

Verified Correct Copy of Original 8/19/2014.

Filed
JUN 05 2013
Benton County Circuit Court
Corvallis, Oregon
Entered [Signature]

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF BENTON

	Case No.:
vs.	CLAIM FOR RELIEF
Plaintiff,	1. Products Liability
, LLC	2. Breach of Implied Warranty of
Defendant.	Merchantability
	3. Negligence
	4. Attorney Fees (ORS 20.080)
	(Subject to Mandatory Arbitration \$10,000)

GENERAL ALLEGATIONS

At all material times herein, Plaintiff alleges:

1.

All events complained of occurred in the City of Corvallis, Benton County, Oregon.

Plaintiff is an individual person and a resident of Benton County, Oregon.

2.

Defendant , LLC is an active domestic limited liability company organized under the laws of the State of Oregon. Defendant is engaged in the business of selling various food products at retail under the DBA of , at Corvallis, Oregon 97330.

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3.

Defendant expected the food products sold by them to reach consumers or users in the condition in which it was sold.

4.

On or about February 22, 2013, Plaintiff purchased a salad from the Defendant for consumption.

5.

Defendant's food product was expected to and did reach Plaintiff without substantial change in the condition in which it was sold.

6.

While eating in Defendant's restaurant, Plaintiff found a live insect in her salad. Plaintiff placed the management on notice.

7.

The salad was in an unreasonably dangerous condition at the time it was sold to Plaintiff in that Plaintiff could have fallen seriously ill from consuming the insect.

8.

Plaintiff has suffered physical pain, mental anguish and emotional pain and suffering. Plaintiff should be awarded non-economic damages in the amount of \$10,000.00 against the Defendant.

9.

Plaintiff suffered no economic damages.

FOR PLAINTIFF'S FIRST CLAIM FOR PRODUCTS LIABILITY AGAINST THE DEFENDANT

Plaintiff realleges paragraphs 1 through 9 and further alleges:

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10.

Plaintiff was using the salad for its intended purpose and was unaware of any defect in the salad or of any danger to Plaintiff as a result of using it.

11.

When Plaintiff sustained the injuries alleged above, the salad was in a defective condition unreasonably dangerous to a user or consumer, in that there was a live insect in the salad. That condition was not observable by Plaintiff who relied on the duty of Defendant to deliver the salad at the time of sale in a condition fit for use for the purpose intended.

12.

The breach of that duty by Defendant and the defective condition of the salad was the actual cause of the injuries sustained by Plaintiff.

FOR PLAINTIFF'S SECOND CLAIM FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY AGAINST THE DEFENDANT

Plaintiff realleges paragraphs 1 through 12 and further alleges:

13.

Defendant is a merchant who deals in the business of selling food products.

14.

There is both vertical and horizontal privity between the Plaintiff and the Defendant.

15.

By selling the goods in question, the Defendant warranted to the Plaintiff that the goods were of a quality that would at least pass without objection in the trade, were at least fit for ordinary purposes for which such goods are used, and in all other respects were of merchantable quality.

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16.

Plaintiff purchased the food products relying on the implied warranty of merchantability.

17.

Defendant's breach of the implied warranty of merchantability was the actual cause of Plaintiff's damages.

18.

The Plaintiff notified the Defendant of the breach on the day the breach occurred.

FOR PLAINTIFF'S THIRD CLAIM FOR NEGLIGENCE AGAINST THE DEFENDANT

Plaintiff realleges paragraphs 1 through 18 and further alleges:

19.

Plaintiff purchased salad from the Defendant for consumption. It was a foreseeable risk of harm that a live insect in the salad could cause harm to Plaintiff.

20.

At the time of the injury, Plaintiff was a patron in Defendant's restaurant. A special relationship exists between merchants and their patrons.

21.

The Defendant failed to sell Plaintiff a food product which was safe to consume. The Defendant's conduct was unreasonable.

22.

Plaintiff was injured when she consumed a salad containing a live insect. Defendant's conduct was the actual cause of Plaintiff's injuries.

23.

Since Plaintiff was a patron in Defendant's restaurant, the Defendant owed Plaintiff a duty of care which was violated when the Defendant failed to sell Plaintiff food which was fit for consumption. Plaintiff was within the class of persons that the Defendant should have

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1 recognized would be harmed by his conduct and the harm Plaintiff suffered should have been
2 reasonably anticipated by the Defendant.

3 24.

4 The above described actions by the Defendant constitute negligence under the laws of the
5 State of Oregon.

6
7 **FOR PLAINTIFF'S FOURTH CLAIM FOR ATTORNEY FEES AGAINST THE**
8 **DEFENDANT**


9 25.

10 Plaintiff made a written demand on Defendant and his insurance carrier for payment of
11 this claim not less than 30 days prior to a formal complaint being filed. See Exhibit 1.
12 Defendant and their insurer tendered a \$500.00 payment to the Plaintiff. See Exhibit 2. Pursuant
13 to ORS 20.080, Plaintiff should be awarded her reasonable attorney fees for the prosecution of
14 the action.

15
16 **WHEREFORE**, Plaintiff prays for relief as follows on all claims against the Defendant:

- 17 1. For a judgment for Plaintiff for \$10,000.00 for her non-economic damages and
- 18 2. For a judgment for Plaintiff's attorney fees, costs and disbursements incurred
- 19 herein.

20
21 **DATED** this 5th day of June, 2013.

22
23 
24 _____
25 LEMARR E. CARVER (OSB #103516)
26 Trial Attorney for Plaintiff

27
28 Salem, OR 97302

CARVER LAW

OF COUNSEL:

A PROFESSIONAL CORPORATION

TELEPHONE

Dennis V. Messoline

Salem, Oregon 97302

FACSIMILE:

March 5, 2013

Via Facsimile 541.452.1011 and U.S. Mail

Baja Fresh

Attn: General Manager

Corvallis, Oregon 97330

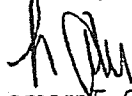
Re:

Dear Sir or Madam:

My firm represents Mrs. _____, a recent patron of your restaurant located at _____, Corvallis, Oregon 97330. A copy of the sales receipt is included for your review. It has come to my attention that while eating at your establishment, Mrs. _____ found a live insect in the salad she had been eating. Pictures of the insect are enclosed with this letter. Your on duty manager was notified at the time of this incident.

Pursuant to ORS 20.080, demand is made for \$10,000 to settle Mrs. _____ claims. If it becomes necessary to litigate this matter, I will bring claims including but not limited to: product liability, negligence and breach of implied warranties. You have thirty (30) days to respond with some offer to settle or suit will be filed and attorney fees and costs will be sought pursuant to ORS 20.080. A copy of the statute is attached for your reference.

Sincerely,



Lemarr E. Carver
Attorney at Law

Cc: Client, via First Class Mail
Enclosures

1 - Letter to

030513

EXHIBIT NO. 1

Page No. 1

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CARVER LAW

OF COUNSEL:

A PROFESSIONAL CORPORATION

TELEPHONE

Dennis V. Messoline

Salem, Oregon 97302

FACSIMILE:

March 8, 2013

Via Facsimile 831.233.5862

Capital Insurance Group

Attn: Ms.

Monterey, CA 93940

Re: - Claim #

Dear Ms. :

This letter is to advise you that my firm represents in the above referenced claim. While dining at the Baja Fresh located at , Corvallis, Oregon 97330, Mrs. found a live insect in the salad she had been eating. Pictures of the insect and a copy of the sales receipt have been sent to the restaurant.

Pursuant to ORS 20.080, demand is made for \$10,000 to settle Mrs. claims. You have thirty (30) days to respond with some offer to settle or suit will be filed and attorney fees and costs will be sought pursuant to ORS 20.080. A copy of the statute is attached for your reference.

Sincerely,



Lemarr E. Carver
Attorney at Law



Capital Insurance Group

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March 25, 2013

VIA FAX ONLY

Carver Law
Attention: Lemarr E. Carver, Attorney at Law

Salem, Oregon 97302

Re: Your Client:
Our Insured: _____, LLC
 dba
 Our Claim Number: M-3410-1406041
 Our Policy Number: 27-CMA-2-1471008
 Date of Loss: March 5, 2013

Dear Mr. Carver:

This confirms our telephone conversation this morning.

As stated, based on the information available to us to date, we find no liability on the part of our insured. However, we are presenting a good-faith offer of \$500.00 as a compromise to a No-Liability claim.

If you and your client accept this offer, please let me know and I will fax a Release to your office for proper execution.

Thank you for working with us to resolve this matter.

Sincerely,
Lei Alofa (extension 7501)
Claim Representative
Eagle West Insurance Company

EXHIBIT NO. 2

Page No. 1

CLAIM SERVICE CENTER
 Bakersfield, California 93384-0460
 • FAX # • www.

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JUN 14 2013

Benton County Circuit Court
Corvallis, Oregon
Entered

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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF BENTON

)	Case No.:
Plaintiff,)	AFFIDAVIT OF SERVICE
vs.)	
)	
, LLC,)	
Defendant.)	

STATE OF OREGON)
County of Marion) ss.

I, _____, upon oath, do hereby certify that I made service of the certified true copy of the Summons, and Claim for Relief upon _____, LLC, by delivering said documents on behalf of Plaintiff herein:

Upon _____, LLC delivering a certified true copy of the above-said documents, personally and in person to: Gina, Shift Manager , located at: _____, Corvallis, OR 97330 , on this 8 day of June, 2013, at or about 5:00 a.m./p.m.

On June 8, 2013, at 5:00 p.m., I drove to Corvallis Fresh, LLC, to serve the above-mentioned documents. When I walked inside, I told the Cashier I needed to speak to the Manager. The Shift Manager then appeared, and told me her name is _____ informed me she would forward the documents to the Manager of the store.

AFFIDAVIT OF MAILING


I completed *Office Service* by handing _____, Shift Manager, the above-mentioned documents, and sending a copy of said documents to: _____, LLC, by First Class Mail to: _____, Corvallis, OR 97330, on this 11 day of June, 2013.

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I further certify that I am a competent person 18 years of age or older and a resident of the state of service or the State of Oregon, and that I am not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise; that the person, firm or corporation served by me is the identical person, firm or corporation, named in the action.

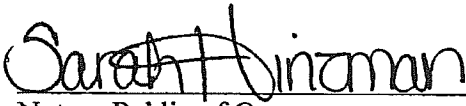
DATED this 11 day of June, 2013.



LORI GRIMMER
Legal Process Server

SUBSCRIBED and sworn to before me on this 11th day of June, 2013.

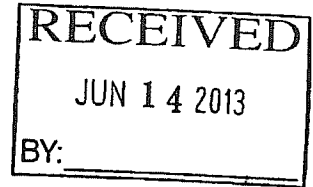




Notary Public of Oregon
My Commission expires: March 25th 2016

Plaintiff,
vs.
, LLC
Defendant.

Case No.
SUMMONS



TO: _____, LLC, _____, CORVALLIS, OREGON 97330

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons on you. If you fail to appear and defend, the plaintiff will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

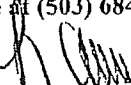
You must "appear" in this case or the other side will win automatically. To "appear" you must file with the Court a legal document called a "motion" or "answer". The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff. If you have any questions you should see an attorney immediately. **If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.**

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal document called a "motion" or "reply". The "motion" or "reply" must be given to the court clerk or administrator within thirty (30) days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff. If you have questions, you should see an attorney immediately. **If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.**

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!

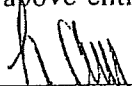
You might be liable for attorney fees in this case. Should defendant in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party. You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply". The "motion" or "reply" must be given to the court clerk or administrator within thirty (30) days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant. If you have questions, you should see an attorney immediately. **If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.**



Lemarr E. Carver, Attorney at Law

STATE OF OREGON, COUNTY of Marion) ss.

I, the undersigned attorney for Plaintiff, certify that the foregoing is an exact and complete copy of the original Summons in the above-entitled section.



Attorney of Record for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this Summons, together with a true copy of the Complaint mentioned therein, upon the individual(s) or other party(ies) to whom or which this Summons is directed and to make your Proof of Service on the reverse hereof or upon a separate similar document which you shall attach hereto.

Lemarr E. Carver, Attorney at Law

Salem, Oregon 97302
(503) Facsimile (503)

Filed
AUG 28 2013
Benton County Circuit Court
Corvallis, Oregon
Entered *CB*

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF BENTON

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Plaintiff,
vs.
 , LLC
Defendant.

) Case No.:

) **MOTION FOR ENTRY OF GENERAL**
) **JUDGMENT OF DISMISSAL**

COMES NOW, Plaintiff and moves the Court for a General Judgment of Dismissal for
the reason that the parties have settled.

Dated this 24th day of August, 2013.



Lemarr E. Carver (OSB #103516)
Attorney for Plaintiff

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AUG 28 2013

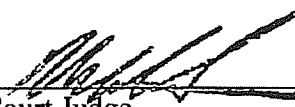
Benton County Circuit Court
Corvallis, Oregon
Entered [Signature] 28

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF BENTON

)	Case No.:
Plaintiff,)	
vs.)	GENERAL JUDGMENT OF DISMISSAL
, LLC)	WITHOUT COSTS AND FEES
Defendant.)	

This matter came before the Court on the Motion of the Plaintiff for a General Judgment of Dismissal because the parties have settled this case: **NOW, THEREFORE IT IS HEREBY ADJUDGED** this matter is dismissed with prejudice and without costs or fees to either party.

Dated this 28 day of August, 2013.



 Circuit Court Judge

Submitted by:
Lemarr E. Carver
Attorney at Law
Salem, Oregon 97302