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*Motion for Admission *Pro Hac Vice* to be filed

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

**SARAH KING and GODSPEED
HOLLOW FARM, CHRISTINE
ANDERSON and CAST IRON FARM,
WANEVA LAVELLE and PURE GRACE
FARM and MELISSA DERFLER and
RAINBOW VALLEY DAIRY GOATS,**

Plaintiffs,

v.

LISA CHARPILLOZ HANSON, in her
official capacity as Director of the Oregon
Department of Agriculture, and **WYM
MATTHEWS**, in his official capacity as
Program Manager of the Oregon Department

Case No. _____

**COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

of Agriculture Confined Animal Feeding
Operations Program,

Defendants.

Plaintiffs Sarah King and Godspeed Hollow Farm, Christine Anderson and Cast Iron Farm, Waneva LaVelle and Pure Grace Farm, and Melissa Derfler and Rainbow Valley Dairy Goats, file this Complaint for Declaratory and Injunctive Relief and sue Defendants Lisa Charpillon Hanson, in her official capacity as Director of the Oregon Department of Agriculture, and Wym Matthews, in his official capacity as Program Manager of the Oregon Department of Agriculture Confined Animal Feeding Operations Program, as follows:

INTRODUCTION

1. Plaintiffs file this lawsuit seeking declaratory and injunctive relief under the Fourteenth Amendment to the U.S. Constitution, challenging the Oregon Department of Agriculture’s (the “Department”) requirement that Plaintiffs be regulated as confined animal feeding operations (“CAFOs”). Plaintiffs are four owner-operators of small-scale dairies, and their respective farms, in Oregon. And these farmers face substantial financial harm or complete shutdown as a result of Defendants’ 2023 reinterpretation of its regulations pertaining to CAFOs in the state.

2. This reinterpretation is irrational and driven by protectionist motives. Indeed, even though Plaintiffs do not “confine” their animals under any normal understanding of the term (or as state and federal law define), Defendants have declared, admittedly at the behest of large dairy operators, that the mere act of milking an animal—in a sheltered location or on a prepared surface—constitutes confinement for purposes of triggering the law’s requirements. Protectionism aside, Defendants also suggest this reinterpretation is meant to manage water and animal waste. But Plaintiffs have safely and sustainably managed those things for years, using

techniques that typical CAFOs simply cannot. Indeed, the additional infrastructure Plaintiffs must install is completely unnecessary. The CAFO regulations are meant for large-scale farming operations that are exponentially larger than Plaintiffs'. These needless modifications come at great expense, and for some Plaintiffs, will prove catastrophic.

PARTIES

3. Plaintiff Sarah King is a United States citizen and a resident of the state of Oregon. She owns and operates Godspeed Hollow Farm, which is located in Yamhill County, Oregon.

4. Plaintiff Godspeed Hollow Farm is a small family-run dairy in Oregon, where Sarah milks two cows daily. It is in compliance with all applicable health and safety regulations.

5. Plaintiff Christine Anderson is a United States citizen and a resident of the state of Oregon. She owns and operates Cast Iron Farm, which is located in Yamhill County, Oregon.

6. Plaintiff Cast Iron Farm is a small family-run dairy in Oregon, where Christine milks two cows daily. It is in compliance with all applicable health and safety regulations. Additionally, Cast Iron Farm has secured and maintains a license as a CAFO.

7. Plaintiff Waneva LaVelle is a United States citizen and a resident of the state of Oregon. She owns and operates Pure Grace Farm, which is located in Marion County, Oregon.

8. Plaintiff Pure Grace Farm is a small family-run dairy in Oregon, where Waneva owns about nine goats whose milk she uses mostly to make soap and lotion. It is in compliance with all applicable health and safety regulations.

9. Plaintiff Melissa Derfler is a United States citizen and a resident of the state of Oregon. She owns and operates Rainbow Valley Dairy Goats, a farm located in Josephine County, Oregon.

10. Plaintiff Rainbow Valley Dairy Goats is a small family-run dairy farm in Oregon, where Melissa milks eight goats daily. It is in compliance with all applicable health and safety regulations.

11. Defendant Lisa Charpilloz Hanson is the director of the Oregon Department of Agriculture. Director Hanson has direct authority over the Oregon Department of Agriculture and is charged with the responsibility of promulgating, interpreting, and enforcing the challenged regulation and/or overseeing agents tasked with the same. She is sued only in her official capacity.

12. Defendant Wym Matthews is the program manager of the Oregon Department of Agriculture's Confined Animal Feeding Operations Program—the specific division within the Oregon Department of Agriculture that is charged with the responsibility of interpreting, disseminating, and enforcing the challenged regulation. He is sued only in his official capacity.

JURISDICTION AND VENUE

13. Plaintiffs bring this civil rights lawsuit pursuant to the Fourteenth Amendment to the United States Constitution, the Civil Rights Act of 1871, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, for violations of the Fourteenth Amendment to the United States Constitution.

14. Plaintiffs seek declaratory and injunctive relief against the Oregon Department of Agriculture's regulation requiring Plaintiffs, a group of small farmers, to obtain permits for, and comply with, the state's regulations pertaining to confined animal feeding operations. *See generally* Or. Admin. R. 603-074-0010(3).

15. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331, as Plaintiffs' claims arise under the Fourteenth Amendment to the U.S. Constitution.

16. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1391(e)(1), as a substantial part of the events giving rise to Plaintiffs' claims occurred in this District.

FACTUAL ALLEGATIONS

Plaintiffs Sarah King and Godspeed Hollow Farm

17. Sarah King owns and operates Godspeed Hollow Farm in Newberg, Oregon. She purchased the property in 2016. Sarah resides on-farm with her husband and two children and has been milking cows there since 2017.

18. Sarah grew up around animals, and in purchasing the property, Sarah sought to reconnect herself to her roots and bring her family and herself closer to their food sources.

19. The farm is not huge—just under 11 acres. And while Sarah periodically raises a small number of pigs and hopes to earn some revenue from leasing some of the property to wine-makers to grow grapes, her milk operation is the farm's only regular source of revenue.

20. Sarah also has 10-15 chickens and maintains a small garden, but again, the eggs and vegetables she produces are kept for personal consumption or given away to family and friends.

21. Sarah owns three cows, but at any given time, typically no more than two cows are producing milk. The whole philosophy at Godspeed Hollow is to do things on a small scale and do them well. So Sarah has never milked more than three cows at a time because it would be difficult to manage.

22. Sarah's operation is exempt from the state's requirements for a fluid milk license.

23. Godspeed Hollow operates on a herdshare system—an arrangement that allows members of the public to purchase "shares" of her dairy cows. By arranging her business this

way, Sarah does not “sell” her milk so much as she maintains a closed group of shareholders who are eligible to make regular pickups of milk on her farm. This is a common model for small-scale dairies like Sarah’s.

24. Sarah sells whole shares and half shares to members. A whole share is \$104 per month and entitles its owner to one gallon of milk per week. A half share is \$52 and entitles its owner to a half-gallon per week. Only herdshare members who pay the monthly fee may have milk. And because Sarah personally knows the members of her herdshare, they are all invited to visit the farm without an appointment, return their empty containers, and pick up their milk from a specially labeled refrigerator. At peak production, Sarah earns about \$4,000 per month providing milk to her herdshare members.

25. The milk at Godspeed Hollow is truly “farm-fresh.” The herdshare refrigerator is in a milk room about a hundred feet from the parlor where Sarah milks her cows every morning.

26. Godspeed Hollow is a raw-milk dairy, meaning that Sarah does not pasteurize her milk. The members of her herdshare seek her out for this very reason; they desire a product that contains all of the natural vitamins, fat content, and nutritional value of fresh, unpasteurized and completely unadulterated milk. And were it not for Sarah and farmers like her, those customers likely would not be able to get that product.

27. For example, during the COVID-19 pandemic, Sarah saw a spike in business. The experience validated the concern that led Sarah to start Godspeed Hollow to begin with—that people are too far removed from their food sources and, as a result, our food supply chain was fragile and susceptible to breakdown.

28. Over the years, Sarah has had herdshare members and customers visit her from over an hour away. Although raw milk is available in retail stores in Washington, California and

Idaho, raw milk is not available in retail stores in Oregon. Sarah and Godspeed Hollow, therefore, provide their customers with something they cannot get through more typical means (unless they want to leave the state).

29. Sarah is deeply committed to the health and happiness of her cows. Her cows are routinely tested and have access to high-quality veterinary care.

30. The cows at Godspeed Hollow are also completely free to move about. They are fully pasture-raised on a rotational pasture—meaning that while one area of the pasture is being used for grazing, other areas are recovering and replenishing. The cows always have access to an enclosed barn, though they tend to not spend much time there except during especially rainy or cold conditions. And, even then, they are able to exit the barn and go out to the pasture if they wish. There is never a time in which the cows are enclosed in the barn without the ability to leave.

31. Thus, the cows at Godspeed Hollow are not “confined” under any common understanding of the term. Likewise, the cows at Godspeed Hollow are not confined under any normal reading of state or federal law.

32. In many ways, Sarah’s milking habits are indistinguishable from how humans have milked livestock since the dawn of modern animal husbandry. She wakes up every day at 5:00 a.m. and totes all of her milking equipment to her barn’s milking parlor, on foot. Because the cows know the routine, they typically come in from the outside and are waiting for her in the barn when it is time to milk. Once Sarah gets there, she greets each cow and individually leads them, typically without a halter, to one of two milking stanchions where they are milked. The floor of the stanchion is “prepared” with rubber mats atop some compacted gravel.

33. Sarah is meticulous about the safety of her milking operation. Without exception, Sarah begins each session with previously sanitized equipment. But before using any of that equipment, Sarah first removes any dirt from the udder and thoroughly cleans each teat. Only then does Sarah attach her milking machine, which safely and mechanically milks the cows—first one, then the other. She does not have the capacity to milk more than one cow at a time.

34. Once the cows are done being milked, they are led back out to pasture. The entire process—from the time Sarah leads them to the stanchion to the time they go back outside—takes roughly 15–20 minutes.

35. The milking machine pumps the milk to a ten-gallon stainless steel milk tank. Milk production quantities depend on many factors, but currently, Sarah’s cows provide roughly eight gallons of milk per day. So Sarah fills two tanks nearly half full, and then hauls the milk and equipment—around 100 pounds—uphill to her milk room. Once there, Sarah manually portions the milk by pouring it through a dairy filter and into half-gallon jars. The jars are sealed and the milk is immediately chilled to prevent any harmful bacteria from growing.

36. After milking and portioning are done, Sarah turns to cleaning her milking equipment—her tanks, tubes, and attachments. First, everything is rinsed with hot water over a commercial sink in her milk room. Then, Sarah mixes an industry-standard cleaning product in a bucket of hot water, places the udder attachments into the bucket, and pumps the cleaning solution through the tubes and into the tank. She then repeats the process with a slightly acidic solution to sanitize the components for milking the next day.

37. The process produces roughly six gallons of “wastewater” per cow, which Sarah typically discards by pouring it onto her gravel driveway, on the grass just beside it, or on her family’s vegetable garden. Smaller items—like empty milk jars, lids, and the funnel Sarah uses

when portioning her milk—are washed in a conventional dishwasher, which runs to her septic tank. The trivial amount of water produced in the course of cleaning the milking equipment is non-toxic and does not harm the environment.

38. At Godspeed Hollow, Sarah practices regenerative and holistic farming. That means that waste is cycled and recycled in a way that nourishes—rather than pollutes—the earth.

39. When Sarah’s cows are out at pasture, like any outdoor livestock, the urine and solid waste they produce falls to the ground. Once the grass in an area has been depleted, the cows rotate to another part of the pasture, while the previous area metabolizes the waste—a fertilization cycle that livens the soil and regenerates grass for the next time the cows graze on that plot.

40. Likewise, when in the barn, the animal waste drops onto straw bedding that is later collected and placed either on a compost pile (and then into the vegetable garden, from which Sarah feeds her family and friends) or applied to the pasture where it decomposes and fertilizes the earth. Because Sarah has only three cows, and thus does not have to manage more animal waste than her property can safely absorb, the process is completely sustainable. It is a cycle that repeats itself again and again.

41. Sarah’s operations have no adverse impact on the state’s environment, soil, or groundwater.

42. Defendants possess no evidence that Sarah’s operations have any adverse impact on the state’s environment, soil, or groundwater.

Plaintiffs Christine Anderson and Cast Iron Farm

43. Christine Anderson owns and operates Cast Iron Farm in McMinnville, Oregon. She purchased the property in 2010. Christine resides on-farm with her husband and three children and has been milking cows there since 2010.

44. The farm is not huge—just about 13 acres. To earn some additional money, Christine is typically able to raise a handful of other animals, which she rotates as the market demands. At the moment, she has about 15 sheep and two yaks, though the income from those animals is seasonal and inconsistent. Christine also keeps about 20 chickens and maintains a seasonal vegetable garden, but neither is much of a source of income. Christine is sometimes able to sell eggs, but the vegetables she produces are kept for personal consumption or given away to family and friends.

45. Christine owns three cows, but at any given time, typically no more than two cows are producing milk. Christine almost never milks more than three cows at a time because it can be difficult to manage.

46. Christine’s operation is exempt from the state’s requirements for a fluid milk license.

47. Although she did not want to get one, and believes she should not have had to, Christine has applied for and obtained a CAFO permit.

48. Cast Iron operates on a herdshare system—an arrangement that allows members of the public to purchase “shares” of her dairy cows. By arranging her business this way, Christine does not “sell” her milk so much as she maintains a closed group of shareholders who are eligible to make regular pickups of milk on her farm. This is a common model for small-scale dairies like Christine’s.

49. A whole share is \$80 per month and entitles its owner to one gallon of milk per week. A half share is \$40 and entitles its owner to a half-gallon per week. Only herdshare members who pay the monthly fee may have milk. And because Christine personally knows the members of her herdshare, they are all invited to visit the farm without an appointment, return their empty containers, and pick up their milk from a specially labeled refrigerator.

50. The milk at Cast Iron is truly “farm-fresh.” The herdshare refrigerator is in a milk room about fifty feet from the parlor where Christine milks her cows every morning.

51. Cast Iron is a raw-milk dairy, meaning that Christine does not pasteurize her milk. The members of her herdshare seek her out for this very reason; they desire a product that contains all of the natural vitamins, fat content, and nutritional value of fresh, unpasteurized and completely unadulterated milk. And were it not for Christine and farmers like her, those customers likely would not be able to get that product.

52. Over the years, Christine has had herdshare members and customers visit her from over an hour away. Although raw milk is available in retail stores in Washington, California and Idaho, raw milk is not available in retail stores in Oregon. Christine and Cast Iron, therefore, provide their customers with something they cannot get through more typical means (unless they want to leave the state).

53. Christine is deeply committed to the health and happiness of her cows. Her cows are routinely tested and have access to high-quality veterinary care.

54. The cows at Cast Iron are also completely free to move about. They are fully pasture-raised on a rotational pasture—meaning that while one area of the pasture is being used for grazing, other areas are recovering and replenishing. The cows always have access to an enclosed barn, though they tend to not spend much time there except during especially rainy or

cold conditions. Except when Christine decides the weather conditions are too severe, which is rare, there is never a time in which the cows are enclosed in the barn. And Christine never keeps them in the barn for more than 45 days a year—to make sure she does not trigger the federal CAFO regulations.

55. Thus, the cows at Cast Iron are not “confined” under any common understanding of the term. Likewise, the cows at Cast Iron are not confined under any normal reading of state or federal law.

56. In fact, in many ways, Christine’s habits are indistinguishable from how humans have milked livestock since the dawn of modern animal husbandry. She wakes up every day at 5:00 a.m. and one of her first tasks is to milk her cows. She brings them in from the outside and into her parlor, where she milks them one by one.

57. Christine’s milking parlor has a concrete floor. The floor contains a typical floor drain that used permeable pipe and tile drainage to lead to a common drain field—a common and still-in-use drainage system that dates to the ancient Romans. Even though the drain line was there when she bought the farm and the drain itself has been in use since 2012, and even though Christine had never had an issue with soil or contamination, Christine had to plug that drain to get a CAFO permit.

58. Christine is meticulous about the safety of her milking operation. Without exception, Christine begins each session with previously sanitized equipment. But before using any of that equipment, Christine first removes any dirt from the udder and thoroughly cleans each teat. Only then does Christine attach her milking machine, which safely and mechanically milks the cows—first one, then the other. She does not have the capacity to milk more than one cow at a time.

59. Once the cows are done being milked, they are led back out to pasture. The entire process—from the time Christine leads them to the parlor to the time they go back outside—takes roughly 15–20 minutes.

60. The milking machine pumps the milk to an eight-gallon stainless steel milk tank. Milk production quantities depend on many factors, but currently, Christine’s cows provide nearly eight gallons of milk per day. So Christine fills a tank until it is nearly full, and then hauls the milk and equipment—over 100 pounds—to her milk room. Once there, Christine manually portions the milk by pouring it through a cheese-cloth filter and into half-gallon jars. The jars are sealed and the milk is immediately chilled to prevent any harmful bacteria from growing.

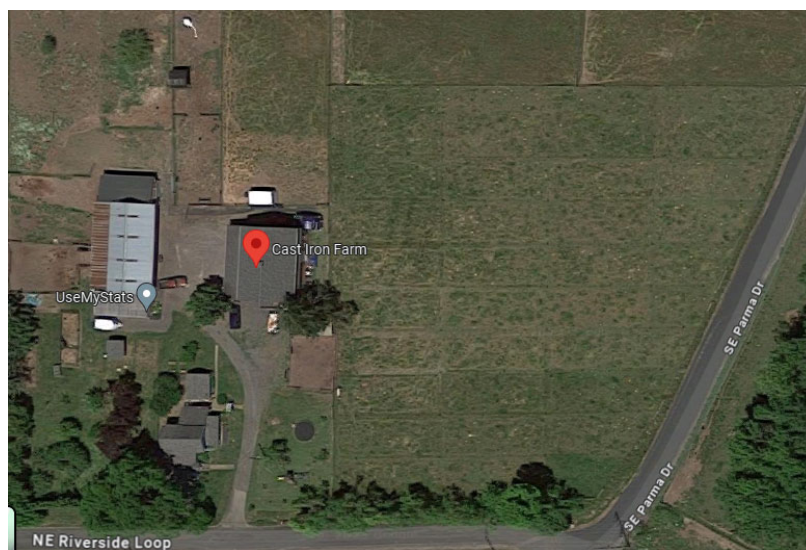
61. After milking and portioning are done, Christine turns to cleaning her milking equipment—her tanks, tubes, and attachments. Christine’s process is virtually identical to Sarah’s. First, everything is rinsed with hot water over a commercial sink in her parlor. Then, Christine mixes an industry-standard cleaning product in a bucket of hot water, places the udder attachments into the bucket, and pumps the cleaning solution through the tubes and into the tank. She then repeats the process with a slightly acidic solution to sanitize the components for milking the next day.

62. At present, the process produces roughly six gallons of “wastewater.” She used to pour that water down her floor drain, but now, because her CAFO permit requires it, she hand-hauls the water out to her field and pours it out in a different location every day. Sometimes that means she pours it on her vegetable garden—which is allowed under her CAFO permit.

63. Smaller items—like empty milk jars, lids, and the funnel Christine uses when portioning her milk—are washed in a conventional dishwasher, which drains through a hose to different locations in her field. She does this because she has been told it is how she can remain

legally compliant because her wastewater does not go through her residential septic system. The trivial amount of water produced in the course of cleaning the milking equipment is non-toxic and does not harm the environment. Yet Christine must haul it and dispose of it as though that were not the case.

64. Christine practices a similar type of rotational grazing as Sarah. She maintains 28 wire-fenced paddocks on her pasture, which allows her cows to graze on a new plot of land every day for nearly a month. This gives each paddock enough time to recover before the cows graze there again. Her system is so precise that the rotational grid can be seen on satellite imagery:



65. When Christine's cows are out at pasture, like any outdoor livestock, the urine and solid waste they produce falls to the ground. When the cows rotate to a new plot, the previous area metabolizes the waste—a fertilization cycle that livens the soil and regenerates grass for the next time the cows graze on that plot.

66. Likewise, when in the barn, the animal waste drops onto straw bedding that is later collected and placed either on a compost pile (and then into a vegetable garden, from which Christine feeds her family and friends) or applied to the pasture where it decomposes and fertilizes the earth. Because Christine has only three cows, and thus does not have to manage

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF—14

more animal waste than her property can safely absorb, the process is completely sustainable. It is a cycle that repeats itself again and again.

67. Christine's operations have no adverse impact on the state's environment, soil, or groundwater.

68. Defendants possess no evidence that Christine's operations have any adverse impact on the state's environment, soil, or groundwater.

69. Still, Christine spent months in a dialogue with Defendants trying to determine what she would need to do to remain compliant with the law once Defendants' reinterpretation takes effect.

70. Those discussions were unproductive. Frustrated, Christine decided that rather than wait for the Department to issue more clarity on its CAFO regulations, she would just apply for the CAFO permit.

71. Christine applied for her CAFO permit in August. To obtain the CAFO permit, Christine paid \$87 for her land-use agreement certification from Yamhill County, and a \$100 application fee to the department. She also submitted to an inspection and provided two soil samples. To maintain the permit, Christine will need to pay an annual fee of \$125 and submit to additional inspections every 10 months.

72. To get her permit, Christine was forced to plug the floor drain in her milking parlor. Whereas before she would pour the wash water from her milking equipment into that drain, now she empties it into buckets or pails.

73. Per Defendants' rules, Christine then hand-carries those buckets of "wastewater"—really just a mild cleaning solution mixed with water and a miniscule amount of milk—and pours it out somewhere on her land. Per Defendants' rules, Christine must distribute it

throughout her property each time she pours it out. That means that to be compliant, sometimes Christine will have to haul the water to the edge of her property, which is about a hundred yards from where she milks her cows and washes her equipment.

74. This is where the reporting requirements come in. Per the CAFO permit's reporting requirements, Christine must log and report each and every location where she "discharges"—i.e., pours out—her buckets of water. That is, she must keep track of where, when, and how much water she is pouring out on the land every time she does it.

75. Because this arrangement is so archaic and backbreaking, it is not sustainable for Christine. But, as Christine understands it, this is the only way she can continue to operate until she installs expensive state-compliant drainage and holding equipment.

76. The CAFO permit's reporting requirements do not just apply to where Christine pours out her water. Christine also needs to track and account for how she manages the solid waste production of her supposedly confined animals. Because Christine's animals are not actually confined, however, this is challenging—most of their waste production occurs outdoors on their pastureland.

77. Nevertheless, per the CAFO permit's reporting requirements, Christine must log and report the volume, weight, and animal origin of the waste produced by her animals. She must also log and report where on her property she deposits any waste—even though most of the waste is produced at pasture and any waste produced in the barn is collected with hay, straw, and other organic matter and placed in her compost pile.

78. All of this tracking and reporting will still be required, even if Christine installs expensive drainage and holding equipment.

79. None of this additional infrastructure and record-keeping is necessary. In fact, when Christine applied for her CAFO permit, she had to submit a soil sample. And all of the results came back within their appropriate ranges. This came as no surprise to Christine, who has been farming in this way, safely and without any negative environmental impacts, for years.

80. The same cannot be said for many single-family residences in Oregon, which routinely use extensive herbicides and fertilizers on their property. If a property is primarily residential, the use of those products is unregulated and does not need to be reported. But if Christine's cow moves its bowels in the barn and Christine places the dung on a compost heap, Christine must report that to the state.

Plaintiffs Waneva LaVelle and Pure Grace Farm

81. Waneva LaVelle owns and operates Pure Grace Farm in Hubbard, Oregon. She purchased the property in 2021. Waneva resides on-farm with her husband and has been milking goats there since 2021. She began milking goats, on another property, in 2017.

82. Waneva owns nine Nigerian Dwarf goats at her farm, which are the sole source of livestock revenue. The remainder of the property grows grass for sod or hay. As part of this operation, Waneva also keeps five horses.

83. Waneva owns nine goats, which allows Waneva to stay compliant with Oregon's small-farm exemption from the fluid milk license. Or. Rev. Stat. § 621.012. Typically, however, that number is much smaller. Waneva plans to milk three goats once her now-pregnant goats kid in the near future.

84. The farm is 17 acres, and the goats have full access to pastureland whenever they want. Thus, the goats at Pure Grace Farms are not "confined" under any common understanding

of the term. Likewise, the goats at Pure Grace are not confined under any normal reading of state or federal law.

85. Waneva is deeply committed to the health and happiness of her goats. Her goats are routinely tested and have access to high-quality veterinary care. In fact, about a quarter of the milk from Waneva's goats is purchased by veterinarians who rely on it as a source of nutrition for their patients.

86. Waneva does not pasteurize her milk. And her customers seek her out for this very reason; they desire a product that contains all of the natural vitamins, fat content, and nutritional value of fresh, unpasteurized and completely unadulterated milk. And were it not for Waneva and farmers like her, those customers likely would not be able to get that product.

87. But milk sales account for only about 25% of Waneva's milk usage. The majority of Waneva's goat milk is used to make a wide variety of soaps and lotions, which she then sells online and wholesales to salons and local stores. A bar of soap typically sells for \$8 and lotions are \$10 or \$14.

88. Waneva milks her goats twice a day. And the milking process is safe. First, she brings the goats in from the pasture. Every milking begins with clean machinery and, before she begins the milking process, Waneva sanitizes each udder and teat with a medicated wipe. She then attaches a milking machine, which pumps into a tank. She does this in a barn, using a wooden stanchion, over a concrete surface.

89. Waneva carries the milk—typically about a gallon—into her home, where she strains it through a funnel system and immediately chills it.

90. Waneva then cleans her milking equipment in a utility sink using piping hot water and soap. Smaller parts are washed and soaked in a soapy solution and then everything is rinsed

and dried for the next use. The “wastewater” from soaking the smaller parts runs down the drain of the utility sink, where it runs to a typical residential septic system. This is how Waneva has, without incident, been doing things for years.

91. The process produces a trivial amount of “wastewater,” which is non-toxic and does not harm the environment. The septic tank is routinely emptied, but even if it were to overflow, the wastewater would run to a drain field where it does no environmental harm.

92. Other than her small dairy operation, the primary activity on Waneva’s farm is growing grass or hay. The small amount of animal waste that her goats produce helps with that endeavor. The goats are able to be out at pasture most of the time, where their waste is simply absorbed by the earth. And the small amount of waste that is produced in the barn is collected and dispersed in her fields. With 17 total acres, there is simply no need to collect and store waste as if Waneva had hundreds or thousands of goats.

93. Waneva’s operations have no adverse impact on the state’s environment, soil, or groundwater.

94. Defendants possess no evidence that Waneva’s operations have any adverse impact on the state’s environment, soil, or groundwater.

Plaintiffs Melissa Derfler and Rainbow Valley Dairy Goats

95. Melissa Derfler owns and operates Rainbow Valley Dairy Goats in Grants Pass, Oregon. She and her husband purchased the property in 2013. Melissa resides on-farm with her husband and has been milking goats there ever since.

96. Melissa currently milks eight goats and never milks more than nine, which allows her to stay compliant with Oregon’s small-farm exemption from the fluid milk license. Or. Rev. Stat. § 621.012. The goats have full access to pastureland whenever they want.

97. Thus, the goats at Rainbow Valley are not “confined” under any common understanding of the term. Likewise, the goats at Rainbow Valley are not confined under any normal reading of state or federal law.

98. Melissa has been milking and breeding goats for over 50 years. Together with her husband, they believe that there is a greater calling, beyond economics, that guides them to keep goats. Their website quotes the following passage from the Bible:

A righteous man regardeth the life of his beast Be thou diligent to know the state of thy flocks, and look well to thy herds. For riches are not for ever The lambs are for thy clothing, and the goats are the price of the field. And thou shalt have goats’ milk enough for thy food, for the food of thy household, and for the maintenance of thy maidens.

Proverbs 12:10, 27:23–27. Thus, their spirituality animates all that they do on the farm.

99. Melissa is also deeply committed to the health and happiness of her goats. Her goats are tested annually and have access to high-quality veterinary care. In fact, Melissa’s goats have won awards at county fairs for their health and milk-production capacity. The outstanding conformation, production, and temperaments of Melissa’s goats are a direct result of her meticulous care and decades of intentional breeding, using the best bloodlines she can obtain.

100. Melissa does not pasteurize her milk. And her customers seek her out for this very reason; they desire a product that contains all of the natural vitamins, fat content, and nutritional value of fresh, unpasteurized and completely unadulterated milk. And were it not for Melissa and farmers like her, those customers likely would not be able to get that product.

101. Melissa milks her goats twice a day. And she does it the old-fashioned way—by hand-milking into a bucket. She does this in a barn, over a “prepared” concrete surface. Before she begins the milking process, Melissa sanitizes each udder and teat with a medicated wipe.

When she's done hand-milking, she hauls the milk up a steep hill to her house, where she then filters it and portions it into clean bottles.

102. Because Melissa does not use a machine to milk, there is almost no equipment to clean afterward; but anything she does use gets put into her dishwasher where it is washed and sterilized with soap and hot water. This "wastewater" goes to her septic tank.

103. Melissa typically gets about three to four gallons of milk per day in total. She sells it on-farm to about 15 regular customers, some of whom raise their families on the milk from Melissa's goats. Though the goats are an important source of revenue, Melissa's goat milk does not earn them much money—approximately \$5,000 annually. But it helps sustain Melissa and her husband and the operations of the farm itself. Approximately sixty percent of their income from their goats comes from selling breeding stock, and forty percent from selling their milk.

104. The animal waste created at Rainbow Valley is minimal. The goats are able to be out at pasture most of the time, where their waste is simply absorbed by the earth.

105. The small amount of waste that is produced in the barn is collected and churned into compost. Melissa's husband, Les, is an avid gardener, and the compost provides rich nutrients for the soil in their vegetable garden. They eat and share the food they grow there.

106. This is consistent with their overall philosophy of regenerative farming. That is, they are adherents to a philosophy that advocates for the use of techniques that encourage soil health and promote the sustainable use of land. They do not believe in, nor do they want to practice, a farming philosophy that requires CAFO infrastructure.

107. Melissa's operations have no adverse impact on the state's environment, soil, or groundwater.

108. Defendants possess no evidence that Melissa’s operations have any adverse impact on the state’s environment, soil, or groundwater.

Current Rules and Regulations

109. Small dairies in Oregon are exempt (and still are exempt) from the state’s food safety and fluid milk license requirements if they own no more than two producing dairy cows, or nine producing goats or sheep, and the milk is sold, on-farm, directly to the consumer. *See* Or. Rev. Stat. § 621.012.

110. As Defendants have acknowledged in a white paper “most of the state’s raw milk purveyors fall into this category by actual cow numbers or by herd-share arrangement.” *White Paper: Raw Milk Dairies and CAFO Permit Requirements*, Or. Dep’t of Agric. (2023)

<https://www.oregon.gov/oda/programs/NaturalResources/Documents/RawMilkOutreach/WhitePaper020123.pdf>.

111. Accordingly, until Defendants chose to revise their interpretation of the state’s CAFO law, Plaintiffs could operate without either a fluid milk license or a CAFO permit. Now that they need a CAFO permit, however, their exemption from the fluid-milk license is far less helpful; the CAFO permit’s requirements are in many instances significantly more onerous.

Oregon’s Reinterpretation of its CAFO Definition

112. In late 2022, Friends of Family Farmers, a nonprofit that promotes small-scale agriculture, and in which Plaintiffs Sarah King and Christine Anderson are members, initiated a campaign behind Oregon HB 2616. The bill provided for a modest scaling back of regulations restricting raw-milk sales to small farms. The bill would have allowed sales to take place off-farm, either at farmers’ markets or through a delivery service. The bill died in committee.

113. Perhaps coincidentally (or perhaps not), in February 2023, on the heels of that failed legislative effort to modestly loosen raw-milk sales restrictions, Defendants announced via email that they would be reinterpreting their CAFO regulations—and specifically singled out raw-milk dairies as the reason.

114. Oregon law defines a CAFO operation, in relevant part, as “[t]he concentrated confined feeding or holding of animals . . . including but not limited to . . . dairy confinement areas . . . [i]n buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material[.]” *See* Or. Admin. R. 603-074-010(3).

115. Defendants never applied that regulation to raw-milk farmers in Oregon who met the fluid milk license exception.

116. But in January 2023, Defendants changed tack, specifically identifying raw-milk producers as the group affected. *White Paper: Raw Milk Dairies and CAFO Permit Requirements*, Or. Dep’t of Agric. (2023)

<https://www.oregon.gov/oda/programs/NaturalResources/Documents/RawMilkOutreach/WhitePaper020123.pdf> (identifying as a top-line issue that “[m]ost raw milk dairies in Oregon must be registered to a [CAFO]”.)

117. Defendants explained that CAFO permits were needed for three reasons: “First, to prevent water pollution. Second, to comply with the federal and state law. Third, *to maintain a level playing field with all dairies holding Grade A Fluid Milk Licenses that bear the costs of compliance with water quality regulations.*” *Id.* (emphasis added).

118. In other words, Defendants have admitted that one of their motivations is to impose a burden on small dairies simply because it’s one that *other*, bigger dairies must shoulder too.

119. Defendants have never indicated that there is any evidence suggesting that either of the first two concerns—water pollution and compliance with state or federal law—is implicated by the state’s small dairies.

120. In another white paper, Defendants explained that it was really the third issue that motivated the law:

The ODA CAFO Program *has received concerns from the Oregon dairy industry that many raw milk or herd-share dairies are operating in Oregon without CAFO Permit registrations. Unpermitted raw milk and herd-share dairies enjoy an unfair competitive advantage of not having a CAFO Permit* by failing to pay Permit fees and not bearing the costs of environmental protection contained in the permits.

See Outreach and Education Program to Unpermitted Raw Milk CAFOs, Program Elements, Or. Dep’t of Agric. (Jan. 2023),

<https://web.archive.org/web/20230610040624/https://www.oregon.gov/oda/programs/NaturalResources/Documents/RawMilkOutreach/ProgramElements020123.pdf> (emphasis added).

Defendants later confirmed this was the case in a CAFO Advisory Committee Meeting, explaining that it was concerned about “an economic unlevel playing field.” Oregon CAFO Advisory Committee Meeting 8:30–33, YouTube (April 13, 2023), <https://www.youtube.com/watch?v=KcR9ak8AImA>.

121. In other words, Defendants mobilized after “the Oregon dairy industry” politicked for Defendants to change their rules so that smaller producers would have to pay fees and install expensive infrastructure.

122. Additionally, Defendants have singled out raw-milk producers—in fact, raw cows’ milk producers—as the only farmers impacted by the CAFO reinterpretation. *See supra* ¶¶ 113, 116–18, 120. But Defendants have not indicated whether the CAFO reinterpretation applies *only* to raw cows’ milk producers.

123. Accordingly, it is unclear whether the CAFO reinterpretation applies only to small dairies' milking cows, as opposed to small dairies' milking goats, sheep, or other livestock.

124. Likewise, it is unclear whether the CAFO reinterpretation applies only to small dairies' milking cows, as opposed to all other farms that raise animals for other reasons, like meat production, or for no reason at all, like domestic companionship (i.e., pets). Indeed, Defendants openly concede that “[t]housands of operations in Oregon technically meet the state’s definition of CAFO,” but that “[m]any are not required to have a permit.” Oregon CAFO Advisory Committee Meeting 13:08–16:50, YouTube (April 13, 2023), <https://www.youtube.com/watch?v=KcR9ak8AImA>.

125. At first, Defendants signaled that they would exempt producers who were only producing milk for on-site consumption. *See id.* at 23:58–25:36. On information and belief, Defendants rescinded this “waiver” option in anticipation of potential litigation challenging the irrationality of a supposed environmental law—as opposed to an economic regulation—whose application turned on whether an actor is engaged commercial sale, i.e., facilitating off-site consumption.

126. Even still, Defendants have not signaled that they will apply the CAFO regulations to farms with significantly more livestock than the small farms they have singled out. This means that CAFO permits will not be required for many farms that produce significantly more animal waste than a two-cow or nine-goat dairy or herdshare.

127. Under federal law, an animal is considered confined for purposes of triggering federal CAFO regulations if it spends more than 45 days in confinement in any 12-month period. 40 C.F.R. 122.23(b)(1). Under Oregon law, that number is higher—120 days. Or. Admin R. 603-074-0010 (Table 1),

<https://www.oregon.gov/oda/shared/Documents/Publications/NaturalResources/WPCFPermit.pdf>

. Per Defendants, however, the federal definition of a CAFO does not apply to Plaintiffs, because state law looks to whether the animals are “confined,” whereas federal law asks whether the livestock is “concentrated.” *See* Oregon CAFO Advisory Committee Meeting 11:15–22, YouTube (April 13, 2023), <https://www.youtube.com/watch?v=KcR9ak8AImA>.

128. Under this definition, Oregon’s threshold is routinely exceeded for raw-milk dairies, according to Defendants, because “all animals are technically confined during the milking process, whether in pens, lots, or buildings.” *White Paper: Raw Milk Dairies and CAFO Permit Requirements*, Or. Dep’t of Agric. (2023), <https://www.oregon.gov/oda/programs/NaturalResources/Documents/RawMilkOutreach/WhitePaper020123.pdf>. That is because, according to Defendants, an animal is deemed to have spent a full day in confinement if it was “confined” during milking—even if only for 15 to 20 minutes. *See* Oregon CAFO Advisory Committee Meeting 12:19–55, YouTube (April 13, 2023), <https://www.youtube.com/watch?v=KcR9ak8AImA> (“A day does not mean it has to be in the milking parlor or in the barn for 24 hours.”). Indeed, Defendant Matthews explained, “unless you’re out in the pasture on a stool with a bucket,” every milking operation requires a CAFO permit. *Id.* at 15:04–11.

129. In this way, Defendants’ reinterpretation of its CAFO regulations is inconsistent with other state and federal law.

- a. There is no state law that suggests that the act of milking constitutes confinement. If there were, every household in Oregon that milks even a single animal is likely to qualify as a CAFO.

- b. There is no federal law that suggests that the act of milking constitutes confinement. If there were, every household in America that milks even a single animal is likely to qualify as a CAFO.

130. Likewise, Defendants' reinterpretation also reflects its view that Plaintiffs operate CAFOs because they wash milking components. *See* Or. Admin. R. 603-074-0010(3)(a)(B). Whether that process involves a trivial amount of water does not matter, as Defendants have explained that a CAFO permit is required even if all a farm is doing is creating "wastewater from cleaning milking equipment" for their two cows or "washing containers, sanitizing processing equipment and cleaning facilities."

<https://www.oregon.gov/oda/programs/NaturalResources/Documents/RawMilkOutreach/WhitePaper020123.pdf>.

131. Thus, Defendants' interpretation is that any animal that is milked daily, even if it lives its entire life on-pasture and enters a barn or structure only to be milked, spends 365 days per year in confinement. Again, that is because, according to Defendants, an animal is deemed to have spent a day in confinement if it is "confined" while being milked—even if only for 15 to 20 minutes.

132. Likewise, according to Defendants, a farm is a CAFO if there is any use of water to wash an animal or milking components after the milking is complete.

133. Under this interpretation, a family milking one cow, or one goat, must obtain CAFO permits and comply with CAFO regulations if the milking process takes place in a barn or standard milking parlor or if they wash their equipment using water when done.

134. But Oregon's CAFO laws are designed for much larger operations than Plaintiffs' small farms. The state provides for four levels of "general" CAFO permitting:

- a. A “small” CAFO for farms having less than 200 dairy cattle or 300 cattle;
- b. A “medium” CAFO for farms having between 200 to 699 mature dairy cattle or between 300 and 999 cattle;
- c. A “large Tier I” CAFO for farms having between 700 and 2,499 mature dairy cows or between 1,000 and 3,499 cattle; and
- d. A “large Tier II” CAFO for farms having more than 2,500 mature dairy cows or 3,500 or more cattle.

See Or. Admin. R. 603-074-0010(9)(a)-(d).

135. There are two levels of CAFO permitting—“individual permits”—that account for operations that are even bigger still:

- a. A Tier I individual permit for farms with no more than 9,999 mature dairy cows or 12,249 cattle; and
- b. A Tier II individual permit for farms with 10,000 or more dairy cows or 12,250 or more cattle.

See id. at (11)(a)-(b).

136. Defendants have acknowledged the obvious: “raw milk dairies will generally be considered small CAFOs, defined as having fewer than 200 mature dairy cows and fewer than 3,000 milking goats or sheep.” White Paper: Raw Milk Dairies and CAFO Permit Requirements, Or. Dep’t of Agric. (2023) at 1–2, <https://www.oregon.gov/oda/programs/NaturalResources/Documents/RawMilkOutreach/WhitePaper020123.pdf>.

137. Oregon’s CAFO laws are thus clearly designed for large-scale farming operations, not two-cow homesteaders. Indeed, small-scale producers like Plaintiffs are being shoehorned

into a regulatory category that is intended for farms literally 100 times bigger (cows) or more than 300 times bigger (goats).

138. And the concept of CAFO regulation is itself designed to capture even larger and more intense operations—up to 10,000 or more cows. Indeed, according to Defendants, Oregon’s largest CAFO operation involves over 38,000 cows.

139. In this way, Plaintiffs’ farms are lumped in with large dairy and cattle operations, while much larger farms, with potentially hundreds or thousands of animals, can evade the CAFO reinterpretation as long as they do not “confine” their livestock by milking them or raising them for meat.

140. The penalties for violating the state’s CAFO regulations are steep. For Plaintiffs, failing to have a CAFO permit likely exposes them to civil fines of up to \$2,500 for a first offense and up to \$10,000 for a repeat violation. Or. Admin. R. 603-074-0070(1)(a).

141. There are no caps on the fines and violations are assessed daily. *Id* at 603-074-0010(31).

142. In addition, state statutes also provide, in some instances, for fines of up to \$25,000 per day for failure to possess a required CAFO permit. Or. Rev. Stat. § 468.140(3)(b)(A).

143. There is also the expense of the application fee (\$100) and the annual fee to maintain it (\$125). Or. Admin. R. 603-074-0020(4)(a) - (6)(a).

144. To obtain a CAFO permit, however, the Department and its agents routinely require extensive retrofitting to accommodate drains, lines, and holding tanks. Agents also can, and do, require additional infrastructure for things like compost piles.

145. Once a CAFO permit is in hand, its owner must supply the Department with detailed information about water discharge, manure collection, and its animal counts.

146. Enforcement of the newly interpreted CAFO regulation will begin on April 1, 2024. *See* Oregon CAFO Advisory Committee Meeting 18:52–58, YouTube (April 13, 2023), <https://www.youtube.com/watch?v=KcR9ak8AImA> (“We’re not putting anybody out of business *this* year.”) (emphasis added).

INJURY TO PLAINTIFFS

Plaintiffs Sarah King and Godspeed Hollow Farm

147. Sarah has milked cows for years without a CAFO permit.

148. But now, Sarah will be required to maintain a CAFO permit because she milks her cows in an enclosed milking parlor and on a prepared surface.

149. Sarah’s other animals—two horses that have stalls in the same barn that the cows have access to, and which also produce waste—are not the reason the state requires Sarah to maintain a CAFO permit.

150. If the state’s CAFO reinterpretation takes effect, Sarah will have to install additional drain lines and holding tanks. Based on the estimates she’s received, this will cost no less than \$10,000. To do it in a manner that will not result in major aesthetic disruption and will allow for headache-free compliance long-term, however, the projects are more likely to exceed \$100,000.

151. This type of work is not just expensive. It also forces on Sarah a type of farming system that goes against her beliefs. For Sarah, her goal has always been to work *with* the earth and soil—something she does by allowing her land to naturally absorb animal waste and the trivial amount of wastewater she produces when rinsing her equipment. New drain lines and

large holding tanks are for farms that, unlike Godspeed Hollow, cannot safely do this. And Sarah's customers do not want to buy products from a CAFO farm.

152. Having a CAFO permit also carries with it additional obligations. Namely, Sarah will have to meticulously track her manure collection—like where and how much she scoops up and how she distributes that waste on her land. She must also similarly track how and where she “discharges” her “wastewater,” e.g., pours a bucket out on her grass or driveway.

153. Sarah will also need to reroute her dishwasher and sink in her milk room so that it runs to a government approved holding tank as opposed to a residential septic system.

154. Sarah is not sure how she will do this. She will either need to hire a private contractor, attempt to pump it out herself, or load smaller containers and haul them throughout the property.

155. Sarah will also incur additional injury as a result of having to maintain her CAFO permit. In addition to the application fee of \$100, there is an annual fee of \$125, along with the required inspection and groundwater testing. Sarah does not want to submit to additional inspections or needlessly test her groundwater or soil.

156. Ultimately, Sarah does not want to be regulated as though she operates a large farm. Likewise, Sarah does not want to have to comply with expensive and elaborate infrastructure requirements that are an affront to her farming philosophy and disregard its sustainability practices.

157. If the Defendants' reinterpretation is not enjoined, therefore, Sarah will incur substantial expense and be forced to undertake substantial and extensive compliance efforts to avoid violation and, potentially, eventual closure.

Plaintiffs Christine Anderson and Cast Iron Farm

158. Christine milked cows for years without a CAFO permit.

159. But now, Christine has had to obtain a CAFO permit and will be required to maintain it because she milks her cows in an enclosed milking parlor and on a prepared surface.

160. Christine's other animals—three horses, her sheep, a donkey, and two yaks, all of which have access to the same barn that the cows have access to, and which also produce waste—are not the reason the state requires Christine to maintain a CAFO permit.

161. If the state's CAFO reinterpretation takes effect and Christine wants to stop hand-hauling her wash water, she will have to install additional drain lines and holding tanks. Based on the estimates she's received, this will cost approximately \$10,000.

162. Christine's costs, thankfully, are not as bad as they could be; she already has a drain installed in her milking parlor (but had to plug it to get her permit). If she switches over to holding tanks so that she no longer has to hand-haul water, she will need to unplug that drain and redo its lines to run to the newly installed holding tank.

163. Christine must also build a permanent structure to house her compost. According to the Department, having a compost pile is fine; but Christine must construct a permanent structure to house it—something that will cost approximately \$15,000.

164. This type of work is not just expensive. It also forces on Christine a type of farming system that goes against her beliefs. For Christine, her goal has always been to work *with* the earth and soil—something she does by allowing her land to naturally absorb animal waste and the trivial amount of wastewater she produces when rinsing her equipment. New drain lines and large holding tanks are for farms that, unlike Cast Iron, cannot safely do this. And Christine's customers do not want to buy products from a CAFO farm.

165. Installing this infrastructure also carries with it additional obligations. Currently, Christine must log the location and other details of all waste and water she “discharges” on her property. While that makes no sense and comes at great physical expense, Christine does it. If Christine installs holding tanks, however, emptying those tanks becomes a challenge. She will either have to hire someone to help, or manually empty the tanks into smaller containers that she will distribute throughout her property.

166. Christine is not sure how she will do this. She will either need to hire a private contractor, attempt to pump it out herself, or load smaller containers and haul them—perhaps using her donkey—throughout the property. Whatever the solution, Christine will have to figure it out if she wants to ever stop hand-hauling buckets of water throughout her property every day.

167. Christine must also report to the government each animal that she owns—including her chickens and two pet ducks. And if any of her animals should reproduce, Christine must inform the state.

168. Between the reporting of her water, her animals, and their droppings, Christine spends several hours every week on needless paperwork.

169. Christine will also incur additional injury as a result of having to maintain her CAFO permit. In addition to the land use certification of \$87 and the application fee of \$100 that she already paid, there is an annual fee of \$125, along with the required inspection and groundwater testing. Christine does not want to submit to additional inspections or needlessly test her groundwater or soil.

170. Ultimately, Christine does not want to be regulated as though she operates a large farm. Likewise, Christine does not want to have to comply with expensive and elaborate

infrastructure requirements that are an affront to her farming philosophy and disregard its sustainability practices.

171. If the Defendants' reinterpretation is not enjoined, therefore, Christine will incur substantial expense and be forced to undertake substantial and extensive compliance efforts to avoid violation and, potentially, eventual closure.

Plaintiffs Waneva LaVelle and Pure Grace Farm

172. Before Waneva started milking goats, she looked up Oregon's CAFO laws and concluded, correctly, that she did not need a CAFO permit.

173. But now, Waneva is required to secure a CAFO permit because she milks her goats in an enclosed milking parlor and pours her wash water into a utility sink.

174. Waneva's horses, which are housed in the same barn that the goats use and produce significantly more waste, do not require Waneva to get a CAFO permit.

175. If the state's CAFO reinterpretation takes effect, Waneva will have to stop milking goats altogether. It is not worth it for her to install expensive plumbing and piping so that she can continue her soap and milk business.

176. And while Waneva would like to continue milking a few goats to have milk for personal consumption, she cannot because the CAFO reinterpretation applies to personal use as well.

177. Waneva will stop milking goats not just because this type of work is expensive or because milking for personal use would be illegal. It also forces on Waneva a type of farming system that goes against her beliefs. For Waneva, her goal has always been to work *with* the earth and soil—something she does by allowing her land to naturally absorb animal waste and the trivial amount of wastewater she produces when rinsing her equipment. New drains, lines, and

large holding tanks are for farms that, unlike Pure Grace, cannot safely do this. And Waneva's customers do not want to buy products from a CAFO farm.

178. If the Defendants' reinterpretation is not enjoined, therefore, Waneva will likely shut down to avoid incurring substantial expense and being forced to undertake substantial and extensive compliance efforts to avoid violation.

Plaintiffs Melissa Derfler and Rainbow Valley Dairy Goats

179. Melissa has milked goats for years without a CAFO permit.

180. But now, Melissa will be required to maintain a CAFO permit because she milks her goats in an enclosed milking parlor and on a prepared surface.

181. This is true even though Melissa milks by hand, and therefore generates almost no wastewater whatsoever in the course of milking her goats because she has no equipment to wash.

182. If the state's CAFO reinterpretation takes effect, Melissa will have to install additional drain lines and holding tanks. Melissa does not know how much this will cost; but her revenue from the farm is low, and so it is unlikely that she will be able to pay for it.

183. The CAFO reinterpretation only applies to Melissa because she milks her goats. If she keeps them for breeding purposes only, and allows the females to naturally stop producing milk after they are done nursing, she will not need a CAFO permit. This is true even though the amount of waste the animals produce, and the amount of wastewater Melissa produces—none, would be exactly the same.

184. This type of work is not just expensive. It also forces on Melissa a type of farming system that goes against her beliefs. For Melissa, her goal has always been to work *with* the earth and soil—something she does by allowing her land to naturally absorb animal waste. New drain

lines and large holding tanks are for farms that, unlike Rainbow Valley, cannot safely do this. And Melissa's customers do not want to buy products from a CAFO farm.

185. For Melissa, the drain lines are not just expensive. They are completely useless. Melissa milks by hand, while the CAFO regulations—and the drainage they require—are designed for large-scale machine-milking operations.

186. Having a CAFO permit also carries with it additional obligations. Namely, Melissa will have to meticulously track her manure collection—like where and how much she scoops up and how she distributes that waste on her land. She must also similarly track how and where she discharges her wastewater—even though she has none.

187. Melissa will also need to redo her dishwashing operation for her empty milk bottles, lids, and funnels. She will have to add a dishwasher outside of her home and route it to a government approved holding tank, as opposed to using her home dishwasher that runs to a residential septic system.

188. Melissa will also incur additional injury as a result of having to maintain her CAFO permit. In addition to the application fee of \$100, there is an annual fee of \$125, along with the required inspection and groundwater testing. Melissa does not want to submit to additional inspections or needlessly test her groundwater or soil.

189. Ultimately, Melissa does not want to be regulated as though she operates a large farm. Likewise, Melissa does not want to have to comply with expensive and elaborate infrastructure requirements that are an affront to her farming philosophy and disregard its sustainability practices.

190. If the Defendants' reinterpretation is not enjoined, therefore, Melissa will incur substantial expense and be forced to undertake substantial and extensive compliance efforts to avoid violation and, potentially, eventual closure.

CAUSES OF ACTION

Count I: The CAFO Regulations, As Applied to Plaintiffs, Violate Plaintiffs' Equal Protection Rights Under the Fourteenth Amendment to the U.S. Constitution.

191. The allegations of paragraphs 1 through 190 are incorporated here as if set forth in full.

192. The CAFO reinterpretation draws an arbitrary and irrational distinction because of how it defines "confinement." While Plaintiffs do not confine their animals under any common understanding of the term, Defendants have declared that an animal is "confined," for purposes of triggering the CAFO permit requirements, as long as they are milked in a covered space or on a prepared surface. Even 15 to 20 minutes indoors for milking is considered confinement. This essentially means that every farm in Oregon, if it milks any livestock, is a CAFO.

193. The CAFO reinterpretation also draws an arbitrary and irrational distinction to the extent that it applies only to raw-milk producers who milk cows, but not goats or other animals, as has been indicated in Defendants' publications.

194. The CAFO reinterpretation also draws an arbitrary and irrational distinction to the extent that it is triggered by the use of a trivial amount of wastewater, while other larger and more intense operations, with a greater likelihood of actual environmental impact, do not require a CAFO permit.

195. Additionally, the Defendants are aware that Plaintiffs have operated for years, safely and without incident, in the absence of any CAFO infrastructure and yet are applying the

CAFO regulation nonetheless. It is irrational to draw a distinction that ignores facts and evidence.

196. The CAFO reinterpretation is also impermissibly overinclusive, because it broadly applies to small-scale dairy farmers who milk their livestock—a small class of individuals who have no impact on the state’s purported interests of environmental quality or water quality.

197. At the same time, the CAFO reinterpretation is impermissibly underinclusive, because it irrationally applies to small-scale dairy farmers who milk their livestock without any environmental impact, while not encompassing much larger-scale livestock operations that produce significantly more waste and wastewater and that are therefore far more likely to impact the environment, like chicken farms or farms that maintain many more animals that are not used for milk or meat production.

198. In other words, the only entities that are regulated as CAFOs are large-scale milk and meat production facilities (which were already regulated as CAFOs before), and very small-scale dairies like Plaintiffs. Everyone else is still exempt.

199. The manner in which the CAFO reinterpretation applies, in light of the Defendants’ purported interests, further demonstrates its irrationality. If the government were truly interested in protecting the environment and water quality, it would not apply the CAFO reinterpretation selectively and only to a class of individuals whose conduct does not implicate the government’s purported concerns.

200. Unless the Defendants are enjoined from enforcing the CAFO reinterpretation, Plaintiffs will suffer continuing and irreparable harm.

Count II: The CAFO Regulations, As Applied to Plaintiffs, Violate Plaintiffs' Substantive Due Process Rights Under the Fourteenth Amendment to the U.S. Constitution.

201. The allegations of paragraphs 1 through 190 are incorporated here as if set forth in full.

202. The CAFO reinterpretation violates Plaintiffs' due process rights because, as Defendants have admitted, the CAFO reinterpretation is motivated, at least in part, by an illegitimate government purpose—economic protectionism.

203. The CAFO reinterpretation violates Plaintiffs' due process rights because, on information and belief, the CAFO reinterpretation is motivated, exclusively, by an illegitimate government purpose—economic protectionism.

204. The CAFO reinterpretation also violates Plaintiffs' due process rights because, even to the extent that it is motivated by a legitimate government interest related to groundwater or environmental quality, the CAFO reinterpretation is not rationally related to that interest. It is irrational to impose the CAFO requirements on farmers like Plaintiffs, in light of the fact that Plaintiffs have been operating without such requirements for years without incident and without undermining any conceivable government interest.

205. The CAFO reinterpretation further violates Plaintiffs' due process rights because, even to the extent that the government might have a legitimate interest in regulating Plaintiffs' products as part of its power to protect public health or comply with other laws, the CAFO reinterpretation is not rationally related to that interest.

206. The CAFO reinterpretation further violates Plaintiffs' due process rights because, even to the extent that the government might have a legitimate interest in facilitating compliance with state or federal law, the CAFO reinterpretation is not rationally related to that interest.

207. Likewise, the CAFO reinterpretation further violates Plaintiffs' due process rights because the state, in passing its small farm exception to the fluid milk license requirement, has identified a class of farming operation that does not require licensure and the CAFO reinterpretation is thus arbitrary and irrational in light of that law.

208. In fact, the CAFO reinterpretation, as applied to Plaintiffs, is not reasonably or rationally related to any conceivable government interest.

209. The CAFO reinterpretation further violates Plaintiffs' due process rights because, as farmers, Plaintiffs are engaged in an enterprise that is deeply rooted in the nation's history and tradition, and the CAFO reinterpretation arbitrarily and irrationally interferes with Plaintiffs' right to engage in that enterprise.

210. Unless the Defendants are enjoined from enforcing the CAFO reinterpretation, Plaintiffs will suffer continuing and irreparable harm.

PRAYER FOR RELIEF

Therefore, Plaintiffs respectfully request the following relief:

A. A declaratory judgment that, as applied to Plaintiffs and all those similarly situated, the Department's CAFO definition, *see* Or. Admin. R. 603-074-0010(3), and the compliance it triggers, violates Plaintiffs' right to Equal Protection under the Fourteenth Amendment to the United States Constitution;

B. A declaratory judgment that, as applied to Plaintiffs and all those similarly situated, the Department's CAFO definition, *see* Or. Admin. R. 603-074-0010(3), and the compliance it triggers, violates Plaintiffs' right to Substantive Due Process under the Fourteenth Amendment to the United States Constitution;

C. A permanent injunction prohibiting Defendants and their agents from enforcing the CAFO regulation against Plaintiffs and all those similarly situated;

D. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988 or any other applicable state or federal provision; and

E. All further legal and equitable relief as the Court may deem just and proper.

Date: January 23, 2024

Respectfully submitted,

s/Edward A. Piper

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*Motion for Admission *Pro Hac Vice* to be filed