

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 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
REPLY TO DECLARATIONS OF
ANITA E. RUUD AND STEPHEN W.
BEAM**

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 Declaration as Exhibit A is a true copy of National Institutes of Health,
5 U.S. Department of Health and Human Services, “*Get the Facts: An Introduction to Probiotics*”
6 published by the National Center for Complementary and Alternative Medicine, January 2007.
- 7 6. Attached to this Declaration as Exhibit B is a true copy of Nutraingredients.com article,
8 May 14, 2007, “*Probiotics could improve premature babies' gut health,*” related to study titled
9 “*Probiotics for prevention of necrotising enterocolitis in preterm neonates with very low*
10 *birthweight: a systematic review of randomised controlled trials*” published in *The Lancet*, May
11 2007, Volume 369, Issue 9573, Pages 1614-1620.
- 12 7. Attached to this Declaration as Exhibit C is a true copy of Nutraingredients.com article,
13 October 12, 2005, “*Probiotics increase protection against autoimmune disease.*”
- 14 8. Attached to this Declaration as Exhibit D is a true copy of Nutraingredients.com article,
15 June 20, 2007, “*Probiotics protect against bacterial infection,*” published in *Proceedings of the*
16 *National Academy of Sciences*, May 1, 2007, Volume 104, Number 18, Pages 7617-7621,
17 “*Bacteriocin production as a mechanism for the antiinfective activity of Lactobacillus salivarius*
18 *UCC118.*”
- 19 9. Attached to this Declaration as Exhibit E is a true copy of Nutraingredients.com article,
20 June 12, 2007, “*Probiotic supplementation during pregnancy and then for the infants after birth*
21 *could reduce the incidence of eczema, suggests a new clinical trial from Sweden*” published in
22 *Journal of Allergy and Clinical Immunology* (Elsevier), Volume 119, Issue 5, Pages 1174-1180,
23 “*Probiotics in prevention of IgE-associated eczema: A double-blind, randomized, placebo-*
24 *controlled trial.*”
- 25 10. Attached to this Declaration as Exhibit F is a true copy of Nutraingredients.com article,
26 September 26, 2007, “*Organic baby cereal incorporates probiotics and omega-3.*”
- 27
- 28

1 11. Attached to this Declaration as Exhibit G is a true copy of “*Inverse association of farm*
2 *milk consumption with asthma and allergy in rural and suburban populations across Europe*”
3 published in *Clinical and Experimental Allergy* (2006), 37:661-670.

4 12. Attached to this Declaration as Exhibit H is a true copy of “*Influence of organic diet on*
5 *the amount of conjugated linoleic acids in breast milk of lactating women in the Netherlands*”
6 published in *British Journal of Nutrition* (2007), 97:735-743.

7 13. Attached to this Declaration as Exhibit I is a true copy of the technical abstract of
8 “*Colicins inhibit growth of escherichia coli 0157:H7 but not salmonella in vitro*” published in
9 *Journal of Food Protection*. 67:2603-2607.

10 14. Attached to this Declaration as Exhibit J is a true copy of the abstract from
11 “*Contamination of milk by enterococci and coliforms from bovine faeces*” published in *Journal*
12 *of Applied Microbiology*, 103, (2007) 1393-1405.

13 15. Attached to this Declaration as Exhibit K is a true copy of Freedom of Information Act
14 Request 06-0819 response from the Department of Health & Human Services, May 8, 2007.

15 16. Attached to this Declaration as Exhibit L is a true copy of a letter from Ron Hull and
16 Associates to Sally Fallon, December 28, 2007.

17 17. Attached to this Declaration as Exhibit M is a true copy of the Table of Contents of a
18 report of the Subcommittee on Science and Technology entitled “*FDA Science and Mission at*
19 *Risk,*” November 2007, prepared for the FDA Science Board.

20 18. Attached to this Declaration as Exhibit N is a true copy of Washington Post article,
21 February 18, 2008, “*USDA Orders Largest Meat Recall in U.S. History.*”

22 19. Attached to this Declaration as Exhibit O is a true copy of testing results from the State
23 of Washington from raw milk operations, including both goat and cow, February 15, 2008.

24 20. Attached to this Declaration as Exhibit P is a true copy of “*A Campaign for Real Milk*”
25 by the Weston A. Price Foundation, undated.

26

27

28

1 21. Attached to this Declaration as Exhibit Q is an Associated Press news article, "Bacteria-
2 Contaminated Milk from Massachusetts Dairy is Blamed for 3 Deaths, Miscarriage," January 8,
3 2008.

4 FURTHER AFFIANT SAYETH NAUGHT

5
6
7 _____
8 David G. Cox
9 Affiant

10 Sworn and subscribed before me, this 14th day of March, 2008.

11 _____
12 Date: March 14, 2008

13 Respectfully submitted,

14 _____
15 David G. Cox (OH Sup. Ct. No. 0042724)
16 Donald M. Collins (OH Sup. Ct. No. 0037701)
17 LANE, ALTON & HORST, LLC
18 Two Miranova Place, Suite 500
19 Columbus, OH 43215-7052

20 and

21 Bradley W. Sullivan, #112111
22 Paul A. Rovella, #245745
23 Lombardo and Gilles
24 318 Cayuga Street
25 Salinas, CA 93901

26 Attorneys for Plaintiffs
27 Organic Pastures Dairy Company, LLC and
28 Claravale Farm, Inc.

1 **PROOF OF SERVICE**

2 I am employed in the County of Franklin, State of Ohio. I am over the age of eighteen
3 years and not a party to the within action. My business address is Two Miranova Place, Suite
500, Columbus, Ohio, 43215-7052.

4 On the date set forth below, I caused the following document(s) entitled:

5 **AFFIDAVIT OF DAVID G. COX IN REPLY TO DECLARATIONS OF ANITA E. RUUD
6 AND STEPHEN W. BEAM**

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

	BY MAIL. By placing each envelope (with postage affixed thereto) in the U.S. Mail at the law offices of Lane, Alton and Horst, LLC, Two Miranova Place, Suite, Columbus, OH 4322-7052, 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.
X	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 Lombardo & Gilles, 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.
X	BY ELECTRONIC MAIL. By transmitting a true copy thereof (without attachments) by electronic mail 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

20
21 Anita Ruud
22 Deputy Attorney General
23 Office of the Regional Attorney General
24 455 Golden Gate Ave., Rm. 6200
25 California Department of Justice
26 San Francisco, CA 94102
27 Counsel for Defendants

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

Executed on March 14, 2008 at Columbus, Ohio.

David G. Cox

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28