

FILED by Arlington County Circuit Court

10/03/2019 05:56:18 PM

VIRGINIA:**IN THE CIRCUIT COURT OF ARLINGTON**

GOLBAHAR JALALI-JAFARI :

880 N Pollard St, Unit #621 :

Arlington, VA 22203 :

Plaintiff, :

v. : **Case No.** CL19-3059

MOBY DICK VII, INC. :

3000 Washington Blvd. :

Arlington, VA 22201 :

SERVE: Hamid R. Khanahmadirizi :

8500 Leesburg Pike, #207 :

Vienna, VA 22182 :

Defendant. :

COMPLAINT FOR DAMAGES

COMES NOW the Plaintiff, Golbahar Jalali-Jafari, by and through her undersigned counsel of record, Christopher J. Regan, Salvatore J. Zambri (*pro hac vice* admission pending) of Regan Zambri Long PLLC in association with William D. Marler of Marler Clark, LLP, PS (*pro hac vice* admission pending), and respectfully moves for judgment against Defendant Moby Dick VII, Inc., on the grounds and in the amount set forth below.

JURISDICTION AND VENUE

1. This cause of action arises under the common law of Virginia; therefore, jurisdiction is appropriate in this Court.

2. Pursuant to Virginia Code Section 8.01-262, venue is proper in this Court because the cause of action arose in Arlington County.

PARTIES

3. Plaintiff, Golbahar Jalali-Jafari, is and was at all times relevant herein a citizen of the Commonwealth of Virginia.

4. Upon information and belief, Defendant Moby Dick VII, Inc., is a Virginia corporation located and regularly conducting business in the Commonwealth of Virginia through its restaurant, Moby Dick House of Kabob, located at 3000 Washington Blvd., Arlington, VA, 22201.

FACTS

The Outbreak

5. On September 26, 2019, the Maryland Department of Health (MDH) announced that it was investigating a cluster of *Salmonella* infections in individuals who all reported eating at Moby Dick House of Kabob restaurant, which has multiple locations in Maryland, Virginia, and District of Columbia.

6. Since September 10, 2019, nine (9) confirmed cases have been reported in Maryland. The exact cause of the infections has not yet been determined and the investigation is ongoing, but eight of the nine cases reported consuming Moby Dick House of Kabob hummus.

7. In addition to the confirmed cases in Maryland, the Virginia Health Department is investigating at least eight separately confirmed or probable cases of *Salmonella* infections associated with Moby Dick House of Kabob.

8. Moby Dick House of Kabob has voluntarily suspended sale of its hummus products for the time being, and health authorities are recommending that consumers discard hummus purchased from any Moby Dick House of Kabob location.

The *Salmonella* bacteria

9. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of humans and other animals. *Salmonella* bacteria are usually transmitted to humans by eating foods contaminated with human or animal feces. Contaminated foods usually look and smell normal. Contaminated foods are often of animal origin, but all foods, including vegetables, may become contaminated. An infected food handler who neglects to wash his or her hands with soap and warm water after using the bathroom may also contaminate food.

10. Once in the lumen of the small intestine, the bacteria penetrate the epithelium, multiply, and enter the blood within 6-72 hours. As few as 15-20 cells of *Salmonella* bacteria can cause salmonellosis or a more serious typhoid-like fever. Variables, such as the health and age of the host and virulence differences among the serotypes, affect the nature and extent of the illness. Infants, elderly, hospitalized, and immune suppressed persons are the populations that are most susceptible to disease and suffer the most severe symptoms.

11. The acute symptoms of *Salmonella* gastroenteritis include the sudden onset of nausea, abdominal cramping, and diarrhea lasting several days. The diarrhea often turns bloody. There is no real cure for *Salmonella* infection, except treatment of the symptoms. Persons with severe diarrhea may require rehydration, often with intravenous fluids.

12. Persons with diarrhea usually recover completely, although it may be several months before bowel habits return entirely to normal. A small number of persons who are infected with *Salmonella* will go on to develop pains in their joints, irritation of the eyes, and painful urination. This development is called Reiter's syndrome or reactive arthritis, and it can last for months or years, sometimes leading to chronic arthritis that is difficult to treat. Antibiotic treatment does not make a difference in whether the person later develops arthritis.

Plaintiff's *Salmonella* Infection

13. On September 8, 2019, Plaintiff consumed hummus from Defendant Moby Dick's restaurant at a friend's baby shower.

14. Plaintiff started developing symptoms of fatigue the next day, September 9, which progressed to severe diarrhea and abdominal pain on September 10.

15. Plaintiff's symptoms continued to worsen, and she sought medical care on September 12 at Kaiser Permanente Tysons Corner.

16. Several of Plaintiff's friends who also attended the baby shower and consumed the hummus product submitted stool samples that tested positive for

Salmonella, although Plaintiff's stool sample tested negative.

17. Plaintiff continues to suffer significant symptoms related to her *Salmonella* infection, such as diarrhea and fatigue.

COUNT I
(Negligence, Negligence *Per Se*)

18. Plaintiff incorporates by reference the foregoing paragraphs.

19. At all relevant times, Defendant was engaged in the business of manufacturing and selling food products to the general public.

20. At all times relevant to this action, Defendant, in its manufacturing and sale operations, had a duty to comply with the federal and Virginia laws and regulations prohibiting the manufacture and sale of adulterated food, including, without limitation, the provisions of Virginia statutes Title, 3.2, Subtitle IV, Chapter 51, Article 3.

21. With reference to duties identified in the preceding paragraph, Defendant did not comply with such duties in its manufacture and sale of the *Salmonella*-contaminated hummus food product that ultimately caused Plaintiff's illness.

22. Under Virginia law, Defendant's failure to comply with legislative or administrative regulations may be evidence of negligence.

23. Plaintiff is among the specific class of persons designed to be protected by the statutory and regulatory provisions cited above, pertaining to the manufacture and sale of food products by Defendant.

24. When an injury-causing aspect of the product was not, at the time of manufacture and sale in compliance with specific mandatory government specifications,

it is evidence that the manufacturer breached its duty of reasonable care and is negligent *per se*.

25. Defendant owed a duty to Plaintiff and other consumers to use supplies and raw materials that complied with federal, state, and local food laws, ordinances, and regulations; that were from safe and reliable sources; that were clean, wholesome, and free from adulteration; and that were safe for human consumption and for their intended purposes. Defendant breached this duty.

26. Defendant owed a duty to Plaintiff and other consumers to use reasonable care in the selection, supervision, and monitoring of its employees, suppliers, or other subcontractors. Defendant breached this duty.

27. Plaintiff's injuries were the direct and proximate result of the negligence of Defendant in wrongfully manufacturing and selling these food products.

28. Defendant owed a duty to Plaintiff and other consumers to use reasonable care in the handling, manufacture, storage, and sale of its hummus food product in order to keep it free of contamination with *Salmonella*. Defendant breached this duty.

29. At all relevant times, the food product that Defendant manufactured were adulterated with *Salmonella* and was poisonous to Plaintiff.

30. Virginia Code § 3.2-5126 prohibits the manufacture, sale, delivery, and offering or sale of adulterated food.

31. Virginia Code § 3.2-5126 prohibits the giving of a guaranty or undertaking concerning a food, which guaranty or undertaking is false.

32. Plaintiff is a member of the class of people for whose protection Virginia Code § 3.2-5126 and Title 3.2, Chapter 31, Article 3 of the Virginia Code were enacted.

33. The aforesaid violations of Virginia Code § 3.2-5126 constitute negligence *per se*.

34. As a direct and proximate result of the aforesaid violations, acts, and/or omissions, Plaintiff was caused serious harm.

35. As a direct and proximate result of Defendant's negligence, Plaintiff was caused to suffer serious injuries; has suffered bodily pain and mental anguish; has suffered, and will suffer in the future, pain of body and mind; has incurred, and will incur in the future, medical and related expenses; has suffered, and will suffer in the future, wage losses; and has suffered, and may suffer in the future, other economic and non-economic damages.

COUNT II
(Breach of Implied Warranty of Fitness and Wholesomeness)

36. Plaintiff incorporates by reference the foregoing paragraphs.

37. Under Virginia Code § 8.2-315, where a seller at the time of contracting has reason to know any particular purpose for which the goods are required and the buyer is relying on the seller's skill or judgment to furnish suitable goods, there is an implied warranty that the goods—in this case food—shall be fit for such purpose.

38. At the time of sale, a merchant of food for human consumption impliedly warrants that the food is wholesome.

39. Defendant was a merchant of food product.

40. Because it was contaminated with *Salmonella*, the food product that Defendant manufactured and sold was not wholesome or fit for Plaintiff's consumption.

41. In selling, distributing, and supplying the contaminated food product, Defendant breached the implied warranties as described above.

42. As a direct and proximate result of the breach of implied warranties by Defendant, Plaintiff was caused to suffer serious injuries; has suffered bodily pain and mental distress; has suffered, and will suffer in the future, pain of body and mind; has incurred, and will incur in the future, medical and related expenses; has sustained, and will sustain in the future, lost wages; and has suffered, and may suffer in the future, other economic and non-economic damages.

COUNT III
(Implied Warranty of Merchantability)

43. Plaintiff incorporates by reference the foregoing paragraphs.

44. Under Virginia Code § 8.2-314, a merchant that sells goods impliedly warrants that the goods are merchantable; *i.e.*, that the goods will pass without objection in the trade under the contract description; that the goods are fit for the ordinary purposes for which such goods are used; and that the goods are adequately contained, packaged, and labeled as the agreement requires.

45. Because it contained *Salmonella*, the food product that Defendant manufactured and sold was objectionable.

46. In manufacturing and selling the contaminated food product, Defendant breached the implied warranties as described above.

47. As a direct and proximate result of the breach of implied warranties by Defendant, Plaintiff was caused to suffer serious injuries; has suffered bodily pain and mental anguish; has suffered, and will suffer in the future, pain of body and mind; has incurred, and will incur in the future, medical and related expenses; has sustained, and will sustain in the future, lost wages; and has suffered, and may suffer in the future, other economic and non-economic damages.

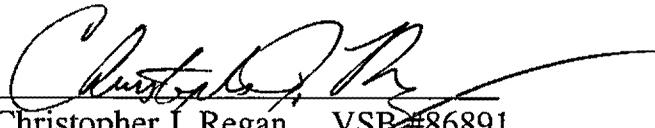
WHEREFORE, Plaintiff, Golbahar Jalali-Jafari, demands judgment against Defendant, Moby Dick VII, Inc., in the full and just amount of Five Hundred Thousand Dollars (\$500,000.00), plus interest from the date of injury and costs.

TRIAL BY JURY IS DEMANDED.

GOLBAHAR JALALI-JAFARI
By Counsel

Respectfully submitted,

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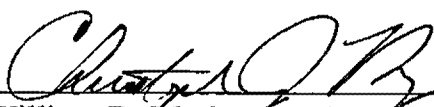
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COVER SHEET FOR FILING CIVIL ACTIONS
 COMMONWEALTH OF VIRGINIA

 Case No. **CL19-3059**
 (CLERK'S OFFICE USE ONLY)

Arlington County

Circuit Court

Golbahar Jalali-Jafari

v./In re:

Moby Dick VII, Inc.

PLAINTIFF(S)

DEFENDANT(S)

I, the undersigned ☐ plaintiff ☐ defendant ☒ attorney for ☒ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL**Subsequent Actions**

- ☐ Claim Impleading Third Party Defendant
☐ Monetary Damages
☐ No Monetary Damages
☐ Counterclaim
☐ Monetary Damages
☐ No Monetary Damages
☐ Cross Claim
☐ Interpleader
☐ Reinstatement (other than divorce or driving privileges)
☐ Removal of Case to Federal Court

Business & Contract

- ☐ Attachment
☐ Confessed Judgment
☐ Contract Action
☐ Contract Specific Performance
☐ Detinue
☐ Garnishment

Property

- ☐ Annexation
☐ Condemnation
☐ Ejectment
☐ Encumber/Sell Real Estate
☐ Enforce Vendor's Lien
☐ Escheatment
☐ Establish Boundaries
☐ Landlord/Tenant
☐ Unlawful Detainer
☐ Mechanics Lien
☐ Partition
☐ Quiet Title
☐ Termination of Mineral Rights

Tort

- ☐ Asbestos Litigation
☐ Compromise Settlement
☐ Intentional Tort
☐ Medical Malpractice
☐ Motor Vehicle Tort
☒ Product Liability
☐ Wrongful Death
☐ Other General Tort Liability

ADMINISTRATIVE LAW

- ☐ Appeal/Judicial Review of Decision of (select one)
☐ ABC Board
☐ Board of Zoning
☐ Compensation Board
☐ DMV License Suspension
☐ Employee Grievance Decision
☐ Employment Commission
☐ Local Government
☐ Marine Resources Commission
☐ School Board
☐ Voter Registration
☐ Other Administrative Appeal

DOMESTIC/FAMILY

- ☐ Adoption
☐ Adoption -- Foreign
☐ Adult Protection
☐ Annulment
☐ Annulment -- Counterclaim/Responsive Pleading
☐ Child Abuse and Neglect -- Unfounded Complaint
☐ Civil Contempt
☐ Divorce (select one)
☐ Complaint -- Contested*
☐ Complaint -- Uncontested*
☐ Counterclaim/Responsive Pleading
☐ Reinstatement -- Custody/Visitation/Support/Equitable Distribution
☐ Separate Maintenance
☐ Separate Maintenance Counterclaim

WRITS

- ☐ Certiorari
☐ Habeas Corpus
☐ Mandamus
☐ Prohibition
☐ Quo Warranto

PROBATE/WILLS AND TRUSTS

- ☐ Accounting
☐ Aid and Guidance
☐ Appointment (select one)
☐ Guardian/Conservator
☐ Standby Guardian/Conservator
☐ Custodian/Successor Custodian (UTMA)
☐ Trust (select one)
☐ Impress/Declare/Create
☐ Reformation
☐ Will (select one)
☐ Construe
☐ Contested

MISCELLANEOUS

- ☐ Amend Death Certificate
☐ Appointment (select one)
☐ Church Trustee
☐ Conservator of Peace
☐ Marriage Celebrant
☐ Approval of Transfer of Structured Settlement
☐ Bond Forfeiture Appeal
☐ Declaratory Judgment
☐ Declare Death
☐ Driving Privileges (select one)
☐ Reinstatement pursuant to § 46.2-427
☐ Restoration -- Habitual Offender or 3rd Offense
☐ Expungement
☐ Firearms Rights -- Restoration
☐ Forfeiture of Property or Money
☐ Freedom of Information
☐ Injunction
☐ Interdiction
☐ Interrogatory
☐ Judgment Lien-Bill to Enforce
☐ Law Enforcement/Public Official Petition
☐ Name Change
☐ Referendum Elections
☐ Sever Order
☐ Taxes (select one)
☐ Correct Erroneous State/Local
☐ Delinquent
☐ Vehicle Confiscation
☐ Voting Rights -- Restoration
☐ Other (please specify)

☒ Damages in the amount of \$ 500,000.00 are claimed.

10/03/2019

DATE

Christopher J. Regan, Esq.

PRINT NAME

1919 M Street NW, Suite 350, Washington, DC 20036

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

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cregan@reganfirm.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

**Civil Action Type Codes
(Clerk's Office Use Only)**

Accounting ACCT
Adoption ADOP
Adoption – Foreign FORA
Adult Protection PROT
Aid and Guidance AID
Amend Death Certificate ADC
Annexation ANEX
Annulment ANUL
Annulment – Counterclaim/Responsive Pleading... ACRP
Appeal/Judicial Review
 ABC Board ABC
 Board of Zoning ZONE
 Compensation Board ACOM
 DMV License Suspension JR
 Employment Commission EMP
 Employment Grievance Decision GRV
 Local Government GOVT
 Marine Resources MAR
 School Board JR
 Voter Registration AVOT
 Other Administrative Appeal AAPL
Appointment
 Conservator of Peace COP
 Church Trustee AOCT
 Custodian/Successor Custodian (UTMA) UTMA
 Guardian/Conservator APPT
 Marriage Celebrant ROMC
 Standby Guardian/Conservator STND
Approval of Transfer of Structured Settlement SS
Asbestos Litigation AL
Attachment ATT
Bond Forfeiture Appeal BFA
Child Abuse and Neglect – Unfounded Complaint ..CAN
Civil Contempt CCON
Claim Impleading Third Party Defendant –
 Monetary Damages/No Monetary Damages CTP
Complaint – (Miscellaneous) COM
Compromise Settlement COMP
Condemnation COND
Confessed Judgment CJ
Contract Action CNTR
Contract Specific Performance PERF
Counterclaim – Monetary Damages/No Monetary
 Damages CC
Cross Claim CROS
Declaratory Judgment DECL
Declare Death DDTH
Detinue DET
Divorce
 Complaint – Contested/Uncontested DIV
 Counterclaim/Responsive Pleading DCRP
 Reinstatement – Custody/Visitation/Support/
 Equitable Distribution CVS
Driving Privileges
 Reinstatement pursuant to § 46.2-427 DRIV
 Restoration – Habitual Offender or
 3rd Offense REST

Ejectment EJET
Encumber/Sell Real Estate RE
Enforce Vendor's Lien VEND
Escheatment ESC
Establish Boundaries ESTB
Expungement XPUN
Forfeiture of Property or Money FORF
Freedom of Information FOI
Garnishment GARN
Injunction INJ
Intentional Tort ITOR
Interdiction INTD
Interpleader INTP
Interrogatory INTR
Judgment Lien – Bill to Enforce LIEN
Landlord/Tenant LT
Law Enforcement/Public Official Petition LEP
Mechanics Lien MECH
Medical Malpractice MED
Motor Vehicle Tort MV
Name Change NC
Other General Tort Liability GTOR
Partition PART
Permit, Unconstitutional Grant/Denial by Locality LUC
Petition – (Miscellaneous) PET
Product Liability PROD
Quiet Title QT
Referendum Elections ELEC
Reinstatement (Other than divorce or driving
 privileges) REIN
Removal of Case to Federal Court REM
Restore Firearms Rights – Felony RFRF
Restore Firearms Rights – Review RFRR
Separate Maintenance SEP
Separate Maintenance – Counterclaim/Responsive
 Pleading SCRPP
Sever Order SEVR
Taxes
 Correct Erroneous State/Local CTAX
 Delinquent DTAX
Termination of Mineral Rights MIN
Trust – Impress/Declare/Create TRST
Trust – Reformation REFT
Uniform Foreign Country Money Judgments RFCJ
Unlawful Detainer UD
Vehicle Confiscation VEH
Voting Rights – Restoration VOTE
Will Construction CNST
Will Contested WILL
Writs
 Certiorari WC
 Habeas Corpus WHC
 Mandamus WM
 Prohibition WP
 Quo Warranto WQW
Wrongful Death WD