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BRANT MAUK

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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H. MIYATA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

BRANT MAUK,

Plaintiff,

vs.

GENKI SUSHI USA, INC., a Hawaii
corporation; HNK, INC., dba Koha Foods, a
Hawaii corporation; JOHN DOES 1-10;
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. 16-1-1573-08 KTN

COMPLAINT; DEMAND FOR JURY
TRIAL; SUMMONS


COMPLAINT

COMES NOW, Plaintiff BRANT MAUK, for a Complaint against Defendants GENKI SUSHI USA, INC., a Hawaii corporation, HNK, INC., dba Koha Foods, a Hawaii corporation, JOHN DOES 1-10, and DOE ENTITIES 1-10, as follows:

I. THE PARTIES

1. Plaintiff BRANT MAUK (hereinafter "MAUK") is and was a citizen and resident of the City and County of Honolulu, State of Hawaii.

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

2. Defendant GENKI SUSHI USA, INC., is a Hawaii corporation, which does business in the State of Hawaii.

3. Defendant HNK, INC., dba Koha Foods, is a Hawaii corporation, which does business in the State of Hawaii.

4. MAUK does not know the true names and identities of those defendants sued herein as JOHN DOES 1-10; or DOE ENTITIES 1-10; and prays leave that when the true names of said Defendants are ascertained, MAUK may amend this Complaint to insert the same with appropriate allegations. MAUK is informed and believes, and upon such information and belief, alleges that each of the Defendants designated herein by such fictitious names are responsible in some manner for the events described herein, and caused injuries and damages to MAUK.

II. JURISDICTION AND VENUE

5. By this reference, MAUK incorporates paragraphs 1 through 4 of this Complaint as if each was set forth here in its entirety.

6. Venue is proper in this Court pursuant to HRS § 603.36 because the negligence from which MAUK claims for relief arose occurred in this circuit.

7. This Court has personal jurisdiction over all Defendants pursuant to HRS § 634-35, including, but not limited to, subsections (1) and (2), because MAUK's causes of action against the Defendants arises from their transactions of business within this State and/or their commission of tortious acts within this State.

8. Each Defendant has substantial, systematic, and continuous contact with this State such that exercise of personal jurisdiction over them is appropriate.

9. Each Defendant has purposefully availed itself to the privilege of conducting business within this State and has the requisite minimum contacts with this State such that the

maintenance of this suit does not offend traditional notions of fair play and substantial justice and that the Defendants should reasonably anticipate being haled into Court here.

III. STATEMENT OF FACTS

10. By this reference, MAUK incorporates paragraphs 1 through 9 of this Complaint as if each was set forth here in its entirety.

About Hepatitis A Virus

11. Hepatitis A (formerly known as infectious hepatitis) is an acute infectious disease of the liver caused by the hepatitis virus (HAV), a virus usually spread by the fecal-oral route, with infections often being traced to conditions of poor sanitation. In addition, the HAV virus is highly resistant, and is resistant to detergent, acid (pH 1), solvents (e.g., ether, chloroform), drying, and temperatures up to 60 degrees Celsius. It can survive for months in fresh and salt water, as well as in frozen products.

12. After ingestion of the virus, HAV enters the bloodstream through the intestine. The blood carries the virus to the virus' target, the liver. Once the virus reaches the liver, it multiplies within hepatocytes and Kupffer cells. As a result, virus particles are secreted into the bile and released in the stool. HAV is secreted in large quantities approximately eleven (11) days prior to appearance of symptoms. The incubation period is 15-50 days, with a mortality rate of one in two hundred.

13. It is an acute illness, which means that the symptoms can come on suddenly and sharply, causing a range of clinical problems from mild illness with no symptoms to more severe illness. Typical symptoms include fatigue, nausea, vomiting, abdominal pain or discomfort (especially in the area beneath the lower ribs on the right side), loss of appetite, low-grade fever, dark urine, muscle pain, and yellowing of the skin (jaundice). But HAV is also one of several types of hepatitis viruses that can cause inflammation that affects a liver's ability to function, and in some cases can cause liver failure, chronic liver disease, or even death.

The HAV Outbreak

14. Since June 12, 2016, residents of the Island of Oahu have become infected by Hepatitis A.

15. The State of Hawaii Department of Health has determined that 168 persons, all adults, have become infected with Hepatitis A.

16. Findings of the investigation suggest that 46 infected persons required hospitalization.

17. Findings of the investigation suggest that the source of the outbreak is on the Island of Oahu.

18. Findings of the investigation suggest that the onset of the illness ranged between June 12, 2016 and August 1, 2016.

19. Based upon information and belief, the Hepatitis A infection was caused by consumption of scallops at restaurants operated by Defendant Genki Sushi USA, Inc. and the scallops were distributed to Defendant Genki Sushi USA, Inc. by Defendant HNK, Inc., dba Koha Foods.

MAUK's Hepatitis A Illness

20. MAUK ate at Genki Sushi in months prior to June 28, 2016. On June 28, 2016, MAUK's symptoms began with feelings of fatigue and nausea. Dr. Lisa Camara treated MAUK for worsening symptoms on July 5, 2016 at the Kaiser Permanente Mapunapuna Medical Office. Dr. Camara informed MAUK that his liver was inflamed and his blood tests confirmed Hepatitis A. On July 7, 2016, MAUK was given a Hepatitis A vaccination and sent home to recover. Later that same day, with symptoms not subsiding and continuing in their intensity, MAUK arrived at Kaiser Permanente Moanalua Medical Center Emergency Department and was admitted to the hospital immediately. MAUK spent a total of seven (7) days in the hospital and is presently continuing his recovery.

IV. STRICT PRODUCTS LIABILITY

21. By this reference, MAUK incorporates paragraphs 1 through 20 of this Complaint as if each was set forth here in its entirety.

22. At all times material to this complaint, the Defendants were in the business of importing, manufacturing, distributing, marketing, and/or selling the scallops in the ordinary course of business.

23. There was a manufacturing defect in the scallops and insufficient warning of said defects with the scallops left the Defendants' possession and control.

24. The scallops contained a manufacturing defect because it was contaminated with HAV when it left the Defendants' possession and control. The presence of HAV was a condition of the product that rendered it unreasonably dangerous for its intended use beyond the extent that would be contemplated by the ordinary consumer or user of the scallops. Due to the presence of HAV, the scallops did not conform to the design of the defendants' other products at the manufacturing state.

25. There was an insufficient warning defect in the scallops when it left the defendants' possession and control. The scallops were defective because it was contaminated with HAV and the Defendants failed to give adequate warnings of the product's dangers, which by the application of reasonably developed human skill and foresight, should have been known. The Defendants also failed to give adequate warnings and instructions to avoid such dangers. The Defendants' failure to provide such warnings and instructions rendered the scallops unreasonably dangerous.

26. The scallops' manufacturing defects and insufficient warnings were the direct, proximate, and producing cause of MAUK's injuries and damages set forth below.

27. The Defendants are therefore strictly liable for importing, manufacturing, distributing, marketing, and/or selling defective and unreasonably dangerous scallops and introducing it into the stream of commerce.

V. NEGLIGENCE

28. By this reference, MAUK incorporates paragraphs 1 through 27 of this Complaint as if each was set forth here in its entirety.

29. The Defendants owed MAUK a duty or ordinary care in the manufacture, preparation, testing, packaging, marketing, distribution, and selling of the scallops in question. Further, the Defendants owed MAUK a duty of warning or instructing him of potentially hazardous or life-threatening conditions with respect to the scallops.

30. The Defendants breached their duties in one or more of the following ways:
- a. Negligently importing, manufacturing, distributing and selling the scallops;
 - b. Failing to properly test the scallops before placing it into the stream of commerce;
 - c. Failing to prevent human and/or animal feces from coming into contact with the scallops;
 - d. Failing to adequately monitor the safety and sanitary conditions of their premises;
 - e. Failing to apply their own policies and procedures to ensure the safety and sanitary conditions of their premises;
 - f. Failing to adopt and/or follow FDA recommended good manufacturing practices;
 - g. Failing to take reasonable measures to prevent the transmission of HAV and related adulteration of their premises;
 - h. Failing to properly train and supervise their employees and agents to prevent the transmission of HAV and related filth and adulteration of their premises;
 - i. Failing to warn MAUK and the general public of the dangerous propensities of the scallops that they consumed, particularly that it was contaminated with HAV, despite knowing or having reason to know of such dangers;
 - j. Failing to instruct MAUK of proper procedures to safe use of the scallops; and
 - k. Failing to timely disclose post-sale information concerning the dangers associated with the scallops.

31. All dangers associated with the contaminated scallops were reasonably foreseeable and/or scientifically discoverable by the Defendants at the time the defendants placed the scallops into the stream of commerce.

32. The Defendants' conduct was a direct, proximate, and producing cause of MAUK's injuries and damages set forth below.

VI. BREACH OF IMPLIED WARRANTY

33. By this reference, MAUK incorporates paragraphs 1 through 32 of this Complaint as if each was set forth here in its entirety.

34. The Defendants are merchants who manufacture, import, distribute, market, and/or sell scallops. MAUK was a consumer.

35. The Defendants breached the implied warranty of merchantability by impliedly warranting that the scallops was fit for the ordinary purpose for which scallops is used, that, as a fungible good, the scallops was of fair and average quality within the description on the package, and that the scallops was adequately labeled.

36. The ordinary purpose for which scallops was not fit is human consumption. Scallops was not fit for human consumption due to the fact that it was contaminated with HAV.

37. Scallops, as a fungible good, was not of average quality, as scallops of average quality would not be contaminated with HAV.

38. The scallops was not adequately labeled, as it failed to warn of risk of HAV contamination.

39. The Defendants breached the implied warranty of fitness for a particular purpose by holding out unreasonably dangerous scallops (i.e. scallops contaminated with HAV) to MAUK and the public as being safe when they knew or had reason to know that the scallops was not safe and that MAUK and the public would consume the scallops.

40. The Defendants did not disclaim these implied warranties.

41. The Defendants' conduct was a direct, proximate, and producing cause of MAUK's injuries and damages set forth below.

VII. DAMAGES

42. By this reference, MAUK incorporates paragraphs 1 through 41 of this Complaint as if each was set forth here in its entirety.

43. The Defendants' conduct was a direct, proximate, and producing cause of MAUK's personal injuries and damages, including but not limited to, pain and suffering, loss of consortium, lost wages, lost earning capacity, past and future medical and pharmaceutical expenses, emotional distress, and other general, special, ordinary, incidental, and consequential damages as would be anticipated to arise under the circumstances.

WHEREFORE, MAUK prays for judgment against the Defendants, jointly and severally, as follows:

1. General damages to be proven at trial;
2. Special damages to be proven at trial;
3. Court costs;
4. Pre-and post-judgment interest at the highest rate allowable by law; and
5. For such other general and specific relief as the Court deems just and proper.

DATED: Honolulu, Hawaii, August 16, 2016.

OGAWA, LAU, NAKAMURA & JEW
Attorneys-at-Law, A Law Corporation



MICHAEL F. O'CONNOR
Attorney for Plaintiff
BRANT MAUK

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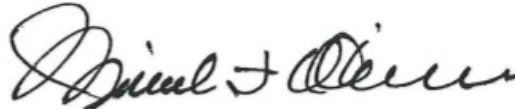
DEMAND FOR JURY TRIAL

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Plaintiff BRANT MAUK, by and through his undersigned counsel, hereby demands a jury trial for all triable claims.

DATED: Honolulu, Hawaii, August 16, 2016.

OGAWA, LAU, NAKAMURA & JEW
Attorneys-at-Law, A Law Corporation



MICHAEL F. O'CONNOR
Attorney for Plaintiff
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Defendants.

CIVIL NO. _____

SUMMONS

SUMMONS

STATE OF HAWAII

To the Above-Named Defendants:

You are hereby summoned and required to file with the Court and serve upon Ogawa, Lau, Nakamura & Jew, Plaintiff's attorney, whose address is 707 Richards Street, Suite 600, Honolulu, Hawai'i 96813, an answer to the Complaint which is herewith served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on the premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

AUG 16 2016

DATED: Honolulu, Hawai'i, _____.

N. MIYATA



Clerk of Court