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Straus Family Creamery, Inc. and  
6 Horizon Organic Holding Corporation

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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**  
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12 STRAUS FAMILY CREAMERY, INC. ) Case No.:  
13 and HORIZON ORGANIC HOLDING )  
14 CORPORATION. ) COMPLAINT FOR DECLARATORY  
15 ) AND INJUNCTIVE RELIEF  
16 Plaintiffs, )  
17 vs. )  
18 WILLIAM B. LYONS, JR., Secretary, )  
19 California Department of Food and )  
20 Agriculture, )  
21 Defendant. )

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1 **INTRODUCTION**

2 1. In this action, plaintiffs seek a declaration that the California Milk  
3 Stabilization Act, California Food & Agriculture Code §§ 61801 *et seq.*, as implemented  
4 by defendant in the Stabilization Plan, and the California Milk Pooling Act, California  
5 Food & Agriculture Code §§ 62700 *et seq.*, as implemented by defendant in the Milk  
6 Pooling Plan (collectively referred to herein as “the Plan”), as applied to plaintiffs’  
7 organic dairy operations, violate plaintiffs’ state and federal constitutional rights to equal  
8 protection, substantive due process and procedural due process. Plaintiffs also seek an  
9 injunction to prohibit the continued application of the Plan to their organic dairy  
10 operations in the unconstitutional and illegal manner described herein.

11 2. Plaintiffs bring this action pursuant to the Fifth and Fourteenth  
12 Amendments to the United States Constitution, Title VI of the Civil Rights Act of 1964  
13 (42 U.S.C. § 1983), and Article 1, Section 7(a) of the Constitution of the State of  
14 California.

15 **JURISDICTION**

16 3. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and  
17 1343, and 42 U.S.C § 1983. The Court has pendent jurisdiction and supplemental  
18 jurisdiction over the state law claims alleged in this Complaint pursuant to 28 U.S.C. §  
19 1367.

20 **VENUE**

21 4. A substantial part of the events giving rise to the claims alleged in this  
22 Complaint arose in Marin County, California. Venue therefore lies in the United States  
23 District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2).  
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1 § 6517, which sets forth national standards for the production and handling of organically  
2 produced products, established by the Agricultural Marketing Service (AMS), an arm of  
3 the United States Department of Agriculture. (Collectively referred to herein as the  
4 “Organic Food Laws.”)

5 10. Pursuant to the Plan, each month, defendant sets a minimum  
6 price that dairy processors, including plaintiffs, must pay to dairy producers for the milk  
7 they purchase (“the Minimum Price”).

8 11. One of the primary purposes of the Plan is to “establish minimum producer  
9 prices at fair and reasonable levels so as to generate reasonable producer incomes,” (Agr.  
10 Code § 61802(h)) and to “insure an adequate and continuous supply, in relation to  
11 demand, of pure, fresh, wholesome market milk for all purposes, including  
12 manufacturing purposes, at prices to consumers which, when considered with relevant  
13 economic criteria, are fair and reasonable.” (Agr. Code § 62062(b)).

14 12. Toward this end, the defendant must take into consideration the “varying  
15 costs of production, health regulations, transportation, and other factors” (Agr. Code §  
16 61805) including “the reasonable and economic soundness of market milk prices for all  
17 classes, giving consideration to the combined income from those class prices, in relation  
18 to the cost of producing and marketing market milk for all purposes, including  
19 manufacturing purposes” (Agr. Code § 62062(a)), and “the cost of management and a  
20 reasonable return on necessary capital investment” in establishing the Minimum Price  
21 each month. (Id.)

22 13. The Minimum Price that defendant sets each month is based on the non-  
23 organic (“conventional”) value of milk and milk products and is designed to reflect the  
24 cost of producing conventional milk. The Minimum Price does not reflect the cost of  
25 producing organic milk and is, on average, substantially lower than the cost of producing

1 organic milk. The cost of producing organic milk is higher than the cost of producing  
2 conventional milk because producers of organic milk are subject to the Organic Foods  
3 Act, which provides, among other things, that:

- 4 a. All feeds administered to livestock within one year of the taking of milk must  
5 be 100 percent certified organic. (During the first 10 months of the first [i.e.,  
6 transition] year, 80 percent of any feed must be organic; during the final two  
7 months of the transition year, and thereafter, 100 percent of the feed must be  
8 organic). Cal. Health & Saf. Code § 110820(d)(2);
- 9 b. The use of any drug, medication, hormone or growth regulator – synthetic or  
10 otherwise – and any synthetic substance including growth or milk stimulants  
11 and antibiotics is prohibited. (The exception is that if a licensed veterinarian  
12 prescribes a drug or medication for a sick cow, that cow may be treated, but  
13 must be withdrawn from production for a period of 30 days after the  
14 medication ceases, or twice the FDA specified time, whichever is the longer).  
15 Id., § 110815(p)(2);
- 16 c. Artificial rumen stimulants, such as plastic pellets and any fed or refeed manure  
17 are prohibited. Id.
- 18 d. An authorized certifying agent must certify all organic milk producers. Id., §  
19 110850.
- 20 e. All feeds grown for the purposes of feeding cows in the production of organic  
21 milk (including pastures) must also meet all the stringent criteria stipulated by  
22 the California Food and Agricultural Code for organic production. Id., §  
23 110820(d).
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1           14. As a direct result of the requirements of the Organic Foods Act, the cost of  
2 producing organic milk is substantially higher than the cost of producing conventional  
3 milk. Additionally, as a direct result of the requirements and limitations of the Organic  
4 Foods Act, the financial risks associated with organic dairying are higher than those  
5 associated with conventional dairying. These costs and risks will be even higher when  
6 the National Organic Program takes effect in October 2002.

7           15. Thus, in order to maintain sources of organic milk for their organic dairy  
8 products, plaintiffs must pay organic dairy producers an amount that is substantially  
9 higher than the Minimum Price.

10           16. Nevertheless, pursuant to the Plan, each month, defendant  
11 requires plaintiffs to contribute to a “pool equalization fund.”

12           17. Defendant calculates plaintiffs’ required contribution to the “pool  
13 equalization fund” (“Pool Obligation”) based primarily upon the difference between the  
14 Minimum Price and the conventional value of the dairy products that plaintiffs process  
15 that month.

16           18. Defendant uses plaintiffs’ monthly Pool Obligations to subsidize the  
17 Minimum Price and to compensate dairy processors who process milk into dairy products  
18 that have a value below the Minimum Price. Defendant thus effectively uses plaintiffs’  
19 Pool Obligation payments to subsidize the conventional dairy industry in that: (a) the  
20 Minimum Price is only sufficient to support conventional dairy producers, who have a  
21 lower cost of production than organic producers; and (b) virtually all recipients of the  
22 Pool Obligation payments are conventional dairy processors.

23           19. However, as processors of certified organic dairy products, plaintiffs are  
24 subject to the Organic Food Laws, which provide, among other things, that they may only  
25 purchase milk from certified organic dairy producers who are in compliance with those

1 laws. Organic dairy processors, including plaintiffs, cannot purchase milk from  
2 conventional dairy producers.

3 20. On or about October 23, 2000, plaintiffs submitted a petition to defendant  
4 in which they requested that defendant amend the Plan to account for the additional costs  
5 of production that organic producers incur and the resulting higher price that organic  
6 processors must pay to organic producers.

7 21. Defendant denied plaintiffs' petition despite finding that  
8 "standards governing organic milk production result in higher production costs" and that  
9 organic processors are paying organic producers a correspondingly higher price.  
10 Statement of Determination and Order of the Secretary of the of Food and Agriculture,  
11 dated May 21, 2001, at p.9.

12 22. Defendant based the denial primarily on the conclusion that (a) plaintiffs  
13 "failed to satisfactorily demonstrate that the Food and Agricultural Code provides  
14 authority for processors of a particular type of milk or milk product to be granted special  
15 status or treatment in the Pooling Plan;" (b) "Only organic processors would benefit  
16 directly from the proposal"; and (c) "The proposal made by the petitioners would  
17 significantly reduce the obligation of organic processors to the pool. The Department  
18 would not make such a change effective without first issuing the proposed change to a  
19 referendum vote of market milk producers. Given testimony presented at the hearing, the  
20 proposed change would be defeated overwhelmingly by producers in a statewide  
21 referendum." Notice of Decision, dated May 21, 2001 at p.2. This is because the vast  
22 majority of the milk producers in California produce conventional milk and currently  
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1 economically benefit from organic milk being pooled with conventional milk.

2 **FIRST CLAIM**

3 **(Violation of Equal Protection, U.S. Const. Amends. 5, 14;**

4 **Cal. Const. Art. 1, Sec. 7(a))**

5 23. Plaintiffs repeat and reallege paragraph 1 through 22 above as though  
6 fully set forth in this claim.

7 24. Defendant, in applying the Plan to plaintiffs' organic dairies, unfairly  
8 discriminates against plaintiffs in violation of their constitutional right to equal protection  
9 in that defendant:

- 10 a. Establishes a monthly Minimum Price that reflects only the costs  
11 incurred by conventional dairy producers who are not required to  
12 comply with the Organic Food Laws and fails to account for the  
13 higher cost of production incurred by organic producers as a direct  
14 and proximate result of complying with the Organic Food Laws;
- 15 b. Calculates the Pool Obligation of conventional processors based on  
16 the minimum cost of purchasing conventional milk, and fails to  
17 calculate the Pool Obligation of organic processors based on the  
18 minimum cost of purchasing organic milk;
- 19 c. Calculates the Pool Obligation of conventional processors based on  
20 the market values of conventional dairy products and the volume of  
21 the various consumer products produced by the conventional dairy  
22 industry each month, and fails to calculate the Pool Obligation of  
23 organic processors based on the market values of organic dairy  
24 products and the volume of the various consumer products produced  
25 by the organic dairy industry each month.; and

1           d.     Requires plaintiffs to pool their revenues with, and thereby  
2                 subsidize, the conventional dairy industry, despite the fact that  
3                 plaintiffs cannot participate in that industry in any significant  
4                 manner as a matter of law and economic reality.

5           25.    As a result of the foregoing, defendant is unfairly discriminating against  
6     plaintiffs and perpetuating a virtual monopoly on the part of the conventional dairy  
7     industry at the expense of the organic dairy industry.

8           26.    The Plan, as applied to plaintiffs, is arbitrary and capricious and bears no  
9     rational relationship to any legitimate state purpose or policy and, indeed, contravenes the  
10    purposes of the enabling statutes in that:

11           a.     The Minimum Price bears no rational relationship to the cost of  
12                 producing organic milk and does not account for the “varying costs  
13                 of production, health regulations, transportation, and other factors”  
14                 associated with organic milk including “the cost of management and  
15                 a reasonable return on necessary capital investment”; and, as a  
16                 result,

17           b.     The Plan does not “establish minimum producer prices at fair and  
18                 reasonable levels so as to generate reasonable producer incomes” for  
19                 organic producers or “insure an adequate and continuous supply, in  
20                 relation to demand, of pure, fresh, wholesome market milk for all  
21                 purposes, including” organic dairy manufacturing purposes, “at  
22                 prices to consumers which, when considered with relevant economic  
23                 criteria, are fair and reasonable.”

24           27.    As a direct and proximate result of defendant’s conduct, plaintiffs have  
25     been denied their constitutional right to equal protection.



- b. Failing to account for the minimum cost of purchasing organic milk incurred by plaintiffs in calculating plaintiffs' Pool Obligation;
- c. Calculating plaintiffs' Pool Obligation based on the market values and the volume of the various consumer products produced by the conventional dairy industry each month; and
- d. Requiring plaintiffs to pool their revenues with, and thereby subsidize, the conventional dairy industry, in which plaintiffs cannot participate in any significant manner as a matter of law and economic reality.

33. The Plan, as applied to plaintiffs, bears no rational relationship to any legitimate state purpose or policy and, indeed, contravenes the purposes of the enabling statutes.

34. As a direct and proximate result of defendant's conduct, plaintiffs have been denied their constitutional right to substantive due process.

35. Defendant's application of the Plan, as described herein, has resulted in, and will continue to result in, irreparable injury to plaintiffs, including but not limited to further violations of their constitutional rights. Plaintiffs have no plain, adequate or complete remedy at law to address the wrongs described herein. Plaintiffs therefore seek injunctive relief restraining defendant from continuing to enforce the Plan in the unconstitutional and illegal manner described herein.

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2 **THIRD CLAIM**

3 **(Violation of Procedural Due Process**

4 **U.S. Const. Amends. 5, 14; Cal. Const. Art. 1, Sec. 7(a))**

5 36. Plaintiffs repeat and reallege paragraphs 1 through 35 above as though  
6 fully set forth in this claim.

7 37. Plaintiffs have a constitutionally protected interest both in the money that  
8 defendant requires them to contribute to the pool equalization fund and in pursuing their  
9 chosen profession as organic dairy processors.

10 38. California Food and Agriculture Code § 62717, as applied to plaintiffs by  
11 defendant in denying the plaintiffs' petition for relief violates the plaintiffs' right to  
12 procedural due process in that it delegates ultimate decision making authority regarding  
13 plaintiffs' property rights to (a) decision-makers who gain personal financial benefits  
14 from their decisions; and (b) decision-makers who have an institutional financial interest  
15 that may lead them to make biased decisions.

16 39. As a direct and proximate result of defendant's conduct, plaintiffs have  
17 been denied their constitutional right to procedural due process.

18 40. Defendant's application of the Plan, as described herein, has resulted in,  
19 and will continue to result in, irreparable injury to plaintiffs, including but not limited to  
20 further violations of their constitutional rights. Plaintiffs have no plain, adequate or  
21 complete remedy at law to address the wrongs described herein. Plaintiffs therefore seek  
22 injunctive relief restraining defendant from continuing to enforce the Plan in the  
23 unconstitutional and illegal manner described herein.

1 **FOURTH CLAIM**

2 **(Declaratory Judgment)**

3 41. Plaintiffs repeat and reallege paragraphs 1 through 40 above as though fully  
4 set forth in this claim.

5 42. There is a real and actual controversy between plaintiffs and defendant  
6 regarding whether defendant may apply the Plan as described herein. Plaintiffs contend  
7 that defendant's conduct violates the United States and California Constitutions.  
8 Defendant denies that his conduct violates the United States or California Constitutions.  
9 Plaintiffs are currently subjected to the unlawful and unconstitutional actions alleged  
10 herein, and seek a judicial declaration that defendant's conduct is depriving plaintiffs of  
11 their rights under the United States and California Constitutions.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, plaintiffs pray that the Court:

14 1. Issue a declaratory judgment that defendant's conduct, as complained herein,  
15 violates plaintiffs' rights under the United States and California Constitutions;

16 2. Issue an injunction prohibiting defendant from enforcing the Plan in the  
17 unconstitutional and illegal manner described herein;

18 3. Award plaintiffs their costs, expenses and reasonable attorneys' fees pursuant to  
19 42 U.S.C. § 1988 and California Code of Civil Procedure § 1021.5; and

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4. Grant such other and further relief as the Court may deem just and proper.

Dated: April 23, 2002

CHILVERS & TAYLOR PC

By: \_\_\_\_\_  
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and Horizon Organic  
Holding Corporation

