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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

ASHLEY JOHNSON and JARET JOHNSON, parents of R. J. AND R. J., minor children, Plaintiffs, v. PURE EIRE, LLC, d/b/a Pure Eire Dairy, a Washington limited liability company, Defendant.	Case No.: **COMPLAINT**

COMPLAINT

COME NOW the Plaintiffs, Ashley Johnson and Jaret Johnson, individually and as the parents of R. J. and R. J. ("the Plaintiffs"), by and through their attorney of record, William D. Marler of Marler Clark, LLP, PS, complaining of the Pure Eire, LLC, d/b/a Pure Eire Dairy ("the Defendant"), a Washington limited liability company, and allege and state as follows:

PARTIES AND JURISDICTION

1. At all times relevant to this action, the Plaintiffs resided in King County, Washington. The Plaintiffs are therefore citizens of the State of Washington.

2. At all times relevant to this action, the Defendant is a Washington limited liability company based in Adams County, Washington. Therefore, the Defendant is a citizen of the state of Washington.

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3. This court has jurisdiction, and venue is proper, because the incident complained of herein occurred in King County, Washington, and because the Defendant, at all times relevant hereto was a resident of Washington and conducted business in King County, Washington.

FACTS

The Outbreak

4. In April and May 2021, the Washington State Department of Health, along with city and county health departments began investigating a multi-county outbreak of *Escherichia coli* O157:H7.

5. Epidemiologic investigation by state and local public health officials, found that at least 9 people had acquired *E. coli* O157:H7 infections. The outbreak now includes 11 confirmed cases, including six children under the age of 10, infected with bacteria that have been genetically linked. Counties with cases include Benton (1), King (8), Snohomish (1), and Walla Walla (1). Seven people have been hospitalized and three people have developed hemolytic uremic syndrome ("HUS"), a potentially fatal complication of *E. coli* O157:H7 infection.

6. During the ongoing investigation, Washington State Department of Public Health identified a link between the documented illnesses and a PCC Community Market brand yogurt, produced by the Defendant.

E. coli O157:H7

7. *E. coli* is an archetypal commensal bacterial species that lives in mammalian intestines. *E. coli* O157:H7 is one of thousands of serotypes *Escherichia coli*. The combination of letters and numbers in the name of the *E. coli* O157:H7 refers to the specific antigens (proteins which provoke an antibody response) found on the body and tail or flagellum respectively and

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distinguish it from other types of *E. coli*. Most serotypes of *E. coli* are harmless and live as normal flora in the intestines of healthy humans and animals. The *E. coli* bacterium is among the most extensively studied microorganism. The testing done to distinguish *E. coli* O157:H7 from its other *E. coli* counterparts is called serotyping. Pulsed-field gel electrophoresis (PFGE), sometimes also referred to as genetic fingerprinting, is used to compare *E. coli* O157:H7 isolates to determine if the strains are distinguishable. A technique called multilocus variable-number tandem repeat analysis (MLVA) is used to determine precise classification when it is difficult to differentiate between isolates with indistinguishable or very similar PFGE patterns. An even newer technique called Whole Genome Sequencing (WGS) is now used to determine relatedness between *E. coli* O157:H7 isolates that is even more conclusive.

8. *E. coli* O157:H7 was first recognized as a pathogen in 1982 during an investigation into an outbreak of hemorrhagic colitis associated with consumption of hamburgers from a fast-food chain restaurant. Retrospective examination of more than three thousand *E. coli* cultures obtained between 1973 and 1982 found only one (1) isolation with serotype O157:H7, and that was a case in 1975. In the ten (10) years that followed there were approximately thirty (30) outbreaks recorded in the United States. This number is likely misleading, however, because *E. coli* O157:H7 infections did not become a reportable disease in any state until 1987 when Washington became the first state to mandate its reporting to public health authorities. As a result, only the most geographically concentrated outbreak would have garnered enough notice to prompt further investigation.

9. *E. coli* O157:H7's ability to induce injury in humans is a result of its ability to produce numerous virulence factors, most notably Shiga-like toxins. Shiga toxin (Stx) has multiple

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variants (e.g., Stx1, Stx2, Stx2c), and acts like the plant toxin ricin by inhibiting protein synthesis in endothelial and other cells. Shiga toxin is one of the most potent toxins known. In addition to Shiga toxins, *E. coli* O157:H7 produces numerous other putative virulence factors including proteins, which aid in the attachment and colonization of the bacteria in the intestinal wall, and which can lyse red blood cells and liberate iron to help support *E. coli* metabolism.

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

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

12. According to a recent study, an estimated 93,094 illnesses are due to domestically acquired *E. coli* O157:H7 each year in the United States. Estimates of foodborne acquired O157:H7 cases result in 2,138 hospitalizations and 20 deaths annually. The colitis caused by *E.*

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coli O157:H7 is characterized by severe abdominal cramps, diarrhea that typically turns bloody within twenty-four (24) hours, and sometimes fevers. The incubation period—which is to say the time from exposure to the onset of symptoms—in outbreaks is usually reported as three (3) to four (4) days but may be as short as one (1) day or as long as ten (10) days. Infection can occur in people of all ages but is most common in children. The duration of an uncomplicated illness can range from one (1) to twelve (12) days. In reported outbreaks, the rate of death is 0-2%, with rates running as high as 16-35% in outbreaks involving the elderly, like those that have occurred at nursing homes.

13. What makes *E. coli* O157:H7 remarkably dangerous is its very low infectious dose, and how relatively difficult it is to kill these bacteria. Unlike *Salmonella*, for example, which usually requires something approximating an "egregious food handling error, *E. coli* O157:H7 in ground beef that is only slightly undercooked can result in infection," as few as twenty (20) organisms may be sufficient to infect a person and, as a result, possibly kill them. And unlike generic *E. coli*, the O157:H7 serotype multiplies at temperatures up to 44°F, survives freezing and thawing, is heat resistant, grows at temperatures up to 111°F, resists drying, and can survive exposure to acidic environments.

14. And, finally, to make it even more of a threat, *E. coli* O157:H7 bacteria are easily transmitted by person-to-person contact. There is also the serious risk of cross-contamination between raw meat and other food items intended to be eaten without cooking. Indeed, a principle and consistent criticism of the USDA *E. coli* O157:H7 policy is the fact that it has failed to focus on the risks of cross-contamination versus that posed by so-called improper cooking. With this pathogen, there is ultimately no margin of error. It is for this precise reason that the USDA has

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repeatedly rejected calls from the meat industry to hold consumers primarily responsible for *E. coli* O157:H7 infections caused, in part, by mistakes in food handling or cooking.

Hemolytic Uremic Syndrome (HUS)

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

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

17. As already noted, there is no known therapy to halt the progression of HUS. HUS is a frightening complication that, even in the best American centers, has a notable mortality rate.

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Among survivors, at least five percent will suffer end stage renal disease (ESRD) with the resultant need for dialysis or transplantation. But "[b]ecause renal failure can progress slowly over decades, the eventual incidence of ESRD cannot yet be determined." Other long-term problems include the risk for hypertension, proteinuria (abnormal amounts of protein in the urine that can portend a decline in renal function), and reduced kidney filtration rate. Since the longest available follow-up studies of HUS victims are 25 years, an accurate lifetime prognosis is not really available and remains controversial. All that can be said for certain is that HUS causes permanent injury, including loss of kidney function, and it requires a lifetime of close medical monitoring.

R. J.'s and R. J.'s *E. coli* O157:H7 Infections

18. Ashley Johnson and Jaret Johnson purchased PCC-brand yogurt from the PCC Community Market in Issaquah, Washington on April 17 and 22, 2021. Their sons, R. J., three years old, and R. J., one year old, both consumed the product soon thereafter.

19. On or about April 25, 2021, three-year-old R. J. began experiencing symptoms including fever, severe stomach pain, cramping, and diarrhea, which turned bloody.

20. R. J.'s, symptoms increased in severity quickly, prompting his parents to seek multiple medical visits until admission Swedish Hospital on April 29, 2021. He was transferred to Seattle Children's Hospital on May 1, 2021, where he was diagnosed with Hemolytic Uremic Syndrome, and discharged on May 5, 2021 after receiving treatment including a transfusion.

21. Their second child, one-year-old R. J., also began to exhibit symptoms on April 29, 2021. He, too, was admitted to Seattle Children's Hospital on May 1, 2021, with symptoms including fever, severe stomach pain, cramping, and diarrhea, which turned bloody.

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22. Because both minor children tested positive for *E. coli* O157:H7 and consumed PCC-brand yogurt, they were both identified as part of an outbreak by the King County Department of Health.

23. Their symptoms are ongoing, and recovery is uncertain.

COUNT I
(Strict Products Liability)

24. The Plaintiffs incorporate the preceding paragraphs of this Complaint, by this reference, as if each of these paragraphs were set forth here in its entirety.

25. The Defendant distributed and sold the contaminated yogurt product that the Plaintiffs purchased on multiple occasions from March through April 2021, which caused the minor Plaintiffs' illness and injuries. This product will hereafter be called the "subject product."

26. The Defendant regularly manufactured, distributed, and sold products of the type of the subject product.

27. Food that is contaminated by *E. coli* O157:H7 is unsafe when put to its reasonably foreseeable use considering the nature of the product. Namely, *E. coli* O157:H7-contaminated food is unfit for human consumption and is thus defective in that it is unreasonably dangerous and thereby posed a serious risk of injury to consumers, including the minor Plaintiff.

28. The defective subject product was contaminated by *E. coli* O157:H7 when it left the control of the Defendant. The minor Plaintiffs' consumption of the contaminated food caused her to become infected by *E. coli* O157:H7 and to suffer injuries as a direct and proximate result of that consumption.

29. The Defendant is strictly liable to the Plaintiffs for the harm proximately caused by its distribution and sale of an unsafe and defective food product.

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COUNT II
(Negligence)

30. The Plaintiffs incorporate by reference and make a part of this Count each and every foregoing paragraph of this Complaint.

31. The Defendant had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of the food products that injured the minor Plaintiffs, including the applicable provisions of the Federal Food, Drug and Cosmetic Act, and similar Washington food and public health statutes, including without limitation the provisions of the Washington Product Liability Act, RCW 7.72 et seq., and the Washington State Retail Food Code, chapter 246-215 WAC, all of which prohibit the sale of any food that is adulterated or otherwise injurious to health.

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

33. The Defendant violated federal, state, and local food safety regulations by its 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.

34. The minor Plaintiffs are in the class of persons intended to be protected by these statutes and regulations, and the minor Plaintiffs were injured as the direct and proximate result of the Defendant's violation of applicable federal, state, and local food safety regulations.

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35. The Defendant was negligent in the manufacture, distribution, and sale of a food product that was adulterated with *E. coli* O157:H7, not fit for human consumption, and not reasonably safe because adequate warnings or instructions were not provided.

36. The Defendant had a duty to manufacture and sell food products that were from reliable sources and that were clean, wholesome, free from adulteration and fit for human consumption, but failed to do so, and therefore breached that duty.

37. The Defendant was negligent in the selection of suppliers, or other agents or subcontractors, and failed to adequately supervise them, or provide them with adequate standards, and, as a result, sold food that was adulterated with *E. coli* O157:H7.

38. The Defendant's various acts and omissions of negligence proximately caused the minor Plaintiffs' *E. coli* O157:H7 infections and related illnesses, injuries, and damages.

COUNT III
(Breach of Express and Implied Warranties)

39. The Plaintiffs incorporate the preceding paragraphs of this Complaint, by this reference, as if each of these paragraphs were set forth here in its entirety.

40. By offering the subject product for sale to the public, Defendant impliedly warranted that such products were safe to eat, that they were not adulterated with a deadly pathogen, and that the products had been safely prepared under sanitary conditions.

41. The Defendant breached these implied warranties by distributing and selling the subject product, because it was contaminated by *E. coli* O157:H7.

42. Further, the Defendant's website promises consumers that it goes "above and beyond organic standards."

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43. By assuring the Plaintiffs that Pure Erie Dairy grass feeds its cows not only to benefit the cows, but because it "benefits our health," Defendant expressly warranted that the food that it sold, distributed and supplied was fit for the Plaintiffs' consumption.

44. Defendant breached its express warranty as described above in that the food that it manufactured, sold, distributed, and supplied was not fit for the minor Plaintiffs' consumption.

45. The minor Plaintiffs' injuries proximately and directly resulted from the Defendant's breach of express and implied warranties, and the Plaintiffs are thus entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

DAMAGES

46. The Plaintiffs have suffered general, special, incidental, and consequential damages as a direct and proximate result of the acts and omissions of the Defendant, which damages shall be fully proven at the time of trial, including, but not limited to: damages for loss of enjoyment of life, both past and future; medical and medical-related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress and future emotional distress; pharmaceutical expenses, past and future; wage and other economic damages; loss of consortium; and other ordinary, incidental, and consequential damages as would be anticipated to arise under the circumstances.

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PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray as follows:

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(1) That the Court award the Plaintiffs judgment against the Defendant for damages.

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

(3) That the Court award the Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred;

(4) 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

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

Dated this 17th day of May, 2021

MARLER CLARK LLP, PS

William D. Marler WSBA #17233
Attorney for Plaintiffs