

1 Craig M. Murphy, Esq.
California Bar No. 314526
2 craig@nvpilaw.com
MURPHY & MURPHY LAW OFFICES
3 4482 Market Street, Ste 407
Ventura, CA 93003
4 (805) 330-3393 Phone
5 (702) 369-9630 Fax
Attorney for Plaintiff

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

<p>9 KELLI VANDERBY,</p> <p>10 Plaintiff,</p> <p>11 vs.</p> <p>12 TARGET CORPORATION, a foreign corporation d/b/a TARGET; KEHE 13 DISTRIBUTORS, LLC, a foreign limited-liability company; KEHE DISTRIBUTORS, INC., a foreign 14 corporation; KEHE ENTERPRISES, LLC, a foreign limited-liability company; 15 WORLD FINER FOODS, INC., a foreign corporation; and WORLD FINER FOODS, 16 LLC, a foreign limited-liability company; DOES 1-10, inclusive; and 17 ROE ENTITIES 1-10, inclusive,</p> <p>18 Defendants.</p>	<p>Case No.:</p> <p>Dept. No.:</p> <p><u>COMPLAINT</u></p> <p>DEMAND FOR JURY TRIAL</p>
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20 COMES NOW the Plaintiff, Kelli Vanderby, by and through her attorney of
21 record, Craig Murphy, Esq. of Murphy & Murphy Law Offices, and alleges and
22 states as follows:

23 **PARTIES**

- 24 1. At all times relevant to this action, Plaintiff resided in Sonoma
25 County, California. Plaintiff is therefore a citizen of the State of
26 California.
- 27 2. At all times relevant to this action, Defendant Target
28 Corporation (hereinafter "Defendant" or "Target") was a Minnesota

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4482 Market Street, Ste 407
Ventura, California 93003
Telephone (805) 330-3393
Facsimile (702) 369-9630

1 corporation with its principal place of business located in
2 Minneapolis, Minnesota. Target is therefore a citizen of the State of
3 Minnesota. At all times relevant to this action, Target owned and
4 operated the Target retail store located at 401 Kenilworth Drive,
5 Petaluma, California.

6 3. At all times relevant to this action, Defendant KeHE
7 Distributors, LLC, was a Delaware limited-liability company with its
8 principal place of business in Naperville, Illinois. On information and
9 belief, KeHE's only member is Brandon Barnholt, who resides in
10 Naperville, Illinois. Therefore, KeHE Distributors, LLC is a citizen
11 of the States of Illinois and Delaware.

12 4. At all times relevant to this action, Defendant KeHE
13 Distributors, Inc., was a Delaware corporation with its principal place
14 of business in Naperville, Illinois. Therefore, KeHE Distributors, Inc.
15 is a citizen of the States of Delaware and Illinois.

16 5. At all times relevant to this action, Defendant KeHE Enterprises,
17 LLC, was a Delaware corporation with its principal place of business in
18 Naperville, Illinois. Therefore, KeHE Enterprises, LLC is a citizen of
19 the States of Delaware and Illinois.

20 6. At all times relevant to this action, Defendant World Finer
21 Foods, Inc. was a Delaware corporation with its principal place of
22 business located in Bloomfield, New Jersey. World Finer Foods, Inc. is
23 therefore a citizen of the States of Delaware and New Jersey.

24 7. At all times relevant to this action, Defendant World Finer
25 Foods, LLC was a Delaware corporation with its principal place of
26 business in Bloomfield, New Jersey. World Finer Foods, LLC is therefore
27 a citizen of the States of Delaware and New Jersey.

28 8. DOES 1 through 10 inclusive are persons, and ROE ENTITIES 1

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

JURISDICTION AND VENUE

20
21 9. This Court has jurisdiction over the subject matter of this
22 action pursuant to 28 U.S.C. § 1332(a) because the matter in
23 controversy exceeds \$75,000.00, exclusive of costs, it is between
24 citizens of different states, and because the Defendants have certain
25 minimum contacts with the State of California such that maintenance of
26 the suit in this district does not offend traditional notions of fair
27 play and substantial justice.

28 10. Venue in the United States District Court for the Northern

1 District of California is proper pursuant to 28 USC § 1391(a)(1) and
2 (2) because the Defendants are subject to personal jurisdiction in this
3 judicial district, and because a substantial part of the events or
4 omissions giving rise to the Plaintiffs' claims and causes of action
5 occurred in this judicial district.

6 **FACTS**

7 **The Outbreak**

8 11. In March 2017, the Food and Drug Administration (FDA) and the
9 Centers for Disease Control and Prevention (CDC), along with state and
10 local health officials, attributed a multi-state outbreak of Shiga
11 toxin-producing Escherichia coli O157:H7 to I.M. Healthy brand SoyNut
12 Butter.

13 12. Epidemiologic investigation by federal, state, and local public
14 health officials, including Centers for Disease Control and Prevention
15 (CDC) and Food and Drug Administration (FDA), found that at least 32
16 people had acquired E. coli O157:H7 infections by consuming
17 contaminated I.M. Healthy SoyNut Butter. This included resident of
18 Arizona (4), California (5), Florida (2), Illinois (1), Massachusetts
19 (1), Maryland (1), Missouri (1), New Jersey (1), Oregon (11), Virginia
20 (2), Washington (2), and Wisconsin (1). Twelve individuals were
21 hospitalized due to their infection, and nine developed hemolytic
22 uremic syndrome (HUS).

23 13. The I.M. Healthy brand of soy nut butter products identified as
24 the contaminated food item in this outbreak were produced jointly by
25 The SoyNut Butter Company and Dixie Dew Products, Inc., at a facility
26 owned by Dixie Dew in Kentucky. On March 28, 2017, once epidemiologic
27 investigation described previously had identified I.M. Healthy brand
28 soy nut butter products as the source of the outbreak, the Food and

1 Drug Administration (FDA) conducted a comprehensive investigation at the
2 Dixie Dew facility. Among other things, the FDA found:

- 3 a. grossly insanitary conditions;
- 4 b. food contact surfaces, floors, walls, and ceilings in
5 the soy nut butter processing and packaging rooms were
6 heavily coated with soy nut butter build-up from previous
7 production runs;
- 8 c. that Dixie Dew does not routinely wash and sanitize
9 smaller pipes, pipe fittings, gaskets, seals, "or the
10 rubber _____ plug" when broken down following a production
11 run;
- 12 d. that Dixie Dew does not conduct a kill step for SoyNut
13 Butter product remaining in its mixing kettle leftover from
14 a production run;
- 15 e. that certain equipment in the facility routinely shuts
16 off during processing—approximately one to two times per
17 day, and that the problem has persisted for approximately
18 15 years despite repeated maintenance intended to correct
19 the problem;
- 20 f. that a thermometer used during the production of the
21 subject product has never been verified for accuracy;
- 22 g. that a temperature probe and chart recorder used during the
23 production process for the subject product does not
24 function properly and has not been used for well over a
25 year;
- 26 h. that Dixie Dew's food safety testing program is problematic
27 among other things, due to the failure to perform
28

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1 microbial testing where necessary to identify possible
2 food contamination;

3 i. that FDA inspectors found that testing materials on hand at
4 Dixie Dew had expired in July 2016 and October 2015;

5 j. that Dixie Dew had a fly infestation problem, and that
6 small apparent flies and fly larvae, too numerous to count,
7 were inside an unplugged chest freezer.

8 14. On March 4, 2017, as a result of epidemiologic and environmental
9 evidence indicating that its soy nut butter products were the source of
10 the outbreak, The SoyNut Butter Company recalled I.M. Healthy Original
11 Creamy Soy Nut Butter with "best by" dates July 5, August 30, and
12 August 31, 2018. This recall also included individual portion cups of
13 the same product with best by dates in July, August, and November 2018.

14 15. On March 7, 2017, The SoyNut Butter Company expanded its recall
15 to include all varieties of I.M. Healthy soy nut butters and all
16 varieties of I.M. Healthy granola products, regardless of production or
17 best by date.

18 16. Plaintiff was one of multiple individuals to make a claim for
19 personal injuries against The SoyNut Butter Company and Dixie Dew as a
20 result of this outbreak. Both companies filed for Chapter 7
21 bankruptcy, and the assets of these companies available to satisfy
22 personal injury claims arising from this outbreak, including
23 Plaintiff's, were insufficient to fairly compensate the claimants.

24 17. Defendants Kehe and World Finer are distributors of various food
25 products to retail stores and foodservice locations nationally.
26 Defendants Kehe and World Finer each acquired and distributed recalled
27 soy nut butter products, including to Target and other retail stores
28 nationally.

1 18. With regard to the contaminated jar of I.M. Healthy Soy Nut
2 Butter that Plaintiff purchased at Target, as described below, World
3 Finer acquired this product from The SoyNut Butter Company and
4 distributed it to Kehe. Kehe then distributed the product to the
5 Target store location where Plaintiff purchased it.

6 **E. coli O157:H7**

7 19. E. coli is an archetypal commensal bacterial species that lives
8 in mammalian intestines. E. coli O157:H7 is one of thousands of
9 serotypes Escherichia coli. The combination of letters and numbers in
10 the name of the E. coli O157:H7 refers to the specific antigens
11 (proteins which provoke an antibody response) found on the body and
12 tail or flagellum respectively and distinguish it from other types of
13 E. coli. Most serotypes of E. coli are harmless and live as normal
14 flora in the intestines of healthy humans and animals. The E. coli
15 bacterium is among the most extensively studied microorganism. The
16 testing done to distinguish E. coli O157:H7 from its other E. coli
17 counterparts is called serotyping. Pulsed-field gel electrophoresis
18 (PFGE), sometimes also referred to as genetic fingerprinting, is used to
19 compare E. coli O157:H7 isolates to determine if the strains are
20 distinguishable. A technique called multilocus variable number of
21 tandem repeats analysis (MLVA) is used to determine precise
22 classification when it is difficult to differentiate between isolates
23 with indistinguishable or very similar PFGE patterns.

24 20. E. coli O157:H7 was first recognized as a pathogen in 1982 during
25 an investigation into an outbreak of hemorrhagic colitis associated with
26 consumption of hamburgers from a fast food chain restaurant.
27 Retrospective examination of more than three thousand E. coli cultures
28 obtained between 1973 and 1982 found only one (1) isolation with

1 serotype O157:H7, and that was a case in 1975. In the ten (10) years
2 that followed there were approximately thirty (30) outbreaks recorded
3 in the United States. This number is likely misleading, however,
4 because E. coli O157:H7 infections did not become a reportable disease
5 in any state until 1987 when Washington became the first state to
6 mandate its reporting to public health authorities. As a result, only
7 the most geographically concentrated outbreak would have garnered
8 enough notice to prompt further investigation.

9 21. E. coli O157:H7's ability to induce injury in humans is a result
10 of its ability to produce numerous virulence factors, most notably
11 Shiga-like toxins. Shiga toxin (Stx) has multiple variants (e.g. Stx1,
12 Stx2, Stx2c), and acts like the plant toxin ricin by inhibiting protein
13 synthesis in endothelial and other cells. Shiga toxin is one of the
14 most potent toxins known. In addition to Shiga toxins, E. coli O157:H7
15 produces numerous other putative virulence factors including proteins,
16 which aid in the attachment and colonization of the bacteria in the
17 intestinal wall and which can lyse red blood cells and liberate iron to
18 help support E. coli metabolism.

19 22. E. coli O157:H7 evolved from enteropathogenic E. coli serotype
20 O55:H7, a cause of non-bloody diarrhea, through the sequential
21 acquisition of phage-encoded Stx2, a large virulence plasmid, and
22 additional chromosomal mutations. The rate of genetic mutation of E.
23 coli O157:H7 indicates that the common ancestor of current E. coli
24 O157:H7 clades likely existed some 20,000 years ago. E. coli O157:H7 is
25 a relentlessly evolving organism, constantly mutating and acquiring new
26 characteristics, including virulence factors that make the emergence of
27 more dangerous variants a constant threat. The CDC has emphasized the
28 prospect of emerging pathogens as a significant public health threat

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Facsimile (702) 369-9630

1 for some time.

2 23. Although foods of a bovine origin are the most common cause of
3 both outbreaks and sporadic cases of E. coli O157:H7 infections,
4 outbreak of illnesses have been linked to a wide variety of food items.
5 For example, produce has, since at least 1991, been the source of
6 substantial numbers of outbreak-related E. coli O157:H7 infections.
7 Other unusual vehicles for E. coli O157:H7 outbreaks have included
8 unpasteurized juices, yogurt, dried salami, mayonnaise, raw milk, game
9 meats, sprouts, and raw cookie dough.

10 24. According to a recent study, an estimated 93,094 illnesses are
11 due to domestically acquired E. coli O157:H7 each year in the United
12 States. Estimates of foodborne acquired O157:H7 cases result in 2,138
13 hospitalizations and 20 deaths annually. The colitis caused by E. coli
14 O157:H7 is characterized by severe abdominal cramps, diarrhea that
15 typically turns bloody within twenty-four (24) hours, and sometimes
16 fevers. The incubation period—which is to say the time from exposure to
17 the onset of symptoms—in outbreaks is usually reported as three (3) to
18 four (4) days but may be as short as one (1) day or as long as ten (10)
19 days. Infection can occur in people of all ages but is most common in
20 children. The duration of an uncomplicated illness can range from one
21 (1) to twelve (12) days. In reported outbreaks, the rate of death is 0-
22 2%, with rates running as high as 16-35% in outbreaks involving the
23 elderly, like those have occurred at nursing homes.

24 25. What makes E. coli O157:H7 remarkably dangerous is its very low
25 infectious dose, and how relatively difficult it is to kill these
26 bacteria. Unlike Salmonella, for example, which usually requires
27 something approximating an "egregious food handling error, E. coli
28 O157:H7 in ground beef that is only slightly undercooked can result in

1 infection," as few as twenty (20) organisms may be sufficient to infect
2 a person and, as a result, possibly kill them. And unlike generic E.
3 coli, the O157:H7 serotype multiplies at temperatures up to 44°F,
4 survives freezing and thawing, is heat resistant, grows at temperatures
5 up to 111°F, resists drying, and can survive exposure to acidic
6 environments.

7 26. And, finally, to make it even more of a threat, E. coli O157:H7
8 bacteria are easily transmitted by person-to-person contact. There is
9 also the serious risk of cross-contamination between raw meat and other
10 food items intended to be eaten without cooking. Indeed, a principle
11 and consistent criticism of the USDA E. coli O157:H7 policy is the fact
12 that it has failed to focus on the risks of cross-contamination versus
13 that posed by so-called improper cooking. With this pathogen, there is
14 ultimately no margin of error. It is for this precise reason that the
15 USDA has repeatedly rejected calls from the meat industry to hold
16 consumers primarily responsible for E.coli O157:H7 infections caused,
17 in part, by mistakes in food handling or cooking.

18 **Hemolytic Uremic Syndrome (HUS)**

19 27. E. coli O157:H7 infections can lead to a severe, life-threatening
20 complication called hemolytic uremic syndrome ("HUS"). HUS accounts for
21 the majority of the acute and chronic illness and death caused by the
22 bacteria. HUS occurs in 2-7% of victims, primarily children, with onset
23 five to ten days after diarrhea begins. It is the most common cause of
24 renal failure in children. Approximately half of the children who
25 suffer HUS require dialysis, and at least 5% of those who survive have
26 long-term renal impairment. The same number suffers severe brain
27 damage. While somewhat rare, serious injury to the pancreas, resulting
28 in death or the development of diabetes, can also occur. There is no

1 cure or effective treatment for HUS. And, tragically, as too many
2 parents can attest, children with HUS too often die.

3 28. HUS is believed to develop when the toxin from the bacteria,
4 known as Shiga-like toxin (SLT), enters the circulation through the
5 inflamed bowel wall. SLT, and most likely other chemical mediators,
6 attach to receptors on the inside surface of blood vessel cells
7 (endothelial cells) and initiate a chemical cascade that results in the
8 formation of tiny thrombi (blood clots) within these vessels. Some
9 organs seem more susceptible, perhaps due to the presence of increased
10 numbers of receptors, and include the kidney, pancreas, and brain. By
11 definition, when fully expressed, HUS presents with the triad of
12 hemolytic anemia (destruction of red blood cells), thrombocytopenia
13 (low platelet count), and renal failure (loss of kidney function).

14 29. As already noted, there is no known therapy to halt the
15 progression of HUS. HUS is a frightening complication that, even in the
16 best American centers, has a notable mortality rate. Among survivors,
17 at least five percent will suffer end stage renal disease (ESRD) with
18 the resultant need for dialysis or transplantation. But "[b]ecause
19 renal failure can progress slowly over decades, the eventual incidence
20 of ESRD cannot yet be determined." Other long-term problems include the
21 risk for hypertension, proteinuria (abnormal amounts of protein in the
22 urine that can portend a decline in renal function), and reduced kidney
23 filtration rate. Other long-term problems include the risk for
24 hypertension, proteinuria (abnormal amounts of protein in the urine
25 that can portend a decline in renal function), and reduced kidney
26 filtration rate. Since the longest available follow-up studies of HUS
27 victims are 25 years, an accurate lifetime prognosis is not really
28 available and remains controversial. All that can be said for certain

Murphy & Murphy Law Offices
4482 Market Street, Ste 407
Ventura, California 93003
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Facsimile (702) 369-9630

1 is that HUS causes permanent injury, including loss of kidney function,
2 and it requires a lifetime of close medical monitoring.

3. **The Plaintiff's E. coli O157:H7 Infection**

4 30. Kelli Vanderby purchased the jar of I.M. Healthy SoyNut Butter
5 that caused the injuries giving rise to this Complaint on December 31,
6 2016 from the Target store located at 401 Kenilworth Drive, Petaluma,
7 California. She consumed product from that jar on several occasions in
8 the days leading up to the onset of her illness. This jar of soy nut
9 butter was contaminated by E. coli O157:H7, causing Ms. Vanderby's
10 severe illness.

11 31. On or about January 20, 2017, Ms. Vanderby developed abdominal
12 cramps, diarrhea, and other flu-like symptoms. Her condition worsened
13 over the next several days.

14 32. On January 28, 2017, Ms. Vanderby's illness had become so severe
15 that she sought care in the emergency department at Petaluma Valley
16 Hospital. She was discharged the same day after treatment, and a stool
17 sample submitted while she was in the emergency department tested
18 positive for Shiga toxin 2, and eventually revealed heavy growth of E.
19 coli O157.

20 33. After learning of her diagnosis, Ms. Vanderby immediately
21 returned to Petaluma Valley Hospital on January 25, 2017. She underwent
22 numerous tests and imaging and was eventually discharged with pain
23 medication and instructions to return in a few days for repeat lab
24 tests, which she did on January 27, 2017. She also required an
25 additional appointment on February 2, 2017 to confirm she was
26 adequately recovering from her illness.

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COUNT I

(Strict Product Liability)

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3 34. The Plaintiff incorporates the preceding paragraphs of this
4 Complaint, by this reference, as if each of these paragraphs were set
5 forth here in its entirety.

6 35. The Defendants distributed and sold the contaminated I.M. Healthy
7 SoyNut Butter product that Ms. Vanderby purchased on December 31, 2016
8 from the Target store located at 401 Kenilworth Drive, Petaluma,
9 California, which caused her illness and injuries. This product will
10 hereafter be called the "subject product."

11 36. The Defendants, and each of them, regularly purchased,
12 distributed, and sold I.M. Healthy SoyNut Butter products. The
13 Defendants, and each of them, purchased, distributed, and sold the
14 subject product.

15 37. Food that is contaminated by E. coli O157:H7 is unsafe when put
16 to the use reasonably foreseeable considering the nature of the
17 product. Namely, E. coli O157:H7 contaminated food is unfit for human
18 consumption.

19 38. The subject product was contaminated by E. coli O157:H7 when it
20 left the control of Defendants. The Plaintiff's consumption of the
21 contaminated food caused her to become infected by E. coli O157:H7 and
22 to suffer injuries as a direct and proximate result of that
23 consumption.

24 39. The Defendants are strictly liable to the Plaintiff for the harm
25 proximately caused by the distribution and sale of an unsafe and defective
26 food product.

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COUNT II

(Negligence)

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40. Plaintiff incorporates by reference and makes a part of this Count each and every foregoing paragraph of this Complaint.

41. The Defendants had a duty to comply with all statutory and regulatory provisions that pertained or applied to the distribution, storage, labeling, and sale of the food products that injured Plaintiff, including the applicable provisions of the Federal Food, Drug and Cosmetic Act, and similar California food and public health statutes, including without limitation the provisions of the California Health & Safety Code Article 5, all of which prohibit the sale of any food that is adulterated, or otherwise injurious to health.

42. The subject product was adulterated within the meaning of the federal Food, Drug and Cosmetic Act, and similar California statutes, because it contained a deleterious substance that rendered it injurious to health, i.e., E. coli O157:H7 bacteria.

43. The Defendants violated federal, state, and local food safety regulations by their 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 sale of food. The violation of these regulations constitutes negligence as a matter of law.

44. The Plaintiff is in the class of persons intended to be protected by these statutes and regulations, and the Plaintiff was injured as the direct and proximate result of the Defendants' violation of applicable federal, state, and local food safety regulations.

45. The Defendants were negligent in the distribution and sale of a food product that was adulterated with E. coli O157:H7, not fit for

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4482 Market Street, Ste 407
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Facsimile (702) 369-9630

1 human consumption, and not reasonably safe because adequate warnings or
2 instructions were not provided.

3 46. The Defendants had a duty to sell food products that were from
4 reliable sources and that were clean, wholesome, free from adulteration
5 and fit for human consumption, but failed to do so, and therefore
6 breached that duty.

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

11 48. The Defendants' various acts and omissions of negligence
12 proximately caused Plaintiff's E. coli O157:H7 infection and related
13 illness, injuries, and damages.

14 **COUNT III**

15 **(Breach of Warranty)**

16 49. The Plaintiff incorporates the preceding paragraphs of this
17 Complaint, by this reference, as if each of these paragraphs were set
18 forth here in its entirety.

19 50. By offering I.M. Healthy SoyNut Butter products for sale to the
20 public, Defendants impliedly warranted that such products were safe to
21 eat, that they were not adulterated with a deadly pathogen, and that
22 the products had been safely prepared under sanitary conditions.

23 51. The Defendants breached these implied warranties by distributing
24 and selling the subject product, because it was contaminated by E. coli
25 O157:H7.

26 52. The Plaintiff's injuries proximately and directly resulted from
27 Defendants' breach of implied warranties, and the Plaintiff is thus
28 entitled to recover for all actual, consequential, and incidental

1 damages that flow directly and in a foreseeable fashion from these
2 breaches.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Plaintiffs pray as follows:

5 (1) That the Court award the Plaintiff judgment against Defendants
6 for damages.

7 (2) That the Court award all such other sums as shall be determined
8 to fully and fairly compensate the Plaintiff for all general, special,
9 incidental, and consequential damages incurred, or to be incurred, by the
10 Plaintiff as the direct and proximate result of the acts and omissions of the
11 Defendant;

12 (3) That the Court award the Plaintiff her costs, disbursements, and
13 reasonable attorneys' fees incurred;

14 (4) That the Court award the Plaintiff the opportunity to amend or
15 modify the provisions of this Complaint as necessary or appropriate after
16 additional or further discovery is completed in this matter, and after all
17 appropriate parties have been served; and

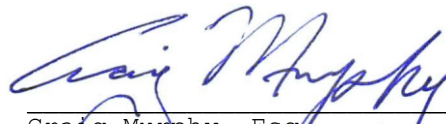
18 (5) That the Court award such other and further relief as it deems
19 necessary and proper in the circumstances.

20 **JURY TRIAL DEMAND**

21 The Plaintiff demands trial by jury on all issues raised herein.

22 DATED June 13, 2019.

23 MURPHY & MURPHY LAW OFFICES

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25 _____
26 Craig Murphy, Esq.
27 California Bar No. 314526
28 4482 Market Street, Ste 407
Ventura, CA 93003
(805) 330-3393 Phone
Attorney for Plaintiff