

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

FRANKLIN PEPPER, ESQ., as :
Administrator and Personal :
Representative of the Estate of :
GERTRUDE KLABUNDE, deceased :
11021 Montgomery Blvd. :
Albuquerque, New Mexico 87111 :

Plaintiff, :

v. : **Case No. 3:24-cv-825**

BOAR’S HEAD PROVISIONS CO., INC. :
1819 Main Street :
Suite 800 :
Sarasota, FL 34236 :

SERVE: Corporation Service Company :
Registered Agent :
100 Shockoe Slip, Floor 2 :
Richmond, VA 23219-4100 :

Defendant. :

FIRST AMENDED COMPLAINT
(Wrongful Death: Food Poisoning)

COMES NOW, Plaintiff Franklin Pepper, Esq., as Administrator and Personal Representative of the Estate of Gertrude Klabunde (“Decedent”), deceased, by and through undersigned counsel, and respectfully move for judgment against Defendant Boar’s Head Provisions Co., Inc. on the grounds and in the amount set forth below:

JURISDICTION AND VENUE

1. The jurisdiction of this Court is proper pursuant to 28 U.S.C. § 1332(a), since the matter in controversy far exceeds, exclusive of interests and costs, the sum of Seventy-Five Thousand Dollars (\$75,000.00) and there is diversity of citizenship between Plaintiff and Defendant.

2. Venue is proper in this judicial district as the facts giving rise to Plaintiff's Complaint arose in this judicial district.

PARTIES

3. Plaintiff is an adult resident of the Commonwealth of Virginia and was appointed the Personal Representative of the Estate of Gertrude Klabunde, pursuant to an Order dated November 12, 2024, issued by the Circuit Court for the City of Richmond, Virginia.

4. Wrongful-death beneficiaries David, Scott, and Todd Klabunde are, and were at all relevant times, residents of the State of New Mexico and the adult surviving children of Decedent Gertrude Klabunde.

5. Decedent Gertrude Klabunde was at all relevant times prior to her death a resident of the State of New Mexico.

6. Defendant Boar's Head Provisions Co., Inc. (Boar's Head) is a Florida corporation with its principal place of business located in Sarasota, Florida. Defendant is, therefore, a citizen of the state of Florida. Defendant, however, is licensed to do business, and conducts business, in the Commonwealth of Virginia.

7. At all times relevant to this action, Defendant was engaged in the manufacture, distribution, and sale of a variety of food products to customers across the country, including deli meat.

8. At all times relevant to this action, defendant owned, operated and managed a Boar's Head plant in Jarratt, which is in Greensville County, Virginia.

FACTS

9. Plaintiff repeats and realleges the prior allegations as if set forth herein.

10. This is an action against Defendant for injuries arising from the manufacture, distribution, and sale of contaminated food which was consumed by Decedent Gertrude Klabunde, causing her serious injuries and death and causing the surviving wrongful-death beneficiaries to suffer the loss of their mother; the loss of comfort, love, and guidance from her; the loss of services, protection, care, and assistance expected to be performed by her; extreme mental anguish, emotional pain, and grief; and financial expenses associated with the death of the Decedent, entitling her sons, David, Scott, and Todd Klabunde to compensatory and punitive damages for these harms and losses and any and all other damages recoverable under the Commonwealth of Virginia's Wrongful Death Statute, VA. CODE § 8.01-50.

The Boar's Head Listeria Outbreak

11. As of November 19, a total of 61 people infected with the outbreak strain of *Listeria* were reported from 19 states: Arizona 1, Florida 3, Georgia 2, Illinois 1, Indiana 1, Louisiana 1, Massachusetts 3, Maryland 8, Minnesota 1, Missouri 3, North Carolina 1, New Jersey 6, New Mexico 1, New York 19, Pennsylvania 2, South Carolina 2, Tennessee 1, Virginia 4 and Wisconsin 1.

12. Sick people's blood and stool samples were collected from May 29, 2024, to September 13, 2024. Of 61 people with information available, 60 were hospitalized. One person got sick during their pregnancy and remained pregnant after recovering.

13. Ten deaths were reported, including one in Illinois, one in New Jersey, two in New York, one in Virginia, one in Florida, one in Tennessee, one in New Mexico, and two in South Carolina.

14. Epidemiologic, laboratory, and traceback data show that Defendant's meats which are sliced at delis, including Boar's Head brand liverwurst, were contaminated with *Listeria* and were

responsible for making people sick.

15. Defendant's products sold at delis, especially those sliced or prepared at the delis, can be contaminated with *Listeria*. *Listeria* spreads easily among deli equipment, surfaces, hands, and food. Refrigeration does not kill *Listeria*, but reheating to a high enough temperature before eating will kill any germs that may be on these meats.

16. Defendant published a recall of its deli meat products, including liverwurst other deli meats, on July 26, 2024. The United States Department of Agriculture's Food Safety and Inspection Service (FSIS) announced that Defendant expanded its July 26, 2024, recall of deli meat products that may be adulterated with *Listeria monocytogenes* on July 30, 2024. Defendant is recalling approximately 7 million additional pounds of ready-to-eat meat and poultry products. Whole genome sequencing results show that a sample of Defendant's liverwurst collected by the Maryland Department of Health tested positive for the outbreak strain of *Listeria monocytogenes*.

17. This recall expansion includes 71 products produced between May 10, 2024, and July 29, 2024, under Defendant's Boar's Head and Old Country brand names. These items include meat intended for slicing at retail delis as well as some packaged meat and poultry products sold at retail locations. These products have "sell by" dates ranging from 29-JUL-2024 through 17-OCT-24. [View full product list.](#) [View labels.](#)

18. The products subject to recall were distributed to retail locations nationwide and some were exported to the Cayman Islands, Dominican Republic, Mexico, and Panama. The products shipped to retailers bear establishment number "EST. 12612" or "P-12612" inside the USDA mark of inspection on the product labels.

19. The problem was discovered when FSIS was notified that a liverwurst sample collected by the Maryland Department of Health tested positive for *L. monocytogenes*. The Maryland

Department of Health, in collaboration with the Baltimore City Health Department, collected an unopened liverwurst product from a retail store for testing as part of an outbreak investigation of *L. monocytogenes* infections. Further testing determined the product sample tested positive for the outbreak strain.

20. Beyond issues like paperwork lapses and leftover meat on equipment, the inspection records show inspectors faulted Defendant several times for mold and mildew building up in many locations throughout the company's facility in Jarratt, Virginia. In July, federal inspectors found what looked to be mold and mildew around the hand washing sinks for the workers tasked with handling meats that are supposed to be ready to eat. Mold was also found building up outside of steel vats used by the plant, as well as in holding coolers between the site's smokehouses. "A black mold like substance was seen throughout the room at the wall/concrete junction. As well as some caulking around brick/metal," an inspector wrote in January, noting that some spots were "as large as a quarter."

21. Other locations were found to have several issues with leaking and pooling water, including a puddle found with "a green algal growth" and condensation that was found to be "dripping over product being held."

22. After inspectors flagged one of the leaks to the company, workers tried to mop up the leaks. "The employee wiped a third time, and the leaks returned within 10 seconds," inspectors wrote after one condensation issue was raised on July 27, 2024, near fans that looked to be blowing the liquid onto uncovered deli meats.

23. In February, an inspector found "ample amounts of blood in puddles on the floor" and a "rancid smell" throughout a cooler used at the plant. A number of records also flag sightings of

insects in and around deli meats at the plant, including one instance that prompted the agency to tag more than 980 pounds of ham in a smokehouse hallway to be “retained” for an investigation.

24. In June, another report flagged concerns over flies going in and out of “vats of pickle” left by Defendant in a room. “Small flying gnat like insects were observed crawling on the walls and flying around the room. The rooms walls had heavy meat buildup,” the report notes. Other parts of the facility were also found to have bugs, including what looked to be “ants traveling down the wall,” as well as a beetle and a cockroach.

25. Further prior to the outbreak, Defendant did not install any barriers that separated the processing lines, and pallet jacks and product racks were moved between all processing lines and all blast coolers, in violation of the standard of care and which the United States Department of Agriculture (USDA) found to constitute inadequate controls to prevent the spread of bacteria throughout the processing environment.

26. The USDA further found that prior to the outbreak, Defendant failed to have a written plan to describe employee practices and use of personal protection equipment (PPE) when moving between processing lines, which led to employees freely moving among lines without changing PPE, which is in violation of the standard of care. Moreover, Defendant’s employees who handled garbage, conducted maintenance, removed condensation, and removed debris from floors, were permitted to freely move between lines without proper sanitation and PPE, in further violation of the standard of care.

27. Prior to the outbreak, the USDA also found that Defendant allowed beaded condensation to exist on door openings and inside at least one blast cell, dripping over and contaminating product.

28. The USDA confirmed that Defendant had an intentional practice of failing to maintain sanitary conditions during processing, handling, and storing of product.

29. Despite knowing of its egregious plant conditions and substandard manufacturing, processing, and packaging practices, Defendant falsely promised the following:

- “Our products are of unquestionable quality, without compromise, using only the best natural ingredients and nothing else.”
- “With Boar’s Head, you can trust each and every one of our products was prepared with the utmost care.”
- That Boar’s Head is “the brand consumers can count on for the highest quality delicatessen products in America.”
- Boar’s Head has “a passion to deliver on our promise for freshness and quality.”
- “At Boar’s Head, we are committed to providing the highest quality delicatessen products. Nothing less.”
- “[W]e are relentless about quality. If a product doesn't live up to our exacting standards, it doesn't carry the Boar's Head name. Simple as that.”
- “That's why Boar’s Head has been the deli brand you can trust for over 115 years.”
- That consumers deserved “better quality . . . than what was [otherwise] available.”
- “Our standards for quality have never wavered.”
- We “only use the finest ingredients.”
- “Commitments like these have made us a leader in our industry and have made Boar’s Head the brand in which consumers continue to place their trust.”
- “Since 1905, our standards of quality have never wavered.”
- “Our mission is to continue to be recognized as the leading provider of exceptional customer service and superior quality delicatessen products.”
- “HIGHER STANDARDS FOR PREMIUM FOODS”

- Defendant also advertised certifications and partnerships with the American Heart Association, indicating that its products are “heart healthy,” and the Feingold Association, a non-profit that “spreads awareness of the role of foods and synthetic additives in behavior, learning, and health.”
- We are proud to work with the American Heart Association® in its Food Certification Program and others.
- Defendant also made express promises to Sprouts Farmers Market and other retailers that its products were safe for human consumption, free of all adulterants, and made with the highest standards of quality and wholesomeness.

Listeria

30. *Listeria* is a gram-positive, rod-shaped bacterium that is ubiquitous and can grow under either anaerobic (without oxygen) or aerobic (with oxygen) conditions.

31. Listeriosis is one of the most important bacterial infections worldwide that arises mainly from the consumption of contaminated food.¹ The disease is caused by *Listeria monocytogenes*, which is considered an opportunistic pathogen that affects mainly those with underlying immune conditions, such as pregnant women, neonates, and elders, resulting in septicemia, meningitis, and/or meningoencephalitis. Of the six species of *Listeria*, only *L. monocytogenes* causes disease in humans. It thrives between bacteria 86-98.6°F (30-37°C), but *Listeria* can grow at temperatures as low as -0.4°C and survive in freezing conditions down to -18°C.² This unique quality allows thermal characteristics to be used as a means of differentiating *Listeria* from other possibly-contaminating bacteria.

32. *Listeria monocytogenes* is omnipresent in nature; it is found widely in such places as water, soil, infected animals, human and animal feces, raw and treated sewage, leafy vegetables,

¹ Reda, W. W., Abdel-Moein, K., Hegazi, A., Mohamed, Y., & Abdel-Razik, K. (2016). *Listeria monocytogenes*: An emerging food-borne pathogen and its public health implications. *The Journal of Infection in Developing Countries*, 10(02), 149-154. <https://doi.org/10.3855/jidc.6616>

effluent from poultry and meat processing facilities, decaying corn and soybeans, improperly fermented silage, and raw (unpasteurized) milk.³

33. Foodborne listeriosis is relatively rare but is a serious disease with high fatality rates (20%–30%) compared with other foodborne microbial pathogens. Severe *L. monocytogenes* infections are responsible for high hospitalization rates (91%) among the most common foodborne pathogens, may cause sporadic cases or large outbreaks, and can persist in food-processing environments and multiply at refrigeration temperatures, making *L. monocytogenes* a significant public health concern.⁴

34. Ready-to-eat foods are a notable and consistent source of *Listeria*. For example, a research study done by the *Listeria* Study Group found that *L. monocytogenes* grew from at least one food specimen in the refrigerators of 64% of persons with a confirmed *Listeria* infection (79 of 123 patients), and in 11% of more than 2,000 food specimens collected in the study. Moreover, 33% of refrigerators (26 of 79) contained foods that grew the same strain with which the individual had been infected, a frequency much higher than would be expected by chance. The danger posed by the risk of *Listeria* in ready-to-eat meats prompted the USDA to declare the bacterium an adulterant in these kinds of meat products and, as a result, to adopt a zero-tolerance policy for the presence of this deadly pathogen. The Code of Federal Regulations includes requirements for the post-lethality control of *Listeria* in meat and poultry products. This regulation is referred to as “The *Listeria* Rule,”

² Santos, T., Viala, D., Chambon, C., Esbelin, J., & Hébraud, M. (2019, May 24). *Listeria monocytogenes* Biofilm Adaptation to Different Temperatures Seen Through Shotgun Proteomics. <https://www.frontiersin.org/articles/10.3389/fnut.2019.00089/full>.

³ Manning, A. (2019). Microbial Food Spoilage and Food Borne Diseases. In *Food microbiology and food processing* (pp. 125–130). Chapter 2. ED-TECH PRESS.

⁴ Arslan, F., Meynet, E., Sunbul, M. *et al.* The clinical features, diagnosis, treatment, and prognosis of neuroinvasive listeriosis: a multinational study. *Eur J Clin Microbiol Infect Dis* 34, 1213–1221 (2015). <https://doi.org/10.1007/s10096-015-2346-5>

which was enacted in 2003. The rule outlines prevention and control measures that must be taken in processing facilities to reduce the risk of contamination of ready-to-eat products.⁵

35. *Listeria* typically spreads to people through contaminated food or water but can also be transmitted from mother to fetus.

36. Except for the transmission of mother to fetus, human-to-human transmission of *Listeria* is not known to occur. Infection is caused almost exclusively by the ingestion of the bacteria, most often through the consumption of contaminated food. The most widely accepted estimate of foodborne transmission is 85-95% of all *Listeria* cases.

37. The infective dose—that is, the number of bacteria that must be ingested to cause illness—is not known but is suspected to vary based on the strain. In an otherwise healthy person, an extremely large number of *Listeria* bacteria must be ingested to cause illness—estimated to be somewhere between 10-100 million viable bacteria (or colony forming units “CFU”) in healthy individuals, and only 0.1-10 million CFU in people at high risk of infection. Even with such a dose, a healthy individual will suffer only a fever, diarrhea, and related gastrointestinal symptoms.

38. The amount of time from infection to the onset of symptoms—typically referred to as the incubation period—can vary to a significant degree.⁶

39. According to the CDC, symptoms of *Listeria* infection can develop at any time from the same day of exposure to 70 days after eating contaminated food. According to the FDA, gastroenteritis (or non-invasive illness) has an onset time of a few hours to 3 days, while invasive illness can have an onset varying from 3 days to 3 months. According to one authoritative text:

⁵ USDA Staff. (2014, January 1). *Controlling Listeria monocytogenes in Post-lethality Exposed Ready-to-Eat Meat and Poultry Products*. <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/guidelines/2014-0001>.

⁶ Goulet V, King LA, Vaillant V, de Valk H. What is the incubation period for listeriosis? *BMC Infect Dis*. 2013; 13:11. Published 2013 Jan 10. doi:10.1186/1471-2334-13-11

The incubation period for invasive illness is not well established, but evidence from a few cases related to specific ingestions points to 11 to 70 days, with a mean of 31 days. In one report, two pregnant women whose only common exposure was attendance at a party developed *Listeria* bacteremia with the same uncommon enzyme type; incubation periods for illness were 19 and 23 days.

40. Adults can get listeriosis by eating food contaminated with *Listeria*, but babies can be born with listeriosis if their mothers eat contaminated food during pregnancy. The mode of transmission of *Listeria* to the fetus is either transplacental via the maternal bloodstream or ascending from a colonized genital tract. Infections during pregnancy can cause premature delivery, miscarriage, stillbirth, or serious health problems for the newborn. Pregnant women make up around 30% of all infection cases while accounting for 60% of cases involving the 10- to 40-year age group.

41. Several segments of the population are at increased risk and need to be informed so that proper precautions can be taken. The body's defense against *Listeria* is called "cell-mediated immunity" because the success of defending against infection depends on our cells (as opposed to our antibodies), especially lymphocytes, otherwise known as "T-cells." Therefore, individuals whose cell-mediated immunity is suppressed are more susceptible to the devastating effects of listeriosis, including HIV-infected individuals, who have been found to have *Listeria*-related mortality of 29%. The incidence of *Listeria* infection in HIV-positive individuals is higher than in the general population. One study found that:

The estimated incidence of listeriosis among HIV-infected patients in metropolitan Atlanta was 52 cases per 100,000 patients per year, and among patients with AIDS it was 115 cases per 100,000 patients per year, rates 65-145 times higher than those among the general population. HIV-associated cases occurred in adults who were 29-62 years of age and in postnatal infants who were 2 and 6 months of age.

42. Pregnant women naturally have a depressed cell-mediated immune system. While other systemic bacterial infections may result in adverse pregnancy outcomes at comparable frequencies, *L. monocytogenes* have notoriety because fetal complications largely occur in the

absence of overt illness in the mother, delaying medical intervention. In addition, the immune systems of fetuses and newborns are very immature and are extremely susceptible to these types of infections.

43. Other adults, especially transplant recipients and lymphoma patients, are given necessary therapies with the specific intent of depressing T-cells, and these individuals become especially susceptible to *Listeria* as well. Other adults, especially transplant recipients and lymphoma patients, are given necessary therapies with the specific intent of depressing T-cells, and these individuals become especially susceptible to *Listeria* as well.

44. According to the FDA, CDC, and other public health organizations, individuals at increased risk for being infected and becoming seriously ill with *Listeria* include the following groups:

- Pregnant women: They are about 10-20 times more likely than other healthy adults to get listeriosis. About one-third of listeriosis cases happen during pregnancy. Fetuses are also highly susceptible to infection and severe complications.
- Newborns: Newborns can develop life-threatening diseases from perinatal and neonatal infections
- Persons with weakened immune systems
- Persons with cancer, diabetes, kidney, or gastrointestinal disease
- Persons with HIV/AIDS: Individuals with HIV/AIDS are almost 300 times more likely to get listeriosis than people with healthy immune systems.
- Persons who take glucocorticosteroid medications (such as cortisone)
- Persons of advanced age: One risk assessment showed people over 60 years old were 2.6 times more likely to develop listeriosis than the general population. And in 2011, the median age of diagnosed cases in people who were not pregnant was 71 years old.

45. Only a small percentage of persons who ingest *Listeria* fall ill or develop symptoms. For those who do develop symptoms because of their infection, the resulting illness is either mild or

quite severe, in what is sometimes referred to as a “bimodal distribution of severity.”⁷ *Listeria* can cause two different types of disease syndromes with differing severity. Non-invasive *Listeria* infection causes gastroenteritis with symptoms such as diarrhea, nausea, and vomiting that resolve on their own. Healthy adults without any immunocompromising conditions typically experience this milder version of the disease. The more severe type of disease caused by *Listeria monocytogenes* is called listeriosis and is referred to as an invasive illness.

46. On the mild end of the spectrum, listeriosis usually consists of the sudden onset of fever, chills, severe headache, vomiting, and other influenza-type symptoms. Along these same lines, the CDC notes that infected individuals may develop fever, muscle aches, and sometimes gastrointestinal symptoms such as nausea or diarrhea. When present, the diarrhea usually lasts 1-4 days (with 42 hours being average), with 12 bowel movements per day at its worst.

47. The more severe form of the illness occurs when the bacteria infect parts of the body that are typically sterile, such as the blood, brain, liver, and cerebral spinal fluid. The presence of the bacteria in these areas triggers the immune response and can lead to those more severe symptoms. *L. monocytogenes* has a specific affinity for the central nervous system (CNS), especially in cell-mediated immunodeficient individuals.⁸

48. As already noted, when pregnant, women have a mildly impaired immune system that makes them susceptible to *Listeria* infection. If infected, the illness appears as acute fever, muscle pain, backache, and headache. The illness usually occurs in the third trimester, which is when immunity is at its lowest. Infection during pregnancy can lead to premature labor, miscarriage,

⁷ Waldron, C. M. (2017, September 15). *The Recovery and Transfer of Aerosolized Listeria Innocua*. <https://vtechworks.lib.vt.edu/handle/10919/78907>.

⁸ Arslan, F., Meynet, E., Sunbul, M., Sipahi, O. R., Kurtaran, B., Kaya, S., ... Mert, A. (2015, June). *The clinical features, diagnosis, treatment, and prognosis of neuroinvasive listeriosis: a multinational study*. *European journal of clinical microbiology & infectious diseases: official publication of the European Society of Clinical Microbiology*. <https://www.ncbi.nlm.nih.gov/pubmed/25698311>.

infection of the newborn, or even stillbirth. Around twenty percent of such infections result in stillbirth or neonatal death.

49. Newborns may present clinically with early-onset (less than 7 days) or late-onset forms of infection (7 or more days). Those with the early-onset form are often diagnosed in the first 24 hours of life with septicemia, meningitis, or respiratory distress and have a higher mortality rate. Early-onset listeriosis is most often acquired through trans-placental transmission. Late-onset neonatal listeriosis is less common and less severe than the early-onset form. Clinical symptoms may be subtle and include irritability, fever, poor feeding, and meningitis. The mode of acquisition of late onset listeriosis is poorly understood.

50. For those persons who suffer a *Listeria* infection that does not resolve on its own, the complications can be numerous and possibly severe. The most common complication is septicemia (bacterial infection in the blood), with meningitis being the second most common. Other complications can include inflammation of the brain or brain stem (encephalitis), brain abscess, inflammation of the heart-membrane (endocarditis), septic arthritis, osteomyelitis (infection in the bone), and localized infection, either internally or of the skin.

51. Death is the most severe consequence of listeriosis, and it is tragically common. The CDC has estimated that *L. monocytogenes* is the third leading cause of death from foodborne illness, with approximately 260 of 1,600 people diagnosed dying from their infections. For example, based on 2018 FoodNet surveillance data, 96% of 126 *Listeria* cases ended up in the hospital, the highest hospitalization rate for pathogenic bacterial infection. This data showed a fatality rate of 21%. According to the FDA, the case-fatality rate increases substantially based on complications, possibly reaching rates of 70% in cases with listeria meningitis, 50% in septicemia cases, and over 80% for

perinatal/neonatal infections. In one US study, *L. monocytogenes* was reportedly the cause of nearly 4% of all cases of bacterial meningitis.

The Decedent's *Listeria* Infection, Illness, and Death

52. On July 4 and 5, 2024, Decedent Gertrude Klabunde consumed Defendant's Liverwurst, which was purchased on July 3, 2024, at Sprouts Farmers Market, located at 11201 Montgomery Blvd., in Albuquerque, NM 87111. In deciding to purchase and consume Defendant's liverwurst, Decedent's son relied on the express promises of Boar's Head as set forth above, as well as Defendant's commercials in which Defendant promised safe and high-quality deli-meats, as well as the fact that he noticed that Sprouts Farmers Market and many other sellers of deli-meat had historically sold Defendant's deli-meat products.

53. On July 10, Decedent began to feel ill with diarrhea, muscle aches, headache, and frequent urination.

54. Decedent became delirious. Started asking for her father to help her. She lost appetite and started going downhill from there. She was unable to eat. She was put on a feeding tube. Massive antibiotics were administered. She became less and less responsive. She did not recognize her family. She was moved to hospice unit. She passed two days later on August 8, 2024, at the age of 95.

55. It was confirmed by the CDC that Decedent's *Listeria* culture was a WGS match to the outbreak strain, and her death was noted as a death related to the outbreak caused by Defendant's tainted food.

56. Decedent's injuries and death were caused by Defendant's tainted food.

57. As a further direct result of being sickened by Defendant's defective food product, Decedent incurred substantial medical bills and expenses associated with the treatment of her

injuries; and she suffered significant pain, emotional anguish, and other damages, entitling her, directly and through her estate, compensatory and punitive damages for these harms and losses and any and all other damages recoverable under the Commonwealth of Virginia's Survival Act Statute, VA. CODE § 8.01-25, *et seq.*

58. As a further direct result of Defendant's defective food product, Decedent's surviving wrongful-death beneficiaries, David, Scott, and Todd Klabunde, suffered the loss of their mother; the loss of comfort, love, and guidance from their mother; the loss of services, protection, care, and assistance expected to be performed by their mother; extreme mental anguish, emotional pain, and grief; and financial expenses associated with the death of Gertrude Klabunde, entitling them to compensatory and punitive damages for these harms and losses and any and all other damages recoverable under the Commonwealth of Virginia's Wrongful Death Statute, VA. CODE § 8.01-50.

COUNT I

(Negligence/Gross Negligence/Recklessness/Failure to Warn/Negligence *Per Se*)

59. Plaintiff repeats and realleges the prior allegations as fully set forth herein.

60. At all relevant times, Defendant was engaged in the business of manufacturing, distributing, supplying, and introducing into the stream of commerce food products intended for human consumption.

61. At all times relevant, Decedent was a person of the type that Defendant might and should have reasonably expected to consume Defendant's goods, namely its liverwurst products, and be affected by them.

62. Consistent with the standard of care, Defendant had a duty to Decedent and others to avoid manufacturing, distributing, supplying, and introducing into the stream of commerce contaminated food, including liverwurst. Defendant breached this duty by failing to employ the proper and necessary protocols and practices required by the standard of care to ensure its food products were

manufactured, processed, stored, packaged, and sold free of bacteria, including *Listeria*.

63. Further consistent with the standard of care, Defendant owed a duty to Decedent and others to use supplies and raw materials that complied with federal, state, and local food laws, ordinances, and regulations, including without limitation the statutes in Code of Virginia Title 3.2, Subtitle IV, Chapter 51, Articles 1-3; that were safe and reliable sources; that were clean, wholesome, and free from adulteration; and that were safe for human consumption and for their intended purposes. Defendant breached this duty.

64. Further consistent with the standard of care, Defendants owed a duty to Decedent and others to use reasonable care in the handling, manufacture, processing, storage, and distribution of their meat products, to keep them free of contamination with *Listeria*. Defendant breached this duty.

65. Furthermore, at all relevant times, Defendant was fully aware of the egregious conditions at its plant, and knew, or should have known, that such conditions were breeding grounds for the presence and spread of *Listeria*.

66. Furthermore, Defendant had actual and constructive knowledge that its food was likely contaminated with *Listeria* and other bacteria given the egregious conditions that Defendant allowed to exist at its plant, and Defendant further knew, or should have known, that consuming its food products, including liverwurst, would be extremely dangerous to consumers.

67. At all relevant times, Defendant knew or had reason to know that the presence of bacteria, including *Listeria*, in the food was not obvious to or readily discoverable by Decedent and other consumers.

68. At all relevant times, Defendant had a duty to warn Decedent and others of the egregious condition of its plant and that its food was likely contaminated with bacteria, including *Listeria*. Defendant breached this duty in that Defendant did not warn Decedent of the condition of its plant nor

that its food was likely contaminated with bacteria, including *Listeria*, despite knowing of the egregious conditions of its plant and the likelihood of the presence of bacteria from such conditions.

69. The food that Defendant manufactured, sold, distributed, and supplied was unmerchantable as to Decedent and not fit for its ordinary purpose, and Defendant knew that at the time it sold, distributed, and supplied the product for Decedent's consumption that it was unmerchantable, but failed to warn Decedent and others of this fact.

70. Defendant's actions as described herein were grossly negligent, reckless, and constituted utter and wanton disregard for Decedent's rights and safety.

71. Consistent with the standard of care, Virginia Code § 3.2-5126 prohibits the manufacture, sale, delivery, and offering or sale of adulterated food. Defendant breached this duty by not taking the appropriate steps to ensure its plant was properly sanitized and its food products were appropriately manufactured, processed, stored, and packaged so they were safe for consumption.

72. Virginia Code § 3.2-5126 prohibits the dissemination of any false advertisement in connection with food. Defendant breached this duty by stating that its food products, including its liverwurst, were safe for human consumption when it knew, or should have known, that it was likely tainted with poisonous bacteria.

73. Virginia Code § 3.2-5126 prohibits the giving of a guaranty or undertaking concerning a food, which guaranty, or undertaking is false. Defendant breached this duty by stating that its food products, including its liverwurst, were safe for human consumption when it knew, or should have known, that it was likely tainted with poisonous bacteria. Defendant falsely promised the following:

- “Our products are of unquestionable quality, without compromise, using only the best natural ingredients and nothing else.”
- “With Boar's Head, you can trust each and every one of our products was prepared with the utmost care.”

- That Boar’s Head is “the brand consumers can count on for the highest quality delicatessen products in America.”
- Boar’s Head has “a passion to deliver on our promise for freshness and quality.”
- “At Boar’s Head, we are committed to providing the highest quality delicatessen products. Nothing less.”
- “[W]e are relentless about quality. If a product doesn't live up to our exacting standards, it doesn't carry the Boar's Head name. Simple as that.”
- “That's why Boar’s Head has been the deli brand you can trust for over 115 years.”
- That consumers deserved “better quality . . . than what was [otherwise] available.”
- “Our standards for quality have never wavered.”
- We “only use the finest ingredients.”
- “Commitments like these have made us a leader in our industry and have made Boar’s Head the brand in which consumers continue to place their trust.”
- “Since 1905, our standards of quality have never wavered.”
- “Our mission is to continue to be recognized as the leading provider of exceptional customer service and superior quality delicatessen products.”
- “HIGHER STANDARDS FOR PREMIUM FOODS”
- Defendant also advertised certifications and partnerships with the American Heart Association, indicating that its products are “heart healthy,” and the Feingold Association, a non-profit that “spreads awareness of the role of foods and synthetic additives in behavior, learning, and health.”
- We are proud to work with the American Heart Association® in its Food Certification Program and others.
- Defendant also made express promises to Sprouts Farmers Market and other retailers that its products were safe for human consumption, free of all adulterants, and made with the highest standards of quality and wholesomeness.

74. Decedent was a member of the class of people for whose protection Virginia Code § 3.2-5126 and Title 3.2, Chapter 31, Article 3 of the Virginia Code were enacted.

75. The aforesaid breaches by Defendant of the applicable standard care in failing to manufacture, process, store, and package its food product and Defendant's violations of Virginia Code § 3.2-5126 constitute negligence *per se*.

76. As a direct and proximate result of Defendant's negligent, gross negligent, reckless, and willful breaches of duties and noncompliance with applicable law and safety regulations, it manufactured, processed, packaged, distributed, and sold food products in an unsanitary manner, and such food products, including the liverwurst sold to Decedent's son and consumed by Decedent, were not reasonably safe, and, as a proximate result, it caused Decedent to suffer severe personal injuries, as well as economic loss; caused her to suffer bodily pain and mental anguish; caused her to suffer pain of body and mind; caused her to incur medical and related expenses; and has caused her death.

77. As a further direct result of Defendant's negligent, gross negligent, reckless, and willful breaches of duties and noncompliance with applicable law and safety regulations, it manufactured, distributed, and sold food products that were not reasonably safe, and, as a proximate result, it caused the surviving wrongful-death beneficiaries to suffer the loss of their mother; the loss of comfort, love, and guidance from their mother; the loss of services, protection, care, and assistance expected to be performed by their mother; extreme mental anguish, emotional pain, and grief; and financial expenses associated with the death of Decedent.

COUNT II
(Breach of Express Warranty)

78. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

79. Defendant is a manufacturer, distributor, supplier, and seller of deli-meat food products and the components thereof. Defendant, through its manufacture, distribution, supply, and sale of deli-meat food products, expressly warranted that its products were reasonably safe for their ordinary and foreseeable purpose (*i.e.*, consumption).

80. At all times relevant, Decedent was a person of the type that Defendant might and should have reasonably expected to consume Defendant's goods, namely its liverwurst products, and be affected by them.

81. Among other misrepresentations, Defendant falsely promised the following, which Decedent's son relied upon in deciding to purchase Defendant's liverwurst and Decedent ultimately relied on to consume Defendant's liverwurst:

- “Our products are of unquestionable quality, without compromise, using only the best natural ingredients and nothing else.”
- “With Boar’s Head, you can trust each and every one of our products was prepared with the utmost care.”
- That Boar’s Head is “the brand consumers can count on for the highest quality delicatessen products in America.”
- Boar’s Head has “a passion to deliver on our promise for freshness and quality.”
- “At Boar’s Head, we are committed to providing the highest quality delicatessen products. Nothing less.”
- “[W]e are relentless about quality. If a product doesn't live up to our exacting standards, it doesn't carry the Boar's Head name. Simple as that.”
- “That's why Boar’s Head has been the deli brand you can trust for over 115 years.”
- That consumers deserved “better quality . . . than what was [otherwise] available.”
- “Our standards for quality have never wavered.”

- We “only use the finest ingredients.”
- “Commitments like these have made us a leader in our industry and have made Boar’s Head the brand in which consumers continue to place their trust.”
- “Since 1905, our standards of quality have never wavered.”
- “Our mission is to continue to be recognized as the leading provider of exceptional customer service and superior quality delicatessen products.”
- “HIGHER STANDARDS FOR PREMIUM FOODS”
- Defendant also advertised certifications and partnerships with the American Heart Association, indicating that its products are “heart healthy,” and the Feingold Association, a non-profit that “spreads awareness of the role of foods and synthetic additives in behavior, learning, and health.”
- “We are proud to work with the American Heart Association® in its Food Certification Program and others.”
- Defendant also made express promises to Sprouts Farmers Market and other retailers that its products were safe for human consumption, free of all adulterants, and made with the highest standards of quality and wholesomeness.

82. Defendant was the manufacturer, distributor, supplier, and seller of the deli-meat food product consumed by Decedent that caused Decedent’s exposure to *Listeria*, her *Listeria* infection, and ultimately her death.

83. Defendant did not disclaim the warranties.

84. To the contrary, Defendant marketed its deli-meat products, expressly promising that they were healthy and safe for consumption.

85. Decedent was a consumer who relied on each of Defendant’s express warranties in deciding to purchase and consume Defendant’s liverwurst.

86. The deli-meat products manufactured, supplied, and sold by Defendant were contaminated with *Listeria*, a potentially fatal pathogen. As such, the deli-meat food products were unreasonably dangerous for their ordinary and foreseeable use.

87. The deli-meat food products were contaminated with *Listeria* when they left the possession and control of Defendant and were subsequently consumed by Decedent.

88. Defendant breached the express warranty of the safety of its goods for their expected and foreseeable purpose. This breach was the direct and proximate cause of Decedent's personal, economic, and other injuries, and Defendant is therefore liable to Decedent and the surviving wrongful-death beneficiaries for the injuries Defendant caused.

COUNT III

(Breach of Implied Warranties of Merchantability and Wholesomeness)

89. Plaintiff repeats and realleges the prior allegations as fully set forth herein.

90. Under Virginia Code § 8.2-314, a merchant that sells goods impliedly warrants that the goods are merchantable; *i.e.*, that the goods will pass without objection in the trade under the contract description; that the goods are fit for the ordinary purposes for which such goods are used; and, that the goods are adequately contained, packaged, and labeled as the agreement requires.

91. Further Under Virginia Code § 8.2-314, “a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind,” and the “serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.”

92. Defendant was a merchant of food products that sold such foods in sealed containers and packages to a retailer, who in turn sold it to Decedent's son, an ultimately to Decedent, a consumer of Defendant's food product, who became sickened by it and ultimately died as a result. The impurities of the food product existed in the product before it left Defendant's possession.

93. At all times relevant, Decedent was a person of the type that Defendant might and should have reasonably expected to consume Defendant's goods, namely its liverwurst products, and be affected by them.

94. The food that Defendant manufactured, distributed, supplied, and sold was objectionable because it contained *Listeria*, was not fit for its ordinary purpose (consumption), and was not wholesome.

95. Thus, Defendant breached the implied warranties of merchantability and wholesomeness because the liverwurst was not fit for ordinary use (consumption) or wholesome but was instead poisonous and deadly to Decedent.

96. In manufacturing, distributing, supplying, and selling the contaminated food, Defendant breached the implied warranties as described above.

97. As a direct and proximate result of the breach of implied warranties by Defendant, Decedent was caused to suffer serious injuries and, bodily pain and mental distress, and death, and the surviving wrongful-death beneficiaries have suffered and will suffer extreme damages in the future.

COUNT IV
(Virginia Consumer Protection Act)

98. Plaintiff repeats and realleges the prior allegations as fully set forth herein.

99. At all relevant times, Defendant was a supplier of goods under the Virginia Consumer Protection Act, Virginia Code § 59.1-196, *et seq.*

100. At all times relevant, Decedent was a person of the type that Defendant might and should have reasonably expected to consume Defendant's goods, namely its liverwurst products, and be affected by them.

101. Defendant marketed its deli-meat product, including the liverwurst consumed by Decedent, as "safe" for consumption and further falsely promised:

- “Our products are of unquestionable quality, without compromise, using only the best natural ingredients and nothing else.”
- “With Boar’s Head, you can trust each and every one of our products was prepared with the utmost care.”
- That Boar’s Head is “the brand consumers can count on for the highest quality delicatessen products in America.”
- Boar’s Head has “a passion to deliver on our promise for freshness and quality.”
- “At Boar’s Head, we are committed to providing the highest quality delicatessen products. Nothing less.”
- “[W]e are relentless about quality. If a product doesn't live up to our exacting standards, it doesn't carry the Boar's Head name. Simple as that.”
- “That's why Boar’s Head has been the deli brand you can trust for over 115 years.”
- That consumers deserved “better quality . . . than what was [otherwise] available.”
- “Our standards for quality have never wavered.”
- We “only use the finest ingredients.”
- “Commitments like these have made us a leader in our industry and have made Boar’s Head the brand in which consumers continue to place their trust.”
- “Since 1905, our standards of quality have never wavered.”
- “Our mission is to continue to be recognized as the leading provider of exceptional customer service and superior quality delicatessen products.”
- “HIGHER STANDARDS FOR PREMIUM FOODS”
- Defendant also advertised certifications and partnerships with the American Heart Association, indicating that its products are “heart healthy,” and the Feingold Association, a non-profit that “spreads awareness of the role of foods and synthetic additives in behavior, learning, and health.”
- We are proud to work with the American Heart Association® in its Food Certification Program and others.

- Defendant also made express promises to Sprouts Farmers Market and other retailers that its products were safe for human consumption, free of all adulterants, and made with the highest standards of quality and wholesomeness.

102. At all relevant times, Defendant was engaged in a consumer transaction with Decedent's son, and thereby Decedent, pursuant to Code of Virginia § 8.2-318, Defendant intended consumers to rely on its representations, Decedent's son relied to his detriment on each of Defendant's representations in deciding to purchase the deli-meat, and Decedent relied on Defendant's representations to her detriment when deciding to consume Defendant's product. In the weeks and months leading up to her son's purchase and her eventual death, Decedent and her son read, as they had previously over the years, the promises and warranties cited above in deciding to purchase and consume the product.

103. The Virginia Consumer Protection Act prohibits a supplier that is engaged in a consumer transaction from misrepresenting that its goods and services have certain characteristics, safe ingredients, uses, or benefits; misrepresenting that its goods and services are of a particular standard or quality of manufacturing, processing, storing, and packaging; and, using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.

104. The deli-meat consumed by Decedent was not safe, nor was it safe for consumption and made with the highest standards of safety, nor was it made with safe ingredients that could be trusted, as they were known by Defendant to be manufactured, processed, stored, and packaged under egregiously dangerous conditions and through dangerous practices that made it likely that its food product was contaminated with bacteria, including *Listeria*.

105. The Defendant's false and misleading representations to the public concerning its plant conditions, practices, and quality of food products, along with its other breaches as described

herein, breached and constituted prohibited practices under the Virginia Consumer Protection Act (VCPA), Virginia Code § 59.1-200.

106. Defendant acted with reckless indifference and with knowledge of circumstances that threatened public injury by knowingly manufacturing, processing, storing, and packaging its food products under egregiously dangerous conditions, and instead of abiding by its obligations pursuant to the standard of care described above and as set forth by law, also cited above, Defendant made false and misleading representations to the public concerning its business practices and its products, which it intended the public to rely upon, and which the public, including Decedent and her son, in fact relied upon, all while Defendant knew its products were likely to be contaminated with bacteria, including *Listeria*.

107. Defendant's breaches of the VCPA were reckless, willful, in wanton disregard for the wellbeing of the public, and designed with the intent to mislead Decedent, who was in fact misled, as she relied on the above misrepresentations to her detriment in deciding to consume Defendant's product, which caused her injuries and death.

108. Each of these misrepresentations stated above were made by Defendant's executives on a daily basis for many months, if not longer, leading up to the time of Decedent's consumption, via Defendant's website, infographics, Tweets/X statements, commercials, the materials Defendant distributed to Kroger's and other retailers, and through other means, and Decedent read and relied to her detriment on these false representations in deciding to consume the Defendant's product. Had they not been misled by Defendant, Decedent and her son would have acted differently and chosen to not purchase or consume Defendant's product; thus, Decedent would have not been injured and died.

109. Virginia Code § 59.1-204 permits consumers who are injured by a defendant supplier's

violation of the Virginia Consumer Protection Act to recover actual damages, and treble damages if the defendant's violation was willful, as well as attorneys' fees and court costs. Accordingly, Plaintiff, on behalf of the Decedent and surviving wrongful death beneficiary, seeks damages, including treble damages, as well as costs and attorneys' fees under the VCPA against the Defendant.

110. As a direct and proximate result of Defendant's violations of the VCPA, Decedent was caused to suffer serious injuries; bodily pain and mental anguish, and death, and the surviving wrongful death beneficiaries have suffered extreme damages and will suffer the same in the future as described herein.

COUNT V
(Survival Act)

111. Plaintiff incorporates by reference the foregoing paragraphs, and further allege that this claim arises under the Virginia Survival Act, Virginia Code § 8.01-25, *et seq.*

112. Decedent's rights of action as set forth above against Defendant survive in favor of Plaintiff, as Administrator and Personal Representative of her Estate, as well as her statutory beneficiaries. As a result of the negligent, grossly negligent, and reckless acts and/or omissions of Defendant, as previously described, Decedent experienced severe pain and suffering, mental and emotional anguish, and other injuries and damages before her untimely, painful, and preventable death, which was caused by Defendant's wrongful conduct, entitling her to compensatory and punitive damages pursuant to the Virginia Survival Act Statute.

COUNT VI
(Wrongful Death)

113. Plaintiff incorporates by reference the foregoing paragraphs, and further allege that this claim arises under the Commonwealth of Virginia's Wrongful Death Statute, VA Code § 8.01-

114. As a direct and proximate result of the negligence, gross negligence, recklessness, and wrongful acts and omissions of Defendant, as previously described, wrongful-death beneficiaries, David, Scott, and Todd Klabunde, as the surviving adult children of Gertrude Klabunde (deceased), suffered, and will continue to suffer, the loss of their mother; the loss of comfort, love, and guidance from her; the loss of services, protection, care, and assistance expected to be performed by her; have suffered, and will continue to suffer, extreme mental anguish, emotional pain, and grief; have incurred financial expenses associated with the death of their mother; and are entitled to compensatory and punitive damages for these harms and losses and any and all other damages recoverable under the Virginia Wrongful Death Act.

WHEREFORE, Plaintiff Franklin Pepper, Esq., as Administrator and Personal Representative of the Estate of Gertude Klabunde, deceased, and on behalf of the wrongful-death beneficiaries, demands damages against Defendant Boar's Head Provisions Co., Inc. in the sum of TEN MILLION DOLLARS (\$10,000,000.00) for compensatory damages, plus pre-judgement interest from July 10, 2024—the date of the injury onset—and costs; punitive damages in the amount of Ten Million Dollars (\$10,000,000.00); and an award of attorneys'-fees as may be permitted by law.

TRIAL BY JURY IS DEMANDED BY PLAINTIFF.

FRANKLIN PEPPER, ESQ.

By Counsel

Respectfully submitted,

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