

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF DUPAGE )

IN THE CIRCUIT COURT OF THE EIGHTEENTH  
JUDICIAL CIRCUIT, DUPAGE COUNTY, ILLINOIS

JOHN DOE, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No.:  
 )  
 ACME RESTAURANT CORP., )  
 )  
 Defendant. )

**COMPLAINT AT LAW**

NOW COMES the Plaintiff, JOHN DOE (hereinafter “Plaintiff”), by and through his attorneys, JOHN J. MALM & ASSOCIATES, P.C., and for his Complaint against the Defendant, ACME RESTAURANT CORP. (hereinafter “Defendant”), state as follows:

**COUNT I**  
**Strict Products Liability v. ACME Restaurant Corp.**

1. At all times herein relevant and on or about January 1, 2000, Plaintiff was a customer at Defendant’s restaurant located in DuPage County, Illinois.
2. At all times herein relevant and on or about January 1, 2000, Defendant was an Illinois Corporation, and engaged in the business of preparing, storing, handling, and selling food at its corporately owned and operated restaurant located in DuPage County, Illinois.
3. At all times herein relevant and on or about January 1, 2000, Defendant prepared, stored, handled, manufactured, and sold food products for sale to the general public.

4. At all times relevant and on or about January 1, 2000, Plaintiff consumed a chicken meal (hereinafter “chicken”), that was prepared and offered for consumption by Defendant at its restaurant located in DuPage County, Illinois.

5. As a direct and proximate result of consuming chicken prepared and offered for consumption by Defendant, Plaintiff suffered serious illness and injury, including paralysis, and other complications of infection, requiring medical care, surgery, and extended hospitalization.

6. At all times herein relevant and on or about January 1, 2000, the chicken purchased and consumed by Plaintiff was contaminated with *Clostridium botulinum* and other illness producing bacteria when it left Defendant’s control.

7. Food, including the chicken that caused Plaintiff’s illness and injuries, that is contaminated with *Clostridium botulinum* and/or other illness producing bacteria is unreasonably dangerous for its ordinary and expected use of human consumption. Such a food product is thus in an unreasonably dangerous condition not contemplated by an ordinary consumer, making it defective *per se*.

8. The above-described chicken prepared, stored, handled, and sold by Defendant was unreasonably dangerous and in a defective condition, as a result of Defendant’s acts or omissions, including but not limited to the following:

- a) Defendant’s failure to use safe and proper food storage, preparation, and handling practices;
- b) Defendant’s failure to use safe and proper food inspection practices;
- c) Failure to adequately and/or safely prepare the chicken for human consumption;
- d) Failure to eliminate the presence of *Clostridium botulinum* bacteria and other illness producing bacteria, which presented an inherently unsafe and defective condition that would result in an unreasonably high propensity for the chicken ingredients to become and remain in a dangerous condition for human consumption; and

- e) Failure to provide adequate warning to consumers or users of the dangers of hazards inherent in the consumption of chicken.

9. As a proximate result of one or more of the foregoing acts or omissions on the part of the Defendant, Plaintiff was on or about January 1, 2000, caused to ingest and/or consume chicken contaminated with Clostridium botulinum and other illness producing bacteria, and suffered injuries of a personal and pecuniary nature.

WHEREFORE, the Plaintiff, JOHN DOE, demands judgment against the Defendant, ACME RESTAURANT CORP., in a sum in excess of Fifty Thousand Dollars (\$50,000.00) and any such additional relief this Honorable Court deems just.

**COUNT II**  
**Negligence v. ACME Restaurant Corp.**

1-9. Plaintiff, JOHN DOE, incorporates by reference paragraphs 1 through 9 of Count I as though fully recited and rewritten herein.

10. At all times herein relevant and on or before January 1, 2000, Defendant had a duty to possess, operate, manage, maintain, control, purchase, prepare, store, handle, and sell its food, including chicken, both directly and indirectly, individually and through its agents, servants, and/or employees, in a reasonably safe manner.

11. At all times herein relevant and on or about January 1, 2000, Defendant was then and there guilty of one or more of the following negligent acts and/or omissions:

- a) Failure to properly operate, maintain, and/or control the sanitary conditions in the kitchen, so that as a direct and proximate result thereof, the Plaintiff was injured;
- b) Failure to make a reasonable inspection of the sanitary conditions of the aforesaid kitchen, when the Defendant knew or should have known, that said inspection was necessary to prevent injury to persons in general, and to Plaintiff in particular;

- c) Failure to make a reasonable inspection of its food, including the chicken, when the Defendant knew or should have known, that said inspection was necessary to prevent injury to persons in general, and to Plaintiff in particular;
- d) Failure to warn Plaintiff of the dangerous condition of the chicken, when the Defendant knew or in the exercise of ordinary care should have known, that the chicken was contaminated with Clostridium botulinum and other illness producing bacteria;
- e) Failure to properly wash, prepare, handle, and/or serve chicken in a reasonably safe manner;
- f) Failure to use ingredients, supplies and other constituent materials that were reasonably safe, wholesome, free of defects, clean, free from adulteration of deadly pathogens, and/or safe for human consumption;
- g) Failure to store chicken ingredients in a safe and reasonably manner; and
- h) Otherwise acted carelessly and negligently in the process of purchasing, preparing, storing, handling, and/or selling its food, including chicken, to Plaintiff.

12. As a proximate result of one or more of the foregoing acts or omissions on the part of the Defendant, Plaintiff on or about January 1, 2000, was caused to ingest and/or consume chicken contaminated with Clostridium botulinum and other illness producing bacteria, and suffered injuries of a personal and pecuniary nature.

WHEREFORE, the Plaintiff, JOHN DOE, demands judgment against the Defendant, ACME RESTAURANT CORP., in a sum in excess of Fifty Thousand Dollars (\$50,000.00) and any such additional relief this Honorable Court deems just.

**COUNT III**  
**Breach of Warranty of Wholesomeness v. ACME Restaurant Corp.**

1-12. Plaintiff, JOHN DOE, incorporates by reference the allegations contained in Paragraphs 1 through 12 of Count I and Count II as if fully recited and rewritten herein.

13. At all times herein relevant and on or about January 1, 2000, Defendant offered food for sale to the general public and impliedly warranted that such food was safe to eat, was

not adulterated with a deadly pathogen, and that the food had been safely prepared under sanitary conditions.

14. Plaintiff, in consuming Defendant's chicken, relied upon Defendant's implied warranty at the time the chicken left the Defendant's control.

15. At all times herein relevant and on or about January 1, 2000, Defendant's chicken was not fit for the uses and purposes intended - human consumption, and was therefore in breach of the implied warranty of wholesomeness.

16. At all times herein relevant and on or about January 1, 2000, as a direct and proximate cause of Defendant's breach of implied warranty of wholesomeness, Plaintiff was caused to ingest and/or consume chicken contaminated with Clostridium botulinum and other illness producing bacteria, and suffered injuries of a personal and pecuniary nature.

WHEREFORE, the Plaintiff, JOHN DOE, demands judgment against the Defendant, ACME RESTAURANT CORP., in a sum in excess of Fifty Thousand Dollars (\$50,000.00) and any such additional relief this Honorable Court deems just.

JOHN J. MALM & ASSOCIATES, P.C.

By: \_\_\_\_\_  
One of Plaintiffs' Attorneys

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