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17 Attorneys for Plaintiffs

18 IN THE SUPERIOR COURT OF SAN BENITO COUNTY

19 STATE OF CALIFORNIA

20 ORGANIC PASTURES DAIRY)
21 COMPANY, LLC, and)
22 CLARAVALE FARM, INC.,)

23 Plaintiffs,)

24 v.)

25 STATE OF CALIFORNIA and)
26 A.G. KAWAMURA, Secretary of California)
27 Department of Food and Agriculture,)

28 Defendants.)

Case No.: CU-07-00204

**AFFIDAVIT OF DAVID G. COX IN
SUPPORT OF PLAINTIFFS' REPLY
TO DEFENDANTS' OPPOSITION
TO MOTION FOR PRELIMINARY
INJUNCTION**

STATE OF OHIO :

FRANKLIN COUNTY :

I, David G. Cox, being duly sworn and under oath, do hereby make the following statements based on my personal knowledge, information and belief:

1. I am counsel of record for the Plaintiffs in this case, Organic Pastures Dairy Company LLC and Claravale Farms, Inc.

2. I am admitted to practice law in the State of Ohio and am in good standing in Ohio.

- 1 3. I have been admitted to practice in this Court *pro hac vice*.
- 2 4. Pursuant to Evidence Code Section 452, subdivision (c), we request that the Court take
3 judicial notice of the attached exhibits.
- 4 5. Attached to this Affidavit as Exhibit A is a true copy “Standard 1.6.1 – Microbiological
5 Limits for Food” from the Country of Australia, bate stamp no. 1157-1160.
- 6 6. Attached to this Affidavit as Exhibit B is a true copy of “Food and Drug Regulations”
7 from the Country of Canada, Division 8, bate stamp no. 1151-1156.
- 8 7. Attached to this Affidavit as Exhibit C is a true copy of “U.S. Food and Drug
9 Administration Memo of Information M-I-02-8” dated June 21, 2002.
- 10 8. Attached to this Affidavit as Exhibit D is a true copy of a fax from the CDFA to Attorney
11 Cox, dated April 17, 2008, with attached letter that references documents produced by the State
12 of California with bate stamp nos. 001-2843.
- 13 9. Attached to this Affidavit as Exhibit E is a true copy a press release from Eureka Alert
14 dated April 2, 2008 entitled “Feta cheese made from raw milk has natural anti-food-poisoning
15 properties.”
- 16 10. Attached to this Affidavit as Exhibit F is a true copy of the Centers for Disease Control
17 and Prevention “MMWR Weekly” for April 11, 2008, entitled “Preliminary FoodNet Data on the
18 Incidence of Infection with Pathogens Transmitted Commonly Through Food – 10 States, 2007.”
- 19 11. Attached to this Affidavit as Exhibit G is a true copy “Regulation (EC) No 853/2004 of
20 the European Parliament and of the Council” dated April 29, 2004.
- 21 12. Attached to this Affidavit as Exhibit H is a true copy of the U.S. Food and Drug
22 Administration’s “Food Protection Plan” dated November 2007.
- 23 13. Attached to this Affidavit as Exhibit I is a true copy of a Cornell University “Dairy Foods
24 Science Notes” dated September 13, 2007, bate stamp no. 899-900.
- 25 14. Attached to this Affidavit as Exhibit J is a true copy of a Cornell University “Dairy Foods
26 Science Notes” dated September 29, 2007, bate stamp no. 897-898.

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- 1 15. Attached to this Affidavit as Exhibit K is a true copy Virginia Cooperative Extension
2 Dairy Publication No. 404-405, 1999, bate stamp no. 901-906.
- 3 16. Attached to this Affidavit as Exhibit L is a true copy a University of California, Davis
4 article by John H. Kirk entitled “Milk Quality On the Dairy – Who Is Responsible,” bate stamp
5 no. 915-923.
- 6 17. Attached to this Affidavit as Exhibit M is a true copy of a University of Southern
7 California, Keck School of Medicine article by John M. Leedom entitled “Milk of Nonhuman
8 Origin and Infectious Diseases in Humans,” bate stamp no. 965-970.
- 9 18. Attached to this Affidavit as Exhibit N is a true copy of a Cornell University article by
10 Boor, et al., entitled “Microbiological and Chemical Quality of Raw Milk in New York State,”
11 bate stamp no. 948-953.
- 12 19. Attached to this Affidavit as Exhibit O is a true copy of a Cornell University article by
13 S.C. Murphy entitled “Raw Milk Bacteria Tests-Standard Plate, Preliminary Incubation, Lab
14 Pasteurization and Coliform counts-Sources and Causes of High Bacteria Counts,” bate stamp
15 no. 908-914.
- 16 20. Attached to this Affidavit as Exhibit P is a true copy of an article entitled “Eliminate
17 Fecal Coliforms,” which can be found on the University of California, Davis “Good Agricultural
18 Practices” website at http://groups.ucanr.org/UC_GAPs/Elimanate_Fecal_Coliforms/.
- 19 21. Attached to this Affidavit as Exhibit Q is a true copy of an email chain to and from the
20 Food and Drug Administration to the California Department of Food and Agriculture re the
21 providing of materials to Michael Payne, bate stamp no. 870.
- 22 22. Attached to this Affidavit as Exhibit R is a true copy of the results of pathogen testing
23 performed by the State of California on samples received on September 23, 2006 that were
24 collected from Organic Pastures Dairy Company, LLC dairy products, bate stamp no. 1403-
25 1406.
- 26 23. Attached to this Affidavit as Exhibit S is a true copy of the Curriculum Vitae of Dr. Ron
27 Hull, Principal Consulting Microbiologist, Ron Hull and Associates, dated April 7, 2008.
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1 FURTHER AFFIANT SAYETH NAUGHT

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5 David G. Cox

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Sworn and subscribed before me this 23rd day of April, 2008.

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11 Notary public

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PROOF OF SERVICE

I am employed in the County of Franklin, State of Ohio. I am over the age of eighteen years and not a party to the within action. My business address is Two Miranova Place, Suite 500, Columbus, Ohio, 43215-7052. On the date set forth below, I caused the following document(s) entitled:

AFFIDAVIT OF DAVID G. COX IN SUPPORT OF PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

to be served on the party(ies) or its (their) attorney(s) of record in this action listed below by the following means:

	BY MAIL. By placing each envelope (with postage affixed thereto) in the U.S. Mail at the law offices of Lane, Alton & Horst, LLC, Two Miranova Place, Suite, Columbus, OH 43215-7052, addressed as shown below. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and in the ordinary course of business, correspondence would be deposited with the U.S. Postal Service the same day it was placed for collection and processing.
	BY HAND-DELIVERY. By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.
XX	BY OVERNIGHT DELIVERY. By placing with an overnight mail company for delivery a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to Lane, Alton & Horst, addressed as shown below.
	BY FACSIMILE TRANSMISSION. By transmitting a true copy thereof by facsimile transmission from facsimile number (614) 228-0146 to the interested party(ies) or their attorney(s) of record to said action at the facsimile number(s) shown below.
XX	BY ELECTRONIC MAIL. By transmitting a true copy thereof by electronic mail (without attachments) from e-mail address dcox@lanealton.com to the interested party(ies) or their attorney(s) of record to said action at the electronic mail address(es) shown below

Anita Ruud
Deputy Attorney General
Office of the Regional Attorney General
455 Golden Gate Ave., Rm. 6200
California Department of Justice
San Francisco, CA 94102
Counsel for Defendants

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.

Executed on April 23, 2008 at Columbus, Ohio.

David G. Cox