

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 8

DANE COUNTY

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FARM-TO-CONSUMER  
LEGAL DEFENSE FUND,  
GRASSWAY ORGANICS  
FARM STORE LLC,  
GRASSWAY ORGANICS  
ASSOCIATION, and KAY and  
WAYNE CRAIG,

Plaintiffs,

v.

Case No. 09CV6313

Declaratory Judgment: 30701

WISCONSIN DEPARTMENT  
OF AGRICULTURE, TRADE  
AND CONSUMER  
PROTECTION,

Defendant.

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NOTICE OF MOTION AND MOTION TO CONSOLIDATE

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TO: Elizabeth Gamsky Rich  
Elizabeth Gamsky Rich & Associates, SC  
637 Walton Drive, Suite 1  
Plymouth, WI 53073

PLEASE TAKE NOTICE that the defendant, Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”), by its attorneys, J.B. Van Hollen, Attorney General, and Robert M. Hunter, Assistant Attorney General, will appear before the Honorable Patrick J. Fiedler, Circuit Court Judge, sitting at the Dane County Courthouse, 215 S. Hamilton Street, Madison, Wisconsin, on such date and

at such time as is set by the Court, and will move and hereby does move the Court for an order as follows:

### MOTION

Pursuant to Wis. Stat. § 803.04, DATCP moves the Court for an order joining and consolidating for decision with the instant case an action brought against DATCP by Farm-to-Consumer Legal Defense Fund (Farm-to-Consumer), Mark and Petra Zinniker, Nourished by Nature, LLC, Gayle Loiselle and Robert Karp, formerly before the Walworth County Circuit Court, as Case No. 10-CV-302. As the basis for this motion, DATCP states that by an order issued from the bench on June 10, 2010, the Walworth County Circuit Court, the Honorable John R. Race, presiding, found that the action brought against DATCP by Farm-to-Consumer Legal Defense Fund, *et al.*, on February 25, 2010, was commenced subsequent to the action commenced before the Dane County Circuit Court. Further, Judge Race found that both actions had been brought by Farm-to-Consumer, as the principal named litigant, against DATCP with seeking, among other things, the same declaratory relief sought by Farm-to-Consumer in the case brought before this Court in Case No. 09CV6313, specifically a judgment declaring that the regulations promulgated by DATCP (specifically, Wis. Admin. Code § 60.235) and its construction and application thereof, violated the provisions of Wis. Stat. § 97.20 and/or the federal and/or state constitutions and/or that the provisions of Wis. Stat. § 97.20 themselves violated the federal and/or state constitutional rights of the plaintiffs.

WHEREFORE, DATCP submits that this Court should consolidate and join for purposes of decision with the underlying action in Walworth County Case No. 10-CV-302.

Dated this \_\_\_\_\_ day of June, 2010.

J.B. VAN HOLLEN  
Attorney General

ROBERT M. HUNTER  
Assistant Attorney General  
State Bar #1008114

Attorneys for Defendant,  
Wisconsin Department of Agriculture,  
Trade and Consumer Protection

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-3941

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