

NO _____ FILED _____
A.M. _____ P.M. _____

JUN 18 2015

CHRISTOPHER D. RICH, Clerk
By **CANTIAGO BARRIOS**
DEPUTY

Robie G. Russell
Russell Law Offices
76 South Main Street
Seattle, WA 98101
(206) 621-2102
ISBA No. 2405

William D. Marler
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WSBA No. 17233
Pro Hac Vice Pending

CHERIC G. COPSEY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

FRANCISCO PANTOJA,

Plaintiff,

vs.

BOISE CONSUMER COOPERATIVE, INC.,
d/b/a **BOISE CO-OP,**

Defendant.

CASE NO. **CV PI 1510362**

SUMMONS

NOTICE

TO THE DEFENDANT: A lawsuit has been commenced against you in the above-entitled Court by the above named Plaintiff. Plaintiff's claims are stated in the written Complaint, a copy of which is served upon you with this Summons. Please read the information below.

In order to defend against this lawsuit, you must file a written response to the Complaint at the Court Clerk's office for the above-listed District Court, within **20 days** from the service of



this Summons. If you do not file a written response the Court may enter a judgment against you without further notice.

The written response must comply with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and include: your name, mailing address and telephone number; or your attorney's name, mailing address and telephone number; and the title and number of this case.

If your written response is an Answer, it must state the things you agree with and those you disagree with that are in the Complaint. You must also state any defenses you have.

You must mail or deliver a copy of your response to the Plaintiff or Plaintiff's attorneys (at the address listed above), and prove that you did.

To determine whether you must pay a filing fee with your response, contact the Clerk of the District Court.

JUN 18 2015

DATED this ____ day of June, 2015.

CLERK OF THE DISTRICT COURT

CHRISTOPHER D. RICH

By: **SANTIAGO BARRIOS**

Deputy Clerk

SEAL

NO _____
A.M. _____ FILED _____ P.M. _____

JUN 18 2015

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**BOISE CONSUMER COOPERATIVE, INC.,
d/b/a BOISE CO-OP,**

Defendant.

CASE NO. **CV PI 1510362**

COMPLAINT FOR DAMAGES

JURY DEMAND

COMES NOW the Plaintiff, Francisco Pantoja, by and through his attorneys of record, Robie G. Russell of Russell Law Offices, and William D. Marler of Marler Clark, LLP, PS (*pro hac vice pending*), for a cause of action against the Defendant Boise Consumer Cooperative, Inc., d/b/a Boise Co-op, to respectfully allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. The Plaintiff is, and was, at all times material to this action, a resident of Payette County, Idaho.

2. The Defendant, Boise Consumer Cooperative, Inc., d/b/a Boise Co-op, operates a grocery store and a restaurant, located in Boise, Idaho, where it sells and manufacturers food.

GENERAL FACT ALLEGATIONS

The Outbreak

3. As of the date of this filing, approximately 60 persons have tested positive for Salmonella as a result of consuming contaminated food manufactured and sold by the Defendant. Most illnesses occurred in early June 2015.

4. The Central District Health Department (CDHD) is currently investigating the outbreak. CDHD Public Information Officer Christine Myron has indicated that the CDHD anticipates that the number of confirmed cases in the outbreak will grow to between 75 and 100 in coming days. CDHD also indicates that reports of illness have come in from outside of Idaho as well, because the Defendant sells its deli products at Boise Airport terminal kiosks.

5. Additionally, on or about June 15, 2015, CDHD reported that lab tests conducted on several food samples from the deli at Defendant's establishment have tested positive for Salmonella. Contaminated foods included tomatoes, onions, and raw turkey. Defendant has since closed its deli, and has warned consumers to discard any foods purchased from the deli after June 1, 2015.

Salmonella

6. Salmonella is an enteric bacterium, which means that it lives in the intestinal tracts of humans and other animals. Salmonella bacteria are usually transmitted to humans by eating foods contaminated with human or animal feces. Contaminated foods usually look and smell normal. Contaminated foods are often of animal origin, such as beef, poultry, milk, or eggs, but all foods, including vegetables, may become contaminated. An infected food handler

who neglects to wash his or her hands with soap and warm water after using the bathroom may also contaminate food.

7. Once in the lumen of the small intestine, the bacteria penetrate the epithelium, multiply, and enter the blood within 24 to 72 hours. As few as 15-20 cells of Salmonella bacteria can cause salmonellosis or a more serious typhoid-like fever. Variables such as the health and age of the host, and virulence differences among the serotypes, affect the nature and extent of the illness. Infants, elderly, hospitalized, and immune suppressed persons are the populations that are the most susceptible to disease, and suffer the most severe symptoms.

8. The acute symptoms of Salmonella gastroenteritis include the sudden onset of nausea, abdominal cramping, and bloody diarrhea and mucous over a period of days. There is no real cure for Salmonella infection, except treatment of the symptoms. Persons with severe diarrhea may require rehydration, often with intravenous fluids.

9. Persons with diarrhea usually recover completely, although it may be several months before their bowel habits are entirely normal. A small number of persons who are infected with Salmonella will go on to develop pains in their joints, irritation of the eyes, and painful urination. This is called Reiter's syndrome or reactive arthritis. It can last for months or years, and can lead to chronic arthritis, which is difficult to treat. Antibiotic treatment does not make a difference in whether or not the person later develops arthritis.

Francisco Pantoja's Salmonella Infection and Illness

10. On or about June 4, 2015, Francisco Pantoja purchased a sandwich from the deli at Boise Co-Op. He ate the sandwich, which was contaminated by Salmonella bacteria, the same day.

11. Mr. Pantoja began to experience symptoms from his Salmonella infection the next

day. He developed severe abdominal cramps, a fever, headache, and repeated bouts of diarrhea.

12. Over the next two days, Mr. Pantoja's symptoms became worse. He continued to suffer from more than a dozen bouts of painful diarrhea, throughout the course of the morning, daytime and nighttime. Soon, due to his immense gastrointestinal losses, Mr. Pantoja became dehydrated.

13. Mr. Pantoja was so fatigued and dehydrated on Sunday, June 7, 2015, that he called his sister to drive him to St. Luke's Hospital in Fruitland, Idaho. He was seen in the emergency department at St. Luke's, where he was treated with intravenous fluids and released. Mr. Pantoja also submitted stool and urine samples for testing, and was prescribed antibiotics as well as medications for pain and nausea.

14. The following day, Mr. Pantoja received a call from a hospital employee who informed him that his stool sample had tested positive for Salmonella. He has since received a call from officials with CDHD, who questioned him about the food that he ate from Boise Co-op.

15. Mr. Pantoja continued to be acutely ill for at least one week after discharge from the St. Luke's ER. He continues to experience gastrointestinal difficulties.

STRICT PRODUCT LIABILITY

16. By this reference, the Plaintiff incorporates the foregoing paragraphs as if each was set forth here in its entirety.

17. At all times relevant to this action, the Defendant manufactured and sold the adulterated food product that Plaintiff purchased, and that caused Plaintiff's injuries and damages.

18. The adulterated food product that the Defendant manufactured and sold was, at the time it left the Defendant's control, defective and unreasonably dangerous for its ordinary

and expected use because it was contaminated with Salmonella, a bacterium dangerous to human health.

19. Because the adulterated food product that is the subject of this action was contaminated by Salmonella, it was in a condition that consumers had not contemplated, including the Plaintiff, and it was in a condition that rendered the product unreasonably dangerous for its ordinary and expected use.

20. The food product that is the subject of this action was expected to reach the consumers, including the Plaintiff, and be consumed by him, without substantial change. The Plaintiff used the food product in the manner expected and intended, including when he consumed it.

21. The Plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the Defendant manufactured, distributed, and sold.

NEGLIGENCE AND NEGLIGENCE PER SE

22. By this reference, the Plaintiff incorporates the foregoing paragraphs as if each was set forth here in its entirety.

23. The 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, but not limited to, the requirements of the Idaho Food Code. IDAPA 16.02.19.

24. The Defendant failed to comply with the provisions of the Idaho Food Code, and, as a result, was negligent per se in its manufacture and sale of food adulterated with Salmonella, a deadly pathogen.

25. The Defendant owed a duty to the Plaintiff to use reasonable care in the manufacture, distribution, and sale of the food products, which duty, if met, would have prevented or eliminated the risk that the Defendant's food product would become or be contaminated with Salmonella or other pathogens. The Defendant breached this duty.

26. The Defendant had a duty to properly supervise, train, and monitor employees, and to ensure compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products. The Defendant breached these duties.

27. The Plaintiff suffered injury and damages as a direct and proximate result of the Defendant's acts and omissions constituting negligence and negligence per se.

DAMAGES

28. The Plaintiff has suffered economic and non-economic damages, both past and future, including, but not limited to: all medical bills for treatment related to Salmonella infection, and all other out-of-pocket costs; lost wages and lost earning capacity; emotional distress, anguish, loss of enjoyment of life, and pain and suffering; reduced life expectancy; and all other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

PRAYER FOR RELIEF

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

- a. Judgment for the Plaintiff against the Defendant for just compensation in a fair and reasonable amount for the damages above set forth; and
- b. Such additional and/or further relief, including interest, costs, and reasonable attorney fees, as this Court deems just and equitable.

JURY DEMAND

Pursuant to the Idaho Rules of Civil Procedure 38(b), the Plaintiff demands a jury trial.

Dated this 18th day of June 2015.

Respectfully submitted,

RUSSELL LAW OFFICES

By: /s/ Robie G. Russell

Robie G. Russell – Of the Firm

Russell Law Offices

76 South Main Street

Seattle, WA 98101

(206) 621-2102

ISBA No. 2405

MARLER CLARK LLP, PS.

By: /s/ William D. Marler

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WSBA No. 17233

(Pro Hac Vice Pending)

Attorneys for Plaintiff

Date: 6/18/2015

Fourth Judicial District Court - Ada County

NO. 0062249

Time: 12:16 PM

Receipt

Page 1 of 1

Received of: Pantoja, Francisco (plaintiff) \$ 221.00

Two Hundred Twenty-One and 00/100 Dollars

Case: CV-PI-2015-10362	Plaintiff: Francisco Pantoja vs. Boise Consumer Cooperative INC	Amount
AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1)		221.00
For: Pantoja, Francisco (plaintiff)		
Total:		221.00

Check: 14354

Payment Method: Check

Amount Tendered: 221.00

Clerk: CCBARRSA

Christopher D. Rich, Clerk of the Court

By: _____
Deputy Clerk