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SUMMONS ISSUED

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Per local Rule, This case is assigned to  
Judge Reyes, Benjamin T, II, for all purposes.

*Attorneys for Plaintiff*

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
**COUNTY OF CONTRA COSTA**

EMMA WILLS, as Administrator and  
Personal Representative of the Estate of  
JOHN WILLS,

Plaintiff,

v.

LYONS MAGNUS LLC, a California  
Limited Liability Company, and PRAIRIE  
FARMS DAIRY, INC.,

Defendants.

Case No.: C25-02227

**UNLIMITED JURISDICTION**

**PLAINTIFF'S COMPLAINT FOR  
DAMAGES FOR:**

**1<sup>st</sup> Cause of Action: Strict Product Liability**

**2<sup>nd</sup> Cause of Action: Breach of Warranty**

**3<sup>rd</sup> Cause of Action: Negligence**

**4<sup>th</sup> Cause of Action: Negligence *Per se***

**5<sup>th</sup> Cause of Action: Survival Action**

**6<sup>th</sup> Cause of Action: Wrongful Death**

**DEMAND FOR JURY TRIAL**

**PLAINTIFF'S COMPLAINT**

COMES NOW Plaintiff Emma Wills, as Administrator and Personal Representative of  
the Estate of John Wills who, by and through her attorneys, FREDERIC L. GORDON and

1 MARLER CLARK INC., PS (*pro hac vice* forthcoming), alleges upon information and belief as  
2 follows:

3 **PARTIES**

4  
5 1. Plaintiff Emma Wills, Administrator and Personal Representative of the Estate of  
6 John Wills (“Plaintiff”), is a resident of Richmond, Contra Costa County, California.

7 2. Defendant Lyons Magnus LLC (“Lyons Magnus”) is a California Limited  
8 Liability Company, with its principal place of business located at 3158 East Hamilton Avenue,  
9 Fresno, California 93702. Lyons Magnus LLC was the manufacturer, supplier, packager,  
10 distributor, and/or seller of the adulterated food product that is the subject of this action.  
11

12 3. Defendant Prairie Farms Dairy, Inc. (“Prairie Farms”) is a for-profit corporation  
13 organized and existing under the laws of the State of Illinois. The recalled products at issue in  
14 this case were manufactured at Prairie Farms’s facility in Fort Wayne, Indiana. Prairie Farms  
15 was the manufacturer, supplier, packager, distributor, and/or seller of the adulterated food  
16 product that is the subject of this action.  
17

18 **JURISDICTION AND VENUE**

19 4. Plaintiff’s cause of action arose and accrued in Contra Costa County, California,  
20 where the injury occurred. Defendant Lyons Magnus maintains its principal place of business in  
21 Fresno, California. Therefore, jurisdiction and venue are proper in this Court.  
22

23 **GENERAL ALLEGATIONS**

24 **An Outbreak of *Listeria monocytogenes* Associated with Lyons Magnus LLC Shakes**

25 5. On February 22, 2025, Lyons Magnus LLC (“Lyons Magnus”) announced that it  
26 is voluntarily recalling 4 oz. Lyons ReadyCare and Sysco Imperial Frozen Supplemental Shakes  
27 due to the potential for the products to be contaminated with *Listeria monocytogenes*.  
28

6. Lyons Magnus took this action in response to a recall of the products by their manufacturer, Prairie Farms Dairy, Inc. ("Prairie Farms") from the Prairie Farms facility in Fort Wayne, Indiana.

7. Lyons Magnus handled distribution of the recalled products, which were manufactured and supplied to Lyons Magnus by Prairie Farms. The recalled products were distributed primarily to long-term care facilities and were not available for retail sale.

8. The recalled products were distributed throughout the United States and packed in 4 oz. cartons under the Lyons ReadyCare and Sysco Imperial brand names.

9. The recalled products are:

Key	Item #	Product Name	BB (Best By)
1	1733	ReadyCare Frozen Vanilla Shake	022125 To 022126
2	1734	ReadyCare Frozen Chocolate Shake	022125 To 022126
3	1735	ReadyCare Frozen Strawberry Shake	022125 To 022126
4	1736	ReadyCare Frozen Vanilla Shake NSA	022125 To 022126
5	1737	ReadyCare Frozen Strawberry Shake NSA	022125 To 022126
6	1747	ReadyCare Frozen Chocolate Shake Plus	022125 To 022126
7	1749	ReadyCare Frozen Strawberry Shake Plus	022125 To 022126
8	1754	ReadyCare Frozen Vanilla Shake Plus	022125 To 022126

Key	Item #	Product Name	BB (Best By)
9	1844	ReadyCare Frozen Strawberry Banana Shake NSA	022125 To 022126
10	3633	ReadyCare Frozen Chocolate Shake NSA	022125 To 022126
11	3338	Imperial Frozen Vanilla Shake	022125 To 022126
12	3339	Imperial Frozen Chocolate Shake	022125 To 022126
13	3340	Imperial Frozen Strawberry Shake	022125 To 022126
14	3341	Imperial Frozen Vanilla Shake NSA	022125 To 022126
15	3342	Imperial Frozen Strawberry Shake NSA	022125 To 022126
16	3364	Imperial Frozen Strawberry Banana Shake NSA	022125 To 022126
17	3699	Imperial Frozen Chocolate Shake NSA	022125 To 022126

10. This outbreak was originally identified in December 2018 and investigated again in 2021 and 2023. In October 2024, six additional illnesses were reported prompting CDC to re-open the investigation. This outbreak occurred in a high-risk population for listeriosis, including people with immunocompromising conditions and people aged  $\geq 65$  years. Most ill people in the outbreak were residents in long-term care facilities or hospitalized prior to their illness onset, indicating that a food served in those settings was the likely source of the outbreak.

1           11.     Upon investigation closure, this outbreak included 42 cases from 21 states: AL:  
2 1, CA: 4, CO: 1, CT: 2, FL: 2, IL: 5, IN: 3, MD: 1, MI: 2, MN: 1, MO: 1, NC: 2, NV: 1, NY: 3,  
3 OH: 1, OK: 1, PA: 1, TN: 2, TX: 6, WA: 1, WV: 1. A case was defined as invasive infection  
4 with *Listeria monocytogenes* AND isolate highly related by whole genome sequencing with  
5 specimen collection dates from August 17, 2018 to March 13, 2025. This outbreak included 4  
6 non-clinical isolates identified in the environment during a facility inspection as part of the  
7 investigation. All isolates were related within 0 to 48 allele differences by wgMLST with  
8 common allele code LMO1.2-73.84.117.155.  
9

10           12.     Ages ranged from 43 to 101 years (median: 78 years), and 56% of cases were  
11 female. Of 42 patients with outcome information, 41 (98%) were hospitalized. There were 18  
12 reported deaths, 14 of which were confirmed as attributed to infection with *Listeria*. Of 42 people  
13 with information, 38 (90%) reported living in long-term care facilities or were hospitalized  
14 before becoming sick.  
15

16           13.     On January 22, 2025, FDA and CDC identified frozen supplement shakes as a  
17 common item across invoices from facilities where ill people were staying. Comparison of item  
18 numbers and production facilities found that two brands on invoices were made by a common  
19 manufacturing facility, Prairie Farms Dairy, Inc (Fort Wayne, IN).  
20

21           14.     FDA undertook a detailed invoice analysis of the most plausible specialized food  
22 products, evaluating purchase records from ten facilities with one case each from 2024 and 2025.  
23 Frozen food products were prioritized for investigation. Analysis from records from 10 facilities  
24 identified frozen dairy desserts and frozen supplement shakes as items of interest.  
25

26           15.     The FDA conducted an inspection at the frozen dessert manufacturer; product and  
27 environmental isolates were negative for *Listeria*. After further invoice analysis, FDA conducted  
28

another inspection at a different common manufacturer of the two brands of frozen supplement shakes; product samples were negative but three environmental subsamples tested positive for *Listeria monocytogenes*, and whole genome sequencing determined that these isolates were the outbreak strain.

16. This large, multi-year multistate outbreak of listeriosis is linked to frozen supplement shakes served to ill people in healthcare settings. Epidemiologic, genomic, and traceback analysis indicates frozen supplement shakes produced by Prairie Farms Dairy, Inc (Fort Wayne, IN) are the confirmed source of this outbreak.

### **The *Listeria* Bacteria**

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

18. Listeriosis is one of the most important bacterial infections worldwide that arises mainly from the consumption of contaminated food. 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. This unique quality allows thermal characteristics to be used as a means of differentiating *Listeria* from other possibly-contaminating bacteria.

19. *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

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

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

9         21. Ready-to-eat foods are a notable and consistent source of *Listeria*. For example,  
10 a research study done by the *Listeria* Study Group found that *L. monocytogenes* grew from at  
11 least one food specimen in the refrigerators of 64% of persons with a confirmed *Listeria* infection  
12 (79 of 123 patients), and in 11% of more than 2,000 food specimens collected in the study.  
13 Moreover, 33% of refrigerators (26 of 79) contained foods that grew the same strain with which  
14 the individual had been infected, a frequency much higher than would be expected by chance.  
15 The danger posed by the risk of *Listeria* in ready-to-eat meats prompted the USDA to declare  
16 the bacterium an adulterant in these kinds of meat products and, as a result, to adopt a zero-  
17 tolerance policy for the presence of this deadly pathogen. The Code of Federal Regulations  
18 includes requirements for the post-lethality control of *Listeria* in meat and poultry products. This  
19 regulation is referred to as “The *Listeria* Rule,” which was enacted in 2003. The rule outlines  
20 prevention and control measures that must be taken in processing facilities to reduce the risk of  
21 contamination of ready-to-eat products.

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

23. 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.

24. 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.

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

26. 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:

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.

27. 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



1 ascending from a colonized genital tract. Infections during pregnancy can cause premature  
2 delivery, miscarriage, stillbirth, or serious health problems for the newborn. Pregnant women  
3 make up around 30% of all infection cases while accounting for 60% of cases involving the 10-  
4 to 40-year age group.

5  
6 28. Several segments of the population are at increased risk and need to be informed  
7 so that proper precautions can be taken. The body's defense against *Listeria* is called "cell-  
8 mediated immunity" because the success of defending against infection depends on our cells (as  
9 opposed to our antibodies), especially lymphocytes, otherwise known as "T-cells." Therefore,  
10 individuals whose cell-mediated immunity is suppressed are more susceptible to the devastating  
11 effects of listeriosis, including HIV-infected individuals, who have been found to have *Listeria*-  
12 related mortality of 29%. The incidence of *Listeria* infection in HIV-positive individuals is  
13 higher than in the general population. One study found that:

14  
15 The estimated incidence of listeriosis among HIV-infected patients in metropolitan  
16 Atlanta was 52 cases per 100,000 patients per year, and among patients with AIDS  
17 it was 115 cases per 100,000 patients per year, rates 65-145 times higher than those  
18 among the general population. HIV-associated cases occurred in adults who were  
19 29-62 years of age and in postnatal infants who were 2 and 6 months of age.

20 29. Pregnant women naturally have a depressed cell-mediated immune system. While  
21 other systemic bacterial infections may result in adverse pregnancy outcomes at comparable  
22 frequencies, *L. monocytogenes* have notoriety because fetal complications largely occur in the  
23 absence of overt illness in the mother, delaying medical intervention. In addition, the immune  
24 systems of fetuses and newborns are very immature and are extremely susceptible to these types  
25 of infections.

26 30. Other adults, especially transplant recipients and lymphoma patients, are given  
27 necessary therapies with the specific intent of depressing T-cells, and these individuals become  
28

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

4  
5 31. According to the FDA, CDC, and other public health organizations, individuals  
6 at increased risk for being infected and becoming seriously ill with *Listeria* include the following  
7 groups:

- 8 • Pregnant women: They are about 10-20 times more likely than other healthy adults  
9 to get listeriosis. About one-third of listeriosis cases happen during pregnancy.  
10 Fetuses are also highly susceptible to infection and severe complications.
- 11 • Newborns: Newborns can develop life-threatening diseases from perinatal and  
12 neonatal infections
- 13 • Persons with weakened immune systems
- 14 • Persons with cancer, diabetes, kidney, or gastrointestinal disease
- 15 • Persons with HIV/AIDS: Individuals with HIV/AIDS are almost 300 times more  
16 likely to get listeriosis than people with healthy immune systems.
- 17 • Persons who take glucocorticosteroid medications (such as cortisone)
- 18 • Persons of advanced age: One risk assessment showed people over 60 years old were  
19 2.6 times more likely to develop listeriosis than the general population. And in 2011,  
20 the median age of diagnosed cases in people who were not pregnant was 71 years  
21 old.

22 32. Only a small percentage of persons who ingest *Listeria* fall ill or develop  
23 symptoms. For those who do develop symptoms because of their infection, the resulting illness  
24 is either mild or quite severe, in what is sometimes referred to as a “bimodal distribution of  
25 severity.” *Listeria* can cause two different types of disease syndromes with differing severity.  
26 Non-invasive *Listeria* infection causes gastroenteritis with symptoms such as diarrhea, nausea,  
27 and vomiting that resolve on their own. Healthy adults without any immunocompromising  
28 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.

33. 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.

34. 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.

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

36. 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

1 symptoms may be subtle and include irritability, fever, poor feeding, and meningitis. The mode  
2 of acquisition of late onset listeriosis is poorly understood.

3 37. For those persons who suffer a *Listeria* infection that does not resolve on its own,  
4 the complications can be numerous and possibly severe. The most common complication is  
5 septicemia (bacterial infection in the blood), with meningitis being the second most common.  
6 Other complications can include inflammation of the brain or brain stem (encephalitis), brain  
7 abscess, inflammation of the heart-membrane (endocarditis), septic arthritis, osteomyelitis  
8 (infection in the bone), and localized infection, either internally or of the skin.  
9

10 38. Death is the most severe consequence of listeriosis, and it is tragically common.  
11 The CDC has estimated that *L. monocytogenes* is the third leading cause of death from foodborne  
12 illness, with approximately 260 of 1,600 people diagnosed dying from their infections. For  
13 example, based on 2018 FoodNet surveillance data, 96% of 126 *Listeria* cases ended up in the  
14 hospital, the highest hospitalization rate for pathogenic bacterial infection. This data showed a  
15 fatality rate of 21%. According to the FDA, the case-fatality rate increases substantially based  
16 on complications, possibly reaching rates of 70% in cases with listeria meningitis, 50% in  
17 septicemia cases, and over 80% for perinatal/neonatal infections. In one US study, *L.*  
18 *monocytogenes* was reportedly the cause of nearly 4% of all cases of bacterial meningitis.  
19  
20

### 21 **JOHN WILLS SR.'S *SALMONELLA* ILLNESS**

22 39. At the time he became ill, John Wills Sr. was residing at Richmond Post Acute  
23 Care, a skilled nursing and rehabilitation facility in Richmond, California. He had been admitted  
24 there following a prior hospitalization related to a slip-and-fall incident. The purpose of his  
25 admission was to regain strength and body weight. At that time, Mr. Wills was mobile, able to  
26  
27  
28

1 walk with the assistance of a walker, and was actively participating in physical therapy and  
2 consuming meals without difficulty.

3       40. On or about July 20, 2024, Mr. Wills consumed a shake provided by the facility.  
4 Shortly thereafter, he developed a fever, began to exhibit difficulty speaking, and appeared to be  
5 in severe distress and pain. He was transported by ambulance to Kaiser Hospital later that day.  
6

7       41. Upon arrival at Kaiser Hospital, Mr. Wills was diagnosed and treated for multiple  
8 serious conditions, including a large bowel obstruction, colonic adenocarcinoma, *Listeria*  
9 bacteremia, meningitis/ventriculitis, and ventriculomegaly.  
10

11       42. On August 20, 2024, Mr. Wills was discharged from Kaiser and admitted to San  
12 Pablo Healthcare & Wellness Center for continued IV antibiotic therapy and rehabilitation.  
13 While at that facility, he was placed under the care of Dr. Mikael Langner for pain management  
14 and infectious disease monitoring.

15       43. On September 17, 2024, Mr. Wills was again transported by ambulance—this  
16 time to Alta Bates Summit Medical Center—due to a primary complaint of altered mental status.  
17 Upon arrival, Mr. Wills was disoriented and unable to state the reason for his hospitalization. He  
18 was diagnosed with “confusion” and noted to have a history of bacterial meningitis.  
19

20       44. A head CT was performed, revealing bilateria aphakia, and advanced central and  
21 peripheral cerebral atrophy with chronic microangiopathic change.  
22

23       45. In early January 2025, Mr. Wills was transferred to Tiburon Hills Care Center,  
24 where he was placed on hospice care. He tragically passed away there on February 22, 2025,  
25 because of complications related to his *Listeria* infection and other comorbid conditions.  
26  
27  
28

## Strict Liability – County I

51. Defendant owed a duty of care to Plaintiff to manufacture, supply, package, distribute, and/or sell food that was fit for human consumption and that was safe to consume to the extent contemplated by a reasonable consumer. Defendant breached this duty.

1           52. Plaintiff suffered injury and damages as a direct and proximate result of the  
2 defective and unreasonably dangerous condition of the adulterated food product that Defendant  
3 manufactured, supplied, packaged, distributed, and/or sold.  
4

5                           **Breach of Warranty – Count II**

6           53. Plaintiff incorporates by reference paragraphs 1 through 52 as though fully set  
7 forth herein.

8           54. Defendant is liable to the Plaintiff for breaching express and implied warranties  
9 that it made regarding the adulterated product that it provided to Plaintiff. These express and  
10 implied warranties include the implied warranties of merchantability and/or fitness for a  
11 particular use. Specifically, Defendant expressly warranted, through its preparation and/or sale  
12 of food for consumption by the public and by the statements and conduct of its employees and  
13 agents, that the food it prepared and sold was fit for human consumption and not otherwise  
14 adulterated or injurious to health.  
15

16           55. The contaminated food that Defendant provided to Plaintiff would not pass  
17 without exception in the trade and was therefore in breach of the implied warranty of  
18 merchantability.  
19

20           56. The contaminated food provided to Plaintiff was not fit for the uses and purposes  
21 intended, *i.e.*, human consumption; this product was therefore in breach of the implied warranty  
22 of fitness for its intended use.  
23

24           57. As a direct and proximate result of the Defendant's breach of warranties, as set  
25 forth above, Plaintiff sustained injuries, and damages in an amount to be determined at trial.  
26  
27  
28

**Negligence – Count III**

58. Plaintiff incorporates by reference paragraphs 1 through 57 as though fully set forth herein.

59. Defendant owed to Plaintiff a duty to use reasonable care in the manufacture, supply, packaging, distribution, and sale of its food product, which duty would have prevented or eliminated the risk that Defendant's food products would become contaminated with *Listeria* or any other dangerous pathogen. Defendant breached this duty and was therefore negligent.

60. Defendant had a duty to comply with all federal, state, and local statutes, laws, regulations, safety codes, and provisions pertaining to the manufacture, distribution, storage, and sale of its food product, but failed to do so, and was therefore negligent. Plaintiff was among the class of persons designed to be protected by these statutes, laws, regulations, safety codes, and provisions pertaining to the manufacture, distribution, storage, and sale of similar food products. Defendant breached this duty and was therefore negligent.

61. Defendant had a duty to properly supervise, train, and monitor its respective employees, and to ensure that its respective employees complied with all applicable statutes, laws, regulations, safety codes, and provisions pertaining to the manufacture, distribution, storage, and sale of similar food products. Defendant breached this duty and was therefore negligent.

62. Defendant had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, and free of defects, and that otherwise complied with applicable federal, state, and local laws, ordinances, regulations, codes, and provisions and that were clean, free from adulteration, and safe for human consumption. Defendant breached this duty and was therefore negligent.



1           63. As a direct and proximate result of Defendant's negligence, Plaintiff sustained  
2 injuries and damages in an amount to be determined at trial.

3                                   **Negligence *Per se* – Count IV**  
4

5           64. Plaintiff incorporates by reference paragraphs 1 through 63 as though fully set  
6 forth herein.

7           65. Defendant had a duty to comply with all applicable state and federal regulations  
8 intended to ensure the purity and safety of its food product, including the requirements of the  
9 Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301, et seq.).  
10

11           66. Defendant breached that duty and, as a result, was negligent *per se* in its  
12 manufacture, distribution, and sale of food adulterated with *Listeria*, a deadly pathogen.

13           67. As a direct and proximate result of the negligent *per se* conduct by Defendant,  
14 Plaintiff sustained injury and damages in an amount to be determined at trial.

15                                   **Survival Action – Count V**  
16

17           68. Plaintiff incorporates by reference paragraphs 1 through 67 as though fully set  
18 forth herein.

19           69. Plaintiff alleges that this cause of action arises pursuant to California Code of  
20 Civil Procedure § 377.30, which provides for the survival of certain causes of action after death.  
21 The claims of Decedent John Wills against Defendant, as set forth herein, survive in favor of  
22 Plaintiff, Emma Wills, in her capacity as the duly appointed Administrator and Personal  
23 Representative of the Estate of John Wills.  
24

25           70. As a direct and proximate result of Defendant's negligent, reckless, and otherwise  
26 wrongful acts and omissions, as previously described, Decedent suffered conscious pain and  
27  
28

1 suffering, severe physical and emotional distress, mental anguish, and other injuries and damages  
2 prior to his death.

3         71. These damages, which include but are not limited to medical expenses and pain  
4 and suffering sustained by Decedent before his death, are compensable under the California  
5 Survival Statute. Plaintiff, as the legal representative of the Estate, is entitled to recover all such  
6 damages on behalf of the Estate.  
7

8                                   **Wrongful Death – Count VI**

9         72. Plaintiff incorporates by reference paragraphs 1 through 71 as though fully set  
10 forth herein.  
11

12         73. Plaintiff further alleges that this cause of action arises under California Code of  
13 Civil Procedure § 377.60, which provides a cause of action for wrongful death to specified heirs  
14 of the decedent.  
15

16         74. As a direct and proximate result of Defendant's negligent, reckless, and otherwise  
17 wrongful acts and omissions, as previously described, Decedent's surviving children, Fenesi  
18 Wills and Sharifia Wills, have suffered—and will continue to suffer—the loss of the love,  
19 companionship, comfort, care, assistance, protection, affection, society, and moral support of  
20 their father, John Wills.  
21

22         75. Additionally, the wrongful death beneficiaries have incurred, and may continue  
23 to incur, financial losses and expenses related to their father's death, including but not limited to  
24 funeral and burial costs.

25         76. As a result of Defendant's conduct, Plaintiff is entitled to recover all allowable  
26 damages under the California Wrongful Death Statute, including economic and non-economic  
27 damages, in an amount to be proven at trial.  
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WHEREFORE, Plaintiff prays as follows:

- (1) For judgment against Defendant on Count I of this Petition in an amount that is fair and reasonable, for her costs incurred, and for any other relief to which she may be entitled;
- (2) For judgment against Defendant on Count II of this Petition in an amount that is fair and reasonable, for her costs incurred, and for any other relief to which she may be entitled;
- (3) For judgment against Defendant on Count III of this Petition in an amount that is fair and reasonable, for her costs incurred, and for any other relief to which she may be entitled;
- (4) For judgment against Defendant on Count IV of this Petition in an amount that is fair and reasonable, for her costs incurred, and for any other relief to which she may be entitled;
- (5) For judgment against Defendant on Count V of this Petition in an amount that is fair and reasonable, for her costs incurred, and for any other relief to which she may be entitled;
- (6) For judgment against Defendant on Count VI of this Petition in an amount that is fair and reasonable, for her costs incurred, and for any other relief to which she may be entitled;
- (7) For costs of suit herein incurred; and
- (8) For such other and further relief as this Court may deem proper.

1 DATED: August 4, 2025

2 **FREDERIC L. GORDON**

3 By: /s/ Frederic L. Gordon  
4 Frederic L. Gordon, SBN 98994  
5 P.O. Box 60761  
6 San Diego, CA 92106  
7 Telephone: (619) 572-2210  
fgordonapc@gmail.com

8 DATED: August 4, 2025

9 **MARLER CLARK INC., PS**

10 By: /s/ William D. Marler  
11 William D. Marler (*pro hac vice*  
12 forthcoming)  
13 180 Olympic Drive S.E.  
14 Bainbridge Island, Washington 98110  
15 Telephone: (206) 346-1888  
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