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 9

10 Attorneys for Plaintiffs **DEREK TRONE** and  
**CINDY TRONE**, husband and wife,  
 Individually, and as Next Friends and  
 11 Natural Guardians of **BRYSON TRONE**, a minor

12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 **DEREK TRONE** and **CINDY TRONE**,  
 husband and wife, individually, and as  
 16 Next Friends and Natural Guardians of  
**BRYSON TRONE**, a minor,

17 Plaintiffs,

18 v.

19 **PEANUT CORPORATION OF**  
 20 **AMERICA**, a Virginia corporation, and  
 Does 1-20, inclusive,

21 Defendants.

CV 09 0418  
 JL

Case No.

**COMPLAINT FOR DAMAGES**

**DEMAND FOR JURY TRIAL**

22  
 23 **COMPLAINT FOR DAMAGES**

24 COME NOW the plaintiffs, by and through their attorneys of record, Richard R. Waite  
 25 and Mary Best, Keeney Waite & Stevens, and William D. Marler, Marler Clark, L.L.P., P.S., and  
 26 allege as follows:

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FILED  
 09 JAN 29 PM 2:16  
 RICHARD R. WAITE  
 MARY M. BEST  
 KEENEY WAITE & STEVENS  
 ATTORNEYS FOR PLAINTIFFS

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E-filing

By Fax

1 **I. PARTIES**

2 1. The plaintiffs are residents of Crescent City, Del Norte County, California.  
3 The plaintiffs DEREK and CINDY TRONE are husband and wife and the natural parents of  
4 BRYSON TRONE, a minor. The plaintiffs are residents of the State of California.

5 2. The defendant, PEANUT CORPORATION OF AMERICA (PCA), is a  
6 Virginia corporation, organized under the laws of the state of Virginia, authorized to do business in  
7 the state of Virginia, with its principal office located at 2121 Wiggington Road, Lynchburg,  
8 Virginia, 24502.

9 3. At all times relevant hereto, PCA was a manufacturer and seller of various  
10 peanut butter products, which it knowingly sold to manufacturers and distributors of its products for  
11 use and sale nationwide, including the state of California.

12 4. The true names and capacities of Defendants Does 1 through 20 (the "Doe  
13 Defendants"), inclusive, are unknown to Plaintiffs, who therefore sue said Doe Defendants by such  
14 fictitious names pursuant to Section 474 of the California Code of Civil Procedure. Plaintiffs are  
15 informed and believe, and thereon allege, that Does 1 through 20 are in some capacity responsible  
16 for the acts and omissions and damages herein alleged. Plaintiffs will seek leave of the Court to  
17 amend this Complaint when said names and true capacities have been ascertained.

18 5. Plaintiffs are informed and believe, and thereon allege that at all times  
19 mentioned herein, except as otherwise stated, each of the Defendants and Doe Defendants, were the  
20 agents and/or employees of each of the remaining Defendants. Plaintiffs lack sufficient information  
21 or belief to allege whether, in so doing the things herein alleged, such Defendants and Doe  
22 Defendants were acting within the scope of such agency or employment. Plaintiffs are informed and  
23 believe that all of the Defendants are the alter egos of every other Defendant.

24 **II. JURISDICTION AND VENUE**

25 6. This Court has jurisdiction over the subject matter of this action pursuant to  
26 28 USC § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is  
27 between citizens of different states, and because the defendant has certain minimum contacts with

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1 the State of California such that the maintenance of the suit in this district does not offend  
2 traditional notions of fair play and substantial justice.

3 7. Venue in the United States District Court for the Northern District of  
4 California is proper pursuant to 28 USC § 1391(a)(2) because a substantial part of the events or  
5 omissions giving rise to the plaintiffs' claims and causes of action occurred in this judicial district—  
6 i.e., the plaintiff Bryson Trone's consumption of the PCA product that caused his illness.  
7 Additionally, the defendant PCA was subject personal jurisdiction in this judicial district at the time  
8 of the commencement of the action.

### 9 III. GENERAL ALLEGATIONS

#### 10 Salmonella

11 8. Salmonella is an enteric bacterium, which means that it lives in the intestinal  
12 tracts of humans and other animals, including birds. Salmonella bacteria are usually transmitted to  
13 humans by eating foods contaminated with animal feces. Contaminated foods usually look and  
14 smell normal. Contaminated foods are often of animal origin, such as beef, poultry, milk, or eggs,  
15 but all foods, including vegetables, may become contaminated. Many raw foods of animal origin are  
16 frequently contaminated, but fortunately thorough cooking kills Salmonella. A food handler who  
17 neglects to wash his or her hands with soap and warm water after using the bathroom may also  
18 contaminate food.

19 9. Once in the lumen of the small intestine, the bacteria penetrate the epithelium,  
20 multiply, and enter the blood within 24 to 72 hours. As few as 15-20 cells of Salmonella bacteria  
21 can cause salmonellosis or a more serious typhoid-like fever. Variables such as the health and age of  
22 the host and virulence differences among the serotypes affect the nature of the diagnosis. Infants,  
23 elderly, hospitalized, and the immune suppressed are the populations that are the most susceptible to  
24 disease and suffer the most severe symptoms.

25 10. The acute symptoms of Salmonella gastroenteritis include the sudden onset of  
26 nausea, abdominal cramping, and bloody diarrhea with mucous. There is no real cure for Salmonella  
27 infection, except treatment of the symptoms.

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1 defendant PCA. The contamination was discovered as a result of product testing initiated after an  
2 MDH epidemiological investigation implicated King Nut creamy peanut butter as a likely source of  
3 Salmonella infections in Minnesota residents. The Minnesota cases had the same genetic fingerprint  
4 as the cases in the national outbreak.

5           16.       On January 10, 2009, King Nut announced that Salmonella has been found in  
6 a five lb. tub of its peanut butter and that they were voluntarily recalling all of their peanut butter  
7 products manufactured by PCA.

8           17.       On January 13, 2009, PCA announced a voluntary recall of peanut butter  
9 produced in its processing facility located in Blakely, Georgia because it had the potential to be  
10 contaminated with Salmonella. The FDA subsequently notified PCA that product samples  
11 originating from its Blakely, Georgia, processing plant were tested and found positive for  
12 Salmonella by laboratories in the states of Minnesota, Georgia, and Connecticut.

13           18.       On January 14, 2009, Kellogg Company announced a product hold on  
14 Austin® and Keebler® branded Toasted Peanut Butter Sandwich Crackers, Peanut Butter and Jelly  
15 Sandwich Crackers, Cheese and Peanut Butter Sandwich Crackers, and Peanut Butter-Chocolate  
16 Sandwich Crackers because PCA is one of several peanut paste suppliers that the company used in  
17 its Austin® and Keebler® branded peanut butter sandwich crackers.

18           19.       On January 16, PCA expanded its voluntary recall to include all peanut butter  
19 produced on or after August 8, 2008, and all peanut paste produced on or after September 26, 2008,  
20 in its Blakely, Georgia, plant because of potential Salmonella contamination. That same day, the  
21 Connecticut Department of Health confirmed it found Salmonella in an unopened jar of King Nut  
22 brand peanut butter manufactured by PCA at its Blakely, Georgia, processing plant.

23           20.       Also on January 16, Kellogg Company announced a voluntary recall of certain  
24 Austin® and Keebler® branded Peanut Butter Sandwich Crackers and select snack-size packs of  
25 Famous Amos® Peanut Butter Cookies and Keebler® Soft Batch Homestyle Peanut Butter Cookies  
26 because the products have the potential to be contaminated with Salmonella.

27           21.       On January 17, 2009, the FDA made an announcement to the public to avoid  
28 eating ALL peanut butter-containing products.

1           22.       On January 19, 2009, Kellogg announced that FDA tests revealed that some of  
2 its cracker products were contaminated with Salmonella.

3           23.       As of January 27, 2009, the Centers for Disease Control (CDC) counts 501  
4 persons from 43 states infected with the same genetic outbreak strain of Salmonella Typhimurium,  
5 and at least eight deaths.

6           24.       During investigation of the outbreak health officials learned of a number of  
7 serious deficiencies at the PCA plant with regard to food safety and quality. On 12 different  
8 occasions, peanut products were tested by PCA at the plant and found to be positive for Salmonella.  
9 These tests included at least one positive result in peanut paste for Salmonella typhimurium. PCA  
10 did not notify health officials. Rather, PCA re-tested the paste, obtained a negative result and  
11 shipped the product into interstate commerce. In each of the other 11 instances in which product  
12 tested positive for Salmonella, PCA re-tested the product, obtained a negative result, and shipped the  
13 product into interstate commerce.

14           25.       Health officials found numerous other deficiencies as well. These included:

- 15           • A failure to clean the peanut paste line after the Salmonella typhimurium was  
16 identified in the paste.
- 17           • A failure to establish the effectiveness of the firm's roasting process as an  
18 effective kill-step for pathogenic bacteria.
- 19           • A failure to store finished food under conditions that would protect against  
20 microbial contamination. This included pallets of finished product stored within 3  
21 feet of an area that swabbed positive for Salmonella Mbandaka.
- 22           • Failure to store finished food under conditions that would protect against  
23 microbial contamination.
- 24           • The plant was not constructed in such a manner as to allow ceilings to be kept  
25 in good repair.
- 26           • The design of equipment and utensils fails to preclude the adulteration of food  
27 with contaminants.

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- 1 • Proper precautions to protect food and food-contact surfaces from
- 2 contamination with microorganisms could not be taken because of deficiencies in
- 3 plant construction and design.
- 4 • Devices and fixtures were not designed and constructed to protect against
- 5 recontamination of clean, sanitized hands.
- 6 • Failure to conduct cleaning and sanitizing operations for utensils and
- 7 equipment in a manner that protects against contamination of food.
- 8 • Effective measures were not being taken to protect against contamination of
- 9 food on the premises by pests.

10 Plaintiffs' Injuries

11 26. The plaintiff Bryson Trone's illness was caused by consumption of peanut  
12 butter product manufactured by defendant PCA.

13 27. On multiple occasions in December, 2008, the Trone family purchased  
14 "Austin" brand peanut butter crackers contained PCA peanut products at the Wal-Mart located in  
15 Crescent City, California.

16 28. Bryson Trone consumed the peanut butter crackers on multiple occasions up  
17 to and including December 25, 2008.

18 29. On or about December 26, Bryson Trone began to suffer from symptoms that  
19 included fever, and profuse and painful bouts of diarrhea that turned bloody.

20 30. Bryson Trone's symptoms worsened, and he was subsequently hospitalized  
21 from January 1, 2009 through January 5, 2009. While hospitalized, Bryson Trone tested positive for  
22 Salmonella Typhimurium, the serotype associated with the PCA contamination and recall.

23 31. As of the filing of this Complaint, Bryson Trone continues to recover from the  
24 effects of his Salmonella Typhimurium infection.

25 32 The plaintiffs have incurred and will continue to incur medical expenses, have  
26 suffered and will continue to suffer pain, loss of enjoyment of life, emotional distress, and medical  
27 problems in the future as a direct and proximate result of contaminated PCA peanut butter product.

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1 **IV. CAUSES OF ACTION**

2 **Strict Liability—Count I**

3 33. Plaintiffs refer to and incorporate herein by reference all preceding paragraphs  
4 of the Complaint.

5 34 The defendant PCA was at all times relevant hereto the manufacturer and  
6 seller of the adulterated food product that is the subject of the action.

7 35. The adulterated food product that defendant PCA manufactured, distributed,  
8 and/or sold was, at the time it left the defendant's control, defective and unreasonably dangerous for  
9 its ordinary and expected use because it contained Salmonella, a deadly pathogen.

10 36. The adulterated food product that the defendant PCA manufactured,  
11 distributed, and/or sold was delivered to the plaintiffs without any change in its defective condition.  
12 The adulterated food product that the defendant manufactured, distributed, and/or sold was used in  
13 the manner expected and intended, and was consumed by the plaintiff.

14 37. The defendant PCA owed a duty of care to the plaintiffs to design,  
15 manufacture, and/or sell food that was not adulterated, that was fit for human consumption, that was  
16 reasonably safe in construction, and that was free of pathogenic bacteria or other substances  
17 injurious to human health. The defendant PCA breached this duty.

18 38. The defendant PCA owed a duty of care to the plaintiffs to design, prepare,  
19 serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated  
20 by a reasonable consumer. The defendant PCA breached this duty.

21 39. The plaintiffs suffered injury and damages as a direct and proximate result of  
22 the defective and unreasonably dangerous condition of the adulterated food product that the  
23 defendant manufactured, distributed, and/or sold.

24 **Breach of Warranty—Count II**

25 40. Plaintiffs refer to and incorporate herein by reference all preceding paragraphs  
26 of the Complaint.

27 41. The defendant PCA is liable to the plaintiffs for breaching express and  
28 implied warranties it made regarding the adulterated product that the plaintiffs purchased. These



1 express and implied warranties included the implied warranties of merchantability and/or fitness for  
2 a particular use. Specifically, the defendant PCA expressly warranted, through its sale of food to the  
3 public and by the statements and conduct of its employees and agents, that the food it prepared and  
4 sold was fit for human consumption and not otherwise adulterated or injurious to health.

5 42. The plaintiffs allege that the Salmonella-contaminated food that defendant  
6 PCA sold to the plaintiffs would not pass without exception in the trade and was therefore in breach  
7 of the implied warranty of merchantability.

8 43. The plaintiffs allege that the Salmonella-contaminated food that the defendant  
9 PCA sold to the plaintiffs was not fit for the uses and purposes intended, i.e. human consumption,  
10 and that this product was therefore in breach of the implied warranty of fitness for its intended use.

11 44. As a direct and proximate cause of the defendant PCA's breach of warranties,  
12 as set forth above, the plaintiffs sustained injuries and damages in an amount to be determined at  
13 trial.

14 Negligence—Count III

15 45. Plaintiffs refer to and incorporate herein by reference all preceding paragraphs  
16 of the Complaint.

17  
18 46. The defendant PCA owed a duty to the plaintiffs to use reasonable care in its  
19 manufacture, distribution, and sale of its food product, which duty would have prevented or  
20 eliminated the risk that the defendant PCA's food products would become contaminated with  
21 Salmonella or any other dangerous pathogen. The defendant PCA breached this duty.

22 47. The defendant PCA had a duty to comply with all statutes, laws, regulations,  
23 or safety codes pertaining to the manufacture, distribution, storage, and sale of its food product, but  
24 failed to do so, and was therefore negligent. The plaintiffs are among the class of persons designed  
25 to be protected by these statutes, laws, regulations, safety codes or provision pertaining to the  
26 manufacture, distribution, storage, and sale of similar food products.

27 48. The defendant PCA had a duty to properly supervise, train, and monitor its  
28 respective employees, and to ensure its compliance with all applicable statutes, laws, regulations, or

1 safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products,  
2 but it failed to do so and was therefore negligent.

3 49. The defendant PCA had a duty to use ingredients, supplies, and other  
4 constituent materials that were reasonably safe, wholesome, free of defects, and that otherwise  
5 complied with applicable federal, state, and local laws, ordinances, and regulations, and that were  
6 clean, free from adulteration, and safe for human consumption, but it failed to do so and was  
7 therefore negligent.

8 50. As a direct and proximate result of the defendant PCA's acts of negligence,  
9 the plaintiffs sustained injuries and damages in an amount to be determined at trial.

10 Negligence Per Se—Count IV

11 51. Plaintiffs refer to and incorporate herein by reference all preceding paragraphs  
12 of the Complaint.

13 52. The defendant PCA had a duty to comply with all applicable state and federal  
14 regulations intended to ensure the purity and safety of their food product, including the requirements  
15 of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 et seq.), and the California  
16 adulterated food statutes.

17 53. The defendant PCA failed to comply with the provisions of the health and  
18 safety acts identified above, and, as a result, was negligent per se in its manufacture, distribution,  
19 and sale of food adulterated with Salmonella, a deadly pathogen.

20 54. As a direct and proximate result of conduct by the defendant PCA that was  
21 negligent per se, the plaintiffs sustained injury and damages in an amount to be determined at trial.

22 Punitive Damages – Count V

23 55. Plaintiffs refer to and incorporate herein by reference all preceding paragraphs  
24 of the Complaint.

25 56. The plaintiffs at trial will present clear and convincing evidence that PCA  
26 operated with a willful and conscious disregard for the rights and safety of others. PCA's malicious  
27 behavior included, but was not limited to, operating its plant in a manner likely to lead to

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1 contamination with human pathogens and knowingly shipping product contaminated with  
2 Salmonella into interstate commerce, as described in paragraphs 22 and 23, above.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the plaintiffs pray:

5 (a) That the defendant be served with a copy of this Complaint and answer as  
6 required by law;

7 (b) That the plaintiffs be granted a judgment against the defendant on Count I-IV  
8 above for monetary damages, general and special, as to all counts in an amount deemed appropriate  
9 by the Court to fully compensate the plaintiffs for the damages they have suffered and will continue  
10 to suffer;

11 (c) That the plaintiffs be granted a judgment against the defendant on Count V  
12 above for punitive monetary damages in an amount deemed appropriate by the Court to fully  
13 compensate the plaintiffs for their damages, to punish the defendant, and to deter like conduct in  
14 others;

15 (d) That the plaintiffs be awarded reasonable attorneys fees and costs as a result of  
16 the undue litigiousness of the defendant resulting in the need to file this action;

17 (e) That the plaintiffs be granted a trial by jury;

18 (f) That the court award the plaintiffs the opportunity to amend or modify the  
19 provisions of this complaint as necessary or appropriate after additional or further discovery is  
20 completed in this matter, and after all appropriate parties have been served; and

21 (g) That the plaintiffs be awarded such other and further relief as would be  
22 equitable and just under the circumstances.

23 **JURY DEMAND**

24 The plaintiffs hereby demand a jury trial.

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1 Dated: January 29, 2009  
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**KEENEY WAITE & STEVENS**  
A Professional Corporation

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