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Circuit Court 2nd Circuit

Attorneys for Plaintiffs
ALIKA ATAY, LORRIN PANG,
MARK SHEEHAN, BONNIE MARSH,
LEI'OHU RYDER, and SHAKA MOVEMENT

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

ALIKA ATAY; LORRIN PANG; MARK
SHEEHAN; BONNIE MARSH; LEI'OHU
RYDER; and SHAKA MOVEMENT,

Plaintiffs,

vs.

COUNTY OF MAUI; MONSANTO
COMPANY; DOW AGROSCIENCES
LLC; JOHN DOES 1-10; JANE DOES 1-
10; DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; and DOE
GOVERNMENTAL ENTITIES 1-10,

Defendants.

Civil No. 14-1-0638 (2)

) COMPLAINT FOR DECLARATORY
) RELIEF; SUMMONS

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs ALIKA ATAY, LORRIN PANG, MARK SHEEHAN, BONNIE MARSH, LEI’OHU RYDER, and SHAKA MOVEMENT (collectively, “Plaintiffs”), by and through their attorneys, Bays Lung Rose & Holma, assert the following Complaint against Defendants COUNTY OF MAUI (“County”), MONSANTO COMPANY (“Monsanto”), and DOW AGROSCIENCES LLC (“Dow”) (collectively, “Defendants”). Plaintiffs hereby allege and aver as follows:

NATURE OF THE CASE

1. On November 4, 2014, Maui County voters passed into law a voter initiative entitled “A Bill Placing a Moratorium on the Cultivation of Genetically Engineered Organisms” (the “GMO Bill”). The GMO Bill was Maui County’s first-ever voter initiative attempt since the Maui County Charter granted voters this initiative power in 1983.

2. The GMO Bill establishes a temporary moratorium on the growth, testing, and cultivation of genetically modified or engineered crops (“GMO’s”) until an Environmental and Public Health Impacts Study analyzing the key environmental and health effects of GMO operations and practices is completed, and after the study finds GMO operations and practices in Maui County to be safe and harmless.

3. Under the Public Trust Doctrine, Maui County has a significant interest in preserving and protecting environmental resources for current and future generations, as current GMO operations and practices may be causing irreparable harm to the Public Trust Resources.

4. The GMO Bill was adopted due to the rapid and unregulated growth of large agricultural companies engaging in the testing, cultivation and development of GMO’s,

which threatens the stability and growth of Maui County's agricultural economy, the health of its citizens, and its environment. This has been allowed to go on in Maui County unregulated.

5. Plaintiffs bring this action seeking declaratory relief against Defendants in order to (1) assure that the GMO Bill is timely and properly implemented and to be able to assist and participate in the County's implementation of the GMO Bill, including being consulted by the County with respect to the GMO Bill's implementation; and (2) resolve the claims that the GMO Bill is not legal and enforceable, as there is an actual controversy and threat of imminent and inevitable litigation regarding this issue.

PARTIES

6. Plaintiffs Alika Atay, Lorrin Pang, Mark Sheehan, Bonnie Marsh, and Lei'ohu Ryder are individuals who are and were, at all times relevant herein, residents of the County of Maui, State of Hawaii, and registered voters who voted in favor of the GMO Bill on the November 4, 2014 ballot.

7. Plaintiff SHAKA (Sustainable Hawaiian Agriculture for the Keiki and the 'Aina) Movement is and was, at all relevant times herein, a Hawaii non-profit corporation providing advocacy, communications, and educational outreach programs.

8. Defendant County of Maui ("County") is a municipal corporation duly organized under the laws of the State of the Hawaii and a political subdivision of the State of Hawaii, with the capacity and power to sue and be sued pursuant to Hawaii Revised Statutes ("HRS") Chapter 46 and other applicable laws.

9. Upon information and belief, Defendant Monsanto Company ("Monsanto") is and was, at all relevant times herein, a corporation organized and existing under the laws of the State of Delaware, registered to conduct business in the State of Hawaii.

10. Upon information and belief, Defendant Dow AgroSciences LLC (“Dow”) is and was, at all relevant times herein, a limited liability company organized and existing under the laws of the State of Delaware and a wholly owned subsidiary of The Dow Chemical Company, registered to conduct business in the State of Hawaii.

11. John Does 1-10; Jane Does 1-10; Doe Partnerships 1-10; Doe Corporations 1-10; and Doe Governmental Entities 1-10 are sued herein under fictitious names for the reason that, after diligent and good faith efforts to ascertain their names and identities through review of documents, their true names and identities are presently unknown to Plaintiffs except that they are persons and/or entities who were, in some manner presently unknown to Plaintiffs, involved with the activities alleged herein, and/or are necessary or appropriate parties that should be joined for the relief requested in this Complaint, and Plaintiffs pray for leave to certify their true names, identities, capacities, activities, or responsibilities when the same are ascertained.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to HRS §§ 603-21.5 (general civil jurisdiction) and HRS § 632-1 (declaratory judgment) to decide an actual controversy existing between Plaintiffs and Defendants.

13. All matters and events giving rise to the claims set forth in this Complaint arose in the County of Maui, State of Hawaii.

14. Venue is proper in the Circuit Court of the Second Circuit pursuant to HRS § 603-36(5), as the claims for relief in this case arose within the jurisdiction of the Circuit Court of the Second Circuit, State of Hawaii.

FACTUAL BACKGROUND

15. Pursuant to Article 11 of the Charter of the County of Maui (2013) (“Charter”), the voters of the county have the power to propose ordinances to the Maui County Council (“Council”).

16. Pursuant to § 11-1(1) of the Charter, if the Council does not adopt a proposed ordinance, the voters may adopt the same proposed ordinance at the polls, which is known as the initiative power.

17. Any five qualified voters may commence initiative proceedings by filing an affidavit with the County Clerk and setting out the full text of the proposed ordinance.

18. On April 7, 2014, pursuant to § 11-4 of the Charter, the five named individual Plaintiffs in this matter submitted the proposed GMO Bill to the County Clerk.

19. Because the Policy and Intergovernmental Affairs Committee of the Council determined that it would take no action on the GMO Bill, the GMO Bill was then submitted to the voters at the general election held on Tuesday, November 4, 2014.

20. Under Article XI, Section 1 of the Hawaii State Constitution and the Public Trust Doctrine, the State and the County are obligated to conserve and protect, for the benefit of present and future generations, Hawaii’s natural resources:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals, energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.

21. The GMO Bill addresses concerns regarding the immediate safety and long term effects of potentially hazardous health effects, contamination, loss of diversity, environmental, and other potentially harmful impacts from GMO operations and practices

threatening Maui County's cultural heritage, agricultural economy, the health of its residents, the environment, and the Public Trust Resources.

22. The GMO Bill was advanced due to the rapid and unregulated growth of commercial agricultural entities engaged in the cultivation and development of GMO's, thereby endangering the stability and growth of Maui County's agricultural economy, the health of its residents, and the environment.

23. Plaintiffs, as the original advocates and drafters of the GMO Bill, vigorously promoted the GMO Bill against pro-GMO agribusiness giants such as Monsanto and Dow to gather support for the GMO Bill; these pro-GMO groups outspent supporters of the GMO Bill by a ratio of 87 to one in campaigning against the GMO Bill, as reported by the Hawaii Campaign Spending Commission.

24. On November 4, 2014, the GMO Bill was approved by the voters of Maui County.

25. After the election, Monsanto made public statements that it intends to challenge the legality and enforceability of the GMO Bill in court, stating "[w]e are committed to ongoing dialogue as we take steps to ask the court to declare that this initiative is legally flawed and cannot be enforced."

26. Dow has made similar public statements that it intends to challenge the legality and enforceability of the GMO Bill, stating ". . . we believe that the ban would be illegal, and we intend to protect our legal rights."

27. Based upon the results of the November 4, 2014 election approving the GMO Bill, the County is required to carry out the will of the people.

28. Implied in the voters' approval of the GMO Bill are the County's duties to obtain the necessary funding to implement the GMO Bill, set up any necessary administrative rules and procedures to establish a systematic approach to execute the GMO Bill, create a review process with the Council that is necessary to enforce the Environmental and Public Health Impact Study, and coordinate with the Department of Environmental Management and/or other appropriate County departments on the enforcement components of the GMO Bill.

29. Maui County Mayor Alan Arakawa and the County have made public statements stating that the County is finalizing how much manpower, equipment, and other resources will be needed to implement the GMO Bill. The details of the measures that the County intends to implement have not yet been reported, and the County has not contacted Plaintiffs to include them in the process despite Plaintiffs' heavy involvement in the enactment of the GMO Bill.

30. Plaintiffs have a significant interest in assuring that the GMO Bill is implemented properly through a transparent process in which the public is kept regularly informed of the County's steps implementing the GMO Bill. Plaintiffs' interest stems from the fact that Plaintiffs were the drafters of the GMO Bill, coordinated the necessary signatures from Maui County voters to have the initiative placed on the ballot, supported the GMO Bill through the election process despite substantial opposition from large mainland agricultural companies, voted in favor of the GMO Bill, and seek to protect the environment, health, economy, and the Public Trust Resources of Maui County.

COUNT I

(Declaratory Relief To Establish The Enforceability Of The GMO Bill)

31. Plaintiffs repeat, reallege, and incorporate by reference the allegations contained in paragraphs 1 to 30 of this Complaint.

32. Plaintiffs' position is that the GMO Bill is proper, legal, and enforceable. Defendants' position is that the GMO Bill is legally flawed and unenforceable. Therefore, an actual controversy exists between Plaintiffs and Defendants.

33. Antagonistic claims are present between Plaintiffs and Defendants, which indicate imminent and inevitable litigation with respect to the enforceability of the GMO Bill under Hawaii law.

34. Plaintiffs have a significant interest concerning the enforceability of the GMO Bill.

35. Monsanto and Dow have made public statements stating that they will challenge the legality and enforceability of the GMO Bill in court.

36. The Public Trust Doctrine in the Hawaii Constitution grants the counties the right to conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals, and energy sources. Moreover, the State of Hawaii has expressly granted the counties the power to enact ordinances necessary to protect health, life, and property, and to address public nuisances. See HRS § 46-1.5(12) and (13).

37. The GMO Bill was adopted in light of the interests contained in the Public Trust Doctrine as well as to address an issue seriously affecting Maui County that was not being regulated by the State of Hawaii. In particular, the GMO Bill seeks to safeguard Maui County from the testing, cultivation, and development of GMO's by requiring that a study be completed to address the key environmental and public health questions associated with the continued operations before GMO operations and practices may resume.

38. The GMO Bill is not preempted by any State laws, as there are no State laws that regulate the subject matter of the GMO Bill, there are no State reporting or testing

requirements on the same subject matter, and the GMO Bill does not conflict with any State laws.

39. There is no adequate remedy at law, and irreparable injury will result unless the relief requested is granted.

40. Accordingly, Plaintiffs are entitled to a declaratory judgment that the GMO Bill is valid and enforceable, and that it is not preempted by any State laws.

COUNT II

(Declaratory Relief Regarding The Proper Implementation Of The GMO Bill)

41. Plaintiffs repeat, reallege, and incorporate by reference the allegations contained in paragraphs 1 to 40 of this Complaint.

42. An actual controversy exists between Plaintiffs and the County as to the timely and proper implementation of the GMO Bill as well as Plaintiffs' involvement in the implementation of the GMO Bill.

43. Antagonistic claims are present between Plaintiffs and the County, which indicate imminent and inevitable litigation with respect to the implementation of proper rules, procedures, and funding necessary for the GMO Bill to take effect.

44. Plaintiffs have a significant interest concerning the County's obligation to enforce the GMO Bill and the County's interest in protecting the health and safety of its citizens and the protection of natural resources under the Public Trust Doctrine.

45. Maui County voters have demonstrated their strong interest in the GMO Bill, as evidenced not only by the number of signatures obtained to get the GMO Bill on the November 2014 ballot, but also by the approval of the GMO Bill by voters despite aggressive campaigning against the GMO Bill by pro-GMO agribusiness groups.

46. As such, Maui County voters are entitled to have a fair, timely, and proper implementation of the GMO Bill by the County, putting into effect a temporary moratorium and setting up administrative rules and procedures for the County to effectively and efficiently enforce the GMO Bill.

47. As citizens who voted in favor of the GMO Bill and as the original proponents of the GMO Bill under the initiative power, Plaintiffs should be permitted to assist and participate in the Court's implementation of the GMO Bill, and Plaintiffs should be consulted concerning the GMO Bill's implementation.

48. In particular, in order for the County to properly implement the law, the County needs to allocate appropriate funding and adopt proper administrative rules and procedures necessary to enforce the language and fulfill the purpose of the GMO Bill.

49. There is no adequate remedy at law, and irreparable injury will result unless the relief requested is granted.

50. Plaintiffs are entitled to a declaratory judgment that:

A. The County is obligated to proceed forward to properly and timely implement the GMO Bill; such measures should include, but not be limited to, the following: (1) allocate adequate funding necessary to support all aspects of the GMO Bill; and (2) set up administrative rules and procedures necessary to execute the language of the GMO Bill.

B. The County shall provide regular updates to the community concerning the progress and concrete steps the County is taking to implement the GMO Bill;

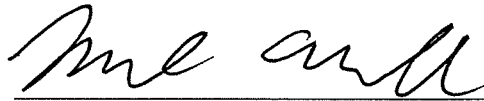
C. Plaintiffs shall be permitted to assist and participate in the County's implementation of the GMO Bill, and the County shall consult the Plaintiffs with respect to the GMO Bill's implementation; and

D. Such other declaratory relief as this Court deems just and proper.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants as follows:

- A. For declaratory and other relief as provided herein; and
- B. For such other and further relief as this Court deems just and proper.

DATED: Honolulu, Hawaii, November 12, 2014.



KARIN L. HOLMA
MICHAEL C. CARROLL

Attorneys for Plaintiffs
ALIKA ATAY; LORRIN PANG;
MARK SHEEHAN; BONNIE MARSH;
LEI'OHU RYDER; and SHAKA MOVEMENT

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

ALIKA ATAY; LORRIN PANG; MARK)	Civil No. <u>14-1-0638 (2)</u>
SHEEHAN; BONNIE MARSH; LEI'OHU)	
RYDER; and SHAKA MOVEMENT,)	SUMMONS
)	
Plaintiffs,)	
)	
vs.)	
)	
COUNTY OF MAUI; MONSANTO)	
COMPANY; DOW AGROSCIENCES)	
LLC; JOHN DOES 1-10; JANE DOES 1-)	
10; DOE PARTNERSHIPS 1-10; DOE)	
CORPORATIONS 1-10; and DOE)	
GOVERNMENTAL ENTITIES 1-10,)	
)	
Defendants.)	
_____)	

SUMMONS

STATE OF HAWAII

TO: DEFENDANTS COUNTY OF MAUI; MONSANTO COMPANY; DOW AGROSCIENCES LLC; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIP 1-10; DOE CORPORATIONS 1-10; AND DOE GOVERNMENTAL ENTITIES 1-10:

You are hereby summoned and required to file with the Court and serve upon KARIN L. HOLMA, ESQ. and/or MICHAEL C. CARROLL, ESQ., Plaintiffs' attorneys, whose address is Topa Financial Center, 700 Bishop Street, Suite 900, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled Court permits, in

writing on this summons, personal delivery during those hours.

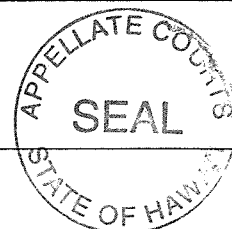
A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: _____, Hawaii, NOV 12 2014

Joyce K. Hidani

CLERK OF THE COURT

Ex Officio Clerk
Circuit Court 2nd Circuit



(This summons is issued pursuant to Rule 4 of the Hawai'i Rules of Civil Procedure).

*For provisional and final remedies, including attachment, garnishment, etc.,
see Chapter VIII of these rules.*