

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*,

Civil Case No. 1:17-cv-01875-RMC

DECLARATION OF
ROBYNN SHRADER, NATIONAL
CO+OP GROCERS, IN SUPPORT
OF PLAINTIFF’S FIRST
AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Pursuant to 28 U.S.C. § 1746 I, Robynn Schrader, declare:

1. I am the Chief Executive Officer of National Co+op Grocers. I previously submitted a declaration in this case and now supplement that statement.
2. National Co+op Grocers (“NCG”) is a business services cooperative and OTA member. We routinely communicate with our representatives of over 200 stores in 37 states with combined annual sales over \$2 billion and over 1.3 million consumer-owners.
3. Since the time of my initial declaration in this case the USDA has failed to allow the *Organic Livestock and Poultry Practices* final rule to become effective.¹
4. The continued delay of the OLPP is causing consumer confusion in NCG co-op stores about the meaning of organic livestock standards and the USDA organic seal.
5. In particular many consumers are hearing that organic chickens, both broilers and egg layers, do not have true outdoor access where the birds may express natural behavior such as ground-pecking and dust bathing and only go out of the chicken house into concrete floored, covered areas. This conflicts with their understanding that “outdoor

¹ 82 Fed. Reg. 7042-92 (published January 19, 2017) (“final rule”).

1 access” is required under the federal organic program, and is contributing to consumer
2 confusion and degrading confidence in the USDA Certified Organic label.

- 3 6. Sales of organic eggs have shown significant decline in 2017 compared with sales
4 growth in years past.
- 5 7. In addition, our members have been harmed by the refusal of the USDA to consult with
6 the National Organic Standards Board (“NOSB”) during any of the rulemakings it has
7 undertaken in regard to the delay of the OLPP, because NCG consumer-facing
8 communications about the USDA Certified Organic program have consistently pointed
9 to the NOSB, as established by the Organic Food Production Act, as a means for
10 consumers and other stakeholders to participate in the transparent, public process that
11 ensures strong and continuously improved organic standards.
- 12 8. The rulemaking USDA released in May 2017 presented only a choice between further
13 delay or making the rule effective as planned.² NCG supported the immediate
14 cessation of delay, and provided public comments to this effect in June 2017 and again
15 in January 2018. However, we could not tell from the published rulemaking what in the
16 OLPP needed revision or how to fashion a meaningful comment because the rulemaking
17 inquiry was simply too vague.
- 18 9. NCG is also concerned about civil liability arising from the confusion the delay of the
19 OLPP has brought about, and how this could impact our members. A recent class action
20 was filed against an organic egg retailer based in large part on a claim of inadequate
21 outdoor access for the poultry. The outdoor access issue would have been resolved by
22 the OLPP. (*Gibson v. Wal-Mart and Cal-Maine Foods*, 3:18-cv-00134, N.D. Ca.)

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27 ² 82 Fed. Reg. 21742 (May 10, 2017).
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1 10. The delay is now nearly a year long. The harm to the organic seal, consumer confidence
2 and the risk of civil liability is not speculative.

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5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed this 14th day of February 2018.

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12 Robynn Shrader, National Co+op Grocers
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