

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

AVERY KIRKSEY

Plaintiff,

v.

JTM FOODS, LLC

Defendant.

JURY TRIAL DEMANDED

CIVIL DIVISION

GD No.

COMPLAINT

Filed on behalf of Plaintiff

Counsel of Record for this party:

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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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AVERY KIRKSEY	:	
	:	CIVIL DIVISION
<i>Plaintiff,</i>	:	
	:	GD No.
v.	:	
	:	
	:	
	:	
JTM FOODS, LLC	:	
	:	
<i>Defendant.</i>	:	
	:	
JURY TRIAL DEMANDED	:	

CIVIL ACTION COMPLAINT

1. Plaintiff is an adult individual and citizen of the Commonwealth of Pennsylvania.

At all times relevant to this Complaint, Plaintiff was an employee of Career Concepts, 4934 Peach, Street, Erie, PA 16509, and was acting in the course and scope of his employment.

2. Defendant is a Pennsylvania limited liability company engaged in the food-manufacturing business with a principal place of business located at 2126 East 33rd Street, Erie, PA 16510. Defendant distributes its food products through a number of retailer partners located in Allegheny County, including Sheetz, Giant Eagle and GetGo.

3. Venue is proper in Allegheny County because defendant regularly and continuously conducts business in Allegheny County.

4. At all times relevant hereto, Defendant acted by and through its respective trustees, directors, agents, servants, employees, workmen and/or other representatives, who were, in turn, acting within the course and scope of their employment, agency and/or service for the same and under the direct control of Defendant.

5. At all times material herein, Defendant, by and through its respective trustees, agents, servants, workmen, employees and/or other representatives, acting in the course and scope of their employment, agency and/or service with the Defendant, inspected, managed, maintained and/or were responsible for overseeing the processes at the manufacturing premises located at 2126 East 33rd Street, Erie, PA 16510, including but not limited to all aspects of safety and compliance with OSHA, codes, statutes and good safety engineering practices.

6. At all times material hereto, it was the duty of the Defendant, by and through its respective agents, servants, workmen, employees and/or other representatives, to ensure the aforesaid premises were in a reasonably safe condition for persons lawfully upon the premises, such as Plaintiff.

7. On or about November 10, 2021, Plaintiff was a business invitee of the Defendant and was lawfully on the aforesaid premises.

8. Plaintiff was invited to enter the premises for a purpose directly or indirectly connected with the business dealing of the Defendant.

COUNT I – NEGLIGENCE
EVERY KIRKSEY v. JTM FOODS, LLC

9. Plaintiff hereby incorporates by reference paragraphs one (1) through eight (8), inclusive, as though same were fully set forth at length herein.

10. On or about November 10, 2021, Plaintiff was in the course and scope of his employment, when, due to the negligence and wrongdoing of Defendant and the defective condition of a mixing machine plaintiff was tasked with cleaning, suddenly and without warning, the Plaintiff's left arm became entangled in the improperly guarded mixing machine, causing him to suffer severe and grievous injuries more fully set forth below.

11. The negligence of Defendant consisted of the following:
 - (a) approving the repair, design, manufacture, alteration, fabrication and use of complex and dangerous machinery without approving or implementing any guidelines for the safety of users of said machinery;
 - (b) approving the design, manufacture, fabrication and use of complex and dangerous machinery without approving or implementing any guidelines for the inspection by qualified safety engineers and personnel for the safety of use of said equipment.
 - (c) failing to hire or train competent personnel to insure that adequate and appropriate safety factors were to be considered and incorporated in the design, manufacture, fabrication and use of the said products, including the mixing machine in question;
 - (d) failing to supervise and be aware of what machinery was being used by workers at its premises;
 - (e) failing to have appropriate guarding and other safety devices on the mixing machine to prevent the type of accident suffered by Plaintiff;
 - (f) failing to have a shut-off mechanism and to timely shut off the mixing machine after Plaintiff became entangled in it;
 - (g) failing to warn Plaintiff of the dangers of the mixing machine

- (h) failing to employ an OSHA certified safety coordinator to conduct routine and necessary inspections to assure that safe practices were used and that Defendant's equipment, including the mixing machine, did not present a hazard to workers;
- (j) failing to provide Plaintiff a safe place to work;
- (k) failing to properly plan, supervise, and regulate the work as it was being performed;
- (l) failing to implement an adequate safety program for protection against unsafe working conditions and/or unsafe work practices present at the aforementioned premises; and
- (m) violating Sections 323 and 413 of the Restatement of Torts;

12. Plaintiff in no manner contributed to his injuries which were the direct and proximate result of Defendant's own carelessness and negligence.

13. At all times material hereto, Plaintiff acted with due care.

14. At all times material hereto, Defendant knew or should have known, through reasonable inspection, about the aforementioned dangerous condition.

15. At all times material hereto, Defendant should have realized the aforementioned dangerous condition involved an unreasonable risk of harm to invitees and/or workers present on the premises.

16. At all times material hereto, Defendant should have expected that these invitees would be unaware and thus unable to protect themselves against the dangerous conditions, more specifically, that Plaintiff would be unable to protect himself from the dangerous condition of the mixing machine.

17. As a direct and proximate result of the carelessness and negligence of Defendant and the defective condition of the aforementioned mixing machine, Plaintiff suffered severe and permanent injuries including, but not limited to, a crush injury to his left arm and multiple finger amputations, all of which have caused him to undergo extensive medical care and treatment and to endure great physical pain, suffering and anxiety.

18. As a direct and proximate result of the carelessness and negligence of Defendant and the defective condition of the aforementioned mixing machine, Plaintiff has in the past and will in the future continue to suffer from the above conditions as well as severe and substantial scarring, deformity, pain, shock, mental anguish, distress, humiliation, embarrassment, disfigurement, loss of well-being, severe restrictions on his ability to engage in normal activities and an inability to pursue and enjoy the normal ordinary features of life.

19. As a direct and proximate result of the carelessness and negligence of Defendant and the defective condition of the aforementioned mixing machine, Plaintiff has required and will in the future, continue to require medical care, rehabilitative care and medical care and treatment to treat and to attempt to treat his condition and has incurred and will incur substantial expenses for such care and treatment.

20. As a direct and proximate result of the carelessness and negligence of Defendant and the defective condition of the aforementioned mixing machine, Plaintiff has in the past and will be in the future, be prevented from performing his usual duties, avocations and occupations and has suffered a loss of earnings and earning capacity.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of Thirty-Five Thousand Dollars (\$35,000.00).

SWARTZ CULLETON PC

By:/s/ Anthony J. Giannetti
Anthony J. Giannetti, Esquire
Pa. Id. No. 318225

Date: November 16, 2021

VERIFICATION

I, Avery Kirksey, hereby state that I am the Plaintiff in this action and verify that the statements made in the foregoing Civil Action Complaint are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

X

Avery Kirksey