

STATE OF INDIANA) IN THE MARION COUNTY CIRCUIT/SUPERIOR COURT
) SS
COUNTY OF MARION) CAUSE NO. 490010612PL0051132

DIANA K. REDMAN and,)
COURTNEY A. REDMAN,)
)
Plaintiffs,)
)
v.)
)
GMRI, INC., d/b/a OLIVE GARDEN,)
)
Defendants.)

**CLASS ACTION COMPLAINT FOR DAMAGES
AND REQUEST FOR JURY TRIAL**

Come now the Plaintiffs, Diana K. Redman and Courtney A. Redman, by counsel, and for their Complaint for damages and request for jury trial against the Defendants, GMRI, Inc. d/b/a Olive Garden (“Olive Garden”), state as follows:

1. Plaintiffs, Diana K. Redman and Courtney A. Redman, are residents of Hamilton County, Indiana.

2. The Defendant, Olive Garden, is a company doing business in the State of Indiana, with its principal place of business in the State of Florida, located at 6100 Lake Ellenor Drive, Orlando, Florida, whose resident agent is Corporate Creations Network Inc., 722 Bristol Court, Greenwood, Indiana 46143.

3. On or about December 13, 2006, Plaintiffs, Diana K. Redman and Courtney A. Redman, ate dinner at Olive Garden located at 6130 East 82nd Street, Indianapolis, Indiana, and shortly thereafter became ill with various bouts of nausea, vomiting and diarrhea.

4. After more than 160 people reported similar illness to Olive Garden and/or the Marion County Health Department, Olive Garden closed for inspection on December 15, 2006.

5. Eventually, more than 370 patrons of Olive Garden who ate at the establishment between Saturday, December 9, 2006, and Friday, December 15, 2006, reported to Olive Garden and/or the Marion County Health Department similar food-borne illness.

6. Laboratory tests performed by the Marion County Health Department found Norovirus in three Olive Garden employees.

7. Norovirus are found in the stool or vomit of infected people, and food can be contaminated either by direct contact with contaminated hands or with work surfaces that are contaminated.

COUNT I – CLASS ACTION ALLEGATIONS

8. Plaintiffs, Diana K. Redman and Courtney A. Redman, bring this action on their own behalf, and as a class action on behalf of all persons who dined at Olive Garden located at 6130 East 82nd Street, Indianapolis, Indiana, from December 9, 2006, through December 15, 2006, who became ill shortly after dining there.

9. Plaintiffs seek the certification of a Plaintiff-class defined as follows:

Any person who consumed food at Olive Garden located at 6130 East 82nd Street, Indianapolis, Indiana, from Saturday, December 9, 2006, through Friday, December 15, 2006, who then suffered bouts of nausea and/or diarrhea and/or fever and/or vomiting.

10. This action is properly maintainable as a class action pursuant to Trial Rule 23(A) for the following reasons:

- a. The Plaintiff class of consumers is so numerous that joinder of all class members is impracticable. Based upon Plaintiffs' counsel's investigation thus far, the putative class members are geographically dispersed throughout Marion County, Hamilton County, and possibly other contiguous counties in Central Indiana. The requirement of Trial Rule 23(A)(1): *Numerosity* is present here.
- b. There are questions of law and fact which are common to members of the class which relate to the Defendant's negligent conduct in serving

contaminated food and/or maintaining contaminated working or eating surfaces which resulted in Norovirus spreading to Olive Garden patrons. Therefore, the requirement of Trial Rule 23(A)(2): *Commonality* is present here.

- c. The claims of the Plaintiffs are typical of the claims of the putative class, as they are based on the same legal theories, and because Plaintiffs have no interests which are antagonistic to the class. The requirement of Trial Rule 23(A)(3): *Typicality* is also present here.
- d. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent legal counsel experienced in class actions, complex-litigation and tort litigation. Accordingly, Plaintiffs are adequate representatives of the class and will fairly and adequately protect the interests of the class as required by Trial Rule 23(A)(4).

11. This action is properly maintainable as a class action pursuant to Trial Rule 23(B)(3)

for the following reasons:

- a. The questions of law and fact to the class predominant over any questions affecting only individual class members as the focus of the litigation will be on the Defendant's conduct in serving contaminated food and/or maintaining contaminated working or eating surfaces which resulted in Norovirus spreading to Olive Garden patrons. The predominant questions of law and fact presented by this litigation include, but are not limited to, the following:
 - i. The mechanism of the food contamination and/or contamination of working or eating surfaces;
 - ii. Whether the Defendant and its agents were negligent in food preparation and/or restaurant cleanliness leading to food contamination and/or contamination of working or eating surfaces;
 - iii. Whether the Defendant was negligent in its quality control procedures so as to allow contaminated food to be served to patrons and/or to allow contamination of working or eating surfaces;
 - iv. Whether the Defendant and its agents maintained a proper hand-washing policy by food handlers;
 - v. Whether the Defendant properly monitored employees with symptoms of Norovirus infection;
 - vi. Whether the food sold and/or served to patrons who became ill was defective and unreasonably dangerous as defined by I.C. 34-20-4-1;
 - vii. Whether the Defendant is liable to the Plaintiffs and the class in strict liability; and
 - viii. Whether the Defendant is liable to the Plaintiffs and the class for a breach of implied warranties.

- b. A class action to resolve this controversy is superior to other available methods for the fair and efficient adjudication of this controversy as the pursuit of hundreds of individual lawsuits would cause a strain on the judicial resources, yet each class member would be required to prove an identical set of facts to recover.
- c. Neither Plaintiffs nor their counsel are aware of any similar litigation instituted on behalf of the putative class members such that it does not appear that individual class members wish to control the prosecution of their separate actions.
- d. Neither Plaintiffs nor their counsel can conceive of any reason why the litigation of these claims should not be concentrated in this particular forum.
- e. This action does not present any unique management difficulties.

12. Therefore, all the requirements of Trial Rule 23(B)(3) are met in this litigation.

WHEREFORE, Plaintiffs, Diane K. Redman and Courtney A. Redman, by counsel, pray this Court to certify the class as defined in paragraph 9, and further request all other relief, just and proper, in the premises.

COUNT II – NEGLIGENCE

13. All and each of the allegations contained in this Complaint are incorporated by this reference.

14. Defendant was negligent in, and among other things, serving contaminated food and/or exposing patrons to contaminated working or eating surfaces; failing to warn patrons concerning the possibility of contaminated food product and/or contaminated working or eating surfaces; failing to timely remediate once put on notice that patrons were becoming ill shortly after eating at Olive Garden; failing to properly instruct its employees concerning hand-washing by food handlers, failing to maintain restaurant cleanliness; failing to discover the contaminated food product and/or contaminated working or eating surfaces in a timely matter; and failing to warn the

public, in general, concerning the potential contaminated food product and/or contaminated working or eating surfaces.

15. As a direct and proximate result of the Defendant's negligence, Plaintiffs have sustained physical injuries.

16. As a direct and proximate result of the Defendant's negligence, Plaintiffs have experienced, and will possibly continue to experience, nausea and/or diarrhea and/or fever and/or vomiting and/or pain and suffering and/or mental anguish and/or loss and enjoyment of life.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendant in an amount reasonable to compensate them and the Plaintiff class for their damages and for all other relief proper in the premises.

COUNT III – STRICT LIABILITY

17. All and each of the allegations contained in this Complaint are incorporated by this reference.

18. The Defendant was engaged in the business of selling food and beverage products.

19. The product consumed by the Plaintiffs and other affected members of the putative class was defective and unreasonably dangerous.

20. The product was defective when it left the Defendant's control and was in a substantially unchanged condition when it reached the Plaintiffs and other affected members of the putative class.

21. Consumption of the product caused the Plaintiffs and other affected members of the putative class to suffer physical harm.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendant in an amount reasonable to compensate them and the Plaintiff class for their damages and for all other relief proper in the premises.

COUNT IV – BREACH OF WARRANTY

22. All and each of the allegations contained in this Complaint are incorporated by this reference.

23. The Defendant was a merchant with respect to the food and beverage product purchased by the Plaintiffs and other affected members of the putative class.

24. As a result of the purchase of food or beverage product by the Plaintiffs and other affected members of the putative class certain warranties attach to the sale under Indiana law as a matter of law, including the implied warranty of merchantability, Indiana Code 26-1-2-314, and the implied warranty of fitness for a particular purpose, Indiana Code 26-1-2-315.

25. The Defendant has breached both the implied warranty of merchantability and of fitness for a particular purpose by serving and selling contaminated food product.

26. As a result of the breach of the implied warranties of merchantability and fitness for a particular purpose by the Defendant, Plaintiffs and other affected members of the putative class have suffered damages.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendant in an amount reasonable to compensate them and the Plaintiff class for their damages and for all other relief proper in the premises.

REQUEST FOR JURY TRIAL

Come now Plaintiffs, by counsel, and respectfully request that the above matter be tried by jury.

Respectfully Submitted,



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