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SECOND CIRCUIT COURT
STATE OF HAWAII

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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

SCOTT HESSLER,

Plaintiff,

vs.

HANA HEALTH, a domestic nonprofit
corporation, d/b/a HANA FRESH and ROE
CORPORATIONS 1-5, JOHN DOES 1-5, JAN
DOES 1-5, ROE NON-PROFIT
CORPORATIONS 1-5, AND ROE
GOVERNMENTAL AGENCIES 1-5.

Defendants.

CIVIL NO. 19-1-0051(2)
PRODUCT LIABILITY, and OTHER
NON-VEHICLE TORT

COMPLAINT; DEMAND FOR JURY
TRIAL; SUMMONS

COMPLAINT

COMES NOW THE Plaintiff, SCOTT HESSLER, by and through the undersigned attorney of record, and hereby submits the following Complaint against defendant, HANA

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HEALTH d/b/a HANA FRESH (the former which is a domestic nonprofit corporation, and the latter a registered trade name), and in support thereof shows as follows:

I. THE PARTIES

1. Plaintiff SCOTT HESSLER (hereinafter "HESSLER") is and was a citizen and resident of Wailuku, Maui County, State of Hawaii, on the date of the incident in question.

2. Defendant HANA HEALTH d/b/a HANA FRESH (hereinafter "DEFENDANT"), is a Hawaiian Domestic Nonprofit Corporation in the name of HANA HEALTH (file no. 102110D2), which does business in the State of Hawaii under the registered trade name HANA FRESH (reference certificate no. 4186647 and certificate no. 4105300). The physical location of the clinic and farm is 4590 Hana Highway, Hana, Hawaii 96713. The Defendant may be served by serving their agent for service of process, Cheryl Vasconcellos, 4590 Hana Highway, Hana, Hawaii 96713. They are, for all practical purposes, a single entity, and that is how they are addressed in this complaint.

II. JURISDICTION AND VENUE

4. Venue is proper in this Court pursuant to HRS § 603.36 because the negligence from which HESSLER claims for relief arose occurred in this circuit.

5. This Court has personal jurisdiction over all Defendants pursuant to HRS § 634-35, including, but not limited to, subsections (1), (2) and (3), because HESSLER'S causes of action against the Defendants arose from their transactions of business within this State and/or their commission of tortious acts within this State and/or the defendants own, use or possess real estate situated in the County of Maui, State of Hawaii.

III. REQUEST TO EXEMPT CASE FROM COURT ANNEXED ARBITRATION PROGRAM

6. Plaintiff requests that the above-entitled matter be exempt from the Court Annexed Arbitration Program, as the probable jury award value, not reduced by the issue of liability, and exclusive of attorney's fees, interest, and costs, is in excess of \$150,000.00.

IV. STATEMENT OF FACTS

7. The Rat Lungworm is a nematode, or roundworm parasite (*Angiostrongylus cantonensis*), and is a parasitic worm of rats. The adult form of the parasitic worm is usually found only in rodents. Infected rats pass larvae of the parasite in their feces. Snails and slugs get infected by ingesting the larvae laden feces. These larvae mature in snails and slugs but do not become adult worms. Finally, when rats eat infected snails or slugs and the larvae then mature to become adult worms within the rat, and the lyfe cycle is complete.

8. Humans are incidental hosts, and cannot pass the larvae to others. However, after the inadvertent ingestion of the parasitic larvae by humans (usually contracted from a slug or snail), *Angiostrongylus cantonensis* enters the bloodstream through the intestines. The blood then carries the larvae throughout the body, where the worms migrate to the brain and mature into adult worms, where they then attack the brain and spinal cord. Human infection, as accidental hosts, result in worms maturing in the brain, but dying there instead of moving back into the bloodstream, as in rats, thereby leading to eosinophilic meningitis. Unable to continue their life cycle because they are unable to re-enter the circulatory system, and after living and feeding within the brain, they die. Neurological damage appears to be casued both by the physical damage casued both by the movement of the worms within the brain, and by the inflammation caused by the immune reaction to the worms, which seesm to be a more intense reaction to the dead than to the live worms. This can cause extreme, life threatening inflamation, permanent neurological damage, and in some cases even death. *Angiostrongylus cantonensis* is

considered the most common infectious cause of eosinophilic meningitis in humans, and common manifestations include headache, photophobia, stiff neck, nausea, vomiting, fatigue, and body aches.

9. Notably, the infection can cause a rare type of meningitis (eosinophilic meningitis), although some infected people don't have any symptoms or only have mild symptoms (depending on the parasitic load); in some other infected people the symptoms can be much more severe. When symptoms are present, they can include severe headache and stiffness of the neck, tingling or painful feelings in the skin or extremities, low-grade fever, nausea, and vomiting. Sometimes, a temporary paralysis of the face may also be present, as well as light sensitivity, or blindness. Other diseases that are linked to the infection of the species are radiculitis, ataxia, cranial nerve abnormalities, and encephalitis. The symptoms usually start 1 to 3 weeks after exposure to the parasite (the incubation period), but have been known to range anywhere from 1 day to as long as 6 weeks after exposure. Although it varies from case to case, the acute symptoms usually last between 2-8 weeks, but can last for longer periods. Long term injury can be devastating as a result of the worms entering the brain, with extreme lifelong neurological damages in some cases.

10. On or about February 25, 2017 (Saturday), HESSLER was employed as a pastry chef at the Travaasa Hotel in Hana, County of Maui, HI. As was commonly done by HESSLER and others, HESSLER ate a salad mix in the lunch room at work on that day around 11:30 a.m. He became nauseous two hours later. Through information and belief, it is alleged that HANA FRESH was the only provider of produce to the hotel on that day. There was delivered a produce package that Saturday morning from HANA FRESH. HESSLER will testify that he remembers the produce being wrapped in newspaper, not looking very fresh, and that he late

consumed a slug or semi-slug in his salad, and recalls something gritty in his mouth, that he went ahead and swallowed on down. HESSLER did not eat any other salads, fruit, or vegetables anywhere else, in the month before the onset of his illness.

11. HANA FRESH is a 7 acre farm, located behind the Health Center in Hana, Maui. HANA HEALTH is a 501(c)(3) private, non-profit corporation, duly registered with the State of Hawaii and governed by a voluntary Board of Directors. HANA HEALTH is a federally qualified health center serving as "safety net" provider for the Hana community, and provides produce to Travaasa Hotel, as well as many other consumers in the community. HANA FRESH is an assumed name, registered to HANA HEALTH, but the defendants are, for all practical purposes, one and the same.

12. As stated, after consuming the adulterated produce, HESSLER began to show the initial signs of *Angiostrongylus* sickness almost immediately, and became extremely nauseous, vomiting, within a couple of hours of consumption. He presented in short order to HANA HEALTH, the community health center, and then eventually to Maui Memorial Hospital for complications described as atrial fibrillation. Over the next two months, his health spiraled downward to the point where he was practically paralyzed for two months, trapped in a body of excruciating pain. He could not walk or stand. He spent approximately 3 days in the hospital at first, but was released to his daughter thereafter to suffer alone while the devastating disease ran its' course. To be clear, Mr. Hessler has received a definitive diagnoses of rat lungworm disease from several doctors over the course of his treatment, and this fact does not seem to be in dispute.

13. The Hawaii State Department of Health conducted a brief investigation, reference Case ID# 100711900. A "Hana Health physician reported the case to the state, with elevated

Eocinophils and possible suspect of Angio." The Department of Health investigated, and confirmed that although snails and slugs were present in Hana, HESSLER drinks bottled water, uses treated tap water, and did not eat out anywhere but at the Travaasa lunchroom. The final report finds "Clinical Diagnosis" of "Angiostrongyliasis." It also states "Only possible Fresh food exposure was at Travaasa Hana." Unfortunately, plaintiff has learned that Hana Fresh wrongfully refused the State of Hawaii access to Hana Fresh facilities at the time of the investigation, so we cannot clear them as the source of the parasite. Through information and belief, Dr. Lorrin Wayie Pang, M.D., the Maui County District Health Officer, was denied access to Hana Fresh on more than one occasion to complete his work on slug counts. Plaintiff's investigation of these facts is ongoing.

14. HESSLER ate a mixed salad in the lunchroom at Travaasa on 2/25/17. It is believed that this produced came from Hana Fresh.

15. HESSLER first began to experience symptoms of Angiostrongylus infection on that day.

16. After seeking health care in Hana, HESSLER remained in significant pain and was hospitalized for testing and examination, which were consistent with Angiostrongyliasis.

17. HANA HEALTH was reported to the Hawaii Department of Health and it was confirmed that HESSLER'S "Only possible Fresh food exposure was at Travaasa Hana."

18. HESSLER'S Angiostrongylus infection caused him to incur substantial medical expenses, lost wages, pain and suffering, mental anguish, physical disability and disfigurement, and loss of enjoyment of life.

V. STRICT PRODUCTS LIABILITY

19. Pleading in the alternative, at all times material to this Complaint, the Defendants were in the business of growing and distributing produce to Travaasa Hotel and other consumers in the ordinary course of business.

20. There was a manufacturing defect in the produce and insufficient warning of said defects with the produce left in the possession and control of Travaasa Hotel by the Defendants, Hana Health d/b/a Hana Fresh.

21. The produce contained a manufacturing defect because they were contaminated with *Angiostrongylus* when it left the Defendants' possession and control. The presence of *Angiostrongylus* was a condition of the product that rendered the produce unreasonably dangerous for their intended use beyond the extent that would be contemplated by the ordinary consumer or user of the produce. Due to the presence of *Angiostrongylus*, the produce did not conform to the design of the defendants' other products at the manufacturing state.

22. There was an insufficient warning of the defect in the produce when it left the possession and control of HANA HEALTH d/b/a HANA FRESH. The produce was defective because it was contaminated with *Angiostrongylus* and the Defendants failed to give adequate warnings of the product's dangers, which by the application of reasonably developed human skill and foresight, should have been known. The Defendants also failed to give adequate warnings and instructions to avoid such dangers. The Defendants' failure to provide such warnings and instructions rendered the produce unreasonably dangerous.

23. The produces' manufacturing defects, and insufficient warnings, were the direct, proximate, and producing cause of HESSLER'S injuries and damages set forth below.

24. The Defendants are therefore strictly liable for importing, manufacturing, distributing, marketing, and/or selling defective and unreasonably dangerous produce and introducing it into the stream of commerce.

VI. NEGLIGENCE

25. Pleading in the alternative, Defendants owed HESSLER a duty or ordinary care in the manufacture, preparation, testing, packaging, marketing, distribution, and selling of the produce in question. Further, the Defendants owed HESSLER a duty of warning or instructing him of potentially hazardous or life-threatening conditions with respect to the produce.

26. The Defendants breached their duties in one or more of the following ways:

- a. Negligently importing, manufacturing, distributing and selling the produce;
- b. Failing to properly test the produce before placing it into the stream of commerce;
- c. Failing to adequately monitor the safety and sanitary conditions of their premises;
- d. Failing to apply their own policies and procedures to ensure the safety and sanitary conditions of their premises;
- e. Failing to adopt and/or follow FDA and/or State of Hawaii recommended good manufacturing practices;
- f. Failing to take reasonable measures to prevent the transmission of *Angiostrongylus* and related adulteration of their premises;

g. Failing to properly train and supervise their employees and agents to prevent the transmission of *Angiostrongylus* and related filth and adulteration of their premises;

h. Failing to warn HESSLER and the general public of the dangerous propensities of the produce that they consumed, particularly that it was contaminated with *Angiostrongylus*, despite knowing or having reason to know of such dangers;

i. Failing to instruct HESSLER of proper procedures to safe use of the produce;

k. Failing to timely disclose post-sale information concerning the dangers associated with the produce; and

l. Failing to properly label the product so as to notify consumers of the dangers.

27. All dangers associated with the contaminated produce were reasonably foreseeable and/or scientifically discoverable by the Defendants at the time the Defendants placed the produce into the stream of commerce.

28. The Defendants' conduct was a direct, proximate, and producing cause of HESSLER'S injuries and damages set forth below.

VII. BREACH OF IMPLIED WARRANTY

29. Pleading in the alternative, the Defendants are merchants who manufacture, import, distribute, market, and/or sell produce. HESSLER was a consumer.

30. The Defendants breached the implied warranty of merchantability by impliedly warranting that the produce was fit for the ordinary purpose for which produce is used, that, as a

fungible good, the produce was of fair and average quality within the description on the package, and that the produce was adequately labeled.

31. The ordinary purpose for which produce is used is human consumption. The produce was not fit for human consumption due to the fact that it was contaminated with *Angiostrongylus*.

32. Said produce, as a fungible good, was not of average quality, as produce of average quality would not be contaminated with *Angiostrongylus*.

33. The produce was not adequately labeled, as Defendants failed to warn of the risk of *Angiostrongylus* contamination.

34. The Defendants breached the implied warranty of fitness for a particular purpose by holding out unreasonably dangerous produce (i.e. produce contaminated with *Angiostrongylus*) to HESSLER and the public as being safe when they knew or had reason to know that the produce was not safe and that HESSLER and the public would consume the produce.

35. The Defendants did not disclaim these implied warranties.

36. The Defendants' conduct was a direct, proximate, and producing cause of HESSLER'S injuries and damages set forth below.

VIII. RES IPSA LOQUITUR

37. The thing speaks for itself. Stated differently, it may be inferred that harm suffered by the plaintiff was caused by the negligence of the defendants when (a) the event is of a kind which ordinarily does not occur in the absence of negligence; (b) other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the

evidence; and (c) the indicated negligence is within the scope of the defendant's duty to the plaintiff. Restatement of Torts Second, Section 328D.

**IX. VIOLATION OF THE HAWAII FOOD,
DRUG, AND COSMETIC ACT**

38. The Defendants' have in this instance violated the Hawaii Food, Drug, and Cosmetic Act in the following particulars. It is alleged that the diseased or adulterated produce in the case at hand was misbranded (in that there was a lack of labeling to disclose the dangers of rat lungworm dangers), that Defendants engaged in a prohibited act when they manufactured, produced, packaged and sold such produce by supplying said produce to Travaasa Hotel, that said produce was deemed adulterated or misbranded, as it was contaminated, injuries to life, and unfit for food, and there was no proper label or warning. The Defendant's knew or should have known that there violation of these statutes would emperil the health and safety of the public at large. The violation of said statutes, described in more particular hereinbelow, is negligence per se. The statutory violations involve the following specific laws. All references are to the Hawaii Food, Drug, and Cosmetic Act.

39. With regard to section 328.3, entitled "*Same; misbranding or misleading advertisement*," "(a) if an article is alleged to be misbranded because the labeling is misleading ... there shall be taken into account ... the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article...".

40. With regard to section 328-5, entitled "*Same; "selling" includes what*," "The provisions of this part regarding the selling of food ... include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; the

sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food ... establishment."

41. With regard to section 328-6, entitled "*Prohibited acts*," "The following acts and the causing thereof within the State by any person are prohibited: (1) The manufacture, sale, delivery, holding, or offering for sale of any food ... that is adulterated or misbranded; (2) The adulteration or misbranding of any food...; (3) The receipt in commerce of any food ... that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise; (6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by section 328-22 and 328-23 to 328-27, or to permit access to or copying of any record as authorized by section 328-23;"

42. With regard to section 328-9, entitled "*Foods deemed adulterated when*," "A food shall be deemed to be adulterated: (1)(A) If it bears or contains any ... deleterious substance which may render it injurious to health...", or "(C) If it consists in whole or in part of a diseased, contaminated ...substance, or if it is otherwise unfit for food; or (D) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health," or "(2)(A) If damage or inferiority has been concealed in any manner."

43. With regard to section 328-10, entitled "*Foods deemed misbranded when*," "A food shall be deemed to be misbranded: (6) If any word, statement, or other information required by or under authority of this part to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use...", "(12) If it is a product

intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded..."

X. NEGLIGENCE PER SE

44. An actor is negligent if, without excuse, the actor violates a statute that is designed to protect against the type of accident the actor's conduct causes, and if the accident victim is within the class of persons the statute is designed to protect. Restatement (3d) on Torts: Liability for Physical Harm.

XI. DAMAGES

45. The Defendants' conduct was a direct, proximate, and producing cause of HESSLER'S personal injuries and damages, including but not limited to, pain and suffering, mental anguish, disability and disfigurement, loss of the enjoyment of life, lost wages, lost earning capacity, past and future medical and pharmaceutical expenses, emotional distress, and other general, special, ordinary, incidental, and consequential damages as would be anticipated to arise under the circumstances.

XII. PRAYOR FOR RELIEF

WHEREFORE, HESSLER prays for judgment against the Defendants, jointly and severally, as follows:

1. General damages to be proven at trial;
2. Special damages to be proven at trial;
3. Court costs;
4. Pre-and post-judgment interest at the highest rate allowable by law; and
5. For such other general and specific relief as the Court deems just and proper.

DATED: Wailuku, Hawaii, February 12, 2019



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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

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)	PRODUCTS LIABILITY and OTHER
Plaintiff,)	NON-VEHICLE TORT
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vs.)	
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HANA HEALTH, a domestic nonprofit)	
corporation, d/b/a HANA FRESH and ROE)	
CORPORATIONS 1-5, JOHN DOES 1-5, JAN)	SUMMONS
DOES 1-5, ROE NON-PROFIT)	
CORPORATIONS 1-5, AND ROE)	
GOVERNMENTAL AGENCIES 1-5.)	
)	
Defendants.)	
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SUMMONS

STATE OF HAWAII

To the Above-Named Defendants:

You are hereby summoned and required to file with the Court and serve upon Attorneys Johnny Brown, and Bill Marler, Plaintiff's attorneys, whose addresses are stated above, an answer to the Complaint which is herewith served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on the premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, February 12, 2019.

FEB 12 2019



Clerk of the above-entitled Court