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**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

CENTER FOR FOOD SAFETY; FOOD &
 WATER WATCH, INC.; HUMANE FARMING
 ASSOCIATION; PETER VAN GORDER; and
 ROBIN MANGINI;

Plaintiffs,

Case No. 4:20-cv-00256-JSW

**FIRST AMENDED COMPLAINT
 FOR DECLARATORY
 AND INJUNCTIVE RELIEF
 (ADMINISTRATIVE
 PROCEDURE ACT CASE)**

v.

SONNY PERDUE, in his official capacity as the Secretary of the U.S. Department of Agriculture; MINDY BRASHEARS, in her official capacity as the Deputy Under Secretary for Food Safety, U.S. Dept. of Agriculture; U.S. DEPARTMENT OF AGRICULTURE; and FOOD SAFETY AND INSPECTION SERVICE;

Defendants.

INTRODUCTION

1. The plaintiff non-profit organizations, Center for Food Safety (CFS), Food & Water Watch, Inc. (FWW); the Humane Farming Association (HFA); FWW member Peter Van Gorder; and CFS and FWW member Robin Mangini (collectively, Plaintiffs) bring this action against the above-listed Defendants (individually and collectively Defendants) for their issuance of new rules that vitiate this country's food-safety inspection system for swine in slaughter plants, effectively turning it over to the slaughter companies themselves. Defendants' New Swine Inspection System (NSIS) rules, at 84 Fed. Reg. 52300 (October 11, 2019), also lift prior limits on slaughter-line speeds, allowing plants to move swine carcasses past government inspection-program personnel (hereinafter, inspectors or Program employees) at speeds that neuter the mandatory government's critical appraisal of swine carcasses and parts. Defendants approved these dangerous regulatory rollbacks, despite the fact that contaminated pork may cause as many as 1.5 million cases of foodborne illnesses, 7,000 hospitalizations, and 200 deaths in the United States each year.

2. As a result of all of these changes—which will essentially eliminate much of the government inspection of ninety-three percent of the domestic pork supply—the health and welfare of the individual plaintiffs, as well as that of CFS, FWW, and HFA's members, are seriously endangered by adulterated and unwholesome pork product. The individual plaintiffs and the groups' members have already been forced to spend money and will continue spending money in an attempt to avoid pork from animals slaughtered in plants likely to switch to NSIS.

3. The rules cannot stand and should be permanently enjoined. They are *ultra vires* and contrary to the Federal Meat Inspection Act (FMIA or the act), 21 U.S.C. §§ 602-695 (2018).

1 Further, they are otherwise contrary to constitutional right, power, privilege, or immunity and
2 arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law in violation
3 of the Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559, 701-706 (2018).

4 **JURISDICTION**

5 4. This Court has jurisdiction under 28 U.S.C. § 1331 (2018), which grants federal district
6 courts “original jurisdiction of all civil actions arising under the . . . laws . . . of the United States,”
7 as well as the APA, 5 U.S.C. §§ 702 and 704, and 21 U.S.C. § 674 (2018), which establishes U.S.
8 district court jurisdiction for all kinds of cases arising under the FMIA.

9 **VENUE AND INTRADISTRICT ASSIGNMENT**

10 5. Venue is proper in this Court under 28 U.S.C. § 1391 (2018) because this suit was filed in
11 the district where Plaintiffs CFS, HFA, Peter Van Gorder, and Robin Mangini all reside, and there
12 is no real property involved in the action. Plaintiff CFS resides in the County of San Francisco and
13 has more than 15,500 members in Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo,
14 and Sonoma counties. Plaintiff HFA resides in the County of Marin, with roughly 40,000 members
15 in California and 12,000 residing in Alameda, Contra Costa, Marin, Napa, San Francisco, San
16 Mateo, and Sonoma counties.

17 6. Plaintiff Robin Mangini resides in Alameda County. Peter Van Gorder resides in
18 Sonoma County. FWW has an office in Oakland and more than 9,400 dues-paying members in
19 Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Sonoma counties.

20 7. This Court may issue a declaratory judgment in this case pursuant to the Declaratory
21 Judgment Act, 28 U.S.C. §§ 2201-2202 (2018), and may grant the requested relief pursuant to the
22 APA, 5 U.S.C. § 706, 28 U.S.C. § 1651(a) (2018), the Federal Rules of Civil Procedure, and
23 pursuant to its inherent authority as a federal district court.

24 **PARTIES**

25 8. Plaintiff CFS is a national, non-profit, public interest and environmental advocacy
26 organization that works to protect human health and the environment by curbing the use of harmful
27 food production technologies and by promoting organic and other forms of sustainable agriculture.

1 CFS has approximately 950,000 members in the United States, with nearly 67,000 in California,
2 including Plaintiff Robin Mangini. CFS's members were some of the hundreds of thousands of
3 individuals that submitted public comments to the FSIS in 2018, urging the Defendants not to
4 finalize the proposed NSIS rules.

5 9. Plaintiff FWW is a national, non-profit, public interest, consumer advocacy organization
6 that works to ensure safe food and clean water. FWW presently has approximately 284,000 dues-
7 paying members in the United States, with 33,000 in California, including Plaintiffs Peter Van
8 Gorder and Robin Mangini. Its members were some of the hundreds of thousands of individuals
9 that submitted public comments to the Defendants in 2018, urging them not to finalize the proposed
10 NSIS rules.

11 10. Plaintiff HFA is a national, non-profit, animal protection and consumer advocacy
12 organization—registered since 1985 as a tax-exempt charity under §501(c)(3) of the Internal
13 Revenue Code—that works to advance the welfare of farm animals and protect the health of
14 Americans who consume animal products. HFA's programs focus on protecting farm animals from
15 cruelty, protecting the public from the risks of consuming adulterated and unwholesome animal
16 products produced in slaughterhouses, restricting the misuse of antibiotics, hormones, and other
17 chemicals used on industrial farms, and protecting the environment from the impacts of
18 industrialized animal farming. HFA currently has approximately 250,000 members in the United
19 States. In 2018, HFA submitted comments to the Defendants urging against adoption of the then-
20 proposed NSIS rules which are the subject of this lawsuit.

21 11. Plaintiff Peter Van Gorder is a resident of Sebastopol, California. He is a dues-paying
22 member of FWW. Before the challenged NSIS rules became effective, he has been a regular
23 consumer of pork, and he intended to continue consuming unadulterated USDA-inspected pork
24 product.

25 12. Plaintiff Robin Mangini is a resident of Piedmont, California. She is a dues-paying
26 member of FWW and a member of CFS. Before the NSIS rules became effective, she has been a
27
28

1 regular consumer of pork, and she intended to continue consuming unadulterated USDA-inspected
2 pork product.

3 13. Defendant Sonny Perdue is the Secretary of the U.S. Department of Agriculture (USDA)
4 and is given authority to administer or delegate the administration of the FMIA. 21 U.S.C. §§ 621,
5 601(a).

6 14. Defendant Dr. Mindy Brashears is Deputy Under Secretary of Food Safety for the
7 USDA, which has been delegated the administration of the FMIA by the USDA Secretary. 7
8 C.F.R. § 2.18(a)(1)(ii)(B) (2019).

9 15. Defendant USDA is the U.S. department that houses Defendant FSIS.

10 16. Defendant FSIS's staff and senior management wrote and approved the final NSIS rules.
11 The agency is responsible for ensuring that the nation's commercial supply of meat, poultry, and
12 egg products is safe, wholesome, and correctly labeled and packaged for human consumption.

13 **STATUTORY BACKGROUND**

14 **A. The Administrative Procedure Act**

15 17. The APA governs federal agency actions, including but not limited to its rulemaking.
16 The purpose for the APA is to improve the administration of justice by prescribing fair
17 administrative procedure.

18 18. Under the APA, a court is empowered to hold unlawful and set aside agency action for
19 findings and conclusions that, among other reasons, are "contrary to constitutional right, power,
20 privilege, or immunity[,] . . . arbitrary, capricious, an abuse of discretion, or otherwise not in
21 accordance with law[.]. . . in excess of statutory jurisdiction, authority, or limitations, or short of
22 statutory right[,] . . . and without observance of procedure required by law." 5 U.S.C. § 706(2).

23 **B. The Federal Meat Inspection Act**

24 19. When Congress passed the FMIA in 1907 it declared that "[i]t is essential in the public
25 interest that the health and welfare of consumers be protected by assuring that meat and meat food
26 products distributed to them are wholesome, not adulterated, and properly marked, labeled, and
27 packaged." 21 U.S.C. § 602. To achieve this goal, Congress authorized the Secretary of
28

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