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8 **Attorneys for Plaintiffs**

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO**

12 HUNTER MILHOLLAND,
EZEKIEL UPCHURCH,
13 CODY PRATT, and
DANIEL CASTILLO

14 Plaintiffs,

15 vs.

16 SODEXO, INC., a Delaware Corporation,
17 and DOES 1 through 50, inclusive,

18 Defendants.
19
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Case No. 37-2019-00049662-CU-PL-CTL

(Unlimited Civil)

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

21
22 Plaintiffs HUNTER MILHOLLAND, EZEKIEL UPCHURCH, CODY PRATT, and DANIEL
23 CASTILLO, by and through their attorneys of record **Ron Simon & Associates** and **Gomez Trial**
24 **Attorneys**, hereby allege as follows:

25 **PARTIES**

- 26 1. Plaintiff HUNTER MILHOLLAND is an adult and resident of Springfield, Missouri.
27 2. Plaintiff EZEKIEL UPCHURCH is an adult and resident of Edgewood, New Mexico.
28 3. Plaintiff CODY PRATT is an adult and resident of Flat Rock, Michigan.

1 4. Plaintiff DANIEL CASTILLO is an adult and resident of Oceanside, California.

2 5. Defendant SODEXO, INC. is a Delaware corporation with its principal place of
3 business located in Gaithersburg, Maryland. Therefore, SODEXO, INC. is a citizen of the states of
4 Delaware and Maryland. At all times relevant to this action, SODEXO, INC. was a provider of food
5 and facility management services for large institutions and organizations, including for cafeterias and
6 other foodservice locations at the Marine Corps Recruit Depo and Camp Pendleton located in San
7 Diego, California. At all times relevant, Sodexo, Inc.'s actions at the Marine Corps Recruit Depo and
8 Camp Pendleton included the manufacture, distribution, and sale of the contaminated food products
9 that are the subject to this action. Specifically, SODEXO, INC. exercised complete control over the
10 sourcing and acquisition of food items and/or ingredients, and the preparation of finished food
11 products from these items and ingredients, including the contaminated food products that are the
12 subject of this action, and the service, sale and distribution of those food products.

13 6. Plaintiffs do not know the true names and capacities, whether corporate or otherwise, of
14 those Defendants sued herein as DOES 1 through 50, inclusive, and Plaintiffs pray leave that when the
15 true names of said Defendants are ascertained Plaintiffs may amend this complaint to insert the same
16 with appropriate allegations. Plaintiffs are informed and believe, upon such information and belief,
17 allege that each of the Defendants designated herein by such fictitious names are responsible in some
18 manner for the events described herein, and caused injuries and damages to Plaintiffs.

19 **JURISDICTION AND VENUE**

20 7. Plaintiffs hereby incorporate paragraphs 1 through 6 above.

21 8. Jurisdiction and venue are proper in California because the Defendant Sodexo, Inc.
22 conducts regular business activities in California. Further, Defendant engages in substantial,
23 continuous, and systematic contacts with the State of California, purposefully directing their activities
24 towards California, including the placement of their goods into the stream of commerce with the intent
25 and expectation that they will likely be repurchased and used by consumers in California. This
26 litigation arises out of those activities.

27 **GENERAL ALLEGATIONS**

28 9. Plaintiffs hereby incorporate paragraphs 1 through 8 above.

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

2 10. According to the Department of Defense (“DOD”), in October of 2017 at least 244
3 servicemen and servicewomen became ill from ingestion of food contaminated with E. coli bacteria.
4 The recruits were stationed at the Marine Corps Recruit Depot (MCRD) and Camp Pendleton, both
5 located in the San Diego area. The contaminated food was prepared and served in camp cafeterias by
6 SODEXO, INC.

7 11. The DOD confirmed that at least fifteen recruits developed the life-threatening
8 complication called hemolytic uremic syndrome (HUS), with at least six becoming critically ill.

9 12. Pulsed-field gel electrophoresis (PFGE) testing on stool isolates obtained from ill
10 recruits resulted in the identification of two strains of E. coli, O157:H7 and O26.

11 13. The DOD conducted epidemiological, microbiological, and environmental studies to
12 trace the source of the E. coli, inspecting the sleeping quarters, bathroom facilities, and cafeterias
13 where meals are served to between two and three thousand recruits at a time, paying attention to food
14 handling and sanitation.

15 14. DOD investigators also conducted 43 case-patient interviews and 135 interviews of
16 healthy Marines, food workers, and staff who had not become ill (the “control group”). The results of
17 the DOD’s epidemiologic study showed a statistically significant association those who had become ill
18 and the consumption of ground beef which is believed to have been contaminated and served without
19 reaching the required internal temperature.

20 15. The DOD’s investigation also found that SODEXO, INC.’s employees routinely served
21 undercooked ground beef to the recruits, failed to properly monitor food temperatures using an
22 appropriate thermometer, and were in violation of proper guidelines in terms of maintaining food at
23 proper, safe temperatures.

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

25 16. Escherichia coli are the name of a family of bacteria, most of which do not cause human
26 disease. E. coli O157:H7 and O26, however, are shiga toxin-producing strains of E. coli (otherwise
27 known as “STEC”) that cause bloody diarrhea in humans.

28 17. E. coli O157:H7 and O26 live in the intestines of cattle and other animals. E. coli

1 O157:H7 and O26 are passed through the oral-fecal method, meaning they are passed in the feces of
2 animals and sicken the host after ingestion. An extremely low infectious dose, with fewer than 50 E.
3 coli O157:H7 or O26 bacteria, are needed to infect the host.

4 18. The most severe cases of the E. coli O157:H7 and O26 infection occur in young
5 children and in the elderly (those 65 or older), and in those with a compromised immune system. After
6 a susceptible individual ingests E. coli O157:H7 or O26, the bacteria attaches to the inside surface of
7 the large intestine and initiates an inflammatory reaction of the intestine (hemorrhagic colitis).

8 19. E. coli O157:H7 and O26 infection result in bloody diarrhea, nausea, and severe
9 abdominal cramping.

10 20. A victim of E. coli O157:H7 or O26 usually becomes symptomatic two to four days
11 post exposure, but in some instances, illness can begin within 24 hours or be delayed several weeks.

12 21. While most victims of E. coli O157:H7 or O26 recover within a few weeks, in about
13 10% of population, E. coli O157:H7 or O26 infections can develop into HUS, a life threatening
14 complication in which the destruction of red blood cells and platelets associated with clotting lead to
15 acute renal failure due to the formation of micro-thrombi that occlude microscopic blood vessels that
16 make up the filtering units within the kidneys. There is no known therapy to halt the progression of
17 HUS, and most victims require dialysis. HUS is fatal in about 5% of the victims. In those who
18 survive, HUS patients often require blood transfusions, dialysis, and in some cases, one or more kidney
19 transplants.

20 **Plaintiff Hunter Milholland's Illness**

21 22. Plaintiff Hunter Milholland, a Field Radio Operator, was stationed at Camp Pendleton
22 North in the autumn of 2017, and regularly ate his food at the facility. In November of 2017 he
23 consumed food at 43 Area Mess Hall, and became sick thereafter with bloody diarrhea, consistent with
24 ingestion of shiga toxin-producing E. coli.

25 23. Plaintiff Hunter Milholland was treated at Naval Hospital Camp Pendleton, located in
26 Oceanside, California. Due to the severity of his injuries, he was admitted and remained hospitalized
27 for several days.

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1 **Plaintiff Ezekiel Upchurch's Illness**

2 24. Plaintiff Ezekiel Upchurch, a United States Marine, was stationed at Camp Pendleton
3 North in the autumn of 2017, and regularly ate his food at the facility. During that time he consumed
4 food at Chow Hall MCRD, and became sick thereafter with bloody diarrhea, consistent with ingestion
5 of shiga toxin-producing E. coli.

6 25. Plaintiff Ezekiel Upchurch was treated at the MCRD Clinic, located on the base. He
7 suffered extensive weight loss and was forced to take significant time off from his duties.

8 **Plaintiff Cody Pratt's Illness**

9 26. Plaintiff Cody Pratt, a United States Marine, was stationed at Camp Pendleton North in
10 the autumn of 2017, and regularly ate his food at the facility. In November of 2017 he consumed food
11 at 43 Area Mess Hall, and became sick thereafter with vomiting, nausea, bloody diarrhea, consistent
12 with ingestion of shiga toxin-producing E. coli.

13 27. Plaintiff Cody Pratt was first treated at Rancho Springs Medical Center, located in
14 Murrieta, California. Shortly thereafter he flew to his home in Michigan, where he received additional
15 medical treatment.

16 **Plaintiff Daniel Castillo's Illness**

17 28. Plaintiff Daniel Castillo, a United States Marine, arrived at MCRD at boot camp
18 September 25, 2017, and regularly ate his food at Edson Range Chow Hall. In October of 2017, he
19 became sick thereafter with vomiting, stomach pain, nausea, and bloody diarrhea, consistent with
20 ingestion of shiga toxin-producing E. coli.

21 29. He was forced to seek treatment at the 31 Area Branch Health Clinic. He continues to
22 suffer from weight loss and gastrointestinal illness.

23 30. SODEXO, INC. was, at all times relevant to this action, the civilian provider of
24 foodservices at MCRD and Camp Pendleton, located near San Diego, including at the cafeterias or
25 mess halls where Plaintiffs and other recruits consumed contaminated food products. In this capacity
26 and at this location, on information and belief, SODEXO, INC. acquired raw materials or ingredients
27 for the food items that it served, and also prepared, processed, cooked, and otherwise made them ready
28 for consumption as finished food items to be served to recruits and other individuals at MCRD and

1 Camp Pendleton.

2 **FIRST CAUSE OF ACTION**

3 **(Strict Products Liability)**

4 31. Plaintiffs hereby incorporate paragraphs 1 through 30 above.

5 32. At all times, Defendant was in the business of producing, manufacturing, preparing,
6 marketing and serving food (hereinafter “the product”) to the public.

7 33. There was a manufacturing defect in the product when it left Defendant’s possession
8 and control. The product was defective because it contained E. coli. The presence of E. coli was a
9 condition of the product that rendered it unreasonably dangerous.

10 34. There was a marketing defect in the product when it left Defendant’s possession and
11 control. The product was defective because it contained E. coli and Defendant failed to give adequate
12 warnings of the product’s dangers that were known or by the application of reasonably developed
13 human skill and foresight should have been known. Defendant also failed to give adequate warnings
14 and instructions to avoid such dangers. Defendant’s failure to provide such warnings and instructions
15 rendered the product unreasonably dangerous.

16 35. Defendant’s conduct was a direct, proximate, and producing cause of Plaintiffs’ injuries
17 and damages set forth below.

18 36. Defendant is therefore strictly liable for importing, manufacturing, distributing,
19 marketing, and selling defective and unreasonably dangerous product and introducing it into the stream
20 of commerce.

21 **SECOND CAUSE OF ACTION**

22 **(Negligence, including Negligence Per Se)**

23 37. Plaintiffs hereby incorporate paragraphs 1 through 36 above.

24 38. Defendant owed Plaintiffs a duty of ordinary care in the manufacture, preparation,
25 testing, packaging, marketing, distribution, and selling of the product. Further, Defendant owed
26 Plaintiffs the duty of warning or instructing Plaintiffs of potentially hazardous or life-threatening
27 conditions with respect to the product.

28 39. Defendant breached its duties in one or more of at least the following ways:

- a. negligently importing, manufacturing, distributing, and marketing the product;
- b. failing to properly test the product before placing it into the stream of commerce;
- c. failing to prevent human and/or animal feces from coming into contact with the product;
- d. failing to adequately monitor the safety and sanitary conditions of its premises;
- e. failing to apply its own policies and procedures to ensure the safety and sanitary conditions of its premises;
- f. failing to adopt and/or follow FDA recommended good manufacturing practices;
- g. failing to take reasonable measures to prevent the transmission of E. coli and related filth and adulteration from its premises;
- h. failing to properly train and supervise its employees and agents to prevent the transmission of E. coli and related filth and adulteration from its premises;
- i. failing to warn Plaintiffs and the general public of the dangerous propensities of the product, particularly that it was contaminated with E. coli, despite knowing or having reason to know of such dangers; and
- j. failing to timely disclose post-sale information concerning the dangers associated with the product.

40. Furthermore, Defendant had a duty to comply with all applicable health regulations, including the FDA’s Good Manufacturing Practices Regulations, 21 C.F.R. part 110, subparts (A)-(G), and all statutory and regulatory provisions that applied to the import, manufacture, distribution, storage, and/or sale of the product or product ingredients, including but not limited to, the Federal Food, Drug, and Cosmetics Act, § 402(a), as codified at 21 U.S.C. § 342(a), which bans the manufacture, sale and distribution of any “adulterated” food, and California’s Sherman Food, Drug, and Cosmetic Act, CA Health & Safety Code § 110545, which imposes an identical ban.

41. Under both federal and applicable state law, food is adulterated if it contains a “poisonous or deleterious substance which may render it injurious to health.”

42. The product was adulterated because it contained E. coli. Thus, by the import,

1 manufacture, distribution, delivery, storage, sale, and/or offering for sale of the product and/or the
2 product's ingredients, Defendant breached their statutory and regulatory duties.

3 43. Plaintiffs were members of the classes sought to be protected by the regulations and
4 statutes identified above.

5 44. Defendant's conduct was a direct, proximate, and producing cause of Plaintiffs' injuries
6 and damages set forth below.

7 45. All dangers associated with the product were reasonably foreseeable and/or
8 scientifically discoverable by Defendant at the time Defendant placed the product into the stream of
9 commerce.

10 **THIRD CAUSE OF ACTION**

11 **(Breach of Implied Warranties)**

12 46. Plaintiffs hereby incorporate paragraphs 1 through 45 above.

13 47. Defendant is a merchant who manufactures, imports, distributes, and markets the
14 product.

15 48. Plaintiffs are consumers.

16 49. Defendant breached the implied warranty of merchantability by impliedly warranting
17 that the product was of merchantable quality and fit for human consumption when it was not due to the
18 presence of E. coli. Plaintiffs reasonably relied upon Defendant's skill and judgment as to whether the
19 product was of merchantable quality and fit for human consumption.

20 50. Defendant breached the implied warranty of fitness for a particular purpose by holding
21 out unreasonably dangerous product (i.e. product containing E. coli) to the public as being safe when
22 they knew or had reason to know that the product was not safe and that the public would consume the
23 product.

24 51. Defendant did not disclaim these implied warranties.

25 52. Defendant's conduct was a direct, proximate, and producing cause of Plaintiffs' injuries
26 and damages set forth below.

27 **DAMAGES**

28 53. Plaintiffs hereby incorporate paragraphs 1 through 52 above.

1 54. Defendant's conduct was a direct, proximate, and producing cause of Plaintiffs' injuries
2 and damages, including but not limited to damages in the past and future for the following: pain and
3 suffering, mental anguish, physical impairment, physical disfigurement, loss of enjoyment of life,
4 medical and pharmaceutical expenses, travel and travel-related expenses, emotional distress, lost
5 wages, lost earning capacity, loss of consortium, punitive and/or exemplary damages and attorneys'
6 fees (to the extent recoverable) and other general, special, ordinary, incidental and consequential
7 damages as would be anticipated to arise under the circumstances.

8 55. WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 9 a. Past and future economic and non-economic damages;
10 b. Court costs, attorneys' fees, and expert fees and costs to the extent recoverable;
11 c. Pre- and post-judgment interest at the highest rate allowed by law; and
12 d. Such other general and special relief as the Court deems just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs demand a jury trial for all triable claims.

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16 Dated: September 19, 2019

GOMEZ TRIAL ATTORNEYS

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18 By:  _____

19 John H. Gomez, Esq.
20 Ed Diab, Esq.

21 **RON SIMON & ASSOCIATES**

22 Ron Simon
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