

# CIVIL COVER SHEET

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

<p><b>I. (a) PLAINTIFFS</b>                  Donna Kay Wells Lloyd</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Baltimore</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b>                  Michael C. Blackstone, Ward &amp; Klein, Chtd., 2275 Research Blvd,                  Ste. 720, Rockville, MD, 20850, 240-243-7200 and William D. Marler,                  Marler Clark, 701 First Avenue, Suite 6600, Seattle, WA 98104, 206-346-1888</p>	<p><b>DEFENDANTS</b>                  Jensen Farms and Frontera Produce, Ltd.</p> <p>County of Residence of First Listed Defendant <u>Prowers</u>                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
--	---

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

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

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

(For Diversity Cases Only)		PTF DEF
Citizen of This State	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
---	---	--	---	--	---	--

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC § 1332(a)

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

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

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 9/29/11 SIGNATURE OF ATTORNEY OF RECORD Michael C. Blackstone

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

for the

District of Maryland

Donna Kay Wells Lloyd

Plaintiff

v.

Jensen Farms

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Jensen Farms
28948 RD 30.5
Holly, Colorado 81047

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_  
\_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Maryland

Donna Kay Wells Lloyd

Plaintiff

v.

Jensen Farms

Defendant

)
)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Frontera Produce, Ltd.
1321 Frontera Road
Edinburg, Texas 78541

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: [ ]

[ ]

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_  
\_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_

*Server's signature*

\_\_\_\_\_

*Printed name and title*

\_\_\_\_\_

*Server's address*

Additional information regarding attempted service, etc:

1       **IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND**

2       DONNA KAY WELLS LLOYD, as Personal       :  
3       Representative for the Estate of Clarence       :  
4       D. Wells, deceased,       :  
5       Catonsville, Maryland       :

6                       Plaintiff,       :

7                       v.       :

CIVIL NO.:

8       JENSEN FARMS, the trade name of a       :  
9       Colorado Corporation       :  
10      28948 Road 30.5       :  
11      Holly, Colorado 81047       :

12      And       :

13      FRONTERA PRODUCE, LTD.       :  
14      A Texas Corporation       :  
15      1321 Frontera Road       :  
16      Edinburg, Texas 78541       :  
17                       Defendants.       :

---

18                                       **COMPLAINT AND JURY DEMAND**

19               COMES NOW the plaintiff, DONNA KAY WELLS LLOYD, as personal representative  
20       for the estate of the decedent, Clarence D. Wells, by and through her attorneys of record, the  
21       MARLER CLARK law firm and WARD AND KLEIN, CHARTERED and alleges as follows:

COMPLAINT FOR DAMAGES - 1

**MARLER CLARK, L.L.P., P.S.**  
Attorneys at Law  
1301 Second Ave., Suite 2800  
Seattle, Washington 98101  
Tel. (206) 346-1888  
Fax (206) 346-1898

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

**I. PARTIES**

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

1.2 The defendant Jensen Farms ("Jensen Farms") does business under this trade name in the State of Maryland. At all times relevant hereto, Jensen Farms was a manufacturer, distributor and seller of agricultural products in Maryland, including cantaloupe. Further, Jensen Farms was incorporated in the State of Colorado, and its principal place of business is located at 28948 RD 30.5, Holly, Colorado 81047. The defendant Jensen Farms is, therefore, a citizen of the State of Colorado, and is not a citizen of the State of Maryland.

1.3 The defendant Frontera Produce, Ltd. ("Frontera") is a corporation organized and existing under the laws of the State of Texas. At all times relevant hereto, Frontera was a manufacturer, distributor and seller of agricultural products in Maryland, including cantaloupe. Frontera's principal place of business is also located in the State of Texas. The defendant Fronterra is, therefore, a citizen of the State of Texas, and is not a citizen of the State of Maryland.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

## II. JURISDICTION AND VENUE

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

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

13  
14  
15  
16  
17  
18  
19  
20  
21

## III. GENERAL ALLEGATIONS

### The Outbreak

3.1 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

1 linked to cantaloupe from the Rocky Ford (Colorado) growing region. It was subsequently  
2 determined that contaminated cantaloupes were grown by the defendant, Jensen Farms,

3         3.2 As of the date of filing, the Centers for Disease Control and Prevention (CDC)  
4 counts a total of 55 persons infected with the 4 outbreak-associated strains of *Listeria*  
5 *monocytogenes* involved in the *Listeria* outbreak caused by the defendant's contaminated  
6 cantaloupes. All illnesses started on or after August 4, 2011. The number of infected persons  
7 identified in each state is as follows: California (1), Colorado (14), Illinois (1), Indiana (1),  
8 Maryland (1), Montana (1), Nebraska (4), New Mexico (10), Oklahoma (8), Texas (9), Virginia  
9 (1), West Virginia (1), Wisconsin (2), and Wyoming (1). According to the CDC, among the 43  
10 ill persons with available information on whether they were hospitalized, all were  
11 hospitalized. Eight deaths have been reported, 2 in Colorado, 1 in Maryland, 4 in New  
12 Mexico, and 1 in Oklahoma. The number of people ill, hospitalized, and dead as a result of the  
13 *Listeria* outbreak caused by the defendant's contaminated cantaloupes is expected to increase.

14         3.3 On or about September 19, 2011, the Food and Drug Administration announced  
15 that it found *Listeria monocytogenes* in samples of Jensen Farms' Rocky Ford-brand cantaloupe  
16 taken from a Denver-area store and on samples taken from equipment and cantaloupe at the  
17 defendant Jensen Farms' packing facility. Tests confirmed that the *Listeria monocytogenes* found  
18  
19  
20

1 in the samples matches one of the three different strains of *Listeria monocytogenes* associated  
2 with the multi-state outbreak of listeriosis.

3 3.4 Jensen Farms recalled its Rocky Ford-brand cantaloupes on September 14 in  
4 response to the multi-state outbreak of listeriosis. Cantaloupes from other farms in Colorado,  
5 including farms in the Rocky Ford growing area, have not been linked to this outbreak.

### 6 Listeriosis

7 3.5 Listeriosis is a serious illness that is caused by eating food contaminated with the  
8 bacterium *Listeria monocytogenes*. Although there are other types of *Listeria*, most cases of  
9 listeriosis are caused by *Listeria monocytogenes*. *Listeria* is found in soil and water. Vegetables  
10 can become contaminated from the soil or from manure used as fertilizer. Animals can carry  
11 the bacterium without appearing ill and can contaminate foods of animal origin, such as meats  
12 and dairy products. *Listeria* has been found in a variety of raw foods, such as uncooked meats  
13 and unpasteurized (raw) milk or foods made from unpasteurized milk. *Listeria* is killed by  
14 pasteurization and cooking; however, in certain ready-to-eat foods, like hot dogs and cold cuts  
15 from the deli counter, contamination may occur after cooking but before packaging.  
16

17 3.6 Although healthy persons may consume contaminated foods without becoming  
18 ill, those at increased risk for infection may become ill with listeriosis after eating food  
19 contaminated with even a few bacteria.  
20



1           3.10 The same day, August 25, 2011, Mrs. Wells Lloyd took her father to the  
2 emergency department at Howard County General Hospital. Shortly after his arrival,  
3 however, Mr. Wells was transferred to a John's Hopkins Medical Center facility, where the  
4 treating physicians were able to get him stabilized, and then admitted him for further  
5 monitoring and treatment.

6           3.11 Mr. Wells remained hospitalized at John's Hopkins over the weekend. On or  
7 about Monday morning, August 29, 2011, he lost his appetite completely and was unable to  
8 eat. Wednesday morning, August 31, 2011, Mr. Wells became extremely fevered, and his  
9 physicians began to treat his septic illness with antibiotics. Later that morning, Mr. Wells had  
10 to be sedated and intubated to help keep his airway open.

11           3.13 Mr. Wells's son and daughter, Mrs. Wells Lloyd, were called to the hospital the  
12 morning of August 31, 2011, and found their father unconscious. They never spoke to him, or  
13 saw him awake, again. Mr. Wells died the evening of August 31, 2011.

14           3.14 On or about September 12, 2011, Mrs. Wells Lloyd received a letter from the  
15 Baltimore County Health Department that was addressed to her father, the decedent. The  
16 letter confirmed that a blood sample taken the day of Mr. Wells's death had tested positive for  
17 *Listeria*. In the weeks following her receipt of this letter, Mrs. Wells Lloyd spoke with officials  
18 from the Baltimore County Health Department and the Maryland Department of Health, who  
19  
20

1 confirmed that the strain of *Listeria monocytogenes* that had infected the decedent, Mr. Wells,  
2 was indistinguishable from the strain involved in the defendants' cantaloupe *Listeria* outbreak.

3 **IV. CAUSES OF ACTION**

4 **Strict Liability – Count I**

5 4.1 At all times relevant hereto, the defendants were manufacturers and sellers of the  
6 adulterated food product that is the subject of this action.

7 4.2. The adulterated food product that the defendants manufactured, distributed,  
8 and/or sold was, at the time it left the defendants' control, defective and unreasonably  
9 dangerous for its ordinary and expected use because it contained *Listeria*, a deadly pathogen.

10 4.3 The adulterated food product that the defendants manufactured, distributed,  
11 and/or sold was delivered to Clarence D. Wells ("decedent") without any change in its  
12 defective condition. The adulterated food product that the defendants manufactured,  
13 distributed, and/or sold was used in the manner expected and intended, and was consumed  
14 by decedent.  
15

16 4.4 The defendants owed a duty to decedent to design, manufacture, and/or sell  
17 food that was not adulterated, that was fit for human consumption, that was reasonably safe in  
18 construction, and that was free of pathogenic bacteria or other substances injurious to human  
19 health. The defendants breached this duty.  
20







1 future; medical and medical related expenses, both past and future; travel and travel-related  
2 expenses, past and future; emotional distress, past and future; pharmaceutical expenses, past  
3 and future; and all other ordinary, incidental, or consequential damages that would or could  
4 be reasonably anticipated to arise under the circumstances.

5 **PRAYER FOR RELIEF**

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

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

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

11 C. Granting all such additional and/or further relief as this Court deems just and  
12 equitable.  
13

14 DATED: September 29, 2011.

1 Respectfully submitted,

2 **WARD & KLEIN, CHARTERED**

3  
4 

5 Michael C. Blackstone, #00976  
6 2275 Research Boulevard, Suite 720  
7 Rockville, Maryland 20850  
8 [mblackstone@ward-klein.com](mailto:mblackstone@ward-klein.com)  
9 Tel.: 240-243-7200; Fax: 240-243-7201

10 **MARLER CLARK, LLP, PS**

11 

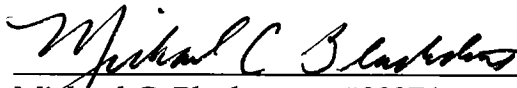
12 William D. Marler, WSBA #17233 <sup>MCS</sup>  
13 701 First Avenue, Suite 6600  
14 Seattle, WA 98104  
15 [bmarler@marlerclark.com](mailto:bmarler@marlerclark.com)  
16 Tel.: 206- 346-1888; Fax: 206-346-1898

17 (pending admission pro hac vice)

18 Attorneys for Plaintiffs

19 **JURY DEMAND**

20 The plaintiff hereby demands a jury trial.

21 

Michael C. Blackstone, #00976