

ER

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO.

KILEY FLAMMIA,  
Plaintiff

V.

BRIGHTON AMIGOS, INC., dba  
LOS AMIGOS TAQUERIA  
Defendant

**COMPLAINT**

1. Plaintiff, Kiley Flammia, is a resident of 2 Bowdoin Street, Everett, Middlesex County and the Commonwealth of Massachusetts.
2. Defendant Brighton Amigos, Inc., dba, Los Amigos Taqueria, is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with a principal place of business at 366 Washington Street, Brighton and Suffolk County.
3. At all times relevant to this legal action, defendant was being operated as a restaurant which manufactured, prepared, distributed and/or sold food to customers, including plaintiff.
4. On or about May 15, 2023, plaintiff, as well as approximately 15 other employees of Ernst & Young accounting firm, purchased food from defendant restaurant; said food was catered and eaten at the Ernst & Young office located at 200 Clarendon Street in Boston. A copy of the Order # TOT-784 reflecting proof of purchase from defendant restaurant is attached hereto and marked "**Exhibit 1**".
5. Within 24 hours of consuming food from defendant restaurant, plaintiff became very sick and underwent emergency room treatment where blood work was done; the results of that blood work confirmed that plaintiff had contracted Salmonella poisoning [stool culture results attached hereto and marked "**Exhibit 2**"].
6. On or about May 19, 2023, local health officials conducted an investigation into the outbreak of Salmonella infections linked to the consumption of food products manufactured, prepared, distributed and/or sold at defendant restaurant, after which defendant restaurant was closed and its permit to sell food suspended.
7. Local health officials further determined that defendant restaurant was selling food products which contained foodborne infections, including Salmonella.

8. Plaintiff's consumption of food products from defendant restaurant which contained Salmonella poisoning has resulted in serious and permanent injuries, including, but not limited to, high fever; significant weight loss; extreme pain and swelling in her right knee requiring drainage; reactive arthritis in her right knee, right foot and left wrist; an ongoing eating disorder; cortisone injections; in-patient hospital admissions; panic/stress attacks causing further emotional distress; and an inability to work for protracted periods of time.
9. The above injuries and damages have been caused directly and exclusively by plaintiff's consumption of tainted/poisoned food products from defendant restaurant.

**COUNT I**  
**[Negligence]**

10. This is a cause of action alleging negligence against defendant restaurant resulting in damages and injuries to plaintiff.

**COUNT II**  
**[Breach of Warranty of Merchantability]**

11. This is a cause of action alleging that defendant restaurant breached its warranties of merchantability resulting in damages and injuries to plaintiff.

**COUNT III**  
**[Breach of Warranty of Fitness for a Particular Purpose]**

12. This is a cause of action alleging that defendant restaurant breached its warranties of fitness for a particular purpose resulting in damages and injuries to plaintiff.

**COUNT IV**  
**[Breach of Contract]**

13. This is a cause of action alleging that defendant restaurant breached its contract- both express and implied- to provide safe and clean food products which were not infected by Salmonella poisoning.

**COUNT V**  
**[Actions Proscribed by G.L. c. 93A]**

14. This is a cause of action alleging that defendant restaurant committed unfair and deceptive business practices proscribed by G.L. c. 93A, §2 and 9, and the regulations promulgated thereunder, by providing plaintiff with contaminated food products; a copy of plaintiff's demand for relief pursuant to this statute is attached hereto and marked "**Exhibit 3**".

**WHEREFORE**, plaintiff demands the following:

- a. that a judgment of liability be entered in her favor against defendant and that damages be awarded to compensate plaintiff for her physical, emotional and mental injuries, pain and suffering, emotional distress, mental anguish, diminished earnings and medical expenses, past, present and future;
- b. that defendant be found in violation of G. L. c. 93A, §2 and 9;
- c. that plaintiff's damages be doubled or trebled;
- d. that plaintiff be awarded her costs and attorneys fees; and
- e. for such other and further relief as this Court deems just and appropriate.

**PLAINTIFF DEMANDS TRIAL BY JURY.**

Respectfully submitted,  
By her attorneys,  
**Harris & Associates, P.C.**

*/s/ Brian P. Harris*

---

Brian P. Harris, Esquire  
BBO No. 223240  
100 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109  
Tel: (617) 523-1100  
[bharris@bhpc1.com](mailto:bharris@bhpc1.com)

Dated: 11/29/23

# **EXHIBIT 1**

## Kiley R Flammia

---

**From:** Linda L Olofernes  
**Sent:** Tuesday, June 6, 2023 2:15 PM  
**To:** Kiley R Flammia  
**Subject:** FW: Your Los Amigos Taqueria order #T0T784 has been placed

Hi Kiley, here is the EZ Cater receipt, the receipt says Caterer Los Amigos Taqueria (Brookline) but the Health Dept confirmed that the food order was fulfilled by the Brighton Location.

Kind Regards, Linda

**Linda L. Olofernes** | Senior Executive Assistant | 8:30 am - 5:00 pm EST  
Ernst & Young, LLP  
Direct:617-585-0982 | Cell:860-985-4069 | [linda.l.olofernes@ey.com](mailto:linda.l.olofernes@ey.com)  
My pronouns are: she/her/hers

---

**From:** Sheila Henke <[Sheila.Henke@ey.com](mailto:Sheila.Henke@ey.com)>  
**Sent:** Friday, May 19, 2023 9:42 AM  
**To:** Linda L Olofernes <[Linda.L.Olofernes@ey.com](mailto:Linda.L.Olofernes@ey.com)>  
**Subject:** FW: Your Los Amigos Taqueria order #T0T784 has been placed

Good morning Linda,

Here is the original order from Los Amigos.

Thanks,  
Sheila

**Sheila Henke** | Workplace Experience Coordinator, Contractor | CBRE | Host  
Ernst & Young  
200 Clarendon Street, Boston, 02116, United States of America  
Office: +1 617 565 0047 | [Sheila.Henke@ey.com](mailto:Sheila.Henke@ey.com)

---

**From:** [support@ezcater.com](mailto:support@ezcater.com) <[support@ezcater.com](mailto:support@ezcater.com)>  
**Sent:** Thursday, May 11, 2023 11:23 AM  
**To:** Sheila Henke <[Sheila.Henke@ey.com](mailto:Sheila.Henke@ey.com)>  
**Subject:** Your Los Amigos Taqueria order #T0T784 has been placed

**Your ezCater order #T0T784 from Los Amigos Taqueria on 05/15/2023 has been placed.**

### Status Updates

For status updates, visit your [Scheduled Orders](#) page in your ezCater account.

### Change or Modify Your Order

You can modify your order online until 05/15/2023 at 09:00 AM.

[Modify My Order](#)

Questions? [Chat with us](#) or call us at 1-800-488-1803.

**Order Number**

# T0T-784

**Reference Codes**

Type of Meeting: Business Meeting/Training - 78001000

EY Meeting Organizer (name of the client EY event organizer, not Host employee name/reserve): Linda Olofernes

EY Meeting Organizer Email (email of the client EY event organizer, not Host employee/reserve email):

[linda.l.olofernes@ey.com](mailto:linda.l.olofernes@ey.com)

Charge Code (begins with "I or E" followed by 8 digits): I-15171691

Business Unit: EAYUS0010-Boston

**Customer**

Sheila Henke

**Date & Time**

Mon 05/15/23 at 11:30 AM

**Address**

EY

200 Clarendon St

16.1151

Boston, MA 02116

617-565-0047

24 people

**Upon Delivery Ask For**

Sheila Henke

**Delivery Instructions**

Please enter through the loading dock entrance to the building on Trinity Pl. Security can check you in under "ez cater" or "Los Amigos Taqueria" to come up the freight elevator to 16th floor. There may be a long wait for the elevators due to lunches being delivered in the building from 11:30-12:30.

**Caterer**

Los Amigos Taqueria (Brookline)

**Food Items**

\$414.00

Make-Your-Own Taco Bar × 23

Fillings: Grilled Chicken, Grilled Steak

Salsas: Pico de Gallo, Mango Salsa

Rice: Cilantro Brown Rice

Beans: Refried Beans

This group includes: 1 Vegetarian

Instructions: Please be sure to include the sour cream and gu...

\$60.00

Crema-Filled Churros × 20

---

**\$474.00**

**Sub Total**

\$30.00

Delivery Fee

\$33.18

7.0% Sales Tax

\$47.40

Tip for Driver

---

**\$584.58**

**Total**

Payment to ezCater or our payment processor constitutes payment to the caterer.

**Thank you for using ezCater!**

Ready to place another order? Choose from 100,000+ caterers and restaurants nationwide!

# **EXHIBIT 2**



Name: Kiley R Flammia | DOB: 11/11/1994 | MRN: 10079532916 | PCP: Daniel S Simpson, MD

## Stool culture - Details

### Component Results

Component	Your Value	Standard Range
<b>Special Requests</b>	<b>Your Value</b> <b>No Special Requests</b>	
<b>Stool Culture</b>	<b>Your Value</b> <b>SALMONELLA SPECIES</b>	
<b>Stool Culture</b>	<b>Your Value</b> <b>NORMAL ENTERIC FLORA PRESENT</b>	

### General Information

Ordered by Kate Elizabeth Crowley

Collected on 05/24/2023 3:25 PM from Stool (Stool)

Resulted on 06/07/2023 2:49 PM

Result Status: Final result

This test result has been released by an automatic process.

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# **EXHIBIT 3**

## Harris & Associates, P.C.

COUNSELORS AT LAW  
100 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Telephone: (617) 523-1100

Website: [bharrislaw.com](http://bharrislaw.com)  
E-mail: [bharris@bhpc1.com](mailto:bharris@bhpc1.com)

June 28, 2023

Nataniel Ustayev, President  
Brighton Amigos, Inc.,  
dba LOS AMIGOS TAQUERIA  
366 Washington Street  
Brighton, MA 02135

*Certified Mail*  
*Return Receipt Requested*

Nataniel Ustayev, President  
33 Saco Street  
Newton Upper Falls, MA 02464

*Certified Mail*  
*Return Receipt Requested*

Re: **Kiley Flammia v. Brighton Amigos, Inc., dba Los Amigos Taqueria**

Dear Mr. Ustayev:

This certified letter, which alleges unfair and deceptive business practices declared unlawful under c. 93A, §2 and 9 and the regulations promulgated thereunder, is being sent to you as president of the Los Amigos Taqueria restaurant located on Washington Street, Brighton, MA ["the Restaurant"].

This firm has been retained to represent the legal interests of Kiley Flammia of Everett, MA.

Ms. Flammia is, and was, a manager/CPA at Ernst & Young here in Boston. On May 15, 2023, at approximately noon, Ms. Flammia, as well as approximately 15 other employees, purchased food at the Restaurant; this food was catered and eaten at the employees' place of business. The order # was TOT-784 and a copy of the proof of the order is attached hereto as "**Exhibit 1**".

Ms. Flammia ate the food purchased from the Restaurant and the following day began to experience extremely uncomfortable symptoms, including diarrhea, shakes, sweats and a rash on her face. She was seen by her primary care physician, Dr. Daniel Simpson, almost immediately and was also seen at Cambridge Health Associates and Mass. General Hospital where blood work was done. The blood work was returned as positive for salmonella poisoning [stool culture results- "**Exhibit 2**"].

Nataniel Ustayev, President

June 28, 2023

Page 2

Since the day Ms. Flammia began to experience the food poisoning symptoms, she has unfortunately experienced the following:

- Lost of weight of approximately 30 pounds;
- High fevers;
- Extreme pain and swelling in her right knee requiring drainage;
- In-patient admission at MGH;
- Ongoing inability to walk/need to use crutches to ambulate;
- Reactive arthritis in her right knee, right foot and left wrist;
- Cortisone injections;
- Out of work for 3 weeks, a short return and now out of work again;
- An eating disorder; and
- Panic/stress attacks causing further emotional distress.

Please note that the above does not represent the totality of the ways in which this food poisoning has impacted Ms. Flammia's life but it does summarize how catastrophically her life has been turned upside down by this event. Unfortunately, there is no indication that Ms. Flammia is recovering from this food poisoning incident.

As you know, the City of Boston Health Department has closed the Restaurant down and has determined that the consumption of food products sold at the Restaurant has caused the foodborne illnesses, i.e., Salmonella bacteria poisoning, to occur, such as the injuries sustained by Ms. Flammia.

Be advised that we now allege, on behalf of Ms. Flammia, that the above incident and resulting injuries sustained by her were caused by the Restaurant's failure to sell safe and merchantable food. The Restaurant is in the business of creating, processing and selling food products such that the Restaurant has engaged in trade or commerce, pursuant to c. 93A. A breach of the warranty of merchantability of those food products constitutes a violation of c. 93A, *Maillet v. ATF-Davidson Co., Inc.*, 407 Mass. 185, 193 (1990). Moreover, it is not a defense for the Restaurant to claim that the food poisoning was negligent, rather than intentional, *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979).

Be advised further that the Restaurant's violation of c. 93A, §§2 and 9 and the regulations promulgated thereunder, may expose the Restaurant to a finding of multiple damages, costs and attorneys fees.

Kindly forward this letter to your insurance carrier; in this regard, notice is hereby given to your insurer that they are required to provide us with the limits of the Restaurant's available insurance policy, G.L. c. 175, §112C. Notice is further given that your insurer is not to pay any settlement of claims arising out of this same incident until we can ascertain the final and full value of Ms. Flammia's damage claim.

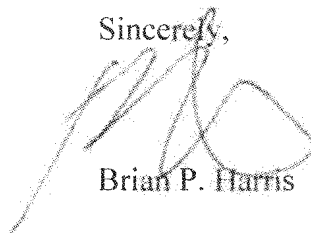
Nataniel Ustayev, President

June 28, 2023

Page 3

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian P. Harris". The signature is stylized with a large, looped initial "B" and "H".

Brian P. Harris

Enclosures

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