

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ORGANIZATION FOR COMPETITIVE
MARKETS,

Plaintiff,

vs.

OFFICE OF INSPECTOR GENERAL,
UNITED STATES DEPARTMENT OF
AGRICULTURE,

Defendants

and

NATIONAL CATTLEMEN'S BEEF
ASSOCIATION,
9110 East Nichols Avenue, Suite 300
Centennial, Colorado 80112

Proposed Defendant-
Intervenor

Civil Action No. 1:14-cv-1902-EGS

ANSWER OF DEFENDANT-INTERVENOR NCBA

Defendant-Intervenor National Cattlemen's Beef Association ("NCBA"), by and through its undersigned counsel, hereby responds to Plaintiff Organization for Competitive Markets' ("OCM") November 12, 2014 Complaint for Injunctive Relief ("Complaint") as follows:

1. Admits that Plaintiff purports to bring this action pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking disclosure of USDA records relating to an audit of the USDA. As to the remaining allegations in Paragraph 1, NCBA is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 1, and denied.

2. States that the allegations in Paragraph 2 and 3 contain legal arguments to which no response is required, and therefore denies the allegations contained in Paragraphs 2 and 3, and refers all questions of law to the Court.

4. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 4 through 6.

7. States that the allegations in Paragraphs 7 through 9 contain legal arguments to which no response is required, and therefore denies the allegations contained in Paragraphs 7 through 9 and refers all questions of law to the Court.

10. Admits that the beef checkoff is a producer-funded program that is established and governed by federal law and regulation. As to the remaining allegations in Paragraph 10, NCBA is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 10, and NCBA denies.

11. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 11 through 39.

40. Incorporates by reference and realleges its responses to Paragraphs 1-39.

41. States that the allegations in Paragraphs 41 through 43 contain legal arguments to which no response is required, and therefore denies the allegations contained in Paragraphs 41 through 43.

44. Incorporates by reference and realleges its responses to Paragraphs 1-43.

45. States that the allegations in Paragraphs 45 through 48 contain legal arguments to which no response is required, and therefore denies the allegations contained in Paragraphs 45 through 48.

AFFIRMATIVE DEFENSES

Without assuming any burden that it would not otherwise bear, NCBA asserts the following defenses to the Complaint.

First Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Defense

Plaintiff's claim is barred, in whole or in part, by the doctrine of laches, estoppel, and/or waiver.

Third Defense

Plaintiff seeks release of documents exempt from disclosure under applicable law, including, but not limited to FOIA Exemption (b)(4) (trade secrets and confidential commercial and financial information), Exemption (b)(5) (deliberative process privilege and attorney work product doctrine), and Exemption (b)(6) and (b)(7)(C) (personal privacy).

Fourth Defense

NCBA has not been provided a reasonable opportunity to object to USDA of any decision to disclose the information, as required under 7 C.F.R. § 1.12.

Fifth Defense

NCBA has, or may have, further and additional affirmative defenses that are not yet known to NCBA, and reserves the right to amend its Answer as such information and defenses become available.

PRAYER FOR RELIEF

WHEREFORE, Defendant-Intervenor NCBA requests that the Court order that the Complaint be dismissed, enter judgment in its favor, or, in the alternative, allowing NCBA

reasonable time to review and object to any proposed disclosures, and grant it such other and further relief as the Court may deem just and proper.

Dated: September 13, 2016

Respectfully submitted,

/s/ Daniel C. Schwartz

Daniel C. Schwartz (D.D.C. Bar # 0017749)

Bryan J. Harrison (D.D.C. Bar # 1016187)

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