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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

MICHIGAN DEPARTMENT OF)
AGRICULTURE,)
)
Plaintiff,)
) File No. 15-574-CZ
-vs-) JUDGE JAMO
)
JOSEPH GOLIMBIESKI, HILL HIGH)
DAIRY, LLC., BJ's COW BOARDING,)
LLC, and BRENDA GOLIMBIESKI,)
)
Defendants.)

MOTION TO SHOW CAUSE
before the Honorable James S. Jamo
Circuit Judge, Ingham County, Michigan
Friday, October 14, 2016

APPEARANCES:

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On behalf of the Plaintiff.

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On behalf of the Golimbieskis & BJ Cow Boarding.

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On behalf of Hill High Dairy.

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4 On behalf of Intervening Defendant,
Michael Lobsinger.

6 EXAMINATION INDEX

7 WITNESSES	PAGE
8 NONE	
9 *	*

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15 EXHIBIT INDEX

16 EXHIBIT	OFFERED	ADMITTED
17 NONE		
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1 Lansing, Michigan
 2 October 14, 2016
 3 2:28 p.m.
 4 R E C O R D
 5 THE COURT: Good afternoon. We are on the record in
 6 the matter of Michigan Department of Agriculture and Rural
 7 Development versus Hill High Dairy, LLC, et al. It's case
 8 15-574-CZ. State your appearances for the record, please.
 9 MS. ALLISON YOKOM: Your Honor, Danielle Allison
 10 Yokom on behalf of the Michigan Department of Agriculture and
 11 Rural Development.
 12 MS. BARRON: Katie Barron on behalf of the Michigan
 13 Department of Agriculture and Rural Development.
 14 MS. DRAKE: Kelly Drake, also on behalf of Plaintiff
 15 Department.
 16 THE COURT: And who do you have seated at counsel
 17 table with you?
 18 MS. DRAKE: This is Terrence Philibeck. He is a
 19 representative of the Department.
 20 THE COURT: All right. Thank you.
 21 MR. ROSS: Good afternoon, Your Honor. Michael Ross
 22 appearing on behalf of Defendant, Brenda Golimbieski, Joe
 23 Golimbieski and BJ Cow Boarding.
 24 MS. HALLEY: I am Michelle Halley, here on behalf of
 25 Hill High Dairy, LLC.

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1 MR. SIER: John Sier, along with Elise Arsenault,
 2 appearing on behalf of Intervening Defendant, Michael
 3 Lobsinger.
 4 THE COURT: All right. And this is the time
 5 scheduled to show cause why the Defendant should not be held
 6 in contempt of court. And are you ready to proceed with that
 7 Ms. -- I assume Ms. Allison Yokom, you are going to argue?
 8 MS. ALLISON YOKOM: Yes, Your Honor. Well, yes. I
 9 will be doing the argument.
 10 THE COURT: How about this. You will be starting
 11 out.
 12 MS. ALLISON YOKOM: I will be starting out. That
 13 sounds great.
 14 THE COURT: All right. And is there anything
 15 preliminarily we need to cover before we begin?
 16 MS. ALLISON YOKOM: Not that I am aware of, Your
 17 Honor.
 18 THE COURT: Any issue on the part of the Defendants
 19 before we begin with the hearing?
 20 MR. ROSS: Your Honor, just to make sure the Court
 21 did receive a copy of the Defendant, BJ's and Golimbieski's
 22 response to the show cause? There was a little mistake on the
 23 part of my office in getting that sent, and I want to make
 24 sure the Court had a copy of that.
 25 THE COURT: I have reviewed a copy of it.

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1 MR. ROSS: Okay. Thank you, Your Honor.
 2 MS. ALLISON YOKOM: And Your Honor, I will admit,
 3 this is my first show cause hearing, so if I am going the
 4 wrong direction, please let me know.
 5 THE COURT: Okay. Maybe we'll have some ground
 6 rules. Let me address the issue as to the briefs. First of
 7 all, so everyone is clear, whenever you file -- at least my
 8 rule, whenever you file any brief in support or opposing a
 9 motion, we need a judge's copy. Not everybody did that in
 10 this case. I did make copies for myself and have obtained
 11 those, but just so we are clear for the future.
 12 So as far as ground rules, Ms. Allison Yokom, what I
 13 anticipate is that you would make some sort of an opening
 14 statement, if you wish. I'll let the others make a brief
 15 opening statement. You do not need to repeat what is in the
 16 briefs. I have read all of the materials that have been
 17 submitted, including the exhibits that were attached. And so
 18 we could start out that way, and we'll find out what issues
 19 remain, and then if you wish to present evidence after that,
 20 we'll do that.
 21 MS. ALLISON YOKOM: Thank you, Your Honor.
 22 THE COURT: So you may proceed, ma'am.
 23 MS. ALLISON YOKOM: As set forth in the Department's
 24 motion and the attached affidavits, it is the Department's
 25 position that the Defendants have violated this Court's

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1 previous order requiring that -- or prohibiting them from
 2 selling milk products without a license, from processing milk
 3 products without a license, and from violating the food law.
 4 There have been a number of issues that have been
 5 raised in the briefing that deal -- that address -- that are
 6 more legal arguments as opposed to evidentiary arguments. And
 7 there are three foundational issues that I believe have been
 8 raised. One has to deal with policy 1.40. The second one has
 9 to do with whether or not the Department should have been --
 10 even been inspecting the herd share room, and the third is who
 11 is responsible for the violations at issue here?
 12 Dealing first with policy 1.40, the question before
 13 the Court today is not whether or not the Department has
 14 violated -- Department has violated policy 1.40, but whether
 15 or not the Defendants have violated this Court's order. Just
 16 so the Court is clear, policy 1.40 has to do with whole
 17 unprocessed milk. That's the only thing that is covered by
 18 the policy, and that is the only thing that the policy applies
 19 to. This case has nothing to do with whole unprocessed raw
 20 milk. This case is about dairy products and food products.
 21 So policy 1.40 is inapplicable here.
 22 The second issue is whether or not the Department
 23 had the right to inspect the herd share room.
 24 THE COURT: Ms. Allison Yokom, you may dispense with
 25 that argument. We addressed that argument at the preliminary

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1 hearing. All sides had an opportunity to argue that. I made
 2 a ruling on that, and that is a non-issue as far as I am
 3 concerned.

4 MS. ALLISON YOKOM: Thank you, Your Honor. That's
 5 where I was going with that, but I appreciate that.

6 So the third foundational issue I felt was raised by
 7 the briefing was, who was responsible for the violations that
 8 are the issue here?

9 In this case, Brenda and Joe Golimbieski own the
 10 property where these activities are occurring. Brenda
 11 Golimbieski is the organizer of BJ's Cow Boarding. Previously
 12 BJ Cow Boarding was an LLC. She was the organizing member of
 13 that LLC. She has entered into contracts on behalf of BJ's
 14 Cow Boarding, and BJ's Cow Boarding asserts ownership over the
 15 utility room where these activities were observed.

16 Hill High Dairy is a licensed dairy under State and
 17 Federal law. The licensed dairy encompasses the entirety of
 18 the property, which includes the dairy barn, the milk cows,
 19 and the utility room where this activity was observed.

20 All of these entities have access and control over
 21 the room, and so it's the Department's position that all of
 22 these entities are responsible for the actions or the
 23 violations that were observed in that room.

24 Further, the activities at this facility are
 25 intermingled between the BJ's Cow Boarding and the Hill High

1 Dairy. There is a single active bulk tank for the production
 2 of milk, so there is no two separate milk production areas
 3 that are occurring. And in the responsive pleadings the
 4 Defendants produced a lease between Joe Golimbieski and BJ's
 5 Cow Boarding. And I'm sorry, Your Honor, I didn't bring all
 6 of my stuff up here so if I can grab that really quick?

7 THE COURT: Sure.

8 MS. ALLISON YOKOM: That lease, which Defendants
 9 used to argue that the utility room was under the sole control
 10 of the herd share, provides that it's a lease for the milk
 11 cows in the cow barns. Well, there is only one milk cows and
 12 only one set of cow barns here that are at issue, and they are
 13 used both by the dairy and by BJ's Cow Boarding. There is
 14 also none exclusively provided for in that lease. So the
 15 lease does not grant anyone exclusive control over any portion
 16 of the property.

17 For these reasons it's the Department's position
 18 that all of the Defendants, all of which who exercise control
 19 or an ownership interest in the area where the violations were
 20 observed, are responsible for the violations that the
 21 Department observed.

22 I am going to rest on the Department's affidavits as
 23 far as I think that sets forth very clearly what the
 24 Department observed during its inspection. I am not going to
 25 address that further today.

1 There are two -- there are numerous legal arguments
 2 that have been raised, but I'd like to address two in
 3 particular. The one that seems to be raised is that because
 4 this is a private property of the herd share members that it
 5 can't be regulated. And the second one kind of intertwines
 6 with that is a jurisdictional question. There is an argument
 7 that the Department lacks jurisdiction to oversee the
 8 activities of the herd share. And both of these arguments
 9 fail. Laws in general restrain the use of private property or
 10 the activities of private individuals. There are numerous
 11 laws that regulate the activity -- a person's activities or
 12 their ability to enter into contracts. Courts have long held
 13 that these types of laws are constitutional. And the herd
 14 share is no different than any other dairy operation. There
 15 are lots of dairy farms that own the cows and the milk that
 16 comes from those cows, but each of those entities has to take
 17 that milk to a licensed facility to be processed. They cannot
 18 sell that product without the appropriate license, even though
 19 they own that product. They can't distribute that product
 20 without the appropriate license, and they cannot store food
 21 products that come from the cow without the appropriate
 22 license.

23 Whether you are a herd sharer, a dairy farm or
 24 anyone else, the same laws apply to you and you must comply
 25 with them.

1 Thank you, Your Honor.

2 THE COURT: All right. Thank you, Ms. Yokom.

3 Who wants to address this first as far as any
 4 opening, if you want to make an opening statement? Is there
 5 anybody who does?

6 MS. HALLEY: Sure.

7 THE COURT: Ms. Halley.

8 MS. HALLEY: Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MS. HALLEY: I am appearing on behalf of Hill High
 11 Dairy solely today. I want to address a couple of the points
 12 that have been raised in the show cause order and the briefing
 13 and just now in Ms. Allison Yokom's discussion.

14 First of all, the affidavits offered by the
 15 Department offer no evidence that Hill High Dairy, LLC, has
 16 anything to do with the processing of the cream and butter and
 17 the meat, I suppose, if that's included in this discussion.
 18 The dairy owns equipment and barns and some cows, but it does
 19 not own the cows that this -- these products, the milk from
 20 which was made from. The dairy doesn't own the milk that
 21 comes from those cows, and the dairy doesn't even own the
 22 building in which these activities -- these activities
 23 occurred.

24 I want to point out to the Court Mr. Golimbieski's
 25 affidavit. Item number 8, paragraph number 8, he swears that

1 the herd share room is under the exclusive control of the herd
2 share members. The dairy, not Brenda Golimbieski, nor I, own
3 a herd share. So just because -- well, if the lease does not
4 at least infer exclusive control of that room, that is exactly
5 the way the lease operates in practice.
6 Now, Ms. Allison Yokom herself said this case has
7 nothing to do with whole unprocessed milk. I agree with her,
8 and that's exactly why Hill High Dairy should not be a
9 Defendant in this case.
10 As I have set out in my brief, and in
11 Mr. Golimbieski's affidavit, and in the comments I just made,
12 a dairy does not own any of the property that's involved in
13 this dispute. The dairy does not process the milk. On the
14 day that cream and butter is made, the milk doesn't even go
15 through the same holding tank. That milk comes out into
16 buckets. The herd share members take the buckets into the
17 herd share room and do what they do with their own milk, not
18 with Hill High's milk, not with Hill High's employees or
19 contractors or anything else, and not with Hill High's
20 supervision. Hill High has nothing to do with this, other
21 than they tend the cows. That is Hill High's sole role in
22 this process. They are not a proper Defendant. They have no
23 control over the herd share members and what they do with
24 their milk once they obtain their milk.
25 And I would like to remind the Court, although I

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1 take to heart your advice not to repeat what's in our briefs,
2 the inconsistencies in the affidavits of the two Department
3 agents also point to the fact that there really is no evidence
4 against Hill High Dairy. One of them swears that they found
5 evidence that Hill High is violating these laws. The other
6 one swears that they found evidence that, quote, the
7 Defendants are violating these laws. The truth is, they don't
8 know and there is no specificity because they don't have --
9 because there is no evidence against Hill High Dairy itself.
10 I'd be happy to answer any questions now or later
11 the Court may have. Thank you.
12 THE COURT: All right. Thank you, Ms. Halley.
13 Mr. Ross?
14 MR. ROSS: Good afternoon, Your Honor. I am not
15 going to go over a lot of the stuff that has already been
16 stated, but I do want to focus the Court's attention because I
17 need to correct Plaintiff's Counsel that when she says that
18 policy 1.40 is not at issue in this case, well, of course it
19 is. We are dealing with a situation where the state is asking
20 this Court to hold my clients in contempt for having violated
21 the terms of the order that you entered in January. So we
22 have to look at that order and what exactly the Court enjoined
23 and what the Court ruled and what the Court did not rule. And
24 the whole point of that order was that the state, through
25 policy 1.40, specifically allows this type of herd share

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1 arrangement. And we fully complied with policy 1.40. The
2 state has not made any attempt whatsoever, Your Honor, to try
3 to trace back the products they seized and determine who owned
4 them.
5 We have my client, Joseph Golimbieski's affidavit,
6 that says all those products are owned by the herd share
7 members, and the herd share members have access, not -- to
8 this cow share room that they call the utility room that
9 everybody agrees is marked and labeled cow share room, and
10 locked and key pad entry to restricting access to it to only
11 the people that are entitled to be there.
12 My clients put raw milk products or whole
13 unprocessed milk into that room, and then, the herd share
14 members, who are not parties to this lawsuit, who are not
15 subject to this Court's injunction, then take the raw milk
16 products that they own because they own the cows from which
17 they are produced. That's policy 1.40 that says that. The
18 state says that those products from the herd share are owned
19 by the members of the herd share. The policy also states that
20 you can have a portion of a licensed farm that is devoted to
21 the herd share, exactly what Hill High and the Golimbieskis
22 are doing in this case. They have a portion devoted to the
23 herd share arrangement, which is specifically allowed by
24 policy 1.40.
25 So they haven't, in the first instance, shown any

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1 violation of this Court's injunction, let alone any violation.
2 THE COURT: Unless you count the ledgers that at
3 least at some level on their face indicate that there is a
4 sale going on, but I guess if you overlook that maybe they
5 haven't shown anything.
6 MR. ROSS: Mr. Golimbieski makes it clear in his
7 affidavit that that ledger is maintained by the herd share
8 members, and if that's the way they want to allocate variable
9 costs for maintaining their heard, that's up to them, but his
10 affidavit states very clearly that he doesn't make the entries
11 in that ledger and he doesn't maintain that ledger. So again,
12 we don't have any evidence in the first instance that the
13 Defendants that are named in this lawsuit have done anything
14 illegal, let alone anything that would violate this Court's
15 previous order. So we would stand on the affidavits and
16 undisputed facts that we have based on the state's own
17 evidence that there has been no violation of this Court's
18 order, and therefore, we'd ask the Court to deny this motion.
19 THE COURT: Mr. Ross, you indicated that the herd
20 share members are not parties to this lawsuit and are not
21 bound by the order that I entered, but isn't it the case that
22 Mr. Sier is here on behalf of Mr. Lopsinger, who argued
23 vociferously that he needed to be in this lawsuit so that he
24 can represent the herd share interests, and I granted that?
25 MR. ROSS: Yes. And I am not going to speak for the

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1 herd share. It's not my place to speak for the herd share
 2 members.
 3 THE COURT: I am just trying to address, you said a
 4 moment ago that herd share members are not party to this
 5 lawsuit and are not bound by it.
 6 MR. ROSS: I did not understand this Court's order
 7 to address the herd share members at all, but if that's what
 8 the order is intended to do, I will leave that to
 9 Mr. Lopsinger to address.
 10 THE COURT: Okay. I guess that's fair.
 11 MR. ROSS: I can't speak --
 12 THE COURT: Mr. Lopsinger, through his attorney,
 13 came in here over objection by the state and said, we want to
 14 be part of this lawsuit. We must be part of this lawsuit
 15 because otherwise our interest is not represented, because
 16 it's not represented by anyone. I guess as exemplified by you
 17 standing up and Ms. Halley standing up and saying, we don't
 18 have anything to do with the herd share, so I guess he was
 19 right about that.
 20 MR. ROSS: Right.
 21 THE COURT: But --
 22 MR. ROSS: They have an interest.
 23 THE COURT: I think once they jump into the lawsuit
 24 they are here.
 25 MR. ROSS: They have an interest. Certainly. They

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1 own the cows.
 2 THE COURT: I only was raising your comment earlier.
 3 Maybe you misspoke, but earlier you said that they are not a
 4 party and are not bound by the order.
 5 MR. ROSS: Okay. And if I was mistaken there, then
 6 obviously you can correct me, but I did not understand that
 7 order as being directed against them, but I'll leave that to
 8 them.
 9 Unless the Court has any other questions, I think as
 10 far as the goals go, it's clear that they haven't violated any
 11 law or the terms of this Court's injunction.
 12 THE COURT: The only question I have for you,
 13 Mr. Ross, you can remind me or I can make sure I have the
 14 parties straight, you represent BJ's Cow Boarding, LLC, Joseph
 15 Golimbieski and Brenda Golimbieski, correct?
 16 MR. ROSS: That's correct, Your Honor.
 17 THE COURT: And at least at the time of the lease
 18 that was entered into and is an attachment as an exhibit to
 19 Hill High Dairy's response, Brenda Golimbieski was holding
 20 herself out as in some way having authority to sign on behalf
 21 of BJ's and to bind BJ's Cow Boarding, LLC, correct?
 22 MR. ROSS: Yes.
 23 THE COURT: And so what is her role in that entity?
 24 MR. ROSS: Well, it's my understanding that the LLC
 25 itself has ceased as a registered LLC. She was the sole

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1 member of the LLC, but it's my understanding that the LLC is
 2 no longer an active LLC.
 3 THE COURT: Did it wind down?
 4 MR. ROSS: There was a certificate of dissolution
 5 filed last year.
 6 THE COURT: There was?
 7 MR. ROSS: With the state.
 8 THE COURT: Prior to that, Brenda Golimbieski was a
 9 member?
 10 MR. ROSS: She was the sole member of it.
 11 THE COURT: Sole member?
 12 MR. ROSS: That's my understanding.
 13 THE COURT: And Joseph Golimbieski is -- is he the
 14 sole owner of the physical premises where all this has taken
 15 place?
 16 MR. ROSS: That I am not sure, Your Honor. I am not
 17 sure whose name is on the title.
 18 THE COURT: Because he signed the lease going back
 19 to -- it's a 2010 lease, but he signed the lease as the lessor
 20 of the premises.
 21 MR. ROSS: I do not know and I wouldn't want to
 22 guess on that.
 23 THE COURT: Do Brenda Golimbieski and/or Joseph
 24 Golimbieski have a membership interest in Hill High Dairy,
 25 LLC?

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1 MR. ROSS: It's my understanding that Joseph
 2 Golimbieski does in Hill High Dairy, LLC, but not Brenda.
 3 THE COURT: And is Hill High Dairy still an
 4 operating entity?
 5 MR. ROSS: Yes. It is. And they are the one that
 6 holds the state license for the Grade A dairy operations.
 7 THE COURT: All right. Thank you, Mr. Ross.
 8 MR. ROSS: Thank you, Your Honor.
 9 THE COURT: Mr. Sier?
 10 MR. SIER: Yes, Your Honor.
 11 And your recollection is very good. The prior
 12 arguments -- and we do want to focus on the policy 1.40, and
 13 in particular the third paragraph says, in a herd share
 14 operation, consumers pay a farmer a fee for boarding their
 15 animal or a share of an animal, caring for the animal and
 16 milking the animal. The herd share shareholder then obtains
 17 but does not purchase the raw milk from his or her own animal.
 18 The ledger is a record of the payments by the herd share
 19 members. So by definition under the policy, it is not records
 20 of a purchase. It is records of the herd share allocation of
 21 these costs for caring, boarding the animal, caring for the
 22 animal and milking the animal, and those costs are -- some of
 23 those costs are variable. So veterinary bills, other
 24 medications and things like that, those costs will go up and
 25 down over the course of a year, so it's not necessarily a set

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1 fee. And then, the herd share members keep track for
 2 themselves who has paid how much. You pay according to what
 3 you draw out. So if you are drawing out a certain amount of
 4 milk, you are paying an allocated portion based on that
 5 according to the agreement of the herd share members.
 6 THE COURT: I could understand that. I'm sorry to
 7 interrupt you, Mr. Sier.
 8 MR. SIER: That's all right.
 9 THE COURT: I could understand that, but one thing
 10 that puzzles me about that argument, and maybe you can address
 11 this, is so why does it say it would be paid to BJ Cow
 12 Boarding, particularly if it's a defunct entity?
 13 MR. SIER: Well, it's paid to the entity that's
 14 providing the services to the herd share members, because you
 15 are paying the farmer --
 16 THE COURT: Well, that couldn't be BJ Cow Boarding.
 17 They are not even an existing entity.
 18 MR. SIER: Well, if it's not an entity, then it's an
 19 unincorporated sole proprietorship by Ms. Golimbieski. She
 20 was the sole owner of BJ's Cow Boarding, and if the LLC is no
 21 longer operating, then it would be just a sole proprietorship.
 22 She wouldn't have the same protections that a limited
 23 liability company would.
 24 THE COURT: Well, you could understand, could you
 25 not, why this whole arrangement might raise questions on the

1 part of the state, because what you have just outlined for me,
 2 is you have a group that is the herd share -- we'll call them
 3 the herd share members, whatever their group is, and what you
 4 have just outlined is that they need a way to keep track of
 5 the expenses that are incurred by maintaining the cows and
 6 veterinary bills and so forth. And then that group, among
 7 themselves, would split up the costs of doing that.
 8 Now, one might think that the logical way to do that
 9 would be that somebody who is within the herd share would keep
 10 track of expenses, would take in money to cover the costs from
 11 each of the herd share members and make sure that they are
 12 covering the costs, even if it were to be divided based upon
 13 what product you take out. And I am going to use that term
 14 not with any particular definition, so no one gets excited
 15 about me putting a definition on it, but what comes from the
 16 cow --
 17 MR. ROSS: Correct.
 18 THE COURT: -- I'll refer to as the product. You
 19 would think that it might make sense, as you have said, that
 20 if somebody from -- who has a herd share portion, takes more
 21 of the product from the cow, that they would bear more of the
 22 expense of maintaining it. I can see all of that. But what I
 23 don't understand and what I think perhaps you could see, could
 24 raise at least some level of concern on the part of the state
 25 in trying to determine whether this is what is going on as

1 what you claim is going on or your clients claim as going on,
 2 is that there is a ledger that has what looks to be prices for
 3 different product, like, milk or butter, whatever it is. It
 4 looks to be prices as opposed to a division of costs. And
 5 then you add to that that the indication is that the payment
 6 for that is going to be to some other entity, not to somebody
 7 within the herd share group who, as I said, you would think
 8 would maybe be somebody within who is keeping the expenses and
 9 making sure everybody pays their fair share. And even if you
 10 were to try to explain it by way of it being a cost of
 11 maintaining the cows, you have just yourself said that one of
 12 the expenses the herd share members have to divide up are
 13 veterinary costs. Well, there is nothing that shows that
 14 anybody is paying anything to a veterinary, and so on its face
 15 it at least looks somewhat -- I understand everybody on the
 16 Defense side is pointing to the state jumping to some
 17 conclusions, but based on the way this is set up, I think it's
 18 somewhat reasonable that one might conclude what the state is
 19 concluding and asserting in this case.
 20 MR. SIER: The only concern -- or the primary
 21 concern, Your Honor, is what you are describing as the
 22 preferred method is not what's allowed in the policy.
 23 THE COURT: I didn't say it was a preferred method.
 24 MR. SIER: A method.
 25 THE COURT: It seems somewhat logical you would do

1 it that way.
 2 MR. SIER: But that's inconsistent with the policy.
 3 Because the policy says that in the herd share operation,
 4 consumers pay a farmer a fee. You know, and it's the herd
 5 share shareholder that obtained the raw milk from his or her
 6 own animal. So it's not that the herd sharer allocates or
 7 collects all the costs -- allocates the costs, and then the
 8 herd share pays the farmer the fee. It's each consumer is --
 9 the way the policy is worded, that each consumer pays the
 10 farmer a fee to draw that milk, to care for the animal, and to
 11 board the animal.
 12 THE COURT: So who is the farmer here?
 13 MR. SIER: The farmer in this instance, the contract
 14 is with BJ's or Brenda Golimbieski as the sole proprietor
 15 doing business as BJ's Cow Boarding.
 16 THE COURT: What contract are you referring to?
 17 MR. SIER: There is a herd share agreement. I don't
 18 think -- did we make it an exhibit?
 19 MS. ARSENAULT: I don't believe it is.
 20 MR. SIER: We do have an agreement between the herd
 21 share members and Brenda Golimbieski. It wasn't -- and BJ's
 22 Cow Boarding. It wasn't necessarily one of the exhibits in
 23 this particular action. I think we did file in the court of
 24 claims action, and the agreement is between the individual
 25 herd share farmers, because the first bullet point where it

1 says herd share operations including following elements. The
 2 first bullet point there should be a signed and dated written
 3 contract between a single herd share farmer and a shareholder.
 4 And we do have that agreement between Mr. Lopsinger, who we
 5 are representing, and BJ's Cow Boarding, who is also
 6 Ms. Golimbieski. So we have the written agreement between the
 7 herd share member and the farmer. Then --
 8 THE COURT: So each herd share member has a contract
 9 individually with the farmer.
 10 MR. SIER: Yes. And that's consistent with the
 11 policy. The policy requires that it's a written contract is
 12 between a single herd sharer farmer and shareholder. So each
 13 shareholder in the herd share has a separate agreement with
 14 the farmer. And then, there must be a workable means of
 15 communication between the farmer and all of the households
 16 receiving milk. So there is all of the herd share members
 17 communicate with the farmer. That's part of the payment and
 18 part of the ledger, is to identify how much each herd share
 19 member is responsible to pay for their portion, and they pay
 20 it to the farmer consistent with their agreement, consistent
 21 with the requirements of the policy. There is no, in fact,
 22 setting up a separate entity and saying, okay, this will be
 23 herd share. That's not allowed under the policy. Under the
 24 policy it has to be individuals. And it is individuals who
 25 are herd share members that have separate contracts with the

1 farmer who is boarding the cows. The herd share members own
 2 the cows, and they own the milk that comes from the cows.
 3 So the -- so that there is no concern or question,
 4 this tracks the policy exactly, and there may be a preference
 5 to say, well, we would rather the herd share collect the money
 6 and then pay collectively and then allocate the money to one
 7 of the members and then pay the farmer, but that's not
 8 consistent with the policy, because the policy wants
 9 individual herd share members entering into separate contracts
 10 with the farmer, and then, the farmer makes the allocation to
 11 the herd share members according to what cost the farmer is
 12 incurring. So it's not that the herd share is establishing
 13 what the costs are. The farmer is the one establishing the
 14 costs, but it is specifically not a purchase of the raw milk
 15 from the farmer. It's paying -- it's reimbursing,
 16 essentially, the farmer for the costs of boarding the cow,
 17 caring for the animal and milking the animal. So there is no
 18 purchase going on here.
 19 When you look at the ledger, the ledger is simply
 20 tracking in accordance with the policy what the former is
 21 saying these are the costs. So I am guessing if you could
 22 take that ledger and take it to a Trader Joe's or a Kroger,
 23 you are not going to see any reasonable correlation of
 24 pricing, because the raw milk on one week is going to cost two
 25 or three times more than it does on another instance, because

1 the costs are variable. Some of the costs are set. You know,
 2 the costs of the barn and sometimes the cost of the feed, but
 3 some of the other costs are going to be much more variable.
 4 So it's not week to week exactly what the costs are. But this
 5 structure is exactly the way that MDARD's policy is set up and
 6 it requires the payments directly to the farmer, not to the,
 7 you know, some corporate entity.
 8 THE COURT: Okay. Well, that's fine. That's
 9 assuming -- when you say it has to be an individual herd share
 10 member, that's assuming that the term consumers in the policy
 11 means individuals as opposed to a group of consumers or herd
 12 share group, but I don't want to argue that.
 13 MR. SIER: Right.
 14 THE COURT: It's probably inconsequential.
 15 MR. SIER: And I am just correlating it to the first
 16 bullet that they have there talking about a single
 17 shareholder.
 18 THE COURT: Right. So all that, if it's all correct
 19 as you have outlined, this ought to be pretty simple.
 20 Ms. Golimbieski ought to be able to testify as to what the
 21 costs were, how they were divided up, receipt of the checks
 22 that are indicated in the ledger, and somebody ought to be
 23 able to testify that no one else has -- or that everybody else
 24 around the table have what one of the recent television adds
 25 show as alligator arms. Not me. I haven't touched anything.

1 MR. SIER: Right.
 2 THE COURT: And that ought to be the answer to the
 3 issue that's raised by the state, I would think. Is that
 4 correct or no?
 5 MR. SIER: We could either -- it would either be
 6 Ms. Golimbieski or a herd share member who would be able to --
 7 THE COURT: How would the herd share member know how
 8 the costs were derived or do you have documentation of that?
 9 MR. SIER: I do not have documentation.
 10 THE COURT: I'm sorry. I didn't mean you
 11 personally, Mr. Sier. I meant, do the herd share members,
 12 such as your client, Mr. Lopsinger, does he have some sort of
 13 breakdown he receives from the farmer consistent with the
 14 contract?
 15 MR. SIER: There are discussions that are had with
 16 the farmer to talk about how the pricing is set and what the
 17 costs are going to be.
 18 THE COURT: Well, pricing and costs seem to be
 19 mixing two different concepts. Pricing sounds like a sale.
 20 MR. SIER: My error saying that. The reimbursement.
 21 What the reimbursement would be and what it would be based on
 22 for any particular transaction. Whenever they are coming to
 23 pick up their product, the herd share members are told then,
 24 here are the costs and here is the expected reimbursement for
 25 that quantity of product. But that is specifically outlined

1 in the policy that the costs for the boarding, the caring for
 2 and the milking of the animal are those costs that the farmer
 3 establishes and then states, here -- here are the costs and
 4 here is how it's allocated to the particular product, the
 5 output.
 6 THE COURT: So that's perhaps --
 7 MR. SIER: That's what's then reflected, then, in
 8 the ledger is what the allocated costs are for a particular
 9 product.
 10 THE COURT: So you may have said it in more words,
 11 what I had described is correct then, there is somebody who
 12 can tell us that under oath with documentation?
 13 MR. SIER: Presumably, yes. Yes.
 14 THE COURT: Okay. What else do you want me to know,
 15 Mr. Sier?
 16 MR. SIER: Well, it's the -- the notion of fairness
 17 and the concept that this milk is agreed by everyone that it
 18 is owned by the herd share members. The herd share members
 19 own the cows. The herd share members own the product that
 20 comes out of the cows. And in fact, I believe the meat that
 21 was located in the herd share -- sometimes these cows no
 22 longer produce. Well, what happens to a non-productive cow at
 23 that point is that it is taken to a licensed butcher who
 24 butchers the meat, and then, that meat is allocated upon the
 25 herd share members because they paid for it. They own it.

1 They own that meat. They own that cow. So they own the
 2 output from the cow in the form of the milk, and they also own
 3 the cow, and you know, the remains of the cow when the cow
 4 ceases to be productive. So the fact that there was meat in
 5 the herd share room simply means that one of the cows was no
 6 longer productive, was taken out of production, was replaced
 7 by another cow, and that cow was butchered and made available
 8 to the herd share members who own the cow. So there is,
 9 again, no sale, no purchase.
 10 This is the herd share members gathering together as
 11 recognized by the policy and following the policy to the
 12 letter, and behaving the way that the state's policy indicates
 13 that they should. And what happened here is by virtue of them
 14 following the policy, now their milk and their meat is being
 15 seized, and that, we think, is fundamentally unfair because
 16 the state is not following its own policy and is attempting to
 17 pull pieces of information. And it's the state's burden here
 18 to show that there was something that was done that violated
 19 the order. And just having the ledger, they need to show that
 20 that ledger reflects purchases versus that it was in the herd
 21 share room. So there is the notion that, hey, these are herd
 22 share records. These are not Hill High Dairy records. So the
 23 state needs to come forward and say, these records indicate
 24 that there was a sale outside of the herd share allocation of
 25 costs, and that that sale violates the order. This was simply

1 a herd sharer behaving in accordance with the policy as
 2 stated. There was no violation of the law. Thank you.
 3 THE COURT: Can I ask you this, Mr. Sier?
 4 MR. SIER: Sure.
 5 THE COURT: And maybe this would have been a better
 6 question for Mr. Ross, but are either Joseph Golimbieski or
 7 Brenda Golimbieski herd share members?
 8 MR. SIER: No.
 9 THE COURT: Okay.
 10 MR. SIER: Neither are.
 11 THE COURT: Okay. Thank you, Mr. Sier.
 12 MR. SIER: Thank you.
 13 THE COURT: Ms. Yokom, two questions for you, ma'am,
 14 is one, do you want to respond to that, and number two, beyond
 15 that, how do you wish to proceed?
 16 MS. ALLISON YOKOM: Number one, I do -- would like
 17 to respond to that. But number two, how we'd like to proceed,
 18 so far I have heard a lot of argument. I have not heard a lot
 19 of evidence that disputes the state's case. There has been no
 20 witnesses presented and no affidavits, beyond
 21 Mr. Golimbieski's, that allege anything other than what the
 22 Department has alleged here. So I'd like to address the legal
 23 arguments that have been raised, but the state would at least
 24 at this point in time rest on the affidavits that I have
 25 provided the Court and would be await the rebuttal testimony

1 of the Defendants here.
 2 I am going to address these arguments by the entity
 3 who made them, and hopefully I don't miss anything. The
 4 first -- Hill High Dairy was represented first. And there was
 5 an argument that the lease at least implies that the room is
 6 under the exclusive control of the herd share. That's not
 7 what the lease says. The lease leases the milk -- milking
 8 house and cow barns. It makes no mention of any utility room
 9 or anything else. So there is no way to infer from that lease
 10 the -- that the use of any part of the dairy is exclusive.
 11 And although we have spent a lot of time this
 12 morning discussing violations -- what the Department sees as
 13 violations of the dairy laws and this Court's order not to
 14 sell products without a license or to process products without
 15 a license, this Court also issued an order that the -- that
 16 the Defendants could not violate the food law. Under the food
 17 law you are required to have a license not just to sell food
 18 but also to store food. This room is owned by the
 19 Golimbieskis. It's on property owned by the two Golimbieskis,
 20 and I do know that they own that property. I do have the deed
 21 information from Arenac County regarding that. It's part
 22 of -- it's on -- in a room that's part of a licensed Grade A
 23 dairy. And under State and Federal law, that Grade A dairy
 24 encompasses the entirety of that property, including that
 25 room. And that is marked that it belongs to BJ's Cow

1 Boarding. It has on the door that says it BJ's Cow Boarding
 2 room.
 3 In that room are stored products and food products.
 4 Whether they be the dairy products or the meat products, the
 5 storage of those food products without a license is prohibited
 6 under the food law. Each of the entities are responsible for
 7 that action.
 8 Turning now to the Golimbieski's arguments and the
 9 arguments of BJ's Cow Boarding. The products that were seized
 10 at the dairy farm were illegal products. There is no
 11 exception anywhere in the law in any policy that permits
 12 processing by any person, herd share member, entity or anyone
 13 else of dairy products. You must have a license to do that
 14 activity. If you are going to do that activity there are then
 15 requirements that those products -- in a licensed facility
 16 that those products be properly labeled. They can only be
 17 sold and stored in places that have a license, and that's not
 18 the case here. The illegal products that were seized were in
 19 containers that were clearly not labeled. They were clearly
 20 not produced in a licensed facility and they were illegal
 21 products. They were seized on site.
 22 The herd share is clearly subject to this action.
 23 BJ's Cow Boarding is a named Defendant in the original
 24 complaint, and it's a named Defendant -- or it's in this
 25 action. It is alleged that BJ's Cow Boarding, who it appears

1 Turning now to Mr. Lopsinger's arguments. Just so
 2 the Court knows, if it wants to see the contract between
 3 Mr. Lopsinger and BJ's Cow Boarding, that was an attached
 4 exhibit to Mr. Lopsinger's response in the summary disposition
 5 motion.
 6 THE COURT: The original hearing. I thought I had
 7 seen it before.
 8 MS. ALLISON YOKOM: But just wanted to make sure you
 9 knew where you could find it if you want to take a look at it.
 10 Mr. Lopsinger seems to want to expand policy 1.40 to things
 11 that it doesn't apply to. And again, the question before the
 12 Court is not whether or not the Department is complying with
 13 policy 1.40. It's whether or not the Defendants here are
 14 violating this Court's order. There is no evidence that the
 15 ledger is anything other than what it appears to be. The
 16 ledger is divided by columns into different types of products.
 17 At the beginning you put your name. You put the
 18 date that you were there. Then, there is products, milk,
 19 cream and butter, milk, or meat, amount paid, amount owed and
 20 cash and check. Then, based on what you are getting you pay a
 21 different price. That's not -- there is no evidence here to
 22 show that that's anything other than a sale. And Michigan law
 23 says that -- I'm sorry, Your Honor. I lost my place again.
 24 Defines who a purchase is. A purchase -- I am looking at By
 25 Lo Oil Company v Department of Treasury, 267 Mich App 19.

1 from the information Mr. Sier presented today that Brenda
 2 Golimbieski is the sole owner of, those two individuals are
 3 clearly responsible for these activities.
 4 And again, there has been a lot of focus on policy
 5 1.40. The policy by its own terms applies only to whole
 6 unprocessed raw milk. It does not, and in fact, specifically
 7 excludes milk products. All of this is a violation of the
 8 law. Policy 1.40 is an exercise in the Department's
 9 enforcement discretion. It doesn't change the law. It just
 10 says that the Department is not going to take enforcement in
 11 this particular instance under these particular conditions.
 12 Going back to the lease, the lease was entered into
 13 between BJ's Cow Boarding, who is represented by Brenda
 14 Golimbieski, who signed the lease on their behalf, and Joe
 15 Golimbieski. If Brenda Golimbieski -- if the LLC no longer
 16 exists, then Brenda is the one who is responsible for that.
 17 And I would point the Court to Duray Development, LLC v
 18 Perrin, where generally a person who signs a contract on
 19 behalf of a company that is not yet in existence becomes
 20 personally liable on that contract.
 21 At the time that Brenda Golimbieski and BJ's Cow
 22 Boarding, LLC, entered into the contract with Joe Golimbieski
 23 for that facility or to use the milk barn and the cow barns
 24 and the milking house, the LLC had not yet been organized and
 25 then it was later dissolved.

1 It's page 51. And the term purchase includes a contract to
 2 purchase or otherwise acquire. In order for there to be a
 3 purchase, there has to be a sale on the other end.
 4 All sales are an allocation of costs among the
 5 people who are receiving product, whether that be in a herd
 6 share arrangement or in a regular transaction. It's the
 7 allocation of the producer's costs to the consumers. That's
 8 what a sale is.
 9 The products here are -- what is being done here is
 10 illegal no matter how it's being done. You cannot process
 11 these products without a license. You cannot acquire these
 12 products under a contract unless you are acquiring them from
 13 someone who is licensed. They cannot be processed or produced
 14 without a license. They can't even be stored or held without
 15 a license. Just being a herd share does not shield you from
 16 the licensing requirements.
 17 And Your Honor, I'll take any questions you might
 18 have.
 19 THE COURT: I have no questions.
 20 Does anybody want to respond further?
 21 MR. ROSS: Your Honor, I'd just like to make one
 22 point, if I may? I think we are still -- what I am troubled
 23 by is that we have an original order that made -- expressly
 24 made no determination that there was a past violation. If you
 25 look at the terms of the order and compare it to what the

1 state is now asking, they are trying to expand the terms of
 2 this Court's order to now cover storage. There is nothing in
 3 the January 22nd order that prohibits storing raw milk
 4 products in the herd share room, the count room, the utility
 5 room, whatever they want to call it.

6 THE COURT: But I thought somebody just said that is
 7 what happens is the herd share members take the raw milk, take
 8 it into this room and they themselves then process it and
 9 store it there. Isn't that what was represented?

10 MR. ROSS: To store it. She just argued twice that
 11 the order prohibited storage.

12 THE COURT: I think what she argued is that the law
 13 prohibits processing, one, and storage, two, unless you are
 14 licensed to do so.

15 MR. ROSS: That's not what this -- and that's why
 16 I'm troubled, Your Honor, because the Court expressly ruled
 17 that it was not deciding whether there was a violation of the
 18 law back in January. It was saying, don't violate the law
 19 by -- don't -- it says clearly, don't sell or process food
 20 without a license in violation of the food law. Don't process
 21 dairy products without a license in violation of the Grade A
 22 milk law. And don't sell unpasteurized processed dairy
 23 products in violation of the Grade A milk law. And that's why
 24 Counsel -- my predecessor Counsel was very careful during the
 25 hearing to say, I don't understand, Your Honor. We are going

1 to be right back where we started because we haven't violated
 2 it in the way we've operated the herd share agreement, and now
 3 the Court is doing exactly what predecessor Counsel predicted
 4 at that hearing. And we quoted it in our brief, because we
 5 are concerned about that, as basically taking an inch and
 6 making it into a mile and saying --

7 THE COURT: Well, I haven't done anything yet.

8 MR. ROSS: No. No. That's what the state is doing.

9 THE COURT: You said the Court is doing.

10 MR. ROSS: I misspoke. The state is arguing that
 11 that order meant a lot more than it did, and the fundamental
 12 problem, regardless of whether you have this ledger or how you
 13 characterize it, it's legally impossible to buy your products
 14 you already own. And that was the fundamental argument that
 15 the parties made last year, the fundamental argument that this
 16 Court never decided, and so that's still an open issue. The
 17 facts are not really disputed on that issue. This is -- these
 18 are herd share products segregated into the cow share room for
 19 use by the cow share -- the herd share members. The herd
 20 share members under policy 1.40, and everything the state has
 21 agreed, owns those products. So they cannot purchase what
 22 they already own.

23 THE COURT: Okay. Let's set aside the purchase a
 24 moment. Let's set aside storage, since you have an issue with
 25 whether that was part of the prior order. What about -- what

1 about processing, because I thought I heard somebody during
 2 the course of this argument, or it was in the brief or both,
 3 say that what happens is the herd share members carry the
 4 buckets to the room, this room where the products were found,
 5 and they process them themselves. Do you have to have a
 6 license to do that or not?

7 MR. ROSS: According to the state now. That wasn't
 8 an issue back then I don't believe.

9 THE COURT: Well, I don't think the statute changed,
 10 did it?

11 MR. ROSS: Well, no. The -- that's where kind of
 12 the rub is. All I can say there is that's never been ruled
 13 on. That was -- it was addressed back in the summary
 14 disposition motions, but the processing does not occur by Joe,
 15 Brenda or BJ's. That's what I can tell you. That's Joe
 16 Golimbieski's affidavit. That's what we have here. So I
 17 don't believe that churning your own milk into butter is
 18 processing, but the state is apparently taking a different
 19 position on that.

20 THE COURT: Seems to be.

21 MR. ROSS: Yes.

22 THE COURT: All right.

23 MR. ROSS: But that's a position that hadn't been an
 24 issue until this litigation. Let's put it that way.

25 THE COURT: Okay. Thank you, Mr. Ross.

1 MR. ROSS: Thank you, Your Honor.

2 THE COURT: Anyone else?

3 MS. HALLEY: Thank you. I'd like to clarify the
 4 issue about the exclusive use of the herd share room.
 5 Mr. Golimbieski's affidavit at No. 8, clarifies this issue.
 6 He says, the herd share room is under the exclusive control of
 7 the herd share members. The dairy, nor Brenda Golimbieski,
 8 nor I own a herd share.

9 He goes onto discuss the ledger and says at
 10 paragraph 9, the herd share members keep a ledger in the herd
 11 share room. At No. 10, he says, I do not, nor does any
 12 representative of the dairy, write in the ledger.

13 And in fact, I just want to remind the Court that in
 14 the Department's own affidavits, they point out that the
 15 ledger, at the very top of it, says, make checks payable to
 16 BJ's Cow Boarding, not to Hill High Dairy, not to Joe
 17 Golimbieski.

18 And this issue about processing really maybe is
 19 beyond the scope of my representation of the Hill High Dairy,
 20 but the state's argument on its face would lead to the
 21 ridiculous result that if I make butter in my own kitchen out
 22 of cream that I go buy at the store, that's processing and
 23 therefore illegal. Their argument carried out to its logical,
 24 or in this case illogical end, ends up right there.

25 Mostly I wanted to clarify the issue about the use

1 of the cow share room, but if the Court has additional
 2 questions. I'd be happy to answer them.
 3 THE COURT: All right. Thank you, Ms. Halley.
 4 MS. HALLEY: Thank you.
 5 MR. SIER: And I do want to follow on with what
 6 Ms. Halley said and what Ms. Allison Yokom appeared to argue
 7 that herd share members who own the milk are not allowed to do
 8 anything with it. We -- we can't take that milk and let it
 9 sit, because by sitting it will separate, and then you'll have
 10 cream and you'll have skim milk. We are not allowed to do
 11 that with our own milk. We are not allowed to take that cream
 12 and turn it into any other product that we would like to
 13 consume. It is our milk. It is from our cow, and now the
 14 state is saying, you can't do anything with that fresh,
 15 unprocessed whole milk. You can only consume it in that
 16 original state.
 17 Well, at what point does the individual herd share
 18 member have any property rights? Because we are doing this --
 19 the herd share members are doing it for their own consumption.
 20 This is not entering into the stream of commerce. This is not
 21 being turned around and sold to other people. And part of the
 22 policy -- down at the bottom where it says the work group felt
 23 comfortable with these decisions based on the fact that there
 24 is a defined consumer pool. The herd share members. Rapid
 25 trace back is possible and the farmer and the shareholder are

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1 both responsible for maintaining the quality of the milk.
 2 This is a private property question. This is milk
 3 belonging to the herd share members. This state wants to tell
 4 the herd share members that they cannot change that milk in
 5 any way. They can't allow it to separate. They can't turn it
 6 into -- churn it into butter. But if we were to go to Trader
 7 Joe's, Kroger, and buy high butter fat milk and decide to turn
 8 that into another product in our own home or even bring in
 9 somebody to help us with that, now, is that processing? Well,
 10 that would be illegal, and the state would be allowed to come
 11 into my house, according to their logic, because I am now
 12 changing the character of that milk into something else, which
 13 makes it processing. I can't buy milk and then for my own
 14 hobby try and make cheese for my own consumption? The state
 15 doesn't want me to do that because now that's processing.
 16 Well, that's just not right, because now you've got the state
 17 coming into a very specific area of private property and
 18 telling us that this milk that we own from the cows that we
 19 own, we are not allowed to change that milk in any way without
 20 a license, even though we are consuming it.
 21 And it's interesting, because part of the seizure
 22 order relative to the meat, when it said to Hill High Dairy,
 23 you know, you must dispose of this meat unless you are going
 24 to consume it yourself. Why is there a difference there?
 25 It's because if they own the meat, and if they are going to

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1 consume the meat themselves, and it's not going to enter the
 2 stream of commerce, the state has no business interfering with
 3 what these individuals do with their own property.
 4 THE COURT: Mr. Sier, you had me until the last
 5 part. Now you have confused me.
 6 MR. SIER: Okay. I'm sorry.
 7 THE COURT: Didn't you tell me earlier that the meat
 8 was sent to a licensed processor?
 9 MR. SIER: Yes.
 10 THE COURT: To be processed?
 11 MR. SIER: No. To be butchered. The cow was
 12 sent --
 13 THE COURT: Isn't that different than what the
 14 argument is happened with the milk, because I thought you told
 15 me that the herd share members themselves --
 16 MR. SIER: Right.
 17 THE COURT: -- processed -- if that's the term we
 18 are going to use -- processed the milk. And we touched on
 19 this at the last hearing about what does process mean. But I
 20 thought you told me that on the one hand the milk was
 21 processed, say, into butter or whatever it was by the herd
 22 share members themselves all locked in this --
 23 MR. ROSS: Correct.
 24 THE COURT: -- utility room or whatever you want to
 25 call it, but the meat was sent out to somebody who was

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1 licensed to handle the meat and then provided back. And now
 2 you are telling me that's the same thing as the --
 3 MR. SIER: The problem, Your Honor, is not very many
 4 people have the capacity to butcher a cow. If I have
 5 chickens, I can clean and dress the chicken.
 6 THE COURT: I get that. I'm just trying to figure
 7 out how you are saying those are the same thing.
 8 MR. SIER: Well, the only reason that it went to a
 9 licensed butcher is because we didn't have the capacity to do
 10 it. If we had the capacity to do it -- if we had the saws and
 11 the cutting table and the -- that room, we would have
 12 butchered our own cow. There are some farmers that do it,
 13 that butcher their own cows. We don't have that capacity.
 14 Hill High Dairy doesn't have that capacity, so it had to go
 15 out to somebody else to be done. The milk is a very different
 16 animal.
 17 THE COURT: Well, I guess all I'm trying to follow
 18 is you said the state in their seizure letter said, has to be
 19 destroyed other than if you plan to consume it. And you said,
 20 well, how is that different than consuming what was processed
 21 from the milk?
 22 MR. SIER: Right.
 23 THE COURT: And my only point was, well, at least
 24 according to the argument Ms. Yokom is making, that you need
 25 to have somebody licensed to process it. That happened with

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1 the meat.

2 MR. SIER: That was only because we did not have the

3 capacity to do it ourselves.

4 THE COURT: I understand, but I guess I don't see

5 how the letter from the state, then, about the seizure

6 saying --

7 MR. SIER: I'll withdraw that part.

8 THE COURT: -- that you can eat it.

9 MR. SIER: I'll withdraw that part, because the only

10 point I'm trying to make is this product is not being

11 distributed to anybody outside of the herd share. The herd

12 share owns the cows. The herd share owns the milk. Whether

13 we drink the milk in its whole capacity, we let it separate,

14 we churn it into butter, we turn it into another product, it

15 is our milk and the state has no right, no ability, there is

16 no trigger here, because there is no sale. There is nothing

17 going on in commerce that the herd share members are doing

18 with their milk. But the state is saying they have the

19 ability to come in, and if we were bringing this milk into our

20 own homes and separating it in our own homes, they would be

21 arguing that we are now processing our own milk, and that's

22 not permitted and that makes this milk contraband. And we

23 think that is illogical and violates the policy, as well as

24 the concept of private property rights. Thank you, Your

25 Honor.

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1 THE COURT: Thank you, Mr. Sier.

2 Ms. Yokom?

3 MS. ALLISON YOKOM: Thank you. Just a few foot

4 points. The first paragraph of the order that this Court

5 previously issued says that the Defendants are not to

6 otherwise violate the food law. The storage provisions are in

7 the food law. The food law prohibits -- it defines a food

8 establishment as a place where food is stored, held for sale,

9 offered for sale or a variety of other actions. To be a food

10 establishment you must have a license. So to do those

11 activities without a license, even the storage of food is

12 prohibited.

13 There has been an argument that the logical

14 conclusion here is that the Department could go into someone's

15 kitchen and say basically, you can't make milk on your kitchen

16 counter, and that's just not the case. The statute -- the

17 pasteurized milk ordinance and the pasteurized milk ordinance

18 limit the inspection authority of the Department. They limit

19 it and preclude the Department from doing inspections within

20 someone's own home. There is a limit to where their authority

21 goes.

22 So you can't extend the fact that you can't process

23 without a license to someone's own kitchen, and that's not

24 what's happening here in any way. What's happening here is

25 that someone else is processing Mr. Lopsinger's products for

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1 him. That activity, processing milk products for someone

2 else's consumption, requires a license, and that's what

3 doesn't exist here is a license.

4 The Department is not saying, in fact, has been very

5 specific in communications in not saying that

6 Mr. Lopsinger -- I'm going to have a double negative here. So

7 the Department does not say you can't take milk home, or

8 Mr. Lopsinger can't take milk home and process it in his own

9 kitchen. The statute and the enforcement scheme limits their

10 authority there. But he can't have someone else do it for

11 them. To do that, that person must be licensed. When dealing

12 with the meat, there are specific laws -- the reason it's

13 treated differently is because of the laws involved. In order

14 to sell meat in this state generally, you must be inspected by

15 USDA. You must have a stamp on you that says the meat has

16 been inspected by USDA. There is an exception that occurs

17 when someone is -- when someone takes their own animal to a

18 licensed processor and then they have -- they personally have

19 that contract with the licensed processor. They get the

20 animal back for their own use. It can't be done for an

21 organization or anyone else. You have to do it for your own

22 personal use. So that's why the meat was treated differently

23 in the seizure -- in the seizure action than the raw milk

24 products is because if the Golimbieskis used that for their

25 own use, then there wouldn't have been a problem there.

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1 And no one denies that -- I'll take that back.

2 Strike that. There is a long history of regulating private

3 property and private contracting in this country. And the

4 U.S. Supreme Court in *Nebbia v New York*, 291 U.S. 502, said

5 the Constitution does not guarantee the unrestricted privilege

6 to engage in a business or to conduct it as -- as one pleases.

7 Certain kinds of businesses may be prohibited, and the right

8 to conduct a business or to pursue a calling may be

9 conditioned. And statutes prescribing the terms upon which

10 those conducting certain businesses may contract or imposing

11 terms if they do enter into agreements are within the state's

12 competency.

13 The U.S. Supreme Court has also said in *Andrus v*

14 *Allard*, 444 U.S. 51, suffice it to say that government

15 regulation by definition involves the adjustment of rights for

16 the public good. Often this adjustment curtails some

17 potential for the use or economic exploitation of private

18 property. And the Michigan Supreme Court has long held that

19 is not disputed that the state may regulate the use of private

20 property when the health, morals or welfare of the public

21 demands it. Such lays their origins in the case of *Bowerman v*

22 *Sheehan*, 442(sic) Michigan 95.

23 What's happening here is the Department is

24 regulating an activity. Food -- although we all rely on it,

25 there is some foods that are dangerous and pose a risk to

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1 public health, and that's the concern with raw milk, and
 2 that's the concern with all dairy products. It's also a
 3 concern with a lot of other processed products. There are a
 4 lot of activities, a lot of things that we make that we
 5 consume on a daily basis that require a license in order to do
 6 that, and it's no different here.
 7 THE COURT: So is it your position that the
 8 statutory scheme is such that if I am a herd share member, and
 9 I get some portion of whatever the cow produces, I can take
 10 that in that raw form and do whatever I want with it, as long
 11 as I am not selling it to somebody else or processing it for
 12 someone else I can use it for my own consumption? I shouldn't
 13 say, do whatever you want for it, but I can take it for my own
 14 consumption or I suppose my family's consumption, but my
 15 fellow herd share member who takes his or her share can't also
 16 take mine and then turn it into butter and then give me the
 17 butter? I have to take my own share under the statutory
 18 scheme in the raw form?
 19 MS. ALLISON YOKOM: Yes, Your Honor.
 20 THE COURT: And has this particular issue been
 21 addressed in any case law in this state?
 22 MS. ALLISON YOKOM: It has not, Your Honor.
 23 THE COURT: Great. Okay. Anything else, Ms. Yokom?
 24 MS. ALLISON YOKOM: No, Your Honor. I think that's
 25 it for now.

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1 MS. ALLISON YOKOM: Thank you.
 2 MR. ROSS: Thank you, Your Honor.
 3 MR. SIER: Thank you, Your Honor.
 4 (Whereupon, Show Cause concluded at 3:44 p.m.)
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1 THE COURT: Anybody else want to present anything?
 2 MR. ROSS: No, Your Honor.
 3 MS. HALLEY: No, thank you, Your Honor.
 4 MR. SIER: Your Honor, only briefly with regard to
 5 that last comment. Let's say a herd share member is infirm
 6 and in her 90's and is not capable of churning butter. I
 7 think the state isn't taking the position that no one other
 8 than that herd share member can do the churning or the
 9 separating. So they can't have any agent or any assistance,
 10 which again, is well beyond the pale of what their ability is
 11 with regard to private property. Thank you, Your Honor.
 12 THE COURT: All right. Thank you, Mr. Sier.
 13 And no one wants to present any other evidence
 14 besides the affidavits that were submitted, correct?
 15 MR. ROSS: Correct, Your Honor.
 16 THE COURT: That is correct, Ms. Halley?
 17 MS. HALLEY: Yes, Your Honor. Thank you.
 18 MR. SIER: That is correct, Your Honor.
 19 THE COURT: Ms. Yokom?
 20 MS. ALLISON YOKOM: No, Your Honor.
 21 THE COURT: So I'm right about that?
 22 MS. ALLISON YOKOM: Yes. Sorry. No other
 23 witnesses. You are correct.
 24 THE COURT: Okay. All right. I'll issue an order
 25 on it. Thank you.

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1 STATE OF MICHIGAN)
 2)SS
 3 COUNTY OF INGHAM)
 4 I, Paul G. Brandell, Certified Shorthand Reporter, do
 5 hereby certify that the foregoing Motion to Show Cause was
 6 taken before me at the time and place hereinbefore set forth.
 7 I further certify that the foregoing is a full,
 8 true, and correct transcript of the statements taken on
 9 October 14, 2016.
 10
 11 11-11-16 Paul G. Brandell, CSR-4552
 12 Certified Shorthand Reporter,
 13 Registered Professional Reporter
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