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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KATHY HALLAK; GEORGE HALLAK,
Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, RETAILER
OPERATIONS DIVISION,
Defendant.

Case No.: 22-cv-00568-AJB-BLM

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

(Doc. No. 12)

Before the Court is Defendant United States Department of Agriculture, Retailer Operations Division’s (“USDA”) Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Doc. No. 11.) Plaintiffs filed an opposition to the motion, (Doc. No. 14), to which USDA replied, (Doc. No. 15). This motion is suitable for determination on the papers and without oral argument in accordance with Civil Local Rule 7.1.d.1. Based on the reasoning below, the Court **GRANTS** USDA’s motion.

I. BACKGROUND

A. Statutory and Regulatory Framework

The Supplemental Nutrition Assistance Program (“SNAP”), which is administered by the Food and Nutrition Service (“FNS”), offers food benefits to qualifying individuals and families with financial hardships. *See* 7 U.S.C. § 2011 *et seq.*; *see also Market v. United*

1 *States*, No. 19–cv–00073, 2020 WL 4043819, at *1 (E.D. Wash. July 17, 2020). “SNAP
2 operates similarly to a debit card, in which benefits are transferred to participants through
3 an Electronic Benefits Transfer (“EBT”) card. Participants may then spend their SNAP
4 benefits by purchasing eligible items sold by approved SNAP retailers.” *Rith v. United*
5 *States*, No. 2:19–CV–01582–BJR, 2020 WL 7398750, at *1 (W.D. Wash. Dec. 17, 2020)
6 (citing 7 U.S.C. § 2018 and 7 C.F.R. § 278.1).

7 The applicable regulations prohibit “trafficking” SNAP benefits. 7 C.F.R.
8 § 278.6(e)(1)(i); *see also* 7 U.S.C. § 2021(b)(3)(B). Trafficking is defined as the “buying,
9 selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or
10 consideration other than eligible food . . .” 7 C.F.R. § 271.2. The presumptively mandatory
11 penalty for trafficking is permanent disqualification from the SNAP program. *Id.*
12 § 278.6(e)(1)(i) (“[FNS] shall . . . [d]isqualify a firm permanently if . . . [p]ersonnel of the
13 firm have trafficked as defined in [7 C.F.R.] § 271.2”); 7 U.S.C. § 2021(b)(3)(B). However,
14 a retailer found to have engaged in trafficking may be assessed a civil monetary penalty
15 (“CMP”) in lieu of disqualification if it “had an effective policy and program in effect to
16 prevent” program violations and provides evidence that the retailer’s ownership was
17 unaware of the violations and did not approve, benefit from, or take part in them. 7 U.S.C.
18 § 2021(b)(3)(B); 7 C.F.R. § 278.6(i).

19 **B. Factual Background**

20 Plaintiffs, the previous owners and operators of Rainbow Market, were given a
21 license to participate in SNAP in 2017. (Complaint (“Compl.”), Doc. No. 1, ¶ 2.) On or
22 around June 23, 2021, Plaintiffs were notified that FNS was charging them with illegally
23 trafficking in the SNAP program pursuant to 7 C.F.R. § 278.6. (Doc. No. 12 at 7.)

24 The letter attached a list of transactions from December 2020 through April 2021,
25 which the FNS claimed constituted trafficking. (Doc. No. 1-2 at 9.) Plaintiffs were
26 informed of their right to reply and present any information, explanation, or evidence
27 regarding the charges, and that, if they showed they met the criteria listed in 7 C.F.R.
28 § 278.6(i), they could be eligible for a CMP of \$59,000 in lieu of permanent

1 disqualification. (*Id.* at 10.) One of the four criteria the store had to meet to be eligible for
2 a penalty in lieu of disqualification was that it had developed, prior to the alleged violations,
3 an effective policy to prevent them. 7 C.F.R. § 278.6(i)(1) (Criterion 1).

4 Plaintiffs replied to the charge letter. On September 23, 2021, the FNS decided to
5 permanently disqualify them from participating in the SNAP program. (Doc. No. 12 at 8.)
6 The FNS further concluded Plaintiffs were not eligible for a trafficking civil money penalty
7 (“CMP”) in lieu of disqualification because Plaintiffs failed to submit sufficient evidence
8 demonstrating they had established and implemented an effective compliance policy and
9 program to prevent SNAP violations. (*Id.*) Plaintiffs were informed of their right to request
10 administrative review.

11 On September 9, 2021, Plaintiffs requested administrative review of the decision; on
12 March 23, 2022, the Administrative Review Officer issued a Final Agency Decision
13 (“FAD”) upholding Plaintiffs’ permanent disqualification. (*Id.*)

14 The FAD specifically stated:

15 If a judicial review is desired, the Complaint, ***naming the United States as***
16 ***the defendant***, must be filed in the U.S. District court for the district in which
17 the Appellant’s owner resides or is engaged in business, or in any court of
18 record of the State having competent jurisdiction. If any Complaint is filed, it
must be filed within thirty (30) days of receipt of this Decision.

19 (Doc. No. 1-2 at 18) (emphasis added). This portion of the FAD reflects the requirements
20 of 7 U.S.C. § 2023(a)(13).

21 Plaintiffs filed the instant suit on April 22, 2022, solely naming USDA to seek
22 judicial review of this decision pursuant to 7 U.S.C. § 2023.

23 **II. LEGAL STANDARDS**

24 **A. Federal Rule of Civil Procedure 12(b)(1)**

25 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) tests
26 whether the court has subject matter jurisdiction. “A Rule 12(b)(1) jurisdictional attack
27 may be facial or factual.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir.
28 2004). “In a facial attack, the challenger asserts that the allegations contained in a complaint

1 are insufficient on their face to invoke federal jurisdiction.” *Id.* The court “resolves a facial
2 attack as it would a motion to dismiss under Rule 12(b)(6): accepting the plaintiff’s
3 allegations as true and drawing all reasonable inferences in the plaintiff’s favor, the court
4 determines whether the allegations are sufficient as a legal matter to invoke the court’s
5 jurisdiction.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

6 “[I]n a factual attack,” on the other hand, “the challenger disputes the truth of the
7 allegations that, by themselves, would otherwise invoke federal jurisdiction.” *Safe Air for*
8 *Everyone*, 373 F.3d at 1039. In resolving such an attack, unlike with a motion to dismiss
9 under Rule 12(b)(6), a court “may review evidence beyond the complaint without
10 converting the motion to dismiss into a motion for summary judgment.” *Id.* Moreover, the
11 court “need not presume the truthfulness of the plaintiff’s allegations.” *Id.* Once the
12 defendant has moved to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1),
13 the plaintiff bears the burden of establishing the court’s jurisdiction. *See Chandler v. State*
14 *Farm Mut. Auto Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010).

15 **B. Federal Rule of Civil Procedure 12(b)(6)**

16 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the
17 pleadings’ legal sufficiency and allows a court to dismiss a complaint if the court finds the
18 plaintiff has failed to state a claim upon which relief may be granted. *Navarro v. Block*,
19 250 F.3d 729, 732 (9th Cir. 2001). As a matter of law, the court may dismiss the complaint
20 for either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal
21 claim. *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir.
22 1996) (citation omitted). However, a complaint survives a motion to dismiss if it contains
23 “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*
24 *Twombly*, 550 U.S. 544, 570 (2007). Notwithstanding such deference, the reviewing court
25 need not accept legal conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
26 Furthermore, it is improper for the court to assume “the [plaintiff] can prove facts that [he
27 or she] has not alleged” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council*
28 *of Carpenters*, 459 U.S. 519, 526 (1983). However, “[w]hen there are well-pleaded factual

1 allegations, a court should assume their veracity and then determine whether they plausibly
2 give rise to an entitlement to relief.” *Iqbal*, 556 U.S. at 679. The court only reviews the
3 complaint’s contents and accepts all factual allegations as true, while drawing all
4 reasonable inferences in favor of the nonmoving party. *Thompson v. Davis*, 295 F.3d 890,
5 895 (9th Cir. 2002).

6 **III. REQUEST FOR JUDICIAL NOTICE**

7 While the scope of review on a motion to dismiss for failure to state a claim is limited
8 to the complaint, a court may consider evidence on which the complaint necessarily relies
9 if: “(1) the complaint refers to the document; (2) the document is central to the plaintiff[’s]
10 claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6)
11 motion.” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010) (internal
12 quotation marks and citations omitted); see *Coto Settlement v. Eisenberg*, 593 F.3d 1031,
13 1038 (9th Cir. 2010) (stating materials incorporated into the complaint may be judicially
14 noticed).

15 Here, USDA requests judicial notice of the complete version of the June 23, 2021
16 Charge Letter issued by USDA to Plaintiffs. (Doc. No. 12 at 11–12.) Plaintiffs do not
17 oppose the request. (See generally Doc. No. 14.) Plaintiffs’ Complaint includes the same
18 letter as Exhibit 1, but does not include a complete copy of the letter with enclosures. (See
19 Doc. No. 1-2 at 9–11.) Because the Complaint includes this document as Exhibit 1 and
20 necessarily relies on it, the Court **GRANTS** USDA’s request for judicial notice.

21 **IV. DISCUSSION**

22 **A. The Court Lacks Jurisdiction Under Rule 12(b)(1)**

23 “The United States is immune from suit unless it consents to waive its sovereign
24 immunity.” *Hodge v. Dalton*, 107 F.3d 705, 707 (9th Cir. 1997) (citing *Lehman v.*
25 *Nakshian*, 453 U.S. 156, 160 (1981)). “The doctrine of sovereign immunity applies to
26 federal agencies and to federal employees acting within their official capacities[,]” *id.*
27 (citing *S. Delta Water Agency v. U.S., Dep’t of Interior*, 767 F.2d 531, 536 (9th Cir.1985)),
28

1 and “[t]he terms of the United States’ consent to be sued in any court define that court’s
2 jurisdiction to entertain the suit.” *Id.* (citing *Lehman*, 453 U.S. at 160).

3 The scope of a court’s jurisdiction in connection with SNAP is defined by 7 U.S.C.
4 § 2023 and 7 U.S.C § 2021. *See Salmo v. U.S. Dep’t of Agric.*, 226 F. Supp. 2d 1234, 1235–
5 36 (S.D. Cal. 2002) (citing *Shoulders v. U.S. Dep’t of Agric.*, 878 F.2d 141, 143 (4th Cir.
6 1989)); *see also Gallo Cattle Co. v. U.S. Dep’t of Agric.*, 159 F.3d 1194, 1197 (9th Cir.
7 1998) (statute providing for judicial review of USDA’s Dairy Promotion Program defines
8 scope of federal court’s subject matter jurisdiction as to such program). The Food and
9 Nutrition Act, 7 U.S.C. § 2011 *et seq.* (which creates the SNAP program), only waives
10 sovereign immunity in the event that the plaintiff files suit directly against the United
11 States. 7 U.S.C. § 2023(a)(13). It has long been held that § 2023 “was [not] meant to waive
12 immunity with regard to any governmental party other than the United States itself.”
13 *Calderon v. U.S. Dep’t of Agric.*, 756 F. Supp. 181, 184 (D. N.J. 1990). Because Plaintiffs
14 chose to sue the USDA and not the United States, the Court has no jurisdiction over their
15 claims. Plaintiffs do not dispute the Court’s lack of jurisdiction, but rather assert that
16 dismissal is not appropriate here. (Doc. No. 14 at 1.) Instead, they request they be given
17 leave to amend the Complaint to name the United States as the defendant. (*Id.* at 2.)

18 Because Plaintiffs have failed to indicate why this Court should not enforce the
19 jurisdictional rules as enumerated in 7 U.S.C. § 2023, the Court **GRANTS** Defendant’s
20 motion to dismiss.

21 **B. Plaintiffs Fail to State a Claim Under Rule 12(b)(6)**

22 USDA also moves to dismiss for failure to state a claim for which relief can be
23 granted, (Doc. No. 12 at 13), and asserts “any attempt to amend the Complaint to name the
24 United States as Defendant would be futile because the Complaint fails to state a claim for
25 relief[.]” (Doc. No. 15 at 2). The Court agrees.

26 The FNS’s disqualification of a store is subject to judicial review by trial de novo.
27 *See* 7 U.S.C. §§ 2021(c), 2023(a)(15); 7 C.F.R. § 279.10(a); *Kim v. U.S.*, 121 F.3d 1269,
28 1272 (9th Cir. 1997). The burden of proof falls on the plaintiff store to establish by a

1 preponderance of the evidence that the violations did not occur. *See Kim*, 121 F.3d at 1272.
2 Once a violation is established, the Court’s only remaining task is to review the
3 appropriateness of the sanction imposed using an arbitrary and capricious standard. *See*
4 *Wong v. United States*, 859 F.2d 129, 132 (9th Cir. 1988); *Banh v. U.S.*, 814 F.2d 1358,
5 1363 (9th Cir. 1987); *Plaid Pantry Stores, Inc. v. United States*, 799 F.2d 560, 563 (9th
6 Cir. 1986); *Bertrand v. United States*, 726 F.2d 518, 520 (9th Cir. 1984).

7 Here, Plaintiffs candidly admit the violations occurred, stating they gave permission
8 to another individual to temporarily take over operations of the business of the market, and
9 that individual “engaged in the fraudulent conduct alleged by the USDA.” (Compl.
10 ¶ 9(vii).) Accordingly, the Court finds that violations likely did occur, and the Court shall
11 limit its inquiry to whether Plaintiffs’ disqualification is arbitrary and capricious. *See*
12 *Wong*, 859 F.2d at 132; *Banh*, 814 F.2d at 1363; *Plaid Pantry Stores, Inc.*, 799 F.2d at 563;
13 *Bertrand*, 726 F.2d at 520.

14 Plaintiffs argue permanent disqualification for a first offense is arbitrary and
15 capricious. (Doc. No. 14 at 2.) However, permanent disqualification is presumptively
16 mandatory where a retailer is found to have engaged in trafficking. 7 C.F.R. § 278.6(e)(1)(i)
17 (providing FNS “*shall* . . . [d]isqualify a firm permanently if . . . [p]ersonnel of the firm
18 have trafficked as defined in [7 C.F.R.] § 271.2” (emphasis added)). FNS may assess a
19 monetary penalty in lieu of disqualification where the retailer produces evidence of a plan
20 to ensure compliance with SNAP regulations and demonstrates that the store’s ownership
21 was ignorant of the violations and did not benefit from them. *See* 7 C.F.R. § 278.6.
22 However, Plaintiffs request that no monetary punishment be assessed against them,
23 (Compl. at 3), and the Complaint does not allege any facts to establish Plaintiffs would
24 have qualified for a CMP, (*see generally id.*).

25 The Court finds the sanction of permanent disqualification imposed by FNS was not
26 arbitrary and capricious. As such, the Court finds Plaintiffs’ request for leave to amend to
27 be futile.


28 ///

1 **V. CONCLUSION**

2 Based on the foregoing, Plaintiffs' action for judicial review under 7 U.S.C. § 2023
3 is **DISMISSED WITH PREJUDICE**. The Clerk of the Court is directed to **CLOSE** this
4 case.

5
6 **IT IS SO ORDERED.**

7 Dated: October 18, 2023

8 
9 Hon. Anthony J. Battaglia
United States District Judge