

1 Craig M. Murphy, Esq.  
2 Nevada Bar No. 4014  
3 MURPHY & MURPHY LAW OFFICES  
4 8414 W. Farm Road, Ste 180, Box 207  
5 Las Vegas, Nevada 89131  
6 (702) 369-9696 Phone  
7 (702) 369-9630 Fax  
8 Attorney for Plaintiff

6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

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| <p>9 HARRY WISEMAN,<br/>10<br/>11 Plaintiff,<br/>12 vs.<br/>13 JACOBS ENTERTAINMENT, INC., a<br/>14 Delaware Corporation; DOES 1 through 10,<br/>15 inclusive; and ROE ENTITIES 1 through 10,<br/>16 inclusive,<br/>17 Defendant.</p> | <p>Case No.:</p> <p><b><u>COMPLAINT</u></b></p> <p>Jury Trial Requested</p> |
|---|---|

16 COMES NOW the plaintiff, HARRY WISEMAN, by and through his attorneys, CRAIG  
17 MURPHY, ESQ. of MURPHY & MURPHY LAW OFFICES, and complains, states, and alleges  
18 as follows:

19 **I.**  
20 **PARTIES**

21 1.1 Plaintiff, Harry Wiseman, at all times relevant to this Complaint, was and is a  
22 resident of Elko, Elko County, Nevada. Plaintiff is thus a citizen of Nevada.

23 1.2 Defendant, Jacobs Entertainment, Inc., is a Delaware corporation with its  
24 principal place of business in Golden, Colorado. Jacobs Entertainment, Inc. is therefore a citizen  
25 of both Delaware and Colorado. At all times relevant to this Complaint, Jacobs Entertainment,  
26 Inc. owned and operated The Grille at Gold Dust West located at 1660 NV-225, Elko, Nevada  
27 89801.

28 1.3 DOES 1 through 10 inclusive are persons, and ROE ENTITIES 1 through 10 are

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1 corporations, related subsidiary or parent entities, associations, or business entities, whose true  
2 names and identities and capacities are unknown to Plaintiff at this time. The DOE Defendants  
3 are individual persons acting on behalf of or in concert with, or at the direction of, any of the  
4 Defendant. The ROE Defendants may be corporations, associations, partnerships, subsidiaries,  
5 holding companies, owners, predecessor or successor entities, joint ventures, parent corporations,  
6 related business entities or the employer of any of the Defendant. Each named Defendant and  
7 the DOE and ROE Defendants are legally responsible for the events and happenings stated in  
8 this Complaint, and thus proximately caused injury and damages to Plaintiff. In particular, said  
9 DOE and ROE Defendants are responsible in full or in part for the production, distribution,  
10 processing, preparation, contamination, and sale of the ingredients in and the eggs sold to or by  
11 Defendant. Plaintiff will ask leave of this Court to insert the true names and capacities for such  
12 DOE and ROE Defendants when discovered to substitute those true names as defendants into  
13 these proceedings for said DOE and ROE Defendants.

## 14 II.

### 15 JURISDICTION AND VENUE

16 2.1 This Court has jurisdiction over the subject matter of this action pursuant to 28  
17 USC § 1332(a) because the matter in controversy exceeds \$75,000, exclusive of costs; it is  
18 between citizens of different states; and because Defendant, Jacobs Entertainment, Inc.,  
19 (hereinafter “Defendant”) has certain minimum contacts with the State of Nevada such that the  
20 maintenance of this suit in this district does not offend traditional notions of fair play and  
21 substantial justice.

22 2.2. Venue in the United States District Court for the District of Nevada is proper  
23 pursuant to 28 USC § 1391(a)(1) and (2) because Defendant was subject to personal jurisdiction  
24 in this judicial district at the time of the commencement of the action, and because a substantial  
25 part of the events or omissions giving rise to Plaintiff’s claims and causes of action occurred in  
26 this judicial district.

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**III.**  
**RELEVANT FACTS**

**3.1 About *Salmonella*:**

3.1.1. *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.

3.1.2. *Salmonella* infections usually occur 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.

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

3.1.4. Typical symptoms of *Salmonella* infection appear 6 to 72 hours after eating contaminated food, last for 3 to 7 days without treatment, and usually consist of:

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

3.1.5. 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,

1 eyes, or reproductive or urinary organs. On average, symptoms appear 18 days after infection.  
2 Irritable Bowel Syndrome can also be a long-term complication.

3 3.1.6. *Salmonella* infections generally last 3 to 7 days, and often do not require  
4 treatment. People with severe dehydration may need rehydration through an IV. Antibiotics are  
5 recommended for those at risk of invasive disease, including infants under three months old.  
6 Typhoid fever is treated with a 14-day course of antibiotics. Unfortunately, treatment of  
7 *Salmonella* has become more difficult as it has become more resistant to antibiotics. Finding the  
8 right antibiotic for a case of *Salmonella* is crucial to treating this bacterial infection.

9 **3.2 The Gold Dust West *Salmonella* Outbreak:**

10 3.2.1. As of March 15, 2019, seventeen suspected cases of *Salmonella* had been reported  
11 in Elko, Nevada, according to the Nevada Department of Health and Human Services.

12 3.2.2. Public information officer Martha Framsted confirmed in an email that The Grille  
13 at Gold Dust West is the suspected source of the disease.

14 3.2.3. The owner of Gold Dust West, Jacobs Entertainment, Inc., confirmed that the  
15 company is cooperating with health officials to determine the source of the problem by  
16 identifying the possible products and causes.

17 3.2.4. The investigation is ongoing, but the health department requested the removal of  
18 eggs from the menu and is investigating the suppliers and purveyors of food products to Gold  
19 Dust West.

20 **3.3 Plaintiff's Injuries:**

21 3.3.1. On March 2, 2019, Plaintiff ate ham and eggs prepared and sold by The Grille at  
22 Gold Dust West, located at 1660 NV-225, Elko, Nevada 89801.

23 3.3.2. Plaintiff began experiencing symptom onset on March 3, 2019, including bloating  
24 and mild nausea. On March 4, 2019, Plaintiff began experiencing severe diarrhea.

25 3.3.3. Plaintiff accompanied his wife to her dental appointment on March 5, 2019.  
26 While she was inside, some individuals who were arriving for their own appointments found  
27 Plaintiff on the ground and subsequently called an ambulance.

28 3.3.4. Plaintiff was admitted to St. Luke's Hospital in Twin Falls, Idaho. He was

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1 admitted from March 5, 2019 through March 14, 2019. During that time, he spent a number of  
2 days in ICU, suffered complete kidney failure necessitating dialysis, and was diagnosed with  
3 *Salmonella* after a stool sample tested positive for the bacteria.

4 3.3.5. Plaintiff continues to recover from his *Salmonella* infection and related injuries.

5 **IV.**

6 **COUNT I—STRICT PRODUCT LIABILITY**

7 4.1. Plaintiff incorporates the preceding paragraphs of this Complaint, by this  
8 reference, as if each and every of these paragraphs were set forth here in its entirety.

9 4.2. Defendant manufactured, prepared, and sold the adulterated food that injured  
10 Plaintiff and caused him to become infected with *Salmonella*.

11 4.3. Defendant manufactures, prepares, and sells food and drink products for sale to  
12 the public.

13 4.4. Food and drink that is contaminated with *Salmonella* is unsafe when put to the use  
14 reasonably foreseeable considering the nature of the product. Namely, *Salmonella*-contaminated  
15 food and drink is unfit for human consumption.

16 4.5. The food that Plaintiff purchased from Defendant was contaminated with  
17 *Salmonella*. Plaintiff's consumption of the contaminated food caused him to become infected  
18 with *Salmonella* and to suffer injuries as a direct and proximate result.

19 4.6. The food that Plaintiff purchased and consumed was contaminated with  
20 *Salmonella* when it left Defendant's control.

21 4.7. Defendant is strictly liable to Plaintiff for the harm proximately caused by its  
22 manufacture, preparation, and sale of an unsafe and defective food product.

23 4.8. Plaintiff was injured and sustained personal injury and damages as the proximate  
24 results of Defendant's manufacture and sale of the unsafe and defective food product.

25 **V.**

26 **COUNT II—NEGLIGENCE**

27 5.1. Plaintiff incorporates the preceding paragraphs of this Complaint, by this  
28 reference, as if each and every of these paragraphs were set forth here in its entirety.

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1           5.2. Defendant designed, manufactured, prepared, and sold food products that were  
2 adulterated with *Salmonella* bacteria, a potentially deadly pathogen. These products, as a result  
3 of adulteration, were unfit for human consumption, and were not reasonably safe as designed,  
4 constructed, manufactured, and sold.

5           5.3. Defendant owed a duty to all persons who were the eventual consumers of its  
6 product, as well as all persons foreseeably at risk of secondary transmission of disease, to  
7 manufacture and sell food that was safe to eat, was not adulterated with potentially deadly  
8 pathogens, like *Salmonella*, and that was not in violation of applicable food and safety  
9 regulations.

10           5.4. Defendant owed a duty to all persons who were the eventual consumers of its  
11 products, as well as all persons foreseeably at risk of secondary transmission of disease, to  
12 maintain its premises in a sanitary and safe condition so that no one eating food produced at the  
13 Defendant's premises would be exposed to, or infected by, a potentially deadly pathogen, like  
14 *Salmonella*. Defendant also owed a duty to all persons who were the eventual consumers of its  
15 products to use wholesome ingredients, and to source those ingredients from entities who use  
16 reasonable care in the growth, harvest, preparation, processing, and distribution of those  
17 products, in the production of food for sale to the public.

18           5.5. Defendant breached the duties it owed to persons who were the eventual  
19 consumers of its products, as well as all persons foreseeably at risk of secondary transmission of  
20 disease, by committing the following acts and omissions of negligence:

21           5.5.1. Failing to adequately maintain or monitor the sanitary conditions of its food,  
22 drink, water, premises, and employees;

23           5.5.2. Failing to properly operate the locations where it manufactured its food in a safe,  
24 clean, and sanitary manner;

25           5.5.3. Failing to prevent the transmission of *Salmonella* from its food, drink, water,  
26 premises, or employees, to the ultimate consumers of its products, and those foreseeably at risk  
27 of secondary transmission of disease;

28           5.5.4. Failing to properly train its employees and agents how to prevent the transmission

1 of *Salmonella* on its premises, or in its food, drink and water;

2 5.5.5. Failing to properly supervise its employees and agents to prevent the transmission  
3 of *Salmonella* on its premises, or in its food, drink and water;

4 5.5.6. Failing to properly and carefully select and monitor the entities from which it  
5 purchased and received raw materials used in the production of the products.

6 5.6 Plaintiff was injured and sustained personal injury and damages as the proximate  
7 result of Defendant’s negligent acts and omissions, as set forth above.

8 **VI.**

9 **COUNT III—BREACH OF WARRANTY**

10 6.1. Plaintiff incorporates the preceding paragraphs of this Complaint, by this  
11 reference, as if each and every of these paragraphs were set forth here in its entirety.

12 6.2. By offering food for sale to the general public, Defendant expressly warranted  
13 that such food was safe to eat, that it was not adulterated with a deadly pathogen, and that the  
14 food had been safely prepared under sanitary conditions.

15 6.3. By offering food for sale to the general public, Defendant also impliedly  
16 warranted that such food was safe to eat, that it was not adulterated with a deadly pathogen, and  
17 that the food had been safely prepared under sanitary conditions.

18 6.4. Defendant breached its express and implied warranties with regard to the food it  
19 manufactured and that was ultimately consumed by Plaintiff.

20 6.5. Plaintiff was injured and sustained personal injury and damages as the proximate  
21 result of Defendant’s breach of express and implied warranties, as set forth above.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for the following relief:

- 24 (1) That the Court award Plaintiff judgment against Defendant for damages;
- 25 (2) That the Court award all such other sums as shall be determined to fully and fairly
- 26 compensate Plaintiff for all general, special, incidental, and consequential
- 27 damages incurred, or to be incurred, by Plaintiff as the direct and proximate result
- 28 of the acts and omissions of Defendant;

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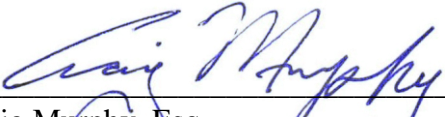
- (3) That the Court award Plaintiff his costs, disbursements, and reasonable attorneys' fees incurred;
- (4) That the Court award Plaintiff the opportunity to amend or modify the provisions of this Complaint as necessary or appropriate after additional or further rediscovery is completed in this matter, and after all appropriate parties have been served; and
- (5) That the Court award such other and further relief as it deems necessary and proper in the circumstances.

**JURY TRIAL DEMAND**

Plaintiff demands trial by jury on all issues raised herein.

Dated this 19<sup>th</sup> day of March, 2019.

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 8414 W. Farm Road, Ste 180, Box 207  
 Las Vegas, Nevada 89131  
 (702) 369-9696 Phone  
 (702) 369-9630 Fax  
 Attorney for Plaintiff