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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF STANISLAUS

EXPLOITED MILK PRODUCERS, INC., Plaintiff, v. **KAREN ROSS**, in her official capacity as the Secretary of the California Department of Food and Agriculture, Defendants.	Case No. _____ **VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff Exploited Milk Producers, Inc. ("Plaintiff"), and for its Complaint alleges as follows:

INTRODUCTION

1. This action challenges a California state government program called the Quota Implementation Program ("QIP"), a copy of which is attached hereto as Exhibit A. In California, certain producers of milk are forced by law to subsidize other producers of milk, for no public benefit whatsoever. The right to receive the subsidy, the "quota," has been traded over the course of decades, untethering it from any purpose it was originally created to serve. Through the statute authorizing the QIP, the most recent reauthorization of the quota regime, the Legislature has unlawfully delegated legislative power to the Secretary of the California Department of Food and Agriculture ("CDFA"), and the Legislature has unlawfully delegated legislative power to an industry board called the Producer Review Board ("PRB"). The quota holders dominating the PRB have used this unlawfully delegated power to write the terms of the QIP and protect themselves from efforts to terminate the quota, thereby enriching themselves.

2. On an annual basis, quota holders take approximately $96 million of milk sales revenues from non-quota holders. Additionally, the amount of the quota payments is based on a known inaccurate calculation of milk sales that has resulted in approximately $280 million in overpayments to the quota holders. For many individual non-quota holding producers, the QIP's punishing exactions can total tens of thousands of dollars a month. Moreover, even some producers who have a smaller amount of quota pay more into the quota system than they receive for their quota. Many non-quota holders have been forced to sell their dairy herds as the only way to avoid paying the quota.

3. Plaintiff is an association comprising dairy producers who are suffering under the illegal and unjust quota system and seeking relief from the crushing and arbitrary burden of the quota system. The quota system has long since ceased to further any legitimate public purpose it may have served when it was created many decades ago. Yet, the quota holders have used their unlawfully delegated power under the QIP to perpetuate it.

4. In sum, two producers can produce the same quality and quantity of milk. Assume one holds quota and the other does not. Even if they were to sell the same product, in the same quantity, to

the same milk processor, and at the same price, they would not receive the same revenues. This is because each producer would pay an assessment based on the quantity of milk they sold, but those funds would then be redistributed to just the quota holders based on the amount of quota they owned. Some quota holders own a sufficient amount of quota to earn more than they are assessed, and some have an amount that pays substantially more than they are assessed.

5. In 1967, the state of California established a milk Pooling Plan. The plan was created because certain milk producers were engaging in unfair trade practices that were resulting in threats to the milk supply, and to generally stabilize the milk supply.

6. The plan included the State issuing quota to compensate certain milk producers who were earning higher revenues due to their high-value contracts with milk buyers and thus induce them to join the revenue pooling plan. The quota would compensate them for the lost revenues that would otherwise have come from being paid the same price as other producers with lower-value contracts.

7. In 2017, this milk Pooling Plan was terminated upon California's adoption of a Federal Milk Marketing Order ("FMMO"). The California FMMO did not require a quota program, but permitted California's continued use of a quota program, should California choose to adopt one.

8. The CDFA first wrote legislation, which the California Legislature adopted, that authorized it to continue the quota program. Through this legislation, the Legislature unconstitutionally delegated its power to the CDFA, giving it no discernible goals, metrics, or guidelines. The Legislature also unconstitutionally delegated its power to the quota-holder dominated PRB, including the power to write the terms of the QIP. The quota-holder dominated PRB used this power to maximize the value of the quota they owned, to the detriment of the non-quota holders. The Legislature gave the Secretary no choice but to implement the QIP proposed by the PRB and approved in a referendum of the producers.

9. The *PRB* used its power under the statute to direct the CDFA to prepare a regulatory framework to continue the quota assessments and payments and specify how the stand-alone quota program would be funded and administered. This program is the QIP. The CDFA rubber-stamped the QIP without undergoing the mandatory procedure for the adoption of new regulations and despite the PRB rejecting CDFA advice on needed provisions.

10. Under the QIP, all Grade A milk producers are assessed a fee of approximately $0.38 per hundred pounds of milk (about 11.6 gallons per hundred pounds of milk). The funds generated by this assessment are then used to pay holders of quota $1.70 per hundred pounds of milk covered by a quota certificate. The more quota a producer owns, the higher their payment. Due to the volume of milk sold on the market and the distribution of quota among producers, approximately $96 million is transferred through this system from non-quota holders to quota holders annually.

11. The QIP has become an unlawful and anticompetitive tax of over $96 million annually, levied by what are, on information and belief, a majority of quota-holding California Grade A dairy farmers on their competitors, the minority of non-quota holding farmers.

12. The CDFA presently administers the QIP. As explained in detail below, the CDFA has appointed the PRB, a board of 14 milk producers, 13 of whom are quota holders. Although non-quota holders regularly apply for appointments to the PRB, the Secretary chooses overwhelmingly to appoint quota holders, guaranteeing their domination of the QIP and exacerbating the Legislature's unlawful delegation of power to a self-interested group of market participants who use that power to enrich themselves through anticompetitive measures.

13. Quota holders have also used their power on the PRB to frustrate efforts by non-quota holders to eliminate the quota, including by limiting the frequency of referenda and limiting the effectiveness of referenda, all to preserve the value of the quota they held. The statute also does not allow the Secretary any power to unilaterally alter or eliminate the quota.

14. The statute enshrines this unlawful delegation of legislative power by making it virtually impossible to eliminate or even lower the exactions on non-quota holders, requiring a supermajority of producers (over half of whom are quota holders) to vote against their financial self-interest to make any changes. Through this unlawful delegation, certain quota-holding dairy farmers have hijacked a state program and use the force of California law to levy an unfair and substantial tax on the minority of dairy farmers.

15. The grounds for these challenges are: (1) that Section 62757 of the California Food and Agriculture Code, which authorized the QIP, unlawfully delegates legislative powers in violation of Article 4, Section 1, of the Constitution of this state to the Secretary of Agriculture because the

Legislature provided no standards to guide the Secretary; (2) that Section 62757 and the QIP unlawfully delegates legislative powers in violation of Article 4, Section 1, of the California Constitution to the PRB and milk producers, including the power to write the QIP, the omission of any standards to guide them, and without any means for the Secretary to alter or end the regulations they created; and (3) that the QIP is an unlawful administrative regulation because CDFA did not follow the mandatory steps to adopt and promulgate regulations under the California Administrative Procedure Act ("California APA"), Cal. Gov't Code §§ 11340–11361.

16. Through this action, Plaintiff seeks an order from the Court: declaring that Section 62757 of the California Food and Agriculture Code is invalid; declaring that the QIP is invalid, void, and of no effect; and enjoining the operation of the QIP, including quota assessments and payments.

PARTIES

17. Plaintiff is an incorporated association that includes current dairy producers who do not own quota, quota holders who pay more into the quota system than they receive in return from it, and former dairy producers unjustly forced out of the industry due to the illegitimate and anticompetitive quota system.

18. Defendant Karen Ross (the "Secretary") is the Secretary of the CDFA, a government agency duly organized and operating in California.

19. As the Secretary of the CDFA, the Secretary is responsible for ensuring that the CDFA's actions comply with California law.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this action pursuant to Code of Civil Procedure Sections 1060 and 1085.

21. A substantial portion of the milk producers that comprise Exploited Milk Producers, Inc. conduct business in Stanislaus County, and they experience the harm complained of herein in Stanislaus County. Accordingly, venue is proper in the County of Stanislaus under Section 393(b), California Code of Civil Procedure.

FACTUAL ALLEGATIONS

22. The QIP arose against the backdrop of a long and complex milk regulatory regime in California. Quota was originally an integral part of a broader regulatory scheme actively supervised by the State of California through the CDFA. Today, that broader regulatory regime has vanished, and QIP stands as an anachronistic remnant that no longer serves a public purpose but instead serves as a mere wealth transfer to powerful dairy farmers at the expense of a disfavored minority of their competitors.

California's Economic Regulation of Milk Before the QIP

23. Milk is sold by dairy farmers to handlers, who convert raw milk to finished dairy products such as beverage milk, sour cream, ice cream, cheese, and butter.

24. In 1935, the Legislature passed the Milk Stabilization Act, which authorized the CDFA to establish minimum prices that dairy farmers would be paid by handlers for their milk. *See* Cal. Food & Agric. Code §§ 61801–62403. Class 1 dairy product (fluid milk) commanded the highest price. Handlers paid progressively lower prices for raw milk that was processed into non-fluid products, including Class 2 (yogurt and cottage cheese), Class 3 (ice cream and frozen dairy desserts), Class 4a (butter and dry milk powders), and Class 4b (cheese). Under this framework, producers of similar quality raw milk received significantly different prices depending on whether the handler utilized the raw milk to make Class 1, 2, 3, or 4 dairy products.

25. The Milk Stabilization Act had no mechanism for revenue redistribution among California dairy farmers, who competed for sales to the highest-paying (Class 1) processors.

26. According to the CDFA, in the 1960s, California dairy farmers sought a mechanism to limit competition for sales to Class 1 processors.[1] Due to the problems created by unrestrained competition and anti-competitive behavior for sales to higher-paying processors, dairy farmers sought a legislative solution to create a new system.

[1] CDFA, *The California Dairy Industry: A Historical Review of the Dairy Regulations and Statutes Specifically Related to the California Milk Price and Pooling Programs* (May 2012), https://www.cdfa.ca.gov/dairy/uploader/docs/Dairy%20Indust%20Hist%20Review%202011%20Update.pdf.

> Producers and producer organizations concluded that such a system could be brought about only through legislation and introduced a number of milk pooling bills into the California Legislature. These early efforts to establish a revenue distribution program were not successful because the producer community could not agree on the basic concepts of the program.[2]

27. The U.S. Department of Agriculture ("USDA") has also described the *status quo* before the introduction of a revenue pooling mechanism among California dairy farmers:

> Until that point, dairy farms were paid through individual handler pools that reflected a plant's use values for their milk—there was no marketwide pooling function that allowed all producers to share in the benefits from Class 1 sales and the burden of balancing the market to ensure an adequate supply of milk to meet Class 1 demand. Many witnesses spoke to the political compromise reached to compensate dairy farmers who held Class 1 supply contracts from the financial loss they would incur by pooling and sharing their Class 1 revenue with all dairy farmers in California.[3]

28. The Legislature then enacted the Gonsalves Milk Pooling Act, Division 21, Part 3, Chapter 3 of the California Food and Agriculture Code. *See* Cal. Food & Agric. Code §§ 62700–62731 (the "Act"). The Act required the California State Secretary of Agriculture to formulate a pooling plan for revenue sharing among California dairy farmers and submit it in a referendum to all eligible market milk producers for their approval or disapproval. The producers voted by referendum to approve the milk pooling plan, and it was implemented in 1967.

29. Under the milk pooling plan, instead of paying producers directly, handlers were required to pay minimum prices set by the CDFA per class of dairy product into a "pool" fund. Producers were then paid from the pool on the basis of a poolwide blend price that reflected the poolwide utilization of all classes of dairy products. Under this pooling arrangement, producers with extensive Class 1 contracts would suffer a loss in revenue because the poolwide blend price was lower than the price for Class 1 contracts.

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[2] CDFA, *History of the California Milk Pooling Program*, at 2 (Oct. 2012), https://www.cdfa.ca.gov/dairy/pdf/History_of_pooling.pdf.

[3] Milk in California: Recommended Decision and Opportunity to File Written Exceptions on Proposal To Establish a Federal Milk Marketing Order, 82 Fed. Reg. 10634, 10652 (Feb. 14, 2017).

30. To offset the revenue losses for producers with class 1 contracts at the time (1967), a "quota" was included in the Gonsalves Milk Pooling Act in 1969. Producers were assigned a "production base" of their historical milk production, and a producer "quota" was allocated based on each producer's historic Class 1 sales plus ten percent. Milk produced in excess of a producer's base and quota allocations was termed "overbase" milk. Producers who hold quota were paid a higher amount for raw milk covered by quota than for milk not covered by quota (which includes "base" and "overbase" production). The quota premium was funded by producers through a deduction from the marketwide pool before the overbase price was calculated.

31. In the past, the CDFA allocated additional quota after the initial allocations, but it has not done so since 1991. Producers are permitted to sell quota to other producers and have done so many times, such that **ownership of quota is no longer tied to a quota holder's past Class 1 sales**. After the passage of nearly 60 years, there is no connection between those producers who hold quota, or the amount of quota they hold, and the need for revenues from quota to compensate those producers for lost revenue. It is purely a tradable entitlement whose price fluctuates depending on the level of confidence the system will survive.

32. Sections 62700–62702 contained the Legislature's findings and declaration of purpose with respect to the former regime under the Gonsalves Milk Pooling Act. The Legislature described two reasons for granting the Secretary greater power to regulate the milk production market: (1) "to enable the dairy industry to develop and maintain satisfactory marketing conditions and bring about and maintain a reasonable amount of stability and prosperity in the production of fluid milk and fluid cream"; and (2) "to insure to consumers within California an adequate and continuous supply of pure, fresh, and wholesome milk at fair and reasonable prices, including a reasonable estimate of the additional supply which is needed to provide for normal fluctuations in production and in consumer demand for those products[.]" Cal. Food & Agric. Code § 62702.

33. However, this fundamental statement of purpose, codified in 1967, concluded with the determination that these supplemental powers were "to equalize gradually the distribution of class 1 usage among the producers of this state," *id.*, that is, over time to move from a regime where only certain producers profited from the higher revenues of class 1 sales of the pooled milk, to a system

where all producers shared in such revenues. In an amendment to the statute ten years later, the Legislature reaffirmed this goal and redoubled its commitment with those amendments to, inter alia, "provide a reasonable and equitable mechanism to permit more accelerated equalization." *Id.* at § 62702.1.

34. This goal of equalization, stated nearly 60 years ago and reaffirmed nearly 50 years ago, would have, if fulfilled, effectively eliminated the impact of the quota as every producer would be treated the same. Despite this clear expression of legislative intent and purpose, and equalization of pricing having happened, quota is now a traded entitlement held by certain producers decades after serving its purpose of compensating and incentivizing producers with sales to Class 1 handlers to support the pooling plan.

35. The now arbitrary quota system has long become divorced from the original public interest and the purposes of the statute, if not contrary to them, insofar as it is inequitable and driving producers from the market. In fact, the extent of the quota's redistribution of wealth from non-quota holders to quota holders has been based on an inaccurate assumption that overstates the amount of Class 1 sales, thereby causing quota holders to over tax non-quota holders approximately $280 million since 2017. The quota holders have been able to perpetuate this rotten regime for their personal enrichment because the Legislature unconstitutionally delegated its power to them to do so.

Federal Regulation Ends the Gonzalves Pooling Regime and the CDFA Lobbies to Perpetuate the Quota Entitlement

36. In 2015, the three largest dairy producer cooperatives, comprising quota and non-quota holders in California, petitioned the USDA to implement an FMMO covering California, which would transfer regulation of raw milk sales in California from state to federal jurisdiction. The California producers wanted an FMMO to obtain higher pricing than California's stand-alone pooling program.

37. Following a hearing, the USDA issued a decision recommending provisions for a California FMMO. As is customary in all FMMOs, the recommended California Federal Milk Marketing Order did not include provisions for administering the quota program. Instead, the USDA's recommended Order contemplated only those quota deductions as separately authorized by the CDFA. As the CDFA explained:

> In February of 2017, United States Department of Agriculture (USDA) published its recommended decision for the establishment of a California Milk Marketing order (CA FMMO). The recommended decision does not allow for quota to be incorporated in the pricing and pooling provisions of a CA FMMO. Rather, it would necessitate quota to operate independently of a CA FMMO as a stand-alone program, administered by the California Department of Food and Agriculture (Department).

38. The FMMO ensures a stable milk market without the need for a quota system.

39. In a letter dated May 12, 2017, the Secretary notified the USDA that the CDFA was willing to create a "producer funded quota program."

40. The Secretary also stated that the CDFA intended to sponsor California legislation to ensure that the CDFA had the authority to establish and administer a stand-alone quota program, convene the PRB to propose the substance of a stand-alone quota program, and hold a producer referendum on the PRB's recommendations.

41. The PRB was established under Section 62719 of the Gonsalves Milk Pooling Act to represent the interests of California dairy farmers. *See* Cal. Food & Agric. Code § 62719. The PRB is comprised of no fewer than 12 members, all of whom are California dairy farmers nominated by other California dairy farmers. *Id.* The PRB members may nominate candidates for one additional member of the PRB to serve as a public member of the PRB. The CDFA has no ability to appoint a PRB member who is not nominated by California dairy farmers. At all times from 2017 through the present, the PRB has been dominated by market participants (California dairy farmers) who hold quota and benefit economically from high quota prices and the continuation of the quota program. Non-quota holders, when represented on the PRB, have been a distinct minority of Board members. Today, as in 2017, there is one PRB board seat for a non-quota holder and thirteen for quota holders. In 2022, the PRB had thirteen quota holders and two non-quota holders.

42. Before the approval of the FMMO, in May 2017, the CDFA sponsored California legislation authorizing it to establish and administer a stand-alone quota program. Approximately one month later, the legislation was signed into law and codified at California Food and Agriculture Code § 62757.

43. Section 62757 was drafted by an employee of the CDFA, Jim Houston. According to a declaration filed by Mr. Houston in another case challenging the QIP, Mr. Houston was "the drafter of

Section 62757" and was "the lead CDFA official mostly intimately involved in the month-long QIP drafting process."

44. According to Mr. Houston, the CDFA was concerned no later than early May 2017 that the CDFA lacked authority under California law to establish a stand-alone quota program. According to Mr. Houston, it was precisely for this reason that the CDFA sponsored a bill (called the 2017 Trailer Bill) now codified at Section 62757.

45. Section 62757 received little attention in the legislative process. According to Mr. Houston, the 2017 Trailer Bill was intentionally drafted "to be as noncontroversial and easy to get through the legislature as possible." Mr. Houston offered the following account of the legislature's consideration of the 2017 Trailer Bill:

> Based on my experience, I believe that the 2017 Trailer Bill was universally viewed as a noncontroversial bill, and thus received little legislative scrutiny. The end-result is that the 2017 Trailer Bill was passed into law and codified at Section 62757 of the FAC exactly as I drafted it.

46. As befitting legislation written by an executive branch agency to obtain a power from the Legislature for itself and for the purpose of an unseemly exaction to benefit a particular class of private persons, and receiving "little legislative scrutiny," the power granted by that legislation was strikingly unrestricted and standardless. Section 62757 thus provided that upon the establishment of a federal milk marketing order, the Secretary was empowered "to establish a stand-alone quota program, the details of which shall be included in the pooling plan." Cal. Food & Agric. Code § 62757. It stated that this "stand-alone quota program may be funded by an assessment on milk produced in the state." *Id.* (underscoring added). Subsection (c) of Section 62757 provided that the stand-alone quota program (the QIP) "shall be pursuant to a recommendation by the review board established pursuant to Section 62719 [*i.e.*, the PRB] and approved by a statewide referendum of producers conducted pursuant to Sections 62716 and 62717." *Id.*

47. Section 62757 on its face delegated the formulation of the QIP entirely to the PRB. The Secretary had no authority to formulate the terms of the QIP or to submit a proposed stand-alone program to a producer referendum other than that which was recommended by the PRB. The

Secretary was merely to "establish" the program recommended by the PRB and approved by a producer referendum. Cal. Food & Agric. Code § 62757.

48. The Legislature did not include any legislative statement of purpose or intelligible principle in Section 62757 to guide the Secretary's development and implementation of such a quota program. The statute provided no standard by which the Secretary was to determine if and when such an assessment should be levied, no standard by which to determine the aggregate amount of the assessment, no defined purpose by which to guide the setting of the assessment, and, other than stating it would be assessed against "milk produced in the state," no delineation as to who should be assessed and who should receive the fruits of any such assessment.

49. Sections 62716 and 62717 govern the producer referendum process that the California Legislature specified for the approval of the stand-alone quota program to be recommended by the PRB. Section 62716 specified the processes applicable to the producer referendum. *See* Cal. Food & Agric. Code § 62716. Section 62717 provided that the Secretary had no power to avoid, modify, disturb, amend, revise, veto, or decline to adopt the outcome of the producer referendum held pursuant to Section 62716. *See* Cal. Food & Agric. Code § 62717 ("If the director finds that producers on a statewide basis have assented in writing to the proposed pooling plan submitted to them for assent, the director shall place the proposed pooling plan into effect." (underscoring added)).

50. Delegation by the California Legislature to the PRB to set the terms of the QIP was an aberrant departure from the process specified and followed for the promulgation of the original quota program that had operated under the Gonsalves Milk Pooling Act since 1969. That quota program was developed pursuant to Sections 62704 and 62705 of the Gonsalves Milk Pooling Act. Section 62704 provided that the CDFA—not the PRB—was to set the terms of the quota program. *See* Cal. Food & Agric. Code § 62704 ("The director is authorized to develop a proposed pooling plan and to designate the proposed areas in which the plan will be made effective."); *see also id.* § 62705 (providing that a public hearing shall be held "[a]fter the director, with the advice and assistance of the formulation committee, has formulated the proposed plan"). And unlike the QIP, which had no legislative statement of purpose or intelligible principle, Section 62704 required that the quota plan under the Gonsalves Milk Pooling Act was to be scrutinized by the CDFA for conformity "with the

purposes of this chapter[,]" that is, with the legislative purpose articulated in Sections 62700–62702 of the Gonsalves Milk Pooling Act.

51. The Secretary was assisted in the formulation of the original quota program under the Gonsalves Milk Pooling Act by a formulation committee convened under Section 62704 and not by the PRB. *See* Cal. Food & Agric. Code § 62704. Although the formulation committee convened under Section 62704 was—like the PRB—comprised of California dairy farmers, Section 62704 specified that the membership of the formulation committee was—unlike the PRB—to be "reasonably representative of all producers" and thus of the interests of quota holders and of non-quota holders. *Id*. Unlike the PRB, where the Secretary's appointment power is limited to the slate of nominees provided by California dairy farmers, *id*. at § 62719, the Secretary's ability to select the formulation committee from among qualified members was plenary. *Id*. at § 62704.

52. Unlike the QIP, which was promulgated without a public hearing, Section 62705 of the Gonsalves Milk Pooling Act specified that the pooling plan promulgated pursuant to the Act, including its quota program, was to be considered at a public hearing. Mr. Houston has explained that he selected the PRB to draft the QIP in part to avoid a public hearing under Section 62705 and with the further purpose of delegating the power to set the terms of the QIP to the PRB rather than to the Secretary. According to Mr. Houston:

> Moreover, in my opinion, the PRB process mandated by Section 62757(c) provided producers and industry with significantly more opportunities for input, more deliberation, and more process than would have occurred through a Section 62705 public hearing (which was a significant reason why the PRB process was chosen instead of the Section 62705 public hearing process). Whereas a Section 62705 public hearing is presided over by a single hearing officer, allows individual producers only one opportunity to testify, often spends substantial time poring over economic data regarding the milk market that the hearing officer needs to sift and weigh, and culminates with the hearing officer making a recommendation to the Secretary (at which point the Secretary has significant discretion in determining what pooling plan amendments to allow producers to vote on in a referendum), the PRB process under Section 62757(c) was led by a representative cross section of more than a dozen producers, allowed individual producers significantly more opportunity to provide their views and input (i.e., at each of the four PRB meetings and through communications with individual PRB members between hearings, if they so wished), was not concerned with sifting and weighing economic data (i.e., quota is almost a pure policy issue) and culminates in all members of the PRB getting an up or down vote on whether to recommend the QIP to [the] Secretary (***at which point it was envisioned that the Secretary would put the QIP as recommended by the PRB,***

without modification, to a statewide producer referendum). (emphasis added).

53. According to Mr. Houston:

> The Secretary, myself, others at CDFA, and the producer community were all familiar with what a Section 62705 public hearing is and what it entails, we specifically did not want a Section 62705 public hearing to be part of the process of adopting the QIP under Section 62757.

54. As the CDFA general counsel candidly admitted at a PRB meeting after the promulgation of the QIP, and in reference to the QIP: "These aren't regs [regulations]. I think that there are weaknesses here. The whole QIP program was adopted without going through the regulatory process. So I mean, for a lawyer, that's a concern, but that's how the QIP is operating now."

55. In other words, Legislature enacted with "little legislative scrutiny" a statute with the sole purpose of benefitting quota holders, the statute empowered a quota-holder dominated board to design the regulation of their industry for their own benefit at the literal expense of their non-quota holding competitors, the statute lacked any measurable objectives or guiding standards and eliminated the discretion the Secretary previously had to influence the quota program that would be put to a producer referendum, and, indeed, "the Secretary would put the QIP as recommended by the PRB, without modification, to a statewide producer referendum."

56. The Legislature's delegation of power to private industry was so complete that even if the Secretary found that amendment of the QIP was "necessary to effectuate the purposes of" the statute, the Secretary is prohibited from making "substantive amendments to the plan" unless "producers assent to the proposed amendments at a referendum." Cal. Food & Agric. Code § 62717.

57. Accordingly, the Secretary is confined to making only procedural amendments to the QIP. For example, on May 21, 2025, the Secretary promulgated an amendment to the procedures for handling hardship petitions (petitions filed with the PRB by producers who seek relief from the financial burden imposed by the quota assessment). The Secretary was permitted to make this amendment solely because of its procedural nature.

58. Even if the Secretary were to find that the QIP no longer conformed to or effectuated the purposes of the statute, the statute prohibits her from terminating the program without the approval of the producers. *Id.*

59. Section 62757, inasmuch as it comprises a wholesale delegation of lawmaking power to certain private milk producers through a board limited in membership to persons they nominate and places the amendment or termination of the regime beyond the power of the Secretary, is starkly at odds with the kind of advisory body of producers appointed by the Secretary in Section 62704.

60. On June 7, 2018, California producers approved the adoption of the FMMO order in the State of California, which automatically suspended the prior pooling plan under the Gonsalves Milk Pooling Act. *See id.* at § 62726.

Creation of the QIP

61. In September 2017, consistent with the intent of the CDFA in drafting Section 62757 and with the plain language of Section 62757, the CDFA rubber-stamped the PRB recommendation to adopt the QIP.

62. The record includes a one-page document dated September 17, 2017 (Exhibit A). It is titled "Recommendation of the Producer Review Board and Determinations of the Secretary of Food and Agriculture." By way of background, the document confirms that the Secretary "charged" the PRB with developing the QIP, the PRB conducted public meetings, the PRB received input from the public and technical assistance from CDFA staff, and the PRB "developed the stand-alone criteria" of the QIP and submitted it to the Secretary. The QIP was attached to this document. In a section titled "Recommendation," the document reiterates that "the Board developed the QIP" and "Staff recommends approving the QIP as submitted by the Board." The document concludes with the statement, above the Secretary's signature, that "It is hereby determined that the newly developed QIP shall become effective if it is assented by California dairy producers through a USDA referendum and a CA FMMO is enacted."

63. Considering that the statute tasked the PRB with drafting the QIP, this document acknowledges the Secretary charged the PRB with the drafting of the QIP, the statute does not allow the Secretary to alter the PRB's draft, and the Secretary adopted the PRB's draft QIP wholesale, this document's text asserting that "The Secretary may adopt, deny, or alter the Board's recommendations based upon her independent assessment of the Department's authority" was merely defensive sham

window dressing, intended to obscure the plain text of the statute that denied her any such authority and the reality that the PRB had been wholly delegated this task.

64. In contrast to this document's terse and conclusory finding, the CDFA's reviews of quota plans recommended for promulgation by the PRB pursuant to the Gonsalves Milk Pooling Act were searching and plenary, the conclusions of which were set forth in lengthy and reasoned written opinions.

65. The drafting of the QIP proceeded in stages, with CDFA staff subordinated to the PRB to help the PRB realize its goals. The PRB first instructed the CDFA about the terms and basic structure of the QIP. The CDFA then drafted language to implement the PRB's instructions. The PRB then reviewed and edited the language proposed by the CDFA, including (as explained below) by eliminating a number of terms recommended by the CDFA that would have made the QIP easier to terminate and thus reduce the economic value of quota to quota holders. The PRB then submitted the edited language to the CDFA for its rubber-stamp approval. The draft minutes of the PRB meeting held on June 15, 2017, described the process this way:

> Undersecretary Houston stated the Board would create/provide CDFA the framework and CDFA will draft language based on the Board's recommendations. Draft language would be presented to the Board for adoption and recommendation to Secretary Ross.

The Quota Holder-Dominated PRB Made the QIP Hard to Kill to Protect Their Economic Self-Interest, Rejecting Suggestions by the CDFA

66. The terms of the QIP were drafted by the PRB to make termination of the QIP difficult in ways that departed from those established by the CDFA in other programs administered by the CDFA that (like the QIP) are funded by assessments on producers, and from the intent of the Legislature regarding the equalization of quota as understood and expressed by the CDFA.

67. A primary concern of quota-holding PRB members during the drafting of the QIP was the elimination from the QIP of possibilities to end the QIP through the referendum process or otherwise. Quota-holding PRB members frequently voiced concerns with aspects of the draft QIP proposed by the CDFA that would have afforded easier and earlier options for termination of the QIP through referendum. Quota-holding PRB members frequently voiced concerns that aspects of the draft QIP that would have made the program easier and more likely to be terminated would depress

the economic value of quota to quota holders (like themselves) and, conversely, would have lightened the magnitude of the tax that quota holders impose through the QIP on non-quota holders. Quota-holding PRB members successfully worked together through the QIP to eliminate such possibilities proposed by the CDFA in the draft QIP.

68. One aspect of this collective action by quota-holding PRB members was the elimination of a process sought by the CDFA that is customarily included by the CDFA in other, similar programs that would have made termination of the QIP easier and more likely. Specifically, in the PRB's drafting of the QIP, the CDFA sought the ability to hold so-called "continuation hearings" every 5 years to determine industry support of the QIP. As the CDFA explained to the PRB in a May 2017 meeting held at the outset of the PRB's process in drafting the QIP:

> Assessment funded programs at CDFA are required to be reviewed every 5 years to determine if industry supports the continuation of the program.
>
> CDFA holds a continuation hearing where witnesses provide testimony regarding whether the program should be continued.
>
> If the hearing record contains overwhelming support for the continuation of the Stand-Alone Quota Program, the Secretary will announce its continuation.
>
> If the hearing record contains a mixture of both support and opposition, CDFA will hold a producer referendum to determine if the Stand-Alone Program will continue.

69. The continuation hearings held by the CDFA in connection with other producer-funded programs are elaborate affairs, with written agendas promulgated by the CDFA including suggested topics and the opportunity for industry participants and other interested parties to present testimony and evidence regarding those and other topics. An example of a notice of such a continuation hearing held by the CDFA in 2025 in connection with a different producer-funded program is attached as Exhibit B.

70. According to the testimony of one PRB member at a CDFA hearing held September 9, 2024, the Secretary in 2017 told the PRB in the drafting of the QIP that the Legislature did not contemplate a QIP of indefinite duration: **"We were told by Secretary Ross at the beginning of the PRB meetings back in 2017 that the legislature does not want marketing programs to go on and on forever."**

71. There was considerable disagreement between CDFA and the PRB on the issue of the inclusion of a continuation review process. The CDFA explained to the PRB in the drafting of the QIP that "the Secretary is trying to be responsible and would like the proposed stand-alone quota program to include a five year continuation review process." According to another CDFA document, reflecting the comments of CDFA staff on the negotiations of this issue with the PRB:

> The PRB received significant input from the CDFA and deliberated at length on this issue. As explained by CDFA, unlike the current program, the QIP will be funded by direct assessments from producers and as a result, should include a review process. The review process is consistent with other CDFA programs.

72. The PRB resisted the CDFA. According to the draft minutes of the August 2, 2017, PRB meeting: "The Board questioned the five year review and still questioned the need. Concerns were reiterated regarding how the continuation process will devalue quota." The draft minutes of the June 15, 2017, PRB meeting provided:

> [CDFA] Staff addressed a review and re-approval component to the stand-alone program that would be consistent with other programs assessed under the Food and Agriculture Code. Most marketing order programs are subject to a review and re-approval process once every five years. This helps determine whether or not a program is needed by the industry assessed. Staff shared that a hearing could occur where witnesses would provide testimony related to the program's continuation. Depending on testimony, the CDFA could submit the re-approval to a continuation referendum.
>
> [PRB] Members indicated concern that a re-approval process devalues quota and puts into question the viability of the asset. Since the nature of the quota based program is different than that of a promotion or research program (such as the California Milk Advisory Board) it did not make sense to have a re-approval process.

73. The quota holder-dominated PRB resisted the CDFA's efforts to include a requirement for continuation hearings in the QIP with the specific intent of increasing the economic value of quota to quota holders and, thereby, increasing the economic harm from the quota program on non-quota holders. As one participant in the process of drafting the QIP explained:

> In my opinion as a broker, such a five year "re-approval" component could possibly diminish the value of quota, because it would create a permanent cloud over quota that could cause a dairyman interested in purchasing quota to question whether or not the quota program would remain in effect after he or she, purchases quota. Dairymen purchasing quota want to be sure that they can recoup their investment. I believe a five-year "re-approval" component will add an element of risk to purchasing quota that in turn could have a negative effect on quota prices, and therefore to the value of quota

> owned by all dairymen. I think the negative effect could be even greater as the date for the five-year "re-approval" gets closer.

74. The PRB was ultimately successful in eliminating from the QIP any mechanism for a continuation hearing or a continuation review process. In 2023, years after the QIP was implemented, producers petitioned for a continuation hearing, citing the CDFA's June 2017 statements to the PRB that such a hearing was customary and required in other similar programs administered by the CDFA. *See* Ex. C at 1. The Secretary denied the petition, writing:

> Currently QIP does not include language that would allow CDFA to conduct a continuation process periodically or otherwise; it only contemplates amendment and termination of the program.

Id.

75. Another aspect of collective action by quota-holding PRB members to eliminate efforts to make termination of the QIP easier and more likely related to draft language that would have triggered a mandatory producer referendum in the event that the quota premium assessed through the QIP exceeded a certain threshold. Draft language suggested by the CDFA in July 2017 provided that "the continuance of the Plan shall be subject to approval by Producer Referendum any time the computed rate reaches a new threshold level of $0.005 per pound of solids not fat above the initial rate [of $0.0450 per pound of solids not fat]." This draft language was eliminated by quota-holders on the PRB.

76. As one participant in the process of drafting the QIP explained:

> The Cooperatives concur with the revisions to Article 9, Section 901 made during the August 2, 2017 Producer Review Board meeting. Like many others at the August 2,2017 meeting, the Cooperatives take issue with the Initial Quota Plan's mandatory referendum that would be triggered by any fluctuation of $0.0500 for the quota assessment in Article 9, Section 901. As was spoken to by a number of producers, trade association spokespeople, and Producer Review Board members, a mandatory referendum trigger will lead to instability in the California quota program, signals a lack of faith in the program, and poses a likely insurmountable obstacle to implementation of new quota regulations in connection with a California FMMO.

77. As another participant in the process of drafting the QIP explained:

> WUD also supports the revised version of the draft language which removes the following statement: 'the continuance of the Plan shall be subject to approval by Producer Referendum any time the computed rate reaches a new threshold level of $0,005 per pound.' Such a statement adds another possibility for a referendum, which

adds unnecessary uncertainty on the longevity of the program.

78. Another aspect of collective action by quota-holding PRB members to eliminate efforts to make termination of the QIP easier and more likely related to changes to the survey of producers subject to the QIP required by Section 1100 of the QIP. The CDFA had originally sought language that would have specified that this survey was intended to gather—and would gather—information relating to whether the QIP should continue in force. Specifically, the CDFA in July 2017 had proposed language in draft Section 1100 that provided that:

> The continuation of this Plan is subject to a producer survey every five (5) years. The survey shall be conducted by an independent party selected by the Producer Review Board. The survey shall evaluate the effectiveness of the Plan and the desire of producers to continue operation of the Plan.

79. Quota-holding PRB members opposed and removed reference to a survey of the "desire of producers to continue operation of the Plan" from the final QIP. As one participant in the QIP drafting process explained:

> As was discussed at the August 2, 2017 Producer Review Board meeting, the Revised Quota Plan's reference, at Article 11, Section 1100, to a mandatory survey of producers on the California quota program every five (5) years raises a number of complications. First, there is no language identifying the nature of the issues to be covered by the survey. This broad reach will lead to confusion about what topics can be subject to survey. Furthermore, as currently phrased in the Revised Quota Plan, the provision suggests the survey could serve as a mandatory, mini-referendum on the California quota program every five (5) years. As was noted in paragraphs 8 and 9 above, and by numerous commenters before the Producer Review Board, that kind of constant peril will destabilize the California quota program and diminish producers' long term faith in its reliability, and thus its overall value.

80. By making the QIP of indefinite duration and frustrating the CDFA's efforts to secure periodic reevaluations of the QIP, the quota-holding producers that dominated the PRB increased not only the length of time the QIP would be in place but also the value of quota—and thus of the economic benefit to quota holders and economic harm to non-quota holders—in any given year.

81. Tracking the statute, the QIP deprives the Secretary of any ability to unilaterally revise or modify the material terms of the QIP, QIP §§ 1101, 1102, or unilaterally terminate the QIP, even when the Secretary independently determines that the QIP is no longer consistent with State law or policy. *See* QIP § 1103.

The QIP Takes Effect

82. The Secretary then put the QIP to a referendum vote by producers. The QIP was approved in December 2017 by a supermajority vote as required by Section 62757(c). However, as discussed below, there is abundant reason to believe the producers, and particularly the non-quota producers, were not adequately informed that the QIP would be funded through substantial and direct reductions in the revenues they received for the sale of their milk, much less that it would be based on an erroneous assumption that inflated the quota payments by hundreds of millions of dollars, and counting, since 2017.

83. On November 1, 2018, the QIP began operating independently of any California revenue pooling plan. (All Grade A California dairy farmers, as defined under California Food and Agricultural Code, Division 15, Part 1, Chapter 3, Article 1, Section 32901 *et seq.*, are required to participate in the milk pool, regardless of whether they own quota.)

84. On December 18, 2018, the non-quota producers received their first payments under the QIP, representing their revenues from their November milk sales. The total quota premium paid to quota holders is approximately $13 million per month. Under the new QIP, they were told for the first time exactly how much of their own revenues each of them was losing due to quota assessments.

85. The shock of this new disclosure immediately produced a backlash against the QIP from the non-quota holders and created a divide in the producer community. An anti-QIP movement was born. The uncertainty over the future of the program due to the disclosure of its costs to non-quota holders and their reactionary movement caused the market value of quota to drop by 35%. Anti-QIP producers immediately began calling on the Secretary of Agriculture to hold a vote to end the program.

86. There were additional revelations of the QIP's detachment from reality and descent from public interest to private grift. The quota exactions had been calculated through a formula based on the assumption that a certain percentage of milk sales were for Class 1 purposes. Quota is rooted in the notion of a right to receive from non-quota holders a supplemental payment tied to the amount of such sales, so the greater the percentage of such sales presumed in the quota calculation formula, the greater the amount taken from non-quota holders for the benefit of the quota holders. However, over

the years, actual Class 1 sales have fallen precipitously while the quota calculation formula remains tied to an obsolete assumption. **As a result, approximately $280 million has been improperly given to the quota holders based on this false Class 1 sales assumption since 2018.**

87. Tracking the statute, the QIP includes two provisions (§§ 1101 and 1103) requiring that significant amendments or termination of the QIP require a producer referendum to be held in the same manner as required for its initial approval, meaning by a supermajority vote. Due to the QIP's delegation of power over government policy to the producers, the requirement for a supermajority vote of the producers to make any changes, and the domination of the quota holders, a proposed quota formula reduction to compensate for the lower Class 1 sales failed to pass. The Secretary has no power under the statute to stop this massive misappropriation.

88. The QIP continues in effect over the active but ineffectual resistance of non-quota holding dairy farmers subject to the QIP, due to a super majority vote requirement to eliminate QIP. A number of referenda to terminate the QIP have failed to garner the supermajority necessary for termination despite the strong support of a vocal minority. In addition to the 2025 referendum to modify the QIP to reduce the value of quota (summarized above), a 2021 referendum to terminate the QIP narrowly failed, while petitions for referenda to terminate in 2019 and 2020 were rejected by the CDFA on procedural grounds. Meanwhile, the quota system under the QIP since 2017 has through state control of the market redistributed several hundred million dollars in quota payments from non-quota holders to quota holders, money that could have been more equitably and efficiently used to invest in the industry according to market forces, money that non-quota holders should have been able to invest in their own businesses and employees.

FIRST CAUSE OF ACTION

Injunctive Relief [CCP §§ 525–26] / Declaratory Relief [CCP § 1060]
Quota Implementation Program Violates Article 4, Section 1, of the California Constitution
Unconstitutional Delegation of Legislative Power to the Secretary of Agriculture

89. Plaintiff incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 88, inclusive.

90. Article 4, Section 1 of the California Constitution provides that "The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum."

> An unconstitutional delegation of legislative power occurs when the Legislature confers upon an administrative agency unrestricted authority to make fundamental policy decisions. This doctrine rests upon the premise that the legislative body must itself effectively resolve the truly fundamental issues. It cannot escape responsibility by explicitly delegating that function to others or by failing to establish an effective mechanism to assure the proper implementation of its policy decisions.

People v. Wright (1982) 30 Cal. 3d 705, 712 (internal quotations and citations omitted). This doctrine:

> does not invalidate reasonable grants of power to an administrative agency, when suitable safeguards are established to guide the power's use and to protect against misuse. The Legislature must make the fundamental policy determinations, but after declaring the legislative goals and establishing a yardstick guiding the administrator, it may authorize the administrator to adopt rules and regulations to promote the purposes of the legislation and to carry it into effect. Moreover, standards for administrative application of a statute need not be expressly set forth; they may be implied by the statutory purpose.

Id. at 712–13 (internal quotations and citations omitted).

91. Courts will invalidate a statute as an unlawful delegation of legislative power if there is a "total abdication of that power, through failure either to render basic policy decisions or to assure that they are implemented as made." *Am. Coatings Assn., Inc. v. State Air Res. Bd.* (2021) 62 Cal. App. 5th 1111, 1131 (citing *People ex rel. Lockyer v. Sun Pac. Farming Co.* (2000) 77 Cal. App. 4th 619, 634).

92. This statute at issue in this case represents the extreme example this doctrine is designed to prevent: a total abdication of legislative power through both a failure of the legislature to make basic policy decisions and to assure that those policy decisions are actually implemented by the agency.

93. Section 62757 did not provide any legislative statement of purpose or intelligible principle to guide the Secretary's development and implementation of the QIP and its quota program. The statute provided no standard by which the Secretary was to determine if and when such an assessment should be levied, no standard by which to determine the aggregate amount of the assessment, no defined purpose by which to guide the setting of the assessment, and, other than stating

it would be assessed against "milk produced in the state," no delineation as to who should be assessed and who should receive the fruits of any such assessment.

94. This is the grant of unrestricted authority to make fundamental policy decisions, the failure to establish an effective mechanism to assure the proper implementation of its policy decisions, and the absence of suitable safeguards to guide the power's use and to protect against misuse. In sum, a total abdication of legislative power, through failure either to render basic policy decisions or to assure that they are implemented as made.

SECOND CAUSE OF ACTION
Injunctive Relief [CCP §§ 525–26] / Declaratory Relief [CCP § 1060]
Quota Implementation Program Violates Article 4, Section 1, of the California Constitution
Unconstitutional Delegation of Legislative Power
to the QIP Producer Review Board

95. Plaintiff incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 94, inclusive.

96. The California Supreme Court has held that "the delegation of governmental authority to an administrative body is proper in some instances," but "the delegation of absolute legislative discretion is not." *State Bd. of Dry Cleaners v. Thrift-D-Lux Cleaners* (1953) 40 Cal. 2d 436, 448. To avoid an unconstitutional delegation of legislative power, "it is necessary that a delegating statute establish an ascertainable standard to guide the administrative body." *Id.* In *State Board of Dry Cleaners*, the Court held that a statute was unconstitutional because it "assumes to confer legislative authority upon those who are directly interested in the operation of the regulatory rule and its penal provisions with no guide for the exercise of the delegated authority." *Id.* That case involved regime with a seven-member board comprising "six active members of the industry, and one member of the public at large" and for which "[t]he initiation of the proposed control is at the insistence of 75% of the cleaners in the area." *Id.* For its reasoning as to why this regime was unconstitutional, the California Supreme Court quoted the U.S. Supreme Court's holding in *Carter v. Carter Coal Co.* (1936) 298 U.S. 238, 311:

> [O]ne person may not be intrusted with the power to regulate the business of another, and especially of a competitor. And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and

> private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of this court which foreclose the question.

State Bd. of Dry Cleaners, 40 Cal. 2d at 448. Indeed, in *Carter Coal Co*., the U.S. Supreme Court held: "This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business." *Carter Coal Co.*, 298 U.S. at 311.

97. In *State Board of Dry Cleaners*, the California Supreme Court also cited a case decided by the Delaware Supreme Court that similarly involved an industry regulation where "vast authority is centered in a governing board, a majority of which are directly interested in the industry," concluding "[t]he practical tendency of the legislation is to create and foster monopoly, to prevent, not to encourage competition, to maintain maximum, not minimum prices, all of which is against, not in aid of, the interest of the consuming public." *Id*. at 448–49 (quoting *Becker v. State* (Del. 1936) 185 A. 92, 100). The California Supreme Court thus held that a statute may be unconstitutional if "the legislature attempts to delegate its powers to an administrative board made up of interested members of the industry[.]" *State Bd. of Dry Cleaners*, 40 Cal. 2d at 449.

98. In a more recent case, one California appellate court recognized the continuing validity of this doctrine while distinguishing *State Board of Dry Cleaners* for reasons wholly inapplicable to the instant case. Declining to hold that a regulatory regime was an unconstitutional delegation, the Court found that "statutes guide the exercise of authority, giving the Secretary the power and obligation to oversee the Commission and to order the Commission to cease or correct any acts not in the public interest (§ 74731), and the statutes even go so far as to set the maximum assessment rates and require industry approval to exceed that rate (§ 74785)." *Duarte Nursery, Inc. v. California Grape Rootstock Improvement Comm'n* (2015) 239 Cal. App. 4th 1000, 1018–19.

99. "More stringent and specific standards are required only where necessary to prevent abuse, for example, in cases in which representatives from private industry serve on administrative boards with power to make rules affecting board members' competitors." *State Bd. of Educ. v. Honig* (1993) 13 Cal. App. 4th 720, 751; *accord Bayside Timber Co. v. Bd. of Supervisors* (1971) 20 Cal.

App. 3d 1, 11–12 ("[S]ince the Legislature has chosen to delegate such law-making power, that its failure to prescribe any standards or 'safeguards to prevent its abuse' impresses upon the Act constitutional taint. When legislative authority without standards for its guidance is delegated to an agency or group of individuals with a pecuniary interest in its subject matter, the constitutional fault is compounded.").

100. Further, "a delegation also violates the nondelegation doctrine where it empowers such a party to '*initiate* . . . rules that acquired the force of law.'" *Coastside Fishing Club v. California Res. Agency* (2008) 158 Cal. App. 4th 1183 n.12 (quoting *King v. Meese* (1987) 43 Cal. 3d 1217, 1234).

101. Section 62757 of the California Food and Agriculture Code, which authorized the QIP, unlawfully delegates legislative powers in violation of Article 4, Section 1. The unlawful delegation made by Section 62577 was made to the PRB, an industry board dominated by market participants who hold quota allocated by the QIP. Neither the Legislature nor the Secretary provided any standards to guide the PRB when it legislated the QIP, and indeed, in many cases, the PRB set the terms of the QIP over the objections of the CDFA. Pursuant to Section 62757, the CDFA is also without authority to set the terms of the QIP or to unilaterally modify, amend, or terminate the QIP or any of its material terms.

THIRD CAUSE OF ACTION
Declaratory Relief [CCP § 1060, Cal. Gov't Code § 11350]
Quota Implementation Program Violates the California APA
Unlawful Promulgation of Administrative Regulations

102. Plaintiff incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 101, inclusive.

103. The QIP constitutes a regulation within the meaning of the California APA. *See* Cal. Gov't Code § 11342.600. The QIP applies generally to all Grade A milk producers in California and implements and makes specific the law set forth in California Food and Agricultural Code § 62757. As such, the QIP is subject to the California APA's procedural requirements for adoption and amendment of a regulation. *See Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal. 4th 324, 333–34; *Tidewater Marine W., Inc. v. Bradshaw* (1996) 14. Cal. 4th 557, 571.

104. California Food and Agricultural Code Section 62757 does not disclose any express

intention to supplant or exempt its rulemaking process from the California APA. In the absence of such an express exemption, the general provisions of the California APA govern. *See Voss v. Superior Ct.* (1996) 46 Cal. App. 4th 900, 909.

105. The California APA requires that, before adopting or amending any regulation, a state agency must (1) provide public notice in the California Regulatory Notice Register, Cal. Gov't Code § 11346.4(5); (2) issue the complete text of the regulation and a statement of reasons for the action, *id.* at § 11346.2; (3) allow public comment and hold a hearing if requested, *id.* at §§ 11346.5; 11346.8; (4) respond in writing to public comments, *id.* at § 11346.9; and (5) forward the entire rulemaking record to the Office of Administrative Law ("OAL") for review, *id.* at § 11347.3.

106. A regulation that substantially fails to comply with the requirements described in the preceding paragraph may be declared invalid. *Id.* at § 11350.

107. The CDFA failed to follow these mandatory procedures in promulgating the QIP. Upon information and belief, the QIP was never noticed in the California Regulatory Notice Register, the CDFA did not issue a formal statement of reasons for the QIP's adoption, the CDFA failed to respond to public comment in the manner required by the California APA, and the CDFA failed to submit a rulemaking record to the OAL for review and approval, as required by law.

108. The CDFA failed to follow these mandatory procedures in promulgating its May 2025 amendment to the procedures for handling hardship petitions filed by California producers pursuant to Article V of the QIP. Upon information and belief, this amendment was never noticed in the California Regulatory Notice Register, the CDFA did not issue a formal statement of reasons for this amendment, the CDFA failed to respond to public comment in the manner required by the California APA, and the CDFA failed to submit a rulemaking record to the OAL for review and approval, as required by law.

109. Because the QIP constitutes a regulation under the California APA and its method of adoption and subsequent amendments to its operative provisions substantially failed to comply with California APA's procedural requirements for the adoption or amendment of regulations, it is an unlawfully promulgated administrative regulation and may be declared invalid pursuant to California Government Code § 11350.

Prayer For Relief

Wherefore, Plaintiff prays for judgment on its cause of action in this Complaint as follows:

1. For an order from the Court declaring Section 62757 of the California Food and Agriculture Code invalid;
2. For an order from the Court declaring that the QIP is invalid, void, and of no effect;
3. For an order from the Court enjoining the QIP, including halting the collection and distribution of all quota payments;
4. For costs of suit;
5. For reasonable attorneys' fees; and
6. For such other relief as the Court deems just and proper.

July 8, 2025

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VERIFICATION

I, Charlene Vieira, am the owner of Charlene Vieira and am authorized to verify this Complaint as a Plaintiff. I have read this Verified Complaint for Declaratory and Injunctive Relief and am informed, and do believe, that the matters alleged herein are true. On that ground, I allege that the matters stated herein are true.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 7/8/2025 Charlene Vieira