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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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12 NATIONAL MEAT ASSOCIATION,
 a not-for-profit corporation,

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Plaintiff,

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and

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16 AMERICAN MEAT INSTITUTE,
 a not-for-profit corporation,

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Plaintiff-Intervenor,

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v.

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19 EDMUND GERALD BROWN, in his official
 capacity as Attorney General of California;
 20 ARNOLD SCHWARZENEGGER, in his
 official capacity as Governor of California; and
 21 the STATE OF CALIFORNIA,

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Defendants.

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Case No. 1:08-cv-01963-LJO-DLB

**COMPLAINT-IN-INTERVENTION
 FOR DECLARATORY AND
 INJUNCTIVE RELIEF**

1 By leave of the Court, Plaintiff-Intervenor AMERICAN MEAT INSTITUTE
2 (“Intervenor” or “AMI”) hereby intervenes in this action and makes and files this Complaint-in-
3 Intervention against Defendant STATE OF CALIFORNIA (“Defendant” or “California”):

4 **NATURE OF ACTION**

5 1. This is an action for declaratory relief under 28 U.S.C. § 2201. As set forth below,
6 AMI seeks a declaration from this Court that the Federal Meat Inspection Act (“FMIA”), 21
7 U.S.C. § 601 et seq., and its implementing regulations and directives preempt section 599f of
8 Title 14 of the California Penal Code, as amended and effective January 1, 2009.

9 2. In addition, AMI seeks a declaration that Amended Section 599f is
10 unconstitutional because it violates the Commerce Clause of the United States Constitution,
11 art. I., § 8, cl. 3, and is void for vagueness under the Fourteenth Amendment to the United States
12 Constitution.

13 **THE PARTIES**

14 3. Intervenor, AMI, formerly known as the American Meat Packers Association, is a
15 voluntary membership-based trade association organized and existing under the laws of the State
16 of Illinois and having its headquarters in Washington, D.C. AMI’s members package and process
17 meat products that are sold in every district in California, including in the Eastern District of
18 California. AMI was founded in 1906 and represents the interests of packers and processors of
19 beef, pork, lamb, and veal products and their suppliers throughout North America. Together,
20 AMI’s members produce approximately ninety-five percent of beef, pork, lamb, and veal
21 products in the United States.

22 4. On information and belief, Plaintiff, National Meat Association (“NMA”),
23 formerly known as the Western States Meat Packers Association, is a voluntary membership-
24 based trade association organized and existing under the laws of the state of California and having
25 its headquarters in Oakland, California. On information and belief, NMA’s predecessor was
26 founded in 1946 and represents the interests of packers and processors who slaughter livestock
27 and who market meats throughout the United States.

1 district in California. Amended Section 599f is applied to, or enforced against, members of AMI
2 would directly affect the purchasing, processing, and sale of their meat products in the Eastern
3 District of California and would impact their interest in the Eastern District of California. Thus,
4 the controversy alleged herein arises in the State of California, including the Eastern District of
5 California.

6 **NECESSITY OF DECLARATORY RELIEF**

7 10. An actual controversy has arisen and now exists because AMI's members face the
8 imminent threat of criminal sanctions if they do not comply with the amended provisions of
9 section 599f, which become effective on January 1, 2009. As set forth below, amended section
10 599f is preempted by federal law, violates the Commerce Clause of the United States
11 Constitution, and is, in part, unconstitutionally vague in violation of the Fourteenth Amendment
12 of the United States Constitution.

13 11. Amended Section 599f is preempted by federal law because: (1) the FMIA
14 expressly preempts different or additional processing and safety inspection requirements imposed
15 by state law; (2) application of Amended Section 599f would conflict with the FMIA's processing
16 and safety inspection requirements; (3) application of Amended Section 599f would conflict with
17 the FMIA's objective of assuring consumer confidence in USDA's processing and safety
18 inspection requirements; and (4) application of Amended Section 599f would frustrate Congress'
19 objective of establishing a comprehensive and uniform federal regulatory scheme that governs
20 meat labeling, processing, and inspection.

21 12. AMI seeks a declaration from this Court that Amended Section 599f is not
22 enforceable as to all federally inspected slaughterhouses or processors in the State of California.
23 Specifically, AMI seeks a declaration that the FMIA, its objectives, its amendments, its
24 implementing regulations and directives, and the USDA's objectives in implementing the FMIA
25 preempt Amended Section 599f as applied to slaughterhouses regulated by the FMIA.

26 13. Such a declaration is necessary and proper at this time so that AMI's members
27 may establish certainty as to their legal obligations and conduct business without subjecting
28 themselves to potential criminal liability for violations of Amended Section 599f.

1 (a) No slaughterhouse, stockyard, auction, market agency, or dealer
2 shall buy, sell, or receive a nonambulatory animal;

3 (b) No slaughterhouse shall process, butcher, or sell meat or meat
4 products of nonambulatory animals for human consumption; and,

5 (c) No slaughterhouse shall hold a nonambulatory animal without
6 taking immediate action to euthanize the animal.

7 Cal. Penal Code § 599f (as amended).

8 18. “Nonambulatory” is defined by Amended Section 599f to mean “unable to stand
9 or walk without assistance.” Cal. Penal Code § 599f(i) (as amended).

10 19. Violations of Amended Section 599f are crimes, punishable by imprisonment of
11 up to one year, a fine of up to \$20,000, or both. Cal Penal Code § 599f(h) (as amended).

12 20. As it exists today (i.e. prior to the amendment), section 599f contains markedly
13 different prohibitions than the amended version. As of the date of this Complaint-in-Intervention,
14 section 599f prohibits only non-federally inspected slaughterhouses, stockyards, and auctions
15 from buying, selling, or receiving a non-ambulatory animal. Moreover, section 599f does not
16 prohibit a slaughterhouse from processing, butchering, or selling meat or meat products derived
17 from nonambulatory animals. Violations of the current statute are punishable only as
18 misdemeanors.

19 **II. OVERVIEW OF THE PREEMPTING FEDERAL STATUTE: THE** 20 **FEDERAL MEAT INSPECTION ACT**

21 21. Congress passed FMIA in 1906, recognizing that meat is an important source of
22 the Nation’s food supply, enacted the FMIA with the objective of protecting the markets for
23 wholesome and unadulterated meat by ensuring consumers that the meat products they consume
24 satisfy uniform federal standards for meat safety and inspection as determined by the federal
25 government. 21 U.S.C. § 602. At the same time, Congress sought to protect and provide for the
26 humane treatment of animals in the slaughter process.

27 22. To serve that objective, the FMIA establishes a comprehensive and uniform
28 federal scheme regulating labeling, processing, and inspection of meat in a manner that ensures

1 that all meat sold to consumers is wholesome, not adulterated, and properly marked, labeled, and
2 packaged, and that animals are treated humanely in the process. 21 U.S.C. § 601 et seq.

3 23. Congress has expressly placed the regulation of meat processing, inspections, and
4 labeling within the exclusive domain of the federal government and prohibited states from
5 attempting to impose any “additional” or “different” requirements.

6 24. Specifically, to ensure uniformity and effectiveness of federal meat safety
7 inspection regulation, the FMIA includes an express preemption provision that states, in relevant
8 part:

9 Requirements within the scope of this chapter with respect to
10 premises, facilities and operations of any establishment at which
11 inspection is provided ... which are in addition to, or different those
made under this chapter may not be imposed by any State or
Territory or the District of Columbia...

12 21 U.S.C. § 678.

13 25. The Food Safety and Inspection Service (“FSIS”), an agency within the United
14 States Department of Agriculture (“USDA”), is charged with implementing the FMIA. FSIS
15 protects the Nation’s meat supply by closely regulating the entire meat production process to
16 ensure that only wholesome and unadulterated meat reaches the marketplace.

17 26. The FMIA implementing regulations set forth in Title 9 of the Code of Federal
18 Regulations, 9 C.F.R. § 301 et seq., govern the meat production process from the time animals are
19 delivered to the slaughterhouse to the time consumers purchase the meat product. FSIS officials
20 conduct a variety of inspections, including, but not limited to, inspections of animals prior to
21 entering a slaughterhouse, packing, meat-canning, rendering, or similar establishment, 21 U.S.C.
22 § 603(a); post-mortem inspections of carcasses to ensure that they are not adulterated, 21 U.S.C.
23 § 604; examination of carcasses brought into slaughtering or packing establishments, 21 U.S.C.
24 § 605; examination of all “meat food products” prepared at any slaughtering, meat-canning,
25 salting, packing, rendering, or similar establishment, 21 U.S.C. § 606; and inspections of
26 slaughtering and meat preparation establishments to ensure sanitary conditions, 21 U.S.C. § 608.
27 Meat may only be packaged in containers free of all poisonous or deleterious substances that
28 might render the contents adulterated or injurious to health. 9 C.F.R. § 317.24.

1 27. The FMIA’s regulations govern how federal officials handle livestock (including
2 inter alia cattle, sheep, swine, and goats) that the State may consider to be “nonambulatory” under
3 the Amended Section 599f. Section 309.3(d) of Title 9 of the Code of Federal Regulations
4 provides that:

5 Any livestock found in a comatose or semicomatose condition or
6 affected with any condition not otherwise covered in this part,
7 which would preclude release of the animal for slaughter for human
8 food, shall be identified “U.S. Condemned” and disposed of in
9 accordance with § 309.13, *except that such animal may be set apart
10 and held for further observation or treatment under supervision of
11 a Program employee or other official designated by the area
12 supervisor and for final disposition in accordance with this part.*

13 9 C.F.R. § 309.3(d) (emphasis added).

14 28. In addition, Section 309.2 of Title 9 of the Code of Federal Regulations provides
15 that:

16 All seriously crippled and non-ambulatory disabled livestock shall
17 be identified as U.S. Suspects and disposed of as provided in
18 § 311.1 of this chapter unless they are required to be classed as
19 condemned under § 309.3. Non-ambulatory disabled livestock are
20 livestock that cannot rise from a recumbent position or that cannot
21 walk, including, but not limited to, those with broken appendages,
22 severed tendons or ligaments, nerve paralysis, fractured vertebral
23 column, or metabolic conditions.

24 9 C.F.R. § 309.2.

25 29. Section 309.13(b) of Title 9 of the Code of Federal Regulations provides specific
26 guidance regarding handling veal calves that may be unable to walk:

27 [...] Veal calves that are unable to rise from a recumbent position
28 and walk because they are tired or cold may also be set apart and
held as provided in this paragraph. The U.S. Condemned
identification tag will be removed by a Program employee
following treatment under such supervision if the animal is found to
be free from any such disease.

29 30. Similarly, section 309.13(e) of Title 9 of the Code of Federal Regulations
30 addresses the proper handling of non-ambulatory cattle, including the FSIS’ discretion to
31 reinspect cattle should they become nonambulatory after they have passed the ante-mortem
32 inspection:

1 Non-ambulatory disabled cattle that are offered for slaughter must
2 be condemned and disposed of in accordance with Sec. 309.13.
3 FSIS inspection personnel will determine the disposition of cattle
4 that become non-ambulatory after they have passed ante-mortem
5 inspection on a case-by-case basis.

6 31. FSIS Directive 6100.1, entitled “Antemortem Livestock Inspection,” interprets
7 these regulations and instructs inspection personnel “to pass for slaughter, livestock that do not
8 show signs of diseases or abnormalities and that are fit to slaughter for human consumption.”
9 The FSIS also provides a “Questions and Answers” guidance that further explains the federal
10 agency’s procedures related to antemortem inspection and onsite treatment of animals.

11 32. Other FSIS directives address various issues related to inspections and the humane
12 treatment of animals, including e.g., Directive 6900.1, *Humane Handling of Disabled Livestock*;
13 Directive 6900.2, *Human Handling and Slaughter of Livestock*; and Directive 6100.2, *Post-*
14 *mortem Livestock Inspection* (discussing the handling of hogs, cattle, sheep, and goats).

15 33. Thus, the federal regulations permit slaughterhouses to purchase, slaughter,
16 process, and sell meat from many livestock that are unable to stand or walk for a variety of
17 reasons so long as those animals are set aside in a humane manner and inspected by a federal
18 inspector, and pass that subsequent inspection. In contrast, Amended Section 599f would prohibit
19 this federal inspection and require euthanization. Instead of federal inspectors determining
20 whether a “downed” animal is fit for slaughter and human consumption, Amended Section 599f
21 expressly forbids the purchase, sale, receipt, processing, or butchering of downed animals under
22 its definition and demands that such animals be removed from the human food supply. Thus, the
23 California law establishes “additional,” “different,” and conflicting requirements for the
24 processing and inspection of livestock, meat, and meat products.

25 **III. APPLICATION OF AMENDED SECTION 599F IMPOSES SUBSTANTIAL** 26 **BURDENS ON INTERVENOR’S MEMBERS**

27 34. The immediate potential for criminal liability under California law is illustrated by
28 considering the impact on the operations of slaughterhouses in California that fully comply with
the FMIA and FSIS inspection.

1 35. Under the Amended Section 599f, the slaughterhouse could be subject to criminal
2 prosecution for simply receiving livestock that cannot or will not stand or walk upon arrival.
3 Thus, in order to avoid prosecution, the slaughterhouse would be forced to turn away livestock
4 that, for a variety of reasons, are unable to stand or walk. This conflicts with federal law’s
5 distinction regarding presenting animals for slaughter. Specifically, under the federal laws
6 animals may be removed from the premises prior to inspection without penalty or restriction.
7 FSIS Directive 6100.1. Under Amended Section 599f, nonambulatory livestock could not be set
8 aside or inspected by the FSIS, as permitted under federal law, much less cleared for processing,
9 also as permitted under federal law. The amended statute thus imposes “different” or “additional”
10 requirements on federal inspection.

11 36. The Amended Section 599f also prohibits slaughterhouses from processing any
12 livestock that becomes unable to stand or walk, or refuses to do so, while in the holding pen or
13 being led to slaughter, and that livestock cannot be used for human consumption. The amended
14 statute thus imposes yet another “different” or “additional” requirement on the federal inspection
15 process.

FIRST CAUSE OF ACTION

(Declaratory Judgment; Preemption)

18 37. AMI re-alleges and incorporates the allegations of paragraphs 1 through 36 as set
19 forth fully herein.

20 38. Application of Amended Section 599f to federally inspected slaughterhouses or
21 processors violates Article VI, Section 2 of the United States Constitution (the “Supremacy
22 Clause”).

23 39. Under the Supremacy Clause, federal law preempts state law where, as here,
24 Congress expresses an intent to preempt state law through explicit statutory language. The FMIA
25 explicitly prohibits states from imposing “additional” or “different” labeling, processing, or
26 inspection requirements on meat governed by the FMIA. 21 U.S.C. § 678. Because any
27 processing or inspection requirement that would be imposed by Amended Section 599f would be
28 “additional” to, “different” from, and conflict with, federal processing and inspection

1 requirements, Amended Section 599f as applied to livestock, meat, and meat products is
2 expressly preempted by the FMIA.

3 40. Federal law similarly preempts state law where, as here, the state law conflicts
4 with federal law or the federal law demonstrates that Congress intended to exclusively occupy the
5 field. Because AMI's members that comply with the FMIA cannot comply with Amended
6 Section 599f, there is a clear conflict between the state and federal law indicating that the federal
7 law preempts the state law. Furthermore, the federal government has occupied the field of meat
8 regulation at federally inspected slaughterhouse, preempting state efforts to regulate in this area.

9 41. AMI is, therefore, entitled to a judgment declaring that the FMIA, 21 U.S.C. § 601
10 et seq., and its implementing regulations, preempt Amended Section 599f's processing and
11 inspection requirements as applied to livestock, meat, and meat products regulated by the FMIA.

12 42. Such a declaration is necessary and appropriate at this time to determine the rights
13 and obligations of the parties.

14 **SECOND CAUSE OF ACTION**

15 **(Declaratory Judgment; Violation of Commerce Clause)**

16 43. AMI re-alleges and incorporates the allegations of paragraphs 1 through 42 as set
17 forth fully herein.

18 44. Application of Amended Section 599f to federally inspected livestock, meat, and
19 meat products violates Article I, Section 8, clause 3 of the United States Constitution (the
20 "Commerce Clause").

21 45. Under the Commerce Clause, a state's law may not discriminate against out-of-
22 state entities or excessively burden interstate commerce.

23 46. Amended Section 599f excessively burdens interstate commerce because it
24 severely restricts the amount of meat entering commerce while simultaneously burdening
25 processing companies with the cost of implementing a set of standard operating procedures that
26 deviate from an otherwise national standard.

27 47. There is little, if any, benefit to the State's regulation of the processing and
28 inspection of livestock. The federal regulations adequately ensure the safety of meat entering the

1 food supply and protect the health of humans. Additionally, State concerns regarding animal
2 cruelty are not implicated by allowing certain livestock unable to stand or walk to remain part of
3 the harvest. Thus, the burden imposed on interstate commerce is clearly excessive in relation to
4 its putative local benefits. In fact, the state law obtains no additional benefit that is not already
5 addressed by the federal law.

6 48. AMI is, therefore, entitled to a judgment declaring that the Amended Section 599f
7 processing and inspection requirements violate the Commerce Clause.

8 49. Such a declaration is necessary and appropriate at this time to determine the rights
9 and obligations of the parties.

10 **THIRD CAUSE OF ACTION**

11 **(Declaratory Judgment; Void For Vagueness)**

12 50. AMI re-alleges and incorporates the allegations of paragraphs 1 through 49 as set
13 forth fully herein.

14 51. Application of Amended Section 599f to federally inspected meat and livestock
15 violates the Fourteenth Amendment to the United States Constitution because the section, as
16 amended, is void for vagueness.

17 52. Amended Section 599f defines a “nonambulatory” animal as one “unable to stand
18 or walk without assistance.” This definition is unconstitutionally vague because it fails to provide
19 a coherent standard as to which criminality can be ascertained.

20 53. In particular, the statute does not define the period for which an animal must be
21 unable to stand or walk and, thus, imposes criminal penalties on slaughterhouses that fail to
22 euthanize an animal immediately without any regard for the realities of meat processing.

23 54. AMI is, therefore, entitled to a judgment declaring that the definition of
24 “nonambulatory” in amended section 599f violates the Fourteenth Amendment because it is void
25 for vagueness.

26 55. Such a declaration is necessary and appropriate at this time to determine the rights
27 and obligations of the parties.

1 **FOURTH CAUSE OF ACTION**

2 **(Injunctive Relief)**

3 56. AMI re-alleges and incorporates the allegations of paragraphs 1 through 55 as if
4 set forth fully herein.

5 57. The enforcement or threat of enforcement of amended section 599f will cause
6 immediate and irreversible injury to AMI's members which slaughter or process livestock,
7 including, but not limited to, loss of opportunity, disruption of business, lost profits, diminution in
8 value, and criminal fines and penalties.

9 58. Because the State's conduct causes harm that cannot be adequately compensated in
10 damages, AMI requests that the Court issue preliminary and permanent injunctive relief enjoining
11 the State of California from enforcing amended section 599f with respect to federally inspected
12 slaughterhouses and meat products.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Intervenor prays as follows:

16 1. For a judgment in its favor on each and every cause of action alleged in the
17 Complaint-in-Intervention:

18 (a) A judgment declaring that the FMIA, 21 U.S.C. § 601 *et seq.*, its
19 objectives, its amendments, its implementing regulations, and the USDA's objectives in
20 implementing the FMIA preempt Amended Section 599f, as applied to all federally regulated
21 slaughterhouses and meat products;

22 (b) A judgment declaring that Amended Section 599f violates the Commerce
23 Clause of the United States Constitution; and,

24 (c) A judgment declaring that the definition of "nonambulatory" animal
25 contained in Amended Section 599f is void for vagueness.

26 2. For attorneys' fees to the extent permitted by law;

27 3. For the preliminary and permanent injunctive relief as set forth above;

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- 4. For costs of suit; and
- 5. Such other and further relief as the Court deems just and proper.

Dated: January 5, 2009

MICHELE B. CORASH
WILLIAM F. TARANTINO
JESSICA OWLEY LIPPMANN
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By: /s/ William F. Tarantino
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