

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AUSTIN J. WESTERMANN,

Plaintiff,

vs.

MCDONALD’S CORPORATION, a  
Delaware Corporation; J & D  
RESTAURANTS, INC. d/b/a  
MCDONALD’S, an Iowa Corporation; and  
TAYLOR FARMS CALIFORNIA, INC., a  
Delaware corporation,

Defendants.

No. \_\_\_\_\_

**PETITION**

COMES NOW the Plaintiff, Austin J. Westermann, by and through his attorneys of record, Wandro Kanne & Lalor, P.C. and Marler Clark, Inc., PS, complaining of the Defendants, McDonald’s Corporation, J & D Restaurants, Inc., and Taylor Farms California, Inc., alleges and states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. At all times relevant to this action, the Plaintiff, Austin Westermann, resides in the city of Des Moines, in the county of Polk, Iowa. The Plaintiff is a citizen of the State of Iowa.

2. At all times relevant to this action, the Defendant McDonald’s Corporation, (hereinafter “McDonald’s” or “Defendant”) is a foreign corporation incorporated under the laws of Delaware and headquartered in Chicago, Illinois at 110 N. Carpenter St. Chicago, IL 60607. At all times relevant hereto, the defendant franchised and exercised operational control over the McDonald’s restaurant located at 4201 Fleur Drive, Des Moines, Iowa 50321.

3. At all times relevant to this action, the Defendant J & D Restaurants, Inc. d/b/a McDonald's (hereinafter "J & D" or "Defendant") is a corporation incorporated under the laws of the State of Iowa and headquartered with a principal office of State of 6101 SW 9th Ste. 100, Des Moines, IA 50315. At all times relevant hereto, J & D was the franchisee operating the McDonald's restaurant located at 4201 Fleur Drive, Des Moines, Iowa 50321.

4. At all times relevant to this action, the Defendant Taylor Farms California, Inc. (hereinafter "Taylor Farms" or "Defendant"), is a corporation organized and existing under the laws of the state of Delaware, with its headquarters located at 150 Main St., Ste. 500, Salinas, CA 93901. At all times relevant, Taylor Farms manufactured and distributed onion products throughout the country, including to Iowa and specifically to the McDonald's restaurant located at 4201 Fleur Drive, Des Moines, Iowa 50321.

5. Venue is proper in Polk County as it is the county in which the injury was sustained, and the Defendants conduct business.

### **FACTS**

#### **The Outbreak**

6. According to the U.S. Centers for Disease Control and Prevention ("CDC"), as of October 30, 2024, 90 individuals were identified as confirmed cases of *E. coli* O157:H7 among 13 states including Iowa. The outbreak investigation is ongoing.

7. According to the CDC, most interviewed individuals purchased and consumed food from McDonalds restaurants, and most reported having eaten a Quarter-Pounder hamburger.

8. Epidemiologic and traceback information, as well as a statement by McDonald's and an internal investigation, indicates that fresh slivered onions from Taylor Farms are likely the source of illness in the outbreak.

9. As a precaution, McDonald's removed the slivered onions and beef patties used in the Quarter-Pounder from stores in the affected states, and Taylor Farms recalled yellow onions.

***E. coli* O157:H7 Infection**

10. *Escherichia coli* are 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.

11. *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.

12. The most severe cases of *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 initiate an inflammatory reaction in the intestine, which ultimately results in the painful, bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

13. 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 from 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 is significantly

longer than that of adults.

14. *E. coli* O157:H7 can produce a wide spectrum of diseases 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.

**Plaintiff's *E. coli* O157:H7 Infection and Illness**

15. Plaintiff Austin Westermann visited the McDonald's restaurant located at 4201 Fleur Drive, Des Moines, IA 50321 on or about October 1, 2024.

16. On that occasion he purchased and consumed a Double Quarter Pounder with no modifications, and large fries.

17. On or about October 7, 2024, Plaintiff began to experience symptoms consistent with his *E. coli* O157:H7 infection including severe and frequent diarrhea and stomach cramping and pain.

18. Plaintiff continued to suffer from significant symptoms until October 18, 2024, when his diarrhea and resultant pain and dehydration necessitated that he seek treatment from Unity Point Health Urgent Care where a stool sample was collected.

19. Plaintiff's stool sample tested positive for *E. coli* O157:H7, and he was subsequently contacted by the Iowa Department of Health and Human Services on October 22, 2024, as a case in the McDonald's *E. coli* outbreak.

**COUNT I**  
**(Strict Product Liability)**

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

21. At all times relevant hereto, the Defendants were manufacturers and sellers of the adulterated food product that is the subject of the action. As to McDonalds and J & D, the adulterated food product was the contaminated Double Quarter-Pounder burger that Plaintiff purchased consumed. As to Taylor Farms, the adulterated food product was the contaminated onion product supplied to the McDonald's Restaurant in question.

22. The adulterated food product that the Defendants manufactured, distributed, and/or sold was, at the time it left the Defendants' control, defective and unreasonably dangerous for its ordinary and expected use because it contained *E. coli* O157:H7, a potentially deadly pathogen.

23. The adulterated food product that the Defendants manufactured, distributed, and/or sold was delivered to Plaintiff without any change in its defective condition. The adulterated food product that the Defendants manufactured, distributed, and/or sold was used in the manner expected and intended, and was consumed by Plaintiff.

24. The Defendants owed a duty of care to Plaintiff to design, manufacture, and/or sell food that was not adulterated, that was fit for human consumption, that was reasonably safe in construction, and that was free of pathogenic bacteria or other substances injurious to human health. The Defendants breached this duty.

25. The Defendants owed a duty of care to Plaintiff to design, prepare, serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable consumer. The Defendants breached this duty.

26. Plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the Defendants manufactured, distributed, and/or sold

**COUNT II  
(Negligence)**

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

28. The Defendants had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of the food product that injured Plaintiff, including the applicable provisions of the Federal Food Drug & Cosmetics Act, and similar Iowa food and public health statutes.

29. The food product that the Defendants manufactured and sold, and that Plaintiff purchased and consumed, was adulterated within the meaning of the Federal Food Drug and Cosmetics Act and similar Iowa statutes, because it contained a deleterious substance that rendered it injurious to health, i.e., *E. coli* O157:H7 bacteria.

30. The Defendants violated federal, state, and local food safety regulations by the manufacture and sale of adulterated food. These federal, state, and local food safety regulations are applicable here, and establish a positive and definite standard of care in the manufacture and sale of food. The violation of these regulations constitutes negligence as a matter of law.

31. Plaintiff is in the class of persons intended to be protected by these statutes and regulations, and Plaintiff was injured as the direct and proximate result of the Defendants' violation of applicable federal, state, and local food safety regulations.

32. The Defendants were negligent in the manufacture, distribution, and sale of a food product that was adulterated with *E. coli* O157:H7, not fit for human consumption, and not reasonably safe because adequate warnings or instructions were not provided.

33. Once the Defendants learned, or in the exercise of reasonable care should have learned, of the dangers associated with preparing and selling food, including, but not limited to, cross-contamination between foods, and the dangers associated with improperly cleaned or washed food, they had a duty to warn Plaintiff but failed to do so.

34. Defendants McDonald's and J & D had a duty to use supplies and raw materials in producing their food products that followed applicable federal, state, and local laws, ordinances and regulations; that were from reliable sources; and that were clean, wholesome, free from adulteration, and fit for human consumption, but failed to do so, and therefore breached that duty.

35. Defendants McDonald's and J & D were negligent in the selection of their suppliers, or other agents or subcontractors, and failed to adequately supervise them, or provide them with adequate standards, and, as a result, produced and sold food that was adulterated with *E. coli* O157:H7.

36. The Defendants had a duty to properly supervise, train, and monitor their employees, or the employees of their agents or subcontractors, engaged in the preparation and sale of their respective food products, to ensure compliance with the Defendants' operating standards and to ensure compliance with all applicable health regulations. The Defendants failed to properly supervise, train, and monitor these employees engaged in the manufacture, preparation and delivery of the food product ultimately sold to Plaintiff and thus breached that duty.

37. Defendants had a duty, given their knowledge of prior outbreaks of *E. coli* and other pathogenic bacteria in fresh produce, to take reasonable measures to ensure that the product

utilized by Defendants McDonald's and J & D in their restaurant was safely manufactured and was not manufactured under conditions, generally, that are known, or reasonably should be known, to the food industry to be unsafe.

38. The Plaintiff's injuries proximately and directly resulted from the negligence of the Defendants, and from the Defendants' violations of statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of food.

**COUNT III  
(Breach of Warranty)**

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

40. The Defendants produced, distributed, and sold the contaminated food product that injured Plaintiff and caused his *E. coli* O157:H7 infection. The Defendants are, therefore, manufacturers, distributors, and/or sellers of an adulterated food product, and the adulterated food product reached Plaintiff without substantial change from the condition in which it was sold by the Defendants.

41. The Defendants are subject to liability to the Plaintiff for their breaches of express and implied warranties made to Plaintiff with respect to the food product sold to him, including the implied warranties of merchantability and of fitness for a particular use. Further, the Defendants expressly warranted, through the sale of food to the public, and by the statements and conduct of their employees and agents, that the food product ultimately sold to Plaintiff was fit for human consumption, and not otherwise adulterated or injurious to health.

42. The food product sold by the Defendants and ultimately consumed by Plaintiff, which product was contaminated with *E. coli* O157:H7 and related filth and adulteration, would



not pass without exception in the trade, and was thus in breach of the implied warranty of merchantability.

43. Plaintiff further alleges that the contaminated food sold by the Defendants and consumed by Plaintiff was not fit for the uses and purposes intended by either Plaintiff or the Defendants, *i.e.*, human consumption, and that this product was therefore in breach of the implied warranty of fitness for its intended use.

44. As a further direct and proximate result of the conduct of the Defendants and their agents, servants, and/or employees as aforesaid, Plaintiff suffered and *E. coli* O157:H7 infection and the adverse effects associated with the same, as described in previous paragraphs of this complaint.

45. As a further direct and proximate result of the conduct of the Defendants and their agents, servants, and/or employees, Plaintiff was forced to endure great pain, suffering, and inconvenience and may endure the same in the future. He was forced to submit to medical care and may be forced to submit to the same in the future.

46. As a further direct and proximate result of the conduct of the Defendants and their agents, servants, and/or employees, Plaintiff suffered an inability to perform the activities of daily living or some of them.

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

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays as follows:

(1) That the Court award Plaintiff judgment against Defendants for damages.

(2) That the Court award all such other sums as shall be determined to fully and fairly compensate Plaintiff for all general, special, incidental and consequential damages incurred, or to be incurred, by Plaintiff as the direct and proximate result of the acts and omissions of the Defendant;

(3) That the Court award Plaintiff his costs, disbursements and reasonable attorneys' fees incurred;

(4) That the Court award the Plaintiff the opportunity to amend or modify the provisions of this Complaint as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served; and

(5) That the Court award such other and further relief as it deems necessary and proper in the circumstances.

### **JURY TRIAL DEMAND**

The Plaintiff demands trial by jury on all issues raised herein.

Dated this 8th day of November, 2024.

Respectfully submitted,

/s/ Ben Arato

Ben Arato AT0010863

Steven Wandro AT0008177

WANDRO, KANNE & LALOR, P.C.

2015 Grand Ave., Ste. 102

Des Moines, IA, 50312

PH: 515-717-7455

Fax: 515-608-4645

[barato@wandrolaw.com](mailto:barato@wandrolaw.com)

[swandro@wandrolaw.com](mailto:swandro@wandrolaw.com)

AND

/s/ William D. Marler

William D. Marler, WSBA #17233  
*Pro hac Vice Pending*  
MARLER CLARK, Inc., PS  
180 Olympic Drive S.E.  
Bainbridge Island, Washington 98110  
Telephone: 206/346-1888  
Facsimile: 206/346-1898  
[bmarler@marlerclark.com](mailto:bmarler@marlerclark.com)

ATTORNEYS FOR PLAINTIFF