UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

VALLEY MEAT COMPANY, LLC, Plaintiff, v. TOM VILSACK, Secretary of Agriculture, *et al.*, Federal Defendants.	Civ. No. 2:12-cv-01083-JCH-CG
FRONT RANGE EQUINE RESCUE, *et al.*, Plaintiffs, v. TOM VILSACK, Secretary of the U.S. Department of Agriculture, *et al.*, Federal Defendants, VALLEY MEAT COMPANY, LLC, Defendant-Intervenor.	Civ. No. 1:13-cv-00639-MCA-RHS

FEDERAL DEFENDANTS' REPLY IN SUPPORT OF JULY 12, 2013 MOTION TO TRANSFER RELATED CASES

Federal Defendants hereby reply to *Front Range* Plaintiffs' response[1] to Federal Defendants' July 12, 2013 "Notice of Related Cases and Motion to Transfer" (ECF No. 31 in

[1] ECF No. 34 in *Valley Meat Company, LLC, v. Tom Vilsack, Secretary, U.S. Department of Agriculture, et al.*, Civil No. 2:12-cv-01083-JCH-CG ("*Valley Meat*")); and ECF No. 41 in *Front Range Equine Rescue, et al. v. Tom Vilsack, Secretary, U.S. Department of Agriculture, et al.*, Civil No. 1:13-cv-00639-MCA-RHS ("*Front Range*").

Valley Meat and ECF No. 39 in *Front Range*), as follows:

Front Range Plaintiffs offer no viable argument that the *Valley Meat* and *Front Range* cases are not "related" or should not be transferred. *See* Pls. Resp. at 2-6. In arguing that the cases are not related, *Front Range* Plaintiffs make a number of erroneous and misleading assertions, many of which openly conflict with statements *Front Range* Plaintiffs have already made in their recent filings before this Court. *Front Range* Plaintiffs' attempts to reframe these cases with misleading and contradictory statements do not suffice to overcome the interest of justice that dictates that these two related cases should be heard by the same judge to avoid what would undeniably be conflicting decisions and injunctions against the United States Department of Agriculture ("USDA") and its Food Safety Inspection Service ("FSIS").

The claims presented in the two cases by Plaintiff in *Valley Meat* and Plaintiffs in *Front Range* are not only diametrically opposed, they are irreconcilable. In *Valley Meat*, Plaintiff seeks an order "[d]eclaring that the USDA's failure to issue Grants of Inspection of equine animals for human consumption is arbitrary and capricious, and not in accordance with [federal law]" and "*[c]ommand[ing] USDA to immediately issue the appropriate Grant of Inspection to Plaintiff*." *Valley Meat*, ECF No. 1 at page 7 ¶¶ 1, 2 (emphasis added). In *Front Range*, Plaintiffs seek an order doing precisely the opposite, "[d]eclaring that USDA's grant of inspection to a horse slaughter facility without the required NEPA review is arbitrary and capricious, and without observance of procedure required by [federal law]" and "*enjoining USDA or FSIS from granting or conditionally granting any applications for inspection of horse slaughter facilities*, and from otherwise carrying out any inspections of horse slaughter facilities." *Front Range*, ECF No. 1 at pages 35-36 ¶¶ 1, 4 (emphasis added). There are few situations in which a potential conflict in relief requested could be any starker.

In opposing transfer, *Front Range* Plaintiffs misleadingly attempt to recast the *Valley Meat* Plaintiff's claims for relief, asserting that "compelling [USDA] to 'grant' the Valley Meat application, as opposed to compelling [USDA] to 'answer' it, was *never* an option for the Court in the *Valley Meat* case." Pls. Resp. at 5 (emphasis in original); *see also id.* at 2 ("*Valley Meat* concerns a single slaughterhouse owner's action to compel a *decision* on his permit application.") (emphasis in original). Plaintiffs' assertion is plainly at odds with the *Valley Meat* Plaintiff's express claims for relief, which seek an order requiring USDA to *grant* the inspection, not just to compel a "decision" or to "answer" the application for such a grant. In seeking to avoid a transfer, not only do *Front Range* Plaintiffs contradict the plain language of the *Valley Meat* Complaint, they contradict their very own recent repeated characterizations of the *Valley Meat* Complaint in their filings before this Court:

> "Valley Meat, through this lawsuit, seeks to force the agencies to permit Valley Meat to begin slaughtering horses and generating horse meat."

Front Range Plaintiffs' Motion to Intervene, *Valley Meat* ECF No. 11-1 at 4.

> "Valley Meat seeks declaratory judgment and injunctive relief, including an order from the Court directing USDA to immediately issue Valley Meat a grant of inspection."

Id.

> "Valley Meat in the instant case is focused on forcing USDA to begin horse slaughter inspections to begin immediately."

Id. at 15.

> "Valley Meat seeks to obtain a court order compelling the USDA to issue a grant of inspection to begin slaughtering horses."

Front Range Plaintiffs' Reply in Support of Motion to Intervene, *Valley Meat* ECF No. 18 at 4.

While the fact that the *Front Range* Plaintiffs have taken of overtly inconsistent positions before the Court is not grounds for granting transfer, their questionable tactics do serve to

demonstrate that their opposition to transfer has no basis in fact or law. The *Valley Meat* Plaintiff seeks an order requiring USDA to immediately grant inspections, and the *Front Range* Plaintiffs seek an order barring USDA from granting those inspections. This risk of incompatible injunctions is a compelling reason for transferring both related cases before a single judge.

That *Front Range* Plaintiffs believe their NEPA case is of national importance is of no moment, because they themselves have characterized (again, in contradiction of their current contentions) the *Valley Meat* case as having precisely the same national import and potential consequences as the *Front Range* case. *Front Range* Plaintiffs raised their alleged "national" concerns as their basis for intervening in *Valley Meat* and opposing the *Valley Meat* Plaintiff's request for an order requiring USDA to grant inspections at the Valley Meat facility. For example, in *Valley Meat*, the *Front Range* Plaintiffs rely heavily on their rulemaking petition to USDA (and a similar one submitted to the FDA) that they assert "address the propriety of granting inspections of horse slaughterhouses – *the central issue* in this [*Valley Meat*] case – based on the *important national concerns* of consumer health and safety, environmental contamination from horse slaughter, and the inhumane treatment that is an inherent part of horse slaughter." *Valley Meat*, ECF No. 11-1 at 10 (emphasis added). It is that same massive petition that *Front Range* Plaintiffs filed as the centerpiece to their preliminary injunction motion in *Front Range*. *See Front Range*, ECF Nos. 8 through 12. Thus, the *Front Range* Plaintiffs have centered their legal challenges in *both* cases on their national campaign against horse slaughter, and the grant of inspection for the Valley Meat facility is the focus of attack for that national campaign in both cases.

Similarly, *Front Range* Plaintiffs also focused their arguments in *Valley Meat* on the district court's NEPA decision in *Humane Society of the United States v. Johanns*, 520 F. Supp. 2d 8 (D.D.C. 2007). In *Valley Meat*, the *Front Range* Plaintiffs assert that they "hold[] a judgment in [their] favor in the *Johanns* case, permanently enjoining FSIS from beginning inspections of horse slaughterhouses without performing NEPA review." *Valley Meat*, ECF No. 11-1 at 8 (citing *Johanns*). The *Front Range* Plaintiffs contend that they hold an "independent right" to enforce the *Johanns* judgment "*with respect to the specific issue* in this [*Valley Meat*] case – whether horse slaughter operations at Valley Meat can be commenced immediately, and whether USDA can be enjoined from providing Valley Meat with a grant inspection absent careful review under NEPA, pursuant to the *Johanns* ruling." *Id.* (emphasis added). And, of course, it is this precise argument that forms the basis of *Front Range* Plaintiffs' claims against the grant of inspection for Valley Meat in the *Front Range* case. *See Front Range Complaint*, ECF No. 1 ¶¶ 1-10; *see also id.* ¶¶ 6, 107, 128, 132 (expressly citing *Johanns*).

There is no legal or factual daylight between *Front Range* Plaintiffs' positions and claims in *Valley Meat* and *Front Range*. There also is no legal or factual daylight between the *Valley Meat* Plaintiff's positions in *Valley Meat* and *Front Range*. The only difference is that the parties' positions have flipped to opposite sides of the "v." in the two cases. But USDA is the Defendant in both cases, caught between the Plaintiffs' claims, and therefore subject to the unjust and untenable situation of potentially conflicting judgments and injunctions if the two cases are not heard before the same judge.

Front Range Plaintiffs argue that *Valley Meat* is of no significance because USDA has rendered *Valley Meat* "entirely moot" by granting the application of Valley Meat for a grant of inspection for the slaughter of horses. Pls. Resp. at 2. Federal Defendants agree that the

granting of Valley Meat's application has rendered *Valley Meat* "entirely moot" and have moved to dismiss *Valley Meat* on precisely that ground. However, Federal Defendants' motion to dismiss *Valley Meat* has not yet been ruled upon. Indeed, Federal Defendants did not file the reply in support of their motion to dismiss *Valley Meat* until July 24, 2013. Until *Valley Meat* is dismissed, it remains a live and pending case with the potential for a ruling and injunction that conflicts with the relief requested in *Front Range.*

Front Range Plaintiffs filed their case in a patently improper venue, wasting that Court's and this Court's judicial resources, forcing Federal Defendants to prepare and file a motion to transfer venue, and unnecessarily delaying their own case. Federal Defendants' transfer motions have always been about ensuring that the *Front Range* case is heard with the *Valley Meat* case to avoid conflicting results. Tellingly, *Front Range* Plaintiffs neglect to mention that Federal Defendants' motion to transfer venue expressly discussed the need for the *Front Range* case to be moved to the District of New Mexico to avoid inconsistent rulings and injunctions from the Valley Meat case. *See Front Range* ECF No. 22 at 18-19.

> If the instant [*Front Range*] case is permitted to proceed in [the Northern District of California], two separate suits involving the same agency action may require the attention of two courts, based on the same NEPA argument. Such duplicative lawsuits unnecessarily waste limited judicial resources and create the risk of inconsistent rulings.

Id. at 18. *Front Range* Plaintiffs' current opposition to transferring the *Front Range* case to the judge assigned to *Valley Meat* case is inconsistent with their ultimate concession that the case should be transferred to the District of New Mexico in the first instance. "[T]he law is clear that the risk of inconsistent rulings is a factor strongly favoring transfer to the court where earlier-filed, related cases are pending." *Giant Eagle, Inc. v. Cephalon, Inc.*, 2010 WL 3834343, *4

(N.D. Ohio 2010). [2]

Finally, *Front Range* Plaintiffs offer no support for their conclusory assertion that a transfer would be "a waste of the Court's resources." Pls. Resp. at 1. It is unclear how or what judicial resources would be wasted by executing a transfer, let alone how such any expenditure of judicial resources would outweigh the much more serious concern about inconsistent injunctions against the United States and USDA. While *Front Range* Plaintiffs complain about this Court considering the "related case" local rule in Plaintiffs' chosen forum (instead of considering the local rule from some other, random, forum), Pls. Resp. at 3, they offer no principled basis for their complaint or that these rules are inconsistent with other jurisdictions that have express "related cases" local rules. *Front Range* Plaintiffs' only real concern appears to be that if this Court considers and takes action consistent with those local rules, granting Federal Defendants motion to transfer these related cases is a certainty. Regardless of the jurisdiction in which related cases are pending, "[a]s a matter of court management and efficiency, the assignment of related matters to a single judge is preferred." *Clifford v. United States*, 136 F.3d 144, 148 (D.C. Cir. 1998).

CONCLUSION

In both the *Front Range* and *Valley Meat* cases, the *Valley Meat* Plaintiff argues that USDA was mandated by federal law to grant the inspections. In both cases, the *Front Range* Plaintiffs argue that USDA has discretion in granting inspections to Valley Meat, that USDA must comply with the National Environmental Policy Act ("NEPA") before granting the inspections, and that USDA has not so complied with NEPA. The *Front Range* and *Valley Meat*

[2] *Front Range* Plaintiffs do not challenge application of the "first filed" rule that, to avoid the appearance of judge shopping, the higher-number related case should be transferred to the lower-number related case.

cases are the mirror images of each other and involving the same core issues and arguments. That the *Front Range* Plaintiffs and the *Valley Meat* Plaintiff have exchanged their roles -- plaintiffs in one case and defendant-intervenors in the other -- only underscores that the two cases are related and seek incompatible relief. The USDA, of course, is the defendant in both cases, and is the party at risk of inconsistent rulings and incompatible injunctions if these cases proceed before separate judges. For this reason, the cases should be transferred to a single judge for resolution.

Respectfully submitted this 25th day of July, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2013, I filed through the United States District Court ECF System the foregoing document to be served by CM/ECF electronic filing on all counsel of record.

/s/ Alison D. Garner
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