

Appeal No. 15-15641

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

vs.

ROBERT ITO FARM, INC.; HAWAII FARM BUREAU FEDERATION, MAUI
COUNTY, "MAUI FARM BUREAU"; MOLOKAI CHAMBER OF
COMMERCE; AGRIGENETICS, INC., DBA MYCOGEN SEEDS; MONSANTO
COMPANY; CONCERNED CITIZENS OF MOLOKAI AND MAUI; FRIENDLY
ISLE AUTO PARTS & SUPPLIES, INC.; NEW HORIZON ENTERPRISES, INC.,
DBA MAKOA TRUCKING AND SERVICES; and HIKIOLA COOPERATIVE,
Plaintiffs-Appellees,

and

COUNTY OF MAUI,
Defendant-Appellee.

Appeal from the United States District Court for the District of Hawaii
Case No. 1:14-CV-00511-SOM-BMK

REPLY BRIEF OF APPELLANTS

BAYS LUNG ROSE & HOLMA
KARIN L. HOLMA
MICHAEL C. CARROLL
SHARON A. LIM
Topa Financial Center
700 Bishop Street, Suite 900
Honolulu, Hawaii 96813
Telephone: (808) 523-9000

Attorneys for Intervenor Defendants-Appellants
Alika Atay, Lorrin Pang, Mark Sheehan, Bonnie Marsh,
Lei'ohu Ryder, and SHAKA Movement

TABLE OF CONTENTS

Table of Authorities ii

I. INTRODUCTION1

II. DISCUSSION.....3

 A. The Length Of The Injunction Is Uncertain.....3

 B. The Ordinance Is Not A Permanent Ban.....4

 C. SHAKA Never Sought A “Full-Blown Evidentiary Hearing”5

 D. The Harms That SHAKA Has Raised Are Not Mere “Speculation”6

 E. Monsanto And Dow Offer No Evidence To Substantiate Their
 Claims Regarding “Devastating Harm” To The Economy9

 F. There Is No Comprehensive Federal And State Regulatory Regime
 Prohibiting Counties’ Police Powers.....11

 G. SHAKA Has Standing To Assert This Appeal13

III. CONCLUSION.....17

TABLE OF AUTHORITIES

Federal Cases

Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531 (1987) 10

Ctr. for Food Safety v. Vilsack, 718 F.3d 829 (9th Cir. 2013)..... 13

Hollingsworth v. Perry, 133 S.Ct. 2652 (2013)..... 13, 14, 16

Idaho Sporting Congress, Inc. v. Alexander, 222 F.3d 562 (9th Cir. 2000)..... 10

League of Wilderness Defenders/Blue Mts. Biodiversity Project v. Connaughton, 752 F.3d 755 (9th Cir. 2014)..... 10

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) 14

Massachusetts v. EPA, 549 U.S. 497 (2007) 14

N. Alaska Env'tl. Ctr. v. Hodel, 803 F.2d 466 (9th Cir. 1986)..... 10

Painsolvers, Inc. v. State Farm Mut. Auto. Ins. Co., 685 F. Supp. 2d 1123 (D. Haw. 2010)..... 9, 10

Regents of Univ. of California v. Am. Broad. Cos., Inc., 747 F.2d 511 (9th Cir. 1984)..... 9

Other Authorities

Haw. Const. Art. XI, § 9 15, 16

Fed. R. Civ. P. 56(d) 3

57 Fed. Reg. 22,984 (May 29, 1992) 12

7 U.S.C. §§ 136-136y..... 12

7 U.S.C. § 7701 13

7 U.S.C. § 7754..... 13

REPLY BRIEF OF APPELLANTS

Intervenor Defendants-Appellants Alika Atay, Lorrin Pang, Mark Sheehan, Bonnie Marsh, Lei'ohu Ryder, and Sustainable Hawai'ian Agriculture for the Keiki and the 'Aina (SHAKA) Movement (collectively, "SHAKA") hereby submit this Reply Brief, pursuant to Rules 28 and 32 of the Federal Rules of Appellate Procedure, and Rule 28-1 of the Circuit Rules for the Ninth Circuit.

I. INTRODUCTION

Plaintiffs-Appellees¹ (hereinafter, "Monsanto and Dow²") and Defendant-Appellee County of Maui's ("County") Answering Briefs are riddled with misstatements and mischaracterizations of the record. These include: (1) trivializing the health and environmental dangers that Maui voters demanded protection from, which are being directly harmed by the County's failure to implement the Ordinance; and (2) falsely elevating Monsanto and Dow's personal financial interests as a countywide crisis without setting forth actual evidence. The injunction entered into by agreement between Monsanto, Dow, and the County was improper from the start, without consideration of any of the harms to the

¹ Plaintiffs-Appellees are Robert Ito Farm, Inc.; Hawaii Farm Bureau Federation, Maui County; Molokai Chamber of Commerce; Monsanto Company; Agrigenetics, Inc.; Concerned Citizens of Molokai and Maui; Friendly Isle Auto Parts & Supplies, Inc.; New Horizon Enterprises, Inc. dba Makoa Trucking and Services; and Hikiola Cooperative.

² Agrigenetics, Inc., a named Plaintiff-Appellee in the action, is a subsidiary of the Dow Chemical Company.

environment and community, and it was plain error for the District Court to extend the injunction. The harms alleged by each side are adamantly disputed, and both sides of this dispute agree that the decision to continue this injunction has huge impacts on the County.

For the reasons set forth in the Brief of Appellants and herein, this Court should reverse the decision of the District Court, and the injunction that was entered into between Monsanto, Dow, and the County should be set aside.

First, SHAKA requested an opportunity to present evidence and for the Court to hear the evidence of harms that would result from allowing the injunction to continue. At a bare minimum, SHAKA should have been allowed a short evidentiary hearing to present its case and show why extending the injunction was not appropriate. SHAKA was unfairly deprived of a chance to demonstrate its opposition through a short evidentiary hearing.

Second, the Answering Briefs ignore the votes of Maui County residents, the expert testimony submitted demonstrating the irreparable harms caused by GMO practices, and the countless studies validating Maui's concerns, including the recent report from the World Health Organization directly linking Monsanto's leading herbicide for genetically altered plants to cancer in humans. Monsanto, Dow, and the County offer no reports or governmental findings to contradict any of these harms despite bold claims that they exist. The District

Court should not have allowed this injunction to continue without at least hearing evidence.

II. DISCUSSION

A. The Length Of The Injunction Is Uncertain

Monsanto and Dow incorrectly claim throughout their Answering Brief that this is a short continuance from May to June 2015. This conclusion presupposes that Monsanto and Dow will prevail on their Motion for Summary Judgment As to Counts 1, 2, and 4 (“Motion for Partial Summary Judgment”), a position that SHAKA disputes and a position that the District Court did not take when it decided to continue the injunction. The Order Extending Injunction Entered Into By Stipulation (“Order Extending Injunction”) extends the injunction, which was previously entered into solely by agreement between Monsanto, Dow, and the County, from a set date of March 31, 2015 “until the court has ruled on the merits of this dispute.” (ER 018). In SHAKA’s opposition to Monsanto and Dow’s Motion for Partial Summary Judgment, SHAKA requested relief under Rule 56(d) of the Federal Rules of Civil Procedure that, at a minimum, requires a denial of the drastic relief of summary judgment until discovery is conducted. (3ER 031-033). If the District Court were to summarily dispose of this case in June 2015 without allowing any discovery, the decision would be improper and would be appealed to the Ninth Circuit.

B. The Ordinance Is Not A Permanent Ban

Monsanto and Dow repeatedly claim that the Ordinance is a permanent ban on all GMO operations, contrary to the plain language of the Ordinance. They go so far as to only partially cite the Ordinance. [Monsanto and Dow's Answering Brief, p. 10]. Monsanto and Dow omit the critical language that the moratorium lasts "until such time that the terms of the 'Moratorium Amendment or Repeal' (Section 6, below) have been met." (4ER 269). As explained in SHAKA's Brief of Appellants, the Ordinance has a two-phase testing process that can be completed in two years or less, with the cooperation of Monsanto and Dow. (4ER 270-271). If the independent studies required by the Ordinance demonstrate that the GMO industry's practices are not harmful to the public health or environment, these practices can be reinstated. If the results are that the activities are harmful, they should not be allowed to continue. Monsanto and Dow could have been halfway completed with the testing protocol had they simply addressed the concerns of Maui voters on the safety and health risks of these operations. All of Monsanto and Dow's alleged harms are based on an incorrect presumption that the Ordinance calls for a *permanent ban*, a statement that is simply not true. (4ER 269).

In their Answering Brief, Monsanto and Dow do not dispute how the Ordinance operates. Instead, they offer a sarcastic description, which is insulting

to the Maui community who voted in favor of this Ordinance and who have serious concerns for their own health. [Monsanto and Dow’s Answering Brief, p. 38] (explaining that after the County completes the safety study with a “brand new governmental entity”, Monsanto and Dow “will be free to carry *on their merry way*.” (emphasis added)). Maui voters did not vote for this Ordinance out of ignorance, as Monsanto and Dow would like this Court to believe. While Monsanto and Dow may find it advantageous to mock the intelligence of Maui voters, this Court should not.

C. SHAKA Never Sought A “Full-Blown Evidentiary Hearing”

SHAKA has never insisted on a “full-blown” evidentiary hearing, as Monsanto and Dow claim. SHAKA made clear in its Opening Brief that it was requesting a “limited hearing” to consider “key evidence.” [Brief of Appellants, p. 15]. While SHAKA was never given the opportunity to explain its request for a hearing with the District Court (because the Court did not even conduct a non-evidentiary hearing after the briefs), all of SHAKA’s witnesses were available, the testimony could have been focused on key harms, and the evidentiary hearing could have been completed in an expedited time period based on the District Court’s schedule. None of these options were considered.

D. The Harms That SHAKA Has Raised Are Not Mere “Speculation”

Monsanto and Dow’s claim that SHAKA’s concerns are merely “speculative” and “unsupported by actual evidence, contrary to the broad scientific consensus, and directly contradicted by the findings of expert government agencies” ignores SHAKA’s entire brief and the evidence in support.

First, the only expert testimony before the Court on the harms caused by GMO operations is the testimony of Hector Valenzuela. (2ER 149-160). His testimony, which is not contradicted by anything in the record, is that GMO operations involve serious risks to the environment and public health by creating ideal conditions for chemical pollution into the environment and public health. (2ER 150-157). These harms are linked to severe health problems, including cancer and birth defects, yet no tests or studies are or have been conducted in Maui County to protect against these harms. (2ER 156-159). Despite having near unlimited resources, Monsanto and Dow have offered no expert testimony to rebut any of these opinions. Instead, all Monsanto and Dow can do is give partial quotations to Dr. Valenzuela’s opinions [Monsanto and Dow’s Answering Brief, pp. 22-23], leaving out his critical conclusion that “there is an urgent need to conduct studies on the impacts of GMO operations in Maui County as there are potentially serious health and environmental impacts that to date have not been evaluated.” (2ER 159). This ultimate opinion central to this appeal remains

unchallenged. Critically, Monsanto and Dow fail to offer any reports conducted in Maui showing that what they are doing to Maui is safe. The potential harms are far too grave to simply take Monsanto's word that these studies exist.

Second, SHAKA and the voters of Maui's concerns on harm are consistent with the broad scientific consensus. Monsanto and Dow's position is not. Dr. Valenzuela lists multiple reports from the scientific community demonstrating the harms, including a comprehensive study conducted on environmental and health impacts in Latin America. (2ER 156-157). This study directly links GMO operations to severe health problems to farm workers, their families, and nearby communities. (2ER 156).

Since the District Court decided to continue the injunction, the consensus in the scientific community on the health hazards has only strengthened. In March 2015, the World Health Organization published a report authored by 17 experts from 11 countries that glyphosate (Roundup), Monsanto's number 1 chemical for genetically modified plants, is a probable carcinogen.³ Another treatise published this year by over 300 independent researchers concluded that "[c]laims of consensus on the safety of GMOs are not supported by an objective

³ See K. Guyton, et al., Carcinogenicity of tetrachlorvinphos, parathion, malathion, diazinon, and glyphosate, *Lancelot Oncol* 2015 (March 20, 2014), [http://www.thelancet.com/journals/lanonc/article/PIIS1470-2045\(15\)70134-8/abstract](http://www.thelancet.com/journals/lanonc/article/PIIS1470-2045(15)70134-8/abstract).

analysis of the referenced literature.”⁴ The American Cancer Society now lists glyphosate as a probable carcinogen.⁵ The American Academy of Pediatricians is calling for more research on pesticide exposure. (2ER 158). The United States Fish and Wildlife Service is phasing-out the planting of any GMO crops on National Wildlife Refuges because of environmental and health problems. (2ER 155). Countries across the world are now either banning Roundup or banning GMOs altogether given the dangers that have now been confirmed by the scientific community.⁶

The articles that Monsanto and Dow cite to support some broad scientific consensus are either (1) irrelevant (deal with the consumption of GE foods not the dangers in growing the crops),⁷ or (2) support SHAKA’s position on environmental and health hazards associated with GMO operations.⁸ Given the

⁴ See A. Hilbeck, et al., No scientific consensus on GMO safety, Environmental Sciences Europe (2015), <http://www.enveurope.com/content/pdf/s12302-014-0034-1.pdf> (last visited June 11, 2015).

⁵ See American Cancer Society, Known and Probable Human Carcinogens, (last revised March 26, 2015), <http://www.cancer.org/cancer/cancercauses/othercarcinogens/generalinformationaboutcarcinogens/known-and-probable-human-carcinogens>.

⁶ See The End Of Monsanto, the Nation <http://nation.lk/online/2015/06/06/the-end-of-monsanto/> (listing the following countries that are banning GMOs or GMO related chemicals: Sri Lanka, the Netherlands, Brazil, Germany, Argentina, France, Peru, and Russia).

⁷ http://www.aaas.org/sites/default/files/AAAS_GM_statement.pdf

⁸ See http://www.who.int/foodsafety/areas_work/food-technology/faq-genetically-modified-food/en/ (recognizing concerns with GMO operations include transgenic contamination and increased use of chemicals in agriculture)

overwhelming data now recognizing the dangers of these practices, Monsanto and Dow can no longer credibly dispute the potential harms to Maui County by their operations.

Finally, there are no governmental findings showing that these operations are safe in the record. Monsanto and Dow fail to cite a single study conducted by the government concluding that these operations are safe, let alone any studies relating to operations in Maui County. In fact, one of the issues in contention in the underlying case is that SHAKA has requested that Monsanto and Dow disclose some of these governmental reports that they claim exist. In response, Monsanto and Dow have adamantly refused to disclose any documents that would quell any complaints about environmental and public health concerns. (FSER 084-090).

E. Monsanto And Dow Offer No Evidence To Substantiate Their Claims Regarding “Devastating Harm” To The Economy

While Monsanto and Dow make bold claims of “devastating harm,” there is no evidence that a short delay in their operations would have any of these impacts to override Ninth Circuit precedent that recognizes that economic harms cannot take precedent over environmental harms. The Ninth Circuit has made clear that money damages or pecuniary loss is not an irreparable harm. See, e.g., Regents of Univ. of California v. Am. Broad. Cos., Inc., 747 F.2d 511, 519 (9th Cir. 1984); Painsolvers, Inc. v. State Farm Mut. Auto. Ins. Co., 685 F. Supp. 2d

1123, 1138 (D. Haw. 2010); N. Alaska Env'tl. Ctr. v. Hodel, 803 F.2d 466 (9th Cir. 1986) (“More than pecuniary harm must be demonstrated.”). Additionally, the Supreme Court and the Ninth Circuit have repeatedly recognized that potential environmental harms significantly outweigh potential economic losses caused by a temporary delay. League of Wilderness Defenders/Blue Mts. Biodiversity Project v. Connaughton, 752 F.3d 755, 767 (9th Cir. 2014) (finding that plaintiffs were likely to face irreparable harm if a logging project were permitted to continue its operations); Idaho Sporting Congress, Inc. v. Alexander, 222 F.3d 562, 569 (9th Cir. 2000); Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 545 (1987).

Monsanto and Dow’s attempt to distinguish these cases by claiming that the risk of environmental harms were greater in those cases than in the present case is simply not correct. For example, League of Wilderness Defenders involved logging mature trees in an area that was previously extensively logged and where mitigation measures were in place. See 752 F.3d at 764-65. Idaho Sporting also involved logging mature trees where 75% of the logging activities had already been completed. See 222 F.3d at 564. Without minimizing the importance of preserving mature trees, the harms at stake in this case significantly dwarf the threats to deforestation recognized in League of Wilderness Defenders and Idaho Sporting. This case deals with the *most* serious environmental harms that can exist: harms that potentially cause irreversible chemical pollution linked to severe

and serious public health problems. These harms cannot be compensated with money damages, and to disregard these harms without providing a short evidentiary hearing is an abuse of discretion.

F. There Is No Comprehensive Federal And State Regulatory Regime Prohibiting Counties' Police Powers

Monsanto and Dow take inconsistent positions in claiming that there is a broad federal regime that prohibits local government from regulating GMOs, and at the same time, there is a broad state regulatory scheme that prohibits counties from regulating GMOs because this field is controlled by the State. Simply put, there cannot be a comprehensive federal scheme that prohibits states and counties from regulating GMOS, while at the same time, there being a broad state regulatory scheme that prohibits the counties from exercising their police powers over GMOs. To date, Monsanto and Dow have been successful in claiming that it is someone else's responsibility to regulate GMOs. As a result, they have been able to create a void in government regulations.

This lack of oversight was made clear during the testimony on this Ordinance, in which the representative from the State of Hawaii, Department of Agriculture testified:

We looked into stream sediments specifically for glyphosate, for Roundup, and we found Roundup in all of the samples that we took. All in all, we found 20 herbicides, 11 insecticides, 6 fungicides, 7 locations with glyphosate but no EPA benchmarks, there are no EPA benchmarks for sediment, for glyphosate. *So we found stuff but,*

frankly, we don't know what it means and no one in, we don't know how to compare that to any kind of health standards. So there's additional work that needs to be done there.

(2ER 268) (emphasis added).

The State of Hawaii admittedly does not regulate in this area, and provides no protection against GMO operations. (3ER 026-027).

The three federal agencies also provide no protection or oversight to GMO operations. The Food and Drug Administration (“FDA”) only regulates the safety of certain commercial foods and food additives. 57 Fed. Reg. 22,984 (May 29, 1992). The FDA does not regulate the growth and development of GMOs, and expressly leaves the safety of GMO operations entirely to the food producers. Statement of Policy: Foods Derived from New Plant Varieties, 57 Fed. Reg. 22,984 (May 29, 1992).

The Environmental Protection Agency (“EPA”) only regulates the use, sale, and labeling of herbicides. 7 U.S.C. §§ 136-136y. The EPA provides no federal oversight or review over GMO operations. According to the EPA’s testimony on this Ordinance, the EPA has never conducted an independent study or test on the activities in Maui County, has not conducted an inspection in at least the past 5 years, and relies entirely on the chemical companies’ reports and articles published in scientific journals in looking at environmental and health issues. (2ER 262-264).

The United States Department of Agriculture (“USDA”), through the Animal and Plant Health Inspection Service (“APHIS”), regulates the interstate movement of plant pests and noxious weeds. 7 U.S.C. §§ 7701, 7754. APHIS does not regulate any of the harms associated with GMO operations leaving these harms to local government to protect against: (1) the crops effects on endangered plants and animals; (2) transgenic contamination – whether the plant could cross-pollinate with and alter the genetic structure of other plants; (3) increased herbicide use; (4) the creation of herbicide resistant weeds, i.e., “super weeds”; and (5) economic harm to organic farms as a result of transgenic contamination. See Ctr. for Food Safety v. Vilsack, 718 F.3d 829, 839-841 (9th Cir. 2013). If the federal and state governments are not protecting local communities from these harms, local municipalities can, and the injunction delaying enforcement while these harms continue unabated is improper.

G. SHAKA Has Standing To Assert This Appeal

Finally, SHAKA has standing to bring this appeal. The County, in its Answering Brief, contends that SHAKA lacks standing to appeal under Hollingsworth v. Perry, 133 S.Ct. 2652 (2013) [County’s Answering Brief, pp. 16-17]. The County’s argument is flawed, as it overlooks key distinctions that differentiate this case from Hollingsworth.

A party has standing to appeal under Article III if the litigant has “suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision.” Hollingsworth, 133 S.Ct. at 2661; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Moreover, “procedural standing”—a subset of the standing doctrine—provides that a “person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy.” Lujan, 504 U.S. at 572 n.7; see also Massachusetts v. EPA, 549 U.S. 497 (2007).

In this case, SHAKA has suffered concrete and particularized injuries that are fairly traceable to the challenged conduct and is likely to be redressed by a favorable judicial decision. These injuries include, but are not limited to, (1) the threat of adverse health effects in being exposed to these activities; (2) economic damages as a result of harms to organic and natural farming practices; (3) interference with Native Hawaiian practices that involve natural plants and animals that are being harmed by GMO operations; (4) environmental damage, such as deteriorating air quality, odor, and chemical exposure; and (5) injuries to recreational and aesthetic interests, as the GMO operations are interfering with and damaging recreational activities affecting SHAKA.

In particular, SHAKA and the individually-named Appellants (the “Concerned Citizens”) live, work, and/or spend their leisure time near GMO operations. (FSER 014, 019-021, 026, 038-039). SHAKA and the Concerned Citizens operate businesses and participate in customary practices that are being directly impacted by ongoing GMO operations. For instance, several of the Concerned Citizens who take part in natural and organic farming are directly threatened by pesticide drift, transgenic contamination, and exposure of their organic crops to chemicals used in GMO operations. (FSER 019-022, 029-030). Additionally, several of the Concerned Citizens who are actively involved in Native Hawaiian practices have also been directly affected, as their ability to practice native Hawaiian gathering rights and traditional cultural practices are being harmed due to potential environmental hazards. (FSER 038-040).

SHAKA has also suffered a procedural injury in that the County has created a risk that serious environmental impacts will be overlooked. SHAKA’s organizers and supporters live, work, and/or spend their leisure time in close proximity to GMO operations, creating a geographical nexus between these activities and SHAKA. The Hawaii Constitution creates a procedural vehicle in which SHAKA is entitled to seek enforcement of laws that promote a clean and healthful environment. Haw. Const. Art. XI, § 9. Accordingly, SHAKA has

demonstrated that it has been affected in a “personal and individual way” from the County’s failure to certify the election results and implement the Ordinance.

Further, in Hollingsworth, the Ninth Circuit first certified the question of whether the petitioners had Article III standing to the California Supreme Court. At a minimum, if there is any question as to SHAKA’s standing, this Court should certify the issue of standing to the Hawaii Supreme Court, as SHAKA vigorously contends that pursuant to the Hawaii Constitution, it unambiguously has standing to enforce its “right to a clean and healthful environment . . . including . . . protection and enhancement of natural resources.” Haw. Const. Art. XI, § 9 (emphasis added). SHAKA has specifically requested that the District Court certify the question of preemption to the Hawaii Supreme Court, and has also requested by way of motion that all issues pertaining to the validity of the Ordinance be resolved in the related State Court action.

Finally, the County’s reliance on Hollingsworth only highlights the impropriety of the original injunction entered into by agreement and the order extending the injunction. Hollingsworth involved a state ballot initiative, implemented and enforced by state officials that was later invalidated as unconstitutional under state law by the Supreme Court of California. In this case, the Maui County officials actively campaigned against the Ordinance prior to its adoption by voters, joined Monsanto and Dow in having the case decided in

federal court, and immediately entered into a “stipulated agreement” with Monsanto and Dow to enjoin their own enforcement of the law. There were not two opposing sides arguing before the Court at the time the original injunction was granted. Both the County and Monsanto/Dow opposed the implementation of the Ordinance from the start. The original injunction was improper when it was agreed upon, and the order continuing the injunction was clear error and an abuse of discretion.

III. CONCLUSION

The District Court’s decision to continue the injunction where there are serious risks to the environment and public health was wrongly decided. SHAKA respectfully requests that this Court reverse the District Court’s Order Extending Injunction and order that the injunction be set aside.

DATED: Honolulu, Hawaii, June 11, 2015.

/s/ Michael C. Carroll

KARIN L. HOLMA
MICHAEL C. CARROLL
SHARON A. LIM

Attorneys for Intervenor Defendants-
Appellants

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

CERTIFICATE OF COMPLIANCE

I hereby certify that pursuant to Rule 32-1 of the Circuit Rules for the Ninth Circuit and Rule 32(a)(7) of the Federal Rules of Appellate Procedure, this Reply Brief of Appellants is proportionately spaced, has a typeface of 14-point, and contains 3,726 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure.

DATED: Honolulu, Hawaii, June 11, 2015.

/s/ Michael C. Carroll

KARIN L. HOLMA

MICHAEL C. CARROLL

SHARON A. LIM

Attorneys for Intervenor Defendants-
Appellants

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been electronically filed with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 11, 2015. A copy of the foregoing document was duly served on the following parties by CM/ECF on June 11, 2015, addressed as follows:

MARGERY S. BRONSTER, ESQ.
REX Y. FUJICHAKU, ESQ.
Bronster Fujichaku Robbins
1003 Bishop Street, Suite 2300
Honolulu, HI 96813

and

CHRISTOPHER LANDAU, P.C.
Kirkland & Ellis LLP
655 Fifteenth Street, NW
Washington, DC 20005

Attorneys for Plaintiffs-Appellees
ROBERT ITO FARM, INC.; HAWAII FARM BUREAU
FEDERATION, MAUI COUNTY; MOLOKAI CHAMBER OF
COMMERCE; and AGRIGENETICS, INC.

PAUL ALSTON, ESQ.
NICKOLAS A. KACPROWSKI, ESQ.
Alston Hunt Floyd & Ing
1001 Bishop Street, Suite 1800
Honolulu, HI 96813

and

RICHARD P. BRESS, ESQ. (*pro hac vice*)
PHILIP J. PERRY, ESQ. (*pro hac vice*)
DREW C. ENSIGN, ESQ. (*pro hac vice*)
ANDREW D. PRINS, ESQ. (*pro hac vice*)
JONATHAN Y. ELLIS, ESQ. (*pro hac vice*)
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004

Attorneys for Plaintiffs-Appellees
MONSANTO COMPANY; CONCERNED CITIZENS OF
MOLOKAI AND MAUI; FRIENDLY ISLE AUTO PARTS &
SUPPLIES, INC.; NEW HORIZON ENTERPRISES, INC. dba
MAKOA TRUCKING AND SERVICES; and HIKIOLA
COOPERATIVE

PATRICK K. WONG, ESQ.
MOANA M. LUTEY, ESQ.
RICHARD B. ROST, ESQ.
Department of Corporation Counsel, County of Maui
200 S. High Street
Wailuku, HI 96793

Attorneys for Defendant-Appellee
COUNTY OF MAUI

DATED: Honolulu, Hawaii, June 11, 2015.

/s/ Michael C. Carroll

KARIN L. HOLMA
MICHAEL C. CARROLL
SHARON A. LIM

Attorneys for Intervenor Defendants-
Appellants
ALIKA ATAY, LORRIN PANG, MARK
SHEEHAN, BONNIE MARSH, LEI'OHU
RYDER, and SHAKA MOVEMENT