

**ONTARIO
SUPERIOR COURT OF JUSTICE**

AMENDED THIS 4 DAY OF Dec 2014
PURSUANT TO RULE 26.02
K. Andersen
LOCAL REGISTRAR,
SUPERIOR COURT OF JUSTICE

BETWEEN:
200
MODIFIÉ DE
CONFORMÉMENT À LA RÈGLE
CHÉFIER LOCAL
COUR SUPÉRIEURE DE JUSTICE

1688782 ONTARIO INC.

Plaintiff

- and -

MAPLE LEAF FOODS INC. and
MAPLE LEAF CONSUMER FOODS INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date December 30, 2008

Issued by _____
Local registrar

Address of 80 Dundas St.
court office London, Ontario

TO: Maple Leaf Foods Inc.
30 St. Clair Avenue West
Suite 1500
Toronto, ON M4V 3A2

AND TO: Maple Leaf Consumer Foods Inc.
30 St. Clair Avenue West
Suite 1500
Toronto, ON M4V 3A2

CLAIM

1. The plaintiff claims on its own behalf and on behalf of the other members of the class as described below:

- (a) an order pursuant to the provisions of the *Class Proceedings Act, 1992* S.O. 1992, c. 6 certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs of a class of persons (hereinafter "the Class") described as follows:

All persons, whether natural or corporate, who, in August, 2008 are were franchisees of the restaurant franchise of which Mr. Submarine Limited ("Mr. Sub") is was the franchisor.

- (b) a declaration that the RTE Meats (defined herein) contained *Listeria monocytogenes* rendering them dangerous and unfit for human consumption, thus requiring their destruction by the Class;

~~(b)~~ (c) a declaration that the defendants owed a duty of care to the Class members in relation to the manufacturing, production, processing, sale, and distribution of RTE Meats to the Class;

~~(c)~~ (d) a declaration that the defendants breached the standard of care were negligent in the manufacturing, production, processing, sale and distribution of meat products to the Class the RTE Meats;

~~(d)~~ a declaration that the meat products so distributed to the Class were dangerous goods unfit for human consumption;

(e) a declaration that the defendants failed to properly warn the Class that the sanitation methods used by the defendants did not eliminate or control the risk of the RTE Meats being contaminated by *Listeria monocytogenes*;

~~(e)~~ (f) damages in the amount of \$100,000,000.00;

- (f) ~~(g)~~ interest on the aforesaid sum in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, on a compounded basis or otherwise;
- (g) ~~(h)~~ the costs of this action on a full indemnity basis and, pursuant to s. 26(9) of the *Class Proceedings Act, 1992*, the costs associated with publication of any and all court-ordered notice to the class and/or costs associated with the administration of any court approved plan of distribution redirecting amounts recovered in the action to class members; and
- (h) ~~(i)~~ such further and other relief as the plaintiff may request and this Honourable Court may deem just and appropriate.

The parties

2. The plaintiff, 1688782 Ontario Inc., is was a franchisee of a Mr. Sub™ (~~hereinafter "Mr. Sub"~~) submarine deli sandwich restaurant located in the cities ~~city~~ of Mississauga, Ontario, pursuant to a franchise agreement (hereinafter the "plaintiff franchise agreement") entered into between 1688782 Ontario Inc. and the franchisor, who was at the material time Mr. Submarine Limited (~~hereinafter the "plaintiff franchise agreement"~~) (hereinafter "Mr. Sub").

3. The plaintiff franchise agreement is identical, or substantially identical in its material portions, to all other franchise agreements entered into between the other Class members and the former franchisor Mr. Submarine Limited (sometimes hereinafter "the franchisor").

4. The defendant, Maple Leaf Foods Inc. (hereinafter "Maple Leaf") is a corporation having its headquarters in the province of Ontario and carrying on business throughout Canada as a manufacturer of meat products. At all material times Maple Leaf manufactured meat products at a manufacturing, processing and packaging facility located on Bartor Road in the city of Toronto. Maple Leaf's

meat products are distributed throughout Canada, and, in particular, are distributed to all Mr. Sub franchisees who are members of the Class.

5. The defendant, Maple Leaf Consumer Foods Inc. (hereinafter "Consumer") is a corporation having its headquarters in the province of Ontario carrying on business as a manufacturer of meat products. At all material times this defendant was the owner of the Bartor Road manufacturing, processing and packaging facility and operated that facility along with Maple Leaf.

Franchise Agreements

6. The plaintiff and Class members each owned and/or operated a Mr. Sub franchise restaurant specializing in the sale of submarine ~~deli~~-meat sandwiches containing ready-to-eat meats ("RTE Meats") pursuant to a franchise agreement with the franchisor Mr. ~~Submarine Limited~~.

7. Each of the Class members' franchise agreements with Mr. ~~Submarine Limited~~ had amongst its purposes and objects the establishment and maintenance of the Mr. Sub brand as a restaurant chain known for standards of high food quality. In order to further the brand's public reputation for high food quality, the Class members' franchise agreements required the franchisees to comply with the franchisor's policies, manuals, memoranda, and other directions. These directions were designed to present a uniform image to the public of the Mr. Sub brand, to ensure that uniform menu items were offered throughout the restaurant chain, and to maintain and enhance the reputation and goodwill of the franchisor, the franchisees and the Mr. Sub brand. In particular, the Class members' franchise agreements:

- (a) required the Class members to serve only those menu items specified by the franchisor from time to time;
- (b) required the Class members to follow all specifications of the franchisor as to the contents and ingredients of those menu items; and

- (c) required the Class members to refrain from offering any products for sale which had not been expressly approved by the franchisor.

Accordingly, the Class members' franchise agreements:

- (d) required the Class members to offer for sale only those brands of ~~deli meat~~ RTE Meats approved by the franchisor;
- (e) required the Class members to purchase those approved ~~deli-meats~~ RTE Meats only from the franchisor or from a supplier expressly approved by the franchisor; and
- (f) entitled the franchisor to remove any unauthorized ~~deli-meats~~ RTE Meats from the restaurants operated by the franchisees.

The defendants as sole suppliers of meat RTE Meat products

8. In order to further its goal of establishing uniformity of menu items and meat products throughout the Mr. Sub franchise, Mr. ~~Submarine Limited~~ entered into an agreement or agreements with the defendants whereby the defendants became the sole source of all meat products distributed to Class members for sale in their restaurants. In order to ensure the uniformity of products throughout the Mr. Sub franchise and the uniqueness of the Mr. Sub brand in the marketplace, the ~~meat products~~ RTE Meats produced by the defendants for sale in the Class members' restaurants were subject to strict specifications and control with respect to matters such as their ingredients, taste, shape, size, colour, and weight. The intention and result of those strict specifications was the creation of a ~~deli-meat~~ RTE Meat product line unique to the Mr. Sub franchise.

9. In accordance with the provisions of the Class members' franchise agreements, the franchisor designated the defendants (and/or distributors of the defendants' ~~deli-meat products~~ RTE Meats) as the sole approved supplier of ~~deli meat~~ RTE Meats for the Class members' restaurants. Accordingly, the Class members were required to source the ~~deli-meats~~ RTE Meats necessary for their

restaurants from the defendants, and were forbidden to obtain their ~~deli-meats~~ RTE Meats from any other source.

10. The defendants knew of the provisions of the Class members' franchise agreements directing and restricting the source of ~~deli-meats~~ RTE Meats for the Class members' restaurants and relied upon those provisions in making its decision to enter into the agreement(s) with Mr. ~~Submarine Limited~~, and to invest in the development of the product line of unique and specialized Mr. Sub ~~deli-meats~~ RTE Meats from which the defendants profited.

11. The defendants expressly or impliedly represented to the plaintiff and the Class that the RTE Meats were safe for human consumption. The plaintiff and the Class reasonably expected that the RTE Meats supplied by the defendants were safe for human consumption.

Defendants' Knowledge Concerning the Class Members

44.12. The plaintiff pleads that the defendants knew or ought to have known:

- (a) that they were the sole supplier of ~~deli-meats~~ RTE Meats for the Class;
- (b) that the Class members were ~~forbidden~~ prohibited from obtaining ~~deli-meats~~ RTE Meats from any other source;
- (c) that ~~deli-meats~~ RTE Meats were an integral and essential part of the Class members' businesses without which their businesses could not operate;
- (d) that any sudden failure of the defendants to supply ~~deli-meats~~ RTE Meats to the Class would result in immediate loss of revenue and goodwill for the Class members;
- (e) that the quality and safety of the ~~deli-meats~~ RTE Meats supplied to the Class by the defendants was essential to the maintenance of the Class members' goodwill and reputation in the community and to the Mr. Sub

brand upon which the Class members depended for their business success;

- (f) that if any ~~meat products~~ RTE Meats distributed to the Class members were contaminated with bacteria such as *listeria monocytogenes*, those ~~meat products~~ RTE Meats would be dangerous goods and not safe for human consumption and Class members would therefore be required to dispose of or destroy those ~~meat products~~ RTE Meats to prevent their customers from becoming ill;
- (g) that if the defendants could not distribute ~~deli meat products~~ RTE Meats to the Class due to bacterial contamination, the Class members would not be able to obtain ~~meat products~~ RTE Meats from any other source in order to continue their franchise operations, and would suffer a loss of revenue and goodwill as a result;
- (h) that if a widespread outbreak of bacterial contamination occurred which included the Mr. Sub ~~deli meat products~~ RTE Meats, the Class members' restaurants would become publicly identified as retailers of the defendants' meat products and would suffer a loss of revenue and goodwill as a result;
- (i) that due to the close, unique and ~~mandatory~~ exclusive nature of the relationship between the Class members and the defendants, the Class members were particularly and uniquely vulnerable to any negligence on the part of the defendants which might result in bacterial contamination of the ~~deli meats~~ RTE Meats distributed and sold to the Class; and
- (j) that the Class members therefore relied upon the defendants to produce and supply ~~deli meats~~ RTE Meats which were free of bacterial contamination and fit for human consumption, failing which the Class members would suffer damages including but not limited to destruction

of product, clean-up costs, mitigation costs, loss of sale volume, loss of profit, loss of goodwill, and loss of franchise value.

Duty of Care

~~42.~~13. The plaintiff pleads that the defendants owed the plaintiff and other Class members a duty of care, and without limiting the generality of the foregoing, a duty of care to ensure that none of their acts or omissions caused the plaintiff and Class members economic and other consequential losses.

~~43.~~14. The plaintiff pleads that it was foreseeable that any negligence on the part of the defendants in the manufacture and processing of meat products for distribution and sale to the Class could cause those meat products RTE Meats to become contaminated with bacteria, unfit for human consumption, dangerous to consume and likely to cause injury to those who consumed those meat products RTE Meats. It was also foreseeable to the defendants that any such negligence on their part would require the Class members to take remedial measures including disposing or destroying of any contaminated or potentially contaminated meat RTE Meats to prevent harm to their customers and employees.

~~44.~~15. Furthermore the plaintiff pleads that it was foreseeable that negligence on ~~their~~ the part of the defendants would result in a recall of all contaminated or potentially contaminated meat RTE Meats distributed to the eClass, and that such recall would be widely publicized and result in a loss of sales, profits and goodwill for the Class members.

~~45.~~16. The plaintiff pleads that the relationship between the defendants and the plaintiff and other eClass members was a uniquely close and proximate relationship such that the defendants ought to have had the Class members in mind as persons who would be particularly affected by any negligence on the part of the defendants.

~~46.~~17. In particular the Class members' franchise agreements, the agreements(s) between the defendants and the franchisor (which made the defendants the sole

permissible source of deli-meats RTE Meats for the Class members' restaurants to the significant economic benefit of the defendants), and the knowledge of the defendants as pleaded in paragraph 11-12, *supra*, created a relationship of proximity between the Class members and the defendants that was uniquely close and intimate and which rendered the Class members particularly and uniquely vulnerable to any negligence on the part of the defendants.

17.18. The plaintiff pleads that it is therefore just and fair having regard to the relationship between the defendants and the Class to impose a duty of care in law upon the defendants.

Listeria outbreak — August, 2008

Defendants' Knowledge Concerning Listeria and Listeriosis

18.19. At all material times the defendants knew or ought to have known that Listeriosis is a type of food poisoning generated by the *listeria monocytogenes* bacteria. Listeriosis causes the sufferer to become seriously ill with symptoms that can include nausea, vomiting, diarrhea, cramping, persistent fever, constipation and severe headache. The defendants also knew that Listeriosis is a potentially fatal condition which is particularly dangerous to the elderly, pregnant women, young children, those with chronic medical conditions, and those with compromised immune systems. As such, any meat products contaminated, or potentially contaminated with the *listeria monocytogenes* bacteria are dangerous goods and unfit for human consumption.

20. The defendants knew or ought to have known that the *listeria monocytogenes* bacteria, unlike many other food borne pathogens, is able to thrive in a refrigerated environment. As such, the defendants knew that if RTE Meats left their meat processing facilities with the *listeria monocytogenes* bacteria present, even in small amounts, the bacteria would multiply and grow to higher and more dangerous levels by the time the RTE Meats reached the Class, the Class members' customers, and others.

21. The defendants furthermore knew or ought to have known that outbreaks of listeriosis caused by the *listeria monocytogenes* bacteria are an entirely preventable occurrence. In particular, the defendants knew that outbreaks of listeriosis from the RTE Meats they produced for the Class and others could be prevented by, *inter alia*:

- (a) maintaining an appropriate facility in a suitable state of repair with appropriate systems concerning the flow of products and the movement of persons in their facility in order to ensure an aseptic environment;
- (b) implementing appropriate sanitation practices in their meat processing facilities, including the use of assiduate citric acid combined with the water used to cleanse and sanitize their facilities and meat processing equipment;
- (c) treating their RTE Meats with post-process thermal pasteurization after packaging of the meats; and/or
- (d) treating their RTE Meats with post-process high-pressure pasteurization after packaging of the meats

Furthermore, the defendants knew or ought to have known that each of these preventative measures were widely used throughout the food processing industry, were easily and readily available, were cost-effective, and were considered standard in the industry.

22. The defendants also knew or ought to have known that the natural tendency of the *listeria monocytogenes* bacteria to grow and multiply in a refrigerated environment could be prevented by the appropriate use of food additives which act as secondary growth inhibitors to prevent the growth of *listeria monocytogenes* bacteria during refrigeration.

23. However, the defendants failed to use, or failed to adequately use, the aforementioned preventative measures, and failed to use appropriate food

additives, which caused and permitted an outbreak of listeria in the RTE Meats produced and processed at the Bartor Road facility.

24. The defendants had a duty to warn the plaintiff and the Class that the sanitation methods used by the defendants did not eliminate or control the risk of *listeria monocytogenes* contamination in RTE Meats.

Listeria outbreak – August, 2008

49-25. On August 17, 2008 Maple Leaf announced a recall of a specified list of ~~meat products~~ RTE Meats manufactured at the defendants' Bartor Road facility due to suspected contamination with listeria. It was widely reported throughout Canada that the affected products included ~~deli-meats~~ RTE Meats sold exclusively at Mr. Sub restaurants. The list of meat products recalled was later expanded to include 220 different products – which also included ~~deli-meats~~ RTE Meats sold exclusively at Mr. Sub restaurants.

26. The defendants were aware in the months leading up to the August 2008 outbreak that they had a serious and ongoing problem with listeria contamination which they were unwilling and/or unable to effectively control.

27. Between January and August 2008 the defendants received repeated and consistent reports confirming the persistent presence of *listeria monocytogenes* bacteria in the facility and in their RTE Meats as a result of their own testing, and as a result of testing conducted by the defendants' customers.

28. The defendants knew that the repeated test results confirming the presence of *listeria monocytogenes* bacteria represented a serious threat to public safety requiring immediate action. However, the defendants did nothing to eradicate the *listeria monocytogenes* bacteria, except repeating the same procedures which had permitted *listeria monocytogenes* bacteria to persist in their facility. The defendants did not halt operations at their facility at any time prior to the outbreak in order to investigate and attempt to eradicate the bacteria, but rather continued to run their production lines uninterrupted.

29. Despite the defendants' knowledge that this situation represented a serious threat to public safety, they did not appropriately report this to Canadian Food Inspection Agency ("CFIA") inspectors, Mr. Sub, the Class Members or the public at any time prior to the outbreak.

The defendants' negligence

20.30. The plaintiff pleads that the defendants breached their duty of care to the plaintiff and Class members as follows:

- ~~(a) — They permitted the meat products they produced and distributed to become contaminated with listeria monocytogenes;~~
- ~~(b) — They permitted the meat products they produced and distributed to become contaminated with unsafe levels of listeria monocytogenes;~~
- ~~(c) — They produced and distributed meat products which were not fit for human consumption and which were likely to, and in which in fact did cause illness, injury and death;~~
- ~~(d) — They failed to order a timely recall of their meat products when they knew or ought to have known that they were contaminated with listeria monocytogenes and/or dangerous levels thereof;~~
- ~~(e) — They permitted the Bartor Road facility to become contaminated with dangerous levels of listeria monocytogenes which caused the meat products distributed to the Class members to become contaminated;~~
- ~~(f) — They failed to comply with the requirements of the *Food and Drug Act*, R.S.C. 1985 c.F-27 for the safe and proper processing, handling, preservation and packaging of food products in order to ensure they were fit for human consumption and free of harmful substances;~~

- ~~(g) — They failed to comply with other regulations, both federal and provincial, for the safe and proper processing, handling, preservation and packaging of food products;~~
- ~~(h) — They failed to comply with ordinary industry standards for the safe and proper processing, handling, preservation and packaging of meat products;~~
- ~~(i) — They failed to have in place proper and adequate food safety inspection, quality control, bacteria testing and other procedures to ensure their meat products were free of contamination and fit for human consumption;~~
- ~~(j) — They failed to properly train and instruct their employees, agents and independent contractors with respect to the safe and proper processing, handling, preservation and packaging of food products;~~
- ~~(k) — They failed to adequately clean, disinfect and maintain the equipment and facility used to process their meat products and failed to adopt and implement proper procedures with respect to same;~~
- ~~(l) — They failed to take reasonable steps to prevent the listeria monocytogenes bacteria from entering the Bartor Road facility;~~
- ~~(m) — They failed to take all due care and precaution in the circumstances to prevent an outbreak of listeria monocytogenes; and~~
- ~~(n) — They failed to meet the standard of care of a reasonably prudent food manufacturing, processing and packaging company in the circumstances.~~

Policies

- (a) They failed to develop, implement and/or follow an adequate Hazard Analysis Critical Control Points policy (“HACCP”) or Food Safety Plan;

- (b) They failed to develop, implement and/or follow an adequate Listeria Control Policy;
- (c) Their HACCP, Food Safety Plan and Listeria Control Policy did not reflect and make accommodation for the fact that the defendants were producing RTE Meats specifically designed for consumption by high-risk vulnerable groups such as the elderly, ill, hospitalized, and immuno-compromised;
- (d) They failed to revisit, reassess and amend their HACCP, Food Safety Plan and Listeria Control Policies when positive listeria tests were obtained in the defendants' facility, or at all;

Defendants' meat processing facility and equipment were inadequate and unsanitary

- (e) Their facility was unsanitary and unfit for the production, processing and packaging of RTE Meats;
- (f) They failed to develop, implement and follow pre-requisite programs as required by the CFIA with respect to their facility and equipment, such as slicers;
- (g) Their facility was in a state of disrepair and incapable of preventing the *listeria monocytogenes* bacteria from entering the facility and the RTE Meat environment, thereby permitting contamination of their food products on a continual basis;

Defendants failed to maintain aseptic conditions in the RTE Meat environment

- (h) They failed to maintain their facility, and in particular the RTE Meat environment, in a sanitary and aseptic condition suitable for the production, processing and packaging of RTE Meats;

- (i) They failed to isolate the RTE Meat environment from other parts of the facility, and from the outside environment, in order to prevent *listeria monocytogenes* bacteria from contaminating their food products;
- (j) They failed to have in place an adequate ventilation system for their facility, and failed to prevent the *listeria monocytogenes* bacteria from entering their facility, including the RTE Meat environment, through the ventilation system;
- (k) They failed to develop, implement and follow adequate policies and procedures with respect to the movement of employees and other persons and goods through their facility, thereby permitting *listeria monocytogenes* bacteria to enter the RTE Meat environment and contaminate their food products;
- (l) Their process and manufacturing production flow was inadequate and permitted *listeria monocytogenes* bacteria to enter the RTE Meat environment and contaminate their food products;

Inadequate sanitization

- (m) They failed to adequately clean and sanitize their facility and equipment;
- (n) They used only hot water to attempt to clean and sanitize their facility and equipment;
- (o) They failed to add agents to their cleaning solutions, such as citric acid which, as was known to the defendants and widely accepted in the industry, eradicates any *listeria monocytogenes* bacteria present in a facility and on food processing equipment;

Failure to use post-process pasteurization

- (p) They failed to employ post-process high pressure pasteurization after packing their RTE Meats, which the defendants knew, or ought to have known, would have completely eliminated *listeria monocytogenes* bacteria from their products;
- (q) They failed to employ post-process thermal pasteurization after packing their RTE Meats which the defendants knew, or ought to have known, would have completely eliminated *listeria monocytogenes* bacteria from their products;

Failure to use secondary listeria growth inhibitors

- (r) They failed to use any, or adequate, secondary growth inhibitor food additives which would have prevented the multiplication and growth of *listeria monocytogenes* bacteria in their RTE Meats after packaging and during refrigeration;
- (s) They particularly failed to use any, or adequate, secondary growth inhibitor food additives in those RTE Meats which were specifically intended for consumption by high-risk vulnerable groups such as the elderly, ill, hospitalized and immuno-compromised;

Inadequate testing

- (t) They employed testing procedures which were inadequate to detect the presence of *listeria monocytogenes* bacteria in their facility, their equipment and in their meat products, and which did not comply with industry standards and government regulations;
- (u) They used inadequate testing equipment and methodologies in their facility to test for the presence of *listeria monocytogenes* bacteria which resulted in artificially low test results which tended to understate the

actual extent of the listeria contamination in their facility, their equipment and meat products;

- (v) They did not conduct any trend analysis of their listeria test results to determine the extent and chronic nature of the *listeria monocytogenes* bacteria infestation in their facility, equipment and RTE Meats;
- (w) They failed to conduct any sampling or testing of the air within the RTE Meat environment for the presence of *listeria monocytogenes* bacteria;
- (x) They failed to conduct any sampling or testing of the RTE Meats they produced for the presence of *listeria monocytogenes* bacteria but rather tested only their facility and equipment, or alternatively, did not conduct adequate testing of the RTE Meats;
- (y) They did not conduct any post-production surveillance and testing to determine the levels of listeria at the point of purchase and consumption by consumers and Class members, or did not conduct adequate post-production surveillance and testing;
- (z) They did not conduct any analysis of the strain of the *listeria monocytogenes* bacteria found in the facility, equipment or products which would have revealed that the strain was particularly virulent, and was therefore very likely to cause serious illness, injury and death;

Failure to eradicate listeria from the RTE Meat environment

- (aa) When the defendants detected *listeria monocytogenes* bacteria in their facility, they failed to take adequate steps to eradicate the bacteria from the facility, equipment and meat products, and simply repeated the same inadequate sanitation procedures which had previously been employed and which had permitted the bacteria to be found and persist in their facility, equipment and food products;

- (bb) They consciously decided not to implement available, cost-effective and industry standard mechanisms, protocols and procedures (such as improved sanitation techniques and post-process pasteurization) which would have eradicated listeria from the defendants' facility and their RTE Meats;
- (cc) They did not appreciate the significance of a single positive test result for *listeria monocytogenes* bacteria, and the consequent need based on a single positive test result to take significant and dramatic remedial measures;
- (dd) They failed to recognize that there had been a significant failure of environmental control which had permitted *listeria monocytogenes* bacteria to be present in their facility, and failed to reassess and amend their procedures, protocols and policies to address the unsanitary condition of their facility;
- (ee) The defendants knew that there was a significant problem in their facility with *listeria monocytogenes* bacteria contamination beginning in at least January 2008 and that the problem had become a chronic, persistent and critical one by March 2008, but nonetheless the defendants did nothing to eradicate the bacteria except employing the same inadequate measures which had permitted the bacteria to persist and flourish in their facility, equipment and RTE Meats;
- (ff) The defendants failed to shut down production at their facility to enable sufficient cleaning, sanitation and other remedial measures in order to eradicate *listeria monocytogenes* bacteria from their facility, equipment and RTE Meats;

Slicers and harbourage points

- (gg) The defendants failed to identify places within their facility and equipment (particularly their meat slicers) where *listeria monocytogenes*

bacteria was likely to persist and cause contamination of their meat products (“harbourage points”);

- (hh) The defendants particularly permitted unsanitary conditions to exist, and harbourage points to form and persist, on production lines 3, 7, 8 and 9 in their facility;
- (ii) The defendants’ slicers contained old and putrid meat residue in the harbourage points which was a breeding ground for the listeria monocytogenes bacteria;
- (jj) The defendants’ slicers were in a state of disrepair;
- (kk) The defendants’ slicers were rusty;
- (ll) The defendants failed to seal their meat slicers to prevent the formation of harbourage points;
- (mm) The defendants failed to disassemble their slicers and other equipment to sanitize and clean their slicers, on a daily or regular basis, thereby permitting harbourage points to form and persist;
- (nn) The defendants did not follow protocols and procedures for the cleaning and sanitization of their slicers as recommended by the slicer manufacturers, and as required by industry standards;
- (oo) The slicers used by the defendants in their facilities were inadequate, outdated and antiquated thereby creating harbourage points for contamination;
- (pp) The defendants failed to sanitize, clean and disinfect their slicers by disassembling them and employing thermal treatment (or “baking”);
- (qq) The defendants otherwise failed to adequately sanitize, clean and disinfect their slicers and other equipment;

- (rr) The defendants failed to implement and follow protocols for pre-operation inspection of their slicers which would have permitted harbourage points to be identified and adequate remedial measures to have been taken;

High-risk production for vulnerable groups

- (ss) The defendants failed to segregate production of products specifically intended for consumption by high-risk vulnerable groups (such as the elderly, ill, hospitalized and immuno-compromised) from the production of RTE Meats for the Class members and general public;
- (tt) The defendants did not employ specific equipment for the production of products for vulnerable high-risk groups, but rather selected the slicers and other equipment based on their desire to maximize production, revenue and profit;
- (uu) The defendants failed to use adequate post-production secondary inhibitors to prevent the growth of listeria monocytogenes bacteria in the products they produced for vulnerable high-risk groups;

Internal communication failures

- (vv) The results of positive *listeria monocytogenes* bacteria testing, and the persistent and chronic presence of the bacteria, were not properly and effectively communicated to management;
- (ww) The results of positive *listeria monocytogenes* bacteria testing, and the persistent and chronic presence of the bacteria, were withheld from health inspectors operating within the defendants' facility, despite the fact that employees working at the defendants' facilities had concerns with respect to listeria contamination and food safety;

Failure to notify and recall

- (xx) Prior to the listeria outbreak in August, 2008 the defendants failed to warn or notify anyone (such as Health Canada, CFIA, the Ministry of Agriculture, Food and Rural Affairs, Mr. Sub, the Class Members, or the public) that the defendants had persistent *listeria monocytogenes* bacteria contamination within their facility, their equipment and their meat products;
- (yy) The defendants failed to order a timely recall of their RTE Meats when they knew or ought to have known that they were contaminated with *listeria monocytogenes* bacteria and/or dangerous levels thereof;

Failure to comply with Health Canada guidelines and standards

- (zz) They failed to comply with the requirements of the *Food and Drug Act*, R.S.C. 1985 c.F-27 for the safe and proper processing, handling, preservation and packaging of RTE Meats in order to ensure they were fit for human consumption and free of harmful substances;
- (aaa) They failed to comply with other regulations, guidelines, and standards, both federal and provincial, including those of Health Canada, the Canadian Food Inspection Agency and the Ministry of Agriculture, Food and Rural Affairs, for the safe and proper processing, handling, and packaging of meat products;

General

- (bbb) The defendants' conduct was driven and motivated primarily by a desire to increase productivity, revenue and profit, all of which was at the expense of food safety;
- (ccc) The defendants failed to keep adequate records and as a result they could not, at the time of the recall, identify specific lots of RTE Meats

that might be contaminated and therefore the defendants were required to recall all of the RTE Meats produced at the Bartor Road facility;

- (ddd) The defendants failed to follow processes, procedures and practices that they employed at other Maple Leaf meat processing facilities to control listeria contamination, including but not limited to environmental controls, sanitization, testing, post-process pasteurization and secondary growth inhibitors;
- (eee) The defendants failed to adhere to industry standards, government standards, and their own procedures, policies and protocols with respect to the prevention of listeria contamination;
- (fff) The defendants' approach to listeria control was outmoded, and not based upon current scientific knowledge concerning listeria and food safety;
- (ggg) The defendants failed to adequately train and educate their employees and agents with respect to listeria, listeria control and the potentially dire and catastrophic consequences associated with *listeria monocytogenes* bacteria contamination;
- (hhh) The defendants permitted the meat products they produced and distributed to become contaminated with *listeria monocytogenes* bacteria, thereby posing a risk to the health of consumers;
- (iii) The defendants produced and distributed meat products which were not fit for human consumption and which were likely to, and which did in fact cause illness, injury and death;
- (jjj) The defendants permitted their facility to become contaminated with dangerous levels of *listeria monocytogenes* bacteria which caused the RTE Meats distributed to the Class members to become contaminated;

- (kkk) The defendants failed to comply with ordinary industry standards for the safe and proper processing, handling, preservation and packaging of RTE Meats;
- (lll) The defendants failed to take reasonable steps to prevent the *listeria monocytogenes* bacteria from entering the Bartor Road facility;
- (mmm) The defendants failed to take all due care and precaution in the circumstances to prevent an outbreak of listeria; and
- (nnn) The defendants otherwise failed to meet the standard of care of a reasonably prudent food manufacturing, processing and packaging company in the circumstances.

31. The defendants' implicit and explicit representations to the plaintiff and the Class that the RTE Meats were safe for human consumption were untrue and negligently made.

32. The defendants failed to warn the plaintiff and the Class that the sanitation methods used by the defendants were inadequate to eliminate or control the risk of *listeria monocytogenes* contamination in the RTE Meats.

Damages

24.33. The plaintiff pleads that the defendants' negligence, misrepresentation and failure to warn was the direct and immediate cause of damages to the Class members which includes, but which may not be restricted to disposal and destruction of RTE Meats; clean-up and mitigation costs; loss of past and future sales; loss of past and future profits; loss of goodwill; loss of the capital value of their franchises and businesses; and special damages for the cost of disposal, destruction, and replacement of the defendants' damaged, contaminated and dangerous products and the cost of replacing the dangerous products which were disposed.

Certification

22-34. The plaintiff pleads that the within action is amenable to certification as a class proceeding in accordance with s. 5 of the *Class Proceedings Act, 1992, supra*. Without limiting the generality of the foregoing:

- (a) the statement of claim herein discloses a cause of action;
- (b) there is an identifiable class or subclass of two or more persons that would be represented by the representative plaintiffs;
- (c) the claims of the Class members raise common issues of fact and/or law;
- (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and
- (e) the plaintiff would fairly and adequately represent the interests of the class or subclass as representative plaintiffs, does not have an interest in conflict with the other Class members in respect of the common issues, and in due course will produce a plan for advancing the proceeding on behalf of the Class, (including procedures for court ordered notice).

23-35. The plaintiff pleads and rely relies upon the provisions of the *Class Proceedings Act, 1992, supra*, and the *Food and Drug Act, supra*.

24-36. The plaintiff proposes that this action be tried in the City of London.

~~December 30, 2008~~ December 4, 2014

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Plaintiff and
Maple Leaf Foods
Inc. et al
Defendants

Court File No: 60680 CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at London

AMENDED STATEMENT OF CLAIM

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