

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

Farm-to-Consumer	:	Case No. 5:10-cv-4018
Legal Defense Fund, et al.	:	
	:	
Plaintiffs	:	Judge Mark W. Bennett
	:	
v.	:	
	:	
Sebelius, et al.	:	<u>AFFIDAVIT OF MARK MCAFEE</u>
	:	
Defendants	:	

STATE OF CALIFORNIA :
COUNTY OF FRESNO :

I, Mark McAfee, being duly sworn, hereby make the following statements based on my personal knowledge, understanding and belief:

1. I am the owner of Organic Pastures Dairy Company, LLC, which is located at 7221 South Jameson, Fresno, CA 93706.
2. Organic Pastures Dairy Company, LLC ("OPDC") is a family owned and operated dairy farm that specializes in the production and distribution of fresh, unprocessed milk and dairy products, including but not limited to whole milk, cream, butter and kefir.
3. I have been a dairyman since 2000.
4. OPDC currently owns about 550 cows, calves, bulls and steers and we are currently milking about 350 cows.
5. It is legal in the State of California to sell and distribute for human consumption dairy products that are not pasteurized. It is also legal in the States of Arizona and Nevada to sell and distribute for human consumption dairy products that

are not pasteurized, but neither of those two States have raw milk producers of their own.

6. As a result, hundreds of consumers have requested that OPDC supply and distribute its legal raw dairy products into Nevada and Arizona.
7. However, 21 C.F.R. 1240.61 prohibits the interstate distribution or transport of dairy products in final package form for human consumption that are not pasteurized, and makes it illegal for OPDC to ship or distribute its unpasteurized dairy products across state lines into either Nevada or Arizona.
8. There seems to be a fundamental injustice to 1240.61's prohibition when state inspected, safe, tested, delicious raw dairy products can be legally purchased in about 400 stores in California but can not be shipped to an adjoining state to also be sold or consumed.
9. Indeed, the physical location of a raw dairy product does not change its safety. All of OPDC's products are secured with tamper proof seals. If they are opened in Tahoe or Los Angeles they are safe, but if they are opened in Reno or Las Vegas 1240.61 deems them unsafe. This on its face is ridiculous.
10. 1240.61's prohibition is also profoundly unjust to those consumers who cannot drink pasteurized milk because it causes them serious allergic reactions and or lactose intolerance. For example, and according to studies conducted by Dr. Donald Fields and Dr. Susan Stone, pasteurized milk is not safe for asthma sufferers yet raw milk is commonly prescribed for asthma.
11. 1240.61's prohibition denies equal access to a "medical food" that is especially sought out for its healing qualities yet FDA refuses to acknowledge these medical

attributes and instead always recommends the use of one of their FDA approved drugs that is prescribed by a doctor.

12. The raw milk consumer refuses to follow this FDA directive of taking drugs and knows that FDA approved drugs have serious side effects that are responsible for uncounted numbers of deaths every year.

13. Consequently, on December 22nd 2008, I submitted a formal Citizens Petition to the FDA as provided by, in part, 21 C.F.R. 10.25 and 10.30.

14. The Citizens Petition requested that the FDA amend CFR 1240.61 to allow the interstate shipment of raw dairy products between two different states in the U.S.A. that both allow the legal sale of raw dairy products.

15. Pursuant to 21 C.F.R. 10.30, FDA had 180 days to respond to my Citizen Petition.

16. As of June 7, 2010, more than 500 days later, the FDA has failed to respond to our filing of the Citizens Petition.

17. Therefore, I believe that complying with the Citizen Petition process as specified in 21 C.F.R. 10.25 and 10.30 is an exercise in futility.

FURTHER AFFIANT SAYETH NAUGHT

In accordance with 28 United States Code Section 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 6/07, 2010.



Mark McAfee

CERTIFICATE OF SERVICE

I hereby certify that June 14 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filings(s) to the following:

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/s/ David G. Cox
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