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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

UNION LLC d/b/a UNION
HOSPITALITY GROUP, an Arizona
limited liability company; and GRANT
KRUEGER, an individual,

Plaintiffs,

v.

STATE OF ARIZONA; and PAUL E.
BRIERLEY, Director of Arizona
Department of Agriculture, in his official
capacity,

Defendants.

No. CV2023-018151

DEFENDANTS' ANSWER

(Hon. Judge Scott A. Blaney)

1 Defendants State of Arizona and Paul E. Brierley, in his official capacity as
2 Director of Arizona Department of Agriculture, answer Plaintiffs' First Amended
3 Complaint as follows:

4 **INTRODUCTION**

5 1. Defendants admit in part and deny in part. Specifically, Defendants admit
6 the following about A.A.C. R3-2-907. Subsection E states: "Beginning no later than
7 January 1, 2025, all egg-laying hens in this state shall be housed in a cage-free manner."
8 Similarly, Subsection F states: "Beginning no later than January 1, 2025, all eggs and egg
9 products sold in this state shall be from hens housed in a cage-free manner."

10 However, Subsection G clarifies that these subsections "do not apply to egg
11 producers or business owners or operators operating or controlling the operation of one
12 or more egg ranches each having fewer than 20,000 egg-laying hens producing eggs." In
13 addition, Subsection G clarifies that Subsection E "also do[es] not apply to any hens that
14 are raised cage-free or any eggs produced by hens that are raised cage-free." Thus,
15 Defendants deny that Subsections E and F are as broad as Plaintiffs allege.

16 Defendants deny that AZDA implemented or will implement Subsections E and F
17 "[i]n little more than a year" from the date of the First Amended Complaint.

18 2. Defendants admit that A.A.C. R3-2-907(E) and (F) are rules promulgated
19 by AZDA, an executive branch agency, not statutes enacted by the Arizona Legislature.

20 3. Defendants admit that AZDA consulted with industry stakeholders in
21 promulgating A.A.C. R3-2-907(E) and (F).

22 4. Defendants lack sufficient information to form a belief as to specific alleged
23 conversations between egg producers and members of the Arizona Legislature, and
24 therefore deny this allegation.

25 5. Defendants admit that AZDA promulgated A.A.C. R3-207(E) and (F) and
26 that AZDA is not the Arizona Legislature. Defendants deny that the rules were
27 promulgated "pursuant to an impermissibly broad statutory delegation of lawmaking
28 power."

1 6. Denied.

2 7. Denied.

3 8. Denied.

4 9. Denied.

5 10. Defendants lack sufficient information to form a belief as to whether
6 Plaintiffs “will be negatively impacted” by the rules at issue, and therefore deny this
7 allegation. Defendants deny any suggestion that the rules at issue prohibit Plaintiffs from
8 purchasing eggs made by caged hens.

9 11. Defendants lack information sufficient to form a belief as to Plaintiffs’
10 motives in bringing this lawsuit, and therefore deny this allegation. Defendants deny any
11 implication that the rules at issue serve “just the interests of the regulators and their
12 regulated entities.”

13 **PARTIES, JURISDICTION, AND VENUE**

14 12. Defendants admit on information and belief that Plaintiff Union L.L.C. does
15 business as Union Hospitality Group, that it is an Arizona Limited Liability Company in
16 Pima County, State of Arizona, and that it operates three restaurants that use eggs and egg
17 products. Defendants lack sufficient information to conclude whether Union L.L.C. “will
18 lose the ability to purchase eggs and egg products it has long relied on” and “will also
19 suffer a pecuniary loss,” and therefore deny these allegations. Defendants deny that such
20 events, even if they occur, are a “direct result” of the rules at issue. Defendants deny any
21 suggestion that the rules at issue prohibit Plaintiffs from purchasing eggs made by caged
22 hens.

23 13. Defendants admit on information and belief that Mr. Krueger is a resident
24 of Pima County, State of Arizona, who purchases eggs. Defendants lack sufficient
25 information to conclude whether Mr. Krueger “will lose the ability to purchase eggs he
26 would otherwise purchase” and “will suffer a pecuniary loss,” and therefore deny these
27 allegations. Defendants deny that such events, even if they occur, are a “direct result” of
28

1 the rules at issue. Defendants deny any suggestion that the rules at issue prohibit Plaintiffs
2 from purchasing eggs made by caged hens.

3 14. Admitted.

4 15. Admitted.

5 16. Defendants admit that jurisdiction is proper under the statutes cited, except
6 that Defendants reserve the right to appeal the denial of their motion to dismiss for lack
7 of standing.

8 17. Admitted.

9 **FACTS COMMON TO ALL CLAIMS**

10 **Authorizing Statute**

11 18. Admitted.

12 19. Admitted.

13 20. Admitted.

14 21. Denied.

15 22. Denied.

16 23. Admitted.

17 **Development of the Cage-Free Egg Rule**

18 24. Defendants admit that A.A.C. R3-207(E) and (F) were promulgated by the
19 AZDA, not the Arizona Legislature. Defendants deny that this promulgation was
20 “pursuant to an impermissible delegation of lawmaking authority to the executive branch
21 by the Arizona Legislature.”

22 25. Admitted.

23 26. Admitted.

24 27. Defendants lack information sufficient to form a belief as to the alleged
25 mental states of Arizona egg producers, and therefore deny the allegation.

26 28. Defendants lack information sufficient to form a belief as to specific alleged
27 interactions between egg producers and members of the Arizona Legislature, and
28 therefore deny the allegation.

1 29. Defendants lack information sufficient to form a belief as to the alleged
2 conversations between egg producers and members of the Arizona Legislature, and
3 therefore deny the allegation.

4 30. Defendants lack information sufficient to form a belief as to the alleged
5 mental states of Arizona egg producers, and therefore deny the allegation.

6 31. Defendants admit that AZDA consulted with industry stakeholders in
7 promulgating A.A.C. R3-2-907(E) and (F), and that the timeframe contemplated by Ballot
8 Initiative I-01-2022 (requiring cage-free practices by May 1, 2023) created significant
9 concerns about the adequacy of cage-free egg supply. Defendants lack information
10 sufficient to form a belief as to communications between stakeholders and the Governor
11 of Arizona, and therefore deny the allegation. Defendants deny the remainder of the
12 paragraph.

13 **Cage-Free Egg Rule**

14 32. Generally admitted, except that A.A.C. R3-2-907(E) (apparently what
15 Plaintiffs call the “Hen Rule”) and A.A.C. R3-2-907(F) (apparently what Plaintiffs call
16 the “Sale Rule”) specified that they would not take effect until January 1, 2025, and
17 A.A.C. R3-2-707(G) specified that the rules do not apply to certain producers, business
18 owners, operators, or hens.

19 33. Admitted.

20 34. Admitted.

21 35. Defendants admit that the quotation in ¶ 35 is from one of the rules, but deny
22 that the Department has enforced the rule “[s]ince October 1, 2022.” The Department has
23 not enforced certain deadlines due to high-path avian influenza.

24 36. Defendants admit that the description in ¶ 36 is from one of the rules, but deny
25 that the Department has enforced the rule “[s]ince October 1, 2022.” The Department has
26 not enforced certain deadlines due to high-path avian influenza.

1 37. Defendants admit that the quotation in ¶ 37 is from one of the rules, by deny
2 that the Department will enforce the rule “[b]y January 1, 2025.” The Department does
3 not intend to enforce certain deadlines due to high-path avian influenza.

4 38. Admitted.

5 39. Admitted in part and denied in part. Defendants admit that A.A.C. R3-2-
6 907(H) provides as follows:

7 “Beginning no later than October 1, 2022, in order to sell eggs or egg products
8 within the state, a business owner or operator must have a certificate from the Supervisor
9 certifying that the eggs or egg products are produced in compliance with subsections (C)
10 through (F), or are exempt under subsection (G). The Supervisor will certify that eggs
11 and egg products are produced in compliance with subsections (C) through (G) if the eggs
12 or egg products are accompanied by documentation from a government or private third-
13 party inspection and continuous process verification service that the Supervisor deems
14 acceptable establishing that the eggs or egg products were produced in compliance with
15 this Section. The immediate container of eggs and egg products shall be plainly and
16 conspicuously marked with the words “ARS 710J” in bold-faced type not less than one-
17 eighth inch in height; or in another manner preapproved by the Department.”

18 Defendants deny Plaintiffs’ summary of the rule because Plaintiffs’ summary is
19 broader than the text.

20 40. Defendants admit that, under subsection (G), the cage-free housing
21 requirement does not apply to egg producers or business owners or operators operating
22 or controlling the operation of one or more egg ranches each having fewer than 20,000
23 egg-laying hens producing eggs. A.A.C. R3-2-907(G). Defendants further admit that,
24 under subsection (H), one way in which a business owner or operator seeking to sell eggs
25 or egg products within the state may meet the certification requirement is by having a
26 certificate from the Supervisor certifying that the eggs or egg products “are exempt under
27 subsection (G).” A.A.C. R3-2-907(H).

1 Defendants deny Plaintiffs' summary of these exceptions because Plaintiffs'
2 summary is narrower than the text.

3 **AZDA's Justifications for the Cage-Free Egg Rule**

4 41. Defendants admit that "the public's growing concerns about animal
5 welfare, including the hens' ability to move freely and express their natural behaviors,"
6 was one reason—among others—why AZDA decided to establish a transition from
7 traditional caged production methods to cage-free production. Defendants deny the
8 characterization of this concern as AZDA's "primary justification."

9 42. Defendants admit that the rules at issue were, among other things, "intended
10 to represent the best management practices in the shell egg industry that ensure the
11 production of high-quality, cruelty-free eggs," that the rules "reflect[ed] market trends"
12 that producers anticipated would shift to cage-free eggs by 2025, and that AZDA "crafted
13 this regulation to minimize its regulatory burden."

14 43. Defendants admit that AZDA's summary of the economic, small business,
15 and consumer impact of the new rules, in the Notice of Final Rulemaking, began with the
16 following two paragraphs:

17 "Over the past decade, alternative production systems have increased in the
18 commercial table egg industry. Increased pressure from consumers and retailers
19 concerned about the welfare of the laying hens in caged housing environments, including
20 the inability to move around and express natural behaviors, are the primary drivers of this
21 change. These animal welfare concerns have prompted most food retailers and
22 restaurants to pledge that, by 2025, they will only purchase and sell cage-free eggs.
23 Similarly, surrounding states, including California, Utah, Colorado, Nevada, Oregon, and
24 Washington, have passed legislation requiring that all eggs produced or sold in their states
25 come from chickens raised using cage-free production methods in the next 1-5 years."

26 "Interest groups also filed a ballot initiative in Arizona, Ballot Initiative I-01-2022
27 (the "Initiative"), requiring (among other things) that all eggs produced or sold in Arizona
28 after May 1, 2023, come from hens housed in cage-free production environments. Given

1 the success of recent animal welfare ballot initiatives in Arizona and elsewhere, this
2 Initiative presents a probably [sic] regulatory alternative. Thus, when deciding whether
3 to pursue the rulemaking, the Department considered – among the many other relevant
4 factors – the Initiative’s potential economic effects on the state.”

5 Defendants deny any paraphrase of this text that differently characterizes AZDA’s
6 concerns, including Plaintiffs’ assertion that public concern for hen welfare was “the
7 justification” for the rules at issue.

8 44. Admitted as explained in ¶ 43 above.

9 45. Admitted as explained in ¶ 43 above.

10 46. Defendants admit that AZDA’s summary of the economic, small business,
11 and consumer impact of the new rules, in the Notice of Final Rulemaking, included the
12 following paragraph:

13 “Another important difference between the proposed rulemaking and the Initiative
14 is timing. Forcing Arizona to transition to cage-free eggs by May 1, 2023, creates
15 significant concerns about the adequacy of the cage-free egg supply. For example,
16 Hickman’s Egg Ranch informs the Department that it cannot convert the remainder of its
17 production facilities to cage-free housing by May 31, 2023, as required by the Initiative,
18 and may have to euthanize a portion of its flock to avoid criminal penalties if the Initiative
19 passes. Moreover, as noted above, other states that are ‘net importers’ of shell eggs are
20 converting to cage free in the next three to four years, and Arizona will be competing with
21 consumers from those states. Accordingly, the Department believes it is important to
22 work with producers and give them sufficient time to convert their production and meet
23 the consumer demands for cage-free eggs. The proposed rulemaking gives egg producers
24 additional time to convert their operations to cage-free production.”

25 Defendants deny any paraphrase of this text that differently characterizes AZDA’s
26 concerns.

1 47. Defendants admit that AZDA’s summary of the economic, small business,
2 and consumer impact of the new rules, in the Notice of Final Rulemaking, included the
3 following paragraph:

4 “As compared to the Initiative, the rulemaking’s regulatory scheme will
5 significantly reduce the Department’s regulatory costs. The Initiative charges the
6 Department with enforcing cage-free requirements but precludes the use of any third-
7 party inspection processes. Thus, the Department would need to send inspectors to
8 inspect producers outside Arizona, requiring the Department to hire additional egg
9 inspectors and significantly increasing inspection costs. On the other hand, the
10 rulemaking enables the Department to rely on third party certifications, including USDA
11 certifications, to ensure producers are compliant. This will modestly increase inspection
12 costs for producers, but will reduce the Department’s regulatory burden.”

13 Defendants deny any paraphrase of this text that differently characterizes AZDA’s
14 concerns.

15 **Adoption of the Cage-Free Egg Rule**

16 48. Admitted in substance, although the new rules do not use the label “Cage-
17 Free Egg Rule.”

18 49. Admitted in substance, although the new rules do not use the label “Hen
19 Rule.”

20 50. Admitted in substance, although the new rules do not use the label “Sale
21 Rule.”

22 **Economic Impact of Cage-Free Egg Rule**

23 51. Defendants admit that AZDA’s summary of the economic, small business,
24 and consumer impact of the new rules, in the Notice of Final Rulemaking, included the
25 following four paragraphs:

26 “The transition to cage-free housing will increase the costs of production as
27 compared to conventional caged production systems. Labor inputs, which comprise about
28 five to seven percent of the costs of egg production, could increase as much as 41%. The

1 economic studies forecast that the cost differential between cage free and conventional
2 production is somewhere between \$.01 per egg, to just over \$.02 per egg. Experts also
3 forecast that the cage free conversion will result in a long-run wholesale price increase of
4 \$.39 per dozen, or \$.0325 per egg. Thus, producers can expect to recoup some of their
5 costs through increased wholesale prices to retailers, etc. Retailers will likely pass some
6 of the increased costs to consumers.”

7 “The transition to cage-free will increase producer’s capital expenditures and the
8 costs of facilities and equipment. One in-state producer estimates that it will have to
9 invest hundreds of millions of dollars into converting its existing production facilities to
10 cage-free. These construction activities will create jobs and benefit the local economy.
11 Importantly, because the transition from conventional caged egg production to cage-free
12 production requires the investment of significant capital, to minimize the burden on small
13 businesses, the Department excluded from the rulemaking all operations that house under
14 20,000 laying hens. Therefore, the proposed rulemaking will have little, if any, impact
15 on small businesses within Arizona.”

16 “The Department estimates that the rulemaking will increase consumer egg costs
17 between \$2.71 and \$8.79 per-person, per year. According to USDA WASDE data, the
18 average yearly egg consumption for the years 2010-2021 is 270.675 eggs per year per
19 person. If the average person eats 270.675 eggs per year, and the increased costs of cage-
20 free eggs are between 1 and 3.25 cents per egg, then the estimated annual economic
21 impact per consumer is between \$2.71 and \$8.79 per year. Economists further predict
22 that the Rulemaking will reduce consumer surplus by \$4.81 to \$11.05 per Arizona
23 household (2.2 persons), per year. Considering that the average U.S. consumer spent
24 \$7,316.00 on food per year in 2019-2020, that is less than a one-tenth of a percent increase
25 in the costs of their overall food expenditures.”

26 “Recent economic reports also indicate that eggs at retail outlets are currently
27 trending 29% higher than the previous year. This suggests that retailers and brokers have
28 a greater impact on the cost of eggs to consumers than the actual costs of producing the

eggs. It further suggests that retailers may be able to absorb some of the costs to maintain demand. Thus, the transition from conventional to cage-free egg production will have little effect on Arizona consumers.”

Defendants deny any paraphrase of this text that differently characterizes AZDA’s summary, including Plaintiffs’ assertion that AZDA acknowledged that the rules would have “substantial economic impacts on both egg consumers and producers.”

52. Defendants admit that AZDA’s summary of the economic, small business, and consumer impact of the new rules, in the Notice of Final Rulemaking, included the following paragraph:

“The transition to cage-free housing will increase the costs of production as compared to conventional caged production systems. Labor inputs, which comprise about five to seven percent of the costs of egg production, could increase as much as 41%. The economic studies forecast that the cost differential between cage free and conventional production is somewhere between \$.01 per egg, to just over \$.02 per egg. Experts also forecast that the cage free conversion will result in a long-run wholesale price increase of \$.39 per dozen, or \$.0325 per egg. Thus, producers can expect to recoup some of their costs through increased wholesale prices to retailers, etc. Retailers will likely pass some of the increased costs to consumers.”

Defendants deny any paraphrase of this text that differently characterizes AZDA’s summary, including Plaintiffs’ assertion that AZDA anticipates that the rules “will” cause a 41% increase in labor inputs.

53. Defendants admit that AZDA’s summary of the economic, small business, and consumer impact of the new rules, in the Notice of Final Rulemaking, included the following paragraph:

“As compared to the Initiative, the rulemaking’s regulatory scheme will significantly reduce the Department’s regulatory costs. The Initiative charges the Department with enforcing cage-free requirements but precludes the use of any third-party inspection processes. Thus, the Department would need to send inspectors to

1 inspect producers outside Arizona, requiring the Department to hire additional egg
2 inspectors and significantly increasing inspection costs. On the other hand, the
3 rulemaking enables the Department to rely on third party certifications, including USDA
4 certifications, to ensure producers are compliant. This will modestly increase inspection
5 costs for producers, but will reduce the Department's regulatory burden."

6 Defendants deny any paraphrase of this text that differently characterizes AZDA's
7 summary.

8 54. Admitted as explained in ¶ 52 above.

9 55. Defendants admit that AZDA's summary of the economic, small business,
10 and consumer impact of the new rules, in the Notice of Final Rulemaking, included the
11 following paragraph:

12 "The Department estimates that the rulemaking will increase consumer egg costs
13 between \$2.71 and \$8.79 per-person, per year. According to USDA WASDE data, the
14 average yearly egg consumption for the years 2010-2021 is 270.675 eggs per year per
15 person. If the average person eats 270.675 eggs per year, and the increased costs of cage-
16 free eggs are between 1 and 3.25 cents per egg, then the estimated annual economic
17 impact per consumer is between \$2.71 and \$8.79 per year. Economists further predict
18 that the Rulemaking will reduce consumer surplus by \$4.81 to \$11.05 per Arizona
19 household (2.2 persons), per year. Considering that the average U.S. consumer spent
20 \$7,316.00 on food per year in 2019-2020, that is less than a one-tenth of a percent increase
21 in the costs of their overall food expenditures."

22 Defendants deny any paraphrase of this text that differently characterizes AZDA's
23 summary.

24 56. Defendants admit that AZDA's summary of the economic, small business,
25 and consumer impact of the new rules, in the Notice of Final Rulemaking, included the
26 following paragraph:

27 "The transition to cage-free will increase producer's capital expenditures and the
28 costs of facilities and equipment. One in-state producer estimates that it will have to

1 invest hundreds of millions of dollars into converting its existing production facilities to
2 cage-free. These construction activities will create jobs and benefit the local economy.
3 Importantly, because the transition from conventional caged egg production to cage-free
4 production requires the investment of significant capital, to minimize the burden on small
5 businesses, the Department excluded from the rulemaking all operations that house under
6 20,000 laying hens. Therefore, the proposed rulemaking will have little, if any, impact
7 on small businesses within Arizona.”

8 Defendants deny any paraphrase of this text that differently characterizes AZDA’s
9 summary.

10 57. Admitted as explained in ¶ 56 above.

11 **Harm to Plaintiffs**

12 58. Admitted on information and belief.

13 59. Admitted on information and belief.

14 60. Admitted on information and belief.

15 61. Admitted on information and belief.

16 62. Admitted on information and belief.

17 63. Defendants lack information sufficient to form a belief as to the volume of
18 Union Hospitality Group’s egg purchases.

19 64. Defendants lack information sufficient to form a belief as to whether Union
20 Hospital Group seeks out eggs produced in a cage-free manner, and therefore deny the
21 allegation.

22 65. Defendants admit that AZDA’s summary in the Notice of Final Rulemaking
23 included general statements about the impact of the rules on consumer pricing as
24 described in ¶ 51 above, but deny that AZDA’s summary analyzed “the amount Union
25 Hospitality Group must spend on eggs or egg products over what its egg costs would be
26 without the Cage-Free Egg Rule.”

1 66. Defendants lack information sufficient to form a belief as to Union
2 Hospitality Group's profit margins or uses of its revenue, and therefore deny the
3 allegation.

4 67. Defendants lack information sufficient to form a belief as to the impact of
5 inflationary pressure on food prices on Union Hospitality Group's businesses, and
6 therefore deny the allegation.

7 68. Defendants lack information sufficient to form a belief as to the impact of
8 any relative price increase on Union Hospitality Group's finances, and therefore deny the
9 allegation.

10 69. Denied.

11 70. Admitted on information and belief.

12 71. Defendants lack information sufficient to form a belief as to Mr. Krueger's
13 career, and therefore deny the allegation.

14 72. Defendants lack information sufficient to form a belief as to how often Mr.
15 Krueger purchases eggs for personal consumption and what criteria he uses in doing so,
16 and therefore deny the allegation.

17 73. Defendants admit that AZDA's summary in the Notice of Final Rulemaking
18 included general statements about the impact of the rules on consumer pricing as
19 described in ¶ 51 above, but deny that AZDA's summary analyzed "the price of the eggs
20 Mr. Krueger purchases for personal consumption over what the price would be without
21 the rule."

22 74. Denied.

23 75. Defendants admit that Plaintiffs seek declaratory and injunctive relief but
24 deny that it is appropriate.

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Count I
The Hen Rule is Not Specifically Authorized by Statute.
(A.R.S. § 41-1030(D)(3))

76. Admitted.

77. Defendants admit that A.R.S. § 41-1030(D)(3) currently states that an agency may not “[m]ake a rule that is not specifically authorized by statute.”

78. Defendants admit that AZDA relied on two statutes as its authority, but deny that “neither . . . provides specific authorization to regulate the housing of egg-laying hens.”

79. Admitted.

80. Admitted.

81. Admitted.

82. Denied.

83. Denied.

84. Defendants responded to the allegations in ¶¶ 58–75 above, and respond identically here.

Count II
The Sale Rule is Not Specifically Authorized by Statute.
(A.R.S. § 41-1030(D)(3))

85. Admitted.

86. Defendants admit that A.R.S. § 41-1030(D)(3) currently states that an agency may not “[m]ake a rule that is not specifically authorized by statute.”

87. Defendants admit that AZDA relied on two statutes as its authority, but deny that “neither . . . provides specific authorization to regulate the housing of egg-laying hens producing eggs for sale in Arizona.”

88. Admitted.

89. Admitted.

90. Admitted.

91. Denied.

92. Denied.

93. Denied.

94. Defendants responded to the allegations in ¶¶ 58–75 above, and respond identically here.

Count III

The Hen Rule is Not Reasonably Necessary to Carry out the Purpose of the Statute.

(A.R.S. § 41-1030(A))

95. Admitted.

96. Defendants admit that A.R.S. § 41-1030(A) currently states that a rule “is invalid unless it is . . . reasonably necessary to carry out the purpose of the statute.”

97. Denied.

98. Denied.

99. Denied.

100. Defendants admit that AZDA considered the public’s perception of hen welfare and egg producers’ objections to an anticipated ballot initiative, but deny that these were AZDA’s only considerations or “primary impetus” in promulgating the rules at issue.

101. Denied.

102. Defendants responded to the allegations in ¶¶ 58–75 above, and respond identically here.

Count IV

The Sale Rule is Not Reasonably Necessary to Carry Out the Purpose of the Statute.

(A.R.S. § 41-1030(A))

103. Admitted.

104. Defendants admit that A.R.S. § 41-1030(A) currently states that a rule “is invalid unless it is . . . reasonably necessary to carry out the purpose of the statute.”

105. Denied.

106. Denied.

1 107. Defendants admit that the specific term “egg products” does not appear in
2 A.R.S. § 3-107(A)(1) or A.R.S. § 3-710(J).

3 108. Denied.

4 109. Defendants admit that AZDA considered the public’s perception of hen
5 welfare and egg producers’ objections to an anticipated ballot initiative, but deny that
6 these were AZDA’s only considerations or “primary impetus” in promulgating the rules
7 at issue.

8 110. Denied.

9 111. Defendants responded to the allegations in ¶¶ 58–75 above, and respond
10 identically here.

11 **Count V**

12 **The Cage-Free Egg Rule is the Product of an Unconstitutional Delegation of
13 Legislative Authority.**

14 112. Admitted.

15 113. Admitted.

16 114. Admitted.

17 115. Paragraph 115 states a legal conclusion to which no response is required.
18 To the extent a response is required, Defendants admit that an executive branch agency
19 may not “legislate” in the manner of a legislature, but such an agency may “regulate”
20 within its grant of authority from the legislature.

21 116. Paragraph 116 states a legal conclusion to which no response is required.
22 To the extent a response is required, Defendants admit that the Court in *Hernandez v.*
23 *Frohmler*, 68 Ariz. 242, 251–52 (1949), stated as follows:

24 “While a statute must be definite to be valid, and reasonable precision is required,
25 yet merely because it is difficult to interpret does not condemn it as offending the
26 constitution. [. . .] In the case of *Vallat v. Radium Dial Co.*, 360 Ill. 407, 196 N.E. 485,
27 487, 99 A.L.R. 607, the court stated:

28 ‘In order that a statute may be held valid, the duty imposed by it must be
prescribed in terms definite enough to serve as a guide to those who have the
duty imposed upon them. [. . .] When it leaves the Legislature a law must

1 be complete in all its terms, and it must be definite and certain enough to
2 enable every person, by reading the law, to know what his rights and
3 obligations are and how the law will operate when put into execution.”

4 117. Paragraph 117 states a legal conclusion to which no response is required.
5 To the extent a response is required, Defendants admit that the court in *Lake Havasu City*
6 *v. Mohave Cnty.*, 138 Ariz. 552, 559 (App. 1983), stated as follows:

7 “It is a well settled principle of law that the state legislature may not delegate its
8 power to make laws. [. . .] However, this does not mean that the legislature cannot confer
9 authority upon an agency or department to exercise its discretion in administering the law.
10 [. . .] All that is required for the proper delegation of such discretion is that it be defined
11 with sufficient clarity to enable the agency or board to know their legal bounds.”

12 118. Defendants respond the same as in ¶ 117 above.

13 119. Defendants respond the same as in ¶ 117 above.

14 120. Denied.

15 121. Denied.

16 122. Denied.

17 123. Denied.

18 124. Denied.

19 125. Denied.

20 126. Paragraph 126 states a legal conclusion to which no response is required.
21 To the extent a response is required, Defendants admit that the Court in *State*
22 *Compensation Fund v. De La Fuente*, 18 Ariz. App. 246, 251 (1972) stated as follows:

23 “The applicable principles are well stated in 82 C.J.S. Statutes § 64 (1953) as
24 follows:

25 ‘An act must be complete in all its terms when it leaves the legislature; so
26 that those charged with the administration of such act are amenable to the
27 courts for failure to put it into effect or for its maladministration.’”
28

127. Paragraph 127 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny that ¶ 127 is an accurate statement of Arizona law.

128. Denied.

129. Denied.

130. Denied.

131. Denied.

132. Denied.

133. Defendants responded to the allegations in ¶¶ 58–75 above, and respond identically here.

DEFENSES

Defendants assert that Plaintiffs lack standing, that Plaintiffs have failed to state a claim upon which relief may be granted, and specifically that some of Plaintiffs' claims would require improper retroactive application of statutes. Defendants reserve the right to assert additional defenses.

REQUEST FOR RELIEF

Defendants deny that Plaintiffs are entitled to any of the relief they request. In the event Plaintiffs are successful, Defendants specifically deny that Plaintiffs should be awarded attorney fees under the private attorney general doctrine.

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1 DATED this 27th day of November, 2024.

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