

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Daniel Crowley

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7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**

<p>9 MICHAEL FELIX, 10 11 Plaintiff, 12 vs. 13 KING'S SEAFOOD COMPANY, LLC, a Delaware Limited-Liability Company d/b/a 14 555 EAST AMERICAN STEAKHOUSE; DOES 1-10, inclusive; and ROE ENTITIES 1-10, inclusive, 15 Defendants.</p>	<p>Case No.: 20STCV06320 Dept. No.: <u>COMPLAINT</u></p>
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17 COMES NOW, the Plaintiff, MICHAEL FELIX, and as for his Complaint against the
18 Defendant KING'S SEAFOOD COMPANY, LLC, a Delaware Limited-Liability Company d/b/a
19 555 EAST AMERICAN STEAKHOUSE, complains and alleges as follows:

20 **I.**

21 **THE PARTIES**

22 1. The Plaintiff, MICHAEL FELIX, (hereinafter, "the Plaintiff"), at all times relevant
23 hereto, is and was a citizen and resident of the City of Long Beach, County of Los Angeles, State of
24 California.

25 2. The Defendant, KING'S SEAFOOD COMPANY, LLC d/b/a as 555 East American
26 Steakhouse, (hereinafter, "the Defendant") at all times relevant hereto was a Delaware Limited-
27 Liability Company, with its business address and managing member address as 3185 Airway
28 Avenue, Suite J, Costa Mesa, California and authorized to and doing business in California as 555

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1 East American Steakhouse located at 555 E. Ocean Blvd., Long Beach, California, 90802. The
2 Defendant at all times material hereto was carrying on in its ordinary course of business of the
3 company, was in the business of the manufacture, distribution, preparation, service and sale of food
4 to its store customers at that location, and as such was doing business in Long Beach, California.

5 3. DOES 1 – 10, inclusive, are persons, and ROE ENTITIES 1-10, inclusive, are
6 corporations, related subsidiary or parent entities, associations, or business entities, whose true
7 names and identities and capacities are unknown to Plaintiff at this time. The DOE Defendants are
8 individual persons acting on behalf of or in concert with, or at the direction of, any of the
9 Defendants. The ROE Defendants may be corporations, associations, partnerships, subsidiaries,
10 holding companies, owners, predecessor or successor entities, joint ventures, parent corporations,
11 related business entities or the employer of any of the Defendants. Each named Defendant and the
12 DOE and ROE Defendants are legally responsible for the events and happenings stated in this
13 Complaint, and thus proximately caused injury and damages to Plaintiff. In particular, said DOE
14 and ROE Defendants are responsible in full or in part for the production, distribution, processing,
15 preparation, contamination, and sale of the ingredients in contaminated food products sold to or by
16 Defendant to Plaintiff and caused his hepatitis A. Plaintiff will ask leave of this Court to insert the
17 true names and capacities for such DOE and ROE Defendants when discovered to substitute those
18 true names as defendants into these proceedings for said DOE and ROE Defendants..

19 **II.**

20 **JURISDICTION AND VENUE**

21 4. This court is vested with original jurisdiction over the Defendant because it is a
22 registered Limited-Liability Company doing business within the State of California, with its
23 principal place of business at 3185 Airway Avenue, Suite J, Costa Mesa, California 92626.

24 5. The venue of this action is proper in Los Angeles County, as the events giving rise to
25 the cause of action occurred in Long Beach, Los Angeles County, California.

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III.

STATEMENT OF FACTS

About Hepatitis A Virus

6. Exposure to hepatitis A virus (“HAV”) can cause an acute infection of the liver that is typically mild and resolves on its own.¹ The symptoms and duration of illness vary a great deal, with many persons showing no symptoms at all.² Fever and jaundice are two of the symptoms most commonly associated with HAV infection.³

7. Throughout history, hepatitis infections have plagued humans. The “earliest accounts of contagious jaundice are found in ancient China.”⁴

8. According to the CDC:

The first descriptions of hepatitis (epidemic jaundice) are generally attributed to Hippocrates. Outbreaks of jaundice, probably hepatitis A, were reported in the 17th and 18th centuries, particularly in association with military campaigns. Hepatitis A (formerly called infectious hepatitis) was first differentiated epidemiologically from hepatitis B, which has a long incubation period, in the 1940s. Development of serologic tests allowed definitive diagnosis of hepatitis B. In the 1970s, identification of the virus, and development of serologic tests helped differentiate hepatitis A from other types of non-B hepatitis.⁵

9. Until 2004, HAV was the most frequently reported type of hepatitis in the United States. In the pre-vaccine era, the primary methods used for preventing HAV infections were hygienic measures and passive protection with immune globulin (IG). Hepatitis A vaccines were licensed in 1995 and 1999. These vaccines provide long-term protection against HAV infection.⁶

10. Hepatitis A is the only common vaccine-preventable foodborne disease in the United States.⁷ This virus is one of five human hepatitis viruses that primarily infect the human liver and

¹ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” in Mandell, Douglas, & Bennett’s PRINCIPLES AND PRACTICE OF INFECTIOUS DISEASES, Fifth Edition, Chap. 161, pp. 1920-40 (2000); Mayo Clinic Staff, “Hepatitis A,” (last updated Sept 1, 2011). Articles available online at <http://www.mayoclinic.com/health/hepatitis-a/DS00397>.

² Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1.

³ Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

⁴ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1.

⁵ CDC, “Hepatitis A,” in EPIDEMIOLOGY AND PREVENTION OF VACCINE-PREVENTABLE DISEASES (also known as “The Pink Book”), Atkinson W, Wolfe S, Hambrosky J, McIntyre L, editors, 12th edition. Chapter available online at <http://www.cdc.gov/vaccines/pubs/pinkbook/hepa.html>.

⁶ *Id.*

⁷ *Id.*; See also Fiore, Anthony, Division of Viral Hepatitis, CDC, “Hepatitis A Transmitted by Food,” Clinical Infectious Diseases, Vol. 38, 705-715 (March 1, 2004). Full text online at http://www.cdc.gov/hepatitis/PDFs/fiore_ha_transmitted_by_food.pdf.

1 cause human illness.⁸ Unlike hepatitis B and C, hepatitis A does not develop into chronic hepatitis
2 or cirrhosis, which are both potentially fatal conditions.⁹ Nonetheless, infection with the hepatitis A
3 virus (HAV) can lead to acute liver failure and death.¹⁰

4 11. Hepatitis A is a communicable (or contagious) disease that often spreads from
5 person to person.¹¹ Person-to-person transmission occurs via the “fecal-oral route,” while all other
6 exposure is generally attributable to contaminated food or water.¹² Food-related outbreaks are
7 usually associated with contamination of food during preparation by a HAV-infected food
8 handler.¹³ The food handler is generally not ill because the peak time of infectivity—that is, when
9 the most virus is present in the stool of an infected individual—occurs two weeks before illness
10 begins.¹⁴

11 12. Fresh produce contaminated during cultivation, harvesting, processing, and
12 distribution has also been a source of hepatitis A.¹⁵ In 1997, frozen strawberries were the source of a
13 hepatitis A outbreak in five states.¹⁶ Six years later, in 2003, fresh green onions were identified as
14 the source of a HAV outbreak traced to consumption of food at a Pennsylvania restaurant.¹⁷ Other
15 fruits and vegetables, such as blueberries and lettuce, have also been associated with HAV
16 outbreaks in the U.S. as well as in other developed countries.¹⁸ HAV is relatively stable and can
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19 ⁸ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1.

20 ⁹ *Id.*

21 ¹⁰ Fiore, Anthony, Division of Viral Hepatitis, CDC, “Hepatitis A Transmitted by Food,” *supra* note 7; Mayo
Clinic Staff, “Hepatitis A,” *supra* note 1.

22 ¹¹ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1.

23 ¹² *Id.*; See also Jaykus Lee Ann, “Epidemiology and Detection as Options for Control of Viral and Parasitic
Foodborne Disease,” *Emerging Infectious Diseases*, Vol. 3, No. 4, pp. 529-39 (October-December 1997). Full text of
the article is available online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2640072/pdf/9366607.pdf>

24 ¹³ Fiore, Anthony, *supra* note 7; CDC, “Hepatitis A,” *supra* note 5; See also CDC, “Surveillance for Acute Viral
Hepatitis – United States, 2007, Morbidity and Mortality Weekly Report, Surveillance Summaries, Vol. 58, No. SS03
(May 22, 2009) at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5803a1.htm>.

25 ¹⁴ Fiore, Anthony, Division of Viral Hepatitis, CDC, “Hepatitis A Transmitted by Food,” *supra* note 7.

26 ¹⁵ *Id.*; See also, Wheeler, C, *et al.*, “An Outbreak of Hepatitis A Associated with Green Onions,” *New England
Journal of Medicine*, Vol. 353, 890-97 (2005). Full text of article available at
<http://www.nejm.org/doi/full/10.1056/NEJMoa050855>.

27 ¹⁶ Hutin YJF, *et al.*, “A Multistate, Foodborne Outbreak of Hepatitis A,” *New England Journal of Medicine*, Vol.
340, pp. 595-602 (1999). Full text of article is online at <http://nejm.org/doi/full/10.1056/NEJM199902253400802>.

28 ¹⁷ Wheeler, C, *et al.*, “An Outbreak of Hepatitis A Associated with Green Onions,” *supra* note 15.

¹⁸ Butot S, *et al.*, “Effects of Sanitation, Freezing and Frozen Storage on Enteric Viruses in Berries and Herbs,”
Intentional Journal of Food Microbiology, Vol. 126, No. 4, pp. 233-246 (2003). Full text of article is available at
http://www.prograd.uff.br/virologia/sites/default/files/bulut_et_al_2008_inactivation.pdf; Calder, L, *et al.*, An Outbreak

1 survive for several hours on fingertips and hands and up to two months on dry surfaces.¹⁹ The virus
2 can be inactivated by heating to 185°F (85°C) or higher for one minute, or disinfecting surfaces
3 with a 1:100 dilution of household bleach in tap water.²⁰ HAV can still be spread from cooked food
4 if it is contaminated after cooking.²¹

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6 13. Although ingestion of contaminated food is a common means of spread for HAV, it
7 may also be spread by household contact among families or roommates, sexual contact, or by direct
8 inoculation from persons sharing illicit drugs.²² Children are often asymptomatic, or have
9 unrecognized infections, and can pass the virus through ordinary play, unknown to their parents,
10 who may later become infected from contact with their children.²³

11 14. Hepatitis A may cause no symptoms at all when it is contracted, especially in
12 children.²⁴ Asymptomatic individuals will only know they were infected (and have become
13 immune, given that you can only get hepatitis A once) by getting a blood test later in life.²⁵
14 Approximately 10 to 12 days after exposure, HAV is present in blood and is excreted via the biliary
15 system into the feces.²⁶ Although the virus is present in the blood, its concentration is much higher

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18 of Hepatitis A Associated with Consumption of Raw Blueberries,” *Epidemiology and Infection*, Vol. 131, No. 1 745-51
(2003) at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2870016/pdf/12948375.pdf>.

19 ¹⁹ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Mayo Clinic Staff, “Hepatitis A,” *supra*
20 note 1.

21 ²⁰ CDC, “Updated recommendations from Advisory Committee on Immunization Practices (ACIP) for use of
22 hepatitis A vaccine in close contacts of newly arriving international adoptees,” *Morbidity and Mortality Weekly Report*,
23 Vol. 58, No. 36, (Sept. 18, 2006), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5836a4.htm>; Fiore, Anthony, *et*
24 *al.*, Advisory Committee on Immunization Practices (ACIP), Prevention of Hepatitis-A Through Active or Passive
25 Immunization: Recommendations, *Morbidity & Mortality Weekly Review*, Vol. 55, Report 407, (May 29, 2006) at
26 <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5507a1.htm>; Todd, Ewan C.D., *et al.*, “Outbreaks Where Food
27 Workers Have Been Implicated in the Spread of Foodborne Disease. Part 6. Transmission and Survival of Pathogens in
28 the Food Processing and Preparation-environment,” *Journal of Food Protection*, Vol. 72, 202-19 (2009). Full text of the
29 article is available online at http://courses.washington.edu/eh451/articles/Todd_2009_food%20processing.pdf.

30 ²¹ Fiore, Anthony, Division of Viral Hepatitis, CDC, “Hepatitis A Transmitted by Food,” *supra* note 7.

31 ²² *Id.*; See also, Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

32 ²³ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Piazza, M, *et al.*, “Safety and
33 Immunogenicity of Hepatitis A Vaccine in Infants: A Candidate for Inclusion in Childhood Vaccination Program,” Vol.
34 17, pp. 585-588 (1999). Abstract at <http://www.ncbi.nlm.nih.gov/pubmed/10075165>; Schiff, E.R., “Atypical
35 Manifestations of hepatitis-A,” *Vaccine*, Vol. 10, Suppl. 1, pp. 18-20 (1992). Abstract at
36 <http://www.ncbi.nlm.nih.gov/pubmed/1475999>.

37 ²⁴ Fiore, Anthony, Division of Viral Hepatitis, CDC, “Hepatitis A Transmitted by Food,” *supra* note 7

38 ²⁵ Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

39 ²⁶ CDC, “Hepatitis A,” *supra* note 5; Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1

1 in feces.²⁷ HAV excretion begins to decline at the onset of clinical illness, and decreases
2 significantly by 7 to 10 days after onset of symptoms.²⁸ Most infected persons no longer excrete
3 virus in the feces by the third week of illness. Children may excrete HAV longer than adults.²⁹

4 15. Seventy percent of HAV infections in children younger than six years of age are
5 asymptomatic; in older children and adults, infection tends to be symptomatic with more than 70%
6 of those infected developing jaundice.³⁰ Symptoms typically begin about 28 days after contracting
7 HAV, but can begin as early as 15 days or as late as 50 days after exposure.³¹ The symptoms
8 include muscle aches, headache, anorexia (loss of appetite), abdominal discomfort, fever, and
9 malaise.³²

10 16. After a few days of typical symptoms, jaundice (also termed “icterus”) sets in.³³
11 Jaundice is a yellowing of the skin, eyes, and mucous membranes that occurs because bile flows
12 poorly through the liver and backs up into the blood.³⁴ The urine will also turn dark with bile and
13 the stool light or clay-colored from lack of bile.³⁵ When jaundice sets in, initial symptoms such as
14 fever and headache begin to subside.³⁶

15 17. In general, symptoms usually last less than two months, although 10% to 15% of
16 symptomatic persons have prolonged or relapsing disease for up to 6 months.³⁷ It is not unusual,
17 however, for blood tests to remain abnormal for six months or more.³⁸ The jaundice so commonly

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19 ²⁷ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1

20 ²⁸ *Id.*

21 ²⁹ *Id.*; See also Sagliocca, Luciano, *et al.*, “Efficacy of Hepatitis A Vaccine in Prevention of Secondary Hepatitis
A Infection: A Randomized Trial,” *Lancet*, Vol. 353, 1136-39 (1999). Abstract at
[http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(98\)08139-2/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(98)08139-2/abstract).

22 ³⁰ CDC, “Hepatitis A,” *supra* note 5.

23 ³¹ *Id.*; See also Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Fiore, Anthony, Division of
Viral Hepatitis, CDC, “Hepatitis A Transmitted by Food,” *supra* note 7.

24 ³² CDC, “Hepatitis A,” *supra* note 5; Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Mayo
Clinic Staff, “Hepatitis A,” *supra* note 1.

25 ³³ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Mayo Clinic Staff, “Hepatitis A,” *supra*
note 1.

26 ³⁴ Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

27 ³⁵ CDC, “Hepatitis A,” *supra* note 5; Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Mayo
Clinic Staff, “Hepatitis A,” *supra* note 1.

28 ³⁶ Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

29 ³⁷ Fiore, Anthony, *et al.*, Advisory Committee on Immunization Practices (ACIP), Prevention of Hepatitis-A
Through Active or Passive Immunization: Recommendations,” *supra* note 20; Gilkson Miryam, *et al.*, “Relapsing
Hepatitis A. Review of 14 cases and literature survey,” *Medicine*, Vol. 71, No. 1, 14-23 (Jan. 1992). Abstract of article
online at <http://www.ncbi.nlm.nih.gov/pubmed/1312659>.

30 ³⁸ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1.

1 associated with HAV can also linger for a prolonged period in some infected persons, sometimes as
2 long as eight months or more.³⁹ Additionally, pruritus, or severe “itchiness” of the skin, can persist
3 for several months after the onset of symptoms. These conditions are frequently accompanied by
4 diarrhea, anorexia, and fatigue.⁴⁰

5 18. Relapse is possible with hepatitis A, typically within three months of the initial onset
6 of symptoms.⁴¹ Although relapse is more common in children, it does occur with some regularity in
7 adults.⁴² The vast majority of persons who are infected with hepatitis A fully recover, and do not
8 develop chronic hepatitis.⁴³ Persons do not carry HAV long-term as with hepatitis B and C.⁴⁴

9 19. Fulminant hepatitis A, or acute liver failure, is a rare but devastating complication of
10 HAV infection.⁴⁵ As many as 50% of individuals with acute liver failure may die or require
11 emergency liver transplantation.⁴⁶ Elderly patients and patients with chronic liver disease are at
12 higher risk for fulminant hepatitis A.⁴⁷ In parallel with a declining incidence of acute HAV infection
13 in the general population, however, the incidence of fulminant HAV appears to be decreasing.⁴⁸

14 20. HAV infects the liver’s parenchymal cells (internal liver cells).⁴⁹ Once a cell has
15 been penetrated by the viral particles, the hepatitis A releases its own toxins that cause, in essence, a
16 hostile takeover of the host’s cellular system.⁵⁰ The cell then produces new viral components that

18 ³⁹ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Mayo Clinic Staff, “Hepatitis A,” *supra*
19 note 1.

20 ⁴⁰ CDC, “Hepatitis A,” *supra* note 5; Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

21 ⁴¹ Gilkson Miryam, *et al.*, “Relapsing Hepatitis A. Review of 14 cases and literature survey,” *supra* note 37.

22 ⁴² Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Gilkson Miryam, *et al.*, “Relapsing
23 Hepatitis A. Review of 14 cases and literature survey,” *supra* note 37.

24 ⁴³ Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

25 ⁴⁴ CDC Summary, “Disease Burden from Viral Hepatitis A, B and C in the United States, 2004-2009, at
26 http://www.cdc.gov/hepatitis/pdfs/disease_burden.pdf; CDC, “Hepatitis A,” *supra* note 5.

27 ⁴⁵ Detry, Oliver, *et al.*, “Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
28 Pathophysiology and Management,” *World Journal of Gastroenterology*, Vol. 12, No. 46 pp. 7405-7412 (Dec. 14,
2006). Full article is available online at <http://www.wjgnet.com/1007-9327/12/7405.pdf>.

29 ⁴⁶ Taylor, Ryan, *et al.*, “Fulminant Hepatitis A Virus Infection in the United States: Incidence, Prognosis, and
30 Outcomes,” *Hepatology*, Vol. 44, 1589-1597. Full text
31 http://deepblue.lib.umich.edu/bitstream/2027.42/55879/1/21349_ft.pdf.

32 ⁴⁷ *Id.*; See also Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1.

33 ⁴⁸ Taylor, Ryan, *et al.*, “Fulminant Hepatitis A Virus Infection in the United States: Incidence, Prognosis, and
34 Outcomes,” *supra* note 46.

35 ⁴⁹ Detry, Oliver, *et al.*, “Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
36 Pathophysiology and Management,” *supra* note 45; Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note
37 1.

38 ⁵⁰ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Schiff, E.R., “Atypical Manifestations of
39 hepatitis-A,” *supra* note 23.

1 are released into the bile capillaries or tubes that run between the liver's parenchymal cells.⁵¹ This
2 process results in the death of liver cells, called hepatic necrosis.⁵²

3 21. The fulminant form of hepatitis occurs when this necrotic process kills so many liver
4 cells—upwards of three-quarters of the liver's total cell count—that the liver can no longer perform
5 its job.⁵³ Aside from the loss of liver function, fulminant hepatic failure can lead to encephalopathy
6 and cerebral edema.⁵⁴ Encephalopathy is a brain disorder that causes central nervous system
7 depression and abnormal neuromuscular function.⁵⁵ Cerebral edema is a swelling of the brain that
8 can result in dangerous intracranial pressure.⁵⁶ Intracranial hypertensions leading to a brain stem
9 death and sepsis with multiple organ failure are the leading causes of death in individuals with
10 fulminant hepatic failure.⁵⁷

11 22. Hepatitis A is much more common in countries with underdeveloped sanitation
12 systems and, thus, is a risk in most of the world.⁵⁸ An increased transmission rate is seen in all
13 countries other than the United States, Canada, Japan, Australia, New Zealand, and the countries of
14 Western Europe.⁵⁹ Nevertheless, infections continue to occur in the United States, where
15 approximately one-third of the population has been previously infected with HAV.⁶⁰

17 ⁵¹ Detry, Oliver, *et al.*, “Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
18 Pathophysiology and Management,” *supra* note 45.

19 ⁵² *Id.*; See also Taylor, Ryan, *et al.*, “Fulminant Hepatitis A Virus Infection in the United States: Incidence,
20 Prognosis, and Outcomes,” *supra* note 46.

21 ⁵³ Detry, Oliver, *et al.*, “Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
22 Pathophysiology and Management,” *supra* note 45; Taylor, Ryan, *et al.*, “Fulminant Hepatitis A Virus Infection in the
23 United States: Incidence, Prognosis, and Outcomes,” *supra* note 46.

24 ⁵⁴ Detry, Oliver, *et al.*, “Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
25 Pathophysiology and Management,” *supra* note 45.

26 ⁵⁵ Detry, Oliver, *et al.*, “Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
27 Pathophysiology and Management,” *supra* note 45; Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note
28 1.

29 ⁵⁶ Detry, Oliver, *et al.*, “Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
30 Pathophysiology and Management,” *supra* note 45.

31 ⁵⁷ Detry, Oliver, *et al.*, “Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
32 Pathophysiology and Management,” *supra* note 45; Taylor, Ryan, *et al.*, “Fulminant Hepatitis A Virus Infection in the
33 United States: Incidence, Prognosis, and Outcomes,” *supra* note 46.

34 ⁵⁸ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Jaykus Lee Ann, “Epidemiology and
35 Detection as Options for Control of Viral and Parasitic Foodborne Disease,” *supra* note 12.

36 ⁵⁹ CDC, “Update: Prevention of Hepatitis A after Exposure to Hepatitis A Virus and in International Travelers,
37 Updated ACIP Recommendations,” *Morbidity and Mortality Weekly Report*, Vol. 56, No. 41, pp. 1080-84 (Oct. 19,
38 2007), online at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5641a3.htm>.

39 ⁶⁰ CDC, “Surveillance for Acute Viral Hepatitis – United States 2007,” *supra* note 13; Fiore, Anthony, Division
40 of Viral Hepatitis, CDC, “Hepatitis A Transmitted by Food,” *supra* note 7.

1 23. Each year, approximately 30,000 to 50,000 cases of hepatitis A occur in the United
2 States.⁶¹ Historically, acute hepatitis A rates have varied cyclically, with nationwide increases every
3 10 to 15 years.⁶² The national rate of HAV infections has declined steadily since the last peak in
4 1995.⁶³ Although the national incidence—1.0 case per 100,000 population—of hepatitis A was the
5 lowest ever recorded in 2007, it is estimated that asymptomatic infections and underreporting kept
6 the documented incidence-rate lower than it actually is. In fact, it is estimated that there were
7 25,000 new infections in 2007.⁶⁴

8 24. In 2007, the CDC reported a total of 2,979 acute symptomatic cases of HAV.⁶⁵ Of
9 these, information about food and water exposure was known for 1,047 cases, leading to an estimate
10 that 6.5% of all infections were caused by exposure to contaminated water or food.⁶⁶ In 2,500 of the
11 cases, no known risk factor was identified.⁶⁷

12 **The HAV Outbreak**

13 25. On February 7, 2020, the Long Beach Department of Health & Human Services
14 announced that it was investigating an outbreak of hepatitis A associated with 555 East American
15 Steakhouse located in downtown Long Beach. Several cases of hepatitis A have been confirmed in
16 individuals who ate at the restaurant on or around December 24, 2019. Those who ate at the
17 restaurant on or around December 24, 2019 may have been exposed to hepatitis A.

18 26. The source of the illness is still under investigation, and the Department of Health
19 has advised persons who ate at the restaurant during the relevant time to seek immediate medical
20 care if they begin to develop symptoms consistent with hepatitis A.

21 **MICHAEL FELIX’S Hepatitis A Illness**

22 27. The Plaintiff is a resident of Long Beach, California.
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25 ⁶¹ CDC, Summary, “Disease Burden from Viral Hepatitis A, B, and C in the United States,” *supra* note 44; CDC,
“Hepatitis A,” *supra* note 5.

26 ⁶² Hutin YJF, *et al.*, “A Multistate, Foodborne Outbreak of Hepatitis A,” *supra* note 16.

27 ⁶³ CDC, Summary, “Disease Burden from Viral Hepatitis A, B, and C in the United States,” *supra* note 44; CDC,
“Surveillance for Acute Viral Hepatitis – United States 2007,” *supra* note 13.

28 ⁶⁴ CDC, “Surveillance for Acute Viral Hepatitis – United States 2007,” *supra* note 13; Schiff, E.R., “Atypical
Manifestations of hepatitis-A,” *supra* note 23.

⁶⁵ CDC, “Surveillance for Acute Viral Hepatitis – United States 2007,” *supra* note 13.

⁶⁶ *Id.*

⁶⁷ *Id.*

1 35. The Defendant is subject to liability to the Plaintiff for its breach of express and
2 implied warranties made to the Plaintiff with respect to the food products sold to those patrons,
3 including the implied warranty of merchantability. Specifically, the Defendant expressly warranted,
4 through its distribution and sale of food to the public, and by the statements and conduct of its
5 employees and agents, that the food it manufactured, distributed, prepared, served and sold to its
6 patrons was fit for human consumption, and not otherwise adulterated or injurious to health.

7 36. The Plaintiff alleges that the Defendant breached the warranty of merchantability
8 because:

- 9 a. Food sold by the Defendant and consumed by the Plaintiff, which was adulterated
10 with HAV and related filth and adulteration, would not pass without exception in the
11 trade, and
12 b. The adulterated food manufactured, distributed, prepared, served and sold by the
13 Defendant and consumed by the Plaintiff was not fit for the uses and purposes
14 intended by either the patrons or the Defendant, *i.e.*, human consumption.

15 37. The Defendant owed a duty to the Plaintiff to manufacture, distribute, prepare, serve
16 and sell only food that was not adulterated, was fit for human consumption, was reasonably safe in
17 construction, and was free of pathogenic viruses or other substances injurious to human health. The
18 Defendant breached this duty.

19 38. The Defendant owed a duty to the Plaintiff to manufacture, distribute, prepare, serve
20 and sell food that was fit for human consumption, and that was safe to the extent contemplated by a
21 reasonable and ordinary consumer. The Defendant breached this duty.

22 39. The Plaintiff became ill and was diagnosed HAV-positive after exposure to food,
23 manufactured, distributed and sold by the Defendant, and is thus a person who the Defendant might
24 reasonably have expected to use, consume or be affected by its adulterated food products.

25 40. Because the food that the Plaintiff purchased and consumed was adulterated, not fit
26 for human consumption, not reasonably safe in design and construction, lacked adequate warnings
27 and instructions, and was unsafe to an extent beyond that contemplated by the ordinary consumer,
28 the Defendant breached both express and implied warranties, and is liable to the Plaintiff for the

1 harm proximately caused to him by its manufacture, distribution and sale of adulterated and
2 adulterated food products.

3 **V.**

4 **SECOND CAUSE OF ACTION**

5 (Negligence)

6 41. The Defendant manufactured, distributed, prepared, served and sold a food product
7 that was adulterated, not fit for human consumption, and that was not reasonably safe as designed,
8 manufactured, or sold.

9 42. The Defendant was negligent in the manufacture, distribution, preparation, service
10 and sale of a food product that was adulterated with HAV, not fit for human consumption, and not
11 reasonably safe because adequate warnings or instructions were not provided.

12 43. The Defendant had a duty to properly supervise, train, and monitor its employees, or
13 the employees of its agents or subcontractors, engaged in the preparation of its food products, to
14 ensure compliance with the Defendant's operating standards and to ensure compliance with all
15 applicable health regulations. The Defendant failed to properly supervise, train, and monitor its
16 employees engaged in the manufacture, distribution, preparation, service, sale and delivery of the
17 food product the Defendant sold to its patrons, and thus breached that duty.

18 44. The Defendant owed the Plaintiff the duty to exercise reasonable care in the
19 manufacture, distribution, preparation, service and sale of its food products, as it was reasonably
20 foreseeable that the Defendant's manufacture and sale of food products adulterated with HAV
21 would cause injury and harm to all persons exposed to HAV. The Defendant has breached that
22 duty, and thereby caused injury to the Plaintiff

23 45. The Defendant was negligent in failing to require its employees to obtain HAV
24 immunizations, and in allowing one or more employees to work while infected with HAV.

25 46. The fact that the Plaintiff became infected as a result of the consumption of food and
26 drink at the subject restaurant conclusively demonstrates the failure of the Defendant to prevent the
27 transmission of HAV by way of adulterated food, drink, and surfaces.

28

1 ordinary, incidental and consequential damages as would be anticipated to arise under the
2 circumstances.

3 **VIII.**

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Plaintiff prays for the following relief:

6 1) That the court award the Plaintiff judgment against the Defendant for such sums as
7 shall be determined to fully and fairly compensate them for all pain and suffering, general, special,
8 incidental and consequential damages respectively incurred by them as the direct and proximate
9 result of the acts and omissions of the Defendant;

10 2) That the court award the Plaintiff their respective costs, disbursements and
11 reasonable attorneys' fees incurred;

12 3) That the court award the Plaintiff the opportunity to amend or modify the provisions
13 of this complaint as necessary or appropriate after additional or further discovery is completed in
14 this matter, and after all appropriate parties have been served; and

15 4) That the court award such other and further relief as it deems necessary, just and
16 proper.

17 Dated: February 14, 2020

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