

STATE OF MICHIGAN
IN THE OTTAWA COUNTY CIRCUIT COURT

JOY LAMFERS,
as Next Friend of
ASPEN LAMFERS, a minor,

Plaintiff,

Case No.: 24- 7732 NO

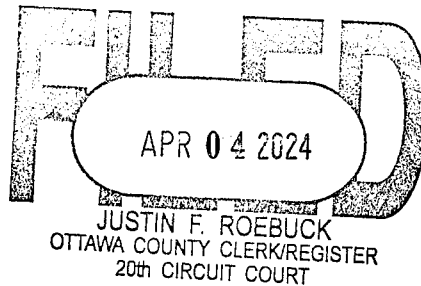
v

Hon. Jon Hulsing

MERITAGE HOSPITALITY GROUP
INC. d/b/a WENDY'S,

Defendant.

Thomas J. Worsfold (P78668)
Thomas R. Behm (P40073)
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COMPLAINT AND JURY DEMAND

A CIVIL ACTION BETWEEN THESE PARTIES OR OTHER PARTIES ARISING OUT OF THE TRANSACTION OR OCCURRENCE ALLEGED IN THE COMPLAINT HAS BEEN PREVIOUSLY FILED IN THIS COURT, WHERE IT WAS GIVEN CASE NUMBER 22-7031-NO AND WAS ASSIGNED TO JUDGE HULSING. THE ACTION IS NO LONGER PENDING.

NOW COMES Plaintiff, Joy Lamfers, as next friend of Aspen Lamfers, a minor, by and through her attorneys, Gruel Mills Nims & Pylman PLLC, and for their Complaint state as follows:



JURISDICTION AND VENUE

1. Plaintiff Joy Lamfers is the mother of Aspen Lamfers (“Aspen”).
2. At all times relevant to this complaint, Plaintiff Joy Lamfers and her daughter Aspen Lamfers resided in Ottawa County, Michigan.
3. Defendant Meritage Hospitality Group, Inc. d/b/a Wendy’s, is a for profit corporation organized under the laws of the State of Michigan and with a principal office in Kent County, Michigan.
4. Defendant Meritage Hospitality Group, Inc. d/b/a Wendy’s operates a Wendy’s restaurant at 2215 Port Sheldon Street in the city of Jenison, Ottawa County, Michigan. (“Jenison Wendy’s”).
5. This claim arose in Ottawa County, Michigan.
6. The amount in controversy exceeds \$25,000 exclusive of interest, costs, and attorney’s fees.

FILED

APR 3 2024

DEFICIENT AND UNSANITARY
FOOD SAFETY PRACTICES AMID *E. COLI* OUTBREAK

58th District Court
Grand Haven

7. Plaintiff incorporates by reference paragraphs 1 through 6 above as if fully set forth herein.
8. At all times relevant to this complaint, Defendant maintained and operated the Jenison Wendy’s, which it held out to the public as providing and selling wholesome and healthy food for consumption on the premises.
9. In late July 2022, romaine lettuce tainted with *E. coli* O157:H7 was shipped to Wendy’s fast-food restaurants throughout the Midwest, including the Jenison Wendy’s.
10. This tainted lettuce caused an outbreak of *E. coli* infections that was tracked and investigated by the Centers for Disease Control (CDC), and from July 26 to August 17, 2022,

109 infections were reported across six states, with 67 of the reported infections occurring in Michigan.

11. On July 27, 2022, during this *E. coli* outbreak, the Ottawa County Health Department (“OCHD”) visited the Jenison Wendy’s for a routine inspection.

12. As a result of the July 27, 2022 inspection, the OCHD reported that the Jenison Wendy’s had “gross insanitary conditions observed throughout the facility,” and it cited the Jenison Wendy’s for 17 separate health and food code violations including, but not limited to:

- a. moldy strawberries, spoiled tomatoes, and day-old chili that had been left out;
- b. food slicer and cutting boards left dirty from the day before;
- c. sanitizing solution too diluted to be effective;
- d. undated produce;
- e. pest harborage conditions throughout the restaurant including musty smells, food left on the ground, and water pooled throughout the premises;
- f. dirty non-food contact surfaces;
- g. premises “dirty at an excessive end of the spectrum” with mold, mildew, and built up debris throughout; and
- h. dirty plumbing fixtures throughout.¹

13. The OCHD report directed that “[e]mployees must be retrained to follow Food safety Codes and Laws to **guarantee safety for those who eat in the facility.**”²

¹Health Department Inspection Report, dated July 27, 2022, attached as **Exhibit 1**.

² **Exhibit 1** (Emphasis added).

14. The Jenison Wendy's voluntarily closed its operations to correct the health and food code violations, and it engaged in cleaning and employee training regarding food safety practices.

15. On August 8, 2022, UofM Health West Hospital reported to OCHD that it had been seeing an unusual increase in hospitalizations from Shiga toxin producing *E. coli* ("STEC") bacteria infections.

16. On August 11, 2022, OCHD identified a connection with the STEC infections and the Jenison Wendy's.

17. On August 11, 2022, OCHD returned to the Jenison Wendy's as part of its investigation of the STEC infections, and it observed the following health and food code violations:

- a. "An employee was observed touching their face and dirty surfaces in the establishment, particularly in the drive through area, and not washing their hands."
- b. "Employees were not changing their gloves after contamination occurred."
- c. "A can of pesticide (Raid) was observed stored in the kitchen at the time of the inspection. The pesticide was not [sic] labeled for use in a kitchen or food service establishment."
- d. "Two instances of cold holding temperature abuses noted: 1.) Raw beef cooler, beef at the top of the cooler was measured at 44-47 F. 2.) Condiments storage area, sour cream and salsa measured 65-75 F."
- e. "Observed some blood from the ground beef dripped across the clean surface/food storage area of the grill where food is not held (such as cooked burgers staying warm). Blood transferred via gloved hands to clean white spatula utilized for the cooked burgers that are then prepared/served without any further cooking. Employee sanitized spill on the equipment, but left the spatula in a state of contamination."
- f. "There was no hand drying provision at the drive thru hand washing area."

- g. "Hand washing sink designated for use at the drive thru area was not stocked and utilized. Staff stated they go to the other hand sinks, however issues noted with employees not hand washing. See other violations."
- h. "Many priority, priority foundation, and core violations cited along with repeated from the previous routine inspection were observed at the time of the inspection. **The large number of violations indicate that food safety is at risk, as they are cited throughout facility and relate to most aspects of food preparation and service.**"
- i. "When the hot water is utilized for the ware-washing sink there is not capacity for the hand washing prep sink to provide 100 F water. Measured approximately 65-75 F when the ware-washing sink is filling up."
- j. "Half of the cooler used to stored [sic] burger patties was not being utilized. The containers used to store raw beef were left soiled and filled with dirty water."
- k. "Employee completing ware-washing was not rinsing after washing dishes, and going straight to the sanitize step."
- l. "Two equipment items were in poor repair due to the following; 1. Cooler for raw beef was not maintaining 41 F, or below. 2. Condiment station cooler was not maintaining food at 41 F, or below."³

18. For each violation identified in Paragraph 16, above, the OCHD noted the health risks caused by each violation:

- a. "All food employees must wash their hands between tasks, prior to donning gloves, and when contamination occurs. The increased risk of contamination requires handwashing after changing tasks, touching and part of the body or clothes, or touching contaminated surfaces. **Effective handwashing is essential in minimizing the likelihood of hands becoming a vehicle of cross contamination.**"
- b. "Gloves may only be worn for one task and must be changed between tasks. **This prevents contamination of food and surfaces in the establishment.**"

³ Health Department Inspection Report, dated August 11, 2022, attached as **Exhibit 2** (emphasis added).

- c. “Pesticides not manufactured for use in a kitchen may contaminate the food or food equipment. Preventing the storage of pesticides in a food establishment prevents that misuse of a pesticide as well.”
- d. “Potentially hazardous foods (time and temperature controlled for safety) held cold must be held at or below 41F, or below to limit the growth of harmful bacteria and production of toxins.”
- e. “All equipment/food contact surfaces and utensils shall be cleaned including a wash/rinse and sanitize after contamination has occurred to reduce the chance of **potential contamination affecting ready to eat foods.**”
- f. “Provide hand drying to avoid dripping water from employees hands onto surfaces and to reduce the chance of employees utilizing their clothes to dry their hands. **Hand washing is the most important way to stop the spread of disease.**”
- g. “Hand washing sinks designed for usage must be accessible at all times and stocked for use.”
- h. “A person in charge with a working knowledge of common risk factors and food safety is essential in preventing foodborne illness. **The primary responsibility of the person in charge is to train staff to ensure compliance with Code requirements in the kitchen.**”
- i. “There must be enough capacity to meet demands for hot water, in this case to provide warm water for the hand sink. **Proper hand washing must be promoted.**”
- j. “Food contact surfaces must be clean to sight and touch. **to prevent contamination of food and food contact surfaces.**”
- k. “Rinsing must occur to **remove suds that dilute the sanitizer concentration and make sanitizing less effective.**”
- l. “Equipment must be in good repair/proper adjustment to keep all food at the correct temperature in this case.”⁴

19. After the August 11, 2022 OCHD inspection, the Jenison Wendy’s again

“voluntarily shut down due to illness complaints and potential outbreak” of *E. coli* infections.⁵

⁴ Exhibit 2 (emphasis added).

⁵ Exhibit 2.

20. Following the voluntary closure on August 11, 2022, Defendant hired, promoted and/or reassigned a new district manager and a new general manager responsible for the Jenison Wendy's.

21. The Jenison Wendy's was permitted to reopen on August 17, 2022.

ASPEN EATS AT JENISON WENDY'S
AND CONTRACTS STEC INFECTION

22. Plaintiff incorporates by reference paragraphs 1 through 21 above as if fully set forth herein.

23. On August 1, 2022, 11-year-old Aspen Lamfers went to the Jenison Wendy's for dinner after softball practice.

24. Aspen ordered and ate a "Biggie Bag" meal, which included a hamburger, chicken nuggets and French fries; Aspen did not consume any lettuce with her meal.

25. On or about August 4, 2022, Aspen began to feel sick, experiencing nausea, severe abdominal pain, a fever, and diarrhea.

26. Aspen's symptoms and pain continued to get worse, and on the morning of August 6, 2022, she had blood in her stool.

27. After Aspen's bloody stool on August 6, 2022, Aspen's mother took her to urgent care, where she was immediately sent to the emergency department at Holland Hospital.

28. Aspen's stool was tested at Holland Hospital, which confirmed Aspen had a STEC infection.

29. Aspen's food, which was sold and distributed by Defendant, was tainted with *E. coli* O157:H7.

30. By August 4, 2022, Aspen began to feel sick, experiencing nausea, severe abdominal pain, a fever, and diarrhea.

31. Aspen's symptoms continued to get worse, and on the morning of August 6, Aspen was crying and calling out in pain in her abdomen, and there was blood in her stool.

32. On August 6, 2022, Aspen's mother took her to the urgent care clinic at Holland Hospital because Aspen's symptoms were intensifying.

33. The urgent care clinic recommended that Aspen go directly to the emergency department at Holland Hospital where they had more capable testing and treatment available.

34. Aspen's stool was tested at the emergency department, and the test confirmed that she had a STEC infection.

35. Subsequent testing confirmed Aspen's STEC infection was contracted at the Jenison Wendy's.

36. After her STEC diagnosis at Holland Hospital on August 6, 2022, Aspen was given IV fluids, which made her feel significantly better, and she was discharged home.

37. Soon after returning home, however, Aspen began to feel sick again.

38. On the morning of August 7, 2022, Aspen felt the sickest she had so far, and she returned to Holland Hospital where she was immediately admitted.

39. Over the course of the next 4-days, Aspen continued to have persistent and at times severe nausea and abdominal pain.

40. Overnight on August 10-11, 2022, Aspen experienced elevated blood pressure and azotemia, an indicator of acute kidney injury.

41. On August 11, 2022, Aspen was transferred to DeVos Children's Hospital in Grand Rapids, Michigan for further treatment of her worsening condition.

42. Upon arrival at DeVos Children's Hospital, Aspen was diagnosed with hemolytic uremic syndrome ("HUS"), a known and critical complication from STEC infection.

43. Her condition continued to deteriorate, and Aspen was transferred to the pediatric ICU where she began dialysis treatment.

44. Aspen was diagnosed with stage 3 acute kidney injury/failure.

45. On August 14, 2022, Aspen had a sudden onset of neurological symptoms including:

- a. severe headache;
- b. facial droop;
- c. left side weakness; and
- d. intermittent numbness.

46. Aspen's treating physicians conducted a series of diagnostic tests, including a CT scan of her head and an EEG, which showed decreased signals from the right hemisphere of her brain.

47. On August 16, 2022, an MRI of Aspen's brain showed progressive restricted diffusion in the right hemisphere.

48. The results of the MRI, together with Aspen's worsening clinical symptoms, were consistent with acute HUS.

49. Aspen was diagnosed with acute encephalopathy—damage to the brain.

50. Aspen was considered "critically ill" during her time in the pediatric ICU at DeVos Children's hospital.

51. Aspen's severe renal failure required continuous renal replacement therapy ("CRRT").

52. Aspen's STEC infection also attacked her pancreas, which caused hyperglycemia that required an insulin drip.

53. Before Aspen's infection progressed to the point that she became non-verbal, she cried out "Why am I so sick? Why? And it's so bad!"

54. When Aspen's left side of her whole body became effectively paralyzed, she struggled to drink water from a straw.

55. During her time in the pediatric ICU, Aspen suffered from high blood pressure, anemia, and thrush.

56. Aspen also suffered severe vision impairments including;

- a. Bilateral visual field defect;
- b. Convergence insufficiency;
- c. Bilateral optic nerve edema; and
- d. Left homogeneous hemianopia.

57. On August 16, 2022, Aspen's fever spiked so high that her body had to be iced down.

58. The pressure from the swelling in her brain became so severe that she started hallucinating.

59. On August 19, 2022, Aspen started to become more responsive, though her left side weakness persisted.

60. Aspen's kidney lab results were improving in some areas and getting worse in others.

61. Although she was seeing some improvement in her condition, on the evening of August 20, 2022, Aspen suffered two significant seizures, one that lasted 10-minutes.

62. Finally, Aspen's condition slowly improved and on September 1, 2022, she was transferred for inpatient treatment at Mary Free Bed Rehabilitation Hospital (Mary Free Bed).

63. While in Mary Free Bed, Aspen's days regularly included vomiting, weakness and confusion among other challenges.

64. Aspen's inpatient rehab at Mary Free Bed targeted mobility, ambulation, ADLs, aphasia, communication and cognition.

65. Aspen underwent physical therapy, occupational therapy, speech and language therapy, nursing care, counseling, and medical supervision and management, including continued kidney dialysis.

66. On September 9, 2022, Aspen was finally discharged home with continued outpatient physical therapy, occupational therapy, and speech and language therapy.

67. After her discharge from Mary Free Bed, Aspen continued active management and monitoring by her neurology, hematology, and endocrinology teams.

68. At the time of discharge Aspen no longer required dialysis, but her kidneys were severely damaged.

69. Aspen's neuropsychologist recommended that she be assessed for an Individualized Education Plan ("IEP") at school.

70. As a result of her STEC infection, Aspen has sustained permanent injuries and life-changing medical conditions.

ASPEN'S PERMANENT IMPAIRMENTS - HYPERTENSION

71. Plaintiff incorporates by reference paragraphs 1 through 70 above as if fully set forth herein.

72. Aspen continues to exhibit hypertension.

73. Aspen has been on blood pressure medication since her hospitalization in August 2022.

74. There is no indication that Aspen's blood pressure will normalize without medication.

**ASPEN'S PERMANENT IMPAIRMENTS –
LEFT SIDED WEAKNESS AND LOSS OF STRENGTH**

75. Plaintiff incorporates by reference paragraphs 1 through 74 above as if fully set forth herein.

76. Aspen will likely experience left-sided weakness for the rest of her life.

77. The encephalopathy (brain damage) caused paralysis on the left side of Aspen's body.

78. As the swelling in her brain subsided, Aspen began to regain movement.

79. Aspen has continued to demonstrate weakness in her left side, especially in her leg.

80. Aspen has received in the past, and is likely to continue to need physical therapy for the foreseeable future to help improve and maintain her strength on her left side.

81. This left-sided weakness is consistent with the abnormal findings in the MRIs and EEG of the right hemisphere of Aspen's brain.

82. As Aspen ages, this deficit is expected to amplify.

ASPEN'S PERMANENT IMPAIRMENTS – DIABETES

83. Plaintiff incorporates by reference paragraphs 1 through 82 above as if fully set forth herein.

84. Aspen's blood sugars have been erratic since her discharge from the hospital in 2022.

85. Aspen's parents have done everything they can to try and regulate Aspen's blood sugars without medication, including promoting exercise and promoting an optimized diet.

86. In spite of Aspen's parents' best efforts, she has been diagnosed a diabetic.

87. Even with prescription medication, Aspen continues to have erratic and unpredictable blood sugar levels.

88. Diabetes creates heightened risk for heart disease, nerve damage, oral health problems, vision loss, chronic hearing loss, foot health concerns, and hearing loss.

89. Given the acute trauma to Aspen's kidneys and brain, these risks are sure to be heightened and portend tremendous health complications in Aspen's future.

ASPEN'S PERMANENT IMPAIRMENTS – SEIZURE DISORDER

90. Plaintiff incorporates by reference paragraphs 1 through 89 above as if fully set forth herein.

91. Aspen has been diagnosed with focal epilepsy.

92. Encephalopathy is a known cause of seizures, which is consistent with the course of Aspen's HUS.

93. After the initial seizures in the Pediatric ICU, EEG confirmed subclinical seizure activity in Aspen's brain.

94. Aspen likely had a seizure in September of 2022 after her hospital discharge, with her waking up in the early morning extremely hot and sweaty and suffering from urinary incontinence.

95. This episode in September of 2022 was after a single missed dose of Aspen's anti-seizure medication.

96. Aspen had another seizure in November 2022 after missing a single dose of medication.

97. While treatment can be effective in controlling seizure disorder, it only *eliminates* seizures in one-third of patients.

98. Anti-seizure medication during pregnancy is known to cause devastating birth defects.

99. While anti-seizure medication presents significant risks to fetal development, abstaining from such medication while pregnant presents its own significant risks because suffering a seizure while pregnant can cause fetal injury and even miscarriage.

100. Further complicating the pregnancy picture, anti-seizure medication can decrease the effectiveness of hormonal birth control; that is, anti-seizure medication makes an unplanned pregnancy more likely, while also creating a significant risk of serious birth defects.

101. Children with epilepsy frequently suffer from learning disabilities, emotional and behavioral disorders, and social anxieties.

102. Such side effects of epilepsy can lead to unsuccessful educational attainment, difficulty connecting and engaging with peers, inadequate social skills and poor self-esteem.

ASPEN'S PERMANENT IMPAIRMENTS – BRAIN DAMAGE

103. Plaintiff incorporates by reference paragraphs 1 through 102 above as if fully set forth herein.

104. On February 7, 2023, Aspen had another EEG study that lasted a little over two hours.

105. The results of the EEG showed slow posterior rhythm over the right hemisphere and focal slowing over the right posterior quadrant suggesting focal neuronal dysfunction.

106. On April 25, 2023, Aspen had an MRI of her brain which showed residual T2/FLIAR hyperintensity on the right side similar to her last MRI at DeVos Children's Hospital.

107. While these objective findings confirm that Aspen suffered a significant brain injury, her neuropsychological testing and her performance in school tell the true story of how devastating that brain damage is.

108. Aspen's first neuropsychological exam in October 2022 showed deficits in processing speed, executive functioning, attention and fatigue.

109. Following the October 2022 neuropsychological examination, Aspen was placed on an IEP at school.

110. Aspen's IEP requires her to be given extra time to complete her tasks, limiting homework, helping with organization and providing her with teacher notes, preferential seating, and allowing her to retake tests and quizzes as many times as necessary to achieve a passing grade.

111. In Aspen's second neuropsychological examination in May of 2023, Aspen was functioning in the low-average range, with numerous persisting deficits in cognition and fine motor control.

112. Aspen's teachers' adherence to her IEP accommodations have been inconsistent, and Aspen has struggled academically the past two school years.

113. When Aspen took the State M-Step assessment in fifth grade in the spring of 2022, she scored in the 61st percentile for reading with a 6th grade reading level, and she scored in the 70th percentile for math.

114. When Aspen took the State M-Step assessment after her STEC infection in the spring of 2023, she scored in the 26th percentile in reading with a 4th grade reading level, and she scored in the 9th percentile for math.

COUNT I – NEGLIGENCE

115. Plaintiff incorporates by reference paragraphs 1 through 114 above as if fully set forth herein.

116. At all times relevant, Defendant had a duty under statutory law, regulations, local codes, and the common law of the State of Michigan to practice proper food safety and serve only uncontaminated, healthy and wholesome food.

117. Through its acts and omissions identified by the OCHD as described above, and other acts and omissions which may be identified through the course of discovery, Defendant was negligent in one or more of the following ways:

- (a) In ignoring the most basic and obvious food safety and sanitation practices to prevent cross-contamination of its food.
- (b) In failing to keep the restaurant clean and sanitary;
- (c) In failing to properly clean and sanitize food contact utensils and surfaces;
- (d) In failing to properly clean and sanitize non-food contact utensils and surfaces;
- (e) In failing to change contaminated gloves;
- (f) In lack of employee cleanliness and hygiene, especially handwashing practices;
- (g) In deficient training its employees;
- (h) In selecting and purchasing contaminated food.

- (i) In the method and manner in which it stored food;
- (j) In the method and manner in which it prepared food;
- (k) In the method and manner in which it maintained food temperatures;
and/or
- (l) In the manner in which it served food.

118. As a natural and proximate result of Defendant's negligence, Aspen Lamfers became infected with *E. coli* O157:H7 and plaintiff is entitled to recover all damages from Defendant.

COUNT II – GROSS NEGLIGENCE

119. Plaintiff incorporates by reference paragraphs 1 through 118 above as if fully set forth herein.

120. After receiving notice of the health and food code violations from the OCHD on July 27, 2022, Defendant had a duty to train and supervise its employees to ensure strict compliance with all applicable health and food safety codes and laws to guarantee safety for those who eat in the facility.

121. Defendant committed gross negligence in failing to adequately train and supervise its employees at the Jenison Wendy's to ensure compliance with health and food safety codes and law to guarantee safety for those who eat in the facility after it had been expressly directed to do so by the OCHD.

122. As a natural and proximate result of Defendant's gross negligence, Aspen Lamfers became infected with *E. coli* O157:H7 and plaintiff is entitled to recover all damages from Defendant.

COUNT III – VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

123. Plaintiff incorporates by reference paragraphs 1 through 122 above as if fully set forth herein.

124. Defendant's sale of food to Aspen Lamfers is a transaction subject to the Michigan Consumer Protection Act, MCL 445.901, et seq.

125. The food Defendant furnished to Aspen Lamfers was contaminated with *E. coli* O157:H7.

126. By selling and allowing Aspen Lamfers to eat food contaminated with *E. coli* O157:H7, Defendant violated the Michigan Consumer Protection Act and is responsible for all of Plaintiff's damages, including a reasonable attorney's fee.

COUNT IV - STRICT LIABILITY-ADULTERATED FOOD

127. Plaintiffs incorporate by reference paragraphs 1 through 126 above as if fully set forth herein.

128. At all times relevant to this complaint, Defendant was the seller of the adulterated food product that is the subject of this action.

129. The adulterated food product that Defendant sold and served to Aspen Lamfers was, at the time it left Defendant's control, defective and unreasonably dangerous for its ordinary and expected use because it contained and/or was contaminated with *E. coli* O157:H7.

130. The adulterated food product that Defendant served Aspen Lamfers was used in the manner expected and intended and was consumed by Aspen Lamfers.

131. Defendant owed a duty of care to Aspen Lamfers to sell food that was not adulterated, that was fit for human consumption, that was reasonably safe in construction, and

that was free of pathogenic *E. coli* O157:H7 bacteria or other substances injurious to human health. Defendant breached this duty.

132. Defendant owed a duty of care to Aspen Lamfers to design, prepare, serve, and sell food that was fit for human consumption and that was safe to the extent contemplated by a reasonable consumer. Defendant breached this duty.

133. Aspen Lamfers has suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that Defendant manufactured, distributed, and/or sold, for which Defendant is strictly liable.

**COUNT V - BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
AND FITNESS FOR USE**

134. Plaintiff incorporates by reference paragraphs 1 through 133 above as if fully set forth herein.

135. Defendant impliedly warranted that its food was merchantable and fit for human consumption.

136. As it was contaminated with *E. coli* O157:H7, Defendant's food was not merchantable or fit for human consumption.

137. In furnishing contaminated and unfit food for Aspen Lamfers' consumption on the premises, Defendant breached its implied warranty of merchantability and fitness for use.

138. Defendant is liable for all of Plaintiff's damages.

DAMAGES

139. Plaintiff incorporates by reference paragraphs 1 through 138 above as if fully set forth herein.

140. As a direct and proximate result of Defendant's conduct as outlined above, Aspen Lamfers has sustained injuries and damages including but not limited to:

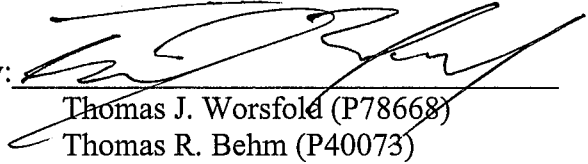
- (a) Poisoning with the STEC bacteria;
- (b) Past and future extreme pain and suffering;
- (c) Past and fright and shock, humiliation, embarrassment, emotional distress and mental anguish and suffering;
- (d) Nausea, abdominal pain, bloody vomiting, bloody diarrhea, fever, headaches, encephalopathy, migraine headaches, neurologic injury, seizures, traumatic brain injury, hemolytic uremic syndrome, pancreatitis, diabetes, and cognitive impairment;
- (e) Future health complications as a result of her trauma;
- (f) Loss of life expectancy;
- (g) Past and future hospital and medical expenses, cost of prescriptions, physical therapy and related items; and
- (h) Loss of earning capacity;
- (i) Permanent disability; and
- (j) Other economic and non-economic damages to be determined.

WHEREFORE, Plaintiff prays for a judgment against Defendant in the amount of \$20,000,000.00, plus interest, costs and actual damages and attorney's fees as provided by law, and any other relief as this Court deems just and equitable under the circumstances.

Dated: April 1, 2024

GRUEL MILLS NIMS & PYLMAN, PLLC

By:



Thomas J. Worsfold (P78668)

Thomas R. Behm (P40073)

Attorney for Plaintiffs

99 Monroe NW, Ste. 800

Grand Rapids, MI 49503

(616) 235-5500

JURY DEMAND

NOW COMES Plaintiff, by and through her attorneys, Gruel Mills Nims & Pylman PLLC,
and hereby demands a trial by jury in the above matter.

Dated: April 1, 2024

GRUEL MILLS NIMS & PYLMAN PLLC

By:



Thomas J. Worsfold (P78668)

Thomas R. Behm (P40073)

Attorney for Plaintiffs

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FILED 4/4/2024

Justin F. Roebuck

20th Circuit Court

EXHIBIT 1



miOttawa
Where You Belong

Ottawa County Dept. of Public Health
12251 James St. Suite 200
Holland, MI 49424
(616) 393-5645

ANDREW PRIEST
APRIEST@MIOTTAWA.ORG
(616) 393-5608

FOOD SERVICE INSPECTION REPORT

LICENSE NO: SFE 4170039974
ESTABLISHMENT: WENDY'S OF MICHIGAN #51
ADDRESS: 2215 PORT SHELDON ST, JENISON, MI 49428
PERSON-IN-CHARGE: Nicole Vanstee/ Connor Underwood

INSPECTION TYPE: ROUTINE INSPECTION
DATE: 07/27/2022
RESULT: FOLLOW UP REQUIRED
ENFORCEMENT: COMPLIANCE CONFERENCE

Complete violation descriptions from the 2009 FDA Food Code can be viewed online, select language: **english** **español**
In the event of an emergency (E.g. power outage, water service problems, sewage, fire, flood) close establishment and contact OCDPH prior to re-opening. For plans that may be followed to re-open after approval is received [CLICK HERE](#)

A FOLLOW-UP INSPECTION WILL OCCUR IN APPROXIMATELY 10 DAYS
Violations must be corrected by the "comply by" dates specified below in the report.
A \$255 follow up inspection fee is assessed if more than one follow up inspection is needed to verify the correction of violations.

INSPECTION VIOLATIONS

- Disaster; cessation of operations; report; emergency plans as temporary alternative procedures.*
Comply by 8/3/2022

289.6147 Disaster; cessation of operations; report; emergency plans as temporary alternative procedures.* Sec. 6147. If a food establishment is affected by fire, flooding, accidents, explosions, or other disaster that may create an imminent or substantial hazard and unless otherwise directed, all food operations shall cease and the licensee shall immediately report to the director the disaster and the effect of the disaster on the operation of the establishment. The department may recognize emergency plans that, if being followed, serve as a means to use temporary alternative procedures for continuity of operation.

No temporary plans for emergency due to plumbing/electrical issues and the health department was not notified of conditions of the flooding/electrical issue.

Imminent health hazards demand immediate corrections, such as closure and fixing health hazards observed. Immediate health risks may get the staff and public sick.

Water was turned off, lighting was turned off to fix the issue. The Georgetown Fire Department stopped and recommended voluntary closure as well. To correct, disclose plans for the future if an imminent health hazard occurs, such as closing the store to repair. Facility is no longer serving the public until corrections take place. Within 7 days will return to ensure no longer substantial threats.

FILED
APR 3 2024

58th District Court
Grand Haven

- Posting and display of license; "conspicuous place" explained.
Comply by 8/3/2022

289.4119 Posting and display of license; food establishment shall keep a copy of the current license posted and exposed in a conspicuous place for public inspection.

Food license is not posted.

Food licenses must be posted for the public.

Within 7 days, post food license.

PRIORITY - 8-404.11

Comply by 8/3/2022

(A) Ceasing operations and reporting - Permit holder shall discontinue operations and notify the regulatory authority if an imminent health hazard exists

INSPECTION VIOLATIONS

Facility ceased food operations due to issues noted with Ottawa County Department of Public Health with leaking water flowing over electrical areas. Further, gross insanitary conditions observed throughout facility.

Imminent health dangers to the public must be corrected prior to reopening. Emergencies such as large water leaks at electrical must be notified to proper authorities. Sanitary conditions for operation are required to operate a restaurant.

Facility voluntarily closed based upon recommendations by the Health Department and Fire Department. To reopen, correct the violations that are open and that are priority or priority foundation violations. Will return in 7 days to follow up.

PRIORITY - 5-205.15

Comply by 8/3/2022

(A) System maintained in good repair - a plumbing system shall; repaired according to law

Plumbing system throughout not maintained due to the following and not maintained to law:

1. Large leak in utility closet where water was streaming down electrical and buckets used to capture water were ineffective.
2. Plumbing leak at drive thru with a bucket capturing water.
3. Water leak in men's room.
4. Water leak at front service soda machines.
5. Plumbing not repaired to law at the three compartment sink. Water runs and sprayer in poor repair.

Plumbing must be safe and repaired according to law at the facility.

To correct: Repair all leaks and maintain the facility to plumbing law/code. Will review within 7 days.

PRIORITY - 3-501.18

Comply by 8/3/2022

(A) Ready-to-eat, potentially hazardous food, disposition - date marked

Expired date marks including cut lettuce, old salads, dressings beyond the discard dates on the food.

Ready-to-eat, potentially hazardous foods must be discarded by the end of the day of the discard date. Discarding the foods helps ensure that items which may be contaminated with harmful bacteria are not served to the public.

Corrected on site: Food was discarded voluntarily by the person in charge as temporary correction. Will follow up in 7 days to verify discarding continues and date marking followed.

PRIORITY - 3-101.11

Comply by 8/3/2022

Safe, unadulterated, and honestly presented

Moldy strawberries, tomatoes turned to paste/mush for salads, old chili left out from the prior day.

Food must be safe and unadulterated to guarantee no illness of the guests/patrons.

Corrected on site: Temporary correction - food was discarded voluntarily during the inspection. Person in charge must retrain staff. Will return in seven days.

PRIORITY - 4-602.11

Comply by 8/3/2022

(A) Equipment food-contact surfaces and utensils - shall be cleaned

LICENSE NO: SFE 4170039974

INSPECTION VIOLATIONS

Food equipment slicer and cutting boards left dirty from the night before. These items should be cleaned including wash rinse and sanitized every 4 hours.

To prevent a potential growth of pathogens and bacteria food contact surfaces in use should be cleaned every 4 hours when they touch potentially hazardous foods such as tomatoes and lettuce.

To correct: Retrain staff on cleaning frequency of food contact surfaces that touch potentially hazardous foods. Will return in 7 days, provide proof on retraining on cleaning and sanitizing. Temporarily the items were washed, rinsed and sanitized. Retrain within 7 days.

PRIORITY - 4-501.114**Comply by 8/3/2022**

(C) Manual and mechanical warewashing equipment, chemical sanitation - temperature, pH, concentration, and hardness - quaternary ammonium compound solution

Sanitizer solution for the wiping clothes was less than 50 ppm due to being left from the evening prior.

Quaternary ammonia (quat) must be at the concentration specified by the manufacturer to ensure food contact surfaces are effectively sanitized. Sanitizer that is too weak will not effectively kill harmful organisms which can cause illness.

To correct: Retrain staff on sanitizer solutions and changing out the solution, recommend every 4 hours at the minimum - or when soiled/dirty. Will return in 7 days to verify retraining.

PRIORITY FOUNDATION - 2-103.11**Comply by 8/3/2022**

(L) Person in Charge - duties; employees training

Due to excessive violations, employees not trained on completing food safety related tasks such as date marking, wash/rinse/sanitizing food contact surfaces, and discarding food that is no longer safe and is adulterated. Cleaning not occurring at the establishment at a frequency to guarantee any cleanliness for staff and guests.

Employees must be retrained to follow Food safety Codes and Laws to guarantee safety for those who eat in the facility.

To correct: Retrain, show proof of training within 7 days.

PRIORITY FOUNDATION - 5-205.11**Comply by 8/3/2022**

(B) Using a handwashing sink - may only be used for handwashing

Hand washing sink at front counter had dirty dishes stored in it.

Hand washing sinks are for hand washing only to promote the hand washing process.

To correct: Clean the sink and retrain staff within 7 days.

PRIORITY FOUNDATION - 3-501.17**Comply by 7/28/2022**

(A) Ready-to-eat, potentially hazardous food, date marking - on-premises preparation; prepare and hold cold

LICENSE NO: SFE 4170039974

INSPECTION VIOLATIONS

Some food in large containers at the walk in was missing date marks: Bulk spring mix lettuce, tomatoes (cut) and leaf lettuce.

Ready-to-eat, potentially hazardous foods must be date marked for no more than 7 days (including the date the item was opened/prepared as day 1) to limit the growth of harmful bacteria such as listeria.

To correct: Retrain staff on date marking within 7 days. Food was voluntarily discarded.

CORE - 6-501.111

Comply by 8/3/2022

(D) Controlling pests - premises shall be maintained free of insects, rodents, and other pests; eliminating harborage conditions

Pest harborage conditions throughout. Plumbing leaks, musty smells under counters and on floors, food left on ground from the night before, and water pooled throughout the establishment. Pests proliferate in these type of environments.

Premises must be maintained free of conditions that may lead to pest proliferation due to pests being able to spread contamination and disease.

To correct: Clean the whole facility, remove plumbing leaks and pooling water. Correct harborage conditions within 7 days.

CORE - 4-602.13

Comply by 8/3/2022

Nonfood-contact surfaces - cleaning requirement

Non-food contact surfaces throughout are dirty. This includes all monitors, handles for equipment, soda areas, and throughout.

Clean all non food contact surfaces at a frequency to preclude a large build up. This build up will contaminate clean gloves and hands if left.

To correct: Clean all items within 7 days. Retrain staff on cleaning.

CORE - 6-501.12

Comply by 8/3/2022

(A) Cleaning, frequency and restrictions - physical facilities shall be cleaned as often as necessary to keep them clean

Facility throughout is dirty at an excessive end of the spectrum. Mold and mildew noted throughout due to leaks in the plumbing not having proper repairs. Floors walls ceilings built up with debris throughout.

Cleaning must be done as often as necessary to keep them clean.

Create a cleaning schedule for the facility. Retrain staff within 7 days on cleaning nightly/daily.

CORE - 6-501.11

Comply by 8/6/2022

Repairing - physical facilities shall be maintained in good repair

Physical facility at the back break room has a desk/counter that is torn up and needs to be replaced. Further, the men's room has dry wall that is wet and needs to be repaired/replaced.

Facility must be maintained in good repair for proper usage.

To correct: Repair the facility within 7 days. Correct areas of concern. Maintain the facility.

INSPECTION VIOLATIONS

CORE - 4-501.11
Comply by 8/3/2022

(A) Good repair and proper adjustment - equipment maintenance

Equipment in poor repair includes hot holding units needing new seals on the units.

Equipment must be in good repair/adjustment for usage per the manufacturer.

To correct: Within 7 days replace or repair the seals on hot holding pull out cabinets. Maintain the equipment.

CORE - 6-501.18
Comply by 8/3/2022

Cleaning of plumbing fixtures - cleaned as often enough to keep them clean

Plumbing fixtures throughout were dirty to sight and touch.

Plumbing fixtures dirty may attract pests and contaminate gloves.

To correct: Clean all fixtures throughout within 7 days.

OVERALL INSPECTION COMMENTS

Facility voluntarily closed due to health risks and recommendations from Ottawa County Department of Public Health and Georgetown Township Fire Department. Plumbing came from Wendy's and repaired large overhead leak in utility room with the electrical issue. Other leaks were left and it was stated that tickets to fix were required to repair dry wall in the bathroom and plumbing throughout the store.

To reopen the facility please correct all priority and priority foundation violations. Further, due to there being greater than 5 p/pf violations noted, facility license is qualified for enforcement and compliance conference is required to ensure that health risks are understood and Food Law/Code is adhered to. Information regarding cost, dates and times of the conference will be disclosed in additional correspondence.

Contact Andrew Priest at apriest@miottawa.org or 616)393-5608

A follow up inspection will occur in seven days to ensure compliance to open violations.

CERTIFIED PROFESSIONALS

<u>Certified Manager</u>	<u>Type</u>	<u>Certificate Number</u>	<u>Expiration</u>
Nicole "Grace" Vanstee	SERVSAFE	21168065	10/20/26

SIGNATURES

Based on an evaluation this day, the items marked above are violations of the Michigan Food Law. Violations cited in this report shall be corrected within the timeframes specified, but within a period not to exceed 10 calendar days for priority or priority foundation items (§8-401.11) or 90 days for core items (§8-406.11). Failure to comply with this notice may result in license suspension and/or other legal action. You have the right to appeal any violations listed.



ANDREW PRIEST



PERSON IN CHARGE

ESTABLISHMENT: WENDY'S OF MICHIGAN #51
 LICENSE NO: SFE 4170039974

FILE REVIEW

Date	Service	Environmental Health Specialist Initials	Priority and Priority Foundation Violations	3-101.11 - 3-101.11 [p]	3-501.17 - 3-501.17(A) [pf]	3-501.18 - 3-501.18(A) [p]	4-501.11 - 4-501.11(A) [c]	4-501.114 - 4-501.114(C) [p]	4-602.11 - 4-602.11(A) [p]	4-602.13 - 4-602.13 [c]	5-205.11 - 5-205.11(B) [pf]	5-205.15 - 5-205.15(A) [p]	6-501.11 - 6-501.11 [c]	6-501.111 - 6-501.111(D) [c]	6-501.12 - 6-501.12(A) [c]	6-501.18 - 6-501.18 [c]	7-202.12 - 7-202.12 [p]	8-404.11 - 8-404.11(A) [p]	Certified manager requirement - 289.212	Disaster, cessation of operations, report;	Posting and display of license; "conspicu	
5/31/17	ROU	KH	1																			
6/2/17	PRO	KH	0																			
12/4/17	ROU	KH	0																			
6/27/18	ROU	KH	0																			
12/17/18	ROU	KH	0																			
6/19/19	ROU	KH	0																			
1/2/20	ROU	KH	1																			
8/2/20	ROU	KH	0																			
12/8/21	ROU	KH	0																			
7/27/22	ROU	AP	9																			

EXHIBIT 2



miOttawa
Where You Belong

Ottawa County Dept. of Public Health

12251 James St. Suite 200

Holland, MI 49424

(616) 393-5645

ANDREW PRIEST

APRIEST@MIOTTAWA.ORG

(616) 393-5608

FOOD SERVICE INSPECTION REPORT

LICENSE NO: SFE 4170039974
ESTABLISHMENT: WENDY'S OF MICHIGAN #51
ADDRESS: 2215 PORT SHELDON ST, JENISON, MI 49428
PERSON-IN-CHARGE: Colton

INSPECTION TYPE: ILLNESS COMPLAINT
DATE: 08/11/2022
RESULT: FOLLOW UP REQUIRED
ENFORCEMENT: ADMINISTRATIVE CONSULTATION

Complete violation descriptions from the 2009 FDA Food Code can be viewed online, select language:

english

español

In the event of an emergency (E.g. power outage, water service problems, sewage, fire, flood) close establishment and contact OCDPH prior to re-opening. For plans that may be followed to re-open after approval is received [CLICK HERE](#)

A FOLLOW-UP INSPECTION WILL OCCUR IN APPROXIMATELY 10 DAYS

Violations must be corrected by the "comply by" dates specified below in the report.

A \$255 follow up inspection fee is assessed if more than one follow up inspection is needed to verify the correction of violations.

INSPECTION VIOLATIONS

PRIORITY - 2-301.14

Comply by 8/12/2022

(F) When to wash - during food preparation

An employee was observed touching their face and dirty surfaces in the establishment, particularly in the drive thru area, and not washing their hands.

All food employees must wash their hands between tasks, prior to donning gloves, and when contamination occurs. The increased risk of contamination requires handwashing after changing tasks, touching and part of the body or clothes, or touching contaminated surfaces. Effective handwashing is essential in minimizing the likelihood of hands becoming a vehicle of cross contamination.

Temporarily corrected on site: Person in charge spoke to the employee. Long term retraining of all staff and proof required.

FILED

APR 8 2024

58th District Court
Grand Haven

PRIORITY - 3-304.15

Comply by 8/12/2022

(A) Gloves, use limitation - used for only one task

Employees were not changing their gloves after contamination occurred.

Gloves may only be worn for one task and must be changed between tasks. This prevents the contamination of food and surfaces in the establishment.

Temporarily corrected on site: Gloves changed and employees were spot trained. To fully correct, a more in depth training to staff should occur, where food safety courses are passed.

PRIORITY - 7-202.12

Comply by 8/12/2022

(A)(2) Conditions of use - used according to manufacturer's use directions

INSPECTION VIOLATIONS

A can of pesticide (Raid) was observed stored in the kitchen at the time of the inspection. The pesticide was not labeled for use in a kitchen or food service establishment.

Pesticides not manufactured for use in a kitchen may contaminate food or food equipment. Preventing the storage of pesticides in a food establishment prevents that misuse of a pesticide as well.

Corrected on site: The raid spray was removed from the kitchen at the time of the inspection. For further correction, retrain all staff on this item.

PRIORITY - 3-501.16**Comply by 8/12/2022***(A) Potentially hazardous food, hot and cold holding - temperature requirements*

Two instances of cold holding temperature abuses noted:

- 1.) Raw beef cooler, beef at the top of the cooler was measured at 44-47 F.
- 2.) Condiments storage area, sour cream and salsa measured 65 - 75 F.

Potentially hazardous foods (time and temperature controlled for safety) held cold must be held at or below 41F, or below to limit the growth of harmful bacteria and production of toxins.

Temporary correction: Food was discarded voluntarily by the person in charge. To fully correct, retrain staff on checking food temperatures to ensure under 41 F.

PRIORITY - 4-602.11**Comply by 8/12/2022***(A)(5) Equipment food-contact surfaces and utensils - shall be cleaned when any contamination may have occurred*

Observed some blood from the ground beef dripped across the clean surface/ food storage area of the grill where food is hot held (such as cooked burgers staying warm). Blood transferred via gloved hands to clean white spatula utilized for the cooked burgers that are then prepared/served without any further cooking. Employee sanitized spill on the equipment, but left the spatula in a state of contamination.

All equipment/food contact surfaces and utensils shall be cleaned including a wash/rinse and sanitize after contamination has occurred to reduce the chance of potential contamination affecting ready to eat foods.

To correct: Employees require retraining within 24 hours regarding cleaning surfaces that are contaminated. Proof of adequate retraining must be provided.

PRIORITY FOUNDATION - 6-301.12**Complied on 8/12/2022***(A) Hand drying provision - shall be provided with individual, disposable towels*

There was no hand drying provision at the drive thru hand washing area.

Provide hand drying to avoid dripping water from employees hands onto surfaces and to reduce the chance of employees utilizing their clothes to dry their hands. Hand washing is the most important way to stop the spread of disease.

Corrected on site: Hand drying paper towels provided.

PRIORITY FOUNDATION - 5-205.11**Comply by 8/12/2022***(A) Using a handwashing sink - accessible*

INSPECTION VIOLATIONS

Hand washing sink designed for use at the drive thru area was not stocked and utilized. Staff stated they go to the other hand sinks, however issues noted with employees not hand washing. See other violations.

Hand washing sinks designed for usage must be accessible at all times and stocked for use.

To correct: Retrain staff on hand washing and keeping this drive thru sink accessible/stocked for the staff. Convey importance of this sink within 24 hours.

PRIORITY FOUNDATION - 2-103.11

Comply by 8/12/2022

(D) Person in Charge - duties; effective hand washing

Many priority, priority foundation, and core violations cited along with violations repeated from the previous routine inspection were observed at the time of the inspection. The large number of violations indicate that food safety is at risk, as they are cited throughout facility and relate to most aspects of food preparation and service.

A person in charge with a working knowledge of common risk factors and food safety is essential in preventing foodborne illness. The primary responsibility of the person in charge is to train staff to ensure compliance with Code requirements in the kitchen.

To correct: Prove knowledge, and ability to retrain staff adequately to fulfill food safety duties. Compliance to all priority and priority foundation violations is required, especially when follow up inspections are completed.

PRIORITY FOUNDATION - 5-103.11

Comply by 8/19/2022

(B) Capacity - sufficient hot water to meet demands

When the hot water is utilized for the ware-washing sink there is not capacity for the hand washing prep sink to provide 100 F water. Measured approximately 65-75 F when the ware-washing sink is filling up.

There must be enough capacity to meet demands for hot water, in this case to provide warm water for the hand sink. Proper hand washing must be promoted.

To correct: Provide capacity to the hand wash sink when ware washing is occurring, such as an instantaneous hot water heater for this sink. Provide within 7 days. Note all other sinks were not effected, but this is a required hand washing area and needs capacity.

PRIORITY FOUNDATION - 4-601.11

Complied on 8/12/2022

(A) Equipment, food-contact surfaces - clean to sight and touch

Half of the cooler used to stored burger patties was not being utilized. The containers used to store raw beef were left soiled and filled with dirty water.

Food contact surfaces must be clean to sight and touch to prevent contamination of food and food contact surfaces.

Corrected on site: The storage pans were removed to warewashing, where they were washed/rinsed and sanitized.

CORE - 4-603.16

Comply by 8/12/2022

(A) Rinsing procedures - distinct, separate water rinse after washing

INSPECTION VIOLATIONS

Employee completing ware-washing was not rinsing after washing dishes, and going straight to the sanitize step.

Rinsing must occur to remove suds that dilute the sanitizer concentration and make sanitizing less effective.

To correct: Retrain staff, send proof of retraining.

CORE - 4-501.11
Comply by 8/21/2022

(A) Good repair and proper adjustment - equipment maintenance

Two equipment items were in poor repair due to the following:

- 1. Cooler for raw beef was not maintaining 41 F, or below.
- 2. Condiment station cooler was not maintaining food at 41 F, or below.

Equipment must be in good repair/proper adjustment to keep all food at the correct temperature in this case.

To correct: Prove these coolers are in good repair/adjustment.

OVERALL INSPECTION COMMENTS

Facility voluntarily closed due to illness complaints and potential outbreak in relation from multiple households ill and eating at a common facility/food. Further, noted priority and priority foundation violations in the report that require correction. Wendy's ownership/management team is putting together a food safety team to work in close proximity with Ottawa County Department of Public Health.

A preliminary report is signed by the management.

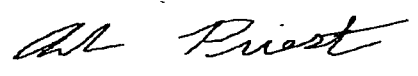
For questions, or concerns please contact Andrew Priest at 616)393-5608 or apriest@miottawa.org

CERTIFIED PROFESSIONALS

<u>Certified Manager</u>	<u>Type</u>	<u>Certificate Number</u>	<u>Expiration</u>
Nicole "Grace" Vanstee	SERVSAFE	21168065	10/20/26

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ANDREW PRIEST

Report generated in office and emailed, no signature

ENFORCEMENT HISTORY

<u>DATE</u>	<u>ENFORCEMENT STEP</u>	<u>VIOLATIONS</u>	<u>ACTION</u>
07/27/2022	COMPLIANCE CONFERENCE	2-103.11 3-101.11 3-501.17 3-501.18 4-501.114 4-602.11 5-205.11 5-205.15 8-404.11 Disaster; cessation	PROCEED