

1 Frederic L. Gordon (SBN 98994)
Rhonda J. Holmes (SBN 157017)
2 Andrew G. Nagurney (SBN 301894)
GORDON & HOLMES
3 223 W. Date Street
San Diego, California 92101-3571
4 Tel: 619-696-0444 Fax: 619-696-1144
Email: fgordon@gordonandholmes.com

5 William D. Marler, Esq. (SBN 17233 [WA])
6 Bruce T. Clark, Esq. (SBN. 14299 [WA])
R. Drew Falkenstein, Esq. (SBN, 33401 [WA])
7 MARLER CLARK, LLP
1301 Second Avenue, Ste. 2800
8 Seattle, WA 98101
Tel: 206-346-1888 Fax: 206-346-1898
9 Email: bmarler@marlerclark.com

10 Attorneys for Plaintiff,
VINCENT GRANO

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 VINCENT GRANO,

15 Plaintiff,

16 v.

17 Andrew & Williamson Fresh Produce, Inc.,

18 Defendant.

Case No.: **'18CV1750 BEN BLM**

**COMPLAINT FOR STRICT LIABILITY AND
NEGLIGENCE**

JURY TRIAL DEMANDED

19
20 NOW comes Plaintiff, VINCENT GRANO, individually, by and through his attorneys of record,
21 Frederic L. Gordon of Gordon & Holmes, and alleges upon information and belief as follows:

22 **PARTIES**

23 1. Plaintiff VINCENT GRANO resides in Lake in the Hills, Illinois. VINCENT
24 GRANO is, therefore, a citizen of the state of Illinois.

25 2. Defendant, SODEXO, INC. is a Delaware corporation with its principal place of
26 business located in Gaithersburg, Maryland. Therefore, SODEXO, INC. is a citizen of the states of
27 Delaware and Maryland. At all times relevant to this action, SODEXO, INC. was a provider of food
28 and facility management services for large institutions and organizations, including for the United

1 States Navy at cafeterias and other foodservice locations at Marine Corps Recruit Depo, located in
2 San Diego, California. At all times relevant, SODEXO, INC.'s actions at the Marine Corps Recruit
3 Depo included the manufacture, distribution, and sale of the contaminated food products that are the
4 subject of this action. Specifically, SODEXO, INC. exercised complete control over the sourcing
5 and acquisition of food items and/or ingredients, the preparation of finished food products from
6 these items and ingredients, including the contaminated food products that are the subject of this
7 action, and the service, sale and distribution of those food products.

8 **JURISDICTION, VENUE, AND CHOICE OF LAW**

9 3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
10 § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is between
11 citizens of different states, and because SODEXO, INC. has certain minimum contacts with the state
12 of California such that maintenance of the suit in this district does not offend traditional notions of
13 fair play and substantial justice.

14 4. Venue in the United States District Court for the Southern District of California is
15 proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions
16 giving rise to VINCENT GRANO'S claims and causes action occurred in this judicial district, and
17 because SODEXO, INC. was subject to personal jurisdiction in this judicial district at the time of the
18 commencement of the action.

19 5. Pursuant to 28 U.S.C. 5001(b), California law governs because the events giving rise
20 to this personal injury action took place at Marine Corps Recruit Depo, which is a location subject to
21 the exclusive jurisdiction of the United States within a State, i.e., California.

22 **GENERAL ALLEGATIONS**

23 **The 2017 Marine Corps Recruit Depot E. coli Outbreak**

24 6. In October 2017, an estimated 244 male recruits at Marine Corps Recruit Depot
25 (MCRD) and Camp Pendleton, both located in or around San Diego, California, were infected by
26 either or both of two strains of Shiga toxin-producing *E. coli* by consuming contaminated food
27 products prepared by SODEXO, INC.

28

1 7. Of the 244 ill recruits, fifteen developed a life-threatening complication called
2 hemolytic uremic syndrome (HUS). Six of the fifteen HUS cases became critically ill, but
3 fortunately none died. Pulsed-field gel electrophoresis (PFGE) testing on stool isolates obtained
4 from ill recruits resulted in the identification of *E. coli* O157:H7 and *E. coli* O26 strains.

5 8. Investigators from the Centers for Disease Control and Prevention (CDC) conducted
6 thorough epidemiologic, microbiologic, and environmental studies into the circumstances of the
7 subject outbreak. Among other things, investigators observed food preparation practices and studied
8 recruit sleep quarters, bathroom facilities, and cafeterias where meals were served to around 2,000 to
9 3,000 recruits at a time.

10 9. During the investigation, CDC officials interviewed 43 case patients and 135 healthy
11 controls, plus Marine officers, food workers, and staff. The results of the CDC's epidemiologic study
12 showed a statistically significant association between ill recruits and the consumption of
13 undercooked ground beef. Environmental findings, including reports from recruits, showed that
14 SODEXO, INC.'s employees routinely undercooked ground beef served to recruits, and only
15 intermittently checked the temperature of foods, including ground beef, using an appropriate
16 thermometer. Moreover, the environmental investigation showed a number of instances of
17 temperature abuse involving other foods.

18 **E. coli O157:H7 Infection and Hemolytic Uremic Syndrome**

19 10. *Escherichia coli* is the name of a common family of bacteria, most members of which
20 do not cause human disease. *E. coli* O157:H7 is a specific member of this family that can cause
21 bloody diarrhea (hemorrhagic colitis) in humans. In the years since *E. coli* O157:H7 was first
22 identified as a cause of diarrhea, this bacterium has established a reputation as a significant public
23 health hazard.

24 11. *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli* O157:H7
25 is also notable among pathogenic bacteria for its extremely low infectious dose—that is, the number
26 of bacteria necessary to induce infection in a person. While for most pathogenic bacteria it takes
27 literally millions of bacterial colonies to cause illness, it is now known that fewer than 50 *E. coli*
28

1 O157:H7 bacteria can cause illness in a child. The practical import is that even a microscopic
2 amount of exposure can trigger a devastating infection.

3 12. The most severe cases of the *E. coli* O157:H7 infection occur in young children and
4 in the elderly, presumably because the immune systems in those age populations are the most
5 vulnerable. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attach to the inside
6 surface of the large intestine and initiates an inflammatory reaction of the intestine. What ultimately
7 results is the painful bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

8 13. The mean incubation period (time from ingestion to the onset of symptoms) of *E.*
9 *coli* O157:H7 is estimated to be two to four days (range, 1-21 days). Typically, a patient with an
10 acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody diarrhea, and vomiting.
11 The duration of diarrhea in children with *E. coli* O157:H7 infections are significantly longer than
12 that of adults.

13 14. *E. coli* O157:H7 can produce a wide spectrum of disease from mild, non-bloody
14 diarrhea, to severe bloody diarrhea accompanied by excruciating abdominal pain to life-threatening
15 complications. In most infected individuals, the intestinal illness lasts about a week and resolves
16 without any long-term effects. Antibiotics do not appear to aid in combating these infections, and
17 recent medical studies suggest that antibiotics are contraindicated for their risk of provoking more
18 serious complications. Apart from good supportive care, which should include close attention to
19 hydration and nutrition, there is no specific therapy.

20 15. About 10% of individuals with *E. coli* O157:H7 infections (mostly young children)
21 go on to develop hemolytic uremic syndrome (HUS), a severe, potentially life-threatening
22 complication. The essence of the syndrome is described by its three central features: destruction of
23 red blood cells, destruction of platelets (those blood cells responsible for clotting), and acute renal
24 failure due to the formation of micro-thrombi that occlude microscopic blood vessels that make up
25 the filtering units within the kidneys.

26 16. There is no known therapy to halt the progression of HUS. The active stage of the
27 disease usually lasts one to two weeks, during which a variety of complications are possible. HUS is
28 a frightening illness that even in the best American medical facilities has a mortality rate of about

1 5%. The majority of HUS patients require transfusion of blood products and develop complications
2 common to the critically ill.

3 **Vincent Grano's Injuries**

4 17. VINCENT GRANO is 19 years old. On June 29, 2018, he was discharged from the
5 Marine Corps due to a seizure disorder caused by his hemolytic uremic syndrome (HUS) illness in
6 the fall of 2017. Mr. Grano's HUS illness occurred as the result of his infection by shiga-toxin
7 producing *E. coli*, which he acquired from the contaminated food products that SODEXO, INC.
8 manufactured and sold and that were implicated as the cause of the subject outbreak.

9 18. Mr. Grano arrived for recruit training at MCRD in San Diego, California, on or about
10 August 7, 2017.

11 19. SODEXO, INC. was, at all times relevant to this action, the civilian provider of
12 foodservices at MCRD, including at the cafeteria or mess hall where Mr. Grano and other recruits
13 consumed contaminated food products in October 2017. In this capacity and at this location, on
14 information and belief, SODEXO, INC. acquired raw materials or ingredients for the food items that
15 it served, and also prepared, processed, cooked, and otherwise made them ready for consumption as
16 finished food items to be served to recruits and other individuals at MCRD.

17 20. In the ten days before onset of symptoms from Mr. Grano's *E. coli* infection, he
18 consumed *E. coli*-contaminated food products, prepared and served by SODEXO, INC., on one or
19 more occasions. During this ten day period, he ate food products made with ground beef, on
20 multiple occasions, including but not limited to hamburgers on October 14 and 21, 2017.

21 21. Mr. Grano began feeling ill on or about the evening of October 23, 2017, the day
22 before he was to begin the final training challenge of bootcamp, called "The Crucible," at nearby
23 Camp Pendleton. His initial symptoms consisted of painful stomach cramps and nausea, which soon
24 developed into diarrhea and vomiting.

25 22. On or about October 26, 2017, Mr. Grano began to suffer from bloody diarrheal
26 stools. On or about this date, he notified his senior drill instructor about his condition and was
27 subsequently taken to the emergency room by paramedics. He was discharged from the emergency
28 room later the same day.

1 31. Because the food that was served to and subsequently consumed by VINCENT
2 GRANO was adulterated, not fit for human consumption, not reasonably safe in design and
3 construction, lacked adequate warnings and instructions, and was unsafe to an extent beyond that
4 contemplated by the ordinary consumer, SODEXO, INC. is liable to VINCENT GRANO for the
5 harm proximately caused to him by its manufacture and sale of contaminated and adulterated food
6 products, and as such SODEXO, INC. is strictly liable to VINCENT GRANO for such harm.

7 **COUNT II**

8 **NEGLIGENCE**

9 32. VINCENT GRANO incorporates by reference and makes a part of this Count each
10 and every foregoing paragraph of this Complaint.

11 33. SODEXO, INC. had a duty to comply with all statutory and regulatory provisions that
12 pertained or applied to the manufacture, distribution, storage, labeling, and sale of the food products
13 that injured VINCENT GRANO, including the applicable provisions of the Federal Food, Drug and
14 Cosmetic Act, and similar California food and public health statutes, including without limitation the
15 provisions of the California Health & Safety Code Article 5, all of which prohibit the manufacture
16 and sale of any food that is adulterated, or otherwise injurious to health.

17 34. The food product that SODEXO, INC. manufactured, served, and sold, and that
18 VINCENT GRANO consumed, was adulterated within the meaning of the federal Food, Drug and
19 Cosmetic Act, and similar California statutes, because it contained a deleterious substance that
20 rendered it injurious to health, *i.e.*, *E. coli* O157:H7 and *E. coli* O26 bacteria.

21 35. SODEXO, INC. violated federal, state, and local food safety regulations by its
22 manufacture, distribution, and sale of adulterated food. These federal, state, and local food safety
23 regulations are applicable here, and establish a positive and definite standard of care in the
24 manufacture, distribution, and sale of food. The violation of these regulations constitutes negligence
25 as a matter of law.

26 36. VINCENT GRANO is in the class of persons intended to be protected by these
27 statutes and regulations, and VINCENT GRANO was injured as the direct and proximate result of
28 SODEXO, INC.'s violation of applicable federal, state, and local food safety regulations.

1 37. SODEXO, INC was negligent in the manufacture, distribution, service, and sale of a
2 food product that was adulterated with *E. coli* O157:H7 and *E. coli* O26, not fit for human
3 consumption, and not reasonably safe because adequate warnings or instructions were not provided.

4 38. Once SODEXO, INC. learned, or in the exercise of reasonable care should have
5 learned, of the dangers associated with preparing, serving, and selling food, including, but not
6 limited to, cross-contamination between foods, and the dangers associated with improperly cleaned,
7 washed, or prepared food, it had a duty to warn VINCENT GRANO, but failed to do so.

8 39. In addition to its duty to comply with applicable federal, state, and local laws,
9 ordinances, and regulations pertaining to the manufacture and sale of food, SODEXO, INC. had a
10 duty to prepare food in accordance with its own corporate guidelines and standards. These
11 guidelines and standards included, among other things, steps and measures to ensure that the food
12 products it prepared and served did not contain a microbial hazard, like contamination by pathogenic
13 *E. coli*, as well as a prohibition against the preparation, service, and sale of adulterated, contaminated
14 food generally. By preparing, serving, and selling food products contaminated by *E. coli*, SODEXO,
15 INC. not only violated federal, state, and local laws, regulations, and ordinances, but also its own
16 guidelines and standards.

17 40. SODEXO, INC. had a duty to use supplies and raw materials in producing its food
18 products that were in compliance with applicable federal, state, and local laws, ordinances and
19 regulations; that were from reliable sources; and that were clean, wholesome, free from adulteration
20 and fit for human consumption, but failed to do so, and therefore breached that duty.

21 41. SODEXO, INC. was negligent in the selection of its suppliers, or other agents or
22 subcontractors, and failed to adequately supervise them, or provide them with adequate standards,
23 and, as a result, produced, sold and served food that was adulterated with *E. coli* O157:H7 and *E.*
24 *coli* O26.

25 42. SODEXO, INC. had a duty to properly supervise, train, and monitor its employees,
26 or the employees of its agents or subcontractors, engaged in the preparation and sale of its food
27 products, to ensure compliance with SODEXO, INC.'s operating standards and to ensure
28 compliance with all applicable health regulations. SODEXO, INC. failed to properly supervise,

1 train, and monitor these employees engaged in the manufacture, preparation, sale, and delivery of
2 the food product ultimately served to VINCENT GRANO, and thus breached that duty.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, VINCENT GRANO prays for judgment against SODEXO, INC. as
5 follows:

- 6 a. Judgment for VINCENT GRANO against SODEXO, INC. for just
- 7 compensation in a fair and reasonable amount for the damages above
- 8 set forth; and
- 9 b. Such additional and/or further relief, including interest, costs, and
- 10 reasonable attorney fees, as this Court deems just and equitable.
- 11

12 **JURY TRIAL DEMANDED**

13 Respectfully Submitted,

15 Dated: July 30, 2018

GORDON & HOLMES

17 By: _____

18 FREDERIC L. GORDON
19 RHONDA J. HOLMES
20 ANDREW G. NAGURNEY
21 Attorneys for Plaintiff[s]
VINCENT GRANO

22 Dated: July 30, 2018

MARLER CLARK, LLP

24 By: _____

25 William D. Marler, Esq.
26 Bruce T. Clark, Esq.
27 R. Drew Falkenstein, Esq.
28 Attorneys for Plaintiff[s]
VINCENT GRANO

GORDON & HOLMES
223 W. DATE STREET
SAN DIEGO, CALIFORNIA 92101-3571

