

CIVIL CASE INFORMATION SHEET
CIVIL CASES
(Other than Domestic Relations)

FILED
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CATHY S. GATSON, CLERK
CIRCUIT COURT

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

I. CASE STYLE:

Plaintiff(s)

Leonard Craig Jarvis,

Case # 16-C-31

Judge King

vs.

Defendant(s)

Days to
Answer

Type of Service

Little Caesar's Enterprises, Inc.
c/o CT Corporation System
5400 D Big Tyler Road
Charleston, WV 25313

30

WV Secretary of State

or

Little Caesar's Enterprises, Inc.
2211 Woodward Avenue
Detroit, MI 48201

30

WV Secretary of State

VDM Management, LLC
c/o Vicki Dunn-Marshall
5250 Route 60 East
Huntington, WV 25705

20

WV Secretary of State

Genesis 4, LLC
c/o Vicki Dunn-Marshall
5250 Route 60 East
Huntington, WV 25705

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WV Secretary of State

D.L.C. Pizza, Inc.
c/o Vicki Dunn-Marshall
5250 Route 60 East
Huntington, WV 25705

20

WV Secretary of State

Original and 16 copies of complaint enclosed/attached.

PLAINTIFF: Leonard Craig Jarvis
DEFENDANT: Little Caesars Enterprises, Inc., et al.

CASE NUMBER:

II. TYPE OF CASE:

General Civil

Mass Litigation
(As defined in T.C.R. Rule XIX (c))

- Asbestos
- Carpal Tunnel Syndrome
- Diet Drugs
- Environmental
- Industrial Hearing Loss
- Silicone Implants
- Other: Contract

Adoption

Administrative Agency Appeal

Civil Appeal from Magistrate Court

Miscellaneous Civil Petition

Mental Hygiene

Guardianship

Medical Malpractice

Habeas Corpus/Other Extraordinary Writ

Other: _____

I. JURY DEMAND: Yes No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): 08-2017

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY? YES

NO

IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

Attorney Name: Anthony J. Majestro, WVSB 5165

J.C. Powell, WVSB 2957

James S. Nelson, WVSB 10776

Firm: Powell & Majestro, PLLC

Address: 405 Capitol Street, Suite P1200

Charleston, WV 25301

Telephone: 304-346-2889

Dated: Januar 8, 2016

Representing:

Plaintiff Defendant

Cross-Complainant

Cross-Defendant



Signature

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

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2016 JAN -8 PM 3:57

GATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

LEONARD CRAIG JARVIS,
individually and on behalf of
all others similarly situated,

Plaintiff,

v.

Civil Action No. 16-C-31
Honorable Judge King

LITTLE CAESAR ENTERPRISES, INC.,
VDM MANAGEMENT COMPANY, LLC,
d/b/a LITTLE CAESARS PIZZA,
GENESIS 4, LLC,
d/b/a LITTLE CAESARS PIZZA,
D.L.C. PIZZA INC.,
d/b/a LITTLE CAESARS PIZZA,

Defendant.

CLASS ACTION COMPLAINT

The plaintiffs for their causes of action against the above-named defendants allege and state as follows:

PARTIES

1. Plaintiff Leonard Craig Jarvis is a resident and citizen of the State of West Virginia.
2. Plaintiff brings this action individually and on behalf of all others similarly situated as set forth in the class definition below.
3. Defendant Little Caesar Enterprises, Inc., is a West Virginia Corporation with its principal place of business in Detroit, Michigan.
4. Defendant VDM Management Company, LLC, d/b/a Little Caesars Pizza ("VDM") is a West Virginia-chartered limited liability company, who for all time periods relevant to this Complaint, was and is conducting business in this county and state.
5. Defendant Genesis 4, LLC, d/b/a Little Caesars Pizza ("Genesis 4") is a West Virginia-

chartered limited liability company, who for all time periods relevant to this Complaint, was and is conducting business in this county and state.

6. Defendant D.L.C. Pizza, Inc., d/b/a Little Caesars Pizza (“DLC”) is a West Virginia-chartered corporation, who for all time periods relevant to this Complaint, was and is conducting business in this state.
7. Hereinafter, Defendants may be referred to collectively as “Little Caesars” or “Defendants”. Defendant Little Caesars Enterprises, Inc. will always be referred to as “Little Caesars Enterprises, Inc.”.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction and venue over this action as the defendants Little Caesars Enterprises, Inc, VDM, and Genesis 4 conduct business in this county and this State.
9. This Court has subject matter jurisdiction over this action as the claims do not arise out of federal law. The plaintiffs and the class they seek to represent seek no relief under any federal laws or regulations, assert no federal claims, and withdraw any asserted state claim that is preempted by federal law. The claims herein are brought solely under state common and state statutory law. Any and all claims or possible claims under any federal law, code, regulation, rule, and/or otherwise are expressly not brought herein and disclaimed. The United States District Court does not have diversity jurisdiction over this case as the named plaintiffs, the defendants VDM, Genesis 4 and DLC, and all of the putative class members are citizens of this State.

FACTUAL INTRODUCTION

The Plaintiff incorporates and restates all of the above and further pleads:

10. Defendants are in the business of making and selling pizza.
11. In the morning hours of January 9, 2014, Freedom Industries caused a chemical spill at its facility that was located along the Elk River in Charleston, West Virginia. The chemical 4-methylcyclohexane methanol, leaked from a containment area into the Elk River.
12. Upon information and belief, West Virginia American Water Company became aware of the spill soon after it occurred.
13. West Virginia American Water Company's water intake on the Elk River was located in close proximity downstream from the Freedom Industries facility where the chemical spill into the Elk River occurred.
14. As a result of the chemical spill, the contaminants were introduced into the water system contaminating the West Virginia American Water Company water supply in at least the following counties: Kanawha, Putnam, Boone, Jackson, Lincoln, Roane, Clay, Logan and the Culloden area of Cabell County.
15. The pipes, filters, and water systems of the customers, including the Defendants, in the affected counties have become contaminated.
16. As a further result of the contaminated water supply, Governor Tomblin declared a state of emergency for all customers of West Virginia American Water Company in the affected counties.
17. All West Virginia American Water Company customers in the counties were instructed not use tap water for drinking or cooking, among other activities.
18. Thereafter, health departments in the affected counties, including the Kanawha County Health Department, closed all restaurants, bars, and other establishments requiring a

health department permit and advised other permittees such as hospitals, day care centers, and other institutions to take appropriate measures.

19. On January 9, 2014, the Kanawha County Health Department announced that it was closing all restaurants in Kanawha County due to the water being contaminated by the chemical spill, including the stores owned or operated by the Defendants at the Little Caesars Pizza locations at:
 - a. 5333 MacCorkle Avenue SW, South Charleston, West Virginia 25309;
 - b. 5632 MacCorkle Avenue, Charleston, West Virginia 25304;
 - c. 109 Patrick Street Plaza, Charleston, West Virginia 25387;
 - d. 1112 Fledderjohn Road, Charleston, West Virginia 25314;
 - e. 5143 Washington Street West, Cross Lanes, West Virginia 25313;
 - f. 104 MacCorkle Avenue, St. Albans, West Virginia 25177; and
 - g. 201 Crossings Mall Road, Elkview, West Virginia 25071.
20. Thereafter, the Defendants did not shut down the restaurants at these locations. Instead, the Defendants continued to operate the restaurants at the above locations.
21. Furthermore, the Defendants used the contaminated water to make the dough and sauce required to make pizzas and sold these pizzas to the Plaintiff and class members.
22. The Defendants instructed their staff members and managers at the above-referenced restaurant locations to lie to omit the material fact that the Defendants were using contaminated water to make their pizzas, in order to induce the Plaintiff and class members to purchase and/or consume the Defendants' contaminated food at these restaurants.
23. The Defendants also "staged" large pots in view of the Plaintiff and class members

creating a false implication, and in order to defraud the Plaintiff and class members into believing, that the Defendants were using clean or boiled water to prepare and serve food, all in order to induce the Plaintiff and class members to purchase and/or consume the Defendants' contaminated food at these restaurants.

24. The Defendants placed signs in their restaurants at the above-referenced locations which omitted the material fact that the Defendants were using contaminated water in food preparation and service, all in order to induce the Plaintiff and class members to purchase and/or consume the Defendants' contaminated food at these restaurants.
25. Furthermore, the Defendants collected the food products that were produced with the contaminated water from some or all of the restaurants at the above-referenced locations and transported said food products to the Defendants' Little Caesars restaurants in St. Albans and Teays Valley where the Defendants sold and served the contaminated food products to their customers at those locations.
26. Furthermore, the Defendants disobeyed directions from the Kanawha County Health Department to shut down their restaurants. In addition, the Defendants omitted to inform the Kanawha County Health Department of the material fact that the Defendants were using contaminated water in the production of food at their restaurants.
27. The numerous omissions made by the Defendants to the Plaintiff and class members were material to the Plaintiff's and class members' decisions to purchase and/or consume food from the Defendants at the above-referenced locations because, had the Plaintiff and class members known the truth that the food was actually produced and served with the contaminated water, the Plaintiff and class members would not have purchased and/or consumed the Defendant's contaminated food.

28. Due to the widespread, regional contamination of the public water supply, clean and bottled water became a scarce commodity in the affected region creating an emergency and panic situation among the populace due to the inability to produce and cook food without the use of the contaminated water supply. Accordingly, the Plaintiff and class, concerned about the ability to obtain food and water for basic human existence and without any idea as to how long they would be deprived of safe water and food in the affected areas, literally began scouring the countryside desperately seeking a source of food that was not contaminated with the contaminated water.
29. Accordingly, the desperate Plaintiff and class members were reasonable in their reliance upon the Defendants' omission of the material fact of their use of contaminated water in food preparation.
30. The Plaintiff and class members did, in fact, reasonably rely upon the material omissions of the Defendants.
31. The Plaintiff and class members paid money to the Defendants to buy uncontaminated food based upon the Defendants' omission of the material fact that the Defendants' food preparation used contaminated water. The Defendants were, therefore, unjustly enriched because they obtained money from the Plaintiff and class members in exchange for uncontaminated food when, in fact, the Defendants were knowingly and intentionally selling the Plaintiff and class members contaminated food.
32. In other words, the Plaintiff and class members had out-of-pocket expenses, i.e. actual damages, because they paid the Defendants for a specific quality of product, uncontaminated food, and received a substandard quality of product, chemically-contaminated food for which they would never have paid to obtain.

33. Before purchasing Defendants' food, the Defendants omitted informing the Plaintiff and class members of the material fact that the Defendants used contaminated water in food manufacture. The Defendants omitted this material fact in order to induce the Plaintiff's and class member's reliance upon this omission to the Plaintiff's and class member's detriment.
34. The Plaintiff and class members were, in fact, induced into purchasing the Defendants' contaminated food by the Defendants' failure to inform the Plaintiff and class members of the material fact that the Defendants used contaminated water to make food.
35. Based upon the Defendants' failure to inform the Plaintiff and class members that their food was manufactured with contaminated water, the Plaintiff and class members made the decision to buy and/or consume food from the Defendants, to their detriment.
36. If the Defendants had informed the Plaintiff and class members the truth that the Defendants' food was manufactured with contaminated water, the Plaintiff and class members would not have purchased and/or consumed food from the Defendants.
37. Because the Plaintiff and class members reasonably relied upon the Defendants' omission of material facts, the Plaintiff and class members paid the Defendants for uncontaminated food but received contaminated food. Therefore, the Plaintiff and class members have out-of-pocket damages because they were defrauded by the Defendants into purchasing contaminated food when the Defendant failed to inform the Plaintiff and class members that the food included contaminated water.
38. Accordingly, the Plaintiff's and class members' out-of-pocket damages were proximately caused by the Defendants' omission of material facts.
39. The Defendants failed to inform the Plaintiff and class members that the Defendants'

food had characteristics or ingredients that the Defendants' food did not have, namely that the Defendants' food was made with contaminated water, when the Defendants' food did contain the contaminated water and was not safe. The Plaintiff and class members reasonably relied upon the Defendants' omission of material facts. The Plaintiff and class members were thereby injured by paying for uncontaminated food and actually receiving from the Defendants contaminated food.

40. The Defendants failed to inform the Plaintiff and class members that the Defendants' food was of a particular standard or quality, namely that the Defendants' food was below the standard or quality that could reasonably be expected because it was made with chemically-contaminated water, when in fact the Defendants' food had been manufactured with the contaminated water. The Plaintiff and class members were thereby injured by paying for uncontaminated food and actually receiving contaminated food from the Defendants.

41. The Defendants' omissions of material fact to the Plaintiff and class members as set forth herein created a likelihood of confusion or misunderstanding as to the characteristics, ingredients, standard or quality of the Defendants' food. The Plaintiff and class members were thereby injured by paying for uncontaminated food and actually receiving contaminated food from the Defendants.

42. The Defendants' omissions of material fact, in the sale and advertisement of their food, to the Plaintiff and class members that the Defendants' were making food with contaminated water were committed with the intent that the Plaintiff and class members rely upon the Defendants' omissions of material fact. The Plaintiff and class members were thereby injured by paying for uncontaminated food and actually receiving

contaminated food from the Defendants.

43. The Defendants, in the sale and advertisement of their food at the Teays Valley and St. Albans restaurants, concealed, suppressed or omitted the material fact from their customers at these locations, including the class members, that the food prepared and served at these two locations, that were commonly known not to be affected by the contaminated water supply, were in fact prepared and served with contaminated materials manufactured with the contaminated water which materials were transported from the Defendants' affected restaurants to the Teays Valley and St. Albans restaurants. Unbeknownst to the Defendants' unsuspecting patrons at the Teays Valley and St. Albans restaurants, including the class members, these patrons were purchasing and eating contaminated food prepared with the contaminated water when those patrons and class members believed that they were eating safe food from a region unaffected by the contaminated water supply. The Defendants committed misrepresentation by omission by failing to inform these patrons and class members of the material fact that the food prepared at the Teays Valley and St. Albans restaurant in areas unaffected by the contaminated water supply were, in fact, manufactured and served using materials which included the contaminated water as an ingredient. The class members were injured by the Defendants' misrepresentation by omission by paying for contaminated food when they reasonably believed, and the Defendants failed to inform them otherwise, that they were purchasing and consuming uncontaminated and safe food.
44. Defendants' acts as set forth herein and each act by Defendants' employees, representatives, agents, co-conspirators, joint enterprisers, joint venturers, parents, subsidiaries or related entities have caused the Plaintiff and class members undue and

unreasonable harassment, oppression, abuse, aggravation, annoyance, and inconvenience by having to engage in litigation to seek recovery from the Defendants due to the illegal conduct of the Defendants.

45. Defendants' conduct is of a kind which has the natural consequence of causing harassment, oppression, abuse, aggravation, annoyance, and inconvenience of which Defendants knew or reasonably should have known would be the natural consequences of said conduct. Accordingly, where intent is required to hold Defendants liable for their conduct, intent may be implied by the nature of said conduct.
46. Defendants and their employees, agents, co-conspirators, servants, joint venturers, joint enterprisers, parents, subsidiaries, and related entities are each liable for the acts of each other under the theories of respondeat superior, agency, conspiracy, joint venture, joint enterprise, as parents-subsiidiaries or under corporate veil piercing theories including, but not limited to, alter ego, instrumentality, identity, unity of interest, disregarding the corporate fiction and other such corporate veil-piercing theories. Accordingly, Defendants and their employees, agents, co-conspirators, servants, joint venturers, joint enterprisers, parents, subsidiaries and related entities are each equally, co-extensively, and jointly and severally liable for each and every act of each other. Where reference is made herein to one or more of the Defendants or their employees, agents, co-conspirators, servants, joint venturers, joint enterprisers, parents, subsidiaries and related entities, the Plaintiff intends that any such act, conduct or reference is attributable to each and every Defendant through these theories of vicarious liability.
47. The Plaintiff was thereby forced by the Defendants to obtain counsel and incur attorneys fees and expenses.

CLASS ACTION ALLEGATIONS

Plaintiff incorporates all allegations above the same as if fully restated and re-alleged and plaintiff further alleges as follows:

48. This civil action is an appropriate case to be brought and prosecuted as a class action by plaintiff against defendants pursuant to West Virginia Rules of Civil Procedure 23.
49. There exists a class of individuals like plaintiff, citizens of the State of West Virginia, who purchased and/or consumed food from the defendants made with the contaminated water based upon the defendants' omission of the material fact that the defendants were using contaminated water to prepare the defendants' food as described above. The aforesaid class is limited to persons who are citizens of this State at the time this action is filed.
50. The claims of plaintiff are typical of the claims of the class, and the plaintiff will fairly and adequately protect the interests of the class with respect to the appropriate common issues of fact and law and have hired counsel competent to prosecute said action for and on behalf of the plaintiff and the class.
51. The prosecution of this civil action by the class members in separate actions would create a risk of varying adjudications with respect to individual members of the class, could be dispositive of interests of other members of the class not parties and/or they may impair or impede their ability to protect their interests and/or the defendants have acted or refused to act on grounds generally applicable to the class making declaratory or injunctive relief appropriate for the whole class.
52. The class includes hundreds of West Virginia residents who have purchased and/or consumed contaminated products of defendants, and the class is, therefore, so numerous

that joinder of all members is impracticable.

53. There are questions of law and fact common to the class.
54. The interest of members of the class as to common questions of law and fact in individually controlling the prosecution of separate actions does not outweigh the benefits of a class action as to those issues.
55. The difficulties in management of this case as a class action are outweighed by the benefits it has with respect to disposing of common issues of law and fact as to the large number of litigants, and it is desirable to concentrate the litigation in one forum for the management of this civil action due to the number of cases filed, pending and to be filed.
56. The questions of law and facts common to the members predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this civil action.
57. There are subclasses of individuals whose claims may be more efficiently and appropriately adjudicated by class action.
58. Jurisdiction and venue are proper in this Court.
59. The individually named plaintiff is a member of the class he seeks to represent. The members of the class are so numerous that joinder is impracticable and would involve hundreds of litigants, and the class in all other ways are similarly situated as required under Rule 23 of the West Virginia Rules of Civil Procedure and complies with the requirements thereof.
60. The class which plaintiff seeks to represent is those citizens of this State who purchased and/or consumed food made or prepared with the contaminated water from the Defendants in West Virginia. Specifically excluded from this class, however, are (a) all

currently serving justices, judges and magistrate judges of the United States and the state in which this action is brought, and their current spouses; (b) all persons (and their current spouses) within the third degree of relationship to such justices, judges, magistrate judges and spouses; (c) all employees, agents, officers, directors, and affiliates of the defendants; and, (d) all persons excluded under the rules of procedure of this court or excluded under the laws of this state.

COUNT I

(FRAUD)

Plaintiff incorporates all allegations above the same as if fully restated and re-alleged and plaintiff further alleges as follows:

61. Defendants by and through the acts as set forth herein committed the tort of fraud against the Plaintiff and class members.
62. As a proximate result of these violations, Defendants caused Plaintiff and class members to suffer damages as set forth herein.
63. Defendants' acts as set forth herein are past acts already performed, which cannot be undone by subsequent remedial measures, which entitle the Plaintiff and class members to the relief and recovery requested herein.

COUNT II

(UNJUST ENRICHMENT)

Plaintiff incorporates all allegations above the same as if fully restated and re-alleged and plaintiff further alleges as follows:

64. Due to the Defendants' illegal conduct as set forth herein, the Defendants were unjustly enriched at the Plaintiff's and class members' expense.

65. The Defendants created a mistake of fact by omitting the material fact to the Plaintiff and class members that the Defendants' food was manufactured with contaminated water, thereby enducing the Plaintiff and class members to pay the Defendants for uncontaminated food when the food was, in fact, contaminated.
66. As a proximate result of these violations, Defendants caused Plaintiff and class members to suffer damages as set forth herein.
67. Defendants' acts as set forth herein are past acts already performed, which cannot be undone by subsequent remedial measures, which entitle the Plaintiff and class members to the relief and recovery requested herein.
68. Plaintiff and class members are therefore entitled to recovery from the Defendants in the form of disgorgement of all of the monies obtained by the Defendants from the Plaintiff and class members due to unjust enrichment.

COUNT III

(FALSE ADVERTISEMENT)

69. Defendants acts as set forth herein constitute violations of West Virginia Code §32A-1-2 *et seq.* by advertising their services and products falsely, fraudulently or deceptively as described above.
70. Plaintiff and class members were damaged as aforesaid as a result of the violation of the statute.

COUNT IV

(FRAUDULENT MISCONDUCT)

Plaintiff incorporates all allegations above the same as if fully restated and re-alleged and plaintiff further alleges as follows:

71. Defendant's acts and conduct amounted to fraudulent misconduct.
72. Plaintiff and class members were damaged by defendants' fraudulent misconduct in that the Plaintiff and class members paid for uncontaminated food but received contaminated food from the Defendants.

COUNT V

(PUNITIVE DAMAGES)

Plaintiff incorporates all allegations above the same as if fully restated and re-alleged and plaintiff further alleges as follows:

73. The actions of the defendants named in this "Complaint" as set forth hereinabove were done wilfully, wantonly, intentionally, maliciously, and/or with a reckless disregard for the rights of the plaintiff and others, including the entire class, entitling the plaintiff and the class to punitive damages for all causes of action alleged herein.

COUNT VI

(OUTRAGE)

Plaintiff incorporates all allegations above the same as if fully restated and re-alleged and plaintiff further alleges as follows:

74. The actions of the defendants named in this "Complaint" as set forth hereinabove were done willfully, wantonly, intentionally, maliciously, and/or with a reckless disregard for the rights of the plaintiff and others, including the entire class, and in such a manner which was atrocious and intolerable in that it offends, and is against, generally accepted standards of decency and shocks the conscious.
75. Plaintiff and class members were damaged by defendant's outrageous misconduct.

COUNT VII

(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

Plaintiff incorporates all allegations above the same as if fully restated and re-alleged and plaintiff further alleges as follows:

76. The actions of the defendants named in this "Complaint" as set forth hereinabove were done willfully, wantonly, and/or with a reckless disregard for the rights of the plaintiff and others, including the entire class, and in such a manner which they knew or should have known would cause emotional distress.

77. Plaintiff and class members were damaged by defendant's acts as described herein.

PRAYER

WHEREFORE, your Plaintiff and the class he seeks to represent demand that they be awarded damages and equitable and affirmative relief as follows:

1. Compensatory damages, special damages and punitive damages in an amount to be determined by the Court and jury; and
2. Damages as provided for under and pursuant to West Virginia Code §32A-1-2 et seq., including compensatory and punitive damages and equitable and injunctive relief; and
3. An award for the Plaintiff's and class members' undue and unreasonable harassment, oppression, abuse, aggravation, annoyance, and inconvenience damages;
4. The costs and disbursements of this action, including attorney fees; and
5. Pre-judgment and post-judgment interest; and
6. Equitable and injunctive relief for providing an accounting and notice to plaintiff and the class; and
7. That the Court finds that this is an appropriate action to be prosecuted as a class action

pursuant to West Virginia Rules of Civil Procedure 23, and that the Court finds that plaintiff, and his counsel, are appropriate representatives and appropriate counsel for the class, and that this action shall proceed as a class action on the common issues of law and fact, all as this Court deems just and proper; and

8. For such other further and general relief, compensatory, punitive, equitable or injunctive, as the Court deems just and proper.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS.

**PLAINTIFF,
By Counsel**

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