

Scott A. Harford
HARFORD, P.C.
299 Broadway, Suite 1310
New York, New York 10007
Phone: (212) 390-8983
Facsimile: (646) 895-6475
E-Mail: scott.harford@harford-law.com

-and-

Jory D. Lange, Jr. (*Pro Hac Vice forthcoming*)
THE LANGE LAW FIRM, PLLC
6300 West Loop South, Suite 350
Houston, TX 77401
Phone: (833) 330-3663
Facsimile: (833) 393-3663
E-Mail: jory@jorylange.com
www.MakeFoodSafe.com

Attorney for Plaintiff Charles Olsen

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
CHARLES OLSEN, :
 :
 Plaintiff, :
 :
 -against- :
 :
 MCDONALD'S CORPORATION, a Delaware :
 Corporation; MICDAVIS, LLC d/b/a :
 MCDONALD'S, a New York Limited Liability :
 Company; THE COLLEY GROUP LLC, a New York :
 Limited Liability Company; and JOHN DOE, :
 :
 Defendants. :
-----X

Index No.:

SUMMONS

Venue based on CPLR 503(a)

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on Plaintiff's attorneys, HARFORD, P.C. and THE LANGE LAW FIRM, PLLC,

within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment may be taken against you by default for the relief demanded in the complaint, plus interest, together with the costs and disbursements of this action.

The Plaintiff designates New York County as the venue for trial. Venue is based on CPLR 503(a) because a substantial part of the events and omissions giving rise to the claim occurred in New York County.

Dated: New York, New York
February 2, 2024.

HARFORD, P.C.
Attorney for Plaintiff Charles Olsen

By: s:// Scott A. Harford
Scott A. Harford
299 Broadway, Suite 1310
New York, New York 10007
(212) 390-8983
Phone: (212) 390-8983
Facsimile: (646) 895-6475
E-Mail: scott.harford@harford-law.com

-and-

Jory D. Lange, Jr. (Admitted *Pro Hac Vice*
application forthcoming)
THE LANGE LAW FIRM, PLLC
6300 West Loop South, Suite 350
Houston, TX 77401
Telephone: 833.330.3663
Facsimile: 833.393.3663
jory@jorylange.com
www.MakeFoodSafe.com

Name and address of Defendants to be served:

MCDONALD'S CORPORATION
c/o The Prentice Hall Corporation System, Inc.
251 Little Falls Drive
Wilmington, DE 19808

MICDAVIS, LLC
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

THE COLLEY GROUP LLC
4 Front Street
Croton Falls, NY 10519

Scott A. Harford
HARFORD, P.C.
299 Broadway, Suite 1310
New York, New York 10007
Phone: (212) 390-8983
Facsimile: (646) 895-6475
E-Mail: scott.harford@harford-law.com

-and-

Jory D. Lange, Jr. (*Pro Hac Vice forthcoming*)
THE LANGE LAW FIRM, PLLC
6300 West Loop South, Suite 350
Houston, TX 77401
Phone: (833) 330-3663
Facsimile: (833) 393-3663
E-Mail: jory@jorylange.com
www.MakeFoodSafe.com

Attorneys for Plaintiff Charles Olsen

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
CHARLES OLSEN,
:
:
Plaintiff,
:
:
-against-
:
:
MCDONALD'S CORPORATION, a Delaware
:
Corporation; MICDAVIS, LLC d/b/a
:
MCDONALD'S, a New York Limited Liability
:
Company; THE COLLEY GROUP LLC, a New York:
Limited Liability Company; and JOHN DOE,
:
:
Defendants.
:
-----X

Index No.:

VERIFIED COMPLAINT

Plaintiff Charles Olsen, through his attorneys, Harford, P.C. and the Lange Law Firm, PLLC for his Complaint against the Defendants states and alleges as follows:

PARTIES

1. Plaintiff Charles Olsen is a resident of Rockland County, New York.

2. Defendant MCDONALD'S CORPORATION is a corporation organized and existing under the laws of the State of Delaware with its corporate headquarters located at 110 N. Carpenter St., Chicago, IL 60607. Thus, MCDONALD'S CORPORATION is a citizen of both Delaware and Illinois. Defendant MCDONALD'S CORPORATION can be served at its corporate headquarters located at 110 N. Carpenter St., Chicago, IL 60607, or through its registered agents at The Prentice-Hall Corporation System, Inc., 251 Little Falls Drive, Wilmington, DE 19808.

3. Defendant MCDONALD'S CORPORATION is a franchisor of McDonald's restaurants across the United States, including the McDonald's location at 335 8th Ave., New York, NY 10001. MCDONALD'S CORPORATION is a manufacturer, distributor, and/or seller of food products.

4. Defendant MICDAVIS, LLC d/b/a MCDONALD'S is a limited liability company organized and existing under the laws of the State of Delaware with its corporate headquarters located at 4 Front Street, Croton Falls, NY 10519. Thus, MICDAVIS, LLC d/b/a MCDONALD'S is a citizen of both Delaware and New York. Defendant MICDAVIS, LLC d/b/a MCDONALD'S can be served at its corporate headquarters located at 4 Front Street, Croton Falls, NY 10519 or its registered agents c/o The Colley Group LLC, P. O. Box 779, Croton Falls, NY 10519 and/or Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

5. Defendant MICDAVIS, LLC d/b/a MCDONALD'S is a franchisee which at all times relevant hereto, including without limitation February 21, 2021, owned and operated the McDonald's restaurant located at 335 8th Ave., New York, NY 10001. Defendant MICDAVIS, LLC dba MCDONALD'S is a manufacturer, distributor, and/or seller of food products.

6. Defendant THE COLLEY GROUP LLC is a limited liability company organized and existing under the laws of the State of New York with its corporate headquarters located at 4

Front Street, Croton Falls, NY 10519. Thus, THE COLLEY GROUP LLC is a citizen of New York. Defendant THE COLLEY GROUP LLC can be served at its corporate headquarters located at 4 Front Street, Croton Falls, NY 10519 or its registered agent c/o Edgar Rizo, P. O. Box 779, Croton Falls, NY 10519.

7. Defendant THE COLLEY GROUP LLC, upon information and belief, at all times relevant hereto owned MICDAVIS, LLC d/b/a MCDONALD'S. Defendant THE COLLEY GROUP LLC is a manufacturer, distributor, and/or seller of food products.

8. Defendant JOHN DOE is a franchisee which at all times relevant hereto, including without limitation February 21, 2021, owned and operated the McDonald's restaurant located at 335 8th Ave., New York, NY 10001. Defendant JOHN DOE is a manufacturer, distributor, and/or seller of food products.

9. Upon information and belief, any agency relationship existed between Defendant McDonald's Corporation and any franchisee insofar as the hiring practices and the right to direct and control the manner in which the restaurant operates its business.

JURISDICTION AND VENUE

10. Defendants conduct and transact business in the State of New York, have committed tortious acts within the state, have otherwise performed acts within and/or without the state giving rise to injuries and losses within the state, which acts subject them to the jurisdiction of the courts of this state.

11. Defendants have substantial contacts and receive benefits and income from and through the State of New York, including New York County.

12. The amount of damages sought by Plaintiff exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

13. Plaintiff designates New York County as the place of trial under CPLR 503(a) because the restaurant, the incident, and the injury in question occurred in New York County, and therefore a substantial part of the events and/or omissions giving rise to the claim occurred in New York County.

14. Jurisdiction and venue are further based on the situ of occurrence.

FACTUAL ALLEGATIONS

DAIRY FOOD ALLERGIES

15. According to the American Academy of Allergy, Asthma & Immunology, milk allergies¹ are one of the nine most common food allergies – affecting roughly 0.5 to 1% of the U.S. population – affecting approximately 1.7 million to 3.4 million Americans.²

16. Allergies to milk are the third most common causes of anaphylaxis in the United States.

17. Milk allergies are also among the most common food allergies in adults.³

18. Research suggests that some types of milk proteins (casein and two proteins found in whey, alpha-lactalbumin and beta-lactalbumin) are more likely to cause serious reactions.

19. When a person with a milk allergy is exposed to milk, proteins in the milk bind to specific IgE antibodies made by the person's immune system. This triggers the person's immune defenses, leading to reaction symptoms that can be mild or very severe.⁴

¹ Milk allergies include: milk, other dairy products, and products containing milk protein.

² As of 2023, the US population was approximately 340 million people.

³ Type I allergy to cow milk proteins in adults. A retrospective study of 34 adults with milk- and cheese-allergic patients. Stoger P, Wuthrich B. Int Arch Allergy Immunol 1993;102(4)399.

⁴ Epidemiology of cow's milk allergy. Flom J, Sicherer S. Nutrients 2019;11(5):1051.

20. Milk allergies are life-long conditions, for which there is no known cure.

21. As with most food allergies, the best way to avoid triggering an allergic reaction is to avoid eating the food that causes the reaction – just as Charles Olsen tried to do when he ordered a Big Mac without cheese from McDonalds.

CHARLES OLSEN’S ALLERGIC REACTION FROM MCDONALD’S FOOD

22. Charles Olsen has a severe allergy to milk.

23. On February 21, 2021, Charles Olsen and his friends decided to order take-out from McDonald’s located at 335 8th Ave., New York, New York 10001.

24. He decided to place his usual order - the Big Mac Meal with No American Cheese. He placed the order through DoorDash. He noticed that there were no allergy warnings or cross-contamination warnings. The only option was to “Remove from Big Mac.” As per usual, he made sure to check off “NO American Cheese”.

X		McDonald's	
1 ×	Double Quarter Pounder with Cheese Meal		\$10.18
	Chocolate Milk (130 Cal.), French Fries, Medium		
1 ×	3 Pack Of Cookies		\$1.99
1 ×	French Fries		\$3.69
	Medium (320 Cal.)		
1 ×	French Fries		\$3.69
	Medium (320 Cal.)		
1 ×	6 Piece Spicy McNuggets		\$4.09
	Spicy Buffalo (30 Cal.)		
1 ×	Big Mac Meal		\$9.08
	Sprite® (200 Cal.), No American Cheese (25 Cal.), French Fries, Medium		
	Subtotal		\$32.72
	Tax ⓘ		\$2.90
	Delivery Fee	\$0.49	Free
	Service Fee ⓘ	\$3.27	\$1.64
	Dasher Tip		\$4.00
	Total		\$41.26

25. After the ordered arrived, Charles opened his burger and began to eat. After a few bites, he immediately felt like something wasn't right. His throat began to itch and swell. He felt a burning sensation throughout his body. He looked at his girlfriend, Alexandra, and coughed "there's milk in this!"

26. Minutes later, Charles' body was covered in hives. His breathing became heavy and congested. His whole body felt feverish. He developed a persistent cough, followed by wheezing. He also began gasping for air. He choked out his words to Alexandra that he needed medical help right away.

27. Alexandra rushed Charles to the hospital, where he was admitted for anaphylaxis. He was hypoxic and on the brink of needing intubation to save his life. All the while, his throat was continuing to swell and close.

28. After a several hours, doctors were able to stabilize Charles and he was discharged home.

29. As a result of consuming Defendants' contaminated food products, Plaintiff incurred substantial medical expenses, and endured great physical pain, discomfort, mental anguish, and suffering.

30. The limitations on liability set forth in CPLR §1601 do not apply.

31. The limitations on liability set forth in CPLR §1601 do not apply by reason of one or more of the exemptions thereto set forth in CPLR §1602.

32. By reason of the foregoing, Plaintiff has been damaged in an amount which exceeds the jurisdictional limit of all lower courts which might otherwise have jurisdiction over this matter.

FIRST CAUSE OF ACTION
(Strict Liability)

33. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as if set forth fully herein.

34. At all relevant times, Defendants were manufacturers, suppliers, packagers, distributors, and sellers of the adulterated food products that caused Plaintiff's illness.

35. The adulterated food produced by Defendants that caused Plaintiff's anaphylaxis was defective and unreasonably dangerous to Charles for its ordinary and expected use at the time it left Defendants' possession because it contained dairy/milk products.

36. The adulterated food that Defendants produced and sold reached Plaintiff without change to its defective condition because it remained contaminated with dairy/milk products.

37. A reasonable person who did in fact know of the adulterated food's potential for causing injury would have concluded that it should not have been served in that condition to someone with dairy/milk products.

38. The adulterated food product that Defendants produced and sold was used in the manner normally expected and intended and was ultimately consumed by Plaintiff.

39. Plaintiff could not have discovered the defect by the exercise of reasonable care.

40. As a result of his consumption of Defendants' dairy/milk contaminated food products, Plaintiff suffered an anaphylactic reaction.

41. As a direct and proximate result of the defective food product manufactured, supplied, packaged, distributed, and sold by Defendants, Plaintiff suffered from anaphylaxis and injuries as set forth herein.

42. In addition, Defendants' aforementioned conduct was committed with knowing, conscious, wanton, willful, and deliberate disregard for the rights and safety of consumers, including Plaintiff.

WHEREFORE, Plaintiff demands judgment for compensatory damages, in amounts to be proved at trial, and that he be awarded reasonable attorneys' fees, costs, and such other and further relief as may be deemed just and proper.

SECOND CAUSE OF ACTION

(Negligence)

43. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as if set forth fully herein.

44. Defendants owed a duty to all consumers of their products, including Plaintiff, to produce food that was safe to eat, that was not adulterated with dairy/milk products, that was not in violation of applicable food safety and food allergy regulations, and was safe to consume to the extent contemplated by a reasonable consumer.

45. Defendants breached this duty by, among other acts and omissions:

- a. Failing to adequately maintain and monitor the safety of their products, premises, equipment and employees;
- b. Failing to properly operate their facilities and equipment in a safe, clean, and sanitary manner;
- c. Failing to adopt adequate food safety and food allergy policies and procedures;
- d. Failing to apply their food safety and food allergy policies and procedures to ensure the safety and sanitary conditions of its food products, premises, and employees;
- e. Failing to adopt, implement, and validate food safety and food allergy policies and procedures that met industry standards for the safe and sanitary production of food products, and the safety and sanitary conditions of their premises and employees;
- f. Failing to prevent the transmission of food allergens to consumers of their food products;
- g. Failing to properly train their employees and agents how to prevent the transmission of food allergens on their premises, from their facility or equipment, or in their food products; and
- h. Failing to properly supervise their employees and agents to prevent the transmission of food allergens on their premises, from their facility or equipment, or in their food products.

46. As a direct and proximate result of Defendants' negligence, Plaintiff suffered anaphylaxis and injuries as set forth above.

47. In addition, Defendants' aforementioned conduct was committed with knowing, conscious, wanton, willful, and deliberate disregard for the rights and safety of consumers, including Plaintiff.

WHEREFORE, Plaintiff demands judgment for compensatory damages, in amounts to be proved at trial, and that he be awarded reasonable attorneys' fees, costs, and such other and further relief as may be deemed just and proper.

THIRD CAUSE OF ACTION
(Negligence *Per Se*)

48. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as if set forth fully herein.

49. Defendants, their employees, agents, or those working on their behalf, as providers of food products in the United States of America, owe a duty to comply with 21 U.S.C. § 331, which states:

The following acts and the causing thereof are prohibited:

- a. The introduction or delivery for introduction into interstate commerce of any food that is adulterated;
- b. The receipt in interstate commerce of any food that is adulterated, and the delivery or proffered delivery thereof for pay or otherwise....

50. Defendants, their employees, agents, or those working on their behalf, failed to comply with U.S.C. § 331. Such conduct constitutes negligence *per se*.

51. Defendants, their employees, agents, or those working on their behalf, also owe a duty to comply with McKinney's Agriculture and Markets Law § 199-a, which states:

No person or persons, firm, association or corporation shall within this state manufacture, compound, brew, distill, produce, process, pack, transport, possess, sell, offer or expose for sale, or serve in any hotel, restaurant, eating house or other place of public entertainment any article of food which is adulterated or misbranded within the meaning of this article.

52. Defendants, their employees, agents, or those working on their behalf, failed to comply with N.Y. Agric. & Mkts. Law § 199-a. Such conduct constitutes negligence *per se*.

53. As a result of the failure of Defendants, their employees, agents, or those working on their behalf, to comply with 21 U.S.C. § 331 and N.Y. Agric. & Mkts. Law § 199-a, Plaintiff suffered the illness and injuries as set forth above.

54. In addition, Defendants' aforementioned conduct was committed with knowing, conscious, wanton, willful, and deliberate disregard for the rights and safety of consumers, including Plaintiff.

WHEREFORE, Plaintiff demands judgment for compensatory damages, in amounts to be proved at trial, and that he be awarded reasonable attorneys' fees, costs, and such other and further relief as may be deemed just and proper.

FOURTH CAUSE OF ACTION
(Breach of Implied Warranty)

55. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as if set forth fully herein.

56. Defendants manufactured, distributed, advertised, promoted, and sold the food ingested by Plaintiff.

57. At all relevant times, Defendants knew of the use for which their food was intended and impliedly warranted the product to be of merchantable quality and safe and fit for such use.

58. Defendants were aware that consumers, including Plaintiff, would consume the food as an ordinary consumer would expect.

59. Plaintiff reasonably relied upon the judgment and sensibility of Defendants to sell food only if it was indeed of merchantable quality and safe and fit for its intended purpose.

60. Defendants breached their implied warranty to consumers, including Plaintiff, because their food was not of merchantable quality and/or safe and fit for its intended purpose.

61. Consumers, including Plaintiff, reasonably relied upon Defendants' implied warranty for their food.

62. Defendants' food reached consumers without substantial change in the condition in which it was manufactured and sold by Defendants.

63. As a direct and proximate result of Defendants' breach of implied warranty, Plaintiff suffered the illness and injuries as set forth above.

64. In addition, Defendants' aforementioned conduct was committed with knowing, conscious, wanton, willful, and deliberate disregard for the rights and safety of consumers, including Plaintiff.

WHEREFORE, Plaintiff demands judgment for compensatory damages, in amounts to be proved at trial, and that he be awarded reasonable attorneys' fees, costs, and such other and further relief as may be deemed just and proper.

DAMAGES

65. Plaintiff has suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions of the Defendants, in an amount that shall be fully proven at the time of trial. These damages include, but are not limited to: general pain and suffering, damages for loss of enjoyment of life, both past and future, medical and related expenses, travel and travel-related expenses, emotional distress, past and future, pharmaceutical expenses, past and future, lost wages, and all other ordinary, compensatory, incidental, or

consequential damages that would or could be reasonably anticipated to arise under the circumstances.

JURY DEMAND

66. Plaintiff hereby demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment against the Defendants as follows:

- a. Ordering compensation for all general, compensatory, special, incidental, and consequential damages suffered by the Plaintiff as a result of Defendants' conduct;
- b. Awarding Plaintiff his reasonable attorneys' fees and costs to the fullest extent allowed by law; and
- c. Granting all such additional and further relief as this Court deems just and equitable.

Dated: New York, New York
February 2, 2024.

HARFORD, P.C.
Attorney for Plaintiff Charles Olsen

By: s:// Scott A. Harford
Scott A. Harford
299 Broadway, Suite 1310
New York, New York 10007
(212) 390-8983
Phone: (212) 390-8983
Facsimile: (646) 895-6475
E-Mail: scott.harford@harford-law.com

-and-

Jory D. Lange, Jr. (Admitted *Pro Hac Vice*
application forthcoming)
THE LANGE LAW FIRM, PLLC
6300 West Loop South, Suite 350
Houston, TX 77401
Telephone: 833.330.3663
Facsimile: 833.393.3663
jory@jorylange.com
www.MakeFoodSafe.com

VERIFICATION

SCOTT A. HARFORD, an attorney admitted to practice in the Bar of this State, hereby affirms under penalty of perjury:

I am the attorney of record for the Plaintiff.

I am a shareholder of HARFORD, P.C. counsel for plaintiff Charles Olsen and am duly authorized to execute this Verification on his behalf. The foregoing Verified Complaint is true to my own knowledge, except as to matters therein stated upon information and belief, and as to those matters, I believe them to be true. I believe the information is true based on information I have obtained from my client and a review of documents. I make this affirmation because Plaintiff does not reside in the county where my office is located.

Dated: New York, New York
February 2, 2024

s:// Scott A. Harford
SCOTT A. HARFORD