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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 PRELIMINARY
INJUNCTION; MEMORANDUM OF
POINTS AND AUTHORITIES**

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 3. USDA’s policy cannot be justified by reference to a different SNAP statute, which does not govern emergency allotments and by its own terms does not deny allotments to recipients receiving the maximum regular benefit. 17

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NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

PLEASE TAKE NOTICE that, upon assignment of the case to a district or magistrate judge and as soon thereafter as counsel may be heard by the assigned judge, Plaintiffs Robin Hall and Steven Summers will move the Court, under Rule 65 of the Federal Rules of Civil Procedure and Rules 7-2 and 65-2 of the Local Civil Rules of the Court, for a preliminary injunction.

The Motion seeks a preliminary injunction enjoining Defendants from denying any otherwise appropriate request from California under section 2302(a)(1) of the Families First Coronavirus Response Act because it provides emergency Supplemental Nutrition Assistance Program (SNAP) allotments to households receiving the maximum monthly benefit amount. Plaintiffs seek a preliminary injunction on behalf of themselves and all others similarly situated. The motion will be heard under the terms of the Court’s General Order No. 72-2 and is filed concurrently with a Motion for Class Certification that seeks certification of a proposed class of SNAP recipients in California who are eligible to receive, are receiving, or will receive the regular maximum monthly SNAP benefit.

This Motion is made on the grounds that Defendants’ interpretation of Section 2302(a)(1) violates the Administrative Procedure Act and will cause irreparable harm, and the equities and public interest weigh in Plaintiffs’ favor. The Motion is based on this Notice of Motion and Motion; the supporting Memorandum of Points and Authorities; the declarations of Plaintiff Robin Hall, Plaintiff Steven Summers, Lauren Bauer, Andrew Cheyne, Meg Davidson, Sarah Palmer DeFrank, Brittany Hodge, Lindsay Nako and Alexander Prieto and any Exhibits attached thereto; and all the records and files in the action.

Dated: May 21, 2020

WESTERN CENTER ON LAW & POVERTY
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Attorneys for Plaintiffs and the Plaintiff Class

1 **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
2 **OF MOTION FOR PRELIMINARY INJUNCTION**

3 **I. INTRODUCTION**

4 Coronavirus has had devastating public health and economic impacts and transformed
5 nearly all aspects of daily life. Among its many impacts, this unprecedented crisis creates a
6 need for additional food assistance among low-income families and individuals who depend
7 on the Supplemental Nutrition Assistance Program (SNAP). Because of disruptions caused
8 by COVID-19, these households must spend more on food and have lost access to food
9 pantries and similar resources they normally rely on. Congress acted to address their urgent
10 needs in the Families First Coronavirus Response Act. Section 2302(a)(1) of the Act
11 provides for “emergency allotments ... to address temporary food needs” as a supplement to
12 regular SNAP benefits. The statute places a simple cap on these additional allotments: they
13 cannot exceed the amount SNAP sets as the maximum regular monthly allotment for the
14 household size. Section 2302(a)(1) makes clear that Congress intended this emergency
15 assistance to benefit *all* SNAP households: the plain language of the statute makes no
16 distinction among households, and the pandemic-related “temporary food needs” Congress
17 sought to address impact all SNAP recipients.

18 In defiance of this unambiguous intent, USDA has issued guidance that denies
19 emergency allotments to the most vulnerable SNAP households – those who already receive
20 the maximum non-emergency SNAP allotment because of their extreme poverty. The
21 agency interprets section 2302(a)(1)’s cap on emergency allotments as applying not just to
22 those allotments, as the plain language of the statute provides, but to the total of a
23 household’s regular and emergency allotments. As a result, households with relatively
24 higher incomes receive the greatest supplemental assistance, while the poorest receive
25 nothing. This interpretation violates the Administrative Procedure Act (APA) because
26 USDA has no authority to deny urgently needed aid to households Congress intended to
27 benefit.

28 But for this illegal guidance, California households receiving the maximum regular

1 allotment would have received emergency allotments. Following SNAP’s federal-state
2 partnership model, California requested emergency allotments for all of the state’s SNAP
3 households. But USDA rejected the request based on its unsupportable interpretation of
4 section 2302(a)(1). These families have already gone without emergency aid for March and
5 April. Unless the Court grants a preliminary injunction to stop USDA from violating the
6 Families First Act, they will be denied emergency relief for the duration of the COVID-19
7 crisis.

8 Plaintiffs have filed a complaint challenging USDA’s binding guidance under the
9 APA and a motion to certify a plaintiff class of California SNAP households who are deemed
10 eligible to receive the maximum regular SNAP allotment. In this motion, they seek a
11 preliminary injunction enjoining Defendants from denying any otherwise appropriate request
12 from California under section 2302(a)(1) because it provides emergency SNAP allotments to
13 households receiving the maximum monthly benefit amount. The Court should grant the
14 motion because all relevant factors weigh in their favor. Plaintiffs will prevail under the
15 APA because USDA’s guidance is contrary to the plain language of the Families First Act.
16 Denial of emergency food assistance during an unprecedented public health crisis is
17 irreparable harm that far outweighs any administrative inconvenience USDA may claim, and
18 providing this critical aid to the most vulnerable households serves the public interest.

19 20 **II. BACKGROUND**

21 **A. SNAP is a federally funded, state-administered anti-hunger program that** 22 **provides low-income families monthly allotments to purchase food.**

23 SNAP, part of the Food and Nutrition Act of 2008, is the nation’s largest anti-hunger
24 program. Congress enacted SNAP to “safeguard the health and well-being of the Nation’s
25 population by raising levels of nutrition among low-income households.” 7 U.S.C. § 2011.
26 This core purpose has remained constant since the program, originally known as the Food
27 Stamp Program, was introduced in 1964. Pub. L. No. 88-525, § 2, 78 Stat. 703. SNAP is
28 intended to fight “hunger and malnutrition” by increasing the “limited food purchasing

1 power” of low-income households. 7 U.S.C. § 2011. SNAP accomplishes this purpose by
 2 providing monthly allotments that eligible low-income families use to purchase food at
 3 authorized retailers. 7 U.S.C. § 2013(a).

4 SNAP is a federal-state partnership. USDA pays the full cost of monthly allotments,
 5 but they are administered by the states, which must opt into the program. 7 U.S.C.
 6 §§ 2013(a), 2020. USDA also funds 50 percent of the states’ SNAP administrative costs. 7
 7 U.S.C. § 2025(a); 7 C.F.R. § 277.4. States that elect to participate in SNAP designate a state
 8 agency to carry out the program at the state level. 7 U.S.C. §§ 2012(s), 2020. California has
 9 chosen to participate in SNAP and designated the California Department of Social Services
 10 as its responsible state agency. Cal. Welf. & Inst. Code § 18900. SNAP is known as
 11 CalFresh in California. Cal. Welf. & Inst. Code § 18900.2.

12
 13 **B. Only very poor households qualify for SNAP, and only the poorest
 receive the maximum regular monthly allotment.**

14 To receive SNAP benefits, a household – defined as a group of people who purchase
 15 and prepare food together – generally must have a net income at or below 100 percent of the
 16 federal poverty line after various deductions and exclusions that account for items including
 17 housing, dependent care, and medical expenses. 7 U.S.C. §§ 2012(m)(1), 2014(c)(1); 7
 18 C.F.R. § 273.10(e)(2)(ii)(A). A household’s monthly allotment is calculated by subtracting
 19 30 percent of its net income from the maximum regular allotment for the household size. 7
 20 C.F.R. § 273.10(e)(2)(ii)(A). Families who receive the non-emergency maximum allotment
 21 are thus extremely poor – their net income after deductions for basic needs other than food is
 22 zero. This means that, without SNAP, they have no money to buy food unless they sacrifice
 23 other essentials.

24 The maximum regular SNAP allotment is uniform by household size across the 48
 25 contiguous States and the District of Columbia. 7 C.F.R. § 273.10(e)(4)(i). The current
 26 maximum regular allotment for a single person is \$194 per month. This equals \$6.38 per day
 27 or about \$2 per meal. Maximum SNAP allotments increase as household size increases, as
 28 shown in the table below:

Federal Fiscal Year 2020 Maximum Allotment by Household Size¹

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

Even before COVID-19, California households receiving the maximum regular allotment struggled to afford a nutritious diet. Because food costs in California are significantly higher than the national average, the purchasing power of the nationally uniform maximum allotment is lower here. Declaration of Lauren Bauer in Support of Motion for Preliminary Injunction (Bauer Decl.) ¶¶ 25-27. In 2018, the maximum allotment per meal did not cover the cost of a meal in any county in California. *Id.* ¶ 27.

To get by on just the maximum SNAP allotment, California households must carefully plan their monthly food budgets and supplement their purchases with food from food pantries and other sources. *Id.* ¶ 33; Declaration of Robin Hall ¶ 14; Declaration of Steven Summers ¶¶ 12, 18. Plaintiff Steven Summers, for example, qualifies for the maximum SNAP allotment, but even before the pandemic, he still relied on free groceries from a food assistance program and used money from his dwindling savings to buy additional food. Summers Decl. ¶¶ 18, 19. Plaintiff Robin Hall regularly attended a free church breakfast program and soup kitchens to supplement what she could buy with the maximum allotment. Hall Decl. ¶¶ 13, 14.

C. COVID-19 causes unmet emergency food needs for California SNAP recipients, particularly for the poorest families already receiving the maximum regular SNAP allotment.

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

¹ 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.

1 Americans have died from the virus.² There are 84 thousand known cases of COVID-19 in
 2 California.³ Over three thousand Californians have died from the virus, and an additional
 3 three thousand Californians have been hospitalized with positive COVID-19 tests.⁴

4 On March 4, Governor Gavin Newsom declared a state of emergency in California
 5 based on COVID-19. Governor Gavin Newsom, Proclamation of a State of Emergency
 6 (Mar. 4, 2020), [https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)
 7 [SOE-Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf). To contain the spread of the virus, the Governor issued a “shelter-in-
 8 place” executive order on March 19, 2020, prohibiting residents from leaving their homes
 9 except to complete essential activities. Exec. Order N-33-20 (Cal. Mar. 19, 2020), *available*
 10 *at* <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

11 Among numerous other impacts, the pandemic has greatly increased food insecurity
 12 in California. Bauer Decl. ¶¶ 18-20. A recent study of the impact of the COVID-19
 13 pandemic found that 26 percent of households in California were “food insecure,” meaning
 14 that respondents reported that “the food that we bought didn’t last, and we didn’t have
 15 enough money to get more.” *Id.* A full third of California households in the study were
 16 “worried our food would run out before we got money to buy more.” *Id.*

17 Households receiving the maximum SNAP allotment are especially vulnerable to
 18 increased food insecurity during the pandemic. COVID-19 and the state’s shelter-in-place
 19 order increase these families’ need for food assistance in several key ways.

20 First, increased food prices caused by the pandemic further reduce the inadequate
 21 purchasing power of the maximum SNAP allotment in California. Bauer Decl. ¶¶ 29-31, 34.
 22 The cost of purchasing food to eat at home has increased 3.6 percent nationally over the past
 23 three months. *Id.* ¶¶ 30-31. The April 2020 increase (2.6 percent) was the largest one-month
 24 increase since 1974. *Id.* ¶ 30. The price of eggs rose 16 percent between March and April,

25 ² Ctrs. For Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19): Cases in*
 26 *the U.S.* (last updated May 20, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/cases-](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html)
[updates/cases-in-us.html](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html)

27 ³ *California Coronavirus COVID-19 Statewide Update* (last updated May 20, 2020),
<https://update.covid19.ca.gov>.

28 ⁴ *Id.*

1 and prices of other staples like meat and grains have also increased. *Id.*

2 Second, changes in the availability of groceries caused by COVID-19 make it harder
3 to stretch the maximum allotment to meet nutritional needs, as does the need to shelter in
4 place, which limits trips to grocery stores. *Id.* ¶¶ 34-35; Summers Decl. ¶¶ 13-17. Mr.
5 Summers, for example, could not find the \$1 cans of tuna fish or discounted ground beef he
6 usually buys during a recent shopping trip. Summers Decl. ¶ 14. He has also had to
7 purchase more expensive brands of pasta and rice because they are all that is available on the
8 shelves. *Id.* ¶ 15. And while his normal shopping and budgeting process calls for trips to
9 several different stores to find the best deals, he must now balance the need for bargains
10 against the increased risk of exposure to coronavirus from visits to multiple grocers. *Id.*
11 ¶¶ 14-17. At age 64, he is among those most vulnerable to severe health consequences if he
12 contracts COVID-19. *Id.* ¶ 3.

13 Third, the pandemic has made it more difficult for SNAP recipients to obtain food
14 from food pantries, soup kitchens, and other community organizations. Across California,
15 demand for these organizations' services has skyrocketed in the wake of the pandemic.
16 Declaration of Andrew Cheyne, California Association of Food Banks ¶ 6; Declaration of
17 Meg Davidson, San Francisco-Marin Food Bank ¶¶ 5-7; Declaration of Sarah Palmer
18 DeFrank, Berkeley Food Network ¶ 6; Declaration of Brittany Hodge, St. Anthony's
19 Foundation ¶ 6. At the same time, COVID-19 creates many new operational challenges for
20 them, including food supply issues, shortage of staff and volunteers, and new pandemic-
21 related expenses like protective equipment. Cheyne Decl. ¶ 8; Davidson Decl. ¶¶ 4, 5;
22 Hodge Decl. ¶ 6. These pressures have forced many direct providers of free food to close or
23 drastically reduce their locations, making it harder for SNAP recipients to find food
24 distributors near them. *See* Davidson Decl. ¶ 4; DeFrank Decl. ¶ 5; Hall Decl. ¶ 16; Hodge
25 Decl. ¶ 8.

26 When SNAP recipients manage to access an open food distribution point, the
27 groceries may run out before they reach the head of the line or they may receive smaller
28 amounts of food and less nutritious items. *See* Davidson Decl. ¶ 9; DeFrank Decl. ¶ 7;

1 Summers Decl. ¶ 18. The Berkeley Food Network, for example, “provides households of
 2 five people with the same amount of food [it] would normally give to individuals.” DeFrank
 3 Decl. ¶¶ 7, 11. And instead of donating ready-made food, the cafeterias that supply its Hub
 4 Kitchen program provide difficult-to-use bulk items like industrial-size cans of tomatoes.
 5 DeFrank Decl. ¶ 10.

6 The consequences of increased food insecurity during a pandemic are severe.
 7 Children living in food-insecure households tend to have a lower health-related quality of
 8 life, higher rates of asthma, less nutritious diets, anemia, and cognitive and behavioral
 9 problems that affect well-being and school performance. Bauer Decl. ¶ 7. Among adults,
 10 food insecurity is predictive of poor nutrition, poor self-reported health, depression and
 11 anxiety, diabetes, and chronic disease. *Id.*

12
 13 **D. Congress responded to the increased need for food assistance caused by**
 14 **COVID-19 by providing mandatory emergency SNAP allotments in the**
 15 **Families First Act.**

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

20 Section 2302(a)(1) makes emergency food assistance available when two conditions
 21 are met. There must be (1) “a public health emergency declaration by the Secretary of
 22 Health and Human Services under section 319 of the Public Health Service Act based on an
 23 outbreak of coronavirus disease 2019 (COVID–19)”—which occurred on January 31, 2020⁵
 24 —and (2) “an emergency or disaster declaration by a State based on an outbreak of COVID-

25
 26
 27 ⁵ Press Release, Dep’t of Health & Hum. Servs., Secretary Azar Declares Public Health
 28 Emergency for United States 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>.

1 19”—which occurred in California on March 4, 2020.⁶ Families First Act § 2302(a). If both
 2 are satisfied, USDA “shall provide ... for emergency allotments” upon a request from a state
 3 agency “that provides sufficient data ... supporting such request.” *Id.* § 2302(a)(1). The
 4 statute directs USDA to issue guidance regarding the information necessary to support a
 5 state’s request. *Id.*

6 Section 2302(a)(1) does not set specific amounts for emergency allotments, but sets
 7 two parameters for those amounts. Emergency allotments (1) must be targeted to “temporary
 8 food needs” and (2) cannot be “greater than the applicable maximum monthly allotment for
 9 the household size.”

10
 11 **E. USDA’s final guidance implementing the Families First Act denies**
 12 **emergency SNAP allotments to the neediest families – those receiving the**
 13 **maximum regular allotment.**

14 USDA set forth its official interpretation of section 2302(a)(1) in two guidance
 15 documents issued on March 20, 2020 and April 21, 2020. In this guidance, the agency
 16 interprets section 2302(a)(1) as limiting emergency allotments to the difference between a
 17 household’s regular allotment and the standard maximum allotment for the household size.
 18 In other words, families receiving less than the maximum regular allotment can be “topped
 19 off,” but families who already receive the maximum due to their extreme poverty are
 20 completely denied emergency assistance to meet their temporary food needs.

21 On March 20, 2020, USDA issued a memorandum to state agencies with a template
 22 “Request to Provide Emergency Allotments (Supplements) to SNAP Households.”
 23 Declaration of Lindsay Nako ¶ 3, Ex. 2. The template limits permissible state requests for
 24 emergency allotments to requests to “bring all households up to the maximum benefit due to
 25 pandemic related economic conditions for up to 2 months.” *Id.*

26 On April 21, 2020, USDA issued updated guidance regarding emergency allotments

27
 28 ⁶ Governor Gavin 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 for additional months. *Id.* ¶ 3, Ex. 7. This guidance authorizes states with requests approved
2 under the March guidance to continue issuing monthly emergency allotments as long as the
3 conditions in section 2302(a) (a federal public health emergency declaration and a state
4 emergency declaration) remain in place. *Id.* The April guidance repeats the agency’s
5 interpretation that “SNAP households that already receive the maximum monthly allotment
6 for their household size are not eligible for [emergency allotments].” *Id.* Both guidance
7 documents also provide simple instructions about the data necessary to support a request for
8 emergency allotments. *Id.* ¶ 3, Exs. 2, 7.

9
10 **F. USDA relied on its guidance to deny California’s request to provide**
11 **Plaintiffs emergency allotments to meet their temporary food needs.**

12 The California Department of Social Services submitted a request to provide
13 emergency allotments to USDA on March 25, 2020. Nako Decl. ¶ 3, Ex. 3. This request
14 sought to provide emergency allotments to all SNAP households, including those receiving
15 the maximum regular allotment. It explained that “[t]hese households are the poorest SNAP
16 households. The reason households receive the maximum benefit is that they have *no*
17 income available to purchase food under the SNAP benefit calculation rules.” *Id.* The
18 request expressed the state’s view that USDA’s interpretation denying emergency allotments
19 to these households, who “are most likely to have unmet food needs in a time of crisis,”
20 “finds no support in the language or purpose of section 2302.” *Id.*

21 California therefore proposed to provide emergency allotments “more equitably,”
22 without exceeding the aggregate amount permissible under USDA’s guidance. *Id.* Under the
23 state’s proposal, the total amount necessary to raise all households to the regular maximum
24 monthly allotment would have been divided equally between all SNAP households, resulting
25 in a flat emergency allotment of \$60 per person per household. *Id.* The request also included
26 information about the economic impact of COVID-19 in the state, consistent with USDA’s
27 guidance on supporting data. *Id.*

28 On March 26, USDA denied California’s request and directed the state to revise the

1 request “in accordance with the template.” Nako Decl. ¶ 3, Ex. 4. The next day, California
2 submitted a revised request consistent with the guidance, accompanied by a cover letter
3 reiterating the state’s position regarding USDA’s interpretation of section 2302(a)(1). *Id.* ¶ 3,
4 Ex. 5. The information about economic impact supporting the revised request was identical
5 in substance to that in the initial request, except for an updated count of COVID-19 cases.
6 *Id.* ¶ 3, Exs. 3, 5.

7 USDA approved the revised request. *Id.* ¶ 3, Ex. 6. Emergency allotments for March
8 and April have been issued to households receiving less than the maximum regular allotment.
9 *Id.* Under the updated April guidance, California is approved to continue issuing emergency
10 allotments that give the most to households with higher incomes, but prohibited from
11 providing emergency aid to the poorest families. *See id.* ¶ 3, Ex. 7. The state expects to
12 issue emergency allotments for May in June. *Id.* ¶ 3, Ex. 8.

13 Plaintiffs Robin Hall and Steven Summers are two of the many California SNAP
14 households denied emergency allotments by USDA’s guidance. Hall Decl. ¶¶ 9-12;
15 Summers Decl. ¶ 9-11. Ms. Hall, who has Type 2 diabetes, has had to skip meals during the
16 pandemic because she lost access to the free food resources she relied on to supplement her
17 maximum SNAP allotment. Hall Decl. ¶¶ 2, 14, 16, 19. The church-based free breakfast
18 program she attended every morning shut down, and the homeless day center where she
19 sometimes received free lunches stopped its regular meal services. *Id.* ¶¶ 13, 14, 16. Ms.
20 Hall must also avoid soup kitchens, which are crowded and have long lines, because her
21 diabetes increases her risk for severe symptoms if she contracts COVID-19. *Id.* ¶ 16.
22 Because of her condition, skipping meals threatens her health. *Id.* ¶ 19. Additional SNAP
23 benefits would allow her to eat regularly again. *Id.*

24 Since the pandemic, Mr. Summers has had to spend more on food because prices are
25 higher and he cannot always find the inexpensive items and deals he usually relies on.
26 Summers Decl. ¶¶ 14, 15. He is also less able to supplement his diet with free food
27 resources. Before the pandemic, Mr. Summers could select the free food items he needed at
28 the Emeryville Citizens Assistance Program, providing him at least a day’s worth of meals

1 each time he went. *Id.* ¶ 18. Now, the program provides pre-selected food boxes that
2 sometimes contain non-nutritious foods like candy and items like sour cream that require
3 additional purchases to make a complete meal, adding to what he must spend purchasing
4 food during the pandemic. *Id.* ¶ 18. Because his normal SNAP assistance does not cover
5 these increased expenses, Mr. Summers has had to spend more of his limited savings on
6 food, leaving him without enough to pay his rent. *Id.* ¶ 19.

7 Concurrent with this motion, Plaintiffs have filed a motion under Federal Rule of
8 Civil Procedure 23(a) and 23(b)(2) for certification of a proposed class of Plaintiffs defined
9 as:

10 SNAP recipients in California who have been deemed eligible to receive, are
11 receiving, or will receive the regular maximum monthly SNAP allotment for
12 their 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.

13 On behalf of themselves and the class, they seek a preliminary injunction enjoining
14 Defendants from denying any otherwise appropriate request from California under section
15 2302(a)(1) because it provides emergency allotments to households receiving the maximum
16 monthly benefit amount.

17 18 **III. LEGAL STANDARD**

19 To obtain a preliminary injunction, a plaintiff must demonstrate that (1) it “is likely to
20 succeed on the merits,” (2) it “is likely to suffer irreparable harm in the absence of
21 preliminary relief,” (3) “the balance of equities tips in [its] favor,” and (4) “an injunction is in
22 the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the
23 “sliding scale” variant of the *Winter* standard adopted by the Ninth Circuit, “if a plaintiff can
24 only show that there are serious questions going to the merits—a lesser showing than
25 likelihood of success on the merits—then a preliminary injunction may still issue if the
26 balance of hardships tips sharply in the plaintiff’s favor, and the other two *Winter* factors are
27 satisfied.” *All. for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017) (citations
28 and internal quotation marks omitted).

1 **IV. ARGUMENT**

2 **A. Plaintiffs will succeed on the merits of their APA claims because denying**
 3 **emergency allotments to the neediest households is inconsistent with the**
 4 **plain meaning of section 2302(a)(1) of the Families First Act.**

5 The APA directs reviewing courts to “hold unlawful and set aside agency action”
 6 that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”
 7 or “in excess of statutory jurisdiction [or] authority.” 5 U.S.C. § 706(2); *Dep’t of Commerce*
 8 *v. New York*, 139 S. Ct. 2551, 2567 (2019). “[W]hether framed as an incorrect application of
 9 agency authority or an assertion of authority not conferred[, the question] is always whether
 10 the agency has gone beyond what Congress has permitted it to do” *City of Arlington v.*
 11 *FCC*, 569 U.S. 290, 297–98 (2013).

12 The USDA guidance challenged in this case is final agency action subject to APA
 13 review. It must be set aside because it is inconsistent with the plain language of section
 14 2302(a)(1). Because the statute unambiguously provides separate emergency allotments for
 15 all SNAP households, USDA has no authority to deny them to households receiving the
 16 maximum regular SNAP allotment.

17 **1. The challenged guidance is a final agency action because it is USDA’s last**
 18 **word on emergency allotments and has immediate legal consequences.**

19 Section 704 of the APA authorizes judicial review of “final agency action.” 5 U.S.C.
 20 § 704. The threshold question in a suit under the APA is whether the challenged action is
 21 final under this section. *Havasupai Tribe v. Provencio*, 906 F.3d 1155, 1161 (9th Cir. 2018).
 22 In *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997), the Supreme Court identified two
 23 conditions necessary for an agency action to be final under section 704. First, the action
 24 must “mark the consummation of the agency’s decisionmaking process – it must not be of a
 25 merely tentative or interlocutory nature”; second, the action must “be one by which rights or
 26 obligations have been determined, or from which legal consequences will flow.” *Id.*
 27 (citations and internal quotation marks omitted); *see also Gill v. U.S. Dep’t of Justice*, 913
 28 F.3d 1179, 1184 (9th Cir. 2019). Courts applying this test “focus on the practical and legal
 effects of the agency action and interpret finality in a pragmatic and flexible manner.” *Gill*,

1 913 F.3d at 1184 (quoting *Or. Nat. Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th
2 Cir. 2006)) (internal quotation marks omitted).

3 Both *Bennett* conditions are satisfied here. In evaluating *Bennett*'s first condition,
4 courts consider "whether the action amounts to a definitive statement of the agency's
5 position" and whether the agency expects "immediate compliance" with its terms. *Or. Nat.*
6 *Desert Ass'n*, 465 F.3d at 982. The guidance is the agency's last word on the permissible
7 scope of emergency allotments: section 2302(a)(1) is an emergency statute requiring
8 immediate implementation and USDA has already used the guidance to evaluate states'
9 requests under it. *See, e.g.*, Nako Decl. ¶ 3, Exs. 4, 6. USDA also requires strict and
10 immediate compliance with the guidance; the agency rejected California's initial request for
11 failure to conform with it and required the state to submit a revised, compliant request. There
12 is thus no question that the agency's decisionmaking process on emergency allotments is at
13 an end, satisfying *Bennett*'s first condition for final agency action.

14 *Bennett*'s second condition is also satisfied. The guidance has immediate and
15 concrete legal consequences, as it determines the outcome of states' requests. *See*
16 *Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015, 1023 (D.C. Cir. 2000) (*Bennett*'s second
17 condition is satisfied where a guidance document "give[s] the States their 'marching
18 orders'"). The guidance impacts SNAP recipients' access to emergency allotments by
19 denying state requests that include supplemental benefits for households at the maximum
20 regular allotment. In doing so, it denies Plaintiffs crucial food assistance. These legal
21 consequences more than satisfy *Bennett*'s second condition. Because both conditions are
22 met, the guidance is final agency action.

23
24 **2. Section 2302(a)(1) unambiguously provides separate emergency allotments to**
25 **meet temporary food needs for all SNAP households, including those**
26 **receiving the maximum regular allotment.**

27 "If the plain meaning of the statute is clear, this Court and the agency 'must give
28 effect to the unambiguously expressed intent of Congress.'" *Queen of Angels/Hollywood*
Presbyterian Med. Ctr. v. Shalala, 65 F.3d 1472, 1477 (9th Cir. 1995) (quoting *Chevron*,

1 *U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837, 842-43 (1984)). To determine plain
2 meaning, courts evaluate the language of the statute “in light of the overall purpose and
3 structure of the whole statutory scheme.” *I.R. ex rel. E.N. v. Los Angeles Unified Sch. Dist.*,
4 805 F.3d 1164, 1167 (9th Cir. 2015).

5 Applying these principles here, the meaning of section 2302(a)(1) is unambiguous.
6 Under the plain language of the statute, reinforced by its structure and purpose, households
7 receiving the maximum regular SNAP allotment are eligible for additional emergency
8 allotments to address their increased food needs during the pandemic.

9 Section 2302(a)(1) of the Families First Act provides that upon a properly supported
10 request from a state agency, USDA “shall provide . . . for emergency allotments to
11 households participating in the supplemental nutrition assistance program under the Food and
12 Nutrition Act of 2008 to address temporary food needs not greater than the applicable
13 maximum monthly allotment for the household size[.]”

14 This statutory language clearly identifies the families and individuals Congress
15 intended to aid: “households participating in the supplemental nutrition assistance program.”
16 This unambiguous and unqualified phrase includes all households that receive a regular
17 SNAP allotment, making clear that households receiving the maximum regular allotment are
18 among those Congress intended to benefit.

19 The words Congress used to describe the problem it sought to address – “temporary
20 food needs” – also demonstrate that households receiving the maximum allotment are
21 intended beneficiaries under section 2302(a)(1). Read in context, this phrase plainly refers to
22 increased needs for food assistance caused by COVID-19. The pandemic temporarily
23 increases SNAP households’ need for food assistance in several ways. Among other things,
24 it raises the price of food, makes it harder to find low-cost staples on grocery shelves, and
25 reduces access to free food from food pantries and similar sources. All SNAP recipients are
26 experiencing the conditions that have created the “temporary food needs” that Congress
27 intended to address. Because of their dire economic circumstances, households receiving the
28 maximum allotment are the most likely to have increased needs. There is no reason to

1 conclude that Congress intended to benefit all SNAP recipients *except* these households.

2 To address pandemic-related food needs, Congress authorized “emergency allotments
3 . . . not greater than the applicable maximum monthly allotment for the household size.”

4 This language too confirms that Congress intended to aid households receiving the maximum
5 regular allotment. Interpreting the words Congress used in context and “in their ordinary,
6 everyday senses” (*Taproot Admin. Servs., Inc. v. Comm’r*, 679 F.3d 1109, 1116 (9th Cir.
7 2012)), “emergency allotment[]” plainly refers to something provided *in addition to* the
8 regular monthly allotment a household receives under non-emergency conditions. The
9 phrase “not greater than the applicable maximum monthly allotment for the household size”
10 then places a simple cap on the amount of these separate emergency allotments. The
11 permissible amount of emergency allotments is defined by this cap and the scope of the
12 temporary needs caused by the pandemic.

13 Nothing in the text of section 2302(a)(1) supports a reading in which a household’s
14 emergency allotment is limited by the amount of its regular allotment – that amount is not
15 mentioned anywhere in the statute. And nothing in the statutory language indicates an intent
16 to distinguish between different groups of SNAP households, or to exclude those with the
17 greatest need. If Congress had intended for the statute to operate the way USDA has
18 implemented it, it could easily have said so, for example by providing, “The total monthly
19 assistance received by a household, including its emergency allotment, shall not exceed the
20 applicable maximum monthly allotment for the household size.” But that is not what the
21 statute says. The phrase “not greater than the applicable maximum monthly allotment for the
22 household size” modifies “emergency allotments . . . to address temporary food needs.” It
23 must therefore be read as a limit on the amount of those separate allotments, not a limit on
24 the combined total of a household’s regular and emergency allotments.

25 The purpose and structure of the Families First Act reinforce this plain language
26 reading of the statute. Nothing in section 2302(a)(1) or elsewhere in the Act suspends the
27 issuance of regular SNAP allotments, demonstrating that Congress intended to provide two
28 parallel streams of assistance: separate emergency allotments alongside ongoing regular

1 allotments.

2 And because emergency allotments are intended to address additional pandemic-
 3 related needs above and beyond the needs addressed by regular allotments, subtracting those
 4 allotments from the value of emergency allotments thwarts the purpose of the statute.
 5 Congress intended to help households experiencing temporary food needs because of
 6 COVID-19 and could not have intended to exclude the households most vulnerable to those
 7 needs. Denying emergency allotments to households receiving the maximum regular
 8 allotment would also violate the Food and Nutrition Act’s express purpose of “safeguard[ing]
 9 the health and well-being of the Nation’s population by raising levels of nutrition among
 10 low-income households.” 7 U.S.C. § 2011. Consistent with this purpose, the Food and
 11 Nutrition Act is structured to provide the most assistance to the households who are least able
 12 to afford food. 7 U.S.C. § 2017(a). Denying those households emergency allotments, while
 13 providing greater emergency assistance to households with higher incomes, would turn this
 14 longstanding principle on its head. There is no fathomable reason why Congress would
 15 choose to distribute emergency allotments in such an arbitrary and inequitable way.

16
 17 **3. USDA’s policy cannot be justified by reference to a different SNAP statute,
 18 which does not govern emergency allotments and by its own terms does not
 deny allotments to recipients receiving the maximum regular benefit.**

19 Instead of applying section 2302(a)(1) as Congress wrote it, USDA states that it
 20 derives its limit on emergency allotments from 7 U.S.C. § 2014(h)(3)(A). Declaration of
 21 Alexander Prieto ¶ 3, Ex. 2 (letter from USDA to Plaintiffs’ counsel). According to the
 22 agency, this statute “prohibits SNAP participants from receiving more than the maximum
 23 SNAP allotment for their household size.” *Id.* But section 2014(h)(3)(A), which provides
 24 emergency SNAP allotments to replace food destroyed in a disaster, contains no such
 25 prohibition. It is also entirely consistent with an interpretation of section 2302(a)(1) that
 26 provides emergency allotment for all SNAP households.

27 Section 2014(h)(3)(A) states:

28 The Secretary shall provide, by regulation, for emergency allotments to

1 eligible households to replace food destroyed in a disaster. The regulations
 2 shall provide for replacement of the value of food actually lost up to a limit
 approved by the Secretary not greater than the applicable maximum monthly
 allotment for the household size.

3 Like section 2302(a)(1), this provision does not limit the combined total of a household's
 4 regular and emergency allotments. It simply says that an emergency allotment to replace
 5 food destroyed in a disaster cannot exceed the maximum monthly allotment – the same limit
 6 section 2302(a)(1) places on emergency allotments to address pandemic-related food needs.

7 Because there are no references to section 2014(h)(3)(A) in section 2302(a)(1) or
 8 elsewhere in the Families First Act, there is also no reason to conclude that Congress
 9 intended section 2014(h)(3)(A) to govern emergency allotments under the Act. The two
 10 statutes address two different kinds of emergencies, and section 2014(h)(3)(A) does not
 11 define “emergency allotment” or place any generally applicable limits on emergency
 12 allotments. Even if it did, section 2302(a)(1), the more recent and more specific statute,
 13 would control if there were an irreconcilable conflict between them. *Chevron U.S.A., Inc. v.*
 14 *Hammond*, 726 F.2d 483, 490 n.8 (9th Cir. 1984).

15 By denying emergency allotments to families and individuals receiving the maximum
 16 regular SNAP allotment, USDA has failed to act in accordance with law and exceeded its
 17 authority under section 2302(a)(1).

18
 19 **B. Denial of emergency allotments to meet increased food needs during an
 unprecedented public health crisis irreparably harms Plaintiffs.**

20 Without a preliminary injunction, Plaintiffs will be denied access to emergency
 21 SNAP allotments necessary to obtain vital nutrition during an unprecedented public health
 22 crisis. That denial unquestionably constitutes irreparable harm and warrants issuance of a
 23 preliminary injunction. Denial of subsistence benefits “almost universally has been regarded
 24 as irreparable injury because welfare recipients depend upon them . . . to sustain life.” *Abreu*
 25 *v. Callahan*, 971 F. Supp. 799, 821 (S.D.N.Y. 1997). Numerous courts have held that
 26 deprivation of food from denial of SNAP benefits is irreparable harm. *See, e.g., D.C. v. U.S.*
 27 *Dep’t of Agric.*, ___ F. Supp. 3d ___, No. CV 20-119 (BAH), 2020 WL 1236657 at *30
 28 (D.D.C. Mar. 13, 2020); *Garnett v. Zeilinger*, 313 F. Supp. 3d 147, 157 (D.D.C. 2018); *Booth*

1 *v. McManaman*, 830 F. Supp. 2d 1037, 1043 (D. Haw. 2011).

2 The fact that Plaintiffs are receiving their normal monthly SNAP assistance does not
3 change the conclusion that denial of emergency allotments inflicts irreparable harm. While
4 Plaintiffs continue to receive the regular maximum monthly allotment, that amount is at best
5 just enough to meet minimum needs under normal economic conditions. And as the Ninth
6 Circuit recognized in *Benito v. Shalala*, 30 F.3d 1057, 1063–64, n.10 (1994), reductions in
7 public benefits “of a relatively small magnitude” can “impose irreparable harm” for those on
8 the economic margin of existence. Denial of emergency SNAP allotments during a crisis
9 that makes food both more expensive and more difficult to obtain is irreparable injury for
10 households that receive the maximum regular allotment because of their extreme poverty.

11
12 **C. The balance of equities and public interest heavily favor a preliminary injunction.**

13 The last two preliminary injunction factors, the balance of equities and the public
14 interest, merge when the government is a party. *California v. Azar*, 911 F.3d 558, 575 (9th
15 Cir. 2018). These factor tip sharply in Plaintiffs’ favor here. Without a preliminary
16 injunction, Plaintiffs will go without emergency assistance to meet urgent food needs. And
17 an injunction will serve the public’s interest in “ensuring that eligible low-income households
18 receive needed assistance to provide food for themselves and their families.” *Booth*, 830 F.
19 Supp. 2d at 1045. These considerations far outweigh any administrative or economic
20 hardship USDA may claim to suffer.

21 A preliminary injunction requiring an agency to comply with the Food and Nutrition
22 Act should not be considered a burden when balancing the equities, because “[t]he Act itself
23 imposes the burden; th[e] injunction merely seeks to prevent the defendants from shirking
24 their responsibilities under it.” *Withrow v. Concanon*, 942 F.2d 1385, 1388 (1991) (citation
25 and internal quotation marks omitted). And when the conflict is one “between financial
26 concerns and preventable human suffering,” the balance of equities strongly favors a
27 preliminary injunction. *Golden Gate Rest. Ass’n v. City and County of San Francisco*, 512
28 F.3d 1112, 1126 (2008). Applying these two principles, the court in *Booth* issued an

1 injunction requiring timely processing of SNAP applications, finding that the public interest
2 and SNAP recipients' need for food "clearly outweighed" any "additional expenses or . . .
3 administrative difficulties" the defendants might experience. 830 F. Supp. 2d at 1044. The
4 public interest further favors a preliminary injunction because "[o]ur society as a whole
5 suffers when we neglect the poor, the hungry, the disabled, or when we deprive them of their
6 rights or privileges." *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983), *rev'd in part on*
7 *other grounds*, 463 U.S. 1328 (1983).

8 The balance of the equities, the public interest, and all relevant factors favor
9 preliminary relief in this case.

10
11 **D. Plaintiffs should not be required to post a bond.**

12 "Although Federal Rule of Civil Procedure 65(c) generally provides that a
13 preliminary injunction will not issue except upon the giving of security, it is not required
14 where plaintiffs are indigent or where considerations of public policy make waiver of a bond
15 appropriate." *Miller v. Carlson*, 768 F. Supp. 1331, 1340 (N.D. Cal. 1991). Exercise of that
16 discretion is particularly appropriate in an action brought by a class of indigent plaintiffs.
17 *See, e.g., Walker v. Pierce*, 665 F. Supp. 831, 844 (N.D. Cal. 1987). The Court should waive
18 the posting of any bond in this case.

19
20 **E. Plaintiffs, who have suffered harms caused by USDA's illegal actions that**
21 **this Court can redress, have constitutional and prudential standing to**
22 **bring this lawsuit.**

23 Article III's "case or controversy" requirement "consists of three elements: "(1) an
24 injury in fact that is (a) concrete and particularized and (b) actual or imminent; (2) causation;
25 and (3) a likelihood that a favorable decision will redress the injury." *Wolfson v. Brammer*,
26 616 F.3d 1045, 1056 (9th Cir. 2010) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555,
560-61 (1992)). This case meets all those requirements.

27 First, there cannot be a dispute that the named Plaintiffs and every class member have
28 suffered concrete injury: denial of emergency allotments to feed themselves and their

1 families. The harm is actual and ongoing; each day that USDA’s illegal guidance remains in
2 effect, it takes food off of Plaintiffs’ tables.

3 Second, the agency’s misinterpretation of section 2302(a)(1) has directly caused the
4 harm. Based on its interpretation, USDA rejected California’s request to provide a \$60 per
5 person emergency allotment to all SNAP recipients, including those receiving the maximum
6 regular allotment. Nako Decl. ¶¶ 3, Ex. 4. *See Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th
7 Cir. 2014) (“Causation may be found even if there are multiple links in the chain connecting
8 the defendant’s unlawful conduct to the plaintiff’s injury . . .”). USDA’s erroneous
9 guidance has harmed Plaintiffs and the class.

10 Third, success in this litigation is more than likely to redress that harm. To “have
11 standing, a federal plaintiff must show only that a favorable decision is *likely* to redress his
12 injury, not that a favorable decision *will inevitably* redress his injury.” *Beno*, 30 F.3d at 1065
13 (citing *Lujan*, 504 U.S. at 561); *see also Skyline Wesleyan Church v. California Dep’t of*
14 *Managed Health Care*, ___ F.3d ___, No. 18-55451, 2020 WL 2464926 at *8 (9th Cir. May 13,
15 2020) (“It is not necessary to show ‘a guarantee that [the plaintiff’s] injuries will be
16 redressed.’”) (citation omitted).

17 Plaintiffs meet this standard. For them to secure emergency allotments after a
18 favorable decision, only two events must occur: (1) California must renew its request for
19 emergency allotments for households receiving the maximum regular allotment; and
20 (2) USDA must approve the request. Both are highly likely.

21 California will very likely take the necessary action after a favorable ruling. The state
22 has every incentive to seek allotments for the poorest SNAP recipients, as allotments are
23 entirely federally funded. 7 U.S.C. § 2013(a). And California previously requested approval
24 to provide emergency allotments to all SNAP recipients and expressed disagreement with
25 USDA’s interpretation of section 2032(a)(1). Nako Decl. ¶¶ 3, Ex. 3.

26 It is also more than likely that USDA will approve California’s request after a
27 favorable decision. Under section 2302(a)(1), USDA “*shall* provide” emergency allotments
28 “at the request of a State agency . . . that provides sufficient data (as determined by the

1 Secretary through guidance) supporting such request.” (Emphasis added.) USDA, in
2 approving California’s current request, has already determined that the state provided
3 sufficient data (Nako Decl. ¶ 3, Ex. 6), so a request based on a proper interpretation of
4 section 2302(a)(1) must be approved. Plaintiffs have met the redressability test and have
5 constitutional standing. *See Graham v. Fed. Emergency Mgmt. Agency*, 149 F.3d 997, 1003-
6 04 (9th Cir. 1998) (plaintiffs with approved applications for disaster assistance grants under
7 program funded primarily by FEMA but administered by Federated States of Micronesia
8 (FSM) had standing to sue FEMA over termination of program, because incentives made it
9 likely FSM, although not a party, would give grants to plaintiffs if FEMA was ordered to
10 provide its share of funding), *abrogated on other grounds, Levin v. Commerce Energy, Inc.*,
11 560 U.S. 413 (2010).

12 Plaintiffs also have prudential standing. In an APA suit, as a prudential requirement,
13 plaintiffs “must show that they fall within the ‘zone of interests’ to be protected or regulated
14 by the underlying statute in question.” *Id.* at 1001. “The zone-of-interests analysis
15 forecloses suit ‘only when a plaintiff’s interests are so marginally related to or inconsistent
16 with the purposes implicit in the statute that it cannot reasonably be assumed that Congress
17 authorized that plaintiff to sue.’” *E. Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1270
18 (9th Cir. 2020) (citation omitted). Here, the interests of low-income individuals and families
19 in need of food security are at the heart of both section 2302(a)(1) and the Food and Nutrition
20 Act. Plaintiffs have prudential as well as constitutional standing to bring this suit.

21 22 **V. CONCLUSION**

23 For the foregoing reasons, Plaintiffs respectfully request that the Court issue a
24 preliminary injunction prohibiting Defendants from denying any otherwise appropriate
25 request from California under section 2302(a)(1) of the Families First Coronavirus Response
26 Act because it provides emergency SNAP allotments to households receiving the maximum
27 monthly benefit amount.

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Dated: May 21, 2020

WESTERN CENTER ON LAW & POVERTY
IMPACT FUND



ALEXANDER PRIETO
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Attorneys for Plaintiffs and the Plaintiff Class