

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL PORK PRODUCERS
COUNCIL & AMERICAN FARM
BUREAU FEDERATION,

Plaintiffs,

v.

KAREN ROSS, in her official capacity as
Secretary of the California Department of
Food and Agriculture, SONIA ANGELL,
in her official capacity as Director of the
California Department of Public Health,
and XAVIER BACERRA, in his official
capacity as Attorney General of
California,

Defendants,

THE HUMAN SOCIETY OF THE
UNITED STATES; ANIMAL LEGAL
DEFENSE FUND; ANIMAL
EQUALITY; THE HUMAN LEAGUE;
FARM SANCTUARY; COMPASSION
IN WORLD FARMING USD; and
COMPASSION OVER KILLING

Defendant-Intervenors.

Case No.: 19-cv-02324 W (AHG)

ORDER:

**(1) GRANTING DEFENDANTS'
MOTION TO DISMISS [DOC. 18];
AND**

**(2) GRANTING DEFENDANT-
INTERVENORS' MOTION FOR
JUDGMENT ON THE PLEADINGS
[DOC. 19.]**

1 Pending before this Court are Defendants’ motion to dismiss and Defendant-
2 Intervenor’s motion for judgment on the pleadings. The Court decides the matters
3 without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons that
4 follow, the Court **GRANTS** Defendants’ motion to dismiss [Doc. 18] and Defendant-
5 Intervenor’s motion for judgment on the pleadings [Doc. 19] with leave to amend.

6
7 **I. BACKGROUND**

8 National Pork Producers Council & American Farm Bureau Federation
9 (collectively “Plaintiffs”) file this case against Defendants Karen Ross, in her official
10 capacity as Secretary of California Department of Food and Agriculture, Sonia Angell, in
11 her official capacity as Director of the California Department of Public Health, and
12 Xavier Bacerra, in his official capacity as Attorney General of California (collectively
13 “Defendants”). Plaintiffs file this action for declaratory and injunctive relief and allege
14 California’s Proposition 12 violates the Commerce Clause of the U.S. Constitution.

15
16 **A. Procedural Background**

17 This case was initially filed on December 5, 2019. (*Compl.* [Doc. 1].) On January
18 9, 2020 Defendant-Intervenor’s motion to intervene was granted. [Doc. 17.] On January
19 10, 2020, Defendants filed a motion to dismiss for failure to state a claim. [Doc. 18.]
20 That same day Defendant-Intervenor filed a motion for judgment on the pleadings.
21 [Doc. 19.] Plaintiffs filed an opposition to these motions on February 28, 2020. [Doc.
22 26.]

23 On January 29, 2020, California Egg Farmers filed a supplemental Amicus Brief in
24 support of the Defendants’ motion to dismiss and Defendant-Intervenor’s motion for
25 judgment on the pleadings. [Doc. 25.] A supplemental Amicus Brief in support of the
26 Plaintiffs was filed on March 10, 2020, by the States of Alabama, Arkansas, Indiana,
27 Iowa, Kansas, Louisiana, Missouri, Nebraska, Ohio, Oklahoma, South Carolina, South
28 Dakota, Texas, Utah, and West Virginia. [Doc. 32.]

1 **B. Factual Background**

2 Plaintiffs allege Proposition 12 violates the Commerce Clause of the U.S.
3 Constitution because it reaches extraterritorially and imposes substantial burdens on
4 interstate commerce. (*Compl.* ¶ 31.) Plaintiffs seek a declaration that Proposition 12
5 violates the Commerce Clause and seek an injunction against the enforcement of
6 Proposition 12’s requirements concerning pork. (*Id.* ¶¶ 31, 32.)

7 Proposition 12 is a ballot initiative passed in November 2018 that amended the
8 California Health and Safety Code. (*Id.* ¶ 14.) Proposition 12 regulates the production of
9 veal, pork, and eggs. (*Id.* ¶ 33.) Importantly for this case, it forbids the sale in California
10 of pork meat from the hogs born of sows (female pigs) not housed in conformity with the
11 law’s requirements. (*Id.* ¶ 21.) The law “requires that a sow cannot be confined in such a
12 way that it cannot lie down, stand up, fully extend its limbs, or turn around without
13 touching the side of its stall or another animal.” (*Id.* ¶ 23.) This requirement, known as
14 the stand up-turn around requirement, “requires producers to house their sows together in
15 a group, referred to as ‘group housing.’” (*Id.* ¶¶ 23, 24.) In contrast, individual stalls
16 each hold one sow and do not allow sows to turn around. (*Id.* ¶ 24.) Thus, Proposition
17 12 bans the use of individual stalls that do not meet the stand up-turn around space
18 requirements. (*Id.* ¶25.)

19 The U.S. Department of Agriculture’s Census of Agriculture for 2017 estimates
20 nearly 65,000 farms nationwide sold hogs for a market value of \$26 billion. (*Id.* ¶ 3.)
21 Pigs are raised throughout the country with a majority of production concentrated in the
22 Midwest and North Carolina. (*Id.* ¶ 5.) A small percentage of farms are structured as
23 “wean to finish,” meaning the pigs are held at the same farm throughout the production
24 process. (*Id.* ¶ 145.) However, a majority of the production of pork comes from a
25 segmented production chain. (*Id.* ¶ 138.) Sows give birth to piglets on sow-specific
26 farms where the piglets are raised for about three weeks before they are weaned at
27 approximately 10 pounds. (*Id.* ¶ 8.) After weaning, piglets are generally moved to
28 nursery farms for about six to eight weeks. (*Id.* ¶¶ 142, 143.) At six to eight weeks

1 piglets have grown into “feeder pigs” and are “transferred again to separate finishing
2 facilities.” (*Id.* ¶ 143.) Pigs spend 16 to 17 weeks at the finishing farms before being
3 sent to markets and packers where the pigs are slaughtered. (*Id.* ¶ 144.) Packers
4 slaughter and butcher the market hogs and sell the pork to wholesalers or retailers, which
5 then distribute to consumers. (*Id.* ¶ 124.) Pork product from one hog is cut into primals,
6 or different cuts of meat, and then shipped to different end users across the country. (*Id.*
7 ¶ 96.)

8 Beginning December 31, 2021, Proposition 12 requires each sow whose offspring
9 is intended to be sold into California be allotted at least 24 square feet in the group pen.
10 (*Id.* ¶ 26.) However, Proposition 12 has an immediate impact on what producers must do
11 now given the time needed for building and production changes. (*Id.*) Plaintiffs allege
12 these requirements are “inconsistent with industry practice and standards, generations of
13 producer experience, scientific research, and standards set by other states.” (*Id.* ¶ 28.)
14 Plaintiffs also allege these requirements impose costly mandates on producers that
15 interfere with commerce among the states and impose costs on pork producers that will
16 ultimately increase costs for American consumers. (*Id.*)

17 In California, there are an estimated 8,000 breeding sows and “1,500 out of
18 California’s 8,000 sows are used in commercial breeding” which produces around 30,000
19 offspring a year. (*Id.* ¶¶ 16, 17.) However, “California’s pork consumption makes up
20 about 13 percent of the national market.” (*Id.* ¶ 20.) As a result, California’s in-state sow
21 breeding does not supply the demand of pork consumption in the state. (*Id.*) Thus, the
22 offspring of approximately “673,000 sows is required to satisfy California consumers’
23 demand for pork meat annually.” (*Id.*)

24 Plaintiffs claim that by imposing these requirements on an industry that is national
25 in scope, Proposition 12 unconstitutionally interferes with the functioning of a \$26 billion
26 a year interstate industry. (*Id.* ¶ 303.) In addition, Plaintiffs claim that compliance with
27 Proposition 12 will require new and less efficient methods of animal husbandry that will
28 increase operating, staff training and veterinary costs. (*Id.* ¶ 322.) As a result, Plaintiffs

1 allege producers may be forced to comply with Proposition 12 standards even if most of
2 their product is not bound for California. (*Id.* ¶¶ 339, 347.)

3 4 **II. LEGAL STANDARD**

5 The Court must dismiss a cause of action for failure to state a claim upon which
6 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6)
7 tests the legal sufficiency of the complaint. See Parks Sch. of Bus., Inc. v. Symington, 51
8 F.3d 1480, 1484 (9th Cir. 1995). A complaint may be dismissed as a matter of law either
9 for lack of a cognizable legal theory or for insufficient facts under a cognizable theory.
10 Balisteri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1990). In ruling on the
11 motion, a court must “accept all material allegations of fact as true and construe the
12 complaint in a light most favorable to the non-moving party.” Vasquez v. L.A. Cnty.,
13 487 F.3d 1246, 1249 (9th Cir. 2007).

14 A complaint must contain “a short plain statement of the claim showing that the
15 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Supreme Court has interpreted
16 this rule to mean that “[f]actual allegations must be enough to raise a right to relief above
17 the speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 554, 555 (2007). The
18 allegations in the complaint must “contain sufficient factual matter, accepted as true, to
19 ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678
20 (2009) (quoting Twombly, 550 U.S. at 570).

21 Leave to amend should be freely granted when justice so requires. See Fed. R.
22 Civ. P. 15(a). However, where an amendment would be futile, a district court may
23 dismiss a pleading without leave. Chubb Custom Ins. Co. v. Space Sys./Loral, Inc., 710
24 F.3d 946, 956 (9th Cir. 2013).

25 A motion for judgment on the pleadings may be brought “[a]fter the pleadings are
26 closed—but early enough not to delay trial[.]” Fed. R. Civ. P. 12(c). “Analysis under
27 Rule 12(c) is substantially identical to analysis under Rule 12(b)(6) because, under both
28 rules, a court must determine whether the facts alleged in the complaint, taken as true,

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