

JOINT CASE MANAGEMENT STATEMENT

The parties to the above-entitled action jointly submit this Joint Case Management Statement and Proposed Case Management Order pursuant to the Court's Order of March 18, 2020, ECF No. 11, the Standing Order for All Judges of the Northern District of California, and Civil Local Rule 16-9.

1. Jurisdiction & Service.

Plaintiffs allege that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as defendant), 28 U.S.C. § 2201-02 (declaratory relief), 5 U.S.C. § 702 (Administrative Procedure Act), and 28 U.S.C. § 2201 (declaratory judgments). Plaintiffs allege that this Court has personal jurisdiction over the defendant officers of federal agencies under 28 U.S.C. § 1391(e). Venue in this Court is proper, 28 U.S.C. § 1391(e). All parties have been served.

Defendants do not contest service and do not contest this Court's jurisdiction at this time based on the allegations in Plaintiffs' complaint.

2. Facts.

Plaintiffs bring this action to challenge USDA's decision to deny its legal rulemaking petition (the Petition) to USDA asking USDA to engage in rulemaking to prohibit organic certification of hydroponic operations, which, according to the complaint, are production systems that produce crops in the absence of soil. Plaintiffs bring this civil action for declaratory and injunctive relief. Plaintiffs seek a declaration that Defendant the United States Department of Agriculture (USDA), under Defendants Secretary Sonny Perdue, Administrator Bruce Summers, and Deputy Administrator Jennifer Tucker, Ph.D. (collectively, USDA or Defendants), violated federal laws in denying the Petition.

Plaintiff Center for Food Safety (CFS) filed the Petition on January 16, 2019. In the Petition, CFS alleged, among other things, that hydroponic operations fail to meet the mandatory soil fertility requirements of the Organic Food Production Act (OFPA), which authorized USDA to administer the National Organic Program. USDA denied the Petition in a letter dated June 6,

1 2019 (the Petition Denial), finding that organic certification of hydroponic operations is
2 consistent with the terms of the National Organic Program.

3 Plaintiffs filed this action challenging the Petition Denial on March 2, 2020 under OFPA
4 and the Administrative Procedure Act (APA). Compl., ECF No. 1. Defendants filed an Answer
5 on May 11, 2020. Defs.' Answer, ECF No. 14.

6 Defendants contend that USDA lawfully denied the petition for rulemaking on both legal
7 and policy grounds.

8 **3. Legal Issues.**

9 Plaintiffs allege that USDA's denial of the Petition was unlawful under OFPA and the
10 APA because the Petition Denial creates an exception to organic production requirements to
11 foster soil fertility under OFPA without any statutory basis and is thus *ultra vires* (Claim 1).
12 Plaintiffs also allege that USDA's denial of the Petition fails to comply with its OFPA
13 implementing regulations requiring producers to manage soil fertility; implement tillage, crop
14 rotation, and cover cropping practices; and to improve natural resources including soil quality
15 and is thus arbitrary and capricious, an abuse of discretion, and contrary to law, in violation of
16 the APA (Claim 2). Further, Plaintiffs allege that USDA's rationale in the Petition Denial is
17 arbitrary and capricious, an abuse of discretion, and contrary to law, in violation of the APA
18 (Claim 3). Finally, Plaintiffs allege that, in allowing hydroponic operations to be certified
19 organic without meeting OFPA's statutory and regulatory requirements, USDA's Petition Denial
20 violates OFPA's statutory mandate for uniform national standards for organic production and
21 organic certification (Claim 4).

22 Defendants contend that USDA denied the petition in accordance with the mandates of
23 the OFPA, and therefore did not take any *ultra vires* action, abuse its discretion, act arbitrarily
24 or capriciously, or otherwise violate the APA. The agency properly concluded that the OFPA
25 does not prohibit hydroponic production systems. It properly determined that organic hydroponic
26 systems cycle and conserve resources in a manner consistent with the vision for organic
27 agriculture expressed by the OFPA, that hydroponic organic systems produce food in a way that
28 can minimize damage to soil and water, and that hydroponic organic systems can support diverse

1 biological communities. USDA fully explained these reasons and others in its decision denying
2 the petition—a decision that courts review under an extremely limited and highly deferential
3 standard.

4 **4. Motions.**

5 There are currently no motions pending before the Court. The parties anticipate filing
6 cross-motions for summary judgment and being unable to resolve this dispute without further
7 litigation.

8 **5. Amendment of Pleadings.**

9 Plaintiffs do not expect at this time to seek to amend the complaint.

10 **6. Evidence Preservation.**

11 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
12 Stored Information (ESI). The parties expect the case to be resolved based on an administrative
13 record, subject to any applicable exceptions for extra-record materials. For this reason, the
14 parties agree that there is no need for an order regarding preservation of ESI.

15 **7. Disclosures.**

16 The parties agree that judicial review of all of Plaintiffs' claims will be based on the
17 administrative record, subject to any applicable exceptions for extra-record materials. As such,
18 this action is exempt from the initial disclosure requirements contained in Rule 26 of the Federal
19 Rules of Civil Procedure. *See* Fed. R. Civ. P. 26(a)(1)(B)(i).

20 **8. Discovery.**

21 No discovery has been taken to date. The parties agree that the claims for review will be
22 based on the administrative record, and no discovery is expected unless Plaintiffs find it
23 necessary to seek discovery concerning the production and contents or other matters related to
24 the administrative record, which has not yet been produced.

25 Defendants contend that any discovery in this matter would be inappropriate and contrary
26 to the principles of APA review.

27 **9. Class Actions.** This is not a class action.

28 **10. Related Cases.** There are no related cases.

1 **11. Relief.**

2 Plaintiffs request an order from the Court, including declaratory, injunctive, and equitable
3 relief as detailed in the Complaint, ECF No. 1, as well as costs of litigation including reasonable
4 attorneys' fees.

5 Defendants deny that Plaintiffs are entitled to the requested relief, or to any relief
6 whatsoever, and seek summary judgment in their favor.

7 **12. Settlement and ADR.**

8 The parties do not believe that this case is amenable for ADR or settlement at this time.

9 **13. Consent to Magistrate Judge for All Purposes.**

10 Plaintiffs declined to proceed before a magistrate judge, ECF No. 8, and this matter was
11 subsequently assigned to the Honorable Richard Seeborg, ECF No. 11.

12 **14. Other References.**

13 This case is not suitable for reference to binding arbitration, a special master, or the
14 Judicial Panel on Multidistrict Litigation.

15 **15. Narrowing of Issues.**

16 The parties are not aware at this time of any issues in this litigation that can be narrowed.
17 Narrowing issues for presentation at trial is not relevant in this case, which is based on the
18 administrative record. There is no request to bifurcate issues, claims or defenses.

19 **16. Expedited Trial Procedure.**

20 The parties do not expect that a trial will be necessary, and expect the issues to be
21 resolved on summary judgment.

22 **17. Scheduling and Page-Length Limitations.**

23 The parties have conferred, and jointly propose a summary judgment briefing schedule
24 with staggered briefing to avoid unnecessary duplication and nonresponsive briefs. The parties
25 further propose that should any motion practice regarding the sufficiency of the administrative
26 record be necessary, that such motion be briefed concurrently with the summary judgment
27 briefing schedule. The parties will meet and confer regarding any issues with the administrative
28 record to avoid the need for such motion practice.

Accordingly, the parties jointly propose the following briefing deadlines:

| | |
|---|----------------------------|
| Defendants to produce and lodge the Administrative Record | July 15, 2020 |
| Plaintiffs' Motion for Summary Judgment, and Plaintiffs' Motion to Complete or Supplement the Administrative Record (if necessary) | September 16, 2020 |
| Defendants' Combined Opposition to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment, and Defendants' Opposition to Plaintiffs' Motion to Complete or Supplement the Administrative Record (if necessary) | October 30, 2020 |
| Plaintiffs' Combined Opposition to Defendants' Cross-Motion for Summary Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment, and Plaintiffs' Reply in Support of Plaintiffs' Motion to Complete or Supplement the Administrative Record (if necessary) | December 1, 2020 |
| Defendants' Reply in Support of Defendants' Cross-Motion for Summary Judgment | December 22, 2020 |
| Hearing | As determined by the Court |

In addition, the parties believe that due to the complexity of this case and the number of parties and claims, a small extension of the default page-length limitations is necessary to fully brief the issues on summary judgment. Accordingly, the parties request page limits for their motions for summary judgment as follows: Plaintiffs' opening brief will not exceed **30 pages** (5 additional pages beyond the default 25-page page limit under Civil L.R. 7-2); Defendants' Combined Opposition and Cross-Motion for Summary Judgment brief will not exceed **50 pages** (which combines the default page limits allowed under Civil L.R. 7-2 and 7-3 of 25 pages for a motion and 25 pages for an opposition); Plaintiffs' Combined Opposition to Cross-Motion and Reply will not exceed **45 pages** (5 additional pages beyond the combined page limits under the Civil L.R. 7-3 for oppositions and replies, allowing 25 and 15 pages respectively); and Defendants' Reply in Support of its Cross-Motion will be extended to **25 pages** (10 pages beyond the LR 7-3(c) allowance of 15 pages for reply). This allows for combined summary judgment briefing on the schedule outlined above with a 10-page extension for each party.

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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

Honorable Richard Seeborg
UNITED STATES DISTRICT JUDGE