

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MASSACHUSETTS RESTAURANT
ASSOCIATION, HOSPITALITYMAINE,
NEW HAMPSHIRE LODGING &
RESTAURANT ASSOCIATION, RHODE
ISLAND HOSPITALITY ASSOCIATION,
RESTAURANT LAW CENTER, and the
NATIONAL PORK PRODUCERS
COUNCIL,

Plaintiffs,

v.

ANDREA JOY CAMPBELL, in her Official
Capacity as the Attorney General of
Massachusetts, and ASHLEY E. RANDLE,
in her Official Capacity as Commissioner of
the Massachusetts Department of Agricultural
Resources,

Defendants.

Civil Action No. 4:22-cv-11245-MRG

**STATUS REPORT AND
JOINT MOTION TO FURTHER EXTEND
STAY OF PROCEEDINGS PENDING REGULATORY PROPOSAL**

Plaintiffs Massachusetts Restaurant Association, HospitalityMaine, New Hampshire Lodging & Restaurant Association, Rhode Island Hospitality Association, Restaurant Law Center, and the National Pork Producers Council (“Plaintiffs”), and defendants Andrea Joy Campbell, in her Official Capacity as the Attorney General of Massachusetts, and Ashley E. Randle, in her Official Capacity as Commissioner of the Massachusetts Department of Agricultural Resources (“Defendants”) (collectively, “Parties”), respectfully submit this Status Report and Joint Motion to Further Extend the Stay.

As background to this Status Report and Motion, the Parties state as follows:

(1) On August 3, 2022, Plaintiffs filed the Complaint in this matter seeking a declaration that Mass. G.L. c. 129 App. § 1-3(C), 330 Code Mass. Reg. § 35.04(1)(c), and the official guidance interpreting same (the “Pork Sale Rules”) violate the dormant Commerce Clause of the Constitution of the United States. Dkt. No. 1.

(2) Also on August 3, 2022, Plaintiffs filed an Emergency Motion for Preliminary Injunction, which has since been withdrawn without prejudice. Dkt. Nos. 3, 21, 23.

(3) On August 10, 2022, the Parties moved to stay this case until 30 days after a final decision by the Supreme Court in a constitutional challenge to a similar California law that raised many of the same issues that were raised in this Complaint. *See National Pork Producers Council v. Ross*, 143 S.Ct. 1142 (May 11, 2023) (“*Ross*”). The Defendants also agreed to stay enforcement of the Pork Sale Rules against any Plaintiff or non-party during this “Stay Period” and agreed not to enforce the Pork Sale Rules against any Plaintiff or non-party for any conduct that occurred during the Stay Period.

(4) The Supreme Court’s decision in *Ross* upholding California’s law became final on June 12, 2023, when the mandate issued to the Ninth Circuit.

(5) At the request of the parties and by order of the Court, the Stay Period was extended until August 23, 2023. Dkt. Nos. 19 & 20.

(6) On August 4, 2023, the Parties filed a joint motion and stipulation (Dkt. No. 21) noting that the Massachusetts Department of Agricultural Resources (“MDAR”) was in the process of proposing amendments to the regulations at 330 Code Mass. Reg. § 35.00 that would, if finalized, address the status of “Whole Pork Meat” that is produced outside of Massachusetts and that enters and exits Massachusetts without additional processing or repackaging,

exclusively for the purposes of transshipment or export outside of Massachusetts. Whole Pork Meat meeting these criteria is referred to herein as “Transshipped Whole Pork Meat.” The Parties acknowledged that Defendant MDAR is required to comply with Mass. G.L. c. 30A when proposing any amendment to its regulations.

(7) The Parties agreed that the Pork Sale Rules, but for those pertaining to Transshipped Whole Pork Meat, would go into effect on August 24, 2023. Insofar as the Pork Sales Rules pertain to Transshipped Whole Pork Meat, the Parties requested that those rules be stayed until 60 days after the date of publication of the amended regulations in the Massachusetts Register in accordance with Mass. G.L. c. 30A but in no event longer than one year from the date of the Court’s approval of the Stipulation. This period of time is referred to as the “Regulatory Stay Period.”

(8) The Parties agreed that the Stay Period, including Defendants’ stay of enforcement, would end on August 23, 2023, as to all other portions of the Pork Sale Rules not otherwise addressed in the Stipulation. The Parties agreed that, on August 24, 2023, the Defendants could begin to enforce the Pork Sale Rules, unless otherwise provided in the Stipulation. The Defendants agreed that they would not enforce the Pork Sale against any Plaintiff or non-party for any conduct that occurred during the Stay Period, i.e. at any time on or before August 23, 2023.

(9) The Pork Sale Rules, except as to Transshipped Whole Pork Meat, did go into effect on August 24, 2023.

(10) The Defendants agreed to stay enforcement of the Pork Sales Rules as to Transshipped Whole Pork Meat during the Regulatory Stay Period. The Defendants further

agreed not to enforce the Pork Sales Rules as to Transshipped Whole Pork Meat against any Plaintiff or non-party for any conduct that occurred during the Regulatory Stay Period.

(11) The Defendants further agreed not to enforce the Pork Sales Rules as to any Whole Pork Meat that was in the supply chain as of August 23, 2023. Whole Pork Meat is considered “in the supply chain” on August 23, 2023, if, on that date, it satisfied the definition of “Whole Pork Meat” as that term is defined in the Pork Sale Rules at 330 Code Mass. Reg. § 35.02. That term does not include live animals.

(12) On August 7, 2023, the Court allowed the parties’ joint motion to stay proceedings in the case for six months, until February 7, 2023. Dkt No. 22.

(13) Since the Court’s order on August 7, 2023, MDAR has continued in the process of proposing amendments to the regulations at 330 Code Mass. Reg. § 35.00 that would address the status of Transshipped Whole Pork Meat. That process is ongoing and MDAR requires additional time to propose any amendments in compliance with the requirements of Mass. G.L. c. 30A.

Accordingly, the Parties now stipulate and request as follows:

(14) The Parties request that the Court enter an order staying proceedings in this case for an additional six months, or until 60 days after promulgation of final regulations, whichever is earlier. If the regulatory process has not concluded within six months, the Parties will file a status report.

(15) The Parties agree to extend the Regulatory Stay Period for an additional six months, or until 60 days after promulgation of final regulations, whichever is earlier. The Defendants agree to stay enforcement of the Pork Sales Rules as to Transshipped Whole Pork

Meat during the extended Regulatory Stay Period. The Defendants further agree not to enforce the Pork Sales Rules as to Transshipped Whole Pork Meat against any Plaintiff or non-party for any conduct that occurs during the extended Regulatory Stay Period. The Defendants further agree not to enforce the Pork Sales Rules as to any Whole Pork Meat that was in the supply chain as of August 23, 2023.

(16) Nothing in this status report and joint motion shall be construed as an admission concerning the merits of this lawsuit with respect to the Pork Sale Rules applicable to Transshipped Whole Pork Meat. The Parties reserve all claims and defenses.

WHEREFORE, the Parties jointly request that the Court order a further stay of proceedings in this action until the earlier of (i) six months after entry of an order extending the stay, or (ii) 60 days after the promulgation of final regulations, as proposed herein, by which time the Parties will file a proposal for future proceedings in the case, if any.

STIPULATED and AGREED this 7th day of February, 2024.

ALL PLAINTIFFS,

**PLAINTIFF NATIONAL PORK
PRODUCERS COUNCIL,**

by their counsel,

by its counsel,

/s/ Robert M. Shaw

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/s/ Michael C. Formica

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ASHLEY E. RANDLE, in her Official Capacity as Commissioner of the Massachusetts Department of Agricultural Resources,

by their counsel,

/s/ Maryanne Reynolds

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SO ORDERED,

Hon. Margaret R. Guzman
United States District Judge

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that today, February 7, 2024, I caused a true copy of the forgoing to be served by e-mail on all counsel of record.

/s/ Robert M. Shaw

Robert M. Shaw