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**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

EVERGREEN RANCH, LC,

Individually and on behalf of all others
similarly situated,

Plaintiff,

Vs.

GEORGE ERVING "SONNY" PERDUE,
United States Secretary of Agriculture, in his
individual and official capacities; UNITED
STATES DEPARTMENT OF
AGRICULTURE; LUANN ADAMS,
Commissioner of the Utah Department of
Agriculture and Food, in her individual and
official capacities; UTAH DEPARTMENT OF
AGRICULTURE AND FOOD; and STATE
OF UTAH,

Defendants.

CLASS ACTION

COMPLAINT

Civil No. 170902954

Judge Robert Faust

Plaintiff, individually and on behalf of all others similarly situated (“plaintiffs”) hereby complain against defendants, alleging as follows:

I. INTRODUCTION

1. In Utah, sellers of cattle are assessed a mandatory charge of \$1.50 per head per transfer (change of ownership). This charge is referred to herein as the “beef checkoff.”

2. Of the \$1.50 charge, \$1.00 is exacted by the federal defendants under the color of a federal statute, the Beef Promotion and Research Act of 1985, 7 U.S.C. § 2901, *et seq.* (the federal beef checkoff). An additional 50 cents is exacted by the state defendants under color of a state statute, Utah Code § 4-21-1, *et seq.* (the state beef checkoff).

3. The \$1.50 per head charge is collected by Utah state officials under the direction of defendant Adams. Fifty cents of the revenue collected is sent to the federal Cattlemen’s Promotion and Beef Board (“CBB”). That portion of the charge is not at issue in this lawsuit. The remaining \$1.00 per head is remitted to a private entity, the Utah Beef Council, which engages in private speech.

4. Plaintiffs object to being compelled by state and federal officials to associate with and to support the private entity.

5. Plaintiffs object to being compelled by state and federal officials to financially subsidize the private speech of the private entity.

6. In compelling plaintiffs to associate with, support, and subsidize the private speech of the Utah Beef Council, the defendants are violating plaintiffs’ rights under the First Amendment to the United States Constitution and Article I § 1 of the Utah Constitution.

7. In 2016 and 2017, United States Senator Mike Lee introduced the Voluntary Check-Off Program Participation Act, legislation that would give farmers and ranchers the freedom not to participate in mandatory Department of Agriculture check-off programs. Senator Lee stated, “If farmers and ranchers want to get together and pool their resources to better promote their products, then that is the free market at its best. But as soon as the power of the federal government is used to force people into a program they do not want to participate in, then that is crony capitalism at its worst.” Until such legislation is enacted, actions such as the present are the only means available for plaintiffs to protect their constitutional rights and prevent future infringements.

II. PARTIES

A. Named plaintiff and class action representative

8. Evergreen Ranch, LC, is a Utah limited liability company. Evergreen is an independent cow-calf producer that raises its cattle in the United States. Evergreen has transferred, and intends to transfer, cattle in the state of Utah. Evergreen has paid the mandatory \$1.50 per head statutory charge complained of in this action.

B. Defendants

9. Defendant Perdue is the United States Secretary of Agriculture. Mr. Perdue is charged with overseeing the federal Beef Checkoff, and is sued in his individual and official capacities.

10. Defendant United States Department of Agriculture is the agency charged with administering the federal government’s portion of the federal Beef Checkoff.

11. Defendant Adams is the Commissioner of the Utah Department of Agriculture. Ms. Adams is charged with overseeing the state Beef Checkoff, and is sued in her individual and official capacities.

12. Defendant Utah Department of Agriculture and Food is the agency within defendant State of Utah that collects and remits to the Utah Beef Council revenue generated by the State Beef Checkoff and one half of the revenue generated in Utah by the federal Beef Checkoff.

13. Defendant State of Utah is the governing body that enacted and facilitated the unconstitutional statutes and actions described herein.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction pursuant to Utah Code § 78A-5-102(1) and 78B-3-205(1) and –(3).

15. Venue is proper pursuant to Utah Code § 78B-3-307(a) and/or 78B-3-302(3).

III. GENERAL FACTUAL ALLEGATIONS¹

16. In Utah, the state and federal governments charge sellers of cattle a \$1.50 per head assessment² on all brand inspected cattle upon change of ownership or slaughter. Upon

¹ For clarity, use of the present tense herein incorporates all relevant times prior thereto, unless otherwise indicated. Thus, for example, a statement that the Utah Beef Council “is” a private organization means that the Utah Beef Council is a private organization and was a private organization at all times set forth in the Complaint. The relevant time period begins four years prior to the filing of this action and extends through the conclusion of the action.

² The state statute refers to the charge as a “fee.” The federal statute and regulations use the term “assessment.” For ease of understanding, Plaintiff utilizes the word “assessment” herein, without ascribing particular legal meaning thereto.

information and belief, the government has extracted more than \$1 million in assessments from transfers of cattle in Utah over the past four years.

17. The \$1.50 per head is collected by state officials (brand inspectors), or is deducted and collected by a marketing agency or purchaser. 7 C.F.R. § 1260.172(a) and 1260.181, 1260.311 (federal beef checkoff); Utah Code § 4-21-3(1) (state beef checkoff).

18. Of the \$1.50 charge per head, the collection of \$1.00 is mandated by defendants Scuse and USDA under the auspices of a federal statute, the Beef Promotion and Research Act of 1985 (the federal beef checkoff), 7 U.S.C. § 2901, *et seq.*³

19. Federal beef checkoff revenues first go to a private entity designated as a “Qualified State Beef Council”. The Utah Beef Council has been designated by the USDA as Utah’s Qualified State Beef Council, which permits the Utah Beef Council to receive federal beef checkoff revenues. 7 C.F.R. §§ 1260.172(a), -1260.181, 1260.312(4), -1260.315.⁴

20. According to the Utah Beef Council’s official monthly newsletter, “Members of the council are appointed by beef and dairy industry organizations.” (The Utah Cattleman, June 2014, p. 1.)

³ The federal beef checkoff provides for a “one dollar (\$1) per head of cattle” assessment to be paid by “a producer” of cattle when the “cattle [is] purchased from such producer.” 7 C.F.R. 1260.172(a)(1). Importers of “cattle, beef, or beef products” also pay an assessment of “one dollar per head of cattle or the equivalent thereof.” 7 U.S.C. § 2904(8)(C).

⁴ “Qualified State beef council” is defined as “a beef promotion entity that is authorized by State statute or a beef promotion entity organized and operating within a State that receives voluntary assessments or contributions; conducts beef promotion, research, and consumer and industry information programs; and that is certified by the [CBB] pursuant to this subpart [7 C.F.R. § 1260.101, *et seq.*] as the beef promotion entity in such State.” 7 C.F.R. § 1260.115.

21. The Utah Beef Council retains half of the federal beef checkoff revenue and transfers the remainder to the Cattlemen’s Beef Promotion and Research Board (“CBB”). The portion of the assessment submitted to the CBB is not at issue in this lawsuit.

22. An additional 50 cents per head is collected by the state defendants under the auspices of Utah Code § 4-21-1, *et seq.* (the “state beef checkoff”).⁵

23. Revenue generated by the state beef checkoff is to be paid initially to the Utah Department of Agriculture and Food, and deposited in an agency fund known as the “Beef Promotion Fund.” Utah Code § 4-21-3(1)(c).

24. After deduction of actual costs of administration for processing the funds, the state beef checkoff revenue is paid to the Utah Beef Council.⁶

25. The Utah Beef Council is a private corporation.

26. The Utah Beef Council engages in private speech that is not effectively controlled by the federal or state government.

27. During the period encompassed within this Complaint, neither the state nor federal government has sought the affirmative consent of sellers before exacting and directing the assessments to the Utah Beef Council.

⁵ Prior to May 10, 2011, the fee assessed under Utah Code § 4-21-3 was “reduced by the amount of any assessment required to be paid pursuant to the Beef Promotion and Research Act of 1985, 7 U.S.C. Sec. 2901 et seq.” Utah Code § 4-21-3 (July 1, 2002-May 9, 2011). In 2011, the statute was amended to increase revenues by providing that the state checkoff assessment would be in addition to, rather than reduced by, the federal checkoff assessment. The amended statute reads that “[t]he fee assessed under this section is in addition to the amount of any assessment required to be paid pursuant to the Beef Promotion and Research Act of 1985, 7 U.S.C. Sec. 2901 et seq.” Utah Code § 4-21-3 (May 10, 2011 – present).

⁶ Under the state statute, the revenue can be paid either to the Utah Beef Council or to another agency “acceptable to the [D]epartment [of Agriculture and Food], with the concurrence of the Utah Cattlemen’s Association.” Utah Code § 4-21-5(1)(a). At all times relevant hereto, the revenue has been paid to the Utah Beef Council.

28. The defendants are compelling plaintiffs to associate with, support, and subsidize the private speech of the Utah Beef Council, all in violation of plaintiffs' federal and state constitutional rights.

Lack of federal control of Utah Beef Council speech

29. The federal government does not appoint members of the Utah Beef Council.

30. The Utah Beef Council is not required to, and does not, obtain preapproval by the federal government of Council-funded plans or projects.

31. The Utah Beef Council is not required to, and does not, obtain preapproval by the federal government of Council-funded promotional campaigns.

32. The federal government does not draft the communications of the Utah Beef Council.

33. The federal government does not preapprove the communications of the Utah Beef Council.

34. The federal government does not preapprove the Utah Beef Council's official monthly publication, The Utah Cattleman.

35. The federal government does not preapprove potential contracts or agreements for the implementation and conduct of plans or projects funded by checkoff funds.

36. The federal government does not preapprove budgets or expenditures of the Utah Beef Council. The federal government only requires the Council to submit a report of its expenditures at some point after the expenditures are made.

37. Parties contracting with the Utah Beef Council are not required to provide to the federal government reports regarding projects or plans.

38. No federal official has a voting position at Utah Beef Council meetings. Alternatively, to the extent that any such voting position exists, it is not a majority position.

39. Minutes of Utah Beef Council meetings, if they exist, are not available to the public through the Freedom of Information Act.

Lack of state control of Utah Beef Council speech

40. Members of the Utah Beef Council are appointed by private organizations.

41. The Utah state government does not draft the communications of the Utah Beef Council.

42. The Utah state government does not preapprove the communications of the Utah Beef Council.

43. The Utah Beef Council is not required to, and does not, obtain preapproval by the state government of its official monthly publication, The Utah Cattleman.

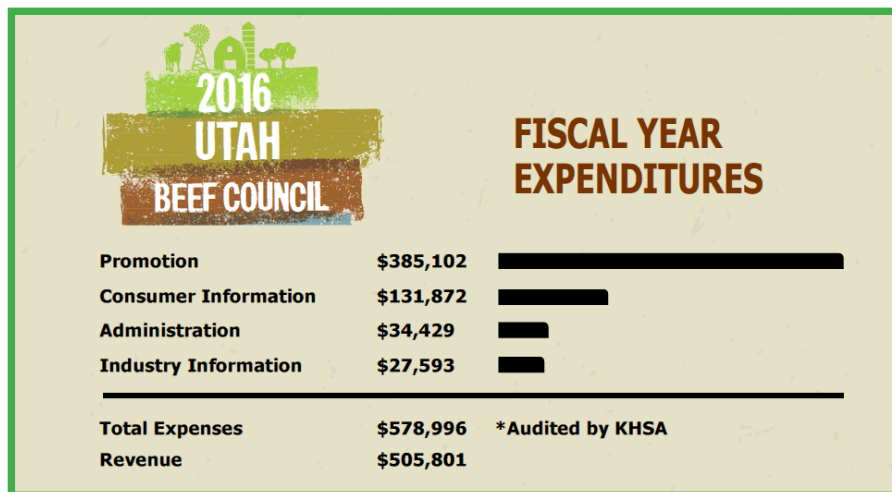
44. The Utah Beef Council is not required to, and does not, submit for preapproval by the state government potential contracts or agreements to be entered into for the implementation and conduct of plans or projects funded by checkoff funds.

45. Parties contracting with the Utah Beef Council are not required to provide to the state government reports regarding projects or plans.

46. The Utah Beef Council does not submit an annual budget to the state outlining and explaining its anticipated expenses and disbursements in the administration of its responsibilities, including probable costs of promotion, research, and consumer information and industry information plans or projects.

47. The Utah Beef Council is not subject to audit, and has not been audited, by the state government. Rather, the only state oversight of the Council’s finances and use of checkoff revenues is a general requirement that “[t]he books, records, and accounts of the Utah Beef Council or appointed agency shall be audited at least once annually by a licensed accountant,” the “results” of which “shall be submitted to the commissioner[.]” Utah Code § 4-21-5(2)(a).⁷

48. Under the Utah beef checkoff statute, a “financial statement of the audit and a general statement of operations and promotional and advertising activities shall be published by the council or appointed agency in a major livestock publication having general circulation in Utah.” Utah Code § 4-21-5(2)(b). Upon information and belief, the only type of “financial statement” of the Utah Beef Council that has been published in a major livestock publication is similar to that published on page 4 of the Council’s April 2017 official monthly newsletter:



49. No state official has a voting position at Utah Beef Council meetings. Alternatively, to the extent that any such voting position exists, it is not a majority position.

⁷ Prior to May 3, 2004, the Utah Beef Council’s audit was required to be performed by a licensed accountant “selected by the Commissioner and approved by the state auditor.” Utah Code § 4-21-5(2)(a). In 2004, the Utah statute was amended to eliminate this level of state oversight.

Beef Council's control over the checkoff funds

50. The Utah Beef Council controls and decides how the \$1.00 per head paid to it (.50 of the federal assessment and .50 of the state assessment) will be spent. The Beef Council and other organizations regularly recognize that the control of the state half of the checkoff funds lies with the beef council's members. Some examples:

- a. "State beef councils... play a pivotal role in not only collecting the entire \$1 per head assessment, but directly deciding how half of that collection will be spent." (2012 Federation of State Beef Councils Partnership Year in Review, p. 5 (unnumbered).)⁸
- b. "This allocation includes checkoff funds from the national half of the \$1-per-head mandatory beef checkoff assessment, which is invested through the Beef Promotion Operating Committee, and the state-directed half of the checkoff dollar, which comes through individual state councils and the Federation of State Beef Councils." (The Utah Cattleman, January 2017, p. 16.)
- c. "Direction of state and national checkoff programs are in the hands of producers themselves... [T]he success comes about because of producers and importers participation in checkoff-directing boards and committees." (Cevin Jones, Chairman, Federation of State Beef Councils, The Utah Cattleman, Feb. 2015, p. 10.)
- d. "We believe in producer control of checkoff funds through the Qualified State Beef Councils, which are the foundation of the beef checkoff[.]" (2014 Reaffirmation of Vision, Beliefs and Principles, Federation of State Beef Councils, February 7, 2014.)

51. The promotions and speech of the Utah Beef Council are typically emblazoned with the Utah Beef Council's logo:

⁸ The Federation of State Beef Councils is a division of the National Cattlemen's Beef Association (NCBA). The Utah Beef Council voluntarily pays a portion of the challenged assessments to the Federation. For example, the Council gave \$23,000 to the Federation in 2016. The Utah Beef Council also elects a representative to the board of directors of the Federation and is represented at Federation meetings.



52. The Utah Beef Council’s logo incorporates a portion of the federal beef checkoff logo:



53. Plaintiffs are not required to identify specific speech or activities of the Utah Beef Council to which they object, or their reasons for objecting to compelled association and support of the Council and its speech. However, as discussed below, Plaintiff alleges that the Utah Beef Council engages in speech that includes political advocacy, that encourages support of lobbying organizations, that encourages continuation of the present mandatory checkoff system, that is not subject to accountability or democratic controls, and that is detrimental to independent domestic beef producers because it does not distinguish between imported and domestic beef.

Utah Beef Council political speech and advocacy

54. In order to be designated as a Qualified State Beef Council entitled to receive funds from the federal beef Checkoff, the Utah Beef Council was required to certify that it would “[n]ot use council funds collected pursuant to this subpart [federal beef checkoff regulations] for the purpose of influencing governmental policy or action....” 7 C.F.R. § 1260.181(b)(7).

55. There is no requirement under the state beef checkoff statute that the Utah Beef Council refrain from using funds collected thereunder for the purpose of influencing governmental policy or action.

56. The Utah Beef Council issues an “official monthly publication” called The Utah Cattleman.

57. The Utah Beef Council’s official monthly publication is issued with the Council’s name and logo in the nameplate.

58. The Utah Beef Council’s official monthly publication indicates that it is a joint publication of the Utah Beef Council and the Utah Cattlemen’s Association:

VOLUME 63 NUMBER 5

MAY 2017



The official monthly publication of the Utah Cattlemen's Association and the Utah Beef Council

59. The Utah Cattlemen’s Association is a private organization that, among other things, engages in lobbying, political speech, and other efforts to influence governmental legislation and policy. According to the Association’s website, the “reasons for the existence of the association” include to “[e]ncourage legislation designed to reinforce and improve the cattle

business,” to “[o]ppose legislation devised to injure and/or destroy the cattle business,” and to “[a]ssist in asserting or defending the rights of UCA members that affect their cattle growing operations, if such assistance will benefit all members[.]”

<http://www.utahcattlemen.org/history.aspx>, accessed 3/17/17.

60. The Utah Cattlemen’s Association is affiliated with the National Cattlemen’s Beef Association (NCBA). The NCBA also engages in lobbying and efforts to influence governmental legislation and policy.

61. The Utah Beef Council is located at the same address as the Utah Cattlemen’s Association, 150 South 600 East #10-B, Salt Lake City, Utah.

62. The Utah Beef Council’s official monthly publication is mailed out under the name of the Utah Cattlemen’s Association.

63. There is significant overlap between the governance of the Utah Beef Council and governing body of the Utah Cattlemen’s Association. For example, in 2017, every single member of the board of Utah Cattlemen’s Association was also on the Utah Beef Council:

| 2017 Utah Beef Council | 2017 Utah Cattlemen’s Association board members |
|------------------------|---|
| Joe Furhiman | Joe Furhiman |
| Mark Wintch | Mark Wintch |
| Laurie Munns | Laurie Munns |
| Tracy Hatch | Tracy Hatch |

| | |
|--------------|--------------|
| Toby Hoffman | Toby Hoffman |
| Don Anderson | |
| Deb Richards | |
| Hal Olsen | |

64. Of the other 2017 Utah Beef Council board members, Deb Richards is the President of the Utah Cattlemen’s Association, an affiliate of both the Utah Cattlemen’s Association and the American National Cattlemen’s Association. Don Anderson is a past president of the Utah Cattlemen’s Association and remained on the Association board in 2016.

65. In short, at least seven of the eight members of the Utah Beef Council are directly associated with the political advocacy and lobbying groups Utah Cattlemen’s Association and National Cattlemen’s Beef Association.

66. The Utah Beef Council’s executive director is the full time executive vice president of the Utah Cattlemen’s Association.

67. Under the state beef checkoff statute, no organization other than the Utah Beef Council can receive state beef checkoff funds unless it is approved by (“with the concurrence of”) the Utah Cattlemen’s Association. Utah Code § 4-21-5(1)(a).

68. The Utah Beef Council’s official monthly publication, The Utah Cattlemen, frequently contains communications advocating for, objecting to, or calling the reader to action on political issues, legislation, and regulations. Such issues include:

- a) The 2015 Dietary Guidelines

- b) Country of Origin Labeling (COOL) regulations
- c) Listing of sage grouse on the Endangered Species list
- d) Repeal of the “death” (estate) tax
- e) Public Lands Initiative
- f) Greenhouse gas emission reporting
- g) Designation of wilderness areas by Department of Interior
- h) Continuation of Payments in Lieu of Taxes (PILT)
- i) Designation of monuments under the Antiquities Act
- j) Trans-Pacific Partnership Agreement
- k) Environmental Protection Agency’s Water of the United States Rule
- l) Grain Inspection, Packers and Stockyards Act rules
- m) The U. S. Fish and Wildlife Service’s Critical Habitat policy
- n) The Energy Security and Research Bill
- o) Bureau of Land Management’s Planning 2.0 Rule

Utah Beef Council encouragement of support for lobbying and other private organizations

69. The Utah Beef Council’s official monthly publication, the Utah Cattleman, is sent to all ranchers in the state who market cattle.

70. The Utah Beef Council’s official monthly publication regularly encourages readers to join or financially support the Utah Cattlemen’s Association, National Cattleman’s Beef Association, and other private organizations. For example:

- a) “[W]hy aren’t you members [of the UCA and NCBA]?... NCBA is the largest cattle association in the world. So please join and help expand the beef market.... Who among us as producers has the time, and connections to help influence this legislation? Do you simply want to sit back and trust that our elected officials...

write laws that may determine how we can manage our livestock? Or, would you rather have someone there driving that discussion with your interests in mind? The choice to be a member of UCA is a choice to be involved, to have your voice heard, and your passion for the beef industry be represented. The examples and reasons that I have just given are a small portion of what is and does go on inside the NCBA and UCA. Please join us and strengthen YOUR industry.” (The Utah Cattleman, March 2017, p. 1.)

- b) “The Utah Cattlemen’s Association needs your involvement.... By paying dues toward your membership in the Utah Cattlemen’s Association you are doing your part as a lifter to further the representation in your behalf.” (The Utah Cattleman, Jan. 2015, p. 1.)
- c) “I would certainly like to see more cattlemen from Cache County get involved with the Utah Cattlemen’s Association. It doesn’t really cost to belong, it actually pays.” The Utah Cattleman, Jan. 2016, p. 1.)
- d) “I will make a pitch for membership [in the UCA] one more time.... Please recruit new members.” (The Utah Cattleman, Feb. 2016, p. 1.)

71. The Utah Beef Council’s official monthly publication regularly expresses or encourages support for the Public Lands Council and its speech. The Public Lands Council is a private organization that engages in lobbying, advocacy, and other efforts to influence legislation and policy. *See, e.g.,* <http://publiclandscouncil.org/category/press-releases/> (accessed March 19, 2017). The Utah Cattlemen’s Association is affiliated with the PLC.

72. The Utah Beef Council’s official monthly publication includes a monthly column for “Utah Cattlemen’s Association News.” This column regularly encourages readers to join the Utah Cattlemen’s Association and the American National Cattle Women (ANCW).

Examples include:

- a) “ANCW needs us, and we need them. This organization gives us a voice about the incredible product we produce and the way of life we all love.” (The Utah Cattleman, Jan. 2017, p.18.)
- b) “The Utah Cattlemen need you and your talents.” (The Utah Cattleman, Jan. 2015, p. 12.)

Utah Beef Council encouragement of Beef Checkoff laws

73. Through its official monthly publication and other communications, the Utah Beef Council regularly encourages support of present mandatory beef checkoff laws and the collection of mandatory checkoff payments. For example:

- a) “We are getting a lot of bang for that buck fifty.” The Utah Cattleman, March 2017, p. 1.
- b) “We think that’s a powerful return, don’t you?” The Utah Cattleman, Feb. 2017, p. 1 (discussing the beef checkoff program)

*Utah Beef Council use of promotional campaigns
that do not distinguish between imported and domestic beef*

74. As the Utah Beef Council’s official monthly publication has stated, United States producers “raise the best, most nutritious, and healthiest beef in the entire world.” (The Utah Cattleman, March 2017, p. 1.) Beef producers in the United States are subject to certain regulations, labor costs, and other costs and oversight to which foreign beef producers are not.

75. The Utah Beef Council, directly and through voluntary contributions to the Federation of Beef Councils, engages in promotion of beef that does not distinguish between domestically raised beef and imported beef, or between local and non-local beef. Rather, the Utah Beef Council’s communications espouse that all beef is equal. For example:

- a. In 2016, the Utah Beef Council funded a promotion with a Utah television station called the “KUTV Backyard Barbecue Contest: Utah Beef Council.” The promotion partnered with Macey’s Grocery Store “to provide a catered barbecue for 20 people in the backyard of the winner.” This campaign did not distinguish between imported and domestic beef, but instead promoted “beef” generally.
- b. In 2017, the Utah Beef Council used Beef Checkoff assessments to pay for an advertisement promoting a Valentine’s meal of “Steak Caprese.” This advertisement is emblematic of the council’s campaigns, which suggest an equivalency between all beef. It does not acknowledge distinctions among

beef, but rather communicates that consumers should just eat more of it, regardless of where the beef was produced. <http://fox13now.com/2017/02/07/steak-caprese/>

- c. In 2016, the Utah Beef Council utilized a “Families in Motion” video campaign designed to reach millennial parents and including nutrition information. The campaign did not address nutritional differences between domestic and foreign beef, encouraging the consumption of beef regardless of where it was produced.
- d. In 2016 and 2017, the Federation of State Beef Councils, to which the Utah Beef Council contributed, expended at least \$600,000 in a campaign with the mobile rebate app IBotta. Pursuant to this campaign, consumers received “educational messaging” about beef generally, not distinguishing between domestically and internationally produced beef.

Utah Beef Council’s lack of transparency and accountability

- 76. Board members of the Utah Beef Council are not elected by the voting public.
- 77. Utah Beef Council bylaws are not available on any public website.
- 78. Little or no meaningful information is publicly available regarding the Utah Beef Council’s expenditures.
- 79. Producers do not have the same avenues available to them to advocate for their interests before the Utah Beef Council that they would before a governmentally controlled, and thus democratically accountable, body.

Federal and state “redirect” or “refund” provisions

- 80. Neither the federal nor state Beef Checkoff assessments require the affirmative consent of the payors from whom they are exacted (*i.e.*, they are not opt in).
- 81. On their face, neither the Beef Act nor federal regulations provide for payors to redirect their payments from a state beef council to the federal Beef Board. 7 U.S.C. § 2904; 7 C.F.R. Pt. 1260; Polly Ruhland, *Obligation to Redirect Assessments Upon Producer Request* if

Not Precluded by State Law (July 29, 2016), <http://www.beefboard.org/library/files/redirection-memo-072916.pdf>, accessed March 30, 2017.

82. In 2016, the federal government proposed an amendment to federal regulations providing for a redirection procedure. At all times relevant to this Complaint, the default procedure under federal law has been for the assessment to be collected by state officials, and for one-half of the assessment to be paid directly to the state beef council. This same default procedure would exist under the proposed amendment.

83. Under the federal government's proposed redirection procedure, producers would be required to affirmatively opt out of the use of their funds to subsidize the Utah Beef Council and its speech. Producers' funds would be deposited in the general Beef Promotion Fund utilized by the Council for a period of up to 105 days.

84. Utah law includes a purported "refund" provision limited to the state beef checkoff. Utah Code § 4-21-4 provides:

A person who objects to payment of the assessed fee may file a claim with the department within 60 days after the fee is collected. No claim for refund, however, is allowed if it is filed more than 60 days after the date the fee is collected. Each claim for refund shall be certified by the department to the state treasurer for payment from the beef promotion account, subject to any applicable provisions of the Beef Promotion and Research Act of 1985, 7 U.S.C. Sec. 1901 et seq.

85. There is no one-time or annual refund or opt out procedure. Rather, a refund must be requested after each transfer.

86. To seek a refund, a payor must obtain a prescribed refund form, which it must then submit to the state.

87. The Utah Beef Council's official monthly newsletter do not advise readers of this "refund" procedure. For example, there is no explanation in any of the Utah Beef Council's

official monthly publications from January 2012 through May 2017 of a “redirect” option for the state’s half of the federal Beef Checkoff or a “refund” option for the state checkoff.

88. No refund of the state Beef Checkoff assessment is allowed if the refund claim is filed more than 60 days after the date the assessment was collected.

89. Sellers requesting a refund must retain and attach a copy of their “Utah Brand Inspection Certificate or auction invoice and a check voucher from the Utah entity.”

90. Refunds are not granted until “departmental approval” has been received. Thereafter, a check is issued by the Utah state treasurer’s office. Thus, even when refunds are granted under state law, it is only after initial exaction and retention of the assessment by the Utah Beef Council, affirmative steps by the payor, and delay.

CLASS ALLEGATIONS

91. This is a class action brought by named plaintiff Evergreen Ranch for itself and all others similarly situated, pursuant to Utah Rule of Civil Procedure 23(b)(1)(A), -(b)(2), and/or -23(b)(3).

92. The class consists of all persons (including individuals and entities) who:

- a) From four years prior to the commencement of this action until its conclusion;
- b) have been charged any Beef Checkoff assessments in the state of Utah under the color of 7 U.S.C. § 2901, *et seq.*, and/or Utah Code § 4-21-1, *et seq.*

93. In the alternative, and only to the extent deemed a necessary legal requirement by the Court, the class shall be defined as all persons (including individuals and entities) who:

- a) From four years prior to the commencement of this action until its conclusion;
- b) have been charged any Beef Checkoff assessments in the state of Utah under the color of 7 U.S.C. § 2901, *et seq.*, and/or Utah Code § 4-21-1, *et seq.*, and
- c) object to or, in the alternative, did not consent to the government-compelled association with, support of, and/or subsidization of the private speech of the Utah Beef Council.

94. The number of persons in the class is unknown, but is believed to exceed 100. Their number makes joinder of the entire class impracticable.

95. There are questions of law and fact common to the class. Factually, all class members are being compelled to associate with, support, and subsidize the private speech of the Utah Beef Council through the mandatory beef checkoffs. The question of law is the same for all class members: Does this violate their rights under the United States Constitution and/or the Utah State Constitution?

96. The claims of representative plaintiff Evergreen Ranch are typical of the claims of the class, in that their constitutional rights are being infringed upon in a similar manner by being compelled through the mandatory beef checkoffs to associate with, support, and subsidize the private speech of the Utah Beef Council.

97. The plaintiff class representative can adequately protect the interests of the class. All members of the class have a cognizable interest in not being subjected to unconstitutional compelled association and speech. Plaintiff has retained counsel who are experienced in representing parties whose constitutional rights have been infringed upon, and who are experienced in complex and class action litigation.

98. A class action can be maintained under Rule 23(b)(1)(A) because separate actions by class members will create a risk of inconsistent adjudications that would establish incompatible standards of conduct for the defendants with respect to whether it is lawful to compel private producers to support the private speech of a private entity.

99. A class action can be maintained under Rule 23(b)(1)(B) because an adjudication that determines whether it is constitutional to compel a class member to support the Utah Beef council will, as a practical matter, be dispositive of the interests of other class members.

100. A class action can be maintained under Rule 23(b)(3) because the common questions of law and fact identified above predominate over any questions affecting only individual class members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because, among other things, all class members are suffering the same violation of their constitutional rights, but the amount of money involved in each individual's claims would make it burdensome for class members to maintain separate actions.

Harm to the named plaintiff and the class

101. Named plaintiff and the other members of the class have been damaged by the compelled association with, support of, and subsidization of the private speech of the Utah Beef Council.

102. At a minimum, all plaintiffs have been damaged to the extent of the amounts assessed pursuant to the unconstitutional beef checkoff programs.

103. All plaintiffs are entitled to nominal damages for the violation of their constitutional rights.

104. The plaintiffs have had to retain the services of legal counsel and expend other funds and resources in order to seek vindication of their constitutional rights.

CLAIMS FOR RELIEF

COUNT I

(Violation of First Amendment to the United States Constitution)

105. Plaintiffs incorporate by reference all other allegations set forth in this Complaint.

106. As described above in ¶¶ 16-50 and 54-90, the mandatory federal Beef Checkoff (to the extent it is paid to the Utah Beef Council and not to the Cattlemen’s Beef Promotion and Research Board (CBB)), and the state beef checkoff assessments, compel plaintiffs to associate with, support, and subsidize the private speech of a private entity.

107. The defendants’ actions and the statutes pursuant to which the actions are taken violate the First Amendment of the United States Constitution, both facially and as applied.

108. Plaintiffs have been harmed as described generally above in ¶¶ 101-104.

COUNT II

(Violation of the Article I § 1 of the Utah Constitution)

109. Plaintiffs incorporate by reference all other allegations set forth herein.

110. Article I § 1 of the Utah Constitution provides: “All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.”

111. The actions of the Defendants described above in ¶¶ 16-50 and 54-90, and the statutes pursuant to which the actions are taken, violate Article I § 1, both facially and as applied.

112. Article I § 1 of the Utah Constitution is self-executing.

113. There is no other adequate state law remedy for these violations.

114. Existing remedies do not redress plaintiff's injuries, because there are no comparable remedies under state common or statutory law, and because the protections of Article I § 1 are broader than those of the First Amendment to the United States Constitution.

115. Plaintiffs have been harmed as described above in ¶¶ 101-104. Equitable relief alone is inadequate to remedy the alleged violations, which include free speech violations.

PRAYER FOR RELIEF

Plaintiff requests that the court grant the named plaintiff and other members of the class the following relief:

- A. Issue an order permanently enjoining defendants from compelling the members of the class to associate with, support, or subsidize the private speech of the Utah Beef Council or other private recipient of mandatory Beef Checkoff assessments;
- B. Enter a judgment declaring it unconstitutional for defendants to compel, and to have compelled, the members of the class to associate with, support, or subsidize the private speech of the Utah Beef Council or other private recipient of mandatory Beef Checkoff assessments;
- C. Award monetary damages, or reimbursement/refunds, to each member of the plaintiff class of the \$1.00 per head unconstitutionally assessed pursuant to the beef checkoff programs;

- D. Award monetary damages to the named class representative(s) for any moneys spent, or spent in the future, to prevent the unconstitutional assessments described herein;
- E. Award nominal damages to plaintiff and each other member of the class;
- F. Award the class representative(s) incentive awards to take into account work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and willingness to act on behalf of the class;
- G. Award pre- and post-judgment interest on all monetary sums awarded;
- H. Award expenses, costs, and reasonable attorney fees under 42 U.S.C. § 1988, the Equal Access to Justice Act, the rules of civil procedure, the Court's inherent and equitable powers, and all other authority;
- I. Grant such other and additional relief, equitable or otherwise, as the Court may deem just and proper.

DATED this 5th day of May, 2017.

CHRISTENSEN & JENSEN, P.C.

/s/ Karra J. Porter
Karra J. Porter
J.D. Lauritzen

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/s/ Robert J. Fuller
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