

1 Frederic L. Gordon, Esq. (SBN 98994 [CA])
2 P.O. Box 60761
3 San Diego, CA. 92106
4 Tel: 619-572-2210
5 Email: FGordonAPC@gmail.com

6 William D. Marler, Esq. (SBN 17233 [WA])
7 MARLER CLARK, LLP
8 1012 First Avenue, Suite 500
9 Seattle, WA 98104
10 Tel: 206-346-1888
11 Email: bmarler@marlerclark.com
12 *Pro hac vice pending*

13 Attorneys for Plaintiffs,
14 DAVID ARTHUR AND MICHELLE BROWN

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

<p>13 DAVID ARTHUR and MICHELLE BROWN, 14 as individuals, and on behalf of their daughter, 15 P.A., a minor,</p> <p style="text-align: center;">16 Plaintiffs,</p> <p style="text-align: center;">17 V.</p> <p>18 FRESHKAMPO, a foreign corporation; 19 MERIDIAN FINE FOODS, LLC, a California 20 limited liability company,</p> <p style="text-align: center;">21 Defendants.</p>	<p>Case No.:</p> <p>UNLIMITED JURISDICTION</p> <p>PLAINTIFFS' COMPLAINT FOR DAMAGES FOR:</p> <p>1st Cause of Action: Strict Product Liability 2nd Cause of Action: Negligence 3rd Cause of Action: Negligence Per Se</p> <p>DEMAND FOR JURY TRIAL</p>
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PLAINTIFFS' COMPLAINT

25 NOW come Plaintiffs, DAVID P. ARTHUR AND MICHELLE A. BROWN individually and
26 on behalf of their daughter P.A., a minor, by and through their attorneys of record, Frederic L. Gordon,
27 Esq. and Marler Clark, LLP, allege upon information and belief as follows:

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PARTIES

- 1. Plaintiff David Arthur resides in San Diego County, California.
- 2. Plaintiff Michelle Brown resides in San Diego County, California.
- 3. P.A. resides in San Diego County, California. P.A. is currently 16 years old and the daughter of Plaintiffs David Arthur and Michelle Brown.

4. Defendant FreshKampo (“Defendant” or “FreshKampo”) is a foreign for-profit corporation organized and existing under the laws of Mexico, with its principal place of business located at Km 0.5 Carr. Periban Los Reyes, SN, Los Camichines, 60440, Periban, Mich., Mexico. At all times relevant to this action, FreshKampo was engaged in the growth, manufacture, distribution, and sale of a variety of products, including the “FreshKampo” strawberries that caused the Plaintiffs’ injuries described below, to customers across the country, including in the State of California—a jurisdiction in which FreshKampo has substantial contacts. According to FreshKampo’s website, upon information and belief, FreshKampo maintains a sales office in the State of California, located at 423 W. Fallbrook Ave. Ste. 205 Fresno, CA 93711. FreshKampo’s business model is advertised as “vertically integrated,” controlling the product from growth to sale to grocers.

5. Defendant Meridian Fine Foods, LLC (“Defendant” or “Meridian”) is a domestic for-profit limited liability company organized and existing under the laws of the State of California, with its principal place of business located at 423 W. Fallbrook Ave Ste. 205, Fresno, CA 93711. At all times relevant to this action, Meridian distributed and sold a variety of food products, including the “FreshKampo” strawberries that caused the Plaintiffs’ injuries, to customers throughout the country, including California. Upon information and belief, Meridian distributed and sold these food products on behalf of, at the direction of, and acting as a wholly owned subsidiary of, FreshKampo, operating out of the same office in Fresno, California.

JURISDICTION AND VENUE

6. The Plaintiffs’ injuries and cause of action arose and accrued in San Diego County, California. Both Defendants maintain an office in Fresno County, California, and have substantial contacts within the State of California because Defendants deliver their products into the stream of

1 commerce with the expectation that they will be purchased by consumers in California and those
2 products subsequently injured the Plaintiff. Therefore, jurisdiction and venue are proper in this Court.

3 **GENERAL ALLEGATIONS**

4 **The 2022 Hepatitis A Outbreak Linked to Strawberries**

5 7. In May 2022, at least 27 individuals in the US and Canada were infected by hepatitis
6 A by consuming strawberries branded as either FreshKampo or HEB and purchased between March
7 5, 2022, and April 25, 2022.

8 8. Of those sickened, 16 individuals were hospitalized because of infection, but
9 fortunately, none have died.

10 9. Traceback investigations show that cases in California, Minnesota, and Canada report
11 having purchased and consumed strawberries branded as FreshKampo or HEB prior to becoming ill.

12 **The Hepatitis A Virus**

13 10. Exposure to the hepatitis A virus (“HAV”) can cause an acute infection of the liver that
14 is typically mild and resolves on its own.¹ The symptoms and duration of illness vary a great deal,
15 with many persons showing no symptoms at all.² Fever and jaundice are two of the symptoms most
16 associated with HAV infection.³

17 11. Hepatitis A is a communicable (or contagious) disease that often spreads from person
18 to person.⁴ Person-to-person transmission occurs via the “fecal-oral route,” while all other exposure is
19 generally attributable to contaminated food or water.⁵ Food-related outbreaks are usually associated
20 with contamination of food during preparation by an HAV-infected food handler.⁶ The food handler
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23 ¹ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” in Mandell, Douglas, & Bennett’s PRINCIPLES AND
24 PRACTICE OF INFECTIOUS DISEASES, Fifth Edition, Chap. 161, pp. 1920-40 (2000); Mayo Clinic Staff, “Hepatitis
A,” (last updated Sept 1, 2011). Articles available online at <http://www.mayoclinic.com/health/hepatitis-a/DS00397>.

25 ² Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1.

26 ³ Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

27 ⁴ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1.

28 ⁵ *Id.*; See also Jaykus Lee Ann, “Epidemiology and Detection as Options for Control of Viral and Parasitic
Foodborne Disease,” Emerging Infectious Diseases, Vol. 3, No. 4, pp. 529-39 (October-December 1997). Full text of the
article is available online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2640072/pdf/9366607.pdf>

⁶ Fiore, Anthony, *supra* note 7; CDC, “Hepatitis A,” *supra* note 5; See also CDC, “Surveillance for Acute Viral
Hepatitis – United States, 2007, Morbidity and Mortality Weekly Report, Surveillance Summaries, Vol. 58, No. SS03
(May 22, 2009) at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5803a1.htm>.

1 is generally not ill because the peak time of infectivity—when the most virus is present in the stool of
2 an infected individual—occurs two weeks before illness begins.⁷

3 12. Fresh produce contaminated during cultivation, harvesting, processing, and distribution
4 has also been a source of hepatitis A.⁸ In 1997, frozen strawberries were the source of a hepatitis A
5 outbreak in five states.⁹ Six years later, in 2003, fresh green onions were identified as the source of an
6 HAV outbreak traced to the consumption of food at a Pennsylvania restaurant.¹⁰ Other fruits and
7 vegetables, such as blueberries and lettuce, have also been associated with HAV outbreaks in the U.S.
8 and other developed countries.¹¹ HAV is relatively stable and can survive for several hours on
9 fingertips and hands and for up to two months on dry surfaces.¹² The virus can be inactivated by
10 heating to 185°F (85°C) or higher for one minute or disinfecting surfaces with a 1:100 dilution of
11 household bleach in tap water.¹³ HAV can still be spread from cooked food if it is contaminated after
12 cooking.¹⁴

13 13. Although ingestion of contaminated food is a common means of spread for HAV, it
14 may also be spread by household contact among families or roommates, sexual contact, or by direct
15 inoculation from persons sharing illicit drugs.¹⁵ Children are often asymptomatic or have unrecognized
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17 ⁷ Fiore, Anthony, Division of Viral Hepatitis, CDC, “Hepatitis A Transmitted by Food,” *supra* note 7.

18 ⁸ *Id.*; See also, Wheeler, C, *et al.*, “An Outbreak of Hepatitis A Associated with Green Onions,” *New England*
19 *Journal of Medicine*, Vol. 353, 890-97 (2005). Full text of article available at
20 <http://www.nejm.org/doi/full/10.1056/NEJMoa050855>.

21 ⁹ Hutin YJF, *et al.*, “A Multistate, Foodborne Outbreak of Hepatitis A,” *New England Journal of Medicine*, Vol.
22 340, pp. 595-602 (1999). Full text of article is online at <http://nejm.org/doi/full/10.1056/NEJM199902253400802>.

23 ¹⁰ Wheeler, C, *et al.*, “An Outbreak of Hepatitis A Associated with Green Onions,” *supra* note 15.

24 ¹¹ Butot S, *et al.*, “Effects of Sanitation, Freezing and Frozen Storage on Enteric Viruses in Berries and Herbs,”
25 *International Journal of Food Microbiology*, Vol. 126, No. 4, pp. 233-246 (2003). Full text of article is available at
26 http://www.prograd.uff.br/virologia/sites/default/files/bulot_et_al_2008_inactivation.pdf; Calder, L, *et al.*, An Outbreak
27 of Hepatitis A Associated with Consumption of Raw Blueberries,” *Epidemiology and Infection*, Vol. 131, No. 1 745-51
28 (2003) at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2870016/pdf/12948375.pdf>.

29 ¹² Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Mayo Clinic Staff, “Hepatitis A,” *supra*
30 note 1.

31 ¹³ CDC, “Updated recommendations from Advisory Committee on Immunization Practices (ACIP) for use of
32 hepatitis A vaccine in close contacts of newly arriving international adoptees,” *Morbidity and Mortality Weekly Report*,
33 Vol. 58, No. 36, (Sept. 18, 2006), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5836a4.htm>; Fiore, Anthony, *et*
34 *al.*, Advisory Committee on Immunization Practices (ACIP), Prevention of Hepatitis-A Through Active or Passive
35 Immunization: Recommendations, *Morbidity & Mortality Weekly Review*, Vol. 55, Report 407, (May 29, 2006) at
36 <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5507a1.htm>; Todd, Ewan C.D., *et al.*, “Outbreaks Where Food
37 Workers Have Been Implicated in the Spread of Foodborne Disease. Part 6. Transmission and Survival of Pathogens in
38 the Food Processing and Preparation-environment,” *Journal of Food Protection*, Vol. 72, 202-19 (2009). Full text of the
39 article is available online at http://courses.washington.edu/eh451/articles/Todd_2009_food%20processing.pdf.

40 ¹⁴ Fiore, Anthony, Division of Viral Hepatitis, CDC, “Hepatitis A Transmitted by Food,” *supra* note 7.

41 ¹⁵ *Id.*; See also, Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

1 infections and can pass the virus through ordinary play, unknown to their parents, who may later
2 become infected from contact with their children.¹⁶

3 14. Hepatitis A may cause no symptoms at all when it is contracted, especially in
4 children.¹⁷ Asymptomatic individuals will only know they were infected (and have become immune,
5 given that you can only get hepatitis A once) by getting a blood test later in life.¹⁸ Approximately 10
6 to 12 days after exposure, HAV is present in blood and excreted via the biliary system into the feces.¹⁹
7 Although the virus is present in the blood, its concentration is much higher in feces.²⁰ HAV excretion
8 begins to decline at the onset of clinical illness and decreases significantly by 7 to 10 days after the
9 onset of symptoms.²¹ Most infected persons no longer excrete the virus in the feces by the third week
10 of illness. Children may excrete HAV longer than adults.²²

11 15. Seventy percent of HAV infections in children younger than six years of age are
12 asymptomatic; in older children and adults, infection tends to be symptomatic, with more than 70% of
13 those infected developing jaundice.²³ Symptoms typically begin about 28 days after contracting HAV
14 but can begin as early as 15 days or as late as 50 days after exposure.²⁴ The symptoms include muscle
15 aches, headache, loss of appetite, abdominal discomfort, fever, and malaise.²⁵

16 16. After a few days of typical symptoms, jaundice (also termed “icterus”) sets in.²⁶
17 Jaundice is a yellowing of the skin, eyes, and mucous membranes because bile flows poorly through
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19 ¹⁶ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Piazza, M, *et al.*, “Safety and
20 Immunogenicity of Hepatitis A Vaccine in Infants: A Candidate for Inclusion in Childhood Vaccination Program,” Vol.
21 17, pp. 585-588 (1999). Abstract at <http://www.ncbi.nlm.nih.gov/pubmed/10075165>; Schiff, E.R., “Atypical
22 Manifestations of hepatitis-A,” *Vaccine*, Vol. 10, Suppl. 1, pp. 18-20 (1992). Abstract at
23 <http://www.ncbi.nlm.nih.gov/pubmed/1475999>.

24 ¹⁷ Fiore, Anthony, Division of Viral Hepatitis, CDC, “Hepatitis A Transmitted by Food,” *supra* note 7
25 ¹⁸ Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

26 ¹⁹ CDC, “Hepatitis A,” *supra* note 5; Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1

27 ²⁰ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1

28 ²¹ *Id.*

²² *Id.*; See also Sagliocca, Luciano, *et al.*, “Efficacy of Hepatitis A Vaccine in Prevention of Secondary Hepatitis
A Infection: A Randomized Trial,” *Lancet*, Vol. 353, 1136-39 (1999). Abstract at

[http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(98\)08139-2/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(98)08139-2/abstract).

²³ CDC, “Hepatitis A,” *supra* note 5.

²⁴ *Id.*; See also Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Fiore, Anthony, Division of
Viral Hepatitis, CDC, “Hepatitis A Transmitted by Food,” *supra* note 7.

²⁵ CDC, “Hepatitis A,” *supra* note 5; Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Mayo
Clinic Staff, “Hepatitis A,” *supra* note 1.

²⁶ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Mayo Clinic Staff, “Hepatitis A,” *supra*
note 1.

1 the liver and backs up into the blood.²⁷ The urine will also turn dark with bile, and the stool will be
2 light or clay-colored from lack of bile.²⁸ When jaundice sets in, initial symptoms such as fever and
3 headache begin to subside.²⁹

4 17. In general, symptoms usually last less than two months, although 10% to 15% of
5 symptomatic persons have prolonged or relapsing disease for up to 6 months.³⁰ However, it is not
6 unusual for blood tests to remain abnormal for six months or more.³¹ Jaundice so commonly associated
7 with HAV can also linger for a prolonged period in some infected persons, sometimes as long as eight
8 months or more.³² Additionally, pruritus, or severe “itchiness” of the skin, can persist for several
9 months after the onset of symptoms. These conditions are frequently accompanied by diarrhea, loss of
10 appetite, and fatigue.³³

11 18. Relapse is possible with hepatitis A, typically within three months of the initial onset
12 of symptoms.³⁴ Although relapse is more common in children, it does occur with some regularity in
13 adults.³⁵ The vast majority of persons who are infected with hepatitis A fully recover and do not
14 develop chronic hepatitis.³⁶ Persons do not carry HAV long-term as with hepatitis B and C.³⁷

15 19. Fulminant hepatitis A, or acute liver failure, is a rare but devastating complication of
16 HAV infection.³⁸ As many as 50% of individuals with acute liver failure may die or require emergency
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19 ²⁷ Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

20 ²⁸ CDC, “Hepatitis A,” *supra* note 5; Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Mayo
Clinic Staff, “Hepatitis A,” *supra* note 1.

21 ²⁹ Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

22 ³⁰ Fiore, Anthony, *et al.*, Advisory Committee on Immunization Practices (ACIP), Prevention of Hepatitis-A
Through Active or Passive Immunization: Recommendations,” *supra* note 20; Gilkson Miryam, *et al.*, “Relapsing
Hepatitis A. Review of 14 cases and literature survey,” *Medicine*, Vol. 71, No. 1, 14-23 (Jan. 1992). Abstract of article
online at <http://www.ncbi.nlm.nih.gov/pubmed/1312659>.

23 ³¹ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1.

24 ³² Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Mayo Clinic Staff, “Hepatitis A,” *supra*
note 1.

25 ³³ CDC, “Hepatitis A,” *supra* note 5; Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

26 ³⁴ Gilkson Miryam, *et al.*, “Relapsing Hepatitis A. Review of 14 cases and literature survey,” *supra* note 37.

27 ³⁵ Feinstone, Stephen and Gust, Ian, “Hepatitis A Virus,” *supra* note 1; Gilkson Miryam, *et al.*, “Relapsing
Hepatitis A. Review of 14 cases and literature survey,” *supra* note 37.

28 ³⁶ Mayo Clinic Staff, “Hepatitis A,” *supra* note 1.

29 ³⁷ CDC Summary, “Disease Burden from Viral Hepatitis A, B and C in the United States, 2004-2009, at
http://www.cdc.gov/hepatitis/pdfs/disease_burden.pdf; CDC, “Hepatitis A,” *supra* note 5.

30 ³⁸ Detry, Oliver, *et al.*, “Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
Pathophysiology and Management,” *World Journal of Gastroenterology*, Vol. 12, No. 46 pp. 7405-7412 (Dec. 14, 2006).
Full article is available online at <http://www.wjgnet.com/1007-9327/12/7405.pdf>.

1 liver transplantation.³⁹ Elderly patients and patients with chronic liver disease are at higher risk for
2 fulminant hepatitis A.⁴⁰ In parallel with a declining incidence of acute HAV infection in the general
3 population, however, the incidence of fulminant HAV appears to be decreasing.⁴¹

4 20. HAV infects the liver's parenchymal cells (internal liver cells).⁴² Once the viral
5 particles have penetrated a cell, hepatitis A releases its own toxins that cause, in essence, a hostile
6 takeover of the host's cellular system.⁴³ The cell then produces new viral components that are released
7 into the bile capillaries or tubes that run between the liver's parenchymal cells.⁴⁴ This process results
8 in the death of liver cells called hepatic necrosis.⁴⁵

9 21. The fulminant form of hepatitis occurs when this necrotic process kills so many liver
10 cells—upwards of three-quarters of the liver's total cell count—that the liver can no longer perform
11 its job.⁴⁶ Aside from the loss of liver function, fulminant hepatic failure can lead to encephalopathy
12 and cerebral edema.⁴⁷ Encephalopathy is a brain disorder that causes central nervous system
13 depression and abnormal neuromuscular function.⁴⁸ Cerebral edema is a swelling of the brain that
14 can result in dangerous intracranial pressure.⁴⁹ Intracranial hypertension leading to brain stem death

18 ³⁹ Taylor, Ryan, *et al.*, "Fulminant Hepatitis A Virus Infection in the United States: Incidence, Prognosis, and
19 Outcomes," *Hepatology*, Vol. 44, 1589-1597. Full text
http://deepblue.lib.umich.edu/bitstream/2027.42/55879/1/21349_ft.pdf.

20 ⁴⁰ *Id.*; See also Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1.

21 ⁴¹ Taylor, Ryan, *et al.*, "Fulminant Hepatitis A Virus Infection in the United States: Incidence, Prognosis, and
22 Outcomes," *supra* note 46.

23 ⁴² Detry, Oliver, *et al.*, "Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
24 Pathophysiology and Management," *supra* note 45; Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1.

25 ⁴³ Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1; Schiff, E.R., "Atypical Manifestations of
26 hepatitis-A," *supra* note 23.

27 ⁴⁴ Detry, Oliver, *et al.*, "Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
28 Pathophysiology and Management," *supra* note 45.

⁴⁵ *Id.*; See also Taylor, Ryan, *et al.*, "Fulminant Hepatitis A Virus Infection in the United States: Incidence,
Prognosis, and Outcomes," *supra* note 46.

⁴⁶ Detry, Oliver, *et al.*, "Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
Pathophysiology and Management," *supra* note 45; Taylor, Ryan, *et al.*, "Fulminant Hepatitis A Virus Infection in the
United States: Incidence, Prognosis, and Outcomes," *supra* note 46.

⁴⁷ Detry, Oliver, *et al.*, "Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
Pathophysiology and Management," *supra* note 45.

⁴⁸ Detry, Oliver, *et al.*, "Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
Pathophysiology and Management," *supra* note 45; Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1.

⁴⁹ Detry, Oliver, *et al.*, "Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
Pathophysiology and Management," *supra* note 45.

1 and sepsis with multiple organ failure are the leading causes of death in individuals with fulminant
2 hepatic failure.⁵⁰

3 **The Plaintiffs' Injuries**

4 22. The Plaintiffs purchased and later consumed FreshKampo branded strawberries on
5 April 16, 2022, and April 25, 2022. As a result, the Plaintiffs were infected with hepatitis A.

6 23. Plaintiff David Arthur began to experience symptoms related to his hepatitis A
7 infection on or about May 8, 2022. Initial symptoms included clammy skin, stomach upset, and body
8 aches and progressed to lethargy, pain, extreme fatigue, loss of appetite, dark urine, and jaundice. By
9 May 19, 2022, these symptoms had progressed to acute liver failure, and David Arthur was
10 hospitalized.

11 24. Plaintiff David Arthur was hospitalized due to acute liver failure resulting from a
12 hepatitis A infection on May 19, 2022. Fortunately, with significant medical testing and intervention,
13 David Arthur was discharged from the hospital on May 20, 2022.

14 25. Plaintiff Michelle Brown began to experience symptoms related to her hepatitis A
15 infection on or about May 5, 2022. Symptoms included fatigue, diarrhea, constipation, bloating,
16 stomach pain, loss of appetite, body aches, and arthritis.

17 26. P.A. began to experience symptoms related to her Hepatitis A infection on or about
18 May 8, 2022. Symptoms included fatigue, diarrhea, constipation, stomach pain, loss of appetite, and
19 body aches. P.A. missed four days of school because of her infection.

20 27. Plaintiffs all continue to suffer symptoms resulting from their infection, including
21 diarrhea, loss of appetite, fatigue, and digestion issues.

22 **CAUSES OF ACTION**

23 **Strict Liability – Count I**

24 28. The Plaintiffs incorporate by reference paragraphs 1 – 27 herein by reference.
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27 ⁵⁰ Detry, Oliver, *et al.*, “Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure:
28 Pathophysiology and Management,” *supra* note 45; Taylor, Ryan, *et al.*, “Fulminant Hepatitis A Virus Infection in the
United States: Incidence, Prognosis, and Outcomes,” *supra* note 46.

1 of the California Health & Safety Code Article 5, and the Tri-Service Food Code, all of which prohibit
2 the distribution and sale of any food that is adulterated, or otherwise injurious to health.

3 44. The strawberries the Defendants distributed and sold and that the Plaintiffs consumed
4 were adulterated within the meaning of the federal Food, Drug, and Cosmetic Act and similar
5 California statutes because they contained a deleterious substance that rendered it injurious to health,
6 *i.e.*, hepatitis A.

7 45. The Defendants violated federal, state, and local food safety regulations by their
8 distribution and sale of adulterated food. These federal, state, and local food safety regulations are
9 applicable here and establish a positive and definite standard of care in the distribution and sale of
10 food. The violation of these regulations constitutes negligence as a matter of law.

11 46. The Plaintiffs are in the class of persons intended to be protected by these statutes and
12 regulations, and the Plaintiffs were injured as the direct and proximate result of the Defendants' acts
13 in violation of applicable federal, state, and local food safety regulations.

14 47. The Defendants breached their duties and, as a result, were negligent *per se* in their
15 manufacture, distribution, and sale of food adulterated with HAV, a deadly pathogen.

16 48. As a direct and proximate result of the negligent *per se* conduct by the Defendants, the
17 Plaintiffs sustained injury and damages in an amount to be determined at trial.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, the Plaintiffs pray as follows:

- 20 a. For judgment against the Defendants on Count I of this Complaint in an
21 amount that is fair and reasonable, for their costs incurred, and for any
22 other relief for which they may be entitled;
- 23 b. For judgment against the Defendants on Count II of this Complaint in
24 an amount that is fair and reasonable, for their costs incurred, and for
25 any other relief for which they may be entitled;
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- 1 c. For judgment against the Defendants on Count III of this Complaint in
2 an amount that is fair and reasonable, for their costs incurred, and for
3 any other relief for which they may be entitled;
4
5 d. For costs of suit herein incurred; and
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7 e. For such other and further relief as this Court may deem proper.

8 DATED: June 2, 2022

9 Respectfully Submitted,

10 By: /s/ Frederic L. Gordon
11 FREDERIC L. GORDON
12 Frederic L. Gordon, Esq. (SBN 98994 [CA])
13 P.O. Box 60761
14 San Diego, CA. 92106
15 Tel: 619-572-2210
16 Email: FGordonAPC@gmail.com

17 William D. Marler, Esq. (SBN 17233 [WA])
18 MARLER CLARK, LLP
19 1012 First Avenue, Suite 500
20 Seattle, WA 98104
21 Tel: 206-346-1888
22 Email: bmarler@marlerclark.com
23 *Pro hac vice pending*

24 Attorneys for Plaintiff
25
26
27
28