

DOCKET NO. -

IN THE UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

RANCHERS CATTLEMEN)
ACTION LEGAL FUND UNITED)
STOCKGROWERS OF)
AMERICA,)
)

APPEAL FROM CAUSE NO.
CV-05-06-BLG-RFC
DISTRICT OF MONTANA,
BILLINGS DIVISION

APPELLEE/PL

PLAINTIFF,
VS.)
)

UNITED STATES)
DEPARTMENT OF)
AGRICULTURE, ANIMAL AND)
PLANT HEALTH INSPECTION)
SERVICE, AND MIKE)
JOHANNIS, IN HIS CAPACITY)
AS THE SECRETARY OF)
AGRICULTURE,)

EMERGENCY MOTION
UNDER CIRCUIT RULE
27-3

ACTION NEEDED BY
MARCH 14, 2005

APPELLEES/D

DEFENDANTS,

VS.)
)

NATIONAL MEAT)
ASSOCIATION,)
)
)
APPELLANT/PROPOSED)
DEFENDANT AND CROSS)
PLAINTIFF-INTERVENOR)

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CIRCUIT RULE 27-3 CERTIFICATE

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- (ii) FACTS SHOWING THE EXISTENCE AND NATURE OF
THE CLAIMED EMERGENCY:

PLAINTIFF R-CALF FILED SUIT SEEKING TO ENJOIN
AND OVERTURN A FINAL RULE PROMULGATED BY
DEFENDANT USDA, WHICH WOULD ALLOW IMPORT OF
CATTLE AND BOXED BEEF FROM CANADA. NATIONAL MEAT
ASSOCIATION (NMA), PURSUANT TO RULE 24, F.R.CIV.P.,
MOVED TO INTERVENE AS PLAINTIFF TO CHALLENGE THE
RULE ALLOWING IMPORT OF BOXED BEEF FROM CANADA,
AND AS DEFENDANT TO OPPOSE PLAINTIFF R-CALF'S
CHALLENGE TO THE FINAL RULE AND APPLICATION FOR A
PRELIMINARY INJUNCTION. THE DISTRICT COURT DENIED
NMA'S MOTION TO INTERVENE. (SEE ATTACHED FEBRUARY

24, 2005 ORDER DENYING MOTION TO INTERVENE). THE COURT GRANTED R-CALF'S APPLICATION FOR A PRELIMINARY INJUNCTION. (SEE MARCH 2, 2005 ORDER GRANTING PRELIMINARY INJUNCTION).

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, BILLINGS DIVISION'S, PRELIMINARY INJUNCTION ORDER STOPS THE IMPORTATION OF LIVE CATTLE FROM CANADA BECAUSE OF A MISPERCEIVED RISK OF INTRODUCING MAD COW DISEASE INTO THE UNITED STATES. BUT THE PRELIMINARY INJUNCTION ORDER IS INTERPRETED BY THE USDA TO ALLOW THOSE SAME CATTLE TO BE SLAUGHTERED IN CANADA AND THE MEAT FROM THOSE CATTLE TO ENTER THE UNITED STATES. THE PRELIMINARY INJUNCTION'S INCONSISTENT TREATMENT OF LIVE CATTLE AND BOXED BEEF IS ARBITRARY AND CAPRICIOUS. FURTHERMORE, THE DISTRICT COURT'S ORDER DOES NOT CONSIDER THE HARM FROM THE PRELIMINARY INJUNCTION TO THE U.S. MEAT PACKING INDUSTRY AND OTHERS. THE PRELIMINARY INJUNCTION'S EFFECT IS TO PREVENT UNITED STATES BEEF PACKERS FROM SLAUGHTERING RELATIVELY CHEAP CANADIAN CATTLE WHILE UNFAIRLY FORCING THEM TO COMPETE WITH CHEAP CANADIAN MEAT. THIS PRELIMINARY INJUNCTION HAS CREATED AN UNFAIR IMBALANCE IN THE MARKETPLACE. UNLESS IT IS DISSOLVED, UNITED STATES JOBS WILL BE LOST. UNITED STATES BUSINESSES WILL CLOSE AND MEAT PACKING CAPACITY WILL MOVE FROM THE UNITED

STATES TO CANADA. AMERICAN CONSUMERS WILL PAY ARTIFICIALLY HIGH PRICES FOR MEAT IN THE GROCERY STORE. THIS HARM WILL BE IRREPARABLE. THE LOST JOBS WILL NOT REAPPEAR. THE CLOSED UNITED STATES BUSINESSES WILL NOT REOPEN. NO ONE WILL COMPENSATE THE AMERICAN CONSUMER FOR THE MONEY THAT WAS WASTED BECAUSE OF ARTIFICIALLY HIGH BEEF PRICES. AN EMERGENCY EXISTS AND THIS COURT'S ACTION IS NEEDED IMMEDIATELY. SEE ATTACHED ARTICLE FROM THE MARCH 7, 2005 EDITION OF *THE NEW YORK TIMES*.

- (III) WHEN AND HOW COUNSEL FOR THE OTHER PARTIES WERE NOTIFIED AND WHETHER THEY HAVE BEEN SERVED WITH THE MOTION; OR IF NOT NOTIFIED AND SERVED, WHY THAT WAS NOT DONE:

CLIFFORD EDWARDS AND TAYLOR COOK, BILLINGS COUNSEL FOR R-CALF, WERE CALLED ON MARCH 5, 2005, AND THEY WERE IN CONFERENCE. A MESSAGE WAS LEFT FOR TAYLOR COOK THAT NMA INTENDED TO FILE TODAY THIS MOTION FOR EXPEDITED BRIEFING AND NOTICE OF APPEAL OF THE DENIAL OF NMA'S INTERVENTION AND THE PRELIMINARY INJUNCTION. LISA OLSON, ATTORNEY WITH THE DEPARTMENT OF JUSTICE WAS CALLED ON MARCH 5, 2005, AND A MESSAGE WAS LEFT ON HER VOICE MAIL THAT NMA INTENDED TO FILE TODAY THIS MOTION FOR EXPEDITED BRIEFING AND NOTICE OF APPEAL OF THE DENIAL OF NMA'S INTERVENTION AND THE PRELIMINARY

INJUNCTION. BILLINGS COUNSEL FOR R-CALF AND ATTORNEY FOR THE DEPARTMENT OF JUSTICE HAVE NOT RETURNED CALLS AND THEREFORE NMA'S CANNOT STATE THEIR POSITIONS ON THE MOTION AT THIS TIME. COUNSEL FOR ALL PARTIES WERE ELECTRONICALLY SERVED A COPY OF THIS MOTION ON MARCH 9, 2005.

(4) PURSUANT TO CIRCUIT RULE 27-3(A)(4), NMA STATES THAT ALL GROUNDS SET FORTH WITH RESPECT TO NMA'S MOTION TO INTERVENE WERE SUBMITTED IN NMA'S BRIEF IN SUPPORT OF ITS MOTION TO INTERVENE TO THE DISTRICT COURT WITH THE EXCEPTION OF THOSE GROUNDS WHICH HAVE DEVELOPED SINCE THE DISTRICT COURT DENIED NMA'S MOTION TO INTERVENE ON FEBRUARY 24, 2005. IN ITS PROPOSED BRIEF IN INTERVENTION LODGED WITH THE DISTRICT COURT, NMA PROVIDED THE DISTRICT COURT REASONS WHY A PRELIMINARY INJUNCTION WAS INAPPROPRIATE. THE DISTRICT COURT REFUSED TO CONSIDER NMA'S BRIEF AND DENIED NMA'S MOTION TO INTERVENE AND DENIED BRIEFS OF OTHER AMICUS WHO OPPOSED ISSUANCE OF R-CALF'S PRELIMINARY INJUNCTION. THIS COURT SHOULD NOT REMAND THIS ISSUE BECAUSE IMMEDIATE ACTION IS NECESSARY TO STOP THE IRREPARABLE HARM RESULTING FROM THE DISTRICT COURT'S ERRONEOUS RULINGS. NMA ATTACHES TO THIS MOTION A COPY OF AN ARTICLE APPEARING IN THE MARCH 7, 2005 EDITION OF *THE NEW YORK TIMES*

DESCRIBING THE EFFECT OF THE DISTRICT COURT'S INJUNCTION IN THE PACIFIC NORTHWEST. AFTER THE INJUNCTION WAS ISSUED, RELIEF WAS NOT SOUGHT BY NMA IN THE DISTRICT COURT BECAUSE NMA WAS NOT ALLOWED TO INTERVENE AND PRESENT EVIDENCE AND ARGUMENT, AND BECAUSE THE DISTRICT COURT INDICATED AT THE HEARING ON THE PRELIMINARY INJUNCTION THAT THE DISTRICT COURT'S ORDER IS APPEALABLE AND IF A STAY IS GRANTED, IT HAS TO BE BY THE NINTH CIRCUIT COURT OF APPEALS. (TRANSCRIPT OF MARCH 2, 2005 HEARING, P. 97).

NMA FILED ITS NOTICE OF APPEAL OF THE DENIAL OF ITS MOTION TO INTERVENE, AND THE PRELIMINARY INJUNCTION ORDER, WITH THE DISTRICT COURT ON MARCH 5, 2005.

EMERGENCY MOTION FOR EXPEDITED BRIEFING AND HEARING OF APPEAL UNDER CIRCUIT RULES 27-3, 27-12 AND F.R.CIV.P. 27

APPELLANT NATIONAL MEAT ASSOCIATION ("NMA"), PURSUANT TO CIRCUIT RULES 27-3 AND 27-12 AND F.R.A.P. 27, HEREBY MOVES FOR AN EMERGENCY ORDER EXPEDITING BRIEFING AND HEARING OF ITS APPEAL OF (1) THE FEBRUARY 24, 2005 ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, BILLINGS DIVISION'S DENYING NATIONAL MEAT ASSOCIATION'S MOTION TO INTERVENE; AND (2) THE MARCH 2, 2005 ORDER OF THE DISTRICT COURT GRANTING THE APPLICATION OF PLAINTIFF RANCHERS CATTLEMEN ACTION LEGAL FUND UNITED

STOCKGROWERS OF AMERICA ("R-CALF") FOR A PRELIMINARY INJUNCTION.

PURSUANT TO CIRCUIT RULE 27-3(A) THE MOVANT, NMA, CERTIFIES THAT TO AVOID IRREPARABLE HARM, RELIEF IS NEEDED IN LESS THAN 21 DAYS, AND AS MORE FULLY SET FORTH BELOW, GOOD CAUSE EXISTS FOR EXPEDITED BRIEFING AND HEARING UNDER CIRCUIT RULE 27-12 BECAUSE IN THE ABSENCE OF EXPEDITED TREATMENT, IRREPARABLE HARM WILL OCCUR TO NMA AND CONSUMERS IN THE UNITED STATES. NMA MUST BE PERMITTED TO INTERVENE AND PARTICIPATE IN ANY FURTHER PROCEEDINGS IN ORDER TO PROTECT ITS INTERESTS WHICH CURRENTLY ARE NOT ADEQUATELY PROTECTED BY ANY PARTY TO THE CASE.

NMA'S MOTION IS AN EMERGENCY UNDER CIRCUIT RULE 27-3(A) BECAUSE THE IMPACT OF THE DISTRICT COURT'S RULINGS IS HAVING AND WILL CONTINUE TO HAVE A DEVASTATING AND IRREPARABLE EFFECT ON NMA'S MEMBERS. NMA NEEDS THE RELIEF SOUGHT IN THIS MOTION IN LESS THAN 21 DAYS TO AVOID FURTHER IRREPARABLE HARM. THE DISTRICT COURT HAS DIRECTED R-CALF AND DEFENDANTS TO PROVIDE THE DISTRICT COURT BY MARCH 12, 2005 A PROPOSED SCHEDULE FOR TRIAL ON THE MERITS ON R-CALF'S REQUEST FOR A PERMANENT INJUNCTION. SOME OF NMA'S MEMBERS ARE SUFFERING SEVERE ECONOMIC HARDSHIP AND FACING THE DESTRUCTION OF THEIR BUSINESSES DUE TO THE

DISTRICT COURT'S RULINGS. THE EFFECT OF THE DISTRICT COURT'S RULINGS WILL BE TO CONTINUE AN UNFAIR BUSINESS ENVIRONMENT UNDER WHICH NMA'S MEMBERS ARE UNABLE TO IMPORT LIVE CATTLE FROM CANADA WHILE COMPETITORS WITH SLAUGHTERHOUSES IN CANADA ARE PERMITTED TO BUY CHEAPER CATTLE IN CANADA, SLAUGHTER THOSE CATTLE IN CANADA AND IMPORT CERTAIN BEEF PRODUCTS INTO THE UNITED STATES WHILE NMA'S MEMBERS MUST PAY HIGHER PRICES FOR LIVE CATTLE IN THE UNITED STATES. NMA SEEKS A LEVEL PLAYING FIELD, WHICH THE DISTRICT COURT'S RULINGS PREVENT. NMA MUST BE IMMEDIATELY HEARD ON ITS APPEAL SO IT MAY PARTICIPATE IN THE CASE IN A MANNER THAT PERMITS NMA TO PROTECT THE ECONOMIC INTERESTS ITS MEMBERS. NO OTHER PARTY TO THE CASE CAN ADEQUATELY PROTECT THE INTERESTS OF NMA AND ITS MEMBERS.

IN COMPLIANCE WITH CIRCUIT RULE 27-12, NMA STATES THAT ITS COUNSEL HAS ORDERED THE ENTIRE TRANSCRIPT OF THE HEARING THE DISTRICT COURT HELD ON MARCH 2, 2005 ON R-CALF'S MOTION FOR PRELIMINARY INJUNCTION. IN FURTHER COMPLIANCE WITH CIRCUIT RULE 27-12, NMA STATES THAT CLIFFORD EDWARDS AND TAYLOR COOK, BILLINGS COUNSEL FOR R-CALF, WERE CALLED ON MARCH 9, 2005, AND THEY WERE IN CONFERENCE. A MESSAGE WAS LEFT FOR TAYLOR COOK THAT NMA INTENDED TO FILE THIS MOTION AND NOTICE OF

APPEAL. LISA OLSON, ATTORNEY WITH THE DEPARTMENT OF JUSTICE WAS CALLED ON MARCH 9, 2005, AND A MESSAGE WAS LEFT ON HER VOICE MAIL THAT NMA INTENDED TO FILE THIS MOTION AND NOTICE OF APPEAL. COUNSEL FOR OTHER PARTIES WERE ELECTRONICALLY SERVED A COPY OF THIS MOTION ON MARCH 9, 2005. BILLINGS COUNSEL FOR R-CALF AND ATTORNEY FOR THE DEPARTMENT OF JUSTICE HAVE NOT RETURNED CALLS AND THEREFORE NMA'S CANNOT STATE THEIR POSITIONS ON THE MOTION AT THIS TIME. PURSUANT TO CIRCUIT RULE 27-12, NMA RESPECTFULLY REQUESTS THAT THE COURT SET THE FOLLOWING BRIEFING SCHEDULE:

APPELLANT'S BRIEF: MARCH 21, 2005

APPELLEES' BRIEF: MARCH 28, 2005

NMA FURTHER REQUESTS THAT ARGUMENT BE SCHEDULED AS SOON AS POSSIBLE AFTER THE COMPLETION OF BRIEFING.

BACKGROUND FACTS

MA IS A NON-PROFIT INDUSTRY ORGANIZATION WITH ITS PRINCIPAL OFFICE IN OAKLAND, CALIFORNIA. NMA HAS SERVED THE INTERESTS OF THE MEAT PACKING INDUSTRY SINCE 1946. THE OVER 500 MEMBERS OF NMA INCLUDE MEAT PACKERS AND PROCESSORS, EQUIPMENT MANUFACTURERS AND SUPPLIERS THROUGHOUT THE UNITED STATES. NMA IS A WELL-RECOGNIZED VOICE ON THE

IMPORTANT ISSUES OF MEAT POLICY, PROCESSING AND SAFETY IN THE UNITED STATES. NMA PROVIDES REGULATORY ASSISTANCE TO ITS MEMBERS, PARTICIPATES IN THE LEGISLATIVE PROCESS AND ADMINISTRATIVE RULEMAKINGS, AND REPRESENT MEMBER INTERESTS IN JUDICIAL PROCEEDINGS AFFECTING THE HEALTH AND WELL-BEING OF CONSUMERS AND THE MEAT INDUSTRY.

SINCE AUGUST, 2003, USDA HAS ALLOWED IMPORTS OF CANADIAN BEEF, BUT BARRED IMPORTS OF CANADIAN CATTLE. AS A RESULT, CANADIAN BEEF EXPORTS TO THE UNITED STATES ARE HIGHER TODAY THAN THEY WERE PRIOR TO THE DISCOVERY OF BSE IN CANADA IN MAY, 2003. THIS CIRCUMSTANCE HAS CREATED A GROSS INEQUITY OF ALLOWING MEAT IMPORTS WHILE PROHIBITING CATTLE IMPORTS AND HAS CAUSED UNITED STATES PACKERS TO CLOSE PLANTS, LAY OFF UNITED STATES WORKERS AND CUT SHIFTS. THE INEQUITY HAS CAUSED MEAT PACKING CAPACITY TO RELOCATE TO CANADA. THIS INEQUITY HAS CAUSED UNITED STATES CONSUMERS TO PAY ARTIFICIALLY HIGH PRICES FOR MEAT.

ON JANUARY 4, 2005, AFTER AN EXTENSIVE AND CAREFUL RULEMAKING, BASED ON A 12,650 PAGE ADMINISTRATIVE RECORD AND THE ANALYSIS BY TEAMS OF EXPERTS, OVER A SPAN OF 14 MONTHS, OF ALL RELEVANT INFORMATION AND MORE THAN 3,000 PUBLIC COMMENTS, USDA PROMULGATED A FINAL RULE, ALLOWING LIVE CATTLE AND BOXED BEEF TO BE IMPORTED FROM CANADA BEGINNING ON MARCH 7, 2005. THIS NEW RULE DETERMINED THAT THE

IMPORTATION OF THESE LIVE CATTLE AND BEEF PRODUCTS WOULD PRESENT A MINIMAL RISK TO HUMAN HEALTH AND WOULD ALLEVIATE THE SEVERE HARDSHIP SUFFERED BY UNITED STATES MEAT PACKERS WHO HAVE BEEN DENIED ACCESS TO LIVE CATTLE FROM CANADA.

ON JANUARY 10, 2005, R-CALF FILED CAUSE NO. CV-05-06-BLG-RFC, IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, BILLINGS DIVISION SEEKING A DECLARATION THAT USDA'S PROPOSED FINAL REGULATIONS ARE UNLAWFUL AND MAY NOT BE IMPLEMENTED, AND SEEKING TO ENJOIN IMPLEMENTATION OF USDA'S FINAL RULE, AND ENJOIN THE IMPORTATION OF ALL LIVE CATTLE FROM CANADA TO THE UNITED STATES. IN ITS COMPLAINT, PLAINTIFF R-CALF SEEKS TO HAVE THE NEW RULE DECLARED UNLAWFUL AND STOP ALL LIVE CATTLE AND ALL PROCESSED MEAT FROM CANADA TO THE UNITED STATES. THE DEFENDANT USDA SEEKS TO IMPLEMENT THE FINAL RULE.¹

ON JANUARY 28, 2005, THE DISTRICT COURT ISSUED AN ORDER SETTING THE SCHEDULE FOR THE CASE. PLAINTIFF

¹

NMA GENERALLY SUPPORTS THE IMPLEMENTATION OF THE FINAL RULE AND THE IMPORTATION OF BOTH MEAT AND CATTLE FROM CANADA. HOWEVER, TO THE EXTENT THAT THE FINAL RULE ALLOWS BONELESS BEEF IMPORTS FROM CANADIAN CATTLE 30 MONTHS OF AGE OR OLDER, BUT BARS IMPORTATION OF LIVE CATTLE OVER 30 MONTHS OF AGE, NMA'S MEMBERS WHO SLAUGHTER CATTLE IN THE UNITED STATES WILL SUFFER SEVERE AND IRREPARABLE IMPACT.

R-CALF FILED ITS APPLICATION FOR A PRELIMINARY
INJUNCTION ON JANUARY 31, 2005.

THE NEXT DAY, FEBRUARY 1, 2005, NMA FILED IN THE DISTRICT COURT A MOTION TO INTERVENE AS DEFENDANT AND CROSS-CLAIMANT AND FOR EXPEDITED BRIEFING SCHEDULE. IN THE MOTION, NMA, AS A DEFENDANT, SOUGHT TO INTERVENE UNDER F.R.CIV.P. 24(A) AND 24(B) SEEKING TO HAVE R-CALF'S COMPLAINT DISMISSED AND R-CALF'S REQUEST FOR INJUNCTIVE RELIEF DENIED. NMA, AS A PLAINTIFF, CHALLENGED THE PROVISIONS OF USDA'S FINAL RULE WHICH WOULD NEWLY AUTHORIZE THE IMPORTATION OF MEAT FROM CANADIAN CATTLE 30 MONTHS AND OLDER WITHOUT AUTHORIZING THE IMPORTATION OF THIS CLASS OF CATTLE.² NMA ALSO MOVED THE COURT TO ORDER AN EXPEDITED BRIEFING SCHEDULE ON NMA'S MOTION TO INTERVENE IN ORDER TO ALLOW THE PARTIES AND THE COURT TO PROCEED WITH ITS JANUARY 28, 2005 SCHEDULING ORDER REGARDING R-CALF'S MOTION FOR PRELIMINARY INJUNCTION.

THE DISTRICT COURT DENIED NMA'S MOTION IN AN ORDER ISSUED ON FEBRUARY 24, 2005, FINDING THAT NMA DID NOT SATISFY ANY OF THE REQUIREMENTS FOR INTERVENTION AS A MATTER OF RIGHT UNDER F.R.CIV.P. 24(A) OR FOR PERMISSIVE INTERVENTION UNDER F.R.CIV.P. 24(B).

²

IN ITS MOTION TO INTERVENE, NMA SOUGHT TO BOTH BE AN INTERVENOR/DEFENDANT AND A CROSS CLAIMANT FOR THE PURPOSE OF OPPOSING THE ENTRY OF MEAT FROM CANADIAN CATTLE OVER 30 MONTHS OF AGE, WHERE CANADIAN CATTLE OVER 30 MONTHS OF AGE WERE NOT PERMITTED TO ENTER THE UNITED STATES. WHEN THE SECRETARY OF AGRICULTURE ANNOUNCED ON FEBRUARY 9, 2005, THAT HE WAS RE-EXAMINING PORTIONS OF THE FINAL RULE DEALING WITH OVER 30 MONTH CATTLE AND BEEF PRODUCTS THERE FROM, NMA FILED A SUPPLEMENT TO ITS MOTION TO INTERVENE ON THE FOLLOWING DAY AND SUBSEQUENTLY

THE DISTRICT COURT HELD A HEARING ON THE MOTION FOR PRELIMINARY INJUNCTION ON MARCH 2, 2005. SINCE NMA'S MOTION TO INTERVENE HAD BEEN DENIED, NMA WAS NOT PERMITTED TO PARTICIPATE IN THE HEARING. ON MARCH 2, 2005, THE DISTRICT COURT ENTERED AN ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION. THE IMPACT OF THE PRELIMINARY INJUNCTION WILL BE DEVASTATING TO NMA AND ITS MEMBERS.

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING NMA'S MOTION TO INTERVENE

THE DISTRICT COURT ERRED IN DENYING NMA'S MOTION TO INTERVENE BY FINDING THAT NMA HAD NO INTEREST "DIFFERENT FROM THAT OF MANY ENTITIES THAT WOULD BENEFIT FROM THE FINAL RULE." THE DISTRICT COURT ERRED IN FINDING THAT NMA "HAS FAILED TO ARTICULATE A SIGNIFICANT INTEREST IN THESE PROCEEDINGS." THE DISTRICT COURT ERRED IN FINDING THAT NMA'S MOTION TO INTERVENE WAS NOT TIMELY, FINDING THAT R-CALF WOULD NOT HAVE TIME TO RESPOND TO ANY BRIEF NMA FILED IN OPPOSITION TO R-CALF'S MOTION FOR A PRELIMINARY INJUNCTION, DESPITE NMA'S AGREEMENT TO ABIDE BY THE SCHEDULE ESTABLISHED BY THE COURT'S JANUARY 28

ONLY SOUGHT TO INTERVENE AS AN INTERVENOR/DEFENDANT.

ORDER. THE DISTRICT COURT ALSO ERRED IN FINDING NMA FAILED TO SATISFY THE ELEMENTS FOR PERMISSIVE INTERVENTION UNDER F.R.CIV.P. 24(B).

THE COURT ERRED IN HOLDING THAT NMA AND ITS MEMBERS DO NOT HAVE SIGNIFICANT PROTECTABLE INTERESTS INVOLVED IN THIS LITIGATION. NMA EXPLAINED ITS INTEREST IN ITS BRIEF IN SUPPORT OF ITS MOTION TO INTERVENE AS FOLLOWS:

NMA'S MEMBERS WHO SLAUGHTER CATTLE HAVE A SUBSTANTIAL ECONOMIC INTEREST IN THE FINAL RULE. THESE MEMBERS HAVE TRADITIONALLY SLAUGHTERED CATTLE SOURCED FROM BOTH THE UNITED STATES AND FROM CANADA. DURING THE TIME WHEN USDA HAS ALLOWED THE IMPORTS OF BEEF FROM CATTLE LESS THAN 30 MONTHS OF AGE TO RESUME, THE IMPORT OF CATTLE HAS NOT BEEN ALLOWED. THIS HAS HAD THE EFFECT OF MOVING THE WORK OF SLAUGHTERING CANADIAN CATTLE UNDER 30 MONTHS ENTIRELY TO CANADA WITH THE RESULT THAT THERE HAS BEEN A 22% INCREASE IN THE CANADIAN CATTLE SLAUGHTER CAPACITY DURING THE LAST 12 MONTHS. THIS MEANS THAT JOBS AND EVENTUALLY CATTLE PRODUCTION HAVE BEEN OUTSOURCED TO CANADA BY THE OPERATION OF USDA REGULATIONS. THE PROPOSED RULE WHICH WILL ALLOW THE IMPORTATION OF LIVE CATTLE UNDER 30 MONTHS OF AGE AND MEAT OBTAINED FROM THIS CLASS OF CATTLE WILL RECTIFY THIS IMBALANCE AND HOPEFULLY PREVENT FURTHER OUTSOURCING OF US JOBS AND CATTLE PRODUCTION, WHICH IS A PRINCIPAL REASON WHY NMA OPPOSES PLAINTIFF'S PETITION TO DELAY THE IMPLEMENTATION OF THE FINAL RULE.

BRIEF IN SUPPORT OF NATIONAL MEAT ASSOCIATION'S MOTION TO INTERVENE..., FEBRUARY 1, 2005 AT P.8

THE COURT DENIED NMA'S MOTION, STATING:

NMA CLAIMS AN INTEREST IN ASSURING THAT THE FINAL RULE GOES INTO EFFECT, BECAUSE THE FINAL RULE WILL ALLOW ITS MEMBERS TO SLAUGHTER AND PROCESS CANADIAN CATTLE THAT HAS PREVIOUSLY BEEN BANNED BECAUSE OF THE PRESENCE OF BSE IN CANADA. HOWEVER, A MERE INTEREST IN PROPERTY THAT MAY BE IMPACTED BY LITIGATION IS NOT A PASSPORT TO PARTICIPATE IN THE LITIGATION ITSELF.

ALISAL, 370 F.3D AT 920. "TO HOLD OTHERWISE WOULD CREATE A SLIPPERY SLOPE WHERE ANYONE WITH AN INTEREST IN THE PROPERTY OF A PARTY TO A LAWSUIT COULD BOOTSTRAP THAT STAKE INTO AN INTEREST IN THE LITIGATION ITSELF." *ID.* NMA'S INTEREST IS NO DIFFERENT THAN THAT OF MANY ENTITIES THAT WOULD BENEFIT FROM THE FINAL RULE.

ORDER DENYING NMA'S MOTION TO INTERVENE, FEBRUARY 24, 2005 AT P. 3. HOWEVER, NMA AND ITS MEMBERS WHO OPERATE SLAUGHTER PLANTS IN THE U.S. HAVE MORE THAN "A MERE INTEREST IN PROPERTY THAT MAY BE IMPACTED BY LITIGATION..." THEY HAVE ALREADY SUFFERED IRREPARABLE INJURY WHERE THEIR VERY LARGE COMPETITORS, SOME OF WHOM ALSO OPERATE SLAUGHTER PLANTS IN CANADA, HAVE BEEN ALLOWED TO BRING IN INCREASED QUANTITIES OF BONELESS BEEF OF CANADIAN ORIGIN SINCE AUGUST 8, 2003, WHILE THE U.S. SLAUGHTER PLANTS HAVE BEEN UNABLE TO OBTAIN THE COMPETITIVELY PRICED CANADIAN CATTLE WHICH ARE THE SOURCE OF THESE IMPORTS SO AS TO BE ABLE TO COMPETE ON A LEVEL PLAYING FIELD. THE FACT THAT THE DISTRICT COURT HAS NOT UNDERSTOOD THIS CONTINUING IRREPARABLE INJURY AND INDEED HAS ENTERED AN ORDER THAT CONTINUES THIS IRREPARABLE INJURY CONFIRMS THAT NMA AND ITS MEMBERS INDEED HAVE A SIGNIFICANT, UNREPRESENTED INTEREST IN THE UNDERLYING LITIGATION.³

3

IN ITS OPINION, THE COURT DESCRIBED CANADIAN BEEF AS "CONTAMINATED," BUT THEN ISSUED AN ORDER WHICH ALLOWS CANADIAN BEEF TO CONTINUE TO ENTER THE UNITED STATES IN MUCH LARGER QUANTITIES THAN WERE AUTHORIZED BY PERMIT PRIOR TO THE DISCOVERY OF BSE IN CANADA IN MAY, 2003. THE COURT STATED THAT "ONCE THE CANADIAN BEEF IS ALLOWED TO INTERMINGLE WITH THE US MEATS IT WILL OPEN A FLOOD OF SPECULATION AND NEITHER THE CONTAMINATED MEAT NOR THE STIGMA ASSOCIATED WITH CONTAMINATED MEAT COULD BE REMOVED FROM THE

IT IS THE LAW IN THE NINTH CIRCUIT THAT:

IN EVALUATING WHETHER THESE REQUIREMENTS AFOR INTERVENTIONA ARE MET, COURTS 'ARE GUIDED PRIMARILY BY PRACTICAL AND EQUITABLE CONSIDERATIONS.' *DONNELLY V. GLICKMAN AND*, 159 F.3D 405, 409 (9TH CIR. 1998). FURTHER, COURTS GENERALLY 'CONSTRUEAA ATHE RULEA BROADLY IN FAVOR OF PROPOSED INTERVENORS.' *UNITED STATES EX REL. MCGOUGH V. COVINGTON TECHS. CO.*, 967 F.2D 1391, 1394 (9TH CIR. 1992) 'A LIBERAL POLICY IN FAVOR OF INTERVENTION SERVES BOTH EFFICIENT RESOLUTION OF ISSUES AND BROADENED ACCESS TO COURTS ...'

U.S. V. CITY OF LOS ANGELES, CALIFORNIA, 288 F.3D 391, 397 (9TH CIR. 2002). THE CIRCUMSTANCES AND BOTH PRACTICAL AND EQUITABLE CONSIDERATIONS SUPPORT NMA'S QUALIFICATION AS AN INTERVENOR AS A MATTER OF RIGHT.

A NON-SPECULATIVE, ECONOMIC INTEREST MAY BE SUFFICIENT TO SUPPORT A RIGHT OF INTERVENTION. *UNITED STATES V. ALISAL WATER CORP.*, 370 F.3D 915, 919 (9TH CIR. 2004). THE PROPOSED INTERVENOR'S INTEREST MUST BE RELATED TO THE UNDERLYING SUBJECT MATTER OF THE LITIGATION. *PEOPLE OF STATE OF CALIFORNIA V. TAHOE REGIONAL PLANNING AGENCY*, 792 F.2D 779, 781 (9TH CIR. 1986); *SEE ALSO ALISAL*, 370 F.3D AT 920. HERE THE NMA'S INTEREST RELATES TO THE SAME PRODUCTS, STATUTES AND RESTRICTIONS, WHICH ARE AT ISSUE BETWEEN PLAINTIFF AND DEFENDANTS.

U.S. CATTLE INDUSTRY AND THE SUBSTANTIAL, IRREPARABLE INJURY WILL HAVE OCCURRED." OPINION AT PAGE 25-26. NEITHER THE PLAINTIFF NOR THE DEFENDANTS HAVE CHALLENGED THIS INCONGRUITY BETWEEN THE COURT'S ORDER AND OPINION, BUT NMA SHOULD HAVE BEEN ALLOWED TO PARTICIPATE AS AN INTERVENOR SO THAT IT COULD HAVE CHALLENGED

THIS INCONGRUITY.

IN SOME CASES THERE IS A PRESUMPTION OF ADEQUATE REPRESENTATION WHERE A GOVERNMENTAL BODY OR OFFICER IS CHARGED BY LAW WITH REPRESENTING THE INTERESTS OF CERTAIN ABSENTEES. SEE, E.G., *FOREST CONSERVATION COUNCIL V. U.S. FOREST SERVICE*, 66 F.3D 1489, 1499 (5TH CIR. 1995). IN THE PRESENT CASE, THE SLAUGHTERHOUSE MEMBERS OF NMA ARE REGULATED, RATHER THAN REPRESENTED BY USDA.

IT IS PARTICULARLY APPROPRIATE THAT NMA SHOULD BE AN INTERVENOR AND ALLOWED TO CHALLENGE THE DISTRICT COURT'S PRELIMINARY INJUNCTION BECAUSE THE ISSUANCE OF A PRELIMINARY INJUNCTION INVOLVES AN EXAMINATION OF WHETHER THERE IS IRREPARABLE HARM AND THE BALANCE OF HARMS. NMA'S SLAUGHTERHOUSE MEMBERS ARE SUFFERING AND WILL CONTINUE TO SUFFER IRREPARABLE HARM AND THE HARM TO THEM FAR OUTWEIGHS IN ITS IMMEDIACY AND SCOPE THE HARM CLAIMED BY PLAINTIFF. A CONSIDERATION OF THE BALANCE OF HARM WAS PROPERLY NOT PART OF THE UNDERLYING RULEMAKING. THEREFORE THE GOVERNMENT DEFENDANTS CANNOT REPRESENT NMA'S INTEREST IN THIS REGARD. THIS COURT SHOULD REVERSE AND OVERTURN THE DISTRICT COURT'S DENIAL OF NMA'S MOTION TO INTERVENE.

NMA'S PRIMARY INTEREST IN THE UNDERLYING PROCEEDING IS TO EXPEDITE THE ENTRY OF HEALTHY CATTLE FROM CANADA INTO THE UNITED STATES. IN ORDER TO PARTICIPATE IN A USEFUL AND TIMELY MANNER, NMA REQUESTED THAT RESPONSES TO ITS MOTION TO INTERVENE

BE PROVIDED ON AN EXPEDITED BASIS AND STIPULATED THAT IT WOULD WAIVE ITS RIGHTS TO REPLY TO THOSE RESPONSES. IN ITS RESPONSE TO NMA'S MOTION TO INTERVENE, PLAINTIFF ARGUED THAT THE INTERESTS OF NMA WOULD BE FULLY REPRESENTED BY THE GOVERNMENT DEFENDANTS.⁴

THE DISTRICT COURT APPARENTLY INTENDED TO GRANT NMA'S MOTION TO INTERVENE, BECAUSE ON FEBRUARY 23, 2005, IN THE COURSE OF DENYING THE MOTION OF THE GOVERNMENT OF CANADA TO FILE AN *AMICUS CURIAE* SUBMISSION, THE COURT STATED:

IT WOULD BE EXTREMELY PREJUDICIAL TO PLAINTIFFS TO ALLOW THE FILING OF A 29 PAGE BRIEF BY THE GOVERNMENT OF CANADA AND ONLY ALLOW PLAINTIFFS THREE DAYS TO RESPOND, IN ADDITION TO ANTICIPATED LENGTHY BRIEFS FILED BY THE USDA AND NMA.

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CURIOUSLY ON THE SAME DAY THAT THE PLAINTIFF R-CALF, OPPOSED NMA'S MOTION TO INTERVENE IN THE BILLINGS LITIGATION, R-CALF ALSO, THROUGH THE SAME COUNSEL, FILED A MOTION TO PARTICIPATE AS AN INTERVENOR/DEFENDANT IN SUPPORT OF THE USDA DEFENDANTS IN *AMERICAN MEAT INSTITUTE V. DEHAVEN*, CASE NO. 1:04-CV-02262-JGP, IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, A SUIT WHICH HAD BEEN FILED ON DECEMBER 29, 2004 SEEKING TO COMPEL USDA TO PROVIDE PERMITS FOR THE ENTRY OF CANADIAN CATTLE OVER 30 MONTHS OF AGE IN THE UNITED STATES. IN ITS INTERVENTION PLEADINGS, R-CALF ARGUES THAT THE DEFENDANT USDA, WHICH R-CALF ARGUES CAN ADEQUATELY REPRESENT NMA'S INTEREST IN THIS LITIGATION WOULD NOT ADEQUATELY REPRESENT PLAINTIFF R-CALF'S INTEREST IN THE LITIGATION PENDING IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

ORDER DENYING MOTION OF THE GOVERNMENT OF CANADA FOR LEAVE TO FILE AN AMICUS BRIEF, FEBRUARY 23, 2005 AT P. 2. APPARENTLY THE COURT HAD A CHANGE OF MIND BETWEEN THE TIME THIS ORDER WAS ISSUED ON FEBRUARY 23 AND THE FOLLOWING DAY WHEN ITS ORDER DENYING NMA'S MOTION TO INTERVENE WAS ISSUED.

II. THE DISTRICT COURT ERRED IN ENTERING THE PRELIMINARY INJUNCTION

THE DISTRICT COURT HAS ERRED AS A MATTER OF LAW IN DENYING NMA'S MOTION TO INTERVENE WITH THE RESULT THAT AS TO NMA AND ITS MEMBERS, THE COURT'S PRELIMINARY INJUNCTION PROCEEDINGS HAVE BEEN ESSENTIALLY AN *EX PARTE* PROCEEDING. THE COURT'S DENIAL OF NMA'S MOTION TO INTERVENE TOGETHER WITH THE COURT'S DENIAL OF THE *AMICUS* SUBMISSIONS OF THE GOVERNMENT OF CANADA AND THE CANADIAN CATTLEMEN'S ASSOCIATION AMOUNTS TO A SUBSTANTIAL ABUSE OF DISCRETION, WHEREBY THE COURT EXHIBITED SUBSTANTIALLY GREATER SOLICITUDE FOR THE BURDENS UPON PLAINTIFF'S COUNSEL THAN FOR GIVING CONSIDERATION TO THE VIEWS OF MEAT PACKERS WHO ARE BEING IRREPARABLY INJURED HERE OR TO CONSIDERING THE VIEWS OF THIS NATION'S CLOSEST ALLY. UNBURDENED BY THIS INPUT, THE DISTRICT COURT WOULD GO ON TO MAKE UNSUPPORTED FINDINGS REGARDING HEALTH RISKS EXISTING WITHIN THE JURISDICTION OF THE SPURNED AND SOVEREIGN *AMICUS* AND ERRONEOUSLY ENTERED A PRELIMINARY

INJUNCTION.⁵

A. THE DISTRICT COURT

FAILED TO GIVE DEFERENCE TO USDA.

THE DISTRICT COURT IGNORED THAT UNDER THE WELL-ESTABLISHED PRINCIPLES OF *SKIDMORE V. SWIFT CO.*, 323 U.S. 134, 139-40 (1944) AND *U.S. V. MEAD CORP.*, 533 U.S. 218, 235 (2001), USDA IS ENTITLED TO SUBSTANTIAL DEFERENCE IN MATTERS THAT REST UPON THE AGENCY'S SCIENTIFIC AND SPECIALIZED EXPERTISE. EVEN WHERE THE EVIDENCE IS SUSCEPTIBLE TO MORE THAN ONE INTERPRETATION, A REVIEWING COURT MAY NOT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE EXPERT AGENCY. *ARIZONA CATTLE GROWERS' ASS'N V. U.S. FISH AND WILDLIFE SERVICE*, 273 F.3D 1229, 1236 (9TH CIR. 2001). A REVIEWING COURT MUST BE AT ITS MOST DEFERENTIAL WHEN, AS HERE, THE AGENCY IS "MAKING PREDICTIONS, WITHIN ITS AREA OF SPECIAL EXPERTISE, AT THE FRONTIERS OF SCIENCE." *CENTRAL ARIZONA WATER CONVERSATION DISTRICT V. E.P.A.*, 990 F.2D 1531, 1539-40 (9TH CIR. 1993) (QUOTING *BALTIMORE GAS & ELEC. CO. V. NRDC, INC.*, 462 U.S. 87, 103 (1983)). THE

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NMA HAD FILED A SUBSTANTIVE PROPOSED BRIEF OPPOSING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION ON FEBRUARY 21 AS REQUIRED BY THE COURT'S BRIEFING SCHEDULE FOR DEFENDANTS. NMA'S PROPOSED BRIEF EXPLAINED THE THREE RISK ANALYSIS STUDIES OBTAINED BY USDA FROM THE HARVARD CENTER FOR RISK ANALYSIS IN 2001, 2003 AND 2004 AND POINTED OUT THAT PLAINTIFF'S PRINCIPAL EXPERT, DR. COX, WHOSE DECLARATION WAS RELIED UPON BY THE COURT (SEE OPINION AT P. 11), STATED AT THE CONCLUSION OF THAT DECLARATION THAT "I DO NOT CONSIDER A WIDESPREAD HEALTH THREAT TO IN THE U.S. TO BE A HIGHLY LIKELY CONSEQUENCE OF REINTRODUCING CANADIAN IMPORTS AS PROPOSED." NMA SUBMITS THAT IF THE COURT HAD HAD TO TAKE INTO ACCOUNT NMA'S EXPOSITION OF THE HARVARD RISK ANALYSES AND TO ACCEPT DR. COX'S BOTTOM LINE EVALUATION REGARDING HUMAN HEALTH RISK, IT SHOULD HAVE AND WOULD HAVE DENIED PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION.

DISTRICT COURT IGNORED THIS RULE OF LAW, GIVING LITTLE OR NO DEFERENCE TO USDA.

B. THE DISTRICT COURT FAILED TO CONSIDER THE HARM TO NMA'S MEMBERS. THE DISTRICT COURT ERRONEOUSLY FOUND THAT R-CALF IS LIKELY TO SUCCEED ON THE MERITS AND THAT THE BALANCE OF HARDSHIP TIPS SHARPLY IN ITS FAVOR. IN PARTICULAR THE DISTRICT COURT FAILED TO TAKE INTO ACCOUNT THE HUGE HARDSHIP THAT CLOSING THE BORDER TO IMPORTS OF LIVE CATTLE UNDER 36 MONTHS HAS CAUSED TO NMA'S MEMBERS AND THE IMPACT OF ENJOINING IMPLEMENTATION OF THE FINAL RULE TO PROLONG THAT HARDSHIP. ATTACHED TO THIS MOTION IS AN ARTICLE FROM *THE NEW YORK TIMES* MARCH 7, 2005 EDITION WHICH DESCRIBES THE IMPACT THE DISTRICT COURT'S INJUNCTION IS HAVING. THIS IMMENSE HARM TILTS ANY BALANCE OF HARM OR HARDSHIP IN FAVOR OF REOPENING THE BORDER IMMEDIATELY, NOT KEEPING IT CLOSED.

THE DISTRICT COURT IGNORED THAT REOPENING THE CANADIAN BORDER TO IMPORTS OF LIVE CATTLE IS IMPORTANT TO THE LONG-TERM VIABILITY OF THE U.S. CATTLE INDUSTRY. WHEN THE CANADIAN BORDER WAS CLOSED TO CATTLE IMPORTS IN MAY 2003, THE UNITED STATES WAS ALREADY FACING SHARPLY REDUCED CATTLE SUPPLIES RESULTING FROM HERD LIQUIDATION AS A RESULT OF DROUGHT AND LOW RETURNS TO CATTLE PRODUCERS. THIS SUPPLY SITUATION WAS FURTHER WORSENERD WHEN

THE CANADIAN BORDER WAS CLOSED TO CATTLE PREVIOUSLY IMPORTED TO SUPPLEMENT U.S. SUPPLIES. REOPENING THE BORDER TO CANADIAN CATTLE WOULD HAVE AN ENORMOUS NORMALIZING EFFECT FOR U.S. MEAT PACKERS AND WILL BEGIN TO AMELIORATE, BUT CANNOT WHOLLY CURE, THE SEVERE, AND IRREPARABLE, INJURY NMA MEMBERS HAVE SUFFERED SINCE THE BORDER WAS CLOSED IN MAY, 2003.

THE DISTRICT COURT IGNORED THAT MANY U.S. PLANTS, PARTICULARLY THOSE IN THE PACIFIC NORTHWEST AND OTHER STATES THAT SHARE THE BORDER WITH CANADA, HAVE BEEN SIGNIFICANTLY DEPENDENT ON CANADIAN CATTLE IN ORDER TO OPERATE THEIR FACILITIES AT AN ECONOMICALLY OPTIMAL LEVEL. WITHOUT CANADIAN CATTLE THESE SLAUGHTER PLANTS HAVE ONLY OPERATED AT 65-70% OF CAPACITY FOR THE LAST DECADE, A LEVEL THAT IS NOT FINANCIALLY SUSTAINABLE. HOWEVER, THE SAME PLANTS, SUPPLEMENTED BY CANADIAN CATTLE, HAVE HISTORICALLY REALIZED NEARLY 95% CAPACITY UTILIZATION.

THE DISTRICT COURT IGNORED A STUDY ENTITLED IMPACTS ON THE U.S. BEEF PACKERS, WORKERS, AND THE ECONOMY OF RESTRICTED CATTLE TRADE BETWEEN CANADA AND THE UNITED STATES, PREPARED BY DR. TED SCHROEDER AND DR. JOHN LEATHERMAN, AGRICULTURAL ECONOMISTS AT KANSAS STATE UNIVERSITY, DESCRIBES THE DEVASTATING ECONOMIC IMPACTS OF THE BORDER RESTRICTIONS IMPOSED IN MAY 2003. THE STUDY WAS

PREPARED FOR THE NATIONAL CATTLEMEN'S BEEF ASSOCIATION, CANADIAN CATTLEMEN'S ASSOCIATION, AMERICAN MEAT INSTITUTE AND CANADIAN MEAT COUNCIL AND RELEASED ON DECEMBER 28, 2004. (MOVANT-INTERVENOR NMA WAS NOT AMONG THE SPONSORS OF THE STUDY.) THE STUDY DESCRIBED THE DEVASTATING IMPACTS OF THE BORDER RESTRICTIONS. THE SCHROEDER/LEATHERMAN STUDY WAS UNDERWRITTEN BY ORGANIZATIONS OTHER THAN THE NMA. NEVERTHELESS, THE DISTRICT COURT COMPLETELY IGNORED IT.

RATHER THAN CONDUCT A LEGITIMATE ANALYSIS OF HARDSHIP, THE DISTRICT COURT REFUSED TO CONSIDER ANY HARDSHIP EXCEPT THAT ALLEGED BY R-CALF. THE DISTRICT COURT ERRED IN FAILING TO CONSIDER THE HARDSHIP OF NMA AND ITS MEMBERS.

C. THE DISTRICT COURT FAILED TO REQUIRE R-CALF TO POST A BOND.

THE DISTRICT COURT ERRED IN FAILING TO REQUIRE R-CALF TO POST A BOND SUFFICIENT TO PROTECT NMA AND ITS MEMBERS FROM THE DEVASTATING IMPACT THE PRELIMINARY INJUNCTION WILL HAVE. F.R.CIV.P. 65(C) PROVIDES:

NO RESTRAINING ORDER OR PRELIMINARY INJUNCTION SHALL ISSUE EXCEPT UPON THE GIVING OF SECURITY BY THE APPLICANT, IN SUCH SUM AS THE COURT DEEMS PROPER, FOR THE PAYMENT OF SUCH COSTS AND DAMAGES AS MAY BE INCURRED OR SUFFERED BY ANY PARTY WHO IS FOUND TO HAVE BEEN WRONGFULLY ENJOINED OR RESTRAINED. NO SUCH SECURITY SHALL BE REQUIRED OF THE UNITED STATES OR OF AN OFFICER OR AGENCY THEREOF.

THE DISTRICT COURT'S PRELIMINARY INJUNCTION VIOLATES THE REQUIREMENTS OF RULE 65(C) SINCE IT FAILS TO REQUIRE R-CALF TO GIVE SECURITY. THE AMOUNT OF THE DAMAGES TO NMA AND ITS MEMBERS IS CONSIDERABLE, BUT THE DISTRICT COURT WHOLLY FAILED TO REQUIRE R-CALF TO COMPLY WITH THE SECURITY REQUIREMENTS INCUMBENT UPON A PARTY SEEKING A PRELIMINARY INJUNCTION.

III. TO AVOID IRREPARABLE HARM, NMA'S APPEAL MUST BE CONSIDERED IMMEDIATELY

CIRCUIT RULE 27-3(A) PROVIDES FOR EMERGENCY CONSIDERATION OF MOTIONS "AIAF A MOVANT CERTIFIES THAT TO AVOID IRREPARABLE HARM RELIEF IS NEEDED IN LESS THAN 21 DAYS..." IN THIS CASE, NMA IS SUFFERING IRREPARABLE HARM THAT CONTINUES TO GROW EVERY DAY. NMA NEEDS TO BE PERMITTED TO PARTICIPATE IN THE PROCEEDINGS IMMEDIATELY, SINCE ITS INTERESTS ARE NOT ADEQUATELY PROTECTED BY ANY PARTY AND THE EFFECT OF THE DISTRICT COURT'S RULINGS IS HAVING A DEVASTATING EFFECT ON THE ABILITY OF NMA'S MEMBERS TO COMPETE. UNLESS NMA IS GRANTED IMMEDIATE RELIEF, MANY OF ITS MEMBERS FACE TOTAL DESTRUCTION OF THEIR BUSINESSES DUE TO THE UNFAIR ECONOMIC ADVANTAGE THAT CURRENT RULES PROVIDE TO SELLERS OF CHEAPER CANADIAN BEEF PRODUCTS SHIPPED TO THE UNITED STATES FOR SALE IN COMPETITION WITH MEMBERS OF NMA WHO ARE

FORECLOSED FROM PROCESSING CANADIAN CATTLE IN SLAUGHTERHOUSES IN THE UNITED STATES. GRANTING RELIEF SEVERAL WEEKS OR MONTHS FROM NOW WILL NOT PREVENT THE IRREPARABLE HARM THAT NMA'S MEMBERS ARE EXPERIENCING.

CIRCUIT RULE 27-13 PROVIDES IN RELEVANT PART:

MOTIONS TO EXPEDITE BRIEFING AND HEARING MAY BE FILED AND WILL BE GRANTED UPON A SHOWING OF GOOD CAUSE. 'GOOD CAUSE' INCLUDES, BUT IS NOT LIMITED TO, SITUATIONS IN WHICH: ... (3) IN THE ABSENCE OF EXPEDITED TREATMENT, IRREPARABLE HARM MAY OCCUR OR THE APPEAL MAY BECOME MOOT..."

GOOD CAUSE TO EXPEDITE BRIEFING AND HEARING EXISTS IN THIS CASE BECAUSE NMA SHOULD BE GRANTED LEAVE TO INTERVENE IN THIS CASE TO CHALLENGE THE DISTRICT COURT'S PRELIMINARY INJUNCTION AND OTHERWISE PROTECT THE RIGHTS AND INTERESTS OF THESE MEAT PROCESSORS, AND THEIR EMPLOYEES, VENDORS AND CUSTOMERS. NMA MEETS THE REQUIREMENTS OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR BOTH INTERVENTION AS OF RIGHT AND PERMISSIVE INTERVENTION. THE DISTRICT COURT HAS MADE RULINGS IN NMA'S ABSENCE WITHOUT CONSIDERING THE EFFECT THE RULINGS MIGHT HAVE ON NMA AND WITHOUT CONSIDERING ARGUMENTS OR EVIDENCE FROM NMA'S PERSPECTIVE. NMA MUST BE PERMITTED TO INTERVENE SO IT CAN PROTECT ITS INTERESTS IMMEDIATELY.

CONCLUSION

NMA RESPECTFULLY REQUESTS THAT THE COURT IMMEDIATELY ENTER AN ORDER EXPEDITING BRIEFING AND HEARING OF NMA'S APPEAL OF (1) THE DENIAL OF NMA'S MOTION TO INTERVENE, AND (2) THE GRANTING OF R-CALF'S APPLICATION FOR PRELIMINARY INJUNCTION. PURSUANT TO CIRCUIT RULE 27-12, NMA RESPECTFULLY REQUESTS THAT THE COURT SET THE FOLLOWING BRIEFING SCHEDULE:

APPELLANT'S BRIEF: MARCH 21, 2005

APPELLEES' BRIEFS: MARCH 28, 2005

NMA FURTHER REQUESTS THAT ARGUMENT BE SCHEDULED AS SOON AS POSSIBLE AFTER THE COMPLETION OF BRIEFING.

DATED THIS ____ DAY OF MARCH, 2005.

RESPECTFULLY SUBMITTED,

BROWN LAW FIRM, P.C.

BY _____

JOHN WALKER ROSS
SCOTT G. GRATTON

ATTORNEYS FOR NATIONAL
MEAT ASSOCIATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT, ON THIS DAY OF MARCH, 2005, A TRUE AND ACCURATE COPY OF THE FOREGOING WAS SERVED BY UNITED STATES MAIL, POSTAGE PREPAID AND VIA ELECTRONIC MAIL, ON THE FOLLOWING:

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