

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

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF JOSEPHINE

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

Plaintiffs,

v.

JOSEPHINE COUNTY,

Defendant.

Case No. 15CV23592

**DECLARATION OF JOHN
DILorenzo, JR. IN SUPPORT OF
PLAINTIFFS' RESPONSE IN
OPPOSITION TO MOTION OF
SISKIYOU SEEDS, LLC AND
OREGONIANS FOR SAFE FARMS
AND FAMILIES TO INTERVENE AS
DEFENDANTS**

I, John DiLorenzo, Jr., declare as follows:

1. I am one of the attorneys representing Plaintiffs in this matter. I make this Declaration in support of Plaintiffs' Response in Opposition to Motion of Siskiyou Seeds, LLC and Oregonians for Safe Farms and Families to Intervene as Defendants. I make this declaration based on my personal knowledge.

2. I have obtained a copy of a deposition of Mr. Donald Tipping which was taken on April 7, 2015 by the plaintiffs in Schultz Family Farms LLC v. Jackson County, US Federal District Court Case No. 1:14-cv-01975-CL. The title page, certificate of the court reporter and excerpts from that deposition are attached as Ex. 1 hereto.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 12th day of October, 2015.

s/ John DiLorenzo, Jr.
John DiLorenzo, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

--oOo--

SCHULZ FAMILY FARMS LLC, an Oregon)
limited liability company;)
JAMES FRINK, MARILYN FRINK,)
individuals; and FRINK FAMILY TRUST,)
an Oregon revocable living trust,)

Plaintiffs,)

vs.)

CASE NO.
1:14:CV-01975-CL

JACKSON COUNTY, an Oregon municipal)
corporation,)

Defendant,)

and)

CHRISTOPHER HARDY, individually;)
OSHALA FARM, LLC, an Oregon limited)
liability company; OUR FAMILY FARMS)
COALITION, an Oregon non-profit)
corporation; and CENTER FOR FOOD)
SAFETY, a non-profit corporation,)

Defendant-Intervenors.)

VIDEOTAPED DEPOSITION UNDER OATH OF

DONALD TIPPING,

taken on behalf of the Plaintiffs, at 3:14 P.M.,

Tuesday, April 7, 2015, at the Law Firm of

Frohnmayr, Deatherage, Jamieson, Moore, Armosino &

McGovern, 2592 E. Barnett Road, City of Medford,

County of Jackson, State of Oregon, before

Eileen M. Leddy-Kalevicoglu, CSR No. 93-0265.

Eileen Leddy, CSR, RPR
(541) 479-7277

DiLorenzo Decl., Exhibit 1

Page 1 of 7

27a294f3-ddb2-45a8-a6ed-55b1a1e7e28b

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

S T I P U L A T I O N

At said time and place the following stipulation was entered into between the attorneys present on behalf of the respective parties:

IT IS HEREBY STIPULATED that all irregularities as to notice of time and place and manner of taking said deposition are hereby waived; each party reserving the right to object at the time of the trial as to competency, relevancy, or materiality of any question or answer. But that objections as to the form of the questions are waived unless made at the time of taking of said deposition.

IT IS HEREBY STIPULATED that the reading and signing of said deposition by the party and the filing thereof, are hereby expressly waived.

--oOo--

Eileen Leddy, CSR, RPR
(541) 479-7277

1 becomes part of the seed, and now within the seed, there is
2 a certain percentage of GMO material, DNA, that you can't
3 take out.

4 It is a contamination. It is -- it's not a mixing.
5 It is literally contaminated. It's much like -- to use the
6 metaphor -- like "radioactivity." You can't take it out.

7 Q. BY MS. ARMSTRONG: And has that process that you
8 just described ever happened to any of your crops?

9 A. We have had one known instance of a GMO
10 contamination, and that was in producing a certified organic
11 corn crop that was for seed for another seed company,
12 Uprising Seeds in Bellingham, Washington. They contracted
13 with us to produce Oaxacan green dent corn. We didn't have
14 planting stocks; so we obtained certified organic seed
15 planting stock from Johnny's Selected Seed in Maine, and
16 once again, it was certified organic seed.

17 We grew it out. We assumed certified organ seed
18 meant no GMOs, but we did not test our planting stock. We
19 grew out the crop, and upon the harvest, as per the
20 conditions of the contract with Uprising Seeds, we tested a
21 sample, and within that, we did a PCR test, which is you
22 take 5 pounds of seed and you grind it up, and you take a
23 minute amount, and you test that. That's a 1 in 10,000 seed
24 sample. So it's giving you a .01 percentage, and that
25 showed up positive.

Eileen Leddy, CSR, RPR
(541) 479-7277

DiLorenzo Decl., Exhibit 1
Page 3 of 7

27a294f3-ddb2-45a8-a6ed-55b1a1e7e28b

1 And in the intervening time -- this was before GMO
2 Roundup Ready sugar beets were deregulated -- we got a call
3 that Syngenta was leasing land from OSU on Hanley Road,
4 their -- what do they call it? -- the Southern Oregon
5 Experiment Station; that is the term for that spot.

6 And Syngenta was growing -- I guess illegally
7 because it wasn't deregulated for open cultivation -- GMO
8 sugar beets over there, and we determined -- we're like,
9 "Okay, Steve, do we let it flower and let it get crossed and
10 spend all the time weeding, harvesting, cleaning the seed,
11 spending the hundreds of dollars on the test to find out
12 it's hot when we knew it was within a half mile?" And we
13 figured out, we just didn't have the time. We're farmers.
14 We mowed it under.

15 So I lost about \$20,000 in that deal because I was
16 just -- we were so certain -- we talked to all the
17 experts -- that it was going to get crossed. That would
18 have been a contamination issue. I'm almost certain of it.
19 Because up in the Skagit Valley where a lot of swiss chard
20 is produced -- this is how I came to this conclusion to mow
21 it under. They maintain a 1-mile isolation, red chard from
22 red chard or red beet from red beet. They maintain a
23 5-mile isolation red chard from any kind of beet or red
24 chard from green chard, and that's just conventional and
25 conventional. We're not even talking GMO.

Eileen Leddy, CSR, RPR
(541) 479-7277

DiLorenzo Decl., Exhibit 1
Page 4 of 7

27a294f3-ddb2-45a8-a6ed-55b1a1e7e28b

1 part of founding an organization called the Southern Oregon
2 Seed Growers Association wherein the presence of Syngenta
3 GMO suggest beets created the first time that a seed crop --
4 in this instance, a GMO sugar beet seed crop -- ever created
5 harm or the threat of harm to the seed production within the
6 Rogue Valley.

7 And so we tried to create an organization to get
8 them to communicate with us wherein they would not agree to
9 do so. So it's never been a problem. So this whole
10 discussion we're having about harm is largely one of
11 semantics and has not ever been an issue within the -- my
12 known history of 20 years of seed production in this Valley.

13 Q. Okay. So you are unaware of any seed crop ever
14 cross-pollinating and damaging a crop that's nearby?

15 A. No, not besides the, the mention I made of
16 Syngenta's 36 at the time of the last meeting when they
17 admitted it was 36 GMO sugar beet plants.

18 Q. No. Do you know of any organic seed production that
19 has ever caused economic damage to another crop --

20 A. No.

21 Q. -- that's grown nearby?

22 A. No.

23 Q. Okay. Is that because there isn't any
24 cross-pollination with organic seed crops and --

25 A. No. It's --

1 my perspective as a certified organic grower, fundamentally
2 the production of GMO crops that outcross into the open
3 environment threaten the viability of organic food
4 production.

5 Q. BY MS. ARMSTRONG: But you have no evidence of it
6 actually happening in Jackson County?

7 A. That's not what my expertise is, is as a regulator.
8 I'm a farmer.

9 Q. Do you have any evidence of cross-pollination of
10 GE crops actually happening in Jackson County?

11 A. No.

12 Q. Okay. Are there any circumstances, in your opinion,
13 in which growing a seed crop could be unreasonable?

14 MR. BUCHELE: Object to the form. Incredibly broad.

15 THE WITNESS: If it's a GMO seed crop.

16 Q. BY MS. ARMSTRONG: Okay. Sure. That's a good
17 caveat. In your opinion, is there any circumstance under
18 which it would be unreasonable to grow an organic seed crop?

19 A. No.

20 Q. What if there is a farmer growing conventional chard
21 one mile away, would it be unreasonable for a farmer to grow
22 organic sugar beet seed within one mile of that farmer?

23 A. Well, here in the Rogue Valley, we have created an
24 organization called the Southern Oregon Seed Growers
25 Association that maintains a GIS pinning map. So anyone who

DONALD TIPPING

REPORTER'S CERTIFICATE

I, EILEEN LEDDY, Oregon CSR No. 93-0265,
California CSR No. 9649, Certified Shorthand Reporter,
certify:

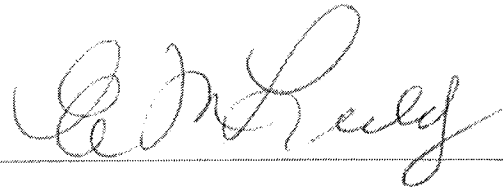
That the foregoing proceedings were taken
before me at the time and place therein set forth, at which
time the witness was put under oath by me;

That the testimony of the witness and all
objections made at the time of the examination were recorded
stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney or of any of the parties nor
financially interested in the action.

Dated this 13th day of April, 2015.



/s/ Eileen Leddy

Certified Shorthand Reporter

(541) 479-7277



1 CERTIFICATE OF SERVICE

2 I hereby certify that I served a copy of the foregoing Declaration of John DiLorenzo, Jr.
3 in Support of Plaintiffs' Response in Opposition to Motion of Siskiyou Seeds, LLC and
4 Oregonians for Safe Farms and Families to Intervene as Defendants on:

5 Matthew Walter Hicks
6 Josephine County Legal Counsel
7 500 NW 6th Street, Dept. 13
8 Grants Pass, OR 97526
9 Telephone (541) 474-5226
10 Facsimile (541) 474-5223
11 Email whicks@co.josephine.or.us

12 Of Attorneys for Defendant

13 by mailing a copy thereof in a sealed, first-class postage prepaid envelope,
14 addressed to said attorney's last-known address and deposited in the U.S. mail at Portland,
15 Oregon on the date set forth below; and on

16 Melissa D. Wischerath
17 Center for Sustainability Law
18 PO Box 12263
19 Eugene, OR 97440
20 Telephone (646) 765-0035
21 Email melissa@sustainabilitylaw.info

22 Of Attorneys for Intervenor Applicants

23 Stephanie Dolan
24 Center for Sustainability Law
25 PO Box 466
26 Talent, OR 97540
Telephone (530) 575-5818
Email stephjd@mac.com

Of Attorneys for Intervenor Applicants

by causing a copy thereof to be hand-delivered to said attorney's address as
shown above on the date set forth below;

by sending a copy thereof via overnight courier in a sealed, prepaid envelope,
addressed to said attorney's last-known address on the date set forth below;

by using the Court's efilng system; or

by emailing a copy thereof to said attorney at his/her last-known email address as
set forth above.

27 Dated this 12th day of October, 2015.

28 DAVIS WRIGHT TREMAINE LLP

29 By: s/ John DiLorenzo, Jr.
30 John DiLorenzo, Jr., OSB #802040
31 Of Attorneys for Plaintiffs