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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **SOUTHERN DIVISION**

17 JACOB PETERSEN, *et al.*,

18 Plaintiffs,

19 v.

20 COSTCO WHOLESALE CO., INC.,
TOWNSEND FARMS, INC., FALLON
21 TRADING CO., INC., and UNITED
JUICE CORP.,

22 Defendants.

Case No.: SA CV-13-01292 DOC (JCGx)

FOURTH AMENDED COMPLAINT

IMAGED FILE

Judge: Hon. David O. Carter
23 Dept.: 9D
24 Trial Date: None Set

HEPATITIS A CLASS ACTION

DEMAND FOR JURY TRIAL

25 COME NOW the Named-plaintiffs, JACOB PETERSEN, GAYLE PRATHER, SUZANNE
26 FABER, LESLIE LEE, THOMAS FIORE, LESLIE STRAKA, DAVID TROUTMAN, ANDREA
27 MEDRANO, and AEROL and AMY PADEN, individually, and for all those similarly situated, by
28 and through counsel of record, FREDERIC L. GORDON of GORDON & HOLMES, RICHARD R.
WAITE of KEENEY, WAITE and STEVENS and WILLIAM D. MARLER of MARLER CLARK,

1 allege and complain as follows:

2 **PARTIES**

3 1. **JACOB PETERSEN**: The plaintiff resides in Orange County, California. Mr.
4 Petersen purchased Townsend Farms Organic Anti-Oxidant Blend Frozen Berry Mix on May 16,
5 2013, consuming the fruit first that same day, and then again on six following days. After learning of
6 the outbreak and recall, he followed the urgings of the Orange County Department of Health and
7 thus went to the Sand Canyon Urgent Care where he received an immune-globulin shot for which he
8 paid \$120.00. He returned the uneaten remains of the recalled-product to the Irvine Costco store on
9 June 1, and he was then refunded \$10.19.

10 2. **GAYLE PRATHER**: The plaintiff resides in Pima County, Arizona. Ms. Prather
11 received a recorded telephone-message from Costco on May 31, 2013 alerting her to the
12 contamination of the Townsend Farms Organic Anti-Oxidant Blend Frozen Berry Mix. She had
13 been consuming this product almost every day for over a month at this point. Extremely worried, she
14 immediately went to the CDC website and read about the outbreak. The next day, she went to
15 Walgreen's Take-Care Clinic and received a hepatitis-A vaccination, which cost \$108.99. Still
16 concerned about the risk of contracting an infection that could lead to liver failure, Ms. Prather went
17 twice to her doctor for further tests and reassurance.

18 3. **SUZANNE FABER**: The plaintiff resides in El Paso County, Colorado. Ms. Faber
19 bought Townsend Farms Organic Anti-Oxidant Blend Frozen Berry Mix near the beginning of May
20 2013, and she consumed the product between May 29 and June 3. After learning of the outbreak and
21 recall, she followed the urgings of Costco and the CDC and received an immune-globulin shot on
22 June 4, 2013 from Colorado Springs Health Partners. Several days later, she was tested for the
23 hepatitis-A virus, testing negative.

24 4. **LESLIE LEE**: The plaintiff resides in Kootenai County, Idaho. Ms. Lee ate
25 Townsend Farms Organic Anti-Oxidant Blend Frozen Berry Mix in the mornings, with Greek
26 yogurt, during the end of April and through the month of May. As a result of eating the recalled-
27 product, and after learning of the recall on the news, she received an immune-globulin shot at
28 Ironwood Family Practice on June 4, 2013, as advised by her doctor. The vaccination cost \$101, the

1 doctor-visit cost \$68, and the blood-work cost \$156.60, as documented by receipts. Ms. Lee was not
2 insured at the time, thus exposure-related costs were all out-of-pocket expenses. She returned the
3 recalled-product to Costco that same day, receiving a \$10.27 refund. Costco refused, however, to
4 reimburse her for the cost of her exposure-related medical treatment.

5 5. **THOMAS FIORE**: The plaintiff resides in Clark County, Nevada. As a result of his
6 eating Townsend Farms Organic Anti-Oxidant Blend Frozen Berry Mix, Mr. Fiore obtained a
7 hepatitis-A vaccination at Costco's pharmacy.

8 6. **LESLIE STRAKA**: The plaintiff resides in Lane County, Oregon. Ms. Straka
9 purchased Townsend Farms Organic Anti-Oxidant Blend Frozen Berry Mix on May 15, 2013, and
10 consumed it on a daily basis, from May 18 through June 5, 2013. Based in part on advice of her
11 physician to be treated "as soon as possible," she obtained the hepatitis-A vaccine at a Rite-Aid
12 Pharmacy in Eugene, and followed up at her physician's office later that same day. She recalls that
13 the cost of the vaccination was approximately \$90. Ms. Straka is a cancer-survivor (Stage 4) and, as
14 such, is concerned about her immune-system and her continuing health overall.

15 7. **DAVID TROUTMAN**: The plaintiff resides in Bernalillo County, New Mexico. Mr.
16 Troutman purchased the Townsend Farms Organic Anti-Oxidant Blend Frozen Berry Mix on May
17 12, 2013. He consumed the fruit daily from May 13, 2013 through May 31, 2013, when he received
18 a telephone call with a recorded message from Costco advising him to contact a health care provider
19 to receive a hepatitis-A vaccine. On June 3, 2013, Mr. Troutman received the hepatitis-A vaccine at
20 New Mexico Aids Services located at 625 Truman Street N.E., Albuquerque, New Mexico.

21 8. **ANDREA MEDRANO**: The plaintiff resides in Hawaii County, Hawaii. Ms.
22 Medrano purchased the Townsend Farms Organic Anti-Oxidant Blend Frozen Berry Mix on May
23 26, 2013. She consumed the product on June 8, 10, and 12, 2013. On June 12, 2013, she received a
24 letter recommending that she receive a hepatitis-A vaccination if she had consumed the product
25 within the past fourteen days because of hepatitis-A contamination. As a result of eating the recalled
26 product, and after learning of the recommended vaccination, Ms. Medrano received the hepatitis-A
27 vaccination on June 13, 2013 at Kaiser located at 1292 Waianaenue Avenue, Hilo, Hawaii 96720.

28 9. **AEROL and AMY PADEN**: The plaintiffs reside in King County, Washington.

1 Costco purchase records show the Aerol and Amy purchased the Townsend Farms Organic Anti-
2 Oxidant Blend Frozen Berry Mix on May 20, 2013 and consumed it for the first and only time on
3 June 3, 2013. The very next day, in response to learning of the outbreak, including the number of
4 infected persons, and based on the recommendation of the CDC and Costco, Aerol and Amy each
5 obtained hepatitis-A vaccinations at Virginia Mason Hospital located at 925 Seneca St., Seattle,
6 Washington 98101 on June 4, 2013. They received their shots for a cost of \$153.70 each.

7 10. **COSTCO WHOLESALE, CO., INC.:** The defendant Costco Wholesale, Co., Inc.
8 (“Costco”) is a Washington corporation that sold “Townsend Farms Organic Anti-Oxidant Blend,” a
9 frozen berry and pomegranate seed mix that the Centers for Disease Control and Prevention
10 (“CDC”) determined to be the cause of an outbreak of 162 hepatitis-A virus (“HAV”) infections in
11 ten western states (“subject outbreak”). At all times relevant to this action, Costco distributed and
12 sold the “Townsend Farms Organic Anti-Oxidant Blend” at its retail stores, which are located
13 throughout the western United States, including in the State of California.

14 11. **TOWNSEND FARMS, INC.:** The defendant Townsend Farms, Inc. (“Townsend
15 Farms”) is an Oregon corporation that manufactures, distributes, and sells a variety of fresh and
16 frozen fruit products, including the “Townsend Farms Organic Anti-Oxidant Blend” product that
17 was determined to be the cause of the subject outbreak. At all times relevant to this action, the
18 defendant manufactured, distributed, and sold the “Townsend Farms Organic Anti-Oxidant Blend”
19 to Costco for sale at its retail store locations, including in the State of California.

20 12. **FALLON TRADING CO., INC.:** The defendant, Fallon Trading Co., Inc., (“Fallon
21 Trading”) is a Pennsylvania corporation that imports, distributes, and sells pomegranate products,
22 including pomegranate arils, to companies throughout the United States. At all times relevant to this
23 action, Fallon Trading carried on at its business location in Green Lane, Pennsylvania, the import,
24 manufacture, distribution, or sale of pomegranate arils, including those sold to the defendant Purely
25 Pomegranate that ultimately were included in the “Townsend Farms Organic Anti-Oxidant Blend”
26 that caused the subject outbreak.

27 13. **UNITED JUICE CORP.:** The defendant, United Juice Corporation, (“United
28 Juice”) is a New Jersey corporation that imports, distributes, and sells pomegranate products,

1 including pomegranate arils, to companies throughout the United States. At all times relevant to this
2 action, United Juice carried on at its business location in Rochelle Park, New Jersey, the import,
3 manufacture, distribution, or sale of pomegranate arils, including those sold to the defendant Fallon
4 Trading that ultimately were included in the “Townsend Farms Organic Anti-Oxidant Blend” that
5 caused the subject outbreak.

6 **JURISDICTION AND VENUE**

7 14. The defendants have each engaged in substantial, continuous, and systematic contacts
8 within the State of California, purposefully directing their activities towards California, including the
9 placement of their goods into the stream of commerce with the intent and expectation that they will
10 be purchased by consumers in California, and this litigation arises out of those activities; and venue
11 is proper in California because the facts giving rise to the claims of the named-plaintiff Jacob
12 Petersen, and all those similarly situated, arose in California as a result of injuries suffered there.

13 15. The defendant Purely Pomegranate, upon its removal of this action to the United
14 States District Court for the District of California, asserts the California District Court has removal
15 jurisdiction over this matter pursuant to 28 U.S.C. §§ 1441(b) and 1332(a), an assertion with which
16 plaintiffs do not concede, but otherwise have elected to not dispute.
17

18 16. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(a)(2) because a
19 substantial part of the events or omissions giving rise to the claim occurred in this judicial district.
20

21 **NATURE OF THE ACTION**

22 17. This is a class action lawsuit brought on behalf of each of the plaintiffs named above
23 (“named-plaintiffs”), and all persons similarly-situated (“class members”) who live in a “represented
24 state.” For purposes of this action, a represented state is a state where one or more named plaintiffs
25 resided at the time of the injury.¹

26
27
28 ¹ The “represented states” are as follows, with the class representatives identified in parentheses: Arizona (Gayle Prather), California (Jacob Petersen), Colorado (Suzanne Faber), Hawaii (Andrea Medrano), Idaho (Leslie Lee), Nevada (Thomas Fiore), New Mexico (David Troutman), Oregon (Leslie Straka), and Washington (Aerol and Amy Paden).

1 and believe that the recalled product was distributed to Costco stores and subsequently sold to
2 consumers in the represented states during the first several months of 2013 up to the date that the
3 outbreak linked to the recalled-product was announced on May 31, 2013. Based on the geographic
4 distribution and sale of the product that caused the subject outbreak, and the scope of the subsequent
5 product recall, the number of potential class members likely exceeds 20,000.

6
7 22. As the recalled-product was distributed and sold in high volume, over several months,
8 and over a multistate region, joinder is impracticable. Nevertheless, notice of this class action to
9 each potential respective class member can be accomplished once the respective individual class is
10 certified, because the identity of potential class members is known by state, regional, and other
11 public health organizations that can issue notification to potential class members, and because
12 Costco stores are in possession of a list of all individuals who purchased the recalled-product.

13
14 23. There are numerous questions of law and fact that are common to the respective class
15 members, including but not limited to:

16 (a) Whether the “Townsend Farms Organic Anti-Oxidant Blend” that was subject
17 to a recall because public health officials had linked the consumption of the recalled-product to more
18 than one-hundred and sixty persons with confirmed HAV infections;

19 (b) Whether there was an outbreak of HAV infections linked to the consumption
20 of the recalled product as proven by both epidemiological and traceback investigations performed by
21 the CDC and other public health agencies;

22 (c) Whether public health agencies directed those who had consumed the recalled
23 product to obtain either the HAV-vaccine or an IG-shot to prevent HAV infection;

24 (d) Whether Townsend Farms agreed to a FDA-recall of the Product and notified
25 those who had consumed the recalled product to not eat the product because it was not safe to eat or
26 would put anyone consuming the product at risk of HAV infection;
27
28

1 (e) Whether a person who had already consumed the recalled product acted in a
2 reasonable and foreseeable manner in following the direction of public health agencies, or direction
3 of their doctor, in obtaining the HAV-vaccine or an IG-shot;

4 (f) Whether ready-to-eat frozen fruit products, like the recalled-products, is, as a
5 matter of law, defective or otherwise unreasonably dangerous beyond what would be expected by
6 the ordinary consumer when products sharing the same Lot Codes are epidemiologically confirmed
7 by public health officials to have been the cause of an HAV-outbreak due to contamination;

8 (g) Whether ready-to-eat frozen fruit products, like the recalled-products, is, as a
9 matter of law, defective or otherwise unreasonably dangerous beyond what would be expected by
10 the ordinary consumer when subject to FDA-recall, and when CDC, other public health agencies,
11 and the defendants Costco and Townsend Farms advised consumer to not eat the product because to
12 do so would be to risk HAV infection;

13 (h) Whether ready-to-eat frozen fruit products, like the recalled product, is, as a
14 matter of law, defective or otherwise unreasonably dangerous beyond what would be expected by
15 the ordinary consumer when subject to FDA recall as a result of confirmation that products sharing
16 the same Lot Codes were contaminated with HAV, that these same Lot Codes were subject to FDA
17 recall, and public health officials directed the public to not consume the product because of the risk
18 of HAV infection resulting from such consumption;

19 (i) Whether the sellers of the recalled product, or contaminated ingredients used
20 to make the recalled product, are strictly liable to those who purchased the recalled product and, as a
21 direct and proximate result, received the HAV-vaccine or an IG-shot at the direction of public health
22 officials to prevent HAV infection;

23 (j) Whether the defendants Costco and Townsend Farms breached express and
24 implied warranties by their respective sale of the recalled products;

1 (k) Whether the sellers of the recalled products, or contaminated ingredients used
2 to make the recalled-product, are liable to the named-plaintiffs and class members due to negligence
3 in the import, manufacture, distribution or sale of food that was actually or potentially contaminated
4 with HAV and thus subject to FDA recall;

5 (l) Whether the sellers of the recalled product, or contaminated ingredients used
6 to make the recalled-product, are liable to named-plaintiffs and class members for the negligent
7 infliction of emotional distress for causing the impact or exposure to the recalled product, thereby
8 causing the need for persons so impacted or exposed to obtain the HAV-vaccine or an IG-shot as a
9 medically reasonable means of preventing infection;

10 (m) Whether it was reasonably foreseeable that the sale of a food product that was
11 contaminated or potentially contaminated with HAV, and thus subject to FDA recall, would cause
12 those who had consumed the product to take medically reasonable steps to avoid infection; and
13

14 (n) Whether it was reasonably foreseeable that the sale of a food product that was
15 contaminated or potentially contaminated with HAV would cause those who had consumed the
16 product to suffer emotional distress, concern, and worry both in the short period prior to taking the
17 medically reasonable steps to avoid infection and for the short period after while waiting to see if the
18 steps had been successful in preventing infection;
19

20 24. Common questions of law and fact predominate over any questions affecting only
21 individual class members. More specifically, whether the recalled product was adulterated is decided
22 with reference to federal law as to all claims, while a significant majority of all claims are governed
23 by California law, given that Purely Pomegranate is a California Corporation, and the more than half
24 of all class-members are residents of California. Those class members of the eight other represented
25 states present no novel issues of liability, with allegations of defect and injury identical as between
26 all class members, and are easily manageable by use of a limited number of state subclasses. There
27
28

1 is, similarly, no significant conflicts between the laws of the represented states, meaning that the
2 liability to the named-plaintiffs and class members will be determined based on essentially identical
3 legal principles. Neither are there individualized issues of proof or variation in the nature or extent of
4 the injuries alleged, with such HAV-claims having been resolved on a class-basis many times before.

5
6 25. The claims of the named-plaintiffs are typical of the claims of all class members, as
7 set forth in the Class Definition above. The damages and relief sought by these named-plaintiffs are
8 also common to the class members, being akin to product-warranty type claims where involving the
9 same product, the same defect, the same alleged injury, and seeking the same damages, which are all
10 primarily economic in nature—*e.g.*, reimbursement for shot-related costs.

11
12 26. The named-plaintiffs will fairly and adequately represent and protect the interests of
13 the class, and there are no identifiable conflicts with any other potential class member.

14
15 27. The named-plaintiffs have retained competent counsel, who are experienced in
16 foodborne illness litigation and who have extensive experience with class action litigation. The
17 counsel for the named-plaintiffs –William D. Marler, Esq. and the Seattle, Washington law firm of
18 Marler Clark–has successfully represented a significant numbers of class-claimants who recovered
19 damages as a result of alleged HAV-exposure and the need for prophylactic vaccinations, including
20 the representation of: (a) more than 1,500 individuals in a class action related to an HAV outbreak at
21 the D’Angelo’s in Swansea, Massachusetts in 2001; (b) approximately 1,300 persons as part of a
22 class action on behalf of persons who received IG shots due to an HAV outbreak in June and July
23 2000 in Spokane, Washington, which was associated with food served at a Carl’s Jr. fast food
24 restaurant there; (c) approximately 9,000 persons who received IG shots due to an outbreak of HAV
25 at a Chi-Chi’s restaurant near Pittsburgh, Pennsylvania in 2003; (d) approximately 3,800 persons as
26 part of a class action on behalf of persons who received IG shots due to an HAV exposure in June
27 2004 at a Friendly’s restaurant in Arlington, Massachusetts; (e) approximately 850 persons as part of
28

1 a class action on behalf of persons who received IG shots due to an HAV exposure at a Quizno's in
2 Boston, Massachusetts in 2004; (f) over 3,000 persons who received IG shots due to potential HAV
3 exposure in January 2007 at a Houlihan's restaurant in Geneva, Illinois; (g) more than 5,000 persons
4 who were required to get vaccinations against HAV following exposure at a McDonald's restaurant
5 in Milan, Illinois in 2009; (g) over 3,000 persons who received HAV vaccines in 2011 due to HAV-
6 exposure at a Fayetteville, North Carolina Olive Garden; and (h) an estimated 1,200 person shot-
7 class linked to HAV-exposure in 2014 caused by an infected employee at Papa John's restaurant in
8 Charlottesville, North Carolina. Marler Clark also has extensive experience representing victims
9 who developed HAV acute illnesses.

10
11 28. The named-plaintiffs are unaware of any possible difficulty in the management of this
12 litigation that would prevent it from being maintained as a class action. The class action mechanism
13 is superior to other alternatives, if any exist, for the fair adjudication of the controversy. Because the
14 damages suffered by each class member is relatively small, easily documented, and not subject to
15 any significant variation, class adjudication is superior and outweighs each member's interest in
16 controlling prosecution of separate actions. Indeed, in the absence of class adjudication, most, if not
17 all, class members would be left without reasonable means of compensation.

18
19 29. The identity of potential class members can be ascertained from the various state and
20 regional health agencies that have administered vaccinations or IG shots, or who have been informed
21 of such vaccination or IG shots by either patient or provider report, and also from Costco stores,
22 which stores are in possession of lists identifying all people who have purchased the Product.

23
24 30. In the absence of a class action, individual litigation of these claims will be
25 unreasonably expensive in light of the probable damages that might be recovered, and will
26 unreasonably burden the courts of this state and others, and will waste important judicial resources.

27 31. In the absence of a class action, individual litigation will also waste money that would
28

1 otherwise be available to compensate these persons who were potentially exposed to infected
2 persons or contaminated food, and accordingly needed treatment.

3 32. In the absence of a class action, persons who might otherwise possess a remedy, and
4 might otherwise be able to seek judicial relief, may be left without a reasonable means to obtain
5 justice and full compensation for the injuries they sustained.

6 33. In the absence of a class action, and in the absence of prompt notification of all
7 potential class members, any minor claims arising from this HAV exposure/outbreak, and the related
8 vaccinations and IG shots, may languish, and may do so without the statute of limitations beginning
9 to run until each minor turns eighteen. As a result, litigation related to this potential outbreak could
10 be in the courts, intermittently, and without coordination, for the next twenty years. In contrast, a
11 class action lawsuit will allow for the efficient and expeditious adjudication of all such claims.
12

13 **OTHER FACTUAL ALLEGATIONS**

14 34. As of October 28, 2013, at least 162 people were infected by HAV and became ill due
15 to consumption of the recalled product. The illnesses thus far have been reported to have occurred in
16 residents of at least ten states: Arizona (23), California (79), Colorado (28), Hawaii (8), New
17 Hampshire (1), New Jersey (1), New Mexico (11), Nevada (6), Utah (3), and Wisconsin (2). There
18 were 71 hospitalizations and no known deaths.
19

20 35. The defendants Purely Pomegranate, Fallon Trading and United Juice variously and
21 respectively imported, manufactured, distributed, or sold the HAV-contaminated pomegranate arils
22 that the defendant Townsend Farms used to manufacture the recalled products. In turn, the defendant
23 Townsend Farms sold the recalled product to Costco for retail sale in its stores, which is where the
24 recalled product that caused injury to the named-plaintiffs and class members was purchased.
25

26 36. On or about the date of the public announcement about the subject outbreak, May 31,
27 2013, Costco removed the recalled-product from its store shelves. Further, and as alleged above, the
28

1 defendant Townsend Farms—at the FDA’s request—announced the subject recall.

2 37. In the Updated Release that Townsend Farms issued, and that the FDA posted on its
3 website, the source of the contamination was clearly stated:

4 Townsend Farms is providing this Update #3 after the FDA and the CDC
5 confirmed that the epidemiological evidence supports a clear association between
6 the hepatitis A illness outbreak and one lot of organic pomegranate seeds used in
7 the Frozen Organic Antioxidant blend subject to the voluntary recall. The
8 implicated lot of pomegranate seeds were imported from Turkey through Goknur
9 and Purely Pomegranate, Inc.

10 38. HAV, which causes severe gastrointestinal illness and, in severe cases, liver failure
11 and death, incubates in the human body for between 15 and 50 days. Therefore, public health
12 officials across the country continued to monitor for additional HAV infections and illnesses
13 occurring as part of the subject outbreak.

14 39. The CDC and other state and regional public health agencies advised any purchasers
15 of the recalled-product to refrain from consuming the Product, and to obtain HAV vaccination, or a
16 prophylactic dose of IG. More specifically, the CDC issued a recommendation that anyone
17 “hav[ing] eaten the Townsend Farms Organic Antioxidant Blend frozen berry and pomegranate
18 mix...within the last 14 days, you need to get the hepatitis-A vaccination.” Public health officials
19 also recommended that people exposed to an individual known to have become ill as part of the
20 subject outbreak should also obtain the HAV-vaccine or an IG-shot.

21 40. It is estimated that more than 20,000 people sought treatment after being exposed or
22 potentially exposed to HAV as a result of consuming the recalled product or as result of exposure to
23 an someone infected as a result of such consumption.

24 41. Of those named-plaintiffs and class members who consumed the recalled product,
25 such consumption occurred before its association with the subject outbreak was known, and before
26 Costco stores removed the recalled-product from store shelves.
27
28

STRICT LIABILITY

1
2 42. By this reference, the preceding paragraphs of this complaint are fully incorporated as
3 if each and every one of these paragraphs was set forth here in its entirety.

4 43. The defendants imported, manufactured, distributed, or sold the recalled-product, or
5 contaminated ingredients used to make the recalled product, thus causing the subject outbreak, as
6 described previously, and thus also causing the named-plaintiffs and class members injury.

7
8 44. The recalled products were ready-to-eat, intended for consumption without further
9 preparation, cooking, or other step that might eliminate the presence of pathogens. A ready-to-eat
10 product contaminated with HAV is adulterated within the meaning of Federal Food, Drug, and
11 Cosmetic Act, 21 U.S.C. § 342(a), as well as being defective, unreasonably dangerous, and not fit
12 for human consumption. Further, food products subject to FDA recall are neither fit for human
13 consumption, nor safe to the extent expected by a reasonable consumer, when such recall is a result
14 of the recalled products being contaminated with HAV and shown to have caused an outbreak.

15
16 45. Neither the recalled product, nor pomegranate arils used to manufacture the recalled
17 product, conformed to the specifications or performance standards of each defendant, nor did they
18 conform to the express and implied warranties of each defendant.

19 46. The products that are alleged here to have caused injury to the named-plaintiffs and
20 class members were subject to FDA-recall because certain product-lots were confirmed to have been
21 contaminated with HAV, and confirmed HAV-infections were linked to the consumption of these
22 same product-lots. But for the recalled products of these same product-lots, the named-plaintiffs and
23 class members would not have needed to obtain either the HAV-vaccine or an IG-shot and, thus,
24 would have suffered no injury and damages, including the economic costs of the needed medical
25 treatment, severe emotional distress caused by the reasonable fear and worry about infection, and the
26 pain and discomfort associated with the vaccination.
27
28

1 provisions that pertained or applied to the import, manufacture, distribution, storage, or sale of their
2 product or product-ingredients, including, but not limited to, the Federal Food, Drug, and Cosmetics
3 Act, § 402(a), as codified at 21 U.S.C. § 342(a), which bans the manufacture, sale and distribution of
4 any “adulterated” food, and California’s Sherman Food, Drug, and Cosmetic Act, CA Health &
5 Safety Code § 110545, which imposes an identical ban. Under both Acts, food is adulterated if it
6 contains a “poisonous or deleterious substance which may render it injurious to health.” HAV is
7 such a substance. Thus, by its import, manufacture, distribution, storage, or sale of the their product
8 or product-ingredients, the defendants breached their statutory and regulatory duties, and the named
9 plaintiffs and class members were each injured as a direct and proximate result of such breaches.
10

11 53. The Defendants were negligent in importing, manufacturing, distributing or selling a
12 food Product actually/potentially contaminated with HAV. The Defendants’ negligent acts and
13 omissions included, but were not limited to:

14 (a) Failure to prevent the contamination of the product or product-ingredients by
15 HAV, including the failure to implement or non-negligently perform inspection and monitoring of
16 the product or product-ingredients such that its adulterated condition would be discovered prior to its
17 sale or distribution to the public for human consumption.
18

19 (b) Failure to properly supervise, train, and monitor their employees, or the
20 employees of their agents or subcontractors, on how to ensure the import, manufacture, distribution
21 or sale of food Product free of adulteration by potentially lethal pathogens.
22

23 54. The federal and state food safety regulations applicable here, and as set forth above,
24 establish a positive and definite standard of care in the import, manufacture, distribution or sale of
25 food, and the violation of these regulations constitutes negligence *per se*.

26 55. The named-plaintiffs and class members were in the class of persons intended to be
27 protected by these statutes and regulations, and were injured as the direct and proximate result of the
28

1 Defendants' violation of applicable federal, state and local food safety regulations.

2 56. The defendants breached the aforementioned duties as alleged above, which breach
3 constituted the proximate cause of injury to the named-plaintiffs and class members.

4 **BREACH OF WARRANTIES (as to Townsend Farms and Costco only)**

5 57. By this reference, the preceding paragraphs of this complaint are fully incorporated as
6 if each and every one of these paragraphs was set forth here in its entirety.

7
8 58. The defendant Costco and Townsend Farms each sold the recalled product, with
9 Townsend Farms selling the recalled product to Costco, and Costco selling the recalled products to
10 the named-plaintiffs and class-members.

11 59. By each of the defendant's sale of the recalled product, the defendants expressly and
12 impliedly warranted that the products sold were fit for human consumption as a ready-to-eat product.

13 60. Because food that is contaminated with HAV, or is otherwise subject to FDA-recall
14 as a result of being linked to a confirmed outbreak of HAV infections, is neither safe, nor fit for
15 human consumption, the defendants Costco and Townsend Farms each breached their respective
16 warranties by respective sales of the recalled product to the named-plaintiffs and class-members who
17 consumed the recalled product. These defendants also breached the same warranties to named-
18 plaintiffs and class members who, as members of households of purchasers of the recalled product,
19 were exposed to HAV as a result of the purchasers being infected as a result of consuming the
20 recalled product.
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23 61. The named-plaintiffs and class members suffered personal injury as a direct result of
24 the defendants Costco and Townsend Farms having breached warranties, as set forth above.

25 **DAMAGES**

26 62. By each of the defendant's sale of the recalled product, the defendants expressly and
27 impliedly warranted that the products sold were fit for human consumption as a ready-to-eat product.
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63. The named-plaintiffs and class members have suffered economic and non-economic damages, including, but not limited to: (a) costs incurred as a result of taking medically-reasonable steps to avoid being infected with HAV after exposure to the recalled product or a person who was infected as a result of consuming the recalled product—*e.g.*, medical expenses, documented lost-wages, and related out-of-pocket costs; (b) non-economic damages for the physical pain caused by the HAV-vaccination or IG-shot; and (c) non-economic damages, in a sum certain amount, for the emotional distress, anxiety, and related reasonable fear of HAV infection for the limited period between learning of need to take the recommended, medically-reasonably steps to avoid infection.

PRAYER FOR RELIEF

WHEREFORE, the named-plaintiffs pray for the following relief:

- (1) That the Court certifies this class action under Rule 23(b)(3), Fed.R.Civ.P. or any other appropriate provision of Federal Rule 23, and appoint counsel herein as class counsel;
- (2) That the Court award named-plaintiffs and class members judgment against the defendants in such sums as shall be determined to fully and fairly compensate the damages alleged above, or in an amount to be proven at trial; and
- (3) That the Court award named-plaintiffs and class members such other and further relief as it deems necessary and proper in the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the named-plaintiffs and class members hereby demand trial by jury on all issues so triable.

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Dated: December 1, 2016

GORDON & HOLMES

/s/ Frederic L. Gordon
Frederic L. Gordon

KEENEY, WAITE and STEVENS

/s/ Richard R. Waite
Richard R. Waite

MARLER CLARK

/s/ William D. Marler
William D. Marler

Attorneys for named-plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2016, I electronically transmitted the foregoing document to the U.S. District Court Clerk’s Office using the Court’s CM/ECF System for filing and transmittal of a Notice of Electronic Filing, thereby serving all counsel of record in this matter.

By: /s/ William D. Marler