

IN THE CIRCUIT COURT OF THE NINTH JUDICAL CIRCUIT
IN AND FOR ORANGE COUNTY FLORIDA

SUZANNE MATTEIS,

Plaintiff,

v.

DARDEN CORPORATION, a Florida
Corporation.

Defendant.

Case No.

**COMPLAINT FOR DAMAGES FOR
PERSONAL INJURY AND
DEMAND FOR JURY TRIAL**

Plaintiff **SUZANNE MATTEIS** through undersigned counsel, files suit against Defendant, **DARDEN CORPORATION** and alleges the following:

PARTIES, JURISDICTION, AND VENUE

Parties

1. Plaintiff **SUZANNE MATTEIS** (hereinafter “Plaintiff”) at all relevant times is a resident of the City of Dallas, Dallas County, Texas.
2. Defendant **DARDEN CORPORATION** (hereinafter “Defendant”) is a corporation organized under the laws of Florida, with a principal place of business at 1000 Darden Center Drive, Orlando, Florida, 32837.
3. At all relevant times, Defendant owns and operates nationwide chain restaurants including “The Olive Garden,” “Red Lobster,” and “Longhorn Steakhouse.” Defendant operates multiple stores throughout the United States including those in the States of Texas and Florida.
4. Defendant Darden Corporation owns and operates more than 2,100 restaurants and has annual revenue of \$8.5 billion.
5. At all relevant times, Defendant manufactured, produced, packaged, distributed and sold food to the public, including within the State of Texas.

Jurisdiction and Venue

6. This Court is vested with jurisdiction over the Defendant because the Defendant conducts substantial business within the State of Florida and in this county and is organized under the laws of Florida.

7. Plaintiff has suffered damages in excess of \$15,000.00.

8. Venue of this action is proper in Orange County under Florida Statutes § 47.051 because a significant act or omission arose in this county, the Defendant's principal place of business is here and the Defendant transacts business here.

FACTS

Cyclospora

9. *Cyclospora* is a protozoan that causes severe gastroenteritis in humans called Cyclosporiasis.

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

11. These symptoms can last six weeks or longer.

12. Humans contract *Cyclospora* infections from eating food or drinking water contaminated with *Cyclospora*.

13. Previous outbreaks of *Cyclospora* in the United States have been associated with consumption of fruits and vegetables.

The Outbreak

14. In June of 2013, health officials in Iowa and Nebraska began investigating a cluster of gastrointestinal illnesses.

15. Several individuals tested positive for the rare protozoan *Cyclospora*. Cases were soon reported in other states.
16. As of August 2, 2013, over 400 individuals have tested positive for *Cyclospora* in 16 states, and many have been hospitalized. The number of confirmed *Cyclospora* cases is expected to rise.
17. On or about July 30, 2013, health officials in Iowa and Nebraska announced they suspected the source of the outbreak was bagged salad mix containing iceberg and romaine lettuce, carrots, and red cabbage. Health officials have thus far refused to name the manufacturer of the food product or restaurants involved in the outbreak.
18. Upon information belief, a significant number of people who ate the aforementioned bagged salad mix at the Defendant's restaurants including the Olive Garden, Longhorn Steakhouse or Red Lobster became ill and were later diagnosed with Cyclosporiasis. Their illnesses occurred within the appropriate incubation period for Cyclosporiasis.
19. Upon information and belief, restaurants owned by the Defendant received bagged salad mix from Taylor Farms Mexico, containing iceberg and romaine lettuce, carrots, and red cabbage, that contained *Cyclospora* in June and July of 2013.
20. Upon information and belief, this common food product was adulterated with *Cyclospora*.
21. Upon information and belief, this common food product was the source of the 2013 *Cyclospora* outbreak at issue in this case.
22. At all times material, Defendant had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food product, including the

requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*) and Florida Statute § 500.10 *et seq.* These acts are designed to protect consumers such as the Plaintiff.

23. 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.

Plaintiff's Illness

24. On or about July 1, 2013, Plaintiff ate at Olive Garden located at 4240 Belt Line Road, Addison, Texas.

25. On or about July 5, 2013, Plaintiff began to suffer nausea, fatigue and frequent diarrhea.

26. The Plaintiff's symptoms continued to worsen over the next several days.

27. On or about July 11, 2013, Plaintiff sought medical treatment at CareNow in Carrollton, Texas.

28. Plaintiff was started on Flagyl and given a stool test to take home. The Plaintiff returned the stool sample on or about July 12, 2013 to the doctor's office for testing.

29. On or about July 22, 2013, Plaintiff was informed her stool sample was positive for *Cyclospora*. She was started on Bactrim, the only known antibiotic effective in treating *Cyclospora* infections in humans.

30. The Plaintiff continues to suffer gastroenteritis and is still taking Bactrim as of August 2, 2013.

31. The Plaintiff contracted *Cyclospora* from eating contaminated food at the Addison, Texas Olive Garden owned and operated by the Defendant. As a direct and proximate result of consuming food that contained *Cyclospora* at Olive Garden, she suffered and still suffers from a *Cyclospora* infection.

32. Plaintiff incurred medical bills and missed time from work as a direct and proximate result of her *Cyclospora* infection.

CAUSES OF ACTION

Count I Negligence

33. The Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint as if set forth in full herein.

34. The defendant owed a duty of care to the Plaintiff and other customers to prepare and serve safe and wholesome foods products including bagged salad mix containing iceberg and romaine lettuce, carrots, and red cabbage.

35. The Defendant owed a duty to the Plaintiff requiring the Defendant to conform to a reasonable standard of conduct for the safe storage, handling, preparation, distribution and sale of food product at their restaurants.

36. Defendant breached the duty of care owed to Plaintiff. Defendant's breach led to an unreasonable and foreseeable risk of foodborne illness to individuals including the Plaintiff.

37. The Defendant had a duty to properly supervise, train, and monitor its employees, and to ensure its employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, preparation and sale of similar food products, but the Defendant failed to do so. Failure to conform to this duty is negligence and led to an unreasonable and foreseeable risk of foodborne illness to individuals including the Plaintiff.

38. The Defendant also had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free of defects, and that otherwise complied with applicable federal, state, and local laws, ordinances, and regulations, and that were clean, free from adulteration, and safe for human consumption, but the defendant failed to do so.

Defendant breached this duty which is negligence which led to an unreasonable and foreseeable risk of foodborne illness to individuals including the Plaintiff.

39. Defendant's breach was the proximate cause of injury or damage to Plaintiff.

40. The Plaintiff was a person intended to be protected by safe food handling procedures and practices. As a direct and proximate result of the Defendant's acts and omissions of negligence, the Plaintiff ate food contaminated with *Cyclospora*.

41. Thus, Plaintiff suffered legally cognizable damages caused by the Defendant's breach in an amount to be determined at trial.

Count II Strict Liability

42. The Plaintiff repeats and realleges each and every allegation contained in paragraphs one through thirty-two of this Complaint as if set forth in full herein.

43. At all times relevant hereto, the Defendant was a manufacturer, distributor and/or seller of a defective product, i.e. the salad or salad mix containing iceberg and romaine lettuce, carrots, and red cabbage that was contaminated with *Cyclospora*.

44. Defendant placed the defective product on the market.

45. The defective product was sold in an unreasonably dangerous condition.

46. The adulterated food product (the salad) that the Defendant manufactured, distributed, and/or sold was, at the time it left the Defendant's control, defective and unreasonably dangerous for its ordinary and expected use because it contained *Cyclospora*, a deadly pathogen.

47. The defective product reached the Plaintiff without substantial change in condition in which the product was sold.

48. The defect is the proximate cause of the Plaintiff's injury.

49. The Defendant is strictly liable for damages caused by the Plaintiff eating adulterated food contaminated with *Cyclospora*.

50. As a direct and proximate result of the Defendant's acts and omissions the Plaintiff ate food contaminated with *Cyclospora* and suffered legally cognizable damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the entry of a judgment against Defendant as follows:

- 1) That the Court award Plaintiff judgment against Defendant in such sums as shall be determined to fully and fairly compensate Plaintiff for all general, special, incidental and consequential damages incurred, or to be incurred, by Plaintiff as the direct and proximate result of the Defendant's defective product and their acts and omissions. These include, but are not limited to, physical pain and suffering, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, both past and future; emotional distress and future emotional distress; pharmaceutical expenses, both past and future; wage loss; and other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances;
- 2) That the Court award Plaintiff her costs incurred in prosecuting this action;
- 3) That the Court award Plaintiff the opportunity to amend or modify the provisions of this complaint as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served; and
- 4) That the Court award such other and further relief as it deems necessary and proper in the circumstances.