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## FOREWORD

CONLIN REIS  
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Continuing its commitment to provide a forum for students and legal professionals to explore various legal issues that impact agriculture, the San Joaquin Agricultural Law Review is proud to present Volume 23. On behalf of the Editorial Board, a heartfelt thank you to everyone who contributed to this volume, including but not limited to our hardworking staff members, professional contributions, and faculty advisors.

In the lead article, *State-level Aquaculture Leasing and Permitting Regulations: Balancing a Growing American Industry with Environmental Protection*, Lauren Bernadett addresses difficulties in permitting and leasing for domestic aquaculture. She discusses the problems with importing over ninety percent of the seafood consumed in the United States and makes the case for decreasing regulatory barriers to entry into domestic aquaculture. She analyzes leasing and permitting frameworks in California, North Carolina, and Maine. She concludes by suggesting the best policies that states can utilize to streamline permitting and leasing while still maintaining environmental protection and accountability. These best policies include specialized governmental staff and departments, streamlined applications, offering different types of leases and permits, prioritizing aquaculture as a beneficial use for leasing, environmentally protective siting, monitoring the environmental impacts of operations, retaining some authority to revoke leases, and promoting aquaculture research and development.

Josh Hallenbeck & Mark Murphey Henry, J.D., L.L.M., in *The Futile Exercise*, analyze the legal strategy used in *OSGATA v. Monsanto* by a non-profit organization known as PUBPAT, as a snapshot by which to explore the growing body of litigation involving patented plant technology and the ensuing genetic contamination. The authors give context to the involvement of PUBPAT in connection with OSGATA and then analyze the weight of OSGATA's claims against the relevant body of patent case law to determine if such a legal challenge (for plaintiffs having actual legal standing) is likely to succeed in the future. They then utilize the expiration of Monsanto's Roundup Ready Generation One Technology patents, which are set to expire in 2014, as a means by which to discuss the potential implications were PUBPAT to have ultimately succeeded using its patent invalidity theories.

Finally, they conclude by analyzing the many issues triggered by domestic and international regulatory approval processes in the use of genetically modified crops as a means by which to further flesh out the implications of patent invalidation.

In *Taking “Baby Steps” Towards Protecting Our Children: Why Proposition 65 Does Not Do Enough to Protect Infants From Lead Exposure*, Corina Burchfield discusses a recent discovery that particular flavors and brands of baby food contain trace amounts of lead and a subsequent state court decision rejecting advocate groups’ claims that a Proposition 65 warning should be placed on the labels of such foods. Ms. Burchfield scrutinizes the court’s decision and explores the application of and policy behind the “safe harbor level” and “naturally occurring” exemptions of Proposition 65. She takes the position that the exemptions should not apply to food that is specifically marketed for infants, since there is no insignificant amount of lead that infants can safely ingest.

Carmen Kalashian, in *Out of Sight, Out of Mind: Finding a Solution to Food Waste in America*, suggests that the current food date labeling system creates misleading labels based on current federal law that prohibits such misleading methods used on food. She explores how improving the date labeling policies and practices would bring benefits to consumers, reduce food waste, and extend the amount of food available to donate. She concludes that the most effective remedy is for the federal government to implement a more efficient and uniform food date labeling system across the United States.

In *Protecting National Security: How the United States Government Put Our Nation at Risk by Approving the Acquisition of Smithfield Foods by Shuanghui International*, Nichola Garver Krebsbach examines Congress’ original intent in creating the National Security Act of 1947, and whether that intent was faithfully advanced when the Obama Administration recently allowed a nefarious Chinese conglomerate to acquire the world’s largest pork producer, U.S.-based Smithfield Foods. The comment discusses the numerous threats to national security inherent in the Shuanghui acquisition, including risk to the safety and adequacy of the U.S. food supply at the hands of a hostile foreign government, risk to critical economic and military infrastructure, and an increased probability of espionage and terrorism. The author outlines the existing federal statutes that address potentially threatening foreign acquisitions, and analyzes how the President could have



blocked the merger between the two private parties under the authority of the Exon-Florio and Byrd Amendments. The author argues that the acquisition should not have been approved, regardless of the economic benefit of foreign direct investment during the current post-recessionary period, and that President Obama's approval stands in direct contravention to the intent behind the security-focused legislation designed to protect the nation and its citizens. She concludes by recommending multiple legislative solutions that would serve to avoid the same potentially dangerous outcome as occurred in the Smithfield acquisition.

Sarah McNabb, in *California's Proposition 2 Has Egg Producers Scrambling: Is It Constitutional?* analyzes whether the proposition is constitutional under the Dormant Commerce Clause due to the burdens it imposes on out-of-state producers. There has been growing public awareness of animal welfare as it relates to food production procedures and states are increasingly introducing ballot initiatives and adopting regulations requiring improved animal welfare practices. Some states have passed statutes requiring all producers selling particular products in the state to meet the same animal welfare requirements. California's Proposition 2, which requires more spacious enclosures for egg-producing hens, is one such statute. This Comment provides an analysis of the appropriate balancing test; balancing the burdens placed on out-of-state egg producers and the legitimate state interests of improving the health of those who consume eggs and preventing animal cruelty to hens used in egg production. Ms. McNabb concludes that Proposition 2 is constitutionally permissible under the Dormant Commerce Clause and recommends federal legislation regulating egg production throughout the country.

Katherine Pankow, in *An Equitable Proposal for Injunctive Relief to End Casualties in Cultivation*, discusses the California legislature's failed efforts to pass preventative measures that would have addressed the heat-related farm worker deaths and injuries that continue to occur in California each summer. She argues that if farm workers could obtain a statutory right to injunctive relief to compel their employers to comply with Cal/OSHA regulations, then heat-related illness could be effectively prevented without unduly burdening agribusiness. In determining whether to issue the injunction, she suggests that the courts should use the standard set forth in *Brinker v. Superior Court*. This article won the McGeorge School of Law's 2014 Stauffer Charitable Trust Award for outstanding student scholarship and excellence in writing.

In *It's Everyone's Beeswax: How Weaknesses in the Federal Regulation of Pesticides Endanger the Environment and Threaten the Public Welfare*, Jarrett Rogers analyzes the current system for regulating the use of pesticides in the United States under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and proposes that weaknesses in the law leave room for vast amounts of untested toxins to enter the market with little to no oversight by the Environmental Protection Agency. Highlighting the charges levied against neonicotinoids, a commonly used class of pesticides implicated in the dramatic collapse of honeybee populations over the last decade, Rogers explores the increased use of the conditional registration process over the years. He goes on to discuss the Agency's lack of useful standard for assessing harm to important pollinators, its questionable procedure for granting conditional registrations, its inability to effectively monitor these registrants for compliance once registration is granted, and its frequent reluctance to cancel or suspend active registrations once problems are detected. He proposes changing these standards and procedures to better reflect evolving scientific understanding and suggests scaling back the use of the conditional registration process to better comport with the spirit with which FIFRA was created and amended. He ultimately concludes that if left unchanged, the current system for regulating pesticides could create both an environmental crisis and a human health disaster.

Tiffany B. Wong, in *Playing Politics with Food: Comparing Labeling Regulations of Genetically Engineered Foods Across the North Atlantic in the United States and European Union*, examines the United States regulatory system for genetically engineered foods. She compares the United States' approach (substantial equivalence) to regulating genetically engineered foods with that of the European Union (risk-based), and demonstrates how the perceived uncertainty of the Food and Drug Administration's policy has increased popular concern and public controversy toward the risk of consuming genetically engineered food. She explores how public perceptions of risk and trade implications for the United States' export market have led to state and federal initiatives to label genetically engineered foods in the United States. She concludes by recommending a cohesive national policy for the regulation of genetically engineered products to best meet consumer concerns and preserve international trade as the world market for genetically engineered products continues to expand.

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