

Defendant would further show the Court that the accident in question was the result of a sudden emergency or a new and independent cause which destroyed the causal connection, if any, between the alleged negligence of Defendant and the occurrence in question or was unavoidable.

V.

Defendant would further show the Court that Plaintiff's claim is barred by the applicable Statute of Limitations, More specifically, Defendant would show this Court that over two years passed from the date on which Plaintiff's cause of action accrued before Plaintiffs brought suit against this Defendant.

VI.

Defendant would further state that at the time and on the occasion of the accident in question, its employees, agents or servants were borrowed servants, as that term is known and understood under the laws of the State of Texas, of Plaintiff's employer [], and as such this action is barred under Vernon's Ann. Civ. St. Art. 8306 § 3. In the alternative, Defendant would state that at the time and on the occasion of the accident in question, Plaintiff was a borrowed servant of Defendant, and as such this action is barred under Vernon's Ann. Civ. St. Art. 8306 § 3.

VII.

Defendant would further state he/she is not liable for any condition existing before the occurrence in question, except to the extent, if any, that such other condition was aggravated by any injuries that resulted from the occurrence in question.

VIII.

In the alternative, and without waiving any of the foregoing, Defendant asserts that Plaintiff had a pre-existing physical condition and the complained of injuries, if any, were not caused by any act or omission of this Defendant. Specifically, the Plaintiff had previously undergone numerous abdominal surgical procedures and had shown a propensity to form abdominal adhesions.

IX.

In the alternative, and without waiving the foregoing, Defendant asserts that the sole proximate cause of Plaintiff's injuries, if any, in this particular matter were the Plaintiff's pre-existing medical conditions. Specifically, the Plaintiff had previously undergone numerous abdominal surgical procedures and had shown a propensity to form abdominal adhesions. The repeated post-surgical formation of abdominal adhesions is the sole proximate cause of Plaintiff's injuries, if any, in this matter.

X.

The Defendant invokes Chapter 41 of the Texas Civil Practice & Remedies Code, including but not limited to §41.008 with respect to Plaintiff's claims of gross negligence and exemplary damages.

XI.

FOR THE COURT ONLY

In the unlikely event Plaintiff is awarded damages against any other person or entity for the damages complained of in this suit, or should Plaintiff enter into a settlement with any person or entity or if Plaintiff accepts consideration for damages complained of in this action, and in the further unlikely event a jury should find liability on the part of this Defendant, then this Defendant would be entitled to contribution and or credit pursuant to Chapter 33 of the Texas Civil Practice & Remedies Code including but not limited to §32.001.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that upon final trial hereof judgment, including costs and all other relief, at law and in equity, be rendered in favor of Defendant.

Respectfully submitted,

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BY: _____
GERALD L. BOLFING
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ATTORNEYS FOR DEFENDANT,
LUMEN FOOD CORP.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing instrument was forwarded to all attorneys of record in accordance with the applicable Texas Rules of Civil Procedure on this ____ day of _____, 2004.

GERALD L. BOLFING