

SAMPLE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

John Doe,

Case No. 3:20 CV 5578

Plaintiff,

DEFENDANT RESPONSE TO
STATEMENT OF DISPUTED FACTS

-vs-

Jane Roe,

Defendant.

INTRODUCTION

Defendant intends to move for summary judgment. In compliance with the Court's Summary-Judgment Protocol, Defendant now provides this Response to Plaintiff's Statement of Disputed Facts.

LEGAL STANDARD

Defendant generally agrees with the legal standard articulated by Plaintiff.

DEFENDANT RESPONSE

Defendant concedes the duty and harm elements in this case. However, for the following reasons, no jury could reasonably conclude Defendant breached her duty of care or that she caused Plaintiff's injuries.

Breach

- Defendant prepared the casserole with a factory-made mix (Doc. 17 at 31).
- The mix's packaging did not indicate the mix contained peanuts (Doc. 17-3 at 1).

- The mix did, in fact, contain trace amounts of peanuts (perhaps due to cross-contamination at the factory), but Defendant cannot be charged with that knowledge. *See Ewing v. Robinson*, 125 Ames App. 4th 496, 499 (2019). The case cited by Plaintiff, *Bryant v. Bell*, is not on point.
- Thus, as a matter of law, Defendant did not breach her duty of care.

Causation

- Minutes before eating the casserole, Plaintiff ate tortilla chips dipped in oyster sauce (Doc. 20 at 14).
- Plaintiff allegedly experienced symptoms only after he ate the casserole (*id.* at 15), but exposure to shellfish typically does not produce symptoms until several minutes have passed (Doc. 17-5 at 2).
- According to experts, Plaintiff's symptoms correlate most closely with shellfish exposure, not peanut exposure (Doc. 17-6 at 11; Doc. 22 at 9; Doc. 29 at 22).
- Plaintiff previously ate peanuts with only minimal symptoms, but he was hospitalized in 2016 after attending a lobster bake in Nantucket (Doc. 20 at 55).
- Therefore, a reasonable jury could conclude only that the oyster sauce, not the casserole, caused Plaintiff's injuries.