



## PRESS RELEASE - Ron Simon & Associates Files New Salmonella Lawsuit Against Boise Co-Op

Date | July 1, 2015

### **Ron Simon & Associates Files Another *Salmonella* Lawsuit Against Boise Co-Op**

Today the national food safety law firm of Ron Simon & Associates, along with local counsel Petersen Lawyers of Boise, Idaho, filed another lawsuit stemming from *Salmonella*-contaminated food served by the Boise Co-Op at its airport kiosk at the Boise Airport. The firms have now filed suits on behalf of three victims of the outbreak.

A copy of the complaint is attached.

The lawsuit was filed in the District Court of Ada County, Idaho, on behalf of Boise resident David Hayden. Mr. Hayden purchased a contaminated sandwich from the Boise Co-Op Airport kiosk. He arrived in Mexico the next day only to be sick throughout his vacation. When he returned to the U.S. for medical treatment, he tested positive for *Salmonella* matching the Boise Co-Op outbreak strain.

Central District Health Department investigators subsequently interviewed David and linked his illness to the Boise Co-Op *Salmonella* outbreak.

### **Boise Co-Op Deli Closed after Wave of *Salmonella* Cases**

Health officials have now confirmed at least 280 *Salmonella* victims from contaminated food served by the Boise Co-Op. The restaurant's management has also confirmed that food testing revealed *Salmonella* contamination in at least three common ingredients, including tomatoes, onions, and raw turkey. The deli remained closed during the investigation, and re-opened on June 19<sup>th</sup> after management cleaned the restaurant.

According to Boise Co-Op's marketing manager, Mo Valko, the Boise Co-Op sees this "as an opportunity to put as many safe practices in place as possible. We have made a couple of changes to the arrangements of the equipment in the back. We have added an additional hand-washing sink just to help with workflow and we will have color-coded cutting boards as well."

### **Attorney Ron Simon Issues Statement for Victims, Sets up *Salmonella* Claim Center**

Lead attorney Ron Simon, who represents Mr. Hayden and several other Boise Co-Op victims, issued the following statement today: "The injuries caused by this outbreak could have been prevented with simple, clear safety procedures. Through this litigation, we will examine Boise Co-Op's unsafe practices and make sure that they do not occur again."

Mr. Simon and his law firm have established a Boise Co-Op *Salmonella* Claims Center to assist victims of the outbreak. The Claims Center can be reached toll-free at 1-888-335-4901.

### **About Ron Simon**

Over the last 20 years, Ron Simon and his colleagues have prosecuted thousands of food poisoning cases for victims across the United States. His work has resulted in numerous upgrades to food safety procedures in Fortune 500 companies and in legislation designed to protect consumers from dangerous food-borne pathogens.

Mr. Simon and his clients have been featured on NBC, ABC, CBS, CNN, FOX and virtually all other major television networks and print media. Mr. Simon has collected over \$600,000,000 for his clients. He regularly publishes articles about food safety and litigation at [www.foodpoisoningnews.com](http://www.foodpoisoningnews.com) which are read by viewers in over 180 countries.

Through litigation, media commentary, and his food poisoning publications, Mr. Simon relentlessly challenges food manufacturers, distributors, and restaurants to do a better job in making our food safe.

For media inquiries or more information on the Boise Co-Op *Salmonella* outbreak and ongoing litigation, please contact Ron Simon directly at (713) 819-8116 or [ron@rsaalaw.com](mailto:ron@rsaalaw.com).

PATRICK H. OWEN

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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

JUL 01 2015

CHRISTOPHER D. RICH, Clerk  
By JAMIE MARTIN  
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT**

**STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

DAVID HAYDEN, an Individual,  
  
Plaintiff,

vs.

BOISE CONSUMER COOPERATIVE,  
INC. dba BOISE CO-OP  
  
Defendant.

Case No. **CV PI 1511186**

**COMPLAINT FOR DAMAGES**

**DEMAND FOR JURY TRIAL**

Plaintiff DAVID HAYDEN, by and through his counsel of record **Ron Simon & Associates and Peterson Lawyers**, allege and complain as follows:

**I. PARTIES**

1. Plaintiff DAVID HAYDEN is an adult and resident of Boise, Idaho.
2. Defendant BOISE CONSUMER COOPERATIVE, INC. dba BOISE CO-OP (hereinafter "Boise Co-Op") is an Idaho corporation headquartered in Boise, Idaho. It may be served through its registered agent, Ben Kuzma, at 888 W Fort Street, Boise, Idaho.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction and venue over Defendant because it is a domestic

corporation headquartered in Idaho, and because purchases of the tainted products and injuries giving rise to this lawsuit occurred in Ada County, Idaho.

### **GENERAL ALLEGATIONS**

4. Plaintiff hereby incorporates paragraphs 1 through 3 above.

#### **About Salmonella**

5. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of human and other warm-blooded animals, including cattle. *Salmonella* bacteria are usually transmitted to humans who consume foods contaminated with animal feces. Such foods usually look and smell normal, meaning that a consumer has no warning of the fact of contamination.

6. After being ingested, *Salmonella* bacteria travel to the lumen of the small intestines, then penetrate the epithelium, multiply, and enter the blood. This infection process – also referred to as the incubation period – usually takes 6 to 72 hours for the onset of symptoms. As few as 15-20 cells of *Salmonella* bacteria can cause infection.

7. The acute symptoms of *Salmonella* gastroenteritis (or *Salmonellosis*) include nausea, vomiting, diarrhea, fever, abdominal cramping and/or stomach pain, dysuria, muscle pain, fatigue, and dehydration. The duration of acute symptoms is typically four to seven days.

8. If medical treatment is provided to an infected person, it is typically treatment of the symptoms, such as prescribing anti-nausea or anti-diarrhea medications. Some physicians prescribe antibiotics. More severe cases may require intravenous fluids for treatment of dehydration, usually in an emergency room or urgent-care setting. The elderly, infants, and those with impaired immune systems are more likely to experience a severe illness or death from ingesting *Salmonella* bacteria.

9. More serious cases of salmonellosis are also linked to cases where the particular strain of *Salmonella* bacteria is resistant to traditional antibiotics, leading to more prolonged illness and often other complications.

10. In cases of prolonged or acute gastroenteritis, long-term side-effects, such as irritable bowel syndrome (IBS) or irritable bowel disease (IBD), can develop, leading to the need for long-term medical treatment and care.

### **The Salmonella Outbreak**

11. Between June 1<sup>st</sup> and 10<sup>th</sup> of 2015, many of the patrons of Boise Co-Op Deli, both at the main deli located at 888 West Fort Street and also those who purchased food at airport kiosks, were exposed to *Salmonella* bacteria in various products they purchased. After a short period of incubation, sometimes lasting only hours, the victims began to experience symptoms including vomiting, nausea, diarrhea, cramping and associated fevers, chills, and headaches. Many of these victims sought medical attention, with some providing stool tests to their medical professionals. When the stool tests began to return positive for *Salmonella*, the medical professionals reported the positive tests to their local health agencies. Within days, local authorities became aware of a potential *Salmonella* outbreak in the Boise, Idaho area.

12. Based upon the eating histories of interviewed victims, the Central District Health Department (CDHD), sent investigators to the Boise Co-Op. As part of the investigation, which took at least two days, health officials confiscated food samples for bacterial culturing. On June 15<sup>th</sup>, testing demonstrated *Salmonella* contamination on at least three food products, including onions, tomatoes, and turkey meat.

13. The restaurant was closed for investigation and cleaning, being allowed to reopen on June 19<sup>th</sup>. At the time of this filing, the CDHD investigation is ongoing to determine the

exact source of the *Salmonella* bacteria

14. At least 280 individual *Salmonella* victims have now been identified, including a number who have been hospitalized.

**Plaintiff David Hayden's Salmonella Illness**

15. On June 6, 2015, David consumed deli foods he purchased from the Boise Co-Op Deli kiosk at the airport in Idaho, as he prepared to board a plane to Mexico. By that evening, while on a lengthy Houston layover, he began to experience an upset stomach – but he nonetheless boarded the plane with his wife, Allison, to Mexico believing it would pass. By the next morning, however, he began to feel the full effects of salmonellosis. David was suffering nausea, diarrhea, abdominal cramping, and the onset of a fever.

16. Because he and his wife had been planning this vacation for a while, David tried to ride out the illness. He went to a Mexican clinic where doctors gave him medication to combat his symptoms.

17. David was miserable, but he finished the short vacation before returning to Idaho. Upon his return, he went to an Urgent Care Clinic where he provided a stool sample. The stool culture was positive for *Salmonella*.

18. Soon thereafter, officials from the Central District Health Department (CDHD) contacted David to discuss his positive *Salmonella* test. During their interview with David, health officials discovered that he had eaten food from the Boise Co-Op prior to his illness onset.

19. The CDHD subsequently identified David as a victim of the Boise Co-Op *Salmonella* outbreak.

## **FIRST CAUSE OF ACTION**

### **(Strict Products Liability)**

20. Plaintiff hereby incorporates paragraphs 1 through 19 above.

21. At all times, Defendant was in the business of importing, manufacturing, distributing, and marketing deli food.

22. There was a manufacturing defect in the deli food when it left Defendant's possession and control. The deli food was defective because it contained *Salmonella*. The presence of *Salmonella* was a condition of the product that rendered it unreasonably dangerous.

23. There was a marketing defect in the deli food when it left Defendant's possession and control. The deli food was defective because it contained *Salmonella*, and Defendant failed to give adequate warnings of the product's dangers that were known or by the application of reasonably developed human skill and foresight should have been known. Defendant also failed to give adequate warnings and instructions to avoid such dangers. Defendant's failure to provide such warnings and instructions rendered the deli food unreasonably dangerous.

24. Defendant's conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

25. Defendant is therefore strictly liable for manufacturing, distributing, and marketing defective and unreasonably dangerous deli food and introducing it into the stream of commerce.

## **SECOND CAUSE OF ACTION**

### **(Negligence and Negligence Per Se)**

26. Plaintiff hereby incorporates paragraphs 1 through 25 above.

27. Defendant owed Plaintiff a duty of ordinary care in the manufacture, preparation,

testing, packaging, marketing, storing, holding, distribution, and selling of the deli food in question. Further, Defendant owed Plaintiff the duty of warning or instructing Plaintiff of potentially hazardous or life-threatening conditions with respect to the deli food.

28. Defendant breached its duty in one or more of at least the following ways:

- a. negligently manufacturing, preparing, distributing, and marketing deli food;
- b. failing to properly test the deli food before placing it into the stream of commerce;
- c. failing to prevent human, insect, and/or animal feces from coming into contact with the deli food;
- d. failing to store, package, hold, or prepare the deli food or its ingredients in a manner to prevent it from becoming contaminated with filth which could render it injurious to health;
- e. failing to adequately monitor the safety and sanitary conditions of their premises;
- f. failing to apply their own policies and procedures to ensure the safety and sanitary conditions of their premises;
- g. failing to adopt and/or follow recommended good manufacturing practices;
- h. failing to take reasonable measures to prevent the transmission of *Salmonella* bacteria and related filth and adulteration from their premises;
- i. failing to properly train and supervise their employees and agents to prevent the transmission of *Salmonella* bacteria and related filth and

adulteration from their premises;

- j. failing to warn Plaintiff and the general public of the dangerous propensities of the deli food, particularly that it was contaminated with *Salmonella*, despite knowing or having reason to know of such dangers; and
- k. failing to timely disclose post-sale information concerning the dangers associated with the deli food.

29. Furthermore, Defendant had a duty to comply with all applicable health regulations, including the FDA's Good Manufacturing Practices Regulations, 21 C.F.R. part 110, subparts (A)-(G), and all statutory and regulatory provisions that applied to the manufacture, distribution, storage, and/or sale of the deli food or its ingredients, 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, and the Idaho Food, Drug and Cosmetic Act, Title 37, especially 37-122 et. Seq.

30. Plaintiff is a member of the classes sought to be protected by the regulations and statutes identified above.

31. Defendant's conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

32. All dangers associated with the product were reasonably foreseeable and/or scientifically discoverable by Defendant at the time Defendant placed the product into the stream of commerce.

33. All dangers associated with the contaminated deli food were reasonably foreseeable and/or scientifically discoverable by Defendant at the time Defendant placed the deli

food into the stream of commerce.

### **THIRD CAUSE OF ACTION**

#### **(Breach of Implied Warranties)**

34. Plaintiff hereby incorporates paragraphs 1 through 33 above.

35. Defendant is a merchant who produces, manufactures, distributes, and markets deli products to consumers. Plaintiff is a consumer.

36. Defendant breached the implied warranty of merchantability by impliedly warranting that their deli food was of merchantable quality and fit for human consumption when it was not due to the conditions under which it was prepared, packaged, and held and due to the presence of *Salmonella*. Plaintiff reasonably relied upon Defendant's skill and judgment as to whether the deli food was of merchantable quality and fit for human consumption.

37. Defendant breached the implied warranty of fitness for a particular purpose, by holding out unreasonably dangerous deli food (i.e. sandwiches produced under egregious conditions and containing *Salmonella*) to the public as being safe when they knew or had reason to know that the deli food was not safe and that the public would consume the deli food.

38. Defendant did not disclaim these implied warranties.

39. Defendant's conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

### **DAMAGES**

40. Plaintiff hereby incorporates paragraphs 1 through 39 above.

41. Defendant's conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages, including but not limited to damages in the past and future for the following: pain and suffering, mental anguish, physical impairment, physical disfigurement, loss

of enjoyment of life, medical and pharmaceutical expenses, travel and travel-related expenses, emotional distress, lost wages, lost earning capacity, loss of consortium, attorneys' fees (to the extent recoverable) and other general, special, ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

42. WHEREFORE, Plaintiff prays for judgment against Defendant as follows:
- a. Past and future economic and non-economic damages;
  - b. Court costs;
  - c. Pre- and post-judgment interest at the highest rate allowed by law; and
  - d. For such other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a jury trial for all triable claims.

Dated: July 1, 2015

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