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

NAVIN PRASAD,

Plaintiff,

vs.

CHILI'S BEVERAGE COMPANY, INC.,
d/b/a ON THE BORDER MEXICAN GRILL
& CANTINA, a Texas corporation,

Defendant.

NO.

**COMPLAINT FOR PERSONAL
INJURY DAMAGES**

Comes now the Plaintiff Navin Prasad through and by his attorneys Marler Clark, and for causes of action do hereby complain and allege as follows:

I. PARTIES

1. Plaintiff Navin Prasad is a resident of Clark County, Washington.
2. Defendant Chili's Beverage Company, Inc., d/b/a On the Border Mexican Grill & Cantina ("Defendant") is a Texas corporation with its principle offices in Dallas, Texas. Its principle business is the ownership, operation and management of Mexican food restaurants

1 nationwide, including the On the Border Mexican Grill and Cantina restaurant located at 1505
2 SE 164th Ave., Vancouver, Clark County, Washington.

3 **II. JURISDICTION AND VENUE**

4 3. This Court is vested with jurisdiction of this action pursuant to RCW 2.08.010
5 and RCW 4.96.010. This Court is additionally vested with jurisdiction over the defendant, as it
6 is a corporation doing business within the State of Washington, pursuant to RCW 2.08.010,
7 RCW 4.28.185 and RCW 4.28.080.

8 4. Venue is proper in this Court, pursuant to RCW 4.12.025, because the plaintiff's
9 causes of action arose within Clark County, and because the defendant does business in Clark
10 County, and is therefore deemed to be a resident of this county.

11 **III. UNDERLYING FACTS**

12 5. On October 10, 2012, Clark County Public Health announced that it was
13 investigating at least 16 *Salmonella* cases among patrons of On the Border, a Mexican restaurant
14 in Vancouver, WA. Clark County health officials had closed the restaurant Tuesday morning,
15 October 9, and were continuing to look into the source of contamination. By Saturday, October
16 13, at least 21 confirmed cases and 55 suspected *Salmonella* infections had been linked to the On
17 the Border Restaurant. Illnesses were predominantly reported among adults who ate at the
18 restaurant on September 20 through October 9.

19 6. The Clark County Public Health said that as of mid-Sunday, October 14, there
20 were 23 confirmed and 54 probable cases of *Salmonella* linked to the outbreak, which was
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1 caused by *Salmonella* Virchow. Of the four victims who were hospitalized, three had been
2 released. The health department allowed the restaurant to reopen Sunday.

3
4 7. *Salmonella* infection occurs when the bacteria are ingested, typically from food
5 derived from infected food-animals, but it can also occur by ingesting the feces of an infected
6 animal or person. Food sources include raw or undercooked eggs/egg products, raw milk or raw
7 milk products, contaminated water, meat and meat products, and poultry. Raw fruits and
8 vegetables contaminated during slicing have been implicated in several foodborne outbreaks.

9 8. The acute symptoms of *Salmonella* gastroenteritis include the sudden onset of
10 nausea, abdominal cramping, and bloody diarrhea with mucous. Fever is almost always present.
11 Vomiting is less common than diarrhea. Headaches, myalgias (muscle pain), and arthralgias
12 (joint pain) are often reported as well. The onset of symptoms usually occurs within 6 to 72
13 hours after the ingestion of the bacteria. The infectious dose is small, probably from 15 to 20
14 cells. Reiter's Syndrome, which includes and is sometimes referred to, as reactive arthritis is an
15 uncommon, but debilitating, result of a *Salmonella* infection. The arthritis associated with
16 Reiter's Syndrome typically affects the knees, ankles, and feet, causing pain and swelling.

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18 9. On or about September 27, 2012, plaintiff Navin Prasad dined at the defendant's
19 restaurant with friends. He ate a variety of menu offerings, including chicken enchiladas as a
20 main course, along with flautas, quesadillas, and nachos from a sampler plate. He also ate small
21 samples of guacamole, cheese dip, and beans and rice.

1 10. Mr. Prasad began to feel ill the evening of September 28, 2012. Symptoms began
2 with a fever and fatigue. Around 2:00 AM on September 29, he woke up with painful body
3 aches and chills as well. At that point, he began what would become a steady diet of over-the-
4 counter pain relievers.

5 11. Mr. Prasad began to suffer from repeated bouts of diarrhea on or about September
6 30, 2012. His fever and other symptoms persisted as well. Mr. Prasad ultimately left work early
7 on September 30 to return home and rest.

8 12. Over the course of the next two days, Mr. Prasad's symptoms worsened. The
9 repeated bouts of diarrhea turned bloody the morning of Monday, October 1, 2012. At this point,
10 Mr. Prasad had been unable to eat anything for days, and was struggling to retain fluids. He was
11 drinking only Gatorade in an effort to stay hydrated.

12 13. During this time, in addition to pain-killers, Mr. Prasad was taking the anti-
13 diarrhea drug Immodium. This caused the bouts of diarrhea to slow enough that, by Friday, he
14 was able to make the short drive to Eugene, Oregon to see his parents. During the drive, Mr.
15 Prasad began to suffer from intense fever spikes, a headache, and a severely stiff neck that
16 caused him to be unable to turn his head. His mother applied ice-cold towels to his head and
17 neck most of the day on Friday and the next morning.

18 14. His symptoms persisting, Mr. Prasad finally went to an urgent care clinic on
19 Saturday, October 6, 2012. He was prescribed anti-nausea and anti-diarrhea medications. Blood
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1 tests showed that he had developed a sodium deficiency due to the immense gastrointestinal
2 losses that he had suffered that week.

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4 15. Over the course of the next several days, Mr. Prasad's symptoms continued. He
5 repeatedly spiked very high fevers, requiring the application of ice-cold compresses. He spoke
6 with physicians at the urgent care clinic on several occasions, who advised him to continue with
7 the same treatment regimen.

8 16. When Mr. Prasad was able to drive again, he returned to Vancouver, Washington.
9 On Saturday, October 13, 2012, he visited a medical clinic again to obtain additional advice on
10 dealing with his ongoing symptoms. That day, he submitted a stool sample that would ultimately
11 test positive for *Salmonella* Virchow.

12
13 17. Mr. Prasad continues in his recovery. He has incurred substantial physical,
14 emotional, and economic losses as a proximate result of his infection by *Salmonella* Virchow at
15 the defendant's restaurant.

16 **IV. FIRST CLAIM FOR RELIEF**

17 (Strict Product Liability)

18 15. At all times relevant to this action, the defendant was a manufacturer, seller and
19 distributor of the *Salmonella* contaminated food products that caused the plaintiff's injuries.

20 16. The *Salmonella* contaminated food product that the defendant manufactured,
21 distributed, and sold was, at the time it left the control of the defendant, defective because it

1 contained *Salmonella*, a potentially lethal pathogen, and was thus in a condition not
2 contemplated by the ultimate consumer.

3 17. The defective condition of the *Salmonella* contaminated food that the defendant
4 manufactured, distributed, and sold caused the food to be unreasonably dangerous, because the
5 food posed a risk beyond that an ordinary consumer would not contemplate when purchasing the
6 product.

7 18. The *Salmonella* contaminated food that the defendant manufactured, distributed,
8 and sold was delivered to the plaintiff without any change in its defective condition. The
9 contaminated food products that the defendant manufactured, distributed, and sold were used in
10 the manner expected and intended, and were consumed by the plaintiff.

11 19. As a direct and proximate result of the defendant's manufacture, distribution and
12 sale of *Salmonella* contaminated food, plaintiff was infected by *Salmonella*, causing him to
13 suffer substantial economic damages. Plaintiff is thus entitled to an award for lost medical and
14 medically-related expenses, both past and future, in a final amount to be determined at trial.

15 20. As a further direct and proximate result of the defendant's manufacture,
16 distribution and sale of *Salmonella* contaminated food, the plaintiff has suffered non-economic
17 damages, including, but not limited to: damages for general pain and suffering; damages for loss
18 of enjoyment of life, both past and future; emotional distress, and future emotional distress; lost
19 familial consortium; and all other ordinary, incidental and consequential non-economic damages
20 as would be anticipated to arise under the circumstances, and plaintiff is thus entitled to an award
21 of non-economic damages in a final amount to be determined at trial.

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V. SECOND CLAIM FOR RELIEF

(Breach of Warranty)

21. The defendant is liable to the plaintiff for breaching express and implied warranties that it made regarding the *Salmonella* contaminated food products that caused the plaintiff's injuries. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, the defendant expressly warranted, through its sale of the food products to the public, and by the statements and conduct of its employees and agents, that the food products it sold and distributed were fit for human consumption and not otherwise adulterated or injurious to health.

22. The *Salmonella* contaminated food that caused the plaintiff's injuries would not pass without exception in the trade, and the sale of those contaminated food products was therefore in breach of the implied warranty of merchantability.

23. The *Salmonella* contaminated food that caused the plaintiff's injuries was not fit for the uses and purposes intended, *i.e.* human consumption, and the sale of that contaminated food was therefore in breach of the implied warranty of fitness for its intended use.

24. As a direct and proximate result of the defendant's breach of express and implied warranties regarding the contaminated product, plaintiff was infected with *Salmonella*, causing him to suffer substantial economic damages. Plaintiff is thus entitled to an award for lost medical and medically-related expenses, both past and future, in a final amount to be determined at trial.

1 regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its
2 food products, and was therefore negligent.

3 28. The defendant had a duty to use ingredients, supplies, and other constituent
4 materials that were reasonably safe, wholesome, free of defects, from reliable sources, and that
5 otherwise complied with applicable federal, state, and local laws, ordinances, and regulations,
6 and that were clean, free from adulteration, and safe for human consumption, but the defendant
7 failed to do so. Defendant failed to use ingredients, supplies, and other constituent materials that
8 were reasonably safe, wholesome, free of defects, from reliable sources, and that otherwise
9 complied with applicable federal, state, and local laws, ordinances, and regulations, and that
10 were clean, free from adulteration, and safe for human consumption, in its manufacture,
11 distribution and sale of the contaminated food products, and was therefore negligent.

12 29. The defendant had a duty to comply with all applicable state and federal
13 regulations intended to ensure the purity and safety of its food products, including the
14 requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*), and the
15 Washington adulterated food statutes. The defendant failed to comply with the provisions of the
16 health and safety acts identified above, by manufacturing, distributing and selling food products
17 that were contaminated with *Salmonella*, a deadly pathogen, and, as a result, defendant was
18 negligent *per se* in its manufacture, distribution, and sale of the adulterated food product.

19 30. The defendant had a duty to comply with all statutes, laws, regulations, or safety
20 codes pertaining to the manufacture, distribution, storage, and sale of its food product, but failed
21 to do so. Defendant failed to comply with statutes, laws, regulations and safety codes pertaining

1 to the manufacture, distribution, storage and sale of its food products, and was therefore
2 negligent. The plaintiff were among the class of persons designed to be protected by these
3 statutes, laws, regulations, safety codes or provision pertaining to the manufacture, distribution,
4 storage, and sale of similar food products.

5 31. As a direct and proximate result of the defendant's negligence, plaintiff was
6 infected by *Salmonella*, and suffered substantial economic damages. Plaintiff is thus entitled to
7 an award for his lost medical and medically-related expenses, both past and future, in a final
8 amount to be determined at trial.

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10 32. As a further direct and proximate result of the defendant's negligence, the
11 plaintiff has suffered non-economic damages, including, but not limited to: damages for general
12 pain and suffering; damages for loss of enjoyment of life, both past and future; emotional
13 distress, and future emotional distress; lost familial consortium; and all other ordinary, incidental
14 and consequential non-economic damages as would be anticipated to arise under the
15 circumstances, and plaintiff is thus entitled to an award of non-economic damages in a final
16 amount to be determined at trial.

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18 **PRAYER FOR RELIEF**

19 WHEREFORE, the plaintiff prays for the following relief:

20 1. For all of plaintiff's economic damages, including all past and future medical
21 expenses, as determined at the time of trial.

