

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT  
CASE TYPE: Personal Injury

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ERIC GUSTAFSON and  
JENNIFER GUSTAFSON,  
Individually and as parents and  
natural guardians for  
CALLIE GUSTAFSON and  
CARSON GUSTAFSON, minors,

Court File No. \_\_\_\_\_

Plaintiffs,

vs.

**SUMMONS**

**JURY TRIAL DEMANDED**

CARGILL MEAT SOLUTIONS CORP.,  
a foreign corporation,

Defendant.

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THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

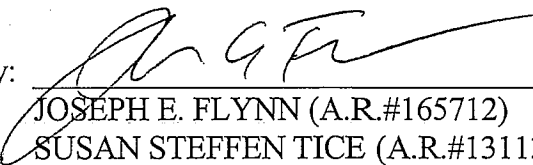
You are hereby summoned and required to serve upon Plaintiff's attorneys an Answer to the Complaint which is herewith served upon you within twenty (20) days after the service of this Summons upon you, exclusive of the day of such service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This case may be subject to Alternative Dispute Resolution (ADR) processes under Rule 114 of the General Rules of Practice for the District Courts. The Court Administrator or your attorney can provide you with information about ADR options and a list of neutrals

available in your area. ADR does not affect your obligation to respond to the Summons and Complaint within twenty (20) days.

DATED: October 9, 2007.

JARDINE, LOGAN & O'BRIEN, P.L.L.P.

By:   
JOSEPH E. FLYNN (A.R.#165712)  
SUSAN STEFFEN TICE (A.R.#131131)  
8519 Eagle Point Boulevard, Suite 100  
Lake Elmo, MN 55042-8624  
651-290-6500

Attorneys for Plaintiffs

MARLER CLARK, LLP, PS  
William D. Marler, Esq., WSBA # 17233  
701 Fifth Avenue, Suite 6600  
Seattle, WA 98104  
Telephone: (206) 346-1888  
Facsimile: (206) 346-1898

Attorneys for Plaintiffs

STATE OF MINNESOTA

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JENNIFER GUSTAFSON,  
Individually and as parents and  
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CALLIE GUSTAFSON and  
CARSON GUSTAFSON, minors,

Court File No. \_\_\_\_\_

Plaintiffs,

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**COMPLAINT**

**JURY TRIAL DEMANDED**

CARGILL MEAT SOLUTIONS CORP.,  
a foreign corporation,

Defendant.

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COME NOW the plaintiffs, ERIC GUSTAFSON and JENNIFER GUSTAFSON, individually and as the parents and natural guardians for their minor children, CALLIE GUSTAFSON and CARSON GUSTAFSON, by and through her attorneys of record, Joseph E. Flynn, and JARDINE, LOGAN, O'BRIEN and the MARLER CLARK LLP, PS, law firm, and allege as follows:

**I. PARTIES**

1. Plaintiffs, Eric Gustafson and Jennifer Gustafson, are the parents and natural guardians of their minor children Callie Gustafson and Carson Gustafson. They all reside in Inver Grove Heights, Dakota County, Minnesota. Plaintiffs are, therefore, residents of Dakota County and the State of Minnesota and venue is proper in Dakota County.

2. Defendant Cargill Meat Solutions Corporation (hereinafter "Cargill") is a foreign corporation organized under the laws of the State of Delaware, registered as a corporation in the State of Kansas and with a current mailing address of P.O. Box 5626, Minneapolis, Minnesota. At all times relevant hereto, Cargill was authorized to and did business in the State of Minnesota.

## **II. GENERAL ALLEGATIONS**

3. On October 6, 2007, the United States Department of Agriculture Food Safety and Inspection Service, (USDA) (FSIS) announced the recall of approximately 845,000 pounds of ground beef manufactured by the defendant Cargill between August 9 and August 17, 2007, due to contamination with *E. coli* O157:H7.

4. Minnesota health officials reported that four cases of *E. coli* O157:H7 infection were connected to the consumption of the recalled ground beef.

5. On September 7, 2007, an acquaintance of the Gustafson's purchased ground beef manufactured by the Defendant Cargill at the Sam's Club store in Eagan, Minnesota. The product was labeled as "American Chef's Angus Beef Patties." At the time the ground beef left the defendant's control it was contaminated with *E. coli* O157:H7.

6. On September 7, 2007 Eric, Jennifer, and Callie Gustafson consumed the ground beef at a barbecue.

7. On September 10, Callie Gustafson started to become ill with gastrointestinal symptoms. Her symptoms worsened over time, and she was hospitalized on September 13, 2007. While hospitalized Callie Gustafson cultured positive for *E. coli* O157:H7.

8. During her hospitalization, Callie Gustafson developed the life-threatening illness Hemolytic Uremic Syndrome, (HUS) as a result of her *E. coli* O157:H7 infection. She was

released from the hospital on September 20, 2007. As a result of her *E. coli* O157:H7 infection, Callie Gustafson has been permanently injured.

9. Carson Gustafson fell ill on or around September 20, with gastrointestinal symptoms. Carson Gustafson tested positive for *E. coli* O157:H7. Carson Gustafson is still recovering from his *E. coli* O157:H7 infection.

### **III. CAUSES OF ACTION**

#### **Strict Liability—Count I**

10. At all times relevant hereto, the defendant was a manufacturer and seller of the adulterated food product that is the subject of the action, and the defendant was in the business of manufacturing and selling like products.

11. The adulterated food product that the defendant manufactured and sold 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* O157:H7, a harmful and potentially lethal foodborne pathogen.

12. The adulterated food product that the defendant manufactured and sold was delivered to the plaintiffs without change in its defective condition. The plaintiffs thereafter used the product in a reasonably foreseeable manner by consuming it.

13. The defendant owed a duty of care to the plaintiffs to design, manufacture, and/or sell 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.

14. The defendant owed a duty of care to the plaintiffs to design, prepare, serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable consumer. The defendant breached this duty.

15. The plaintiffs' illnesses and associated legal injuries occurred as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the defendant manufactured and sold.

Breach of Warranty—Count II

16. The defendant is liable to the plaintiffs for breaching express and implied warranties that they made regarding the adulterated product that caused the plaintiffs' injuries. These express and implied warranties included, among others, the implied warranties of merchantability and fitness for a particular use. Specifically, though not exclusively, the defendant also expressly warranted, through its sale of food to the public and by the statements and conduct of its employees and agents, that its food was fit for human consumption and not otherwise adulterated or injurious to health.

17. The adulterated food that the defendant manufactured and sold to the plaintiffs would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

18. The adulterated food that the defendant manufactured and sold to the plaintiffs was not fit for the uses and purposes intended, *i.e.* human consumption, and the product was therefore in breach of the implied warranty of fitness for its intended use.

19. The plaintiffs' illnesses and associated legal injuries occurred as a direct and proximate result of defendant's several breaches of the express and implied warranties discussed above.

Negligence—Count III

20. The defendant owed to the plaintiffs a duty to use reasonable care in the manufacture, distribution, handling, and sale of its food products, the observance of which duty would have prevented or eliminated the risk that the defendant's food products would become contaminated with *E. coli* O157:H7 or any other dangerous pathogen, and that the plaintiffs, or any other consumer, would be infected with *E. coli* O157:H7 by consuming the defendant's food products. The defendant breached this duty.

21. The defendant owed to the plaintiffs a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, handling, and sale of their food products. The defendant failed to observe this duty and was therefore negligent.

22. The plaintiffs were among the class of persons intended to be protected by the statutes, laws, regulations, and safety codes referenced above and pertaining to the manufacture, distribution, handling, and sale of similar food products.

23. The defendant owed a duty to properly supervise, train, and monitor its employees, and to ensure its employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products. The defendant failed to observe this duty and was therefore negligent.

24. The defendant owed a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, and free of defects and that otherwise complied with applicable federal, state, and local laws, ordinances, and regulations, and that were clean, free from adulteration, and safe for human consumption. The defendant failed to observe this duty and was therefore negligent.

25. The defendant failed to warn plaintiffs of the hazards and defects.

26. The plaintiffs' illnesses and associated legal injuries occurred as a direct and proximate result of defendant's several breaches of duty discussed above.

#### Negligence Per Se—Count IV

27. The defendant had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food products, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*) and the Minnesota Food Law (Minn. Stat. § 31.01, *et. seq.*)

28. The defendant failed to comply with the provisions of the health and safety acts identified above, and, as a result, was negligent *per se* in their manufacture, distribution, and sale of food adulterated with *E. coli* O157:H7, a harmful and potentially lethal foodborne pathogen.

29. The plaintiffs' illnesses and associated legal injuries occurred as a direct and proximate result of conduct by the defendant that constituted negligence *per se*.

#### **IV. DAMAGES**

30. Plaintiffs are entitled to receive just compensation for the following:

(a) the pain and suffering that plaintiffs incurred by reason of defendant's fault and negligent acts and omissions, past present and future;

(b) all related medical expenses and costs incurred, past, present, and future;

(c) the physical harm that plaintiffs suffered by reason of defendant's fault and negligent acts and omissions, past, present, and future;

(d) the emotional suffering and distress that the plaintiffs suffered by reason of defendant's fault and negligent acts and omissions, past, present, and future;

(e) the loss of enjoyment of life that the plaintiffs sustained, past present, and future; and all other ordinary, incidental or consequential damages that could be reasonably anticipated to arise under the circumstances, including, but not limited to, loss of earning capacity.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs, pray for judgment against the defendant as follows:

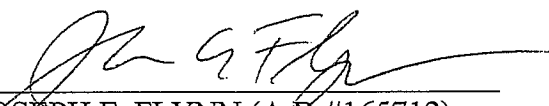
A. Judgment against the defendant for just compensation in a fair and reasonable amount for all general, special, incidental and consequential damages suffered by Plaintiffs as a result of Defendant's conduct; and

B. Judgment in a fair and reasonable amount for expenses and legal injuries incurred, in a fair and reasonable amount for the damages suffered; and

C. Such additional and/or further relief, including interest, costs, and reasonable attorney fees, as this Court deems just and equitable.

DATED: October 9, 2007.

JARDINE, LOGAN & O'BRIEN, P.L.L.P.

By:   
JOSEPH E. FLYNN (A.R.#165712)  
SUSAN STEFFEN TICE (A.R.#131131)  
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Attorneys for Plaintiffs

**MARLER CLARK, LLP, PS**

William D. Marler, Esq., WSBA # 17233

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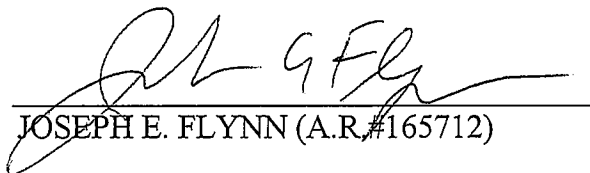
Telephone: (206) 346-1888

Facsimile: (206) 346-1898

Attorneys for Plaintiffs

ACKNOWLEDGMENT

The undersigned hereby acknowledges in accordance with Minn. Stat. §549.211 that costs, disbursements and reasonable attorney and witness fees may be awarded to an opposing party or parties pursuant to Minn. Stat. §549.211.

  
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JOSEPH E. FLYNN (A.R.#165712)