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RICHARD W. WICKERS
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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10 ATTORNEYS FOR PLAINTIFFS RUTHELLEN HARRIS, INDIVIDUALLY AND AS
11 PERSONAL REPRESENTATIVE OF ROBERT JEAN HARRIS, HEATHER HARRIS, JAMIE
12 HARRIS AND GREG HARRIS

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 CV 10 4626
CASE NO.

17 Ruthellen Harris, individually and as personal
18 representative of Robert Jean Harris, Heather
Harris, Jamie Harris and Greg Harris,

19 Plaintiffs,

20 v.

21 Costco Wholesale Corporation, Warehouse Demo
22 Services, Inc., Cargill Meat Solutions Corporation,
Fresh Choice International, LLC and Does 1 - 100,
23 inclusive,

24 Defendants.

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

(Wrongful Death - Negligence; Wrongful
Death - Strict Products Liability; Wrongful
Death - Products Liability Negligence;
Wrongful Death - Negligent Retention of an
Independent Contractor; Wrongful Death -
Negligent Supervision; Wrongful Death -
Peculiar Risk; and Survival Action)

Complaint Filed: n/a
Trial Date: Unassigned

26 Plaintiffs, RUTHELLEN HARRIS, INDIVIDUALLY AND AS PERSONAL
27 REPPRESENTATIVE OF ROBERT JEAN HARRIS, HEATHER HARRIS, JAMIE HARRIS
28 AND GREG HARRIS, allege against all defendants as follows:

GENERAL ALLEGATIONS

1. On June 5, 2010, plaintiff Robert Jean Harris sustained severe injuries when he consumed a sample of a meat product that he was provided by defendants, and each of them. Plaintiff Robert Jean Harris ultimately died on June 5, 2010. The subject accident occurred at defendant Costco Wholesale Corporation's Store #422 located at 451 South Airport Boulevard, South San Francisco, California.
2. At all times mentioned in this complaint, plaintiffs Ruthellen Harris and Robert Jean Harris resided in the State of California and plaintiffs Heather Harris, Jamie Harris and Greg Harris resided in the State of Maryland.
3. At all times mentioned in this complaint, plaintiff Robert Jean Harris and plaintiff Ruthellen Harris were lawfully married.
4. At all times mentioned in this complaint, plaintiff Robert Jean Harris was the father of plaintiffs Heather Harris, Jamie Harris and Greg Harris.
5. Plaintiff Ruthellen Harris is entitled to bring an action for the wrongful death of plaintiff Robert Jean Harris, deceased, under California Code of Civil Procedure section 377.60, because they were lawfully married at the time the injury and death occurred.
6. Plaintiffs Heather Harris, Jamie Harris and Greg Harris are entitled to bring an action for the wrongful death of plaintiff Robert Jean Harris, deceased, under California Code of Civil Procedure section 377.60, because they were his children.
7. Plaintiff Ruthellen Harris is the Personal Representative of Robert Jean Harris as she is the executor of the estate of Robert Jean Harris under California Code of Civil Procedure section 377.30.
8. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned in this complaint, defendant Costco Wholesale Corporation was a Washington corporation with its principal place of business in Issaquah, Washington. Costco Wholesale Corporation was authorized to do business in California and actually did business in California.
9. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned in this complaint, defendant Warehouse Demo Services, Inc. was a Washington corporation with its

1 principal place of business in Kirkland, Washington. Warehouse Demo Services, Inc. was
2 authorized to do business in California and actually did business in California.

3 10. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned in this
4 complaint, defendant Cargill Meat Solutions Corporation was a Kansas corporation with its
5 principal place of business in Wichita, Kansas. Cargill Meat Solutions Corporation was
6 authorized to do business in California and actually did business in California.

7 11. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned in this
8 complaint, defendant Fresh Choice International, LLC was a Minnesota corporation with its
9 principal place of business in Minneapolis, Minnesota. Fresh Choice International, LLC was
10 authorized to do business in California and actually did business in California.

11 12. This court has original jurisdiction over this action because the amount in controversy
12 exceeds \$75,000.00, exclusive of interest and costs, and there is diversity of citizenship of all
13 named parties. 28 U.S.C. §§1332, 1441(a).

14 13. At all times mentioned in this complaint, defendants Does 1 through 100, and each of them,
15 were individuals or business entities, form unknown.

16 14. Plaintiffs are ignorant of the true names and capacities of defendants sued in this complaint
17 as Does 1 through 100, and each of them, and therefore sue these defendants by such
18 fictitious names. Plaintiffs will amend this complaint to allege these defendants' true names
19 and capacities when ascertained. Plaintiffs are informed and believe, and thereon allege, that
20 each fictitiously-named defendant is negligent or otherwise responsible in some manner for
21 the occurrences alleged in this complaint, and that plaintiffs' injuries and damages were
22 legally caused by defendants' negligence or other conduct.

23 15. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned in this
24 complaint, each of the defendants was the agent and employee of each of the other
25 remaining defendants, and in doing the things alleged in this complaint, was acting within the
26 course and scope of this agency and employment, and each defendant has ratified and
27 approved the acts of its agent.

28 16. Plaintiffs are informed and believe and thereon allege that each of the defendants was the

1 successor-in-interest to each of the remaining defendants and on that basis is liable for any
2 defendants' act or omission alleged in this complaint.

3 17. At all times herein relevant, plaintiff Robert Jean Harris, deceased, was consuming and/or
4 had recently consumed a sample of the SUBJECT MEAT PRODUCT that was produced,
5 processed, packaged, configured, prepared, inspected, distributed, supplied, merchandised,
6 recommended, advertised, promoted, instructed, marketed, sold and/or provided meat
7 product provided by defendants, and each of them.

8 **FIRST CAUSE OF ACTION: WRONGFUL DEATH – NEGLIGENCE AGAINST**
9 **DEFENDANTS COSTCO WHOLESALE CORPORATION, WAREHOUSE DEMO**
10 **SERVICES, INC., CARGILL MEAT SOLUTIONS CORPORATION, FRESH CHOICE**
11 **INTERNATIONAL, LLC AND DOES 1-100, AND EACH OF THEM**

12 18. Plaintiffs incorporate all of the foregoing paragraphs as though fully set forth herein.

13 19. At all times mentioned in this complaint, defendants Costco Wholesale Corporation,
14 Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice
15 International, LLC and Does 1 - 100, and each of them, were engaged in the business of
16 producing, processing, packaging, configuring, preparing, inspecting, distributing, supplying,
17 merchandising, recommending, advertising, promoting, instructing, marketing, selling and/or
18 providing the SUBJECT MEAT PRODUCT and had knowledge concerning the
19 composition, configuration, size, shape, preparation, and use of the SUBJECT MEAT
20 PRODUCT and had knowledge concerning the proper and safe use of the SUBJECT MEAT
21 PRODUCT.

22 20. At all times mentioned in this complaint, defendants Costco Wholesale Corporation,
23 Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice
24 International, LLC and Does 1 - 100, and each of them, had a duty to all foreseeable users of
25 the SUBJECT MEAT PRODUCT to properly, safely and adequately produce, process,
26 package, configure, prepare, inspect, distribute, sell and/or provide the SUBJECT MEAT
27 PRODUCT.

28 21. At all times mentioned in this complaint, defendants Costco Wholesale Corporation,

1 Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice
2 International, LLC and Does 1 - 100, and each of them, knew or reasonably should have
3 known that the SUBJECT MEAT PRODUCT was dangerous or was likely to be dangerous
4 when used in a reasonably foreseeable manner.

5 22. At all times mentioned in this complaint, defendants Costco Wholesale Corporation,
6 Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice
7 International, LLC and Does 1 - 100, and each of them, negligently and carelessly produced,
8 processed, packaged, configured, prepared, inspected, distributed, sold and/or provided the
9 SUBJECT MEAT PRODUCT.

10 23. At all times mentioned in this complaint, defendants Costco Wholesale Corporation,
11 Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice
12 International, LLC and Does 1 - 100, and each of them, negligently and carelessly failed to
13 produce, process, package, configure, prepare, inspect, distribute, sell and/or provide the
14 SUBJECT MEAT PRODUCT.

15 24. At all times mentioned in this complaint, defendants Costco Wholesale Corporation,
16 Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice
17 International, LLC and Does 1 - 100, and each of them, increased the risk of harm to
18 plaintiff Robert Jean Harris by failing to safely and adequately produce, process, package,
19 configure, prepare, inspect, distribute, sell and/or provide the SUBJECT MEAT
20 PRODUCT, or warn him of a hazardous condition of the SUBJECT MEAT PRODUCT,
21 including, but not limited to the SUBJECT MEAT PRODUCT'S configuration and size.

22 25. On or about June 5, 2010, Robert Jean Harris was consuming the SUBJECT MEAT
23 PRODUCT for the purpose for which it was intended.

24 26. As a legal result of the negligence of defendants Costco Wholesale Corporation, Warehouse
25 Demo Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice International, LLC
26 and Does 1 - 100, and each of them, the SUBJECT MEAT PRODUCT became lodged in
27 Robert Jean Harris' throat causing Robert Jean Harris's injuries and ultimate death.

28 27. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has suffered

1 economic and general damages including, but not limited to, the deprivation of the love,
2 society, comfort, protection, guidance, household services, conjugal fellowship, and the
3 emotional and economic support of the decedent, in an amount according to proof.

4 28. As a legal result of Robert Jean Harris's death, plaintiffs Heather Harris, Jamie Harris and
5 Greg Harris have suffered economic and general damages including, but not limited to, the
6 deprivation of the love, society, comfort, protection, guidance, services, and the emotional
7 and economic support of the decedent, in an amount according to proof.

8 29. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has incurred funeral
9 and burial expenses for the decedent.

10 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as
11 hereinafter set forth.

12 **SECOND CAUSE OF ACTION: WRONGFUL DEATH - PRODUCTS LIABILITY,**
13 **STRICT PRODUCTS LIABILITY AGAINST DEFENDANTS COSTCO WHOLESALE**
14 **CORPORATION, WAREHOUSE DEMO SERVICES, INC., CARGILL MEAT**
15 **SOLUTIONS CORPORATION, FRESH CHOICE INTERNATIONAL, LLC AND**
16 **DOES 1-100, AND EACH OF THEM**

17 30. Plaintiffs incorporate here by reference all preceding paragraphs, as if fully set forth herein.

18 31. At all times mentioned in this complaint, defendants Costco Wholesale Corporation,
19 Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice
20 International, LLC and Does 1 - 100, and each of them, produced, processed, packaged,
21 configured, prepared, inspected, distributed, supplied, merchandised, recommended,
22 advertised, promoted, instructed, marketed, warned or failed to warn, sold and/or provided
23 the SUBJECT MEAT PRODUCT, including, but not limited to, the SUBJECT MEAT
24 PRODUCT'S configuration and size.

25 32. At all times mentioned in this complaint, defendants Costco Wholesale Corporation,
26 Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice
27 International, LLC and Does 1 - 100, and each of them, knew, or should have known that
28 the SUBJECT MEAT PRODUCT including, but not limited to, the SUBJECT MEAT

1 PRODUCT'S configuration and size were to be purchased and used without inspection for
2 defects by members of the general public, including plaintiffs.

3 33. At all times herein relevant, the SUBJECT MEAT PRODUCT failed to perform as safely as
4 an ordinary consumer of said product would have expected when used in a manner
5 reasonably foreseeable by the aforesaid defendants, and each of them. In addition, any
6 alleged benefit regarding the size and configuration of the SUBJECT MEAT PRODUCT did
7 not outweigh the risks inherent in the actual size and configuration of said product.

8 34. At all times mentioned in this complaint, the SUBJECT MEAT PRODUCT was unsafe for
9 its intended use because of the defect in its manufacture, design, instructions and/or
10 warnings, so that the product could not safely serve its' intended purpose, but would instead
11 expose users to serious injury and death.

12 35. At all times mentioned in this complaint, defendants Costco Wholesale Corporation,
13 Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice
14 International, I.I.C and Does 1 - 100, and each of them, had a duty to properly and
15 adequately guard, protect, instruct, or warn the users of the SUBJECT MEAT PRODUCT
16 against the defective, dangerous and hazardous propensities of the product.

17 36. At all times mentioned in this complaint, defendants Costco Wholesale Corporation,
18 Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice
19 International, LLC and Does 1 - 100, and each of them, increased the risk of harm to
20 plaintiff Robert Jean Harris by failing to warn him of a hazardous condition of the SUBJECT
21 MEAT PRODUCT, including, but not limited to, the product's design, configuration, and
22 size.

23 37. Robert Jean Harris was not aware of these defects before they caused his injuries and
24 ultimately his death.

25 38. On or about June 5, 2010, Robert Jean Harris was consuming the SUBJECT MEAT
26 PRODUCT, for the purpose for which it was intended.

27 39. As a legal result of the defects in the SUBJECT MEAT PRODUCT, the SUBJECT MEAT
28 PRODUCT became lodged in Robert Jean Harris throat causing him sustain severe injuries

1 and ultimately resulting in his death.

2 40. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has suffered
3 economic and general damages including, but not limited to, the deprivation of the love,
4 society, comfort, protection, guidance, household services, conjugal fellowship, and the
5 emotional and economic support of the decedent, in an amount according to proof.

6 41. As a legal result of Robert Jean Harris's death, plaintiffs Heather Harris, Jamie Harris and
7 Greg Harris have suffered economic and general damages including, but not limited to, the
8 deprivation of the love, society, comfort, protection, guidance, services, and the emotional
9 and economic support of the decedent, in an amount according to proof.

10 42. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has incurred funeral
11 and burial expenses for the decedent.

12 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as
13 hereinafter set forth.

14 **THIRD CAUSE OF ACTION: WRONGFUL DEATH - PRODUCTS LIABILITY,**
15 **NEGLIGENCE AGAINST DEFENDANTS COSTCO WHOLESALE CORPORATION,**
16 **WAREHOUSE DEMO SERVICES, INC., CARGILL MEAT SOLUTIONS**
17 **CORPORATION, FRESH CHOICE INTERNATIONAL, LLC AND DOES 1-100, AND**
18 **EACH OF THEM**

19 43. Plaintiffs incorporate all of the foregoing paragraphs as though fully set forth herein.

20 44. On June 5, 2010, the SUBJECT MEAT PRODUCT was produced, processed, packaged,
21 configured, prepared, inspected, distributed, supplied, merchandised, recommended,
22 advertised, promoted, instructed, marketed, sold and/or provided by defendants Costco
23 Wholesale Corporation, Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation,
24 Fresh Choice International, LLC and Does 1 - 100, and each of them.

25 45. On June 5, 2010, as a consumer of the SUBJECT MEAT PRODUCT, Robert Jean Harris
26 was owed a duty of care by defendants Costco Wholesale Corporation, Warehouse Demo
27 Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice International, LLC and
28 Does 1 - 100, and each of them.

1 46. Defendants Costco Wholesale Corporation, Warehouse Demo Services, Inc., Cargill Meat
2 Solutions Corporation, Fresh Choice International, LLC and Does 1 - 100, and each of them,
3 knew, or in the exercise of ordinary and reasonable care should have known, that the
4 SUBJECT MEAT PRODUCT was a product of such a nature that if it was not properly
5 manufactured, designed, assembled, compounded, tested, inspected, produced, packaged,
6 labeled, fabricated, constructed, analyzed, distributed, serviced, merchandised, recommended,
7 advertised, promoted, marketed, instructed and warned, and sold, for the use and purpose
8 for which it was intended, it was likely to cause injury to person or persons by whom it was
9 used.

10 47. On or before June 5, 2010, defendants Costco Wholesale Corporation, Warehouse Demo
11 Services, Inc., Cargill Meat Solutions Corporation, Fresh Choice International, LLC and
12 Does 1 - 100, and each of them, so negligently and carelessly manufactured, designed,
13 assembled, compounded, tested or failed to test, inspected or failed to inspect, packaged,
14 produced, labeled, fabricated, constructed, analyzed, distributed, serviced, merchandised,
15 recommended, advertised, promoted, marketed, instructed and warned, and sold the
16 SUBJECT MEAT PRODUCT, so that it was in a dangerous and defective condition, and
17 unsafe for the use and purpose for which it was intended when used as recommended by the
18 defendants, and each of them.

19 48. The defective and dangerous character and condition of the SUBJECT MEAT PRODUCT,
20 and that it was unsafe for the use and purpose for which it was intended when used as
21 recommended by the defendants, and each of them, was known to the defendants, and each
22 of them, or in the exercise of ordinary and reasonable care should have been known and
23 discovered by defendants, and each of them. Furthermore, the dangerous and defective
24 character and condition of the SUBJECT MEAT PRODUCT was not made known to
25 Robert Jean Harris by the defendants, and each of them.

26 49. On or about June 5, 2010, while Robert Jean Harris was using the SUBJECT MEAT
27 PRODUCT for the purpose for which it was intended, and as a legal result of the said
28 negligence and carelessness of the defendants, and each of them, the SUBJECT MEAT

1 PRODUCT, was caused to lodge in Robert Jean Harris's throat, thereby causing serious and
2 severe injuries to Robert Jean Harris, which resulted in his death.

3 50. As a direct and legal result of this negligence, Robert Jean Harris suffered injuries and
4 ultimately died.

5 51. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has suffered
6 economic and general damages including, but not limited to, the deprivation of the love,
7 society, comfort, protection, guidance, household services, conjugal fellowship, and the
8 emotional and economic support of the decedent, in an amount according to proof.

9 52. As a legal result of Robert Jean Harris's death, plaintiffs Heather Harris, Jamie Harris and
10 Greg Harris have suffered economic and general damages including, but not limited to, the
11 deprivation of the love, society, comfort, protection, guidance, services, and the emotional
12 and economic support of the decedent, in an amount according to proof.

13 53. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has incurred funeral
14 and burial expenses for the decedent.

15 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as
16 hereinafter set forth.

17 **FOURTH CAUSE OF ACTION:**

18 **NEGLIGENT RETENTION OF A INDEPENDENT CONTRACTOR AGAINST**
19 **COSTCO WHOLESALE CORPORATION AND DOES 1 - 100, AND EACH OF THEM**

20 54. Plaintiffs incorporate all preceding paragraphs as though alleged in this cause of action.

21 55. At all times relevant herein, defendants Costco Wholesale Corporation and Does 1-100 and
22 each of them, retained defendants Warehouse Demo Services, Inc. Cargill Meat Solutions
23 Corporation and Fresh Choice International, LLC as independent contractors to perform
24 work which would involve a risk of physical harm unless it was skillfully and carefully done.
25 And further, to perform work which defendants Costco Wholesale Corporation and Does 1 -
26 100, and each of them, were under a duty to perform to third persons.

27 56. That at all times relevant, defendants Costco Wholesale Corporation and Does 1 - 100, and
28 each of them, negligently failed to exercise reasonable care in employing defendants

1 Warehouse Demo Services, Inc., Cargill Meat Solutions Corporation and Fresh Choice
2 International, LLC in that defendants, and each of them, negligently failed to determine
3 whether defendants Warehouse Demo Services, Inc. Cargill Meat Solutions Corporation and
4 Fresh Choice International, LLC had the skill, experience and equipment necessary to
5 perform the work required under the contract. In fact, defendants Warehouse Demo
6 Services, Inc., Cargill Meat Solutions Corporation and Fresh Choice International, LLC
7 lacked the skill, experience or adequate equipment to perform the work contemplated. As a
8 result of the negligence of defendants, Costco Wholesale Corporation and Does 1 - 100, and
9 each of them, decedent Robert Jean Harris suffered serious injury and death as herein
10 alleged.

11 57. As a legal result of the negligence of defendants Costco Wholesale Corporation and Does 1 -
12 100, and each of them, the SUBJECT MEAT PRODUCT became lodged in Robert Jean
13 Harris' throat causing Robert Jean Harris's injuries and ultimate death.

14 58. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has suffered
15 economic and general damages including, but not limited to, the deprivation of the love,
16 society, comfort, protection, guidance, household services, conjugal fellowship, and the
17 emotional and economic support of the decedent, in an amount according to proof.

18 59. As a legal result of Robert Jean Harris's death, plaintiffs Heather Harris, Jamie Harris and
19 Greg Harris have suffered economic and general damages including, but not limited to, the
20 deprivation of the love, society, comfort, protection, guidance, services, and the emotional
21 and economic support of the decedent, in an amount according to proof.

22 60. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has incurred funeral
23 and burial expenses for the decedent.

24 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as
25 hereinafter set forth.

26 **FIFTH CAUSE OF ACTION:**

27 **NEGLIGENT SUPERVISION AGAINST COSTCO WHOLESALE CORPORATION**

28 **AND DOES 1 - 100, AND EACH OF THEM**

- 1 61. Plaintiffs incorporate all preceding paragraphs as though alleged in this cause of action.
- 2 62. At all relevant times allege defendants Costco Wholesale Corporation and DOES 1-100, and
3 each of them, were acting as marketers, processors, distributors, and/or sellers, of food
4 samples at Costco Wholesale Corporation store #422 located at 451 South Airport
5 Boulevard, South San Francisco, California.
- 6 63. On or about June 5, 2010, decedent Robert Jean Harris was a customer (business invitee) at
7 the above-mentioned Costco Wholesale Corporation store #422 and was on the
8 aforementioned premises with the permission and consent of defendants, and each of them.
- 9 64. At the aforementioned time and place, defendants, and each of them, undertook the role of
10 marketing, producing, processing, packaging, preparing, distributing, and/or selling food
11 samples for public consumption at Costco Wholesale Corporation store #422.
- 12 65. Decedent Robert Jean Harris and other customers at Costco Wholesale Corporation store
13 #422 relied upon defendants, and each of them, to reasonably and prudently exercise their
14 role of marketing, processing, preparing, distributing, and/or selling food samples for public
15 consumption at Costco Wholesale Corporation store #422.
- 16 66. Decedent Robert Jean Harris and other customers at Costco Wholesale Corporation store
17 #422 did not perform the aforementioned function of marketing, processing, preparing,
18 distributing, and/or selling food samples for public consumption, recognizing that
19 defendants, and each of them, had assumed the duty and were in fact exercising such duty.
- 20 67. At the aforementioned time and place, defendants Costco Wholesale Corporation and Does
21 1 - 100, and each of them, failed to supervise all other defendants, and each of them, to make
22 certain that all other defendants, and each of them, complied with their duty and obligations
23 to perform their function of marketing, producing, processing, packaging, distributing,
24 and/or selling food samples for public consumption and to provide decedent Robert Jean
25 Harris and other similarly situated with safe samples of the SUBJECT MEAT PRODUCT.
- 26 68. As a legal result of the negligence of defendants Costco Wholesale Corporation and Does 1 -
27 100, and each of them, the SUBJECT MEAT PRODUCT became lodged in decedent
28 Robert Jean Harris' throat causing decedent Robert Jean Harris's injuries and ultimate death.

1 69. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has suffered
2 economic and general damages including, but not limited to, the deprivation of the love,
3 society, comfort, protection, guidance, household services, conjugal fellowship, and the
4 emotional and economic support of the decedent, in an amount according to proof.

5 70. As a legal result of Robert Jean Harris's death, plaintiffs Heather Harris, Jamie Harris and
6 Greg Harris have suffered economic and general damages including, but not limited to, the
7 deprivation of the love, society, comfort, protection, guidance, services, and the emotional
8 and economic support of the decedent, in an amount according to proof.

9 71. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has incurred funeral
10 and burial expenses for the decedent.

11 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as
12 hereinafter set forth.

13 **SIXTH CAUSE OF ACTION:**

14 **PECULIAR RISK AGAINST COSTCO WHOLESALE CORPORATION AND DOES 1-**
15 **100, AND EACH OF THEM**

16 72. Plaintiffs incorporate all preceding paragraphs as though alleged in this cause of action.

17 73. At all relevant times, defendants Costco Wholesale Corporation and DOES 1-100, and each
18 of them, hired Warehouse Demo Services, Inc. and Cargill Meat Solutions Corporation to
19 perform work (marketing, processing, preparing, distributing and/or selling food samples for
20 public consumption), at Costco Wholesale Corporation store #422 located at 451 South
21 Airport Boulevard, South San Francisco which defendants Costco Wholesale Corporation
22 and defendants Does 1 - 100, and each of them, should have recognized as likely to create
23 during its progress a peculiar or a special unreasonable risk of physical harm to others unless
24 special precautions were taken.

25 74. Given the nature of the work, the place where the work was to be performed and the risk
26 associated with that work, defendants Costco Wholesale Corporation and Does 1 - 100, and
27 each of them, knew or should have known of the special risks and the necessary precautions.

28 75. On or about June 5, 2010 decedent Robert Jean Harris was on the premises of the COSTCO

1 store located at 451 South Airport Boulevard, South San Francisco with the consent and
2 permission of defendants, and each of them, as a customer (business invitee).

3 76. At the aforementioned time and place, defendants Costco Wholesale Corporation and Does
4 1 - 100, and each of them, were legally responsible to plaintiffs for their damages in that
5 defendants and each of them failed to provide in the contracts with defendants Warehouse
6 Demo Services, Inc., Cargill Meat Solutions Corporation and Fresh Choice International,
7 LLC that special precautions be taken, nor were special precautions taken by defendants and
8 each of them, nor by the hired independent contractors (defendants Warehouse Demo
9 Services, Inc. Cargill Meat Solutions Corporation and Fresh Choice International, LLC).

10 77. Defendants Costco Wholesale Corporation and Does 1 - 100, and each of them, negligently
11 and carelessly owned, occupied, leased, constructed, controlled, used, maintained, managed,
12 superintended, directed, limited, regulated, possessed, or operated the premises all of which
13 caused decedent Robert Jean Harris' injuries and ultimate death.

14 78. As a direct and legal result of the negligence and carelessness of defendants Costco
15 Wholesale Corporation and Does 1- 100, and each of them, as aforesaid, decedent Robert
16 Jean Harris sustained personal injuries and death. As a legal result of the negligence of
17 defendants Costco Wholesale Corporation and Does 1 - 100, and each of them, the
18 SUBJECT MEAT PRODUCT became lodged in Robert Jean Harris' throat causing Robert
19 Jean Harris's injuries and ultimate death.

20 79. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has suffered
21 economic and general damages including, but not limited to, the deprivation of the love,
22 society, comfort, protection, guidance, household services, conjugal fellowship, and the
23 emotional and economic support of the decedent, in an amount according to proof.

24 80. As a legal result of Robert Jean Harris's death, plaintiffs Heather Harris, Jamie Harris and
25 Greg Harris have suffered economic and general damages including, but not limited to, the
26 deprivation of the love, society, comfort, protection, guidance, services, and the emotional
27 and economic support of the decedent, in an amount according to proof.

28 81. As a legal result of Robert Jean Harris's death, plaintiff Ruthellen Harris has incurred funeral

1 and burial expenses for the decedent.

2 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as
3 hereinafter set forth.

4 **SEVENTH CAUSE OF ACTION:**

5 **SURVIVAL ACTION BY RUTHELLEN HARRIS AS PERSONAL REPRESENTATIVE**
6 **OF ROBERT JEAN HARRIS AGAINST COSTCO WHOLESALE CORPORATION,**
7 **WAREHOUSE DEMO SERVICES, INC., CARGILL MEAT SOLUTIONS**
8 **CORPORATION, FRESH CHOICE INTERNATIONAL, LLC AND DOES 1 - 100, AND**
9 **EACH OF THEM**

10 82. Plaintiff incorporates the preceding paragraphs as though alleged in this cause of action.

11 83. Plaintiff Ruthellen Harris is the Personal Representative of Robert Jean Harris, deceased, as
12 she is the Executor of the Estate of Robert Jean Harris and so commences this action on his
13 behalf under California Code of Civil Procedure §377.30.

14 84. On or about June 5, 2010, after negligence, strict products liability, negligent products
15 liability, negligent retention of an independent contractor, negligent supervision, and peculiar
16 risk actions arose in his favor, Robert Jean Harris, who would have been the plaintiff in this
17 action had he survived and later died.

18 85. As a legal result of defendants Costco Wholesale Corporation, Warehouse Demo Services,
19 Inc., Cargill Meat Solutions Corporation, Fresh Choice International, LLC and Does 1 - 100,
20 and each of them, and each of their conduct and defective product, Robert Jean Harris was
21 required to and did employ physicians, surgeons, and other medical-related treatment, such
22 as emergency-medical-response care.

23 WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as
24 hereinafter set forth.

25 **PRAYER FOR RELIEF AND DEMAND FOR JURY TRIAL**

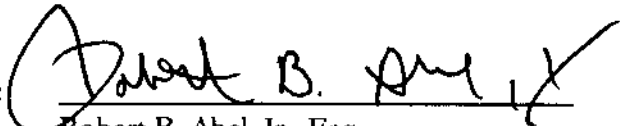
26 WHEREFORE, plaintiffs Ruthellen Harris individually and as Personal Representative of
27 Robert Jean Harris, Heather Harris, Jamie Harris and Greg Harris demand a jury trial and pray
28 for judgment against defendants Costco Wholesale Corporation, Warehouse Demo Services,

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- Inc., Cargill Meat Solutions Corporation, Fresh Choice International, LLC and Does 1 - 100, and each of them, on all theories of action, as follows:
- a. For general damages according to proof;
 - b. For special damages according to proof;
 - c. For interest to the extent allowable by law;
 - d. For costs of the suit herein; and
 - e. For such further relief as the court may deem proper.

DATED: October 13, 2010

THE LAW OFFICES OF ROBERT B. ABEL, JR.

By: 
Robert B. Abel, Jr., Esq.
Attorney for Plaintiffs Ruthellen Harris,
individually and as Personal Representative of
Robert Jean Harris, Heather Harris, Jamie
Harris and Greg Harris