

District Court, El Paso County, State of Colorado
Court Address: 270 South Tejon Street
P.O. Box 2980
Colorado Springs, CO 80903-2203
Phone Number: (719)452-5000

DATE FILED: October 30, 2013
CASE NUMBER: 2012CV1196

Plaintiff:

PATRICIA HAUSER, individually, and as the surviving spouse of MICHAEL HAUSER, deceased

v.

Defendants:

FRONTERA PRODUCE LTD., a foreign corporation;
PRIMUS GROUP, INC. d/b/a PRIMUS LABS, a foreign corporation;
FRESHPACK PRODUCE, INC.; SUNFLOWER FARMERS MARKET, LLC, a foreign corporation, and
JOHNDOES 1-10,

Cross-Claim Plaintiff:

FRONTERA PRODUCE, LTD., a foreign corporation

Cross-Claim Defendants:

JENSEN FARMS, a trade name; PRIMUS GROUP, INC. d/b/a PRIMUS LABS, a foreign corporation; and BIO FOOD SAFETY, INC., a foreign corporation

↑ COURT USE ONLY ↑

Case Number: 12CV1196

Div.:16 Ctrm: S370

ORDER PARTIALLY GRANTING PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE COURT'S RULING ON PRIMUS LABS, INC. MOTION TO DISMISS

1. The court grants the Motion for Reconsideration and finds that Colorado case law does indeed support a determination that Primus owed a duty to the plaintiff – notwithstanding the court's previous determination of nonfeasance – pursuant to Restatement of Torts § 324(A)

and § 314, comment a. See *Jefferson County School Dist. R-1 v. Justus*, 725 P.2d 767, 771 (Colo. 1986) and *University of Denver v. Whitlock*, 749 P.2d 54 (Colo. 1987).

In this case, Primus clearly undertook a contractual obligation to perform a duty by Jensen to the public (Restatement § 324A(b)). While the "special relationship" exception to the nonfeasance standard does not apply, the facts of this case support a finding that Primus assumed a duty of reasonable care for the protection of both Jensen and third-party consumers.

2. The court declines to grant the Motion to Reconsider the dismissal of the claim for negligent hiring. The First Amended Complaint merely makes a pro forma demand for liability under the theory of negligent hiring and fails to allege any facts whatsoever that should have led Primus to believe that Bio Food Safety and/or DiLorio "by reason of some attribute of character or prior conduct" would have created an undue risk of harm. See *Cannes v. Molalla Transp. Sys. Inc.*, 831 P.2d 1316, (Colo.1992) and Restatement (Second) of Agency § 213, comment d.

DONE THIS 30TH DAY OF OCTOBER, 2013.

BY THE COURT:



G. DAVID MILLER
District Court Judge