

NO. 26,836-B

SHARON LEE § IN THE DISTRICT COURT OF
V. § LIMESTONE COUNTY, TEXAS

PARKVIEW REGIONAL HOSPITAL,
INC.; PROVINCE HEALTHCARE
COMPANY; CHARLES RONALD
SMITH, D.O.; ALPHA OMEGA LABS;
GREG CATON; HERBOLOGICS, LTD.;
AND LUMEN FOOD CORP. § 87TH JUDICIAL DISTRICT

**DEFENDANT'S FIFTH SUPPLEMENTAL
RESPONSE TO REQUEST FOR DISCLOSURE**

TO: Plaintiff Sharon Lee, by serving Peter Malouf, The Law Office of Stephen F. Malouf, P.C., 3506 Cedar Springs Road, Dallas, Texas 75219, Attorney of Record for such party.

NOW COMES, Defendant, Lumen Food Corp., in the above entitled and numbered cause, and files the following Fifth Supplemental Response to Request for Disclosure pursuant to Rule 194, Texas Rules of Civil Procedure.

Respectfully submitted,

FULBRIGHT WINNIFORD
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Attorneys at Law
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(254) 776-8555 [FAX]

BY: _____
GERALD L. BOLFINING
State Bar No. 02574850

ATTORNEYS FOR DEFENDANT,
LUMEN FOOD CORP.

CERTIFICATE OF SERVICE

_____ This is to certify that a true and correct copy of the foregoing instrument has been forwarded to all attorneys of record in accordance with the applicable Texas Rules of Civil Procedure, on this the ____ day of January, 2004.

GERALD L. BOLFING

**DEFENDANT'S FIFTH SUPPLEMENTAL
RESPONSE TO REQUEST FOR DISCLOSURE**

1. R.194.2(a):

State the correct names of the parties to the lawsuit.

RESPONSE:

Plaintiff:

Sharon Lee
c/o Mr. Peter G. Malouf
Marcellene Malouf
Law Offices of Stephen F. Malouf, P.C.
3506 Cedar Springs Road
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(214) 969-7373
FAX (214) 969-7648

Defendants:

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Haley & Davis, P.C.
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Parkview Regional Hospital and
Province Healthcare Company
c/o John M. Curney, Jr.
Curney, Garcia, Farmer, Pickering & House, P.C.
411 Heimer Road
San Antonio, Texas 78232-4854
(210) 377-1990
FAX (210) 377-1065

Greg Caton, Alpha Omega Labs and
Herbologics, Ltd.
c/o Mary "Amy" Cazes Greene
Phelps Dunbar, L.L.P.
3040 Post Oak Blvd., Suite 900
Houston, Texas 77056
(713) 626-1386
FAX (713) 626-1388

2. R.194.2(b):

State the name, address, and telephone number of any potential parties.

RESPONSE:

HPT Research, Inc.
(Laboratory)
13010 Loma Rica Drive
Grass Valley, CA 95945
(530) 274-7631
(Production)
11355 Folsom Blvd., Suite E
Rancho Cordova, CA 95670
(916) 635-3871

3. R.194.2(c):

State the legal theories and, in general, the factual bases of Plaintiff's claims or defenses.

RESPONSE:

This Defendant has filed an answer to this lawsuit which puts Plaintiff to the burden of proving her case by a preponderance of the evidence. This Defendant did not manufacture the product in question. Furthermore, this Defendant asserts that the product in question (in its diluted form) did not cause the Plaintiff any harm. Plaintiff was not a "consumer" under the DTPA. This Defendant, alternatively, reserves the right to such indemnity against the manufacturer of the product. Plaintiff is further referred to this Defendant's First Amended Answer on file in this cause.

4. R.194.2(d):

State the amount and any method of calculating economic damages.

RESPONSE:

Defendant has filed a General Denial which puts Plaintiff to the burden of proving her case by a preponderance of the evidence, including the amount and any method of calculating economic damages.

Defendant contests the economic claim(s) of damages relating to the injury asserted by Plaintiff on the basis of (1) nature of the contact involved in the occurrence made the basis of the lawsuit; (2) lack of causal connection between claim(s) of economic damages and the occurrence made the basis of the lawsuit; and, (3) lack of basis or predicate for claim charges incurred were reasonable and necessary considering extent and duration of asserted injury.

5. R.194.2(e):

State the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

RESPONSE:

Dr. Andrew Armstrong
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Sister of Plaintiff

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Eric Brown, M.D.
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Benicia, CA 94510-1126
Tele.: (707) 747-5906
Fax: (707) 747-1751
(Did testing on H3O)

6. R.194.2(f):

For any testifying expert, state:

1. the expert's name, address, and telephone number;
2. the subject matter on which the expert will testify;
3. the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
4. if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - A). All documents, tangible things, reports, models or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - B). The expert's current resume and bibliography.

RESPONSE:

1. **Ernest P. Williams**
ANALYTICAL CONSULTING SERVICES, INC. (ACS LABS)
16203 Park Row
Suite 100
Houston, Texas 77084
(281) 579-8522
2. Mr. Williams may testify as to methodology of testing the chemical makeup and/or sterility of H3O. Also, the reaction of H3O and a sodium chloride solution, i.e., the reaction between an acid and salt. Also, the results of the Exothermic Reaction Test. He may also testify as to his understanding and experience as to what this substance would do if introduced into the body such as was done with respect to the Plaintiff in this case.
3. Previously produced.

4. Previously produced.
1. **Homer Jacobs, M.D.**
El Paso, Texas
2. Dr. Jacobs may testify as to the practice of obstetrics/gynecology. He may also testify about the effect that the H3O solution used by Dr. Smith would have on human tissue. He may testify as to whether the use of the H3O solution by Dr. Smith could cause the injuries suffered by the Plaintiff. He may testify as to whether the Plaintiff was predisposed the formation of scar tissue. He may testify as to the formation of scar tissue post surgery and the likelihood of such to occur.
3. Any report by Dr. Jacobs is available through counsel for Parkview Hospital.
4. Dr. Jacobs is not retained by this Defendant. Dr. Jacobs' CV is being provided by counsel for Parkview Hospital.

1. **Marland Dean Dulaney, Jr., Ph.D. DABT**
Dulaney Toxicology, Inc.
7133 Heritage Ridge Road
Tallahassee, Florida 32312
(850) 668-0646
FAX (850) 893-8844

2. Dr. Dulaney may testify as to the area of toxicology and how the human body would be expected to react to the diluted H3O solution used by Dr. Smith. He may also testify about his review of the tests performed by the Plaintiff's expert, Dr. Andrew Armstrong, and by Ernest P. Williams. He may testify as to the effect that the diluted solution of H3O would have on human tissue.
3. Previously produced.
4. Previously produced.

7. R.194.2(g):

Produce any discoverable indemnity and insuring agreement.

RESPONSE:

Previously produced.

8. R.194.2(h):

Produce any discoverable settlement agreements.

RESPONSE:

None.

9. R.194.2(i):

Produce any discoverable witness statements.

RESPONSE:

None.

10. R.194.2(j):

If this a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, produce all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

RESPONSE:

None.

11. R.194.2(k):

If this is a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by you by virtue of an authorization furnished by Plaintiff.

RESPONSE:

This Defendant does not have such authorization furnished by Plaintiff.