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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINCOLN**

REX CAPRI,)	
WAKEFIELD FARMS, LLC)	
)	Case # 17CV23360
Plaintiffs,)	
)	DEFENDANTS
v.)	DANA JENKINS' AND
)	LINCOLN COUNTY'S
)	ANSWER TO PLAINTIFFS'
)	AMENDED COMPLAINT
DANA W. JENKINS, LINCOLN COUNTY)	AND COUNTERCLAIM
)	
)	
Defendants.)	
)	
and)	
)	
LINCOLN COUNTY COMMUNITY RIGHTS)	
)	
Intervenor-Defendant.)	

Defendants Dana Jenkins and Lincoln County answer the Plaintiffs' Amended Complaint (hereinafter "Complaint") as follows:

1.

Admit the allegations in paragraphs 1, 2, 3, 4, and 6 of the Complaint except deny for paragraph 6 that the attached Exhibit I is a true and accurate copy of the election results for the approved Measure (Measure 21-177).

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2.

Admit the allegations in paragraph 5 of the Complaint, but deny that it describes the full extent of Defendants' authority to make laws.

3.

Admit the allegations in paragraphs 7 and 11 of the Complaint except as specifically responded to in this Answer.

4.

Admit the allegations in paragraph 13 as to the Court's jurisdiction to determine the validity of the Measure.

5.

Lack sufficient information to form a belief as to the truth of the general allegations in paragraphs 8 and 12 and of the Complaint and therefore deny the same.

6.

Deny the allegations in paragraph 9 of the Complaint that the Court has jurisdiction under ORS 246.910(1) to review the decisions of Defendant Jenkins.

7.

Deny the allegations in paragraph 10 of the Complaint.

8.

Deny the allegations in paragraph 14 (a), (b), (c) and (d) of the Complaint to the extent that the allegations are that the Defendants are completely preempted from regulating activities under the state laws noted therein.

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9.

Admit the allegations in paragraph 14 (e), (f) and (g) of the Complaint.

FIRST AFFIRMATIVE DEFENSE

(Subject Matter Jurisdiction)

10.

As a first and separate and distinctive affirmative defense Defendants allege that the Court lacks subject matter jurisdiction to consider Plaintiffs’ first claim for relief on appeal under ORS 246.910. The Court has already decided that the Measure does not violate the single subject rule or that it fails to include the full text of the law both under Section 1(2)(d) of Article IV of the Oregon Constitution, in a previous challenge to the Measure under ORS 250.168(1).

FIRST COUNTERCLAIM

(Declaratory Judgment)

11.

Defendants reallege paragraphs 1-9 above.

12.

Defendant Lincoln County is a “person”, ORS 28.130, entitled to a determination by the Court of the construction or validity of Measure 21-177 as an ordinance of the County and is entitled to a declaration of rights, status or other legal relations under the ordinance under the Uniform Declaratory Judgments Act, ORS 28.010 through 28.160 (the Act).

13.

1 Defendant Lincoln County seeks determinations under the Act as to the construction
2 of Measure 21-177 as follows:

3 a. Sections 2(c) and 4(b) “aerial spraying” applies to methods of pesticide
4 application by helicopters, airplanes and other aviation devices through certified aerial
5 pesticide applicators under Oregon law and not to other methods of pesticide application.

6 b. Section 2 (a) and Section 4 “corporations” does not include individuals and
7 natural persons.

8 c. Sections 3 (f), (g) and (h) and Section 4(d) are invalid statements of law,
9 violate the Oregon Constitution, and are overbroad and void for vagueness.

10 d. Except to the extent that County is not preempted under Oregon law, the
11 remainder of Section 6(c) is invalid and unconstitutional under the Oregon and Federal
12 Constitutions.

13 WHEREFORE, Defendants Dana Jenkins and Lincoln County request a judgment of
14 this Court:

- 15 1. Dismissing Plaintiff’s first claim for relief for lack of jurisdiction or alternatively
16 denying Plaintiff’s first claim for relief;
- 17 2. Declaring under law the extent, if any, of preemption of Measure 21-177 under
18 Plaintiff’s second claim for relief, but finding that portions of the Measure are not
19 preempted and therefore not invalidating the entire Measure;
- 20 3. Declaring and deciding the additional terms of Measure 21-177 as requested by
21 Defendants in their Counterclaim;
- 22 4. Awarding Defendants their reasonable costs and disbursements incurred herein;

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5. Awarding all further relief deemed just and equitable by the Court.

DATED this 2nd day of August.

s/Wayne Belmont
Wayne Belmont, OSB #841662
Lincoln County Counsel
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Newport, OR 97365
Phone: 541-265-4108
Fax: 541-265-4176
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Attorney for Defendants Dana Jenkins and Lincoln County

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CERTIFICATE OF SERVICE

Pursuant to ORCP 9, I hereby certify that I served a true and accurate copy of the foregoing DEFENDANTS DANA JENKINS' AND LINCOLN COUNTY'S ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM upon the following by e-service:

Gregory A. Chaimov, OSB #822180
Davis Wright Tremaine LLP
1300 SW Fifth Ave, Suite 2400
Portland, OR 97201-5610
Attorney for Plaintiffs

and

Ann. B Kneeland, OSB #992977
Community Environmental Legal Defense Fund
PO Box 10294
Eugene, OR 97440
Attorney for Intervenor-Defendants
Lincoln County Community Rights

DATED 2nd day of August, 2017

s/Wayne Belmont
Wayne Belmont, OSB #841662
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