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The Honorable Debbie Stabenow
Chairwoman
U.S. Senate Committee on Agriculture,
Nutrition, and Forestry

The Honorable John Boozman
Ranking Member
U.S. Senate Committee on Agriculture,
Nutrition, and Forestry

TRANSMITTED ELECTRONICALLY

Dear Chairwoman Stabenow, Ranking Member Boozman, and Members of the Committee:

With over 5,000 independent cattle-producer members in 46 states, the Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA) is the largest United States cattle industry trade association that exclusively represents the interests of independent seed stock and cow/calf producers, backgrounders and stockers, and cattle feeders.

For the reasons stated below, we urge the U.S. Senate Committee on Agriculture, Nutrition, and Forestry to reject the compromise bill, S.3229, negotiated by committee members Senator Chuck Grassley and Senator Deb Fischer.

R-CALF USA has long advocated for substantive structural reforms to the U.S. cattle market. With no such reforms originating either in Congress or in the executive branch for decades, R-CALF USA in April 2019 filed a historic class action antitrust lawsuit against the nation's largest beef packers alleging they have colluded to depress prices paid to America's cattle producers.

On Sept. 12, 2021, the Federal District Court for the District of Minnesota denied the motion by the nation's four largest beef packers to dismiss this class-action, finding Plaintiffs had plausibly pled Defendants' anticompetitive agreement. Our case is, therefore, proceeding to discovery.

Our lawsuit alleges that the largest beef packers' reliance on formula and forward contracts for at least 70% of their cattle procurement needs, both facilitated and incentivized their alleged agreement to manipulate the cash cattle market. As stated in our Complaint:

The greater a Packing Defendant's supply of captive cattle is, the less reliant it becomes on participating in the cash cattle trade to procure sufficient cattle to operate its slaughter plants at its chosen utilization rates. This, in turn, allows a Packing Defendant to abstain from purchasing cash cattle when it regards market prices to be too high, and provides it with leverage to require a would-be cash seller to agree to a formula deal. All things being equal, a reduction in demand for cash cattle results in a drop in cash cattle prices, as producers are forced to lower their asking price in order to attract a buyer willing to purchase and slaughter the producer's perishable product. And because

cash cattle prices are used to set the prices paid by Packing Defendants under their formula contracts and directly impact the Live Cattle futures prices incorporated into forward agreements, a reduction in cash cattle prices reduces the price paid by Packing Defendants for cattle bought on such contracts.

The result of the largest packers' limited participation in the cash cattle market in recent years is severely depressed cattle prices and record packer margins.

If enacted, S.3229, would lock-in for up to at least two years, if not indefinitely, the very market structure that facilitated and incentivized the alleged anticompetitive conduct alleged in our lawsuit. It does so by allowing at least two years to pass before the U.S. Department of Agriculture can set any minimum cash cattle participation requirement and benchmarking that requirement against the low level of participation witnessed in the prior 18 months.

Further, the definition of "NEGOTIATED GRID PURCHASE" in S.3229 does not specify the day upon which the negotiated base price must be determined. This may permit the packers' continued use of novel top-of-the-market procurement methods as "cash" purchases. However, because these agreements do not typically set a firm price at time of contract, but rather a price formula that incorporates published reports of cash cattle transactions elsewhere at a later date, they do not contribute to price discovery but instead augment the packers' leverage over the cash market.

We implore you and your committee to take no action pending the conclusion of our class action antitrust case and/or the conclusion of the U.S. Department of Justice's investigation into the nation's largest packers that would potentially cause or have the effect of a congressional sanctioning of the current proportion of cash versus non-cash purchases. Unfortunately, this is precisely the unintended effect that S.3229 would have.

A bill announced today by committee member Senator Cory Booker along with Representative Ro Khanna, the *Protecting America's Meatpacking Workers Act of 2021*, includes a farm system reforms title that contains cattle market structure reforms that are consistent with our members' aims and may assist in alleviating the market conditions that led to the conduct at issue in our antitrust suit. We urge you to support this new alternative in lieu of S.3229.

For the foregoing reasons, we urge you to reject S.3229 and instead support the soon-to-be-introduced *Protecting America's Meatpacking Workers Act of 2021*. Thank you for your consideration of this important matter.

Sincerely,



Bill Bullard, CEO
406-670-8157

