IN THE UNITED STATES DISTRICT COURT 1 FOR THE WESTERN DISTRICT WASHINGTON AT TACOMA 2 3 GAVEN PICCIANO. NO. Plaintiff, 4 **COMPLAINT FOR** DECLARATORY RELIEF 5 VS. AND DAMAGES CLARK COUNTY, CLARK COUNTY JAIL, JURY DEMAND and NAPHCARE, INC. 7 Defendants. 8 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 as a result, he was held in Clark County Jail. This Complaint does not relate to Mr. Picciano's 13 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 requires strictly gluten-free food. Mr. Picciano was held by Defendants for 30 days without food 16 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 ("ADA"), 42 U.S.C. § 12131 et seq., Section 504 of the Rehabilitation Act ("Section 504"), 29 22 U.S.C. § 794, and the Washington Law Against Discrimination ("WLAD)", RCW § 49.60.010 et 23

Complaint for Declaratory and Injunctive Relief and Damages

WASHINGTON CIVIL & DISABILITY ADVOCATE 4115 Roosevelt Way NE, Suite B Seattle, WA 98105 (206) 428-3172

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

I. **PARTIES**

- 1. Plaintiff Gaven Picciano now resides in Michigan. However, at the time of the relevant events, Mr. Picciano was living in Vancouver, Washington.
- 2. Defendant Clark County is a political subdivision of the State of Washington and runs the Clark County Jail. Upon information and belief, Clark County is a recipient of federal financial assistance including but not limited to approximately \$26,857,500 from the United States Department of the Treasury.
- 3. Defendant Clark County Jail is an intake facility that houses pre-trial and locally sentenced individuals arrested in Clark County. Upon information and belief, Clark County Jail is a recipient of federal financial assistance because, *inter alia*, a portion of the \$26,857,500 of federal funds allocated to Clark County are being or have been directed to Clark County Jail.
- 4. Defendant NaphCare, Inc. is a company headquartered in Birmingham, Alabama, that provides medical care in correctional facilities throughout the United States, including at Clark County Jail. Defendant NaphCare, Inc. prides itself on providing "cost-effective" services to the prison industry. NaphCare, Inc. has been repeatedly sued for discrimination and injuries. One of the most appalling of these lawsuits was in the Eastern District of Virginia. Chief Judge Rebecca Beach Smith described the death of a young man who was denied medical care for his disability by NaphCare, Inc. and died among his own feces and urine. Chief Judge Beach Smith

1

6

7

8

9

11

12

13

15

16

17

19

20

21

Case 3:20-cv-06106-RAJ Document 1 Filed 11/11/20 Page 3 of 26

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
13	
14	6. This court has jurisdiction pursuant to 28 U.S.C. § 1331, which gives district
	6. This court has jurisdiction pursuant to 28 U.S.C. § 1331, which gives district courts original jurisdiction over civil actions arising in the Constitution, laws, or treaties of the
14	
14 15	courts original jurisdiction over civil actions arising in the Constitution, laws, or treaties of the
141516	courts original jurisdiction over civil actions arising in the Constitution, laws, or treaties of the United States.
14151617	courts original jurisdiction over civil actions arising in the Constitution, laws, or treaties of the United States. 7. This court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(4), which gives distriction pursuant to 28 U.S.C. § 1343(a)(4), which gives distriction pursuant to 28 U.S.C.
14 15 16 17 18	courts original jurisdiction over civil actions arising in the Constitution, laws, or treaties of the United States. 7. This court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(4), which gives distric courts jurisdiction over actions to secure civil rights under Acts of Congress.
14 15 16 17 18	courts original jurisdiction over civil actions arising in the Constitution, laws, or treaties of the United States. 7. This court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(4), which gives district courts jurisdiction over actions to secure civil rights under Acts of Congress. 8. This court has jurisdiction pursuant to 28 U.S.C. § 1367, which gives district
14 15 16 17 18 19 20	courts original jurisdiction over civil actions arising in the Constitution, laws, or treaties of the United States. 7. This court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(4), which gives district courts jurisdiction over actions to secure civil rights under Acts of Congress. 8. This court has jurisdiction pursuant to 28 U.S.C. § 1367, which gives district courts supplemental jurisdiction over state law claims.

III. FACTUAL ALLEGATIONS 10. Gaven Picciano is a 26-year-old Native American male who lives on a reservation in Michigan. 11. Mr. Picciano has Celiac Disease. As a result, he must eat a strictly gluten-free

- 11. Mr. Picciano has Celiac Disease. As a result, he must eat a strictly gluten-free diet, or he becomes extremely ill with both short- and long-term health consequences.
- 12. Celiac Disease is an auto-immune disease that affects approximately 1% of the population. Celiac Disease has no cure. The only treatment is strict avoidance of gluten.
 - 13. Gluten is the name of a protein contained in wheat, barley, rye, and triticale.
- 14. When a person with Celiac Disease ingests food containing even trace amounts of gluten, they can experience not only short-term symptoms such as vomiting, nausea, diarrhea, neuropathic pain, and stomach pain, but also long-lasting bodily damage, significantly increasing their risk of developing cancer and other life-threatening diseases.
- 15. When Mr. Picciano ingests gluten, he experiences vomiting, diarrhea, stomach pain, and other substantially limiting symptoms.
- 16. On January 30, 2020, Mr. Picciano was arrested and transported to Clark County Jail. This is the only time Mr. Picciano has ever been arrested.
- 17. At the time he was booked into Clark County Jail on January 30, 2020 and repeatedly thereafter, Mr. Picciano notified Defendants that he has Celiac Disease and requires a strictly gluten free diet.
- 18. Initially, Mr. Picciano was told he was not going to be held long enough to request or receive a gluten-free diet.

22

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

1	19.	Within 24 hours, it became clear this was not true and Mr. Picciano renewed his
2	request for a g	gluten-free diet. He promptly signed a records release for Defendants to obtain his
3	medical recor	ds 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 requ	ests for help. Again and again, he requested food that was safe for him to eat and
10	again and aga	in, his requests were ignored, discarded, or brushed off.
11	23.	Mr. Picciano filed grievances with "medical" seeking a medical diet of gluten-fre
12	food. "Medica	al" directed him to "food services". He filed grievances with "food services" and
13	they in turn re	edirected 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 hi	is counsel all begged Defendants through a series of filed grievances, written
18	corresponden	ce, court proceedings, and even a plea to the Washington Attorney General to
19	provide him v	vith safe food options.
20	26.	For example, on or about February 2, 2020, Mr. Picciano filed a grievance
21	seeking a glut	ren-free diet.
22	27.	No later than February 3, 2020, Mr. Picciano had signed a release to allow
23	Defendants ac	ecess to his medical records.

1	28.	On or about February 4, 2020, Mr. Picciano filed a medical kite/grievance seeking
2	a gluten-free o	liet.
3	29.	On or about February 5, 2020, Defendants responded to Mr. Picciano's February
4	2, 2020 grieva	ance by instructing him to contact "Medical". No action was taken to help Mr.
5	Picciano in re	sponse 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 fo	od and needed a gluten-free diet due to Celiac Disease.
8	31.	By February 6, 2020, Defendants had received Mr. Picciano's medical records bu
9	still they did r	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 f	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 grieva	ance saying "diet ordered."
19	36.	Having not had meals for approximately 10 days, Mr. Picciano went "code blue."
20	Defendants ac	lministered NARCAN even though Mr. Picciano had not taken drugs or overdosed
21	He had collap	sed 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 te
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 tha
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.

foods that cause discomfort until allergies are verified, diets cannot be changed. Medical does

not have any control of what type of food you receive." By this point, Mr. Picciano had been

virtually without food for 19 days.

21

1	52. Mr. Picciano's family contacted the County and the State Attorney General in a
2	attempt to seek intervention for Mr. Picciano's health. No one working at the Jail or County or
3	for NaphCare, Inc. acted, despite the fact that Defendants were on explicit notice that Mr.
4	Picciano was ill and starving under their derelict care and control.
5	53. Even worse, Defendants took punitive action against Mr. Picciano in response to
6	his pleas for food, including making retaliatory and intimidating comments to him.
7	54. Despite Mr. Picciano's eventual release, his injuries continued to manifest. Mr.
8	Picciano lost more than ten percent of his body weight while detained. In the wake of his releas
9	Mr. Picciano suffered, and continues to suffer, esophagitis and gastritis as result of Defendants
10	actions as well as abdominal pain, vomiting, and liver involvement along with an increase to hi
11	risk of cancers and other serious diseases as the result of the Defendants' actions.
12	55. Jail is not a positive experience for anyone, but Defendants inflicted deliberate
13	pain, suffering and humiliation on Mr. Picciano and acted with malice and deliberate
14	indifference to Mr. Picciano's obvious suffering and pleas for help.
15	56. Mr. Picciano suffered damages and continues to suffer damages as the result of
16	Defendants' conduct.
17	57. Mr. Picciano timely filed a Tort Claims Notice with Clark County and Clark
18	County Jail on or about September 4, 2020. They did not respond other than to acknowledge
19	receipt.
20	FIRST CAUSE OF ACTION
21	Title II of the Americans with Disabilities Act of 1990 42 U.S.C. § 12131 et seq.
22	(Against Defendants Clark County and Clark County Jail)
23	58. Mr. Picciano incorporates by reference the allegations in the paragraphs above.
	Complaint for Declaratory and Injunctive Relief and Damages WASHINGTON CIVIL & DISABILITY ADVOCATE 4115 Roosevelt Way NE, Suite B Seattle, WA 98105

(206) 428-3172

1	67.	As public entities, Defendants are required under the ADA to make modifications
2	to their food	service policies in order to accommodate Mr. Picciano's disability.
3	68.	By refusing to do so, Defendants discriminated against Mr. Picciano on the basis
4	of his disabil	ity by denying him the food services that the jail provides to similarily situated
5	individuals w	rithout his disability. 28 C.F.R. § 35.130(b)(1)(ii).
6	69.	Defendants intentionally and deliberately discriminated against Mr. Picciano, on
7	the basis of h	is disability, in violation of Title II of the ADA and its implementing regulations.
8	70.	Mr. Picciano experienced harm as the result of discrimination including but not
9	limited to hu	miliation and fear.
10	71.	Mr. Picciano is therefore entitled to monetary damages and an award of attorneys
11	fees, costs, ar	nd disbursements purusant to the ADA, 42 U.S.C. § 12133.
12		SECOND CAUSE OF ACTION
13		Section 504 of the Rehabilitation Act of 1973 29 U.S.C. § 794
14		(Against All Defendants)
15	72.	Mr. Picciano incorporates by reference the allegations in the paragraphs above.
16	73.	The Rehabilitation Act of 1973 was enacted in part to further a policy of
17	promoting "r	espect for the privacy, rights, and equal access (including the use of accessible
18 19	formats), of t	he individuals [with disabilities]." 29 U.S.C. § 701(c)(2).
20	74.	Mr. Picciano is limited in the major activity of eating and the major bodily
21	functions of t	he immune, digestive, bowel, and neurological systems due to his Celiac Disease.
22	75.	At all times relevant to this action, Defendants were recipients of federal financia
	assistance.	
23		
	Complaint for and Damages	Declaratory and Injunctive Relief WASHINGTON CIVIL & DISABILITY ADVOCATE 4115 Roosevelt Way NE, Suite B Seattle WA 98105

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 incaracerated 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.
23	

1	84.	Defendants intentionally discriminated against Mr. Picciano, on the basis of his
2	disability, in	violation of the Rehabilitation Act and its implementing regulations.
3	85.	Mr. Picciano suffered harm and humiliation as the result of Defendants' actions
4	and inactions	3.
5	86.	Mr. Picciano is therefore entitled to damages and attorneys' fees and costs for the
6	injuries and	oss sustained as a result of the Defendants' discriminatory conduct and deliberate
7	indifference	as hereinbefore alleged.
8		THIRD CAUSE OF ACTION
9		42 U.S.C. § 1983
10		(Against All Defendants)
11	87.	Mr. Picciano incorporates by reference the allegations in the paragraphs above.
12	The Fourteen	th Amendment to the United States Constitution guarantees equal protection under
13	the law.	
14	88.	Incarcerated individuals have a constitutional right to receive and have access to
15	adequate basi	c essentials including medically appropriate food and health care.
16	89.	Congress enacted 42 U.S.C. § 1983 to provide a remedy for constitutional
17	violations.	
18	90.	The failure of Defendants to provide adequate gluten-free meals caused the
19	deprivation of	f Mr. Picciano's rights, and was the ultimate cause of Mr. Picciano's injuries.
20	91.	Defendants' acts and omissions resulted in the wanton and unnecessary infliction
21	of pain on Mr	r. Picciano.
22	92.	Defendants were acting under the color of state law when they violated Mr.
23	Picciano's co	nstitutional rights.
	Complaint for	Declaratory and Injunctive Relief WASHINGTON CIVIL & DISABILITY ADVOCATE

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
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 R.C.W. §§ 49.60.010 et seq.
23	(Against All Defendants)
	Complaint for Declaratory and Injunctive Relief WASHINGTON CIVIL & DISABILITY ADVOCATE and Damages 4115 Roosevelt Way NE, Suite B

Seattle, WA 98105 (206) 428-3172

1	99. Mr. Picciano incorporates by reference the allegations in the paragraphs above	e.
2	100. The Washington Law Against Discrimination ("WLAD") declares: "The righ	t 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 no	t 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 WLA	۸D.
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"	" an
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 t	urn
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 individu	als
19	who are incarcerated without disabilities and therefore discriminated against Mr. Picciano by	7
20	failing to provide these effective services or treatment to Mr. Picciano because of his disabili	ity.
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. Piccia	no'
23		

clear and repeated requests and explanations of the need for meals that will not exacerbate his
Celiac disease.
107. As a direct and proximate cause of Defendants' discriminatory conduct as alleged
in this Complaint, Mr. Picciano suffered extreme hunger, malnourishment, gastrointestinal
distress, weight loss, loss of consciousness and humiliation.
108. As a direct and proximate cause of Defendants' discriminatory conduct as alleged
in the Complaint, Mr. Picciano suffered real out-of-pocket monetary damages and mental and
emotional distress.
FIFTH CAUSE OF ACTION
Negligence
(Against All Defendants)
109. Mr. Picciano incorporates by reference the allegations in the paragraphs above.
110. On or about January 30, 2020, Mr. Picciano was incarcerated at Clark County
Jail, which was operated by Defendants.
111. Between January 30, 2020 and February 20, 2020, Defendants negligently failed
to provide Mr. Picciano with a safe, gluten free diet, so as to cause extreme hunger, significant
weight loss, fatigue, dizziness, gastrointestinal distress, vomiting, weakness, pain, and loss of
consciousness, and to directly and legally cause the injuries and damages described below.
112. As a direct and legal result of the negligence of Defendants, Mr. Picciano was
injured in his health, strength, and activity, all of which injuries have caused, and continue to
cause, Mr. Piciano great mental, physical, and emotional pain and suffering. As a result of these
injuries, Mr. Picciano has suffered general damages.

1	113. As a further direct and legal result of the negligence of Defendants, Mr. Picciano
2	has incurred and will continue to incur medical and related expenses.
3	SIXTH CAUSE OF ACTION
4	Outrage
5	(Against All Defendants)
6	114. Mr. Picciano incorporates by reference the allegations in the paragraphs above.
7	115. Between January 30 and February 20, 2020, at the Clark County Jail, Defendants
8	refused to provide Mr. Picciano with a safe, gluten-free diet even though he has Celiac Disease.
9	116. Defendants were aware that Mr. Picciano had Celiac Disease, and, were
10	repeatedly reminded of this fact. As a result of his Celiac Disease, Mr. Picciano is particularly
11	suspectible to physical and emotional distress.
12	117. Even after Mr. Picciano became so ill that he lost consciousness and had to be
13	transported to the hospital, Defendants did not provide him with an edible diet.
14	118. Throughout his detention, Defendants refused to provide Mr. Picciano with an
15	edible gluten-free diet in accordance with this Celiac Disease requirements. Mr. Picciano
16	experienced extreme hunger and malnourishment. Defendants eventually approved an edible
17	diet. Even so, Defendants continued to serve Mr. Picciano with gluten-contaminated food,
18	further contributing to his deteroriation in health.
19	119. In doing so, Defendants intended to cause, or recklessly caused, emotional
20	distress. Defendants' conduct was intentional and malicious and done for the purpose of causing
21	Mr. Picciano to suffer humiliation, mental anguish, and emotional and physical distress.
22	Defendants' conduct was done with knowledge that Mr. Picciano's emotional and physical
23	

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 examinate, 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.
	Complaint for Declaratory and Injunctive Relief WASHINGTON CIVIL & DISABILITY ADVOCATE

1	126. In doing the acts as alleged above, Defendants acted with the intent to make
2	contact with Mr. Picciano's person and to injure his health, strength, and activity, all of which
3	injuries have caused, and continue to cause, Mr. Piciano great mental, physical, and emotional
4	pain and suffering.
5	127. At no time did Mr. Picciano consent to any of the acts of the Defendants alleged
6	above. In fact, Mr. Picciano contested the meals he was provided and repetaedly requested a
7	gluten-free diet.
8	128. Mr. Picciano sustained damages as a result of Defendants' conduct.
9	EIGHTH CAUSE OF ACTION
10	Negligent Misrepresentation
11	(Against All Defendants)
12	129. Mr. Picciano incorporates by reference the allegations in the paragraphs above.
13	130. Only days before his release, Mr. Picciano was finally granted his requested and
14	medically required gluten-free diet. Mr. Picciano consumed the food given to him as it was
15	labeled "gluten-free." In doing so, Mr. Picciano justifiably relied on the representations of the
16	Defendants that the food was in fact gluten-free and safe for him to eat. In reality, the special-
17	diet food given to Mr. Picciano was the same gluten-contaminated food given to all other
18	inmates.
19	131. After relying on the representations made by Defendants, Mr. Picciano ate the
20	contaminated food and became even sicker. Mr. Picciano experienced vomiting and abdominal
21	pain.
22	
23	

1	132. By giving Mr. Picciano "gluten-free" food that was still gluten-contaminated,
2	Defendants negligently misrepresented a material fact to Mr. Picciano, which he relied on to his
3	detriment.
4	133. Defendants knew or should have known that Mr. Picciano would rely on their
5	representations that the food was gluten-free because Mr. Picciano asked for food that was
6	gluten-free and the food he received was labeled as such.
7	134. Defendants were negligent in communicating to Mr. Picciano the false
8	information that the meal was gluten-free, when it was in fact not gluten-free.
9	135. Defendants communicated false information to Mr. Picciano as to the contents of
10	his food. Defendants knew or should have known that the food was contaminated because this
11	was the exact same food supplied to all other inmates that Mr. Picciano previously became sick
12	from. Defendant was negligent in failing to communicate that the food contained gluten. Mr.
13	Picciano's reliance on Defendants' representations was justified, as he had finally been approved
14	for a special diet and he had gone his entire stay in the jail up to that point with barely anything
15	to eat. Finally, Defendant's negligent misrepresentation of the content of the food caused Mr.
16	Picciano to become severely ill.
17	136. Mr. Picciano is entitled to economic damages and compensatory damages for his
18	emotional distress and pain and suffering caused by Defendants' negligent misrepresentations.
19	NINTH CAUSE OF ACTION
20	Fraud and Intentional Misrepresentation
21	(Against All Defendants)
22	137. Mr. Picciano incorporates by reference the allegations in the paragraphs above.
23	
	Complaint for Declaratory and Injunctive Relief WASHINGTON CIVIL & DISABILITY ADVOCATE

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 an
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 ea
	Complaint for Declaratory and Injunctive Relief WASHINGTON CIVIL & DISABILITY ADVOCATE and Damages 4115 Roosevelt Way NE, Suite B

1	147.	The risk of harm to Mr. Picciano	was clearly foreseeable to Defendants and
2	adamantaly ex	xpressed by Mr. Picciano and his	family members.
3	148.	Defendants breached their duty	o Mr. Picciano by refusing to reasonably
4	accommodate	e his disability, knowing that the b	reach would cause him suffering because
5	Defendant wa	as witness to the suffering caused	by Mr. Picciano's improper diet yet continued
6	tofail to accor	mmodate his diet.	
7	149.	Mr. Picciano experienced especi	ally horrendous events inflicted upon him during
8	the court of h	is time in Clark County Jail where	he was constantly sick and unable to eat. His
9	sickness cause	ed great shock to his body and mi	nd.
10	150.	Mr. Picciano's fear and anxiety	are objective symptoms of his emotional distress
11	151.	As a result of Defendants' neglig	gence in failing to feed Mr. Picciano while he wa
12	in custody, an	nd relying solely upon their service	es for survival, Mr. Picciano suffered great
13	emotional dis	stress and physical injuries.	
14	152.	Due to Defendants' negligence,	Mr. Picciano is entitled to monetary
15	compensation	and general damages for his emo	tional distress caused by Defendants' actions.
16		ELEVENTH CA	USE OF ACTION
17			press Warranty
18			\$ 7.72.030
19	1.50		d Defendants)
20	153.	Mr. Picciano incorporates by ref	erence 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 t	to the express warranty of the man	ufacturer if it is made part of the basis of the
د2			
	Complaint for and Damages	Declaratory and Injunctive Relief W	ASHINGTON CIVIL & DISABILITY ADVOCATE 4115 Roosevelt Way NE, Suite B

1	bargain and re	elates to a material fact or facts concerning the product and the express warranty
2	proved to be u	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 c	ause 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 con	ncerning 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-contaminents. Therefore, Defendant
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 RCW § 62A.2-314
17		
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."
	163.	Defendants have breached the implied warranty of merchantability by not
23	adequately pa	ckaging or labeling their special diet meals and by not conforming their packaged
	Complaint for land Damages	Declaratory and Injunctive Relief WASHINGTON CIVIL & DISABILITY ADVOCATE 4115 Roosevelt Way NE, Suite B Seattle, WA 98105
	Page 23 of 26	(206) 428-3172

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 R.C.W. § 62A.2-315
9	(Against All Defendants)
10	166. Mr. Picciano incorporates by reference the allegations in the paragraphs above.
11	
12	
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
	could safely consume.
18	169. Defendants knew that Mr. Picciano was relying on them for their experience,
19	skill, and judgment. Defendants were also aware that Mr. Picciano requested the gluten-free
20	meals for the particular purpose of obtaining food that a person with Celiac Disease could safely
21	consume. The meals were defective and unfit for the particular purpose of providing of Mr.
22	Picciano with food that a person with Celiac disease could safely consume.
23	

1	170. The injuries sustained by Mr. Picciano were the reasonably foreseeable
2	consequences of a breach of the implied warranty of fitness for a particular purpose. Defendant
3	were aware that Mr. Picciano relied on them to supply him with food that a person with Celiac
4	disease could safely consume. Mr. Picciano made numerous complaints to Defendants and had
5	been approved by Defendants to recieve gluten-free food.
6	171. As such, Defendants breached the implied warranty of fitness for a particular
7	purpose under R.C.W. 62A.2-315, and Mr. Picciano has suffered damages as a result.
8	PRAYER FOR RELIEF
9	WHEREFORE, Mr. Picciano respectfully requests that this Court:
10	1. Assume jurisdiction over this action;
11	2. Award Mr. Picciano compensatory damages, including economic and
12	noneconomic damages, damages for pain, suffering, humiliation, terror, and in an amount to be
13	proven at trial;
14	3. Award Mr. Picciano his reasonable attorneys' fees and costs pursuant to the
15	Americans with Disabilities Act, the Rehabilitation Act of 1973, section 1983, and the
16	Washington Law Against Discrimination and to the extent available under the law;
17	4. Award punitive damages against the non-municipal defendants to the extent
18	authorized by law in an amount to be proven at trial;
19	5. Declare the defendants jointly and severally liable;
20	6. Award any and all applicable interest on the judgment; and
21	7. Award such other and further relief as the Court deems just and equitable.
22	JURY DEMAND
23	Trial by jury demanded.
	Complaint for Declaratory and Injunctive Policie WASHINGTON CIVIL & DISABILITY ADVOCATE

Case 3:20-cv-06106-RAJ Document 1 Filed 11/11/20 Page 26 of 26

1		
2	DATED THIS 11th day of November, 2020	
3	By:	
4	WASHINGTON CIVIL & DISABILITY ADVOCATE Attorneys for Plaintiff	
5	/s/ Conrad Reynoldson /s/ Christina Dunbar	
6	Conrad Reynoldson, WSBA #48187 Christina Dunbar, WSBA #50121 4115 Roosevelt Way NE, Suite B 4115 Roosevelt Way NE, Suite B	
7	Seattle, WA 98105 Seattle, WA 98105 (206) 876-8515 (206) 428-3172	
8	conrad@wacda.com christina@wacda.com	
9	Mary C. Vargas, Motion to Participate <i>Pro Hac Vice</i> Concurrently Filed	
10		
11	WASHINGTON, DC 20002 Mary.Vargas@steinvargas.com	
12	Telephone: 240-793-3185 Facsimile: 888-778-4620	
13	Attorneys for Plaintiff Gaven Picciano	
14		
15		
16		
17		
18		
19		
20		
21		
2223		
۷3		