

JUN 23 2015

CHRISTOPHER D. RICH, Clerk
By **HALEY MYERS**
DEPUTY

Robie G. Russell
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76 South Main Street
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William D. Marler
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Pro Hac Vice Pending

TIMOTHY HANSEN

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

MARY CHRISTINE HENESH,

Plaintiff,

vs.

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

Defendant.

CV PI 15 10586

CASE NO.

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.

DATED this 23 day of June, 2015.

CLERK OF THE DISTRICT COURT
CHRISTOPHER D. HIGH

By: HALEY MYERS
Deputy Clerk



JUN 23 2015

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vs.

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

Defendant.

CASE NO. **CV PI 15 10586**

COMPLAINT FOR DAMAGES

JURY DEMAND

COMES NOW the Plaintiff, Mary Christine Henesh, by and through her 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 Ada 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, the Central District Health Department (CDHD) estimates that approximately 250 people have been sickened by Salmonella after consuming contaminated food prepared and sold by the Boise Co-Op. Most illnesses have occurred in June 2015.

4. The CDHD is currently investigating the outbreak. DHD 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 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.

Mary Christine Henesh's Salmonella Infection and Illness

10. On or about Tuesday, June 9, 2015, Mary "Christine" Henesh purchased a turkey sandwich from the deli at Boise Co-Op. She ate the sandwich, which was contaminated by Salmonella bacteria, the same day in the Co-Op deli.

11. Ms. Henesh began to experience symptoms from her Salmonella infection the early morning hours of Thursday, June 11. Initial symptoms included intense abdominal cramps and repeated bouts of diarrhea.

12. Over the next two days, Ms. Henesh's symptoms became worse, causing her to miss work. The diarrhea was incessant, and she was unable to maintain adequate hydration due to the immense gastrointestinal losses. Accordingly, the morning of Friday, June 12, Ms. Henesh was seen at St. Luke's Urgent Care Eagle, where she received 3 liters of normal saline for rehydration. She was also prescribed Imodium, and submitted a stool sample for testing.

13. On Saturday, June 13, Ms. Henesh's bouts of diarrhea became bloody, and she was severely nauseated. She was seen at the emergency department of St. Luke's Hospital in downtown Boise later in the morning, where she was again rehydrated with multiple liters of saline. On this visit, she was also treated with intravenous morphine for pain control, and Zofran for nausea. Later in the day, Ms. Henesh was informed that the stool sample she had submitted Friday had tested positive for Salmonella.

14. Over the next two days, Ms. Henesh was unable to do anything for herself and had to have her parents drive 5 hours from their hometown to help her out. The following week, Ms. Henesh gradually became less and less ill. She suffered her last bouts of diarrhea on Tuesday of that week, but continued to have abdominal discomfort and fatigue, which have continued as of the date of this filing.

15. Ms. Henesh has had multiple conversations with CDHD officials since her illness. She is a confirmed case in the outbreak. As a result of her profession, Ms. Henesh has had to have two consecutive negative stool samples before returning to work. She has missed a total of 7 days work since the beginning of her illness.

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 her, 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
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MARLER CLARK LLP, PS.

By: /s/ William D. Marler
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Attorneys for Plaintiffs

Date: 6/23/2015
Time: 02:14 PM

Fourth Judicial District Court - Ada County
Receipt

NO. 0063897
Page 1 of 1

Received of: Russell, Robie G (attorney for Henesh, Mary Christ \$ 221.00

Two Hundred Twenty-One and 00/100 Dollars

Case: CV-PI-2015-10586	Plaintiff: Mary Christine Henesh vs. Boise Consumer Cooperative Ir	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: Henesh, Mary Christine (plaintiff)		
Total:		221.00

Check: 14359
Payment Method: Check
Amount Tendered: 221.00

Clerk: CCMYERHK

Christopher D. Rich, Clerk of the Court

By: _____
Deputy Clerk