

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

Farm-to-Consumer Legal Defense Fund, et al.	:	Case No. 5:10-cv-4018
	:	
Plaintiffs	:	Judge Mark W. Bennett
	:	
v.	:	
	:	
Sebelius, et al.	:	<u>AFFIDAVIT OF ERIC WAGONER</u>
	:	
Defendants	:	

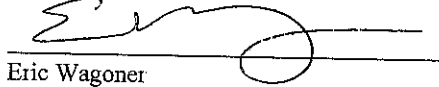
STATE OF GEORGIA :
COUNTY OF FRANKLIN :

I, Eric Wagoner, being duly sworn, hereby make the following statements based on my personal knowledge, understanding and belief:

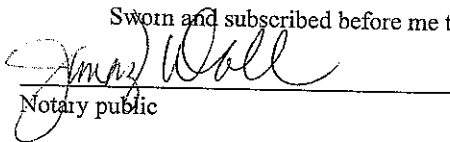
1. I am a Plaintiff in this case and at all time relevant to this case have been a member of the Plaintiff Farm-to-Consumer Legal Defense Fund.
2. I reside at 310 Woody Road, Royston, Georgia 30662 and have resided at this location at all times relevant to this case
3. I am the owner as well as a member of an internet-based virtual farmers' market known as "Athens Locally Grown." Individuals can become members of Athens Locally Grown ("ALG") by paying an annual membership fee of \$25 per household.
4. Plaintiff Anne Cooper is also a member of ALG and resides at 1104 Mill Pointe, Bogart, GA 30622
5. I manage and own ALG, which operated in this fashion until October 19, 2009:
 - a. Approximately 100 different farms/farmers listed their agricultural products with ALG;
 - b. Some of the 100 different farms/farmers are located in Georgia while some are located in South Carolina;
 - c. Approximately 2,000 members of ALG perused the ALG list and placed orders for the products that were listed there by the 100 farmers;
 - d. Orders were placed once a week and deliveries were made on Thursdays at a location in Georgia;
 - e. Some of the ALG members, including myself and Anne Cooper, ordered raw milk in final package form for personal consumption from three dairies located in South Carolina who listed their dairy products with ALG;
 - f. I drove to South Carolina to pick up the raw dairy products and returned with them to Georgia for distribution to the ALG members, including to myself and Ms. Cooper;
 - g. ALG members paid the farmers for the price of the products listed on ALG's website
6. On October 15, 2009, an ALG volunteer was driving my delivery truck from South Carolina into Georgia with about 110 gallons of raw milk in final package form that had been ordered and purchased by members of ALG. Not only was the volunteer delivering my own milk in my own truck, she was acting as the agent of the other ALG members, including Ms. Cooper, who had purchased raw milk from the South Carolina farmers.
7. Of the 110 gallons of raw milk the volunteer was delivering, I owned 2 gallons and Ms. Cooper owned 1 gallon.
8. Upon reaching Georgia, my truck was searched and seized by officials from Georgia without a warrant. Officials from Georgia embargoed the raw milk in my truck without a search warrant.
9. I was allowed to drive my truck and its contents to my home where it was parked until October 19th.
10. On October 19, 2009, the 110 gallons of raw milk, including milk owned by Ms. Cooper and I, were destroyed at the order of the Georgia officials and of the FDA without a warrant or other legal process.
11. The FDA agent who ordered me to destroy the 110 gallons of raw milk was Marybeth Willis from FDA's Atlanta office.

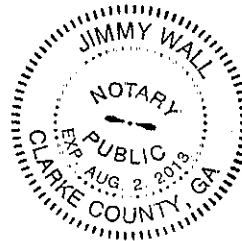
12. The destruction of the raw milk was video taped by my wife, Christina Wagoner.
13. A copy of this video is on the internet website You Tube, located in two parts at <http://www.youtube.com/watch?v=EMfOXxVAPgk>.
14. The destruction of the raw milk was also video taped by a film crew hired by Ms. Kristin Canty, who I understand is also supplying an affidavit in opposition to FDA's motion to dismiss.
15. During the destruction process, I questioned Ms. Willis about FDA's interpretation of 21 C.F.R. 1240.61, which I understand prohibits the interstate distribution or transport of dairy products in final package form for human consumption that are not pasteurized.
16. During the destruction process, Ms. Willis stated it is a federal crime to bring raw milk or raw dairy products across state lines for any reason. She specifically said that if you go to the dairy yourself, buy a gallon for your own use, and bring it back to your own home in Georgia, you would be a federal criminal.
17. Ms. Cooper and I have been injured by FDA's actions because we have not been allowed to keep our raw milk but instead had to destroy it at FDA's direction.
18. In addition, all other ALG members for whom I acted as their agent have been injured by FDA's actions because they too have been deprived the use of their raw milk at the direction of FDA.

FURTHER AFFIANT SAYETH NAUGHT


Eric Wagoner

Sworn and subscribed before me this 8 day of June, 2010.


Notary public



CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filings(s) to the following:

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/s/ David G. Cox
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