

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT WASHINGTON
3 AT TACOMA

3 GAVEN PICCIANO,

4 Plaintiff,

5 vs.

6 CLARK COUNTY, CLARK COUNTY JAIL,
7 and NAPHCARE, INC.

8 Defendants.

NO.

**COMPLAINT FOR
DECLARATORY RELIEF
AND DAMAGES**

JURY DEMAND

9 **INTRODUCTION**

10 In the winter of 2020, Plaintiff Gaven Picciano was in a long-term relationship that
11 suddenly ended. He was devastated by the breakup. The woman he had been dating called police
12 when he exhibited suicidal ideation on January 30, 2020. Police in turn arrested Mr. Picciano and
13 as a result, he was held in Clark County Jail. This Complaint does not relate to Mr. Picciano's
14 arrest. This Complaint relates to the shocking conditions of Mr. Picciano's detention at Clark
15 County Jail from January 30, 2020, until February 20, 2020. Mr. Picciano has Celiac Disease and
16 requires strictly gluten-free food. Mr. Picciano was held by Defendants for 30 days without food
17 that he could safely eat. This discriminatory treatment and failure to provide a reasonable dietary
18 accommodation resulted in illness, loss of consciousness, hospitalization, the loss of
19 approximately 10% of body weight, and short and long-term damage and injury. Clark County,
20 Clark County Jail and NaphCare, Inc. (collectively "Defendants") discriminated against Mr.
21 Picciano on the basis of disability in violation of Title II of the Americans with Disabilities Act
22 ("ADA"), 42 U.S.C. § 12131 *et seq.*, Section 504 of the Rehabilitation Act ("Section 504"), 29
23 U.S.C. § 794, and the Washington Law Against Discrimination ("WLAD"), RCW § 49.60.010 *et*

1 *seq.* The cruel conditions in which Mr. Picciano was held also violated the Fourteenth
2 Amendment and Mr. Picciano asserts a claim pursuant to 42 U.S.C. § 1983. Mr. Picciano also
3 alleges state law claims based on tort and breach of warranty with respect to the food he was
4 promised was safe for him but was not. Mr. Picciano seeks declaratory relief, damages, and
5 attorneys' fees and costs.

6 I. PARTIES

7 1. Plaintiff Gaven Picciano now resides in Michigan. However, at the time of the
8 relevant events, Mr. Picciano was living in Vancouver, Washington.

9 2. Defendant Clark County is a political subdivision of the State of Washington and
10 runs the Clark County Jail. Upon information and belief, Clark County is a recipient of federal
11 financial assistance including but not limited to approximately \$26,857,500 from the United
12 States Department of the Treasury.

13 3. Defendant Clark County Jail is an intake facility that houses pre-trial and locally
14 sentenced individuals arrested in Clark County. Upon information and belief, Clark County Jail
15 is a recipient of federal financial assistance because, *inter alia*, a portion of the \$26,857,500 of
16 federal funds allocated to Clark County are being or have been directed to Clark County Jail.

17 4. Defendant NaphCare, Inc. is a company headquartered in Birmingham, Alabama,
18 that provides medical care in correctional facilities throughout the United States, including at
19 Clark County Jail. Defendant NaphCare, Inc. prides itself on providing "cost-effective" services
20 to the prison industry. NaphCare, Inc. has been repeatedly sued for discrimination and injuries.
21 One of the most appalling of these lawsuits was in the Eastern District of Virginia. Chief Judge
22 Rebecca Beach Smith described the death of a young man who was denied medical care for his
23 disability by NaphCare, Inc. and died among his own feces and urine. Chief Judge Beach Smith

1 described the case as “heartbreaking and shocking, ““needless,” lacking in “human decency,”
2 and among “the most appalling and inhumane” conditions the Chief Judge had heard in her 30
3 years on the bench. *Adams v. NaphCare, Inc.*, Civil A. No. 2:16-cv-229, 2019 U.S. Dist. LEXIS
4 45534 (E.D. Va. Mar. 19, 2019) (man arrested for stealing \$5.05 worth of food from a 7-Eleven
5 wasted away from 180 pounds to 140 pounds over a period of four months while his
6 deteriorating mental and physical condition was “basically ignored” until he “died amid his own
7 feces and bodily fluids . . . from ‘wasting syndrome’”). Upon information and belief, NaphCare,
8 Inc. contracts with Clark County and Clark County Jail to provide medical services in Clark
9 County Jail. NaphCare, Inc. has received at least \$155.1 million dollars in federal financial
10 assistance.

11 5. Defendants were responsible for Mr. Picciano’s well-being while he was detained
12 from January 30, 2020 through February 20, 2020.

13 II. JURISDICTION AND VENUE

14 6. This court has jurisdiction pursuant to 28 U.S.C. § 1331, which gives district
15 courts original jurisdiction over civil actions arising in the Constitution, laws, or treaties of the
16 United States.

17 7. This court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(4), which gives district
18 courts jurisdiction over actions to secure civil rights under Acts of Congress.

19 8. This court has jurisdiction pursuant to 28 U.S.C. § 1367, which gives district
20 courts supplemental jurisdiction over state law claims.

21 9. Venue is appropriate in this judicial district under 28 U.S.C. § 1391 because the
22 incidents that gave rise to Plaintiff’s Complaint occurred in this district and Defendants reside
23 within this district.

1 **III. FACTUAL ALLEGATIONS**

2 10. Gaven Picciano is a 26-year-old Native American male who lives on a reservation
3 in Michigan.

4 11. Mr. Picciano has Celiac Disease. As a result, he must eat a strictly gluten-free
5 diet, or he becomes extremely ill with both short- and long-term health consequences.

6 12. Celiac Disease is an auto-immune disease that affects approximately 1% of the
7 population. Celiac Disease has no cure. The only treatment is strict avoidance of gluten.

8 13. Gluten is the name of a protein contained in wheat, barley, rye, and triticale.

9 14. When a person with Celiac Disease ingests food containing even trace amounts of
10 gluten, they can experience not only short-term symptoms such as vomiting, nausea, diarrhea,
11 neuropathic pain, and stomach pain, but also long-lasting bodily damage, significantly increasing
12 their risk of developing cancer and other life-threatening diseases.

13 15. When Mr. Picciano ingests gluten, he experiences vomiting, diarrhea, stomach
14 pain, and other substantially limiting symptoms.

15 16. On January 30, 2020, Mr. Picciano was arrested and transported to Clark County
16 Jail. This is the only time Mr. Picciano has ever been arrested.

17 17. At the time he was booked into Clark County Jail on January 30, 2020 and
18 repeatedly thereafter, Mr. Picciano notified Defendants that he has Celiac Disease and requires a
19 strictly gluten free diet.

20 18. Initially, Mr. Picciano was told he was not going to be held long enough to
21 request or receive a gluten-free diet.

1 19. Within 24 hours, it became clear this was not true and Mr. Picciano renewed his
2 request for a gluten-free diet. He promptly signed a records release for Defendants to obtain his
3 medical records to confirm his diagnosis with Celiac Disease.

4 20. Over the next 22 days, Defendants failed to provide Mr. Picciano with adequate
5 food that was safe for him to eat.

6 21. For the first nine days of his detention, Mr. Picciano had virtually no access to
7 food at all.

8 22. For days at a time, he had virtually nothing to eat while Defendants refused his
9 repeated requests for help. Again and again, he requested food that was safe for him to eat and
10 again and again, his requests were ignored, discarded, or brushed off.

11 23. Mr. Picciano filed grievances with “medical” seeking a medical diet of gluten-free
12 food. “Medical” directed him to “food services”. He filed grievances with “food services” and
13 they in turn redirected him back to “medical”.

14 24. Mr. Picciano asked guards for food and was told to trade with other detainees if
15 he wanted to eat.

16 25. Between his booking and his release on February 20, 2020, Mr. Picciano, his
17 family, and his counsel all begged Defendants through a series of filed grievances, written
18 correspondence, court proceedings, and even a plea to the Washington Attorney General to
19 provide him with safe food options.

20 26. For example, on or about February 2, 2020, Mr. Picciano filed a grievance
21 seeking a gluten-free diet.

22 27. No later than February 3, 2020, Mr. Picciano had signed a release to allow
23 Defendants access to his medical records.

1 28. On or about February 4, 2020, Mr. Picciano filed a medical kite/grievance seeking
2 a gluten-free diet.

3 29. On or about February 5, 2020, Defendants responded to Mr. Picciano’s February
4 2, 2020 grievance by instructing him to contact “Medical”. No action was taken to help Mr.
5 Picciano in response to the February 2, 2020 grievance.

6 30. On or about February 5, 2020, Mr. Picciano again filed a grievance stating that he
7 had had no food and needed a gluten-free diet due to Celiac Disease.

8 31. By February 6, 2020, Defendants had received Mr. Picciano’s medical records but
9 still they did not provide a gluten-free diet.

10 32. On or about February 6, 2020, Mr. Picciano escalated his February 2, 2020,
11 grievance to a “level 2 grievance” stating that he had been to “Medical” multiple times seeking
12 safe food and had not received assistance.

13 33. On or about February 7, 2020, Mr. Picciano went to sick call saying he had not
14 received any food safe for his Celiac Disease.

15 34. On or about February 10, 2020, Defendants responded to Mr. Picciano’s February
16 6, 2020 Level Two Grievance saying simple “n/a.”

17 35. On or about February 10, 2020, Defendants responded to Mr. Picciano’s February
18 5, 2020 grievance saying “diet ordered.”

19 36. Having not had meals for approximately 10 days, Mr. Picciano went “code blue.”
20 Defendants administered NARCAN even though Mr. Picciano had not taken drugs or overdosed.
21 He had collapsed from not having food.

22 37. Emergency personnel responded and Mr. Picciano was documented as not
23 responsive to painful stimuli and was transported to the hospital.

1 38. By the time Mr. Picciano reached the hospital, he had not eaten a safe meal in ten
2 days. He was diagnosed with orthostatic hypotension, dehydration, electrolyte imbalance and
3 arrhythmia. He was released back into the custody of the County with instructions from the
4 hospital to provide him a gluten free diet. Still, the County failed to do so.

5 39. On or about February 11, 2020, Mr. Picciano still had not received gluten-free
6 meals. He filed another grievance and went to sick call having become sick from eating cross-
7 contaminated food.

8 40. On or about February 14, 2020, Mr. Picciano filed another grievance requesting
9 gluten free food.

10 41. On or about February 14, 2020, Defendants responded to Mr. Picciano's February
11 11, 2020 grievance stating "your diet was revised to GF" but Mr. Picciano was still not receiving
12 gluten free meals.

13 42. On or about February 15, 2020, Mr. Picciano filed another grievance stating that
14 he was not receiving gluten-free meals. Defendants did not bother to respond to this grievance
15 until after Mr. Picciano was released.

16 43. On or about February 17, 2020, Defendants responded to Mr. Picciano's February
17 14, 2020 grievance stating that they had no medical records documenting his Celiac Disease.
18 This was unequivocally false.

19 44. On or about February 18, 2020, Mr. Picciano filed a response to Defendants'
20 February 17, 2020 claim that they did not have medical records. Mr. Picciano informed
21 Defendants that he had already signed a medical release.

22 45. On or about February 18, 2020, Defendants finally admitted they had medical
23 records and falsely claimed they had ordered a gluten-free diet the week prior.

1 46. On or about February 18, 2020, Mr. Picciano filed a grievance alerting
2 Defendants that the food he had been given as gluten-free was in fact not gluten-free.

3 47. Mr. Picciano suffered extreme hunger, significant weight loss, fatigue, dizziness,
4 gastrointestinal distress, vomiting, weakness, pain, and loss of consciousness.

5 48. In fact, it is Defendants’ policy that individuals with food allergies and Celiac
6 Disease are not to receive medically necessary diets until medical records are received. This
7 policy is on its face life threatening, dangerous, and discriminatory to individuals with
8 disabilities that require medically necessary food all the time – not just when the Defendants feel
9 like providing such medically necessary food.

10 49. Defendants eventually approved Mr. Picciano for gluten-free food. Although the
11 meals were labeled as gluten-free, they were *exactly* the same meals provided to other
12 individuals who were detained. As a result of the Defendants’ false statements and assurances,
13 Mr. Picciano ate the food and became even sicker. He experienced vomiting and severe
14 abdominal pain.

15 50. When, in the last several days of his incarceration, Mr. Picciano was finally given
16 a special, uncontaminated diet, it was nutritionally insufficient and inedible and not remotely
17 equivalent nutritionally to the food served to nondisabled individuals.

18 51. As just one example of the Defendants’ stunning indifference to Mr. Picciano’s
19 suffering, in response to a February 14, 2020 complaint that he did not have food, the Defendants
20 responded three days later, on February 17, 2020, instructing him to “please continue to avoid
21 foods that cause discomfort until allergies are verified, diets cannot be changed. Medical does
22 not have any control of what type of food you receive.” By this point, Mr. Picciano had been
23 virtually without food for 19 days.

1 59. The ADA was enacted on July 26, 1990, more than 30 years ago, in order to
2 protect individuals with disabilities against discrimination.

3 60. Title II of the ADA provides that “no qualified individual with a disability shall,
4 by reason of such disability, be excluded from participation in or be denied the benefits of the
5 services, programs, or activities of a public entity, or be subjected to discrimination by any such
6 entity.” 42 U.S.C. § 12132.

7 61. Due to his Celiac Disease, Mr. Picciano is substantially limited in the major life
8 activity of eating and the major bodily functions of the immune, digestive, bowel, reproductive,
9 and neurological systems.

10 62. He is therefore an individual with a disability within the meaning of the ADA. 42
11 U.S.C. § 12131.

12 63. Mr. Picciano is a qualified individual with a disability under the meaning of Title
13 II of the ADA, 42 U.S.C. § 12131(2), because he meets the essential eligibility requirements for
14 the receipt of incarceration services by Defendants.

15 64. Defendants are public entities under the meaning of Title II of the ADA as it is an
16 “instrumentality of a State . . . or local government. 42 U.S.C. § 12131(1)(b).

17 65. Defendants illegally and intentionally discriminated against Mr. Picciano, on the
18 basis of his disability and in violation of Title II of the ADA, by denying him the basic services
19 of incarceration with accommodation for his disability.

20 66. A public entity must make “reasonable modifications in policies, practices, or
21 procedures when the modifications are necessary to avoid discrimination on the basis of
22 disability, unless the public entity can demonstrate that making the modifications would
23 fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7)(i).

1 76. Section 504 of the Rehabilitation Act provides that “[n]o otherwise qualified
2 individual with a disability . . . shall, solely by reason of her or his disability, be excluded from
3 the participation in, be denied the benefits of, or be subjected to discrimination under any
4 program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).

5 77. Food service is provided to other incarcerated individuals. Because of his
6 disability, Mr. Picciano cannot eat a standard diet, and requires a strictly gluten-free diet. By
7 denying Mr. Picciano this necessary and reasonable accommodation for his Celiac Disease,
8 Defendants denied Mr. Picciano the benefits of a program or activity receiving federal financial
9 assistance, and discriminated against him in violation of § 504.

10 78. The criteria Defendants used to deny Mr. Picciano access and use of gluten-free
11 meals had the effect of subjecting him to discrimination solely based on his disability.

12 79. The Rehabilitation Act extends relief to “any person aggrieved” by discrimination
13 in violation thereof. 29 U.S.C. § 794a(a)(2).

14 80. Defendants were informed in writing on multiple occasions that Mr. Picciano
15 desperately needed a specialized gluten-free diet.

16 81. Defendants’ knowledge came not not only from Mr. Picciano’s requests,
17 grievances, and medical records, but also from communciations with Mr. Picciano’s family
18 members.

19 82. Defendants’ knowledge also came from multiple court hearings in which they
20 were advised that Mr. Picciano was not being fed.

21 83. In spite of this knowledge, Defendants intentionally denied Mr. Picciano’s
22 reasonable accommodation request, intentionally failing to act to protect his rights.

1 93. Defendants acted with deliberate indifference because they knew or should have
2 known that Mr. Picciano required gluten-free meals and that the failure to provide him with such
3 meals would result in significant emotional and physical injuries to Mr. Picciano, yet they failed
4 to provide him with such meals.

5 94. Defendants have a custom or practice of not providing medically necessary meals
6 in timely manner to individuals with disabilities, including a custom or practice of not providing
7 gluten-free meals for individuals with Celiac Disease.

8 95. Defendants' custom or practice of not timely providing individuals with Celiac
9 Disease such as Mr. Picciano with gluten-free meals caused Mr. Picciano's injuries.

10 96. Defendants acted with reckless or callous indifference to Mr. Picciano's federally
11 protected right to receive medically necessary meals and health care while held in jail.
12 Specifically, Defendants failed to provide Mr. Picciano with medically necessary gluten-free
13 meals despite repeatedly being made aware of Mr. Picciano's Celiac Disease and need for
14 gluten-free meals. Defendants' failure to provide these gluten-free meals despite repeated notice
15 was malicious, wanton, and oppressive, causing severe emotional and physical harm to Mr.
16 Picciano as he literally wasted away behind bars.

17 97. Mr. Picciano suffered compensatory damages as a result of Defendants' conduct.

18 98. Mr. Picciano is additionally entitled to punitive damages from NaphCare, Inc. as a
19 result of its actions under color of law in providing food services and medical care for Mr.
20 Picciano while he was detained.

21 **FOURTH CAUSE OF ACTION**

22 **The Washington Law Against Discrimination**
23 **R.C.W. §§ 49.60.010 *et seq.***

(Against All Defendants)

1 99. Mr. Picciano incorporates by reference the allegations in the paragraphs above.

2 100. The Washington Law Against Discrimination (“WLAD”) declares: “The right to
3 be free from discrimination because of . . . the presence of any sensory, mental, or physical
4 disability . . . is recognized as and declared to be a civil right. This right shall include, but not be
5 limited to . . . (b) The right to the full enjoyment of any of the accommodations, advantages,
6 facilities, or privileges of any place of public resort, accommodation, assemblage, or
7 amusement” R.C.W. § 49.60.030(1).

8 101. Mr. Picciano is an individual with a disability within the meaning of the WLAD.
9 R.C.W. § 49.60.040(7)(a).

10 102. Clark County Jail is a place “where medical service or care is made available” and
11 is thus a place of public accommodation within the meaning of the WLAD. R.C.W. §
12 49.60.040(2). Clark County is subject because it operates the Clark County Jail which is in turn
13 subject to the WLAD.

14 103. Naphcare, Inc. is a place of public accommodation within the meaning of the
15 WLAD because it makes its medical services available at the Clark County Jail.

16 104. Defendants discriminated against Mr. Picciano by not affording him full and
17 equal access to proper nutrition because of his disability.

18 105. Defendants provide effective food services and medical care to other individuals
19 who are incarcerated without disabilities and therefore discriminated against Mr. Picciano by
20 failing to provide these effective services or treatment to Mr. Picciano because of his disability.

21 106. Defendants intentionally discriminated against Mr. Picciano by refusing to
22 provide proper gluten-free meals to Mr. Picciano during his incarceration, despite Mr. Picciano’s
23

1 clear and repeated requests and explanations of the need for meals that will not exacerbate his
2 Celiac disease.

3 107. As a direct and proximate cause of Defendants' discriminatory conduct as alleged
4 in this Complaint, Mr. Picciano suffered extreme hunger, malnourishment, gastrointestinal
5 distress, weight loss, loss of consciousness and humiliation.

6 108. As a direct and proximate cause of Defendants' discriminatory conduct as alleged
7 in the Complaint, Mr. Picciano suffered real out-of-pocket monetary damages and mental and
8 emotional distress.

9 **FIFTH CAUSE OF ACTION**

10 **Negligence**

11 ***(Against All Defendants)***

12 109. Mr. Picciano incorporates by reference the allegations in the paragraphs above.

13 110. On or about January 30, 2020, Mr. Picciano was incarcerated at Clark County
14 Jail, which was operated by Defendants.

15 111. Between January 30, 2020 and February 20, 2020, Defendants negligently failed
16 to provide Mr. Picciano with a safe, gluten free diet, so as to cause extreme hunger, significant
17 weight loss, fatigue, dizziness, gastrointestinal distress, vomiting, weakness, pain, and loss of
18 consciousness, and to directly and legally cause the injuries and damages described below.

19 112. As a direct and legal result of the negligence of Defendants, Mr. Picciano was
20 injured in his health, strength, and activity, all of which injuries have caused, and continue to
21 cause, Mr. Picciano great mental, physical, and emotional pain and suffering. As a result of these
22 injuries, Mr. Picciano has suffered general damages.

1 distress would thereby increase, and was done with a wanton and reckless disregard of the
2 consequences to Mr. Picciano.

3 120. As a proximate cause of the acts alleged above, Mr. Picciano suffered
4 humiliation, mental anguish, emotional and physical distress, and has been injured in mind and
5 body. Mr. Picciano suffered extreme hunger, significant weight loss, fatigue, dizziness,
6 gastrointestinal distress, vomiting, weakness, pain, and loss of consciousness.

7 121. As a further proximate cause of the acts alleged above, Mr. Picciano was required
8 to and did employ physicians to examine, treat, and care for Mr. Picciano, and incurred
9 additional medical expenses for hospital bills. Mr. Picciano alleges, upon information and belief,
10 that he will incur some additional medical expenses as the damage done to his body continues to
11 cause medical problems. Mr. Picciano also suffered severe emotional distress.

12 122. The acts of Defendants as alleged above were willful, wanton, malicious, and
13 oppressive.

14 SEVENTH CAUSE OF ACTION

15 Battery

16 *(Against All Defendants)*

17 123. Mr. Picciano incorporates by reference the allegations in the paragraphs above.

18 124. Between January 30, 2020 and February 20, 2020, at the Clark County Jail,
19 Defendants intentionally provided Mr. Picciano with meals containing gluten without his
20 knowledge, which triggered symptoms of his Celiac disease.

21 125. As a result of Defendants' unlawful contact in providing a not gluten-free meal,
22 Mr. Picciano suffered significant weight loss, fatigue, dizziness, gastrointestinal distress,
23 vomiting, weakness, pain, and loss of consciousness.

1 138. Defendants are liable for fraud and intentional misrepresentation because
2 Defendants made false and material representations about the nature of a meal, with the intent
3 that Mr. Picciano rely on its representations and eat the meals.

4 139. Defendants provided Mr. Picciano with meals that they intentionally
5 misrepresented as “gluten-free.” The meal was in fact not gluten-free, but was the same gluten-
6 contaminated meal served to the other incarcerated individuals.

7 140. Defendants had actual knowledge of the falsity and materiality of the
8 representations, and intended for Mr. Picciano to rely on its false representations.

9 141. Mr. Picciano had no knoweldge of the falsity of the gluten-free representations,
10 and reasonably relied upon Defendants’ false representations in believing that the food did not
11 contain gluten and would not make him sick due to his Celiac disease.

12 142. Mr. Picciano suffered substantial damages as a result of the Defendants’ false and
13 intentional misrepresentations.

14 143. As a result of relying on the Defendants’ misrepresentation, Mr. Picciano ate the
15 meals, and was injured as he experienced vomiting and abdominal pain.

16 144. As such, Mr. Picciano is entitled to economic damages and compensatory
17 damages for his emotional distress and pain and suffering caused by Defendants’ fraud and
18 intentional misrepresentations.

19 **TENTH CAUSE OF ACTION**

20 **Negligent Infliction of Emotional Distress**

21 *(Against All Defendants)*

22 145. Mr. Picciano incorporates by reference the allegations in the paragraphs above.

23 146. Defendants had a clear duty to provide Mr. Picciano with food he could safely eat.

1 147. The risk of harm to Mr. Picciano was clearly foreseeable to Defendants and
2 adamantly expressed by Mr. Picciano and his family members.

3 148. Defendants breached their duty to Mr. Picciano by refusing to reasonably
4 accommodate his disability, knowing that the breach would cause him suffering because
5 Defendant was witness to the suffering caused by Mr. Picciano's improper diet yet continued
6 to fail to accommodate his diet.

7 149. Mr. Picciano experienced especially horrendous events inflicted upon him during
8 the court of his time in Clark County Jail where he was constantly sick and unable to eat. His
9 sickness caused great shock to his body and mind.

10 150. Mr. Picciano's fear and anxiety are objective symptoms of his emotional distress.

11 151. As a result of Defendants' negligence in failing to feed Mr. Picciano while he was
12 in custody, and relying solely upon their services for survival, Mr. Picciano suffered great
13 emotional distress and physical injuries.

14 152. Due to Defendants' negligence, Mr. Picciano is entitled to monetary
15 compensation and general damages for his emotional distress caused by Defendants' actions.

16 **ELEVENTH CAUSE OF ACTION**

17 **Breach of Express Warranty**
18 **RCW § 7.72.030**

19 *(Against All Defendants)*

20 153. Mr. Picciano incorporates by reference the allegations in the paragraphs above.

21 154. Under the Washington Products Liability Act (WPLA), a product manufacturer is
22 strictly liable for any injury of the claimant that was proximately caused when a "product does
23 not conform to the express warranty of the manufacturer if it is made part of the basis of the

1 bargain and relates to a material fact or facts concerning the product and the express warranty
2 proved to be untrue.” RCW § 7.72.030(2)(b).

3 155. Under WPLA, a product seller is also liable for breach of express warranty that
4 proximately cause the claimant’s harm. RCW § 7.72.040(1)(b).

5 156. Defendants, as the product manufacturers or sellers, are liable for making express
6 warranties concerning the contents of their “gluten-free” food that proved to be untrue.

7 157. Defendants expressly told Mr. Picciano that the food was glutenfree.

8 158. The food in fact did contain gluten or gluten-contaminants. Therefore, Defendants
9 breached their express warranty when they gave Mr. Picciano the food and told him it was
10 gluten-free.

11 159. Mr. Picciano’s illnesses were proximately caused by the food supplied by
12 Defendants.

13 160. Mr. Picciano suffered damages as a result.

14
15 **TWELFTH CAUSE OF ACTION**

16 **Breach of Implied Warranty of Merchantability**
17 **RCW § 62A.2-314**

18 *(Against All Defendants)*

19 161. Mr. Picciano incorporates by reference the allegations in the paragraphs above.

20 162. Under R.C.W. § 62A.2-314(2)(e), (f), for a good to be merchantable, it must be
21 “adequately contained, packaged, and labeled as the agreement may require” and “conform to
22 the promises or affirmations of fact made on the container or label if any.”

23 163. Defendants have breached the implied warranty of merchantability by not
adequately packaging or labeling their special diet meals and by not conforming their packaged

1 food to the promises made on the label. Defendants have done this by packaging meals that
2 contained trace amounts of gluten and then promising Mr. Picciano that his meals were gluten-
3 free via the incorrect “gluten-free” label.

4 164. The injuries sustained by Mr. Picciano were the reasonably foreseeable
5 consequences of a breach of the implied warranty of merchantability.

6 165. Mr. Picciano has suffered damages as a result.

7 **THIRTEENTH CAUSE OF ACTION**

8 **Breach of Implied Warranty: Fitness for a Particular Purpose**
9 **R.C.W. § 62A.2-315**

10 *(Against All Defendants)*

11 166. Mr. Picciano incorporates by reference the allegations in the paragraphs above.

12 167. Under R.C.W. 62A.2-315, a seller is liable for a breach of implied fitness for a
13 particular purpose if at the time of contracting the seller has reason to know of any particular
14 purpose for which the goods are required and that the buyer is relying on the seller’s skill or
15 judgement for supply him or her with suitable goods.

16 168. Mr. Picciano reasonably relied on Defendants for their judgment that his meals
17 were fit for the particular purpose of supplying him with food that a person with Celiac disease
18 could safely consume.

19 169. Defendants knew that Mr. Picciano was relying on them for their experience,
20 skill, and judgment. Defendants were also aware that Mr. Picciano requested the gluten-free
21 meals for the particular purpose of obtaining food that a person with Celiac Disease could safely
22 consume. The meals were defective and unfit for the particular purpose of providing of Mr.
23 Picciano with food that a person with Celiac disease could safely consume.

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DATED THIS 11th day of November, 2020

By:

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