

<p>DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO  Court Address:  Larimer County Justice Center  201 La Porte Ave.  Suite 100  Fort Collins, CO 80521  970-494-3500</p>	<p style="text-align: center;">▲COURT USE ONLY▲</p>
<p><b>Plaintiff:</b> BRIA GALLEGOS, an individual.</p> <p>v.</p> <p><b>Defendant:</b> LA LUZ MEXICAN GRILL INC., a Colorado Corporation.</p>	
<p><b>Attorneys for Plaintiff Bria Gallegos</b>  John Riley, #18962  William Ross, #46500  Montgomery Little &amp; Soran, PC  5445 DTC Parkway, Suite 800  Greenwood Village, CO 80111  <b>Telephone:</b> 303.773.8100  <b>Facsimile:</b> 303-220-0412  <b>Email:</b> jriley@montgomerylittle.com  wross@montgomerylittle.com</p> <p>Bill Marler (<i>pro hac vice</i> to be filed)  Marler Clark LLP PS  1303 Second Avenue, Suite 2800  Seattle, WA 98101-3808  <b>Telephone:</b> 206.346.1888  <b>Facsimile:</b> 206.346.1898  <b>Email:</b> <a href="mailto:bmarler@marlerclark.com">bmarler@marlerclark.com</a></p>	<p><b>Case No.:</b></p> <p><b>Division:</b></p>
<p><b>COMPLAINT AND JURY DEMAND</b></p>	

COMES NOW the Plaintiff, Bria Gallegos (“Ms. Gallegos”), by and through her attorneys of record, John Riley and William Ross of Montgomery Little & Soran, PC, and Bill Marler of Marler Clark, LLP, PS, (pending *pro hac vice* admission) to file this Complaint and allege as follows:

## **I. PARTIES**

1.1 Ms. Gallegos, at all times relevant to this Complaint, resided at 807 W. Oak St. Fort Collins, Larimer County, Colorado.

1.2 The Defendant, La Luz Mexican Grill, Inc. (“La Luz”), is a corporation organized and existing under the laws of the State of Colorado. La Luz’s principal office is identified on the Colorado Secretary of State website as 200A Walnut St., Fort Collins, Colorado.

## **II. JURISDICTION AND VENUE**

2.1 This Court is vested with jurisdiction over the defendants pursuant to C.R.S. §13-1-124(1)(a), because the defendant, La Luz, conducts business within the State of Colorado.

2.2 Pursuant to C.R.C.P. 98, venue of this action is proper in the County of Larimer, because La Luz’s principle office is in Fort Collins, Larimer County, and because La Luz conducts and transacts business in Fort Collins, Larimer County.

## **III. FACTUAL BACKGROUND**

### **The Outbreak**

3.1 La Luz, which is located on 200 Walnut St. in Fort Collins, Colorado, closed on August 21, 2018 after a *Salmonella* illness outbreak occurred in early August.

3.2 Larimer County Health Department spokesperson, Katie O’Donnell, has reported 19 confirmed cases of the *Salmonella* outbreak with additional testing still pending for others.

3.3 Larimer County Health Department officials conducted a routine surprise inspection of La Luz on August 17, 2018 rating the kitchen as "fair" while citing a number of temperature violations and observing multiple flies in the kitchen.

3.4 A follow-up inspection on August 22, 2018 determined that the location had corrected its violations.

3.5 La Luz was cited as "unacceptable" in its previous routine surprise inspection in January 2017, when it was cited for temperature and cleanliness violations.

3.6 La Luz's staff was required to attend a ServSafe Food Handler Program training at The Cooking Studio before La Luz could re-open the restaurant.

### **The *Salmonella* Bacteria**

3.7. *Salmonella* is the second most common intestinal infection in the United States. More than 7,000 cases of *Salmonella* were confirmed in 2009; however, the majority of cases go unreported. The Centers for Disease Control and Prevention estimates that over 1 million people in the U.S. contract *Salmonella* each year, and that an average of 20,000 hospitalizations and almost 400 deaths occur from *Salmonella* poisoning, according to a 2011 report.

3.8. *Salmonella* infection usually occurs when a person eats food contaminated with the feces of animals or humans carrying the bacteria. *Salmonella* outbreaks are commonly associated with eggs, meat and poultry, but these bacteria can also contaminate other foods such as fruits and vegetables. Foods that are most likely to contain *Salmonella* include raw or undercooked eggs, raw milk, contaminated water, and raw or undercooked meats.

3.9. Symptoms of *Salmonella* infection, or Salmonellosis, range widely, and are sometimes absent altogether. The most common symptoms include diarrhea, abdominal cramps,

and fever.

3.10. Typical Symptoms of *Salmonella* infection, which appear 6 to 72 hours after eating contaminated food and last for 3 to 7 days without treatment, include:

- Diarrhea
- Abdominal Cramps
- Fever of 100 F to 102 F
- Bloody diarrhea
- Vomiting
- Headache
- Body Aches

3.11. Complications of *Salmonella* poisoning are more likely to occur among young children and people age 65 or older. Possible complications like Reactive Arthritis are thought to occur in 2 to 15 percent of *Salmonella* patients. Symptoms include inflammation of the joints, eyes, or reproductive or urinary organs. On average, symptoms appear 18 days after infection. Irritable Bowel Syndrome can also be a long-term complication.

3.12. *Salmonella* infections generally last 3 to 7 days, and often do not require treatment. People with severe dehydration may need rehydration through an IV. Antibiotics are recommended for those at risk of invasive disease, including infants under three months old. Typhoid fever, which is an acute illness associated with the fever caused by *Salmonella*, can be treated with a 14-day course of antibiotics. Unfortunately, treatment of *Salmonella* has become more difficult as it has become more resistant to antibiotics. Finding the right antibiotic for a case of *Salmonella* is crucial to treating this bacterial infection.

### **Bria Gallegos's *Salmonella* Infection and Illness**

3.13 Ms. Gallegos, age 24, resides in Fort Collins, Larimer County, Colorado with her

partner Jack Dunnigan.

3.14 On August 9, 2018, Ms. Gallegos ate tacos, chips, and salsa at La Luz in Fort Collins, Colorado.

3.15 On or about August 10, 2018, Ms. Gallegos began experiencing the onset of her *Salmonella* symptoms, including nausea, severe vomiting, diarrhea, stomach cramps, intense sweats, chills, muscle aches, fatigue, and headache.

3.16 Her symptoms grew so severe that she required professional medical treatment. Ms. Gallegos received professional medical treatment on August 13, 2018. Ms. Gallegos continued to experience symptoms following her return home.

3.17 Stool and blood samples were laboratory tested and returned positive for *Salmonella*.

3.18 Health officials from Larimer County Health Department contacted Ms. Gallegos regarding her confirmed exposure to *Salmonella* and inquired into what all she consumed at La Luz and the nature of her illness.

3.19 Health officials from the Colorado Health Department later contacted Ms. Gallegos to inform her that her strain of *Salmonella* was consistent with the strain of others sickened after eating at La Luz in Fort Collins.

3.20 Due to her illness, Ms. Gallegos has missed work since August 11, 2018. She is paid an hourly rate of \$7.40 and has thus lost a significant amount of wages due to her illness.

#### **IV. FIRST CLAIM FOR RELIEF – STRICT LIABILITY**

4.1 Ms. Gallegos incorporates and realleges paragraphs 2.1 through 3.20 of this Complaint as if each paragraph were set forth here in its entirety.

4.2 Defendant La Luz is a product manufacturer within the meaning of the Colorado Product Liability Act. C.R.S.A. § 13-21-401(1).

4.3 Defendant La Luz manufactured the food product that injured Ms. Gallegos by, among other things, assembling, fabricating, constructing, and otherwise preparing the contaminated meal and its component parts.

4.4 The food product that Defendant La Luz manufactured was defective, and not reasonably safe in construction, because the food product, and one or more of its component parts, was contaminated with *Salmonella*, a deadly pathogen.

4.5 The food product that Defendant La Luz manufactured was not safe to the extent reasonably contemplated or expected by a consumer, because it was contaminated with *Salmonella*.

4.6 Because the food product consumed by Ms. Gallegos was defective and not reasonably safe in construction, Defendant La Luz is strictly liable to Ms. Gallegos for the harm proximately caused by the manufacture and sale of the food product.

#### V. **SECOND CLAIM FOR RELIEF - NEGLIGENCE**

5.1 Ms. Gallegos incorporates and realleges paragraphs 2.1 through 4.6 of this Complaint as if each paragraph were set forth herein in its entirety.

5.2 Defendant La Luz owed Ms. Gallegos a duty to exercise reasonable care in the manufacture of food products intended for human consumption.

5.3 Defendant La Luz owed a duty to Ms. Gallegos to manufacture a product that was reasonably safe in construction, that was safe to the extent reasonably contemplated by a consumer, and that was fit for human consumption.

5.4 Defendant La Luz owed a duty to exercise reasonable care in the selection and supervision of suppliers, employees, agents, and subcontractors, to prevent the risk that the food product would become contaminated with *Salmonella*.

5.5 By manufacturing, distributing, and selling food product contaminated with *Salmonella*, Defendant La Luz breached the duties it owed to Ms. Gallegos, and Ms. Gallegos was harmed as a proximate result.

## **VI. THIRD CLAIM FOR RELIEF – NEGLIGENCE PER SE**

6.1 Ms. Gallegos incorporates and realleges paragraphs 2.1 through 5.5 of this Complaint as if each paragraph were set forth herein in its entirety.

6.2 Defendant La Luz owed a duty to properly supervise, train, and monitor its employees, or the employees of their agents or subcontractors, in the preparation of food products or ingredients it sold, in order to ensure compliance with Defendant La Luz's own specifications and performance standards, as well as to ensure compliance with all applicable health regulations, including the Colorado Retail Food Establishment Rules and Regulations, 6 CCR 1010-2.

6.3 Defendant La Luz breached several of these duties, and Ms. Gallegos was injured as a direct and proximate result of such breaches.

6.4 Defendant La Luz also owed a duty to comply with statutory and regulatory provisions that pertained or applied to either the import, manufacture, distribution, storage, or sale of their food products or ingredients, including, but not limited to, the Federal Food, Drug, and Cosmetics Act, § 402(a), as codified at 21 U.S.C. § 342(a), which bans the manufacture, sale and distribution of any "adulterated" food, and Colorado's Food and Drug Act, which imposes an identical ban.

6.5 Under both federal and applicable state law, food is adulterated if it contains a “poisonous or deleterious substance which may render it injurious to health.” *Salmonella* is such a substance. Thus, by its manufacture and sale of the subject product or the subject product’s ingredients, defendant La Luz breached its statutory and regulatory duties, and Ms. Gallegos was injured as a direct and proximate result of such breaches.

6.6 The federal and state food safety regulations applicable here, and as set forth above, establish a positive and definitive standard of care in the import, manufacture, distribution or sale of food, and the violation of these regulations constitutes negligence *per se*.

6.7 Ms. Gallegos was in the class of persons intended to be protected by these statutes and regulations and she was injured as the direct and proximate result of La Luz’s violation of applicable federal, state and local food safety regulations.

6.8 Defendant La Luz breached the aforementioned duties as alleged above, which breach constituted the proximate cause of injury to Ms. Gallegos.

## **VII. DAMAGES**

7.1 Ms. Gallegos incorporates and realleges paragraphs 2.1 through 6.8 of this Complaint as if each paragraph were set forth herein in its entirety.

7.2 Ms. Gallegos has suffered damages as the direct result of the tortious and unlawful acts and omissions of Defendant La Luz, including, without limitation, past and future damages for the loss of enjoyment of life, pain and suffering, mental anxiety and distress, past and future economic loss, past and future damages for medical-related expenses, permanent physical injury, and any damages for which the law provides relief.

7.3 Ms. Gallegos has also suffered special, incidental, and consequential damages



as the direct and proximate result of the unlawful acts and omissions of Defendant La Luz, including, without limitation, past and future damages for medical-related expenses, travel-related expenses, and any damages for which the law provides relief.

**VIII. REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, Ms. Bria Gallegos demands:

- (1) That the Court award Ms. Gallegos judgment against Defendant La Luz for all general, special, incidental and consequential damages incurred, or to be incurred;
- (2) That the Court award Ms. Gallegos her costs, disbursements and reasonable attorneys' fees incurred; and
- (3) That the Court award such other and further relief as it deems necessary and proper.

**PLAINTIFF HEREBY DEMANDS TRIAL TO A JURY OF SIX PERSONS ON ALL ISSUES SO TRIABLE**

DATED: September 11, 2018

MONTGOMERY LITTLE & SORAN, PC

*s/ William Ross*

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*s/ Bill Marler*

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