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Attorneys for Plaintiff Trevor Walker

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

TREVOR WALKER, an individual;

Plaintiff,

vs.

McDONALD’S CORPORATION, a Delaware Corporation; ROSSCO, INCORPORATED, a Utah Corporation doing business as McDONALD’S; THE COCA-COLA COMPANY, a Delaware Corporation; SWIRE PACIFIC HOLDINGS, INCORPORATED, a Delaware Corporation doing business as SWIRE COCA-COLA, SALT LAKE CITY and SWIRE COCA-COLA, USA; and DOES 1-50.

Defendants.

COMPLAINT:

- 1. STRICT LIABILITY**
- 2. BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
- 3. NEGLIGENCE**
- 4. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

**TIER III DISCOVERY
(JURY TRIAL DEMANDED)**

SUMMARY OF ACTION

Plaintiff Trevor Walker’s Diet Coke was spiked at a McDonald’s Drive-Thru located in Riverton, Utah. The Utah State Crime Lab confirmed the drink contained a heroin substitute—buprenorphine/Suboxone (**Exhibit A**). The drug negatively interacted with Mr. Walker’s medication, causing him to lose feeling in his arms and legs, lose the ability to walk, and eventually lose consciousness. Mr. Walker suffered respiratory repression resulting in excitotoxicity, post-traumatic stress disorder, and severe anxiety. Despite an immediate police investigation, McDonald’s failed to preserve the video recording of the Drive-Thru in question and video of the event was deleted and spoliated.

COMPLAINT

Plaintiff Trevor Walker, (“**Trevor**” or “**Plaintiff**”) through counsel, hereby complains against Defendant McDonald’s Corporation (“**McDonald’s**”), Rossco Incorporated (“**Rossco**”), The Coca-Cola Company (“**Coca-Cola**”), Swire Pacific Holdings Incorporated (“**Swire**”), and DOES 1 through 50 (“DOES 1-50”, and together with McDonald’s, Rossco, Coca-Cola, and Swire, “**Defendants**”) and each of them alleges:

PARTIES

1. Plaintiff is an individual residing in Salt Lake County, State of Utah.
2. Upon information and belief, Defendant McDonald’s is a Delaware corporation with its principal place of business in Illinois.
3. Upon information and belief, Defendant Rossco is a Utah corporation with its principal place of business in West Jordan, Utah.
4. Upon information and belief, Defendant Coca-Cola is a Delaware corporation with its principal place of business in Georgia.
5. Upon information and belief, Defendant Swire is a Delaware corporation doing business in Salt Lake County as Swire Coca-Cola, Salt Lake City and Swire Coca-Cola, USA with its principal place of business in Draper, Utah.
6. The true names and capacities, whether individual, plural, corporate, partnership, associate or otherwise, of DOES 1-50, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. The full extent of the facts linking such fictitiously sued defendants with the causes of action alleged is unknown to Plaintiff. Plaintiff is informed and believes, and thereon alleges, that each of the defendants designated herein as a Doe was and is negligently, carelessly, recklessly, unskillfully, unlawfully, tortiously, wantonly, wrongfully,

illegally, or in some other actionable manner, responsible for the events and happenings hereinafter referred to, and thereby negligently, carelessly, recklessly, unskillfully, unlawfully, tortiously, wantonly, wrongfully and illegally proximately caused the hereinafter described injuries and damages to Plaintiff. Plaintiff will hereafter seek leave of court to amend this Complaint to show such defendants' true names and capacities after the same have been ascertained.

7. Plaintiff is informed and believes, that at all times mentioned herein, defendants and each of them, including DOES 1-50, were agents, servants, employees, and joint venturers of their co-defendants, and were, as such, acting within the course, scope and authority of said agency, employment, and joint venture, and that each and every defendant, as aforesaid, when acting as a principal, was negligent in the selection and hiring of each and every co-defendant as an agent, employee, contractor, subcontractor, and joint venturer, and that each Defendant by and through its officers, directors, or managing agents, authorized, ratified or otherwise approved the acts of the remaining defendants, and said officers, directors, or managing agents participated in said acts with the Defendants, including DOES 1-50.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to U.C.A. §§ 78A-5-102 and 78B-3-205.

9. Venue is proper in this forum pursuant to U.C.A. § 78B-3-307.

GENERAL ALLEGATIONS

10. On August 12, 2016, Trevor Walker and his three young children (ages 8, 3, and 12 months at the time) went through the Drive-Thru at the McDonalds located at 2002 W. 12600 S. in Riverton, Utah. Trevor ordered two happy meals for his children and two chicken sandwich meals for himself and his wife. As part of the adult meals, he ordered two Diet Coke beverages.

11. Trevor began drinking his Diet Coke on the way home, which was approximately 1-2 miles away. Upon arriving home, Trevor watched the children while Rachelle was working at their in-home hair salon.

12. While holding the 12-month old baby, and typing an email, Trevor noticed that his fingers started to become non-responsive. He began to lose feeling in his arms and legs. His vision became distorted. He handed the baby to his older child (age 8) who after seeing this, asked: “Daddy, are you okay?” Trevor managed to send two text messages to his wife:

Text No. 1: “Something is vey (sic) wrong with me. I am having sensations in my arms and everything is moving slowly. I’m feeling scared. I don’t know what to do.”

Text No. 2: “I’m so scared I’m trying to be calm. I need you.”

13. Trevor tried to stand, but blacked out and fell on a nearby table and collapsed to the floor. He was unable to get up from the floor until Rachelle arrived, and called their neighbors. The neighbors assisted to lift Trevor and place him into the car. Rachelle then took Trevor to the emergency room.

14. A urinalysis performed at the hospital confirmed the presence of Buprenorphine.

15. Rachelle compared Trevor’s Diet Coke to her own at the hospital. While Rachelle’s Diet Coke looked like a regular Diet Coke, Trevor’s had speckles and a film on the surface—a fact that Trevor was not aware of due to the lid placed by McDonald’s on the drink.

16. While at the hospital emergency room, Rachelle called the police department and reported the suspicious drink



Figure 1 - Rachelle's Diet Coke above, Trevor's below

and its effect on Trevor. The Unified Police Department of Greater Salt Lake took custody of the drink and sent it to the state crime lab for testing.

17. On August 29, 2016, the Utah Bureau of Forensic Services analyzed a sample of Trevor's Diet Coke and positively identified the presence of buprenorphine in the vial.

Buprenorphine is a common replacement for heroin or other opioids and is generally ingested through a dissolvable sublingual film that could easily be dissolved into a drink. A copy of the Utah Bureau of Forensic Services' Report is attached hereto as **Exhibit A**.

18. Immediately after Trevor and Rachelle filed a police report, the police began investigating the matter. The primary suspect was the McDonald's Manager's younger brother identified herein as **Employee #1**. It has since been discovered that prior to, and leading up to August 12, 2016, Employee #1 was a known drug user, had posted on social media about his drug use, and had posted about disrespecting McDonald's customers through the Drive-Thru window. Further, on information and belief, by virtue of the Manager being the sibling of Employee #1, it is believed that she was fully aware of these activities and behaviors. Both the Manager and Employee #1 quit their jobs at McDonalds shortly after the police interviewed them as part of the follow-up criminal investigation.

19. The police attempted to obtain video surveillance from the location, which included surveillance of the Drive-Thru area. It is believed that the McDonald's Manager provided footage to the police. However, the footage was from August 13, 2016—the day after the incident. Additionally, rather than preserve the footage from August 12, 2016, McDonalds allowed the footage to be deleted. It is unknown whether the footage was allowed to be deleted to protect Employee #1 or to protect McDonalds from liability. Upon information and belief, the lack of video footage was the primary reason that none of the employees have been arrested.

20. As a result of drinking the spiked Diet Coke, Trevor has sustained substantial damages. The spiked Diet Coke interacted with Trevor's medication at the time, and created a substantial risk of death. Additionally, Trevor suffered respiratory repression resulting in excitotoxicity, post-traumatic stress disorder, and severe anxiety. These have required Trevor to seek counseling, have interrupted his closest relationships, have impacted his work, have disrupted his sleep and diet habits, and have caused severe distress. He has ongoing needs for medication and counseling that will continue for the foreseeable future and likely his entire life.

FIRST CAUSE OF ACTION
Strict Liability—Against All Defendants

21. Trevor realleges the allegations contained in paragraphs 1 through 20 of this Complaint as if set forth fully herein.

22. Defendants are in the business of manufacturing (Coca-Cola), distributing (Swire), or selling (McDonalds and Rossco) food products and are in the chain of distribution for the Diet Coke received and ingested by Trevor on August 12, 2016 (the "**Diet Coke**"). The Defendants are each a participant in the enterprise responsible for placing the Diet Coke in the stream of commerce and thus, subject to strict liability under the laws of Utah.

23. Moreover, to the extent the Diet Coke was altered or modified, such modification occurred *prior* to the sale of the Diet Coke to Trevor. Accordingly, U.C.A. 78B-6-705 and 78B-5-818 are not applicable and provide no shelter from strict liability to Defendants, nor can fault be allocated away from Defendants.

24. Trevor seeks to recover damages because he was injured by a defective and unreasonably dangerous product—the Diet Coke he ingested on August 12, 2016. The Diet

Coke and the buprenorphine contained therein was dangerous to an extent beyond which would be contemplated by the ordinary and prudent buyer or consumer.

25. As a direct, legal, and proximate result, Trevor has suffered and continues to suffer harm, special damages, and economic loss in an amount to be determined by the trier of fact.

SECOND CAUSE OF ACTION
Breach of Implied Warranty—Against All Defendants

26. Trevor realleges the allegations contained in paragraphs 1 through 25 of this Complaint as if set forth fully herein.

27. Defendants impliedly warranted that the Diet Coke was of merchantable quality, safe and fit for human consumption. Trevor purchased and consumed the Diet Coke, and reasonably relied upon the skill and judgment of Defendants as to whether the product was of merchantable quality and fit for human consumption.

28. Defendants breached these implied warranties in that the subject products was contaminated with buprenorphine before it was delivered to Plaintiff.

THIRD CAUSE OF ACTION
Negligence and Negligence Per Se—Against All Defendants

29. Trevor realleges the allegations contained in paragraphs 1 through 28 of this Complaint as if set forth more fully herein.

30. Defendants were negligent in the manufacture, distribution, or sale of the Diet Coke, thus causing Trevor's injury.

31. More specifically, the Defendants each owed a duty to properly supervise, train, and monitor employees, or the employees of their agents or subcontractors, in the preparation of

the product (Diet Coke), and ingredients it sold, and doing so to ensure compliance with each Defendant's own specifications and performance standards as well as to ensure compliance with all applicable health regulations which prohibit the distribution of controlled substances or other unsafe ingredients such as buprenorphine in food or beverages. The defendants violated one or more of the safety requirements that the law imposes¹ and, as a result, breached duties owed to the Trevor, and injuring Trevor as a direct and proximate result of such breaches.

32. Defendants' negligent acts include, but are not limited to:

a. Failure to prevent the contamination of the product (Diet Coke) or product-ingredients with buprenorphine, including the failure to implement or non-negligently perform inspection and monitoring of the product or product-ingredients such that its adulterated condition would be discovered prior to its sale or distribution to the public.

b. Failure to properly supervise, train, and monitor their employees, or the employees of their agents or subcontractors, on how to ensure the manufacture, distribution or sale of food product (the Diet Coke) free of adulteration by potentially lethal substances.

Particularly with regards to the known problems and proclivities of Employee #1 by the on-site Manager.

33. The state food safety regulations applicable here, and as set forth above, establish a positive and definite standard of care in the import, manufacture, distribution, or sale of food, and the violation of these regulations constitutes negligence per se.

34. Trevor was in the class of persons intended to be protected by these statutes and

¹ These include, but are not limited to the Federal Food, Drug, and Cosmetics Act and the Utah Wholesome Food Act, which prohibits the manufacture, distribution and sale of adulterated food containing any "substance that may render it injurious to health."

regulations and was injured in the direct and proximate result of the Defendants' violation of applicable food safety regulations.

FOURTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress—Against All Defendants

35. Trevor realleges the allegations contained in paragraphs 1 through 34 of this Complaint as if set forth fully herein.

36. Defendants knew or should have known that their failure to exercise due care in the performance of their duties would cause Trevor severe emotional distress.

37. As a direct, legal, and proximate result, Trevor has suffered and continues to suffer harm, special damages, and economic loss in an amount to be determined by the trier of fact.

PUNITIVE DAMAGES

38. In committing the acts alleged in this Complaint, Defendants knew or should have known of the defective, unsafe, and dangerous conditions of the product that they manufactured, prepared, and sold to Trevor as well as the employee risk created by Employee #1. In committing the acts described in this Complaint, the Defendants acted in conscious disregard of the rights and safety of Trevor and are guilty of malice, oppression, and/or fraud thereby warranting an assessment of punitive damages in an amount appropriate to punish the Defendants and deter others from engaging in similar wrongful conduct.

JURY DEMAND

Trevor hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Trevor prays for relief as follows:

- A. For general damages according to proof;
- B. For medical, hospital, and related expenses according to proof;
- C. For loss of earnings according to proof;
- D. For punitive damages;
- E. For attorneys' fees and costs incurred herein; and
- F. For such other relief as the Court deems just and equitable.

DATED: July 30, 2018.

SPAULDING LAW

/s/ *Brady Brammer*

Brady Brammer

Attorneys for Plaintiff

8/29/2016

Utah Bureau of Forensic Services
4501 South Constitution Blvd, Salt Lake City, UT 84129 (801) 965-4487

CL Case#:	C2016-1876	Agency Case #:	16132879
Agency:	UNIFIED POLICE DEPT OF GREATER SALT LAKE	Report#:	1
Agency Address:	3365 S 900 W SALT LAKE CITY UT 84119		

Forensic Analysis Report-CONTROLLED SUBSTANCE ANALYSIS

Evidence Submission Information

Evidence Submitted:	08/24/2016
How Received:	Hand Delivered
Investigating Officer:	Jared Nichols
Delivered By:	Donny Gasu
Received By:	Tamara Harper

Case Names

<u>Type</u>	<u>Name</u>	<u>Sex</u>	<u>Race</u>
Suspect	RESTAURANT, MCDONALDS	U	

Crimes

POSSESSION OR USE OF A CONTROLLED SUBSTANCE

Chain of Custody Statement

The item(s) submitted under the police agency case numbers referenced in this report were in a sealed condition at the time any examination, testing, or analysis was commenced by the undersigned, and that said examination or handling, if any, of the actual items within any such sealed containers was accomplished in a manner to preserve the integrity of the item to assure that any chance of misidentification, or environmental cross-contamination would be avoided by adherence to standardized procedures within the Utah State Crime Laboratory appropriate to any processes applicable to the examination, analysis, or testing of said items. Any deviation from said procedures, and reasons therefore is noted below. The breaking of any seal or part of the container in which the item was submitted, has been followed by a reinsertion of the item into its original container, followed by any examination, testing or analysis and resealing of that container with the undersigned's initials placed over such new seal.

Forensic Analysis Report Follows

8/29/2016

Utah Bureau of Forensic Services
4501 South Constitution Blvd, Salt Lake City, UT 84129 (801) 965-4487

CL Case#:	C2016-1876	Agency Case #:	16132879
Agency:	UNIFIED POLICE DEPT OF GREATER SALT LAKE	Report#:	1
Agency Address:	3365 S 900 W SALT LAKE CITY UT 84119		

Forensic Analysis Report-CONTROLLED SUBSTANCE ANALYSIS

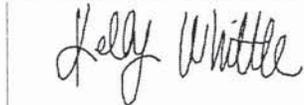
Item 1 (Agency Item 1). No controlled substances were identified in the off-white powder in the paper cup.

Item 2 (Agency Item 2). The sealed brown paper bag represented as containing a swab of cup was not analyzed.

Item 3 (Agency Item 3). Buprenorphine was identified in the brown liquid in the glass vial.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

Executed On: 09/07/2016



Kelly Whittle
Forensic Scientist II