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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ALEXIS FELLOWS and

MICHELLE FELLOWS

Plaintiffs

vs.

GREAT WOLF RESORTS

HOLDINGS, INC.

Defendant.

CASE NO. 30-2019-01074110-CU-PO-CJC
[Assigned to The Honorable Richard Lee]

Unlimited Civil Case

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

JURY TRIAL DEMANDED

Complaint Filed: May 31, 2019
Trial Date: None

Plaintiffs Alexis Fellows and Michelle Fellows amend the complaint in this action and allege as follows:

PARTIES

1. Plaintiffs are residents of the County of San Luis Obispo, State of California. During the entire period of time at issue in this lawsuit, Plaintiffs resided in San Luis Obispo County, in the State of California.
2. Great Wolf Resorts Holdings, Inc. is a Delaware corporation which conducts business in California under the name Great Wolf Lodge in Anaheim, Orange County, California.

JURISDICTION AND VENUE

3. Venue is proper in this judicial district, pursuant to California Code of Civil Procedure § 395(a). Defendants reside and/or transact business in the County of Orange, and are within the jurisdiction of this Court for purposes of service of process.

FACTUAL BACKGROUND

4. Alexis Fellows is 18 years old and has an anaphylactic life-threatening allergic reaction to all forms of milk, eggs and peanuts.
5. On July 13, 2018, Alexis Fellows and her mother Plaintiff Michelle Fellows attended a cheerleading camp held at Great Wolf Lodge in Anaheim, California.
6. Plaintiff Michelle Fellows informed the staff of Great Wolf Lodge about Alexis Fellows's allergies and their severity prior to and during their stay.
7. At approximately 12:45pm, Alexis Fellows and Michelle Fellows arrived at Great Wolf Lodge.
8. At approximately 4:45pm, the camp activities paused for a dinner break. Plaintiffs went to the

Moose Loose cafeteria.

9. Plaintiff Michelle Fellows had informed the cheer camp organization prior to, upon arrival and at the cafe that Alexis Fellows had food severe food allergies and asked the staff of Great Wolf Lodge to be prepared.
10. Ms. Fellows further informed the staff that if they could not guarantee Alexis's safety, she would supply her own food. However, the staff was adamant they could accommodate her.
11. When Plaintiffs arrived at the cafeteria, Ms. Fellows again reminded the staff about Alexis's allergies. The staff seemed confused and stated that they would check with the kitchen.
12. One of the staff members then told Ms. Fellows that the staff was aware of the allergies and that someone in the kitchen was "working on it".
13. At approximately 5:30pm, Alexis still had not received her meal, and most of the other cheerleaders had already finished their meals and returned to camp.
14. Ms. Fellows noticed that the head chef was speaking with the cheer camp director, so she approached the chef to find out why there was a delay with her daughter's meal.
15. Mrs. Fellows told the head chef that Alexis had life-threatening allergies to dairy, eggs and peanuts. She asked the chef for assurances that he understood the allergies and could prepare a meal that was safe to eat.
16. He assured her that he could, in a rather arrogant way, stating that "we are all adults here."
17. The chef then approached Alexis and said, "You can eat anything on the buffet; there are none of your allergens there. Everything on the buffet is safe for you to eat."
18. Alexis replied that she normally never eats foods served at a buffet due to cross contamination and that she wanted to check with her mother first. Alexis at this time was seated with two assistant coaches and some teammates.

19. Alexis and the chef called Mrs. Fellows over to address the situation. The chef again stated that, "Everything on the buffet is safe for her to eat."
20. Mrs. Fellows said, "Wow, so the ranch dressing is dairy free?" The chef said, "No, but everything else is". Mrs. Fellows said, "What about the butter, is it dairy free?" He said, "Well no but everything else is." This exchange worried Mrs. Fellows because he clearly could not identify items containing dairy on the buffet. However, the chef adamantly assured her that there were some items on the buffet that were safe for Alexis, such as the potatoes and chicken.
21. The chef then walked Alexis over to the buffet area and proceeded to get her fresh salad and served her the chicken and potatoes from the buffet.
22. The chef then said he wanted to make her a dessert. Alexis said no thank you, but he swore it would be safe and to trust him.
23. The chef brought over a dessert consisting of a brownie, sorbet and fresh strawberries and raspberries, with some kind of drizzle on the plate, red in color with possible seeds.
24. Before Alexis took a bite of the dessert, Mrs. Fellows tried it. It seemed to Mrs. Fellows that the brownie contained chocolate chips. She asked the chef if the chocolate chips were safe for her daughter.
25. The chef replied, "There are no chocolate chips in the brownie." Based on the guarantees of the chef that it did not contain chocolate chips and the fact that he implied he made the dessert himself and knew all the ingredients, Alexis then ate the remainder of the dessert.
26. The camp activities resumed at 6:00pm. Mrs. Fellows was in her room. At 6:40pm Alexis called her mother using the assistant coach's phone and told her she could not breathe. Mrs. Fellows told her she was possibly having reaction and that she should to go with the trainer

until she got there.

27. Mrs. Fellows then raced down from her room to her daughter, who was taking her albuterol inhaler and pulled her into the lobby area away from fellow camp participants.
28. The camp trainer took Alexis's vital signs while Mrs. Fellows gave Alexis Benadryl.
29. The trainer moved Alexis to a chair, and Alexis took 2 more puffs of her inhaler. Mrs. Fellows told one of the camp employees to call 911.
30. At that point, someone from hotel staff said life guards were coming from the pool. This aggravated Mrs. Fellows because she felt that they could not provide the appropriate help and should instead be calling 911, which none of the staff was doing.
31. At 7:02pm, Mrs. Fellows noticed that the reaction was getting worse. Alexis was terrified and embarrassed because by now the hotel staff and others were beginning to gather around her.
32. Alexis was beginning to turn pale and "fade" but asked if she could wait for paramedics to administer the Epi Pen. Her mother overrode that decision because she knew from past experience that once a reaction starts, there is no going back and you MUST stay ahead of it. Alexis was fading and asked her mother to hold her while the trainer gave her the EpiPen shot. Someone must have called 911 because shortly thereafter, the paramedics arrived on the scene and took Alexis by ambulance to the University of California, Irvine Medical Center.
33. As Mrs. Fellows was walking toward the ambulance, the chef ran up to her with the ingredient label for the brownie in his hands. He showed her the ingredients of which the last item was "Vegan Chocolate Chips." The brownies were manufactured by Evolving Kneads Bakery. However, Mrs. Fellows could not see any other ingredients on the label because there were no ingredients listed to show what the chips contained. A copy of the label is attached as Exhibit A.

34. The chef insisted that the chips were vegan, but Mrs. Fellows told him that he could not be certain that they were in fact dairy free or even peanut free. He then insisted that the brownies were gluten free, even though Alexis is not allergic to gluten.
35. According to studies conducted by the FDA, 25% of chocolate labeled as only “vegan” were found to actually contain milk.¹ The FDA issued an advisory in 2017 saying that consumers should “View even products with dairy-free claims or without any mention of milk with caution, unless the manufacturer is a trusted source and/or uses dedicated equipment for making milk-free chocolate products.” *Id.*
36. Had the chef at Great Wolf Lodge truly been knowledgeable about food allergies, he would have or should have known that there was a good possibility that the brownies labeled with vegan chocolate would contain milk.
37. Instead of giving the Plaintiffs the opportunity to view the package and make the determination of the risk themselves, the chef instead not only served the contaminated product but intimated that he was preparing the dessert from scratch.
38. On the way to the hospital, Alexis could not breathe and was put on oxygen. When she arrived the hospital, she was wheeled into a hallway and was seen by an emergency room doctor almost immediately. He took one look at her and ordered an IV to give her steroids and other medications to stop the reaction.
39. Alexis was then put into a triage room with 5 other patients. Because she has a history of delayed anaphylaxis, she had to stay in the trauma room for several hours and was not released until midnight. Plaintiffs had to arrange for a ride home from the hospital.

¹ A Survey of Milk in Dark Chocolate Products,
<https://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAllergens/ucm446646.htm>

40. This was an incredibly traumatic experience, and both Plaintiffs are suffering still from all that they witnessed.
41. The chef, after having been informed of and acknowledging Alexis’s allergy, owed a duty to Alexis to avoid serving food to which she was allergic.
42. At no time did the chef at Great Wolf Lodge Anaheim state the items he gave Alexis were from an outside source; rather, the chef deceptively intimated that he himself had made the dessert and the items on the buffet.
43. The Plaintiffs trusted that the Defendant would be knowledgeable about food allergies. First, the Defendant assured Plaintiffs that this was the case. Second, the Defendant advertises itself as being a “gold standard for food allergies” and is well-known in the allergy community for being knowledgeable about food allergies.²
44. For example, on their website, Great Wolf Lodge states that “[a]t Great Wolf Lodge, all our culinary teams are well versed in common food allergies and dietary restrictions.”³
45. Furthermore, Chris Hammond, the Corporate Director of Food and Beverage is quoted on AllergyEats (a popular website catering to the food allergy community) that they made a “brand-wide effort” to be allergy-friendly and that the Great Wolf Lodge “chef or sous chef is the only person that handles the food-allergic guest’s food. They don’t go back to the kitchen and ask someone else to handle it. We don’t put food allergy

² <https://www.allergyeats.com/great-wolf-lodge-the-gold-standard-of-food-allergy-staycations/>

³ <https://www.greatwolf.com/grand-mound/dining-shopping/dining/hungry-wolf>

meals up in the window with the other food, and no one else touches it. That chef owns that meal until they personally bring it back to the guest.”⁴

46. Plaintiffs relied on the statements made by Great Wolf Lodge that the food would be safe for her to eat. The cavalier actions of the chef almost cost Alexis her life.

FIRST CAUSE OF ACTION
(Negligence)

47. Plaintiff incorporates here all foregoing paragraphs.
48. Defendant owed Plaintiffs a duty of care in ensuring that all food prepared for her was safe for her to eat.
49. Defendant owed Plaintiff Alexis a duty of care in ensuring that foods prepared for her were free of the allergens that Defendant knew she was allergic to.
50. Defendant had notice of Plaintiff Alexis’s milk allergy and nonetheless served Plaintiff Alexis food that contained her allergen.
51. Defendant failed to act as the ordinary, reasonably prudent restaurant operator would under the same or similar circumstances.
52. Defendant failed to exercise ordinary and reasonable care to ensure that the food was free of the allergen and safe for consumption.
53. Defendant failed to maintain policies and practices to ensure the safe handling of orders for people with food allergies.

⁴ <https://www.allergyeats.com/great-wolf-lodge-the-gold-standard-of-food-allergy-staycations/> See also <https://www.hotelfandb.com/articles/1182-who-s-afraid-of-the-big-healthy-wolf->

54. As a direct and proximate result of Defendant's actions, Plaintiffs have suffered both physical and emotional harm.

SECOND CAUSE OF ACTION
(Breach of Warranty)

55. Plaintiffs incorporate here all foregoing paragraphs.

56. By the purchasing, processing, preparation, serving and sale of its products, the Defendant impliedly warranted that the products were of merchantable quality. Specifically, the Defendant impliedly warranted that the food did not contain milk and the Plaintiff would not have reasonably expected to find milk in her food.

57. Defendant further impliedly warranted fitness for a particular purpose when it accepted and fulfilled an order for a patron with a known milk allergy that it should not have milk.

58. Defendant caused milk to be present in the Plaintiff's food when Defendant knew or should have known of the danger it posed to the Plaintiff who was allergic to milk.

59. The actions of the Defendant in making and serving the contaminated, dangerous and defective food to the Plaintiff were inherently defective and dangerous.

60. A person would not reasonably expect to find milk in her food after telling Defendant about a milk and nut allergy and requesting that there be no milk. Since Defendant accepted the food order and produced the food knowing about the milk allergy, a reasonable person would expect that there would be no milk in the food.

61. As a direct result of Defendant's actions, the Plaintiff Alexis has suffered both physical and emotional harm and Plaintiff Michelle Fellows suffered extreme emotional distress. Plaintiff Alexis suffered a terrifying anaphylactic reaction that

included involvement of multiple body systems and required emergency hospital care and medications. Plaintiff Alexis also suffered emotional harm, having feared that she was going die imminently and having lost trust in the safety of her environment and food.

THIRD CAUSE OF ACTION
(Violation of California CONSUMERS LEGAL REMEDIES ACT)

62. Plaintiffs incorporate by reference all previous paragraphs.
63. The Defendant violated the Consumer Legal Remedies Act Cal. Civ. Code § 1750 et seq. by misrepresenting the nature of the goods (i.e. asserting the food was milk-free).
64. On January 9, 2019, Plaintiffs sent a formal demand letter to the Defendant.
65. As an actual and proximate result of Defendant's wrongful conduct, Plaintiffs have suffered and continue to suffer severe emotional distress, and physical and mental pain and anguish, all to their damage in an amount according to proof at the time of trial.

FOURTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

66. Plaintiffs incorporate here all foregoing paragraphs.
67. The conduct of the Defendant as set forth above was so extreme and outrageous that it exceeded the boundaries of human decency and was beyond pale of conduct tolerated in a civilized society. This conduct was intended to cause severe emotional distress, or was done in reckless disregard of the probability of causing severe emotional distress.
68. As an actual and proximate result of Defendant's wrongful conduct, Plaintiffs have suffered and continue to suffer severe emotional distress, and physical and mental pain and anguish, all to her damage in an amount according to proof at the time of trial.

FIFTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)
Alexis Fellows v. Defendant

69. Plaintiffs incorporate here all foregoing paragraphs.
70. The defendant was negligent.
71. As the result of the defendant's negligence, Alexis suffered serious emotional distress.

SIXTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)
Michelle Fellows v. Defendant

72. Plaintiffs incorporate here all foregoing paragraphs.
73. The Plaintiff Michelle Fellows, as Alexis's mother, is closely related to the victim.
74. The Defendant negligently caused injury to the victim.
75. The Plaintiff Michelle Fellows was present at the scene of the injury when it occurred and was aware that the victim was being injured.
76. As a result of the injury, the Plaintiff Michelle Fellows reasonably suffered serious emotional distress beyond that which would be anticipated in a disinterested witness.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendant as follows:

1. For compensatory damages, including but not limited to, medical costs and damages for emotional distress and pain and suffering, according to proof allowed by law;
2. For punitive damages allowed by law;
3. For an award to Plaintiff of costs of suit incurred herein and reasonable attorneys' fees;
4. For an award of prejudgment and post-judgment interest; and

5. For an award to Plaintiff of such other and further legal and equitable relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests trial by jury.

DATED: 6/11/19

Respectfully submitted,

/s/ Sumangala Bhattacharya

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EXHIBIT A



Product Overview



Brownie, Double Chocolate Not Iced
Gluten-Free Sheet 1/2 Unsliced Tray Froz
(8892226)

Evolving Kneads



6.63 LB

CS: \$43.12 CS

Add to Order

Product Information

Manufacturer

Evolving Kneads Bakery

Manufacturer Product Number

004

Additional Description

This Item Received Frozen. These Moist, Rich Fudge Brownies Are Gluten Free and Vegan, but Your Customers Won't Be Able to Tell. Cut to 3x3 Yields 20 Pieces, Cut to 2x2 Yields 42 to 48 Pieces

Ingredients

Garbanzo Bean Flour, Potato Starch, Tapioca Flour, Whole Grain Sweet White Sorghum Flour, Fava Bean Flour, Granulated Sugar, Cocoa Powder, Salt, Water, Rice Bran Oil, Vanilla Extract, Vegan Chocolate Chips

GTIN

06007712790452

UPC Code

No Data Available

Ready To Eat

No

Nutritional Facts

Serving Size (2oz)
Servings Per Container 48

Amount per Serving		Calories From Fat 110	
		% Daily Value	
Total Fat	13g		65%
Saturated Fat	3.5g		20%
Trans Fat	0g		
Cholesterol	0mg		300%
Sodium	105mg		0%
Total Carbohydrate	34g		%
Dietary Fiber	3g		25%
Sugars	22g		
Protein	2g		
Vitamin A			0%
Vitamin C			0%
Calcium			0%
Iron			0%
*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.			
	Calories	2,000	2,500
Total Fat	LessThan	65g	80g
Sat Fat	LessThan	20g	25g
Cholesterol	LessThan	300mg	300mg
Sodium	LessThan	2400mg	2400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Supplemental Facts % Daily Value

None specified at this time

Allergens