

6 JAN 29 1993

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IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

KAREN GRAGG, as guardian ad litem
of LORISSA GRAGG, a minor child,
individually and on behalf of
themselves and all similarly
situated,

Plaintiffs,

v.

FOODMAKER, INC., a Delaware
corporation doing business as
"JACK-IN-THE-BOX" RESTAURANTS,

Defendant.

93-2-00930 1

NO.

CLASS ACTION COMPLAINT
FOR DAMAGES

FILED
PIERCE COUNTY CLERK'S OFFICE
JAN 29 1993 P.M.
PIERCE COUNTY, WASHINGTON
TO BUIT CO.

Plaintiffs, on behalf of themselves and all similarly
situated, for their claims against defendant, state and allege as
follows:

I. PARTIES

1. Plaintiff KAREN GRAGG, individually and as guardian ad
litem of LORISSA GRAGG, a minor child, is a resident of Pierce
County, Washington.

2. Defendant FOODMAKER, INC. is a Delaware corporation
doing business in Pierce County, Washington, and is the operator
of a nationwide chain of "Jack-In-The-Box" Restaurants which is

1 engaged principally in the preparation and sale of fast food
2 products.

3 **II. JURISDICTION AND VENUE**

4 3. This Court has subject matter jurisdiction of this
5 action pursuant to RCW 2.08.010.

6 4. Venue in Pierce County is proper pursuant to
7 RCW 4.12.020, as this is a cause of action involving recovery of
8 damages arising from product contamination and food poisoning
9 which occurred in this county.

10 **III. CLASS ACTION ALLEGATIONS**

11 5. This action is brought as a class action pursuant to
12 Superior Court Rules CR 23(a) and 23(b)(3) on behalf of a class of
13 all persons (but excluding defendant and its employees) who, at
14 any time during the months of December, 1992 and January, 1993,
15 consumed contaminated food at a "Jack-in-the-Box" restaurant in
16 the State of Washington.

17 6. Plaintiffs do not yet know the exact size of the class,
18 since such information is in the exclusive control of defendant
19 and the Washington State Department of Health. However, based
20 upon information and belief, plaintiffs believe that the total
21 number of class members is in excess of three hundred, and that
22 class members are geographically dispersed throughout the State of
23 Washington. Therefore, joinder of all members of the class is not
24 practicable.

25 7. There are questions of law and fact common to the class,
26 including but not limited to:

1 (a) Whether defendant Foodmaker, Inc., d/b/a "Jack-In-
2 The-Box" Restaurants, was negligent and/or strictly liable in
3 preparing, delivering, selling for profit and serving food which
4 was unfit for human consumption;

5 (b) Whether defendant Foodmaker, Inc., d/b/a "Jack-In-
6 The-Box" Restaurants, was negligent and/or strictly liable in
7 failing to properly train and supervise its employees in preparing
8 the product;

9 (c) Whether defendant Foodmaker, Inc., d/b/a "Jack-In-
10 The-Box" Restaurants, was negligent and/or strictly liable in
11 failing to apprise itself of and observe the Washington State
12 Department of Health safety standards, including but not limited
13 to WAC 246-215, et seq.;

14 (d) Whether defendant Foodmaker, Inc., d/b/a "Jack-In-
15 The-Box" Restaurants, engaged in unfair and deceptive acts and
16 practices in violation of the Washington State Consumer Protec-
17 tions Act, RCW 19.86, et seq.;

18 (e) Whether defendant Foodmaker, Inc., d/b/a "Jack-In-
19 The-Box" Restaurants, violated other laws or regulations relating
20 to the preparation or processing of food;

21 (f) Whether the defendant Foodmaker, Inc., d/b/a "Jack-
22 In-The-Box" Restaurants, took steps to prevent the contamination
23 of its food products; and

24 (g) Whether the conduct of defendant Foodmaker, Inc.,
25 d/b/a "Jack-In-The-Box" Restaurants, caused injury to plaintiffs
26 and the members of the class, and if so, the appropriate class-

1 wide measure of damages.

2 8. These and other questions of law and fact are common to
3 the class and predominate over any questions affecting only
4 individual members of the class.

5 9. Plaintiffs' claims are typical of the claims of all
6 members of the class in that plaintiffs consumed contaminated food
7 from a "Jack-In-The-Box" Restaurant in the State of Washington no
8 different in any relevant respect from any other class members,
9 and the relief sought, monetary damages, is common to the class.

10 10. Plaintiff will fairly and adequately protect the inter-
11 ests of the class in that plaintiff is a typical consumer of
12 contaminated fast food products from a "Jack-In-The-Box"
13 Restaurant in the State of Washington, and has no conflict with
14 any other members of the class. Plaintiff has retained competent
15 counsel experienced in class action litigation and personal injury
16 litigation.

17 11. Plaintiff knows of no difficulty which would be encoun-
18 tered in the management of this litigation that would preclude its
19 maintenance as a class action. A class action is superior to
20 other alternatives, if any, for the fair and efficient adjudica-
21 tion of this controversy. The identity of class members should be
22 ascertainable from the Washington State Department of Health and
23 from defendant's records.

24 12. In the absence of a class action, defendant will retain
25 the benefits of its wrongful conduct.

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IV. FACTUAL BACKGROUND

13. On or about January 7, 1993, plaintiff Karen Gragg purchased and plaintiff Lorissa Gragg consumed a food product at defendant's "Jack-In-The-Box" Restaurant located at 5517 Pacific Avenue in Tacoma, Washington. On or about January 10 and 11, 1993, plaintiff Lorissa Gragg was hospitalized at Mary Bridge Hospital in Tacoma, Washington with symptoms related to food eaten previously at the "Jack-In-The-Box" Restaurant.

14. As a direct and proximate result of defendant's actions and the consumption of the contaminated food products, plaintiff Lorissa Gragg and the members of the class became violently ill with attendant physical consequences. The full nature and extent of disease suffered by plaintiff Lorissa Gragg and the members of the class are presently undetermined. Plaintiffs and the members of the class have suffered monetary losses, extreme pain, anguish and disability, both mental and physical, and will suffer such losses, pain, anguish and disability in the future. In addition, plaintiff Karen Gragg and members of the class have incurred substantial medical expenses to date and will continue to incur medical expenses in the future.

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V. CAUSES OF ACTION

15. Defendant Foodmaker, Inc., d/b/a "Jack-In-The-Box" Restaurants, was negligent and/or strictly liable in preparing, delivering, selling for profit and serving food which was unfit for human consumption.

16. Defendant Foodmaker, Inc., d/b/a "Jack-In-The-Box"

1 Restaurants, was negligent and/or strictly liable in failing to
2 properly train and supervise its employees in preparing the
3 product.

4 17. Defendant Foodmaker, Inc., d/b/a "Jack-In-The-Box"
5 Restaurants, was also negligent and/or strictly liable in failing
6 to apprise itself of and observe the Washington State Department
7 of Health safety standards, including but not limited to WAC 246-
8 215, et seq.

9 18. Defendant Foodmaker, Inc., d/b/a "Jack-In-The-Box"
10 Restaurants, engaged in unfair and deceptive acts and practices in
11 violation of the Washington State Consumer Protection Act,
12 RCW 19.86, et seq.

13 **VI. DAMAGES**

14 19. As a direct and proximate result of eating the contam-
15 inated food products served by defendant, plaintiffs and the
16 members of the class were injured.

17 20. Said product contamination was the direct and proximate
18 cause of all of damages suffered by plaintiffs and the members of
19 the class as alleged in this class action complaint.

20 21. As a direct and proximate result of the product contam-
21 ination alleged herein, plaintiffs and the members of the class
22 have suffered severe physical injuries and are entitled to
23 compensation for their physical injuries.

24 22. As a direct and proximate result of the product contam-
25 ination alleged herein, plaintiffs and the members of the class
26 have incurred and will continue to incur medical expenses and

1 other out-of-pocket expenses and are entitled to compensation to
2 compensation for their medical and out-of-pocket expenses.

3 23. As a direct and proximate result of the product contam-
4 ination alleged herein, plaintiffs and the members of the class
5 have suffered and will continue to suffer severe physical pain and
6 suffering and are entitled to compensation for their severe physi-
7 cal pain and suffering.

8 24. As a direct and proximate result of the product contam-
9 ination alleged herein, plaintiffs and the members of the class
10 have suffered mental and emotional distress and are entitled to
11 compensation for their mental and emotional distress.

12 25. As a direct and proximate result of the product contam-
13 ination alleged herein, plaintiffs and the members of the class
14 have suffered lost income and are entitled to compensation for
15 their lost income.

16 26. As a direct and proximate result of the product contam-
17 ination alleged herein, the earning capacity of plaintiffs and the
18 members of the class has been diminished, and plaintiffs and the
19 members of the class are entitled to compensation for their
20 diminished earning capacity.

21 27. Plaintiffs and the members of the class are entitled to
22 attorneys' fees.

23 28. Plaintiffs and the members of the class are entitled to
24 prejudgment interest on all medical and out-of-pocket expenses
25 directly and proximately caused by the product contamination and
26 food poisoning alleged herein.

1 29. Plaintiffs and the members of the class are entitled to
2 costs and disbursements incurred herein.

3 **VII. PRAYER FOR RELIEF**

4 WHEREFORE, plaintiffs and the members of the class pray for
5 the following relief:

6 1. For an award of damages compensating plaintiffs and the
7 members of the class for their physical damages in an amount to be
8 proven at trial;

9 2. For an award of damages compensating plaintiffs and the
10 members of the class for their past and future medical and out-of-
11 pocket expenses in an amount to be proven at trial;

12 3. For an award of damages compensating plaintiffs and the
13 members of the class for their past and future pain and suffering
14 in an amount to be proven at trial;

15 4. For an award of damages compensating plaintiffs and the
16 members of the class for their past and future mental and
17 emotional distress in an amount to be proven at trial;

18 5. For an award of damages compensating plaintiffs and the
19 members of the class for their lost income in an amount to be
20 proven at trial;

21 6. For an award of damages compensating plaintiffs and the
22 members of the class for their diminished earning capacity in an
23 amount to be proven at trial;

24 7. For an award of the attorneys' fee incurred by plain-
25 tiffs and the members of the class herein in an amount to be
26 proven at trial;

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8. For an award of prejudgment interest on all medical and out-of-pocket expenses directly and proximately caused by the negligence alleged herein in an amount to be proven at trial;

9. For an award of damages compensating plaintiffs and the members of the class for their costs and disbursements herein in an amount to be proven at trial; and

10. For such other and further relief as the Court deems just and equitable.

DATED this 28 day of January, 1993.



William D. Marler, WSBA #17233
Lynn Lincoln Sarko, WSBA #16569
Mark A. Griffin, WSBA #16296
KELLER ROHRBACK
Attorneys for Plaintiffs

CITY OF WASHINGTON, District of Columbia
I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
day of SEP - 1 2009, 20
By Kevin Stock Deputy