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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

LOUISE FRASER,

Plaintiff,

vs.

**COMPLAINT
AND JURY DEMAND**

FRESHWAY FOODS, INC.; and
PANERA, LLC,

Case No.: _____

Defendants.

COMES NOW the plaintiff Louise Fraser who, by and through her attorneys of record, Marler Clark, LLP, PS (pending admission *pro hac vice*) and Michael Ferrara, alleges upon information and belief as follows:

PARTIES

1. The plaintiff Louise Fraser is a resident of Flemington, Hunterdon County, New Jersey. The plaintiff resides within the jurisdiction of this Court and is a Citizen of

the State of New Jersey.

2. The defendant Freshway Foods Inc., is an Ohio corporation doing business in Sydney, Ohio, with its principal offices located in Ohio as well. Therefore, Freshway Foods Inc., is a Citizen of the State of Ohio.

3. The defendant Panera, LLC, is a Delaware LLC with headquarters and principal offices in St. Louis, Missouri. The sole member of Panera, LLC is “Panera Bread Company,” a Delaware Corporation. Defendant Panera, LLC owns and operates the Panera restaurant located at 300 US Highway 202, Raritan, New Jersey. Therefore, Panera is a Citizen of the states of Delaware and Missouri for diversity jurisdiction purposes, and not a Citizen of New Jersey.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is between citizens of different states, and because the defendants have certain minimum contacts with the State of New Jersey such that maintenance of the suit in this district does not offend traditional notions of fair play and substantial justice.

5. Venue in the United States District Court for the District of New Jersey is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the plaintiff’s claims and causes action occurred in this judicial district, and because the defendants are subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

GENERAL ALLEGATIONS**Prior Outbreaks Linked to Lettuce and Other Leafy Greens**

6. *E. coli* O157:H7 outbreaks associated with lettuce and other leafy greens are by no means a new phenomenon. Outlined below is a list of *E. coli* outbreaks involving contaminated lettuce or leafy greens:

Date	Vehicle	Etiology	Confirmed Cases	State(s)
Aug. 1993	Salad Bar	<i>E. coli</i> O157:H7	53	WA
July 1995	Lettuce (leafy green; red; Romaine)	<i>E. coli</i> O157:H7	70	MT
Sept. 1995	Lettuce (Romaine)	<i>E. coli</i> O157:H7	20	ID
Sept. 1995	Lettuce (Iceberg)	<i>E. coli</i> O157:H7	30	ME
Oct. 1995	Lettuce (Iceberg; unconfirmed)	<i>E. coli</i> O157:H7	11	OH
May-June 1996	Lettuce (Mesclun; red leaf)	<i>E. coli</i> O157:H7	61	CT, IL, NY
May 1998	Salad	<i>E. coli</i> O157:H7	2	CA
Feb.-Mar. 1999	Lettuce (Iceberg)	<i>E. coli</i> O157:H7	72	NE
July-Aug. 2002	Lettuce (Romaine)	<i>E. coli</i> O157:H7	29	ID, WA
Oct.2003 -May 2004	Lettuce (mixed salad)	<i>E. coli</i> O157:H7	57	CA
April 2004	Spinach	<i>E. coli</i> O157:H7	16	CA
Sept. 2005	Lettuce (Romaine)	<i>E. coli</i> O157:H7	32	MN, OR, WI
Sept. 2006	Spinach (baby)	<i>E. coli</i> O157:H7 and other serotypes	204	Nationwide
Nov./Dec. 2006	Lettuce	<i>E. coli</i> O157:H7	71	DE, NY, NJ, PA
Nov./Dec. 2006	Lettuce	<i>E. coli</i> O157:H7	81	IA, MN, WI
May 2008	Lettuce (Romaine)	<i>E. coli</i> O157:H7	9	WA
April 2010	Lettuce (Romaine)	<i>E. coli</i> O145	33	MI, NY, OH, PA, TN
March 2011	Lettuce (Romaine)	<i>E. coli</i> O157:H7	55	AR, AZ, IL, IN, KS, KY, MN, MO, NE
October 2011	Lettuce (Romaine)	<i>E. coli</i> O157:H7	60	AZ, AR, GA, IL, IN, KS, KY, MN, MO, NE

The 2018 E. coli O157:H7 Outbreak Linked to Romaine Lettuce from Yuma

7. On April 13, 2018, the Centers for Disease Control and Prevention (CDC) announced a multi-state outbreak of *E. coli* O157:H7 linked to the consumption of romaine lettuce products produced in the Yuma, Arizona growing region.

8. As of the April 13, 2018 announcement, thirty-five people had become ill in the outbreak from eleven states, including Connecticut (2), Idaho (8), Illinois (1), Michigan (1), Missouri (1), New Jersey (7), New York (2), Ohio (2), Pennsylvania (9), Virginia (1), and Washington (1). In addition, the state of Montana reports as many as 8 sick and the state of Arizona reports 3.

9. Illnesses started on dates ranging from March 22, 2018 to March 31, 2018. Ill people range in age from 12 to 84 years, with a median age of 29. Sixty-nine percent of ill people are female. Twenty-two ill people have been hospitalized, including three people who developed hemolytic uremic syndrome, a type of kidney failure. No deaths have been reported.

10. Multiple restaurants, retailers and distributors have, since the CDC's April 13 announcement, recalled or removed romaine lettuce that was grown in the Yuma, Arizona region.

11. Certain Panera Bread restaurant locations in the northeastern part of the United States acquired *E. coli* O157:H7-contaminated romaine lettuce grown in the Yuma, Arizona region. Multiple other retail foodservice locations nationally have also acquired the contaminated lettuce from the Yuma, Arizona region and, like Panera Bread, have had customers who have become ill as a result of consuming menu items containing the contaminated romaine lettuce. On information and belief, Panera Bread was supplied

the contaminate romaine lettuce by Freshway Foods, Inc.

12. Federal and state public health officials continue to investigate this outbreak. Among other things, these investigators are currently trying to determine the precise location(s) at which the contaminated lettuce was grown and/or processed.

***E. coli* O157:H7 Infection and Hemolytic Uremic Syndrome**

13. *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 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.

14. *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 number 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.

15. 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 attach 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.

16. 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.

17. *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.

18. 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.

19. 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.

Louise Fraser's Injuries

20. On or about March 20, 2018, Ms. Fraser consumed romaine lettuce from the Yuma, Arizona growing region and provided by Defendant Freshway Foods Inc., in a salad at the Defendant's Panera Bread restaurant located at 300 US Highway 202, Raritan, New Jersey. The salad was contaminated by *E. coli* O157:H7 bacteria.

21. Onset of Ms. Fraser's symptoms caused by the *E. coli* O157:H7 infection occurred on or about March 23 or 24, 2018, with diarrhea, abdominal cramps, and a general feeling of illness.

22. Ms. Fraser's symptoms worsened dramatically over the next twenty-four hours, and her diarrhea became bloody.

23. Ms. Fraser was seen in the emergency department at the Hunterdon Medical Center in Flemington, New Jersey on or about March 25, 2018. She was admitted and remained hospitalized until April 9, 2018.

24. Ms. Fraser was diagnosed with hemolytic uremic syndrome (HUS), caused by her infection by *E. coli* O157:H7. As a result of her HUS condition, Ms. Fraser required multiple blood transfusions and underwent paracentesis, among other invasive and painful medical treatments.

25. Ms. Fraser is currently at home recovering from her *E. coli* O157:H7-mediated HUS illness. She is at risk for the development of kidney and cardiovascular complications from her injuries and may require additional medical treatment.

26. Ms. Fraser contracted her confirmed *E. coli* O157:H7 illness by

consuming the defendant's *E. coli* O157:H7-contaminated romaine lettuce.

CAUSES OF ACTION

Product Liability Claims Under the New Jersey Products Liability Act

27. By this reference, Plaintiff incorporates the foregoing paragraphs as if each was set forth here in its entirety.

28. At all times relevant, the Defendants manufactured and sold the adulterated food product that is the subject of this action.

29. The adulterated food product that the Defendants manufactured, distributed, and sold was, at the time it left the Defendants' control, defective and unreasonably dangerous for its ordinary and expected use because it was contaminated by *E. coli* O157:H7, a bacterium dangerous to human health.

30. Because the adulterated food product that is the subject of this action was contaminated by *E. coli* O157:H7, it was in a condition that consumers had not contemplated, including the Plaintiff, and it was in a condition that rendered the product unreasonably dangerous for its ordinary and expected use.

31. The food product that is the subject of this action was expected to reach the consumers, including Plaintiff, and be consumed by them, without substantial change. The consumers used the Product in the manner expected and intended, including when they consumed it.

32. The food product that is the subject of this action was defective and unreasonably dangerous for its ordinary and expected use because it was contaminated by *E. coli* O157:H7, which was a manufacturing defect, and did not contain warnings or instructions indicating that the product was unreasonably dangerous due to the

contamination.

33. The Plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the defendants manufactured, distributed, and sold. These damages include but are not limited to: physical and mental pain and suffering, past and future in the form of the pain and suffering including bodily suffering, discomfort and loss of enjoyment of life; and medical costs and expenses to this point and the present value of reasonable medical expenses in the future.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment against the defendants as follows:

- a. Judgment for the Plaintiff against the defendants for just compensation in a fair and reasonable amount for the damages above set forth; and
- b. Such additional and/or further relief, including interest, costs, and reasonable attorney fees, as this Court deems just and equitable.

JURY DEMAND

The Plaintiff hereby demands a jury trial.

Dated: April 16, 2018

_____/s/ Michael A. Ferrara, Jr._____
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and

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