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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUFFOLK SUPERIOR COURT

_____	)
NATHALIE MURCIA,	)
Plaintiff,	)
	)
v.	)
	)
PHO PASTEUR II, INC.,	)
Defendant.	)
_____	)

**COMPLAINT**

**PARTIES**

1. The Plaintiff, Nathalie Murcia ("Plaintiff"), is an individual residing at 159 West Springfield Street, Boston, Massachusetts 02118.
2. The Defendant, Pho Pasteur II, Inc., ("Defendant"), is a Domestic Profit Corporation with a principal office located at 682 Washington Street, Boston, Massachusetts 02111 and a President, Ha Huu Nguyen, located at 62 Burt Street, Dorchester, Massachusetts 02124.
3. At all times material hereto, Defendant, Ha Huu Nguyen owned, leased, managed, controlled, occupied, possessed, maintained, and/or had the right to control the Pho Pasteur II, Inc. located at 682 Washington Street, Boston, Massachusetts 02111 (the "Premises").

**COUNT 1 - NEGLIGENCE**

**PHO PASTEUR II, INC.**

4. The Plaintiff incorporates by reference paragraphs 1-3 of this Complaint.
5. At all times relevant to this Complaint, the Plaintiff was a legally at the Premises.
6. At all times relevant to this Complaint, the Defendant was legally responsible for all management, operation, and food and/or beverage service at the Premises.
7. On or about, September 20, 2024, Plaintiff arrived at Premises to purchase Phở, a hot noodle soup. Plaintiff chose to dine-in, placed her order, and upon finishing her meal, requested fresh soup broth to-go.

8. Defendant's employee(s) failed to properly secure the lid of the soup container.
9. Defendant's employee served Plaintiff the soup in a container inside a paper bag, without the lid properly or adequately secured to the container holding the soup.
10. As a result, upon service to Plaintiff, the improperly or inadequately secured lid leaked soup into the paper bag, and caused the bottom of the bag to fall out and spill on Plaintiff's lap causing serious burn injuries.
11. At all material times, Defendant's employee(s) was/were working within the course and scope of their employment.
12. At all material times, Defendant controlled the mode, manner, and means by which it managed and operated the Premises. Under Defendant's mode, manner, and means of managing and operating the Premises, injuries to customers were reasonably foreseeable.
13. Defendant owed its customers a duty to use ordinary care to guard against foreseeable risks of harm caused by Defendant's mode, manner, and means of managing and operating the Premises.
14. Defendant had a duty to develop, implement, maintain, comply with, and enforce appropriate safety measures to protect customers from the foreseeable risks of harm.
15. Defendant had a duty to develop, implement, maintain, comply with, and enforce appropriate training procedures that would enable its employees to protect customers from the foreseeable risks of harm.
16. At all times material hereto, Defendant through its principals, agents, servants, employees, and/or representatives, was negligent, careless and breached duty owed to Plaintiff by committing one of more of the following omissions or commissions:
  - a. Negligently failed to properly and adequately secure the lid on the soup container before giving it to Plaintiff in a brown-paper bag to-go;
  - b. Defendant failed to maintain procedures and protocols to protect customers from the foreseeable risk of injuries;
  - c. Defendant's safety measures were inadequate to protect customers from the foreseeable risk of injuries;
  - d. Defendant's employees negligently failed to comply with, carry out, and enforce Defendant's procedures and protocols;
  - c. Defendant negligently failed to adequately train its employees, contractors, agents,

and/or representatives;

f. Defendant failed to hire sufficiently adequate employees to carry out its procedures and protocols;

g. Negligently failed to inspect or adequately inspect the lid of the coffee cup to make sure it was properly and adequately secured to the cup and that both the cup and lid were free from defects before giving it to Plaintiff;

h. Negligently serving coffee at a temperature that created a dangerous condition and/or hazard to patrons when taking possession of the coffee;

Negligently failing to train and/or supervise employees with regard to the proper temperature to serve coffee;

j. Negligently failing to warn Plaintiff of the danger of the lid not being properly secured to the cup of the hot coffee when Defendant knew or through the exercise of reasonable care, should have known that it was unreasonably dangerous and was in a position of superior knowledge of the risks compared to Plaintiff;

k. Negligently failed to correct the dangerous condition when Defendant knew of the condition, that it existed for such a length of time that it should have known of the condition, or that it was foreseeable that the condition could and/or did exist;

l. In other ways not yet known to the Plaintiff but that might be discovered as the case progresses.

17. The aforementioned incident was caused solely and exclusively by reason of the negligence of Defendant, individually and/or through their agents, servants or employees, and was caused in no manner whatsoever by any act or failure to act on the part of the Plaintiff.
18. Defendant's acts and/or omissions constitute a breach of the duty of due care owed to the plaintiff
19. As a further result of the Defendants' negligence herein, the Plaintiff has endured a great expense for medical treatment, and will for an indefinite time in the future be obliged to expend further monies in an effort to cure the injuries Plaintiff has suffered, all to Plaintiff's great detriment and loss.
20. As a direct and proximate result of the negligence of the Defendant, as heretofore alleged, the Plaintiff, suffered bodily injuries, incurred medical expenses for the treatment of said injuries, lost wages, pain and suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and loss of capacity for the enjoyment of life. The

injuries are either permanent or continuing in nature and Plaintiff will suffer the losses and impairment in the future.

**WHEREFORE**, the Plaintiff, Nathalie Murcia, demands judgment as against the Defendant, Pho Pasteur II, Inc., in full, fair, and adequate amount to compensate the Plaintiff for all of the Plaintiff's Incident-related harms and losses, together with interest and costs.

**JURY DEMAND**

The Plaintiff hereby claims Plaintiff's right to a trial by jury of all claims so triable asserted at any time, and of all defenses asserted at any time by any current or future-named defendant.

Respectfully Submitted,  
the Plaintiff,  
NATHALIE MURCIA,

By her attorneys,  
MICHAEL KELLY INJURY LAWYERS,

*/s/ John McCarthy* \_\_\_\_\_

John McCarthy. Esq.

BBO #705631

Michael Kelly Injury Lawyers

83 Atlantic Avenue, Suite 202

Boston, MA 02110

(617) 444-4444

Date: October 25, 2024

john@CallKellyCall4.com