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14 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

15 IN AND FOR THE COUNTY OF KING

16 ED YUSEN, an Individual, ) NO.  
17 )  
18 Plaintiff, )  
19 )  
20 vs. ) **COMPLAINT FOR PERSONAL**  
21 ) **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. 205<sup>th</sup> 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. 205<sup>th</sup> 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.



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- 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 7<sup>th</sup> day of June 2021.

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



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

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

ED YUSEN, an Individual, ) NO.  
 )  
 Plaintiff, )  
 )  
 vs. ) **SUMMONS**  
 )  
 SEATTLE CHAR, LLC., d/b/a The Habit )  
 Burger Grill )  
 )  
 )  
 Defendant. )

TO THE DEFENDANT: A lawsuit has been started against you in the above-entitled court by Ed Yusen, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what she or he



1 asks for because you have not responded. If you serve a notice of appearance on the undersigned  
2 person, you are entitled to notice before a default judgment may be entered.

3 You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand  
4 must be in writing and must be served upon the person signing this summons. Within 14 days after  
5 you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this  
6 summons and complaint will be void.

7 If you wish to seek the advice of an attorney in this matter, you should do so promptly so that  
8 your written response, if any, may be served on time.

9 This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State of  
10 Washington.

11 DATED: June 7, 2021.

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

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15 \_\_\_\_\_  
16 William D. Marler, WSBA #17233  
17 Josh Fensterbush, WSBA #51109  
18 Attorneys for Plaintiff  
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**KING COUNTY SUPERIOR COURT**  
**CASE ASSIGNMENT AREA DESIGNATION and CASE INFORMATION COVER SHEET**  
**(CICS)**

Pursuant to King County Code 4A.630.060, a faulty document fee of \$15 may be assessed to new case filings missing this sheet.

**CASE NUMBER:** \_\_\_\_\_  
(Provided by the Clerk)

**CASE CAPTION:** Ed Yusen vs. Seattle Char, LLC, d/b/a The Habit Burger Grill  
(New case: Print name of person starting case **vs.** name of person or agency you are filing against.)  
(When filing into an existing family law case, the case caption remains the same as the original filing.)

Please mark one of the boxes below:


**Seattle Area**, defined as:

All of King County north of Interstate 90 and including all of the Interstate 90 right-of-way; all the cities of Seattle, Mercer Island, Bellevue, Issaquah and North Bend; and all of Vashon and Maury Islands.

**Kent Area**, defined as:

All of King County south of Interstate 90 except those areas included in the Seattle Case Assignment Area.

I certify that this case meets the case assignment criteria, described in King County LCR 82(e).

	17233	6/7/2021
Signature of Attorney	WSBA Number	Date

or

_____	_____
Signature of person who is starting case	Date

\_\_\_\_\_  
Address, City, State, Zip Code of person who is starting case if not represented by attorney

**KING COUNTY SUPERIOR COURT**  
**CASE ASSIGNMENT AREA DESIGNATION and CASE INFORMATION COVER SHEET**

**CIVIL**

Please check the category that best describes this case.

- |   |   |
|---|---|
| <p><input type="checkbox"/> <b>APPEAL/REVIEW</b></p> <p><input type="checkbox"/> Administrative Law Review (ALR 2)*<br/>(Petition to the Superior Court for review of rulings made by state administrative agencies.( e.g. DSHS Child Support, Good to Go passes, denial of benefits from Employment Security, DSHS)</p> <p><input type="checkbox"/> Board of Industrial Insurance Appeals – Workers Comp (ALRLI 2)*<br/>(Petition to the Superior Court for review of rulings made by Labor &amp; Industries.)</p> <p><input type="checkbox"/> DOL Revocation (DOL 2)*<br/>(Appeal of a DOL revocation Implied consent-Test refusal ONLY.) RCW 46.20.308(9)</p> <p><input type="checkbox"/> Subdivision Election Process Review (SER 2)*<br/>(Intent to challenge election process)</p> <p><input type="checkbox"/> Voter Election Process Law Review (VEP 2)*<br/>(Complaint for violation of voting rights act)</p> <p><input type="checkbox"/> Petition to Appeal/Amend Ballot Title (BAT 2)</p> <p><b>CONTRACT/COMMERCIAL</b></p> <p><input type="checkbox"/> Breach of Contract (COM 2)*<br/>(Complaint involving money dispute where a breach of contract is involved.)</p> <p><input type="checkbox"/> Commercial Contract (COM 2)*<br/>(Complaint involving money dispute where a contract is involved.)</p> <p><input type="checkbox"/> Commercial Non-Contract (COL 2)*<br/>(Complaint involving money dispute where no contract is involved.)</p> | <p><input type="checkbox"/> Third Party Collection (COL 2)*<br/>(Complaint involving a third party over a money dispute where no contract is involved.)</p> <p><b>JUDGMENT</b></p> <p><input type="checkbox"/> Abstract, Judgment, Another County (ABJ 2)<br/>(A certified copy of a judgment docket from another Superior Court within the state.)</p> <p><input type="checkbox"/> Confession of Judgment (CFJ 2)*<br/>(The entry of a judgment when a defendant admits liability and accepts the amount of agreed-upon damages but does not pay or perform as agreed upon.)</p> <p><input type="checkbox"/> Foreign Judgment (from another State or Country) (FJU 2)<br/>(Any judgment, decree, or order of a court of the United States, or of any state or territory, which is entitled to full faith and credit in this state.)</p> <p><input type="checkbox"/> Tax Warrant or Warrant (TAX 2)<br/>(A notice of assessment by a state agency or self-insured company creating a judgment/lien in the county in which it is filed.)</p> <p><input type="checkbox"/> Transcript of Judgment (TRJ 2)<br/>(A certified copy of a judgment from a court of limited jurisdiction (e.g. District or Municipal court) to a Superior Court.)</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> Condemnation/Eminent Domain (CON 2)*<br/>(Complaint involving governmental taking of private property with payment, but not necessarily with consent.)</p> |
|---|---|

- Foreclosure (FOR 2)\*  
(Complaint involving termination of ownership rights when a mortgage or tax foreclosure is involved, where ownership is not in question.)
- Land Use Petition (LUP 2)\*  
(Petition for an expedited judicial review of a land use decision made by a local jurisdiction.) RCW 36.70C.040
- Property Fairness Act (PFA 2)\*  
(Complaint involving the regulation of private property or restraint of land use by a government entity brought forth by Title 64.)
- Quiet Title (QTI 2)\*  
(Complaint involving the ownership, use, or disposition of land or real estate other than foreclosure.)
- Residential Unlawful Detainer (Eviction) (UND 2)  
(Complaint involving the unjustifiable retention of lands or attachments to land, including water and mineral rights.)
- Non-Residential Unlawful Detainer (Eviction) (UND 2)  
(Commercial property eviction.)
- OTHER COMPLAINT/PETITION**
- Action to Compel/Confirm Private Binding Arbitration (CAA 2)  
(Petition to force or confirm private binding arbitration.)
- Assurance of Discontinuance (AOD 2)  
(Filed by Attorney General's Office to prevent businesses from engaging in improper or misleading practices.)
- Birth Certificate Change(PBC 2)  
(Petition to amend birth certificate)
- Bond Justification (PBJ 2)  
(Bail bond company desiring to transact surety bail bonds in King County facilities.)
- Change of Name (CHN 5)  
(Petition for name change, when domestic violence/anti-harassment issues require confidentiality.)
- Certificate of Rehabilitation (CRR 2)  
(Petition to restore civil and political rights.)
- Certificate of Restoration Opportunity(CRP 2)  
(Establishes eligibility requirements for certain professional licenses)
- Civil Commitment (sexual predator) (PCC 2)  
(Petition to detain an individual involuntarily.)
- Notice of Deposit of Surplus Funds (DSF 2)  
(Deposit of extra money from a foreclosure after payment of expenses from sale and obligation secured by the deed of trust.)
- Emancipation of Minor (EOM 2)  
(Petition by a minor for a declaration of emancipation.)
- Foreign Subpoena (OSS 2)  
(To subpoena a King County resident or entity for an out of state case.)
- Foreign Protection Order (FPO 2)  
(Registering out of state protection order)
- Frivolous Claim of Lien (FVL 2)  
(Petition or Motion requesting a determination that a lien against a mechanic or materialman is excessive or unwarranted.)
- Application for Health & Safety Inspection (HSI 2)

- Injunction (INJ 2)\*  
(Complaint/petition to require a person to do or refrain from doing a particular thing.)
  - Interpleader (IPL 2)  
(Petition for the deposit of disputed earnest money from real estate, insurance proceeds, and/or other transaction(s).)
  - Malicious Harassment (MHA 2)\*  
(Suit involving damages resulting from malicious harassment.) RCW 9a.36.080
  - Non-Judicial Filing (NJF 2)  
(See probate section for TEDRA agreements. To file for the record document(s) unrelated to any other proceeding and where there will be no judicial review.)
  - Other Complaint/Petition (MSC 2)\*  
(Filing a Complaint/Petition for a cause of action not listed)
  - Minor Work Permit (MWP 2)  
(Petition for a child under 14 years of age to be employed)
  - Perpetuation of Testimony (PPT 2)  
(Action filed under CR 27)
  - Petition to Remove Restricted Covenant (RRC 2)  
Declaratory judgment action to strike discriminatory provision of real property contract.
  - Public records Act (PRA 2)\*  
(Action filed under RCW 42.56)
  - Receivership (RCV 2)  
(The process of appointment by a court of a receiver to take custody of the property, business, rents and profits of a party to a lawsuit pending a final decision on disbursement or an agreement.)
  - Relief from Duty to Register (RDR 2)  
(Petition seeking to stop the requirement to register.)
  - Restoration of Firearm Rights (RFR 2)  
(Petition seeking restoration of firearms rights under RCW 9.41.040 and 9.41.047.)
  - School District-Required Action Plan (SDR 2)  
(Petition filed requesting court selection of a required action plan proposal relating to school academic performance.)
  - Seizure of Property from the Commission of a Crime-Seattle (SPC 2)\*  
(Seizure of personal property which was employed in aiding, abetting, or commission of a crime, from a defendant after conviction.)
  - Seizure of Property Resulting from a Crime-Seattle (SPR 2)\*  
(Seizure of tangible or intangible property which is the direct or indirect result of a crime, from a defendant following criminal conviction. (e.g., remuneration for, or contract interest in, a depiction or account of a crime.))
  - Structured Settlements- Seattle (TSS 2)\*  
(A financial or insurance arrangement whereby a claimant agrees to resolve a personal injury tort claim by receiving periodic payments on an agreed schedule rather than as a lump sum.)
  - Vehicle Ownership (PVO 2)\*  
(Petition to request a judgment awarding ownership of a vehicle.)
- TORT, ASBESTOS**
- Personal Injury (ASP 2)\*  
(Complaint alleging injury resulting from asbestos exposure.)

- Wrongful Death (ASW 2)\*  
(Complaint alleging death resulting from asbestos exposure.)

**TORT, MEDICAL MALPRACTICE**

- Hospital (MED 2)\*  
(Complaint involving injury or death resulting from a hospital.)
- Medical Doctor (MED 2)\*  
(Complaint involving injury or death resulting from a medical doctor.)
- Other Health care Professional (MED 2)\*  
(Complaint involving injury or death resulting from a health care professional other than a medical doctor.)

**TORT, MOTOR VEHICLE**

- Death (TMV 2)\*  
(Complaint involving death resulting from an incident involving a motor vehicle.)
- Non-Death Injuries (TMV 2)\*  
(Complaint involving non-death injuries resulting from an incident involving a motor vehicle.)
- Property Damages Only (TMV 2)\*  
(Complaint involving only property damages resulting from an incident involving a motor vehicle.)
- Victims Vehicle Theft (VVT 2)\*  
(Complaint filed by a victim of car theft to recover damages.) RCW 9A.56.078

**TORT, NON-MOTOR VEHICLE**

- Other Malpractice (MAL 2)\*  
(Complaint involving injury resulting from other than professional medical treatment.)

- Personal Injury (PIN 2)\*  
(Complaint involving physical injury not resulting from professional medical treatment, and where a motor vehicle is not involved.)

- Products Liability (TTO 2)\*  
(Complaint involving injury resulting from a commercial product.)
- Property Damages (PRP 2)\*  
(Complaint involving damage to real or personal property excluding motor vehicles.)
- Property Damages-Gang (PRG 2)\*  
(Complaint to recover damages to property related to gang activity.)

- Tort, Other (TTO 2)\*  
(Any other petition not specified by other codes.)

- Wrongful Death (WDE 2)\*  
(Complaint involving death resulting from other than professional medical treatment.)

**WRIT**

- Habeas Corpus (WHC 2)  
(Petition for a writ to bring a party before the court.)
- Mandamus (WRM 2)\*\*  
(Petition for writ commanding performance of a particular act or duty.)
- Review (WRV 2)\*\*  
(Petition for review of the record or decision of a case pending in the lower court; does not include lower court appeals or administrative law reviews.)

\*The filing party will be given an appropriate case schedule at time of filing.

\*\* Case schedule will be issued after hearing and findings.