

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI**

CHARLES and ELLICE MEYER, husband : )  
And wife, )  
 )  
Plaintiffs, )

v. )

SCHNUCK SUPERMARKETS, INC., )  
A domestic corporation; )  
*Registered Agent:* )  
*Terry E. Schnuck* )  
*12921 Enterprise Way* )  
*Bridgeton, MO 63044-0400* )

Complaint and Jury Demand

And )

VAUGHAN FOODS, INC., )  
A foreign corporation; )

And )

JOHN DOES 1-4, domestic and/or  
foreign corporations,

Defendants.

**COMPLAINT FOR DAMAGES**

COME NOW the plaintiffs, by and through their attorneys of record, ALESHIRE ROBB, P.C and MARLER CLARK, L.L.P., and allege as follows:

**I. PARTIES**

1. The plaintiffs reside in St. Louis County, Missouri, which is located within the jurisdiction of this Court.

2. The Defendant Schnuck Supermarket, Inc. is a Missouri corporation that, at all times relevant, owned and operated retail grocery stores d/b/a “Schnucks” in the state of

Missouri, including the Schnucks' location at 1225 South Florissant Road, Cool Valley, MO. At that location, Schnucks operated a salad bar where customers make their own salads. The defendant resides and does business within the jurisdiction of this Court.

3. The defendant Vaughan Foods, Inc. (Vaughan) is a foreign corporation that, at all times relevant, owned and operated a food processing and distributing company that manufactured, among other items, fresh vegetable products for distribution in the interstate marketplace, including to Schnuck's retail grocery locations in the State of Missouri. Vaughan manufactured and sold the *E. coli* O157:H7-contaminated romaine lettuce that caused the outbreak more fully described at paragraphs 8 through 13 of this complaint.

4. The defendants John Does 1 through 4 are persons or entities whose true identities are presently unknown, but who may have manufactured, distributed, or sold the romaine lettuce that was the proximate cause of plaintiff's injuries. Defendants John Does 1 through 4 will be properly identified upon discovery of their true identities.

## **II. JURISDICTION AND VENUE**

5. Jurisdiction and venue are proper in this Court because the plaintiffs and defendant Schnucks reside in this jurisdiction, the defendants do business in this jurisdiction, and the events that give rise to this cause of action occurred in this jurisdiction.

## **III. GENERAL ALLEGATIONS**

6. ***E. coli* O157:H7**: *Escherichia coli* is the name of a common family of bacteria, most members of which do not cause human disease. *E. coli* O157:H7 is a specific member of this family that can cause bloody diarrhea (hemorrhagic colitis) in humans. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attaches to the inside surface of the large intestine and initiates an inflammatory reaction of the intestine. The mean incubation period

(time from ingestion to the onset of symptoms) of *E. coli* O157:H7 is estimated to be two to four days (range, 1-21 days). Typically, a patient with an acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody diarrhea, and vomiting. *E. coli* O157:H7 can produce a wide spectrum of disease from mild, non-bloody diarrhea, to severe bloody diarrhea accompanied by excruciating abdominal pain to life-threatening complications.

7. **Prior *E. coli* Outbreaks Tied to Lettuce and Leafy Greens:** *E. coli* outbreaks associated with lettuce or spinach, specifically the “pre-washed” and “ready-to-eat” varieties, are by no means a new phenomenon. The chart below references a number of the higher profile outbreaks:

<b>Date</b>	<b>Vehicle</b>	<b>Etiology</b>	<b>Confirmed Cases</b>	<b>States/Provinces</b>
Aug. 1993	Salad Bar	<i>E. coli</i> O157:H7	53	1:WA
July 1995	Lettuce (leafy green; red; romaine)	<i>E. coli</i> O157:H7	70	1:MT
Sept. 1995	Lettuce (romaine)	<i>E. coli</i> O157:H7	20	1:ID
Sept. 1995	Lettuce (iceberg)	<i>E. coli</i> O157:H7	30	1:ME
Oct. 1995	Lettuce (iceberg; unconfirmed)	<i>E. coli</i> O157:H7	11	1:OH
May-June 1996	Lettuce (mesclun; red leaf)	<i>E. coli</i> O157:H7	61	3:CT, IL, NY
May 1998	Salad	<i>E. coli</i> O157:H7	2	1:CA
Feb.-Mar. 1999	Lettuce (iceberg)	<i>E. coli</i> O157:H7	72	1:NE
July-Aug. 2002	Lettuce (romaine)	<i>E. coli</i> O157:H7	29	2:WA, ID
Oct. 2003-May 2004	Lettuce (mixed salad)	<i>E. coli</i> O157:H7	57	1:CA
Apr. 2004	Spinach	<i>E. coli</i> O157:H7	16	1:CA

Date	Vehicle	Etiology	Confirmed Cases	States/Provinces
Sept. 2005	Lettuce (romaine)	<i>E. coli</i> O157:H7	32	3:MN, WI, OR
Sept. 2006	Spinach (baby)	<i>E. coli</i> O157:H7 and other serotypes	204	Many States
Nov/Dec 2006	Lettuce	<i>E. coli</i> O157:H7	71	NY, NJ, PA, DE
Nov/Dec 2006	Lettuce	<i>E. coli</i> O157:H7	81	IA, MN, WI
May 2008	Romaine	<i>E. coli</i> O157:H7	9	WA
April/May 2010	Romaine	<i>E. coli</i> O145	33	MI, NY, OH, PA, TN

8. **The Outbreak:** Collaborative investigative efforts of state, local, and federal public health agencies indicates that romaine lettuce sold primarily at several locations of defendant Schnucks' grocery stores caused an *E. coli* O157:H7 outbreak that has sickened at least 60 people in 10 states.

9. From October 10 to November 4, 2011, public health officials in several states and the Centers for Disease Control and Prevention conducted an epidemiologic study by comparing foods eaten by 22 ill and 82 well persons, including 45 well persons who shopped at Schnucks' grocery store locations during the week of October 17, 2011. Analysis of this study established that eating romaine lettuce was associated with illness. Ill persons (85%) were significantly more likely than well persons (46%) to report eating romaine lettuce in the week before illness. Ill persons (86%) were also significantly more likely than well persons (55%) to report shopping at Schnucks' grocery stores.

10. The investigation also showed that, among ill and well persons who shopped at Schnucks' locations, ill persons (89%) were significantly more likely than well persons (9%) to report eating a salad from the salad bar. Several different types of lettuce were offered on the salad bar. Of 18 ill persons who reported the type of lettuce eaten, 94% reported eating romaine lettuce. No other type of lettuce or other item offered on the salad bar was reported to be eaten by more than 55% of ill persons.

11. Ill persons reported purchasing salads from salad bars at Schnucks' locations between October 5 and October 24, 2011. A total of 9 Schnucks' locations were identified where more than one ill person reported purchasing a salad from the salad bar in the week before becoming ill. This included 2 separate locations where 4 ill persons reported purchasing a salad at each location. For locations where more than one ill person reported purchasing a salad from the salad bar and the date of purchase was known, dates of purchase were all within 4 days of other ill persons purchasing a salad at that same location.

12. Romaine lettuce served on salad bars at all Schnucks' locations had come from defendant Vaughan's food processing business in Oklahoma. The contamination of romaine lettuce in this outbreak occurred at or before the lettuce left the possession and control of Vaughan, and before the product reached Schnucks' locations.

13. The Food and Drug Administration and several state agencies conducted traceback investigations for romaine lettuce to try to identify the source of contamination. Traceback investigations focused on ill persons who had eaten at salad bars at several Schnucks' locations and ill persons at university campuses in Minnesota (1 ill person) and Missouri (2 ill persons). Traceback analysis determined that a single common lot of romaine lettuce harvested

from Farm A was used to supply Vaughan with romaine lettuce, and from there the Schnucks' locations as well as the university campus in Minnesota during the time of the illnesses. Preliminary findings of investigation at Farm A did not identify the source of the contamination. Farm A was no longer in production during the time of the investigation.

### **Charles Meyer's *E. coli* O157:H7 Infection and Illness**

14. Charles Meyer, 61 years old, is a regular customer of Schnuck's grocery locations in the St. Louis area. In the week prior to the onset of symptoms related to his *E. coli* O157:H7 infection, Mr. Meyer ate from the salad bar at the 1225 South Florissant Road, Cool Valley, Missouri Schnuck's location on several occasions. Each time, he selected romaine lettuce, in addition to a variety of other ingredients from the salad bar, and ate them.

15. Onset of Mr. Meyer's *E. coli* O157:H7 illness occurred on or about October 24, 2011, a Monday. Symptoms began with uncomfortable abdominal cramps and diarrhea. These and other developing gastrointestinal symptoms persisted through the next evening, by which time Mr. Meyer's cramps had become unbearably painful, and his bouts of diarrhea grossly bloody.

16. Continuing to be very ill, on Wednesday, October 26 Mr. Meyer saw his primary care physician, who ruled out acute appendicitis and diagnosed Mr. Meyer with a likely case of foodpoisoning. By this time, Mr. Meyer's abdomen had become notably distended. His physician called St. John's Mercy Hospital to inform the hospital that Mr. Meyer would be coming to the emergency department.

17. Mr. Meyer went straight to the emergency department at St. John's Mercy, where the attending physician began intravenous fluids due to severe gastrointestinal losses, and antibiotic treatment. Mr. Meyer gave a stool sample during his brief stay in the ER that would

ultimately test positive for the strain of *E. coli* O157:H7 involved in the outbreaks described at paragraph 8 through 13, above.

18. Mr. Meyer was later admitted to St. John's Mercy Hospital. During his hospitalization, Mr. Meyer underwent a colonoscopy, among other treatment and diagnostic measures, and ultimately had to be transferred to the cardiology unit for monitoring of his heart function. He was discharged on Sunday, October 30, 2011.

19. Since being discharged, Mr. Meyer has struggled to return to his prior state of health. Before his illness, Mr. Meyer regularly exercised, strength training three times a week. He has not regained either the strength or endurance that he formerly enjoyed, and still has not returned to his normal fitness routine. Nor has his gastrointestinal function returned to normal. He continues to regain the weight that he lost during his severe illness.

20. As a direct and proximate result of his *E. coli* O157:H7 infection, Charles Meyer has suffered severe and permanent injuries of the mind and body, has incurred medical bills for the care and treatment of his injuries and will continue to do so in the future.

21. As a further direct and proximate result of his *E. coli* O157:H7 infection, Charles Meyer's ability and capacity for work, labor, pleasure and enjoyment of life has been diminished and will continue to be so in the future.

#### **IV. CAUSES OF ACTION AGAINST DEFENDANT SCHNUCK**

##### **Strict Liability—Count I**

22. Plaintiffs hereby incorporate by reference all preceding paragraphs 1-21 of this Petition in *haec verba*.

23. Defendant Schnucks was the seller of the salad that contained romaine lettuce that caused Mr. Meyer to become infected by *E. coli* O157:H7 and suffer damages as a result.

24. The salad sold by defendant Schnucks was contaminated by *E. coli* O157:H7 at the time it left the defendant Schnucks' possession or control.

25. A salad contaminated by *E. coli* O157:H7 is unreasonably dangerous for its ordinary and expected use—*i.e.*, consumption. Such a product is thus in an unreasonably dangerous condition not contemplated by an ordinary consumer, making it defective *per se*.

26. The salad was used by the plaintiff in the manner expected and intended when Mr. Meyer consumed it.

27. Mr. Meyer suffered the injuries and damages specifically set forth in Paragraphs 14-21 above, as a direct and proximate result of the defective and unreasonably dangerous condition of the product sold by defendant Schnucks.

28. Defendant Schnucks is strictly liable to the plaintiffs for all damages proximately caused by its defective product.

WHEREFORE, Plaintiffs pray for judgment on Count I of their Petition against the defendant Schnuck in an amount that is fair and reasonable, for costs, and for any other relief the Court deems proper.

Breach of Warranty—Count II

29. Plaintiffs hereby incorporate by reference all preceding paragraphs 1-28 of this Petition in *haec verba*.

30. Defendant Schnucks is liable to the plaintiffs for breaching express and implied warranties that it made regarding the adulterated product that the plaintiff Mr. Meyer purchased. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, the defendant expressly warranted that the salad it sold was healthful, safe, and beneficial for the plaintiff.

31. Plaintiffs allege that the *E. coli* O157:H7-contaminated food that defendant Schnucks sold to plaintiff would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

32. Plaintiffs allege that the *E. coli* O157:H7-contaminated food that defendant Schnucks sold to plaintiff Mr. Meyer was not fit for the uses and purposes intended, *i.e.* human consumption, and that this product was therefore in breach of the implied warranty of fitness for its intended use.

33. As a direct and proximate result of the defendant Schnucks' breach of warranties, as set forth above, the plaintiffs sustained injuries and damages as specifically set forth in paragraphs 14-21 above.

WHEREFORE, Plaintiffs pray for judgment on Count II of their Petition against Defendant Schnuck in an amount that is fair and reasonable, for costs, and for any other relief the Court deems proper.

Negligence and Negligence Per Se—Count III

34. Plaintiffs hereby incorporate by reference all preceding paragraphs 1-33 of this Petition in *haec verba*.

35. Defendant Schnucks owed a duty to the plaintiff Mr. Meyer to use reasonable care in the promotion, marketing, and sale of its salad product to ensure that the product did not infect consumers with *E. coli* O157:H7 or any other dangerous pathogen. The defendant breached this duty.

36. Defendant Schnucks had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the distribution, storage, and sale of its salad product, but failed to do so, and was therefore negligent. The plaintiff Mr. Meyer is among the class of persons designed

to be protected by these statutes, laws, regulations, safety codes, or provisions pertaining to the manufacture, distribution, storage, and sale of similar food products.

37. Defendant Schnucks had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its salad product, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*), the Missouri adulterated food statutes, RSMo. § 196.010 *et. seq.*, and the Missouri Merchandising Practices Act, RSMo. § 407.020 *et. seq.*.

38. Defendant Schnuck failed to comply with the provisions of the health and safety acts identified above, and, as a result, was negligent *per se* in its distribution and sale of a salad product adulterated by *E. coli* O157:H7, a deadly pathogen.

39. As a direct and proximate result of defendant Schnucks' acts of negligence and negligence *per se*, the plaintiffs sustained injuries and damages specifically set forth in Paragraphs 14-21 above.

40. As a result of defendant Schnucks' false and misleading representation that the salad was healthy and beneficial, defendant Schnucks violated the Missouri Merchandising Practices Act, thereby entitling plaintiffs to attorneys' fees and punitive damages.

WHEREFORE, Plaintiffs pray for judgment on Count III of their Petition against the defendant Schnucks in an amount that is fair and reasonable, for additional award of punitive damages and attorney's fees, for costs, and for any other relief the Court deems proper.

**V. CAUSES OF ACTION AGAINST DEFENDANTS VAUGHAN AND JOHN DOES**  
**1-4**

Strict Liability—Count IV

41. Plaintiffs incorporate by reference all preceding paragraphs 1-40 of this Petition in *haec verba*.

42. Defendants Vaughan and John Does 1-4 were the manufacturers, distributors, and sellers of the *E. coli* O157:H7-contaminated romaine lettuce that defendant Schnucks used in manufacturing and selling the salad that caused Mr. Meyer's *E. coli* O157:H7 infection, which caused plaintiffs to suffer damages as a result.

43. The romaine lettuce manufactured, distributed, or sold by defendants Vaughan and John Does 1-4 was contaminated by *E. coli* O157:H7 at the time it left the defendants' possession or control.

44. *E. coli* O157:H7-contaminated romaine lettuce is unreasonably dangerous for its ordinary and expected use—*i.e.*, consumption. Such a product is thus in an unreasonably dangerous condition not contemplated by an ordinary consumer, making it defective *per se*.

45. The *E. coli* O157:H7-contaminated romaine lettuce manufactured, distributed, and sold by the defendants Vaughan and John Does 1-4 was used by the plaintiff Mr. Meyer in the manner expected and intended when he consumed it.

46. The plaintiffs suffered injury and damages specifically set forth in paragraphs 14-21 above, as a direct and proximate result of the defective and unreasonably dangerous condition of the product sold by defendants Vaughan and John Does 1-4.

47. Defendants Vaughan and John Does 1-4 are strictly liable to the plaintiffs for all damages proximately caused by their defective product.

WHEREFORE, Plaintiffs pray for judgment on Count IV of their Petition against the defendants Vaughan and John Does 1-4 in an amount that is fair and reasonable, for costs, and for any other relief the Court deems proper.

Breach of Warranty—Count V

48. Plaintiffs hereby incorporate by reference all preceding paragraphs 1-47 of this Petition in *haec verba*.

49. Defendants Vaughan and John Does 1-4 are liable to the plaintiffs for breaching express and implied warranties that they made regarding the adulterated product that Mr. Meyer purchased. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, the defendants expressly warranted that the romaine lettuce they manufactured, distributed, and sold was healthful, safe, and beneficial for the plaintiff Mr. Meyer.

50. The *E. coli* O157:H7-contaminated romaine lettuce that defendants Vaughan and John Does 1-4 manufactured, distributed, or sold, and that caused Mr. Meyer's *E. coli* O157:H7 infection, would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

51. Plaintiffs allege that the *E. coli* O157:H7-contaminated romaine lettuce that defendants Vaughan and John Does 1-4 sold to plaintiff Mr. Meyer was not fit for the uses and purposes intended, *i.e.* human consumption, and that this product was therefore in breach of the implied warranty of fitness for its intended use.

52. As a direct and proximate result of the defendants Vaughan and John Does 1-4 breaches of warranty, as set forth above, the plaintiffs sustained injuries and damages specifically set forth in Paragraphs 14 through 21 above.

WHEREFORE, Plaintiffs pray for judgment on Count V of their Petition against the defendants Vaughan and John Does 1-4 in an amount that is fair and reasonable, for costs, and for any other relief the Court deems proper.

Negligence and Negligence Per Se—Count VI

53. Plaintiffs hereby incorporate by reference all preceding paragraphs 1-52 of this Petition in *haec verba*.

54. Defendants Vaughan and John Does 1-4 owed a duty to the plaintiff Mr. Meyer to use reasonable care in the promotion, marketing, and sale of their romaine lettuce products to ensure that the products did not infect consumers with *E. coli* O157:H7 or any other dangerous pathogen. Defendants breached this duty.

55. Defendants Vaughan and John Does 1-4 had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of their romaine lettuce products, but failed to do so, and were therefore negligent. The plaintiff Mr. Meyer is among the class of persons designed to be protected by these statutes, laws, regulations, safety codes, or provisions pertaining to the manufacture, distribution, storage, and sale of similar food products.

56. Defendants Vaughan and John Does 1-4 had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of their romaine lettuce products, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*), the Missouri adulterated food statutes, RSMo. §196.010 *et. seq.*, and the Missouri Merchandising Practices Act, RSMo. §407.020 *et. seq.*.

57. Defendants Vaughan and John Does 1-4 failed to comply with the provisions of the health and safety acts identified above, and, as a result, were negligent *per se* in their manufacture, distribution, and sale of romaine lettuce products adulterated by *E. coli* O157:H7, a deadly pathogen.

58. The defendants Vaughan and John Does 1-4 also had a duty to properly supervise, train, and monitor their respective employees, and to ensure their respective employees'

compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but the defendants failed to do so. Defendants failed to properly supervise, train, and monitor their respective employees, and to ensure their respective employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of their romaine lettuce food products, and were therefore negligent or negligent *per se*.

59. As a result of defendants Vaughan and John Does 1-4 violations of the Missouri Merchandising Practices Act, plaintiffs are entitled to punitive damages and attorney's fees.

60. As a direct and proximate result of defendants Vaughan and John Does 1-4 various acts of negligence, the plaintiffs sustained injuries and damages specifically set forth in Paragraphs 14 through 21 above.

WHEREFORE, Plaintiffs pray for judgment on Count III of their Petition against the defendants Vaughan and John Does 1-4 in an amount that is fair and reasonable, for additional award of punitive damages and attorney's fees, for costs, and for any other relief the Court deems proper.

**JURY DEMAND**

The plaintiffs hereby demand a jury trial.

**ALESHIRE ROBB, P.C.**

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(Pending admission *pro hac vice*)

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