

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

MICHELLE WAKLEY AND DAVID
PACIOREK, individually and as guardians
of the minor child K.P.,

Plaintiffs,

VS.

FRONTERA PRODUCE, LTD., a Texas
corporation, PRIMUS GROUP, INC d/b/a
PRIMUS LABS, a foreign corporation;
CH ROBINSON WORLDWIDE, INC., a
foreign corporation; ALDI, INC., a domestic
corporation; and JOHN DOES 1-10,

Defendants.

Case No. 1:13-cv-5597

Judge:

Magistrate:

JURY DEMAND

COMPLAINT

COME NOW the Plaintiffs, MICHELLE WAKLEY and DAVID PACIOREK, by and through their attorneys of record, Newland & Newland, LLP, and Marler Clark, L.L.P., P.S., complaining of the defendants, FRONTERA PRODUCE, LTD, PRIMUS GROUP, INC, d/b/a Primus Labs, CH ROBINSON WORLDWIDE, INC., ALDI, INC., and JOHN DOES 1-10, and to allege and state as follows:

I. PARTIES

1. At all times relevant to this action, the Plaintiffs resided in Hamilton County, Indiana, with the minor child K.P. Plaintiffs Michelle Wakley and Dave Paciorek are the natural parents of K.P.

2. 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 Illinois, including Jensen Farms Rocky Ford brand cantaloupe.

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. The Defendant CH Robinson Worldwide, Inc. (CH Robinson), is a corporation organized and existing under the laws of the State of Delaware, and with its principal office located in the State of Minnesota. At all times relevant hereto, CH Robinson distributed and sold a wide variety of fresh produce products, including cantaloupes grown by Jensen Farms, to customers in the Midwest, including to Defendant Aldi, Inc. in the State of Illinois.

5. The Defendant Aldi, Inc. (Aldi), is a domestic corporation with its principal office located in Batavia, Illinois. At all times relevant hereto, Defendant Aldi owned and operated the retail grocery stores located at 14245 South Greystone Drive, in Homer Glen, Illinois and 18901 S. Halstead St., Glenwood, Illinois. At these locations, the Defendant Aldi carried on in the ordinary course of its business the manufacture, distribution, and sale of food products, including Jensen Farm cantaloupes.

6. 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 Plaintiffs' injuries, and whose identities are not known to the

Plaintiffs at this time. The Plaintiffs will seek leave of the Court to amend this Complaint at such time that the identities of these parties become known.

II. FACTS

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' 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' ranchlands and packing house.

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' 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%.

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' 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.

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’ facility, equipment and procedures that the FDA heavily criticized to be in “total compliance.”

27. 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.

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

28.1 Jensen Farms' inability to control pests;

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

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

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

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

28.7 Jensen Farms' 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 packing house to fail the July 25, 2011 audit.

30. 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.

31. Had the Jensen Farms' packing house failed the July 25, 2011 audit, the cantaloupe that caused the Plaintiffs' 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

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.

Michelle Wakley's Consumption of a Jensen Farms Cantaloupe, Her *Listeria* Infection, and K.P.'s premature birth and related injuries

35. In late August 2011, plaintiff David Paciorek's father, Michael Paciorek, purchased a cantaloupe at defendant Aldi's store located at 14245 South Greystone Drive, in Homer Glen, Illinois, or at 18901 S. Halstead St., in Glenwood, Illinois. The cantaloupe was contaminated by *Listeria monocytogenes*, and had been grown by Jensen Farms.

36. Michael Paciorek and his wife Sharon, plaintiff David Paciorek's mother, live in Cook County, Illinois.

37. The Aldi's stores located at 14245 South Greystone Drive, in Homer Glen, Illinois and 18901 S. Halstead St., in Glenwood, Illinois, both received contaminated Jensen

Farms from their respective distribution centers; shortly before Michael Paciorek purchased the cantaloupe described in the preceding paragraph.

38. The contaminated cantaloupes had been sold and distributed to the respective Aldi distribution centers by defendant CH Robinson, who, in turn, had received the contaminated Jensen Farms cantaloupes from defendant Frontera.

39. Michael and Sharon Paciorek visited their townhome in Carmel, Indiana, from August 26 through 28, 2011. Carmel, Indiana is just a short distance from plaintiffs' residence in Fishers, Hamilton County, Indiana. Both towns are in the suburbs of Indianapolis.

40. As was their custom, Michael and Sharon Paciorek packed a cooler full of food, including fresh fruits and vegetables, for their August 26, 2011 trip to the townhome in Carmel, Indiana. They packed the Jensen Farms cantaloupe that Michael Paciorek had recently purchased in the cooler as well.

41. During their trip to the townhome in Carmel, Indiana, Michael and Sharon Paciorek invited the plaintiffs over for a meal. At this meal, plaintiff Michelle Wakley, who was in the second trimester of K.P.'s pregnancy at the time, consumed a portion of the contaminated Jensen Farms cantaloupe that her father-in-law had purchased from defendant Aldi.

42. Plaintiff Michelle Wakley became infected with *Listeria monocytogenes* as a result, and her infection would later be confirmed by analysis of a bodily fluid sample as having a PFGE pattern matching one of the five strains linked to the Jensen Farms cantaloupe *Listeria* outbreak.

43. As a result of her consumption of *Listeria*-contaminated cantaloupe during the second trimester of her pregnancy with K.P., Michelle Wakley developed intense headaches, body aches, fevers and chills around September 10, 2011.

44. On September 21, 2011, these symptoms became much worse. That day, her OB-GYN instructed Michelle Wakley to be seen at the labor and delivery department at St. Vincent Carmel Hospital. Soon after her arrival, Michelle began to have contractions every 2-3 minutes.

45. K.P. was born at 29 weeks gestation in 2011. The initial diagnosis as to the reason for K.P.'s premature birth was stated by physicians to have been premature onset of labor secondary to chorioamnionitis—a bacterial infection of the membranes surrounding the fetus. The bacterial infection was later demonstrated to be *Listeria monocytogenes* that Michelle Wakley had ingested from a contaminated Jensen Farms cantaloupe distributed by Defendant.

46. K.P. would remain hospitalized from the date of her birth through December 19, 2011. During this period, she suffered from many health problems that occurred as a proximate result of her premature birth. These included, among many others, respiratory distress; sepsis; physical pain; hyperglycemia; anemia; jaundice; problems with nutrition, feeding, and weight gain (poor latch, poor coordination, poor nipping, poor suck and tongue control, swallowing difficulties, and inconsistency); and a variety of developmental delays.

47. After discharge from the hospital on December 29, 2011, K.P. has continued to exhibit signs of developmental delay and has consistently had problems with adequate oral intake, and feedings generally. A gastrostomy tube was placed in early December 2011 to facilitate her nutritional intake, given her feeding and swallowing problems, and the tube remains in place to the date of this filing. K.P. continues to receive physical, speech, occupational, and other therapies and treatments to address the many problems related to her premature birth.

48. As a proximate result of her ingestion of *Listeria monocytogenes* from a Jensen Farms cantaloupe distributed by the Defendant, the Plaintiffs have suffered severe economic loss and other general damages in an amount to be determined at trial. To date, medical expenses

related to K.P.'s premature birth total \$342,761.76, and future care requirements, reduced to present value, are forecast to cost between \$340,613 and \$6,956,626.

III. COUNT I
(Strict Product Liability against Frontera, CH Robinson, and Aldi)

49. The plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

50. The Defendants Frontera, CH Robinson, and Aldi manufactured, distributed, and sold the adulterated cantaloupe that injured the Plaintiffs.

51. The Defendants Frontera, CH Robinson, and Aldi manufacture food products, including cantaloupe, for sale to the public.

52. Food that is contaminated by *Listeria monocytogenes* is unsafe when put to the use reasonably foreseeable considering the nature of the product. Namely, *Listeria* contaminated food is unfit for human consumption.

53. The Jensen Farms' Rocky Ford brand cantaloupe that Michael Paciorek purchased, and that Michelle Wakley consumed, was contaminated with *Listeria monocytogenes* when it left the control of Frontera, CH Robinson, and Aldi. The plaintiff Michelle Wakley's consumption of the contaminated food caused her to become infected by *Listeria monocytogenes* and to suffer injuries, including the premature birth of her daughter K.P., as a direct and proximate result.

54. Defendants Frontera, CH Robinson, and Aldi are strictly liable to the Plaintiffs for the harm proximately caused by the manufacture and sale of an unsafe and defective food product.

WHEREFORE, the plaintiffs Michelle Wakley and David Paciorek pray for judgment against the defendants Frontera, CH Robinson, and Aldi in an amount in excess of the minimum

amount allowed to establish jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

IV. COUNT II
(Negligence against Frontera, CH Robinson, and Aldi)

55. The plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

56. Defendants Frontera, CH Robinson, and Aldi designed, manufactured, distributed, and sold cantaloupes that were contaminated with *Listeria monocytogenes*, a deadly pathogen.

57. Defendants Frontera, CH Robinson, and Aldi owed a duty to all persons who consumed its products, including the plaintiff Michelle Paciorek, 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 Defendants Frontera, CH Robinson, and Aldi breached this duty.

58. Defendants Frontera, CH Robinson, and Aldi owed a duty to all persons who consumed its products, including Michelle Wakley, to ensure that any representations regarding the certifications its products had undergone prior to distribution and sale were made with reasonable care. Defendants Frontera, CH Robinson, and Aldi breached this duty.

59. Defendants Frontera, CH Robinson, and Aldi had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of their food products, but failed to do so, and were therefore negligent. Michelle Wakley 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.

60. Defendants Frontera, CH Robinson, and Aldi breached the duties owed to the ultimate consumers of their cantaloupe products by committing the following acts and omissions of negligence:

60.1 Failed to adequately maintain or monitor the sanitary conditions of their products, premises, equipment and employees, and the products, premises, equipment and employees of other entities in the supply chain of the subject cantaloupe;

60.2 Failed to properly operate their facilities and equipment in a safe, clean, and sanitary manner;

60.3 Failed to apply their food safety policies and procedures to ensure the safety and sanitary conditions of their food products, premises, and employees;

60.4 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 their premises and employees;

60.5 Failed to prevent the transmission of *Listeria monocytogenes* to consumers of their cantaloupe;

60.6 Failed to properly train their employees and agents how to prevent the transmission of *Listeria monocytogenes* on their premises, from their facility or equipment, or in their food products;

60.7 Failed to properly supervise their employees and agents to prevent the transmission of *Listeria monocytogenes* on their premises, from their facility or equipment, or in their food products.

60.8 Failed to test their cantaloupes for microbial pathogens, like *Listeria monocytogenes*.

61. Defendants Frontera, CH Robinson, and Aldi had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of their food products. The Defendants Frontera, CH Robinson, and Aldi breached this duty.

62. Defendants Frontera, CH Robinson, and Aldi owed a duty to the plaintiffs to use reasonable care in the manufacture, distribution, and sale of their food products, to prevent contamination with *Listeria monocytogenes*. The Defendants Frontera, CH Robinson, and Aldi breached this duty.

63. The Plaintiffs' injuries proximately and directly resulted from the negligence of the Defendants Frontera, CH Robinson, and Aldi, and from these defendants' violations of statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of food.

WHEREFORE, the plaintiffs Michelle Wakley and David Paciorek pray for judgment against the defendants Frontera, CH Robinson, and Aldi in an amount in excess of the minimum amount allowed to establish jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

V. COUNT III
(Breach of Warranty against Frontera, CH Robinson, and Aldi)

64. The plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

65. By offering cantaloupe for sale to the general public, Defendants Frontera, CH Robinson, and Aldi 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.

66. Defendants Frontera, CH Robinson, and Aldi breached the implied warranties with regard to the food they manufactured and sold to Michael Paciorek, which was consumed by plaintiff Michelle Wakley, causing plaintiffs' injuries and losses.

67. The Plaintiffs' injuries proximately and directly resulted from Frontera, CH Robinson, and Aldi'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.

WHEREFORE, the plaintiffs Michelle Wakley and David Paciorek pray for judgment against the defendants Frontera, CH Robinson, and Aldi in an amount in excess of the minimum amount allowed to establish jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

VI. COUNT IV
(Negligence against Primus)

68. The plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

69. Defendant Primus and the Texas company called Bio Food Safety, as contractor and sub-contractor respectively 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.

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

71. 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.

72. 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.

73. 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 Plaintiff's Listeriosis infection and related illness, Defendant Primus is liable to the Plaintiffs for the Plaintiffs' injuries, damages and losses.

WHEREFORE, the plaintiffs Michelle Wakley and David Paciorek pray for judgment against the defendant Primus in an amount in excess of the minimum amount allowed to establish jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

VII. DAMAGES

74. As the direct and proximate result of the Defendants' acts and omissions, the 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.

IX. JURY TRIAL

75. Plaintiff's hereby demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray as follows:

(1) That the Court award the Plaintiffs judgment against Defendants for damages;

(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;

(3) That the Court award the Plaintiffs their costs, disbursements and reasonable attorneys' fees incurred;

(4) 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; and

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

JURY TRIAL DEMAND

Plaintiffs demand trial by jury on all issues raised herein.

Respectfully submitted,

\s\ Troy A. Brinson

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