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

24 CENTER FOR FOOD SAFETY; FOOD &
25 WATER WATCH, INC.; HUMANE FARMING
26 ASSOCIATION; and ROBIN MANGINI;

27 *Plaintiffs,*

28 v.

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

**SECOND AMENDED
COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE RELIEF**

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

(ADMINISTRATIVE
 PROCEDURE ACT CASE)

5 *Defendants.*

6 **INTRODUCTION**

7
 8 1. The plaintiff non-profit organizations, Center for Food Safety (CFS), Food & Water
 9 Watch, Inc. (FWW); the Humane Farming Association (HFA); and CFS and FWW member Robin
 10 Mangini (collectively, Plaintiffs) bring this action against the above-listed Defendants (individually
 11 and collectively Defendants) for their issuance of new rules that vitiate this country's food-safety
 12 inspection system for swine in slaughter plants, effectively turning it over to the slaughter
 13 companies themselves. Defendants' New Swine Inspection System (NSIS) rules, at 84 Fed. Reg.
 14 52300 (October 11, 2019), also lift prior limits on slaughter-line speeds, allowing plants to move
 15 swine carcasses past government inspection-program personnel (hereinafter, inspectors or Program
 16 employees) at speeds that neuter the mandatory government's critical appraisal of swine carcasses
 17 and parts. Defendants approved these dangerous regulatory rollbacks, despite the fact that
 18 contaminated pork may cause as many as 1.5 million cases of foodborne illnesses, 7,000
 19 hospitalizations, and 200 deaths in the United States each year.

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

26 3. The rules cannot stand and should be permanently enjoined. They are *ultra vires* and
 27 contrary to the Federal Meat Inspection Act (FMIA or the act), 21 U.S.C. §§ 602-695 (2018).
 28

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, and Robin Mangini all reside, and there is no real property
12 involved in the action. Plaintiff CFS resides in the County of San Francisco and has more than
13 15,500 members in Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Sonoma
14 counties. Plaintiff HFA resides in the County of Marin, with roughly 40,000 members in California
15 and 12,000 residing in in Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and
16 Sonoma counties. Plaintiff Robin Mangini resides in Alameda County. FWW has on office in
17 Oakland and more than 9,400 dues-paying members in Alameda, Contra Costa, Marin, Napa, San
18 Francisco, San Mateo, and Sonoma counties.

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

23 PARTIES

24 7. Plaintiff CFS is a national, non-profit, public interest and environmental advocacy
25 organization that works to protect human health and the environment by curbing the use of harmful
26 food production technologies and by promoting organic and other forms of sustainable agriculture.
27 CFS has approximately 950,000 members in the United States, with nearly 67,000 in California,
28

1 including Plaintiff Robin Mangini. CFS's members were some of the hundreds of thousands of
2 individuals that submitted public comments to the Defendants in 2018, urging them not to finalize
3 the proposed NSIS rules.

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

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

19 10. Plaintiff Robin Mangini is a resident of Piedmont, California. She is a dues-paying
20 member of FWW and a member of CFS. Before the NSIS rules became effective, she has been a
21 regular consumer of pork, and she intended to continue consuming unadulterated USDA-inspected
22 pork product.

23 11. Defendant Sonny Perdue is the Secretary of the U.S. Department of Agriculture (USDA)
24 and is given authority to administer or delegate the administration of the FMIA. 21 U.S.C. §§ 621,
25 601(a).*

26
27 * Secretary Perdue no longer holds office, so under to Fed. R. Civ. P. 15(d), his successors is to
28 be automatically substituted as a party. As of this filing, a successor has yet to take office.

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

4 13. Defendant USDA is the U.S. department that houses Defendant Food Safety and
5 Inspection Service (FSIS or “agency”).

6 14. Defendant FSIS’s staff and senior management wrote and approved the final NSIS rules.
7 The agency is responsible for ensuring that the nation’s commercial supply of meat, poultry, and
8 egg products is safe, wholesome, and correctly labeled and packaged for human consumption.

9 **STATUTORY BACKGROUND**

10 **A. The Administrative Procedure Act**

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

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

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

20 17. When Congress passed the FMIA in 1907 it declared that “[i]t is essential in the public
21 interest that the health and welfare of consumers be protected by assuring that meat and meat food
22 products distributed to them are wholesome, not adulterated, and properly marked, labeled, and
23 packaged.” 21 U.S.C. § 602. To achieve this goal, Congress authorized the Secretary of
24 Agriculture to issue regulations “to protect the health and welfare of consumers” from
25 “[u]nwholesome, adulterated, or misbranded meat or meat food products[.]” *Id.* The reason was

26 _____
27 [†] Under Secretary Brashears no longer holds office, so under to Fed. R. Civ. P. 15(d), her
28 successor is to be automatically substituted as a party. As of this filing, a successor has yet to
take office.

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