

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

MARY BUSSING,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:20-cv-2142-TWP-TAB
	)	
TYSON FOODS, INC. and	)	
WAL-MART STORES EAST, LP,	)	
	)	
Defendants.	)	

**DEFENDANT TYSON FOODS, INC.’S ANSWER AND AFFIRMATIVE DEFENSES TO  
PLAINTIFF’S COMPLAINT FOR DAMAGES**

Defendant, Tyson Foods, Inc. (“Tyson”), by counsel, for its answers and affirmative defenses to Plaintiff’s Complaint for Damages, states as follows:

*Parties, Jurisdiction, and Venue*

1. Plaintiff, Mary Bussing, is a citizen of the State of Indiana, residing in Indianapolis, Indiana in Marion County.

**ANSWER: Based on information and belief, Defendant Tyson admits the material allegations of rhetorical paragraph 1 of Plaintiff’s Complaint.**

2. Defendant Tyson Foods, Inc. (“Tyson”) is incorporated under the laws of the State of Delaware, with its Corporate Office located at 2200 W. Don Tyson Parkway, Springdale, Arkansas making it a citizen of Arkansas.

**ANSWER: Defendant Tyson admits the material allegations of rhetorical paragraph 2 of Plaintiff’s Complaint for Damages.**

3. Defendant Tyson was a corporation doing business and selling/producing products in the State of Indiana.

**ANSWER: Defendant Tyson admits the material allegations of rhetorical paragraph 3 of Plaintiff's Complaint for Damages. However, Defendant Tyson denies any liability to Plaintiff for the incident, injuries and damages alleged in Plaintiff's Complaint.**

4. Defendant Wal-Mart Stores East, LP ("Walmart") is incorporated under the laws of the State of Delaware, with its principal place of business at 708 SW 8<sup>th</sup> Street, Bentonville, Arkansas, making it a citizen of Arkansas.

**ANSWER: Defendant Tyson admits the material allegations of rhetorical paragraph 4 of Plaintiff's Complaint.**

5. Defendant Walmart did business in Indiana operating a Walmart Neighborhood Market (Facility #5804) located at 5835 W. 10<sup>th</sup> Street, Indianapolis, IN 46224 (hereinafter "Neighborhood Market").

**ANSWER: Defendant Tyson admits the material allegations of rhetorical paragraph 5 of Plaintiff's Complaint. However, Defendant Tyson denies any liability to Plaintiff for the incident, injuries and damages alleged in Plaintiff's Complaint.**

6. Defendant Tyson sold its products at Defendant Walmart's Neighborhood Market.

**ANSWER: In response to the material allegations of rhetorical paragraph 6 of Plaintiff's Complaint, Defendant Tyson admits that Tyson products were sold at Walmart Neighborhood Market #5804. However, Defendant Tyson denies any liability to Plaintiff for the incident, injuries and damages alleged in Plaintiff's Complaint.**

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 in that there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

**ANSWER: Defendant Tyson admits the material allegations of rhetorical paragraph 7 of Plaintiff's Complaint. However, Defendant Tyson denies any liability to Plaintiff for the incident, injuries and damages alleged in Plaintiff's Complaint.**

#### *Summary of Facts*

8. On September 12, 2018, Plaintiff, Mary Bussing, purchased Tyson ground beef (hereinafter "the Food") from the Walmart Neighborhood Market.

**ANSWER: Defendant Tyson is without knowledge sufficient to form a belief as to the truth of the material allegations of rhetorical paragraph 8 of Plaintiff's Complaint. To the extent further response is contemplated, Defendant Tyson denies any liability to Plaintiff for the incident, injuries and damages alleged in Plaintiff's Complaint.**

9. On September 13, 2018, Plaintiff, Mary Bussing prepared the Food she had purchased the day before.

**ANSWER: Defendant Tyson is without knowledge sufficient to form a belief as to the truth of the material allegations of rhetorical paragraph 9 of Plaintiff's Complaint. To the extent further response is contemplated, Defendant Tyson denies any liability to Plaintiff for the incident, injuries and damages alleged in Plaintiff's Complaint.**

10. On September 15, 2018, following consumption of the food, Mary Bussing began having health issues and was admitted into the hospital the following day and remained there for six (6) days for medical treatment.

**ANSWER: Defendant Tyson is without knowledge sufficient to form a belief as to the truth of the material allegations of rhetorical paragraph 10 of Plaintiff's Complaint. To the extent further response is contemplated, Defendant Tyson denies any liability to Plaintiff for the incident, injuries and damages alleged in Plaintiff's Complaint.**

11. As a direct result of the Food manufactured/produced by Tyson and sold by Wal-Mart Plaintiff was diagnosed with sepsis secondary to colitis secondary to enterohemorrhagic Escherichia coli ("E-coli").

**ANSWER: Defendant Tyson denies the material allegations of rhetorical paragraph 11 of Plaintiff's Complaint and further denies any liability to Plaintiff for the incident, injuries and damages alleged in Plaintiff's Complaint.**

*Count I – Strict Liability of Tyson Foods, Inc.*

12. The Plaintiff reasserts, realleges, and incorporates paragraphs one (1) through eleven (11) herein by reference.

**ANSWER: In response to rhetorical paragraph 12 of Count I of Plaintiff's Complaint, Defendant Tyson incorporates by reference, as if fully set forth herein, its responses to rhetorical paragraphs 1 through 11, inclusive, and all other preceding paragraphs of Plaintiff's Complaint.**

13. Defendant Tyson's Food contained E-coli at the time it was sold.

**ANSWER: Defendant Tyson denies the material allegations of rhetorical paragraph 13 of Count I of Plaintiff's Complaint.**

14. Defendant Tyson sold the Food in a defective condition unfit for consumption to its customer, Plaintiff, Mary Bussing.

**ANSWER: The material allegations of rhetorical paragraph 14 of Count I of Plaintiff's Complaint constitute legal conclusions to which no response is required. To the extent further response is contemplated, Defendant Tyson denies the material allegations of rhetorical paragraph 14 of Count I of Plaintiff's Complaint.**

15. Defendant Tyson's Food reached the consumer without substantial alteration from the time of production to the time it was sold.

**ANSWER: The material allegations of rhetorical paragraph 15 of Count I of Plaintiff's Complaint constitute legal conclusions to which no response is required. To the extent further response is contemplated, Defendant Tyson denies the material allegations of rhetorical paragraph 15 of Count I of Plaintiff's Complaint.**

16. Plaintiff, Mary Bussing, was in the class of persons that defendant Tyson should reasonably have foreseen as being subject to harm caused by the contaminated Food, and the Food was expected to and did reach the plaintiff, Mary Bussing.

**ANSWER: The material allegations of rhetorical paragraph 16 of Count I of Plaintiff's Complaint constitute legal conclusions to which no response is required. To the extent further response is contemplated, Defendant Tyson denies the material allegations of rhetorical paragraph 16 of Count I of Plaintiff's Complaint.**

17. Defendant Tyson is in the business of producing and selling meat and other food products, and was the producer/manufacturer of the Food.

**ANSWER: Defendant Tyson admits to that portion of rhetorical paragraph 17 which avers that Defendant Tyson is in the business of producing and selling meat and other food products. However, Defendant Tyson denies the remaining material allegations of rhetorical paragraph 17 of Count I of Plaintiff's Complaint for Damages and further denies any liability to Plaintiff for the incident, injuries and damages alleged in Plaintiff's Complaint.**

18. As a direct and proximate result of the contaminated Food sold by defendant, Tyson, plaintiff, Mary Bussing, developed enterohemorrhagic Escherichia coli, sustained severe injuries, incurred medical expenses, lost wages, endured pain and suffering, and will continue to incur such losses in the future.

**ANSWER: The material allegations of rhetorical paragraph 18 of Count I of Plaintiff's Complaint constitute legal conclusions to which no response is required. To the extent further response is contemplated, Defendant Tyson denies the material allegations of rhetorical paragraph 18 of Count I of Plaintiff's Complaint.**

*Count II – Negligence of Defendant Tyson*

19. Plaintiff reasserts and realleges the information contained in rhetorical paragraphs one (1) through eighteen (18) and reincorporates them herein by reference.

**ANSWER: In response to rhetorical paragraph 19 of Count II of Plaintiff's Complaint, Defendant Tyson incorporates by reference, as if fully set forth herein, its responses to rhetorical paragraphs 1 through 18, inclusive, and all other preceding paragraphs of Plaintiff's Complaint.**

20. Defendant Tyson, through its agents and employees, was careless and negligent in failing to ensure proper food safety practices were followed, with said negligence including, but not limited to, the following:

- a. Failure to use reasonable care in handling its food products;
- b. Selling food contaminated with E-coli;
- c. Failing to use reasonable care in preparing its food products;
- d. Failure to use reasonable care in packaging its food products; and
- e. Failure to use reasonable care to inspect its food products to ensure that said food products were fit and safe for consumption.

**ANSWER: The material allegations of rhetorical paragraph 20, including subparagraphs (a) – (e), inclusive, of rhetorical paragraph 20 of Count II of Plaintiff's Complaint constitute legal conclusions to which no response is required. To the extent further response is contemplated, Defendant Tyson denies the material allegations of**

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.