

Ice Cream Co. Sued After Listeria Recall

By **Collin Krabbe**

Law360 (August 15, 2023, 10:12 PM EDT) -- An ice cream company's recall of soft-serve desserts has been followed by a proposed class action in New York federal court alleging it misled consumers by not telling them about the risk of Listeria contamination, and cost them the money they spent on the frozen treats.

The Real Kosher Ice Cream Inc. said in its recall last week that the "on-the-go" ice cream and sorbet cups have the potential to be contaminated with Listeria monocytogenes, noting that there had been two reports of illnesses, one each in Pennsylvania and New York.

And in a **complaint** filed in the Eastern District of New York on Monday, Chaya Gurkov alleged the company does not disclose that its ice cream and sorbet products contain — or are at risk of containing — Listeria.

"Defendant is using a marketing and advertising campaign that omits from the ingredients lists that the products contain Listeria monocytogenes," the complaint said. "This omission leads a reasonable consumer to believe they are not purchasing a product with a known bacterium."

Gurkov claims to have eaten Real Kosher ice cream and sorbet products that had Listeria, including recalled products. Gurkov alleges the company broke New York General Business Law through its deceptive advertising and labeling.

The recall, which was published by the FDA on Aug. 9, said Listeria monocytogenes can cause serious and sometimes fatal infections in young children, frail or elderly people and others with weakened immune systems

The Pennsylvania Department of Agriculture tested product samples, and one tested positive for Listeria monocytogenes, the recall said. Gurkov is proposing a class of certain consumers who bought the ice cream and sorbet products in the U.S.

Gurkov brought two claims for breaking New York General Business Law as well as claims for breach of express warranty, breaking the New York State Agriculture & Market Law and negligence per se.

According to the FDA recall notice, the company has stopped the production and distribution of the soft-serve ice cream as FDA and the company investigate.

A representative for Real Kosher could not be immediately reached for comment Tuesday.

Gurkov is represented by Jason Sultzer and Daniel Markowitz of The Sultzer Law Group PC and Nick Suci III of Milberg Coleman Bryson Phillips Grossman PLLC

Counsel information for Real Kosher Ice Cream was not immediately available.

The case is Gurkov v. Real Kosher Ice Cream Inc., case number 1:23-cv-06128, in the U.S. District Court for the Eastern District of New York.

--Editing by Linda Voorhis.

