

COMMONWEALTH OF KENTUCKY
FRANKLIN COUNTY CIRCUIT COURT
CIVIL ACTION NO. _____

JO ANN SMITH and MICHAEL SMITH,)
Husband and wife,)

Plaintiffs,)

vs.)

YUM BRANDS INC., a foreign)
Corporation d/b/a "Taco Bell" at 1590)
Versailles Road, Frankfort, KY)

Defendants)

COMPLAINT AT LAW

COME NOW the plaintiffs JO ANN and MICHAEL SMITH, a married couple, by and through their attorneys of record, MARLER CLARK LLP and FRANK JENKINS LAW OFFICE, and allege and state as follows, for cause of action by Complaint:

I. PARTIES

1.1 Plaintiffs Jo Ann and Michael Smith, at all times relevant hereto, were husband and wife, and residents of Scott County, Kentucky.

1.2 The Defendant YUM BRANDS INC. d/b/a Taco Bell (hereinafter referred to as "Taco Bell"), is a North Carolina corporation with its principal place of business in Kentucky. On information and belief, the defendant Taco Bell owned and operated the Taco Bell restaurant located at 1590 Versailles Road, Frankfort, Franklin County, Kentucky. The defendant Taco Bell, at all times material hereto, was carrying on its ordinary course of business of the

manufacture, preparation, service and sale of food to the restaurant customers at that location in Franklin County.

II. JURISDICTION AND VENUE

2.1 This court is vested with jurisdiction over the Defendant, as a corporation doing business within the State of Kentucky, pursuant to KRS 23A.010.

2.2 The venue of this action is proper in Franklin County, pursuant to KRS 452.460, because these personal injury causes of action arose within this county.

III. FACTS

3.1 On or about August 4, 2010, the Centers for Disease Control and Prevention announced an outbreak of Salmonella serotype Baildon and Hartford illnesses linked to Taco Bell restaurant locations in many states, including Kentucky. Many of the illnesses involved in the outbreak occurred during late May and throughout the month of June 2010. No specific Taco Bell menu item has been identified as having been contaminated in all cases of illness.

3.2 On or about May 24, 2010, the plaintiff Jo Ann Smith and a co-worker purchased and consumed food from the Taco Bell restaurant at 1590 Versailles Road, Frankfort, Kentucky, owned and operated by the Defendant. Mrs. Smith consumed two tacos garnished with lettuce, cheese, and sour cream.

3.3 Onset of Mrs. Smith's gastrointestinal illness occurred on or about the morning of Wednesday, May 26, 2010 with nausea and general malaise. Mrs. Smith's symptoms worsened over the next two days, including the onset of diarrhea on Thursday, May 27, 2010.

3.4 On or about the morning of Friday, May 28, 2010, despite her worsening illness, Mrs. Smith and her husband and son began a drive to Omaha, Nebraska, where her son was

competing in a debate competition for the National Forensic League. Mrs. Smith suffered from severe gastrointestinal symptoms during the long drive.

3.5 On or about the morning of Saturday, May 29, 2010, Mrs. Smith awoke with violent cramps, diarrhea, and extreme body pains. She began to vomit shortly after waking, and soon both her episodes of vomiting and diarrhea appeared to contain blood. Mrs. Smith stayed in her hotel room while her husband and son went to the debate competition.

3.6 Later the same morning, Mrs. Smith could not get up from the bathroom floor in her hotel room, and called her husband and asked him to return or call 911 so that she could be taken to a local hospital for emergency medical care.

3.7 Mr. Smith and his son, who elected to leave the competition to be with his ailing mother, arrived shortly thereafter, and rushed Mrs. Smith to a nearby emergency room for treatment. Blood tests showed that Mrs. Smith was suffering from a severe bacterial infection, and she was also found to be badly dehydrated and anemic. She underwent an array of diagnostic tests and procedures, and received a variety of medications and supplements to address her severe symptoms.

3.8 After being discharged from the hospital and returning home to Kentucky, Mrs. Smith continued to suffer from severe gastrointestinal symptoms. In fact, she remains under the care of a gastroenterologist for a variety of conditions, including anemia and daily abdominal pain, bloating, and diarrhea, caused by her confirmed Salmonella Hartford infection.

IV. STRICT PRODUCTS LIABILITY CLAIM

4.1 Defendant manufactured the food that injured the plaintiffs.

4.2 Defendant owed a duty to the plaintiffs to manufacture food that was reasonably

safe in construction, that did not materially deviate from applicable design specifications, or otherwise deviate in some material way from otherwise identical units of similar food manufactured and served as part of the defendant's restaurant product line. Defendant failed to do so, and breached this duty.

4.3 Defendant owed a duty to the plaintiffs to provide adequate warnings about any dangers created or presented by its food, and to instruct the plaintiffs concerning the dangers present in its food products. Defendant failed to provide adequate warnings about the dangers created by its food, and failed to provide instructions concerning those dangers.

4.4 Defendant owed a duty to the plaintiffs to manufacture a product that conformed to its express and implied warranties, under Article II of the Uniform Commercial Code, including the implied warranty that the defendant's food was fit for human consumption, but failed to do so, and thereby breached that duty.

4.5 The defendant's food that the plaintiffs purchased and consumed was not reasonably safe as designed and constructed, and did not conform to the defendant's express or implied warranties, because it was contaminated and adulterated with *Salmonella* bacteria.

4.6 Defendant owed a duty to the plaintiffs not to prepare and serve food that was unsafe to an extent beyond that which would be contemplated by the ordinary consumer, but failed to do so, and breached this duty.

4.7 Because the food the plaintiffs purchased and consumed was contaminated with *Salmonella* bacteria, and was not reasonably safe in design and construction, lacked adequate warnings and instructions, did not conform to the defendant's express or implied warranties, and was unsafe to an extent beyond that contemplated by the ordinary consumer, defendant is strictly

liable to the plaintiffs for the harm to them proximately caused by defendant's contaminated and adulterated food.

V. NEGLIGENCE

5.1 Defendant negligently manufactured, distributed and sold a food product that was not reasonably safe as designed or manufactured.

5.2 Defendant was negligent in manufacturing, distributing, and selling a food product that was not reasonably safe because adequate warnings or instructions were not provided, including but not limited to, the warning that its food may contain *Salmonella* bacteria.

5.3 Defendant had a duty to comply with all applicable federal, state and local statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling and sale of the food they sold including the provisions of Kentucky's Food, Drug and Cosmetic Act, KRS Chapter 217. Those statutory and regulatory provisions are intended to protect patrons of the restaurant, including plaintiffs, from the risk of consuming contaminated and adulterated food. Defendant failed to comply with all applicable statutory and regulatory provisions pertaining to the distribution, storage, labeling and sale of their food, by manufacturing and selling adulterated food, and therefore breached that duty.

5.4 Once defendant learned, or in the exercise of reasonable care should have learned, of the dangers associated with preparing and serving its food, including, but not limited to, serving improperly cleaned or cooked foods, defendant had a duty to warn the plaintiffs, but failed to do so, and was therefore negligent.

5.5 Defendant had a duty to use supplies and/or raw materials in producing its food that were in compliance with applicable federal, state, and local laws, ordinances and

regulations, that were from reliable sources, that were clean, wholesome, and that were free from adulteration and fit for human consumption, but failed to do so, and breached that duty.

5.6 Defendant was negligent in the selection of its food suppliers, or other subcontractors, and failed to adequately supervise them, or provide them with adequate standards, in writing, and, as a result, purchased and used food that was adulterated with *Salmonella* bacteria.

5.7 Defendant had a duty to properly supervise, train and monitor its employees engaged in the preparation of its food products to ensure compliance with all applicable state and federal regulations. Defendant failed to properly supervise, train and monitor its employees engaged in the manufacture, preparation and delivery of the food product it sold to the plaintiffs, and breached that duty.

VI. BREACH OF WARRANTIES

6.1 Defendant is subject to liability to plaintiffs for breach of express and implied warranties made to plaintiffs with respect to the contaminated food product sold to plaintiffs, including the implied warranties of merchantability and of fitness for use.

6.2 Plaintiffs allege that the contaminated food product that is the subject of this action would not pass without exception in the trade, and was thus in breach of the implied warranty of merchantability.

6.3 Plaintiffs allege that the contaminated food product which is subject of this action was not fit for the uses and purposes intended by the defendant, as represented and sold by defendant, and was thus in breach of the implied warranty of fitness for the intended use.

VII. DAMAGES

7.1 The plaintiffs have all suffered general damages as the direct result of the above described unlawful acts and omissions of the defendant, which damages shall be fully proven at the time of trial. These include, without limitation, damages, both past and future, for the loss of enjoyment of life, pain and suffering, and mental anxiety and stress.

7.2 The plaintiffs have also all suffered special, incidental and consequential damages as the direct and proximate result of the above described unlawful acts and omissions of the defendant, which damages shall be fully proven at the time of trial. These include, but are not limited to, wage loss; medical related expenses, both past and future; and travel and travel-related expense, past and future.

7.3 The plaintiff Mr. Smith suffered a loss of consortium due to the illness of his spouse, essentially the loss of the society, affection, assistance and conjugal fellowship typically part of their marital relationship.

VIII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

(1) That the Court award the plaintiffs judgment against the defendant in such a sum as shall be determined to fully and fairly compensate the plaintiffs for all general, special, incidental and consequential damages incurred, or to be incurred, by the plaintiffs as the direct and proximate result of the unlawful acts and omissions of the defendant;

(2) That the Court award the plaintiffs their respective costs, disbursements and reasonable attorneys' fees incurred herein;

(3) That the Court award the plaintiffs the opportunity to amend or modify the provisions of this Complaint, if necessary or appropriate after additional or further discovery is

completed in this matter, and after all appropriate parties have been served;

(4) That the Court award such other and further relief as it deems necessary and proper in the circumstances; and

(5) Plaintiffs request trial by jury.

DATED this _____ day of August, 2010.

Frank Jenkins

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