

IN THE UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

CHARLES LANCE HAYES, JR. and JUDE THADDEUS
HAYES, individually, and on behalf of the ESTATE OF
ELAINE FILMENT HAYES BABCOCK, deceased,

Case No. _____

Plaintiffs,

VS.

**COMPLAINT FOR
WRONGFUL DEATH**

FRONTERA PRODUCE, LTD. and PRIMUS GROUP
INC., d/b/a "Primus Labs", a California corporation;

JURY DEMAND

Defendants.

NOW INTO COURT, through undersigned counsel, comes CHARLES LANCE HAYES
AND THAD HAYES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ELAINE
FILMENT HAYES BABCOCK, DECEASED, who respectfully represent:

I. PARTIES

1. At all times relevant to this action, the Plaintiff CHARLES LANCE HAYES, JR.
was a resident of Baton Rouge, Louisiana. At all times relevant to this action, the Plaintiff JUDE
THADDEUS HAYES was a resident of New York, New York. Charles Lance Hayes, Jr. and
Jude Thaddeus Hayes are the natural-born sons of the decedent, ELAINE FILMENT HAYES
BABCOCK, who, at all times relevant to this action, was a resident of Baton Rouge, Louisiana.
Charles Lance Hayes, Jr. and Jude Thaddeus Hayes are duly authorized to pursue both their
individual claims, and the claims of the Estate of Elaine Filment Hayes Babcock, as further
described in this Complaint.

2. Charles Lance Hayes, Jr. and Jude Thaddeus Hayes are Co-Independent

Executors of The Estate of Elaine Filment Hayes Babcock, Probate No. 93,876, 19th JDC, East Baton Rouge Parish, Louisiana, with Letters Testamentary issued on November 16, 2011.

3. At all times relevant to this action, FRONTERA PRODUCE LTD. (Frontera Produce), was a Texas corporation with its principal place of business located in Edinburg, Texas. At all times relevant to this action, Frontera Produce was a manufacturer, distributor and seller of agricultural products in Louisiana, including Jensen Farms Rocky Ford brand cantaloupe.

4. At all times relevant to this action, PRIMUS GROUP, INC. d/b/a "Primus Labs" (Primus), was a corporation organized and existing under the laws of the State of California, with its principal place of business in Santa Maria, California. At all times relevant to this action, Primus was a company that, among other things, provided auditing services for agricultural and other businesses involved in the manufacture and sale of food products, including in the State of Louisiana. Primus retained the services of certain subcontractors, to provide auditing services, including the audit of Jensen Farms, the manufacturer, distributor and seller of the Jensen Farms Rocky Ford brand cantaloupe at issue in this action, in Colorado, described in more detail at paragraph 24.

II. JURISDICTION AND VENUE

5. Subject matter jurisdiction in this matter is proper based on the diversity of the parties, as the parties are citizens of different states, and the amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000.00), both as required under 28 USC § 1332(a)(2).

6. Venue of this matter is proper in this court, pursuant to 28 USC §1391(a), as a substantial part of the events and omissions giving rise to the claim set forth herein occurred in this judicial district.

7. This Court has personal jurisdiction over defendants' Frontera and Primus, pursuant to La. R.S. 13:3201, *et seq.*

III. FACTS

8. On September 2, 2011, the Colorado Department of Public Health and Environment (CDPHE) announced that it was investigating an outbreak of Listeriosis. On September 9, 2011, CDPHE announced that the likely source of the *Listeria* outbreak was cantaloupe. On September 12, 2011 CDPHE announced that the outbreak of *Listeria* was linked to cantaloupe from the Rocky Ford (Colorado) growing region. It was subsequently determined that contaminated cantaloupes were grown by Jensen Farms, and distributed by Defendant Frontera.

9. In its final outbreak summary, the Centers for Disease Control and Prevention (CDC) counted a total of 146 persons infected with any of the five outbreak-associated strains of *Listeria monocytogenes* from 26 states. Thirty-two people died as a result of their Listeriosis illnesses caused by Jensen Farms' and Defendant Frontera's contaminated cantaloupe, and there was one miscarriage as well.

10. On or about September 19, 2011, the Food and Drug Administration (FDA) announced that it found *Listeria monocytogenes* in samples of Jensen Farms' Rocky Ford brand cantaloupe taken from a Denver-area store and on samples taken from equipment and cantaloupe at the Jensen Farms' packing facility. Tests confirmed that the *Listeria monocytogenes* found in

the samples matched one of the five different strains of *Listeria monocytogenes* associated with the multi-state outbreak of Listeriosis.

11. Jensen Farms recalled its Rocky Ford-brand cantaloupes on September 14, 2011. The recalled cantaloupes were distributed from July 29, 2011 to and including the date of the recall.

12. Prior to the outbreak described in paragraphs 8 through 11, Jensen Farms or Frontera, or both of them, contracted with Defendant Primus to conduct an audit of Jensen Farms' ranchlands and packing house.

13. It was the intent of these contracting parties—i.e. Jensen Farms or Frontera, or both of them, and Primus—to ensure that the facilities, premises, and procedures used by Jensen Farms in the production of cantaloupes met or exceeded applicable standards of care related to the production of cantaloupe, including, but not limited to, good agricultural and manufacturing practices, industry standards, and relevant FDA industry guidance. It was further the intent of these contracting parties to ensure that the food products that Jensen Farms produced, and that Frontera distributed, would be of high quality for consumers, and would not be contaminated by potentially lethal pathogens, like *Listeria*.

14. Prior to the formation of the contract described at paragraph 11, Frontera represented to the public generally, and specifically to the retail sellers of its produce products, including cantaloupes, that its various products were "Primus Certified."

15. It was Frontera's intent and expectation that the representation set forth in the preceding paragraph would serve as an inducement for the purchase of its various products, including cantaloupes, and that consumers, ultimate retailers, and itself would all benefit from Primus's audit and certification by having a high quality product.

16. After the formation of the contract described at paragraph 11, Primus selected and hired Bio Food Safety to conduct the audit of Jensen Farms. Bio Food Safety thereby became Primus's subcontractor, and agent, for the limited purpose of auditing Jensen Farms.

17. Defendant Primus and Bio Food Safety held themselves out as experts in the field of food safety, including specifically, though not exclusively, in the analysis and assessment of food safety procedures, facility design and maintenance, and Good Agricultural and Manufacturing Practices, and other applicable standards of care incumbent on producers of agricultural products, including cantaloupes.

18. By auditing companies involved in the production and distribution of food products, Primus and Bio Food Safety intended to aid such companies in ensuring that the food products produced were of high quality, were fit for human consumption, and were not contaminated by a potentially lethal pathogen, like *Listeria*.

19. Bio Food Safety auditor James Dilorio conducted an audit at Jensen Farms' ranchlands and packing facility on or about July 25, 2011, roughly one week before the CDC identified the first victim of the cantaloupe *Listeria* outbreak. Mr. Dilorio, as employee and agent of Bio Food Safety, and as agent of Primus, gave the Jensen Farms packing house a "superior" rating, and a score of 96%.

20. On or about September 10, 2011, officials from both FDA and Colorado, conducted an inspection at Jensen Farms during which FDA collected multiple samples, including whole cantaloupes and environmental (non-product) samples from within the facility, for purposes of laboratory testing.

21. Of the 39 environmental samples collected from within the facility, 13 were confirmed positive for *Listeria monocytogenes* with pulsed-field gel electrophoresis (PFGE)

pattern combinations that were indistinguishable from at least three of the five outbreak strains collected from outbreak cases. Cantaloupe collected from the firm's cold storage during the inspection also tested positive for *Listeria monocytogenes* with PFGE pattern combinations that were indistinguishable from at least two of the five outbreak strains.

22. After isolating at least three of the five outbreak strains of *Listeria monocytogenes* from Jensen Farms' packing house and whole cantaloupes collected from cold storage, FDA initiated an environmental assessment at Jensen Farms, in which the FDA was assisted by Colorado state and local officials.

23. The environmental assessment at Jensen Farms occurred on September 22-23, 2011. Findings from this assessment, set forth in the FDA's report dated October 19, 2011, included, but were not limited to, the following:

- a. **Facility Design:** Certain aspects of the packing facility, including the location of a refrigeration unit drain line, allowed for water to pool on the packing facility floor in areas adjacent to packing facility equipment. Wet environments are known to be potential reservoirs for *Listeria monocytogenes* and the pooling of water in close proximity to packing equipment, including conveyors, may have extended and spread the pathogen to food contact surfaces. Samples collected from areas where pooled water had gathered tested positive for an outbreak strain of *Listeria monocytogenes*. Therefore, this aspect of facility design is a factor that may have contributed to the introduction, growth, or spread of *Listeria monocytogenes*. This pathogen is likely to establish niches and harborage in refrigeration units and other areas where water pools or accumulates.

Further, the packing facility floor where water pooled was directly under the packing facility equipment from which FDA collected environmental samples that tested positive for *Listeria monocytogenes* with PFGE pattern combinations that were indistinguishable from outbreak strains. The packing facility floor was constructed in a manner that was not easily cleanable. Specifically, the trench drain was not accessible for adequate cleaning. This may have served as a harborage site for *Listeria monocytogenes* and, therefore, is a factor that may have contributed to the introduction, growth, or spread of the pathogen.

- b. **Equipment Design:** FDA evaluated the design of the equipment used in the packing facility to identify factors that may have contributed to the growth or spread of *Listeria monocytogenes*. In July 2011, the firm purchased and installed equipment for its packing facility that had been previously used at a firm producing a different raw agricultural commodity.

The design of the packing facility equipment, including equipment used to wash and dry the cantaloupe, did not lend itself to be easily or routinely cleaned and sanitized. Several areas on both the washing and drying equipment appeared to be un-cleanable, and dirt and product buildup was visible on some areas of the equipment, even after it had been disassembled, cleaned, and sanitized. Corrosion was also visible on some parts of the equipment. Further, because the equipment is not easily cleanable and was previously used for handling another raw agricultural commodity with different washing and drying requirements, *Listeria monocytogenes* could have been introduced as a result of past use of the equipment.

The design of the packing facility equipment, especially that it was not easily amenable to cleaning and sanitizing and that it contained visible product buildup, is a factor that likely contributed to the introduction, growth, or spread of *Listeria monocytogenes*. Cantaloupe that is washed, dried, and packed on unsanitary food contact surfaces could be contaminated with *Listeria monocytogenes* or could collect nutrients for *Listeria monocytogenes* growth on the cantaloupe rind.

- c. **Postharvest Practices:** In addition, free moisture or increased water activity of the cantaloupe rind from postharvest washing procedures may have facilitated *Listeria monocytogenes* survival and growth. After harvest, the cantaloupes were placed in cold storage. The cantaloupes were not pre-cooled to remove field heat before cold storage. Warm fruit with field heat potentially created conditions that would allow the formation of condensation, which is an environment ideal for *Listeria monocytogenes* growth.

The combined factors of the availability of nutrients on the cantaloupe rind, increased rind water activity, and lack of pre-cooling before cold storage may have provided ideal conditions for *Listeria monocytogenes* to grow and out compete background microflora during cold storage. Samples of cantaloupe collected from refrigerated cold storage tested positive for *Listeria monocytogenes* with PFGE pattern combinations that were indistinguishable from two of the four outbreak strains.

24. In October and December 2011, FDA officials participated in briefings with the House Committee on Energy and Commerce that were held to further investigate the likely causes of the *Listeria* outbreak that is the subject of this action. At these briefings, FDA officials cited multiple failures at Jensen Farms, which, according to a report issued by the Committee, “reflected a general lack of awareness of food safety principles.” Those failures included:

- 24.1 Condensation from cooling systems draining directly onto the floor;
- 24.2 Poor drainage resulting in water pooling around the food processing equipment;
- 24.3 Inappropriate food processing equipment which was difficult to clean (i.e., *Listeria* found on the felt roller brushes);
- 24.4 No antimicrobial solution, such as chlorine, in the water used to wash the cantaloupes; and
- 24.5 No equipment to remove field heat from the cantaloupes before they were placed into cold storage.

25. The prior audit that had been conducted by Mr. Dilorio on or about July 25, 2011, on behalf of Defendant Primus and Bio Food Safety, found many aspects of Jensen Farms’ facility, equipment and procedures that the FDA subsequently heavily criticized to be in “total compliance.”

26. Further, during the prior July 25, 2011 packing house audit conducted by Bio Food Safety, as agent for Primus, Mr. Dilorio failed to observe, or properly downscore or consider, multiple conditions or practices that were in violation of Primus’s audit standards applicable to cantaloupe packing houses, industry standards, and applicable FDA industry guidance. The true and actual state of these conditions and practices was inconsistent and

irreconcilable with the “superior” rating, and 96% score, that Mr. Dilorio ultimately gave to Jensen Farms packing house.

27. These substandard conditions or practices included, but were not limited to:
 - 27.1 Jensen Farms’ inability to control pests;
 - 27.2 Jensen Farms’ use of equipment that was inappropriate for the processing of cantaloupes;
 - 27.3 Jensen Farms’ failure to use an antimicrobial in its wash system, or in the solution used to sanitize processing equipment;
 - 27.4 Jensen Farms’ failure to ensure the appropriate antimicrobial concentration in its wash water, which, as alleged at paragraph 26.3, did not contain any antimicrobial at all;
 - 27.5 Jensen Farms’ failure to have hot water available for purposes of handwashing;
 - 27.6 The design of Jensen Farms’ packing house caused water to pool, creating a harborage site for bacteria;
 - 27.5 Jensen Farms’ failure to precool cantaloupes prior to processing.

28. Many of the substandard conditions and practices cited in the preceding paragraph, and others, should have caused Jensen Farms to receive a score that would have caused its packing house to fail the July 25, 2011 audit.

29. Mr. Dilorio misrepresented the conditions and practices at Jensen Farms’ packing house by giving it a “superior” rating and a score of 96%, despite the existence of conditions and practices that should have caused him to fail the facility. Mr. Dilorio made other material misrepresentations—including, but not limited to, statements about the suitability of equipment

in place at the packing house for the processing of cantaloupes—all of which were relied on by Jensen Farms as justification for continuing to use, rather than changing or improving, the various conditions, practices, and equipment for its processing of cantaloupes.

30. Had the Jensen Farms packing house failed the July 25, 2011 audit, the cantaloupe that caused the decedent's Listeriosis illness and resulting death would not have been distributed by Jensen Farms and Frontera. Further, had the Jensen Farms packing house failed the July 25, 2011 audit, production would not have continued without Jensen Farms first correcting the various conditions and practices that (a) should have caused the packing house to fail the July 25 audit and (b) were proximate causes of the outbreak that is the subject of this action.

31. Defendant Frontera distributed and sold Jensen Farms' Rocky Ford brand cantaloupe to a number of stores in Louisiana, including the store in Baton Rouge where the cantaloupe was purchased by Ms. Babcock.

32. At the time of her Listeriosis illness, the decedent, Elaine Filment Hayes Babcock, was a resident of Baton Rouge, Louisiana. In August 2011, Ms. Babcock there purchased and consumed Jensen Farms' Rocky Ford brand cantaloupe that had been manufactured, distributed, and sold by Defendant Frontera.

33. Onset of symptoms related to Ms. Babcock's Listeriosis illness occurred on or about September 25, 2011, and her son Lance found her unresponsive on the floor of her home. She was rushed to Our Lady of the Lake Hospital, where she was admitted. While there, Ms. Babcock gave a blood sample that would ultimately test positive for one of the strains of *Listeria* implicated in the cantaloupe Listeria outbreak.

34. Ms. Babcock's condition continued to deteriorate while she was hospitalized at Our Lady of the Lake Hospital, and on September 30, 2011, she was transferred to the Carpenter House Hospice. She passed away there during the morning of October 1, 2011.

IV. CAUSE OF ACTION AGAINST FRONTERA :
PRODUCT LIABILITY CLAIM

35. The Defendant Frontera manufactured and sold the adulterated Jensen Farms' Rocky Ford brand cantaloupe that injured the Plaintiff. The Defendant Frontera manufactured the Jensen Farms' Rocky Ford brand cantaloupe for sale to the public.

36. The Jensen Farms' Rocky Ford brand cantaloupe the decedent, Ms. Babcock, purchased and consumed was contaminated with *Listeria monocytogenes* when it left the control of Frontera.

37. The decedent's consumption of the contaminated Jensen Farms' Rocky Ford brand cantaloupe caused her to become infected with *Listeria monocytogenes* and suffer injury and death as a direct and proximate result.

38. Cantaloupe that is contaminated with *Listeria monocytogenes* is unsafe and thus defective when used in a reasonably foreseeable manner—*i.e.*, consuming it. *Listeria monocytogenes*-contaminated cantaloupe is unfit for human consumption, and poses an unreasonable risk of injury to consumers because reasonably prudent persons, having full knowledge of the risk, would find the risk unacceptable.

39. The Jensen Farms' Rocky Ford brand cantaloupe that the decedent, Ms. Babcock, purchased and consumed from the Defendant Frontera was contaminated with *Listeria monocytogenes* and was therefore, as a result, defective and unreasonably dangerous.

40. The decedent's consumption of the contaminated Jensen Farms' Rocky Ford brand cantaloupe was a reasonably anticipated use of the food product.

41. Defendant Frontera is strictly liable to the Plaintiffs for the harm proximately caused by the manufacture and sale of an unsafe and defective cantaloupe.

V. CAUSE OF ACTION AGAINST FRONTERA:
NEGLIGENCE and NEGLIGENCE PER SE

42. Frontera designed, manufactured, distributed, and sold cantaloupes that were contaminated with *Listeria monocytogenes*, a deadly pathogen.

43. Frontera owed a duty to all persons who consumed its products, including the decedent, to manufacture and sell cantaloupe that were safe to eat, that were not adulterated with deadly pathogens, like *Listeria monocytogenes*, and that were not in violation of applicable food and safety regulations. The Defendant breached this duty.

44. Frontera owed a duty to all persons who consumed its products, including the decedent, to ensure that any representations regarding the certifications its products had undergone prior to distribution and sale were made with reasonable care. The Defendant breached this duty.

45. Frontera had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food product, but failed to do so, and was therefore negligent. The decedent was among the class of persons designed to be protected by these statutes, laws, regulations, safety codes or provision pertaining to the manufacture, distribution, storage, and sale of similar food products.

46. Frontera breached the duties owed to the ultimate consumers of its cantaloupe products by committing the following acts and omissions of negligence:

46.1 Failed to adequately maintain or monitor the sanitary conditions of its products, premises, equipment and employees;

- 46.2 Failed to properly operate its facilities and equipment in a safe, clean, and sanitary manner;
- 46.3 Failed to apply its food safety policies and procedures to ensure the safety and sanitary conditions of its food products, premises, and employees;
- 46.4 Failed to apply food safety policies and procedures that met industry standards for the safe and sanitary production of food products, and the safety and sanitary condition of its premises and employees;
- 46.5 Failed to prevent the transmission of *Listeria monocytogenes* to consumers of its cantaloupe;
- 46.6 Failed to properly train its employees and agents how to prevent the transmission of *Listeria monocytogenes* on its premises, from its facility or equipment, or in its food products;
- 46.7 Failed to properly supervise its employees and agents to prevent the transmission of *Listeria monocytogenes* on its premises, from its facility or equipment, or in its food products.
- 46.8 Failed to test its cantaloupes for microbial pathogens, like *Listeria monocytogenes*.

47. Frontera had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of its food products. The Defendant breached this duty.

48. Frontera owed a duty to the decedent to use reasonable care in the manufacture, distribution, and sale of its food products, to prevent contamination with *Listeria monocytogenes*. The Defendant breached this duty.

49. The Plaintiff's injuries proximately and directly resulted from the negligence of the Defendant Frontera, and from the Defendant's violations of statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of food.

**VI. CAUSE OF ACTION AGAINST FRONTERA:
BREACH OF WARRANTY**

50. By offering cantaloupe for sale to the general public, Frontera impliedly warranted that such cantaloupe was safe to eat, that it was not adulterated with a deadly pathogen, and that the cantaloupe had been safely prepared under sanitary conditions.

51. Frontera breached the implied warranties with regard to the food it manufactured and sold to the decedent.

52. Ms. Babcock's injuries proximately and directly resulted from Frontera's breach of implied warranties, and the Plaintiffs are thus entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

**VII: CAUSE OF ACTION AGAINST PRIMUS:
NEGLIGENCE**

53. Defendant Primus, as contractor for the purposes of auditing Jensen Farms ranchlands and packing house, entered into an agency relationship by which Primus is bound by, and liable for, the acts and omissions of negligence of Bio Food Safety and its employees.

54. As the primary contractor for the Jensen Farms audit in July 2011, Primus owed a duty to those people that it knew, or had reason to know, would be the ultimate consumers of

Jensen Farms products, including the decedent, to act with reasonable care in the selection, approval, and monitoring of subcontractors. Primus breached this duty.

55. The audit done by James Dilorio on July 25, 2011 was not done with reasonable care, and constituted a breach of Primus' duty of reasonable care owed to the consumers of Jensen Farms/Frontera cantaloupes. Mr. Dilorio's various acts and omissions of negligence in the conduct of the audit include specifically, but not exclusively, those acts and omissions set forth at paragraphs 24 through 28.

56. Mr. Dilorio's various acts and omissions of negligence, in conjunction with the negligence of Primus in selecting, approving, and monitoring Bio Food Safety as auditor of Jensen Farms' facility, and with Bio Food Safety's negligence in hiring, training, and supervising Mr. Dilorio as auditor, constituted a proximate cause of the decedent's Listeriosis illness and death.

57. Because Bio Food Safety was an agent of Primus for purposes of Mr. Dilorio's negligently conducted audit of Jensen Farms on July 25, 2011, Primus is liable to the Plaintiffs for the Listeriosis illness and death of the decedent.

VIII. DAMAGES

58. As the direct and proximate result of the Defendants' acts and omissions, the decedent and Plaintiffs suffered ordinary, incidental, and consequential damages as would be anticipated to arise under the circumstances, which shall be fully proven at the time of trial.

59. The decedent was 87 years old at the time of her death.

60. Charles Lance Hayes, Jr. and Jude Thaddeus Hayes and their late mother were very close, enjoying each other's companionship a great deal and visited with their mother

frequently. As a result of their mother's untimely death, and particularly the circumstances thereof, Charles Lance Hayes, Jr. and Jude Thaddeus Hayes suffered extreme grief, mental anguish and distress, and sustained an irreparable loss of being deprived of their mother's companionship, love, moral support, guidance and affection. They further suffered extreme and debilitating emotional distress as a result of seeing their mother suffer and die from her illness.

60. Charles Lance Hayes, Jr. and Jude Thaddeus Hayes itemize their damages which they sustained as a proximate result of the illness and death of their mother, as follows:

- A. Deprivation of the companionship, love and affection of their mother;
- B. Grief, mental anguish and distress from the loss of their mother;
- C. Emotional distress from seeing their mother suffer and die from her illness; and
- D. Funeral expenses in the amount of \$13,242.70, hospital and other medical expenses in the amount of \$44,609.83.

61. As beneficiaries of the action of Elaine Filment Hayes Babcock, decedent, for her own injuries and illness proximately caused by the defendants as set forth herein, plaintiffs claim the damages reasonable in the premises for the decedent's injuries set forth herein.

62. Plaintiffs request trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray as follows:

(1) That the Court award the Plaintiffs judgment against Defendants Frontera and Primus in solido for damages as are reasonable in the premises for the death of their mother.

(2) That the Court award all such other sums as shall be determined to fully and fairly compensate the Plaintiffs for all general, special, incidental and consequential damages incurred, or to be incurred, by the Plaintiffs as the direct and proximate result of the acts and omissions of

the Defendants in the total sum of \$2,750,000.00, including (a) deprivation of the companionship, love and affection of their mother, (b) grief, mental anguish and distress from the loss of their mother, (c) emotional distress from seeing their mother suffer and die from her illness, and (d) funeral, hospital and other medical expenses in the total amount of \$57,852.53;

(3) That the Court award judgment in favor of the Plaintiffs in solido against the Defendants for such damages as are reasonable in the premises for the injuries and illness suffered by the decedent, Elaine Filment Hayes Babcock;

(4) That the Court award the Plaintiffs their costs, disbursements, and legal interest;

(5) That the Court award the Plaintiffs the opportunity to amend or modify the provisions of this Complaint as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served;

(6) That should the case proceed to trial, a jury is hereby requested; and

(7) That the Court award such other and further relief as it deems necessary and proper in the circumstances.

DATED this 21st day of September, 2012.

Respectfully submitted,

McMICHAEL, MEDLIN, D'ANNA,
WEDGEWORTH & LAFARGUE, LLC

/s/ Norman I. Lafargue
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ATTORNEYS FOR PLAINTIFFS

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Charles Lance Hayes, Jr. and Jude Thaddeus Hayes, Individually and on Behalf of the Estate of Elaine Filmont Hayes Babcock, Deceased

(b) County of Residence of First Listed Plaintiff E. Baton Rouge Parish
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Norman I. Lafargue - McMichael, Medlin, D'Anna, Wedgeworth & Lafargue, LLC, 400 Texas St., Suite 1150 (71101) P. O. Box 72, Shreveport, LA 71161-0072 (318) 221-1004

DEFENDANTS

Frontera Produce, Ltd. and Primus Group, Inc. d/b/a Primus Labs

County of Residence of First Listed Defendant Hidalgo County, TX
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Recopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

U.S. Civil Statute: 28 USC 1332(a)(2)

Brief description of cause:

Listerial Contamination resulting in wrongful death

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

2,750,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/21/2012

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE