

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILE NO. 18CS12752

IAFREEDRE MCCLAIN, MONTRELL DAVIS, and others similarly situated,

Plaintiffs,

v.

MORNING STAR, LLC a/k/a MORNING  
STAR NC, LLC, d/b/a HARDEE'S;

Defendants.

**CLASS ACTION COMPLAINT FOR DAMAGES**

The plaintiffs, IAFREEDRE MCCLAIN and MONTRELL DAVIS, on behalf of themselves and all those similarly situated, by and through their counsel of record, BRETT DRESSLER and MICHELLE MASSINGALE DRESSLER, of Sellers, Ayers, Dortch, Lyons, and WILLIAM D. MARLER, of Marler Clark, LLP, PS, (pending admission *pro hac vice*) states, alleges and complains as follows:

**I.**

**PARTIES**

1. The plaintiffs, IAFREEDRE MCCLAIN and MONTRELL DAVIS, are residents of Charlotte, Mecklenburg County, North Carolina. Plaintiffs purchased and consumed food and drink at the Hardee's restaurant at 2604 Little Rock Road, in Charlotte, North Carolina, (the "Hardee's restaurant"), on June 15 and June 16, 2018. The Mecklenburg County Public Health Departments announced on or about June 26, 2018, that persons who had consumed food or drink at the Hardee's restaurant from June 13, 2018, through June 23, 2018, were at risk for development of Hepatitis A infections. Officials further urged that these persons contact their

health care provider and be administered an injection of Hepatitis A immune globulin (“IG”) or Hepatitis A vaccine as soon as possible. The health officials offered vaccinations at the Northwest Health Department on June 27, 2018, and at the Hal Marshall Building on June 29 and June 30, 2018. Following the warning, a large number of persons, numbering at least 1,000, including the named plaintiffs, obtained the recommended IG shots. The proposed class consists of all those persons who obtained the shots, at the clinics or otherwise, following the health department warning. The plaintiffs, IAFREEDRE MCCLAIN and MONTRELL DAVIS, and all those similarly situated, are hereafter referred to collectively as “plaintiffs.”

2. The defendant MORNIG STAR, LLC a/k/a MORNING STAR NC, LLC d/b/a Hardee’s (“Hardee’s”), is a properly licensed limited liability company, maintaining and operating a Hardee’s restaurant, located at 2604 Little Rock Road, Charlotte, North Carolina. This defendant, at all times material hereto, was carrying on in its ordinary course of business of the corporation, was in the business of the manufacture, preparation, service and sale of food to its store customers at that location, and as such, was doing business in Mecklenburg County, North Carolina.

## II.

### **JURISDICTION AND VENUE**

3. This court is vested with jurisdiction over the defendant Hardee’s because, at all times material hereto, it was a company doing business and maintaining a place of business in the State of North Carolina.

4. This court is vested with original jurisdiction because the damages sought by the plaintiff and others similarly situated are in an amount in excess of Twenty Thousand Dollars (\$25,000.00 USD).

5. The venue of this action is proper in Mecklenburg County, pursuant to N.C. Gen. Stat. §§ 1-79 and 1-80, because the cause of action arose in this county, and because, at all times

material hereto, the plaintiffs resided in Mecklenburg County, and the defendant Hardee's transacted business and maintained a place of business in Mecklenburg County and is, therefore, a resident of Mecklenburg County.

### **III.**

#### **THE NATURE OF THE ACTION**

6. This is a class action lawsuit brought on behalf of persons injured as a result of exposure to the Hepatitis A Virus ("HAV") at the Hardee's restaurant from June 13, 2018, through June 23, 2018. The exposure was caused by 1) Exposure to a HAV infected employee(s) of the defendant Hardee's; 2) consumption of contaminated food and drink exposed to, prepared and/or served by the infected employee(s) of the defendant Hardee's, and/or 3) exposure to, or close proximity with, persons who ate food or drink at the defendants' restaurant or were exposed to the defendants' HAV infected employee(s).

7. The plaintiffs in this lawsuit are those persons who were required for public and personal safety reasons to obtain a vaccination with IG because of this exposure.

### **IV.**

#### **CLASS ACTION ALLEGATIONS**

8. This action is brought as a class action, pursuant to N.C. Gen. Stat. § 1A-1, Rule 23, on behalf of all persons who were potentially exposed to HAV in Mecklenburg County, North Carolina, from June 13, 2018, through June 23, 2018, and who, as a result of this exposure, were required to obtain immunizations. Specifically, this class includes all persons who were exposed to HAV as a direct and proximate result of: (1) their exposure to an HAV infected employee(s) of the defendants at the defendants' restaurant; (2) their consumption of food that was manufactured and sold by the defendants at their restaurant; (3) their exposure to, or close proximity with, persons who ate food from the restaurant who were exposed to the HAV infected worker(s) at the restaurant; or (4) their exposure to persons who were actually infected

with HAV after consuming contaminated food that was manufactured and sold by the defendants at their restaurant.

9. The plaintiffs do not yet know the precise size of the class because this information remains confidential and within the exclusive control of the applicable state and regional health departments and districts. However, the plaintiffs understand and believe that an employee of the defendant Hardee's was ill with HAV, and prepared or served food to customers on numerous days. The plaintiffs believe that the number of potential class members may reach over 4,000.

10. Because the defendants' potentially contaminated food was distributed and sold in high volume, and over a number of different days, joinder is impracticable. The Mecklenburg County Public Health Departments can, however, transmit notice of this class action to each known potential respective class member, once the respective individual class is certified.

11. There are numerous questions of law and fact that are common to the respective class members, including but not limited to:

- (a) Whether the defendants breached express and implied warranties by their sale of food that was potentially contaminated with HAV;
- (b) Whether the defendants were negligent in their manufacture and sale of food that was potentially contaminated with HAV;
- (c) Whether the defendants were negligent in allowing one or more of their employees to work while infected with HAV;
- (d) Whether the defendants were negligent in not requiring their food-service employees to obtain Hepatitis A immunizations;
- (e) Whether the defendants negligently failed to promulgate, enforce and /or abide by work rules, protocols and policies regarding ill employees involved in the handling, preparation, service and sale of food to the public;

(f) Whether the defendants are liable for damages to all potentially exposed persons who obtained vaccination to avoid infection.

12. Common questions of law and fact predominate over any questions affecting only individual class members.

13. The plaintiffs, Iafreedre McClain and Montrell Davis, claims are typical of the claims available to all potentially exposed class members, each of whom was potentially exposed to either potentially contaminated foods or potentially infected persons. The damages and relief sought by these plaintiffs are also common to the exposed class and its members because the nature and process of immunization treatment, its costs, and additional consequential losses are also similar throughout the exposed class.

14. The plaintiffs will fairly and adequately represent and protect the interests of the class. The plaintiffs, Iafreedre McClain and Montrell Davis, have no identifiable conflicts with any other potential class member.

15. The Named Plaintiffs have retained competent counsel, Marler Clark of Seattle, Washington, who has represented thousands of individuals in class actions related to HAV, including:

(a) More than 1,500 individuals in a class action related to a previous HAV outbreak at the D'Angelo's in Swansea, Massachusetts in 2001;

(b) Approximately 1,300 persons as part of a class action on behalf of persons who received IG shots due to an HAV outbreak in June and July 2000 in Spokane, Washington, which was associated with food served at a Carl's Jr. fast-food restaurant;

(c) Approximately 9,000 persons who received IG shots due to an outbreak of HAV at a Chi-Chi's restaurant near Pittsburgh, Pennsylvania in 2003;

(d) Approximately 3,800 persons as part of a class action on behalf of persons who received IG shots due to an HAV exposure in June 2004 at a Friendly's restaurant in Arlington, Massachusetts;

(e) Approximately 850 persons as part of a class action on behalf of persons who received IG shots due to an HAV exposure at a Quizno's in Boston, Massachusetts in 2004.

(f) Approximately 2,700 people infected with Cryptosporidium at a New York spray-park in 2005.

(g) Over 3,000 persons who received IG shots due to potential HAV exposure in January 2007 at a Houlihan's restaurant in Geneva, Illinois;

(h) More than 5,000 persons who were required to get vaccinations against HAV following exposure at a McDonald's restaurant in Milan, Illinois in 2009;

(i) Approximately 3000 claimants who dined at The Olive Garden Italian Restaurant in Fayetteville, North Carolina who thereby were required to get vaccinations against HAV following their potential exposure to hepatitis A.

(j) Approximately 700 persons who consumed food and drink at a McDonald's Restaurant in Northport, Alabama on March 14, 2012 or on March 16, 2012, and who thereby were required to get vaccinations against HAV following their potential exposure to HAV;

(k) Approximately 2,400 persons who received HAV vaccines in 2014 due to exposure at a Charlotte, North Carolina Papa Johns;

(l) Approximately 3,000 persons who received HAV vaccines in New York due to exposure at the New Hawaiian restaurant in 2013;

(m) Approximately 2,700 persons who received HAV vaccines in Springfield, Missouri due to exposure at a Red Robin restaurant in 2014; and

(n) Marler Clark is also counsel for a nine-state certified HAV class involving as many as 25,000 claimants who were forced to obtain preventive vaccinations after consuming recalled Townsend Farms frozen berry-mix that had been purchased at Costco.

16. The plaintiffs are unaware of any possible difficulty in the management of this litigation that would prevent it from being maintained as a class action. The class action mechanism is superior to other alternatives, if any exist, for the fair adjudication of the controversy.

17. The identity of potential class members can be ascertained from the Mecklenburg County Public Health Departments. The plaintiffs believe that health officials will have a list identifying all of those who received IG shots at the free clinics or upon referral to other locations.

18. In the absence of a class action, individual litigation of these claims will be unreasonably expensive in light of the probable damages that might be recovered, and will unreasonably burden the courts of this state and will waste important judicial resources.

19. In the absence of a class action, individual litigation will also waste money that would otherwise be available to compensate these persons who were potentially exposed to infected persons or contaminated food, and accordingly needed vaccination.

20. In the absence of a class action, persons who might otherwise possess a remedy, and might otherwise be able to seek judicial relief, may be left without a reasonable means to obtain justice and full compensation for the injuries they sustained.

21. In the absence of a class action, and in the absence of prompt notification of all potential class members, any minor claims arising from this potential HAV outbreak may languish, and may do so without the statute of limitations beginning to run until each minor turns 18. As a result, litigation related to this potential outbreak could be in the courts, intermittently,

and without coordination, for the next 20 years. In contrast, a class action lawsuit will allow for the efficient and expeditious adjudication of all such claims.

## V.

### **OTHER FACTUAL ALLEGATIONS**

22. In June 2018, at least one employee of the Hardee's restaurant was confirmed to be infected with HAV, and health department officials confirmed that he worked at the restaurant while infected with HAV.

23. The Mecklenburg County Public Health Departments announced on or about June 26, 2018, that persons who had consumed food or drink at the Hardee's restaurant from June 13, 2018, through June 23, 2018, were at risk for development of Hepatitis A infections.

24. Health officials urged that anyone who consumed food or drink at the Hardee's restaurant from June 13, 2018, through June 23, 2018, should contact their health care provider, or attend the free clinics to receive an IG shot as soon as possible.

25. It is estimated that as many as 4,000 persons were potentially exposed to HAV at the Hardee's restaurant in the relevant time frame.

26. The plaintiffs, Iafreedre McClain and Montrell Davis, consumed food at the restaurant in question in the relevant time frame, on June 15, 2018 and June 16, 2018. Both Ms. McClain and Mr. Davis received the required IG shot on June 27, 2018.

## VI.

### **FIRST CAUSE OF ACTION**

#### **(Product Liability and Breach of Warranties)**

27. The defendant Hardee's is the owner and operator of the retail food establishment that manufactured and sold the potentially adulterated food that created the risk and injured the plaintiffs. The defendant Hardee's is the product manufacturer under the North Carolina Product



Liability Act (“Act”), N.C. Gen. Stat. §§ 99B-1 et al, and similar statutes. The contaminated food that the defendant Hardee’s prepared and sold, and that the plaintiffs consumed, was a product within the meaning of the Act and similar statutes. The defendant Hardee’s is the product manufacturer and seller of the HAV-contaminated food that injured the plaintiffs.

28. Under the Act, and similar statutes, the defendant Hardee’s owed to the plaintiffs a duty to manufacture a product that was reasonably safe in construction, that did not materially deviate from applicable design specifications, and that otherwise did not deviate materially from identical units in the defendants’ product line.

29. Under the Act, and similar statutes, the defendant Hardee’s owed to the plaintiffs a duty to manufacture a product that conformed to its express warranties that the food it prepared and sold was, among other things, fit for human consumption, healthful, and suitable for all persons.

30. Under the Act, and similar statutes, the defendant Hardee’s owed to the plaintiffs a duty to manufacture a product that conformed to its implied warranties, including the implied warranty of merchantability, and that was fit for human consumption.

31. The plaintiffs allege that the food that the defendants manufactured and sold, and that the plaintiffs consumed, was not reasonably safe in construction and did not conform to the defendants’ express or implied warranties because it was contaminated and adulterated with, among other things, HAV.

32. The plaintiffs are all persons who reasonably sought vaccination protection from HAV after exposure to food or persons potentially contaminated or infected with HAV by the defendants, and are thus all persons who the defendants might reasonably have expected to use, consume or be affected by their potentially contaminated food products.

33. Because the food that the defendant Hardee's manufactured and sold and that was later consumed by the plaintiffs was potentially adulterated, was not reasonably safe in design and construction, was not fit for human consumption, lacked adequate warnings and instructions, and did not conform to the defendant's express or implied warranties, the defendant Hardee's breached both express and implied warranties, and are liable to the plaintiffs affected thereby for the harm proximately caused to the plaintiffs by their manufacture and sale of potentially contaminated and adulterated food products.

## VII.

### **SECOND CAUSE OF ACTION**

#### **(Negligence)**

34. The defendants manufactured, distributed, and sold a food product that was potentially adulterated, that was not fit for human consumption, and that was not reasonably safe as designed, manufactured, or sold.

35. The defendants were negligent in manufacturing, distributing, and selling a food product that was potentially adulterated with HAV, not fit for human consumption, and not reasonably safe because it was contaminated with HAV and because adequate warnings or instructions were not provided, including but not limited to the warning that its product may contain HAV, and thus should not be given to, or eaten by humans.

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 of their 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 defendants sold to their patrons, and thus breached that duty.

37. The defendants owed a duty to the plaintiffs to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of their food products, including all applicable local, state, and federal health and safety regulations, such as N.C. Gen. Stat. Article 12, Chapter 106, and the Federal Food, Drug and Cosmetics Act. The defendant, by its manufacture, distribution, storage, labeling, and sale of adulterated, unsafe, and unhealthy food products to the minor plaintiffs, failed to conform to this duty.

38. The defendants owed the plaintiffs the duty to exercise reasonable care in the preparation and sale of their food products, as it was reasonably foreseeable that the defendants' manufacture and sale of food products potentially contaminated with HAV would cause injury and harm to all persons potentially exposed to HAV. The defendants have breached that duty, and thereby caused injury to these plaintiffs.

39. The plaintiffs, as customers and patrons of the defendants' restaurant, were the defendants' business invitees and are therefore among the class of persons designed to be protected by the statutory and regulatory provisions pertaining to the manufacture, distribution, storage, labeling, and sale of food by the defendants.

40. The defendants were negligent in producing and selling a food product contaminated with HAV, and in allowing one or more of their employees to have direct and/or indirect contact with their customers. The defendants' negligent acts and omissions included, but were not limited to:

- (a) Failure to require that their employees be vaccinated against HAV;
- (b) Failure to prevent one or more employees from working while infected with HAV;
- (c) Failure to notify their patrons and the public in a timely manner that one or more of their employees worked while infected with HAV;

(d) Failure to prevent the contamination of food, drink, and the premises at their restaurant with HAV.

(e) Failure to promulgate, enforce and /or abide by work rules, protocols and policies regarding ill employees involved in the handling, preparation, service and sale of food to the public.

41. The defendants breached the aforementioned duties as alleged herein.

### **VIII.**

#### **DAMAGES**

42. The plaintiffs, Iafreedre McClain and Montrell Davis, and all those similarly situated, *i.e.* the class of persons exposed either to potentially contaminated food or to potentially infected persons, have suffered general and special, incidental and consequential damages as the direct and proximate result of the acts and omissions of the defendants, which damages are in excess of Ten Thousand Dollars (\$25,000.00) and shall be fully proven at the time of trial. These damages include, but are not limited to: damages for wage loss; medical and medical-related expenses; travel and travel-related expenses; emotional distress; fear of harm and humiliation; physical pain; physical injury; and all other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

#### **PRAYER FOR RELIEF**

WHEREFORE, the plaintiffs, Iafreedre McClain and Montrell Davis, and all those similarly situated pray for the following relief:

- (1) For a trial by jury;
- (2) That the plaintiffs, Iafreedre McClain and Montrell Davis, recover judgment for damages, on behalf of themselves and all those similarly situated, against each of the defendants, jointly and severally, for such sums in excess of \$25,000.00, as shall be determined to fully and

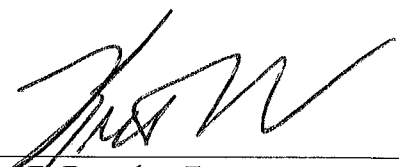
fairly compensate them for all general, special, incidental and consequential damages respectively incurred by them as the direct and proximate result of the acts and omissions of the defendants;

(3) That the court award the plaintiffs, and all those similarly situated, their respective costs, disbursements and reasonable attorneys' fees incurred;

(4) That the court award the plaintiffs, and all those similarly situated, 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 equitable in the circumstances.

THIS the 28 day of June, 2018.



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