

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Martin D. Asleson, as Conservator
of Linda Christine Miller

Case No. _____

Plaintiff,

vs.

COMPLAINT

JURY TRIAL DEMANDED

Markon Cooperative, Inc., and
Reinhart Foodservice L.L.C.,

Defendants.

COMES NOW, the Plaintiff, Martin D. Asleson, Conservator of Linda Christine Miller a/k/a Linda C. Miller, by and through his attorneys of record, complaining of the Defendants, Reinhart Foodservices L.L.C. and Markon Cooperative, Inc., and alleges and states as follows:

PARTIES

1. Plaintiff, Martin D. Asleson, is the Court appointed Conservator of Linda Christine Miller. Mr. Asleson and Ms. Miller, at all times relevant to this action, resided in Minneapolis, Hennepin County, Minnesota. Plaintiff is, therefore, a citizen of the State of Minnesota.

2. The Defendant Reinhart Foodservices, L.L.C., is a foreign L.L.C., incorporated under the laws of Delaware, with its principle offices located at 6250 N. River Road, #9000, Rosemont, Illinois. The sole member of Reinhart Foodservices is Reinhart Management, L.L.C, a Delaware Corporation with its principle offices in

Rosemont, Illinois. Christopher J. Reyes and Jude M. Reyes are the sole managers of Reinhart Management, L.L.C., and reside in West Palm Beach, Florida. Therefore, Reinhart Foodservices, L.L.C., is a Citizen of the States of Delaware, Illinois, and Florida for diversity jurisdiction purposes.

3. Defendant Reinhart Foodservices L.L.C., at all times relevant to this action, was a food service company that manufactured and delivered meat, seafood, produce, dairy, coffee, dry groceries, china, utensils, disposables and foodservice equipment products within the States of Georgia, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Tennessee, Vermont, Virginia, and Wisconsin. Defendant Reinhart Foodservices L.L.C. also has a location in the state of Minnesota, from which it manufactured and distributed the *E. coli*-contaminated romaine lettuce products that were the source of Ms. Miller's injuries, described below.

4. At all times relevant to this action, Defendant Markon Cooperative, Inc. was a corporation organized and existing under the laws of the State of California, with its principal offices located at 1023 South Main Street, Salinas, California. Defendant Markon Cooperative, Inc. is a citizen of the State of California.

5. Defendant Markon Cooperative, Inc., at all times relevant, procured, processed, and distributed fresh produce products to foodservice customers nationally. Markon Cooperative, Inc. procured, processed, and distributed to Defendant Reinhart Foodservices L.L.C. the *E. coli*-contaminated romaine lettuce products that were the source of Ms. Miller's injuries, described below.

JURISDICTION & VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is between citizens of different states. and because the Defendants have certain minimum contacts with the State of Minnesota such that maintenance of the suit in this District does not offend traditional notions of fair play and substantial justice.

7. Venue in the United States District Court for the District of Minnesota is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to Ms. Miller's claims and causes action occurred in this judicial district, and because Defendants were subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

FACTS

The 2018 Romaine Lettuce *E. coli* O157:H7 Outbreak

8. As of June 28, 2018, at least 210 people in 36 states were sickened in an outbreak of *E. coli* O157:H7 linked to romaine lettuce grown in the Yuma, Arizona region. Illnesses also occurred in Canada, and are not included in this count.

6. Illnesses started on dates ranging from March 13, 2018 to June 6, 2018. Ill people range in age from 1 to 88 years, with a median age of 28. Sixty-seven percent of ill people are female. Of 201 people with information available, 96 (48%) have been hospitalized, including 27 people who developed hemolytic uremic syndrome, a type of kidney failure. At least five victims died from their *E. coli* O157:H7 infections.

7. Epidemiologic, laboratory, and traceback evidence—generated during a large multi-agency investigation that included Centers for Disease Control and Prevention, Food and Drug Administration, and officials from the Minnesota Department of Health and other state and local public health agencies—indicated that romaine lettuce from the Yuma growing region was the likely source of this outbreak.

8. In interviews, ill people answered questions about the foods they ate and other exposures they had before they became ill. Of the 166 people interviewed, 145 (87%) reported eating romaine lettuce in the week before their illness started. This percentage was significantly higher than results from a survey of healthy people in which 46% reported eating romaine lettuce in the week before they were interviewed. Some people who became sick in this outbreak did not report eating romaine lettuce, but had close contact with someone else who got sick from eating romaine lettuce.

9. The FDA and state and local regulatory officials traced the romaine lettuce to many farms in the Yuma growing region. The FDA, along with CDC and state partners, started an environmental assessment in the Yuma growing region and collected samples of water, soil, and manure. CDC laboratory testing identified the outbreak strain of *E. coli* O157:H7 in water samples taken from a canal in the Yuma growing region. Whole genome sequencing analysis showed that the *E. coli* O157:H7 found in the canal water is closely related genetically to the *E. coli* O157:H7 from ill people. Laboratory testing for other environmental samples is continuing. FDA is continuing to investigate to learn more about how the *E. coli* bacteria could have entered the water and ways this water could have contaminated romaine lettuce in the region.

***E. coli* O157:H7 and Hemolytic Uremic Syndrome**

10. *Escherichia coli* is the name of a common family of bacteria, most members of which do not cause human disease. *E. coli* O157:H7 is a specific member of this family that can cause bloody diarrhea (hemorrhagic colitis) in humans. In the years since *E. coli* O157:H7 was first identified as a cause of diarrhea, this bacterium has established a reputation as a significant public health hazard.

11. *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli* O157:H7 is also notable among pathogenic bacteria for its extremely low infectious dose—that is, the number of bacteria necessary to induce infection in a person. While for most pathogenic bacteria it takes literally millions of bacterial colonies to cause illness, it is now known that fewer than 50 *E. coli* O157:H7 bacteria can cause illness in a child. The practical import is that even a microscopic amount of exposure can trigger a devastating infection.

12. The most severe cases of the *E. coli* O157:H7 infection occur in young children and in the elderly, presumably because the immune systems in those age populations are the most vulnerable. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attach to the inside surface of the large intestine and initiates an inflammatory reaction of the intestine. What ultimately results is the painful bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

13. The mean incubation period (time from ingestion to the onset of symptoms) of *E. coli* O157:H7 is estimated to be two to four days (range, 1-21 days). Typically, a patient with an acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody

diarrhea, and vomiting. The duration of diarrhea in children with *E. coli* O157:H7 infections are significantly longer than that of adults.

14. *E. coli* O157:H7 can produce a wide spectrum of disease from mild, non-bloody diarrhea, to severe bloody diarrhea accompanied by excruciating abdominal pain to life-threatening complications. In most infected individuals, the intestinal illness lasts about a week and resolves without any long-term effects. Antibiotics do not appear to aid in combating these infections, and recent medical studies suggest that antibiotics are contraindicated for their risk of provoking more serious complications. Apart from good supportive care, which should include close attention to hydration and nutrition, there is no specific therapy.

15. About 10% of individuals with *E. coli* O157:H7 infections (mostly young children) go on to develop hemolytic uremic syndrome (HUS), a severe, potentially life-threatening complication. The essence of the syndrome is described by its three central features: destruction of red blood cells, destruction of platelets (those blood cells responsible for clotting), and acute renal failure due to the formation of micro-thrombi that occlude microscopic blood vessels that make up the filtering units within the kidneys.

16. There is no known therapy to halt the progression of HUS. The active stage of the disease usually lasts one to two weeks, during which a variety of complications are possible. HUS is a frightening illness that even in the best American medical facilities has a mortality rate of about 5%. The majority of HUS patients require transfusion of blood products and develop complications common to the critically ill.

Ms. Miller's *E. coli* O157:H7 infection

17. Prior to her *E. coli* O157:H7 infection, Linda Miller lived at Andrew Residence, located at 1215 South 9th St, Minneapolis, MN 55404, which is a facility specializing in long-term care, treatment, and rehabilitation services for adults experiencing mental illness.

18. Defendant Reinhart is a distributor of food products to foodservice locations, including chopped romaine lettuce products manufactured by Defendant Markon. At all relevant times, Defendant Markon sourced romaine lettuce from the Yuma, Arizona growing region. Defendant Markon processed whole heads of romaine lettuce into a chopped romaine lettuce product that it distributed in cases consisting of six two-pound bags.

19. In the weeks leading up to Linda Miller's *E. coli* O157:H7 infection, Defendant Markon processed romaine lettuce products and distributed them to Defendant Reinhart under the brand name "Markon." These products contained romaine lettuce from the Yuma, Arizona growing region.

20. In the weeks leading up to Ms. Miller's *E. coli* O157:H7 infection, Defendant Reinhart distributed contaminated "Markon" brand chopped romaine lettuce products to Andrew Residence, where Ms. Miller consumed them. Defendant Reinhart was the only supplier of romaine lettuce to Andrew Residence during this time period.

21. On or about April 28, 2018, Ms. Miller experienced the onset of severe gastrointestinal symptoms, including nausea, vomiting, diarrhea, bloody diarrhea, stomach cramps, muscle aches, and fatigue. She quickly became severely ill, and was hospitalized

at Abbot Northwestern Hospital. She developed hemolytic uremic syndrome with central nervous system involvement, resulting in seizures and other neurological injury. She required intubation to be able to breathe, and a feeding tube. Ms. Miller would remain hospitalized for approximately six weeks at Abbot Northwestern Hospital, during which time a stool sample tested positive for *E. coli* O157:H7 matching the strain involved in the subject outbreak.

22. On or about June 13, 2018, Ms. Miller was admitted to the Ebenezer Care Center in Minneapolis for further care. Ms. Miller continues to struggle from the neurological and other injury associated with her *E. coli* O157:H7-induced HUS illness.

COUNT I—STRICT PRODUCT LIABILITY

20. Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs was set forth here in its entirety.

21. The Defendants were, at all times relevant hereto, the manufacturers, distributors and/or sellers of the adulterated food product that is the subject of this action.

22. The adulterated food product that the Defendants manufactured, distributed, and/or sold was, at the time it left the Defendants' control, defective and unreasonably dangerous for its ordinary and expected use because it contained *E. coli*, a harmful pathogen.

23. The adulterated food product that the Defendants manufactured, distributed, and/or sold was delivered to Andrew Residence without any change in its defective condition. The adulterated food product that the Defendants manufactured, distributed,

and/or sold was used in the manner expected and intended, and was consumed by Ms. Miller.

24. The Defendants owed a duty of care to Ms. Miller to design, manufacture, and/or sell food that was not adulterated, that was fit for human consumption, that was reasonably safe in construction, and that was free of pathogenic bacteria or other substances injurious to human health. The Defendants breached this duty.

25. The Defendants owned a duty of care to Ms. Miller to design, prepare, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable consumer. The Defendants breached this duty.

26. As a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the Defendants manufactured, distributed, and/or sold, Ms. Miller suffered injury and damages in an amount to be determined at trial.

COUNT II--NEGLIGENCE

27. Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs was set forth here in its entirety.

28. The Defendants designed, manufactured, distributed, and sold food products that were contaminated with *E. coli*, a harmful pathogen.

29. The Defendants owed a duty to all persons who consumed their products, including Ms. Miller, to use reasonable care in the manufacture, distribution, and sale of food products, the observation of which duty would have prevented or eliminated the

risk that the Defendants' food products would be contaminated with harmful pathogens, like *E. coli*. Defendants breached this duty.

30. The Defendants had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of their food products. The Defendants' manufacture, distribution, and sale of the *E. coli*-contaminated food products that caused Ms. Miller's injuries was in breach of the duties imposed upon Defendants under said statutory and regulatory provisions.

31. Ms. Miller was among the class of persons designed to be protected by these statutes and regulations pertaining to the manufacture, distribution, storage, and sale of similar food products. As a result, the Defendants' actions in manufacturing, distributing, and selling the subject food products constituted negligence *per se*, for which negligence they are liable.

32. The Defendants breached the duties owed to the ultimate consumers of their food products by committing the following acts and omissions of negligence:

- 32.1 Failed to adequately maintain or monitor the sanitary conditions of their products, premises, equipment and employees;
- 32.2 Failed to properly operate their facilities and equipment in a safe, clean, and sanitary manner;
- 32.3 Failed to apply their food safety policies and procedures to ensure the safety and sanitary conditions of their food products, premises, and employees;

- 32.4 Failed to apply food safety policies and procedures that met industry standards for the safe and sanitary production of food products, and the safety and sanitary condition of their premises and employees;
- 32.5 Failed to prevent the transmission of *E. coli* to consumers of their food products;
- 32.6 Failed to properly train their employees and agents how to prevent the transmission of *E. coli* on their premises, from their facility or equipment, or in their food products; and
- 32.7 Failed to properly supervise their employees and agents to prevent the transmission of *E. coli* on their premises, from their facility or equipment, or in their food products;
- 32.8 Failed to exercise reasonable care in the selection, monitoring, and approval of suppliers of romaine lettuce.

33. The Defendants owed a duty to Ms. Miller to use reasonable care in the manufacture, distribution, and sale of their food products, to prevent contamination with *E. coli*. The Defendants breached this duty.

34. Ms. Miller's injuries proximately and directly resulted from the negligence of the Defendants, and from the Defendants' violations of statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of food.

COUNT III—BREACH OF WARRANTY

35. Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

36. The Defendants are liable to Ms. Miller for breaching express and implied warranties that they made regarding the adulterated product that Ms. Miller consumed. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, by offering food products for sale to the general public, the Defendants impliedly warranted that these food products were safe to eat, that they were not adulterated with a harmful pathogen, and that the food products had been safely prepared under sanitary conditions.

37. Ms. Miller alleges that the *E. coli* contaminated food product would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

38. Ms. Miller alleges that the *E. coli* contaminated food product was not fit for the uses and purposes intended, i.e., human consumption, and that this product was therefore in breach of the implied warrant of fitness for its intended use.

39. The Defendants breached the implied warranties with regard to the food products they manufactured and sold to Andrew Residence, and that Ms. Miller consumed, causing Ms. Miller's injuries and losses.

40. Ms. Miller's injuries proximately and directly resulted from the Defendants' breach of implied warranties, and Ms. Miller is thus entitled to recover for

all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

COURT IV-NEGLIGENCE PER SE

41. Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

42. The Defendants had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of their food product, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*), and the Minnesota Food Law (Minn. Stat. § 31.01 *et seq.*)

43. The Defendants failed to comply with the provisions of the health and safety acts identified above, and, as a result, each was negligent *per se* in their manufacture, distribution, and sale of food adulterated with *E. coli*, a harmful pathogen.

44. As a direct and proximate result of conduct by the Defendants that was negligent *per se*, Ms. Miller suffered injury and damages in an amount to be determined at trial.

DAMAGES

45. Ms. Miller has suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions the Defendants, in an amount that shall be fully proven at the time of trial. These damages include but are not limited to: the pecuniary and non-pecuniary losses suffered; pain and suffering, both past and future; loss of enjoyment of life, both past and future; medical and medical related expenses; travel and travel-related expenses; pharmaceutical expenses; and all other

ordinary, incidental, or consequential damages that would or could be reasonably anticipated to arise under the circumstances.

PRAYER FOR RELIEF AND DEMAND FOR JURY TRIAL

WHEREFORE, Ms. Miller prays for judgment against the Defendants as follows:

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by Ms. Miller as a result of the Defendants' conduct;
- B. Ordering statutory prejudgment interest;
- C. Awarding Ms. Miller his reasonable attorney's fees and costs, to the fullest extent allowed by law; and
- D. Granting all such further relief as this Court deems just and equitable.
- E. Ms. Miller demands that the above Complaint and all issues herein be tried by a jury.

Dated: _____

JARDINE, LOGAN & O'BRIEN, P.L.L.P.

By: _____

JOSEPH E. FLYNN (A.R.#165712)

VICKI A. HRUBY (A.R.#0391163)

8519 Eagle Point Boulevard

Lake Elmo, MN 55042-8624

Phone: (651) 290-6500

Fax: (651) 223-5070

E-Mail: JFlynn@jlolaw.com

E-Mail: vhruby@jlolaw.com

AND

By: _____

MARLER CLARK, LLP, PS

R. DREW FALKENSTEIN (WSBA #33401)

1301 Second Avenue, Suite 2800

Seattle, WA 98101

Phone: (206) 346-1888

E-Mail: dfalkenstein@marlerclark.com

(Pro hac Pending)

Attorneys for Plaintiff