

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RICHARD SIMMONS, JR. individually and
as W. MonEparent of S.S., a minor,

Plaintiff,

v.

PIZZA RANCH, INC., an Iowa
corporation,

Defendant.

Civil No: 2:16-cv-2170

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

Plaintiff RICHARD SIMMONS, JR. for his Complaint against the Defendant states and alleges as follows:

PARTIES

1. Plaintiff RICHARD SIMMONS, JR. is the adult parent of S.S., a minor, who is seven years old. At all times relevant each of these persons were residents of Valley Center, Sedgwick County, Kansas.

2. At all times relevant to this action, PIZZA RANCH, INC. was an Iowa corporation with its principal place of business located in Orange City, Iowa.

3. Defendant Pizza Ranch's registered agent for service in Kansas is The Corporation Company, Inc., 112 SW 7th Street Suite 3C, Topeka, KS 66603.

4. Upon information and belief, Pizza Ranch owns, operates and controls the "Pizza Ranch" restaurant located at 3000 West 18th Avenue, Emporia, Kansas (hereinafter "the Emporia Pizza Ranch").

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. §1332(c) because the amount in

controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and because there is complete diversity of citizenship between the Plaintiff and Defendant.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the acts and omissions giving rise to the claims asserted occurred in this district.

FACTUAL ALLEGATIONS

***E. coli* O157:H7 and the Outbreak**

7. *E. coli* O157:H7 is a foodborne pathogen that may cause serious injury and death. Although young children, the elderly, and people with compromised immune systems are most likely to develop complications, any person may become ill or die as a result of an *E. coli* O157:H7 infection.

8. An estimated 70,000 illnesses due to *E. coli* O157:H7 infections occur each year in the United States, leading to an estimated 2,100 hospitalizations and 60 deaths.

9. Hemolytic Uremic Syndrome (HUS) is a severe complication that may result from an *E. coli* O157:H7 infection. HUS is the most common cause of acute renal failure (ARF) in children and may also cause ARF in adults. Characteristic features of the syndrome are microangiopathic anemia, thrombotic thrombocytopenia, and renal failure.

10. *E. coli* can be found in a variety of foods. In recent years, contamination has led to large-scale *E. coli* outbreaks linked to fresh produce, ground beef, and machine-tenderized steaks.

11. Because *E. coli* contamination is such a well-known risk in food production, manufacturers have long adopted food safety measures focused on preventing *E. coli* contamination and detecting the presence of *E. coli* in food.

12. Because of the severe health risks and the significant public health costs posed by *E. coli*, the Centers for Disease Control (“CDC”) in conjunction with state health departments like the Kansas Department of Health and Environment actively monitor *E. coli* cases throughout the country to identify the illness-causing food and stop outbreaks.

13. State and CDC labs routinely perform testing on *E. coli* samples that identify the *E. coli* bacteria’s serotype and perform a further genetic subtyping process known as Pulsed-Field Gel Electrophoresis (“PFGE”). The PFGE results—akin to genetic fingerprints—are then loaded into a national database where they are easily compared to each other.

14. This system alerts the state departments of health and the CDC when the number of *E. coli* cases spikes or when a group of *E. coli* cases are caused by the same, or closely related, genetic strain of the bacteria. The CDC or the state then investigates those cases as a single-source outbreak.

15. In December 2015, the CDC and other health departments detected a spike in cases caused by *E. coli* O157:H7 in persons who had eaten at Pizza Ranch restaurants.

16. PFGE testing on samples from 13 ill individuals revealed a common PFGE pattern.

17. Public health officials, including the CDC, then traced the outbreak-causing food to Pizza Ranch restaurants in several states including Kansas, Iowa, and Minnesota.

18. On March 16, 2016, the CDC announced the implicated food as items served at Pizza Ranch.

S.S.’s *E. coli* infection

19. On January 31, 2016 Plaintiff took his family, including his daughter, S.S., to the Pizza Ranch in Emporia, Kansas.

20. S.S. ate food from the buffet including, but not limited to fried chicken, pizza, breadsticks, salad, and dessert pizza

21. A few days after this meal, S.S. began to feel ill. She had stomach cramps and then developed diarrhea. Eventually, her diarrhea progressed to bloody diarrhea.

22. S.S. followed up with her pediatrician who ordered a stool sample. The stool sample tested positive for *E. coli* O157:H7.

23. S.S. was admitted to Wesley Medical Center in Wichita on February 12. She remained hospitalized until February 27.

24. During her hospital admission, S.S. developed HUS and had to be transferred to ICU and placed in the care of pediatric kidney specialists.

25. Since her discharge from the hospital, S.S. has followed up with her nephrologists and remains on various medications including medications for protein in her urine and for high blood pressure.

26. The positive stool culture was forwarded to the Kansas Department of Health which performed further testing on the sample.

27. The Kansas Department of Health test results revealed that S.S. had contracted *E. coli* O157:H7 with a PFGE pattern that matched the outbreak strain. The CDC concluded that S.S. was one of the 13 “case match” patients discussed above.

28. As a direct and proximate result of consuming contaminated food prepared and served by Pizza Ranch, S.S. suffered a debilitating and painful illness, incurred, and will incur, medical expenses, and suffered other losses and damages as proved at trial.

**COUNT I: STRICT PRODUCT LIABILITY CLAIM UNDER
THE KANSAS PRODUCT LIABILITY ACT**

29. Plaintiff incorporates the preceding paragraphs by this reference as if each

paragraph was set forth herein in its entirety.

30. Pizza Ranch manufactured, processed, marketed, served and sold food that was contaminated with *E. coli* O157:H7, a deadly pathogen.

31. Pizza Ranch owed a duty to all its restaurant patrons who consume its products, including S.S., to manufacture and sell food that is safe to eat, that is not adulterated with deadly pathogens like *E. coli* O157:H7, and that was not produced in violation of applicable food safety regulations and industry standards.

32. S.S.'s consumption of the contaminated Pizza Ranch food caused her to become infected with *E. coli* and suffer permanent injury as a direct and proximate result.

33. Food that is contaminated with *E. coli* is unsafe and thus defective when used in a reasonably foreseeable manner - i.e., consuming it. *E. coli*-contaminated food is unfit for human consumption and poses an unreasonable risk of injury to consumers because reasonably prudent persons, having full knowledge of the risk, would find the risk unacceptable.

34. By offering food for sale to the general public, Pizza Ranch impliedly warranted that such food was safe to eat, that it was not adulterated with a deadly pathogen, and that the food had been safely prepared under sanitary conditions.

35. The food that S.S. consumed from Pizza Ranch was contaminated with *E. coli* and was therefore, as a result, defective and unreasonably dangerous when it left Pizza Ranch's control.

36. S.S.'s consumption of the contaminated Pizza Ranch food was a reasonably anticipated use of the food product.

37. Defendant Pizza Ranch is strictly liable to the Plaintiff for the harm proximately caused by the manufacture and sale of an unsafe and defective food under the Kansas Product

Liability Act.

**COUNT II: CAUSE OF ACTION AGAINST PIZZA RANCH:
NEGLIGENCE and NEGLIGENCE PER SE**

38. Plaintiff incorporates the preceding paragraphs by this reference as if each paragraph was set forth herein in its entirety.

39. Pizza Ranch designed, manufactured, distributed, and sold foods that were contaminated with *E. coli*, a deadly pathogen.

40. Pizza Ranch owed a duty to all persons who consumed its products, including S.S., to manufacture and sell food that was safe to eat, that was not adulterated with deadly pathogens like *E. coli*, and that was not produced in violation of applicable food and safety regulations. The Defendant breached this duty.

41. Pizza Ranch owed a duty to all persons who consumed its products, including S.S., to ensure that any representations regarding the certifications its products had undergone prior to distribution and sale were made with reasonable care. Defendant breached this duty.

42. Pizza Ranch had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food product, but failed to do so, and was therefore negligent. S.S. was among the class of persons designed to be protected by these statutes, laws, regulations, safety codes or provision pertaining to the manufacture, distribution, storage, and sale of food products.

43. Pizza Ranch breached the duties owed to the ultimate consumers of its food products by committing the following acts and omissions of negligence:

- a. Failing to adequately maintain or monitor the sanitary conditions of its products, premises, equipment and employees;

- b. Failing to properly operate its facilities and equipment in a safe, clean, and sanitary manner;
- c. Failing to apply its food safety policies and procedures to ensure the safety and sanitary conditions of its food products, premises, and employees;
- d. Failing to apply food safety policies and procedures that met industry standards for the safe and sanitary production of food products, and the safety and sanitary condition of its premises and employees;
- e. Failing to prevent the transmission of *E. coli* to consumers of its food;
- f. Failing to properly train its employees and agents how to prevent the transmission of *E. coli* on its premises, from its facility or equipment, or in its food products;
- g. Failing to properly supervise its employees and agents to prevent the transmission of *E. coli* on its premises, from its facility or equipment, or in its food products.
- h. Failing to test its foods for microbial pathogens, like *E. coli*.

44. Pizza Ranch owed a duty to S.S. to use reasonable care in the manufacture, distribution, and sale of its food products to prevent contamination with *E. coli*. The Defendant breached this duty.

45. S.S.'s injuries proximately and directly resulted from the negligence of the Defendant Pizza Ranch, and from the Defendant's violations of statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of food.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays judgment against the Defendant in an amount greater than Seventy-Five Thousand Dollars (\$75,000.00) together with pre- and post-judgment interest,

costs, and disbursements incurred herein and such other relief as the court may find just and equitable.

JURY DEMAND

Plaintiff hereby demands a jury trial.

Dated: this 17th day of March, 2016

Respectfully Submitted,

MONSEES & MAYER, P.C.

By /s/ Timothy W. Monsees
TIMOTHY W. MONSEES, #13507
4717 Grand Avenue, Suite 820
Kansas City, Missouri 64112
(816) 361-5550 telephone
(816) 361-5577 facsimile
tmonsees@monseesmayer.com

-and-

PRITZKER OLSEN, P.A.
Elliot L. Olsen (#0203750)
Ryan M. Osterholm (#0390152)
PritzkerOlsen P.A.
Plaza VII, Suite 2950
45 South Seventh Street
Minneapolis, MN 55402-1652
Telephone: (612) 338-0202
Email: elliott@pritzkerlaw.com
ryan@pritzkerlaw.com

Attorneys for Plaintiff