

IN THE CIRCUIT COURT OF HAMILTON COUNTY
CHATTANOOGA, TENNESSEE

CHANDLER FUSSELL, an individual,

Plaintiff,

v.

SYSCO NASHVILLE, LLC, a Delaware
limited liability company;
FRESHPOINT, INC., a Delaware
corporation;
FRESHPOINT ATLANTA, INC., a Georgia
Corporation; and JOHN DOE
DEFENDANTS 1, 2, AND 3;

Defendants.

Docket No. 19C346

Division

JURY DEMAND

FILED IN OFFICE
2019 MAR 19 PM 12:04
LARRY L. HENRY, CLERK
CHBN

SUMMONS

To: Freshpoint, Inc.
c/o registered agent
Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

You are hereby summoned to answer and make defense to a bill of complaint which has been filed in the Circuit Court of Hamilton County, Tennessee in the above styled case. Your defense to this complaint must be filed in the office of the Circuit Court Clerk of Hamilton, Tennessee on or before thirty (30) days after service of this summons upon you. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

ATTESTED TO and Issued this 19th day of March, 2019.

LARRY HENRY, CIRCUIT COURT CLERK

By: H. Nowko

Deputy Circuit Court Clerk

ATTORNEYS FOR PLAINTIFF:

Timothy G. Wehner BPR No. 15711 Rainey Kizer Reviere & Bell, PLC 105 S. Highland Avenue Jackson, TN 38301 P: (731) 425-7941 E: twehner@raineykizer.com	Fred S. Clelland, BPR No. 14272 Rainey, Kizer, Reviere & Bell, PLC 1008 Executive Drive, Suite 104 Chattanooga, TN 37343 P: 423/756-3333 F: 423-756-3337 E: fclelland@raineykizer.com
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PLAINTIFF'S ADDRESS: c/o attorneys

Received this ____ day of _____, 2019.

/S/ _____
Deputy Sheriff

**STATE OF TENNESSEE
COUNTY OF HAMILTON**

I, Larry Henry, Clerk, in and for the State and County aforesaid, hereby certify that the within and foregoing is a true and correct copy of the original writ of summons issued in this case.

Larry Henry, Circuit Court Clerk

By: _____ D.C.

OFFICERS RETURN

I certify that I served this summons together with the complaint as follows:

I On _____, 2019. I delivered a copy of the summons and
Complaint to the defendant, _____

I Failed to serve this summons within 30 days after it issuance because: _____

_____, Sheriff

Deputy Sheriff

CLERK' S RETURN

I hereby acknowledge and accept service of the within summons and receive copy of same, this ____ day of _____, 2019.

Defendant

Larry Henry, Circuit Court Clerk

By: _____ D.C.

NOTICE TO DEFENDANT:

Tennessee Law provides a four thousand dollar (\$4,000.00) personal property exemption from execution or seizure to satisfy a judgment. I a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

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CHANDLER FUSSELL, an individual

Case No. 19C346

Plaintiff,

v.

SYSCO NASHVILLE, LLC, a Delaware limited liability company; FRESHPOINT, INC., a Delaware corporation; FRESHPOINT ATLANTA, INC.; and JOHN DOE DEFENDANTS 1, 2, and 3;

COMPLAINT AND DEMAND
FOR JURY TRIAL

Defendants.

COMES NOW, Plaintiff Chandler Fussell, who, by and through his attorneys of record, RAINEY KIZER REVIERE & BELL, PLC, and MARLER CLARK, LLP, PS (pending admission *pro hac vice*), alleges upon information and belief as follows:

PARTIES

1.1 Plaintiff currently resides in Obion County, Tennessee. At all other times relevant to the events that gave rise to this lawsuit, Plaintiff resided in Hamilton County, Tennessee, where he was a student at the University of Tennessee Chattanooga.

1.2 Sysco Nashville, LLC, is a limited liability company organized and existing under the laws of the State of Delaware. At all times relevant, Sysco Nashville, LLC was a distributor of food products, operating one or more distribution facilities in the State of Tennessee, including the facility located at One Hermitage Plaza, Nashville, Tennessee. Sysco Nashville, LLC, either alone or acting jointly with Defendant Freshpoint, Inc., distributed the contaminated

romaine lettuce products that are the subject of this action to the Chick-Fil-A restaurant located at 615 McCallie Avenue, Suite 107, Chattanooga, Tennessee.

1.3 Freshpoint, Inc., is a corporation organized and existing under the laws of the State of Delaware. At all times relevant, Freshpoint, Inc., was a distributor of food products to foodservice locations within the State of Tennessee, among others. Freshpoint, Inc., either alone or acting jointly with Sysco Nashville, LLC, distributed the contaminated romaine lettuce products that are the subject of this action to the Chick-Fil-A restaurant located at 615 McCallie Avenue, Suite 107, Chattanooga, Tennessee.

1.4 Freshpoint Atlanta, Inc., is a corporation organized and existing under the laws of the State of Georgia. At all times relevant, Freshpoint Atlanta, Inc., was a distributor of food products to foodservice locations within several counties in southeastern Tennessee, including Hamilton County. Freshpoint Atlanta, Inc., either alone or acting jointly with Sysco Nashville, LLC, distributed the contaminated romaine lettuce products that are the subject of this action to the Chick-Fil-A restaurant located at 615 McCallie Avenue, Suite 107, Chattanooga, Tennessee.

1.5 John Doe Defendants 1, 2, and 3, are growers, processors, and distributors of the contaminated lettuce products that are the subject of this action. Plaintiff is presently unaware of the identities of John Doe Defendants 1, 2, and 3, but alleges that, at all relevant times, these entities, in the ordinary course of their businesses, grew, processed, distributed and sold the contaminated romaine lettuce products that are the subject of this action.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

The 2018 Romaine Lettuce *E. coli* O157:H7 Outbreak

2.1 As of June 28, 2018, at least 210 people in 36 states were sickened in an outbreak of *E. coli* O157:H7 linked to romaine lettuce grown in the Yuma, Arizona region. Illnesses also occurred in Canada and are not included in this count.

2.2 Illnesses started on dates ranging from March 13, 2018 to June 6, 2018. Ill people range in age from 1 to 88 years, with a median age of 28. Sixty-seven percent of ill people are female. Of 201 people with information available, 96 (48%) have been hospitalized, including 27 people who developed hemolytic uremic syndrome, a type of kidney failure. At least five victims died from their *E. coli* O157:H7 infections.

2.3 Epidemiologic, laboratory, and traceback evidence—generated during a large multi-agency investigation that included Centers for Disease Control and Prevention, Food and Drug Administration, and officials from the Minnesota Department of Health and other state and local public health agencies—indicated that romaine lettuce from the Yuma growing region was the likely source of this outbreak.

2.4 In interviews, ill people answered questions about the foods they ate and other exposures they had before they became ill. Of the 166 people interviewed, 145 (87%) reported eating romaine lettuce in the week before their illness started. This percentage was significantly higher than results from a survey of healthy people in which 46% reported eating romaine lettuce in the week before they were interviewed. Some people who became sick in this outbreak did not report eating romaine lettuce but had close contact with someone else who got sick from eating romaine lettuce.

2.5 The FDA and state and local regulatory officials traced the romaine lettuce to many farms in the Yuma growing region. The FDA, along with CDC and state partners, started an environmental assessment in the Yuma growing region and collected samples of water, soil,

and manure. CDC laboratory testing identified the outbreak strain of *E. coli* O157:H7 in water samples taken from a canal in the Yuma growing region. Whole genome sequencing analysis showed that the *E. coli* O157:H7 found in the canal water is closely related genetically to the *E. coli* O157:H7 from ill people. Laboratory testing for other environmental samples is continuing. FDA is continuing to investigate to learn more about how the *E. coli* O157:H7 bacteria could have entered the water and ways this water could have contaminated romaine lettuce in the region.

***E. coli* O157:H7 and Hemolytic Uremic Syndrome**

2.6 *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. In the years since *E. coli* O157:H7 was first identified as a cause of diarrhea, this bacterium has established a reputation as a significant public health hazard.

2.7 *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli* O157:H7 is also notable among pathogenic bacteria for its extremely low infectious dose—that is, the number of bacteria necessary to induce infection in a person. While for most pathogenic bacteria it takes literally millions of bacterial colonies to cause illness, it is now known that fewer than 50 *E. coli* O157:H7 bacteria can cause illness in a child. The practical import is that even a microscopic amount of exposure can trigger a devastating infection.

2.8 The most severe cases of the *E. coli* O157:H7 infection occur in young children and in the elderly, presumably because the immune systems in those age populations are the most vulnerable. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attach to the inside surface of the large intestine and initiates an inflammatory reaction of the intestine. What

ultimately results in painful bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

2.9 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. The duration of diarrhea in children with *E. coli* O157:H7 infections are significantly longer than that of adults.

2.10 *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. In most infected individuals, the intestinal illness lasts about a week and resolves without any long-term effects. Antibiotics do not appear to aid in combating these infections, and recent medical studies suggest that antibiotics are contraindicated for their risk of provoking more serious complications. Apart from good supportive care, which should include close attention to hydration and nutrition, there is no specific therapy.

2.11 About 10% of individuals with *E. coli* O157:H7 infections (mostly young children) go on to develop hemolytic uremic syndrome (HUS), a severe, potentially life-threatening complication. The essence of the syndrome is described by its three central features: destruction of red blood cells, destruction of platelets (those blood cells responsible for clotting), and acute renal failure due to the formation of micro-thrombi that occlude microscopic blood vessels that make up the filtering units within the kidneys.

2.12 There is no known therapy to halt the progression of HUS. The active stage of the disease usually lasts one to two weeks, during which a variety of complications are possible. HUS is a frightening illness that even in the best American medical facilities has a mortality rate

of about 5%. The majority of HUS patients require transfusion of blood products and develop complications common to the critically ill.

Sysco and Freshpoint's Distribution and Sale of the Subject Romaine Lettuce

2.13 On information and belief, Sysco Nashville, LLC (Sysco) and Freshpoint, Inc./Freshpoint Atlanta, Inc. (hereinafter collectively referred to as "Freshpoint") are related business entities, although the precise nature and scope of the relationship is not presently known by Plaintiff.

2.14 On information and belief, Sysco and Freshpoint maintain an agreement, express or implied, to carry out the distribution of food products to certain retail and institutional foodservice locations.

2.15 On information and belief, the common purpose of the agreement between Sysco and Freshpoint to distribute food products is the accomplishment of a commercial or business objective, carried out for the mutual profit of both entities.

2.16 On information and belief, Sysco and Freshpoint were engaged in a joint enterprise to distribute food products to certain retail and institutional foodservice locations.

2.17 On information and belief, in the two weeks before and including March 19, 2018, and in furtherance of their joint food distribution enterprise, Sysco and Freshpoint distributed the romaine lettuce products that are the subject of this action to the Chick-Fil-A restaurant located at 615 McCallie Avenue, Suite 107, Chattanooga, Tennessee.

2.18 In the alternative, and on information and belief, in the two weeks before and including March 19, 2018, Sysco and Freshpoint, acting independently of each other and without common purpose, distributed the romaine lettuce products that are the subject of this action to the Chick-Fil-A restaurant located at 615 McCallie Avenue, Suite 107, Chattanooga, Tennessee.

2.19 Whether they did so jointly and with a common purpose, or acting independently of each other and without common purpose, Sysco and Freshpoint distributed romaine lettuce products that were contaminated by *E. coli* O157:H7 to the Chick-Fil-A restaurant located at 615 McCallie Avenue, Suite 107, Chattanooga, Tennessee. These contaminated romaine lettuce products were grown, processed, and distributed to Defendant's Sysco and Freshpoint by John Doe Defendants 1, 2, and 3.

Chandler Fussell's *E. coli* O157:H7 Infection

2.20 At the time of the events giving rise to this suit, Chandler Fussell, who is 21 years old, was a student at the University of Tennessee at Chattanooga. His fiancé, Tatum Cary, was also a student at the school.

2.21 On or about March 19, 2018, Ms. Cary purchased a salad from the Chick-Fil-A restaurant located at 615 McCallie Avenue, Suite 107, Chattanooga, Tennessee, and brought it to Mr. Fussell, who ate it. The salad was made with, among other things, romaine lettuce and chicken. The romaine lettuce was contaminated by *E. coli* O157:H7.

2.22 On or about the evening of March 22, 2018, Mr. Fussell began to experience stomach cramps and nausea. The next day, he developed diarrhea and other gastrointestinal symptoms.

2.23 On or about March 25, 2018, Mr. Fussell sought medical attention from CHI Memorial hospital in Hixson, Tennessee, and was soon transferred to the CHI Memorial Hospital downtown location in Chattanooga, where he was admitted for further care and treatment.

2.24 Mr. Fussell was diagnosed with hemolytic uremic syndrome and experienced kidney failure. He required multiple plasmapheresis treatments and would remain hospitalized for almost two weeks.

2.25 While hospitalized, Mr. Fussell submitted a stool sample that tested positive for *E. coli* O157:H7. After discharge from the hospital, Mr. Fussell learned from public health officials from the State of Tennessee that he had tested positive for a strain of *E. coli* O157:H7 that matched the multi-state outbreak linked to romaine lettuce from the Yuma, Arizona growing region, described above.

2.26 Mr. Fussell's *E. coli* O157:H7 infection, which was proximately caused by his ingestion of contaminated romaine lettuce that the Defendants distributed and sold, has left him with permanent injuries requiring ongoing medical cost and treatment.

CAUSES OF ACTION

COUNT I – STRICT LIABILITY

3.1 Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs was set forth here in its entirety.

3.2 At all times relevant, Defendants were in the business of manufacturing and selling food products to the public. Defendants manufactured and sold the romaine lettuce product that caused Mr. Fussell's *E. coli* O157:H7 infection and injuries.

3.3 The adulterated romaine lettuce product that Defendants manufactured, distributed, and sold was, at the time it left Defendants' control, defective and unreasonably dangerous for its ordinary and expected use because it was contaminated by *E. coli* O157:H7, a bacterium dangerous to human health.

3.4 Because the adulterated romaine lettuce product was contaminated by *E. coli* O157:H7, it was dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it.

3.5 Additionally, because of its contamination by *E. coli* O157:H7, the romaine lettuce product was not put on the market by a reasonably prudent manufacturer or seller, assuming that the manufacturer or seller knew of its dangerous condition.

3.6 The romaine lettuce product was expected to reach the consumer, i.e. Mr. Fussell, and be consumed by him, without substantial change. Mr. Fussell used the product in the manner expected and intended by consuming it.

3.7 Mr. Fussell suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that Defendants manufactured, distributed, and sold. These damages include but are not limited to: physical and mental pain and suffering, past and future, including bodily suffering, discomfort, and loss of enjoyment of life; and medical costs and expenses to this point and the present value of reasonable medical expenses in the future.

COUNT II – NEGLIGENCE AND NEGLIGENCE PER SE

3.8 Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs was set forth here in its entirety.

3.9 Because the romaine lettuce product was, at the time of its sale by Defendants, contaminated by *E. coli* O157:H7, the romaine lettuce product was defective and unreasonably dangerous for its ordinary and expected use.

3.10 Defendants owed to Mr. Fussell a duty to comply with all applicable state and federal statutes, laws, regulations, and safety codes intended to ensure the purity and safety of their food products, including, but not limited to, the requirements of the Tennessee Food, Drug, and Cosmetic Act, Tennessee Code Annotated, Title 53.

3.11 Mr. Fussell is among the class of persons intended to be protected by these statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products.

3.12 Defendants 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 food adulterated by *E. coli* O157:H7, a pathogen harmful to human health.

3.13 Defendants also owed a duty to Mr. Fussell to use reasonable care in the manufacture, distribution, and sale of their food products, which duty, if met, would have prevented or eliminated the risk that their food products would become contaminated with *E. coli* O157:H7 or any other dangerous pathogen.

3.14 Defendants' duty described in the foregoing paragraph required that they exercise reasonable care in the selection and approval of growers, processors, and other individuals and entities involved in the manufacture and production of the subject romaine lettuce product.

3.15 At the time of this sale, being contaminated by *E. coli* O157:H7, the romaine lettuce product that Defendants manufactured and sold was not fit for the ordinary purpose for which food is used, and Defendants therefore breached their duty of reasonable care with regard to this product.

3.16 Mr. Fussell suffered personal injury as a direct result of Defendants' breach of their duty of reasonable care, as set forth above. These damages include, but are not limited to: physical and mental pain and suffering, past and future, including bodily suffering, discomfort and loss of enjoyment of life; and medical costs and expenses to this point and the present value of reasonable medical expenses in the future.

COUNT III – BREACH OF WARRANTY

3.17 Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

3.18 Defendants are liable to Mr. Fussell for breaching express and implied warranties that they made regarding the adulterated romaine lettuce product that Plaintiff consumed. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, by offering food products for sale to the general public, Defendants impliedly warranted that these food products were safe to eat, that they were not adulterated with a harmful pathogen, and that the food products had been safely prepared under sanitary conditions.

3.19 The *E. coli* O157:H7 contaminated food product that is the subject of this action would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

3.20 The *E. coli* O157:H7 contaminated food product that is the subject of this action was not fit for the uses and purposes intended, i.e., human consumption, and the product was therefore in breach of the implied warranty of fitness for its intended use.

3.21 Defendants breached the implied warranties with regard to the contaminated food product that they sold, and that Mr. Fussell consumed, causing his injuries and losses.

3.22 Mr. Fussell's injuries proximately and directly resulted from Defendants' breach of implied warranties, and he is thus entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

DAMAGES

4.1 As a direct and proximate cause of the wrongful conduct of the Defendants, as stated in each of the causes of action above, the Plaintiff has suffered economic and non-

economic damages, both past and future, including, but not limited to: all medical bills for treatment related to and deriving from his *E. coli* O157:H7 infection, and all other out-of-pocket costs; lost wages and lost earning capacity; emotional distress, anguish, loss of enjoyment of life, and pain and suffering; reduced life expectancy; and all other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances. The Plaintiff reserves the right to prove the precise amount of damages at the trial of this action.

PRAYER FOR RELIEF

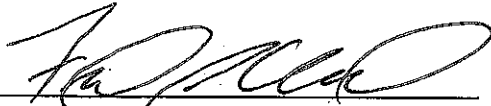
WHEREFORE, the Plaintiff prays for judgment against Defendants as follows:

- a. For all economic and non-economic damages sustained as a direct and proximate result of the wrongful conduct of Defendants, as stated above, all in amounts to be proven at the time and place of trial;
- b. For such other and further relief as this Court deems just and equitable, including interest, costs, and reasonable attorney fees.

JURY DEMAND

The Plaintiff hereby demands a jury trial.

RESPECTFULLY SUBMITTED this 19th day of March 2019.


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