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2. Defendant Forever Cheese, Inc. ("Forever Cheese") is a New York corporation with its principle offices in Long Island City, New York. Its principle business is the manufacture, sale, and nationwide distribution of food products, including Ricotta Salata Frescolina brand cheese (the "cheese product". Forever Cheese does business in King County and the State of Washington, and is subject to the jurisdiction of this court.

3. Defendant Peterson ("Peterson") is a Washington company with its principle offices in Auburn, King County, Washington. Its principle business is the manufacture, sale, and nationwide distribution of food products, including Ricotta Salata Frescolina brand cheese (the "cheese product"). Peterson does business in King County and the State of Washington, and is subject to the jurisdiction of this court.

II. JURISDICTION AND VENUE

- 4. This Court is vested with jurisdiction of this action pursuant to RCW 2.08.010 and RCW 4.96.010. This Court is additionally vested with jurisdiction over the defendants, as both are corporations doing business within the State of Washington, pursuant to RCW 2.08.010, RCW 4.28.185 and RCW 4.28.080.
- 5. Venue is proper in this Court, pursuant to RCW 4.12.025, because the plaintiffs' causes of action arose within King County, and because the defendants do business in King County, and are therefore deemed to be residents of this county.

III. THE OUTBREAK

6. As of September 21, 2012, the CDC was collaborating with public health and regulatory officials in several states and the U.S. Food and Drug Administration (FDA) to

investigate a multistate outbreak of *Listeria monocytogenes* infections (listeriosis). Joint investigation efforts indicate that ricotta salata cheese was the probable source.

- 7. As of September 21, 2012, a total of 15 persons infected with the outbreak strain of *Listeria monocytogenes* had been reported from 12 states and the District of Columbia. Illness onset dates ranged from March 28, 2012 to August 30, 2012. All 15 ill persons reported being hospitalized. Four of the illnesses were related to a pregnancy; two of these illnesses were diagnosed in newborns. The other 11 ill persons ranged in age from 30 years to 87 years, with a median age of 77 years, and 64% percent of them are female. No fetal losses had been reported. Three deaths had been reported. Listeriosis contributed to at least one of the deaths in Nebraska and New York, but did not contribute to the death in Minnesota.
- 8. Collaborative investigation efforts of local, state, and federal public health and regulatory agencies indicated that imported ricotta salata cheese was the likely source of this outbreak. FDA identified the outbreak strain of *Listeria monocytogenes* bacteria in a sample of uncut imported Marte brand Frescolina ricotta salata cheese distributed by defendant Forever Cheese, Inc.
- 9. On September 10, 2012, Forever Cheese, Inc. voluntarily recalled one lot of Marte brand Frescolina ricotta salata cheese due to *Listeria monocytogenes* contamination. On September 21, 2012, the U.S. Food and Drug Administration issued an expanded recall of all lots and production codes of Marte brand Frescolina ricotta salata cheese, and all cheese by the Italian cheese maker.

10. This cheese may also have been referred to as Ricotta Frescolina Marte Tipo Toscanella and/or Ricotta Salata Soft Lot (T9425) as it was being distributed. The cheese was sold to distributors for retailers and restaurants in California, Colorado, District of Columbia, Florida, Georgia, Illinois, Indiana, Maine, Maryland, Massachusetts, Montana, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Virginia, and Washington between June 20, 2012 and August 9, 2012.

IV. MERRILL WEST BEHNKE'S ILLNESS

- 11. On or about August 25, 2012, plaintiff Merrill West Behnke consumed a *Listeria*-contaminated Ricotta Salata Frescolina brand cheese. The contaminated cheese had been manufactured, distributed and sold by defendants Forever Cheese and Peterson Company.
- 12. Ms. Behnke first became ill on or about August 28, 2012. Ms. Behnke developed an intensely painful headache that night. When she woke up the next morning, Ms. Behnke also had severe neck and back pains and a 102 degree fever.
- 13. Ms. Behnke's husband took her to an urgent care clinic Wednesday afternoon, August 29, 2012. There Ms. Behnke underwent a lumbar puncture and CT scan. Her physicians ultimately concluded that she had developed Meningitis. Almost one week into her stay at the hospital, serum from the lumbar puncture done the day of her admission tested positive for *Listeria monocytogenes*, which was then identified as the cause of Ms. Behnke's meningitis illness.
- 14. Ultimately, Ms. Behnke endured a hospitalization that lasted through the 13th of September, 2012. Ms. Behnke's physicians struggled during her hospitalization, part of which

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was in the intensive care unit, to find the right antibiotic treatment regimen to combat her Listeriosis illness. Before discharge, physicians inserted a peripherally inserted central catheter for the continuing administration of antibiotics post-discharge, and Ms. Behnke has been on antibiotics six times a day since her discharge on September 13, 2012.

- 15. Ms. Behnke's *Listeria*-positive serum result has been tested by public health authorities, who have determined that the strain of *Listeria monocytogenes* that infected Ms. Behnke is indistinguishable from the strain involved in the outbreak linked to defendants' cheese products.
- 16. As a result of the *Listeria*-induced illness, plaintiff has suffered severe injuries, severe emotional injuries, and substantial economic loss.

V. FIRST CLAIM FOR RELIEF

(Strict Product Liability)

- 17. At all times relevant to this action, the defendants were manufacturers, sellers and distributors of the *Listeria* contaminated cheese food product that caused the plaintiffs' injuries.
- 18. The *Listeria* contaminated cheese food product that the defendants manufactured, distributed, and sold was, at the time it left the control of the defendants, defective because it contained *Listeria*, a potentially lethal pathogen, and was thus in a condition not contemplated by the ultimate consumer.
- 19. The defective condition of the *Listeria* contaminated cheese that the defendants manufactured, distributed, and sold caused the cheese to be unreasonably dangerous, because the

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product posed a risk beyond that an ordinary consumer would not contemplate when purchasing the product.

- 20. The *Listeria* contaminated cheese that the defendants manufactured, distributed, and sold was delivered to the plaintiffs without any change in its defective condition. The adulterated cheese food product that the defendants manufactured, distributed, and sold was used in the manner expected and intended, and was consumed by the plaintiff, Ms. Behnke.
- 21. As a direct and proximate result of the defendants' manufacture, distribution and sale of *Listeria* contaminated cheese, Ms. Behnke was infected by *Listeria*, causing plaintiffs to suffer substantial economic damages. Plaintiffs are thus entitled to an award for lost medical and medically-related expenses, both past and future, in a final amount to be determined at trial.
- 22. As a further direct and proximate result of the defendants' manufacture, distribution and sale of *Listeria* contaminated cheese, the plaintiffs have suffered non-economic damages, including, but not limited to: damages for general pain and suffering; damages for loss of enjoyment of life, both past and future; emotional distress, and future emotional distress; lost familial consortium; and all other ordinary, incidental and consequential non-economic damages as would be anticipated to arise under the circumstances, and plaintiffs are thus entitled to an award of non-economic damages in a final amount to be determined at trial.

VI. SECOND CLAIM FOR RELIEF

(Breach of Warranty)

23. The defendants are liable to the plaintiffs for breaching express and implied warranties that they made regarding the *Listeria* contaminated adulterated cheese product that

caused the plaintiffs' injuries. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, the defendants expressly warranted, through their sale of the cheese product to the public and by the statements and conduct of their employees and agents, that the cheese product they sold and distributed was fit for human consumption and not otherwise adulterated or injurious to health.

- 24. The *Listeria* contaminated cheese that caused the plaintiffs' injuries would not pass without exception in the trade, and the sale of that contaminated cheese food product was therefore in breach of the implied warranty of merchantability.
- 25. The *Listeria* contaminated food that caused the plaintiffs' injuries was not fit for the uses and purposes intended, *i.e.* human consumption, and the sale of that contaminated cheese food product was therefore in breach of the implied warranty of fitness for its intended use.
- 26. As a direct and proximate result of the defendants' breach of express and implied warranties regarding the contaminated cheese product, Ms. Behnke was infected with *Listeria*, causing plaintiffs to suffer substantial economic damages. Plaintiffs are thus entitled to an award for lost medical and medically-related expenses, both past and future, in a final amount to be determined at trial.
- 27. As a further direct and proximate result of the defendants' breach of express and implied warranties regarding the contaminated cheese, the plaintiffs have suffered non-economic damages, including, but not limited to: damages for general pain and suffering; damages for loss of enjoyment of life, both past and future; emotional distress, and future emotional distress; lost

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consortium; and all other ordinary, incidental and consequential non-economic damages as would be anticipated to arise under the circumstances, and plaintiffs are thus entitled to an award of non-economic damages in a final amount to be determined at trial.

VI. THIRD CLAIM FOR RELIEF

(Personal Injury - Negligence)

- 28. The defendants owed to the plaintiffs a duty to use reasonable care in the manufacture, distribution, and sale of their cheese food product, the observance of which duty would have prevented or eliminated the risk that the defendants' food product would become contaminated with *Listeria* or any other dangerous pathogen. The defendants breached this duty by failing to exercise reasonable care in the manufacture, distribution and sale of the cheese product.
- 29. The defendants had a duty to properly supervise, train, and monitor their employees, and to ensure their employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but the defendants failed to do so. Defendants failed to properly supervise, train, and monitor their employees, and to ensure their employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of their cheese food product, and were therefore negligent.
- 30. The defendants had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free of defects, from reliable sources, and that otherwise complied with applicable federal, state, and local laws, ordinances, and regulations,

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and that were clean, free from adulteration, and safe for human consumption, but the defendants failed to do so. Defendants failed to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free of defects, from reliable sources, 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, in their manufacture, distribution and sale of the cheese food product, and were therefore negligent.

- 31. The defendants had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of their food product, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 et seq.), and the Washington adulterated food statutes. The defendants failed to comply with the provisions of the health and safety acts identified above, by manufacturing, distributing and selling a cheese food product which was contaminated with *Listeria*, a deadly pathogen, and, as a result, were negligent *per se* in their manufacture, distribution, and sale of the adulterated food product.
- 32. The defendants had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of their food product, but failed to do so. Defendants failed to comply with statutes, laws, regulations and safety codes pertaining to the manufacture, distribution, storage and sale of cheese food products, and were therefore negligent. The plaintiffs were among the class of persons designed to be protected by these statutes, laws, regulations, safety codes or provision pertaining to the manufacture, distribution, storage, and sale of similar cheese food products.

33. As a direct and proximate result of the defendants' negligence, Ms. Behnke was infected by Listeria, and suffered substantial economic damages. Plaintiffs are thus entitled to an award for lost medical and medically-related expenses, both past and future, in a final amount to be determined at trial.

34. As a further direct and proximate result of the defendants' negligence, the plaintiffs have suffered non-economic damages, including, but not limited to: damages for general pain and suffering; damages for loss of enjoyment of life, both past and future; emotional distress, and future emotional distress; lost familial consortium; and all other ordinary, incidental and consequential non-economic damages as would be anticipated to arise under the circumstances, and plaintiffs are thus entitled to an award of non-economic damages in a final amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray for the following relief:

- 1. For all of plaintiffs' economic damages, including all past and future medical expenses, as determined at the time of trial.
 - 2. For all of plaintiffs' non-economic damages, as determined at the time of trial.
- 3. That the Court award the plaintiffs the opportunity to amend or modify the provisions of this complaint as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served; and

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