

Prepared for: Andrew Martineau

Court Dockets

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**Cloverdale Foods v. Pioneer Snacks Inc, Docket No. 4:94-cv-00331 (D. Minn. Apr 08, 1994), Court Docket****GENERAL INFO**

Current As Of  
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U.S. District Court  
 District of Minnesota (MPLS)  
 CIVIL DOCKET FOR CASE #: 4:94-cv-00331-DSD-JMM

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Cloverdale Foods v. Pioneer Snacks Inc

**DOCKET INFORMATION**

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DATE FILED	Apr 8, 1994
STATUS	Closed
NATURE OF SUIT	190 Contract: Other
DEMAND	\$0
ASSIGNED TO	Senior Judge David S. Doty
CASE IN OTHER COURT	97-02452MNMI
CAUSE	28:1332 Diversity-Breach of Contract
DATE TERMINATED	Mar 12, 1997
JURISDICTION	Diversity
JURY DEMAND	None
REFERRED TO	Magistrate Judge John Milton Mason

**Date Filed**

Apr. 08, 1994

**Docket Number**

4:94-cv-00331

**Status**

CLOSED

**Court**United States District Court  
For The District Of Minnesota**PARTIES AND ATTORNEYS**

Expand All v

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**Cloverdale Foods of Minnesota Inc**a Minnesota corporation  
Plaintiff**Pioneer Snacks Inc**a Michigan corporation  
Defendant**Pioneer Snacks Inc**

Counter Claimant

**Cloverdale Foods of Minnesota Inc**

Counter Defendant

**DOCKET ENTRIES**

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**KEYWORD***Type here to filter entries by keyword***DATE**

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Numbers shown are court assigned numbers.

ENTRY	FILED	PDF	DESCRIPTION
1	Apr 8, 1994	Request	COMPLAINT - Summons issued. Assigned to Judge David S. Doty per master list and referred to Magistrate Judge Floyd E. Boline (JMR) (Entered: 04/12/1994)
2	June 8, 1994	Request	STIPULATION AND ORDER ( Magistrate Judge Floyd E. Boline ) to extend time to answer until 6/22/94. (1 pg) (c: attys.) (JMR) (Entered: 06/08/1994)
	June 8, 1994		Routed pro hac vice request to admission clerk on behalf of atty., Ulrich (JMR) (Entered: 06/08/1994)
3	June 22, 1994	Request	ANSWER by defendant (6 pgs) (JMR) (Entered: 06/23/1994)
4	June 22, 1994	Request	Def't's affirmative defenses (5 pgs) (JMR) (Entered: 06/23/1994)
5	June 22, 1994	Request	Reliance upon Jury demand (3 pgs) (JMR) (Entered: 06/23/1994)
	June 22, 1994		Routed pro hac vice request to admission's clerk on behalf of atty., Acho (JMR) (Entered: 06/23/1994)
7	June 29, 1994	Request	COUNTERCOMPLAINT by defendant against plaintiff (15 pgs) (JMR) (Entered: 07/07/1994)
6	July 1, 1994	Request	Appearance by atty., George R. Serdar for defts' (1 pg) (JMR) (Entered: 07/05/1994)
8	July 1, 1994	Request	PETITION AND ORDER for admission pro hac vice ( Clerk Francis E. Dosal ) on behalf of Pioneer Snacks Inc by Ronald G. Acho. 1pg (PAK) (Entered: 07/08/1994)
9	July 12, 1994	Request	ORDER (Judge David S. Doty / 7/12/94) regarding filing report of rule 26(f) meeting (4 pgs) (JMR) (Entered: 07/14/1994)
10	Sept 22, 1994	Request	REPORT OF RULE 26(f) MEETING by plaintiff, defendant (4 pgs) (JMR) (Entered: 09/22/1994)
11	Sept 22, 1994	Request	Pretrial SCHEDULING ORDER (Judge David S. Doty / 9/22/94) ; amd complaint set for 4/1/95 ; discovery set for 6/15/95 ; non-dispositive motions set for 6/15/95 ; dispositive motions set for 7/1/95 ; ready for trial set for 9/1/95. (c: attys.) (4 pgs) (JMR) (Entered: 09/23/1994)

ENTRY	FILED	PDF	DESCRIPTION
13	Oct 18, 1994	<b>Request</b>	ANSWER by pltf to Counterclaim [7-1] (4 pgs) (SJH) (Entered: 10/19/1994)
14	Nov 14, 1994	<b>Request</b>	NOTICE TO COUNSEL (Clerk Francis E. Dosal / 11/14/94) That Magistrate Judge Jonathan G. Lebedoff replaces Magistrate Judge Floyd E. Boline for the handling of discovery matters and nondispositive motions in the above case. (Case referred to Magistrate Judge Jonathan G. Lebedoff) (cc: all counsel) (JMR) (Entered: 11/16/1994)
15	Mar 21, 1995	<b>Request</b>	MOTION by defendant to compel production of witnesses ( to Magistrate Judge Jonathan G. Lebedoff ) , and for costs and attorney fees Ret. 4/4/95 at 10:30 a.m. (2 pgs) (JMR) (Entered: 03/22/1995)
16	Mar 21, 1995	<b>Request</b>	MEMORANDUM by defendant in support of motion to compel discovery (5 pgs) (JMR) (Entered: 03/22/1995)
17	Mar 21, 1995	<b>Request</b>	AFFIDAVIT of George R. Serdar regarding motion to compel discovery [15-1] (5 pgs + exhibits) (JMR) (Entered: 03/22/1995)
18	Apr 4, 1995	<b>Request</b>	MINUTES: (Magistrate Judge Jonathan G. Lebedoff) deft. moved to compel depositions and for an award of attys fees and costs - motions heard and taken under advisement. [15-1] [15-2] [15-3] (1 pg) (JMR) (Entered: 04/05/1995)
19	Apr 14, 1995	<b>Request</b>	ORDER (Magistrate Judge Jonathan G. Lebedoff / 4/14/95) granting deft's motion to compel and [15-1] denying deft's motion for attorney fees [15-3] (cc: all counsel) (2 pgs) (JMR) (Entered: 04/14/1995)
20	Apr 24, 1995	<b>Request</b>	MINUTES: (Magistrate Judge Jonathan G. Lebedoff) conference call re: scheduling of depositions - attys will call 4/25/95 for follow-up (1 pg) (JMR) (Entered: 05/02/1995)
21	May 1, 1995	<b>Request</b>	MINUTES: (Magistrate Judge Jonathan G. Lebedoff) conference call re: discovery dispute. ORDERED: either Mssrs. Miller and Russell will appear in Mpls. for depositions as noticed on 5/2 and 5/3/95, or pltf. Cloverdale will be assessed costs. Nevertheless, Mssrs. Miller and Russell must appear in Detroit for deposition the week of 5/8/95, if they do not present themselves in Mpls. 5/2 or 5/3/95. (1 pg) (JMR) (Entered: 05/02/1995)
22	June 20, 1995	<b>Request</b>	MOTION by plaintiff to amend scheduling order ( to Magistrate Judge Jonathan G. Lebedoff ) Ret. 7/5/95 at 11:00 a.m. (3 pgs) (JMR) (Entered: 06/21/1995)
23	June 20, 1995	<b>Request</b>	MEMORANDUM by plaintiff in support of motion to amend scheduling order [22-1] (6 pgs) (JMR) (Entered: 06/21/1995)

ENTRY	FILED	PDF	DESCRIPTION
24	June 20, 1995	<b>Request</b>	AFFIDAVIT of Joh F. Bonner III (4 pgs + exhibits) (JMR) (Entered: 06/21/1995)
25	June 20, 1995	<b>Request</b>	MOTION by plaintiff to compel ( to Magistrate Judge Jonathan G. Lebedoff ) , and for attorney fees Ret. 7/5/95 at 11:00 a.m. (2 pgs) (JMR) (Entered: 06/21/1995)
26	June 20, 1995	<b>Request</b>	MEMORANDUM by plaintiff in support of motion to compel [25-1] [25-2] (6 pgs) (JMR) (Entered: 06/21/1995)
27	June 20, 1995	<b>Request</b>	AFFIDAVIT of John F. Bonner III (3 pgs + exhibits) (JMR) (Entered: 06/21/1995)
28	June 28, 1995	<b>Request</b>	RESPONSE by defendant to motion to compel and to extend scheduling order [25-1] [25-2] [22-1] (4 pgs) (JMR) (Entered: 06/29/1995)
29	June 28, 1995	<b>Request</b>	AFFIDAVIT of William B. Butler (2 pgs + exhibits) (JMR) (Entered: 06/29/1995)
30	June 30, 1995	<b>Request</b>	REPLY MEMORANDUM by plaintiff in support of motion to compel [25-1] (4pgs) ( Entered: 07/03/1995)
31	June 30, 1995	<b>Request</b>	AFFIDAVIT of Bradley A. Kletscher regarding pltf's motion to compel [25-1] (4pgs) ( Entered: 07/03/1995)
32	July 11, 1995	<b>Request</b>	STIPULATION for order amending scheduling order (3 pgs) (JMR) (Entered: 07/12/1995)
33	July 11, 1995	<b>Request</b>	ORDER (Magistrate Judge Jonathan G. Lebedoff / 7/11/95) amending scheduling order as follows ; discovery set for 9/1/95 ; non-dispositive motions set for 9/8/95 ; dispositive motions set for 10/6/95 ; ready for trial set for 11/1/95 (cc: all counsel) (1 pg) (JMR) (Entered: 07/12/1995)
34	Aug 18, 1995	<b>Request</b>	MINUTES: (Magistrate Judge Jonathan G. Lebedoff) Conference call re: motion to compel - August 23 - 24 depos continued until week of Sept. 11. All documents preparatory to depos must be furnished to opposing counsel by August 25, 1995. (1 pg) (JMR) (Entered: 08/21/1995)



ENTRY	FILED	PDF	DESCRIPTION
35	Aug 23, 1995	<b>Request</b>	ORDER (Magistrate Judge Jonathan G. Lebedoff / 8/23/95) granting pltf's motion to compel production of various items from deft. Deft. shall have 10 days to produce these documents from the date of this order. Deft. shall provide supplemental responses to interrogatories 3 and 34 within 5 days from the date of this order. 3. The scheduling order is modified to extend discovery to 60 days from the date that the documents ordered produced by this court are provided to pltf. The deft. shall notify the Court in writing of the date the documents are provided to pltf. [25-1] (c: attys.) (2 pgs) (JMR) (Entered: 08/24/1995)
36	Aug 28, 1995	<b>Request</b>	AFFIDAVIT of George R. Serdar regarding document production (3 pgs) (JMR) (Entered: 08/29/1995)
37	Aug 28, 1995	<b>Request</b>	ORDER TO SHOW CAUSE (Magistrate Judge Jonathan G. Lebedoff) that John F. Bonner, III, appear before the Honorable Jonathan G. Lebedoff, at U.S. Courthouse, 110 South Fourth Street, Mpls., MN on 9/13/95 at 9:00 a.m. or as soon as counsel can be heard to show cause why he should not be adjudged in contempt of the August 17 Order. (cc: all counsel) (2 pgs) (JMR) Modified on 08/30/1995 (Entered: 08/29/1995)
38	Sept 5, 1995	<b>Request</b>	MEMORANDUM by plaintiff in opposition to motion for civil contempt (4 pgs) (JMR) (Entered: 09/06/1995)
39	Sept 5, 1995	<b>Request</b>	AFFIDAVIT of Bradley A. Kletscher (3 pgs + exhibits) (JMR) (Entered: 09/06/1995)
40	Sept 5, 1995	<b>Request</b>	AFFIDAVIT of John F. Bonner III (3 pgs) (JMR) (Entered: 09/06/1995)
41	Sept 7, 1995	<b>Request</b>	AFFIDAVIT of John F. Bonner III (2 pgs) (JMR) Modified on 09/08/1995 (Entered: 09/08/1995)
42	Sept 7, 1995	<b>Request</b>	ORDER TO SHOW CAUSE (Magistrate Judge Jonathan G. Lebedoff) why George Serdar of Messerli & Kramer and Pioneer Snacks, Inc. should not be adjudged in contempt of 8/23/95 order. Ret. 9/13/95 at 9:00 a.m. at the USCH in Mpls., MN with appearance of Geroge Serdar before Magistrate Judge Lebedoff (cc: all counsel) (2 pgs) (JMR) (Entered: 09/08/1995)
43	Sept 11, 1995	<b>Request</b>	AFFIDAVIT of George R. Serdar regarding document production (3 pgs) (JMR) (Entered: 09/12/1995)
44	Sept 12, 1995	<b>Request</b>	AFFIDAVIT of Bradley A. Kletscher (3 pgs + exhibits) (JMR) (Entered: 09/13/1995)
45	Sept 13, 1995	<b>Request</b>	MINUTES: (Magistrate Judge Jonathan G. Lebedoff) the case was called and cross-motions for orders to show cause were heard. The matter will be under advisement as of Monday, September 18, 1995 (1 pg) (JMR) (Entered: 09/13/1995)

ENTRY	FILED	PDF	DESCRIPTION
46	Sept 27, 1995	Request	STIPULATION extending scheduling order [22-1] (2 pgs) (JMR) (Entered: 09/27/1995)
47	Sept 27, 1995	Request	ORDER (Magistrate Judge Jonathan G. Lebedoff / 9/27/95) extending scheduling order as follows: 1. The scheduling order is amended to extend the deadline for noticing non-dispositive motions to and including 30 days after the completion of discovery. 2. The scheduling order is amended to extend the deadline for noticing dispositive motions to and including 60 days after the completion of discovery. 3. The scheduling order is amended to move the trial ready date to and including 90 days after the completion of discovery. (c: attys.) (1 pg) (JMR) (Entered: 09/27/1995)
48	Nov 6, 1995	Request	MOTION by defendant to quash deposition notices ( to Magistrate Judge Jonathan G. Lebedoff ) (3 pgs) (JMR) (Entered: 11/07/1995)
49	Nov 6, 1995	Request	MEMORANDUM by defendant in support of motion to quash deposition notices [48-1] (2 pgs) (JMR) (Entered: 11/07/1995)
50	Nov 6, 1995	Request	AFFIDAVIT of George R. Serdar regarding motion to quash deposition notices [48-1] (7 pgs + attachment) (JMR) (Entered: 11/07/1995)
51	Nov 7, 1995	Request	MEMORANDUM by plaintiff in opposition to motion to quash deposition notices [48-1] (12 pgs) (JMR) (Entered: 11/08/1995)
52	Nov 7, 1995	Request	AFFIDAVIT of John F. Bonner III (3 pgs + exhibits) (JMR) (Entered: 11/08/1995)
53	Nov 8, 1995	Request	MINUTES: (Magistrate Judge Jonathan G. Lebedoff) def't's motion to quash was stricken [48-1] (1 pg) (JMR) (Entered: 11/16/1995)
54	Dec 5, 1995	Request	REPORT AND RECOMMENDATION( to Judge David S. Doty ) ( Magistrate Judge Jonathan G. Lebedoff / 12/4/95) Recommended that: pltf be ordered to pay \$1,000 to dft as atty fees, but that the imposition of \$700 be stayed; dft be ordered to pay \$1,000 to pltf as atty fees, but that the imposition of \$700 be stayed. (cc: counsel) (5pgs) ( (Entered: 12/05/1995)
55	Dec 8, 1995	Request	Amended MOTION by plaintiff for summary judgment ( to Judge David S. Doty ) Ret. 1/5/96 at 9:30 a.m. (2 pgs) (JMR) (Entered: 12/11/1995)
56	Dec 8, 1995	Request	MEMORANDUM by plaintiff in support of motion for summary judgment [55-1] (26 pgs) (JMR) (Entered: 12/11/1995)
57	Dec 8, 1995	Request	AFFIDAVIT of Bradley A. Kletscher (3 pgs + exhibits) (separate) (JMR) (Entered: 12/11/1995)

ENTRY	FILED	PDF	DESCRIPTION
58	Dec 8, 1995	Request	AFFIDAVIT of Donald Russell (3 pgs) (JMR) (Entered: 12/11/1995)
59	Dec 8, 1995	Request	AFFIDAVIT of James Miller (10 pgs + attachment) (JMR) (Entered: 12/11/1995)
60	Dec 8, 1995	Request	AFFIDAVIT of Tom Axtman (2 pgs) (copy) (JMR) (Entered: 12/11/1995)
61	Dec 21, 1995	Request	AFFIDAVIT of Tom Axtman (2 pgs) (JMR) (Entered: 12/21/1995)
62	Dec 26, 1995	Request	ORDER (Judge David S. Doty / 12/26/95) 1. Pltf is ordered to pay \$1,000 to deft as atty's fees, but the imposition of \$700 is stayed; 2. Deft is ordered to pay \$1,000 to pltf as atty's fees, but the imposition of \$700 is stayed. (1 pg) (c: attys.) (JMR) (Entered: 12/28/1995)
63	Dec 26, 1995	Request	AFFIDAVIT of George R. Serdar under Rule 56(f) (4 pgs) (JMR) (Entered: 12/28/1995)
64	Dec 28, 1995	Request	ORDER (Judge David S. Doty / 12/28/95) that: 1. Pursuant to Fed.R.Civ.P. 16 the parties in this action, by and through their respective counsel, shall appear before Judge Doty at the USCH in Mpls., MN Room 670, on 1/5/96 at 9:30 a.m. for a conference to establish the date discovery will be completed, establish the date by which all dispositive motions shall be filed and heard and any other matters appropriate under the circumstances of this case; 2. Pltf's motion for sumjgm scheduled to be heard on 1/5/96 is continued. (c: attys.) (1 pg) (JMR) (Entered: 12/29/1995)
65	Jan 5, 1996	Request	Amended SCHEDULING ORDER (Judge David S. Doty / 1/5/96) discovery set for 5/1/96 ; non-dispositive motions set for 5/1/96 ; dispositive motions set for 6/28/96 ; ready for trial on/after 11/4/96i ; all documents will be produced by 1/24/96. (c: attys.) (1 pg) (JMR) (Entered: 01/08/1996)
66	Apr 1, 1996	Request	MOTION by plaintiff to compel answers to interrogatories (to Magistrate Judge Jonathan G. Lebedoff) (2 pgs) (JMR) (Entered: 04/03/1996)
67	Apr 1, 1996	Request	MEMORANDUM by plaintiff in support of motion to compel answers to interrogatories [66-1] (11 pgs) (JMR) (Entered: 04/03/1996)
68	Apr 1, 1996	Request	AFFIDAVIT of John F. Bonner III (27 pgs) (JMR) (Entered: 04/03/1996)
69	Apr 1, 1996	Request	STIPULATION re amendment of scheduling order (2 pgs) (JMR) (Entered: 04/03/1996)

ENTRY	FILED	PDF	DESCRIPTION
70	Apr 1, 1996	<b>Request</b>	ORDER (Magistrate Judge Jonathan G. Lebedoff / 3/28/96) amending scheudling order ; discovery set for 5/17/96 ; non-dispositive motions set for 5/17/96 (cc: all counsel) (1 pg) (JMR) (Entered: 04/03/1996)
71	Apr 11, 1996	<b>Request</b>	AFFIDAVIT of George R. Serdar in opposition to pltf's motion to compel discovery [66-1] (4pgs + exh.) ( (Entered: 04/11/1996)
72	Apr 16, 1996	<b>Request</b>	Amended NOTICE by plaintiff setting hearing for motion to compel answers to interrogatories (to Magistrate Judge Jonathan G. Lebedoff) [66-1] at 8:30 a.m. on 4/18/96 (2 pgs) (JMR) (Entered: 04/17/1996)
73	Apr 16, 1996	<b>Request</b>	REPLY by plaintiff to motion to compel answers to interrogatories [66-1] (11 pgs) (JMR) (Entered: 04/17/1996)
74	Apr 16, 1996	<b>Request</b>	AFFIDAVIT of John F. Bonner III (2 pgs + exhibits) (separate) (JMR) (Entered: 04/17/1996)
75	May 17, 1996	<b>Request</b>	MOTION by plaintiff for leave of court allowing service of deponent by mail (to Magistrate Judge Jonathan G. Lebedoff) Ret. 6/3/96 at 9:30 a.m. (2 pgs) (JMR) (Entered: 05/20/1996)
76	May 17, 1996	<b>Request</b>	MEMORANDUM by plaintiff in support of motion for leave of court allowing service of deponent by mail [75-1] (5 pgs) (JMR) (Entered: 05/20/1996)
77	May 17, 1996	<b>Request</b>	AFFIDAVIT of Bradley A. Kletscher (4 pgs) (JMR) (Entered: 05/20/1996)
78	May 17, 1996	<b>Request</b>	AFFIDAVIT of Larry Mick (1 pg) (JMR) (Entered: 05/20/1996)
79	June 3, 1996	<b>Request</b>	STIPULATION for order amending scheduling order (3 pgs) (JMR) (Entered: 06/03/1996)
80	June 3, 1996	<b>Request</b>	ORDER (Magistrate Judge Jonathan G. Lebedoff / 6/3/96) 1. Pltf may serve a subpoena for the taking of Gary Ohlgart's depositions via US mail. Such service shall be deemed effective under the Fed.Rules of Civil Procedure. 2. Pltf may take the deposition of Gary Ohlgart after the 5/17/96 deadline for discovery in this matter, but prior to 7/9/96 (2 pgs) (c: attys.) (JMR) (Entered: 06/03/1996)
81	July 3, 1996	<b>Request</b>	MEMORANDUM by defendant in opposition to motion for summary judgment [55-1] (24 pgs) (JMR) (Entered: 07/05/1996)
82	July 3, 1996	<b>Request</b>	AFFIDAVIT of Madhulika Jain (2 pgs + exhibits) (copy) (JMR) (Entered: 07/05/1996)
83	July 3, 1996	<b>Request</b>	AFFIDAVIT of Laura Bausch (3 pgs) (JMR) (Entered: 07/05/1996)

ENTRY	FILED	PDF	DESCRIPTION
84	July 3, 1996	<b>Request</b>	AFFIDAVIT of Michael Baker (3 pgs) (JMR) (Entered: 07/05/1996)
85	July 3, 1996	<b>Request</b>	AFFIDAVIT of Art Hoffmann (3 pgs) (JMR) (Entered: 07/05/1996)
86	July 3, 1996	<b>Request</b>	AFFIDAVIT of Robert George (8 pgs+ exhibits) (JMR) (Entered: 07/05/1996)
87	July 10, 1996	<b>Request</b>	REPLY by plaintiff to motion for summary judgment [55-1] (6 pgs) (JMR) (Entered: 07/11/1996)
88	July 10, 1996	<b>Request</b>	ATTORNEY SUBSTITUTION: terminating Levy and Kletsher attorneys of the law firm of Parsinen Bowman Kaplan & Levy and substituting attorney John Bonner with Malkerson Gilliland & Martin for pltf. (3 pgs) (JMR) (Entered: 07/12/1996)
89	July 12, 1996	<b>Request</b>	MINUTES:( Judge David S. Doty / Steve Amon) taking under advisement pltf's motion for summary judgment [55-1] (1 pg) (JMR) (Entered: 07/12/1996)
90	July 12, 1996	<b>Request</b>	ORDER (Magistrate Judge Jonathan G. Lebedoff / 7/12/96) granting in part and denying in part pltf's motion to compel answers to interrogatories. Pltf's motion for atty's fees is denied. [66-1] (cc: all counsel) (19 pgs) (JMR) (Entered: 07/15/1996)
91	Nov 19, 1996	<b>Request</b>	NOTICE TO COUNSEL ( Clerk Francis E. Dosal / 11/19/96) Case referred to Magistrate Judge John M. Mason (cc: all counsel) (dmn) (Entered: 11/19/1996)
92	Dec 11, 1996	<b>Request</b>	NOTICE of assignment of cases for trial ret. beginning the week of 2/10/97 with trials to commence at 9:00 a.m. before Judge David S. Doty (2 pgs) (JMR) (Entered: 12/12/1996)
93	Dec 13, 1996	<b>Request</b>	LETTER to counsel from Magistrate Judge Mason dated 12/13/96 re settlement conference ret. 1/16/97 at 9:00 a.m. (2 pgs) (copy) (JMR) (Entered: 12/13/1996)
94	Dec 24, 1996	<b>Request</b>	ORDER (Judge David S. Doty / 12/23/96) granting in part and denying in part pltf's motion for summary judgment on the counterclaims. Cts II, III, IV, and V of deft Pioneer's counterclaim are dismissed with prejudice (c: attys) (12 pgs) (JMR) (Entered: 12/26/1996)
95	Jan 14, 1997	<b>Request</b>	LETTER to Magistrate Judge Mason dated 1/10/97 from George Serdar re rescheduling of settlement conference - now ret. 1/29/97 at 1:30 p.m. (1 pg) (JMR) (Entered: 01/14/1997)
96	Jan 29, 1997	<b>Request</b>	MINUTES: (Magistrate Judge John M. Mason) Settlement conference held on 1/29/97 - no settlement (1 pg) (JMR) (Entered: 01/31/1997)

ENTRY	FILED	PDF	DESCRIPTION
97	Feb 10, 1997	Request	LETTER to counsel from Magistrate Judge John Mason dated 2/7/97 re settlement conference ret. 2/14/97 at 11:30 a.m. (1 pg) (copy) (JMR) (Entered: 02/11/1997)
98	Feb 13, 1997	Request	MOTION by plaintiff for sanctions on deft. including expenses pursuant to Rule 37 ( to Judge David S. Doty ) (2 pgs) (JMR) (Entered: 02/14/1997)
99	Feb 13, 1997	Request	MEMORANDUM by plaintiff in support of motion for sanctions on deft. including expenses pursuant to Rule 37 [98-1] (30 pgs) (JMR) (Entered: 02/14/1997)
100	Feb 13, 1997	Request	AFFIDAVIT of John F. Bonner, III (99 pgs) (separate) (JMR) (Entered: 02/14/1997)
113	Feb 14, 1997	Request	MINUTES: (Magistrate Judge John M. Mason) settlement conference - no settlement. Parties will discuss on the weekend. (1 pg) (JMR) (Entered: 02/18/1997)
101	Feb 18, 1997	Request	EXHIBIT LIST by plaintiff (8 pgs) (JMR) (Entered: 02/18/1997)
102	Feb 18, 1997	Request	AMENDED exhibit list by plaintiff [101-1] (8 pgs) (JMR) (Entered: 02/18/1997)
103	Feb 18, 1997	Request	STATEMENT OF CASE as to plaintiff (2 pgs) (JMR) (Entered: 02/18/1997)
104	Feb 18, 1997	Request	WITNESS LIST submitted by plaintiff (3 pgs) (JMR) (Entered: 02/18/1997)
105	Feb 18, 1997	Request	VOIR DIRE submitted by plaintiff (2 pgs) (JMR) (Entered: 02/18/1997)
106	Feb 18, 1997	Request	Pltf's proposed jury INSTRUCTIONS (81 pgs) (JMR) Modified on 02/18/1997 (Entered: 02/18/1997)
107	Feb 18, 1997	Request	Special verdict form submitted by pltf (4 pgs) (JMR) Modified on 02/18/1997 (Entered: 02/18/1997)
108	Feb 18, 1997	Request	Proposed JURY INSTRUCTIONS submitted by defendant (25 pgs) (JMR) (Entered: 02/18/1997)
109	Feb 18, 1997	Request	EXHIBIT LIST by defendant (9 pgs) (JMR) (Entered: 02/18/1997)
109	Feb 18, 1997	Request	WITNESS LIST submitted by defendant (9 pgs) (JMR) (Entered: 02/18/1997)
110	Feb 18, 1997	Request	STATEMENT OF CASE as to defendant (15 pgs) (JMR) (Entered: 02/18/1997)
111	Feb 18, 1997	Request	Def't's proposed special verdict form (2 pgs) (JMR) (Entered: 02/18/1997)

ENTRY	FILED	PDF	DESCRIPTION
112	Feb 18, 1997	<b>Request</b>	Def't's proposed VOIR DIRE questions (2 pgs) (JMR) (Entered: 02/18/1997)
114	Feb 18, 1997	<b>Request</b>	OBJECTIONS by defendant to jury instructions [108-1] (5 pgs) (JMR) (Entered: 02/19/1997)
115	Feb 18, 1997	<b>Request</b>	RESPONSE by defendant to motion for sanctions on def't. including expenses pursuant to Rule 37 [98-1] (10 pgs) (JMR) (Entered: 02/19/1997)
116	Feb 19, 1997	<b>Request</b>	MINUTES: (Judge David S. Doty / Ed Rafel) re:JURY TRIAL BEGAN - motions in limine argued and ruling made on record. Court adjourned until 9:00 a.m. 2/20/97 (1 pg) (JMR) (Entered: 02/21/1997)
117	Feb 20, 1997	<b>Request</b>	JURY PANEL RECORD (1 pg) (JMR) (Entered: 02/21/1997)
118	Feb 20, 1997	<b>Request</b>	MINUTES: (Judge David S. Doty / Edward Rafel/Steve Amon) of jury trial continued (1 pg) (JMR) (Entered: 03/04/1997)
119	Feb 21, 1997	<b>Request</b>	MINUTES:(Judge David S. Doty / Edward Rafel/Steve Amon) of jury trial continued. Court entertained motions in limine and rulings made on the record. Jurors not in. (1 pg) (JMR) Modified on 03/04/1997 (Entered: 03/04/1997)
120	Feb 24, 1997	<b>Request</b>	MINUTES: (Judge David S. Doty / Edward Rafel/Steve Amon) of jury trial continued. (1 pg) (JMR) (Entered: 03/04/1997)
121	Feb 25, 1997	<b>Request</b>	MINUTES: (Judge David S. Doty / Edward Rafel/Steve Amon) of jury trial continued (1 pg) (JMR) (Entered: 03/04/1997)
122	Feb 26, 1997	<b>Request</b>	MINUTES: (Judge David S. Doty / Edward Rafel/Steve Amon) of jury trial continued (1 pg) (JMR) (Entered: 03/04/1997)
123	Feb 27, 1997	<b>Request</b>	MINUTES: (Judge David S. Doty / Edward Rafel/Steve Amon) of jury trial continued. Def't's oral motion for judgment as a matter of law - argued, submitted, and granted in part (1 pg) (JMR) (Entered: 03/04/1997)
124	Feb 28, 1997	<b>Request</b>	MINUTES: (Judge David S. Doty / Edward Rafel/Steve Amon) of jury trial continued. Charge conference held in chambers (without jury) (1 pg) (JMR) (Entered: 03/04/1997)
125	Mar 3, 1997	<b>Request</b>	MINUTES: (Judge David S. Doty / Edward Rafel/Steve Amon) of jury trial continued (1 pg) (JMR) (Entered: 03/05/1997)
126	Mar 4, 1997	<b>Request</b>	MINUTES: (Judge David S. Doty / Edward Rafel/Steve Amon) of jury trial continued (1 pg) (JMR) (Entered: 03/05/1997)

ENTRY	FILED	PDF	DESCRIPTION
128	Mar 5, 1997	Request	MINUTES: (Judge David S. Doty / Edward Rafel/Steve Amon) of jury trial continued. At 4:50 p.m. jury excused to select foreperson, and begin deliberations. Deft's oral motion for judgment as a matter of law - argued, submitted and denied. Deft's second oral motion for judgment as a matter of law - argued, submitted & denied. (1 pg) (JMR) (Entered: 03/12/1997)
127	Mar 6, 1997	Request	The Court's INSTRUCTIONS to the jury (33 pgs) (JMR) (Entered: 03/07/1997)
129	Mar 6, 1997	Request	MINUTES: (Judge David S. Doty / Edward Rafel/Steve Amon) jury deliberation continued. Verdict reached at 3:30 p.m. Cloverdale Foods did breach a contract with Pioneer Snacks in the amt. of \$264,000 for damages. Judgment is to be entered in favor of counter-claimant Pioneer Snacks Inc. in the amt. of \$264,000 and against counter-deft Cloverdale Foods of Minnesota, Inc. (3 pgs) (JMR) Modified on 03/12/1997 (Entered: 03/12/1997)
130	Mar 12, 1997	Request	Special VERDICT Form (2 pgs) (JMR) (Entered: 03/12/1997)
131	Mar 12, 1997	Request	JUDGMENT by Judge David S. Doty / 3/12/97 [98-1] that judgment is hereby entered in favor of the counter-claimant, Pioneer Snacks, Inc., and against the counter-defendant, Cloverdale Foods of Minnesota, Inc., in the amount of \$264,000.00. (cc: all counsel) (1 pg) (JMR) (Entered: 03/14/1997)
132	Apr 9, 1997	Request	MEMORANDUM by defendant in opposition to pltf's motion for judgment after trial; alternative motion for a new trial (13 pgs) (JMR) (Entered: 04/10/1997)
133	Apr 9, 1997	Request	AFFIDAVIT of Ellen Dorow (4 pgs) (JMR) (Entered: 04/10/1997)
134	Apr 10, 1997	Request	MOTION by plaintiff for judgment (to Judge David S. Doty) ; alternative for new trial (20 pgs) (JMR) (Entered: 04/10/1997)
135	Apr 10, 1997	Request	AFFIDAVIT of John F. Bonner, III (4 pgs) (JMR) (Entered: 04/10/1997)
136	Apr 10, 1997	Request	ORDER (Judge David S. Doty / 4/10/97) denying pltf's motion for judgment or in the alternative [134-1] denying motion for new trial [134-2] (cc: all counsel) (3 pgs) (JMR) (Entered: 04/10/1997)
	May 6, 1997		WRIT issued as to plaintiff Cloverdale Foods -mailed to Madhulika Jain, Esq. per request. ( (Entered: 05/07/1997)



ENTRY	FILED	PDF	DESCRIPTION
137	May 12, 1997	<b>Request</b>	NOTICE OF APPEAL by plaintiff Cloverdale Foods from Judge David S. Doty's Order filed 4/10/97 denying pltf's motion for judgment as a matter of law or for a new trial and the judgment entered on 3/12/97 [136-1] [131-1] (1pg) (Receipt #218164) (BLW Modified on 05/14/1997 (Entered: 05/14/1997)
	May 14, 1997		DELIVERED TWO CERTIFIED and one uncertified copy of each of the following to the Court of Appeals, St. Paul Office: Notice of Appeal, Order, Judgment and District Court Docket Entries. Copy of Notice of Appeal mailed to counsel (BLW (Entered: 05/14/1997)
	May 29, 1997		NOTIFICATION BY CIRCUIT COURT of Appellate Docket Number 97-2452MNMI (BLW (Entered: 05/30/1997)
138	June 13, 1997	<b>Request</b>	MOTION by plaintiff to stay judgment pending appeal ( to Judge David S. Doty ) , and waiver of supersedeas bond (2 pgs) (JMR) (Entered: 06/17/1997)
139	June 13, 1997	<b>Request</b>	MEMORANDUM by plaintiff in support of motion to stay judgment pending appeal [138-1] (4 pgs) (JMR) (Entered: 06/17/1997)
140	June 13, 1997	<b>Request</b>	AFFIDAVIT of John F. Bonner, III (13 pgs) (JMR) (Entered: 06/17/1997)
141	June 16, 1997	<b>Request</b>	ORDER ( Judge David S. Doty / 6/16/97) that pltf's motion for a stay pending is denied. [138-1] [138-2] (cc: all counsel) (1pg) (CJF) (Entered: 06/17/1997)
142	July 16, 1997	<b>Request</b>	TRANSCRIPT OF trial (Day One) taken before Judge David S. Doty and a jury on 2/19/97 by Ed Rafel (Volume I) (separate) (JMR) (Entered: 07/17/1997)
143	July 16, 1997	<b>Request</b>	TRANSCRIPT OF trial (Day Three) taken before Judge David S. Doty and a jury on 2/21/97 by Ed Rafel (Volume III) (separate) (JMR) (Entered: 07/17/1997)
144	July 16, 1997	<b>Request</b>	TRANSCRIPT OF trial proceedings (Day Four) taken before Judge David S. Doty and a jury on 2/24/97 by Ed Rafel (Volume IV) (separate) (JMR) (Entered: 07/17/1997)
145	July 16, 1997	<b>Request</b>	TRANSCRIPT OF trial proceedings (Day Six) taken before Judge David S. Doty and a jury on 2/26/97 by Ed Rafel (Volume VI) (separate) (JMR) (Entered: 07/17/1997)
146	July 16, 1997	<b>Request</b>	TRANSCRIPT OF proceedings (Day Eight) taken before Judge David S. Doty on 2/28/97 by Ed Rafel (Volume VIII) (separate) (JMR) (Entered: 07/18/1997)
147	July 16, 1997	<b>Request</b>	TRANSCRIPT OF trial proceedings (Day Nine) taken before Judge David S. Doty and a jury on 3/3/97 by Ed Rafel (Volume IX) (separate) (JMR) (Entered: 07/18/1997)

ENTRY	FILED	PDF	DESCRIPTION
148	July 16, 1997	<b>Request</b>	TRANSCRIPT OF trial proceedings (Day Eleven) taken before Judge David S. Doty and a jury on 3/5/97 by Ed Rafel (Volume XI) (separate) (JMR) (Entered: 07/18/1997)
149	July 29, 1997	<b>Request</b>	TRANSCRIPT OF proceedings taken before Judge David S. Doty and a jury on 2/20/97 by Stephn J. Amon (Volume II) (separate) (JMR) (Entered: 07/31/1997)
150	July 29, 1997	<b>Request</b>	TRANSCRIPT OF proceedings taken before Judge David S. Doty and a jury on 2/25/97 by Stephen J. Amon (Volume V) (separate) (JMR) (Entered: 07/31/1997)
151	July 29, 1997	<b>Request</b>	TRANSCRIPT OF proceedings taken before Judge David S. Doty and a jury on 2/27/97 by Stephen J. Amon (Volume VII) (separate) (JMR) (Entered: 07/31/1997)
152	July 29, 1997	<b>Request</b>	TRANSCRIPT OF proceedings taken before Judge David S. Doty and a jury on 3/4/97 by Stephen J. Amon (Volume X) (separate) (JMR) (Entered: 07/31/1997)
153	Nov 24, 1997	<b>Request</b>	CERTIFIED COPY OF OPINION FROM USCA (Fagg) (Wollman) (Morris Sheppard Arnold) - J; filed 10/30/97 affirming the decision of the District Court [137-1] as to Cloverdale Foods (cc: All Counsel) (BLW (Entered: 11/24/1997)
154	Nov 24, 1997	<b>Request</b>	CERTIFIED COPY of judgment from USCA that the judgment of the district court is affirmed in accordance with the opinion of this Court - MANDATE ISSUED 11/20/97 (Notice to Counsel) (1pg) (BLW (Entered: 11/24/1997)
155	Aug 11, 1998	<b>Request</b>	BILL OF COSTS submitted by defendant. (4 pgs) (JMR) (Entered: 08/12/1998)
156	Aug 11, 1998	<b>Request</b>	AFFIDAVIT of George R. Serdar regarding bill of costs [155-1] (36 pgs) (JMR) (Entered: 08/12/1998)
157	Aug 14, 1998	<b>Request</b>	Clerk's NOTICE in re Receipt of Bill of Costs and briefing schedule regarding same (1 pg) (JMR) (Entered: 08/14/1998)
158	Aug 24, 1998	<b>Request</b>	OBJECTIONS by plaintiff to bill of costs [155-1] 5pg(s) (JMR) (Entered: 04/13/1999)
159	Apr 12, 1999	<b>Request</b>	COST JUDGMENT is hereby entered in favor of the deft. and against the pltf. in the amount of \$ 5,648.37 1pg(s) (cc: all counsel) (JMR) (Entered: 04/13/1999)

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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Cloverdale Foods of Minnesota, Inc.,  
a Minnesota corporation,

Plaintiff,

v.

Pioneer Snacks, Inc.,  
a Michigan corporation,

Defendant.

COMPLAINT  
AND JURY DEMAND

4-94CV331

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Plaintiff, Cloverdale Foods of Minnesota, Inc., a Minnesota corporation, for its cause of action against Defendant hereby states and alleges as follows:

1. Parties

1.1 Plaintiff, Cloverdale Foods of Minnesota, Inc., a Minnesota corporation ("Cloverdale"), is and was at all times relevant to these proceedings a corporation doing business in the State of Minnesota.

1.2 Defendant, Pioneer Snacks, Inc. ("Pioneer"), is a Michigan corporation with its principal place of business in Michigan.

2. Jurisdiction

2.1 Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §1332.

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3. Venue

3.1 Venue is proper pursuant to 28 U.S.C. §1391(a).

3.2 The cause of action accrued within the State of Minnesota in that the parties entered into an agreement in 1990, where in Cloverdale agreed to package certain meat products at a Mankato, MN site for Pioneer.

3.3 All products sold were delivered to Pioneer, FOB shippers dock Mankato, MN.

3.4 The agreement of the parties provided that Pioneer would purchase and Cloverdale would package meat products belonging to Pioneer using packaging materials selected by Pioneer.

3.5 At all times relevant herein Pioneer selected the meat to be packaged as well as the packaging materials used to package the product.

3.6 Pioneer represented to Cloverdale that the meat to be packaged by Cloverdale and supplied by Pioneer would be of a type and quality suitable for packaging and processing at Cloverdale's Mankato facility. In fact, Pioneer had reason to know that said meat was, or would in all probability be, to a substantial degree unfit for said purpose.

3.7 At the time Pioneer and Cloverdale entered into discussions concerning the pricing of Cloverdale's services, Pioneer represented to Cloverdale that Cloverdale would not be required to bear the risk of returns or rejected goods. Accordingly, Pioneer induced Cloverdale to price its services without providing for a factor which would take into account normal returns or rejected product.

3.8 After entering into the contract with Cloverdale, Pioneer caused quantities of meat to be delivered to the Mankato facility. Significant quantities of said meat was not uniform as to size and in significant part was oxygenated or moldy.

3.9 As a result of the lack of uniformity in size and the significant amount of spoilage, Cloverdale's employees were required to sort by hand and separate meat delivered to Cloverdale by Pioneer for packaging by Cloverdale. The meat which was separated was stored by Cloverdale at Cloverdale's facility.

4.0 Notwithstanding the rejection by Cloverdale of the oxygenated and moldy product, representatives of Pioneer would periodically visit the Mankato, MN facility and insist, contrary to Cloverdale's advice, that rejected meat be packaged and sold.

4.1 At all times, Pioneer designated the specifications for all packaging materials, all of which were purchased, at Pioneer's insistence, either by Pioneer or pursuant to Pioneer's instructions from Sunrise Packaging, Inc. Through no fault of Cloverdale, certain problems arose with respect to said packaging materials, many of which caused the rejection by Pioneer of goods for which packaging services had been provided, together with claims by Pioneer for return credits or cash.

4.2 As a result of the misrepresentations and negligence of Pioneer, Cloverdale has suffered substantial damages both in excessive production costs and product return claims all resulting in substantial lost profits to Cloverdale. Further, as a result of the negligence of Pioneer, Cloverdale may be exposed to potential third-party claims.

## COUNT ONE

### 5. Misrepresentation.

5.1 Cloverdale realleges the allegations set forth within Paragraphs 1 - 4.2.

5.2 Absent representation by Pioneer concerning the quality of the meat to be supplied, Cloverdale would never have entered into the contract to provide packaging services.

5.3 Said representation was false and was known or should have been known to be false at the time it was made.

5.4 As a result of said misrepresentation, Cloverdale has suffered substantial damages and loss profits. Cloverdale is entitled to substantial damages estimated to be an amount in excess of \$50,000.00.

## COUNT TWO

### 6. Breach of Contract - Meat.

6.1 Cloverdale realleges the allegations set forth within Paragraphs 1 - 5.3.

6.2 Pioneer has breached its contract to provide meat of good quality, suitable for packaging by Cloverdale.

6.3 Said representation induced Cloverdale to agree to enter into an understanding whereby Cloverdale would provide packaging services to Pioneer. As a result of the breach by Pioneer of said contract, Cloverdale was damaged in an amount in excess of \$50,000.00.



### COUNT THREE

#### 7.0 Breach of Contract - Packaging Materials.

7.1 Cloverdale realleges the allegations set forth within Paragraphs 1 - 6.4.

7.2 Pioneer has breached its contract to provide packaging materials of good quality, suitable for meat packaging by Cloverdale.

7.3 Said representation induced Cloverdale to agree to enter into an understanding whereby Cloverdale would provide packaging services to Pioneer. As a result of the breach by Pioneer of said contract, Cloverdale was damaged in an amount in excess of \$50,000.00.

#### 8.0 Negligence

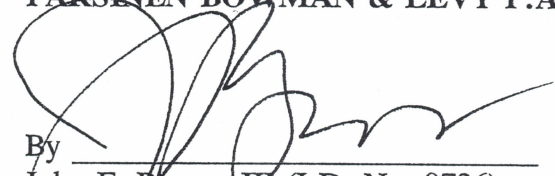
8.1 Pioneer owed, as a result of the relationship of the parties, a duty to Cloverdale to furnish packaging materials and meat of a quality suitable to permit Cloverdale to perform its obligations under the terms of its agreement. Pioneer failed to do so and as a result thereof Cloverdale was damaged in an amount in excess of \$50,000.00

**WHEREFORE**, Cloverdale prays judgment of this Court in favor of Cloverdale and against Defendant in an amount in excess of \$50,000.00, together with costs, prejudgment interest and attorney's fees together with such other and further relief as the Court deems just and equitable.

A Jury Trial is demanded.

Dated: 4/8/94

**PARSINEN BOWMAN & LEVY P.A.**



By \_\_\_\_\_  
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Robert A. Levy (I.D. No. 62790)  
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Minneapolis, MN 55402  
(612) 333-2111  
Attorneys for Plaintiff



UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

PIONEER SNACKS, INC.,  
a Michigan corporation,

Cross-Plaintiff,

vs.

Case No. 4:94 CV 00331  
Hon. David Doty

CLOVERDALE FOODS OF MINN.,  
INC., a Michigan corporation,

Cross-Defendant.

---

**CUMMINGS, McCLOREY, DAVIS & ACHO, P.C.**

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Minneapolis, MN 55402  
(612) 333-2111  
Attorneys for Cross-Defendant

---

COUNTER-COMPLAINT

General Allegations

NOW COMES Plaintiff, Pioneer Snacks, Inc., by and through its attorneys, CUMMINGS, McCLOREY, DAVIS, & ACHO, P.C., by RONALD G. ACHO, and for its Complaint against Cloverdale Foods Company states as follows:

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JUDGMENT ENTB  
DEPUTY CLERK

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1. That Plaintiff, Pioneer Snacks, Inc. ("Pioneer") is a Michigan corporation in good standing and has its principal place of business at 30777 Northwestern highway, Farmington Hills, Michigan, 48334.

2. That Defendant, Cloverdale Foods Company ("Cloverdale") is a North Dakota corporation and has its principal place of business at 3015 34th St., Northwest, Mandan, North Dakota, 58554.

3. That on or about December 14, 1990, Pioneer and Cloverdale entered into an agreement whereby Cloverdale would process and package meat snacks and meat products at its Mankato, Minnesota facility for Pioneer.

4. That Pioneer was in the business of the wholesale distribution of snack foods generally and processed meat snacks and meat products in particular, to retail outlets and wholesale distributors for sale to the consuming public.

5. That at all times, Defendant knew that Plaintiff intended to market these items as convenience-snack foods and that they needed to be fit for said particular purpose.

6. That the products which Cloverdale were to process and package under the contract were intended for delivery to Pioneer at its Livonia, Michigan warehouse facility and other locations for direct distribution to Pioneer customers.

7. That pursuant to the Agreement, Pioneer has the right to inspect and reject any products that did not meet the agreed upon standards at the Livonia warehouse facility. Some defects and non-conforming products were not readily and immediately recognizable.

8. That many problems with the fitness of the end product arose, including, but not limited to, layer separation with the film used in packaging, lack of adhesion between the forming and non-forming films, and non-performance of the films within the specified ranges. The goods were not merchantable as to quality, quantity, fitness or packaging.

9. That the goods manufactured and delivered by Cloverdale would not pass, without objection, in the trade.

10. That the packaging materials provided and employed by Cloverdale for Pioneer did not meet the proper specifications and were otherwise defective. The packaging materials varied as to quality and did not conform to the requirements of the contract between the two parties.

11. That Pioneer has suffered economic and non-economic losses through, but not limited to, a high level of film loss and product return claims.

12. That the inadequacies of the packaging materials used and provided by Cloverdale have resulted in significant financial damages to Pioneer.

13. That these damages have resulted in a loss of customers, product, markets and market share, as well as damage to the good name and reputation of Pioneer, and otherwise constitute a substantial financial loss to Pioneer, along with incidental and consequential damages.

14. That this counter-claim arises from an actual controversy now before this Court, under the same case heading, in an amount exceeding \$50,000.00 and the jurisdiction of this Honorable Court is otherwise proper.

#### COUNT I

##### Breach of Contract

15. That Defendant/Counter-Plaintiff repeats and realleges its allegations contained in paragraphs 1 through 14 as if recited herein.

16. That Pioneer entered into a valid executed contract with recitals of valuable consideration with Cloverdale, whereby Cloverdale was to supply Pioneer with processed and packaged meat products for sale to retail outlets (Exhibit 1).

17. That pursuant to the contract, and by its expressed and implied terms, Cloverdale had the responsibility to process the meat snacks by cooking and seasoning for resale and consumption.

18. That under the contract, Cloverdale had the responsibility to package the meat products for sale and distribution.

19. That Pioneer provided Cloverdale with specifications for processing and packaging which permit a very low tolerance for error.

20. That Cloverdale agreed to the specifications as set forth by Pioneer and agreed to perform within those specifications.

21. That Cloverdale failed to perform under the terms, conditions, and specifications of the contract, and is therefore, in breach of contract.

22. That specific examples of Cloverdale's breach's of express and implied terms include, but are not limited to:

- a. improper processing and preparation of the meat products;
- b. non-performance of packaging films;
- c. lack of adhesion at point of packaging seal;
- d. separation of packaging films;
- e. failure of "vacuum packed" packaging system;
- f. failure to maintain equipment causing damage to the end product.

23. That Cloverdale was otherwise unable to properly process, prepare and package the meat snack products.



24. That the manufacturing problems were within Cloverdale's facility and under its dominion and control. Cloverdale's actions and/or inactions resulted in defective processing and packaging equipment, defective packaging material, and machine operator error.

25. That the above-mentioned manufacturing problems and Cloverdale's failure to perform pursuant to the contract resulted in a high rate of product spoilage and an unacceptable number of unsalable items.

26. That the product failure rate exceeded the agreed to specifications and standards, and as a result Pioneer incurred substantial financial damage, as well as damage to its reputation, its relations with retailers and customers, and loss of markets and market share.

27. That the product failure rate exceeded the industry accepted/failure rate of .5% of total product delivered and exceeded the agreed to specifications and standards set by Pioneer and agreed to by Cloverdale. Pioneer incurred substantial financial damages, as well as damage to its name, reputation, relations with retailers and customers, as well as the loss of markets and market share.

28. That the financial loss to Pioneer exceeds One Million Six Hundred Thousand (\$1,600,000.00) Dollars.

29. WHEREFORE, Defendant/Counter-Plaintiff, Pioneer Snacks, Inc., respectfully requests this Honorable Court to render judgement in favor of Defendant/Counter Plaintiff in an amount in excess of One Million Six Hundred Thousand (\$1,600,000.00) Dollars, plus costs, interest and attorney fees.

COUNT II

Breach of Express Warranties - UCC 2-313

30. That Defendant/Counter-Plaintiff repeats and realleges its allegations contained in paragraphs 1 through 29 as if recited herein.

31. That Cloverdale breached the express warranty to Pioneer that the goods sold would be of good quality and fit for the purposes intended, and Defendant Pioneer was injured both incidentally and consequentially.

32. That Plaintiff Cloverdale's express warranties of good quality and fitness for particular purposes were the "basis of the bargain", and that Pioneer was induced to rely upon Plaintiff's expressed warranties. Defendant has suffered consequential and incidental damages as a result of its reliance.

33. That Plaintiff, Cloverdale, used samples which appeared to be of high quality and which created an express warranty that the quality of the whole of the goods would conform to the quality of the sample.

34. That Cloverdale, by and through its agents and employees made representations, affirmations and promises that the goods sold by Cloverdale would be of good quality, and would have defects only within the industry accepted range.

35. That Pioneer relied upon the warranties created by Cloverdale's affirmations, representations and promises as well as upon the samples on entering into a contract with Plaintiff.

36. That the goods provided by Cloverdale failed to conform to the warranties created by Plaintiff's representations.

37. That Defendant/Counter-Plaintiff was damaged in an amount in excess of One Million Six Hundred Thousand (\$1,600,000.00) Dollars by Plaintiff's breach of warranty.

38. WHEREFORE, Defendant/Counter-Plaintiff Pioneer Snacks, Inc., respectfully requests this Honorable Court to render judgement in favor of Defendant/Counter-Claimant in an amount in excess of One Million Six Hundred Thousand (\$1,600,000.00) Dollars plus costs, interest and attorney fees.

### COUNT III

#### **Breach of Implied Warranty and Merchantability - UCC 2-314**

39. That Defendant/Counter-Plaintiff repeats and realleges its allegations contained in paragraphs 1 through 38 as if recited herein.



40. That the contract for the sale of goods between Pioneer and Cloverdale required such goods to be of a quality comparable to that generally accepted in the industry as defined by UCC 2-314.

41. That Plaintiff, Cloverdale, is a "merchant" pursuant to UCC 2-104(1).

42. That Plaintiff's delivered goods deviated from the standard of merchantability causing Pioneer injury, both proximately and in fact.

43. That Plaintiff sold goods to the Defendant which were not adequately contained, packaged, or labeled, as the agreement required and were unfit for the ordinary purposes for which the goods were to be used, in violation of UCC 2-314.

44. That as a result of Plaintiff's breaches of warranty, Pioneer suffered injury and damages which were caused proximately and in fact by the defective nature of the goods.

45. That notice of the injuries and breaches were given by Pioneer to Cloverdale as required by the Uniform Commercial Code 2-607(3)(a) through multiple telephone calls and written correspondence.

46. WHEREFORE, Defendant/Counter-Plaintiff Pioneer Snacks, Inc., respectfully requests this Honorable Court to render judgement in favor of Defendant/Counter-Plaintiff in

an amount in excess of One Million Six Hundred Thousand (\$1,600,000.00) Dollars plus costs, interest and attorney fees.

COUNT IV

Conversion

47. That Defendant/Counter-Plaintiff repeats and realleges its allegations contained in paragraphs 1 through 46 as if recited herein.

48. That Pioneer placed orders with Cloverdale for products which were not properly filled by Cloverdale.

49. That Cloverdale intentionally delivered less than the orders placed by Pioneer with the intent to deprive Defendant of its property.

50. That Pioneer has advised Cloverdale of the discrepancies between the orders placed by the Defendant and the product delivered by Cloverdale, but Cloverdale has consistently refused to satisfactorily explain the discrepancies and has not made restitution.

51. That Cloverdale has caused inventory discrepancies causing shrinkage, which have wrongfully deprived Pioneer of the meat products and meat snacks for which Pioneer had been billed and paid.

52. That Cloverdale has been unjustly enriched by the shrinkage to Pioneer.

53. That Pioneer is entitled to an accounting to determine the amount of shrink to Pioneer and restitution of any amount improperly paid to Cloverdale.

54. WHEREFORE, Defendant/Counter-Plaintiff Pioneer Snacks, Inc., respectfully requests this Honorable Court to render judgement in favor of Defendant/Counter-Plaintiff in an amount in excess of One Million Six Hundred Thousand (\$1,600,000.00) Dollars plus costs, interest and attorney fees.

#### COUNT V

##### Malicious Abuse of Legal Process

55. That Defendant/Counter-Plaintiff repeats and realleges its allegations contained in paragraphs 1 through 54 as if recited herein.

56. That the Plaintiff willfully and maliciously misapplied this Honorable Court's process to obtain jurisdiction over Defendant not intended by law.

57. That Defendant, having given notice to Plaintiff that a lawsuit would be filed in Michigan if Plaintiff's breaches of contract were not rectified to Defendant's satisfaction, relied to its detriment on promises and assurances by Plaintiff that the breaches would be corrected.

58. That Defendant/Counter-Plaintiff, in response to a settlement conference offer, traveled to Minnesota in anticipation of meaningful discussion and resolution of the

above-captioned matter, when in fact, Plaintiff's sole motive was to lure Defendant into the territorial bounds of Minnesota.

59. That during the course of sham settlement discussions, Plaintiff was not amenable to any suggestions put forth by Defendant and immediately served the Defendant with a Summons and complaint.

60. That the Complaint filed by Plaintiff lacks basis in fact and in law and was filed for the sole purpose of harassing Defendant/Counter-Plaintiff. Plaintiff's counsel even admitted the suit filed was without merit, but solely for jurisdiction purposes.

61. That Defendant/Counter-Plaintiff has incurred damages, and will continue to incur damages in the form of substantial expenses of attorneys fees and through the inconvenience of having to defend this frivolous action before this Honorable Court.

62. That this action, instituted by Plaintiff, does not arise from a proper use of process and is wholly without merit.

63. WHEREFORE, Defendant/Counter-Plaintiff Pioneer Snacks, Inc., respectfully requests this Honorable Court to render judgement in favor of Defendant/Counter-Plaintiff in

an amount in excess of One Million Six Hundred Thousand (\$1,600,000.00) Dollars plus costs, interest and attorney fees.

Respectfully submitted,

CUMMINGS, McCLOREY, DAVIS & ACHO

By: *Ronald G. Acho*  
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(313) 261-2400

DATE: June 28, 1994

Attorneys for Cross-Plaintiff



UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

Cloverdale Foods of  
Minnesota, Inc, a  
Minnesota corporation,

Civil No. 4-94-331

Plaintiff,

v.

ORDER

Pioneer Snacks, Inc., a  
Michigan corporation,

Defendant.

John F. Bonner III, Esq. and Malkerson, Gilliland & Martin, 1500 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-3205, counsel for plaintiff.

George R. Serdar, Esq. and Messerli & Kramer, 1800 Fifth Street Towers, 150 South Fifth Street, Minneapolis, MN 55402-4218 and Ronald G. Acho, Esq. and Cummings, McClorey, Davis & Acho, 33900 Schoolcraft Road, Livonia, MI 48150, counsel for defendant.

This matter is before the court on the motion of plaintiff Cloverdale Foods of Minnesota, Inc. ("Cloverdale"), for summary judgment on the counterclaims asserted by defendant Pioneer Snacks, Inc. ("Pioneer"). Based on a review of the file, record and proceedings herein, and for the reasons stated below, plaintiff's motion is granted in part and denied in part.

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FILED  
FRANCIS E. DOSAL, CLERK  
Judgment Ent'd.  
21 1995

## BACKGROUND

Cloverdale packages and processes meat products for other businesses, such as Pioneer, who sells the packaged meat to distributors and retailers. In December 1990, the parties entered into an oral agreement whereby Cloverdale would process and package beef jerky for Pioneer. Cloverdale had never before packaged beef jerky.

Pioneer supplied Cloverdale with packaging materials and bulk meat to be processed into beef jerky. Pioneer purchased most of the bulk meat from Garseb Meats ("Garseb") and the packaging materials from Sunrise Packaging, Inc. or Curwood, Inc. Although the oral agreement was modified by a written agreement in December 1992, the entire agreement between the parties was never reduced to a written contract.

By spring 1993, the parties' working relationship had deteriorated. On April 8, 1994, Cloverdale filed suit against Pioneer claiming misrepresentation, breach of contract and negligence. Cloverdale alleges that Pioneer misrepresented the quality of the meat it supplied for processing and packaging, breached its contractual obligations by supplying unsuitable meat and packaging materials and negligently supplied inferior meat and packaging materials. On June 24, 1994, Pioneer filed an answer and

asserted counterclaims for breach of contract, breach of express warranty under § 2-313 of the Uniform Commercial Code, breach of implied warranty under § 2-314 of the Uniform Commercial Code, conversion and malicious prosecution and abuse of process. Cloverdale seeks summary judgement on Pioneer's counterclaims.

Cloverdale claims that a substantial quantity of the meat supplied by Pioneer from Garseb was not of uniform size and was of poor quality. The inferior condition of the Garseb meat required more time to process, which resulted in increased labor costs and overhead for Cloverdale. Cloverdale also claims that Pioneer supplied it with inferior packaging materials. Cloverdale contends that it brought these problems to Pioneer's attention, but Pioneer refused to remedy them.

Pioneer counters that the meat and packaging materials it supplied were well-suited for packaging beef jerky. Pioneer further asserts that if bad meat was delivered to Cloverdale, it never insisted that the spoiled meat be processed. Pioneer claims that Cloverdale packaged the beef jerky incorrectly, which resulted in spoilage, a high inventory shrinkage rate and customer returns which exceeded the industry average. Pioneer attributes these problems, and its customers' dissatisfaction, to Cloverdale's inexperience, inadequate equipment maintenance at its Mankato,



Minnesota facility and the poor training and supervision of Cloverdale employees.

The court has jurisdiction pursuant to 28 U.S.C. § 1332.

#### DISCUSSION

The court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). This standard mirrors the standard for judgment as a matter of law under Federal Rules of Civil Procedure 50(a), which requires that trial court to enter judgment as a matter of law if there can be but one reasonable conclusion as to the verdict. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. Id. at 249.

On a motion for summary judgment, the court views the evidence in favor of the nonmoving party and gives that party the benefit of all justifiable inferences that can be drawn in its favor. Id. at 250. The nonmoving party, however, cannot rest upon mere denials or allegations in the pleadings. Nor may the nonmoving party

simply argue facts supporting its claim may be developed later or at trial. Rather, the nonmoving party must set forth specific facts, by affidavit or otherwise, sufficient to raise a genuine issue of fact for trial. Celotex v. Catrett, 477 U.S. 317, 324 (1986). An issue of material fact is genuine if it has a real basis in the record. See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). If reasonable minds could differ as to the import of the evidence, summary judgment should not be granted. See Anderson, 477 U.S. at 250-51. If non-moving party fails to support an essential element of a claim, however, summary judgment must issue because a complete failure of proof regarding an essential element renders all other facts immaterial. Celotex, 477 U.S. at 322-23. With these standards at hand, the court will consider Cloverdale's motion.

#### **I. Breach of Contract**

Although Cloverdale and Pioneer are sophisticated businesses, they never reduced their agreement to a written contract. Instead, their four-year relationship was governed by a hodgepodge of oral agreements, at least one written agreement and a course of dealing. Neither party disputes that there was a contract between them whereby Cloverdale was to process and package beef jerky for

Pioneer. Virtually every other fact issue in this case is disputed, however.

A contract requires a meeting of the minds regarding its essential terms. Minneapolis Cablesystems v. City of Minneapolis, 299 N.W.2d 121, 122 (Minn. 1980). Mutual manifestation of assent is essential to the making of a contract. Benedict v. Pfunder, 237 N.W.2d 2, 4 (Minn. 1931). "It is well settled Minnesota law that where the evidence fails to disclose an express agreement, the law may imply a contract from the circumstances of acts of the parties." Bergstedt, Wahlberg, Berquist Assocs., Inc. v. Rothchild, 225 N.W.2d 261, 263 (Minn. 1975). Thus, a promise has the same effect whether it is expressed orally, in writing, by the actions of the parties or a combination of means. Id. If disputed, the existence and terms of a contract are questions for the fact-finder. Morrisette v. Harrison Int'l Corp., 486 N.W.2d. 424, 427 (Minn. 1992); Hughes v. Becker, 108 N.W.2d 781 (Minn. 1961).

It is undisputed that a contract existed between the parties. Indeed, both parties have asserted claims for breach of contract. There are genuine disputes of material fact, however, regarding the terms of that contract which preclude summary judgment on Pioneer's

contract counterclaim. These disputes must be resolved by the trier of fact.

## II. U.C.C. Claims

Pioneer alleges that Cloverdale breached express and implied warranties under Article 2 of the Uniform Commercial Code ("U.C.C."). Article 2 of the U.C.C. applies only to contracts for the sale of goods, not services. Valley Farmers' Elevator v. Lindsay Bros. Co., 398 N.W.2d 553, 556 (Minn. 1987), overruled on other grounds by, Hapka v. Paquin Farms, 458 N.W.2d 683 (Minn. 1990). If a contract involves both goods and services, the "predominant purpose" test is used to determine whether the U.C.C. is applicable. Id. Under this test, a contract is classified according to its dominant characteristic. McCarthy Well Co. v. St. Peter Creamery, Inc., 410 N.W.2d. 312, 315 (Minn. 1987).

Pioneer claims that the U.C.C. is applicable because the contract between the parties involved both the sale of goods and the provision of services. Pioneer does not dispute that Cloverdale processed and packaged beef jerky for it using meat and packaging materials that Pioneer had supplied. In addition, Pioneer claims that Cloverdale purchased meat and packaging materials for beef jerky it processed and later sold to Pioneer.



Cloverdale counters that the contract was strictly a service contract. It provided labor and equipment to process and package beef jerky for Pioneer; there was no sale of goods. Pioneer supplied all the meat and packaging materials used by Cloverdale. Although Cloverdale disputes that it ever sold any meat or packaging materials to Pioneer, if it did, it further argues, the predominant purpose of the contract was for the rendition of services.

The U.C.C. does not apply in this case because there is no evidence in the record that there was any sale of "goods." Although Pioneer claims that Cloverdale supplied it with some meat and packaging materials, see (Docket No. 86; Robert George Aff. at ¶ 31 and Ex. 1), there is no evidence that Cloverdale sold any beef jerky or packaging material at issue in this case to Pioneer. There is also no evidence that Pioneer paid Cloverdale any money for any meat or packaging supplies. Moreover, the basis of Pioneer's U.C.C. claims is not that Cloverdale sold it defective beef jerky, but rather that Cloverdale's processing and packaging services were deficient. Even assuming that the contract was a hybrid, involving both the sale of goods and provision of services, by Pioneer's own admission the dominant characteristic of the

contract was the rendition of services. (Docket No. 52; John F. Bonner, III, Aff.; Robert George Dep. Vol. II at 71).

The U.C.C. is also inapplicable because there was no "sale" of goods between Cloverdale and Pioneer. Robert George, the president of Pioneer, testified that although bulk meat was physically transferred to Cloverdale for processing, Pioneer always retained ownership of the meat. (Docket No. 52; John F. Bonner, III, Aff.; Robert George Dep. Vol. II at 200). Because there was no sale of goods between Cloverdale and Pioneer, Cloverdale is entitled to summary judgment on Pioneer's U.C.C. counterclaims.

### III. Conversion

Pioneer also claims Cloverdale converted some of its personal property. To establish a cause of action for conversion, Pioneer must show that (1) it had a property interest and (2) Cloverdale deprived it of that interest. Larson v. Archer-Daniels-Midland Co., 32 N.W.2d 649, 650 (1948). Pioneer claims Cloverdale converted meat snacks which it had paid for by: (1) failing to properly fill orders; (2) intentionally not filling orders; and (3) creating inventory discrepancies. (Docket No. 7, ¶¶ 48-51). There is no credible evidence in the record supporting this claim. Pioneer's conversion claim, and supporting arguments, are nothing more than an attempt to characterize its breach of contract claim



as a tort claim. There is no dispute as to any issue of material fact and Cloverdale is entitled to summary judgment on Pioneer's conversion counterclaim.

#### **IV. Malicious Prosecution/Abuse of Process**

Minnesota has expressed its disapproval of spiteful lawsuits by recognizing a cause of action for malicious prosecution. By definition, a claim for malicious prosecution requires termination of the suit in favor of the defendant. See First Nat'l Bank of Omaha v. Marquette Nat'l Bank of Minneapolis, 482 F. Supp. 514, 523 (D. Minn. 1979); Jordan v. Lamb, 392 N.W.2d. 607, 609 (Minn. Ct. App. 1986), rev. denied (elements of claim). Pioneer cannot satisfy this element because the merits of Cloverdale's allegations have not yet been decided. Allowing Pioneer to proceed on this counterclaim would eviscerate the policy considerations by requiring that the defendant prevail as an element of a prima facie malicious prosecution claim.

Pioneer's abuse of process claim also fails. Pioneer contends that Cloverdale's request for a settlement conference in Minnesota was a canard to lure its representatives to Minnesota. Pioneer believes that Cloverdale requested the meeting to effect personal service on Pioneer. A complaining party must establish two essential elements to support an abuse of process claim: (1) the

existence of an ulterior purpose; and (2) the act of using process to accomplish a result not within the scope of the proceeding in which it was issued. Bigelow v. Galway, 281 N.W.2d 835, 837 (Minn. 1979). Other than the affidavit of Pioneer's counsel, there is no basis in the record for its assertion that Cloverdale had an ulterior motive for requesting a settlement conference in Minnesota, or that the service was effected for a reason other than pursuing Cloverdale's legal remedies against Pioneer for an alleged breach of contract.

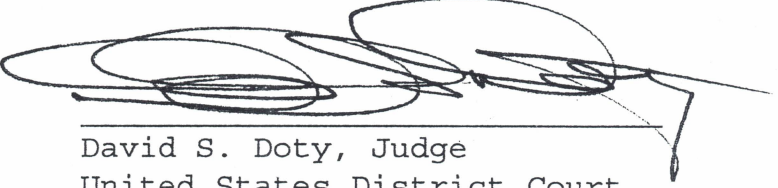
#### CONCLUSION

Based upon the foregoing, **IT IS HEREBY ORDERED** that:

1. The motion of plaintiff Cloverdale for summary judgment on defendant Pioneer's breach of contract counterclaim is denied;
2. The motion of plaintiff Cloverdale for summary judgment on Pioneer's U.C.C., conversion and malicious prosecution/abuse of process counterclaims is granted;

3. Counts II, III, IV and V of defendant Pioneer's counterclaim are dismissed with prejudice.

Dated: December 23, 1996



David S. Doty, Judge  
United States District Court