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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 KIRK SMITH

20 I, Kirk Smith, on oath hereby depose and state as follows:

21 1. I am the Manager of the Foodborne, Waterborne, Vectorborne, and Zoonotic Diseases Section
22 at the Minnesota Department of Health (MDH). I have held this position since 2014. Prior to being
23 the Section Manager, I was Supervisor of the MDH Foodborne, Vectorborne, and Zoonotic Diseases
24 Unit from 1999 to 2014, overseeing all of the same disease areas that I do currently.

25 2. In my capacity as an Epidemiologist Supervisor/Manager for the Minnesota Department of
26 Health, I have personally overseen epidemiologic investigations into over 1,000 confirmed foodborne
27 disease outbreaks.

1 3. I estimate that I have overseen epidemiologic investigations into over 100 outbreaks caused by
2 Shiga-toxin producing *E. coli* (STEC), primarily *E. coli* O157:H7. Over 50 of these have been
3 foodborne outbreaks of *E. coli* O157:H7 infections, with the others due to foodborne transmission of
4 non-O157 STEC through food and transmission of STEC through other routes, including waterborne,
5 animal contact, and person-to-person transmission.
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7 4. I have reviewed:

- 8 a) Marines OB – CDC Records (#18-00903-FOIA)
- 9 b) Marines OB – CDC Linelist
- 10 c) CMS00005309 (CDC linelist)
- 11 d) CMS00005310 (CDC linelist)
- 12 e) CMS00005311 (CDC outbreak records - [#20-0557-FOIA]))
- 13 f) Declarations of R. Dunkleberger, E. Salcido, A. Dunkleberger (PLAINTIFFS 000638-
14 000648)
- 15 g) Deposition of Andrew Jassick
- 16 h) Healio Article – E. coli outbreak in marine recruits associated with undercooked beef (1)
- 17 i) Italian Beef and Rice Cook Temp Logs 10-21-17
- 18 j) SDX011239-11240 (Sodexo e-mails)
- 19 k) Tristan Abbott records (medical records; California Department of Health records; first
20 amended complaint; deposition)
- 21 l) Bailey Anderson records (medical records; California Department of Health records; first
22 amended complaint; deposition)
- 23 m) Michael Baker records (medical records; California Department of Health records; first
24 amended complaint; deposition)
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- 1 n) Hunter Browning records (medical records; California Department of Health records; first
2 amended complaint; deposition)
- 3 o) Chase Evers records (medical records; California Department of Health records; first
4 amended complaint; deposition)
- 5 p) Vincent Grano records (medical records; California Department of Health records; second
6 amended complaint; deposition)
- 7 q) Conner Lader (medical records; California Department of Health records; first amended
8 complaint; deposition)
- 9 r) Frank Miller records (medical records; California Department of Health records; first
10 amended complaint; deposition)
- 11 s) Depositions of Tristan Abbott, Bailey Anderson, Michael Baker, Hunter Browning, Chase
12 Evers, Vincent Grano, Conner Lader, and Frank Miller.
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15 5. I have also discussed Sodexo's food handling and food safety practices with Charlie Cook,
16 particularly surrounding Sodexo's use of ground beef products in various menu items served at MH
17 569 in the week before October 24, 2017. I have also reviewed and considered his memo dated June
18 27, 2020 regarding various beef-containing menu items served.

19 6. Based on all of these materials and my experience as an epidemiologist with 24 years of
20 experience investigating outbreaks caused by STEC and other pathogens from food, water, animals,
21 and person-to-person transmissison, I hold the opinion, to a reasonable degree of epidemiologic
22 certainty, that the source of the October/November 2017 STEC outbreak at MCRD San Diego and
23 Camp Pendleton was contaminated ground beef. More specifically, the source of the outbreak was
24 contaminated hamburgers that Sodexo prepared at MH 569 on October 21, 2017, which Sodexo
25 prepared using frozen ground beef patties that were contaminated during manufacture by Cargill.
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1 7. I am aware of no evidence suggesting that the source of contamination of these frozen ground
2 beef patties occurred anywhere but during manufacture by Cargill. I am further presently aware of no
3 temperature abuse or other factor that occurred during distribution of the frozen beef patties that would
4 have amplified the contamination problem.

5 8. Nonetheless, it is clear to me, based primarily on the Centers for Disease Control and
6 Prevention (CDC) investigation, that substantial numbers of Marine recruits were infected secondarily
7 (i.e., due to person-to-person transmissison from other recruits who had been infected from ground
8 beef). The initial wave of illness onsets began on October 24, 2017, which is consistent with the classic
9 3-4 day incubation period for STEC, given exposure to the contaminated ground beef on October 21.

10 9. Recruits who consumed hamburgers on October 21 and experienced onsets within a week of
11 their exposure should be classified as primary cases, meaning that they were most likely infected by
12 eating contaminated hamburgers on the 21st. Although the classic incubation period for STEC is 3-4
13 days, it can be as long as 10 days. Although a 10-day incubation is not ordinary, it is common to see
14 incubations for STEC infection of 3-7 days. With respect to those recruits whose STEC illnesses began
15 later than 1 week after hamburger consumption on the 21st, it is possible that some are primary cases
16 with long incubation periods, but it is equally or more likely that they represent secondary infections.
17 Certainly recruits with illness onsets in November represent secondary infections. The secondary
18 infections that obviously occurred in this outbreak are not surprising given the close quarters and
19 conditions under which the recruits lived and trained and the lack of opportunity for good hygiene that
20 sometimes occurred.
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24 10. My conclusion that Cargill's frozen ground beef patties were the original source of
25 contamination in this outbreak is based on multiple epidemiologic and environmental factors.
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1 11. First, it is apparent that the initial investigation occurring in late October and early November
2 (i.e., before CDC was involved) was not systematic, robust, or well-directed. I have seen reference to
3 various theories of exposure including contaminated chicken or fish, water at Camp Pendleton, etc.
4 There is no evidence to support that these could have been the sources for this STEC outbreak.

5
6 12. This outbreak clearly began as a point source outbreak. Illnesses began suddenly, with the
7 exception of two confirmed cases with reported onsets earlier than October 21 (the date of exposure
8 to contaminated burgers). No specifics about these earlier onset cases are known other than what is
9 reported on the CDC's epidemic curve, but a number of plausible and likely explanations for these
10 reported dates exist. One is that the recruits that reported these dates misremembered (in my
11 experience, late teenage males have the poorest recall when it comes to dates/timelines). Another likely
12 reason relates to the reports of abundant norovirus-like illnesses occurring around the time of the STEC
13 outbreak. Some recruits could have developed norovirus illness during October 17-21 and then became
14 infected with *E. coli* O157 on October 21; in this scenario these recruits would have thought they had
15 one continuous illness and reported the onset of the norovirus illness. Regardless of the reason, the
16 epidemiologic characteristics of this outbreak are consistent with a point source at the beginning of
17 the outbreak.
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19 13. Once the CDC Epi-Aid team arrived, the investigation was competently conducted, systematic,
20 and comprehensive. The numbers included in the case-control study were robust and produced reliable
21 information. As stated in the Epi-Aid report, the study demonstrated a statistically significant
22 association between the consumption of undercooked beef and illness. Given that some secondary
23 cases could have been included in the study, and likely imperfect historical information provided by
24 recruits, this finding is not as specific as it is in some outbreak investigations, but neither is it
25 unprecedented. Of note, however, the case-control study did find a strong inverse association with
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1 consuming hot dogs, the alternative entrée to burgers on burger Saturday – controls were 14 times
2 more likely to have consumed a hot dog than cases. In other words, if you did not become sick, you
3 were far more likely to have eaten a hot dog (presumably instead of a hamburger). Therefore, this
4 finding represents indirect, but compelling, evidence that hamburgers specifically were associated
5 with illness and thus provides further context for the association with undercooked beef. Furthermore,
6 epidemiologists view statistical analyses alongside environmental health investigation, traceback, and
7 all other factors to develop conclusions as to what happened to cause an outbreak. The finding of a
8 statistically significant relationship between undercooked beef and illness is certainly a very important
9 consideration in determining the source of this outbreak.
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11 14. We have learned a great deal about Sodexo’s hamburger production process. Epidemiologic
12 conclusions need to be informed by and compatible with the results of traceback and environmental
13 considerations, and this is definitely an instance in which the environmental assessment findings are
14 strongly supportive of the epidemiologic findings. I have discussed Sodexo’s hamburger preparation
15 process with Charlie Cook, in addition to the documentary information that I have reviewed, and it is
16 clear to me that the process was essentially without any controls.
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18 15. My opinion that the frozen ground beef patties manufactured by Cargill and used by Sodexo
19 to make hamburgers on October 21 were the source of this outbreak is further solidified by the lack of
20 any other plausible explanation.
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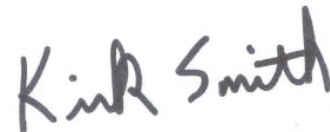
22 16. First, and again despite the likely imperfect historical information provided by the Marine
23 recruits, the case-control study did not show a positive statistical association between illness and any
24 item other than undercooked beef. Undercooked beef certainly includes hamburgers. Importantly, the
25 food safety deficiencies associated with Sodexo’s hamburger production provided the perfect
26 opportunity for an STEC outbreak once contaminated patties were used for burger Saturday.
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1 17. No produce item was statistically associated with illness; in fact, cases were less likely to report
2 eating produce items than controls. Nor am I aware of other information even hinting that any produce
3 items could be the source of this outbreak. It is certainly true that produce items, specifically leafy
4 greens, have frequently caused STEC outbreaks before, and the epi curve in this outbreak is not
5 inconsistent with a point source outbreak associated with leafy green consumption. However,
6 conclusions about the source of an outbreak must include a careful assessment of case exposure
7 information, and the case-control study demonstrates that leafy greens or other produce were not the
8 source of this particular outbreak.

10 18. I am also aware that there was significant troop movement between the two training areas
11 (MCRD and Camp Pendleton). I have read the deposition transcripts of the eight plaintiffs in this
12 matter and believe that all were exposed at MCRD/MH 569. It is possible that recruits were exposed
13 to contaminated hamburgers at both mess halls, but given the obvious secondary transmission that
14 occurred, the illnesses that occurred among recruits at Camp Pendleton may have been secondary to
15 the primary cases exposed to contaminated hamburgers at MH 569.

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

19 Dated: July 1, 2020

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23 _____
24 Kirk Smith