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Attorneys for the Plaintiffs

KENNETH and MELISSA VELA as
Individuals and a Marital Community, and also
as Parents on behalf of their minor children,
ANDREW VELA, ELIZABETH VELA, and
JACOB KIELAN

SUMMONS

CASE NO.
Case Code #30100

Plaintiffs,

v.

LOS CORRALES ENTERPRISE. LLC., doing
business as SUPERMERCADO LOS
CORRALES, a Wisconsin Company,
3933 52nd Street,
Kenosha, WI 53144; and

JOHN DOE INSURANCE COMPANY, an
insurance company,
Address Unknown,

Defendants.

THE STATE OF WISCONSIN

To the company named as a defendant above:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or

disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, which address is Clerk of Courts, Kenosha County Courthouse, 912 56th Street, Kenosha, Wisconsin 53140, and to Denis W. Stearns, Marler Clark, LLP, PS, attorney for the plaintiffs, whose address is 1301 2nd Avenue, Suite 2800, Seattle, Washington, 98101.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose the right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

DATED this 27th day of May, 2015.

ON BEHALF OF THE PLAINTIFFS:

/s/ Denis W. Stearns
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CASE NO.
Case Code: 30100

COMPLAINT FOR DAMAGES

Plaintiffs, **JURY DEMANDED**

v.

LOS CORRALES ENTERPRISE. LLC., doing
business as SUPERMERCADO LOS
CORRALES, a Wisconsin Company,
3933 52nd Street,
Kenosha, WI 53144; and

JOHN DOE INSURANCE COMPANY, an
insurance company,
Address Unknown,

Defendants.

COME NOW the plaintiffs, as set forth in the caption above, by and through their attorneys of record, Denis W. Stearns, and the law firm of Marler Clark, L.L.P., P.S., to allege as follows:

I. THE PARTIES

1.1 At all times relevant to this action, the adult plaintiffs, Kenneth and Melissa Vela, are and have been married, and are and have been the parents of the minor plaintiffs, Andrew and Elizabeth Vela, and Jacob Kielan. The Vela family live in Kenosha, Wisconsin, making all of them

residents within the jurisdiction of this Court, and citizens of the State of Wisconsin.

1.2 At all times relevant to this complaint, the defendant Los Corrales Enterprise, LLC (“Los Corrales”) is and was a limited liability company organized and existing under the laws of the State of Wisconsin, with its headquarters and principle place of business located at 3933 52nd Street, Kenosha Wisconsin, 53144, where it does business as Supermercado Los Corrales, a specialty grocery store. Moreover, Los Corrales is authorized to do, and in fact does, business in the State of Wisconsin and the County of Kenosha.

1.3 The defendant John Doe Insurance Company is an insurance company, with an unknown principal place of business. John Doe Insurance Company is in the business of selling and underwriting liability insurance and had a policy of liability insurance in force with Los Corrales at all times relevant to the claim asserted in this complaint. Pursuant to the policy terms, John Doe Insurance Company must pay all sums the insured defendant may become legally obligated to pay for losses and damages caused to the plaintiffs. By virtue of Wis. Stats. Sec. 803.04(2), John Doe Insurance Company is a proper party to this action and is jointly and severally liable to the plaintiffs.

II. GENERAL ALLEGATIONS

The 2015 Los Corrales *Salmonella* Outbreak

2.1 According to a “News Flash” that Kenosha County Division of Health (“KCDH”) posted on May 21, 2015, an outbreak investigation was in progress with regard to “individuals with gastrointestinal illness and exposure to Supermercado Los Corrales. As of this time, more than 60 ill persons have been identified.” The KCDH further stated as follows:

- To-date *Salmonella* with a matching DNA fingerprint has been found in five case patients. Additional stool sample are currently being tested and the number of confirmed cases is expected to increase as those results become available.

- Based on the interviews that have been conducted, the source of the outbreak appears to be pork carnitas sold at Supermercado Los Corrales. Testing of food from Supermercado Los Corrales is currently in progress.
- The meat and food preparation area of Supermercado Los Corrales is temporarily closed while the investigation is ongoing[.]

2.2 The investigation into the outbreak began when KCDH received a report of a stool sample that had tested positive for *Salmonella*. The food implicated as the source of the outbreak is believed to have been purchased over Mother's Day weekend, May 9 and 10, 2015.

2.3 As reported in a news story posted on Fox6Now.com, "dozens in the area had the same complaints" about having become sick "after they had eaten food from the same grocery store during the same time period." Mark Melotik of KCDH is quoted in the story as stating, "Any time you have numerous families, it potentially is large. We are dealing with over a couple dozen people calling in that they are ill." Investigation into the outbreak is ongoing.

Salmonella Infections

2.4 *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of humans and other animals. *Salmonella* bacteria are usually transmitted to humans by eating foods contaminated with human or animal feces. Contaminated foods usually look and smell normal. Contaminated foods are often of animal origin, such as beef, poultry, milk, or eggs, but all foods, including vegetables, may become contaminated. An infected food handler who neglects to wash his or her hands with soap and warm water after using the bathroom may also contaminate food.

2.5 Once in the lumen of the small intestine, the bacteria penetrate the epithelium, multiply, and enter the blood within 24-to-72 hours. As few as 15-to-20 cells of *Salmonella* bacteria can cause salmonellosis or a more serious typhoid-like fever. Variables such as the health and age of

the host, and virulence differences among the serotypes, affect the nature and extent of the illness. Infants, elderly, hospitalized, and immune suppressed persons are the populations that are the most susceptible to disease, and suffer the most severe symptoms.

2.6 The acute symptoms of *Salmonella* gastroenteritis include the sudden onset of nausea, abdominal cramping, and diarrhea lasting several days. The diarrhea often turns bloody. There is no real cure for *Salmonella* infection, except treatment of the symptoms. Persons with severe diarrhea may require rehydration, often with intravenous fluids.

2.7 Persons with diarrhea usually recover completely, although it may be several months before bowel habits return entirely normal. A small number of persons who are infected with *Salmonella* will go on to develop pains in their joints, irritation of the eyes, and painful urination. This development is called Reiter's syndrome or reactive arthritis, and it can last for months or years, sometimes leading to chronic arthritis that is difficult to treat. Antibiotic treatment does not make a difference in whether or not the person later develops arthritis.

The Plaintiffs' *Salmonella* Infections and Resulting Injuries

2.8 The plaintiffs purchased pork carnitas at Supermercado Los Carroles on May 9, 2015, and they consumed the purchased food at home that same day. The following evening, May 10, the plaintiffs began to feel sick with nausea and abdominal pain, followed by vomiting, diarrhea, headaches, body pain, and other symptoms consistent with a *Salmonella* infection.

2.9 The symptoms worsened over the next two days, causing significant pain, suffering, and worry. When it appeared that the children—Elizabeth, Andrew, and Jacob—were not getting better, the three were taken to St. Catherine's Medical Center for evaluation and treatment. A stool sample obtained from Jacob ultimately tested positive for *Salmonella*.

2.10 Because of her continuing illness, Elizabeth received follow-up care on May 14 from her regular pediatrician, Dr. Jaya Iyer, at Kenosha Pediatrics. Dr. Iyer advised that Andrew did not

need to be brought in for treatment unless his condition worsened, which it fortunately did not. For his part, Jacob received follow-up care on May 12 and 13 from Dr. Dragos Nanul at Kenosha Medical Center Clinic. Busy caring for his children, Kenneth did not seek medical treatment.

2.11 Kenosha County Division of Health contacted the plaintiffs, speaking to Kenneth, to discuss the purchase and consumption of food at Supermercado Los Corrales and subsequent illnesses linked to the *Salmonella* outbreak. The Division of Health had also been notified that Jacob had tested positive for *Salmonella*, the same serotype that had infected other outbreak victims.

2.12 Although they have begun to feel better, as of May 25, the plaintiffs have not fully recovered, and each continues to suffer abdominal pain and discomfort, loose stools, headaches, and body aches, all attributable to consumption of the pork carnitas that caused *Salmonella* infections.

III. CAUSES OF ACTION

Strict Liability—Count I

3.1 At all times relevant to this action, the defendant was the manufacturer and seller of an adulterated food product that, as a result of its defective and unsafe condition due to *Salmonella* contamination, caused injury to the plaintiffs. This food product was pork carnitas.

3.2 The adulterated food product that the defendant manufactured and sold was, at the time it left the defendant's control, defective and unreasonably dangerous for its ordinary and expected use because of its contamination with *Salmonella*, a sometimes deadly pathogen.

3.3 The adulterated food product that the defendant manufactured and sold was given to the plaintiffs without any change in its defective condition.

3.4 The adulterated food product that the defendants manufactured and sold was used in the manner expected and intended—that is, consumed by the plaintiffs.

3.5 The plaintiffs suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the defendants

manufactured and sold.

Negligence & Negligence Per Se—Count II

3.6 For purposes of this cause of action, the plaintiffs incorporate all of the above-stated allegations as if fully set forth here.

3.7 The defendant owed to the plaintiffs a duty to use reasonable care in the manufacture and sale of its food products, the observance of which duty would have prevented or eliminated the risk that such food products would become contaminated with *Salmonella* or any other dangerous pathogen. The defendant breached this duty and was negligent as a result.

3.8 The defendant had a duty to comply with all safety statutes, laws, regulations, and codes—including, but not limited to, the Wisconsin Food Code, Wis. Stats. § 35.93—pertaining to the manufacture and sale of food products at a retail food establishment, but failed to do so, and was therefore negligent.

3.9 The plaintiffs are among the class of persons intended to be protected by these statutes, laws, regulations, safety codes and provision pertaining to the manufacture and sale of food products at a retail food establishment. Further, foodborne illness caused by the manufacture and sale of pathogen-contaminated food is the type of injury the safety statutes are intended to prevent.

3.10 The defendant had a duty to properly supervise, train, and monitor its employees, and to ensure that these employees complied with all applicable safety statutes, laws, regulations, and safety codes pertaining to the manufacture and sale of food products at a retail food establishment, but the defendant failed to do so and was therefore negligent.

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

3.12 The defendant owed a duty of care to the plaintiffs to design, prepare, serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable consumer. The defendant breached these duties and was negligent as a result.

3.13 As a direct and proximate result of the defendant's negligence, as alleged above, the plaintiffs sustained injuries and damages in an amount to be determined at trial.

IV. DAMAGES

4.1 For purposes of pleading damages, the plaintiffs incorporate all of the above-stated allegations as if fully set forth here.

4.2 The plaintiffs suffered general, special, incidental, and consequential damages as a direct and proximate result of the acts and omissions of the defendants, as set forth above, in an amount that shall be fully proven at the time of trial. Such damages include, but are not limited to: past and future damages for pain and suffering, loss of enjoyment of life, mental distress, and fear of future illness and death; past and future medical expenses and other costs or related out-pocket expense; lost wages and earning-capacity, past and future; loss of consortium; and any other damages that are reasonably anticipated to arise under the circumstances.

JURY DEMAND

The plaintiffs hereby demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray for judgment against the defendants as follows:

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the plaintiffs as a result of the defendants' conduct;
- B. Awarding plaintiffs their reasonable attorneys fees and costs, to the fullest extent allowed by law; and
- C. Granting all such additional or further relief as this Court deems just and equitable

under the circumstances.

DATED this 27th day of May, 2015.

ON BEHALF OF THE PLAINTIFFS:

/s/ Denis W. Stearns

Denis W. Stearns, State Bar No. 1020675

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