

Exhibit A

1 William J. Friedman (DC Bar. No. 117050)
2 107 S. West St.
3 Alexandria, VA 22314
4 Tel.: 571.217.2190
5 Email: pedlarfarm@gmail.com

6 Attorney for Plaintiff

7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF COLUMBIA**

9 **ORGANIC TRADE ASSOCIATION,**

10 **Plaintiff,**

11 **v.**

12 **SONNY PERDUE, et al.,**

13 **Defendants.**

Civil Case No.

DECLARATION OF
JESSE LAFLAMME AND PETE
AND GERRY'S ORGANICS LLC in
support of PLAINTIFF'S
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

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16 Pursuant to 28 U.S.C. § 1746 I, declare:

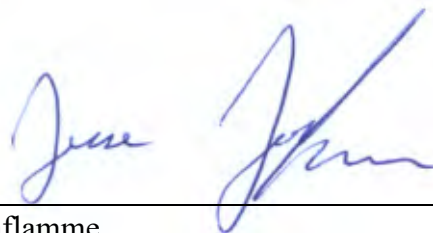
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19 1. I am Jesse LaFlamme, I am the owner and CEO of Pete and Gerry's Organics LLC, based
20 in Monroe, New Hampshire.
- 21 2. Pete and Gerry's Organic Eggs is the #1 selling organic egg brand in the country, and is
22 sold in more than 9,600 retailers. We produce our eggs through a network of more than
23 100 independent family farms in 12 states. In 2003 the company was the first egg farm in
24 the country to earn the Certified Humane designation, and 2013 the company became the
25 first animal agriculture business to earn B-Corp status.
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- 1 3. Animal welfare standards that include outdoor access, allowing animals to engage in
2 natural behaviors, and other best animal husbandry practices are a main tenet of the
3 organic foods production system that distinguishes organic from other agricultural
4 production methods. The practices codified in the final rule were over a decade in the
5 making. *Organic Livestock and Poultry Practices*, 82 Fed. Reg. at 7042-92 (published
6 January 19, 2017) (“final rule”). The rulemaking was guided by the transparent
7 regulatory process mandated by Congress in the Organic Foods Production Act. This
8 unique regulatory process allows farmers, consumers, suppliers, retailers, and all entities
9 of the organic industry to have a seat at the table in developing the USDA organic
10 standards.
11
- 12 4. I have presented testimony at public meetings conducted by the National Organic
13 Standards Board. (“NOSB”).
14
- 15 5. The organic industry overall has experienced double digit growth annually over the last
16 five years, achieving approximately \$43 billion in sales in 2015. The organic livestock
17 and dairy sector represents approximately 17% of total organic sales and the organic
18 dairy sector alone represents the second-largest and fastest-growing food segment in the
19 industry.
20
- 21 6. The final *Organic Livestock and Poultry Practices* rule gives clarity for my business, all
22 organic producers, and those seeking to enter the organic market on what practices are
23 required to meet the animal welfare standards in order to be certified organic. A lack of
24 clarity led to inconsistent practices amongst the industry. We strongly endorse the new
25 rule, and feel it is critical for the integrity of the USDA Organic Program.
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- 1 7. Consumer trust and confidence in the USDA Organic seal are the foundation of our
2 industry. The decision to become certified organic is voluntary, and meeting the high
3 standards that consumers expect from the organic seal maintains a healthy and strong
4 organic marketplace. A recent Consumer Reports survey found that 83% of consumers
5 who frequently purchase organic products believe that organic eggs should come from
6 hens that have access to the outdoors.
- 7
- 8 8. We believe that the failure to implement the final rule, and its welfare provisions, will
9 lead to irremediable damage to consumer trust in the USDA Organic seal because it will
10 fall behind the consumer's expectations for egg production and thus our farmers will
11 suffer severe financial setbacks.
- 12
- 13 9. We also believe that a flat refusal to implement, or continued and inexplicable delay will
14 irremediably damage the public's trust and reliance on the National Organic Standards
15 Board, a public-private partnership in which our industry has placed great reliance and
16 faith.
- 17

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed this 12 day of September 2017.

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22 _____
23 Jesse Laflamme,
24 CEO, Pete and Gerry's Organics LLC

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Exhibit B

1 William J. Friedman (DC Bar. No. 117050)
2 107 S. West St.
3 Alexandria, VA 22314
4 Tel.: 571.217.2190
5 Email: pedlarfarm@gmail.com

6 Attorney for Plaintiff

7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF COLUMBIA**

9 **ORGANIC TRADE ASSOCIATION,**

10 **Plaintiff,**

11 **v.**

12 **SONNY PERDUE, et al.,**

13 **Defendants.**

Civil Case No.

DECLARATION OF
ROBYNN SHRADER, NATIONAL
CO+OP GROCERS, in support of
PLAINTIFF'S COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

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17 Pursuant to 28 U.S.C. § 1746 I, declare:

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19 1. I am the Chief Executive Officer of the National Co+op Grocers. This statement is based
20 on my personal knowledge and upon information and belief.
21
22 2. National Co+op Grocers (“NCG”) is a business services cooperative for retail food co-
23 ops located throughout the United States. We represent 146 food co-ops operating over
24 200 stores in 38 states with combined annual sales over \$2 billion and over 1.3 million
25 consumer-owners.
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- 1 3. NCG helps unify natural food co-ops in order to optimize operational and marketing
2 resources, strengthen purchasing power, and ultimately offer more value to natural food
3 co-op owners and shoppers everywhere.
- 4
5 4. Through its partnerships with organic advocacy groups, NCG frequently presents expert
6 opinion testimony at public meetings conducted by the National Organic Standards
7 Board. (“NOSB”).
- 8
9 5. Our association, and its members frequently submit comments on proposed rules issued
10 by the USDA’s National Organic Program.
- 11
12 6. NCG prioritizes implementing strong organic standards, because strong organic standards
13 are imperative to the success of our business. Consumer confidence in the USDA
14 Certified Organic seal is foundational to our industry. NCG recognizes organic as the
15 gold standard of consumer food labels, because it represents a federally regulated
16 guarantee that food has been produced in a transparent and sustainable way. On average,
17 certified organic product comprises roughly 40% of NCG retail grocery stores’ total
18 annual sales.
- 19
20 7. Our customers expect organic products to meet or exceed the organic standards,
21 including animal welfare provisions for consistent, meaningful outdoor access and indoor
22 space that allows animals to express natural behaviors. If the organic standards are not
23 met, and thereby our customers lose faith in the organic standards and animal welfare
24 provisions therein, this would be an irreparable harm to all cooperative stores that sell
25 organic products.
- 26
27 8. We are familiar with and supported the final rule entitled, *Organic Livestock and Poultry*
28 *Practices*, 82 Fed. Reg. at 7042-92 (published January 19, 2017) (“final rule”).

1 9. When USDA issued its second delay of the final rule, we submitted a letter to Paul
2 Lewis, Director, Standards Division at the USDA National Organic Program, that said,

3 “While the vast majority of organic producers already adhere to strong animal
4 welfare standards, this rule closes existing loopholes and levels the playing field
5 for organic producers, ultimately ensuring that USDA Certified Organic can
6 continue to meet evolving consumer expectations...Any further delay [of the final
7 rule] could significantly erode consumer trust in the organic label, which is the
8 basis not only for organic’s double-digit sales growth, but also fosters a unique,
9 consumer-driven marketplace that allows producers to earn an economically
10 significant premium.”

11 10. NCG continues to support immediate implementation of the final rule.

12 11. Withdrawing this final rule or continuing to delay its implementation harms and will
13 continue to harm NCG and could lead to profound disruption to the marketplace for
14 certified organic products by irretrievably damaging consumer trust in the USDA organic
15 seal.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed this 13th day of September 2017.

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23 Robynn Shrader, National Co+op Grocers
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Exhibit C

1 William J. Friedman (*pro hac vice* pending)
2 107 S. West St.
3 Alexandria, VA 22314
4 Tel.: 571.217.2190
5 Email: pedlarfarm@gmail.com

6 Attorney for Plaintiff

7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF COLUMBIA**

9 **ORGANIC TRADE ASSOCIATION,**

10 **Plaintiff,**

11 **v.**

12 **SONNY PERDUE, *et al.*,**

13 **Defendants.**

Civil Case No.

**DECLARATION OF
KYLA SMITH, ACCREDITED
CERTIFIER'S ASSOCIATION in
support of PLAINTIFF'S
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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17 Pursuant to 28 U.S.C. § 1746 I, Kyla Smith declare:

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1. I am the Board of Directors Chair of the Accredited Certifiers Association. This statement is based on my personal knowledge and upon information and belief.
 2. The Accredited Certifiers Association, Inc. ("ACA") is a 501(c)(3) non-profit educational organization created to benefit the accredited organic certifier community and the organic industry. Our membership includes 53 accredited certification agencies.
 3. Each of our members undergoes a rigorous accreditation review by the USDA that establishes each member's expertise and competence in the area of organic standards and certification systems. The federal accreditation requirements are set forth in 7 C.F.R. Part 205, Subpart F "Accreditation of Certifying Agents."

- 1 4. ACA’s primary mission is to ensure the integrity and consistency of organic certification
2 in the United States. Specific purposes include, developing uniform criteria for
3 implementation of the USDA National Organic Program, certifier training, support and
4 being a forum for discussion of issues impacting organic certification.
- 5 5. Our members are the front-line decision makers for implementation and application of
6 organic production and handling standards across the entirety of the supply chain – from
7 production to retail sale. We also address many questions from the purchasers of
8 certified organic products throughout the supply chain, all the way to retail consumers.
- 9 6. Our members receive direct feedback from producers and handlers and purchasers of
10 organic products.
- 11 7. Our association and its members believe that producers, handlers and consumers trust the
12 USDA organic seal as an assurance of product identity in principal part because of
13 consistent application of the organic requirements by accredited certifying agents in the
14 field.
- 15 8. Our association, and its members frequently present expert opinion testimony at public
16 meetings conducted by the National Organic Standards Board. (“NOSB”).
- 17 9. Our association, and its members frequently submit comments on proposed rules issued
18 by the USDA’s National Organic Program.
- 19 10. Our association and its members are very familiar the final rule entitled, *Organic*
20 *Livestock and Poultry Practices*, 82 Fed. Reg. at 7042-92 (published January 19,
21 2017)(“final rule”) and the *Organic Livestock and Poultry Practices Rule* 81 Fed. at
22 21,956-22,009 (published April 13, 2016)
- 23 11. These two publications captured the work product of many years of effort by the organic
24 community and the National Organic Standards Board.
- 25 12. Among the key issues resolved by the final rule was the access to outdoors for poultry
26 animals, whether grown for meat or eggs. The correct application of the existing
27 standards on this point had been a source of some inconsistency amongst our members
28 primarily due to an unfortunate enforcement decision issued by the USDA early in the
history of the National Organic Program.

1 13. ACA submitted detailed comments to the proposed rule in July 2016 and were supportive
2 of the publication of the final rule in January 2017.

3 14. At the time of July 2016 comment submission ACA said, “The level of detail contained
4 in the Standard will permit more consistent enforcement, and provide operators with the
5 management information they need to meet the requirements.”

6 15. When USDA issued its first delay of the final rule the ACA submitted a letter to recently
7 confirmed USDA Secretary Sonny Perdue that said,

8 a. “Consistent enforcement of the USDA Organic Regulations is crucial to success
9 of the National Organic Program. It creates and a fair and level playing field for
10 organic farmers and handlers. These two components translate into consumer trust
11 in the USDA Organic label. That is why the National Organic Program’s
12 completion of the Organic Livestock and Poultry Practices Rule, published on
13 January 19 of this year, has been strongly applauded by the majority of
14 Accredited Certifying Agents and the farms they certify.”

15 b. “While the new rule was originally scheduled to go into effect on March 20, 2017,
16 a sixty-day delay has resulted in a new effective date of May 19, 2017. The
17 National Organic Standard Board recently passed a unanimous resolution in
18 support of implementing this new rule without further delay. The ACA represents
19 a wide variety of certification agencies, including many of the largest and most
20 knowledgeable certifiers of organic livestock, and we support and echo this
21 request.”

22 16. ACA continues to support immediate implementation of the final rule.

23 17. ACA and its members have spent considerable staff time and financial resources to
24 participate in the multi-year process before the NOSB regarding this rulemaking and to
25 prepare for the implementation of the final rule.

26 18. ACA and its members have spent thousands of hours over many years in conversations
27 with producers, handlers and purchasers of certified organic products throughout the
28 supply chain, including retail consumers, to develop our understanding and expertise in
order to bring consistency and assurance to the organic certification process.

1 19. Withdrawing this final rule or continuing to delay its implementation harms and will
2 continue to harm ACA and its members and could lead to profound disruption to the
3 marketplace for certified organic products by irretrievably damaging consumer trust in
4 the USDA organic seal.

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6 I declare under penalty of perjury that the foregoing is true and correct.

7 Executed this 12th day of September 2017.

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11 _____
12 Kyla Smith
13 Accredited Certifiers Association
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EXHIBIT D

DECLARATIONS SIGNED BY FORMER CHAIRS OF THE NATIONAL ORGANIC STANDARDS BOARD

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*,

Defendants.

Civil Case No. 1:17-cv-01875-RMC

DECLARATION OF
ROBERT ANDERSON, IN
SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

Pursuant to 28 U.S.C. § 1746 I, Robert Anderson, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am a past member of the National Organic Standards Board ("NOSB" or "board"). I served during year(s) 1996 - 2001 and served as the board chair from 1997 - 2000. I have continued to follow the development of organic policy and the work of the National Organic Program ("NOP").
3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule* ("OLPP") on March 13, 2018 when it published *Organic Livestock and Poultry Practices; Withdrawal*. ("Rescission")
4. I am also aware that the Rescission states "[T]he OFPA does not require the NOP to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule." 83 Fed. Reg. at 10778 (March 13, 2018)
5. The quoted statement is inconsistent with my experience and knowledge of the USDA's past practices, with regard to pre-rulemaking consultation with the NOSB. In my experience any action by the NOP or Secretary that required public notice and comment, whether guidance or legislative rulemakings, was conducted solely in the aftermath of consultation with the NOSB.

6. During the time I was on the NOSB, the organic community of stakeholders and the NOP agreed that Congress intended organic livestock production practices to reduce or eliminate the need for synthetic medicines and production aids by development of organic standards that required livestock be managed as part of the whole system of the organic farming and handling created by the OFPA. For livestock, an organic livestock system plan is required that emphasizes preventive care and includes among other requirements, space for the fullest expression of an animal's natural behavior, reduced stress, and access to the outdoors consistent with that animal's well being.
7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken the position that Congress intended the NOSB recommend standards to the Secretary regarding organic livestock care only if the recommendation was directly related to the list of three prohibited livestock healthcare practices appearing in the OFPA.
8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of October 2019.



Robert B Anderson
Former Chairman
National Organic Standards Board

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

3 ORGANIC TRADE ASSOCIATION,

4 Plaintiff,

5 v.

6 UNITED STATES DEPARTMENT OF
7 AGRICULTURE, *et al.*,

8 Defendants.

Civil Case No. 1:17-cv-01875-RMC

DECLARATION OF HARRIET
BEHAR, IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

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10 Pursuant to 28 U.S.C. § 1746 I, Harriet Behar, declare:

- 11 1. I am over 18 and under no disability that prevents me from making this declaration. Each
12 statement is based on my personal knowledge unless otherwise stated. I am aware of this
13 litigation because of its importance to the organic community. I have no financial interest
14 in this litigation.
- 15 2. I am currently a member of the National Organic Standards Board (“NOSB” or “board”).
16 I have served during year(s) Jan. 2016-Jan. 2020 and currently serve as the board
17 chair. I have continued to follow the development of organic policy and the work of the
18 National Organic Program (“NOP”).
- 19 3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule*
20 (“OLPP”) on March 13, 2018 when it published *Organic Livestock and Poultry*
21 *Practices; Withdrawal*. (“Rescission”)
- 22 4. I am also aware that the Rescission states “[T]he OFPA does not require the NOP to
23 consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final
24 rule.” 83 Fed. Reg. at 10778 (March 13, 2018)
- 25 5. The quoted statement is inconsistent with my experience and knowledge of the USDA’s
26 past practices, with regard to pre-rulemaking consultation with the NOSB. In my
27 experience any action by the NOP or Secretary that required public notice and comment,
28 whether guidance or legislative rulemakings, was conducted solely in the aftermath of
consultation with the NOSB.

- 1 6. During the time I have served on the NOSB, the organic community of stakeholders and
2 the NOP agreed that Congress intended organic livestock production practices to reduce
3 or eliminate the need for synthetic medicines and production aids by development of
4 organic standards that required livestock be managed as part of the whole system of the
5 organic farming and handling created by the OFPA. For livestock, an organic livestock
6 system plan is required that emphasizes preventive care and includes among other
7 requirements, space for the fullest expression of an animal's natural behavior, reduced
8 stress, and access to the outdoors consistent with that animal's well being.
- 9 7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken
10 the position that Congress intended the NOSB recommend standards to the Secretary
11 regarding organic livestock care only if the recommendation was directly related to the
12 list of three prohibited livestock healthcare practices appearing in the OFPA.
- 13 8. I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this 17 day of October 2019.

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18 Harriet Behar
19 Chair
20 National Organic Standards Board
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF DAVE
CARTER, IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746 I, Dave Carter, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am a past member of the National Organic Standards Board (“NOSB” or “board”). I served during year(s)2001-2006and served as the board chair in 2003. I have continued to follow the development of organic policy and the work of the National Organic Program (“NOP”).
3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule* (“OLPP”) on March 13, 2018 when it published *Organic Livestock and Poultry Practices; Withdrawal*. (“Rescission”)
4. I am also aware that the Rescission states “[T]he OFPA does not require the NOP to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule.” 83 Fed. Reg. at 10778 (March 13, 2018)
5. The quoted statement is inconsistent with my experience and knowledge of the USDA’s past practices, with regard to pre-rulemaking consultation with the NOSB. In my experience any action by the NOP or Secretary that required public notice and comment, whether guidance or legislative rulemakings, was conducted solely in the aftermath of consultation with the NOSB.

- 1 6. During the time I was on the NOSB, the organic community of stakeholders and the NOP
2 agreed that Congress intended organic livestock production practices to reduce or
3 eliminate the need for synthetic medicines and production aids by development of
4 organic standards that required livestock be managed as part of the whole system of the
5 organic farming and handling created by the OFPA. For livestock, an organic livestock
6 system plan is required that emphasizes preventive care and includes among other
7 requirements, space for the fullest expression of an animal's natural behavior, reduced
8 stress, and access to the outdoors consistent with that animal's well being.
- 9 7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken
10 the position that Congress intended the NOSB recommend standards to the Secretary
11 regarding organic livestock care only if the recommendation was directly related to the
12 list of three prohibited livestock healthcare practices appearing in the OFPA.
- 13 8. I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this 16th day of October 2019.

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17 Dave Carter
18 Former Chairman
19 National Organic Standards Board
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Civil Case No. 1:17-cv-01875-RMC

Plaintiff,

v.

**DECLARATION OF TOM
CHAPMAN, IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

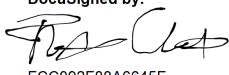
Pursuant to 28 U.S.C. § 1746 I, Tom Chapman, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am currently a member of the National Organic Standards Board (“NOSB” or “board”). I have served during year(s) 2015-2020 and served as the board chair in 2016-2018. I have continued to follow the development of organic policy and the work of the National Organic Program (“NOP”).
3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule* (“OLPP”) on March 13, 2018 when it published *Organic Livestock and Poultry Practices; Withdrawal*. (“Rescission”)
4. I am also aware that the Rescission states “[T]he OFPA does not require the NOP to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule.” 83 Fed. Reg. at 10778 (March 13, 2018)
5. The quoted statement is inconsistent with my experience and knowledge of the USDA’s past practices, with regard to pre-rulemaking consultation with the NOSB. In my experience any action by the NOP or Secretary that required public notice and comment, whether guidance or legislative rulemakings, was conducted solely in the aftermath of consultation with the NOSB.

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- 6. During the time I have served on the NOSB, the organic community of stakeholders and the NOP agreed that Congress intended organic livestock production practices to reduce or eliminate the need for synthetic medicines and production aids by development of organic standards that required livestock be managed as part of the whole system of the organic farming and handling created by the OFPA. For livestock, an organic livestock system plan is required that emphasizes preventive care and includes among other requirements, space for the fullest expression of an animal’s natural behavior, reduced stress, and access to the outdoors consistent with that animal’s well being.
- 7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken the position that Congress intended the NOSB recommend standards to the Secretary regarding organic livestock care only if the recommendation was directly related to the list of three prohibited livestock healthcare practices appearing in the OFPA.
- 8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of October 2019.

DocuSigned by:

 FCC092F88A6645F...
 Tom Chapman
 Former Chairman
 National Organic Standards Board

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF TRACY
FAVRE, IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746 I, Tracy Favre, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am a past member of the National Organic Standards Board (“NOSB” or “board”). I served during year(s) 2012 - 2017 and served as the board chair in 2016-2017. I have continued to follow the development of organic policy and the work of the National Organic Program (“NOP”).
3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule* (“OLPP”) on March 13, 2018 when it published *Organic Livestock and Poultry Practices; Withdrawal*. (“Rescission”)
4. I am also aware that the Rescission states “[T]he OFPA does not require the NOP to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule.” 83 Fed. Reg. at 10778 (March 13, 2018)
5. The quoted statement is inconsistent with my experience and knowledge of the USDA’s past practices, with regard to pre-rulemaking consultation with the NOSB. In my experience any action by the NOP or Secretary that required public notice and comment, whether guidance or legislative rulemakings, was conducted solely in the aftermath of consultation with the NOSB.

- 1 6. During the time I was on the NOSB, the organic community of stakeholders and the
2 NOP agreed that Congress intended organic livestock production practices to reduce or
3 eliminate the need for synthetic medicines and production aids by development of
4 organic standards that required livestock be managed as part of the whole system of the
5 organic farming and handling created by the OFPA. For livestock, an organic livestock
6 system plan is required that emphasizes preventive care and includes among other
7 requirements, space for the fullest expression of an animal's natural behavior, reduced
8 stress, and access to the outdoors consistent with that animal's well being.
- 9 7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken
10 the position that Congress intended the NOSB recommend standards to the Secretary
11 regarding organic livestock care only if the recommendation was directly related to the
12 list of three prohibited livestock healthcare practices appearing in the OFPA.
- 13 8. I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this 15th day of October 2019.

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17 Tracy Favre
18 Former Chairman
19 National Organic Standards Board
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF BARRY
FLAMM, IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746 I, Barry Flamm, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am a past member of the National Organic Standards Board (“NOSB” or “board”). I served during year(s) _____ and served as the board chair in 2012. I have continued to follow the development of organic policy and the work of the National Organic Program (“NOP”).
3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule* (“OLPP”) on March 13, 2018 when it published *Organic Livestock and Poultry Practices; Withdrawal*. (“Rescission”)
4. I am also aware that the Rescission states “[T]he OFPA does not require the NOP to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule.” 83 Fed. Reg. at 10778 (March 13, 2018)
5. The quoted statement is inconsistent with my experience and knowledge of the USDA’s past practices, with regard to pre-rulemaking consultation with the NOSB. In my experience any action by the NOP or Secretary that required public notice and comment, whether guidance or legislative rulemakings, was conducted solely in the aftermath of consultation with the NOSB.

- 1 6. During the time I was on the NOSB, the organic community of stakeholders and the
2 NOP agreed that Congress intended organic livestock production practices to reduce or
3 eliminate the need for synthetic medicines and production aids by development of
4 organic standards that required livestock be managed as part of the whole system of the
5 organic farming and handling created by the OFPA. For livestock, an organic livestock
6 system plan is required that emphasizes preventive care and includes among other
7 requirements, space for the fullest expression of an animal's natural behavior, reduced
8 stress, and access to the outdoors consistent with that animal's well being.
- 9 7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken
10 the position that Congress intended the NOSB recommend standards to the Secretary
11 regarding organic livestock care only if the recommendation was directly related to the
12 list of three prohibited livestock healthcare practices appearing in the OFPA.
- 13 8. I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this 18th day of October 2019.

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16 Signed by electronic confirmation

17 Barry Flamm
18 Former Chairman
19 National Organic Standards Board
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*,

Defendants.

Civil Case No. 1:17-cv-01875-RMC

DECLARATION OF DANIEL G.
GIACOMINI, IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

Pursuant to 28 U.S.C. § 1746 I, Daniel G. Giacomini, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am a past member of the National Organic Standards Board ("NOSB" or "board"). I served during year(s) (Jan) 2006 – (Jan) 2011 and served as the board chairperson in 2010. I have continued to follow the development of organic policy and the work of the National Organic Program ("NOP").
3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule* ("OLPP") on March 13, 2018 when it published *Organic Livestock and Poultry Practices; Withdrawal*. ("Rescission")
4. I am also aware that the Rescission states "[T]he OFPA does not require the NOP to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule." 83 Fed. Reg. at 10778 (March 13, 2018)
5. The quoted statement is inconsistent with my experience and knowledge of the USDA's past practices, with regard to pre-rulemaking consultation with the NOSB. In my experience any action by the NOP or Secretary that required public notice and comment, whether guidance or legislative rulemakings, was conducted solely in the aftermath of consultation with the NOSB.

- 1 6. During the time I was on the NOSB, the organic community of stakeholders and the NOP
2 agreed that Congress intended organic livestock production practices to reduce or
3 eliminate the need for synthetic medicines and production aids by development of
4 organic standards that required livestock be managed as part of the whole system of the
5 organic farming and handling created by the OFPA. For livestock, an organic livestock
6 system plan is required that emphasizes preventive care and includes among other
7 requirements, space for the fullest expression of an animal's natural behavior, reduced
8 stress, and access to the outdoors consistent with that animal's well being.
- 9 7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken
10 the position that Congress intended the NOSB recommend standards to the Secretary
11 regarding organic livestock care only if the recommendation was directly related to the
12 list of three prohibited livestock healthcare practices appearing in the OFPA.
- 13 8. I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this 18th day of October 2019.

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17 Daniel G. Giacomini
18 Former Chairperson
19 National Organic Standards Board
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF TRACY
MIEDEMA, IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**


Pursuant to 28 U.S.C. § 1746 I, Tracy Miedema, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am a past member of the National Organic Standards Board (“NOSB” or “board”). I served during year(s) 2007 -2012 and served as the board chair in 2011. I have continued to follow the development of organic policy and the work of the National Organic Program (“NOP”).
3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule* (“OLPP”) on March 13, 2018 when it published *Organic Livestock and Poultry Practices; Withdrawal*. (“Rescission”)
4. I am also aware that the Rescission states “[T]he OFPA does not require the NOP to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule.” 83 Fed. Reg. at 10778 (March 13, 2018)
5. The quoted statement is inconsistent with my experience and knowledge of the USDA’s past practices, with regard to pre-rulemaking consultation with the NOSB. In my experience any action by the NOP or Secretary that required public notice and comment, whether guidance or legislative rulemakings, was conducted solely in the aftermath of consultation with the NOSB.

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- 6. During the time I was on the NOSB, the organic community of stakeholders and the NOP agreed that Congress intended organic livestock production practices to reduce or eliminate the need for synthetic medicines and production aids by development of organic standards that required livestock be managed as part of the whole system of the organic farming and handling created by the OFPA. For livestock, an organic livestock system plan is required that emphasizes preventive care and includes among other requirements, space for the fullest expression of an animal’s natural behavior, reduced stress, and access to the outdoors consistent with that animal’s well being.
- 7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken the position that Congress intended the NOSB recommend standards to the Secretary regarding organic livestock care only if the recommendation was directly related to the list of three prohibited livestock healthcare practices appearing in the OFPA.
- 8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of October 2019.

DocuSigned by:

 689F892185A9482...
 Tracy Miedema
 Former Chairman
 National Organic Standards Board

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF JEFF MOYER,
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Pursuant to 28 U.S.C. § 1746 I, Jeff Moyer, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am a past member of the National Organic Standards Board (“NOSB” or “board”). I served during year(s) 2006 till 2011 and served as the board chair in 2010. I have continued to follow the development of organic policy and the work of the National Organic Program (“NOP”).
3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule* (“OLPP”) on March 13, 2018 when it published *Organic Livestock and Poultry Practices; Withdrawal*. (“Rescission”)
4. I am also aware that the Rescission states “[T]he OFPA does not require the NOP to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule.” 83 Fed. Reg. at 10778 (March 13, 2018)
5. The quoted statement is inconsistent with my experience and knowledge of the USDA’s past practices, with regard to pre-rulemaking consultation with the NOSB. In my experience any action by the NOP or Secretary that required public notice and comment, whether guidance or legislative rulemakings, was conducted solely in the aftermath of consultation with the NOSB.

- 1 6. During the time I was on the NOSB, the organic community of stakeholders and the NOP
2 agreed that Congress intended organic livestock production practices to reduce or
3 eliminate the need for synthetic medicines and production aids by development of
4 organic standards that required livestock be managed as part of the whole system of the
5 organic farming and handling created by the OFPA. For livestock, an organic livestock
6 system plan is required that emphasizes preventive care and includes among other
7 requirements, space for the fullest expression of an animal's natural behavior, reduced
8 stress, and access to the outdoors consistent with that animal's well being.
- 9 7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken
10 the position that Congress intended the NOSB recommend standards to the Secretary
11 regarding organic livestock care only if the recommendation was directly related to the
12 list of three prohibited livestock healthcare practices appearing in the OFPA.
- 13 8. I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this 18 day of October 2019.

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19 Jeff Moyer
20 Former Chairman
21 National Organic Standards Board
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF JIM RIDDLE,
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Pursuant to 28 U.S.C. § 1746 I, Jim Riddle, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am a past member of the National Organic Standards Board (“NOSB” or “board”). I served during year(s) 2001-2006 and served as the board chair in 2005. I have continued to follow the development of organic policy and the work of the National Organic Program (“NOP”).
3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule* (“OLPP”) on March 13, 2018 when it published *Organic Livestock and Poultry Practices; Withdrawal*. (“Rescission”)
4. I am also aware that the Rescission states “[T]he OFPA does not require the NOP to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule.” 83 Fed. Reg. at 10778 (March 13, 2018)
5. The quoted statement is inconsistent with my experience and knowledge of the USDA’s past practices, with regard to pre-rulemaking consultation with the NOSB. In my experience any action by the NOP or Secretary that required public notice and comment, whether guidance or legislative rulemakings, was conducted solely in the aftermath of consultation with the NOSB.

- 1 6. During the time I was on the NOSB, the organic community of stakeholders and the NOP
2 agreed that Congress intended organic livestock production practices to reduce or
3 eliminate the need for synthetic medicines and production aids by development of
4 organic standards that required livestock be managed as part of the whole system of the
5 organic farming and handling created by the OFPA. For livestock, an organic livestock
6 system plan is required that emphasizes preventive care and includes among other
7 requirements, space for the fullest expression of an animal's natural behavior, reduced
8 stress, and access to the outdoors consistent with that animal's well being.
- 9 7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken
10 the position that Congress intended the NOSB recommend standards to the Secretary
11 regarding organic livestock care only if the recommendation was directly related to the
12 list of three prohibited livestock healthcare practices appearing in the OFPA.
- 13 8. I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this 15th day of October 2019.

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17 Jim Riddle
18 Former Chairman
19 National Organic Standards Board
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF J. MICHAEL
SLIGH, IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746 I, J. Michael Sligh, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am a past member of the National Organic Standards Board (“NOSB” or “board”). I served during year(s) 1992 - 1997 and served as the board chair in 1992-1995. I have continued to follow the development of organic policy and the work of the National Organic Program (“NOP”).
3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule* (“OLPP”) on March 13, 2018 when it published *Organic Livestock and Poultry Practices; Withdrawal*. (“Rescission”)
4. I am also aware that the Rescission states “[T]he OFPA does not require the NOP to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule.” 83 Fed. Reg. at 10778 (March 13, 2018)
5. The quoted statement is inconsistent with my experience and knowledge of the USDA’s past practices, with regard to pre-rulemaking consultation with the NOSB. In my experience any action by the NOP or Secretary that required public notice and comment, whether guidance or legislative rulemakings, was conducted solely in the aftermath of consultation with the NOSB.

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- 7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken the position that Congress intended the NOSB recommend standards to the Secretary regarding organic livestock care only if the recommendation was directly related to the list of three prohibited livestock healthcare practices appearing in the OFPA.
- 8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18 day of October 2019.

DocuSigned by:

142474FFA7124BC...
J. Michael Sligh
 Former Chairman
 National Organic Standards Board

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF MAC STONE,
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Pursuant to 28 U.S.C. § 1746 I, Mac Stone, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am a past member of the National Organic Standards Board (“NOSB” or “board”). I served during year(s) 2011-2016 and served as the board chair in 2014. I have continued to follow the development of organic policy and the work of the National Organic Program (“NOP”).
3. I am aware that USDA rescinded the *Organic Livestock and Poultry Practices Final Rule* (“OLPP”) on March 13, 2018 when it published *Organic Livestock and Poultry Practices; Withdrawal*. (“Rescission”)
4. I am also aware that the Rescission states “[T]he OFPA does not require the NOP to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule.” 83 Fed. Reg. at 10778 (March 13, 2018)
5. The quoted statement is inconsistent with my experience and knowledge of the USDA’s past practices, with regard to pre-rulemaking consultation with the NOSB. In my experience any action by the NOP or Secretary that required public notice and comment, whether guidance or legislative rulemakings, was conducted solely in the aftermath of consultation with the NOSB.

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- 6. During the time I was on the NOSB, the organic community of stakeholders and the NOP agreed that Congress intended organic livestock production practices to reduce or eliminate the need for synthetic medicines and production aids by development of organic standards that required livestock be managed as part of the whole system of the organic farming and handling created by the OFPA. For livestock, an organic livestock system plan is required that emphasizes preventive care and includes among other requirements, space for the fullest expression of an animal’s natural behavior, reduced stress, and access to the outdoors consistent with that animal’s well being.
- 7. Neither I, nor any other board member that I can recall, nor any USDA staff, has taken the position that Congress intended the NOSB recommend standards to the Secretary regarding organic livestock care only if the recommendation was directly related to the list of three prohibited livestock healthcare practices appearing in the OFPA.
- 8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16 day of October 2019.

DocuSigned by:
Mac Stone
50E89002B608431...
Mac Stone
Former Chairman
National Organic Standards Board

EXHIBIT A

DECLARATION AND CURRICULUM VITAE OF DR. TOMISLAV VUKINA

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

3 ORGANIC TRADE ASSOCIATION,

4 Plaintiff,

5 v.

6 UNITED STATES DEPARTMENT OF
7 AGRICULTURE, *et al.*,

8 Defendants.

Civil Case No. 1:17-cv-01875-RMC

DECLARATION OF
TOMISLAV VUKINA IN SUPPORT
OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

9
10 Pursuant to 28 U.S.C. § 1746 I, Tomislav Vukina, declare:

- 11 1. I am over 18 and under no disability that prevents me from making this declaration. Each
12 statement is based on my personal knowledge unless otherwise stated.
- 13 2. I have a PhD in Economics and am the Principal at Vukina et al. Consulting and hold an
14 academic appointment at North Carolina State University. *See Exhibit A* (Curriculum
15 Vitae)
- 16 3. The areas of my expertise related to this case are poultry industry economics and
17 economics of animal welfare.
- 18 4. In 2011-12, I served as the project leader for a team that prepared a report for the National
19 Organic Program entitled: "*Economic Impact Analysis of Proposed Regulations for
20 Living Conditions for Organic Poultry, Phase 3 Report.*"¹ ("Report")
- 21 5. This Report is cited on pgs. 23, 69, 102, 107 of the agency's *Regulatory Impact Analysis
22 and Final Regulatory Flexibility Analysis* (January 2017).

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25 ¹. See e.g. Tomislav Vukina, *et al.*, "*Economic effects of proposed changes in living conditions
26 for laying hens under the National Organic Program,*" *Journal of Applied Poultry Research* 23
27 (1) (March 2014): 80-93; see also Tomislav Vukina, *et al.*, "*Proposed changes in living
28 conditions for broilers under the National Organic Program will have limited economic effects,*"
Journal of Applied Poultry Research 23 (2) (June 2014): 233-243.

- 1 6. I am familiar with the National Organic Program (“NOP”) and have reviewed the
2 economic analyses conducted for its *Organic Livestock and Poultry Practices* final rule
3 (the “*OLPP*”) 82 Fed. Reg. 7042-7093 (January 17, 2017) and the agency’s subsequent
4 final rule that extinguished it, *Organic Livestock and Poultry Practices--Withdrawal*.
5 (“*the Rescission*”) 83 Fed. Reg. at 10775-83 (March 13, 2018)
- 6 7. To analyze the economic arguments I also reviewed the agency’s *Regulatory Impact*
7 *Analysis and Final Regulatory Flexibility Analysis* (January 2017) (“*OLPP RIA*”)
8 offered in support of the *OLPP* as well as the agency’s *Regulatory Impact Analysis*
9 *Organic Livestock and Poultry Practices; Withdrawal* offered in support of the
10 *Rescission* less than a year later. (“*Withdrawal RIA*”)
- 11 8. Based on the review and the calculations submitted herewith, I conclude the estimated
12 benefits figures arising from implementation of the *OLPP* that appear in the *Rescission*
13 *RIA* and *Rescission*, are incorrect.
- 14 9. The principal error made by the agency was the application of straight-line depreciation
15 to the estimated benefits of the *OLPP*.
- 16 10. I am very familiar with enterprise budgeting and cost-benefit analysis tools and in my
17 experience the use of straight-line depreciation in calculating estimated benefits is
18 inconsistent with standard practice of enterprise budgeting and/or cost-benefits analysis.
- 19 11. Exhibit B to this Declaration is a summary of the review I conducted of the economic
20 analysis appearing in the *Rescission RIA* and *Rescission*, with an accompanying
21 spreadsheet demonstrating the calculations discussed in the review.
- 22 12. I used the agency’s updated cost estimates, its three relevant market scenarios about how
23 the industry is going to respond to proposed regulation and the same annual growth
24 projections for organic eggs of 12.7 percent used in the *Rescission RIA* and *Rescission*,
25 and used the formula set forth in *OLPP RIA* at fn. 94 to calculate estimated benefits,
26 except I did not depreciate the estimated benefits using straight line depreciation.
- 27 13. As discussed in the review, and contrary to the findings in the *Rescission RIA* and
28 *Rescission*, the correctly calculated estimated benefits of the *OLPP* easily exceeded the
revised estimated costs of implementing the *OLPP* under the scenarios selected by the
agency.

1 14. In addition, when applying the formula set forth in the *OLPP RIA* at fn. 94 to calculate
2 the estimated benefits and using the updated estimated costs as was done in the
3 *Rescission RIA* and *Rescission I* could not replicate the results obtained by the agency.

4 15. Nothing in the *Rescission RIA* and *Rescission* sets forth the formula or computational
5 methodology used by the agency. The “Benefits+Cost Workbook” the agency posted
6 online in December contains the results of calculations but does not disclose the
7 underlying formula. In addition, based on all enclosed withdrawal materials, it was
8 impossible to figure out whether the projected period of the analysis is 13 years or 15
9 years and what year was taken as the base year in the calculations of the stream of present
10 values.

11 16. It is not possible to fully analyze the calculations in the “Benefits+Cost Workbook”
12 without disclosure of the formula or computational methodology.

13 17. In my opinion the calculations conducted in support of the *Rescission* and *Rescission RIA*
14 do not support the conclusion that the *OLPP* is economically unjustified.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed this 21 day of October 2019.

17 

18 _____
19 Tomislav Vukina, PhD
20 1513 Shadowood Lane
21 Raleigh, North Carolina 27612

TOMISLAV VUKINA

Home: 1513 Shadowood Lane, Raleigh, NC 27612
Phone: (919) 781-6902; Cell: (919) 274-4612

Office: Department of Agricultural and Resource Economics
North Carolina State University; Raleigh, NC 27695-8109
Phone: (919) 515-5864; FAX: (919) 515-6268
E-mail: tom_vukina@ncsu.edu

EDUCATION

1991 UNIVERSITY OF RHODE ISLAND, USA
Ph.D., Economics – Marine Resources.

1982 UNIVERSITY OF ZAGREB, Croatia
M.A., Economics.

1978 UNIVERSITY OF ZAGREB, Croatia
B.A., Economics.

RESEARCH FIELDS

- Economic Organization of Agriculture
- Economics of Incentives and Information
- Environmental and Resource Economics

EMPLOYMENT HISTORY

North Carolina State University - Department of Agricultural and Resource Economics
2002-present Professor
1997-2002 Associate Professor
1993-1997 Assistant Professor

University of Zagreb - Graduate School of Economics and Business; Croatia
Fall 2007 Visiting Professor - Fulbright scholar

Royal Veterinary and Agricultural University – Department of Economics and Natural Resources; Copenhagen, Denmark.
Fall 1999 Visiting Professor - Lektor

University of Rhode Island - Department of Resource Economics
1993 Visiting Assistant Professor
1992 Postdoctoral Fellow
1988-1991 Graduate Assistant

TOMISLAV VUKINA

Institute for Developing Countries - Zagreb; Croatia
1983-1986 Research Associate

Center for Economic Development - Zagreb; Croatia
1978-1983 Research Assistant

AWARDS

- 2019 Award for Excellence in Multistate Research. Northeastern Regional Association of State Agricultural Experiment Station Directors: Presented to the Technical Committee of NE1442 “Poultry Production Systems and Well-being: Sustainability for Tomorrow.” June 3, 2019.
- Agricultural and Applied Economics Association President’s Award. In recognition of outstanding leadership as inaugural editor of the AAEA journal: Applied Economic Perspectives and Policy. July 25, 2011.
- J. William Fulbright Lecturing/Research Award to Croatia, Fall 2007 semester.
- Outstanding Journal Article, Review of Agricultural Economics: T. Vukina. “The Relationship between Contracting and Livestock Waste Pollution. Review of Agricultural Economics, Vol. 25 (1) (2003): 66-88.
- Outstanding Journal Article, American Journal of Agricultural Economics: Tsoulouhas, T. and T. Vukina. “Integrator Contracts with Many Agents and Bankruptcy”. American Journal of Agricultural Economics, Vol. 81 (February 1999): 61-74.
- Article of the Year – 1994, Northeastern Agricultural and Resource Economics Association: Vukina, T. and J. L. Anderson. “An Adaptive Model of Perishable Inventory Dissipation in a Nonstationary Price Environment. Agricultural and Resource Economics Review, Vol.23, (April 1994):1-10.
- The University of Rhode Island 1991-92 Greg J. Lessne Award in Recognition of Excellence in the Study of Natural Resource Markets and Economics.

PUBLICATIONS**Refereed Journal Articles:**

Wang, Z. and T. Vukina. Sorting into Contests: Evidence from Production Contracts. The B.E. Journal of Economic Analysis and Policy, 19 (2019) DOI: <https://doi.org/10.1515/bejeap-2018-0049>

Zheng, Y., T. Vukina and X. Zheng. Estimating Asymmetric Information Effects in Health Care with Uninsurable Costs. International Journal of Health Economics and Management, 19 (1) (March 2019): 79-98.

Oh, S.E. and T. Vukina. Substitutability between Organic and Conventional Poultry Products and Organic Price Premiums. *Economia Agro-alimentare / Food Economy* 20 (1) (2018): 75-92.

Wang, Z. and T. Vukina. Welfare Effects of Payment Truncation in Piece Rate Tournaments. *Journal of Economics* 120 (2017): 219-249.

TOMISLAV VUKINA

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Dubois, P. and T. Vukina. Incentives to Invest in Short-term vs. Long-term Contracts: Theory and Evidence. *The B.E. Journal of Economic Analysis and Policy*, Vol. 16 (3), (2016): 1239-1272.

Zheng, Y. and T. Vukina. Using Age-Based Insurance Eligibility Criterion to Estimate Moral Hazard in Medical Care Consumption. *Financial Theory and Practice* 40 (No.3), (2016): 338-356.

Kandilov, I. and T. Vukina. Salaries or Piece Rates: On Endogenous Matching of Harvest Workers and Crops. *Economic Inquiry*, Vol. 54 (No.1), January 2016: 76-99.

Vukina, T. and D. Nestic. Do People Drive Safer when Accidents are More Expensive: Testing for Moral Hazard in Experience Rating Schemes. *Transportation Research Part A: Policy and Practice*, Vol. 71 (2015): 46-58.

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Vukina, T. and W. E. Foster. Grower Response To Broiler Production Contract Design. NE-165 Conference: Vertical Coordination in the Food System. Washington, D.C., June 5-6, 1995.

TOMISLAV VUKINA

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GRANTS

- U.S. Dept. of Agriculture (USDA) – Economic Research Service, Cooperative agreement 2017-2019: "Measuring the Effects of One-Side Exogenous Supply Shock on the Two Tier Substitutes Markets: Organic-Conventional Table Eggs Markets Example." \$15,000 (with Zheng)
- US Dept. of Agriculture (USDA) - Agriculture Research Service: "One-two Punch for Organic Poultry Processing: Knocking out Foodborne Pathogens with Plant Derived Antimicrobials and Featuring Specialized Food Safety and Processing Training." 9/1/2017-5/31/2020, \$50,000.
- U.S. Department of State, 2011 Title VIII Research Competition: "Strategic Price Discrimination in the Mandatory Insurance Markets in Transition." \$19,668.
- J. William Fulbright follow-on grant to Croatia, June 2010. \$5,000.
- U.S. Department of Agriculture, CSREES, AFRI grant, 2010-2011: Entry, Exit and Mergers in the Poultry Sector: Effects on Contract Growers Welfare and Industry Competitiveness." \$286,567 (with Zheng).
- U.S. Department of State, 2008 Title VIII Research Competition: "Health Sector Reform in Post-Socialist Croatia: Analyses of Asymmetric Information Problems." \$17,755.
- U.S. Department of Agriculture, ERS, Extramural Agreement, 2008-2009: "Dynamic Prevention and Control of Highly Pathogenic Avian Influenza." \$29,426.
- International Research and Exchanges Board (IREX), 2008-2009 Short-Term Travel Grant for Croatia: Health Insurance Reform in Post-Socialist Croatia: An Analysis of Asymmetric Information Problems."
- U.S. Department of Agriculture, CSREES, NRI grant, 2008-2009: "Quantifying the Benefits of Farm Level Utilization of Alternative Marketing Arrangements". \$210,000 (with Phaneuf and Zheng).
- U.S. Department of Agriculture, 2004-2006: Funded by Congress in the FY 2003 Omnibus Appropriations Bill. Contract to conduct an exhaustive study on livestock and meat marketing. \$4,319,373 (with Research Triangle Institute).
- United States Department of Agriculture – Economic Research Service, Cooperative Agreement 2002-2006: "Estimating Costs and Returns for Poultry and Eggs." \$41,000.
- North Carolina Attorney General – Smithfield Foods Agreement, 2001-2003: "Full Economic Feasibility of the Smithfield Foods Agreement." \$352,000 (with Wohlgenant et al.)
- United States Department of Agriculture – Grain Inspection, Packers and Stockyards Administration, Cooperative agreement 2000-2001: "Economic Effects of Regulating Broiler Contracts." \$64,756.
- College of Agriculture and Life Sciences, NCSU, Competitive Research Program, 1999: "Economic Analysis of Alternative Payment Mechanisms in Settlement of Broiler Contracts." \$14,000.
- USDA-EPA, 1998 – 2001: "National Agricultural Compliance Assistance Program – Assistance for General Agriculture" \$415,965 (with J. Spooner et al.)

TOMISLAV VUKINA

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- Abbott Laboratories, 1997: “Poult Enteritis Mortality Syndrom Outbreak Prediction Model” - \$4,980 (with J. Barnes).
- N.C. Department of Environment, Health and Natural Resources, 1997: “Methodologies to Estimate Benefits from Sedimentation Pollution Control” - \$24,805 (with Smutko, White, Danielson, and Line).
- Multi-State Consortium on Waste Management, 1997-1998: “Full-Scale Ozonation of Urine-Rich Swine Slurry” - \$38,000.
- Abbott Laboratories, 1996: "Intervention Decision Model to Prevent Spiking Mortality of Turkeys" - \$6,643 (with J. Barnes).
- North Carolina State University/ Iowa State University Waste Management Research Consortium, 1996: "Cost Effectiveness of Alternative Swine Waste Management Technologies" - \$13,000 (with M. Renkow).
- National Research Council, Office of International Affairs: Collaborative Research in Sectoral Policy Program Travel Grant: "Coastal Zone Pollution and its Welfare Effects on Local Communities." - \$2,200.
- Agricultural Foundation, NCSU, 1995: "Grower Response to Broiler Production Contract Design" - \$10,000 (with T. Carter and W. Foster)
- Agricultural Research Service, 1994: "Economic Impact Study of Swine and Poultry Production in North Carolina" - \$35,000 (with Zering, Brandt, Palmquist and Roka).

TEACHING AND ADVISING**Undergraduate Courses:**

- ARE-425 (NCSU) Contracts and Organization in Agriculture: Spring 2007, Fall 2017, Fall 2018, Fall 2019.
- ARE-301 (NCSU) Intermediate Microeconomics: Spring 2002, 2003, 2004, 2005, Fall 2011, 2012, 2013, 2014, 2015, 2016.
- ARE-336 (NCSU) Introduction to Resource and Environmental Economics: Fall 1996, 1997.
- EC-436 (NCSU) Environmental Economics: Fall 1993, 1994, Spring 1999, 2000, 2001.

Graduate Courses:

- ECG 701 – NCSU: Microeconomics I, Fall 2015, 2016, 2017, 2018, 2019.
- ECG 700 - NCSU: Fundamentals of Microeconomics, Fall 2006, 2011, 2012, 2013, 2014.
- ECG 706 – NCSU: Industrial Organization, Fall 2008, 2009, 2010.
- Graduate School of Economics and Business, University of Zagreb: Methodology of Economics, Fall 2007
- ECG-515 - NCSU: “Environmental and Resource Policy,” Fall 1994, 1995, 1996, 1997, Spring 2001, 2002, 2003, 2004, 2005, 2006, 2008.
- ECG-716 - NCSU: “Topics in Environmental and Resource Economics,” Spring 1998, 1999, 2000.

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- 095918 - Royal Agricultural University, Copenhagen: “Natural Resource Economics” (Master’s level), Fall 1999.

Master’s Committees Chair:

- Qing Chang, 2015: “Cooptation Strategy in China: Empirical Evidence from Integration of Private Sector Entrepreneurs.” (co-chaired with Ed Kick)
- Jessica Lynn McCauley, 1997: “The Value of Hiking at the Grandfather Mountain Wilderness Preserve.”

Ph.D. Committees Chair:

- Shuyang Wang, 2019: “Essays on the Principal-Agent Problems in Agricultural Contracts.” (co-chaired with Zheng Li)
- Yan Zheng, 2015: “Demand Side Economics of Health Care Provision under a Single Payer System: The Case Study of Croatia.”
- Zhen Wang, 2014: “On Tournaments in Agricultural Contracts: A Study of Regulation, Incentives and Sorting”.
- Tengying Weng, 2013: “The Dynamics of the U.S. Broiler Industry.” (co-chaired with X. Zheng)
- Mitchell R. Dudley, 2012: “Economics of the Atlantic Menhaden Fishery.” (co-chaired with W. Thurman)
- Wu-Yueh Hu, 2010: “Quantifying the Benefits of Farm Level Utilization of Alternative Marketing Arrangements.” (co-chaired with X. Zheng)
- Aaron, S. Hegde, 2004: “Hedging vs. Contracting: Managing Risk in the Broiler Industry.” (co-chaired with D. Holthausen)
- Win Leegomonchai, 2003: “Three Essays on the Problem of Hold-Up in Broiler Industry.”
- Dong-feng Li, 1998: “The Effectiveness of Hedging Strategies Using Yield Futures.” (co-chaired with D. Holthausen). – winner of the Kenneth R. Keller Research Award, College of Agriculture and Life Sciences, NCSU.

PROFESSIONAL SERVICE

- Participant in the MRF project NE1942: “Enhancing Poultry Production Systems through Emerging Technologies and Husbandry Practices” for the period October 1, 2019 – September 30, 2024.
- Participant in the MRF project NE 1442: “Poultry Production Systems and Well-being: Sustainability for Tomorrow” for the period October 1, 2014 - September 30, 2019.
- Invited participant, Agricultural Research Connections Workshop; Bill and Melinda Gates Foundation, Biosciences Eastern and Central Africa (BecA) and International Livestock Research Institute (ILRI), Nairobi/Naivasha, Kenya, July 21-26, 2013.

TOMISLAV VUKINA

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- Member of Scientific Committee, Beeronomics 2013 - The Economics of Beer and Brewing, The University of York, United Kingdom, September 18 -21, 2013.
- Editor, Applied Economic Perspectives and Policy (former Review of Agricultural Economics), Volumes 2009-2011.
- Member of the International Programme Committee, 2nd Beeronomics Conference. The Economics of Beer and Brewing, Freising, Germany, September 21-24, 2011.
- Member of the International Editorial Board, Croatian Economic Survey.
- Member of the Scientific Committee for the 8th and 9th INRA-IDEI Conference on “Industrial Organization and the Food Processing Industry,” Toulouse 2010, 2012.
- Conference Organizer “Tournaments, Contests and Relative Performance Evaluation,” North Carolina State University, College of Management, March 8-9, 2008.
- Member of the American Agricultural Economics Association’s (AAEA) Economics, Statistics and Information Resources Committee, 2006-2007.
- Associate Editor of the American Journal of Agricultural Economics (January 2002-December 2005, Volumes 84-87).
- Member of the NCSU Economics Graduate Program Ph.D. preliminary exam committee for microeconomics (2003-2004; 2017-2019).
- Member of the North Carolina State University, College of Agriculture and Live Sciences Research Committee (2001-2004).
- Member of the academic evaluation team, National Council of Higher Education, Republic of Croatia (1997-1998).
- Member of the Graduate Council, Graduate School, University of Rhode Island (1989-1990).
- Associate Editor, Kulturni Radnik, Casopis za drustvena i kulturna pitanja. Zagreb, Croatia (1988-1989).

EXHIBIT 9

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.

Defendants.

Civil Case No: 1:17-cv-01875-RMC

**DECLARATION OF DON FOWLER
IN SUPPORT OF PLAINTIFF'S
SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

I, Don Fowler, declare as follows:

1. I reside at 1357 Carpers Farm Way, Vienna, VA 22182 where I have resided since January 2000. I have personal knowledge of, and, if called upon as a witness, I could and would testify willingly to the statements contained herein.
2. I am a member of the Animal Welfare Institute (AWI). In 2004, I became a member of Animal Welfare Institute (“AWI”) because I read about their work and I believe in AWI’s mission to reduce the suffering of animals at the hands of humans and hoped that AWI would represent my interest in improving the welfare of all animals.
3. My primary interest as a member of AWI and in regard to the matter of farm animal welfare is to end the use of sub-therapeutic antibiotics, rough handling and mistreatment by workers and to make sure farm animals’ lives are as stress free as possible. I am concerned about farm animal wellbeing and treatment. During my time as a member of AWI, I have become active in signing petitions relating to farm animal issues, and have contributed to AWI’s campaigns. I enjoy visiting with and photographing the farm animals at Poplar Springs animal sanctuary in Poolesville, MD.
4. I am now retired, but I was formerly a skilled tradesman and worked for the American Society of Appraisers. Many years ago, I was employed as a farm hand, and worked at caring for cattle and horses. In addition to being a member of AWI, I am a volunteer for Homeless Animal Rescue Team (HART) and Pets Bring Joy, and was treasurer for the Wildlife Rescue League. I also make frequent visits to Poplar Springs Animal Sanctuary. I have attended the national Animal Rights Conference, where I listen to speakers discuss a range of animal welfare issues.


5. I am aware of the USDA's prior plan to develop the proposed Organic Livestock and Poultry Practices (OLPP) rule. I am aware of the current standards as applied to farm animals, and what the OLPP will do to change these standards. I was able to follow the progress of the OLPP rule because I receive action alerts and press releases from AWI which I depend on and trust to represent my interest in farm animal welfare. AWI notified me about the new rule's effect on different farm animals' health and welfare.

6. I purchase and consume dairy products and would continue to purchase and consume dairy products that have been certified organic by the USDA because the NOP is supposed to ensure higher animal welfare standards. A part of the OLPP rule I was particularly interested in was the changes made to the standards that apply to dairy cattle. Specifically, it improved the standards relating to housing, pain relief and euthanasia, transport, and slaughter. The withdrawal of this rule directly and irreparably harms my interests because the current animal welfare standards in the organic regulations are not only less stringent, but they are unevenly and inconsistently applied between different facilities. This inconsistency results in highly variable conditions for animals raised under the National Organics Program, which means the Organic label on one product does not mean the same thing it does on another. I don't think this is a fair practice and it puts the burden on me as a consumer to do additional research about animal welfare standards. When I shop for milk products especially, I look for the organic label, but because of inconsistencies in the application of standards, I cannot trust the Organic label. Implementation of the OLPP remedies this problem and my injury. Most people, including myself, are busy when they are shopping and they don't have time to research the producers of these products to determine whether or not they meet certain standards. The Organic label, if the standards

are clear enough to be applied consistently, will be a way for me to look once at the product, understand what it means and believe that those standards are met. To continue to buy these products, I need the labels to mean something, especially because organic products are usually higher priced than non-organic products.

Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge.

Executed on this 12 day of May, 2018.



Mr. Don Fowler

EXHIBIT 10

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.

Defendants.

Civil Case No: 1:17-cv-01875-RMC

**DECLARATION OF DIANE
HOPKINS PhD IN SUPPORT OF
PLAINTIFF'S SECOND AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

I, Diane Hopkins, PhD, declare as follows:

1. I reside at 1357 Carpers Farm Way, Vienna, VA 22182 where I have resided since January 2000. I have personal knowledge of, and, if called upon as a witness, I could and would testify willingly to the statements contained herein.
2. I am a member of the Animal Welfare Institute (AWI). In 2004, I became a member of Animal Welfare Institute (“AWI”) because I believed in AWI’s mission to reduce the pain and fear inflicted on animals by humans and hoped that it would represent my interest to improve the welfare of animals, including farm animals.
3. My primary interest as a member of AWI is to oppose anything that would cause harm or suffering to animals, like confinement. During my time as a member of AWI, I have become active in signing petitions relating to farm animal issues, and have contributed regularly to AWI’s campaigns.
4. I am currently retired, but before that I worked for the U.S. Department of Health and Human Services. In addition to being a member of AWI, I am a member of Homeless Animal Rescue Team (HART), Pets Bring Joy, and Wildlife Rescue League. I also make frequent visits to Poplar Springs Animal Sanctuary in Poolesville, MD, and witnessing first-hand a farm animal in a natural setting.
5. I am aware of the efforts to develop the proposed Organic Livestock and Poultry Practices (OLPP) rule. I followed the promulgation of the OLPP rule through notifications I received from AWI, which I depend upon to represent my interest in farm animal welfare. AWI notified me about the rule’s effect on farm animal health and welfare, and because of their efforts, I followed the progression of the rule closely.

When I saw the action alert from AWI about the government delaying and then withdrawing the rule, I was very upset. I was disappointed especially when I learned that the OLPP was to be withdrawn, because I was hoping animal welfare standards under the National Organic Program (NOP) would be strengthened

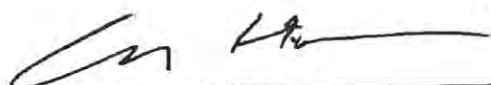
6. I am interested in standards under the NOP because I seek to improve the standards for animals raised for human consumption. I have researched the current standards under the Organics Program. When I read “access to outdoors” in the current regulations, I expect that to mean access to vegetation, soil and open air for all animals in the facility. I am aware that the current regulations for layer hens allow for “access to the outdoors” to sometimes mean an enclosed concrete porch that is not large enough for even half of the population of the facility to use. Currently, there is no way for me or other consumers to know, without doing significant research, whether the Organic Label on a product indicates true outdoor access or not. The withdrawal of the OLPP rule directly and irreparably harms my interests because the current animal welfare measures in the organic regulations are unevenly and inconsistently applied from farm to farm, resulting in highly variable conditions for animals raised under the NOP. Because of these inconsistent standards, I worry about the welfare and health of animals raised under the NOP.
7. I purchase and consume or seek to purchase and consume organic dairy products, and I hoped that the OLPP rule would be implemented to improve the welfare standards of cattle under the NOP. I was enthusiastic about the promulgation of the OLPP rule because of the improvements it made with respect to pain relief and euthanasia, housing requirements, transport, and slaughter, which applies to the dairy cattle that

produce products I purchase. The rule also contained new transport and slaughter requirements that I found acceptable as minimum standards for the products I choose to purchase and consume. I am injured by the delay and withdrawal of the OLPP rule because these improved standards will not be implemented. Because these new standards will not be implemented, I am injured because my interest in the improved welfare and health of dairy cattle under the NOP is negatively affected. Without these new standards, our family is unlikely to purchase dairy products.

8. I am unlikely to purchase organic animal products because I cannot trust that the label represents consistent and accurate information. Implementation of the OLPP rule remedies this problem. I would, or would be more likely to purchase organic livestock or poultry products if the OLPP rule was implemented because I could trust that the higher welfare standards were consistently applied.

Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge.

Executed on this 12 day of May, 2018.

 .Ph.D.

Diane Hopkins, Ph.D.

EXHIBIT 8

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.

Defendants.

Civil Case No: 1:17-cv-01875-RMC

**DECLARATION OF DENA JONES
IN SUPPORT OF PLAINTIFF'S
SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

I, Dena Jones, declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge. If I am called as a witness in these proceedings, I could and would testify competently to these facts.
2. I am the Director of the Farm Animal Program of the Animal Welfare Institute (“AWI”). I have served as lead of this department since September 2009. Previously, I worked in farm animal advocacy at the World Society for the Protection of Animals, Farm Sanctuary, Humane Farming Association, and the Animal Protection Institute. Before that, I earned my master’s in Animals in Public Policy at Tufts University, School of Veterinary Medicine. As the Director of the Farm Animal Department of AWI, I am responsible for overseeing this program.
3. AWI is a 501(c)(3) nonprofit corporation organized and existing under the laws of Delaware, with its principal place of business in Washington, D.C. AWI has more than 20,000 members, many of whom are specifically interested in the well-being of farm animals. Members

finance AWI's activities and rely on AWI to express their collective views and protect their collective interests in animal welfare.

4. Founded in 1951, AWI's mission is to reduce animal suffering caused by people. Since its inception, AWI has pursued regulatory, legislative, and judicial initiatives to improve the treatment of farm animals. To accomplish these goals, AWI expends resources on domestic farm animal matters through advocacy, research, education, litigation, and grass-roots activities. AWI has spent considerable time and resources on behalf of its members, advocating for implementation of better, more consistent standards for the millions of animals raised under the National Organic Program each year. The USDA's decisions to serially delay, withdraw, and not provide adequate procedure in revoking the Organic Livestock and Poultry Practices (OLPP) rule perceptibly impair AWI's ability to continue its advocacy, research, and education, and requires the continued expenditure of resources it expected to spend on other farm animal campaigns.

5. AWI's farm animal program consists of three full-time staff who work to reduce suffering of animals raised for human consumption. AWI also employs government affairs staff who work on legislative matters relating to farm animal welfare. The farm animal program helps AWI achieve its mission of reducing animal suffering by advocating for improved standards for farm animals through state and federal regulatory and legislative matters, researching the effects of current farm animal policies on the welfare of animals, advocating for increased transparency in the labeling of animal food products, and educating and rallying our members about farm animal welfare matters.

6. To achieve its goal of reducing farm animal suffering, AWI actively participates and expends resources on behalf of its members in the regulatory process associated with livestock and poultry standards. This work includes AWI's involvement in National Organic Program

(NOP) regulatory matters. For NOP rulemakings, AWI has participated on behalf of its members in the entire process of the OLPP rulemaking. This participation has included advocating for improved animal welfare standards in these regulations, researching the effects of regulations on farm animals, and educating its members about the effects of said regulations. In the past, AWI has participated in National Organic Standards Board (NOSB) meetings on its members' behalf on issues relating to animal welfare. For example, AWI has submitted six comments advocating for increased welfare standards, testified at four NOSB meetings, and for a period of time, participated as a member of an advisory working group to the Livestock Committee of the NOSB. In 2011, the NOSB submitted recommendations to the USDA about animal welfare standards under the NOP. In response, the USDA developed the OLPP rule to address these recommendations. AWI submitted four substantive comments on the OLPP Rule on behalf of its members, which varied over time due to changing circumstances, but ranged from advocating for development of the rule, improvement of standards in the rule to full, and immediate implementation.¹ During this timeframe, AWI also rallied its members and supporters to submit comments to the docket three times.² AWI has expended significant resources on this work in support of its organizational interest and on behalf of its members, and continues to do so today.

¹ Animal Welfare Institute, Farm Animal Policy Efforts “Miscellaneous” and “On Farm” at <https://awionline.org/content/farm-animal-policy-efforts> (providing comments to the USDA on organic welfare standards since 2010).

² Animal Welfare Institute, *Last Chance to Save the Organic Rule!*, (Jan. 11, 2018) <https://awionline.org/action-ealerts/last-chance-save-organic-animal-welfare-rule>; *Stop Trump's USDA From Scrapping the Organic Animal Welfare Rule*, (May 25, 2017) <https://awionline.org/archived-action-ealerts/tell-usda-you-support-better-treatment-organically-raised-animals>; Animal Welfare Institute, *Tell the USDA You Support Better Treatment of Organically Raised Animals*, (May 12, 2016) (on file with Author).

7. Many of AWI's members are concerned about the well-being of animals raised for human consumption and are interested in policy efforts to improve their living conditions. Some of these members also purchase or seek to purchase organic products because they believe there are better welfare conditions for animals raised under the NOP. AWI educates its members about the standards of care required for animals raised under the NOP by using social media, researching, writing, and publishing reports, and using its website to communicate to its members. Since the OLPP rule will not go in to effect and the NOP will not guarantee consistent standards across the board, AWI expects it will expend more resources counseling its members about which products meet minimum animal welfare standards.

8. AMS's continued delays and withdrawal of the OLPP rule harmed and continue to harm AWI and its members. Before the OLPP rule's withdrawal, AWI planned to work on campaigns relating to ritual slaughter of livestock, improving slaughter conditions of livestock and poultry, improving the conditions livestock face during transport, and improving the standards for poultry growth under the organic program. Instead, AWI has been forced to mitigate its injury by diverting substantial resources toward advocacy, research, litigation and educating its members about the impacts of the withdrawal of the OLPP rule.

9. Initially, when the rule was delayed, AWI educated its members about the effect of the delay. This entailed drafting action alerts, conducting research, and partnering with the ASPCA and Farm Forward to produce a report about the OLPP Rule.³ This report, and notifying and educating its members about the report and the delay, required expenditure of time and funds meant

³ AWI, ASPCA, & Farm Forward, *Animal Welfare in the National Organic Program: The USDA Must Act Quickly to Protect Millions of Animals*, (Aug. 2017) <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-AnimalWelfare-NatOrganicProgram-2017-13.pdf> (Hereinafter "Organic Report").

for other farm animal project areas. The report exposed loopholes that many large organic producers exploit, resulting in a lower standard of care for animals and consumer confusion about what the Certified Organic Label guarantees.

10. When the USDA delayed the rule for the second time, AWI had to divert significant time and resources drafting a statement to notify its members about the rule's delay.⁴ AWI was forced to divert resources again to comment on the "voting" rulemaking where the agency polled stakeholders about whether to delay, implement, modify, or withdraw the OLPP Rule.⁵ Then, when the USDA published notice about its decision to withdraw the rule, AWI was forced to divert even more resources and time toward commenting on the withdrawal on its members' behalf and issuing a statement to notify its members and the public.⁶ AWI even attempted to extend the comment period to be sure that all of its members were alerted to the withdrawal and to complete the extensive research necessary to respond to the USDA's action.⁷

11. When the rule was withdrawn, AWI had to divert even more resources towards mitigating its injury. AWI continued to educate its members about the effect of the rule withdrawal and drafted a report about the connection between farm animal health and welfare to demonstrate

⁴ AWI Statement on the Second Delay of the OLPP Rule, <https://awionline.org/press-releases/statement-response-second-delay-organic-livestock-and-poultry-practices-rule>.

⁵ AWI Comment on the USDA's OLPP Vote, <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-comments-on-organic-rule-June-2017.pdf>.

⁶ AWI Comment on USDA's Withdrawal of the OLPP Rule, <https://www.regulations.gov/contentStreamer?documentId=AMS-NOP-15-0012-123038&attachmentNumber=1&contentType=pdf>; AWI Statement on the Withdrawal of the OLPP Rule, <https://awionline.org/press-releases/awi-statement-usda-withdrawal-organic-rule-leaves-millions-farm-animals-vulnerable>.

⁷ AWI, *Request for Extension of Withdrawal Comment Period*, <https://www.regulations.gov/document?D=AMS-NOP-15-0012-57208>. This request was denied by the USDA.

that the USDA's position that it could regulate health and not welfare was contrary to science and its own past positions.⁸ This report required AWI to expend significant program resources on researching animal health and animal welfare and demonstrating the connection between the two. AWI also hired Kenneth Litwak, DVM, Ph.D., to assist on writing the report to educate its members and the public.

12. Overall, since the rule has been delayed and withdrawn, AWI has expended in excess of 1000 staff and consultant hours responding to and mitigating its injury. AWI also must now expend resources it expected to spend on other farm animal campaigns educating its members about how the organic program will not have the consistent standards expected to be implemented, which is directly traceable to the USDA's failure to comply with its own statute, OFPA.

13. As part of its mission to reduce animal suffering, AWI also expends resources and advocates on behalf of its members regarding the necessity of consistent standards from farm to farm to ensure animal welfare. Unfortunately, because the current vague standards under the NOP are unevenly applied from farmer to farmer and do not address many animal critical care issues, AWI has difficulty determining what organic products to endorse to its members who purchase or seek to purchase dairy, eggs, meat, or poultry products because it is difficult to determine how the animal was raised. For example, AWI and its members sincerely believe that access to the outdoors for laying hens is necessary for the health and well-being of the bird. Some AWI members seek to purchase eggs from producers which provide outdoor access for their hens, but because of the ambiguity in the existing NOP regulations, true access to the outdoors is not always provided,

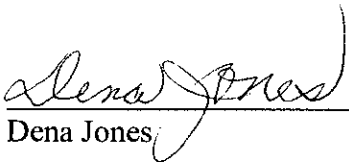
⁸ AWI, *The Critical Relationship Between Farm Animal Health and Welfare*, available at <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-Animal-Health-Welfare-Report-04022018.pdf>.

despite the fact that it appears to be required.⁹ This inconsistency in organic production practices leads to inconsistent products in the marketplace and degrades AWI's ability and interest in educating and directing concerned parties to organic products from animals that actually receive outdoor access including soil and vegetation. The inconsistent and unevenly applied standards under the current organic regulations were remedied by clarifications made in the OLPP Rule.

14. The serial delay, withdrawal, and lack of adequate procedure in revoking the OLPP Rule harmed and continues to harm AWI and its members' interests, has drained its resources, and generally makes AWI's work more difficult. None of these actions were taken in anticipation of litigation. A judgment on the merits redresses AWI's injuries.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed this 15th day of May 2018.


Dena Jones

⁹ Organic Report at 19. Some certified organic egg producers provide outdoor access to hens by allowing them onto enclosed, concrete porches.

EXHIBIT 11

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al,***

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
ERIC PIERCE IN SUPPORT OF
PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Pursuant to 28 U.S.C. § 1746 I, Eric Pierce declare:

1. I am employed as a VP of Business Insights by New Hope Network, owner of the Nutrition Business Journal.
2. The Nutrition Business Journal ("NBJ") is a research, publishing and consulting company serving the nutrition, natural products and alternative health care industries.
3. Nutrition and natural products include, but are not limited to, dietary supplements, herbs & botanicals, vitamins & minerals, natural & organic foods and natural personal care.
4. NBJ has worked with the Organic Trade Association since 2007 to conduct its annual Organic Industry Survey ("OIS").
5. The OIS is an often cited, premier annual report on the state of the U.S. organic marketplace.
6. The organic industry survey model was created using a variety of data sources that reflect sales data for the calendar year prior to the year of issuance of the report. For example, the 2017 OIS report is based on data gathered on calendar year 2016. The OIS of manufacturers is an important data set, but is only part of the data that goes into the final report.
7. Data are compiled from multiple additional sources. A focus is placed on obtaining and reviewing wholesale sales figures, in key organic product categories, *e.g.*, beverages,

Declaration of Eric Pierce

1 condiments, supplements, dairy, meat, eggs etc., and includes data from the various sales
2 channels, e.g., natural food stores, conventional grocery, farmers' markets, etc. Export
3 data are examined and employment and other related industry performance measures are
4 included to increase the accuracy of the OIS.

- 5 8. Published data on the organic industry market size, market growth history, product
6 breakdowns and other areas including private label are considered. Secondary sources
7 including Natural Foods Merchandiser's annual industry survey, public company
8 financial filings, industry expert interviews and media reports are also utilized.
- 9 9. Data from the prior calendar year are typically gathered and analyzed in February and
10 March of the succeeding year because much of the year-end data reports cannot be
11 compiled until the calendar year is completed. The final OIS is typically issued in the
12 month of May the following year.
- 13 10. Last year's OIS (published May 2017) concluded the 2016 growth rate for organic food
14 sales overall was approximately 8.4%. *See 2017 Report at p. 3* ("the 2017 Report")
- 15 11. The 2017 Report concluded a growth rate of 6.6% for the dairy and egg category in 2016,
16 upon sales that comprised approximately 15% of the total market for organic food. *See*
17 *2017 Report at p. 21* ("the 2017 Report")
- 18 12. The 2017 Report forecast an overall growth rate of 9.4% for organic food for calendar
19 year 2017. *See 2017 Report at p. 17.*
- 20 13. The initial assessments of the 2017 data are just now available.
- 21 14. The growth in the overall organic marketplace in 2017, based on the first analysis of 2017
22 data, is approximately 6% to 7%.
- 23 15. The annual growth in the organic dairy and egg category in 2017 is initially estimated at
24 1.7%. The dairy and egg category for 2017 is estimated to have the lowest sales growth
25 rate of any category and the lowest growth rate for the category since the recession
26 declines observed in 2009.
- 27 16. The dairy and egg category is initially estimated to have added the fewest new dollars of
28 any organic food category in 2017, despite being the third largest category of sales in
terms of dollar values.


Declaration of Eric Pierce

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17. The initially estimated growth rate for organic overall declined by approximately 30% and the decline for dairy and eggs is approximately 74%.

18. The downward pressure on the dairy and egg category is significantly greater than other categories and the steeper decline, which was not experienced by other categories, correlates to the period of regulatory inaction on the OLPP.

Dated this 5th day of March 2018.



Eric Pierce
New Hope Network, owner of Nutrition
Business Journal

Declaration of Eric Pierce

EXHIBIT 4

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
JEFFREY MOYER IN SUPPORT OF
PLAINTIFF'S SECOND AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Pursuant to 28 U.S.C. § 1746 I, Jeff Moyer, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am employed as the Executive Director at Rodale Institute, where I am responsible for all programs for the Institute.
3. I am a past member of the National Organic Standards Board (“NOSB” or “board”). I began a term on the “NOSB” in January 2006 and was elected to the chair position for the 2010 term, and left my position on the board in January 2011.
4. Congress created the NOSB to “assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA,” 7 USC §6518(a), and directed the Secretary: “shall establish an organic certification program ... and shall consult with the NOSB.” 7 USC §6503(a)
5. To discharge these duties the Secretary and the NOSB use a formal procedure to identify and place policy matters before the board for consideration, including the use of an annual work plan.

6. Any matter placed before the NOSB may result in a final recommendation regarding the matter from the board. Each final recommendation of the board is considered, debated and voted on in public session and officially recorded.
7. A key role of the board, and particularly the Chair, is to ensure the organic policy recommendations forwarded to the Secretary increase and never degrade the public trust in the meaning and value of the USDA's organic seal. This trust has been developed and maintained by years of robust, collaborative, and transparently adduced administrative records. Such records include extensive public, academic, and industry input, spirited and informed debate among board members, and carefully vetted written recommendations upon which the Secretary has always based its rulemaking decisions.
8. I cannot recall that the Secretary initiated any rulemaking during my time on the board or as its chair, whether a proposed, interim or final rule, to create or amend existing organic standards except when based on receipt of a formal recommendation from the NOSB.
9. During my time on the NOSB, including my time as Chairperson the well-settled practice and common understanding was that the sections of the OFPA referenced above required collaboration between the Secretary and the NOSB on every policy question that might ultimately lead to rulemaking. In fact, every organic-related rulemaking of which I am familiar was based on the work and formal recommendations of the NOSB.
10. A failure to formally consult the NOSB before initiating organic-related rulemaking would be inconsistent with my experience of the process followed by past Secretaries, and the expectations of the organic community, and my understanding of the collaborative course of conduct that, so far as I am aware, has always guided organic policy development. It is imperative that a strong relationship exists between farmers, producers, ranchers and all members of the organic community and the Secretary of the USDA in order to fulfill the mandates of OFPA and to protect the integrity of the word organic in the marketplace .

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of May 2018.



Jeff Moyer
Former Chairman
National Organic Standards Board

EXHIBIT 7

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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF COLUMBIA**

5 **ORGANIC TRADE ASSOCIATION, *et al*,**

6 **Plaintiff,**

7 **v.**

8 **UNITED STATES DEPARTMENT OF**
9 **AGRICULTURE, *et al*,**

10 **Defendants.**

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
LAURA BATCHA IN SUPPORT OF
PLAINTIFF'S SECOND AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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14 Pursuant to 28 U.S.C. § 1746 I, Laura Batcha, declare:

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- 16 1. I am the CEO and Executive Director of the Organic Trade Association (“OTA”). This
17 statement is based on my personal knowledge and is submitted in support of OTA’s
18 opposition to the USDA’s motion to dismiss OTA’s Second Amended Complaint.
 - 19 2. OTA was created to generate and ensure organic industry representation and advocacy
20 for organic trade participants and organic consumers. *See e.g. SAC at ¶¶’s 21-25* Prior to
21 passage of the OFPA OTA was very active in organic standards development and had a
22 unique role of attempting to harmonize the various private and state standards that then
23 existed. *See e.g. 65 Fed. Reg. at 80,666* (citing “the industry developed standards recently
24 proposed by the Organic Trade Association.”) OTA worked with all market participants
25 and certification entities, many of whom were members.
 - 26 3. OTA was instrumental in passage of the Organic Foods Production Act and supported the
27 creation by Congress of the National Organic Standards Board (“NOSB”) as a unique,
28 expert, public-private organic standards development body. *See e.g 65 Fed. Reg. at*
80677. (“Congress was petitioned by the Organic Trade Association to establish national

1 standards for organic food and fiber products.); *see also SAC* at ¶¶'s 62-68 (citing
2 approvingly legislative history of NOSB creation)

- 3 4. OTA also supported the creation of a single, uniform national market for organic
4 products. 7 U.S.C. § 6501 (purposes of enactment). *SAC* at ¶ 253 (citing legislative
5 history of need for single national standard; inability of marketplace to solve the market
6 failure problem); *see also e.g. SAC* at ¶ 248(e) (citing USDA research--"Setting a
7 national organic standard ended variance among State standards. This gave the organic
8 sector more access to interstate and international markets, increasing sales.")
- 9 5. The National Organic Program's elimination of competing private and state organic
10 standards backed by the USDA organic seal fulfilled Congressional intent to eliminate
11 regulatory variance and eliminate the informational asymmetry that plagued farmers,
12 processors and consumers prior to the initiation of the federal program. *See e.g. 7 U.S.C.*
13 *§ 6501* (purposes of enactment); *see also SAC* at ¶ 248 (USDA research findings that
14 consumer support for product attributes they cannot verify themselves, like organic, can
15 vanish if inconsistency is introduced); 65 Fed. Reg. at 80666 (rejecting maintenance of
16 "status quo" because there "would be no national standard or national program of
17 accreditation and certification.")
- 18 6. Following passage of the OFPA and creation of the NOSB, OTA's mission was updated
19 to operate within the framework that Congress selected and OTA has worked to ensure
20 the federal organic program fulfilled its transformational agricultural, environmental and
21 market promise of establishing a single, uniform, consistently applied national standard
22 for organic production and the labeling of organic products based on recommendations
23 from the NOSB to the Secretary. All OTA advocacy activities proceed from the
24 perspective of a single national standard that is backed by a single, federal certification
25 and enforcement scheme and a standards development process that fully incorporates the
26 NOSB. 7 U.S.C. § 6503-04 (national program requirements); 7 U.S.C. § 6519 (federal
27 penalties for misuse of label or false statements in certification process)
- 28 7. OTA's mission and advocacy activities harmonized with the first twenty years of the
USDA's approach to the NOSB and the maintenance of a uniform national standard for
organic production and products. *See e.g. SAC* at ¶¶ 's 269-272 (noting pathway to

1 harmonized organic standards—statutory authority, agency findings of inconsistency in
2 federal standards, programmatic determination to conduct federal rulemaking to remedy
3 the inconsistency consonant with cost/benefit analysis principles); SAC at ¶ 248 (USDA
4 research findings that consumer support for product attributes they cannot verify
5 themselves, like organic, can vanish if inconsistency is introduced)

6 8. OTA and its members recognize that use of the USDA’s Organic Seal constitutes a kind
7 of shared brand among all certified operations and businesses. This unique common
8 equity places greater than usual emphasis on the need for consensus standard setting
9 under the federal organic program and on uniform compliance and cohesive enforcement.
10 The USDA seal is commonly and uniformly used on the packaging of every certified
11 organic product.

12 9. In the Withdrawal Rule USDA reversed these two foundational principles--,

13 a. “[T]he withdrawal of the OLPP final rule does not restrict organic producers
14 from using private certification labels to communicate additional information to
15 consumers about production practices or product attributes.” 83 Fed. Reg. at
16 10780; “Variance in production practices and participation in private, third-party
17 certification programs, however, do not constitute evidence of significant market
18 failure.” 83 Fed. Reg. at 10,782;

19 b. “OFPA does not require AMS to consult with the NOSB prior to undertaking a
20 rulemaking to withdraw the OLPP final rule.” 83 Fed. Reg. 10,778 at n. 6.;
21 “[N]othing in OFPA requires AMS to consult the NOSB at every phase of the rule
22 making process or makes the NOSB’s recommendations binding on the Secretary,
23 nor could it.” 83 Fed. Reg. 10778

24 10. With regard to the change referenced in 9(a) the OTA’s modern mission and advocacy
25 activities in pursuit thereof are severely compromised and concretely harmed because
26 they are organized around the lodestone of a single national standard and the NOSB as
27 the gatekeeper. But that activity is frustrated and impeded by the narrowing role of the
28 NOSB arising from the withdrawal rule. OTA’s activities and advocacy efforts will
instead have to be redirected to a returning to its role as a harmonizer of various private
standards or become a private standards setter as well as grapple with the possibility of

1 restoration of a patchwork of new private entities and state “add on” organic standards
2 that will fundamentally change its mission. The sea change introduced by the approach
3 taken in the withdrawal cannot be overestimated and is not speculative.

4 11. OTA’s typical advocacy activities that are in addition to this litigation are already
5 impaired. OTA’s annual “policy week” activities in Washington have been curtailed
6 because it has paid for a venue and an expert to convene a facilitated working session in
7 Washington D.C. to address this proposed reversion to the pre-OFPA wild west days of
8 organic standards. This takes away from and frustrates the main purpose of “policy
9 week” which is to meet with federal officials on federal organic issues.

10 12. Since the adoption of the NOP in 2000 USDA has consistently rejected “better than you”
11 organic claims or “beyond organic” marketing claims and certification programs as
12 antithetical to the purposes the OFPA set forth in Section 6501. The NOP in the proposed
13 OLPP and the final OLPP, and the USDA’s own researchers in a recent research report,
14 have concluded that differences between government standards and private standards
15 often results in consumer confusion and anticompetitive outcomes. *See e.g. SAC* at ¶ 248
(review of Economic Research Service Report conclusions)¹

16 13. In sum, OTA’s mission was reformed in 1990 to be part of a federal organic eco-system
17 that focused on a uniform national standard that was consistently enforced. It is already
18 expending financial and expert resources to overcome the harm to its activities arising
19 directly from the USDA’s reversion to a mixture of private, state and federal organic
20 production requirements created by the withdrawal rule of March 2018. OTA anticipates
21 significant additional expenditure of funds to restructure its operations and ongoing
22 frustration of its current activities and mission.

23 14. With regard to the change in 9(b), OTA has pointed throughout the SAC that amending a
24 substantive legislative rule twice without notice and comment and a third time on
25 substandard notice, and withdrawing a valid published rule ten-years in the making
26 without consulting the NOSB whatsoever hardly constitutes an undertaking that can be

27 ¹ *A Report Summary from the Economic Research Service, Beyond Nutrition and Organic*
28 *Labels—30 Years of Experience With Intervening in Food Labels*, Report No. 39 (November
2017) (“ERS Report No. 39”).

1 dismissed as a mere “phase” of rulemaking. These steps are at the core of development of
2 organic policy for which Congress commanded, and USDA past practice confirms, the
3 NOSB must be involved. *See e.g. Exhibits x-x* (declarations of former NOSB chairs);
4 *Dkt. No. 16, Exhibit 3: Declaration of NOSB Chair Tom Chapman* at ¶¶’s 15, 18, 20, 22,
5 26.

- 6 15. The SAC at ¶ 24 notes that the “consultative channel with the NOSB” is a “key
7 mechanism” by which OTA and its members participate in development of organic
8 policy. OTA participates with the NOSB on an ongoing basis and has organized its
9 activities around this purpose. A sudden change to operating in 50 states with various
10 organic agendas and interacting with an innumerable number of private certification
11 entities whose goals and purposes may well be at odds with the single national standard
12 around which OTA currently operates is an inescapable and concrete harm to its present
13 activities and operating principles. OTA is already spending resources to address the
14 development of private organic standards that were sparked by USDA’s delay
15 rulemakings, and now expects a significant expansion in light of the statements in the
16 withdrawal rulemaking.
- 17 16. OTA is also aware that the USDA has curtailed the work plan of the NOSB in alignment
18 with the statements cited above thus forcing OTA to expend additional resources on
19 attempting to guess what USDA is planning with regard to organic policy. The NOSB
20 work plan typically demonstrated the focal point of the agency’s interest and efforts and
21 allowed OTA to focus its members attention and resources on these topics. *See e.g.*
22 *Exhibits x-x*. (declarations of former NOSB chairs describing purpose of work plan and
23 its role in NOSB recommendations) This directly and materially impairs OTA’s
24 activities on pending matters that are now put on the back burner or dropped, such as
25 organic seed policy and soilless production systems and aquaculture systems.
- 26 17. Each Plaintiff in this case pointed out the harm arising from USDA’s reversal on the
27 OLPP included persistent market failure and public institution failure to maintain and
28 enforce a statutory purpose—consistent national standards. SAC at ¶ 250 (citing OTA
and AWI/ASPCA comments during rulemaking); SAC *Exhibit 4* (OTA comment at 4);
SAC *Exhibit 5 Comment of ASPCA and AWI* at 17-19.

- 1 18. In December 2017 OTA requested that the USDA enlarge the time for comment on its
2 proposed withdrawal of the OLPP. Enlargement was requested because the issues raised
3 with regard to the cost/benefit analysis was complex and appeared likely to require an
4 expert, or multiple experts, to analyze the revised economic findings in the USDA's
5 PRIA. The PRIA was not published in the Federal Register. USDA refused to enlarge the
6 time for comment. This resulted in substandard due process under the APA and concrete
7 harm to OTA's interests that are not merely abstract or an objection to a policy direction.
8 19. The conduct of the USDA throughout this fourteen month period has evidenced a closed
9 mind and unwillingness to fully and fairly consider the ramifications of its abrupt change
10 in the foundational principles of federal organic policy.

11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed this 15th day of May 2018.

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16 Laura Batcha
17 Organic Trade Association
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EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
J. MICHAEL SLIGH, IN SUPPORT
OF PLAINTIFF'S SECOND
AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Pursuant to 28 U.S.C. § 1746 I, J. Michael Sligh, declare:

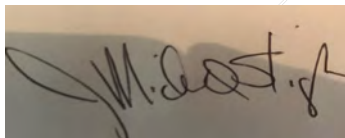
1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am a past member of the National Organic Standards Board (“NOSB” or “board”). I served a five-year term - [March,1992-1997]- I was elected the founding chairperson in [March,1992 and served in that position for three years, as well as later serving as co-chair during my tenure.
3. Congress created the NOSB to “assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA,” 7 USC §6518(a), and directed the Secretary: “shall establish an organic certification program ... and shall consult with the NOSB.” 7 USC §6503(a)
4. To discharge these duties the Secretary and the NOSB use a formal procedure to identify and place policy matters before the board for consideration, including the use of an annual work plan.
5. Any matter placed before the NOSB may result in a final recommendation regarding the matter from the board. Each final recommendation of the board is considered, debated and voted on in public session and officially recorded.

Declaration of J. Michael Sligh

- 1 6. A key role of the board, and particularly the Chair, is to ensure the organic policy
2 recommendations forwarded to the Secretary increase and never degrade the public trust
3 in the meaning and value of the USDA's organic seal. This trust has been developed and
4 maintained by years of robust, collaborative, and transparently adduced administrative
5 records. Such records include extensive public, academic, and industry input, spirited and
6 informed debate among board members, and carefully vetted written recommendations
7 upon which the Secretary has always based its rulemaking decisions.
- 8 7. I recall that the Secretary did not initiate any rulemaking during my time on the board or
9 as its chair, whether a proposed, interim or final rule, to create or amend existing organic
10 standards except when based on receipt of a formal recommendation from the NOSB.
- 11 8. During my time on the NOSB, including my time as Chairperson the well-settled practice
12 and common understanding was that the sections of the OFPA referenced above required
13 collaboration between the Secretary and the NOSB on every policy question that might
14 ultimately lead to rulemaking. In fact, every organic-related rulemaking of which I am
15 familiar was based on the work and formal recommendations of the NOSB.
- 16 9. A failure to formally consult the NOSB before initiating organic-related rulemaking
17 would be inconsistent with my experience of the process followed by past Secretaries,
18 and the expectations of the organic community, and my understanding of the
19 collaborative course of conduct that, so far as I am aware, has always guided organic
20 policy development.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed this 11th day of May 2018.

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24 J. Michael Sligh
25 Former Chairman
26 National Organic Standards Board
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EXHIBIT 3

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
MAC STONE IN SUPPORT OF
PLAINTIFF'S SECOND AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Pursuant to 28 U.S.C. § 1746 I, Mac Stone declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am employed as a managing partner of Elmwood Stock Farm where I am responsible for protein sales and farmers markets.
3. I am a past member of the National Organic Standards Board (“NOSB” or “board”) serving during the years that animal welfare standards were being discussed and debated. I was elected and became the chairperson in 2012. I was honored to be elected by my peers to be their Chairman, and served for 1.5 years.
4. Congress created the NOSB to “assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA,” 7 USC §6518(a), and directed the Secretary: “shall establish an organic certification program ... and shall consult with the NOSB.” 7 USC §6503(a)
5. To discharge these duties the Secretary and the NOSB use a formal procedure to identify and place policy matters before the board for consideration, including the use of an annual work plan.

6. Any matter placed before the NOSB may result in a final recommendation regarding the matter from the board. Each final recommendation of the board is considered, debated and voted on in public session and officially recorded.
7. A key role of the board, and particularly the Chair, is to ensure the organic policy recommendations forwarded to the Secretary increase and never degrade the public trust in the meaning and value of the USDA's organic seal. This trust has been developed and maintained by years of robust, collaborative, and transparently adduced administrative records. Such records include extensive public, academic, and industry input, spirited and informed debate among board members, and carefully vetted written recommendations upon which the Secretary has always based its rulemaking decisions.
8. I have no recollection of the Secretary initiating any rulemaking during my time on the board or as its chair, whether a proposed, interim or final rule, to create or amend existing organic standards except when based on receipt of a formal recommendation from the NOSB, and I would probably remember that, because it would have been a big deal to all segments of the organic community.
9. During my time on the NOSB, including my time as Chairperson the well-settled practice and common understanding was that the sections of the OFPA referenced above required collaboration between the Secretary and the NOSB on every policy question that might ultimately lead to rulemaking. In fact, every organic-related rulemaking of which I am familiar was based on the work and formal recommendations of the NOSB.
10. A failure to formally consult the NOSB before initiating organic-related rulemaking would be inconsistent with my experience of the process followed by past Secretaries, and the expectations of the organic community, and my understanding of the collaborative course of conduct that, so far as I am aware, has always guided organic policy development.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this __14__ day of May 2018.

Original signed, filed by permission

Mac Stone, former NOSB Chairperson

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
[FORMER CHAIRMAN] IN
SUPPORT OF PLAINTIFF'S
SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Pursuant to 28 U.S.C. § 1746 I, Robert B Anderson, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am the owner of Sustainable Strategies LLC and provide consultation services regarding domestic and international trade in organic products.
3. I am a past member of the National Organic Standards Board ("NOSB" or "board"). In January 1995, I began a six year term on the "NOSB" and was elected and consecutively served as the chairperson during the development of National Organic Standards from 1996 through 2000. Congress created the NOSB to "assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA," 7 USC §6518(a), and directed the Secretary: "shall establish an organic certification program ... and shall consult with the NOSB." 7 USC §6503(a)

4. To discharge these duties the Secretary and the NOSB use a formal procedure to identify and place policy matters before the board for consideration, including the use of an annual work plan.
5. Any matter placed before the NOSB may result in a final recommendation regarding the matter from the board. Each final recommendation of the board is considered, debated and voted on in public session and officially recorded.
6. A key role of the board, and particularly the Chair, is to ensure the organic policy recommendations forwarded to the Secretary increase and never degrade the public trust in the meaning and value of the USDA's organic seal. This trust has been developed and maintained by years of robust, collaborative, and transparently adduced administrative records. Such records include extensive public, academic, and industry input, spirited and informed debate among board members, and carefully vetted written recommendations upon which the Secretary has always based its rulemaking decisions. The Organic Trade Association's 2016 report - © *U.S. Families' Organic Attitudes and Beliefs Study* found that the USDA Organic Seal was one of the top three seals recognized and trusted by American consumers. During my tenure on the NOSB, the Secretary did not initiate any rulemaking during my time on the board or as its chair, whether a proposed, interim or final rule, to create or amend existing organic standards except when based on receipt of a formal recommendation from the NOSB.
7. During my time on the NOSB, including my time as Chairperson the well-settled practice and common understanding was that the sections of the OFPA referenced above required collaboration between the Secretary and the NOSB on every policy question that might ultimately lead to rulemaking. In fact, every organic-related rulemaking of which I am familiar was based on the work and formal recommendations of the NOSB.
8. The USDA withdrew the first proposed Organic Rule following receipt of more than two hundred thousand adverse comments from U.S organic consumers, producers, businesses, associations and NOSB members, and consultation with the NOSB including declarant. Thereafter, USDA openly solicited NOSB recommendations throughout the development of the final organic regulation.

9. A failure to formally consult the NOSB before initiating organic-related rulemaking is inconsistent with my experience of the process followed by past Secretaries, the expectations of the organic community, including consumers, and my knowledge of the collaborative course of conduct that has [always] guided organic policy development in the United States.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of May 2018.



Robert B Anderson
Former Chairman
National Organic Standards Board

EXHIBIT 6

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION, *et al.*,

Plaintiffs,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
SUZANNE MCMILLAN IN SUPPORT
OF PLAINTIFFS' OPPOSITION TO
MOTION TO DISMISS SECOND
AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Pursuant to 28 U.S.C. § 1746 I, Suzanne McMillan, declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the animal welfare community. I have no financial interest in this litigation.
2. I am employed as the Content Director for the ASPCA's Farm Animal Welfare Campaign, where I am responsible for tracking and improving animal welfare standards associated with animal welfare certification programs and government-regulated food label claims.
3. The ASPCA has a well-established farm animal welfare program which employs several farm animal welfare experts and is supported by other ASPCA staff, including those in the organization's Government Relations and Legal Advocacy departments.
4. The farm animal welfare program helps the ASPCA achieve its mission by advocating for a range of laws, regulations, and policies that promote greater protection for farm animals, including bans on raising farm animals with cages, crates, and other intensive farming practices that maximize output at the expense of animal welfare; corporate

Declaration of ASPCA Employee Suzanne McMillan

policies adopting more humane husbandry, transportation, and slaughter practices; and regulatory and legislative requirements that ensure food product labels convey accurate information to consumers about farm animal welfare.

5. The ASPCA pursues these efforts through regulatory and legislative advocacy; corporate and institutional engagement; and consumer education and mobilization.
6. Through this work, the ASPCA aims to improve farm animal welfare by, among other things, expanding the portion of the market comprised of meaningful third-party animal welfare-certified meat, dairy, and egg products.
7. Much of the ASPCA's farm animal welfare work is reflected on the ASPCA's "Shop With Your Heart" campaign website, which is geared toward consumers, companies, and advocates.
8. That website, launched in 2016, reaches millions of Americans to encourage them to consider making more humane food choices by providing resources such as food label guides, lists of higher-welfare brands, guides for farmers considering welfare certification, and ways for the public to take action to improve farm animal welfare.
9. The campaign has been reported on by national publications including the *New York Times*, *USA Today*, and the *Los Angeles Times*.
10. The Shop With Your Heart campaign reaches 2.5 million ASPCA members by e-mail and has 1.75 million Facebook followers, 490,000 Twitter followers, and 303,000 Instagram followers.
11. Over the past year, forty-five brands and twelve major food buyers have collaborated with the Shop With Your Heart campaign by adopting the most rigorous and transparent farm animal welfare certification programs in the country, thereby improving the lives of hundreds of thousands of chickens, cows, pigs, and other farm animals.
12. In its first year, the ASPCA's Shop With Your Heart campaign garnered the ASPCA approximately 3,000 additional followers, supporters, and donors per month, reflecting the growing expectations of ASPCA supporters and the American public that animal welfare organizations like the ASPCA vigorously advocate for improvements in farm animal welfare.

13. The ASPCA's farm work has also helped the ASPCA reach new audiences, such as individuals concerned with personal health, public health, the environment, and fair labor standards.
14. The ASPCA is a key participant in a number of cross-sector initiatives and events that have allowed it to generate materials for those new audiences and reach them through public appearances on conference panels and in other venues.
15. Additionally, the farm animal welfare program continues to develop relationships with farm animal sanctuaries, helping to increase the ASPCA's ability to place farm animals from cruelty cases.
16. Prior to the OLPP's withdrawal, the ASPCA devoted a substantial amount of its time and other resources to improving organic standards.
17. It has focused on educating consumers on what the Organic label entails for animal welfare and, eventually, planned to help raise the labels' welfare standards, through the implementation of the OLPP and other efforts.
18. While the OLPP rulemaking process was underway, and relying on the assumption that the process would have established regulations leading to higher welfare, the ASPCA engaged organic farmers to secure their support for OLPP, and encouraged their participation in its outreach campaigns.
19. Now that OLPP has been withdrawn and the anticipated certainty in consistent and improved animal welfare regulations has been destroyed, the Organic farming community is splintering off in several directions.
20. Some farms will implement higher-welfare standards, while others may not. Without OLPP in place, both types of farms may use the same Organic certification.
21. This is likely to cause increased consumer confusion, since the Organic food label will not carry a consistent meaning as it relates to animal welfare standards.
22. Relatedly, the OLPP's withdrawal has now made it difficult for the ASPCA to clarify the Organic label for consumers, because the ASPCA had previously publicized the OLPP rule as promising significant improvements to the Organic label.

23. The ASPCA's Shop With Your Heart campaign is aimed at helping consumers understand the complex food labeling marketplace and increasing the availability of meaningful food-labeling certifications.
24. The repeated postponement, and eventual withdrawal, of the OLPP has undermined this work and likely eroded consumer trust in this campaign.
25. USDA's recent refusal to include NOSB in its decision-making process (including on USDA's decision to withdraw the OLPP rule) limited the ASPCA's ability to obtain critical information about the status of the agency's rulemaking, which the ASPCA needed to develop appropriate educational and other programmatic activities.
26. Since the OLPP was first postponed, the ASPCA has diverted resources toward extensive communication with the public, journalists, and partner organizations to alert them to USDA's actions.
27. This includes press releases; researching and releasing reports on the economic and ethical imperative for these rules; conducting extensive media interviews; coordinating with farmers, companies, and other strategically-aligned groups; issuing multiple rounds of advocacy emails; and launching multi-platform social media campaigns, all urging public comment to USDA.
28. None of these activities were taken for the purpose of litigation or in anticipation of litigation. The ASPCA would have undertaken these activities to counteract USDA's conduct regardless of whether it joined this lawsuit or not.
29. If the OLPP were implemented, the ASPCA could rededicate resources to its other legislative, regulatory, corporate, or consumer education initiatives that help fulfill its mission.
30. For example, the ASPCA could focus its work on clarifying other types of food labeling claims for the public, as well as improving the underlying animal welfare standards of those labels.
31. The ASPCA could also focus more on growing the market for, and continuing to raise the standards of, animal welfare certification programs (such as Certified Humane, Global Animal Partnership and Animal Welfare Approved), which is a cornerstone of the ASPCA's farm animal welfare strategy.

32. To date, many of the ASPCA's resources have been dedicated to just one label – USDA Organic.
33. Therefore, immediate implementation of the OLPP rule would allow the ASPCA to focus on other campaigns, as well as refine its work with organic farmers and consumers and continue to advocate for higher organic welfare standards following implementation of OLPP.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of May 2018.



Suzanne McMillan
Content Director, Farm Animal Welfare
Campaign
Strategy & Campaigns
ASPCA

EXHIBIT 5

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
TRACY MIEDEMA IN SUPPORT OF
PLAINTIFF'S SECOND AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Pursuant to 28 U.S.C. § 1746 I, Tracy Miedema , declare:

1. I am over 18 and under no disability that prevents me from making this declaration. Each statement is based on my personal knowledge unless otherwise stated. I am aware of this litigation because of its importance to the organic community. I have no financial interest in this litigation.
2. I am employed as the Vice President of Innovation and Brand Development at Presence Marketing, where I am responsible for New Business and Investment Portfolio.
3. I am a past member of the National Organic Standards Board (“NOSB” or “board”). In January 2007 I began a 5 year term on the “NOSB” and was elected the chairperson in January 1, 2011 until January 1, 2012
4. Congress created the NOSB to “assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA,” 7 USC §6518(a), and directed the Secretary: “shall establish an organic certification program ... and shall consult with the NOSB.” 7 USC §6503(a)
5. To discharge these duties the Secretary and the NOSB use a formal procedure to identify and place policy matters before the board for consideration, including the use of an annual work plan.

- 1 6. Any matter placed before the NOSB may result in a final recommendation regarding the
2 matter from the board. Each final recommendation of the board is considered, debated
3 and voted on in public session and officially recorded.
- 4 7. A key role of the board, and particularly the Chair, is to ensure the organic policy
5 recommendations forwarded to the Secretary increase and never degrade the public trust
6 in the meaning and value of the USDA's organic seal. This trust has been developed and
7 maintained by years of robust, collaborative, and transparently adduced administrative
8 records. Such records include extensive public, academic, and industry input, spirited and
9 informed debate among board members, and carefully vetted written recommendations
10 upon which the Secretary has always based its rulemaking decisions.
- 11 8. I recollect that the Secretary did not initiate any rulemaking during my time on the board
12 or as its chair, whether a proposed, interim or final rule, to create or amend existing
13 organic standards except when based on receipt of a formal recommendation from the
14 NOSB.
- 15 9. During my time on the NOSB, including my time as Chairperson the well-settled practice
16 and common understanding was that the sections of the OFPA referenced above required
17 collaboration between the Secretary and the NOSB on every policy question that might
18 ultimately lead to rulemaking. In fact, every organic-related rulemaking of which I am
19 familiar was based on the work and formal recommendations of the NOSB.
- 20 10. A failure to formally consult the NOSB before initiating organic-related rulemaking
21 would be inconsistent with my experience of the process followed by past Secretaries,
22 and the expectations of the organic community, and my understanding of the
23 collaborative course of conduct that, so far as I am aware, has always guided organic
24 policy development.

25 I declare under penalty of perjury that the foregoing is true and correct.

26 Executed this 11th day of May 2018.

27 

Tracy Miedema - Former Chairman
National Organic Standards Board

1
2
3 **UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF COLUMBIA**

5 **ORGANIC TRADE ASSOCIATION,**

6 **Plaintiff,**

7 **v.**

8 **UNITED STATES DEPARTMENT OF**
9 **AGRICULTURE, *et al.***

10 **Defendants.**

Civil Case No. 1:17-cv-001875-RMC

**DECLARATION OF
GINA ASOUDEGAN IN SUPPORT
OF PLAINTIFF'S FIRST
AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

11
12
13
14 Pursuant to 28 U.S.C. § 1746 I, Gina Asoudegan, declare:

- 15
16 1. I am over 18 and under no disability that prevents me from making this statement, which is
17 based on my personal knowledge unless otherwise stated.
- 18 2. I am the Vice President of Mission and Innovation Strategy for Applegate, the nation's
19 leading natural and organic meat brand. Among other responsibilities, I oversee the
20 development and maintenance of Applegate's livestock production requirements. Our
21 standards are based on our company values and consumer preferences.
- 22 3. Applegate is the leading natural and organic prepared meat products company in the United
23 States. Our products are sold in all 50 states. Applegate is an OTA member.
- 24 4. We purchase millions of dollars of certified organic livestock products from certified organic
25 livestock farmers every year, and market millions of dollars of certified organic prepared
26 meat products to consumers through retail channels. We purchase and process beef, turkey,
27 chicken, and pork products.
- 28

Declaration of Gina Asoudegan

- 1 5. We operate a website that explains the principles of our business model. Two core values of
2 the company are supporting appropriate scale livestock operations and high animal welfare
3 production systems.
- 4 6. Our consumers have for many years been telling us that they support and seek products from
5 farms that follow verified higher animal welfare practices.
- 6 7. Sufficient outdoor access, and indoor and outdoor space sufficient to express behaviors
7 natural to their species is generally recognized by consumers and farmers as a baseline high
8 animal welfare practice and a key organic principle. But there have been and currently are
9 inconsistencies in the application of these principles under the USDA's certification system.
- 10 8. It is our experience that these inconsistencies allowed some organic operators to achieve
11 lower production costs by ignoring the consensus organic baseline outdoor access and space
12 requirements, while remaining certified. This in turn distorts the marketplace for organic
13 livestock products by making these products less expensive than ones from operations that
14 observed the strictest organic welfare requirements. Our company is harmed by competition
15 from organic livestock products that are not meeting the highest, organic welfare standards.
- 16 9. Because of the inconsistent application of the federal program, Applegate expends resources
17 confirming that our organic suppliers are not operating under the lower organic welfare
18 requirements. We also purchase from organic operations that pay for animal welfare
19 certifications in addition to organic certification, which further increases the cost of organic
20 products. These costly discrepancies were set to be eliminated by the Organic Livestock
21 Production Practices Final Rule issued in January 2017. ("OLPP")
- 22 10. The absence of a consistent national standard for organic livestock products and its
23 associated additional costs harms consumers in the form of higher prices.
- 24 11. Our consumers communicate with us directly via social media and indirectly through
25 purchases. Our consumers uniformly support the OLPP final rule. Our consumers, via social
26 media, have expressed dismay and a growing distrust of the federal organic program because
27
28

Declaration of Gina Asoudegan

1 of the delay. Applegate has collected more than 32,000 signatures of support for the OLPP
2 through a change.org petition started on January 16, 2018.


3
4 12. Our company has been involved in the development of the USDA's rulemaking for many
5 years through submission of comments and testimony before the National Organic Standards
6 Board. ("NOSB") We supported the draft OLPP published in April 2016 and the final OLPP
7 published in January 2017. Applegate has invested, and continues to invest, significant
8 employee resources to remain abreast of organic policy making and the activities of the
9 NOSB. We also rely on OTA to lobby and provide current information.

10 13. The refusal of the current administration to consult the public on the first announced delays
11 and the refusal to consult the NOSB on the decision to delay the OLPP and the decision to
12 propose its withdrawal, further undermines the trust of consumers in the USDA's organic
13 seal.

14 14. We believe that further delay or withdrawal of the OLPP would promote higher costs for
15 processors of organic livestock products, and higher consumer prices that the OLPP was
16 designed to reduce. We also believe that consumers' trust the USDA organic seal on
17 livestock products in part because they believe animals are allowed outdoors and sufficient
18 space to express natural behavior. Refusal to implement the OLPP renders that trust
19 misplaced.
20

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed this ___ day of February 2017.
23

24
25 
26 _____
27 Gina Asoudegan
28 Vice President of Mission and Innovation
Strategy, Applegate

Declaration of Gina Asoudegan

1
2
3 **UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF COLUMBIA**

5 **ORGANIC TRADE ASSOCIATION,**

6 **Plaintiff,**

7 **v.**

8 **UNITED STATES DEPARTMENT OF**
9 **AGRICULTURE, et al,**

Civil Case No. 1:17-cv-01875-RMC

DECLARATION OF
GEORGE SIEMON, IN SUPPORT
OF PLAINTIFF'S FIRST
AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

10
11
12
13 Pursuant to 28 U.S.C. § 1746 I, George Siemon, declare:

- 14 1. I am the Chief Executive Officer (CEO) of CROPP Cooperative d/b/a Organic Valley.
15
16 2. CROPP is the largest farmer-owned organic cooperative in the world. CROPP
17 Cooperative is a marketing cooperative focused exclusively in organic trade. Organized
18 in 1988, CROPP is owned by over 2,000 certified organic livestock organic farmers in 36
19 states. The co-op achieved more than \$1 billion in sales in 2017. CROPP produces a
20 variety of organic foods, including organic milk, soy, cheese, butter, spreads, creams,
21 eggs, pork, poultry, and beef and produce.
22
23 3. CROPP Cooperative produces and markets certified organic dairy and egg products
24 under the Organic Valley® brand and certified organic meat products under the Organic
25 Prairie® brand.
26
27 4. CROPP produces, processes and markets only certified organic products and change in
28 the organic regulations affects our business directly. Because we are a livestock products

Declaration of George Siemon

1 business, the Organic Livestock Production Practices rule directly affected our business
2 by altering the terms of compliance and competition, including changing what can be
3 certified and labeled as organically produced.

4
5 5. CROPP, through my personal activity and that of others, supported the adoption of the
6 OFPA in 1990 to remove the patchwork of state and private organic standards that were
7 confusing consumers, and preventing a single, consistent definition of organic production
8 practices to govern the interstate marketplace. In 1990, organic advocates considered it a
9 great victory to have Congress create the National Organic Program (“NOP”) and the
10 National Organic Standards Board (“NOSB”) to advise the USDA, and strongly
11 supported the diverse composition of the NOSB and the mandate that the Secretary
12 conduct pre-rulemaking consultations with the NOSB.

13
14 6. It was widely understood by organic advocates at the time of the passage of the OFPA
15 that livestock production practices and standards were underdeveloped compared to crop
16 production practices and the statutory requirement that the NOSB and USDA develop
17 additional dairy, meat and egg producing animal management and healthcare practices
18 was considered necessary.

19
20 7. CROPP, through its farmer-owners, has invested, and continues to invest significant time
21 and financial and employee resources to remain abreast of organic policy making and the
22 activities of the NOSB and the USDA’s National Organic Program (“NOP”).

23
24 8. Because the NOP is a marketing program, and organic consumers are represented on the
25 NOSB, it has long been the policy of the NOSB to incorporate consumer preferences and
26 concerns into the recommendations to the USDA. Correspondingly, USDA has
27
28

Declaration of George Siemon

1 recognized and repeatedly referred to consumer attitudes and preferences in developing
2 and issuing the NOP's programmatic standards.

- 3
4 9. Consumer preferences and attitudes are critical because unlike many other product
5 "standards" for manufactured items, organic is called a "process-based" standard. No
6 one can look at a tomato or egg and know if it is organic or not. The only way a
7 consumer can know something is organically produced is if it is certified by a certifying
8 agency. If the standards are not set by transparent mechanisms, or the verification
9 systems are weak, or the standards are inconsistently applied, the grounds for consumer
10 trust begin to dissolve.
- 11
12 10. Unlike most federal rulemaking, the pre-rulemaking consultation with the NOSB
13 requirement facilitates trust because it allows affected businesses, and consumers, a
14 unique and comprehensive opportunity to be part of pre-vetting of any proposed
15 amendment to the organic standards.
- 16
17 11. This pre-vetting allows certified organic parties and consumers to ascertain the concerns
18 of, and to fully assist the NOSB in refining its recommendations and critically, to hear the
19 level of support or opposition from farmers, consumers, and organic business entities.
- 20
21 12. Unlike most federal rulemaking, the direction and content of organic rulemaking is
22 generally well formed prior to the publication of any final recommendation to the
23 Secretary and certainly before any Notice of Proposed Rulemaking or Proposed Rule in
24 the Federal Register. It is common for organic businesses to act in reliance on detailed
25 NOSB recommendations that USDA has accepted, but not yet rendered into a final rule.
- 26
27 13. I believe this pre-vetting opportunity was mandated by Congress to ensure the organic
28 marketing program was always nimble, informed, transparent and continuously

Declaration of George Siemon

1 improving and to allow organic operators advance notice of programmatic issues that
2 may result in changes to organic standards. It has also expressly brought consumer
3 preferences into the discussion of organic standards.
4

5 14. The Final OLPP was a very logical and nearly unchanged version of the NOSB's
6 recommendations on this point and the provisions of the NPRM

7 15. CROPP relies on the rules governing notice and comment before the NOSB and those
8 governing rulemaking by the USDA to ensure it is able to fully and fairly participate in
9 all aspects of the development of organic policies. In addition, CROPP relies on the
10 mandatory consultation provisions set forth in the OFPA to both learn the USDA's
11 thinking and the thinking of the NOSB with regard to proposed amendments to the
12 organic standards.
13

14 16. I am aware that the current Administration has not consulted the NOSB regarding its
15 course of action with regard to the blocking the OLPP and CROPP has presently lost the
16 opportunity to meaningfully advocate to the NOSB on the current matter. This is an
17 ongoing deprivation.
18

19 17. I am personally unaware in more than 25 years of participation with Congress, USDA,
20 the NOSB and the organic marketplace, of any significant organic policy that has been
21 developed without consultation with the NOSB until the recent activity by USDA
22 surrounding its efforts to block the implementation of the OLPP.
23

24 18. CROPP submitted written comments and testimony during the NOSB deliberations that
25 led to the OLPP and again on the NPRM that led to the OLPP and has submitted
26 comments every time the USDA has allowed comment since January 2017.
27
28

Declaration of George Siemon

1 19. CROPP requires all the members of its cooperative to be certified organic and to comply
2 with all organic practices set forth in the rules and presently requires its members to
3 observe the organic production practices listed in the OLPP.
4

5 20. CROPP required compliance because the final rule's provisions were a very long time in
6 development and thus largely anticipated, known, and were an important next step in the
7 process of continual improvement of organic standards that Congress imposed. The
8 compliance costs, such as alteration of pork and poultry housing, expansion of poultry
9 housing, and acquisition of certified organic land, and adaptation of ongoing management
10 practices, such as moving birds in and out of the barns, necessary to comply with OLPP
11 are incurred and ongoing expenses that can only be redressed by implementation of the
12 OLPP.
13

14 21. The lower welfare management practices that the OLPP bars, particularly the elimination
15 of poultry houses that provide no access to the outdoors where there is no roof and no
16 floor, is necessary to ensure fair competition in the marketplace. As the NOP found
17 before adopting the OLPP, consumers are increasingly confused because of the
18 inconsistent approach to "outdoor access."
19

20 22. Livestock production standards that include outdoor access that includes direct sunlight,
21 soil access, dust bathing and allowing animals to engage in other natural behaviors, and
22 other best animal husbandry practices are a main tenet of the organic foods production
23 system unlike other agricultural production methods. The practices codified in the OLPP
24 were over a decade in the making. *Organic Livestock and Poultry Practices*, 82 Fed.
25 Reg. at 7042-92 (published January 19, 2017) ("final rule").
26
27
28

Declaration of George Siemon

1 23. In 2010 the USDA's Inspector General concluded that the "outdoor access" requirement
2 for poultry raised on certified organic farms was not being consistently applied. The
3 NOP agreed to resolve the inconsistencies. After many years of discussion, it was
4 determined that a rulemaking to ensure consistency was needed because certain practices
5 that had been previously accepted were no longer acceptable, in part because it was not in
6 the animal's best interests and because consumers were abandoning organic products for
7 products certified to "higher welfare" standards.

8
9
10 24. Many of these "higher welfare" standards the OLPP incorporated are set forth in
11 certification programs such as the Global Animal Partnership 5 Step Program ("GAP") or
12 "Certified Humane".

13 25. Verifying animal production standards that are in addition to organic requirements
14 imposes an additional cost on certified organic operations. Simply put, it duplicates the
15 cost of the organic certification. CROPP members have borne the financial cost burden
16 of double certification and continue to do so.

17
18 26. The delay in implementing the OLPP has caused ongoing imposition of costs of
19 additional certification that would have been alleviated by the final rule becoming
20 effective.

21
22 27. In addition, during this period of delay consumers have become increasingly aware that
23 the pre-OLPP requirements of "outdoor access" are not being consistently applied thus
24 causing reputational harm to farmers that are willing to comply with the new
25 requirements and lowering consumer trust and diluting the value of the USDA's organic
26 seal.

27
28
Declaration of George Siemon

1 28. If consumers understand that some organic livestock products meet higher welfare
2 standards than others the USDA organic seal is concretely damaged by that inconsistency
3 because consumers cannot know which organic products meet the higher requirements
4 and which don't.

5
6 29. CROPP depends on consistent application of the organic standards and without OLPP,
7 some organic producers are not allowing their poultry to truly go outdoors and stocking
8 densities are at unhealthy levels.

9
10 30. CROPP cannot abandon the federal organic program for other certification programs as
11 its brand, Organic Valley, and its membership, require organic certification. CROPP is
12 harmed when the USDA's organic seal is devalued in the market place.

13 31. The failure to consult the NOSB during this entire delay period has also eroded
14 confidence that the USDA is operating transparently and managing the NOP to ensure
15 consistent standards are applied to all certified operations.

16
17 I declare under penalty of perjury that the foregoing is true and correct.

18
19 Executed this ___ day of February 2017. _____
20

21 _____
22 
23 _____

24 CEO, CROPP Cooperative and Organic Valley
25 Family of Farms

26
27
28 Declaration of George Siemon

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
JOHN F. LEE IN SUPPORT OF
PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Pursuant to 28 U.S.C. § 1746 I, John F. Lee, declare:

1. I am an employee of CROPP Cooperative and Organic Valley Family of Brands, an entity that makes and markets certified organic livestock products. CROPP/Organic Valley is an OTA member.
2. I am the Retail Category Team Manager. In my employment, I study market trends regarding certified organic dairy products and eggs.
3. The best available organic market information for the year ending December 31, 2017 demonstrates that the organic dairy sector has stopped growing, and there is an actual downturn. Source: SPINS MULO + Natural Channels data ending 12/31/2017.
4. Data show total organic dairy sales were approximately 2.334 billion dollars in 2016 and 2.330 billion dollars in 2017, a decline of four million dollars.
5. This is only the second annual sales decline in organic dairy products in the past eleven years. The prior decline in 2009 was precipitated by the recession.
6. The sharpest drop in the growth rate in both volume of products and dollars in sales occurred in January 2017 and coincided with the administration's announcement that it would delay the Organic Livestock Production Practices ("OLPP") rule.

- 1 7. Since the announcement of the OLPP delay in January 2017, organic dairy volume has
2 posted ten periods of negative growth.
- 3 8. Data show total organic shell egg sales were approximately 60.2 million dollars in 2016
4 and 62.9 million dollars in 2017, a gain of \$2.7 million. The per egg sales contribution
5 declined from \$0.42 in 2016 to \$0.40 in 2017, resulting in a revenue decrease of \$14.5
6 million.
- 7 9. Similarly, with the temporary exception of high consumption periods around certain
8 holidays, the organic shell egg market dollar sales growth steadily declined in 2017 but
9 has not turned negative yet.
- 10 10. At present, I attribute the decline in egg shell profitability to a rapidly expanding supply
11 arising from the use of organic production systems that were set to be disallowed under
12 the OLPP.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this 13th day of February 2018.

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John F. Lee
CROPP Cooperative
Organic Valley Family of Farms

1
2
3 **UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF COLUMBIA**

5 **ORGANIC TRADE ASSOCIATION**

6 **Plaintiff,**

7 **v.**

8 **UNITED STATES DEPARTMENT OF**
9 **AGRICULTURE, *et al*,**

10 **Defendants.**

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
KYLA SMITH, ACCREDITED
CERTIFIER'S ASSOCIATION, IN
SUPPORT OF PLAINTIFF'S FIRST
AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

11
12
13
14 Pursuant to 28 U.S.C. § 1746 I, Kyla Smith, declare:

- 15
16 1. I am the Board of Directors Chair of the Accredited Certifiers Association (“ACA”), a
17 member of the Organic Trade Association. I previously submitted a declaration in this
18 case and now supplement that statement.
- 19 2. Following an audit, in 2010 the Inspector General of the Department of Agriculture
20 determined the “outdoor access” requirement for organic poultry operations was
21 inconsistently applied by federal organic certifying agents. This finding confirmed what
22 our members had reported to the National Organic Program for many years.
- 23 3. The necessary clarifications to the rules were continuously worked on by the National
24 Organic Standards Board (“NOSB”) after the audit’s findings and the ACA filed
25 comments and testified multiple times to assist the board’s deliberations on this subject.
26 The board’s recommendations became the basis of the Organic Livestock Production
Practices rulemaking.¹ (“OLPP”)

27 ¹*Organic Livestock and Poultry Practices*. 82 Fed. Reg. at 7042-92 (January 19, 2017).
28

- 1 4. At the time the OLPP was published in January 2017 the Secretary said, “Based on
2 recommendations from the Office of Inspector General and the NOSB, AMS determined
3 that the current USDA organic regulations covering livestock care and production
4 practices and living conditions needed additional specificity and clarity to better ensure
5 consistent compliance by certified organic operations and to provide for more effective
6 administration of the National Organic Program by AMS.” 82 Fed. Reg. at 7042; *see also*
7 7044 (“rulemaking...consistent with recommendations provided by USDA's Office of
8 Inspector General and nine separate recommendations from the NOSB.”)
- 9 5. The OLPP was a necessary clarification of the federal rules governing organic livestock
10 production practices in order to ensure uniform, national organic standards as well as
11 consistent compliance assessments by federally accredited certifying agents.
- 12 6. Delay or withdrawal of the OLPP harms and will continue to harm ACA members by
13 depriving members of the clarifications contained in the final rule and the resultant
14 inconsistent certification outcomes.
- 15 7. Delay or withdrawal of the OLPP harms ACA members because without the OLPP’s
16 clarifications, the meaning of the word “organic” and the USDA organic seal persists in
17 being inconsistently presented to consumers, something Congress sought to end with the
18 passage of the Organic Foods Production Act and adoption of verification procedures that
19 are implemented by accredited certifying agents.²
- 20 8. Accredited certifying agents (ACA members) are in the business of ensuring the efficacy
21 of the USDA organic seal and are harmed when consumer perception and trust of the
22 USDA seal is downgraded or diminished.
- 23 9. An example of the harm caused to the USDA’s organic seal, and consumer confusion is a
24 recent class action filing against a certified organic egg producer and distributor. The
25 case is based in large part on allegations of inadequate outdoor access for poultry which
26 would have been resolved by the OLPP. (*Gibson v. Wal-Mart and Cal-Maine Foods*,
27 3:18-cv-00134, N.D. Ca.)

28 ² 7 U.S.C. §6505(a)(2) (USDA standards and seal; authorizing incorporation of USDA seal into organic marketing information)

- 1 10. Further delay in implementing the OLPP clarifications increases the risk of civil liability
2 for ACA members, as the civil litigants like those in the *Gibson* case may choose to
3 attack the certifying agents as well as the certified organic operation.
- 4 11. ACA members each must “fully comply with the terms and conditions” of the National
5 Organic Program. *See* 7 U.S.C. §6515(f). The failure to allow the OLPP to become
6 effective interferes with ACA members’ efforts to fulfill this statutory mission because it
7 reinstates the very inconsistency the Inspector General determined required remediation.
- 8 12. The ACA works closely with the NOSB to develop and refine recommendations to the
9 Secretary. One of the fifteen seats on the NOSB is held by an accredited certifying agent.
10 The seat is currently held by an ACA member. The expertise ACA’s members provide
11 includes guidance on the effective dates of compliance because our members must train
12 their inspectors in the new rule’s provisions to effectuate uniform compliance.
- 13 13. In this instance the ACA formed a working group of members to vet the Notice of
14 Proposed Rulemaking issued in April 2016 for consistency, as well as verification and
15 inspection issues that might require adjustment. ACA members expended resources to
16 assist the board and the USDA and to be ready to conduct inspections under the new rule.
17 ACA members continue to expend resources in support of the OLPP.
- 18 14. The NOP has not consulted the NOSB on any of the rulemakings the Secretary has
19 undertaken since the OLPP was published in January 2017. If the NOSB is not consulted
20 prior to rulemaking by the Secretary, the ACA’s members are cut off from the main
21 artery of communication to the Secretary and deprived of their opportunity to vet issues
22 with the NOSB.
- 23 15. Under the rulemakings that involved no notice and comment to the public that are
24 challenged in the OTA lawsuit, the ACA members are harmed by the denial of the right
25 to directly participate in the rulemaking.
- 26 16. Similarly, when the USDA opened a rulemaking and presented four procedural options
27 and nothing more, there was insufficient information to determine what the USDA sought
28

1 by the rulemaking.³ The proposed rulemaking did not identify any deficiencies in the
2 OLPP or identify grounds in support of the options that could be the basis of a response.

3 17. I repeat one part of my prior declaration in this case: Withdrawing this final rule or
4 continuing to delay its implementation harms and will continue to harm ACA and its
5 members and could lead to profound disruption to the marketplace for certified organic
6 products by irretrievably damaging consumer trust in the USDA organic seal.

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8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed this 13th day of February 2018.

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12 _____
13 Kyla Smith
14 Accredited Certifiers Association
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27 ³ 82 Fed. Reg. 21742 (May 10, 2017).
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al*,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
LAURA BATCHA IN SUPPORT OF
PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Pursuant to 28 U.S.C. § 1746 I, Laura Batcha, declare:

1. I am the CEO and Executive Director of the Organic Trade Association (“OTA”). This statement is based on my personal knowledge and is submitted in support of OTA’s opposition to the USDA’s motion to dismiss.
2. The Organic Trade Association is a membership-based business association for organic agriculture and products in North America.
3. Our members include growers, shippers, processors, certifiers, farmers’ associations, distributors, importers, exporters, consultants, retailers, consumers and others.
4. OTA’s mission is to promote and protect the growth of organic trade to benefit the environment, farmers and consumers using research-driven policy analysis and advocacy.
5. OTA’s members recognize that use of the USDA’s Organic Seal constitutes a kind of shared brand among all certified operations and businesses. This unique common equity places greater than usual emphasis on the need for consensus standard setting under the federal organic program and on uniform compliance.
6. The USDA seal is commonly and uniformly used on the packaging of every certified organic product.

- 1 7. OTA was instrumental in obtaining passage of the Organic Foods Production (“OFPA”)
2 (“Congress was petitioned by the Organic Trade Association to establish national
3 standards for organic food and fiber products.) *See* 65 Fed. Reg. at 80677
- 4 8. OTA is experienced in the development, implementation and enforcement of organic
5 standards *See* 65 Fed. Reg. at 80678 (citing OTA’s work developing the American
6 Organic Standards.)
- 7 9. OTA routinely works closely with the National Organic Standards Board (“NOSB”) on
8 organic policy, standards, and other matters.
- 9 10. The NOSB’s role developing standards for the Secretary of Agriculture has historically
10 been plenary. For the last 20 years it has been understood that the strongest role for the
11 NOSB is with regard to the National List, and development of livestock standards.
- 12 11. OTA’s relationships with the principal statutory advisor to the Secretary of Agriculture is
13 a key part of its professional toolkit and when the USDA denies the NOSB its
14 consultative opportunity, it directly harms OTA’s members and mission.
- 15 12. OTA was instrumental in obtaining the publication of the Organic Livestock and Poultry
16 Practices final rule. *See* 82 Fed. Reg. at 7042-92 (January 19, 2017) (“OLPP”)
- 17 13. USDA’s refusal to undertake notice and comment prior to issuing final rules that
18 amended the OLPP directly harmed OTA’s interest in participation in the rulemakings.
19 *See* 82 Fed. Reg. at 9967 (February 9, 2017). (“First Delay Rule”) 82 Fed. Reg. at 21,677
20 (May 10, 2017) (the Second Delay Rule)
- 21 14. The USDA’s subsequent rulemaking undertaken on May 10, 2017, Fed. Reg. at 21742,
22 asked for comment *solely* on whether the published final OLPP should be implemented
23 as published, further delayed or permanently withdrawn. It contained no substantive
24 inquiry, identified no deficiency in the existing administrative record made over
25 approximately ten years, identified no outstanding issue of law, fact or policy, and did not
26 mention the NOSB’s role or its view on the matter.
- 27 15. When the USDA issued its Third Delay Rule following the May 10, 2017 rulemaking it
28 said, “This final rule adopts Option 3: Delay, so that important questions regarding
USDA’s statutory authority to promulgate the OLPP rule and the likely costs and benefits
of that rule, can be more fully assessed through the notice and comment process prior to

1 AMS making a final decision on whether the OLPP final rule should take effect.” *See*
2 82 Fed. Reg. at 52643

3 16. USDA also said, “[D]uring the course of reviewing the rulemaking record for the Organic
4 Livestock Rule final rule, AMS discovered a significant, material error in the
5 mathematical calculations of the benefits estimates.” 82 Fed. Reg. at 52644 Based on
6 this discovery, AMS concluded: “It is not appropriate for AMS to allow a final rule to
7 become effective based on a record containing such a material error.” *Id.*

8 17. The rationale set forth for further delay in November was not a logical outgrowth of the
9 four procedural questions posed in the May 10, 2017 notice of rulemaking, thus OTA and
10 its members were deprived of the chance to meaningfully comment.

11 18. In addition, the technical reports necessary to assess whether a cost/benefit error had been
12 made were not included in the rulemaking materials, and thus could not be evaluated and
13 commented upon. The documents that USDA was apparently analyzing were posted to
14 the regulations.gov website on December 18, 2017. Available at
15 <https://www.regulations.gov/docket?D=AMS-NOP-15-0012> “Supporting Documents
16 Folder” (OLPP-PRIA) and (“Benefit+Cost Workbook for OLP Notice”)

17 19. OTA requested an extension of time in order to evaluate and comment on the cost benefit
18 analysis question posed by USDA but the request was denied. Available at
19 regulations.gov

20 20. Our members are very concerned that the ongoing delay is increasing consumer
21 confusion and leading to unhelpful litigation against producers, retailers and others. A
22 recently filed case in California seized on the concerns expressed by AMS in the OLPP
23 regarding consumer confusion and the incompatibility of certain production systems with
24 the claim that poultry receive “outdoor access.” *See Gibson v. Wal-Mart and Cal-Maine*
25 *Foods*, 3:18-cv-00134, N.D. Ca.)

26 21. Further delay in implementing the OLPP clarifications increases the risk of civil liability
27 for OTA and its members, as the civil litigants like those in the *Gibson* case may choose
28 to attack the certifying agents as well as the certified organic operation.

I declare under penalty of perjury that the foregoing is true and correct.

1 Executed this ____ day of February 2018.

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5 Laura Batcha
6 Organic Trade Association
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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF COLUMBIA**

5 **ORGANIC TRADE ASSOCIATION,**

6 **Plaintiff,**

7 **v.**

8 **UNITED STATES DEPARTMENT OF**
9 **AGRICULTURE, et al.,**

Civil Case No. 1:17-cv-01875-RMC

DECLARATION OF
ROBYNN SHRADER, NATIONAL
CO+OP GROCERS, IN SUPPORT
OF PLAINTIFF’S FIRST
AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

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15 Pursuant to 28 U.S.C. § 1746 I, Robynn Schrader, declare:

- 16 1. I am the Chief Executive Officer of National Co+op Grocers. I previously submitted a
17 declaration in this case and now supplement that statement.
- 18 2. National Co+op Grocers (“NCG”) is a business services cooperative and OTA member.
19 We routinely communicate with our representatives of over 200 stores in 37 states with
20 combined annual sales over \$2 billion and over 1.3 million consumer-owners.
- 21 3. Since the time of my initial declaration in this case the USDA has failed to allow the
22 *Organic Livestock and Poultry Practices* final rule to become effective.¹
- 23 4. The continued delay of the OLPP is causing consumer confusion in NCG co-op stores
24 about the meaning of organic livestock standards and the USDA organic seal.
- 25 5. In particular many consumers are hearing that organic chickens, both broilers and egg
26 layers, do not have true outdoor access where the birds may express natural behavior
27 such as ground-pecking and dust bathing and only go out of the chicken house into
28 concrete floored, covered areas. This conflicts with their understanding that “outdoor

¹ 82 Fed. Reg. 7042-92 (published January 19, 2017) (“final rule”).

1 access” is required under the federal organic program, and is contributing to consumer
2 confusion and degrading confidence in the USDA Certified Organic label.

- 3 6. Sales of organic eggs have shown significant decline in 2017 compared with sales
4 growth in years past.
- 5 7. In addition, our members have been harmed by the refusal of the USDA to consult with
6 the National Organic Standards Board (“NOSB”) during any of the rulemakings it has
7 undertaken in regard to the delay of the OLPP, because NCG consumer-facing
8 communications about the USDA Certified Organic program have consistently pointed
9 to the NOSB, as established by the Organic Food Production Act, as a means for
10 consumers and other stakeholders to participate in the transparent, public process that
11 ensures strong and continuously improved organic standards.
- 12 8. The rulemaking USDA released in May 2017 presented only a choice between further
13 delay or making the rule effective as planned.² NCG supported the immediate
14 cessation of delay, and provided public comments to this effect in June 2017 and again
15 in January 2018. However, we could not tell from the published rulemaking what in the
16 OLPP needed revision or how to fashion a meaningful comment because the rulemaking
17 inquiry was simply too vague.
- 18 9. NCG is also concerned about civil liability arising from the confusion the delay of the
19 OLPP has brought about, and how this could impact our members. A recent class action
20 was filed against an organic egg retailer based in large part on a claim of inadequate
21 outdoor access for the poultry. The outdoor access issue would have been resolved by
22 the OLPP. (*Gibson v. Wal-Mart and Cal-Maine Foods*, 3:18-cv-00134, N.D. Ca.)

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27 ² 82 Fed. Reg. 21742 (May 10, 2017).
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1 10. The delay is now nearly a year long. The harm to the organic seal, consumer confidence
2 and the risk of civil liability is not speculative.

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5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed this 14th day of February 2018.

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12 Robynn Shrader, National Co+op Grocers
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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF COLUMBIA**

5 **ORGANIC TRADE ASSOCIATION,**

6 **Plaintiff,**

7 **v.**

8 **UNITED STATES DEPARTMENT OF**
9 **AGRICULTURE, *et al.*,**

10 **Defendants.**

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF
TOM CHAPMAN IN SUPPORT OF
PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

11
12 Pursuant to 28 U.S.C. § 1746 I, Tom Chapman, declare:

- 13
14 1. I am over 18 and under no disability that prevents me from making this statement. Each
15 of the statements is based on my personal knowledge unless otherwise stated. I have no
16 financial interest in this litigation. I am a member of the Organic Trade Association.
- 17 2. I am employed as the Director of Ingredient Sourcing at Clif Bar & Company, where I
18 am responsible for sourcing and contracting for organic ingredients. Clif Bar produces
19 certified organic products.
- 20 3. I am a past member of the California Organic Products Advisory Committee (COPAC)
21 and the California Certified Organic Farmers Certification Services Management
22 Committee, which I chaired from 2011-2014.
- 23 4. In January 2015 I began a term on the National Organic Standards Board ("NOSB") and
24 was elected the chairman in November 2016.
- 25 5. According to the Organic Foods Production Act ("OFPA") the NOSB has two key roles:
26 to "assist in the development of standards for substances to be used in organic production
27 *and* to advise the Secretary on any other aspects of the implementation of OFPA." *See* 7
28 USC §6518(a) (emphasis added)

Declaration of NOSB Chairman, Tom Chapman

- 1 6. Section 6503 (a) of the OFPA correspondingly imposes a duty on the Secretary who:
2 "shall establish an organic certification program ... and shall consult with the NOSB."
3 7. To give effect to this public-private consultative process the NOSB meets in open public
4 session twice a year, conducts telephonic committee meetings and working group
5 meetings on a monthly basis, and issues formally adopted recommendations to the
6 Secretary.
7 8. According to the NOSB Vision Statement appearing in the board's Policy and Procedures
8 Manual at Section I (A),

9 The NOSB's vision is an agricultural community rooted in organic principles and
10 values that instills trust among consumers, producers, processors, retailers and
11 other stakeholders. Consistent and sustainable organic standards guard and
advance the integrity of organic products and practices. *Available at*
<https://www.ams.usda.gov/sites/default/files/media/NOSB-PolicyManual.pdf>

- 12 9. According to Section III (E) of the board's Policy and Procedures Manual,

13 The unique nature of the NOSB and its relationship with the NOP, as established
14 through OFPA, requires that the volunteer Board, which regularly receives
15 stakeholder input through public comment, must work collaboratively with the
16 NOP. Similarly the NOP, as required through OFPA, must consult and collaborate
with the NOSB *Available at:*
<https://www.ams.usda.gov/sites/default/files/media/NOSB-PolicyManual.pdf>

- 17 10. According to Section III (F) of the Policy and Procedures Manual, the board's workplan
18 may include only those items that USDA determines are "within the scope of OFPA."
19 *Available at:* [https://www.ams.usda.gov/sites/default/files/media/NOSB-](https://www.ams.usda.gov/sites/default/files/media/NOSB-PolicyManual.pdf)
20 [PolicyManual.pdf](https://www.ams.usda.gov/sites/default/files/media/NOSB-PolicyManual.pdf)

- 21 11. According to Section III (D) as the chairman it is my duty, to ensure the "integrity of the
22 NOSB process." *See NOSB Policy and Procedures Manual, pg. 8 (Duties of the Chair)*

- 23 12. In April 2016 the USDA published the Organic Livestock and Poultry Practices Rule
24 ("Proposed OLPP"). 81 Fed. Reg. at 21,956-22,009 (April 13, 2016) and on January 19,
25 2017, the USDA published the final rule. ("Final OLPP"). *See* 82 Fed. Reg. at 7042-92
26 (January 19, 2017). The Final OLPP was set to take effect on March 20, 2017.

1 13. I was a member of the NOSB during this interval from April 2016 to December 2017. At
2 no time did anyone at USDA raise with the NOSB whether any provision of the OLPP
3 was "within the scope" of the authority granted the Secretary under the OFPA.

4 14. On February 9, 2017 the effective date of the OLPP was delayed to May 19, 2017. *See*
5 82 Fed. Reg. at 9967 (February 9, 2017)

6 15. At no time was I, as the chair of the NOSB, consulted regarding this change to the final
7 OLPP nor was I requested to place the question of the amendment of the effective date
8 before the NOSB for its consideration.

9 16. The NOSB conducted its semi-annual public meeting on April 19-21, 2017. At the outset
10 of the meeting the Deputy Administrator of AMS said of the OLPP,

11 The final rule is "a pretty amazing accomplishment that -- lot of work by the
12 organic community, by this board, the National Organic Standards Board to come
13 up with comprehensive recommendations and if you remember, that was in
14 December 2011, and it took 3 us -- took AMS to finalize that a number of years,
15 and that was finalized last year." *See e.g. Meeting Transcript*, at 19 (available at:
16 [https://www.ams.usda.gov/sites/default/files/media/TranscriptsNOSBApril2017.p](https://www.ams.usda.gov/sites/default/files/media/TranscriptsNOSBApril2017.pdf)
17 [df](https://www.ams.usda.gov/sites/default/files/media/TranscriptsNOSBApril2017.pdf))

18 17. Despite the praise, the board was informed that the USDA had delayed the OLPP and that
19 it was "under review." *See e.g. Meeting Transcript*, at 19; at 411 (available at:
20 <https://www.ams.usda.gov/sites/default/files/media/TranscriptsNOSBApril2017.pdf>)

21 18. Having been excluded from all deliberations regarding the decision to delay, the board in
22 open session unanimously adopted a resolution expressing its view that the OLPP
23 become effective on May 19th as proposed in the February 9 delay rule. *See e.g. Meeting*
24 *Transcript*, at 184-87 (Transcript Excerpt Attached)

25 19. On May 10, 2017, USDA issued another stay of the effective date, this time for 180 days
26 to November 14, 2017. *See* 82 Fed. Reg. at 21,677 (May 10, 2017) (the Second Delay
27 Rule)

28 20. At no time was I, as the chair of the NOSB, requested to place the question of the second
amendment of the effective date of the Final OLPP before the NOSB or its relevant
committees, for consideration.

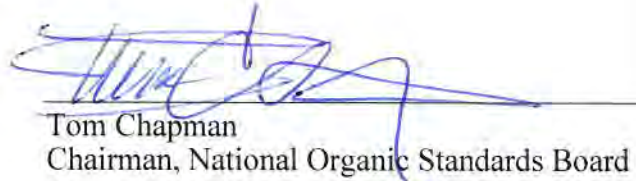
21. In addition, USDA published a new rulemaking that posed four procedural questions
focused on whether the Final OLPP should be further delayed, made effective, suspended
indefinitely or withdrawn. *See* 82 Fed. Reg. at 21742 (May 10, 2017)

- 1 22. At no time was I, as the chair of the NOSB, requested to place the substance of the new
2 rulemaking before the NOSB or its relevant committees, for consideration.
- 3 23. On Nov. 14, 2017, the Secretary published a third final rule delaying the Final OLPP, for
4 180 days until May 14, 2018. *See* 82 Fed. Reg. 52643 (Nov. 14, 2017)
- 5 24. At no time was I, as the chair of the NOSB, requested to place the substance of the new
6 rulemaking before the NOSB or its relevant committees, for its consideration. *See* 82
7 Fed. Reg. 52643-44 (no statement of consultation, its outcome or a waiver of the
8 consultative duty by NOSB)
- 9 25. On December 18, 2017 the Secretary published a proposed new rule that would withdraw
10 the Final OLPP. *See* 82 Fed. Reg. 59988 (Dec. 18, 2017)
- 11 26. At no time was I, as the chair of the NOSB, requested to place the substance of the
12 December 2017 rulemaking before the NOSB or its relevant committees for its
13 consideration. *See* 82 Fed. Reg. 59988-92 (no statement of consultation, its outcome or a
14 waiver of the consultative duty by NOSB)
- 15 27. In sum, the USDA has not consulted the NOSB on any of the three delay rulemakings or
16 either of the two rulemakings proposing withdrawal of the Final OLPP.
- 17 28. The record during the period since the first delay rule in February 2017 until the present
18 time appears to me to conflict with the past practice of the USDA, under which no
19 rulemaking affecting organic standards was undertaken without NOSB consultation,
20 deliberation and input.
- 21 29. The record also appears to me to conflict with the duties and responsibilities of the
22 USDA as set forth above in the cited sections of the OFPA and the board's Policy and
23 Procedures Manual. The failure to consult the NOSB diminishes trust among consumers
24 and the organic community and undermines the collaborative work ethic that has guided
25 us in the past.
- 26 30. The chair's responsibility to ensure the integrity of the board's process cannot be
27 faithfully discharged without collaboration with the USDA or a fair debate among equals
28 on the board to bring out the best collective wisdom on a topic.
31. The NOSB did not waive its consultative role. It is my experience that the NOSB is a
diverse and active advisory board and that decisions it confronts with regard to organic

1 policy are often sharpened, clarified and ultimately resolved by group consensus. Public
2 participation is key. I have observed many times that my board colleagues change their
3 stated positions (or USDA changes its position) after a standing committee meeting or a
4 full board meeting and following the opportunity to hear from colleagues and, when
5 appropriate, the public. This deliberative opportunity has been foregone by the approach
6 taken by the USDA in this matter.

7 32. I believe that the failure to implement the Final OLPP will harm consumer trust in the
8 USDA Organic seal and the role of the NOSB because it appears the rulemaking process
9 is underpinned not by deliberate and robust consensus building under the public-private
10 partnership created by Congress, but by unhelpful exclusionary fiat.

11 I declare under penalty of perjury that the foregoing is true and correct.
12 Executed this 14th day of February 2017.

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16 Tom Chapman
17 Chairman, National Organic Standards Board
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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

3 ORGANIC TRADE ASSOCIATION,

4 Plaintiff,

5 v.

6 UNITED STATES DEPARTMENT OF
7 AGRICULTURE, *et al.*,

8 Defendants.

Civil Case No. 1:17-cv-01875-RMC

SUPPLEMENTAL DECLARATION
OF DR. TOMISLAV VUKINA IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO MOTION FOR
REMAND

9
10 Pursuant to 28 U.S.C. § 1746 I, Dr. Tomislav Vukina, declare:

- 11
- 12 1. Each statement is based on my personal knowledge unless otherwise stated.
 - 13 2. This declaration is submitted to assist the Court in understanding the relationship of my
14 prior submission in this case, ECF No. 98-3 (“*Dr. Vukina Declaration*”), 98-4 (“*Vukina*
15 *Report*”) to the Declaration of Dr. Peyton Ferrier, submitted in support of the USDA’s
16 request for a voluntary remand in this case, which I have reviewed.¹ (the “*Ferrier*
17 *Declaration*”)
 - 18 3. The *Ferrier Declaration* does not conclude the economic analysis in the Withdrawal RIA
19 was properly conducted or reached the right result or can be understood by further
20 explanation by USDA.
 - 21 4. The *Ferrier Declaration* does conclude the economic analysis in the Withdrawal RIA
22 was seriously flawed and plagued by multiple “methodological errors, principally in the
23 ways that I described in my prior submission. *See e.g. Ferrier Declaration*, at ¶5(b)
24 (stating the Withdrawal RIA applied an “invalid depreciation methodology” to the
25 estimated benefits of the OLPP); ¶5(c) (stating the Withdrawal RIA “incorrectly”

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27 ¹ I use the same naming conventions as the *Ferrier Declaration*—the Regulatory Impact
28 Analyses conducted for the Organic Livestock Production Practices rule is the “OLPP RIA” and
for the OLPP Withdrawal rule, the “Withdrawal RIA.”

1 depreciated costs when re-calculating the costs associated with one of the three examined
2 market scenarios); ¶5(d) (stating the Withdrawal RIA “used inconsistent baseline
3 values” when re-calculating future benefits of the OLPP); ¶5(e) (stating the Withdrawal
4 RIA used “incorrect projections of organic egg production”)

- 5 5. It is not possible to independently confirm the results of any calculations expressed in
6 the *Ferrier Declaration* because it does not include any calculations to support the stated
7 conclusions. *See e.g. Ferrier Declaration* at ¶5(c) (concluding certain Withdrawal RIA
8 calculations are off by 19.7%; offering no substantiation).
- 9 6. It is not possible to independently confirm or determine the scope of economic work that
10 is proposed for further administrative action and, most notably for the issues raised by
11 my submissions on behalf of OTA because the *Ferrier Declaration* does not disclose
12 what formula or computational methodology for calculating the costs and benefits of the
13 OLPP will be used in USDA’s next reconsideration of the OLPP.
- 14 7. For example, the *Ferrier Declaration* at ¶5(d) states the Withdrawal RIA did not apply
15 the formula published in the OLPP RIA at fn. 94 but does not state the published formula
16 *will in fact be followed* in any further administrative proceedings. The *Ferrier*
17 *Declaration* at ¶5(d) also states that the “baseline values” of the formula published at fn.
18 94 were not used but does not state that they *will be used* in further administrative
19 proceedings.
- 20 8. The term “baseline values” refers in economics to the assumptions about the current state
21 of affairs—the starting point for economic analyses. Suggesting flaws in the treatment
22 of “baseline values” and declining to reaffirm the existing formula for calculating
23 benefits is tantamount to opening the door to completely reconfiguring the economic
24 modeling and basic assumptions in the existing analysis.
- 25 9. The *Ferrier Declaration* indicates a proposed “redo” of the entire Withdrawal RIA rather
26 than a bolstered explanation of the existing Withdrawal RIA or correcting minor
27 technical errors in calculations.
- 28 10. Relying on the formula published by USDA in the OLPP RIA and carried forward by
USDA to the Withdrawal RIA, I previously concluded the expected OLPP benefits easily
exceeded the published costs and produced my calculations. I also concluded that the
Withdrawal RIA artificially suppressed the benefits of the OLPP by inappropriately

1 applying straight line depreciation to future benefits and by undisclosed tinkering with
2 some part of the published formula for benefits calculation, most likely by reducing the
3 number of eggs used in the published formula. I also concluded that it was not possible
4 to replicate the results USDA published in conjunction with the Withdrawal RIA, the
5 “workbook” using the published formula. *See generally* ECF No. 98-3 (“*Dr. Vukina*
6 *Declaration*”), 98-4 (“*Vukina Report*”)

7 11. As I concluded, and USDA has now admitted, the “workbook” of calculations it
8 published in conjunction with the Withdrawal RIA was incorrect and the calculations did
9 not in fact support its conclusion that costs exceeded benefits. *See* ECF No. 102, at p. 5,
10 fn.4 (USDA Motion for Voluntary Remand stating “...USDA published a workbook on
11 Regulations.gov that demonstrated its earlier (erroneous) analysis with revised discount
12 formulas, rather than the fully corrected analysis.”)

13 12. In most instances the *Ferrier Declaration* appears to be restating an error I
14 previously identified, for example:

15 a. Compare my Conclusion 1, *Vukina Report* at p. 5, that USDA invalidly
16 applied straight line depreciation to benefits in the Withdrawal RIA thus
17 artificially reducing the value of the benefits of the OLPP with *Ferrier*
18 *Declaration* at ¶5(b), that USDA used an “invalid depreciation
19 methodology that affected the benefits calculations that was not fully
20 corrected in the Withdrawal RIA.” In simple terms, we agree that the
21 expected benefits of the OLPP were miscalculated due to an incorrect
22 depreciation formula in the Withdrawal RIA and the results are thus
23 erroneous and invalid.

24 b. Compare my Conclusion 4, *Vukina Report* at p. 5, that the OLPP benefit
25 figures in the Withdrawal RIA were too low because a “different number
26 of eggs or different formula” was used than appeared in the Withdrawal
27 RIA with the *Ferrier Declaration* at ¶5I which states that the “benefit
28 figures” in the Withdrawal RIA were the result of “incorrect projections of
organic egg production.” In simple terms, we agree the published formula
was not followed in the Withdrawal RIA and the OLPP benefit figures
were thereby miscalculated and are incorrect.

- 1 c. Compare my Conclusions 4-6, *Vukina Report* at p. 5, that even after
2 correcting for the erroneous depreciation methodology that calculations of
3 the expected benefits of the OLPP in the Withdrawal RIA could not be
4 replicated using the published formula with the *Ferrier Declaration* at
5 ¶5(d) which states that the Withdrawal RIA did not consistently apply the
6 published formula to determine the “expected benefits of the OLPP rule.
7 In simple terms, we agree that the published formula was not followed in
8 the Withdrawal RIA and this introduced computational errors in addition
9 to the specific methodological error involving depreciation, thus further
10 rendering the results invalid.
- 11 d. Compare my Conclusion 9, *Vukina Report* at p. 5, that the Withdrawal
12 RIA’s economic treatment of “forced molting” was incorrect with the
13 *Ferrier Declaration* at ¶4 that concludes USDA properly lowered the
14 estimated benefits of the OLPP because it had incorporated “...an inflated
15 [consumer] willingness-to-pay...” value because forced molting is already
16 required by the NOP. The *Ferrier Declaration* offers no substantiation for
17 its conclusion.

18 13. I also note that my Conclusions 5-7, *Vukina Report* at p. 6, that are based on
19 calculations I shared in Attachment A, demonstrate “the estimated benefits of the
20 OLPP exceed the estimated costs by a large margin.” This should be compared
21 with the two declarations submitted by USDA, that of Dr. Feather, ECF No. 102-
22 1, and Dr. Ferrier, neither of which states the Withdrawal RIA’s conclusions are
23 reliable or correct.

24 14. Two conclusions are possible now. First that there is no dispute that the
25 Withdrawal RIA, as it stands, does not support USDA’s decision to withdraw the
26 OLPP. Second, that whatever USDA is proposing to accomplish in further
27 administrative procedures, the errors it has agreed exist in the Withdrawal RIA
28 cannot be corrected by further explanation and instead must be the subject of a
new and substantially different analysis.

I declare under penalty of perjury that the foregoing is true and correct.

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Executed this 2nd day of March 2020.

Signed Copy on File

Dr. Tomislav Vukina, PhD
1513 Shadowood Lane
Raleigh, North Carolina 27612

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF GWENDOLYN
WYARD**

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12 Pursuant to 28 U.S.C. § 1746 I, Gwendolyn Wyard declare:

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1. This statement is based on my personal knowledge and upon information and belief.
 2. I am the Vice President of Regulatory and Technical Affairs for the Organic Trade Association (“OTA”), the plaintiff in this case and submit this declaration in support of OTA’s opposition to USDA’s request to remand the case.
 3. Among my duties is the evaluation of existing and proposed federal organic production and handling regulations and development of industry-wide analysis and comments to assist our members. I also track administrative matters like guidance documents and agency activities that relate to organic certification, the USDA seal and consistent application of the federal organic standards. I interact with our members regarding these matters including but not limited to farmers, handlers, consumers and accredited certifying agents.
 4. I, OTA and OTA members are very familiar with the final rule entitled, the *Organic Livestock and Poultry Practices*, 82 Fed. Reg. at 7042-92 (published January 19, 2017) (“OLPP”) and the purported grounds upon which it was rescinded. 83 Fed. Reg. 10775-783 (March 13, 2018) (“*Final Rule; Withdrawal*”).
 5. I am informed that USDA, after more than two years of litigating, has requested a remand of the case to the USDA which requires this Court to consider whether there is ongoing

1 harm to OTA and its members. I have prepared this declaration to assist the Court in
2 understanding the extent to which further delay caused by a remand will harm OTA and
3 its members.

4 6. Within OTA three groups of constituents, among others, directly perceived the need for
5 the OLPP and were very supportive of its publication.

6 a. OTA's organic poultry and egg farmer members faced unfair competition in the
7 marketplace from organic operations that benefited from the inconsistent
8 treatment of the outdoor access requirement by accredited certifying agents that
9 resulted in artificially lowered costs of production for competitors that did not
10 provide meaningful outdoor access.

11 b. OTA's organic poultry and egg farmer members had to obtain a separate and
12 expensive animal welfare certification in addition to organic certification because
13 the inconsistent treatment of the outdoor access requirement by accredited
14 certifying agents required in some cases separate verification of livestock
15 management practices to satisfy confused consumers and retail buyers. This
16 further increased the cost of production.

17 c. OTA's organic poultry and egg farmer members also suffered from a growing
18 lack of consumer trust in the USDA Organic Seal because organic consumers
19 strongly supported and believed pre-OLPP organic production practices required
20 organic poultry to have access to the outdoors that included access to the Earth
21 and its soil in which the animals could engage in and exhibit their natural
22 behavior.

23 d. OTA's consumer members were confused when made aware that the USDA
24 Organic Seal was on products that did not follow a single, consistently applied
25 national standard for organic poultry and egg production.

26 e. OTA's accredited certifying agent members strongly supported a single,
27 consistent certification requirement regarding the quality and meaning of outdoor
28 access for poultry. The absence of single national standard for organic poultry
and egg production caused inconsistent certification and enforcement outcomes
that undermined the principal role of the certifying agent which is to ensure


1 consistent organic production and handling practices across the entire United
2 States.

- 3 7. Because of the rescission of the OLPP in March 2018, the existing confusion in the
4 organic marketplace was exacerbated and extended and has produced two private
5 certification programs that include the requirements that would have been implemented
6 had the OLPP not been rescinded.¹ One is Regenerative Organic Certification (ROC),
7 launched in March 2018, and the other is the Real Organic Project (ROP), launched in
8 July 2018. *See Appendix A*
- 9 8. Each of these programs has the word “organic” in its name and seeks to fill the gap left
10 by rescission and the stakeholder community’s concern that the USDA Organic Seal no
11 longer represents the highest and best farming practices. *See Appendix A* The rescission
12 of the OLPP in March 2018 (1) restored the unfair competition for certified organic
13 poultry and egg farmers and (2) re-imposed additional and unnecessary certification costs
14 on certified organic poultry and egg farmers and (3) damaged organic egg and poultry
15 consumers due to market distortions caused by artificially increased organic livestock and
16 livestock product production costs and (4) exacerbated consumer confusion regarding the
17 meaning of the USDA Organic Seal by eliminating the single national standard
18 consistently applied by USDA’s certifying agents with regard to livestock production
19 required under the OLPP and (5) continues to harm ACAs which are forced to operate in
20 a regulatory environment that lacks the clarity achieved by the OLPP.
- 21 9. The rescission of the OLPP re-introduced the many market failures sought to be cured by
22 the OLPP and the harm to OTA members, including consumers, is ongoing and
23 exacerbated by further delay.
- 24 10. Absent reinstatement of the OLPP OTA members are faced with a federal marketing
25 program whose seal receives diminished consumer trust and that cannot achieve a central
26 purpose of the Organic Foods Production Act, which is a consistent national standard for
27 organic products that is consistently applied by the accredited certifiers.

28 I declare under penalty of perjury that the foregoing is true and correct.

¹ The description of market disruption is not limited to poultry and egg producers, all organic livestock producers are adversely affected by rescission of the OLPP.

1 Executed this 27 day of February 2020.

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5 Gwendolyn Wyard
6 Organic Trade Association
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1 **Appendix A**
2 **(Excerpts from Private Organic Certification Websites)**

3 <https://www.realorganicproject.org/author/davec/> (last visited on Feb. 27, 2020)

4 “The Real Organic Project will restore organic farmers’ ability to convey that they are
5 producing real organic food, in the tradition of pioneer farmers who began the organic
6 movement. It is unfortunate that this add-on label is necessary, but USDA has
7 demonstrated over the past few years that it is unwilling to uphold the full integrity of the
8 organic label,” stated Francis Thicke, organic dairy farmer from Fairfield, Iowa, current
9 Real Organic Project Standards Board chair and former National Organic Standards
10 Board member.

11 <https://www.realorganicproject.org/provisional-standards/> (last visited on Feb. 27,
12 [2020](https://www.realorganicproject.org/provisional-standards/))

13 “The USDA has recently embraced hydroponics and has dropped the proposed rule on
14 animal welfare. Many farmers now feel the USDA organic label no longer adequately
15 reflects how we farm, and many in the organic community feel a loss of identity within
16 the label. Our community worked for years to build an organic label that people can
17 trust.”

18 <https://regenorganic.org/> (last visited on Feb. 27, 2020)

19 “In addition to requiring adherence with NOP’s organic program requirements,
20 Regenerative Organic Certification also looks to international standards as the basis for
21 Regenerative Organic Certification, with additional requirements included for Soil Health
22 and Land Management, Animal Welfare, and Farmer and Worker Fairness.:

23 **Why do we need another certification system?**

24 <https://www.bard.edu/cep/blog/?p=10319> (last visited on Feb. 27, 2020)

25 Some particularly salient [controversies](#) have been in the press in the past few years: the
26 inclusion of soil-less farming (namely [hydroponics](#)) under the USDA Organic label and
27 the cancelling of an animal welfare compliance [rule](#) by the Trump administration. The
28

1 organic community was outraged by both decisions, feeling as though they had “[lost the](#)
2 [helm.](#)”
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

**DECLARATION OF HARRIET
BEHAR (former chair of NOSB)**

Pursuant to 28 U.S.C. § 1746 I, Harriet Behar, declare:

1. This statement is based on my personal knowledge and upon information and belief.
2. I am an organic farmer, organic inspector and I have taught organic training classes for the International Organic Inspectors Association (IOIA) and USDA’s National Resource Conservation Service (“NRCS”) and have performed many other organic educational activities for the agricultural and food processing communities.
3. I served as a member of the USDA’s National Organic Standards Board (“NOSB”) from January 2016 to January 2020. I am the most recent past chairperson of the NOSB, having been in that role from October 2018 until October 2019.
4. I submit this declaration in support of the Organic Trade Association’s (“OTA”) opposition to the withdrawal of the Organic Livestock Production Practices (“OLPP”) final rule that was published in March 2018 and its opposition to USDA’s request for remand.
5. I was on the NOSB at the time USDA determined to delay the implementation of the OLPP in January 2017 and when USDA decided to withdraw the OLPP in March 2018. I am familiar with the OLPP and the arguments made by USDA in support of its withdrawal. I strongly disagreed with the USDA on this subject, particularly its view of the role of the NOSB.
6. While I was on the NOSB we were approached by stakeholders to add a livestock production issue to our workplan. We asked the NOP to allow us to address

1 inconsistencies between certifiers concerning the “outdoor access and living conditions”
2 requirements for organic management of hogs. The “outdoor access” question for
3 poultry had been resolved by the OLPP and at that time the USDA declined to address
4 “outdoor access” for hogs and we believed a clarification like that for poultry was needed
5 for organic hog production operations. We were told by the USDA that we could not
6 address or make recommendations regarding the issue while the OTA lawsuit was
7 pending.

- 8 7. In addition, during my time on the NOSB the breadth of the consultative role of the board
9 was significantly reduced by USDA.
- 10 8. It is my belief that the refusal of USDA to permit the NOSB to add livestock production
11 issues like “outdoor access” for hogs to its workplan diminished the importance of the
12 NOSB as a means of channeling the public’s input to the Secretary, diminished our role
13 as members of a Congressionally mandated advisory board, and reduced the ability of the
14 NOSB to timely address issues of concern to organic farmers, handlers and consumers. I
15 believe this destructive dimming of the NOSB’s role is ongoing. The NOSB was
16 specifically designed to represent many stakeholders within the organic community.
17 When the NOP prevents the NOSB from being responsive with new guidance and
18 regulations to meet the pressing needs of those stakeholders, the greater organic
19 community and the organic label are significantly harmed.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed this **29th** day of February 2020.

22 Signed copy on file with counsel

23
24 _____
25 Harriet Behar
26 Former Chairperson
27 National Organic Standards Board
28

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,**

Defendants.

Civil Case No. 1:17-cv-01875-RMC

DECLARATION OF SAM WELSCH

Pursuant to 28 U.S.C. § 1746 I, Sam Welsch declare:

1. This statement is based on my personal knowledge and upon information and belief.
2. I am a member of the Organic Trade Association. I am also the Chairman of the Board of Directors of the Accredited Certifiers Association (The Association”). I submit this declaration to establish that the inconsistent application of organic livestock standards that was set to be cured by the implementation of the OLPP was undercut by the withdrawal of the OLPP in March 2018 and the harm to the Association’s members, and the farmers and consumers that rely on the integrity of our work, is ongoing.
3. The Association is a non-profit educational organization composed of certifying agents that have been accredited by USDA’s National Organic Program (“NOP”) to offer organic certification services to farmers, handlers and retail operations *See* 7 C.F.R. Part 205, Subpart F (“Accreditation of Certifying Agents.”). Our membership includes more than 60 accredited certification agencies.
4. The Association was created, among other reasons, to provide collective feedback to the NOP, other policy makers and the public regarding organic certification services, issues that impact the integrity of organic certification and the use of the USDA’s Organic Seal.
5. Each Accredited Certifying Agent’s (“ACA”) primary mission is to ensure the integrity and consistency of organic certification in the United States and to enforce the federal organic standards on a case by case basis. ACAs are private entities that should compete

1 with each other based on service quality, not inconsistent applications of what is
2 supposed to be a single national standard consistently enforced.

- 3 6. ACAs are the front-line decision makers for the federal government's application of
4 federal organic production and handling standards to products across the entirety of the
5 nation's organic supply chain – from on-farm production to retail sale. *See* 7 U.S.C. §§'s
6 6514-6516 (duties and requirements for accreditation) Producers, handlers and consumers
7 trust the USDA organic seal as an assurance of product identity because of consistent
8 application of the organic requirements by accredited certifying agents in the field.
- 9 7. I am personally very familiar with the *Organic Livestock and Poultry Practices*, 82 Fed.
10 Reg. at 7042-92 (published January 19, 2017)(“OLPP”) as it was the work product of
11 many years of effort by me, the Association, the organic community and the National
12 Organic Standards Board (“NOSB”). A key aspect of that rulemaking was to eliminate
13 inconsistency in the application of federal organic standards by accredited certifying
14 agents regarding outdoor access for poultry.
- 15 8. The OLPP rulemaking was based in part on the (1) March 2010 report by the USDA's
16 Office of Inspector General entitled *Oversight of the National Organic Program* (“OIG
17 Report”) and (2) recommendations to the Secretary from the National Organic Standards
18 Board over many years. The Report found inconsistent treatment of outdoor access for
19 livestock producers by accredited certifying agents, and the NOSB addressed the finding
20 by recommending poultry operations seeking organic certification be required to
21 demonstrate all poultry have access to the outdoors that includes access to the earth's soil
22 to permit natural behaviors and to enhance animal well-being.
- 23 9. The OIG Report and NOSB recommendations highlighted the need for clarification of
24 existing livestock production practices to ensure a consistent organic standard throughout
25 the country that was itself consistently applied by *all* accredited certifying agents.
- 26 10. During this time the Association's members, me included, repeatedly urged USDA to
27 realize that inconsistent certification and enforcement decisions by ACAs failed to
28 achieve a central purpose of the Organic Foods Production Act, which is a consistent
national standard for organic products that is consistently applied by the accredited
certifiers.

- 1 11. On July 11, 2016 the Association submitted a comment to the Secretary regarding the
2 proposed OLPP noting “ACA members are very supportive of the National Organic
3 Program efforts to establish clear, consistent requirements for organic livestock and
4 poultry management. * * * The level of detail contained in the Standard will permit more
5 consistent enforcement, and provide operators with the management information they
6 need to meet the requirements.” *See Exhibit A* at p. 1 (Copy of Association Comment)
- 7 12. The unfortunate decision to withdraw the OLPP means today’s consumers purchase
8 organic poultry and eggs from disparate production systems that all bear the USDA’s
9 Organic Seal. The effect of withdrawing the OLPP is that consumer products arising
10 from such disparate systems are not being produced to a single national standard because
11 the federal organic program standards are not being consistently applied, thus
12 undermining the meaning and value of the USDA’s Organic Seal. Certification decisions
13 and program enforcement decisions likewise remain inconsistent.
- 14 13. The elimination of the OLPP also means there is unfair competition for certification
15 services because lower standards are more easily complied with, thereby favoring the
16 businesses of accredited certifying agents that rely uncured inconsistencies to offer less
17 strict organic oversight.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed this 28 day of February 2020.

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22 _____
23 Sam Welsch
24 Chairman
25 Accredited Certifiers Association
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28