1	William D. Marler, WSBA #17233
Joshua A. Fensterbush, WSBA #51109 2 Marler Clark	Joshua A. Fensterbush, WSBA #51109 Marler Clark
3	1012 First Avenue 5 th Floor
3	Seattle, WA 98104
4	
5	
6	IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7	IN AND FOR THE COUNTY OF MASON
8	NANCY GREEN, an Individual,) NO.
9	
10	
	vs. COMPLAINT FOR PERSONAL
11) INJURY AND DAMAGES
12	FRED MEYER, Inc., an Ohio
13	
14	Defendant.)
15	COMES NOW the plaintiff, NANCY GREEN, by and through her attorneys of record, the
16	
17	MARLER CLARK law firm, and alleges as follows:
18	I. <u>PARTIES AND JURISDICTION</u>
	1.1 The plaintiff, NANCY GREEN ("the plaintiff"), resides in Mason County,
19	Washington.
20	
21	
	COMPLAINT FOR PERSONAL INJURY AND DAMAGES - 1 MARLER CLARK Attorneys at Law
	1012 First Avenue, Fifth Floor Seattle, Washington 98104-1008

Tel. (206) 346-1888 Fax. (206) 346-1898

10

11

12

13

14

15

16

17

18

19

20

1.3 This court has jurisdiction, and venue is proper, because the incident complained of herein occurred in Mason County, Washington, and because the defendant at all times relevant was doing business within the state of Washington.

II. FACTS

The Outbreak

- 2.1 The Washington State Department of Health (WSDH) is currently investigating a cluster of at least eighteen *Salmonella* infections associated with pre-cut watermelon, cantaloupe, or mixes containing the two fruits sold at QFC, Fred Meyer, Rosauers, and Central Market establishments in Washington and Oregon.
- 2.2 The eighteen infected persons are from King (5), Mason (1), Pierce (1), Snohomish (7), Thurston (1), and Yakima (1) counties in Washington, and two individuals from Oregon. Lab results identified *Salmonella* Newport as the cause of infection.
- 2.3 On December 1, the WSDH advised persons who purchased the pre-cut fruits on or about October 25 up to December 1, 2017 to not eat the products or throw them away.

21

COMPLAINT FOR PERSONAL INJURY AND DAMAGES - 2

2.4 The WSDH is working with state and federal partners to determine the source of the fruit, including whether there may be additional retailers where related products were sold.

The Salmonella Bacteria:

- 2.5 The term *Salmonella* refers to a group or family of bacteria that variously cause illness in humans. The taxonomy and nomenclature of *Salmonella* has changed over the years and are still evolving. Currently, the Centers for Disease Control and Prevention (CDC) recognizes two species, which are divided into seven subspecies. These subspecies are divided into over fifty serogroups based on somatic (O) antigens present. The most common *Salmonella* serogroups are A, B, C, D, E, F, and G. Serogroups are further divided into over 2,500 serotypes. *Salmonella* serotypes are typically identified through a series of tests of antigenic formulas listed in a document called the Kauffmann-White Scheme published by the World Health Organization Collaborating Centre for Reference and Research on *Salmonella*.
- 2.6 Salmonella is an enteric bacterium, which means that it lives in the intestinal tracts of humans and other animals, including birds. Salmonella bacteria are usually transmitted to humans by eating foods contaminated with animal feces or foods that have been handled by infected food service workers who have practiced poor personal hygiene. Contaminated foods usually look and smell normal, and are often of animal origin, such as beef, poultry, milk, or eggs, but all foods, including vegetables, may become contaminated. Many raw foods of animal origin are frequently contaminated, but thorough cooking kills Salmonella.

Medical Complications of Salmonellosis:

- 2.7 The term reactive arthritis refers to an inflammation of one or more joints, following an infection localized at a site distant from the affected joints. The predominant site of the infection is the gastrointestinal tract.
- 2.8 Reactive arthritis can be post infection, meaning that the infection may not be active when diagnosed. Several bacteria, including *Salmonella*, can cause reactive arthritis. And although the resulting joint pain and inflammation can resolve completely over time, permanent joint damage may occur.
- 2.9 The reactive arthritis associated with Reiter's may develop after a person eats food that has been tainted with bacteria. In a small number of persons, the joint inflammation is accompanied by conjunctivitis (inflammation of the eyes), and uveitis (painful urination). This triad of symptoms is called Reiter's Syndrome. *Salmonella* is one of the most common gastrointestinal bacteria involved with Reiter's Syndrome.
- 2.10 Salmonella is also a cause of a condition called post-infectious irritable bowel syndrome (PI IBS), which is a chronic disorder characterized by alternating bouts of constipation and diarrhea, both of which are generally accompanied by abdominal cramping and pain. In one recent study, over one-third of PI IBS suffers had experienced symptoms of IBS for more than ten years, with their symptoms remaining fairly constant over time.

NANCY GREEN's Salmonella Infection:

2.11 The plaintiff consumed pre-cut cantaloupe on November 1, 2017, which she purchased from the defendant's Shelton, Washington establishment.

COMPLAINT FOR PERSONAL INJURY AND DAMAGES - 4

- 2.12 On November 2, 2017, the plaintiff began experiencing symptom onset, including nausea, vomiting, diarrhea, stomach cramps, fever, muscle aches, fatigue, and headaches.
- 2.13 The plaintiff sought medical treatment for her symptoms and, during the course of her treatment, she submitted a stool culture that tested positive for *Salmonella*.
- 2.14 The plaintiff was subsequently contacted by the Mason County Department of Public Health, who interviewed the plaintiff regarding her illness.

III. CAUSE OF ACTION

STRICT PRODUCT LIABILITY

- 3.1 The defendant is a product manufacturer within the meaning of the Washington Product Liability Act ("WPLA" or "the Act"), RCW 7.72.010(2), and manufactured the food that caused the plaintiff's *Salmonella* infection and related injuries. The *Salmonella*-contaminated food consumed by the plaintiff was a product within the meaning of the WPLA, RCW 7.72.010(3).
- 3.2 Under the WPLA, the defendant owed a duty to the plaintiff to manufacture a product that was reasonably safe in construction, did not materially deviate from applicable design specifications, or otherwise deviate in some material way from otherwise identical units in the defendant's product line.
- 3.3 Under the WPLA, the defendant owed a duty to the plaintiff to manufacture a product that conformed to their implied warranties, as defined by RCW Ch. 62A, including, but not limited to, the implied warranty that defendant's food was fit for human consumption.
- 3.4 The food manufactured and sold by the defendant that caused plaintiff's *Salmonella* infection, and all associated legal injuries, was not reasonably safe in construction, and did not

COMPLAINT FOR PERSONAL INJURY AND DAMAGES - 5

conform to defendant's implied warranties, because it was contaminated and adulterated with, among other things, *Salmonella*

3.5 Because the defendant's food was not reasonably safe in construction, and did not conform to defendant's implied warranties, the defendant is strictly liable to the plaintiff for the harm proximately caused by the contaminated food.

IV. CAUSE OF ACTION

NEGLIGENCE

- 4.1 The defendant manufactured, distributed and sold a product that was not reasonably safe as designed or manufactured, within the meaning of the WPLA, RCW 7.72.030(1).
- 4.2 The defendant was negligent in manufacturing, distributing, and selling a product that was not reasonably safe because adequate warnings or instructions were not provided including, but not limited to, the warning that the food may contain *Salmonella* bacteria, and thus should not be provided for the purpose of human consumption.
- 4.3 The defendant had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of their food products including, but not limited to, the Federal Food, Drug, and Cosmetics Act, which bans the manufacture, sale, and distribution of any "adulterated" food. The defendant breached this duty.
- 4.4 The plaintiff is among the class of persons designed to be protected by the statutory and regulatory provisions pertaining to the defendant's manufacture, distribution, storage, labeling, and sale of their food.
 - 4.5 The defendant owed a duty to the plaintiff to use reasonable care in the manufacture,

COMPLAINT FOR PERSONAL INJURY AND DAMAGES - 6

distribution, and sale of its product, to prevent contamination by *Salmonella*. The defendant breached this duty.

4.6 As a result of the defendant's negligence, the plaintiff suffered severe and permanent personal injuries, as well as economic loss.

V. DAMAGES

5.1 The plaintiff has suffered general, special, incidental, and consequential damages as a direct and proximate result of the acts and omissions of the defendant, which damages shall be fully proven at the time of trial, including, but not limited to: damages for loss of enjoyment of life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress, and future emotional distress; pharmaceutical expenses, past and future; wage and other economic damages loss; loss of consortium; and other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays, having stated her claims in full, request judgment by this court against the defendants as follows:

- 1. For general damages, in amounts to be proven at the time of trial;
- 2. For special damages, in amounts to be proven at the time of trial;
- 3. For costs, including their reasonable attorney fees; and
- 4. For such other and further relief as the court deems just and equitable in the circumstances.

COMPLAINT FOR PERSONAL INJURY AND DAMAGES - 7

The plaintiff further requests that the court award the plaintiff the opportunity to amend or modify the provisions of this complaint as necessary or appropriate after additional or further discovery is completed, and after all appropriate parties have been served. DATED this 5th day of December, 2017. MARLER CLARK, L.L.P., P.S. William D. Marler, WSBA #17233 Joshua A. Fensterbush, WSBA #51109 Attorneys for Plaintiff

COMPLAINT FOR PERSONAL INJURY AND DAMAGES - 8