

FILED

STATE OF NORTH CAROLINA IN THE COURT OF GENERAL JUSTICE
COUNTY OF MECKLENBURG SUPERIOR COURT JURISDICTION
14 CVS 7700

ELISHEVIA GRAHAM, on behalf of)
herself and all others similarly situated)
as representative,)
PLAINTIFF,)
v.)

COMPLAINT
(JURY TRIAL REQUESTED)

PAPA JOHN'S USA, INC, PAPA JOHN'S)
STORE # 1580, 8016-B CAMBRIDGE)
COMMONS DRIVE, CHARLOTTE,)
NORTH CAROLINA 28215,)
DEFENDANTS.)

Plaintiff, on behalf of herself and all others similarly situated, states as follows:

1. The Plaintiff, Elishevia Graham, is over the age of eighteen years and is a resident of Mecklenburg County, North Carolina.
2. The Plaintiff, brings this action on behalf of herself and all other persons similarly situated, who purchased and consumed food which the Defendant caused to be manufactured, prepared and sold for human consumption to members of the consuming public within Mecklenburg, Cabarrus and the surrounding counties during the period of March 24, 2014 through April 7, 2014.
3. Pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, all persons who consumed food which was manufactured and sold by Pappa Johns Pizza between March 24, 2014 and April 7, 2014, maintain the same issues of law and fact as that of the Plaintiff. These same issues of law and fact maintained by the Plaintiff and all other persons such as the Plaintiff, who purchased and consumed food which was

manufactured and sold to them for human consumption predominates over issues affecting only individual class members.

4. The defendant is a corporation organized under the laws of the State Kentucky and licensed to operate in the State of North Carolina.
5. The Defendant, at all times pertinent and relevant to the events and times as set out in this Complaint was carrying on its ordinary course of business throughout Mecklenburg, Cabarrus and surrounding counties.
6. The ordinary course of the Defendant's business is the manufacture, preparation, service and sale of food to its customers at its location at 8016 Cambridge Commons Drive, Charlotte, North Carolina. Accordingly, the Defendant was conducting its ordinary business in Mecklenburg County, North Carolina. At all times pertinent and relevant between March 24-April 7, 2014.

JURISDICTION AND VENUE

7. This Court properly assumes jurisdiction over this Defendant in that at all times pertinent and relevant hereto, the defendant was engaged as a corporate entity in the State of North Carolina, County of Mecklenburg and was engaged in maintaining its business enterprise.
8. The venue of this action is Mecklenburg County in that the location of Defendant's business which is the subject of this action is located in Mecklenburg County, North Carolina.

FACTUAL ALLEGATIONS

9. The North Carolina Department of Health and the Mecklenburg County Health Department has reported that as many as 2,400 food orders were sold by Defendant to members of the consuming public between March 24, 2014 and April 7, 2014.

10. These food orders which were manufactured and sold to members of the consuming public are subject to exposure to contamination from Hepatitis A. A worker who was infected at said restaurant with Hepatitis A, subsequently became ill on March 24, 2014 and was ultimately diagnosed on or about April 7, 2014, with Hepatitis A after having being hospitalized.
11. In accordance therewith, officials of the Mecklenburg County Health Department, along with the Cabarrus County Health Department established vaccination clinics at various locations throughout Mecklenburg and Cabarrus Counties to vaccinate persons who were exposed to the contaminated foods manufactured and sold by this Defendant to the consuming public within the relevant time period.
12. While at least 2,400 food orders were purchased by members of the consuming public during this period, it is estimated that as many as 4,000 persons may have consumed contaminated foods manufactured and sold by this Defendant.
13. The named representative Plaintiff consumed food manufactured and sold by Defendant between April 3 and 4, 2014.
14. The food purchased by Plaintiff was shared with four friends and/or such members of the Plaintiff's family as well as one minor child who is the Plaintiff's grandchild.
15. Upon the Plaintiff learning of the vaccination clinics established by the health departments because of the exposure of the food purchased and consumed by the Plaintiff to the Hepatitis A virus, the Plaintiff obtained the Hepatitis A vaccination.
16. Plaintiff, as well as all other persons similarly situated as the plaintiff were forced to receive immune globulin (IG) shots after being exposed to the Hepatitis A virus. Additionally, the Plaintiff and all other person similarly situated as the Plaintiff have

and will continue to be concerned and scared for their future health and well being as the result of the acts by the Defendant.

17. However, the Plaintiff is also required to obtain an additional vaccination on October 14, 2014.

18. The Plaintiff has experienced and continues to experience anxiety, emotional distress, worry, frustration and fear of the illness as the results of the facts and circumstances complained of in this Complaint.

19. The anxiety, emotional distress, worry, frustration, scared feelings, concerns about present and future health problems, and fear of the Plaintiff are typical of all other persons similarly situated, as the proximate causes of their exposure to the contamination of food manufactured and sold by this Defendant to members of the consuming public between the two weeks of March 24, 2014 through April 7, 2014.

FIRST CAUSE OF ACTION
(Products Liability and Breach of Warranties)

20. Defendants are the owners and operators of the retail food establishment that manufactured and sold the adulterated food that injured the Plaintiff. The defendant is the product manufacturer of the food that injured the Plaintiff, and all other persons similarly situated, under North Carolina Product Liability Act ("Act"). N.C. Gen. Stat. §§ 99B-1 et al, and similar statutes. The contaminated food that the Defendant prepared and sold, and the Plaintiff, and all other person similarly situated, consumed, was a product within the meaning of the Act and similar statutes. The Defendant is the product manufacturer and seller of Hepatitis A contaminated food that injured the Plaintiff and all other persons similarly situated.

21. Under the Act, and similar statutes, the Defendant owed to the Plaintiff and all other persons similarly situated, a duty to manufacture a product that was reasonably safe in construction, that did not materially deviate from applicable design specification, and that otherwise did not deviate materially from identical units in the Defendant's product line.
22. Under the Act, and similar statutes, the Defendant owed the Plaintiff, and all other persons similarly situated, a duty to manufacture a product that conformed to its express warranties that the food it prepared and sold was, among other things, fit for human consumption, healthful, and suitable for all persons.
23. Under the act, and similar statutes, the Defendant owed the Plaintiff, and all other persons similarly situated, a duty to manufacture a product that conformed to its implied warranty of merchantability, and that was fit for human consumption.
24. The Plaintiff on behalf of herself and all other persons similarly situated, alleges that the food that the Defendant manufactured and sold, and that the Plaintiff, and all other persons similarly situated, consumed, was not reasonably safe in construction and did not conform to the Defendant's express or implied warranties because it was contaminated and adulterated among other things, with the Hepatitis A virus.
25. The Plaintiff, and all other persons similarly situated, as a customers at Defendant's restaurant, is a person who Defendant might have reasonably expected to use, consume or be affected by its potentially contaminated food products.
26. Because the food the Defendant manufactured and sold and that was later consumed by the Plaintiff, and all other persons similarly situated, was adulterated, was not reasonably safe in design and construction, was not fit for human consumption,

properly insure that all persons employed by Defendant, in supervisory and subordinate roles were properly supervised, trained and monitored as employees, or the employees of its agents or subcontractors who are engaged in the preparation of its food products, to ensure compliance with the Defendants operating standards and to ensure compliance with all applicable health regulations. The defendant failed to properly supervise, train, and monitor these employees engaged in the manufacture, preparation and delivery of the food products Defendant sold to its patrons, and thus breached that duty.

32. The Defendant owed a duty to the Plaintiff, and all other persons similarly situated, to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of its food products, including all applicable local, state, and federal health and safety regulations, such as N.C. Gen. Stat. Article 12, Chapter 106, and the Federal Food, Drug and Cosmetics Act. The Defendant, by its manufacture, distribution, storage, labeling, and sale of adulterated, unsafe, and unhealthy food products to the Plaintiff, and all other persons similarly situated, failed to conform to this duty.

33. The Defendant owed the Plaintiff, and all other persons similarly situated, the duty to exercise reasonable care in the preparation and sale of its food products, as it was reasonably foreseeable that the Defendant's manufacture and sale of food products contaminated with Hepatitis A virus would cause injury and harm to its customers, including the Plaintiff, and all other person similarly situated. The defendant breached that duty, and thereby caused injury and harm to the Plaintiff, and all other persons similarly situated.

34. The Plaintiff, and all other persons similarly situated, as customers and patrons of the Defendant restaurant, was the Defendant's business invitee and is therefore among the class of persons designed to be protected by the statutory and regulatory provisions pertaining to the manufacture, distribution, storage, labeling, and sale of food products by the Defendant.

35. The Defendant was negligent in producing and selling a food product contaminated with Hepatitis A virus. The Defendant's negligence acts and omissions included, but were not limited to :

- a. Failed to adequately maintain or monitor the sanitary conditions of its food, drink, water, premises, and employees, including supervisors;
- b. Failed to properly operate its restaurant in a safe, clean, and sanitary manner;
- c. Failed to apply its food safety policies and procedures to ensure the safety and sanitary conditions of its food, drink, water, premises, and employees, including supervisors;
- d. Failed to prevent the transmission of Hepatitis A contamination from its food, drink, water, premises, or employees, including supervisors to its business invitees and customers;
- e. Failed to properly train its employees, including supervisors and agents how to prevent the transmission of Hepatitis A virus on its premises, or in its food, drink and water;
- f. Failed to properly supervise its employees, including supervisors and agents to prevent the transmission of contamination on its premises, or in its food, drink and water;

lacked adequate warnings and instructions, and did not conform to the Defendant's express or implied warranties, the Defendant breached both express and implied warranties, and is liable to the Plaintiff, and all other persons similarly situated, for the harm proximately caused by him by its manufacture and sale of contaminated and adulterated food products.

27. That Plaintiff, and all other person similarly situated, is entitled to actual, special and punitive damages, jointly and severally, in an amount in excess of Ten Thousand Dollars (\$10,000.00) under this Count.

SECOND CAUSE OF ACTION

(Negligence)

28. The Plaintiff, and all other persons similarly situated, realleges Paragraphs 1-27 above and incorporated same by reference.
29. The Defendant manufactured, distributed, and sold a food product that was adulterated, not fit for human consumption, and that was not reasonably safe as designed, manufactured, or sold.
30. The Defendant was negligent in manufacturing, distributing, and selling a food product that was adulterated with exposure of contamination of the Hepatitis A virus, not fit for human consumption, and not reasonably safe because it subjected to exposure to the Hepatitis A virus and because adequate warnings or instructions were not provided, including but limited to the warning that its product may contain contamination from Hepatitis A virus, and thus should not be given to, or eaten by humans.
31. The Defendant had a duty to follow all health and safety standards under N.C. Gen. Stat. Article 12, Chapter 106. Further, Defendant had a duty to abide by and to

- g. Failed to design, implement, have, or enforce a hand-washing or glove-use policy effective to prevent the transmission of contamination on its premises, or in its food, drink and water;
- h. Failed to design or implement an employee or supervisor sick- leave policy that would allow, encourage, or cause employees, including supervisors to work while sick.

36. The Defendant breached the aforementioned duties as alleged herein.

37. That Plaintiff, and all other persons similarly situated, is entitled to actual, special and punitive damages, jointly and severally, in an amount in excess of Ten Thousand Dollars (\$10,000.00) under this Count.

DAMAGES

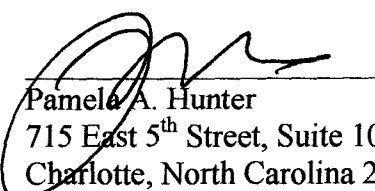
38. The Plaintiff, and all other persons similarly situated has suffered actual, special incidental and punitive damages as the direct and proximate result of the acts and omissions of the Defendant, which damages are in excess of Ten Thousand Dollars (\$10,000.00) and shall be fully proven at the time of trial. These damages include, but are not limited to: damages for wage loss; medical and medical-related expenses; travel and travel-related expenses; emotional distress, fear of harm and humiliation; fear of future health and well- being; physical pain; physical injury; and all other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

WHEREFORE, the Plaintiff, and all other persons similarly situated, prays for the following relief:

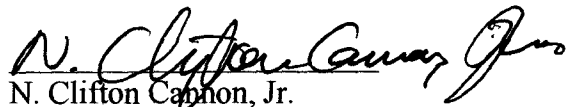
1. For a trial by Jury;

2. That this matter be deemed a Class Action;
3. That the Plaintiff, and all other persons similarly situated, each recover damages, jointly and severally, in excess of Ten Thousand Dollars (\$10,000.00) under the First Cause of Action;
4. That the Plaintiff, and all other persons similarly situated, each recover damages, jointly and severally, in excess of Ten Thousand Dollars (\$10,000.00) under the Second Cause of Action;
5. That the Plaintiff, and all other persons similarly situated, recover the cost of this action;
6. That the Plaintiff, and all other persons similarly situated, recover reasonable attorney fees, as allowed by law;
7. For such other and further relief as the Court deems just and proper.

This 25th day of April 2014



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