

**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

**JOINT STIPULATION AND
MOTION FOR PARTIAL EXTENDED STAY 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 Joint Stipulation and Motion for a Partial Extended Stay.

As background to this Joint Stipulation 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 seeking an order that would prevent the Defendants from enforcing the Pork Sale Rules, which were then scheduled to take effect on August 22, 2022. Dkt. No. 3.

(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 are raised in this case. *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 occurs 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.

The Parties hereby stipulate as follows:

(6) Pursuant to its regulatory authority, the Massachusetts Department of Agricultural Resources (“MDAR”) is 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.”

(7) The Parties request that this case be further stayed for six months, and potentially longer, to allow Plaintiffs to assess whether the potential regulatory change resolves the remaining legal issue. If the regulatory process has not concluded within six months, the Parties will file a status report and request for further stay as necessary. The parties acknowledge that Defendant MDAR is required to comply with Mass. G.L. c. 30A when proposing any amendment to its regulations.

(8) The Parties agree that the Pork Sale Rules, but for those pertaining to Transshipped Whole Pork Meat, should go into effect on August 24, 2023. Insofar as the Pork Sales Rules pertain to Transshipped Whole Port Meat, the Parties request 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 this Stipulation. This period of time shall be referred to herein as the “Regulatory Stay Period.”

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

(10) The Defendants further agree not to enforce the Pork Sales Rules as to any Whole Pork Meat that is 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 satisfies 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.

(11) The Plaintiffs agree to withdraw their pending motion for preliminary injunction (Dkt. No. 3), without prejudice to refile the motion insofar as the motion pertains to Transshipped Whole Pork Meat following the regulatory proposal process described herein.

(12) The Stay Period, including Defendant’s stay of enforcement, will end as to all other portions of the Pork Sale Rules not otherwise addressed herein on August 23, 2023. The Parties agree that, on August 24, 2023, the Defendants may begin to enforce the Pork Sale Rules, unless otherwise provided herein. The Defendants will 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.

(13) Nothing in this stipulation 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 partial further stay of this action until 60 days after the promulgation of final regulations, as proposed under paragraphs 6-8 of this Joint Stipulation and Motion, by which time the Parties will file a proposal for future proceedings in the case, if any.

STIPULATED and AGREED this 4th day of August, 2023.

ALL PLAINTIFFS,

**PLAINTIFF NATIONAL PORK
PRODUCERS COUNCIL,**

by their counsel,

by its counsel,

/s/ Robert M. Shaw

Jeremy M. Sternberg, BBO No. 556566
Robert M. Shaw, BBO No. 669664
HOLLAND & KNIGHT LLP
10 St. James Ave.
Boston, MA 02116
617-523-2700
jeremy.sternberg@hklaw.com
robert.shaw@hklaw.com

/s/ Michael C. Formica

Michael C. Formica*
NATIONAL PORK PRODUCERS COUNCIL
122 C Street, N.W. Suite 875
Washington, DC 20001
202-347-3600
formicam@nppc.org
*Motion for admission *pro hac vice*
forthcoming.

Charles E. Borden*

HOLLAND & KNIGHT LLP
800 17th Street N.W., Suite 1100
Washington, DC 20006
202-469-5461
charles.borden@hklaw.com
*Motion for admission *pro hac vice*
forthcoming.

**PLAINTIFF RESTAURANT LAW
CENTER,**

by its counsel,

/s/ Angelo I. Amador

Angelo I. Amador*
RESTAURANT LAW CENTER
2055 L Street, N.W., Suite 700
Washington, DC 20036
202-331-5913
aamador@restaurant.org
*Motion for admission *pro hac vice*
forthcoming.

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

by their counsel,

/s/ Maryanne Reynolds

Maryanne Reynolds, BBO #627127
Assistant Attorney General
Office of the Attorney General
Government Bureau
10 Mechanic Street, Suite 301
Worcester, MA 01608
(774) 214-4407
maryanne.reynolds@mass.gov

Grace Gohlke, BBO #704218
Assistant Attorney General
Office of the Attorney General
Government Bureau
One Ashburton Place, 20th Floor
Boston, MA 02108
(617) 963-2527
grace.gohlke@mass.gov

SO ORDERED,

Hon. Margaret R. Guzman
United States District Judge

Date: _____