

STATE OF INDIANA)
)ss: THE MARION COUNTY SUPERIOR COURT
COUNTY OF MARION) CIVIL DIVISION
 CAUSE NO.

PENNY POSTON, as Personal)
Representative of the Estate)
of KEISHA GRIFFIE, Deceased,)
and DAIJOUR GRIFFIE, a single)
individual,)

Plaintiffs,)

vs.)

HUAN YING INCORPORATED d/b/a)
FOON YING,)

Defendant.)

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

COME NOW Plaintiffs, Penny Poston, as Personal Representative of the Estate of Keisha Griffie, Deceased, and Daijour Griffie, a single individual, and for their cause of action against Defendant Huan Ying d/b/a Foon Ying, allege and say as follows:

FACTS RELEVANT TO ALL COUNTS

1. Plaintiff Penny Poston is the mother and Personal Representative of the Estate of Keisha Griffie (hereinafter, "Keisha"), deceased, established for the purpose of bringing a wrongful death claim. Plaintiff Daijour Griffie is Keisha's son.

2. Defendant Huan Ying Incorporated d/b/a Foon Ying, (hereinafter, "Defendant"), is a restaurant doing business in the state of Indiana located at 3770 North Shadeland Avenue, Indianapolis, Indiana.

3. At all times herein mentioned, the Plaintiff, Keisha and Daijour Griffie were residents of Marion County, Indiana.

4. At all times material, Defendant was engaged in the operation of a restaurant known as Foon Ying, located at 3770 North Shadeland Avenue, Indianapolis, Indiana, where Defendant solicited and/or invited the public to purchase Chinese food and beverage products for consumption on and off the premises in exchange for payment for the food and beverage items.

5. The Defendant is one hundred percent (100%) responsible for the damages incurred by Plaintiffs.

6. Defendant is in the business of selling carryout egg rolls and other Chinese meals and edibles to the homes or other places for consumption at their customers' discretion.

7. Keisha ordered and purchased vegetable egg rolls from the Defendant on or about February 4, 2017.

8. Keisha's vegetable egg rolls were picked up at Defendant's restaurant by her cousin, Kevin Griffie, and delivered to her at her home.

9. Keisha consumed Defendant's vegetable egg roll products and became violently ill.

10. Keisha was treated by emergency medical personnel at her home for anaphylactic shock secondary to shellfish allergy where she passed away.

COUNT I - BREACH OF WARRANTY

11. Plaintiffs incorporate paragraphs one (1) through ten (10) of their Complaint as if set forth herein verbatim.

12. Defendant warranted to the public, including Keisha, the food so offered was wholesome and free from harmful and injurious foreign substances and was reasonably fit for human consumption and of merchantable quality.

13. Relying on Defendant's warranty of merchantability and on the skill, experience, and judgment of Defendant in the selection, preparation, and service of Chinese food and beverages, Keisha ordered and consumed vegetarian egg rolls ordered from the Defendant's restaurant on February 4, 2017.

14. Defendant breached the warranty of merchantability in that the vegetable egg rolls sold to Keisha were not wholesome or fit for human consumption, but were unwholesome, contaminated, adulterated, and contained harmful, toxic, and injurious foreign substances, bacteria, and germs that rendered it unfit for consumption as a vegetarian egg roll.

15. As a result of the Defendant's breach of warranty, Keisha became violently ill necessitating emergency medical care and the eventual loss of her life.

16. On March 13, 2017, within a reasonable time, Plaintiffs gave Defendant notice of the Defendant's breach of implied warranty of merchantability and the death of Keisha.

17. As a result of this breach, Plaintiffs have been damaged and have lost the services, love and companionship of Keisha and bring this action for damages as set forth in IC 34-23-1-1, et. seq.

WHEREFORE, Plaintiffs pray for damages in such sum as will fairly and fully compensate them for their damages, including attorney fees, as set forth in Indiana Code 34-23-1-1, et. seq. and for all other just and proper relief in the premises.

COUNT II - PLAINTIFFS' PRODUCT LIABILITY CLAIM-STRICT LIABILITY

18. Plaintiffs incorporate paragraphs one (1) through seventeen (17) of their Complaint as if set forth herein verbatim.

19. Defendant failed to warn Keisha of the dangerous propensities of the vegetable egg rolls purchased from its restaurant.

20. The vegetable egg rolls sold by the Defendant were defective in that they contained shrimp or other shellfish particles. Keisha advised Defendant when making her order that her egg rolls could not contain shellfish particles since she had an allergy to shellfish.

21. The egg rolls were prepared by the Defendant in its restaurant, wrapped by Defendant and presented to Kevin Griffie as vegetarian egg rolls for carryout.

22. Kevin delivered the vegetarian egg rolls as prepared by the Defendant to Keisha and others who also placed food orders with the Defendant.

23. That after consuming the vegetarian egg rolls, Keshia became violently ill in the presence of her son, Daijour Griffie.

24. Keshia went into anaphylactic shock and died as a result of consuming the egg rolls, a defective food product, sold by Defendant.

25. Keisha was killed as a result of consumption of the vegetarian egg rolls and Defendant is strictly liable for her death.

WHEREFORE, Plaintiffs pray for damages in such sum as will fairly and fully compensate her for damages, including attorney fees, as set forth in Indiana Code 34-23-1-1, et. seq. and for all other just and proper relief in the premises.

COUNT III - BREACH OF CONTRACT

26. Plaintiffs incorporate paragraphs one (1) through twenty-five (25) of their Complaint as if set forth herein verbatim.

27. Defendant knowingly invited Keisha to purchase its vegetarian egg rolls by its menu and requested Defendants' staff to prepare and deliver wholesome food products that did not contain shellfish due to the fact she was allergic to shellfish.

28. Keisha agreed to pay and did pay for the vegetable egg rolls at the prices advertised and set forth by the Defendant.

29. Keisha has suffered damages by the loss of her life.

WHEREFORE, Plaintiffs pray for damages in such sum as will fairly and fully compensate her for damages, including attorney

fees, as set forth in Indiana Code 34-23-1-1, et. seq. and for all other just and proper relief in the premises.

COUNT IV - NEGLIGENCE

30. Plaintiffs incorporate paragraphs one (1) through twenty-Nine (29) of their Complaint as if set forth herein verbatim.

31. Keisha advised the staff of Defendant that she was allergic to shellfish and specifically requested vegetarian egg rolls.

32. That Defendant was negligent by preparing vegetarian egg rolls for Keisha containing shellfish.

33. Defendant had a duty to properly prepare the vegetarian egg rolls for Keisha.

34. Defendant breached the duty to prepare vegetarian egg rolls for Keisha that were not contaminated with shellfish.

35. The improperly prepared vegetarian egg rolls were the proximate cause of Keisha's death.

WHEREFORE, Plaintiffs pray for damages in such sum as will fairly and fully compensate her for damages, including attorney fees, as set forth in Indiana Code 34-23-1-1, et. seq. and for all other just and proper relief in the premises.

COUNT V - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

36. Plaintiffs incorporate paragraphs one (1) through thirty-five (35) of their Complaint as if set forth herein verbatim.

37. Daijour Griffie is the son of Keisha and was with his mother at home when she suffered anaphylactic shock as aforesaid.

38. That Daijour was attending to his mother as she was unconscious in their home awaiting the arrival of emergency personnel.

39. As a proximate result of Defendant's said negligence, Daijour suffered extreme mental anguish and emotional distress as a result of witnessing the death of his mother due to anaphylactic shock.

COUNT VI - INJUNCTIVE RELIEF

40. Plaintiffs incorporate paragraphs one (1) through thirty-nine (39) of their Complaint as if set forth herein verbatim.

41. Plaintiffs are informed and believe and thereupon allege that Defendant's food handling policies and procedures are insufficient to prevent the contamination of food served to the public.

42. The public interest demands that Defendant's food handling policies and procedures be modified so that food intended for public consumption is not contaminated.

43. The Court should issue an injunction mandating that the Defendant modify its food handling policies and procedures so as to prevent the contamination of food served to the public.

WHEREFORE, Plaintiffs pray for such damages as are reasonable in the premises of this Complaint, for a mandatory injunction as

described above, for the costs of suit incurred herein, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ROBERTS & BISHOP

/s/ Reginald B. Bishop

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