

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

CIRCUIT CIVIL DIVISION

CASE NO: _____

ANDREW MOSKOWITZ,

Plaintiff,

vs.

SIGA LOGISTICS de RL de CV, THE GARDEN
WHOLESALE, INC. D/B/A THE GARDEN PRODUCE,
AND COOPER'S HAWK JACKSONVILLE,
LLC d/b/a COOPER'S HAWK WINERY & RESTAURANT,

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Andrew Moskowitz brings this action against Siga Logistics de RL de CV, The Garden Wholesale, Inc. d/b/a The Garden Produce, and Cooper's Hawk Jacksonville, LLC d/b/a Cooper's Hawk Winery & Restaurant and alleges:

JURISDICTION AND VENUE

1. Plaintiff Andrew Moskowitz is a citizen of Jacksonville, Duval County, Florida.
2. Defendant Siga Logistics de RL de CV (hereinafter "Siga Logistics") is a corporation located in Morelos, Mexico.
3. Defendant The Garden Wholesale, Inc. d/b/a The Garden Produce (hereinafter "The Garden") is a corporation transacting business in Florida, with its principal place of business located at 5400 Longleaf Street, Jacksonville, Florida 32209. It may be served through its registered agent, Wasson Matthew, 444 Orchis Road, Saint Augustine, Florida 32086.

4. Defendant Cooper's Hawk Jacksonville, LLC d/b/a Cooper's Hawk Winery & Restaurant (hereinafter "Cooper's Hawk") 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.

5. Siga Logistics, The Garden, and Cooper's Hawk are hereinafter collectively referred to as "Defendants."

6. 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.

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

GENERAL ALLEGATIONS

About the Parasite Cyclospora

8. 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.

9. 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.

10. 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.

11. 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 Mexican Basil Cyclospora Outbreak

12. On July 25, 2019, the U.S. Food and Drug Administration (“FDA”) announced an investigation into at least 132 cases of cyclosporiasis linked to the consumption of fresh basil across eleven states.

13. The FDA’s traceback investigation indicated that the fresh basil was made available at points of sale, including at least four separate restaurants, where consumers became ill after consuming basil exported to the United States by Siga Logistics located in Morelos, Mexico.

14. One of the restaurants which served diners identified in the outbreak was Cooper’s Hawk, where Plaintiff consumed fresh basil. Cooper’s Hawk obtained the fresh basil from The Garden. The basil originated from Siga Logistics.

15. The FDA requested that Siga Logistics recall the contaminated basil, and Siga Logistics agreed. The FDA has also increased import screening on basil products and will continue to investigate the cause and source of the outbreak as well as the distribution of products in the United States.

16. Meanwhile, the number of illnesses linked to contaminated basil has continued to continue to grow since the initial announcement, and now exceeds at least 132 in 11 states, with

at least five (5) restaurants linked to illnesses.

Plaintiff's Illness

17. On June 11, 2019, Andrew Moskowitz purchased and consumed food at the Cooper's Hawk Winery & Restaurant in Jacksonville, Florida. Among the foods he consumed were bruschetta and a caprese salad, served with fresh basil.

18. On or about June 19th, Andrew began to experience the initial symptoms of cyclosporiasis, including severe diarrhea, gas and bloating. Andrew was forced to take time off from work, but he hoped that his symptoms would abate in a matter of days.

19. But the ongoing abdominal cramping, nausea, diarrhea, and loss of appetite persisted. Andrew was forced to seek medical attention. Unfortunately, the medical professionals were unaware of the Cooper's Hawk cyclospora outbreak and initially were not able to effectively treat Andrew. Andrew continued to suffer waves of abdominal cramping, gas, severe diarrhea, and nausea for a month.

20. In July 2019, health officials finally linked the cyclospora outbreak to contaminated basil sold at Cooper's Hawk Winery & Restaurant. Knowing the source of his illness, doctors from Saint Vincent's Urgent Care were able to prescribe Bactrim, a sulfa antibiotic that has proven effective against the cyclospora parasite.

21. Andrew is still recovering, having lost 14 pounds from his cyclospora illness.

COUNT I: STRICT LIABILITY

22. The fresh basil, produced by Siga Logistics, distributed by The Garden, served at Cooper's Hawk (hereinafter "products") and consumed by Plaintiff were contaminated with the cyclospora parasite.

23. There was a manufacturing defect in the products when they left Defendants'

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.

24. There was a marketing defect in the products when they left Defendants' possession and control. The products were defective because they contained the cyclospora parasite, and Defendants 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. Defendants also failed to give adequate warnings and instructions to avoid such dangers. Defendants' failure to provide such warnings and instructions rendered the products unreasonably dangerous.

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

26. Defendants are 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

27. Defendants 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, Defendants owed Plaintiff the duty of warning or instructing Plaintiff of potentially hazardous or life-threatening conditions with respect to the products.

28. Defendants breached their duty in one or more of at least the following ways:

- a. negligently importing, 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.

29. 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 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.*

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

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

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

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

COUNT III: BREACH OF IMPLIED WARRANTIES

34. Defendants are merchants who produces, import, manufacture, distribute, and market products to consumers. Plaintiff is a consumer.

35. Defendants 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 Defendants' skill and judgment as to whether the products were of merchantable quality and fit for human consumption.

36. Defendants 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.

37. Defendants did not disclaim these implied warranties.

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

DAMAGES

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

40. Plaintiff has suffered damages in excess of \$50,000.

41. WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. Past and future economic and non-economic damages;
- b. Court costs;

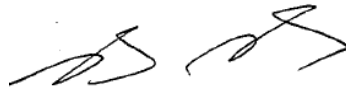
- c. Pre- and post-judgment interest at the highest rate allowed by law; and
- d. For such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a jury trial for all triable claims.

DATED this 29th day of July.

Respectfully submitted,



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