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7 Attorneys for Plaintiffs

8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 MARIELLE WILLIAMSON, by and through  
11 her father, BENNETT WILLIAMSON, for  
herself and on behalf of ANIMAL  
12 AWARENESS CLUB, a student organization;  
PHYSICIANS COMMITTEE FOR  
13 RESPONSIBLE MEDICINE, a nonprofit  
membership organization,

14 Plaintiffs

15 v.

16  
17 UNITED STATES DEPARTMENT OF  
AGRICULTURE; LOS ANGELES UNIFIED  
18 SCHOOL DISTRICT; JOSE P. HUERTA,  
Region East Superintendent of Los Angeles  
19 Unified School District; TONY CORTEZ,  
Administrator for Eagle Rock/Highland Park  
20 Community of Schools, Los Angeles Unified  
School District; DEREK STEINORTH,  
21 Principal of Eagle Rock Junior/Senior High  
School, Los Angeles Unified School District,  
22

23 Defendants.  
24  
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26  
27  
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Case No. 2:23-cv-03307-FMO-E

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

1 **Introduction**

2 1. Plaintiff Marielle Williamson (“Marielle” or “Plaintiff Williamson”) brings this action as a  
3 student and advocate for the health and well-being of children, animals, and the environment.  
4 Marielle seeks to protect the First Amendment right to peacefully engage in student speech that  
5 exposes the harms caused by consuming dairy products.

6 2. Not wishing to subject herself or her school to punishment under the National School  
7 Lunch Program (“NSLP”), Marielle sought confirmation from her school district that such  
8 advocacy would not violate NSLP provisions 42 U.S.C. § 1758(a)(2)(C) and 7 C.F.R. § 210.10  
9 (referred to hereinafter collectively as “Milk Marketing Protections”), which prohibit direct or  
10 indirect restrictions of the sale or marketing of dairy milk by schools and individuals approved by  
11 schools.

12 3. Marielle’s school district, in an attempt to comply with the discriminatory, vague, and  
13 overbroad Milk Marketing Protections, required Marielle to simultaneously distribute USDA-  
14 generated pro-dairy materials (“Dairy Promotions”) alongside any materials critical of dairy.

15 4. Marielle’s school district does not otherwise compel students to present both sides of an  
16 issue while distributing non-disruptive literature on schoolgrounds. Speech critical of dairy was the  
17 exception to the rule.

18 5. Marielle’s school’s actions have laid bare the extent to which the Milk Marketing  
19 Protections treat dairy as sacrosanct and, in turn, induce schools to harm students with blatant  
20 viewpoint discrimination.

21 6. As the experiences of Marielle and other students demonstrate, schools restrict students’  
22 free speech rights for fear of “indirectly restrict[ing] the marketing of dairy milk.”

23 7. Multiple schools have denied student requests to hang posters critical of dairy in the school  
24 cafeterias, notwithstanding the fact that these schools allow students to hang posters in the cafeteria  
25 concerning a wide range of other topics.

26 8. In the case of Ryan T., for example, his school explicitly communicated that he was not  
27 allowed to hang posters critical of dairy because doing so would violate the Milk Marketing  
28 Protections.

1 9. The Physicians Committee for Responsible Medicine (“Physicians Committee”) joins  
2 Marielle in this action, having had the privilege to work with dedicated Physicians Committee  
3 student members, like Marielle and Ryan T., as well as parent members and physician members, to  
4 educate the public about the harms associated with consuming dairy products.

### 5 **Jurisdiction and Venue**

6 10. This action arises under the First and Fourteenth Amendments to the United States  
7 Constitution, pursuant to 42 U.S.C. § 1983.

8 11. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

9 12. Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 empower Plaintiffs to seek, and  
10 this Court to enter, the requested declaratory judgments.

11 13. Federal Rule of Civil Procedure 65 and the Court’s inherent equitable powers empower  
12 Plaintiffs to seek, and this Court to enter, the requested injunctive relief.

13 14. This Court is authorized to grant Plaintiffs’ prayer for relief regarding costs, including  
14 reasonable attorneys’ fees, under 42 U.S.C. § 1988.

15 15. This Court has supplemental jurisdiction over the state law claims made herein pursuant to  
16 28 U.S.C. § 1367.

17 16. Venue is proper under 28 U.S.C. § 1391 because violations of the United States Constitution  
18 at issue in this suit have arisen and continue to arise in the Central District of California.

### 19 **Parties**

20 17. In fall 2022 and spring 2023, Marielle was a senior at Eagle Rock Junior/Senior High  
21 School (“Eagle Rock School”), within the Eagle Rock/Highland Park Community of Schools, in  
22 Region East, under the jurisdiction of Los Angeles Unified School District (“LAUSD”). In June  
23 2023, Marielle graduated from Eagle Rock School. Marielle brings this action by and through her  
24 father, Bennett Williamson.

25 18. Marielle was the President of the Eagle Rock School Animal Awareness Club (“Awareness  
26 Club”), a registered student club at Eagle Rock School that aims to make the world a better place by  
27 protecting animals and the environment. The Awareness Club has other members, one of whom  
28 was a junior.

1 19. The Awareness Club was approved in January 2023 by class officers and the faculty club  
2 manager. Its mission is “[t]o highlight the lesser-known effects our food choices have on animals  
3 and ourselves.”

4 20. The Awareness Club meets every Tuesday in the classroom of a permanent faculty sponsor.

5 21. Marielle is also a student member of the Physicians Committee and a participant in the  
6 Physicians Committee’s “Truth or Dairy” campaign.

7 22. Prior to participating in the “Truth or Dairy” campaign, Marielle conducted research via  
8 news articles, scientific publications, and documentaries, through which she learned about dairy’s  
9 negative impacts on public health, animal welfare, and the environment.

10 23. Marielle was selected as the sole winner of the Vegan Teens Are The Future Scholarship  
11 based on her essay detailing her dedication to advocacy, her plans to study food science to create  
12 sustainable, affordable animal product alternatives, and her commitment to continuing to serve as a  
13 voice for the animals.

14 24. As an International Baccalaureate diploma student, Marielle has produced scholarship on  
15 the impact that animal-derived food products have on climate change and human health, with a  
16 particular emphasis on the ways in which government entities subsidize and otherwise promote the  
17 dairy industry.

18 25. Plaintiff Physicians Committee is a nonprofit membership organization headquartered at  
19 5100 Wisconsin Ave., NW, Suite 400, Washington, DC 20016. Established in 1985, the Physicians  
20 Committee is a national organization representing nearly 1 million members and supporters,  
21 including 17,000 physicians. Approximately 78,000 of these members reside in California. The  
22 Physicians Committee advocates for preventive medicine through proper nutrition, encourages  
23 higher standards for ethics and effectiveness in medical research, and conducts clinical research on  
24 the relationships between food and disease.

25 26. Since 2001, the Physicians Committee has issued a periodic “School Lunch Report Card,”  
26 analyzing the nutritional quality of the menus offered by the largest school districts participating in  
27 the NSLP. California school districts appear in all editions of the School Lunch Report Card.

28 27. In 2004, the Physicians Committee initiated its related “Golden Carrot Awards” program to  
recognize food service professionals who make an exceptional effort to improve the healthfulness

1 of school lunches. The Golden Carrot Awards program has recognized improvements in various  
2 California school districts.

3 28. In 2017, the Physicians Committee testified before the LAUSD Board of Education in  
4 support of a student’s proposed pilot program to serve healthful lunches in LAUSD schools.

5 29. That same year, the Physicians Committee sued the California Department of Education,  
6 seeking a writ of mandate directing the Department to “develop and maintain nutrition guidelines  
7 for school lunches and breakfasts, and for all food and beverages sold on public school campuses,”  
8 as required by California Education Code Section 49531.1.

9 30. When the Department thereafter initiated a rulemaking process, the Physicians Committee  
10 participated in both subsequent public comment periods, urging the Department to require schools  
11 to offer plant-based milks at all times without a formal written request because the “majority of  
12 California public school students—72.3 percent”—are members of demographic groups who  
13 experience difficulty digesting dairy milk.

14 31. In 2019, the Physicians Committee co-sponsored the Healthy, Climate-friendly School  
15 Lunch Act (AB 479), a California bill proposing to provide extra funding to schools that add or  
16 increase the number of plant-based milks on their menus.

17 32. In 2022, the Physicians Committee co-sponsored the Child Nutrition Act of 2022.

18 33. Many of the Physicians Committee’s members joined the organization to obtain adequate  
19 representation of their interest in a safe and healthful diet free from risks, including in schools.

20 34. The Physicians Committee brings this action on behalf of its student and parent members,  
21 and to safeguard its own organizational interest in protecting the right to educate students,  
22 administrators, and communities regarding the adverse health and equity impacts of dairy, as well  
23 as raise awareness about the obstacles imposed by the federal government upon student participants  
24 in the NSLP who do not wish to consume dairy milk. The interests of the Physicians Committee  
25 and its members in eating a healthful, safe diet are harmed by Defendant’s restrictions of student  
26 speech critical of dairy, as student members continue to face difficulties obtaining dairy milk  
27 substitutes yet are chilled from speaking out about it.

28 35. The Physicians Committee has advised and assisted Marielle, the Awareness Club, Ryan T.,  
and its student members throughout the United States, as part of its Truth or Dairy campaign, which

1 aims to raise awareness about the health and equity problems associated with serving dairy milk in  
2 schools.

3 36. The Truth or Dairy campaign works with students who present and distribute educational  
4 materials that highlight the benefits of a plant-based diet and, specifically, plant-based alternatives  
5 to dairy. As part of this campaign, the Physicians Committee advises students on how to present  
6 and distribute material to other students and provides educational materials for students to present  
7 and distribute.

8 37. As a result of the unconstitutional Milk Marketing Protections, Physicians Committee  
9 student members, including Ryan T, have suffered and will continue to suffer direct harms to their  
10 free speech rights.

11 38. Additionally, Defendant has frustrated the Physicians Committee's mission and perceptibly  
12 impaired its ability to provide advice and resources to students about how and what educational  
13 material to distribute to promote plant-based diets at their schools. Rather than advise students  
14 about strategies for educating their peers about the benefits of a plant-based diet, and in particular  
15 plant-based alternatives to dairy, Physicians Committee has been forced to advise them on the  
16 limitations placed on them by the Milk Marketing Protections and the ways in which they may best  
17 protect their First Amendment rights in the face of such unconstitutional limitations. This has  
18 resulted in a diversion of and drain on Physicians Committee's resources.

19 39. Defendant USDA is, and was at all times relevant herein, a federal agency with authority  
20 over our nation's agriculture and child nutrition programs, inclusive of the NSLP.

### 21 **Legal Background and Framework**

#### 22 *National School Lunch Program Prohibitions of Restrictions on Sale and Marketing of Milk by 23 Persons Approved by the School*

24 40. The National School Lunch Act established the NSLP, a federally assisted meal program  
25 operating in public and nonprofit private schools and other institutions. *See generally* 42 U.S.C. §§  
26 1751–1769j.

27 41. Defendant USDA oversees the program, which state agencies administer at the state level  
28 pursuant to agreements with USDA. 42 U.S.C. §§ 1753, 1757.

42. For each eligible meal they serve, participating school districts and independent schools

1 receive cash reimbursements that originate as federal appropriations paid to the administering state  
2 agencies and then are disbursed to schools. *See* 42 U.S.C. §§ 1752–1753, 1756–1757.

3 43. Schools that participate in the NSLP “shall offer students a variety of fluid milk.” 42 U.S.C.  
4 § 1758(a)(2)(A)(i).

5 44. “Fluid milk” is implicitly defined as a dairy beverage made from “cow’s milk.” *See* 42  
6 U.S.C. § 1758(a)(2)(B)(i).

7 45. Students must receive substitutes for dairy milk only if they provide a written statement  
8 from “a licensed physician that identifies a disability that restricts the student’s diet and that  
9 specifies the substitute for fluid milk.” Students may, at the school’s discretion, receive substitutes  
10 for dairy milk if they provide a written statement from a parent, legal guardian, or medical authority  
11 that “identifies the medical or other special dietary need that restricts the student’s diet.” 42 U.S.C.  
12 §§ 1758(a)(2)(A)(iii), (a)(2)(B).

13 46. Per the Milk Marketing Protections, participating schools “shall not directly or indirectly  
14 restrict the sale or marketing of fluid milk products by the school (or by a person approved by the  
15 school) at any time or any place (i) on the school premises; or (ii) at any school-sponsored event.”  
16 42 U.S.C. § 1758(a)(2)(C).

17 47. Per the Milk Marketing Protections, “A school participating in the Program, or a person  
18 approved by a school participating in the Program, must not directly or indirectly restrict the sale or  
19 marketing of fluid milk [] at any time or in any place on school premises or at any school-sponsored  
20 event.” 7 C.F.R. § 210.10(d)(4).

21 48. By prohibiting the direct or indirect restriction of the sale or marketing of fluid milk by  
22 persons approved by the school, the Milk Marketing Protections specifically and directly prohibit  
23 student advocacy.

24 49. Students who dutifully obtain their school’s approval prior to advocating for plant-based  
25 alternatives to dairy are not exempt from the prohibition of the Milk Marketing Protections, since  
26 the statutes and regulations specifically apply to “person[s] approved by a school.”

27 50. USDA may fine participating schools for failure to comply with the Milk Marketing  
28 Protections. *See* 42 U.S.C. § 1769c.





1 pictures were taken are in Oklahoma and Kansas . . . .”

2 55. In response to concerns from the dairy industry, USDA explained in a March 2018 email  
3 that it has taken “corrective action” against school districts to eliminate signage that “promotes  
4 water or other beverages as an alternative to milk during meal service.” USDA did not limit its  
5 position to only signage generated by the school itself and instead emphasized that the relevant  
6 issue was the content of the signage. This position reflects a content-based restriction on anti-dairy  
7 speech, and this USDA position (based on the Milk Marketing Protection) is consistent with the  
8 unlawful conduct of the schools and principals discussed herein. On information and belief, USDA  
9 did not verify that all signage had been generated by the school itself prior to taking corrective  
10 action, and never limited its position to such; thus, the content-based restriction applies equally to  
11 school-generated signage and student-generated signage.

12 56. In an April 2020 email, a USDA official informed the Florida state agency responsible for  
13 administering the NSLP in Florida that providing “materials for students on the perceived harmful  
14 consequences of the consumption of cow’s milk” represents “a direct attempt to restrict the sale or  
15 marketing of fluid milk products” under the Milk Marketing Protections. Consequently, the Florida  
16 agency concluded that the Milk Marketing Protections forbid schools from distributing materials  
17 critical of dairy “at any time or in any place on school premises or at any school-sponsored event,”  
18 inclusive of a school’s educational curriculum and instruction. The Florida agency stated that  
19 providing students with posters, brochures, and classroom lessons detailing the negative impacts of  
20 dairy consumption on human health, the environment, and animal welfare constitutes “negative  
21 marketing information about dairy consumption . . . [that] in effect, directly discourages students  
22 from selecting fluid milk as a food component,” and further emphasized that “7 C.F.R. §  
23 210.10(d)(4) explicitly prohibits displaying such marketing materials because it would directly or  
24 indirectly restrict the sale or marketing of fluid milk at the school.”

25 57. Taken as a whole, USDA’s monitoring of schools has resulted in a nationwide policy under  
26 which speech critical of dairy on school premises or at any school-sponsored event runs afoul of the  
27 Milk Marketing Protections, inclusive of speech by both the schools themselves *and the students* as  
28 “person[s] approved by the school.”

*Students’ First Amendment Right to Free Speech Under the United States Constitution*

1 58. Students do not shed their First Amendment right to free speech at the schoolhouse gate.  
2 *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“*Tinker*”). As the Supreme  
3 Court of the United States has emphasized, “[t]he vigilant protection of constitutional freedoms is  
4 nowhere more vital than in the community of American schools.” *Keyishian v. Bd. Of Regents of*  
5 *Univ. of State of New York*, 385 U.S. 589, 603 (1967).

6 59. By the same token, “the Constitution protects the right to receive information and ideas.”  
7 *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). This right extends to students in the school context.  
8 *Bd. Of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 868 (1982) (“[J]ust  
9 as access to ideas makes it possible for citizens generally to exercise their rights of free speech and  
10 press in a meaningful manner, such access prepares students for active and effective participation in  
11 the pluralistic, often contentious society in which they will soon be adult members.”).

12 60. Student speech on schoolgrounds may be restricted only if it “materially disrupts classwork  
13 or involves substantial disorder or invasion of the rights of others.” *Tinker*, 393 U.S. at 513.

14 61. Under *Tinker*, a permissible restriction of student speech “requires a specific and significant  
15 fear of disruption, not just some remote apprehension of disturbance.” *Saxe v. State Coll. Area Sch.*  
16 *Dist.*, 240 F.3d 200, 211 (3d Cir. 2001).

17 62. “When [a student] is in the cafeteria . . . [s]he may express h[er] opinions, even on  
18 controversial subjects . . .” *Tinker*, 393 U.S. at 512–13.

## 18 **Statement of Facts**

### 19 *Marielle’s Allegations*

20 63. In fall 2022 and spring 2023, Marielle was a senior at Eagle Rock School within LAUSD in  
21 California. In June 2023, Marielle graduated from Eagle Rock School.

22 64. Eagle Rock School participates in the NSLP.

23 65. In October 2022, LAUSD permitted Marielle to engage in speech critical of dairy on  
24 schoolgrounds as part of the Raven Corps’ Mind Over Milk event.

25 66. As part of the Mind Over Milk event, Marielle handed out literature directly outside the  
26 cafeteria that was critical of the dairy industry. LAUSD did not require or request that Marielle  
27 hand out any materials that promoted the dairy industry.

28 67. As part of the Mind Over Milk event, LAUSD allowed Marielle to distribute two kinds of

1 plant-based milk for students to sample: Oatly oat milk and Ripple pea protein milk.

2 68. At the time of the October 2022 event, Marielle was not yet aware of the Milk Marketing  
3 Protections. As such, she did not raise the issue with the school.

4 69. Marielle’s school granted permission for the Mind Over Milk event without ever  
5 mentioning the Milk Marketing Protections.

6 70. Marielle became aware of the Milk Marketing Protections shortly after the Mind Over Milk  
7 event.

8 71. On February 8, 2023, Marielle emailed the principal of her school seeking permission for  
9 her and the Awareness Club to participate in a day of action on April 14, 2023, to “educate students  
10 about the health and equity problems associated with serving dairy milk in schools.” Marielle stated  
11 that she aimed to table in the quad during lunch to distribute educational materials; the materials  
12 would describe:

- 13 a. the relationship between dairy and heart disease and cancer;
- 14 b. issues of equity around dairy’s disproportionate negative health impacts on students  
15 of color;
- 16 c. the burdensome process for requesting a substitute for dairy milk;
- 17 d. the ways in which schools pressure students to drink dairy milk;
- 18 e. the ways in which schools are used as a marketing arm for the dairy industry; and
- 19 f. the harm to the environment and animals caused by the dairy industry.<sup>1</sup>

20 72. To be certain that providing literature critical of dairy would not subject her to discipline by

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21 <sup>1</sup> In addition to being constitutionally protected, the veracity of Marielle’s speech is supported by  
22 substantial evidence. Fluid milk is one of the top sources of saturated fat and cholesterol in  
23 the American diet. Nat’l Cancer Inst., Nat’l Inst. of Health (“NIH”), Identification of Top  
24 Food Sources of Various Dietary Components 38, 46 (2019),  
25 <https://epi.grants.cancer.gov/diet/foodsources/top-food-sources-report-02212020.pdf>.  
26 Lactose, the sugar omnipresent in fluid milk, is indigestible in individuals lacking the  
27 lactase enzyme. NIH, NIH Consensus Development Conference: Lactose Intolerance and  
28 Health 35 (2010) (hereinafter “NIH Consensus Report”),  
[https://consensus.nih.gov/2010/images/lactose/lactose\\_abstracts.pdf](https://consensus.nih.gov/2010/images/lactose/lactose_abstracts.pdf). This is the case for  
many people of color, as described below, resulting in diarrhea, pain, and other, sometimes  
serious, digestive symptoms. *Id.* at 35–36. One major environmental effect of fluid milk  
consumption is the production of methane, a potent greenhouse gas, by cattle herds used for  
its production. U.S. Env’tl. Prot. Agency, Inventory of U.S. Greenhouse Gas Emissions and  
Sinks 5-1 to 5-4 (2018), <https://www.epa.gov/sites/production/files/2020-04/documents/us-ghg-inventory-2020-main-text.pdf>.

1 the school nor subject her school to fines by USDA, Marielle inquired in the February 8 email as to  
2 whether “a student-led event discouraging the consumption of dairy milk in schools” would violate  
3 the NSLP requirement that “a school that participates in the school lunch program . . . shall not  
4 directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a  
5 person approved by the school) at any time or any place—on the school premises; or at any school-  
6 sponsored event.”

7 73. In the February 8, 2023, email, Marielle requested that the principal notify her by March 1  
8 whether she had permission to disseminate the materials.

9 74. On February 15, 2023, the principal asked to meet with Marielle to discuss her proposal as  
10 he had “a couple concerns.”

11 75. On March 3, 2023, the principal met with Marielle, and she reiterated her fear that she might  
12 be punished for distributing materials critical of dairy directly outside the cafeteria.

13 76. Despite having approved an almost identical event just a few months earlier without  
14 communicating that he would have to consult first with his supervisors, during Marielle’s March 3,  
15 2023, meeting with the principal, he said he would have to speak about the matter with his District  
16 supervisor before he could provide Marielle with a final answer as to whether she had permission to  
17 disseminate materials critical of dairy.

18 77. On March 13, 2023, not having heard back from the principal, Marielle followed up with an  
19 additional email to see whether the principal had spoken yet with his LAUSD supervisor.

20 78. Despite having approved an almost identical event just a few months earlier without  
21 requiring that Marielle simultaneously distributing materials promoting dairy, on March 14, 2023,  
22 the principal emailed Marielle to update her that, after speaking with his District supervisor and the  
23 Cafeteria Branch, they had decided as follows:

24 You can have a table set up outside at lunch with her flyers on the pros  
25 and cons of drinking milk, but you should also have some literature for  
26 both sides of the debate. I am trying to get some from a LAUSD  
27 nutritionist so that burden does not fall only on you . . . You should  
28 not disrupt or interrupt students from getting meals for the day.

29 The principal added, “I don’t think [these restrictions are] too unreasonable.”

30 79. On March 15, 2023, Marielle responded via email to the principal, agreeing that she would

1 “absolutely make it clear to all of our students participating that we are not allowed to disrupt or  
2 interrupt students getting meals,” further clarifying that “our intention is simply to raise awareness  
3 in a peaceful manner.” Marielle did note, however that if “sharing materials that promote dairy [is]  
4 required in order for [] to proceed with the event . . . [w]e would not do the event.” Marielle  
5 requested that the principal let her know “as soon as possible” whether she could proceed with the  
6 day of action as the Awareness Club was “already in the planning stages of the event.”

7 80. The principal failed to reply to Marielle’s March 15, 2023, email.

8 81. On March 24, 2023, Marielle sent another email to the principal, reiterating that if  
9 distributing “pro-milk literature information is mandatory,” the Awareness Club would not hold the  
10 event. She repeated her request that the principal make a decision as soon as possible, as the day of  
11 action was drawing near and she needed sufficient time to organize the event.

12 82. Notwithstanding Marielle’s clear communication that she would not distribute Dairy  
13 Promotions, on March 24, 2023, the principal sent Marielle the USDA-generated Dairy Promotions  
14 that she would be required to distribute in conjunction with materials critical of dairy.

15 83. Some Dairy Promotions provided by the principal were USDA publications. For example,  
16 one of the Dairy Promotions was published by the National Dairy Council, the marketing arm of the  
17 National Dairy Promotion & Research Board, a program overseen by USDA.

18 84. On March 27, 2023, Marielle emailed the principal explaining that “the point of this  
19 campaign is to counter industry-funded misinformation on dairy, and those flyers you provided fall  
20 into that category. Handing those out at the same time would defeat the purpose of our event.” Once  
21 again, Marielle emphasized that she needed a final decision on whether the event could go forward  
22 without sharing Dairy Promotions, as the date of the event was fast approaching, and the Awareness  
23 Club needed a final answer for planning purposes.

24 85. The principal did not reply to Marielle’s March 27, 2023, email.

25 86. On April 10, 2023, still hoping that her group might proceed with the event, Marielle  
26 emailed the principal again.  
27  
28

1 87. The principal did not reply to Marielle’s April 10, 2023, email, so Marielle sent one final  
2 email:

3 As the day of action is approaching, you have said twice that I must  
4 include pro-dairy content. My understanding as of now is that I cannot  
5 go forward with my tabling event unless I provide pro-dairy content as  
6 well. If I am incorrect or misunderstanding this in any way, please me  
7 know by Thursday at the latest, as this Friday is the date I had  
8 scheduled in my initial email to you two months ago. I would like to  
9 begin setting up for this event as soon as possible, but at the same time  
10 do not want to break any rules. I understand that you are busy, but if I  
11 don’t hear back before this Friday, I’m going to assume the answer is  
12 no.

13 Thank you and I appreciate your time,  
14 Marielle Williamson

15 88. On April 13, 2023, the day before Marielle’s event, the principal finally emailed back:  
16 “Marielle, I’m sorry. I was asked to make sure that those materials were available as well. I  
17 completely understand your point though.”

18 89. Under Eagle Rock School’s “Referral Policy,” students are subject to discipline, including  
19 “detention,” for “fail[ing] to comply with [] school rules.”

20 90. Because LAUSD confirmed that it had made and/or enforced a rule prohibiting Marielle  
21 from engaging in speech critical of dairy on schoolgrounds without simultaneously distributing  
22 Dairy Promotions, Marielle could not proceed with the event without being subject to discipline.

23 91. On information and belief, in April of 2023, LAUSD did not allow Marielle to distribute  
24 literature critical of dairy without simultaneously distributing materials that promote dairy solely  
25 because Marielle referenced the Milk Marketing Protections in discussions with the principal.

26 92. In October of 2022, LAUSD allowed Marielle to distribute literature critical of dairy  
27 without simultaneously distributing materials that promote dairy because Marielle did not reference  
28 the Milk Marketing Protections prior to the event.

93. To the extent that the 2022 event critical of dairy was meaningfully different from the 2023  
event at issue, the 2022 event was *even more* explicit in its goal of restricting student dairy  
consumption, as the previous event included the distribution of plant-based milk samples as well.

94. Notwithstanding LAUSD’s insistence that student speech critical of dairy must be  
accompanied by speech promoting dairy, LAUSD regularly permits, approves, and promotes  
speech that advocates for just one side of a debate.

1 95. LAUSD applied an egregious double standard to speech regarding dairy: *speech that*  
2 *promotes dairy at school need not be accompanied by speech that provides the opposing viewpoint*  
3 *critical of dairy.*

4 96. LAUSD previously encouraged student participation in the California Milk Processor  
5 Board's "Breakfast Challenge," through which students compete to increase breakfast participation  
6 with milk, including through student creation and/or distribution of Dairy Promotions such as  
7 handouts and posters.

8 97. During Marielle's years at Eagle Rock School, "Got Milk" posters were consistently hung  
9 in the hallways. Every day of the school year, the student announcements over the intercom include  
10 the "Got Milk" slogan in describing the day's menu. The menus themselves include the phrase "Got  
11 Milk" for each and every meal.

12 98. LAUSD does not require that students provide materials from both sides of the debate  
13 outside of the milk context. Following the tragic February 14, 2018, shooting at Marjory Stoneman  
14 Douglas High School in Parkland, Florida, students throughout LAUSD led on-campus assemblies  
15 and forums to speak and share materials in support of gun control.

16 99. On information and belief, LAUSD did not require that students present "both sides of the  
17 debate," during any of these actions in support of gun control, nor were any students required to  
18 simultaneously provide materials in support of gun use from gun lobbies such as the National Rifle  
19 Association.

20 100. On information and belief, LAUSD treated speech critical of dairy differently than all other  
21 forms of nondisruptive student speech (inclusive of speech that promotes dairy) because LAUSD  
22 reasonably believed that the Milk Marketing Protections legally required it to do so.

23 *Physicians Committee Student Member Allegations*

24 101. Physicians Committee student members have participated in Physicians Committee's  
25 nationwide "Truth or Dairy" campaign to educate students about the health and equity problems  
26 associated with serving dairy milk in schools.

27 102. As part of Physicians Committee's Truth or Dairy campaign, student members would like to  
28 engage in nondisruptive speech critical of dairy on schoolgrounds but reasonably fear that doing so  
could lead to punitive action taken by their schools, as compelled by USDA, and/or by USDA

1 directly, especially in light of Marielle’s schools’ restriction of her speech critical of dairy as well  
2 as previous corrective action taken by USDA to curb signage promoting nondairy beverages in  
3 schools.

4 103. Not wishing to subject themselves or their schools to punishment under the NSLP, several  
5 Physicians Committee student members have dutifully sought confirmation from their schools that  
6 engaging in nondisruptive speech critical of dairy on schoolgrounds would not violate the Milk  
7 Marketing Protections.

8 104. Schools from which Physicians Committee members have dutifully sought confirmation  
9 that engaging in nondisruptive speech critical of dairy on schoolgrounds would not subject students  
10 or schools to punishment under the NSLP have responded by denying those students permission to  
11 engage in nondisruptive speech critical of dairy on schoolgrounds, citing the Milk Marketing  
12 Protections. These schools have denied this permission despite allowing other students to engage in  
13 similar forms of speech on any number of topics and allowing similar speech that promotes dairy.

14 105. Approval by the school has been a school-imposed precondition for every Physicians  
15 Committee student member who has sought to hold an event or hang educational posters about the  
16 harms of milk.

17 106. Physicians Committee member Ryan T., a 17-year-old student at a New York high school  
18 that participates in the NSLP, met with his assistant principal on November 17, 2023, seeking  
19 permission to hang two posters in the school cafeteria for the purpose of increasing student  
20 awareness of the adverse impacts of dairy milk.

21 107. In advance of Ryan’s November 17, 2023, meeting with his assistant principal, Ryan  
22 emailed the assistant principal regarding the Milk Marketing Protections and explained that he did  
23 not wish to get himself or the school in trouble.

24 108. At Ryan’s November 17, 2023, meeting with his assistant principal, Ryan described to his  
25 assistant principal the two posters. One poster consisted of an image of a glass of milk alongside  
26 text stating, “65% of adolescents are unable to digest lactose,” and then urged, “Add alternative  
27 beverage options to the National School Lunch Program.” The other poster showed a hand-drawn  
28 calf drinking from a carton of milk, alongside text stating, “He needs milk. You need plants.”

109. At Ryan’s November 17, 2023, meeting with his assistant principal, the assistant principal



1 expressed concern about the application of the Milk Marketing Protections to Ryan’s request to  
2 hang the posters.

3 110. At the end of Ryan’s November 17, 2023, meeting with his assistant principal, the assistant  
4 principal stated that the school would not allow Ryan to hang the posters. The assistant principal  
5 explained that the school had recently become eligible for a new USDA program providing free  
6 breakfast and free lunch to every student enrolled in the school district regardless of income. That  
7 program began November 1, 2023. The assistant principal did not wish to run afoul of USDA and  
8 jeopardize the school district’s participation in this USDA program. The program, called the  
9 Community Eligibility Provision (CEP), is a “meal service option for schools and school districts in  
10 low-income areas. CEP allows the nation’s highest poverty schools and districts to serve breakfast  
11 and lunch at no cost to all enrolled students without collecting household applications.”

12 111. After Ryan’s November 17, 2023, meeting with his assistant principal, Ryan was surprised  
13 that the school denied him permission, since other students had previously been allowed to hang  
14 posters in the cafeteria on a wide range of topics.

15 112. Ryan followed up his November 17, 2023, meeting with the assistant principal with an  
16 email to clarify whether the school had denied him permission because of the Milk Marketing  
17 Protections specifically. Ryan concluded by writing, “I don’t want to get the school in trouble and  
18 will try to find a different way to teach my peers about the harms of dairy.”

19 113. In response to Ryan’s email following his November 17, 2023 meeting with the assistant  
20 principal, the assistant principal replied via email, “Yes, this would be prohibited according to the  
21 law you cited about national breakfast and lunch programs.”

22 **First Cause of Action**  
23 **Infringement of Freedom of Speech**  
24 **Viewpoint Discrimination**  
25 **First Amendment to the U.S. Constitution (42 U.S.C. § 1983)**

26 114. Plaintiffs incorporate the allegations contained in the preceding paragraphs as if set forth  
27 fully herein.

28 115. “[T]he First Amendment forbids the government [from regulating] speech in ways that  
favor some viewpoints or ideas at the expense of others.” *Members of the City Council of City of*  
*L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984).

1 116. The Milk Marketing Protections favor viewpoints that promote dairy over viewpoints that  
2 are critical of dairy.

3 117. The Milk Marketing Protections favor viewpoints that promote dairy over viewpoints that  
4 promote other beverages, such as water or plant-based milks.

5 118. Because the Milk Marketing Protections explicitly prohibit “person[s] approved by the  
6 school from directly or indirectly restricting the sale or marketing of dairy,” the Milk Marketing  
7 Protections induced Marielle’s school and Physicians Committee student members’ schools (such  
8 as Ryan T.’s school) to engage in a prior restraint of their speech through viewpoint discrimination,  
9 in violation of the First and Fourteenth Amendments. *See United States v. Am. Libr. Ass’n, Inc.*, 539  
10 U.S. 194, 203 (2003) (“Congress has wide latitude to attach conditions to the receipt of federal  
11 assistance to further its policy objectives [citation omitted]. But Congress may not ‘induce’ the  
12 recipient to engage in activities that would themselves be unconstitutional.”).

13 119. Plaintiff Williamson has suffered irreparable harm and the deprivation of her rights because  
14 of the unconstitutional Milk Marketing Protections.

15 120. Plaintiff Physicians Committee’s student members have suffered and will continue to suffer  
16 irreparable harm and the deprivation of their rights because of the unconstitutional Milk Marketing  
17 Protections.

18 **Second Cause of Action**  
19 **Vagueness**  
20 **First Amendment (42 U.S.C. § 1983)**

21 121. Plaintiffs incorporate the allegations contained in the preceding paragraphs as if set forth  
22 fully herein.

23 122. Both facially and as applied, the Milk Marketing Protections are unconstitutionally vague.

24 123. The Milk Marketing Protections are not clearly defined such that a person of ordinary  
25 intelligence can readily determine what is prohibited.

26 124. The Milk Marketing Protections raise many questions, the answers to which are unclear.  
27 These include, but are not limited to: What is meant by the phrase “indirectly restrict?”; Does  
28 student speech involving the distribution of literature critical of dairy outside the cafeteria  
“indirectly restrict” the sale or marketing of fluid milk in violation of the Milk Marketing

1 Protections?; Has a student “approved by the school” who hangs a poster critical of the dairy in the  
2 school cafeteria (or a poster suggesting that NSLP should add a non-dairy beverage for all students)  
3 “indirectly restricted” the sale or marketing of fluid milk?; Has a school that develops an  
4 educational curriculum critical of dairy “indirectly” restricted the sale or marketing of fluid milk?

5 125. “If [a] statute, judged on its face and as applied [], is void for vagueness, access may not be  
6 had to the legislative history in order to establish its meaning.” *Fleuti v. Rosenberg*, 302 F.2d 652,  
7 654–55 (9th Cir. 1962).

8 126. The vagueness of the Milk Marketing Protections as applied to Marielle and Physicians  
9 Committee’s student members’ speech has induced schools to violate their First Amendment right  
10 to free speech.

11 127. As a result of the vagueness of the Milk Marketing Protections, at least one state agency  
12 tasked with administering the NSLP has concluded that the Milk Marketing Protections forbid  
13 schools from distributing educational materials about the negative impacts of dairy consumption  
14 well beyond the lunch line, extending the scope to “any time or any place—on the school premises;  
15 or at any school-sponsored event,” inclusive of educational curricula and instruction.

16 128. As a result of the vagueness of the Milk Marketing Protections, third party students at  
17 schools that participate in the NSLP have suffered a violation of their First Amendment right to  
18 receive information and ideas on schoolgrounds from their peers during noninstructional time,  
19 inclusive of materials critical of dairy, although such materials are neither lewd nor in any way  
20 likely to cause a substantial disruption to school operations.

21 129. As a result of the vagueness of the Milk Marketing Protections, third party teachers and  
22 administrators at schools that participate in the NSLP are objectively chilled by a reasonable fear  
23 that engaging in speech critical of dairy on schoolgrounds, inclusive of curricula, will result in  
24 punitive actions taken against them by their respective school districts, as compelled by Defendant  
25 USDA, or against their school districts by Defendant USDA in violation of the First and Fourteenth  
26 Amendments to the United States Constitution.

27 130. Accordingly, the Milk Marketing Protections are facially invalid and should be struck down.

28 131. Plaintiffs have no other adequate remedy at law and have already suffered as a result of  
having their speech restricted and will continue to suffer in the future.

**Third Cause of Action**  
**Overbreadth**  
**First Amendment (42 U.S.C. § 1983)**

132. Plaintiffs incorporate by reference all other paragraphs of this complaint as if those allegations were set out explicitly herein.

133. The Milk Marketing Protections violate the First Amendment because they are overbroad.

134. According to at least one state agency tasked with administering the NSLP, the Milk Marketing Protections forbid schools from distributing educational materials about the negative impacts of dairy consumption well beyond the lunch line, i.e., “at any time or any place—on the school premises; or at any school-sponsored event,” inclusive of educational curricula and instruction.

135. The Supreme Court has historically stricken restrictions on the free flow of knowledge and learning, including restrictions on what can and cannot be taught, commenting that “[t]eachers and students must always remain free to inquire, to study and to evaluate . . . .” *Sweezy v. N.H.*, 354 U.S. 234, 250 (1957).

136. Schools and school districts in California, including public schools and districts, possess free speech rights, including academic freedom concerning classroom content and method.

137. While schools have no constitutional right to the benefits of participating in government programs, Congress does not have the authority to attach “conditions that seek to leverage funding to regulate speech *outside the contours of the program itself*.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 213 (2013).

138. The Milk Marketing Protections apply not just to schools but to *anyone approved by the school*. See 7 C.F.R. § 210.10 (d)(4) (“[A] person approved by a school participating in the Program, must not directly or indirectly restrict the sale or marketing of fluid milk [] at any time or in any place on school premises or at any school-sponsored event.”).

139. The Milk Marketing Protections suppress a substantial amount of protected speech outside the contours of the program, including (1) speech critical of dairy by non-NSLP funding recipients, such as students and charitable organizations, and (2) speech critical of dairy that takes place far beyond the cafeteria, such as in classrooms, libraries, and theaters.

140. By restricting speech critical of dairy by those who do not themselves receive funding from

1 the NSLP and prohibiting such speech “at any time or any place—on the school premises; or at any  
2 school-sponsored event,” the Milk Marketing Protections are facially invalid and should be struck  
3 down.

4 141. Plaintiffs have no other adequate remedy at law and have already suffered as a result of  
5 having their speech restricted and will continue to suffer in the future.

6 **Fourth Cause of Action**  
7 **Cal. Educ. Code § 48950**

8 142. Section 48950(a) of the Education Code establishes that a school district “shall not make or  
9 enforce a rule subjecting a high school pupil to disciplinary sanctions solely on the basis of conduct  
10 that is speech or other communication that, when engaged in outside of the campus, is protected  
11 from governmental restriction by the First Amendment to the United States Constitution or Section  
12 2 of Article I of the California Constitution.”

13 143. Under Eagle Rock School “Referral Policy,” students are subject to discipline, including  
14 “detention,” for “fail[ing] to comply with [] school rules.”<sup>2</sup>

15 144. Under Section 48950(b), “[a] pupil who is enrolled in a school at the time that the school  
16 has made or enforced a rule in violation of subdivision (a) may commence a civil action to obtain  
17 appropriate injunctive and declaratory relief as determined by the court.”

18 145. The Milk Marketing Protections induced Marielle’s school to subject her to “disciplinary  
19 sanctions solely on the basis of conduct that is speech or other communication that, when engaged  
20 in outside of the campus, is protected from governmental restriction by the First Amendment to the  
21 United States Constitution.”

22 146. Pursuant to Section 48950(b), Marielle brings an action “to obtain injunctive and  
23 declaratory relief as determined by the court.”

24 147. As a student at Eagle Rock School at the time that District Defendants “made or enforced”  
25 the unlawful rule restricting her protected speech, Section 48950(b) allows Plaintiff Williamson to  
26 continue this civil action despite having graduated.

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28 <sup>2</sup> Eagle Rock School, Policies (2021), <https://erhs.la/students/policies>.

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**Requested Relief**

Plaintiffs respectfully request that this Court enter judgment against Defendant USDA and provide Plaintiffs with the following relief:

- a. A declaratory judgment that the Milk Marketing Protections are unconstitutional as applied to Plaintiff Williamson’s speech critical of dairy under the First Amendment to the United States Constitution;
- b. A declaratory judgment that the Milk Marketing Protections are unconstitutional as applied to Plaintiff Physicians Committee’s student members’ speech critical of dairy under the First Amendment to the United States Constitution;
- c. A declaratory judgment that the Milk Marketing Protections are facially unconstitutional under the First Amendment to the United States Constitution;
- d. A declaratory judgment that the Milk Marketing Protections as applied to Plaintiff Williamson violate Cal. Educ. Code § 48950;
- e. Plaintiffs’ costs and reasonable attorneys’ fees in this action; and
- f. All other further relief as the Court deems appropriate.

Dated: December 29, 2023

By: /s/ Corey Page  
Corey Page  
Geneva Page  
Matthew Hamity

*Attorneys for Plaintiffs*

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ATTORNEY ATTESTATION OF SERVICE

I, Corey Page, am the ECF User whose ID and password are being used to file this document. In compliance with N.D. Cal. Civil L.R. 5- 1(i)(3), I hereby attest that concurrence in the filing of the document has been obtained from each of the other signatories.

By: /s/ Corey Page  
Corey Page