

## Marijuana racketeering case dismissed for now

Landowners can refile complaint against neighbors

By MATEUSZ PERKOWSKI  
Capital Press

A federal judge has dismissed a racketeering lawsuit filed by Oregon landowners against neighbors who allegedly produce marijuana but the plaintiffs can refile their complaint.

Last year, several people filed a lawsuit accusing neighboring property owners near Lebanon, Ore., of growing marijuana in violation of the Racketeer Influence and Corrupt Organization Act.

U.S. District Judge Michael McShane has now ruled that the injuries alleged by the plaintiffs, including unpleasant noises, foul odors and reduced property values, aren't the kind that can be compensated under RICO.

The 10 plaintiffs — Robert Ainsworth and Tami Ainsworth, Karl and Lucinda Frink, Gordon and Elaine Griswold, John and Linda Lindsey and William and Suzanne Whitaker — claimed they'd been adversely affected by a "persistent stench," traffic, greenhouse fans and guard dogs.

According to the complaint, because marijuana remains illegal under federal law regardless of its legalization in Oregon, RICO has been violated by the defendants: Mark Owenby, Michelle Page, Jenny Silveira, Howard Brown, William Templeton, Elisha Templeton and Bryan Philp.

Whether or not the marijuana is still grown at the site is a point of dispute — the defendants say it's hasn't operated since October 2017 while plaintiffs claim it's still functional.

Though the judge found that the plaintiffs have constitutional standing to file the lawsuit, he has decided that diminished "use and enjoyment" doesn't qualify as an "injury to property" under RICO, even considering their "out-of-pocket



Mateusz Perkowski/Capital Press

A racketeering lawsuit over marijuana production has been dismissed but the Oregon landowners will be able to refile an amended complaint against their neighbors.

expenses for firearms, fencing, gates, and security cameras."

Such costs arise from an alleged personal injury that's not covered by RICO "because those losses are derivative of their emotional distress and not a property interest recognized under Oregon law," McShane said.

The reduction in the plaintiffs' property values is speculative, since they haven't shown any attempt to "rent, sell or otherwise monetize their property interests," rendering the alleged harm "abstract" and uncompensable under RICO, he said.

However, the judge will allow the landowners to amend their complaint to make such a claim "in good faith" and he agreed that the marijuana operation was a plausible cause of any alleged reduction in property value.

"If plaintiffs cannot sue to vindicate the federal drug laws and recover for any compensable injuries, it is difficult to imagine a person who could," McShane said.

Capital Press was unable to reach the plaintiffs' attorney, Rachel McCart, for comment.

Alex Tinker, attorney for the defendants, called the ruling "a very well reasoned opinion" that recognized the facts don't allow for a RICO case to move forward in the 9th U.S. Circuit Court of Appeals.

# Oregon co-op launches first optical sorting line for pears

By GEORGE PLAVEN  
Capital Press

Faced with an industry-wide labor shortage, Diamond Fruit Growers in Hood River, Ore., is turning to cameras to sort shipments of fresh pears, a job previously reserved for the trained eye of humans.

The 105-year-old farmers' cooperative recently installed a new optical sorting line — the first of its kind, specially designed for pears — which is now up and running just in time for this year's harvest across the Hood River Valley.

Optical sorters are widely used in food processing, though the technology has been slow to adapt to pears. Most sorters roll the fruit along a conveyor past cameras, but unlike apples and cherries, pears are not perfectly round and cannot roll as easily without scuffing.

This system, engineered by the Italian company Unitec, instead flips the pears gently and automatically from one side onto the other, minimizing damage while still allowing cameras to capture the entire fruit. A software program then sorts pears into large 1,100-pound bins based on their size and grade.

David Garcia, president and CEO of Diamond Fruit Growers, said the \$7.5 million machine will replace two out-



George Plaven/Capital Press

David Garcia, president of Diamond Fruit Growers in Hood River, Ore., shows a new optic sorting line designed specifically for pears, installed at the co-op's processing facility earlier this year.

dated sorting lines at the main plant in Odell, and in nearby Parkdale. Angelo Benedetti, CEO of Unitec, was on hand to cut the ribbon July 16, and after weeks of testing, the line began sorting freshly picked pears on Aug. 10.

"So far, it's doing what we hoped it to do," Garcia said.

Labor was a major factor in the switch, Garcia said, as the co-op struggled to fill shifts amid a declining workforce.

"Often, we were only able to run two of our three packing lines consistently," he said.

Not only was labor tight, but Garcia said the old sorting lines had been converted from

handling potatoes, and were rough on pears. He estimated 4-5 percent shrinkage, or lost product, damaged by the equipment.

Diamond Fruit Growers is one of the largest shippers of fresh pears in North America, with 2 million boxes annually, but between labor concerns and shrinkage, Garcia said they knew they needed to be proactive or risk losing volume.

"That wasn't going to be an option for us," he said.

Garcia said they reached out to two companies in Europe, including Unitec in Italy and Greefa, a manufacturer based in the Netherlands. Greefa had created an apple line modified for pears, while

Unitec wanted to build an entirely new system, from start to finish.

In the end, Garcia said they agreed it was time for pears to have a line of their own.

"We saw the future, and we said, 'Let's make the investment,'" he said.

It took Unitec three years to design, and the line was finally shipped to Oregon in April. Assembly is nearly finished, though Garcia said they are still working out the last few bugs.

The massive 18-lane sizer whirs to life in an instant, carrying bright green Bartlett pears along an automated conveyor and loading 100 bins per hour. What used to take 70-75 employees to fill a shift now takes just 15, shifting more workers to where they are needed on the packing lines.

"Labor will continue to be a stress for agriculture," he said. "We will need to continue to invest in technology that will enable us to handle our volumes with less people. Because they are just not going to be there."

Diamond Fruit Growers represents 85 pear and cherry growers in the Hood River Valley, farming more than 6,000 acres.

Garcia said he is getting calls every day from members curious to know when the new line is ready.

## Organic farms scramble to replace certifier

By MATEUSZ PERKOWSKI  
Capital Press

The discontinuation of Stellar organic certification due to compliance problems with USDA has some farmers scrambling to find a replacement certifier to maintain their organic status.

Stellar Certification Services began certifying organic farms about 16 years ago and most recently served as the certifier for about 200 farms in 29 states, according to USDA records.

The company shared a certification staff with Demeter USA of Philomath, Ore., which certifies farms as "biodynamic" — an ecologically-oriented system of alternative agriculture.

Stellar shut down certification services at the end of July, which means that its clients have until Sept. 30 to find a new certifier, who will then review their organic system plans and conduct inspections.

A year ago, Stellar brought in two auditors to review its

operations, identifying problems the company had since sought to correct, said Elizabeth Candelario, president of Demeter USA.

One of the company's clients filed a complaint with "false and misleading" allegations to USDA's National Organic Program, which Stellar denied, she said.

Nonetheless, the company did disclose that "quality systems" related to policies, procedures and recordkeeping were out of compliance with USDA standards, Candelario said. For example, the company hadn't maintained proper confidentiality of certain records.

The USDA sent notice that it planned to suspend or revoke Stellar's status as an organic certifier, which convinced the company to surrender its accreditation and stop operating, she said.

Stellar is sorry for the inconvenience to its clients and has sought to make the transition easier by connecting them with other certifiers, she said.

Farmers who used Stellar were able to obtain two certifications — organic and biodynamic — for the price of one, but the downside was

that Demeter USA was effectively in competition with organic certifiers, Candelario said.

With Stellar no longer operating, Demeter USA plans to work with four to five organic certifiers who can provide a "dual inspection," she said. "Now that we're not competing with them, it's going to be a lot easier to have those collaborative partnerships."

Re-applying for new organic certification took "a lot of work" shortly before harvest is to begin at Cooper Mountain Vineyards, a winery in Beaverton, Ore., said Gilles de Domingo, its winemaker.

"It was a mess," he said. Dropping organic certification wasn't an option because the company wants to support the organic cause and because it already has labels printed identifying the wine as organic, de Domingo said.

Oakhill Organics, a farm near McMinnville, Ore., was certified by Stellar but is now leaning toward allowing its organic certification to expire until next year.

Submitting a new organic system plan and getting a new inspection doesn't seem worthwhile just to maintain organic status for the final two months of the growing season, said Casey Kulla, the farm's owner.

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