

DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, CO 80202	
Plaintiff: ISAAK MARGOLIN Defendants: FRONTERA PRODUCE, LTD. a foreign corporation; PRIMUS GROUP, INC. d/b/a PRIMUS LABS, a foreign corporation; and JOHN DOES 1-10	▲COURT USE ONLY▲
Attorneys for Plaintiff: John Riley, Esq. No. 18962 Montgomery Little & Soran, P.C. 5445 DTC Parkway, Suite 800 Greenwood Village, Colorado 80111 Telephone: 303.773.8100 Facsimile: 303.220.0412 Email: jriley@montgomerylittle.com	Case No.: 2013CV33461 Division:
COMPLAINT	

COMES NOW the Plaintiff, by and through his attorneys of record, Montgomery Little & Soran, PC, and Marler Clark, LLP, PS, to file this Complaint and allege as follows:

PARTIES

1. The Plaintiff Isaak Margolin, at all times relevant, resided in Denver, Denver County, Colorado.

2. 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 Colorado, including cantaloupe. Frontera’s principal place of business is located in the State of Texas.

3. 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 20.

4. Upon information and belief, the Defendants John Does 1-10 are entities who participated in the manufacture, distribution, and/or sale of the contaminated food product that was the proximate cause of the Plaintiff's injuries, and whose identities are not known to the Plaintiffs at this time. The Plaintiff will seek leave of the Court to amend this Complaint at such time that the identities of these parties become known.

JURISDICTION AND VENUE

5. This Court is vested with jurisdiction over the Defendants because the Defendants conduct business within the State of Colorado.

6. Pursuant to C.R.C.P. 98, venue of this action is proper in Denver County, because the cause of action arose in this county and the Defendants transacted business here.

GENERAL ALLEGATIONS

The Outbreak

7. 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.

8. 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).

9. 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.

10. 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.

11. 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's packing facility. Tests confirmed that the *Listeria monocytogenes* found in the samples matches one of the multiple different strains of *Listeria monocytogenes* associated with the multi-state outbreak of listeriosis.

12. 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

13. Prior to the outbreak described in paragraphs 7 through 12, Jensen Farms or Frontera, or both of them, contracted with Defendant Primus to conduct an audit of Jensen Farms's ranchlands and packinghouse.

14. 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*.

15. Prior to the formation of the contract described at paragraph 13, 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.”

16. 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.

17. After the formation of the contract described at paragraph 13, 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.

18. 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.

19. 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*.

20. Bio Food Safety auditor James Dilorio conducted an audit at Jensen Farms's 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 packinghouse a "superior" rating, and a score of 96%.

21. 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.

22. 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.

23. After isolating at least three of the five outbreak strains of *Listeria monocytogenes* from Jensen Farms's packinghouse 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.

24. 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.

25. 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:

25.1 Condensation from cooling systems draining directly onto the floor;

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

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

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

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

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

27. Further, during the July 25, 2011 packinghouse 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 packinghouses, 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’s packinghouse.

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

28.1 Jensen Farms’s inability to control pests;

28.2 Jensen Farms’s use of equipment that was inappropriate for the processing of cantaloupes;

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

28.4 Jensen Farms's failure to ensure the appropriate antimicrobial concentration in its wash water, which, as alleged at paragraph 25.4, did not contain any antimicrobial at all;

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

28.6 The design of Jensen Farms's packinghouse caused water to pool, creating a harborage site for bacteria;

28.7 Jensen Farms's failure to precool cantaloupes prior to processing.

29. 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 packinghouse to fail the July 25, 2011 audit.

30. In addition, Mr. Dilorio misrepresented the conditions and practices at Jensen Farms's packinghouse 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 packinghouse 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.

31. Had the Jensen Farms's packinghouse 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 packinghouse 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 packinghouse to fail the July 25 audit and (b) were proximate causes of the outbreak that is the subject of this action.

Listeriosis

32. 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.

33. 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.

34. 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.

Isaak Margolin's *Listeria* Illness

35. In August 2011, Isaak Margolin purchased two contaminated cantaloupes at M&I International Market in Denver, where he frequently shopped. The cantaloupes were contaminated by *Listeria Monocytogenes*, and had been grown by Jensen Farms and distributed to M & I International Market by Defendant Frontera. Mr. Margolin consumed the cantaloupes, causing his *Listeria* infection and related illness.

36. Mr. Margolin experienced symptom onset on August 28, 2011. On August 31, 2011, he was seen in the Emergency Department at Rose Medical Center in Denver, Colorado. Emergency staff obtained a blood specimen that tested positive for *Listeria monocytogenes* at the hospital laboratory. Test results were confirmed by the Laboratory Services Division at the Colorado Department of Public Health and Environment (CDPHE). The state laboratory conducted Pulsed Field Gel Electrophoresis (PFGE) on an isolate (CDPHE ID#HUM-2011024190) cultured from Mr. Margolin's blood. Tests showed that Mr. Margolin's strain of *Listeria monocytogenes* was a genetic match to one of the Jensen Farms outbreak strains, classified by the CDPHE laboratory as "06-J & 06-J."

37. Investigators also collected various foods from Mr. Margolin's refrigerator for testing. Whole cantaloupe and two samples of cut cantaloupe were also positive for *Listeria monocytogenes*. The isolate cultured from the whole cantaloupe (CDPHE Specimen ID# ENV-2011010606) was a genetic match to a recognized Jensen Farms strain, 11-E/11-F (GX6A16.0019/GX6A12.0227). One sample of cut cantaloupe (CDPHE Specimen ID# ENV2011010607-6) was positive with Jensen Farms strain 11-D/11-E (GX6A16.0029/GX6A12.0069). A second sample of cut cantaloupe collected from Mr. Margolin's refrigerator (CDPHE Specimen ID# ENV-2011010607-4) was positive with what would be deemed to be a fifth strain associated with Jensen Farms's cantaloupe, CDC Pulsenet PFGE pattern combination GX6A16.1471/GX6A12.2154.

38. Mr. Margolin was hospitalized at Rose Medical Center on or about September 2, 2011. He was discharged on September 8, 2011 to a convalescent care center, where he remained for more than 3 weeks. He was finally discharged on September 27, 2011, at which

point he returned home, continuing to experience medical complications related to his Listeriosis illness.

FIRST CLAIM FOR RELIEF
(Strict Product Liability)

39. The Plaintiff hereby incorporates paragraphs 1 through 38 by this reference as if each paragraph was set forth herein in its entirety.

40. The Defendant Frontera is a product manufacturer and seller within the meaning of the Colorado Product Liability Act, C.R.S. §13-21-401 *et seq.* Frontera manufactured, distributed and/or sold the food that was the source of the Plaintiff's injuries. The *Listeria*-contaminated food that was the source of the Plaintiff's injuries was a product within the meaning of the Act.

41. The food product that was the source of the Plaintiff's illness and injuries was defective, and was unreasonably dangerous to the consumer, because it was contaminated and adulterated with *Listeria*, a potentially deadly pathogen.

42. The food product manufactured and distributed by Frontera reached the Plaintiff without substantial change in the condition in which it was sold.

43. Frontera's defective, *Listeria* contaminated food product caused the Plaintiff's *Listeria* infection and related damages.

44. Frontera was a seller of the defective *Listeria*-contaminated food product.

45. Frontera was engaged in the business of selling food products.

46. Because the Defendant Frontera manufactured and sold the food product that was the source of the Plaintiff's injuries and losses, which food was defective and not reasonably safe due to *Listeria* contamination, Frontera is strictly liable to the Plaintiff for the harm proximately caused by its sale of defective food.

SECOND CLAIM FOR RELIEF
(Breach of Warranties)

47. The Plaintiff hereby incorporates paragraphs 1 through 46 by this reference as if each paragraph was set forth herein in its entirety.

48. The Defendant Frontera owed a duty to the Plaintiff to manufacture and sell a food product that conformed to its express and implied warranties, including, but not limited to, the implied warranty of merchantability and the implied warranty of fitness for a particular use or purpose.

49. The food product manufactured and sold by the Defendant Frontera was contaminated with the *Listeria* bacteria. Such contaminated food products would not pass without exception in the trade, and the sale of such food products was thus in breach of the implied warranty of merchantability.

50. The food product manufactured and sold by the Defendant Frontera was contaminated with the *Listeria* bacteria, and was not fit for the uses and purposes intended by either the Plaintiff or the Defendants, *i.e.*, human consumption. The sale was thus a breach of the implied warranty of fitness for its intended use.

51. Because the Defendant Frontera manufactured and sold food that was in breach of its express and implied warranties, Frontera is liable to the Plaintiff for the harm proximately caused by its sale of contaminated food.

THIRD CLAIM FOR RELIEF
(Negligence and Negligence *per se*)

52. The Plaintiff hereby incorporates paragraphs 1 through 51 by this reference as if each paragraph was set forth herein in its entirety.

53. The Defendant Frontera negligently manufactured, distributed and sold a food product that was not reasonably safe.

54. The Defendant Frontera was negligent in manufacturing, distributing and selling a product that was not reasonably safe because adequate warnings or instructions were not provided, including, but not limited to, the warning that its product may contain *Listeria*, and thus should not be given to, or eaten by, people.

55. The Defendant 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, including, but not limited to, the Federal Food, Drug, and Cosmetics Act, which bans the manufacture, sale and distribution of any “adulterated” food, but failed to do so.

56. In the manufacture and production of its finished product, the Defendant Frontera owed to the Plaintiff a duty to use supplies and raw materials that were in compliance with applicable federal, state, and local laws, ordinances and regulations; that were from safe and reliable sources; and that were clean, wholesome, free from spoilage and adulteration, and safe for human consumption, but failed to do so.

57. The Plaintiff is among the class of persons designed to be protected by the statutory and regulatory provisions pertaining to the Defendant Frontera’s manufacture, distribution, storage, labeling, and sale of food.

58. As a result of the negligent acts and omissions of Defendant Frontera, and as a result of its violation of statutes designed to protect the Plaintiff from contaminated foods, Frontera is liable to the Plaintiff for his *Listeria* illness and for associated injuries and losses.

FOURTH CLAIM FOR RELIEF
(Negligence against Defendant Primus)

59. Plaintiff realleges and incorporates each and every allegation contained in paragraphs 1 through 58, above, as though set forth fully herein.

60. 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 packinghouse described at paragraph 20, is bound by, and liable for, the acts and omissions of negligence of Bio Food Safety and its employees.

61. 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.

62. 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 26 through 31.

63. 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's 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 Plaintiff's associated injuries and damages.

64. 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, and because Primus committed acts and omissions of negligence that constituted a proximate cause of the Plaintiffs' injuries and damages, Defendant Primus is liable to the Plaintiff for his injuries, damages and losses.

DAMAGES

65. The Plaintiff hereby incorporates paragraphs 1 through 64 by this reference as if each paragraph was set forth herein in its entirety.

66. The Plaintiff has suffered general and special, incidental and consequential damages as the direct and proximate result of the acts and omissions of the Defendants, which damages shall be fully proven at the time of trial. Such damages include, but not limited to,

damages for loss of enjoyment of life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress and future emotional distress; pharmaceutical expenses, past and future; wage loss; loss of consortium; and other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays:

A. That the Court award the Plaintiff judgment against the Defendants in such sums as shall be determined to fully and fairly compensate the Plaintiff for all general, special, incidental and consequential damages incurred, or to be incurred, by the Plaintiff as the direct and proximate result of the acts and omissions of the Defendants;

B. That the Court award the Plaintiff his costs, including experts fees, and reasonable attorneys' fees incurred;

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

PLAINTIFF HEREBY DEMANDS TRIAL TO A JURY OF SIX PERSONS ON ALL ISSUES SO TRIABLE.

DATED: August 6, 2013

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