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14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 3 RATONES CIEGOS,
17 a California Limited Liability Company,

18 Plaintiff,

19 v.

20 SANTOS LUCHA LIBRE TACO SHOP LLC,
21 an Arizona Limited Liability Company,
22 MARTINA GUZMAN, an Individual, and
23 DOES 1-10, inclusive,

24 Defendants.

Case No. **'14CV1518 BTM BLM**

COMPLAINT FOR:

**I. FEDERAL UNFAIR COMPETITION
(TRADEMARK) (15 U.S.C. § 1125(a))**

**II. FEDERAL UNFAIR COMPETITION
(TRADE DRESS) (15 U.S.C. § 1125(a))**

**III. COMMON LAW UNFAIR
COMPETITION**

**IV. COMMON LAW TRADEMARK
INFRINGEMENT**

**V. COMMON LAW TRADE DRESS
INFRINGEMENT**

**VI. STATE TRADEMARK
INFRINGEMENT AND UNFAIR
COMPETITION**

[Cal. Bus. & Prof. Code § 17200 *et seq.*]

DEMAND FOR JURY TRIAL

25 Plaintiff 3 Ratones Ciegos, LLC, demanding a trial by jury, complains and alleges as
26 follows against Defendants Santos Lucha Libre Taco Shop LLC, Martina Guzman and DOES 1-
27 10, inclusive (hereinafter collectively “Defendants” and, each, individually, a “defendant”).

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NATURE OF ACTION

1. This lawsuit seeks damages and injunctive relief against Defendants for trademark infringement, trade dress infringement and related causes of action arising out of federal and state law.

THE PARTIES

2. Plaintiff 3 Ratones Ciegos, LLC is a California limited liability company with its principal place of business at 1810 W. Washington Street, San Diego, California, and is the holding company for Lucha Libre Gourmet Taco Shop, LLC #1, a California limited liability company. Plaintiff is the owner of all trademark and trade dress rights as alleged herein.

3. Plaintiff is informed and believes, and thereon alleges, that Defendant Santos Lucha Libre Taco Shop LLC is an Arizona limited liability company having its principal place of business at 6636 N. Cave Creek Road, Unit 217, Phoenix, Arizona. Plaintiff is informed and believes, and thereon alleges, that Santos Lucha Libre Taco Shop LLC owns and operates a restaurant under the name Santos Lucha Libre Taco Shop located at 9822 N. 7th Street, Phoenix, Arizona.

4. Plaintiff is informed and believes, and thereon alleges, that Defendant Martina Guzman is an Arizona citizen residing in Phoenix, Arizona. Ms. Guzman’s current home address is not known. Plaintiff is informed and believes, and thereon alleges, that Ms. Guzman is a principal, officer, director, employee and/or agent of Defendant Santos Lucha Libre Taco Shop LLC. On information and belief, Ms. Guzman has an ownership interest in Santos Lucha Libre Taco Shop LLC.

5. The true names and capacities of the defendants sued herein as DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true name and capacity of each such DOE defendant when the same is ascertained.

6. Plaintiff is informed and believes, and thereon alleges that, at all times relevant hereto, each of the Defendants was acting in concert and in active participation with each of the other Defendants in committing the wrongful acts herein alleged and each of the Defendants was

1 the agent of each of the other Defendants, and, in doing the things herein alleged, each of the
2 Defendants was acting within the scope of his, her or its agency and was subject to and under the
3 supervision of, his, her or its co-defendants.

4 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants
5 is either an alter ego of Santos Lucha Libre Taco Shop LLC, possesses the right and/or ability to
6 supervise the relevant marketing and sales complained of in this Complaint, has obvious and
7 direct and financial interest in such conduct, has engaged in conduct that forms part of or furthers
8 the claims for relief alleged in this Complaint, and/or provides the means to the activities and
9 action underlying these claims for relief by virtue of services, machinery, finances or goods
10 contributed. Each of the Defendants is therefore also liable under theories of vicarious liability,
11 direct infringement, contributory infringement, and/or inducing infringement.

12 **JURISDICTION AND VENUE**

13 8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
14 1331 [federal question], 28 U.S.C. §§ 1338(a) and (b) [acts of Congress relating to trademarks,
15 and unfair competition claims joined therewith] and 28 U.S.C. § 1367(a) [supplemental
16 jurisdiction over related actions arising under state law]. This Court also has subject matter
17 jurisdiction under 28 U.S.C. § 1332(a)(1), in that the parties are citizens of different states; the
18 amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and the exercise of
19 supplemental jurisdiction under 28 U.S.C. § 1367(a) is consistent with the jurisdictional
20 requirements of 28 U.S.C. § 1332.

21 9. This Court has personal jurisdiction over Defendants because Defendants have
22 purposely availed themselves of the laws of the State of California. Defendants actively market
23 and promote their restaurant that bears the infringing trademark and trade dress at issue in this
24 case in the State of California and in this judicial district. Specifically, on information and belief,
25 Defendants also actively advertise and promote their restaurant to consumers through the Internet
26 including, but not limited to, on Facebook® and Instagram®. The aforementioned websites are
27 accessible from this judicial district, and on information and belief, have all been accessed by
28 consumers located in this judicial district. As a result, on information and belief, numerous

1 consumers from this judicial district have visited Defendants' restaurant.

2 10. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) and (c).

3 **FACTUAL ALLEGATIONS**

4 11. Plaintiff is also the owner and operator of the popular restaurant Lucha Libre
5 Gourmet Taco Shop (hereinafter, "Lucha Libre Gourmet" or "Plaintiff's Restaurant") located at
6 1810 W. Washington Street in the Mission Hills neighborhood of San Diego, California.
7 Plaintiff's Restaurant offers a vibrant and distinctive dining experience featuring very bright
8 colors in a French Rococo style infused with Mexican wrestling-themed decor and epicurean
9 cuisine, a combination of which is not typically associated with a taco shop. Further information
10 regarding Plaintiff's restaurant can be found on its website at www.tacosmackdown.com.

11 12. In addition to the Washington Street location, Plaintiff has a second restaurant
12 location within Petco Park, Home of the San Diego Padres, located at 100 Park Blvd., San Diego,
13 California.

14 13. Prior to opening Plaintiff's Restaurant, Plaintiff was the owner and operator of a
15 catering company in San Diego operating under the name Lucha Libre Taco Shop and Lucha
16 Libre Gourmet Taco Shop, and it is this business that evolved into Plaintiff's Restaurant.

17 14. Plaintiff has expended significant sums advertising, promoting and marketing its
18 catering company and Lucha Libre Gourmet since January 10, 2007.

19 15. Since its opening on or about January 15, 2008, Plaintiff's Restaurant has enjoyed
20 tremendous success locally in San Diego, and has been featured in or given awards by, among
21 others, the following publications: SAN DIEGO MAGAZINE (voted Best Chips and Salsa (Critic's
22 Pick) and Best Burrito Runner-up in 2014; Best Burrito (Reader's Pick) in 2013); BUSINESS
23 INSIDER MAGAZINE (featured in *The Coolest Small Businesses in San Diego* in 2013); SAN DIEGO
24 CITY BEAT (voted Best Taco Shop in 2011- 2013; featured in Best of San Diego Edition in 2011);
25 SAN DIEGO A-LIST (voted Best Burrito in San Diego from 2009-2012); and FOOD NETWORK
26 MAGAZINE (featured in June 2010 edition).

27 16. Plaintiff's Restaurant has also garnered national attention for both its unique décor
28 and delicious, high-quality food and it regularly receives visitors from all over the country,

1 including from Phoenix, Arizona, where Defendants' restaurant is located. Lucha Libre Gourmet
2 was prominently featured on the season premiere of the Travel Channel's *Man v. Food* in 2010, a
3 portion of which can be viewed on the Internet at www.youtube.com/watch?v=a47pPdG15wo.

4 17. Lucha Libre Gourmet has also generated a significant amount of attention on
5 social media. As of the date this Complaint was filed, Lucha Libre Gourmet's Facebook page
6 indicated over 15,500 "Likes", with over 72,000 Facebook users "checking in." A review of
7 comments on the Internet and social media demonstrates that diners rave about Plaintiff's
8 Restaurant not only for its delicious cuisine, but also for the fun and distinctive dining
9 atmosphere.

10 18. Furthermore, Lucha Libre Gourmet consistently receives excellent reviews from
11 critics, food bloggers and diners. For example, Lucha Libre Gourmet has received an 88% "Like
12 it" review on Urbanspoon; an overall 4-star rating on Yelp with over 3,500 reviews, a 9.2/10
13 rating by diners on Foursquare, and a 80% recommendation rate on TripAdvisor.

14 19. The vivacious and distinctive dining concept originated, developed and created at
15 Lucha Libre Gourmet includes the unexpected twist of Mexican-style food served in an
16 atmosphere of French rococo style of decoration infused with gaudy, overly bright colors
17 accented by accessories from the 1950's.

18 20. The atmosphere and décor at Lucha Libre Gourmet was carefully designed and
19 chosen to reflect the same vibrant, high spirits often displayed in Mexican Lucha Libre
20 wrestling. The atmosphere and décor are particularly distinctive given the unexpected use of
21 bright and traditionally feminine colors and elements not typically associated with a restaurant
22 featuring wrestling or offering Mexican cuisine. Attached hereto as **Exhibit A** are true and
23 correct copies of photos of Plaintiff's Restaurant. Key elements of the design include, but are not
24 limited to, the following:

- 25 a. Hot pink, black and light blue overall color scheme;
- 26 b. Walls and interior of restaurant painted hot pink with light blue and gold
27 accents;
- 28 c. Mexican wrestling-themed decorations;

- 1 d. Mexican wrestling masks displayed on the walls and offered for sale;
- 2 e. A distinctive logo reflecting the interior colors of the restaurant, using vibrant
- 3 shades of hot pink, light blue and black;
- 4 f. Masked wrestler photographs adorning the walls;
- 5 g. An oversized painting of a vintage Mexican wrestler (a “Luchador”);
- 6 h. Gold frames around wall photos;
- 7 i. Black and white zebra striped chairs, each with a different Mexican wrestling
- 8 mask embedded between the upholstery and transparent chair cover;
- 9 j. An oversized metallic gold diamond tuck upholstered “Champions Booth”;
- 10 k. Black tuck upholstery on booths and all surrounding walls;
- 11 l. A gold vintage 1950’s television;
- 12 m. Hand-painted Mexican wrestling portraits;
- 13 n. Autographed Lucha Libre wrestling memorabilia;
- 14 o. Gold chandeliers and disco ball hanging from ceiling;
- 15 p. Bathrooms that continue the trade dress theme, including one decorated with
- 16 photos and artwork of Mexican wrestlers and masks, and the other painted pink
- 17 with ornate French Rococo style gold frames around artwork and zebra print
- 18 accents; and
- 19 q. Custom Mexican wrestling themed pop art.

20 21. In connection with Plaintiff’s Restaurant and catering company, Plaintiff has used
21 and is the owner of the following common law trademarks: LUCHA LIBRE GOURMET TACO
22 SHOP, LUCHA LIBRE TACO SHOP, and LUCHA LIBRE (hereinafter, collectively, “the Lucha
23 Libre Marks”).

24 22. Plaintiff has been substantially exclusively and continuously using the Lucha Libre
25 Marks in connection with its catering service and Lucha Libre Gourmet offering restaurant
26 services since at least as early as January 10, 2007.

27 23. On March 25, 2014, Plaintiff filed an application to register the trademark
28 “LUCHA LIBRE GOURMET TACO SHOP” on the principal register in the United States Patent

1 and Trademark Office. The application bears Serial Number 86231887.

2 24. On March 25, 2014, Plaintiff filed an application to register the trademark
3 “LUCHA LIBRE TACO SHOP” on the principal register in the United States Patent and
4 Trademark Office. The application bears Serial Number 86231866.

5 25. On March 25, 2014, Plaintiff filed an application to register the trademark
6 “LUCHA LIBRE” on the principal register in the United States Patent and Trademark Office.
7 The application bears Serial Number 86231778.

8 26. At some date after Plaintiff began using its Lucha Libre Marks, Defendants opened
9 a restaurant in Phoenix, Arizona called “Santos Lucha Libre Taco Shop” which has the same
10 décor and trade dress as Plaintiff’s Restaurant. On information and belief, Defendants are
11 engaged in the business of offering for sale and selling in interstate commerce restaurant services
12 that infringe Plaintiff’s intellectual property rights.

13 27. Like Plaintiff’s Lucha Libre Marks, Defendants’ use of the Santos Lucha Libre
14 Taco Shop name incorporates the identical terms “Lucha Libre,” “Taco,” and “Shop”.

15 28. Like Plaintiff’s Restaurant, Santos Lucha Libre Taco Shop offers a Mexican
16 wrestling-themed eatery that serves Mexican style food.

17 29. Like Plaintiff’s Restaurant, Santos Lucha Libre Taco Shop offers a dining
18 experience that incorporates the same or highly similar theme and décor as Plaintiff’s Restaurant.
19 including, but not limited to, the following elements:

- 20 a. A hot pink, black and light blue overall color scheme;
- 21 b. Walls and interior of restaurant painted hot pink with light blue and gold
22 accents;
- 23 c. Masked wrestler photographs adorning the walls;
- 24 d. An oversized painting of a vintage Mexican wrestler (a “Luchador”);
- 25 e. Mexican wrestling-themed decorations;
- 26 f. Mexican wrestling masks displayed on the walls;
- 27 g. Gold frames around wall photos;
- 28 h. A gold 1950’s vintage television set;

- 1 i. Hand-painted Mexican wrestling portraits;
- 2 j. Vinyl records hanging on the walls in a decidedly 1950's fashion; and
- 3 k. Gold chandeliers and a disco ball hanging from the ceiling.

4 Attached as **Exhibit B** to this Complaint are true and correct copies of photos of the
5 Santos Lucha Libre Taco Shop owned and operated by Defendants.

6 30. On or about March 2014, Plaintiff became aware of the existence of the Santos
7 Lucha Libre Taco Shop in Phoenix, Arizona.

8 31. There have been several instances of actual confusion between Plaintiff's
9 Restaurant and Defendants' Santos Lucha Libre Taco Shop. On or about March 2014, diners at
10 Plaintiff's Restaurant were overheard by an employee of Plaintiff discussing the "new" Lucha
11 Libre Gourmet location in Phoenix, Arizona. On a second occasion on or about March 2014, a
12 diner leaving Plaintiff's restaurant congratulated one of Plaintiff's employees on the Plaintiff's
13 "new location" in Arizona. Furthermore, a Facebook user posted a comment on Plaintiff's
14 Facebook Page stating that a new restaurant had opened in Phoenix by the name Santos Lucha
15 Libre Taco Shop, noting that the color scheme was the same as Plaintiff's Restaurant and asking
16 if there was any relation. A copy of the Facebook posting is attached hereto as **Exhibit C**.

17 32. On or about April 16, 2014, Plaintiff sent a letter to Defendants alerting them to
18 their infringement of Plaintiff's Lucha Libre Marks and trade dress, asking them to cease and
19 desist further use of the name "Santos Lucha Libre Taco Shop" as well as the trade dress of
20 Plaintiff's Restaurant. A copy of that letter is attached hereto as **Exhibit D**.

21 33. On or about April 21, 2014, Jamie Zarraga, who held himself out to be a
22 representative of Defendants, contacted counsel for Plaintiff by telephone. Mr. Zarraga advised
23 that Defendants would not change either the name or décor of Defendants' restaurant in response
24 to Plaintiff's April 16, 2014 letter.

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FIRST CAUSE OF ACTION

FEDERAL UNFAIR COMPETITION (TRADEMARK)

[15 U.S.C. § 1125(a)]

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4 34. Plaintiff repeats, re-alleges, and incorporates Paragraphs 1-33 as though fully set
5 forth in this cause of action.

6 35. Plaintiff is the rightful owner of the Lucha Libre Marks and has applied to the
7 United States Patent and Trademark Office for registration thereof. The Trademarks are in full
8 force and effect, have been used exclusively and continuously by Plaintiff since at least as early
9 as January 10, 2007, and have not been abandoned.

10 36. After Plaintiff adopted the Lucha Libre Marks, Defendants intentionally used and
11 continue to use Plaintiff's Lucha Libre Marks, or a mark or marks confusingly similar thereto, in
12 connection with the promotion, distribution, marketing, advertising for sale and/or sale of
13 restaurant services.

14 37. Defendants' use of the Lucha Libre Marks, or a mark or marks confusingly similar
15 thereto, is without permission, authorization, or consent from Plaintiff.

16 38. As a result of Plaintiff's substantial marketing and promotional efforts and the
17 tremendous success of Plaintiff's restaurant using the Lucha Libre Marks, consumers
18 immediately associate the Lucha Libre Marks with Plaintiff.

19 39. Defendants' use in commerce of the Lucha Libre Marks, or a mark or marks
20 confusingly similar thereto, in connection with the offering of restaurant services, is likely to
21 cause and indeed has caused, confusion and mistake in the minds of the purchasing public
22 generally, who will mistakenly believe, and have mistakenly believed that Defendants' services
23 are endorsed, authorized, sponsored, or approved by Plaintiff or are otherwise affiliated,
24 connected, or associated with Plaintiff, when in fact they are not.

25 40. Defendants intentionally adopted the Lucha Libre Marks, or a mark or marks that
26 are confusingly similar thereto, to associate with confusingly similar services when they could
27 easily have selected from many other marks. In so doing, Defendants have used in interstate
28 commerce, on or in the connection with the offering of restaurant services, a false designation of

1 origin, a false and misleading description of fact, or a false and misleading representation of fact,
2 including words, terms, names, devices and symbols or a combination thereof, which is likely to
3 cause confusion, mistake or to deceive as to the origin, sponsorship or approval of Defendants'
4 services by Plaintiff or which misrepresents the nature, characteristics, qualities or geographic
5 origins of Defendants' services.

6 41. Defendants adopted the Lucha Libre Marks, or a mark or marks that are
7 confusingly similar thereto, with knowledge that use of the Lucha Libre Marks would cause
8 confusion, mistake, or deception, and has knowingly and willfully infringed Plaintiff's trademark
9 rights and deliberately exploited the substantial goodwill associated with the Lucha Libre Marks.
10 Plaintiff is informed and believes, and on that basis alleges, that Defendants selected the Santos
11 Lucha Libre Taco Shop name with the express intent to cause confusion and to deceive
12 consumers into believing that Defendants' services emanate from Plaintiff.

13 42. By reason of Defendants' use of the Lucha Libre Marks, or a mark or marks
14 confusingly similar thereto, Defendants have infringed on Plaintiff's rights in the Lucha Libre
15 Marks.

16 43. Defendants' activities have been intentional, willful, deliberate and in bad faith,
17 and have continued in spite of Defendants' knowledge that their use of the Lucha Libre Marks, or
18 a mark or marks confusingly similar thereto, directly contravenes Plaintiff's rights.

19 44. Defendants are acting intentionally, willfully, and in bad faith, with the intent to
20 diminish Plaintiff's property rights and control over the Lucha Libre Marks, and with the intent to
21 exploit the goodwill represented by the Lucha Libre Marks, by deceiving and misleading the
22 consuming public as to whether Defendants' services are sponsored, endorsed or approved by
23 and/or affiliated, connected or otherwise associated with Plaintiff or its goods and services.

24 45. Plaintiff has no adequate remedy at law to compensate it for the injuries suffered
25 and threatened.

26 46. Defendants' conduct has caused, and if not enjoined, will continue to cause,
27 irreparable harm to Plaintiff's rights in the Lucha Libre Marks, and to its business reputation and
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1 goodwill, as well as damages in an amount that cannot be accurately computed at this time, but
2 that will be proven at trial.

3 **SECOND CAUSE OF ACTION**

4 **FEDERAL UNFAIR COMPETITION (TRADE DRESS)**

5 **[15 U.S.C. § 1125(a)]**

6 47. Plaintiff repeats, re-alleges, and incorporates Paragraphs 1-45 as though fully set
7 forth in this cause of action.

8 48. Plaintiff is the rightful owner of protectable trade dress in the total visual
9 appearance of the Lucha Libre Gourmet Taco Shop, which it has been using since on or about
10 January 15, 2008.

11 49. The protectable trade dress includes, but is not limited to, the following elements
12 or features, taken collectively:

- 13 a. Hot pink, black and light blue overall color scheme;
- 14 b. Walls and interior of restaurant painted hot pink with light blue and gold
15 accents;
- 16 c. Mexican wrestling-themed decorations throughout;
- 17 d. Mexican wrestling masks displayed on the walls and offered for sale;
- 18 e. A distinctive logo reflecting the interior colors of the restaurant, using vibrant
19 shades of hot pink, light blue and black;
- 20 f. Masked wrestler photographs adorning the walls;
- 21 g. An oversized painting of a vintage Mexican wrestler (a “Luchador”);
- 22 h. Gold frames around wall photos;
- 23 i. Black and white zebra striped chairs, each with a different Mexican wrestling
24 mask embedded between the upholstery and transparent chair cover;
- 25 j. An oversized metallic gold diamond tuck upholstered “Champions Booth”;
- 26 k. Black tuck upholstery on booths and all surrounding walls;
- 27 l. A gold vintage 1950’s television;
- 28 m. Hand-painted Mexican wrestling portraits;

- 1 n. Autographed Lucha Libre wrestling memorabilia;
- 2 o. Gold Chandeliers and disco ball hanging from ceiling;
- 3 p. Bathrooms that continue the trade dress theme, including one decorated with
- 4 photos and artwork of Mexican wrestlers and masks, and the other painted pink
- 5 with ornate French Rococo style gold frames and artwork and zebra print
- 6 accents; and
- 7 q. Custom Mexican wrestling themed pop art.

8 50. The unique combination of the various elements makes this trade dress distinctive.

9 51. Defendants' restaurant copies and infringes these trade dress rights.

10 52. Defendants' use of this protectable trade dress, or trade dress confusingly similar
11 thereto, is without permission, authorization and consent;

12 53. Defendants' use of the elements is likely to cause confusion, or to cause mistake,
13 or to deceive the consumer as to the affiliation, connection or association of Plaintiff with
14 Defendants, or as to the origin, sponsorship, or approval by Plaintiff of Defendants' goods,
15 services or commercial activities.

16 54. Defendants' use of the elements enables Defendants to benefit unfairly from
17 Plaintiff's reputation and success; thereby giving Defendant's infringing sales and commercial
18 value they would not have otherwise.

19 55. This trade dress was intentionally copied by Defendants for use in the Santos
20 Lucha Libre Taco Shop.

21 56. Defendants intentionally adopted the protectable trade dress, or trade dress
22 confusingly similar thereto, to associate with confusingly similar services when they could easily
23 have selected from many other elements of trade dress. In so doing, Defendants have used in
24 interstate commerce, on or in the connection with the offering of restaurant services, a false
25 designation of origin, a false and misleading description of fact, or a false and misleading
26 representation of fact, including the décor, furnishings, color scheme and/or a combination
27 thereof of the elements identified herein as its protectable trade dress which is likely to cause
28 confusion, mistake or to deceive as to the origin, sponsorship or approval of Defendants' services

1 by Plaintiff or which misrepresents the nature, characteristics, qualities or geographic origins of
2 Defendants' services.

3 57. Defendants' use of the protectable trade dress, or trade dress confusingly similar
4 thereto, in connection with the offering of restaurant services, is likely to cause, and indeed, has
5 caused, confusion and mistake in the minds of the purchasing public generally, who will
6 mistakenly believe that Defendants' services are endorsed, authorized, sponsored, or approved by
7 Plaintiff, when they are not. Plaintiff has already received written communications and oral
8 comments from various individuals indicating and reflecting actual confusion.

9 58. Prior to Defendants' first use of Plaintiff's trade dress, Defendants were aware of
10 Plaintiff's business and had either actual notice and knowledge, or constructive notice of
11 Plaintiff's trade dress, and has refused to change its restaurant elements or name in response to
12 Plaintiff's objections.

13 59. Plaintiff is informed and believes, and on that basis alleges, that Defendant's
14 infringement of Plaintiff's trade dress as described herein has been and continues to be
15 intentional, willful and deliberate and in bad faith, and has continued in spite of Defendants'
16 knowledge that their use of the trade dress, or trade dress confusingly similar thereto, directly
17 contravenes Plaintiff's pre-existing rights.

18 60. Defendants are acting intentionally, willfully, and in bad faith, with the intent to
19 diminish Plaintiff's property rights and control over the trade dress, and with the intent to exploit
20 the goodwill represented by the trade dress, by deceiving and misleading the consuming public as
21 to whether Defendants' services are sponsored, endorsed, or approved by and/or affiliated,
22 connected, or otherwise associated with Plaintiff or its goods and services.

23 61. Plaintiff is informed and believes, and on that basis alleges, that Defendants have
24 gained profits by virtue of their infringement of Plaintiff's trade dress.

25 62. Plaintiff has suffered and will continue to suffer damages and irreparable harm as a
26 result of Defendants' infringement of Plaintiff's trade dress insofar as Plaintiff's invaluable
27 goodwill is being eroded by Defendants' continuing infringement. Plaintiff has no remedy at law
28 to compensate it for the loss of business reputation, customers, market position, confusion of

1 potential customers and good will flowing from Defendants' infringing activities. Pursuant to 15
2 U.S.C. § 1116, Plaintiff is entitled to an injunction against Defendants' continuing infringement
3 of Plaintiff's trade dress. Unless enjoined, Defendants will continue to their infringing conduct,
4 all to Plaintiff's continued damage and irreparable harm.

5 **THIRD CAUSE OF ACTION**

6 **COMMON LAW UNFAIR COMPETITION**

7 63. Plaintiff repeats, re-alleges, and incorporates Paragraphs 1-62 as though fully set
8 forth in this cause of action in their entirety.

9 64. Defendants' aforementioned use and intended use of the Lucha Libre Marks, or a
10 mark or marks confusingly similar thereto, and its use of the protectable trade dress, or trade dress
11 confusingly similar thereto, is likely to cause confusion and/or mistake and/or to deceive as to the
12 origin or affiliation of the restaurant services sold by Defendants.

13 65. As a direct and proximate cause of Defendants' conduct described herein, Plaintiff
14 has suffered irreparable harm. Unless Defendants are restrained from further infringement of the
15 Lucha Libre Marks and the protectable trade dress, Plaintiff will continue to be irreparably
16 harmed.

17 66. Plaintiff has no remedy at law to compensate it for the continued and irreparable
18 harm it will suffer if Defendants' acts are allowed to continue.

19 **FOURTH CAUSE OF ACTION**

20 **COMMON LAW TRADEMARK INFRINGEMENT**

21 67. Plaintiff repeats, re-alleges, and incorporates Paragraphs 1-66 as though fully set
22 forth in this cause of action.

23 68. Defendants' unauthorized use of the Lucha Libre Marks, or a mark or marks
24 confusingly similar thereto, in connection with its restaurant services constitutes trademark
25 infringement and misappropriation and is likely to cause confusion, deception and mistake among
26 the consuming public and trade as to the source of, and authorization of, the goods and services
27 provided by Defendants in violation of the common law of the State of California.

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1 The Lucha Libre Marks and trade dress represent a significant source of value, including
2 goodwill, to Plaintiff.

3 84. Plaintiff is informed and believes, and thereon alleges, that Defendants have
4 acquired excess earnings, profits, and/or benefits from the unlawful, unfair and/or fraudulent
5 business acts and practices set forth in the preceding paragraphs of this Complaint. This unjust
6 enrichment continues to occur as Defendants continue to engage in said unlawful, unfair and/or
7 fraudulent business acts and practices.

8 85. Defendants have been trading off and continue to trade off the substantial goodwill
9 of Plaintiff by Defendants' unauthorized use of the Lucha Libre Marks and trade dress in
10 connection with their restaurant services, without providing Plaintiff any compensation related
11 thereto.

12 86. Defendants have knowingly and willfully infringed Plaintiff's trademark rights by
13 deliberately exploiting the substantial goodwill associated with Plaintiff's Lucha Libre Marks and
14 trade dress. Plaintiff is informed and believes, and on that basis alleges, that Defendants selected
15 the Lucha Libre Marks, or marks confusingly similar thereto, and trade dress, or trade dress
16 confusingly similar thereto, with the express intent to cause confusion and to deceive consumers
17 into believing that Defendants' products and services emanate from Plaintiff.

18 87. As a direct result of Defendants' unfair competition with regard to the Lucha Libre
19 Marks, and trade dress, Defendants have unlawfully acquired, and continue to acquire on an
20 ongoing basis, an unfair competitive advantage and have engaged in, and continue to engage in,
21 wrongful business conduct to Defendants' monetary advantage and to the detriment of Plaintiff.

22 88. Plaintiff has no adequate remedy at law. Defendants' conduct has caused, and if
23 not enjoined, will continue to cause, irreparable harm to Plaintiff's rights in its Lucha Libre
24 Marks and trade dress, and to its business reputation and goodwill, as well as damages in an
25 amount that cannot be accurately computed at this time, but that will be proven at trial.

26 89. Plaintiff is informed and believes and thereon alleges that Defendants committed
27 the above-alleged acts willfully and maliciously, and with full knowledge and in conscious
28 disregard of Plaintiff's rights, and Plaintiff is therefore entitled to exemplary and punitive

1 damages pursuant to California Civil Code Section 3294 in an amount sufficient to punish, to
2 deter, and to make an example of Defendants.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff hereby respectfully prays for the following relief as against
5 Defendants, and each of them, as follows:

6 A. That the Court immediately and permanently enjoin Defendants, their officers,
7 directors, agents, servants, employees, representatives, attorneys, related companies, successors,
8 assigns, and all others in active concert or participation with it, from:

- 9 a. Using the Lucha Libre Marks, or confusingly similar derivations thereof, in
10 connection with restaurant services in California and throughout the United States;
11 b. Using Plaintiff's protectable trade dress, or any trade dress that is a confusingly
12 similar derivation thereof, in connection with restaurant services in California and
13 throughout the United States;
14 c. Engaging in any conduct that tends falsely to represent that, or is likely to confuse,
15 mislead or deceive members of the public to believe that the actions of Defendants
16 or any of its officers, directors, predecessors, successors, agents, employees,
17 representatives and all persons, corporations or other entities acting in concert or
18 participation with Defendants are sponsored, approved, or licensed by Plaintiff, or
19 are in any way connected or affiliated with Plaintiff;
20 d. Otherwise competing unfairly with Plaintiff in any manner; and
21 e. Effecting assignments or transfers, forming new entities or associations or utilizing
22 any other device for the purpose of circumventing or otherwise avoiding the
23 prohibitions set forth in subparagraphs (a)-(d) above.

24 B. That the Court award Plaintiff general, actual and statutory damages in accordance
25 with proof at trial;

26 C. For an accounting and restitution and/or disgorgement of any and all unlawful
27 profits, payments, revenues, monies and/or royalties derived and/or obtained by Defendants;
28

1 D. For accounting and restitution and/or disgorgement of any and all benefits not
2 encompassed in the preceding paragraph which have or will be derived or obtained by Defendants
3 pertaining to the conduct complained of herein;

4 E. That the Court award Plaintiff exemplary and/or punitive damages;

5 F. That the Court award Plaintiff its costs of suit and reasonable attorney's fees;

6 G. That the Court retain jurisdiction of this action for the purpose of enabling Plaintiff
7 to apply to the Court at any time for such further orders and interpretation or execution of any
8 order entered in this action, for the modification of any such order, for the enforcement or
9 compliance therewith and for the punishment of any violations thereof; and

10 H. For such other and further relief as the Court may deem just and equitable.

11
12 Dated: June 23, 2014

13 IP Legal Advisors, P.C.

14 By:

15 s/ *John M. Kim*

16 _____
17 John M. Kim

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28 Attorneys for Plaintiff

3 Ratones Ciegros LLC.

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DEMAND FOR JURY TRIAL

Plaintiff 3 Ratones Ciegos, LLC hereby demands a trial by jury.

Dated: June 23, 2014

IP Legal Advisors, P.C.

By:

s/ John M. Kim

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