

FILED AND RECORDED
BOSSIER PARISH, LA

2012 SEP 13 P 2: 03

139958

ALLEN RAY GILBERT, INDIVIDUALLY
AND AS EXECUTOR OF THE
SUCCESSION OF FRANCES M.
GILBERT, KATHLEEN G. BUCHANAN
AND JAMES R. GILBERT

NUMBER 139958
CLERK OF COURSE
RECORDED

DIV. F - SELF

VERSUS

* 26TH JUDICIAL DISTRICT COURT

FRONTERA PRODUCE, LTD., PRIMUS
GROUP INC., D/B/A "PRIMUS LABS",
AND THE KROGER COMPANY

* BOSSIER PARISH, LOUISIANA

PETITION FOR DAMAGES FOR WRONGFUL DEATH

NOW INTO COURT, through undersigned counsel, come plaintiffs, ALLEN RAY GILBERT, INDIVIDUALLY AND AS EXECUTOR OF THE SUCCESSION OF FRANCES M. GILBERT, KATHLEEN G. BUCHANAN AND JAMES R. GILBERT, who respectfully represent:

1.

Made defendants herein are:

- A. FRONTERA PRODUCE, LTD. (hereinafter "Frontera"), a Texas corporation, whose principal place of business is located in Edinburg, Texas and which is not licensed to do business in the State of Louisiana;
- B. PRIMUS GROUP, INC. d/b/a PRIMUS LABS (hereinafter "Primus"), a California corporation, whose principal place of business is located in Santa Maria, California and is not licensed to do business in the State of Louisiana; and
- C. THE KROGER COMPANY (hereinafter "Kroger"), an Ohio corporation authorized to do and doing business in the State of Louisiana.

2. Frances M. Gilbert ("decedent"), who, at all times relevant to this action, was a resident of Bossier City, Bossier Parish, Louisiana.

3.

Allen Ray Gilbert was married to his late wife in 1951, and they never adopted any children. Two children were born of this marriage, namely Kathleen Gilbert Buchanan and James R. Gilbert.

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DEPUTY CLERK
26TH JUDICIAL DISTRICT COURT
BOSSIER PARISH, LOUISIANA

4.

Allen Ray Gilbert is the duly appointed Executor of the Succession of Frances M. Gilbert, No. 18,218, 26th JDC, Bossier Parish, Louisiana, pursuant to an Order of that Court, dated July 30, 2012, and Letters issued on August 3, 2012.

5.

Kathleen G. Buchanan and James R. Gilbert are the natural-born children of the decedent,

6.

At all times relevant to this action, Frontera was a manufacturer, distributor and seller of agricultural products in Louisiana, including Jensen Farms Rocky Ford brand cantaloupe.

7.

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 Louisiana. Primus retained the services of certain subcontractors, to provide auditing services, including the audit of Jensen Farms, the manufacturer, distributor and seller of the Jensen Farms Rocky Ford brand cantaloupe at issue in this action, in Colorado, described in more detail at paragraph 27.

8.

At all times relevant to this action, Kroger was a manufacturer, distributor and seller of food products in Louisiana, including the manufacture, distribution and sale of Jensen Farms Rocky Ford brand cantaloupe.

9.

This Court has personal jurisdiction over defendants' Frontera and Primus, pursuant to La. R.S. 13:3201, *et seq*, based on their transacting business in this state, providing services and products in this state, causing injury and damage in this state, and providing a product that caused damage or injury in this state when at

the time said product or products were placed in the stream of commerce defendants knew or should have known that the product would be eventually found in this state.

10.

On September 2, 2011, the Colorado Department of Public Health and 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, and distributed by Defendant Frontera.

11.

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 Jensen Farms' packing facility. Tests confirmed that the *Listeria monocytogenes* found in the samples matched one of the five 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. The recalled cantaloupes were distributed from July 29, 2011 to and including the date of the recall.

13.

Prior to the outbreak described in paragraphs 10 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 12, 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 12, 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.

18.

Defendant 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, 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 and Bio Food Safety 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, FDA initiated an environmental assessment at Jensen Farms, in which the FDA was assisted by Colorado state and local officials.

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, but are not limited to:

- A. Condensation from cooling systems draining directly onto the floor;
- B. Poor drainage resulting in water pooling around the food processing equipment;
- C. Inappropriate food processing equipment which was difficult to clean (i.e., *Listeria* found on the felt roller brushes);
- D. No antimicrobial solution, such as chlorine, in the water used to wash the cantaloupes; and
- E. No equipment to remove field heat from the cantaloupes before they were placed into cold storage.

26.

The prior audit that had been conducted by Mr. Dilorio on or about July 25, 2011, on behalf of Defendant Primus and Bio Food Safety, found many aspects of Jensen Farms' facility, equipment and procedures that the FDA subsequently heavily criticized to be in "total compliance."

27.

Further, during the prior 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 substandard conditions or practices included, but were not limited to:

- A. Jensen Farms' inability to control pests;
- B. Jensen Farms' use of equipment that was inappropriate for the processing of cantaloupes;
- C. Jensen Farms' failure to use an antimicrobial in its wash system, or in the solution used to sanitize processing equipment;
- D. Jensen Farms' failure to ensure the appropriate antimicrobial concentration in its wash water, which, as alleged at paragraph 26.3, did not contain any antimicrobial at all;
- E. Jensen Farms' failure to have hot water available for purposes of handwashing;
- F. The design of Jensen Farms' packing house caused water to pool, creating a harborage site for bacteria; and
- G. Jensen Farms' failure to precool cantaloupes prior to processing.

29.

Many of the substandard 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.

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 decedent's Listeriosis illness and resulting death 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.

32.

Defendant Frontera distributed and sold Jensen Farms' Rocky Ford brand cantaloupe to Defendant Kroger. Defendant Kroger, in turn, distributed and sold Jensen Farms' Rocky Ford brand cantaloupe at a number of its stores, including at its store at 4100 Barksdale Boulevard, Bossier City, Louisiana.

33.

In August and September, 2011, Ms. Gilbert purchased and consumed Jensen Farms' Rocky Ford brand cantaloupe that had been manufactured, distributed, and sold by Defendant Frontera.

34.

Defendant Kroger also manufactured, distributed, and sold the Jensen Farms' Rocky Ford brand cantaloupe that Ms. Gilbert purchased from the Defendant Kroger's store in Bossier City.

35.

Onset of symptoms related to Ms. Gilbert's Listeriosis illness occurred on or about September 14, 2011, with vomiting, diarrhea, and general malaise. Her condition deteriorated further, and the next day she was transported and admitted to the WK Pierremont Health Center. While there, Ms. Gilbert gave a blood sample that would ultimately test positive for one of the strains of *Listeria* implicated in the cantaloupe Listeria outbreak.

36.

Ms. Gilbert's condition continued to deteriorate while she was hospitalized at WK Pierremont Health Center, and she ultimately passed away in the early morning of September 22, 2011.

CAUSE OF ACTION AGAINST FRONTERA AND KROGER

37.

The Defendants Frontera and Kroger manufactured and sold the adulterated Jensen Farms' Rocky Ford brand cantaloupe that injured the Plaintiff. The Defendants Frontera and Kroger manufactured the Jensen Farms' Rocky Ford brand cantaloupe for sale to the public.

38.

The Jensen Farms' Rocky Ford brand cantaloupe the decedent, Ms. Gilbert, purchased and consumed was contaminated with *Listeria monocytogenes* when it left the control of Frontera and Kroger.

39.

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

40.

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

41.

The Jensen Farms' Rocky Ford brand cantaloupe that the decedent, Ms. Gilbert, purchased and consumed from the Defendants Frontera and Kroger was contaminated with *Listeria monocytogenes* and was therefore, as a result, defective and unreasonably dangerous.

42.

The decedent's consumption of the contaminated Jensen Farms' Rocky Ford brand cantaloupe was a reasonably anticipated use of the food product.

43.

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

44.

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

45.

Frontera and Kroger 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. The Defendants breached this duty.

46.

Frontera and Kroger owed a duty to all persons who consumed their products, including the decedent, to ensure that any representations regarding the certifications

their products had undergone prior to distribution and sale were made with reasonable care. The Defendants breached this duty.

47.

Frontera and Kroger 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.

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

- A. Failed to adequately maintain or monitor the sanitary conditions of their products, premises, equipment and employees;
- B. Failed to properly operate their facilities and equipment in a safe, clean, and sanitary manner;
- C. Failed to apply their food safety policies and procedures to ensure the safety and sanitary conditions of their food products, premises, and employees;
- D. 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;
- E. Failed to prevent the transmission of *Listeria monocytogenes* to consumers of their cantaloupe;
- F. 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;
- G. 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; and
- H. Failed to test their cantaloupes for microbial pathogens, like *Listeria monocytogenes*.

49.

Frontera and Kroger 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 breached this duty.

50.

Frontera and Kroger 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.

51.

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

52.

Frontera and Kroger are strictly liable for the injuries and death of the decedent.

53.

By offering cantaloupe for sale to the general public, Frontera and Kroger 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.

54.

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

55.

Ms. Gilbert's injuries proximately and directly resulted from Frontera and Kroger'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.

CAUSE OF ACTION AGAINST PRIMUS

56.

Defendant Primus, as contractor 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.

57.

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.

58.

The audit done by James Dilorio on July 25, 2011 was not done with reasonable care, and constituted a breach of Primus' duty of reasonable care 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 24 through 28.

59.

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 decedent's Listeriosis illness and death.

60.

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, Primus is liable for the Listeriosis illness and death of the decedent.

61.

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

62.

Allen Ray Gilbert witnessed the deteriorating condition, accompanying illness and death of the decedent.

63.

The decedent was 80 years old at the time of her death. Allen Ray Gilbert and his late wife had been devoted to each other. His late wife had always been a good wife and provided a good home in addition to affection and companionship. As a result of his wife's untimely death, and particularly under the circumstances thereof, Allen Ray Gilbert suffered extreme grief, mental anguish and distress; and as a result of her death, he sustained an irreparable loss of being deprived of her companionship, security, love and affection. He also suffered extreme and debilitating emotional distress as a result of him seeing his wife suffer and die from her illness.

64.

Allen Ray Gilbert paid medical, hospital and funeral expenses his late wife.

65.

Allen Ray Gilbert itemizes his damages which he sustained as a proximate result of the illness and death of his wife, as follows:

- A. Deprivation of companionship, security, love and affection of his wife;
- B. Grief, mental anguish and distress from the loss of his wife;
- C. Emotional distress for seeing his wife suffer and die from her illness;
- D. Loss of future support; and
- E. Funeral, hospital and other medical expenses.

66.

Kathleen G. Buchanan and James R. Gilbert and their late mother were very close, enjoying each other's companionship a great deal and visited with their mother frequently. As a result of their mother's untimely death, and particularly the circumstances thereof, Kathleen G. Buchanan and James R. Gilbert suffered extreme grief, mental anguish and distress, and sustained an irreparable loss of being deprived of their mother's companionship, love, moral support, guidance and affection. They further suffered extreme and debilitating emotional distress as a result of seeing their mother suffer and die from her illness.

67.

Kathleen G. Buchanan and James R. Gilbert itemize their damages which they sustained as a proximate result of the illness and death of their mother, as follows:

- A. Deprivation of the companionship, love and affection of their mother;
- B. Grief, mental anguish and distress from the loss of their mother, and
- C. Emotional distress from seeing their mother suffer and die from her illness.

68.

As beneficiaries of the action of Frances M. Gilbert, decedent, for her own injuries and illness proximately caused by the defendants as set forth herein, plaintiffs claim the damages reasonable in the premises for the decedent's injuries set forth herein.

69.

Plaintiffs request trial by jury on all issues.

WHEREFORE, PLAINTIFFS PRAY:

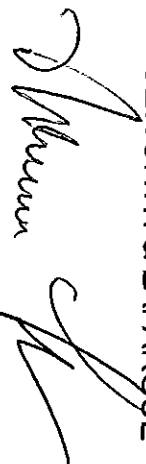
- (1) That the Court award the Plaintiffs judgment in solido against Defendants Frontera, Kroger, and Primus for damages as are reasonable in the premises for the death of their wife and mother;
- (2) That the Court award all such other sums as shall be determined to fully and fairly compensate the Plaintiffs 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 judgment in favor of the Plaintiffs in solido against the Defendants for such damages as are reasonable in the premises for the injuries and illness suffered by the decedent, Frances M. Gilbert;
- (4) That the Court award the Plaintiffs their costs, disbursements, legal interest and reasonable attorneys' fees incurred;
- (5) 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;
- (6) That should the case proceed to trial, a jury is hereby requested; and
- (7) That the Court award such other and further relief as it deems necessary and proper in the circumstances.

DATED this 13th day of September, 2012.

Respectfully submitted,

MCMICHAEL, MEDLIN, D'ANNA,
WEDGEWORTH & LAFARGUE

By 

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ATTORNEYS FOR PLAINTIFFS

PLEASE PREPARE FOR SERVICE VIA LOUISIANA LONG-ARM STATUTE:

FRONTERA PRODUCE, LTD.

and

PRIMUS GROUP, INC. (d/b/a Primus Labs)

PLEASE HOLD SERVICE UNTIL FURTHER NOTICE FOR:

THE KROGER COMPANY

139958

ALLEN RAY GILBERT, INDIVIDUALLY
AND AS EXECUTOR OF THE
SUCCESSION OF FRANCES M.
GILBERT, KATHLEEN G. BUCHANAN
AND JAMES R. GILBERT

VERSUS

FRONTERA PRODUCE, LTD., PRIMUS
GROUP INC., D/B/A "PRIMUS LABS",
AND THE KROGER COMPANY

* BOSSIER PARISH, LOUISIANA
ORDER

* 26TH JUDICIAL DISTRICT COURT

Div. F - Self

Considering the petition for damages and the request for trial by jury filed by
plaintiffs herein:

IT IS HEREBY ORDERED that this matter be tried before a jury.

IT IS FURTHER ORDERED that plaintiffs, ALLEN RAY GILBERT,
INDIVIDUALLY AND AS EXECUTOR OF THE SUCCESSION OF FRANCES M.
GILBERT, KATHLEEN G. BUCHANAN AND JAMES R. GILBERT, are ordered to post
bond in the amount of \$ _____, said bond to be posted no later than 30 days prior
to Trial on the merits.

THUS DONE AND SIGNED in Shreveport, Caddo Parish, Louisiana, this _____
day of _____, 2012.

DISTRICT JUDGE