

**IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA**

TIMOTHY MARKS
As parent of T.M.,

Plaintiff,

CASE NO.:

vs.

CREAM DESSERTERY INC,
and
MAIN STREET AMERICA INSURANCE, INC.,

Defendants.

COMPLAINT

COMES NOW, Plaintiff, TIMOTHY MARKS As parent of T.M., (hereinafter "Plaintiff") by and through the undersigned counsel, hereby sues the Defendant, CREAM DESSERTERY INC (hereinafter "CREAM"), and MAIN STREET AMERICA INSURANCE, INC., (hereinafter "MAIN") as follows:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of Fifty Thousand (\$50,000.00) Dollars, and is within the jurisdiction of this Court.
2. That at all times material hereto the negligent acts were committed in Palm Beach County, State of Florida, and are otherwise *sui juris*.
3. That at all times material hereto the CREAM was and is a Florida Profit Corporation duly licensed and authorized to do business in Palm Beach County, Florida.
4. That at all times material hereto the CREAM owned, possessed and/or otherwise was in control of the premises located at 1163 E Atlantic Ave, Delray Beach, Palm Beach County, Florida.

5. That at all times material hereto MAIN was and is a Florida Profit Corporation duly licensed and authorized to do business in Palm Beach County, Florida.

COUNT I – NEGLIGENCE – CREAM

6. Plaintiff re-alleges the allegations contained in paragraphs 1 through 5 as if fully set forth herein.

7. That on or about August 18, 2025, Plaintiff was on the Defendant's premises, when the countertop shifted, caused the Plaintiff to get injured.

8. That at all times stated herein, the Plaintiff was a guest and/or invitee of the Defendant, and conducted himself in a reasonable and prudent manner for his own safety.

9. That at all times stated herein, the Defendant owed a duty of care to the Plaintiff as a guest and/or invitee to maintain its premises in a reasonably safe condition, to inspect its premises for any dangerous conditions, and to warn of any dangerous conditions.

10. That the Defendant knew or should have known that there was a loose countertop and failed to remedy the situation or warn of the dangerous condition it created on the premises.

11. That at said time and place, Plaintiff reached onto the counter when it shifted, causing his injuries.

12. At the time and place aforesaid, the Defendant negligently and carelessly:

(a) Maintained its premises; and/or

(b) Inspected its premises; and/or

(c) Controlled its premises so that they were unsafe, dangerous and otherwise hazardous to the Plaintiff.

13. The Defendant negligently and carelessly knew or, with the exercise of reasonable care, should have known of the dangerous condition, to wit: loose countertop in the kitchen, where Defendant knew that patrons would be; however, the Defendant:

- (a) Failed to remedy the dangerous condition and/or keep its premises in a reasonably safe condition; and/or
- (b) Further represented to the Plaintiff that said area was safe and suitable for the Plaintiff when, in fact, it was not because of the dangerous condition, to wit: loose countertop.

14. The Defendant knew, or with the exercise of reasonable care, should have known that the Plaintiff and others could be injured as a result of the dangerous condition on the counter but negligently and carelessly failed to provide adequate warning and/or other reasonable notice of the dangerous condition, as well as failed to remedy the condition.

15. That as a further direct and proximate result of the negligence of the Defendant CREAM, the Plaintiff has in the past and will in the future suffer disability, disfigurement, pain and suffering, mental anguish, loss of capacity for the enjoyment of life, loss of income, loss of earning capacity, medical expenses, hospitalization expenses, therapy expenses, diagnostic expenses, nursing expenses, and/or aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment against the Defendant CREAM in an amount in excess of Fifty Thousand (\$50,000.00) Dollars, exclusive of interest and costs and any other relief this Court deems reasonable.

COUNT II – CLAIM FOR MEDPAY AGAINST MAIN

16. Plaintiff re-alleges the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

17. On or about August 18, 2025, Plaintiff was injured on MAIN's insured property.

18. MAIN wrote a policy of insurance for General Liability coverage for CREAM.

19. That the Plaintiff has incurred medical bills within or in excess of the Med expense limit as a result of the subject incident which occurred on the insured's property, and covered by the subject policy.

20. These medical bills were incurred and timely submitted to Defendant's insurance carrier, MAIN, for payment under the "Medpay" provision of the subject liability policy, which provides for \$10,000.00 in medpay benefits.

21. The policy number is BP00091546, which defendant MAIN is in possession of, and is incorporated by reference herein, and attached in exhibit A.

22. Plaintiff is an omnibus insured under MAIN's policy's Medpay clause and is contractually entitled to recover medical costs directly from MAIN.

23. Plaintiff is entitled to attorney's fees and costs under Fla. Stat. §627.428 and/or other statutory provisions, as this claim falls under the wording of §627.428.

WHEREFORE, the Plaintiff demands judgment against the Defendant MAIN in an amount in excess of Fifty Thousand (\$50,000.00) Dollars, exclusive of interest and costs and any other relief this Court deems reasonable.

DEMAND FOR JURY TRIAL

The Plaintiff in the above-styled cause hereby demand a trial by jury of all of the issues triable by right.

Dated: 01/13/26

Respectfully Submitted,

IAN BRESSLER LAW P.A.
8461 Lake Worth Rd., #469
Lake Worth, FL 33467
P- 561-305-8257
F- 561-210-8925
ian@ianbresslerlaw.com

By: /s/ Ian Bressler
Ian Bressler, Esq.
Florida Bar No.: 104905

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