

Michael Fuller, OSB No. 09357

OlsenDaines
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-222-2000

Kelly D. Jones, OSB No. 074217

Law Office of Kelly D. Jones
kellydonovanjones@gmail.com
Direct 503-847-4329

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

SHANE VASELL

Plaintiff

vs

**POPEYES LOUISIANA
KITCHEN, INC.**

Defendant

Case No. 3:23-cv-1391

COMPLAINT

Negligence; Products Liability

28 U.S.C. § 1332

Demand for Jury Trial

1.

JURISDICTION AND VENUE

Jurisdiction is proper under 28 U.S.C. § 1332 because plaintiff is a citizen of Connecticut and defendant is a citizen of Minnesota and the amount in controversy requirement is satisfied.

2.

Venue is proper under 28 U.S.C. § 1391 because a substantial part of the acts and omissions giving rise to plaintiff's claims occurred in Portland, Oregon.

3.

FACTUAL ALLEGATIONS

As he had done many times in the past, on June 23, 2023, plaintiff ordered and purchased one of defendant's delicious chicken sandwiches from defendant's store location at 3120 NE Martin Luther King Jr Blvd in Portland, Oregon.

4.

When ordering his chicken sandwich, as he had done many times in the past, plaintiff specifically told defendant that he had a severe pickle allergy, and he asked that the sandwich be made without pickles.

5.

As he had done many times in the past, plaintiff relied on defendant's skill and judgment in making and delivering a chicken sandwich that did not contain pickles, consistent with the instructions given to defendant that the sandwich would not contain pickles given his severe pickle allergy.

6.

Despite being told of plaintiff's pickle allergy and plaintiff's instructions to deliver a sandwich that did not contain any pickles, on June 23, 2023, defendant delivered a chicken sandwich to plaintiff that contained pickles, and defendant failed to warn plaintiff that the chicken sandwich would and did contain pickles. Soon after taking a bite of the chicken sandwich containing pickles, plaintiff experienced a severe allergic reaction, and promptly notified defendant. Due to the severe allergic reaction caused by defendant's chicken sandwich containing pickles, plaintiff was taken to the hospital and incurred medical bills in the amount of \$6,992.45.

7.

Plaintiff provided defendant a written demand for the payment of this claim not less than 30 days before the commencement of this complaint and otherwise complied with ORS 20.080.

8.

– Claim 1 –

Negligence

As alleged in this complaint, defendant's acts and omissions on June 23, 2023, in delivering a chicken sandwich to plaintiff that contained pickles with knowledge that plaintiff was allergic to pickles and with instructions to make the sandwich without pickles created a foreseeable risk that plaintiff would be physically harmed when consuming the sandwich containing pickles, and plaintiff did in fact suffer physical injury, pain, discomfort, emotional distress, interference with life activities, and medical expenses, and so requests economic damages in the amount of \$6,992.45, and noneconomic damages in the amount of \$3,000.

9.

– Claim 2 –

Breach of Implied Warranty

of Fitness for a Particular Purpose (ORS 72.3150)

As alleged in this complaint, as he had done many times in the past, on June 23, 2023, plaintiff relied on defendant's skill, judgment, and knowledge of plaintiff's pickle allergy to deliver a chicken sandwich that did not contain pickles and could be safely consumed by plaintiff, but defendant sold and delivered a chicken sandwich to plaintiff that could not be safely consumed by plaintiff. As a result of defendant's breach of the implied warranty that the chicken sandwich was safe for plaintiff to consume given plaintiff's severe pickle allergy, plaintiff suffered physical injury, pain, discomfort, emotional distress, interference with life activities, and medical expenses, and so requests economic damages in the amount of \$6,992.45, and noneconomic damages in the amount of \$3,000.

10.

Plaintiff also requests judgment for reasonable attorney fees under ORS 20.080 and costs and post-judgment interest.

11.

Request for jury trial.

12.

PRAYER FOR RELIEF

Plaintiff seeks relief against defendant as requested above, and any other relief this Court may determine is fair. Plaintiff reserves the right to amend this complaint to adjust the claims for compensation and damages and to add claims and additional defendants. Some of the complaint's allegations are based in part on the memory of witnesses, which may later prove to be inaccurate in parts, and so the complaint may later be amended before trial to conform the allegations to the evidence obtained throughout the case. This complaint is made on personal knowledge as to plaintiff's actions and based on information and belief as to the actions of others.

September 25, 2023

RESPECTFULLY FILED,

s/ Michael Fuller

Michael Fuller, OSB No. 09357

Lead Trial Attorney for Plaintiff

OlsenDaines

US Bancorp Tower

111 SW 5th Ave., Suite 3150

Portland, Oregon 97204

michael@underdoglawyer.com

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