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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN FRANCISCO**

13
14 JESSIE WITHERS,
15 Plaintiff,
16 v.

17 ATHERSTONE FOODS INC., dba,
GLASS ONION CATERING &
18 GOURMET FOODS, INC.; and DOES
1-20, inclusive,
19 Defendants.
20

Case No.:

COMPLAINT FOR PERSONAL INJURIES

IMAGED FILE

JURY TRIAL DEMANDED

Trial Date: None set

21 JESSIE WITHERS, by and through her attorneys of record, allege as follows:

22 **PARTIES**

23 1. The plaintiff JESSIE WITHERS is a resident of San Francisco, San Francisco
24 County, California.

25 2. The Atherstone Foods Inc., d.b.a., Defendant Glass Onion Catering and
26 Gourmet Foods, Inc., (Glass Onion) is a corporation organized and existing under the laws of
27 the State of California, and based in 200 West Ohio Avenue, Richmond, California. At all
28

1 times relevant to the allegations contained in this complaint, Glass Onion was registered to
2 do business, and did conduct business, in the State of California. Glass Onion is a gourmet
3 caterer and also a manufacturer and seller of prepackaged, “grab and go” items sold at a
4 variety of retail locations. Glass Onion manufactured and sold the prepackaged food
5 products that are the subject of this action at Trader Joe’s.

6 3. The true names and capacities, whether individual, corporate, associate or
7 otherwise, of Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiffs,
8 who therefore sue said Defendants by such fictitious names. Plaintiffs will amend this
9 complaint to show their true names and capacities when the same have been ascertained.

10 4. Plaintiffs are informed and believe and thereon allege that at all time herein
11 mentioned, Defendants, and each of them, were the agents or employees of their co-
12 defendants and were acting within the scope and course of their agency and employment,
13 and with the permission and consent of the other co-defendants, and that said Defendants,
14 and each of them, are responsible in some manner for the events and happenings herein
15 referred to or otherwise proximately caused the acts, omissions or events hereinafter alleged.

16 **JURISDICTION AND VENUE**

17 5. This Court is vested with jurisdiction over the defendants, because the
18 defendants are corporations incorporated in the State of California, and are doing business
19 within the State of California.

20 6. The venue of this action is proper in San Francisco County, because the
21 defendants transacted business in this county.

22 **FACTS**

23 **The Health Department Investigation**

24 7. A total of 32 individuals infected with a rare strain of *E. coli* O157:H7 have
25 been reported from four states. The number of ill persons identified in each state is as
26 follows: Arizona (1), California (27), Washington (3) and Texas (1).

27 8. Among persons for whom information is available, illness onset dates range
28 from September 29, 2013 to October 26, 2013. Ill persons range in age from 4 years to 78

1 years, with a median age of 28 years. Sixty-one percent of ill persons are female. Among 21
2 persons with available information, 6 (28%) reported being hospitalized. Two ill persons
3 have developed HUS, and no deaths have been reported.

4 9. Epidemiologic and traceback investigations conducted by officials in local,
5 state, and federal public health, agriculture, and regulatory agencies indicate that two ready-
6 to-eat salads, Field Fresh Chopped Salad with Grilled Chicken and Mexicali Salad with Chili
7 Lime Chicken, produced by Glass Onion are the likely source of this outbreak of *E. coli*
8 O157:H7 infections.

9 10. On November 10, 2013, Glass Onion voluntarily recalled numerous ready-to-
10 eat salads and sandwich wrap products that may be contaminated with *E. coli* O157:H7.

11 ***E. coli* O157:H7**

12 11. *Escherichia coli* is the name of a common family of bacteria, most members of
13 which do not cause human disease. The *E. coli* O157:H7 bacteria, unlike the vast majority
14 of *E. coli* family members, are pathogenic. Specifically, *E. coli* O157:H7 can cause painful,
15 bloody diarrhea (hemorrhagic colitis) in humans.

16 12. After someone ingests a sufficient quantity of *E. coli* O157:H7 (also known as
17 the infectious dose), the bacteria attaches to the inside surface of the large intestine and
18 initiates an inflammatory reaction. The result is the bloody diarrhea and abdominal cramps
19 characteristic of this intestinal illness.

20 13. A wide spectrum of disease is possible as a result of an *E. coli* O157:H7
21 infection, extending from mild, and non-bloody diarrhea, to severe diarrhea that is grossly
22 bloody and accompanied by abdominal pain.

23 14. While the acute symptoms usually resolve without complications within seven
24 to ten days, with further convalescence taking up to weeks, an *E. coli* O157:H7 infection can
25 also develop into hemolytic uremic syndrome, a life-threatening condition for which there is
26 no known treatment.

27 **Plaintiff's *E. coli* O157:H7 Infection**

28 15. JESSIE WITHERS consumed Glass Onion's salad product on or about

1 October 13, 2013 that she purchased at a Trader Joe's retail outlet, and first exhibited
2 symptoms on or about October 21, 2013 which including severe diarrhea and bloody stool.

3 16. JESSIE WITHERS was admitted to CMPC ER on or about October 22 and 24,
4 2013 for a variety of procedures.

5 17. On or about October 25, 2013 JESSIE WITHERS was informed that her stool
6 culture was positive for *E. coli* O157:H7. Shortly thereafter, the County of San Francisco
7 and the State of California Department of Health informed JESSIE WITHERS that her stool
8 culture was positive for *E. coli* O157:H7. They confirmed that the strain of *E. coli* O157:H7
9 that had infected JESSIE WITHERS was an indistinguishable match to the Glass Onion
10 outbreak pattern - 1310CAEXH-1 PFGE PATTERN: EXHX01.0589 /EXHA26.3182.

11 18. JESSIE WITHERS continues to suffer from the symptoms of her severe
12 infection by *E. coli* O157:H7, as a direct and proximate result of consuming Glass Onion's
13 contaminated food products.

14 **FIRST CAUSE OF ACTION**

15 **STRICT LIABILITY CLAIM**

16 **(Violation of California's Sherman Food, Drug, and Cosmetic Laws, California Health
17 and Safety Code ' 109875, et seq.)**

18 19. Defendants are in the business of manufacturing and selling food products,
19 including the contaminated product that is at issue herein.

20 20. Defendants manufactured and sold food that was defective at the time it left
21 defendant's control in that it was contaminated with *E. coli* O157:H7, which rendered it
22 adulterated, unwholesome, injurious to health and unfit for human consumption. This
23 defective condition created an unreasonable risk to people such as the plaintiffs.

24 21. It was reasonably foreseeable to defendants that the contaminated food, when
25 put to its reasonably foreseeable use, would expose people, such as the plaintiffs, to harm.

26 22. Defendants prepared, distributed and sold food that was adulterated and
27 contaminated with *E. coli* O157:H7 bacteria, by which the food was rendered adulterated,
28 unwholesome and injurious to health, in violation of California's Sherman Food, Drug and

1 Cosmetic Laws, California Health and Safety Code Sections 109875, et seq. and particularly
2 110620, and similar federal health and safety standards and regulations.

3 23. Plaintiffs have been injured by their consumption of food, which was
4 adulterated, contaminated, unwholesome, and injurious to their health and unfit for human
5 consumption.

6 **SECOND CAUSE OF ACTION**

7 **BREACH OF IMPLIED WARRANTY CLAIM**

8 24. Defendants impliedly warranted that the food products were of merchantable
9 quality, and were safe and fit for human consumption. Plaintiffs purchased and consumed
10 the food product, and reasonably relied upon the skill and judgment of defendants as to
11 whether the products were of merchantable quality and fit for human consumption.

12 25. Defendants breached these implied warranties in that defendants' food products
13 were contaminated with *E. coli* O157:H7. As a direct, legal and proximate result of the
14 breach of implied warranties, plaintiffs suffered and may continue to suffer injury, harm,
15 special damages and economic loss.

16 **THIRD CAUSE OF ACTION**

17 **NEGLIGENCE CLAIM**

18 26. Defendants were negligent in manufacturing, distributing and selling a product
19 which was not reasonably safe because adequate warnings or instructions were not provided,
20 including but not limited to the warning that the food product may contain *E. coli* O157:H7,
21 and thus should not be given to, or eaten by, people.

22 27. Defendants had a duty to comply with all statutory and regulatory provisions
23 that pertained or applied to the manufacture, distribution, storage, labeling, and sale of food
24 products, including, but not limited to, the Federal Food, Drug, and Cosmetics Act, which
25 bans the manufacture, sale and distribution of any "adulterated" food. Defendants failed to
26 do so. Plaintiffs are among the class of persons designed to be protected by the statutory and
27 regulatory provisions pertaining to the defendants' manufacture, distribution, storage,
28 labeling, and sale of its food.

1 28. Defendants had a duty to use supplies and/or raw materials in producing the
2 food product which were in compliance with applicable federal, state, and local laws,
3 ordinances and regulations, which were from safe and reliable sources, which were clean,
4 wholesome and free from spoilage and adulteration, and which were safe for human
5 consumption, but failed to do so.

6 29. Defendants were negligent in the selection of their material and ingredient
7 suppliers, or other subcontractors, and failed to adequately supervise them, or provide them
8 with adequate standards, in writing, and as a result, purchased and used products
9 contaminated with *E. coli* O157:H7.

10 30. As a result of the defendants' negligence, the plaintiffs suffered severe and
11 permanent personal injuries, as well as economic loss.

12 **FOURTH CAUSE OF ACTION**

13 **STRICT LIABILITY CLAIM**

14 31. Defendants are in the business of manufacturing and selling food products,
15 including the contaminated product that is at issue herein.

16 32. Defendants sold the food products used by Plaintiffs knowing the products
17 would be used by Plaintiffs without inspection for defects.

18 33. Plaintiffs utilized the products as anticipated by Defendants.

19 34. As a proximate cause of Plaintiff's use of the products in a fashion anticipated
20 by the Defendants, Plaintiffs suffered injury and damages as described herein.

21 **DAMAGES**

22 35. The plaintiffs have suffered general and special, incidental and consequential
23 damages, including loss of consortium, as the direct and proximate result of the acts and
24 omissions of the defendants, which damages shall be fully proven at the time of trial,
25 including, but not limited to, damages for loss of enjoyment of life, both past and future;
26 medical and medical related expenses, both past and future; wage and economic loss, past
27 and future; emotional distress, and future emotional distress; medical and pharmaceutical
28 expenses, past and future; and other ordinary, incidental and consequential damages as

1 would be anticipated to arise under the circumstances.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, plaintiffs pray as follows:

4 (1) That the court award plaintiffs judgment against the defendants, jointly and
5 severally, in such sums as shall be determined to fully and fairly compensate plaintiffs for all
6 general, special, incidental and consequential damages incurred, or to be incurred, by
7 plaintiffs as the direct and proximate result of the acts and omissions of the defendant;

8 (2) That the court award plaintiffs their costs, disbursements and reasonable
9 attorneys' fees incurred;

10 (3) That the court award plaintiffs the opportunity to amend or modify the
11 provisions of this complaint as necessary or appropriate after additional or further discovery
12 is completed in this matter, and after all appropriate parties have been served; and

13 (4) That the court awards such other and further relief as it deems necessary and
14 proper in the circumstances.

15 **JURY TRIAL DEMANDED**

16
17 Respectfully submitted,

18 Dated: November 22, 2013

GORDON & HOLMES

19
20 Bv: _____

FREDERIC L. GORDON, ESQ.
Attorneys for Plaintiff
JESSIE WITHERS