

CAUSE NO. _____

DUSTIN MINER AND
AUSTIN CARR,

Plaintiffs,

VS.

FRALO'S ART OF PIZZA

Defendant,

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IN THE DISTRICT COURT OF

BEXAR COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION, REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Dustin Miner and Austin Carr, Plaintiffs, and file this their Plaintiffs' Original Petition complaining of Fralo's Art of Pizza.

DISCOVERY CONTROL PLAN

1. Pursuant to Rule 190 *et seq* of the Texas Rules of Civil Procedure, Plaintiffs request a Level III discovery control plan.

PARTIES

2. Plaintiff, Dustin Miner resides at 10 Falls View, Fair Oak Ranch, Bexar County, Texas 78015.

3. Plaintiff, Austin Carr resides at 2 Spring Lake Drive, San Antonio, Bexar County, Texas, 78248.

4. Defendant, Fralo's Art of Pizza is a professional business association authorized to do business in the State of Texas and may be served by serving its registered agent, Arthur J. Farley, M.D., P.A., 403 Heights Boulevard, Houston, Texas 77007.

JURISDICTION AND VENUE

5. Venue in this case is proper in San Antonio, Dexar County, Texas, because all or a substantial part of the events or omissions giving rise to Plaintiffs' causes of action occurred there, including the Plaintiffs' consumption of *E. coli* contaminated water and subsequent infection with *E. coli* caused by that consumption.

6. As set forth below, Plaintiffs' causes of action arise out of illnesses resulting from the consumption of *E. coli*-contaminated water from Fralo's Art of Pizza ("Fralo's") on or about August 14, 2010. The negligent conduct of Defendants was a proximate as well as producing cause of the injuries in question and Plaintiffs' damages resulting from the illnesses.

7. Plaintiffs' damages are within the jurisdictional limits of this Court. This Court has subject matter jurisdiction over this case because the amount in controversy, exclusive of court costs and pre-judgment interests is more than \$50,000.

FACTS

8. On or about August 15, 2010, within days of eating at Fralo's together, Plaintiffs became violently ill with extreme nausea, vomiting, abdominal cramping and diarrhea. Plaintiffs also suffered from fever, chills, fatigue and bloody stools.

9. Plaintiff, Dustin Miner was diagnosed with *E. coli* poisoning. He continues to suffer from cramping and discomfort while passing stools. Likewise, Plaintiff, Austin Carr was diagnosed with *E. coli* poisoning.

10. Upon information and belief, the San Antonio Metro Health Department tested samples of the water at Fralo's and reported that the tests came back positive for *E. coli* bacteria; causing Fralo's to be closed down temporarily as a result of the *E. coli* contaminated water

supply. Upon information and belief, Fralo's was using a private water source, which was not properly tested at the time of the food poisonings.

11. Just prior to the contamination at Fralo's, San Antonio Water Systems experienced a 400,000 gallons sewage leakage from a compromised sewer line causing sewage to migrate into the ground and a nearby creek bed, contaminating Fralo's water source.

NEGLIGENCE
Against Defendant

12. Defendant owed a duty of care to Plaintiffs, and Defendant breached its duty to use ordinary care. The Defendant's negligent conduct was a proximate cause of Plaintiffs' injuries.

DAMAGES TO PLAINTIFFS

13. As a result of the incident described herein, Plaintiffs incurred reasonable and necessary medical expenses and in all reasonable probability such medical expenses will continue in the future.

14. Plaintiffs experienced mental anguish in the past as a result of their physical injuries, and in all reasonable probability, will sustain mental anguish and suffering in the future as a result of their physical injuries.

15. Plaintiffs experienced physical pain and suffering in the past as a result of their physical injuries, and in all reasonable probability, will sustain physical pain and suffering in the future as a result of their physical injuries.

16. Plaintiffs experienced physical impairment or physical incapacity in the past as a result of their physical injuries, and in all reasonable probability, will sustain physical impairment or physical incapacity in the future as a result of their physical injuries.

17. As a result of the above, Plaintiffs seek damages within the jurisdictional limits of this Court.

18. Plaintiffs claim all lawful pre-judgment and post-judgment interest on the damages suffered by them.

REQUEST FOR DISCLOSURE

19. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiffs request Defendant, Fralo's Art of Pizza, to disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure. Plaintiffs specifically request the responding party to produce responsive documents at the undersigned law offices within fifty (50) days of service of this request.

JURY DEMAND

20. Plaintiffs request that a jury be convened to try the factual issues in this cause.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendant be cited to appear and answer wherein and upon final hearing of this cause, Plaintiffs have judgment against the Defendant for damages described herein, for costs of suit, interest from the date of the incident and for such other relief to which Plaintiffs may be justly entitled.

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Respectfully submitted,

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