

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO:

ROBERTA CASH AND OSCAR CASH,

Plaintiffs,

v.

PUBLIX SUPER MARKETS, INC.

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Roberta Cash and Oscar Cash bring this action against Defendant Publix Super Markets, Inc. and alleges:

PARTIES

1. Plaintiffs Roberta and Oscar Cash (hereinafter "Plaintiffs") at all times relevant hereto were citizens of Palm Beach County, Florida.

2. Defendant Publix Super Markets, Inc. (hereinafter referred to as "Publix" and "Defendant"), is a company organized and existing under the laws of the State of Florida with its headquarters located in Lakeland, Florida and has grocery stores for the transaction of its customary business throughout the State of Florida.

JURISDICTION AND VENUE

3. Jurisdiction is proper in Circuit Court, pursuant to Fla. Stat. §§ 26.012(2)(a) and 34.01(1)(c), because the amount in controversy exclusive of attorney's fees exceeds \$50,000.

4. Venue is proper in Palm Beach County under Florida Stat. § 47.011 because

Plaintiffs' purchased the blueberries at issue from Publix in Palm Beach County, and Publix regularly does business in Palm Beach County.

GENERAL ALLEGATIONS

E. coli O145:H28 Infection and Hemolytic Uremic Syndrome

5. Escherichia coli is the name of a family of bacteria, most of which do not cause human disease. E. coli O145:H28, however, is a Shiga toxin-producing strain of E. coli (otherwise known as "STEC") that causes bloody diarrhea in humans.

6. E. coli O145:H28 lives in the intestines of cattle and other animals. E. coli O145:H28 is passed through the oral-fecal method, meaning it is passed in the feces of animals and then sickens the host after ingestion. An extremely low infectious dose, with fewer than 50 E. coli O145:H28 bacteria, are needed to infect the host.

7. The most severe cases of the E. coli O145:H28 infection occur in young children, the elderly (those 65 or older), and those with compromised immune systems. After a susceptible individual ingests E. coli O145:H28, the bacteria attaches to the inside surface of the large intestine and initiates an inflammatory reaction of the intestine (hemorrhagic colitis).

8. E. coli O145:H28 infections often result in bloody diarrhea, nausea, and severe abdominal cramping.

9. A victim of E. coli O145:H28 usually becomes symptomatic within two to four days post exposure, but in some instances, illness can begin within 24 hours or be delayed several weeks.

10. Most victims of E. coli O145:H28 recover within a few weeks. But in about 10% of the population, E. coli O145:H28 infections can develop into HUS, a life-threatening complication in which the destruction of red blood cells and platelets associated with clotting lead

to acute renal failure due to the formation of micro-thrombi that occlude microscopic blood vessels that make up the filtering units within the kidneys. There is no known therapy to halt the progression of HUS, and most victims require dialysis. HUS is fatal in about 5% of the victims. In those who survive, HUS patients often require blood transfusions, dialysis, and in some cases, one or more kidney transplants.

The Publix GreenWise Blueberry E. coli O145:H28 Outbreak

11. In July 2026, the Centers for Disease Control and Prevention (CDC) and the U.S. Food and Drug Administration (FDA) announced an investigation into a multistate outbreak of Shiga toxin-producing Escherichia coli (STEC) O145:H28 infections linked to frozen GreenWise Organic IQF Blueberries, Publix's branded blueberries, manufactured by Frutas y Hortalizas del Sur S.A. of San Carlos, Chile. The Publix-branded product is sold exclusively through Publix Super Markets.

12. The outbreak investigation has, to date, identified twelve laboratory-confirmed illnesses in Florida and Georgia linked to consumption of the tainted blueberries. Illness onset dates for these victims range from May 11, 2026 to June 5, 2026.

13. Laboratory genetic testing has confirmed that clinical isolates from victims indicated a common source of contamination. Health department interviews with victims found that most reported consuming frozen blueberries before becoming ill. Further investigation identified a common brand of blueberries - Frozen GreenWise Organic IQF Blueberries - sold exclusively at Publix retail outlets.

14. On July 3, 2026, a recall was initiated of all Frozen GreenWise Organic IQF Blueberries, 10-ounce bags, Lot Code 60401, with a "Best By" date of February 9, 2028. A photo of the blueberry packaging is identified below:



15. The recall stated: “*After receiving reports of consumers experiencing digestive illnesses and having consumed GreenWise frozen blueberries as part of their diet, Frutas y Hortalizas S.A. has decided to initiate the recall.*”

16. The recalled blueberries were shipped to Publix retail stores throughout 8 states including Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia.

17. The CDC has now warned consumers to check their freezers and not eat the recalled blueberries, and has also advised Publix to immediately remove the tainted blueberries from store shelves.

18. To date, four known victims have required hospitalization, including Plaintiff Roberta Cash, with victims ranging in age from 2 to 88 years.

Plaintiff Roberta Cash’s E. coli Illness

19. In May 2026, Oscar and Roberta Cash purchased and consumed Frozen GreenWise Organic IQF Blueberries from the Publix located at 10142 West Indian Town Road in Jupiter, Florida. Soon thereafter, Roberta began to experience the symptoms of E. coli, including bloody stools, abdominal pain, stomach cramps, dehydration, and fever.

20. After a few days of ongoing symptoms, Oscar decided to take Roberta to the Jupiter Medical Center ER, where she was hospitalized and aggressively treated for ten days. At the end

of the ten days, doctors determined that she was not yet able to return home. They elected to transfer her to The Gardens Court nursing facilities for rehabilitation services, where she was held for an additional 18 days.

21. Roberta Cash continues to receive medical treatment at home from the CenterWell Home Health nursing staff and her primary health provider at Conviva Care Centers in Jupiter, Florida.

Plaintiff Oscar Cash's E. coli Illness

22. Oscar Cash also consumed the Frozen GreenWise Organic IQF Blueberries in May of 2026, and soon noted his symptoms of E. coli, including bloody stools, abdominal pain, stomach cramps, dehydration, and fever.

23. While Oscar was very ill, his illness was less pronounced than that of Roberta, his wife of nearly 46 years. He elected to try to recover from his illness without extensive medical treatment, while spending all of his waking hours taking care of Roberta.

24. Once Roberta was cleared to return home safely, he took over her daily care, with assistance from ongoing visits by rehabilitation professionals.

25. Oscar has slowly recovered from his E. coli illness.

COUNT I

STRICT LIABILITY

26. Plaintiffs restate and reallege paragraphs 1-25 as if fully restated herein.

27. At all times, Defendant was in the business of producing, manufacturing, preparing, marketing, and/or serving blueberries (hereinafter "the product") to the public.

28. There was a manufacturing defect in the product when it left Defendant's possession and control. The product was defective because it contained E. coli. The presence of E.

coli was a condition of the product that rendered it unreasonably dangerous.

29. There was a marketing defect in the product when it left Defendant's possession and control. The product was defective because it contained E. coli 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 product unreasonably dangerous.

30. The product reached the Plaintiffs without substantial change in the condition in which the product was sold.

31. Defendant's conduct and the defective product were a direct, proximate, and producing cause of Plaintiffs' injuries and damages set forth in the paragraphs set forth below.

32. Defendant is therefore strictly liable for importing, manufacturing, distributing, marketing, and selling defective and unreasonably dangerous product and introducing it into the stream of commerce.

COUNT II

NEGLIGENCE AND NEGLIGENCE PER SE

33. Plaintiffs reallege and reassert paragraphs 1-25 as if fully alleged herein.

34. Defendant owed Plaintiffs a duty of ordinary care in the importation, preparation, testing, packaging, marketing, distribution, and/or selling of the product. Further, Defendant owed Plaintiffs the duty of warning or instructing Plaintiffs of potentially hazardous or life-threatening conditions with respect to the product.

35. Defendant breached its duties in one or more of at least the following ways:

- a. Negligently importing, manufacturing, distributing, and/or

- marketing the product;
- b. failing to properly test the product before placing it into the stream of commerce;
 - c. failing to prevent human and/or animal feces from coming into contact with the product;
 - d. failing to adequately monitor the safety and sanitary conditions of its premises;
 - e. failing to apply its own policies and procedures to ensure the safety and sanitary conditions of its premises;
 - f. failing to adopt and/or follow FDA recommended good manufacturing practices;
 - g. failing to take reasonable measures to prevent the transmission of E. coli and related filth and adulteration from its premises;
 - h. failing to properly train and supervise its employees and agents to prevent the transmission of E. coli and related filth and adulteration from its premises; and
 - i. failing to timely disclose post-sale information concerning the dangers associated with the product.

36. 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 products or their 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 similar provision in the *Florida Food Safety Act*, including §§ 500.01, 500.04, 500.10, and 500.11, *et. seq.*

37. Under both federal and applicable state law, food is adulterated if it contains a “poisonous or deleterious substance which may render it injurious to health.”

38. The product was adulterated because it contained E. coli. Thus, by the import, manufacture, distribution, delivery, storage, sale, and/or offering for sale of the product and/or the product’s ingredients, Defendant breached its statutory and regulatory duties.

39. Plaintiffs were members of the classes sought to be protected by the regulations and statutes identified above.

40. Defendant’s conduct was a direct, proximate, and producing cause of Plaintiffs’ injuries and damages set forth in paragraphs set forth below.

41. 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.

COUNT III

BREACH OF IMPLIED WARRANTIES

42. Plaintiffs reallege and reassert paragraphs 1-25 as if fully alleged herein.

43. Defendant is a merchant who manufactures, imports, distributes, markets, and/or sells the product.

44. Plaintiffs are consumers.

45. Defendant breached the implied warranty of merchantability by impliedly warranting that the product was of merchantable quality and fit for human consumption when it was not due to the presence of E. coli. Plaintiffs reasonably relied upon Defendant’s skill and

judgment as to whether the product was of merchantable quality and fit for human consumption.

46. Defendant breached the implied warranty of fitness for a particular purpose by holding out unreasonably dangerous product (i.e. product containing E. coli) to the public as being safe when it knew or had reason to know that the product was not safe and that the public would consume the product.

47. Defendant did not disclaim these implied warranties.

48. Defendant's conduct was a direct, proximate, and producing cause of Plaintiffs' injuries and damages set forth in the paragraphs below.

DAMAGES

49. Defendant's conduct was a direct, proximate, and producing cause of Plaintiffs' 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.

50. Plaintiffs have suffered damages in excess of \$50,000.

51. WHEREFORE, Plaintiffs pray 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.

DEMAND FOR JURY TRIAL

This is an action for damages in excess of \$50,000, exclusive of attorneys' fees, interest and costs, and plaintiff(s) hereby demand a trial by jury; accordingly, although, to file this complaint, undersigned counsel is being required by order of the Supreme Court of Florida to contemporaneously complete a civil cover sheet with a dollar figure as an estimated amount of claim for data collection and clerical processing purposes only, the full monetary value of the damages suffered by plaintiff (s) is yet to be determined and will be decided in a verdict by the jury that judges the facts of this action in compliance with Article I, Section 21, Florida Constitution.

CLAIM FOR COSTS: RECOVERY BY PLAINTIFF

If Plaintiff(s) recover(s) judgment, Plaintiff(s) will be entitled to taxation of costs and charges pursuant to § 57.041, Florida Statutes.

CLAIM FOR ATTORNEY'S FEES AND COSTS: OFFER OF JUDGMENT/PROPOSAL FOR SETTLEMENT

If an offer of Judgment and/or Proposal for Settlement is served by Plaintiff, [PLTF(s) NAME], then Plaintiff will be entitled to recover reasonable costs and attorney's fees incurred by Plaintiff from the date of such Offer of Proposal pursuant to §768.79, Florida Statute and Rule 1.442, Florida Rules of Civil Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the Defendant via service of process.

Respectfully submitted,

ELIZABETH ZWIBEL LAW

/s/ *Elizabeth A. Zwibel, Esq.*

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