

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 WAL-MART STORES EAST, LP’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S COMPLAINT FOR DAMAGES

Defendant, Wal-Mart Stores East, LP (“Walmart”), 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 Walmart 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: The material allegations of rhetorical paragraph 2 of Plaintiff’s Complaint are not directed at this Defendant, and, therefore, no response is required.

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

ANSWER: The material allegations of rhetorical paragraph 3 of Plaintiff’s Complaint are not directed at this Defendant, and, therefore, no response is required.

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 8th Street, Bentonville, Arkansas, making it a citizen of Arkansas.

ANSWER: Defendant Walmart 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. 10th Street, Indianapolis, IN 46224 (hereinafter “Neighborhood Market”).

ANSWER: Defendant Walmart admits the material allegations of rhetorical paragraph 5 of Plaintiff’s Complaint. However, Defendant Walmart 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 Walmart admits that Tyson products were sold at Walmart Neighborhood Market #5804. However, Defendant Walmart 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 Walmart admits the material allegations of rhetorical paragraph 7 of Plaintiff’s Complaint. However, Defendant Walmart 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 Walmart 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 Walmart 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 Walmart 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 Walmart 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 Walmart 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 Walmart 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 Walmart Plaintiff was diagnosed with sepsis secondary to colitis secondary to enterohemorrhagic Escherichia coli ("E-coli").

ANSWER: Defendant Walmart is without knowledge sufficient to form a belief as to the truth of the material allegations of rhetorical paragraph 11 of Plaintiff's Complaint. To the extent further response is contemplated, Defendant Walmart 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 Walmart 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: The material allegations of rhetorical paragraph 13 of Count I of Plaintiff's Complaint are not directed at this Defendant, and, therefore, no response is required from this Defendant. To the extent further response is contemplated, Defendant Walmart denies any liability to Plaintiff for the incident, injuries and damages alleged in 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 and are not directed at this Defendant. Therefore, no response is required from this Defendant. To the extent further response is contemplated, Defendant Walmart denies any liability to Plaintiff for the incident, injuries and damages alleged in 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 and are not directed at this Defendant. Therefore, no response is required from this Defendant. To the extent further response is contemplated, Defendant Walmart denies any liability to Plaintiff for the incident, injuries and damages alleged in 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 and are not directed at this Defendant. Therefore, no response is required from this Defendant. To the extent further response is contemplated, Defendant Walmart denies any liability to Plaintiff for the incident, injuries and damages alleged in 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: The material allegations of rhetorical paragraph 17 of Count I of Plaintiff's Complaint are not directed at this Defendant, and, therefore, no response is

required from this Defendant. To the extent further response is contemplated, Defendant Walmart 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 and are not directed at this Defendant. Therefore, no response is required from this Defendant. To the extent further response is contemplated, Defendant Walmart denies any liability to Plaintiff for the incident, injuries and damages alleged in 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 Walmart 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.

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