

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

SUSAN M. WIKSTROM,
Plaintiff,

v.

CHIPOTLE MEXICAN GRILL,
INC., a Delaware corporation,

Defendant.

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Plaintiff Susan M. Wikstrom for her Complaint against the Defendant states and alleges as follows:

PARTIES

1. Plaintiff Susan Wikstrom is a resident of the City of White Bear Lake, Minnesota.

2. Defendant Chipotle Mexican Grill, Inc. (hereafter “Chipotle”) is a corporation organized and existing under the laws of Delaware with its corporate headquarters and principal place of business located in Denver, Colorado.

3. Defendant Chipotle’s Minnesota registered agent for service is National Registered Agents, Inc., 100 South 5th Street, Suite 1075, Minneapolis, MN 55402.

4. Upon information and belief, Chipotle owns, operates and controls the “Chipotle” restaurant located at 3095 White Bear Avenue North, Maplewood, MN (hereafter “the Maplewood Chipotle”).

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. §1332(c) because the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and because there is complete diversity of citizenship between the Plaintiff and Defendant.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the acts and omissions giving rise to the claims asserted occurred in this district.

FACTUAL ALLEGATIONS

***Salmonella* Newport and the Outbreak**

7. *Salmonella* is a bacterium that occurs in humans and other animals and is shed in their feces.

8. When *Salmonella* is ingested by humans, it can cause severe gastroenteritis called salmonellosis. Symptoms of salmonellosis include nausea, vomiting, diarrhea, and abdominal pain. Headache, myalgia, and low-grade fever may also accompany salmonellosis.

9. Symptoms typically develop within 6 to 72 hours after contaminated food or water is ingested. Symptoms usually last for several days, but severe cases can last much longer and result in serious medical complications.

10. When severe infection occurs, *Salmonella* may spread from the intestines to the bloodstream and then to other body sites, which can result in death. Infants, the

elderly, and those with impaired immune systems are more likely than others to develop severe acute illness.

11. Salmonellosis can also result in a variety of well-documented long-term health issues, including reactive arthritis (Reiter's syndrome), inflammatory bowel syndrome, and immunological deficiencies.

12. *Salmonella* can be found in a variety of foods. In recent years, fecal contamination has led to large-scale *Salmonella* outbreaks linked to fresh produce. Those outbreaks include a 2014 outbreak of *Salmonella* Newport associated with cucumbers that sickened at least 275 people in 29 states; a separate 2014 outbreak of *Salmonella* Saintpaul associated with cucumbers that sickened at least 84 people in 18 states; and a 2014 outbreak of *Salmonella* Enteritidis associated with bean sprouts that sickened at least 115 people in 12 states.

13. Because *Salmonella* contamination is such a well-known risk in the production of produce, produce manufacturers have long adopted food safety measures focused on preventing *Salmonella* contamination and detecting the presence of *Salmonella* in produce.

14. Because of the severe health risks and the significant public health costs posed by *Salmonella*, the Centers for Disease Control ("CDC") in conjunction with state health departments like the Minnesota Department of Health actively monitor *Salmonella* cases throughout the country to identify the illness-causing food and stop outbreaks.

15. State and CDC labs routinely perform testing on *Salmonella* samples that identify the *Salmonella* bacteria's serotype and perform a further genetic subtyping

process known as Pulsed-Field Gel Electrophoresis (“PFGE”). The PFGE results—akin to genetic fingerprints—are then loaded into a national database where they are easily compared to each other.

16. This system alerts the state departments of health and the CDC when the number of *Salmonella* cases spikes or when a group of *Salmonella* cases are caused by the same, or closely related, genetic strain of the bacteria. The CDC or the state then investigates those cases as a single-source outbreak.

17. In August and early September of 2015, the Minnesota Department of Health (MDH) detected a spike in cases caused by *Salmonella* Newport.

18. PFGE testing on samples from 45 ill individuals revealed common PFGE patterns.

19. The MDH launched a full-scale epidemiological investigation, which included interviewing individuals who contracted outbreak strains of *Salmonella* Newport.

20. Through this process, the MDH found that 32 of the 24 people interviewed reported eating at a Chipotle restaurant shortly before their illness began.

21. Public health officials then traced the outbreak-causing food to Chipotle restaurants in Minnesota.

22. Illnesses started on dates ranging from August 20, 2015 to August 29, 2015.

Plaintiff’s *Salmonella* infection

23. On August 28, 2015, Plaintiff went to the Maplewood Chipotle to eat.

24. On approximately August 31, 2015, Plaintiff began developing stomach cramps and diarrhea.

25. Instead of improving as anticipated, Plaintiff's symptoms continued to worsen in the following days.

26. Plaintiff then sought medical treatment on multiple occasions. Plaintiff's treating doctors suspected food poisoning and obtained a stool culture.

27. The results of this testing confirmed that Plaintiff had contracted *Salmonella* and doctors prescribed a course of oral antibiotics for Plaintiff.

28. The positive stool culture was then forwarded to MDH who performed further testing on the sample.

29. The MDH test results revealed that Plaintiff had contracted *Salmonella* Newport with a PFGE pattern that matched one of the outbreak strains.

30. At roughly the same time that Plaintiff contracted salmonellosis, MDH was receiving reports that several additional individuals had contracted *Salmonella* Newport and launched an investigation.

31. The investigation revealed that several Minnesotans, including Plaintiff, contracted *Salmonella* Newport from contaminated food.

32. In addition, MDH found that 34 of the 36 sickened individuals who were interviewed, including Plaintiff, consumed food at a Chipotle restaurant.

33. As a direct and proximate result of consuming contaminated food prepared and served by Chipotle, Plaintiff suffered a debilitating and painful gastrointestinal

illness, incurred, and will incur, medical expenses, and suffered other losses and damages as proved at trial.

COUNT I – STRICT PRODUCT LIABILITY – MANUFACTURING DEFECT

34. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

35. Defendant Chipotle manufactured, processed, marketed, served and sold the adulterated food that caused Plaintiff's illness.

36. The food served by Chipotle and consumed by Plaintiff was contaminated with *Salmonella* Newport when they left the control of Defendant Chipotle.

37. Plaintiff's consumption of the contaminated food caused her to become infected with *Salmonella* and develop salmonellosis.

38. Food contaminated with *Salmonella* is dangerous if eaten and is particularly dangerous to children, the elderly, and anyone with a compromised immune system.

39. Because *Salmonella* is colorless and odorless, consumers like Plaintiff have no way of detecting the contamination.

40. The food served by Chipotle, purchased and consumed by Plaintiff was contaminated with *Salmonella* and was therefore defective and unreasonably dangerous to ordinary consumers.

41. The food served by Chipotle lacked any warning whatsoever to consumers.

42. Chipotle is strictly liable to the Plaintiff for the harm proximately caused by the manufacture and sale of its dangerous and defective food and for its failure to warn of foreseeable risks to ordinary consumers.

43. As a result of Defendant Chipotle's production and sale of a defectively manufactured product and failure to warn, Plaintiff sustained injuries and damages set forth in the preceding paragraphs.

COUNT II – NEGLIGENCE

44. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

45. Chipotle manufactured, processed, marketed, served and sold food that was contaminated with *Salmonella*, a deadly pathogen.

46. Chipotle owed a duty to all its restaurant patrons who consume its products, including Plaintiff, to manufacture and sell food that is safe to eat, that is not adulterated with deadly pathogens like *Salmonella*, and that was not produced in violation of applicable food safety regulations and industry standards.

47. Chipotle breached the duties owed to the patrons by committing the following negligent acts and omissions:

- a. Failing to adequately maintain and monitor the safety of its products, premises, equipment and employees;
- b. Failing to properly operate its restaurants in a safe, clean, and sanitary manner;
- c. Failing to adopt, implement, and follow adequate food safety policies and procedures;
- d. Failing to apply its food safety policies and procedures to ensure the safety and sanitary conditions of its food products, premises, and employees;

- e. Failing to adopt, implement, and validate food safety policies and procedures that met industry standards for the safe and sanitary production of produce;
- f. Failing to properly train its employees and agents how to prevent the transmission of *Salmonella*; and
- g. Failing to properly supervise its employees and agents to prevent the transmission of *Salmonella*.

48. Plaintiff's injuries are a direct and proximate result of the negligence of Defendant Chipotle.

49. As a result of Defendant Chipotle's negligence, Plaintiff sustained the injuries and damages set forth in the preceding paragraphs.

COUNT III – NEGLIGENCE PER SE (MINN. STAT. § 31.02)

50. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

51. Defendant Chipotle, its employees, agents, or those working on its behalf, as providers of food products within the State of Minnesota, owe a duty to comply with Minn. Stat. Chapter 31.

52. Minnesota Food Law, Minn. Stat. § 31.02 *et seq.*, prohibits:

- a. The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded;
- b. The adulteration or misbranding of any food;
- c. The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

53. Chipotle, its employees, agents, or those working on its behalf, failed to comply with Minn. Stat. Chapter 31. Such conduct constitutes negligence *per se*.

54. As a result of the failure of Defendant Chipotle, its employees, agents, or those working on its behalf, to comply with Minn. Stat. Chapter 31, Plaintiff sustained damages as set forth in the preceding paragraphs.

COUNT IV – NEGLIGENCE PER SE (21 U.S.C. § 331)

55. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

56. Defendant Chipotle, its employees, agents, or those working on its behalf, as providers of food products in the United States of America, owe a duty to comply with 21 U.S.C. § 331, which states:

The following acts and the causing thereof are prohibited:

- a. The introduction or delivery for introduction into interstate commerce of any food that is adulterated;
- b. The receipt in interstate commerce of any food that is adulterated, and the delivery or proffered delivery thereof for pay or otherwise....

57. Chipotle, its employees, agents, or those working on its behalf, failed to comply with U.S.C. § 331. Such conduct constitutes negligence *per se*.

58. As a result of the failure of Defendant Chipotle, its employees, agents, or those working on its behalf, to comply with 21 U.S.C. § 331, Plaintiff sustained damages as set forth in the preceding paragraphs.

COUNT V – BREACH OF IMPLIED WARRANTY

59. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

60. The food produced, served and sold by Chipotle that caused Plaintiff's illness was adulterated with *Salmonella* and was in a defective condition unreasonably dangerous to ordinary consumers and members of the public when it left Chipotle's control.

61. Chipotle violated Minnesota Statutes § 336.2-314 because its goods would not: (a) pass without objection in the trade under the contract description; (b) were not of fair average quality within the description; and (c) were not fit for the ordinary purposes for which such goods are used: human consumption.

62. Plaintiff's injuries are a direct and proximate result of Chipotle's breach of implied warranties, and the Plaintiff is entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

63. As a direct result of Defendant Chipotle's breach of its implied warranties, Plaintiff suffered the injuries and damages set forth in the preceding paragraphs.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays judgment against the Defendant in an amount greater than Seventy-Five Thousand Dollars (\$75,000.00) together with pre- and post-

