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7 Attorneys for Plaintiff,
8 VINCENT GRANO

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 VINCENT GRANO, an individual,
12 Plaintiff,

13 v.

14 SODEXO MANAGEMENT, INC., a New
15 York Corporation; and CARGILL MEAT
16 SOLUTIONS CORP., a Delaware
17 Corporation.

18 Defendants.

19 AND ALL RELATED ACTIONS

Case No.: 3:18-cv-01818-GPC BLM
Case No.: 3:19-cv-01903-GPC-BLM
Case No.: 3:19-cv-01904-GPC-BLM
Case No.: 3:19-cv-01905-GPC-BLM
Case No.: 3:19-cv-01907-GPC-BLM
Case No.: 3:19-cv 01908-GPC-BLM
Case No.: 3:19-cv-01909-GPC-BLM
Case No.: 3:19-cv-01917-GPC-BLM

**DECLARATION OF RICHARD RAYMOND,
M.D.**

20 I, Richard Raymond, M.D., on oath hereby depose and state as follows:

21 1. My name is Richard A. Raymond, M.D. I have been asked by the law firm of Marler Clark
22 LLP to review records relevant to an outbreak of, primarily, *E coli O157:H7*, with a few *E coli O26*,
23 cases in Marine Corps recruits based at MCRD (Marine Corps Recruit Depot) San Diego and Edson
24 Range, Camp Pendleton, occurring in October and November, 2017.

25 2. For personal background, I graduated with Distinction from the University of Nebraska
26 Medical School in 1972. After one year of internship, I practiced Family Medicine in rural Nebraska
27 for 17 years and then developed and directed a Family Practice Residency for Bishop Clarkson
28

1 Memorial Hospital in Omaha, Nebraska, for ten years. During this time I served many roles with the
2 Nebraska Medical Association, including being its President from 1988-1989.

3 3. After Clarkson merged with the University of Nebraska Medical Center, I was appointed to
4 the position of Chief Medical Officer for the Nebraska Health and Human Services System by then
5 Governor Michael Johanns. During the next 6 ½ years I was the political appointee with oversight of
6 all foodborne illness and other infectious diseases outbreak investigations, among many other
7 responsibilities, including being Interim Director for Services, Interim for Director for Finance and
8 Support and Director of Licensing and Regulation.

10 4. Governor Johanns became the Secretary for the United States Department of Agriculture in
11 2005 and brought me to Washington D.C. with a Presidential nomination and Senate confirmation to
12 be his Undersecretary for Food Safety at the USDA. Once again I was the political appointee in charge
13 of foodborne illness outbreaks and food recalls for same. I was also the Chair of the U.S. Codex Policy
14 Committee and the highest ranked food safety official in the U.S. government. I served during the
15 second George W. Bush term and then began consulting for various organizations regarding food
16 safety, including Elanco, Tyson Foods, JBS Swift and Merck Animal Health. I have also done
17 consulting or made presentations on food safety for the National Pork Producers Council, the National
18 Pork Board, the National Chicken Council, USAID, the Animal Agriculture Alliance, Diamond V, the
19 American Farmers and Ranchers Alliance, the California Farm Bureau, the Oklahoma Beef Producers
20 Association, Alltech and the Nebraska Medical Association.

23 5. I also wrote food safety blogs pro bono on a weekly basis for Meatingplace.com from 2009-
24 2019 and still write two blogs on food safety per month for Feedstuffs Foodlink.

25 6. Materials Reviewed:

- 26 • CDC Report of findings, including exit interview with Amelia Keaton, lead for the Epi-Aid
27 team;

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- Depositions from current and former Sodexo employees Jason Boothe, David Bowser, Andrew Jassick, Carlos Menes, Tegisti Almedom and Heidi Snyder;
- Declarations from Eric Salcido, Rebecca Dunkelberger and Aubre Dundelberger;
- Deposition labeled SDX 30 (b) (6) (full) representing Sodexo management;
- Griddles work log;
- Cheeseburger recipe for Sodexo;
- Vincent Grano labeled second amended complaint;
- RFP 16 and RFP 16.2;
- Sodexo response to RFPs and Sodexo response to ROGs;
- CDC, FDA and USDA recommendations for cooking from a thawed state and recommended cooking temperatures for ground beef.

7. Opinions Based on Review of Evidence:

8. When I first considered my possible involvement in this litigation, I wondered how anyone could consider serving 2-4,000 hamburgers in one setting over a three hour window to be a safe endeavor. Ground beef is considered to be a high risk food for *E coli O157:H7* and *E coli O26* and 5 other STECs considered by the United States Department of Agriculture (USDA) to be adulterants in ground beef. Fast food restaurants serve thousands of burgers, with very tightly controlled cooking times and temperatures, but never 3,000 in 3 hours in one outlet.

9. First, I want to review the CDC’s report. This Trip Report was authored by members of the Epi-Aid team, epidemiological investigators the CDC deploys to assist in outbreak investigations when requested. The U.S. Marine Corps requested the deployment after initial investigation by the U.S. Navy’s Preventive Medicine Unit. The report states that they were asked on November 17 to assist in the investigation of an E. coli outbreak that peaked on October 28, 2017. They arrived on

1 November 21, too late to find samples of food that would positively confirm the source. Their stated
2 task was to *identify the source, and to develop Public Health recommendations to stop the spread*
3 *and prevent a recurrence.*

4 10. They confirmed 62 cases and identified another 182 probable cases, making this the largest E.
5 coli outbreak linked to ground beef since the Jack in the Box sickened over 700 and killed several
6 children in 1993. Jack in the Box changed the world in how we handle and cook ground beef, including
7 declaring *E. coli* O157:H7 to be an adulterant in ground beef.

9 11. In response to the Jack in the Box *E. coli* outbreak caused by undercooked ground beef, fast
10 food chains changed and validated their cooking recipes, paying particular attention to the exact time
11 for which ground beef patties were cooked and the temperature of cooking surfaces to assure all ground
12 beef was cooked to the recommended internal temperature.

14 12. It is clear to me from the Sodexo witnesses knew both about the Jack in the Box outbreak and
15 fully understood the association between ground beef and STEC. Astonishingly to me, however, they
16 simply ignored that knowledge when it came to the production of hamburgers at MCRD.

17 The United States Department of Agriculture’s Food Safety and Inspection Service recommends
18 ground beef be cooked to 160 degrees internal temperature.

19 13. It should be noted here that on every box of frozen ground beef received by Sodexo from US
20 Foods, the label clearly stated the ground beef should be cooked to 160 degrees. The label also said to
21 “keep frozen”.

23 14. The CDC’s observations of risky practices included:

- 24 • *Temperatures of cooked product lower than the USDA recommended;*
- 25 • *Lack of standard cooking times;*
- 26 • *Self-serve cross contamination probable;*

- ***Cooking from frozen state.***

15. None of these risky practices changed after the CDC submitted its report other than the Marines later put their burgers into the buns. This is just unbelievable to me as a long time follower and practitioner of food safety practices.

16. The CDC found that not all cooks even knew of the Sodexo recommended cooking temp of 155 degrees for 15 seconds. Tegisti Almedom testified that she did not know the griddle surface temperature for cooking burgers. She is the chief cook and this is also astonishing to me.

17. Finally, as to the CDC investigation, the lead inspector, Amelia Keaton, M.D., in her exit interview, noted that 15 marines suffered from Hemolytic Uremic Syndrome and that *E. coli* O157:H7 is the most common pathogen known to cause that syndrome.

18. Sodexo clearly knew of the risks involved in trying to serve thousands of hamburgers at one setting. It never should have undertaken this endeavor in the first place, as there were alternatives, in terms of pre-cooked patties, that it could have employed if it wanted to continue serving hamburgers. But at the very least Sodexo needed to implement strict measures to reduce the risk such as paying close attention to the temperature of their grills and/or ovens and to the time each burger was cooked. And this should have been done literally decades ago.

19. What follows are my observations of lack of control for cooking times, temperatures, or even methods employed at Sodexo MCRD San Diego.

20. **Grills were not tested for cooking temperatures on a regular basis:** In fact, Request for Production (RFP) No. 45 asked specifically for “any document relating to temperature calibration and verification of grill surface temperatures for those grills at MH 569...” Sodexo’s response was that “A diligent search and reasonable inquiry have been performed and no such documents have been identified. Verification of product compliance to the established critical control point is done through checking internal product temperature.”

1 21. RFP No. 64 asks basically the same question and Sodexo’s response was that “SODEXO states
2 that the food temperature is monitored, not the grill temperature.” It is clear from this response and
3 other statements by the witnesses that “food temperature” meaning final cook temps, is the last and
4 only control measure that Sodexo used. Given the volume of burgers being cooked, Sodexo food
5 safety, had they thought about it at all, would have expected exactly the temperature taking travesty
6 that occurred, which I address later.
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8 22. One deposition revealed that Jack in the Box tests their grills to validate cooking temperatures
9 three times a day, even though it had developed a validated cooking process through its own test
10 kitchen. David Bowser, then District Manager in October 2017, testified in his deposition that cooking
11 at “that temperature for this time is a fast food concept. It is not what Sodexo does.”
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13 23. Serving 3,000 hamburgers in three hours seems to me to be a description of a fast food service.
14 One former cook and one manager said one of the four grills had one-half of the grilling surface that
15 did not heat properly but was still used for grilling hamburgers.

16 24. The food “recipe” for cooking ground beef patties says to “place frozen patties on the grill and
17 grill for 5-6 minutes or until brown” then “flip and grill for 4 minutes”. Temperature must reach 155
18 degrees and then hold for 15 seconds.

19 25. **Cooking from a partially frozen state:** In multiple statements from former cooks and
20 management staff, and including current management and food safety staff, the “frozen patties” part
21 of the recipe becomes muddled. The frozen burgers were taken out of the freezer three days before
22 Saturday hamburger day. All testimonies say they were placed in reefers. This caused the previously
23 “frozen” patties, some of them anyways, to become partially thawed before cooking.
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25 26. **One temperature taken per “batch”:** The definition of a “batch”, for the purpose of
26 determining final temperatures, differs greatly among the deposed individuals and is a critical element
27 in this discussion. Some describe a batch as all burger patties on one grill. Some describe it as all four
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1 grills in one time segment, and some go so far as to say it can be 3,045 patties cooked at the same time
2 in the ovens. And then Heidi Snyder, Director of Food Safety at Sodexo on October 21, 2017, testified
3 in her deposition, “There was no clear definition of what constitutes a batch.”

4 27. Taking one temperature per “batch” and considering it representative of hundreds or even
5 thousands of hamburgers being cooked at the same time when the hamburgers are being cooked from
6 differing levels of frozen is ridiculous—particularly where there is no dedicated time and temperature
7 formula that is religiously adhered to. Sodexo had conducted no validation studies to ensure that its
8 batch temperatures would, in fact, be representative of the hundreds or thousands of burgers that were
9 not temperature checked.

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11 28. On October 21, 2017, there were 3,045 burgers served to Marines. There were two
12 temperatures recorded, one for hamburgers and one for cheeseburgers. Two temperatures for over
13 3,000 burgers.

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15 29. In Ms. Almedom’s deposition, it was also pointed out that on four consecutive Saturdays in
16 September of 2017, there were only two temperatures recorded for the entire production, one for
17 hamburger and one for a cheeseburger and both temperatures were always the same for both. In fact,
18 for three of the four Saturdays the temperature was amazingly the same, 170 degrees; the same
19 temperature recorded for production day October 21, 2017.

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21 30. Ms. Almedom would ask a cook what the temperature was for a hamburger and a cheeseburger,
22 would record it herself in the Galley HACCP Log book for that Saturday, and felt that “if we measure
23 the temperature once, that is enough”.

24 31. Andrew Jassick testified that he sampled food from time to time by eating it and he could tell
25 if a burger is done by tasting it. “You are able to taste an undone burger.” So much for science and
26 the need for validation studies.

1 32. Mr. Jassick also stated that the only way he could tell if temperatures of ground beef were
2 being taken was by the HACCP logs, logs that a Marine inspector found to be occasionally filled in
3 prior to cooking, and sometimes, according to a former cook, just randomly entered numbers to look
4 good. But most importantly, on October 21, there were only two temperatures entered.

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6 33. **Are the hamburgers cooked on grills or in ovens?** The assumption most deposed persons
7 made regarding the two temps was that the burgers must have been cooked in the ovens so they were
8 all in one so-called batch, something that occurred when Sodexo was shorthanded and did not have
9 time to cook on the grills. But Mr. Jassick says: We “were adamantly told not to cook burgers in the
10 ovens” by the Marines, “so we were not allowed to do that.”

11 34. Ms. Almedom insisted that ovens were never used, yet others openly admit under oath that
12 ovens often had to be used to cook hamburgers because of cook shortages and time constraints. From
13 the depositions I cannot tell if the 3,045 hamburgers were all cooked in the forbidden ovens, all cooked
14 on grills or a combination of both.

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16 35. The Marine contract specifically required burgers to be cooked on the grills, not in the ovens,
17 yet every deposition, with the exception of Ms. Almedom’s, says using the ovens was normal for
18 getting Saturday burgers to the line in a timely fashion. There was also testimony that the cooks did
19 not like cooking that many burgers on the grill and often called in sick on Saturdays so they were
20 short-handed.

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22 36. There is no “recipe” for cooking burgers in the ovens, but it was a practice that most deponents
23 recognized with cooking time varying from 15 minutes at 350 degrees to 30 minutes at 350 degrees.
24 There certainly was no scientific documentation as to time and temperature to get to a safely cooked
25 product, and there was no documentation of verification of the temperatures for the eight different
26 ovens.

1 37. Carlos Menes, Director of Health, Safety and Environment on October 21, 2017, testified that
2 record keeping is the least important of the 7 HACCP points, and that “per code, records are not
3 required”. He felt they did not need to record temperatures, because “I mean these are trained
4 professionals.”

5 38. David Bowser, who was a District manager for Sodexo on October 21, 2017, testified that
6 Mess Hall 569’s number one goal was to “not interfere with the training schedule.” The recruits had
7 ten minutes to get their food and twenty minutes to eat it. To put it another way, food safety was not
8 Sodexo’s number one goal.

9 39. He also stated, as did several others, that there were no timers in the kitchen, so there was no
10 way to adhere to the 5-6 minutes on one side and then 4 on the other. He also testified that since the
11 cooks could not determine if the side on the grill was “brown” the standard protocol was to wait until
12 “bloody droplets” formed on the patty. A former cook also testified that the bloody fluid was the
13 determining factor on when to flip the burger and that the time listed in the “recipe” was totally
14 ignored.

15 40. In response to Interrogatory No. 25, which asked for validation of the method to kill pathogens,
16 the Sodexo response was: ”SODEXO contractually requires its suppliers like Cargill to provide
17 untainted product...” In other words, Sodexo felt they did not need to answer the question because
18 they assumed the ground beef was pathogen free. No lessons learned from the Jack in the Box outbreak
19 that changed the knowledge and practices for cooking and handling ground beef throughout the United
20 States.

21 41. Mr. Bowser also stated that “We purchase E coli free ground beef.” That statement by a District
22 Manager pretty much summarizes Sodexo’s attitude toward the risk of serving 3,000 hamburgers and
23 cheeseburgers in 3 hours.

1 42. In regards to *E. coli*, when Chief Cook 3 Tegisti Almedom was asked if she knew what kind
2 of an organism *E. coli* was she replied “I don’t know”. When asked if she knew where it came from,
3 she replied “I don’t know”. When asked if it was associated with any particular foods like ground
4 beef, the reply was the same: “I don’t know”. And the answer was the same when asked if she knew
5 how to kill *E. coli*.

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7 43. Ms. Almedom has been with Sodexo since 2003, has almost always worked on Saturdays, has
8 risen through all the ranks of Cook 1, 2 and Chief Cook 3 and testified that she has never cooked a
9 hamburger for Sodexo.

10 44. The “recipe” also says “serve immediately” yet all persons deposed recognized that as
11 impossible. Cook times started as early as 5 AM and the burgers were then held in a hot box for hours.
12 Some temperatures were checked and on occasion meat was as low as 115 degrees, far below the safe
13 standard of 140. One witness said that was okay as long as the time did not exceed 4 hours. The USDA
14 recognized safe time for hot foods being held at temperatures less than 140 degrees is 2 hours.
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16 45. When asked why MCRD 569 had not switched to pre-cooked burgers, David Bowser stated,
17 under oath, that Sodexo would have to eat the cost. He also testified that upper management received
18 healthy bonuses if certain parameters were met, including financial goals. As an example, in 2017, the
19 year in question, Mr. Bowser received a \$15,000 bonus.

20 46. The conduct of Sodexo in preparing hamburgers for 18-year-old young men trying to make it
21 through Marine boot camp is personally and professionally disturbing to me. It is personally
22 disturbing because the young men who were injured deserved Sodexo’s best. What they got was the
23 total absence of care and attention, and not just by Sodexo’s cooks. It is the corporate food safety
24 people who are to blame. I am aware that some of these young men had severe illnesses and life-
25 changing illness. Reading about what Sodexo did and did not do makes me angry.
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47. Professionally, I have devoted a significant part of my professional career to food safety and public health. I have never seen behavior on this level in any hamburger operation, and the fact that it involved the production of such vast quantities of hamburgers so clearly magnified all risks. Sodexo did not have any control over this operation whatsoever. These were things that we all learned not to do, and moreover learned how to do things the proper way, back in the 1990s. Here we are in year 2017 and Sodexo does it like this. It is astonishing, disturbing, and frankly anger-provoking.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 1, 2020



Richard Raymond, M.D.