

COURT FILE NUMBER      **2101-04628**

COURT                      COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE        CALGARY

PLAINTIFF(S)            **Matthew Cornfield as Representative Plaintiff**

DEFENDANT(S)          **Joey Tomato's (Canada) Inc.**

DOCUMENT                **STATEMENT OF CLAIM**

  

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A Class Proceeding pursuant to the  
*Class Proceedings Act*, Chapter C-16.5

**NOTICE TO DEFENDANT(S)**

You are being sued. You are Defendants.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

**A. LITIGANTS**

1. The Representative Plaintiff Matthew Cornfield resides in the City of Calgary in the Province of Alberta ("Matthew").
2. The Defendant, Joey Tomato's Canada Inc. ("Joeys") carried on business at all material times in Calgary, Alberta and owns and operates restaurants in Calgary under

the name “Joey” and has a registered office in British Columbia, located at 2800 Park Place, 666 Burrard Street, Vancouver, B.C., V6C 2Z7.

**B. CLASS**

3. The Plaintiff claims on behalf of himself and natural persons in Canada who:
  - a. Individuals of Joeys (“customers”) who became infected with COVID-19 within 2 weeks of dining at Joeys;
  - b. Individuals that share households with individuals who dined at Joeys, and were subsequently infected with COVID-19 within 2 weeks of the said dining.
  - c. Are spouses, adult interdependent partners or children of any age (“Family Class”) of Customers of Joeys

**C. THE COVID-19 PANDEMIC IN CANADA**

4. On January 26, 2020, the first presumptive case of COVID-19 in Canada was announced in the City of Toronto, in the Province of Ontario.
5. On March 5, 2020, the first presumptive case of COVID-19 in Alberta was announced;
6. The first death in Alberta from COVID-19 was announced on March 19, 2020.

**D. THE REPRESENTATIVE PLAINTIFF**

7. On Saturday, March 13th, 2021, Matthew and his spouse attended Joeys Restaurant at the Eau Claire location in Calgary.
8. Matthew subsequently went for a test on March 21 and received positive results for COVID-19 on March 22, 2021. His spouse also tested positive for COVID-19.
9. Six (6) other individuals including both Matthew’s parents and both of his spouse’s parents became infected with COVID-19 as a result of close contact with Matthew and his spouse.
10. Matthew’s spouse was 20 weeks pregnant at the time of testing positive and was subsequently hospitalized with serious complications from Covid. She now has to be

monitored by a specialist for the duration of her pregnancy for the well being and safety of her unborn baby.

11. His mother-in-law was hospitalized as well, with various severe complications 2 weeks after being infected, and, was just released on April 14, 2021.

#### **E. NEGLIGENCE**

12. The Defendants are liable to the Plaintiff and the other Class members in negligence.
13. At all material times the Defendants owed a duty of care to the Plaintiff and Class members to ensure that there were reasonable protocols and procedures in place to protect the Customers and prevent the introduction or spread of COVID-19.
14. The Defendants owed the Plaintiff and the Class, the following duties of care, and other duties, among others:
  - a. To ensure that adequate sanitation protocols were in place;
  - b. To take reasonable measures to mitigate and reduce the risk of transmission of COVID-19 given the prevailing circumstances at the time, including without limitation:
    - i. Observing proper sanitation protocols,
    - ii. Ensuring adequate ventilation
    - iii. Seating tables such that they were appropriately distant from each other.
    - iv. Taking reasonable steps to ensure patrons who wished to be seated together were from the same household.
    - v. Taking reasonable steps to minimize transmission among staff.
    - vi. Taking reasonable steps to ensure that staff who were exposed to COVID-19 isolated appropriately, and for the appropriate length of time.
    - vii. Taking reasonable steps to ensure the collection of contact information from Patrons in order to conduct contact tracing should an exposure be discovered,
    - viii. Generally taking steps to comply with, and ensure that patrons were complying with, health directives, recommendations, and public health laws from municipal, provincial and federal government agencies.

- c. Upon discovering that COVID-19 was present at Joeys, to warn the Class of COVID-19 infection, including by contacting those for whom contact information was available, and otherwise taking immediate and comprehensive steps to isolate those affected, or take any other appropriate remedial action.
15. The Defendant, through its employees, breached the duty of care and failed to meet the applicable standard of care, particulars of which include:
- a. Failing to ensure that adequate safety protocols were in place;
  - b. Failing to warn the Class Members of COVID-19 exposures or infections at Joeys and failing to take immediate and comprehensive steps to isolate those affected or take other appropriate remedial action.
  - c. Failing to provide or monitor adequate separation between Customers;
  - d. Failing to provide or monitor adequate separation between Customers and staff;
  - e. Failing to take reasonable steps to ensure that patrons seated together were from the same household;
  - f. Failing to conduct regular testing to prevent the spread of COVID-19;
  - g. Failing to have any or adequate personal protective equipment available;
  - h. Failing to implement and adhere to protocols mandated or recommended by Alberta Health Services, Alberta's Chief Medical Officer of Health, and the World Health Organization, among others.
  - i. Failing to implement adequate procedures for cleaning in order to prevent the spread of COVID-19, or, in the alternative, failing to ensure such procedures were followed;
  - j. Failing to implement adequate procedures to ensure that personnel or staff or others infected or potentially infected with COVID-19 were not allowed entry into Joeys or, in the alternative, failing to ensure such procedures were followed;

- k. Failing to employ and properly train competent staff on proper, safe or adequate protocols for caring for those with COVID-19 and preventing the spread;
- l. Failing to implement adequate cleaning and maintenance procedures;
- m. Failing to take immediate and comprehensive steps to inform Alberta Health Services, the Chief Medical Officer or the public of the scope of the infection with COVID-19;
- n. Failing to ensure that the Customers or Family Members were adequately informed, or at all, of the COVID-19 outbreak at Joeys.

#### **F. VICARIOUS LIABILITY**

16. The Plaintiff and the Class plead that the Defendant can only act through its employees, directors, officers and agents and is vicariously liable for their acts and omissions as hereinafter pleaded. The acts and omissions particularized and alleged in this claim to have been done by the Defendant was authorized, ordered or done by the Defendant's employees, directors, officers and agents while engaging in the management, direction, control and transaction of the Defendant business and are therefore acts and omissions for which the Defendant are vicariously liable.

#### **G. PUNITIVE DAMAGES**

17. The Plaintiff and the other Class Members plead that the Defendant's conduct was reckless and egregious and warrants the imposition of punitive damages.

#### **H. DAMAGES**

28. As a result of the breaches by Joeys of the duty of care, failures to meet the applicable standard of care and the acts and omissions of Joeys as referred to herein, the Class and Class Members suffered damage, particulars of which include:
- a. Damages for Family Members pursuant to the *Fatal Accidents Act*, RSA 2000, c F-8 and amendments thereto;

- b. Damages for the unnecessary pain and suffering endured by customers who had COVID-19 but are recovered or recovering;
- c. Damages for emotional distress and psychological injuries as a result of fearing for the health and lives of customers who were unnecessarily exposed to COVID-19 at Joeys;
- d. Damages for loss of consortium for the person's spouse or adult interdependent partner;
- e. Damages for hospital, medical, nursing, medication and other out of pocket expenses.

29. The trial of this action will not likely take more than twenty-five days.

30. The Plaintiff proposes that this action be tried in the City of Calgary in the Province of Alberta.

31. The Plaintiff have sufficient facts and grounds to serve this Statement of Claim ex juris outside of Alberta and, if necessary, outside of Canada since the within claims arise out of and relate to torts committed in Alberta and is governed by the law of Alberta and have a real and substantial connection to Alberta.

## **I. REMEDY SOUGHT**

32. The Plaintiff and the Class therefore claim against the Defendant:

- a. A declaration that the Defendant is liable to the Plaintiff and the other Class Members for the damages caused by the COVID-19 outbreak in Joeys;
- b. Certification of this action including certification of the common issues;
- c. General damages, and pecuniary damages in the sum of \$15 Million;
- d. Exemplary, Aggregate or Punitive Damages in the sum of \$2 Million;
- f. Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J 1 as may be allowed;

- g. Costs of this action; and
- h. Such further and other relief as this Honourable Court may allow or counsel may advise.

**NOTICE TO THE DEFENDANTS (S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the Plaintiff's address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff against you.