

STATE OF WISCONSIN

CIRCUIT COURT

LA CROSSE COUNTY

THADDAEUS PEDRETTI
1316 Sheri Court
Tomah, WI 54660

Plaintiff,

vs.

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

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

and

UNITEDHEALTHCARE OF
WISCONSIN, INC., a domestic
corporation,
W1030-100 10701 W. Research Dr.
Wauwatosa, WI 53226

Defendants.

THE STATE OF WISCONSIN

To each person named above as a defendant:

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

Within forty-five (45) days of receiving this summons, you must respond with a written

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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 La Crosse County Courthouse, 333 Vine Street, La Crosse, Wisconsin, 54601, and to Egan & Richgels, S.C, plaintiffs' attorney, whose address is 201 Main Street, Suite 1010, La Crosse, Wisconsin, 54601. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) 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 21st day of June, 2018

By: Electronically signed by James W. Richgels

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Attorneys for Plaintiff

STATE OF WISCONSIN

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W1030-100 10701 W. Research Dr.
Wauwatosa, WI 53226

Defendants.

Plaintiff, by and through his attorneys of record Ron Simon & Associates and Egan & Richgels, S.C., hereby alleges as follows:

I. Parties

1. Plaintiff Thaddaeus Pedretti is a resident of Monroe County, Wisconsin.

2. Defendant Del Monte Fresh Produce N.A., Inc. (hereinafter “Del Monte”) is a corporation organized under the laws of the State of Florida, with a 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.

3. Defendant Kwik Trip, Inc. (hereinafter “Kwik Trip”) is a domestic business corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business and registered agent, Thomas E. Reinhart, located at 1626 Oak Street, La Crosse, Wisconsin 54603-2308.

4. At all relevant times, Defendant Del Monte and Kwik Trip, Inc. (hereinafter Defendants”) sold prepackaged ready-to-eat vegetable trays in the United States including at Defendant Kwik Trip stores in Monroe County and throughout the state of Wisconsin.

5. Defendant UnitedHealthcare of Wisconsin, Inc. (“UnitedHealthcare”) is a domestic business corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business at W1030-100 10701 W. Research Dr., Wauwatosa, WI 53226. At all times material hereto, UnitedHealthcare insured Plaintiff, under a policy or policies of health insurance coverage and/or an employee benefit plan which was made available to the Plaintiff through his employer. Pursuant to the terms and conditions of said insurance policy and/or employee benefit plan and the laws of the State of Wisconsin, UnitedHealthcare may have made payments for medical expenses incurred on behalf of its insured and as a result, may be subrogated to the rights of its insured against the other Defendants named herein. Therefore, UnitedHealthcare is a proper Defendant in this lawsuit, which has a direct interest herein.

II. Factual Background

About the Parasite Cyclospora

6. *Cyclospora cayentanensis* (hereinafter “*Cyclospora*”) is a parasite composed of a single cell, too small to be seen without a microscope. This parasite causes an intestinal infection called cyclosporiasis.

7. *Cyclospora* is spread when people ingest something - such as food or water - that is contaminated with feces (stool). People living or traveling in tropical or subtropical regions of the world may be at increased risk for infection because cyclosporiasis is endemic to those regions. In the United States, foodborne outbreaks of cyclosporiasis are relatively rare, and in the past have been linked to various types of imported fresh produce, including fruits and vegetables.

8. The time between becoming infected and becoming sick is approximately seven days, though it can vary greatly. *Cyclospora* infects the small intestine (bowel) and usually causes watery diarrhea, with frequent, sometimes explosive, bowel movements. Other common symptoms include loss of appetite, weight loss, stomach cramps/pain, bloating, increased gas, nausea, and fatigue. Vomiting, body aches, headache, fever, and other flu-like symptoms are also relatively common.

9. If not treated, the illness often lasts for months. Symptoms may also seem to go away and then return one or more times during infection. It is common for a victim of *cyclospora* poisoning to suffer chronic fatigue.

The Outbreak

10. In early June of 2018, health officials in Minnesota and Wisconsin began investigating a cluster of gastrointestinal illnesses among individuals who tested positive of 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 Fresh Produce vegetable trays (containing broccoli, cauliflower, carrots, and dill dip) 6 and 12-ounce varieties.”

12. By June 15th, the Centers for Disease Control and Prevention has been notified of 78 laboratory-confirmed cases of cyclosporiasis in persons who reportedly consumed pre-packaged Del Monte Fresh Produce vegetable trays containing broccoli, cauliflower, carrots, and dill dip in Wisconsin, Iowa, Michigan, and Minnesota.

Plaintiff’s Illness

13. On several occasions in May 2018, Plaintiff purchased 6 ounce Del Monte vegetable trays at Kwik Trip locations in Tomah and Reedsburg, Wisconsin. Plaintiff consumed the vegetable trays which were contaminated with *cyclospora*. Unfortunately, on May 30th, Plaintiff began experiencing stomach cramps, nausea, and diarrhea. Over the next few days, his symptoms grew to include fever, chills, vomiting, dehydration, headaches, body aches, abdominal pain, gas and bloating.

14. On June 9th, Plaintiff presented to Warrens Walk in Clinic for medical treatment and the attending physician ordered stool studies due to the severity of Plaintiff’s injuries.

15. On June 10th, Plaintiff presented to Tomah Memorial Hospital for an ova/parasite screen which, the following day, came back positive for *cyclospora*.

16. The Monroe County Department of Public Health thereafter confirmed that Plaintiff was one of the victims in the Del Monte Vegetable Tray Cyclospora Outbreak.

III. First Cause of Action - Strict Products Liability

17. At all times, Defendants were in the business of importing, manufacturing, distributing, and marketing vegetable trays (“Product”).

18. There was a manufacturing defect in the Product when it left Defendants’ possession and control. The Product was defective because it contained *cyclospora*. The presence of *cyclospora* was a condition of the product that rendered it unreasonably dangerous.

19. There was a marketing defect in the Product when it left Defendants’ possession and control. The Product was defective because it contained *cyclospora* and Defendants failed to give adequate warnings of the Product’s dangers that were known or by the application of reasonably developed human skill and foresight should have been known. Defendants also failed to give adequate warnings and instructions to avoid such dangers. Defendants’ failure to provide such warnings and instructions rendered the Product unreasonably dangerous.

20. Defendants’ conduct was a direct, proximate, and producing cause of Plaintiff’s injuries and damages set forth below.

21. Defendants are therefore strictly liable for importing, manufacturing, distributing, and marketing defective and unreasonably dangerous Product and introducing it into the stream of commerce.

IV. Second Cause of Action – Negligence, Including Negligence Per Se

22. Defendants owed Plaintiff a duty of ordinary care in the manufacture, preparation, testing, packaging, marketing, distribution, and selling of the Product in question. Further, Defendants owed Plaintiff the duty of warning or instructing Plaintiff of potentially hazardous or life-threatening conditions with respect to the Product.

23. Defendants breached their duties in one or more of at least the following ways:
- a. negligently importing, manufacturing, distributing, and marketing the Product;
 - b. failing to properly test the Product before placing it into the stream of commerce;
 - c. failing to prevent human, insect, and/or animal feces from coming into contact with the Product;
 - d. failing to adequately monitor the safety and sanitary conditions of their premises;
 - e. failing to apply their own policies and procedures to ensure the safety and sanitary conditions of their premises;
 - f. failing to adopt and/or follow FDA recommended good manufacturing practices;
 - g. failing to take reasonable measures to prevent the transmission of *cyclospora* parasite and related filth and adulteration from their premises;
 - h. failing to properly train and supervise their employees and agents to prevent the transmission of *cyclospora* parasite and related filth and adulteration from their premises;
 - i. failing to warn Plaintiff and the general public of the dangerous propensities of the Product, particularly that it was contaminated with *cyclospora*, despite knowing or having reason to know of such dangers; and
 - j. failing to timely disclose post-sale information concerning the dangers associated with the Product.

24. Furthermore, Defendants had a duty to comply with all applicable health regulations, including the FDA's Good Manufacturing Practices Regulations, 21 C.F.R. part 110, subparts (A)-(G), and all statutory and regulatory provisions that applied to the manufacture, distribution, storage, and/or sale of the Product or its ingredients, including but not limited to, the Federal Food, Drug, and Cosmetics Act, § 402(a), as codified at 21 U.S.C. § 342(a), which bans

the manufacture, sale and distribution of any “adulterated” food, and Wisconsin Statute §§ 97.02 - 97.60 which track the federal statutes.

25. Plaintiff is a member of the classes sought to be protected by the regulations and statutes identified above.

26. Defendants failed to comply with the provisions of both the federal and state statutes set forth above, and as a result, were negligent per se in manufacturing and selling food adulterated with *cyclospora*.

27. Defendants’ conduct was a direct, proximate, and producing cause of Plaintiff’s injuries and damages set forth below.

28. All dangers associated with the contaminated Product were reasonably foreseeable and/or scientifically discoverable by Defendants at the time Defendants placed the Product into the stream of commerce.

V. Third Cause of Action – Breach of Warranty

29. Defendants are merchants who produce, manufacture, distribute, and market Products to consumers. Plaintiff is a consumer.

30. Defendants breached the implied warranty of merchantability by impliedly warranting that their Product was of merchantable quality and fit for human consumption when it was not due to the conditions under which it was prepared, packaged, and held and due to the presence of *cyclospora*. Plaintiff reasonably relied upon Defendants’ skill and judgment as to whether the Product was of merchantable quality and fit for human consumption.

31. Defendants breached the implied warranty of fitness for a particular purpose by holding out unreasonably dangerous Product (i.e. Product produced under insanitary conditions

and containing *cyclospora*) to the public as being safe when Defendants knew or had reason to know that the food was not safe, and that the public would consume the Product.

32. Defendants did not disclaim these implied warranties.

33. Defendants' conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

VI. Damages

34. Defendants' conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages, including but not limited to damages in the past and future for the following: pain and suffering, mental anguish, physical impairment, physical disfigurement, loss of enjoyment of life, medical and pharmaceutical expenses, travel and travel-related expenses, emotional distress, lost wages, lost earning capacity, loss of consortium, loss of love, companionship, comfort, care, assistance, protection, affection, society, moral support, loss of training and guidance, attorneys' fees (to the extent recoverable) and other general, special, ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

VII. Prayer

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. Past and future economic and non-economic damages;
- b. Court costs;
- c. Reasonable attorney fees;
- d. Pre- and post-judgment interest at the highest rate allowed by law;
- e. In the event of a settlement or verdict in favor of the Plaintiff, for an order declaring that the claim of the Plaintiff to such settlement or verdict is paramount to any claim of any subrogated party, and for a judgment extinguishing and dismissing all subrogation claims. and
- f. For such other relief as the Court deems just and proper.

VIII. Jury Demand

Plaintiff demands a jury trial for all triable claims.

Dated this 21st day of June, 2018

By: Electronically signed by James W. Richgels

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