

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA
LINCOLN DIVISION

SARAH JOHNSON,)
)
Plaintiff,)
)
v.)
)
MCDONALD’S CORPORATION, a)
Delaware corporation; ESSIG &)
ASSOCIATES, INC. d/b/a ESSIG FAMILY)
MCDONALD’S, a Missouri Corporation;)
)
Defendants,)
)
)

CASE NO:

JURY TRIAL DEMAND

PLAINTIFF’S COMPLAINT FOR DAMAGES

COMES NOW the plaintiff, SARAH JOHNSON, by and through her attorneys of record, THE AUSMAN LAW FIRM PC, LLO and MARLER CLARK INC., PS (*pro hac vice* pending), and alleges as follows:

I. PARTIES

1. The plaintiff is a thirty-eight-year-old married woman who resides in Eagle, Cass County, Nebraska.

2. Defendant McDonald’s Corporation, (hereinafter “McDonald’s” or “Defendant”) is a foreign corporation incorporated under the laws of Delaware and headquartered in Chicago, Illinois at 110 N. Carpenter St. Chicago, IL 60607. At all times relevant hereto, the defendant franchised and exercised operational control over the McDonald’s restaurant located at 13821 Guildford St, Waverly, NE 68462.

1 3. Defendant Essig & Associates, Inc. d/b/a Essig Family McDonald's
2 (hereinafter "Essig" or "Defendant") is a corporation incorporated under the laws of the
3 State of Missouri and headquartered with a principal office listed with the Missouri
4 Secretary of State of 916 S State Route 291, Liberty, MO, 64068 and registered agent
5 Jerome E. Brant located at Two South Main, Liberty, MO 64068. At all times relevant
6 hereto, Essig was the franchisee operating the McDonald's restaurant located at 13821
7 Guildford St, Waverly, NE 68462.

8 **II. JURISDICTION AND VENUE**

9 4. This Court has jurisdiction over the subject matter of this action pursuant to
10 28 U.S.C. § 1332(a) because the matter in controversy far exceeds \$75,000.00, exclusive of
11 costs; because the matter is between a citizen of Nebraska, the Plaintiff, and two defendant
12 foreign corporations; and because the Defendants have certain minimum contacts with the
13 State of Nebraska such that maintenance of the suit in this district does not offend traditional
14 notions of fair play and substantial justice. Both McDonald's and Essig maintain such
15 business contacts in Nebraska by operation of McDonald's restaurants, to which the case at
16 bar is directly related, such that maintenance of this suit is proper.

17 5. Venue in the United States District Court for the District of Nebraska is
18 proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or
19 omissions giving rise to Plaintiff's claims and causes of action occurred in this judicial
20 district, and because the Defendants are subject to personal jurisdiction in this judicial
21 district at the time of the commencement of the action.

1 **III. GENERAL ALLEGATIONS**

2 **E. coli O157:H7 Infection and Hemolytic Uremic Syndrome**

3 6. *Escherichia coli* are the name of a common family of bacteria, most members
4 of which do not cause human disease. *E. coli* O157:H7 is a specific member of this family
5 that can cause bloody diarrhea (hemorrhagic colitis) in humans. In the years since *E. coli*
6 O157:H7 was first identified as a cause of diarrhea, this bacterium has established a
7 reputation as a significant public health hazard.

8 7. *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli*
9 O157:H7 is also notable among pathogenic bacteria for its extremely low infectious dose—
10 that is, the number of bacteria necessary to induce infection in a person. While for most
11 pathogenic bacteria, it takes literally millions of bacterial colonies to cause illness, it is now
12 known that fewer than 50 *E. coli* O157:H7 bacteria can cause illness in a child. The practical
13 import is that even a microscopic amount of exposure can trigger a devastating infection.

14 8. The most severe cases of *E. coli* O157:H7 infection occur in young children
15 and in the elderly, presumably because the immune systems in those age populations are the
16 most vulnerable. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attach
17 to the inside surface of the large intestine and initiate an inflammatory reaction in the
18 intestine, which ultimately results in the painful, bloody diarrhea and abdominal cramps
19 characteristic of the intestinal illness.

20 9. The mean incubation period (time from ingestion to the onset of symptoms)
21 of *E. coli* O157:H7 is estimated to be two to four days (range from 1-21 days). Typically, a
22 patient with an acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody

1 diarrhea, and vomiting. The duration of diarrhea in children with *E. coli* O157:H7 infections
2 is significantly longer than that of adults.

3 10. *E. coli* O157:H7 can produce a wide spectrum of diseases from mild, non-
4 bloody diarrhea to severe, bloody diarrhea accompanied by excruciating abdominal pain to
5 life-threatening complications. In most infected individuals, the intestinal illness lasts about
6 a week and resolves without any long-term effects. Antibiotics do not appear to aid in
7 combating these infections, and recent medical studies suggest that antibiotics are
8 contraindicated for their risk of provoking more serious complications. Apart from good
9 supportive care, which should include close attention to hydration and nutrition, there is no
10 specific therapy.

11 11. About 10% of individuals with *E. coli* O157:H7 infections (mostly young
12 children) go on to develop hemolytic uremic syndrome (HUS), a severe, potentially life-
13 threatening complication. The essence of the syndrome is described by its three central
14 features: the destruction of red blood cells, the destruction of platelets (those blood cells
15 responsible for clotting), and acute renal failure due to the formation of micro-thrombi that
16 occlude microscopic blood vessels that make up the filtering units within the kidneys.

17 12. There is no known therapy to halt the progression of HUS. The active stage
18 of the disease usually lasts one to two weeks, during which a variety of complications are
19 possible. HUS is a frightening illness that, even in the best American medical facilities, has
20 a mortality rate of about 5%. Most HUS patients require transfusion of blood products and
21 develop complications common to the critically ill.

1 **The Outbreak**

2 13. As of October 24, 2024, 75 individuals were identified as confirmed cases of
3 *E. coli* O157:H7 among 10 including Nebraska. The outbreak is ongoing.

4 14. According to the CDC, all interviewed individuals purchased and consumed
5 food from McDonalds restaurants, and most reported having eaten a Quarter-Pounder
6 hamburger.

7 15. According to a statement by McDonald's an initial investigation indicates
8 that slivered onions from a single supplier may be the source of the outbreak.

9 16. McDonald's has removed the slivered onions and beef patties used in the
10 Quarter-Pounder from stores in the affected states.
11

12 **The Plaintiff's *E. coli* O157:H7 Infection and Illness**

13 17. Plaintiff visited the McDonald's restaurant located at 13821 Guildford St,
14 Waverly, NE 68462 on September 28, 2024.

15 18. She purchased and consumed a Quarter-Pounder without modification.

16 19. Plaintiff began to suffer symptoms consistent with *E. coli* O157:H7 on or
17 about October 3, 2024, including stomach pain and diarrhea.

18 20. By Sunday October 6, Plaintiff's illness had worsened such that she went to
19 the emergency department at CHI Health St. Elizabeth Hospital. There she was evaluated for
20 severe dehydration, abdominal pain, and diarrhea, which evaluation included blood and
21 stool samples. Plaintiff was treated for her symptoms and sent home with medication and
22 instructions to follow up with a GI specialist.

1 21. On October 8, 2024, Plaintiff's stool sample returned a positive result for *E.*
2 *coli* O157:H7, and she was contacted by her local health department as a case in the
3 McDonald's outbreak.

4 22. Plaintiff continued to suffer significant pain and other physical effects of her
5 illness until after October 20, 2024.

6 23. Plaintiff was again contacted by her health department on October 21, 2024.

7 **IV. WARRANTY AND PRODUCTS LIABILITY CLAIM AGAINST**
8 **DEFENDANTS**

9 24. Plaintiff incorporates paragraphs 1 through 23 of this Complaint as if each
10 paragraph was set forth herein in its entirety.

11 25. At all times relevant hereto, the Defendants were the manufacturers,
12 suppliers, packagers, distributors, and/or sellers of the adulterated food product that is the
13 subject of this action. Because the product was contaminated with *E. coli* O157:H7 causing
14 Plaintiff's illness and injuries described above, the product was defective.

15 26. Plaintiff was unaware of the defect in the product that the Defendants
16 manufactured, supplied, packaged, distributed, and/or sold, and she relied upon the
17 Defendants' implied warranties of merchantability and of suitability for human
18 consumption. The Defendants breached those warranties by selling a product that was
19 contaminated with *E. coli* O157:H7.

20 27. The product that the Defendants sold, and Plaintiff consumed, caused
21 Plaintiff's illness and injuries described above, was defective and unreasonably dangerous at
22 the time it left the Defendants' control because it contained *E. coli* O157:H7 and was, as a

1 result, dangerous beyond the reasonable expectations of the ordinary consumer, including
2 the Plaintiff.

3 28. The defect in the product sold by the Defendants proximately caused
4 Plaintiff's injuries, both personal and economic.

5 **V. NEGLIGENCE CLAIM AGAINST DEFENDANTS**

6 29. Plaintiff incorporates paragraphs 1 through 28 of this Complaint as if each
7 paragraph was set forth herein in its entirety.

8 30. The Defendants are in the business of manufacturing, supplying, packaging,
9 distributing, and selling food products for human consumption.

10 31. The Defendants owed the ultimate consumers of their products that they sold
11 a duty to take reasonable measures for their protection and safety.

12 32. The Defendants breached the duty it owed to persons who were the ultimate
13 consumers of its product by committing the following acts and omissions of negligence:

- 14 a. The Defendants failed to adequately monitor the safety and sanitary
15 conditions of their premises;
- 16 b. The Defendants failed to apply their own policies and procedures to
17 ensure the safety and sanitary conditions of their premises;
- 18 c. The Defendants failed to take reasonable measures aimed at preventing
19 the transmission of *E. coli* O157:H7 and related filth and adulteration
20 from their premises, equipment, and employees to their food products,
21 including the product that Plaintiff purchased and consumed;
- 22 d. The Defendants failed to properly train their employees and agents how
to prevent the adulteration of their food products with *E. coli* O157:H7;

1 e. The Defendants failed to properly supervise its employees and agents to
2 prevent the adulteration of their food products with *E. coli* O157:H7;

3 33. Plaintiff's illness and associated legal injuries occurred as a direct and
4 proximate result of the acts and omissions of negligence discussed above.

5 **VI. DAMAGES**

6 34. Plaintiff incorporates paragraphs 1 through 33 of this Complaint as if each
7 paragraph was set forth here in its entirety.

8 35. Plaintiff has suffered general and special, incidental and consequential
9 damages, in an amount yet to be determined, as the direct and proximate result of the acts
10 and omissions of the Defendants, which damages shall be fully proven at the time of trial.
11 These damages include, without limitation, damages for loss of enjoyment of life; medical
12 and medical-related expenses, wage claims and other economic loss; emotional distress;
13 pharmaceutical expenses; and other ordinary, incidental and consequential damages as
14 would be generally anticipated to arise under the circumstances.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, the plaintiff prays:

17 (1) That the court award Plaintiff judgment against the Defendants in such sums
18 as shall be determined to fully and fairly compensate Plaintiff for all general, special,
19 incidental and consequential damages incurred, or to be incurred, by Plaintiff as the direct
20 and proximate result of the acts and omissions of the Defendants;

21 (2) That the court award Plaintiff costs, disbursements, and reasonable attorneys'
22 fees incurred herein;

1 (3) That the court allow Plaintiff the opportunity to amend or modify the
2 provisions of this complaint, as necessary or appropriate, after additional or further
3 discovery is completed in this matter, and after all appropriate parties have been served; and

4 (4) That the court award such other and further equitable relief as it deems
5 necessary and proper in the circumstances.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby requests that the above and foregoing cause of action be set for trial
8 by jury.

9 Dated this 25th day of October 2024.

10 SARAH JOHNSON, Plaintiff

11 /s/Jason G. Ausman

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