

UNITED STATES COURT OF FEDERAL CLAIMS

CHARVIN ORGANIC FARMS, INC.,  
MALLONEE FAMILY FARM, LLC,  
MCCLELLAND'S DAIRY, LLC,  
MIKITA DAIRY, PERK FARM ORGANIC  
DAIRY, STOLLERS' ORGANIC DAIRY,  
LTD., and WENCL FAMILY FARM LLC,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 26-cv-\_\_\_\_\_

**CLASS-ACTION COMPLAINT**

USDA certified organic dairy farmers Charvin Organic Farms, Inc.; Mallonee Family Farm, LLC; McClelland's Dairy, LLC; Mikita Dairy; Perk Farm Organic Dairy; Stollers' Organic Dairy, Ltd.; and Wencil Family Farm LLC (collectively and on behalf of the class, "Plaintiffs"), all of whom are members of Cooperative Regions of Organic Producer Pools d/b/a CROPP Cooperative ("CROPP"), hereby file this class action complaint against the United States of America, acting through its Department of Agriculture ("USDA"), and allege as follows:

**I. NATURE OF THE ACTION**

1. This action seeks just compensation under the Takings Clause of the Fifth Amendment to the U.S. Constitution for certain property taken by USDA from Plaintiffs and other CROPP members ("proposed class") and placed into "producer settlement funds."

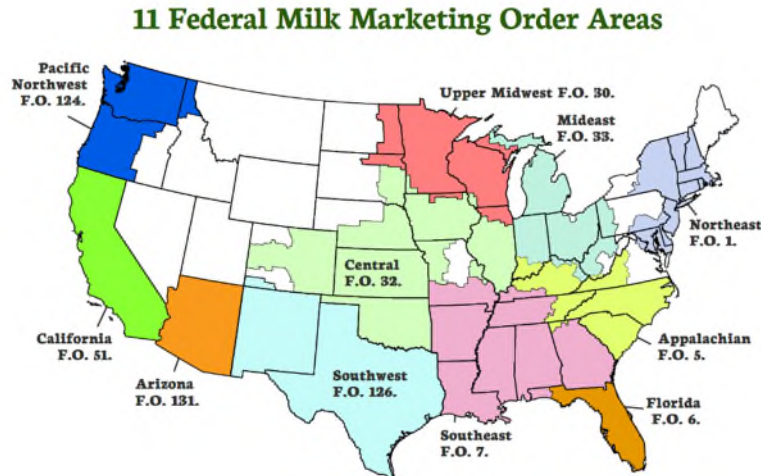
2. Plaintiffs—and all other members of the proposed class—are members of CROPP. CROPP is a farmer-owned agricultural cooperative. CROPP is controlled and operated by and for the benefit of its member-farmers.

3. As members of CROPP, Plaintiffs are subject to CROPP's Dairy Membership Agreement through which Plaintiffs pledge to ship all of their organic dairy production to CROPP and appoint CROPP as their exclusive agent in the marketing of said organic dairy production.

4. Plaintiffs challenge the Federal Milk Marketing Order system, 7 C.F.R. Parts 1000 to 1131, as it effects an ongoing taking of Plaintiffs' property under the Federal Milk Marketing Order system ("FMMOs"). Under FMMOs, when CROPP, as an organic milk processor (referred to as a "handler" under FMMOs) purchases organic milk from its cooperative membership of organic farmers like Plaintiffs (called "producers"), with the intent to market that milk for the benefit of the producers, the producers acquire a vested property interest in the total proceeds of their sales. But USDA, through FMMOs, takes a portion of the producers' proceeds to be paid into USDA's "producer settlement funds." But for this taking, CROPP would distribute these sales proceeds as an "Available Patronage Refund" to Plaintiffs and other CROPP members. The Available Patronage Refund is the net proceeds derived from marketing producers' milk, after accounting for capital reserves and returns on equity ("Available Patronage Refund"). CROPP distributes these net proceeds to the members in the form of annual patronage refunds.

5. In other words, USDA takes identified funds—otherwise payable to Plaintiffs—and redistributes them for the near-exclusive benefit of non-organic (i.e., conventional) handlers and farmers. This redistribution of Plaintiffs' proceeds for the near-exclusive benefit of others violates the Takings Clause of the Fifth Amendment. *See Horne v. Dep't of Agric.*, 576 U.S. 350, 352 (2015).

6. USDA has established eleven marketing areas for the purpose of regulating the sale of milk, as shown in the map below.<sup>1</sup> Each marketing area has its own producer settlement fund.



7. Plaintiffs' complaint pertains to the regulations found in 7 C.F.R. Parts 1000 to 1131 that apply uniformly to all eleven of the FMMOs and their respective producer settlement funds.

8. CROPP is a cooperative handler under FMMOs (7 C.F.R. § 1000.9). USDA requires CROPP, either directly or via a co-manufacturer, to turn over monthly payments to the FMMO producer settlement funds, from funds that are derived from Plaintiffs' sale of organic milk, constituting millions of dollars annually.

9. Plaintiffs derive the proceeds from their organic milk in two main ways. Plaintiffs first receive the purchase price from CROPP for their milk, paid monthly. In addition, CROPP pays its members the Available Patronage Refund, paid annually. CROPP calculates each Plaintiff's share of the Available Patronage Refund based on a formula that reflects the value of the milk supplied by each Plaintiff relative to the total value of the milk supplied by all members of the cooperative.

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<sup>1</sup> Found at <https://www.ams.usda.gov/sites/default/files/media/Federal%20Milk%20Marketing%20Orders%20Map.pdf>

10. Each Plaintiff's Available Patronage Refund is reduced by USDA's requirement that CROPP pay the producer settlement fund based on volume of the milk produced by Plaintiffs. Without USDA's producer settlement fund, Plaintiff CROPP members would be legally entitled to the entirety of their Available Patronage Refund.

11. USDA's actions amount to a *per se* takings of Plaintiffs' property.

12. USDA has never compensated CROPP or the organic farmer members of CROPP (like Plaintiffs) for this taking.

## **II. JURISDICTION AND VENUE**

13. This Court has subject-matter jurisdiction over Plaintiffs' claims and is the proper venue for Plaintiffs' claims, which are against the United States and founded on the Constitution of the United States. 28 U.S.C. § 1491(a)(1) (2025) (the "Tucker Act"); U.S. Const. amend. V (the "Takings Clause").

## **III. PARTIES**

14. Charvin Organic Farms, Inc. is a dairy farm producing USDA-certified organic milk in Pennsylvania. Charvin Organic Farms, Inc. is a member of CROPP. CROPP participates in the mandatory pooling and equalization provisions of FMMO 1 (Northeast) regional producer settlement fund for Charvin Organic Farms, Inc.'s milk. In other words, CROPP is required to make producer settlement fund payments based on the value of the milk supplied by Charvin Organic Farms, Inc. As a result of these compelled payments, USDA reduced the proceeds otherwise allocable to Charvin Organic Farms, Inc. from the sale of its milk in the form of the Available Patronage Refund and redistributes that money for the near-exclusive benefit of others, effecting a taking of its property.

15. Mallonee Family Farm, LLC is a dairy farm producing USDA-certified organic milk in Washington. Mallonee Family Farm, LLC is a member of CROPP. CROPP participates in the mandatory pooling and equalization provisions of FMMO 124 (Pacific Northwest) regional producer settlement fund for Mallonee Family Farm, LLC's milk. In other words, CROPP is required to make producer settlement fund payments based on the value of the milk supplied by Mallonee Family Farm, LLC. As a result of these compelled payments, USDA reduced the proceeds otherwise allocable to Mallonee Family Farm, LLC from the sale of its milk in the form of the Available Patronage Refund and redistributes that money for the near-exclusive benefit of others, effecting a taking of its property.

16. McClelland's Dairy, LLC is a dairy farm producing USDA-certified organic milk in California. McClelland's Dairy, LLC is a member of CROPP. CROPP participates in the mandatory pooling and equalization provisions of FMMO 51 (California) regional producer settlement fund for McClelland's Dairy, LLC's milk. In other words, CROPP is required to make producer settlement fund payments based on the value of the milk supplied by McClelland's Dairy, LLC. As a result of these compelled payments, USDA reduced the proceeds otherwise allocable to McClelland's Dairy, LLC from the sale of its milk in the form of the Available Patronage Refund and redistributes that money for the near-exclusive benefit of others, effecting a taking of its property.

17. Mikita Dairy is a dairy farm producing USDA-certified organic milk in Colorado. Mikita Dairy is a member of CROPP. CROPP participates in the mandatory pooling and equalization provisions of FMMO Order 32 (Central) regional producer settlement fund for Mikita Dairy's milk. In other words, CROPP is required to make producer settlement fund payments based on the value of the milk supplied by Mikita Dairy. As a result of these compelled payments,

USDA reduced the proceeds otherwise allocable to Mikita Dairy from the sale of its milk in the form of the Available Patronage Refund and redistributes that money for the near-exclusive benefit of others, effecting a taking of its property.

18. Perk Farm Organic Dairy is a dairy farm producing USDA-certified organic milk in West Virginia. Perk Farm Organic Dairy is a member of CROPP. CROPP participates in the mandatory pooling and equalization provisions of FMMO 5 (Appalachian) regional producer settlement fund for Perk Farm Organic Dairy's milk. In other words, CROPP is required to make producer settlement fund payments based on the value of the milk supplied by Perk Farm Organic Dairy. As a result of these compelled payments, USDA reduced the proceeds otherwise allocable to Perk Farm Organic Dairy from the sale of its milk in the form of the Available Patronage Refund and redistributes that money for the near-exclusive benefit of others, effecting a taking of its property.

19. Stollers' Organic Dairy, Ltd. is a dairy farmer producing USDA-certified organic milk in Ohio. Stollers' Organic Dairy, Ltd. is a member of CROPP. CROPP participates in the mandatory pooling and equalization provisions of FMMO 33 (Midwest) regional producer settlement fund for Stollers' Organic Dairy, Ltd.'s milk. In other words, CROPP is required to make producer settlement fund payments based on the value of the milk supplied by Stollers' Organic Dairy, Ltd. As a result of these compelled payments, USDA reduced the proceeds otherwise allocable to Stollers' Organic Dairy, Ltd. from the sale of its milk in the form of the Available Patronage Refund and redistributes that money for the near-exclusive benefit of others, effecting a taking of its property.

20. Wencil Family Farm LLC is a dairy farm producing USDA-certified organic milk in Minnesota. Wencil Family Farm LLC is a member of CROPP. CROPP participates in the

mandatory pooling and equalization provisions of FMMO Order 30 (Upper Midwest) regional producer settlement fund for Wencil Family Farm LLC's milk. In other words, CROPP is required to make producer settlement fund payments based on the value of the milk supplied by Wencil Family Farm LLC. As a result of these compelled payments, USDA reduced the proceeds otherwise allocable to Wencil Family Farm LLC from the sale of its milk in the form of the Available Patronage Refund and redistributes that money for the near-exclusive benefit of others, effecting a taking of its property.

21. The United States of America, acting through USDA, is the defendant. RCFC 10(a).

#### **IV. BACKGROUND**

##### **A. The Agricultural Marketing Agreement Act**

22. The Agricultural Marketing Agreement Act of 1937 ("AMAA") authorizes the Secretary of Agriculture to issue "marketing orders," known as FMMOs regulating the marketing and sale of agricultural commodities, including milk. 7 U.S.C. § 608c.

23. The principal purpose of FMMOs is to bring forth an adequate supply of milk for fluid use (that is, packaged milk used for beverages). 7 U.S.C. § 608c(18).

24. To effectuate this goal, the AMAA further authorizes USDA to regulate raw milk prices under various FMMO regional milk marketing orders administered by a regional Marketing Administrator. USDA has established eleven marketing areas (see map, paragraph 5) for the purpose of regulating the sale of milk. For each area, USDA proposes the regulatory structure for the order, and then the dairy farmers (i.e., "producers") in that region vote to either adopt or veto the proposed order.

25. Each marketing area is a geographic area where handlers compete for their sales, regardless of where the farm milk is produced. 7 U.S.C. § 608c(5); 7 C.F.R. pts. 1000–1131 (2025). A handler is defined within the regulations, generally, as a processor of raw milk or as a cooperative (an association of dairy farmers with full authority to market its members' milk). 7 C.F.R. § 1000.9. Most dairy farmers market their raw milk to dairy handlers who process and/or manufacture the raw milk into dairy products.

26. The AMAA requires USDA to classify milk and milk products by use and to ensure that minimum prices are “uniform as to all handlers, subject only to adjustments for . . . (2) the grade or quality of the milk purchased.” 7 U.S.C. § 608c(5)(A).

27. USDA has developed four classes of milk products: bottled fluid milk (Class I), soft products, e.g., ice cream, cottage cheese, yogurt, etc. (Class II), hard cheeses (Class III), and butter and powdered dry milk (Class IV). USDA has never made an adjustment in the minimum class or uniform prices for organic milk based on grade or quality, as permitted by the AMAA statute.

28. The FMMO regulations use end-product price formulas to compute the minimum class prices. USDA structures the formulas with the intent (and result) that the Class I price for fluid milk is almost always the highest price and the Class II, III, and IV prices are lower. The price structure is purportedly designed to incentivize the supply of farm milk to fluid milk handlers over other uses of producer farm milk.

29. The FMMO regulations mandate that *fluid milk handlers* (beverage milk, Class I) always participate in the producer settlement funds. However, there is not a parallel mandate for *manufacturing handlers* (i.e., cheese, ice cream, butter, yogurt, nonfat dry milk, among others, Classes II, III, and IV) to participate in the producer settlement funds and they typically participate

only when it is economically beneficial to do so. Thus, the regulations differentiate between two types of FMMO handlers: fluid and manufacturing.

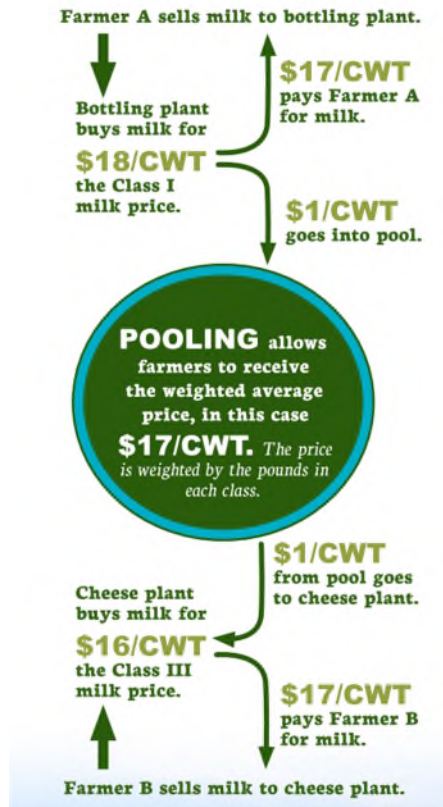
30. FMMOs purport to bring forth an adequate supply of milk for fluid use through two mechanisms: (1) the pricing and pooling schemes described above; and (2) requiring dairy farmers who wish to be eligible to receive pool payments from the producer settlement funds to satisfy performance standards designed to encourage shipments of milk to Class I plants.

31. For example, the performance standards include tying a dairy farmer's participation in the producer settlement fund to commit to minimum shipments of milk to handlers. These requirements apply regardless of whether the milk is organic or conventional.

32. USDA provides an example of this class utilization and pooling process below.<sup>2</sup> The graphic depicts a handler purchasing Class I fluid milk from Farmer A for \$18 per hundredweight ("cwt"), paying \$17/cwt to Farmer A, and placing the remaining \$1/cwt in a pool. That \$1/cwt is then redistributed to a manufacturing handler (Class III) for payment to "Farmer B." In this example, Plaintiffs are analogous to "Farmer A" and the pooled \$1/cwt represents the funds attributable to Plaintiffs' milk that are redistributed to others rather than being paid to Plaintiffs through the Available Patronage Refund.

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<sup>2</sup> Agric. Mktg. Serv., U.S. Dep't of Agric., *An Overview of the Federal Milk Marketing Order Program 5* (2025), <https://www.ams.usda.gov/sites/default/files/media/DairyFMMOBooklet.pdf>.



33. For each regional FMMO, USDA calculates the value of all milk associated with that order to establish a per hundredweight (abbreviated “cwt”) uniform minimum price for producer farm milk. USDA establishes the minimum class price for each class (“FMMO Price”) and multiplies that by the total pounds of milk in that class. The uniform price is the weighted average price across the four classes (see table below). In this example, as is typical for most months and regional pools, only the Class I price (\$19.00) exceeds the uniform price (\$16.70). Thus, only Class I handlers pay into the pool, and then USDA redistributes that money to all other manufacturing handlers.

<b>FMMO Pool Computation</b>	<b>Utilization (%)</b>	<b>Milk (million lb)</b>	<b>FMMO Price (\$/cwt)</b>	<b>FMMO Value (million \$)</b>
Class I (Fluid Milk)	27%	270	\$19.00	\$51.3
Class II (Soft Products)	9%	90	\$16.20	\$14.6
Class III (Cheese)	54%	540	\$16.00	\$86.4
Class IV (Butter and Powder)	10%	100	\$15.50	\$15.5
<b>FMMO Pool Total</b>	100%	1,000		\$167.8
<b>Uniform (Producer Milk)</b>			<b>\$16.78</b>	

34. The table above demonstrates with more detail how the difference between the Class I price (\$19.00/cwt) and the uniform price (\$16.78/cwt) of \$2.22/cwt is pooled and redistributed through the producer settlement fund. The difference, derived from the higher value of the Class I milk supplied by Plaintiffs, is transferred to other producers (primarily conventional farmers) and thereby reduces the proceeds otherwise allocable to Plaintiffs in their Available Patronage Refund.

35. Organic farmers like plaintiffs suffer uniquely under this system for many reasons, but in particular because of the significant volume of organic milk in the Class I category compared to both conventional and FMMOs as a whole. As demonstrated in the table below, 55% of organic milk is used in Class I as compared to 26% of conventional milk, meaning that organic farmers' property is diverted into the producer settlement funds at a comparatively higher proportion than conventional milk farmers.

	<b>Conventional FMMO Utilization (%)</b>	<b>Organic FMMO Utilization (%)</b>	<b>Total FMMO Utilization (%)</b>
Class I (Fluid Milk)	26	55	27
Class II (Soft Products)	9	20	9
Class III (Cheese)	55	15	54
Class IV (Butter and Powder)	10	10	10
Total / Weighted Average	100	100	100

## **B. The Organic Dairy Sector**

36. In 1990, Congress enacted the Organic Food Production Act (“OFPA”) as part of the 1990 Farm Bill, establishing a separate USDA program for the certification of organic food production, including dairy products. 7 U.S.C. ch. 94. In December 2000, USDA published the regulations implementing OFPA and establishing the National Organic Program (“NOP”). National Organic Program, 65 Fed. Reg. 80548 (Dec. 21, 2000); 7 C.F.R. pt. 205 (2025).

37. Under OFPA and the NOP, both the production and processing of organic milk is subject to rigorous certified production methods and segregation to prevent the co-mingling of organic and conventional (i.e., non-organic-certified) milk. Certified organic milk production costs for organic dairy farmers and organic processing plants are substantially higher than conventional milk counterparts.

38. These differing rules for organic versus conventional production result in significant cost disparities for organic dairy farming versus conventional, including: (1) lower milk production per cow; (2) higher feed and labor costs; (3) higher operational costs; and (4) more expensive herd replacements.

39. These rules require organic cows to consume organic feed. Unlike conventional feed, organic feed requires: (1) a three-year land transition period from conventional to organic; (2) restricted use of synthetic fertilizers, and a prohibition on use of pesticides, herbicides, or GMO seed; (3) distinct boundaries and buffer zones; and (4) crop rotation. 7 C.F.R. §§ 205.202, .24, and .205 (2025). The requirements result in higher upfront investment and operating costs to produce organic crops and lower crop yields per acre, increasing the cost of organic feed relative to conventional feed.

40. Unlike conventional dairy, organic dairy farmers must meet specific on-farm grazing requirements. For organic dairy herds, all cows older than 6 months of age must graze a minimum of 120 days during a defined grazing season, and at least 30 percent of the Dry Matter Intake Demand must come from that grazing. 7 C.F.R. § 205.237 (2025).

41. Unlike conventional dairy farms, the NOP also regulates the actual care of organic cows. The organic dairy herd health requirements include prohibiting the use of unapproved synthetic substances, as well as prohibiting hormones, pesticides, and antibiotics (similar to organic feed rules). The organic system plan must include the use of preventive health practices which may not restrict the use of a prohibited substance in order to preserve organic status of the animal. An animal must be removed from the organic herd if treated with a prohibited substance. 7 C.F.R. § 205.238 (2025). Organic herd health care is more labor intensive than for conventional, increasing the cost of production.

42. Unlike conventional dairy farms, the NOP also mandates outdoor access for the organic herd, requires minimum time that organic cows are actually on pasture and minimum dry matter intake from pasture, provides housing requirements for cows, and proscribes physical alteration to cattle. 7 C.F.R. §§ 205.238–.239 (2025). These requirements further increase the cost of organic milk production relative to conventional.

43. In addition to increased production costs on the farm, organic milk also has a more costly supply chain as the farmers of organic milk consist largely of smaller farm operations, and organic farms are located at greater distances from organic handlers than their conventional counterparts. Additionally, organic milk must always be transported by haulers in segregated tankers, and organic milk must be segregated from conventional milk at the processing facility.

FMMOs do not recognize these significant systemic differences between conventional and organic milk costs.

44. As a result, certified organic milk production costs for organic dairy farmers and organic processing plants are substantially higher than conventional milk production costs.

**C. The FMMO Taking of Organic Dairy Farmer Segregated Funds**

45. USDA, through the Agricultural Marketing Service, administers both the FMMOs and the NOP. Although the FMMO system dates back to the 1930s, the implementation of the NOP in early 2001 introduced regulatory requirements on organic milk that are not accounted for within the FMMO system and that result in the uncompensated transfer of the proceeds of organic milk.

46. The two programs operate pursuant to wholly separate enabling statutes (AMAA and OFPA) and regulations (7 C.F.R. pts. 205, 1000–131).

47. The FMMOs have never provided support for the organic dairy sector by bringing forth an adequate supply of certified organic milk. The FMMOs make no distinction between organic and conventional milk—even though federal law and USDA regulations prohibit organic milk processors from substituting or otherwise using conventional milk (i.e., non-organic certified milk) in their organic milk products. 7 C.F.R. §§ 205.100, .305, and .310. General provisions that otherwise can encourage delivery of milk to handlers for fluid use (the performance standards summarized in paragraph 29 above) do not specifically apply for certified organic milk. *See, e.g.*, 7 C.F.R. §§ 1001.7 and .13.

48. There are now 11 FMMOs regulating the sales of milk. 7 C.F.R. pts. 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1051, 1124, 1126, and 1131.

49. As described above, *see supra* at ¶¶ 29–34, the FMMO system requires that all fluid milk handlers (Class I handlers) account for their milk at the applicable minimum Class I price and to make payments into the producer settlement fund based on that value. USDA then redistributes the proceeds of the producer settlement fund through the pooling system to handlers of Class II, III, and IV milk. 7 C.F.R. §§ 1001.70, 1005.70, 1006.70, 1007.70, 1030.70, 1032.70, 1033.70, 1051.70, 1124.70, 1126.70, and 1131.70.

50. Under federal law and USDA regulation, organic milk processors cannot substitute or otherwise use conventional milk in their organic milk products. 7 C.F.R. §§ 205.100, .305, and .310.

51. Yet, FMMOs treat the products as interchangeable, applying the same pricing and pooling rules to both products. For example, since the FMMOs do not have performance standards for organic milk they are unable to assist when organic milk supplies are insufficient. As a result, the FMMOs cannot ensure an adequate supply of *certified organic milk* for fluid use.

52. Given the higher costs of production for organic milk, organic dairy farmers sell their milk to organic handlers at one organic milk price regardless of class utilization, that is regardless of whether the organic milk is used for Class I beverage milk or for Class II, III, or IV manufactured products. The lowest farmer pay price for organic milk is typically much greater than even the highest minimum class set pursuant to the FMMOs. This price may vary regionally, but is well above FMMO minimum prices. For example, the Pennsylvania Monthly Organic Dairy Report for January 2026 reported a milk price range of \$40.70 to \$45.79 with a weighted average price of \$45.39.<sup>3</sup>

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<sup>3</sup> Agric. Mktg. Serv., U.S. Dep’t of Agric., *Pennsylvania Monthly Organic Dairy Report - January 2026*, (April 3, 2026), [https://mymarketnews.ams.usda.gov/filerepo/sites/default/files/3800/2026-04-03/1315302/ams\\_3800\\_00020.pdf](https://mymarketnews.ams.usda.gov/filerepo/sites/default/files/3800/2026-04-03/1315302/ams_3800_00020.pdf).

53. Despite the higher prices, organic handlers pay their own dairy farmer suppliers (like Plaintiffs) for organic fluid milk, organic handlers must also then pay a portion of Plaintiffs' property into the producer settlement fund.

54. Organic milk utilization differs from the FMMO market as a whole; a larger portion of organic milk (approximately 55%) is utilized for fluid use (Class I) than the portion of conventional milk (approximately 26%) that goes to fluid use. This disparity means that a greater proportion of organic milk is subject to mandatory participation in the FMMO system (as Class I milk) than conventional milk.

55. Even though organic milk is disproportionately regulated in the FMMO system due to the high Class I utilization, it is a small share of overall farm milk production. USDA's Economic Research Service reports that there are about 225 billion pounds of milk produced in the United States annually, with only 2.3% of that total organic.<sup>4</sup> USDA's Estimated Fluid Milk Products Sales Report for February 2026 shows that 7.2% of fluid milk products are organic.<sup>5</sup>

56. As a result, due to the high Class I utilization of organic milk relative to conventional, organic milk handlers necessarily pay more of Plaintiffs' property into producer settlement funds at a higher rate than conventional milk handlers. The payments made by organic handlers of Plaintiffs' property into the producer settlement fund are then distributed by USDA mostly to other, mostly conventional dairy handlers to benefit conventional dairy farmers.

57. For each month, each FMMO's producer settlement fund reflects a determinable dollar amount attributable to milk supplied by Plaintiffs to CROPP that is paid into the pooling

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<sup>4</sup> See USDA ECON. RSCH. SERV., ERS DAIRY DATA: US MILK PRODUCTION AND RELATED DATA (QUARTERLY AND ANNUAL), available at <https://www.ers.usda.gov/media/5502/us-milk-production-and-related-data-quarterly-and-annual.xlsx?v=91192> (total production); JEFFREY GILLESPIE ET AL., USDA ECON. RSCH. SERV., PUB. NO. ERR-335, U.S. CERTIFIED ORGANIC DAIRY PRODUCTION: THREE DECADES OF GROWTH 3 (2024) (2.3% organic).

<sup>5</sup> USDA, ESTIMATED FLUID MILK PRODUCTS SALES REPORT, PUB. NO. EFMS-0226 (2026), available at [https://mymarketnews.ams.usda.gov/filerepo/sites/default/files/3358/2026-02-01/1318035/ams\\_3358\\_00082.pdf](https://mymarketnews.ams.usda.gov/filerepo/sites/default/files/3358/2026-02-01/1318035/ams_3358_00082.pdf).

system and redistributed rather than being paid to Plaintiffs through the Available Patronage Refund. USDA requires these funds, in which Plaintiffs have a legal and equitable interest, be transferred for the benefit of other handlers and producers.

58. For the calendar years April 2020 to March 2026, CROPP, directly or through its co-manufacturers as a 7 C.F.R. § 1000.9(a) or .9(b) handler under the FMMOs, paid at least \$60 million into the producer settlement funds. In other words, USDA took at least \$60 million of property from the Plaintiffs and the other members of CROPP.

59. Of the at least \$60 million paid by CROPP, USDA returned to CROPP a negligible amount, while distributing these funds primarily to other handlers for the benefit of conventional dairy farmers. Except in unusual circumstances (e.g., when class prices are inverted, as they were in May 2020 resulting from COVID market disruption), USDA never returned, on balance, any significant net proceeds from the producer settlement funds to CROPP and by way of CROPP to Plaintiffs in the Available Patronage Refund.

60. Plaintiffs are among more than 1,350 certified organic dairy farmer owners of CROPP. There are approximately 2,750 total organic dairy farmers subject to the takings by FMMOs.

61. Effective June 1, 2025, USDA adopted a “modernization” package of revised FMMO regulations. Uniform Pricing Formula Provisions, 90 Fed. Reg. 6600 (Jan. 17, 2025). These new rules increase Class I prices while decreasing Class II, III, and IV prices. As a result, the difference between the Class I and the uniform price has widened, increasing the amount paid by CROPP into the settlement fund. This change increases the amount of money attributable to Plaintiffs’ milk that is redistributed to other producers.

62. Plaintiffs (through CROPP) along with other CROPP farmers opposed the new rules. During the formal rulemaking process leading up to the adoption of these rules, Plaintiffs argued that the new rules would violate the Takings Clause of the Fifth Amendment. USDA ignored Plaintiffs' Fifth Amendment arguments, dismissing the matter in a catch-all, general rejection. *See* Final Decision on Proposed Amendments to Marketing Agreements and Orders, 89 Fed. Reg. 95466, 95537 (Dec. 2, 2024) (“To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the claims to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.”).

**D. Plaintiffs' Operations**

63. Plaintiffs are individual or incorporated certified organic dairy farmers that own or operate certified organic dairy farms that produce certified organic raw milk and market their milk through their farmer owned cooperative CROPP. Plaintiffs bring this suit solely in their capacity as “producers” under the AMAA. No Plaintiff is a “handler” under the AMAA.

**V. CLASS-ACTION ALLEGATIONS**

64. Pursuant to Rule 23 of the Rules of the United States Court of Federal Claims, Plaintiffs bring this action on behalf of a plaintiff class consisting of “all CROPP dairy farmers whose Available Patronage Refund paid by CROPP was reduced by the CROPP producer settlement funds paid within the past six years to USDA.”

65. The plaintiff class consists of approximately 1,350 CROPP certified organic dairy farmers, rendering the class sufficiently “numerous that joinder of all members is impracticable.” RCFC 23(a)(1). Plaintiffs' claims present “questions of law or fact common to the class.” RCFC 23(a)(2). For example: (a) whether the portion of Available Patronage Refund taken for the

producer settlement funds constitute private property under the Fifth Amendment's Takings Clause; (b) whether the FMMOs transferred title to class members' rights to portions of their Available Patronage Refund or pro-rata portion of the producer settlement funds paid on their milk to other dairy farmers; (c) whether such title transfer constituted a *per se* taking for which just compensation is due; (d) if it constitutes a taking, whether class members received just compensation for their pro-rata portion of Available Patronage Refunds reduced pro rata by the producer settlement funds paid by CROPP on their certified organic milk; and (e) if they did not receive just compensation, the amount of just compensation now due to them.

66. Plaintiffs' claims "are typical of the claims . . . of the class." RCFC 23(a)(3). Class members have similar production processes (certified by USDA as organic), and all class members are affected by the pooling provisions of FMMOs that take their Available Patronage Refunds and CROPP paid producer settlement funds and reallocate them to other dairy farmers. Accordingly, except for the specific, calculated pro rata amount of reduced Available Patronage Refund received by each class member for the producer settlement funds paid by CROPP and taken by USDA from each class member, no material differences exist between Plaintiffs' claims and the claims of class members.

67. Plaintiffs' claims are made nationwide for each of the eleven FMMOs upon which class members market or could market their certified organic milk. Each class member is represented by a Plaintiff for purposes of the different marketing orders upon which CROPP acts as a handler and incurs, directly or indirectly through co-manufacturers, producer settlement fund obligations which result in the takings.

68. Plaintiffs "will fairly and adequately protect the interests of the class." RCFC 23(a)(4). Plaintiffs suffer from no entanglements, conflicts, or disqualifications adversely

affecting their ability to serve as class representatives. Further, Plaintiffs have carefully selected counsel uniquely experienced in class-action litigation, constitutional litigation, and regulatory compliance with the FMMO pooling requirements.

69. Class certification is appropriate because “the United States has acted . . . on grounds generally applicable to the class.” RCFC 23(b)(2). Specifically, the United States has taken the Available Patronage Refunds and CROPP’s producer settlement funds allocable to each class member and not provided the class member with just compensation.

70. Class certification is also appropriate because “the questions of law or fact common to class members predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” RCFC 23(b)(3). As noted, some individual questions exist (e.g., the quantity of the reduced Available Patronage Refunds and producer settlement funds taken by the United States from each class member), but the common questions (*see supra* ¶ 42) predominate over them. Further, a class action—which can resolve all class members’ claims in a single litigation—is more efficient and superior to over a thousand individual lawsuits overwhelming this Court’s docket. Finally, some class members’ claims may be sufficiently small in value that they may not pursue their claims in separate proceedings. Aggregated as a class, however, the claims in this case are worth in excess of \$60 million. A class action ensures that all class members receive the just compensation to which the Fifth Amendment entitles them.

71. This Court should therefore certify the requested class of certified organic dairy farmers under Rules 23(a), 23(b)(2), and (b)(3).

## COUNT I

### **Just Compensation For Taking Of Private Property (U.S. Constitution Amendment V)**

72. Plaintiffs reallege and incorporate by reference paragraphs 1 through 71 of their complaint.

73. The Takings Clause of the Fifth Amendment ensures that private property shall not “be taken for public use, without just compensation.” U.S. Const. amend. V.

74. Under the guarantees of the Fifth Amendment, the Supreme Court has affirmed that the Government may not “tak[e] the property or money of one and transfer[] it to another without compensation.” *R.R. Ret. Bd. v. Alton R. Co.*, 295 U.S. 330, 357 (1935); *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021) (taking occurs whether the government takes property “for itself or someone else”).

75. But here, USDA has taken Plaintiffs’ property and transferred it to others, all without just compensation.

76. As members of the CROPP cooperative, Plaintiffs receive the proceeds from organic milk sales to the cooperative in two ways: (1) monthly, from the purchase price from CROPP; and (2) annually, from the Available Patronage Refund.

77. The Available Patronage Refund reflects the annual net proceeds that CROPP derives from marketing its members’ milk, after accounting for certain expenses and allocations, and is calculated through a formula that allocates those proceeds based on the value of the milk supplied by each Plaintiff relative to the total value of the milk supplied by all members of the cooperative.

78. Each Plaintiff possesses full legal or equitable title to the funds attributable to its Available Patronage Refund. Each Plaintiff's share of the Available Patronage Refund is thus property protected by the Takings Clause of the Fifth Amendment.

79. Although Plaintiffs possess a property interest in these funds, the FMMO pooling and producer settlement fund provisions, issued and enforced by USDA, require that a portion of Plaintiffs' allocable share of the Available Patronage Refund be paid into the producer settlement fund. USDA then redistributes those funds through the pooling system for the benefit of other handlers and producers, predominantly in the conventional dairy market.

80. These compelled transfers deprived Plaintiffs of all property rights in the portion of the Available Patronage Refund attributable to their milk. USDA provided no compensation to Plaintiffs when the market administrators appropriated for others Plaintiffs' interests in their reduced Available Patronage Refund as allocable shares of the producer settlement funds.

81. USDA's appropriation of a portion of the proceeds allocable to Plaintiffs, as reflected in their Available Patronage Refund, constitutes a per se taking without just compensation and thereby violates the Fifth Amendment's Takings Clause. *See Horne v. Dep't of Agric.*, 576 U.S. 350, 352, 364-65 (2015) (concluding California Handling Order's raisin reserve-pool requirement, which was "a condition on permission to engage in commerce" of raisins, effected "a clear physical taking" in violation of the Fifth Amendment's Takings Clause for which just compensation was due).

82. Plaintiffs are entitled to receive compensation for any reduced Available Patronage Refund and the producer settlement funds taken for certified organic milk produced by them but held for and paid to other farmers based upon the payments made accounting for the marketing of

their milk to CROPP. As USDA's taking is ongoing, Plaintiffs are entitled to receive all such compensation as determined at trial, in an amount of at least \$60 million.

### **PRAYER FOR RELIEF**

83. Plaintiffs respectfully request that this Court enter judgment:
- (a) Holding that USDA's *per se* physical appropriation of Plaintiffs' Available Patronage Refund resulting from producer settlement funds paid by CROPP for Plaintiffs' marketings of certified organic milk without just compensation violates the Fifth Amendment's Takings Clause;
  - (b) Awarding Plaintiffs just compensation for their appropriated Available Patronage Refund and CROPP's net producer settlement funds as taken during the applicable statute of limitations period to the date of judgment based upon the funds' fair market value at the time of the taking, as well as interest thereon, an amount to be determined at trial given the ongoing monthly nature of the takings but no less than \$60 million;
  - (c) Order that the United States provide just compensation going forward for any further appropriation of Plaintiffs' Available Patronage Refund and CROPP's producer settlement funds based on the funds' fair market value at the time of any future taking;
  - (d) Awarding Plaintiffs their reasonable attorneys' fees, including under the Equal Access to Justice Act, as applicable, and costs; and
  - (e) Granting any and all additional relief as the Court deems necessary.

Dated: April 28, 2026

Respectfully submitted,

/s/ Ashley L. Vulin

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*Of Counsel*