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5
6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON
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8 NANCY GREEN, an Individual,) NO.
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Plaintiff,)
vs.)
FRED MEYER, Inc., an Ohio)
Corporation,)
Defendant.)

**COMPLAINT FOR PERSONAL
INJURY AND DAMAGES**

COMES NOW the plaintiff, NANCY GREEN, by and through her attorneys of record, the
MARLER CLARK law firm, and alleges as follows:

I. PARTIES AND JURISDICTION

1.1 The plaintiff, NANCY GREEN (“the plaintiff”), resides in Mason County,
Washington.

1 2.4 The WSDH is working with state and federal partners to determine the source of the
2 fruit, including whether there may be additional retailers where related products were sold.

3 **The Salmonella Bacteria:**

4 2.5 The term *Salmonella* refers to a group or family of bacteria that variously cause illness
5 in humans. The taxonomy and nomenclature of *Salmonella* has changed over the years and are still
6 evolving. Currently, the Centers for Disease Control and Prevention (CDC) recognizes two species,
7 which are divided into seven subspecies. These subspecies are divided into over fifty serogroups
8 based on somatic (O) antigens present. The most common *Salmonella* serogroups are A, B, C, D, E,
9 F, and G. Serogroups are further divided into over 2,500 serotypes. *Salmonella* serotypes are
10 typically identified through a series of tests of antigenic formulas listed in a document called the
11 Kauffmann-White Scheme published by the World Health Organization Collaborating Centre for
12 Reference and Research on *Salmonella*.

13 2.6 *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of
14 humans and other animals, including birds. *Salmonella* bacteria are usually transmitted to humans
15 by eating foods contaminated with animal feces or foods that have been handled by infected food
16 service workers who have practiced poor personal hygiene. Contaminated foods usually look and
17 smell normal, and are often of animal origin, such as beef, poultry, milk, or eggs, but all foods,
18 including vegetables, may become contaminated. Many raw foods of animal origin are frequently
19 contaminated, but thorough cooking kills *Salmonella*.

1 **Medical Complications of Salmonellosis:**

2 2.7 The term reactive arthritis refers to an inflammation of one or more joints, following
3 an infection localized at a site distant from the affected joints. The predominant site of the infection
4 is the gastrointestinal tract.

5 2.8 Reactive arthritis can be post infection, meaning that the infection may not be active
6 when diagnosed. Several bacteria, including *Salmonella*, can cause reactive arthritis. And although
7 the resulting joint pain and inflammation can resolve completely over time, permanent joint damage
8 may occur.

9 2.9 The reactive arthritis associated with Reiter's may develop after a person eats food
10 that has been tainted with bacteria. In a small number of persons, the joint inflammation is
11 accompanied by conjunctivitis (inflammation of the eyes), and uveitis (painful urination). This triad
12 of symptoms is called Reiter's Syndrome. *Salmonella* is one of the most common gastrointestinal
13 bacteria involved with Reiter's Syndrome.

14 2.10 *Salmonella* is also a cause of a condition called post-infectious irritable bowel
15 syndrome (PI IBS), which is a chronic disorder characterized by alternating bouts of constipation
16 and diarrhea, both of which are generally accompanied by abdominal cramping and pain. In one
17 recent study, over one-third of PI IBS sufferers had experienced symptoms of IBS for more than ten
18 years, with their symptoms remaining fairly constant over time.

19 **NANCY GREEN's *Salmonella* Infection:**

20 2.11 The plaintiff consumed pre-cut cantaloupe on November 1, 2017, which she
21 purchased from the defendant's Shelton, Washington establishment.

1 2.12 On November 2, 2017, the plaintiff began experiencing symptom onset, including
2 nausea, vomiting, diarrhea, stomach cramps, fever, muscle aches, fatigue, and headaches.

3 2.13 The plaintiff sought medical treatment for her symptoms and, during the course of her
4 treatment, she submitted a stool culture that tested positive for *Salmonella*.

5 2.14 The plaintiff was subsequently contacted by the Mason County Department of Public
6 Health, who interviewed the plaintiff regarding her illness.

7 **III. CAUSE OF ACTION**

8 **STRICT PRODUCT LIABILITY**

9 3.1 The defendant is a product manufacturer within the meaning of the Washington
10 Product Liability Act (“WPLA” or “the Act”), RCW 7.72.010(2), and manufactured the food that
11 caused the plaintiff’s *Salmonella* infection and related injuries. The *Salmonella*-contaminated food
12 consumed by the plaintiff was a product within the meaning of the WPLA, RCW 7.72.010(3).

13 3.2 Under the WPLA, the defendant owed a duty to the plaintiff to manufacture a product
14 that was reasonably safe in construction, did not materially deviate from applicable design
15 specifications, or otherwise deviate in some material way from otherwise identical units in the
16 defendant’s product line.

17 3.3 Under the WPLA, the defendant owed a duty to the plaintiff to manufacture a product
18 that conformed to their implied warranties, as defined by RCW Ch. 62A, including, but not limited
19 to, the implied warranty that defendant’s food was fit for human consumption.

20 3.4 The food manufactured and sold by the defendant that caused plaintiff’s *Salmonella*
21 infection, and all associated legal injuries, was not reasonably safe in construction, and did not

1 conform to defendant's implied warranties, because it was contaminated and adulterated with, among
2 other things, *Salmonella*

3 3.5 Because the defendant's food was not reasonably safe in construction, and did not
4 conform to defendant's implied warranties, the defendant is strictly liable to the plaintiff for the harm
5 proximately caused by the contaminated food.

6 **IV. CAUSE OF ACTION**

7 **NEGLIGENCE**

8 4.1 The defendant manufactured, distributed and sold a product that was not reasonably
9 safe as designed or manufactured, within the meaning of the WPLA, RCW 7.72.030(1).

10 4.2 The defendant was negligent in manufacturing, distributing, and selling a product that
11 was not reasonably safe because adequate warnings or instructions were not provided including, but
12 not limited to, the warning that the food may contain *Salmonella* bacteria, and thus should not be
13 provided for the purpose of human consumption.

14 4.3 The defendant had a duty to comply with all statutory and regulatory provisions that
15 pertained or applied to the manufacture, distribution, storage, labeling, and sale of their food products
16 including, but not limited to, the Federal Food, Drug, and Cosmetics Act, which bans the
17 manufacture, sale, and distribution of any "adulterated" food. The defendant breached this duty.

18 4.4 The plaintiff is among the class of persons designed to be protected by the statutory
19 and regulatory provisions pertaining to the defendant's manufacture, distribution, storage, labeling,
20 and sale of their food.

21 4.5 The defendant owed a duty to the plaintiff to use reasonable care in the manufacture,

1 distribution, and sale of its product, to prevent contamination by *Salmonella*. The defendant
2 breached this duty.

3 4.6 As a result of the defendant's negligence, the plaintiff suffered severe and permanent
4 personal injuries, as well as economic loss.

5 **V. DAMAGES**

6 5.1 The plaintiff has suffered general, special, incidental, and consequential damages as
7 a direct and proximate result of the acts and omissions of the defendant, which damages shall be
8 fully proven at the time of trial, including, but not limited to: damages for loss of enjoyment of life,
9 both past and future; medical and medical related expenses, both past and future; travel and travel-
10 related expenses, past and future; emotional distress, and future emotional distress; pharmaceutical
11 expenses, past and future; wage and other economic damages loss; loss of consortium; and other
12 ordinary, incidental and consequential damages as would be anticipated to arise under the
13 circumstances.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the plaintiff prays, having stated her claims in full, request judgment by this
16 court against the defendants as follows:

- 17 1. For general damages, in amounts to be proven at the time of trial;
- 18 2. For special damages, in amounts to be proven at the time of trial;
- 19 3. For costs, including their reasonable attorney fees; and
- 20 4. For such other and further relief as the court deems just and equitable in the
21 circumstances.

1 The plaintiff further requests that the court award the plaintiff the opportunity to amend or
2 modify the provisions of this complaint as necessary or appropriate after additional or further
3 discovery is completed, and after all appropriate parties have been served.

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5 DATED this 5th day of December, 2017.

6 MARLER CLARK, L.L.P., P.S.

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12 Attorneys for Plaintiff
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