DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO 1437 Bannock St. Denver, CO 80202 **Plaintiff:** **INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION**, a District of Columbia nonprofit corporation, v. **Defendant:** **COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**, an agency of the State of Colorado, **Attorney for Plaintiff:** Timothy G. Atkinson, No. #18477 James R. Silvestro, No. #43982 IRELAND STAPLETON PRYOR & PASCOE, PC 1660 Lincoln Street, Suite 3000 Denver, CO 80264 Phone: 303-628-2700 Fax: 303-623-2062 E-mail: tatkinson@irelandstapleton.com jsilvestro@irelandstapleton.com	▲ COURT USE ONLY ▲ Case No. Division:
COMPLAINT AND DEMAND FOR DECLARATORY INJUNCTIVE RELIEF	

Plaintiff Independent Lubricant Manufacturers Association ("ILMA"), by and through its attorneys, Ireland Stapleton Pryor & Pascoe, PC, and for its Complaint and Demand for Declaratory and Injunctive Relief against Defendant the Colorado Department of Public Health and Environment ("CDPHE"), states as follows:

NATURE OF THE ACTION

1. This case seeks judicial review of CDPHE's unlawful implementation of Colorado's Producer Responsibility Program for Statewide Recycling Act, C.R.S. § 25-17-701, *et seq.* (the "Act"), to prevent its unlawful enforcement against ILMA members. While the Act theoretically seeks to shift the cost of recycling onto package producers, the Act as implemented by CDPHE with respect to two classes of packaging—Lubricant Packaging and Non-Lubricant Packaging (both defined below)—unlawfully and unconstitutionally shifts regulatory power to unaccountable private actors.

2. ILMA is a national trade association that represents independent lubricant producers and wholesale distributors within and outside of Colorado—all of which are subject to the Act with respect to their activities in Colorado and thus face immediate and irreparable harm as a result of the Act and CDPHE's unlawful implementation of the same.

3. With respect to Lubricant Packaging, CDPHE violated the plain meaning of the Act by approving an illegal "Individual Program Plan" submitted by the Lubricants Packaging Management Association ("LPMA"), a non-producer private entity formed by large industry players that are ILMA members' direct competitors (LPMA also operates under "Interchange 360, a trademark. of LPMA")(https://interchange360.com). From there, CDPHE further violated the Act by appointing LPMA as a de facto second "Producer Responsible Organization" or "PRO" with sole authority over ILMA members notwithstanding CDPHE's prior determination that Circular Action Alliance ("CAA") would be the only PRO allowed under the Act for the first five years. Consequently, CDPHE has compelled ILMA members to enter into a "take it or leave it" contract to pay LPMA exorbitant fees which have no connection to the actual costs of running a

recycling program in Colorado as required by the Act and which violate the Act's requirement that no more than five percent (5%) of those fees be used to pay for administrative expenses. At the same time, CDPHE also violated ILMA members' fundamental right to due process of law under the U.S. and Colorado Constitutions, as well as the Non-Delegation Doctrine by forcing ILMA members to enter into contracts of adhesion with a private entity that is controlled by their larger competitors with no meaningful government oversight and no avenue for judicial review.

4. With respect to the Non-Lubricant Packaging, CDPHE has committed many of these same abuses. Most significantly, CDPHE has approved a "producer responsibility program" ("PRP") to be administered by CAA with respect to Non-Lubricant Packaging that likewise violates the Act by seeking to charge ILMA members exorbitant fees that have no connection to the actual cost of recycling in Colorado. Like LPMA's contract of adhesion, CAA's PRP requires ILMA members to enter into a form contract with no meaningful government oversight or opportunity to challenge the fees set by CAA. Moreover, CAA further prevents judicial review by forcing participants in its PRP to agree to binding and confidential arbitration. As with LPMA's illegal IPP, CDPHE's approval of CAA's PRP violates ILMA members' right to due process of the law and the Non-Delegation Doctrine.

5. Finally, beyond CDPHE's implementation of the Act, the Act is also facially unconstitutional because it violates the right to free speech guaranteed by the First Amendment by prohibiting ILMA members from disclosing the actual costs of the Act to consumers and wholesale buyers in Colorado.

6. ILMA brings this action in its representative capacity on behalf of its members to obtain preliminary and permanent injunctive relief against CDPHE to enjoin CDPHE from

enforcing its unlawful implementation of the Act against ILMA members. ILMA also seeks declaratory relief from this Court confirming that CDPHE cannot enforce the Act against ILMA members under this unlawful and unconstitutional structure. Absent immediate relief, ILMA members will be forced to continue to pay millions of dollars to an unaccountable entity that is controlled entirely by their competitors and that continues to operate in violation of the Act and basic guarantees of due process. Finally, ILMA seeks declaratory relief confirming that the Act's prohibition on disclosing the costs of the Act to consumers and wholesale buyers violates freedom of speech as protected by the First Amendment.

PARTIES, JURISDICTION, AND VENUE

7. Plaintiff ILMA is a District of Columbia nonprofit corporation with its principal place of business in Alexandria, Virginia and which operates as a national trade association. ILMA members are manufacturers and distributors of specialized automotive and industrial lubricants across the United States, including members that conduct business in Colorado in a manner that subjects them and the products they provide to the provisions of the Act.

8. Founded in 1948, ILMA's total membership is 355 companies, including 125 companies that manufacture lubricants and related products at blending facilities they own and operate across the country, including in Colorado, and 37 companies that distribute lubricants and related products across the country, including in Colorado. ILMA members generally manufacture, package, distribute and/or sell the following types of lubricant-based goods: (1) specific to the auto and aeronautics industries, including various types of lubricating oils, antifreeze, diesel exhaust fluid, windshield washer fluid, brake fluid, sealers, conditioners, boosters, solvents, degreasers,

stabilizers, fuel system cleaners, and various other lubricant based products; (2) metalworking fluids; and (3) lubricants that keep business and household machinery running efficiently.

9. ILMA members include small and mid-sized businesses—many of which are family-owned and operated—along with larger scale producers, that participate to various degrees in national, regional, and state supply chains. Member companies typically rely upon independent distributors and national brand automotive and farm supply stores whose inventory logistics operate across state lines and internal borders in addition to production and manufacturing processes utilized to distribute their products throughout the national lubricants marketplace.

10. ILMA members play a critical role in the supply and movement of goods nationwide, including in Colorado. These business activities require sourcing, handling, and distributing packaged products, including those produced by others, which in certain cases means ILMA members are considered "producers" under the Act (*i.e.*, because they introduce "covered materials" into the State of Colorado).

11. The Act makes participation in the EPR program mandatory for producers of covered materials. Specifically, ILMA members, as producers under the Act, may not sell or distribute any products with covered materials in the State of Colorado unless they participate in the EPR program.

12. As implemented by CDPHE, the Act now mandates that ILMA members who manufacture, sell, or distribute "packaging for oil-based lubricants, grease, antifreeze, engine additives or other fluids typically used in transportation and mechanical applications" (hereinafter, "Lubricant Packaging") in Colorado must enter into a form contract unilaterally dictated by LPMA to pay unspecified fees for unidentified recycling services and facilities that have not yet been—

and may never be—developed. Producers of Lubricant Packaging, including ILMA members who transact business anywhere in the State of Colorado, cannot opt out of this requirement. They must either enter into a contract of adhesion with LPMA or entirely cease operations in Colorado.

13. With respect to packaging other than Lubricant Packaging (referred to herein as "Non-Lubricant Packaging" and further defined below), the Act as implemented by CDPHE now requires ILMA members to enter into a non-negotiable contract unilaterally dictated by CAA to pay unspecified fees for unidentified recycling services and facilities that have not yet been—and may never be—developed.

14. ILMA brings this lawsuit pursuant to the representational standing that it maintains on behalf of its members, who have been and will continue to be injured by CDPHE's unlawful implementation of the Act with respect to both Lubricant Packaging and Non-Lubricant Packaging.

15. Defendant CDPHE is a state agency within the executive branch of the State of Colorado. CDPHE is charged with administering and enforcing various statutes, including the Act. CDPHE reviews and approves producer responsibility program plans and plan amendments and is authorized under the Act to inspect and enforce the requirements of the same. CDPHE's principal place of business is located in Denver, Colorado. CDPHE operates throughout the State of Colorado, including within the City and County of Denver.

16. This Court has subject matter jurisdiction over all claims for relief asserted herein, pursuant to Section 13-51-101, C.R.S., *et seq.*, and C.R.C.P. 57.

17. This Court has personal jurisdiction over CDPHE pursuant to Section 13-1-124, C.R.S.

18. Venue is proper in this judicial district pursuant to C.R.C.P. 98 because a substantial part of the events or omissions giving rise to the claims occurred in the state of Colorado, and the state officials and agencies responsible for administering the challenged law are located within this judicial district.

FACTUAL ALLEGATIONS

Legal Framework of the Act

19. Enacted in 2022, the Act is purportedly intended to create an "Extended Producer Responsibility" ("EPR") program that will shift the responsibility for recycling packaging materials from local governments onto the companies that produce and sell those materials.

20. The Colorado Department of Public Health and Environment ("CDPHE") is the state agency charged with implementation and regulation of an EPR program under the Act. C.R.S. § 25-17-702(1).

21. The Act creates an advisory board within CDPHE, called the Producer Responsibility Program Advisory Board (the "Board"), consisting of thirteen voting members and two non-voting members, to provide expertise in the field of recycling to CDPHE. C.R.S. §§ 25-17-702(1), 25-17-704. The members of the Board are appointed by the Executive Director of CPDHE, and the Executive Director is appointed by the Colorado Governor. C.R.S. § 25-17-704(3). The Board is required to "advise"; "review"; "consult"; and "recommend" with respect to the statewide EPR program. C.R.S. § 25-17-704(7).

22. Rather than implementing an EPR program through a governmental entity, the Act provides that the Board and CDPHE must designate a single private, third-party "producer responsibility organization" ("PRO"), with an approved "producer responsibility program"

("PRP") for all "producers" of packaging materials that are manufactured or distributed within Colorado. C.R.S. § 25-17-705; *see also* 6 C.C.R. § 1007-2.18.1.6 (defining "Producer Responsibility Organization" or "PRO" as "the nonprofit organization designated to implement the program pursuant to section 705(1)(b)(II) of the Producer Responsibility Act").

23. The Act specifically provides that additional PROs may not be considered until at least January 1, 2029. C.R.S. § 25-17-708(2)(a).

24. The General Assembly's decision to limit implementation of the Act to a single PRO during the first five years is consistent with the fact that there are significant costs and barriers to establishing a statewide program for collection, processing, and recycling. *See also* C.R.S. § 25-17-702(1)(g)(I) (explaining that the Act is intended to "[e]stablish a centralized system for managing recycling in the state . . ."). Moreover, if the Act were to allow for competition during this time period, the lack of exclusivity could serve as a significant disincentive to the private establishment of a PRO.

25. In the same vein, the General Assembly designed the Act to purportedly exempt private companies acting in furtherance of approved plans from liability for antitrust or unfair competition claims. C.R.S. § 25-17-711.

26. As a purported alternative to the creation of a PRO with an approved PRP, the Act supposedly allows "a producer" to "submit to the advisory board an individual program plan proposal." C.R.S. § 25-17-705(8). Under the regulations adopted by CPDHE, an "Individual Program Plan" or "IPP" means a plan developed by a *producer* who chooses to assume responsibility to comply with the Act *individually*. To have a valid IPP, a producer must submit

its IPP to, and receive approval from, the Board and CDPHE pursuant to section 705(8) of the Producer Responsibility Act. 6 C.C.R. § 1007-2-18.

Mandatory Participation by ILMA Members in Colorado

27. The Act mandates that producers of "covered materials" sold or distributed in Colorado must comply with the requirements of the Act. C.R.S. §§ 25-17-705, 25-17-708. Producers include any brand owner or product manufacturer, brand licensee, or other person that sells, distributes, or imports "covered materials" into the State of Colorado. C.R.S. § 25-17-703(30).

28. "Covered materials" are broadly defined under the Act, and with limited exceptions they include: (i) any packaging material intended for single or short-term use in commerce such as food and beverage containers, plastic, glass, cartons, foam, and other common material; and (ii) any paper products. C.R.S. §§ 25-17-703 (25)-(26).

29. CDPHE has further confirmed that the statutory definition of "covered materials" specifically applies to "packaging for oil-based lubricants, greases, antifreeze, engine additives, and other fluids typically used in transportation and mechanical applications" (referred to herein as "Lubricant Packaging").

30. Accordingly, ILMA members who sell, manufacture, or distribute any products that utilize Lubricant Packaging in Colorado are subject to the Act.

31. Similarly, ILMA members who sell, manufacture, or distribute any products that utilize Non-Lubricant Packaging in Colorado are subject to the Act. This Non-Lubricant Packaging can include secondary and tertiary packaging materials, like boxes, that are used to ship larger volumes of products contained within Lubricant Packaging.

32. To comply with the Act, these ILMA members must either enter into a binding contract with the State-designated PRO (a private third-party entity) or receive approval to operate their own individual IPP, which must provide statewide coverage for the recycling of that manufacturer's covered materials (*see* C.R.S. §§ 25-17-705(5)-(8))—a process that is impossible for any individual producer to accomplish in an economically viable manner.

33. All ILMA members who sell, manufacture, or distribute any products that utilize "covered materials" in Colorado were statutorily required to participate in the EPR Program by registering by July 1, 2025. C.R.S. § 25-17-708.

34. The sale or distribution of "covered materials" without EPR Program participation after July 1, 2025, is expressly prohibited, and producers are subject to significant penalties for non-compliance with the Act. C.R.S. §§ 25-17-708(1), 25-17-710.

35. Even if it were theoretically possible for ILMA members to set up their own IPPs in advance of this deadline—which it was not—the fact that they have not set up their own IPPs now means that they have no choice but to sign up with LPMA and/or CAA for implementation of their respective IPP and/or PRP or risk significant penalties for non-compliance with the Act.

36. Upon information and belief, only one (1) ILMA member company doing business in Colorado and registered by the July 1, 2025 deadline qualifies for the limited business exceptions under the Act.

CDPHE's Unlawful Approval of LPMA's IPP and Unlawful Incorporation of LPMA's IPP Into Colorado's Exclusive PRO

37. In May 2023, CDPHE appointed Circular Action Alliance ("CAA") as the only designated PRO for the first five years of the EPR program through at least January 1, 2029. (*See*

Circular Action Alliance, Final Colorado Program Plan 2026, p. 28 (attached hereto as **Exhibit A**)).

38. Although the Act mandated that producers participate in CAA's "producer responsibility program" ("PRP") no later than July 1, 2025, CAA's PRP was not approved by CDPHE until December 9, 2025.

39. While CAA's PRP was pending review and final approval by CDPHE, LPMA submitted its own purported IPP proposal to CDPHE "for purposes of providing extended producer responsibility (EPR) compliance services and circular management support to its obligated Producer Members" with a specific focus on Lubricant Packaging. (LPMA, IPP – Colorado, Aug. 26, 2025, p. 2 (attached hereto as **Exhibit B**)).

40. According to LPMA's submission, LPMA is a nonprofit entity founded by five leading petroleum companies: BP Lubricants USA, Inc. (Castrol), Chevron U.S.A. Inc., ExxonMobil Oil Corporation, Shell Oil Products US d/b/a Pennzoil-Quaker State (Shell) and VGP Holdings LLC (Valvoline). (Ex. B, at 4.) These five companies are direct competitors with ILMA members in the national lubricant marketplace and in Colorado.

41. Upon information and belief, with the exception of one individual from Interchange Recycling (the trade name of the British Columbia Used Oil Management Association), the remaining members of LPMA's board of directors are employees of, or otherwise affiliated with, the five petroleum-related producers who formed LPMA and who are direct competitors of ILMA members. Upon information and belief, these five companies, plus one major oil company not represented on the LPMA board, account for 60 percent of the U.S. market share by volume for consumer lubricants and 58 percent of the U.S. market share by volume for commercial lubricants.

42. It is unclear what—if any—physical presence LPMA maintains within the State of Colorado and the United States more generally.

43. LPMA is operating under "Interchange 360, a trademark of LPMA," even though upon information and belief, LPMA has not applied to register the trademark with the U.S. Patent and Trademark Office.

44. In its IPP submission to CDPHE, LPMA listed its primary address as the address of an international law firm located in Palo Alto, California. (Ex. B, p. 1.)

45. The only individual listed in LPMA's IPP submission to CDPHE is David Lawes. (Ex. B, at 1.)

46. Based upon publicly available information, it appears that Mr. Lawes resides in Canada where he runs a separate recycling program for "used oil, oil filters and used oil containers since 2004 and for antifreeze since 2011." (Ex. B, at 4.)

47. Based upon publicly available information, it appears that LPMA has a management team of five individuals, including Mr. Lawes. It is presently unclear if any of these individuals are employees of LPMA and where they perform their work.

48. LPMA's submission to CDPHE does not suggest that LPMA has any offices or employees located in Colorado.

49. LPMA incorporated as a nonprofit corporation (501(c)(6)) in the State of Delaware on June 24, 2024, although upon information and belief, LPMA has not received a determination from the Internal Revenue Service that it is a tax-exempt organization.

50. In its publicly available tax and nonprofit filings, as of the end of 2024, LPMA had virtually no revenue, no assets and significant debt presumably related to its formation and

attempts to obtain appointment as the exclusive provider of EPR services to Producers of Lubricant Packaging in Colorado. Absent that appointment and the collection of "dues" to reimburse the formation and administrative fees incurred by LPMA, it will not become a going concern able to deliver upon the recycling services promised to Colorado and elsewhere.

51. As a representative trade organization that does not actually sell, manufacture, or distribute any Lubricants Packaging in Colorado, LPMA is not a "producer" under the Act.

52. Notwithstanding the fact that LPMA is not a "producer" under the Act, CDPHE accepted LPMA's IPP proposal and began processing it for review and final approval.

53. While LPMA's IPP for Lubricant Packaging was still under review and not yet approved by CDPHE, CDPHE "informed CAA that producers of petroleum and automotive products must register directly with LPMA and should report their primary packaging associated with products on the LPMA Applicable Product List (*i.e.*, any products that use Lubricant Packaging) to LPMA."

54. As a result of this directive, CAA did not develop a plan for petroleum and automotive products separate from LPMA's IPP.

55. Now that CAA's PRP has been approved and adopted by CDPHE, in order to comply with the compulsory participation requirement with the only available PRO in Colorado, ILMA members must register with LPMA and sign a contract of adhesion with LPMA to be regulated under LPMA's IPP.

56. In the LPMA IPP approved by the Executive Director of CDPHE in September 2025, LPMA stated that it intended to start collecting Producer Responsibility Dues ("PRDs") in

January of 2026, with the promise that it would register with the Colorado Secretary of State to "formalize its authority to transact business in Colorado."

57. As of March 10, 2026, LPMA still has not registered with the Colorado Secretary of State to conduct business in the State of Colorado.

58. LPMA appears to have walked through a non-existent regulatory door as an alleged nonprofit entity formed by industry specific producers, rather than being a "producer" with an "individual program plan." It is in substance a PRO with an extensive and defined PRP ("producers or their designated agents shall establish a nonprofit organization to fulfill the requirements of this part 7"). C.R.S. §§ 25-17-705(1)(a).

59. The fact that LPMA was established by a collection of producers that requires the participation of all producers in the lubricant category demonstrates that any single producer adopting an IPP is not a feasible alternative, even though that is the only alternative the Act provides.

The Unlawful Design of LPMA's IPP

60. Even assuming the appointment of LPMA was allowed, CDPHE has in effect mandated that producers of Lubricant Packaging in Colorado (including ILMA members) must comply with LPMA's IPP as the adopted PRO for this product class.

61. Consequently, LPMA's IPP must comply with all of the rules and requirements applicable to a valid PRO under the Act.

62. With respect to the fees that can validly be charged as part of a PRO, the Act provides certain parameters for producer fees but does not specify a methodology or any statutory dollar amounts for such fees.

63. CDPHE has not explored these fees in any detail and has therefore left it up to the program entity—that is, LPMA—to set those fees.

64. With respect to Lubricant Packaging, because CDPHE unlawfully approved LPMA's IPP and then unlawfully required CAA to incorporate that IPP in the only PRO, CDPHE has ceded all of its regulatory authority to a barely existent non-profit that is controlled by industry players that are direct competitors of ILMA members.

65. Under the Act, a PRO's funding mechanism "must not exceed the direct and indirect costs" of implementing the EPR program in Colorado, C.R.S. § 25-17-705(4)(i)(I) (emphasis added), but those costs have not been required to be correlated to the individual producers being charged.

66. Producer fees must vary by the type of covered material and be based on net recycling costs for each covered material within the state of Colorado, and the PRO or IPP may only use up to five percent (5%) of producer fees for administration of the Program. C.R.S. § 25-17-705(4)(i)(II).

67. The Act and CDPHE's implementation thereof charges LPMA with responsibility for calculating and collecting producer fees for all producers of Lubricant Packaging in Colorado, supposedly in line with these statutory requirements.

68. Currently, however, under the IPP approved by CDPHE (and effectively converted into a PRO that ILMA members must adhere to), LPMA is charging all Colorado producers of Lubricant Packaging a flat rate of $0.56/gallon (retroactive to April 1, 2025) on all forms of packaging up to 15 gallons as an "implementation fee", and $0.14/gallon as a "planning fee" from July 1, 2024 to March 31, 2025, increasing to $0.56/gallon since April 1, 2025, with no

differentiation whatsoever with respect to product or packaging type or size. (Ex. B, p. 16; see also LPMA, Fees/Dues Schedule (December 9, 2025) (attached hereto as Exhibit C)). If the goal of the Act is to reduce the volume of materials found in landfills with reasonable collection and recycling options, the fee should bear some rational relationship to the shape, size, weight, or composition of the covered materials. A flat fee of $0.56/gallon does not fulfill that goal.

69. LPMA has said that it will credit the "planning fee" towards "implementation fees" in the future as the State EPR program matures and it "becomes financially feasible." Covered producers are required to blindly pay this planning fee without any guarantee of ever receiving any kind of credit or other service in exchange and without any apparent recourse to CDPHE or any other government entity.

70. LPMA has not publicly disclosed any of the methodology that it used to calculate either its "implementation fee" or its "planning fee." Accordingly, there is no way that CDPHE could have considered whether these fees are reasonable and comply with the Act.

71. LPMA has not yet implemented any kind of recycling program in Colorado for any products, including for any kind of Lubricant Packaging.

72. Accordingly, as of now, 100 percent of the planning and implementation fees that LPMA has charged and collected have necessarily been used to pay the millions of dollars in administrative expenses in violation of the five percent (5%) cap on administrative expenses set forth in Section 25-17-705(4)(i)(II), C.R.S. LPMA has itself confirmed that all of the dues collected "[f]rom the program launch on July 1, 2024," "were directed to LPMA planning activities. These planning dues were used to fund the program start-up, including for development

of the EPR Plan, engagement with state EPR leads, engagement with stakeholders, preparation of an operational plan, IT, communications, legal and administration."

73. Moreover, the implementation fee of $0.56/gallon and the planning fee of $0.14/gallon (increasing to $0.56/gallon) appear to be the same rate that LPMA is proposing to charge Lubricant Packaging producers in five other states outside of Colorado. (*See* Ex. C.) Accordingly, there is no indication that this charge has any connection to the actual costs associated with implementing and operating a Lubricant Packaging recycling program in Colorado as required by Section 25-17-705(4)(i)(I), C.R.S.

74. In other words, LPMA has set fees to be imposed on Colorado's producers which are the exact same fees/dues it imposes on other producers in five other states, despite the Act's explicit imposition of duties on producers based on their activity within the State of Colorado. *See* C.R.S. § 25-17-705(4)(i)(I) (LPMA's funding mechanism "must not exceed the direct and indirect costs of implementing the [Colorado EPR Program]" including specific cost categories within Colorado).

75. Likewise, the Act requires LPMA's fees to be based on covered products and recycling costs exclusively within Colorado. *See* C.R.S. § 25-17-705(4)(i)(II) ("[t]he producer responsibility dues must vary by the type of covered material, whether or not the material is readily recyclable, and be based on the net recycling services costs for each covered material in the state.").

76. CDPHE is requiring ILMA members to join LMPA's program and then further compelling them to fund the creation of an entity in which they have no voice (and which is instead

controlled by direct competitors of ILMA members) that wields what is essentially the power to tax them as it sees fit.

77. In being forced to join LPMA's program, ILMA members that are producers of Lubricant Packaging in Colorado have no visibility into the methodology by which rates are set and no recourse to challenge LPMA's fee methodology. It is “take it, or leave it,” and an ILMA member has to cease doing business in Colorado if it decides to “leave it.”

78. The statutory and regulatory framework provided for Colorado's EPR program, and the authority vested in LPMA, creates a captive compliance environment with no effective oversight on the critical issue of fee determination and cost. ILMA members have been forced into contracts of adhesion with LPMA, in part, because the contract was entirely drafted by LPMA with no opportunity for negotiation, with significant disparity in bargaining position between the parties, and with no realistic alternative for compliance. There is likewise no mechanism for judicial review to challenge the unfair terms dictated by LPMA.

79. In a December 12, 2025 communication with its members, LPMA admitted that it is only now beginning to do the work needed to establish the mechanisms that might someday lead to a recycling program that accurately and fairly allocates costs to producers, including the incorporation of cost and eco-modulation factors specific to Colorado.

80. LPMA's uniform $0.56/gallon producer implementation fees are not based on the direct or indirect costs of EPR program implementation within Colorado, and are not based on covered material, recycling criteria, and net recycling costs within Colorado, in violation of the Act.

CDPHE's Approval of CAA's Unlawful PRP

81. In addition to the unlawful LPMA structure, ILMA members are similarly subject to CAA's unlawful PRP for any "covered materials" they introduce into the State of Colorado beyond Lubricant Packaging.

82. ILMA members use and distribute various types of paper, boxes, cardboard, and related material, containers, and packaging into Colorado that are deemed "covered materials" under the Act other than Lubricant Packaging for petroleum and automotive products (collectively, "Non-Lubricant Packaging").

83. Accordingly, ILMA members must grapple with two different regulatory programs in Colorado depending on the different covered material that they might introduce into the State: (1) LPMA's IPP for Lubricant Packaging and (2) CAA's PRP for Non-Lubricant Packaging. Both programs suffer fatal flaws under the law.

84. As described above, CAA is a private, non-governmental entity that received PRO approval from CDPHE on December 9, 2025.

85. Although it holds itself out as a non-profit entity in most public materials, CAA's approved PRP was prepared and submitted by a different entity: Circular Action Alliance Colorado LLC. (Ex. A, p. 1.) CAA states that the Colorado PRO "will operate under the stewardship" of Circular Action Alliance Colorado LLC. (*Id*., p. 15.)

86. The actual relationship between these two entities is not publicly known. On the face of CAA's PRP, however, it appears that CAA's PRP will be unlawfully managed and implemented by a for-profit company, even if the Internal Revenue Service considers Circular Action Alliance Colorado LLC to be a "disregarded entity" of CAA.

87. Circular Action Alliance Colorado LLC is registered with the Colorado Secretary of State as a Delaware limited liability company. The company's principal office, as listed in its approved Colorado PRP (Ex. A, p. 1) and with the Colorado Secretary of State, is located in Washington, D.C.

88. It is unclear what—if any—physical presence CCA or Circular Action Alliance Colorado LLC maintains within the State of Colorado.

89. CCA's PRP sets forth the types of covered materials subject to the PRO. (Ex. A, pp. 99-103 & 186-88.) Relevant to ILMA members operating in Colorado, this includes Non-Lubricant Packaging such as paper, packaging paper, corrugated cardboard, paperboard boxes, and related packaging, containers, and material used in everyday commerce. (*Id*.)

90. Like LPMA for Lubricant Packaging, the Act charges CAA with responsibility for calculating and collecting producer fees for Non-Lubricant Packaging. The details of this process supposedly are provided in CAA's PRP. However, CAA merely pays lip service to a Colorado "methodology" (Ex. A, p. 26) without providing an objective methodology or creating a fee structure that complies with the Act.

91. In its approved PRP, CAA alleges that it "relies on a set of standard guiding principles and methodology" to determine PRO funding and individual producer dues. (Ex. D, p. 174.) CAA's PRP, however, is devoid of any such objective principles or methodology tailored to the State of Colorado, as required by the Act.

92. CAA's adopted per-pound producer dues for Non-Lubricant Packaging are based on estimated data for the first program year in 2026, undetermined ranges of costs, and national (*i.e.*, not specific to Colorado) factors, notwithstanding the fact that CAA has already issued

invoices to ILMA members in Colorado as of January 1, 2026. Although CAA's PRP contains various figures, tables, and appendices purporting to explain its producer dues – it provides no mechanism for ILMA members to understand or investigate how such dues are calculated and charged to a specific producer.

93. In its Colorado PRP, CAA openly admits that producer dues in Colorado are calculated pursuant to "CAA's harmonized national dues-setting methodology" and alleges that "Circular Action Alliance has the authority to determine the methodology" in state EPR programs such as Colorado's. (Ex. A, p. 180.) CAA, however, does not have such authority in Colorado. The Act requires producer fees to be based on costs and activity exclusively within the State of Colorado, as discussed below.

94. Pursuant to its adopted 2026 producer fee schedules posted on its website (https://circularactionalliance.org/), CAA has imposed identical producer fees in both Colorado and Oregon for the most common types of Non-Lubricant Packaging that ILMA members introduce into commerce. For example, the producer fee in Colorado for Kraft Paper (used for packaging consumer products), Corrugated Cardboard, and Paperboard is $0.08 per pound. (CAA, 2026 Colorado Producer Dues Schedule, p. 1 (attached hereto as **Exhibit D**).) In Oregon, CCA imposes the exact same producer fee of per pound for Kraft Paper, Corrugated Cardboard, and Paperboard. (CAA, 2026 Oregon Producer Dues Schedule, p. 1 (attached hereto as **Exhibit E**).)

95. CAA's adopted producer dues in Colorado for Non-Lubricant Packaging include "pre-program" costs, start-up costs, regulatory costs, PRO management and administration costs, and other costs unrelated to recycling in the State of Colorado. (Ex. A, pp. 176-88.)

96. CAA has not yet implemented any kind of recycling program in Colorado for any products, including for any kind of Non-Lubricant Packaging.

97. In its publicly available tax and nonprofit filings, CAA acknowledges that it has no physical assets, no existing recycling operations and significant debt presumably related to its formation and attempts to obtain appointment as the exclusive provider of ERP services to Producers of Non-Lubricant Packaging in Colorado and elsewhere. Absent those appointments and the collection of dues to reimburse the formation and administrative fees incurred by CAA, it will not become a going concern able to deliver upon the recycling services promised to Colorado and elsewhere.

98. Accordingly, as of now, 100 percent of the planning and implementation fees that CAA has charged and collected have necessarily been used to pay administrative expenses in violation of the five percent (5%) cap on administrative expenses set forth in Section 25-17-705(4)(i)(II), C.R.S.

99. Moreover, CAA's adopted producer fees are based on "national" methodology, and the most common Non-Lubricant Packaging for ILMA members is charged at the exact same rate in both Colorado and Oregon. (*See* Exs. D & E.) Accordingly, there is no indication that these fees have any connection to the actual costs associated with implementing and operating a Non-Lubricant Packaging recycling program in Colorado as required by Section 25-17-705(4)(i)(I), C.R.S.

100. The United States District Court for the District of Oregon recently enjoined Oregon's enforcement of the CAA appointed EPR program, citing a lack of visibility into the manner in which CAA set prices and a lack of any meaningful remedy for the producers subjected

to those dues. The same due process violations exist in CDPHE's appointment of CAA in Colorado.

101. In other words, CAA has set the Non-Lubricant Packaging fees most impactful to ILMA members in Colorado as the exact same fees/dues it imposes on producers in Oregon, despite the Act's explicit imposition of duties on producers based on their activity within the State of Colorado. *See* C.R.S. § 25 17-705(4)(i)(I) (LPMA's funding mechanism "must not exceed the direct and indirect costs of implementing the [Colorado EPR Program]" including specific cost categories within Colorado).

102. Likewise, the Act requires CAA's fees to be based on covered products and recycling costs exclusively within Colorado. *See* C.R.S. § 25-17-705(4)(i)(II) ("[t]he producer responsibility dues must vary by the type of covered material, whether or not the material is readily recyclable, and be based on the net recycling services costs for each covered material in the state.").

103. As with LPMA's contract of adhesion, in order to participate in CAA's PRP, ILMA members who sell, manufacture, or distribute Non-Lubricant Packaging in Colorado must agree to a contract of adhesion drafted by CAA with no opportunity for negotiation, with significant disparity in terms, and no other avenue for compliance with the Act with respect to Non-Lubricant Packaging. In fact, the form contract provided by CAA requires ILMA members to acknowledge that they are producers under the Act who are obligated to participate in CAA's PRP. Like the LPMA contract, there is no mechanism for judicial review to challenge the unfair terms dictated by CAA. Moreover, CAA's contract provides that any dispute arising from the contract must be submitted to binding and confidential arbitration with no opportunity for judicial review or appeal.

Consequences for ILMA Members

104. As compared to the large multinational companies that have formed and control both LPMA and CAA, ILMAs members are smaller, independent producers. The majority of ILMA's manufacturing members are small and mid-sized, family-owned entities,

105. ILMA members – independent lubricant manufacturers – occupy a discrete and price-sensitive position in the lubricants and petroleum products supply chains. Unlike vertically integrated oil companies, they purchase base oils (including from several LPMA board members) and additive packages at commodity-linked prices, blend these inputs into finished lubricants, package them in containers (including those subject to the Act), and then sell them to distributors or end users at gross and net profit margins that are structurally narrow by industry standards.

106. ILMA members have no pricing power over their primary input costs and face intense competitive pressure from major integrated oil companies that can cross-subsidize their lubricant operations across upstream, midstream and downstream business segments. The typical ILMA member therefore operates with gross margins – defined as net sales revenue minus cost of goods sold, including base oils, additives, packaging, and blending and manufacturing labor and overhead – of 18% to 25%.

107. Because packaging container costs are embedded in ILMA members' cost of goods sold, the EPR fees for Colorado unilaterally charged by LPMA and CAA, over which CDPHE has refused to provide oversight, directly and necessarily increases their cost of goods sold. For example, ILMA members, as producers in Colorado, are required to pay LPMA's $0.56/gallon implementation fee and each dollar assessed by LPMA is a direct and non-negotiable addition to

the cost of producing each unit of finished lubricant, compressing their gross margins dollar-for-dollar unless the ILMA member can raise its selling price by an equivalent amount.

108. ILMA members, as a practical matter, cannot raise their selling prices to offset the EPR fees. Prices to distributors and end users are often set by contract on fixed schedules (e.g., quarterly or annually or tied to indices), so the EPR fee obligations cannot be immediately reflected in these contract prices. Even where price negotiation is available, ILMA members' customers are sophisticated buyers able to shift their purchases to the major integrated lubricant suppliers, whose larger volumes, geographic diversification, and cross-subsidization capacity enable them to absorb comparable fee burdens with lesser per-unit margin impact.

109. The result is that the EPR fee obligations from LPMA and CAA are economically non-passable by ILMA's members to their customers, so they compress gross margins of ILMA members without corresponding revenue recovery.

110. ILMA members' net margin, defined as gross margin minus selling, general and administrative ("SG&A) expenses, regulatory compliance overhead, legal expenses, and EPR compliance) represents the earnings remaining after all costs of operating the business are deducted.

111. The LPMA and CAA program obligations in Colorado generate direct and material additions to SG&A, over and above the per-unit fee obligations that compress gross margins. These SG&A compliance costs include without limitation; (a) allocation of staff time and external compliance resources to track Colorado container volumes, calculate fee obligations, and prepare required disclosures, (b) audit obligations, including the risk of third-party audits of sales and container data commissioned by LPMA and/or CAA at the producer's expense, (c) legal and

consulting costs to interpret, monitor, and respond to regulatory changes and fee revisions; and (d) costs of evaluating and, if required, sourcing post-consumer recycled content packaging.

112. These SG&A costs fall disproportionately on ILMA members relative to their major integrated lubricant competitors. A major oil company has dedicated environmental compliance staff, in-house counsel and regulatory compliance staff distributed across multiple programs and product lines, so they incur marginal incremental cost from a single state's EPR compliance obligation. ILMA members with limited administrative staff must either divert existing personnel from revenue-generating functions or engage outside counsel or consultants, in either case creating compliance costs that are a far greater percentage of revenue and operating margin than the equivalent costs imposed on a major integrated competitor.

113. The combined effect of gross margin compression at the gross and net margin levels creates a compounding and potentially existential financial burden on ILMA members. They cannot absorb these costs without raising prices, and they cannot raise prices without losing market share to better capitalized competitors. Thus, they face the real prospect of withdrawing from the Colorado market entirely, operating at a loss on Colorado-destined product lines, or attempting to raise prices in other markets.

114. This coerced outcome is involuntary, irrational, and constitutionally impermissible.

115. The margin compression injuries described above are materially worsened by the structural defect at the core of the delegation to LPMA and CAA - the unconstrained authority to set producer fee obligations without legislative caps, defined methodologies, or meaningful appeal rights.

116. Because ILMA members cannot predict with reasonable certainty the fee levels that will be imposed in future program years, they cannot plan pricing, negotiate distributor contracts, or make capital investments with knowledge of their future Colorado compliance cost exposure. This regulatory unpredictability compounds the direct margin compression of current fee obligations with the economic injury of foreclosed business planning — a harm that, standing alone, constitutes an unconstitutional taking of the reasonable investment-backed expectations of Plaintiff's member companies.

117. Colorado's EPR Program, as implemented by CDPHE's appointment of LMPA and CAA, impose concrete, substantial, and ongoing economic injuries on ILMA member companies in the form of gross margin compression, net margin compression, disproportionate compliance overhead, and unquantifiable future fee exposure — injuries that are directly traceable to the unconstitutional structure and operation of the program challenged herein, and that are redressable by the declaratory and injunctive relief sought in this Complaint.

118. The resulting loss of competition will increase the costs paid by Coloradoans, further consolidate market power in the hands of a few large players, and more broadly interrupt the interstate market for these critical products.

119. The Act, as implemented by with respect to what is now mandatory participation by ILMA members in LPMA's IPP and/or CAA's PRP, imposes irreparable harm on ILMA members, compelling compliance with regulatory framework through a contractual relationship in which they face unreasonable burdens, exercise no consequential voice, and have no meaningful recourse.

120. In the same manner that LPMA and CAA's pricing methodology have not been disclosed, critical details regarding the formation, governance, financing, and budgeting for these entities have not been disclosed and the CDPHE has failed to exercise any appropriate oversight or require any transparency.

121. ILMA members have no assurance that LPMA and CAA are adequately capitalized or that they have the employees and expertise needed to establish the necessary recycling technology and infrastructure in Colorado.

122. In the case of an identified producer pursuing an IPP, CDPHE is required to examine the viability of that producer and its plan. CDPHE has not done this with LPMA or CAA.

123. If ILMA members pay money to LPMA and/or CAA, and it turns out that one or both of these entities are unable to perform according to plan due to a lack of capital or expertise, ILMA members will suffer irreparable harm as CDPHE will likely be powerless to ensure the return of these payments. Likewise, if it is determined that CAA/LPMA were not validly appointed, there is no remedy at law for CDPHE to reimburse ILMA's members the monies paid to these private entities

The Act's Facially Unconstitutional Restriction on Free Speech

124. The Act mandates that "[a] person shall not charge any kind of point-of-sale or point-of-collection fee to consumers to recoup its costs in meeting the obligations of or complying with" the Act. C.R.S. § 25-17-714. The regulations repeat that provision. *See* C.C.R. § 6-1007-2-18.2.6 (the "Ban on Cost Disclosure").

125. By its plain meaning, this provision of the Act and the accompanying regulations adopted CDPHE prevents producers from placing the cost of complying with the Act (including

but not limited to the fees charged by LPMA and CAA) on the Colorado consumers that are the purported beneficiaries of the recycling programs that may result.

126. Rather than segregating the costs of compliance to Colorado, where that cost cannot be recovered, it is far more likely that producers will instead add the cost of tracking and paying the Colorado fee to their overall cost structure, raising the price of covered products in states that have not imposed Colorado's restrictions and are not benefiting from the promised recycling programs.

127. In doing so, consumers in markets outside Colorado will be deprived of the competitive pricing they would receive by choosing a lower level of environmental regulation than Colorado has adopted.

128. Decisions and communications regarding the pricing of products are protected components of freedom of contract and freedom of speech. Those decisions, and the accurate description of them to consumers of those products, are both lawful and legitimate.

129. Colorado's attempt to dictate the terms of sale is improper. There is no legitimate government purpose to be served by preventing Colorado consumers from paying the cost of recycling services they are actually receiving or knowing what that cost is.

130. CDPHE's regulations implementing the Act provide that any violation of the Act—including presumably any effort to inform ILMA members' customers of the true cost that they are incurring as a result of higher prices under the Act through a point-of-sale or point-of-collection fee—could result in an enforcement action and tens of thousands of dollars in fines.

FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT – UNLAWFUL ENFORCEMENT OF LPMA IPP)

131. ILMA realleges and incorporates by reference the foregoing allegations as if fully stated herein.

132. Pursuant to C.R.C.P. 57, this Court has authority to determine the lawfulness of CDPHE's interpretation and enforcement of the Act and to declare the rights of the parties.

133. CDPHE violated the Act by approving LPMA's IPP despite the fact that LPMA is not a "producer" under the Act.

134. CDPHE further violated the law by requiring ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado to adhere to LPMA's IPP by virtue of CDPHE's unlawful decision to incorporate LPMA's IPP within CAA's PRP.

135. In effect, CDPHE has made LPMA a de facto PRP in violation of the Act and has compelled ILMA members to contract directly with LPMA for LPMA's direct administration of LPMA's IPP completely outside of the statutory process for complying with the only approved PRP to be administered by CAA.

136. ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado are now faced with the impossible choice of either violating the Act as it has been unlawfully implemented by CDPHE or entering into a contract of adhesion with LPMA, which is controlled by their direct competitors in the marketplace and paying arbitrary fees that provide ILMA members' competitors with an unfair advantage in the marketplace.

137. An actual, present, and justiciable controversy exists between ILMA (by and through its representation of its members) and CDPHE with respect to CDPHE's efforts to enforce

its unlawful implementation of the Act against ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado.

138. ILMA seeks declaratory relief pursuant to C.R.S. § 13-51-101, *et seq.*, and C.R.C.P. 57 to resolve this actual, real, and immediate controversy, to confirm that CDPHE has violated the Act, and to confirm that CDPHE cannot compel ILMA members to contract with and pay dues to LPMA.

139. ILMA has no other plain and speedy remedy at law and is therefore entitled to a judgment declaring that CDPHE has violated the Act and cannot require ILMA members to contract with LPMA under its unlawful IPP.

SECOND CAUSE OF ACTION
(DECLARATORY JUDGMENT – UNLAWFUL ENFORCEMENT OF LPMA LUBRICANT PACKGAGING FEES)

140. ILMA realleges and incorporates by reference the foregoing allegations as if fully stated herein.

141. Pursuant to C.R.C.P. 57, this Court has authority to determine the lawfulness of CDPHE's implementation and enforcement of the Act and to declare the rights of the parties.

142. CDPHE violated the Act by approving LPMA's IPP despite the fact that LPMA's IPP sets an arbitrary implementation fee that: (a) has no connection to any actual or anticipated recycling costs in Colorado; and (b) allows for LPMA to spend 100 percent of revenue on administrative expenses without providing any recycling service.

143. ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado are now faced with the impossible choice of either violating the Act as it has been unlawfully implemented by CDPHE or entering into a contract of adhesion with LPMA, which is

controlled by their direct competitors in the marketplace and paying arbitrary fees that provide ILMA members' competitors with an unfair advantage in the marketplace.

144. An actual, present, and justiciable controversy exists between ILMA (by and through its representation of its members) and CDPHE with respect to CDPHE's efforts to enforce its unlawful implementation of the Act against ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado.

145. ILMA seeks declaratory relief pursuant to C.R.S. § 13-51-101, *et seq.*, and C.R.C.P. 57 to resolve this actual, real, and immediate controversy, to confirm that CDPHE has violated the Act, and to confirm that CDPHE cannot compel ILMA members to contract with and pay dues to LPMA.

146. ILMA has no other plain and speedy remedy at law and is therefore entitled to a judgment declaring that CDPHE has violated the Act and cannot require ILMA members to contract with LPMA under its unlawful IPP.

THIRD CAUSE OF ACTION
(DECLARATORY JUDGMENT – AS APPLIED DUE PROCESS VIOLATION – LPMA)

147. ILMA realleges and incorporates by reference the foregoing allegations as if fully stated herein.

148. Pursuant to C.R.C.P. 57, this Court has authority to determine the lawfulness of CDPHE’s implementation and enforcement of the Act and to declare the rights of the parties.

149. The U.S. Constitution prohibits states from depriving persons of property without due process of law. U.S. Const. amend. XIV. Likewise, the Colorado Constitution guarantees that “[n]o person shall be deprived of life, liberty or property, without due process of law.” Colo. Const. Art. II, § 25.

150. As described herein, CDPHE has implemented the Act in a manner that violates the fundamental right to due process of law for ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado. The regulatory regime established by CDPHE under the Act fails to provide for adequate procedural protections in violation of the three-part balancing test adopted by the U.S. Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (explaining the level of process that must be provided in connection with the government's regulatory authority depends: (1) on the private interest effected; (2) the risk of erroneous deprivation and the value of additional or substitute procedural safeguards; and (3) the state's interest. *Id.* at 335.

151. The private interest in access to the Colorado market and freedom from costly fees on the part of affected ILMA members is substantial. Under the LPMA contract that these ILMA members are compelled to accept under CDPHE's implementation of the act, however, these ILMA members are not provided a meaningful opportunity to challenge the terms of this contract or the fees that LPMA unilaterally sets. ILMA members did not have an opportunity to provide comment on the development of LPMA's fees, and LPMA is under no obligation to disclose the methodology that it used to calculate its fees. There is likewise no avenue for ILMA members to appeal LPMA's fees or to obtain judicial review with respect to the fairness and adequacy of LPMA's mandatory contract. Colorado's purported interest in the efficient administration of the EPR program is not enough to justify ceding, effectively, complete control over the determination of fees to a single, self-interested private organization.

152. An actual, present, and justiciable controversy exists between ILMA (by and through its representation of its members) and CDPHE with respect to CDPHE's unlawful

enforcement of the Act against ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado.

153. ILMA seeks declaratory relief pursuant to C.R.S. § 13-51-101, *et seq.*, and C.R.C.P. 57 to resolve this actual, real, and immediate controversy and to confirm that the Act may not be enforced against ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado in contravention of their fundamental right to due process of law.

154. ILMA has no other plain and speedy remedy at law and is therefore entitled to a judgment declaring that the Act violates ILMA members' fundamental right to due process of law and therefore may not be enforced against ILMA members.

FOURTH CAUSE OF ACTION
(DECLARATORY JUDGMENT – AS APPLIED VIOLATION OF THE NON-DELEGATION DOCTRINE – LPMA)

155. ILMA realleges and incorporates by reference the foregoing allegations as if fully stated herein.

156. Pursuant to C.R.C.P. 57, this Court has authority to determine the lawfulness of CDPHE's implementation and enforcement of the Act and to declare the rights of the parties.

157. As implemented by CDPHE, the Act violates ILMA members' right to due process of law under the U.S. and Colorado Constitutions by unlawfully delegating state regulatory authority to an unaccountable private entity that is controlled by ILMA members' primary competitors and with no meaningful legislative or administrative oversight or safeguards.

158. Under Article III of the Colorado Constitution, "[i]t has long been settled that the legislature may not delegate its legislative power to another agency or person." *Amica Life Ins.*

Co. v. Wertz, 462 P.3d 51, 54 (Colo. 2020). However, the legislature may "delegate its lawmaking function when it establishes a definite framework for the law's operation." *Id.* at 55.

159. Here, the Act's delegation of legislative authority to a private, non-governmental entity is not constrained by clear standards or adequate safeguards. The Act fails to articulate sufficient standards to guide the delegated private entity's extraction of fees from producers, allowing that entity to adopt a fee methodology that leads to exorbitant, duplicative, and arbitrary fees. As applied here, the Act has been used by CDPHE to concentrate unaccountable regulatory authority in a private entity that is controlled by competitors of ILMA members and who can now wield the power of the state to gain an unfair advantage against ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado.

160. An actual, present, and justiciable controversy exists between ILMA (by and through its representation of its members) and CDPHE with respect to CDPHE's unlawful enforcement of the Act against ILMA members who manufacture, sell, or distribute Lubricant Packaging.

161. ILMA seeks declaratory relief pursuant to C.R.S. § 13-51-101, *et seq.*, and C.R.C.P. 57 to resolve this actual, real, and immediate controversy and to confirm that the Act may not be enforced against ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado in contravention of Colorado's Non-Delegation Doctrine.

162. ILMA has no other plain and speedy remedy at law and is therefore entitled to a judgment declaring that the Act violates the Non-Delegation Doctrine and may not be enforced against ILMA members without violating their rights to due process of law.

FIFTH CAUSE OF ACTION
(DECLARATORY JUDGMENT – UNLAWFUL ENFORCEMENT OF CAA FEES)

163. ILMA realleges and incorporates by reference the foregoing allegations as if fully stated herein.

164. Pursuant to C.R.C.P. 57, this Court has authority to determine the lawfulness of CDPHE's implementation and enforcement of the Act and to declare the rights of the parties.

165. CDPHE violated the Act by approving CAA's PRP despite the fact that CAA's PRP sets arbitrary Non-Lubricant Packaging fees that: (a) have no connection to any recycling costs in Colorado; and (b) allow for CAA to spend 100 percent of revenue on administrative expenses without providing any recycling service.

166. ILMA members who manufacture, sell, or distribute Non-Lubricant Packaging in Colorado are now faced with the impossible choice of either violating the Act as it has been unlawfully implemented by CDPHE or entering into a contract of adhesion with CAA, and paying arbitrary fees that were adopted contrary to the requirements of the Act.

167. An actual, present, and justiciable controversy exists between ILMA (by and through its representation of its members) and CDPHE with respect to CDPHE's efforts to enforce its unlawful implementation of the Act against ILMA members who manufacture, sell, or distribute Non-Lubricant Packaging in Colorado.

168. ILMA seeks declaratory relief pursuant to C.R.S. § 13-51-101, *et seq.*, and C.R.C.P. 57 to resolve this actual, real, and immediate controversy, to confirm that CDPHE has violated the Act, and to confirm that CDPHE cannot compel ILMA members to contract with and pay dues to CAA.

169. ILMA has no other plain and speedy remedy at law and is therefore entitled to a judgment declaring that CDPHE has violated the Act and cannot require ILMA members to contract with CAA under its unlawful PRP.

SIXTH CAUSE OF ACTION
(DECLARATORY JUDGMENT – AS APPLIED DUE PROCESS VIOLATION – CAA)

170. ILMA realleges and incorporates by reference the foregoing allegations as if fully stated herein.

171. Pursuant to C.R.C.P. 57, this Court has authority to determine the lawfulness of CDPHE's implementation and enforcement of the Act and to declare the rights of the parties.

172. The U.S. Constitution prohibits states from depriving persons of property without due process of law. U.S. Const. amend. XIV. Likewise, the Colorado Constitution guarantees that "[n]o person shall be deprived of life, liberty or property, without due process of law." Colo. Const. Art. II, § 25.

173. As described herein, CDPHE has implemented the Act in a manner that violates the fundamental right to due process of law for ILMA members who manufacture, sell, or distribute Non-Lubricant Packaging in Colorado. The regulatory regime established by CDPHE under the Act fails to provide for adequate procedural protections in violation of the three-part balancing test adopted by the U.S. Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (explaining the level of process that must be provided in connection with the government's regulatory authority depends: (1) on the private interest effected; (2) the risk of erroneous deprivation and the value of additional or substitute procedural safeguards; and (3) the state's interest. *Id.* at 335.

174. The private interest in access to the Colorado market and freedom from costly fees on the part of affected ILMA members is substantial. Under the CAA contract that these ILMA

members are compelled to accept under CDPHE's implementation of the act, however, these ILMA members are not provided a meaningful opportunity to challenge the terms of this contract or the fees that CAA unilaterally sets. ILMA members did not have an opportunity to provide comment on the development of CAA's fees, and CAA is under no obligation to disclose the methodology that it used to calculate its fees. There is likewise no avenue for ILMA members to appeal CAA's fees or to obtain judicial review with respect to the fairness and adequacy of CAA's mandatory contract. Colorado's purported interest in the efficient administration of the EPR program is not enough to justify ceding, effectively, complete control over the determination of fees to a single, self-interested private organization.

175. An actual, present, and justiciable controversy exists between ILMA (by and through its representation of its members) and CDPHE with respect to CDPHE's unlawful enforcement of the Act against ILMA members who manufacture, sell, or distribute Non-Lubricant Packaging in Colorado.

176. ILMA seeks declaratory relief pursuant to C.R.S. § 13-51-101, *et seq.*, and C.R.C.P. 57 to resolve this actual, real, and immediate controversy and to confirm that the Act may not be enforced against ILMA members who manufacture, sell, or distribute Non-Lubricant Packaging in Colorado in contravention of their fundamental right to due process of law.

177. ILMA has no other plain and speedy remedy at law and is therefore entitled to a judgment declaring that the Act violates ILMA members' fundamental right to due process of law and therefore may not be enforced against ILMA members.

SEVENTH CAUSE OF ACTION
(DECLARATORY JUDGMENT – AS APPLIED VIOLATION OF THE NON-DELEGATION DOCTRINE – CAA)

178. ILMA realleges and incorporates by reference the foregoing allegations as if fully stated herein.

179. Pursuant to C.R.C.P. 57, this Court has authority to determine the lawfulness of CDPHE's implementation and enforcement of the Act and to declare the rights of the parties.

180. As implemented by CDPHE, the Act violates ILMA members' right to due process of law under the U.S. and Colorado Constitutions by unlawfully delegating state regulatory authority to CCA, an unaccountable private entity that purportedly operates both as a non-profit organization and a limited liability company in Colorado and with no meaningful legislative or administrative oversight or safeguards.

181. Under Article III of the Colorado Constitution, "[i]t has long been settled that the legislature may not delegate its legislative power to another agency or person." *Amica Life Ins. Co. v. Wertz*, 462 P.3d 51, 54 (Colo. 2020). However, the legislature may "delegate its lawmaking function when it establishes a definite framework for the law's operation." *Id.* at 55.

182. Here, the Act's delegation of legislative authority to a private, non-governmental entity is not constrained by clear standards or adequate safeguards. The Act fails to articulate sufficient standards to guide the delegated private entity's extraction of fees from producers, allowing that entity to adopt a fee methodology that leads to exorbitant, duplicative, and arbitrary fees. As applied here, the Act has been used by CDPHE to concentrate unaccountable regulatory authority in CAA, a private entity that wields the power of the state to impose unlawful fees and

mandatory obligations on ILMA members who manufacture, sell, or distribute Non-Lubricant Packaging in Colorado.

183. An actual, present, and justiciable controversy exists between ILMA (by and through its representation of its members) and CDPHE with respect to CDPHE's unlawful enforcement of the Act against ILMA members who manufacture, sell, or distribute Non-Lubricant Packaging in Colorado.

184. ILMA seeks declaratory relief pursuant to C.R.S. § 13-51-101, *et seq.*, and C.R.C.P. 57 to resolve this actual, real, and immediate controversy and to confirm that the Act may not be enforced against ILMA members who manufacture, sell, or distribute Non-Lubricant Packaging in Colorado in contravention of Colorado's Non-Delegation Doctrine.

185. ILMA has no other plain and speedy remedy at law and is therefore entitled to a judgment declaring that the Act violates the Non-Delegation Doctrine and may not be enforced against ILMA members without violating their rights to due process of law.

EIGHTH CAUSE OF ACTION
(VIOLATION OF FIRST AMENDMENT RIGHT TO FREE SPEECH)
(U.S. CONST. Amend. I)

186. ILMA realleges and incorporates by reference the foregoing allegations as if fully stated herein.

187. The First Amendment to the U.S. Constitution, applicable to state and local governments through the Fourteenth Amendment's Due Process Clause, protects the right to free speech. "At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." *See Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 213 (2013).

188. The First Amendment forbids the State from "restrict[ing] expression because of its message, its ideas, its subject matter, or its content." *See Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 95 (1972).

189. On its face, the Act restricts ILMA members' right to free speech under the First Amendment to the U.S. Constitution by prohibiting them from informing their customers of the true cost of the Act (and the resulting cost that consumers must pay) through a point-of-sale or point-of collection fee.

190. Specifically, because of the costs imposed by CDPHE through its approval of CAA's PRP (and, by extension, LPMA's IPP), ILMA members who sell, manufacture, or distribute Lubricant Packaging and/or Non-Lubricant Packaging in Colorado will necessarily be forced to raise prices of products to comply with those obligations. However, the Act prohibits these ILMA members from accurately communicating the cause and cost of the price increase to their consumers.

191. The Ban on Cost Disclosure bears no relationship to the Act's intended purpose and any governmental legitimate interest the Act seeks to further.

192. Therefore, the Act, through its restriction on the disclosure of the true costs of compliance with the Act for consumers, impermissibly hinders ILMA members' ability to exercise protected speech under the First Amendment of the U.S. Constitution.

193. There exists and actual case or controversy between ILMA and CDPHE because ILMA members who sell, manufacture, or distribute Lubricant Packaging and/or Non-Lubricant Packaging in Colorado have no choice but to either have their rights to free speech violated or risk

facing tens of thousands of dollars of fines from CDPHE under CDPHE's regulations implementing the Act.

194. Because ILMA and ILMA members have no other plain or speedy remedy at law, ILMA is entitled to declaratory relief confirm that the Ban on Cost Disclosure cannot be lawfully enforced against its members and permanently enjoining CDPHE from doing so.

PRAYER FOR RELIEF

WHEREFORE, ILMA respectfully prays that the Court enter judgment and other orders in its favor and against the Defendants as follows:

(a) Declaring the Act as administered by CDPHE is unlawful and unenforceable against ILMA members who manufacture, sell, or distribute Lubricant Packaging and Non-Lubricant Packaging in Colorado;

(b) Declaring that CDPHE has violated the Act as applied to ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado by unlawfully incorporating LPMA's illegal IPP into CAA's PRP;

(c) Declaring that CDPHE has violated the Act as applied to ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado by forcing them to contract with LPMA and to pay fees that violate the Act;

(d) Declaring that CDPHE has violated ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado's fundamental right to due process of law by forcing them to enter into contracts of adhesion with a private entity (LPMA) with no meaningful government oversight or opportunity for judicial review;

(e) Declaring that CDPHE has violated the Non-Delegation Doctrine by unlawfully delegating government authority (LPMA) to a private entity with no effective government oversight and no opportunity for judicial review;

(f) Declaring that CDPHE has violated the Act as applied to ILMA members who manufacture, sell, or distribute Non-Lubricant Packaging in Colorado by forcing them to contract with CAA and to pay fees that violate the Act;

(g) Declaring that CDPHE has violated ILMA members who manufacture, sell, or distribute Non-Lubricant Packaging in Colorado's fundamental right to due process of law by forcing them to enter into contracts of adhesion with a private entity (CAA) with no meaningful government oversight or opportunity for judicial review;

(h) Declaring that CDPHE has violated the Non-Delegation Doctrine by unlawfully delegating government authority to a private entity (CAA) with no effective government oversight and no opportunity for judicial review;

(i) Declaring the Ban on Cost Disclosure facially unconstitutional and unenforceable by CDPHE under the First Amendment;

(j) Ordering CDPHE to provide for the return of all illegal amounts collected by LPMA from ILMA members who manufacture, sell, or distribute Lubricant Packaging in Colorado;

(k) Ordering CDPHE to provide for the return of all illegal amounts collected by CAA from ILMA members who manufacture, sell, or distribute Non-Lubricant Packaging in Colorado;

(l) Entering preliminary and permanent injunctive relief to prevent CDPHE's unlawful application and enforcement of the Act against ILMA members who manufacture, sell, or distribute Lubricant Packaging and/or Non-Lubricant Packaging in Colorado;

(m) Entering preliminary and permanent injunctive relief providing that CDPHE cannot enforce the Ban on Cost Disclosure against any party;

(n) Awarding ILMA its attorneys fees and costs consistent with applicable law; and

(o) Awarding ILMA such other and further relief as needed to rectify the harm caused by CDPHE.

DATED: March 12, 2026

Respectfully submitted,

/s/ Timothy G. Atkinson

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