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**IN THE CIRCUIT COURT OF THE STATE OF OREGON**

**COUNTY OF JOSEPHINE**

ROBERT A. WHITE, JR. and  
SHELLEY ANN WHITE,

Plaintiffs,

v.

JOSEPHINE COUNTY,

Defendant.

Case No.: 15-CV-23592

**ANSWER OF DEFENDANT  
INTERVENORS**

Defendant-Intervenors Siskiyou Seeds, LLC (“Siskiyou Seeds”), and Oregonians for Safe Farms and Families (“OSFF”) answer Plaintiffs’ Complaint as follows:

1.

Defendant-Intervenors admit that Plaintiffs “challenge” the Josephine County Ordinance 2014-007, which qualified for ballot placement on February 19, 2014 and was approved as Ballot Measure 17-58 at the May 20, 2014 primary election. Defendant-Intervenors deny that Plaintiffs’ state and statutory rights were violated. Defendant-Intervenors also deny that the Ordinance “requires plaintiffs to destroy” crops; the Ordinance also offers technical assistance and resources to assist with the 12-month phase-out period from genetically engineered to natural organisms. Paragraph 1 contains Plaintiffs’ characterizations of the Ordinance, which speaks for itself and is the best evidence of its

1 intent. Defendant-Intervenors deny any allegations in paragraph 1 that are inconsistent with the  
2 language of the Ordinance. Defendant-Intervenors deny the remaining allegations in paragraph 1.

3 2.

4 Defendant-Intervenors admit that Plaintiffs seek “declaratory relief and to permanently enjoin the  
5 enforcement of the Ordinance.”

6 **JURISDICTION**

7 3.

8 Defendant-Intervenors admit that the Circuit Court has jurisdiction, except for Plaintiffs’ failure to  
9 comply with ORS 28.110.  
10

11 4.

12 Defendant-Intervenors deny the allegations in paragraph 4.

13 **VENUE**

14 5.

15 Defendant-Intervenors admit the allegations in paragraph 5, unless this matter is ultimately  
16 removed to federal court for Constitutional questions.  
17

18 **BACKGROUND AND PARTIES**

19 6.

20 Defendant-Intervenors lack knowledge or information sufficient to form a belief as to the truth of  
21 the allegations in paragraph 6 and thus deny them.

22 7.

23 Defendant-Intervenors admit that Josephine County a home rule county. Paragraph 7 contains  
24 Plaintiffs’ characterizations of ORS 633.738(2). Defendant-Intervenors admit that the Oregon  
25 legislature passed ORS 633.738(2), which speaks for itself and is the best evidence of its content.  
26

1 Defendant-Intervenors deny any allegations in paragraph 7 that are inconsistent with the text of ORS  
2 633.738(2).

3 **COUNTY ORDINANCE**

4 8.

5 Defendant-Intervenors admit that voters approved the Ordinance on May 20, 2014, that the  
6 Ordinance became law on June 5, 2014, and went into effect on September 4, 2014 due to the 90-day  
7 period in the Josephine County Charter, and that a true copy of the Ordinance as enacted is attached to  
8 the Complaint. Defendant-Intervenors deny any remaining allegations in paragraph 8.

9 9.

10  
11 Defendant-Intervenors admit the allegations in paragraph 9, with the addition that the Josephine  
12 County Clerk and Recorder approved the Ballot Title for the Ordinance on September 30, 2013.

13 10.

14 Paragraph 10 contains Plaintiffs' characterizations of the Ordinance; those provisions speak for  
15 themselves and are the best evidence of their intent. Defendant-Intervenors deny any allegations in  
16 paragraph 10 that are inconsistent with the text of the Ordinance.

17  
18 11.

19 Defendant-Intervenors admit the allegations in paragraph 11.

20 12.

21 Paragraph 12 contains Plaintiffs' characterizations of the Ordinance and Notice; those provisions  
22 speak for themselves and are the best evidence of their intent. Defendant-Intervenors deny any  
23 allegations in paragraph 12 that are inconsistent with the text of the Ordinance and Notice.

24  
25 13.

26 Paragraph 13 characterizes Plaintiff's farm and farming practices. Defendant-

1 Intervenor lack knowledge or information sufficient to form a belief as to the truth of the  
2 allegations in paragraph 13 and thus deny the allegations.

3 14.

4 Defendant-Intervenors admit the allegations in paragraph 14.

5 15.

6 Defendant-Intervenors deny the allegations in paragraph 15.

7 16.

8 Defendant-Intervenors admit the allegations in paragraph 16.

9  
10 **DECLARATORY RELIEF**

11  
12 17.

13 Defendant-Intervenors incorporate by reference their answers to all preceding paragraphs as  
14 though fully set forth herein.

15 18.

16 Defendant-Intervenors lack knowledge or information sufficient to form a belief as to the truth of  
17 the allegations in paragraph 18 and thus deny the allegations.

18 19.

19 Defendant-Intervenors deny the allegations in paragraph 19.

20  
21 **COUNT TWO: MANDATORY INJUNCTION**

22 20.

23 Defendant-Intervenors incorporate by reference their answers to all preceding paragraphs as  
24 though fully set forth herein.

25 21.

26 Defendant-Intervenors lack knowledge or information sufficient to form a belief as to the truth of  
27

1 the allegations in paragraph 21 and thus deny the allegations.

2 22.

3 Defendant-Intervenors lack knowledge or information sufficient to form a belief as to the truth of  
4 the allegations in paragraph 22 and thus deny the allegations.

5 **AFFIRMATIVE DEFENSES**

6 **FIRST AFFIRMATIVE DEFENSE**  
7 **(Failure to State a Claim)**

8 23.

9 Plaintiffs' Complaint fails to allege facts sufficient to constitute a claim for relief.

10 **SECOND AFFIRMATIVE DEFENSE**  
11 **(Standing)**

12 24.

13 Plaintiffs lack standing to raise some or all of the claims in the Complaint.

14 **THIRD AFFIRMATIVE DEFENSE**  
15 **(Laches)**

16 25.

17 Without waiver of any defense, Plaintiffs delayed in asserting the claims for an  
18 unreasonable length of time with full knowledge of all relevant facts resulting in substantial prejudice  
19 to the Defendant-Intervenors such that it would be inequitable for a court to grant any relief under  
20 Plaintiffs' Complaint.

21 **FOURTH AFFIRMATIVE DEFENSE**  
22 **(Assumption of Risk)**

23 26.

24 Plaintiffs assumed the risk by planting or maintaining their crops after the Ordinance was  
25 proposed and ultimately approved by the voters.  
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**FIFTH AFFIRMATIVE DEFENSE  
(Estoppel)**

27.

Some or all of Plaintiffs' claims for equitable relief are barred by estoppel.

**EIGHTH AFFIRMATIVE DEFENSE  
(Failure to Mitigate)**

28.

Plaintiffs are not entitled to some or all of the damages or compensation they seek because they have not, and show no intention to, take actions to mitigate the harm they allegedly have or will suffer.

**NINTH AFFIRMATIVE DEFENSE  
(Unconstitutionality)**

29.

The state legislation at issue (ORS 633.738) violates the federal and state constitutions.

**TENTH AFFIRMATIVE DEFENSE  
(Home Rule)**

30.

The state legislation at issue (ORS 633.738) violates Josephine County's constitutional and statutory home rule rights.

**INCORPORATION OF ALL APPLICABLE DEFENSES**

31.

Defendant-Intervenors assert any and all applicable defenses pled by all other Defendants to the action, and hereby incorporate the same herein by reference.

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///

**RESERVATION**

32.

Upon further particularization of Plaintiffs’ claims, or upon discovery of further information concerning Plaintiffs’ claims, Defendant-Intervenors reserve the right to add further defenses as may be developed during litigation.

33.

Except as expressly admitted in this Answer, Defendant-Intervenors deny each and every remaining allegation of the Complaint.

WHEREFORE, Defendant-Intervenors respectfully pray as follows:

For judgment in Defendants-Intervenors favor declaring the Ordinance valid and lawful, dismissing Plaintiffs’ Complaint and the whole thereof, for costs and disbursements incurred herein and for such other and further relief as the Court deems just, equitable and proper.

Respectfully submitted and dated this 9<sup>th</sup> day of November, 2015,

/s/ Melissa D. Wischerath  
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Attorneys for Proposed Defendants

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CERTIFICATE OF SERVICE

I certify that I electronically filed served the foregoing Motion to Intervene by depositing a true, full and exact copy with the Clerk of Court using the OJD eFiling system, which will automatically deliver a notification of such filing to the following:

John DiLorenzo, Jr., OSB #802040  
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Attorney for Defendant Josephine County

Dated this 9<sup>th</sup> Day of November, 2015

/s/ Stephanie Dolan  
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