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11
12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**
14 **FRESNO DIVISION**

15 UNITED FARM WORKERS and UFW
16 FOUNDATION,

17 Plaintiffs,

18 v.

19 SONNY PERDUE, WILLIAM NORTHEY, and
20 THE UNITED STATES DEPARTMENT OF
21 AGRICULTURE,

22 Defendants.

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

**PLAINTIFFS' OPPOSITION TO
MOTION TO MODIFY AND
DISSOLVE TRO AND PRELIMINARY
INJUNCTION**

ORAL ARGUMENT REQUESTED

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INTRODUCTION

Nothing about the rule recently issued by the United States Department of Labor (DOL) obviates the necessity for the preliminary injunction issued by this Court. This Court enjoined the United States Department of Agriculture (USDA) from ending (1) data collection through the Farm Labor Survey (FLS) and (2) publication of the Farm Labor Report (FLR)—including the survey originally planned for October 2020 and the report scheduled for publication in November 2020. In so doing, the Court recognized that unless USDA collects data now, hundreds of thousands of U.S. farmworkers and agricultural guestworkers would likely experience devastating wage cuts if DOL cannot provide a satisfactory replacement for the current AEWR methodology by the end of the year.

DOL has now issued a rule that, when it becomes effective on December 21, 2020, will modify the methodology for calculating AEWRs. That methodology—which drastically departs from the proposed rule DOL issued in July 2019—arbitrarily freezes 2020 AEWRs for two years instead of using the most accurate, recent FLS data to issue 2021 AEWRs. The rule also uses a generic labor index to adjust AEWRs—based on outdated FLS data—starting in 2023. While acknowledging that “the FLS has been the only comprehensive survey of wages paid by farmers and ranchers,” DOL justifies its decision to stop using updated FLS data largely by relying on USDA’s decision to discontinue the survey. However, the rule ignores that, under this Court’s Order, 2020 FLS data will be available to calculate 2021 AEWRs. DOL also chose to freeze farmworker wages and then adjust those wages using an index that does not measure farmworker wages, even though it recognizes that paying below-market wages harms farmworkers and contravenes DOL’s statutory mandate. That contradiction is underscored by DOL’s concession that the rule is actually meant to depress farmworker wages below market rates.

For three reasons, DOL’s new rule does not impact the Court’s conclusion that farmworkers will be irreparably injured absent injunctive relief or render Plaintiffs’ claims moot. *First*, the rule does not undermine any fact, premise, or assumption underlying this Court’s findings that Plaintiffs’ members would be irreparably harmed absent injunctive relief. The Court anticipated and considered DOL’s forthcoming rule when it issued the injunction. Defendants’ motion to dissolve the injunction thus amounts to an improper request for this Court to reconsider issues it already decided. And in any



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