

IN THE CIRCUIT COURT OF THE 4th JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO: _____

JAMES WALKER,

Plaintiff,

vs.

COOPER'S HAWK JACKSONVILLE,
LLC d/b/a COOPER'S HAWK WINERY & RESTAURANT,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff James Walker brings this action against Cooper's Hawk Jacksonville, LLC and alleges:

JURISDICTION AND VENUE

1. Plaintiff James Walker is a citizen of Valdosta, Lowndes County, Georgia.
2. Defendant Cooper's Hawk Jacksonville, LLC d/b/a Cooper's Hawk Winery & Restaurant ("Cooper's Hawk" or "Defendant") is a Limited Liability Company organized under the laws of Florida, transacting business in the State of Florida, with its principal place of business located at 4850-03 Big Island Drive, Jacksonville, Florida 32246. It may be served through its registered agent, CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324.
3. Jurisdiction is proper in Circuit Court, pursuant to Fla. Stat. §§ 26.012(2)(a) and 34.01(1)(c), because the amount in controversy exceeds \$15,000.

4. Venue is proper in Duval County under Florida Stat. § 47.011.

GENERAL ALLEGATIONS

About the Parasite Cyclospora

5. Cyclospora cayetanensis (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.

6. 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 (cyclospora poisoning) is endemic to those regions. In the United States, foodborne outbreaks of cyclosporiasis have been linked to various types of imported fresh produce, including fruits and vegetables.

7. The average 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.

8. 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 Cooper’s Hawk Cyclospora Outbreak

9. On June 21, 2019, according to a statement by Cooper’s Hawk Winery & Restaurant spokesperson, the establishment began receiving calls from ill patrons who had

recently eaten at the establishment.

10. According to the Cooper's Hawk Winery & Restaurant spokesperson, the Duval County Health Department launched an investigation into the cause of those illnesses and found that the victims had suffered from ingestion of cyclospora parasites, which "typically come from a fresh produce food item purchased through a 3rd party supplier. Unfortunately, food grade produce washes do not kill cyclospora and they are not visible to the naked eye. We have removed the product and changed suppliers for the ingredient in question."

11. In the following weeks, many additional customers began to test positive for the cyclospora parasite. The reported illnesses are from patrons who ate at Cooper's Hawk between June 11 and 15, 2019.

12. The number of illnesses linked to the restaurant has continued to continue to grow since the initial announcement and now numbers over 100 according to local reports.

Plaintiff's Illness

13. On June 15, 2019, Plaintiff, together with his wife and other family members, celebrated his wedding anniversary at Cooper's Hawk Winery & Restaurant, located at 4850-03 Big Island Drive, Jacksonville, Florida 32246.

14. By June 20, 2019, Mr. Walker began to experience the effects of cyclosporiasis, including initial vomiting, abdominal cramps, diarrhea, headaches, gas, bloating and fatigue. His illness onset was within the expected incubation period for the parasite cyclospora.

15. The illness was debilitating, and forced Plaintiff to seek medical attention.

16. Plaintiff was forced to endure more than four weeks of severe illness before his medical team was able to properly diagnose him with cyclosporiasis and treat him accordingly. He lost the enjoyment of an entire summer, feeling ill throughout most of June and July. He has

still not yet fully recovered.

17. Plaintiff tested positive for cyclospora only after the outbreak was publicly announced. He was interviewed by the health department and identified by health officials as one of the confirmed victims of the Cooper's Hawk Cyclospora Outbreak.

COUNT I: STRICT LIABILITY

18. The food served by Cooper's Hawk (hereinafter "products") and consumed by Plaintiff were contaminated with the cyclospora parasite.

19. There was a manufacturing defect in the products when they left Defendant's possession and control. The products were defective because they contained the cyclospora parasite. The presence of the cyclospora parasite was a condition of the products that rendered them unreasonably dangerous.

20. There was a marketing defect in the products when they left Defendant's possession and control. The products were defective because they contained the cyclospora parasite, and Defendant failed to give adequate warnings of the products' dangers that were known or by the application of reasonably developed human skill and foresight should have been known. Defendant also failed to give adequate warnings and instructions to avoid such dangers. Defendant's failure to provide such warnings and instructions rendered the products unreasonably dangerous.

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

22. Defendant is therefore strictly liable for manufacturing, distributing, and marketing defective and unreasonably dangerous products and introducing them into the stream of commerce.

COUNT II: NEGLIGENCE AND NEGLIGENCE PER SE

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

24. Defendant breached its duty in one or more of at least the following ways:

- a. negligently manufacturing, preparing, distributing, and marketing the products;
- b. failing to properly test the products before placing them into the stream of commerce;
- c. failing to prevent human, insect, and/or animal feces from coming into contact with the products;
- d. failing to store, package, hold, or prepare the products or their ingredients in a manner to prevent them from becoming contaminated with filth which could render them injurious to health;
- e. failing to adequately monitor the safety and sanitary conditions of its premises;
- f. failing to apply their own policies and procedures to ensure the safety and sanitary conditions of its premises;
- g. failing to adopt and/or follow recommended good manufacturing practices;
- h. failing to take reasonable measures to prevent the transmission of cyclospora and related filth and adulteration from its premises;

- i. failing to properly train and supervise their employees and agents to prevent the transmission of cyclospora parasites and related filth and adulteration from its premises;
- j. failing to warn Plaintiff and the general public of the dangerous propensities of the products, particularly that they were contaminated with cyclospora parasites, despite knowing or having reason to know of such dangers; and
- k. failing to timely disclose post-sale information concerning the dangers associated with the products.

25. Furthermore, Defendant 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 products or their 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 the similar provision in the *Florida Food Safety Act*, including §§ 500.01, 500.04, 500.10, and 500.11, *et. seq.*

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

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

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

29. All dangers associated with the contaminated products were reasonably foreseeable and/or scientifically discoverable by Defendant at the time Defendant placed the products into the stream of commerce.

COUNT III: BREACH OF IMPLIED WARRANTIES

30. Defendant is a merchant who produces, manufactures, distributes, and markets products to consumers. Plaintiff is a consumer.

31. Defendant breached the implied warranty of merchantability by impliedly warranting that its products were of merchantable quality and fit for human consumption when they were not due to the conditions under which they were prepared, packaged, and held and due to the presence of cyclospora parasites. Plaintiff reasonably relied upon Defendant's skill and judgment as to whether the products were of merchantable quality and fit for human consumption.

32. Defendant breached the implied warranty of fitness for a particular purpose, by holding out unreasonably dangerous products (i.e. products containing cyclospora parasites) to the public as being safe when they knew or had reason to know that the products were not safe and that the public would consume the products.

33. Defendant did not disclaim these implied warranties.

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

DAMAGES

35. Defendant's 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, attorneys' fees (to the extent recoverable) and other general, special, ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

36. Plaintiff has suffered damages in excess of \$50,000.
37. WHEREFORE, Plaintiff prays for judgment against Defendant as follows:
 - a. Past and future economic and non-economic damages;
 - b. Court costs;
 - c. Pre- and post-judgment interest at the highest rate allowed by law; and
 - d. For such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a jury trial for all triable claims.

DATED this 23rd day of July.

Respectfully submitted,

/s/ Brandon L. Bogle

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