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**Attorneys for Plaintiff**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

Valerie M. Wansor, an individual,  
  
Plaintiff,  
  
v.  
  
SunFed Produce LLC, an Arizona  
limited liability company,  
  
Defendant.

NO.  
  
**COMPLAINT**  
  
**DEMAND FOR JURY TRIAL**

Plaintiff Valerie M. Wansor, by and through her attorneys of record, Jonathan O’Steen of O’Steen & Harrison, PLC and William Marler of Marler Clark, Inc., PS, alleges upon information and belief as follows:

**PARTIES**

1. Plaintiff Valerie M. Wansor resides in Wasilla, Alaska and is therefore a citizen of the State of Alaska.

- 1 2. Defendant SunFed Produce LLC (hereinafter “Defendant” or “SunFed”) is an  
2 LLC formed and existing under the laws of Arizona, with its principal place of  
3 business located at 51 Kipper Street, Rio Rico, Arizona. SunFed is,  
4 therefore, a citizen of the State of Arizona.  
5

### 6 **JURISDICTION AND VENUE**

- 7 3. This Court has jurisdiction over the subject matter of this action pursuant to  
8 28 U.S.C. section 1332(a) because the matter in controversy far exceeds  
9 \$75,000.00, exclusive of costs, and it is between citizens of different states  
10 given that the Plaintiff is a citizen of Alaska, and the Defendant is a citizen of  
11 Arizona.  
12  
13 4. Venue in the United States District Court of the District of Arizona, Tucson, is  
14 proper under 28 U.S.C. section 1391(b) because Defendant is subject to  
15 general personal jurisdiction in Arizona, and a substantial part of the events  
16 giving rise to Plaintiff’s claims occurred within this division. The tortious acts  
17 and omissions central to the subject outbreak occurred in Rio Rico, Arizona  
18 where Defendant is located.  
19  
20 5. Defendant is subject to personal jurisdiction in the United States District  
21 Court of the District of Arizona, Tucson, because, at all times relevant to this  
22 matter, it was a citizen of the State of Arizona.  
23

### 24 **GENERAL ALLEGATIONS**

#### 25 **An Overview of *Salmonella***

- 26  
27 6. It has long been said that, in 1885, pioneering American veterinary scientist,  
28 Daniel E. Salmon, discovered the first strain of *Salmonella*. Actually, though,

1 Theobald Smith, research-assistant to Dr. Salmon, discovered the first strain  
2 of *Salmonella*—*Salmonella* Choleraesuis. But being in charge, Dr. Salmon  
3 received all of the credit.<sup>1</sup> Today, the number of known serotypes of  
4 *Salmonella* bacteria totals over two thousand. And in recent years, concerns  
5 have been raised, as particular strains of *Salmonella* have become resistant  
6 to traditional antibiotics.

7  
8 7. There are two *Salmonella* species: *Salmonella enterica* (*S. enterica*) and  
9 *Salmonella bongori* (*S. bongori*). *S. bongori* strains predominantly colonize  
10 cold-blooded reptiles, whereas *S. enterica* strains are capable of infecting  
11 both humans and mammals.<sup>2</sup> Based on factors such as morphology,  
12 structure, mode of reproduction, and other criteria, the two species are  
13 further classified into subgroups called serotypes or serovars. More than  
14 2,600 serotypes have been described for *Salmonella*, and they are  
15 characterized by the type(s) of animal they are found in or by the clinical  
16 symptoms they cause.<sup>3</sup> Of these, less than 100 are responsible for most  
17 human *Salmonella* infections.<sup>4</sup>  
18  
19  
20

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21  
22 1. Kass EH. (1987). A brief perspective on the early history of American  
infectious disease epidemiology. *Yale J Biol Med.* 60(4):341-8.

23 2. Hernandez, A. K. C. *Salmonella bongori*. Poultry and Avian Diseases.  
24 *Encyclopedia of Agriculture and Food Systems*, available at  
<https://www.sciencedirect.com/topics/agricultural-and-biological-sciences/salmonella-bongori>.

25 3. Boore AL, et al. (2015). *Salmonella enterica* Infections in the United States  
26 and Assessment of Coefficients of Variation: A Novel Approach to Identify  
27 Epidemiologic Characteristics of Individual Serotypes, 1996–2011. *PLoS One.* 10(12):  
e0145416

28 4. Besser JM. (2018). *Salmonella* epidemiology: a whirlwind of change. *Food  
Microbiol.* 71:55-9.

- 1 8. *Salmonella* are widely distributed in nature and are found in the intestinal  
2 tract of wild and domesticated animals and in humans. *Salmonella* poisoning  
3 can occur when a person ingests contaminated fecal particles transmitted by  
4 another infected human or animal.<sup>5</sup>
- 6 9. *Salmonella enterica* serotypes Typhi, Sendai, and Paratyphi A, B, or C are  
7 found exclusively in humans. These serotypes, collectively referred to as  
8 typhoidal *Salmonella*, cause enteric fever (also known as typhoid or  
9 paratyphoid fever if caused by serotypes Typhi or Paratyphi, respectively).<sup>6</sup>  
10 Most often, enteric fever is acquired through ingestion of food or water  
11 contaminated with human feces. Most U.S. residents who are diagnosed with  
12 typhoidal *Salmonella* are infected while traveling abroad in areas where  
13 typhoid fever and paratyphoid fever are common. Three types of vaccines  
14 against *S. Typhi* are commercially available, although there is still not a  
15 single licensed vaccine available against *S. Paratyphi A*.<sup>7</sup> Persons planning  
16 to travel outside of the United States are advised to find out if a vaccine for  
17 typhoid fever is recommended (see [www.cdc.gov/travel](http://www.cdc.gov/travel)).  
18  
19  
20  
21 10. Most *Salmonella* infections are caused by eating contaminated food. One  
22 study found that 87% of all confirmed cases of *Salmonella* are foodborne.  
23

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24 5. Chiu, CH. (2019). *Salmonella, Non-Typhoidal Species (S. Choleraesuis, S.*  
25 *Enteritidis, S. Hadar, S. Typhimurium)*, available at  
<http://www.antimicrobe.org/b258.asp>.

26 6. Ohad eGal-Mor, Erin C Boyle, & Guntram A. Grassl. (2014). Same species,  
27 different diseases: how and why typhoidal and non-typhoidal *Salmonella enterica*  
28 serovars differ. *Frontiers in Microbiology*, 5, available at  
<https://doi.org/10.3389/fmicb.2014.00391>.

7. *Id.*

1 Foods of animal origin, including meat, poultry, eggs, or dairy products can  
2 become contaminated with *Salmonella*. Eating uncooked or inadequately  
3 cooked food—or food cross contaminated with uncooked or undercooked  
4 products—can lead to human infections. As explained in a comprehensive  
5 report issued by the U.S. Department of Agriculture’s Economic Research  
6 Service:  
7

8 *Salmonella* contamination occurs in a wide range of animal and  
9 plant products. Poultry products and eggs are frequently  
10 contaminated with *S. Enteritidis*, while beef products are  
11 commonly contaminated with *S. Typhimurium*. Other food  
12 sources of *Salmonella* may include raw milk or other dairy  
products and pork.

13 11. In the past two decades, consumption of produce, especially sprouts,  
14 tomatoes, fruits, leafy greens, nuts, and nut butters, has been associated  
15 with *Salmonella* illnesses.<sup>8</sup> The surface of fruits and vegetables may be  
16 contaminated by human or animal feces. Changes in food consumption and  
17 production, as well as the rapid growth of international trade in agricultural  
18 products, have facilitated the transmission of *Salmonella* associated with  
19 fresh fruits and vegetables.  
20

21 12. In the United States, *Salmonella* is the second most commonly isolated  
22 bacterial pathogen when laboratory diagnosis of diarrhea is sought.<sup>9</sup>  
23 However, passive laboratory surveillance, which uses voluntary reporting by  
24

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25 8. National Typhoid and Paratyphoid Fever Surveillance Annual Summary,  
26 2015.” Centers for Disease Control and Prevention, Nov. 6, 2018, *available at*  
27 <https://www.cdc.gov/typhoid-fever/reports/annual-report-2015.html>.

28 9. “National Enteric Disease Surveillance: *Salmonella* Annual Report, 2016.”  
Centers for Disease Control and Prevention, Feb. 28, 2018, *available at*  
<https://www.cdc.gov/nationalsurveillance/pdfs/2016-Salmonella-report-508.pdf>.

1 health care providers and facilities, captures only a fraction of illnesses that  
2 actually occur. Furthermore, only a small proportion of illnesses are  
3 confirmed by laboratory testing and reported to public health agencies. Thus,  
4 researchers rely on quantitative statistical modeling to estimate the incidence  
5 of foodborne illness. These estimates are used to direct policy and  
6 interventions.  
7

8 13. *Salmonella* infections can produce a broad range of disease, from no  
9 symptoms to severe illness. The most common clinical presentation is acute  
10 gastroenteritis. Symptoms commonly include diarrhea and abdominal  
11 cramps, often accompanied by fever of 100°F to 102°F (38°C to 39°C). More  
12 serious infections may also involve bloody diarrhea, vomiting, headache, and  
13 body aches.<sup>10</sup>  
14

15 14. The incubation period, or the time from ingestion of the bacteria until the  
16 symptoms start, is generally 6 to 72 hours; however, there is evidence that in  
17 some situations the incubation can be longer than 10 days. People with  
18 salmonellosis usually recover without treatment within three to seven days.  
19 Nonetheless, *Salmonella* bacteria can persist in the intestinal tract and stool  
20 for many weeks after the resolution of symptoms—on average, one month in  
21 adults and longer in children.<sup>11</sup>  
22

23 15. *S. Typhi* and *S. Paratyphi* are capable of causing systemic illness if they  
24 invade the bloodstream (termed “bacteremia”). “Septicemia” or “sepsis”  
25

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26 10. “*Salmonella*.” Centers for Disease Control and Prevention, June 24, 2020,  
27 available at <https://www.cdc.gov/salmonella/>.

28 11. *Id.*

1 (bloodstream infection or “blood poisoning”) occurs if the bacteria multiply in  
2 the blood and cause the immune system to respond by activating  
3 inflammatory mechanisms. This may result in the development of “systemic  
4 inflammatory response syndrome,” or “SIRS.” By definition, SIRS includes  
5 tachycardia, tachypnea, fever, and abnormal white blood cell count. When  
6 the bacteria involved are *S. Typhi* or *S. Paratyphi*, this serious illness is  
7 called enteric typhoid, or paratyphoid fever. Symptoms may start gradually  
8 and include fever, headache, malaise, lethargy, and abdominal pain. In  
9 children, it can present seemingly innocuously as a non-specific fever. The  
10 incubation period for *S. Typhi* is usually 8 to 14 days, but it can range from  
11 three to 60 days. For *S. Paratyphi* infections, the incubation period is similar  
12 to that of nontyphoidal *Salmonella*—one to 10 days.<sup>12</sup>

- 16 16. Medical treatment is acutely important, though, if the patient becomes  
17 severely dehydrated or if the infection spreads from the intestines. Persons  
18 with severe diarrhea often require re-hydration, usually with intravenous (IV)  
19 fluids. But antibiotics are not necessary or indicated unless the infection  
20 spreads from the intestines, at which time the infection can be treated with  
21 ampicillin, gentamicin, trimethoprim/sulfamethoxazole, or ciprofloxacin.  
22 Unfortunately, though, some *Salmonella* bacteria have become resistant to  
23  
24  
25  
26

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27 12. Miller, S. and Pegues, D. “*Salmonella* Species, Including *Salmonella Typhi*” in  
28 Mandell, Douglas, and Bennett’s Principles and Practice of Infectious Diseases,  
Sixth Edition, Chap. 220, pp. 2636-50 (2005).

1 antibiotics, largely as a result of the use of antibiotics to promote the growth  
2 of feed animals.<sup>13</sup>

3  
4 17. Formerly referred to as Reiter syndrome, the term reactive arthritis refers to  
5 an inflammation of one or more joints, following an infection localized at a  
6 site distant from the affected joints. The predominant site of the infection is  
7 the gastrointestinal tract. And reactive arthritis can be post infection, meaning  
8 that the infection may not be active when diagnosed. Several bacteria,  
9 including *Salmonella*, can cause reactive arthritis.<sup>14</sup> And although the  
10 resulting joint pain and inflammation can resolve completely over time,  
11 permanent joint damage can occur.<sup>15</sup>

12  
13 18. The symptoms of reactive arthritis include pain and swelling in the knees,  
14 ankles, feet, and heels. Less frequently, the upper extremities may be  
15 affected, including the wrists, elbows, and fingers. Tendonitis (inflammation  
16 of the tendons) or enthesitis (inflammation where tendons attach to the bone)  
17 can occur. Other symptoms may include prostatitis, cervicitis, urethritis  
18 (inflammation of the prostate gland, cervix, or urethra), conjunctivitis  
19 (inflammation of the membrane lining the eyelid), or uveitis (inflammation of  
20 the inner eye). Ulcers and skin rashes are less common. Symptoms can  
21 range from mild to severe and can occur anywhere from three days to six  
22  
23  
24

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25 13. Medalla, F., Gu, W., Mahon, B. E., Judd, M., Folster, J., Griffin, P. M., &  
26 Hoekstra, R. M. (2016). Estimated Incidence of Antimicrobial Drug-Resistant  
27 Nontyphoidal Salmonella Infections, United States, 2004-2012. *Emerging infectious*  
28 *diseases*, 23(1), 29–37, available at <https://doi.org/10.3201/eid2301.160771>.

14. See “Reactive Arthritis.” *Questions and Answers About*. N.p., n.d. Web. 12  
Nov. 2015.

15. *Id.*



1 weeks after the antecedent infection and may involve one or more joints,  
2 though usually six or fewer. Although most cases recover within a few  
3 months, some continue to experience complications for years. Treatment  
4 focuses on relieving the symptoms.<sup>16</sup>

5  
6 19. Irritable bowel syndrome (IBS) is a functional disorder of the gastrointestinal  
7 tract. The hallmark symptoms of IBS are abdominal pain and altered bowel  
8 habits, ranging from constipation to diarrhea, or alternating diarrhea and  
9 constipation. Abdominal pain is usually crampy in nature, but character and  
10 sites can vary. In some patients, the pain is relieved by defecation but, in  
11 others, defecation may worsen the pain. Additional symptoms may include  
12 bloating, straining at stools, and a sense of incomplete evacuation.

13  
14  
15 20. The observation that the onset of IBS symptoms can be precipitated by  
16 gastrointestinal infection dates to the 1950s. Mechanisms are not known but  
17 include changes in the microbiome, use of antibiotics to treat the infection,  
18 and an increase in enteroendocrine cells. Another consequence of infective  
19 gastroenteritis is the disruption of normal gut flora. Studies on postinfectious  
20 IBS have provided etiological insights into the pathogenesis of IBS. It is well  
21 documented that following infective gastroenteritis, more than 10% of  
22 affected individuals go on to develop postinfectious IBS.<sup>17</sup> The risk of  
23  
24

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25 16. "Reactive Arthritis." National Institute of Arthritis and Musculoskeletal and Skin  
26 Diseases, Oct. 2016, available at <https://www.niams.nih.gov/health-topics/reactive-arthritis>.

27 17. Ng, Q. X., Soh, A., Loke, W., Lim, D. Y., & Yeo, W. S. (2018). The role of  
28 inflammation in irritable bowel syndrome (IBS). *Journal of inflammation research*, 11,  
345–349, available at <https://doi.org/10.2147/JIR.S174982>.

1 postinfectious IBS appears greater with bacterial gastroenteritis compared to  
2 viral gastroenteritis.

### 3 **Prior *Salmonella* Outbreaks Linked to Cucumbers**

4  
5 21. In April 2013 the CDC and their state and local partners and the FDA,  
6 investigated an outbreak of *Salmonella* Saintpaul Infections linked to  
7 consumption of imported cucumbers. In total, there were 84 outbreak  
8 associated cases residing in 18 states. Among persons for whom information  
9 was available, illness onset dates ranged from January 12, 2013 to April 28,  
10 2013. Ill persons ranged in age from less than 1 year to 89 years. Among 60  
11 persons with available information, 17 (28%) were hospitalized. No deaths  
12 were reported. On April 24, 2013 the FDA placed Daniel Cardenas Izabal  
13 and Miracle Greenhouse of Culiacan, Mexico on Import Alert. The  
14 cucumbers were distributed by Tricar Sales, Inc. of Rio Rico, Arizona.

15  
16  
17 22. In August 2014 public health investigators detected an increase  
18 in *Salmonella* Newport through surveillance of PulseNet, a national molecular  
19 subtyping network for foodborne disease. A total of 275 cases were reported  
20 from 29 states and the District of Columbia. Illness onset dates ranged from  
21 May 25 to September 29, 2014. Thirty four percent (48 of 141) were  
22 hospitalized; one death was reported in an elderly man with bacteremia.  
23 Sixty-two percent (49 of 79) of respondents reported eating cucumbers in the  
24 week before becoming ill. Officials in Maryland, Delaware and New York  
25 worked with the FDA and USDA to conduct an informational traceback from  
26 retail establishments to identify a point of distribution for produce items.  
27  
28

1 Preliminary traceback led to common grower in Maryland's Eastern Shore in  
2 the Delmarva region. Officials collected 48 environmental samples from  
3 areas where cucumbers were grown, harvested and packed. No samples  
4 yielded *Salmonella* although sampling was performed several months after  
5 harvest.  
6

7 23. On September 4, 2015 the CDC announced an outbreak  
8 of *Salmonella* Poona linked to consumption of cucumbers grown in Mexico  
9 and imported by Andrew & Williamson Fresh Produce. On March 18, 2016  
10 the outbreak was declared to be over. A total of 907 people infected with the  
11 outbreak strains of *Salmonella* Poona were reported from 40 states. Among  
12 people for whom information was available, illnesses started on dates  
13 ranging from July 3, 2015 to February 29, 2016. Two hundred four ill people  
14 were hospitalized, and six deaths were reported. *Salmonella* infection was  
15 not considered to be a contributing factor in two of the 6 deaths.  
16 Epidemiologic, laboratory, and traceback investigations identified imported  
17 cucumbers from Mexico and distributed by Andrew & Williamson Fresh  
18 Produce as the likely source of the infections in this outbreak.  
19

20  
21  
22 24. In April 2016, a multistate cluster of *Salmonella* Oslo infections with an  
23 indistinguishable PFGE pattern was detected, involving 14 patients in 8  
24 states. Illness onsets occurred between March 21 and April 9. Epidemiologic  
25 evidence implicated consumption of Persian cucumbers;  
26 however, *Salmonella* was not isolated from any cucumbers.  
27  
28

- 1 25. Seven cases of *Salmonella* Infantis infections were associated with  
2 consumption of English cucumbers purchased at various Costco stores.  
3 Illnesses began in August 2018. The last reported illness occurred on  
4 September 15, 2018. Two people were hospitalized. No one died.
- 5
- 6 26. In June 2024, the CDC announced a multistate outbreak of salmonellosis  
7 associated with cucumbers. As of August 22, 2024, a total of 551 cases had  
8 been reported by 34 states and the District of Columbia. Cases  
9 of *Salmonella* Africana (n=282) and *Salmonella* Braenderup (n=269) were  
10 detected. CDC and FDA combined investigations of these two serotypes as  
11 they shared several similarities, including where and when illnesses  
12 occurred, the demographics of ill people and the foods they reported eating  
13 before they became sick. Illnesses started on dates ranging from March 11,  
14 2024 to July 26, 2024. Of 456 people with information available, 155 were  
15 hospitalized. No deaths were reported.

### 18 **The SunFed Cucumber *Salmonella* Outbreak**

- 19
- 20 27. As of November 26, 2024, a total of 68 people infected with the outbreak  
21 strain of *Salmonella* have been reported from 19 states: Alaska, California,  
22 Colorado, Iowa, Illinois, Massachusetts, Montana, Nebraska, New Jersey,  
23 New York, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Utah,  
24 Washington, Wisconsin and Wyoming. Of the 50 people for whom  
25 information is available, 18 have been hospitalized. No deaths have been  
26 reported. On Thanksgiving Day, The whole fresh American cucumbers were  
27 sold by SunFed and other importers and shipped to customers located in the  
28

1 states of Alaska, Arizona, Arkansas, California, Colorado, Connecticut,  
2 Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland,  
3 Massachusetts, Minnesota, Missouri, Montana, Nevada, New Jersey, New  
4 York, North Carolina, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas,  
5 Utah, Virginia, Washington, Wisconsin & Wyoming and the Canadian  
6 provinces of Alberta, British Columbia, Calgary, Saskatchewan, & Ontario.  
7  
8 On November 27, 2024, SunFed Produce, LLC initiated a recall of all sizes of  
9 American/slicer cucumbers that were grown by Agrotato, S.A. de C.V. in  
10 Sonora, Mexico.  
11

12 28. Illnesses started on dates ranging from October 12, 2024, to November 16,  
13 2024. Of the 50 people for whom information is available, 18 have been  
14 hospitalized. No deaths have been reported.  
15

16 29. According to the CDC, as of November 26, 2024, a total of 68 people  
17 infected with the outbreak strain of *Salmonella* have been reported from 19  
18 states – Alaska 1, California 1, Colorado 8, Iowa 2, Illinois 2, Massachusetts  
19 5, Montana 16, Nebraska 1, New Jersey 1, New York 1, Ohio 1, Oregon 7,  
20 Pennsylvania 1, South Dakota 4, Texas 5, Utah 2, Washington 5, Wisconsin  
21 3 and Wyoming 2.  
22

23 30. On November 27, 2024, SunFed Produce, LLC initiated a voluntary recall of  
24 all sizes of American/slicer cucumbers that were grown by Agrotato, S.A. de  
25 C.V. in Sonora, Mexico. SunFed Produce, LLC distributed recalled products  
26 to retail and foodservice customers in AK, AZ, AR, CA, CO, CT, FL, ID, IL,  
27  
28



1 36. A CT scan was performed showing thickening of her intestinal wall due to  
2 infection. She was given IV fluids, pain medication and discharged with a  
3 stool sample kit.

4  
5 37. Plaintiff completed and returned a stool sample which subsequently tested  
6 positive for *Salmonella*.

7 38. Plaintiff's symptoms of abdominal pain and diarrhea continued for at least  
8 another week after her diagnosis of *Salmonella*.

9  
10 39. On November 20, 2024 Plaintiff was contacted by the department of Health  
11 and was informed that her stool culture for *Salmonella* was a whole genome  
12 match to the *Salmonella* outbreak strain in the outbreak linked to Defendant's  
13 cucumbers.

14  
15 40. Plaintiff suffered after effects of her *Salmonella* illness caused by  
16 Defendant's cucumber products for several weeks.

17 **CAUSES OF ACTION**

18 **CLAIM ONE**  
19 **STRICT PRODUCT LIABILITY**

20 41. Plaintiff incorporates by reference, and makes a part of this count, each  
21 foregoing paragraph of this Complaint.

22  
23 42. At all times relevant hereto, the Defendant was the manufacturer, supplier,  
24 packager, distributor, and/or seller of the adulterated and/or harmful food  
25 product that is the subject of this action, namely cucumbers as identified by  
26 the CDC, state, and local health department investigations.

1 43. The adulterated and/or harmful product that the Defendant manufactured,  
2 supplied, packaged, distributed, and/or sold was, at the time it left the  
3 Defendant's control, defective and unreasonably dangerous for its ordinary  
4 and expected use by the intended public, including Plaintiff, because the  
5 Defendant's product was adulterated and/or harmful to human health by  
6 virtue of containing *Salmonella*, a potentially deadly pathogen.  
7

8 44. The adulterated and/or harmful product that Defendant manufactured,  
9 supplied, packaged, distributed, and/or sold was delivered to Plaintiff without  
10 any change in its defective condition. The adulterated and/or harmful food  
11 product that the Defendant manufactured and distributed was consumed by  
12 Plaintiff in a manner to be expected.  
13

14 45. The Defendant owed a duty of care to the public, including Plaintiff, to  
15 manufacture, supply, package, distribute, and/or sell food that was not  
16 adulterated and/or harmful and that was free of substances injurious to  
17 human health. The Defendant breached this duty.  
18

19 46. The Defendant owed a duty of care to the public, including Plaintiff, to  
20 manufacture, supply, package, distribute, and/or sell food that was fit for  
21 human consumption and that was safe to consume to the extent  
22 contemplated by a reasonable consumer. The Defendant breached this duty.  
23

24 47. As a direct and proximate result of the defective and unreasonably  
25 dangerous condition of the adulterated and/or harmful food product that the  
26 Defendant manufactured, supplied, packaged, distributed, and/or sold, as set  
27  
28





1 52. The Defendant had a duty to properly supervise, train, and monitor its  
2 employees and to ensure that its employees complied with all applicable  
3 statutes, laws, regulations, safety codes, and provisions pertaining to the  
4 manufacture, distribution, packaging, and sale of similar food products. The  
5 Defendant, however, breached this duty and was therefore negligent.  
6

7 53. The Defendant had a duty to use supplies, tools, and other constituent  
8 materials that were reasonably safe, wholesome, and free of defects and that  
9 otherwise complied with applicable federal, state, and local laws, ordinances,  
10 regulations, codes, and provisions, and that were free from adulteration and  
11 injurious objects, and safe for human consumption. The Defendant, however,  
12 breached this duty and was therefore negligent.  
13

14 54. As a direct and proximate result of the Defendant's negligence, as described  
15 above, Plaintiff suffered significant physical injury and pain, and faces  
16 permanent injury, future pain, and loss of enjoyment of life, all of which  
17 amount to economic injury in an amount to be proved at trial. Plaintiff also  
18 incurred, and will incur, medical bills and lost wages from work, amounting to  
19 economic damages in an amount to be proved at trial.  
20

21  
22 **CLAIM THREE**  
23 **NEGLIGENCE *PER SE***

24 55. Plaintiff incorporates by reference, and makes a part of this count, each of  
25 the foregoing paragraph of this Complaint.  
26

27 56. The Defendant had a duty to comply with all statutory and regulatory  
28 provisions that pertained or applied to the manufacture, distribution, storage,

1 labeling, and sale of the food products that injured Plaintiff, including the  
2 applicable provisions of the Federal Food, Drug and Cosmetic Act, and  
3 similar Arizona public health laws, all of which prohibit the sale of any food  
4 that is adulterated or otherwise injurious to health.  
5

6 57. Plaintiff was among the class of persons designed to be protected by these  
7 statutes, laws, regulations, safety codes, and provisions pertaining to the  
8 manufacture, distribution, storage, labeling, and sale of the food products.  
9

10 58. In breach of this duty, the Defendant failed to comply with the provisions of  
11 the health and safety acts identified above and, as a result, was negligent *per*  
12 *se* in its manufacture, distribution, packaging, and/or sale of adulterated food.  
13

14 59. As a direct and proximate result of conduct by the Defendant that was  
15 negligent *per se*, Plaintiff suffered significant physical injury and pain, and  
16 faces permanent injury, future pain, and loss of enjoyment of life, all of which  
17 amount to economic injury in an amount to be proved at trial. Plaintiff also  
18 incurred, and will incur, medical bills and lost wages from work, amounting to  
19 economic damages in an amount to be proved at trial.  
20

21 **CLAIM FOUR**  
22 **BREACH OF WARRANTY**

23 60. Plaintiff incorporates by reference, and makes a part of this count, each  
24 foregoing paragraph of this Complaint.

25 61. The Defendant is liable to Plaintiff for breaching express and implied  
26 warranties that it made regarding the injurious products that Defendant sold,  
27  
28

1 and Plaintiff consumed. These express and implied warranties include the  
2 implied warranties of merchantability and/or fitness for a particular use.

3  
4 62. Specifically, Defendant expressly warranted, through its sale of food products  
5 to be consumed by the public and by the statements and conduct of its  
6 employees and agents, that the food products it sold were fit for human  
7 consumption and not otherwise adulterated or injurious to health.

8  
9 63. The harmful and injurious food product that the Defendant sold, and Plaintiff  
10 consumed, would not pass without exception in the trade and was therefore  
11 in breach of the implied warranty of merchantability.

12  
13 64. The harmful and injurious food product that the Defendant sold, and Plaintiff  
14 consumed, would not pass without exception in the trade and was therefore  
15 in breach of the implied warranty of merchantability.

16  
17 65. The harmful and injurious food product that the Defendant sold, and Plaintiff  
18 consumed, was not fit for the uses and purposes intended, i.e., human  
19 consumption; this product was therefore in breach of the implied warranty of  
20 fitness for its intended use.

21  
22 66. As a direct and proximate cause of the Defendant's breach of warranties, as  
23 set forth above, Plaintiff suffered significant physical injury and pain, and  
24 faces permanent injury, future pain, and loss of enjoyment of life, all of which  
25 amount to economic injury in an amount to be proved at trial. Plaintiff also  
26 incurred, and will incur, medical bills and lost wages from work, amounting to  
27 economic damages in an amount to be proved at trial.  
28

**DAMAGES**

1  
2 67. Plaintiff suffered general, special, incidental, and consequential damages as  
3 the direct and proximate result of the acts and omissions of the Defendant, in  
4 an amount that shall be fully proven at the time of trial. These damages  
5 include but are not limited to past and future pain and suffering, past and  
6 future damages for loss of enjoyment of life, past and future emotional  
7 distress, past and future medical and related expenses, including  
8 pharmaceutical expenses, travel, and travel-related expenses, and all other  
9 ordinary, incidental, or consequential damages that would or could be  
10 reasonably anticipated to arise under the circumstances.  
11  
12

**PRAYER FOR RELIEF**

13  
14 **WHEREFORE**, Plaintiff prays for judgment against the Defendant as follows:  
15

- 16 A. For all of Plaintiff's economic damages, including all past and future  
17 medical expenses, as determined at the time of trial;  
18  
19 B. For all of Plaintiff's non-economic damages, as determined at the time of  
20 trial;  
21  
22 C. That the Court award Plaintiff the opportunity to amend or modify the  
23 provisions of this complaint as necessary or appropriate after additional  
24 or further discovery is completed in this matter, and after all appropriate  
25 parties have been served; and  
26  
27 D. That the Court award all such other and further relief as it deems  
28 necessary and proper in the circumstances.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable with the maximum  
number of jurors permitted by law.

1 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of December 2024.  
2

3 **O'STEEN & HARRISON, PLC**

4 

5 \_\_\_\_\_  
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9 **MARLER CLARK, INC., PS**

10 William D. Marler  
11 180 Olympic Drive S.E.  
12 Bainbridge Island, Washington 98110

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Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of December 2024, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

/s/ Jonathan V. O'Steen

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