

1 JOSEPH H. HUNT
 Assistant Attorney General
 2 ERIC WOMACK
 Assistant Branch Director
 3 LIAM C. HOLLAND
 Liam.C.Holland@usdoj.gov
 4 N.Y. Bar No. 5580378
 Trial Attorney
 5 Civil Division, Federal Programs Branch
 1100 L Street, NW
 6 Washington, D.C. 20530
 Telephone: (202) 514-4964
 7 Facsimile: (202) 616-8470

8 Counsel for the United States of America

9
 10 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 11

12 CENTER FOR FOOD SAFETY,
 SWANTON BERRY FARMS, INC., FULL
 13 BELLY FARM, INC., DURST ORGANIC
 GROWERS, INC., TERRA FIRMA FARMS,
 14 INC., JACOBS FARM/DEL CABO, INC.,
 LONG WIND FARM, INC., ONECERT,
 15 INC., and MAINE ORGANIC FARMERS
 AND GARDENERS ASSOCIATION,

16 Plaintiffs,

17 vs.

18 SONNY PERDUE, in his official capacity as
 19 Secretary of the United States Department of
 Agriculture, BRUCE SUMMERS, in his
 20 official capacity as Administrator of the
 Agricultural Marketing Service, JENNIFER
 21 TUCKER, Ph.D., in her official capacity as
 Deputy Administrator of the National
 22 Organic Program, and the UNITED
 STATES DEPARTMENT OF
 23 AGRICULTURE,

24 Defendants.

Case No. 3:20-cv-01537-RS

DEFENDANTS' ANSWER

1 Defendants—collectively, Sonny Perdue, Secretary of the U.S. Department of
2 Agriculture; Bruce Summers, Administrator of the Agricultural Marketing Service; Jennifer
3 Tucker, Ph.D., Deputy Administrator of the National Organic Program; and United States
4 Department of Agriculture (USDA)—hereby answer plaintiffs’ Complaint as follows:

5 1. The first and second sentences of this paragraph set forth plaintiffs’
6 characterization of this action, to which no response by the defendants is required. The third
7 sentence of this paragraph sets forth plaintiffs’ characterization of and conclusions of law
8 about a USDA agency action, to which no response by defendants is required. To the extent
9 a response is deemed necessary, defendants deny the allegations in this paragraph.

10 2. This paragraph contains plaintiffs’ characterizations of and legal conclusion
11 about the Organic Foods Production Act (“OFPA”), and the USDA regulations
12 implementing OFPA, to which no response is required. Defendants respectfully refer the
13 Court to the cited statutory and regulatory provisions for a complete and accurate statement
14 of their contents.

15 3. Defendants lack knowledge or information sufficient to form a belief as to the
16 truth of the allegations in the first sentence of this paragraph. To the extent the first sentence
17 of this paragraph contains plaintiffs’ conclusions of law, no response is required. To the
18 extent a response is deemed necessary, defendants deny the allegations in the first sentence
19 of this paragraph. Defendants admit the second sentence only to the extent that that plaintiff
20 Center for Food Safety filed a petition for rulemaking with USDA on January 16, 2019,
21 attached to the complaint as Exhibit A (“the petition”). Defendants respectfully refer the
22 Court to the petition for a complete and accurate statement of its contents. Defendants
23 admit the third sentence only to the extent that USDA denied the petition in a letter dated
24 June 6, 2019, attached to the complaint as Exhibit B (“USDA response letter”). Defendants
25 respectfully refer the Court to the cited USDA response letter for a complete and accurate
26 statement of its contents. Defendants admit the allegations in the fourth sentence of this
27 paragraph.

1 4. This paragraph contains plaintiffs’ conclusions of law, to which no response
2 is required. To the extent a response is deemed necessary, defendants deny the allegations
3 in this paragraph.

4 5. This paragraph contains plaintiffs’ characterization of this lawsuit and their
5 requested relief, to which no response is required. To the extent a response is deemed
6 necessary, Defendants deny that Plaintiffs are entitled to the relief requested or any relief.

7 6. This paragraph contains plaintiffs’ conclusions of law, to which no response
8 is required.

9 7. This paragraph contains plaintiffs’ conclusions of law, to which no response
10 is required.

11 8. The first sentence of this paragraph contains plaintiff Center for Food Safety’s
12 (“CFS”) characterization of this lawsuit, to which no response is required. Defendants lack
13 knowledge or information sufficient to form a belief as to the truth of the allegations in the
14 second and third sentences of this paragraph. The fourth sentence of this paragraph contains
15 plaintiffs’ conclusions of law, to which no response is required. To the extent a response is
16 deemed necessary, defendants deny the allegations in the fourth sentence of this paragraph.

17 9. Defendants lack knowledge or information sufficient to form a belief as to the
18 truth of the allegations in this paragraph.

19 10. Defendants lack knowledge or information sufficient to form a belief as to the
20 truth of the allegations in this paragraph.

21 11. Defendants lack knowledge or information sufficient to form a belief as to the
22 truth of the allegations in the first three sentences of this paragraph. The last six sentences
23 of this paragraph contain plaintiffs’ characterizations of lawsuits, to which no response is
24 required. Defendants respectfully refer the Court to the cited court decisions for a complete
25 and accurate description of their contents.

26 12. The first and sixth sentences of this paragraph contains plaintiffs’ conclusions
27 of law, to which no response is required. To the extent a response is deemed necessary,
28 defendants deny the allegations in the first and sixth sentences of this paragraph. Defendants

1 lack knowledge or information sufficient to form a belief as to the truth of the allegations in
2 the second, third, fourth, and fifth sentences of this paragraph, except defendants admit that
3 CFS provided comments to the NOSB in 2015. Defendants respectfully refer the Court to
4 the cited comments for a complete and accurate description of their contents.

5 13. Defendants lack knowledge of information sufficient to form a belief as to the
6 truth of the allegations in the first four sentences of this paragraph. The fifth sentence of
7 this paragraph contains plaintiffs' conclusions of law, to which no response is required. To
8 the extent a response is deemed necessary, defendants deny the allegations in the fifth
9 sentence of this paragraph.

10 14. Defendants lack knowledge or information sufficient to form a belief as to the
11 truth of the allegations in this paragraph.

12 15. Defendants lack knowledge or information sufficient to form a belief as to the
13 truth of the allegations in this paragraph.

14 16. Defendants lack knowledge or information sufficient to form a belief as to the
15 truth of the allegations in this paragraph.

16 17. Defendants lack knowledge or information sufficient to form a belief as to the
17 truth of the allegations in this paragraph.

18 18. Defendants lack knowledge or information sufficient to form a belief as to the
19 truth of the allegations in the first sentence of this paragraph. To the extent the clause
20 beginning with the sixteenth word of the first sentence of this paragraph contains plaintiffs'
21 conclusions of law, no response is required. The second and third sentences of this
22 paragraph contains plaintiffs' conclusions of law, to which no response is required. To the
23 extent a response is deemed necessary, defendants deny the allegations in the second and
24 third sentences and in the clause beginning with the sixteenth word of the first sentence of
25 this paragraph.

26 19. Defendants lack knowledge or information sufficient to form a belief as to the
27 truth of the allegations in this paragraph.

1 20. Defendants lack knowledge or information sufficient to form a belief as to the
2 truth of the allegations in this paragraph.

3 21. Defendants lack knowledge or information sufficient to form a belief as to the
4 truth of the allegations in this paragraph.

5 22. Defendants lack knowledge or information sufficient to form a belief as to the
6 truth of the allegations in the first through sixth sentences of this paragraph, and with respect
7 to plaintiff Full Belly Farm's alleged beliefs in the seventh sentence of this paragraph. To
8 the extent the seventh sentence of this paragraph contains plaintiffs' conclusions of law, no
9 response is required. To the extent a response is deemed necessary, defendants deny the
10 allegations in the seventh sentence of this paragraph.

11 23. Defendants lack knowledge or information sufficient to form a belief as to the
12 truth of the allegations in this paragraph.

13 24. Defendants lack knowledge or information sufficient to form a belief as to the
14 truth of the allegations in this paragraph.

15 25. This paragraph contains plaintiffs' conclusions of law, to which no response
16 is required. To the extent a response is deemed necessary, defendants deny the allegations
17 in this paragraph.

18 26. Defendants lack knowledge or information sufficient to form a belief as to the
19 truth of the allegations in this paragraph.

20 27. Defendants lack knowledge or information sufficient to form a belief as to the
21 truth of the allegations in this paragraph.

22 28. Defendants lack knowledge or information sufficient to form a belief as to the
23 truth of the allegations in this paragraph.

24 29. Defendants lack knowledge or information sufficient to form a belief as to the
25 truth of the allegations in this paragraph.

26 30. Defendants lack knowledge or information sufficient to form a belief as to the
27 truth of the allegations of the first sentence of this paragraph. The second sentence of this
28 paragraph contains plaintiffs' conclusions of law, to which no response is required. To the

1 extent a response is deemed necessary, defendants deny the allegations in the second
2 sentence of this paragraph.

3 31. Defendants lack knowledge or information sufficient to form a belief as to the
4 truth of the allegations in this paragraph.

5 32. Defendants lack knowledge or information sufficient to form a belief as to the
6 truth of the allegations in this paragraph.

7 33. Defendants lack knowledge or information sufficient to form a belief as to the
8 truth of the allegations in this paragraph.

9 34. Defendants lack knowledge or information sufficient to form a belief as to the
10 truth of the allegations in this paragraph.

11 35. Defendants lack knowledge or information sufficient to form a belief as to the
12 truth of the allegations in this paragraph.

13 36. This paragraph contains plaintiffs' conclusions of law, to which no response
14 is required. To the extent a response is deemed necessary, defendants deny the allegations
15 in this paragraph.

16 37. Defendants lack knowledge or information sufficient to form a belief as to the
17 truth of the allegations in this paragraph.

18 38. Defendants lack knowledge or information sufficient to form a belief as to the
19 truth of the allegations in this paragraph.

20 39. Defendants lack knowledge or information sufficient to form a belief as to the
21 truth of the allegations regarding plaintiff Jacobs Farm's beliefs in the first sentence of this
22 paragraph. To the extent that the first sentence of this paragraph contains plaintiffs'
23 conclusions of law, no response is required. The second sentence of this paragraph contains
24 plaintiffs' conclusions of law, to which no response is required. To the extent a response is
25 deemed necessary, defendants deny the allegations in this paragraph.

26 40. Defendants lack knowledge or information sufficient to form a belief as to the
27 truth of the allegations in this paragraph.

28

1 41. Defendants lack knowledge or information sufficient to form a belief as to the
2 truth of the allegations in this paragraph.

3 42. Defendants lack knowledge or information sufficient to form a belief as to the
4 truth of the allegations in this paragraph.

5 43. This paragraph contains plaintiffs' conclusions of law, to which no response
6 is required. To the extent a response is deemed necessary, defendants deny the allegations
7 in this paragraph.

8 44. Defendants admit the allegations in this paragraph.

9 45. Defendants admit the allegations in the first sentence of this paragraph.
10 Defendants lack knowledge or information sufficient to form a belief as to the truth of the
11 allegations in the first seventeen words of the second sentence of this paragraph and the last
12 twenty-seven words of the third sentence of this paragraph. The last clause of the second
13 sentence and the first clause of the third sentence of this paragraph include plaintiffs'
14 characterization of and legal conclusions about the OFPA, to which no response is required.
15 Defendants respectfully refer the Court to the cited statutory provision for a complete and
16 accurate statement of its contents. To the extent a response a deemed necessary, defendants
17 deny these allegations to the extent they are inconsistent with the statute.

18 46. This paragraph contains plaintiffs' conclusions of law, to which no response
19 is required. To the extent a response is deemed necessary, defendants deny the allegations
20 in this paragraph.

21 47. Defendants lack knowledge or information sufficient to form a belief as to the
22 truth of the allegations in this paragraph.

23 48. Defendants lack knowledge or information sufficient to form a belief as to the
24 truth of the allegations in this paragraph.

25 49. Defendants lack knowledge or information sufficient to form a belief as to the
26 truth of the allegations in this paragraph.

27 50. Defendants lack knowledge or information sufficient to form a belief as to the
28 truth of the allegations in this paragraph.

1 51. This paragraph contains plaintiffs' conclusions of law, to which no response
2 is required. To the extent a response is deemed necessary, defendants deny the allegations
3 in this paragraph.

4 52. The first sentence of this paragraph contains plaintiffs' characterization of this
5 lawsuit, to which no response is required. The second sentence of this paragraph contains
6 plaintiffs' conclusions of law, to which no response is required.

7 53. The first sentence of this paragraph contains plaintiffs' characterization of this
8 lawsuit, to which no response is required. Defendants admit the allegations in the second
9 sentence of this paragraph. The third sentence of this paragraph contains plaintiffs'
10 conclusions of law, to which no response is required.

11 54. The first sentence of this paragraph contains plaintiffs' characterization of this
12 lawsuit, to which no response is required. The second sentence of this paragraph contains
13 plaintiffs' conclusions of law, to which no response is required.

14 55. Defendants admit the allegations in this paragraph.

15 56. This paragraph contains plaintiffs' characterizations of and legal conclusions
16 about the OFPA, to which no response is required. Defendants respectfully refer the Court
17 to the cited statutory provision for a complete and accurate statement of its contents.

18 57. This paragraph contains plaintiffs' characterizations of and legal conclusions
19 about the OFPA and National Organic Program regulations, to which no response is
20 required. Defendants respectfully refer the Court to the cited statutory and regulation
21 provisions for a complete and accurate statement of their contents.

22 58. This paragraph contains plaintiffs' characterizations of and legal conclusions
23 about the OFPA, to which no response is required. Defendants respectfully refer the Court
24 to the cited statutory provision for a complete and accurate statement of its contents.

25 59. This paragraph contains plaintiffs' characterizations of and legal conclusions
26 about the OFPA, to which no response is required. Defendants respectfully refer the Court
27 to the cited statutory provision for a complete and accurate statement of its contents.
28

1 60. This paragraph contains plaintiffs' characterizations of and legal conclusions
2 about the OFPA, to which no response is required. Defendants respectfully refer the Court
3 to the cited statutory provision for a complete and accurate statement of its contents.

4 61. This paragraph contains Plaintiffs' characterization of and legal conclusions
5 about a Senate Report, to which no response is required. Defendants respectfully refer the
6 Court to the cited Senate Report for a complete and accurate statement of its contents.

7 62. This paragraph contains plaintiffs' characterizations of and legal conclusions
8 about the OFPA, to which no response is required. Defendants respectfully refer the Court
9 to the cited statutory provisions and 7 U.S.C. § 6502(14) for a complete and accurate
10 statement of their contents.

11 63. This paragraph contains plaintiffs' characterizations of and legal conclusions
12 about the OFPA, to which to response is required. Defendants respectfully refer the Court
13 to the cited statutory provision for a complete and accurate statement of its contents.

14 64. This paragraph contains plaintiffs' characterizations of and legal conclusions
15 about the OFPA, to which no response is required. Defendants respectfully refer the Court
16 to the cited statutory provision for a complete and accurate statement of its contents.

17 65. This paragraph contains plaintiffs' characterizations of and legal conclusions
18 about the OFPA, to which no response is required. Defendants respectfully refer the Court
19 to the cited statutory provision for a complete and accurate statement of its contents.

20 66. This paragraph contains plaintiffs' characterizations of and legal conclusions
21 about the OFPA, to which no response is required. Defendants respectfully refer the Court
22 to the cited statutory provision for a complete and accurate statement of its contents.

23 67. This paragraph contains plaintiffs' characterizations of and legal conclusions
24 about the OFPA, to which no response is required. Defendants respectfully refer the Court
25 to the cited statutory provision for a complete and accurate statement of its contents.

26 68. The first two sentences of this paragraph contain plaintiffs' characterizations
27 of and legal conclusions about the OFPA, to which no response is required. Defendants
28 respectfully refer the Court to the OFPA for a complete and accurate statement of its

1 contents. The third sentence of this paragraph contains plaintiffs' characterizations of and
2 legal conclusions about a Senate Report, to which no response is required. Defendants
3 respectfully refer the Court to the cited Senate Report for a complete and accurate statement
4 of its contents.

5 69. This paragraph contains plaintiffs' characterizations of and legal conclusions
6 about the OFPA, to which no response is required. Defendants respectfully refer the Court
7 to the cited statutory provision for a complete and accurate statement of its contents.

8 70. This paragraph contains plaintiffs' characterizations of and legal conclusions
9 about the OFPA, to which no response is required. Defendants respectfully refer the Court
10 to the cited statutory provisions for a complete and accurate statement of their contents.

11 71. This paragraph contains plaintiffs' characterizations of and legal conclusions
12 about USDA regulations, to which no response is required. Defendants respectfully refer
13 the Court to the cited regulatory provision for a complete and accurate statement of its
14 contents.

15 72. This paragraph contains plaintiffs' characterizations of and legal conclusions
16 about USDA regulations, to which no response is required. Defendants respectfully refer
17 the Court to the cited regulatory provision for a complete and accurate statement of its
18 contents.

19 73. This paragraph contains plaintiffs' characterizations of and legal conclusions
20 about USDA regulations, to which no response is required. Defendants respectfully refer
21 the Court to the cited regulatory provisions for a complete and accurate statement of their
22 contents.

23 74. This paragraph contains plaintiffs' characterizations of and legal conclusions
24 about USDA regulations, to which no response is required. Defendants respectfully refer
25 the Court to the cited regulatory provision for a complete and accurate statement of its
26 contents.

27 75. This paragraph contains plaintiffs' characterizations of and legal conclusions
28 about USDA regulations, to which no response is required. Defendants respectfully refer

1 the Court to the cited regulatory provision for a complete and accurate statement of its
2 contents.

3 76. This paragraph contains plaintiffs' characterizations of and legal conclusions
4 about USDA regulations, to which no response is required. Defendants respectfully refer
5 the Court to the cited regulatory provision for a complete and accurate statement of its
6 contents.

7 77. This paragraph contains plaintiffs' characterizations of and legal conclusions
8 about the OFPA and USDA regulations, to which no response is required. Defendants
9 respectfully refer the Court to the cited statutory and regulatory provisions for a complete
10 and accurate statement of their contents.

11 78. This paragraph contains plaintiffs' characterizations of and legal conclusions
12 about the Administrative Procedure Act ("APA"), to which no response is required.
13 Defendants respectfully refer the Court to the cited statutory provision for a complete and
14 accurate statement of its contents.

15 79. This paragraph contains plaintiffs' characterizations of and legal conclusions
16 about the APA, to which no response is required. Defendants respectfully refer the Court
17 to the cited statutory provision for a complete and accurate statement of its contents.

18 80. This paragraph contains plaintiffs' characterizations of and legal conclusions
19 about the APA, to which no response is required. Defendants respectfully refer the Court
20 to the cited statutory provision for a complete and accurate statement of its contents.

21 81. Defendants deny the allegations in this paragraph, except to admit that
22 hydroponic systems are systems where organisms grow in the absence of soil.

23 82. Defendants deny the allegation in the first sentence of this paragraph. The
24 second and third sentences of this paragraph contains plaintiffs' characterization of formal
25 recommendations issued by the National Organic Standards Board ("NOSB") on April 29,
26 2010, to which no response is required. To the extent a response is deemed necessary,
27 defendants deny the allegations in the second and third sentences except to admit that the
28 NOSB issued formal recommendations on April 29, 2010 regarding production standards

1 for terrestrial plants in containers and enclosures (“2010 NOSB recommendations”).
2 Defendants respectfully refer the Court to the cited document for a complete and accurate
3 statement of its contents.

4 83. This paragraph contains plaintiffs’ characterization of the 2010 NOSB
5 recommendations, to which no response is required. Defendants respectfully refer the Court
6 to the published 2010 NOSB recommendations for a complete and accurate statement of
7 their contents.

8 84. The first sentence of this paragraph contains plaintiffs’ characterization of the
9 2010 NOSB recommendations, to which no response is required. Defendants respectfully
10 refer the Court to the published 2010 NOSB recommendations for a complete and accurate
11 statement of their contents. To the extent a response is deemed necessary, defendants deny
12 the allegations in the first sentence of this paragraph. Defendants admit the allegations in
13 the second sentence of this paragraph.

14 85. Defendants deny the allegations in the first sentence of this paragraph except
15 to admit that USDA created the Hydroponic and Aquaponic Task Force (the “Task Force”)
16 in 2015. Defendants admit the allegations in the second sentence of this paragraph.

17 86. This paragraph contains plaintiffs’ characterization of the Task Force Report,
18 to which no response is required. Defendants respectfully refer the Court to the published
19 report for a complete and accurate statement of its contents.

20 87. This paragraph contains plaintiffs’ characterization of a memo transmitting
21 the Task Force Report to the NOSB, to which no response is required. Defendants
22 respectfully refer the Court to the published memo for a complete and accurate statement of
23 its contents.

24 88. Defendants deny the allegations in the first and second sentences of this
25 paragraph except to admit that the NOSB Crops Subcommittee presented a proposal entitled
26 “Hydroponic/Aquaponics/Biaponics” at the November 2016 NOSB meeting, that the
27 NOSB referred it back to the Subcommittee for additional work, and that at the November
28 2016 meeting, the NOSB voted on and passed a resolution entitled: “NOSB Resolution on

1 Hydroponics.” The third sentence of this paragraph contains plaintiffs’ characterization of
2 the NOSB Resolution on Hydroponics. Defendants respectfully refer the Court to the
3 published document for a complete and accurate statement of its contents.

4 89. Defendants deny the allegations in this paragraph except to admit that the
5 NOSB Crops Subcommittee published a discussion document entitled
6 “Aeroponics/Hydroponics/Aquaponics” in February 2017.

7 90. Defendants deny the allegations in the first twenty-four words of the first
8 sentence of this paragraph, except to admit that USDA published an “Organic Insider” on
9 January 25, 2018 entitled “Status of Organic Hydroponics, Aquaponics, Aeroponics;
10 National Organic Standards Board Fall 2017 Updates.” The last twenty-four words of the
11 first sentence and the second through fourth sentences of this paragraph each contain
12 plaintiffs’ characterization of the cited “Organic Insider” document, to which no response is
13 required. Defendants respectfully refer the Court to the cited document for a complete and
14 accurate statement of the contents. To the extent a response is deemed necessary,
15 defendants deny the allegations in the last twenty-four words of the first sentence and the
16 second through fourth sentences of this paragraph.

17 91. Defendants deny the allegations in this paragraph except to admit that
18 certifiers have certified organic hydroponics operations since the beginning of the program
19 and continue to certify organic hydroponics operations.

20 92. Defendants deny the allegations in this paragraph except to admit that
21 certifiers have certified organic hydroponics operations since the beginning of the program
22 and continue to certify organic hydroponics operations, that there is disagreement among
23 certifiers as to whether hydroponics should be allowed in organic production, and that some
24 certifiers do not certify such systems at this time.

25 93. Defendants lack knowledge or information sufficient to form a belief as to the
26 truth of the allegations in the first two sentences of this paragraph. This third sentence of
27 this paragraph contains plaintiffs’ conclusions of law, to which no response is required. To
28

1 the extent a response is deemed necessary, defendants deny the allegations in the third
2 sentence of this paragraph.

3 94. This paragraph contains plaintiffs' characterization of the petition, to which
4 no response is required. Defendants respectfully refer the Court to the cited petition for a
5 complete and accurate statement of its contents. Defendants admit that Plaintiff CFS
6 submitted the petition to USDA on January 16, 2019.

7 95. This paragraph contains plaintiffs' characterization of the petition and legal
8 conclusions about the OFPA, to which no response is required. Defendants respectfully
9 refer the Court to the cited petition and the OFPA for a complete and accurate statement of
10 their contents.

11 96. This paragraph contains plaintiffs' characterization of the petition and legal
12 conclusions about the OFPA and USDA regulations, to which no response is required.
13 Defendants respectfully refer the Court to the cited petition, the OFPA, and cited USDA
14 regulations for a complete and accurate statement of their contents.

15 97. Defendants admit the first sentence of this paragraph. The second and third
16 sentences of this paragraph contain plaintiffs' characterization of the USDA response letter,
17 to which no response is required. Defendants respectfully refer the Court to the cited
18 response letter for a complete and accurate statement of its contents.

19 98. This paragraph contains plaintiffs' characterization of the USDA response
20 letter, to which no response is required. Defendants respectfully refer the Court to the
21 USDA response letter for a complete and accurate statement of its contents.

22 99. This paragraph contains plaintiffs' characterization of the USDA response
23 letter, plaintiffs' characterization of the OFPA and USDA regulations, and plaintiffs' legal
24 conclusions, to which no response is required. Defendants respectfully refer the Court to
25 the USDA response letter and the cited statutory and regulatory provisions for a complete
26 and accurate statement of their contents. To the extent a response is deemed necessary,
27 defendants deny the allegations in this paragraph.
28

1 100. This paragraph contains plaintiffs' characterizations of the USDA response
2 letter and of the OFPA, and plaintiffs' legal conclusions, to which no response is required.
3 Defendants respectfully refer the Court to the USDA response letter and the cited statutory
4 provision for a complete and accurate statement of their contents. To the extent a response
5 is deemed necessary, defendants deny the allegations in this paragraph.

6 101. Defendants repeat and incorporate by reference the responses to paragraphs
7 1 through 100 of the complaint contained in all preceding paragraphs.

8 102. This paragraph contains plaintiffs' characterizations of the USDA response
9 letter, to which no response is required. Defendants respectfully refer the Court to the
10 USDA response letter for a complete and accurate statement of its contents.

11 103. This paragraph contains plaintiffs' characterizations of and legal conclusions
12 about the OFPA, to which no response is required. Defendants respectfully refer the Court
13 to the cited statutory provisions for a complete and accurate statement of their contents.

14 104. This paragraph contains plaintiffs' conclusions of law, to which no response
15 is required. To the extent a response is deemed necessary, defendants deny the allegations
16 in this paragraph.

17 105. This paragraph contains plaintiffs' characterizations of and legal conclusions
18 about the APA, to which no response is required. Defendants respectfully refer the Court
19 to the cited statutory provisions for a complete and accurate statement of their contents.

20 106. This paragraph contains plaintiffs' characterizations of the APA and a
21 Supreme Court opinion, to which no response is required. Defendants respectfully refer the
22 Court to the cited statutory provision and the cited opinion for a complete and accurate
23 statement of their contents.

24 107. This paragraph contains plaintiffs' conclusions of law, to which no response
25 is required. To the extent a response is deemed necessary, defendants deny the allegations
26 in this paragraph.

1 108. This paragraph contains plaintiffs' conclusions of law, to which no response
2 is required. To the extent a response is deemed necessary, defendants deny the allegations
3 in this paragraph.

4 109. Defendants repeat and incorporate by reference the responses to paragraphs
5 1 through 108 of the complaint contained in all preceding paragraphs.

6 110. This paragraph contains plaintiffs' characterizations of and legal conclusions
7 about the OFPA and USDA regulations, to which no response required. Defendants
8 respectfully refer the Court to the cited statutory and regulatory provisions for a complete
9 and accurate statement of their contents.

10 111. This paragraph contains plaintiffs' characterizations of and legal conclusions
11 about the OFPA and USDA regulations, to which no response is required. Defendants
12 respectfully refer the Court to the cited regulatory provisions for a complete and accurate
13 statement of their contents. To the extent a response is deemed necessary, defendants deny
14 the allegations in this paragraph.

15 112. This paragraph contains plaintiffs' conclusions of law, to which no response
16 is required. To the extent a response is deemed necessary, defendants deny the allegations
17 in this paragraph.

18 113. This paragraph contains plaintiffs' conclusions of law, to which no response
19 is required. To the extent a response is deemed necessary, defendants deny the allegations
20 in this paragraph.

21 114. Defendants repeat and incorporate by reference the responses to paragraphs
22 1 through 113 of the complaint contained in all preceding paragraphs.

23 115. This paragraph contains plaintiffs' characterizations of and legal conclusions
24 about the USDA response letter and USDA regulations, to which no response is required.
25 Defendants respectfully refer the Court to the USDA response letter and the cited regulatory
26 provisions for a complete and accurate statement of their contents. To the extent a response
27 is deemed necessary, defendants deny the allegations in this paragraph.

28

1 116. This paragraph contains plaintiffs' characterizations of and legal conclusions
2 about the USDA response letter and the OFPA, to which no response is required.
3 Defendants respectfully refer the Court to the USDA response letter and the cited statutory
4 provisions for a complete and accurate statement of their contents. To the extent a response
5 is deemed necessary, defendants deny the allegations in this paragraph.

6 117. This paragraph contains plaintiffs' conclusions of law, to which no response
7 is required. To the extent a response is deemed necessary, defendants deny the allegations
8 in this paragraph.

9 118. This paragraph contains plaintiffs' conclusions of law, to which no response
10 is required. To the extent a response is deemed necessary, defendants deny the allegations
11 in this paragraph.

12 119. Defendants repeat and incorporate by reference the responses to paragraphs
13 1 through 118 of the complaint contained in all preceding paragraphs.

14 120. This paragraph contains plaintiffs' characterizations of and legal conclusions
15 about the OFPA, to which no response is required. Defendants respectfully refer the Court
16 to the cited statutory provision for a complete and accurate statement of its contents.

17 121. This first sentence of this paragraph contains plaintiffs' characterizations of
18 and legal conclusions about the OFPA and USDA regulations, to which no response is
19 required. Defendants respectfully refer the Court to the cited statutory and regulatory
20 provisions for a complete and accurate statement of their contents. The second sentence
21 contains plaintiffs' conclusion of law, to which no response is required. To the extent a
22 response is deemed necessary, defendants deny the allegations in this paragraph.

23 122. This paragraph contains plaintiffs' conclusions of law, to which no response
24 is required. To the extent a response is deemed necessary, defendants deny the allegations
25 in this paragraph.

26 123. This paragraph contains plaintiffs' conclusions of law, to which no response
27 is required. To the extent a response is deemed necessary, defendants deny the allegations
28 in this paragraph.

1 DATED: May 11, 2020

Respectfully submitted,

2 JOSEPH H. HUNT
3 Assistant Attorney General

4 ERIC WOMACK
5 Assistant Branch Director

6 LIAM C. HOLLAND
7 Trial Attorney

8 */s/ Liam C. Holland*

9 LIAM C. HOLLAND
10 NY Bar Reg. No. 5580378
11 Trial Attorney
12 U.S. Department of Justice
13 Civil Division, Federal Programs Branch
14 1100 L. Street, NW
15 Washington, DC 20530
16 Tel: (202) 514-4964
17 Fax: (202) 616-8470
18 Email: liam.c.holland@usdoj.gov

19 *Attorney for Defendants*