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22 **UNITED STATES DISTRICT COURT**  
23 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
24 **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.  
5 Dept. of Agriculture; U.S. DEPARTMENT OF  
6 AGRICULTURE; and FOOD SAFETY AND  
7 INSPECTION SERVICE;

(ADMINISTRATIVE  
PROCEDURE ACT CASE)

*Defendants.*

## INTRODUCTION

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).\*

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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).<sup>†</sup>

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 <sup>†</sup> 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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