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13 Attorneys for Plaintiffs
14 LORI ALLEGRANZA and RALPH LEO
ALLEGRANZA

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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

18 LORI ALLEGRANZA and RALPH LEO
ALLEGRANZA, husband and wife,
19
20 Plaintiffs,
21
22 v.
23 ANDREW & WILLIAMSON FRESH
PRODUCE, INC., a California corporation;
and DOES 1-50, inclusive,
24 Defendants.

Case No.: 37-2015-00030869-CU-PL-CTL
COMPLAINT FOR PERSONAL INJURIES
IMAGED FILE

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1 COME NOW the Plaintiffs, LORI ALLEGRANZA and RALPH LEO ALLEGRANZA, by
2 and through their counsel of record, FREDERIC L. GORDON of GORDON & HOLMES, LLP and
3 RICHARD R. WAITE of KEENEY, WAITE and STEVENS, and allege and complain by way of
4 this Complaint as follows:

5 **PARTIES**

6 1. LORI ALLEGRANZA and RALPH LEO ALLEGRANZA: Plaintiffs LORI
7 ALLEGRANZA and RALPH LEO ALLEGRANZA are a married couple, residing in Bakersfield,
8 California.

9 2. ANDREW & WILLIAMSON FRESH PRODUCE, INC.: The Defendant ANDREW
10 & WILLIAMSON FRESH PRODUCE INC. (hereinafter "A&W") is California corporation that
11 imports, manufactures, distributes, and sells a variety of fresh produce products, including the
12 Product at issue. At all times material hereto, A&W carried on in the ordinary course of business the
13 import, manufacture, distribution, and sale of the Product (cucumbers) that the Centers for Disease
14 Control and Prevention has determined to be the cause of an outbreak of at least 341 Salmonella
15 Poona illnesses in thirty states. A&W's principal place of business is located in San Diego County,
16 California.

17 3. JOHN DOES 1-50: Plaintiff is ignorant of the true names and capacities of
18 defendants named herein as DOES 2 through 100, inclusive, and therefore sues these defendants by
19 such fictitious names. Plaintiff will amend the complaint to allege their true names and capacities
20 when ascertained. Plaintiff is informed and believes that each fictitiously named DOE Defendant is
21 the agent of Defendant A&W and in doing the acts herein alleged, were acting within the scope and
22 course of this agency relationship and have responsibility for the acts alleged herein.

23 **JURISDICTION AND VENUE**

24 4. Jurisdiction and venue are proper in San Diego County, because the Defendant
25 conducts regular business activities San Diego County and resides there as well.

26 **FACTUAL ALLEGATIONS**

27 **The Salmonella Poona Outbreak**

28 5. The CDC, multiple states, and the U.S. Food and Drug Administration (FDA) are

1 investigating a multistate outbreak of Salmonella Poona infections linked to imported cucumbers
2 grown and packed by Rancho Don Juanito in Mexico and distributed by Defendant A&W.

3 6. Public health investigators are using the PulseNet system to identify illnesses that
4 may be part of this outbreak. CDC coordinates PulseNet, the national subtyping network of public
5 health and food regulatory agency laboratories. DNA “fingerprinting” is performed on Salmonella
6 bacteria isolated from ill people by using a technique called pulsed-field gel electrophoresis, or
7 PFGE. PulseNet manages a national database of these DNA “fingerprints” to identify possible
8 outbreaks. Three DNA “fingerprints” (outbreak strains) are included in this investigation.

9 7. As of September 8, 2015, a total of 341 people infected with the outbreak strains of
10 Salmonella Poona have been reported from 30 states. The number of ill people reported from each
11 state is as follows: Alaska (9), Arizona (66), Arkansas (6), California (72), Colorado (14), Hawaii
12 (1), Idaho (8), Illinois (6), Kansas (1), Kentucky (1), Louisiana (4), Minnesota (12), Missouri (8),
13 Montana (10), Nebraska (2), Nevada (7), New Mexico (18), New York (4), North Dakota (1), Ohio
14 (2), Oklahoma (8), Oregon (8), Pennsylvania (2), South Carolina (7), Texas (18), Utah (30), Virginia
15 (1), Washington (10), Wisconsin (2), and Wyoming (3).

16 8. Among people for whom information is available, illnesses started on dates ranging
17 from July 3, 2015 to August 30, 2015. Ill people range in age from less than 1 year to 99, with a
18 median age of 15. Fifty-three percent of ill people are children younger than 18 years. Fifty-eight
19 percent of ill people are female. Among 214 people with available information, 70 (33%) report
20 being hospitalized. Two deaths have been reported from California (1) and Texas (1).

21 9. On September 4, 2015, A&W voluntarily recalled all cucumbers sold under the
22 “Limited Edition” brand label during the period from August 1, 2015 through September 3, 2015
23 because they may be contaminated with Salmonella. The type of cucumber is often referred to as a
24 “slicer” or “American” cucumber. It is dark green in color and typical length is 7 to 10 inches. In
25 retail locations it is typically sold in a bulk display without any individual packaging or plastic
26 wrapping. Limited Edition cucumbers were distributed in the states of Alaska, Arizona, Arkansas,
27 California, Colorado, Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Minnesota, Mississippi,
28 Montana, Nevada, New Jersey, New Mexico, Oklahoma, Oregon, South Carolina, Texas, and Utah

1 and reached customers through retail, food service companies, wholesalers, and brokers. Further
2 distribution to other states may have occurred.

3 **Prior Salmonella Outbreaks Linked to Cucumbers**

4 10. In 2014 a total of 275 cases were reported from 29 states and the District of
5 Columbia. An additional 18 suspected cases not meeting the case definition were excluded from the
6 analysis because they were found to be temporal outliers and unlikely to be related. Illness onset
7 dates ranged from May 25 to September 29, 2014. Median age of patients was 42 years (range = <1–
8 90 years); 66% (174 of 265) were female. Thirty-four percent (48 of 141) were hospitalized; one
9 death was reported in an elderly man with bacteremia. A total of 101 patients were interviewed using
10 the supplemental questionnaire about exposures in the week before illness onset. This questionnaire
11 focused on leafy greens and tomatoes and contained smaller sections on fruit, vegetables, and
12 seafood common to the Delmarva region.

13 11. In 2013 the CDC collaborated with public health officials in many states and the U.S.
14 Food and Drug Administration (FDA) to investigate a multistate outbreak of Salmonella Saintpaul
15 infections linked to imported cucumbers supplied by Daniel Cardenas Izabal and Miracle
16 Greenhouse of Culiacán, Mexico and distributed by Tricar Sales, Inc. of Rio Rico, Arizona. A total
17 of 84 persons infected with the outbreak strain of Salmonella Saintpaul were reported from 18 states.
18 The number of ill persons identified in each state was as follows: Arizona (11), California (29),
19 Colorado (2), Idaho (2), Illinois (3), Louisiana (1), Maryland (1), Massachusetts (1), Minnesota (9),
20 Nevada (1), New Mexico (2), North Carolina (3), Ohio (3), Oregon (2), South Dakota (2), Texas (7),
21 Virginia (3), and Wisconsin (2). Among persons for whom information was available, illness onset
22 dates ranged from January 12, 2013 to April 28, 2013. Ill persons ranged in age from less than 1 year
23 to 89 years, with a median age of 27 years. Sixty-two percent of ill persons were female. Among 60
24 persons with available information, 17 (28%) were hospitalized. No deaths were reported.

25 **Salmonella**

26 12. The term Salmonella refers to a group or family of bacteria that variously cause
27 illness in humans. The taxonomy and nomenclature of Salmonella have changed over the years and
28 are still evolving. Currently, the Centers for Disease Control and Prevention (CDC) recognize two

1 species, which are divided into seven subspecies. These subspecies are divided into over 50
2 serogroups based on somatic (O) antigens present. The most common Salmonella serogroups are A,
3 B, C, D, E, F, and G. Serogroups are further divided into over 2,500 serotypes. Salmonella
4 serotypes are typically identified through a series of tests of antigenic formulas listed in a document
5 called the Kauffmann-White Scheme published by the World Health Organization Collaborating
6 Centre for Reference and Research on Salmonella.

7 13. Salmonella is an enteric bacterium, which means that it lives in the intestinal tracts of
8 humans and other animals, including birds. Salmonella bacteria are usually transmitted to humans
9 by eating foods contaminated with animal feces or foods that have been handled by infected food
10 service workers who have practiced poor personal hygiene. Contaminated foods usually look and
11 smell normal. Contaminated foods are often of animal origin, such as beef, poultry, milk, or eggs,
12 but all foods, including vegetables, may become contaminated. Many raw foods of animal origin are
13 frequently contaminated, but thorough cooking kills Salmonella.

14 **Medical Complications of Salmonellosis**

15 14. The term reactive arthritis refers to an inflammation of one or more joints, following
16 an infection localized at another site distant from the affected joints. The predominant site of the
17 infection is the gastrointestinal tract. Several bacteria, including Salmonella, induce septic arthritis.
18 The resulting joint pain and inflammation can resolve completely over time or permanent joint
19 damage can occur.

20 15. The reactive arthritis associated with Reiter's may develop after a person eats food
21 that has been tainted with bacteria. In a small number of persons, the joint inflammation is
22 accompanied by conjunctivitis (inflammation of the eyes), and uveitis (painful urination). Id. This
23 triad of symptoms is called Reiter's Syndrome. Reiter's syndrome, a form of reactive arthritis, is an
24 uncommon but debilitating syndrome caused by gastrointestinal or genitourinary infections. The
25 most common gastrointestinal bacteria involved are Salmonella, Campylobacter, Yersinia, and
26 Shigella. A triad of arthritis, conjunctivitis, and urethritis characterizes Reiter's syndrome, although
27 not all three symptoms occur in all affected individuals.

28 16. Salmonella is also a cause of a condition called post infectious irritable bowel

1 syndrome (IBS), which is a chronic disorder characterized by alternating bouts of constipation and
2 diarrhea, both of which are generally accompanied by abdominal cramping and pain. In one recent
3 study, over one-third of IBS sufferers had had IBS for more than ten years, with their symptoms
4 remaining fairly constant over time. IBS sufferers typically experienced symptoms for an average of
5 8.1 days per month.

6 **The Plaintiff's Illness**

7 17. On August 2, 2015, at the beginning of a long-awaited RV trip, plaintiffs Lori and
8 Leo Allegranza ate at the Red Lobster in Santa Maria, California. Lori was served a garden salad
9 with cucumbers, which Leo did not share or order.

10 18. Plaintiffs resumed their RV vacation and were camping when Lori began to feel sick
11 on or about August 4, 2015. Illness began with terrible stomach cramps and, shortly thereafter,
12 diarrhea. These symptoms lasted for days, and Lori had to suffer from this illness while confined to
13 the small interior space of the RV's bathroom.

14 19. By Sunday, August 9, 2015, Lori remained ill—so ill, in fact, that she thought she
15 was dying. She could not keep anything down, even water. Having become so badly dehydrated,
16 she knew that she needed professional medical intervention.

17 20. Lori was seen the same day in the ER at Arroyo Grande Community Hospital.
18 Initially, her medical team suspected a severe urinary tract infection. She was given IV fluids, had
19 blood drawn for culture, and was started on Ciprofloxacin. She did not have a fever in the ER.
20 After several hours in the ER, she was discharged "home" (back to her RV), but she continued to
21 have diarrhea for a few more days before it stopped.

22 21. Arroyo Grande Community Hospital called Lori a few days later to tell her that her
23 blood was culture positive for Salmonella. The health department called her to tell her that she was
24 part of a larger Salmonella Poona outbreak linked to tainted cucumbers. She took Ciprofloxacin for
25 a week.

26 **FIRST CAUSE OF ACTION**

27 **(Strict Product Liability)**

28 22. By this reference, the Plaintiffs incorporate the preceding paragraphs of this

1 complaint as if each and every one of these paragraphs was set forth here in its entirety.

2 23. Defendant A&W imported, manufactured, distributed, and sold the Product that was
3 the cause of at 341 Salmonella Poona illnesses in thirty states, as described previously.

4 24. Because the Defendant's Product was contaminated by Salmonella, the food that the
5 Defendants imported, manufactured, distributed and sold, and that the consumers purchased and
6 consumed, as described previously, was in a condition that the consumers had not contemplated, and
7 was in a condition that rendered the food Product unreasonably dangerous for its ordinary and
8 expected use.

9 25. The food Product that the Defendant imported, manufactured, distributed and sold,
10 and that the consumers purchased and consumed, as described previously, was expected to reach the
11 consumers, and be consumed by them, without substantial change. The consumers used the Product
12 in the manner expected and intended, including when they consumed it.

13 26. The Plaintiffs suffered the aforementioned injuries as a direct and proximate result of
14 the contaminated, defective food Product imported, manufactured, distributed and sold by the
15 Defendant.

16 27. The Plaintiffs have suffered general and special, incidental and consequential
17 damages as the direct and proximate result of the acts and omissions of the Defendants, which
18 damages shall be fully proven at the time of trial. These damages include, but are not limited to:
19 damages for wage loss; medical and medical-related expenses; emotional distress; fear of harm and
20 humiliation; physical and emotional pain; physical injury; and all other ordinary, incidental and
21 consequential damages as would be anticipated to arise under the circumstances.

22 **SECOND CAUSE OF ACTION**

23 **(Negligence)**

24 28. By this reference, the Plaintiffs incorporate the preceding paragraphs of this
25 complaint as if each and every one of these paragraphs was set forth here in its entirety.

26 29. The Defendant imported, manufactured, distributed, and sold a food Product that was
27 adulterated, not fit for human consumption, and that was not reasonably safe as designed,
28 manufactured, or sold.

1 30. Defendant was negligent in importing, manufacturing, distributing, and selling a food
2 Product that was adulterated with Salmonella, not fit for human consumption, and not reasonably
3 safe because it was contaminated with Salmonella and because adequate warnings or instructions
4 were not provided, including but not limited to the warning that its Product may contain Salmonella,
5 and thus should not be given to, or eaten by humans.

6 31. The Defendant had a duty to properly supervise, train, and monitor its employees, or
7 the employees of its agents or subcontractors, engaged in the growth, harvest, preparation, or
8 distribution of its food Product, to ensure compliance with the Defendant's operating standards and
9 to ensure compliance with all applicable health regulations. The Defendant failed to properly
10 supervise, train, and monitor these employees, or the employees of its agents or subcontractors
11 engaged in the growth, harvest, preparation, or distribution of the Product, and thus breached that
12 duty.

13 32. The Defendant owed a duty to the Plaintiffs to comply with all statutory and
14 regulatory provisions that pertained or applied to the import, manufacture, distribution, storage,
15 labeling, and sale of its food Product, including all applicable local, state, and federal health and
16 safety regulations. The Defendant, by its import, manufacture, distribution, storage, labeling, and
17 sale of an adulterated, unsafe, and unhealthy food Product, failed to conform to this duty.

18 33. The Defendant owed the Plaintiffs the duty to exercise reasonable care in the
19 preparation and sale of its food Product, as it was reasonably foreseeable that the Defendant's
20 import, manufacture, distribution and sale of a food Product contaminated with Salmonella would
21 cause injury and harm to all persons who consumed the Product. The Defendant has breached that
22 duty, and thereby caused injury to the Plaintiffs.

23 **THIRD CAUSE OF ACTION**

24 **(Negligence Per Se)**

25 34. By this reference, the Plaintiffs incorporate the preceding paragraphs of this
26 complaint as if each and every one of these paragraphs was set forth here in its entirety.

27 35. The Defendant was negligent in importing, manufacturing, distributing and selling a
28 food Product contaminated with Salmonella. The Defendants' negligent acts and omissions

1 included, but were not limited to:

- 2 a. Failure to prevent the contamination of their food Product by Salmonel; and
- 3 b. Failure to properly supervise, train, and monitor their employees, or the
- 4 employees of their agents or subcontractors, on how to ensure the growth, harvest,
- 5 preparation, or distribution of food Product free of adulteration by potentially
- 6 lethal pathogens.

7 36. Defendant owed the Plaintiffs a duty to comply with all statutory and regulatory
8 provisions that pertained or applied to the import, manufacture, distribution, storage, labeling and
9 sale of their food Product, including the applicable provisions of the federal Food, Drug and
10 Cosmetic Act, and the California adulterated food statutes, including but not limited to, California
11 Health & Safety Code Section 110545.

12 37. The food Product that the Defendant imported, manufactured, distributed and sold,
13 and that the consumers purchased and consumed, was “adulterated” within the meaning of the
14 federal Food, Drug and Cosmetic Act, and the California adulterated food statutes, including but not
15 limited to, California Health & Safety Code Section 110545, because (inter alia): it contained a
16 deleterious substance that rendered it injurious to health; it consisted in whole or in part of a
17 diseased, contaminated, filthy, putrid or decomposed substance, or was otherwise unfit for food;
18 and/or it had been produced, prepared, packed or held under insanitary conditions whereby it may
19 have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome
20 or injurious to health.

21 38. Defendant violated federal, state and local food safety regulations by their import,
22 manufacture, distribution and sale of adulterated food Product.

23 39. The federal, state and local food safety regulations applicable here, and as set forth
24 above, establish a positive and definite standard of care in the import, manufacture, distribution and
25 sale of food, and the violation of these regulations constitutes negligence per se.

26 40. The Plaintiffs were in the class of persons intended to be protected by these statutes
27 and regulations, and were injured as the direct and proximate result of the Defendant’s violation of
28 applicable federal, state and local food safety regulations.

1 41. The Defendant breached the aforementioned duties as alleged herein, which breach
2 constituted the proximate cause of the Plaintiffs' and injuries.

3 **FOURTH CAUSE OF ACTION**

4 **(Breach of Warranties)**

5 42. By this reference, the Plaintiffs incorporate the preceding paragraphs of this
6 complaint as if each and every one of these paragraphs was set forth here in its entirety.

7 43. Defendant imported, manufactured, distributed and sold the Product to retail
8 locations, including the Red Lobster restaurant where Plaintiffs were infected, which, in turn, sold
9 them to consumers.

10 44. By selling the food Product to the consumers, the Defendant impliedly warranted that
11 the food Product sold was fit for the ordinary purpose for which food is used.

12 45. By selling food to the consumers, the Defendant expressly warranted that such food
13 was safe to eat, that it was not adulterated with a deadly pathogen, and that the food had been safely
14 prepared.

15 46. At the time of this sale, being contaminated with Salmonella, the Product was not fit
16 for the ordinary purpose for which food is used, and the Defendant breached its express and implied
17 warranties with regard to the food Product it imported, manufactured, distributed and sold to
18 consumers.

19 47. The Plaintiffs suffered personal injury as a direct result of the Defendant's breach of
20 express and implied warranties, as set forth above.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the Plaintiffs pray for the following relief:

23 1. That the Court award Plaintiffs judgment against Defendants in such sums as shall be
24 determined to fully and fairly compensate them for all general, special, incidental and consequential
25 damages incurred, or to be incurred, as the direct and proximate result of the acts and omissions of
26 Defendants, in an amount to be proven at trial;

27 2. That the Court award Plaintiffs their respective costs and disbursements, and award
28 reasonable attorneys' fees;

1 3. That the Court award Plaintiffs the opportunity to amend or modify the provisions of
2 this complaint as necessary or appropriate after additional or further discovery is completed in this
3 matter, and after all appropriate parties have been served; and

4 4. That the Court award Plaintiffs such other and further relief as it deems necessary and
5 proper in the circumstances.

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7 Respectfully Submitted,

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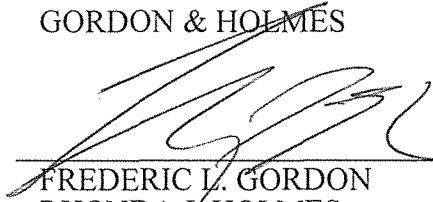
9 Dated: September 14, 2015

GORDON & HOLMES

10

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