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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(NORTHERN DIVISION)

Donna Kay Wells Lloyd, as Personal)
Representative for the Estate of Clarence)
D. Wells, deceased,)

Plaintiff,)

CIVIL NO.:

v.)

FRONTERA PRODUCE, LTD.,)
a foreign corporation)
1321 Frontera Road)
Edinburg, Texas 78540)

and)

PRIMUS GROUP, INC., d/b/a PRIMUS)
LABS, a foreign corporation)
2810 Industrial Parkway)
Santa Maria, California 93455)

and)

John Does 1-10,)

Defendants.)

COMPLAINT

COMES NOW the plaintiff, DONNA KAY WELLS LLOYD, as personal representative for the estate of the decedent, Clarence D. Wells, by and through her attorneys of record, Marler Clark, LLP, PS, and Ward and Klein, Chartered, and alleges as follows:

COMPLAINT FOR DAMAGES - 1

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1 **I. PARTIES**

2 1.1 At the time of the *Listeria* illness and death that are the subject of this action, the
3 decedent Clarence D. Wells resided with his daughter, the plaintiff Donna Kay Wells Lloyd, in
4 Catonsville, Maryland. The plaintiff therefore resides within the jurisdiction of this Court, and is a
5 citizen of the State of Maryland.

6 1.2 The defendant Frontera Produce, Ltd. (“Frontera”) is a corporation organized and
7 existing under the laws of the State of Texas. At all times relevant hereto, Frontera was a
8 manufacturer, distributor and seller of agricultural products in Maryland, including cantaloupe.
9 Frontera’s principal place of business is 1321 Frontera Road, Edinburg, Texas 78540. The
10 defendant Fronterra is, therefore, a citizen of the State of Texas, and is not a citizen of the State of
11 Maryland.

12 1.3 The Defendant Primus Group, Inc. d/b/a “Primus Labs” (Primus), is a corporation
13 organized and existing under the laws of the State of California, with its principal place of business
14 located at 2810 Industrial Parkway, Santa Maria, California 93455. At all times relevant to this
15 Complaint, Primus was a company that, among other things, provided auditing services for
16 agricultural and other businesses involved in the manufacture and sale of food products, including
17 in the State of Colorado. Primus retained the services of certain subcontractors, including a Texas
18 company called Bio Food Safety, to provide auditing services, including the audit described in
19 more detail at paragraph 3.14.

20 1.4 Upon information and belief, the Defendants John Does 1-10 are entities who
21 participated in the manufacture, distribution, and/or sale of the contaminated food product that was

1 the proximate cause of the Plaintiff's injuries, and whose identities are not known to the Plaintiff at
2 this time. The Plaintiff will seek leave of the Court to amend this Complaint at such time that the
3 identities of these parties become known.

4 **II. JURISDICTION AND VENUE**

5 2.1 This Court has jurisdiction over the subject matter of this action pursuant to 28 USC
6 § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is between
7 citizens of different states, and because the defendants each have certain minimum contacts with
8 the State of Maryland such that the maintenance of the suit in this district does not offend
9 traditional notions of fair play and substantial justice.

10 2.2 Venue in the United States District Court for the District of Maryland is proper
11 pursuant to 28 USC § 1391(a)(2) because a substantial part of the events or omissions giving rise to
12 the plaintiffs' claims and causes of action occurred in this judicial district, and because the
13 defendants Jensen Farms and Frontera were subject to personal jurisdiction in this judicial district
14 at the time of the commencement of the action.

15 **III. GENERAL ALLEGATIONS**

16 **The Outbreak**

17 3.1 On September 2, 2011, the Colorado Department of Public Health and the
18 Environment (CDPHE) announced that it was investigating an outbreak of Listeriosis. On
19 September 9, 2011, CDPHE announced that the likely source of the *Listeria* outbreak was
20 cantaloupe. On September 12, 2011 CDPHE announced that the outbreak of *Listeria* was linked to
21 cantaloupe from the Rocky Ford (Colorado) growing region. It was subsequently determined that

1 contaminated cantaloupes were grown by Jensen Farms, a Colorado company, and distributed by
2 Defendant Frontera.

3 3.2 A total of 147 persons infected with any of the five outbreak-associated strains of
4 *Listeria monocytogenes* were reported to CDC from 28 states. The number of infected persons
5 identified in each state was as follows: Alabama (1), Arkansas (1), California (4), Colorado (40),
6 Idaho (2), Illinois (4), Indiana (3), Iowa (1), Kansas (11), Louisiana (2), Maryland (1), Missouri
7 (7), Montana (2), Nebraska (6), Nevada (1), New Mexico (15), New York (2), North Dakota (2),
8 Oklahoma (12), Oregon (1), Pennsylvania (1), South Dakota (1), Texas (18), Utah (1), Virginia (1),
9 West Virginia (1), Wisconsin (2), and Wyoming (4).

10 3.3 Among persons for whom information was available, reported illness onset ranged
11 from July 31, 2011 through October 27, 2011. Ages ranged from <1 to 96 years, with a median
12 age of 77 years. Most cases were over 60 years old. Fifty-eight percent of cases were female.
13 Among the 144 ill persons with available information on whether they were hospitalized, 142
14 (99%) were hospitalized.

15 3.4 Thirty three deaths were reported. Among persons who died, ages ranged from 48
16 to 96 years, with a median age of 82.5 years. In addition, one woman pregnant at the time of
17 illness had a miscarriage. Seven of the illnesses were related to a pregnancy; three were diagnosed
18 in newborns and four were diagnosed in pregnant women.

19 3.5 On or about September 19, 2011, the Food and Drug Administration announced that
20 it found *Listeria monocytogenes* in samples of Jensen Farms' Rocky Ford-brand cantaloupe taken
21 from a Denver-area store and on samples taken from equipment and cantaloupe at the Jensen

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

4 3.6 Jensen Farms recalled its Rocky Ford-brand cantaloupes on September 14, 2011 in
5 response to the multi-state outbreak of listeriosis.

6 **The July 25, 2011 Audit of Jensen Farms**

7 3.7 Prior to the outbreak described in paragraphs 3.1 through 3.6, Jensen Farms or
8 Frontera, or both of them, contracted with Defendant Primus to conduct an audit of Jensen Farms'
9 ranchlands and packing house.

10 3.8 It was the intent of these contracting parties—i.e. Jensen Farms or Frontera, or both
11 of them, and Primus—to ensure that the facilities, premises, and procedures used by Jensen Farms
12 in the production of cantaloupes met or exceeded applicable standards of care related to the
13 production of cantaloupe, including, but not limited to, good agricultural and manufacturing
14 practices, industry standards, and relevant FDA industry guidance. It was further the intent of
15 these contracting parties to ensure that the food products that Jensen Farms produced, and that
16 Frontera distributed, would be of high quality for consumers, and would not be contaminated by
17 potentially lethal pathogens, like *Listeria*.

18 3.9 Prior to the formation of the contract described at paragraph 3.7, Frontera
19 represented to the public generally, and specifically to the retail sellers of its produce products,
20 including cantaloupes, that its various products were "Primus Certified."

21

1 3.10 It was Frontera's intent and expectation that the representation set forth in the
2 preceding paragraph would serve as an inducement for the purchase of its various products,
3 including cantaloupes, and that consumers, ultimate retailers, and itself would all benefit from
4 Primus's audit and certification by having a high quality product.

5 3.11 After the formation of the contract described at paragraph 3.7, Primus selected and
6 hired Bio Food Safety, a Texas-based auditing company, to conduct the audit of Jensen Farms. Bio
7 Food Safety thereby became Primus's subcontractor, and agent, for the limited purpose of auditing
8 Jensen Farms.

9 3.12 Defendant Primus held itself out as an expert in the field of food safety, including
10 specifically, though not exclusively, in the analysis and assessment of food safety procedures,
11 facility design and maintenance, and Good Agricultural and Manufacturing Practices, and other
12 applicable standards of care incumbent on producers of agricultural products, including
13 cantaloupes.

14 3.13 By auditing companies involved in the production and distribution of food products,
15 Primus intended to aid such companies in ensuring that the food products produced were of high
16 quality, were fit for human consumption, and were not contaminated by a potentially lethal
17 pathogen, like *Listeria*.

18 3.14 Bio Food Safety auditor James Dilorio conducted an audit at Jensen Farms'
19 ranchlands and packing facility on or about July 25, 2011, roughly one week before the CDC
20 identified the first victim of the cantaloupe *Listeria* outbreak. Mr. Dilorio, as employee and agent
21

1 of Bio Food Safety, and as agent of Primus, gave the Jensen Farms packing house a “superior”
2 rating, and a score of 96%.

3 3.15 On or about September 10, 2011, officials from both FDA and Colorado, conducted
4 an inspection at Jensen Farms during which FDA collected multiple samples, including whole
5 cantaloupes and environmental (non-product) samples from within the facility, for purposes of
6 laboratory testing.

7 3.16 Of the 39 environmental samples collected from within the facility, 13 were
8 confirmed positive for *Listeria monocytogenes* with pulsed-field gel electrophoresis (PFGE)
9 pattern combinations that were indistinguishable from at least three of the five outbreak strains
10 collected from outbreak cases. Cantaloupe collected from the firm’s cold storage during the
11 inspection also tested positive for *Listeria monocytogenes* with PFGE pattern combinations that
12 were indistinguishable from at least two of the five outbreak strains.

13 3.17 After isolating at least three of the five outbreak strains of *Listeria monocytogenes*
14 from Jensen Farms’ packing house and whole cantaloupes collected from cold storage, the FDA
15 initiated an environmental assessment at Jensen Farms, in which the FDA was assisted by
16 Colorado state and local officials.

17 3.18 The environmental assessment at Jensen Farms occurred on September 22-23, 2011.
18 Findings from this assessment, set forth in the FDA’s report dated October 19, 2011, included, but
19 were not limited to, the following:

20 a. **Facility Design:** Certain aspects of the packing facility, including the location of a
21 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

1 reservoirs for *Listeria monocytogenes* and the pooling of water in close proximity to
2 packing equipment, including conveyors, may have extended and spread the pathogen to
3 food contact surfaces. Samples collected from areas where pooled water had gathered
4 tested positive for an outbreak strain of *Listeria monocytogenes*. Therefore, this aspect of
5 facility design is a factor that may have contributed to the introduction, growth, or spread of
6 *Listeria monocytogenes*. This pathogen is likely to establish niches and harborage sites in
7 refrigeration units and other areas where water pools or accumulates.

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

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

21 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.

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

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

14 3.19 In October and December 2011, FDA officials participated in briefings with the
15 House Committee on Energy and Commerce that were held to further investigate the likely causes
16 of the *Listeria* outbreak that is the subject of this action. At these briefings, FDA officials cited
17 multiple failures at Jensen Farms, which, according to a report issued by the Committee, “reflected
18 a general lack of awareness of food safety principles.” Those failures included:

19 3.19.1 Condensation from cooling systems draining directly onto the floor;

20 3.19.2 Poor drainage resulting in water pooling around the food processing
21 equipment;

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

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

1 3.19.5 No equipment to remove field heat from the cantaloupes before they were
2 placed into cold storage.

3 3.20 The audit conducted by Mr. Dilorio on or about July 25, 2011, on behalf of
4 Defendant Primus, found many aspects of Jensen Farms' facility, equipment and procedures that
5 the FDA heavily criticized to be in "total compliance."

6 3.21 Further, during the July 25, 2011 packing house audit conducted by Bio Food
7 Safety, as agent for Primus, Mr. Dilorio failed to observe, or properly downscore or consider,
8 multiple conditions or practices that were in violation of Primus's audit standards applicable to
9 cantaloupe packing houses, industry standards, and applicable FDA industry guidance. The true
10 and actual state of these conditions and practices was inconsistent and irreconcilable with the
11 "superior" rating, and 96% score, that Mr. Dilorio ultimately gave to Jensen Farms packing house.

12 3.22 These conditions or practices included, but were not limited to:

13 3.22.1 Jensen Farms' inability to control pests;

14 3.22.2 Jensen Farms' use of equipment that was inappropriate for the processing of
15 cantaloupes;

16 3.22.3 Jensen Farms' failure to use an antimicrobial in its wash system, or in the
17 solution used to sanitize processing equipment;

18 3.22.4 Jensen Farms' failure to ensure the appropriate antimicrobial concentration
19 in its wash water, which, as alleged at paragraph 3.19.4, did not contain any antimicrobial at
20 all;

21

1 3.22.5 Jensen Farms’ failure to have hot water available for purposes of
2 handwashing;

3 3.22.6 The design of Jensen Farms’ packing house caused water to pool, creating a
4 harborage site for bacteria;

5 3.22.7 Jensen Farms’ failure to precool cantaloupes prior to processing.

6 3.23 Many of the conditions and practices cited in the preceding paragraph, and others,
7 should have caused Jensen Farms to receive a score that would have caused its packing house to
8 fail the July 25, 2011 audit.

9 3.24 In addition, Mr. Dilorio misrepresented the conditions and practices at Jensen
10 Farms’ packing house by giving it a “superior” rating and a score of 96%, despite the existence of
11 conditions and practices that should have caused him to fail the facility. Mr. Dilorio made other
12 material misrepresentations—including, but not limited to, statements about the suitability of
13 equipment in place at the packing house for the processing of cantaloupes—all of which were
14 relied on by Jensen Farms as justification for continuing to use, rather than changing or improving,
15 the various conditions, practices, and equipment for its processing of cantaloupes.

16 3.25 Had the Jensen Farms’ packing house failed the July 25, 2011 audit, the cantaloupe
17 that caused the Plaintiffs’ Listeriosis illness would not have been distributed by Jensen Farms and
18 Frontera. Further, had the Jensen Farms packing house failed the July 25, 2011 audit, production
19 would not have continued without Jensen Farms first correcting the various conditions and
20 practices that (a) should have caused the packing house to fail the July 25 audit and (b) were
21 proximate causes of the outbreak that is the subject of this action.

1 **Listeriosis**

2 3.26 Listeriosis is a serious illness that is caused by eating food contaminated with the
3 bacterium *Listeria monocytogenes*. Although there are other types of *Listeria*, most cases of
4 listeriosis are caused by *Listeria monocytogenes*. *Listeria* is found in soil and water. Vegetables
5 can become contaminated from the soil or from manure used as fertilizer. Animals can carry the
6 bacterium without appearing ill and can contaminate foods of animal origin, such as meats and
7 dairy products. *Listeria* has been found in a variety of raw foods, such as uncooked meats and
8 unpasteurized (raw) milk or foods made from unpasteurized milk. *Listeria* is killed by
9 pasteurization and cooking; however, in certain ready-to-eat foods, like hot dogs and cold cuts
10 from the deli counter, contamination may occur after cooking but before packaging.

11 3.27 Although healthy persons may consume contaminated foods without becoming ill,
12 those at increased risk for infection may become ill with listeriosis after eating food contaminated
13 with even a few bacteria.

14 3.28 A person with listeriosis may develop fever, muscle aches, and sometimes
15 gastrointestinal symptoms such as nausea or diarrhea. If infection spreads to the nervous system,
16 symptoms such as headache, stiff neck, confusion, loss of balance, or convulsions can occur. In
17 immune-deficient individuals, *Listeria* can invade the central nervous system, causing meningitis
18 and/or encephalitis (brain infection). Infected pregnant women ordinarily experience only a mild,
19 flu-like illness; however, infection during pregnancy can lead to miscarriage, infection of the
20 newborn or even stillbirth. The most recent data suggest that about 2,500 illnesses and 500 deaths
21 are attributed to listeriosis in the United States annually.

1 **Clarence W. Wells' *Listeria* Infection and Death**

2 3.29 In the weeks that preceded his *Listeria* illness and death, the decedent Clarence
3 Wells consumed cantaloupe on multiple occasions, including at least one *Listeria*-contaminated
4 cantaloupe manufactured, distributed, and sold by the defendant Frontera.

5 3.30 Mr. Wells' *Listeria* symptoms began on or about August 23, 2011, when his
6 daughter, Mrs. Wells Lloyd, noticed that he had begun to gain weight due to an accumulation of
7 fluids in his body. By August 25, 2011, Mr. Wells had gained nine additional pounds, and had
8 begun to have difficulties breathing. Upon noticing this, Mrs. Wells Lloyd called her father's
9 primary physician, who instructed her to take Mr. Wells to the hospital immediately.

10 3.31 The same day, August 25, 2011, Mrs. Wells Lloyd took her father to the emergency
11 department at Howard County General Hospital. Shortly after his arrival, however, Mr. Wells was
12 transferred to a John's Hopkins Medical Center facility, where the treating physicians were able to
13 get him stabilized, and then admitted him for further monitoring and treatment.

14 3.32 Mr. Wells remained hospitalized at John's Hopkins over the weekend. On or about
15 Monday morning, August 29, 2011, he lost his appetite completely and was unable to eat.

16 3.33 Wednesday morning, August 31, 2011, Mr. Wells became extremely fevered, and
17 his physicians began to treat his septic illness with antibiotics. Later that morning, Mr. Wells had
18 to be sedated and intubated to help keep his airway open.

19 3.34 Mr. Wells' son and daughter, Mrs. Wells Lloyd, were called to the hospital the
20 morning of August 31, 2011, and found their father unconscious. They never spoke to him, or saw
21 him awake, again. Mr. Wells died the evening of August 31, 2011.

1 that was free of pathogenic bacteria or other substances injurious to human health. Frontera
2 breached this duty.

3 4.5 Frontera owned a duty to the decedent to design, prepare, serve, and sell food that
4 was fit for human consumption, and that was safe to the extent contemplated by a reasonable
5 consumer. Frontera breached this duty.

6 4.6 Decedent suffered injury and damages as a direct and proximate result of the
7 defective and unreasonably dangerous condition of the adulterated food product that Frontera
8 manufactured, distributed, and/or sold.

9 **Breach of Warranty against Frontera—Count II**

10 4.7 Frontera is liable to the plaintiff for breaching express and implied warranties that it
11 made regarding the adulterated product that caused decedent's death. These express and implied
12 warranties included the implied warranties of merchantability and/or fitness for a particular use.
13 Specifically, Frontera expressly warranted, through its sale of food to the public and by the
14 statements and conduct of its employees and agents, that the food it prepared and sold was fit for
15 human consumption and not otherwise adulterated or injurious to health.

16 4.8 Plaintiff alleges that the *Listeria*-contaminated food that Frontera sold to decedent
17 would not pass without exception in the trade and was therefore in breach of the implied warranty
18 of merchantability.

19 4.9 Plaintiff alleges that the *Listeria*-contaminated food that Frontera sold to decedent
20 was not fit for the uses and purposes intended, *i.e.* human consumption, and that this product was
21 therefore in breach of the implied warranty of fitness for its intended use.

1 4.10 As a direct and proximate result of Frontera's breach of warranties, as set forth
2 above, the decedent sustained injuries and damages in an amount to be determined at trial.

3 **Negligence against Frontera—Count III**

4 4.11 Frontera owed to the decedent a duty to use reasonable care in the manufacture,
5 distribution, and sale of its food product, the observance of which duty would have prevented or
6 eliminated the risk that its food product would be contaminated with *Listeria* or any other
7 dangerous pathogen at the time the decedent consumed it. Frontera breached this duty.

8 4.12 Frontera had a duty to comply with all statutes, laws, regulations, or safety codes
9 pertaining to the manufacture, distribution, storage, and sale of its food product, but failed to do so,
10 and was therefore negligent. The decedent was among the class of persons designed to be
11 protected by these statutes, laws, regulations, safety codes or provision pertaining to the
12 manufacture, distribution, storage, and sale of similar food products.

13 4.13 Frontera had a duty to properly supervise, train, and monitor its employees, and to
14 ensure its respective employees' compliance with all applicable statutes, laws, regulations, or
15 safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products,
16 but Frontera failed to do so and was therefore negligent.

17 4.14 Frontera had a duty to use ingredients, supplies, and other constituent materials that
18 were reasonably safe, wholesome, free of defects, and that otherwise complied with applicable
19 federal, state, and local laws, ordinances, and regulations, and that were clean, free from
20 adulteration, and safe for human consumption, but Frontera failed to do so and was therefore
21 negligent.

1 4.15 As a direct and proximate result of Frontera's acts and omissions of negligence, the
2 decedent sustained injuries and damages in an amount to be determined at trial.

3 **Negligence against Primus—Count IV**

4 4.16 Defendant Primus and the Texas company Bio Food Safety, as contractor and sub-
5 contractor respectively for the purposes of auditing Jensen Farms ranchlands and packing house,
6 entered into an agency relationship by which Primus is bound by, and liable for, the acts and
7 omissions of negligence of Bio Food Safety and its employees.

8 4.17 As the primary contractor for the Jensen Farms audit in July 2011, Primus owed a
9 duty to those people that it knew, or had reason to know, would be the ultimate consumers of
10 Jensen Farms products, including the decedent, to act with reasonable care in the selection,
11 approval, and monitoring of subcontractors. Primus breached this duty.

12 4.18 The audit done by James Dilorio on July 25, 2011 was not done with reasonable
13 care, and constituted a breach of the duty of reasonable care that Primus owed to the consumers of
14 Jensen Farms/Frontera cantaloupes. Mr. Dilorio's various acts and omissions of negligence in the
15 conduct of the audit include specifically, but not exclusively, those acts and omissions set forth at
16 paragraphs 3.20 through 3.25.

17 4.19 Mr. Dilorio's various acts and omissions of negligence, in conjunction with the
18 negligence of Primus in selecting, approving, and monitoring Bio Food Safety as auditor of Jensen
19 Farms' facility, and with Bio Food Safety's negligence in hiring, training, and supervising Mr.
20 Dilorio as auditor, constituted a proximate cause of the Decedent's Listeriosis infection and related
21 illness and death, and the Plaintiff's associated injuries and damages.

1 4.20 Because Bio Food Safety was an agent of Primus for purposes of Mr. Dilorio's
2 negligently conducted audit of Jensen Farms on July 25, 2011, and because Primus committed
3 negligent acts and omissions that were a proximate cause of the Decedent's listeriosis illness and
4 death, Defendant Primus is liable to the Plaintiff for the Plaintiff's injuries, damages and losses.

5 **DAMAGES**

6 4.21 The plaintiff has suffered general, special, incidental, and consequential damages as
7 the direct and proximate result of the acts and omissions of the defendants, in an amount that shall
8 be fully proven at the time of trial. These damages include, but are not limited to: damages for
9 general pain and suffering; damages for loss of enjoyment of life, both past and future; medical and
10 medical related expenses, both past and future; travel and travel-related expenses, past and future;
11 emotional distress, past and future; pharmaceutical expenses, past and future; and all other
12 ordinary, incidental, or consequential damages that would or could be reasonably anticipated to
13 arise under the circumstances.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the plaintiff prays for judgment against the defendants as follows:

16 A. Ordering compensation for all general, special, incidental, and consequential
17 damages suffered by the plaintiff as a result of the defendants' conduct;

18 B. Awarding plaintiff her reasonable attorneys fees and costs, to the fullest extent
19 allowed by law; and

20 C. Granting all such additional and/or further relief as this Court deems just and
21 equitable.

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DATED: ~~July~~ August 31, 2013.

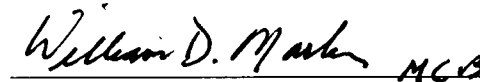
Respectfully submitted,

WARD AND KLEIN, CHARTERED



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Attorneys for Plaintiffs

JURY DEMAND

The plaintiff hereby demands a jury trial.



Michael C. Blackstone, #00976