

STATE OF NEW YORK
SUPREME COURT COUNTY OF NASSAU

LAUREN COOPER,

Plaintiff,

Index No.:

-vs-

SUMMONS

BRIX ON THE BEACH, LLC, d/b/a BRIXX & BARLEY,


Defendant.

To the above-named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's attorney within twenty (20) days after the service of this Summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: August 13, 2019
Rochester, New York

HEISMAN NUNES & HULL LLP


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SUPREME COURT
STATE OF NEW YORK

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LAUREN COOPER,

Plaintiff,

v.

Index No.:

BRIX ON THE BEACH, LLC, d/b/a BRIXX & BARLEY,

Defendant

**NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Court. This Notice is being served as required by Subdivision (b) (3) of that Section.

The New York Courts Electronic Filing System (NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack computer and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYCEF Resource Center at 646-386-3033 or efil@courts.state.ny.us.

Dated: August 13, 2019
Rochester, New York

HEISMAN NUNES & HULL LLP

s/Paul V. Nunes

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STATE OF NEW YORK
SUPREME COURT COUNTY OF NASSAU

Lauren Cooper,

Plaintiff,

-vs-

Brix on the Beach, LLC, d/b/a Brixx & Barley

Defendant.

COMPLAINT

Index No.:

The Plaintiff, LAUREN COOPER, for a Complaint against the Defendant BRIX ON THE BEACH, LLC, d/b/a Brixx & Barley, a New York limited liability company, who alleges upon information and belief as follows:

I.

THE PARTIES

1. The Plaintiff LAUREN COOPER (hereinafter, “plaintiff”) at all material times is and was a citizen and resident of the City of Long Beach and County of Nassau, State of New York.

2. The Defendant, Brix on the Beach, LLC, d/b/a Brixx & Barley (hereinafter, “defendant”) at all material times owned and operated the restaurant known as Brixx & Barley located at 152 W. Park Ave, Long Beach, New York. The defendant at all material times in the ordinary course of its business manufactured, distributed, prepared, served and sold food to its customers at the above described location, and as such was doing business in Long Beach, New York.

II.

JURISDICTION AND VENUE

3. This court is vested with original jurisdiction over the defendant pursuant to New York CPLR §§ 301, *et seq.* because defendant was doing business within the State of New York.

4. The venue of this action is proper in Nassau County, pursuant to New York CPLR § 503, as the events giving rise to the cause of action occurred in Long Beach, New York.

III.

STATEMENT OF FACTS

5. The plaintiff repeats and realleges all prior paragraphs as if fully set forth herein.

About *Salmonella*

6. *Salmonella* is the second most common intestinal infection in the United States. More than 7,000 cases of *Salmonella* were confirmed in 2009; however, the majority of cases go unreported. The Centers for Disease Control and Prevention estimates that over 1 million people in the U.S. contract *Salmonella* each year, and that an average of 20,000 hospitalizations and almost 400 deaths occur from *Salmonella* poisoning, according to a 2011 report.

7. *Salmonella* infections usually occur when a person eats food contaminated with the feces of animals or humans carrying the bacteria. *Salmonella* outbreaks are commonly associated with eggs, meat, and poultry, but these bacteria can also contaminate other foods such as fruits and vegetables. Foods that are most likely to contain *Salmonella* include raw or undercooked eggs, raw milk, contaminated water, and raw or undercooked meats.

8. Symptoms of *Salmonella* infection, or Salmonellosis, range widely, and are sometimes absent altogether. The most common symptoms include diarrhea, abdominal cramps, and fever.

9. Typical symptoms of *Salmonella* infection appear 6 to 72 hours after eating contaminated food, last for 3 to 7 days without treatment, and usually consist of:

- Diarrhea
- Abdominal Cramps
- Fever of 100 F to 102 F
- Bloody diarrhea
- Vomiting
- Headache
- Body Aches

10. Complications of *Salmonella* poisoning are more likely to occur among young children and people age 65 or older. Possible complications like Reactive Arthritis are thought to occur in 2 to 15 percent of *Salmonella* patients. Symptoms include inflammation of the joints, eyes, or reproductive or urinary organs. On average, symptoms appear 18 days after infection. Irritable Bowel Syndrome can also be a long-term complication.

11. *Salmonella* infections generally last 3 to 7 days, and often do not require treatment. People with severe dehydration may need rehydration through an IV. Antibiotics are recommended for those at risk of invasive disease, including infants under three months old. Typhoid fever is treated with a 14-day course of antibiotics. Unfortunately, treatment of *Salmonella* has become more difficult as it has become more resistant to antibiotics. Finding the right antibiotic for a case of *Salmonella* is crucial to treating this bacterial infection.

The Brixx & Barley Salmonella Outbreak

12. In early August, 2019, the Nassau County Department of Health (“DOH”) shut down the defendant restaurant Brixx & Barley, located at 152 W. Park Ave., as it investigated multiple cases of *Salmonella*.

13. The DOH began its investigation of approximately a dozen cases of *Salmonella* among people who ate food and drank beverages at the Brixx & Barley restaurant after a number of stool samples from Brixx & Barley patrons tested positive for *Salmonella* infection. Potential *Salmonella* exposures at the restaurant may date back to early July.

14. The DOH further stated that the defendant restaurant would remain closed until the source of the *Salmonella* was identified.

The Plaintiff’s Salmonella Illness

15. On July 13, 2019, the plaintiff purchased and consumed food and drink at the defendant’s restaurant known as Brixx & Barley located at 152 W. Park Ave., Long Beach, New York.

16. The plaintiff began experiencing the onset of symptoms on or about July 17, 2017. She initially experienced severe back pain which was later accompanied by diarrhea and vomiting. Her symptoms worsened over the next few days.

17. The plaintiff’s wedding was July 20, 2019. She spent the night before her wedding day suffering from her *Salmonella* symptoms which continued throughout her wedding day. Unfortunately, the plaintiff was so sick that she cannot recall most of July 20, 2019. Due to her worsening physical condition, the plaintiff took only limited bridal party and family photos between repeated trips to the bridal suite restroom. Further, the plaintiff barely made it through

the marriage ceremony and the traditional first dance with her husband before returning to the bridal suite where she remained for the balance of the reception.

18. At approximately 12:15am on her wedding night, the plaintiff was rushed to the emergency room at Soyosset Hospital – Northwell Health, a division of North Shore University Hospital (the “Hospital”) for medical treatment and was later admitted to hospital where she remained from July 21 through July 24, 2019.

19. On or about July 23, 2019, while under the hospital’s care the plaintiff tested positive for *Salmonella*.

20. As of August 12, 2019, the plaintiff continues to recover from her *Salmonella* infection and related injuries.

IV.

FIRST CAUSE OF ACTION **(Breach of Warranties)**

21. The plaintiff repeats and realleges all prior paragraphs as if fully set forth herein.

22. At all material times, the defendant was and is the owner and operator of the restaurant known as Brixx & Barley in Long Beach, New York, the retail food establishment that manufactured, distributed, prepared, served and sold the adulterated food that injured the plaintiff. At all material times, the defendant was and is the manufacturer, distributor, preparer, server, and seller of the adulterated food product, which food product reached its intended consumers (including plaintiff) without substantial change from the condition in which it was sold by the defendant.

23. The defendant is subject to liability to the plaintiff for its breach of express and implied warranties (including the implied warranty of merchantability) made to the plaintiff with respect to the food products sold to defendant’s patrons (including plaintiff). . Specifically, the

defendant expressly warranted, through its distribution and sale of food to the public, and by the statements and conduct of its employees and agents, that the food it manufactured, distributed, prepared, served and sold to its patrons was fit for human consumption, and not otherwise adulterated or injurious to health.

24. The plaintiff alleges that the defendant breached the warranty of merchantability because:

- a. Food sold by the defendant and consumed by the plaintiff, was adulterated with *Salmonella* and related filth and adulteration, and would not pass without exception in the trade, and
- b. The adulterated food manufactured, distributed, prepared, served and sold by the defendant to its patrons and consumed by the plaintiff was not fit for the uses and purposes intended by either the patrons or the defendant, *i.e.*, human consumption.

25. The defendant owed a duty to the plaintiff to manufacture, distribute, prepare, serve and sell only food that was not adulterated, was fit for human consumption, was reasonably safe in construction, and was free of pathogenic bacteria or other substances injurious to human health. The defendant breached this duty.

26. The defendant owed a duty to the plaintiff to manufacture, distribute, prepare, serve and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable and ordinary consumer. The defendant breached this duty.

27. The plaintiff became ill and was diagnosed with *Salmonella* after exposure to food, manufactured, distributed, prepared, served and sold by the defendant, and is thus a person

who the defendant should reasonably have expected to use, consume or be affected by its adulterated food products.

28. Because the food that the plaintiff purchased and consumed was adulterated, not fit for human consumption, not reasonably safe in design and construction, lacked adequate warnings and instructions, and was unsafe to an extent beyond that contemplated by the ordinary consumer, the defendant breached both express and implied warranties, and is liable to the plaintiff for the harm proximately caused to her by its manufacture, distribution, preparation, service and sale of adulterated food products.

V.

SECOND CAUSE OF ACTION (Negligence)

29. The plaintiff repeats and realleges all prior paragraphs as if fully set forth herein.

30. The defendant manufactured, distributed, prepared, served and sold a food product that was adulterated, not fit for human consumption, and not reasonably safe as designed, manufactured, or sold.

31. The defendant was negligent in the manufacture, distribution, preparation, service and sale of a food product that was adulterated with *Salmonella*, not fit for human consumption, and not reasonably safe because adequate warnings or instructions to its patrons were not provided.

32. The defendant had a duty to properly supervise, train, and monitor its employees, or the employees of its agents or subcontractors, engaged in the manufacture, distribution, preparation, service and sale of its food products, to ensure compliance with the defendant's operating standards and to ensure compliance with all applicable health and safety regulations. The defendant failed to properly supervise, train, and monitor its employees engaged in the

manufacture, distribution, preparation, service and sale of the food product the defendant sold to its patrons (including plaintiff), and thus breached that duty.

33. The defendant owed the plaintiff the duty to exercise reasonable care in the manufacture, distribution, preparation, service and sale of its food products, as it was reasonably foreseeable that the defendant's manufacture, distribution, preparation, service and sale of food products adulterated with *Salmonella* would cause injury and harm to all persons exposed to *Salmonella*, including plaintiff. The defendant has breached that duty, and thereby caused injury to the plaintiff

34. The defendant had a duty to comply with all health and safety statutes, laws, regulations, and codes including, but not limited to, the applicable provisions of the Federal Food, Drug and Cosmetic Act and similar New York food and public health safety statutes—such as New York Agriculture and Markets Law §§ 199-a and 200, and 10 N.Y.C.R.R. §§ 14-1.1 and 1.10—all of which prohibit the manufacture and sale of any food that is adulterated, or otherwise injurious to health. The defendant failed to do so and was therefore negligent *per se*.

35. The fact that the plaintiff became infected as a result of the consumption of food products at defendant's restaurant conclusively demonstrates the failure of the defendant to prevent the transmission of *Salmonella* by way of adulterated food products.

36. The defendant's negligent acts and omissions have caused the plaintiff physical injury, emotional distress, reasonable fear of injuries and harm, and related general and special damages.

VI.**THIRD CAUSE OF ACTION**
(Strict Liability)

37. The plaintiff repeats and realleges all prior paragraphs as if fully set forth herein.

38. The defendant manufactured, distributed, prepared, served and sold a *Salmonella*-adulterated food product that was the cause of the plaintiff's confirmed *Salmonella* illness, thus, the defendant is strictly liable for the plaintiff's injuries.

39. The products that the defendant manufactured, distributed, prepared, served and sold were, at the time of manufacture, distribution, or sale, in a condition that a consumer would not reasonably contemplate (i.e. *Salmonella*-adulterated) and were in a condition that rendered the products unreasonably dangerous for their ordinary and expected use.

40. The products that the defendant manufactured, distributed, prepared, served and sold, and that the plaintiff purchased and consumed, as described previously, were expected to reach consumers (including the plaintiff), and be consumed by them, without substantial change. The plaintiff used the product in the manner expected and intended, e.g. consumption.

41. The plaintiff suffered the injuries alleged in this complaint as a direct and proximate result of the adulterated, defective food products that the defendant manufactured, distributed, prepared, served and sold.

VII.**DAMAGES**

42. The plaintiff has suffered general and special, incidental and consequential damages as the direct and proximate result of the acts and omissions of the defendant, which damages shall be fully proven at the time of trial. These damages include, but are not limited to: damages for wage loss; medical and medical related expenses; wedding costs and other related

expenses; travel and travel-related expenses; pain and suffering; emotional distress, fear of harm and humiliation; physical pain; physical injury; and all other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

VIII.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for the following relief:

- 1) That the court award the plaintiff judgment against the defendant for such sums as shall be determined to fully and fairly compensate her for all pain and suffering, general, special, incidental and consequential damages respectively incurred by her as the direct and proximate result of the acts and omissions of the defendant;
- 2) That the court award the plaintiff her respective costs, disbursements and reasonable attorneys' fees incurred;
- 3) That the court award the plaintiff the opportunity to amend or modify the provisions of this complaint as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served; and
- 4) That the court award such other and further relief as it deems necessary, just and proper.

Dated: August 13, 2019
Rochester, New York

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