

General Civil and Domestic Relations Case Filing Information Form

☐ Superior or ☐ State Court of _____ County

For Clerk Use Only

3/19/2020

Date Filed _____
MM-DD-YYYY

Case Number 20A79727

Plaintiff(s)

Last	First	Middle I.	Suffix	Prefix

Plaintiff's Attorney _____

Defendant(s)

Last	First	Middle I.	Suffix	Prefix

Last and JOHN DOE First Middle I. Suffix Prefix
and JOHN DOE GROWER, SHIPPER AND DISTRIBUTOR

Bar Number _____ Self-Represented ☐

Check One Case Type in One Box

General Civil Cases

- ☐ Automobile Tort
- ☐ Civil Appeal
- ☐ Contract
- ☐ Garnishment
- ☐ General Tort
- ☐ Habeas Corpus
- ☐ Injunction/Mandamus/Other Writ
- ☐ Landlord/Tenant
- ☐ Medical Malpractice Tort
- ☐ Product Liability Tort
- ☐ Real Property
- ☐ Restraining Petition
- ☐ Other General Civil

Domestic Relations Cases

- ☐ Adoption
- ☐ Dissolution/Divorce/Separate Maintenance
- ☐ Family Violence Petition
- ☐ Paternity/Legitimation
- ☐ Support – IV-D
- ☐ Support – Private (non-IV-D)
- ☐ Other Domestic Relations

Post-Judgment – Check One Case Type

- ☐ Contempt
 - ☐ Non-payment of child support, medical support, or alimony
- ☐ Modification
- ☐ Other/Administrative

- ☐ Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

Case Number _____

Case Number _____

- ☐ I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

- ☐ Is an interpreter needed in this case? If so, provide the language(s) required. _____
Language(s) Required

- ☐ Do you or your client need any disability accommodations? If so, please describe the accommodation request.

No. 20A79727

**STATE COURT OF DEKALB COUNTY
GEORGIA, DEKALB COUNTY**

Date Summons Issued and E-Filed

3/19/2020

PK

Deputy Clerk

Deposit Paid \$ _____

SUMMONS

SECOND ORIGINAL

JULIA DELEON-ACOSTA and JOSE ACOSTA,
Individually and as Parents and Natural Guardians
of N.M.A., a Minor Child
Plaintiff's name and address

[X] JURY

vs.
LA MADELEINE OF GEORGIA, LLC, LA MADELEINE DE CORPS, INC., LA
MADELEINE, INC. (TEXAS); HEIDI LM CAFE, INC.; FUTURE MANAGEMENT
CORP. A/K/A PHOENIX WHOLESALE FOODSERVICE; GREENGATE FRESH,
LLLP; GREENGATE FRESH LIMITED PARTNERSHIP and JOHN DOE GROWER,
SHIPPER AND DISTRIBUTOR
Defendant's name and address

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to file with the Clerk of State Court, Suite 230, 2nd Floor, Administrative Tower, DeKalb County Courthouse, 556 N. McDonough Street, Decatur, Georgia 30030 and serve upon the plaintiff's attorney, to wit:

Glenn E. Kushel, Esq. / MORAITAKIS & KUSHEL, LLP

Name

5555 Glenridge Connector, Suite 550, Atlanta, GA 30342

Address

404-261-0016

glenn@mktriallaw.com

430498

Phone Number

Email

Georgia Bar No.

an **ANSWER** to the complaint which is herewith served upon you, within thirty (30) days after service upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. The answer or other responsive pleading can be filed via electronic filing through eFileGA via www.eFileGA.com or, if desired, at the e-filing public access terminal in the Clerk's Office at 556 N. McDonough Street, Decatur, Georgia 30030

Defendant's Attorney

Third Party Attorney

Address

Address

Phone No.

Georgia Bar No.

Phone No.

Georgia Bar No.

TYPE OF SUIT

- ☒ Personal Injury ☐ Products Liability
☐ Contract ☐ Medical Malpractice
☐ Legal Malpractice ☐ Product Liability
☐ Other

Principal \$ _____

Interest \$ _____

Atty Fees \$ _____

Access to the e-filing site and the rules is available at www.dekalbstatecourt.net

To indicate consent to e-service check the box below.

☒ (Plaintiff consents to e-service pursuant to OCGA 9-11-5 (f). The email address for service appears in the complaint.

E-file summons1-2016

Plaintiff's Attorney Pending Application to Appear Pro Hac Vice:
William D. Marler, Esq./Marler Clark, LLP, PS
1012 First Avenue, 5th Floor, Seattle, WA 98104
206-346-1890 / bmarler@marlerclark.com / Washington Bar No.: 17233

STATE COURT OF
DEKALB COUNTY, GA.
3/19/2020 10:44 AM
E-FILED
BY: Phyleta Knighton

20A79727

No. _____

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GEORGIA, DEKALB COUNTY**

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Individually and as Parents and Natural Guardians
of N.M.A., a Minor Child
Plaintiff's name and address

vs.

[X] JURY

LA MADELEINE OF GEORGIA, LLC.
c/o Reg Agt: The Corporation Company (FL)
112 North Main St., Cumming, Forsyth Co., GA, 30040
Defendant's name and address

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JULIA DELEON-ACOSTA and JOSE ACOSTA,
Individually and as Parents and Natural Guardians
of N.M.A., a Minor Child

Plaintiff's name and address

vs.

LA MADELEINE DE CORPS, INC.
c/o Reg Agt: CT Corporation System
289 South Culver St., Lawrenceville, Gwinnett Co., GA, 30046
Defendant's name and address

[X] JURY

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Plaintiff's name and address

vs.

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c/o Reg Agt: The Corporation Company (FL)
112 North Main St., Cumming, Forsyth Co., GA, 30040
Defendant's name and address

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GEORGIA, DEKALB COUNTY**

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JULIA DELEON-ACOSTA and JOSE ACOSTA,
Individually and as Parents and Natural Guardians
of N.M.A., a Minor Child

Plaintiff's name and address

vs.

[X] JURY

HEIDI LM CAFE, INC.
c/o Reg Agt: Corporation Service Company
40 Technology Pkwy South, #300, Norcross, Gwinnett Co, GA 30092
Defendant's name and address

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of N.M.A., a Minor Child

Plaintiff's name and address

☒ **JURY**

vs.

FUTURE MANAGEMENT CORP. A/K/A PHOENIX WHOLESALE FOODSERVICE

c/o Reg Agt: Herbert E. Robins, III

2330 Patrick Henry Pkwy, #100, McDonough, Henry Co, GA 30253
Defendant's name and address

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GEORGIA, DEKALB COUNTY**

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3/19/2020

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JULIA DELEON-ACOSTA and JOSE ACOSTA,
Individually and as Parents and Natural Guardians
of N.M.A., a Minor Child

Plaintiff's name and address

[X] JURY

vs.

GREENGATE FRESH, LLLP
c/o Georgia Secretary of State
2 Martin Luther King Jr. Dr, #313 W Twr, Atlanta, GA 30334; and
Reg Agt: Charles Alm, Barkley AG Enterprises, LLC

Defendant's name and address

5060 N. 40th St, #115, Phoenix Maricopa Co., AZ 85018-2140 or
CEO Toby Jones and/or Charlie Alm, VP/GC
1818 South Letvin Avenue, Yuma, Yuma County, Arizona, 85365

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Plaintiff's name and address

[X] JURY

vs.

GREENGATE FRESH LIMITED PARTNERSHIP
c/o Georgia Secretary of State

2 Martin Luther King Jr. Dr, #313 W Twr, Atlanta, GA 30334;and
CEO Toby Jones, 1818 South Letvin Avenue
Defendant's name and address

Yuma, Yuma County, Arizona, 85365

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STATE OF GEORGIA

JULIA DELEON-ACOSTA and JOSE ACOSTA,
Individually and as Parents and Natural Guardians of
N.M.A., a Minor Child,

Plaintiffs,

v.

LA MADELEINE OF GEORGIA, LLC., LA MADELEINE
DE CORPS, INC., LA MADELEINE, INC. (TEXAS),
HEIDI LM CAFÉ, INC. d/b/a LA MADELEINE,
FUTURE MANAGEMENT CORP. A/K/A PHOENIX
WHOLESALE FOODSERVICE, GREENGATE FRESH,
LLLP, GREENGATE FRESH LIMITED PARTNERSHIP,
and JOHN DOE GROWER, SHIPPER and
DISTRIBUTOR,

Defendants.

CIVIL ACTION FILE

20A79727

NO.: _____

COMPLAINT FOR TORT DAMAGES

COME NOW, Plaintiffs Julia DeLeon-Acosta and Jose Acosta, individually and as Parents and Natural Guardians of N.M.A., a Minor Child, who by and through their attorneys of record, Moraitakis & Kushel, LLP and Marler Clark, LLP, PS (pending *pro hac vice* admission), file this Complaint for Tort Damages against Defendants:

PARTIES

1. Plaintiffs Julia DeLeon-Acosta and Jose Acosta, a married couple, and their minor child, N.M.A., are residents of Marietta, Cobb County, Georgia. On the date of the incident giving rise to this Complaint, N.M.A. was 14 years old.

2. Defendant La Madeleine of Georgia, LLC is a Delaware limited liability company with its principal place of business located at 12201 Merit Drive, Suite. 900, Dallas, TX 75251. La Madeleine of Georgia, LLC owned, operated and/or managed the La Madeleine restaurant

located at 1165 Perimeter Center W, #350, Atlanta, DeKalb County, Georgia, 30346, from which location it prepared and sold food products and/or is otherwise liable for Plaintiffs' damages.

3. Defendant La Madeleine de Corps, Inc. is a corporation incorporated under the laws of Delaware with its principal place of business located at 12201 Merit Drive, Suite 900, Dallas, TX 75251. Defendant La Madeleine de Corps, Inc. owned, operated and/or managed the La Madeleine restaurant located at 1165 Perimeter Center W, #350, Atlanta, DeKalb County, Georgia 30346, from which location it prepared and sold food products and/or is otherwise liable for Plaintiffs' damages.

4. Defendant La Madeleine, Inc. (Texas) is a corporation incorporated under the laws of Texas with its principal place of business located at 12201 Merit Drive, Suite 900, Dallas, TX 75251. Defendant La Madeleine, Inc. (Texas) owned, operated and/or managed the La Madeleine restaurant located at 1165 Perimeter Center W, #350, Atlanta, DeKalb County, Georgia 30346, from which location it prepared and sold food products, and/or is otherwise liable for Plaintiffs' damages.

5. Defendant Heidi LM, Inc. d/b/a La Madeleine is a foreign profit corporation incorporated under the laws of Texas with its principal place of business located at 2161 NW Military Highway, Suite 300, San Antonio, Texas, 78213. Defendant Heidi LM, Inc. owned, operated and/or managed the La Madeleine restaurant located at 1165 Perimeter Center W, # 350, Atlanta, DeKalb County, Georgia 30346, from which location it prepared and sold food products, and/or is otherwise liable for Plaintiffs' damages.

6. Defendant Future Management Corp. a/k/a Phoenix Wholesale Foodservice is a Georgia Corporation with its principal place of business located at 16 Forest Parkway, Building J, Forest Park, Clayton County, GA, 30298. Defendant Future Management Corp. a/k/a Phoenix Wholesale Foodservice is a manufacturer, distributor, and seller of fresh produce products.

7. Defendant GreenGate Fresh, LLLP is a limited liability limited partnership organized under the laws of the State of Arizona. Defendant GreenGate Fresh, LLLP owns and

operates a produce processing facility in or around Yuma, Arizona, where it processes fresh produce products, including the romaine lettuce products that are the subject of this action. Defendant GreenGate Fresh, LLLP distributed the subject romaine lettuce products in the interstate marketplace with knowledge and expectation that its products would reach distributors and consumers in the State of Georgia.

8. Defendant GreenGate Fresh, Limited Partnership is a limited partnership organized under the laws of Arizona. Defendant GreenGate Fresh, Limited Partnership owns and operates a produce processing facility in or around Yuma, Arizona, where it processes fresh produce products, including the romaine lettuce products that are the subject of this action. Defendant GreenGate Fresh, Limited Partnership distributed the subject romaine lettuce products in the interstate marketplace with knowledge and expectation that its products would reach distributors and consumers in the state of Georgia.

9. The identities of Defendants John Doe Grower, Shipper and Distributor are not presently known. These Defendants, at all relevant times, owned and operated business entities that grew, harvested, distributed and sold romaine lettuce grown and processed in the Yuma, Arizona growing regions, which include certain nearby locations in California along the Arizona border.

JURISDICTION AND VENUE

10. Defendant La Madeleine of Georgia, LLC is subject to jurisdiction and venue in this Court pursuant to O.C.G.A. § 14-2-510 and/or the Georgia Long-arm statute at O.C.G.A. §§ 9-10-91 and/or 9-11-4(e)(1)(A) and/or other applicable law. Defendant La Madeleine GA may be served by Second Original upon its registered agent for service of process, The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware, 19801.

11. Defendant La Madeleine de Corps, Inc. is subject to jurisdiction and venue in this Court pursuant to O.C.G.A. § 14-2-510 and/or the Georgia Long-arm statute at O.C.G.A. §§ 9-10-91 and/or 9-11-4(e)(1)(A) and/or other applicable law. Defendant La Madeleine de Corps, Inc.

may be served by Second Original upon its registered agent for service of process, The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware, 19801.

12. Defendant La Madeleine, Inc. (Texas) is subject to the jurisdiction and venue in this Court pursuant to O.C.G.A. § 14-2-510 and/or other applicable law. Defendant La Madeleine, Inc. may be served by Second Original upon its registered agent for service of process The Corporation Company (FL), 112 North Main Street, Cumming, Forsyth County, GA 30040.

13. Defendant Heidi LM Café, Inc. is subject to the jurisdiction and venue in this Court pursuant to O.C.G.A. § 41-2-510 and/or other applicable law. Defendant La Madeleine, Inc. may be served by Second Original upon its registered agent for service of process Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia, 30092.

14. Defendant Future Management Corp. a/k/a Phoenix Wholesale is subject to jurisdiction and venue in this Court pursuant to O.C.G.A. § 14-2-510 and/or the Georgia Long-arm statute at O.C.G.A. §§ 9-10-91 and/or 9-11-4(e)(1)(A) and/or other applicable law. Defendant Future Management Corp. a/k/a Phoenix Wholesale may be served by Second Original upon its registered agent Herbert E. Robins, III, 2330 Patrick Henry Parkway, Suite 100, McDonough, Henry County, GA 30253.

15. Defendant GreenGate 1 is subject to jurisdiction and venue in this Court pursuant to Georgia Long-arm statute at O.C.G.A. §§ 9-10-91 and/or 9-11-4(e)(1)(A) and/or other applicable law. Defendant GreenGate 1 has no registered agent on record with the Georgia Secretary of State and is subject to service upon the Georgia Secretary of State in accordance with Georgia law, including O.C.G.A. § 14-9-104(g). Defendant GreenGate 1 may be served on its registered agent for service by Second Original, Charles Alm, Barkley AG Enterprises, LLC, 5060 N. 40th Street, Suite 115, Phoenix, Maricopa County, Arizona, 85018-2140. Alternatively,

and/or in addition, Defendant GreenGate 1 may be served on CEO Toby Jones and/or Charlie Alm, VP/GC at 1818 South Letvin Avenue, Yuma, Yuma County, Arizona, 85365.

16. Defendant GreenGate 2 is subject to jurisdiction and venue in this Court pursuant to Georgia Long-arm statute at O.C.G.A. §§ 9-10-91 and/or 9-11-4(e)(1)(A) and/or other applicable law. Defendant GreenGate 2 has no registered agent on record with the Georgia Secretary of State and is subject to service upon the Georgia Secretary of State in accordance with Georgia law, including O.C.G.A. § 14-9-104(g). Alternatively, Defendant GreenGate 2 may be served on CEO Toby Jones at 1818 South Letvin Avenue, Yuma, Yuma County, Arizona, 85365.

GENERAL ALLEGATIONS

Prior Outbreaks Linked to Lettuce and Other Leafy Greens

17. *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 foodborne pathogen outbreaks involving contaminated lettuce or leafy greens just within the past ten years:

Date	Causative Agent	Illnesses Reported	Source
Mar. 2018	<i>E. coli</i> O157:H7	219	Romaine lettuce
Nov. 2017- Dec. 2017	<i>E. coli</i> O157:H7	41, 1 death	Romaine lettuce
Dec. 2015-Jan. 2016	Listeria monocytogenes	19, 1 death	Package salads
Apr. 2015	Escherichia coli, Shiga toxin-producing	7	Prepackaged leafy greens
Mar. 2015	<i>E. coli</i> O157:H7	12	Leafy greens
Jul. 2014	<i>E. coli</i> O111	15	Salad/cabbage served at Applebee's and Yard House (Minnesota)

Oct. 2013	<i>E. coli</i> O157:H7	33	Pre-packaged salads and sandwich wraps (California)
Jul. 2013	<i>E. coli</i> O157:H7	94	Lettuce served at Federico's Mexican Restaurant
Jul. 2013	Cyclospora	140 (Iowa); 87 (Nebraska)	Salad mix, cilantro
Dec. 2012 – Jan. 2013	<i>E. coli</i> O157:H7	31	Shredded lettuce from Freshpoint, Inc.
Oct. 2012	<i>E. coli</i> O157:H7	33	Leafy greens salad mix (Massachusetts)
Apr. 2012	<i>E. coli</i> O157:H7	28	Romaine lettuce
Dec. 2011	Salmonella Hartford	5	Lettuce; roast beef
Dec. 2011	Norovirus	9	Lettuce, unspecified
Oct. 2011	<i>E. coli</i> O157:H7	58	Romaine lettuce
Oct. 2011	<i>E. coli</i> O157:H7	26	Lettuce
Aug. 2011	N/A	8	Lettuce; onions; tomatoes
Jul. 2011	Cyclospora cayatenensis	99	Lettuce based salads
Jun. 2011	Norovirus	23	Garden salad
Apr. 2011	Salmonella Typhimurium	36	Multiple salads
Feb. 2011	Norovirus	24	Garden salad
Jan. 2011	Norovirus	93	Lettuce; salad, unspecified
Jul.-Oct. 2010	Salmonella Java	136	Salad vegetable
May 2010	<i>E. coli</i> O145	33 (26 lab-confirmed)	Romaine Lettuce grown in Arizona

Apr. 2010	Salmonella Hvittingfoss	102	Lettuce, tomatoes, and olives served at Subway restaurants
Jan. 2010	<i>E. coli</i>	260	Lettuce grown in France

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

18. On April 13, 2018, the 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. Ultimately, the investigation by the CDC, FDA, and local and state health agencies determined that at least 240 people from 37 states had been sickened in the outbreak.

19. Illnesses started on dates ranging from March 13, 2018 to August 22, 2018. Ill people range in age from 1 to 93 years, with a median age of 26. Sixty-six percent of ill people were female. Of more than 201 people with information available, 104 were hospitalized, including 28 people who developed hemolytic uremic syndrome (HUS). At least five victims died from their *E. coli* O157:H7 infections.

20. Epidemiologic analysis showed that the cause of the outbreak was contaminated romaine lettuce. Traceback analysis and investigation showed that the contaminated romaine lettuce came from the growing region that straddles the California-Arizona border at and around Yuma, Arizona, to include growing locations in the Imperial Valley, California.

21. The FDA, along with the CDC and state partners, conducted 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 was closely related genetically to the *E. coli* O157:H7 from ill people.

22. More specifically, the canal water samples that yielded the three positive results for the outbreak strain of *E. coli* O157:H7 were taken from the Wellton Canal in the immediate vicinity of the Five Rivers Feedyard, which is one of several Wellton-area CAFOs.

23. The following is a Google Earth image of the Five Rivers Feedyard, which is the Wellton CAFO described in the FDA's Environmental Assessment Report. Leafy green growing fields, including on information and belief romaine lettuce fields, are adjacent to the CAFO and surround it, and the Wellton Canal, on all sides.



Figure 1. *Wellton Irrigation Canal.* This Google Earth view depicts a section of the Wellton main canal adjacent to a CAFO and locations of three outbreak-pathogen-positive irrigation water samples. The sample locations are upstream, adjacent to, and downstream of the Wellton-area CAFO. Also noted are unlined irrigation canal sections and a CAFO retention pond. Water in the canal flows from west (left) to east (right) in the figure above. The CAFO at the bottom center of Figure 1. See Figure 2 for an enlarged image of the CAFO.

24. The following is another Google Earth image of the Five Rivers Feedyard, which also appears in the FDA's Environmental Assessment Report. It depicts the locations at the Five Rivers Feedyard that tested positive for Shiga-toxin producing strains of *E. coli* during the FDA's investigation.



Figure 2. Overview of Wellton area CAFO and adjacent canal property, Including West (1) and North (2) Composting Facilities, North retention pond (3), fresh manure sampling location of steer feeding pens (4), Drag Swabs and soil samples along feedlot perimeter fence-line (5). Circles represent EA team sampling locations (compost and manure). Red circles indicate samples that were positive for STECs. No samples were positive for the outbreak strain.

25. Water from the Wellton canal used to irrigate romaine lettuce crops implicated in the 2018 *E. coli* O157:H7 outbreak was not treated or disinfected in any way.

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

26. *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.

27. *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.

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

29. 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.

30. *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.

31. 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.

32. 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.

**Facts Relating to Defendants' Manufacture and
Distribution of the Contaminated Romaine Lettuce Products**

33. On multiple dates in March 2018, Phoenix Wholesale received cases of chopped romaine lettuce from John Doe grower, shipper and distributor. The cases consisted of eight, two-pound bags of chopped romaine each. The romaine lettuce had been processed and sold by GreenGate 1 and/or GreenGate 2.

34. Phoenix Wholesale was the sole supplier of chopped romaine lettuce products to La Madeleine throughout March 2018. On or about March 20, 22, and 24, and possibly other dates, Phoenix Wholesale distributed one or more cases of chopped romaine lettuce products to La Madeleine located at 1165 Perimeter Center W, #350, Atlanta, Georgia.

N.M.A.'s Injuries

35. On or about March 25, 2018, N.M.A. consumed a Caesar salad containing romaine lettuce from La Madeleine Restaurant located at 1165 Perimeter Center W, #350, Atlanta, Georgia. La Madeleine had prepared the salad using romaine lettuce products manufactured, distributed, and sold by Phoenix Wholesale, John Doe Grower, Shipper and Distributor, and GreenGate 1 and/or GreenGate 2.

36. Onset of N.M.A.'s symptoms caused by *E. coli* O157:H7 infection occurred on or about March 28, 2018, with diarrhea, abdominal cramps, nausea, and a general feeling of illness.

37. N.M.A.'s symptoms worsened dramatically over the next few days, and her diarrhea became bloody.

38. N.M.A. was seen in the emergency department at WellStar Kennestone Hospital in Marietta, Georgia on March 31, 2018.

39. The next day, April 1, 2018, she was admitted to Children's Healthcare of Atlanta - Scottish Rite Hospital in Atlanta, Georgia and remained hospitalized until April 21, 2018.

40. While hospitalized, N.M.A. was diagnosed with hemolytic uremic syndrome (HUS), caused by her *E. coli* O157:H7 infection. As a result of her HUS condition, N.M.A. required multiple blood transfusions, among other invasive and painful medical treatments. She also suffered from pancreatitis.

41. N.M.A. continues to have lower energy levels and endurance with activity after recovering from her *E. coli* O157:H7-mediated HUS illness. She is at risk for the development of kidney, cardiovascular and other complications from her injuries and may require additional medical treatment.

42. N.M.A. contracted her confirmed *E. coli* O157:H7 illness by consuming the Defendants' *E. coli* O157:H7-contaminated romaine lettuce.

43. Plaintiffs as the parents and natural guardians of N.M.A., a Minor Child, incurred medical expenses in connection with their child's medical care and treatment and the Defendants are liable to Plaintiffs as a result of their wrongful actions as set forth herein.

44. Plaintiffs' minor child suffered significant physical injury and pain and suffering and the Defendants are liable for damages as a result of their wrongful actions as set forth herein.

CAUSES OF ACTION

COUNT I - BREACH OF WARRANTY

45. Plaintiffs incorporate by reference and make a part of this count each and every foregoing paragraph of this Complaint.

46. Defendants produced, distributed, and sold the contaminated food product that injured N.M.A., and caused her *E. coli* O157:H7 infections. The Defendants are, therefore, manufacturers, distributors, and sellers of an adulterated food product, and the adulterated food product reached N.M.A. without substantial change from the condition in which it was sold by the Defendants.

47. The Defendants are subject to liability to the Plaintiffs for their breaches of express and implied warranties made to Plaintiffs and N.M.A. with respect to the food product sold to them, including the implied warranties of merchantability and of fitness for a particular use. Further, the Defendants expressly warranted, through their sale of food to the public, and by the statements and conduct of their employees and agents, that the food product ultimately sold to Plaintiffs was fit for human consumption, and not otherwise adulterated or injurious to health.

48. The food product sold by the Defendants and ultimately consumed by N.M.A., which product was contaminated with *E. coli* O157:H7 and related filth and adulteration, would not pass without exception in the trade, and was thus in breach of the implied warranty of merchantability.

49. The Plaintiffs further allege that the contaminated food sold by the Defendants and consumed by N.M.A. was not fit for the uses and purposes intended by either Plaintiffs, N.M.A., or the Defendants, i.e., human consumption, and that this product was therefore in breach of the implied warranty of fitness for its intended use.

50. As a further direct and proximate result of the conduct of Defendants and their agents, servants, and/or employees as aforesaid, N.M.A. suffered an *E. coli* O157:H7 infection and the adverse effects associated with the same, as described in previous paragraphs of this Complaint.

51. As a further direct and proximate result of the conduct of Defendants and their agents, servants, and/or employees, N.M.A. was forced to endure great pain, suffering, and

inconvenience and may endure the same in the future. She was forced to submit to medical, medicinal, and therapeutic care and may be forced to submit to the same in the future.

52. As a further direct and proximate result of the conduct of Defendants and their agents, servants, and/or employees, N.M.A. suffered an inability to perform the activities of daily living or some of them.

53. As a further direct and proximate result of the conduct of Defendants and their agents, servants, and/or employees, Plaintiffs were forced to expend sums of money for doctors, hospitals, and/or other items necessary for the proper care and treatment of their minor child.

COUNT II - STRICT LIABILITY

54. Plaintiffs incorporate by reference and make a part of this Count each and every foregoing paragraph of this Complaint.

55. The Defendants owed a duty to Plaintiffs and N.M.A. to manufacture and sell only food that was not adulterated, was fit for human consumption, was reasonably safe in construction, and was free of pathogenic bacteria or other substances injurious to human health. The Defendants breached this duty.

56. The Defendants owed a duty to Plaintiffs and N.M.A. to provide adequate warnings about the non-obvious danger of their food products, including warnings and instructions indicating that the food might contain pathogenic bacteria, including *E. coli* O157:H7. The Defendants breached this duty.

57. The Defendants owed a duty to Plaintiffs and N.M.A. to prepare, serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable and ordinary consumer. The Defendants breached this duty.

58. Because the food that Plaintiffs and N.M.A. purchased and consumed was adulterated, not fit for human consumption, not reasonably safe in design and construction, lacked adequate warnings and instructions, and was unsafe to an extent beyond that contemplated by the ordinary consumer, the Defendants are liable to the Plaintiffs for the harm proximately caused

by their manufacture and sale of contaminated and adulterated food products, and as such the Defendants are strictly liable to Plaintiffs for such harm.

COUNT III - NEGLIGENCE

59. Plaintiffs incorporate by reference and make a part of this Count each and every foregoing paragraph of this Complaint.

60. The Defendants had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of the food products that injured Plaintiffs' minor child, including the applicable provisions of the Federal Food, Drug and Cosmetic Act, and similar Georgia food and public health statutes, including without limitation the provisions of the Georgia Food Act, O.C.G.A. § 26-2-20, *et seq.*, all of which prohibit the manufacture and sale of any food that is adulterated, or otherwise injurious to health.

61. The food product that Defendants manufactured and sold, and that the Plaintiffs and N.M.A. purchased and consumed, was adulterated within the meaning of the federal Food, Drug and Cosmetic Act, and similar Georgia statutes, because it contained a deleterious substance that rendered it injurious to health, i.e., *E. coli* O157:H7 bacteria.

62. The Defendants violated federal, state, and local food safety regulations by their manufacture and sale of adulterated food. These federal, state, and local food safety regulations are applicable here, and establish a positive and definite standard of care in the manufacture and sale of food. The violation of these regulations constitutes negligence as a matter of law.

63. The Plaintiffs and N.M.A. are in the class of persons intended to be protected by these statutes and regulations, and Plaintiffs and N.M.A. were injured as the direct and proximate result of the Defendants' violation of applicable federal, state, and local food safety regulations.

64. The Defendants were negligent in the manufacture, distribution, and sale of a food product that was adulterated with *E. coli* O157:H7, not fit for human consumption, and not reasonably safe because adequate warnings or instructions were not provided.

65. Once the Defendants learned, or in the exercise of reasonable care should have learned, of the dangers associated with preparing and selling food, including, but not limited to, cross-contamination between foods, and the dangers associated with improperly cleaned or washed food, they had a duty to warn Plaintiffs and N.M.A. but failed to do so.

66. The Defendants had a duty to use supplies and raw materials in producing their food products that were in compliance with applicable federal, state, and local laws, ordinances and regulations; that were from reliable sources; and that were clean, wholesome, free from adulteration, and fit for human consumption, but failed to do so, and therefore breached that duty.

67. The Defendants were negligent in the selection of their suppliers, or other agents or subcontractors, and failed to adequately supervise them, or provide them with adequate standards, and, as a result, produced and sold food that was adulterated with *E. coli* O157:H7.

68. The Defendants had a duty to properly supervise, train, and monitor their employees, or the employees of their agents or subcontractors, engaged in the preparation and sale of their food products, to ensure compliance with the Defendants' operating standards and to ensure compliance with all applicable health regulations. The Defendants failed to properly supervise, train, and monitor these employees engaged in the manufacture, preparation and delivery of the food product ultimately sold to Plaintiffs and N.M.A. and thus breached that duty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants and for the following relief:

- a. That this Complaint be filed, Summonses issued and service effected in accordance with law;
- b. Judgment for the Plaintiffs against the Defendants for just compensation in a fair and reasonable amount for the damages above set forth;
- c. Such additional and/or further relief, including interest, costs, and reasonable attorney fees, as this Court deems just and equitable; and

d. That this case be tried by a jury.

Respectfully submitted,

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STATE COURT OF
DEKALB COUNTY, GA.
3/19/2020 10:44 AM
E-FILED
BY: Phyleta Knighton