



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION**

DEMETRIA HANNAH,)
an individual,)
)
Plaintiff,)
)
v.)
)
KMG ENTERPRISES, INC. d/b/a)
IHOP #4418, a foreign corporation;)
)

CASE NO.: _____

FICTITIOUS DEFENDANTS: No. 1, whether singular or plural, that entity or those entities who or which had the duty to maintain the cleanliness and safe condition of the food served at the subject premises; No. 2, whether singular or plural, that entity or those entities who or which had a duty to warn and failed to warn had a duty to issue and failed to issue or issued inadequate warnings or instructions, regarding conditions that were hazardous to Demetria Hannah and other invitees at the premises in question in this lawsuit; No. 3, whether singular or plural, that entity or those entities who or which had a duty to inspect the location and food served at the premises in question and at issue in this lawsuit for hazards, hidden defects or dangerous conditions at the premises in question and at issue in this lawsuit; No. 4, whether singular or plural, that entity or those entities who or which placed, allowed or caused the dangerous condition to be present at the location in question and at issue in this lawsuit and was hazardous and caused injury and damages to the above-named Demetria Hannah; No. 5, whether singular or plural, that entity or those entities which provided general liability or premises liability or medical payment coverage to the premises in question and at issue in this lawsuit; No. 6, whether singular or plural that entity or those entities who or which conducted safety inspections or analyses or provided consulting services pertaining to the premises in question and at issue in this lawsuit; No. 7, whether singular or plural, that entity or those entities who or which had a duty to insure or ensure the safety of the food being served to Plaintiff, Demetria Hannah, while at the premises involved in the occurrence made the basis of this suit; No. 8, whether singular or plural, that entity or those entities who or which manufactured or distributed the food, including any and all components utilized to make the food served to the Plaintiff at the time of the occurrence made the basis of Plaintiff’s complaint; No. 9, whether singular or plural, that entity or those entities who or which controlled and/or had a duty to control the premises involved in the occurrence made the basis of this lawsuit at the time of or at any time before

said occurrence which caused injury and damage to Plaintiff and which is at issue and the basis of this lawsuit; No. 10, whether singular or plural, that person, persons entity or those entities other than those entities described above whose negligence, wantonness, willfulness, or other wrongful conduct caused or contributed to cause the occurrence made the basis of this lawsuit; No. 11, whether singular or plural, that entity or those entities described above, whose breach of contract or breach of warranty contributed to cause the occurrence made the basis of this lawsuit; No. 12 whether singular or plural, that entity or those entities other than those entities described above, which is the successor in interest of any of those entities described above; No. 13, being that person, firm, partnership or corporation who contracted with any named defendant to provide training or supervision of its food service employees who prepared food at the subject premises; No. 14, being that person, firm, partnership or corporation who owned or operated the premises causing the injuries to Plaintiff as alleged in the complaint; No. 15, being the person, firm, partnership or corporation who is a successor or predecessor in interest to any named or fictitiously identified defendant; No. 16, being the person, firm, partnership or corporation charged with the overall hiring, training and supervision of the employees or contractors who or which were charged with the duty or contracted to assume said duty of preparing, inspecting, cooking, and serving food at the the location in question and at issue in this lawsuit and whose breach of duty caused or contributed to cause the injuries and damages to Plaintiff, Demetria Hannah, as alleged in this lawsuit; Plaintiff avers that the identities of the Fictitious Party Defendants are otherwise unknown to Plaintiff at this time, or if their names are known to Plaintiff at this time, their identities as proper party Defendants are not known to Plaintiff at this time, but their true names will be substituted when ascertained.

)

Defendants.

COMPLAINT

COMES NOW, Demetria Hannah (hereinafter, "Plaintiff"), by and through undersigned counsel, and hereby sets forth the following as her Complaint against Defendants and alleges the causes of action as follows

PARTIES

1. Plaintiff Demetria Hannah, (hereinafter may be referred to as "Plaintiff"), is an individual over the age of 19 years and a resident of Jefferson County, Alabama.

2. Defendant KMG Enterprises, Inc. d/b/a IHOP #4418 (“IHOP”) is a Kansas corporation, operating the IHOP restaurant #4418 located at 221 State Farm Parkway; Homewood, Alabama in Jefferson County, Alabama and is believed to be authorized to do business in the State of Alabama and conducts business within Jefferson County, Alabama.

3. At the time and place made the basis of this lawsuit, and for some time prior thereto, the other fictitious party defendants are described as follows: **No. 1**, whether singular or plural, that entity or those entities who or which had the duty to maintain the cleanliness and safe condition of the food served at the subject premises; **No. 2**, whether singular or plural, that entity or those entities who or which had a duty to warn and failed to warn had a duty to issue and failed to issue or issued inadequate warnings or instructions, regarding conditions that were hazardous to Demetria Hannah and other invitees at the premises in question in this lawsuit; **No. 3**, whether singular or plural, that entity or those entities who or which had a duty to inspect the location in question and at issue in this lawsuit for hazards, hidden defects or dangerous conditions at the premises in question and at issue in this lawsuit; **No. 4**, whether singular or plural, that entity or those entities who or which placed, allowed or caused the dangerous condition to be present at the location in question and at issue in this lawsuit and was hazardous and caused injury and damages to the above-named Demetria Hannah; **No. 5**, whether singular or plural, that entity or those entities which provided general liability or premises liability or medical payment coverage to the premises in question and at issue in this lawsuit; **No. 6**, whether singular or plural that entity or those entities who or which conducted safety inspections or analyses or provided consulting services pertaining to the premises in question and at issue in this lawsuit; **No. 7**, whether singular or plural, that entity or those entities who or which had a duty to insure or ensure the safety of the food being served to Plaintiff, Demetria Hannah, while at the premises involved in the occurrence made the basis of this suit; **No. 8**, whether singular or plural, that entity or those entities who or which manufactured or distributed the food, including any and all components utilized to make the food served to the Plaintiff at the time of the occurrence made the basis of Plaintiff’s complaint; **No. 9**, whether singular or plural, that entity or those entities who or which controlled and/or had a duty to control the premises involved in the occurrence made the basis of this lawsuit at the time of or at any time before said occurrence which caused injury and damage to Plaintiff and which is at issue and the basis of this lawsuit; **No. 10**, whether singular or plural, that person, persons entity

or those entities other than those entities described above whose negligence, wantonness, willfulness, or other wrongful conduct caused or contributed to cause the occurrence made the basis of this lawsuit; **No. 11**, whether singular or plural, that entity or those entities described above, whose breach of contract or breach of warranty contributed to cause the occurrence made the basis of this lawsuit; **No. 12** whether singular or plural, that entity or those entities other than those entities described above, which is the successor in interest of any of those entities described above; **No. 13**, being that person, firm, partnership or corporation who contracted with any named defendant to provide training or supervision of its food service employees who prepared food at the subject premises; **No. 14**, being that person, firm, partnership or corporation who owned or operated the premises causing the injuries to Plaintiff as alleged in the complaint; **No. 15**, being the person, firm, partnership or corporation who is a successor or predecessor in interest to any named or fictitiously identified defendant; **No. 16**, being the person, firm, partnership or corporation charged with the overall hiring, training and supervision of the employees or contractors who or which were charged with the duty or contracted to assume said duty of preparing, inspecting, cooking, and serving food at the location in question and at issue in this lawsuit and whose breach of duty caused or contributed to cause the injuries and damages to Plaintiff, Demetria Hannah, as alleged in this lawsuit; Plaintiff avers that the identities of the Fictitious Party Defendants are otherwise unknown to Plaintiff at this time, or if their names are known to Plaintiff at this time, their identities as proper party Defendants are not known to Plaintiff at this time, but their true names will be substituted when ascertained.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the parties to this action and over the subject matter of this action. Venue is proper in this Court pursuant to § 6-3-2 and § 6-3-7, *Code of Alabama* (1975) in that actions against individuals may be brought in the county in which the act or omission occurred and an action against an foreign corporation may be commenced in any county where such organization or association does business or has in existence a branch or local entity. The amount of damages being claimed by the Plaintiff exceed the jurisdictional minimum of this Court.

STATEMENT OF FACTS

5. The Plaintiff re-alleges the paragraphs above as if set out in full herein.
6. On or about February 19, 2017 the Plaintiff along with her husband, minor grandson and minor granddaughter went to the IHOP restaurant located at 221 State Farm Parkway; Homewood, Alabama to have dinner at the request of the Plaintiff's minor granddaughter.
7. The subject IHOP restaurant is upon information and belief owned and operated by Defendant KMG Enterprises, Inc.
8. After being seated, the Plaintiff and her family ordered their meals. The Plaintiff ordered French toast and sausage.
9. While consuming her meal the Plaintiff felt something become lodged in her throat, which caused her to have difficulty breathing.
10. As a result, she ran to the women's bathroom along with her minor grandson. While in the women's bathroom the Plaintiff attempted to dislodge the material in her throat by vomiting.
11. The Plaintiff was unable to dislodge the material lodged in her throat by vomiting and for that reason proceeded to place her fingers in the back of her throat in an attempt to pull out the material.
12. The Plaintiff was able to pull out the material that had become lodged in her throat and she placed it onto the counter in the bathroom.
13. Upon inspection of this material the Plaintiff and her minor grandson observed a condom amongst the chewed up food that Plaintiff had consumed.
14. Plaintiff's minor grandson went and retrieved the Plaintiff's husband who also observed the condom and contacted the Homewood Police Department.

15. The Plaintiff was treated by emergency medical personnel and transported to the hospital where she received additional treatment.

COUNT I
NEGLIGENCE

16. The Plaintiff re-alleges the paragraphs above as if set out in full herein.

17. At the time of the events made the basis of this Complaint, the Plaintiff was a business invitee of Defendant KMG Enterprises d/b/a IHOP #4418.

18. At all times pertinent hereto, Defendant and one or more of the fictitious party Defendants had a duty to exercise reasonable care in the preparation of the food served to Plaintiff.

19. At all times pertinent hereto Defendant and one or more of the fictitious party Defendants had a duty to sell food that was merchantable.

20. At all times pertinent hereto Defendant and one or more of the fictitious party Defendants had a duty to sell food that was not unreasonably dangerous.

21. At all times pertinent hereto Defendant and one or more of the fictitious party Defendants, had a duty to exercise the same degree of care that Defendant and its employees would exercise in the selection and preparation of food for their own private table.

22. Defendants breached their duties to exercise reasonable care in the preparation of the food served to Plaintiff, to sell food that was merchantable, to sell food that was not unreasonably dangerous and to exercise the same degree of care that Defendants would exercise in the selection and preparation of food for their own private table by negligently causing, permitting, allowing a condom to be served to Plaintiff with her French toast.

23. The negligent conduct of all Defendants is the actual and proximate cause of the Plaintiff's injuries and damages stated herein.

24. As a result of the Defendants' negligence, the Plaintiff has suffered injuries and damages including, but not limited to physical ailments; physical pain and suffering; severe mental anguish and medical expenses.

WHEREFORE, the above premises considered, the Plaintiff demands judgment against the Defendants, separately and severally, in an amount that exceeds the minimal jurisdictional limits of this Court in and which the fact finder may determine whether the same be compensatory or punitive, plus interest and all costs of this proceeding to be determined by the trier of facts.

COUNT II
WANTONNESS

25. The Plaintiff re-alleges the paragraphs above as if set out in full herein.

26. Defendant and its employees and one or more of the fictitious party Defendants breached their duties to exercise reasonable care in the preparation of the food served to Plaintiff, to sell food that was merchantable, to duty to sell food that was not unreasonably dangerous and to exercise the same degree of care that Defendant and its employees and one or more of the fictitious party Defendants, would exercise in the selection and preparation of food for their own private table by reckless or wantonly causing, permitting, allowing a condom to be served to Plaintiff with her French toast.

27. The reckless and/or wanton conduct of the Defendants is the actual and proximate cause of the Plaintiff's injuries and damages stated herein.

28. As a result of the Defendants' reckless and/or wanton conduct, the Plaintiff has suffered injuries and damages including, but not limited to physical ailments; physical pain and suffering; severe mental anguish and medical expenses. The Plaintiff claims damages, both compensatory and punitive, against the Defendants for the reckless and/or wanton actions and/or inactions described herein.

WHEREFORE, the above premises considered, the Plaintiff demands judgment against the Defendants, separately and severally, in an amount that exceeds the minimal jurisdictional limits of this Court in and which the fact finder may determine whether the same be compensatory or punitive, plus interest and all costs of this proceeding to be determined by the trier of facts.

COUNT III
NEGLIGENT/WANTON HIRING, TRAINING, AND SUPERVISION

29. The Plaintiff re-alleges the paragraphs above as if fully set out herein.

30. The Plaintiff alleges that the Defendant and one or more of the fictitious party Defendants failed to exercise proper care and diligence to ensure that their agents, servants and/or employees who were responsible for preparing and serving the food at issue served and/or prepared food that is merchantable, not unreasonably dangerous and prepared in such a way as those agents, servants and/or employees would prepare food for their own private tables.

31. Defendants had a duty to ensure that all employees entrusted with the preparation of food at the premises at issue were adequately hired, trained and/or supervised to prepare and serve such food in a safe and responsible manner. Defendant is therefore responsible for all acts committed by those employees who were not adequately hired, trained and/or supervised to maintain said premises in a responsible manner, within the line and scope of their employment and of their agency.

32. The Defendants' failure to exercise proper care and diligence to ensure their agents, servants and/or employees who prepared and served food at the subject premises is the actual and proximate cause of Plaintiff's injuries.

33. As a result of the Defendants' failure to exercise proper care and diligence to ensure their agents, servants and/or employees who prepared and served food at the subject premises would do so in a careful and responsible manner, was the proximate cause of Plaintiff's injuries.

34. The Plaintiff has suffered injuries and damages including, but not limited to physical ailments; physical pain and suffering; severe mental anguish and medical expenses.

WHEREFORE, the above premises considered, the Plaintiff demands judgment against the Defendants, separately and severally, in an amount that exceeds the minimal jurisdictional limits of this Court in and which the fact finder may determine whether the same be compensatory or punitive, plus interest and all costs of this proceeding to be determined by the trier of facts.

COUNT V

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

35. The Plaintiff re-alleges the paragraphs above as if fully set out herein.

36. At all times pertinent to the subject action the Defendant KMG Enterprises, Inc. and one or more of the fictitious party Defendants were in the business of selling prepared food items such as the French toast the Plaintiff ordered and which was served to her by Defendant's employees.

37. This French toast sold to Plaintiff contained an unwrapped condom and as such was not fit for consumption.

38. Defendants' failure to serve Plaintiff food that was not fit for consumption is a beach of the implied warranty of merchantability of said food.

39. Defendants' breach of the implied warranty of merchantability of the French toast served to Plaintiff was the actual and proximate cause of Plaintiff's injuries.

40. As a result of the Defendants' breach of the implied warranty of merchantability, the Plaintiff has suffered injuries and damages including, but not limited to physical ailments; physical pain and suffering; severe mental anguish and medical expenses. The Plaintiff claims damages, both compensatory and punitive, against the Defendants for the reckless and/or wanton actions and/or inactions described herein.

WHEREFORE, the above premises considered, the Plaintiff demands judgment against the Defendants, separately and severally, in an amount that exceeds the minimal jurisdictional limits of this Court in and which the fact finder may determine whether the same be compensatory or punitive, plus interest and all costs of this proceeding to be determined by the trier of facts.

COUNT VI

ALABAMA EXTENDED MANUFACTURERS LIABILITY DOCTRINE

41. The Plaintiff re-alleges the paragraphs above as if fully set out herein.

42. At the aforesaid time and place, and for some time prior thereto, the Defendant and one or more of the fictitious party Defendants were engaged in the business of preparing and selling food products for the consumption of members of the general public, in this case that food product was French toast. Said Defendants, during said period of time and for valuable consideration, created, manufactured, sold, and/or distributed the French toast, including some or all of the ingredients used to make the subject French toast, which led to Plaintiff's injuries.

43. At all times pertinent to this Complaint, the French toast served was substantially in the same condition as when manufactured, sold, and/or distributed, and was being consumed in a manner that was foreseeable. The subject French toast was not reasonably safe when consumed in a foreseeable manner, but to the contrary, was defective and unreasonably dangerous to the

human body when being so consumed. Said Defendants knew, or in the exercise of reasonable care should have known, that said French toast was unreasonably dangerous to the human body when being so consumed in the foreseeable manner.

44. The foregoing wrongful conduct of said Defendants, was the approximate cause of Plaintiff's injuries as mentioned herein and rendered said Defendants liable to the Plaintiff pursuant to the Alabama Extended Manufactures Liability Doctrine.

WHEREFORE, the above premises considered, the Plaintiff demands judgment against the Defendants, separately and severally, in an amount that exceeds the minimal jurisdictional limits of this Court in and which the fact finder may determine whether the same be compensatory or punitive, plus interest and all costs of this proceeding to be determined by the trier of facts.

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY

/s/ Sara L. Williams
Sara L. Williams (WIL363)
Alexander Shunnarah (SHU019)
Attorneys for Plaintiff

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REQUEST FOR SERVICE BY CERTIFIED MAIL BY CLERK

Pursuant to ARCP 4.1 and 4.2, Plaintiff requests that the Clerk direct service of the foregoing “Summons and Complaint” by certified mail, addressed as follows:

KMG Enterprises d/b/a IHOP#4418
c/o Karen J. Garrett
17619 W 66th Terr
Shawnee, Kansas 66217