

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

| | | |
|-------------------------------------|---|-------------------------------|
| ED YUSEN, an Individual, |) | NO. |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | COMPLAINT FOR PERSONAL |
| |) | INJURY AND DAMAGES |
| SEATTLE CHAR, LLC., d/b/a The Habit |) | |
| Burger Grill |) | |
| |) | |
| |) | |
| Defendant. |) | |

COMES NOW the plaintiff, ED YUSEN, by and through his attorneys of record, the MARLER CLARK law firm, and alleges as follows:

I. PARTIES AND JURISDICTION

1.1 The plaintiff, ED YUSEN (“the plaintiff”), resides in King County, Washington.

1.2 The defendant, SEATTLE CHAR, LLC (“the defendant”), at all material times owned and operated the restaurant known as “The Habit Burger Grill” (hereinafter “Habit”) located at 1253 N. 205th St., Shoreline, Washington. The defendant at all times material hereto was carrying on in the ordinary course of its business at this location the manufacture, preparation, service, and sale of

1 food to customers. As such, the defendant was doing business in Shoreline, King County,
2 Washington.

3 1.3 This court has jurisdiction, and venue is proper, because the incident complained of
4 herein occurred in King County, Washington, and because the defendant at all times relevant was
5 doing business within the state of Washington.

6 **II. FACTS**

7 **The Outbreak**

8 2.1 The Defendant owns and operates the restaurant called Habit in Shoreline,
9 Washington, located at 1253 N. 205th Street.

10 2.2 As of June 3, Seattle and King County were investigating an outbreak of norovirus-
11 like illnesses with vomiting, diarrhea, body aches, and chills. The illnesses were associated with
12 Habit Burger Grill in Shoreline, Washington.

13 2.3 There are 23 reported cases as of June 3, 2021, from six unrelated meal parties. The
14 people who reported being ill had eaten at Habit between May 21-24. No ill employees have been
15 identified.

16 2.4 The restaurant was required to conduct a thorough cleaning and disinfection before
17 it was re-visited by investigators on May 28. They conducted onsite food safety and employee
18 illness training with staff and reinforced cleaning, disinfection, handwashing, and no bare hand
19 contact with ready to eat food. Health investigators intend to return to Habit again within two
20 weeks' time to ensure compliance.

21 ///

1 **The Norovirus:**

2 2.6 Norovirus is a member of the family Caliciviridae, a family that consists of several
3 distinct groups of viruses. Each such group was named after the places where the outbreaks first
4 occurred.

5 2.7 Humans are the only host of norovirus, which has several mechanisms that allow it
6 to spread quickly and easily. Norovirus infects humans through person-to-person transmission or
7 through contamination of food or water. In addition, Norovirus is able to survive a wide range of
8 temperatures and has evolved to avoid the immune system, which results in outbreaks.

9 2.8 Norovirus illness usually develops 24-to-48 hours after ingestion. Symptoms
10 include nausea, vomiting, diarrhea, and abdominal pain, headache and low-grade fever. And
11 although symptoms usually last only one-to-two days in most healthy individuals, Norovirus
12 infections can become quite serious in children and the elderly, and those who are immune-
13 compromised.

14 2.9 There is no specific treatment available for Norovirus. In most healthy people, the
15 illness is self-limiting and resolves without the need for medical treatment. For infants, children,
16 elderly, and immune-compromised populations, infections can lead to severe complications,
17 including death.

18 **Ed Yusen's Norovirus Infection:**

19 2.10 On May 25, Ed Yusen went to the Habit restaurant in Shoreline, Washington with a
20 friend for lunch. He ordered the #1 Charburger with fries and a drink.

21

1 that conformed to their implied warranties, as defined by RCW Ch. 62A, including, but not limited
2 to, the implied warranty that defendant's food was fit for human consumption.

3 3.4 The food manufactured and sold by the defendant that caused plaintiff's *Norovirus*
4 infection, and all associated legal injuries, was not reasonably safe in construction, and did not
5 conform to defendant's implied warranties, because it was contaminated and adulterated with, among
6 other things, *Norovirus*.

7 3.5 Because the defendant's food was not reasonably safe in construction, and did not
8 conform to defendant's implied warranties, the defendant is strictly liable to the plaintiff for the harm
9 proximately caused by the contaminated food.

10 **IV. SECOND CAUSE OF ACTION**

11 **NEGLIGENCE**

12 4.1 The defendant manufactured, distributed and sold a product that was not reasonably
13 safe as designed or manufactured, within the meaning of the WPLA, RCW 7.72.030(1).

14 4.2 The defendant was negligent in manufacturing, distributing, and selling a product that
15 was not reasonably safe because adequate warnings or instructions were not provided including, but
16 not limited to, the warning that the food may contain *Norovirus*, and thus should not be provided for
17 the purpose of human consumption.

18 4.3 The defendant had a duty to comply with all statutory and regulatory provisions that
19 pertained or applied to the manufacture, distribution, storage, labeling, and sale of their food products
20 including, but not limited to, the Federal Food, Drug, and Cosmetics Act, which bans the
21 manufacture, sale, and distribution of any "adulterated" food. The defendant breached this duty.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

- 2. For special damages, in amounts to be proven at the time of trial;
- 3. For costs, including their reasonable attorney fees; and
- 4. For such other and further relief as the court deems just and equitable in the circumstances.

The plaintiff further requests 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, and after all appropriate parties have been served.

DATED this 7th day of June 2021.

MARLER CLARK, L.L.P., P.S.



William D. Marler, WSBA #17233
Josh Fensterbush, WSBA #51109
Attorneys for Plaintiff