

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO**

Hall of Justice, Department 54

JUDICIAL OFFICER: HONORABLE CHRISTOPHER E. KRUEGER

Courtroom Clerk: G. Toda  
Court Attendant: S. Khorn  
Bailiff: N. Alvi

CSR: M. Cheng #6800

---

---

**34-2022-00328732-CU-MC-GDS**

October 19, 2023  
9:00 AM

**Craig Gordon vs. Karen Ross**

---

---

**MINUTES**

**APPEARANCES:**

Plaintiff Craig Gordon represented by Mark A Wasser.  
Defendant Karen Ross in her official capacity as Secretary of the California Department of Food and Agriculture represented by Matthew J Goldman.  
Other Appearance Notes: Andrew Kirtley, Attorney for Save Qip Dairy Farmers (Defendant in Intervention) Remotely

**NATURE OF PROCEEDINGS: Hearing on Motion for Summary Judgment**

Defendant Karen Ross, sued in her official capacity as Secretary of the California Department of Food and Agriculture's (the "CDFA") "cross-motion for summary judgment" against plaintiff Craig Gordon ("Plaintiff") is DENIED.

Plaintiff is a milk producer. Plaintiff filed this action on October 21, 2022, against the CDFFA alleging claims for unlawful taking without compensation, injunctive relief, declaratory relief, and accounting. In August of 2023, defendant Save QIP Dairy Famers ("Save QIP") intervened.

Save QIP's joinder to this motion is GRANTED. A party may join a motion for summary judgment filed by another party and adopt that party's arguments as its own where the party seeking joinder timely files and serves a notice of joinder and a separate statement of undisputed facts in support of the issues it seeks to join. (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1195; *Village Nurseries, L.P. v. Greenbaum* (2002) 101 Cal.App.4th 26, 46; *Frazee v. Seely* (2002) 95 Cal.App.4th 627, 636.)

The CDFFA's Notice of Motion states it "move[s] for summary judgment via [this motion], to be heard in conjunction with Plaintiff Craig Gordon's Motion for Summary Adjudication." (Notice of Motion at 1:27-2:2.) The Notice of Motion states the CDFFA "is entitled to judgment in its favor" and asks that Plaintiff's Complaint "be dismissed with prejudice."

The CDFFA's Separate Statement of Undisputed Material Facts ("Separate Statement") presents 24 material facts it contends support summary judgment. No separate issues or causes of action are delineated in the separate statement. There are no headings whatsoever, only the presentation

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

of 24 material facts following the caption page.

The CDFA's Memorandum of Points and Authorities in Support ("MPAs") of the motion lays out the regulatory background regarding the regulation of milk pricing and establishment of the challenged quota premium assessment, the legal standard for summary judgment, and the CDFA's legal argument as to why its Quota Implementation Program ("QIP") is not a regulatory taking under the factors enumerated in *Penn Central Transportation Company v. City of New York* (1978) 438 U.S. 104 and *Kavanau v. Santa Monica Rent Control Board* (1997) 16 Cal.4th 761.

In short, the CDFA moves for summary judgment and a dismissal of Plaintiff's Complaint on the grounds the QIP assessments do not constitute an unconstitutional regulatory taking.

In evaluating a motion for summary judgment the Court engages in a three-step process. First, the Court identifies the issues framed by the pleadings. The pleadings define the scope of the issues on a motion for summary judgment. (*FPI Dev. Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381-382.) Because a motion for summary judgment is limited to the issues raised by the pleadings (*Lewis v. Chevron* (2004) 119 Cal.App.4th 690, 694), all evidence submitted in support of or in opposition to the motion must be addressed to the claims and defenses raised in the pleadings. (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 541.)

Next, the Court must determine whether the moving party has met its burden. A defendant moving for summary judgment bears the burden of persuasion that one or more elements of each of the plaintiff's cause of action cannot be established, or that there is a complete defense to each cause of action. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, quoting Code Civ. Proc. § 437c(p)(2).) A defendant is not required to conclusively negate one or more elements of the plaintiff's cause of action. (*Saelzer v Advance, Group 400* (2001) 25 Cal.4th 763, 780-781). Rather, to meet its burden, the defendant is only required to show that the plaintiff cannot prove an element of its cause of action, i.e., that the plaintiff does not possess and cannot reasonably obtain evidence necessary to show this element. (*Aguilar, supra*, at 853-855.) Further, the initial burden requires a showing that the plaintiff "could not prevail on any theory raised by the pleadings." (*Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 939-940.)

The court must determine whether the moving party has met his or her burden of proof "by reliance on competent declarations, binding judicial admissions contained in the allegations of the [opposing party's pleadings], responses to discovery, and the testimony of witnesses at noticed depositions. (Code Civ. Proc. § 437c, subd. (b); *D'Amico v. Board of Examiners* (1974) 11 Cal.3d 1, 20-21.)" (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 162.)

Once the moving party has met its burden, the burden shifts to the opposing party to show that a material factual issue exists as to the cause of action alleged or a defense to it. (Code Civ. Proc. § 437c(p); see, generally *Bush v. Parents Without Partners* (1993) 17 Cal.App.4th 322, 326-327.) In ruling on the motion, the Court must consider the evidence and inferences reasonably drawn from the evidence in the light most favorable to the party opposing the motion. (*Aguilar, supra*, at 843.)

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

The CDFA has failed to meet its initial burden to establish summary judgment is appropriate. Specifically, the CDFA has failed to show that Plaintiff cannot establish one or more elements for *each* of the causes of action alleged or that there is a complete defense to *each* of the causes of action alleged. Plaintiff's third cause of action seeks declaratory relief. In particular, Plaintiff alleges "QIP is an unlawfully promulgated and unenforceable regulation whereas the Secretary disagrees," and Plaintiff seeks "a declaration that QIP is an unlawful and unenforceable regulation, ostensibly adopted in violation of law and without complying with any of the procedures that apply to adoption of a regulation." (Complaint ¶ 24; Prayer for Relief at 4.) This places the validity of the CDFA's QIP at issue, but the CDFA's motion for summary judgment does not address these allegations anywhere and is silent as to this claim. The CDFA has provided no facts, no law, and no argument as to whether the QIP was adopted in compliance with the law. As discussed above, the CDFA's Notice of Motion only seeks summary judgment, the Separate Statement does not delineate any separate issues for summary adjudication, and the MPAs only address whether the assessment is a regulatory taking. Electing to present the motion in this manner also precludes the Court from considering the motion as one for summary adjudication as to Plaintiff's unlawful takings claim. It is not the Court's responsibility, duty, or burden, to transform the CDFA's motion for summary judgment into one for summary adjudication only. It was the CDFA's burden, as the moving party, to show that Plaintiff "could not prevail on any theory raised by the pleadings." (*Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 939-940.)

On reply, the CDFA argues Plaintiff is collaterally estopped from relitigating his declaratory relief claim, but the CDFA cannot rectify its failure to present this argument and supporting papers in its moving papers on reply. Considering this argument raised for the first time on reply would deprive Plaintiff the opportunity to address this argument in opposition and present competing evidence. It is elementary that points raised for the first time in a reply brief are not considered by the court. (See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783; *Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794, fn. 3.)

Having failed to meet its initial burden, the CDFA's motion for summary judgment is DENIED.

The minute order is effective immediately. No formal order pursuant to California Rules of Court, Rule 3.1312, or further notice is required.

### **COURT RULING:**

The matter was argued and submitted. The Court took the matter under submission.

### **SUBMITTED MATTER RULING:**

The Court having taken the matter under submission, now rules as follows:

The Court affirmed the tentative ruling.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO**

Certificate of Mailing is attached.

By: */s/ G. Toda*  
G. Toda, Deputy Clerk  
Minutes of: 10/19/2023  
Entered on: 10/19/2023

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Gordon D. Schaber Superior Court 720 Ninth Street, Sacramento, CA 95814	<b>FILED</b> Superior Court of California County of Sacramento 10/19/2023 G. Toda, Deputy
PLAINTIFF/PETITIONER: Craig Gordon	
DEFENDANT/RESPONDENT: Karen Ross et al	
<b>CERTIFICATE OF MAILING</b>	CASE NUMBER: 34-2022-00328732-CU-MC- GDS

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Hearing on Motion for Summary Judgment) upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Sacramento, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Mark A Wasser  
400 Capitol Mall  
1100  
Sacramento, CA 95814

Matthew J Goldman  
Deputy Attorney General  
PO Box 944255  
Sacramento, CA 94244-2550

Niall Padraic McCarthy  
Cotchett Pitre & McCarthy LLP  
840 Malcolm Road  
Burlingame, CA 94010

Dated: 10/20/2023

By: */s/ G. Toda*  
G. Toda, Deputy Clerk

**CERTIFICATE OF MAILING**