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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

BETTE ONSAGER, as Personal
Representative of the Estate of Jerome
Onsager and personally,

Plaintiff,

vs.

FRONTERA PRODUCE, LTD., a
foreign, corporation; PRIMUS
GROUP, INC., a foreign corporation,
d/b/a "PrimusLabs"; WALMART
STORES, INC., a foreign corporation;
and JOHN DOES 1-10 and companies
XYZ,

Defendants.

Cause No. CV-13-66-BU-DWM-
JCL

**DEFENDANT PRIMUS GROUP,
INC.'S ANSWER TO
PLAINTIFF'S FIRST
AMENDED COMPLAINT AND
CROSS-CLAIMS AGAINST
FRONTERA LTD., AND WAL-
MART STORES, INC.**

PRIMUS GROUP INC.'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant Primus Group, Inc., dba Primus Labs (“Primus”), by and through its undersigned counsel, and in response to the First Amended Complaint filed by Plaintiff, Bette Onsager, individually and personal representative of Jerome Onsager (“Plaintiff”), states and alleges as follows:

I. PARTIES

1. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of the First Amended Complaint. To the extent that any of the allegations contained in Paragraph 1 of the First Amended Complaint are deemed to require a response, Primus denies them.

2. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 2 of the First Amended Complaint. To the extent that any of the allegations contained in Paragraph 2 of the First Amended Complaint are deemed to require a response, Primus denies them.

3. With respect to Paragraph 4, Primus admits that it is a corporation organized and existing under the laws of the State of California. To the extent that any of the allegations contained in Paragraph 3 of the First Amended Complaint are deemed to require a response, Primus denies them.

4. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 of the First Amended

Complaint. To the extent that any of the allegations contained in Paragraph 4 of the First Amended Complaint are deemed to require a response, Primus denies them.

5. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 5 of the First Amended Complaint. To the extent that any of the allegations contained in Paragraph 5 of the First Amended Complaint are deemed to require a response, Primus denies them.

6. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 6 of the First Amended Complaint. To the extent that any of the allegations contained in Paragraph 6 of the First Amended Complaint are deemed to require a response, Primus denies them.

7. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 7 of the First Amended Complaint. To the extent that any of the allegations contained in Paragraph 7 of the First Amended Complaint are deemed to require a response, Primus denies them.

II. FACTS

8. Primus admits that the Centers for Disease Control and Prevention (CDC) has published on its website that, on September 2, 2011, the Colorado Department of Public Health and Environment (CDPHE) notified CDC of seven cases of listeriosis reported since August 28, 2011. Primus further admits that, on September 12, 2011, the Centers for Disease Control and Prevention (CDC)

published on its website that the multistate outbreak of listeriosis was linked to Rocky Ford Cantaloupes. Primus is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 8 of the First Amended Complaint, and therefore denies said allegations.

9. Primus admits that, on December 8, 2011, the Centers for Disease Control and Prevention (CDC) reported on its website that a total of 146 persons infected with any of the four outbreak-associated strains of *Listeria monocytogenes* were reported to CDC from 28 states. Primus further admits that, on December 8, 2011, the Centers for Disease Control and Prevention (CDC) reported on its website that thirty (30) deaths were reported. Primus is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 9 of the First Amended Complaint, and therefore denies said allegations.

10. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 10 of the First Amended Complaint. To the extent that any of the allegations contained in Paragraph 10 of the First Amended Complaint are deemed to require a response, Primus denies them

11. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of the First Amended

Complaint. To the extent that any of the allegations contained in Paragraph 11 of the First Amended Complaint are deemed to require a response, Primus denies them.

12. Primus admits that, on September 19, 2011, the FDA issued a press release announcing 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. Primus admits that, on September 19, 2011, the FDA issued a press release announcing that tests confirmed that the *Listeria monocytogenes* found in the samples matches one of the three different strains of *Listeria monocytogenes* associated with the multi-state outbreak of *listeriosis*. Primus is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 12 of the First Amended Complaint, and therefore denies said allegations.

13. Primus admits that, on September 19, 2011, the FDA issued a press release announcing that Jensen Farms recalled its Rocky Ford-brand cantaloupes on September 14, 2011. Primus admits that, on September 19, 2011, the FDA issued a press release announcing that Jensen Farms shipped the recalled cantaloupes from July 29, 2011, through September 10, 2011. Primus is without sufficient information or knowledge to form a belief as to the truth of the

remaining allegations contained in Paragraph 13 of the First Amended Complaint, and therefore denies said allegations.

14. With respect to Paragraph 13, Primus admits that, in or about July 2011, Jensen Farms contracted with Primus to perform certain auditing services at Jensen Farms' cantaloupe ranchlands and packinghouse. Primus denies the remaining allegations contained in Paragraph 14 of the First Amended Complaint and further denies that it entered into a contract with Frontera related to the auditing services it agreed to provide Jensen Farms.

15. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 15 of the First Amended Complaint are deemed to require a response, Primus denies them.

16. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 16 of the First Amended Complaint are deemed to require a response, Primus denies them.

17. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 17 of the First Amended

Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 17 of the First Amended Complaint are deemed to require a response, Primus denies them.

18. Primus denies the allegation that it is “the nation’s largest third-party food safety auditing firm,” “primarily involving fresh produce facilities,” and depending on year, admits “for over 3,000 clients worldwide.” Primus denies any and all remaining allegations contained in Paragraph 18 of the First Amended Complaint.

19. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 19 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 19 of the First Amended Complaint are deemed to require a response, Primus denies them.

20. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 20 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 20 of the First Amended Complaint are deemed to require a response, Primus denies them.

21. Primus denies any and all allegations contained in Paragraph 21 of the First Amended Complaint.

22. Primus admits that the Primus logo on its Certificate related to the July 25, 2011, packinghouse audit at Jensen Farms, states, “PrimusLabs when food safety counts.” Primus is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 22 of the First Amended Complaint, and therefore denies said allegations.

23. Primus denies any and all allegations contained in Paragraph 23 of the First Amended Complaint.

24. Primus denies any and all allegations contained in Paragraph 24 of the First Amended Complaint.

25. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 25 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 25 of the First Amended Complaint are deemed to require a response, Primus denies them.

26. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 26 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 26 of the First Amended Complaint are deemed to require a response, Primus denies them.

27. Primus denies any and all allegations contained in Paragraph 27 of the

First Amended Complaint.

28. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 28 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 28 of the First Amended Complaint are deemed to require a response, Primus denies them.

29. Primus denies any and all allegations contained in Paragraph 29 of the First Amended Complaint.

30. Primus admits that on August 5, 2010, Jerry Walzel of Bio Food Safety audited the Jensen Farms cantaloupe packing facility. Primus further admits that the front page of the August 5, 2010, packinghouse audit states, “[t]his facility packs fresh cantaloupes from their own fields into cartons. The melons are washed and then run through a hydrocooler which has chlorine added to the water. Once the product is dried and packed into cartons it is placed into coolers.” Primus is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 30 of the First Amended Complaint, and therefore denies said allegations.

31. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 31 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the

allegations contained in Paragraph 31 of the First Amended Complaint are deemed to require a response, Primus denies them.

32. On information and belief, Primus admits the allegations contained in Paragraph 32 of the First Amended Complaint.

33. Primus denies any and all allegations contained in Paragraph 33 of the First Amended Complaint.

34. Primus denies any and all allegations contained in Paragraph 34 of the First Amended Complaint.

35. Primus denies any and all allegations contained in Paragraph 35 of the First Amended Complaint.

36. Primus denies any and all allegations contained in Paragraph 36 of the First Amended Complaint.

37. Primus denies any and all allegations contained in Paragraph 37 of the First Amended Complaint.

38. Primus admits that the Packinghouse Audit Scoring Guidelines for the v.08.06 packinghouse audit contains a section captioned “Good Manufacturing Practices, The Facility Tour,” and that this section contains subsections titled, “General Food Safety,” “Pest Control,” “Storage Areas & Packaging Materials,” “Operational Practices,” “Employee Practices,” “Equipment,” “Equipment Cleaning,” “General Cleaning,” and “Buildings and Grounds.” Primus denies any

and all remaining allegations contained in Paragraph 38 of the First Amended Complaint.

39. Primus admits that the Packinghouse Audit Scoring Guidelines for the v.08.06 packinghouse audit contains a section captioned “Food Safety File,” and that this section contains subsections titled, “General File Requirements,” “Traceability,” “Chemicals,” “Pest Control,” “Self-Inspection,” “Maintenance & Sanitation,” “Personnel,” “Microbial Tests,” and “Temperature Controlled Storage and Distribution.” Primus denies any and all remaining allegations contained in Paragraph 39 of the First Amended Complaint.

40. Primus denies any and all allegations contained in Paragraph 40 of the First Amended Complaint.

41. Primus denies any and all allegations contained in Paragraph 41 of the First Amended Complaint.

42. Primus denies any and all allegations contained in Paragraph 42 of the First Amended Complaint.

43. Primus admits that James DiIorio conducted an audit at Jensen Farms’ cantaloupe ranchlands and packinghouse on or about July 25, 2011, and admits that James DiIorio gave the Jensen Farms packinghouse a “superior” rating and a score of 96%. Primus denies any and all remaining allegations contained in Paragraph 43 of the First Amended Complaint.

44. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 44 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 44 of the First Amended Complaint are deemed to require a response, Primus denies them.

45. Primus admits that, on October 19, 2011, the FDA issued a document providing an overview of factors that potentially contributed to the contamination of fresh, whole cantaloupe with the pathogen *Listeria monocytogenes*, which was implicated in a 2011 multi-state outbreak of *listeriosis*. According to this FDA document, on September 10, 2011, FDA, along with Colorado state officials, 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*. Primus is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 45 of the First Amended Complaint, and therefore denies said allegations.

46. Primus admits that, according to the October 19, 2011, FDA document, providing an overview of factors that potentially contributed to the contamination of fresh, whole cantaloupe with the pathogen *Listeria monocytogenes*, 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. Primus is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 46 of the First Amended Complaint, and therefore denies said allegations.

47. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 47 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 47 of the First Amended Complaint are deemed to require a response, Primus denies them.

48. Primus admits that, according to the October 19, 2011, FDA document, providing an overview of factors that potentially contributed to the contamination of fresh, whole cantaloupe with the pathogen *Listeria monocytogenes*, as a result of the isolation of three of the four 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. Primus is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 48 of the First Amended Complaint, and therefore denies said allegations.

49. Primus admits that, according to the October 19, 2011, FDA document, providing an overview of factors that potentially contributed to the contamination of fresh, whole cantaloupe with the pathogen *Listeria monocytogenes*, FDA, state, and local officials conducted the environmental assessment at Jensen Farms on September 22-23, 2011. Primus is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 49 of the First Amended Complaint, and therefore denies said allegations.

50. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 50 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 50 of the First Amended Complaint are deemed to require a response, Primus denies them.

51. Primus denies any and all allegations contained in Paragraph 51 of the

First Amended Complaint.

52. Primus denies any and all allegations contained in Paragraph 52 of the First Amended Complaint.

53. Primus denies any and all allegations contained in Paragraph 53 of the First Amended Complaint.

54. Primus denies any and all allegations contained in Paragraph 54 of the First Amended Complaint.

55. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 55 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 55 of the First Amended Complaint are deemed to require a response, Primus denies them.

56. Primus denies any and all allegations contained in Paragraph 56 of the First Amended Complaint.

57. Primus denies any and all allegations contained in Paragraph 57 of the First Amended Complaint.

58. Primus denies any and all allegations contained in Paragraph 58 of the First Amended Complaint.

59. Primus denies any and all allegations contained in Paragraph 59 of the First Amended Complaint.

60. Primus denies any and all allegations contained in Paragraph 60 of the First Amended Complaint.

61. Primus denies any and all allegations contained in Paragraph 61 of the First Amended Complaint.

62. Primus denies any and all allegations contained in Paragraph 62 of the First Amended Complaint.

63. Primus denies any and all allegations contained in Paragraph 63 of the First Amended Complaint.

64. Primus denies any and all allegations contained in Paragraph 64 of the First Amended Complaint.

65. Primus denies any and all allegations contained in Paragraph 65 of the First Amended Complaint.

66. Primus denies any and all allegations contained in Paragraph 66 of the First Amended Complaint.

67. Primus denies any and all allegations contained in Paragraph 67 of the First Amended Complaint.

68. Primus denies any and all allegations contained in Paragraph 68 of the First Amended Complaint.

69. Primus denies any and all allegations contained in Paragraph 69 of the First Amended Complaint.

70. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 70 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 70 of the First Amended Complaint are deemed to require a response, Primus denies them.

71. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 71 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 71 of the First Amended Complaint are deemed to require a response, Primus denies them.

72. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 72 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 72 of the First Amended Complaint are deemed to require a response, Primus denies them.

73. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 73 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 73 of the First Amended Complaint are deemed to require a response, Primus denies them.

74. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 74 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 74 of the First Amended Complaint are deemed to require a response, Primus denies them.

75. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 75 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 75 of the First Amended Complaint are deemed to require a response, Primus denies them.

76. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 76 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 76 of the First Amended Complaint are deemed to require a response, Primus denies them.

77. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 77 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 77 of the First Amended Complaint are deemed to require a response, Primus denies them.

**III. CAUSE OF ACTION AGAINST FRONTERA AND WALMART:
STRICT LIABILITY**

78. Primus realleges and incorporates its answers to Paragraphs 1 through 77, as though fully set forth herein, in response to Paragraph 78.

79. The allegations contained in Paragraph 79 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 79 are intended to implicate Primus, the allegations are denied.

80. The allegations contained in Paragraph 80 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 80 are intended to implicate Primus, the allegations are denied.

81. The allegations contained in Paragraph 81 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 81 are intended to implicate Primus, the allegations are denied.

82. The allegations contained in Paragraph 82 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at

Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 82 are intended to implicate Primus, the allegations are denied.

83. The allegations contained in Paragraph 83 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 83 are intended to implicate Primus, the allegations are denied.

84. The allegations contained in Paragraph 84 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 84 are intended to implicate Primus, the allegations are denied.

85. The allegations contained in Paragraph 85 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 85 are intended to implicate Primus, the allegations are denied.

**IV. CAUSE OF ACTION AGAINST FRONTERA AND WALMART:
NEGLIGENCE AND NEGLIGENCE PER SE**

86. Primus realleges and incorporates its answers to Paragraphs 1 through

85, as though fully set forth herein, in response to Paragraph 86.

87. The allegations contained in Paragraph 87 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 87 are intended to implicate Primus, the allegations are denied.

88. The allegations contained in Paragraph 88 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 88 are intended to implicate Primus, the allegations are denied.

89. The allegations contained in Paragraph 89 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 89 are intended to implicate Primus, the allegations are denied.

90. The allegations contained in Paragraph 90 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 90 are intended to implicate Primus, the

allegations are denied.

91. The allegations contained in Paragraph 91 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 91 are intended to implicate Primus, the allegations are denied.

92. The allegations contained in Paragraph 92 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 92 are intended to implicate Primus, the allegations are denied.

93. The allegations contained in Paragraph 93 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 93 are intended to implicate Primus, the allegations are denied.

94. The allegations contained in Paragraph 94 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 94 are intended to implicate Primus, the

allegations are denied.

95. The allegations contained in Paragraph 95 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 95 are intended to implicate Primus, the allegations are denied.

**V. CAUSE OF ACTION AGAINST FRONTERA AND WALMART:
BREACH OF WARRANTY**

96. Primus realleges and incorporates its answers to Paragraphs 1 through 95, as though fully set forth herein, in response to Paragraph 96.

97. The allegations contained in Paragraph 97 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 97 are intended to implicate Primus, the allegations are denied.

98. The allegations contained in Paragraph 98 of the First Amended Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 98 are intended to implicate Primus, the allegations are denied.

99. The allegations contained in Paragraph 99 of the First Amended

Complaint are directed at other parties or settled parties. As they not directed at Primus, it does not appear that a response from Primus is required. However, to the extent the allegations in Paragraph 99 are intended to implicate Primus, the allegations are denied.

**VI. CAUSE OF ACTION AGAINST PRIMUS:
NEGLIGENCE**

100. Primus realleges and incorporates its answers to Paragraphs 1 through 99, as though fully set forth herein, in response to Paragraph 100.

101. Primus denies any and all allegations contained in Paragraph 101 of the First Amended Complaint and further denies that it is bound by, and liable for, the acts and omissions of negligence, if any there were, of Bio Food Safety and its employees.

102. Primus denies any and all allegations contained in Paragraph 102 of the First Amended Complaint and further denies that it owed a duty to the ultimate consumers of Jensen Farms' products, include the decedent, to act with reasonable care in the selection, approval, and monitoring of any subcontractors.

103. Primus denies any and all allegations contained in Paragraph 103 of the First Amended Complaint, and further denies that it owed a duty to the ultimate consumers of Jensen Farms' products, include the decedent, to act with reasonable care in the selection, approval, and monitoring of any subcontractors, and further denies that Primus breached any duty purportedly owed to plaintiff.

104. Primus denies any and all allegations contained in Paragraph 104 of the First Amended Complaint and further denies that the audit conducted by James DiIorio on or about July 25, 2011, was not done with reasonable care and constituted a breach of Primus' duty of reasonable care purportedly owed to the ultimate consumers of Jensen Farms' cantaloupe.

105. Primus denies any and all allegations contained in Paragraph 105 of the First Amended Complaint and further denies that any and all of the alleged acts and omissions of negligence by James DiIorio constituted a proximate cause of the decedent's claimed illness and death.

106. Primus denies any and all allegations contained in Paragraph 106 of the First Amended Complaint and further denies that Bio Food Safety was an agent of Primus for purposes of James DiIorio's audit at Jensen Farms, that Primus committed acts and omissions of negligence, that Primus' alleged acts and omissions of negligence constituted a proximate cause of the decedent's claimed injuries and death, and that Primus is liable for damages to Plaintiff and the decedent's heirs.

VII. NEGLIGENCE INFLICTION OF EMOTIONAL DISTRESS

107. Primus realleges and incorporates its answers to Paragraphs 1 through 106, as though fully set forth herein, in response to Paragraph 107.

108. Primus is without sufficient information or knowledge to form a belief

as to the truth of the allegations contained in Paragraph 108 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 108 of the First Amended Complaint are deemed to require a response, Primus denies them.

109. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 109 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 109 of the First Amended Complaint are deemed to require a response, Primus denies them.

110. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 110 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 110 of the First Amended Complaint are deemed to require a response, Primus denies them.

111. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 111 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 111 of the First Amended Complaint are deemed to require a response, Primus denies them.

112. Primus denies any and all allegations contained in Paragraph 102 of

the First Amended Complaint and further denies that further denies that any and all of the alleged acts and omissions of negligence by Primus and/or James DiIorio constituted a proximate cause of Plaintiff's alleged emotional torment.

113. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 113 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 113 of the First Amended Complaint are deemed to require a response, Primus denies them.

114. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 114 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 114 of the First Amended Complaint are deemed to require a response, Primus denies them.

115. Primus denies any and all allegations contained in Paragraph 115 of the First Amended Complaint.

116. Primus denies any and all allegations contained in Paragraph 116 of the First Amended Complaint.

VIII. SURVIVORS ACTION

117. Primus realleges and incorporates its answers to Paragraphs 1 through 116, as though fully set forth herein, in response to Paragraph 117.

118. Paragraph 118 of the First Amended Complaint alleges legal conclusions to which no response is required. To the extent a response to the allegations of Paragraph 118 is deemed to be required, Primus denies them.

119. Paragraph 119 of the First Amended Complaint does not assert any allegations against Primus and thus does not require a response. To the extent a response to the allegations of Paragraph 118 is deemed to be required, Primus denies them.

120. Paragraph 120 of the First Amended Complaint does not assert any allegations against Primus and thus does not require a response. To the extent a response to the allegations of Paragraph 120 is deemed to be required, Primus denies them.

121. Paragraph 121 of the First Amended Complaint alleges legal conclusions to which no response is required. To the extent a response to the allegations of Paragraph 121 is deemed to be required, Primus denies them.

IX. LOSS OF CONSORTIUM

122. Primus realleges and incorporates its answers to Paragraphs 1 through 122, as though fully set forth herein, in response to Paragraph 122.

123. Primus denies that Plaintiff is entitled to loss of consortium from Primus. The remaining allegations within Paragraph 123 of the First Amended Complaint do not assert any allegations against Primus and thus do not require a

response. To the extent a response to the allegations of Paragraph 123 are deemed to be required, Primus denies them.

124. Paragraph 124 of the First Amended Complaint alleges legal conclusions to which no response is required. To the extent a response to the allegations of Paragraph 124 is deemed to be required, Primus denies them.

125. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 125 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 125 of the First Amended Complaint are deemed to require a response, Primus denies them.

126. Primus is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 126 of the First Amended Complaint, and therefore denies said allegations. To the extent that any of the allegations contained in Paragraph 126 of the First Amended Complaint are deemed to require a response, Primus denies them.

X. DECLARATORY JUDGMENT

127. Primus realleges and incorporates its answers to Paragraphs 1 through 126, as though fully set forth herein, in response to Paragraph 127.

128. Primus denies that Plaintiff is entitled to declaratory judgment against Primus. The remaining allegations within Paragraph 128 of the First Amended

Complaint do not assert any allegations against Primus and thus do not require a response. To the extent a response to the allegations of Paragraph 128 are deemed to be required, Primus denies them.

129. Primus denies any and all allegations contained in Paragraph 129 of the First Amended Complaint.

130. Paragraph 130 does not assert any allegations against Primus and thus does not require a response. To the extent a response to the allegations of Paragraph 130 are deemed to be required, Primus denies them.

XI. DAMAGES

131. Primus realleges and incorporates its answers to Paragraphs 1 through 130, as though fully set forth herein, in response to Paragraph 131.

132. Primus denies any and all allegations contained in Paragraph 132 of the First Amended Complaint and further denies that any and all of the alleged acts and omissions of negligence by Primus and/or James DiIorio constituted a proximate cause of the decedent's claimed illness and death and Plaintiff's claimed damages.

AFFIRMATIVE DEFENSES

As separate, alternative, and additional defenses, this Defendant states:

First Affirmative Defense

1. The First Amended Complaint has failed to state facts sufficient to constitute any cause of action upon which relief can be granted.

Second Affirmative Defense

2. The Claims against this Defendant are barred by the doctrines of waiver, laches, estoppel, or other equitable defenses.

Third Affirmative Defense

3. This Defendant's acts or omissions, alleged or otherwise, were not the proximate cause of the decedent's claimed illness and death, or Plaintiff's alleged injuries and/or damages.

Fourth Affirmative Defense

4. This Defendant alleges on information and belief that if any loss, injury, damage, or detriment occurred as alleged in the First Amended Complaint, said loss, injury, damage, or detriment were the result of the act or omission of some third party, not an employee, servant, or agent of this Defendant, including but not limited to Wal-mart, Inc., and Jensen Farms, whom Primus has designed as settled parties liable to plaintiff, beyond this Defendant's supervision and control, and without this Defendant's knowledge, consent, approval, or ratification, and that this Defendant cannot be liable for that loss as a matter of law. Accordingly, liability of this Defendant, if any proved, and responsible parties, named or

unnamed and including Wal-Mart, Inc., and Jensen Farms, should be apportioned according to their respective degrees of fault or other legal responsibility, and the liability, if any, of this Defendant should be reduced accordingly.

Fifth Affirmative Defense

5. Plaintiff's injuries and damages sustained, if any, were proximately caused by the intervening and superseding actions of others, which intervening and superseding actions bar and/or diminish Plaintiff's damages, if any, against this Defendant on theories of indemnity and contribution.

Sixth Affirmative Defense

6. This Defendant alleges that Plaintiff's injuries and damages sustained, if any, were proximately caused by an unforeseeable accident, without any negligence or culpable conduct by this answering Defendant.

Seventh Affirmative Defense

7. This Defendant did not violate any duty allegedly owed to Plaintiff, including, but not limited to, any common law duty, or statutory or regulatory standard.

Eighth Affirmative Defense

8. Plaintiff has failed to exercise reasonable diligence to mitigate any alleged damages, and this conduct of Plaintiff was the legal cause of any injuries and damages.

Ninth Affirmative Defense

9. Plaintiff's claims are barred or limited because the injuries or damages of which Plaintiff complains were caused, in whole or in part, by indispensable nonparties whom Plaintiff has failed to join in this action.

Tenth Affirmative Defense

10. Plaintiff's injuries and damages sustained, if any, were proximately caused by the misuse, abuse, alteration, and/or modification of the product alleged in the First Amended Complaint by either the decedent, the Plaintiff, or third parties, which was a superseding action that bars any recovery against this Defendant.

Eleventh Affirmative Defense

11. Plaintiff's injuries and damages sustained, if any, must be reduced by the application of the collateral source rule.

Twelfth Affirmative Defense

12. This Defendant alleges that, to the extent Plaintiff has been compensated for the damages alleged in the First Amended Complaint by receiving payment from other persons or entities, the amount of any such compensation should be set off against any recovery Plaintiff may receive in this action.

Thirteenth Affirmative Defense

13. In the event of a settlement between Defendant and any other tortfeasor or a judgment herein against this Defendant and any other Defendant currently or subsequently named, this Defendant is entitled to contribution or a statutory credit for any such settlement or judgment.

Fourteenth Affirmative Defense

14. The Claims against this Defendant are barred or limited by assumption of risk.

Fifteenth Affirmative Defense

15. The Claims against this Defendant are barred or limited by the Plaintiff's comparative negligence.

Sixteenth Affirmative Defense

16. This Defendant hereby reserves the right to designate non-parties at fault.

Seventeenth Affirmative Defense

17. The Claims against this Defendant may be barred under the doctrine of spoliation of evidence or the fact that certain evidence may have been tampered with, destroyed, lost, or undergone destructive testing to the prejudice of this Defendant.

Eighteenth Affirmative Defense

18. The Claims against this Defendant may be preempted by the Food, Drug and Cosmetic Act, 21 U.S.C. § 301, et seq.

Nineteenth Affirmative Defense

19. This Defendant is informed and believes and thereon alleges that, at all materials times herein, this Defendant acted consistent with industry practice.

Twentieth Affirmative Defense

20. This Defendant hereby incorporates all of the affirmative defenses raised by any other Defendant who is or may become a party to this action.

Twenty-First Affirmative Defense

21. This Defendant is informed and believes and thereon alleges that the First Amended Complaint and each cause of action contained therein are barred by applicable statutes of limitations.

Twenty-Second Affirmative Defense

22. This Defendant is informed and believes and thereon alleges that, at all times relevant to the First Amended Complaint, this Defendant was acting within the course and scope of its employment and/or agency, and is immune from liability for the acts alleged herein.

Twenty-Third Affirmative Defense

23. Because the First Amended Complaint is couched in conclusory terms, this Defendant cannot fully anticipate defenses that may be applicable to this action. Accordingly, this Defendant reserves its right to assert additional defenses to the extent such defenses are applicable.

PRAYER FOR RELIEF

WHEREFORE, Defendant Primus Group, Inc., d/b/a Primus Labs, prays that judgment be entered in its favor and against Plaintiff on the First Amended Complaint, and for any other relief the Court deems just and proper.

JURY DEMAND

Defendant Primus Group, Inc., d/b/a Primus Labs, hereby demands trial to a jury of six persons on all issues.

CROSS-CLAIMS AGAINST FRONTERA PRODUCE, LTD. AND WAL-MART, INC.

COMES NOW Cross-Defendant/Cross-Defendant/Cross-Complainant, Primus Group, Inc., d/b/a Primus Labs (“Primus”), by and through its counsel, and for its Cross-Complaint against Frontera Produce, Ltd. (“Frontera”), and Wal-Mart Stores, Inc., (“Wal-Mart”), states and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Primus is a California corporation with its principal place of business in California.

2. Upon information and belief, Jensen Farms is a Colorado partnership with its principal place of business in Colorado. At all relevant times to this Cross-Complaint, Jensen Farms was a manufacturer, distributor, and seller of agricultural goods, including the cantaloupes that are at issue in Plaintiffs' Complaint.

3. Upon information and belief, Frontera is a Texas limited liability partnership with its principal place of business in Texas. At all relevant times to this Cross-Complaint, Frontera was a seller and distributor of produce, including the cantaloupes that are at issue in Plaintiff's Complaint.

4. Upon information and belief, Wal-Mart is a foreign corporation organized and existing under the laws of the State of Delaware with its principal place of business in Arkansas. At all relevant times to this Cross-Complaint, Wal-Mart was a seller of produce, including the cantaloupes that are at issue in Plaintiff's Complaint.

5. Plaintiff's underlying Complaint asserts that jurisdiction is proper under 28 U.S.C. § 1332(a).

6. Primus asserts its cross-claims pursuant to Fed. R. Civ. P. 13(g). Primus' cross-claims against Frontera and Wal-Mart, relate to the claims asserted in Plaintiff's First Amended Complaint.

7. This Court has supplemental jurisdiction over Primus' third-party claims pursuant to 28 U.S.C. § 1367.

8. To the extent that Primus is determined to have any fault to Plaintiff, which is denied, then the fault attributable to the Cross-Defendant must be determined and apportioned.

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff BETTE ONSAGER, individually and as Personal Representative for the Estate of Jerome Onsager (“Plaintiff”), filed a Complaint against Primus for negligence arising from Primus’ audit of the Jensen Farms’ cantaloupe packinghouse that packaged the cantaloupes at issue in the Plaintiff’s Complaint that allegedly caused the decedent’s *Listeria*-related illness. Primus denies the claims made by Plaintiff.

10. Unless otherwise referenced, all allegations and facts herein referenced pertain to a period on or before September 2011.

11. Primus is and was an auditor that, based upon customer request, has the ability to perform several different fresh produce-related audits covering Good Agricultural Practices (“GAP”), Good Manufacturing Practices (“GMP”), and Hazard Analysis Critical Control Points (“HACCP”).

12. Separate from its auditing function, Primus maintained microbiological labs that gather samples of soil, water, and environmental swabs of fresh produce operations to test for pathogens commonly found in fresh produce.

13. Upon customer request, Primus could perform microbiological testing

of samples of soil, water, and environmental swabs of fresh produce operations to test for pathogens commonly found in fresh produce.

14. As of September 2011, the Food and Drug Administration (“FDA”) did not set forth uniform statutory requirements relating to GAP, GMP, and HACCP.

15. There are numerous different GAP, GMP, and HAACP-included audits offered by different entities that may be performed in North America.

16. These aforementioned various GAP, GMP, and HAACP-included audits have varying standards and requirements.

17. The client and/or auditee is responsible to select which agricultural audit it wants Primus or any other auditor to perform.

18. Primus does not suggest, direct, or instruct an auditee client as to which agricultural audit it should utilize for its operations.

19. In or about July 2011, Jensen Farms contracted with Primus to perform three (3) separate ranch audits of Jensen Farms’ ranches, and a standard packinghouse audit without HACCP of Jensen Farms’ packinghouse (the standard packinghouse audit contract is hereby referred to as the “Auditing Contract”). A true and correct copy of the Auditing Contract is attached hereto and incorporated herewith as Exhibit A.

20. Ranch audits are performed to observe and report as to certain food

safety topics including site selection, adjacent land use, fertilizer usage, water sourcing and usage, pest control and pesticide monitoring, and harvesting practices (including worker hygiene, packaging storage, field sanitation and product transportation).

21. A packinghouse audit without HACCP, which is conducted while the facility is running product (i.e., processing, packing, cooling, and performing normal functions) consists of a visual tour of the client auditee's procedural operations and a review of applicable food safety files maintained by the client auditee.

22. During the tour of the procedural operations and safety file review as set forth above, the auditor observes and reports his observations against the criteria of the audit chosen by the client auditee.

23. The auditor provides a score that is composed of points based upon each applicable guideline criteria.

24. Jensen Farms requested that Primus perform a standard packinghouse audit without HACCP.

25. Jensen Farms contracted with Primus to perform a standard packinghouse audit without HACCP.

26. The standard packinghouse audit without HACCP as contracted by Jensen Farms assessed the packinghouse on the following areas:

- a. Good manufacturing practices, including pest control, storage areas and packaging materials, operational practices, employee practices, equipment, equipment cleaning, general cleaning, buildings and grounds;
- b. Food safety file requirements, including general file requirements, corrective actions taken by the auditee for nonconformances of previous years, traceability, chemicals, pest control, self-inspection, maintenance and sanitation, personnel, microbial test records, temperature controlled storage and distribution;
- c. Food security, including facility security, employee security, transport security, water supply security, food security systems; and
- d. Miscellaneous survey questions, including employment of minors, allergens, country of origin labeling.

27. The standard packinghouse audit without HACCP utilized at Jensen Farms did not include any microbiological testing of soil, water, environmental swabs, or the commodity at any stage of production.

28. The standard packinghouse audit without HACCP utilized at Jensen Farms consisted solely of an observation and report of processes and procedures of the client auditee's operations.

29. The Primus standard packinghouse audit without HACCP does not

entail an examination of the fitness for consumption of the commodity produced by the auditee.

30. The Primus standard packinghouse audit without HACCP utilized at Jensen Farms did not entail an examination of the fitness for consumption of the cantaloupe produced by Jensen Farms.

31. The audit report relating to the Primus standard packinghouse audit without HACCP as utilized at Jensen Farms contains no scoring or assessment criteria pertaining to the fitness for consumption or quality of the commodity produced by the auditee.

32. The audit report relating to the Primus standard packinghouse audit without HACCP as utilized at Jensen Farms did not contain any scoring or assessment criteria pertaining to the fitness for consumption or quality of the cantaloupe produced by Jensen Farms.

33. There is no accepted method or practice for processing cantaloupe that can guarantee that it is free of food borne pathogens such as *Listeria monocytogenes*.

34. A perfect score on a standard packinghouse audit without HACCP provides no guarantee that a commodity produced at that packinghouse is free of food borne pathogens.

35. Primus did not at any time represent, warrant, or ensure to Jensen

Farms that its audit could detect any food borne pathogens.

36. Primus did not at any time represent, warrant or ensure that Jensen Farms' product would be free of any food borne pathogens regardless of the audit score.

37. At no time did Jensen Farms request that Primus represent, warrant or ensure that Jensen Farms' products would be free of food borne pathogens.

38. At no time did Frontera request that Primus represent, warrant or ensure that Jensen Farms' products would be free of food borne pathogens.

39. At no time did Wal-Mart request that Primus represent, warrant or ensure that Jensen Farms' products would be free of food borne pathogens.

40. *Listeria monocytogenes* is invisible to the naked eye.

41. *Listeria monocytogenes* cannot be detected without utilizing laboratory testing procedures.

42. Neither Jensen Farms, nor any of the cross-defendants, requested that Primus perform any sampling or microbiological testing of Jensen Farms' soil, water, any environmental swabs, or commodity at Jensen Farms' ranches or packinghouse.

43. In or about July 2011, James DiIorio ("DiIorio") agreed to perform the aforementioned audits of Jensen Farms' cantaloupe ranches and packinghouse audit without HAACP.

44. DiIorio performed the aforementioned audits on or about July 25, 2011.

45. The ranch audits performed by DiIorio on that date noted a total of thirteen (13) non-conformances, all of which deviated from GAP.

46. DiIorio noted on the front page of each ranch audit that the ranches were “operating under organic principles with no use of crop protection materials.”

47. The packinghouse audit without HAACP performed by DiIorio was checked against 151 separate criteria and noted three (3) separate minor deficiencies, three separate major deficiencies, and five (5) complete non-compliances, all of which deviated from GMP.

48. The front page of the packinghouse audit report stated that, “no antimicrobial solution is injected into the water of the wash stations.”

49. The “Audit Scope” of the packinghouse audit report states as follows: “Audit scope consists of a tour of the facility operations and surrounding grounds and review of the food safety file requirements.”

50. The packinghouse audit report further reflected that Jensen Farms had no record of performing any corrective actions with respect to non-conformances that had been set forth in prior audits performed at Jensen Farms.

51. The audit score does not relieve the duty of the auditee to rectify non-conformances.

52. On information and belief, Jensen Farms scheduled the packinghouse audit to be performed on the first day of the cantaloupe production season at the packinghouse.

53. The packinghouse audit was performed within the first several days of cantaloupe production season at the packinghouse.

54. On information and belief, Jensen Farms' cantaloupe operation at the packinghouse was performing at less than 50% of its capacity at the time DiIorio performed the audit.

55. Frontera was aware in advance of the date of the audit.

56. On information and belief, Frontera sent one of its representatives to Jensen Farms in July 2011 prior to the scheduled audit.

57. On information and belief, the person sent by Frontera to Jensen Farms in July 2011 prior to the scheduled audit was a quality assurance representative.

58. A purpose of Frontera's visit prior to the audit in July 2011 was to assist and/or advise Jensen Farms in preparation for the audit.

59. Primus conveyed the complete audit results and/or report solely to Jensen Farms (the "Packinghouse Audit Report").

60. A certificate was issued to Jensen Farms showing that the Packinghouse Audit had been completed, including instructions to review the

substance of the audit report for details of the observed conditions of the packinghouse.

61. Jensen Farms failed to take corrective action with respect to the minor deficiencies, major deficiencies, non-compliance issues, or comments set forth in the Packinghouse Audit Report.

62. Cross-defendant Frontera failed to request or require corrective action with respect to the deficiencies, non-compliance issues, or comments set forth in the Packinghouse Audit Report.

63. Cross-defendant Wal-Mart failed to request or require corrective action with respect to the deficiencies, non-compliance issues, or comments set forth in the Packinghouse Audit Report.

64. Cross-defendant Frontera was aware that the Jensen Farms cantaloupe were grown on transitional ground.

65. Cross-defendant Wal-Mart was aware that the Jensen Farms cantaloupe were grown on transitional ground.

66. Primus was prohibited from disclosing audit results to any third party without the express written permission of the client auditee.

67. In the Auditing Contract, Jensen Farms did not authorize Primus to provide the audit results to any third party.

68. Cross-defendants did not request or receive the ranch or packinghouse

audit reports from Primus.

69. Primus had no control over the operations of Jensen Farms, including any operational decisions, what type of auditing and testing to do, whether to discontinue production until corrective actions were taken, or whether to distribute the cantaloupe.

70. Primus was not retained or requested to serve in a consulting capacity or provide consulting services to Jensen Farms.

71. Jensen Farms provided the Packinghouse Audit Report to Frontera.

72. Cross-defendant Frontera did not request or require Jensen Farms to utilize an anti-microbial wash of the cantaloupes at any time before or after taking possession of the cantaloupe produced by Jensen Farms.

73. Cross-defendant Wal-Mart did not request or require Jensen Farms to utilize an anti-microbial wash of the cantaloupes at any time before or after taking possession of the cantaloupe produced by Jensen Farms.

74. Frontera or Jensen Farms submitted the Packinghouse Audit Report to Wal-Mart either directly or through its parent company.

75. Wal-Mart reviewed the Packinghouse Audit Report.

76. On information and belief, Cross-Defendants Frontera and Wal-Mart had access to the Packinghouse Audit Report prior to receiving cantaloupes originating at Jensen Farms.

77. On information and belief, Cross-Defendants Frontera and Wal-Mart had access to the Packinghouse Audit Report prior to September 2011.

78. Cross-Defendants Frontera and Wal-Mart did not request or require Jensen Farms to take corrective actions on the non-conforming deviations from GMP as a condition for purchasing cantaloupe from them.

79. Cross-Defendants Frontera and Wal-Mart did not perform, request or require any follow up inspections or audits at any point after July 25, 2011, later in the cantaloupe production season when the Jensen Farms packinghouse operations were running at full or near full capacity.

80. Primus was not asked to, nor did it have permission or authority to perform any follow up inspections or audits at Jensen Farms' facility at any point after July 25, 2011.

81. On or before September 10, 2011, The Centers for Disease Control ("CDC"), using epidemiological evidence gathered from more than one hundred individuals infected with *Listeriosis*, determined that cantaloupe originating from Jensen Farms was the cause of a national outbreak of the disease.

82. There has never been a reported case of a *Listeria* breakout involving whole, uncut fresh cantaloupe.

83. On or about September 10, 2011, at the peak of the Colorado cantaloupe processing season, officials from the FDA and the Colorado

Department of Health visited Jensen Farms. On information and belief, approximately 4 experts from those agencies performed an inspection of, as well as environmental and commodity sampling from, the Jensen Farms packinghouse and fields.

84. Despite the epidemiological evidence and the inspection by the FDA and Colorado Dept. of Health Inspectors, neither Jensen Farms, Frontera nor any of the government agencies informed the public of the potentially contaminated cantaloupes, until September 14, 2011, when Jensen Farms issued a voluntary Class 1 recall.

85. The first final results of the samples taken by the FDA at Jensen Farms were completed on September 14, 2011.

86. Primus was not notified by any of the Cross-Defendants as to any issues with cantaloupe originating from Jensen Farms until after the voluntary Class 1 recall made by Jensen Farms.

87. Primus and had no control, input, or authority to make any such recall.

88. Prior to the July 2011 audits, Pepper Equipment Corporation sold and installed equipment at Jensen Farms' packinghouse that was used to wash the cantaloupes.

89. On information and belief, Pepper specifically installed the equipment to allow for anti-microbial wash and initial cooling.

90. On information and belief, Jensen did not utilize the portions of the equipment installed by Pepper for antimicrobial washing or initial cooling.

91. At all times during the growing, harvesting, processing and shipping of its cantaloupes, Jensen Farms had complete control over the methods and procedures used to harvest, process, wash and cool its cantaloupes.

92. At all times during the growing, harvesting, processing and shipping of Jensen Farms' cantaloupes, Primus had no control, authority, or influence over the methods and procedures used to harvest, process, wash and cool its cantaloupes.

93. Primus did not know, and had no way of knowing the conditions of harvesting, processing, washing and cooling of Jensen Farms' cantaloupes after July 25, 2011.

94. At all times prior to and during taking possession of, shipping, and selling the cantaloupes originating from Jensen Farms, Cross-Defendants had the control and decision making authority as to whether or not to sell those cantaloupes for consumption, or under what conditions it was willing to accept the cantaloupes from Jensen Farms.

95. At all times prior to and during taking possession of, shipping, and selling the cantaloupes originating from Jensen Farms, Primus had no control or decision making authority over whether or not to distribute or sell such cantaloupes

for consumption.

96. Primus does not, nor has it ever had any contractual or other business relationship with Frontera.

97. Primus has never granted Frontera a license or given it any permission to utilize the Primus name or logo for advertising.

98. At no time did Primus represent, warrant, speak, or otherwise communicate to any party to this lawsuit that its audits are a reliable measure of pathogen-free commodity.

99. At no time did Primus represent, warrant, speak, or otherwise communicate to any party to this lawsuit that receiving certification or any particular score on an audit ensures, warrants, or guarantees that the commodity will be safe or pathogen free.

**PRIMUS' CROSS-CLAIMS CLAIMS AGAINST
FRONTERA AND WAL-MART
Count 1: Equitable Implied Indemnity and Contribution**

100. Primus re-alleges and incorporates by reference all prior paragraphs as if fully set forth herein.

101. Plaintiff, Bette Onsager, individually and as personal representative of the Estate of Jerome Onsager, filed a Complaint for negligence against Defendant/Cross-Plaintiff, Primus, arising from Primus' audit of Jensen Farms' cantaloupe packinghouse which packaged the cantaloupes at issue in the Plaintiff's

Complaint that allegedly caused the decedent's *Listeria*-related illness. Primus denies all allegations made by Plaintiff.

102. Plaintiff's Complaint alleged specific acts of negligence against Primus, which allegedly caused Plaintiffs damages.

103. Primus has denied any and all liability arising out of the allegations in Plaintiffs' Complaint.

104. If Plaintiff sustained any injuries through negligence, then those injuries arose from the acts or omissions of one or more of the other named Defendants, Frontera and/or Wal-Mart.

105. If Plaintiff recovers any judgment herein against Primus, Primus will be damaged thereby and will be entitled to full or partial indemnity or contribution on the basis of their proportionate responsibility in negligence, breach of warranty, and strict liability in tort of Cross-Defendants.

106. While Primus denies liability in all respects, it alternatively avers that, should it be found liable in any respect, Primus seeks contribution and/or setoff for all claims made or to be made by Plaintiff against all Cross-Defendants.

WHEREFORE, Defendant/Cross-Plaintiff, Primus, prays as follows:

1. That Primus be awarded all actual and consequential damages resulting from Cross-Defendants' breach of their duties and obligations to Primus.
2. That the Court award damages for such amounts that are just and reasonable

by reason of Cross-Defendants' indemnification obligations, as well as damages that Primus has incurred as a result of the claims asserted herein in an amount to be determined at trial.

3. That the Court determine that the Cross-Defendants herein are at fault and that their fault be apportioned, along with any alleged fault on Primus (which is denied) in determining the amount of responsibility if any in judgment rendered in favor of the Plaintiff.
4. That Primus be entitled to recover from each of the Cross-Defendants all losses and damages for which it is determined to be responsible to Plaintiff.
5. That Primus recover all its costs and attorneys' fees.
6. For such other and further relief that the Court may deem just and proper.

DATED this 24th day of July, 2014.

Original Signature is on File at

KAUFMAN BORGEEST & RYAN LLP

/s/ Jeffrey S. Whittington

Jeffrey S. Whittington (*Pro Hac Vice*)

Kaufman Borgeest & Ryan, LLP

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Attorneys for Defendant Primus Group, Inc.

d/b/a Primus Labs

Original Signature is on File at

THE HUSTEAD LAW FIRM

/s/ Patrick Q. Hustead

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Montana Bar No. 4420
*Attorneys for Defendant Primus Group, Inc.
d/b/a Primus Labs*

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 2014 a true and correct copy of the foregoing **DEFENDANT PRIMUS GROUP, INC.’S ANSWER PLAINTIFF’S FIRST AMENDED COMPLAINT** was electronically filed and served via CM/ECF, and/or e-mail, or United States mail, first-class, postage prepaid, and addressed to the following:

<p>Scott L. Anderson, Esq. Anderson Law Associates, PLLC 745 South Main Street Kalispell, MT 59901 <i>Counsel for Plaintiff</i></p>	<p>William D. Marler, Esq. Marler Clark, LLP PS 1301 Second Avenue, #2800 Seattle, Washington 98101 <i>Counsel for Plaintiff</i></p>
<p>Mark S. Williams, Esq. Susan Moriarity Miltko, Esq. Peter B. Ivins, Esq. Williams Law Firm, P.C. 233 E. Pine, P.O. Box 9440 Missoula, MT 59807-9440 <i>Counsel for Defendant Walmart Stores, Inc.</i></p>	<p>John E. Bohyer, Esq. Erin Erickson, Esq. Boyher, Erickson, Beaudette & Tranel, P.C. 283 West Front Street, Suite 201 P.O. Box 7729 Missoula, MT 59807 <i>Counsel for Defendant Frontera Produce, Ltd.</i></p>
<p>Craig W. Phillips, Esq. Todd D. Erb, Esq. Lewis Roca Rothberger, LLP 40 North Central Ave., Suite 1900 Phoenix, AZ 85004-4429 <i>Pro Hac Vice Counsel for Defendant Walmart Stores, Inc.</i></p>	

Original Signature is on File at

Kaufman Borgeest & Ryan, LLP

/s/Jeffrey S. Whittington

Jeffrey S. Whittington, Esq.

EXHIBIT A

Rev3 042905

**PRIMUSLABS.COM
FACILITY SERVICES AGREEMENT**

Please sign and return this service agreement within 24 hours of receipt. PLc is not responsible for changes to estimated costs or any additional costs incurred when Service Agreements are returned late. All estimates are calculated in US dollars.

Customer: **Jensen Farms**

Billing Address: **28948 County Rd. 30.5, Holly, Colorado, United States**

Purchase Order #:

Audit to be automatically transferred to the following buyers :

Services to be delivered by PrimusLabs.com per facility: -

Facility Name	Services	Agreed Date ⁽¹⁾
Jensen Farms	Packinghouse v08.06	07/25/2011
Jensen #3	Ranch V07.04 Rev. 1	07/25/2011
Jensen #2	Ranch V07.04 Rev. 1	07/25/2011
Jensen #1	Ranch V07.04 Rev. 1	07/25/2011

Estimated Charges:-

Est. PrimusLabs.com Service Fees	\$2,500.00
Travel Expenses	\$650.00
Data Transfer Fees	\$0.00
Total Estimate	\$3,150.00

Travel charges above are estimated and are subject to change bases on actual travel expenses incurred.

Travel charges are on a direct reimbursement basis and include all transportation expenses, accommodation and meals. When ever possible trips are combined with other business to divide expenses and reduce the total cost for all our customers whenever possible.

Note that audit reports and certificates are sent electronically via e-mail. Hardecopies of the report and certificate are available:

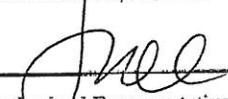
All data submitted to the Primus system become the property of Primus Group, Inc., for use in preparing specific statistical comparisons, and generic use in reports, presentations and other materials.

The Customer agrees to pay PrimusLabs.com within 30 days of billing.



Authorized Representative of Jensen Farms

8-2-11
Date



Authorized Representative of PrimusLabs.com

8-2-2011
Date

¹ A cancellation administration fee of \$50.00 may be charged for any audit cancellations within 21 days of the scheduled audit date. This cancellation fee excludes any expenses related to travel and labor if incurred.