STATE OF WISCONSIN CIRCUIT COURT

OUTAGAMIE COUNTY

MICHAEL LEWIS and LAURIE LEWIS, a married couple,

Plaintiffs,

v.

WOODMAN'S FOOD MARKET, INC., d/b/a Woodman's Food Market, a Wisconsin corporation,
2631 Liberty Ln.
Janesville, WI 53545

Defendant.

Case No. 2021-CV-_____

Case Classification Code: 30100

SUMMONS

THE STATE OF WISCONSIN

To the company named as a defendant above:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action. Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, which address is Clerk of Circuit Court, Justice Center, 320 S Walnut St, Appleton, WI 54911, and to Denis W. Stearns, Stearns Law Pllc, attorney for the plaintiffs, whose address is 211 Taylor Street, Suite 5, Port Townsend, WA 98368.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose the

right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

DATED this 29th day of April, 2021.

ON BEHALF OF PLAINTIFFS:

/s/ Denis W. Stearns
Denis W. Stearns, Wis. Bar No. 1020675
Stearns Law Pllc
211 Taylor Street, Suite 5
Port Townsend, WA 98368
Tel: 360-379-2415

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COMPLAINT FOR DAMAGES

COME NOW the Plaintiffs, as set forth in the caption above, by and through their attorneys of record, Denis Stearns of Stearns Law Pllc, and William Marler, of Marler Clark, L.L.P., P.S., to allege and complain as follows:

I. THE PARTIES

1.1 At all times relevant to this action, the Plaintiffs, Michael and Laurie Lewis ("Plaintiffs"), lived in Appleton, Wisconsin, making them residents and citizens of the State of Wisconsin and, therefore, within the jurisdiction of this Court.

1.2 At all times relevant to this complaint, the Defendant Woodman's Food Market, Inc., d/b/a Woodman's Food Market ("Defendant") is and was a Wisconsin corporation, with its headquarters located at 2631 Liberty Ln. in Janesville, WI. At all relevant times, Defendant

owned and operated the Woodman's Food Market located at 595 N. Westhill Blvd. in Appleton, Wisconsin.

II. GENERAL ALLEGATIONS

About the Hepatitis A Virus

2.1 Exposure to hepatitis A virus ("HAV") can cause an acute infection of the liver that is typically mild and resolves on its own.[1] The symptoms and duration of illness vary a great deal, with many persons showing no symptoms at all.[2] Fever and jaundice are two of the symptoms most commonly associated with HAV infection.[3]

2.2 Throughout history, hepatitis infections have plagued humans. The "earliest accounts of contagious jaundice are found in ancient China."[4]

2.3 According to the CDC: The first descriptions of hepatitis (epidemic jaundice) are generally attributed to Hippocrates. Outbreaks of jaundice, probably hepatitis A, were reported in the 17th and 18th centuries, particularly in association with military campaigns. Hepatitis A (formerly called infectious hepatitis) was first differentiated epidemiologically from hepatitis B, which has a long incubation period, in the 1940s. Development of serologic tests allowed definitive diagnosis of hepatitis B. In the 1970s, identification of the virus, and development of serologic tests helped differentiate hepatitis A from other types of non-B hepatitis.[5]

2.4 Until 2004, HAV was the most frequently reported type of hepatitis in the United

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[1] Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," in Mandell, Douglas, & Bennett's PRINCIPLES AND PRACTICE OF INFECTIOUS DISEASES, Fifth Edition, Chap. 161, pp. 1920-40 (2000); Mayo Clinic Staff, "Hepatitis A," (last updated Sept 1, 2011). Articles available online at http://www.mayoclinic.com/health/hepatitis-a/DS00397.

[2] Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1.

[3] Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

[4] Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1.

[5] CDC, "Hepatitis A," in EPIDEMIOLOGY AND PREVENTION OF VACCINE-PREVENTABLE DISEASES (also known as "The Pink Book"), Atkinson W, Wolfe S, Hambrosky J, McIntyre L, editors, 12th edition. Chapter available online at http://www.cdc.gov/vaccines/pubs/pinkbook/hepa.html.

States. In the pre-vaccine era, the primary methods used for preventing HAV infections were hygienic measures and passive protection with immune globulin (IG). Hepatitis A vaccines were licensed in 1995 and 1999. These vaccines provide long-term protection against HAV infection.[6]

2.5 Hepatitis A is the only common vaccine-preventable foodborne disease in the United States.[7] This virus is one of five human hepatitis viruses that primarily infect the human liver and cause human illness.[8] Unlike hepatitis B and C, hepatitis A does not develop into chronic hepatitis or cirrhosis, which are both potentially fatal conditions.[9] Nonetheless, infection with the hepatitis A virus (HAV) can lead to acute liver failure and death.[10]

2.6 Hepatitis A is a communicable (or contagious) disease that often spreads from person to person.[11] Person-to-person transmission occurs via the "fecal-oral route," while all other exposure is generally attributable to contaminated food or water.[12] Food-related outbreaks are usually associated with contamination of food during preparation by a HAV-infected food handler.[13] The food handler is generally not ill because the peak time of infectivity—that is, when the most virus is present in the stool of an infected individual—occurs two weeks before illness begins.[14]

2.7 Fresh produce contaminated during cultivation, harvesting, processing, and

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6 *Id.*

7 *Id.*; *See also* Fiore, Anthony, Division of Viral Hepatitis, CDC, "Hepatitis A Transmitted by Food," Clinical Infectious Diseases, Vol. 38, 705-715 (March 1, 2004). Full text online at http://www.cdc.gov/hepatitis/PDFs/fiore_ha_transmitted_by_food.pdf.

8 Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1.

9 *Id.*

10 Fiore, Anthony, Division of Viral Hepatitis, CDC, "Hepatitis A Transmitted by Food," *supra* note 7; Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

11 Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1.

12 *Id.; See also* Jaykus Lee Ann, "Epidemiology and Detection as Options for Control of Viral and Parasitic Foodborne Disease," Emerging Infectious Diseases, Vol. 3, No. 4, pp. 529-39 (October-December 1997). Full text of the article is available online at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2640072/pdf/9366607.pdf

13 Fiore, Anthony, *supra* note 7*;* CDC, "Hepatitis A," *supra* note 5; *See also* CDC, "Surveillance for Acute Viral Hepatitis – United States, 2007, Morbidity and Mortality Weekly Report, Surveillance Summaries, Vol. 58, No. SS03 (May 22, 2009) at http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5803a1.htm.

14 Fiore, Anthony, Division of Viral Hepatitis, CDC, "Hepatitis A Transmitted by Food," *supra* note 7.

distribution has also been a source of hepatitis A.[15] In 1997, frozen strawberries were the source of a hepatitis A outbreak in five states.[16] Six years later, in 2003, fresh green onions were identified as the source of a HAV outbreak traced to consumption of food at a Pennsylvania restaurant.[17] Other fruits and vegetables, such as blueberries and lettuce, have also been associated with HAV outbreaks in the U.S. as well as in other developed countries.[18]

2.8 The following are examples of HAV outbreaks in the past forty years:

Hepatitis A outbreaks associated with fresh, frozen, and minimally processed produce, worldwide, from 1983 to 2016

Year	# Cases	Implicated food	Location of cases	Source of implicated food	Suspected cause of contamination	Reference
1983	24	Raspberries (frozen)	Scotland	*Scotland*	Infected pickers or packers	Reid et al., 1987[19]
1987	5	Raspberries (frozen)	Scotland	*Tayside, Scotland*	Infected pickers	Ramsay and Upton, 1989[20]
1988	202	Iceberg lettuce	Kentucky	Unknown, suspected to be from Mexico	Believed to have occurred prior to distribution, since multiple restaurants involved	Rosenblum et al., 1990[21]
1990	35	Strawberries (frozen)	Montana, Georgia	California	Suspect an infected picker	Sivapalasingam et al.,

[15] *Id.; See also,* Wheeler, C, *et al.,* "An Outbreak of Hepatitis A Associated with Green Onions," New England Journal of Medicine, Vol. 353, 890-97 (2005). Full text of article available at http://www.nejm.org/doi/full/10.1056/NEJMoa050855.

[16] Hutin YJF, *et al.,* "A Multistate, Foodborne Outbreak of Hepatitis A," New England Journal of Medicine, Vol. 340, pp. 595-602 (1999). Full text of article is online at http://nejm.org/doi/full/10.1056/NEJM199902253400802.

[17] Wheeler, C, *et al.,* "An Outbreak of Hepatitis A Associated with Green Onions," *supra* note 15.

[18] Butot S, *et al.,* "Effects of Sanitation, Freezing and Frozen Storage on Enteric Viruses in Berries and Herbs," Intentional Journal of Food Microbiology, Vol. 126, No. 4, pp. 233-246 (2003). Full text of article is available at http://www.prograd.uff.br/virologia/sites/default/files/bulot_et_al_2008_inactivation.pdf.; Calder, L, *et al.,* An Outbreak of Hepatitis A Associated with Consumption of Raw Blueberries," Epidemiology and Infection, Vol. 131, No. 1 745-51 (2003) at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2870016/pdf/12948375.pdf.

[19] Reid, T., Robinson, H. (1987). Frozen raspberries and hepatitis A. *Epidemiol Infect*, 98: 109–112.

[20] Ramsay, C. N. and Upton, P. A. (1989). Hepatitis A and frozen raspberries. *Lancet*, 1: 43–44.

[21] Rosenblum, L. S., Mirkin, I. R., Allen, D. T., Safford, S., Hadler, S. C. (1990). A multifocal outbreak of hepatitis A traced to commercially distributed lettuce. *American Journal of Public Health*, 80(9): 1075-1079.

					at farm	2004;[22] Niu et al., 1992[23]
1996	30	Salad ingredients	Finland	Imported salad ingredients	Unknown	Pebody et al., 1998[24]
1997	256	Strawberries (frozen)	Michigan, Maine, Wisconsin, Arizona, Louisiana, Tennessee	Grown in Mexico, processed and frozen at a single California facility a year before consumption	Inconclusive due to time between harvest and consumption, suspect barehanded contact with berries at harvesting, coupled with few latrines and handwashing facilities on site	Hutin et al., 1999[25]
1998	43	Green onions	Ohio	One of two Mexican farms or a farm in California	Believed to be contaminated before arrival at restaurant	Dentinger et al., 2001[26]
2000	31	Green onions or tomatoes	Kentucky, Florida	Green onions: California	Unknown	Wheeler et al., 2005[27]; Datta et al., 2001[28];

[22] Sivapalasingam, S., Friedman, C. R., Cohen, L., Taube, R. V. (2004). Fresh produce: a growing cause of outbreaks of foodborne illness in the United States, 1973 through 1997. *J Food Prot,* 67: 2342-2353.

[23] Niu, M. T., Polish, L. B., Robertson, B. H. (1992). Multistate outbreak of hepatitis A associated with frozen strawberries. *J Infect Dis* 166: 518-524.

[24] Pebody, R. G., Leino, T., Ruutu, P., Kinnunen, L., Davidkin, I., Nohynek, H., & Leinikki, P. (1998). Foodborne outbreaks of hepatitis A in a low endemic country: an emerging problem? *Epidemiology and infection*, *120*(1): 55-59.

[25] Hutin, Y. J., Pool, V., Cramer, E. H., Nainan, O. V., Weth, J., Williams, I. T. et al. (1999). A multistate, foodborne outbreak of hepatitis A. *New England Journal of Medicine*, 340(8): 595-602.

[26] Dentinger, C. M., Bower, W. A., Nainan, O. V., Cotter, S. M., Myers, G., Dubusky, L. M., Fowler, S., Salehi, E. D. P., and Bell, B. P. (2001). An outbreak of hepatitis A associated with green onions. *J Infect Dis*, 183: 1273-1276.

[27] Wheeler, C., Vogt, T. M., Armstrong, G. L., Vaughan, G., Weltman, A., Nainan, O. V. et al. (2005). An outbreak of hepatitis A associated with green onions. *New England Journal of Medicine*, *353*(9): 890-897.

[28] Datta, S. D., Traeger, M. S., & Nainan, O. V. (2001). Identification of a multi-state outbreak of hepatitis A associated with green onions using a novel molecular epidemiologic technique [abstract 896]. In *Program and abstracts*

				or Mexico Tomatoes: Unknown		Fiore, 2004[29]
2002	81	Blueberries	New Zealand	*New Zealand, one orchard*	Inadequate bathroom facilities in fields, workers had barehanded contact with product, polluted groundwater from nearby latrines a possibility	Calder et al., 2003[30]
2003	601	Green onions	Pennsylvania, Tennessee, Georgia, North Carolina	Mexico, two farms	Contaminated during or before packing at farm	CDC, 2003[31]; Wheeler et al., 2005[32]
2009	562	Tomatoes (semidried)	Australia	Unknown; imported and domestic product involved	Product suspected to be imported due to concurrent outbreaks elsewhere at the time, source of contamination unknown	Donnan et al., 2012[33]
2009	13	Tomatoes (semidried)	Netherlands	Unknown; imported	Identical strain to the 2009	Petrignani et

of the 39th Annual Meeting of the Infectious Diseases Society of America. Alexandra, VA: Infectious Diseases Society of America (Vol. 192).

[29] Fiore, A. E. (2004). Hepatitis A transmitted by food. *Clinical Infectious Diseases*, 38(5): 705-715.

[30] Calder, L. , Simmons, G., Thornley, G. (2003). An outbreak of hepatitis A associated with consumption of raw blueberries. *Epidemiol Infect,* 131: 745-751

[31] Centers for Disease Control and Prevention (CDC). (2003). Hepatitis A outbreak associated with green onions at a restaurant--Monaca, Pennsylvania, 2003. *MMWR*, 52(47): 1155-1157. Available at https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5247a5.htm

[32] Wheeler, C., Vogt, T. M., Armstrong, G. L., Vaughan, G., Weltman, A., Nainan, O. V. et al. (2005). An outbreak of hepatitis A associated with green onions. *New England Journal of Medicine*, *353*(9): 890-897.

[33] Donnan, E. J., Fielding, J. E., Gregory, J. E., et al. (2012). A multistate outbreak of hepatitis A associated with semidried tomatoes in Australia, 2009. *Clin Infect Dis*, 54: 775–781.

				product suspected	Australian outbreak	al., 2010[34]
2010	59	Tomatoes (semidried)	France	Likely Turkey, single batch of product	Unable to determine when and where contamination occurred. Virus was slightly different from one in the 2009 Australian and Dutch outbreaks.	Gallot et al., 2011[35]
2012	9	Pomegranate seeds (frozen)	Canada	Egypt	Suspect product contamination before export. Some history of travel to endemic areas among workers at Canadian processing facility, but less likely as only one product was associated with illness.	CDC 2013[36]; Swinkels et al., 2014[37]
2013	103	Strawberries (frozen) Other frozen berries may	Denmark, Finland, Norway, Sweden	Suspected Egypt and Morocco based on	Unknown, some cases matched the strain of the larger 2013	Nordic Outbreak Investigation Team, 2013[38]

[34] Petrignani, M., Harms, M., Verhoef, L. (2010). Update: a food-borne outbreak of hepatitis A in The Netherlands related to semi-dried tomatoes in oil, January-February 2010. *Euro Surveillance,* 15(20): 19572.

[35] Gallot, C., Grout, L., Roque-Afonso, A., Couturier, E., Carrillo-Santisteve, P., Pouey, J. et al. (2011). Hepatitis A Associated with Semidried Tomatoes, France, 2010. *Emerging Infectious Diseases*, 17(3): 566-567.

[36] Centers for Disease Control and Prevention (CDC). (2013). Multistate outbreak of hepatitis A virus infections linked to pomegranate seeds from Turkey (Final Update). Available at: https://www.cdc.gov/hepatitis/outbreaks/2013/a1b-03-31/

[37] Swinkels, H. M., Kuo, M., Embree, G., Andonov, A., Henry, B., Buxton, J. A. (2014). Hepatitis A outbreak in British Columbia, Canada: the roles of established surveillance, consumer loyalty cards and collaboration, February to May 2012. *Euro Surveillance*, 19: 20792.

[38] Nordic Outbreak Investigation Team C (2013). Joint analysis by the Nordic countries of a hepatitis A outbreak, October 2012 to June 2013: frozen strawberries suspected. *Euro Surveillance*, 18(27): 20520.

		have been involved		virus strain and import history	European outbreak (see below)	
2013	1589	Berries (frozen)	Italy (90% of cases), Austria, Bulgaria, Denmark, England, Finland, France, Germany, Ireland, the Netherlands, Norway, Poland, Sweden	Multiple food items containing frozen mixed berries (cakes, smoothies); Bulgarian blackberries and Polish redcurrants were the most common ingredients in the implicated lots	Unknown, no single source found. Some cases also related to travel to Italy.	Severi et al., 2015[39]; EFSA 2014[40]; Chiapponi et al., 2014[41]; Rizzo et al., 2013[42]; Guzman-Herrador et al., 2014[43]; Fitzgerald et al., 2014[44]
2013	165	Pomegranate arils (frozen)	Arizona, California, Colorado,	Turkey	Unknown	Collier et al., 2014[45]; CDC

[39] Severi, E., Verhoef, L., Thornton, L., Guzman-Herrador, B. R., Faber, M., Sundqvist, L. et al. (2015). Large and prolonged food-borne multistate hepatitis A outbreak in Europe associated with consumption of frozen berries, 2013 to 2014. *Euro Surveillance*, 20(29): 1-9.

[40] European Food Safety Authority (EFSA). (2014). Tracing of food items in connection to a multinational hepatitis A virus outbreak in Europe. *EFSA Journal*, 12(9): 3821-4007. Available at http://www.efsa.europa.eu/en/efsajournal/pub/3821.htm

[41] Chiapponi, C., Pavoni, E., Bertasi, B., Baioni, L., Scaltriti, E., Chiesa, E., et al. (2014). Isolation and genomic sequence of hepatitis A virus from mixed frozen berries in Italy. *Food Environ Virol*, 6(3): 202-206.

[42] Rizzo, C., Alfonsi, V., Bruni, R., Busani, L., Ciccaglione, A., De Medici, D., et al. (2013). Ongoing outbreak of hepatitis A in Italy: preliminary report as of 31 May 2013. *Euro Surveillance*, 18(27): 20518.

[43] Guzman-Herrador, B., Jensvoll, L., Einoder-Moreno, M., Lange, H., Myking, S., Nygard, K., et al. (2014). Ongoing hepatitis A outbreak in Europe 2013 to 2014: imported berry mix cake suspected to be the source of infection in Norway. *Euro Surveillance*, 19(15): 20775.

[44] Fitzgerald, M., Thornton, L., O'Gorman, J., O Connor, L., Garvey, P., Boland, M., et al. (2014). Outbreak of hepatitis A infection associated with the consumption of frozen berries, Ireland, 2013 - linked to an international outbreak. *Euro Surveillance: European communicable disease bulletin,* 19(43).

[45] Collier, M. G., Khudyakov, Y. E., Selvage, D., Adams-Cameron, M., Chiepson, E., Cronquist, A., et al. (2014). Outbreak of hepatitis A in the USA associated with frozen pomegranate arils imported from Turkey: an epidemiological case study. *Lancet Infectious Diseases*, 14(10): 976-981.

			Hawaii, New Hampshire, New Jersey, New Mexico, Nevada, Utah, Wisconsin			2013[46]
2016	143	Strawberries (frozen)	Arkansas, California, Maryland, New York, North Carolina, Oregon, Virginia, West Virginia, Wisconsin	Egypt	Unknown	CDC 2016[47]

2.9 HAV is relatively stable and can survive for several hours on fingertips and hands and up to two months on dry surfaces.[48] The virus can be inactivated by heating to 185°F (85°C) or higher for one minute, or disinfecting surfaces with a 1:100 dilution of household bleach in tap water.[49] HAV can still be spread from cooked food if it is contaminated after cooking.[50]

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[46] Centers for Disease Control and Prevention (CDC). (2013) – Multistate outbreak of hepatitis A virus infections linked to pomegranate seeds from Turkey (Final Update), s*upra* note 85.

[47] Centers for Disease Control and Prevention (CDC). (2016). 2016 - Multistate outbreak of hepatitis A linked to frozen strawberries (Final Update). Available at https://www.cdc.gov/hepatitis/outbreaks/2016/hav-strawberries.htm

[48] Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1; Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

[49] CDC, "Updated recommendations from Advisory Committee on Immunization Practices (ACIP) for use of hepatitis A vaccine in close contacts of newly arriving international adoptees," Morbidity and Mortality Weekly Report, Vol. 58, No. 36, (Sept. 18, 2006), http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5836a4.htm; Fiore, Anthony, *et al.,* Advisory Committee on Immunization Practices (ACIP), Prevention of Hepatitis-A Through Active or Passive Immunization: Recommendations, Morbidity & Mortality Weekly Review, Vol. 55, Report 407, (May 29, 2006) at http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5507a1.htm; Todd, Ewan C.D., *et al.,* "Outbreaks Where Food Workers Have Been Implicated in the Spread of Foodborne Disease. Part 6. Transmission and Survival of Pathogens in the Food Processing and Preparation-environment," Journal of Food Protection, Vol. 72, 202-19 (2009). Full text of the article is available online at http://courses.washington.edu/eh451/articles/Todd_2009_food%20processing.pdf.

[50] Fiore, Anthony, Division of Viral Hepatitis, CDC, "Hepatitis A Transmitted by Food," *supra* note 7.

2.10 Although ingestion of contaminated food is a common means of spread for HAV, it may also be spread by household contact among families or roommates, sexual contact, or by direct inoculation from persons sharing illicit drugs.[51] Children are often asymptomatic, or have unrecognized infections, and can pass the virus through ordinary play, unknown to their parents, who may later become infected from contact with their children.[52]

2.11 HAV may cause no symptoms at all when it is contracted, especially in children.[53] Asymptomatic individuals will only know they were infected (and have become immune, given that you can only get hepatitis A once) by getting a blood test later in life.[54] Approximately 10 to 12 days after exposure, HAV is present in blood and is excreted via the biliary system into the feces.[55] Although the virus is present in the blood, its concentration is much higher in feces.[56] HAV excretion begins to decline at the onset of clinical illness, and decreases significantly by 7 to 10 days after onset of symptoms.[57] Most infected persons no longer excrete virus in the feces by the third week of illness. Children may excrete HAV longer than adults.[58]

2.12 Seventy percent of HAV infections in children younger than six years of age are asymptomatic; in older children and adults, infection tends to be symptomatic with more than 70% of those infected developing jaundice.[59] Symptoms typically begin about 28 days after contracting

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51 *Id.*; *See also,* Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

52 Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1; Piazza, M, *et al.,* "Safety and Immunogenicity of Hepatitis A Vaccine in Infants: A Candidate for Inclusion in Childhood Vaccination Program," Vol. 17, pp. 585-588 (1999). Abstract at http://www.ncbi.nlm.nih.gov/pubmed/10075165; Schiff, E.R., "Atypical Manifestations of hepatitis-A," Vaccine, Vol. 10, Suppl. 1, pp. 18-20 (1992). Abstract at http://www.ncbi.nlm.nih.gov/pubmed/1475999.

53 Fiore, Anthony, Division of Viral Hepatitis, CDC, "Hepatitis A Transmitted by Food," *supra* note 7

54 Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

55 CDC, "Hepatitis A," *supra* note 5; Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1

56 Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1

57 *Id.*

58 *Id.*; *See also* Sagliocca, Luciano, *et al.,* "Efficacy of Hepatitis A Vaccine in Prevention of Secondary Hepatitis A Infection: A Randomized Trial," Lancet, Vol. 353, 1136-39 (1999). Abstract at http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(98)08139-2/abstract.

59 CDC, "Hepatitis A," *supra* note 5.

HAV, but can begin as early as 15 days or as late as 50 days after exposure.[60] The symptoms include muscle aches, headache, anorexia (loss of appetite), abdominal discomfort, fever, and malaise.[61]

2.13 After a few days of typical symptoms, jaundice (also termed "icterus") sets in.[62] Jaundice is a yellowing of the skin, eyes, and mucous membranes that occurs because bile flows poorly through the liver and backs up into the blood.[63] The urine will also turn dark with bile and the stool light or clay-colored from lack of bile.[64] When jaundice sets in, initial symptoms such as fever and headache begin to subside.[65]

2.14 In general, symptoms usually last less than two months, although 10% to 15% of symptomatic persons have prolonged or relapsing disease for up to 6 months.[66] It is not unusual, however, for blood tests to remain abnormal for six months or more.[67] The jaundice so commonly associated with HAV can also linger for a prolonged period in some infected persons, sometimes as long as eight months or more.[68] Additionally, pruritus, or severe "itchiness" of the skin, can persist for several months after the onset of symptoms. These conditions are frequently accompanied by diarrhea, anorexia, and fatigue.[69]

2.15 Relapse is possible with HAV, typically within three months of the initial onset of

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60 *Id.*; *See also* Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1; Fiore, Anthony, Division of Viral Hepatitis, CDC, "Hepatitis A Transmitted by Food," *supra* note 7.

61 CDC, "Hepatitis A," *supra* note 5; Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1; Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

62 Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1; Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

63 Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

64 CDC, "Hepatitis A," *supra* note 5; Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1; Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

65 Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

66 Fiore, Anthony, *et al.,* Advisory Committee on Immunization Practices (ACIP), Prevention of Hepatitis-A Through Active or Passive Immunization: Recommendations," *supra* note 20; Gilkson Miryam, *et al.,* "Relapsing Hepatitis A. Review of 14 cases and literature survey," Medicine, Vol. 71, No. 1, 14-23 (Jan. 1992). Abstract of article online at http://www.ncbi.nlm.nih.gov/pubmed/1312659.

67 Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1.

68 *Id.*; Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

69 CDC, "Hepatitis A," *supra* note 5; Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

symptoms.[70] Although relapse is more common in children, it does occur with some regularity in adults.[71] The vast majority of persons who are infected with hepatitis A fully recover, and do not develop chronic hepatitis.[72] Persons do not carry HAV long-term as with hepatitis B and C.[73]

2.16 Fulminant hepatitis A, or acute liver failure, is a rare but devastating complication of HAV infection.[74] As many as 50% of individuals with acute liver failure may die or require emergency liver transplantation.[75] Elderly patients and patients with chronic liver disease are at higher risk for fulminant hepatitis A.[76] In parallel with a declining incidence of acute HAV infection in the general population, however, the incidence of fulminant HAV appears to be decreasing.[77]

2.17 HAV infects the liver's parenchymal cells (internal liver cells).[78] Once a cell has been penetrated by the viral particles, the hepatitis A releases its own toxins that cause, in essence, a hostile takeover of the host's cellular system.[79] The cell then produces new viral components that are released into the bile capillaries or tubes that run between the liver's parenchymal cells.[80] This process results in the death of liver cells, called hepatic necrosis.[81]

2.18 The fulminant form of hepatitis occurs when this necrotic process kills so many

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70 Gilkson Miryam, *et al.,* "Relapsing Hepatitis A. Review of 14 cases and literature survey," *supra* note 37.

71 Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1; Gilkson Miryam, *et al.,* "Relapsing Hepatitis A. Review of 14 cases and literature survey," *supra* note 37.

72 Mayo Clinic Staff, "Hepatitis A," *supra* note 1.

73 CDC Summary, "Disease Burden from Viral Hepatitis A, B and C in the United States, 2004-2009, at http://www.cdc.gov/hepatitis/pdfs/disease_burden.pdf; CDC, "Hepatitis A," *supra* note 5.

74 Detry, Oliver, *et al.,* "Brain Edema and Intracranial Hypertension in Fulminant Hepatic Failure: Pathophysiology and Management," World Journal of Gastroenterology, Vol. 12, No. 46 pp. 7405-7412 (Dec. 14, 2006). Full article is available online at http://www.wjgnet.com/1007-9327/12/7405.pdf.

75 Taylor, Ryan, *et al.,* "Fulminant Hepatitis A Virus Infection in the United States: Incidence, Prognosis, and Outcomes," Hepatology, Vol. 44, 1589-1597. Full text http://deepblue.lib.umich.edu/bitstream/2027.42/55879/1/21349_ftp.pdf.

76 *Id.*; *See also* Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1.

77 Taylor, Ryan, *et. al.,* "Fulminant Hepatitis A Virus Infection in the United States: Incidence, Prognosis, and Outcomes," *supra* note 46.

78 Detry, Oliver, *et al., supra* note 74; Feinstone, *supra* note 1.

79 Feinstone, *supra* note 1; Schiff, E.R., "Atypical Manifestations of hepatitis-A," *supra* note 23.

80 Detry, *supra* note 74.

81 *Id.*; *See also* Taylor, Ryan, *et. al.,* "Fulminant Hepatitis A Virus Infection in the United States: Incidence, Prognosis, and Outcomes," *supra* note 46.

liver cells—upwards of three-quarters of the liver's total cell count—that the liver can no longer perform its job.[82] Aside from the loss of liver function, fulminant hepatic failure can lead to encephalopathy and cerebral edema.[83] Encephalopathy is a brain disorder that causes central nervous system depression and abnormal neuromuscular function.[84] Cerebral edema is a swelling of the brain that can result in dangerous intracranial pressure.[85] Intracranial hypertensions leading to a brain stem death and sepsis with multiple organ failure are the leading causes of death in individuals with fulminant hepatic failure.[86]

2.19 HAV is much more common in countries with underdeveloped sanitation systems and, thus, is a risk in most of the world.[87] An increased transmission rate is seen in all countries other than the United States, Canada, Japan, Australia, New Zealand, and the countries of Western Europe.[88] Nevertheless, infections continue to occur in the United States, where approximately one-third of the population has been previously infected with HAV.[89]

2.20 Each year, approximately 30,000 to 50,000 cases of HAV occur in the United States.[90] Historically, acute HAV rates have varied cyclically, with nationwide increases every 10 to 15 years.[91] The national rate of HAV infections has declined steadily since the last peak in 1995.[92]

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82 Detry, Oliver, *et al.,* "*supra* note 74; Taylor, Ryan, *et. al.,* "Fulminant Hepatitis A Virus Infection in the United States: Incidence, Prognosis, and Outcomes," *supra* note 46.

83 *Id.*

84 *Id*; Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1.

85 Detry, Oliver, *et al., supra* note 74.

86 *Id.*

87 Feinstone, Stephen and Gust, Ian, "Hepatitis A Virus," *supra* note 1; Jaykus Lee Ann, "Epidemiology and Detection as Options for Control of Viral and Parasitic Foodborne Disease," *supra* note 12.

88 CDC, "Update: Prevention of Hepatitis A after Exposure to Hepatitis A Virus and in International Travelers, Updated ACIP Recommendations," Morbidity and Mortality Weekly Report, Vol. 56, No. 41, pp. 1080-84 (Oct. 19, 2007), online at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5641a3.htm.

89 CDC, "Surveillance for Acute Viral Hepatitis – United States 2007," *supra* note 13; Fiore, Anthony, Division of Viral Hepatitis, CDC, "Hepatitis A Transmitted by Food," *supra* note 7.

90 CDC, Summary, "Disease Burden from Viral Hepatitis A, B, and C in the United States," *supra* note 44; CDC, "Hepatitis A," *supra* note 5.

91 Hutin YJF, *et al.,* "A Multistate, Foodborne Outbreak of Hepatitis A," *supra* note 16.

92 CDC, Summary, "Disease Burden from Viral Hepatitis A, B, and C in the United States," *supra* note 44; CDC, "Surveillance for Acute Viral Hepatitis – United States 2007," *supra* note 13.

Although the national incidence—1.0 case per 100,000 population—of HAV was the lowest ever recorded in 2007, it is estimated that asymptomatic infections and underreporting kept the documented incidence-rate lower than it actually is. In fact, it is estimated that there were 25,000 new infections in 2007.[93]

The HAV Outbreak

2.21 As of February 2020, twenty individuals were identified as infected with HAV among seven states: Indiana, Michigan, Minnesota, Missouri, Nebraska, Pennsylvania, and Wisconsin. The outbreak is considered over.

2.22 Illnesses started on dates ranging from October 8, 2019 to November 15, 2019. Eleven people were hospitalized, and no deaths were reported.

2.23 Epidemiologic and traceback evidence indicated that fresh blackberries were the likely source of this outbreak. Of all cases interviewed (20), 19 reported eating fresh blackberries, and at least 16 cases reported purchasing those blackberries from either Fresh Thyme Farmers Market or Woodman's Food Market between September 9 and September 30, 2019.

Plaintiffs' HAV Infections and Illnesses

2.25 Plaintiffs reside in Appleton, Wisconsin.

2.26 Plaintiff Laurie Lewis purchased blackberries from the Woodman's Food Market located at 595 N. Westhill Blvd. in Appleton, Wisconsin on September 3, 9, or 16, 2019. Plaintiffs then consumed these blackberries.

Plaintiff Michael Lewis's HAV infection

2.27 Onset of Plaintiff Michael Lewis's HAV illness began on or about October 1, 2019. His symptoms included leg pain, fatigue, lack of appetite, jaundice, and abdominal pain.

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[93] CDC, "Surveillance for Acute Viral Hepatitis – United States 2007," *supra* note 13; Schiff, E.R., "Atypical Manifestations of hepatitis-A," *supra* note 23.

2.28 Plaintiff Michael Lewis sought professional medical assistance starting on October 1, 2019 at St. Elizabeth Hospital and Kaukauna Clinic. At the clinic, medical staff took blood samples and did a CT scan of the Plaintiff's abdomen.

2.29 Plaintiff Michael Lewis's test results necessitated his admission to ThedaCare Regional Medical Center for an endoscopic retrograde cholangiopancreatography on October 6, 2019. During this procedure, a bile duct stent was also inserted and placed. Later that day, Plaintiff was transferred to Froedtert Hospital with a diagnosis of acute liver failure.

2.30 Plaintiff Michael Lewis was ultimately diagnosed with an acute HAV infection. He remained hospitalized at Froedtert Hospital for 8 days for treatment. Plaintiff's bile duct stent was removed on November 22, 2019.

2.31 Plaintiff Michael Lewis had several follow-up medical appointments as he recovered from his HAV infection, and he continues to suffer from fatigue due to his HAV infection to this day.

2.32 Plaintiff Michael Lewis was classified as a case in the hepatitis A Fresh Thyme blackberry outbreak of 2019 by the Wisconsin Department of Health Services.

Plaintiff Laurie Lewis's HAV infection

2.33 Plaintiff Laurie Lewis experienced symptom onset of her HAV infection on or about October 8, 2019. Her symptoms included fever, nausea, loss of appetite, abdominal pain, and headache.

2.34 Plaintiff Laurie Lewis sought medical attention for her symptoms on October 14, 2019 at Primary Care Associates of Appleton. After blood testing and a CT scan of her abdomen and pelvis, Plaintiff was diagnosed with HAV.

2.35 Plaintiff had several follow-up appointments for her HAV infection and continued to experience symptoms through November 2019.

2.36 Plaintiff Laurie Lewis was classified as a case in the hepatitis A Fresh Thyme blackberry outbreak of 2019 by the Wisconsin Department of Health Services.

III. CAUSES OF ACTION

Strict Liability—Count I

3.1 Plaintiffs incorporate paragraphs 1.1 through 2.36 of this Complaint as if each paragraph were set forth herein in its entirety.

3.2 At all times relevant to this action, Defendant was the manufacturer and/or seller of an adulterated food product—blackberries—that, as a result of its defective and unsafe condition due to HAV contamination, caused injury to Plaintiffs.

3.3 The adulterated food product that Defendant manufactured and/or sold was, at the time it left Defendant's control, defective and unreasonably dangerous for its ordinary and expected use because of its contamination with HAV, a harmful virus.

3.4 The adulterated food product that Defendant manufactured and/or sold was given Plaintiffs without any change in its defective condition.

3.5 The adulterated food product that Defendant manufactured and/or sold was used in the manner expected and intended, i.e., human consumption.

3.6 Plaintiffs suffered injuries and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that Defendant manufactured and/or sold.

Warranty and Products Liability—Count II

3.7 Plaintiffs incorporate paragraphs 1.1 through 3.6 of this Complaint as if each paragraph was set forth herein in its entirety.

3.8 Defendant was at all relevant times a seller of the HAV-contaminated fresh non-organic blackberries that Plaintiffs purchased and consumed from Woodman's Food Market

during September 2019. Because they were contaminated with HAV, causing Plaintiffs' illness and injuries described above, these blackberries were defective.

3.9 Plaintiffs were unaware of the defect in the blackberries that the Defendant sold, and they relied upon Defendant's implied warranties of merchantability and of suitability of the blackberries for human consumption. Defendant breached those warranties by selling blackberries that were contaminated with HAV.

3.10 The blackberries that Defendant sold, and that caused Plaintiffs' HAV illnesses described above, were defective and unreasonably dangerous at the time they left Defendant's control because they contained HAV and were, as a result, dangerous beyond the reasonable expectations of the ordinary consumer, including Plaintiffs.

3.11 The defect in the blackberries sold by Defendant proximately caused Plaintiffs' injuries, both personal and economic.

Negligence—Count III

3.12 Plaintiffs incorporate paragraphs 1.1 through 3.11 of this Complaint as if each paragraph was set forth herein in its entirety.

3.13 Defendant is in the business of selling, among other types of food products, blackberries for sale and human consumption.

3.14 Defendant owed the ultimate consumers of the blackberries that it sold a duty to take reasonable measures for their protection and safety.

3.15 Defendant breached the duty it owed to persons who were the ultimate consumers of its blackberries by committing the following acts and omissions of negligence:

3.15.1 Defendant failed to adequately monitor the safety and sanitary conditions of its premises;

3.15.2 Defendant failed to apply its own policies and procedures to ensure the safety and sanitary conditions of its premises;

3.15.3 Defendant failed to take reasonable measures aimed at preventing the

transmission of HAV and related filth and adulteration from its premises, equipment, and employees to its food products, including, specifically, blackberries;

3.15.4 Defendant failed to properly train its employees and agents how to prevent the transmission of HAV and related filth and adulteration from its premises, equipment, and employees to its food products, including, specifically, blackberries;

3.15.5 Defendant failed to properly supervise its employees and agents to prevent the transmission of HAV and related filth and adulteration from its premises, equipment, and employees to its food products, including, specifically, blackberries;

3.16 Plaintiffs' illnesses and associated legal injuries occurred as a direct and proximate result of the acts and omissions of negligence discussed above.

IV. DAMAGES

4.1 For purposes of pleading damages, Plaintiffs incorporate all of the above-stated allegations as if fully set forth here.

4.2 Plaintiffs suffered general, special, incidental, and consequential damages as a direct and proximate result of the acts and omissions of Defendant, as set forth above, in an amount that shall be fully proven at the time of trial. These damages include, without limitation, damages for loss of enjoyment of life; medical and medical-related expenses, wage claims and other economic loss; emotional distress; pharmaceutical expenses; and other ordinary, incidental and consequential damages as would be generally anticipated to arise under the circumstances.

V. JURY DEMAND

Plaintiffs hereby demand a jury trial.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendant as follows:

A. That the court award Plaintiffs judgment against Defendant in such sums as shall be determined to fully and fairly compensate Plaintiffs for all general, special, incidental and consequential damages incurred, or to be incurred, by Plaintiffs as the direct and proximate result of the acts and omissions of Defendant;

B. That the court award Plaintiffs costs, disbursements, and reasonable attorneys' fees incurred herein;

C. That the court allow Plaintiffs the opportunity to amend or modify the provisions of this complaint, as necessary or appropriate, after additional or further discovery is completed in this matter, and after all appropriate parties have been served; and

D. Granting all such additional or further relief as this Court deems just and equitable under the circumstances.

DATED this 29th day of April 2021.

ON BEHALF OF PLAINTIFFS:

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