

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

ROBIN MILLER KROENING

Plaintiff,

Civil Action No. _____

vs.

DEL MONTE FRESH PRODUCE
N.A., INC. a foreign corporation,

COMPLAINT
DEMAND FOR JURY TRIAL

Defendant.

COME NOW the Plaintiff Robin Miller Kroening, files suit against the Defendant and states and alleges as follows:

PARTIES

1. Plaintiff Robin Miller Kroening is a resident of the City of St. Charles, Winona County, Minnesota.
2. Defendant Del Monte Fresh Produce N.A., Inc. (hereinafter "Del Monte") is a corporation organized under the laws of Florida, with a principal place of business and corporate headquarters located at 241 Sevilla Avenue. Coral Gables, Florida 33134.
3. Del Monte's Minnesota registered agent for service is 1010 Dale Street North, St. Paul, Minnesota 55117.
4. At all relevant times, Defendant Del Monte sold prepackaged ready-to-eat vegetable trays across America including at Kwik Trip stores in Minnesota and Wisconsin.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(c) because the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and because there is complete diversity of citizenship between the Plaintiff and Defendant.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the acts and omissions giving rise to the claims asserted occurred in this district.

FACTS
Cyclospora

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

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

9. 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.

10. 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.

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

The Outbreak and Plaintiff's Illness

12. 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*.

13. 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.

14. Fresh produce producers, including Defendant, have a duty to produce food free of dangerous organisms. This duty includes a duty to develop a food safety program; 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.

15. Fresh produce producers, including Defendant, also have a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of food products, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*) and Minnesota Food Code. These acts are designed to protect consumers such as the Plaintiff.

16. The Defendant failed to comply with the provisions of the health and safety acts identified above, and, as a result, was negligent in its manufacture, distribution, and sale of food adulterated with *Cyclospora*, a deadly pathogen.

17. Plaintiff purchased a Del Monte vegetable tray at Kwik Trip in St. Charles, Minnesota on May 26, 2018. Plaintiff consumed the vegetable tray for lunch that day.

18. The produce in the tray consumed by Plaintiff was contaminated with *Cyclospora*.

19. On or about June 1, 2018, Plaintiff began suffering severe diarrhea, fatigue and cramping.

20. Plaintiff remained deathly ill for the next several days. On or about June 5, 2018, Plaintiff sought medical treatment at Olmsted Medical Group.

21. Plaintiff remained ill for the next week, and again sought medical treatment due to her worsening condition.

22. On or about June 7, 2018, Plaintiff was diagnosed with a *Cyclospora* infection.

23. Plaintiff was prescribed Bactrim to treat her infection.

24. Plaintiff continues to suffer symptoms from the *Cyclospora* infection and cannot yet return to work.

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

CAUSES OF ACTION

COUNT I – STRICT PRODUCT LIABILITY – MANUFACTURING DEFECT

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

27. Defendant processed, manufactured, marketed, and sold the contaminated vegetable tray that caused Plaintiff's illness.

28. The vegetable tray produced by Defendant Del Monte and consumed by Plaintiff was contaminated with *Cyclospora* when it left the control of Defendant Del Monte.

29. Plaintiff's consumption of the contaminated food caused her to become infected with *Cyclospora* and become deathly ill.

30. Food contaminated with *Cyclospora* is dangerous if eaten and is particularly dangerous to children, the elderly, and anyone with a compromised immune system.

31. Because *Cyclospora* is colorless and odorless, consumers like Plaintiff have no way of detecting the contamination.

32. The vegetable tray produced by Defendant and subsequently consumed by Plaintiff was contaminated with *Cyclospora* and therefore defective and unreasonably dangerous to ordinary consumers.

33. The vegetable tray produced by Defendant lacked any warning whatsoever to consumers.

34. Defendant is therefore strictly liable to the Plaintiff for the harm proximately caused by the production and sale of its dangerous and defective product and for its failure to warn of foreseeable risks to ordinary consumers.

35. As a direct and proximate result of Del Monte's production and sale of a defectively manufactured product and failure to warn, Plaintiff sustained injuries and damages set forth in the preceding paragraphs.

COUNT II – NEGLIGENCE

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

37. Defendant Del Monte grew, processed, manufactured, marketed, and sold vegetable trays that were contaminated with *Cyclospora*, a deadly pathogen.

38. Defendant Del Monte owed a duty to all its customers who consume its products, including Plaintiff, to manufacture and sell food that is safe to eat, that is not adulterated with deadly pathogens like *Cyclospora*, and that was not produced in violation of applicable food safety regulations and industry standards.

39. Defendant Del Monte breached the duties owed to its customers by committing the following negligent acts and omissions:

- a. Failing to adequately maintain and monitor the safety of its products, premises, equipment and employees;
- b. Using fresh produce that was exposed to fecal matter;
- c. Failing to properly operate its manufacturing facilities in a safe, clean, and sanitary manner;

- d. Failing to adopt, implement, and follow adequate food safety policies and procedures;
- e. Failing to apply its food safety policies and procedures to ensure the safety and sanitary conditions of its food products, premises, and employees;
- f. Failing to adopt, implement, and validate food safety policies and procedures that met industry standards for the safe and sanitary production of ready-to-eat foods;
- g. Failing to adequately test its products and processing environment;
- h. Failing to properly train its employees and agents how to prevent the transmission of *Cyclospora*;
- i. Failing to properly supervise its employees and agents to prevent the transmission of *Cyclospora*; and
- j. Other acts and omissions as revealed through investigation and discovery.

40. Plaintiff's injuries are a direct and proximate result of the negligence of Defendant Del Monte.

41. As a direct and proximate result of Defendant Del Monte's negligence, Plaintiff sustained the injuries and damages set forth in the preceding paragraphs.

COUNT III – NEGLIGENCE PER SE (MINN. STAT. § 31.02)

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

43. Defendant Del Monte, its employees, agents, or those working on its behalf, as providers of food products within the State of Minnesota, owe a duty to comply with Minn. Stat. Chapter 31.

44. Minnesota Food Law, Minn. Stat. § 31.02 *et seq.*, prohibits:
- a. The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded;
 - b. The adulteration or misbranding of any food;
 - c. The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

45. Defendant Del Monte, its employees, agents, or those working on its behalf, failed to comply with Minn. Stat. Chapter 31. Such conduct constitutes negligence *per se*.

46. As a result of the failure of Defendant Del Monte, its employees, agents, or those working on its behalf to comply with Minn. Stat. Chapter 31, Plaintiff sustained damages as set forth in the preceding paragraphs.

COUNT IV – NEGLIGENCE PER SE (21 U.S.C. § 331)

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

48. Defendant Del Monte, its employees, agents, or those working on its behalf, as providers of food products in the United States of America, owe 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....

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

50. As a result of the failure of Defendant Del Monte, its employees, agents, or those working on its behalf, to comply with 21 U.S.C. § 331, Plaintiff sustained damages as set forth in the preceding paragraphs.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays judgment against the Defendant in an amount greater than Seventy-Five Thousand Dollars (\$75,000.00) together with pre- and post-judgement interest, costs, and disbursements incurred herein and such other relief as the court may find just and equitable.

JURY DEMAND

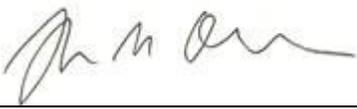
Plaintiff hereby demands a jury trial.

Respectfully Submitted,

Dated: June 11, 2018

PRITZKER HAGEMAN, P.A.

By: _____


Ryan Osterholm (#039015)
Brendan Flaherty (#0327657)
45 South Seventh Street Suite 2950
Minneapolis, MN 55402-1652
Telephone: (612) 338-0202
Email: ryan@pritzkerlaw.com
Brendan@pritzkerlaw.com
Attorneys for Plaintiff