

STATE OF WISCONSIN

CIRCUIT COURT

EAU CLAIRE COUNTY

AVERIE K. GOODMAN
3355 Beverly Hills Drive,
Eau Claire, WI 54701,

Plaintiff,

SUMMONS
Case No.

vs.

DEL MONTE FRESH PRODUCE, N.A.,
a foreign corporation,
241 Sevilla Avenue
Coral Gables, FL 33134,

and

KWIK TRIP, INC.,
a Wisconsin corporation,
1626 Oak Street
La Crosse, WI 54603,

Defendants.

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 721 Oxford Ave #2220, Eau Claire, WI 54703, and to Lindsay C. Lien Rinholen, Plaintiff's attorney, whose address is 45 S. 7th Street, Suite 2950, Minneapolis, MN 55402. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 14 day of June, 2018.

PRITZKER HAGEMAN, P.A.

Electronically Signed by:

By: Lindsay C. Lien Rinholen

Lindsay C. Lien Rinholen, #1103163

Ryan M. Osterholm (*pro hac vice* forthcoming)

Attorneys for Plaintiff

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3355 Beverly Hills Drive,
Eau Claire, WI 54701,

Plaintiff,

vs.

DEL MONTE FRESH PRODUCE, N.A.,
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241 Sevilla Avenue
Coral Gables, FL 33134,

and

KWIK TRIP INC.,
a Wisconsin corporation,
1626 Oak Street
La Crosse, WI 54603,

Defendants.

COMPLAINT
Case No.

Products Liability: 30100

Plaintiff, by her attorneys, Lindsay Lien Rinholen and Ryan M. Osterholm, complains of the Defendants as follows:

PARTIES

1. This lawsuit arises out of a multistate outbreak of *Cyclospora* illnesses associated with the consumption of contaminated ready-to-eat vegetable trays sold under the Del Monte brand name by Kwik Trip stores.

2. Averie K. Goodman is an adult residing in Eau Claire County, Wisconsin with a mailing address of 3355 Beverly Hills Drive, Eau Claire, Wisconsin 54701.

3. Defendant Del Monte Fresh Produce N.A., Inc. (“Del Monte”) is a corporation organized and existing under the laws of the State of Florida, with its principal place of business

and corporate headquarters located at 241 Sevilla Avenue, Coral Gables, Florida 33134. Del Monte does business in the State of Wisconsin.

4. Defendant Kwik Trip (“Kwik Trip”) is a corporation organized and existing under the laws of State of Wisconsin, with its corporate headquarters located at 1626 Oak Street, La Crosse, Wisconsin, 54603. Kwik Trip operates a number of gas station and convenience stores throughout the state of Wisconsin.

FACTUAL BACKGROUND

Cyclospora and the Del Monte Outbreak

5. *Cyclospora* is a protozoan that causes severe gastroenteritis in humans called cyclosporiasis.

6. Symptoms of cyclosporiasis include watery diarrhea, loss of appetite, cramping, nausea, fatigue, fever, dehydration and weight loss.

7. Untreated, these symptoms can last several months or longer. *Cyclospora* infections in the United States are difficult to diagnose unless a specific test for the parasite is ordered.

8. Humans contract *Cyclospora* infections from eating food or drinking water contaminated with *Cyclospora*. Contamination of food often occurs when produce is irrigated or washed in water contaminated with feces.

9. Numerous previous outbreaks of *Cyclospora* in the United States have been associated with consumption of fecally-contaminated fruits and vegetables.

10. In early June of 2018, health officials in Minnesota and Wisconsin began investigating a cluster of gastrointestinal illnesses among individuals who tested positive for the rare protozoan *Cyclospora*.

11. On June 8, 2018, the Minnesota and Wisconsin Departments of Health informed the public that a cluster of at least 13 *Cyclospora* cases were linked to consumption of “Del Monte Vegetable Tray (containing broccoli, cauliflower, carrots, and dill dip) 6 and 12 ounce varieties.” The number of confirmed *Cyclospora* cases is expected to rise significantly.

12. The Del Monte vegetable trays were sold at Kwik Trip stores across Wisconsin and Minnesota.

13. Fresh produce producers, including Defendant Del Monte, have a duty to produce food that is free of dangerous organisms. This includes a duty to develop a food safety program and follow good agricultural practices; monitor and test its products and processing environments; and otherwise ensure that its ready-to-eat products are not exposed to fecal matter.

14. Fresh produce producers, including Defendant Del Monte, also have a duty to comply with all applicable state and federal regulations to ensure the purity and safety of its food products, including the requirements of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 *et seq.*) and Wis. Stat. § 97.10. These laws are intended to protect consumers such as the Plaintiff.

15. Defendant Kwik Trip, as a food establishment, also owed a duty to Plaintiff to comply with all applicable state and federal regulations, including the Wisconsin Food Code.

16. The Defendants failed to comply with the provisions of the health and safety laws and regulations identified above, and, as a result, were negligent in their manufacture, distribution, and sale of food adulterated with *Cyclospora*, a deadly pathogen.

Plaintiff's Illness

17. Plaintiff Averie Goodman purchased multiple Del Monte vegetable trays from the Kwik Trip located at 4395 North Town Hall Road, Eau Claire, Wisconsin, from May 14 through May 29, 2018.

18. Plaintiff ate the Del Monte vegetable trays purchased from Kwik Trip as intended.

19. On or about May 30, 2018, Plaintiff began suffering nausea and stomach pain. By the next day, she began to vomit and have diarrhea, which became extremely debilitating.

20. When she did not improve, Plaintiff sought care from a doctor on June 8, 2018. Her doctor ran several laboratory tests.

21. On June 9, 2018, after a stool sample yielded a positive result, Plaintiff was diagnosed with a *Cyclospora* infection.

22. Plaintiff was prescribed an antibiotic to treat her infection, but she continues to suffer symptoms and fatigue from her illness.

23. As a direct and proximate result of consuming contaminated produce produced by Del Monte and sold by Kwik Trip, Plaintiff suffered a debilitating and painful gastrointestinal illness, incurred medical expenses and lost wages; and suffered other losses and damages as proved at trial.

COUNT I – STRICT LIABILITY – DEL MONTE

24. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

25. At all relevant times, Defendant Del Monte was a manufacturer and seller of an adulterated food product that, as a result of its unsafe condition, injured the Plaintiff. This food product was a Del Monte vegetable tray.

26. The adulterated food produce that Defendant Del Monte manufactured and sold was, at the time it left Defendant Del Monte's control, defective and unreasonably dangerous for its ordinary and expected use due to its contamination with *Cyclospora*, a pathogen.

27. The adulterated food product that Defendant Del Monte manufactured, distributed, or sold was delivered to the Plaintiff without any change in its defective condition.

28. The adulterated food product that Defendant Del Monte manufactured, distributed, or sold was used in the manner expected and intended—that is, the vegetable tray was consumed by Plaintiff as a ready-to-eat food product.

29. The Plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that Defendant Del Monte manufactured, distributed, and sold.

COUNT II – NEGLIGENCE – DEL MONTE

30. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

31. Defendant Del Monte owed to the Plaintiff a duty to use reasonable care in the manufacture, distribution, and sale of its food products, the observance of which duty would have prevented or eliminated the risk that such food products would have become contaminated with *Cyclospora* or any other dangerous pathogen. Defendant Del Monte breached this duty.

32. Defendant Del Monte owed additional duties to the Plaintiff, including but not limited to duties to:

- a. properly supervise, train, and monitor its employees, and to ensure its employees' compliance with all applicable laws and regulations pertaining to the manufacture, distribution, storage, and sale of ready-to-eat food products;

- b. design, manufacture, and/or sell food that was not adulterated, that was fit for human consumption, that was reasonably safe in construction, and that was free of pathogens injurious to human health; and
 - c. design, prepare, serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable consumer.
33. Defendant Del Monte breached these duties.
34. As a direct and proximate result of the Defendant Del Monte's acts and omissions of negligence, the Plaintiff sustained injuries and damages in an amount to be determined at trial.

COUNT III – NEGLIGENCE PER SE – DEL MONTE

35. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

36. Defendant Del Monte its employees, agents, or those working on its behalf, as a provider of food products in the United States of America, owed a duty to comply with 21 U.S.C. § 331, which states:

The following acts and the causing thereof are prohibited:

- a. The introduction or delivery for introduction into interstate commerce of any food that is adulterated;
- b. The receipt in interstate commerce of any food that is adulterated, and the delivery or proffered delivery thereof for pay or otherwise....

37. By its terms, 21 U.S.C. § 331 was designed to prevent the harm inflicted, namely the sale of adulterated food. Plaintiff is a member of the protected class of consumers. Moreover, the legislature has expressed its intent that 21 U.S.C. § 331 serve as a basis for the imposition of civil liability.

38. Defendant Del Monte its employees, agents, or those working on its behalf, failed to comply with §331. Such conduct constitutes negligence per se.

39. Defendant Del Monte its employees, agents, or those working on its behalf, as a provider of food products in the State of Wisconsin owed a duty to comply with Wis. Stat. §97.10, which states:

(1) The sale of any food that is adulterated or misbranded is prohibited.

(2) It is unlawful to manufacture, prepare for sale, store, or sell food unless the food is protected from filth, flies, dust or other contamination or unclean, unhealthful or insanitary conditions.

40. By its terms, Wis. Stat. § 97.10 was designed to prevent the harm inflicted, namely the sale of adulterated food. Plaintiff is a member of the protected class of consumers. Moreover, the legislature has expressed its intent that Wis. Stat. § 97.10 serve as a basis for the imposition of civil liability.

41. Defendant Del Monte its employees, agents, or those working on its behalf, failed to comply with §97.10. Such conduct constitutes negligence per se.

42. As a direct and proximate result of Defendant Del Monte's acts and omissions of negligence, the Plaintiff sustained injuries and damages in an amount to be determined at trial.

COUNT IV – STRICT LIABILITY – KWIK TRIP

43. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

44. At all relevant times, Kwik Trip was a distributor and seller of the adulterated food product that, as a result of its defective and unsafe condition, injured the Plaintiff.

45. The adulterated food produce that Defendant Kwik Trip manufactured and sold was, at the time it left Defendant Kwik Trip's control, defective and unreasonably dangerous for its ordinary and expected use due to its contamination with *Cyclospora*, a pathogen.

46. The adulterated food product that Defendant Kwik Trip distributed and sold was delivered to the Plaintiff without any change in its defective condition.

47. The adulterated food product that Defendant Kwik Trip distributed and sold was used in the manner expected and intended—that is, the vegetable tray was consumed by Plaintiff as a ready-to-eat food product.

48. The Plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that Defendant Kwik Trip manufactured, distributed, and sold.

COUNT V – NEGLIGENCE – KWIK TRIP

49. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

50. Defendant Kwik Trip owed to the Plaintiff a duty to use reasonable care in the distribution and sale of its food products, the observance of which duty would have prevented or eliminated the risk that such food products would have become contaminated with *Cyclospora* or any other dangerous pathogen. Defendant Kwik Trip breached this duty.

51. Defendant Kwik Trip owed duties to the Plaintiff, including but not limited to duties to:

- a. properly supervise, train, and monitor its employees, and to ensure its employees' compliance with all applicable laws and regulations pertaining to the manufacture, distribution, storage, and sale of ready-to-eat food products;

- b. design, manufacture, and/or sell food that was not adulterated, that was fit for human consumption, that was reasonably safe in construction, and that was free of pathogens injurious to human health; and
 - c. design, prepare, serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable consumer.
52. Defendant Kwik Trip breached these duties.
53. As a direct and proximate result of Defendant Kwik Trip's acts and omissions of negligence, the Plaintiff sustained injuries and damages in an amount to be determined at trial.

COUNT VI – NEGLIGENCE PER SE – KWIK TRIP

54. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

55. Defendant Kwik Trip, its employees, agents, or those working on its behalf, as a provider of food products in the United States of America, owed a duty to comply with 21 U.S.C. § 331, which states:

The following acts and the causing thereof are prohibited:

- c. The introduction or delivery for introduction into interstate commerce of any food that is adulterated;
- d. The receipt in interstate commerce of any food that is adulterated, and the delivery or proffered delivery thereof for pay or otherwise....

56. By its terms, 21 U.S.C. § 331 was designed to prevent the harm inflicted, namely the sale of adulterated food. Plaintiff is a member of the protected class of consumers. Moreover, the legislature has expressed its intent that 21 U.S.C. § 331 serve as a basis for the imposition of civil liability.

57. Defendant Kwik Trip, its employees, agents, or those working on its behalf, failed to comply with §331. Such conduct constitutes negligence per se.

58. Defendant Kwik Trip, its employees, agents, or those working on its behalf, as a provider of food products in the State of Wisconsin owed a duty to comply with Wis. Stat. §97.10, which states:

(1) The sale of any food that is adulterated or misbranded is prohibited.

(2) It is unlawful to manufacture, prepare for sale, store, or sell food unless the food is protected from filth, flies, dust or other contamination or unclean, unhealthful or insanitary conditions.

59. By its terms, Wis. Stat. § 97.10 was designed to prevent the harm inflicted, namely the sale of adulterated food. Plaintiff is a member of the protected class of consumers. Moreover, the legislature has expressed its intent that Wis. Stat. § 97.10 serve as a basis for the imposition of civil liability.

60. Defendant Kwik Trip, its employees, agents, or those working on its behalf, failed to comply with §97.10. Such conduct constitutes negligence per se.

61. As a direct and proximate result of Defendant Kwik Trip's acts and omissions of negligence, the Plaintiff sustained injuries and damages in an amount to be determined at trial.

DAMAGES

62. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

63. Plaintiff suffered general, special, incidental, and consequential damages as a direct and proximate result of the acts and omissions of the Defendants, in an amount that shall be fully proven at the time of trial. Such damages include but are not limited to: past and future damages

for pain and suffering, loss of enjoyment of life, mental distress, and fear of future illness and death; past and future medical expenses and other costs or related out-of-pocket expense; lost wages, past and future; and any other damages that are reasonably anticipated to arise under the circumstances.

JURY DEMAND

The Plaintiff hereby demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment against the Defendants as follows:

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the Plaintiff as a result of the Defendants' conduct;
- B. Awarding the Plaintiff reasonable attorney's fees and costs, to the fullest extent allowed by law; and
- C. Granting all such additional or further relief as the Court deems just and equitable under the circumstances.

Dated this 14 day of June, 2018.

PRITZKER HAGEMAN, P.A.

Electronically Signed by:

By: Lindsay C. Lien Rinholen

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