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8 VICTOR ANTONY RODRIGUEZ

**FILED**  
Superior Court of California  
County of Los Angeles

**MAR 27 2018**

Sherri R. [Signature], Executive Officer/Clerk  
By [Signature] Deputy  
Sharmya Bolden

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11 VICTOR ANTONY RODRIGUEZ

12 Plaintiff(s),

13 vs.

14 CHOCOLATE CHAIR, INC.; and DOES  
15 1 through 100, Inclusive,

16 Defendants.

CASE NO. **BC 6 9 9 4 7 0**

COMPLAINT FOR:

**1) NEGLIGENCE**

**[UNLIMITED]**

17 Plaintiff VICTOR ANTONY RODRIGUEZ hereby alleges as follows:

18 **GENERAL ALLEGATIONS**

19 1. Plaintiff VICTOR ANTONY RODRIGUEZ, is now, and at all times  
20 mentioned herein was, a resident of the State of California.

21 2. Plaintiff is informed and believes and based thereon alleges that at all  
22 times herein mentioned Defendants CHOCOLATE CHAIR, INC., and DOES 1 through  
23 100, inclusive, was and is a California corporation with its headquarters in Santa Clara,  
24 California, and doing business in the City of Los Angeles, in the County of Los Angeles  
25 in the State of California with a restaurant location at 621 S. Western Ave., Los  
26 Angeles, CA 90005. At said location, Defendant CHOCOLATE CHAIR, INC., creates,  
27 markets, and sells its "Dragon Breath" ice cream, a liquid nitrogen based novelty  
28 dessert in which the customer is given a plastic cup, fitted with a cardboard ring, full of

CIT/CASE: BC699470  
LEA/DEF#:

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8182722720

RECEIPT #: CCH465980136  
DATE PAID: 03/27/18 03:19 PM  
PAYMENT: \$435.00 310  
RECEIVED:  
CHECK: \$435.00  
CASH: \$0.00  
CHANGE: \$0.00  
CARD: \$0.00

OSC: 09/10/2018 TRAL: 09/27/2018 OSC: 03/29/2021

1 fruity cereal puffs into which Defendant's employees have poured liquid nitrogen. The  
2 customer is given the cup full of these liquid nitrogen soaked/covered fruity cereal puffs  
3 with the instructions to dip said colored fruity cereal puffs into flavored sauces provided  
4 by Defendant to create ice cream bites which the customer eats for its namesake effect.  
5 Consuming these liquid nitrogen soaked/covered fruity cereal puffs produces "a thick  
6 fog, mimicking the smoke coming out of a dragon's mouth and nostrils," emanating from  
7 the customer's nose and mouth, hence the name "Dragon Breath."

8         3. The true names and capacities, whether individual, corporate, associate,  
9 governmental or otherwise, of Defendants DOES 1 through 100, inclusive, are unknown  
10 to Plaintiff at this time, who therefore sues said Defendants by such fictitious names.  
11 When the true names and capacities of said Defendants are ascertained, Plaintiff will  
12 amend this Complaint accordingly.

13         4. Plaintiff is informed and believes, and based thereon alleges, that each of  
14 the named Defendants, and those designated herein as a DOE, is legally responsible  
15 and legally caused injuries and damages proximately thereby to Plaintiff as herein  
16 alleged.

17         5. Plaintiff is informed and believes, and based thereon alleges, that each of  
18 the Defendants was the agent, servant, or employee of the other Defendants, and each  
19 of them, and at all times, were acting within the scope of their agency, service or  
20 employment with the agreement and ratification of the other Defendants, and each of  
21 them, or due to their ownership, possession, maintenance, repair, control, sale, lease,  
22 manufacture or untrue warranty of fitness of the defective instrumentality, and/or its  
23 component parts, which caused the accident and injury or in some other manner.

24         6. The incident herein sued upon occurred on or about April 10, 2017. At said  
25 time, Plaintiff VICTOR ANTONY RODRIGUEZ, purchased two "Dragon Breath" ice  
26 cream products from Defendant CHOCOLATE CHAIR, INC.'s Los Angeles, California  
27 location at 621 S. Western Ave., Los Angeles, CA 90005. On April 10, 2017, Defendant  
28 CHOCOLATE CHAIR, INC., and DOES 1 through 100, inclusive, and each of them,

1 served Plaintiff VICTOR ANTONY RODRIGUEZ with its liquid nitrogen covered/soaked  
2 fruity cereal puffs in a plastic cup and also provided flavored dipping sauce. The liquid  
3 nitrogen has a temperature of approximately -320 degrees Fahrenheit. Defendant  
4 CHOCOLATE CHAIR, INC.'s employees provided Plaintiff with toothpicks with which to  
5 pluck the liquid nitrogen soaked/covered fruity cereal puffs out of the plastic cup to dip  
6 in the flavored sauce.

7       Upon receiving his plastic cup full of liquid nitrogen soaked/covered fruity cereal  
8 puffs, Plaintiff sat down on a bench within Defendant CHOCOLATE CHAIR, INC.'s Los  
9 Angeles, California location to enjoy his novelty dessert and placed the plastic cup filled  
10 with the liquid nitrogen soaked/covered fruity cereal puffs between his legs in order to  
11 pluck said puffs out of the plastic cup to be dipped into the flavored sauce. During the  
12 time that Plaintiff VICTOR ANTONY RODRIGUEZ sat eating the novelty dessert, with  
13 the plastic cup between his legs, the liquid nitrogen that had been poured into the  
14 plastic cup continued to bubble and boil.

15       Thereafter, Plaintiff discovered severe bilateral burn marks on his interior thighs  
16 from the extreme cold of the liquid nitrogen that Defendant had poured into the plastic  
17 cup and that had remained in said plastic container at the time it was served to Plaintiff.  
18 Defendants CHOCOLATE CHAIR, INC.; and DOES 1 through 100, inclusive, and each  
19 of them, failed to warn of the risks of being burned by and failed to warn of the hazards  
20 involved with using, interacting, and holding plastic containers containing liquid nitrogen.  
21 Defendant failed to ensure that the container that held the liquid nitrogen was  
22 appropriate for dispensing liquid nitrogen into it and holding said liquid nitrogen  
23 covered/soaked fruity cereal puffs. Defendant failed to learn of and to warn of the  
24 hazards associated with the use of liquid nitrogen, including but not limited to the  
25 propensity to cause severe burns upon contact with human skin or prolonged exposure  
26 to the freezing cold of the plastic container in which it was served.

27       7. Plaintiff has been damaged in an amount according to proof at trial but  
28 within the jurisdictional limits of the Superior Court.

1        **FIRST CAUSE OF ACTION BY PLAINTIFF VICTOR ANTONY RODRIGUEZ**  
2                    **AGAINST DEFENDANT CHOCOLATE CHAIR, INC.,**  
3                    **AND DOES 1 THROUGH 100, INCLUSIVE,**  
4                    **FOR NEGLIGENCE**

5            8.     Plaintiff VICTOR ANTONY RODRIGUEZ incorporates by reference herein  
6 paragraphs 1 through 7, inclusive, of this Complaint.

7            9.     At all times herein mentioned, Defendants CHOCOLATE CHAIR, INC.;  
8 and DOES 1 through 100, inclusive, provided for use to Plaintiff the "Dragon Breath"  
9 novelty ice cream dessert into which Defendant poured liquid nitrogen over the fruity  
10 cereal puffs and served the plastic cup containing said liquid nitrogen soaked/covered  
11 fruity cereal puffs to Plaintiff.

12          10.    At all times herein mentioned, Defendants CHOCOLATE CHAIR, INC.;  
13 and DOES 1 through 100, inclusive, and each of them had a duty to use reasonable  
14 care in the service and provision of their food products, including said "Dragon Breath"  
15 novelty ice cream dessert. Defendants CHOCOLATE CHAIR, INC.; and DOES 1  
16 through 100, inclusive, and each of them, were responsible for the safety of the  
17 individuals to whom they provided the "Dragon Breath" novelty ice cream dessert, so as  
18 to protect from injury all foreseeable users and/or business invitees, including but not  
19 limited to Plaintiff VICTOR ANTONY RODRIGUEZ, who was or would be eating said  
20 "Dragon Breath."

21          11.    At all times herein mentioned, Defendants, and each of them, owed a duty  
22 of due care to all persons and patrons using the equipment they provided, including  
23 Plaintiff VICTOR ANTONY RODRIGUEZ. This duty included a duty to properly warn,  
24 instruct, train, supervise, design, manufacture, sell, test, maintain, modify, evaluate for  
25 safety, inspect, and construct of proper materials for containing liquid nitrogen the  
26 "Dragon Breath" novelty ice cream dessert, and its component parts, such as the plastic  
27 cup/container in which the "Dragon Breath" is served to customers, including Plaintiff  
28 VICTOR ANTONY RODRIGUEZ.

1           12. At all times herein mentioned, Defendants CHOCOLATE CHAIR, INC.;  
2 and DOES 1 through 100, inclusive, and each of them, knew, or in the exercise of  
3 reasonable care should have known, that said "Dragon Breath" novelty ice cream  
4 dessert into which Defendant poured liquid nitrogen over the fruity cereal puffs and  
5 served the plastic cup containing said liquid nitrogen soaked/covered fruity cereal puffs  
6 to Plaintiff VICTOR ANTONY RODRIGUEZ was negligently designed, manufactured,  
7 sold, tested, leased, modified, inspected, maintained, constructed of improper materials  
8 for containing liquid nitrogen, contained inadequate warnings, was not safe, and did not  
9 incorporate a reasonably safe design when used in a foreseeable manner.

10           13. Defendants CHOCOLATE CHAIR, INC.; and DOES 1 through 100,  
11 inclusive, so negligently designed, manufactured, sold, tested, inspected, modified,  
12 maintained, constructed, and warned regarding said "Dragon Breath" novelty ice cream  
13 dessert, and its component parts, into which Defendant poured liquid nitrogen over the  
14 fruity cereal puffs and served the plastic cup containing said liquid nitrogen  
15 soaked/covered fruity cereal puffs to Plaintiff, that said product was defective,  
16 dangerous and unsafe for the respective use and purpose for which it was intended  
17 when used by Plaintiff VICTOR ANTONY RODRIGUEZ.

18           14. On April 10, 2017, Plaintiff VICTOR ANTONY RODRIGUEZ, purchased  
19 two "Dragon Breath" ice cream products from Defendant CHOCOLATE CHAIR, INC.'s  
20 Los Angeles, California location at 621 S. Western Ave., Los Angeles, CA 90005.  
21 Defendant CHOCOLATE CHAIR, INC., and DOES 1 through 100, inclusive, and each  
22 of them, served Plaintiff VICTOR ANTONY RODRIGUEZ with its liquid nitrogen  
23 covered/soaked fruity cereal puffs in a plastic cup along with flavored dipping sauce.  
24 The liquid nitrogen has a temperature of approximately -320 degrees Fahrenheit.  
25 Defendant CHOCOLATE CHAIR, INC.'s employees provided Plaintiff with toothpicks  
26 with which to pluck the liquid nitrogen soaked/covered fruity cereal puffs out of the  
27 provided plastic cup to dip in the flavored sauce.

28           Upon receiving his plastic cup full of liquid nitrogen soaked/covered fruity cereal

1 puffs, Plaintiff sat down on a bench within Defendant CHOCOLATE CHAIR, INC.'s Los  
2 Angeles, California location to enjoy his novelty dessert and placed the plastic cup filled  
3 with the liquid nitrogen soaked/covered fruity cereal puffs between his legs in order to  
4 pluck said puffs out of the plastic cup to be dipped into the flavored sauce. During the  
5 time that Plaintiff VICTOR ANTONY RODRIGUEZ sat eating the novelty dessert, with  
6 the plastic cup between his legs, the liquid nitrogen that had been poured into the  
7 plastic cup continued to bubble and boil.

8       Thereafter, Plaintiff discovered severe bilateral burn marks on his interior thighs  
9 from the extreme cold of the liquid nitrogen that Defendant had poured into the plastic  
10 cup and that had remained in said plastic container at the time it was served to Plaintiff.  
11 Defendants CHOCOLATE CHAIR, INC.; and DOES 1 through 100, inclusive, and each  
12 of them, failed to warn of the risks of being burned by and failed to warn of the hazards  
13 involved with using, interacting, and holding plastic containers containing liquid nitrogen.  
14 Defendant failed to ensure that the container that held the liquid nitrogen was  
15 appropriate for dispensing liquid nitrogen into it and holding said liquid nitrogen.  
16 Defendant failed to learn of and to warn of the hazards associated with the use of liquid  
17 nitrogen, including but not limited to the propensity to cause third degree burns upon  
18 contact with human skin or prolonged exposure to the freezing cold of the plastic  
19 container in which it was served.

20       15. As a direct and legal result of the negligence, carelessness and/or unlawful  
21 conduct of Defendant CHOCOLATE CHAIR, INC., and DOES 1 through 100, inclusive,  
22 and each of them, on April 10, 2017, Plaintiff VICTOR RODRIGUEZ, sustained serious  
23 and significant injuries, including severe bilateral burns on the interior of his thighs,  
24 which required several surgeries to clean and de-bride and to graft replacement skin  
25 onto the burned areas. Plaintiff was hurt and injured in his health, strength and activity,  
26 sustaining serious and severe injuries to his person and body and members thereof,  
27 and injury to his nerves and nervous system. Plaintiff is informed and believes, and  
28 upon such information and belief alleges, that all these injuries have caused and

1 continue to cause him great physical, mental and nervous pain and suffering and  
2 mental anguish, all to his general damage in a sum which has yet to be ascertained.

3 16. As a direct and legal result of the negligence, carelessness, and/or  
4 unlawful conduct of Defendants CHOCOLATE CHAIR, INC., and DOES 1 through 100,  
5 inclusive, and each of them, Plaintiff VICTOR ANTONY RODRIGUEZ was compelled to  
6 employ and did employ physicians and surgeons to treat and care for him, and did  
7 necessarily become hospitalized and did necessarily incur and will in the future incur  
8 expenses for physicians and surgeons, hospitalizations and hospital facilities, nurses, x-  
9 rays, medicines, medical supplies, and other medically related expenses according to  
10 proof at trial.

11 17. As a direct and legal result of the negligence, carelessness, and/or  
12 unlawful conduct of Defendants CHOCOLATE CHAIR, INC., and DOES 1 through 100,  
13 inclusive, and each of them, and the injuries caused thereby as aforesaid, Plaintiff did  
14 necessarily incur, and in the future will incur, incidental expenses and damages  
15 according to proof at trial.

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17  
18 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of  
19 them, as follows:


- 20 1. General damages for injuries to Plaintiff's mind and body according to  
21 proof;
- 22 2. Medical expenses, both past and future, according to proof;
- 23 3. Incidental expenses and damages according to proof;
- 24 4. Interest from the date of accident according to proof;
- 25 5. For costs of suit incurred;
- 26 6. This is an action for the breach of an obligation not arising from a contract,  
27 and Plaintiff therefore, pursuant to California Code Section 3288, seeks interest in the  
28 discretion of the jury; and

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7. For such other and further relief as the Court deems just and proper.

Dated: March 24, 2018

**BRYMAN & APELIAN**

By:   
ANDREW C. BRYMAN, ESQ.  
Attorneys for Plaintiffs  
VICTOR ANTONY RODRIGUEZ