

1 MAYER BROWN LLP
2 TIMOTHY S. BISHOP (IL 6198062)
3 (*pro hac vice application forthcoming*)
4 *tbishop@mayerbrown.com*
5 71 S. Wacker Drive
6 Chicago, Illinois 60606
7 Telephone: (312) 782-0600
8 Facsimile: (312) 701-7711

9 MAYER BROWN LLP
10 C. MITCHELL HENDY (SBN 282036)
11 *mhendy@mayerbrown.com*
12 350 South Grand Avenue
13 25th Floor
14 Los Angeles, California 90071-1503
15 Telephone: (213) 229-9500
16 Facsimile: (213) 625-0248

17 Attorneys for Plaintiffs National Pork Producers
18 Council & American Farm Bureau Federation

19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

16 NATIONAL PORK PRODUCERS
17 COUNCIL & AMERICAN FARM
18 BUREAU FEDERATION,

19 Plaintiffs,

20 v.

21 KAREN ROSS, in her official capacity
22 as Secretary of the California
23 Department of Food & Agriculture, &
24 SONIA ANGELL, in her official
25 capacity as Director of the California
26 Department of Public Health, and
27 XAVIER BECERRA, in his official
28 capacity as Attorney General of
California,

Defendants.

CASE NO. '19CV2324 W AHG

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiffs the National Pork Producers Council and the American Farm
2 Bureau Federation allege upon information and belief as follows:

3 **INTRODUCTION AND NATURE OF CLAIMS**

4 1. The market for pork produced in the United States (“U.S.”) is
5 enormous and national and international in scope.

6 2. It meets a demand for high-quality, affordable protein.

7 3. According to the U.S. Department of Agriculture’s Census of
8 Agriculture for 2017, nearly 65,000 farms nationwide sold hogs that year with a
9 market value of more than \$26 billion.

10 4. During the first nine months of 2019, some 94 million hogs were
11 slaughtered at federally inspected facilities, for a rate of about 125 million hogs
12 slaughtered per year.

13 5. Pigs are raised throughout the country, but production is concentrated
14 in the Midwest and North Carolina. The latest Agriculture Census reported that
15 22.7 million pigs were sold by Iowa farms in 2017, 8 to 9 million each by North
16 Carolina, Oklahoma, and Minnesota farms, 5.25 million by Illinois farms, and 4.5
17 million by South Dakota farms.

18 6. The U.S. is one of the world’s top five pork exporters. It has exported
19 over 5 billion pounds of fresh and frozen pork cuts annually to foreign markets, on
20 average, since 2010, principally to Mexico, China, Japan, and Canada.

21 7. The U.S. commercial production chain for pork is complex and
22 varied, using principally a segmented production model driven by herd health
23 considerations and to achieve economies of scale.

24 8. Sows are female pigs held for breeding that give birth to the piglets
25 that ultimately become hogs sent to market. For disease prevention and efficiency,
26 sows are usually maintained on sow-specific farms that are commonly separated
27 from other hog facilities. On those sow farms, the sows are generally artificially
28 inseminated, litters of piglets are born (“farrowed”), and the piglets are then raised

1 for about three weeks before they are weaned at the weight of approximately 10
2 pounds.

3 9. The overwhelmingly vast majority of sow farms use some type of
4 indoor confinement for these processes. Indoor housing allows year-round
5 production by protecting sows from seasonal weather changes, disease exposure,
6 and predators, while facilitating the management of each sow's health,
7 conditioning, feeding, and reproduction.

8 10. Only a small portion of the pigs that are slaughtered for meat are sows
9 that have been kept to reproduce—only 2.2 million in the first nine months of
10 2019, compared to 91.8 million of their male (“barrows”) and female offspring,
11 which are raised as feeder or market hogs. And almost none of the meat from
12 those sows is sold as whole pork cuts; it is instead used in prepared or cooked
13 products and sausages.

14 11. The offspring of sows (“market hogs”) are raised to market weight in
15 separate, specialized production facilities: (1) feeder pig producers, or nurseries,
16 which raise pigs from weaning to about 40-60 pounds, then sell them for finishing;
17 (2) feeder pig finishers, which buy feeder pigs and grow them to their slaughter
18 weight of about 240-280 pounds; and (3) farrow-to-finish operations, a small
19 percentage of farms that raise hogs from weaning to their slaughter weight.
20 Farrow to finish takes 24-26 weeks.

21 12. Once they reach slaughter weight, hogs are sent to packing facilities,
22 which may be local or in other states. Packer facilities receive hogs from multiple
23 farms, operated by multiple producers. These farms may be owned by affiliates of
24 the packer, by producers who have contracts to deliver hogs to the packer, or by
25 independent producers.

26 13. A packing facility typically slaughters thousands, or even tens of
27 thousands, of hogs daily. Packers process the slaughtered hogs into whole pork
28 cuts (or send them to separate processing facilities for this and later steps), pack the

1 meat, and deliver it to wholesale or large retail customers throughout the country
2 and abroad.

3 14. California's Proposition 12, challenged here, is a ballot initiative that
4 was passed in November 2018 and that amended the California Health and Safety
5 Code.

6 15. Proposition 12 has thrown a giant wrench into the workings of the
7 interstate market in pork.

8 16. In California itself, there are estimated to be only some 8,000
9 breeding sows, most of which are in family-focused "4-H" and other county fair
10 and similar show-pig programs.

11 17. It is believed that only about 1,500 out of California's 8,000 sows are
12 used in commercial breeding in the state, housed in a handful of very small farms.

13 18. Commercial sows typically produce two litters a year of about 10
14 piglets, so those 1,500 sows may produce around 30,000 offspring a year. Those
15 sows are therefore insufficient even to supply the current in-state farms' annual
16 capacity of approximately 65,000 commercial hog finishing spaces that exist in
17 California, which must therefore be filled from out-of-state sows.

18 19. By contrast to the tens of millions of hogs sold by farms in many other
19 states, the Agriculture Census reports that only 208,000 hogs were sold by all
20 farms in California in 2017, including those born (farrowed) outside California.

21 20. California's pork consumption makes up about 13 percent of the
22 national market. Accordingly, California's in-state sow breeding scarcely puts a
23 dent in the demand for pork consumed in the state. The offspring of about 673,000
24 sows is required to satisfy California consumers' demand for pork meat annually,
25 compared to the 1,500 sows that are commercially bred in-state.

26 21. Proposition 12 forbids the sale in California of whole pork meat from
27 hogs born of sows that were not housed in conformity with the law's requirements.
28

1 22. A violation of Proposition 12 is a criminal offense punishable by fines
2 and imprisonment, and also the basis for civil liability under California’s unfair
3 competition statute.

4 23. Proposition 12 requires that a sow cannot be confined in such a way
5 that it cannot lie down, stand up, fully extend its limbs, or turn around without
6 touching the sides of its stall or another animal. This requirement is often referred
7 to as “stand up-turn around.”

8 24. Stand-up turn-around effectively requires that producers house their
9 sows together in a group, referred to as “group housing.” This housing structure
10 may also be referred to as a “pen.” In contrast, individual stalls each hold one sow
11 apiece and do not allow sows to turn around.

12 25. Proposition 12 bans the use of individual stalls that do not meet stand-
13 up turn-around requirements, except during the five-day period prior to farrowing
14 and during weaning. It accordingly bars the use of individual stalls during
15 breeding and most of the gestation period.

16 26. After December 31, 2021—but with immediate impact now on what
17 producers must do given the lead time needed for building and production
18 changes—each sow must be allotted at least 24 square feet of space in the group
19 pen, subject to the same limited exception for the five-day period prior to
20 farrowing and during weaning.

21 27. Only a miniscule portion of sows in the U.S. are housed in compliance
22 with all of Proposition 12’s requirements.

23 28. Proposition 12 institutes a wholesale change in how pork is raised and
24 marketed in this country. Its requirements are inconsistent with industry practices
25 and standards, generations of producer experience, scientific research, and the
26 standards set by other states. They impose on producers costly mandates that
27 substantially interfere with commerce among the states in hogs and whole pork
28 meat. And they impose these enormous costs on pork producers, which will

1 ultimately increase costs for American consumers, making it more difficult for
2 families on a budget to afford this important source of protein. And they do all this
3 for reasons that are both fallacious and vastly outweighed by the economic and
4 social burdens the law imposes on out-of-state producers and consumers and on the
5 authority of other states over their domestic producers.

6 29. Proposition 12 imposes these severe requirements as the result of a
7 ballot initiative drafted by the Humane Society of the United States (“HSUS”).

8 30. Because Proposition 12 was a ballot initiative, it was passed without
9 any semblance of meaningful legislative deliberation, let alone inclusive input and
10 inquiry into the impacts of its requirements on national commerce in pork, on the
11 pork production industry, or even the welfare of sows.

12 31. Because it reaches extraterritorially to impose California’s
13 idiosyncratic and unjustified sow housing requirements on other states and their
14 producers, because it Balkanizes hog production in ways inconsistent with our
15 Federalist system, and because it imposes burdens on interstate commerce that far
16 outweigh any of its benefits, Proposition 12 violates the dormant Commerce
17 Clause and is unconstitutional.

18 32. Plaintiffs seek a declaration that Proposition 12’s requirements with
19 regard to breeding pigs violate the Commerce Clause and principles of interstate
20 federalism embodied in the U.S. Constitution, and an injunction against the
21 enforcement of Proposition 12’s requirements concerning pork.

22 33. While Proposition 12 regulates the production of veal, pork, and eggs,
23 the basis of Plaintiffs’ challenge here is Proposition 12’s extraterritorial reach and
24 market disruption regarding pork production.

25
26
27
28

1 **JURISDICTION**

2 34. This Court has subject matter jurisdiction over this action under 28
3 U.S.C. §§ 1331 and 1343 because this case presents a federal question arising
4 under the Commerce Clause of the U.S. Constitution and under 42 U.S.C. § 1983.

5 35. This Court has authority to enjoin enforcement of Proposition 12
6 under 42 U.S.C. § 1983 and to grant declaratory relief pursuant to 28 U.S.C.
7 §§ 2201 and 2202.

8 **VENUE**

9 36. Venue is proper in this district under 28 U.S.C. § 1391(b) because all
10 Defendants maintain an office and conduct their official duties within this judicial
11 district.

12 37. Additionally, substantial events giving rise to this lawsuit occurred
13 and will continue to occur within this judicial district. Plaintiffs' members produce
14 and sell pork that is or may be sold in California (including within this judicial
15 division). Pork produced by Plaintiffs' members inevitably is imported into and
16 consumed within this district, because the roughly 9% of California's population
17 located within this district consumes more pork than can be produced by the
18 approximately 8,000 sows located within California.

19 **THE PARTIES**

20 38. Plaintiff National Pork Producers Council ("NPPC") is a federation of
21 42 affiliated state associations and other regional and area organizations. NPPC's
22 members include U.S. pork producers along with other industry stakeholders such
23 as packers, processors, companies that serve the pork industry, and veterinarians.
24 NPPC is the global voice of the U.S. pork industry. Its mission is to advocate on
25 behalf of its members to establish reasonable federal legislation and regulations,
26 develop revenue and export-market opportunities, and serve the interests of pork
27 producers and other industry stakeholders. This includes advocating for free
28

1 market access for pork producers and opposing measures that restrict producers’
2 market opportunities.

3 39. Plaintiff American Farm Bureau Federation (“AFBF”) is a voluntary
4 membership organization formed by farm and ranch families in 1919. Today,
5 AFBF represents just under 6 million member families through Farm Bureau
6 organizations in all 50 States plus Puerto Rico. America’s largest general farm
7 organization, AFBF represents the people who grow and raise virtually every
8 agricultural product in the United States. AFBF seeks to promote the development
9 of reasonable and lawful public policy for the benefit of farmers and consumers.
10 According to AFBF’s mission statement: “We are farm and ranch families working
11 together to build a sustainable future of safe and abundant food, fiber, and
12 renewable fuel for our nation and the world.”

13 40. Defendant Karen Ross is sued in her official capacity as the Secretary
14 of the California Department of Food and Agriculture (“CDFA”), which is a State
15 of California regulatory entity responsible for jointly issuing regulations to
16 implement Proposition 12.

17 41. Defendant Sonia Angell is sued in her official capacity as the Director
18 of the California Department of Public Health (“CDPH”), which is a State of
19 California regulatory entity responsible for jointly issuing regulations to implement
20 Proposition 12.

21 42. Xavier Becerra is sued in his official capacity as the Attorney General
22 of California. The Attorney General’s office is responsible for enforcing the
23 provisions of Proposition 12 that make its violation a criminal offense.

24 **STANDING**

25 43. AFBF and NPPC bring this suit on behalf of themselves and their
26 members. They have each suffered and continue to suffer concrete and
27 particularized injuries that are fairly traceable to Proposition 12. Their injuries will
28

1 be redressed by a favorable decision. *See Organic Consumers Assoc. v. Sanderson*
2 *Farms, Inc.*, 284 F. Supp. 3d 1005 (N.D. Cal. 2018).

3 44. As a result of Proposition 12, AFBF and NPPC have expended
4 substantial resources to understand the obligations, requirements and impacts of
5 Proposition 12, and then to explain to pork producer members the meaning and
6 requirements of Proposition 12 and changes to farming practices that would be
7 necessary to comply with Proposition 12.

8 45. On NPPC's part, these efforts have entailed fielding inquiries from
9 members regarding Proposition 12 and its expected impact on pork production and
10 the supply chain, developing data sheets that summarize Proposition 12 into
11 audience-friendly information, and holding and participating in meetings and
12 teleconferences with members and industry-stakeholders. *See* Exh. A, Decl. D.
13 Hockman, ¶¶ 21-24.

14 46. NPPC personnel additionally fielded numerous questions from
15 suppliers, packers, distributors, retailers, and food-service companies regarding the
16 impact that Proposition 12 will have on the supply of pork product. *Id.*

17 47. AFBF personnel have also hosted and participated in presentations,
18 teleconferences, and other events for purposes of informing members and state
19 Farm Bureau staff about what coming into compliance with Proposition 12 will
20 require. *See* Exh. B, Decl. S. Bennett, ¶¶ 9-11.

21 48. Both AFBF and NPPC submitted detailed comments to the CDFA on
22 June 3, 2019, explaining how Proposition 12 will negatively impact the pork
23 production industry and is unconstitutional. *See* Exh. A, Decl. D. Hockman, ¶ 22;
24 Exh. B, Decl. S. Bennett, ¶ 11.

25 49. Because of resources they have expended addressing Proposition 12,
26 both AFBF and NPPC have diverted resources from pursuing other matters central
27 to the organizations' missions. *See* Exh. A, Decl. D. Hockman, ¶ 30; Exh. B, Decl.
28 S. Bennett, ¶ 12.

1 50. On AFBF's part, this includes time and money that could have been
2 spent advancing other issues critical to AFBF's mission to advance reasonable
3 farm policy. Exh. B, Decl. S. Bennett, ¶ 4.

4 51. On NPPC's part, these diverted costs include time and resources that
5 could have been spent pursuing NPPC's core mission of establishing reasonable
6 industry regulation on a nationwide level. Exh. A, Decl. D. Hockman, ¶ 20.

7 52. Resources have also been diverted from NPPC's efforts on behalf of
8 its members to address other important issues, including international trade and
9 free access to markets. *Id.* ¶ 30; Exh. C, Decl. H. Roth, ¶¶ 9-12.

10 53. Both NPPC and AFBF anticipate that, as California implements
11 Proposition 12, they will need to divert more resources and time from other core
12 organizational priorities to assist members with understanding what is involved in
13 coming into compliance (or not coming into compliance) with Proposition 12. *See*
14 Exh. A, Decl. D. Hockman, ¶ 28; Exh. B., Decl. S. Bennett, ¶ 13.

15 54. These organizational injuries would be remedied by the relief sought
16 in this action.

17 55. In addition, both AFBF and NPPC have associational standing to
18 challenge Proposition 12 on behalf of their members.

19 56. One or more members of AFBF and NPPC have standing to bring this
20 action in their own right. Plaintiffs are submitting declarations from some of these
21 members as exhibits, attached to this Complaint and incorporated herein by
22 reference. *See* Exh. D, Decl. G. Boerboom; Exh. E, Decl. P. Borgic; Exh. F, Decl.
23 N. Deppe; Exh. G, Decl. M. Falslev; Exh. H, Decl. T. Floy; Exh. I, Decl. T. Hays;
24 Exh. J, Decl. P. Jordan; Exh. K, Decl. C. Leman; Exh. L, Decl. G. Maher; Exh. C,
25 Decl. H. Roth; Exh. M, Decl. R. Spronk; Exh. N, Decl. J. Hofer.

26 57. Thousands of AFBF and NPPC pork producer members are directly
27 subject to Proposition 12 because they breed or raise pigs that are or may be sold
28 into California. Almost all of these members are currently raising pigs that do not

1 meet Proposition 12's requirements and are suffering and will suffer imminent,
2 concrete and particularized injuries as a result of Proposition 12—either substantial
3 compliance costs or loss of a major market for their products.

4 58. While all manner of hog farms across the country are harmed by
5 Proposition 12, from large-scale to small, independent farms, a sampling of
6 affected NPPC and AFBF pork producer members who have submitted
7 declarations in support of the Complaint includes the following:

- 8 a. Mr. Greg Boerboom is a hog producer on his third-generation farm in
9 Southwest Minnesota. He has lived on that farm since he was born.
10 Mr. Boerboom now owns a total of 10,000 sows, from which he
11 produces around 320,000 market hogs annually. Some of his sows are
12 housed in group pens, and others in individual stalls. But, as a
13 consistent practice since 1988, Mr. Boerboom has always housed his
14 sows in individual stalls for at least seven days between weaning and
15 breeding. He noticed when he held his sows in group pens for these
16 seven days after weaning that they would fight and bite at each other,
17 resulting in rips and permanent damage to the sows' udders. Since
18 keeping sows in breeding stalls during this time, the productivity rate
19 on his farm has increased, and incidences of sow injuries have
20 decreased. Mr. Boerboom is one of the most successful hog
21 producers in the U.S. to operate under a group housing system, which
22 he manages through an incredible amount of hard work and an
23 expensive electronic feeding system developed by a Dutch company,
24 Nedap, that requires skilled labor and training to operate. Despite Mr.
25 Boerboom's great success in managing sows, his farming practices do
26 not comply with Proposition 12, because he does not provide each
27 sow 24 square feet, and he cannot not imagine moving his sows back
28 into a group pen directly after weaning, as Proposition 12 requires.

1 Nor does Mr. Boerboom comply with Proposition 12's requirements
2 as to gilts (young, unbred sows), because he follows the standard
3 industry practice of keeping gilts in individual stalls until they are first
4 bred at about seven months of age, which is past the six months
5 during which Proposition 12 allows use of stalls. Because Mr.
6 Boerboom will not comply with Proposition 12, his product will be
7 barred from the California market. *See* Exh. D, Decl. G. Boerboom.

8 b. Mr. Phil Borgic is the owner of a family farm located in Nokomis,
9 Illinois. Mr. Borgic produces around 225,000 hogs annually and sells
10 his product under market contracts with Smithfield Foods
11 ("Smithfield") and JBS USA ("JBS"). Mr. Borgic houses his sows in
12 individual stalls throughout gestation because, based on his lifetime of
13 experience raising sows, he determined that individual stalls are best
14 for the welfare of his sows and the productivity of his farm. Mr.
15 Borgic's housing of gilts also does not comply with Proposition 12.
16 Compliance with Proposition 12 would be cost-prohibitive for Mr.
17 Borgic. It would require him either to spend around three million
18 dollars on construction costs expanding his facilities or to reduce his
19 sow herd by one-third, destroying his farm's productivity and
20 rendering him unable to meet delivery performance requirements in
21 his contracts with JBS and Smithfield. It would also result in worse
22 welfare outcomes for his sows, significantly lower sow productivity,
23 and increased labor costs. If Proposition 12 remains in place, Mr.
24 Borgic is concerned that the price he receives for his product will drop
25 because whole meat from his market hogs could not be sold into
26 California. Mr. Borgic also stands to lose his longstanding business
27 relationships with JBS and Smithfield, both of which sell into
28 California. *See* Exh. E, Decl. P. Borgic.

1 c. Mr. Nathan Deppe operates a farrow-to-finish hog farm in
2 Washington, Missouri, that has been in his family for generations. He
3 produces around 30,000 market hogs annually, which he then sells to
4 JBS under a marketing contract. Mr. Deppe houses his sows in group
5 pens that provide about 15 square feet per sow for most of gestation.
6 Nevertheless, he also uses individual breeding stalls to help sows
7 regain weight post weaning, to accomplish artificial insemination, and
8 then to house the sows for an additional 28 days until he can confirm
9 that his sows are pregnant before moving them back into the group
10 pens. The changes required to comply with Proposition 12 are too
11 costly for Mr. Deppe's business to survive. Mr. Deppe anticipates
12 Proposition 12's restrictions would significantly damage productivity
13 on his farm and negatively impact the welfare of his animals.
14 Productivity losses, along with construction costs to convert his
15 housing to provide 60% more space per sow to comply with
16 Proposition 12, would be too high for him to bear. Because of
17 Proposition 12, Mr. Deppe has lost the opportunity to sell his whole
18 pork product into supply chains bound for the large California market.
19 *See* Exh. F, Decl. N. Deppe.

20 d. Mr. Mike Falslev is an independent hog producer on his farm near
21 Logan, Utah. Mr. Falslev's farm specializes in serving the
22 predominantly Asian-American market for suckling pigs. To satisfy
23 the demand primarily from Asian-American consumers in California,
24 he sells about 600 pigs per week under a five-year contract to a
25 packing plant located in California. Thus, essentially all of his
26 product is bound for California. Currently, Mr. Falslev houses all of
27 his sows in individual stalls until he confirms that they are pregnant.
28 He keeps some of the sows in individual stalls throughout gestation,

1 but, after confirming that these sows are pregnant, moves others into a
2 hoop barn where they are housed in a group. Changing these
3 practices to comply with Proposition 12's housing requirements
4 would lower productivity on Mr. Falslev's farm by requiring him to
5 move his sows into the hoop barn directly after weaning. He would
6 lose the ability to provide a peaceful environment for the sows to
7 recover and regain weight from their previous litter, and instead be
8 required to subject them to stress and fighting with other animals
9 during the vulnerable time between insemination and before the
10 embryo attaches to the uterine wall. This would seriously damage
11 productivity and conception rates, because his pigs fight for feed and
12 territory when moved into the group pen. It would also make Mr.
13 Falslev's process for artificially inseminating sows much more
14 difficult and increase his labor costs, because it is more difficult for
15 him to care for the sows in the hoop barn. Compliance would also
16 require Mr. Falslev to expend significant construction costs to
17 construct a new barn with open space. Alternatively, constructing
18 enough hoop barns to replace his lost production would cost Mr.
19 Falslev almost as much, and would take up an enormous amount of
20 land. Operating solely out of hoop barns rather than using individual
21 breeding stalls would also significantly increase Mr. Falslev's
22 operating costs. For example, the colder hoop barn requires straw
23 bedding to provide warmth, and the straw bedding triples the amount
24 of waste and manure that needs to be disposed of, requiring a great
25 deal of additional labor. It also makes it much more difficult to
26 maintain comfortable temperatures for his sows during the cold of
27 winter and the heat of summer. If Mr. Falslev does not bear these
28 significant costs, Proposition 12 will block Mr. Falslev's product from

- 1 the lucrative suckling pig market in California. Proposition 12 leaves
2 Mr. Falslev with no good alternatives. *See* Exh. G, Decl. M. Falslev.
- 3 e. Mr. Tom Floy has been an Iowa hog producer for the past 45 years.
4 Mr. Floy produces 1,500 to 2,000 market hogs annually. He sells his
5 hogs exclusively to Tyson Foods (“Tyson”), which in turn sells the
6 resulting product all over the country and the world. Mr. Floy houses
7 his sows in individual stalls that do not allow them to turn around.
8 Compliance with Proposition 12 would require Mr. Floy to bear
9 significant construction costs to provide his sows with around 40%
10 more space. Mr. Floy would need to expend significant time to select
11 appropriate equipment and design and educate himself on how to
12 manage the new sow housing system. Mr. Floy also expects that
13 compliance would significantly lower productivity on his farm and
14 reduce the welfare of his sows. After moving from open lots to
15 individual stalls in 1994, Mr. Floy noticed that his sows experience
16 fewer injuries and produce a greater number of parities (farrowings).
17 Because of Proposition 12, Mr. Floy’s product will be barred from the
18 California market. He is concerned that loss of access to the market
19 harms the value of his product and will decrease its price. *See* Exh. H,
20 Decl. T. Floy.
- 21 f. Mr. Todd Hays is a fifth-generation hog producer on a farrow-to-
22 finish farm located in Monroe City, Missouri, who raises and finishes
23 approximately 13,500 market hogs per year. Pursuant to a two-year
24 contract, Mr. Hays sells ninety percent of these hogs to Smithfield,
25 which he has been in business with for the past ten years. Mr. Hays
26 houses his sows in individual stalls. Mr. Hays anticipates that
27 changing his sow housing practices to comply with Proposition 12
28 would increase sow mortality and lameness rates on his farm,

1 dramatically reduce his productivity rates, and require more labor and
2 personnel to operate his farm. These productivity losses and the costs
3 of either constructing new Proposition 12-compliant facilities or
4 reducing his current sow population to provide the needed space per
5 sow are likely greater than his business could bear, because Mr. Hays
6 would not receive enough return to cover these large costs. Because
7 of Proposition 12, Mr. Hays will lose the opportunity to sell his whole
8 pork product into supply chains bound for the large California market
9 and his business will become less attractive to suppliers who choose
10 to comply with Proposition 12. *See* Exh. I, Decl. T. Hays.

11 g. Mr. Phil Jordan is a hog producer on his family-owned farm in Ohio,
12 where he produces approximately 35,000 market hogs annually and is
13 looking to expand his operations. Mr. Jordan sells his market hogs
14 primarily to JBS under a marketing agreement. He holds the majority
15 of his sows in individual stalls, but is currently in the process of
16 converting his sow housing to a group pen system as required under
17 Ohio regulations by December 2025; however, those group pens will
18 not provide 24 square feet per sow. In addition, as permitted by
19 Ohio's regulations, Mr. Jordan will continue to place all of his sows in
20 individual breeding stalls for the first thirty-five to forty days after
21 weaning until they are confirmed pregnant in order to maximize
22 embryonic welfare. Mr. Jordan does not plan to comply with
23 Proposition 12, because he cannot imagine moving a sow directly
24 after weaning into a group pen in her weakened state rather than
25 protecting the sow in an individual stall and providing her with
26 enough feed to recover from weaning. Further, coming into
27 compliance with Proposition 12 would require Mr. Jordan to
28 significantly downsize his herd or incur steep construction costs to

1 expand his sow housing. It would be very difficult for Mr. Jordan to
2 change his plans to come into compliance with Ohio's regulations by
3 December 2025 to also come into compliance with California's more
4 restrictive regulations at the earlier date of December 31, 2021.

5 Because of Proposition 12, Mr. Jordan will lose the opportunity to sell
6 his whole pork product into supply chains bound for the California
7 market. *See* Exh. J, Decl. P. Jordan.

- 8 h. Mr. Chad Leman is a third-generation hog producer in Woodford
9 County, Illinois. He produces between 90,000 and 100,000 market
10 hogs annually, which he sells under contracts with Tyson and JBS.
11 Mr. Leman houses two-thirds of his sows in group pens that provide
12 about 19 square feet per sow. These sows are held in farrowing rooms
13 to give birth and wean piglets, and then in individual stalls for
14 approximately thirty-five days after weaning until they are confirmed
15 pregnant, when they are moved into group housing. Mr. Leman
16 houses the remaining one-third of his sows in individual stalls. It
17 would be cost-prohibitive for Mr. Leman to convert his individual
18 sow housing to group housing or to remodel his existing group pen to
19 provide 24 square feet per sow, while maintaining the same number of
20 sows. Because the sows fight each other in the pens and it is more
21 difficult for him to provide care and feed sows according to their
22 needs in the pen, Mr. Leman expects complying with Proposition 12
23 would be disastrous for productivity on his farm and harmful to sow
24 welfare. Moving sows into the group pens during the vulnerable time
25 directly after weaning would lower conception rates and result in sow
26 injuries. Because he cannot convert to Proposition 12, Mr. Leman
27 stands to lose business with suppliers because his whole pork product
28 is barred from the large California market. He is concerned that

1 activist measures such as Proposition 12 will drive him out of the
2 industry. *See* Exh. K, Decl. C. Leman.

3 i. Mr. Greg Maher, a hog producer on his small family farm outside of
4 Monroe City, Missouri, produces around 52,000 pigs annually. He
5 sells many of his pigs to Smithfield, which sells pork in all 50 states,
6 including California. Mr. Maher converted his sow housing five or
7 six years ago from individual stalls to group pens that provide 16
8 square feet per sow. As a result of this change, his sow mortality rate
9 skyrocketed and his costs of production increased under the group pen
10 system. For these reasons, Mr. Maher would like to move back to
11 housing all of his sows in individual stalls as soon as possible. He
12 now holds only about 40% of his sows in the group pen, and the
13 remaining sows in individual stalls. For all sows, Mr. Maher makes
14 use of breeding stalls until he confirms that the sow is pregnant in
15 order to allow the embryo to attach before she is moved back into the
16 group pen, where fights between sows risk pregnancy loss. If
17 required to bear construction costs and productivity losses to comply
18 with Proposition 12, Mr. Maher may have to exit the hog production
19 business. *See* Exh. L, Decl. G. Maher.

20 j. Mr. Howard “A.V.” Roth is a fifth-generation producer who produces
21 hogs on his family farm located in Crawford County, Wisconsin. Mr.
22 Roth’s farm produces approximately 72,000 weaned pigs annually.
23 While Mr. Roth previously used a group pen, he now houses his sows
24 in individual stalls that provide about 15 square feet per sow. After he
25 moved from group pens to individual stalls, Mr. Roth’s sows
26 experienced far fewer injuries and were much easier to manage. His
27 average litter size also increased from 9.2 to 10.2 piglets per litter. If
28 required to comply with Proposition 12, Mr. Roth expects that he

1 would have to pull out of the hog production business, because it
2 would no longer be sustainable for him. If Mr. Roth moved his sows
3 back to a group pen and eliminated the use of breeding stalls for the
4 first 30 days after breeding as Proposition 12 requires, Mr. Roth
5 expects his productivity rates would plummet. Mr. Roth would also
6 bear increased labor costs to run his farm, and significant initial
7 construction costs to convert his sow housing. Because of Proposition
8 12, Mr. Roth's whole pork product will be barred from sale in the
9 California marketplace. *See* Exh. C, Decl. H. Roth.

10 k. Mr. Randy Spronk is a third-generation Minnesota farmer and hog
11 producer. Working with his brother, Mr. Spronk produces around
12 250,000 market hogs annually, mostly under contracts with JBS and
13 Tyson. He also sells a great deal of his product to Hormel. While he
14 previously held his sows in group pens, Mr. Spronk was heartsick
15 watching smaller sows get picked on by the dominant animals, and
16 now houses his sows in individual stalls. Mr. Spronk does not plan to
17 comply with Proposition 12 because Proposition 12's housing
18 requirements would compromise the welfare of his animals, cause
19 productivity rates on his farm to drop, and increase his production
20 costs. Compliance would also require him to undergo costly
21 construction. At some of his barns, there would not be enough space
22 for him to expand sow housing to comply with Proposition 12. Mr.
23 Spronk does not believe that any increased price for Proposition-12
24 compliant pork in California would recoup his increased production
25 costs, because cuts of pork from his market hogs are shipped to many
26 different end users, most of whom would not value Proposition-12
27 compliant pork. Because of Proposition 12, Mr. Spronk's product is
28

1 barred from the California market. Mr. Spronk is concerned about
2 losing business as a result. *See* Exh. M, Decl. R. Spronk.

- 3 1. Mr. Joe Hofer is President and Senior Minister of a Hutterite colony.
4 He speaks on behalf of the roughly 30 pork-producing Hutterite
5 colonies located in Montana, most of which rely on hog production as
6 a major source of income. Much of the pork product that comes from
7 the colonies' hogs is shipped into the State of California. Mr. Hofer's
8 colony, along with eight others, contracts regularly to sell pork to a
9 packer who has demanded that the colonies comply with Proposition
10 12 for *all* of the product that they provide to it. This is despite the fact
11 that this packer only sells an estimated one-third of the product it
12 receives from these communities into California. If the colonies do
13 not comply, it will disrupt their business relationship with this packer.
14 Because most of the colonies house sows in individual gestation stalls,
15 changing their practices to comply with Proposition 12 would be
16 incredibly costly. The majority of the colonies would need to reduce
17 their sow populations by 20%. The colonies would also need to
18 purchase 20% more replacement gilts to replace sows that are injured
19 in fights between sows held in group housing. The colonies stand to
20 incur substantial costs if required to comply with Proposition 12. If
21 they do not comply, they stand to lose a longstanding business
22 relationship. *See* Exh. N, Decl. J. Hofer.

23 59. These farmers' experiences exhibit a common theme: Proposition 12
24 damages producers whose product is or may be sold into California, regardless of
25 whether they choose to comply with Proposition 12 or not.

26 60. To come into compliance with Proposition 12's stand-up turn-around
27 requirements, along with its 24 square foot per sow requirement, members of
28 NPPC and AFBF who operate sow farms would be forced to immediately expend

1 substantial capital costs to build new group housing that provides 24 square feet
2 per sow, or to retrofit existing barns to provide sows with 24 square feet of space
3 each. *See* Exh. E, Decl. P. Borgic, ¶¶ 27-31; Exh. C, Decl. H. Roth, ¶ 26; Exh. J,
4 Decl. P. Jordan, ¶ 14; Exh. K, Decl. C. Leman, ¶ 12; Exh. H, Decl. T. Floy, ¶¶ 24-
5 25.

6 61. One producer, Mr. Borgic, estimates that construction costs to comply
7 with Proposition 12 for his herd of 10,000 sows would reach around three million
8 dollars. Exh. E, Decl. P. Borgic, ¶ 28.

9 62. Another farmer, Mr. Maher, also estimates steep construction costs, as
10 he previously spent a million-and-a-half dollars building a group pen with space
11 for 16 square feet per sow. Exh. L, Decl. G. Maher, ¶ 17.

12 63. Exacerbating these costs, sow housing is a decades-long investment.
13 To reconstruct an existing barn is to waste a significant part of that investment.
14 *See* Exh. M, Decl. R. Spronk, ¶ 18.

15 64. Cheaper alternatives, such as constructing a hoop barn that would
16 consist of a concrete floor and a tarp, expose sows to extremely cold weather and
17 cold-related injuries and lack cooling measures to maintain comfortable
18 temperatures in summer. Exh. G, Decl. M. Falslev, ¶ 34. Hoop barns are also less
19 efficient, require more labor, and are more expensive to operate. *Id.*

20 65. In addition, because they are colder, hoop barns require a great deal of
21 straw bedding and external heating to provide warmth. Conventional barns, with
22 greater numbers of animals in closer proximity to each other, are warmer and do
23 not require this bedding. The more bedding provided for warmth, the more manure
24 stacks up, increasing the amount of waste and manure the farm needs to dispose of
25 and spiking labor costs. Exh. G, Decl. M. Falslev, ¶¶ 32, 34.

26 66. In addition to direct construction costs, producers would be required
27 to obtain various permits and comply with state regulatory requirements. Exh. F,
28 Decl. N. Deppe, ¶ 20; Exh. K, Decl. C. Leman, ¶ 13.

1 67. During any construction, many producers would need to depopulate
2 their entire sow barn, which would grind production to a halt. *See* Exh. K, Decl. C.
3 Leman, ¶ 13.

4 68. Producers' alternative would be to significantly reduce their
5 production by removing sufficient sows from existing group housing so that each
6 sow has 24 square feet of space. Exh. J, Decl. P. Jordan, ¶ 14; Exh. E, Decl. P.
7 Borgic, ¶ 31; Exh. I, Decl. T. Hays, ¶ 16.

8 69. Removing sows from an existing group pen that provides 16 square
9 feet per sow to allow 24 square feet per sow would reduce sow inventories (and
10 increase average fixed costs) by an estimated 33%. *See* Exh. O, Decl. S. Meyer, ¶
11 13.

12 70. For farmers who do not employ group housing, going from 14-square-
13 foot gestation stalls to 24 square feet of pen space per sow would drive an
14 estimated 42% reduction in sow inventory and the same percentage increase of
15 average fixed costs. *See* Exh. O, Decl. S. Meyer, ¶ 13.

16 71. Members would face additional penalties by taking this route. Many
17 producers operate under years-long contracts with suppliers that obligate them to
18 deliver a certain number of market hogs to each supplier at certain times. If they
19 miss a shipment, they would be in breach and potentially subject to monetary
20 penalties. Exh. E, Decl. P. Borgic, ¶ 31; Exh. J, Decl. P. Jordan, ¶ 16; Exh. K,
21 Decl. C. Leman, ¶ 17.

22 72. And whether they chose to drastically reduce their sow populations or
23 to bear the exorbitant costs of constructing new sow housing facilities, Proposition
24 12 would also require farmers to substantially change their animal husbandry
25 practices—methods of caring for sows that they have selected as best for the
26 management of their farms and their animals based on decades of experience. *See*
27 Exh. I, Decl. T. Hays, ¶¶ 8-9.

28

1 73. Proposition 12 effectively requires sows be held in group housing
2 instead of individual stalls, as a sow would need more than 24 square feet to turn
3 around in an individual stall without touching the sides of the enclosure.

4 74. These required changes would lower productivity on members' farms.
5 Producers who must move sows from individual stalls and into group pens will
6 experience lower productivity rates because sows in pens fight each other to
7 establish dominance and access to food, leading to serious injuries and fatalities.
8 *See* Exh. E, Decl. P. Borgic, ¶ 12; Exh. C, Decl. H. Roth, ¶¶ 16-18; Exh. J, Decl.
9 P. Jordan, ¶ 7; Exh. I, Decl. T. Hays, ¶¶ 9-11; Exh. F, Decl. N. Deppe, ¶ 18; Exh.
10 K, Decl. C. Leman, ¶ 14; Exh. G, Decl. M. Falslev, ¶¶ 2, 24-25; Exh. N, Decl. J.
11 Hofer, ¶ 27.

12 75. For example, one member noticed that the sow mortality rate on his
13 farm "skyrocketed" after moving from individual stalls to a group pen. Exh. L,
14 Decl. G. Maher, ¶ 9.

15 76. Producers also expect lower average litter sizes if required to house
16 gestating sows in a group pen given the stress associated with these fights and
17 lower level of care that sows often receive in a group, as opposed to individual,
18 housing system. Exh. C, Decl. H. Roth, ¶ 21; Exh. F, Decl. N. Deppe, ¶ 19.

19 77. Even worse for productivity rates on farms, Proposition 12's
20 restriction on the use of breeding stalls would require producers to move sows into
21 a group pen before pregnancy is confirmed.

22 78. As a practice, almost all producers use breeding stalls to artificially
23 inseminate sows and hold them individually at least through the confirmation of
24 pregnancy. To move the sows prior to the confirmation of pregnancy would
25 increase the risk of pregnancy loss. Exh. C, Decl. H. Roth, ¶ 22; Exh. I, Decl. T.
26 Hays, ¶ 14; Exh. G, Decl. M. Falslev, ¶ 28.

27
28

1 79. Keeping a sow within an individual stall for at least the first five to
2 seven days after breeding is critical to allow the embryos to attach. Exh. C, Decl.
3 H. Roth, ¶ 22; Exh. K, Decl. C. Leman, ¶ 16.

4 80. And keeping a sow in an individual stall for the first 30 to 40 or so
5 days after weaning and through the confirmation of the next pregnancy guards
6 against the high risk of loss of pregnancy caused by fights. Exh. J, Decl. P. Jordan,
7 ¶ 12; *See* Exh. I, Decl. T. Hays, ¶ 14; *See* Exh. M, Decl. R. Spronk, ¶ 11.

8 81. It also allows sows to recover from weaning, experience reduced
9 stress levels, and receive a proper amount of individualized feed at a time when
10 they are vulnerable. Exh. J, Decl. P. Jordan, ¶ 12; Exh. F, Decl. N. Deppe, ¶ 16-17.

11 82. It is also dangerous to the herd to move sows back into a group pen
12 prior to confirmation of pregnancy. When sows in heat are returned to a group
13 pen, they may fight or injure other sows by trying to mount or ride them. Exh. E,
14 Decl. P. Borgic, ¶¶ 20-21.

15 83. Because of additional sow injuries and deaths and lower productivity
16 on farms as a result of these requirements, compliance with Proposition 12 would
17 require members to breed additional replacement gilts or sows each year. Exh. E,
18 Decl. P. Borgic, ¶ 24.

19 84. These changes would further disrupt farm management practices, and
20 increase production costs. Exh. C, Decl. H. Roth, ¶15; Exh. J, Decl. P. Jordan, ¶¶
21 11-12; Exh. I, Decl. T. Hays, ¶¶ 13-14; Exh. K, Decl. C. Leman, ¶¶ 14-15; Exh. E,
22 Decl. P. Borgic, ¶¶ 10-17; Exh. G, Decl. M. Falslev, ¶¶ 27-29; Exh. H, Decl. T.
23 Floy, ¶¶ 31-32.

24 85. Many producers carefully provide each sow with the right amount of
25 feed to achieve the appropriate body condition, which is difficult in a group
26 housing system and especially critical shortly after weaning. Exh. J, Decl. P.
27 Jordan, ¶ 12.

28

1 86. While some producers with a group pen utilize an electronic feeding
2 system to provide individualized feed to each sow, these systems are difficult to
3 manage and cost-prohibitive for smaller producers. *See, e.g.*, Exh. J, Decl. P.
4 Jordan, ¶ 12; Exh. L, Decl. G. Maher, ¶ 12; Exh. D, Decl. G. Boerboom, ¶ 37.

5 87. It is also more difficult to provide individualized care to sows when
6 they are housed in a group, including providing immunizations, monitoring sows'
7 feed intake, and noticing when sows require medical care. *See* Exh. I, Decl. T.
8 Hays, ¶ 12; Exh. L, Decl. G. Maher, ¶ 12; Exh. M, Decl. R. Spronk, ¶ 14; Exh. H,
9 Decl. T. Floy, ¶¶ 19.

10 88. Housing sows in a group also requires complicated grouping of sows
11 based on their sizes and personalities. Exh. L, Decl. G. Maher, ¶ 12.

12 89. Because of the more labor-intensive nature of group pens, some
13 members would have to hire additional farm hands. Exh. C, Decl. H. Roth, ¶ 23;
14 Exh. I, Decl. T. Hays, ¶ 13; Exh. K, Decl. C. Leman, ¶ 15; Exh. E, Decl. P. Borgic,
15 ¶ 33.

16 90. Housing sows in a group pen also raises worker safety issues, given
17 the large size of the animals and the need for farm hands to enter the pens with 400
18 pound animals. *See* Exh. I, Decl. T. Hays, ¶ 11; Exh. M, Decl. R. Spronk, ¶ 15.

19 91. Producers carefully manage gilts—young sows that have not yet been
20 bred—to allow them to develop into healthy breeding sows. Proposition 12 allows
21 gilts to be housed in individual stalls or in group pens in which they have less than
22 24 square feet of space per gilt until six months of age (or until they are bred, if
23 that is earlier).

24 92. But gilts are not usually bred until about seven months of age. Exh.
25 D, Decl. G. Boerboom, ¶ 27. A sow farm seeking to comply with Proposition 12
26 would therefore need to change the way it handles not only its breeding sows, but
27 also its gilts, and would need to ensure that all its replacement sows were
28 Proposition 12 compliant—contrary to current industry practice—during the month

1 or so before first breeding. Entire herds will have to be replaced from Proposition
2 12 compliant gilts. *See* Exh. E, Decl. P. Borgic, ¶ 25; Exh. D, Decl. G. Boerboom,
3 ¶¶ 26-32.

4 93. Some compliance methods will be impossible to achieve for farm-
5 specific reasons (*e.g.*, lack of space or permits to build or retrofit barns). *See* Exh.
6 M, Decl. R. Spronk, ¶ 16.

7 94. And for some farmers, the expense of conforming to Proposition 12
8 will be cost-prohibitive. Many producers would no longer be able to operate if
9 required to comply with Proposition 12. *See* Exh. C, Decl. H. Roth, ¶ 28; Exh. F,
10 Decl. N. Deppe, ¶ 22; Exh. K, Decl. C. Leman, ¶¶ 12; Exh. L, Decl. G. Maher, ¶
11 17.

12 95. This is due to the costs they would expend converting to comply with
13 Proposition 12, reduced productivity on their farms, and increased labor costs as a
14 result of Proposition 12. *See* Exh. I, Decl. T. Hays, ¶ 17; *see also* Exh. F, Decl. N.
15 Deppe, ¶ 22 (expressing uncertainty as to whether his farm could remain
16 economically viable).

17 96. Pork producer members are also concerned that any increased price of
18 pork in California would not offset their increased costs of production from
19 compliance with Proposition 12. This is because pork product from one hog is cut
20 into primals, meaning different cuts of meat, and then shipped to many different
21 end users across the country and sometimes internationally. There is no
22 expectation that customers outside of California would see any value in
23 Proposition-12 compliant pork. But Proposition 12 dictates changes that increase
24 the costs of production for the entire pig, resulting in higher-cost products that are
25 not of higher value to most consumers. *See* Exh. M, Decl. R. Spronk, ¶ 19.

26 97. If producer members do not come into compliance with Proposition
27 12, they will lose direct access to the California market and stand imminently to
28 lose business with packers that are supplying the California market. *See* Exh. N,

1 Decl. J. Hofer, ¶ at 19; Exh. J, Decl. P. Jordan, ¶ 12; *See* Exh. I, Decl. T. Hays, ¶¶
2 17-18; Exh. F, Decl. N. Deppe, ¶ 21-22; ; Exh. K, Decl. C. Leman, ¶ 18; Exh. M,
3 Decl. R. Spronk, ¶ 17; Exh. H, Decl. T. Floy, ¶ 33.

4 98. Some AFBF and NPPC members have already received letters from
5 customers with which they have supply contracts explaining that they expect their
6 suppliers to comply with Proposition 12. *See* Exh. A-1, Decl. D. Hockman,
7 (Performance Group Food notice). These producers stand to lose business
8 relationships.

9 99. Plaintiffs' members who sell pork into California are also subject to
10 an imminent risk of an enforcement action. The compliance date for Proposition
11 12's stand-up, turn-around requirement as applied to out-of-state producers is
12 unclear. Thus, members who sell pork into California and who are not in
13 compliance with this mandate are exposed to potential enforcement suits.

14 100. Some producers have already received letters from animal welfare
15 activists explaining that the activists are aware that most of the pork industry is not
16 in compliance with Proposition 12 and that the activists are committed to ensuring
17 that they comply with Proposition 12. *See* Exh. A, Decl. of D. Hockman, ¶¶ 12-15.

18 101. Other members have been notified that "every US retailer chain has
19 been notified" about Proposition 12 and that the activists "are going to vigilantly
20 ensure that [Proposition 12's requirements] are followed." *See* Exh. A-3, Decl. of
21 D. Hockman.

22 102. Plaintiffs' members involved in every segment of the pork production
23 industry face imminent injury from Proposition 12, because its requirements have a
24 dramatic, negative impact on pork production and the pork supply chain as a
25 whole. It steeply increases producers' production costs, some of which will be
26 passed along each segment of the supply chain. And producers who do not comply
27 will need to adjust their businesses to avoid placing pork into a supply chain that
28 does or may result in sales to California.

1 103. NPPC and AFBF members who operate farms at any stage of the
2 complex pork production process—for example as piglet nurseries, gilt farms, sow
3 farms, or finishing farms, and the packers who purchase hogs that originated from
4 them—face concrete, imminent injury caused by Proposition 12.

5 104. Operations will need to change dramatically for any producer whose
6 product eventually reaches California, and new, difficult tracing methods will be
7 necessary to determine which products do so.

8 105. Because of steeper costs, pork products will become more expensive
9 at every step of production and distribution and for the consumer.

10 106. And because the industry is not currently capable of supplying enough
11 Proposition 12 compliant pork to California to meet California’s demand, pork
12 suppliers stand to lose business and face serious product availability issues, at least
13 in the short term.

14 107. These imminent injuries will be redressed by the injunctive and
15 declaratory relief sought in this action.

16 108. The interests that NPPC and AFBF seek to protect in this action are
17 germane to the purposes of the organizations. As organizations that advocate for
18 the economic interests of pork producers nationwide, California’s regulation of
19 pork production practices and of the interstate market for pork, as well as its
20 interference with farm management practices, is of vital concern to AFBF and
21 NPPC.

22 109. Neither the nature of the claims nor the forms of relief sought in this
23 action require the participation by the Plaintiff associations’ individual members.
24 Plaintiffs’ facial challenge to Proposition 12 does not require individualized proof
25 and Plaintiffs seek prospective relief. *See Hunt v. Wash. Apple Advert. Comm’n*,
26 432 U.S. 333, 343 (1977).

27
28

FACTUAL BACKGROUND

I. PORK PRODUCTION IN THE U.S.

A. The U.S. Pork Market

110. Pork production in the U.S. is an industry that is vital to the agricultural economy and the Nation’s overall economy.

111. In the U.S., approximately 65,000 pork producers market around 125 million hogs per year at a total gross income of around \$26 billion annually.

112. Iowa alone contains nearly 6,000 hog farms.

113. Other top producing states include North Carolina, Minnesota, Illinois, Indiana, Missouri, Ohio, and Utah.

114. Pork products include fresh products such as whole cuts, pork chops, ribs, or butts, among many others; processed meat such as sausages; further processed, ready-to-eat items such as smoked and cured products; and cooked items.

115. Breeding pigs, referred to as “sows,” produce market hogs.

116. Market hogs are raised until they are sent to market, while sows are kept on the farm for the purpose of breeding more market hogs.

117. Typically, a sow will bear about six parities, or litters, and then be culled, meaning removed from the sow farm and sold.

118. Only a small amount of product from sows themselves enters the market: About 125 million head of market hogs are slaughtered per year as opposed to just 2 million head of sows.

119. Almost all sow meat goes into sausage manufacturing, a processed product not subject to Proposition 12.

B. Pork Producers And The Pork Supply Chain

120. Pork producers include vertically integrated companies, that is, they own breeding farms, raise gilts to breeding age, raise hogs to market weight in nursery and finishing facilities, slaughter hogs, and process and distribute pork.

1 221. Producers also include individual farmers who own facilities at one or
2 more but not at all of these stages of production.

3 222. For example, some producers own only breeding farms and sell all or
4 most of their sows' offspring to feeder nursery or finisher farms.

5 223. And some packers are vertically integrated while others purchase
6 most of the pigs they slaughter from independent finishers.

7 224. Packers operate slaughterhouses and then sell pork product to
8 wholesale or large retail customers who distribute pork to consumers.

9 225. Packers may obtain some of their supply of hogs from affiliated
10 producers. They may obtain other hogs from family farms or other independent
11 producers.

12 226. Many pork producers enter into supply agreements with packers,
13 some of which are multi-year contracts, such that very little pork product in the
14 U.S. is sold on the open market. Producers who contract with packers do not sell
15 directly to wholesalers or consumers.

16 227. The number of steps before a product reaches a consumer or business
17 depends on the ultimate purchaser and the amount that a product is processed.
18 Downstream supply chain participants include processors, brokers, distributors,
19 warehouses, retailers, foodservice operators, and other actors.

20 228. Pork is a particularly difficult product to trace throughout the supply
21 chain because of the multiple and segmented steps in the production process.

22 229. Because the U.S. Department of Agriculture's Food Safety and
23 Inspection Service already inspects pork meat for wholesomeness, the industry
24 does not closely track production details for the vast majority of commodity pork
25 products.

26 230. The origin of a market hog is not always clear upon its arrival at
27 packer slaughter facilities. The animals are segmented for slaughter based on a
28 producer's identity, so hogs that were born and raised on a single farm generally

1 can be traced back to their producers. But the origin of a hog is often unclear if it
2 is purchased from a producer that only finishes market hogs, and who in turn had
3 purchased the hog after weaning from a different farm. And while some hogs are
4 purchased from known producers under longstanding contracts, others are bought
5 on the spot market directly at the packing plant.

6 131. The housing conditions of the sow from which a market pig came are
7 even more uncertain to packers. Sow farms often have different barns with
8 different conditions. And a gilt may have been purchased rather than bred by the
9 sow farm, making the determination of a sow's housing conditions throughout the
10 period it was subject to Proposition 12 even more difficult.

11 132. After pork comes out of a packing house, it becomes very difficult to
12 ascertain where pork product came from. This is because, when pork product
13 leaves a slaughter facility and enters processing, it is often cut into many parts and
14 combined with product from pigs raised by different producers.

15 133. It is especially difficult to determine the origin of pork products that
16 are not whole but undergo further processing, such as sausages. These products
17 run through multiple "touch points" such that tracing the original farm where a
18 product originated becomes extremely difficult.

19 134. To determine if pork product is Proposition 12 compliant, the entire
20 product line would need to be segregated.

21 135. This burden to segregate product will fall on farmers at every stage of
22 pork production as well as packers.

23 **C. The Steps Involved In The Production Of Pork**

24 136. Pork production in the U.S. is complex and driven by herd health and
25 efficiency considerations.

26 137. Throughout the production process, pigs are carefully grouped to form
27 herds with similar health status. This minimizes the need for treatment with
28

1 vaccines or antibiotics. Producers also keep pigs in groups of the same age and
2 with a similar diet.

3 138. For herd health reasons as well as economies of scale, the production
4 process is segmented. This means that most farms hold pigs at a specific phase or
5 phases in the production process, and they are moved between farms as they
6 develop.

7 139. Breeding farms contain sows, female pigs that produce piglets.

8 140. Farms strive to locate sow breeding farms in isolated areas with low
9 concentrations of pigs. Their remote location is a biosecurity measure to protect
10 sow herds from disease. Biosecurity is a set of preventive measures to help avoid
11 the transmission of infectious diseases in livestock.

12 141. Sows deliver piglets in farrowing stalls on breeding farms.

13 142. After being weaned at about 21 days in the farrowing stall, piglets are
14 moved away to nursery farms in a separate location. These locations are often
15 removed from breeding farms for biosecurity and other concerns.

16 143. Piglets are kept in nursery farms until they weigh approximately 50
17 pounds at about 6-8 weeks, at which point they are referred to as “feeder pigs” and
18 are transferred to separate finishing facilities.

19 144. Pigs spend 16-17 weeks at a finishing farm, where they develop and
20 gain weight before being sent to markets and packers, where they are slaughtered.

21 145. A small percentage of farms are structured as “wean to finish,”
22 meaning that pigs are held at the same farm rather than transferred between farms
23 as they develop throughout the production process.

24 **D. Sow Housing At Breeding Farms**

25 146. A breeding farm houses sows that are bred, usually by artificial
26 insemination, to produce piglets.

27 147. Determining how to house sows is a critical farm management
28 decision.

1 148. Sow housing affects the ability of farm management to provide
2 appropriate care to sows, maintain sow and herd health, and appropriately
3 sequence sows through farrowing stalls where they give birth, and it is critical to
4 farm productivity.

5 149. Thus, at breeding farms, many production and animal welfare
6 considerations go into determining how to house sows.

7 150. Most types of sow housing fit into one of two categories: individual or
8 group housing.

9 151. Individual stall housing is the most common housing method in the
10 industry. Individual stalls may be referred to as “breeding stalls,” meaning
11 individual stalls where a single sow is held after weaning piglets until confirmation
12 of another pregnancy, or as “gestation stalls,” meaning individual stalls where a
13 single sow is held after confirmation of pregnancy.

14 152. Individual stalls typically provide around 14 square feet per sow. *See*
15 *Exh. O, Decl. S. Meyer, ¶ 11.*

16 153. Individual stalls serve important animal health and efficiency
17 purposes, because when using breeding and gestation stalls, it is easier to feed,
18 treat, and observe sows.

19 154. Throughout breeding and gestation, producers typically confine sows
20 to these individual stalls.

21 155. The stalls prevent a sow from turning around, such that a pig is fed
22 only at one end of the stall and defecates only at the other end. This prevents the
23 sow from eating feces.

24 156. The stalls allow the sow individual access to critical resources,
25 including water and feed, without competition from other sows.

26 157. And they facilitate nutrition tailored to the needs of the individual sow
27 to recover peacefully from the stress and strain of delivering and nursing their
28 previous litter and allow the sows to regain body weight and prepare to be re-bred.

1 158. Individual stalls also provide a sow with easy access to veterinary
2 care.

3 159. They further protect sows from aggression and injury from other
4 sows.

5 160. Consumer demands from purchasers of pork to increase space for
6 sows during gestation has led roughly 28% of the industry to convert from
7 individual gestation stalls to group housing.

8 161. Group housing for sows is defined as a housing environment for more
9 than one sow in which the sow has the ability to lie down and stand up and to turn
10 around unimpeded.

11 162. Group housing generally provides around 16 to 18 square feet per
12 sow. *See* Exh. O, Decl. S. Meyer, ¶ 11.

13 163. Many variables can negatively impact sow welfare and productivity
14 when they are held in groups rather than individual stalls.

15 164. It is more difficult for producers to identify and remove sick sows for
16 medical care in group housing, and to ensure that each sow receives appropriate
17 nutrition tailored to its individual needs to achieve and maintain a healthy body
18 condition.

19 165. Group housing systems increase the chance that a sow will be injured
20 from aggressive interactions with other sows. Anytime a new group of sows is
21 formed, there will be significant stress and injuries, because the sows will fight to
22 establish their social order in group housing.

23 166. Sows also compete for feed in group housing, which risks dominant
24 sows becoming overweight and subordinate sows becoming underweight.

25 167. The welfare of sows held in group housing depends more heavily than
26 that of sows held individually on the care and skill of the producers who tend to
27 them.

28

1 168. Farm management using group housing must make a variety of
2 decisions to attempt to alleviate this aggression among sows and to ensure that
3 sows receive appropriate nutrition.

4 169. This requires flexibility in housing type and design to appropriately
5 care for and ensure the productivity of sows held in group pens.

6 170. As an example, producers select peer groups of sows based on both
7 the size of their operation and how sows will fit into farrowing room sequencing
8 when they give birth and nurse piglets.

9 171. The size of the group may range from five to more than 100 sows per
10 pen.

11 172. Producers must also consider whether the group-housed sow
12 population will be dynamic, meaning that different sows will be regularly added or
13 removed from the group to retain stocking levels in pens, or static, meaning that
14 the same group of sows will be kept together.

15 173. Another factor managers consider is the feeding system employed.
16 The choice of feeding method is critical in group housing because the producer is
17 not able to tailor the nutrition provided to each sow as with individual stalls. The
18 system employed can also influence the level of aggression and competition
19 between sows for feed. The appropriate feeding system will be influenced by the
20 size and make-up of the group, as well as the size of the pen.

21 174. Feeding practices range from floor feeding, meaning that feed is
22 simply dropped on the floor at one time; feeding in free access stalls, which allow
23 sows to enter stalls that close behind them to eat individually; electronic sow
24 feeding systems, which can be employed in larger pens where sows are directed to
25 eat and given an individualized ration based on a tag on the sow's ear; and
26 "trickle" feeding, meaning that feed is slowly released into feeding sites.

27
28

1 175. The type of flooring used is another decision that can impact hygiene
2 and sow injuries. While solid flooring with bedding can increase sow comfort,
3 slatted flooring to clear away manure can improve hygiene.

4 176. Another housing permutation is whether to provide free access stalls
5 within the group housing. When a sow voluntarily enters a free access stall, the
6 stall will close behind the sow and prevent other sows from entering. The sow
7 within the free access stall cannot turn around, but it can voluntarily leave the stall
8 by backing out.

9 177. All of these factors will impact sows' ability to avoid aggressive
10 encounters that could result in injury and reduce farm productivity.

11 178. Producers require flexibility in housing design to make these
12 decisions.

13 179. The "best" housing design, including space per sow, will depend on
14 the interplay between each of the above factors as well as producer experience and
15 preferences.

16 180. Housing features that work well for one producer may fail to secure
17 sow welfare and negatively impact sow productivity in a different setting.

18 **E. The Importance Of Individual Stalls During Breeding And Gestation**

19 181. The overwhelmingly vast majority of producers, even if they use
20 group housing at other stages, hold sows in individual breeding stalls for
21 approximately 30 to 40 days between the time a sow finishes weaning through the
22 time it enters estrus, it is bred, and pregnancy is confirmed.

23 182. After weaning piglets for about 21 days, a sow will generally enter
24 estrus five to seven days later.

25 183. Once a producer confirms that a sow has entered estrus, the sow will
26 be bred, typically by artificial insemination.

27 184. Pregnancy is confirmed around 21 days later.

28

1 185. The use of breeding stalls for around 30 to 40 days after weaning is a
2 widely accepted industry practice that is endorsed by veterinarians.

3 186. It is also critical to managing sows for breeding and productivity.

4 187. Breeding stalls assist producers with detecting when a sow is in estrus
5 to determine when it is time to breed the sow.

6 188. Commonly, producers will expose sows to a boar to assist with estrus
7 detection by walking a boar along the side of the pen or stalls.

8 189. It is much more difficult to ensure that each sow is adequately
9 exposed to the boar in order to detect estrus in a group pen setting as compared to
10 individual stalls.

11 190. Additionally, the separation of sows into individual stalls during
12 estrus reduces the risk of injuries to sows and to human caretakers.

13 191. A sow's normal behavior during this time period is to attempt to
14 mount or ride other sows, which can place farm workers at great risk of injury.
15 Thus, keeping sows in group settings during this time presents safety concerns.

16 192. Use of breeding stalls after implantation and prior to confirmation of
17 pregnancy ensures that the embryo properly attaches.

18 193. It also guards against the risk of the loss of pregnancy or a drop in
19 litter size due to the stress of socialization in the group setting, as well as the risk
20 of aggression from other sows.

21 194. Sows in stalls do not face the risk of aggression or jostling that occurs
22 in group settings.

23 195. Sows placed immediately in a group housing setting after weaning
24 have lower conception rates.

25 196. Breeding stalls also assist producers in confirming that the sow is
26 pregnant. It is challenging in a group-housing setting to detect whether a sow is
27 pregnant. While producers can use ultrasound technology, the ability of the sow to
28 move around in a pen complicates the confirmation of pregnancy. Even with

1 ultrasound technology, it is difficult to confirm pregnancy prior to 30 or 40 days
2 after breeding.

3 197. Production management also benefits greatly from the ability to keep
4 a sow in a stall until confirmed pregnant such that, if the sow does not conceive, it
5 can be easily re-bred once it returns to estrus.

6 198. After pregnancy is confirmed, some pork producers transfer sows to
7 group housing.

8 199. Of these sows, some will not adapt healthily to the group setting and
9 will be moved back to an individual stall.

10 200. As a farm management decision, most producers elect to hold sows
11 continually in breeding or gestation stalls throughout pregnancy rather than to
12 move sows into group housing facilities after pregnancy is confirmed.

13 201. Although the first several weeks after breeding are most critical and
14 present the highest risk of embryo mortality, stress from a group setting at any
15 stage of the production process may result in a pregnancy loss.

16 202. Breeding stalls protect gestating sows from aggression that is common
17 when sows are moved from stalls into a group housing setting.

18 203. When mixed into groups, sows experience increased levels of
19 fighting, cortisol, lameness, and body and vulva lesions as compared to sows
20 housed in stalls. These conditions directly erode animal health.

21 204. The worst parts of this aggression occur for the first several days
22 while the sows establish their social order.

23 205. Producers report a higher rate of injuries and fatalities in group than in
24 individual housing.

25 206. Breeding stalls also enable farm managers to provide each sow with
26 the proper nutrition during gestation. Producers can better ensure that sows that
27 lost weight during lactation or those that have excessive body weight receive the
28 correct amount of feed when they are housed in individual stalls.

1 **II. PROPOSITION 12**

2 **A. The History Of Proposition 12**

3 207. On November 6, 2018, California voters approved Proposition 12, a
4 ballot initiative that amends the California Health and Safety Code with prescribed
5 requirements for housing covered farm animals, including breeding pigs, calves
6 raised for veal, and egg-laying hens.

7 208. Proposition 12 was drafted and sponsored primarily by the HSUS as
8 well as supported by various other animal rights activists.

9 209. Proposition 12’s requirements were driven by activists’ conception of
10 what qualifies as “cruel” animal housing, not by consumer purchasing decisions or
11 scientifically based animal welfare standards.

12 210. The Proposition states that its “purpose ... is to prevent animal cruelty
13 by phasing out extreme methods of farm animal confinement, which also threaten
14 the health and safety of California consumers, and increase the risk of foodborne
15 illness”

16 211. Proposition 12’s requirements add to and amend those previously
17 imposed by another ballot initiative, Proposition 2, titled *Standards for Confining*
18 *Farm Animals*, which was also sponsored by the HSUS.

19 212. Passed November 4, 2008, Proposition 2 imposed animal housing
20 requirements *on California producers* based on activists’ conception of ideal
21 animal housing.

22 213. Proposition 2 required that egg-laying hens, breeding pigs, and calves
23 raised for veal *in California* must be housed in a manner that allows the animals to
24 “turn around freely, lie down, stand up, and fully extend their limbs,” subject to
25 limited exceptions.

26 214. The effective date of Proposition 2 was January 1, 2015, over six
27 years after Proposition 2 passed.
28

1 215. To come into compliance, Proposition 2 obligated California
2 producers to undergo major, costly changes in their production practices that
3 required millions of dollars' worth of investments in capital improvements to their
4 animal housing facilities.

5 216. Recognizing the economic impact Proposition 2 would impose on
6 California producers and eager to level the playing field, the California legislature
7 enacted Assembly Bill 1437 (AB 1437).

8 217. AB 1437 exported Proposition 2's requirements to apply to all sales of
9 eggs in California, even if the eggs were produced entirely outside of California.
10 AB 1437 also had an effective date of January 1, 2015.

11 218. AB 1437 did not apply to pork.

12 219. AB 1437 was subject to legal challenge by six states as in violation of
13 the Commerce Clause of the U.S. Constitution, but the lawsuit was dismissed for
14 lack of *parens patriae* standing.

15 220. Through Proposition 12, activists have now imposed even more
16 stringent requirements for housing to an expanded range of farm animals, to the
17 detriment of animal health and the success of small family farms.

18 221. Proposition 12 redefines supposedly "cruel" animal confinement,
19 dictating the amount of space and type of housing that producers must provide to
20 breeding pigs, calves raised for veal, and egg-laying hens.

21 222. This time, activists drafted the ballot initiative so as to require *all*
22 producers to follow the requirements of Proposition 12 in order for their products
23 to be sold in California, regardless of whether the product was produced inside or
24 outside of California.

25 223. Thus, their intent was to have Proposition 12 impose an extra-
26 territorial effect on interstate commerce.

27
28

1 224. Indeed, multiple statements confirm the activists’ intent to reach out-
2 of-state production through Proposition 12, as well as their awareness of
3 Proposition 12’s extraterritorial impact.

4 225. For example, in an editorial to support passage of Proposition 12
5 sponsored by a committee of HSUS, the activists explained that California does not
6 have a sizable pork industry, and that the proposition would ban sales from other
7 states not meeting California’s standards. “Editorial: Vote Yes on Prop. 12 to Give
8 Farm Animals a Cage-Free Life,” *Mercury News* (September 4, 2018),
9 <https://perma.cc/45Y7-WVFX>.

10 226. HSUS officials and other activists explained how Proposition 12
11 would have an out-of-state impact, forcing producers outside of California to meet
12 its “historical” standards in order to reach the California market. *See, e.g.*,
13 Charlotte Simmonds, “‘History in the Making’: California Aims for World’s
14 Highest Farm Animal Welfare Law”, *The Guardian* (March 7, 2018),
15 <https://perma.cc/6RL3-99ZL> (The vice-president of farm animals protection for
16 HSUS claims that Proposition 12 “is history in the making”); Anna Keeve, “Farm
17 Animal Rights Bill, Proposition 12: Everything You Need to Know”, *LA*
18 *Progressive* (August 30, 2018), <https://perma.cc/6G64-AHUZ>, (Humane League
19 activist states that Proposition 12 “has the potential to be the biggest legislative
20 victory for animals in history, not just in the state but in the country.”); *see also*
21 Nicole Pallotta, “Wins for Animals in the 2018 Midterm Election”, *Animal Legal*
22 *Defense Fund* (January 5, 2019), <https://perma.cc/J7T5-98XP> (Proposition 12 is
23 “being called the strongest law of its kind in the world”).

24 227. Thus, as is the intent behind Proposition 12, producers outside of
25 California who wish to sell in the California market must comply with Proposition
26 12.

27 228. A report regarding Proposition 12 prepared by the Legislative Analyst
28 Office for the Attorney General for the State of California (LAO Report) also

1 recognized that Proposition 12 inevitably regulates extraterritorial conduct with
2 regard to pork. The LAO Report explained that most of the pork that Californians
3 purchase is produced in other states.

4 229. The LAO Report further anticipated that in response to Proposition
5 12, California farmers would stop or reduce their production, potentially causing a
6 decrease of millions of dollars of state tax revenue that California collects
7 annually.

8 230. In addition, the LAO Report explained that consumer prices for pork
9 would likely increase as a result of Proposition 12.

10 231. The LAO Report explained that Proposition 12 will require many
11 producers—including those “in California **and other states**” —to remodel existing
12 housing or build new housing for animals to satisfy the new definition of “cruel”
13 animal confinement.

14 232. Further, the LAO Report explained that it could take several years for
15 producers to change their housing systems to come into compliance with
16 Proposition 12. Demand for Proposition 12-compliant products in California
17 would outpace supply.

18 233. The LAO Report also anticipated a \$10 million cost to California
19 annually in ensuring that products sold in California, whether produced in-state or
20 out-of-state, comply with Proposition 12.

21 234. The LAO Report did not quantify the costs that Proposition 12
22 imposes outside of California.

23 235. Because Proposition 12 was a ballot initiative, it passed without
24 legislative debate or legislative hearings to investigate the impact it would have on
25 interstate commerce, on the pork industry, or on sow welfare.

26 236. Proposition 12 passed with approval of 62.66% of participating
27 California voters.

28

B. Proposition 12’s Space Requirements As Applied To Breeding Pigs

237. Proposition 12 prohibits “confining [breeding pigs] in a manner that prevents the animal from lying down, standing up, fully extending the animal’s limbs, or turning around freely.”

238. This means that a sow must be able to fully extend all of its limbs “without touching the side of an enclosure or another animal,” and must be able to “tur[n] in a complete circle without any impediment, including a tether, and without touching the side of the enclosure or another animal.”

239. These requirements mean that meat from the offspring of sows housed in individual stalls may not be sold in California.

240. Proposition 12 permits only narrow exclusions from this requirement that breeding pigs not be housed in individual stalls. Individual stalls may be used:

- a. for five days before a breeding pig is expected to give birth, and any day a pig is nursing piglets;
- b. for animal husbandry purposes, limited to six hours in any 24 hours, and not more than 24 hours in any 30 days;
- c. for “examination, testing, individual treatment, or operation for veterinary purposes”;
- d. for medical research; and
- e. during transportation, during shows, during slaughter, at establishments where federal meat inspection takes place, and at live animal markets.

241. These exclusions do not allow the housing of sows in individual breeding stalls to detect estrus or to ensure that a pig is pregnant and that the eggs have properly attached.

242. They also do not allow a sow to recover peacefully from the strain of delivering and weaning her last litter of piglets, protected from fighting and competing against dominant and aggressive sows.

1 243. Subject to the same narrow exceptions, Proposition 12 also prohibits,
2 after December 31, 2021, “confining a breeding pig with less than 24 square feet of
3 useable floor space per pig.” “Usable floor space” is defined as the total square
4 footage of floor space divided by the number of animals in the enclosure.

5 **C. Proposition 12’s Space Requirements As Applied To Gilts**

6 244. Proposition 12’s requirements apply to breeding pigs, which it defines
7 as “any female pig of the porcine species kept for the purpose of commercial
8 breeding who is six months or older or pregnant.” Gilts which are not pregnant are
9 therefore exempt until they are six months old.

10 245. However, standard industry practice is not to breed gilts until they are
11 about seven months old.

12 246. Accordingly, gilts over six months old must be housed in compliance
13 with Proposition 12.

14 247. Virtually no gilts currently are housed that way.

15 248. Many sow farms raise their own gilts. Others buy their sows, or some
16 sows, from gilt producers.

17 249. In order to be Proposition 12 compliant, even a sow farm that
18 complied with Proposition 12 for its breeding pigs would also need to ensure that
19 all its sows were raised as gilts in compliance with Proposition 12. And currently
20 non-compliant herds would need to be entirely replaced using compliant gilts.

21 **D. The Scope Of Proposition 12**

22 250. Proposition 12’s requirements apply to sales of covered products in
23 California even if the product derives from a farm animal raised entirely outside of
24 California. Specifically, covered products from a breeding pig or from the
25 offspring of a breeding pig cannot be sold in California if the breeding pig was
26 ever confined in conditions that do not satisfy Proposition 12.

27 251. This restriction covers business owners and operators who know or
28 should know that covered product does not comply with Proposition 12.

1 252. There is a defense to a violation of Proposition 12 if the seller proves
2 that it did not know, and should not have known, that the product was from an
3 animal that did not meet Proposition 12’s confinement mandates, or if the seller
4 proves that it relied in good faith upon certification “by the supplier” that the
5 product was not from an animal confined in conditions that fail to meet Proposition
6 12’s requirements.

7 253. The products covered by Proposition 12 are uncooked, whole pork
8 meat comprised entirely of pork intended for human consumption.

9 254. “Whole pork meat” means any uncooked cut of pork that is comprised
10 entirely of pork meat, or of pork meat with very basic additives, such as seasoning,
11 curing agents, coloring, and preservatives. Examples of covered products include
12 “bacon, ham, chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin, or
13 cutlet.”

14 255. This definition “does not include combination food products” that
15 consist of more than pork meat and such basic meat additives, such as “soups,
16 sandwiches, pizzas, hot dogs, or similar processed or prepared food products.”

17 256. In the industry, a “processed” product generally refers to a product
18 that is ready to eat and need not be cooked for food safety reasons.

19 257. A covered sale is the commercial sale of a covered product in
20 California, deemed to occur where the buyer takes physical possession of the item.
21 It does not include sales that occur at facilities that are federally inspected pursuant
22 to the Federal Meat Inspection Act.

23 258. Because there is no exclusion for pork raised outside the country,
24 Proposition 12 applies to foreign producers as well as the entire U.S. pork market.

25 **E. Implementation Of Proposition 12**

26 259. A sale of pork in California that does not comply with Proposition 12
27 is a criminal offense that carries a penalty of up to a \$1,000 fine or 180 days
28 imprisonment.

1 260. A violation is also defined as “unfair competition” under the
2 California Business & Professional Code § 17200. This definition subjects a seller
3 to a civil action for damages or injunctive relief by any person injured in fact by
4 the violation.

5 261. Proposition 12 charges the CDFA and the CDPH with jointly
6 promulgating regulations to implement Proposition 12.

7 262. The CDFA is in the process of developing this regulatory framework.
8 Proposition 12 required CDFA and CDPH to produce final regulations by
9 September 1, 2019.

10 263. On April 2, 2019 the CDFA issued a Notice of a Request for
11 Information.

12 264. CDFA explained that Proposition 12’s implementing regulations may
13 include “production facility registration, certification, verification audits or
14 inspections, border station inspection, and a penalty matrix for violations including
15 an appeal process.”

16 265. On June 3, 2019, Plaintiffs AFBF and NPPC submitted comments in
17 response to the CDFA’s Request for Information. In these comments, the NPPC
18 explained that the production of pork in the U.S. is driven by a complex industry
19 that is vastly different from the egg and dairy industries.

20 266. Both Plaintiffs further explained that the arbitrary housing
21 requirements in Proposition 12 have no connection to animal welfare, that the costs
22 of compliance will force producers to choose between incurring untenable
23 compliance costs or losing access to the California market, and that Proposition 12
24 violates the Commerce Clause.

25 267. As of the filing of this lawsuit, no regulations have been promulgated.

26 **F. The Proponents’ Justifications For Proposition 12**

27 268. The purported justifications for the section of the California Health
28 and Safety Code that Proposition 12 amends is to “prevent animal cruelty by

1 phasing out extreme methods of farm animal confinement, which also threaten the
2 health and safety of California consumers, and increase the risk of foodborne
3 illness and associated negative fiscal impacts on the State of California.”

4 269. The Proposition 12 Official Voter’s Guide did not explain how
5 Proposition 12 has anything to do with pork product safety. And its discussion of
6 animal cruelty with regard to pork production reflected a misunderstanding of
7 industry practices.

8 270. Proponents of Proposition 12 stated in the Voter Guide: “Voting YES
9 prevents . . . mother pigs . . . from being crammed inside tiny cages for their entire
10 lives. It will eliminate inhumane and unsafe products from these abused animals
11 from the California marketplace. Voting YES reduces the risk of people being
12 sickened by food poisoning”

13 271. In the Voter Guide proponents also stated: “A mother pig shouldn’t
14 be locked in a tiny, metal cage where she can barely move. She’s trapped, forced
15 to live in this small amount of space for *nearly four years*.”

16 272. Proponents also stated in the Voter Guide: “Scientific studies
17 repeatedly find that packing animals in tiny, filthy cages increases the risk of food
18 poisoning.”

19 273. These proponent statements in support of Proposition 12 in the Voter
20 Guide that concern breeding pigs are inaccurate. They arise from misconceptions
21 about the industry and housing practices.

22 274. The proponents did not explain why 24 square feet per sow are needed
23 to prevent animal cruelty, or have anything to do with it.

24 275. Their arguments relied on inaccurate depictions instead of prevailing
25 industry standards of space provided per sow.

26 276. They made no reference to the reasons for the use of breeding stalls,
27 or the ways and periods in which breeding stalls are used.

28

1 277. And they did not explain or point to scientific studies that show how
2 sow housing can affect public health when the pork sold to consumers comes
3 almost exclusively from pigs raised and slaughtered in other facilities.

4 278. The proponent statements in the Voter Guide are inaccurate, and fail
5 to take into account the benefits to animal health of limiting group housing of
6 sows.

7 **III. PROPOSITION 12 REGULATES WHOLLY OUT-OF-STATE**
8 **CONDUCT**

9 **A. Proposition 12 Requires Massive Changes In Pork Production**
10 **Practices Nationwide**

11 279. A 24-square-foot-per-sow requirement and severe restriction on—
12 indeed almost complete elimination of—the use of breeding stalls is entirely
13 inconsistent with current industry best practices.

14 280. While a handful of states have passed laws requiring that pregnant or
15 gestating sows be confined in conditions that permit them to stand up, fully extend
16 their limbs, and turn around, Proposition 12's ban on breeding stalls prior to
17 pregnancy and its square-foot-per-sow requirement are singular in the U.S.

18 281. Even more, these other state regulations that require stand-up turn-
19 around have only imposed these requirements on in-state producers. Only
20 Massachusetts has passed a law that, once in effect, will similarly export its
21 requirements to out-of-state producers. That law was also passed via ballot
22 proposition, and lacked any semblance of legislative investigation, debate, or
23 deliberation.

24 282. Agreed-upon industry standards developed in collaboration with
25 veterinarians and other industry stakeholders recognize that a variety of housing
26 systems can adequately provide for the welfare of sows and do not require one type
27 of housing system, let alone set one prescriptive space-per-sow numerical
28 requirement or end the use of breeding stalls.

1 283. Compliance with Proposition 12 will require massive changes in
2 production practices nationwide.

3 284. Although approximately 28% of the U.S. market houses sows in
4 group housing systems, only a miniscule portion meets all of the housing
5 requirements prescribed by Proposition 12. Exh. A, Decl. D. Hockman, ¶ 9.

6 285. Of the approximately 28% of the market that uses group housing,
7 those facilities generally house sows with anywhere from 16-18 square feet per
8 sow. See Exh. O, Decl. S. Meyer, ¶ 11.

9 286. Approximately 72% of U.S. pork producers house sows in individual
10 stalls throughout gestation. Exh. A, Decl. D. Hockman, ¶ 9.

11 287. The overwhelmingly vast majority of producers typically use
12 individual breeding stalls for the first 30 to 40 days between the time a sow
13 finishes weaning through the time it enters estrus, is bred, and pregnancy is
14 confirmed. Exh. A, Decl. D. Hockman, ¶ 9.

15 288. None of these pork producers are in compliance with the stand-up
16 turn-around requirements or the 24-square-foot-per-sow group housing space
17 requirement of Proposition 12.

18 289. Demonstrating the massive changes that Proposition 12 requires,
19 almost the entire industry is out of compliance with Proposition 12.

20 **B. By Dictating Producers' Production Practices Outside Of California,**
21 **Proposition 12 Disrupts The Interstate Pork Supply Chain**

22 290. The inevitable effect of Proposition 12 is to regulate out-of-state
23 production.

24 291. Proposition 12 targets an industry whose production occurs almost
25 entirely outside of California, in other states and countries.

26 292. California's consumption of pork is hugely disproportionate to its
27 production. California consumes about 13% of the pork sold in the U.S. But pork
28 production inside California is minimal. There are approximately 8,000 sows in

1 California, and only approximately 1,500 of those are in commercial production.
2 Yet, California annually consumes the pork from approximately 673,000 sows.

3 293. Accordingly, the inevitable effect of Proposition 12 is to project
4 California's required methods of production into other states and countries that
5 allow different methods of production, and to force costly and unwanted changes
6 in production methods that producers believe are both inefficient and harmful to
7 their sows.

8 294. The extraterritorial reach of Proposition 12 is a substantial barrier to
9 interstate commerce, which functions through a well-established and complex
10 supply chain in which virtually no participant is Proposition 12 compliant.

11 295. Proposition 12 will remove from the California market pork product
12 derived from the offspring of sows whose producers provide for animal welfare but
13 do not meet Proposition 12's prescriptions.

14 296. Out-of-state producers must submit to California's mandated
15 production methods or lose access to California's large market.

16 297. In addition, because of the difficulty of tracing pork products back to
17 sows and gilts housed in particular facilities, Proposition 12 disrupts the entire U.S.
18 pork chain of supply. Absent tracing individual cuts of whole pork product
19 throughout that chain of supply back to particular sow facilities (indeed, particular
20 sow housing), and segregation of any Proposition 12 compliant hogs and
21 individual pork meat cuts at slaughter and processing facilities, it will be
22 impossible to sell any commercially produced pork into California.

23 298. As an alternative to tracing and segregation, producers will be forced
24 to change their production practices for pork intended for other, non-California
25 markets in order to make all of their production Proposition 12-compliant.

26 299. End of chain suppliers who sell pork into California will likely force
27 their pork suppliers to produce *all* product they provide to those suppliers in
28 compliance with California's specifications, or to carefully segregate products.

1 300. Furthermore, some buyers will require that all products they receive
2 from suppliers meet the same specifications and therefore avoid the need to
3 segregate products. *See, e.g.*, Exh. N, Decl. J. Hofer, ¶¶ 18-21 (explaining that a
4 packer with whom nine Hutterite colonies contract demanded that the colonies
5 meet California’s specifications for all pork product they sell to it); Exh. A, Decl.
6 D. Hockman, ¶¶ 16-19.

7 301. Thus, even sow farms developing all or most of their product
8 primarily for sale outside of California will likely be required to meet Proposition
9 12’s strictures in order to sell their products to packers who supply those
10 customers.

11 302. Confirming the extraterritorial nature of Proposition 12, it is
12 impossible to conceive how CDFA will ensure compliance with Proposition 12
13 unless it certifies facilities in other states through direct field verification audits or
14 inspections by state employees or third party auditors. Indeed, CDFA explains on
15 its webpage regarding the implementation of Proposition 12 that certification and
16 verification audits are among the methods it is considering for policing
17 compliance.

18 303. By imposing drastic changes in production on an industry that is
19 national in scope, and in which whole cuts of pork are shipped around the country,
20 Proposition 12 interferes with the functioning of \$26 billion a year in interstate
21 commerce.

22 304. By imposing drastic changes that regulate how producers house sows
23 in other states, California is directly challenging the sovereignty of other states to
24 regulate their own citizens’ animal husbandry practices.

25
26
27
28

1 **IV. PROPOSITION 12 IMPOSES AN EXCESSIVE BURDEN ON**
2 **INTERSTATE COMMERCE**

3 **A. Proposition 12 Imposes Substantial Costs On Out-of-State Producers**

4 305. The overwhelmingly vast majority of the market is not in compliance
5 with Proposition 12.

6 306. Producers who attempt to alter their practices to comply with
7 Proposition 12 face severe and costly burdens.

8 307. To come into compliance with Proposition 12, the minority of
9 producers who currently use group sow housing will need to decrease their
10 production by removing sows from barns until the 24 square foot requirement is
11 met, retrofit barns to increase available group housing space, or build new group
12 housing barns, all with no corresponding financial benefit. Exh. F, Decl. N.
13 Deppe, ¶ 20; Exh. K, Decl. C. Leman, ¶ 12; Exh. J, Decl. P. Jordan, ¶ 14.

14 308. Farms with group housing currently provide around 16-18 square feet
15 per sow. These farms will need to reduce their sow inventories by 33% to come
16 into compliance with Proposition 12. *See* Exh. O, Decl. S. Meyer, ¶ 13.

17 309. To comply with Proposition 12, producers who currently use
18 individual sow housing will need to reduce their sow inventory by 42%, or build
19 new or convert existing barns to group sow housing that provides 24 square feet
20 per sow. *See* Exh. O, Decl. S. Meyer, ¶¶ 13, 14; Exh. E, Decl. P. Borgic, ¶ 31;
21 Exh. C, Decl. H. Roth, ¶ 26.

22 310. In addition to the direct costs of renovation and reconstruction, the
23 process will also require producers to shut down their existing farms while the
24 farms are retrofitted. *See, e.g.*, Exh. H, Decl. T. Floy, ¶ 28; Exh. K, Decl. C.
25 Leman, ¶¶ 13.

26 311. New construction costs will for some hog producers reach millions of
27 dollars, and those costs will be in addition to any costs that some producers have
28 already incurred in prior barn renovations transitioning to group housing.

1 312. As an example, Smithfield, a vertically-integrated pork processor and
2 hog producer, already spent \$360 million over a ten-year period to convert from
3 individual stall housing to group housing. *See* Decl. of Robert Darrell, *North Am.*
4 *Meat Inst. v. Becerra, et al.*, 2:19-cv-08569-CAS, Dkt. 15-7 (C.D. Cal. Nov. 18,
5 2019). Smithfield estimates that retrofitting its barns to meet Proposition 12's 24-
6 square-foot-per-sow requirement for all of its company-owned sows would in turn
7 cost an additional \$100 million in capital investments and increased operating
8 costs. *See* Decl. of Robert Darrell, *North Am. Meat Inst. v. Becerra, et al.*, 2:19-
9 cv-08569-CAS, Dkt. 15-7 (C.D. Cal. Nov. 18, 2019). Clemens, a vertically
10 coordinated company that produces, processes, and distributes pork, estimates that
11 restructuring its company-owned sow farms as well as those of its suppliers to
12 comply with Proposition 12 would require a capital investment of over \$45
13 million. *See* Decl. Joshua Rennells, *North Am. Meat Inst. v. Becerra, et al.*, 2:19-
14 cv-08569-CAS, Dkt. 15-9 (C.D. Cal. Nov. 18, 2019).

15 313. Smaller operations also face steep construction costs and have less
16 ability to meet them. Illinois hog producer Mr. Borgic estimates that construction
17 costs to comply with Proposition 12 for his herd of 10,000 sows would reach
18 around \$3 million. Exh. E, Decl. P. Borgic, ¶ 28. Missouri hog producer Mr.
19 Maher explains that he previously spent \$1.5 million building a group pen with
20 space for 16 square feet per sow. Exh. L, Decl. G. Maher, ¶¶ 7,17.

21 314. Some farms will not have the capital available to meet these costs.
22 *See* Exh. O, Decl. S. Meyer, ¶ 16.

23 315. Permits to construct new or retrofit existing barns are difficult to
24 obtain in many states and restricted by state regulation. Available space for new
25 facilities is also limited by zoning regulation, and often subject to significant
26 construction or litigation delays.

27
28

1 316. Producers that elect to undergo these steep construction costs will
2 need to secure financing, which will also likely require them to negotiate revised,
3 long-term contracts with suppliers. Exh. F, Decl. N. Deppe, ¶ 20.

4 317. The timeline for producers to come into compliance with Proposition
5 12's spacing requirements is abbreviated and requires action now. Exh. C, Decl.
6 H. Roth, ¶ 10.

7 318. Before beginning construction, producers will need to consult with
8 equipment manufacturers and experts regarding how to design the group housing
9 and select appropriate equipment and fixtures. Exh. H, Decl. T. Floy, ¶¶ 26-33.

10 319. Producers who intend to retrofit or build new barns to meet
11 Proposition 12's 24-square-foot-per-sow requirement by the December 31, 2021
12 deadline would likely have needed to start planning and contracting for
13 construction during 2019.

14 320. By early 2020, pork producers who intend to construct new barns or
15 retrofit their facilities will need to begin construction on new sow housing units.

16 321. Thus, Plaintiffs' members must begin retrofitting or constructing new
17 barns to come into compliance now, or be prepared to lose certain customers and
18 access to the California market. Exh. C, Decl. H. Roth, ¶ 10.

19 322. Compliance with Proposition 12 will require entirely new and less
20 efficient methods of animal husbandry that will increase operating, staff training,
21 and veterinary costs.

22 323. Proposition 12 significantly interferes with production by taking farm
23 management practices out of the hands of the farmers who are most informed
24 about animal care. The impact of this intrusion will also jeopardize animal health
25 (as previously explained), increase production costs, and decrease productivity.
26 Exh. C, Decl. H. Roth, ¶¶ 15-26; Exh. J, Decl. P. Jordan, ¶¶ 12-14; Exh. I, Decl. T.
27 Hays, ¶¶ 9-10, 14; Exh. K, Decl. C. Leman, ¶¶ 14-16; Exh. E, Decl. P. Borgic, ¶¶
28 10-22; Exh. G, Decl. M. Falslev, ¶¶ 27-29; Exh. H, Decl. T. Floy, ¶¶ 16-18.

1 324. Proposition 12 eliminates the use of breeding stalls on which the vast
2 majority of producers rely for managing the breeding of sows based on generations
3 of experience. Those farmers will need to completely change their methods of
4 operation to accommodate sows in estrus and during breeding and early pregnancy
5 in group housing, which will require changes in the sow population and/or in the
6 physical plant.

7 325. Proposition 12 will also require virtually all farms to change the way
8 they acquire or raise and first breed gilts.

9 326. In an expedited timeframe, Proposition 12 upends generations of
10 animal husbandry, training, and knowledge.

11 327. It will be significantly more difficult for producers to oversee the
12 production process with restricted breeding stall use.

13 328. It will be much more difficult for many producers to artificially
14 inseminate their sows under the limited animal husbandry exceptions permitted
15 under Proposition 12. *See* Exh. I, Decl. T. Hays, ¶¶ 9-10.

16 329. Sow productivity will drop and sow injuries will increase without
17 farm management's ability to place sows in breeding stalls during estrus,
18 implantation of the embryo, and confirmation of pregnancy. Exh. C, Decl. H.
19 Roth, ¶¶ 22; Exh. I, Decl. T. Hays, ¶ 14; Exh. G, Decl. M. Falslev, ¶ 28.

20 330. Producers will need to expend resources to provide additional training
21 to stockpersons on how to properly care for gestating sows held in groups rather
22 than individual stalls. Exh. I, Decl. T. Hays, ¶¶ 12-13; Exh. K, Decl. C. Leman, ¶
23 15; Exh. E, Decl. P. Borgic, ¶ 33.

24 331. Stockpersons will need to be differently trained to recognize sows that
25 require specific nutrition or care and remove them from a group housing setting,
26 and to confirm more carefully when a sow is in estrus or whether a sow is
27 pregnant. Exh. I, Decl. T. Hays, ¶¶ 12-13; Exh. K, Decl. C. Leman, ¶ 15; Exh. E,
28 Decl. P. Borgic, ¶ 33; Exh. G, Decl. M. Falslev, ¶ 29.

1 332. Proposition 12 forces farmers to utilize group housing even when their
2 animal care, staff knowledge, and farm management practices are best suited to
3 individual stall systems.

4 333. The decrease in farm productivity driven by Proposition 12 will cause
5 producers to lose revenue. Small farms are more likely to cease operations than
6 large farms, due to a lack of adequate capital to undertake the massive investment
7 required to meet Proposition 12's requirements.

8 334. As a conservative estimate, farrowing rates will decrease on farms
9 that comply with Proposition 12 and eliminate the use of breeding stalls by around
10 9%. *See* Exh. O, Decl. S. Meyer, ¶ 20.

11 335. For some farmers, the economic and productivity costs described
12 above will be too steep to come into compliance with Proposition 12. *See* Exh. F,
13 Decl. N. Deppe, ¶ 20; Exh. I, Decl. T. Hays, ¶¶ 17-18; Exh. E, Decl. P. Borgic, ¶
14 35.

15 336. Proposition 12 will also cause producers who are unable to comply
16 with Proposition 12 to lose business, including for sales that occur entirely outside
17 the State of California. Some of this lost business may be from suppliers with
18 whom producers have contracted for many years. *See* Exh. G, Decl. M. Falslev, ¶
19 9; Exh. H, Decl. T. Floy, ¶ 33; Exh. J, Decl. P. Jordan, ¶ 9.

20 337. Producers have already received letters from suppliers demanding
21 compliance with Proposition 12. *See* Exh. A, Decl. D. Hockman, at ¶ 12-15.

22 338. Producers may be forced to satisfy Proposition 12 to continue the
23 supply relationship with suppliers that intend to sell pork product in California,
24 even if their sale of product to those suppliers takes place outside of California.

25 339. Some suppliers will set specifications that must be met for all of their
26 pork product across the board, regardless of what market it is sold into. Producers
27 thus may be forced to comply with Proposition 12 to continue a supply relationship
28 with these suppliers, even if most of their product is not bound for California.

1 340. These changes in physical plants and operations required in order to
2 comply with Proposition 12 impose serious financial hardship on pork producers.

3 341. The consequences of this would likely include further consolidation of
4 the pork industry, as larger farms with greater capital are able to adapt and smaller
5 farms are forced to cease operation.

6 **B. Proposition 12 Substantially Interferes with Interstate Commerce in**
7 **Pork**

8 342. Producers who comply with Proposition 12 will need to spend at least
9 an estimated \$293,894,455 to \$347,733,205 of additional capital in order to
10 reconstruct their sow housing and overcome the productivity loss that Proposition
11 12 imposes. *See* Exh. O, Decl. S. Meyer, ¶ 24.

12 343. Plaintiffs expect that compliance with Proposition 12 will increase
13 production costs per pig by over \$13 dollars per head, a 9.2% cost increase at the
14 farm level. *See* Exh. O, Decl. S. Meyer, ¶ 25.

15 344. Proposition 12 will impact sales of pork that take place entirely
16 outside of California.

17 345. Because of the small in-state production of sows in California
18 compared to California's greater consumption of pork, the majority of the costs
19 and operational changes to supply the California market will necessarily be
20 incurred by producers operating entirely out-of-state.

21 346. Selling a cut from a pig to California means the entire pig must be
22 raised according to Proposition 12's requirements, regardless of where the other
23 cuts are sold. *See* Exh. A, Decl. of D. Hockman, ¶ 17; Exh. O, Decl. S. Meyer, ¶ 8.

24 347. As a consequence, producers will be required to conform to
25 Proposition 12's requirements even for pork product that is bound for other
26 markets, even though there is no consumer demand in other states for Proposition
27 12 compliant pork.

28

1 348. Further, segregating pork product throughout the supply chain is very
2 difficult and complicated. *See* Exh. A, Decl. D. Hockman, ¶¶ 17-18, 28.

3 349. Thus, some packers and food distributors will require all of the
4 product that they receive to comply with Proposition 12, regardless of where they
5 sell it. *See* Exh. N, Decl. J. Hofer, ¶¶ 18-21; Exh. A, Decl. D. Hockman, ¶¶ 16-19.

6 350. This has already been the experience of NPPC members who operate
7 sow farms on Hutterite colonies in Montana, who have been told by a packer that
8 sends only an estimated one third of its pork to California that all hogs it buys must
9 be Proposition 12-compliant. Exh. N, Decl. J. Hofer, ¶¶ 18-21.

10 **V. THERE IS NO SOW WELFARE BENEFIT FROM MANDATING 24**
11 **SQUARE FEET PER SOW OR RESTRICTING THE USE OF**
12 **BREEDING STALLS**

13 **A. The Concept Of Sow “Welfare”**

14 351. Proposition 12 will not advance sow welfare.

15 352. Sow welfare depends on an assessment of the individual sow and the
16 care that is provided to that sow, not an arbitrary, prescriptive housing space
17 number.

18 353. To assess sow welfare, farmers, veterinarians, and other industry
19 stakeholders consider a variety of objective factors.

20 354. The industry uses voluntary, third party audits that consider objective
21 physical criteria developed in collaboration with veterinarians. These factors
22 include body condition scoring, lameness scoring, nutrition, and water provided to
23 the sow.

24 355. Veterinarians also consider whether the needs of the sow are provided
25 for in order to enable the sow to produce.

26 356. Human management, not a prescriptive space requirement, is the most
27 important factor determining sow welfare.

28

1 357. Care from dedicated, knowledgeable farmers leads to the best welfare
2 results for sows. This is because the best individual to determine how to raise and
3 house a sow is the person who is caring for it, taking into account the barn and the
4 specific animals involved.

5 358. A variety of farm management factors impact the care and attention
6 that a sow receives, including the producers' knowledge, the feeding system used,
7 the type of stall, the number of sows in the pen, the size of the operation, and the
8 ease of human access in and out of stalls.

9 359. Further, a sow's needs change throughout production, from the time it
10 is weaned through inception and gestation.

11 360. And a sow's welfare needs are unique to the particular sow. One
12 mandatory practice may harm many sows, while advancing the welfare of others.

13 **B. Sow Welfare And Housing**

14 361. Research repeatedly demonstrates that there is no single "best"
15 method for housing sows to provide for sow welfare.

16 362. Indeed, based on their lifelong experience producing hogs, AFBF and
17 NPPC members rely on various methods of caring for and housing their sows. *See,*
18 *e.g.,* Exh. D, Decl. G. Boerboom, ¶¶ 20, 24, 37; Exh. E, Decl. P. Borgic, ¶ 10; Exh.
19 F, Decl. N. Deppe, ¶ 10; Exh. G, Decl. M. Falslev, ¶¶ 15, 20; Exh. H, Decl. T. Floy
20 ¶ 23; Exh. I, Decl. T. Hays, ¶¶ 3, 20; Exh. J, Decl. P. Jordan, ¶ 11; Exh. K, Decl.
21 C. Leman, ¶ 5; Exh. L, Decl. G. Maher, ¶¶ 6-8; Exh. C, Decl. H. Roth, ¶ 15; Exh.
22 M, Decl. R. Spronk, ¶¶ 6-8, 21.

23 363. The American Veterinary Medical Association has concluded that
24 "[t]here are advantages and disadvantages to any sow housing system."

25 364. Within a group housing system, the amount of space a sow needs
26 depends not on a prescriptive number, but instead on the type of group housing
27 system used, the quality of the space, and the make-up of the group in terms of
28 size, age, parity, and type of sow.

1 365. It is disastrous to farm management and sow welfare to prescribe one
2 specific number without considering these factors.

3 366. For example, gilts and younger sows are smaller than older sows, and
4 need less space than mixed groups or groups comprised solely of older sows.

5 367. As another example, group size will directly influence quality of
6 space and the social interactions among the sows. The larger the group, the greater
7 the number of sub-groups that develop among dominant, intermediate, and
8 submissive sows. In a large group setting, the design of the feeding space becomes
9 particularly critical to prevent submissive sows from being displaced from the
10 feeding space and to mitigate sow aggression.

11 368. Quality of space provided to sows is much more important than
12 quantity of space per sow.

13 369. Elements dictating quality of space include not only space per sow,
14 but also design of the housing system, flooring type, group size, bedding, nutrition,
15 the feeding mechanism, and the training of farm staff in removing sows that need
16 individual care.

17 370. Because the amount of space a sow needs depends on a variety of
18 situation-specific factors, a prescriptive requirement will not be appropriate in all
19 cases.

20 371. Many guidelines produced by collaboration between industry
21 stakeholders and veterinarians regarding appropriate care and housing of sows to
22 secure sow welfare recognize that a variety of factors determine what amount of
23 space is appropriate and do not prescribe one specific number in sow housing
24 requirements.

25 372. For example, the Common Swine Industry Audit is a third party,
26 voluntary audit based upon standards developed by a task force of industry
27 stakeholders, including veterinarians, producers, animal scientists, packers,
28

1 processers, and retail and food service representatives. The audit reviews 27
2 aspects of swine care and pre-harvest pork safety.

3 373. One animal well-being topic reviewed by the audit considers space
4 allowance per sow. Instead of tying space per pig to an arbitrary number, the
5 Common Swine Industry Audit assesses whether a sow has the ability to easily lie
6 down fully and stand back up within the housing. The Audit also considers body
7 condition scores, the number of pigs with lameness or lesions, air temperature, feed
8 and water access, and caretaker training, among other factors.

9 374. The Pork Checkoff's 2018 Swine Care Handbook, drafted by
10 academics, producers, and veterinarians, also creates recommendations for group
11 housing space allowances. Regarding sow housing during breeding and gestation,
12 the Handbook notes that pregnant sows can be kept "in a variety of housing
13 situations," and that the management system should provide access to appropriate
14 feed, water, sanitation, and air quality, facilitate the observation of individual sows
15 to assess their well-being, and provide adequate quality and quantity of space to
16 permit sows to "assume normal postures and express normal patterns of behavior,"
17 among other factors. It states that there are disadvantages and advantages to any
18 sow-housing system, and that each system should be weighted based on scientific
19 evidence, veterinary professional judgment, and caretaker management abilities.
20 The Handbook also explains that group housing systems are less restrictive than
21 individual stalls but "could lead to increased lameness," as well as aggression and
22 competition for resources.

23 375. With regard to space allowance recommendations in indoor group
24 housing, the Handbook does not require one prescriptive number. Instead, it
25 explains that space requirements are influenced by "feeding method, group size,
26 flooring type, pen design, management practices and other factors." It states that
27 adequate space in group housing will allow sows space for full lateral recumbency
28 and minimize the risk of injury.

1 **C. There Is No Scientific Basis For The Belief That The 24-Square-Foot-**
2 **Per-Sow Requirement Promotes Sow Welfare**

3 376. The requirement of 24 square feet per sow is an arbitrary number.

4 377. It has not been scientifically shown to improve sow welfare.

5 378. To compare sow welfare under different housing systems, studies look
6 at stress hormones (cortisol), injury levels, the number of fights between sows, the
7 ability of sows to get enough feed, the ability to maintain pregnancy, and sow
8 longevity.

9 379. In terms of square footage, at most, the science suggests that sows
10 need room for lying down separate from room for defecating, and that less than 15
11 square feet per sow may compromise sow welfare in terms of longevity and risk of
12 injury.

13 380. U.S. producers typically provide at least 16 square feet per sow, with
14 the average being 18-19 square feet per sow in group housing.

15 381. There are no marginal gains to sow welfare from increasing space
16 allowances per sow from 16-19 square feet per sow to 24 square feet per sow.

17 382. Providing too large an area may decrease sow welfare. It may lead to
18 sows defecating in the lying area, rather than the dunging area, thus compromising
19 hygiene. *See* Exh. M, Decl. R. Spronk, ¶ 13.

20 383. And additional floor space may permit more room for fighting,
21 thereby increasing sow stress levels and negatively impacting sow welfare.

22 384. In large floor spaces, there is often a great deal of wasted space.
23 Given the option, many sows choose to spend their time in a more confined pen.

24 385. On the other hand, the selection of one prescriptive number is
25 detrimental to animal welfare and farm management.

26 386. The blanket 24 square feet requirement limits the ability of farm
27 management to make housing adaptations to best address the welfare of their sows.
28

1 387. In imposing an arbitrary square foot per sow requirement, Proposition
2 12 requires producers to divert costs that could be spent on more direct influencers
3 of sow welfare such as optimal nutrition, stockperson training, and advanced
4 feeding systems to an arbitrary square feet per sow number.

5 388. Blindly imposing a single square foot per sow requirement on all
6 farms denies producers the ability to manage their farms to optimally manage
7 production while providing for sow welfare.

8 **D. Limiting The Use Of Breeding Stalls Harms Sow Well-Being**

9 389. Proposition 12 prohibits the use of individual stalls except during the
10 period from five days before farrowing and while nursing piglets, and in certain
11 additional narrow circumstances. It therefore prohibits the industry's almost
12 universal practice of using breeding stalls until pregnancy is confirmed, as well as
13 the use of individual stalls to ensure the welfare of specific sows.

14 390. Restrictions on the use of breeding stalls decrease sow welfare during
15 breeding and gestation.

16 391. Farmers who transitioned from group pens to individual stalls noticed
17 that the sows appeared calmer and healthier in individual stalls. *See* Exh. C, Decl.
18 H. Roth, ¶ 19; Exh. G, Decl. M. Falslev, ¶ 19; Exh. H, Decl. T. Floy, ¶¶ 20-22.

19 392. Sows held in individual stalls lasted on average for a greater number
20 of parities, or farrowings, than when held in the group pen. Exh. H, Decl. T. Floy,
21 ¶ 18.

22 393. Group housing exposes sows to aggression and fights, leading to a
23 greater incidence of injuries. The sows tear at each other's vulvas and ears,
24 leading to serious injuries that can render sows unable to continue to farrow, as
25 well as fatalities. *See* Exh. E, Decl. P. Borgic, ¶ 12; Exh. I, Decl. T. Hays, ¶ 9;
26 Exh. N, Decl. J. Hofer, ¶ 33. These fights occur regardless of the number of sows
27 held in the pen. Exh. F, Decl. N. Deppe, ¶ 18.

28

1 394. Producers that transitioned from individual stalls to group housing
2 experienced higher cull rates and sow injuries. *See* Exh. L, Decl. G. Maher, ¶ 9.

3 395. Conversely, producers that transitioned from group housing to
4 individual pens experienced the opposite. *See* Exh. E, Decl. P. Borgic, ¶¶ 14-15;
5 Exh. C, Decl. H. Roth, ¶ 16; Exh. G, Decl. M. Falslev, ¶ 20; Exh. H, Decl. T. Floy,
6 ¶¶ 14-18. One farmer noticed that despite tripling his herd size at the time that he
7 transitioned from a group pen to individual stalls, the number of sows culled due to
8 serious injuries remained constant—even with three times as many animals. Exh.
9 C, Decl. H. Roth, ¶ 16. Thus, the percentage of injured sows sharply decreased on
10 his farm.

11 396. Because of these fights, sows experience greater stress in group
12 housing than in individual stalls.

13 397. The consequences of stress and fights are particularly severe to sow
14 welfare prior to the confirmation of pregnancy and in the early stages of gestation.

15 398. Mixing sows into a group setting after weaning results in higher levels
16 of stress than mixing sows into a group setting after pregnancy is confirmed. *See,*
17 *e.g.,* Exh. M, Decl. R. Spronk, ¶ 11.

18 399. By preventing the use of breeding stalls during the 30 to 40 day period
19 between weaning and confirmation of pregnancy, Proposition 12 puts sows at
20 greater risk of injury and stress during the vulnerable stages of breeding and
21 gestation.

22 400. The stress and fights in the group pen increase the chance that a sow's
23 embryo will fail to attach following implantation, or that a sow will lose a
24 pregnancy or drop a litter size. Exh. E, Decl. P. Borgic, ¶ 22-23; Exh. F, Decl. N.
25 Deppe, ¶¶ 18-19; Exh. H, Decl. T. Floy, ¶ 16; Exh. K, Decl. C. Leman, ¶ 16.

26 401. As one farmer explained, Proposition 12's restriction on the use of
27 breeding stalls after weaning until the confirmation of pregnancy would effectively
28 "kill piglets." Exh. C, Decl. H. Roth, ¶ 22; *see also* Exh. M, Decl. R. Spronk, ¶ 11.

1 402. Proposition 12 will also cause sows still in heat to be moved back into
2 a group pen. This is dangerous to the individual sow, the herd, and workers,
3 because the sow in heat may attempt to mount or ride other sows and farm hands
4 and cause injury. Exh. E, Decl. P. Borgic, ¶¶ 19-21.

5 403. Proposition 12 also prohibits many producers' practice of relying on
6 breeding stalls to allow sows to recover peacefully from their pregnancies and gain
7 back needed weight when in a weakened and vulnerable state after weaning. Exh.
8 E, Decl. P. Borgic, ¶ 19; Exh., F, Decl. N. Deppe, ¶¶ 16-17; Exh. K, Decl. C.
9 Leman, ¶ 16.

10 404. It is much harder to provide a sow with individualized nutrition
11 appropriate to its body condition and stage of pregnancy in a group setting.

12 405. Appropriate nutrition is especially critical for sows coming out of
13 farrowing and prior to a new pregnancy. Sows may have lost weight during
14 lactation or gained excessive weight, and require tailored nutrition to recover. *See*
15 Exh. E, Decl. P. Borgic, ¶ 19; Exh. F, Decl. N. Deppe, ¶¶ 16-17.

16 406. Thus, it is a cruel practice to move a sow back into a group setting
17 directly after weaning when it is weak and vulnerable.

18 407. In addition to providing benefits during breeding and gestation,
19 individual stalls advance the welfare of sows that do poorly in group housing.

20 408. Group housing is particularly detrimental to the welfare of submissive
21 sows, which are bullied by more aggressive sows and can be cut off from food
22 sources. Exh. I, Decl. T. Hays, ¶¶ 9-10; Exh. H, Decl. T. Floy, ¶ 14.

23 409. A pig that is not growing will receive better care in an individual stall
24 than in a group setting, as the stall permits more individualized attention and care.
25 Exh. M, Decl. R. Spronk, ¶¶ 11-12; Exh. H, Decl. T. Floy, ¶ 19.

26 410. It is more difficult for producers to identify ill or injured sows in a
27 group setting and remove them to stalls for individualized care. Exh. I, Decl. T.
28 Hays, ¶ 12.

1 **E. Policing Compliance With Proposition 12 Threatens Sow Welfare**

2 411. CDFA explains that it may regulate compliance with Proposition 12
3 through verification audits. Verification audits or inspections would require
4 auditors to visit the sow farms to inspect producers' practices.

5 412. Direct inspections threaten the health and welfare of sows due to
6 biosecurity concerns.

7 413. Contagious diseases can quickly decimate herds and present a serious
8 problem for the welfare of sows housed on breeding farms.

9 414. Farms take careful measures to prevent the potential of any pathogen
10 entry, including filtering air that enters the barn.

11 415. Breeding farms are intentionally constructed in remote areas to
12 prevent the spread of diseases.

13 416. A critical biosecurity measure on farms is to limit access to the farm
14 by unnecessary persons, which is considered a hazard to herd health.

15 417. Persons who have recently visited other hog farms of unknown health
16 status present a serious threat to biosecurity and herd health. Inspectors who visit
17 multiple farms of unknown health status may compromise the biosecurity of
18 breeding farms by spreading contagious diseases among breeding farms.

19 418. In this manner, CDFA's likely method of verifying compliance with
20 Proposition 12 poses a direct threat to the welfare of sows.

21 **VI. AT LEAST AS APPLIED TO PORK, PROPOSITION 12 OFFERS NO**
22 **HUMAN HEALTH OR SAFETY BENEFIT**

23 **A. Proposition 12 Has No Relation to Foodborne Illness or Human**
24 **Health**

25 419. Contrary to the proponents' claims, there are no human health benefits
26 to Proposition 12 as applied to pork.

27 420. Proposition 12 is unnecessary because under the Federal Meat
28 Inspection Act, the U.S. Department of Agriculture's Food Safety and Inspection

1 Service (FSIS) inspects meat product shipped into California to ensure that the
2 product is safe. Indeed, 488 FSIS employees operate specifically in California to
3 protect food safety.

4 421. FSIS ensures product safety by issuing regulations that require
5 establishments to adopt Hazard Analysis and Critical Control Point Plans
6 governing safe slaughter and production practices. FSIS also tests samples of
7 products at facilities to ensure that the products are safe and wholesome.

8 422. Proposition 12 will not provide any additional protection against the
9 threat of foodborne illness in pork products, because it has no relation to food
10 safety.

11 423. First, Proposition 12 addresses only *sow* housing practices at breeding
12 farms. But sows do not generally enter the food chain, and when they do it is as
13 cooked or processed pork that is not covered by Proposition 12.

14 424. The pork products that enter the market and present some risk of
15 causing foodborne illness derive almost entirely from the *offspring* of sows, not
16 from the sows themselves. Proposition 12 does nothing to address the safety of
17 these products.

18 425. The idea that the square footage provided to sows has bearing on the
19 safety of the food product derived from their offspring is incredible.

20 426. A foodborne risk to human health from uncooked pork would
21 generally result from pathogen transmission. Salmonella is the most common
22 pathogen in pork products that might cause human illness, as well as the most
23 researched. Around 90 percent of the scientific literature is focused on salmonella.

24 427. Pigs rarely become ill from most types of salmonella.

25 428. If a sow contracted salmonella, the salmonella would only potentially
26 transmit to its offspring if the sow was shedding pathogens in the farrowing stall
27 when she gave birth.

28

1 429. Even if a sow passed salmonella on to her piglets, this transmission
2 would not pose a threat to human health. There is almost no likelihood of the
3 offspring carrying the salmonella to market.

4 430. Piglets are separated from the sow after three weeks of nursing in the
5 farrowing stalls. And during much of nursing, piglets have maternal antibody
6 protection that would stem disease transmission.

7 431. After weaning, piglets are transferred to nurseries or wean-to-finish
8 barns and are physically separated from the sows.

9 432. This separation is done deliberately to prevent diseases from being
10 transmitted from the sow to the offspring while the piglets develop.

11 433. There is a six month lapse between the birth of offspring and the
12 slaughter of market hogs. Any salmonella the offspring received from the sow
13 would have run its course by the time the sows reached market. Any infection held
14 early in life is not likely to be present even several months later.

15 434. Thus, even if a sow transmitted salmonella to her offspring, the
16 transmission would not pose a realistic threat to human health.

17 435. Second, even putting aside that Proposition 12 does not address the
18 housing of market hogs, the animals that actually enter the market, the scientific
19 evidence does not support a causal link between swine housing and food safety
20 characteristics of pigs.

21 436. Interventions taken on farms to prevent the spread of salmonella into
22 food products are only minimally effective, because salmonella that may infect the
23 food supply is more commonly contracted at plants than on farms.

24 437. Strains of salmonella found in food products at grocery stores are
25 more commonly traced to strains of salmonella found at slaughter and processing
26 plants than at farms.

27
28

1 438. Further, there is no connection between requiring 24 square feet per
2 sow and sow health, let alone the health of piglets or humans.

3 439. The majority of research analyzing any link between space provided
4 to pigs and their health analyzes the health of growing animals such as market hogs
5 and finishing pigs, not breeding animals such as sows.

6 440. Although some of these studies suggest that lower stocking density
7 correlates with lower salmonella rates among growing pigs, those studies do not
8 apply to sows. Growing pigs are generally held in much different space allocations
9 than sows.

10 441. Even assuming that research related to housing conditions for market
11 hogs and finishing pigs applies to sows, no studies establish that a move from 16 to
12 24 square feet per sow in open housing impacts health, let alone in any way that
13 would transfer to food products

14 442. There is no link between Proposition 12's sow housing requirements
15 and food safety or foodborne illness.

16 **B. If Anything, Proposition 12 Will Increase Pathogen Transmission**

17 443. Studies show that sows housed in groups rather than in individual
18 stalls have a higher incidence of salmonella. This worse health outcome is likely
19 due to the fact that sows in group housing, unlike animals confined in stalls, have
20 the opportunity to eat manure, which spreads pathogens and disease. Thus,
21 restricting the amount of time that a sow can spend in an individual breeding stall
22 may increase the risk of pathogen transmission among the sows.

23 444. Proposition 12 will likely lead to more pigs being housed outdoors in
24 pastures, rather than in indoor open housing that must comply with Proposition 12.

25 445. Studies demonstrate that pigs housed outside, where they have the
26 opportunity to wallow in mud, exhibit greater incidence of pathogens than those
27 housed indoors. Thus, the greatest risk of pathogen transmission is from pasture-
28 raised sows.

1 446. If Proposition 12 does result in pigs being moved outside, we can
2 expect an increase in other kinds of pathogens that create a greater risk to human
3 health than salmonella, including one called Trichinella, and another called
4 Toxoplasma.

5 447. Trichinella can lead to trichinosis in humans, a disease caused by
6 infection from the Trichinella roundworm. Trichinella results in diarrhea,
7 abdominal cramps, nausea, and vomiting in humans.

8 448. When the industry moved pigs inside to barn housing, issues with this
9 pathogen were largely eliminated. Indeed, the Centers for Disease Control and
10 Prevention reports that between 2008 and 2012, there were only 10 cases
11 nationwide from commercial pork. Other cases of trichinosis resulted from wild
12 game or home-raised pork.

13 449. Re-introduction of outdoor housing could revive incidences of
14 Trichinella.

15 450. It could also increase incidences of Toxoplasma. The infective oocysts
16 of Toxoplasma are shed in the feces of infected cats and are transmitted to
17 mammals through ingestion of cat feces.

18 451. Interaction with cats and their feces is more likely for pigs that are
19 held outdoors.

20 452. Many studies widely consider Toxoplasma in the top five causes of
21 death due to foodborne illness

22 453. There is no possibility that Proposition 12 will improve human food
23 safety.

24 **FIRST CLAIM FOR RELIEF**

25 **(Impermissible Extraterritorial Regulation)**

26 454. Plaintiffs re-allege and incorporate by reference all of the preceding
27 paragraphs.

28

