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Superior Court of California
County of Fresno
By: A. Rodriguez, Deputy

8 Attorneys for Plaintiff MARSHALL HUTCHINGS

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF FRESNO**

11 MARSHALL HUTCHINGS,

12 Plaintiff,

13 vs.

14 FRESNO SPORTS AND EVENTS, LLC.,
15 AND DOES 1 to 20, inclusive,

16 Defendants.
17
18

Case No.: 21CECG00941

**PLAINTIFF'S COMPLAINT FOR
WRONGFUL DEATH DAMAGES AND
DEMAND FOR JURY TRIAL**

1. NEGLIGENCE
2. NEGLIGENCE

19 COMES NOW Plaintiff, MARSHALL HUTCHINGS ("Plaintiff") for causes of action
20 against Defendants and DOES 1 through 20, inclusive, who complains and alleges as
21 follows:
22

23 **INTRODUCTORY ALLEGATIONS**

- 24 1. Plaintiff is an individual suing in such capacity and has been a resident of Fresno,
25 California at all times relevant to this action.
- 26 2. Defendant FRESNO SPORTS AND EVENTS, LLC., is a limited liability company and
27 has been authorized to do business in California at all times relevant to this action.
- 28 3. Plaintiff is informed and believes, and thereon alleges, that at all times relevant to this

1 action, FRESNO SPORTS AND EVENTS, LLC., was and still presently is, a
2 California corporation with its principal place of business in the State of California,
3 County of Fresno, where it owns and operates, FRESNO SPORTS AND EVENTS,
4 LLC., entertainment services in the nature of professional baseball games, minor league
5 baseball games, and promotional events and/or expositions.

- 6 4. At all times and places mentioned herein, Defendant, and each of them, were the
7 owners, operators, sponsors, event managers, event coordinators, event planners, event
8 specialists, administrative assistants, director(s) of events, director(s) of event
9 marketing, event project managers, operations supervisors, special events planners,
10 event supervisors, event risk managers, employees of defendant and were acting within
11 the purpose, scope and course of said agency, service and employment, with the
12 express and/implied knowledge, permission and consent of those remaining defendants,
13 and each of them, and each of said defendant ratified and approved the acts of the other
14 defendants.
- 15 5. Plaintiff is informed and believes and thereon alleges, that FRESNO SPORTS AND
16 EVENTS, LLC., sponsored and hosted an amateur taco-eating competition which led to
17 the death of Dana Hutchings.
- 18 6. Plaintiff is informed and believes and thereon alleges, that FRESNO SPORTS AND
19 EVENTS, LLC., did not possess the competence and/or experience to safely carry out
20 an eating competition of this nature.
- 21 7. Plaintiff is informed and believes and thereon alleges, that FRESNO SPORTS AND
22 EVENTS, LLC., through their incompetence and inexperience failed to assess the risk
23 of injury and death when they planned their promotional amateur taco-eating
24 competition.
- 25 8. Plaintiff is informed and believes and thereon alleges, that FRESNO SPORTS AND
26 EVENTS, LLC., failed to occupy medical technicians for their amateur taco-eating
27 contest and by doing so, they exercised an extreme departure of the standard of
28

1 ordinary care.

2 9. Plaintiff is informed and believes and thereon alleges, that FRESNO SPORTS AND
3 EVENTS, LLC., did not secure a medical response team that could have identified a
4 medical emergency promptly and initiated life-saving procedures that could have
5 saved Dana Hutchings' life.

6 10. Plaintiff is informed and believes and thereon alleges, that FRESNO SPORTS AND
7 EVENTS, LLC., did not warn, and did nothing to prevent their amateur participants
8 from consuming alcohol prior to the commencement of the competition.

9 11. Plaintiff is informed and believes and thereon alleges, that FRESNO SPORTS AND
10 EVENTS, LLC., hosted their amateur taco-eating competition at a location where
11 alcoholic beverages would be readily available to their contestant.

12 12. Plaintiff is informed and believes and thereon alleges, that FRESNO SPORTS AND
13 EVENT, LLC., failed to fully inform decedent, Dana Hutchings, of every risk he was
14 accepting when he agreed to enter the amateur taco-eating competition. The lack of
15 information outlining every risk to amateur eaters was omitted and Mr. Hutchings
16 entered the competition with limited information on all the risks he was agreeing to.
17 His assumption of risk was distorted, and therefore, he was unable to assume the risks
18 he was taking when he agreed to enter the competition.

19 13. Plaintiff is informed and believes and thereon alleges, that FRESNO SPORTS AND
20 EVENTS, LLC., knew or should have known that promoting inherently dangerous
21 eating competitions with coarse foods, such as tacos, are more likely to lead to
22 choking, especially, for an amateur eating participant.

23 14. Plaintiff is informed and believes and thereon alleges, that FRESNO SPORTS AND
24 EVENTS, LLC., did not fully disclose the risks of competing in their taco-eating
25 contest, and therefore, decedent did not fully understand the risk he was accepting.
26

27 15. All allegations made in this complaint are based upon information and belief, except
28 those allegations which pertain to the named plaintiff, which are based on personal

1 knowledge. The allegations of this complaint, stated on information and belief, are
2 likely to have evidentiary support after a reasonable opportunity for further
3 investigation or discovery.

4 16. The true names and capacities, whether individual, corporate, associate or others, of
5 defendants Does 1 through 20, inclusive, are unknown to plaintiff, who therefore sue
6 said defendants by such fictitious names. Each of the defendants designated herein as
7 DOE is legally responsible in some manner for the events and happenings herein
8 alleged, and plaintiff's damages as alleged herein were proximately cause by such
9 defendants. Plaintiff will ask for leave of court to amend this complaint and insert the
10 true names and capacities of said DOE Defendants when the same have been
11 ascertained.

12 **JURISDICTION AND VENUE**

13 17. This court is the proper court because the defendant resides and/or maintains a place of
14 business in Fresno County, and because all the events giving rise to this action took
15 place in Fresno County.

16 **GENERAL ALLEGATIONS**

17 18. On the evening of August 13, 2019, FRESNO SPORTS AND EVENTS, LLC., held
18 an amateur taco-eating contest at Chukchansi Park during a Fresno Grizzlies minor
19 league baseball game. The amateur taco-eating contest was a preface for a professional
20 taco-eating contest that would have followed on August 14, 2019, at the 9th annual
21 Taco Truck Throwdown, where taco chefs compete to be the best taco truck in the
22 Central Valley. As the name of the event suggests, the taco- eating contest was for
23 *amateurs*, meaning that novice participants could enter the competition. The *amateur*
24 contestants were to eat as many tacos as they could in a short amount of time. Each
25 contestant was served a large platter of tacos. The choice of meat used for this eating
26 contest is unknown to Plaintiff. As time was of the essence, contestants quickly and
27
28

1 ferociously attempted to chew and swallow the tacos on their platters. After the
2 competition began, it was only a matter of minutes before Chukchansi Staff members
3 noticed amateur participant, Dana Hutchings, collapse. Dana Hutchings, 41-years-old,
4 had a mouth full of chewed and unchewed tacos obstructing his respiratory system.
5 Chukchansi staff members went on stage and commenced CPR (cardiopulmonary
6 resuscitation) and AED (automated external defibrillator). Chukchansi Staff members
7 called Emergency Medical Services at this time. Emergency Medical Services arrived
8 on the scene to find Dana Hutchings unconscious and undoubtedly choking on the
9 tacos.
10

11
12 Dana Hutchings was transported to Community Medical Center where he was later
13 pronounced dead. Dana Hutchings choked on large amounts of chewed and unchewed
14 tacos. Decedent, Dana Hutchings, is survived by his sole heir, Marshall Hutchings,
15 who now brings a wrongful death action against Defendant FRESNO SPORTS AND
16 EVENTS, LLC.
17

18 **THE INHERENT RISKS OF AMATEUR EATING CONTEST**

19 19. It is well known that competitive eating contests are popular events that occur all over
20 the United States. While professional eating competitions can be fun to watch,
21 *amateur* eating contests are inherently dangerous.
22

23 20. An amateur eater is not trained to safely chew and swallow large chunks of foods, such
24 as tacos, without the risk of choking present.
25

26 21. Professional eaters know of the inherent dangers that come with competitive eating.
27 As professionals, they know how to assess the risk of the competitions they participate
28 in and fully prepare and train prior to their competitions. The preparation and training

1 they undergo can minimize the risk of injury or death from choking.

2 22. Amateurs have absolutely no experience and, as a consumer, the risk of choking is not
3 fully present. Professional speed eaters have experience, a unique skill set, and the
4 training required to safely ingest large chunks of food quickly. Some professionals
5 must strengthen their jaw to quickly breakdown the food prior to swallowing.
6 Professionals also spend months, if not years, developing techniques that facilitate
7 their ability to swallow large chunks of food at a fast pace.
8

9
10 23. Professional speed eaters know the importance of steering clear of alcohol consumption
11 due to the impairment that would compromise their ability to compete safely.
12

13 24. Amateur eaters that compete for promotional expositions are placed at great
14 disadvantage from the outset of the competition. Amateurs do not have the advantages
15 that come along with training, experience, and development of techniques to safely
16 ingest large chunks of food safely.
17

18 **FIRST CAUSE OF ACTION**

19 **(Negligence Against FRESNO SPORTS AND EVENTS LLC., and DOES 1 Through 20,**
20 **Inclusive)**

21 25. Plaintiffs re-allege and incorporates herein by reference each and every allegation and
22 statement contained in the prior paragraphs.

23 26. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
24 herein, Defendant FRESNO SPORTS AND EVENTS LLC., and DOES 1 through 20,
25 inclusive, owned, operated, managed, sponsored, hosted and/or organized the
26 Amateur Taco- Eating Contest and are legally responsible for the safety of the
27 Amateur eating contestants. Defendant and DOES 1 to 20, inclusive, owed plaintiff a
28

1 duty to carry out this inherently dangerous event with reasonable care.

2 27. Defendants breached their duty to plaintiff by failing to exercise ordinary care and due
3 diligence in negligently permitting the circumstances to exist that led to the death of
4 Dana Hutchings. Defendant's amateur taco-eating contest contributed to the choking
5 of Dana Hutchings, and each of their actions as alleged herein, were a substantial
6 factor in Dana Hutchings' death. At all times mentioned herein, defendants, through
7 their negligence as herein alleged, ignored their responsibility to plaintiff and
8 unreasonably jeopardized the health and well-being of Dana Hutchings and caused his
9 death.
10

11
12 28. As a legal, direct and proximate result of the negligent conduct of Defendant FRESNO
13 SPORTS AND EVENTS, LLC., including DOES 1 through 20, has sustained damages
14 resulting from the loss of love, affection, society, service, comfort, and counseling,
15 companionship, solace and mental support, all to their general damages in a sum in
16 excess of the jurisdictional limits of this Court, which will be stated according to
17 proof, pursuant to Section 425.20 of the California *Code of Civil Procedure*
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19
20 **SECOND CAUSE OF ACTION**

21 **(Negligence Against FRESNO SPORTS AND EVENTS LLC., and DOES 1 TO 20, Inclusive)**

22 29. Plaintiff re-alleges and incorporates herein by reference each and every allegation and
23 statement contained in the prior paragraphs.

24 30. As alleged herein, on August 13, 2019, Dana Hutchings participated in an amateur
25 taco-eating contest, a promotional event for the 9th annual Taco Throwdown. As further
26 alleged herein, defendant's conduct constitutes a want of even scant care and an
27 extreme departure from the ordinary standard of conduct. Such outrageous lack of care
28

1 represents an extreme departure from the ordinary standard of conduct in the context of
2 the situation. This grossly negligent conduct resulted in the death of Dana Hutchings.

3 31. As a direct and proximate result of defendant's grossly negligent conduct, Dana
4 Hutchings choked, and plaintiff is entitled to recover compensatory damages in the
5 amount according to proof.
6

7 32. As a legal, direct and proximate result of the negligent conduct of Defendant FRESNO
8 SPORTS AND EVENTS, LLC., including DOES 1 through 20, has sustained damages
9 resulting from the loss of love, affection, society, service, comfort, and counseling,
10 companionship, solace and mental support, all to their general damages in a sum in
11 excess of the jurisdictional limits of this Court, which will be stated according to proof,
12 pursuant to Section 425.20 of the California *Code of Civil Procedure*.
13

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Marshall Hutchings prays judgment against Defendant as follows:

- 16 1. For non-economic damages suffered by Plaintiff including, but not limited to,
17 loss of love, affection, care, society, service, comfort, companionship, solace or
18 moral support, and counseling, in an amount in excess of the jurisdictional
19 minimum, according to proof;
20
21 2. For prejudgment interest, according to proof;
22
23 3. For pre-trial interest, according to proof;
24
25 4. For such other and further relief as this Court may deem just and proper.

26 Dated: 3/23/21

27 **SAWL LAW GROUP**

28 By: Martin Taleisnik
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