

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Russell Lane Mattison Jr.,

Plaintiff,

vs.

Dragon Breath, Simon Property Group,  
Haywood Mall, Jamie Wright, Hana and Me,  
LLC, Halim Kitous, and John Doe,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2018-CP-23-

**COMPLAINT**  
**(Jury Trial Requested)**

COMES NOW, the plaintiff, alleging and complaining of the defendants as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. The plaintiff is a citizen and resident of Anderson County, South Carolina.
2. Upon information and belief, Dragon Breath is a company doing business in Greenville County, South Carolina.
3. Upon information and belief, Hana and Me, LLC, is a North Carolina company that operates Dragon Breath, which does business in Greenville County, South Carolina.
4. Haywood Mall is a shopping center located in Greenville County, South Carolina.
5. Simon Property Group is a property management company doing business throughout the United States, including in Greenville County, South Carolina.
6. Upon information and belief, Halim Kitous is a citizen and resident of Burke County, North Carolina.
7. Upon information and belief, Jamie Miller is a citizen and resident of Greenville County, South Carolina.
8. Upon information and belief, John Doe is a citizen and resident of Greenville County, South Carolina.
9. The events giving rise to this action took place in Greenville County, South Carolina.
10. Venue and jurisdiction are proper for the foregoing reasons.

### **FACTUAL BACKGROUND**

11. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.
12. Simon Property Group owns and manages Haywood Mall, a shopping center located at 700 Haywood Road, Greenville, South Carolina, 29607.
13. Upon information and belief, Jamie Miller is the Mall Manager for Haywood Mall.
14. Upon information and belief, Hana and Me, LLC, is a North Carolina company that operates Dragon Breath.
15. Upon information and belief, defendant Halim Kitous is the owner of the Dragon Breath kiosk located in Haywood Mall.
16. Upon information and belief, defendant John Doe is the manager of the Dragon Breath kiosk located in Haywood Mall.
17. For purposes of distributing food at the Dragon Breath kiosk located in Haywood Mall, defendant John Doe is the agent, servant, and/or employee of defendant Dragon Breath.
18. Upon information and belief, Dragon Breath sells a type of frozen dessert made from cereal dipped in liquid hydrogen. The product takes its name from the vapors that the dessert produces, which are released through the consumer's mouth and nose, resembling the breath of a dragon.
19. On or about April 29, 2018, the plaintiff visited the Dragon Breath kiosk located in Haywood Mall and ordered the company's eponymous product.
20. Upon information and belief, on the date that the plaintiff visited the Dragon Breath located in Haywood Mall, there were no written warnings posted to alert consumers that the food was potentially dangerous, and the plaintiff was not asked to sign a waiver prior to purchasing or consuming the food. The plaintiff received no written or verbal instructions for how to consume the food.
21. The plaintiff purchased and consumed several pieces of the liquid nitrogen-soaked cereal, recording his consumption of the food in short videos that he intended to upload through the social media application "Snapchat."
22. When the plaintiff consumed one piece of the food, he experienced sudden and intense pain in his mouth. Upon immediate inspection, the plaintiff discovered that his mouth was filled with blood, which was the result of an ulceration to the inside of his cheek.
23. The plaintiff sought medical treatment for his injury, which health care professionals verified

was the direct result of the unfit food the defendants sold to the plaintiff.

24. In the days following his consumption of this food, the plaintiff continued to suffer severe physical pain, as the laceration in his mouth continued to bleed and swell. For several weeks, the plaintiff was unable to consume food that was a part of his normal diet due to the pain that he experienced when eating.
25. As a result of this injury, the plaintiff suffered severe physical pain, weight loss, and mental anguish.
26. The defendants' actions were motivated by unreasonable financial gain. The defendants sought to sell unfit food to consumers such as the plaintiff and sought to earn a profit from the sale of that unfit food.
27. The defendants were reckless to the extent that they failed to hire fit employees to prepare and serve food to the public, that they ignored complaints about food prior to the sale of food to the plaintiff, and in such other ways as will be shown through discovery and at trial.
28. The individual defendants are personally liable to the extent that they ignored Dragon Breath's rules, endangered the plaintiff and the public, acted intentionally, and in other such ways as will be shown through discovery and at trial.
29. Dragon Breath is vicariously liable via *respondeat superior* for the acts of its employees and agents.
30. Every defendant is jointly and severally liable for the acts of every other defendants, whether herein named or named through an amended pleading.
31. The plaintiff is therefore informed and believes he is entitled to judgment against the defendants for actual and punitive damages.

**FOR A FIRST CAUSE OF ACTION**

**(S.C. Food and Cosmetics Act, S.C. Code Ann. § 39-25-10, et seq.)**

32. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.
33. Defendants sold the plaintiff food that contained poisonous and/or deleterious substances, which rendered it injurious to the plaintiff's health, in violation of S.C. Code Ann. § 39-25-30.
34. The defendants sold the plaintiff food that was unwholesome and unfit for consumption when it left the defendants' hands.
35. As a direct and proximate result of the defendants' violation of the S.C. Food and Cosmetics

Act, the plaintiff suffered an ulceration and consequential damages as pleaded herein.

36. As a direct result of the defendants' violations of common law and statutes, including those listed herein, the plaintiff was seriously injured. Health care professionals verified the link between the unfit food the plaintiff consumed and his resulting injury.
37. The plaintiff is therefore informed and believes he is entitled to judgment against the defendants for actual and punitive damages.

**FOR A SECOND CAUSE OF ACTION**  
(S.C. Defective Product Act, S.C. Code Ann. § 15-73-10, *et seq.*)

38. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.
39. On or about April 29, 2018, the defendants sold the plaintiff food that was in a defective condition and was unreasonably dangerous to the plaintiff, who was the consumer and user of the food.
40. The defendants are engaged in the business of selling prepared food to the public.
41. The plaintiff was severely injured by the food described herein.
42. The plaintiff's injuries were directly and proximately caused by the defective condition of the food.
43. The food was expected to, and did, reach the plaintiff in essentially the same condition as when it left the defendants' hands. Indeed, the plaintiff consumed the product immediately after he purchased it from the defendants.
44. The plaintiff is therefore informed and believes he is entitled to judgment against the defendants for actual and punitive damages.

**FOR A THIRD CAUSE OF ACTION**  
(Negligence/Negligence *Per Se*)

45. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.
46. In operating the restaurant, Dragon Breath undertook a duty to ensure that any of its agents, servants, or employees complied with South Carolina laws regarding safe and pure food products and the proper method of preparing such food products.
47. On April 29, 2018, the defendants had a duty to serve food that was fit for human consumption.
48. On April 29, 2018, the defendants breached their duties in one or more of, but not limited to, the following ways:

- a. by selling and offering for sale foods that were adulterated and not fit for human consumption;
  - b. by adulterating food that was sold for human consumption;
  - c. by receiving in commerce adulterated food;
  - d. by selling adulterated food to the plaintiff and to others;
  - e. by failing to inspect foods prior to sale to the plaintiff and to others;
  - f. by failing to establish and/or maintain proper procedures and safeguards designed to prevent the sale of food products that were adulterated and/or contaminated;
  - g. by failing to properly train its employees in the preparation, storage, sale, and inspection of food products, in order to prevent the sale and distribution of food products that were adulterated and/or contaminated;
  - h. by failing to properly supervise employees in the preparation, storage, sale, and inspection of good products, in order to prevent the sale and distribution of food products that were adulterated and/or contaminated;
  - i. by failing to properly store food products intended for consumption, in order to prevent the adulteration and/or contamination of said food products;
  - j. by violating *S.C. Code Ann.* § 39-25-30; and
  - k. in other such particulars as the evidence may show.
49. The defendants' violations of *S.C. Code Ann.* § 39-25-30 constitute negligence *per se*.
50. As a direct and proximate result of the defendants' negligence and negligence *per se*, the plaintiff was injured and damaged as described herein.
51. The plaintiff is therefore informed and believes he is entitled to judgment against the defendants for actual and punitive damages.

**FOR A FOURTH CAUSE OF ACTION**  
**(Breach of Warranty)**

52. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.
53. Upon the sale of the adulterated food to the plaintiff on April 29, 2018, the defendants created an implied warranty of merchantability that the food was fit for ordinary purposes.
54. The defendants breached the implied warranty of merchantability when they sold contaminated and/or adulterated food to the plaintiff that caused the plaintiff's injuries.
55. The plaintiff pleads a breach of all applicable warranties, including express, implied, fitness

for a particular purpose, and all other applicable warranties.

56. As a direct and proximate cause of this breach of warranty, the plaintiff has suffered actual damages as described herein.

57. The plaintiff is therefore informed and believes he is entitled to judgment against the defendants.

**FOR A FIFTH CAUSE OF ACTION**  
**(Strict Liability)**

58. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.

59. At the times and places in question the defendants sold, handled, distributed, and profited from the unfit food, which caused the plaintiff's damages.

60. The food was in a defective condition and made unreasonably dangerous thereby at the time it caused the plaintiff's damages.

61. The food consumed by the plaintiff was made unreasonably unsafe by some defect in its preparation, design, or manufacture, which defect existed at the time that the defendants handled it, profited from it, distributed it, and/or placed it into the stream of commerce.

62. The plaintiff was, at the time of his damage was caused, a member of that class of persons contemplated by the defendants as users or consumers of the food in question, and the plaintiff was in fact a user of the food at the inception of accrual of damages and expenses.

63. The food in question was expected to reach the plaintiff, as the ultimate consumer of the food, in substantially the condition it was in when it was handled, distributed, and profited-from by the defendants.

64. The food did in fact reach the plaintiff without substantial change in the condition that it was in at the time it was handled, distributed, and profited-from by the defendants.

65. As a direct and proximate result of the defective and unreasonably dangerous condition of the food, the plaintiff suffered the damages alleged above.

66. Pursuant to *S.C. Code Ann.* § 15-73-10, the plaintiff alleges that the defendants are strictly liable for his actual damages.

67. The plaintiff is therefore informed and believes he is entitled to judgment against the defendants for actual and punitive damages.

**PRAYER FOR RELIEF**

WHEREFORE, the plaintiff prays for a jury trial and judgment against the defendants for actual and punitive damages, for the costs of this action, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ Helena L. Jedziniak

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Greenville, South Carolina  
June 5, 2018

Attorneys for Plaintiffs

Pursuant to Rule 38, *SCRCP*, Plaintiff demands a trial by jury on all issues triable to a jury.

s/ Helena L. Jedziniak

Helena L. Jedziniak