

DISTRICT COURT, OURAY COUNTY, COLORADO 541 4 <sup>th</sup> Street, P.O. Box 643, Ouray, CO 81427	DATE FILED: June 23, 2023 8:13 PM FILING ID: 1B1FAFE3EE4A2 CASE NUMBER: 2023CV30010
<b>Plaintiff:</b> PATRICIA PITTS, an individual  v.  <b>Defendants:</b> GNAR, LLC, a Colorado limited-liability company, d/b/a TACO DEL GNAR and GNAR TACOS CO.; JOHN DOES 1-10	<b>▲ COURT USE ONLY ▲</b>
Attorneys for Patricia Pitts:  John R. Riley, Esq. No. 18962 Jason C. Kennedy, Esq. No. 45139 Montgomery Little & Soran, PC 5445 DTC Parkway, Suite 800 Denver, CO 80111 Phone: (303) 773-8100 jriley@montgomerylittle.com jkennedy@montgomerylittle.com  William D. Marler, Esq. ( <i>pro hac vice</i> to be filed) Marler Clark Inc., PS 1012 First Ave, Fifth Floor Seattle, WA 98104 Phone number: (206) 346-1888 Fax Number: (206) 346-1898 Email: bmarler@marlerclark.com	Case Number:  Division:                      Courtroom:
<b>PATRICIA PITTS’ COMPLAINT</b>	

Patricia Pitts, the plaintiff in this action, by and through her attorneys of record Jason C. Kennedy of Montgomery Little & Soran PC, and William Marler of Marler Clark Inc., PS, (*pro hac vice* to be filed), files this Complaint and alleges as follows:

**PARTIES**

1. Patricia Pitts is the plaintiff in this action. She resides in Ridgeway, Ouray County, Colorado.
2. Gnar, LLC doing business as Taco Del GNAR and/or GNAR Taco Co. (hereinafter “TDG”) is a defendant in this action. It is a limited liability company organized and

existing under the laws of the State of Colorado. TDG's principal place of business is located at 630 Sherman St., Ridgeway, CO 81432. In the ordinary course of its business, and at all times relevant, TDG owned and operated the restaurant, at its principal place of business, that prepared and sold the food that caused the Plaintiff's injuries, as alleged in this complaint.

3. Defendants John Does 1-10 inclusive, whose identities are currently unknown, are manufacturers, distributors, importers, packagers, brokers, and/or growers of the food product, and/or its constituent ingredients, that caused Plaintiff's illness as well as the illnesses of other individuals sicked as a result of the subject outbreak. These defendants are in some manner responsible for the acts, occurrences, and transactions set forth herein, and/or are the partners and/or alter ego(s) of the Defendant(s) named herein, and therefore are legally liable to Plaintiff. Plaintiff will set forth the true names and capacities of the fictitiously named Doe Defendants together with appropriate specific charging allegations once ascertained.

#### **JURISDICTION AND VENUE**

4. The Court is vested with general subject matter jurisdiction over this action by Article VI, Section 9, Paragraph 1 of the Colorado Constitution.
5. The Court is vested with general personal jurisdiction over TDG because it is a limited liability company organized and existing under the laws of the State of Colorado.
6. Pursuant to C.R.C.P. 98, venue of this action is proper in Ouray County because the cause of action arose in this county and TDG transacted business there.

#### **FACTS**

##### **The Outbreak**

7. On June 16, 2023, the Colorado Department of Public Health and Environment (CDPHE) announced an investigation into an outbreak of *Cyclospora* on the Western Slope.
8. As of June 15, 2023, 62 cases of *Cyclospora* had been reported in Colorado. Of those 62 cases, 45 people who were associated with the outbreak reported dining at Tacos Del GNAR in Ridgeway, Colorado.
9. People affected by the outbreak reported having dined at Tacos del GNAR after May 1, 2023, and had experienced or were still experiencing symptoms including diarrhea, fatigue, weakness, and rapid weight loss at the time of reporting.

## **What is *Cyclospora*?**

10. *Cyclospora* is a parasite composed of one cell too small to be seen without a microscope. The organism was previously thought to be a blue-green alga or a large form of cryptosporidium. *Cyclospora* cayetanensis is the only species of this organism found in humans. The first known human cases of illness caused by *Cyclospora* infection (that is, cyclosporiasis) were first discovered in 1977. An increase in the number of cases being reported began in the mid-1980s, in part due to the availability of better diagnostic techniques. Over 15,000 cases are estimated to occur in the United States each year. The first recorded *Cyclospora* outbreak in North America occurred in 1990 and was linked to contaminated water. Since then, several cyclosporiasis outbreaks have been reported in the U.S. and Canada, many associated with eating fresh fruits or vegetables. In some developing countries, cyclosporiasis is common among the population and travelers to those areas have become infected as well.
11. *Cyclospora* is spread when people ingest water or food contaminated with infected stool. For example, exposure to contaminated water among farm workers may have been the original source of the parasite in raspberry-associated outbreaks in North America.
12. *Cyclospora* needs time (one to several weeks) after being passed in a bowel movement to become infectious. Therefore, it is unlikely that *Cyclospora* is passed directly from one person to another. It is not known whether or not animals can be infected and pass infection to people.
13. *Cyclospora* infects the small intestine (bowel) and usually causes watery diarrhea, bloating, increased gas, stomach cramps, loss of appetite, nausea, low-grade fever, and fatigue. In some cases, vomiting, explosive diarrhea, muscle aches, and substantial weight loss can occur. Some people who are infected with *Cyclospora* do not have any symptoms. Symptoms generally appear around a week after infection. If not treated, the illness may last from a few days up to six weeks. Symptoms may also recur one or more times. In addition, people who have previously been infected with *Cyclospora* can become infected again.
14. *Cyclospora* has been associated with a variety of chronic complications such as Guillain-Barré syndrome, reactive arthritis, biliary disease, and acalculous cholecystitis. Since *Cyclospora* infections tend to respond to the appropriate treatment, complications are more likely to occur in individuals who are not treated or not treated promptly. Extraintestinal infection also appears to occur more commonly in individuals with a compromised immune system.

## **Patricia Pitts' *Cyclospora* Infection**

15. On June 5, 2023, Plaintiff purchased a buffalo chicken taco, and a shrimp taco at Defendant TDG's restaurant located at 630 Sherman St., Ridgeway, CO 81432.

16. Immediately after ordering and paying for her order TDG closed for business claiming a “kitchen emergency” and Plaintiff was given her food in a to-go container.
17. She proceeded to take the two tacos and accompanying tater tots and beans to her house and consume them thereafter.
18. On or about the evening of June 13, 2023, Plaintiff began to suffer the beginning symptoms of *Cyclospora* infection.
19. On June 14, 2023, Plaintiff’s symptoms of diarrhea, nausea, body aches, and fatigue became so significant that she could not stay at work. Plaintiff reports having diarrhea multiple times per hour during this period, which she described as embarrassing and physically miserable.
20. On June 15, 2023, Plaintiff’s superior at work asked her if she had eaten at TDG having heard about the subject outbreak. Plaintiff proceeded to contact an acquaintance at the Ouray County health department who suggested she seek medical help as she was likely a victim of the subject outbreak.
21. Plaintiff was seen by a doctor via telemedicine on June 15, 2023, and was prescribed an antibiotic.
22. Plaintiff’s symptoms have begun to abate, but as of June 23, 2023, she continues to have some of the symptoms from her *Cyclospora* infection.

**FIRST CLAIM FOR RELIEF:  
STRICT PRODUCT LIABILITY**

23. Plaintiff hereby incorporates paragraphs 1 through 22 by this reference as if each paragraph was set forth herein in its entirety.
24. The Defendants are product manufacturers within the meaning of the Colorado Product Liability Act, C.R.S. §13-21-401 et seq. The Defendants manufactured and sold the subject romaine lettuce product that was the source of the Plaintiff’s *Cyclospora* infection and related illness. The *Cyclospora*-contaminated food that was the source of the Plaintiff’s’ injuries was a product within the meaning of the Act.
25. Defendants’ contaminated food that was the source of Plaintiff’s *Cyclospora* infection and related illness was defective and was unreasonably dangerous to the consumer because it was contaminated and adulterated with *Cyclospora*, a potentially deadly pathogen.
26. The contaminated food manufactured, sold, and distributed by Defendants reached the Plaintiff without substantial change in the condition in which it was sold.

27. Defendants' defective, *Cyclospora*-contaminated food caused the Plaintiff's *Cyclospora* infection and related illness.
28. Defendants were the sellers of the defective *Cyclospora*-contaminated food that caused the Plaintiff's *Cyclospora* infection and related illness.
29. Defendants were engaged in the business of manufacturing, distributing, and selling food products for human consumption.
30. Because Defendants manufactured and sold the contaminated food that was the source of the Plaintiff's injuries, which was defective and not reasonably safe due to *Cyclospora* contamination, Defendants are strictly liable to the Plaintiff for the harm proximately caused by their manufacture and sale of a defective food product.

**SECOND CLAIM FOR RELIEF:  
BREACH OF WARRANTIES**

31. Plaintiff hereby incorporates paragraphs 1 through 30 by this reference as if each paragraph was set forth herein in its entirety.
32. Defendants owed a duty to the Plaintiff to manufacture and sell a food product that conformed to its express and implied warranties, including, but not limited to, the implied warranty of merchantability and the implied warranty of fitness for a particular use or purpose.
33. The food product manufactured, distributed, and sold by Defendants, that caused the Plaintiff's *Cyclospora* infection was contaminated with *Cyclospora*. Such contaminated food products would not pass without exception in the trade, and the sale of such food products was thus in breach of the implied warranty of merchantability.
34. The food product manufactured, distributed, and sold by Defendants that caused the Plaintiff's *Cyclospora* infection was contaminated with *Cyclospora*, and was not fit for the uses and purposes intended by either the Plaintiff or the Defendant, i.e., human consumption. The sale was thus a breach of the implied warranty of fitness for its intended use.
35. Because Defendants manufactured, distributed, and sold the food product that caused Plaintiff's illness and injuries, the condition of which breached their express and implied warranties, Defendants are liable to the Plaintiff for the harm proximately caused by their sale of contaminated food.

**THIRD CLAIM FOR RELIEF:  
NEGLIGENCE AND NEGLIGENCE *PER SE***

36. Plaintiff hereby incorporates paragraphs 1 through 35 by this reference as if each paragraph was set forth herein in its entirety.
37. Defendants negligently manufactured, distributed, and sold a food product that was not reasonably safe.
38. Defendants were negligent in manufacturing, distributing, and selling a food product that was not reasonably safe because adequate warnings or instructions were not provided, including, but not limited to, the warning that the product may contain the *Cyclospora* parasite, and thus should not be given to, or eaten by, people.
39. Defendants had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of food products, 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, but they failed to do so.
40. In the manufacture and production of the product, Defendants owed to the Plaintiff a duty to use supplies and raw materials that were in compliance with applicable federal, state, and local laws, ordinances and regulations; that were from safe and reliable sources; and that were clean, wholesome, free from spoilage and adulteration, and safe for human consumption, but they failed to do so.
41. Defendants owed a duty to Plaintiff, and other consumers similarly situated, to use reasonable care in the manufacture., production, and distribution of the adulterated food product that is the subject of this action, which duties of care the Defendants breached.
42. Plaintiff was among the class of persons designed to be protected by the statutory and regulatory provisions pertaining to Defendants’ manufacture, distribution, storage, labeling, and sale of food.
43. As a result of Defendants’ negligence, and as a result of their violation of statutes designed to protect the Plaintiff from contaminated foods, Defendants are liable to the Plaintiff for the Plaintiff’s injuries.

**DAMAGES**

44. Plaintiff hereby incorporates paragraphs 1 through 43 by this reference as if each paragraph was set forth herein in its entirety.
45. Plaintiff has suffered damages as the direct result of the tortious and unlawful acts and omissions of Defendants, including, without limitation, past and future damages for the

loss of enjoyment of life, pain and suffering, mental anxiety and distress, past and future economic loss, past and future damages for medical-related expenses, travel-related expenses, permanent physical injury, and any other damages for which the law provides relief.

**JURY DEMAND**

Ms. Pitts respectfully demands a trial by jury as to all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Ms. Pitts prays:

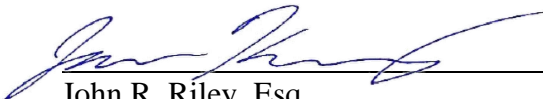
A. A. That the Court award the Plaintiff judgment against the Defendants in such sums as shall be determined to fully and fairly compensate the Plaintiff for all general, special, incidental, and consequential damages incurred, or to be incurred, by the Plaintiff as the direct and proximate result of the acts and omissions of the Defendants;

B. That the Court award the Plaintiff her costs, including expert fees, and reasonable attorneys' fees incurred to the extent permitted by law;

C. That the Court award such other and further relief as it deems necessary and proper in the circumstances.

Dated: June 23, 2023

Respectfully Submitted,



John R. Riley, Esq.  
Jason C. Kennedy, Esq.  
MONTGOMERY LITTLE & SORAN, PC  
*Attorneys for Patricia Pitts*

Respectfully Submitted,

/s/ William D. Marler

William D. Marler, Esq.  
MARLER CLARK INC., PS

*Attorney for Patricia Pitts,  
pro hac vice to be filed*