

NORTH CAROLINA  
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NUMBER: 18cws 8159

ANITA HARWARD,  
Plaintiff,

v.

JSL & MORE, INC. and SON OF JSL,  
LLC,  
Defendants.

2018 OCT -1 P 3 28

GUILFORD CO., N.C.

COMPLAINT  
(JURY TRIAL DEMANDED)

NOW COMES Plaintiff Anita Harward (hereinafter "Harward"), by and through undersigned counsel, complaining of and against Defendant JSL & MORE, INC. (hereinafter "Defendant JSL") and Defendant Son of JSL, LLC (hereinafter "Defendant Son") (hereinafter "Defendants" collectively), saying and alleging as follows:

**JURISDICTION AND VENUE**

1. Harward is a natural person and resident of Guilford County, North Carolina.
2. Upon information and belief, Defendant JSL is a domestic corporation, organized and existing under the laws of the state of North Carolina, which has its principal place of business in Greensboro, North Carolina, is registered with the North Carolina Department of Secretary of State, and is engaged in substantial business activity within North Carolina.
3. Upon information and belief, the registered agent for Defendant JSL is Scott L. Lang, 5603-B W. Friendly Avenue #278, Greensboro, North Carolina 27410-4213.
4. Upon information and belief, Defendant Son is a domestic limited liability company, organized and existing under the laws of the state of North Carolina, which has its principal place of business in Greensboro, North Carolina, is registered with the North Carolina Department of Secretary of State, and is engaged in substantial business activity within North Carolina.
5. Upon information and belief, the registered agent for Defendant Son is also Scott L. Lang, 5603-B W. Friendly Avenue #278, Greensboro, North Carolina 27410.
6. At all times herein relevant, one or more of the Defendants owned and/or operated and/or maintained a McDonald's restaurant located at 4427 W. Wendover Avenue, Greensboro, North Carolina 27407.

7. At all times herein relevant, one or more of the Defendants were sellers of food intended for human consumption.
8. At all times herein relevant, one or more of the Defendants impliedly warranted to the public that the various foods offered for sale by them were clean, wholesome, and free from harmful and injurious foreign substances and reasonably fit for human consumption.
9. At all times herein relevant, one or more of the Defendants were engaged in the business of and operated fast food restaurants, including the McDonald's restaurant located at 4427 W. Wendover Avenue, Greensboro, North Carolina 27407.
10. At all times herein relevant, one or more of the Defendants sold hamburgers containing meat patties made of beef products.
11. One or more of the Defendants were negligent and otherwise violated North Carolina law by selling Harward a hamburger which contained a mouse carcass and which caused her physical and psychological injuries and severe emotional distress on or about July 8, 2017.
12. The amount in controversy exceeds twenty-five thousand dollars (\$25,000.00).
13. Civil Summons will be filed with this Complaint and will be served upon Defendants pursuant to N.C. Gen. Stat. § 1A-1, Rule 4.
14. Jurisdiction is proper pursuant to N.C. Gen. Stat. §§ 1-75.4, 7A-240, and 7A-243.
15. Venue is proper pursuant to N.C. Gen. Stat. § 1-79.
16. This action is being commenced within the applicable statute of limitations set forth in N.C. Gen. Stat. § 1-52 et seq.

### **FACTUAL ALLEGATIONS**

17. Harward hereby realleges and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.
18. On or about July 8, 2017 at approximately 5:30 p.m., Harward was a lawful visitor and customer of the McDonald's restaurant located at 4427 W. Wendover Avenue, Greensboro, North Carolina 27407.
19. On the previously alleged date and time, the employees of the McDonald's store located at 4427 W. Wendover Avenue, Greensboro, North Carolina 27407 were employees and/or agents of one or more of the Defendants, and their negligent acts and/or omissions are imputed to one or more of the Defendants by virtue of that employment and/or agency relationship.

20. On the previously alleged date and time, Harward placed an order for a double cheeseburger, among other items, with the cashier.
21. Upon information and belief, on the previously alleged date and time, the employees of the McDonald's restaurant prepared, created, and/or formed said double cheeseburger for Harward's order.
22. On the previously alleged date and time, Harward took a bite from the double cheeseburger and bit down on something hard.
23. On the previously alleged date and time, Harward spit out the hard item and put the double cheeseburger down and inspected the meat and bun to determine what she bit down on.
24. On the previously alleged date and time, Harward discovered the hard item she bit down on was a mouse carcass that was present in the double cheeseburger she was sold by the employees and/or agents of the McDonald's restaurant.

**FIRST CAUSE OF ACTION**  
**(Negligence of the Defendants)**

25. Harward hereby realleges and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.
26. One or more of the Defendants, through their employees and/or agents, owed Harward and other customers a duty of reasonable care in the processing, manufacturing, preparation, creation, and/or sale of food products in their restaurants.
27. One or more of the Defendants, through their employees and/or agents, knew or should have known that Harward and other customers could be seriously injured if they did not exercise reasonable and appropriate care in the processing, manufacturing, preparation, creation, and/or sale of food products in their restaurants.
28. One or more of the Defendants were negligent and breached this duty of care owed to Harward in the processing, manufacturing, preparation, creation, and/or sale of food products in its restaurants, specifically, the McDonald's restaurant located at 4427 W. Wendover Avenue, Greensboro, North Carolina 27407.
29. One or more of the Defendants breached this duty of care and was negligent in one or more of the following respects:
  - a. Failing to exercise reasonable care in the processing, manufacturing, preparation, creation, and/or sale of food products in its restaurants, specifically, the double cheeseburger sold to Harward;

- b. Causing or permitting a deleterious substance to be placed and mixed in the ingredients of the double cheeseburger sold to Harward even though they knew or should have known that such a deleterious substance would or could be injurious to customers;
  - c. Causing or permitting a diseased, contaminated, filthy, putrid, or decomposed mouse carcass to be placed and mixed in the ingredients of the double cheeseburger sold to Harward even though they knew or should have known that it would or could be injurious to customers;
  - d. Producing, packaging, preparing, and/or holding their meat patties and other ingredients in insanitary conditions which allowed them to become contaminated with filth, rendered diseased, unwholesome, or injurious to health;
  - e. Failing to properly screen and inspect their meat patties and other ingredients prior to, during, and after the processing, manufacturing, preparation, creation, and/or sale of the double cheeseburger sold to Harward;
  - f. Failing to properly screen and inspect their meat patties and other ingredients upon receipt of said ingredients at the McDonald's restaurant located at 4427 W. Wendover Avenue, Greensboro, North Carolina 27407 prior to processing, manufacturing, preparation, creation, and/or sale of the double cheeseburger sold to Harward;
  - g. Failing to warn Harward that the double cheeseburger sold to her contained or might contain a deleterious substance which would render said double cheeseburger dangerous as food for a human being;
  - h. Failing to warn Harward that the double cheeseburger sold to her contained or might contain a diseased, contaminated, filthy, putrid, or decomposed mouse carcass which would render said double cheeseburger dangerous as food for a human being;
  - i. Processing, manufacturing, preparing, creating, and/or selling a double cheeseburger to Harward marketed as fit for human consumption which was not in all respects fit for human consumption;
  - j. Acting negligently in other respects which will be developed throughout discovery and proven at a trial of this action.
30. As a direct and proximate result of the negligent acts, omissions, series of acts, and/or series of omissions of one or more of the Defendants and their employees and/or agents, Harward has experienced damages, including, but not limited to physical and psychological injury, emotional distress, and mental anguish.

## **SECOND CAUSE OF ACTION**

**(Negligence *per se* of the Defendants)**

31. Harward hereby realleges and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.
32. By reason of the conduct alleged herein, one or more of the Defendants have violated N.C. Gen. Stat. §§ 106-122, 106-129, and other applicable sections of North Carolina and Federal law by selling adulterated food to Harward.
33. Said statutes were enacted by the North Carolina General Assembly and the United States Congress for the purpose of public safety, Harward was a member of the class of persons intended to be protected by said statutes, and one or more of the Defendants' violation of said statutes therefore constitutes negligence *per se*.
34. As a direct and proximate result of the *per se* negligent acts, omissions, series of acts, and/or series of omissions of one or more of the Defendants and their employees and/or agents, Harward has experienced damages, including, but not limited to physical and psychological injury, emotional distress, and mental anguish.

**THIRD CAUSE OF ACTION**

**(Breach of Implied Warranty of Merchantability by one or more of the Defendants)**

35. Harward hereby realleges and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.
36. On the previously alleged date and time, one or more of the Defendants were merchants as defined by N.C. Gen. Stat. § 25-2-104(1) in that they dealt in goods of the kind or otherwise held themselves out as having knowledge or skill peculiar to the practices or goods involved in the transaction, said goods being food products and the restaurant industry in general.
37. By reason of the conduct alleged herein, Defendant breached N.C. Gen. Stat. § 25-2-314, the implied warranty of merchantability, because the double cheeseburger sold to Harward was injurious to her and was not fit for the ordinary purposes for which such food products are to be used and consumed.
38. On the previously alleged date and time, one or more of the Defendants breached N.C. Gen. Stat. § 25-2-314, the implied warranty of merchantability, in one or more of the following respects:
  - a. Failing to exercise reasonable care in the processing, manufacturing, preparation, creation, and/or sale of food products in its restaurants, specifically, the double cheeseburger sold to Harward;
  - b. Causing or permitting a deleterious substance to be placed and mixed in the ingredients of the double cheeseburger sold to Harward even though they knew or

should have known that such a deleterious substance would or could be injurious to customers;

- c. Causing or permitting a diseased, contaminated, filthy, putrid, or decomposed mouse carcass to be placed and mixed in the ingredients of the double cheeseburger sold to Harward even though they knew or should have known that it would or could be injurious to customers;
  - d. Producing, packaging, preparing, and/or holding their meat patties and other ingredients in insanitary conditions which allowed them to become contaminated with filth, rendered diseased, unwholesome, or injurious to health;
  - e. Failing to properly screen and inspect their meat patties and other ingredients prior to, during, and after the processing, manufacturing, preparation, creation, and/or sale of the double cheeseburger sold to Harward;
  - f. Failing to properly screen and inspect their meat patties and other ingredients upon receipt of said ingredients at the McDonald's restaurant located at 4427 W. Wendover Avenue, Greensboro, North Carolina 27407 prior to processing, manufacturing, preparation, creation, and/or sale of the double cheeseburger sold to Harward;
  - g. Failing to warn Harward that the double cheeseburger sold to her contained or might contain a deleterious substance which would render said double cheeseburger dangerous as food for a human being;
  - h. Failing to warn Harward that the double cheeseburger sold to her contained or might contain a diseased, contaminated, filthy, putrid, or decomposed mouse carcass which would render said double cheeseburger dangerous as food for a human being;
  - i. Processing, manufacturing, preparing, creating, and/or selling a double cheeseburger to Harward marketed as fit for human consumption which was not in all respects fit for human consumption;
  - j. Violating N.C. Gen. Stat. § 25-2-314 in other respects to be developed throughout discovery and proven at a trial of this action.
39. As a direct and proximate result of one or more of the Defendants' and their employees' and/or agents' breach of the implied warranty of merchantability, Harward has experienced damages, including, but not limited to physical and psychological injury, emotional distress, and mental anguish.
40. As a direct and proximate result of one or more of the Defendants' and their employees' and/or agents' breach of the implied warranty of merchantability, Harward has

experienced damages as set forth in N.C. Gen. Stat. §§ 25-2-714 and 25-2-715, including, but not limited to, incidental and consequential damages.

**FOURTH CAUSE OF ACTION**  
**(Breach of Express Warranty by one or more of the Defendants)**

41. Harward hereby realleges and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.
42. The descriptions depicted on the packaging of the double cheeseburger sold to Harward, the advertisements in the McDonald's restaurant located at 4427 W. Wendover Avenue, Greensboro, North Carolina 27407, and the advertisements in print, on television, on the radio, and on the internet created an express warranty by one or more of the Defendants that the double cheeseburger sold to Harward was fit for human consumption.
43. By reason of the conduct alleged herein, one or more of the Defendants breached N.C. Gen. Stat. § 25-2-313, the express warranty statute, by warranting on its packaging, product description, and advertisements that the double cheeseburger sold to Harward were expressly fit for human consumption.
44. One or more of the Defendants also breached N.C. Gen. Stat. § 25-2-313 in other ways which will be developed throughout discovery and proven at a trial of this action.
45. As a direct and proximate result of one or more of the Defendants' and their employees' and/or agents' breach of express warranty, Harward has experienced damages, including, but not limited to physical and psychological injury, emotional distress, and mental anguish.
46. As a direct and proximate result of one or more of the Defendants' and their employees' and/or agents' breach of express warranty, Harward has experienced damages as set forth in N.C. Gen. Stat. §§ 25-2-714 and 25-2-715, including, but not limited to, incidental and consequential damages.

**DAMAGES**

47. Harward hereby realleges and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.
48. As a direct and proximate result of one or more of the Defendants' and their employees' and/or agents' conduct alleged herein, Harward experienced damages, including, but not limited to, physical and psychological injury, emotional distress, and mental anguish.
49. As a direct and proximate result of one or more of the Defendants' and their employees' and/or agents' conduct alleged herein, Harward sustained physical and psychological injuries of a permanent nature, which may continue to cause her physical pain, mental anguish, emotional distress, and anxiety for the rest of her life.

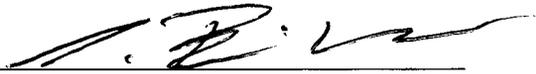
50. As a direct and proximate result of one or more of the Defendants' and their employees' and/or agents' conduct alleged herein, Harward has experienced significant physical pain, mental anguish, emotional distress, and anxiety, all of which she may continue to endure in the future.
51. As a direct and proximate result of one or more of the Defendants' and their employees' and/or agents' conduct alleged herein, Harward has sustained damages in an amount in excess of twenty-five thousand dollars (\$25,000.00).
52. As a direct and proximate result of one or more of the Defendants' and their employees' and/or agents' conduct alleged herein, both Defendants are jointly and severally liable for Harward's damages.
53. As a direct and proximate result of one or more of the Defendants' and their employees' and/or agents' conduct alleged herein, Harward is entitled to recover from one or more of the Defendants, both jointly and severally, for compensatory damages sustained in an amount in excess of twenty-five thousand dollars (\$25,000.00).
54. Prior to the filing of this action, Harward gave notice to one or more of the Defendants of the breach of warranty and her damages as a result of said breach, but one or more of the Defendants have failed and refused to compensate her for her damages.

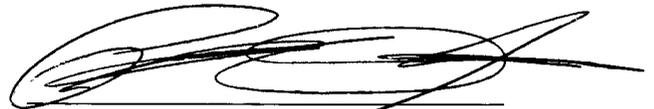
**WHEREFORE**, Harward prays unto this Honorable Court:

1. That Harward have and recover from one or more of the Defendants, both jointly and severally, for compensatory damages sustained, together with interest as allowed by law, in an amount in excess of twenty-five thousand dollars (\$25,000.00);
2. That the costs of this action be taxed against one or more of the Defendants, including reasonable attorney's fees, as provided by law and in the discretion of the Court;
3. That all issues herein be tried by a jury;
4. For any and all further relief as allowed by law or equity as this Honorable Court may deem just and proper.

This 1<sup>st</sup> day of October, 2018.

GARRETT WALKER AYCOTH & OLSON

By:   
S. Brian Walker  
N.C. Bar Number: 35632



Philip A. Olivier  
N.C. Bar Number: 47989

Attorneys for Plaintiff  
436 Spring Garden St.  
Greensboro, NC 27401  
T: (336) 379-0539  
F: (336) 281-8411  
[brian@gwa-law.com](mailto:brian@gwa-law.com)  
[philip@gwa-law.com](mailto:philip@gwa-law.com)