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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IOWA PORK PRODUCERS
ASSOCIATION,

Plaintiff,

v.

ROB BONTA, et al.

Defendants.

No. 1:21-cv-01663-NONE-EPG

ORDER DECLINING TO RECONSIDER
EXPEDITING PENDING MOTION

ORDER GRANTING EX PARTE MOTION
TO TRANSFER CASE TO THE CENTRAL
DISTRICT OF CALIFORNIA

***NOTE TO CLERK OF COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA:
THIS CASE IS RECOMMENDED FOR
DIRECT TRANSFER TO DISTRICT JUDGE
CHRISTINA A. SNYDER IN LIGHT OF
RELATED CASE NO. 2:19-cv-08569-CAS-
FFM***

Plaintiff in this case challenges the constitutionality and seeks to prevent the enforcement of California Health & Safety Code § 25990, *et seq.*, which California voters most recently amended through passage of Proposition 12 on November 16, 2018 (“Proposition 12”). Among other things, Proposition 12 prohibits the sale of “whole pork meat” from a “covered animal” that was confined in a “cruel manner” or is the immediate offspring of a covered animal that was confined in a cruel manner. Cal. Health & Safety Code § 25900. The statute defines “confined in a cruel manner” to include confining any animal in a manner that “prevents the animal from lying down, standing up, fully extending the animal’s limbs, or turning around freely.” *Id.* at § 25901. In a provision that explicitly does not take effect until after December 31, 2021, the law also

1 includes “confining a breeding pig with less than 24 square feet of usable floorspace per pig”
2 within the definition of “confined in a cruel manner.” *Id.* Plaintiff seeks injunctive and
3 declaratory relief based on its assertion that Proposition 12, including its enforcement provisions,
4 violates the Due Process Clause, the Privileges and Immunities Clause, and the Commerce
5 Clause, and is preempted by Packers and Stockyards Act, 7 U.S.C. § 193 *et seq.* (Doc. No. 23
6 (first amended complaint (“FAC”))).

7 As mentioned below, commerce clause challenges to Proposition 12 previously have been
8 presented to other courts where related injunctive relief motions have been resolved and rejected.
9 The present lawsuit advances similar commerce clause arguments once again and adds several
10 new claims. Among other things, plaintiff now alleges that certain aspects of Proposition 12 are
11 unconstitutionally vague, particularly given that implementing regulations related to the law—
12 which Proposition 12 directed relevant state agencies to promulgate by September 1, 2019—have
13 yet to be finalized. *See* Cal. Health & Safety Code § 25993(a). For example, plaintiff alleges that
14 “it remains vague [] to whether a single violation is based on each sale, each pound or piece of
15 meat, or each breeding pig.” (FAC ¶ 49.) Plaintiff elsewhere argues that while Proposition 12
16 prohibits the sale of non-compliant whole pork meat by anyone “engaged in” the sale of meat
17 within California, California Health & Safety Code §§ 25990(b)(2), 25991, the term “engaged in”
18 is not defined and therefore “requires the entire pork supply chain to speculate as to its meaning
19 while concurrently risking criminal prosecution.” (Doc. No. 24-1 at 18.) Finally, plaintiffs assert
20 that the “turn around” requirements and “square footage” requirements “are only mentioned in
21 one phrasing in the statute, providing no further definition of what these terms even mean,” which
22 plaintiff asserts is problematic because “[t]he practical implication of how to implement these two
23 sets of requirements is complex.” (*Id.*)

24 The complaint in this action was originally filed in Fresno County Superior Court on
25 November 9, 2021; defendants removed the matter to this federal court on November 16, 2021.
26 (Doc. No. 1.) On November 22, 2021, plaintiff filed an overlength motion for preliminary
27 injunction. (*See* Doc. Nos. 15–15-6.) Plaintiff urged the court to accept the overlength brief (*see*
28 Doc. No. 14); to set a hearing on the matter for December 17, 2021; and to rule on their motion

1 for preliminary injunction before January 1, 2022, the effective date of some of Proposition 12’s
2 provisions.¹ (See Doc. No. 15.) In an order issued November 24, 2021, the undersigned struck
3 the overlength brief, granted a more modest page expansion, required the re-filing of the motion,
4 and declined to expedite the matter in the manner requested by plaintiff. (Doc. No. 21.) The
5 court noted that “[c]onsidering the ongoing and well-documented judicial resource emergency in
6 this court . . . plaintiff’s request would be nearly impossible to accommodate.” (*Id.* at 2.) The
7 thrust of the court’s ruling was premised upon plaintiff’s failure to bring the matter before this
8 court with the urgency required to merit expedited treatment under the circumstances:

9 Even if the court could muster the resources to address the pending
10 motion on the expedited timeline suggested by plaintiff, the
11 undersigned declines to urgently prioritize this matter vis-à-vis the
12 numerous other civil litigants who have been waiting many months
13 (if not years) for rulings on important matters. It is undisputed that
14 Proposition 12 passed in November 2018. (See Doc. No. 15-1 at
15 12.) Some of the provisions challenged here went into effect later
16 that year. (*Id.*) Certain other aspects of Proposition 12 are set to go
17 into effect on January 1, 2022. (*Id.*) Since Proposition 12’s
18 passage, starting in 2019, at least two other groups of similarly-
19 situated plaintiffs have tried unsuccessfully to block the same
20 aspects of Proposition 12 challenged by plaintiff here from going
21 into effect. See *N. Am. Meat Institute v. Becerra*, 420 F. Supp. 3d
22 1014 (C.D. Cal. 2019), *aff’d*, 825 Fed. Appx. 518 (9th Cir. 2020);
23 *Nat’l Pork Producers Council v. Ross*, 456 F. Supp. 3d 1201, 1206
24 (S.D. Cal. 2020), *aff’d*, 6 F.4th 1021 (9th Cir. 2021).

25 Moreover, it has come to the court’s attention that plaintiff initially
26 filed a largely identical suit to this one in state court in Iowa in May
27 2021. See *Iowa Pork Producers Ass’n et al. v. Bonta*, No. 3:21-cv-
28 3018 (N.D. Iowa), ECF No. 1-4 (Complaint). That case was
removed to the U.S. District Court for the Northern District of Iowa
and subsequently dismissed for lack of personal jurisdiction in late
August 2021. *Id.* at ECF No. 67. Then, seemingly inexplicably,
plaintiff waited approximately ten weeks to file the instant
complaint in Fresno County Superior Court on November 9, 2021.
The Fresno County complaint was subsequently (and
unsurprisingly) removed to this federal court seven days later, a
mere six weeks before the square footage requirements of
Proposition 12 are set to take effect. Were this motion to proceed
according to the December 17, 2021 hearing date proposed by
plaintiff, this highly complex matter would become ripe a mere 21
days before December 31, 2021, a period that encompasses several
holiday-related court closures. This timing renders the pending

¹ Plaintiff concedes that the turnaround requirements of the law went into effect on December 19, 2018. (FAC, ¶ 37.) Plaintiff alleges that on that date, “[i]t immediately became a crime for the Plaintiff’s members –and the out-of-state pork industry to sell into California.” (*Id.*, ¶ 38.)

1 motion effectively one for a temporary restraining order insofar as
2 it demands highly expedited treatment. The undersigned therefore
3 looks to this court's local rule regarding temporary restraining
4 orders, which provides:

5 Timing of Motion. In considering a motion for a temporary
6 restraining order, the Court will consider whether the
7 applicant could have sought relief by motion for preliminary
8 injunction at an earlier date without the necessity for
9 seeking last-minute relief by motion for temporary
10 restraining order. Should the Court find that the applicant
11 unduly delayed in seeking injunctive relief, the Court may
12 conclude that the delay constitutes laches or contradicts the
13 applicant's allegations of irreparable injury and may deny
14 the motion solely on either ground.

15 Local Rule 231(b).

16 The court finds that the present record fails to explain why this case
17 could not have been presented to the court in a far timelier manner.
18 The "urgency" presented here is largely of plaintiff's own making.
19 Therefore, the court will not expedite consideration of the pending
20 motion in the manner suggested by plaintiff. The court recognizes
21 that—at least according to plaintiff—the financial implications of
22 Proposition 12 going into effect may be enormous, but that does not
23 change the procedural history of this case.

24 (*Id.* at 2–4 (footnotes omitted).) In short, the undersigned refused to effectively treat plaintiff's
25 motion for a preliminary injunction as one for temporary injunctive relief. In the same order, the
26 undersigned also indicated that it was "considering the issuance of an order to show cause why
27 this case should not be transferred to the U.S. District Court for the Central District of California,
28 where the substantially related *North American Meat Institute v. Becerra*, No. 2:19-cv-08569-
CAS (FFMx) case remains open," but did not indicate an intended timeframe for its consideration
of that issue. (*Id.* at 5.)

More than three weeks later, on December 16, 2021, plaintiff filed a first amended
complaint along with a revised motion for preliminary injunction, setting that motion for hearing
before this court on January 27, 2022. (Doc. Nos. 23, 24.) Simultaneously, plaintiff filed an *ex*
parte application for an order transferring venue to the Central District of California, invoking 28
U.S.C. § 1406(a). (Doc. No. 25.) Plaintiff indicated therein that defendants were taking no
position on the question of transfer. (*Id.* at 3.) Plaintiff also appears not to have fully internalized
the undersigned's ruling that expedited treatment of this matter was not warranted given the

1 substantially self-inflicted delay in bringing this action before a federal court in California. For
2 example, plaintiff suggests that a delayed ruling on their motion to transfer will “invite more
3 unnecessary briefing and undue delay that will certainly surpass the January 1, 2022 deadline.”
4 (Doc. No. 27 at 2.) To the extent that this language could be construed as a request for
5 reconsideration of this court’s prior ruling (i.e., another demand for this court to facilitate a
6 situation in which the pending motion for preliminary injunction could be resolved by January 1,
7 2022), that request is denied for the reasons stated in this court’s November 24, 2021 order.

8 The conclusion reached in the November 24, 2021 order is not undermined by more recent
9 events, including the December 3, 2021 release by California regulators of additional revisions to
10 the draft regulations intended to implement aspects of Proposition 12. (FAC, ¶ 58.) It is alleged
11 by plaintiff that the earliest date any revised proposed regulations will be effective and
12 enforceable is April 1, 2022. (*Id.*) As the court acknowledged in its November 24, 2021 order,
13 California regulators failed to promulgate implementing regulations by the September 1, 2019
14 deadline set forth in Proposition 12. (Doc. No. 21 at 3 n.1.) Plaintiff has been arguing since mid-
15 2021 when it filed suit in Iowa state court that California regulators would not promulgate
16 regulations in time for plaintiff’s members to comply the January 1, 2022 effective date of
17 Proposition 12. (*See Iowa Pork Producers Ass’n v. Bonta*, 3:21-cv-03018-CJW-MAR (*N.D.*
18 *Iowa Case*), Doc. No. 1-4, ¶ 67 (alleging in May 20, 2021 filing that “[i]t is not commercially
19 feasible, or perhaps even possible, for Iowa pork farmers to comply with Proposition 12 by
20 January 1, 2022”).) Therefore, the situation being presented to this court has been a matter of
21 “urgency” to plaintiffs for more than seven months now. Plaintiff also acknowledges that the
22 very structure of Proposition 12 did not permit any time to promulgate regulations before the
23 December 19, 2018 effective date of the law’s turn around requirements. (*See id.*, ¶ 64; FAC ¶
24 54.) Therefore, any claim by plaintiff premised upon California regulators’ failure to clarify
25 allegedly vague aspects of the law’s turn around requirements appears to have been ripe for
26 almost three years. All of this belies any attempt to now push in front of other litigants in this
27 court (or arguably in any other) to rush this matter to resolution.

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1 The court now turns to the application for an order to transfer. Plaintiff’s invocation of 28
2 U.S.C. § 1406(a)² notwithstanding, the appropriate mechanism for a transfer of this nature is 28
3 U.S.C. § 1404(a), which states: “For the convenience of parties and witnesses, in the interest of
4 justice, a district court may transfer any civil action to any other district or division where it might
5 have been brought or to any district or division to which all parties have consented” Although
6 Congress drafted § 1404(a) in accordance with the doctrine of *forum non conveniens*, it was
7 intended to be a revision to rather than a codification of the common law. *Piper Aircraft Co. v.*
8 *Reyno*, 454 U.S. 235, 253 (1981). Thus, a § 1404(a) transfer is available “upon a lesser showing
9 of inconvenience” than that required for a *forum non conveniens* dismissal. *Norwood v.*
10 *Kirkpatrick*, 349 U.S. 29, 32 (1955).

11 The burden is upon the moving party to show that transfer is appropriate. *Los Angeles*
12 *Mem’l Coliseum Comm’n v. Nat’l Football League*, 89 F.R.D. 497, 499 (C.D. Cal. 1981), *aff’d*,
13 726 F.2d 1381, 1399 (9th Cir. 1984). Nonetheless, the district court has broad discretion “to
14 adjudicate motions for transfer according to an ‘individualized, case-by-case consideration of
15 convenience and fairness.’” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000)
16 (quoting *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)). The Ninth Circuit has offered
17 examples of factors that may be considered under § 1404(a): (1) plaintiff’s choice of forum;
18 (2) convenience of the parties; (3) convenience of the witnesses and availability of compulsory
19 process; (4) ease of access to the evidence; (5) feasibility of consolidation of other claims;
20 (6) familiarity of each forum with the applicable law; (7) any local interest in the controversy; and
21 (8) the relative court congestion and time to trial in each forum. *See Decker Coal Co. v.*
22 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986); *Jones*, 211 F.3d at 498–99.

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26 ² Title 28 U.S.C. § 1406(a) applies where a case has been venued in the “wrong division or
27 district” and permits the district court to “dismiss, or if it be in the interest of justice, transfer such
28 a case to any district or division in which it could have been brought.” That provision plainly
does not apply to the present circumstances, as no one suggests that venue is *improper* in this
court.

1 Here, there is no dispute that this case could have been brought in the U.S. District Court
2 for the Central District of California. The FAC alleges California as a whole (as opposed to any
3 location within the Eastern District of California in specific) is a “behemoth” consumer of pork,
4 most of which is imported from outside the state, (*see* FAC, ¶¶ 4–5), and the Attorney General of
5 California may be sued in any district where he maintains an office, including the Central District
6 of California, *see* California Code of Civil Procedure § 401. To the extent that any of the other
7 relevant factors are applicable here, they weigh in favor of transfer. Of utmost importance to the
8 undersigned is the fact that the Central District is already familiar with many of the arguments
9 raised in this case, as Judge Snyder has ruled on similar arguments in the relatively recent past,
10 *see N. Am. Meat Inst. v. Becerra*, 420 F. Supp. 3d 1014 (C.D. Cal. 2019), *aff’d*, 825 Fed. Appx.
11 518 (9th Cir. 2020) (reviewing a commerce clause challenge to Proposition 12 in detail and
12 finding that plaintiff had failed to raise any serious questions on the merits of those claims), in a
13 case that remains open. Plaintiff’s choice of forum also weighs in favor of transfer, since plaintiff
14 is now requesting transfer to the Central District and defendants do not object thereto.

15 Plaintiff’s declarants all appear to reside outside California, (*see* Doc. Nos. 24-2, 24-3, 24-
16 4), so it is unlikely that they would be more inconvenienced by a forum in Los Angeles than they
17 would be if this case was heard and decided in Fresno. Defendants have not identified any
18 witnesses in this case, but counsel of record are located in Sacramento, San Francisco, and Los
19 Angeles, so Los Angeles appears to be at least as convenient as Fresno. Finally, the court may
20 also consider “the administrative difficulties flowing from court congestion” in the balance.

21 *Decker*, 805 F.2d at 843 (quoting *Piper Aircraft*, 454 U.S. at 241 n. 6). Although the Central
22 District of California is extremely busy and the judges of that court are burdened with a caseload
23 far above the national average, as of the last statistical analysis published by the U.S. Courts, the
24 per judge caseload in the Eastern district is more than twice as large as that in the Central District
25 of California.³ For all these reasons, the court concludes that transfer to the Central District of

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27 ³ *See* Administrative Office of the U.S. Courts, U.S. District Courts–Combined Civil and
28 Criminal Federal Court Management Statistics (June 30, 2021), *available at*:
<https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2021/06/30-3>
(last visited December 26, 2021).

1 California is appropriate.

2 Plaintiff's motion for preliminary injunction remains pending and set for hearing on
3 January 27, 2021, subject to re-setting by the transferee court at its discretion.

4 CONCLUSION

5 For the reasons set forth above,

6 (1) To the extent that plaintiff is requesting reconsideration of this court's refusal
7 to expedite a hearing and ruling on their motion for preliminary injunction, that request is
8 DENIED;

9 (2) The Clerk of Court is directed to transfer this case to the Central District of
10 California and to communicate to the Clerk of that Court that it is the undersigned's
11 opinion that this case should be directly assigned, if possible, to U.S. District Judge
12 Christina A. Snyder given that Judge Snyder currently presides over a related case:
13 2:19-cv-08569-CAS-FFM.

14 IT IS SO ORDERED.

15 Dated: December 27, 2021

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18 UNITED STATES DISTRICT JUDGE
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