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12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 ANGELA SMITH, on behalf of herself and all
others similarly situated

18 Plaintiff,
19

20 vs.

21 UNITED STATES DEPARTMENT OF
AGRICULTURE, TOM VILSACK, Secretary,
United States Department of Agriculture in his
22 official capacity, and WILL LIGHTBOURNE,
Director, California Department of Social
23 Services, in his official capacity

24 Defendant.
25
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27
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Case No.: _____

**CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

NATURE OF ACTION

1. Plaintiff, a low income California resident, brings this lawsuit on behalf of herself and a class of approximately 46 million other similarly situated individuals to stop Defendants from cutting off or otherwise interfering with benefits under the federal government's Supplemental Nutrition Assistance Program ("SNAP," formerly known as the Food Stamp Program). The named Plaintiff and the class are individuals who either are scheduled to receive or have applied to receive benefits under SNAP beginning this Thursday, October 1, 2015. These individuals and their families, over 95% of whom live below the federal poverty level, rely on SNAP benefits redeemed at authorized SNAP retailers to meet basic subsistence and nutritional needs.

2. With another federal government shutdown looming because of the political budget impasse in Congress, Defendants have announced that unless and until Congress enacts a full or part-year appropriations act, Plaintiff and the class will be prevented from using SNAP benefits to purchase food beginning as early as the first several days of October 2015. And even if a continuing resolution is adopted for a few weeks or months, the USDA has stated that SNAP benefits will not be available if, and when a shutdown occurs at that time.

3. Plaintiff and the class are among the neediest and most vulnerable people in America and should not be forced to go without food because Congress cannot agree on a budgetary legislation for reasons unrelated to SNAP. Under the Food and Nutrition Act of 2008, Defendants are obligated to provide continued assistance and make available SNAP benefits to "all eligible households who make applications for such participation." If Defendants are not enjoined from breaching their duties and obligations under the Act, Plaintiff and the members of the class will suffer irreparable harm as a result of being denied the financial means to buy food.

4. Defendants' decision to interfere with and halt SNAP benefits in the event of a government shutdown by de-authorizing all food retailers accepting those benefits from Plaintiff and class members is unlawful and inequitable. Neither the Act, nor the regulations promulgated under the Act, allow Defendants to carry out wholesale "de-authorization" of all food retailers as a means of cutting off SNAP benefits to otherwise qualified recipients.

5. Unlike some laws, Congress structured the Food and Nutrition Act to direct benefits to continue even where, as here, the annual appropriations legislation for SNAP is delayed. Specifically, unlike other benefit programs, the Act makes SNAP benefits an “entitlement” that Defendants are directed to continue to issue while awaiting annual appropriations legislation. That clear directive to pay benefits except where program costs exceed a ceiling Congress has imposed for a year constitutes an appropriation in compliance with the Appropriations Clause and the Anti-Deficiency Act. Even if it did not, and even if the Appropriations Clause and the Anti-Deficiency Act prevented Defendants from reimbursing retailers for food purchased, the Food and Nutrition Act’s mandate to continue issuing benefits still stands. If Defendants did not reimburse authorized food retailers, the Food and Nutrition Act allows the retailers to seek reimbursement through the Court of Federal Claims, and reimbursements would be paid from the permanent, uncapped appropriation for judgments against the United States.

6. In any event, there is nothing in the Act or its regulations that could be construed to abrogate, abridge or diminish Defendants’ legal and equitable obligations to provide lawfully issued SNAP benefits to qualified recipients because of a budget appropriation delay. That is especially true when the justification for halting benefits is based on a budget appropriation delay caused entirely by political squabbling over issues that have nothing to do with SNAP. Whatever its political differences, Congress did not authorize Defendants to deprive 46 million people of their ability to meet subsistence level nutritional needs under the Act because of a temporary delay in annual appropriations legislation.

JURISDICTION, VENUE, AND RIGHT OF ACTION

7. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337, 1346, and 1367.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

9. Plaintiff’s action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201(a) and 2202 and by Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure. 42 U.S.C. § 1983 and 5 U.S.C. §§ 500, *et seq.*, confer rights of action to enforce the statutes cited in this complaint.

THE PARTIES

10. Plaintiff Angela Smith is a resident of Oakland in Alameda County, California. She is eligible for and currently receiving SNAP benefits.

11. Defendant United States Department of Agriculture (“USDA”), is a federal agency charged with implementing SNAP, which provides nutritional assistance to low-income individuals throughout the United States. At all times, Defendant has acted under the color of state and federal law.

12. Defendant Tom Vilsack is the Secretary of the USDA, and is sued in his official capacity. He is responsible for ensuring USDA’s compliance with the laws of the United States. At all times, Defendant has acted under the color of state and federal law.

13. Defendant Will Lightbourne is the Director of the California Department of Social Services (“DSS”), which is the California state agency that is charged with administering the CalFresh program. He is sued in his official capacity as the official responsible for ensuring DSS and its agents act in compliance with the laws of the United States. At all times, Defendant has acted under the color of state and federal law.

FACTS**Impending Government Shutdown**

14. With alarming frequency, partisan political brinkmanship has brought the government of the United States to shut down, or near shut down, in recent history. And every time there is a shutdown or threatened shutdown that affects SNAP-related appropriations bills, millions of households that rely on SNAP benefits (which are called “CalFresh” in California) to supplement their monthly income to purchase food and avert hunger face threats that their benefits will be suspended.

15. This year is no exception. For agencies and programs that are funded through annual appropriation acts, Congress and President must enact interim or full-year appropriations by October 1, the beginning of the federal fiscal year. A failure to do so results in a funding gap, at which point, the federal government begins a “shutdown” of affected activities, including the furlough of non-essential personnel and curtailment of agency activities and services. In order to

1 avoid a government shutdown, Congress may enact short-term measures, called continuing
2 resolutions, to keep the government funded for a few days, weeks, or months at previous levels until
3 final budgeting decisions are made.

4 16. As of the filing of this Complaint, Congress has failed to pass a budget or a
5 continuing resolution to avert a government shutdown that will go into effect on October 1, 2015.

6 17. As a result of the pending shutdown, Defendants intend to cut off SNAP benefits to
7 Plaintiff and the class. A spokeswoman for USDA has stated that “[i]f Congress does not act to
8 avert a lapse in appropriations, then USDA . . . will be forced to stop providing benefits within the
9 first several days of October.” According to USDA, “[o]nce that occurs, families won’t be able to
10 use these benefits at grocery stores to buy the food their families need.”

11 18. On September 23, 2015, the USDA sent a letter to state administrators stating that:

12
13 . . . should Congress fail to act, USDA would have limited resources to
14 finance October SNAP benefits and would be required by law to
15 ensure that USDA does not incur obligations for which funding is not
16 available. ***This would require USDA to take steps, including the de-
authorization of retailers in the first several days of the month to
prevent SNAP benefits from being redeemed during an
appropriations lapse.***¹

17 19. On its website, the USDA warned the public that SNAP benefits will only remain
18 available through “the first couple of days in October.”² And even in the event appropriations
19 legislation is passed after October 1, the USDA anticipates that there will be interruption of benefits
20 and SNAP recipients will not be able to purchase for a “few days to bring retailers back online so
21 they can begin accepting SNAP EBT cards again.” *Id.*

22 20. Even if a continuing resolution is adopted for a few weeks or months, the threat of a
23 shutdown continues, as does USDA’s threat to make SNAP benefits unavailable in the event of a
24 shutdown.

25
26 ¹ Sept. 23, 2015 Letter from Audrey Rowe, Administrator Food and Nutrition Services to SNAP
27 State Agency Directors (emphasis added) (“9/23/15 Letter”).

28 ² Q&A for SNAP Recipients in the Event of a Government Shutdown, *available at*
<http://www.fns.usda.gov/snap/2015-qas> (last accessed Sept. 27, 2015).

21. Any disruption of SNAP benefits would cause considerable hardship and immediate irreparable harm to its indigent recipients who may not have enough money to purchase food, and many households would become confused and leave the program altogether.

22. Food pantries and soup kitchens across the country are already stretched to capacity. They cannot meet the additional nutritional needs of people who lose SNAP benefits if the USDA acts as threatened. Unless Defendants are enjoined, those who lose SNAP benefits will go hungry.

Representative Plaintiff

23. Plaintiff and class representative Angela Smith is 58 years old, currently unemployed, and lives alone in a room in transitional housing in Oakland, California.

24. Plaintiff's only monthly income at this time is General Assistance and CalFresh benefits. She receives about \$653 in General Assistance, and about \$125 in CalFresh benefits. About half of the General Assistance money goes towards housing and the rest is used to meet her basic needs.

25. Plaintiff worked most of her adult life, until recently. In her 20s, Plaintiff worked for the U.S. Postal Service, where she injured her back from heavy-lifting. Her back injury has been a persistent problem. For the last 10 years, Smith was employed as a home health care worker. When the hours she was working at the home health care job started to be cut, she was unable to afford her rent. She moved in with family friends. After a year, when her unemployment benefits ran out, and she felt that she had overstayed her welcome, she sought help at a homeless shelter.

26. Plaintiff now lives in transitional housing, which is understood to be a temporary arrangement. Plaintiff is provided with a room, which she must vacate between 9 a.m. to 3 p.m. every day and must purchase and prepare her own meals.

27. Plaintiff struggles to make ends meet on her fixed monthly income of approximately \$778 in cash and CalFresh benefits. Plaintiff pays \$344 in rent plus \$50 in utilities each month. After her other living expenses, Plaintiff has approximately \$175 to purchase food any given month. More than 70% (\$125) of her food budget comes from her CalFresh benefits.

28. If her CalFresh benefits are disrupted, or taken away all together, Plaintiff would struggle to eat every day. She would have to rely on food banks or soup kitchens, since \$50 would

1 not be enough to allow her to maintain a sufficient and nutritious diet for a month. Because of the
 2 uncertainty about when SNAP benefits might resume, she would not dare spend all of the \$50 at the
 3 beginning of the month for fear of having nothing at all to spend for food during the remainder of
 4 the month. If there is a system-wide shutdown of SNAP, Plaintiff worries that there would not be
 5 enough food at the food banks or soup kitchens.

6 **LEGAL FRAMEWORK**

7 **Overview of SNAP and D-SNAP Laws and Programs**

8 29. The Food Stamp Act of 1964, P.L. 88-525, was enacted to promote the general
 9 welfare and safeguard the health and well-being of the Nation's population, by helping low-income
 10 households access nutrition and alleviate hunger and malnutrition.

11 30. On October 1, 2008, the federal Food Stamp Program was renamed the
 12 Supplemental Nutrition Assistance Program and the Food Stamp Act was renamed the Food and
 13 Nutrition Act of 2008. §§ 4001 and 4002 of P.L. 110-246. The program's stated purpose is to
 14 "promote the general welfare and to safeguard the health and well-being of the Nation's population
 15 by raising the levels of nutrition among low-income households." Food and Nutrition Act of 2008, 7
 16 U.S.C. § 2011; 7 C.F.R. § 271.1(a).

17 31. Each state is responsible for administering SNAP. In California, DSS administers
 18 the program, known as "CalFresh." 7 U.S.C. §§ 2012(s), 2020; 7 C.F.R. § 271.4(a); Cal. Wel. &
 19 Inst. Code § 18900-18927.

20 32. The DSS also manages and oversees the implementation of the federal program
 21 known as Disaster Supplemental Nutrition Assistance Program ("D-SNAP"), called Disaster
 22 CalFresh ("D-CalFresh") in California. D-SNAP provides assistance to disaster victims, and can
 23 offer emergency aid within a matter of days to help victims purchase food. 7 U.S.C. § 2014(h); 7
 24 C.F.R. Part 280. An event is considered a major disaster where a Presidential declaration for
 25 individual assistance has been approved and commercial channels of food were disrupted but have
 26 been restored. MPP § 63-900.12. In 2014, D-SNAP helped households affected by storms in
 27 Illinois and Kentucky, an earthquake in California, and storms and flooding in Alabama, Arkansas,
 28 Michigan, and Mississippi. D-SNAP has been approved for Lake County following the Butte and

1 Valley Fires of September, 2015 and the application period for D-SNAP in Lake County has been
2 authorized to run from September 28, 2015, through October 3, 2015.

3 33. Applicants that meet requirements of limited income and financial resources can
4 receive dedicated funds that they can use to purchase food. 7 U.S.C. §§ 2014, 2017. To be eligible
5 for SNAP benefits, an applicant's net income generally must be below the federal poverty level
6 (100% FPL), 7 U.S.C. § 2014(c)(1), and the household must meet other eligibility requirements set
7 forth in the Food and Nutrition Act. 7 U.S.C. § 2011, *et seq.*

8 34. SNAP serves low-wage, working families, low-income seniors, and people with
9 disabilities living on fixed incomes. For Fiscal Year 2015 (October 1, 2014-September 30, 2015),
10 for a family of two, the net monthly income at 100% FPL is \$1,311. Close to 70 percent of SNAP
11 participants live in families with children; more than one-quarter are in households with seniors or
12 are people with disabilities.

13 35. In order to receive SNAP benefits, individuals or households must first apply. 7
14 U.S.C. § 2014(a). Each state designs its own SNAP application process, following federal
15 guidelines, but in most states, households apply in person, by mail, fax, or online, and must
16 participate in an eligibility interview. 7 C.F.R. § 273.2(c), (e). Applicants must document
17 numerous aspects of their eligibility, including their identity, residency, immigration status,
18 household composition, income and resources, and deductible expenses. 7 C.F.R. § 273.2(f).

19 36. Applicants who are found to be eligible are then "certified" for participation, and
20 receive an Electronic Benefit Transfer ("EBT") card. The amount of benefits an applicant receives
21 is called an allotment. The SNAP benefit formula targets benefits according to need: allotments are
22 calculated with the expectation that SNAP recipients spend about 30 percent of their net incomes
23 on food. 7 U.S.C. § 2017(a); 7 C.F.R. § 273.10(e)(2)(ii)(A); MPP § 63-503.32; ACIN I-45-07.
24 Very poor households receive larger benefits than households closer to the poverty line since they
25 need more help affording an adequate diet. As of September 2015, for a family of two in
26 California, the maximum allotment is \$357.

27 37. Once SNAP benefits become available, the full value of the monthly allotment is
28 loaded into accounts, which the SNAP recipient can access using his or her EBT card to purchase

1 food at one of over 259,000 authorized SNAP retailers in the same way one uses a debit card. *See* 7
 2 U.S.C. §§ 2016(g), 2018. States are authorized to make the benefits available on the first day of
 3 each month or to stagger the issuance of benefits over a longer period of time. In California,
 4 benefits are made available over the first 10 business days of every month, and participants are
 5 assigned a specific day on which their benefits are loaded.

6 38. From the perspective of the recipient, the EBT system operates similar to other debit
 7 card systems. When a SNAP recipient uses his or her EBT card at a retailer Point of Sale (POS)
 8 machine, an electronic message goes to a computer for approval. If the purchase is approved, the
 9 customer's EBT account gets an immediate debit and the retailer's account gets credited. At the end
 10 of the business day, transactions are totaled and the funds are moved. The retailer will usually
 11 receive money from an EBT transaction within 2 banking days.³

12 **Defendants' Unlawful Plan To Cutoff SNAP Benefits To Plaintiff and the Class**

13 39. Defendants have announced that they will take steps to halt operation of SNAP
 14 beginning in October, in the event that Congress fails to pass a full or part-year appropriations act.
 15 Defendants' acts are unlawful and are based on erroneous belief that SNAP must be renewed with
 16 annual appropriations legislation every fiscal year so as to require the cessation of the program "to
 17 ensure that USDA does not incur obligations for which funding is not available."⁴ As a result,
 18 Defendants' actions would put millions of SNAP participants in jeopardy, with their right to their
 19 entitled benefits intended to supplement their purchase of food disrupted every year Congress fails
 20 to pass the annual appropriations legislation.

21 40. The Food and Nutrition Act remains in effect on October 1, 2015, whether or not
 22 Congress passes appropriations legislation.⁵ This includes the provisions of the Act establishing
 23 eligibility rules and entitling eligible households to a specified level of benefits.

24 41. The Appropriations Clause provides that "No Money shall be drawn from the
 25 Treasury, but in Consequence of Appropriations made by Law". U.S. Const. art. I, § 9, cl.7. The

26 ³ 7 C.F.R. § 274.8(a)(3).

27 ⁴ 9/23/15 Letter.

28 ⁵ While a few parts of the Act are time-limited, none of those expire on October 1, 2015.

1 Appropriations Clause does not, however, require that such legislation be in the form of annual
2 appropriations acts or indeed that it be denominated as an “appropriation.”

3 42. When Congress has wanted to limit a nutrition program, it has made that clear with
4 specific language requiring a separate appropriations act before benefits may be provided. By
5 contrast, the Food and Nutrition Act requires Defendants to furnish SNAP benefits “to all eligible
6 households who make applications for such participation” without qualifications that subject it to
7 appropriation. 7 U.S.C. § 2014(a).

8 43. Similarly, the policy declaration under the Act provides that “to alleviate such
9 hunger and malnutrition, a supplemental nutrition assistance program is herein authorized which
10 will permit low-income households to obtain a more nutritious diet through normal channels of
11 trade by increasing food purchasing power for *all eligible households who apply for participation.*”
12 7 U.S.C. § 2011 (emphasis added).

13 44. Since 1990, the Congressional Budget Act, the Balanced Budget and Emergency
14 Deficit Control Act, and other budget process rules have explicitly recognized the Food Stamp
15 Program and now SNAP as directing the expenditure of the funds necessary to deliver those
16 entitlement benefits. As such, the entitlement language in the Food and Nutrition Act is an explicit
17 congressional direction to spend money satisfying the requirements of the Appropriations Clause
18 and the Anti-Deficiency Act. *See* 7 U.S.C. § 2014(a); U.S. Const. art. I, § 9, cl.7; 31 U.S.C. § 1341.

19 **Section 18 of the Food and Nutrition Act Does Not Allow Defendants’ to Reduce SNAP**

20 **Allotments In the Event of a Government Shutdown**

21 45. The Food and Nutrition Act does not provide the Secretary with the power to cease
22 the operation of the program in the event of a government shutdown. While section 18(b) of the
23 Food and Nutrition Act provides the procedures for how a reduction of allotments may be
24 administered by the Secretary of the USDA in the event that the needs of the program exceed
25 amount Congress specifies in an appropriations act for a particular fiscal year, this section does not
26 provide the basis for to de-authorize retailers or to take other steps to stop benefits from being used
27 by program participants where Congress has passed no annual appropriations act. Section 18(b)
28 states:

In any fiscal year, the Secretary shall limit the value of those allotments issued to an amount not in excess of the appropriation for such fiscal year. Notwithstanding any other provision of this Act, if in any fiscal year the Secretary finds that the requirements of participating States will exceed the appropriation, the Secretary shall direct State agencies to reduce the value of such allotments to be issued to households certified as eligible to participate in the supplemental nutrition assistance program to the extent necessary to comply with the provisions of this subsection.

7 U.S.C. § 2027(b). Section 18(b)'s language enforcing limits in appropriations bills has no application to the present situation, where Congress has not enacted an appropriation limit. The section hinges on the amount of "*the* appropriation" for the year. Where Congress has not legislated any such number, there is no number to exceed.

46. In the 1990 farm bill and the Budget Enforcement Act of 1990, Congress abandoned its long-time practice of treating food stamp legislation as an authorization of appropriations rather than an entitlement in the budgeting process.⁶ Thus, after the 1990 farm bill and the Budget Enforcement Act, Congress had directed that food stamps be treated as a mandatory program to reflect the fact that the original allotment reduction language had been rendered inoperative except in rare circumstances, leaving food stamps largely an uncapped individual entitlement. By 1998, food stamps' transformation from a capped program to an open-ended entitlement was so widely accepted that Congress eliminated as obsolete the requirement that the Secretary of Agriculture report monthly to Congress on whether benefit reductions would be ordered.⁷

47. Under many programs, once funding runs out, no further spending can occur. But that is not how Congress drafted section 18(b) of the Food and Nutrition Act.

48. While the Congress can enact an appropriation of zero for SNAP, it has not done so, and there are no precedents or reason to believe that Congress intends to do so for fiscal year 2016.

⁶ See, e.g., H. Rep. No. 99-271 (pt. 1) at 522, *reprinted in* 1985 U.S. Code Cong. & Admin. News 1626 (showing food stamp amendments in the category of "authorizations of appropriations" rather than the category for "direct spending authority"); S. Rep. No. 145 at 530-31, *reprinted in* 1985 U.S. Code Cong. & Admin. News 2196-97 (same). The House followed the "authorization of appropriations" approach more consistently than the Senate prior to the elimination of authorization caps in 1990.

⁷ Federal Reports Elimination Act of 1998, Pub. L. No 105-362, §101(b), 112 Stat. 3280, 3281 (1998).

1 Congress has never allowed the Food Stamp Program or SNAP to run out of money, in good times
2 and bad, in eras friendly to the program and those when it was subject to sharp criticism.

3 49. Without a specific appropriation of an inadequate amount, Defendants have no
4 authority or mechanism under the Food and Nutrition Act to take steps that effectively lead to
5 denial of benefits to qualified households.

6 **Even if No Annual Appropriation is Passed for Fiscal Year 2016, Defendants Should Not**
7 **Suspend or Terminate SNAP Benefits**

8 50. The clear directive in section 5(a) of the Food and Nutrition Act (7 U.S.C. § 2014(a))
9 to provide SNAP benefits to all eligible households that apply satisfies the Appropriations Clause
10 and the Anti-Deficiency Act and is binding on Defendants.

11 51. Even if section 5(a) did not provide an appropriation, most crucial activities required
12 to operate SNAP do not require the spending of federal funds. Defendants should therefore
13 continue to operate SNAP, consistent with the entitlement language in the Food and Nutrition Act.
14 If the lapse in appropriations is still continuing when the Treasury is called upon to reimburse the
15 banks that reimburse food retailers⁸ – the point at which federal funds would be expended – those
16 banks or retailers can seek reimbursement in the Court of Federal Claims under the Tucker Act. 28
17 U.S.C. § 1491(a)(1). The Court would direct their payment through the permanent, uncapped
18 appropriation for judgments against the United States. 28 U.S.C. § 2517; 31 U.S.C. § 1304(a).
19 Directing states to continue normal operations and allowing retailers to seek reimbursement through
20 the Court of Federal Claims would protect Plaintiff and the class from the harm caused by being
21 unable to purchase food with SNAP benefits.

22 52. In order to operate SNAP properly, several steps must occur:

- 23 1) A state agency must receive an application and certify the household consistent with
24 federal eligibility standards.⁹

25
26
27 ⁸ USDA regulations provide reimbursement of retailers within two business days. 7 C.F.R. §
274.8(a)(3).

28 ⁹ 7 U.S.C. §§ 2014(a) and (b) and 2020(e)(2)-(4); 7 C.F.R. §§ 273.2, 273.10, 273.12, and 273.14.

- 2) Working with its EBT vendor, a state agency must load the household's EBT account with the benefits the state agency calculated under federal standards.¹⁰
- 3) The household must purchase food with the card at an authorized retailer.¹¹
- 4) The retailer must request and receive payment from the bank working with the EBT vendor.¹²
- 5) The bank must submit a daily file of EBT transactions to the Federal Reserve.¹³
- 6) The U.S. Treasury must pay the bank.¹⁴

53. If no appropriation is available when the banks seek payment, the Treasury would not respond. The banks could then sue the United States in the U.S. Court of Federal Claims under the Tucker Act, which provides in pertinent part:

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

54. Congress has enacted a permanent, uncapped appropriation for the payment of such judgments.¹⁵

55. In the event Congress fails to pass an annual appropriations bill or a continuing resolution in October, this process could be repeated each month during the lapse of annual appropriations acts. The Court of Federal Claims could then grant SNAP retailers judgment reimbursing them for the food provided without interruption of service to SNAP participants. This solution fits within the framework of current federal laws and regulations, and minimizes the disruption and hardship to households and imposes the burden of working out the budgetary issues to the government and the retailers, rather than the SNAP households.

¹⁰ 7 U.S.C. § 2016(a); 7 C.F.R. §§ 274.2(a)-(d) and 274.8(a)(1)(i), (vi) and (vii).

¹¹ 7 U.S.C. § 2016(b); 7 C.F.R. §§ 274.7, 274.8(a)(2)(i), (ii), (iii) and (iv) and 278.2.

¹² 7 U.S.C. § 2019; 7 C.F.R. § 274.3(a)(3).

¹³ 7 U.S.C. § 2019; 7 C.F.R. § 274.8(c)(1)(i) and (ii).

¹⁴ 7 U.S.C. § 2019; 7 C.F.R. § 274.8(c)(1)(iii).

¹⁵ 31 U.S.C. § 1304(a).

Food and Nutrition Act Does Not Permit Defendants to De-Authorize Retailers

56. The USDA's plans to "de-authorize" licensed retailers from receiving SNAP EBT credit for purchase of food violates Section 9 (7 U.S.C. § 2018) of the Food and Nutrition Act, which provides the process for businesses to become an authorized SNAP retailer. *See also* 7 C.F.R. Part 278. The 259,000 authorized retailers all have concededly met the criteria and thus cannot legally be denied authorization. Section 12 of the Act (7 U.S.C. § 2021) establishes the sole procedure for removing retailers, and USDA has provided no evidence of wrongdoing to justify such actions.

CLASS ALLEGATIONS

57. Plaintiff brings this action under Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedures on behalf of a class defined as follows:

(1) All individuals who, since August 1, 2013, applied for and are eligible to receive Supplemental Nutrition Assistance Program ("SNAP") or Disaster Supplemental Nutrition Assistance Program ("D-SNAP") benefits; and

(2) All California residents who, since August 1, 2013, have applied for and are eligible to receive SNAP or D-SNAP benefits (the "California subclass").

58. Joinder of all class members is impracticable, as there are approximately 46 million individuals in the United States that receive benefits under SNAP.¹⁶ In the event of a government shutdown, all such individuals who are eligible under the Food and Nutrition Act to receive SNAP or D-SNAP benefits will be unable to purchase food using their SNAP EBT cards from any source, as all retailers will be "de-authorized" from receiving EBT debit. In addition, because of Defendants' failure to ensure the continued operation of SNAP, the class includes individuals whose identity is not available, and as to future class members, is not readily available, making joinder of all members a practical impossibility.

¹⁶ Supplemental Nutrition Assistance Program Data as of September 4, 2015, *available at* <http://www.fns.usda.gov/sites/default/files/pd/34SNAPmonthly.pdf> (last accessed Sept. 29, 2015).

59. The material questions of fact and law required to determine the merits of Plaintiff's and the classes' claims in this action are common to the class because all of the claims in this case turn on whether Defendants have failed to meet their obligation to provide SNAP benefits under federal law and regulations.

60. The named Plaintiff's claims are typical of the claims of the class in that the named Plaintiff is entitled to SNAP benefits. Upon a government shutdown and the ensuing de-authorization of retailers, Plaintiff, like other members of the class, will be unable to transact her SNAP EBT credit for food.

61. The named Plaintiff will fairly and adequately protect the interests of the proposed class. In supporting her individual claims, the named Plaintiff will simultaneously advance the claims of absent class members. The named Plaintiff is aware of no conflicts of interest that would render her an inadequate class representative.

62. Declaratory and injunctive relief is appropriate with respect to the class because Defendant has acted on grounds applicable to the class.

63. The named Plaintiff and the proposed class are represented by Arnold & Porter LLP and the Western Center on Law and Poverty, all of whose attorneys are experienced in class action litigation and will adequately represent the class. Arnold & Porter has litigated numerous class action cases in this District. Western Center has litigated numerous public benefits class actions in state and federal courts throughout California.

64. A class action is superior to other available methods for a fair and efficient adjudication of this matter, because the prosecution of separate actions by individual class members would unduly burden the Court and create the possibility of conflicting decisions. Further, declaratory and/or injunctive relief is appropriate and applies to the class as a whole.

FIRST CLAIM FOR RELIEF

(Violation of the Administrative Procedures Act, 5 U.S.C. § 500, *et seq.*, for Failure to Adhere to the Food and Nutrition Act of 2008, 7 U.S.C. § 2011, *et seq.*, Against Defendants USDA and Vilsack)

65. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set herein.

1 66. Under the Administrative Procedures Act, 5 U.S.C. § 701, *et seq.*, this Court has
2 authority to review and to hold unlawful and set aside agency actions that are found to be “arbitrary,
3 capricious, an abuse of discretion, or otherwise not in accordance with law,” or “in excess of
4 statutory jurisdiction, authority, or limitation, or short of statutory right,” or “without observance of
5 procedure required by law.” 5 U.S.C. § 706(2).

6 67. Any action taken to disrupt SNAP benefits in light of the absence of an annual Fiscal
7 Year 2016 appropriation is not in accordance with the Food and Nutrition Act, which requires that
8 SNAP benefits “shall be furnished to all eligible households who make applications for such
9 participation” without qualifications that require the prior enactment of annual appropriations
10 legislation. 7 U.S.C. § 2014(a). Similarly, the policy declaration under the Act provides that “to
11 alleviate such hunger and malnutrition, a supplemental nutrition assistance program is herein
12 authorized which will permit low-income households to obtain a more nutritious diet through
13 normal channels of trade by increasing food purchasing power for *all eligible households who apply*
14 *for participation.*” 7 U.S.C. § 2011 (emphasis added). The mandate of the Food and Nutrition Act
15 to continue to provide individual entitlement to benefits in SNAP to eligible households does not
16 cease upon a government shutdown. In light of the absence of any decision from Congress that the
17 program will be terminated for Fiscal Year 2016 once the budgetary impasse is cleared, Defendants’
18 actions to preliminary disrupt the services are an abuse of discretion, or otherwise not in accordance
19 with law.

20 68. Furthermore, Defendants’ plan to de-authorize retailers en masse from receiving
21 SNAP EBT credit for purchase of food is in excess of statutory jurisdiction, authority and without
22 observance of procedure required by law in violation of Section 9 (7 U.S.C. § 2018) of the Food and
23 Nutrition Act, which provides the process for businesses to become an authorized SNAP retailer.
24 *See also* 7 C.F.R. Part 278. Defendants have provided no evidence of wrongdoing to justify the de-
25 authorization pursuant to section 12 (7 U.S.C. § 2021) of the Act, which establishes the sole
26 procedure for removing retailers from participating in the program.

SECOND CLAIM FOR RELIEF

(Violation of Food and Nutrition Act of 2008, 7 U.S.C. § 2011, *et seq.*, Against Defendants Will Lightbourne, Director, California Department of Social Services, in his Official Capacity,)

69. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set herein.

70. The mandate of the Food and Nutrition Act to continue to provide individual entitlement to benefits in SNAP to eligible households does not cease upon a government shutdown. In light of no decision from Congress that the program will be terminated for Fiscal Year 2016 once the budgetary impasse is cleared, Defendants' actions to disrupt the services by failing to issue benefits under SNAP or failing to take all steps for proper administration and continued service to plan participants are an abuse of discretion, or otherwise not in accordance with law.

THIRD CLAIM FOR RELIEF

(Declaratory Relief Pursuant to 28 U.S.C. §§ 2201-2202 Against Defendants USDA and Vilsack)

71. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set herein.

72. Under 28 U.S.C. § 2201, this Court has authority to issue a judgment declaring the rights of the parties.

73. An actual controversy exists between Plaintiff and the class and Defendants. Plaintiff and the class will lose their individual entitlements to SNAP benefits if Defendants cease making available SNAP benefits to all eligible households that have applied to participate in the program, including engaging in the mass de-authorization of retailers. This is contrary to the Food and Nutrition Act, 7 U.S.C. 2011, *et seq.*; Defendants contend that the actions are lawful.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Take jurisdiction of this case;
2. Certify this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
3. Preliminarily and permanently enjoin Defendants from de-authorizing retailers or otherwise interfering with Plaintiff's ability to obtain and use SNAP benefits, to

1 which they are entitled, contrary to the Food and Nutrition Act, 7 U.S.C. § 2011, *et*
2 *seq.*;

- 3 4. Declare that Defendants' policies and practices of disrupting Plaintiff's ability to
4 obtain and use SNAP benefits in the absence of an appropriation, by de-authorizing
5 retailers or through other means, violate the Food and Nutrition Act, 7 U.S.C.
6 § 2011, *et seq.*;

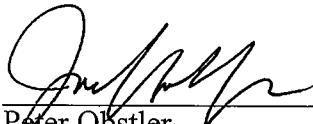
- 7 5. Award litigation costs and reasonable attorneys' fees; and

- 8 6. Grant such other and further relief as the Court may deem just and proper.

9 **PLAINTIFF REQUESTS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

10 Dated: September 30, 2015

ARNOLD & PORTER LLP

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13 By: 

14 Peter Obstler
15 Jee Young You

16 Attorneys for Plaintiff Angela Smith
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