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10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE DISTRICT OF COLUMBIA**

12 DISTRICT OF COLUMBIA, STATE OF
 NEW YORK, STATE OF CALIFORNIA,
 13 STATE OF CONNECTICUT, STATE OF
 MARYLAND, COMMONWEALTH OF
 14 MASSACHUSETTS, ATTORNEY
 GENERAL DANA NESSEL ON
 15 BEHALF OF THE PEOPLE OF
 MICHIGAN, STATE OF MINNESOTA,
 16 STATE OF NEVADA, STATE OF NEW
 17 JERSEY, STATE OF OREGON,
 COMMONWEALTH OF
 18 PENNSYLVANIA, STATE OF RHODE
 ISLAND, STATE OF VERMONT,
 19 COMMONWEALTH OF VIRGINIA,
 20 STATE OF WASHINGTON and CITY
 OF NEW YORK,

21
 22 Plaintiffs,

23 v.

24 U.S. DEPARTMENT OF
 AGRICULTURE; GEORGE ERVIN
 25 PERDUE III, in his official capacity as
 Secretary of the U.S. Department of
 26 Agriculture, and UNITED STATES OF
 27 AMERICA,

28 Defendants.

Case No. 1:20-cv-00119

**DECLARATION OF ALEXIS CARMEN FERNÁNDEZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to 28 U.S.C. § 1746, I, Alexis Carmen Fernández, declare and state as follows:

1. I am over the age of eighteen years, competent to testify to the matters contained herein, and testify based on my personal knowledge and information.

2. I am the Acting Chief of the CalFresh & Nutrition Branch within the California Department of Social Services (CDSS). I have held this position since July 2019.

3. Prior to the position I hold now, I served as Chief of the CalFresh Policy Bureau, previously known as the CalFresh Policy Section, within the CalFresh and Nutrition Branch at CDSS, from June 2016 to July 2019. Before joining state service, I was the Policy Director at the First 5 Association of California for eight months and the Director of Legislation at California Food Policy Advocates for one year and nine months but worked for the organization for a total of six years. I have a Master of Social Welfare, with a specialization in Management and Planning, from the University of California, Berkeley.

4. In my current position, I oversee the administration of the Supplemental Nutrition Assistance Program (SNAP) for the State of California. Therefore, I have reviewed and am familiar with the federal rules and requirements pertaining to SNAP. I supervise a staff of 125 state employees, in various sections and units within the CalFresh and Nutrition Branch, including Policy, Operations, Quality Control & Improvement, Employment & Training, Outreach, and Nutrition Education, as well as federal food distribution programs, including the Emergency Food Assistance Program and the Commodity Supplemental Food Program. In my previous position as Chief of the CalFresh Policy Bureau, I oversaw all nutrition policy for CDSS and worked directly with counties, client advocacy organizations, and other stakeholders to increase CalFresh enrollment among eligible Californians.

I. ADMINISTRATION OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM IN CALIFORNIA

5. In California, the federal SNAP is known as CalFresh. It is overseen by CDSS and administered by the State's fifty-eight counties.

1 6. Under federal SNAP rules, administrative costs are shared equally between the
2 federal government and the State. To cover California's 50% share of administrative costs, the
3 State pays 35% of administrative costs, and the counties pay the remaining 15%.

4 7. CDSS is the single state oversight agency responsible for providing the State's
5 fifty-eight counties with all necessary CalFresh guidance in the form of regulations, as well as All
6 County Letters (ACLs) and All County Information Notices (ACINs), pursuant to California
7 Welfare and Institutions Code section 18902. CDSS is responsible for monitoring the accuracy
8 and integrity of the counties' administration of CalFresh.

9 8. CalFresh Employment & Training (CalFresh E&T) is California's version of the
10 SNAP Employment & Training program. The purpose of CalFresh E&T is to provide CalFresh
11 recipients with access to employment and training opportunities, supportive services, and skills
12 and credentialing, to increase the employment and earning capacity of participants. CalFresh
13 E&T components include, but are not limited to, supervised job search, work experience,
14 education, and retention services. Individuals must be receiving SNAP benefits in order to
15 participate. In Federal Fiscal Year (FFY) 2020, CalFresh E&T will be offered in thirty-seven of
16 the fifty-eight California counties and is estimated to provide services to approximately 85,000
17 SNAP recipients.

18 9. CalFresh Outreach is California's version of the SNAP Outreach program. The
19 purpose of CalFresh Outreach is to increase the number of eligible households participating in
20 SNAP and to educate individuals and families with low income and other stakeholders about
21 CalFresh. The CalFresh Outreach unit at CDSS develops outreach materials and tools. The unit
22 also works with a statewide network of contractors who provide outreach services such as SNAP
23 application assistance, engagement with potentially eligible individuals, and education about
24 changes to SNAP. CalFresh Outreach activities are conducted statewide and, in FFY 2020, the
25 statewide network of CalFresh Outreach contractors estimate that they will support the
26 submission of more than 100,000 SNAP applications.

27 10. The California Food Assistance Program (CFAP) provides state-funded nutrition
28 benefits to certain immigrants who are not eligible for federally-funded SNAP benefits due to

1 their immigration status. CFAP recipients are provided with CalFresh benefits that are paid for
2 with state funds. Currently, there are about 40,000 individuals served by CFAP per month in
3 California. As required by statute, CFAP follows all SNAP eligibility requirements, with the
4 exception of eligibility rules regarding immigration status. Therefore, any change to federal
5 SNAP requirements applies to both CalFresh and CFAP.

6 **II. ABLE-BODIED ADULTS WITHOUT DEPENDENTS TIME LIMIT RULE, WAIVERS, AND**
7 **DISCRETIONARY EXEMPTIONS IN CALIFORNIA**

8 11. Under SNAP eligibility rules, individuals who are age eighteen through forty-nine
9 are limited to three months of benefits within a thirty-six-month period, unless they are working
10 or participating in a qualifying work activity for at least twenty hours per week. This rule is
11 known as the Able-Bodied Adults Without Dependents (ABAWD) time limit. Some individuals
12 are exempt from this rule, such as those who live with children in the household, those
13 determined to be physically or mentally unfit for work, pregnant women, and others determined
14 to be exempt from the general SNAP work requirements. Individuals who live in an area that is
15 under a waiver of the ABAWD time limit (waived areas) are also not subject to the time limit.

16 12. ABAWDs subject to the time limit are required to work or participate in a
17 qualifying work activity for an average of twenty hours per week within a calendar month. If an
18 ABAWD is not living in a waived area, does not meet the criteria for an exemption, and does not
19 satisfy the work requirement in a given month, then that month will be deemed a “countable
20 month” for the purposes of determining whether the ABAWD received SNAP benefits for three
21 months within the thirty-six-month period. ABAWDs who exhaust their three countable months
22 are ineligible for SNAP for the remainder of the thirty-six-month period unless they regain
23 eligibility by meeting the work requirement, becoming exempt, or moving to a waived area.

24 13. In 2016, California established a fixed statewide “clock” to track the thirty-six-
25 month period in which an ABAWD receives SNAP benefits. In California, all ABAWDs are
26 tracked within the same fixed thirty-six-month period. The first statewide clock was put in place
27 between January 1, 2017, and December 31, 2019. A new thirty-six-month period began January
28

1 1, 2020, and will end December 31, 2022. The statewide clock will reset each thirty-six-month
2 period thereafter.

3 14. For FFY 2019, California had approximately 505,300 non-exempt ABAWDs
4 statewide. Around 90% of these non-exempt ABAWDs lived in waived areas.

5 15. Because the purpose of the ABAWD time limit is to engage ABAWDs in the work
6 force, it was not intended to apply to individuals who are unable to obtain employment. The
7 governing statute allows states to seek a waiver to suspend the time limit “to any group of
8 individuals in the State” if the area where those individuals live “has an unemployment rate of
9 over 10 percent” or “does not have a sufficient number of jobs to provide employment for the
10 individuals.” 7 U.S.C. § 2015(o)(4)(A). From 2008 to 2018, California was under a statewide
11 waiver of the time limit, approved by the USDA based on high statewide unemployment rates
12 resulting from the Great Recession.

13 16. Beginning September 1, 2018, due to improvements in the State’s overall and
14 regional economies, USDA approved a partial waiver of the time limit in California. As a result,
15 the time limit was implemented between September 1, 2018, and August 31, 2019 in three
16 California counties: San Francisco, San Mateo, and Santa Clara. Beginning September 1, 2019,
17 USDA approved another partial waiver of the time limit that required implementation of the time
18 limit between September 1, 2019, and August 31, 2020 in three additional counties: Marin,
19 Alameda, and Contra Costa. As a result, six counties currently implement the time limit in
20 California: Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, and Marin.

21 17. In September 2019, California submitted to USDA a new request for a partial
22 waiver of the time limit to begin September 1, 2020, based on the federal rules effective at the
23 time. This partial waiver would have required implementation of the time limit in one new
24 county, Napa County, in addition to the six currently implementing counties. Accordingly, fifty-
25 one of California’s fifty-eight counties would have remained under a partial waiver of the time
26 limit from September 1, 2020, through August 31, 2021.

27 18. Under California’s current partial waiver of the time limit, several of California’s
28 most populated counties, with the largest SNAP caseloads, are not implementing the time limit.

1 One example is Los Angeles County, which had 1,176,731 SNAP recipients as of October 2019
2 and is estimated to have provided SNAP benefits to 98,730 non-exempt ABAWDs in FFY 2019.

3 19. In addition to the current partial waiver of the time limit, California has a large
4 number of discretionary exemptions available for use as a result of past carryover. Discretionary
5 exemptions are annually provided to each state based on a percentage of that state's count of
6 ABAWDs subject to the time limit, i.e., non-exempt and not living in an area under a waiver of
7 the time limit. Each discretionary exemption is equal to one month of SNAP benefits for one
8 non-exempt ABAWD. A discretionary exemption can be used to provide one month of SNAP
9 benefits to an otherwise SNAP eligible, non-exempt ABAWD, who has exceeded the time limit
10 and would be denied benefits solely for that reason.

11 20. States have great flexibility in applying discretionary exemptions at the individual
12 level and must track and report their use to USDA each quarter. In California, county eligibility
13 workers have the discretion to apply these exemptions. CDSS works with all counties to submit
14 required reports to USDA each quarter.

15 21. Under prior federal rules, if a state did not use their annual allocation of
16 discretionary exemptions, the unused discretionary exemptions carried over, which allowed the
17 unused discretionary exemptions to be used at any time in the future. Due to California's
18 restrained use of discretionary exemptions prior to being approved for a statewide waiver of the
19 time limit in 2008, as of the date of this declaration, California has a carryover total of over
20 850,000 discretionary exemptions.

21 22. California's reserve of carryover discretionary exemptions allows county
22 eligibility workers to apply discretionary exemptions in order to continue providing necessary
23 food benefits to non-exempt ABAWDs. Such application of these discretionary exemptions has
24 been instrumental in providing food benefits in the six counties currently implementing the time
25 limit, as many food insecure residents of these counties have been unable to secure the requisite
26 number of hours of work per week, despite an economy that is improving overall. For example,
27 in the metropolitan areas that fall largely within the counties currently under waiver, the U.S.
28 Bureau of Labor Statistics reports that there are approximately 60,000 people completely

1 unemployed and searching for employment in San Francisco, Oakland, and Hayward, and
2 approximately 25,000 in San Jose, Sunnyvale, and Santa Clara.

3 **III. U.S. DEPARTMENT OF AGRICULTURE'S ABAWD TIME LIMIT RULE**

4 23. I have reviewed and am familiar with the rule, "Supplemental Nutrition Assistance
5 Program: Requirements for Able-Bodied Adults Without Dependents," 84 Fed. Reg. 66782
6 (hereinafter "Final Rule") issued on December 5, 2019, by the U.S. Department of Agriculture
7 (USDA).

8 24. The Final Rule voids all currently approved waivers of the time limit as of April 1,
9 2020, and establishes two core waiver standards that limit waiver eligibility to (1) areas
10 experiencing a recent twelve-month average unemployment rate above 10%; or (2) areas
11 experiencing a recent twenty-four-month average unemployment rate no lower than 6% and at
12 least 20% above the national average. In addition, the Final Rule restricts the definition of an
13 "area" to a Department of Labor "Labor Market Area" (LMA) when requesting a waiver of the
14 time limit. Together, the new waiver criteria increase the number of ABAWDs subject to the
15 time limit across California and ultimately reduce California's ability to respond to economic
16 downturns that impact access to employment opportunities.

17 25. Previously, states had the flexibility to define an "area" when seeking a waiver of
18 the time limit. Restricting an "area" to an LMA dramatically limits California's ability to waive
19 the time limit in zip codes, counties, and regional groupings of counties. These flexibilities are
20 essential to California's ability to submit waivers that reflect local economic conditions and the
21 county administration of CalFresh. In past requests to USDA, California could combine adjacent
22 counties as a single area. Under the Final Rule, California may ask for a waiver of the time limit
23 based on unemployment data only for LMAs—the smallest geographic area for which the U.S.
24 Bureau of Labor Statistics provides unemployment data. These LMAs do not always reflect
25 regional economic trends, such as those in multi-county areas. As a result, larger geographic
26 areas where the twenty-four-month average unemployment rate is higher than 6% will not qualify
27 for a waiver.

1 26. For the last two decades, states could show that there were insufficient jobs for
2 ABAWDs by establishing that areas had a twenty-four-month average unemployment rate that
3 was 20% higher than the national rate. The Final Rule alters that by requiring that LMAs also
4 have a twenty-four-month average unemployment rate at or above 6% to qualify for a waiver.
5 USDA fails to adequately explain or justify why, absent this floor, LMAs that meet the 20%
6 standard actually have sufficient jobs for the ABAWDs residing there. The six percent floor
7 relies on general unemployment conditions that do not capture the realities faced by ABAWDs.
8 Even where the area's unemployment rate is below six percent, there may nonetheless be
9 insufficient jobs for ABAWDs because ABAWDs face barriers to employment that the general
10 population does not.

11 27. The Final Rule eliminates current carryover of accrued discretionary exemptions
12 beginning October 1, 2020, disallowing their future use, and drastically limits future carryover of
13 any new discretionary exemptions accrued. Under the Final Rule, states will only be allowed to
14 apply newly accrued discretionary exemptions to ABAWDs for two years. Any discretionary
15 exemptions not used within two years of their original allocation will be eliminated.

16 **IV. IMPACT TO ABAWDs**

17 28. CDSS estimates that in the first full State Fiscal Year following implementation
18 (July 2020 – June 2021), the Final Rule will impact approximately 402,800 ABAWDs who are
19 currently tracked as non-exempt and are residing in the forty counties, thirty-four newly impacted
20 and six currently implementing, that will be ineligible for a waiver under the Final Rule. As
21 California's economy continues to improve, the new core waiver standards will increase the
22 number of implementing counties and therefore, the number of impacted ABAWDs will also
23 increase over time.

24 29. Based on the experience of three of the currently implementing counties between
25 September 1, 2018, and August 31, 2019, CDSS anticipates that up to 85% of ABAWDs
26 currently tracked as non-exempt will either satisfy the work requirement or could be determined
27 exempt after a methodical and time intensive screening process for exemptions, such as a physical
28 or mental unfitness for work, or pregnancy, that may not have previously been known to the

1 county. That said, educating ABAWDs about the time limit rules, engaging ABAWDs in
2 qualifying work activities, and completion of a robust screening process, requires significant
3 advance planning, staff training and development, and months of time to complete, especially
4 given California's significant SNAP caseload. Effective client education, improved access to
5 local employment and training programs, and a methodical screening process at a scale that will
6 reach all SNAP recipients currently tracked as non-exempt ABAWDs, will not be possible given
7 the limited timeline for implementation of the Final Rule.

8 30. California approximates that a minimum of 60,400 non-exempt ABAWDs
9 currently receiving SNAP benefits in the forty impacted counties will lose eligibility during
10 California's State Fiscal Year 2020-21 as a result of the Final Rule. At the maximum benefit
11 allotment for an individual, this could mean an aggregate loss of approximately \$105 million in
12 SNAP benefits during this time period.

13 31. In my current and previous roles, I have worked directly with county welfare
14 departments, food banks, client advocates, and state lawmakers. Based on information these
15 stakeholders have provided to me over the years, I am aware that confusion regarding SNAP
16 eligibility rules among eligible individuals contributes to eligible households not applying for the
17 public benefits to which they are entitled. For example, food bank staff report that many of their
18 immigrant clients do not understand the recently enjoined change to the Public Charge Rule and
19 are afraid to apply for SNAP.

20 32. I anticipate that the number of impacted individuals and lost benefits described in
21 Paragraph 30 will grow over time. Not only will California be required to implement the time
22 limit in more counties over the coming years, but also, because of the scale of the rule change and
23 the abbreviated implementation timeline, many ABAWDs who are willing to engage in
24 qualifying work activities may not know whether and/or when they are eligible for SNAP due to
25 confusion about how the rule works.

26 33. Similarly, based on the experiences of other states, it is anticipated that many non-
27 exempt ABAWDs who become ineligible for SNAP because of the time limit are unlikely to
28 return to the program even when they regain eligibility. Many ABAWDs who lose eligibility will

1 be confused about how they could have remained eligible and may be unaware when they become
2 eligible again in the future. For example, many ABAWDs no longer receiving SNAP will be
3 unaware that a new thirty-six-month period has begun when the statewide clock resets or that, if
4 their circumstances change (for example they become disabled), they may meet the criteria for an
5 exemption from the time limit. Therefore, the harm to ABAWDs who lose eligibility as a result
6 of the time limit will likely extend well beyond their period of ineligibility.

7 34. Hunger is a barrier to employment. Although the USDA states in its Final Rule
8 that the time limit is intended to encourage SNAP recipients to work and become self-sufficient,
9 in fact, losing access to food will make it more difficult for ABAWDs to obtain and maintain
10 gainful employment and achieve personal stability. Most of these individuals are ineligible for
11 any other form of public assistance because they are not elderly, severely disabled; or raising
12 minor children. For many of them, SNAP is the only public assistance they can receive to help
13 make ends meet and achieve the stability required to obtain and maintain employment. Research
14 into the time limit, and similar work rules, shows that cutting off basic public assistance does not
15 help individuals get jobs.

16 35. Significantly, CalFresh E&T does not have the capacity to provide services to all
17 of the ABAWDs who will need to engage in qualifying work activities as a result of the Final
18 Rule, much less within the timeline required by the Final Rule. As an example, in preparation for
19 implementation of the time limit in 2018, Santa Clara County launched a significant effort to add
20 six new CalFresh E&T providers to serve non-exempt ABAWDs. This effort, supported by
21 CDSS, took over a year and required the commitment of significant county and community
22 resources, and resulted in the availability of E&T services for only 2,638 more people. In this
23 best-case scenario, Santa Clara County had the benefit of an existing CalFresh E&T program
24 infrastructure. Only thirty-seven counties in California currently offer CalFresh E&T due to
25 limited county and community resources, financial and otherwise, and because there may be
26 limited employment and training service providers available. The Final Rule neither offers nor
27 contemplates supplementing employment and training resources. Based on my many experiences
28 overseeing implementation of SNAP rules by the counties, the implementation timeline of the

1 Final Rule gives counties nowhere near sufficient time to issue guidance and train county staff,
2 update client materials, provide official notice to ABAWDs, and expand employment and training
3 services.

4 36. Without adequate access to CalFresh E&T, many ABAWDs will lose eligibility
5 for SNAP due to an inability to become employed or participate in a qualifying work activity for
6 the requisite twenty hours per week. Once an ABAWD is no longer receiving SNAP, they will
7 also lose their eligibility for CalFresh E&T services. Therefore, even if more CalFresh E&T
8 services become available over time, ABAWDs may not be eligible for them, having already lost
9 SNAP eligibility, and will, as a result, not gain enough qualifying work hours to regain SNAP
10 eligibility.

11 37. Although ABAWDs, by definition, do not have dependent children living with
12 them, many are non-custodial parents. A lack of food causes people to trade off between food
13 and other basic needs. Therefore, for example, a loss of food benefits can make it more difficult
14 for non-custodial parents to provide safe visitations and/or financial support to their children, two
15 responsibilities that are already challenging for unemployed or underemployed parents.

16 38. The ABAWD time limit will also increase the occurrence of homelessness in
17 California. ABAWDs who lose food benefits as a result of the time limit will be forced to spend
18 what little money they have on food instead of other basic needs, such as rent.

19 39. The experience of homelessness will in turn make it much more difficult for an
20 ABAWD to regain SNAP eligibility. Based on information stakeholders have provided to me
21 over the years while I have served in my present and previous roles overseeing the CalFresh
22 Program, and based on my previous work in client advocacy, I am aware that the experience of
23 homelessness can create significant barriers to employment. The Final Rule does nothing to cure
24 these barriers to employment for individuals experiencing homelessness. Currently, in the six
25 counties implementing the time limit, county eligibility workers apply discretionary exemptions
26 from California's carryover bank to these individuals so that they may continue to receive SNAP
27 benefits. The Final Rule will eliminate California's carryover of discretionary exemptions in
28 October 2020, resulting in a loss of benefits for this population.

1 40. The ABAWD time limit will present an additional barrier for foster youth aging
2 out of care and former foster youth who already experience higher rates of homelessness and
3 unemployment. A loss of food benefits will only make it more difficult for young adults to
4 achieve personal stability, engage in education or work, and set themselves on a pathway for
5 success. Additional barriers early in life, particularly for current and former foster youth, could
6 lead to years of struggle and increase dependency on other public assistance benefits.

7 41. Implementation of the time limit as a result of the updated waiver criteria in the
8 Final Rule will also disparately impact women, people of color, and individuals with disabilities.
9 The Final Rule will hit hardest those individuals who have the greatest difficulties in the labor
10 market. The unemployment rates relied on for waiver approvals are an average of the entire
11 population in a given region. Those rates do not accurately reflect the much higher rates of
12 women and minorities who are unemployed and searching for employment, as reported by the
13 U.S. Bureau of Labor and Statistics. They also do not take into account the additional barriers to
14 employment, and institutional prejudice experienced by women, people of color, and people with
15 disabilities during the hiring process and in the workplace.

16 42. The severe reduction in the carryover of discretionary exemptions will limit
17 California's ability to mitigate the harm of the Final Rule among non-custodial parents,
18 individuals experiencing homelessness, current and former foster youth, women, people of color,
19 individuals with disabilities, and others. While county eligibility workers have the flexibility to
20 provide a discretionary exemption to an individual struggling to find work or engage in a
21 qualifying work activity, this flexibility will be severely limited by the elimination of the State's
22 current carryover of more than 850,000 discretionary exemptions, each equivalent to one month
23 of benefits for one ABAWD.

24 **V. IMPLEMENTATION OF THE ABAWD TIME LIMIT RULE IN PREVIOUSLY WAIVED**
25 **COUNTIES**

26 43. In my current and former roles, I have reviewed and am familiar with the SNAP
27 rules, codified in Title 7 of the Code of Federal Regulations. From my experience, the ABAWD
28 time limit is immensely complicated and difficult to grasp for CalFresh beneficiaries. As a result,

1 it will take significant planning, training and staff development, outreach, and operational process
2 development to accurately implement the time limit.

3 44. Under the Final Rule, California's current partial waiver of the time limit will
4 expire on March 31, 2020. USDA has requested that states submit new waiver requests under the
5 Final Rule by February 1, 2020.

6 45. The Center for Budget and Policy Priorities (CBPP) analyzed the impact of the
7 Final Rule's new core standards for obtaining a waiver of the time limit on California counties.
8 The CBPP estimates that beginning April 1, 2020, only eighteen of California's fifty-eight
9 counties will be eligible for a waiver of the time limit. Thirty-four counties that were expected to
10 provide SNAP benefits to an estimated 352,077 non-exempt ABAWDs in FFY 2019, will be
11 required to implement the time limit. These counties, which do not include the six currently
12 implementing counties, will be required to implement this highly complex rule for the first time
13 since 2008, with less than four months' notice.

14 46. By providing states with fewer than four months to prepare for this complex
15 eligibility policy to take effect at a massive scale, USDA has created a considerable obstacle to
16 compliant and accurate implementation as well as prudent fiscal planning by the State, where all
17 additional costs will be shared by the federal government. The expedited implementation timeline
18 will inhibit and limit the effectiveness of county planning activities, training for county eligibility
19 workers, CDSS technical assistance, and client communications. The shortened timeline also will
20 require CDSS and the counties to re-direct staff and financial resources and deprioritize other key
21 projects and initiatives. This abbreviated timeline is untenable and will require a large-scale
22 redirection and increase in fiscal and program expenditures.

23 47. Pursuant to the Final Rule, California must submit a new waiver request for the
24 eighteen eligible counties as soon as possible so that it can be approved before the April 1, 2020
25 effective date. USDA has asked that these waiver requests be submitted by February 1, 2020.
26 This task—significant in and of itself—will require minimal staff time and resources when
27 compared to the massive demands of implementing the ABAWD time limit in the majority of
28 California counties.

1 48. Compliant and accurate implementation of the ABAWD time limit requires that
2 CDSS provide policy guidance and trainings for county staff. The Final Rule will require CDSS
3 to revise previously issued policy guidance.

4 49. As the majority of the forty impacted counties have been under a waiver of the
5 time limit for over a decade, there is limited institutional knowledge of the ABAWD time limit
6 rules at the county level. This means that the majority of eligibility staff must be trained on how
7 to: (1) properly explain the rule to recipients; (2) determine exemptions; (3) engage ABAWDs in
8 qualifying work activities; (4) apply the rule; and (5) track recipients' countable months, work
9 and other qualifying activities, and use of discretionary exemptions. The Final Rule will require
10 CDSS to provide extensive training to our forty counties on a very tight timeline. This is not
11 tenable.

12 50. For the six counties currently implementing the time limit, county staff received
13 policy guidance and participated in CDSS trainings over the course of more than a year leading
14 up to implementation. CDSS staff, made up of a team of three individuals, visited each county on
15 several occasions and held a series of ongoing monthly meetings with counties to provide
16 technical assistance and ensure accurate implementation. In an attempt to comply with these
17 staggering changes and implement the Final Rule in the thirty-four newly impacted counties,
18 CDSS intends to host webinar-style trainings on a minimum of four related policy topics, provide
19 updated talking points and client materials for county staff to use when speaking to recipients,
20 and update all written policy guidance on the ABAWD time limit and necessary tracking. In-
21 person training opportunities and technical assistance visits will require substantial staff time at
22 both the state and county level, which will likely require significant diversion of staff from other
23 important projects and program areas.

24 51. In order to implement at the scale and on the timeline required by the Final Rule,
25 elements of ABAWD time limit automation in the State's three eligibility Information
26 Technology (IT) systems, particularly noticing and client reporting mechanisms, will have to be
27 newly implemented or updated and prioritized over existing high priority projects. This change in
28 automation priorities will lead to previously unanticipated costs and delays in other priority

1 projects for SNAP and other CDSS programs, including the federally required consolidation of
2 our Statewide Automated Welfare systems (SAWS) from three to one.

3 52. Prior to implementation, ABAWDs must be provided with written notice of the
4 ABAWD time limit. The notice must explain how the ABAWD time limit works, what the
5 requirements are, and what exemptions exist. While notices of this kind have been used in the six
6 currently implementing counties, significant amendments will be required to address issues
7 specific to the expedited timeframe for implementation and the anticipated elimination of the
8 State's carryover of discretionary exemptions. These notices should be sent at least thirty days
9 prior to the April 1, 2020, effective date of the Final Rule, though ideally, they would be sent
10 earlier.

11 53. Along with the informational notice of the ABAWD time limit rule, CDSS must
12 include a screening tool that will assist in screening ABAWDs for an exemption from the time
13 limit outside of normal touchpoints such as periodic reporting or recertification, as had been done
14 in the past. Certain ABAWDs are exempt from the time limit due to factors such as mental or
15 physical unfitness to work or pregnancy, and this information may not be readily known to the
16 county. The criteria for exemptions are incredibly detailed, but it is beneficial to identify the
17 individual ABAWDs exempt on these grounds prior to implementation, if possible, in order to
18 reduce how many ABAWDs the counties will have to apply the time limit to and to limit the
19 number of discretionary exemptions used unnecessarily. By including a screening tool with the
20 notice, ABAWDs will have the opportunity to provide information to the county either by mail,
21 phone, or electronically and, if eligible, establish an exemption from the time limit prior to
22 implementation. Processing the results of the screening outside of normal touchpoints will create
23 an unanticipated workload for counties.

24 54. CDSS will actively encourage counties and CalFresh Outreach contractors
25 statewide to assist as many ABAWDs as possible with completion of exemption screening prior
26 to April 1, 2020. The six currently implementing counties began this process approximately six to
27 nine months in advance of their implementation, and the abbreviated timeline for implementation
28 in the new counties under the Final Rule will limit the effectiveness of exemption screening.

1 55. The notice and screening tool, once finalized, must be translated into SNAP's
2 seventeen threshold languages to ensure compliance with SNAP language access requirements.
3 These translations take time and will lead to additional previously unanticipated costs.

4 56. A mass issuance of notices on this scale normally requires significant advance
5 planning. I do not believe that the State's eligibility IT systems will be able to program a mailing
6 of this nature in this timeframe. If the State and counties are unable to complete this mailing via
7 the eligibility IT systems, there will be significant costs that were not previously accounted for in
8 budgeting.

9 57. For example, if the eligibility IT systems cannot complete the mailing, then CDSS
10 may have to pay for the California Office of State Publishing (OSP) to print and mail the notices.
11 Contracting with OSP often takes time and is expensive. If OSP cannot complete a statewide
12 mailing on time, individual counties may have to print and mail notices to certain ABAWDs
13 outside of the mass noticing process. This will likely lead to further delays and will heighten the
14 risk of benefit payment errors.

15 58. Ahead of implementation, each county is required to develop an ABAWD
16 Time Limit County Readiness Plan and submit it to CDSS for review. These plans include
17 detailed proposals on a variety of relevant topics including: staff training, ABAWD engagement,
18 use of discretionary exemptions, and internal processes for applying the time limit rule. Normally
19 counties are aware of their implementation date at least a year in advance and CDSS receives
20 these plans six months before implementation. This timeframe provides CDSS time to review the
21 plans and provide any necessary technical assistance. Unfortunately, the thirty-four newly
22 implementing counties will need to develop their plans and CDSS will need to conduct its review
23 on an unreasonably expedited four-month timeline for implementation. This expedited timeline
24 and the sheer volume of counties involved will mean that in order to complete these reviews and
25 provide the necessary technical assistance, CDSS will need to divert staff from other priorities
26 such as continued efforts to increase CalFresh access and participation among Supplemental
27 Security Income (SSI) recipients and other target populations, issuance of new policy guidance
28 and corresponding regulation development, development of training curriculum, and technical

1 assistance to improve accuracy and the consistency of operations across counties. Even with
2 additional staff diverted to this task, the timeframe simply does not provide CDSS or the counties
3 with the time needed to develop and consult on effective plans for implementation.

4 59. CDSS has scheduled a two-day, in person, All County Readiness Summit in
5 January 2020. This summit will provide counties with content and trainings meant to assist with
6 the finalization of their ABAWD readiness plans. This summit will also require significant staff
7 time dedicated to planning and content development and lead to travel costs for both the State and
8 counties.

9 60. CDSS regularly hosts a bi-annual operations roundtable with county
10 representatives. The roundtable is an opportunity for CDSS and the counties to discuss a wide
11 range of topics impacting the administration of SNAP throughout the State. The next roundtable
12 is scheduled for March 2020. Given the magnitude of this policy change and nearly impossible
13 deadline for implementation, I anticipate most of the roundtable will focus on implementation of
14 the ABAWD time limit. This means that many other important topics will not be discussed and
15 resolved.

16 61. Currently, the six implementing counties are instructed to use California's
17 carryover of discretionary exemptions as needed. However, the Final Rule's changes in the
18 accrual of discretionary exemptions and required implementation in the thirty-four newly
19 implementing counties will limit the availability of discretionary exemptions to each of the
20 counties. CDSS will need to identify the likely usage rate of each county and formally allocate
21 specific amounts of discretionary exemptions to each of the forty counties, six currently
22 implementing and thirty-four newly implementing, that will be implemented as of April 1, 2020.
23 This analysis and policy guidance will require substantial staff time for both CDSS CalFresh
24 Policy and CDSS fiscal staff.

25 62. An important aspect of compliant and accurate implementation of the ABAWD
26 time limit rule is the work done to educate community stakeholders and CalFresh Outreach
27 contractors statewide. There are numerous non-governmental entities and individuals who
28 provide key assistance to ABAWDs, many of whom are part of the formal CalFresh Outreach

1 network. They help individuals apply for SNAP and they help ABAWDs to understand the time
2 limit, the work requirements, and when they can re-apply to receive benefits. Certain stakeholders
3 also provide opportunities for ABAWDs to engage in qualifying work activities. Community
4 stakeholders include food banks that can provide emergency food for ABAWDs who lose
5 benefits as a result of the time limit rule, or volunteer opportunities so that ABAWDs can fulfill
6 their work requirements. As such, the six counties currently implementing the time limit have
7 found that community stakeholder and outreach contractor trainings are key to effective
8 implementation of the ABAWD time limit rule. CDSS intends to provide written outreach
9 materials and training opportunities to help community stakeholders and outreach contractors
10 understand the ABAWD time limit rule and help ABAWDs directly. These efforts will also
11 require substantial staff time and, as with other components of implementation, the timeframe
12 will simply not allow for comprehensive stakeholder engagement.

13 **VI. QUALITY CONTROL AND FEASIBILITY**

14 63. USDA has made payment accuracy and reducing quality control error rates a key
15 priority for all states this year. The SNAP quality control system measures the accuracy of state
16 eligibility and benefit determinations. While quality control outcomes are used for program
17 improvement, a high rate of quality control errors can lead to financial penalties for both the
18 counties and the State.

19 64. As mentioned, compliant and accurate implementation of the time limit rule at this
20 unanticipated scale is not feasible in the time allowed under the Final Rule. The expedited
21 implementation timeline drastically limits CDSS' ability to train county staff and for county staff
22 to familiarize themselves with the ABAWD time limit. As a result, I anticipate an increase in
23 quality control errors. Although CDSS does plan to provide several training opportunities and
24 detailed written guidance, California's counties have thousands of eligibility workers, and so it is
25 unrealistic to assume that all eligibility workers will be prepared to accurately apply the ABAWD
26 time limit in the time provided by the Final Rule.

27 65. Previously, states have used discretionary exemptions to cure administrative errors
28 related to the application of the ABAWD time limit. Within a few months of implementation in

1 the thirty-four newly implementing counties, this will no longer be feasible in most cases given
2 the restrictions on the carryover of discretionary exemptions under the Final Rule.

3 66. If county eligibility workers make administrative errors that lead to ABAWDs
4 receiving benefits that they were not entitled to, those individuals may be liable for paying back
5 those benefits. This means that individuals who are not gainfully employed and are already living
6 in poverty will lose their food benefits and owe money, even though they did nothing wrong. The
7 Final Rule provides no relief for those individuals, and the timeline of implementation makes it
8 inevitable that significant numbers of people will be adversely affected.

9 **VII. BUDGETARY IMPACTS OF USDA'S ABAWD TIME LIMIT RULE**

10 67. As described above, the implementation of the Final Rule has associated costs that
11 could not have been considered in the development of the current year's administrative budget.

12 68. When overall administrative costs for SNAP go up, the state and county shares go
13 up as well. State and county budgets were nearly universally adopted in July 2019 and did not
14 include funding for the tasks that are required by the recent issuance of the Final Rule. As a result
15 of the Final Rule, the State and counties will need to consider whether they are able to cover their
16 share of increased administrative costs or if other budgetary adjustments need to be made, which
17 will impact the administration of SNAP overall. The reduction in these resources will adversely
18 affect existing recipients of SNAP.

19 **VIII. CALFRESH AND CDSS' IMPACTED INITIATIVES AND DIVISIONS**

20 69. CalFresh E&T anticipates a drastic increase in the demand for E&T services as
21 more ABAWDs are subject to the time limit. However, SNAP E&T annual plans are submitted
22 each August, so CalFresh E&T could not have and did not account for this impact in its annual
23 plan. Similarly, the Final Rule provides no additional funding or support for the states' E&T
24 programs. USDA has informed states that expanding E&T services in response to the increased
25 implementation of the time limit is a priority, but it has not provided the State with resources
26 necessary to meet this increased demand.

27 70. As CFAP abides by SNAP rules, the thirty-four newly implementing counties will
28 also be required to implement the time limit for CFAP cases by April 1, 2020. This will require

1 CDSS to provide the counties with specialized training and guidance on how to track CFAP
2 ABAWDs and apply and track state-funded discretionary exemptions for CFAP cases. The
3 discretionary exemptions for CFAP ABAWDs are allotted and tracked separately from the
4 traditional SNAP-funded CalFresh discretionary exemptions since they are not part of the
5 federally provided bank of discretionary exemptions for SNAP-funded CalFresh ABAWDs.

6 71. CalFresh Outreach and its contractors will need to shift priorities to respond to the
7 mass implementation of the time limit. In FFY 2019, California has prioritized outreach to SSI
8 recipients as they first became eligible for SNAP in California on June 1, 2019. However, the
9 staff and financial resources meant to provide outreach to this community will instead need to be
10 redirected to ABAWD outreach and education. As a result, there will be a large and previously
11 unanticipated adverse impact on this population.

12 72. CDSS' State Hearings Division (SHD) conducts administrative hearings for
13 individuals who believe the county mishandled their case in some way. When recipients lose
14 eligibility or experience a decrease in benefits, they are entitled to an administrative evidentiary
15 hearing. As a result of the implementation of the Final Rule, we anticipate a significant increase
16 in requests for administrative hearings. This will create a substantial burden on SHD and will lead
17 to delays in hearings, which violate the rules of SNAP and the many other programs for which
18 SHD provides administrative review.

19 **IX. BROADER IMPACTS**

20 73. CalFresh provides approximately four million Californians, including two million
21 children, with essential nutrition assistance each month. These benefits are used to purchase food
22 at grocery stores, grocery outlets, and farmers' markets across the State, generating more than \$11
23 billion in economic activity annually. Each year, SNAP benefits lead to tens of thousands of jobs
24 in California alone. From farmers' market vendors to large-scale agricultural producers,
25 businesses in the agricultural industry benefit from the use of SNAP benefits. Based on USDA's
26 own analysis, each dollar "saved" as a result of this Final Rule and the implementation of the
27 ABAWD time limit rule, is \$1.54 kept from our Nation's food and farm industries. The Final
28 Rule will have a massive negative economic impact if implemented.

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74. California's food banks distribute federal Emergency Food Assistance Program commodities to over 1.5 million people each month, in addition to purchased and donated food, via networks of hundreds of community charities and congregations. Individuals who are no longer eligible for SNAP will still need food and will turn to food banks' supply of federal, purchased, and donated food. However, food banks do not have the capacity to address a new significant need of this kind.

I declare under penalty of perjury that the foregoing is true and correct and of my own personal knowledge.

Executed on the 9th day of January 2020, in Sacramento, California.



Alexis Carmen Fernández
Acting Chief, CalFresh & Nutrition Branch
California Department of Social Services