

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

WASHINGTON

County



<i>For Prothonotary Use Only:</i>	
Docket No:	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition <input type="checkbox"/> Transfer from Another Jurisdiction <input type="checkbox"/> Declaration of Taking	
Lead Plaintiff's Name: Stacey Gesky	Lead Defendant's Name: Big Plan Group, LLC
Are money damages requested? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Dollar Amount Requested: (check one) <input type="checkbox"/> within arbitration limits <input checked="" type="checkbox"/> outside arbitration limits
Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: <u>D. Aaron Rihn, Esquire</u>	
<input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)	

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort) <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input checked="" type="checkbox"/> Other: <u>Foodborne Illness</u>	CONTRACT (do not include Judgments) <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other <input type="checkbox"/> Other:	CIVIL APPEALS Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other:
MASS TORT <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other:	REAL PROPERTY <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other:	MISCELLANEOUS <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other:
PROFESSIONAL LIABILITY <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional:		

FILED
MAR 10 2020
L. H. HOUGH
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

STACEY GESKY,

NO. 2020-1688

Plaintiff,

PLAINTIFF'S COMPLAINT

v.

CODE:

BIG PLAN GROUP, LLC, a Pennsylvania limited liability company, d/b/a Moe's Restaurant & Tex Mex Grill and/or Moe's Southwest Grill; MONTEVERDE'S, INC., a Pennsylvania corporation; and JOHN DOES, growers, shippers, and distributors,

FILED ON BEHALF OF PLAINTIFF,
STACEY GESKY

Counsel of Record for this Party:

Defendants.

D. Aaron Rihn, Esquire
PA I.D. No.: 85752

Robert Peirce & Associates, P.C.
Firm I.D. No.: 839

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Pittsburgh, PA 15219
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arihnr@peircelaw.com

JURY TRIAL DEMANDED

**IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION**

STACEY GESKY,

NO.

Plaintiff,

JURY TRIAL DEMANDED

v.

BIG PLAN GROUP, LLC, a Pennsylvania limited liability company, d/b/a Moe's Restaurant & Tex Mex Grill and/or Moe's Southwest Grill; MONTEVERDE'S, INC., a Pennsylvania corporation; and JOHN DOES, growers, shippers, and distributors,

Defendants.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice were served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

If you do not know a lawyer, contact:

Lawyer Referral Service
119 South College Street
Washington, PA 15301
724.225.6710

or

If you cannot afford a lawyer, contact:

Southwestern Pennsylvania Legal Aid Society
10 West Cherry Avenue
Washington, PA 15301
724.225.6170

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

STACEY GESKY,

NO.

Plaintiff,

JURY TRIAL DEMANDED

v.

BIG PLAN GROUP, LLC, a Pennsylvania limited liability company, d/b/a Moe's Restaurant & Tex Mex Grill and/or Moe's Southwest Grill; MONTEVERDE'S, INC., a Pennsylvania corporation; and JOHN DOES, growers, shippers, and distributors,

Defendants.

PLAINTIFF'S COMPLAINT

The Plaintiff, Stacey Gesky, by and through her counsel of record, D. Aaron Rihn, Esquire of Robert Peirce & Associates, P.C., and R. Drew Falkenstein of Marler Clark, LLP (pending admission *pro hac vice*), alleges and complains as follows:

PARTIES

1. Plaintiff Stacey Gesky is a resident of the Commonwealth of Pennsylvania, residing at 431 Independence Boulevard, Washington, Washington County, Pennsylvania 15301.
2. Defendant Big Plan Group, LLC, d/b/a Moe's Restaurant & Tex Mex Grill and/or Moe's Southwest Grill (hereinafter Moe's Washington), a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania, at all relevant times owned and operated the Moe's restaurant located at 118 Trinity Point Drive, Washington, Washington County, Pennsylvania 15301.
3. Defendant Monteverde's, Inc., a corporation organized and existing under the laws

of the Commonwealth of Pennsylvania, at all relevant times owned and operated a produce distribution business at 2 Rutgers Road, Crafton, Allegheny County, Pennsylvania 15205.

4. The identities and residences of Defendants John Does growers, shippers, and distributors are not presently known. These Defendants, at all relevant times, owned and operated business entities that grew, harvested, distributed, and sold romaine lettuce grown and processed in the Yuma, Arizona growing regions, which includes certain nearby locations in California along the Arizona border.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action because all known or reasonably identifiable parties reside within the Commonwealth of Pennsylvania and arises out of an incident that took place in the Commonwealth of Pennsylvania.

6. Venue is proper in this Court because the Defendants regularly conduct business within the County of Washington.

GENERAL ALLEGATIONS

Prior Outbreaks Linked to Lettuce and Other Leafy Greens

7. *E. coli* O157:H7 outbreaks associated with lettuce and other leafy greens are by no means a new phenomenon. Outlined below is a list of foodborne pathogen outbreaks involving contaminated lettuce or leafy greens just within the past ten years:

Date	Causative Agent	Illnesses Reported	Source
Mar. 2018	<i>E. coli</i> O157:H7	219	Romaine lettuce
Nov. 2017- Dec. 2017	<i>E. coli</i> O157:H7	41, 1 death	Romaine lettuce
Dec. 2015-Jan. 2016	Listeria monocytogenes	19, 1 death	Package salads

Apr. 2015	Escherichia coli, Shiga toxin- producing	7	Prepackaged leafy greens
Mar. 2015	<i>E. coli</i> O157:H7	12	Leafy greens
Jul. 2014	<i>E. coli</i> O111	15	Salad/cabbage served at Applebee's and Yard House (Minnesota)
Oct. 2013	<i>E. coli</i> O157:H7	33	Pre-packaged salads and sandwich wraps (California)
Jul. 2013	<i>E. coli</i> O157:H7	94	Lettuce served at Federico's Mexican Restaurant
Jul. 2013	Cyclospora	140 (Iowa); 87 (Nebraska)	Salad mix, cilantro
Dec. 2012 – Jan. 2013	<i>E. coli</i> O157:H7	31	Shredded lettuce from Freshpoint, Inc.
Oct. 2012	<i>E. coli</i> O157:H7	33	Leafy greens salad mix (Massachusetts)
Apr. 2012	<i>E. coli</i> O157:H7	28	Romaine lettuce
Dec. 2011	Salmonella Hartford	5	Lettuce; roast beef
Dec. 2011	Norovirus	9	Lettuce, unspecified
Oct. 2011	<i>E. coli</i> O157:H7	58	Romaine lettuce
Oct. 2011	<i>E. coli</i> O157:H7	26	Lettuce
Aug. 2011	N/A	8	Lettuce; onions; tomatoes

Jul. 2011	Cyclospora cayatenensis	99	Lettuce based salads
Jun. 2011	Norovirus	23	Garden salad
Apr. 2011	Salmonella Typhimurium	36	Multiple salads
Feb. 2011	Norovirus	24	Garden salad
Jan. 2011	Norovirus	93	Lettuce; salad, unspecified
Jul.-Oct. 2010	Salmonella Java	136	Salad vegetable
May 2010	<i>E. coli</i> O145	33 (26 lab-confirmed)	Romaine Lettuce grown in Arizona
Apr. 2010	Salmonella Hvittingfoss	102	Lettuce, tomatoes, and olives served at Subway restaurants
Jan. 2010	<i>E. coli</i>	260	Lettuce grown in France

The 2018 *E. coli* O157:H7 Outbreak Linked to Romaine Lettuce from Yuma

8. On April 13, 2018, the CDC announced a multi-state outbreak of *E. coli* O157:H7 linked to the consumption of romaine lettuce products produced in the Yuma, Arizona growing region. Ultimately, the investigation by the CDC, FDA, and local and state health agencies determined that at least 240 people from 37 states had been sickened in the outbreak.

9. Illnesses started on dates ranging from March 13, 2018 to August 22, 2018. Ill people range in age from 1 to 93 years, with a median age of 26. Sixty-six percent of ill people were female. Of more than 201 people with information available, 104 were hospitalized, including 28 people who developed hemolytic uremic syndrome (HUS). At least five victims died from their *E. coli* O157:H7 infections.

10. Epidemiologic analysis showed that the cause of the outbreak was contaminated romaine lettuce. Traceback analysis and investigation showed that the contaminated romaine lettuce came from the growing region that straddles the California-Arizona border at and around Yuma, Arizona, to include growing locations in the Imperial Valley, California.

11. The FDA, along with the CDC and state partners, conducted an environmental assessment in the Yuma growing region and collected samples of water, soil, and manure. CDC laboratory testing identified the outbreak strain of *E. coli* O157:H7 in water samples taken from a canal in the Yuma growing region. Whole genome sequencing analysis showed that the *E. coli* O157:H7 found in the canal water was closely related genetically to the *E. coli* O157:H7 from ill people.

12. More specifically, the canal water samples that yielded the three positive results for the outbreak strain of *E. coli* O157:H7 were taken from the Wellton Canal in the immediate vicinity of the Five Rivers Feedyard, which is one of several Wellton-area CAFOs.

13. The following is a Google Earth image of the Five Rivers Feedyard, which is the Wellton CAFO described in the FDA's Environmental Assessment Report. Leafy green growing fields, including on information and belief romaine lettuce fields, are adjacent to the CAFO and surround it, and the Wellton Canal, on all sides.

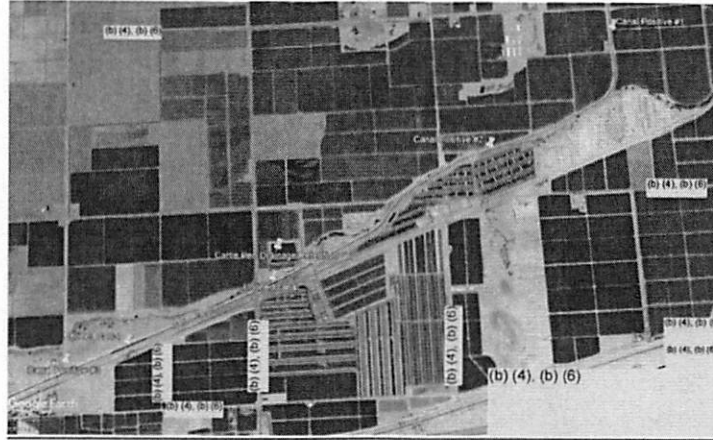


Figure 1. Wellton Irrigation Canal. This Google Earth view depicts a section of the Wellton main canal adjacent to a CAFO and locations of three outbreak-pathogen-positive irrigation water samples. The sample locations are upstream, adjacent to, and downstream of the Wellton-area CAFO. Also noted are unlined irrigation canal sections and a CAFO retention pond. Water in the canal flows from west (left) to east (right) in the figure above. The CAFO at the bottom center of Figure 1. See Figure 2 for an enlarged image of the CAFO.

14. The following is another Google Earth image of the Five Rivers Feedyard, which also appears in the FDA’s Environmental Assessment Report. It depicts the locations at the Five Rivers Feedyard that tested positive for Shiga-toxin producing strains of *E. coli* during the FDA’s investigation.



Figure 2. Overview of Wellton area CAFO and adjacent canal property, including West (1) and North (2) Composting Facilities, North retention pond (3), fresh manure sampling location of steer feeding pens (4), Drag Swabs and soil samples along feedlot perimeter fence-line (5). Circles represent EA team sampling locations (compost and manure). Red circles indicate samples that were positive for STECs. No samples were positive for the outbreak strain.

15. Water from the Wellton canal used to irrigate romaine lettuce crops implicated in

the 2018 *E. coli* O157:H7 outbreak was not treated or disinfected in any way.

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

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

17. *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli* O157:H7 is also notable among pathogenic bacteria for its extremely low infectious dose—that is, the number of bacteria necessary to induce infection in a person. While for most pathogenic bacteria it takes literally millions of bacterial colonies to cause illness, it is now known that fewer than 50 *E. coli* O157:H7 bacteria can cause illness in a child. The practical import is that even a microscopic amount of exposure can trigger a devastating infection.

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

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

that of adults.

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

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

22. There is no known therapy to halt the progression of HUS. The active stage of the disease usually lasts one to two weeks, during which a variety of complications are possible. HUS is a frightening illness that even in the best American medical facilities has a mortality rate of about 5%. The majority of HUS patients require transfusion of blood products and develop complications common to the critically ill.

Facts Relating to Defendants' Manufacture and Distribution of the Contaminated Romaine Lettuce Products

23. On multiple dates in March 2018, Monteverde's received cases of chopped romaine lettuce from John Does growers, shippers, and distributors. The cases consisted of six, two-pound bags of chopped romaine each.

24. Monteverde's was the sole supplier of chopped romaine lettuce products to Moe's Washington throughout March 2018. On at least March 16, 19, 21, 23, 26, 28, and 30, if not other dates, Monteverde's distributed one or more cases of chopped romaine lettuce products to Moe's Washington.

25. On March 29, 2018, Stacey Gesky purchased and consumed a "Close Talker Chicken Salad" from Moe's Washington.

26. Moe's Washington prepared the salad that Ms. Gesky purchased on March 29, 2018, using *E. coli* O157:H7-contaminated chopped romaine lettuce that it had purchased and received from Monteverde's.

27. The salad that Ms. Gesky purchased on March 29, 2018 from Moe's Washington was, therefore, contaminated by *E. coli* O157:H7, causing her infection and injuries described in more detail below.

Stacey Gesky's Injuries

28. On or about Tuesday, April 3, 2018, Stacey Gesky began to feel the first symptoms of her *E. coli* O157:H7 infection. Over the course of the day, she began to suffer from exhaustion, body aches, abdominal cramps, and ultimately diarrhea. The diarrhea turned bloody late that night.

29. The sudden onset of her severe symptoms frightened Stacey so much that she went to the emergency department at The Washington Hospital at 3:00 a.m. on April 4, 2018 reporting 15-20 episodes of diarrhea in the past seven hours. Stool tests were positive for the presence of blood. Stacey was ultimately discharged after receiving fluids for hydration, as well as nausea and pain medications. Stacey was also treated with antibiotics.

30. Symptoms persisted, in fact worsening, causing Stacey to return to the Washington Hospital the morning of April 5, 2018. She was admitted with a diagnosis of infectious versus

inflammatory colitis. She continued to suffer from repeated episodes of bloody diarrhea.

31. On Friday, April 6, 2018 a colonoscopy revealed severe colitis across most of Stacey's colon. Further diagnostic imaging showed the development of extensive ascites, pleural effusion, and other consequences of her developing critical illness.

32. Stacey's kidneys began to show signs of failure on April 8, 2018. The next day, biopsies from Stacey's colonoscopy showed that she was suffering from ischemic colitis with mucosal necrosis in the descending and sigmoid colon.

33. Meanwhile, Stacey continued to suffer from pulmonary problems, and on April 11, 2018 underwent ultrasound-guided bilateral thoracentesis, during which procedure 550 mL of pleural fluid was removed on the left and 900 mL on the right.

34. Stacey's hematological and kidney problems continued to worsen. On April 13, 2018 peripheral blood smear showed that she was suffering from microangiopathic hemolytic anemia. She was transfused with two units of packed red blood cells on this date. Shortly thereafter, Stacey underwent placement of a peripherally inserted central catheter (PICC) with the tip positioned in the superior vena cava of the heart.

35. Stacey was now so ill that she needed a level of care that could not be provided at The Washington Hospital. Therefore, on April 14, 2018 she was transferred to the University of Pittsburgh Medical Center in Pittsburgh. (**which one?**)

36. Shortly after admission, Stacey began to receive plasmapheresis treatments through a central venous catheter inserted into her right femoral vein. She received her first plasma exchange the morning of April 15, 2018 receiving nine units of fresh frozen plasma.

37. For the next five days, Stacey continued to suffer from kidney failure, anemia, and low platelets. She received multiple plasmapheresis treatments and additional blood transfusions.

38. Meanwhile, diagnostic testing suggested a likely diagnosis of either shiga-toxin associated or complement-mediated hemolytic uremic syndrome. Stacey was discharged home in stable condition on April 19, 2018.

39. After discharge, Stacey saw multiple doctors in follow-up to her severe illness and hospitalization. Among them was Donald Woytowitz, M.D., hematologist at UPMC. Dr. Woytowitz monitored Stacey's blood chemistry and performed hemolytic studies to monitor the anemia. Regarding the cause of Stacey's severe illness, Dr. Woytowitz diagnosed Stacey with shiga-toxin associated hemolytic uremic syndrome, "secondary to enterotoxigenic *Escherichia coli* strain O157," with a possible predisposition to that condition caused by complement abnormality.

40. In March 2019, blood test results showed that Stacey's estimated glomerular filtration rate, or eGFR, was 77, and urinalysis showed 1+ protein. These test results indicate that Stacey now suffers from chronic kidney disease as a direct result of the kidney injury she suffered during her hemolytic uremic syndrome. She is forecast to reach end stage renal disease, requiring transplantation or permanent dialysis, during her lifetime.

CAUSES OF ACTION

COUNT I - BREACH OF WARRANTY

41. Plaintiff incorporates by reference and makes a part of this Count each and every paragraph of the foregoing Counts of this Complaint.

42. Defendants John Does and Monteverde's produced, distributed, and sold the contaminated romaine lettuce products that injured Stacey Gesky; and, using those contaminated romaine lettuce products, Moe's Washington produced and sold the contaminated salad product that Ms. Gesky purchased and consumed on March 29, 2018. These defendants are, therefore, the

manufacturers, distributors, and sellers of an adulterated food product, and the adulterated food product reached the Plaintiff Stacey Gesky without substantial change from the condition in which it was sold by the Defendants.

43. The Defendants are subject to liability to the Plaintiff for their breaches of express and implied warranties made to the Plaintiff with respect to the food products sold to the Plaintiff, including the implied warranties of merchantability and of fitness for a particular use. Specifically, the Defendants expressly warranted, through their sale of food, and by the statements and conduct of their employees and agents, that the food products ultimately sold to the Plaintiff were fit for human consumption, and not otherwise adulterated or injurious to health.

44. The Plaintiff alleges that the food sold by the Defendants and ultimately consumed by her, which was contaminated by *E. coli* O157:H7 and related filth and adulteration, would not pass without exception in the trade and was thus in breach of the implied warranty of merchantability.

45. The Plaintiff further alleges that the contaminated food products sold by the Defendants and consumed by the Plaintiff was not fit for the uses and purposes intended by either the Plaintiff or the Defendants, *i.e.*, human consumption, and that these products were therefore in breach of the implied warranty of fitness for their intended use.

46. As a further direct and proximate result of the conduct of Defendants and their agents, servants, and/or employees as aforesaid, the Plaintiff Stacey Gesky suffered an *E. coli* O157:H7 infection and the adverse effects associated with same.

47. As a further direct and proximate result of the conduct of Defendants and their agents, servants, and/or employees, the Plaintiff Stacey Gesky was forced to endure great pain, suffering, and inconvenience and may endure same in the future. She was forced to submit to

medical, medicinal, and therapeutic care and may be forced to submit to same in the future.

48. As a further direct and proximate result of the conduct of the Defendants and their agents, servants, and/or employees, the Plaintiff Stacey Gesky suffered an inability to perform the activities of daily living or some of them.

49. As a further direct and proximate result of the conduct of Defendants and their agents, servants, and/or employees, the Plaintiff Stacey Gesky was forced to expend sums of money for doctors, hospitals, and/or other items necessary for her proper care and treatment.

50. As a further direct and proximate result of the conduct of Defendants and their agents, servants, and/or employees, the Plaintiff Stacey Gesky suffered a loss of earnings.

WHEREFORE, the Plaintiff demands judgment against the Defendants that will reasonably compensate significant injuries, pain and suffering, and other damages sustained together with attorneys' fees, interest and costs of suit in an amount that exceeds the jurisdictional amount in Washington County for compulsory arbitration, together with interest, prejudgment interest and costs.

COUNT II - STRICT LIABILITY

51. The Plaintiff incorporates by reference and makes a part of this Count each and every paragraph of the foregoing Counts of this Complaint.

52. The Defendants owed a duty to the Plaintiff to manufacture and sell only food that was not adulterated, was fit for human consumption, was reasonably safe in construction, and was free of pathogenic bacteria or other substances injurious to human health. The Defendants breached this duty.

53. The Defendants owed a duty to the Plaintiff to provide adequate warnings about the non-obvious dangers of their food products, including warnings and instructions indicating that

the food might contain pathogenic bacteria, including *E. coli* O157:H7. The Defendants breached this duty.

54. The Defendants owed a duty to the Plaintiff to prepare, serve, and sell food that was fit for human consumption and that was safe to the extent contemplated by a reasonable and ordinary consumer. The Defendants breached this duty.

55. Because the food that the Plaintiff Stacey Gesky purchased and consumed was adulterated, not fit for human consumption, not reasonably safe in design and construction, lacked adequate warnings and instructions, and was unsafe to an extent beyond that contemplated by the ordinary consumer, the Defendants are liable to the Plaintiff for the harm proximately caused to the Plaintiff by their manufacture and sale of contaminated and adulterated food products, and as such the Defendants are strictly liable to the Plaintiff for such harm.

WHEREFORE, the Plaintiff demands judgment against the Defendants that will reasonably compensate significant injuries, pain and suffering, and other damages sustained together with attorneys' fees, interest and costs of suit in an amount that exceeds the jurisdictional amount in Washington County for compulsory arbitration, together with interest, prejudgment interest and costs.

COUNT III - NEGLIGENCE

56. The Plaintiff incorporates by reference and makes a part of this Count each and every paragraph of the foregoing Counts of this Complaint.

57. The Defendants had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of romaine lettuce products, including the applicable provisions of the Federal Food, Drug and Cosmetic Act, and similar Pennsylvania food and public health statutes, including without limitation the

provisions of the Food Act at 31 Pa. C.S. § 20.3, all of which prohibit the manufacture and sale of any food that is adulterated or otherwise injurious to health.

58. The food that Defendants manufactured and sold, and that the Plaintiff Stacey Gesky eventually purchased and consumed, was adulterated within the meaning of the federal Food, Drug and Cosmetic Act, and similar Pennsylvania statutes, because it contained a deleterious substance that rendered it injurious to health, *i.e.*, *E. coli* O157:H7 bacteria.

59. The Defendants violated federal, state, and local food safety regulations by their manufacture and sale of adulterated food. These federal, state, and local food safety regulations are applicable here and establish a positive and definite standard of care in the manufacture and sale of food. The violation of these regulations constitutes negligence as a matter of law.

60. The Plaintiff is in the class of persons intended to be protected by these statutes and regulations, and the Plaintiff Stacey Gesky was injured as the direct and proximate result of the Defendants' violation of applicable federal, state, and local food safety regulations.

61. The Defendants were negligent in the manufacture, distribution, and sale of food products that were adulterated by *E. coli* O157:H7, not fit for human consumption, and not reasonably safe because adequate warnings or instructions were not provided.

62. Once the Defendants learned, or in the exercise of reasonable care should have learned, of the dangers associated with preparing and selling food products, specifically romaine lettuce products from the Yuma, Arizona growing region, they had a duty to warn the Plaintiff, but failed to do so.

63. The Defendants had a duty to use supplies and raw materials in producing their food products that were in compliance with applicable federal, state, and local laws, ordinances

and regulations; that were from reliable sources; and that were clean, wholesome, free from adulteration and fit for human consumption, but failed to do so, and therefore breached that duty.

64. The Defendants were negligent in the selection of their suppliers, or other agents or subcontractors, and failed to adequately supervise them, or provide them with adequate standards, and, as a result, produced and sold food that was adulterated with *E. coli* O157:H7.

65. The Defendants had a duty to properly supervise, train, and monitor their employees, or the employees of their agents, subcontractors, and suppliers, engaged in the preparation and sale of food products, to ensure compliance with the Defendants' operating standards and product requirements, and to ensure compliance with all applicable health regulations. The Defendants failed to properly supervise, train, and monitor these employees and entities engaged in the manufacture, preparation, and delivery of the food product ultimately sold to the Plaintiff Stacey Gesky, and thus breached that duty.

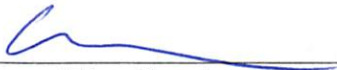
WHEREFORE, the Plaintiff demands judgment against the Defendants that will reasonably compensate significant injuries, pain and suffering, and other damages sustained together with attorneys' fees, interest and costs of suit in an amount that exceeds the jurisdictional amount in Washington County for compulsory arbitration, together with interest, prejudgment interest and costs.

DATED: March 3, 2020

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

BY: _____


D. Aaron Rihn, Esquire
Counsel for Plaintiff

VERIFICATION

I verify that the averments of fact made in the foregoing Plaintiff's Complaint are true and correct and based on my personal knowledge, information or belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

3-3-2020

Dated




D. Aaron Rihn, Esquire

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Plaintiff's Attorney

Signature: 

Name: D. Aaron Rihn, Esquire

Attorney No. (if applicable): 85752