

CAUSE NO. C-4707-13-J

WILL BURKS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
VS.	§	HIDALGO COUNTY, TEXAS
FRONTERA PRODUCE LTD.; and	§	
PRIMUS GROUP, INC., d/b/a PRIMUS	§	
LABS, a foreign corporation,	§	
	§	
Defendants.	§	<u>430th</u> JUDICIAL DISTRICT COURT

PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE COURT:

The plaintiff, Will Burks, files this Original Petition and Jury Demand complaining of the defendants, Frontera Produce Ltd. and Primus Group, Inc. d/b/a Primus Labs, and for cause-of-action respectfully shows this Court as follows:

DISCOVERY CONTROL PLAN

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, the plaintiff intends for discovery to be conducted under Level 3 as provided by Rule 190.3.

PARTIES

2. Plaintiff, Will Burks, is a citizen and resident of the State of Texas, Hidalgo County.
3. The Defendant Frontera Produce Ltd. (“Frontera”) is a corporation organized and existing under the laws of the State of Texas. At all times relevant hereto, Frontera was a manufacturer, distributor and seller of agricultural products in Texas, including cantaloupe. Frontera’s principal place of business is located in the State of Texas. Frontera Produce Ltd. may be served with process via certified mail, return receipt requested at its place of business at: 1321 Frontera Road, Edinburg,

Texas 78541.

4. The Defendant Primus Group, Inc. d/b/a “Primus Labs” (“Primus”), is a corporation organized and existing under the laws of the State of California, with its principal place of business in California as well. At all times relevant to this Complaint, 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 Colorado. Primus retained the services of certain subcontractors, including a Texas company called Bio Food Safety, to provide auditing services, including the audit described in more detail at paragraph 23. Primus Group, Inc. d/b/a “Primus Labs” has its principal office located at: 2810 Industrial Parkway, Santa Monica, California 93455. Primus Group, Inc. d/b/a “Primus Labs” can be served with process via certified mail to the Texas Secretary of State, Service of Process, P. O. Box 12079, Austin, TX 78711-2079.

ASSUMED NAMES

6. Pursuant to Rule 28 of the Texas Rules of Civil Procedure, plaintiff hereby brings suit against all partnerships, unincorporated associations, individuals, entities, and private corporations doing business under the assumed name of or including the words: Frontera Produce or Primus Group.

JURISDICTION AND VENUE

7. The amount in controversy herein, exclusive of costs and interest, exceeds the minimal jurisdictional limits of this Court.

8. Venue is proper in Hidalgo County, Texas, pursuant to Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because the defendants conduct business in Hidalgo County.

9. As required by Texas Rule of Civil Procedure 47, Plaintiff pleads that he seeks monetary relief in excess of \$1,000,000. However, as stated below, the Plaintiff demands this case be tried before a jury, at which time said jury shall determine the monetary relief awarded.

FACTUAL BACKGROUND

The Outbreak

10. On September 2, 2011, the Colorado Department of Public Health and the 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, a Colorado company, and distributed by Defendant Frontera.

11. A total of 147 persons infected with any of the five outbreak-associated strains of *Listeria monocytogenes* were reported to CDC from 28 states. The number of infected persons identified in each state was as follows: Alabama (1), Arkansas (1), California (4), Colorado (40), Idaho (2), Illinois (4), Indiana (3), Iowa (1), Kansas (11), Louisiana (2), Maryland (1), Missouri (7), Montana (2), Nebraska (6), Nevada (1), New Mexico (15), New York (2), North Dakota (2), Oklahoma (12), Oregon (1), Pennsylvania (1), South Dakota (1), Texas (18), Utah (1), Virginia (1), West Virginia (1), Wisconsin (2), and Wyoming (4).

12. Among persons for whom information was available, reported illness onset ranged from July 31, 2011 through October 27, 2011. Ages ranged from <1 to 96 years, with a median age of 77 years. Most cases were over 60 years old. Fifty-eight percent of cases were female. Among the 144

ill persons with available information on whether they were hospitalized, 142 (99%) were hospitalized.

13. Thirty three deaths were reported. Among persons who died, ages ranged from 48 to 96 years, with a median age of 82.5 years. In addition, one woman pregnant at the time of illness had a miscarriage. Seven of the illnesses were related to a pregnancy; three were diagnosed in newborns and four were diagnosed in pregnant women.

14. On or about September 19, 2011, the Food and Drug Administration 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 multiple different strains of *Listeria monocytogenes* associated with the multi-state outbreak of listeriosis.

15. Jensen Farms recalled its Rocky Ford-brand cantaloupes on September 14, 2011 in response to the multi-state outbreak of listeriosis.

The July 25, 2011 Audit of Jensen Farms

16. Prior to the outbreak described in paragraphs 10 through 15, Jensen Farms or Frontera, or both of them, contracted with Defendant Primus to conduct an audit of Jensen Farms' ranchlands and packing house.

17. 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*.

18. Prior to the formation of the contract described at paragraph 16, 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.”

19. 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.

20. After the formation of the contract described at paragraph 16, Primus selected and hired Bio Food Safety, a Texas-based auditing company, 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.

21. Defendant Primus held itself out as an expert 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.

22. By auditing companies involved in the production and distribution of food products, Primus 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*.

23. 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%.

24. 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.

25. 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.

26. 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, the FDA initiated

an environmental assessment at Jensen Farms, in which the FDA was assisted by Colorado state and local officials.

27. 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 harborages 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.

28. 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:

28.1 Condensation from cooling systems draining directly onto the floor;

28.2 Poor drainage resulting in water pooling around the food processing equipment;

28.3 Inappropriate food processing equipment which was difficult to clean (i.e., *Listeria* found on the felt roller brushes);

28.4 No antimicrobial solution, such as chlorine, in the water used to wash the cantaloupes; and

28.5 No equipment to remove field heat from the cantaloupes before they were placed into cold storage.

29. The audit conducted by Mr. Dilorio on or about July 25, 2011, on behalf of Defendant Primus, found many aspects of Jensen Farms' facility, equipment and procedures that the FDA heavily criticized to be in "total compliance."

30. Further, during the 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.

31. These conditions or practices included, but were not limited to:

31.1 Jensen Farms' inability to control pests;

31.2 Jensen Farms' use of equipment that was inappropriate for the processing of cantaloupes;

31.3 Jensen Farms' failure to use an antimicrobial in its wash system, or in the solution used to sanitize processing equipment;

31.4 Jensen Farms' failure to ensure the appropriate antimicrobial concentration in its wash water, which, as alleged at paragraph 28.4, did not contain any antimicrobial at all;

31.5 Jensen Farms' failure to have hot water available for purposes of handwashing;

31.6 The design of Jensen Farms' packing house caused water to pool, creating a harborage site for bacteria;

31.7 Jensen Farms' failure to precool cantaloupes prior to processing.

32. Many of the 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.

33. In addition, 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.

34. Had the Jensen Farms' packing house failed the July 25, 2011 audit, the cantaloupe that caused the Plaintiff's Listeriosis illness 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.

Listeriosis

35. Listeriosis is a serious illness that is caused by eating food contaminated with the bacterium *Listeria monocytogenes*. Although there are other types of *Listeria*, most cases of listeriosis are caused by *Listeria monocytogenes*. *Listeria* is found in soil and water. Vegetables can become contaminated from the soil or from manure used as fertilizer. Animals can carry the bacterium

without appearing ill and can contaminate foods of animal origin, such as meats and dairy products. *Listeria* has been found in a variety of raw foods, such as uncooked meats and unpasteurized (raw) milk or foods made from unpasteurized milk. *Listeria* is killed by pasteurization and cooking; however, in certain ready-to-eat foods, like hot dogs and cold cuts from the deli counter, contamination may occur after cooking but before packaging.

36. Although healthy persons may consume contaminated foods without becoming ill, those at increased risk for infection may become ill with listeriosis after eating food contaminated with even a few bacteria.

37. A person with listeriosis may develop fever, muscle aches, and sometimes gastrointestinal symptoms such as nausea or diarrhea. If infection spreads to the nervous system, symptoms such as headache, stiff neck, confusion, loss of balance, or convulsions can occur. In immune-deficient individuals, *Listeria* can invade the central nervous system, causing meningitis and/or encephalitis (brain infection). Infected pregnant women ordinarily experience only a mild, flu-like illness; however, infection during pregnancy can lead to miscarriage, infection of the newborn or even stillbirth. The most recent data suggest that about 2,500 illnesses and 500 deaths are attributed to listeriosis in the United States annually.

Will Burks's Listeriosis Illness

38. In late August 2011, Mr. Burks consumed a cantaloupe that he had purchased at the HEB grocery store located at 11521 North FM 620 in Austin, Texas. This store, owned and operated by HEB, had received a shipment of Jensen Farms cantaloupe from defendant Frontera under purchase order # 947527 just two days earlier. The cantaloupe that Mr. Burks purchased and consumed was

contaminated by *Listeria monocytogenes*.

39. Mr. Burks experienced symptom onset caused by his *Listeria* infection on or about September 7, 2011. Cerebralspinal fluid collected that day at the Seton Medical Center tested positive for *Listeria monocytogenes*. Test results were confirmed by Laboratory Services at the Texas Department of State Health Services, which also conducted Pulsed Field Gel Electrophoresis (PFGE) on Mr. Burks' isolate (Lab ID number ACB1102729). Results of genetic testing showed that Mr. Burks was infected with strain GX6A16.0001/GX6A12.0001, one of multiple *Listeria monocytogenes* strains associated with illness in the Jensen Farms cantaloupe outbreak.

40. On or about September 7, 2011, Mr. Burks was admitted to the intensive care unit at Seton Medical Center. He remained hospitalized at this facility until October 6, 2011, at which point he was transferred to Hearthstone Health Center's skilled nursing facility for further care and rehabilitation. Mr. Burks remained at Hearthstone Health Center until November 21, 2011, at which point he was discharged to home health care.

41. As a direct result of his Listeriosis illness, Mr. Burks suffered a severe and permanent neurological injury and other complications. He remains deconditioned from his severe illness and prolonged hospitalization, and has endured many hours of speech and other rehabilitation therapies in an effort to recover as fully as possible.

CAUSES OF ACTION

I.

STRICT LIABILITY (against Frontera)

42. The plaintiff reincorporates allegations contained in paragraphs 1 – 41.

43. The food product at issue in this suit was designed, manufactured, constructed, marketed and/or distributed by and through the agents and/or representatives of the defendants Frontera and HEB.

44. The defendant Frontera was regularly engaged in the business of supplying or placing products, like the product in question, in the stream of commerce for use by the consuming public, including the plaintiff. Further, such conduct in selling items such as the food product was solely for commercial purposes.

45. The food product in question remained unchanged from the time it was originally manufactured, distributed and sold by the defendant Frontera until it reached the plaintiff. The product in question was defective and in an unreasonably dangerous condition when it left the hands of defendant Frontera, and remained defective and unreasonably dangerous at all times thereafter until it ultimately caused the plaintiff's illness and damages.

46. At the time the product was placed into the stream of commerce, it was, or should have been, reasonably expected and foreseeable that the food product would be used by persons such as plaintiff in the manner and application in which it was being used, *i.e.* for consumption.

47. At the time the food product left control of the defendant Frontera, it was defective and unreasonably dangerous in that it was not adequately manufactured or marketed to minimize the risk of injury or death. Specifically, the food was contaminated with *Listeria monocytogenes*.

48. The above unreasonably dangerous defects, among others, in the product in question were the proximate and producing cause of the plaintiff's damages.

49. The plaintiff further contends that defendant Frontera is not entitled to a rebuttal presumption

that they are not liable for any injury to plaintiff caused by their formulation, labeling or design of the food product because they had not established that the product's formulation, labeling and design complied with the mandatory standards adopted by the Federal Government or agency or that such standards apply to this product. Additionally, in the event that the defendant Frontera does establish compliance with a standard, the plaintiff will present evidence that the standard is inadequate to protect the public from unreasonable risks of injury or damage.

II.

NEGLIGENCE, NEGLIGENCE PER SE (against Frontera)

50. The plaintiff reincorporates allegations contained in paragraphs 1 – 49.

51. The defendant Frontera owed a duty to the plaintiff to take reasonable care to prevent the manufacture, distribution, and sale of food products contaminated with *Listeria monocytogenes* or other foodborne pathogens.

52. The defendant Frontera owed a duty to the plaintiff to maintain its premises, equipment, and facilities, and supervise their employees, in a reasonable manner to prevent the contamination of the food products that they manufactured, distributed and/or sold by *Listeria monocytogenes*, or other pathogens.

53. The defendant Frontera owed a duty to the plaintiff to comply with all applicable laws and regulations relating to the manufacture, distribution, and sale of food, requiring that such food be free of pathogens, and unadulterated.

54. The plaintiff was among the class of persons, namely consumers, intended to be protected by laws related to the manufacture, distribution, and sale of food that was free from pathogens and

unadulterated.

55. The defendant Frontera breached these duties. These defendants' breach of these duties was the proximate cause of each of the plaintiff's injuries.

III.

BREACH OF IMPLIED WARRANTY(against Frontera)

56. The plaintiff reincorporates allegations contained in paragraphs 1 – 55.

57. The defendant Frontera, through its manufacture, distribution, and sale of food to consumers, impliedly warranted that their food products were fit for their intended purpose, *i.e.* consumption; and would pass through trade without exception.

58. The defendant Frontera, in manufacturing, distributing, and selling food products contaminated with *Listeria monocytogenes*, breached these implied warranties.

59. The defendant Frontera's breach of these implied warranties was the proximate cause of the plaintiff's injuries.

IV.

NEGLIGENCE (against Primus)

60. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 59, above, as though set forth fully herein.

61. Defendant Primus, as principal in the agency relationship between itself and Bio Food Safety, the auditor that conducted the audit of Jensen Farms ranchlands and packing house described at paragraph 23, is bound by, and liable for, the acts and omissions of negligence of Bio Food Safety and its employees.

62. 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 Plaintiff, to act with reasonable care in the selection, approval, and monitoring of subcontractors. Primus breached this duty.

63. The audit done by James Dilorio on July 25, 2011 was not done with reasonable care, and constituted a breach of the duty of reasonable care that Primus 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 29 through 34.

64. 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 Plaintiff's Listeriosis infection and related illness, and the Plaintiffs' associated injuries and damages.

65. 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, Defendant Primus is liable to the Plaintiffs for the Plaintiffs' injuries, damages and losses.

DAMAGES

66. As a result of the acts and/or omissions of the defendants, the plaintiff suffered significant physical and emotional injury; and economic loss and will continue to do so in the future. The plaintiff is entitled to all damages allowed under Texas law, including but not limited to, pain and

suffering (past and future), medical expenses (past and future), physical impairment (past and future), and lost earning capacity (past and future).

INTEREST

67. The plaintiff claims pre-judgment and post-judgment interest at the maximum amount allowed by law.

DEMAND FOR A JURY TRIAL

68. The plaintiff hereby demands that this case be set for a trial by jury. The cost for a jury trial is enclosed with the filing of this, the plaintiff's Original Petition and Jury Demand.

WHEREFORE, PREMISES CONSIDERED, the plaintiff respectfully prays that upon final trial of this matter, they recover a judgment against the defendant that includes:

- (a) a judgment from the defendants, in an amount sufficient to fully compensate the plaintiff for his damages and in an amount that exceeds the minimal jurisdictional limits of this Court;
- (b) pre-judgment interest as provided by law;
- (c) post-judgment interest as provided by law;
- (d) cost of suit; and
- (e) all such other and further relief, both general and special, at law or in equity, to which the plaintiff may show himself justly entitled.

Respectfully submitted,

/s/ Andrew L. Payne

ANDREW L. PAYNE

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