

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY

MICHAEL SILBERMAN and
BARBARA SILBERMAN,

CASE NO:

Plaintiffs,

v.

BOAR'S HEAD PROVISION, CO., INC.,
and PUBLIX SUPERMARKETS, INC.,

Defendants.

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COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, MICHAEL SILBERMAN, a Florida citizen and resident (hereinafter "Mr. Silberman") and his wife, BARBARA SILBERMAN (hereinafter, "Mrs. Silberman"), hereby sue the Defendants, BOAR'S HEAD PROVISION, CO., INC., a Florida corporation, and PUBLIX SUPERMARKETS, INC., a Florida corporation, and allege:

PARTIES

1. Plaintiff, MICHAEL SILBERMAN (the "Plaintiff" or "Mr. Silberman"), and his wife, BARBARA SILBERMAN ("Mrs. Silberman"), are citizens of Delray Beach, in Palm Beach County, Florida.

2. Defendant, BOAR'S HEAD PROVISION CO., INC., (hereinafter, "Boar's Head"), is a corporation organized and existing under the laws of the State of Florida with headquarters located at 1819 Main Street, Sarasota, Florida, 34236. Boar's Head may be served through its registered agent, Corporate Service Provisions Co., Inc., 1201 Hays Street, Tallahassee, Florida 32301.

3. Defendant, PUBLIX SUPERMARKETS, INC., (hereinafter, “Publix”), is a corporation organized and existing under the laws of the State of Florida with headquarters located at 3300 Publix Corporate Parkway, Lakeland, Florida, 33811. Publix may be served through its registered agent, Corporate Creations Network, Inc., 801 US Highway 1, North Palm Beach, Florida 33408.

JURISDICTION AND VENUE

4. Jurisdiction is proper in the Fifteenth Judicial Circuit Court, in and for Palm Beach County, pursuant to Florida Statute §§ 26.012(2)(a) and 34.01(1)(c), as the amount in controversy exceeds \$50,000.00, exclusive of attorney’s fees. Venue is proper in Palm Beach County, Florida pursuant to Florida Statute § 47.011.

GENERAL ALLEGATIONS

Listeria monocytogenes

5. As it has been widely reported, listeriosis is an infection due to food contamination caused by the bacterium *Listeria monocytogenes*. The disease affects primarily persons of advanced age, pregnant women, newborns, and adults with weakened immune systems. However, people without these risk factors can also be affected. Food contaminated with *Listeria monocytogenes* bacteria usually look, smell, and taste normal, meaning that a consumer has no warning of contamination.

6. On or about July 30, 2024, the Food and Drug Administration Food Safety and Inspection Service issued an advisory titled “Boar’s Head Provisions Co. Expands Recall for Ready-To-Eat Meat and Poultry Products Due to Possible Listeria Contamination.” (Hereinafter, the “FDA Advisory” or “Advisory”).

7. Pursuant to the FDA Advisory, a person with listeriosis can experience a fever,

muscle aches, headache, stiff neck, confusion, loss of balance and convulsions sometimes preceded by diarrhea or other gastrointestinal symptoms. Listeria poisoning can quickly lead to an invasive infection that spreads beyond the gastrointestinal tract. In people who are pregnant, the infection can cause miscarriages, stillbirths, premature delivery or life-threatening infection of the newborn. In addition, serious and sometimes fatal infections can occur in older adults and persons with weakened immune systems. These can include meningitis and dementia. In other victims, Listeria can cross the blood brain barrier and cause encephalitis and meningitis, often accompanied by a fever and neck, back, or head pain. Listeriosis is treated with antibiotics.

8. Individuals who are in higher-risk categories who experience flu-like symptoms within two months after eating contaminated food should seek medical care and tell health care providers about eating the contaminated food. Prior to July of 2024, it was estimated that approximately 1,600 people in the United States fall seriously ill with listeriosis. Of these individuals, approximately 260 die of the disease annually.

The Listeria Outbreak in the United States

9. On July 19, 2024, the United States Food and Drug Administration (the “FDA”), and the Centers for Disease and Prevention (the “CDC”), along with health and regulatory officials in several states, and the U.S. Department of Agriculture’s Food and Safety Inspection Service (the “USDA-FSIS”), announced an investigation into the multistate outbreak of confirmed cases of *Listeria monocytogenes*.

10. By July 20, 2024, the FDA confirmed at least twenty-eight (28) people in twelve (12) states were hospitalized in connection with a Listeria outbreak link to meat sold in the United States. By August 29, 2024, the Listeria outbreak tied to Boar’s Head deli meat had expanded

across eighteen (18) states, resulting in at least fifty-seven (57) known hospitalizations and nine (9) reported deaths.

11. According to reports in the media, by August 29, 2024, Defendant Boar's Head recalled seventy-one (71) of its products equating to approximately 7.2 million pounds of deli meats.

12. The Listeria outbreak was first discovered when FSIS received notice of a liverwurst sample collected by the Maryland Department of Health that tested positive for Listeria monocytogenes, the bacteria which causes the listeria infection.

13. The Boar's Head infected products were produced between June 11 and July 17, 2024, having sell-by dates between July 25 and 30, 2024. The Boar's Head plant linked to the outbreak recalled more than seven million pounds of deli meat and poultry products. The recall included meat products intended for slicing at delis and pre-packaged products which were produced between May 10 and July 29, 2024, according to a notice posted on the USDA FSIS website.

14. Defendant Boar's Head eventually issued a statement regarding the outbreak, advising consumers: "[w]e deeply regret the impact this recall has had on affected families. No words can fully express our sympathies and the sincere and deep hurt we feel for those who have suffered losses or endured illness."

15. On September 25, 2024, the CDC issued an update titled: "Investigation Update: Listeria Outbreak, Meats Sliced at Deli." The CDC reported of fifty-nine (59) reported cases of people hospitalized due to the Listeria outbreak, with ten (10) deaths reported in, including one in Illinois, one in New Jersey, one in New York, one in Virginia, one in Florida, one in Tennessee,

one in New Mexico, two in South Carolina, and as of this update, one additional death in New York.

Publix Sells Contaminated Boar's Head Products to Its Customers, Including the Plaintiff

16. Publix is the largest employee-owned company in the United States, operating approximately 1,360 supermarkets including approximately 860 supermarkets located in Florida, 210 supermarkets located in Georgia, 90 in Alabama and approximately 200 in other states throughout the southeastern United States.

17. On August 14, 2024, the United States Department of Agriculture Food Safety and Inspection Service prepared and published an 825 page Retail List for Recall Number 023-2024 (the "Retail Recall List"). FSIS's Retail Recall List identifies various retailers throughout the United States who were the recipients of the 7 million pounds of recalled Boar's Head deli meats.

18. Included on the list is the Publix store located at 16130 Jog Road, Delray Beach, Florida. The Jog Road Publix is the store which Plaintiff shops weekly and purchased his Boar's Head meat products from the deli.

Mr. Silberman Consumes Boar's Head Meat Contaminated With Listeria

19. On July 15, 2024, the Plaintiff, Michael Silberman, purchased Boar's Head turkey at a Publix supermarket located at 16130 Jog Road, Delray Beach, Florida. In the days following the purchase, Mr. Silberman ate a sandwich using the Boar's Head turkey he purchased from Publix located at 16130 Jog Road, Delray Beach, Florida. The Boar's Head turkey Mr. Silberman purchased from Publix and ultimately consumed was contaminated with Listeria as a direct result of the Listeria outbreak caused by Defendant Boar's Head.

20. To date, the recall of Boar's Head meat containing Listeria did not include turkey products. However, according to the Centers for Disease Control, food infected with Listeria can

easily spread among deli equipment, surfaces, by hand contact and through contact with other food. See CDC Publication: How Listeria Spread – Deli Foods and Prepared Meats.

<https://www.cdc.gov/listeria/causes/deli-ready-to-eat-foods.html>

21. On September 26, 2019, the CDC completed its investigation of a Listeria outbreak where at least ten (10) people were known to have contracted Listeria, all of whom were hospitalized and one death.

22. From its investigation, the CDC determined that the 2019 Listeria outbreak occurred due to various meats and cheeses sliced at deli counters were exposed to infected products.

23. To prevent future Listeria outbreaks, the CDC warned manufacturers such as Boar's Head and retailers such as Publix to take precautionary steps to prevent infection. These steps included:

- a. Not allowing juice from lunch meat to get on other foods, utensils and food preparation surfaces;
- b. Meat preparers should wash their hands after handling deli meat, lunch meats and cheeses;
- c. Store opened packages of meat sliced at a deli no longer than 3 to 5 days in the refrigerator;
- d. Regularly clean food surfaces, equipment and utensils in direct contact with deli products, such as cutting boards, tables, cheese slicers and knives; and,
- e. Make sure food contact surfaces, such as cutting boards, are smooth, sealed, non-porous and easily cleanable.

24. On Friday, July 20, 2024, just a few days after consuming his sandwich containing the Boar's Head turkey, Mr. Silberman experienced a high fever. By July 22, 2024, Mr.

Silberman's health had deteriorated to the point where Palm Beach County Fire and Rescue was called to his home.

25. At all times relevant to this action, the Boar's Head turkey meat purchased and consumed by Mr. Silberman was contaminated with Listeria prior to being sold to the Plaintiff. The turkey Mr. Silberman purchased and later consumed was contaminated through its preparation, handling and exposure to other Boar's Head meat products containing Listeria.

26. After Mr. Silberman purchased and consumed the contaminated Boar's Head meat products, the Palm Beach County Fire and Rescue team concluded Mr. Silberman was experiencing tachypnea, a term used to describe atypical rapid breathing. Mr. Silberman was also experiencing hypocarbia due to abnormally low levels of carbon dioxide in his blood. The Fire and Rescue team noted in their records that Mr. Silberman demonstrated an "altered mental status." After examining Mr. Silberman at his home, the Palm Beach County Fire and Rescue team determined he met the criteria for sepsis and was placed on a stretcher and taken to the Emergency Room at the Delray Medical Center in Delray Beach, Florida.

27. While in the Delray Medical Center, Mr. Silberman was diagnosed with Listeria, meningitis and encephalitis. It is well documented that Listeria causes meningitis, especially in older individuals who may have weakened immune systems. Bacterial meningitis is a life-threatening complication of a Listeria infection.

28. In addition to meningitis, Listeria is widely understood to cause encephalitis, a serious condition that causes inflammation on the brain. Encephalitis can lead to a number of symptoms, including mental confusion, seizures, compromised motor function, altered mental state and coma.

29. Mr. Silberman's Listeria infection and subsequent complications, including but not limited to meningitis, encephalitis, renal failure, muscle atrophy and cognitive impairment, were all the direct result of his consumption Defendant Boar's Head's meat products, specifically the Boar's Head turkey, manufactured by Boar's Head and sold to Mr. Silberman by Publix. Further, Plaintiff's consumption of Boar's Head meat products, sold to him by Publix, required Plaintiff to remain in bed, unable to move about independently, for approximately four (4) weeks.

30. As a direct result of consuming Defendant Boar's Head meat products, specifically the Boar's Head turkey, Plaintiff currently must walk using the assistance of a walker, Plaintiff suffers from low iron and hemoglobin, remains constantly lethargic, and is otherwise unable to live and function independently as he did in the days, weeks, months and years before his consumption of Boar's Head meats.

31. As a direct result of consuming Defendant Boar's Head meat products, specifically the Boar's Head turkey sold to Plaintiff by Publix, Plaintiff is no longer able to do housework, drive, shop, travel, work in the yard or shower without assistance. Prior to purchasing and consuming the Boar's Head meat, Plaintiff was able to live independently. Since consuming Boar's Head meat contaminated with Listeria, Plaintiff is unable to live independently as he did in the days, weeks, months and years prior to consuming Defendant's products.

32. As a direct result of purchasing and consuming Defendant Boar's Head meat products, specifically the Boar's Head turkey sold to Plaintiff by Publix, Plaintiff was admitted to the Delray Medical Center from July 19, 2024, through August 7, 2024. Plaintiff was subsequently discharged from Delray Medical Center and on or about August 7, 2024, was admitted to Harbour's Edge Rehabilitation Center in Delray Beach, Florida. Plaintiff stayed at Harbour's Edge Rehabilitation Center from August 7, 2024 through to September 10, 2024.

33. Plaintiff was required to stay at Harbour's Edge Rehabilitation Center for over a month due to complications following his consumption of Defendant Boar's Head's contaminated meat products. Specifically, while at Harbour's Edge, Plaintiff underwent physical and occupational therapy to learn to walk again and build muscle due to infection-related muscle atrophy.

COUNT I
(Strict Liability against Boar's Head)

34. Plaintiffs repeat and reallege paragraphs 1 – 33 above as if fully stated herein.

35. At all times, Defendant Boar's Head was in the business of producing, manufacturing, preparing, marketing, selling, supplying, and serving food (hereinafter, "meat products") to the public, and specifically to consumers such as the Plaintiff, Mr. Silberman.

36. At the time that Defendant Boar's Head's meat products were manufactured and placed into the stream of commerce, there was a manufacturing defect in the meat products when it left Defendant Boar's Head's possession, custody and control.

37. Defendant Boar's Head's meat products were defective because they contained Listeria at the time Boar's Head placed the product into the stream of commerce. The presence of Listeria was a condition of the product that rendered it unreasonably dangerous to the public at large and the Plaintiff, Mr. Silberman specifically. Defendant's Boar's Head meat products were contaminated with Listeria to such a degree that the contamination was able to spread from the recalled Boar's Head meat products to other non-recalled Boar's Head meat products, including the Boar's Head turkey purchased and consumed by the Plaintiff, Mr. Silberman. Alternatively, the Boar's Head turkey which Defendant Boar's Head manufactured and sold to Publix, wherein Publix sold the turkey to Plaintiff, was directly contaminated with Listeria during the manufacture, packaging, handling or shipping process.

38. As a result of Defendant Boar's Head placing a defective product, specifically, the meat products, including the Boar's Head turkey sold to Plaintiff, into the stream of commerce, cross-contaminating other foods and being consumed as contaminated Boar's Head turkey by the Plaintiff, Mr. Silberman, the meat products failed to constitute a safe food for human consumption as an ordinary consumer would expect when consuming meat products in an intended and/or reasonably foreseeable manner.

39. As a direct and proximate cause of the manufacturing defects in Boar's Head's meat products, which contaminated the Boar's Head turkey consumed by the Plaintiff, Mr. Silberman, Plaintiff contracted a Listeria infection, resulting in multiple complications including but not limited to meningitis, encephalitis, renal failure, muscle atrophy and cognitive impairment, among other injuries, impairments and complications.

40. The Boar's Head meat products containing Listeria which ultimately contaminated food, that is the Boar's Head turkey consumed by the Plaintiff, Mr. Silberman, were defective and unreasonably dangerous at the time they were manufactured and distributed as well as at the time the Plaintiff was exposed to the products. The defects in the Boar's Head turkey consumed by the Plaintiff included, but are not limited to the following:

- a. Contamination and cross-contamination with Listeria bacteria;
- b. The presence of Listeria within the meat products sold to Publix such that it would directly infect consumers and cross-contaminate other Boar's Head meats sold to consumers including the Boar's Head turkey sold to Plaintiff;
- c. The meat products were designed and manufactured in such a way, and under such conditions, that it led to the adulteration of the meat products including the Boar's Head turkey sold to Plaintiff;
- d. The meat products, including the Boar's Head turkey sold to Plaintiff, lacked sufficient warnings to advise consumers of the hazards presented due to the presence of Listeria;

- e. The meat products, including the Boar's Head turkey sold to Plaintiff, failed to perform as safely as an ordinary consumer would expect when used as intended or in a manner reasonably foreseeable by the Plaintiff, Mr. Silberman;
- f. The risk of damage in the meat products' design, including the Boar's Head turkey sold to Plaintiff, outweighed the benefits obtained with the use of the meat products and reasonable alternatives to the contaminated product were readily available; and,
- g. The meat products, including the Boar's Head turkey sold to Plaintiff, failed to perform safely and reached the Plaintiff, Mr. Silberman, without substantial change which would affect its condition.

41. The Defendant's conduct and the defective meat products, including the Boar's Head turkey sold to Plaintiff, were a direct, proximate and producing cause of Plaintiff's injuries and damages.

42. Plaintiff ingested *Listeria* from the Boar's Head turkey sold to Plaintiff and developed listeriosis, encephalitis, meningitis, sepsis, and sustained other injuries as a result of the ingestion of the Defendant Boar's Head product.

43. The ingestion of the product, namely the Boar's Head turkey sold to Plaintiff, which was contaminated with *Listeria* caused great pain and suffering, including anguish of mind and body and loss of capacity for the enjoyment of life and said injuries directly and proximately caused Plaintiff's injuries and related loss and pain and suffering.

44. As a further direct and proximate result of the defects described above, and the injuries sustained by the Plaintiff, Mr. Silberman has sustained the following damages:

- a. Permanent bodily injury and past, present, and future pain and suffering;
- b. Past, present and future aggravation of pre-existing conditions or physical defects;
- c. Past, present, and future disability or physical impairment;
- d. Past, present, and future disfigurement;
- e. Past, present, and future mental anguish;
- f. Past, present, and future inconvenience;

- g. Past, present and future loss of capacity for the enjoyment of life;
- h. Past, present and future medical expenses; and
- i. Past, present and future loss of earnings and earning capacity.

45. Defendant Boar's Head is strictly liable for manufacturing, distributing, marketing, and selling defective and unreasonably dangerous products, including the Boar's Head turkey sold to Plaintiff, and introducing these products into the stream of commerce, and Plaintiffs demand judgment for damages against the Defendant, trial by jury of all issues so triable in this cause, and for relief as the Court deems just and proper.

WHEREFORE, Plaintiff, MICHAEL SILBERMAN, demands judgment for damages against Defendant, BOAR'S HEAD PROVISION CO., INC., and further demands trial by jury.

COUNT II
(Negligence against Boar's Head)

46. Plaintiffs repeat and reallege paragraphs 1 – 33 above as if fully stated herein.

47. Defendant Boar's Head, at all times, owed Plaintiff a duty of ordinary care in the preparation, testing, packaging, handling, labelling, marketing, distribution, and/or selling of the meat products, including the Boar's Head turkey sold to Plaintiff, in such a manner that the products would be safe and not pose an unreasonable risk of harm to the life and safety of the consuming public, including the Plaintiff, when the meat products were used in a foreseeable manner.

48. Further, Defendant Boar's Head owed Plaintiff the duty of warning or instructing Plaintiff of potentially hazardous or life-threatening conditions with respect to the meat products, including the Boar's Head turkey sold to Plaintiff, whether through direct exposure to its contaminated meat products, or through indirect exposure through cross-contamination of Listeria infected Boar's Head meat.

49. At all times Defendant Boar's Head knew, or in the exercise of ordinary care should have known, that its meat products, including the Boar's Head turkey sold to Plaintiff, contained or were contaminated with Listeria.

50. At all times Defendant Boar's Head knew, or in the exercise of ordinary care should have known, that the Listeria in its meat products, including the Boar's Head turkey sold to Plaintiff, was invisible to the naked eye, and yet when ingested during the course of ordinary and foreseeable use could and did cause terminal illness and if not diagnosed and treated in time, cause death.

51. At all times Defendant Boar's Head knew, or in the exercise of ordinary care should have know, that the Listeria in its meat products, specifically the Boar's Head meat products sold to Publix, could and would contaminate other Boar's Head meat products, including the Boar's Head turkey sold to Plaintiff through retailers such as Defendant Publix.

52. Defendant Boar's Head breached its duties in one or more of at least the following ways:

- a. Negligently manufacturing, distributing, handling, and/or marketing the meat products, including the Boar's Head turkey sold to Plaintiff;
- b. Failing to properly test the meat products before placing them into the stream of commerce, including the Boar's Head turkey sold to Plaintiff and other Boar's Head products sold to Publix;
- c. Failing to prevent human and/or animal feces from coming into contact with the meat products including the Boar's Head turkey sold to Plaintiff and other Boar's Head products sold to Publix;
- 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 Listeria and related filth and adulteration from its premises;
- h. Failing to properly train and supervise its employees and agents to prevent the transmission of *listeria* and related filth and adulteration from its premises;
- i. Failing to warn the Plaintiff and the general public of the dangerous propensities of the product, particularly that it was contaminated with Listeria, despite knowing or having reason to know of such dangers;
- j. Failing to timely disclose post-sale information concerning the dangers associated with the product; and,
- k. Failing to take reasonable measures to prevent the transmission of Listeria from contaminated Boar's Head meat products to other products being sold at retail stores such as Defendant Publix.

53. 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 manufacture, distribution, storage, and/or sale of the products or their 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 the similar provision in the *Florida Food Safety Act*, including §§ 500.01, 500.04, 500.10, and 500.11, *et. seq.*

54. 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."

55. The meat products were adulterated because they contained Listeria whether through direct transmission into the Boar's Head turkey sold to Plaintiff, or through other Boar's Head meat products that ultimately contaminated the Boar's Head turkey sold to Plaintiff. Thus,

by the manufacture, distribution, handling, delivery, storage, sale, and/or offering for sale of the meat products and/or the products' ingredients, Defendant breached its statutory and regulatory duties.

56. Plaintiff was a member of the classes sought to be protected by the regulations and statutes identified above.

57. Plaintiff ingested *Listeria* and developed listeriosis, encephalitis, meningitis, sepsis, and sustained other injuries as a result of the ingestion of the Defendant Boar's Head product, specifically, the Boar's Head turkey which it sold to Plaintiff through Defendant Publix.

58. As a further direct and proximate result of the negligence described above, and the injuries sustained by the Plaintiff, Mr. Silberman has sustained the following damages:

- a. Permanent bodily injury and past, present, and future pain and suffering;
- b. Past, present and future aggravation of pre-existing conditions or physical defects;
- c. Past, present, and future disability or physical impairment;
- d. Past, present, and future disfigurement;
- e. Past, present, and future mental anguish;
- f. Past, present, and future inconvenience;
- g. Past, present and future loss of capacity for the enjoyment of life;
- h. Past, present and future medical expenses; and
- i. Past, present and future loss of earnings and earning capacity.

59. Defendant is therefore liable for negligence in the manufacturing, distributing, marketing, and selling defective and unreasonably dangerous meat products, including the Boar's Head turkey that Publix sold to Plaintiff, and introducing them into the stream of commerce, and Plaintiff, MICHAEL SILBERMAN, therefore demands judgment for damages against Defendant, trial by jury of all issues so triable in this cause, and for relief as the Court deems just and proper.

WHEREFORE, Plaintiff, MICHAEL SILBERMAN, demands judgment for damages against Defendant, BOAR'S HEAD PROVISION CO., INC., and further demands trial by jury.

COUNT III
(Strict Liability against Publix)

60. Plaintiffs repeat and reallege paragraphs 1 – 33 above as if fully stated herein.

61. At all times, Defendant Publix was in the business of producing, manufacturing, preparing, marketing, selling, supplying, and serving food (hereinafter, “meat products”) to the public, and specifically to consumers such as the Plaintiff, Mr. Silberman. The meat products Publix sold including the Boar’s Head turkey sold to Plaintiff containing Listeria.

62. At the time that Defendant Publix’s meat products were manufactured and placed into the stream of commerce, there was a manufacturing defect in the meat products when it left Defendant Publix’s possession, custody and control. This manufacturing defect including Publix’s sale of Boar’s Head turkey to Plaintiff containing Listeria.

63. Defendant Publix’s meat products, including the Boar’s Head turkey sold to Plaintiff, were defective because they contained Listeria at the time Publix placed the product into the stream of commerce. The presence of Listeria was a condition of the product that rendered it unreasonably dangerous to the public at large and the Plaintiff, Mr. Silberman specifically. Defendant Publix’s meat products were contaminated with Listeria to such a degree that the contamination was able to spread from the recalled Boar’s Head meat products to other non-recalled Boar’s Head meat products, including the Boar’s Head meat purchased and consumed by the Plaintiff, Mr. Silberman.

64. As a result of Defendant Publix placing a defective product, specifically, the meat products and Boar’s Head turkey sold to Plaintiff, into the stream of commerce, cross-contaminating other foods and being consumed by the Plaintiff, Mr. Silberman, the meat products consumed by Plaintiff, including the Boar’s Head turkey sold to Plaintiff by Publix, failed to

constitute a safe food for human consumption as an ordinary consumer would expect when consuming meat products in an intended and/or reasonably foreseeable manner.

65. As a direct and proximate cause of the manufacturing defects in Boar's Head's meat products, which defects contaminated the Boar's Head turkey sold by Publix and consumed by the Plaintiff, Mr. Silberman, Plaintiff contracted a Listeria infection, resulting in multiple complications including but not limited to meningitis, encephalitis, renal failure, muscle atrophy and cognitive impairment, among other injuries, impairments and complications.

66. The Boar's Head meat products, including the Boar's Head turkey, containing Listeria which ultimately contaminated food consumed by the Plaintiff, Mr. Silberman, were defective and unreasonably dangerous at the time they were packaged, distributed and sold by Publix to Plaintiff, as well as at the time the Plaintiff was exposed to the products. The defects in the Boar's Head meat products included, but are not limited to the following:

- a. Contamination and cross-contamination with Listeria bacteria;
- b. The presence of Listeria within the meat products sold to Publix such that it would directly infect consumers and cross-contaminate other Boar's Head meats sold to consumers including the Boar's Head turkey sold to Plaintiff;
- c. The meat products were designed and manufactured in such a way, and under such conditions, that it led to the adulteration of the meat products including the contamination in the turkey sold by Publix to Plaintiff;
- d. The meat products, including the turkey sold to Plaintiff, lacked sufficient warnings to advise consumers of the hazards presented due to the presence of Listeria;
- e. The meat products, including the turkey sold to Plaintiff, failed to perform as safely as an ordinary consumer would expect when used as intended or in a manner reasonably foreseeable by the Plaintiff, Mr. Silberman;
- f. The risk of damage in the meat products' design outweighed the benefits obtained with the use of the meat products, including the

Boar's Head turkey sold to Plaintiff, and reasonable alternatives to the contaminated product were readily available; and,

- g. The meat products, including the Boar's Head turkey sold to Plaintiff, failed to perform safely and reached the Plaintiff, Mr. Silberman, without substantial change which would affect its condition.

67. The Defendant Publix's conduct in its handling, packaging, distribution and sale of the defective meat products, including the Boar's Head turkey sold to Plaintiff, were a direct, proximate and producing cause of Plaintiff's injuries and damages.

68. Plaintiff ingested Listeria from the meat products, specifically the Boar's Head turkey sold to Plaintiff by Publix and developed listeriosis, encephalitis, meningitis, sepsis, and sustained other injuries as a result of the ingestion of the Defendant Publix's sale Boar's Head product.

69. The ingestion of the product, specifically the Boar's Head turkey sold to Plaintiff by Publix which was contaminated with Listeria, caused great pain and suffering, including anguish of mind and body and loss of capacity for the enjoyment of life and said injuries directly and proximately caused Plaintiff's injuries and related loss and pain and suffering.

70. As a further direct and proximate result of the defects described above, and the injuries sustained by the Plaintiff, Mr. Silberman has sustained the following damages:

- a. Permanent bodily injury and past, present, and future pain and suffering;
- b. Past, present and future aggravation of pre-existing conditions or physical defects;
- c. Past, present, and future disability or physical impairment;
- d. Past, present, and future disfigurement;
- e. Past, present, and future mental anguish;
- f. Past, present, and future inconvenience;
- g. Past, present and future loss of capacity for the enjoyment of life;
- h. Past, present and future medical expenses; and
- i. Past, present and future loss of earnings and earning capacity.

71. Defendant Publix is strictly liable for manufacturing, distributing, marketing, handling, preparing, packaging, marketing and selling defective and unreasonably dangerous products, specifically the Boar's Head turkey consumed by the Plaintiff, and introducing these products into the stream of commerce, and Plaintiffs demand judgment for damages against the Defendant, trial by jury of all issues so triable in this cause, and for relief as the Court deems just and proper.

WHEREFORE, Plaintiff, MICHAEL SILBERMAN, demands judgment for damages against Defendant, PUBLIX SUPERMARKETS, INC., and further demands trial by jury.

COUNT IV
(Negligence against Publix)

72. Plaintiffs repeat and reallege paragraphs 1 – 33 above as if fully stated herein.

73. Defendant Publix, at all times, owed Plaintiff a duty of ordinary care in the preparation, testing, packaging, handling, labelling, marketing, distribution, and/or selling of the meat products, including the Boar's Head turkey purchased by Plaintiff, in such a manner that the products would be safe and not pose an unreasonable risk of harm to the life and safety of the consuming public, including the Plaintiff, when the meat products were used in a foreseeable manner.

74. Further, Defendant Publix owed Plaintiff the duty of warning or instructing Plaintiff of potentially hazardous or life-threatening conditions with respect to the meat products, including the Boar's Head turkey sold to Plaintiff, whether through direct exposure to its contaminated meat products, or through indirect exposure through cross-contamination of Listeria infected Boar's Head meat.

75. At all times Defendant Publix knew, or in the exercise of ordinary care should have known, that its meat products, including the Boar's Head turkey sold to Plaintiff, contained or were contaminated with Listeria.

76. At all times Defendant Publix knew, or in the exercise of ordinary care should have known, that the Listeria in its meat products, including the Boar's Head turkey Publix sold to Plaintiff, was invisible to the naked eye, and yet when ingested during the course of ordinary and foreseeable use could and did cause terminal illness and if not diagnosed and treated in time, cause death.

77. At all times Defendant Publix knew, or in the exercise of ordinary care should have known, that the Listeria in its meat products could and would contaminate other Boar's Head meat products sold to consumers through retailers such as Defendant Publix and that such contamination would include the Boar's Head turkey Publix sold to Plaintiff.

78. Defendant Publix breached its duties in one or more of at least the following ways:
- a. Negligently manufacturing, distributing, handling, and/or marketing the meat products, specifically the Boar's Head turkey Publix sold to Plaintiff;
 - b. Failing to properly test the meat products, specifically the Boar's Head turkey Publix sold to Plaintiff, before placing them into the stream of commerce;
 - c. Failing to prevent human and/or animal feces from coming into contact with the meat products it sold to Plaintiff, specifically the Boar's Head turkey Publix sold to Plaintiff;
 - 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 Listeria and related filth and adulteration from its premises;
- h. Failing to properly train and supervise its employees and agents to prevent the transmission of Listeria and related filth and adulteration from its premises;
- i. Failing to warn the Plaintiff and the general public of the dangerous propensities of the product, specifically the Boar's Head turkey Publix sold to Plaintiff, warning that it was contaminated with Listeria, despite knowing or having reason to know of such dangers;
- j. Failing to timely disclose post-sale information concerning the dangers associated with the product; and,
- k. Failing to take reasonable measures to prevent the transmission of Listeria from contaminated Boar's Head meat products to other products being sold the Publix store where Plaintiff shopped and purchased Boar's Head turkey on a weekly basis.

79. Furthermore, Defendant Publix 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 manufacture, distribution, storage, and/or sale of the products or their 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 the similar provision in the *Florida Food Safety Act*, including §§ 500.01, 500.04, 500.10, and 500.11, *et. seq.*

80. 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."

81. The meat products, including the Boar's Head turkey Publix sold to Plaintiff, were adulterated because they contained Listeria. Thus, by the manufacture, distribution, handling, delivery, storage, sale, and/or offering for sale of the meat products and/or the products' ingredients, Defendant breached its statutory and regulatory duties.

82. Plaintiff was a member of the classes sought to be protected by the regulations and statutes identified above.

83. Plaintiff ingested Listeria and developed listeriosis, encephalitis, meningitis, sepsis, and sustained other injuries as a result of the ingestion of the Defendant Boar's Head product, specifically the Boar's Head turkey sold to Plaintiff by Publix.

84. As a further direct and proximate result of the negligence described above, and the injuries sustained by the Plaintiff, Mr. Silberman has sustained the following damages:

- a. Permanent bodily injury and past, present, and future pain and suffering;
- b. Past, present and future aggravation of pre-existing conditions or physical defects;
- c. Past, present, and future disability or physical impairment;
- d. Past, present, and future disfigurement;
- e. Past, present, and future mental anguish;
- f. Past, present, and future inconvenience;
- g. Past, present and future loss of capacity for the enjoyment of life;
- h. Past, present and future medical expenses; and
- i. Past, present and future loss of earnings and earning capacity.

85. Defendant Publix is therefore liable for negligence in the manufacturing, distributing, handling, packaging, marketing, and selling defective and unreasonably dangerous meat products, specifically the Boar's Head turkey Publix sold to Plaintiff, and introducing them into the stream of commerce, and Plaintiff, MICHAEL SILBERMAN, therefore demands judgment for damages against Defendant, trial by jury of all issues so triable in this cause, and for relief as the Court deems just and proper.

WHEREFORE, Plaintiff, MICHAEL SILBERMAN, demands judgment for damages against Defendant, PUBLIX SUPERMARKETS, INC., and further demands trial by jury.

COUNT V
(Loss of Consortium against Boar's Head)

86. Plaintiffs repeat and reallege paragraphs 1 – 33 above as if fully stated herein.

87. At all times hereto, the Plaintiffs, MICHAEL SILBERMAN and BARBARA SILBERMAN were married to each other and living together as husband and wife.

88. As a direct and proximate result of Plaintiff, Mr. Silberman, consuming food prepared and sold by Defendant Boar's Head which was contaminated with Listeria, Plaintiff, Mrs. Silberman has suffered the loss of consortium, society, comfort, support and services of her husband, Mr. Silberman.

WHEREFORE, Plaintiff, BARBARA SILBERMAN, demands judgment for damages against Defendant, BOAR'S HEAD PROVISION CO., INC., and further demands trial by jury.

**COUNT VI
(Loss of Consortium against Publix)**

89. Plaintiffs repeat and reallege paragraphs 1 – 33 above as if fully stated herein.

90. At all times hereto, the Plaintiffs, MICHAEL SILBERMAN and BARBARA SILBERMAN were married to each other and living together as husband and wife.

91. As a direct and proximate result of Plaintiff, Mr. Silberman, consuming food prepared and sold by Defendant Publix which was contaminated with Listeria, Plaintiff, Mrs. Silberman has suffered the loss of consortium, society, comfort, support and services of her husband, Mr. Silberman.

WHEREFORE, Plaintiff, BARBARA SILBERMAN, demands judgment for damages against Defendant, PUBLIX SUPERMARKETS, INC., and further demands trial by jury.

/s/ Jason Cornell

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Dated: October 14, 2024

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