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1 Jonathan V. O'Steen, Esq. – State Bar #024043
2 **O'STEEN & HARRISON, PLC**
3 300 W. Clarendon Ave., Suite 400
4 Phoenix, Arizona 85013-3424
5 (602) 252-8888
6 josteen@vanosteen.com
7 **Attorneys for Plaintiff**

8 William D. Marler, Esq. – *Pro Hac Vice* Pending
9 **MARLER CLARK**
10 1301 Second Ave., Suite 2800
11 Seattle, Washington 98101
12 (206) 346-1876
13 bmarler@marlerclark.com
14 **Attorneys for Plaintiff**

15 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
16 **IN AND FOR THE COUNTY OF MARICOPA**

17 MELANI BEAUREGARD, on behalf of
18 ALEXANDREE-ANA BEAUREGARD,
19 minor,
20
21 Plaintiff,
22
23 v.
24 FEMEX, LLC, an Arizona limited liability
25 company, d/b/a/ Federico's Mexican Food,
26
27 Defendant.

28 NO.
CV2013-010682
COMPLAINT
Tort/Products Liability
1. Strict Products Liability
2. Negligence
3. Negligence Per Se
4. Breach of Warranties
DEMAND FOR JURY TRIAL

29 Plaintiff, Melani Beauregard, by and through undersigned counsel, and for her claims
30 against the Defendant, alleges as follows:

PARTIES

- 31 1. Plaintiff MELANI BEAUREGARD resides in Maricopa County, Arizona. Plaintiff
32 MELANI BEAUREGARD is the mother and legal guardian of ALEXANDREE-ANA
33 BEAUREGARD.

1 meal purchased at Defendant FEMEX, LLC's restaurant several days prior.
2 Symptoms initially consisted of severe abdominal cramps, diarrhea and other
3 gastrointestinal problems.

4 9. ALEXANDREE-ANA BEAUREGARD's symptoms became worse over the course of
5 the next several days. Ultimately, she was hospitalized at Phoenix Children's
6 Hospital for treatment of her E. coli O157:H7 infection from Thursday, August 1,
7 2013 to Tuesday, August 6, 2013.

8
9 10. ALEXANDREE-ANA BEAUREGARD continues to suffer from severe symptoms of
10 the E. coli O157:H7 infection that she acquired from food manufactured and sold by
11 Defendant FEMEX, LLC.

12 **COUNT ONE**
13 **STRICT PRODUCTS LIABILITY**

14 11. Plaintiff incorporates herein by reference the allegations in paragraphs 1–10.

15 12. Defendant FEMEX, LLC is a product manufacturer, distributor and seller of the
16 product that injured ALEXANDREE-ANA BEAUREGARD.

17 13. Defendant FEMEX, LLC owed a duty to ALEXANDREE-ANA BEAUREGARD to
18 manufacture and distribute a product that was reasonably safe in construction, that
19 did not materially deviate from applicable design specifications, and that did not
20 otherwise deviate in some material way from otherwise identical units in its product
21 line, but failed to do so.

22
23 14. Defendant FEMEX, LLC owed a duty to ALEXANDREE-ANA BEAUREGARD to
24 manufacture and distribute a product that conformed to its express warranties, i.e.,
25 that the food was, among other things, not adulterated and was fit for human
26 consumption, but failed to do so.

1 15. Defendant FEMEX, LLC owed a duty to ALEXANDREE-ANA BEAUREGARD to
2 manufacture and distribute a product that conformed to its implied warranties,
3 including, but not limited to, the implied warranty that the food was for human
4 consumption, but failed to do so.

5 16. The product that infected ALEXANDREE-ANA BEAUREGARD with E. coli O157:H7
6 was not reasonably safe in construction, and did not conform to Defendant FEMEX,
7 LLC's express or implied warranties, because it was contaminated and adulterated
8 with, among other things, E. coli O157:H7.

9 17. Because the product was not reasonably safe in construction, and did not conform
10 to Defendant FEMEX, LLC's express or implied warranties, Defendant is strictly
11 liable to Plaintiff for the harm proximately caused by the contaminated food.

12 18. As a direct and proximate result of Defendant FEMEX, LLC's culpable acts and
13 omissions, ALEXANDREE-ANA BEAUREGARD suffered severe and permanent
14 personal injuries, as well as substantial economic loss.

15
16
17 **COUNT TWO**
18 **NEGLIGENCE**

19 19. Plaintiff incorporates herein by reference the allegations in paragraphs 1–18.

20 20. Defendant FEMEX, LLC breached duties of reasonable care that it owed to
21 ALEXANDREE-ANA BEAUREGARD by manufacturing, distributing and selling a
22 product that was not reasonably safe.

23 21. Defendant FEMEX, LLC was negligent in manufacturing, distributing and selling a
24 product that was not reasonably safe because it was contaminated with E. coli
25 O157:H7 and because adequate warnings or instructions were not provided,
26 including, but not limited to, the warning that the product may contain, or be
27 contaminated by, E. coli O157:H7.
28

1 22. Defendant FEMEX, LLC had a duty to comply with all applicable federal and state
2 statutory and regulatory provisions that pertained or applied to the manufacture,
3 distribution, storage, labeling and sale of food products, including, but not limited to,
4 the Federal Food, Drug, and Cosmetics Act, which bans the manufacture, sale and
5 distribution of any "adulterated" food; but failed to do so. ALEXANDREE-ANA
6 BEAUREGARD is among the class of persons intended to be protected by the
7 statutory and regulatory provisions pertaining to Defendant's manufacture,
8 distribution, storage, labeling and sale of food.

10 23. Defendant FEMEX, LLC had a duty to use supplies and/or raw materials in
11 producing and distributing products that were in compliance with applicable federal,
12 state, and local laws, ordinances and regulations; that were from safe and reliable
13 sources; that were clean, wholesome and free from contamination and adulteration;
14 and that were safe for human consumption, but failed to do so.

16 24. The wrongful acts alleged above were each substantial and proximate causes of
17 Plaintiff's injuries and damages.

18 **COUNT THREE**
19 **NEGLIGENCE *PER SE***

20 25. Plaintiff incorporates herein by reference the allegations in paragraphs 1–24.

21 26. Defendant FEMEX, LLC owed ALEXANDREE-ANA BEAUREGARD a duty to
22 comply with all statutory and regulatory provisions that pertained or applied to the
23 manufacture, distribution, storage, labeling and sale of its food products (including
24 the Recalled Product), including the applicable provisions of the federal Food, Drug
25 and Cosmetic Act, and the Arizona adulterated food statutes (A.R.S. § 36-901 *et*
26 *seq.*)
27

1 27. The food that Defendant FEMEX, LLC manufactured and sold, and that
2 ALEXANDREE-ANA BEAUREGARD consumed, was "adulterated" within the
3 meaning of the Federal Food, Drug and Cosmetic Act, and the Arizona adulterated
4 food statutes (A.R.S. § 36-901 *et seq.*), because (*inter alia*): it contained a
5 deleterious substance that rendered it injurious to health; it consisted in whole or in
6 part of a diseased, contaminated, filthy, putrid or decomposed substance, or was
7 otherwise unfit for food; and/or it had been produced, prepared, packaged or held
8 under insanitary conditions whereby it became unwholesome or injurious to health.

10 28. Defendant FEMEX, LLC violated federal, state and local food safety regulations by
11 its manufacture and sale of adulterated food.

12 29. The federal, state and local food safety regulations applicable here, and as set forth
13 above, establish a positive and definite standard of care in the manufacture and
14 sale of food, and the violation of these regulations constitute negligence *per se*.

15 30. ALEXANDREE-ANA BEAUREGARD was in the class of persons intended to be
16 protected by these statutes and regulations

17 31. The wrongful acts alleged above were each substantial and proximate causes of
18 Plaintiff's injuries and damages.

19
20 **COUNT FOUR**
21 **BREACH OF WARRANTIES**

22 32. Plaintiff incorporates herein by reference the allegations in paragraphs 1–31.

23 33. Defendant FEMEX, LLC is liable to Plaintiff for breaching express and implied
24 warranties made to her, or for which Plaintiff was the intended third-party
25 beneficiary, with respect to the product that caused ALEXANDREE-ANA
26 BEAUREGARD's infection and resulting injuries.
27
28

1 34. The contaminated product was not fit for the uses and purposes intended by
2 Defendant FEMEX, LLC, as represented by Defendant, and thus was in breach of
3 implied warranties of fitness for its intended use.

4
5 35. The wrongful acts alleged above were each substantial and proximate causes of
6 Plaintiff's injuries and damages.

7 **DAMAGES**

8 36. ALEXANDREE-ANA BEAUREGARD has suffered general and special, incidental
9 and consequential damages as the direct and proximate result of the acts and
10 omissions of Defendant FEMEX, LLC in an amount in excess of the minimum
11 jurisdictional limits of the Court, which damages shall be fully proven at the time of
12 trial. These damages include, but are not limited to: damages for general pain and
13 suffering; damages for loss of enjoyment of life, both past and future; medical and
14 medical related expenses, both past and future; travel and travel-related expenses,
15 past and future; emotional distress, and future emotional distress; pharmaceutical
16 expenses, past and future; related wage and lost earning capacity damages; and all
17 other ordinary, incidental and consequential damages as would be anticipated to
18 arise under the circumstances.

19
20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff prays for the following relief:

- 22
- 23 1. That the Court award Plaintiff judgment against Defendant, in such sums as
24 shall be determined to fully and fairly compensate Plaintiff for all general, special,
25 incidental and consequential damages incurred, or to be incurred, as the direct
26 and proximate result of the acts and omissions of Defendant, in an amount to be
27 proven at trial.
 - 28 2. That the Court award plaintiff her costs, disbursements and reasonable
attorneys' fees incurred.

- 1 3. That the Court award Plaintiff the opportunity to amend or modify the provisions
- 2 of this Complaint as necessary or appropriate after additional or further
- 3 discovery is completed in this matter, and after all appropriate parties have been
- 4 served; and
- 5
- 6 4. That the Court award such other and further relief as it deems necessary and
- 7 proper in the circumstances.

8 **JURY DEMAND**

9 Plaintiff demands a trial by jury on all issues so triable with the maximum number of

10 jurors permitted by law.

11 DATED this 6th day of August 2013.

12 **O'STEEN & HARRISON, PLC**

13 

14 Jonathan V. O'Steen
15 300 W. Clarendon Ave., Suite 400
16 Phoenix, Arizona 85013-3424
17 Attorneys for Plaintiff

18 **MARLER CLARK**
19 William D. Marler

20 Attorneys for Plaintiff

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