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

JUDY FISHER and RANDY FISHER,

Plaintiffs,

vs.

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

Defendant.

COMPLAINT FOR DAMAGES

JURY DEMAND

COME NOW the Plaintiffs, Judy and Randy Fisher, by and through their 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:

COMPLAINT - 1

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PARTIES, JURISDICTION, AND VENUE

1. The Plaintiffs are wife and husband and are, and were, at all times material to this action, residents 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. Nearly 30 individuals testing positive for Salmonella have been reported to the Central District Health Department (CDHD) since Monday, June 8.

4. CDHD is currently investigating each reported Salmonella case to help determine the exact source of the illness. So far, there is a link to the Boise Co-op.

5. CDHD is working closely with the Boise Co-op to identify how Salmonella may have entered a food source. Multiple food samples have been sent to the state public health laboratory for testing and results are pending. Additionally, lab tests have not yet confirmed whether those involved contracted the same strain of Salmonella. More information regarding the food samples and strain(s) is expected by late next week.

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.

Judy Fisher's Salmonella Infection and Illness

10. On Friday, June 5, 2015, in the late morning, Randy Fisher purchased a tuna sandwich at Defendant's restaurant. His wife, Plaintiff Judy Fisher, consumed the sandwich at approximately 12:00 PM.

11. The next morning, Judy began to feel unwell while shopping with her husband. She returned home and went to bed, hoping that some rest would help. Judy woke up at 2:00 PM with extreme chills and intense nausea. She soon vomited. The chills were so bad that she put on a coat and wrapped herself in a blanket for around ½ hour to get her temperature to a comfortable level.

12. At about 3:00 PM the same day, Judy began to suffer from repeated bouts of diarrhea. The diarrhea continued incessantly for the next two days. Together with the vomiting and other symptoms, the diarrhea was fast causing Judy to become dehydrated.

13. Judy finally sought medical help at the emergency department at St. Luke's Hospital on Wednesday, June 10, 2015. At the ER, she received intravenous fluids for rehydration and was discharged with a prescription for Zofran, an anti-nausea drug. She was instructed to take over-the-counter Imodium AD for the diarrhea.

14. The diarrhea continued nevertheless, as did the other symptoms, and Judy again sought medical care at the St. Lukes ER on Friday morning. This time she was able to give a stool sample at the hospital. She received prescriptions for the antibiotics Flagyl and Ciprofloxacin to treat what physicians told her they believed was a severe bacterial infection.

15. Judy received a call around 2:15 PM from staff at the St. Luke's ER on Saturday, June 13, and was told that the stool sample she had submitted had tested positive for Salmonella. Judy was also interviewed by CDHD officials, and she told them that she had eaten a tuna sandwich from the Boise Co-op on Friday June 5, 2015.

16. Judy continues to suffer ongoing symptoms related to her Salmonellosis illness.

STRICT PRODUCT LIABILITY

17. By this reference, the Plaintiffs incorporate the foregoing paragraphs as if each was set forth here in its entirety.

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

19. 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.

20. 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 Plaintiffs, and it was in a condition that rendered the product unreasonably dangerous for its ordinary and expected use.

21. The food product that is the subject of this action was expected to reach the consumers, including the Plaintiffs, and be consumed by her, without substantial change. The Plaintiffs used the food product in the manner expected and intended, including when she consumed it.

22. The Plaintiffs 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

23. By this reference, the Plaintiffs incorporate the foregoing paragraphs as if each was set forth here in its entirety.

24. 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.

25. 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.

26. The Defendant owed a duty to the Plaintiffs 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.

27. 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.

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

DAMAGES

29. The Plaintiffs have 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 Plaintiffs pray for judgment against the Defendant as follows:

- a. Judgment for the Plaintiffs 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 Plaintiffs demand a jury trial.

Dated this 15th day of June 2015.

Respectfully submitted,

RUSSELL LAW OFFICES

By: /s/ Robie G. Russell

Robie G. Russell – Of the Firm

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