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No. 130862

In the

Supreme Court of Illinois

MARTIN PRODUCE, INC.,

Plaintiff-Appellee,

v.

JACK TUCHTEN WHOLESALE PRODUCE, INC. and
LA GALERA PRODUCE, INC.,

Defendants-Appellants.

On Leave to Appeal from the Illinois Appellate Court,
First Judicial District, No. 1-23-1369.
There Heard Appeal from the Circuit Court of Cook County, Illinois,
County Department, Law Division, No. 16 L 6628.
The Honorable Daniel J. Kubasiak, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE

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STATEMENT OF JURISDICTION

This case is subject to jurisdiction under Illinois Supreme Court Rule 315 as a result of this Court granting the Petitions for Leave to Appeal filed by Appellants, Jack Tuchten Wholesale Produce, Inc. and La Galera Produce, Inc.

STATEMENT OF FACTS

Defendant/Third-Party Plaintiff/Appellee, Martin Produce, Inc. ("Martin Produce"), is a distributor of fresh produce and food products, which it purchases from wholesalers, and sells to restaurants across the Chicagoland area. (C 3440-3443). Third-Party Defendants/Appellants, Jack Tuchten Wholesale Produce, Inc. ("Jack Tuchten") and La Galera Produce, Inc. ("La Galera"), are wholesale sellers of fresh produce that do business with Martin Produce. (C 3440-3443; C 3610-3645). (Collectively, Jack Tuchten and La Galera are sometimes referred to herein as the "Wholesalers").

In June of 2016, the Wholesalers each sold and shipped cilantro to Martin Produce, which Martin Produce then sold to Plaintiff, Carbon on Chicago, LLC and Carbon on 26th, LLC, (collectively "Carbon"), a fast-casual Mexican restaurant. (C 3440-3443; C 3610-3645). On July 1, 2016, Carbon closed due to an E. coli O157:H7 outbreak, during which at least 55 of Carbon's customers became ill. (C 3440-3472; C 3610-3645). Shortly thereafter, the Chicago Department of Public Health investigated the E. coli outbreak and issued a Foodborne Final Report and Supplement to the Foodborne Report, identifying contaminated cilantro as the most likely cause of the outbreak, based on epidemiological evidence. (C 2086-2106). The E.coli outbreak resulted in significant personal injury litigation, as well as Carbon's economic damages claims against Martin Produce.

Martin Produce's Position

Martin Produce has consistently denied that it sold contaminated cilantro to Carbon, arguing that the E.coli originated at Carbon's restaurant. (C 904-909; C 3584-3589). In the alternative, if it is proven that the cilantro was contaminated, which Martin Produce denies, it is Martin Produce's position that the contamination occurred at the Wholesalers facilities and/or fields, prior to being purchased by, and delivered to, Martin Produce, as Martin Produce was a mere pass-through distributor. (C 904-909; C 3584-3589). Accordingly, if Martin Produce is found by the jury to have sold defective cilantro to Carbon, thereby breaching its warranty of merchantability, then Jack Tuchten and/or La Galera sold the defective cilantro to Martin Produce, in breach of their own warranties of merchantability. (C 904-909; C 3584-3589). This is the basis of Martin Produce's contingent, third-party claims against Jack Tuchten and La Galera, which are the subject of the appeal at bar.

On May 16, 2023, the circuit court entered summary judgment in favor of Jack Tuchten and La Galera, finding that Martin Produce did not provide pre-suit notice of the allegedly defective cilantro, as required under Section 2-607(3)(a) of the UCC. (C 4057-4058). On appeal, however, the Illinois First District Appellate Court overturned the May 16, 2023, Order granting summary judgment, finding that the pre-suit notice requirement was satisfied, based on the actual knowledge exception established in *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 492 (1996). *See Andrews v. Carbon on 26th, LLC*, 2024 IL App (1st) 2313169. The Appellate Court reasoned that Jack Tuchten and La Galera were informed of the allegedly defective cilantro, prior to the filing of Martin Produce's Third-Party Complaint, by and through the extensive personal injury litigation involving everyone in the supply chain associated with the very same E.coli outbreak and allegedly

tainted cilantro. *Andrews*, 2024 IL App (1st) 2313169 at ¶ 43. Accordingly, since the underlying litigation is of critical importance here, a detailed recitation of this matter's procedural history is set forth below.

The E.coli Litigation Begins

In 2016 and 2017, following the E.coli outbreak, 54 separate personal injury lawsuits were filed against Carbon and Martin Produce, seeking damages for injuries resulting from the E.coli outbreak at Carbon's restaurant. (C 3405-6). On May 8, 2017, Carbon filed a counterclaim for contribution against Martin Produce, which Martin Produce answered on May 26, 2017, denying all material allegations. (C 173-190, C 671-701). The parties conducted initial discovery, during which Martin Produce identified Jack Tuchten as one source of the cilantro that Martin Produce bought and sold to Carbon. (C 3404-3407, ¶ 18).

On October 27, 2017, Carbon brought Jack Tuchten into the litigation by way of a Third-Party Complaint, asserting counts of strict products liability, negligence, contribution, and breach of express and implied warranty, regarding the allegedly contaminated cilantro sold by Jack Tuchten to Martin Produce. (C 3404-3433). On January 29, 2018, Jack Tuchten moved to dismiss Carbon's Third-Party Complaint, based on a lack of privity. (C 3434-3439). As discovery continued, Martin Produce identified La Galera as another source of the allegedly tainted cilantro. (C 3440-3443, ¶¶ 19-20).

On March 1, 2018, Carbon filed an Amended Third-Party Complaint, which added La Galera to the litigation, based on the same causes of action previously asserted against Jack Tuchten. (C 3440-3472). On June 4, 2018, La Galera filed its Answer to Carbon's

Amended Third-Party Complaint, denying that it breached its express and implied warranties. (C 3473-3521)

Additionally, on April 17, 2018, within the same personal injury action, Carbon filed a "Second Supplemental Counterclaim" against Martin Produce, seeking recovery for Carbon's alleged economic damages resulting from the E.coli outbreak and closure of Carbon's restaurant, including for its purported lost profits, discarded products, and other consequential damages. (C 166-171). On May 11, 2018, Martin Produce Answered Carbon's Second Amended Supplemental Counterclaim, denying all material allegations. (C 1334-1350).

Melissa Andrews' Third Amended Complaint

On June 13, 2018, the 54 personal injury plaintiffs, led by plaintiff, Melissa Andrews, amended their complaints to name all cilantro wholesalers and distributors as direct defendants, including Carbon, Martin Produce, Jack Tuchten, and La Galera. (C 3610-3645). Melissa Andrews' Third Amended Complaint contained detailed allegations to establish causes of action of negligence, strict liability, and breach of express and implied warranties, each of which were alleged and/or incorporated into counts directed against Carbon, Martin Produce, La Galera, and Jack Tuchten. (C 3610-3644).

On June 20, 2018, one week after the filing of Melissa Andrew's Third Amended Complaint, Carbon filed a Second Amended Third-Party Complaint, dropping Carbon's third-party claims against Jack Tuchten and La Galera. (C 3523-3536). This prompted Martin Produce to file its third-party claims against the Wholesalers, which are the subject of this appeal; however, the parties first participated in additional discovery regarding the E.coli outbreak and allegedly contaminated cilantro.

Written and Oral Discovery

On November 19, 2018, Jack Tuchten served verified Responses to Carbon's Requests for Production of Documents, identifying and producing documents regarding Jack Tuchten's sales of cilantro to Martin Produce. (C 2808-9, ¶¶ 3-4). La Galera also served Responses to Carbon's Requests for Production and produced invoices that accompanied five shipments of cilantro to Martin Produce, in May and June of 2016. (C 2826-7, ¶ 4; C 2801-2806).

Next, on January 10, 2019, counsel for Jack Tuchten and La Galera participated in the deposition of Chicago Department of Public Health's ("CDPH's") infectious disease investigator, Stephanie Black, Ph.D., who testified as to her investigation, findings, and reports regarding the E. coli outbreak, which CDPH attributed to the cilantro present at Carbon. (C 2560-2629).

On February 13, 2019, the parties took the deposition of Brian Malinowski, Carbon's Manager, who testified that Martin Produce was the only supplier of cilantro to Carbon. (C 1168). On March 28, 2019, the parties took the deposition of Carbon's owner, John Falduto, regarding the E.coli outbreak and subject cilantro. (C 1229-1257).

Additionally, in February and March of 2019, counsel for Jack Tuchten and La Galera took three depositions of Martin Produce's employees, including depositions of Martin Produce's Co-Managers, Alexander Maciel and Griscel Maciel, as well as Martin Produce's Warehouse Manager, Ugo Llorente, to further investigate the E.coli outbreak and claims of allegedly tainted cilantro. (C 2652-73; C 2675-93; C 2880-88).

Finally, on March 25, 2019, Martin Produce served Requests to Admit on Jack Tuchten and La Galera, to clarify and confirm the exact transactions of the allegedly

defective cilantro sold by the Wholesalers and distributed to Carbon immediately prior to the E.coli outbreak. (C 4303-4309; C 4319-4325).

Martin Produce's Third-Party Complaint

On April 16, 2019, Martin Produce filed it Third-Party Complaint for Contribution to Carbon's Second Amended Supplemental Counterclaim against Jack Tuchten and La Galera. (C 904-909). Martin Produce's Third-Party Complaint asserted the subject breach of implied warranty claim, giving rise to the appeal at bar, as the Wholesalers claim they did not receive pre-suit notice of Martin Produce's third-party claims. (C 904-909).

While Martin Produce denied, and continues to deny, that it sold contaminated cilantro to Carbon, Martin Produce was compelled to file its third-party, contingent, claims against the Wholesalers relative to Carbon's economic damages claims, as Carbon did not seek economic damages from the Wholesalers, due to lack of privity of contract. (C 904-909). Accordingly, Martin Produce's third-party allegations mirrored those of Carbon's and asserted contingent negligence and breach of warranty claims for Carbon's economic damages. (C 904-909).

On May 10, 2019, Jack Tuchten filed its Answer to Martin Produce's Third-Party Complaint, denying that it breached the implied warranty of merchantability. (C 4349-4356). On June 5, 2019, La Galera filed its Answer to Martin Produce's Third-Party Complaint, denying that it breached the implied warranty of merchantability. (C 4358-4372).

Settlement of Personal Injury Claims

In light of the volume and complexity of the pending personal injury claims, Carbon's economic damages claims were stayed. The parties, including Carbon, Martin

Produce, and the Wholesalers, litigated the personal injury claims, up to and through jury selection, before all defendants reached a global settlement as to fault allocation in March of 2020.

Subsequently, Carbon's economic damages claims proceeded against Martin Produce, with Jack Tuchten and La Galera as Third-Party Defendants. On June 29, 2022, with leave of court, Carbon filed its Amended Count IX to its Second Amended Supplemental Counterclaim, reasserting its breach of implied warranty claim against Martin Produce. (C 2429-2430; C 3568-3572). On July 1, 2022, with leave of court, Martin Produce filed its Amended Third-Party Complaint, reasserting its contingent breach of implied warranty claim against Jack Tuchten and La Galera. (C 2429-2430; C 3584-3589).

Martin Produce's Amended Third-Party Complaint continued to deny that the cilantro was the cause of the E.coli outbreak but alleged that, if it were found liable to Carbon, then the Wholesalers breached their implied warranties and were liable for a *pro rata* share of liability. (C 3584-3589). Martin Produce alleged that the wholesalers each "had actual notice of the alleged defect of the cilantro in or around June 2018 as a result of being named as a defendant in the [personal injury complaints]"; that "[a]s a result of the many Individual Complaints, for over three years, all parties ha[d] engaged in extensive written and oral discovery"; and that through that extensive discovery, the wholesalers "had the opportunity to review and consider extensive evidence relating to Carbon's breach of warranty claim against Martin [Produce]." (C 3584-3589).

On July 13, 2022, both Jack Tuchten and La Galera filed Answers to Martin Produce's Amended Third-Party Complaint, denying that they breach the implied warranty of merchantability. (C 3590-3598; C 3599-3609).

The Summary Judgment Motions at Bar

On July 13, 2022, Jack Tuchten and La Galera filed separate Motions for Summary Judgment, arguing, for the first time, that Martin Produce failed to provide notice of the allegedly defective cilantro, prior to the filing of Martin Produce's third-party claims, pursuant to the requirements of 810 ILCS 5/2-607(3)(a). (C 2705-2719; C 2527-2540). In response, and among other arguments, Martin Produce asserted that the Wholesalers had actual knowledge and sufficient notice, consistent with the Illinois Supreme Court's ruling in *Connick v. Suzuki Motor Co.*, as a result of the numerous personal injury complaints and subsequent litigation, all of which preceded Martin Produce's Third-Party Complaint and Amended Third-Party Complaint. (C 3370-3644; C 3645-3920).

Initially, the Circuit Court denied the Wholesalers' dispositive motions but granted their joint Motion to Reconsider on May 16, 2023, and, as a result, granted summary judgment in favor of Jack Tuchten and La Galera. (C 4057-4058). The Circuit Court's May 16, 2023, Order enforced a strict, direct notice requirement, without considering the pre-suit notice exceptions. (C 4057-4058). Martin Produce appealed to the Appellate Court to revers the lower court's May 16, 2023, Order.

On appeal, in its detailed, 17-page Opinion of June 7, 2024, the Illinois Appellate Court overturned the Circuit Court's May 16, 2023, Order, based, in part, on the Wholesaler's actual knowledge regarding the allegedly defective cilantro, obtained during the personal injury litigation and prior to the filing of Martin Produce's third-party claims. *Andrews*, 2024 IL App (1st) 231369, ¶ 38. Jack Tuchten and La Galera now appeal the Appellate Court's decision.

STANDARD OF REVIEW

The issues presented before this Court and regarding summary judgment are subject to the *de novo* standard of review. *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 102 (1992). Summary judgment is a drastic measure and should only be granted if there are no genuine issues of material fact and if the movant's right to judgment is clear and free from doubt. *Id*. Where a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied. *Id*. Summary judgment is reviewed in the light most favorable to the nonmoving party. *Gillespie v. Edmier*, 2020 IL 125262, ¶ 9.

ARGUMENT

Martin Produce is asking this Supreme Court to uphold the Illinois First District Appellate Court's Opinion that lack of pre-suit notice does not entitle Jack Tuchten and La Galera to summary judgment, as the Wholesalers had actual knowledge of the allegedly defective cilantro prior to the filing of Martin Produce's Third Party Complaint on April 16, 2019.

Section 2-607(3)(a) of the UCC provides that, "[w]here a tender has been accepted," the "buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy." 810 ILCS 5/2-607(3)(a) (West 2022). The notice need not be a threat to sue; its content need only alert the seller that "the transaction is still troublesome and must be watched." 810 ILCS Ann. 5/2-607, Uniform Commercial Code Comment 4, at 465 (Smith-Hurd 2022). "Whether sufficient notice has been provided is generally a question of fact to be determined based upon the particular circumstances of each case." *Maldonado v. Creative*

Woodworking Concepts, Inc., 296 Ill. App. 3d 935, 940 (1998). An evaluation of whether the notice requirement has been satisfied must be based on the factual setting of each case and the circumstances of the parties involved. *Wagmeister v. A.H. Robins Co.*, 64 Ill.App.3d 964, 966 (1st Dist. 1978); *Malawy v. Richards Mfg. Co.*, 150 Ill. App. 3d 549, 561 (5th Dist. 1989).

Furthermore, this Supreme Court has found that "direct notice is not required for a breach of implied warranty of merchantability claim where: (1) the seller has actual knowledge of the defect of the particular product; or (2) the seller is deemed to have been reasonably notified by the filing of the buyer's complaint alleging breach of UCC warranty." *Connick*, 174 Ill. 2d at 492. Actual knowledge satisfies the notice requirement where "the manufacturer is somehow apprised of the trouble with the particular product purchased by a particular buyer." *Id*. 494. As noted by the Appellate Court in this matter, the comments to section 2-607 suggests that the notice exceptions be given a practical, common-sense application. *Andrews*, 2024 IL App (1st) 2313169, ¶ 41.

The Appellate Court's June 7, 2024, Opinion should be upheld by this Supreme Court, based on the overwhelming evidence of the Wholesalers' complete, clear, and specific knowledge regarding the allegedly defective cilantro, in accordance with the instructive case law regarding the actual knowledge exception to the Section 2-607 notice requirement, originally established in *Connick*, 174 Ill. 2d at 492.

In the two years preceding the filing of Martin Produce's initial Third-Party Complaint, the Wholesalers received and answered multiple complaints, filed dispositive motions, answered discovery requests, produced product specific invoices, participated in depositions, and were served narrowly tailored Requests to Admit; all of which focused on

the particular cilantro, and supply chain thereof, that was alleged to have caused the E.coli outbreak. The Wholesalers were undoubtedly "apprised of the trouble" with the particular cilantro they sold to Martin Produce, time and time again, prior to April 16, 2019. For these reasons, Martin Produce's respectfully asks this Supreme Court to affirm the Appellate Court's June 7, 2024, Opinion.

I. THE APPELLATE COURT'S OPINION PROPERLY APPLIED THE ACTUAL KNOWLEDGE EXCEPTION TO THE FACTS AT BAR.

The First District Appellate Court issued a detailed, well-reasoned Opinion, finding, "the wholesalers here had actual knowledge of a purported defect years before Martin Produce's claim for breach of implied warranty was filed and thus Martin Produce may well have been excused by the actual knowledge exception recognized in Connick from providing pre-suit notice." *Andrews,* 2024 IL App (1st) 2313169, ¶ 40. While there are numerous instances within the record that demonstrate the Wholesaler's actual knowledge, the Appellate Court reasonably concluded that the Wholesalers obtained sufficient, actual knowledge, "by at least June 2018, when the personal injury plaintiffs first brought claims against them." *Id.*, at ¶ 4; (C 3610-3645).

A. As the Appellate Court Opined, The Personal Injury Lawsuits Provided the Wholesalers Extensive, Specific, Pre-Suit Knowledge of the Allegedly Defective Cilantro.

Melissa Andrews' Third Amended Complaint was filed on June 13, 2018, and, as a result, La Galera and Jack Tuchten were made aware of the particular products, transactions, and alleged defects that formed the basis of Martin Produce's contingent breach of warranty claims, filed on April 16, 2019, thus providing the Wholesalers with actual knowledge of the troublesome transactions, falling squarely within *Connick's* actual knowledge exception to the 2-607(3)(a) notice requirement. (C 3610-3645; C 3610-3645).

Jack Tuchten and La Galera have repeatedly attempted to overcomplicate the actual knowledge exception, and did so successfully before the Circuit Court, by blending the two notice exceptions in their favor and arguing that actual knowledge could not have occurred here because only personal injury plaintiffs may satisfy notice by way of a complaint. However, the Appellate Court expressly addressed this concern, along with the Wholesaler's flawed logic, finding, "the Circuit Court failed to realize that although the personal injury lawsuit exception did not apply here, the consumer lawsuits could still be **the vehicle by which** the wholesalers in this case received actual pre-suit knowledge of the defective product. Those earlier personal injury lawsuits clearly informed all sellers **within the chain of distribution**, including the wholesalers, that the cilantro they sold was considered defective." *Andrews*, 2024 IL App (1st) 2313169, ¶ 42 (emphasis added).

Moreover, the Appellate Court's Opinion and application of *Connick's* actual knowledge exception aligns and is consistent with this Supreme Court's analysis and its ruling in *Connick*. *Connick,* 174 Ill. 2d at 492-5. In *Connick*, consumer plaintiffs brought a class action lawsuit for breach of implied warranty against an auto manufacturer, Suzuki, alleging that each plaintiff had purchased the same model of vehicle, which was allegedly defective due to an increased risk of rollover. *Id*. at 489. *Connick* did not involve any claims of personal injury, nor any actual rollover accidents, as the class action plaintiffs sought purely economic losses related to diminution of the vehicles' resale value. *Id*. at 489. In terms of notice, the plaintiffs alleged that Suzuki had received general information regarding safety concerns relating to the vehicle model's entire product line; however, there were no allegations that Suzuki had received notice directly from the plaintiffs, nor regarding the particular vehicles purchased by those particular plaintiffs. *Id*. at 493.

Under those facts, this Supreme Court examined what constitutes sufficient notice under 810 ILCS 5/2-607(3)(a), considering that the purpose of notice in economic loss claims is to encourage pre-suit resolutions between the product buyer and seller. *Connick,* 174 Ill. 2d at 493-5. In doing so, the Court found that Suzuki's "generalized knowledge" regarding the entire product line was insufficient to satisfy notice, as that product line had produced many different vehicles, which were involved in many different transactions with various buyers. *Id.* Accordingly, the Court held that generalized knowledge is insufficient to satisfy notice, and the actual knowledge exception requires knowledge of the "particular product purchased by a particular buyer." *Id.*

Here, the Wholesalers had far more than generalize knowledge, as they were fully aware of the particular transactions, buyer, and alleged defect at issue, as a result of being named in the personal injury lawsuits. Ms. Andrews' Third Amended Complaint contained a detailed Statement of Facts regarding the 2016 E. coli outbreak, including regarding the allegedly contaminated cilantro, the Chicago Department of Public Health's investigation and findings, the plaintiffs' injuries, and the relevant supply chain involving Jack Tuchten, La Galera, Martin Produce, and Carbon. (C 3610-3617). In fact, Ms. Andrews cited to and restated allegations directly from Carbon's Amended Third-Party Complaint, which the Wholesalers had previously been served, to support and clarify that the allegedly defective cilantro was sold by Jack Tuchten and La Galera, to Martin Produce and, then, from Martin Produce to Carbon. (C 3615-3617). To put it another way, if Martin Produce had simply mailed Ms. Andrews' Third Amended Complaint to the Wholesalers, which it would never do, the information therein would have adequately informed them of the issues with their

cilantro, in accordance with the direct notice requirement; therefore, the personal injury lawsuit also provided sufficient, actual knowledge, in lieu of direct notice.

As noted by the Illinois Appellate Court, "by naming everyone in the supply chain, the personal injury suits filed here necessarily gave each of those entities actual knowledge that the cilantro *they* sold was alleged to be defective, i.e., that there was 'trouble with [a] particular product purchased by a particular buyer.'" *Andrews*, 2024 IL App (1st) 2313169, ¶ 43 (emphasis in original). The Appellate Court went on to reason, "this is the sort of actual knowledge that will make it unnecessary of a buyer to separately notify its direct seller that a transaction is considered 'troublesome and must be watched.'" *Id*.

Furthermore, in August of 2018, Jack Tuchten and La Galera filed Answers to the personal injury complaints, in which Jack Tuchten admitted that Carbon's allegations were accurately incorporated, including that Jack Tuchten sold cilantro to Martin Produce during the relevant time period. (C 4270-4288; C 4278-9). Jack Tuchten's Answer denied that the cilantro was contaminated or defective. (C 4279). Similarly, La Galera's Answer to Melissa Andrew's Third Amended Complaint admitted that La Galera sold cilantro to Martin Produce "in the summer of 2016" and denied all other material allegations. (C 4290-4293, ¶¶ 4-5).

At that point, well in advance of Martin Produce's April 16, 2019, filing, Jack Tuchten and La Galera were obviously aware that the particular cilantro they sold to Martin Produce in June of 2016 was allegedly contaminated with E. coli and the suspected cause of the E.coli outbreak that allegedly resulted in personal injuries and economic losses. The evidence of actual knowledge at bar is far greater, and far more specific, than the purported

evidence of actual knowledge present in *Connick*, and the Wholesalers' arguments to the contrary are without logic or merit.

For these reasons, the Appellate Court's June 7, 2024, Opinion properly overturned the lower court's May 16, 2023, order granting summary judgment, based on its well-reasoned application of the actual knowledge exception to direct notice. Martin Produce respectfully asks this Supreme Court to uphold the Appellate Court's Opinion.

B. A *De Novo* Review of the Record Would Reveal Numerous Events that Provided the Wholesalers with Actual Knowledge of the Troublesome Transactions, Well Before Martin Produce's Third-Party Complaint, Filed on April 16, 2019, Further Supporting the Appellate Court's Decision.

The Appellate Court aptly determined that the Wholesalers obtained actual knowledge by at least June of 2018, the filing date of Ms. Andrews' Third Amended Complaint. Considering this Court's *de novo* review, however, the record contains at least nine distinct instances where the Wholesalers were either apprised of, or demonstrated their clear knowledge of, the troublesome nature of the transactions, prior to April 16, 2019, the date Martin Produce filed its third party contingent claims against the Wholesalers, thereby excusing Martin Produce from the notice requirement time and time again.

Beginning in 2017, Jack Tuchten and La Galera were inundated with detailed information, documents, and testimony regarding the E. coli outbreak and allegedly tainted cilantro they sold in June of 2016. Even under the strictest of standards, it is evident that Jack Tuchten and La Galera obtained pre-suit, actual knowledge, and each of the events outlined below provide an additional, independent basis to affirm the Appellate Court's June 7, 2024, Opinion.

1) October 27, 2017 - Carbon's Third-Party Complaint. (C 3404-3433).

Carbon's Third-Party Complaint brought Jack Tuchten into the litigation and alleged that Jack Tuchten sold defective cilantro to Martin Produce, which Martin Produce sold to Carbon on June 13, 2016 and June 16, 2016, and which the Chicago Department of Public Health had identified as the cause of the E.coli outbreak and personal injuries at Carbon's restaurant. (C 3404-3407, ¶¶ 8-19). Further, Carbon's Third-Party Complaint included breach of warranty claims Jack Tuchten, and it incorporated by reference the 54 personal injury complaints filed under the same case caption. (C 3419, ¶ 26; C 3405, ¶ 7). This document, alone, notified Jack Tuchten of the troublesome nature of the transactions at issue, over 17 months prior to the filing of Martin Produce's Third-Party Complaint.

2) March 1, 2018 – Carbon's Amended Third-Party Complaint. (C 3440-3472).

In early 2018, Carbon added La Galera to the litigation and reasserted its allegations that Jack Tuchten, along with La Galera, sold contaminated cilantro to Martin Produce, which Martin Produce sold to Carbon in June of 2016, and which was the suspected caused of the E.coli outbreak and resulting injuries, based on the Chicago Department of Public Health's investigation. (C 3440-3443, ¶¶ 8-21). Once again, Carbon asserted claims of breach of warranty and incorporated by reference the 54 personal injury complaints. (C 3440-3472). Considering the nature of these claims, Jack Tuchten and La Galera were immediately notified of the alleged problem with their product. Moreover, the Wholesalers reacted accordingly and immediately began investigating the alleged defect.

3) March 22, 2018 – Jack Tuchten's Rule 214 Production Requests to All Parties. (C 2852-2855).

On March 22, 2018, Jack Tuchten served Rule 214 Production Requests on all parties, with tailored requests for documents related to the E.coli outbreak and relevant

transactions of cilantro, further demonstrating Jack Tuchten's clear knowledge and understanding of the alleged defect and claims that it was facing. (C 2852-2855).

4) June 13, 2018 – Melissa Andrews' Third Amended Complaint. (C 3610-3645).

As set forth above, the personal injury complaints provided actual knowledge to the Wholesalers and satisfied the notice requirement, as they contained detailed allegations regarding the allegedly contaminated cilantro, the Chicago Department of Public Health's investigation and findings, the plaintiffs' personal injuries, and the relevant transactions between the Wholesalers, Martin Produce, and Carbon. (C 3611-3617).

5) November of 2018 – The Wholesalers' Production of Relevant Invoices. (C 2808-2824; C 2826-2831).

Shortly after being named direct Defendants within the personal injury litigation, the Wholesalers received and responded to Carbon's requests for production. (C 2808-2824; C 2826-2831). Notably, Jack Tuchten's responses were verified by one of its representatives, Rameil Azizi, and, when Carbon requested documents related to "the subject cilantro," Mr. Azizi was able to identify and produce invoices for cilantro it sold to Martin Produce on June 14, 2016 and June 16, 2016. (C 2808-9, ¶ 4). Similarly, La Galera responded to the same discovery requests and had no problem identifying the relevant invoices pertaining to the "subject cilantro" that it sold to Martin Produce in May and June of 2016. (C 2826-31, ¶ 4; C 2801-6). Even when Carbon asked for invoices relating to cilantro sales to Martin Produce "during the last two years," the Wholesalers narrowed their document production to the relevant time period and transactions, based on their understanding of the alleged defect and E.coli outbreak at issue. (C 2808-9, ¶ 4; C 2826-31, ¶ 4).

The Wholesalers' ability to identify and produce relevant sales documents, despite Carbon's broad requests, demonstrate Jack Tuchten's and La Galera's particular knowledge regarding the troublesome transactions, alleged defect, and breach of warranty claims, in accordance with *Connick's* actual knowledge exception. These discovery responses and invoices were attached as exhibits to Jack Tuchten's Motion for Summary Judgment and were available for consideration by the trial court. (C 2705-2831; C 2798-2831).

6) January 10, 2019 – Deposition of Stephanie Black, CDPH. (C 2560-2629).

In addition to receiving and responding to multiple pleadings and discovery requests, counsel for the Wholesalers took the deposition of Dr. Black, who led the CDPH's investigation into the E.coli outbreak at Carbon's restaurant. (C 2560-2629). During the deposition, CDPH's Foodborne Final Report and Supplement to the Foodborne Report, which summarized CDPH's investigation and conclusions, were marked and attached as exhibits. (C 2562; C 2086-2106). Accordingly, Jack Tuchten and La Galera were fully aware of, and/or in possession of, the CDPH's Final Report, by at least January 10, 2019. This is significant, as the report confirmed the dates, location, and potential source of the E.coli outbreak. (C 2086-2106).

7) February 21, 2019 and March 28, 2019 – Deposition of Carbon's Representatives. (C 1143-1218; C 1229-1257).

Jack Tuchten and La Galera also took the depositions of Carbon's Owner, John Falduto, and Carbon's Manager, Brian Malinowski, both of whom testified in detail about the E.coli outbreak, Carbon's food handling practices, and potential sources of the E.coli. (C 1143-1218; C 1229-1257).

Accordingly, it is practically inconceivable that the Wholesalers are claiming a lack of pre-suit knowledge and notice of the allegedly defective cilantro, despite obtaining hours of testimony from two witnesses with direct knowledge of the E.coli outbreak, the CDPH's investigation, the alleged personal injuries, and Carbon's economic damages.

Moreover, during the deposition of John Falduto, the parties marked several additional discovery documents, including Carbon's Answers and Supplemental Answer to Plaintiff's Interrogatories, as well as Carbon's Responses and Supplemental Responses to Martin Produce's Supplemental Interrogatories, all of which would have provided even more information and notice, to all parties, regarding the alleged defective cilantro. (C 1242; C 1245; C 1246; C 1247).

8) February and March, 2019 – Depositions of Martin Produce's Representatives. (C 2652-73; C 2675-93; C 2880-88).

In February and March of 2019, Jack Tuchten and La Galera took the depositions of Martin Produce's Managers, Alexander Maciel, Griscel Maciel, and Ugo Llorente. (C 2652-73; C 2675-93; C 2880-88). Each of the aforementioned depositions involved extensive questioning and information gathering regarding the E. coli outbreak, the allegedly defective cilantro, Martin Produce's shipping and receiving practices, and the potential connection between the Wholesalers and the cilantro at issue. (C 2652-73; C 2675-93; C 2880-88). During Mr. Maciel's deposition, for example, the parties learned that Martin Produce operates with a "first in, first out" policy for distributing fresh produce, and that Martin Produce typically distributes produce within three days of its receipt. (C 2666, P 58). With this information, the parties were able to further narrow the scope of their investigation to transactions in June of 2016. (C 2666, P 58).

These depositions further demonstrate why the Wholesaler had actual knowledge that their cilantro, the allegedly defective produce, was at the core of the personal injury claims filed by the consumers and the economic damages claims filed by Carbon. (C 2651-2; C 2674-5; C 2856-7; C 2879-80; C 2892-3; C 2969-70).

9) March 25, 2019 – Martin Produce's Requests to Admit. (C 4303-4309; C 4319-4325).

Considering Martin Produce's "first in, first out" policy, Martin Produce served Requests to Admit on the Wholesalers, to solidify the exact transactions at issue. (C 4303-9; C 4319-5).

For Jack Tuchten, the Requests to Admit attached the three invoices previously produced by Jack Tuchten, and sought admissions confirming that Jack Tuchten's sold three shipments of allegedly defective cilantro to Martin Produce, identified by Invoice No. 1294243, delivered on June 14, 2016; Invoice No. 1295229, delivered on June 16, 2016; and Invoice No. 1295509, delivered on June 17, 2016. (C 4307-4309). Similarly, Martin Produce's Requests to Admit to La Galera attached copies of La Galera's invoices, sought particular admissions, and confirmed that La Galera sold three shipments of allegedly defective cilantro to Martin Produce, identified by Order No. 00304912, delivered on June 3, 2016; Order No. 00306240, delivered on June 10, 2016; and Order No. 00306541, delivered on June 13, 2016. (C 4323-4325). While the Wholesalers' knowledge was already well-established by this point, after Martin Produce's Requests to Admit, Jack Tuchten and La Galera were undoubtedly on notice of *their* particular cilantro shipments that allegedly caused the E.coli outbreak.

For over 17 months, Jack Tuchten and La Galera investigated the exact breach of warranty claims of which they now plead willful ignorance. Each of the above-mentioned

documents, alone, serve as compelling evidence that the Wholesalers received notice, and had actual knowledge, of the troublesome nature of the product (cilantro) purchased by a particular buyer (Martin Produce), prior to April 16, 2019. Together, however, the numerous pleadings, discovery responses, and depositions transcripts create an overwhelming inference of Jack Tuchten's and La Galera's actual knowledge and understanding that their particular cilantro shipments were allegedly defective. By the time Martin Produce filed its Third-Party Complaint on April 16, 2019, the allegations therein were routine, unsurprising, and a mere procedural requirement to preserve Martin Produce's right to attribute contingent liability to the Wholesalers.

Therefore, even if this Honorable Supreme Court finds that actual knowledge did not occur by way of the personal injury complaints, the record provides ample evidence and instances of sufficient, pre-suit, actual knowledge, each of which reasonably satisfies the notice requirement under Section 2-607. Accordingly, Martin Produce respectfully asks this Court to uphold the Appellate Court's Opinion, affirming that the Circuit Court entered summary judgment in error.

C. Actual Knowledge of a Defective Product, Whether Received from the Buyer or a Third-Party, is Sufficient to Satisfy the Notice Requirement of 2-607(3)(a).

As stated by the Appellate Court, "we see no reason why actual knowledge must be more definitive than what direct notice of a purported defect would provide, since it is meant to stand in lieu of it." *Andrews*, 2024 IL App (1st) 2313169. The Appellate Court's practical approach and findings are supported by the recognized notice standards and every reasonable interpretation of the extensive record at bar.

Jack Tuchten and La Galera appear to take issue with the fact that their actual knowledge in this matter was obtained from third-parties and/or through personal injury

litigation that involved only allegations of defective cilantro. First and foremost, Martin Produce absolutely agrees that the claiming of defective cilantro is only an allegation, as Martin Produce has consistently denied that the cilantro was contaminated. Unlike a traditional breach of warranty contract claim, here, Martin Produce is not seeking its own economic damages, nor has Martin Produce ever asked Jack Tuchten and La Galera to ship a replacement crate of cilantro to cure the alleged defect. Even now, it is Martin Produce's position that there was nothing wrong with the cilantro sold to Carbon. Rather, Martin Produce was forced to file its Third-Party Complaint against the Wholesalers because Martin Produce had been sued by its customer, Carbon, for damages caused by produce purchased from the Wholesalers, and the 735 ILCS 5/2-406 contingent liability filing was the only procedural vehicle available to Martin Produce to bring them in as necessary parties.

Second, the Wholesalers have not provided any support for their position that allegations can never satisfy the notice requirement. On the contrary, almost all forms of direct notice under Section 2-607 involve mere allegations, as a buyer must simply advise the seller that the product is defective, thereby giving notice of the *alleged* defect, so that the seller may investigate, negotiate, or cure the defect. *Maldonado*, 296 Ill. App. 3d at 939. Following the Wholesalers' logic that "allegations" are inherently insufficient, direct notice would require a buyer to physically show the product and its defect to the seller, otherwise the buyer is barred from bringing a claim for breach of implied warranty.

Of course, such a requirement would be illogical, impractical, and contrary to Illinois law, as notice may be provided by way of correspondence, and the content need only alert the seller that "the transaction is still troublesome and must be watched." 810

ILCS Ann. 5/2-607, UCC Comment 4, at 465 (Smith-Hurd 2022). Similarly, this Supreme Court expressly held that actual knowledge satisfies the notice requirement, "where the manufacturer is somehow apprised of the trouble with the particular product purchase by a particular buyer." *Connick*, 174 Ill. 2d at 494. These undisputed standards were unequivocally met, repeatedly, prior to Martin Produce's Third-Party Complaint.

Finally, the Wholesalers argue that actual knowledge must come from the buyer directly and involve the physical observation of the defect. Simply put, that is direct notice, and, as highlighted by La Galera, actual knowledge and direct notice are distinct concepts. The Wholesalers cite to three cases to support their overreaching conclusion: *Malawy v. Richards Mfg. Co.*, 150 Ill. App. 3d 549, 561 (5th Dist. 1989); *Crest Container Corp. v. R.H. Bishop Co.*, 111 Ill. App. 3d 1068; *Overland Bond & Investment Corp. v. Howard*, 9 Ill. App. 3d 348 (1972). However, each of these cases **predate** *Connick* and merely provide examples of how actual knowledge satisfies notice under a practical approach. *Connick*, 174 Ill. 2d at 494. Of course, *Malawy*, *Crest*, and *Overland* do not create a strict standard that actual knowledge must come from the buyer, nor that the seller must observe the defect. Such a heightened, impractical standard would render the exception meaningless and contradict the Supreme Court's unambiguous explanation that actual knowledge occurs when the seller is "somehow apprised of the trouble" with the product. *Id*. Not to mention, observation of the defect was not possible in this case because the alleged defect was latent and could only be discovery after the cilantro was consumed by Carbon's customers who became ill days later.

Similarly, Jack Tuchten's reliance on the unreported U.S. District case of *Porter v. NBTY, Inc.*, should be given no weight by this Honorable Court, as that case is easily

distinguished. *Porter v. NBTY, Inc.*, 2016 WL 6948379 (N.D. Ill. Nov. 28, 2016). The court in *Porter* ruled on a motion to dismiss at the pleading stage, not summary judgment, and the case did not involve personal injuries or personal injury complaints. *Id*. In addition, *Porter* was a multi-state class action lawsuit involving multiple, unrelated transactions across different states, and the court found a single letter did not satisfy notice for all plaintiffs, as the letter was from a non-party and did not identify the product, the location of purchase(s), or the relationship between the author and plaintiffs. *Id*.

Additionally, the court in *Porter* emphasized that notice is intended to facilitate settlement negotiations of a claim pre-suit, and the seller in *Porter* was not afforded that opportunity. *Id*. That reasoning does not apply to the case at bar, as the complaints clearly advised all sellers of the cilantro, Martin Produce and the Vendors, that claims were being made that their product was defective, even when there was, and remains, no evidence of said defects. (C 3610-3644).

This Supreme Court has already held that allegations or third-party documents providing "generalized knowledge" are insufficient to satisfy notice, thereby creating an appropriate limitation to the actual knowledge exception in accordance with Section 2-607's purpose. *Connick,* 174 Ill. 2d at 493-5. There is simply no basis for Jack Tuchten's and La Galera's proposed, strict mandate for actual knowledge to come directly from the buyer, involve a first-hand interaction with the defect, and/or include proof of the defect. Such a standard would defeat the practical purpose of the exception, to satisfy direct notice through alternative means.

Accordingly, where a seller's knowledge is as extensive, and as specific, as the evidence demonstrates in this case, the actual knowledge exception can and should apply,

thereby satisfying the notice requirement, in lieu of direct notice. For these reasons, Martin Produce respectfully asks this Supreme Court to affirm the Appellate Court's June 7, 2024, Opinion, which overturned summary judgment, based on the application of the actual knowledge exception to the 2-607(3)(a) notice requirement.

II. PRE-SUIT NOTICE IS NOT INTENDED TO DEPRIVE A GOOD FAITH CONSUMER OF THEIR REMEDY.

Compelling Martin Produce to provide duplicative, pre-suit notice under the circumstances at bar would serve no purpose and, thus, should not be required under Illinois law. "Notice to the seller is required in order to defeat commercial bad faith, not to deprive a good faith consumer of his remedy." *810 ILCS 5/2-607, Comment No. 4*. Notice under Section 2-607 is not intended to establish a strict, nonpractical requirement that defeats its own purpose and prejudices claimants. *See Muehlbauer v. Gen. Motors Corp.*, 431 F. Supp. 2d 847 (N.D. Ill. 2006) (examining *Connick* and finding notice where the purpose of Section 2-607 was met).

A. The Intended Purpose of Section 2-607 Notice Cannot Apply to the Martin Produce's Contingent, Third-Party Claims.

The Appellate Court's reversal of summary judgment should be affirmed by this Supreme Court, as Martin Produce could never have notified the Wholesalers of an alleged defect with their cilantro, as it cannot be smelled, tasted, tested, or seen, and which Martin Produce, itself, denies. Moreover, providing notice of an alleged defect that Martin Produce denies exists defied logic and would serve no practical purpose in this specific situation. Therefore, notice should not be required.

The UCC's notice requirement is intended for traditional breach of warranty claims and has a well-defined purpose, to advise a product seller of a defect before engaging in legal action, in order to encourage negotiations and settlement, by allowing the parties to

investigate the breach, cure defects, and mitigate damages. *Maldonado*, 296 Ill. App. 3d 935, 939 (3rd Dist. 1998); *See Connick*, 174 Ill. 2d 482 at 95 (". . . where the breach has not resulted in personal injury, the UCC indicates a preference that the breach be cured without a lawsuit.").

This case, however, is not about widgets or poorly manufactured goods, it involves perishable goods; a latent, invisible defect; and a significant personal injury event. Furthermore, since Martin Produce denies any defect, and because its breach of warranty claims are dependent on Carbon's claims, Martin Produce and the Wholesalers could never have negotiated a settlement, cured the defect, or otherwise resolved the alleged breach without litigation. The UCC's notice requirement has no practical purpose under these circumstances. On the contrary, the notice requirement, if applied in this instance, would effectively let the culpable parties off the hook, potentially causing great injustice to an innocent party.

Furthermore, while futile, "notice" was undoubtedly afforded to Jack Tuchten and La Galera well before the filing of Martin Produce's Third-Party Complaint. As early as 2017, the Wholesalers had the opportunity to investigate, potentially correct, and then defend against the alleged breach of warranty claims, without suffering any prejudice. Therefore, the logical explanation of this appeal, and even the Motion for Summary Judgment filed with the lower court, is that the Wholesalers are attempting to avoid their potential culpability based on an inapplicable and irrelevant UCC technicality.

B. If the Appellate Court's Opinion is Overturned, Martin Produce Will Be Forced to Endure Two Separate Jury Trials.

Martin Produce continues to deny that the cilantro was contaminated and, as such, there is no defect of which to give notice. While Martin maintains that the cilantro was not

defective, it was obligated to join the Wholesalers as necessary third parties, pursuant to Sections 406 of the Illinois Code of Civil Procedure (the "Code"). 735 ILCS 5/2-406. It is undisputed, as the trial court has ruled, that Jack Tuchten and La Galera are necessary parties to Carbon's economic damages claims, as a complete determination of the controversy cannot be made without their presence. (C 3999-4006, p. 5). *See Holzer v. Motorola Lighting, Inc.*, 295 Ill. App. 3d 963, 970 (1st Dist. 1998); 735 ILCS 5/2-406; 735 ILCS 5/2-405.

However, as permitted under Sections 405 and 406 of the Code, Martin Produce's breach of warranty claims against the Wholesalers are conditional, asserted in the alternative, and dependent on the success of Carbon's contested economic damages claims. Accordingly, there was, and still is, no defect of which Martin Produce is required to give notice of, dictating that the issue of "notice" is not ripe, and would never be ripe, until a jury were to determine, as the fact finder, that the cilantro at issue had actually been contaminated with E. coli.

If Martin Produce's third-party claims are barred by the UCC notice requirement, which does not apply to this situation, then Carbon would proceed to trial against Martin Produce, as the sole defendant, on its breach of warranty claims, without the parties that originally placed the product into the stream of commerce. Further, if the jury then finds that the cilantro was defective and holds Martin Produce liable for Carbon's economic damages, then, with the existence of a defect, Martin Produce would then be forced to start the entire process over again - provide pre-suit notice to the Wholesalers and litigate against the Wholesalers the very same breach of warranty claims and damages a second time. This would result in a duplicative trial, involving the same witnesses, the same experts, the same

arguments, and the same jury instructions. Most importantly, separate trials would require duplicate efforts by Martin Produce and this Court, with double the costs, and potential inconsistent verdicts, all of which will cause extreme prejudice to Martin Produce.

Therefore, for the sake of judicial economy and considering the contingent nature of Martin Produce's claims brought against necessary parties, under 735 ILCS 5/2-405 and 735 ILCS 5/2-406, this Supreme Court should affirm the Appellate Court's Order, as the purpose of pre-suit notice simply cannot, and should not, apply to the case at bar.

C. Jack Tuchten and La Galera Are Attempting to Avoid Liability Based on an Inapplicable UCC Technicality.

Jack Tuchten and La Galera cannot reasonably argue that they were blindsided by Martin Produce's breach of warranty claims for allegedly defective cilantro, after they answered multiple personal injury complaints and conducted extensive oral and written discovery regarding the very same allegedly defective cilantro.

It is telling that the Wholesaler's Additional Appellate Briefs never claim that they were unaware of the allegedly contaminated cilantro or E.coli outbreak, only that such knowledge did not align with their narrow interpretation of the actual knowledge exception. In fact, almost immediately into Jack Tuchten's oral argument before the Appellate Court, Jack Tuchten admitted that it had actual knowledge that someone was "complaining of a problem," and "alleging an issue," with the cilantro it sold, once it was named in the personal injury litigation. (S*ee May 2, 2024, Oral Argument, Timestamp 32:04-32:33;34:07-35:00).* Apparently, realizing that their knowledge was and is evident, La Galera's brief seems to imply that their "notice" and/or knowledge was not timely.

To be clear, and as confirmed by the Appellate Court, the timing of the Wholesalers' actual knowledge is not an issue on appeal. *Andrews*, 2024 IL App (1st)

2313169, ¶ 47. The Wholesalers' Joint Motion to Reconsider, which was granted by the Circuit Court and resulted in summary judgment, focused solely on the existence of direct notice and never raised the issue of timing. (C 4007-13). The Wholesalers also did not raise the issue of timing before the Illinois Appellate Court, until first doing so during oral argument. *Id*. at ¶ 46. It is well established that "[i]ssues raised for the first time on appeal will not be considered by the reviewing court." *Id*. at ¶ 24 (citing *Britamco Underwriters, Inc. v. J.O.C. Enterprises, Inc.*, 252 Ill. App. 3d 96, 99 (1993)). Regardless, whether the timing of notice was reasonable under the circumstances is a question of fact for the jury. *Maldonado*, 296 Ill. App. 3d at 941.

The case at bar is not about investigation or the reality of surprise, nor is it about ensuring that merchant parties attempt to negotiate simple contract disputes to avoid needless litigation; this appeal is about the wholesalers avoiding potential liability by using a contractual UCC technicality to remove themselves from litigation. For these reasons, Martin Produce asks this Honorable Court to affirm the Appellate Court's Opinion, and, if so inclined, to establish a new exception to notice described below.

III. THE SUPREME COURT HAS THE OPPORTUNITY TO CREATE A NEW EXCEPTION TO NOTICE FOR THIRD PARTY CONTRACT CLAIMS BROUGHT UNDER 735 ILCS 5/2-406.

For the first time in 28 years, this court may create a third exception to the UCC's 2-607 notice requirement. This appeal, involving a codified notice requirement, provides this Supreme Court with the opportunity to not only clarify this Court's opinions in *Connick*, but also to create a new exception in accordance with the UCC's intended purpose.

To be specific, the UCC 2-607 notice requirement simply does not allow for the situation where the buyer, as in this case, denies the presence of a defect and, yet, due to

circumstances beyond its control, must bring the sellers into the litigation pursuant to the "necessary parties" rule, Section 2-405 of the Code, and the "third-party proceedings" rule, Section 2-406 of the Code. Under these unique set of facts, which would only occur in cases involving personal injury and/or contingent, third-party claims brought under 735 ILCS 5/2-406, the UCC's notice requirement is impractical, unnecessary, and should not be enforced. For these reasons, Martin Produce respectfully asks this Honorable Court to establish a third exception to pre-suit notice under 810 ILCS 5/2-607(3)(a), as follows:

> In third-party actions filed under 735 ILCS 5/2-406, where a defendant facing breach of warranty claims brings in a third-party that may be liable for all or part of the plaintiff's claims, the defendant/third-party plaintiff is exempt from providing pre-suit notice to the third-party defendant(s) under 810 ILCS 5/2-607(3)(a).

CONCLUSION

For the reasons set forth above, the Counter-Defendant/Third-Party Plaintiff/Appellant, MARTIN PRODUCE, INC., respectfully requests that this Honorable Supreme Court uphold the Illinois First District Appellate Court's June 7, 2024, Opinion; thereby, affirming that the Circuit Court erred in granting summary judgment in favor of Jack Tuchten and La Galera; and/or for any other relief that this Supreme Court deems just and equitable.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 31 pages.

/s/ Daniel J. Arnett
Daniel J. Arnett

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

MARTIN PRODUCE, INC., *Plaintiff/Appellee,* v. JACK TUCHTEN WHOLESALE PRODUCE, INC., et al., *Defendants-Appellants.*	)	No. 130862

The undersigned, being first duly sworn, deposes and states that on December 20, 2024, there was electronically filed and served upon the Clerk of the above court the Brief of Plaintiff-Appellee. On December 20, 2024, service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Daniel J. Arnett
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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Daniel J. Arnett
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