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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JAMES BUDER and DEANNA BUDER,)
individually, and on behalf of ELIZABETH)
BUDER, a minor)
Plaintiffs,)
vs.)
MENDEZ BROTHERS, LLC,)
d/b/a Taqueria Los Chilangos,)
a Washington corporation,)
Defendant.)

NO.

**COMPLAINT FOR PERSONAL
INJURY AND DAMAGES**

COME NOW the Plaintiffs JAMES BUDER and DEANNA BUDER, individually and on behalf of ELIZABETH BUDER, a minor, through their attorneys of record, the MARLER CLARK law firm, and allege as follows:

I. PARTIES AND JURISDICTION

1.1 The Plaintiffs James and Deanna Buder are husband and wife, and the parents of Elizabeth Buder, a minor. At all relevant times, James, Dianna and Elizabeth Buder were residents of Issaquah, King County, Washington. James and Deanna Buder are the natural parents of Elizabeth Buder, a minor, and are proper and responsible persons to act as guardians ad litem for Elizabeth Buder for the purpose of prosecuting this action on behalf of said minor.

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2 1.2 The Defendant Mendez Brothers, LLC., d/b/a Taqueria Los Chilangos (hereinafter
3 “Los Chilangos”), is a corporation organized and existing under the laws of the State of
4 Washington. Los Chilangos’ location and mailing address is 14720 NE 35th Street, Apt. E104,
5 Bellevue, Washington. At all times relevant hereto, Los Chilangos was in the business of
6 producing and selling food products, operated food trucks, and managed a food catering business in
7 King County, Washington.

8 1.3 This court has jurisdiction, and venue is proper, because the incident complained of
9 herein occurred in King County, Washington, and because Defendant at all times relevant hereto
10 was a resident of King County and the incidents subject of this complaint occurred in King County.

11 **II. FACTS**

12 2.1 Seattle/King County Public Health in August and September, 2015, investigated an
13 outbreak of *E. coli* O157:H7 bacteria linked to Los Chilangos. Everyone who became sick had
14 something in common – they ate food prepared by the local food vendor called Los Chilangos.
15 The outbreak of *E. coli* O157:H7 bacteria was associated with the consumption of food prepared
16 and sold by Los Chilangos. After the illnesses were reported and linked in August, Public Health
17 took action and required Los Chilangos to cease operations.
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19 2.2 Los Chilangos in August and September, 2015, had been preparing and selling food
20 at seven farmers markets in King and Snohomish Counties, operated two food trucks, and also
21 catered events.

1 2.3 Los Chilangos in August and September, 2015, utilized a shared kitchen space,
2 called a commissary kitchen. The kitchen that Los Chilangos used was Eastside Commercial
3 Kitchen, where Los Chilangos shared space and equipment with about a dozen other food
4 businesses. Following an inspection by health officials, the condition of the Eastside Commercial
5 Kitchen and the potential for cross contamination were deemed an imminent health hazard, and the
6 health officer issued a cease and desist order to the commissary kitchen on Thursday, August 27.
7 All of the other food vendors permitted by Public Health that were then using this kitchen were
8 also told to cease operations.

9 2.4 On September 2, 2015, Los Chilangos was reopened. Some of the requirements by
10 Seattle/King County Health included:
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- 12 • Disposed of all food that could have potentially been a source of the outbreak
- 13 • Assured that all food workers are not ill
- 14 • Identified and signed a contract with a new commissary, which we have approved
15 following a site inspection
- 16 • Washed, rinsed and sanitized all of their equipment before moving it to the new
17 commissary.
- 18 • Made all staff available for additional food safety education from public health inspectors
19 including sanitation, cross contamination, and cold and hot holding.

1 2.5 Eastside Commercial Kitchen reopened on September 4, following the completion
2 of all corrective actions.

3 2.6 As of September 15, 2015, the health department determined that a total of thirteen
4 people had become victims of this outbreak, and that the outbreak had been linked to food prepared
5 by Los Chilangos.
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7 2.7 *Escherichia coli* is the name of a common family of bacteria, most members of
8 which do not cause human disease. The *E. coli* O157:H7 bacteria, unlike the vast majority of *E.*
9 *coli* family members, are pathogenic. Specifically, *E. coli* O157:H7 can cause painful, bloody
10 diarrhea (hemorrhagic colitis) in humans. After someone ingests a sufficient quantity of *E. coli*
11 O157:H7 (also known as the infectious dose), the bacteria attaches to the inside surface of the large
12 intestine and initiates an inflammatory reaction. The result is the bloody diarrhea and abdominal
13 cramps characteristic of this intestinal illness. A wide spectrum of disease is possible as a result of
14 an *E. coli* O157:H7 infection, extending from mild, and non-bloody diarrhea, to severe diarrhea
15 that is grossly bloody and accompanied by severe abdominal pain. While the acute symptoms
16 usually resolve without serious complications within seven to ten days, with further convalescence
17 taking up to weeks, an *E. coli* O157:H7 infection can also develop into hemolytic uremic syndrome
18 (“HUS”), a life-threatening condition for which there is no known treatment.

19 2.8 On August 8, 2015, Plaintiff Elizabeth Buder (“Scout”) shared food with her
20 parents that they had purchased from the Los Chilangos food truck, at the time located at the
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1 Issaquah Farmers' Market, in Issaquah, Washington . The food that she consumed on this date,
2 which the Defendant Los Chilangos manufactured and sold, was contaminated by *E. coli*
3 O157:H7.

4 2.9 Onset of Scout's illness due to *E. coli* O157:H7 infection occurred a few days later.
5 Initially, she lost her appetite. During the following few days she started experiencing severe
6 stomach cramps, and by August 21, 2015, she was suffering from fever and bloody diarrhea. The
7 gastrointestinal symptoms were severe, including repeated bouts of grossly bloody diarrhea and
8 debilitating abdominal cramps, and on August 23, 2015, Scout was taken to Overlake Urgent Care.

9 2.10 Ultimately, Scout developed HUS, and kidney failure, and was hospitalized at
10 Seattle Children's Hospital from August 24 to September 10, 2015, including time in the Intensive
11 Care Unit.

12 2.11 At this time, Scout continues with her recovery. She is still suffering from stomach
13 cramps, dizziness, sadness and anxiety, however, and will require additional future medical care
14 and laboratory testing.

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17 **III. STRICT PRODUCT LIABILITY**

18 3.1 Defendant Los Chilangos is a product manufacturer within the meaning of the
19 Washington Product Liability Act ("WPLA" or "the Act"), RCW 7.72.010(2), and manufactured
20 the food that caused Plaintiff's *E. coli* O157:H7 infection and related injuries. The *E. coli*
21 O157:H7-contaminated food consumed by Scout was a product within the meaning of the WPLA,

1 RCW 7.72.010(3).

2 3.2 Under the WPLA, the Defendant owed a duty to the Plaintiffs to manufacture a
3 product that was reasonably safe in construction, did not materially deviate from applicable design
4 specifications, or otherwise deviate in some material way from otherwise identical units in the
5 Defendant's product line.

6 3.3 Under the WPLA, the Defendant owed a duty to the Plaintiffs to manufacture a
7 product that conformed to its implied warranties, as defined by RCW Ch. 62A, including, but not
8 limited to, the implied warranty that Defendant's food was fit for human consumption.

9 3.4 The food manufactured and sold by the Defendant that caused Scout's *E. coli* O157
10 infections, and all associated legal injuries, was not reasonably safe in construction, and did not
11 conform to Defendant's implied warranties, because it was contaminated and adulterated with,
12 among other things, *E. coli* O157:H7.

13 3.5 Because the Defendant's food was not reasonably safe in construction, and did not
14 conform to Defendant's implied warranties, the Defendant is strictly liable to the Plaintiffs for the
15 harm proximately caused by its contaminated food.

16 **IV. NEGLIGENCE**

17 4.1 The Defendant Los Chilangos manufactured, distributed and sold a product that was
18 not reasonably safe as designed or manufactured, within the meaning of the WPLA, RCW
19 7.72.030(1).

20 4.2 The Defendant was negligent in manufacturing, distributing, and selling a product
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1 that was not reasonably safe because adequate warnings or instructions were not provided
2 including, but not limited to, the warning that the food may contain *E. coli* O157:H7, and thus
3 should not be provided for the purpose of human consumption.

4 4.3 The Defendant had a duty to comply with all statutory and regulatory provisions
5 that pertained or applied to the manufacture, distribution, storage, labeling, and sale of its food
6 products including, but not limited to, the Federal Food, Drug, and Cosmetics Act, which bans the
7 manufacture, sale, and distribution of any “adulterated” food. The Defendant breached this duty.

8 4.4 The Plaintiffs are among the class of persons designed to be protected by the
9 statutory and regulatory provisions pertaining to Defendant’s manufacture, distribution, storage,
10 labeling, and sale of its food.

11 4.5 The Defendant owed a duty to the Plaintiffs to use reasonable care in the
12 manufacture, distribution, and sale of its product, to prevent contamination with *E. coli* O157:H7.
13 The Defendant breached this duty.

14 4.6 As a result of the Defendant’s negligence, the Plaintiffs suffered severe and
15 permanent personal injuries, as well as economic loss.

16 **V. DAMAGES**

17 5.1 The Plaintiffs have each suffered general, special, incidental, and consequential
18 damages as a direct and proximate result of the acts and omissions of the Defendant Los Chilangos,
19 which damages shall be fully proven at the time of trial, including, but not limited to: damages for
20 loss of enjoyment of life, both past and future; medical and medical related expenses, both past and
21 future; travel and travel-related expenses, past and future; emotional distress, and future emotional

1 distress; pharmaceutical expenses, past and future; wage and other economic damages loss; loss of
2 parental consortium; and other ordinary, incidental and consequential damages as would be
3 anticipated to arise under the circumstances.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the individual Plaintiffs each pray, having stated their claims in full, for a
6 judgment by this court against the Defendant Los Chilangos as follows:

- 7 1. For general damages, in amounts to be proven at the time of trial;
- 8 2. For special damages, in amounts to be proven at the time of trial;
- 9 3. For costs, including their reasonable attorney fees; and
- 10 4. For such other and further relief as the court deems just and equitable in the
11 circumstances.

12 Plaintiffs further request that the court award Plaintiffs the opportunity to amend or modify
13 the provisions of this complaint as necessary or appropriate after additional or further discovery is
14 completed, and after all appropriate parties have been served.

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16 DATED this _____ day of October, 2015.

17 MARLER CLARK, L.L.P., P.S.

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19 _____
20 William D. Marler, WSBA #17233

21 Attorneys for Plaintiffs Buder