

1 David G. Cox (OH Sup. Ct. No. 0042724)
2 Donald M. Collins (OH Sup. Ct. No. 0037701)
3 Two Miranova Place, Suite 500
4 Columbus, OH 43215-7052
5 Tel: 614-228-6885
6 Fax: 614-228-0146
7 dcox@lanealton.com
8 dcollins@lanealton.com

9 Bradley W. Sullivan, #112111
10 Paul A. Rovella, Esq. #245745
11 Lombardo & Gilles, LLP
12 318 Cayuga Street
13 Salinas, CA 93901
14 Tel: (831) 754-2444
15 Fax: (831) 754-2011
16 brad@lomgil.com

17 IN THE SUPERIOR COURT OF SAN BENITO COUNTY
18 STATE OF CALIFORNIA

19 ORGANIC PASTURES DAIRY) Case No.: CU-07-00204
20 COMPANY, LLC, and)
21 CLARAVALE FARM, INC.,)
22) **AFFIDAVIT OF RON**
23 Plaintiffs,) **GARTHWAITE**
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 San Benito)

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

1. I am an owner and operator of Claravale Farms, Inc., 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 engaged in the operation of Claravale Farms for the past 11 years.

1 3. Claravale Farms is located in Paicines, San Benito County, California, has 4 employees
2 and 100 head of livestock.

3 4. Our annual sales of raw milk and raw milk products is over \$800,000 annually. Our
4 customers are located throughout California.

5 5. I am aware that Claravale Farms, Inc. is one of only two raw milk producers in the state
6 of California. The other is Organic Pastures Dairy Company, LLC in Fresno, California.

7 6. In October 2007, AB 1735 was signed into law by the Governor and became effective on
8 January 1, 2008. AB 1735 imposed a new testing standard on, in part, raw whole milk and
9 cream that was not in existence before its enactment. The new standard imposed by AB 1735 is
10 that retail containers of raw whole milk and cream could not have more than ten coliform
11 bacteria per milliliter. I did not become aware of AB 1735 until late December 2007.

12 7. Prior to the enactment of AB1735, no one from the State of California Department of
13 Food and Agriculture or State of California government has asked me about the impact this
14 would have on my business. Also, prior to the enactment of AB 1735, raw milk producers in the
15 state of California did not have their raw whole milk or cream tested for the presence of
16 coliforms. In other words, prior to the enactment of AB 1735, the law did not impose a coliform
17 standard on raw milk or raw dairy products.

18 8. Since we have been in operation our milk and cream have been tested for the presence of
19 pathogens, which are organisms that cause illness in humans when consumed. Claravale Farms
20 has never had a pathogen detected in its milk at any time. Even though AB1735 imposes a
21 coliform limit instead of a pathogen limit the state is continuing its testing for pathogens and we
22 agree that our milk should be tested for pathogens.

23 9. Since AB 1735 has become effective, Claravale Farms' raw milk and raw dairy products
24 have been tested twice for coliforms. I know from my past experience at Claravale Farms that
25 our coliform bacteria level will not consistently be under the 10 coliform bacteria limit imposed
26 by AB1735.

27
28

1 10. Specifically, over the last five years, our whole milk has been tested for coliform bacteria
2 monthly and has had ranges from 10 coliform bacteria up to 140 coliform bacteria. The range
3 varies significantly and always has. However, no one has ever reported to me that coliform
4 bacteria are a source of illness, or that anyone has gotten sick from drinking our milk with these
5 coliform levels.

6 11. Recently, Claravale Farms moved into a new dairy with brand new milking equipment
7 and state-of-the-art stainless steel milking and storage tanks for raw milk. I was advised that
8 even with this brand new state-of-the-art equipment, we will still have coliforms in our milk and
9 that there is no guarantee we will be able to meet the 10 coliform limit.

10 12. To date, we have been tested twice and our whole milk met the requirements of AB1735
11 once and failed it once, yet our cream and non-fat have failed it both times. A third failure for
12 our cream and skim milk would force us to stop selling those products. Even if our milk was
13 tested in the bulk tank right after milking, I do not believe our milk, cream and skim milk would
14 consistently meet the requirement of 10 coliforms per milliliter.

15 13. I do not believe that Claravale Farms, Inc. will be able to meet the new standards
16 imposed by AB 1735, and that because of this our business will have to shut down for being in
17 violation of applicable law. I believe this will occur as soon as we are tested for a third time,
18 which will occur no later than March 2008.

19 Affiant Further Sayeth Naught

20 _____
21 Ron Garthwaite
22 Claravale Farms, Inc.

23 Sworn to before me and subscribed in my presence this ____ day of _____,
24 2008.

25 _____
26 Notary Public
27
28