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10  
11 IN THE UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA  
13 FRESNO DIVISION  
14

15 UNITED FARM WORKERS, *et al.*,

16 Plaintiffs,

17 v.  
18

19 SONNY PERDUE, in his official capacity as  
the Secretary of the United States Department  
20 of Agriculture, *et al.*,

21 Defendants.

Case No. 1:20-CV-01452-DAD-JLT

**DEFENDANTS' MOTION TO MODIFY AND  
DISSOLVE TRO AND PRELIMINARY  
INJUNCTION**

**NO HEARING REQUESTED**

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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that at the earliest practical date to be set by the Court, and pursuant to  
4 Local Rule 231(e), Defendants the Department of Agriculture (“USDA”), Secretary Perdue, and  
5 Undersecretary Northey will and hereby do move the Court to modify and dissolve the temporary  
6 restraining order and preliminary injunction issued on October 28, 2020. *See* Order Granting Plaintiffs’  
7 Motion for a Temporary Restraining Order and Preliminary Injunction, ECF 33 (“Order” or “October 28  
8 Order”). Dissolution of the preliminary injunction is warranted because the now-final rule issued by the  
9 Department of Labor (“DOL”) and published on November 5, 2020, negates the legal premise for the  
10 Court’s October 28 Order; as a result, Plaintiffs now lack any Article III injury which is redressed by  
11 continued maintenance of the injunction. The injunction should therefore be dissolved. Defendants also  
12 respectfully request an administrative stay during the pendency of this motion.

13 This Motion is supported by the accompanying Memorandum of Points and Authorities, and such  
14 other written or oral argument as may be presented at or before the time this motion is taken under  
15 submission by the Court. In accordance with this Court’s Standing Order, *see* ECF 6-1 at 2, counsel for  
16 Defendants conferred with Plaintiffs’ counsel prior to filing this motion with the Court. On November 4,  
17 2020, Counsel discussed the substance of Defendants’ motion by phone. Counsel did not reach an  
18 alternative resolution. Plaintiffs oppose the relief sought in this motion.

19 Defendants submit this motion for decision without oral argument in light of the nature and timing  
20 of the relief sought. *See* ECF 6-1 at 1. Defendants’ counsel is, however, available for argument at the  
21 Court’s earliest convenience.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **INTRODUCTION**

24 Plaintiffs’ Complaint and the analysis contained in the Court’s October 28 Order both turned on  
25 Plaintiffs’ assertion that USDA’s Farm Labor Survey (“FLS”) and Farm Labor report (“FLR”) are the sole  
26 means for DOL to determine the Adverse Effect Wage Rate (“AEWR”). Today, DOL published a new  
27 AEWR regulation that negates that premise. *See* Adverse Effect Wage Rate Methodology for the  
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