

SCANNED

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

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WHATCOM COUNTY
WASHINGTON

BY _____

AMY HAYES-SHAW, individually and as)
Guardian ad Litem of TOBY HAGER, a minor;)
ELIZABETH MYERS and PALMER MYERS,)
individually and as Guardians ad Litem of HALLE)
MYERS and PALMER MYERS, JR., minors; and)
AMANDA NEISER and CHAD NEISER,)
individually and as Guardians ad Litem of)
BENNETT NEISER, MACY NEISER, and)
SELAH NEISER, minors,)

Plaintiffs,)

vs.)

WHATCOM COUNTY DAIRY WOMEN, a)
Washington corporation; NORTHWEST)
WASHINGTON FAIR ASSOCIATION, a)
Washington corporation; and LYNDEN SCHOOL)
DISTRICT NO. 504, a Washington school district,)

Defendants.)

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**COMPLAINT
FOR DAMAGES**

The plaintiffs, AMY HAYES-SHAW, individually and as Guardian ad Litem of TOBY HAGER, a minor; ELIZABETH MYERS and PALMER MYERS, individually and as Guardians ad Litem of HALLE MYERS and PALMER MYERS, JR., minors; and AMANDA NEISER and CHAD NEISER, individually and as Guardians ad Litem of BENNETT NEISER, MACY NEISER, and SELAH NEISER, minors, and their attorneys, the MARLER CLARK law firm, state, allege and complain as follows:

I.

PARTIES

1.1 Plaintiffs AMY HAYES-SHAW (“Hager”) is a resident of Whatcom County, Washington. Plaintiff Hager is the parent of Toby Hager, a minor, who is also a resident of Whatcom County, Washington, and is qualified to act as Guardian ad Litem on his behalf.

1.2 Plaintiffs ELIZABETH MYERS and PALMER MYERS (“Myers”) are residents of Whatcom County, Washington. Plaintiffs are the parents of Halle Myers, a minor, who is also a resident of Whatcom County, and are qualified to act as Guardians ad Litem on her behalf.

1.3 Plaintiffs ELIZABETH MYERS and PALMER MYERS (“Myers”) are residents of Whatcom County, Washington. Plaintiffs are the parents of Palmer Myers, Jr., a minor, who is also a resident of Whatcom County, and are qualified to act as Guardians ad Litem on his behalf.

1.4 Plaintiffs AMANDA NEISER and CHAD NEISER (“Neiser”) are residents of Whatcom County, Washington. Plaintiffs are the parents of Bennett Neiser, a minor, who is also a resident of Whatcom County, Washington, and are qualified to act as Guardians ad Litem on his behalf.

1.5 Plaintiffs AMANDA NEISER and CHAD NEISER (“Neiser”) are residents of Whatcom County, Washington. Plaintiffs are the parents of Macy Neiser, a minor, who is also a resident of Whatcom County, Washington, and are qualified to act as Guardians ad Litem on her behalf.

1.6 Plaintiffs AMANDA NEISER and CHAD NEISER (“Neiser”) are residents of Whatcom County, Washington. Plaintiffs are the parents of Selah Neiser, a minor, who is also a resident of Whatcom County, Washington, and are qualified to act as Guardians ad Litem on her behalf.

1.7 Defendant WHATCOM COUNTY DAIRY WOMEN (hereinafter “Dairy Women”) is a domestic nonprofit corporation, organized and existing under the laws of the state of Washington, duly authorized and doing business in Lynden, Whatcom County, Washington. Annually for the last 22 years, Dairy Women has organized and sponsored the “Milk Maker’s Fest” (hereinafter “the Festival”), a dairy farming exhibition. In 2015, the Festival occurred on April 21 through 23, and certain activities described below involving preparation and set-up, occurred on April 20, 2015.

1.8 Defendant NORTHWEST WASHINGTON FAIR ASSOCIATION (hereinafter “Northwest Fair”) is a domestic nonprofit corporation, organized and existing under the laws of the state of Washington, duly authorized and doing business in Lynden, Whatcom County, Washington. Northwest Fair owns and operates property located at 1775 Front Street, Lynden, Washington, otherwise known as the Northwest Washington Fairgrounds. At this location, Northwest Fair regularly, and in the ordinary course of its business, rents space and facilities to individuals and organizations to use for a variety of activities, including, weddings, seminars, auctions, banquets, or according to its website “most any event type.” Events frequently involve the exhibition of cattle and other livestock. One of the facilities frequently rented for this purpose is the “Dairy Barn,” which is a large open building with dividers, an open arena, and bleachers to accommodate visitors.

1.9 Defendant LYNDEN SCHOOL DISTRICT NO. 504, Whatcom County, State of Washington, (hereinafter “School District”), is a Washington corporate entity and Washington first-class school district, a political subdivision of the state of Washington, organized and existing under the laws of the state of Washington and duly authorized and doing business in Lynden, Whatcom County, Washington. On information and belief, the School District has, in

the years preceding the subject outbreak, described below, participated in events held at the Northwest Washington Fairgrounds during the Festival, including allowing students in attendance at its schools to attend the Festival.

II.

JURISDICTION AND VENUE

2.1 This court is vested with original jurisdiction over the defendants, as individuals and entities all doing business within the State of Washington, pursuant to RCW 2.08.010 and RCW 4.28.080.

2.2 This court has jurisdiction, and venue is proper, pursuant to RCW 4.12.025, because the injuries to the plaintiffs arose in Whatcom County, the defendants conduct business in Whatcom County, and, therefore, the defendants are considered residents of Whatcom County for these purposes.

2.3 Pursuant to RCW 4.96.020, compliant standard tort claim forms asserting plaintiffs' claims against the School District were presented to the School District's designated agent more than sixty calendar days prior to the filing of this lawsuit.

III.

FACTUAL ALLEGATIONS

Outbreak Facts

3.1 On or about April 10-11, 2015, the Whatcom Youth Fair held an event at the Dairy Barn, an exhibition facility at the Northwest Washington Fairgrounds. On information and belief, the Whatcom Youth Fair rented the facility from Northwest Fair after full disclosure of the nature of activities expected during the event. The event involved the exhibition of dairy and

beef cattle. Event attendees sat in bleachers at each of two exhibition areas within the Dairy Barn.

3.2 Cattle and other ruminant animals are, and were at the time of the events giving rise to this action, known by the defendants collectively to be reservoirs for *E. coli* O157:H7.

3.3 Northwest Fair gave Whatcom Youth Fair the option of cleaning the premises itself after the event, or paying Northwest Fair an additional fee for the clean-up. Whatcom Youth Fair opted to clean the premises itself, and in furtherance of that effort, utilized scrapers and possibly tractors and other implements to push sawdust and other organic materials, including manure, to the barn's compost bunker. Whatcom Youth Fair then utilized a leaf blower to further cleanse the exhibition areas of observable organic materials, including manure. Plaintiffs are presently unaware whether employees of Northwest Fair were present during the clean-up, or had provided any advice, oversight, or instruction.

3.4 On or about April 20, 2015, members of the Lynden High School Ag Tech Class, including 15-year-old plaintiff Toby Hager arrived in the morning at the Dairy Barn to help the Dairy Women set up a maze made of hay bales. The maze was to serve as an attraction for students of the School District, including the minor plaintiffs in this action, who were scheduled to visit the Dairy Barn on one or more dates during the Festival. The bales that Toby and the other minor children used to create the maze had been delivered to, and stored at, the Dairy Barn on or about April 17, 2015. The maze was positioned in an area of the Dairy Barn immediately adjacent to the compost bunker, which is the same area of the Dairy Barn where the Whatcom Youth Fair dairy cattle exhibit had occurred on April 10-11, 2015.

3.5 *E. coli* O157:H7 is known to be able to survive in the environment for many weeks under appropriate biological conditions.

3.6 Several adults were present during the hay maze set-up on April 20, 2015, including John Grubbs, the teacher of Toby's agricultural technology class, as well as, on information and belief, Cheryl DeHaan or another representative of the Dairy Women.

3.7 Toby was given soiled, dirty gloves to use during the hay maze set-up.

3.8 After moving the hay bales and arranging them into the maze format, Toby and other children were asked to help move the bleachers around in the Dairy Barn. These were the same bleachers that had been used during the Whatcom Youth Fair exhibition on April 10 and 11, 2015.

3.9 At no time prior to, or during, the hay maze set-up were Toby or the other minor children present informed of any risks of infection by *E. coli* or any other bacteria posed by their contact with, or handling of, items and surfaces within the Dairy Barn.

3.10 At no time prior to, or during, the hay maze set-up were Toby or the other minor children present instructed on precautions to take to prevent infection by *E. coli* or any other bacteria during their participation in the hay maze set-up.

3.11 At no time prior to, or during, the hay maze set-up were Toby or the other minor children present instructed to wash their hands, or how to do so in a manner sufficient to rid their hands of infectious micro-organisms, including *E. coli* O157:H7.

3.12 In fact, after Toby completed his work, he sought to wash his hands but found that the only wash station, which consisted only of a dispenser of hand-sanitizer, was empty. Therefore, he was unable to wash his hands at all.

3.13 As they completed their work, students, including Toby, were given donuts to eat, and possibly other food and drink items. These items were located on, or distributed from, the bleachers inside the Dairy Barn.

3.14 The Festival was held from April 21 through 23, 2015. In total, at least 1,325 first-grade students attending various schools within the School District, visited the Festival, as well as teachers from the various schools and a number of the first-graders' parents. The children were provided pasteurized chocolate milk by the Dairy Women.

3.15 The Whatcom County Health Department (WCHD) in Bellingham investigated an outbreak of Shiga toxin-producing *E. coli* O157:H7 infections that occurred in April, 2015. The Washington State Department of Health (WADOH) and the Centers for Disease Control and Prevention (CDC) assisted with the investigation. All of the ill people in the outbreak had either attended the Festival between April 21 and 23 at the Northwest Fairgrounds; helped with the event between April 20 and 24; or were close contacts of people associated with the event.

3.16 Environmental contamination by *E. coli* O157:H7 at the Dairy Barn was the source of this outbreak. The Dairy Women sponsored the Festival, as well as the events that took place in the Dairy Barn between April 20 and 24, 2015, during which many of the minor plaintiffs were exposed to the *E. coli* O157:H7 bacteria that caused their illnesses and injuries.

3.17 The School District organized and supervised the events at the Northwest Fairgrounds, including jointly with the Dairy Women those events held in the Dairy Barn, during which the minor plaintiffs were exposed to the *E. coli* O157:H7 bacteria that caused their illnesses and injuries.

3.18 Public health officials from WCHD, WADOH, and CDC calculated the number of outbreak victims (referred to as "cases") based only on lab-confirmed infection by *E. coli* O157:H7 or physician-diagnosed hemolytic uremic syndrome (HUS), a blood disorder frequently caused by *E. coli* O157:H7 infection, resulting in hemolytic anemia, thrombocytopenia, and kidney failure. Ultimately, investigators counted 25 confirmed cases,

nine of which were considered secondary cases, meaning that the person had become infected by contact with an already-infected individual. Ten of the 25 cases were hospitalized, and 6 cases developed HUS.

3.19 During their investigation, health officials collected multiple environmental samples from the Dairy Barn. Laboratory analysis and testing at the WADOH Public Health Laboratory indicated that several areas of the north end of the Dairy Barn—specifically the “manure bunker,” “hay maze” area, bleachers by the east wall, and bleachers by the west wall—were contaminated with the same strain of *E. coli* O157:H7 that caused illness in this outbreak.

3.20 As part of the investigation, officials interviewed many of the cases to find out what they did during the event before they became ill. Significant findings from these interviews included, among other things: event attendees who reported washing or sanitizing their hands before eating lunch were less likely to become ill; children who reported always biting their nails were more likely to become ill; leaving animal areas without washing hands likely contributed to an increased risk of transmission; and eating in animal areas likely contributed to an increased risk of transmission. Of all 103 students interviewed during the investigation, including both cases and controls, only 45 (49%) recalled being told to wash their hands after animal contact, and only 29 (28%) recalled being told not to eat or drink in animal areas.

3.21 At the conclusion of its investigation, WCHD concluded that the likely source of contamination in the Dairy Barn was the Whatcom Youth Fair cattle exhibits, and that the Dairy Barn had been inadequately cleaned to mitigate the known risk of *E. coli* O157:H7 contamination and transmission to students. WCHD also concluded that the use of the leaf-blower to move manure and other organic materials may have contributed to the contamination. Further, WCHD found that eating in animal areas, or eating after attending the Festival but

without first washing hands, caused Festival attendees to be more likely to become ill. WCHD determined that the children that attended the Festival, including the plaintiffs and other students from the School District, had inadequate access to supervised hand washing facilities.

3.22 WCHD recommended that organizers of similar events: evaluate and update plans for cleaning and disinfection before, during, and after events, particularly surfaces with high levels of hand contact (such as seats, door or fence handles, and hand railings); evaluate and update measures to restrict access to areas more likely to be contaminated with animal manure (this is especially important for people at higher risk for severe illness, including young children, pregnant women, adults older than 65, and people with weakened immune systems); ensure access to hand washing facilities with soap, running water, and disposable towels; display signs and use other reminders to attendees to wash hands when leaving animal areas; and store, prepare, or serve food and beverages only in non-animal areas.

Nature of Illness

3.23 *Escherichia coli* are the name of a common family of bacteria, most members of which do not cause human disease. *E. coli* O157:H7 is a specific member of this family that can cause bloody diarrhea (hemorrhagic colitis) in humans. In the twenty two years since *E. coli* O157:H7 was first identified as a cause of diarrhea, this bacterium has established a reputation as a significant public health hazard.

3.24 *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli* O157:H7 is also notable among pathogenic bacteria for its extremely low infectious dose—that is, the amount of bacteria necessary to induce infection in a person. While for most pathogenic bacteria it takes literally millions of bacterial colonies to cause illness, it is now known that

fewer than 50 *E. coli* O157:H7 bacteria can cause illness in a child. The practical import is that even a microscopic amount of exposure can trigger a devastating infection.

3.25 The most severe cases of the *E. coli* O157:H7 infection occur in young children and in the elderly, presumably because the immune systems in those age populations are the most vulnerable. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attaches to the inside surface of the large intestine and initiates an inflammatory reaction of the intestine. What ultimately results is the painful bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

3.26 The mean incubation period (time from ingestion to the onset of symptoms) of *E. coli* O157:H7 is estimated to be two to four days (range, 1-21 days). Typically, a patient with an acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody diarrhea, and vomiting. The duration of diarrhea in children with *E. coli* O157:H7 infections are significantly longer than that of adults.

3.27 *E. coli* O157:H7 can produce a wide spectrum of disease from mild, non-bloody diarrhea, to severe bloody diarrhea accompanied by excruciating abdominal pain to life-threatening complications. In most infected individuals, the intestinal illness lasts about a week and resolves without any long-term effects. Antibiotics do not appear to aid in combating these infections, and recent medical studies suggest that antibiotics are contraindicated for their risk of provoking more serious complications. Apart from good supportive care, which should include close attention to hydration and nutrition, there is no specific therapy.

3.28 About 10% of individuals with *E. coli* O157:H7 infections (mostly young children) go on to develop hemolytic uremic syndrome (HUS), a severe, potentially life-threatening complication. The essence of the syndrome is described by its three central features:

destruction of red blood cells, destruction of platelets (those blood cells responsible for clotting), and acute renal failure due to the formation of micro-thrombi that occlude microscopic blood vessels that make up the filtering units within the kidneys.

3.29 There is no known therapy to halt the progression of HUS. The active stage of the disease usually lasts one to two weeks, during which a variety of complications are possible. HUS is a frightening illness that even in the best American medical facilities has a mortality rate of about 5%. The majority of HUS patients require transfusion of blood products and develop complications common to the critically ill.

Previous *E. coli* O157:H7 outbreaks linked to fairs and petting zoos

3.30 A significant number of prior *E. coli* O157:H7 outbreaks have been previously linked to county fairs, dairy farms, and petting zoos. Some of those outbreaks occurring in the United States between 2000 and 2012 are identified below:

- 2000 Snohomish County, Washington, Petting Zoo *E. coli* Outbreak

The Snohomish Health District, Communicable Disease Department (June, 2000) reported five cases of bacterial diarrhea caused by *E. coli* O157:H7 in children in Snohomish County in May 2000. Three of the children visited a petting zoo several days before they became sick.

- 2000 *E. coli* Outbreak at a Dairy Farm

Crump et al (2002) discussed an outbreak of *E. coli* O157:H7 among visitors to a dairy farm in Pennsylvania in September, 2000. The total number of confirmed or suspected *E. coli* O157:H7 cases was 51.

- 2001 *E. coli* Outbreak at a Petting Zoo in Worcester, Pennsylvania

An article published by WebMD Medical News on April 23, 2001 (Bloomquist, 2001), reported an outbreak of *E. coli* O157:H7 among visitors to the Merrymead Farm petting zoo in Worcester, Pennsylvania. In all, 16 children who had visited the zoo contracted *E. coli*, and it was suspected that another 45 people became ill from the bacteria.

- 2001 Ozaukee County, Wisconsin, Fair *E. coli* Outbreak

The Ozaukee County Public Health Department and Wisconsin Department of Health and Family Services (2001) investigated an outbreak of *E. coli* O157:H7 associated with animals at the Ozaukee County Fair in August, 2001. A total of 59 *E. coli* O157:H7 cases were identified in this outbreak, with 25 laboratory confirmed cases (25 “primary cases” and 34 probable cases).

- 2002 Lane County, Oregon, Fair *E. coli* Outbreak

The Oregon Department of Human Services (Oregon, 2002) initially documented a patient with bloody diarrhea, who attended the Lane County Fair held during August, 2002. Epidemiologists identified 82 ill persons, 22 who were hospitalized, and 12 with HUS. Although not confirmed, health officials postulated that possible exposures leading to the outbreak occurred at animal enclosures.

- 2003 Fort Bend County Fair *E. coli* Outbreak - Rosenberg, Texas

In 2003, 25 people (fair visitors and animal exhibitors) became ill with hemolytic uremic syndrome and one case of a related disease, thrombotic thrombocytopenic purpura. All seven laboratory-confirmed cases had an indistinguishable PFGE pattern which matched 10 isolates obtained from environmental samples taken from animal housing areas.

- 2004 *E. coli* Outbreak Associated with the North Carolina State Fair in Raleigh

In late October 2004 the North Carolina Department of Health and Human Services (NCDHHS) conducted an *E. coli* O157:H7 outbreak investigation among attendees at the 2004 State Fair. 108 cases were identified with 15 who experienced HUS. The majority of cases occurred in children. Illness was associated with animal contact and hand-to-mouth activities.

- 2005 Florida State Fair, Central Florida Fair, and Florida Strawberry Festival *E. coli* Outbreak

The AgVenture Farms *E. coli* O157:H7 outbreak was first recognized after two separate HUS case reports were reported to the Florida Department of Health in mid-March. The two cases (a 5-yr-old girl and a 7-yr-old boy) both reported having visited a fair with a petting zoo (AgVenture) a few days prior to becoming ill. The two children visited the same fair and did not have any other common risk factors.

- 2005 Big Fresno Fair Petting Zoo *E. coli* Outbreak

At least six children were infected with *E. coli* O157:H7 - one gravely - visiting the petting zoo at the 2005 Big Fresno Fair.

- 2007 Petting Zoo E. coli O157:H7 outbreak in Pinellas County, FL

In May and June 2007, seven Florida children were infected with *E. coli* O157:H7. Six of the children had visited a Day Camp petting zoo, and the seventh was a sibling. Two of the children were hospitalized, all seven recovered. The petting zoo was closed on the recommendation of the health department.

- 2009 “Feed the Animals” Exhibit E. coli outbreak at the Western Stock Show

In January 2009, the Communicable Disease and Consumer Protection Divisions of the Colorado Department of Public Health noticed an increase in the number of laboratory confirmed cases of *E. coli* O157. Thirty cases were identified—including nine hospitalizations and 2 cases of HUS. All the children had visited the National Western Stock Show in Denver, Colorado. A case-control study found the risk of *E. coli* infection was associated with touching animals in the “Kids Zone”...

- 2011 Snohomish County Petting Zoo

At least 6 people who visited the Forest Park Petting Zoo in Everett, Washington, in June 2011 became ill with *E. coli* O157:H7 infections. The Snohomish County Health Department investigated the *E. coli* outbreak and determined that there was a “clear association between disease and being in the open animal interaction area of the forest Park Animal Farm.”

- 2012 Cleveland County Fair E. coli Outbreak

North Carolina public health officials investigated an *E. coli* O157:H7 outbreak associated with attendance at the Cleveland County Fair, which ran from September 27 to October 7, 2012. At least 106 people became ill with *E. coli* infections after either visiting the fair or coming into direct contact with a person who had attended the fair.

- 2012 Willow Grove Pumpkin Patch E. coli Outbreak

In October of 2012, Cowlitz County Health and Services announced that 4 children had become ill with *E. coli* O157:H7 infections after visiting the Willow Grove Gardens Pumpkin Patch and petting zoo. One of the children was hospitalized for several days. The suspected source of the *E. coli* outbreak was the petting zoo at the pumpkin patch.

3.31 In 2001, the Center for Disease Control, (CDC) issued recommendations for Farm Animal Contact. These recommendations included the following rules and guidelines:

- (a) Persons providing public access to farm animals should inform visitors about the risk for transmission of enteric pathogens from farm animals to humans, and strategies for prevention of such transmission. This should include public information and training of facility staff. Visitors should be made aware that certain farm animals pose greater risk for transmitting enteric infections to humans than others. Such animals include calves and other young ruminant animals, young poultry, and ill animals. When possible, information should be provided before the visit.
- (b) Venues should be designed to minimize risk. Farm animal contact is not appropriate at food service establishments and infant care settings, and special care should be taken with school-aged children. At venues where farm animal contact is desired, layout should provide a separate area where humans and animals interact and an area where animals are not allowed. Food and beverages should be prepared, served, and consumed only in animal-free areas. Animal petting should occur only in the interaction area to facilitate close supervision and coaching of visitors. Clear separation methods such as double barriers should be present to prevent contact with animals and their environment other than in the interaction area.
- (c) Handwashing facilities should be adequate. Handwashing stations should be available to both the animal-free area and the interaction area. Running water, soap, and disposable towels should be available so that visitors can wash their hands immediately after contact with the animals. Handwashing facilities should be accessible, sufficient for the maximum anticipated attendance, and configured for use by children and adults. Children aged <5 years should wash their hands with adult supervision. Staff training and posted signs should emphasize the need to wash hands after touching animals or their environment, before eating, and on leaving the interaction area. Communal basins do not constitute adequate handwashing facilities. Where running water is not available, hand sanitizers may be better than using nothing. However, CDC makes no recommendations about the use of hand sanitizers because of the lack of independently verified studies of efficacy in this setting.
- (d) Hand-mouth activities (e.g., eating and drinking, smoking, and carrying toys and pacifiers) should not be permitted in interaction areas.

- (e) Persons at high risk for serious infections should observe heightened precaution. Farm animals should be handled by everyone as if the animals are colonized with human enteric pathogens. However, children aged <5 years, the elderly, pregnant women, and immunocompromised persons (e.g., those with HIV/AIDS) are at higher risk for serious infections. Such persons should weigh the risks for contact with farm animals. If allowed to have contact, children aged <5 years should be supervised closely by adults, with precautions strictly enforced.

3.32 In March, 2005 the National Association of State Public Health Veterinarians and the CDC issued guidelines for decreasing the risk of human contraction of illness through interaction with animals. These guidelines included:

- (a) The public's contact with animals should occur in settings where controls are in place to reduce the potential for injuries or disease and increase the probability that exposures will be reported, documented, and handled appropriately. The design of facilities or contact settings should minimize the risk for exposure and facilitate hand washing. Certain jurisdictions might choose to establish more restrictive recommendations in areas where animal contact is specifically encouraged (e.g., petting zoos). Requirements for the design of facilities or contact settings might include double barriers to prevent contact with animals or contaminated surfaces except for specified interaction areas. Manure disposal and wastewater runoff should occur in areas where the risk for exposure to pedestrians is eliminated or reduced. Control methods should focus on facility design and management.
- (b) Recommendations should be applied both to settings in which animal contact is possible (e.g., county fairs) and settings in which direct animal contact is encouraged (e.g., petting zoos). However, in settings where direct animal contact is encouraged, additional precautions should be taken to reduce the risk for injuries and disease transmission.
- (c) For areas where animal contact is possible, design of the entry and exit points for animal contact areas should be planned to facilitate proper visitor flow through transition areas. These transition areas should include educational information and hand-washing facilities. Fences, gates, or

other types of barriers can restrict uncontrolled access to animals and animal contact areas and ensure that visitors enter and exit through transition areas. Animal feed and water should not be accessible to the public. In addition, in buildings where animals live, adequate ventilation is essential for both animals (99) and humans.

- (d) Food and beverages. No food or beverages should be allowed in animal areas. In addition, smoking, carrying toys, and use of pacifiers, spill-proof cups ("sippy cups"), and baby bottles should not be permitted in animal areas.
- (e) Cleaning procedures. Manure and soiled animal bedding should be removed promptly. Animal waste and specific tools for waste removal (e.g., shovels and pitchforks) should be confined to designated areas restricted from public access. Manure and soiled bedding should not be transported or removed through non-animal areas or transition areas used by visitors. If this is unavoidable, precautions should be taken to avoid spillage and aerosolization. During events where animal contact is encouraged, periodic disinfection of the venue might reduce the risk for disease transmission during the event.
- (f) Supervision of children. Children should be closely supervised during contact with animals to discourage contact with manure and soiled bedding. Hand-to-mouth contact (e.g., thumb-sucking) should also be discouraged. Appropriate hand washing should be required. Additional recommendations for groups at high risk, including children aged <5 years, are outlined in this report.
- (g) Staff. Trained staff should be present in areas where animal contact is permitted to encourage appropriate human-animal interactions, reduce risk for exposure (e.g., by promptly cleaning up wastes), and process reports of injuries and exposures.
- (h) Feeding animals. If feeding animals is permitted, only food sold by the venue for that purpose should be allowed. Food sold for animal consumption should not be eaten by humans and should not be provided in containers that can be eaten by persons (e.g., ice cream cones). This policy will reduce the risk for animal bites and the probability of children eating food that has come into contact with animals.

- (i) Use of animal areas for public (non-animal) activities. Zoonotic pathogens can contaminate the environment for substantial periods. If animal areas need to be used for public events (e.g., weddings and dances), these areas should be cleaned and disinfected, particularly if food and beverages are served. Materials with smooth, impervious surfaces (e.g., steel, plastic, and sealed concrete) are easier to clean than other materials (e.g., wood or dirt floors). Removing organic material (bedding, feed, and manure) before using disinfectants is important. A list of disinfectants is included in this report.
- (j) Providing transition areas for visitors to pass through when entering and exiting animal areas is critical. The transition areas between animal and non-animal areas should be designated as clearly as possible, even if they need to be conceptual rather than physical. In these areas, information should be provided regarding the 1) prevention of infection and injury and 2) location of hand-washing facilities and instructions for visitors to wash their hands upon exiting.
- (k) Signs informing visitors that they are entering an animal area should be posted at the entrance transition areas. These signs should also instruct visitors not to eat, drink, or place their hands in their mouth while in the animal area. Visitors should be discouraged from taking strollers, baby bottles, pacifiers, food, and beverages into areas where animal contact is encouraged or where contact with animal manure or bedding can occur. Visitor traffic should be controlled to avoid overcrowding the animal area.
- (l) Exit transition areas should be marked with signs instructing the public to wash their hands. Hand-washing stations should be available and accessible to all visitors, including children and persons with disabilities.
- (m) The risk for disease or injuries from animal contacts can be reduced by carefully managing the specific animals used for such contacts. These recommendations should be considered for management of animals in contact with the public.
- (n) Animals should be monitored daily by their owners or caretakers for signs of illness, and they should receive appropriate veterinary care. Ill animals and animals from herds with a recent history of abortion or diarrhea should

not be exhibited. Animals should be housed to minimize stress and overcrowding, which can increase shedding of microorganisms. Options to reduce the burden of enteric pathogens need to be evaluated, particularly for animals that are at higher risk and that will be used in venues where animal contact is encouraged.

- (o) Animal owners should retain and use the services of a licensed veterinarian. Vaccination, preventive care, and parasite control appropriate for the species should be provided. Health certificates from a licensed veterinarian should be up-to-date according to local or state requirements for animals in areas where public contact might occur. A herd or flock inspection is a critical component of the health certificate process. Diseases for which animal screening should be considered include TB for elephants and primates, and Q fever for ruminants in birthing exhibits.

- (p) Groups at high risk for serious infection include persons with waning immunity (e.g., older adults); children aged <5 years; and persons who are cognitively impaired, pregnant, or immunocompromised (e.g., persons with human immunodeficiency virus/acquired immunodeficiency syndrome, without a functioning spleen, or on immunosuppressive therapy). Persons at high risk should take heightened precautions at any animal exhibit. In addition to thorough and frequent hand washing, heightened precautions might include avoiding contact with animals and their environment (e.g., pens, bedding, and manure). Animals of particular concern for transmitting enteric diseases include young ruminants, young poultry, reptiles, amphibians, and ill animals. For young children, risk for exposure might be reduced if they are closely supervised by adults, carried by adults in animal areas, or have animal contact only over a barrier. These measures discourage animals from jumping on or nuzzling children and minimize contact with feces and soiled bedding.

Washington regulations related to fairs and petting zoos

3.33 WAC 246-100-192, “Animals in public settings—Measures to prevent human disease,” provides in part that: “Animal venue operators shall: (a) Provide an accessible hand-washing station or alternative hand sanitizing method approved by the local health officer; (b)

Post a prominent sign in a simple and easy to understand format for visitors to see before they enter the animal exhibit area which warns that: (i) Animals can carry germs that can make people sick, even animals that appear healthy; (ii) Eating, drinking, or putting things in a person's mouth in animal areas could cause illness; (iii) Older adults, pregnant women, immunocompromised people, and young children are more likely to become ill from contact with animals; (iv) Young children and individuals with intellectual disabilities should be supervised in animal exhibit areas; and (v) Strollers, baby bottles, pacifiers, and children's toys are not recommended in animal exhibit areas. (c) Post a prominent sign at each exit of the animal exhibit area reminding visitors to wash their hands.”

IV.

PLAINTIFFS' INJURIES

Toby Hager

4.1 On or about April 22, Toby Hager began to feel unwell. During the next few days, he started to experience stomach cramps, bloody diarrhea, and vomiting. On or about April 29, Toby was hospitalized at Seattle Children's Hospital, where he continued to suffer from nausea, vomiting, bloody diarrhea, stomach cramps and fever and fatigue. Ultimately, Toby developed hemolytic uremic syndrome (HUS) as a complication of his *E. coli* O157:H7 infection, and was hospitalized for approximately ten days at Seattle Children's Hospital. He required dialysis to treat his related acute renal failure, and continues to suffer from kidney problems.

Palmer Myers, Jr.

4.2 Palmer Myers Jr., at the relevant time was a first-grader attending Bernice Vossbeck Elementary, a part of the School District. Palmer was one of the many primary school

children who attended the Festival between April 21 and 23, 2015, and participated in events held at the Dairy Barn. He attended the Festival as a part of a school event organized and supervised by his school, one of the schools that constitute the School District. Palmer, his classmates, and other children had the opportunity to pet a variety of animals, and to enjoy the hay maze, all within the Dairy Barn. Palmer was not required to wash his hands while attending the Milk Makers Fest, or when exiting the Dairy Barn.

4.3 Palmer was infected by *E. coli* O157:H7 as a direct and proximate result of his participation in the activities at the Dairy Barn. Palmer was one of the cases confirmed by the Health Department to be part of the subject outbreak. He suffered from bloody diarrhea, stomach cramps, muscle aches and fatigue. He was hospitalized for approximately two days, and required a number of doctor visits and related medical care over a period of approximately two weeks.

Halle Myers

4.4 Halle Myers' older brother, Palmer Myers Jr., was one of the many primary school children who attended the Festival between April 21 and 23, 2015, and participated in activities within the Dairy Barn. She was exposed to the *E. coli* O157:H7 bacteria by contact with her brother Palmer. Halle became infected as a result of that contact. She was counted as a secondary case in the subject outbreak. Halle Myers suffered from bloody diarrhea, stomach cramps, muscle aches and fatigue. She required a number of doctor visits and related medical care over a period of approximately two weeks.

Macy Neiser

4.5 Macy Neiser at the relevant time attended Bernice Vossbeck Elementary, a school which is a part of the School District. Macy attended the Festival with classmates between April

21 and 23, 2015, at participated in activities in the Dairy Barn. Macy was not required to wash her hands while attending the Festival, or when exiting the Dairy Barn, before she ate lunch.

4.6 Macy was exposed to, and infected by, *E. coli* O157:H7 bacteria in the Dairy Barn at the Festival, and subsequently developed diarrhea, stomach cramps and fatigue, and required a number of doctor visits and related medical care over a period of approximately two weeks. She was forced to miss approximately a week of school. She tested positive for *E. coli* O157:H7 and was counted as a confirmed case in the subject outbreak.

Bennet Neiser

4.7 Bennett Neiser is the younger brother of Macy Neiser, who was infected by *E. coli* O157:H7 as a result of her participation in activities at the Dairy Barn during the Festival. Bennett was exposed to the *E. coli* O157:H7 bacteria by contact with his ill sister Macy. He also became ill through that exposure, as a secondary case, and was also confirmed to be part of the outbreak by the Health Department. Bennett subsequently developed hemolytic uremic syndrome (HUS) as a complication of his *E. coli* O157:H7 infection, and was hospitalized for approximately twelve days. He required dialysis to treat acute renal failure. He required surgical intervention to place a central line. Bennett has suffered permanent renal damage as a result of his *E. coli* O157:H7 infection. He requires an anti-hypertensive drug. He is at risk for the further progressive loss of renal function including the risk of end-stage renal disease which would require chronic dialysis and kidney transplantation.

Selah Neiser

4.8 Selah Neiser's is the younger sister of Macy Neiser, who was infected by *E. coli* O157:H7 as a result of her participation in activities at the Dairy Barn during the Festival. Selah was exposed to the *E. coli* O157:H7 bacteria by contact with her ill sister Macy. She also

became ill through that exposure, as a secondary case, and was also confirmed to be part of the outbreak by the Health Department. Selah suffered from an *E. coli* O157:H7 infection. She suffered from diarrhea, stomach cramps and fatigue, and required a number of doctor visits and related medical care over a period of approximately a week. She was forced to miss approximately a week of school.

V.

**PLAINTIFFS' CLAIMS FOR RELIEF AGAINST DEFENDANTS DAIRY WOMEN
AND NORTHWEST FAIR**

(Negligence)

5.1 Patrons of the Festival, including the plaintiffs, were business invitees of Northwest Fair and the Dairy Women. The defendants Dairy Women and Northwest Fair maintained and occupied land and facilities that were open for use by members of the public. Festival patrons, including the plaintiffs, who participated in events during the Festival, including inside the Dairy Barn, were on business that concerned the defendants Dairy Women and Northwest Fair, with the express or implied consent of the defendants Dairy Women and Northwest Fair.

5.2 The defendants Dairy Women and Northwest Fair owed a duty of reasonable care to Festival patrons, including plaintiffs, which included, but was not limited to: taking all reasonable precautions to insure the safety of the Festival's patrons; to undertake reasonable inspection of the premises for unreasonable risks of harm to Festival patrons; and to warn Festival patrons of any unreasonable risks of harm.

5.3 Defendants Dairy Women and Northwest Fair knew, or reasonably should have known, of the risk of *E. coli* O157:H7 infection among Festival patrons, including plaintiffs, by exposure to the Dairy Barn, which was likely to be contaminated by *E. coli* O157:H7 or other

pathogens. Given its virulence and known propensity to cause severe illness in human beings, this risk constituted an unreasonable risk of harm to Festival patrons—one that cannot reasonably have been expected to be known or discovered, or protected against, by the patrons themselves.

5.4 Defendants Dairy Women and Northwest Fair, by and through the acts and omissions of their employees and agents, were negligent in one or more of the following particulars, which negligence constituted a proximate cause of the injuries alleged in this Complaint:

a. Defendants Dairy Women and Northwest Fair failed to exercise reasonable care under the circumstances to protect Festival patrons from exposure to and infection by *E. coli* O157:H7.

b. Defendants Dairy Women and Northwest Fair held the Festival open for entry to the public, but failed to exercise reasonable care to inspect for and discover that acts of third persons or animals on the fairgrounds had caused, or were likely to cause, harm to Festival patrons through the likelihood of environmental contamination within the Dairy Barn by *E. coli* O157:H7.

c. Defendants Dairy Women and Northwest Fair, having knowledge of the risks of *E. coli* O157:H7 exposure and infection posed to Festival patrons, failed to give adequate warnings to Festival patrons.

d. Defendants Dairy Women and Northwest Fair failed to keep the Dairy Barn premises, and other areas where Festival events occurred, in a reasonably safe condition to prevent Festival patrons from being exposed to and infected by *E. coli* O157:H7.

e. Defendants Dairy Women and Northwest Fair failed to properly sanitize the Dairy Barn premises, and other areas where Festival events occurred, prior to commencing Festival activities thereon, and actively permitted the environment where these events occurred to remain in a contaminated, unsafe condition throughout the duration of the Festival.

f. Defendants Dairy Women and Northwest Fair failed to exercise reasonable care to inspect the premises to determine the extent to which Festival patrons, including plaintiffs, would be exposed to dangerous conditions caused by contamination by *E. coli* O157:H7.

g. Defendants Dairy Women and Northwest Fair failed to exercise reasonable care under the circumstances to provide Festival patrons with adequate and reasonable measures to protect themselves from the danger of exposure to and infection by *E. coli* O157:H7.

h. Defendants Dairy Women and Northwest Fair failed to exercise reasonable care under the circumstances by failing to obtain guidance and inspection help from appropriate sources, including the local and state departments of health, regarding the proper precautions to implement, both prior to and during the Festival, to provide Festival patrons with adequate and reasonable measures to protect themselves from the danger of exposure to and infection by *E. coli* O157:H7.

5.5 Defendants Dairy Women and Northwest Fair had a duty to comply with all applicable state and federal regulations intended to ensure the safety of Festival patrons, including, among others, the requirements of WAC 246-100-192, "Animals in public settings – Measures to prevent human diseases." Plaintiffs were among the class of persons designed to be protected by these statutes, laws, regulations, and safety codes. Defendants Dairy Women and Northwest Fair failed to comply with the provisions of the health and safety acts identified above, among others, and, as a result, were negligent *per se* due to their failure to comply with

those health and safety provisions. As a direct and proximate result of conduct by the defendants Dairy Women and Northwest Fair that was negligent *per se*, the plaintiffs sustained injury and damages in an amount to be determined at trial.

5.6 The plaintiffs have suffered severe injury and damages as a direct and proximate result of defendants Dairy Women and Northwest Fair's negligent acts and omissions. As a result, plaintiffs have suffered serious non-economic damage, including severe physical injury, pain and suffering, emotional and psychological distress arising directly from being poisoned by *E. coli* O157:H7, loss of enjoyment of life, reduced life expectancy, loss of consortium and other non-economic damages.

5.7 As a result of the negligence of the defendants Dairy Women and Northwest Fair, the plaintiffs have also suffered serious economic damage, including past and future doctor, hospital and other medical expenses, past and future wage loss and reduced future earning capacity, the exact amount to be proven at trial.

5.8 As a result of the negligence of the defendants Dairy Women and Northwest Fair, the parent plaintiffs have sustained medical expenses and other out-of-pocket costs, the loss of their child's services and support, the loss of their child's love and companionship, and injury to the parent-child relationship, and are entitled to recover all additional remedies provided by RCW 4.24.010, with the exact amount to be proven at trial.

VI.

PLAINTIFFS' CLAIMS FOR RELIEF AGAINST DEFENDANT SCHOOL DISTRICT

(Negligence)

6.1 The School District owed a duty to those students in its custody to protect them from reasonably foreseeable harm. The School District owed a duty to those students in its

custody to anticipate risks of harm that were reasonably foreseeable during their participation in Festival activities and events, and to take reasonable precautions to protect students from those risks. The protective custody of the School District was substituted for that of the parents. The School District's duty required that it exercise the same degree of care as an ordinarily reasonable and prudent person would exercise under the same or similar circumstances.

6.2 The supervisory duty of the School District extended to any off-campus extra-curricular activities under the supervision of the district employees.

6.3 The School District failed to exercise reasonable care in its custodial and supervisory duties by failing to anticipate risks of foreseeable harm posed to the students by their participation in Festival activities, including those occurring within the Dairy Barn.

6.4 The School District failed to exercise reasonable care in its custodial and supervisory duties by failing to take reasonable precautions to protect students from risks of harm that it knew, or by the exercise of ordinary diligence should have known, were posed to its students by their participation in Festival activities, including those occurring within the Dairy Barn.

6.5 Defendant School District knew, or reasonably should have known, of the risk of *E. coli* O157:H7 infection present at the Festival, including specifically within the Dairy Barn, which constituted an unreasonable risk of harm to students attending the Festival. The School District should have expected that the plaintiff students would neither discover nor be able to adequately protect themselves from the risk of *E. coli* O157:H7 infection created by their participation in Festival activities, including those occurring within the Dairy Barn.

6.6 The School District failed to protect students in its custody from reasonably foreseeable harm at the Festival. It was reasonably foreseeable that children visiting an

environment used for events featuring domestic ruminant animals, including cattle, could be exposed to pathogenic bacteria such as *E. coli* O157:H7 if reasonable precautions were not taken. The School District failed to anticipate the dangers that could reasonably be anticipated in similar locations, and failed to take related reasonable precautions or ensure that others, including employees and agents of Defendants Northwest Fair and the Dairy Women, took reasonable precautions to protect the students from harm.

6.7 Among other things, the School District:

a. failed to avail itself of the readily available public health information concerning the risk of *E. coli* O157:H7 infections in the setting of children and animals;

b. failed to exercise reasonable care under the circumstances by failing to contact and obtain guidance and inspection help from appropriate sources, including the local and state departments of health, regarding the proper precautions to implement, both prior to and during the Festival, to ensure that its students were reasonably and adequately protected against the risk of infection at the Festival.

c. failed to exercise reasonable care under the circumstances by failing to request or obtain any information about environmental conditions, including the presence of pathogens, in areas where children would be in proximity to locations used by animals or in areas in proximity to locations where animals had previously been exhibited.

d. failed to exercise reasonable care under the circumstances by failing to provide sufficient information, instructions, warnings and supervision to School District staff who attended the Festival with children, regarding both the risks of harm present at the Festival and the precautions to take to ensure that students were reasonably and adequately protected against the risk of infection at the Festival.

e. failed to exercise reasonable care under the circumstances by failing to provide sufficient information, instructions, warnings and supervision to the parents of the students who attended the Festival, regarding both the risks of harm present at the Festival and the precautions to take to ensure that students were reasonably and adequately protected against the risk of infection at the Festival.

f. failed to exercise reasonable care under the circumstances by failing to provide sufficient information, instructions, warnings and supervision to the volunteers who attended the Festival with students, regarding both the risks of harm present at the Festival and the precautions to take to ensure that students were reasonably and adequately protected against the risk of infection at the Festival.

g. failed to exercise reasonable care under the circumstances by failing to provide sufficient information, instructions, warnings and supervision to children working in the Dairy Barn or participating in Festival activities, regarding both the risks of harm present at the Festival and the precautions to take to ensure that students were reasonably and adequately protected against the risk of infection at the Festival.

h. failed to ensure that all children working in the Dairy Barn and/or attending the Festival washed their hands with soap and water after being in the Dairy Barn, and prior to their eating or drinking, and failed to ensure that adequate hand-washing facilities were available at the Festival, including at the Dairy Barn;

i. failed to advise children to keep their fingers out of their mouths before washing their hands;

j. failed to ensure that the Dairy Women and Northwest Fair provided adequate information, instructions, notice and warnings, regarding both the risks of harm present at the

Festival and the precautions to take to ensure that students were reasonably and adequately protected against the risk of infection at the Festival.

k. failed to ensure that the Dairy Women and Northwest Fair provided adequate facilities, including adequate and sufficient hand washing facilities, to protect students from infection by *E. coli* O157:H7.

l. and failed to follow the School District's own policies and procedures intended to protect children from the danger of exposure to and infection by *E. coli* O157:H7 in similar circumstances.

6.8 The plaintiffs have suffered severe injury and damages as a direct and proximate result of defendant School District's negligent acts or omissions. As a result of the negligence of the defendant School District, plaintiffs have suffered serious non-economic damage, including severe physical injury, pain and suffering, emotional and psychological distress arising directly from being poisoned by *E. coli* O157:H7, loss of enjoyment of life, reduced life expectancy, loss of consortium and other non-economic damages.

6.9 As a result of the negligence of the defendant School District, the plaintiffs have also suffered serious economic damage, including past and future doctor, hospital and other medical expenses, past and future wage loss and reduced future earning capacity, the exact amount to be proven at trial.

6.10 As a result of the negligence of the defendant School District, the parent plaintiffs have sustained medical expenses and other out-of-pocket costs, the loss of their child's services and support, the loss of their child's love and companionship, and injury to the parent-child relationship, and are entitled to recover all additional remedies provided by RCW 4.24.010, with the exact amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

- (1) That the court award plaintiffs judgment against the defendants, jointly and severally, for an amount to be determined by a jury, for such sums as shall be determined to fully and fairly compensate the plaintiffs for all non-economic and economic damages incurred, or to be incurred, by plaintiffs as the direct and proximate result of the negligent acts and omissions of the defendants, plus interest.
- (2) That the court awards plaintiffs their respective costs and disbursements.
- (3) That the court awards such other and further relief as it deems necessary and equitable in the circumstances.

SIGNED AND DATED this 2 day of March, 2016.

MARLER CLARK, LLP, PS

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