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Western United Dairies

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

STOP QIP TAX COALITION,

Plaintiff and Petitioner,

v.

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, AND DOES 1 through 100, inclusive,,

Defendant and Respondent.

and

CLOVERDALE DAIRY, LLC; COUCO CREEK DAIRY, INC.; DE JAGER FARMS SOUTH; DOUBLE D. DAIRY; DOVER DAIRY FARMS; DYT DAIRY; FAGUNDES DAIRY; FELICITA DAIRY; FRANK J. BORGES DAIRY; GOYENETCHE DAIRY; MCCLELLAND'S DAIRY; MIGLIAZZO & SONS DAIRY; MILKY WAY DAIRYVISALIA; TILLEMA FARMS; VAN EXEL DAIRY; VIERRA DAIRY FARMS; and VISTA VERDE DAIRY,

Defendant and Respondent-Intervenors

Case No. 34-2019-80003273

APPLICATION OF *AMICI CURIAE* UNITED DAIRY FAMILIES OF CALIFORNIA, INC. AND WESTERN UNITED DAIRIES TO FILE A BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT; *AMICI CURIAE* BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT

[*Including Declarations of Shannon Nessier (Exhibit B), Dino Giacomazzi (Exhibit C), and Anja Raudabaugh (Exhibit D)*]

Date: July 28, 2020
Time: 9:00 a.m.
Dept.: 17
Judge: Hon. James P. Arguelles

Action Filed: December 4, 2019

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

United Dairy Families of California, Inc. ("Dairy Families") and Western United Dairies ("Western United") (collectively, "*Amici*") respectfully request permission to file an *Amici Curiae* brief, attached hereto as **Exhibit A**, to provide the Court with information relevant to consideration of the pending petition for writ of mandate and complaint for declaratory and injunctive relief ("Petition"), and to appear at the hearing on the merits set for July 28, 2020 at 9:00 am in Department 17 of the above-entitled court located at 720 9th St., Sacramento, California 95814.

Amici seek leave of court to file the attached *Amici Curiae* brief in support of respondent California Department of Food and Agriculture ("Department"). The *Amici Curiae* brief explains why the QIP was lawfully enacted and demonstrates that the Department's interpretation of the relevant enabling statute is entitled to deference. The *Amici Curiae* brief explains why the wholesale termination of the QIP sought by Petitioner Stop QIP Tax Coalition ("Petitioner") would cause acute and deleterious harm to the dairy industry and why, if this Court determines the QIP was not lawfully enacted, the Court should exercise its inherent authority to maintain the status quo rather than ordering the immediate termination of a quota system that has been a feature of the California dairy industry for over 50 years.

Accordingly, *Amici* request permission to file this brief due to the significant impact the Court's ruling on the Petition will have and believe the attached brief will "facilitate informed judicial consideration of a wide variety of information and points of view that may bear on important legal questions." *Bily v. Arthur Young & Co.*, 3 Cal.4th 370, 405 fn. 14 (1992) ("Amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties"); *see also In re Marriage Cases*, 43 Cal.4th 757, 791 fn. 10 (2008) (the superior has broad discretion "to determine the manner and extent of these entities' participation as amici curiae that would be of most assistance to the court").

INTERESTS OF *AMICI*

Amicus Dairy Families is a non-profit organization comprised of dairy farmers throughout California that is committed to creating a platform for sharing ideas on quota and the QIP. *See* Giacomazzi Declaration ("Giacomazzi Dec."), ¶ 3, attached hereto as **Exhibit C**. Dairy Families

believes that any changes to the QIP require economic analysis and an appropriate public process that reflects the will of the industry and that gives proper recognition to the perspectives of quota holders and non-quota holders alike. *Ibid.* To this end, Dairy Families engaged in a multi-phase process that took place over more than a year, involving hundreds of California dairy producers, that took input from the diverse views within the industry (not just one polar extreme or the other), and worked with that group to build a consensus driven response to the current push to address the quota divide in California. *Id.*, ¶ 4. As part of bringing that industry driven process to fruition, Dairy Families has actively opposed Petitioner's recent efforts to terminate the QIP in a manner that would be incongruent with the manner in which QIP was approved and the will of the diverse dairy industry. *Id.*, ¶ 5.

Amicus Western United is a trade organization comprised of over 700 California dairy producers, and representing more than 60% of the milk produced in California. Raudabaugh Declaration ("Raudabaugh Dec."), ¶ 3, attached hereto as **Exhibit D**. In its 35th year of operation, it has sought to promote sound legislative and administrative policies and programs for the profitability of the dairy industry and the welfare of the consumers by striving always to develop concepts for the general welfare and longevity of dairy producers, while maintaining the strong, positive public image of the dairy farmers. *Ibid.* Western United has a diverse membership in terms of quota holders and non-quota holders, and is thus in a unique position to provide information to the Court in this process that does not simply speak to the two polarized views presented by Petitioner and Intervenors, but represents a necessary insight into the spectrum of other dairy opinions on this industry flashpoint. *Id.*, ¶ 4. That information is necessary for the Court to have, and necessary to resolve this quota issue in an appropriate public process that reflects the will of the industry and that gives proper deference to the perspectives of quota and non-quota holders alike. *Id.*, ¶¶ 5, 8.

Amici are familiar with the issues raised in this case and have actively followed the proceedings and developments in this case. Giacomazzi Dec., ¶ 11; Raudabaugh Dec., ¶ 9. Moreover, *Amici* and/or many of their constituent members participated actively in the initiative process that led to the adoption of QIP, and *Amici*, on behalf of their constituent members, have

actively participated in and submitted comments during the course of more recent initiative processes, including a pending referendum request by Petitioner, concerning the QIP. Giacomazzi Dec., ¶¶ 7, 9; Raudabaugh Dec., ¶¶ 6-7. *Amici* respectfully submits that it is necessary for the issues raised by this case to be decided, at least in the first instance, in light of the diverse views of and impacts on the livelihoods of dairy farmers throughout California and, by extension the general public. Giacomazzi Dec., ¶ 6, 12; Raudabaugh Dec., ¶ 10.

THE PROPOSED *AMICUS CURIAE* BRIEF WILL ASSIST THE COURT IN DECIDING THIS MATTER

Amici respectfully submit that this brief will assist the Court in deciding this matter. *Cf.* Calif. Rule of Court 8.200(c)(2) (rule for amicus briefs in the Court of Appeal).

As detailed in the attached *Amici Curiae* brief, constituent members of *Amici* pay the assessment that funds quota payments under the QIP and voted in the referendum for the QIP that passed overwhelmingly; further, constituent members of each participated in the Producer Review Board ("PRB") process that led to the QIP referendum. Giacomazzi Dec., ¶¶ 7, 9; Raudabaugh Dec., ¶¶ 6-7. The constituent members of *Amici* include *both* members who hold quota as well as members who do not hold quota. Giacomazzi Dec., ¶ 3; Raudabaugh Dec., ¶ 4. Thus, *Amici* are in the unique position of being able to present a viewpoint that recognizes the potential impact of the Court's rulings in this matter on both groups—all of whom *Amici* respectfully submits will be negatively impacted by a ruling granting the Petition. Giacomazzi Dec., ¶¶ 4, 6, 10; Raudabaugh Dec., ¶ 4. *Amici's* participation will assist the Court in doing justice in this litigation by providing information that will allow the Court to have a more complete understanding of the context, and the potential impact of the Court's actions, on a broad range of parties, including *Amici's* constituent members. Giacomazzi Dec., ¶ 12; Raudabaugh Dec., ¶ 10. As discussed above, *Amici* provide perspective and historical, first-hand context not presented by Petitioner or Intervenors, and their presence in this action as *Amici* will be essential for the Court. Because of the importance of the issue facing the Court with the proposed destruction of a billion dollar asset, and because *Amici*'s interests are not and will not be fully presented by any of the parties before the Court, *Amici* request permission to file the brief attached as **Exhibit A** to this application.

In addition, though the membership of *Amici* does include individual members of the other parties by virtue of their broad membership and missions, no party or counsel for a party in the pending matter authored this brief in whole or in part or made a monetary contribution specifically intended to fund the preparation of submission of this brief. *Cf.* Calif. Rule of Court 8.200(c)(2) (rule for amicus briefs in the Court of Appeal).

Finally, *Amici* communicated their intention to request leave to file an *Amici Curiae* brief in this action to all parties. Counsel for Intervenors and the Respondent have confirmed they have no opposition to the request. Both Petitioner and Plaintiff Farmdale Creamery, Inc. have indicated they oppose *Amici's* request. Nessier Declaration ("Nessier Dec."), ¶¶ 2-5, attached hereto as **Exhibit B**.

DATED: July 2, 2020

HANSON BRIDGETT LLP

By: _____

MEGAN OLIVER THOMPSON
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MATTHEW J. PECK
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I. INTRODUCTION

For over half-a-century, a quota system has been a feature of the California dairy industry and, as such, quota has become deeply enmeshed in the industry's economics—for better or for worse, depending on whom you ask. Yet, a newcomer to the issue might well get the impression from Petitioner's opening brief on the merits ("Opening Brief") that the establishment of the quota implementation plan ("QIP") in 2017 by the Secretary ("Secretary") of the California Department of Food and Agriculture ("Department") ushered in a new era for the dairy industry in which millions of dollars were handed over to quota holders through little more than administrative say-so. But, the fact of the matter is that the QIP's establishment in 2017 simply ensured the quota system that had been in effect for over half-a-century would continue after the dairy industry transitioned to a federal milk marketing order ("FMMO"), until such time as the producers themselves voted to change that. Moreover, the QIP was overwhelmingly approved by 87.2% of the voting producers in a Statewide referendum. Nevertheless, more than two years after the referendum and more than one year after the Department began administering the QIP, Petitioner brought this action in which it asserts—based on a strained interpretation of the applicable statute—that this Court *must immediately enjoin* the QIP because it was unlawfully enacted and Petitioner's members will suffer the same *imminent* and *irreparable injury* they suffered in silence for the entire year prior to the filing of the Petition, let alone for the past 50 plus years.

Amici respectfully urge the Court to deny the Petition because the Secretary's development and establishment of the QIP complied with the enabling statute. *See* Cal. Food & Agric. Code, § 62757.[1] The Secretary was authorized to establish the stand-alone QIP upon the establishment of a FMMO in California, subject to two limitations: (1) that a producer review board convened pursuant to § 62719 make a recommendation regarding the QIP; and (2) that the producer review board's recommendation be approved in a Statewide referendum conducted pursuant to §§ 62716 and 62717. *See* § 62757, sub. (c). All of those requirements were met and, thus, *Amici* respectfully

[1] Unless stated otherwise, all statutory references are to the California Food & Agricultural Code ("Code").

submit that the QIP was validly established, and the Petition should be summarily denied. The Secretary's interpretation of § 62757—which is entitled to deference under the facts of this case—harmonizes the statutory language and gives effect and significance to all of it. Petitioner on the other hand proffers an interpretation that is illogical, internally inconsistent, renders statutory language superfluous or nugatory, and seeks to impose notice and hearing requirements not expressly found in, or reasonably implied from, the statutory language, even though it is axiomatic that drafters of legislation "do not, one might say, hide elephants in mouse-holes." *California Redevelopment Assn. v. Matosantos*, 53 Cal.4th 231, 260 (2011), quoting *Whitman v. American Trucking Associations*, 531 U.S. 457, 468 (2001).

Even if the Court concludes that the QIP was unlawfully enacted, *Amici* respectfully submit that the Court should exercise its inherent authority to preserve the status quo and leave the QIP in place and remand the QIP to the Department to cure whatever deficiencies the Court finds have rendered its enactment unlawful or, alternatively, direct the Department to undertake the actions required to amend or terminate the QIP in a manner that reflects producer self-determination. *Amici* believe that every producer deserves to have a voice in the future of the quota system, that quota has an asset value, and that the elimination of the quota program should come—not through zero-sum litigation such as this—but through an industry-driven solution pursuant to the proper processes. *Amici* respectfully submit that granting Petitioner the immediate termination of the QIP that it seeks in the Petition would financially devastate many producers in the dairy industry, upset an important industry stabilizing status-quo that has existed for over 50 years, and divide an industry that needs to mount a united front to face the innumerable challenges on the horizon threatening the industry's continued viability.

II. BACKGROUND

Milk pricing has been regulated in California for decades. Beginning in the 1930's, processors were required to pay dairy farmers minimum prices for their raw milk based on the end-product utilization. Competition for higher value Class 1 fluid milk contracts put producers in weak bargaining positions in relation to processors and led to disorderly market conditions. Opening

Brief, p. 10:2-7. In 1967, the Legislature enacted the Gonsalves Milk Pooling Act to protect reasonable producer incomes, and thereby protect the state's supply of milk. § 62702. The Act authorized the Secretary to "equalize gradually the distribution of [highest value of fluid milk] usage among producers of the State." *Ibid.* A producer referendum allowed it to be implemented in 1969.

Processors were still required to pay minimum class prices, but instead of paying different class prices directly to producers, they paid into a "pool" from which all producers were then paid a price reflecting the pool-wide utilization of all classes. Opening Brief, p. 10:11-19. To ensure a fair transition to the pooling program, "pool quota" was allocated to producers based on their historic production and Class 1 usage. ¶ 14. Each producer in California was issued an allotment equal to 110% of such producer's historical Class 1 sales, measured in pounds, or "quota." *See* § 62707. To further equalize returns among producers, additional quota was later issued to California producers in 1978, and periodically thereafter. § 62707.1; *see also* Opening Brief, p. 11, fn. 6.[2] Quota has generally always provided owners a higher price for their quota milk than for milk not covered by quota (overbase milk). ¶ 21. Quota has always been a producer-funded program, meaning the quota was paid out of the pool first. ¶ 22.

In February 2015, in light of farmer concerns with the California pricing program, the three largest dairy cooperatives in the state (California Dairies, Inc., Dairy Farmers of America, Inc., and Land O'Lakes, Inc.) petitioned the U.S. Department of Agriculture ("USDA") on behalf of their member producers to implement an FMMO in California. ¶ 26; *see also* Ex. 128. Among other things, the petition requested that the California quota program be included in the California FMMO. *Ibid.*. The authority for including quota in the California FMMO derived primarily from the 2014 Farm Bill's provision that any California order "**shall** have the right to reblend and distribute order receipts to recognize quota value." 82 FR 10652; 7 U.S.C.S. § 7253(a)(2) (Emphasis added).

Based on this language, and evidence and argument presented at the 40 day promulgation hearing, USDA concluded that the appropriate way for a California Federal Order to recognize quota value and comply with all requirements of the Agricultural Marketing Agreement Act would be for

[2] Unless specified otherwise, all Exhibits references are to the exhibits submitted by Petitioner in connection with its Opening Brief and all paragraph references are to the Petition/Complaint.

USDA to authorize a deduction from producer payments to fund the California quota plan, and for quota payments to continue to be administered by the Department, as it had been doing since quota's inception. 82 FR 10653. As USDA explained in its Recommended Decision: "The California FMMO would allow regulated handlers to deduct monies, in an amount determined and announced by CDFA, from blend prices paid to California dairy farmers for pooled milk, and send those monies to CDFA to administer the quota program. CDFA would in turn enforce quota payments to quota holders." *Ibid*.

USDA contemplated the California quota program would continue to operate in the event a FMMO was established in California, stating: "In essence, this decision proposes that the California quota program could continue to operate in essentially the same manner as it currently does." 82 FR 10653. Thus, USDA left the details and administration of California's quota program to the expert on the issue, the Department.

Following the Recommended Decision, the Department advised USDA in May 2017 that it was "ready and willing to establish a stand-alone, producer funded quota program" (*see* Ex. 59) and just two months later, the California Legislature enacted legislation in July 2017 that granted the Department the legal authority to enact a stand-alone quota program in the event that USDA published a Final Decision approving the California FMMO. *See* § 62757.

In full, § 62757, titled "Establishment of stand-alone quota program; necessary reports," states:

> (a) If a federal milk marketing order is established in California, the secretary is authorized to establish a stand-alone quota program, the details of which shall be included in the pooling plan. The stand-alone quota program may be funded by an assessment on milk produced in the state.
>
> (b) The secretary may require handlers, including cooperative associations acting as handlers, to make reports necessary for the operation of the stand-alone quota program.
>
> (c) The stand-alone quota program shall be pursuant to a recommendation by the review board established pursuant to Section 62719 and approved by a statewide referendum of producers conducted pursuant to Sections 62716 and 62717.

Pursuant to this express authority, and beginning in May 2017, the Department convened the Producer Review Board ("PRB") pursuant to § 62719 to develop recommendations for a stand-alone quota program. *See,* Exs. 4, 17-18. The PRB was specifically tasked with responsibility to represent members of the producer community in those discussions and decisions. *Ibid.* The PRB held multiple public meetings in 2017 to discuss, debate, and to make decisions in order to prepare their recommendation to the Department about a stand-alone quota program. *See, e.g.*, Exs. 10-23. Consistently, the Department provided notice to the dairy industry of each meeting and each meeting was open to all members of the industry and the public, and public comments were invited and voiced at each such meeting. *Ibid.* The Department also provided agendas, outlines of issues, including the new itemization of the producer's milk checks after the FMMO, and other instructive PowerPoints and documents for review and discussion by the public. *See, e.g.*, Exs. 46-49, 51-52.

Once the draft QIP was approved by the PRB, it was provided to the dairy industry for public comment, and several written comments were received and considered by the PRB and the Department before the proposed QIP was finalized. *See, e.g.*, Exs. 24-32, 37-38. Once finalized, the QIP went to a producer referendum, where it was required to pass by a supermajority, and was overwhelmingly approved in accordance with the referendum requirements set forth in §§ 62716 and 62717. Ex. 7. (January 5, 2018 QIP Referendum results reflect that 87.2% of producers who voted, representing 90% of voting milk production in California, voted in favor of QIP). USDA issued its Final Decision establishing the FMMO, which was published on April 2, 2018. ¶¶ 27-28. The California FMMO and the QIP became effective beginning on November 1, 2018. ¶¶ 39-40. USDA's Recommended and Final Decisions both recognized that the Department could still maintain, administer, and enforce the California quota program as a stand-alone program, notwithstanding the adoption of the California FMMO. *Ibid.*

Almost two years after the referendum was conducted and more than one year after the Department first began administering the QIP, Petitioner filed the instant Petition asserting the QIP was invalid and the Department's continued administration of it must be enjoined. The Petition asserts QIP is invalid because it was adopted in violation of the enabling legislation adopted by the California Legislature authorizing the Department to adopt and implement a standalone quota

program. ¶¶ 45-57. The Petition seeks the following declaratory, injunctive and mandamus relief: (1) an order declaring the QIP invalid; (2) an order suspending the implementation of the QIP, including halting the collection and distribution of all fees; and (3) a determination that the QIP is invalid, illegal, void, and of no effect. *Id.*, pp. 13:23-14:1 (Prayers for Relief).

The Department answered the Petition on January 16, 2020. On June 23, 2020, approximately 20 dairies that own quota were jointly granted leave to intervene to assist the Department in defending against the Petition ("Intervenors").

III. LEGAL STANDARD

The operative Petition in this action seeks relief pursuant to Code of Civil Procedure §§ 1085 (the so-called "traditional" writ statute) and 1094.5 (the so-called "administrative" writ statute), the latter of which Petitioner does not discuss presumably because it does not appear to apply.[3] Mandamus relief under § 1085 requires Petitioner to establish the Department abused its discretion and "acted arbitrarily, beyond the bounds of reason or in derogation of the applicable legal standards." *Entezampour v. North Orange County Community College Dist.*, 190 Cal.App.4th 832, 838 (2010); *Khan v. Los Angeles City Employees' Retirement System*, 187 Cal.App.4th 98, 105-106 (2010).

To do so, Petitioner must establish "(1) a clear, present and usually ministerial duty on the part of the [Department], and (2) a clear, present and beneficial right in the [P]etitioner to performance of that duty." *Barnes v. Wong*, 33 Cal.App.4th 390, 394-395 (1995). This Court exercises its independent judgment when reviewing an agency's interpretation of a statute or regulation, although deference to an agency's interpretation is "situational" and, as set forth *infra*, *Amici* respectfully submit such deference is warranted in this case. *Yamaha Corp. of Am. v. State Bd. of Equal.*, 19 Cal.4th 1, 7 (1988) (*Yamaha*).

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[3] Administrative mandamus applies where a party seeks judicial review of adjudicatory decisions rendered by administrative agencies as a result of a proceeding in which by law a hearing is required. Code Civ. Proc., § 1094.5, subd. (a); *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 514-15 (1974). Here, Petitioner asserts the Department did not hold a hearing prior to enacting QIP, and the Department contends no such hearing is required. *See Shelden v. Marin County Employees Retirement Ass'n*, 189 Cal.App.4th 458, 462-463 (2010) (an agency's determination may not be challenged under CCP § 1094.5 unless a hearing is required by law).

IV. ARGUMENT

A. THE QUOTA IMPLEMENTATION PLAN (QIP) WAS LAWFULLY ENACTED UNDER A PLAIN READING OF THE GOVERNING STATUTE.

In 2017, the Legislature enacted a statute that authorized the Secretary to establish a stand-alone quota program in the event a FMMO was established in California. § 62757, sub. (a). The Secretary's authority to establish the stand-alone quota program was subject to two limitations: (1) that a PRB established pursuant to § 62719 make a recommendation to the Secretary regarding the stand-alone program, and (2) that the final recommendation be approved in a Statewide referendum conducted pursuant to §§ 62716 and 62717. § 62757, sub. (c).

Nowhere in § 62757 do the words "notice" or "hearing" appear. Petitioner contends, based on an oblique reference to a "pooling plan" in Subdivision (a) (Opening Brief, pp. 18:17-19:12), and Subdivision (c)'s requirement that the referendum be conducted pursuant to §§ 62716 and 62717 (*id.*, pp. 19:13-21:5), that this confirms the Legislature intended to "incorporate the hearing requirements already in place for dairy farmers to adopt or amend a pooling plan" under Chapter 3 (*id.*, p. 18:1-5). *Amici* address each of Petitioner's arguments in turn.

First, Subdivision (a) states, in relevant part, that: "[i]f an [FMMO] is established in California, the secretary is authorized to establish a stand-alone quota program, the details of which shall be included in the pooling plan." § 62757, subd. (a). As expressly stated in the QIP itself, the Secretary reasonably construes the referenced "pooling plan" to mean the stand-alone quota program. Ex. 1, p. 4 ("The 'pooling plan' referenced in the Trailer Bill (Section 62757 of the Food & Ag Code) means this Plan"). Petitioner responds that "pooling plan" refers to the pooling plan under Chapter 3 that existed at the time Section 62757 was enacted and, therefore, because any amendments to that pooling plan were subject to, among other things, the statutory notice and hearing requirements under Chapter 3, the stand-alone quota program is subject to those requirements too. Opening Brief, p. 18:17-19:2.

At base, establishment of an FMMO in California would have preempted or suspended the existing pooling plan under Chapter 3 to the extent it conflicted with the FMMO. Opening Brief, p. 12:17-19; *see also id.*, p. 13:10-12, citing § 62726 ("Per the California Pooling Plan, the Plan would

be automatically suspended if a federal marketing order was adopted that conflicts with the Plan.") Petitioner nevertheless asserts—in a catch-22 fashion—that the stand-alone quota program had to be included in *that pooling plan*. Opening Brief, p. 19:3-12. Petitioner does not explain how, as a practical matter, the stand-alone quota program could have been "included in the pooling plan," other than to argue that it means the Legislature intended to impose the requirements that govern the adoption, amendment, and termination of Chapter 3 pooling plans—including the notice and hearing requirements—on the stand-alone quota program. *Ibid*. But, drafters of legislation "do not, one might say, hide elephants in mouse-holes." *Matosantos,* 53 Cal.4th at 260, quoting *Whitman,*, 531 U.S. at 468 (the Legislature does not "alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions"). To agree with Petitioner's interpretation would require the Court to do just that.

Petitioner argues the Department "[seeks to] back its way into meeting the statutory requirement by defining the QIP as being the "pooling plan" when there was a pooling plan in existence." Opening Brief, p. 18:27-28. But, that assertion ignores that the recommended FMMO—at the time § 62757 was enacted—defined the stand-alone quota program as the "applicable provisions of the [Code], **and** related provisions of the pooling plan administered by the [the Department]." 7 C.F.R. § 1051.11 (Emphasis added); *see also* Declaration of Jim Houston ("Houston Dec."), ¶ 11. It also ignores the most obvious of Legislative indicators: Section 62757 is titled "Establishment of a **stand-alone** quota program; necessary reports" (Emphasis added); the use of the descriptor "stand-alone" undermines Petitioner's assertion that QIP was an amendment to an existing pooling plan since it, quite literally, *stands alone*. Additionally, the temporal exigency in getting the QIP approved (as discussed at length in the Houston Declaration) provides valuable historical context that supports the Department's proffered interpretation. *See* Houston Dec., ¶¶ 8-10. Petitioner's interpretation wholly ignores this key historical context in asking the Court to accept that, while the Legislature enacted § 62757 in order to give the Secretary express authority to establish a new **stand-alone** quota program, the Legislature nevertheless intended the Secretary to include that new **stand-alone** quota program in the "pooling plan" that would be suspended upon enactment of the FMMO. This is complete and utter nonsense. Not only does Petitioner's argument

seek to force their desired conclusion, but it produces exactly the type of absurd and unjust result that courts are required to avoid in statutory interpretation. *See In re Greg F.*, 55 Cal.4th 393, 406 (2012) (a court may disregard explicit language in a statute that would produce an absurd result, since it is presumed that the Legislature would not have intended such a result).

Perhaps most importantly, Petitioner's proffered interpretation renders the procedural requirements governing the establishment of the stand-alone quota program set forth in Subdivision (c) superfluous. *See People v. Cole*, 38 Cal.4th 964, 981 (2006) ("interpretations that render a part of a statute superfluous" are to be avoided). Petitioner's suggestion that the Court interpret Subdivision (a) as "incorporating" the requirements that apply to the adoption, amendment, and termination of Chapter 3 pooling plans into the § 62757 stand-alone quota program ignores the rest of the express terms in Subdivision (c). Petitioner's argument would render those expressly identified procedural requirements under § 62757—*i.e.*, the PRB recommendation and the Statewide referendum—superfluous, since similar requirements are already set forth in Chapter 3. In essence, Petitioner argues that the Legislature intentionally drafted (as Petitioner notes) "three short sections" containing "a total of 104 words" (Opening Brief, p. 20:23-25), but could not recall by the time it got to Subdivision (c) that it had impliedly already incorporated a different procedural process into Subdivision (a). Put another way, why would the Legislature refer to two very specific statutory requirements set forth in Chapter 3—to the exclusion of all other statutory requirements in Chapter 3—if the Legislature truly intended to incorporate all of the statutory requirements set forth in Chapter 3? The only logical answer, and the right answer, is that the Legislature would not have done that.

Second, Subdivision (c) states: "[t]he stand-alone quota program shall be pursuant to a recommendation by the review board established pursuant to Section 62719 and approved by a statewide referendum of producers conducted pursuant to Sections 62716 and 62717." § 62757, subd. (c). Petitioner asserts that because § 62716, titled "Statewide Referendum" begins by stating that the referendum shall be conducted "following the required hearing," that this textual nugget evinces the Legislature's intent to incorporate, and therefore to apply, the Chapter 3 requirements into the process for establishing the stand-alone quota program. Opening Brief, p. 19:13-15. But,

again, drafters of legislation do not "hide elephants in mouse-holes." *Matosantos*, 53 Cal.4th at 260, citations omitted. The more logical interpretation—and the one advanced by the Secretary—is that the recommendation of the PRB had to be approved by a referendum conducted in accordance with the requirements of §§ 62716 and 62717. These long-standing sections set forth the manner in which a referendum under Chapter 3 must be conducted, in addition to the inapplicable notice and hearing provisions referenced by Petitioner. The referendum requirements can easily be parsed from the other inapplicable provisions that no longer apply in light of Section 62757, to give full and appropriate effect to the requirements in Section 62757.

The prefatory clause in § 62716 which mentions the "required hearing" has nothing to do with the "conduct" of, or process by which the referendum is to be conducted, and this makes sense given the definition of referendum: "1. The process of referring… an important public issue to the people for final approval by popular vote. 2. A vote taken by this method." REFERENDUM, Black's Law Dictionary (11th ed. 2019). To assert that the "conduct" of the referendum pursuant to §§ 62716 and 62717 requires that, as a statutory prerequisite to the referendum process, the Secretary *must* conduct a notice and hearing results in an unnatural reading of very plain language that, again, renders the process set forth in Subdivision (c) superfluous. Petitioner concludes by arguing that had the "Legislature [] wanted to eliminate the hearing requirement, it could have said so" (Opening Brief, p. 20:23-25). First, it is apparent from Section 62757 that this is exactly what the Legislature did. Second, this *ipse dixit* ignores that it is equally true that had the Legislature wanted to apply the hearing requirement it could have said so, with language such as, "The stand-alone quota program shall be approved in accordance with all of the requirements set forth in Chapter 3 that apply to the amendment, termination, and adoption of pooling plans under that Chapter." But the Legislature did neither of those things and, in any event, Petitioner's resort to legislative silence is unavailing because "[s]omething more than legislative silence, however, is necessary to justify an interpretation inconsistent with the statutory scheme." *Wilcox v. Birtwhistle*, 21 Cal.4th 973, 983 (1999) citations omitted.

Though Petitioner takes pains to note that § 62757 consists of "three short sections" containing "a total of 104 words" (Opening Brief, p. 20:23-25), Petitioner proffers an interpretation

of § 62757 that renders the majority of the statutory language superfluous in derogation of well-settled principles of statutory construction. *Amici* respectfully submit that the Secretary's interpretation of § 62757 better harmonizes § 62757 with the rest of the statutory scheme and gives effect and significance to all of the statutory language; whereas Petitioner's proffered interpretation renders much of the statutory language superfluous or nugatory and asks the Court to "connect the dots" in an illogical and circular approach to reach their desired conclusion.

B. THE DEPARTMENT'S INTERPRETATION OF THE STATUTE IS ENTITLED TO DEFERENCE.

California courts exercise independent judgment when reviewing an administrative agency's interpretation of a statute or regulation. *Yamaha*, 19 Cal.4th at 7; *Cf., Bonnell v. Medical Board of California*, 31 Cal.4th 1255, 1264-1265 (2003) (if a statute or regulation is clear, the court should not grant any deference to the agency's interpretation). Nevertheless, judicial deference to an agency interpretation is fundamentally "situational," and the degree of deference owed to an agency interpretation depends on two sets of factors: (1) whether the agency has a "comparative interpretative advantage" over the court; and (2) those indicating "that the interpretation in question is probably correct." *Yamaha*, 19 Cal.4th at 12 (1998). Here, a careful review of both factors establishes that the Secretary's interpretation of § 62757 is entitled to deference.

With respect to the first factor, where an interpretive issue involves language in a highly technical statute that an agency specializes in administering, the agency "may possess special familiarity with satellite legal and regulatory issues" such that its interpretation possesses "presumptive value." *MHC Operating Ltd. Partnership v. City of San Jose*, 106 Cal.App.4th 204, 219 (2003); *see also Yamaha*, 19 Cal.4th at 12 (courts "assume the agency has expertise and technical knowledge, [] where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion" because the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another).

As has been made clear herein, the California milk pricing regulatory scheme is a special creature. It has long been an outsider in a nation dominated by Federal Orders, and California's

adoption of a FMMO was done only after USDA specifically assigned the task of the complex and technical provisions for recognizing quota value to the one expert in this statutory scheme, the Department. The Department has been not just the keeper of the unique California quota program since its inception over 50 years ago; it has also been a daily part of assessments, payments, governing statutes and regulations, as well as on-going hearings and outreach to the California producer community, all of which make it both uniquely familiar with the satellite legal and regulatory issues and sensitive to the practical implications of one interpretation over the other. The Department knows better than anyone the practical implications of the question before the Court, and thus its interpretation is entitled to deference.

With respect to the second factor, controlling case law confirms the Secretary's interpretation is the better conclusion. For starters, the evidence shows that both the enactment of § 62757 and the adoption of the QIP itself were carefully studied by senior Department officials. *Sharon S. v. Sup. Ct. (Annette F.),* 31 Cal.4th 417, 436 (2003) (interpretation that came from authoritative policymaking levels of agency supports deference); *see generally* Houston Dec. The fact the Department has consistently maintained the same interpretation of § 62757 also weighs in favor of deference. *See Yamaha,* 19 Cal.4th at 13. Moreover, an "indication" that the Department's interpretation is "probably correct" arises where, as here, the evidence shows that the Department was involved in drafting § 62757, and its interpretation of the statute's requirement was substantially contemporaneous with enactment of the statute. *See Sara M. v. Sup. Ct. (Tuolumne County Dept. of Social Services),* 36 Cal.4th 998, 1014 (2005) (Judicial Council Rule adopted contemporaneously with statute it interpreted presumed correct under *Yamaha* analysis); *see also Whitcomb Hotel, Inc. v. California Employment Comm'n,* 4 Cal.2d 753, 756-757 (1944), citations omitted ("Substantially contemporaneous expressions of opinion are highly relevant and material evidence of the probable general understanding of the times and of the opinions of men who probably were active in the drafting of the statute").

For the reasons set forth above, a review of the "situational factors" demonstrate that the Department's interpretation of § 62757 is entitled to deference.

C. EVEN IF THE COURT DETERMINES THAT THE QIP WAS NOT LAWFULLY ENACTED, THE COURT SHOULD LEAVE IT IN PLACE AND REMAND THE QIP TO THE DEPARTMENT TO CONDUCT ANY PROCESS DEEMED BY THE COURT TO BE REQUIRED BY THE STATUTE.

Although an unlawful regulation may be enjoined, the California Supreme Court has recognized that in certain circumstances—which *Amici* respectfully submit are present here—courts may exercise their inherent authority to maintain the status quo to leave invalid regulations in place and to remand the matter to the agency to correct the deficiencies that rendered the regulation unlawful.

For example, in *California Hotel & Motel Ass'n v. Industrial Welfare Comm'n,* 25 Cal.3d 200, 216 (1979), the Court held that a minimum wage order promulgated in 1976 by the Industrial Welfare Commission was "invalid as promulgated" because it failed to comply with the authorizing statute.[4] Nevertheless, the Court recognized that the order "ha[d] been in effect since 1976," "is of critical importance to significant numbers of employees" whom "bear no responsibility for the [order's] deficiencies." It therefore exercised its "inherent power to make an order appropriate to preserve the status quo pending correction of deficiencies," and reversed the underlying judgment enjoining enforcement of the order "with directions to issue a writ of mandate to compel the commission to take further action in a manner consistent with this opinion within 120 days of the finality of the opinion." *Id.* at 12, fn. 42 (collecting cases that set forth the "inherent power of the court to make an order to preserve the status quo").

More recently in *Morning Star Co. v. State Bd. of Equalization,* 38 Cal.4th 324, 340-342 (2006), the Court left in place a hazardous materials fee collection policy implemented by an invalid underground regulation pending completion of proper rulemaking proceedings. There, the court found that interruption of fee collection would undermine an important public program of critical importance to the State of California. *See Id.* at 342, citing *inter alia Sugar Cane Growers Co-op. of Florida v. Veneman,* 289 F.3d 89, 97–98 (D.C. Cir. 2002) (remanding agency action without vacating same where agency had failed to engage in the required notice and comment procedures)

[4] Superseded on other grounds as stated in *Brinker Restaurant Corporation v. Superior Court,* 53 Cal.4th 1004, 1036, fn. 14 (2012).

and *International Union, UMW v. FMSHA*, 920 F.2d 960, 967 (D.C. Cir. 1990) (decision to remand without vacating depends on "the seriousness of the order's deficiencies" and the "disruptive consequences of an interim change that may itself be changed"); *see also POET, LLC v. Calif. Air Resources Bd.*, 218 Cal.App.4th 681, 708., 755-766 (2013) (invalid regulations concerning auto fuel formulation left in place while agency corrected rulemaking file and cured CEQA violations).

In the event the Court concludes that the Department's actions resulted in an invalid QIP, in light of the facts below, the Court should exercise its inherent authority to maintain the QIP and remand the matter to the Department to remedy any process issues identified by the Court.

1. Quota Has Been Integral To The California Dairy Industry For Over Half A Century.

As Petitioner concedes, the quota system was originally adopted in 1969 and, since that time, a quota system has been a feature of the California dairy industry. Opening Brief, p. 7:3-5. That is, the quota system *has been the status quo in the California dairy industry for over half-a-century*. This fact, standing alone, strongly cautions against granting the order sought by Petitioner to immediately enjoin the continued operation of the QIP and bears in favor of an order maintaining the status quo. *California Hotel & Motel Ass'n,* 25 Cal.3d at 216 (where minimum wage order had been in effect for three years, was critically important to many employees, and "employees bear no responsibility for the [order's] deficiencies" an order preserving the status quo under the unlawful order was warranted); *Sugar Cane Growers Co-op. of Florida,* 289 F.3d at 97–98 (remanding agency action without vacating same where agency had failed to engage in the required notice and comment procedures). Furthermore, when California producers were given the chance to craft the stand-alone QIP however they desired, they instead simply affirmed the status quo with the QIP, and it was voted in by an overwhelming majority. Ex. 7. This is not just the status quo, it is the industry-mandated status quo.

2. An Order Immediately Enjoining The Operation Of the QIP Would Financially Devastate Quota Holders And Create Disorder In The Dairy Industry.

The Opening Brief oftentimes reads as though the establishment of the QIP in 2017 ushered in a brand new era in which monies were arbitrarily transferred from non-quota holders to quota

holders. But the fact remains that the quota system has existed and operated virtually the same way for over half-a-century, has become deeply enmeshed in the economics of the California dairy industry, and represents a billion dollar producer held asset. *See, e.g.,* Houston Dec., ¶¶ 23-24; Exs. 111, 118. The constituent members of *Amici* include *both* members who hold quota as well as members who do not hold *quota*; thus, *Amici* are in the unique position of being able to present a viewpoint that recognizes the potential impact of the Court's rulings in this matter on both groups—all of whom *Amici* respectfully submits will be negatively impacted by a ruling that immediately enjoins the continued operation of QIP. Giacomazzi Dec., ¶¶ 4, 6, 10; Raudabaugh Dec., ¶ 4.

For many producers, quota has also been the largest, most liquid asset they will ever own. It has been a safety net during financial crisis that helped strapped farms stay in business, and for many producers quota has also been their retirement plan. *See, e.g.*[5], Cipponeri, Ex. 16, ¶ 11; Borges, Ex. 9, ¶¶ 8,14; De Jager, Ex. 17, ¶ 12; Van Exel, Ex. 15, ¶ 8; McClelland, Ex. 11, ¶¶ 9, 15; Goyenetche, Ex. 10, ¶¶ 7, 12; Tillema, Ex. 14, ¶¶ 8, 13; G. De Jong, Ex. 8, ¶ 8; P. De Jong, Ex.1, ¶¶ 8, 13; Agresti, Ex. 4, ¶¶ 8, 13; Machado, Ex. 2, ¶¶ 7, 14; Dyt, Ex. 6, ¶ 8, Brunner, Ex. 3, ¶ 13. Moreover, some producers sold quota to grow their operations, others purchased additional quota to limit production gains (or to enhance revenue because local and regional constraints impeded growth). *See, e.g.*, Dyt, Ex. 6, ¶ 10; Borges, Ex. 9, ¶ 12; Van Exel, Ex. 15, ¶ 12; Migliazzo, Ex. 12, ¶ 13. In addition, many producers purchased quota to allow smaller footprint operations to survive, without negatively impacting the environment, especially the sensitive regions of Northern California. *See, e.g.*, P. De Jong, Ex. 1, ¶ 10; Machado, Ex. 2, ¶ 11; G. De Jong, Ex. 8, ¶ 10.

The dairy industry writ large has always operated under the assumption that quota has an economic value, and the immediate termination of the QIP would impose devastating economic consequences on quota holders. *See, e.g.*, A. De Jong, Ex. 13, ¶ 11; Tillema, Ex. 14, ¶ 15; Van Exel, Ex. 15, ¶ 12; Cipponeri, Ex. 16, ¶11; Machado, Ex. 2, ¶13. For example, some producers utilize

[5] The declarations cited in this section are those declarations submitted by Intervenors in support of their Motion for Leave to Intervene, granted by this Court. They are attached to the Declaration of Brian Danitz, ¶¶ 2-18, Exs. 1-17. They are cited here by declarant's last name, the Intervenors' Exhibit number, and the paragraph number.

lines of credit, which take account of their quota holdings, to fund their operations; and, in the event the economic value of quota is reduced to nothing through the sudden invalidation of the QIP as Petitioner urges this Court to do, those producers may be unable to find similar lending. *See, e.g.*, McClelland, Ex. 11, ¶ 14; Brunner, Ex. 3, ¶ 11. Some producers borrowed to pay for quota, and if terminated, would be unable to pay back those loans. *See*, J. De Jong, Ex. 5, ¶ 11.

Furthermore, the immediate termination of the QIP, which will in turn immediately nullify the value of quota, will have several practical impacts that will cause disorder in the marketing of milk in the State, and likely drive producer pay prices lower than they already are during a time of substantial economic challenge for the dairy industry. For every single quota holding farm, the race will be on to replace that lost money – more cows, more milk, milking more often – the likely surplus would have the necessary impact of tanking milk prices, thus lowering the tide for all producer boats. *See, e.g.*, Machado, Ex. 2, ¶ 11; Fagundes, Ex. 7, ¶ 11; Agresti, Ex. 4, ¶ 12; Borges, Ex. 9, ¶ 12; P. De Jong, Ex. 1, ¶ 15. The way that might further impact the supply chain while the on-going threats of a pandemic loom cannot be understated. *See, e.g.*, P. De Jong, Ex. 1, ¶ 15; Machado, Ex. 2, ¶ 13; Brunner, Ex. 3, ¶ 14. The gains secured by those who invest in quota rather than simply dumping more milk into the supply, like environmental efficiencies, reduced carbon footprints and impacts, will be eviscerated, and every farmer in California, really every resident, will suffer from that loss greatly.

V. CONCLUSION

The QIP was lawfully enacted pursuant to the Department's interpretation of the relevant enabling statute, and its interpretation is entitled to deference. It was the result of months of the PRB shining a spotlight on the issues to the industry and the public, and even years of additional sunlight on the issue of quota recognition during the FMMO implementation process.

The immediate termination of the QIP sought by Petitioner is not only inconsistent with the statutes and regulations, but it would also cause deleterious harm to the dairy industry. Petitioner's request to immediately dismantle the quota program through this action, a staple twice voted into being by an overwhelming majority of producers, would wreak havoc on the California dairy

industry.

For these reasons, the Court should deny Petitioner's writ, or, if it finds that the QIP was not properly enacted, maintain the status quo and remand the issue to the Department to address any issues identified by the Court.

DATED: July 2, 2020

HANSON BRIDGETT LLP

By: 

MEGAN OLIVER THOMPSON
SHANNON M. NESSIER
MATTHEW J. PECK
Attorneys for *Amici Curiae,*
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

STOP QIP TAX COALITION,

Plaintiff and Petitioner,

v.

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, AND DOES 1 through 100, inclusive,,

Defendant and Respondent.

and

CLOVERDALE DAIRY, LLC; COUCO CREEK DAIRY, INC.; DE JAGER FARMS SOUTH; DOUBLE D. DAIRY; DOVER DAIRY FARMS; DYT DAIRY; FAGUNDES DAIRY; FELICITA DAIRY; FRANK J. BORGES DAIRY; GOYENETCHE DAIRY; MCCLELLAND'S DAIRY; MIGLIAZZO & SONS DAIRY; MILKY WAY DAIRYVISALIA; TILLEMA FARMS; VAN EXEL DAIRY; VIERRA DAIRY FARMS; and VISTA VERDE DAIRY,

Defendant and Respondent-Intervenors

Case No. 34-2019-80003273

DECLARATION OF SHANNON M. NESSIER IN SUPPORT OF APPLICATION OF *AMICI CURIAE* UNITED DAIRY FAMILIES OF CALIFORNIA, INC. AND WESTERN UNITED DAIRIES TO FILE A BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT; *AMICI CURIAE* BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT

Date: July 28, 2020
Time: 9:00 a.m.
Dept.: 17
Judge: Hon. James P. Arguelles

Action Filed: December 4, 2019

I, Shannon M. Nessier, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Hanson Bridgett LLP, attorneys of record for proposed *Amici Curiae*, United Dairy Families of California, Inc. ("Dairy Families") and Western United Dairies ("Western United"). I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. On Monday, June 29, 2020, Megan Oliver Thompson of my firm sent an email to counsel for Plaintiff/Petitioner Stop QIP Tax Coalition ("Petitioner"), Defendant/Respondent California Department of Food and Agriculture ("Respondent"), Plaintiff Farmdale Creamery, Inc. ("Farmdale"), and Intervenors Cloverdale Dairy, LLC; Couco Creek Dairy, Inc.; De Jager Farms South; Double D. Dairy; Dover Dairy Farms; Dyt Dairy; Fagundes Dairy; Felicita Dairy; Frank J. Borges Dairy; Goyenetche Dairy; McClelland's Dairy; Migliazzo & Sons Dairy; Milky Way Dairy - Visalla; Tillema Farms; Van Exel Dairy; Vierra Dairy Farms; And Vista Verde Dairy ("Intervenors").

3. The email contained notice of Dairy Families and Wester United's intent to seek permission to file an *Amici Curiae* brief in this action. It also sought to confirm whether any of the parties intended to oppose the request.

4. I have been informed that both Respondent and Intervenors confirmed that they have no opposition to Dairy Families and Western United's request to file an *Amici Curiae* brief.

5. Both Petitioner and Farmdale have indicated they will oppose the request.

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

Executed on this 1st day of July, 2020, at Orangevale, California.

Shannon M. Nessier

EXHIBIT C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

STOP QIP TAX COALITION,

Plaintiff and Petitioner,

v.

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, AND DOES 1 through 100, inclusive,,

Defendant and Respondent.

and

CLOVERDALE DAIRY, LLC; COUCO CREEK DAIRY, INC.; DE JAGER FARMS SOUTH; DOUBLE D. DAIRY; DOVER DAIRY FARMS; DYT DAIRY; FAGUNDES DAIRY; FELICITA DAIRY; FRANK J. BORGES DAIRY; GOYENETCHE DAIRY; MCCLELLAND'S DAIRY; MIGLIAZZO & SONS DAIRY; MILKY WAY DAIRYVISALIA; TILLEMA FARMS; VAN EXEL DAIRY; VIERRA DAIRY FARMS; and VISTA VERDE DAIRY,

Defendant and Respondent-Intervenors

Case No. 34-2019-80003273

DECLARATION OF DINO GIACOMAZZI IN SUPPORT OF APPLICATION OF *AMICI CURIAE* UNITED DAIRY FAMILIES OF CALIFORNIA, INC. AND WESTERN UNITED DAIRIES TO FILE A BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT; *AMICI CURIAE* BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT

Date: July 28, 2020
Time: 9:00 a.m.
Dept.: 17
Judge: Hon. James P. Arguelles

Action Filed: December 4, 2019

I, Dino Giacomazzi, declare as follows:

1. I am one of the founders of United Dairy Families of California, Inc. ("Dairy Families"). I make this declaration in support of the Application Of *Amici Curiae* United Dairy Families Of California, Inc. And Western United Dairies To File A Brief In Support Of Defendant And Respondent; *Amici Curiae* Brief In Support Of Defendant And Respondent**.**

2. I have personal knowledge of the facts set forth herein. If called as a witness, I could and would competently testify to the matters stated herein.

3. Dairy Families is a non-profit organization comprised of dairy farmers throughout California that is committed to creating a platform for sharing ideas on quota and the QIP. Because of Dairy Families' mission, it believes that any changes to the QIP require economic analysis and an appropriate public process that reflects the will of the industry and that gives proper recognition to the perspectives of quota holders and non-quota holders alike. Dairy Families includes both members who hold quota as well members who do not hold quota.

4. Dairy Families engaged in a multi-phase process that took place over more than a year following enactment of QIP. That process involved hundreds of California dairy producers, and considered input from the diverse views in the industry, and not just one extreme or the other, and worked with all groups to develop a consensus driven response to address the discord in the industry over quota. These efforts culminated in the submission of a Petition to Amend the QIP by Dairy Families and that Petition is currently pending before the California Department of Food and Agriculture.

5. As part of bringing that industry driven process to fruition, Dairy Families has actively opposed and hereby does oppose Petitioner's efforts to terminate the QIP in a manner that would be incongruent with the manner in which QIP was approved and that does not reflect the will of the diverse dairy industry.

6. For this action, Dairy Families is in the unique position of being able to present viewpoints that recognize the potential impact of the Court's rulings in this matter on all the involved stakeholders, from those who own significant quota to those who own little, from those who have recently purchased quota, to those who own no quota – all of whom Dairy Families believes will be

negatively impacted by a ruling granting the Petition. Dairy Families thus has a breadth of perspective that none of the current parties can offer the Court and this perspective will assist the Court in reaching its decision.

7. Dairy Families and many of its constituent members participated actively in the initiative process that led to the adoption of QIP, including serving on the Producer Review Board ("PRB"), which developed the recommendations related to the QIP that were thereafter approved by a Statewide referendum of producers.

8. Constituent members of Dairy Families pay the assessment that funds quota payments under the QIP and voted in the Statewide referendum for the QIP that passed overwhelmingly in 2018.

9. On behalf of its constituent members, Dairy Families has actively participated in and submitted both written and oral testimony, and documentary evidence during the course of the recent initiative processes, including a referendum request by Petitioner currently pending before CDFA that seeks to terminate the QIP.

10. Dairy Families believes that it is necessary for the issues raised by this case to be decided in light of the diverse views of and impacts on the livelihoods of dairy farmers throughout California.

11. Dairy Families is familiar with the issues raised in this case and has actively followed the proceedings and developments in this case.

12. Dairy Families' participation will provide information that will allow the Court to have a more complete understanding of the historical and industry context, and the potential impact of the Court's actions, on a broad range of parties, including Dairy Families' constituent members.

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

Executed on this 1st day of July, 2020, at Hanford, California.

Dino Giacomazzi

EXHIBIT D

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

STOP QIP TAX COALITION,

Plaintiff and Petitioner,

v.

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, AND DOES 1 through 100, inclusive,,

Defendant and Respondent.

and

CLOVERDALE DAIRY, LLC; COUCO CREEK DAIRY, INC.; DE JAGER FARMS SOUTH; DOUBLE D. DAIRY; DOVER DAIRY FARMS; DYT DAIRY; FAGUNDES DAIRY; FELICITA DAIRY; FRANK J. BORGES DAIRY; GOYENETCHE DAIRY; MCCLELLAND'S DAIRY; MIGLIAZZO & SONS DAIRY; MILKY WAY DAIRYVISALIA; TILLEMA FARMS; VAN EXEL DAIRY; VIERRA DAIRY FARMS; and VISTA VERDE DAIRY,

Defendant and Respondent-Intervenors

Case No. 34-2019-80003273

DECLARATION OF ANJA RAUDABAUGH IN SUPPORT OF APPLICATION OF *AMICI CURIAE* UNITED DAIRY FAMILIES OF CALIFORNIA, INC. AND WESTERN UNITED DAIRIES TO FILE A BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT; *AMICI CURIAE* BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT

Date: July 28, 2020
Time: 9:00 a.m.
Dept.: 17
Judge: Hon. James P. Arguelles

Action Filed: December 4, 2019

I, Anja Raudabaugh, declare as follows:

1. I am the Chief Executive Officer of Western United Dairies ("Western United). I make this declaration in support of the Application Of *Amici Curiae* United Dairy Families Of California, Inc. And Western United Dairies To File A Brief In Support Of Defendant And Respondent; *Amici Curiae* Brief In Support Of Defendant And Respondent**.**

2. I have personal knowledge of the facts set forth herein.. If called as a witness, I could and would competently testify to the matters stated herein.

3. Western United is a trade organization comprised of over 700 California dairy producers that produce more than 60% of all milk produced in the State of California that is now in its 35th year of operation. Since it was first established, Western United has sought to promote sound legislative and administrative policies and programs for the profitability of the dairy industry and the welfare of consumers by developing concepts for the general welfare and longevity of dairy producers, while maintaining the strong, positive public image of the dairy farmers.

4. Western United has a diverse membership that includes both quota holders and non-quota holders. Western United is thus in a unique position to provide information to the Court in connection with this litigation that does not simply speak to the two polarized views presented by Petitioner and Intervenors, but represents a necessary insight into the spectrum of other dairy opinions on this industry flashpoint.

5. Western United believes the issues raised in this case need to be decided through an appropriate public process that reflects the will of the industry and that gives proper deference to the perspectives of quota and non-quota holders alike and believes that the presentation of such information will assist the Court in understanding the diverse views of producers that will be affected by the Court's ruling and, in so doing, will ensure that a just decision is reached.

6. Constituent members of Western United pay the assessment that funds the quota payments under the QIP and voted in the Statewide referendum that ultimately resulted in the overwhelming approval of the QIP. Further, constituent members of each participated in the Producer Review Board ("PRB") process that led to the QIP referendum, some of whom actively served on the PRB at that time.

7. Western United and many of its constituent members participated actively in the initiative process that led to the adoption of QIP, and on behalf of its constituent members, Western United actively participated in and submitted written comments in connection with more recent initiative processes, including a pending referendum request initiated by Petitioner, that seeks the termination of the QIP.

8. Western United believes that it is necessary for the issues raised by this case to be decided in light of the diverse views of and impacts on the livelihoods of dairy farmers throughout California.

9. Western United is familiar with the issues raised in this case and has actively followed the proceedings and developments in this case.

10. Western United's participation will provide information that will allow the Court to have a more complete understanding of this context, and the potential impact of the Court's actions, on a broad range of parties, including Western United's constituent members.

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

Executed on this 1st day of July, 2020, at Modesto, California.

Anja Raudabaugh

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 425 Market Street, 26th Floor, San Francisco, CA 94105.

On July 2, 2020, I served true copies of the following document(s) described as

APPLICATION OF *AMICI CURIAE* UNITED DAIRY FAMILIES OF CALIFORNIA, INC. AND WESTERN UNITED DAIRIES TO FILE A BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT; *AMICI CURIAE* BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT

[*Including Declarations of Shannon Nessier (Exhibit B), Dino Giacomazzi (Exhibit C), and Anja Raudabaugh (Exhibit D)*]

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address kbendick@hansonbridgett.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY OVERNIGHT DELIVERY: I caused said document(s) to be enclosed in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I caused the envelope or package to be placed for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

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

Executed on July 2, 2020, at San Francisco, California.

Kate A. Bendick

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