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Attorneys for Plaintiff, Jordan Anglen

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

JORDAN ANGLEN,

Plaintiff,

vs.

GRASMICK PRODUCE CO. INC.,

Defendant.

CV01-18-15208

Case No. _____

**COMPLAINT FOR DAMAGES
JURY DEMAND**

COMES NOW the Plaintiff, Jordan Anglen, by and through his attorneys of record, John Janis of Hepworth Holzer, LLP and William D. Marler of Marler Clark, LLP, PS (*Pro Hac Vice* pending), for a cause of action against Grasmick Produce Co. Inc., to respectfully allege as follows:

PARTIES

1. The Plaintiff is, and was, at all times material to this action, a resident of Ada County, Idaho.

2. Defendant Grasmick Produce Co. Inc. (hereinafter “Grasmick”) is incorporated under the laws of Idaho. Grasmick is a processor and distributor of fresh produce products. At all times relevant, Defendant Grasmick distributed fresh produce products, including the salad product that is the subject of this action, to various retail locations in the state of Idaho and other regional locations, including the Costco located at 2051 S Cole Rd, Boise, Idaho.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

The 2018 Romaine Lettuce E. coli O157:H7 Outbreak

3. As of June 28, 2018, at least 210 people in 36 states were sickened in an outbreak of E. coli O157:H7 linked to romaine lettuce grown in the Yuma, Arizona region. Illnesses also occurred in Canada and are not included in this count.

4. Illnesses started on dates ranging from March 13, 2018 to June 6, 2018. Ill people range in age from 1 to 88 years, with a median age of 28. Sixty-seven percent of ill people are female. Of 201 people with information available, 96 (48%) have been hospitalized, including 27 people who developed hemolytic uremic syndrome, a type of kidney failure. At least five victims died from their E. coli O157:H7 infections.

5. Epidemiologic, laboratory, and traceback evidence—generated during a large multi-agency investigation that included Centers for Disease Control and Prevention, Food and Drug Administration, and officials from the Minnesota Department of Health and other state and local public health agencies—indicated that romaine lettuce from the Yuma growing region was the likely source of this outbreak.

6. In interviews, ill people answered questions about the foods they ate and other exposures they had before they became ill. Of the 166 people interviewed, 145 (87%) reported eating romaine lettuce in the week before their illness started. This percentage was significantly

higher than results from a survey of healthy people in which 46% reported eating romaine lettuce in the week before they were interviewed. Some people who became sick in this outbreak did not report eating romaine lettuce but had close contact with someone else who got sick from eating romaine lettuce.

7. The FDA and state and local regulatory officials traced the romaine lettuce to many farms in the Yuma growing region. The FDA, along with CDC and state partners, started an environmental assessment in the Yuma growing region and collected samples of water, soil, and manure. CDC laboratory testing identified the outbreak strain of *E. coli* O157:H7 in water samples taken from a canal in the Yuma growing region. Whole genome sequencing analysis showed that the *E. coli* O157:H7 found in the canal water is closely related genetically to the *E. coli* O157:H7 from ill people. Laboratory testing for other environmental samples is continuing. FDA is continuing to investigate to learn more about how the *E. coli* bacteria could have entered the water and ways this water could have contaminated romaine lettuce in the region.

E. coli O157:H7 and Hemolytic Uremic Syndrome

8. *Escherichia coli* is 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.

9. *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.

10. 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 painful bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

11. 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.

12. 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.

13. 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.

14. 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.

Jordan Anglen's *E. coli* Infection and Illness

15. Jordan Anglen is an employee of Costco. He is 23 years old.

16. On or about March 25, 2018, Jordan purchased a Caesar salad from the food court at the Costco location where he works. The salad was prepared from a salad mix product that Defendant Grasmick had processed and distributed to Costco, containing romaine lettuce grown and harvested in Yuma, Arizona. The salad mix product that Grasmick processed and distributed to Costco was contaminated by *E. coli* O157:H7, causing Jordan's infection and hemolytic uremic syndrome, described below.

17. On or about March 28, 2018, Jordan began to experience violent bouts of bloody diarrhea, as well as excruciating abdominal pains, among other symptoms.

18. On or about March 29, 2018, Jordan sought medical attention from Primary Health Urgent Care. On or about March 30, 2018, he went to St. Luke's Meridian, and was soon transferred to St. Luke's Boise, where he was admitted for further care and treatment.

19. Jordan shortly thereafter developed hemolytic uremic syndrome and was taken to the intensive care unit. He suffered from seizures as a result of neurological injury due to his

hemolytic uremic syndrome.

20. Jordan remained hospitalized through approximately April 23, 2018, but continues to receive medical care for his injuries, including specifically but not exclusively the neurological injury that he suffered.

21. During Jordan's hospitalization, he submitted a stool sample that tested positive for Shiga toxin-producing *Escherichia coli* (STEC), serotype O157:H7. Jordan's *E. coli* O157:H7 infection, which was proximately caused by his ingestion of contaminated romaine lettuce distributed by Defendant Grasmick, was determined to be a match to the strain involved in the subject outbreak.

22. Jordan continues to suffer from neurological and other injuries associated with his *E.coli*-induced illness.

COUNT I: STRICT PRODUCT LIABILITY

23. Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs was set forth here in its entirety.

24. The Defendant was at all times relevant hereto, the manufacturer and distributor of the adulterated food product that is the subject of this action.

25. The adulterated food product that the Defendant manufactured and distributed was, at the time it left the Defendant's control, defective and unreasonably dangerous for its ordinary and expected use because it contained *E. coli*, a harmful pathogen.

26. The adulterated food product that the Defendant manufactured and distributed was delivered to Costco in Boise, Idaho without any change in its defective condition. The adulterated food product that the Defendant manufactured distributed was used in the manner expected and intended and was consumed by the Plaintiff.

27. The Defendant owed a duty of care to the Plaintiff to distribute food that was not adulterated, that was fit for human consumption, that was reasonably safe in construction, and that was free of pathogenic bacteria or other substances injurious to human health. The Defendant breached this duty.

28. As a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the Defendant distributed, Plaintiff suffered injury and damages in an amount to be determined at trial.

COUNT II: NEGLIGENCE AND NEGLIGENCE PER SE

29. Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs was set forth here in its entirety.

30. The Defendant manufactured and distributed food products that were contaminated by *E. coli*, a harmful pathogen.

31. The Defendant owed a duty to all persons who consumed their products, including Plaintiff, to use reasonable care in the manufacture and distribution of food products, the observation of which duty would have prevented or eliminated the risk that the Defendant's food products would be contaminated with harmful pathogens, like *E. coli*. Defendant breached this duty.

32. The Defendant had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food product, including, but not limited to, the requirements of the Idaho Food Code. IDAPA 16.02.19. The Defendant's distribution of the *E. coli*-contaminated food products that caused Plaintiff's injuries was in breach of the duties imposed upon the Defendant under the provisions of the Idaho Food Code, and, as a result, was negligent *per se* in its distribution of food adulterated with *E. coli*, a deadly pathogen.

33. Plaintiff was among the class of persons designed to be protected by these statutes and regulations pertaining to the manufacture, distribution, storage, and sale of similar food products. As a result, the Defendant's actions in distributing the subject food products constituted negligence *per se*, for which negligence they are liable.

34. The Defendant breached its duties owed to the ultimate consumers of its food products by committing the following acts and omissions of negligence:

- 34.1 Failed to adequately maintain or monitor the sanitary conditions of its products, premises, equipment and employees;
- 34.2 Failed to properly operate its facilities and equipment in a safe, clean, and sanitary manner;
- 34.3 Failed to apply its food safety policies and procedures to ensure the safety and sanitary conditions of its food products, premises, and employees;
- 34.4 Failed to apply food safety policies and procedures that met industry standards for the safe and sanitary production of food products, and the safety and sanitary condition of its premises and employees;
- 34.5 Failed to prevent the transmission of *E. coli* to consumers of its food products.
- 34.6 Failed to properly train its employees and agents how to prevent the transmission of *E. coli* on its premises, from its facility or equipment, or in its food products;

34.7 Failed to properly supervise its employees and agents to prevent the transmission of *E. coli* on their premises, from its facility or equipment, or in its food products; and

34.8 Failed to exercise reasonable care in the selection, monitoring, and approval of suppliers of romaine lettuce.

35. The Defendant owed a duty to Plaintiff to use reasonable care in the manufacture and distribution of its food products, to prevent contamination with *E. coli*. The Defendant breached this duty.

36. Plaintiff's injuries proximately and directly resulted from the negligence of the Defendant, and from the Defendant's violations of statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of food.

COUNT III: BREACH OF WARRANTY

37. Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

38. The Defendant is liable to the Plaintiff for breaching express and implied warranties that it made regarding the adulterated product that Plaintiff consumed. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, by offering food products for sale to the general public, the Defendant impliedly warranted that these food products were safe to eat, that they were not adulterated with a harmful pathogen, and that the food products had been safely prepared under sanitary conditions.

39. Plaintiff alleges that the *E. coli* contaminated food product would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

40. Plaintiff alleges that the *E. coli* contaminated food product was not fit for the uses and purposes intended, i.e., human consumption, and that this product was therefore in breach of the implied warrant of fitness for its intended use.

41. The Defendant breached the implied warranties with regard to the food products it distributed to Costco, and that Plaintiff consumed, causing Plaintiff's injuries and losses.

42. Plaintiff's injuries proximately and directly resulted from the Defendant's breach of implied warranties, and Plaintiff is thus entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

DAMAGES

43. As a direct and proximate cause of the wrongful conduct of the Defendant, as stated in each of the causes of action above, the Plaintiff has suffered economic and non-economic damages, both past and future, including, but not limited to: all medical bills for treatment related to and deriving from his *E. coli* infection, and all other out-of-pocket costs; lost wages and lost earning capacity; emotional distress, anguish, loss of enjoyment of life, and pain and suffering; reduced life expectancy; and all other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances. The Plaintiff reserves the right to prove the precise amount of damages at the trial of this action, but which damages will in any event exceed the Magistrate's jurisdictional limits of \$10,000.

REQUEST FOR ATTORNEY FEES

As a further direct and proximate result of the wrongful conduct of the Defendant as stated above, the Plaintiff has been forced to hire counsel for purposes of prosecution of this action and is entitled to recover all reasonable costs and attorney fees consistent with applicable Idaho law, specifically including but not limited to Idaho Code §§ 12-120 and 12-121.

PRAYER

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

- a. For all economic and non-economic damages sustained as a direct and proximate result of the wrongful conduct of the Defendant, as stated above, all in amounts to be proven at the time and place of trial, but which amount will in any event exceed the Magistrate’s jurisdictional limits of \$10,000;
- b. For all reasonable costs and attorney fees incurred in prosecution of this action, pursuant to applicable Idaho law; and
- c. For such other and further relief as this Court deems just and equitable.

JURY DEMAND

Pursuant to the Idaho Rules of Civil Procedure 38(b), the Plaintiff demands a jury trial.

Dated this 17th day of August 2018.

HEPWORTH HOLZER, LLP

By: /s/ John J. Janis
John J. Janis

Marler Clark LLP, PS.

By: /s/ William D. Marler
William D. Marler

Attorneys for Plaintiffs