

DISTRICT COURT, COUNTY OF ALAMOSA,
STATE OF COLORADO

702 4th Street
Alamosa, Colorado 81101

LUIS AMAYA, individually, KENDRA &
ALIFONSO BAROZ, as Next Friends of ISAAH
BAROZ, a minor, FRANK & PAMELA CALHOUN,
husband and wife, and individually, GREGORY
ALLEN COLLINS, individually, JENNIFER &
RAYMOND COOK, as Next Friends of JORDAN
RAYMOND COOK, a minor, THERESA &
GILBERT COVARRUBIAS, as Next Friends of
KIRSTEN & MADISON COVARRUBIAS, minors,
ELIZABETH & DAVID DODDS, as Next Friends of
DAVINA DODDS, a minor, DORA VIOLA ELLIS,
individually, NATHAN ANDREW GALLEGOS,
individually, BARBARA M. GONZALES, as Next
Friend of CAMELA GONZALES, a minor, BLAS
LUZ HUERTA, individually, CALVIN B. JONES,
JR., individually, ELI WILBERT LUCERO, as Next
Friend of SOPHIA LUCERO, a minor, LOUISE
HELEN MALOUFF, individually and as Next Friend
of ABEL & JORDAN MALOUFF, minors, PHILIP
MALOUFF, individually, TIMOTHY MALOUFF,
individually, CRYSTAL & MATTHEW
MARTINEZ, as Next Friends of ALICIA
MARTINEZ, a minor, CHRISTY J. MEDINA,
individually, KRISTY & DANIEL MILLER, as Next
Friends of MADISON MILLER, a minor, MEAGAN
MARIE VAN MATRE & CHAD MORISTON, as
Next Friends of KADEN MORISTON, a minor,
RALPH RAYMOND PETTY, individually,
MEAGHAN MAYNES, as Next Friend of
MARISSA ROLDAN, a minor, SHANNON LISA
APODACA, as Next Friend of DARREN ROMERO,
a minor, DARACE J. SMITH, individually, LEVI K.
TORRES, individually, CHRISTINA K. VALDEZ,
individually, ISABEL VELASQUEZ, individually
and as personal representative of the ESTATE OF
LARRY VELASQUEZ, SR., LUZ ELENA &

▲ COURT USE ONLY ▲

Case Number:

Div.:

MARTIN VILLALVA, as Next Friends of
VANESSA VILLALVA, a minor, CASSANDRA
WOBITH, individually and as Next Friends of
KEITH & LINDSEY WOBITH, minors,

Plaintiffs

v.

CITY OF ALAMOSA, COLORADO, a municipal
corporation,

Defendant.

Attorneys for Plaintiffs

John R. Riley, #18962
MONTGOMERY LITTLE & SORAN, P.C
5445 DTC Parkway, Suite 800
Greenwood Village, Colorado 80111
Phone Number: 303-773-8100
Facsimile: 303-220-0412
Email: jriley@montgomerylittle.com

R. Drew Falkenstein, Esq.
MARLER CLARK, L.L.P., P.S.
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
Telephone: 206-346-1898
Facsimile: 3206-346-1898
dfalkenstein@marlerclark.com

COMPLAINT FOR DAMAGES

COME NOW the Plaintiffs, by and through their attorneys of record, John R. Riley of
Montgomery Little & Soran, P.C., and R. Drew Falkenstein of Marler Clark, L.L.P., P.S.
(admission *pro hac vice* pending), and allege as follows:

I. PARTIES

1. Plaintiff LUIS AMAYA lives in Alamosa, Alamosa County, Colorado.
2. Plaintiffs KENDRA & ALIFONSO BORAZ live in LaJara, Conejos County, Colorado. KENDRA & ALIFONSO BAROZ are the natural parents of ISAAH BAROZ, a minor.
3. Plaintiffs FRANK & PAMELA CALHOUN live in Colorado Springs, El Paso County, Colorado.
4. Plaintiff GREGORY ALLEN COLLINS lives in Fountain, El Paso County, Colorado.
5. Plaintiffs JENNIFER & RAYMOND COOK live in Holland, Ottawa County, Michigan. JENNIFER & RAYMOND COOK are the natural parents of JORDAN RAYMOND COOK, a minor.
6. Plaintiffs THERESA & GILBERT COVARRUBIAS live in Alamosa, Alamosa County, Colorado. THERESA & GILBERT COVARRUBIAS are the natural parents of KIRSTEN & MADISON COVARRUBIAS, minors.
7. Plaintiffs ELIZABETH & DAVID DODDS live in Grand Junction, Mesa County, Colorado. ELIZABETH & DAVID DODDS are the natural parents of DAVINA DODDS, a minor.
8. Plaintiff DORA VIOLA ELLIS lives in Alamosa, Alamosa County, Colorado.
9. Plaintiff NATHAN ANDREW GALLEGOS lives in Alamosa, Alamosa County, Colorado.

10. Plaintiff BARBARA M. GONZALES lives in Monte Vista, Rio Grande County, Colorado. BARBARA M. GONZALES is the natural parent of CAMELA GONZALES, a minor.

11. Plaintiff BLAS LUZ HUERTA lives in Romeo, Conejos County, Colorado.

12. Plaintiff CALVIN B. JONES, JR. lives in Fountain, El Paso County, Colorado.

13. Plaintiff ELI WILBERT LUCERO lives in Sandford, Conejos County, Colorado.

ELI WILBERT LUCERO is the natural parent of SOPHIA LUCERO, a minor.

14. Plaintiff LOUISE HELEN MALOUFF lives in Alamosa, Alamosa County, Colorado. LOUISE HELEN MALOUFF is the natural parent of ABEL & JORDAN MALOUFF, minors.

15. Plaintiff PHILIP MALOUFF lives in Alamosa, Alamosa County, Colorado.

16. Plaintiff TIMOTHY MALOUFF lives in Alamosa, Alamosa County, Colorado.

17. Plaintiffs CRYSTAL & MATTHEW MARTINEZ live in Alamosa, Alamosa County, Colorado. CRYSTAL & MATTHEW MARTINEZ are the natural parents of ALICIA MARTINEZ, a minor.

18. Plaintiff CHRISTY J. MEDINA lives in Alamosa, Alamosa County, Colorado.

19. Plaintiffs KRISTY & DANIEL MILLER live in Monte Vista, Rio Grande County, Colorado. KRISTY & DANIEL MILLER are the natural parents of MADISON MILLER, a minor.

20. Plaintiffs MEAGAN MARIE VAN MATRE & CHAD MORISTON live in Dakota City, Dakota County, Nebraska. MEAGAN MARIE VAN MATRE & CHAD MORISTON are the natural parents of KADEN MORISTON, a minor.

21. Plaintiff RALPH RAYMOND PETTY lives in Alamosa, Alamosa County, Colorado.

22. Plaintiff MEAGHAN MAYNES lives in Alamosa, Alamosa County, Colorado. MEAGHAN MAYNES is the natural parent of MARISSA ROLDAN, a minor.

23. Plaintiff SHANNON LISA APODACA lives in Alamosa, Alamosa County, Colorado. SHANNON LISA APODACA is the natural parent of DARREN ROMERO, a minor.

24. Plaintiff DARACE J. SMITH lives in Pueblo, Pueblo County, Colorado.

25. Plaintiff LEVI K. TORRES lives in Antonito, Conejos County, Colorado.

26. Plaintiff CHRISTINA K. VALDEZ lives in Monte Vista, Rio Grande County, Colorado.

27. Plaintiff ISABEL VELASQUEZ lives in Romeo, Conejos County, Colorado. She is the former spouse of the decedent, LARRY VELASQUEZ, SR.

28. Plaintiffs LUZ ELENA & MARTIN VILLALVA live in Alamosa, Alamosa County, Colorado. LUZ ELENA & MARTIN VILLALVA are the natural parents of VANESSA VILLALVA, a minor.

29. Plaintiff CASSANDRA WOBITH lives in Alamosa, Alamosa County, Colorado. CASSANDRA WOBITH is the natural parent of KEITH & LINDSEY WOBITH, minors.

30. The Defendant City of Alamosa is a municipal corporation duly organized and existing as a home-rule city pursuant to article XX of the Constitution of the State of Colorado, and the Charter of the City of Alamosa.

II. GENERAL ALLEGATIONS

The Outbreak

31. At all times relevant, the Defendant operated and maintained a community public water system that collected and distributed unchlorinated potable water to approximately 8,900 people in and around the City of Alamosa, Colorado, and over 1,000 more through consecutive connections.¹ The community public water system that the Defendant operated and maintained is a “public water facility” within the meaning of C.R.S. 24-10-103(5.7).

32. In the second week of March 2008, multiple residents of Alamosa, Colorado fell ill with severe gastrointestinal symptoms, including diarrhea and abdominal cramps. On March 17, 2008, the Colorado Department of Public Health and Environment (CDPHE) notified the Centers for Disease Control and Prevention (CDC) that 18 Alamosa residents who had fallen ill in the month of March 2008 had tested positive for *Salmonella* Typhimurium, and that 19 others were suspected to be suffering from gastrointestinal symptoms related to *Salmonella* Typhimurium infection.

33. During the same general timeframe, epidemiological investigation by CDPHE showed that the City of Alamosa’s public water facility was the likely source of infection amongst the 18 confirmed and 19 suspected *Salmonella* Typhimurium “cases.” Tests of randomly sampled water from the City of Alamosa’s public water facility soon confirmed that the water was, in fact, heavily contaminated by *Salmonella* Typhimurium, and was thus the source of illness in the developing outbreak.

¹ At the time of the outbreak, the Defendant’s public water facility did not, however, distribute water to East Alamosa.

34. Because the Defendant's public water facility supplied potable water to many thousands of people, and thus constituted a grave threat to the health and lives of all Alamosa residents, as well as anybody who had come into contact with contaminated Alamosa water, either directly or indirectly, Colorado's chief medical officer and CDPHE issued an order on March 19, 2008 requiring the City of Alamosa to advise its residents to drink only bottled water. As of that date, at least 79 people were believed to have been infected by the heavily contaminated public water supply; and that number was quickly rising.

35. Led by CDPHE, officials from a variety of local, state, and national health organizations, including the CDC, conducted a major investigation into the Alamosa water outbreak. Ultimately, 122 people were confirmed by stool or blood test as having been infected by the same strain of *Salmonella* Typhimurium as was isolated from Alamosa water in late March 2008. It is estimated, however, that as many as 2,000 people may have actually been infected and become ill in the outbreak. One person, Larry Velasquez Sr., died as a result of his *Salmonella* Typhimurium infection.

36. During the investigation, state and national health officials, including officials from the Environmental Protection Agency, also performed the critical task of ridding the Defendant's public water facility of the *Salmonella* bacteria that had caused the outbreak. The facility's distribution system consists of approximately 50 miles of distribution line, some parts of which were extremely old and of questionable integrity, and three large water tanks.

37. Decontamination of the Defendant public water facility was accomplished by a system-wide, multi-phase hyperchlorination and flushing process that lasted approximately 13 days, ending on or about April 3, 2008. On that date, the City of Alamosa rescinded its bottled

water advisory and replaced it with a boil water advisory, to ensure that any remaining bacteria or contaminants were killed prior to consumption.

38. At the time of the March 2008 *Salmonella* Typhimurium outbreak linked to Alamosa water, critical points within the City of Alamosa's public water facility were in significant disrepair. Among other things:

a. The Weber Reservoir, the City's primary water well at the time of the outbreak, was in poor condition with cracking and noticeable holes in the corners of the concrete structure; it held 12 to 18 inches of sediment at the bottom of the tank; and had last been drained and cleaned in 1984;

b. The Weber Reservoir had not been professionally inspected since 1997; and the inspection that did occur in 1997 noted certain structural deficiencies that remained uncorrected through the time of the 2008 Alamosa water outbreak; further, and as noted in CDPHE's November 2009 report on the outbreak:

[Regarding the 1997 inspection] the only specific recommendations made by the inspector at the time were to clean the reservoir and inspect it every three to five years. There is no evidence that the recommendation to routinely clean and inspect the reservoir was addressed by the city in subsequent years.

c. Two other city water storage facilities, the Ross Tower and the Craft Tower, contained significant sediment; and the Ross Tower had deficiencies in its structural integrity, and was contaminated by animal feces.

d. The Ross Tower was last inspected in the 1980's, and had not been cleaned since then either; The Craft Tower was last inspected in 1997.

39. The Weber Reservoir was permanently disconnected from the Defendant's public water facility on or about April 11, 2008, the date that the City's boil water advisory was finally rescinded.

Plaintiffs' Injuries

40. Each of the Plaintiffs identified in paragraphs 1 through 29, and/or the minor children identified, was infected by Salmonella Typhimurium in the March 2008 Alamosa water outbreak, each suffering severe gastrointestinal illness and related physical injury, and economic and non-economic loss.

41. Larry Velasquez Sr., husband of Plaintiff Isabel Velasquez, died as a proximate result of his Salmonella Typhimurium infection.

III. WAIVER OF GOVERNMENTAL IMMUNITY AND VENUE

42. Colorado Revised Statute § 24-10-106(1)(f) sets forth a statutory waiver of immunity as to all public entities in an action for injuries resulting from "the operation and maintenance of any public water facility."

43. Defendant City of Alamosa is a public entity subject to the immunity waiver described in the foregoing paragraph.

44. Pursuant to C.R.S. §24-10-103(2.5), "Maintenance" means the act or omission of a public entity or public employee in keeping a facility in the same general state of repair or efficiency as initially constructed or in preserving a facility from decline or failure.

45. Pursuant to C.R.S. §24-10-103(3)(a), "Operation" means the act or omission of a public entity or public employee in the exercise and performance of the powers, duties, and functions vested in them by law with respect to the purposes of any public . . . water . . . facility.

46. As a result, and because the Plaintiffs' claims in this action result from the Defendant's operation and maintenance of the Alamosa public water facility, as well as the dangerous condition of the public water facility, the Defendant is not immune from liability on the causes of action set forth below.

47. Venue is appropriate pursuant to C.R.C.P. 98 as the Defendant is a resident of Alamosa County, Colorado and the acts took place in this county. See C.R.C.P. 98(c)(1) and (5).

IV. CAUSES OF ACTION

A. Negligence and Negligence per se

48. The Plaintiffs hereby incorporate paragraphs 1 through 47 by this reference as if each paragraph was set forth herein in its entirety.

49. Defendant City of Alamosa owed the Plaintiffs a duty to use reasonable care in operation and maintenance of its public water facility.

50. Defendant breached its duty to use reasonable care in the operation and maintenance of its public water facility by, among other things, committing the following acts and omissions of negligence:

a. Failure to adequately maintain or monitor the sanitary condition and integrity of its public water facility, and failure to operate the facility with the requisite care;

b. Failure to prevent the transmission of pathogens, including *Salmonella* Typhimurium, through its public water facility to the plaintiffs;

c. Failure to properly train employees and agents how to prevent the transmission of pathogens, including *Salmonella* Typhimurium, through its public water facility

to users and consumers of the water, or those in direct or indirect contact with users and consumers of the water;

d. Failure to properly supervise employees and agents to prevent the transmission of pathogens, including *Salmonella* Typhimurium, through its public water facility to users and consumers of the water, or those in direct or indirect contact with users and consumers of the water;

e. Failure to maintain its public water facility in a clean, sanitary, and healthful manner;

f. Failure to maintain the public water facility in the same general state of repair or efficiency as initially constructed or in preserving the facility from decline or failure;

g. Failure to maintain the public water facility so as to prevent the development and persistence of a physical condition that constituted an unreasonable risk to the health and safety of the public, which dangerous physical condition was known or, with the exercise of reasonable care, should have been known to the defendant City of Alamosa;

h. Failure to exercise reasonable care to discover and correct the dangerous physical conditions that, by its own acts and omissions, the defendant allowed to develop and persist within its public water facility.

51. Defendant City of Alamosa also owed a duty to Plaintiffs to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, and sale of potable drinking water through its maintenance and operation of its public water facility. These statutory and regulatory provisions included, but were not limited to, the federal Safe Drinking Water Act and C.R.S. § 25-1.5-201 *et seq*, which prohibit the distribution of potable

drinking water contaminated by *Salmonella* Typhimurium.

52. The Plaintiffs are among the class of persons intended to be protected by the statutory and regulatory provisions pertaining to manufacture, distribution, and sale of potable drinking water.

53. As a result of the defendant's negligent acts and omissions set forth above, the defendant is liable to the Plaintiffs for their personal injuries and related economic and non-economic loss.

B. Strict Product Liability

54. The Plaintiffs hereby incorporate paragraphs 1 through 53 by this reference as if each paragraph was set forth herein in its entirety.

55. The Defendant City of Alamosa is a manufacturer and product seller within the meaning of the Colorado Product Liability Act, C.R.S. §§13-21-401 *et seq* ("The Product Liability Act.") Within the meaning of the Product Liability Act, The City of Alamosa manufactured and sold the *Salmonella*-contaminated water that was the source of Plaintiffs' illnesses and legal injuries. The *Salmonella*-contaminated water that caused the Plaintiffs' illness and legal injuries was a product within the meaning of the Act.

56. Under the Product Liability Act, Defendant City of Alamosa owed a duty to all users and consumers of water distributed by the defendant through the public water facility that it operated and maintained, as well as any individuals foreseeably affected by the water distribution, to manufacture, distribute, and sell water that was not defective and that was reasonably safe. The water that caused Plaintiffs' illness and legal injuries was defective, and

was unreasonably dangerous, because it was contaminated and adulterated with, among other things, *Salmonella* Typhimurium.

57. Because the Defendant City of Alamosa manufactured and sold the *Salmonella*-contaminated water that caused the Plaintiffs' illnesses and legal injuries through the maintenance and operation of its public water facility, the defendant is strictly liable to the Plaintiffs for their personal injuries and related economic and non-economic loss.

DAMAGES

58. The Plaintiffs hereby incorporate paragraphs 1 through 57 by this reference as if each paragraph was set forth herein in its entirety.

59. Plaintiffs have suffered general and special, incidental and consequential damages as the direct and proximate result of the acts and omissions of the defendant, which damages shall be fully proven at the time of trial, including, but not limited to, damages for loss of enjoyment of life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress and future emotional distress; pharmaceutical expenses, past and future; wage loss; and other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

1. That the Court award Plaintiffs judgment against Defendant in such sum as shall be determined to fully and fairly compensate Plaintiffs for all general, special, incidental

- and consequential damages incurred, or to be incurred, by them as the direct and proximate result of the acts and omissions of defendant;
2. That the Court award Plaintiffs their costs, disbursements and reasonable attorneys' fees incurred;
 3. That the Court award Plaintiffs the opportunity to amend or modify the provisions of this complaint as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served; and
 4. That the Court award such other and further relief as it deems necessary and proper in the circumstances.

JURY DEMAND

The Plaintiffs hereby demand a jury trial.

MONTGOMERY LITTLE & SORAN, P.C.

By: /s/ John Riley
John Riley, Atty. Reg. #18962
5445 DTC Parkway, Suite 800
Greenwood Village, Colorado 80111
Telephone: (303) 773-8100

MARLER CLARK, LLP, P.S.

By: /s/R. Drew Falkenstein
R. Drew Falkenstein, WSBA #33401
dfalkenstein@marlerclark.com
701 Fifth Avenue, Suite 6600
Seattle, WA 98104
Telephone: (206) 346-1888
Facsimile: (206) 346-1898
(pending admission *pro hac vice*)
Attorneys for the Plaintiffs