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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**TREVOR KEENE, individually and
on behalf of all others similarly
situated,**

Plaintiff,

vs.

TAYLOR FRESH FOODS, INC.,

Defendant

Case No. _____

CLASS ACTION COMPLAINT FOR:

- (1) UNJUST ENRICHMENT
- (2) BREACH OF EXPRESS WARRANTY
- (3) BREACH OF IMPLIED WARRANTY
- (4) BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
- (5) FRAUDULENT CONCEALMENT
- (6) STRICT LIABILITY- FAILURE TO WARN
- (7) STRICT LIABILITY- DESIGN AND FORMULATION DEFECT
- (8) NEGLIGENT FAILURE TO WARN
- (9) NEGLIGENT DESIGN & FORMULATION DEFECT
- (10) NEGLIGENCE
- (11) MEDICAL MONITORING

1 Plaintiff Trevor Keene (“Plaintiff”) brings this Class Action Complaint
2 against Defendant, Taylor Fresh Foods, Inc., (“Defendant” or “Taylor Farms”)
3 individually and on behalf of all others similarly situated, and alleges, upon
4 personal knowledge as to Plaintiff’s own actions and to counsels’ investigation,
5 and upon information and belief as to all other matters, as follows:
6
7

8 **NATURE OF THE ACTION**

9
10 1. Plaintiff brings this class action lawsuit on behalf of himself, and all
11 others similarly situated who purchased Taylor Fresh Foods, A/K/A Taylor Farms,
12 Onion Products (collectively herein “the Products”).
13

14 2. Unfortunately, the Products are unfit for their intended consumption
15 because they are contaminated with the harmful bacteria, E. coli.
16

17 3. Plaintiff became ill following consumption of the Products.

18 4. On October 22, 2024, Defendant began investigating the Products
19 due to possible E. coli outbreak.¹
20

21 5. Most people in the outbreak reported eating the Quarter Pounder
22 hamburger at McDonald’s before becoming sick.²
23
24
25

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27
28 ¹ <https://www.cdc.gov/ecoli/outbreaks/e-coli-O157.html>

² *Id.*

1 6. *The Center for Disease Control has stated that E. coli* are germs
2 called bacteria. They are found in many places, including in the environment,
3 foods, water, and the intestines of people and animals.³ Some *E. coli* can make
4 people sick with diarrhea, urinary tract infections, pneumonia, sepsis, and other
5 illnesses. The infection is “most likely to sicken pregnant women and their
6 newborns, adults aged 65 or older, and people with weakened immune systems.”⁴
7

8
9 7. Symptoms begin anywhere from a few days after consuming
10 contaminated food or up to nine days later. Symptoms include severe stomach
11 cramps, diarrhea, fever, nausea, and/or vomiting. Some infections can cause
12 severe bloody diarrhea and lead to life-threatening conditions, such as a type of
13 kidney failure called hemolytic uremic syndrome (HUS), or the development of
14 high blood pressure, chronic kidney disease, and neurologic problems.⁵
15
16

17
18 8. The Products were formulated, designed, manufactured, advertised,
19 sold, and distributed by Defendant or its agents, to consumers, including Plaintiff,
20 across parts of the United States.
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27 ³ <https://www.cdc.gov/ecoli/about/index.html>

⁴ *Id.*

⁵ <https://www.fda.gov/food/outbreaks-foodborne-illness/outbreak-investigation-e-coli-o157h7-mcdonalds-quarter-pounders-october-2024>

1 9. Each of the products was manufactured by Defendant, distributed to
2 other locations and then sold to consumers McDonald's restaurants across parts
3 of the United States.⁶
4

5 10. Through marketing and sale, Defendant represented that the Products
6 are safe for people, including pregnant women and their newborns, adults aged 65
7 or older, and people with weakened immune systems.
8

9 11. Plaintiff and consumers do not know, and did not have a reason to
10 know, that the Products purchased were contaminated with E. coli. Consumers
11 expect the food they purchase to be safe for consumption and not contaminated
12 by harmful bacteria, which can cause a serious infection.
13
14

15 12. Other manufacturers formulate, produce, and sell non-harmful foods
16 including onions, which is evidence that the risk inherent with Defendant's
17 Products is demonstrably avoidable.
18

19 13. Feasible alternative formulations, designs, and materials are
20 currently available and were available to Defendant at the time the Products were
21 formulated, designed, and manufactured.
22
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28 ⁶ <https://www.cdc.gov/ecoli/outbreaks/e-coli-O157.html>

1 concerning the Products, and the claims alleged herein was primarily carried out
2 at Defendant's headquarters and facilities within Salinas, California.
3

4 **JURISDICTION AND VENUE**

5 21. This Court has subject jurisdiction over this matter pursuant to 28
6 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (1) there are 100
7 or more putative Class Member, (ii) the aggregate amount in controversy exceeds
8 \$5,000,000.00, exclusive of interest and costs, and (iii) there is minimal diversity
9 because Plaintiff and Defendant are citizens of different states.
10
11

12 22. This Court has supplemental jurisdiction over Plaintiff's state law
13 claims pursuant to 28 U.S.C. § 1367.
14

15 23. This Court has personal jurisdiction over Defendant because
16 Defendant has purposefully availed itself to the laws, rights, and benefits of the
17 State of California and maintains its principal place of business in this judicial
18 District.
19

20 24. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (a)(1)
21 because many Class Members reside in the Northern District of California, and
22 throughout the state of California. A substantial part of the events or omissions
23 giving rise to the Classes' claims occurred in this district. Moreover, Defendant
24 maintains its principal place of business in this district.
25
26
27

28 **FACTUAL ALLEGATIONS**

1 25. Plaintiff re-alleges and incorporate by reference all the allegations
2 contained in the foregoing paragraphs as if fully set forth herein.
3

4 26. Plaintiff Trevor Keene bought a McDonald's Quarter Pounder for
5 himself on or about October 21, 2024.
6

7 27. Soon after his purchase, Plaintiff Trevor Keene began experiencing
8 many of the symptoms associated with E. coli infection.
9

10 28. Nowhere on the Products' packaging or webpage did Defendant
11 disclose that the Products could present a risk of E. coli contamination.
12

13 29. If Plaintiff had been aware of the E. coli contamination in the
14 Products, they would not have purchased the Products.
15

16 30. As a result of Defendant's actions, Plaintiff has incurred damages.
17

18 31. If the Products and packaging were reformulated to be safe and
19 avoid risk of bacterial contamination due to E. coli, Plaintiff would consider
20 purchasing the Products again in the future.
21

22 32. On October 22, 2024, McDonald's began investigating the Products
23 due to possible E. coli contamination.⁷ 75 cases, 22 hospitalizations and 1 death
24 have been reported as a result of the E. coli outbreak attributable to Defendant.
25

26
27
28 ⁷ <https://www.cdc.gov/ecoli/outbreaks/e-coli-O157.html>

1 33. On October 30, 2024, the CDC issued an update stating,
2 “Epidemiologic and traceback information show that fresh, slivered onions are
3 the likely source of illness in this outbreak. Taylor Farms, the supplier of slivered
4 onions to the affected McDonald’s locations also recalled onions.”⁸
5

6 **Defendant’s Misrepresentations and Omissions are Actionable**
7

8 34. Plaintiff bargained for Products that were safe to consume.
9 Defendant’s Products were, and still are, unsafe to consume due to the risk of E.
10 coli.
11

12 35. Nowhere in the packaging of the Products did Defendant disclose
13 that the products could contaminate the consumers with E. coli.
14

15 36. No reasonable consumer would expect the Products to be
16 contaminated with E. Coli. Accordingly, Plaintiff and similarly situated
17 consumers were injured as a result of purchasing the Products, including, among
18 other things, they purchased and paid for products that did not conform to what
19 was promised as promoted, marketed, advertised, packaged, and labeled by
20 Defendant; they were deprived of the benefit of their bargain; they spent money
21 on a product that did not have any value or had less value than warranted; and
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28 ⁸ *Id.*

1 they would not have purchased and consumed had they known the truth about the
2 products.
3

4 37. Additionally, because the facts concern a safety-related deficiency in
5 the Products, Defendant was under a continuous duty to disclose to Plaintiff and
6 consumers the true nature of the Product and to disclose the Product was
7 contaminated with E. coli. Furthermore, Defendant, as the owner, manufacturer,
8 marketer, and seller, had a duty to disclose because of Defendant's exclusive
9 and/or superior knowledge concerning the composition of the Product.
10
11

12 38. Plaintiff seeks to recover damages because the Products are
13 adulterated, worthless, and unfit for safe human use due to the bacteria contained
14 within the Products.
15

16 39. Defendant engaged in fraudulent, unfair, deceptive, misleading,
17 and/or unlawful conduct stemming from its omissions surrounding the risk of E.
18 coli contamination affecting the Products.
19
20
21

22 **CLASS ACTION ALLEGATIONS**

23 40. Plaintiff brings this case as a class action pursuant to Federal Rules
24 of Civil Procedure 23(a), 23(b)(2) and or 23(c)(4), individually, and as the Class
25 representatives on behalf of the following:
26
27
28

1 **Nationwide Class:** All persons within the United States who
2 consumed Taylor Fresh Foods, Inc., Products contaminated with E. coli.
3

4
5
6
7 41. The Nationwide Class shall collectively be referred to herein as the
8 “Class.”

9 42. Plaintiff reserves the right to amend the Class definitions if further
10 investigation and discovery indicate that the Class definitions should be narrowed,
11 expanded, or otherwise modified.
12

13 43. Excluded from the Class is governmental entities, Defendant, its
14 officers, directors, affiliates, legal representatives, and employees.
15

16 44. This action has been brought and may be maintained as a class action
17 under Federal Rule of Civil Procedure 23.
18

19 45. **Numerosity** – Federal Rule of Civil Procedure 23(a)(1). The Class
20 numbers at least in the thousands of persons. As a result, joinder of all Class
21 members in a single action is impracticable. Class members may be informed of
22 the pendency of this class action through a variety of means, including, but not
23 limited to, direct mail, email, published notice, and website posting.
24
25

26 46. **Existence and Predominance of Common Questions of Law and**
27 **Fact** – Federal Rules of Civil Procedure 23(a)(2) and 23(b)(3). There are
28

1 questions of fact and law common to the Class that predominate over any question
2 affecting only individual members. Those questions, each of which may also be
3 certified under Rule 23(c)(4), include without limitation:
4

- 5 a. Whether Defendant negligently failed to exercise reasonable care in the
6 formulation, design, manufacturing, promotion, marketing, advertising,
7 packaging, labeling, distribution, and/or sale the Products;
- 8 b. Whether Defendant sold the contaminated Products, that were
9 unreasonably dangerous to consumers such as Plaintiff and members of
10 the Class;
- 11 c. Whether Defendant failed to adequately warn Plaintiff and the Class of
12 the dangers with respect to the contaminated Products;
- 13 d. Whether Defendant was negligent for failure to warn;
- 14 e. Whether Plaintiff and the Class suffered Damages as a result of the
15 contaminated Products;
- 16 f. Whether Defendant was negligent for failure to test;
- 17 g. Whether Defendant's advertising, merchandising, and promotional
18 materials directed to Plaintiff were deceptive regarding the risks posed
19 by Defendant's Products;
- 20 h. Whether Defendant made representations regarding the safety of the
21 Products;
- 22 i. Whether Defendant omitted material information regarding the safety of
23 the Products;
- 24 j. Whether Defendant's Products were merchantable;
- 25 k. Whether Defendant violated the consumer protection statutes invoked
26 herein;
- 27 l. Whether Defendant's conduct alleged herein was fraudulent; and
28

1 m. Whether Defendant was unjustly enriched by sales of the Products.
2

3 47. The questions set forth above predominate over any questions
4 affecting only individual persons concerning sales of Defendant's Products
5 throughout the United States and a class action is superior with respect to
6 considerations of consistency, economy, efficiency, fairness, and equity to the
7 other available methods for the fair and efficient adjudication of Plaintiff's claims.
8
9

10 48. **Typicality** – Federal Rule of Civil Procedure 23(a)(3). Plaintiff's
11 claims are typical of those of the Class in that the Class members uniformly
12 purchased Defendant's Products and were subjected to Defendant's uniform
13 merchandising materials and representations at the time of purchase.
14
15

16 49. **Superiority** – Federal Rule of Civil Procedure 23(b)(3). A class
17 action is the appropriate method for the fair and efficient adjudication of this
18 controversy. The presentation of separate incompatible standards of conduct for
19 Defendant, and/or substantially impair or impede the ability of Class members to
20 protect their interests. In addition, it would be impracticable and undesirable for
21 each member of the Class who suffered an economic loss to bring a separate
22 action. The maintenance of separate actions would place a substantial and
23 unnecessary burden on the courts and could result in inconsistent adjudications,
24
25
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28

1 while a single class action can determine, with judicial economy, the rights of all
2 Class members.
3

4 50. **Adequacy** – Federal Rule of Civil Procedure 23(a)(4). Plaintiffs are
5 adequate representatives of the Class because they are members of the Class, and
6 their interests do not conflict with the interests of the Class that they seek to
7 represent. The interests of the members of the Class will be fairly and adequately
8 protected by Plaintiffs and undersigned counsel.
9
10

11 51. **Insufficiency of Separate Actions** – Federal Rule of Civil
12 Procedure 23(b)(1). Absent a representative class action, members of the Class
13 would continue to suffer the harm described herein, for which they would have
14 no remedy. Even if separate actions could be brought by individual consumers,
15 the resulting multiplicity of lawsuits would cause undue burden and expense for
16 both the Court and the litigants, as well as create a risk of inconsistent rulings and
17 adjudications that might be dispositive of the interests of similarly situated
18 purchasers, substantially impeding their ability to protect their interests, while
19 establishing incompatible standards of conduct for Defendant. The proposed
20 Class thus satisfies the requirements of Fed. R. Civ. P. 23(b)(1). Counsel is
21 experienced in the litigation of civil matters, including the prosecution of
22 consumer protection class action cases.
23
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1 **52. Declaratory and Injunctive Relief** – Federal Rule of Civil
2 Procedure 23(b)(2). Defendant has acted or refused to act on grounds generally
3 applicable to Plaintiff and the other Class Members as described below, with
4 respect to the members of the Class as a whole. In particular, Plaintiff seeks to
5 certify the Class to enjoin Defendant from selling or otherwise distributing the
6 Products as labeled until such time that Defendant can demonstrate to the Court’s
7 satisfaction that the Products confer the advertised benefits and are otherwise safe
8 to use as intended

9 **53.** Additionally, the Class may be certified under Rule 23(b)(1) and/or
10 (b)(2) because:

- 11 a. The prosecution of separate actions by individual members of the Class
12 would create a risk of inconsistent or varying adjudications with respect
13 to individual members of the Class that would establish incompatible
14 standards of conduct for the Defendant;
- 15 b. The prosecution of separate actions by individual members of the Class
16 would create a risk of adjudications with respect to them which would,
17 as a practical matter, be dispositive of the interests of other members of
18 the Class not parties to the adjudications, or substantially impair or
19 impede their ability to protect their interests; and/or

1 c. Defendant has acted or refused to act on grounds generally applicable to
2 the Class, thereby making appropriate final and injunctive relief with
3 respect to the members of the Class as a whole.
4

5 **CAUSES OF ACTION**

6 **COUNT I**
7 **Unjust Enrichment**
8

9 54. Plaintiff incorporates by reference all the allegations contained in the
10 foregoing paragraphs as if fully set forth herein.
11

12 55. Plaintiff, and the other members of the Class, conferred benefits on
13 Defendant in the form of monies paid to purchase Defendant's defective and
14 worthless Products. These monies were no gifts or donations but were given in
15 exchange for the Products.
16

17 56. Defendant voluntarily accepted and retained these benefits.
18

19 57. Because this benefit was obtained unlawfully, namely by selling and
20 accepting compensation for Products unfit for human consumption, it would be
21 unjust and inequitable for Defendant to retain the benefit without paying the value
22 thereof.
23

24 58. Defendant received benefits in the form of revenues from purchases
25 of the Products to the detriment of Plaintiff, and the other members of the Class,
26 because Plaintiff, and members of the Class, purchased mislabeled products that
27
28

1 were not what Plaintiff and the Class bargained for and were not safe and
2 effective, as claimed.
3

4 59. Defendant has been unjustly enriched in retaining the revenues
5 derived from the purchases of the Products by Plaintiff and the other members of
6 the Class. Retention of those monies under these circumstances is unjust and
7 inequitable because Defendant's labeling of the Products was misleading to
8 consumers, which caused injuries to Plaintiff, and members of the Class, because
9 they would have not purchased the Products had they known the true facts.
10
11

12 60. Because Defendant's retention of the non-gratuitous benefits
13 conferred on them by Plaintiff and members of the Class is unjust and inequitable,
14 Defendant must pay restitution to Plaintiff and members of the Nationwide Class
15 for its unjust enrichment, as ordered by the Court.
16
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21 **COUNT II**
22 **Breach of Express Warranty**

23 61. Plaintiff incorporates by reference all the allegations contained in the
24 foregoing paragraphs as if fully set forth herein.
25

26 62. Plaintiff, and each member of the Class, formed a contract with
27 Defendant at the time they purchased the Products.
28

1 63. The terms of the contract include the promises and affirmations of
2 fact, that the products were safe to consume, made by Defendant on the Products'
3 packaging and through marketing and advertising.
4

5 64. This labeling, marketing, and advertising constitute express
6 warranties and became part of the basis of the bargain and are part of the
7 standardized contract between Plaintiff and the members of the Class and
8 Defendant.
9
10

11 65. As set forth above, Defendant purports through its advertising,
12 labeling, marketing, and packaging, to create an express warranty that the
13 Products are safe to consume by people of all ages and genders.
14

15 66. Plaintiff and the members of the Class performed all conditions
16 precedent to Defendant's liability under this contract when they purchased the
17 Products.
18

19 67. Defendant breached express warranties relating to the Products and
20 their qualities because Defendant's Products possessed the capability to
21 contaminate the consumers with E. coli at the time of purchase and the Products
22 do not conform to Defendant's affirmations and promises described above.
23
24

25 68. Plaintiff and each of the members of the Class would not have
26 purchased the Products had they known the true nature of the risk of the Products
27 contaminating those who consumed the Products.
28

1 69. As a result of Defendant’s breach of warranty, Plaintiff and each
2 Class Member suffered and continue to suffer financial damage and injury, and
3 are entitled to all damages, in addition to costs, interest and fees, including
4 attorneys’ fees, as allowed by law.
5

6
7 **COUNT III**
8 **Breach of Implied Warranty**

9 70. Plaintiff incorporates by reference all the allegations contained in the
10 foregoing paragraphs as if fully set forth herein.
11

12 71. Defendant is engaged in the business of designing, manufacturing,
13 constructing, making, selling, distributing, labeling, advertising, retailing,
14 and/or otherwise placing the Product into the stream of commerce.
15

16 72. The Products are “goods” under the relevant laws, and Defendant
17 knew or had reason to know of the specific use for which the Products, as goods,
18 were purchased.
19

20 73. Defendant’s warranty expressly applies to the purchaser of the
21 Products, creating privity between Defendant and Plaintiff and Class Members.
22

23 74. However, privity is not required because Plaintiff and Class
24 Members are the intended beneficiaries of Defendant’s warranties and its sale
25 through retailers. Defendant’s retailers were not intended to be the ultimate
26 consumers of the Products and have no rights under the warranty agreements.
27
28

1 Defendant's warranties were designed for and intended to benefit the consumer
2 only, including Plaintiff and Class Members.
3

4 75. Defendant has provided sufficient notice of its breaches of implied
5 warranties associated with the Products. Defendant was put on constructive notice
6 of its breach through its review of consumer complaints and other reports.
7

8 76. Had Plaintiff, Class Members, and the consuming public known that
9 the Products could contaminate them and cause harm, they would not have
10 purchased the Products or would have paid less for them.
11

12 77. As a direct and proximate result of the foregoing, Plaintiff and Class
13 Members suffered and continue to suffer financial damage and injury, and are
14 entitled to all damages, in addition to costs, interest and fees, including attorneys'
15 fees, as allowed by law.
16
17

18 **COUNT IV**
19 **Breach of Implied Warranty of Merchantability**

20 78. Plaintiff incorporates by reference all the allegations contained in the
21 foregoing paragraphs as if fully set forth herein.
22

23 79. Defendant is a merchant engaging in the sale of goods to Plaintiff
24 and the Class.
25

26 80. There was a sale of goods from Defendant to Plaintiff and the Class.
27
28

1 81. As the developer, manufacturer, marketer, distributor, and/or seller
2 of the defective Products, Defendant impliedly warranted to Plaintiff and the
3 Class that its Products were fit for their intended purpose in that they would be
4 safe for Plaintiff and the Class to consume. Contrary to these representations and
5 warranties, the Products were not fit for their ordinary consumption, and did not
6 conform to Defendant's affirmations of fact and promises included with the
7 packaging.
8

9
10
11 82. The implied warranty of merchantability included with the sale of
12 each Product means that Defendant guaranteed that the Products would be fit for
13 the ordinary purposes for which such Products are consumed and sold and were
14 not otherwise injurious to consumers. The implied warranty of merchantability is
15 part of the basis for the benefit of the bargain between Defendant, and Plaintiff
16 and the Class Members.
17

18
19 83. Defendant breached the implied warranty of merchantability because
20 the Products are not fit for their ordinary purpose of providing reasonably safe for
21 consumption Products because the Products have a risk of contaminating the
22 consumer with E. coli. Therefore, the Products are not fit for their particular
23 purpose.
24

25
26 84. Defendant breached the implied warranty in the contract for the sale
27 of the Products by knowingly selling to Plaintiff and the Class a product that
28

1 Defendant knew would expose Plaintiff and the Class to health risks, thus
2 meaning Defendant knew that the Products were not fit for their intended
3 consumption as safe to consume Products.
4

5 85. Defendant was on notice of this breach, as they were made aware of
6 the adverse health effects caused by risk of E. coli contamination that can result
7 from the consumption of their Products.
8

9 86. Plaintiff and the Class did not receive the goods as bargained for
10 because the goods they received were not merchantable as they did not conform
11 to the ordinary standards for goods of the same average grade, quality, and value.
12

13 87. Plaintiff and members of the Class are the intended beneficiaries of
14 Defendant's implied warranties.
15

16 88. The Products were not altered by Plaintiff or the members of the
17 Classes.
18

19 89. Plaintiff and members of the Class consumed the Products in the
20 ordinary way such Products were intended to be consumed.
21

22 90. The Products were defective when they left the exclusive control of
23 Defendant.
24

25 91. The Products were defectively designed and/or manufactured and
26 unfit for their intended purpose as safe to consume Products, and Plaintiff and
27 members of the Class did not receive the goods that they bargained for.
28

1 92. Plaintiff and members of the Class purchased the Products that
2 contained the Defect, which was undiscoverable by them at the time of purchase
3 and at any time during the class period.
4

5 93. As a result of the defect in the Products, Plaintiff and members of the
6 Class have suffered damages including, but not limited to, the cost of the defective
7 product, loss of use of the product and other related damage.
8

9 94. Defendant breached the implied warranty of merchantability to the
10 Plaintiff and Class members.
11

12 95. Thus, Defendant's attempt to limit or disclaim the implied warranties
13 in a manner that would exclude coverage of the Defect is unenforceable and void.
14

15 96. Plaintiff and Class members have been damaged by Defendant's
16 breach of the implied warranties.
17

18 97. Plaintiff and Class members have suffered damages in an amount to
19 be determined at trial and are entitled to any incidental, consequential, and other
20 damages and other legal and equitable relief, as well as costs and attorneys' fees,
21 available under law.
22

23 **COUNT V**
24 **Fraudulent Concealment**

25 98. Plaintiff incorporates by reference all the allegations contained in the
26 foregoing paragraphs as if fully set forth herein.
27
28

1 99. Defendant aimed to portray the Product as safe for frequent and
2 repeated consumption and omitted key facts concerning the potential harm from
3 contamination due to E. coli.
4

5 100. Defendant, acting through its representatives or agents, delivered
6 the Product to its distributors and through other channels to consumers,
7 including the Plaintiff and Class Members.
8

9 101. Defendant, as the owner, manufacturer, marketer, and seller of the
10 Products, had a duty to disclose because of Defendant's exclusive and/or superior
11 knowledge concerning the Products. Defendant owed Plaintiff and Class
12 Members a duty to disclose because the risks associated with E. coli
13 contaminated products were known and/or accessible exclusively to
14 Defendant, who had superior knowledge of the facts; because the facts would
15 be material to consumers; because the Defendant actively concealed or
16 understated them; because the Defendant intended for consumers to rely on
17 the omissions in question; and because Defendant made partial
18 representations concerning the same subject matter as the omitted facts.
19 Furthermore, because the Product poses an unreasonable risk of substantial
20 bodily injury, Defendant was under a continuous duty to disclose that the
21 Products contained a bacteria known to have adverse health effects.
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1 102. Defendant willfully and knowingly omitted material information
2 regarding the quality and safety of the Products as discussed herein. Defendant
3 countenanced these material omissions to boost or maintain sales of the Product,
4 and to create a false assurance that prolonged loyalty to Defendant’s brand—the
5 continued consumption of the Product—would not place consumers in danger.
6 The omitted information and partial representations were material to consumers
7 because they play a significant role in determining the value of the Product at the
8 time of purchase.
9
10
11

12 103. During this time, Plaintiff, and members of the Classes, were using
13 the Products without knowing the Products could contaminate them due to the E.
14 coli bacteria found in them.
15

16 104. Defendant failed to discharge its duty to disclose these materials facts.
17

18 105. Although Defendant had a duty to ensure the accuracy of the
19 information regarding the Products because such information was within the
20 exclusive knowledge of Defendant and because the information pertains to
21 serious health issues, Defendant failed to satisfy its duty.
22

23 106. Defendant engaged in fraudulent and deceptive conduct by devising
24 and executing a scheme to deceptively convey that their products were safe.
25 Defendant’s actions were done to gain a commercial advantage over
26
27
28

1 competitors, and to drive consumers, like the Plaintiff and Class Members,
2 away from purchasing a competitor's product.
3

4 107. Plaintiff and the Class reasonably relied on Defendant's failure to
5 disclose insofar as they would not have purchased the defective Products
6 manufactured and sold by Defendant had they known they possessed this risk of
7 contamination due to E. coli.
8

9 108. As a direct and proximate cause of Defendant's fraudulent
10 concealment, Plaintiff, and the Class, suffered damages in the amount of monies
11 paid for the defective Products.
12

13 109. Plaintiff and the Class Members have suffered damages in an amount
14 to be determined at trial that, among other things, refunds the amount Plaintiff and
15 the Class Members paid for the Product, awards medical monitoring expenses,
16 costs, interest and attorneys' fees.
17
18

19
20 **COUNT VI**
21 **Strict Liability- Failure to Warn**

22 110. Plaintiff incorporates by reference all the allegations contained in the
23 foregoing paragraphs as if fully set forth herein.
24

25 111. Defendant had a duty to warn Plaintiff and the Class members
26 regarding the Defect, that being risk of contamination due to E Coli, with the
27 Products.
28

1 112. Defendant, which is engaged in the business of selling,
2 manufacturing and supplying the Products placed them into the stream of
3 commerce in a defective and unreasonably dangerous condition such that the
4 foreseeable risks exceeded the benefits associated with the design and/or
5 formulation of the Products.
6
7

8 113. The Products supplied to Plaintiff and Class Members was defective
9 in design and formulation and unreasonably dangerous when they left the hands
10 of Defendant and they reached the consumer of the Products, including Plaintiff
11 and Class Members, without substantial alteration in the condition in which they
12 were sold.
13
14

15 114. Defendant was in a superior position to know of the Defect, yet as
16 outlined above, chose to do nothing when the defect became known to them.
17

18 115. Defendant failed to provide adequate warnings regarding the risks of
19 the Products after knowledge of the Defect was known only to them.
20

21 116. Defendant had information regarding the true risks but failed to warn
22 Plaintiff and members of the Class to strengthen their warnings.
23

24 117. Despite their knowledge of the Defect and obligation to unilaterally
25 strengthen the warnings, Defendant instead chose to actively conceal this
26 knowledge from the public.
27
28

1 118. Plaintiff and members of the Class would not have purchased,
2 chosen, and/or paid for all or part of the Products if they knew of the Defect and
3 the risks of purchasing the Products.
4

5 119. This Defect proximately caused Plaintiff and Class members'
6 damages.
7

8 120. The Plaintiff and Class members have suffered damages in an
9 amount to be determined at trial and are entitled to any incidental, consequential,
10 and other damages and other legal and equitable relief, as well as costs and
11 attorneys' fees, available under law.
12

13
14 **COUNT VII**
15 **Strict Liability- Design and Formulation Defect**

16 121. Plaintiff incorporates by reference all the allegations contained in the
17 foregoing paragraphs as if fully set forth herein.
18

19 122. The design and formulation of the Products was defective and
20 unreasonably dangerous.
21

22 123. The risk of bacterial contamination contained within the Products
23 creates unreasonable danger.
24

25 124. The design and formulation of the Products rendered them not
26 reasonably fit, suitable, or safe for their intended purpose.
27
28

1 125. The risk of bacterial contamination contained within the Products
2 outweighed the benefits and rendered the Products unreasonably dangerous.
3

4 126. Defendant's Products were defective because the design and
5 formulation of the Products included E. coli. After Defendant knew or should
6 have known of the risk of injury from the E. coli found in the Products, Defendant
7 continued to promote the Products as safe and effective to the Plaintiff, Class
8 Members, and public.
9
10

11 127. There are other Products that do not pose the risk of contamination
12 due to E coli, meaning that there were other means of production available to
13 Defendant.
14

15 128. The Products were unreasonably unsafe, and the Products should not
16 have been sold in the market.
17

18 129. The Products did not perform as an ordinary consumer would expect.
19

20 130. The Defendant's negligent design/formulation of the Products was
21 the proximate cause of damages to the Plaintiff and the Class members.
22

23 131. Plaintiff and Class members have suffered damages in an amount to
24 be determined at trial and are entitled to any incidental, consequential, and other
25 damages and other legal and equitable relief, as well as cost and attorneys' fees,
26 available under law.
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3 **COUNT VIII**
4 **Negligent Failure to Warn**

5 132. Plaintiff incorporates by reference all the allegations contained in the
6 foregoing paragraphs as if fully set forth herein.

7 133. Defendant owed Plaintiff and Class members a duty of care and to
8 warn of any risks associated with the Products.
9

10 134. Defendant knew or should have known of the defect but failed to
11 warn Plaintiff and members of the Classes.
12

13 135. Plaintiff had no way of knowing of the Products' latent defect.

14 136. Defendant's failure to warn caused Plaintiff and Class members
15 economic damages and injuries in the form of lost value due to risk of
16 contamination due to E. coli exposure.
17

18 137. Plaintiff and Class members have suffered damages in an amount to
19 be determined at trial and are entitled to any incidental, consequential, and other
20 damages and other legal and equitable relief, as well as cost and attorneys' fees,
21 available under law.
22
23

24 **COUNT IX**
25 **Negligent Design & Formulation Defect**

26 138. Plaintiff incorporates by reference all the allegations contained in the
27 foregoing paragraphs as if fully set forth herein.
28

1 139. Defendant owed Plaintiff and the Class a duty to design and
2 formulate the Products in a reasonable manner.
3

4 140. The design and formulation of the Products was defective and
5 unreasonably dangerous, causing exposure to a material with harmful effects.
6 Thus, the Products are now worthless.
7

8 141. The design and formulation of the Products caused them to be not fit,
9 suitable, or safe for their intended purpose. The dangers of the Products
10 outweighed the benefits and rendered the products unreasonably dangerous.
11

12 142. There are other Products that do not contaminate the consumers with
13 E. coli.
14

15 143. The risk/benefit profile of the Products was unreasonable, and the
16 Products should have had stronger and clearer warnings or should not have been
17 sold in the market.
18

19 144. The Defendant's negligent design/formulation of the Products was
20 the proximate cause of damages to the Plaintiff and the Class members.
21

22 145. Plaintiff and Class members have suffered damages in an amount to
23 be determined at trial and are entitled to any incidental, consequential, and other
24 damages and other legal and equitable relief, as well as cost and attorneys' fees,
25 available under law.
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28 **COUNT X**

Negligence

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146. Plaintiff incorporates by reference all the allegations contained in the foregoing paragraphs as if fully set forth herein.

147. Defendant owed a duty to consumers to produce a product that was safe for its intended consumption.

148. Defendant breached this duty by producing a product that was dangerous for its intended consumption. Defendant knew or should have known that E. coli contaminated Products would cause injuries once exposed to humans and thus be worthless as a safe-to-consume Product

149. As a direct result of this breach, Plaintiff suffered injury in that Plaintiff has been deprived of their benefit of the bargain. Plaintiff's injuries were caused in fact by Defendant's breach. But for Defendant's negligent manufacture and improper oversight, Plaintiff would not have been injured.

150. Further, Plaintiff's injuries were proximately caused by Defendant's breach. It is foreseeable that poorly designed and formulated Products containing E. coli would cause injury, and it is foreseeable that a user would lose their benefit of the bargain if they purchased dangerous Products.

151. Plaintiff and Class members have suffered damages in an amount to be determined at trial and are entitled to any incidental, consequential, and other

1 damages and other legal and equitable relief, as well as cost and attorneys' fees,
2 available under law.
3

4 **COUNT XI**
5 **MEDICAL MONITORING**

6 152. Plaintiff incorporates by reference all the allegations contained in the
7 foregoing paragraphs as if fully set forth herein.
8

9 153. Plaintiff and the Class Members have been exposed to the harmful
10 bacteria E. coli.

11 154. Plaintiff and the Class were exposed to this harmful bacterium, as a
12 direct and proximate result of Defendant's tortious actions, including Defendant's
13 negligent and willful and wanton conduct as alleged herein.
14

15 155. As a proximate result of their exposure to this harmful bacterium,
16 Plaintiff and the Class have a significantly increased risk of developing future
17 health complications. This increased risk makes periodic diagnostic medical
18 examinations reasonably necessary.
19

20 156. This increased risk would warrant a reasonable physician to order
21 monitoring.
22

23 157. Early diagnosis of these health conditions has significant value for
24 Plaintiff and the Class Members because such diagnoses will help them monitor
25 and minimize the harm therefrom.
26
27
28

1 158. Monitoring procedures exist that make early detection of these health
2 complications possible and beneficial. These monitoring procedures are
3 reasonably necessary as a direct and proximate result of Plaintiff's and the Class
4 Members' exposures to the harmful bacteria, as a result of Defendant's actions as
5 alleged herein.
6

7
8 159. As a direct and proximate result of Plaintiff's and the Class Members'
9 exposure to the harmful bacteria, surveillance in the form of periodic medical
10 examinations is reasonable and necessary, because such surveillance will provide
11 early detection and diagnosis of harmful and debilitating injuries potentially
12 resulting from exposure to E. coli and, as a remedy for the conduct alleged.
13
14

15 160. As a result, Plaintiff and the Class should be awarded the quantifiable
16 costs of such a monitoring regime.
17

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, individually and on behalf of the other members
20 of the Class, alleged herein, respectfully requests that the Court enter judgment in
21 his favor and against Defendant as follows:
22

- 23
- 24 a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil
25 Procedure and naming Plaintiff as the representative for the Class and
26 Plaintiff's attorneys as Class Counsel;
 - 27 b. For an order declaring the Defendant's conduct violates the causes of action
28 referenced herein;

- 1 c. For an order finding in favor of Plaintiff and the Class on all counts asserted
2 herein;
- 3 d. For compensatory, statutory, and punitive damages in amounts to be
4 determined by the Court and/or jury;
- 5
- 6 e. For quantifiable costs of medical monitoring;
- 7
- 8 f. For prejudgment interest on all amounts awarded;
- 9
- 10 g. For an order of restitution and all other forms of equitable monetary relief;
- 11
- 12 h. For injunctive relief as pleaded or as the Court may deem proper; and
- 13
- 14 i. For an order awarding Plaintiff and the Class their reasonable attorneys'
15 fees and expenses and costs of suit.
- 16
- 17 j. Such other relief as this Court deems just and proper.

16 Dated: November 5, 2024

18 Respectfully submitted,

19
20 */s/ John C. Bohren*
21 **YANNI LAW APC**
22 John C. Bohren (California State
23 Bar No. 295292)
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AND

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.