

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHERYL HARRIS,

Plaintiff,

Case No. 2:17- cv-10239-GAD-R
Honorable Gershwin Drain

v.

YUM! BRANDS, INC., PIZZA HUT
OF AMERICA, INC., REDBERRY
RESTO BRANDS INTL, INC.,
REDBERRY RESTO-BRANDS INC.,
and JOHN DOW ENTITIES 1
THROUGH 10, whose true names
are unknown,

ANSWER

Defendants.

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DEFENDANTS REDBERRY RESTO BRANDS INTL, INC. AND REDBERRY RESTO-

BRANDS INC.'S ANSWER TO COMPLAINT

NOW COMES THE DEFENDANTS, Redberry Resto Brands Intl, Inc. and Redberry Resto-Brands Inc., by and through their attorneys, Law Offices of Terrance Lynch, by Attorney Christine M. Greig, and in answer to plaintiff's complaint, states the follow. Defendants deny any allegation not specifically admitted:

1. Neither admitted nor denied, for lack of information to plead more definitely.
2. Neither admitted nor denied, for lack of information to plead more definitely.
3. Neither admitted nor denied, for lack of information to plead more definitely.
4. Neither admitted nor denied, for lack of information to plead more definitely.
5. Neither admitted nor denied, for lack of information to plead more definitely.
6. Neither admitted nor denied, for lack of information to plead more definitely.
7. Admitted.
8. Admitted.
9. Neither admitted nor denied, for lack of information to plead more definitely.
10. Neither admitted nor denied, for lack of information to plead more definitely.
11. Neither admitted nor denied, for lack of information to plead more definitely.
12. Neither admitted nor denied, for lack of information to plead more definitely.
13. Neither admitted nor denied, for lack of information to plead more definitely.
14. Neither admitted nor denied, for lack of information to plead more definitely.
15. Neither admitted nor denied, for lack of information to plead more definitely.
16. Neither admitted nor denied, for lack of information to plead more definitely.
17. Neither admitted nor denied, for lack of information to plead more definitely.
18. Neither admitted nor denied, for lack of information to plead more definitely.
19. Neither admitted nor denied, for lack of information to plead more definitely.
20. Neither admitted nor denied, for lack of information to plead more definitely.
21. Neither admitted nor denied, for lack of information to plead more definitely.
22. Neither admitted nor denied, for lack of information to plead more definitely.
23. Neither admitted nor denied, for lack of information to plead more definitely.
24. Neither admitted nor denied, for lack of information to plead more definitely.
25. Neither admitted nor denied, for lack of information to plead more definitely.
26. Neither admitted nor denied, for lack of information to plead more definitely.

27. Neither admitted nor denied, for lack of information to plead more definitely.

COUNT ONE: (NEGLIGENCE- AGAINST REDBERRY-DELAWARE)

28. All previous answers given by defendant are hereby incorporated by reference, in response to the incorporated paragraphs listed by plaintiff.

29. Neither admitted nor denied, for lack of information to plead more definitely.

30. Neither admitted nor denied, for lack of information to plead more definitely.

31. Neither admitted nor denied, for lack of information to plead more definitely.

32. Denied, because the allegations are untrue.

33. Neither admitted nor denied, for lack of information to plead more definitely.

34. Denied, because the allegations are untrue.

35. Neither admitted nor denied, for lack of information to plead more definitely.

36. Neither admitted nor denied, because the allegations are legal conclusions requiring no further answer of defendants, including subparts i-x.

37. Defendants admit any duties imposed by law, but denies the breach of any such duties. The remainder of the allegations are denied because they are untrue.

38. Denied because the allegations are untrue.

COUNT TWO (VICARIOUS LIABILITY- AGAINST REDBERRY-DELAWARE)

39. All previous answers given by defendant are hereby incorporated by reference, in response to the incorporated paragraphs listed by plaintiff.

40. Denied because the allegations are untrue, including all subparts.

41. Denied to the extent the paragraph alleges the breach of a legal duty. Neither admitted nor denied in all other respects based on lack of information to plead more definitely.

42. Denied because the allegations are untrue.

43. Neither admitted nor denied, for lack of information to plead more definitely.

COUNT THREE (PREMISES LIABILITY-AGAINST REDBERRY-DELAWARE)

44. All previous answers given by defendant are hereby incorporated by reference, in response to the incorporated paragraphs listed by plaintiff.
45. No contest.
46. No contest.
47. Defendants admit any duties imposed by law but deny the breach of those duties.
48. Denied because the allegations are untrue.
49. Denied because the allegations are untrue.

COUNT FOUR (NEGLIGENCE-AGAINST REDBERRY-CANADA)

50. All previous answers given by defendant are hereby incorporated by reference, in response to the incorporated paragraphs listed by plaintiff.
51. No contest.
52. No contest.
53. Defendants admit any duties imposed by law but deny the breach of those duties.
54. Denied, because the allegations are untrue.
55. Denied because the allegations are untrue.
56. Denied because the allegations are untrue.

COUNT FIVE (THIRD PARTY BENEFICIARY BREACH OF CONTRACT-AGAINST REDBERRY-DELAWARE AND REDBERRY-CANADA)

57. All previous answers given by defendant are hereby incorporated by reference, in response to the incorporated paragraphs listed by plaintiff.
58. No contest.
59. Neither admitted nor denied, for lack of information to plead more definitely.
60. Neither admitted nor denied, for lack of information to plead more definitely.

61. Defendants deny any negligence or breach of duty on its part or that of its agents and/or employees. Furthermore, defendants deny any injury sustained by plaintiff as a result of any action on the part of the defendants whatsoever.

62. Defendants deny any negligence or breach of duty on its part or that of its agents and/or employees. Furthermore, defendants deny any injury sustained by plaintiff as a result of any action on the part of the defendants whatsoever.

63. Neither admitted nor denied, for lack of information to plead more definitely.

64. Defendants deny any negligence or breach of duty on its part or that of its agents and/or employees. Furthermore, defendants deny any injury sustained by plaintiff as a result of any action on the part of the defendants whatsoever.

65. Defendants deny any negligence or breach of duty on its part or that of its agents and/or employees. Furthermore, defendants deny any injury sustained by plaintiff as a result of any action on the part of the defendants whatsoever.

COUNT SIX (NEGLIGENCE-AGAINST PIZZA HUT OF AMERICA)

66. All previous answers given by defendant are hereby incorporated by reference, in response to the incorporated paragraphs listed by plaintiff.

67. No contest.

68. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

69. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants, including subparts i-iv.

70. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

71. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

72. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

**COUNT SEVEN (THIRD PARTY BENEFICIARY BREACH OF CONTRACT-
AGAINST REDBERRY-DELAWARE AND PIZZA HUT OF AMERICA)**

73. All previous answers given by defendant are hereby incorporated by reference, in response to the incorporated paragraphs listed by plaintiff.

74. Neither admitted nor denied, for lack of information to plead more definitely.

75. Neither admitted nor denied, for lack of information to plead more definitely.

76. Defendants deny any negligence or breach of duty on its part or that of its agents and/or employees. Furthermore, defendants deny any injury sustained by plaintiff as a result of any action on the part of the defendants whatsoever.

77. Defendants deny any negligence or breach of duty on its part or that of its agents and/or employees. Furthermore, defendants deny any injury sustained by plaintiff as a result of any action on the part of the defendants whatsoever.

78. Neither admitted nor denied, for lack of information to plead more definitely.

79. Defendants deny any negligence or breach of duty on its part or that of its agents and/or employees. Furthermore, defendants deny any injury sustained by plaintiff as a result of any action on the part of the defendants whatsoever.

80. Defendants deny any negligence or breach of duty on its part or that of its agents and/or employees. Furthermore, defendants deny any injury sustained by plaintiff as a result of any action on the part of the defendants whatsoever.

COUNT EIGHT (NEGLIGENCE- AGAINST YUM!)

81. All previous answers given by defendant are hereby incorporated by reference, in response to the incorporated paragraphs listed by plaintiff.

82. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

83. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

84. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

85. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants, including subparts i-iv.

86. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

87. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

88. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

**COUNT NINE (THIRD PARTY BENEFICIARY BREACH OF
CONTRACT-AGAINST PIZZA HUT OF AMERICA AND YUM!)**

89. All previous answers given by defendant are hereby incorporated by reference, in response to the incorporated paragraphs listed by plaintiff.

90. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

91. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

92. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

93. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

94. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

95. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

96. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

COUNT TEN (NEGLIGENCE-AGAINST JOHN DOE ENTITIES 1-10)

97. All previous answers given by defendant are hereby incorporated by reference, in response to the incorporated paragraphs listed by plaintiff.

98. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

99. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

100. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

101. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

**COUNT ELEVEN (STRICT PRODUCT LIABILITY-
AGAINST JOHN DOE ENTITIES 1-10)**

102. All previous answers given by defendant are hereby incorporated by reference, in response to the incorporated paragraphs listed by plaintiff.

103. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

104. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

105. Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

106 Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

107 Neither admitted nor denied, for the reason that the allegations do not pertain to the defendants.

108 No contest.

AFFIRMATIVE DEFENSES

109. Defendants admit any duties expressed or implied by law but denies any breach of duty whatsoever.

110. Defendants deny all allegations, expressed or implied, that plaintiff was without fault as to the causation or occurrence of the incident complained of; all such allegations being untrue.

111. Defendants deny all allegations of negligence, either of omission or commission, and further denies all allegations of any other wrongdoing, as being without foundation and untrue.

112. That the claim brought by plaintiff is barred by the expiration of the applicable statute of limitations, and defendants hereby reserve the right to bring a motion for summary disposition accordingly.

113. That the accident or injuries were caused in whole or in part by plaintiff, other parties to this action, or other persons or entities. Defendants reserve the right to request plaintiff's award, if any, be reduced accordingly; and furthermore, defendants assert the right to have its liability apportioned with respect to co-defendants or other joint tortfeasors as appropriate. Furthermore, the accident or injuries were caused by negligence on the part of the plaintiff in a percentage proportion of more than fifty percent (50%); therefore, plaintiff is barred from recovering any non-economic loss damages.

114. That defendants had no notice, and could not have foreseen, the particular hazard complained of. Defendants are not responsible or liable for the alleged conditions or hazard which defendants reasonably could not have prevented.

115. Plaintiff has failed to state a cause of action against this defendants, and defendants therefore reserves the right to move for summary disposition pursuant to MCR 2.116.

116. The plaintiff had a duty to mitigate damages and failed to do so.

117. Assuming that the condition existed as described by the plaintiff, the condition of which the plaintiff complains was open and obvious and was readily observable by the plaintiff; therefore, the defendants had no duty to warn with respect to the alleged condition.


118. The plaintiff's ability to function was impaired due to the consumption of alcohol and/or a controlled substance, thus rendering the plaintiff more than 50% at fault in the occurrence of the sued upon incident, and precluding the plaintiff's recovery of damages from the defendants.

This defendants reserve the right to plead further and more specific Affirmative Defenses or Special Defenses upon discovery of facts which will allow defendants to plead more specifically.

119. Plaintiff's claims are variously barred by the doctrines of accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, waiver and estoppel, laches, payment and release, res judicata, and/or statute of limitations.

WHEREFORE, Defendants prays for a judgment in its favor, of "no cause of action," dismissal of the complaint, together with awarding of costs, attorney fees, and all other expenses incurred in the defense of this action so wrongfully brought.

LAW OFFICES OF TERRANCE LYNCH



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Dated: March 29, 2017