

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

**TECHE VERMILION SUGAR CANE
GROWERS ASSOCIATION, INC.; CORA
TEXAS GROWERS AND HARVESTERS
AGRICULTURAL ASSOCIATION, INC.;
AMERICAN SUGAR CANE LEAGUE;
FOUR OAKS FARM, GP; GONSOLIN
FARMS, LLC; TOWNSEND BROTHERS
FARM, INC.; and JOHN EARLES,
Plaintiffs,**

CIVIL ACTION NO. 6:23-CV-00831

JUDGE ROBERT R. SUMMERHAYS

**MAGISTRATE JUDGE CAROL B.
WHITEHURST**

VERSUS

**JULIE A. SU, Acting Secretary of Labor,
in her official capacity; BRENT PARTON,
Principal Deputy Assistant Secretary of
Labor, in his official capacity; BRIAN
PASTERNAK, Administrator of the
Employment and Training Administration,
Office of Foreign Labor Certification, in his
official capacity; JESSICA LOOMAN,
Action Administrator, Wage and Hour
Division, in her official capacity,
Defendants**

**FIRST AMENDMENT TO COMPLAINT FOR DECLARATORY AND
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

NOW INTO COURT come Plaintiffs Teche Vermilion Sugar Cane Growers Association, Inc., Cora Texas Growers and Harvesters Agricultural Association, Inc., American Sugar Cane League, Four Oaks Farm, GP, Gonsoulin Farms, LLC, Townsend Brothers Farm, Inc., and John Earles (collectively “Plaintiffs”), file this First Amendment to their Complaint for Declaratory and Preliminary and Permanent Injunctive Relief. This amendment is made as a matter of course pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), as it is made within twenty-one (21) days of service of a motion filed pursuant to Federal Rule of Civil Procedure 12(b) by defendants Julie

A. Su, Acting Secretary of Labor, in her official capacity; Brent Parton, Principal Deputy Assistant Secretary of Labor, in his official capacity; Brent Parton, Principal Deputy Assistant Secretary of Labor, in his official capacity; Brian Pasternak, Administrator of the Employment and Training Administration, Office of Foreign Labor Certification, in his official capacity; and Jessica Looman, Action Administrator, Wage and Hour Division, in her official capacity (collectively, the “DOL”). This amendment supplements and provides additional detailed allegations concerning the claims of Plaintiffs under the Regulatory Flexibility Act, 5 U.S.C. §§ 601, et seq. (the “RFA”). All other allegations and claims set forth in the original Complaint remain effective, and to the extent necessary are incorporated herein by reference and *in extenso*.

Now, wherefore, Plaintiffs amend their prior original Complaint by the addition of the following new allegations:

70.1 The Final Rule further violates the Regulatory Flexibility Act because it fails to follow the procedures, set forth in 5 U.S.C. § 605, by which an agency can avoid the required economic analysis by certifying that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The DOL has violated this procedure in multiple ways, including, without limitation, by failing to have the requisite certification made by the head of DOL, and by lacking a sufficient factual basis upon which to make a good faith certification.

112.1 Furthermore, the DOL attempted to alleviate itself of these requirements by making the certification contemplated by 5 U.S.C. § 605. However, the DOL failed to comply in good faith with this alternative procedure. This noncompliance includes the fact that the head of the agency at the time the Final Rule was issued, Martin J. Walsh (the Secretary of Labor), did not make the certification, as required by Section 605. Additionally, the DOL failed to take reasonable

steps to confirm that the certification was valid, and failed to develop any factual basis from which the true effect of the Final Rule on small entities could be reasonably estimated.

112.2 In the absence of a valid certification under 5 U.S.C. § 605, the DOL was obligated to fully comply with the requirement to conduct initial and final regulatory flexibility analyses addressing the impact of the proposed rule on “small entities,” see 5 U.S.C. §§ 603, 604. As alleged herein, the DOL failed to conduct these analyses.

Dated: September 15, 2023.

Respectfully submitted,

PHELPS DUNBAR LLP

BY: /s/ J. Walter Green

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