

COURT FILE NUMBER 1803 08418

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF(S) NORA ROMERO as REPRESENTATIVE PLAINTIFF

DEFENDANT(S) THE MEAT SHOP AT PINE HAVEN and PINE HAVEN HUTTERITE COLONY

DOCUMENT **STATEMENT OF CLAIM**

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A Class Proceeding pursuant to the
Class Proceedings Act, Chapter C-16.5

NOTICE TO DEFENDANT(S)

You are being sued. You are Defendants.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

A. LITIGANTS

1. The Representative Plaintiff Nora Romero resides in the City of Edmonton in the Province of Alberta.
2. The Defendants THE MEAT SHOP AT PINE HAVEN and PINE HAVEN HUTTERITE COLONY (collectively "Pine Haven") carried on business at all material times near Wetaskiwin, Alberta. The Defendants' operated a meat processing and distribution business with products being sold throughout Alberta and Canada.
3. This action relates to the *E. coli* contamination of pork produced by Pine Haven. To date, over 36 people are believed to have become ill from consuming pork contaminated with *E. coli* and one person has died as a result.
4. A mandatory recall was implemented by the Canadian Food Inspection Agency ("CFIA"). The mandatory recall is for all pork products sold and distributed by Pine Haven between February 19, 2018 and April 24, 2018 ("Recalled Pork" or "Products").
5. The Recalled Pork has been sold and/or consumed in the Province of Alberta and elsewhere in Canada.
6. This class action concerns the Defendants' negligent quality control, monitoring, processing, storage, distribution and sale of the Recalled Pork.
7. The Plaintiff consumed the Recalled Pork in Alberta.
8. After consuming the Recalled Pork, the Plaintiff became extremely ill. She was nauseous, feverish, and attended at the hospital for treatment due to the *E. coli* infection.
9. As a result of the acts and omissions of the Defendants as described herein, the Plaintiff experienced pain and suffering and incurred expenses such as missed time from work and medical expenses.

B. CLASS

10. The Plaintiff claims on behalf of herself and natural persons in Canada who:
 - a. Consumed Recalled Pork and suffered a physical illness or injury;

- b. Purchased Recalled Pork and suffered an economic loss;
- c. Purchased the Recalled Pork, which was not of merchantable quality or reasonably fit for the purpose of sale to consumers; or
- d. Purchased the Recalled Pork and suffered emotional distress.

C. THE RECALL

- 11. On April 24, 2018, the Canadian Food Inspection Agency (“CFIA”) issued a recall for all Recalled Pork.
- 12. CFIA stated that the Recalled Pork had been contaminated with *E. coli*.

D. POSSIBLE HEALTH CONSEQUENCES ASSOCIATED WITH *E. COLI*

- 13. Consumption of food contaminated with *E. coli* can cause serious and potentially life-threatening illnesses. Symptoms can be similar to food poisoning and include severe abdominal pain and bloody diarrhoea. Some people might suffer more serious consequences, including seizures or strokes, and some may need blood transfusions and kidney dialysis. Others may live with permanent kidney damage. In the most severe cases, people may die.

E. NEGLIGENCE

- 14. The Defendants are liable to the Plaintiff and the other Class members in negligence.
- 15. At all material times the Defendants owed a duty of care to the Plaintiff and other Class members to ensure that its products were safe for consumption and that ingestion of those products would not cause illness or injury.
- 16. The Plaintiff and the other class members plead that the Defendants breached its duty and the standard of conduct expected of them in the circumstances.
- 17. The Defendants owed to the Plaintiff and other similarly situated persons in Alberta, or elsewhere in Canada the following duties of care and other duties, among others:

- a. To ensure that its pork products were safe for consumption and that consumption of such products would not cause illness or injury;
 - b. To conduct adequate and regular testing on its pork products to ensure that they were safe for consumption and that consumption of such products would not cause illness or injury;
 - c. To develop and implement adequate control methods for dealing with situations of *E. coli* contamination, so as to ensure that *E. coli* contaminated pork does not enter the marketplace; and/or
 - d. Upon discovering that *E. coli* contaminated pork had entered the marketplace, to warn the Class of the *E. coli* contamination, take immediate and comprehensive steps to remove any and all contaminated and/or possibly contaminated pork products from the marketplace, or take any other appropriate remedial action.
18. The Plaintiff and the other class members state that the Defendants breached its duty by failing to ensure that its pork products were safe for consumption. The Plaintiff and the other class members' damages were caused by the negligence of the Defendants . Such negligence includes, but is not limited to:
- a. Failing to test its pork products thoroughly prior to marketing and distribution to ensure they were safe for consumption;
 - b. Failing to implement, ensure and follow quality control and assurance processes in the processing, storage and distribution of its pork products;
 - c. Failing to recall all of its tainted pork immediately upon learning that people were becoming ill after ingesting them;
 - d. Failing to adopt technological advances in laboratory testing of pork products and advances in equipment;
 - e. Failing to devote sufficient financial resources to staffing personnel with expertise in food safety;
 - f. Failing to implement adequate procedures for the cleaning of equipment in order to prevent the contamination of food products, or, in the alternative, failed to ensure such procedures were followed;

- g. Failing to implement adequate procedures to ensure that outside contaminants were not brought into the plant where pork was manufactured and/or processed, or, in the alternative, failed to ensure such procedures were followed;
- h. Failing to employ and properly train competent staff on proper, safe or adequate food handling techniques;
- i. Failing to take adequate steps to ensure that its pork products were safe for consumption and that consumption of such products would not cause illness or injury;
- j. Pine Haven did not adequately train employees regarding product safety and did not implement adequate safety measures;
- k. Pine Haven did not implement adequate cleaning and maintenance procedures;
- l. Pine Haven did not conduct adequate and regular testing on its pork products to ensure that they were safe for consumption and that consumption of such products would not cause illness or injury; and
- m. Upon discovering possible *E. coli* contamination, Pine Haven:
 - i. did not take immediate and comprehensive steps to inform the CFIA or the public of the contamination;
 - ii. did not immediately remove any and all affected products from the marketplace;
 - iii. did not ensure that the retail channels in which the Recalled Pork was sold were adequately informed of the recall;

F. SALE OF GOODS ACT CLAIMS

19. In this Statement of Claim, "Sale of Goods Legislation" refers to:
- (a) Sale of Goods Act, RSA 2000 c. s-2, s. 16;
 - (b) Sale of Goods Act, RSBC 1996 c. 140, s. 18;
 - (c) Civil Code of Quebec, LRQ, c C-1991, s 1726;
 - (d) Sale of Goods Act, CCSM c. S10, s. 16;
 - (e) Sale of Goods Act, RSO 1990 c. s.1, s. 15;

- (f) Sale of Goods Act, RSNB 1973, c S-1, s. 15;
- (g) Sale of Goods Act, RSNL 1990, c S-6, s. 16;
- (h) Sale of Goods Act, RSNS 1989 c. 408, s. 17;
- (i) Sale of Goods Act, RSNWT 1988, c. S-2, s. 18;
- (j) Consolidation of Sale of Goods Act, RSNWT 1988, c. S-2, s. 18;
- (k) Sale of Goods Act, RSPEI 1988, c S-1, s. 16;
- (l) Sale of Goods Act, RSS 1978, c S-1. s. 16; and
- (m) Sale of Goods Act, RSY 2002, c 198, s. 15.

(a) Alberta

20. The Plaintiff pleads and relies upon the Sale of Goods Act, RSA 2000 c. s-2, s. 16, and pleads that there is an implied warranty or condition that the Recalled Products are reasonably fit for the intended purpose and of merchantable quality.

(b) British Columbia

21. The Plaintiff pleads and relies upon the Sale of Goods Act, RSBC 1996 c. 140, s. 18, and pleads that there is an implied warranty or condition that the Recalled Products are reasonably fit for the intended purpose and of merchantable quality.

(c) Quebec

22. The Plaintiff pleads and relies upon the Civil Code of Quebec, LRQ, c C-1991, s 1726, and pleads there is an implied warranty that property is, at the time of sale, free of latent defects which render it unfit for the intended purpose or which so diminish its usefulness that the buyer would not have bought it or paid so high a price had he/she been aware of them.

(d) Manitoba

23. The Plaintiff pleads and relies upon the Sale of Goods Act, CCSM c. S10, s. 16, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(e) Ontario

24. The Plaintiff pleads and relies upon the Sale of Goods Act, RSO 1990 c. s.1, s. 15, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(f) New Brunswick

25. The Plaintiff pleads and relies upon the Sale of Goods Act, RSNB 1973, c S-1, s. 15, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(g) Newfoundland

26. The Plaintiff pleads and relies upon the Sale of Goods Act, RSNL 1990, c S-6, s. 16, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(h) Nova Scotia

27. The Plaintiff pleads and relies upon the Sale of Goods Act, RSNS 1989 c. 408, s. 17, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(i) Northwest Territories

28. The Plaintiff pleads and relies upon the Sale of Goods Act, RSNWT 1988, c. S-2, s. 18, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(j) Nunavut

29. The Plaintiff pleads and relies upon the Consolidation of Sale of Goods Act, RSNWT 1988, c. S-2, s. 18, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(k) Prince Edward Island

30. The Plaintiff pleads and relies upon the Sale of Goods Act, RSPEI 1988, c S-1, s. 16, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(l) Saskatchewan

31. The Plaintiff pleads and relies upon the Sale of Goods Act, RSS 1978, c S-1. s. 16, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(m) Yukon

32. The Plaintiff pleads and relies upon the Sale of Goods Act, RSY 2002, c 198, s. 15, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.
33. The Plaintiff and class members who bought the Recalled Pork are “buyers” within the meaning of the *Sale of Goods Legislation*.
34. The Defendants, having agreed to sell the Products to the Plaintiff and class members, is a “seller” within the meaning of the *Sale of Goods Legislation*.
35. The Products are chattels personal and are “goods” within the meaning of the *Sale of Goods Legislation*.
36. The Products were supplied by the Defendants to the Plaintiff and class members, under contracts of sale. Sufficient privity of contract existed between the Defendants and the Plaintiff and Class, and between the Defendants, and each class member.
37. In each contract of sale, there was:
- a. an implied condition that the Products were reasonably fit for their ordinary purpose, where the Plaintiff and class members expressly or by implication made known to the Defendants the particular purpose for which the Products were required;
 - b. an implied condition that the Products were of merchantable quality; and
 - c. an implied warranty or condition as to the quality and fitness of the Products for their ordinary purpose.
38. The Defendants breached these implied warranties and conditions. The Plaintiff and class members reasonably expected that the Products were safe, of

merchantable quality, and reasonably fit for its ordinary purpose. The Products were not safe, of merchantable quality, or reasonably fit for their ordinary purpose. The Plaintiff repeats the material facts in regards to the negligence claim with respect to this statutory claim.

39. As a result of the Defendants' breaches of the implied warranties and conditions, the Plaintiff and class members have suffered damages and those who purchased the Products are entitled to statutory remedies pursuant to the *Sale of Goods Legislation*.

E. VICARIOUS LIABILITY

40. The Plaintiff plead that the Defendants can only act through its employees, directors, officers and agents and is vicariously liable for their acts and omissions as hereinafter pleaded. The acts and omissions particularized and alleged in this claim to have been done by the Defendants was authorized, ordered or done by the Defendants employees, directors, officers and agents while engaging in the management, direction, control and transaction of the Defendants business and are therefore acts and omissions for which the Defendants is vicariously liable.

F. DAMAGES

41. The Plaintiff and other Class members experienced physical injury as a result of consuming Recalled Pork, including symptoms of abdominal cramping, vomiting, headache, fever, and diarrhoea.
42. The Plaintiff and other Class members suffered psychological injuries as a consequence of their physical injuries. The Plaintiff and other Class members suffered psychological injuries as a result of fearing for their health and their lives, as well as fearing for the health and lives of family members who also consumed Recalled Pork. They have lost and will continue to lose enjoyment of life.
43. As a further result of the breaches as pleaded above, the Plaintiff and those other persons similarly situated have suffered loss and damages, the particulars of which include:

- a. For persons who purchased Recalled Pork for consumption, did not consume the Recalled Pork and did not receive a full refund for the Recalled Pork, damages equivalent to the purchase price;
 - b. For persons who purchased Recalled Pork which was not of merchantable quality, damages equivalent to the purchase price under the Sales of Goods Acts;
 - c. For persons who consumed Recalled Pork and experienced resulting illness, damages for any out-of-pocket medical expenses, damages for lost wages, damages for any future care expense, and damages for pain and suffering.
44. Where a person suffered illness, injury or death as a result of consumption of Recalled Pork:
- a. The Defendants' negligent conduct gives rise to common law damages for the person's spouse for loss of consortium;
 - b. The Defendants' negligent conduct gives rise to common law damages for the person's dependants for loss of care, guidance and companionship; and
 - c. The Defendants' negligent conduct gives rise to damages pursuant to the *Tortfeasors Act*, RSA 2000, c. T-5;
 - d. The Defendants' negligent conduct gives rise to damages pursuant to the *Fatal Accidents Act*, RSA 2000, c F-8 for the deceased's family and dependants.
45. The Plaintiff and other Class Members will continue to suffer physical injury, psychological injury, and emotional upset flowing from the consumption of Recalled Pork for the foreseeable future.
46. The Plaintiff and other Class members have suffered pecuniary damages due to illness and the threat of illness.
47. They have incurred hospital, medical, nursing, medication and other out-of pocket expenses and will incur future care costs. They have lost income and will continue to lose income in the future.

48. The Defendants are liable to pay damages to the Plaintiff and to the other Class members including, but not limited to, damages on account of out-of-pocket expenses associated with consuming Recalled Pork .
49. The trial of this action will not likely take more than twenty-five days to complete.
50. The Plaintiff and the other class members propose that this action be tried in the City of Edmonton in the Province of Alberta.
51. The Plaintiff have sufficient facts and grounds to serve this Amended Statement of Claim ex juris outside of Alberta and, if necessary, outside of Canada since the within claims arise out of and relate to torts committed in Alberta and are governed by the law of Alberta and have a real and substantial connection to Alberta.

I. REMEDY SOUGHT:

52. The Plaintiff and the Class therefore claims against the Defendants:
 - a. A declaration that the Recalled Pork was contaminated;
 - b. A declaration that the Defendants is liable to the Plaintiff and the other Class Members for the damages caused by the Recalled Pork ;
 - c. Alternatively, a declaration that the Defendants were negligent in the manufacturing, processing and packaging of the Recalled Pork ;
 - d. Certification of this action;
 - e. Damages, in the sum of \$15,000,000.00:
 - i. For persons who purchased Recalled Pork for consumption, did not consume the Recalled Pork and did not receive a full refund for the Recalled Pork , damages equivalent to the purchase price;
 - ii. For persons who purchased Recalled Pork for consumption and consumed the product but did not get sick, damages equivalent to the purchase price as the product was fit or of merchantable quality;
 - iii. For persons who consumed Recalled Pork and experienced resulting illness, damages for any out-of-pocket medical expenses, damages for

lost wages, damages for any future care expense, and damages for pain and suffering.

- f. Special damages in the sum of \$1,000,000.00;
- g. Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J 1 as may be allowed;
- h. Costs of this action on a solicitor/client basis; and
- i. Such further and other relief as this Honourable Court may allow or counsel may advise.

NOTICE TO THE DEFENDANTS (S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the Plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff against you.