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10 Attorneys for Plaintiffs NANCY GRUCHAWKA AND  
PETER GRUCHAWKA

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

12 **COUNTY OF SONOMA**

13 NANCY GRUCHAWKA and PETER  
GRUCHAWKA, husband and wife,,

14 Plaintiffs,

15 v.

16 AATHERSTONE FOODS, INC., a California  
17 corporation, d.b.a. GLASS ONION  
CATERING & GOURMET FOODS, INC.;;  
18 and ,

19 Defendants.

Case No.:

**COMPLAINT FOR PERSONAL INJURIES**

**IMAGED FILE**

1 Nancy Gruchawka and Peter Gruchawka, husband and wife, by and through their attorneys  
2 of record, allege as follows:

3 **PARTIES**

4 1. The plaintiffs Nancy Gruchawka and Peter Gruchawka, husband and wife, are  
5 residents of Kenwood, Sonoma County, California.

6 2. The Atherstone Foods Inc., d.b.a., Defendant Glass Onion Catering and Gourmet  
7 Foods, Inc., (Glass Onion) is a corporation organized and existing under the laws of the State of  
8 California, and based in 200 West Ohio Avenue, Richmond, California. At all times relevant to the  
9 allegations contained in this complaint, Glass Onion was registered to do business, and did conduct  
10 business, in the State of California. Glass Onion is a gourmet caterer and also a manufacturer and  
11 seller of prepackaged, "grab and go" items sold at a variety of retail locations. Glass Onion  
12 manufactured and sold the prepackaged food products that are the subject of this action.

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

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

23 **JURISDICTION AND VENUE**

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

27 6. The venue of this action is proper in Sonoma County, because the defendants  
28 transacted business in this county.

FACTS

The Health Department Investigation

7. A total of 26 individuals infected with a rare strain of E. coli O157:H7 have been reported from three states. The number of ill persons identified in each state is as follows: Arizona (1), California (22), and Washington (3).

8. Among persons for whom information is available, illness onset dates range from September 29, 2013 to October 26, 2013. Ill persons range in age from 4 years to 78 years, with a median age of 28 years. Sixty-one percent of ill persons are female. Among 21 persons with available information, 6 (28%) reported being hospitalized. Two ill persons have developed HUS, and no deaths have been reported.

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

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

E. coli O157:H7

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

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

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

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

4 Plaintiff's E. coli O157:H7 Infection

5 15. Nancy Gruchawka consumed Glass Onion's salad product on or about October 15,  
6 2013 and first exhibited symptoms on or about October 18, 2013.

7 16. Ms. Gruchawka was admitted to Santa Rosa Memorial Hospital on or about October  
8 30, 2013 for colonoscopy, biopsies from right and left colon, hematology, routine chemistry and  
9 extended chemistry, CT scan (with IV contrast and barium sulfate) of the abdomen and pelvis and a  
10 stool culture. Early diagnosis was potentially Ischemia or enteritis or Crohn's disease.

11 17. On or about November 4, 2013 Dr. Anderson informed Nancy Gruchawka that her  
12 stool culture was positive for E. coli O157:H7. On or about November 5, 2013 both the Sonoma  
13 County Health Department and the State of California Department of Health informed Nancy  
14 Gruchawka that her stool culture was positive for E. coli O157:H7. They confirmed that the strain  
15 of E. coli O157:H7 that had infected Ms. Gruchawka was an indistinguishable match to the Glass  
16 Onion outbreak pattern - 1310CAEXH-1 PFGE PATTERN: EXHX01.0589 /EXHA26.3182. On or  
17 about November 8, 2013 the CDC informed Nancy Gruchawka that her stool culture was positive for  
18 E. coli O157:H7.

19 18. Ms. Gruchawka continues to suffer from the symptoms of her severe infection by E.  
20 coli O157:H7, as a direct and proximate result of consuming Glass Onion's contaminated food  
21 products.

22 **FIRST CAUSE OF ACTION**

23 **STRICT LIABILITY CLAIM**

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

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

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

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

7 22. Defendants prepared, distributed and sold food that was adulterated and contaminated  
8 with E. coli O157:H7 bacteria, by which the food was rendered adulterated, unwholesome and  
9 injurious to health, in violation of California's Sherman Food, Drug and Cosmetic Laws, California  
10 Health and Safety Code Sections 109875, et seq. and particularly 110620, and similar federal health  
11 and safety standards and regulations.

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

14 **SECOND CAUSE OF ACTION**

15 **BREACH OF IMPLIED WARRANTY CLAIM**

16 24. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 23  
17 as though fully set forth herein.

18 25. Defendants impliedly warranted that the food products were of merchantable quality,  
19 and were safe and fit for human consumption. Plaintiffs purchased and consumed the food product,  
20 and reasonably relied upon the skill and judgment of defendants as to whether the products were of  
21 merchantable quality and fit for human consumption.

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

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1 **THIRD CAUSE OF ACTION**

2 **NEGLIGENCE CLAIM**

3 26. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 26  
4 as though fully set forth herein.

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

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

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

19 30. Defendants were negligent in the selection of their material and ingredient suppliers,  
20 or other subcontractors, and failed to adequately supervise them, or provide them with adequate  
21 standards, in writing, and as a result, purchased and used products contaminated with E. coli  
22 O157:H7.

23 31. As a result of the defendants' negligence, the plaintiffs suffered severe and permanent  
24 personal injuries, as well as economic loss.

25 **FOURTH CAUSE OF ACTION**

26 **STRICT LIABILITY CLAIM**

27 32. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 32  
28 as though fully set forth herein.

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

3 34. Defendants sold the food products used by Plaintiffs knowing the products would be  
4 used by Plaintiffs without inspection for defects.

5 35. Plaintiffs utilized the products as anticipated by Defendants.

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

8 **DAMAGES**

9 37. The plaintiffs have suffered general and special, incidental and consequential  
10 damages, including loss of consortium, as the direct and proximate result of the acts and omissions  
11 of the defendants, which damages shall be fully proven at the time of trial, including, but not limited  
12 to, damages for loss of enjoyment of life, both past and future; medical and medical related  
13 expenses, both past and future; wage and economic loss, past and future; emotional distress, and  
14 future emotional distress; medical and pharmaceutical expenses, past and future; and other ordinary,  
15 incidental and consequential damages as would be anticipated to arise under the circumstances.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiffs pray as follows:

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

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

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

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

3 JURY TRIAL DEMANDED.  
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5 Respectfully submitted,

6 Dated: November 14, 2013  
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8 By: 

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