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DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

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<p>TZAHY SALOMON and JULIA SALOMON, husband and wife,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>FIREFLY PARTNERS, LLC, a Nevada Limited-Liability Company d/b/a Firefly Kitchen Tapas and Bar and/or Firefly on Paradise; FIREFLY MANAGEMENT, LLC, a Nevada Limited-Liability Company d/b/a Firefly Kitchen Tapas and Bar and/or Firefly on Paradise; FLYBYNIGHT VENTURES, LLC, a Nevada Limited-Liability Company d/b/a Dragonfly; JOHN D. SIMMONS, individually; DOES I through X, inclusive; and ROE ENTITIES I through X, inclusive,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.:</p> <p>Dept. No.:</p> <p><u>COMPLAINT</u></p>
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The above named Plaintiffs, by and through their attorney of record, complain, state, and
allege as follows:

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I.

NATURE OF THE ACTION

1. This lawsuit on arises out of an outbreak of Salmonella. The outbreak occurred among guests and patrons who consumed food prepared by the Firefly Tapas Kitchen and Bar restaurant, also known as Firefly on Paradise, and/or the adjacent affiliated restaurant Dragonfly, (hereinafter, collectively referred to as “Firefly Restaurants”), the restaurants at issue, located at 3900 Paradise Road, Las Vegas, NV, during the period of April 21 through April 25, 2013.
2. The outbreak was caused by the consumption of food, drink, or water contaminated with *Salmonella*, a pathogenic bacteria.
3. The Firefly Restaurants are owned and/or operated by the defendant, John Simmons (hereinafter, “Simmons”), a resident of Las Vegas, Nevada.

II.

PARTIES

4. Plaintiffs repeat and re-allege those allegations set forth in Paragraphs 1 through 3 above as if fully set forth herein.
5. Plaintiffs, Tzahi Salomon and Julia Salomon, (hereinafter, “Plaintiffs”) at all times material hereto, were husband and wife and residents of Las Vegas, Clark County, Nevada.
6. Defendant, John D. Simmons, (hereinafter, “Simmons”) at all times material hereto, was a resident of Las Vegas, Clark County, Nevada.
7. Defendant Firefly Partners, LLC, (hereinafter “Defendant”) at all times material hereto, was a Nevada Limited-Liability Company licensed and doing business in Clark County, Nevada as Firefly Tapas Kitchen and Bar, also known as Firefly on Paradise.

- 1 8. Defendant Firefly Management, LLC (hereinafter, “Defendant”) at all times material
2 hereto, was a Nevada Limited-Liability Company licensed and doing business in Clark
3 County, Nevada as Firefly Tapas Kitchen and Bar, also known as Firefly on Paradise.
- 4 9. Defendant Flybynight Ventures, LLC (hereinafter, “Defendant”), at all times material
5 hereto, was a Nevada Limited-Liability Company licensed and doing business in Clark
6 County, Nevada as Dragonfly.
- 7 10. The true names and capacities of the Defendants designated herein as DOES I through X
8 and ROE ENTITIES I through X are presently unknown to Plaintiffs at this time who,
9 therefore, sues said Defendants by such fictitious names, and when their true names and
10 capacities are ascertained, Plaintiffs will amend this Complaint accordingly to insert the
11 same herein. Plaintiffs are informed and believe, and based upon such information and
12 belief, allege that Defendants, and each of them, designed as DOES and/or ROE
13 ENTITIES are, in some manner, responsible for the occurrence and injuries sustained by
14 Plaintiffs as alleged herein.
- 15 11. Plaintiffs went to the Firefly Restaurants on Tuesday, April 23, 2013, with Tzahi’s
16 brother, Avi, visiting from Israel, and three other friends. While there, Plaintiffs ordered
17 and consumed sangria, mojitos, and a number of different foods. The food and/or drink
18 items then prepared and served by the Firefly Restaurants were contaminated with
19 *Salmonella*.
- 20 12. As a result of exposure to the Salmonella bacteria, both Plaintiffs became ill with a
21 *Salmonella* infection. Tzahi started feeling ill on April 24, 2013, and on April 25, 2013
22 Presented to an Emergency Room suffering from high fever, heartburn, stomach pain,
23 diarrhea, and muscle cramps. Julia also suffered with a very strong headache, nausea,
24 and diarrhea. Neither Plaintiff has yet recovered.
- 25

- 1 13. Lab tests subsequently confirmed that Tzahi was culture positive for *Salmonella*.
- 2 14. As a direct and proximate result of the conduct of Defendants, their agents, servants,
3 and/or employees, Plaintiffs were forced to endure great pain, suffering, and
4 inconvenience, and were forced to submit to related medical care.
- 5 15. As a further direct and proximate result of the conduct of Defendants and their agents,
6 servants, and/or employees, Plaintiffs were forced to expend sums of money for doctors,
7 hospitals, and/or other items necessary for their proper care and treatment.
- 8 16. As a further direct and proximate result of the conduct of Defendants and their agents,
9 servants, and/or employees, Plaintiffs were unable to perform some or all of their
10 activities of daily living.
- 11 17. As a further direct and proximate result of the conduct of Defendants and their agents,
12 servants, and/or employees, Plaintiffs suffered a loss of earnings and loss of earning
13 capacity.
- 14 18. By reason of the negligent acts and breach of the applicable standard of care by
15 Defendants, and each of them, and as a direct and proximate result thereof, Plaintiffs
16 have found it necessary to secure the services of an attorney in order to prosecute this
17 action, have sustained damages to the extent of such attorney fees, and Plaintiffs are
18 entitled to reasonable attorney's fees and costs.

19 **III.**

20 **JURISDICTION AND VENUE**

- 21 19. Plaintiffs repeat and re-allege those allegations set forth in Paragraphs 1 through 18
22 above as if fully set forth herein.
- 23 20. At all times relevant to this complaint, Simmons was a citizen of Nevada, and a resident
24 of Las Vegas, Nevada. Accordingly, under NRS 14.065, personal jurisdiction is
25 appropriate in the District Court of Clark County, Nevada.

1 21. Because Simmons is a resident of Las Vegas, Clark County, Nevada, venue is proper in
2 Clark County District Court under NRS 13.040.

3 22. By reason of the negligent acts and breach of the applicable standard of care by
4 Defendants, and each of them, and as a direct and proximate result thereof, Plaintiffs
5 have found it necessary to secure the services of an attorney in order to prosecute this
6 action, have sustained damages to the extent of such attorney fees, and Plaintiffs are
7 entitled to reasonable attorney's fees and costs.

8 IV.

9 **FACTS ABOUT THE FIREFLY RESTAURANT**
10 **SALMONELLA OUTBREAK**

11 23. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of
12 humans and other animals. *Salmonella* bacteria are usually transmitted to humans by
13 eating foods contaminated with human or animal feces. Contaminated foods usually
14 look and smell normal. Contaminated foods are often of animal origin, such as beef,
15 poultry, milk, or eggs, but all foods, including vegetables, may become contaminated.

16 24. Once in the lumen of the small intestine, the bacteria penetrate the epithelium, multiply,
17 and enter the blood within 12 to 72 hours. As few as 15-20 cells of *Salmonella* bacteria
18 can cause salmonellosis, or a more serious typhoid-like fever. Variables such as the
19 health and age of the host, and virulence differences among the serotypes, affect the
20 nature and extent of the illness. Infants, elderly, hospitalized, and immune-suppressed
21 persons are the populations that are the most susceptible to disease, and suffer the most
22 severe symptoms.

23 25. The acute symptoms of *Salmonella* gastroenteritis include the sudden onset of nausea,
24 abdominal cramping, and bloody diarrhea with mucous over a period of days. There is
25 no real cure for *Salmonella* infection, except treatment of the symptoms. Persons with
severe diarrhea may require rehydration, often with intravenous fluids.

1 26. Persons with diarrhea usually eventually recover completely, although it may be several
2 months before their bowel habits become entirely normal. A number of persons develop
3 infectious colitis or irritable bowel syndrome as a consequence of their *Salmonella*
4 illness. A small number of persons who are infected with *Salmonella* will go on to
5 develop pains in their joints, irritation of the eyes, and painful urination. This is called
6 Reiter's syndrome and/or reactive arthritis. It can last for months or years, and can lead
7 to chronic arthritis, which is difficult to treat.

8 27. On April 26, 2013, the Southern Nevada Health District (SNHD), Office of
9 Epidemiology (OOE) received reports of gastrointestinal illness from eight independent
10 groups of patrons of the Firefly Restaurants located at 3900 Paradise Road, Las Vegas,
11 NV 89109. All patrons from these groups ate at the Firefly restaurant during April 21-
12 24, 2013. Ill patrons reported symptoms of diarrhea and/or vomiting after they
13 consumed food from the Firefly Restaurants, and many sought medical care for their
14 illness. In response to these illness reports, the SNHD initiated an investigation.

15 28. On April 26, 2013, the SNHD performed an investigative inspection and closed the
16 Firefly Restaurants to minimize ongoing risk of illness. The SNHD OOE, Environmental
17 Health (EH) and Southern Nevada Public Health Laboratory (SNPHL) have been
18 collaborating on the investigation and response to this *Salmonella* outbreak. The Nevada
19 State Health Division was also apprised of the outbreak investigation.

20 29. At this time, it is estimated that at least 86 patrons, including Plaintiffs and 3 employees
21 who consumed food and/or drinks at the Firefly Restaurants during April 21-25, 2013
22 may have contracted *Salmonella* infection.

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COUNT I

STRICT PRODUCT LIABILITY

30. Plaintiffs repeat and re-allege those allegations set forth in Paragraphs 1 through 29 above as if fully set forth herein.

31. Defendants own and operate the Firefly Restaurants which were the source of a *Salmonella* outbreak during April 21-25, 2013.

32. At the Firefly Restaurants, Defendants manufacture food for sale to the public, and so manufactured the contaminated food that it served and sold to Plaintiffs.

33. Food that is contaminated with *Salmonella* is defective because it cannot perform in the manner reasonably to be expected of food, which is to nourish the body and promote health and wellness. Instead, *Salmonella*-contaminated food causes illness and injury, which, in light of the nature and intended function of food, is not the reasonably expected performance.

34. The defective food that Defendants sold to Plaintiffs was unreasonably dangerous and unsafe for its intended use because it contained a potentially lethal foodborne pathogen.

35. Defendants are strictly liable to Plaintiffs for the harm proximately caused by their manufacture and sale of the unsafe and defective food product.

COUNT II

NEGLIGENCE

36. Plaintiffs repeat and re-allege those allegations set forth in Paragraphs 1 through 35 above as if fully set forth herein.

37. Defendants designed, manufactured, distributed, and sold food and products that were adulterated with the *Salmonella* bacteria, a potentially deadly pathogen. These products,

1 as a result of adulteration, were unfit for human consumption, and were not reasonably
2 safe as designed, constructed, manufactured, and sold.

3 38. Defendants owed a duty to all persons who were the restaurant's guests and customers to
4 manufacture and sell food and drink that was safe to eat, that was not adulterated with
5 potentially deadly pathogens, like *Salmonella*, and that was not in violation of applicable
6 food and safety regulations.

7 39. Defendants owed a duty to all persons who were their guests and customers to maintain
8 their premises in a sanitary and safe condition so that no one eating at or purchasing
9 food from the Firefly Restaurants would be exposed to, or infected by, a potentially
10 deadly pathogen like *Salmonella*.

11 40. Defendants breached the duties owed to persons who were the restaurant guests and
12 customers by committing the following acts and omissions of negligence: failing to
13 adequately maintain or monitor the sanitary conditions of their food, drink, water,
14 premises, and employees; failing to properly operate their restaurant in a safe, clean,
15 and sanitary manner; failing to apply their food safety policies and procedures to ensure
16 the safety and sanitary conditions of their food, drink, water, premises, and employees;
17 failing to prevent the transmission of *Salmonella* from their food, drink, water, premises,
18 or employees to their business invitees and customers; failing to properly train their
19 employees and agents how to prevent the transmission of *Salmonella* on their premises,
20 or in their food, drink, and water; and failed to properly supervise their employees and
21 agents to prevent the transmission of *Salmonella* on their premises or in their food,
22 drink, and water.
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1 41. Plaintiffs were injured and sustained personal injury and damages as the proximate
2 result of Defendants' negligent acts and omissions, as set forth above.

3 42. By reason of the negligent acts and breach of the applicable standard of care by
4 Defendants, and each of them, and as a direct and proximate result thereof, Plaintiffs
5 have found it necessary to secure the services of an attorney in order to prosecute this
6 action, have sustained damages to the extent of such attorney fees, and Plaintiffs are
7 entitled to reasonable attorney's fees and costs.
8

9 **COUNT III**

10 **BREACH OF WARRANTY**

11 43. Plaintiffs repeat and re-allege those allegations set forth in Paragraphs 1 through 42
12 above as if fully set forth herein.

13 44. By offering food and drink for sale at the Firefly Restaurants, Defendants expressly
14 warranted that such food was safe to eat, that it was not adulterated with a deadly
15 pathogen, and that the food had been safely prepared under sanitary conditions.

16 45. By offering food and drink for sale at the Firefly Restaurants, Defendants also impliedly
17 warranted that such food was safe to eat, that it was not adulterated with a deadly
18 pathogen, and that the food had been safely prepared under sanitary conditions.

19 46. Defendants breached express and implied warranties with regard to the food they
20 manufactured and sold to Plaintiffs.

21 47. Plaintiffs suffered personal injury and damages as a foreseeable consequence of
22 Defendants' breach of warranties, as set forth above, and are thus entitled to recover for
23 all actual, consequential, and incidental damages that flow directly and in a foreseeable
24 fashion from these breaches.
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1 48. By reason of the negligent acts and breach of the applicable standard of care by
2 Defendants, and each of them, and as a direct and proximate result thereof, Plaintiffs
3 have found it necessary to secure the services of an attorney in order to prosecute this
4 action, have sustained damages to the extent of such attorney fees, and Plaintiffs are
5 entitled to reasonable attorney's fees and costs.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for the following relief:

- 8 1. For general and special damages in excess of \$10,000;
- 9 2. For past and future medical expenses in a sum to be determined at trial;
- 10 3. For general damages for past and future pain, suffering, mental distress, anguish and
11 fear, to be determined at trial;
- 12 4. For past and future lost wages;
- 13 5. For any and all pre- and post-judgment interest allowed under the law;
- 14 6. For reasonable attorney's fees plus costs of suit;
- 15 7. That the Court award the plaintiff the opportunity to amend or modify the complaint,
16 including the addition of a claim for punitive damages, if necessary or appropriate
17 after additional or further discovery is completed in this matter, and after all
18 appropriate parties have been served; and

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1 8. For such other and further relief as the Court may find just and proper.

2 DATED this _____ day of May, 2013.

3 MURPHY & MURPHY LAW OFFICES

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6 _____
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