

EXHIBIT C

IN THE CIRCUIT COURT
FOR THE FIRST JUDICIAL CIRCUIT OF ILLINOIS
JOHNSON COUNTY, VIENNA, ILLINOIS

LARRY TROVER PRODUCE, INC.,)	
)	
Plaintiff,)	
)	
vs.)	No. 2021-L 2021L7
)	
NUTRIEN AG SOLUTIONS, INC.,)	
NUTRIEN, LTD., OMNILYTICS, INC.)	
CERTIS USA, INC.,)	
)	
Defendants.)	

COMPLAINT

Now comes Larry Trover Produce, Inc., Plaintiff in the above-captioned cause by Richard Kruger, its attorney and complains in the alternative, of Nutrien Ag Solutions, Inc., Nutrien Ltd., OmniLytics, Inc. and Certis USA, Inc., Defendants in the above-captioned cause and prays as follows:

GENERAL ALLEGATIONS

1. At all times herein alleged, Plaintiff Larry Trover Produce, Inc. (hereafter referred to as "Trover") is a Florida business corporation, authorized to do business in Illinois, with its principal business office located at 992 Gilead Church Road, Vienna, Johnson County, Illinois. At all times herein:

2. At all times herein alleged, Trover is, and was, owned by Larry D. Trover and Patricia Trover husband and wife with Larry D. Trover serving as the corporate President/Vice President, and Patricia Trover as the corporate secretary.

3. At all times herein alleged, Trover is, and was, engaged in farming operations, primarily the growing and production of tomatoes, and other vegetables, in Johnson County, Illinois.

4. At all times herein alleged, Nutrien Ag Solutions, Inc. (hereinafter referred to as “Nutrien Ag”) is a Delaware corporation, with its principal place of business at 3065 Rocky Mountain Avenue, Loveland, Colorado, and authorized to transact business in Illinois, with its principal business office at 208 South LaSalle St., Ste 814, Chicago, IL 60604

5. At all times herein alleged, OmniLytics, Inc. (hereinafter referred to as “OmniLytics”) is a Utah corporation with its principal place of business at 9075 South Sandy Parkway, Sandy, Utah.

6. At all times herein alleged, Nutrien, Ltd (hereinafter referred to as “Nutrien”) is a Canadian corporation and is the parent company and sole owner of Nutrien Ag (Nutrien Ag being the retail division of Nutrien), with its principal place of business at 122 1st Avenue South, Suite 500, Saskatoon, Saskatchewan, Canada S7K 7G3.

7. At all times herein alleged, Certis USA, LLC (hereinafter referred to as “Certis”) is a limited liability company with its principal place of business at 1209 Orange Street, Wilmington, DE 19801.

8. At all times herein mentioned, there was a product called Agriphage, a bactericide for use in the growing of tomatoes.

9. The following entities manufactured, distributed and purchased the Agriphage products referred to herein:

- (a) OmniLytics, Inc.
- (b) Certis USA, Inc.
- (c) Nutrien, LTD
- (d) Nutrien Ag Solutions, Inc

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10. The Agriphage products, including Agriphage CMM, referred to herein, were distributed to the within Plaintiff by Nutrien Ag Solutions, Inc.

11. Over the past seven (7) years Plaintiff had initially dealt directly with agents and representatives of Omnilytics, but Plaintiff was subsequently directed to deal with agents and representatives of Nutrien Ag, Inc. located in Tipton, Indiana.

12. In or about June of 2020, because of the ongoing weather conditions, including driving/splashing rain storms, coupled with extreme heat, Plaintiff decided to spray the Agriphage products on its tomato crop, located in Johnson County, Illinois, in order to prevent any spread of bacterial spot and bacterial canker.

13. On or about June 18, 2020, Plaintiff, while in Johnson County, Illinois, ordered from Defendant Nutrien Ag the following:

- (a) 10 gallons of Agriphage Tomato Spot;
- (b) 10 gallons of Agriphage CMM

as shown on the invoice No. 42769294 attached hereto as Exhibit "A" and incorporated herein.

14. On or about July 2, 2020, Plaintiff, while in Johnson County, Illinois, ordered from Defendant Nutrien Ag, the following:

- (a) 15 gallons of Agriphage Tomato Spot;
- (b) 25 gallons of Agriphage CMM.

as shown on the invoice No. 42991509 attached hereto as Exhibit "B" and incorporated herein.

15. The Agriphage Tomato Spot product is to prevent "tomato spot" infestation on plants, which can afflict the tomato fruit itself, as well as the stems and leaves.

16. The Agriphage CMM product primarily prevents “bacterial canker” on tomato plants, which effects the entire plant and can render the plants diseased and unmarketable. The bacterial canker can spread and adversely effect an entire crop of tomatoes.

17. Plaintiff ordered the Agriphage products on June 18, 2020 to proactively prevent an infection of their tomato plant crops, in and about Johnson County, Illinois, which had become more likely due to the ongoing weather conditions, including periods of driving/splashing rain and heat.

18. As of June 18, 2020, the Plaintiff had planted three primary types of tomato crops in Johnson County, Illinois:

- a. Larger “round” tomatoes;
- b. “Roma” tomatoes; and,
- c. Smaller “grape” tomatoes.

19. On or about June 24, 2020 Plaintiff received the first order of the Agriphage products from Nutrien Ag. These products were shipped to Plaintiff at its address in Johnson County, Illinois.

20. Upon receipt, Plaintiff immediately began to apply the Agriphage products received to Plaintiff’s tomato crops in and about Johnson County, Illinois. The Plaintiff, per recommended manufacturer instructions, kept the Agriphage products cool until the application on the tomato crops.

21. Over the next weeks, the tomato plants began to show signs of infection with bacterial canker, even though the Plaintiff had properly applied the Agriphage CMM product to the tomato crops.

22. On or about July 2, 2020, Plaintiff placed an order by e—mail with Nutrien

Ag for additional Agriphage product to address the increased presence of bacterial canker on Plaintiff's tomato crop.

23. Nutrien Ag initially failed to promptly fill and ship this second July 2, 2020 order. Plaintiff called the agent at Nutrien Ag and explained their alarm at the spread of the tomato canker, even after the first application of the Agriphage CMM. After receiving the telephone call from Plaintiff, Nutrien Ag did ship the Agriphage product to Plaintiff, which Plaintiff received, in Johnson County, Illinois, on or about July 9, 2020.

24. Upon receipt of the July order from Nutrien Ag, the Plaintiff began to apply the Agriphage CMM immediately to Plaintiff's tomato crops to try and stop further spread of the bacterial canker.

25. After Plaintiff began applying the July shipment of the Agriphage product, Plaintiff noticed that the Agriphage CMM product that had been shipped was not "fresh", and was in fact well past the expiration date noted on the Agriphage packaging received by Plaintiff with the shipment.

26. Plaintiff then looked at the containers and lot number of the prior June, 2020 Agriphage shipment, and the product that had been shipped had also expired at the time it was received by Plaintiff.

27. Plaintiff had utilized Agriphage CMM in the past seven (7) years and had generally favorable results in warding off bacterial canker to Plaintiffs tomato crops.

28. At all times herein alleged, Plaintiff was told by representatives of Defendants that Agriphage CMM would resist and prevent the onset of bacterial canker.

29. Plaintiff was told by Defendants that the Agriphage CMM product had to be "fresh" and stored in a cool place. Upon receipt of any Agriphage product Plaintiff

always stored the product in a cool environment.

30. Plaintiff relied on the Defendants' promises and assurances of the quality and effectiveness of the Agriphage CMM product. In June and July, 2020, Plaintiff applied the Agriphage CMM product to their tomato crops with the expectation that the Plaintiff's tomato crops would be protected from bacterial canker.

31. The Plaintiff's 2020 tomato crops, located in Johnson County, Illinois, sustained substantial infestation of the bacterial canker, which destroyed the majority of Plaintiff's three (3) tomato crops.

32. The Plaintiff's 2020 tomato crop yields were substantially reduced due to the infestation of the bacterial canker, which rendered much of the Plaintiff's tomato crops unmarketable.

33. Plaintiff's loss due to bacterial canker infestation in 2020 was due to the Agriphage CMM being defective in one or more of the following respects:

(a) The product was no longer effective due to expiration of the time to be successfully applied.

(b) The product was generally not effective.

34. In this Complaint, where it is alleged that Plaintiff performed an act, Plaintiff is asserting that this act was done by Plaintiff's employees or agents acting within the scope of their employment.

35. In this Complaint, where it is alleged that a Defendant performed a certain act, Plaintiff is asserting that this act was done by that Defendants' employees or agents acting in the scope of their employment

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COUNT I.
VIOLATION OF EXPRESS WARRANTY (810 ILCS 5/2-313)
AS TO ALL DEFENDANTS

Now comes Larry Trover Produce, Inc.. (hereinafter “Plaintiff” or “Trover”), the plaintiff in the above-captioned cause, by Richard Kruger of the Richard Kruger Law Firm, its attorney and brings this action for Violation of Express Warranty (810 ILCS 5/2-313) in the alternative, against Nutrien Ag Solutions, Inc., Nutrien Ltd., Omnilytics, Inc. and Certis, USA, Inc., Defendants in the above-captioned cause, and states as follows:

1-35. Plaintiff repeats and realleges all of the paragraphs in the above “General Allegations” as paragraphs 1 through 35 of this Count I, as though fully set forth herein.

36. On or about June 18, 2020 Defendants, and each of the, through their authorized sales agents and representatives, sold to Plaintiff ten (10) gallons of Agriphage CMM.

37. Defendants, as they had always done in the past seven (7) years, through their authorized agents and representatives, warranted and promised that the Agriphage CMM product would be delivered fresh, and upon application to Plaintiff’s tomato crop, would prevent tomato canker.

38. Defendants, over the past seven (7) years, specifically promised and warranted that the Agriphage CMM product would arrive “fresh”, and as such, upon receipt should be stored in a cool place and applied in a proper manner.

39. Defendant, OmniLytics on its label, affixed to the product shipped to Plaintiffs, specifically stated that Agriphage CMM is “Bactericide for use on tomato plants ... [Biological bactericide for the suppression of bacterial stem canker on greenhouse tomatoes]”. “DIRECTIONS FOR USE: Agriphage-CMM is a bactericide

used as a preventative and curative product for the suppression of bacterial canker on greenhouse tomato caused by *Clavibacter michiganensis* subsp. *michiganensis*.”.

40. Plaintiff, in reliance on Defendants’ promises and assurances regarding suppression of tomato canker, purchased the Agriphage CMM and applied the Agriphage CMM to its tomato crops.

41. Had Defendants not made representations of suppression of canker in tomatoes, the Plaintiff would not have made this purchase of the Agriphage CMM.

42. On or about June 23, 2020, upon receipt of the Agriphage in Johnson County, Illinois, the Plaintiff properly stored the Agriphage CMM product in a cool storage place.

43. Immediately thereafter, in June, 2020, Plaintiff began the proper application of the Agriphage CMM to its tomato crops.

44. Even after this initial application, Plaintiff noted that the bacterial canker was starting to spread in its tomato crops.

45. On July 2, 2020, Plaintiff ordered an additional twenty five (25) gallons of Agriphage CMM from the Defendants’ authorized agent, Nutrien Ag.

46. Plaintiff, relying on the promises and assurances that the product was effective and would function as advertised and represented , did order this July shipment of Agriphage CMM.

47. Defendant Nutrien Ag delayed shipment of the second order of Agriphage CMM, but said product was ultimately delivered to Plaintiff on or about July 9, 2020.

48. Plaintiff, in reliance on the promises and assurances of the effectiveness of the Agriphage CMM product, received the product, provided proper storage and began to properly apply the Agriphage CMM to their tomato crops.

49. After this second application of the Agriphage CMM, instead of preventing the spread of the bacterial canker, the bacterial canker spread rapidly throughout all of Plaintiff's tomato crops, effectively destroying a substantial portion of the tomato yield for all types of tomatoes.

50. The following applies to the Agriphage CMM product as provided to Plaintiff:

- (a) The product was not as warranted or promised;
- (b) The product was defective, was not fresh, and failed to prevent spread of the bacterial canker

51. The bacterial canker devastated the majority of Plaintiff's tomato crops, destroying the majority of all types of Plaintiff's Johnson County, Illinois tomato crops, and rendering the crop unmarketable.

52. Plaintiff did learn, subsequent to the application of the product, that the Agriphage CMM product lot that was sold and provided to Plaintiff was not fresh, was shipped by Defendant Nutrien Ag, and received by Plaintiff, after the expiration date, rendering the product defective and ineffective.

53. Plaintiff promptly provided the Defendants with notice of breach of warranty in that Plaintiff did the following:

- (a) Notified Nutrien Ag and informed them of the product failure;
- (b) Notified Nutrien Ag and informed them of the product being shipped to them after the expiration date;
- (c) Notified Nutrien Ag and informed them of the loss of the tomato crop due to the widespread bacterial canker.

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54. After being notified of the breach of warranty and crop failure, the representative for Nutrien Ag promised that Defendant manufacturers/distributors would be in contact with Plaintiff to try and rectify the damages caused by the defective Agriphage CMM product.

55. Plaintiff never received any contact from any of the defendants as promised in the preceding paragraph.

56. Plaintiff sustained substantial losses in the yield of their tomato crop. The yield from each field of the round, Roma and grape tomatoes was drastically less than in years past.

57. Defendants' Agriphage CMM failed to prevent the spread of the bacterial canker, and in fact, the bacterial canker spread rampantly, even after two (2) applications of the Agriphage CMM product.

58. Plaintiff lost in excess of \$300,000.00 due to the destruction of their tomato crops from the spread of the bacterial canker.

WHEREFORE, Plaintiff prays for the following relief:

- A. That judgment be entered in favor of Plaintiff and against Defendants;
- B. That the Defendants be ordered to compensate Plaintiff for their losses and damages caused by the destruction of their tomato crops due to bacterial canker;
- C. For costs of suit, and;
- D. For such other relief as is just and proper.

Larry Trover Produce, Inc., Plaintiff

By: Richard Kruger
Richard Kruger, Plaintiff's attorney

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COUNT II.
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(810 ILCS 5/2-314) AS TO ALL DEFENDANTS

Now comes Larry Trover Produce, Inc., the plaintiff in the above-captioned cause, by Richard Kruger of the Richard Kruger Law Firm, its attorney and brings this action for Breach of Implied Warranty (810 ILCS 5/2-314) in the alternative, against Nutrien Ag Solutions, Inc., Nutrien Ltd., Omnilytics, Inc. and Certis, USA, Inc., Defendants in the above-captioned cause, and states as follows:

1-57. Plaintiff repeats and realleges paragraphs 1 through 35 of the above “General Allegations” as paragraphs 1 through 35 of this Count I and paragraphs 36-57 of Count I, as paragraphs 36-57 of this Count II, as though fully set forth herein.

58. At all times herein alleged, Defendants were merchants of the product Agriphage CMM in that the following applies:

a. Each Defendant deals in the manufacture, sale and/or distribution of these goods, the Agriphage CMM product; and,

b. Each Defendant held themselves out of having knowledge of the production applications and use.

59. Over the past approximately seven (7) years Plaintiff had ordered and applied Agriphage CMM to Plaintiff's tomato crops. Over the past seven (7) years Plaintiff was told by defendants and their agents that the product would arrive fresh and needed to be stored in a cool place and applied within a short time after receipt of the product.

60. On or about June 18, 2020 Plaintiff ordered the product Agriphage CMM from Defendant, Nutrien Ag, to proactively prevent possible spread of bacterial canker to Plaintiff's tomato crops.

61. Agriphage CMM is marketed by Defendants to the public with the ordinary and common purpose of preventing the spread of bacterial canker on all varieties of tomato plants.

62. Defendants, through their authorized agents, sold their Agriphage CMM product to Plaintiff on June 18, 2020 and again on July 2, 2020.

63. Defendants, through their authorized agents, shipped their Agriphage CMM product to Plaintiff's location in Johnson County, Illinois on June 23, 2020 and again on July 8, 2020.

64. The Agriphage CMM product lots that were shipped to Plaintiff on June 23, 2020 and July 8, 2020 were not merchantable at the time of the sale and shipment of the product.

65. The Agriphage CMM product sold and shipped to Plaintiff was not as warranted, was not fresh, and was defective in not preventing the spread of bacterial canker to tomato plants. The defective Agriphage CMM sold and shipped to Plaintiff failed to perform as it was designed and marketed.

66. The defective and ineffective Agriphage CMM product was unfit for the ordinary purpose it was sold and shipped to Plaintiff, specifically, to prevent the spread of bacterial canker to tomato plants.

67. Because of the defective condition of the Agriphage CMM product shipped and utilized by Plaintiff, the Plaintiff sustained substantial damages to its tomato crops.

68. Plaintiff sustained substantial losses in the yield of their tomato crop. The yield from each field of the round, Roma and grape tomatoes was drastically less than in years past.

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69. Defendants' Agriphage CMM failed to prevent the spread of the bacterial canker, and in fact, the bacterial canker spread rampantly, even after two (2) applications of the Agriphage CMM product.

70. Plaintiff lost in excess of \$300,000.00 due to the destruction of their tomato crops from the spread of the bacterial canker.

71. Plaintiff promptly notified the Nutrien Ag representative regarding the defective nature of the Agriphage CMM product.

72. The Nutrien Ag representative promised that Defendant manufacturers/distributors would be in contact to try and rectify the damages caused by the defective Agriphage CMM product.


73. Plaintiff never received any contact from any of the defendants.

74. After Plaintiffs contact of Defendant Nutrien Ag, the Defendant Nutrien Ag representative acknowledged to Plaintiff that the Agriphage CMM product sold and shipped to Plaintiff was likely defective and not fit for its ordinary use.

WHEREFORE, Plaintiff prays for the following relief:

- A. That judgment be entered in favor of Plaintiff and against Defendants;
- B. That the Defendants be ordered to compensate Plaintiff for their losses and damages caused by the destruction of their tomato crops due to bacterial canker;
- C. For costs of suit, and;
- D. For such other relief as is just and proper.

Larry Trover Produce, Inc, Plaintiff

By: 
Richard Kruger, Plaintiff's attorney

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COUNT III
FRAUDULENT MISREPRESENTATION AGAINST ALL DEFENDANTS

Now comes Larry Trover Produce, Inc., Plaintiff in the above-captioned cause, by Richard Kruger of Kruger Law Firm, its attorney, and brings this action for Fraudulent Misrepresentation, in the alternative, against Nutrien Ag Solutions, Inc., Nutrien Ltd., Omnilytics, Inc. and Certis, USA, Inc., Defendants in the above-captioned cause, and states as follows:

1-74. Plaintiff repeats and realleges paragraphs 1 through 35 of the “General Allegations” as paragraphs 1 through 35 of this Count III, paragraphs 36-57 of Count I, as paragraphs 36-57 of this Count III, and paragraphs 58-74 of Count II as paragraphs - 58-74 of this Count III, as though fully set forth herein.

75. At all times Stuart Brenneman was employed with, and acting as an authorized sales agent and representative of Defendants, Nutrien Ltd, and Nutrien Ag and acting in the scope of his employment.

76. At all times herein relevant Stuart Brenneman, acting as a sales agent and representative for Nutrien, Ltd, Nutrien Ag, was acting within the course, scope and authorization of his employment with Nutrien Ltd, and Nutrien Ag.

77. The Defendants, and each of them, intentionally, through its agents and employees knowingly stated the following material facts regarding the Agriphage CMM product that had been shipped to Plaintiff over the preceding approximately seven (7) years, including the product that was shipped to Plaintiff on June 23, 2020 and July 8, 2020:

a. Plaintiff was assured that the Agriphage CMM product, which Plaintiff had utilized in the past, would be delivered to Plaintiff in a timely manner, and that the Agriphage CMM product would be “fresh”.

b. Plaintiff was told that since the Agriphage CMM product they were purchasing would be “fresh” the Plaintiff had to ensure that the Agriphage CMM remained stored in a cool environment and was applied to the tomato crops in a proper manner.

c. Plaintiff was told that, as in the past, if Plaintiff applied the Agriphage CMM product to their tomato crops there would be limited to no loss of crops due to bacterial canker.

78. That the statements by all Defendants, through their authorized agent(s), as set forth in the preceding paragraph 54.a., 54.b. and 54.c. were false. The statements referred to in the preceding paragraphs 54.a., 54.b. and 54.c. are hereinafter referred to as the “statements”.

79. That the statements were known by representative and agents of Defendants to be false.

80. That Defendants intended that the statements induce Plaintiff to act: Said actions include but are not limited to the following:

(a) that Plaintiff would order over the preceding years the Agriphage CMM product;

(b) that Plaintiff would order, and pay in full, for ten (10) gallons of Agriphage CMM on June 23, 2020;

(c) that Plaintiff would order the twenty five (25) gallons of Agriphage CMM on July 2, 2020;

(d) that Plaintiff would apply the product to their tomato crops.

81. Plaintiff believed the statements of the agents and representatives of the Defendants, and rightfully relied on the Defendants’ representatives and agents’ statements, and did order the two (2) shipments of the Agriphage CMM product.

82. Plaintiff sustained damages as a result of the reliance on the Defendants’ representatives and agents’ statements in that the following applies:

a. Defendants, by and through their authorized agents and employees, including, but not limited to Stuart Brenneman, were aware that Plaintiff was concerned, and was becoming increasingly concerned, about the threat and spread of bacterial canker to the Plaintiff's tomato crops.

b. On or about July 8, 2020, after the application of the June 2020 Agriphage CMM shipment, Plaintiff's representative called and explained to Stuart Brenneman that it was critical to obtain the Agriphage CMM product as the bacterial canker appeared to be spreading, even though the June shipment of the product had been stored properly and properly applied to the crops.

c. Defendants, by and through their authorized agents and employees, had always promised to provide quality, fresh, Agriphage CMM product after any order had been placed.

d.. In reality, Defendants, through their agents, distributors and employees, had no intention of honoring this promise of providing fresh quality Agriphage CMM product, and instead concealed and improperly provided known expired and defective Agriphage CMM product to Plaintiff on both the June and July 2020 orders.

e. Defendants, through their authorized agents, distributors and employees, concealed and fabricated about the fact that the product they were providing to Plaintiff was not fresh, was actually expired, and would not work as promised.

f. Defendants, through their agents and representatives, knew that Plaintiff was facing an onset and increased infestation of bacterial canker. Plaintiff's representative specifically explained to Nutrien Ltd, Nutrien Ag's agent that the bacterial canker was getting worse, even after the first application of the June 2020

Agriphage CMM shipment.

g. Defendants ignored the Plaintiff's requests and concerns and instead fraudulently and wrongfully distributed more of the same lot of defective and expired Agriphage CMM product to the Plaintiff.

h. The Defendants, through its agents, distributors and employees, at all times knew that the statements to Plaintiff regarding their assertions that they were providing fresh and quality Agriphage CMM, were false, and that in reality Defendants were distributing defective, expired Agriphage CMM product to Plaintiff on both the June and July, 2020 shipments.

i. Defendants, though placed on notice, and knowing that the product they distributed was defective, have continued to fail to take steps to reimburse Plaintiff for the cost of this defective product. Defendants have failed to take any steps to address the Plaintiff's loss of crops due to their distribution of their defective product.

j. The Defendants intended that Plaintiff rely on the false promises and statements in order to induce Plaintiff to act by placing, and paying in part, for these orders for the defective Agriphage CMM product.

k. Plaintiff believed the Defendants' false statements, assurances, warranties and promises, and relied on Defendants' false statements and promises to Plaintiff's detriment in that Plaintiff did order and pay in part for the Agriphage CMM product, though said product was in reality worthless to Plaintiff and was defective.

83. Plaintiff had a right to rely on Defendants' representations as Defendants holds themselves out to be an expert and legally engaged in the business of manufacturing, producing, distributing and providing Agriphage CMM products, in order to help ensure the health and prevention of disease to farm crops, to customers

such as Plaintiff who are engaged in the business of farming and raising tomato crops.

84. If Plaintiff had known of Defendants false and misleading statements, fraudulent distribution of product, and failure to perform as they had promised Plaintiff, the Plaintiff would not have contracted with Defendants to purchase the Agriphage CMM product.

85. If Plaintiff had known of Defendants fraudulent distribution of product, and failure to perform as they had promised Plaintiff, the Plaintiffs would not have paid the full amount for the June 2020 shipment as charged by Nutrien Ltd., Nutrien Ag.

86. If Plaintiff had known of Defendants false and misleading statements, fraudulent distribution of product, and failure to perform as they had promised Plaintiff, the Plaintiff would not have applied the Agriphage CMM product to its tomato crops, and would have obtained viable product elsewhere to protect its tomato crops.

87. As a result of Defendants' actions, Plaintiff has sustained damages and injury in paying for Agriphage CMM product that was defective and failed to protect Plaintiff's tomato crops. The Plaintiff's reliance on Defendants' false promises and assurances led to Plaintiff's loss of tomato crops and revenue.

88. Plaintiff seeks damages in an amount of the amount it was fraudulently induced to pay, and for its crop revenue loss due to the wrongful acts of Defendants.

WHEREFORE, Plaintiff requests judgment against Defendants, and each of them, for the following:

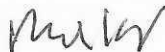
A. For the return of the money they paid to Defendant, Nutrien Ag to date in the amount of \$1,255.00;

B. That the Defendants, and each of them, be ordered to compensate Plaintiff for all costs and expenses incurred by Plaintiff arising out of the Defendants' conduct,

including the loss of Plaintiff's tomato crops and loss of revenue due to the low yield as a result of the infestation of the bacterial canker to Plaintiff's crops;

- C. For costs of suit, and;
- D. For such other relief as is just and proper.

Larry Trover Produce, Inc., Plaintiffs

By: 
Richard Kruger, Plaintiff's attorney

COUNT IV
FOR VIOLATION OF ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES AGAINST ALL DEFENDANTS

Now comes Larry Trover Produce, Inc., Plaintiff in the above-captioned cause, by Richard Kruger of Kruger Law Firm, its attorney and brings this action for Violation of Illinois Consumer Fraud and Deceptive Business Practices, in the alternative, against Defendants, Nutrien Ag Solutions, Inc., Nutrien Ltd., Omnilytics, Inc. and Certis, USA, Inc., in the above-captioned cause. This Count for violation of the Illinois Consumer Fraud Act is brought in the alternative on the following grounds:

(a) The Tort of fraudulent misrepresentation (common law fraud) alleging causation of damages by direct reliance by Plaintiff on the misrepresentations of Defendants (paragraphs 75-88 of this Count);

1-88. Plaintiff repeats and realleges paragraphs 1 through 35 of the "General Allegations" as paragraphs 1 through 35 of this Count IV, paragraphs 36-57 of Count I, as paragraphs 36-57 of this Count IV, paragraphs 58-74 of Count II as paragraphs 58 - 74 of this Count IV, and paragraphs 75 - 88 of Count III as paragraphs 75 - 88 of this Count IV, as though fully set forth herein.

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89. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2) states in relevant part:

“Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the ‘Uniform Deceptive Trade Practices Act’, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.”

90. Defendants, and each of them, are engaged in the business of production, manufacture, sales, marketing and distribution, to the general public, in the State of Illinois, of and for the sale and distribution of certain products, including “bactericide” products, , including, but not limited to the product known as Agriphage CMM. Agriphage CMM is used to help farmers and growers in the prevention of a bacterial canker on tomato plants.

91. Defendants advertise and promote their Agriphage CMM product within Illinois, have agents located throughout the United States, including within the State of Illinois, solicit directly with Illinois consumers, and distribute said Agriphage product(s) for compensation throughout the United States, and within the State of Illinois.

92. Defendants committed unfair and/or deceptive practices in that principal and agents of said Defendant did one or more of the following acts:

a. Over the past seven (7) years, agents for the Defendants have verbally assured Plaintiff that the Agriphage CMM product would be delivered to Plaintiff in a timely manner, and that the Agriphage CMM product would be “fresh”.

b. Plaintiff was consistently told that since the Agriphage CMM

product they were purchasing would be “fresh” the Plaintiff had to ensure that the Agriphage CMM remained stored in a cool environment and was applied to the tomato crops in a proper manner.

c. Plaintiff was delivered the June, 2020 and July, 2020 Agriphage CMM product with the same admonitions of keeping the product fresh, and to apply as soon as possible.

d. Plaintiff was charged, and paid in full, the sum of \$2,510.00 for the shipments of Agriphage products shipped on June 23, 2020, \$1,255.00 of which was for the ten (10) gallons of Agriphage CMM.

e. Defendants delivered the gallons of Agriphage CMM as ordered, however, unbeknownst to Plaintiff at the time of delivery, the product delivered was not usable, was not fresh, was past the expiration date, and was defective and therefore ineffective in combatting the bacterial canker, which is the sole reason Plaintiff bought the product.

f. Though Plaintiff alerted Defendants, at the time of the July, 2020 order and shipment, that the Agriphage CMM product did not appear to be working effectively, the Defendants assured Plaintiff that additional Agriphage CMM would address the growing concern over infestation of the bacterial canker. Defendants then obtained and placed an order for even more of the Agriphage CMM product to be delivered to Plaintiff.

g. Defendants shipped another larger order of Agriphage CMM on July 8, 2020, even though this shipment was from the same defective lot and batch of Agriphage CMM that had been previously shipped to Plaintiff.

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h. Though consistently assuring Plaintiffs that the product they were being provided was fresh and quality Agriphage CMM, in reality, the product delivered by Defendants to Plaintiff on both the June, 2020 and July, 2020 occasions was not fresh, was expired, and was defective.

93. All of the above acts, concealments, lies, misrepresentations and fraudulent acts and statements constituted fraudulent, unfair and deceptive business practices in violation of 815 ILCS 505/2.

94. The Defendants committed the acts as set forth in Paragraph 92 a-h above, with the intent that Plaintiff would rely on their misrepresentations and unfair and deceptive business practices, and these actions were material.

95. That the Defendants committed the unfair and deceptive acts set forth in Paragraph 92 a-h above, in the course of conduct involving trade and commerce within the State of Illinois.

96. Defendants' statements that were providing quality, fresh and viable Agriphage CMM product to the Plaintiff constitutes a deceptive, fraudulent or unfair practice in violation of the Illinois Consumer Fraud and Deceptive Practices Act (815 ILCS 505/1 et seq.) (hereinafter referred to as "the Act"). Defendants' aforesaid conduct as alleged in this Count constitutes a violation of the Act.

97. The Illinois Consumer Fraud and Deceptive Business Practices Act provide "(a) any person who suffers actual damages as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion, may award actual economic damages or any other relief which the court deems proper,". (815 ILCS 505/10(a)).

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98. Subsection (c) of that Section also provides that the court “may award in addition to the relief provided in this Section, reasonable attorneys’ fees and costs to the prevailing party”. (815 ILCS 505/10a(c)).

WHEREFORE, Plaintiff prays as follows:

- A. For judgment in favor of the Plaintiff and against the Defendants for the sum of \$1,255.00, or in an amount as the Court determines to apply.
- B. For loss of revenue in the amount of \$300,000.00 or in an amount as the Court determines to apply.
- C. For Plaintiff’s reasonable attorney’s fees and costs pursuant to Section 10a (c) of the Act.
- D. For judgment for Plaintiff’s court costs.
- E. For such other relief as is just and proper.

Larry Trover Produce, Inc., Plaintiffs

By:


Richard Kruger, Plaintiff’s attorney

V.
NEGLIGENCE AGAINST ALL DEFENDANTS

Now comes Larry Trover Produce, Inc., the plaintiff in the above-captioned cause, by Richard Kruger of the Richard Kruger Law Firm, its attorney and brings this action for Negligence, in the alternative, against Nutrien Ag Solutions, Inc., Nutrien Ltd., Omnilytics, Inc. and Certis, USA, Inc., Defendants in the above-captioned cause, and states as follows:

1-35. Plaintiff repeats and realleges paragraphs 1 through 35 of the above “General Allegations” as paragraphs 1 through 35 of this Count V, as though fully set

forth herein.

36. Defendants, and each of them, owed a duty to Plaintiff to not cause harm to Plaintiff's crops.

37. Defendants, and each of them, breached their duty by manufacturing, producing and distributing defective Agriphage CMM product, and allowing and causing two (2) shipments of this defective Agriphage CMM product to be delivered to Plaintiff.

38. Unbeknownst to Plaintiff, the Agriphage CMM product that they were provided was not fresh, had expired, was defective and was completely ineffective in fighting bacterial canker, which is the sole reason Plaintiff purchased the product.

39. Defendants, and each of them, knew or should have known, that the Agriphage CMM product, which had expired, was not fresh, and which they were informed was not working, would cause damages to Plaintiff.

40. Defendants, and each of them, knew or should have known that their defective product would lead to Plaintiff's crop loss due to infestation of bacterial canker.

41. The Defendants, in manufacturing, producing, marketing and distributing this defective product to Plaintiff, have damaged Plaintiff's crops, including causing a substantial loss of all the varieties of tomatoes, throughout the Plaintiff's property.

42. Defendants actions were negligent, careless and in disregard of Plaintiff's rights. Defendants failed to exercise ordinary caution and controls over their product, allowing their product to be manufactured, produced, marketed, distributed and delivered to consumers, such as Plaintiff herein, to the Plaintiff's detriment.

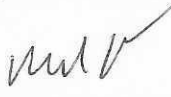
43. As a direct and proximate cause of the Defendants' acts, Plaintiff has suffered and sustained injuries and damages to Plaintiff's tomato crops and loss from

substantially low yields of the tomato crops due to the bacterial canker infestation.

WHEREFORE, Plaintiff prays for the following relief:

- A. That judgment be entered in favor of Plaintiff and against Defendants.
- B. That the Defendants be ordered to compensate Plaintiff for all costs and expenses incurred by Plaintiff arising out of the Defendants' conduct in manufacturing, producing, marketing, distributing and delivering defective product to Plaintiff.
- C. For costs of suit, and;
- D. For such other relief as is just and proper.

Larry Trover Produce, Inc., Plaintiff

By: 
Richard Kruger, Plaintiff's attorney

COUNT VI
FOR BREACH OF CONTRACT AS TO ALL DEFENDANTS

Now comes Larry Trover Produce, Inc., the plaintiff in the above-captioned cause, by Richard Kruger of the Richard Kruger Law Firm, its attorney and brings this action for Breach of Contract, in the alternative, against Nutrien Ag Solutions, Inc., Nutrien Ltd., Omnilytics, Inc. and Certis, USA, Inc., Defendants in the above-captioned cause, and states as follows:

1-33. Plaintiff repeats and realleges paragraphs 1 through 35 of the above "General Allegations" as paragraphs 1 through 35 of this Count VI, as though fully set forth herein.

36. Defendants, and each of them, have breached their contract with Plaintiff in one or more of the following ways as set forth below:

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37. Defendants entered into the contract for the Plaintiff to purchase a total of thirty five (35) gallons of Agriphage CMM. Defendants, pursuant to Plaintiff's order, did deliver a total of thirty five (35) gallons of Agriphage CMM to Plaintiff to enable Plaintiff to apply the Agriphage CMM to his tomato crops to ward off the onset of bacterial canker.

38. Plaintiff paid in full the sum of \$1,255.00 for the first ten (10) gallons of Agriphage CMM, as evidenced by the Invoices attached hereto as Exhibits A and B.

39. Plaintiff did not pay for the subsequent twenty five (25) gallons of Agriphage CMM once Plaintiff learned that both of the Agriphage CMM shipments were defective.

40. Defendants, as part of the contractual agreement, agreed to provide Plaintiff with "fresh" quality Agriphage CMM product to combat the bacterial canker.

41. Plaintiff relied on Defendants to provide "fresh" quality Agriphage CMM so that Plaintiff could immediately apply to their tomato crops to try and avert the onset and spread of bacterial canker. Plaintiff relied on the belief that the product that would be provided would be as warranted and would be free from defects.

42. Defendants failed to perform and comply with the contract between the parties.

43. Though consistently assuring Plaintiff that the Agriphage CMM product was fresh and of good quality, in actuality, the Defendants provided Plaintiff with defective and ineffective Agriphage CMM product, leading to substantial crop loss to bacterial canker.

44. Defendants breached the contract and refused to honor the terms of the contract.

45. Plaintiff, in reliance on the promises and statements of Defendants, have paid \$2,510.00 to defendants (\$1,255.00 for the Agriphage CMM), per the terms of the contract.

46. Plaintiff has performed all of the terms and conditions of the Contract required by Plaintiff.

47. As a result of Defendants' breach of the Contract, Plaintiffs have sustained the following damages:

- a. Loss of \$1,255.00;
- b. Loss of the majority of their 2020 tomato crop, in excess of \$300,000.00;
- c. Loss of revenue from the diminished crop yield;

WHEREFORE, Plaintiff requests judgment against Defendants for the following:

A. Actual damages for losses due to amounts paid, in the sum of \$1,255.00 to date, or in an amount to be determined by this Court;


B. Damages in the amount of \$300,000.00 for losses to Plaintiff's tomato crop yields;

C. For all other damages resulting from Defendant's breach of contract;

D. For costs of suit, and;

E. For such other relief as is just and proper.

Larry Trover Produce, Inc., Plaintiffs

By: 
Richard Kruger, Plaintiff's attorney

COUNT VII.
BREACH OF IMPLIED WARRANTY: FITNESS FOR PARTICULAR PURPOSE
(810 ILCS 5/2-315) AS TO ALL DEFENDANTS

Now comes Larry Trover Produce, Inc., the plaintiff in the above-captioned

cause, by Richard Kruger of the Richard Kruger Law Firm, its attorney and brings this action for Breach of Implied Warranty: Fitness for Particular Purpose (810 ILCS 5/2-315), in the alternative, against Nutrien Ag Solutions, Inc., Nutrien Ltd., Omnilytics, Inc. and Certis, USA, Inc., Defendants in the above-captioned cause, and states as follows:

1-35. Plaintiff repeats and realleges paragraphs 1 through 35 of the above “General Allegations” as paragraphs 1 through 35 of this Count VII, as though fully set forth herein.

36. On or about June 18, 2020 Plaintiff ordered the product Agriphage CMM from Defendant, Nutrien Ag, to proactively prevent possible spread of bacterial canker to Plaintiff's tomato crops.

37. Plaintiff had a long-standing relationship with the manufacturer, producer and distributor(s) of Agriphage CMM, including the agents and representatives at Omnilytics, Inc., Certis, USA, Inc, and Nutrien Ag Solutions who all directly serviced Plaintiff's orders within the State of Illinois.

38. Plaintiff had ordered Agriphage CMM for at least seven (7) years from Omnilytics, Inc., Certis, USA, Inc, and Nutrien Ag Solutions in order to protect Plaintiffs' tomato crops from bacterial canker.

39. On or about June 18, 2020, Plaintiff's representative contacted Stuart Brenneman at Nutrien Ag and ordered 10 gallons of Agriphage CMM in order to proactively protect the Plaintiffs' tomato crops from bacterial canker.

40. Over the previous approximately seven (7) years Plaintiff's representative spoke to Defendants' representatives, including, but not limited to Stuart Brenneman at Nutrien Ag, and explained that in certain weather conditions, including strong, splashing rains, coupled with the bouts of intense heat, the Plaintiff needed the

Agriphage CMM product to protect the Plaintiff's tomato crop from bacterial canker.

41. Over the previous approximately seven (7) years the representatives of Defendants Omnilytics, Inc., Certis, USA, Inc., and Nutrien Ag Solutions were made aware of the particular purpose and need for the proper product to fight bacterial canker. Defendants had in the past, and continued up through July, 2020, to recommend that Plaintiff use Agriphage CMM to fight against bacterial canker on their tomato crops.

42. Plaintiff, in the past, and up through June and July, 2020, relied on the Defendants' skill and judgment in recommending the product of Agriphage CMM to best protect Plaintiff's tomato crops from bacterial canker.

43. Plaintiff most recently ordered the two (2) shipments of the Agriphage CMM product, and the lots were shipped to Plaintiff on June 23, 2020 and July 8, 2020.

44. The two (2) orders of Agriphage CMM were not fit for the purpose for which they were sold and purchased at the time of the sale and shipment of the product.

45. Both orders of the Agriphage CMM were defective and failed to do anything to prevent the start, and then spread, of the bacterial canker to the Plaintiff's tomato crops.

46. As a result of the defect in the Agriphage CMM, the Plaintiff's sustained substantial crop loss, with only a fraction of Plaintiff's crops producing marketable tomatoes.

47. Due to the drastically decreased crop yield because of the bacterial canker, the Plaintiff sustained substantial monetary loss, in excess of \$300,000.00.

48. Defendants' Agriphage CMM failed to prevent the spread of the bacterial canker, and in fact, the bacterial canker spread rampantly, even after two (2)

applications of the Agriphage CMM product.

49. Plaintiff contacted Nutrien Ag regarding the defective nature of the Agriphage CMM product. The Nutrien Ag representative promised that the Co-Defendant manufacturers/distributors would be in contact to try and rectify the damages caused by the defective Agriphage CMM product.


50. Plaintiff never received any contact from any of the Defendants.

51. After Plaintiffs' contact of Defendant Nutrien Ag, the Defendant Nutrien Ag representative acknowledged to Plaintiff that the Agriphage CMM product sold and shipped to Plaintiff was likely defective and not fit for its ordinary use.

WHEREFORE, Plaintiff prays for the following relief:

- A. That judgment be entered in favor of Plaintiff and against Defendants;
- B. That the Defendants be ordered to compensate Plaintiff for their losses and damages caused by the destruction of their tomato crops due to bacterial canker;
- C. For costs of suit, and;
- D. For such other relief as is just and proper.

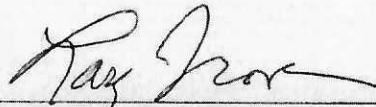
Larry Trover Produce, Inc, Plaintiff

By: 
Richard Kruger, Plaintiff's attorney

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RICHARD KRUGER LAW FIRM
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Fax (618) 524-9305
Email: richard@richardkrugerylaw.com

VERIFICATION BY CERTIFICATION

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 Complaint are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he believes the same to be true.



Larry Trover, President of Larry Trover
Produce, Inc.

RICHARD KRUGER
RICHARD KRUGER LAW FIRM
Attorneys at Law
110 W. 5th Street
P.O. Box 568
Metropolis, IL 62960
Telephone (618) 524-9302
Fax (618) 524-9305

Nutrien Ag Solutions, Inc.
MOORESVILLE IN (3508)
840 SOUTH 550 WEST
TIPTON, IN 46072
765-675-3310



INVOICE

LARRY TROVER PRODUCE INC (1767494)
992 GILEAD CHURCH RD
VIENNA, IL 62995

Invoice #: 42769294
Invoice Date: 06/23/20
Due Date: Cash On Delivery
Delivery Date: 06/18/20
Order #: 17232922
PO#:
Sales Rep: Brenneman, Stuart

Ship Via: Company Vehicle **County:** JOHNSON

1000001912 - AGRIPHAGE TOMATO SPOT 2X2.5GA 67986-1	10.0000 GA	125.5000	1,255.00
1000695337 - AGRIPHAGE-CMM 2X2.5GA 67986-6--	10.0000 GA	125.5000	1,255.00

Safety Data Sheets are available upon request for applicable products. Contact your local branch for details. For a medical emergency involving this product, call 1-866-944-8565. For help with any spill, leak, fire or exposure, call Chemtrec at 1-800-424-9300.

*** Invoice Notes ***

order 523

Wells Fargo - 7/08

765-714-8387

FRAUD ALERT - Our bank information has NOT changed. Please immediately call (866) 712-1090 and speak to a member of our Credit Department if you are asked to change bank information. Again, DO NOT CHANGE OUR BANK REMITTANCE INFORMATION.

Payment Terms: IMMEDIATE

Q/A

Invoice Sub Total:	2,510.00
Sales Tax:	0.00
Invoice Total:	2,510.00
Less Prepay Used:	0.00
Less Prepay Discount:	0.00
Gross Invoice Total:	2,510.00
Amount Due:	2,510.00

Nutrien Ag Solutions, Inc.
MOORESVILLE IN (3508)
840 SOUTH 550 WEST
TIPTON, IN 46072
765-675-3310



INVOICE

LARRY TROVER PRODUCE INC (1767494)
992 GILEAD CHURCH RD
VIENNA, IL 62995

Invoice #: 42991409
Invoice Date: 07/08/20
Due Date: Cash On Delivery
Delivery Date: 07/02/20
Order #: 17399174
PO#:
Sales Rep: Brenneman, Stuart

Ship Via: Company Vehicle **County:** JOHNSON

Product #	Product Description	Quantity	Unit	Price	Gross Total Price
1000695337 - 67986-6--	AGRIPHAGE-CMM 2X2.5GA	25.0000	GA	125.5000	3,137.50
1000001912 - 2X2.5GA 67986-1	AGRIPHAGE TOMATO SPOT	15.0000	GA	125.5000	1,882.50

Safety Data Sheets are available upon request for applicable products. Contact your local branch for details. For a medical emergency involving this product, call 1-866-944-8565. For help with any spill, leak, fire or exposure, call Chemtrec at 1-800-424-9300.

***** Invoice Notes *****

Order 600

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Payment Terms: IMMEDIATE

Invoice Sub Total: 5,020.00
Sales Tax: 0.00
Invoice Total: 5,020.00
Less Prepay Used: 0.00
Gross Invoice Total: 5,020.00
Amount Due: 5,020.00

EJB

Nutrien Ag Solutions, Inc.
840 SOUTH 550 WEST
TIPTON, IN 46072