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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ROBIN HALL and **STEVEN SUMMERS**,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE** and **GEORGE ERVIN
“SONNY” PERDUE III**, in his official
capacity as United States Secretary of
Agriculture,

Defendants.

Case No. 3:20-cv-03454

**NOTICE OF MOTION
AND MOTION FOR CLASS
CERTIFICATION AND
APPOINTMENT OF CLASS
COUNSEL; MEMORANDUM OF
POINTS AND AUTHORITIES**

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27 Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84
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1 **NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION AND**
2 **APPOINTMENT OF CLASS COUNSEL**

3 PLEASE TAKE NOTICE that, upon assignment of the case to a district or magistrate
4 judge and as soon thereafter as counsel may be heard by the assigned judge, Plaintiffs Robin
5 Hall and Steven Summers will move the Court, under Rule 23(a), Rule 23(b)(2), and Rule
6 23(g) of the Federal Rules of Civil Procedure and Rule 7-2 of the Civil Local Rules of the
7 Court, for certification of the proposed class challenging Defendants’ interpretation of
8 section 2302(a)(1) of the Families First Coronavirus Response Act and for appointment of
9 class counsel.

10 In their Motion for Class Certification, Plaintiffs will seek an order certifying the
11 proposed class defined as:

12 SNAP recipients in California who have been deemed eligible to receive, are
13 receiving, or will receive the regular maximum monthly SNAP allotment for their
14 household size from March 2020 until the Secretary for Health and Human Services
 rescinds the COVID-19 public health emergency declaration or the State-issued
 emergency or disaster declaration expires.

15 The motion will seek certification of the class under Federal Rule of Civil Procedure 23(a)
16 and 23(b)(2) because the misinterpretation of section 2303(a)(1) by Defendant U.S.
17 Department of Agriculture (USDA) applies uniformly to the class and—as briefed in the
18 concurrently filed motion for preliminary injunction—injunctive relief is appropriate for the
19 class as a whole. The motion will also request appointment of attorneys from the Western
20 Center on Law and Poverty and the Impact Fund as class counsel under Federal Rule of Civil
21 Procedure 23(g).

22 This Motion for Class Certification and Appointment of Counsel is based on this
23 Notice of Motion and Motion; the supporting Memorandum of Points and Authorities; the
24 declarations of counsel Jocelyn D. Larkin and Richard A. Rothschild in support of Class
25 Certification; Plaintiffs’ Notice of Motion and Motion for Preliminary Injunction, the
26 declarations of Robin Hall, Steven Summers, Lindsay Nako, Alexander Prieto, Lauren Bauer,
27 Meg Davidson, Andrew Cheyne, Brittany Hodge, and Sarah Palmer DeFrank offered in
28 support of Plaintiffs’ Motion for Preliminary Injunction; and all of the records in the action.

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**
2 **FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL**

3 **I. INTRODUCTION**

4 Congress passed the Families First Coronavirus Response Act in March 2020 in
5 response to the public health emergency created by the global pandemic. Section 2302(a)(1)
6 of the Act directs the U.S. Department of Agriculture to permit states to provide “emergency
7 allotments” to households participating in the Supplemental Nutrition Assistance Program
8 (SNAP, previously known as the Food Stamp program). The statute requires that these
9 allotments “address temporary food needs” and be “not greater than the applicable maximum
10 monthly allotments for the household size.” This case challenges USDA’s misinterpretation
11 of section 2302(a)(1), which it has used to prevent California’s most vulnerable recipients—
12 those currently receiving the maximum *regular* monthly benefit—from getting supplemental
13 *emergency* benefits.

14 Plaintiffs Robin Hall and Steven Summers seek to represent a class of these families
15 and individuals in California to whom USDA is denying emergency benefits. These class
16 members do not have the capacity to dispute USDA’s misinterpretation of section 2302(a)(1)
17 on their own. Faced with the cataclysmic changes wrought by the pandemic, their focus is on
18 daily survival: feeding themselves and their families, protecting their health and safety, and
19 observing shelter-in-place mandates. A class action is ideally suited for these circumstances;
20 it will allow one lawsuit to correct USDA’s error and bring immediate and urgently needed
21 relief to over one million California households.

22 Plaintiffs request that the Court certify a class of SNAP recipients in California who
23 are receiving or will receive the maximum regular monthly benefit for their household size;
24 all have been denied an emergency allotment as a result of USDA’s interpretation of
25 section 2302(a)(1). Certification under Fed. R. Civ. P. 23(b)(2) is appropriate because the
26 challenged policy applies uniformly to the class and the relief sought against USDA and
27 Secretary Perdue is declaratory and injunctive relief. Class certification will ensure full relief
28 for the individuals and families in California affected by Defendants’ conduct.

//

1 **II. FACTS SUPPORTING CLASS CERTIFICATION¹**

2 **A. USDA Provides SNAP Benefits to Low-Income Californians Through
the State’s CalFresh Program.**

3 SNAP is the country’s largest anti-hunger program. It provides food to over forty
4 million low-income individuals and families and is often the last resource to stave off hunger
5 for children and adults across the country. Recognizing that “the limited food purchasing
6 power of low-income households contributes to hunger and malnutrition among members of
7 such households,” Congress enacted SNAP to “safeguard the health and well-being of the
8 Nation’s population” and “alleviate . . . hunger and malnutrition” by “permit[ing] low-
9 income households to obtain a more nutritious diet through normal channels of trade.”

10 7 U.S.C. § 2011. SNAP provides monthly allotments that eligible low-income individuals
11 use to purchase food at authorized retailers. *Id.* § 2013.

12 SNAP is a federal-state partnership; USDA pays the full cost of SNAP benefits, but
13 they are administered by the states. *See id.* §§ 2013(a), 2020. Each state designates a state
14 agency to administer SNAP benefits for its residents. *Id.* § 2020; 7 C.F.R. § 271.4. In
15 California, the SNAP program, known as “CalFresh,” is administered by the California
16 Department of Social Services and the state’s 58 county human services agencies. Cal. Welf.
17 & Inst. Code § 18902. As of March 2020, CalFresh provided benefits to over 4 million
18 individuals and nearly 2.19 million households in California.²

19 The maximum SNAP allotment is uniform by household across all states in the
20 contiguous United States and the District of Columbia. 7 U.S.C. § 2014(b); 7 C.F.R.
21 § 273.10(e)(4)(i). Currently the maximum monthly allotment for an individual is \$194 per
22 month. This equals \$6.38 per day or about \$2 per meal. Maximum SNAP allotments
23 increase as household size increases, as shown in the table below:

24
25
26 ¹ Plaintiffs’ Motion for Preliminary Injunction and supporting memorandum, concurrently
filed, explain in greater detail the factual record and legal violations. (ECF No. 4).

27 ² Cal. Dep’t of Soc. Servs., *CalFresh Data Dashboard* (last updated May 1, 2020)
28 <https://www.cdss.ca.gov/inforesources/data-portal/research-and-data/calfresh-data-dashboard>
(last visited May 18, 2020).

Federal Fiscal Year 2020 Maximum Allotment by Household Size³

1	2	3	4	5	6	7	8	Each Add'l Person
\$194	\$355	\$509	\$646	\$768	\$921	\$1,018	\$1,164	+\$146

The Food and Nutrition Act and USDA regulations determine SNAP eligibility as well as the amount of the allotment. 7 U.S.C. § 2014; 7 C.F.R. § 273.10. Families who receive the non-emergency maximum as their regular SNAP allotment are extremely poor—their net income after deductions for basic needs other than food is zero. This means that, without SNAP, they cannot buy food unless they sacrifice other essentials. Over one million households in California receive the maximum SNAP benefit. See Decl. of Lindsay Nako in Supp. of Pls.’ Mot. for Prelim. Inj. (“Nako Decl.”) (ECF No. 4-9) ¶ 3, Exs. 5, 8.

B. The COVID-19 Health Crisis Has Dramatically Increased Food Insecurity Among Vulnerable Californians.

Since January 2020, COVID-19 has swept across the country, radically altering daily life and causing devastating economic and public health consequences. As of May 20, 2020, there are over 1.5 million known cases of COVID-19 in the U.S., and over 90 thousand Americans have died from the virus.⁴ There are over 84 thousand known cases of COVID-19 in California.⁵ Over three thousand Californians have died from the virus, and an additional three thousand Californians have been hospitalized with positive COVID-19 tests.⁶

The pandemic has greatly increased the need for food assistance among low-income California families, especially the households receiving the maximum regular SNAP

³ Cal. Dep’t of Soc. Servs., All County Info. Notice I-54-19, *CalFresh Cost-of-Living Adjustments Effective October 1, 2019* at 2 (Aug. 21, 2019), https://www.cdss.ca.gov/Portals/9/ACIN/2019/I_54_19_ES.pdf?ver=2019-09-24-104141-480.

⁴ Ctrs. For Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19): Cases in the U.S.* (last updated May 20, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

⁵ *California Coronavirus COVID-19 Statewide Update* (last updated May 20, 2020), <https://update.covid19.ca.gov>.

⁶ *Id.*

1 allotment. COVID-19 and the state’s shelter-in-place order increase these families’ need for
2 food assistance in several key ways.

3 **Food Costs:** The pandemic has increased the price of food. Decl. of Lauren Bauer in
4 Supp. of Pls.’ Mot. for Prelim. Inj. (“Bauer Decl.”) (ECF No. 4-7) ¶¶ 30–32. The cost of
5 purchasing food to eat at home has increased 3.6% nationally over the past three months.
6 *See id.* ¶ 30. The April 2020 increase (2.6%) was the largest one month increase since 1974.
7 *Id.* As a result, the maximum SNAP allotment cannot purchase as much food as it could
8 before COVID-19, and especially not in California. Bauer Decl. ¶¶ 26-27, 31-32.

9 **Food Availability and Accessibility:** Changes in the availability of groceries caused
10 by COVID-19 and the need to shelter in place make it harder to stretch the maximum
11 allotment to meet nutritional needs. Bauer Decl. ¶¶ 33-34. Plaintiff Summers, for example,
12 usually buys tuna at \$1 per can and, when on sale, ground beef. On an April shopping trip,
13 he could buy neither because the only available brand of tuna was twice the price and there
14 was no ground beef on sale. Decl. of Steven Summers in Supp. of Pls.’ Mot. for Prelim. Inj.
15 (“Summers Decl.”) (ECF No. 4-2) ¶ 14. Making multiple trips to the grocery store in search
16 of affordable or available items has to be balanced against the health risks particularly for
17 older individuals like Mr. Summers. *Id.* ¶ 16. SNAP recipients who are symptomatic or at
18 greater risk of complications from exposure to the virus must avoid grocery stores altogether.
19 While grocery delivery is an option for those who can afford it, SNAP benefits cannot be
20 used for delivery fees or transportation costs. Bauer Decl. ¶ 33.

21 **Supplemental Food Sources:** The pandemic has made it more difficult for SNAP
22 recipients to obtain food from food pantries, soup kitchens, and other community
23 organizations. COVID-19 has placed tremendous strain on these organizations and the food
24 banks that supply them. Across California, demand for their services has skyrocketed, as
25 many of them close down in the wake of the pandemic. Decl. of Andrew Cheyne in Supp. of
26 Pls.’ Mot. for Prelim. Inj. (ECF No. 4-3) ¶ 6; Decl. of Meg Davidson in Supp. of Pls.’ Mot.
27 for Prelim. Inj. (ECF No. 4-4) ¶¶ 5-7; Decl. of Brittany Hodge in Supp. of Pls.’ Mot. for
28 Prelim. Inj. (ECF No. 4-5) ¶¶ 5-6; Decl. of Sarah Palmer DeFrank in Supp. of Pls.’ Mot. for

1 Prelim. Inj. (ECF No. 4-6) ¶ 6. When SNAP recipients manage to access an open food
 2 distribution point, the groceries may run out before they reach the head of the line or they
 3 may receive smaller amounts of food and less nutritious items. *See* DeFrank Decl. ¶ 7;
 4 Davidson Decl. ¶ 9; Summers Decl. ¶ 18.

5 A recent study of the impact of the COVID pandemic found that 26 percent of
 6 households in California were “food insecure,” meaning that respondents said that “the food
 7 that we bought just didn’t last, and we didn’t have enough money to get more.” Bauer Decl.
 8 ¶ 20. A full third of California households in the study were “worried our food would run
 9 out before we got money to buy more.” *Id.*

10 **C. Congress Authorized Emergency SNAP Allotments in the Families First** 11 **Coronavirus Response Act of 2020.**

12 In response to the unprecedented national crisis created by the COVID-19 pandemic,
 13 Congress passed the Families First Coronavirus Response Act on March 18, 2020. Pub. L.
 14 No. 116-127, 134 Stat. 178 (Families First Act). In section 2302(a)(1) of the Act, Congress
 15 addressed the additional food needs resulting from the pandemic by authorizing extra
 16 “emergency allotments” to increase SNAP recipients’ food purchasing power.

17 Section 2302(a)(1) makes this emergency assistance available when two conditions
 18 are met: there must be (1) “a public health emergency declaration by the Secretary of Health
 19 and Human Services under section 319 of the Public Health Service Act based on an
 20 outbreak of coronavirus disease 2019 (COVID–19)”⁷ and (2) “an emergency or disaster
 21 declaration by a State based on an outbreak of COVID–19.”⁸ Families First Act § 2302(a).
 22 If both are satisfied, USDA “shall provide ... for emergency allotments” upon a request from
 23 a state agency “that provides sufficient data ... supporting such request.” *Id.* § 2302(a)(1).

24 ⁷ The federal emergency declaration occurred on January 31, 2020. Press Release, Dep’t of
 25 Health & Hum. Servs., Secretary Azar Declares Public Health Emergency for United States
 26 for 2019 Novel Coronavirus (Jan. 31, 2020),
<https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

27 ⁸ California declared a COVID-19 related emergency on March 4, 2020. Governor Gavin
 28 Newsom, Proclamation of a State of Emergency (Mar. 4, 2020),
<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

1 The statute directs USDA to issue guidance regarding the information necessary to support a
2 state's request. *Id.*

3 Section 2302(a)(1) does not set specific amounts for emergency allotments, but sets
4 two parameters for those amounts. Emergency allotments (1) must be targeted "to address
5 temporary food needs," and (2) cannot be "greater than the applicable maximum monthly
6 allotment for the household size." *Id.*

7
8 **D. USDA Wrongly Denied the California Department of Social Services's**
9 **March 25, 2020 Request to Provide Emergency Allotments to the**
10 **Poorest SNAP Households in California.**

11 Despite the Act's clear language and intent, USDA issued guidance to states on
12 March 20, 2020 and April 21, 2020, in which it interpreted section 2302(a)(1) as limiting
13 emergency allotments to the difference between a household's regular allotment and the non-
14 emergency maximum allotment for that household's size. In other words, individuals and
15 families receiving less than the maximum regular allotment could be "topped off," but those
16 who already receive the maximum due to their extreme poverty are completely denied
17 emergency assistance to meet their temporary food needs.

18 California sought to provide emergency allotments to households receiving the
19 maximum regular SNAP allotment. In the cover letter to its March 25 request, the
20 Department of Social Services explained, "These households are the poorest SNAP
21 households. The reason households receive the maximum benefit is that they have *no* income
22 available to purchase food under the SNAP benefit calculation rules." Nako Decl. ¶ 3, Ex. 3
23 (emphasis in original). The request expressed the state's view that USDA's interpretation
24 denying emergency allotments to these households, who "are most likely to have unmet food
25 needs in a time of crisis," "finds no support in the language or purpose of section 2302." *Id.*

26 California therefore proposed to provide emergency allotments "more equitably,"
27 without exceeding the aggregate amount permissible under USDA's guidance. Nako Decl.
28 ¶ 3, Ex. 3. Under the state's proposal, the total amount necessary to raise all households to
the regular maximum monthly allotment would have been shared equally among all SNAP

1 households, resulting in a flat emergency allotment of \$60 per person in each participating
2 household. *Id.* The request also included information about the economic impact of
3 COVID-19 in the state, consistent with USDA’s guidance on supporting data. *Id.*

4 On March 26, USDA denied California’s request and directed the state to revise the
5 request “in accordance with the template.” *Id.* ¶ 3, Ex. 4. The next day, California submitted
6 a revised request consistent with the guidance, accompanied by a cover letter reiterating the
7 state’s position that USDA’s interpretation of section 2302(a)(1) was inconsistent with the
8 statute. *Id.* ¶ 3, Ex. 5. USDA approved the revised request. *Id.* ¶ 3, Ex. 6.

9
10 **E. The Named Plaintiffs Have Been and Will Be Deprived of SNAP**
11 **Emergency Allotments as a Result of USDA’s Misinterpretation of**
12 **Section 2302(a)(1).**

13 USDA’s rejection of California’s initial request has denied emergency allotments to
14 more than a million SNAP households who already receive the maximum regular SNAP
15 allotments because of their extreme poverty. Plaintiffs Robin Hall and Steven Summers are
16 among these households. Decl. of Robin Hall in Supp. of Pls.’ Mot. for Prelim. Inj. (“Hall
17 Decl.”) (ECF No. 4-1) ¶¶ 9-10; Summers Decl. ¶¶ 9-11.

18 Plaintiff Robin Hall is a 45-year old woman who lives in Santa Rosa, California. Hall
19 Decl. ¶¶ 2, 3. She lives and works as an unpaid volunteer at the Homeless Services Center in
20 Santa Rosa. *Id.* ¶ 7. Because she has no income, Ms. Hall receives the maximum monthly
21 SNAP benefit for an individual, \$194. *Id.* ¶ 8. Ms. Hall, who has Type 2 diabetes, has had to
22 skip meals during the pandemic because she lost access to the free food resources on which
23 she relied to supplement her SNAP allotment. *Id.* ¶¶ 4, 14-16. The church-based free
24 breakfast program Ms. Hall attended every morning shut down, as did another program
25 where she sometimes received free dinners. *Id.* ¶ 14. She must avoid soup kitchens, which
26 are crowded and have long lines, because she has a high risk of severe symptoms if she
27 contracts COVID-19 due to her diabetes. *Id.* Because of her condition, skipping meals
28 threatens her health. *Id.* Additional temporary SNAP benefits would allow her to eat
regularly again. *Id.* ¶ 16. Ms. Hall has received no emergency allotment despite

1 experiencing these increased costs obtaining food because of the pandemic as a result of
2 USDA's misinterpretation of section 2302(a)(1). Hall Decl. ¶¶ 9-10.

3 Plaintiff Steven Summers is a 64-year old man who lives on his own in Oakland,
4 California. Summers Decl. ¶¶ 2, 3. He was scheduled to begin a new job in March 2020,
5 which was cancelled because of the pandemic. *Id.* ¶ 8. He currently receives the maximum
6 regular SNAP allotment of \$194 per month, less a \$10 administrative over issuance. His
7 allotment does not cover his current food costs. *Id.* ¶¶ 9, 19. Since the pandemic, Mr.
8 Summers has had to spend more on food because prices are higher, and he cannot always
9 find the inexpensive items and deals he usually relies on. *Id.* ¶¶ 14-17. He is also less able to
10 supplement his diet with free food resources. Summers Decl. ¶ 18. Before the pandemic,
11 Mr. Summers could select the free food items he needed at the Emeryville Citizens
12 Assistance Program, providing him at least a day's worth of meals each time he visited. *Id.*
13 Now, the program provides pre-selected food boxes that sometimes contain non-nutritious
14 foods like candy and items like sour cream that require additional purchases to make a
15 complete meal, adding to what he must spend on food during the pandemic. *Id.* Because his
16 regular allotment does not cover these increased expenses, Mr. Summers has had to spend
17 more of his limited savings on food, leaving him without enough to pay his rent. *Id.* ¶ 19.
18 Mr. Summers has not received an emergency allotment because of USDA's misinterpretation
19 of Section 2302(a)(1). *Id.* ¶ 11.

21 **III. LEGAL STANDARD AND PROPOSED CLASS DEFINITION**

22 Federal Rule of Civil Procedure 23(a) requires parties seeking class certification to
23 establish:

- 24 (1) that the class is so large that joinder of all members is impracticable (numerosity);
- 25 (2) that there are one or more questions of law or fact common to the class
26 (commonality);
- 27 (3) that the named parties' claims are typical of the class (typicality); and
- 28 (4) that the class representatives will fairly and adequately protect the interests of
other members of the class (adequacy of representation).

1 *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 980 (9th Cir. 2011). The proposed class must
 2 also satisfy one of the subsections of Rule 23(b), “which defines three different types of
 3 classes.” *Leyva v. Medline Indus., Inc.*, 716 F.3d 510, 512 (9th Cir. 2013). Plaintiffs who
 4 satisfy these prerequisites have a “categorical” right to “pursue [their] claim as a class
 5 action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398
 6 (2010).

7 Plaintiffs propose to certify a class under Rule 23(b)(2) defined as follows:

8 SNAP recipients in California who have been deemed eligible to receive, are
 9 receiving, or will receive the regular maximum monthly SNAP allotment for their
 10 household size from March 2020 until the Secretary for Health and Human Services
 rescinds the COVID-19 public health emergency declaration or the State-issued
 emergency or disaster declaration expires.

11 Membership in the proposed class is based on objective characteristics: 1) a California
 12 resident; 2) deemed eligible for or receiving the maximum regular monthly SNAP allotment
 13 for their household size; 3) during the specified time frame (March 2020 until either the
 14 federal or state emergency declaration expires). *See Hernandez v. County of Monterey*, 305
 15 F.R.D. 132, 152 (N.D. Cal. 2015). Anticipating many new SNAP applications as economic
 16 conditions deteriorate, the class definition includes those who will newly meet the definition
 17 in the coming months. *Rodriguez v. Hayes*, 591 F.3d 1105, 1118 (9th Cir. 2010) (“the
 18 inclusion of future class members in a class is not itself unusual or objectionable.”).

19 20 **IV. THE PROPOSED CLASS SHOULD BE CERTIFIED**

21 **A. The Proposed Class Satisfies the Requirements of Rule 23(a).**

22 A district court must conduct a “rigorous analysis” to ensure that the Rule 23(a)
 23 requirements are met. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982).

24 The named plaintiffs and the proposed class easily satisfy these requirements.

25 1. The Proposed Class is Sufficiently Numerous that Joinder is Impractical

26 Numerosity is met when the proposed class “is so numerous that joinder of all
 27 members is impracticable.” Fed. R. Civ. P. 23(a)(1). Plaintiffs “do[] not need to allege a
 28 precise number of class members, but may make a reasonable estimate.” *Wortman v. Air*

1 *New Zealand*, 326 F.R.D. 549, 556 (N.D. Cal. 2018). A class of at least 40 members will
 2 presumptively meet this requirement. *Id.* Classes challenging unlawful denials of public
 3 benefits regularly satisfy numerosity. *See, e.g., Garnett v. Zeilinger*, 301 F. Supp. 3d 199,
 4 206 (D.D.C. 2018).

5 Over 4 million Californians receive SNAP benefits in over 2.1 million households.
 6 Nako Decl. ¶ 3, Ex. 5. Of those recipients, over a million households currently are deemed
 7 eligible for the maximum monthly benefit and have not received “emergency allotments.”
 8 *See* Nako Decl. ¶ 3, Exs. 5, 8.⁹ Thus, the proposed class easily satisfies numerosity.

9 2. The Case Presents Common Questions of Law and Fact

10 Plaintiffs satisfy the commonality requirement of Rule 23(a)(2) because there are
 11 questions of law and fact common to the class. Just one common question is sufficient for
 12 commonality provided that the “determination of its truth or falsity will resolve an issue that
 13 is central to the validity of each claim in one stroke.” *Wal-Mart Stores, Inc., v. Dukes*, 564
 14 U.S. 338, 350, 359 (2011). Rule 23(a)(2)’s commonality standard is “construed
 15 permissively,” and “[a]ll questions of fact and law need not be common to satisfy the rule.”
 16 *Ellis*, 657 F.3d at 981. Class actions that seek injunctive or declaratory relief by their very
 17 nature present common questions of law and fact. *Disability Rights Council of Greater*
 18 *Wash. v. Wash. Metro. Area Transit Auth.*, 239 F.R.D. 9, 26 (D.D.C. 2007) (citing 7A
 19 Wright, Miller & Kane, *Federal Practice and Procedure* § 1763 (3d ed. 2006)).

20 The Proposed Class satisfies commonality because the *same* question of law applies
 21 to every member of the class: has USDA misinterpreted section 2302(a)(1) by limiting
 22 eligibility for “emergency allotments” to SNAP recipients who receive less than the
 23 maximum regular monthly benefit for their household size in violation of the Administrative
 24

25 ⁹ In its March 27 request for emergency allotments, which USDA approved, California
 26 estimated that there were 2,176,109 SNAP-participating households. Nako Decl. ¶ 3, Ex.
 27 5. In its request for an extension of benefits, filed on May 4 and approved by USDA,
 28 California estimated that 1,151,714 households were receiving emergency allotment
 benefits. *Id.* ¶ 3, Ex. 8. Subtracting the number of households that received emergency
 allotments from the total number of participating households results in approximately
 1,024,395 households that are not receiving emergency allotments.

1 Procedures Act. Complaint (ECF No. 1) ¶ 60. “Commonality is satisfied where the lawsuit
2 challenges a system-wide practice or policy that affects all of the putative class members.”
3 *Hernandez*, 305 F.R.D. at 153.

4 In addition, the key facts underlying the claims are common: every class member is a
5 California resident who is eligible to receive the maximum monthly benefit for their
6 household size; every class member has been denied emergency allotments as result of
7 USDA’s refusal to allow California to provide emergency allotments to them; and every
8 class member has been harmed as a result of USDA’s actions.

9 Resolution of the core legal question—what is the plain meaning of section
10 2302(a)(1)—will determine whether injunctive relief is appropriate to direct USDA to allow
11 California’s SNAP program to provide emergency allotments to the proposed class members.
12 Rule 23(a)(2) is therefore met.

13 3. The Named Plaintiffs Are Typical of the Class

14 To satisfy typicality, plaintiffs must show that their claims are typical of those of the
15 class. Fed. R. Civ. P. 23(a)(3). “The test of typicality is whether the other members have the
16 same or similar injury, whether the action is based on conduct which is not unique to the
17 named plaintiffs, and whether other class members have been injured by the same court of
18 conduct.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (internal quotations omitted).
19 Plaintiffs meet this test.

20 Plaintiffs Hall and Summers are SNAP recipients in California who are currently
21 eligible for the maximum monthly benefit for their household size (one). Hall Decl. ¶¶ 9-10;
22 Summers Decl. ¶¶ 9-10; *see supra* Section II.A. As a result of the global pandemic, it is
23 more difficult to obtain food at nearby grocery stores and, when it is available, the food is
24 more expensive. Summers Decl. ¶¶ 14-17. Plaintiffs have been unable to rely on other food
25 sources, like soup kitchens or food pantries, because they have shut down or have reduced
26 what food is available. Hall Decl. ¶ 14; Summers Decl. ¶ 18. Their regular SNAP monthly
27 benefit is insufficient to cover their enhanced needs arising from the pandemic. Hall Decl.
28 ¶¶ 15-16; Summers Decl. ¶ 19. They have not received an emergency allotment of SNAP

1 benefits because USDA has prohibited state agencies like the California Department of
2 Social Services from providing them to recipients who receive the maximum monthly
3 benefit. Hall Decl. ¶¶ 9-10, Summers Decl. ¶ 11; *see supra* Section II.D-E.

4 The Plaintiffs share the identical injury with all class members: they have not
5 received an emergency allotment of SNAP benefits as provided by the Families First Act
6 because of USDA’s misinterpretation of section 2302(a)(1). As a result, they are deprived of
7 supplemental nutrition benefits that they need to address food insecurity created by the
8 pandemic. Their injuries are the same as those experienced by the class. *See* Bauer Decl.
9 ¶¶ 26-27, 30-34.

10 4. The Named Plaintiffs and Counsel Are Adequate Representatives

11 The final requirement under Rule 23(a) is that the class representatives and their
12 proposed Class Counsel will “fairly and adequately protect the interests of the class.” Fed. R.
13 Civ. P. 23(a)(4). The court must determine whether the class representatives “have any
14 conflicts of interest with other class members” and will “prosecute the action vigorously on
15 behalf of the class” through qualified counsel. *Staton v. Boeing Corp.*, 327 F.3d 938, 957
16 (9th Cir. 2003). Plaintiffs and their proposed class counsel meet this requirement.

17 Plaintiffs’ interests are directly aligned with those of the class. Like all class
18 members, they are facing increased food insecurity as a result of the pandemic but have
19 received no emergency allotments as authorized by Congress. They want to obtain these
20 benefits for themselves and for the class. They understand their duties as class
21 representatives and that they must prioritize the interests of the class over their own. Hall
22 Decl. ¶ 18; Summers Decl. ¶ 21.

23 Proposed class counsel will also adequately represent the interests of the class.
24 Plaintiffs’ counsel, the Western Center on Law and Poverty and the Impact Fund, together
25 bring extensive experience in public benefits and class action litigation and are prepared to
26 vigorously represent the class. *See infra* Section IV.C. (Appointment of Class Counsel).

1 **B. The Proposed Class Meets the Standard for Rule 23(b)(2) Certification.**

2 Federal Rule of Civil Procedure 23(b)(2) requires that “the party opposing the class
3 has acted or refused to act on grounds that apply generally to the class, so that final injunctive
4 relief or corresponding declaratory relief is appropriate respecting the class as a whole.”
5 Rule 23(b)(2) is “unquestionably satisfied when members of a putative class seek uniform
6 injunctive or declaratory relief from policies or practices that are generally applicable to the
7 class as a whole.” *Parsons*, 754 F.3d at 688. The “indivisible nature of the injunctive and
8 declaratory remedy” justifies certification because the conduct “can be enjoined or declared
9 unlawful only as to all of the class members or as to none of them.” *Dukes*, 564 U.S. at 360
10 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U.
11 L. Rev. 97, 132 (2007)). The fact that some class members may have suffered no injury or
12 different injuries from the challenged practice does not prevent the class from meeting the
13 requirements of Rule 23(b)(2). *Rodriguez*, 591 F.3d at 1125 (9th Cir. 2010).

14 Courts routinely certify classes challenging federal agency policies under Rule
15 23(b)(2). *See e.g.*, *J.L. v. Cissna*, No. 18-cv-04914, 2019 WL 415579, at *12 (N.D. Cal. Feb.
16 1, 2019) (challenge to U.S. Citizenship and Immigration Services’s policy denying legal
17 status to certain non-citizen children who received guardianship order in California probate
18 courts); *Jane Doe I v. Nielsen*, 357 F. Supp. 972, 993 (N.D. Cal. 2018) (challenge to
19 Department of Homeland Security notices regarding refugee status ineligibility); *Hart v.*
20 *Colvin*, 310 F.R.D. 427, 439 (N.D. Cal. 2015) (challenge to Social Security Administration
21 policy of relying on disqualified doctor’s reports to deny benefits).

22 Here, Plaintiffs have provided significant proof that USDA adopted a uniform policy
23 that prohibits states from providing emergency allotments to SNAP recipients who are
24 receiving the maximum monthly benefit for their household size. As a result of that policy,
25 Plaintiffs and over a million California households lack sufficient resources to purchase food
26 under the exigent conditions created by the public health emergency. Plaintiffs seek class-
27 wide injunctive and declaratory relief to remedy USDA’s refusal to approve California’s
28 request to provide emergency allotments of SNAP benefits to recipients like them. Any

1 order entered by this Court would inure to the benefit of all members of the plaintiff class
 2 because California could seek approval for emergency allotments as authorized by the
 3 Families First Act. Certification is thus appropriate under Rule 23(b)(2) and should be
 4 granted.

5
 6 **C. The Court Should Appoint Attorneys from the Western Center on Law
 and Poverty and the Impact Fund as Class Counsel under Rule 23(g).**

7 When certifying a class, the court is required to appoint counsel to represent the
 8 certified class. Fed. R. Civ. P. 23(g). This Court should appoint attorneys from the Western
 9 Center on Law and Poverty (Alexander Prieto, Richard A. Rothschild, Antionette Dozier,
 10 Rebecca Miller) and from the Impact Fund (Lindsay Nako, Jocelyn D. Larkin, David S.
 11 Nahmias) to represent the proposed class.

12 In evaluating counsel, the court must consider: 1) the work counsel has done
 13 investigating the claims; 2) counsel’s experience in handling class actions and the types of
 14 claims asserted in the action; 3) counsel’s knowledge of the applicable law; and 4) the
 15 resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1). In
 16 addition to these factors, the court may consider “any other matter pertinent to counsel’s
 17 ability to fairly and adequately represent the interests of the class.” *Id.*

18 **Investigation:** Proposed class counsel has been diligently investigating the specific
 19 claims in this case since Congress enacted the Families First Coronavirus Response Act and
 20 USDA announced its guidance. Decl. of Richard A. Rothschild in Supp. of Mot. for Class
 21 Certification (“Rothschild Decl.”) ¶ 9; Decl. of Jocelyn D. Larkin in Supp. of Mot. for Class
 22 Certification (“Larkin Decl.”) ¶ 9. The organizations have evaluated the legal issues relating
 23 to SNAP recipients in California, consulted with economists, hunger experts and food bank
 24 professionals, and counseled clients who receive SNAP benefits. Rothschild Decl. ¶ 9;
 25 Larkin Decl. ¶ 9. The organizations sent a letter to Defendant USDA on April 23, 2020,
 26 explaining why its interpretation of section 2302(a)(1) of the Act was incorrect. Decl. of
 27 Alexander Prieto in Supp. of Pls.’ Mot. for Prelim. Inj. ¶ 2 & Ex. 1 (ECF No. 4-8).

28 //

1 **Subject Matter and Class Action Expertise:** Attorneys from Western Center have
2 deep and longstanding expertise in the area of public benefits. Rothschild Decl. ¶¶ 5-8.
3 They have served as counsel in many class actions, including significant cases on behalf of
4 public assistance recipients. *Id.* ¶¶ 3-4. Impact Fund attorneys have expertise in class action
5 and complex litigation, particularly for underserved communities. Larkin Decl. ¶¶ 6-8. They
6 have been approved to serve as class counsel in many major civil rights class actions in this
7 district and in other courts. Larkin Decl. ¶ 6.

8 **Commitment of Time and Resources:** Proposed class counsel has and is prepared to
9 commit the time and resources necessary to litigate this case and represent the interests of the
10 class. Rothschild Decl. ¶ 10; Larkin Decl. ¶ 10. Each of the attorneys is admitted to practice
11 in this district. Rothschild Decl. ¶¶ 4-7; Larkin Decl. ¶¶ 1, 7-8.

12

13 **V. CONCLUSION**

14 This case presents precisely the circumstances where a class action is warranted.
15 Accordingly, Plaintiffs respectfully request that this Court certify the proposed class and
16 appoint class counsel.

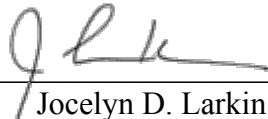
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18 Dated: May 21, 2020

IMPACT FUND
WESTERN CENTER ON LAW & POVERTY

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By: 
Jocelyn D. Larkin
Attorneys for Plaintiffs

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