ADAM KEATS (CA Bar No. 191157)
Center for Food Safety
303 Sacramento St., Second Fl.
San Francisco, CA 94111
Ph: (415) 826-2770
Fax: (415) 826-0507
Email: akeats@centerforfoodsafety.org

GEORGE KIMBRELL (*Pro Hac Vice pending*)
AMY VAN SAUN (*Pro Hac Vice pending*)
Center for Food Safety
917 SW Oak St., Suite 300
Portland, OR 97205
Ph: (971)-271-7372
Emails: gkimbrell@centerforfoodsafety.org
avansaun@centerforfoodsafety.org

Counsel for Plaintiffs

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR FOOD SAFETY and CENTER FOR ENVIRONMENTAL HEALTH, *Plaintiffs,* v. SONNY PERDUE, Secretary of the United States Department of Agriculture; BRUCE SUMMERS, Administrator of the Agricultural Marketing Service; and the UNITED STATES DEPARTMENT OF AGRICULTURE, *Defendants.*	Case No. 18-4633 **COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF**

COMPLAINT

Plaintiffs Center for Food Safety and Center for Environmental Health, on behalf of themselves and their members allege as follows:

INTRODUCTION AND NATURE OF ACTION

1. This is an action seeking declaratory and equitable relief against the U.S. Department of Agriculture (USDA, agency, or Defendants) regarding that agency's failure to comply with mandatory deadlines established by the 2016 Federal Bioengineered Food Disclosure Standards Act, 7 U.S.C. § 1639 *et seq.* (hereinafter the "GE Labeling Act" or "the Act").

2. Plaintiffs Center for Food Safety (CFS) and Center for Environmental Health (CEH) challenge the failure of Defendants Sonny Perdue, Secretary of the United States Department of Agriculture; Bruce Summers, Administrator of the Agricultural Marketing Service (AMS), an Administrative Agency of the United States Department of Agriculture; and the United States Department of Agriculture (collectively USDA) to comply with the GE Labeling Act. This case is brought pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 706(1), for agency action that is "unlawfully withheld."

3. The American people have advocated for the mandatory labeling of genetically engineered (GE) foods for nearly two decades. Polls show that over 90% of U.S. residents support requiring the labeling of GE foods. Sixty-four countries around the world already require such on-package labeling, including many U.S. trade partners such as all of the European Union, Japan, China, and Australia. Consumers have become increasingly aware that, while few whole foods are GE, the majority of processed foods are produced with GE ingredients. The public recognizes that having thousands of processed food products containing unlabeled GE ingredients is deceptive and misleading or, at best, confusing. The American public deserves full disclosure as well as the right to transparency and free choice in the marketplace, and they have waited long enough for these rights.

4. This case is about giving Americans these long overdue rights as soon as possible, making the mandated GE labeling as meaningful as possible, and ensuring the public's right to know what is in their food. All of which was mandated by Congress in the GE Labeling Act.

5. Prior to the GE Labeling Act, in the absence of federal leadership on the GE labeling issue, states stepped into the breach, passing several labeling laws. Connecticut and Maine both passed GE food labeling laws in 2013, albeit with their effective dates contingent on the passage of similar standards in other states. In 2014, Vermont became the first state to pass a mandatory GE labeling law, which would have gone into effect in 2016. In anticipation of Vermont's law, numerous major food producers began labeling their food for GE content. In response, Congress finally passed the GE Labeling Act in July of 2016, preempting state laws and setting a federal standard in their place.

6. The GE Labeling Act, the first federal law to establish a nationwide system requiring disclosure of GE foods, went into effect July 29, 2016. The Act's purpose is to provide Americans with the information they need to make informed food decisions by setting a nationwide "bioengineered," or GE, food disclosure standard. The statute establishes basic standards, but leaves much of the detail for USDA to set up in its implementing regulations. The statute preempted state laws requiring GE labeling, but until USDA issues the regulations, the statute is an empty vessel: there can be no federally required disclosures.

7. Understanding the urgency of the issue, Congress mandated express deadlines in the statute for USDA's compliance. These included, *inter alia*, a one-year deadline to conduct a study on the accessibility of potential electronic or digital disclosure methods, and a two-year deadline by which time USDA "shall" have established the statute's implementing regulations. 7 U.S.C. § 1639b(a). Congress's use of repeated deadlines underscores the entire statutory scheme's congressional intent: that this process must be conducted and completed in a timely manner.

8. The statutory deadline for the completion of the final regulations implementing the statute and establishing the national disclosure standard for GE foods was July 29, 2018, or

two years after the enactment of the statute. That express statutory deadline has now passed, and USDA has failed to establish a national disclosure standard in contravention of Congress's commands.

9. USDA's failure to implement a national disclosure standard is withholding information from the public, a practice that is inimical to the democratic process. U.S. consumers have already waited decades for mandatory GE labeling, and further delay of the final rule has caused still more harm to the public and the stakeholders. USDA must finish its rulemaking process and issue the statute's implementing regulations.

JURISDICTION

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1346 (United States as Defendant).

11. Plaintiffs have a right to bring this action pursuant to the APA. 5 U.S.C. § 702.

12. The relief requested is specifically authorized pursuant to 5 U.S.C. § 706(1) (compelling unlawfully withheld and unreasonably delayed agency action), 28 U.S.C. § 1651 (writs), and 28 U.S.C. §§ 2201–2202 (declaratory relief).

13. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201 (declaratory judgments).

VENUE

14. Venue properly lies in this Court pursuant to 28 U.S.C. § 1391(e) because one or more of the Plaintiffs reside in this District.

PARTIES

15. Plaintiff Center for Food Safety (CFS) brings this action on behalf of itself and its members. CFS is a public interest, non-profit, membership organization that has offices in San Francisco, CA; Portland, OR; and Washington, D.C. CFS represents over 950,000 members, from every state in the country. USDA's continued failure to adhere to mandatory deadlines established by the GE Labeling Act has adversely affected CFS and its members.

16. CFS's fundamental mission is to protect food, farmers, and the environment from the harms of industrial agriculture. A large part of that mission is championing transparency in the food system and preserving informed consumer choice, including the labeling of genetically engineered foods.

17. For over two decades CFS has been the leading U.S. public interest organization working on the issue of agricultural biotechnology. Part of CFS's mission is to ensure that GE organisms that could adversely affect public health, agriculture, and the environment are adequately labeled and properly regulated. CFS has a major program area specific to GE organism oversight, and numerous staff members—scientific, policy, campaign, and legal—whose work encompasses the topic. CFS staff members are recognized experts in the field and are intimately familiar with the issue of GE foods, their inadequate oversight, their risks, and their adverse impacts.

18. In accordance with its organizational missions to reduce harms caused by industrial agriculture and champion transparency throughout the food production system, CFS has long been committed to securing mandatory GE food labeling across the country. CFS has worked closely with dozens of state legislatures and leaders in U.S. Congress on GE food issues and GE food labeling legislation. For example, in 2011, CFS drafted and filed a formal legal rulemaking petition with the Food and Drug Administration (FDA), on behalf of over 650 companies and organizations, calling on the FDA to require the mandatory labeling of all GE foods, which garnered over 1.4 million individual public comments in support. In the void of federal leadership, several states stepped in to protect the public's right to know, and to that end, CFS also assisted in the successful passage of several state labeling laws. For many years, CFS has spearheaded nationwide grassroots efforts to inform consumers across the country about GE foods and GE labeling.

19. Plaintiff Center for Environmental Health (CEH) brings this action on behalf of itself and its members. CEH is located in Oakland, CA. Founded in 1996, CEH is a nonprofit organization dedicated to protecting the public from environmental and public health hazards.

CEH is committed to environmental justice, promoting a safe and sustainable food supply, supporting communities in their quest for a safer environment, and fostering corporate accountability. CEH works to protect people from toxic chemicals through engagement with communities, businesses, and as a government watchdog to demand practices that are safe for human health and the environment. CEH promotes safer food and farming to provide families the right to know what they are feeding their families, including through food labeling, and to help people avoid genetically engineered foods, harmful pesticides, food additives, and other health and safety threats. CEH works in support of safer, sustainable food production that serves to regenerate natural resources, support healthier food for consumers, and create healthier environments for farmers, farm workers, and rural communities. CEH's scientific investigations, food safety testing, legal advocacy and litigation, and work with state and national food advocacy coalitions all converge around the goals of ending unsafe, unsustainable food production practices and supporting ecological, organic alternatives that promote healthy farming and a healthier food supply. CEH's fundamental mission includes securing transparency on food products, including GE foods, to ensure that their members and American consumers know what they are feeding their families.

20. CEH has long worked to secure accurate food labeling for consumers, including the labeling of GE foods. For example, CEH worked to pass Proposition 37 in California in 2014, which would have mandated labeling of GE foods. Prop 37 in California, like other state-based GE labeling initiatives such as Vermont's Act 120, that lead to the enactment of the GE Labeling Act. CEH has an interest, organizationally, and on behalf of its members, in the timely labeling of GE foods nationwide. CEH members have waited years for mandatory GE food disclosure and USDA's failure to adhere to the GE Labeling Act's mandatory deadlines adversely affects CEH and its members.

21. Defendant Sonny Perdue is sued in his official capacity as USDA Secretary. As Secretary, Mr. Perdue has the ultimate responsibility for USDA's activities and policies and for the implementation of the GE Labeling Act.

22. Defendant Bruce Summers is sued in his official capacity as Administrator of the Agricultural Marketing Service, an agency of the United States Department of Agriculture. The AMS administers programs at USDA related to the marketing of food and agricultural products. As Administrator, Mr. Summers has ultimate responsibility for AMS's activities and policies, including the implementation of the GE Labeling Act.

23. Defendant United States Department of Agriculture is a federal agency of the U.S., which is charged with acquiring and providing to the people of the United States useful information on subjects connected with agriculture, rural development, aquaculture, and human nutrition. USDA, including AMS, is the Agency responsible for the implementation of the GE Labeling Act.

LEGAL AUTHORITY

I. ADMINISTRATIVE PROCEDURE ACT.

24. The APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.

25. The definition of agency action within this statute "includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." *Id.* § 551(13).

26. The APA instructs that reviewing courts "shall compel agency action unlawfully withheld or unreasonably delayed." *Id.* § 706(1).

II. NATIONAL BIOENGINEERED FOOD DISCLOSURE STANDARD.

27. The GE Labeling Act commands that "not later than 2 years after July 29, 2016, the Secretary shall establish a national mandatory bioengineered food disclosure standard with respect to any bioengineered food and any food that may be bioengineered; and establish such requirements and procedures as the Secretary determines necessary to carry out the standard." 7 U.S.C. § 1639b(a).

FACTUAL ALLEGATIONS

I. THE NEED FOR GE FOOD LABELING.

28. Consumers have the right to know whether the foods they purchase were produced with genetic engineering, so they can make informed purchasing decisions. Mandatory labeling is necessary to ensure that consumers are fully and reliably informed about the products they purchase and consume. Such labels provide informed consent, and prevent consumer deception or misleading labeling by omission. Polls consistently show that the overwhelming majority of Americans want to know whether their food has been genetically engineered or contains GE ingredients.

29. Sixty-four countries, including Japan, South Korea, China, Australia, Russia, India, the European Union member states, and other key U.S. trading partners, already have laws mandating labeling of GE foods. Although the first GE crops were approved in the U.S. in the 1990s, U.S. consumers are still awaiting mandatory GE disclosure on food labels.

30. People want to know if food is produced using GE for numerous reasons: health, personal, economic, environmental, religious, and cultural. For example, on the human health side, the public knows that FDA, the Agency charged with ensuring the safety of most foods, does not actually independently test the food safety of GE foods or require them to be tested. FDA does not "approve" GE foods for safety; rather, the Agency has confidential meetings with industry in which it merely reviews the industry's own testing—and even that is only voluntary. Market entry for GE foods is based solely on confidential industry research.

31. Scientific studies have shown that genetic engineering of plants and animals can and has caused unintended consequences. Manipulating genes via genetic engineering and inserting them into organisms is an imprecise process. The results are not always predictable or controllable. Mixing plant, animal, bacterial, and viral genes through genetic engineering, in combinations that cannot occur in nature, can produce results that lead to adverse health or environmental consequences.

32. U.S. government scientists have stated that the artificial insertion of genetic material into plants via genetic engineering can cause a variety of significant problems with plant foods. Such genetic engineering may have consequential health concerns such as an increase in the levels of known toxicants and food allergens or the creation of new toxicants and food allergens.

33. Further, independent scientists are prohibited from conducting safety and risk-assessments of GE materials used in food products due to industry restrictions on research of those materials. There are no long-term or epidemiological studies in the U.S. that have examined the safety of human consumption of GE foods. Without GE labeling, there is no accountability or traceability to link such foods to proliferating public health problems. Mandatory labeling of GE foods can provide a method for detecting, on a large epidemiological scale, the potential health effects of consuming such foods.[1] These facts rightly give consumers pause; disclosure through labeling allows them to make their own choices about whether to buy and consume GE foods.

34. Additionally, consumers want the ability to make purchase decisions that align with their values. On the environmental side, GE crops are a key cog of inherently unsustainable industrial agriculture, and cause significant adverse environmental impacts. GE crops are essentially a pesticide-promoting technology: The overwhelming majority of commercial GE crops are genetically engineered by pesticide companies, such as Monsanto, Dow Chemical, and Bayer (now the owner of Monsanto), to withstand herbicide application (with their pesticide products) or to produce their own pesticides. Consequently, these GE crops have dramatically increased the overall pesticide output of American agriculture into our environment. Monsanto's GE crops, "Roundup Ready" crops resistant to glyphosate, have made glyphosate the most used pesticide in history, with over 280 million pounds applied in U.S. agriculture in 2012 alone.

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[1] Philip J. Landrigan, M.D., and Charles Benbrook, Ph.D., *GMOs, Herbicides, and Public Health*, New England Journal of Medicine (2015), http://www.nejm.org/doi/full/10.1056/NEJMp1505660#t=article.

Reliance on these pesticide-promoting GE crop systems has caused a number of harms, including widespread pollution of our waterways and native ecosystems, injury to beneficial insects such as pollinators, and harm to soil health. The well-established environmental impacts of GE crops (and their attendant pesticides) are widespread and dire. People reasonably want to align their food purchasing choices with their environmental values.

35. Protection of the environment and protection of public health are intimately intertwined. In 2015, the World Health Organization's International Agency for Research on Cancer concluded that glyphosate is probably carcinogenic to humans. Evidence unearthed in a recent case in this district shows the willingness of the agrochemical industry to engage in morally objectionable tactics to downplay potential carcinogenic effects of glyphosate.

36. On the agricultural side, over the past decade transgenic contamination of traditional crops from GE crops has caused U.S. farmers billions of dollars in market losses. Numerous foreign markets with restrictions on genetically engineered foods have restricted imports of U.S. crops due to concerns about such forms of production. Some foreign markets are choosing to purchase agricultural products from countries other than the U.S. because GE crops are not identified in the U.S., which makes it impossible for buyers to determine whether products meet their national labeling laws or restrictions.

37. Further, the widespread adoption of crops engineered for pesticide resistance has proliferated an epidemic of resistant "superweeds" now covering more than 60 million acres of U.S. farmland. These weeds have flourished, infesting farm fields and roadsides, complicating weed control for farmers, and forcing farmers to resort to more and increasingly toxic pesticides. Many consumers do not want to support unsustainable agricultural practices that harm American farmers and instead want to make choices that align with their support of family farmers, not agrochemical companies.

38. Juxtaposed against these facts, the U.S. public is discovering that the industry's hype about genetically engineered foods is false: Despite billions of dollars in research and nearly two decades of commercialization, no GE crops are commercially produced to increase

yields, reduce world hunger, or mitigate global warming. Rather, the commercial reality is that agrochemical companies have largely succeeded in engineering these crops to be resistant to the companies' own products—pesticides—in order to reap huge profits.

39. Studies show that, due to the lack of mandatory labeling, many American consumers are under an incorrect assumption as to whether the food they purchase is produced with GE. Disclosure of whether or not foods are genetically engineered will reduce this consumer confusion and deception.

40. Consumers also want mandatory labeling for religious, cultural, ethical, moral, personal, or dietary reasons. Without mandatory disclosures, consumers of GE foods may unknowingly violate their beliefs or health restrictions. Labeling will provide consumers with the information they need to make safe and informed decisions.

II. PROCEDURAL HISTORY.

41. The GE Labeling Act was signed into law on July 29, 2016. The primary goals of the Act are to "(1) establish a national mandatory bioengineered food disclosure standard with respect to any bioengineered food and any food that may be bioengineered; and (2) establish such requirements and procedures as the Secretary determines necessary to carry out the standard." 7 U.S.C. § 1639b(a).

42. Prior to drafting a proposed rule, USDA presented the public with 30 questions pertaining to mandatory GE food labeling as a means of collecting stakeholder opinions. The questions covered a range of topics such as terminology, definitions, threshold, and scope. USDA posted these questions on its website and collected public input from June 28, 2017 through August 25, 2017. The Agency received comments from over 112,000 concerned citizens and organizations. In July 2017, CFS submitted detailed comments to USDA on the scoping "30 questions" notice.

43. Additionally, the statute requires that USDA conduct a study to inform its rulemaking. The required study concerns one of the most controversial aspects of the Act: the potential to allow food companies to use "digital or electronic" disclosures for GE foods.

Correctly recognizing how unprecedented and controversial this potential option was, Congress mandated that USDA first specifically study the efficacy, or lack thereof, of this type of disclosure and its impacts on consumers and retailers. The Act mandated the study analyze, among other things, the "potential technological challenges that may impact whether consumers would have access to the bioengineering disclosure through electronic or digital disclosure methods," before the statutorily imposed deadline of July 29, 2017. *Id.* § 1639b(c)(1). This study was included in the Act to measure the efficacy of the electronic/digital link option in accomplishing the goals of the Act.

44. The Act also required public consultation on the study stating, "[i]n conducting the study under paragraph (1), the Secretary shall solicit and consider comments from the public." *Id.* § 1639b(c)(2). Public comment was necessary to allow for successful understanding of consumer behavior.

The Missed Study Deadline and Subsequent Litigation

45. USDA failed to finish and publicly release the study by the statutory deadline. USDA also failed to hold public comment on the study by the statutory deadline. Because the study was necessary to inform USDA's ultimate rulemaking decision and what type of disclosure is mandated, CFS and its members were injured by their inability to review and participate in the mandated study and public comment process. USDA's withholding of the 2017 study negated CFS and its members' procedural rights to participate in the implementation of the GE Labeling Act. Accordingly, CFS filed suit pursuant to the APA against USDA, for its failure to comply with the Act's deadline. *Center for Food Safety v. Perdue, et al.*, No. 17-cv-04967-JSW (N.D. Cal. 2017). Shortly thereafter USDA publicly released the study and agreed to hold comment on it, mooting the case, which Plaintiffs' then voluntarily dismissed.

46. It is unknown why USDA did not release the 2017 study until forced to do so through litigation. But very likely it is because the study is not at all supportive of the use of electronic or digital forms of GE food disclosure. Among other relevant findings, all of which go to the factors specifically enumerated by Congress in the Act, the study concluded that

technological challenges, such as lack of technical knowledge, prevent consumers from acquiring the necessary GE information via methods of digital disclosure. The study found further obstacles, such as lack of consumer association between digital links and additional food information. The study found that 100 percent of consumers polled did not recognize digital links were associated with food info. Additionally, the study found the use of digital disclosure to be inimical to various populations such as those 65 years of age and older as well as those living in rural communities. This is due to the disparate rates of smartphone ownership across varying demographics. The complete study, containing additional examples of the inefficacy of digital disclosure, can be found on USDA's website.

47. As these non-exhaustive examples show, the 2017 study found significant problems with the efficacy of digital and electronic disclosure; its analysis of every factor enumerated by Congress in the Act weighed against such disclosures being sufficient. Thus, the 2017 study strongly supports a conclusion by USDA that U.S. consumers will not have sufficient access to GE food disclosure through electronic or digital disclosure alone.

The Final Rule Deadline

48. Despite USDA's knowing the July 29, 2018 hard deadline set by Congress to issue the final rules, and multiple media reports that the proposed rules were imminent and planned to be release for public comment by the end of 2017, USDA in fact did not issue the draft rules by the end of 2017, for unknown reasons. Instead, USDA did not issue the proposed draft rules until many months later, on May 4, 2018. National Bioengineered Food Disclosure Standard, 83 Fed. Reg. 19860 (May 4, 2018).

49. USDA's May 4 proposed rule finally set forth some proposed metrics for the rule for comment, but in other instances made several proposals instead of just one it was endorsing, or continued to leave other major questions unanswered with a definitive proposal. For example, as to a de minimis threshold of GE content, USDA set forth three options rather than one proposal. For on-package labeling, the agency gave multiple potential symbols. For the scope of the classification, the agency gave two vastly different options, as to whether highly refined GE

foods, which are the vast majority of all GE foods, would be included or not. And the proposal did not make any recommendation whatsoever as to the efficacy of electronic or digital forms of labeling and its own 2017 study's analysis and conclusions.

50. USDA opened a 60-day comment period on the proposal, with a deadline of July 3, 2018. CFS submitted comments on the proposed rule.

51. USDA has failed to implement a national mandatory GE food disclosure standard by the July 29, 2018 deadline.

USDA's Repeated Acknowledgements of the Deadline

52. USDA's failure to comply with the statute is contrary, not only to the law, but to the Agency's own interpretation of the law and public recognition of its mandatory duties. USDA has repeatedly acknowledged its duty to comply with the statutory deadline.

53. For example, a July 28, 2017 USDA website post states that:

> The National Bioengineered Food Disclosure Standard Law was enacted by Congress on July 29, 2016. AMS has two years to establish the standard and the procedures necessary for implementation. AMS is seeking input from stakeholders in order to establish the final rule by the mandated July 2018 deadline.[2]

54. In other example, in the May 3, 2018 announcement, USDA preemptively refused to permit any extension to the 60-day comment period on its rule proposal, citing the mandatory statutory deadline:

> The proposed rule is open for comment for 60 days. Due to the Congressionally mandated timeline for this rulemaking, the comment period will not be extended, so it is important that anyone interested file comments in a timely manner.[3]

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[2] U.S. Department of Agriculture, *USDA Seeks Input in Developing a Proposed Bioengineered Food Disclosure Rule* (June 28, 2017) https://www.ams.usda.gov/content/usda-seeks-input-developing-proposed-bioengineered-food-disclosure-rule (last visited July 31, 2018) (emphasis added).

[3] U.S. Department of Agriculture, *USDA Seeks Comments on Proposed Rule for National Bioengineered Food Disclosure Standard* (May 3, 2018) https://www.usda.gov/media/press-

55. Another example is a 2016 USDA Presidential Transition briefing document, received through the Freedom of Information Act (FOIA), which lays out the intent and scope of the Act, reiterating USDA's knowledge of the statutory deadline:

> The legislation amends the Agricultural Marketing Act of 1946, and requires that within two years of the Law's enactment USDA's Agricultural Marketing Service (AMS) establish a mandatory national bioengineered food disclosure standard and the procedures necessary to implement the national standard.

56. Another USDA email, dated September 28th, 2016, includes a quoted statement made by former United States Secretary of Agriculture, Tom Vilsack:

> I think it's important for us to figure out a way to get this thing started so that we don't slip on the timeline that is important to meet in order for us to meet the deadline set by Congress to get (the final rule) in place within two years.

57. In further FOIA documents, the Agency acknowledged that failing to meet the mandatory deadline would be detrimental, as it would lead to "further confusion." Additional USDA documents repeatedly acknowledge the existence and importance of the mandatory 2018 deadline.

58. Despite USDA's continuous recognition of its statutory obligations to finalize regulatory standards by the congressionally mandated deadline of July 29, 2018, USDA has not done so.

III. IMPACTS OF RULE WITHHOLDING ON PLAINTIFFS.

59. Plaintiffs and their members are adversely affected by USDA's failure to issue the rules by Congress's express deadline. Plaintiffs, organizationally, and through their hundreds of thousands of members individually, have substantial interests in the government requiring the disclosure of genetically engineered food by the deadline expressly established by Congress.

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releases/2018/05/03/usda-seeks-comments-proposed-rule-national-bioengineered-food (last visited July 31, 2018) (emphasis added).

60. USDA's unlawful withholding of the rules harms CFS's and CEH's organizational interests. A critical part of both CFS's and CEH's missions is to ensure transparency in the food system and informed consumer choice in the marketplace. The labeling of GE food is an essential aspect of establishing such criterions. CFS has worked for many years championing GE labeling through programmatic policy, campaign, legal, and legislative efforts. This work has consumed hundreds of CFS staff hours over the course of many years. CEH has also worked for years to secure transparency in the food system, including through the state-based labeling initiative in California (Prop 37). USDA's indefinite delay of the rules harms these interests.

61. USDA's unlawful withholding of the final GE food disclosure standard has also injured Plaintiffs' members. This is particularly true when state laws that would have otherwise provided those disclosures are preempted in the interim. Plaintiffs' members include consumers who have strong interests in knowing whether the food they purchase has been genetically engineered, and in having that information provided in clear on-package labeling. Plaintiffs' members depend on clear food labeling to determine whether food is healthy and safe, as well as produced in a manner that aligns with their values. Plaintiffs' members have waited for many years, yet they still cannot rely on accessible food labeling to inform them of whether a particular food has been genetically engineered or contains GE ingredients. This is the express harm that Congress intended to redress by placing express deadlines in the statute, which USDA has now flouted.

62. The relief sought in this action would redress Plaintiffs and their members by enforcing the implementation of the mandated disclosure of GE foods, thereby ensuring consumers are afforded free choice as well as the right to transparency and full disclosure in the marketplace.

63. USDA's failure to establish a national mandatory GE food disclosure standard by the July 29, 2018 deadline injures Plaintiffs and their members in these ways.

CAUSE OF ACTION
VIOLATION OF THE APA AND GE LABELING ACT:
FAILURE TO ESTABLISH NATIONAL STANDARDS

64. Plaintiffs re-allege, as if fully set forth, each and every allegation set forth in paragraphs 1 through 63 of this Complaint.

65. The APA grants a right of judicial review to "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action." 5 U.S.C. § 702.

66. The definition of "agency action" includes a "failure to act." *Id.* § 551(13).

67. The APA states that a reviewing court "shall" interpret statutes and "shall compel agency action unlawfully withheld." *Id.* § 706(1).

68. The GE Labeling Act requires USDA to establish a national GE food disclosure standard by the mandatory deadline of July 29, 2018. USDA's failure to establish a national standard by July 29, 2018 is a direct violation of the GE Labeling Act and constitutes "unlawfully withheld" agency action within the meaning of the APA. *Id.* §§ 702, 706(1).

69. The actions and inactions of the Defendants described in this Cause of Action are causing injuries to the Plaintiffs, described above, for which they have no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

70. Enter an order declaring that USDA has violated the GE Labeling Act and the APA by failing to establish a national mandatory GE food disclosure standard by the July 29, 2018 deadline;

71. Order USDA to finalize and issue the regulations implementing the statute as soon as reasonably practicable, according to a Court-ordered timeline;

72. Retain jurisdiction of this action to ensure compliance with its decree;

73. Award Plaintiffs their fees, costs, expenses, and disbursements, including reasonable attorneys' fees, associated with this litigation under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

74. Grant such further and additional relief as the Court deems just and proper.

Respectfully submitted this 1st day of August, 2018 in San Francisco, California.

/s/ Adam Keats

ADAM KEATS (CA Bar No. 191157)
Center for Food Safety
303 Sacramento St., Second Fl.
San Francisco, CA 94111
Ph: (415) 826-2770
Fax: (415) 826-0507
Email: akeats@centerforfoodsafety.org

GEORGE KIMBRELL (*Pro Hac Vice pending*)
AMY VAN SAUN (*Pro Hac Vice pending*)
Center for Food Safety
917 SW Oak St., Suite 300
Portland, OR 97205
Ph: (971)-271-7372
Emails: gkimbrell@centerforfoodsafety.org
avansaun@centerforfoodsafety.org

Counsel for Plaintiffs