

IN THE CIRCUIT COURT FOR THE 17th JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

BETTY GAITOR,

CASE NO.:

Plaintiff,

vs.

TYSON FOODS, INC., and
WALMART, INC.,

Defendants.

COMPLAINT

Plaintiff, BETTY GAITOR, by and through the undersigned attorney, sues the Defendants, TYSON FOODS, INC., and WALMART, INC., and alleges as follows:

GENERAL ALLEGATIONS & JURISDICTION

1. This is an action for damages which exceeds the sum of Thirty Thousand and 00/100 (\$30,000.00) Dollars, excluding interest and costs.
2. At all times material hereto, Plaintiff, BETTY GAITOR, was a resident of Broward County, Florida.
3. At all times material hereto, Defendant, WALMART, INC., a corporation duly authorized to do business in Florida, manufactured, and/or prepared for consumption, and sold chicken wings at its store at 3801 Turtle Creek Dr., Coral Springs, Broward County, FL 33067.
4. At all times material hereto, Defendant, TYSON FOODS, INC., a corporation duly authorized to do business in Florida, manufactured, and/or prepared for consumption chicken wings sold at the Walmart store located at 3801 Turtle Creek Dr., Coral Springs, Broward County, FL 33067.

5. On or about February 12, 2019, Plaintiff, BETTY GAITOR purchased prepared chicken wings, ready to eat, from the Walmart located at 3801 Turtle Creek Dr., Coral Springs, Broward County, FL 33067.

6. On the aforementioned date, Plaintiff, BETTY GAITOR, as she bit into the chicken wings she purchased at Walmart, encountered a piece of metal in her chicken and sustained injuries.

COUNT I – NEGLIGENCE OF WALMART, INC.

7. Plaintiff readopts and realleges Paragraphs 1 through 6 as if fully set forth herein.

8. At all times material hereto, Defendant, WALMART, INC., had a duty to sell safe food to its customers, guests, and/or invitees, including the Plaintiff, BETTY GAITOR.

9. In light of the above, Defendant, WALMART, INC., by and through its employees, agents and/or servants breached its duties to the Plaintiff, BETTY GAITOR, by committing one or more of the following negligent acts and/or negligent acts of omission which were the direct and proximate cause of injuries to Plaintiff, BETTY GAITOR, as alleged more fully:

- a. The condition of piece of metal in chicken wings was such as to constitute a hazard;
- b. Allowed a dangerous condition to exist in chicken wings by virtue of the hidden piece of metal in the chicken wings;
- c. Failed to implement appropriate policies and procedures with reference to recognizing and addressing dangerous and/or hazardous conditions in food sold;
- d. Failing to warn of the known hazard;
- e. Failure to inspect the chicken wings for hazards;

f. Failure to correct hazards that appear to have been present for a sufficient amount of time in which a repair should and could have been performed;

g. Failure to properly train its employees with regard to identifying and correcting hazards in food products and/or food preparation and related devices, like fryers;

h. Failure to maintain its food preparation devices, like fryers, in a safe and reasonable manner; and

i. Continuing to do business with and selling chicken products from a vendor like Tyson, Inc., which has a known reputation for selling dangerous chicken products with metal.

As a direct and proximate result of the Defendant's negligence, Plaintiff, BETTY GAITOR suffered serious bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, significant and permanent scarring, loss of capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, and loss of ability to earn money.

Plaintiff, BETTY GAITOR demands judgment from Defendant, WALMART, INC., for damages and costs, pre-judgment interest where applicable, along with any further relief this Court deems just and proper.

COUNT II – NEGLIGENCE OF TYSON FOODS, INC.

10. Plaintiff readopts and realleges Paragraphs 1 through 6 as if fully set forth herein.

11. At all times material hereto, Defendant, TYSON FOODS, INC., had a duty to sell safe food to its customers, guests, and/or invitees, including the Plaintiff, BETTY GAITOR.

12. In light of the above, Defendant, TYSON FOODS, INC., by and through its employees, agents and/or servants breached its duties to the Plaintiff, BETTY GAITOR, by committing one

or more of the following negligent acts and/or negligent acts of omission which were the direct and proximate cause of injuries to Plaintiff, BETTY GAITOR, as alleged more fully:

- a. The condition of piece of metal in chicken wings was such as to constitute a hazard;
- b. Allowed a dangerous condition to exist in chicken wings by virtue of the hidden piece of metal in the chicken wings;
- c. Failed to implement appropriate policies and procedures with reference to recognizing and addressing dangerous and/ or hazardous conditions in food sold;
- d. Failing to warn of the known hazard;
- e. Failure to inspect the chicken wings for hazards;
- f. Failure to correct hazards that appear to have been present for a sufficient amount of time in which a repair should and could have been performed;
- g. Failure to properly train its employees with regard to identifying and correcting hazards in food products and/or food preparation and related devices; and
- h. Failure to maintain its food preparation devices, in a safe and reasonable manner.

As a direct and proximate result of the Defendant's negligence, Plaintiff, BETTY GAITOR suffered serious bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, significant and permanent scarring, loss of capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, and loss of ability to earn money.

Plaintiff, BETTY GAITOR demands judgment from Defendant, TYSON FOODS, INC., for damages and costs, pre-judgment interest where applicable, along with any further relief this

Court deems just and proper.

DEMAND FOR JURY TRIAL

The Plaintiff, BETTY GAITOR, herein demands a trial by jury on all issues so triable by law.

Dated this 25th of August, 2020.

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BY: /s/ Peter J. Porcaro

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