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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
12 advance the integrity of organic products and practices. *Available at*
13 <https://www.ams.usda.gov/sites/default/files/media/NOSB-PolicyManual.pdf>

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

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

- 21 10. According to Section III (F) of the Policy and Procedures Manual, the board’s workplan
22 may include only those items that USDA determines are “within the scope of OFPA.”
23 *Available at:* [https://www.ams.usda.gov/sites/default/files/media/NOSB-](https://www.ams.usda.gov/sites/default/files/media/NOSB-PolicyManual.pdf)
24 [PolicyManual.pdf](https://www.ams.usda.gov/sites/default/files/media/NOSB-PolicyManual.pdf)

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

- 27 12. In April 2016 the USDA published the Organic Livestock and Poultry Practices Rule
28 (“Proposed OLPP”). 81 Fed. Reg. at 21,956-22,009 (April 13, 2016) and on January 19,
2017, the USDA published the final rule. (“Final OLPP”). *See* 82 Fed. Reg. at 7042-92
(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
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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Tom Chapman
Chairman, National Organic Standards Board