

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

JOHN WILCOX, individually and as Personal
Representative for the Estate of Florence Wilcox, and
ROBERT WILCOX, individually,

Plaintiffs,

Cause No. _____

JENSEN FARMS, a trade name, a foreign corporation;
FRONTERA PRODUCE LTD., a foreign corporation;
PRIMUS GROUP, INC, a foreign corporation, d/b/a
“Primus Labs”; and BIO FOOD SAFETY INC., a foreign corporation,

Defendants.

**COMPLAINT FOR PERSONAL INJURIES, WRONGFUL DEATH
AND LOSS OF CONSORTIUM**

COME NOW the Plaintiffs above-named, by and through their attorneys of record, Youtz & Valdez and Marler Clark, L.L.P., P.S., and for their causes of action against the Defendants above-named complain, allege, and state as follows:

I. PARTIES

1. At all times relevant to this action, the Plaintiff John Wilcox was a resident of San Diego County, California and Plaintiff, Robert Wilcox was a resident of Hobbs, New Mexico. John Wilcox and Robert Wilcox are the natural-born children of the decedent, Florence M. Wilcox, who, at all times relevant to this action, was a resident of Lea County, New Mexico.

2. At all times relevant to this action, the Defendant Jensen Farms was a manufacturer, distributor and seller of cantaloupes to consumers in New Mexico. Upon information and belief, Jensen Farms is a Colorado company with a principal place of business at 28948 RD 30.5, Holly, Colorado 81047.

3. At all times relevant to this action, Frontera Produce Ltd. (Frontera), was a

manufacturer, distributor and seller of agricultural products in New Mexico, including cantaloupe. Frontera is a Texas company with a principal place of business located in Texas as well.

4. At all times relevant to this action, Primus Group, Inc. d/b/a “Primus Labs” (Primus), was 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 action, 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. On information and belief, Primus retained the services of certain subcontractors, including Defendant Bio Food Safety, to provide auditing services, including the audit described in more detail at paragraph 17.

5. At all times relevant to this action, Bio Food Safety Inc.(Bio Food Safety) was a corporation organized and existing under the laws of the State of Texas, with its principal place of business in Texas as well. At all times relevant to this action, Bio Food Safety was a company that provided auditing services for agricultural and other businesses . On information and belief, Bio Food Safety was a subcontractor and agent of Primus who, in that capacity, audited Defendant Jensen Farms’ cantaloupe packing facility in the State of Colorado. This audit is described in more detail at paragraph 17.

III. FACTS

The Outbreak

6. 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 the Defendant, Jensen Farms, and distributed by Frontera.

7. As of the date of filing, the Centers for Disease Control and Prevention (CDC) counts a total of 133 persons infected with any of the four outbreak-associated strains of *Listeria monocytogenes* from 26 states. 29 people have died as a result of their Listeriosis illnesses caused by Defendant Jensen Farms and Frontera's contaminated cantaloupe, and there has been one miscarriage as well. The number of people ill, hospitalized, and dead as a result of the *Listeria* outbreak caused by the contaminated cantaloupes is expected to increase further.

8. On or about September 19, 2011, the Food and Drug Administration (FDA) 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 Defendant 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.

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

The July 25, 2011 Audit of Jensen Farms

10. Prior to the outbreak described in paragraphs 6 through 9, on information and belief, Jensen Farms or Frontera, or both of them, contracted with Primus to conduct an audit of Jensen Farms cantaloupe packing facility, growing locations, and agricultural and manufacturing

practices, generally, pertaining to the production of cantaloupes for distribution into the interstate market.

11. 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. 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 with harmful pathogens, like *Listeria*.

12. Prior to the formation of the contract described at paragraph 10, 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.”

13. 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 the Primus certification by having a high quality product.

14. On information and belief, after the formation of the contract described at paragraph 10, Primus selected and hired Bio Food Safety 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.

15. Defendants Primus and Bio Food Safety held themselves out as experts 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 for producers of agricultural products, including cantaloupes.

16. By auditing companies involved in the production and distribution of food products, Primus and Bio Food Safety intend to aid such companies in ensuring that the food products produced are of high quality, are fit for human consumption, and are not contaminated by a potentially lethal pathogen, like *Listeria*.

17. Bio Food Safety auditor James Diiorio conducted an audit at Jensen Farms' packing facility on or about July 25, 2011, roughly one week before the CDC identified the first victim of the cantaloupe *Listeria* outbreak. Mr. Diiorio, as employee and agent of Bio Food Safety, and as agent of Primus, gave the Jensen Farms facility a "superior" rating, and a score of 96%.

18. 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 laboratory culturing to identify the presence of *Listeria monocytogenes*.

19. 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 three of the four outbreak strains collected from affected patients. Cantaloupe collected from the firm's cold storage during the inspection was also confirmed positive for *Listeria monocytogenes* with PFGE pattern combinations that were indistinguishable from two of the four outbreak strains.

20. As a result of the isolation of 3 of the 4 outbreak strains of *Listeria monocytogenes* in the environment of the packing facility and whole cantaloupes collected from cold storage, and the fact that this is the first documented Listeriosis outbreak associated with

fresh, whole cantaloupe in the United States, FDA initiated an environmental assessment in conjunction with Colorado state and local officials.

21. FDA, state, and local officials conducted the environmental assessment at Jensen Farms on September 22-23, 2011, doing so in an effort to gather more information to assist FDA in identifying the factors that potentially contributed to the introduction, growth, or spread of the *Listeria monocytogenes* strains that contaminated the cantaloupe.

22. The FDA's findings from this assessment, set forth in its report dated October 19, 2011, are as follows, in part:

- 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.

23. The audit conducted by Mr. Diorio on or about July 25, 2011, on behalf of Defendants Primus and Bio Food Safety, found many of the same or similar aspects of Jensen Farms' facility, equipment and procedures to be in "total compliance."

Listeriosis

24. 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.

25. 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.

26. 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.

Florence M. Wilcox's Listeriosis Illness and Death

27. Before her Listeriosis illness, the decedent, Florence Wilcox, was a 96-year-old

resident of Hobbs, Lea County, New Mexico. Ms. Wilcox lived independently and remained very active. In fact, she was named 2011 “Patron of the Year” at the local public library.

28. Ms. Wilcox frequently purchased and ate cantaloupes. On at least one occasion in the weeks before the onset of her Listeriosis illness, Ms. Wilcox purchased and consumed a cantaloupe that had been manufactured, distributed, and sold by Defendants Jensen Farms and Frontera.

29. Onset of symptoms related to Ms. Wilcox’s Listeriosis illness occurred on or about September 8 with fever and chills, bloody stools, weakness, and general malaise. A neighbor drove Ms. Wilcox to Lea Regional Medical Center, where she remained for approximately 1 day. While at Lea Regional Medical Center, Ms. Wilcox gave a blood sample that would ultimately test positive for one of the strains of *Listeria* implicated in the cantaloupe Listeria outbreak, described previously.

30. Ms. Wilcox’s condition continued to deteriorate while she was hospitalized at Lea Regional, and her physicians ultimately decided that she should be transferred, by helicopter life-flight service, to Covenant Medical Center in Lubbock, Texas.

31. At Covenant Medical Center, Ms. Wilcox was first treated in the regular hospital, but soon was admitted into the intensive care unit. She developed extremely high fevers, her speech became fragmented, and she exhibited obvious pain and discomfort.

32. Ms. Wilcox endured many diagnostic procedures throughout her hospitalization at Covenant Medical Center. Ultimately, the results of a spinal tap showed that she had developed meningitis. Ms. Wilcox died on September 15, 2011.

33. During or shortly after his mother’s hospitalization at Covenant Medical Center, John Wilcox spoke with officials from the New Mexico Department of Health, who ultimately

confirmed that the strain of *Listeria* isolated from his mother's blood sample was indistinguishable from one of the strains implicated in the cantaloupe *Listeria* outbreak. The health department learned that cantaloupe manufactured, distributed and sold remained at the decedent's home in Hobbs, New Mexico. The health department secured a sample of the leftover cantaloupe from Ms. Wilcox's home for testing. Results showed that the leftover cantaloupe was also positive for one of the strains of *Listeria* involved in the cantaloupe *Listeria* outbreak.

**IV. CAUSE OF ACTION AGAINST JENSEN FARMS AND FRONTERA:
STRICT LIABILITY**

34. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 33, above, as though set forth fully herein.

35. The Defendants Jensen Farms and Frontera manufactured and sold the adulterated food that injured the Plaintiff.

36. The Defendants Jensen Farms and Frontera manufactured food products, and in particular, cantaloupe for sale to the public.

37. Cantaloupe that is contaminated with *Listeria monocytogenes* is unsafe and thus defective when used in a reasonably foreseeable manner—*i.e.*, consuming it.

38. *Listeria monocytogenes*-contaminated cantaloupe is unfit for human consumption, and poses an unreasonable risk of injury to consumers because reasonably prudent persons, having full knowledge of the risk, would find the risk unacceptable.

39. The cantaloupe that the decedent, Ms. Wilcox, purchased and consumed from the Defendants Jensen Farms and Frontera was contaminated with *Listeria monocytogenes* and was therefore, as a result, defective and unreasonably dangerous.

40. The cantaloupe the decedent, Ms. Wilcox, purchased and consumed was

contaminated with *Listeria monocytogenes* when it left the control of Jensen Farms and Frontera.

41. The decedent's consumption of the contaminated cantaloupe caused her to become infected with *Listeria monocytogenes* and suffer injury and death as a direct and proximate result.

42. Defendants Jensen Farms and Frontera are strictly liable to the Plaintiffs for the harm proximately caused by the manufacture and sale of an unsafe and defective cantaloupe.

**V. CAUSE OF ACTION AGAINST JENSEN FARMS AND FRONTERA:
NEGLIGENCE and NEGLIGENCE PER SE**

43. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 42, above, as though set forth fully herein.

44. Jensen Farms and Frontera designed, manufactured, distributed, and sold cantaloupes that were contaminated with *Listeria monocytogenes*, a deadly pathogen.

45. Jensen Farms and Frontera owed a duty to all persons who consumed their products, including the decedent, 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.

46. Frontera owed a duty to all persons who consumed its products, including the decedent, to ensure that any representations regarding the certifications its products had undergone prior to distribution and sale were made with reasonable care. With respect to the representation that its products were "Primus Certified," described at paragraph 12, Frontera owed a duty to all persons who consumed its products, including the decedent, to conduct reasonable investigation into the competence and reliability of the subcontractors retained by Primus.

47. Jensen Farms and Frontera had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of their food product, but failed to do so, and were therefore negligent. The decedent 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.

48. Jensen Farms and Frontera owed a duty to all persons who consumed their cantaloupes a duty to maintain their premises in a sanitary and safe condition so that the cantaloupe they manufactured and sold would not be contaminated with a deadly pathogen, like *Listeria monocytogenes*.

49. Jensen Farms and Frontera breached the duties owed to the ultimate consumers of their cantaloupe products by committing the following acts and omissions of negligence:

49.1 Failed to adequately maintain or monitor the sanitary conditions of their products, premises, equipment and employees;

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

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

49.4 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;

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

49.6 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;

49.7 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.

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

50. Jensen Farms and Frontera had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of their food products.

51. Jensen Farms and Frontera owed a duty to the decedent to use reasonable care in the manufacture, distribution, and sale of their food products, to prevent contamination with *Listeria monocytogenes*. The Defendants breached this duty.

52. The Plaintiff's injuries proximately and directly resulted from the negligence of the Defendants Jensen Farms and Frontera, and from those Defendants' violations of statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of food.

**VI. CAUSE OF ACTION AGAINST JENSEN FARMS AND FRONTERA:
BREACH OF WARRANTY**

53. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 52, above, as though set forth fully herein.

54. By offering cantaloupe for sale to the general public, Jensen Farms and Frontera 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.

55. Jensen Farms and Frontera breached the implied warranties with regard to the food and drink they manufactured and sold to the decedent.

56. The Plaintiff's injuries proximately and directly resulted from Defendant Jensen Farms and Frontera'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.

**VII: CAUSE OF ACTION AGAINST PRIMUS AND BIO FOOD SAFETY:
NEGLIGENCE**

57. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 56, above, as though set forth fully herein.

58. Defendants Primus and Bio Food Safety, as contractor and sub-contractor respectively for the purposes of auditing Jensen Farms facility, 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.

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

60. As auditor of Jensen Farms facility, which was known to be a facility for the production of cantaloupes for human consumption, Bio Food Safety owed a duty to the ultimate consumers of Jensen Farms products, including the decedent, to exercise reasonable care in the conduct of the audit. Bio Food Safety breached this duty.

61. The audit done by James Diiorio on July 25, 2011, as described at paragraph 17, was not done with reasonable care, and constituted a breach of Bio Food Safety's duty of reasonable care owed to the consumers of Jensen Farms/Frontera cantaloupes . Mr. Diiorio's various acts and omissions of negligence in the conduct of the audit include specifically, but not exclusively, his failures to identify that the equipment and facility design and maintenance generally posed an unreasonable risk of harm to consumers of the facility's cantaloupes because the equipment and facility design and maintenance encouraged bacterial growth and proliferation, and ultimately contamination of cantaloupes.

62. Mr. Diiorio'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. Diiorio as auditor, constituted a proximate cause of the decedent's Listeriosis illness and death.

63. Because Bio Food Safety is liable for the acts and omissions of negligence of its employees, and because Bio Food Safety was an agent of Primus for purposes of Mr. Diiorio's negligently conducted audit of Jensen Farms on July 25, 2011, Defendants Primus and Bio Food Safety are liable to the Plaintiffs for the Listeriosis illness and death of the decedent.

VII. LOSS OF CONSORTIUM CLAIMS

64. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 63, above, as though set forth fully herein.

65. Plaintiffs enjoyed a close familial relationship of sons and mother. As a result of the aforementioned negligence and breach of duties on the part of Defendants, Plaintiffs, have suffered the loss of consortium of their mother and is entitled to all such damages as are permissible by law due to the loss of guidance and companionship resulting from the death of Florence Wilcox.

VII. DAMAGES

66. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 65, above, as though set forth fully herein.

67. 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.

VIII. 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;

(5) That should the case proceed to trial, a jury of 12 is hereby requested; and

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

DATED this 23 day of November, 2011.

Respectfully submitted,

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