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17 IN THE SUPERIOR COURT OF SAN BENITO COUNTY

18 STATE OF CALIFORNIA

19 ORGANIC PASTURES DAIRY)
20 COMPANY, LLC, and) Case No.: CU-07-00204
21 CLARAVALE FARM, INC.,)
22) **AFFIDAVIT OF MARK MCAFEE**
23 Plaintiffs,)
24)
25 v.)
26)
27 STATE OF CALIFORNIA and)
28 A.G. KAWAMURA, Secretary of California)
Department of Food and Agriculture,)
Defendants.)
_____)

State of California)
: ss
County of Fresno)

I, Mark McAfee, having been duly cautioned and sworn, say on my own personal knowledge and belief, the following:

1. I am the owner and operator of Organic Pastures Dairy Company (“OPDC”), a dairy farm engaged solely in the business of producing raw milk and raw milk products including, but not limited to, whole milk, skim milk, butter and cream.
2. I have been so engaged since 2000 when I established OPDC.

- 1 3. OPDC is located in Fresno, California, has 40 employees and has 450 head of livestock.
- 2 4. Our annual sales of raw milk and raw milk products tops \$5 million dollars. Sales of
- 3 skim milk and cream most recently were \$47, 000 monthly or close to \$600,000 annually. Our
- 4 customers are located throughout California.
- 5 5. OPDC's herd roams freely in pastures and feeds on grass as well as certified organic
- 6 feed. OPDC's branding is that our raw milk is supplied by organically grown and fed dairy
- 7 cows.
- 8 6. I am aware that OPDC is one of only two raw milk producers in the state of California.
- 9 The other is Claravale Farms in Paicines, California.
- 10 7. At Christmas time in 2007, I first become aware that the State of California had adopted
- 11 another new standard that sellers of raw milk must meet in order to sell their product. That
- 12 standard, adopted by AB 1735 which was signed into law by the Governor in October 2007 and
- 13 which became effective 1/1/08, required that raw milk, in retail containers, could not have more
- 14 than 10 coliform bacteria per milliliter of product.
- 15 8. I became aware of this new standard while reading a newsletter from my state
- 16 representative.
- 17 9. Prior to the enactment of AB1735, no one from the State of California government has
- 18 ever asked me about the impact this would have on my business.
- 19 10. During the eight years of operation of OPDC, no one has ever reported becoming ill or
- 20 sick from drinking our raw milk. I have never received a report from anywhere that there was
- 21 any type of problem with our raw milk.
- 22 11. No pathogens, such as E-coli, have never been found in our milk.
- 23 12. The test standard used by the California Department of Food and Agriculture, when
- 24 checking for the proscribed level of coliform bacteria, is when I fail 3 out of 5 monthly tests, I
- 25 am required to stop sale of that product.
- 26
- 27
- 28

1 13. Since January 1, 2008, I have failed three cream tests for AB 1735 coliform bacteria. On
2 February 28, 2008, I failed my third test and have had to stop the sale of cream products. This
3 action will cost me \$10,000 per week in lost cream sales.

4 14. Since January 1, 2008, I have failed two raw milk tests for AB 1735 coliform bacteria
5 levels and passed two.

6 15. If I fail a third test for my raw/whole milk, I will have to cease selling raw/whole milk
7 and my business will collapse.

8 16. I am concerned about the impact AB 1735 has on my business, on my employees, on the
9 goodwill of my business, and on my farm operations and my livestock herd if I must stop selling
10 raw milk during the pendency of this lawsuit.

11 17. Prior to the passage of AB 1735, the raw milk of OPDC has been subject to California
12 Department of Food and Agriculture inspections and there has never been a pathogen found. All
13 of OPDC's raw milk products since 2000 have met the same strict bacteria standards as
14 pasteurized milk. Any inspection issue that arose was corrected.

15 18. I am concerned that this new level for coliform bacteria is unrealistic, is too stringent for
16 raw milk producers, and does not act to determine if any pathogens exist. Other states that use
17 this same standard also test the raw milk at the bulk tank, not at the milk bottle. Testing at the
18 milk bottle increases coliform levels substantially. In California, the inspectors test the milk
19 bottle.

20 19. Any time that raw milk is pumped, flows through clean pipes, comes in contact with air
21 or agitated in any way, coliform levels increase. The presence of coliforms is not an indication of
22 an unsafe condition. I have been advised by University researchers that coliforms should not be
23 used as a determinant or indicator of unsanitary conditions. I have also been advised by
24 researchers that coliforms are highly beneficial and actually work to control pathogenic bacteria
25 if they are present.

26 Affiant Further Sayeth Naught

27 _____
Mark McAfee

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Sworn to before me and subscribed in my presence this ____ day of _____,

2008.

Notary Public

My Commission Expires: