

**2017CI02244**  
NO. \_\_\_\_\_

**KAREN GOODE**  
**Plaintiff,**

**V.**

**POPEYES LOUISIANA KITCHEN**  
**INC. F/K/A AFC ENTERPRISES INC.**  
**F/K/A AMERICA'S FAVORITE**  
**CHICKEN COMPANY D/B/A**  
**POPEYES, AND Z & H FOODS, INC.**  
**Defendant.**

§ **IN THE DISTRICT COURT**  
§  
§ **73rd** §  
§ **JUDICIAL DISTRICT**  
§  
§ **BEXAR COUNTY, TEXAS**

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COMES** Karen Goode, hereinafter called Plaintiff, complaining of and about Popeyes Louisiana Kitchen Inc. f/k/a AFC Enterprises Inc. f/k/a Americas's Favorite Chicken Company d/b/a Popeyes, and Z & H Foods Inc., hereinafter called Defendants, and for cause of action would show unto the Court the following:

**DISCOVERY CONTROL PLAN LEVEL**

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

**CAUSES OF ACTION**

2. Premises and general negligence.

**RELIEF**

3. Plaintiff sues Defendants and seeks monetary relief in excess of \$1,000,000.00, and demands judgment for all other relief which Plaintiff shows herself entitled.

**PARTIES AND SERVICE**

4. Plaintiff, Karen Goode, is an Individual whose address is 1539 Gibbs, San Antonio, Texas 78202.

5. Defendant Popeyes Louisiana Kitchen Inc. ("Popeyes"), a Corporation based in Georgia, organized under the laws of the State of Minnesota, and service of process on the Defendant may be effected pursuant to article 2.11(A) of the Texas Business Corporation Act, or its successor statute, sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving

the registered agent of the corporation, Corporate Creations Network Inc., at 2425 W. Loop S. #200, Houston, Texas 77027, its registered office. Service of said Defendant as described above can be effected by personal delivery.

6. Defendant Z & H Foods Inc. ("Z & H"), a Corporation based in Texas, is organized under the laws of the State of Texas, and service of process on the Defendant may be effected pursuant to article 2.11(A) of the Texas Business Corporation Act, or its successor statute, sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving the registered agent of the corporation, Shoukat Dhanani, 4415 Hwy 6, Sugarland, Texas 77478, its registered office. Service of said Defendant as described above can be effected by personal delivery.

### **JURISDICTION AND VENUE**

7. The subject matter in controversy is within the jurisdictional limits of this court.

8. This court has jurisdiction over the parties because Z & H is a Texas resident and franchisee of Popeyes, Popeyes is a franchisor of Z & H pursuant to a contractual relationship (franchise agreement) performed in the State of Texas, and a tort was committed by these Defendants in Texas giving Texas personal jurisdiction over Popeyes, under Tex. Civ. Prac. & Rem. Code Ann. §17.041 (2015).

More specifically, Plaintiff shows this court has specific and personal jurisdiction over Popeyes since Popeyes committed a tort in whole or in part in Texas, the Texas long-arm statute permits the exercise of jurisdiction over Popeyes, and satisfies constitutional due-process guarantees of Popeyes. Popeyes has established minimum contacts with Texas and exercise of jurisdiction over Popeyes comports with traditional notions of fair play and substantial justice.

Popeyes purposefully availed itself of the privilege of conducting business activities within Texas, thereby invoking benefits and protection of Texas laws.

Plaintiff sues Popeyes, franchisor of a franchise agreement with Z & H, for committing a tort in Bexar County Texas when Popeyes failed to:

- A. Properly inspect or evaluate the food in question to discover the dangerous condition at the location of purchase;
- B. Properly inspect or evaluate the food in question upon receipt from the product

supplier;

- C. Inspect, assess or evaluate the source or supplier of the food product to determine it was not adulterated with flesh eating screwworms;
- D. Remove, correct or warn Z & H and Plaintiff of the dangerous condition of the food product;
- E. Recall the dangerous food product from its franchisee Z & H;
- F. Prepare and maintain the food in a reasonably safe condition;
- G. Give adequate and understandable warnings to Plaintiff of the unsafe condition of the food;
- H. Remove or correct the condition causing Plaintiff's injuries;
- I. Discover and remove the condition within a reasonable time;
- J. Adequately train employees to adequately inspect, evaluate, control, prepare or maintain food free from flesh eating screwworms;
- K. Adequately supervise employees whom inspect, evaluate, control, prepare or maintain food free from flesh eating screwworms; and
- L. Hire or retain employees who failed to adequately inspect, evaluate, control, or maintain food free of flesh eating screwworms.

Pursuant to the franchise agreement entered by Popeyes and Z & H, it was Popeyes' obligation to provide and require Z & H to use its "System" in its Texas Popeyes restaurants to include: food formula and recipes for preparation of specific food products identified and directed by Popeyes, apply unique standards and specifications for food products and preparation, operating procedures for food product and ingredient inspection, evaluation, maintenance, quality control, management, preparation and service for sale to and consumption by the public, assist, train and license Z & H employees, uniform standards of quality, cleanliness, appearance and service necessary for Z & H to operate franchises in Texas. Popeyes charges Z & H a monetary franchise fee and recurring non-refundable royalty fee of 5% of gross sales during the term of the agreement, payable weekly, for the purpose of Popeyes to earn a profit from the Popeyes' restaurants operated by Z & H in Texas. Popeyes advertises directly to Texas residents for the purpose to incentivise Texas residents to purchase food from the Z & H and Popeyes restaurants, which is designed to increase profits to Popeyes from the Z & H Texas restaurants. Popeyes charges Z & H an

advertising fee of 3% of gross sales per week, payable weekly by Z & H in Texas. Popeyes has sole control for selection of the advertising media directed to Texas residents, and places and directs to specific locations within Texas, to include TV, radio and internet mediums, and Popeyes intends the advertising to maximize awareness of Z & H's restaurants to Bexar and Harris County Texas residents.

Popeyes was or is responsible to train Z & H employees responsible for day to day restaurant operations, to include in-store training to include food product or ingredient selection, inspection, evaluation, quality control, and preparation for sale to and consumption by Texas residents, to include identifying adulterants hazardous to Texas residents, controlling ,removing or discarding adulterated food products, or warning Texas residents of the hazardous condition of a food product, such as containing flesh eating screwworms. Popeyes also has the obligation annually to test Z & H employees on proper food product operations, and provide additional mandatory training or advice throughout the term of the franchise agreement at Z & H Texas restaurants.

Popeyes is obligated to make effort to maintain high and uniform standards of quality, cleanliness, appearance and service to all Popeyes' restaurants located in Texas, and enhance the demand for the food products sold to and consumed by Texas residents.

Popeyes is obligated to approve suppliers of food products and ingredients used in Texas restaurants, provide those suppliers with standards and specifications of product or ingredient type used in Texas restaurants, and conduct inspections of supplier premises and evaluation of food products or ingredients used and sold to its restaurants located in Texas. Popeyes obligates its Texas restaurants to implement processes, procedures, and terms or conditions contained in its operation manual which identifies or describes methods, standards or specifications pertaining to food product or ingredient quality or cleanliness, use only such food products, ingredients or materials approved by Popeyes, inspect, evaluate, control, maintain or prepare pursuant to Popeyes' standards, specifications, methods and techniques, permit Popeyes or its agents, at anytime, to remove a food product, ingredients or material from a Texas restaurant to inspect, evaluate or test in a laboratory, and immediately correct any deficiency in a food product, ingredient or material, purchase all food products, ingredients or material designated only by Popeyes, to include suppliers, and direct the

number of supervising employees in Z & H Texas restaurants.

During the term of the Popeyes and Z & H franchise agreement, Popeyes' employees, agents or representations have made numerous purposeful contacts with Z & H in its restaurants located in Bexar and Harris County, Texas to train restaurant employees.

Z & H owns approximately 21 Popeyes franchise restaurants in the Bexar and Harris County, Texas geographical region. Each location requires Popeyes employees, agents or representations to conduct numerous purposeful contacts in Texas for inspecting, evaluating and approving Z & H's building locations, plans and completion, doing the same prior to opening for business to the public, and training and advising Z & H employees, and inspecting Z & H restaurant premises.

There is a substantial connection between Popeyes' contacts with Texas and the facts leading up to causing Plaintiff's injuries and damages because Popeyes failed to properly inspect or evaluate the food in question to discover the dangerous condition at the location of purchase; failed to properly inspect or evaluate the food in question upon receipt from the product supplier; failed to properly inspect or evaluate the food in question prior to preparation into a final product for sale to and consumption by Plaintiff; failing to inspect, assess, or evaluate the source or supplier of the food product to determine it was not adulterated with flesh eating screwworms; failed to remove, correct or warn Z & H or Plaintiff of the dangerous condition of the food product; failed to recall the dangerous food product from its franchise; Failed to adequately train employees of Z & H to adequately inspect, evaluate, control, prepare or maintain food free from flesh eating screwworms; and failed to adequately supervise employees whom inspect, evaluate, control, prepare or maintain food free from flesh eating screwworms.

The exercise of personal jurisdiction over Popeyes in Texas does not offend traditional notions of fair play and substantial justice because Popeyes committed a tort against Plaintiff in Texas, Popeyes is the franchisor of approximately 21 franchisees located in Texas, and the franchise agreement with Z & H causes Popeye employees, agents or representations to frequently travel to Texas to conduct franchise business with Z & H. Furthermore, Plaintiff and Z & H reside in Texas, Z & H employees who have knowledge of relevant facts reside in Texas, Plaintiff's medical providers reside in Texas, and the underlying connection between Popeyes and Z & H is a franchise

agreement operated by Popeyes and Z & H in Texas.

9. Venue in Bexar County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

### **FACTS**

10. At all times material hereto, Popeyes is the franchisor of Popeyes Chicken & Biscuits, and Z & H Foods is the franchisee and owner or occupier of the Popeyes Chicken & Biscuits franchise located at 506 S. WW White Road, San Antonio, Texas 78220.

11. Karen Goode entered upon said premises for the purpose to purchase food. She entered on the said property of Defendants at the invitation of Defendants to engage in the act of purchasing food.

12. During the time that Karen Goode consumed the food purchased from Defendants, Karen Goode was seriously injured as a result of a dangerous condition in that Defendants caused Plaintiff to ingest dangerous parasites residing in food Plaintiff purchased from Defendants. More specifically, Plaintiff purchased rice and beans from Defendants' restaurant that contained flesh eating New World Screwworms, and Plaintiff unknowingly ingested the flesh eating screwworms. The flesh eating screwworms entered Plaintiff's digestive track, laid eggs which embedded in the interior lining of Plaintiff's small intestine, and when hatched, infested Plaintiff's body and began to eat Plaintiff alive from the inside-out.

13. Plaintiff's bodily injuries and complications occurred as a direct result of ingestion of flesh eating screwworms that was proximately caused by the dangerous condition described above, which Defendants knew, or in the exercise of ordinary care, should have known existed.

### **LIABILITY OF DEFENDANTS**

14. At all times mentioned herein, Popeyes was the franchisor and Z & H Foods the franchisee of the Popeyes Chicken & Biscuits, located at 506 S. WW White Road, San Antonio, Texas 78220.

15. At all times mentioned herein, Defendants had such control over the restaurant in question that Defendants owed certain duties to Plaintiff, the breach of which proximately caused

the injuries set forth herein.

16. Defendants, Defendants' agents, servants, and employees negligently permitted the food purchased and consumed by Plaintiff to become adulterated with flesh eating screwworms, negligently or willfully allowed such condition to continue, and negligently or willfully failed to warn Plaintiff of the condition. This condition existed despite the fact that Defendants or Defendants' agents knew or should have known of the existence of the aforementioned condition and that there was likelihood of a person being injured, such as Plaintiff.

17. Plaintiff shows the condition of the food continued for such period that had Defendants or Defendants' agents exercised ordinary care in the inspection, control or maintenance of the food, they would have or should have noticed and corrected the condition.

18. At all times pertinent herein, Defendants, and any of Defendants' agents, who were acting in the scope of their employment, Popeyes and Z & H were guilty of negligent conduct toward the Plaintiff in:

- A. Popeyes and Z & H failed to properly inspect or evaluate the food in question to discover the dangerous condition at the location of purchase;
- B. Popeyes and Z & H failed to properly inspect or evaluate the food in question upon receipt from the product supplier;
- C. Z & H failed to properly inspect or evaluate the food in question prior to preparation into a final product for sale to and consumption by Plaintiff;
- D. Popeyes and Z & H failed to inspect, assess or evaluate the source or supplier of the food product to determine it was not adulterated with flesh eating screwworms;
- E. Popeyes failed to remove, correct or warn Z & H and Popeyes and Z & H failed to warn Plaintiff of the dangerous condition of the food product;
- F. Popeyes failed to recall the dangerous food product from its franchisee Z & H;
- G. Popeyes and Z & H failed to prepare and maintain the food in a reasonably safe condition;
- H. Popeyes and Z & H failed to give adequate and understandable warnings to Plaintiff of the unsafe condition of the food;
- I. Popeyes and Z & H failed to remove or correct the condition causing Plaintiff's injuries;
- J. Popeyes and Z & H failed to discover and remove the condition within a reasonable time;

- K. Popeyes and Z & H failed to adequately train employees to adequately inspect, evaluate, control, prepare or maintain food free from flesh eating screwworms;
- L. Popeyes and Z & H failed to adequately supervise employees whom inspect, evaluate, control, prepare or maintain food free from flesh eating screwworms; and
- M. Popeyes and Z & H failed to hire or retain employees who failed to adequately inspect, evaluate, control, or maintain food free of flesh eating screwworms.

#### **PROXIMATE CAUSE**

19. Each and every, all and singular of the foregoing acts and omissions, on the part of Defendants, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages set forth below.

#### **DAMAGES FOR PLAINTIFF**

20. As a direct and proximate result of the occurrence made the basis of this lawsuit, and Defendants' acts as described herein, Plaintiff was caused to become ravaged by E.coli and Helicobacter Pylori bacteria infection, infestation of flesh eating screwworms into her body, injury to her neck, digestive track, shoulders and arm, and to endure anxiety, pain, anguish, fear, and illness resulting in damages more fully set forth below.

21. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff has incurred the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in Bexar County, Texas;
- B. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;
- C. Physical pain and suffering in the past and into the future;
- D. Mental anguish in the past and into the future;
- E. Loss of bodily functions in the past and into the future;
- F. Loss of enjoyment of life in the past and into the future;
- G. Physical impairment in the past and into the future;
- H. Physical disfigurement in the past and into the future;



- I. Loss of personal and real property; and
- J. Loss of business and profits.

### **EXEMPLARILY DAMAGES**

22. Pleading further, and alternatively, if necessary, Defendants are guilty of misconduct which was committed knowingly, intentionally, maliciously, wantonly or fraudulently, and in reckless and callous disregard of the legitimate rights of Plaintiff so far as to justify the imposition of exemplary damages. That conduct constitutes gross negligence, conduct involving an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff, of which Defendants had actual, subjective awareness of the risk involved to Plaintiff but nevertheless proceeded with conscious indifference to the rights, safety or welfare of Plaintiff.

23. More specifically, Plaintiff shows Defendants and Defendants' employees, while in the course and scope of employment of Defendant, allowed food to become adulterated with flesh eating screwworms and sold to Plaintiff for the purpose of Plaintiff consuming food, when they had actual or constructive knowledge it contained flesh eating screwworms, knew it posed an unreasonable risk of injury to Plaintiff, and disregarded their duty owed Plaintiff to make her safe from risk of injury from ingesting flesh eating screwworms.

### **REQUEST FOR DISCLOSURE**

25. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose, within 50 days of service of this request, the information or material described in Rule 194. However, a response to a request under Rule 194.2(f) is due according to Rule 195.2 of the Texas Rules of Civil Procedure.

The disclosures must be signed in accordance with Texas Rules of Civil Procedure, Rule 191.3, and delivered to the undersigned attorney. If you fail to comply with the requirements above, the Court may order sanctions against you in accordance with the Texas Rules of Civil Procedure.

### **PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff, respectfully prays that Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants for damages in an amount in excess of \$1,000,000.00, together

with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; exemplary damages, and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

By: /s/ Patrick J. Stolmeier  
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**PLAINTIFF HEREBY DEMANDS TRIAL BY JURY**