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RECEIVED NYSCEF: 05/20/2022

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

LA BELLE FARM, INC. and HVFG, LLC d/b/a Hudson Valley Foie Gras,

Plaintiffs,

-against-

THE CITY OF NEW YORK,

Defendant.

**SUMMONS** 

Index No.

Plaintiffs designate New York County as the place of trial.

Venue is proper pursuant to CPLR § 504(3).

TO: CITY OF NEW YORK

c/o Corporation Counsel 100 Church Street New York, NY 10007

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with the summons, to serve a notice of appearance, on Plaintiffs' attorneys within 20 days after service of this summons, exclusive of the day of service (or within 30 days after the service is complete if the service is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: White Plains, NY

May 20, 2022

**KEANE & BEANE, P.C.** 

By:

Edward J. Phillips

Attorneys for Plaintiffs

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SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

----- X

LA BELLE FARM, INC. and HVFG, LLC d/b/a Hudson Valley Foie Gras,

Plaintiffs,

VERIFIED COMPLAINT

-against-

V OF NEW VODIZ

Index No.

THE CITY OF NEW YORK,

Defendant.

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## NATURE OF SUIT

- 1. Plaintiffs La Belle Farm, Inc. ("La Belle") and HVFG, LLC, d/b/a Hudson Valley Foie Gras ("Hudson Valley") bring this action pursuant to CPLR §§ 3001 and 3017(b) to challenge the adoption and enforcement of New York City Local Law No. 2019/202, codified at N.Y.C. Admin. Code § 17-1901, et seq. ("Local Law 202"), which will ban the sale of foie gras in the City of New York effective November 25, 2022.
- 2. Plaintiffs La Belle and Hudson Valley operate farms in state-certified agricultural districts located in Sullivan County that have sold foie gras in New York City for decades. Defendant, the City of New York ("Defendant" or the "City"), enacted Local Law 202 after the City Council determined that the farming method essential to producing foie gras specifically, the force-feeding of ducks for approximately 16 21 days was inhumane and needed to be stopped. Thus, by its terms, Local Law 202 bans the sale of any "force-feed" poultry products in the City of New York and makes the sale of any product labeled as

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or containing foie gras presumptively unlawful and punishable by a civil penalty. See N.Y.C. Admin. Code § 17-1903(a).

- 3. Local Law 202 should be declared invalid and void, and Defendant should be enjoined from enforcing it, for at least three (3) reasons. First, Local Law 202 violates Section 305-a of the N.Y. Agriculture and Markets Law ("AML"). Notwithstanding the City's opinion about force-feeding ducks to produce foie gras, as a matter of statewide law and longstanding public policy, farms in certified agricultural districts, such as those operated by La Belle and Hudson Valley, are protected against unreasonable restrictions imposed by local laws. Local Law 202 is unreasonable per se under Section 305-a because it imposes a blanket ban on the sale of products that may be produced and sold in complete compliance with applicable state and federal law. Indeed, the New York State Department of Agriculture ("NYSDAM"), the agency responsible for interpreting the Agriculture and Markets Law, has opined that Local Law 202 unreasonably restricts the farming operations of La Belle and Hudson Valley in violation of AML § 305-a.
- 4. Second, Local Law 202 should be declared invalid and void because it conflicts with AML Article 5-D, and therefore exceeds Defendant's municipal home rule authority under Article IX, § 2(c)(ii) of the New York State Constitution and Municipal Home Rule Law § 10[1][ii][a][12]. As a matter of law, municipalities may not adopt local laws that conflict with the provisions of any general law. Thus, a local law will be preempted and invalid where it purports to prohibit conduct that would be permissible under State law, thereby inhibiting the operation of the State's general laws. See Eric M. Berman, P.C. v. City of New York, 25 N.Y.3d 684, 690, 16 N.Y.S.3d 25, 30 (2015). Here, Local Law 202 conflicts

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with AML Article 5-D, which permits the farming and sale of foie gras on a statewide basis,

subject to quality control, inspection, and labeling requirements prescribed by federal law.

Plaintiffs' foie gras products are certified as wholesome by the USDA for sale in the United

States and may be sold without restriction. The USDA has expressly rejected claims that

livers from force-fed ducks are unfit for human consumption.<sup>1</sup>

5. Third, Local Law 202 should be declared invalid and void because its

enactment exceeded Defendant's municipal home rule authority on jurisdictional grounds.

By attempting to eliminate a farming operation that is occurring roughly 80 miles away in

Sullivan County, Local Law 202 exceeds Defendant's legislative authority by projecting its

regulations and policymaking far beyond its municipal boundaries.

In that respect, the City's attempt to legislate a farming practice occurring 6.

outside its borders is unprecedented and alarming. The State of New York has a long

history and tradition of farming and protecting agriculture uses. In 1971, New York became

the first state in the country to enact agricultural district laws, and our state constitution

proclaims that "[t]he policy of the state shall be to conserve and protect its natural resources

and scenic beauty and encourage the development and improvement of its agricultural lands

for the production of food and other agricultural products." N.Y. Const. art. XIV, § 4. This

public policy is also articulated in AML § 300, which declares in relevant part:

<sup>1</sup> See Animal Legal Defense Fund v. United States Department of Agriculture, 223 F.Supp.3d

1008 (C.D. Cal. 2016).

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The socio-economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the state as a whole. It is, therefore, the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products.

AML § 300 (McKinney's 1987).

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- 7. These statewide enactments stand against the unreasonable regulation of farm operations within certified agricultural districts, particularly insofar as efforts to legislate farming operations. And for good reason. In New York State, it has been estimated that 5,000 acres of farmland are lost each year to real estate development -- about one farm a Nationally, in 2021 alone, approximately 1.3 million acres of farmland were converted to nonagricultural uses according to the United States Department of Agriculture ("USDA").3 Long before the COVID-19 pandemic, market pressures and other forces threatened the existence of farms like those operated by La Belle and Hudson Valley, and those challenges have only become more acute in the current economic climate. The need for upholding statewide policies and statutes designed to protect agricultural uses has never been stronger.
- 8. La Belle and Hudson Valley cannot absorb the financial blow that Local Law 202 will deliver, as the New York City market is a vital source of sales for both farms.

<sup>&</sup>lt;sup>2</sup> See Lindsey L. Johnson, Urban Creep in Upstate New York: Optimizing the Preservation of Agricultural Land, 82 ALB. L. REV. 665, 670 (2019).

<sup>&</sup>lt;sup>3</sup> See USDA, NATIONAL AGRICULTURAL STATISTICS SERVICE, FARMS AND LAND IN FARMS 2021 SUMMARY (2022), at p. 4. The loss of farmland to development has been a source of concern for decades. Over 30 years ago, the New York State legislature recognized that "many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes." AML § 300.

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La Belle anticipates having to terminate most of its 100 employees due to the loss of

revenues from foie gras sales in New York City after Local Law 202 goes into effect and may

be forced out of business. At a minimum, Hudson Valley will be forced to terminate dozens

of employees.

9. Plaintiffs bring this action because the enforcement of Local Law 202 will

jeopardize their continued existence. For the owners of La Belle and Hudson Valley,

farming is a way of life. The enforcement of Local Law 202 will not only hurt them, but

dozens of employees and their families who depend upon La Belle and Hudson Valley for

their livelihood. While the City may claim to have been motivated by genuine concerns

about animal welfare, the economic impact of Local Law 202 on people will be severe, and it

will hit a rural farming community and families of very modest means.

10. For all these reasons, this Court should declare that Local Law 202 is invalid

and unenforceable. Plainly stated, the City's attempt to legislate a farming practice out of

existence on public policy grounds must yield to statewide laws and policies which permit

Plaintiffs to produce and sell foie gras, notwithstanding the need to utilize force-feeding to

make it. By attempting to eliminate a farming practice occurring in a duly certified

agricultural district, the City has violated AML § 305-a and exceeded its legislative authority.

**PARTIES** 

11. Plaintiff La Belle Farm, Inc. is a corporation duly organized and existing under

the laws of the State of New York.

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12. La Belle maintains its principal office at 504 Swan Lake Road, Ferndale, New

York 12734.

13. Plaintiff HVFG, LLC, d/b/a Hudson Valley Foie Gras, is a limited liability

company duly organized and existing under the laws of the State of New York.

14. Hudson Valley maintains its principal office at 80 Brooks Road, Ferndale,

New York 12734.

15. Upon information and belief, Defendant City of New York ("City" or

"Defendant") is a municipal corporation duly established and existing under the laws of the

State of New York.

**VENUE** 

16. Venue is proper in New York County pursuant to CPLR § 504(3), which

provides, in relevant part, that the place of trial of all actions against the City of New York

shall be "in the county within the city in which the cause of action arose, or if it arose

outside of the city, in the county of New York."

**FACTS** 

A. <u>La Belle Farm</u>

17. La Belle operates four poultry farm establishments in Sullivan County, New

York, on 153 acres of land which it owns and an additional 82 acres which it leases. These

farms are situated in the Towns of Liberty, Bethel and Cochecton, New York.

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18. The farming establishments operated by La Belle are located within Sullivan County Agricultural Districts Nos. 1 and 4, which are duly certified agricultural districts

within the meaning of AML § 303.

19. La Belle grows approximately 400-450 tons of corn for feed annually to supply

its poultry farm operations.

20. La Belle currently employs approximately 100 individuals.

21. Approximately one-third of La Belle's sales of foie gras and foie gras products

are based in New York City, with customers including wholesalers, restaurants, and

individuals.

22. La Belle also sells foie gras to customers in New York City online through an

affiliate, Bella Bella Gourmet Foods, LLC.

23. La Belle's foie gras sales in New York City total approximately \$3 million

annually. New York City is La Belle's largest market for foie gras products

24. In addition to foie gras, La Belle also farms and sells whole ducks, duck

breasts, duck bacon, cooked duck, and other duck products. La Belle also farms and sells

whole chickens and various chicken products.

25. Once Local Law 202 becomes effective on November 25, 2022, La Belle

anticipates having to terminate most of its 100 employees due to the loss of revenues from

its New York City sales of foie gras.

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B. Hudson Valley

26. Hudson Valley operates three farm establishments on approximately 200 acres

in the Towns of Cochecton, Bethel, and Liberty, New York.

27. The farming establishments operated by Hudson Valley are located within

Sullivan County Agricultural Districts Nos. 1 and 4, which are duly certified agricultural

districts within the meaning of AML § 303.

28. Hudson Valley's annual sales of foie gras and foie gras specialty products in

New York City totals approximately \$5 million.

29. New York City is the largest market for Hudson Valley's foie gras products

has been for many years.

30. Hudson Valley delivers fresh foie gras and duck products daily to food

distributors serving New York City. Hudson Valley also sells its foie gras duck products

directly to retailers in New York City.

31. Hudson Valley currently employs approximately 190 individuals. Its affiliate,

Hudson Valley Chicken, LLC, employs approximately 90 additional individuals.

32. In addition to foie gras, Hudson Valley also farms and sells whole ducks, duck

breasts, duck confit, duck broth, and cooked duck products. Hudson Valley Chicken, LLC

farms and sells whole chickens and various chicken products.

33. Once Local Law 202 becomes effective, Hudson Valley anticipates having to

terminate approximately 20-25% of its workforce due to lost sales in New York City.

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C. Plaintiffs' Production of Foie Gras

The farming practices at the farms operated by La Belle and Hudson Valley 34.

are similar insofar as the production of foie gras.

35. The farms receive shipments of thousands of ducklings each week. After

arriving, for the first ten (10) weeks of their lives, the ducks are given unlimited access to

feeding pans containing formulated pellets of food designed to help them grow to maturity.

Following the unlimited feeding period, the ducks enter the pre-gavage stage, which lasts

two (2) weeks. During the pre-gavage stage, the feeding pans are made accessible to the

ducks once a day for thirty (30) minutes to develop the elasticity of the ducks' crop sacs.

The ducks, on their own accord, generally begin to consume food more rapidly in pre-

gavage.

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Thereafter, at week thirteen (13) and beyond, the ducks enter the "gavage" 36.

phase during which they are hand-fed using a tube 2-3 times per day, with the amount of

food in each feeding increasing gradually. When hand-feeding the ducks, workers must

individually assess the amount of food the animal will tolerate based upon several factors.

Approximately twelve (12) days into the gavage phase, workers will palpate each duck's crop

sac to determine whether the duck has completely digested its previous meal. If digestion is

not complete, the feeder exercises his or her discretion to skip the feeding of that duck.

Typically, after 16 - 21 days in the gavage phase, the ducks are selected for slaughter based

upon their size and continued appetites.

37. It is impossible to obtain a fattened liver from a goose or duck to make foie

gras without causing the bird to consume more food than it would ordinarily consume. To

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produce and maintain the fattened liver recognized as foie gras, force-feeding is an essential

farming practice. There is no current alternative to force-feeding that produces an

equivalent product.

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38. Ducks are slaughtered, cut, and packaged at Plaintiffs' facilities, which are

subject to inspection and regulation by the United States Department of Agriculture

("USDA"). Nearly every part the duck is used in some way. For example, excess fat from

the duck is used for biodiesel and their down feathers are used in various products, including

comforters and jackets.

D. The Regulation of Poultry Production

39. Since approximately 1982, New York State has delegated responsibility for the

inspection of poultry production and products to the federal government.

40. New York State has not delegated any legislative authority to municipalities

with respect to the regulation of poultry production.

The farms operated by La Belle and Hudson Valley are recognized by the 41.

USDA as official establishments, see 21 U.S.C. § 453(p), and have a USDA inspector on site

at all relevant times.

42. Federal law imposes various requirements upon Plaintiffs' farm procedures

before and after ducks are slaughtered, including but not limited to the marking of duck

products with a USDA seal, the labeling of duck products, and the definitions and standards

of composition applicable to duck products. See 9 C.F.R. Ch. III, Subch. A, Pt. 381.

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43. Federal law prohibits the sale of "any poultry products which are capable of

use as human food and are adulterated or misbranded at the time of such sale ... or offer for

sale." 21 U.S.C. § 458(a)(2); see also 9 C.F.R. § 381.190(b)(1). With respect to poultry, federal

law further provides that "[e]ach carcass and all organs and other parts of carcasses which

are found to be not adulterated shall be passed for human food."

44. USDA regulations provide that "the Administrator is authorized to prescribe

definitions and standards of identity or composition for poultry products whenever he

determines such action is otherwise necessary for the protection of the public." 9 C.F.R.

§ 381.155(a)(1).

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45. The USDA has established definitions and standards for the production and

sale of foie gras.

46. In New York, no federal or state law prohibits or otherwise regulates the

practice of force-feeding or dictates how much food may be given to ducks and other

poultry.

47. The foie gras and foie gras products produced and sold by La Belle and

Hudson Valley fully comply with all applicable inspection and labeling requirements.

Ε. Farming in New York State

48. In 2017, New York was home to more than 33,400 farms which generated

direct revenues of approximately \$5.7 billion.4 Nationally, New York ranks third in the sale

<sup>4</sup> See A Profile of Agriculture in New York State, Office of The New York State Comptroller

(Aug. 2019). Reported revenue figures vary. See e.g., https://www.nasda.org/organizations/new-

vork-state-department-of-agriculture-markets (\$3.6 billion).

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of milk, and it leads the nation in the production of yogurt, cottage cheese, and sour cream.<sup>5</sup>

The poultry industry makes a significant contribution to the total agricultural output of the

state.

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49. There are a total of 174 agricultural districts in New York State in 52 different

counties spanning over 9 million acres.<sup>6</sup> Most farmers in New York live on their farms,

96 percent of which are family owned.<sup>7</sup> There are no agricultural districts within the five

boroughs of New York City (i.e., New York, Kings, Bronx, Richmond, and Queens

Counties).

50. The importance of farming to New York State's economy and quality of life is

reflected in Article XIV of the State Constitution, which declares in part: "The policy of the

state shall be to conserve and protect its natural resources and scenic beauty and encourage

the development and improvement of agricultural lands for the production of food and

other agricultural products." (N.Y. Const. art. XIV, § 4).

51. Agriculture is considered an economic multiplier because it drives related

economic activities, such as business-to-business transactions, and injects revenues into the

local economy through wages and consumption.

<sup>5</sup> *Id*.

<sup>6</sup> See NYSDAM, DIVISION OF LAND AND WATER, FREQUENTLY ASKED QUESTIONS REGARDING

AGRICULTURAL DISTRICTS (2020). There are a total of 62 counties in New York State. Id.

<sup>7</sup> *Id.* 

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52. In Sullivan County, agriculture is considered one of the pillars of the local economy and quality of life.8 Approximately 9% of the total land area in Sullivan County is dedicated to farming.9 Most agricultural sales in Sullivan County are generated by the livestock sector, which includes poultry and egg producers and dairy farms. 10

53. According to the U.S. Census Bureau, per capita income in Sullivan County in 2016-2020 (in 2020 dollars) was \$32,346, and 12.70% of the population live below the poverty line.<sup>11</sup> Compared to national averages, per capita income in Sullivan County is lower, and the percentage of the population living below the poverty line is higher. 12

## F. Local Law 202

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54. On November 25, 2019, Defendant amended New York City Administrative Code Title 17 by adding a new chapter (Chapter 19) entitled "Force-Fed Products." A true copy of Local Law 202 is annexed hereto as Exhibit "1".

55. Effective November 25, 2022, Local Law 202 will prohibit the sale of forcefed products in New York City, including but not limited to foie gras. This sales ban is set forth in Section 17-1902, which provides:

See Sullivan County, Agricultural & Farmland Protection Plan EXECUTIVE SUMMARY (2014).

<sup>&</sup>lt;sup>9</sup> *Id.* 

<sup>&</sup>lt;sup>10</sup> *Id.* 

<sup>&</sup>lt;sup>11</sup> See United States Census Bureau, QuickFacts: Sullivan County, New YORK, https://www.census.gov/quickfacts/sullivancountynewyork (last visited, May 12, 2022).

See https://www.census.gov/library/publications/2021/demo/p60-273.html.

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No retail food establishment or food service establishment, or agent thereof, shall store, keep, maintain, offer for sale, or sell any force-fed product or food containing a force-fed product. For purposes of this chapter, it shall be a rebuttable presumption that an item in a retail food establishment or food service establishment having the label "foie gras" or listed on a menu as "foie gras" is a force-fed product.

NYC Administrative Code § 17-1902 (Ex. 1).

- 56. Despite receiving considerable evidence to the contrary, and without visiting or sending representatives to observe foie gras farming practices, the City concluded that force-feeding ducks was inhumane and needed to be stopped.
- 57. The legislative history leading to the adoption of Local Law 202 indicates that the City Council intended to eliminate the practice of force-feeding ducks through the legislation.
- 58. During the public hearing on the proposed legislation, City Council Member Carlina Rivera, the prime sponsor of Local Law 202, described the bill as follows:

My legislation to prohibit the sale of force-fed foie gras will finally put an end to one of the cruelest and most inhumane practices in the food industry. No longer will these animals suffer ... The method itself is abusive and it's unnecessary. And many countries and cities in the globe have enacted their own ban, and I'm excited the five boroughs are joining them. At the same time, we've heard from stakeholders regarding the effects of this bill and that's why the legislation we are passing today includes a phase-in period for any impacted businesses so that they might work to change production approaches to shift some of their focus to other established and lucrative markets.<sup>13</sup>

<sup>&</sup>lt;sup>13</sup> See 10/30/19 Public Hearing Tr., p. 55:7-25.

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through the proposed bill:

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59. Throughout the City Council's public hearing on Local Law 202, other City Council Members expressed similar sentiments about banning the sale of force-fed products

> "I think it's a disgusting inhumane practice that we have that needs to stop like asap."

-- Council Member Fernando Cabrera

"I just can't believe we could be so cruel for some luxury item like foie gras . . . this has to be stopped and it has to be stopped now."

-- Council Member Robert Holden

"I am incredibly proud that this City Council blatantly and thankfully begun to put empathy for the suffering of animals front and center on our agenda. And, more importantly, that we are translating that empathy into tangible policy, smart policy, for the animals in the city and beyond."

-- Chairperson Stephen Levin

"So as someone who worked on the Council's legislation to ban exotic animals in circuses and introed wild bird protection legislation just last year, I know this body understand that animal cruelty has no place in our city, and I encourage my Council colleagues to sign onto this important piece of legislation."

- -- Council Member Carlos Menchaca
- 60. The Mayor's Office expressed its support for Local Law 202 based upon its concerns for animal welfare. Through a spokesperson, former Mayor Bill De Blasio made the following statement during the public hearing held on Local Law 202:

The Mayor believes in the humane treatment of animals and birds suffer tremendously in the production of foie gras. This cruelty and

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the resulting luxury product consumed by few New Yorkers is completely unnecessary.<sup>14</sup>

After Local Law 202 was enacted, former Mayor de Blasio once again 61. emphasized that the legislation would promote animal welfare in the following statement on Twitter:

> The days of foie gras are gone and foie-gotten in New York City. A new law will END this cruel practice in our city for good. We're also strengthening our animal adoption centers, protecting horses from dangerous heat and expanding animal rights efforts across our city.

- 62. The former mayor was also quoted in the media as calling foie gras "a luxury item that the vast majority of us would never be able to afford" and stating that "this is not where we should be shedding a tear."
- 63. Local Law 202 does not expressly identify or otherwise purport to address any perceived public health or safety concern with respect to the sale of foie gras.
- 64. During the public hearing on Local Law 202, Plaintiffs invited the members of the City Council to visit their respective farms and observe firsthand how they raised and fed their ducks to produce foie gras. No member of the City Council accepted Plaintiffs' invitation to observe the farming practices they had condemned as inhumane.
- 65. After its enactment, NYSDAM reviewed Local Law 202 and concluded that it "violates the policy and goals of AML Article 25-AA and unreasonably restricts [La Belle]

<sup>&</sup>lt;sup>14</sup> See 6/18/19 Public Hearing Tr., p. 24:2–9.

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and [Hudson Valley], farm operations located within a county adopted, State certified agricultural district, in possible violation of AML § 305-a(1)(a)."

In sum, Local Law 202 was expressly intended to - and will - regulate a 66. farming practice in certified agricultural districts. The City Council enacted Local Law 202 with little or no regard for how the legislation would impact not only La Belle and Hudson Valley, but the broader community in Sullivan County. La Belle and Hudson Valley employ numerous individuals, pay significant school and municipal property taxes, and help drive other economic activity in their local community. The enforcement of Local Law 202 will jeopardize the viability of both farms, and their closure would send shock waves through Sullivan County.

## AS AND FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment Pursuant to CPLR §§ 3001, 3017(b) That Local Law 202 Violates AML § 305-a and Therefore is Invalid and Unenforceable)

- 67. Plaintiffs repeat and reallege each allegation set forth above in Paragraphs "1" through "66" above as if fully set forth herein.
  - 68. AML § 305-a states as follows:

Local governments, when exercising their powers to enact . . . local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.

AML  $\S 305-a(1)(a)$ .

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69. As a matter of policy, NYSDAM regards blanket prohibitions as unreasonable

when they are not reflective of science-based best practices.

70. The stated purpose and effect of Local Law 202 is the regulation of a farm

operation - namely, the force-feeding process known as "gavage" that is essential to

producing foie gras.

71. By banning the sale of foie gras, Local Law 202 is intended to eliminate force-

feeding as a farming practice.

72. Defendant's ban on the sale of force-fed products will have a direct impact

upon Plaintiffs' farming operations within certified agricultural districts, even though Local

Law 202 purports to regulate sales rather than poultry production.

73. Courts routinely examine the effect of state and local legislation to determine

whether such laws are preempted or otherwise invalid. For example, the United States

Supreme Court struck down a sales ban in National Meat Association v. Harris, 565 U.S. 452,

132 S.Ct. 965 (2012), based upon federal preemption grounds, recognizing that the ban

would have the "inevitable effect" of regulating meat production.

74. The same reasoning and scrutiny must be applied to Local Law 202. Allowing

municipalities to regulate farming operations through a sales ban would represent an

unprecedented departure from settled norms. No municipality in New York has attempted

to circumvent AML § 305-a by regulating farming operations through a sales ban.

75. If Local Law 202 is upheld, nothing would prevent the City of New York or

another municipality from similarly regulating other farming practices and foods deemed

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objectionable through a sales ban. Examples abound: the production of beef, the use of

fertilizers and pesticides, animal feed lots, eggs from caged chickens. There is an ever-

changing list of foods and farming methods would become potential targets for sales bans.

76. Such laws would radically change agriculture in the State of New York. Here,

Local Law 202 will force Hudson Valley and La Belle to discontinue the production of

foie gras for the New York City market, since force-feeding is the only known method to

produce foie gras.

77. Enforcement of Local Law 202 will inflict devastating financial losses upon

Plaintiffs' respective businesses. Hudson Valley will lose approximately \$5 million in annual

sales and be forced to terminate approximately 20-25% of its employees as a result of the

enforcement of Local Law 202. La Belle will lose approximately \$3 million in annual sales

and be forced to terminate most of its 100 employees as a result of the enforcement of Local

Law 202.

78. NYSDAM has opined that Local Law 202 violates the policy and goals of

AML Article 25-AA and unreasonably restricts the farm operations of La Belle and Hudson

Valley within duly certified agricultural districts.

79. Based upon the foregoing, a justiciable controversy exists between the parties

within the meaning of CPLR §§ 3001 and 3017(b), such that a judicial determination of the

respective rights of the parties is necessary and appropriate.

80. Plaintiffs contend that Local Law 202 should be declared and adjudged invalid

and unenforceable because it unreasonably restricts and/or regulates farm operations within

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agricultural districts in contravention of the purposes of AML Article 25-AA and does not

address any public health or safety concern.

81. Upon information and belief, Defendant contends that Local Law 202 is a

valid enactment and intends to enforce its penalty provision once the law becomes effective

on November 25, 2022.

82. Plaintiffs are entitled to a judgment declaring that Local Law 202 is invalid and

unenforceable because it unreasonably restricts and/or regulates farm operations within

certified agricultural districts in violation of AML 305-a.

83. No other claim for the foregoing relief has been made by Plaintiffs in this or

any other court.

84. Plaintiffs have no adequate remedy at law.

> AS AND FOR A SECOND CAUSE OF ACTION

(Declaratory Judgment Pursuant to CPLR §§ 3001, 3017(b) That Local Law 202 Violates the New York Constitution and

the Municipal Home Rule Law)

85. Plaintiffs repeat and reallege each allegation set forth above in Paragraphs "1"

through "84" above as if fully set forth herein.

Defendant has the authority to enact local laws only to the extent such 86.

authority is delegated by the State of New York pursuant to Article IX, Section 2, of the

New York State Constitution and Sections 10 and 11 of the Municipal Home Rule Law.

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87. Local Law 202 is unconstitutional and invalid pursuant to the New York Constitution, article IX, § 2, and Municipal Home Rule Law §§ 10 and 11, on the grounds it conflicts with AML Article 5-D.

- 88. The production of foie gras, which requires the force-feeding of ducks, is permitted under AML Article 5-D and applicable federal law.
- 89. The provisions of AML Article 5-D relating to the production of poultry for human consumption are general laws having statewide application.
- 90. Pursuant to AML §§ 96-z-21, 96-z-28, 96-z-32 and applicable federal laws and regulations, *see* 21 U.S.C. § 458(a) and 9 C.F.R. Ch. III, Subch. A, Pt. 381, the production of foie gras, which requires the force-feeding of ducks, is permitted.
- 91. Local Law 202 is intended to and will have the actual effect of prohibiting a farming operation, *i.e.*, force-feeding, that is permitted under applicable state and federal law.
- 92. By reason of the foregoing, Local Law 202 should be declared and adjudged invalid and unenforceable because it conflicts with the foregoing provisions of AML Article 5-D and applicable federal law.
- 93. No other claim for the foregoing relief has been made by Plaintiffs in this or any other court.
  - 94. Plaintiffs have no adequate remedy at law.

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AS AND FOR A **THIRD CAUSE OF ACTION** 

(Declaratory Judgment Pursuant to CPLR §§ 3001, 3017(b) That Local Law 202 is Ultra Vires and Unconstitutional

under the New York State Constitution)

95. Plaintiffs repeat and reallege each allegation set forth above in Paragraphs "1"

through "94" above as if fully set forth herein.

96. The N.Y. Municipal Home Rule Law provides that municipalities may enact

local laws for the "protection, order, conduct, safety, health and well-being of persons or

property" within their jurisdiction, see Municipal Home Rule Law § 10[1][ii][a][12], provided

that such enactments are not "inconsistent with the State Constitution or any general law of

the State." Municipal Home Rule Law § 10[1][ii].

97. The intended purpose and effect of Local Law 202 is the regulation of a

farming operation occurring in duly certified agricultural districts in Sullivan County, New

York, roughly 80 miles outside Defendant's jurisdiction.

98. By reason of the foregoing, Local Law 202 should be declared and adjudged

invalid and unenforceable because it effectively regulates a farming operation occurring

outside the City of New York in violation of Municipal Home Rule Law § 10[1][ii][a][12].

99. No other claim for the foregoing relief has been made by Plaintiffs in this or

any other court.

100. Plaintiffs have no adequate remedy at law.

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AS AND FOR A **FOURTH CAUSE OF ACTION** 

(Preliminary and Permanent Injunction Against Enforcing Local Law 202)

Plaintiffs repeat and reallege each allegation set forth above in paragraphs "1" 101.

through "100" above as if fully set forth herein.

102. The Court is authorized to grant a preliminary injunction pursuant to CPLR

§ 6301 where "it appears that the defendant . . . is about to do . . . an act in violation of the

Plaintiff's rights respecting the subject of the action, and tending to render the judgment

ineffectual."

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A preliminary injunction should be granted upon a showing that Plaintiffs are

(i) likely to succeed on the merits; (ii) will be irreparably injured absent the injunctive relief;

and (3) the balance of equities weighs in their favor. See Nobu Next Door, LLC v. Fine Arts

Housing, Inc., 4 N.Y.3d 839, 840, 800 N.Y.S.2d 48, 49 (2005); Bernheim v. Matthew Bender &

Co., 244 A.D.2d 161, 663 N.Y.S.2d 577 (1st Dep't 1997). A permanent injunction should be

granted under same standard upon a trial on the merits, to the extent a hearing is needed to

resolve any relevant questions of fact.

104. Based upon the foregoing, Plaintiffs are entitled to a preliminary and

permanent injunction enjoining Defendant from enforcing Local Law 202 in its entirety.

WHEREFORE, Plaintiffs respectfully request entry of a Judgment against

Defendant as follows:

on their First Cause of Action, declaring that Local Law 202 is invalid and unenforceable because it unreasonably restricts

and/or regulates farming operations within certified agricultural

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districts in contravention of the purposes of AML Article 25-AA;

- ii. on their Second Cause of Action, declaring that Local Law 202 is invalid and unenforceable because it conflicts with AML §§ 96-z-21, 96-z-28, 96-z-32 and applicable federal laws and regulations, see 21 U.S.C. § 458(a) and 9 C.F.R. Ch. III, Subch. A, Pt. 381, under which the production of foie gras is permitted;
- on their Third Cause of Action, declaring that Local Law 202 is iii. invalid and unenforceable because its intended purpose and effect is regulating a farming operation occurring outside Defendant's jurisdiction;
- on their Fourth Cause of Action, granting a preliminary and iv. permanent injunction enjoining Defendant from enforcing Local Law 202 in its entirety; and
- granting Plaintiffs such other and further relief as this Court ٧. deems just and proper.

Dated: White Plains, NY May 20, 2022

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KEANE & BEANE, P.C.

Edward J. Phillips Attorneys for Plaintiffs

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

LA BELLE FARM, INC. and HVFG, LLC
d/b/a Hudson Valley Foie Gras,

Plaintiffs,

VERIFICATION

-against
Index No.

THE CITY OF NEW YORK,

Defendant.

STATE OF NEW YORK

HECTOR ABEL SARAVIA, being duly sworn, deposes and says:

I am the General Manager of Plaintiff LA BELLE FARM, INC. I have read the foregoing Complaint and know the contents thereof; that the same is true to the best of my knowledge, except as to matters stated therein on information and belief and, as to those matters, I believe them to be true; and that I have authorized the filing of said Complaint.

) SS .:

HECTOR ABEL SARAVIA

Sworn to before me this Lth day of May, 2022

COUNTY OF SULLIVAN

Notary Public

NANCY CARO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CA4650433
Qualified in Sullivan County
Commission Expires 95/31/2023

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COUNTY OF NEW YORK		
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LA BELLE FARM, INC. and HVFG, L d/b/a Hudson Valley Foie Gras,	LC	
Plaintiffs,		
and the second s		<u>VERIFICATION</u>
-against-		Index No.
THE CITY OF NEW YORK,		maex no.
Defendant.		
	X	
STATE OF NEW YORK	)	
	) SS.:	
COUNTY OF SULLIVAN	Í	

MARCUS HENLEY, being duly sworn, deposes and says:

I am the Vice President of Plaintiff HVFG, LLC d/b/a Hudson Valley Foie Gras. I have read the foregoing Complaint and know the contents thereof; that the same is true to the best of my knowledge, except as to matters stated therein on information and belief and, as to those matters, I believe them to be true; and that I have authorized the filing of said Complaint.

MARCUS HENLEY

Sworn to before me this th day of May, 2022

Notary Public

NANCY CARO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CA4650433
Qualified in Sullivan County
Commission Expires 05/31/2023