

CAUSE NO. _____

JUSTIN AND REGINA KESSLER,
Individually and as next friend of J.K.
a minor,

Plaintiffs,

vs.

IGUANA JOES RESTAURANT,
and JOHN DOES 1-10,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION,
REQUEST FOR DISCLOSURE AND JURY DEMAND**

TO THE HONORABLE COURT:

Plaintiffs, Justin and Regina Kessler, individually and as next friend of JK, a minor child (hereinafter "Plaintiffs") file this Original Petition, Request for Disclosure and Jury Demand complaining of the defendants, Iguana Joes Restaurant (hereinafter "Iguana Joes") and John Does 1-10 (hereinafter "John Does"), and for cause-of-action respectfully show this Court as follows:

DISCOVERY CONTROL PLAN

1. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, the Plaintiff intends for discovery to be conducted under Level 3.

PARTIES

2. Plaintiffs are citizens and residents of Harris County, Texas and were citizens and residents of Harris County, Texas at all times relevant to this suit.

3. Iguana Joes is a corporation organized and existing under the laws of the State of Texas. Iguana Joe's conducts substantial business in the State of Texas and

derives substantial economic profits in the State of Texas. At all times relevant hereto, Iguana Joes was a manufacturer, distributor and seller of contaminated food products in Texas. Iguana Joes' principal place of business is located in Harris County, Texas. Iguana Joes may be served with process by serving its Registered Agent, Victor P. Ybarra at 18319 W. Lake Houston Pkwy, Humble, Texas 77346.

4. Upon information and belief, John Does are entities that participated in the manufacture, distribution, and/or sale of the contaminated food product that was the proximate cause of the Plaintiffs' injuries, and whose identities are not known to the Plaintiffs at this time. Plaintiffs are informed and believe, and thereupon allege that each of the Doe Defendants are responsible under law in some manner negligently, strictly or otherwise for the events and happenings referred to in this Petition and thereby proximately caused injuries and damages to Plaintiffs as alleged herein. The Plaintiffs will seek leave of the Court to amend this Complaint at such time that the identities of these parties become known.

ASSUMED NAMES

5. Pursuant to Rule 28 of the Texas Rules of Civil Procedure, plaintiff hereby brings suit against all partnerships, unincorporated associations, individuals, entities, and private corporations doing business under the assumed name of or including the words: Iguana Joes.

JURISDICTION AND VENUE

6. The amount in controversy herein, exclusive of costs and interest, exceeds the minimal jurisdictional limits of this Court.

7. Venue is proper in Harris County, Texas, pursuant to Section 15.002(a)(1)

of the Texas Civil Practice and Remedies Code because the defendant conducts business at 18319 West Lake Houston Parkway in Humble, Harris County, Texas and because the acts and omissions of the defendant giving rise to the plaintiffs' causes-of-action occurred in Harris County, Texas.

8. The Court has general and specific personal jurisdiction over Defendants because they have sufficient contacts, generally and with regard to this specific action, such that the exercise of jurisdiction over them is proper and does not offend traditional notions of fair play and substantial justice. Defendants conduct and solicit business in Texas, derive substantial revenues and profits from their business in Texas, purposely direct their activities towards Texas and its residents, and purposely avail themselves of the privilege of conducting business in Texas.

9. The Court has subject matter jurisdiction over this civil action because Plaintiffs seek damages in excess of the minimum jurisdictional limit of this Court and the \$75,000 limit of the federal district courts.

FACTUAL BACKGROUND

The Outbreak

10. On or about June 25, 2013, the Harris County Public Health & Environmental Services investigated a report of illness at Iguana Joes. Iguana Joes was temporarily shut down due to "continued critical violations that put the public's health at risk." The Harris County Public Health & Environmental Services linked a dozen people sick with *Salmonella* with seven being children. The Harris County Public Health & Environmental Services found 27 violations in 1 inspection. Inspectors went back the next day and found another 29 violations. Two days later, they returned and

recorded 24 violations and discarded 45 pounds of food. Harris County Public Health & Environmental Services returned the next day and identified another 27 violations. Iguana Joes was then closed.

Jalen Kessler's Salmonella Infection

11. On or about June 18, 2013, Plaintiffs consumed a variety of food at Iguana Joes. On or about June 21, 2013, Jalen became fussy and suffered a loss of appetite. Later that day, and for the next several days, he became quite ill with a fever and diarrhea. Justin and Regina cared for their son, keeping him as comfortable as possible and hydrated. After a week of illness, his pediatrician, who ordered a stool culture, which eventually returned positive for Salmonella, saw Jalen. Jalen continued to be ill over the next week as his parents continued to care for him.

CAUSES OF ACTION

I.

STRICT LIABILITY

12. The plaintiffs reincorporate allegations contained in paragraphs 1 – 11.

13. The food product at issue in this suit was designed, manufactured, constructed, marketed and/or distributed by and through Iguana Joes.

14. The food product in question remained unchanged from the time it was originally manufactured, distributed and sold by Iguana Joes until it reached the plaintiffs. The product in question was defective and in an unreasonably dangerous condition when it left the hands of Iguana Joes and remained defective and unreasonably dangerous at all times thereafter until it ultimately caused the plaintiffs' illness and damages.

15. At the time the food product left control of the Iguana Joes, it was defective and unreasonably dangerous in that it was not adequately manufactured or marketed to minimize the risk of injury or death. Specifically, the food was contaminated with *Salmonella*.

16. The above unreasonably dangerous defects, among others, in the product in question were the proximate and producing cause of the plaintiffs' damages.

II.

NEGLIGENCE AND NEGLIGENCE PER SE

17. The plaintiffs reincorporate allegations contained in paragraphs 1 – 16.

18. Iguana Joes owed a duty to the plaintiffs to take reasonable care to prevent the manufacture, distribution, and sale of food products contaminated with *Salmonella* or other foodborne pathogens.

19. Iguana Joes owed a duty to the plaintiffs to maintain their premises, equipment, and facilities, and supervise their employees, in a reasonable manner to prevent the contamination of the food products that they manufactured, distributed and/or sold by *Salmonella*, or other pathogens.

20. Iguana Joes owed a duty to the plaintiffs to comply with all applicable laws and regulations relating to the manufacture, distribution, and sale of food, requiring that such food be free of pathogens, and unadulterated.

21. The plaintiffs were among the class of persons, namely consumers, intended to be protected by laws related to the manufacture, distribution, and sale of food that was free from pathogens and unadulterated.

22. Iguana Joes breached these duties. The breach of these duties was the

proximate cause of each of the plaintiffs' injuries.

III.

BREACH OF EXPRESS AND IMPLIED WARRANTIES

23. The plaintiff reincorporates allegations contained in paragraphs 1 – 22.

24. Iguana Joes, through their manufacture, distribution, and sale of food to consumers, expressly and impliedly warranted that its food products were fit for their intended purpose, *i.e.* consumption; and would pass through trade without exception.

25. Iguana Joes, in manufacturing, distributing, and selling food products contaminated with *Salmonella*, breached these express and implied warranties.

26. Iguana Joes' breach of these express and implied warranties was the proximate cause of the plaintiffs' injuries.

DAMAGES

27. As a proximate result of Defendants' conduct, Plaintiffs suffered injuries and damages, including the following:

- (a) past and future physical pain and suffering;
- (b) past and future mental anguish;
- (c) past and future medical expenses;
- (d) past and future lost wages and loss of earning capacity; and
- (e) past and future physical impairment.

INTEREST

28. The plaintiffs claim pre-judgment and post-judgment interest at the maximum amount allowed by law.

DEMAND FOR A JURY TRIAL

29. The plaintiff hereby demands that this case be set for a trial by jury. The cost for a jury trial is enclosed with the filing of this, the plaintiffs' Original Petition and Jury Demand.

REQUEST FOR DISCLOSURE

30. Pursuant to Texas Rule of Civil Procedure 194, Defendants are to disclose, within the time allotted in the rules, the information and material described in Rule 194.2 (a) – (l).

PRAYER

WHEREFORE, PREMISES CONSIDERED, the plaintiffs respectfully pray that upon final trial of this matter, they recover a judgment against the defendants that include:

- (a) a judgment from the defendants, in an amount sufficient to fully compensate plaintiffs for their damages and in an amount that exceeds the minimal jurisdictional limits of this Court;
- (b) pre-judgment interest as provided by law;
- (c) post-judgment interest as provided by law;
- (d) cost of suit; and
- (e) all such other and further relief, both general and special, at law or in equity, to which the plaintiff may show himself justly entitled.

Respectfully submitted,

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