

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI

FIRST JUDICIAL DISTRICT

**FILED**  
OCT 31 2016

PAUL M. NEWTON, JR.

PLAINTIFF

V.

NO. 2401-2016-225

POPEYES LOUISIANA KITCHEN, INC.,  
METRO FOODS OF GULFPORT SOUTH, INC.,  
JAMES E WINCHESTER, RODNEY SALVAGGIO, and  
"POPEYES 2420 PASS ROAD GULFPORT"

BY *[Signature]*  
CONNIE LADNER  
CIRCUIT CLERK  
D.C.

DEFENDANTS

COMPLAINT

(JURY TRIAL DEMANDED)

NOW INTO COURT, through undersigned counsel, comes plaintiff PAUL M. NEWTON, JR., and files this Complaint against defendants POPEYES LOUISIANA KITCHEN, INC., METRO FOODS OF GULFPORT SOUTH, INC., JAMES E. WINCHESTER, RODNEY SALVAGGIO, and "POPEYES PASS ROAD GULFPORT," and respectfully shows as follows:

PARTIES

1. Plaintiff Paul M. Newton, Jr. ["Newton"] is an adult resident of the First Judicial District of Harrison County, Mississippi.

2. Defendant Popeyes Louisiana Kitchen, Inc. ["Popeyes"] is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Minnesota, which is authorized to do, and which is doing, business in the State of Mississippi. Defendant Popeyes may be served through its registered agent for service of process, Corporate Creations Network Inc., whose address is 232 Market Street, Flowood, MS 39232.

3. Defendant Metro Foods of Gulfport South, Inc. ["Metro Foods"] is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Louisiana, which is not authorized to do business in the State of Mississippi and which has been administratively dissolved under the laws of the State of Mississippi. Defendant Metro Foods may be served through its registered agent for service of process, A. Albert Ajubita, whose address is Suite 1950, Energy Center, 1100 Poydras Street, New Orleans, LA 70163-1950.

4. Defendant James E. Winchester ["Winchester"] is the manager and a director of defendant Metro Foods, is an adult resident of Louisiana, who may be served with process at his business office located at 201 Plauche Court, Suite C, Harahan, LA 70123.

5. Defendant Rodney Salvaggio ["Salvaggio"] is a director of defendant Metro Foods, is an adult resident of Louisiana, who may be served with process at his business office located at 201 Plauche Court, Suite C, Harahan, LA 70123.

6. Defendant "Popeyes 2420 Pass Road Gulfport" refers to any and all unknown persons and/or unknown entities who own and/or operate the Popeyes Louisiana Kitchen franchise located at 2420 Pass Road, Gulfport, MS in the event that plaintiff's allegations of ownership or operation are incorrect or incomplete.

#### **JURISDICTION**

7. This Court has subject jurisdiction over this cause for recovery of personal injury damages.

## VENUE

8. Venue is proper in this Court under Mississippi Code § 11-11-1 inasmuch as a substantial act or omission occurred in this jurisdiction and a substantial event that caused the injury occurred in this jurisdiction.

## FACTS

9. All matters pertinent to the facts set forth herein occurred on November 1, 2015.

10. On November 1, 2015, plaintiff Newton was a drive-through customer at a Popeyes Louisiana Kitchen franchise located at 2420 Pass Road, Gulfport, MS, which franchise on information and belief is owned and operated by defendants Metro Foods, Winchester, and Salvaggio.

11. In the drive-through line, plaintiff Newton ordered, received and paid for two chicken breasts, and order of red beans and rice, a biscuit, and a soft drink. Newton's order was delivered to him in a bag which included the napkins, salt and pepper, and the utensil deemed necessary for consumption of his order.

12. Plaintiff Newton drove directly to his business office at 625 16<sup>th</sup> Street, Suite B, Gulfport, MS 39507, and began to consume his meal. The sole utensil accompanying the order was a plastic "spork," which is a combination fork and spoon, which Newton used to consume the red beans and rice.

13. Because Newton's order did not include a plastic knife, plaintiff Newton's only option for consumption of the chicken breasts was to hold a chicken breast in his hands and to tear off pieces thereof with his teeth.

14. During his consumption of his meal, plaintiff Newton became choked on a portion of chicken which lodged in his throat and other neck areas, and was unable to swallow the bite, or to spit or cough the bite out.

15. On the evening of November 1, 2015, plaintiff Newton underwent emergency surgery at Memorial Hospital at Gulfport, in Gulfport, MS to remove the said portion of chicken.

#### **CAUSE OF ACTION**

16. Defendants Metro Foods of Gulfport South, Inc., James E. Winchester, Rodney Salvaggio, and Popeyes Pass Road Gulfport owed a duty to plaintiff Newton, and owes a duty to all its customers, to provide the appropriate utensil or utensils for safe consumption of the purchased food orders.

17. Defendants Metro Foods of Gulfport South, Inc., James E. Winchester, Rodney Salvaggio, and Popeyes Pass Road Gulfport breached such duty by failure to provide the appropriate utensil or utensils such as a plastic knife to enable plaintiff Newton to cut the chicken breast into appropriate portions.

18. Plaintiff Newton subsequently determined by placing another order at the same Popeyes Louisiana Kitchen franchise located at 2420 Pass Road, Gulfport, MS for a chicken

breast and red beans that the said franchise routinely provides only a spork and does not include a knife to enable a customer to cut the chicken breast into appropriate portions.

19. Plaintiff Newton reasonably believes that defendant Popeyes Louisiana Kitchen, Inc. advises its franchisees to include only a spork in conjunction with orders of chicken breasts.

20. The failure of these defendants to provide the appropriate utensil for safe consumption of purchased food orders proximately caused the medical emergency occurring on November 1, 2015, and the injuries suffered by plaintiff Newton.

21. The failure of these defendants to provide the appropriate utensil for safe consumption of purchased food orders has caused monetary damages due to medical expenses to plaintiff Newton.

22. The injuries suffered by plaintiff Newton include, but are not limited to, the following:


- a. Medical expenses;
- b. Pain and suffering, and any other nonpecuniary damages; and
- c. Any and all such other damages as may be shown at the trial of this matter,

including but not limited to punitive damages.

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, plaintiff Newton respectfully requests a judgment of and from defendants in an amount sufficient to compensate him for the above enumerated elements of damages, as well as any such other acts giving rise to liability which may

be shown at trial of this matter, and in addition for an order requiring all franchises of Popeyes Louisiana Kitchen, Inc. to provide its drive-through customers with the appropriate utensil or utensils such as a plastic knife to enable such customers to cut their purchased food orders into appropriate portions. Plaintiff Newton further requests a Judgment that defendants to bear all costs of this action.

  
PAUL M. NEWTON, JR.  
Plaintiff

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