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

JOHN BURNS and BARBARA BURNS, husband and wife, DONALD HAUSMANN and JANICE HAUSMANN, husband and wife, HERMAN LIEM and PARTCHARA LIEM, husband and wife, CHARLES OTT, THOMAS PITCHFORD and MELISSA PITCHFORD, husband and wife, ERIC RICKARD and KATHRYN RICKARD, husband and wife, DAN SAWYER and JANET SINCLAIR, husband and wife, CLINTON SMITH and SANDRA SMITH, husband and wife, JAMES SWEENEY, and BARBARA WELSH,

Plaintiffs,

v.

PACIFIC AIR RESEARCH, an Oregon domestic business corporation, CROOK TIMBERLANDS, LLC, an Oregon limited liability company, BARNES & ASSOCIATES, INC., and Oregon domestic business corporation, JOSEPH KAUFMAN, and PRO FORESTRY CONSULTING, LLC, an Oregon limited liability company,

Defendants.

Case No.

COMPLAINT

(Declaratory Relief, Injunction)

Claim not subject to Arbitration

Prayer Amount:

Filing Fee Amount: \$252.00

Plaintiffs allege as follows:

GENERAL ALLEGATIONS

1.

Plaintiffs are citizens and landowners who live in Curry County, Oregon. They each allege that their person and private property were damaged as a result of the aerial spray or release of pesticides that occurred on or about October 16, 2013.

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2.

Plaintiffs John and Barbara Burns are husband and wife and own property and live at 32830 Cedar Valley Rd., Gold Beach, OR 97444.

3.

Plaintiffs Donald and Janice Hausmann are husband and wife and own property and live at 29101 N. Grizzly Rd., Gold Beach, OR 97444.

4.

Plaintiffs Herman and Partchara Liem are husband and wife and own property and live at 33166 Cedar Valley Rd., Gold Beach, OR 97444.

5.

Plaintiff Charles Ott is an individual who owns property and lives at 32778 Cedar Valley Rd., Gold Beach, OR 97444.

6.

Plaintiffs Thomas and Mellissa Pitchford are husband and wife and own property and live at 95810 McKinnon Drive, Gold Beach, OR 97444.

7.

Plaintiffs Eric Rickard and Kathryn Rickard are husband and wife and own property and live at 95791 Ponderosa Dr., Gold Beach, OR 97444.

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Plaintiffs Dan Sawyer and Janet Sinclair are husband and wife and own property and live at 32934 Cedar Valley Rd., Gold Beach, OR 97444.

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2 Plaintiffs Clinton and Sandra Smith are husband and wife and own property and live at
3 34496 Cedar Valley Rd., Gold Beach, OR 97444.

4 10.

5 Plaintiff James Sweeney is an individual who owns property and lives at 95416 Grizzly
6 Mountain Rd., Gold Beach, OR 97444.

7 11.

8 Plaintiff Barbara Welsh is an individual who lives at 641 NW Ashley Street, Dallas, OR
9 97338 and owns the property located at 32855 Cedar Valley Rd., Gold Beach, OR 97444.

10 12.

11 Defendant Pacific Air Research is an Oregon domestic business corporation with a
12 principle place of business at 600 Ave. C, White City, OR 97503.

13 13.

14 Defendant Crook Timberlands, LLC is an Oregon limited liability company with a
15 principle place of business at P.O. Box 1304, Coos Bay, OR 97420.

16 14.

17 Defendant Barnes & Associates, Inc., is an Oregon domestic business corporation with a
18 principle place of business at 3000 Stewart Parkway, Suite 204, Roseburg, OR 97471.

19 15.

20 Defendants Joseph Kaufman is an individual who resides at 32435 Libby Creek Rd., Gold
21 Beach, OR 97444 and who also does business as Sandy's Backhoe and Construction, which has
22 a principle place of business at 28170 Hunter Creek Rd., Gold Beach, OR 97444.
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1 16.

2 On or about October 16, 2013, Defendant Pacific Air Research aerially applied pesticides
3 to property owned by Defendants Crook Timberlands, LLC and Defendant Kaufman.

4 17.

5 The parcels owned by Defendant Crook Timberlands LLC that were treated on October
6 16, 2013 are known as Squaw 2013 (T35S R14W Sec 29-32) (86 acres), Squaw 08 (T35S
7 R14W Sec 28-29) (90), and Flynn 08 (T37S R14W Sec 8 & Sec 17) (25 acres).
8

9 18.

10 The parcel owned by Defendant Kaufman that was treated on October 16, 2013 is located
11 at T36S R14W Sec 3 (25 acres).

12 19.

13 While applying pesticides to these parcels and while transiting between the application
14 sites, Plaintiffs and their property were exposed to pesticides released from the helicopter
15 operated by Defendant Pacific Air Research.
16

17 20.

18 Defendant Barnes & Associates is a contract logging firm that was overseeing operations
19 on behalf of Crook Timberlands, LLC.

20 21.

21 Defendant Pro Forestry Consulting, LLC is a contract logging firm that was overseeing
22 operations on behalf of Defendant Kaufman and in conjunction with Defendant Barnes &
23 Associates.
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22.

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2 Plaintiffs allege that they have suffered various damages and injuries as a result of
3 exposure to pesticides on or about October 16, 2014, including injuries to their physical health
4 and well being, emotional distress and pain and suffering, injuries to pets and livestock, and
5 injuries to their private real property.

23.

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8 On April 4, 2014, the Oregon Department of Agriculture released a preliminary report of
9 its investigation into the events of October 16, 2013. ODA concluded that the residents had
10 likely been exposed to chemicals as a result of Defendants' activities, including 2, 4-D and
11 triclopyr, which were identified on the property of Plaintiffs Burns and at the treatment sites.

24.

12
13 Plaintiffs have the motive and means to bring an action in nuisance and/or trespass against
14 Defendants, individually and/or joint and severally, to remedy the harms resulting from this
15 release of pesticides onto their properties.

25.

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18 The aerial application of toxic chemicals, including, but not limited to, 2,4-D, is an ultra-
19 hazardous activity.

20 **CLAIM FOR RELIEF**
21 (Declaratory Judgment – ORS 28.020)

22 For their CLAIM FOR RELIEF, Plaintiffs allege as follows:

23 26.

24 Plaintiffs re-allege paragraphs 1 through 25, above.

25 ///

26 ///

1 27.

2 ORS 30.936 insulates parties from common law liability for nuisance or trespass arising
3 from farming or forestry practices on lands zoned for farm or forest use.

4 28.

5 ORS 30.938 provides for an award of reasonable attorneys fees and costs to a prevailing
6 party in "any action or claim for relief alleging nuisance or trespass and arising from a practice
7 that is alleged by either party to be a farming or forest practice * * *."

8 29.

9 ORS 30.939 establishes conditions for when use of a pesticide is considered to be a
10 farming or forest practices for purposes of ORS 30.936.

11 30.

12 Based on information and belief, Plaintiffs allege that if they were to pursue claims for
13 common law nuisance or trespass as a result of exposure to hazardous chemicals, including
14 pesticides or herbicides, for the events of October 16, 2013, one or more defendants would
15 allege that they were engaged in a farming or forest practice under ORS 30.936-939.
16

17 31.

18 Plaintiffs therefore seek a declaration from this Court under ORS 28.020 that ORS
19 30.936-939 are unconstitutional under the Remedies Clause of the Oregon Constitution, Or
20 Const, Art I, § 10, because those statutory provisions have abolished a common law cause of
21 action for nuisance or trespass resulting from exposure of person or property to hazardous
22 chemicals, including pesticides and/or herbicides, rights that are protected by the Remedy
23 Clause, without providing an adequate substitute remedy.
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An actual and justiciable controversy has arisen between Plaintiffs and Defendants because Plaintiffs have the means and wherewithal to pursue claims for nuisance and/or trespass resulting from exposure of person or property to hazardous chemicals, including pesticides and/or herbicides, against Defendants and because Defendants may allege in response to such claims that they were engaged in a farming or forest practice under ORS 30.946-939.

* * * * *

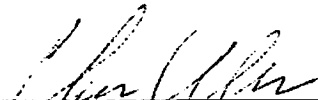
WHEREFORE Plaintiffs pray for relief as follows:


- (1) A declaration that the prohibitions under ORS 30.936-939 violate the Remedies Clause of the Oregon Constitution;
- (2) A declaration that Defendants may not avail themselves of the immunity provisions from common law liability under ORS 30.936-939;
- (3) For judgment awarding Plaintiffs their costs and disbursements herein; and
- (4) Such other relief as this court deems just and equitable.

DATED: August 5, 2014

CRAG LAW CENTER

HUTCHINSON, COX, COONS,
ORR & SHERLOCK, P.C.

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