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Attorneys for Plaintiffs

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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N. MIYATA
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KALI WATSON, individually, and on
behalf of all those similarly situated,

Plaintiffs,

v.

GENKI SUSHI USA, INC., a Hawaii
corporation; HNK, INC., d/b/a Koha
Foods, a Hawaii corporation; SEA PORT
PRODUCTS CORPORATION, a
California corporation; and JOHN DOES
1-10,

Defendants.

CIVIL NO. 16-1-1702-09
(Other Civil Action) (Class Action)

JHC

**CLASS ACTION COMPLAINT; DEMAND
FOR JURY TRIAL; SUMMONS**

No trial date

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

CLASS ACTION COMPLAINT FOR DAMAGES

The plaintiff, Kali Watson, individually, and on behalf of all persons similarly situated,
by and through their respective counsel of record, state, allege, and complain as follows:

I. PARTIES

1. The plaintiff and class representative, Kali Watson, is, and at all times relevant to this action was, a resident of Honolulu, Oahu, Hawaii who consumed adulterated food on July 20, 2016 at the Chili's Grill & Bar Restaurant ("Chili's"). After learning that he had been exposed to Hepatitis A through the consumption of adulterated food, and following the recommendation of public health officials, the plaintiff received a Hepatitis A vaccine on July 29, 2016 to prevent imminent infection due to his exposure to Hepatitis A.

2. The plaintiff, and all those similarly situated, (collectively the "plaintiffs"), visited and consumed food at one of the following establishments during the following time periods:

- Baskin-Robbins, Oahu, Waialeale Center, June 17, 18, 19, 21, 22, 25, 27, 30, and July 1 and 3, 2016
- Chili's, Oahu, Kapolei (590 Farrington Highway), July 10, 12, 14, 15, 17, 18, 20-23, 25-27, 2016
- Costco Bakery, Oahu, Hawaii Kai, June 16-20, 2016
- Hawaiian Airlines:

July 31, 2016 — Flight HA22 from Honolulu, HI (HNL) to Seattle, WA (SEA)

August 1, 2016 – Flight HA21 from Seattle, WA (SEA) to Honolulu, HI (HNL)

August 10, 2016 – Flight HA18 from Honolulu, HI (HNL) to Las Vegas, NV

(LAS)

August 12, 2016 – Flight HA17 from Las Vegas, NV (LAS) to Honolulu, HI

(HNL)

- Hokkaido Ramen Santouka, Oahu, Honolulu (801 Kaheka Street), July 21-23, 26-30, and August 2-6, 9-11, 2016
- Sushi Shiono, Hawaii, Waikoloa Beach Resort, Queen's MarketPlace (69-201 Waikoloa Beach Drive), July 5-8, 11-15, and 18-21, 2016
- Taco Bell, Oahu, Waipio (94-790 Ukee Street), June 16, 17, 20, 21, 24, 25, 28-30, and July 1, 3, 4, 6, 7, and 11, 2016
- Tamashiro Market, Oahu, Kalihi (802 N. King Street), July 2, 4, 6-8, 11-13, 15-19, and 23, 2016
- Papa John's Waipahu, Oahu, Waipahu (94-1021 Waipahu Street), July 23-24, and Aug. 2, 2016
- New Lin Fong bakery, Oahu, Chinatown (1132 Maunakea Street), July 20, 22-23, 25, 27, 29-30, and Aug. 1, 3, and 5-6, 2016
- Zippy's Restaurant, Oahu, Kapolei (950 Kamokila Boulevard), August 14, 18-19, 21, 23 and 25 -26

One or more employees of the above-listed establishments and/or food service facilities ate scallops at a Defendant Genki Sushi USA, Inc.'s restaurant during the Hepatitis A exposure period, between April 2016 and August 2016, during which time adulterated food-products, including scallops, were served at Defendant Genki Sushi USA, Inc.'s establishments, thus exposing the employees of the above-listed establishments to Hepatitis A. Those employees in turn were involved in the preparation and sale of food at their respective establishments during the identified time periods, thus causing an imminent and immediate risk of Hepatitis A infection to plaintiffs herein, the patrons of those establishments, who urgently required a preventive vaccination.

3. The defendant Genki Sushi USA, Inc. (“Genki Sushi”) is a Hawaii corporation that does business in the State of Hawaii operating, among other things, foodservice establishments, including the one at which the employees described above were exposed to the Hepatitis A virus.

4. The defendant HNK, Inc., d/b/a Koha Foods Inc., is a Hawaii corporation that does business in the State of Hawaii, selling and distributing food products, including scallops contaminated with Hepatitis A that were served at Genki Sushi restaurants.

5. The defendant Sea Port Products Corporation is a California corporation that does business in the State of Hawaii, including the import and subsequent sale and distribution of the scallops contaminated with Hepatitis A that were served at Genki Sushi restaurants.

6. The plaintiffs have also sued John Does 1-10 and as those persons or entities, not yet known or identified, who were additionally involved in the production, importation, marketing, distribution or sale of scallops contaminated with the Hepatitis A virus (HAV) that were served to customers at Genki Sushi restaurants in April, May, June, July or August 2016. The plaintiffs do not know the names of these persons or entities after diligent search and thus seek leave to name such persons or entities as defendants at a later date.

II. JURISDICTION AND VENUE

7. This court has personal jurisdiction over all defendants pursuant to HRS § 634-35, including, but not limited to, subsections (1) and (2), because the plaintiffs’ causes of action against the defendants arise from the transaction of business and the commission of tortious acts within the State.

8. Each defendant has substantial, systematic, and continuous contact with this State, such that exercise of personal jurisdiction over them is appropriate. Each defendant has

purposefully availed itself of the privilege of conducting business within the State, has the requisite minimum contacts with the State such that the maintenance of this suit does not offend traditional notions of fair play and substantial justice, and the defendants should reasonably anticipate being hauled into Court here.

9. The venue of this action is proper in this Court pursuant to HRS § 603.36 because plaintiff's claims for relief arose in this circuit.

III. THE NATURE OF THE ACTION

10. Beginning on or about June 12, 2016, residents of and visitors to the Island of Oahu were infected by Hepatitis A, with the cause of such infections initially unknown. After an extensive investigation, the State of Hawaii Department of Health determined that over 200 known persons had been infected with Hepatitis A. Findings of the investigation suggested that the onset of the illnesses ranged between June 12, 2016 and August, 2016.

11. Based upon information and belief, and the findings of the Department of Health, the Hepatitis A infections were attributed to the consumption of contaminated scallops, with such consumption having occurred at restaurants operated by the defendant Genki Sushi. The contaminated scallops were distributed to Genki Sushi by the defendant HNK, Inc., d/b/a Koha Foods. Those same scallops were initially imported to the United States from the Philippines by the defendant Sea Port Products Corporation, and were then sold by Sea Port Products Corporation to Defendant HNK, Inc., d/b/a Koha Foods.

12. One or more employees of a number of different establishments and/or food service facilities ate food at a Genki Sushi USA, Inc.'s restaurant during the Hepatitis A exposure period, between April 2016 and August 2016, during which time adulterated food-products, including scallops, were served at Genki Sushi USA, Inc.'s restaurants.

13. Those employees of the different establishments had been exposed to Hepatitis A infection. Those employees in turn were involved in the preparation and sale of food at their respective establishments during the identified time periods, thus causing an imminent and immediate risk of Hepatitis A infection to plaintiffs herein, the patrons of those establishments during the identified time periods, who therefore urgently required a preventive vaccination.

14. Consistent with CDC recommendations, and with the recommendations made by the public health officials responding to the subject outbreak, the plaintiff and other persons who had been thus exposed to the Hepatitis A virus were told that post-exposure prophylactic treatment is recommended for all exposed individuals if such treatment can be administered within two weeks of exposure. "Post-exposure treatment" consisted of the administration by injection of either a Hepatitis A vaccine or IG (immune globulin).

15. The plaintiffs and all persons similarly situated were exposed to HAV as a result of consumption of adulterated food from a number of different establishments whose employees had been exposed to the Hepatitis A virus by eating food at a Genki Sushi USA, Inc.'s restaurant during the Hepatitis A exposure period, between April 2016 and August 2016. The plaintiffs and all persons similarly situated subsequently received the recommended post-exposure treatment to prevent infection with Hepatitis A.

IV. CLASS ACTION ALLEGATIONS

16. This is a class action lawsuit brought on behalf of all persons who were exposed, to the Hepatitis A virus (HAV) by their consumption of adulterated food and drink at establishments whose employees had been previously exposed to the Hepatitis A virus by consuming food at a Genki Sushi USA, Inc.'s restaurant during the Hepatitis A exposure period,

between April 2016 and August 2016.

17. **Class Definition:** The class includes all persons who consumed food or drink from the establishments identified below, during the identified time periods:

- Baskin-Robbins, Oahu, Waialeale Center, June 17, 18, 19, 21, 22, 25, 27, 30, and July 1 and 3, 2016
- Chili's, Oahu, Kapolei (590 Farrington Highway), July 10, 12, 14, 15, 17, 18, 20-23, 25-27, 2016
- Costco Bakery, Oahu, Hawaii Kai, June 16-20, 2016
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- Papa John's Waipahu, Oahu, Waipahu (94-1021 Waipahu Street), July 23-24, and Aug. 2, 2016
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- Zippy's Restaurant, Oahu, Kapolei (950 Kamokila Boulevard), August 14, 18-19, 21, 23 and 25 -26

and who, as a direct and proximate result of such consumption, were exposed to HAV and, following the recommendations of public health officials or other medical personnel, obtained vaccination, and any related medical treatment, including blood tests, to prevent HAV infection. The class does not include those who developed HAV infections.

18. Given the length of the exposure and the multiple restaurants involved, the number of potential class members is likely to be in the thousands. But because the number of persons who obtained vaccination remains confidential and within the exclusive control of the applicable state and regional health departments and districts, the precise number of class members is not known.

19. All food and drink sold at the defendant Genki Sushi USA, Inc.'s restaurants during the Hepatitis A exposure period, between April 2016 and August 2016, was defective, adulterated, and not reasonably safe as a result of use of contaminated scallops in the preparation of particular food items, or preparation in proximity or conjunction with such contaminated ingredients, rendering all food and drink prepared and sold during the exposure period adulterated, unsafe, and not fit for human consumption. Such food and drink was distributed and sold in high volume during the exposure periods to a significant number of guests and patrons, including the employees of a number of different establishments. Given the substantial number

of exposed employees of many other establishments, the number of putative class members is so numerous that joinder of all members in this case is impracticable.

20. The State of Hawaii Department of Health can transmit notice of this class action to each known potential class member, once the respective individual class is certified. Such notifications have been used successfully in prior HAV class actions for which certification and settlement have been obtained.

21. In addition to numerosity, there are significant questions of law or fact that are common to the class, including but not limited to:

(a) Whether food prepared with HAV-contaminated scallops is adulterated, unsafe to eat, defective, or otherwise prohibited from sale and distribution under the laws of the State of Hawaii;

(b) Whether food prepared in proximity or conjunction with HAV-contaminated scallops is adulterated, unsafe to eat, defective, or otherwise prohibited from sale and distribution under the laws of the State of Hawaii;

(c) Whether the defendants are strictly liable for the sale of adulterated food;

(d) Whether the defendants were negligent in their manufacture and sale of adulterated food under both Federal and Hawai'i Food, Drugs and Cosmetics Acts (HRS § 328-6) and all applicable local, state, and federal health and safety regulations;

(e) Whether the plaintiffs are among the class of persons designed to be protected by the statutory and regulatory provisions of both Federal and Hawai'i Food, Drugs and Cosmetics Acts (HRS § 328-6) and all applicable local, state, and federal health and safety regulations;

(f) Whether the defendants breached their duties to the plaintiffs to make,

prepare, and sell food products that were reasonably safe in construction, that did not materially deviate from applicable design specifications, and that did not deviate materially from identical units in the product line;

(g) Whether the defendants manufactured, distributed, and sold a food product that was adulterated, not fit for human consumption, in a defective condition unreasonably dangerous to the plaintiffs, and not reasonably safe as designed, manufactured, or sold;

(h) Whether the defendants breached their duties to exercise reasonable care in the purchase, preparation and sale of food products; and

(i) Whether the defendants are liable for damages to all potentially exposed persons who obtained vaccinations to avoid HAV infections.

22. The claims of the plaintiff and named representative are typical of the claims of the potential class members, each of whom meet the class definition as set forth above. The damages and relief sought by the named representative is also typical to the class and its members because of the essentially identical nature and process of treatment, its costs, and physical and emotional consequences amongst the class representative and the class members.

23. The named plaintiff has common interests with the members of the class, will vigorously prosecute the interests of the class through qualified counsel, and does not have identifiable conflicts with any other potential class member and, thus, the named plaintiff will fairly and adequately represent and protect the interests of the whole class.

24. The named plaintiff has retained competent counsel.

(a) The plaintiff's attorneys, Starn, O'Toole Marcus & Fisher, are experienced and able counsel who have litigated numerous class actions. Specifically, the firm has handled class action litigation involving the Volkswagen diesel cheat-device,

mold in hotel rooms, data breaches at the University of Hawaii, car theft products, bank overdraft charges, service tip charges, and college student fees. Attorneys at the firm also represented local dairy farmers in a heptachlor poisoning case, and decorative plant, orchid and tomato farmers in the contaminated Benlate fungicide case against DuPont.

(b) The plaintiff anticipates pending *pro hac vice* approval, being represented in this action by Marler Clark of Seattle, Washington, who has represented thousands of individuals in class actions related to HAV, including:

- i. More than 1,500 individuals in a class action related to a previous HAV outbreak at the D'Angelo's in Swansea, Massachusetts in 2001;
- ii. Approximately 1,300 persons as part of a class action on behalf of persons who received IG shots due to an HAV outbreak in June and July 2000 in Spokane, Washington, which was associated with food served at a Carl's Jr. fast-food restaurant;
- iii. Approximately 9,000 persons who received IG shots due to an outbreak of HAV at a Chi-Chi's restaurant near Pittsburgh, Pennsylvania in 2003;
- iv. Approximately 3,800 persons as part of a class action on behalf of persons who received IG shots due to an HAV exposure in June 2004 at a Friendly's restaurant in Arlington, Massachusetts;
- v. Approximately 850 persons as part of a class action on behalf of persons who received IG shots due to an HAV exposure at a Quizno's in Boston, Massachusetts in 2004.
- vi. Approximately 2,700 people infected with *Cryptosporidium* at a New

York spray-park in 2005.

- vii. Over 3,000 persons who received IG shots due to potential HAV exposure in January 2007 at a Houlihan's restaurant in Geneva, Illinois;
- viii. More than 5,000 persons who were required to get vaccinations against HAV following exposure at a McDonald's restaurant in Milan, Illinois in 2009;
- ix. Approximately 3000 claimants who dined at The Olive Garden Italian Restaurant in Fayetteville, North Carolina who thereby were required to get vaccinations against HAV following their potential exposure to hepatitis A.
- x. Approximately 700 persons who consumed food and drink at a McDonald's Restaurant in Northport, Alabama on March 14, 2012 or on March 16, 2012, and who thereby were required to get vaccinations against HAV following their potential exposure to HAV; and
- xi. Approximately 2,400 persons who received HAV vaccines in 2014 due to exposure at a Charlotte, North Carolina Papa Johns.

Marler Clark is also presently class counsel in the following cases:

- (i) approximately 3,000 persons who received HAV vaccines in New York due to exposure at the New Hawaiian restaurant in 2013; this class action was recently certified;
- (ii) for 2,700 persons who received HAV vaccines in Springfield, Missouri due to exposure at a Red Robin restaurant in 2014; and
- (iii) for a nine-state putative HAV class involving as many as 25,000 claimants who were forced to obtain preventive vaccinations after consuming recalled Townsend Farms frozen berry-mix

that had been purchased at Costco.

V. FIRST CAUSE OF ACTION
(Strict Liability)

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

25. The defendants imported, manufactured, distributed, or sold products, including HAV-contaminated scallops, that were the cause of confirmed HAV illnesses in Hawai'i, as described previously, and that caused the plaintiff and all others similarly situated to obtain a Hepatitis A vaccination or a prophylactic dose of IG, and related tests or treatment, due to the consumption of adulterated food or drink products at restaurants whose employees had been exposed to the Hepatitis A virus at a Genki Sushi USA restaurant, during the exposure period, thus causing injury for which the defendants are strictly liable.

26. The products the defendants respectively imported, distributed, manufactured, or sold were, at the time of import, distribution, manufacture, or sale, in a condition that a consumer would not reasonably contemplate, including being HAV-contaminated, and was in a condition that rendered the products unreasonably dangerous for ordinary and expected use.

27. The products that the defendants imported, manufactured, distributed or sold, and that the plaintiff and others purchased and consumed, as described previously, was expected to reach the consumers, and be consumed by them, without substantial change. The plaintiff and others used the product in the manner expected and intended, including consumption.

28. The plaintiff and the class suffered the injuries alleged above as a direct and proximate result of the contaminated, defective food products that the defendants respectively imported, manufactured, distributed, or sold.

VI. SECOND CAUSE OF ACTION

(Negligence Per Se)

29. The defendants imported, manufactured, distributed, or sold a food product that was adulterated, not fit for human consumption, and not reasonably safe as manufactured or sold.

30. The defendants were negligent in manufacturing, importing, distributing, and selling a food product that was adulterated, not fit for human consumption, and not reasonably safe because the defendants failed to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of the food product including, without limitation, provisions of both Federal and Hawai'i Food, Drugs and Cosmetics Acts (HRS § 328-6) and all applicable local, state, and federal health and safety regulations.

31. The plaintiff was among the class of persons, namely consumers, intended to be protected by local, state, and federal health and safety laws related to the manufacture, distribution, and sale of food that was free from pathogens and unadulterated.

32. The defendants owed a duty to the plaintiff to comply with all statutory and regulatory provisions that pertained or applied to the import, manufacture, distribution, storage, and sale of the food product including, without limitation, provisions of both Federal and Hawai'i Food, Drugs and Cosmetics Acts (HRS § 328-6) and all applicable local, state, and federal health and safety regulations.

33. The defendants, by their respective import, manufacture, distribution, storage, and sale of adulterated, unsafe, and unhealthy food products, failed to conform to the duties prescribed by law and, this failure constituted a proximate cause of the plaintiff's injuries.

VII. DAMAGES

34. The named plaintiff, and all those similarly situated, *i.e.* those persons who fit the class definition, have suffered general and special damages as the direct and proximate result of the acts and omissions of the defendant, which damages shall be fully proven at the time of trial. These damages are common among the representative party and putative class members and may include: wage loss; medical and medical-related expenses; travel and travel-related expenses; emotional distress; fear of harm and humiliation; physical pain; physical injury; and all other damages as would be anticipated to arise under the circumstances.

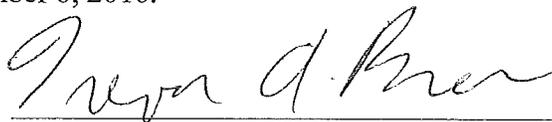
PRAYER FOR RELIEF

WHEREFORE, the plaintiff, and all those similarly situated, pray for the following relief:

- (1) For a trial by jury;
- (2) That the plaintiff and all class members recover judgment for damages, on behalf of themselves and all those similarly situated, against the defendants for such sums as shall be determined to fully and fairly compensate them for all general, special, incidental, and consequential damages respectively incurred by them as the direct and proximate result of the acts and omissions of the defendant;
- (3) That the court award the plaintiff, and all those similarly situated, their respective costs, disbursements and reasonable attorneys' fees incurred;
- (4) That the court award the plaintiff, and all those similarly situated, the opportunity to amend or modify the provisions of this petition as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served;
and
- (5) That the court award the plaintiff, and all those similarly situated, such other and

further relief as it deems necessary and equitable in the circumstances.

DATED: Honolulu, Hawaii, September 8, 2016.

A handwritten signature in cursive script, appearing to read "Trevor A. Brown", written in black ink above a horizontal line.

TREVOR A. BROWN
JUDITH A. PAVEY
SHARON V. LOVEJOY

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

16-1-1702-09

JHC

KALI WATSON, individually, and on
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Defendants.

CIVIL NO. _____
(Other Civil Action) (Class Action)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiffs above named, by and through their attorneys of record, hereby demand trial by jury in this matter on all issues triable to a jury herein.

DATED: Honolulu, Hawaii, September 8, 2016.



TREVOR A. BROWN
JUDITH A. PAVEY
SHARON V. LOVEJOY

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

16-1-1702-09 -LJHC

KALI WATSON, individually, and on behalf of all those similarly situated,

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Defendants.

CIVIL NO. _____
(Other Civil Action) (Class Action)

SUMMONS

SUMMONS

STATE OF HAWAII

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to file with the court and serve upon Trevor A. Brown, Judith A. Pavey and Sharon V. Lovejoy, Plaintiffs' attorneys, whose address is Starn O'Toole Marcus & Fisher, 733 Bishop Street, Suite 1900, Honolulu, Hawai'i 96813, an answer to Plaintiffs' Class Action Complaint, which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, entry of default and default judgment will be taken against you for the relief demanded in the Complaint.

Pursuant to Rule 4(b) of the Hawai'i Rules of Civil Procedure, this summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general

public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

DATED: Honolulu, Hawai'i; SEP 08 2016

N. MIYATA

CLERK OF THE COURT

