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THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR FOOD SAFETY, *Plaintiff,* 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. **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMPLAINT

Plaintiff Center for Food Safety, on behalf of itself and its members allege as follows:

INTRODUCTION AND NATURE OF ACTION

1. This is an action seeking declaratory and injunctive relief against the U.S. Department of Agriculture (USDA or the agency) 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. Plaintiff Center for Food Safety (CFS) challenges the failure of Defendants Sonny Purdue, 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 is a case pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 706(1), for agency action "unlawfully withheld."

3. The American people have advocated for 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, as sixty-four countries already do, including many U.S. trade partners such as the European Union and Japan. Consumers have become more and more aware that, while few whole foods are genetically engineered, the majority of processed foods are produced with GE ingredients. The public recognizes that having thousands of processed food products containing GE ingredients, yet going unlabeled is deceptive, misleading, or at best confusing. The American public deserves full disclosure, the right to transparency and free choice in the marketplace, and they have waited long enough for it.

4. This case is about that wait ending as soon as possible, as Congress expressly mandated. It is about having the mandated GE labeling be as meaningful as possible to consumers. And it is about ensuring that the public have a full and meaningful say in that important process, all as Congress mandated.

5. In the absence of prior 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 go into effect in 2016. Numerous major food producers began to label their food for genetically engineered content in order to anticipate compliance with Vermont's law. In response, Congress finally passed a GE labeling law in July 2016, preempting state laws and setting a federal standard in its place.

6. The GE Labeling Act is the first federal law to establish a nationwide system requiring disclosure of GE foods. The Act went into effect July 29, 2016 and its purpose is to provide Americans with information they need to make informed food decisions by setting a nationwide "bioengineered," or GE, food disclosure standard. The statute sets some basic standards, but leaves much of the detail to USDA to set up in its implementing regulations. State laws requiring GE labeling were preempted immediately by the statute, but until USDA establishes the implementing regulations, there will be no federally-required disclosures.

7. The Act has numerous mandates that USDA must comply with in its rulemaking process. As most relevant here, the statute requires that USDA conduct a study to inform its rulemaking. The required study is about one of the most controversial aspects of the law: the potential to allow food companies to forgo labeling their GE food packages with clear, easy-to-understand text, the way food labeling has always been done and the now-preempted state law required. Instead, the statute potentially allows for the option of "digital or electronic" disclosures for GE foods. This means food manufacturers would put a "QR" code or a website link, forcing shoppers to have and use a smart phone or call a 1-800 number in order to find out if a food was genetically engineered or not. Correctly recognizing how unprecedented and controversial this potential option was, Congress mandated that USDA first specifically study the efficacy of this type of disclosure and its impacts on consumers and retailers, to 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." 7 U.S.C. § 1639b(c)(1).

8. For the same reasons, Congress mandated USDA have meaningful public involvement in this critical study, requiring that, in conducting the study, USDA "solicit and consider comments from the public." *Id.* § 1639b(c)(2).

9. Finally, understanding the urgency of the issue, Congress placed express deadlines in the statute for USDA's compliance. The final regulations implementing the statute and establishing the national disclosure standard for GE foods must be completed by two years from the law's enactment, July 29, 2018. And in order to meet that rulemaking deadline, Congress required that the study on digital and electronic disclosures be completed by one year from the law's enactment, by July 29, 2017.

10. That express statutory deadline has now passed, and USDA has failed to publicly release the study, or provide for public comment on it, in contravention of Congress's commands.

11. Because the results of the electronic/digital link study are a necessary precursor to the development of the final rules, further delay of this process is likely to delay the rules themselves, causing still more harm to the public and the stakeholders, who have already waited many years. USDA must act now, completing the study and immediately releasing it for public comment, before releasing the final results to inform the rulemaking, in order to prevent further statutory violations and further harm to the consumers.

JURISDICTION

12. 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).

13. Plaintiff has a right to bring this action pursuant to the APA. 5 U.S.C. § 702.

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

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

VENUE

16. 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

17. Plaintiff Center for Food Safety 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 900,000 members, from every state in the country. CFS and its members are being, and will be, adversely affected by USDA's continued failure to adhere to deadlines established by the GE Labeling Act.

18. 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 of what they eat and feed their families.

19. 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 genetically engineered organisms that could adversely impact 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 are recognized experts in the field and intimately familiar with the issue of GE organisms, the inadequacy of their oversight, their risks, and their adverse impacts.

20. 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 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 GE foods for all Americans, 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 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.

21. Defendant Sonny Purdue is sued in his official capacity as USDA Secretary. As Secretary, Mr. Purdue 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 the 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 and the required study on electronic or digital disclosure.

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. The USDA, including the AMS, is the agency responsible for 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) (emphasis added).

26. The APA grants reviewing courts the power to "compel agency action unlawfully withheld or unreasonably delayed." *Id.* § 706(1).

II. NATIONAL BIOENGINEERED FOOD DISCLOSURE STANDARD.

27. The GE Labeling Act establishes that by July 29, 2018, USDA 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).

28. Those forthcoming regulations will "require" food disclosures, including "text, symbol, or electronic or digital link." *Id.* § 1639b(b)(2)(D).

29. To better understand the efficacy of potentially permitting an electronic/digital disclosure method, the Act requires that "not later than 1 year after July 29, 2016, the Secretary shall conduct a study to identify potential technological challenges that may impact whether consumers would have access to the bioengineering disclosure through electronic or digital disclosure methods." *Id.* § 1639b(c)(1).

30. The Act instructs that, "[i]n conducting the study under paragraph (1), the Secretary shall solicit and consider comments from the public." *Id.* § 1639b(c)(2).

31. In the study, USDA must analyze several delineated factors in considering "consumer access to the bioengineered disclosure through electronic or digital methods," including:

> (A) The availability of wireless Internet or cellular networks.
> (B) The availability of landline telephones in stores.
> (C) Challenges facing small retailers and rural retailers.
> (D) The efforts that retailers and other entities have taken to address potential technology and infrastructure challenges.
> (E) The costs and benefits of installing in retail stores electronic or digital link scanners or other evolving technology that provide bioengineering disclosure information.

Id. § 1639b(c)(3).

32. Finally, in conducting the study, if USDA determines that "consumers, while shopping, would not have sufficient access to the bioengineered disclosure through electronic or digital methods," then USDA "shall provide additional and comparable options to access the bioengineering disclosure." *Id.* § 1639b(c)(4).

FACTUAL ALLEGATIONS

I. HISTORY OF GE FOOD AND LABELING IN THE U.S.

33. 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 vast majority of the American public wants to know if its food was produced with genetic engineering.

34. 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 genetically engineered foods on foods and food package labels. Although the first GE crops were approved in the U.S. in the 1990s, U.S. consumers are still awaiting mandatory disclosure on food labels.

35. People want to know if food is produced with genetic engineering for numerous good reasons: health, personal, economic, environmental, religious, and cultural reasons. For example, on the human health side, the public knows that the U.S. Food and Drug Administration (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, FDA has confidential meetings with industry in which it merely reviews the industry's own testing—and even that is only voluntary. Instead, market entry for genetically engineered foods is based on confidential industry research alone.

36. The science of genetic engineering has shown that the 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. Thus the 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.

37. 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 increase the levels of known toxicants or allergens in foods and create new toxicants or allergens with consequent health concerns.

38. Further, independent scientists are prohibited from conducting safety and risk-assessment research of genetically engineered materials used in food products due to industry restrictions on research of those materials. There are no long-term or epidemiological studies in the United States that have examined the safety of human consumption of genetically engineered foods, and without labeling, there is no accountability or traceability to link such foods to proliferating public health problems. Mandatory labeling of foods produced with genetic engineering can provide a method for detecting, on a large epidemiological scale, the potential health effects of consuming such foods.[1] These facts rightly give some consumers pause, and disclosure through labeling allows them to make their own choices about whether or not to buy and consume genetically engineered foods.

39. Many consumers care about the environment as well, and want to make food choices that are in line with their values. On the environmental side, genetically engineered crops are a key cog of inherently unsustainable industrial agriculture, and cause significant adverse environmental impacts. Genetically engineered crops are essentially a pesticide-promoting technology: The overwhelming majority of commercial GE crops are genetically engineered by pesticide companies like Monsanto, Dow Chemical, and Bayer to withstand herbicide application (with their pesticide products) or to produce their own pesticides. These GE crops have consequently dramatically increased the overall pesticide output of American

[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.

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. 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 like pollinators, and harm to soil health. The well-established environmental impacts of GE crops (and their attendant pesticides) are widespread and dire.

40. Protection of the environment and protection of public health are of course 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.

41. On the agricultural side, transgenic contamination of traditional crops from engineered crops has caused U.S. farmers billions of dollars in market losses. Numerous foreign markets with restrictions on foods produced with genetic engineering have restricted imports of U.S. crops due to concerns about genetic engineering. Some foreign markets are choosing to purchase agricultural products from countries other than the U.S. because genetically engineered crops are not identified in the U.S., which makes it impossible for buys to determine what does or does not meet their national labeling laws or restrictions.

42. 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 developed and flourished, infesting farm fields and roadsides, complicating weed control for farmers, and causing farmers to resort to more and increasingly toxic pesticides. Some consumers do not want to support unsustainable agricultural practices that harm American farmers.

43. Juxtaposed against these facts, the U.S. public is discovering that the industry's hype 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. Instead, 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.

44. Studies show that currently, in many cases, American consumers are under an incorrect assumption about whether the food they purchase is produced with genetic engineering, because the lack of mandatory labeling is confusing and/or misleading. Labeling food as produced with genetic engineering will reduce this consumer confusion and deception regarding the food they purchase.

45. Other consumers want labeling for religious, cultural, ethical, moral, personal, or dietary reasons. Without mandatory disclosures, consumers of genetically engineered foods may unknowingly violate their beliefs, and labeling will provide consumers with the information they need to make informed decisions.

46. In the United States, never before has the government allowed compliance with mandatory food labeling through "electronic or digital" means, such as "QR codes."

47. Electronic labeling, like QR codes or websites, will not provide disclosure to a large portion of Americans, contrary to the intent of the GE Labeling Act, disproportionally affecting minority, low-income, and elderly people. Studies show that half of low-income people do not own smartphones. Almost half of rural people do not own smart phones. Minorities are a disproportionate percentage of low-income and rural Americans. Two-thirds of the elderly do not own smart phones. In fact, only 64 percent of Americans own a smart phone.

48. Electronic disclosure is inherently discriminatory against all of these demographics. Moreover, smart phones and data plans are expensive and nearly half of those who have smart phones have had to cancel or shut off their cell phone service for a period of time because the cost of maintaining that service was a financial hardship. Even those who have the phones and service plans are not guaranteed consistent access to the internet while shopping. Moreover, few people have ever used a QR code—only 16% have ever scanned a QR code and only 3% of those people do it regularly. As such, allowing labeling based on QR codes is

discriminatory against the poor, rural Americans, minorities, the elderly and other groups less likely to own a smart phone or know how it is used.

49. In addition, electronic labeling disclosures put an undue burden on the shopper. It is completely unrealistic for a shopper to scan all of the many items s/he is shopping for on any given shopping trip (which for a family of 4 could easily amount to more than 50 items). This would be an undue burden on the consumer and greatly impede access to information. On-package labeling is simple, quick, and effective. QR codes, websites, and 1-800 numbers are not.

50. Only on-package labeling provides easy access to all Americans—anything else is simply discriminatory. The public's right to know the crucial information regarding whether a food product was produced with genetic engineering can only be fulfilled by clear labeling that is accessible to all.

51. Vermont's mandatory GE labeling act was signed in 2014 and went into effect in July 2016, before being preempted by the federal GE Labeling Act. It mandated clear, on-package labeling of genetically engineered foods. Consumers would have been benefiting from mandatory GE labeling for over a year already, were it not for the GE Labeling Act.

52. USDA's withholding of the study and public participation in it, is depriving the public of access to information, a practice that is inimical to the democratic process.

II. THE GE LABELING ACT'S STUDY AND USDA'S ACKNOWLEDGMENTS OF ITS MANDATORY DUTIES.

53. 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).

54. Anticipating the problems inherent in the possible electronic/digital disclosure option, Congress mandated that USDA conduct a study "to identify 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). The Act unambiguously requires public consultation on the study by stating, "[i]n conducting the study under paragraph (1), the Secretary shall solicit and consider comments from the public." *Id.* § 1639b(c)(2).

55. If the study shows that electronic or digital disclosure will not provide consumers with sufficient access to which food is genetically engineered, the Act requires that additional and comparable disclosure options be provided. *Id.* § 1639(c)(4). In other words, this study was included in the Act to measure the efficacy of the electronic/digital link option in accomplishing the goal of the Act. If the link will not disclose GE foods to consumers, the option will have to be replaced with a more effective alternative in the final rules. Therefore, the results of this study are indispensable to USDA's creation of the final rules.

56. Public input on the study, as required by the Act, is critical. The study is meant to provide USDA with information about consumers, and without their input, the study could fail to address important factors. Functioning final rules are conditioned upon successful completion of this study, and public comments are crucial in successfully understanding public behavior.

57. USDA has failed to finish and publicly release the study by the statutory deadline. USDA has also failed to hold public comment on the study by the statutory deadline.

58. USDA's failure to comply with the statute is contrary, not only to the law, but to USDA's own interpretation of the law. In a Performance-Based Work Statement released by USDA on its website from fall 2016, the agency sought a vendor to conduct the study and a companion study on consumer use of electronic/digital links, "to be completed in their entirety no later than July 29, 2017."[2] USDA cannot be excused from missing the statutorily imposed deadlines the agency itself acknowledged.

59. The Performance-Based Work Statement also outlines USDA's plan to comply with the public comment requirement in the GE Labeling Act. According to USDA, "[t]o facilitate this requirement, a draft Electronic or Digital Disclosure Study and a draft Consumer Use Study will be published for public input. Comments on both draft studies will be accepted

[2] U.S. DEPT. OF AGRICULTURE, PERFORMANCE-BASED WORK STATEMENT, 3, https://www.ams.usda.gov/sites/default/files/media/RFILPSGMOdisclosurestudy.pdf.

for 30 days after publication."[3] The Statement indicates that a 30-day comment period would allow for changes to be made to the draft study in response to public comments.[4] Similarly, a section on the period of performance indicates that "all work shall be finished by no later than 45 days prior to the July 29, 2017, completion deadline to permit USDA to publish the studies in compliance with statutory requirements."[5] Thus USDA knew it had to both have comment on the study and finish it by the July 2017 deadline, but still failed to comply with the statutory directive.

60. USDA acknowledges its duties regarding the study again in its Statement of Objectives, also from fall 2016, published on its website. In the Statement of Objectives, AMS commits to publishing an Advanced Notice of Rulemaking prior to undertaking the study.[6] The document states that "public comments the Agency receives during this comment period will be provided to the vendor to inform the study as it is being conducted."[7]

61. Finally, internal USDA documents from March 2017 received through the Freedom of Information Act (FOIA) lay out the time line and events required for implementation of the Act, reiterating USDA's admission that the study is due by the statutory deadline and that public input on the study is required:

> Study has been awarded and funded. AMS will meet with Deloitte on April 3rd at 2:00pm for an entrance interview. Will discuss how to complete the study under a condensed timeframe (4 month), deadlines, how to conduct public input required by statute, etc.

62. Despite USDA's requested recognition of its statutory obligations to conduct the electronic/digital disclosure study, including public comment and participation, by the statutory deadline of July 29, 2017, USDA has not published even a draft study, nor have the promised opportunities for public involvement in the study come to fruition.

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[3] *Id.* at 5.
[4] *Id.* at 6.
[5] *Id.*
[6] U.S. DEPT. OF AGRICULTURE, STATEMENT OF OBJECTIVES, 2, https://www.ams.usda.gov/sites/default/files/media/Statement%20of%20Objectives_for%20posting.pdf.
[7] *Id.*

III. IMPACTS OF STUDY WITHHOLDING ON PLAINTIFF.

63. Plaintiff and its members are adversely affected by USDA's failure to conduct the study of challenges impacting consumer access to bioengineering disclosures through electronic or digital methods by the July 29, 2017 deadline. Plaintiff, organizationally, and through its hundreds of thousands of members individually, has substantial interests in the labeling of genetically engineered food. CFS has worked for many years championing GE labeling, through programmatic policy, campaign, legal, and legislative efforts. CFS's members have strong interests in knowing if the food in their grocery stores is genetically engineered, and having that information provided in clear on-package labeling. CFS's members depend on clear food labeling to determine what food is healthy, safe, and aligned with their values and what to feed their families. Because this study will inform USDA's ultimate rulemaking decision and what type of disclosure is mandated, CFS and its members are injured by their inability to review and participate in this important statutorily mandated study and public comment process. USDA's withholding of the study and public comment on it negates CFS and its members' procedural rights to participate in the GE Labeling Act implementation.

64. Plaintiff, organizationally, and through its hundreds of thousands of members individually, has substantial interests in the government requiring the labeling of genetically engineered food by the deadlines expressly established by Congress. CFS's members are injured by undue delay of the rules establishing disclosures, particularly when state laws that would have otherwise provided that disclosure are preempted in the interim. CFS's members still cannot rely on accessible food labeling to inform them of whether a particular food is genetically engineered or contains GE ingredients. Plaintiff and its members are adversely affected by USDA's failure to solicit and consider public comments in conducting the study regarding challenges impacting consumer access to bioengineering disclosures through electronic or digital methods by the July 29, 2017 deadline.

65. Further, if the digital and electronic disclosure study process is unlawfully delayed, it is likely the rulemaking itself will be unlawfully delayed beyond July 2018. USDA's failure to comply with the law injuries Plaintiff and its members in these ways.

CAUSE OF ACTION
VIOLATION OF THE APA AND GE LABELING ACT:
FAILURE TO CONDUCT STUDY AND PUBLIC COMMENT

66. Plaintiff re-alleges, as if fully set forth, each and every allegation set forth in paragraphs 1 through 65 of this Complaint.

67. 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.

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

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

70. The GE Labeling Act requires USDA to conduct a study identifying potential technological challenges that may impact whether consumers would have access to the bioengineering disclosure through electronic or digital disclosure methods by the mandatory deadline of July 29, 2017. USDA's failure to conduct this study before July 29, 2017 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).

71. In conducting the electronic/digital disclosure study, the GE Labeling Act requires USDA to solicit and consider public comments, by the same statutory deadline of July 29, 2017. USDA's failure to solicit and consider public comments in conducting the study, by the deadline, 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).

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

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully request that this Court:

73. Enter an order declaring that USDA has violated the GE Labeling Act and the APA by failing to conduct the study identifying potential technological challenges that may

impact whether consumers would have access to the bioengineering disclosure through electronic or digital disclosure methods;

74. Enter an order declaring that USDA has violated the GE Labeling Act and the APA by failing to solicit and consider public comments in conducting the study;

75. Order USDA to conduct the study and publish publicly as soon as reasonably practicable, according to a Court-ordered timeline;

76. Order USDA to solicit and consider public comments in conducting the study in accordance with a Court-ordered timeline;

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

78. Award the Plaintiff its 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

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

Respectfully submitted this 25th day of August, 2017 in San Francisco, California.

/s/ Sylvia Shih-Yau Wu

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