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

REX CAPRI, WAKEFIELD FARMS, LLC,)
)
 Plaintiffs,)
)
 v.)
)
 DANA W. JENKINS, LINCOLN COUNTY,)
)
 Defendants,)
)
 and)
)
 LINCOLN COUNTY COMMUNITY RIGHTS,)
)
 Intervenor-Defendant.)
 _____)

Case No. 17CV23360

**ANSWER AND COUNTERCLAIM
OF INTERVENOR-DEFENDANT
LINCOLN COUNTY
COMMUNITY RIGHTS**

1.

In answer to Petitioners' Amended Complaint herein, Intervenor-Defendant Lincoln County Community Rights admits, denies and alleges:

2.

Admits paragraphs 4, 5, 6 (regarding allegation that Dana Jenkins certified the election approving Measure 21-177 on June 5, 2017), 7, and 11.

3.

Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1, 2, 3, 9, 12, 13 and 15, and therefore denies.

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4.

Denies paragraph 6 (regarding allegation that Exhibit 1 is a true and exact copy of the June 5, 2017 certification), 8, 10, 14, 16 and 17 as follows, and each and every other allegation not expressly admitted.

FACTUAL ALLEGATIONS COMMON TO AFFIRMATIVE DEFENSE AND COUNTERCLAIM

5.

Lincoln County Community Rights (LCCR) is an organization that, along with its members, seeks “to provide educational opportunities and leadership around issues of human and natural rights in Lincoln County and Oregon by raising consciousness about participating in a community-based democracy,” and further, “to educate the residents of Lincoln County, Oregon and the State of Oregon about local, community self-government.”

6.

Consistent with its purpose, Lincoln County Community Rights (LCCR) has significant interests in the recognition and enforcement of local rights that protect the health, safety and welfare of Lincoln County residents and the environment, and of local bans on harmful corporate activity, specifically the aerial spraying of pesticides, in Lincoln County. LCCR also has a significant interest in the recognition of the right of local community self-government that authorizes these protections.

7.

Lincoln County Community Rights interests are directly and immediately harmed by Plaintiffs’ lawsuit which seeks to overturn the Freedom from Aerially Sprayed Pesticides Ordinance of Lincoln County (the “Ordinance”) and which claims that the people of Lincoln

1 County lack the authority to adopt the Ordinance.

2 FIRST AFFIRMATIVE DEFENSE
3 (Right of Local Community Self-Government)

4 8.

5 Intervenor-Defendant re-alleges paragraphs 5-7.

6 9.

7 The Freedom from Aerially Sprayed Pesticides Ordinance of Lincoln County (the
8 “Ordinance”) is lawfully enacted under Lincoln County voters’ legal authority under the right of
9 local community self-government.
10

11 10.

12 Plaintiffs’ assertions of preemptive Oregon laws and constitutional provisions to support
13 claims that the Ordinance is unlawfully enacted violates the Lincoln County voters’ right of local
14 community self-government which authorizes the Ordinance’s enactment and enforcement, and
15 immunizes it from ceiling preemption by less protective state laws.
16

17 FIRST COUNTERCLAIM
18 (Declaratory Judgment)

19 COMES NOW Intervenor-Defendant Lincoln County Community Rights, and for its
20 counterclaim for a declaratory judgment under ORS 28.010-28.160, Oregon Uniform
21 Declaratory Judgments Act, against Plaintiffs, alleges:

22 11.

23 Intervenor-Defendant re-alleges paragraphs 5-7, 9 and 10.

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12.

Under the Freedom from Aerially Sprayed Pesticides Ordinance of Lincoln County, Oregon Constitution, U.S. Constitution and Declaration of Independence, all residents of Lincoln County have the right of local community self-government.

13.

Under the Right of Local Community Self-Government, Lincoln County voters have the right to enact and enforce local laws that protect health, safety, and welfare by recognizing or establishing rights of natural person, their local communities, and nature. Additionally, these voters have the authority therein to enact and enforce laws that ban corporations from engaging in activities which violate the stated rights.

14.

Under the Right of Local Community Self-Government, Lincoln County voters' authority to enact and enforce legal rights of the people, their community, and nature and to ban corporate activities prevails over claimed corporate legal rights, privileges, powers, and protections, including personhood and future lost profits, and over state or federal preemptive laws used to overturn local laws that are more protective of people's rights, health, safety, and welfare.

15.

Under the Right of Local Community Self-Government, the Freedom from Aerially Sprayed Pesticides Ordinance is validly adopted and enforceable.

16.

Under the Right of Local Community Self-Government, the Freedom from Aerially Sprayed Pesticides Ordinance is immune from state preemptive laws and claimed corporate rights under the Oregon Constitution.

1 **CERTIFICATE OF SERVICE**

2 I certify that on July 11, 2017, I served the foregoing ANSWER AND
3 COUNTERCLAIM OF INTERVENOR-DEFENDANT LINCOLN COUNTY COMMUNITY

4 RIGHTS upon:

5 Gregory A. Chaimov
6 Davis Wright Tremaine LLP
7 1300 S. W. Fifth Avenue, Suite 2400
8 Portland, Oregon 97201-5610,

9 and

10 Wayne Belmont
11 Lincoln County Counsel
12 110 Lincoln County Courthouse
13 225 W Olive St
14 Newport, OR 97365

15 by E-serve.

16 DATED this 11th day of July, 2017.

17 s/ Ann B. Kneeland

18 Ann B. Kneeland, OSB #992977
19 Community Environmental Legal Defense Fund
20 P.O. Box 10294
21 Eugene, OR 97440
22 (541) 514-9720
23 ann@kneelandlaw.net

24 Attorney for Intervenor-Defendant Lincoln
25 County Community Rights
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