CHAD A. READLER
Acting Assistant Attorney General
MCGREGOR W. SCOTT
United States Attorney
ERIC R. WOMACK
Assistant Branch Director, Federal Programs Branch
DANIEL HALAINEN
Trial Attorney (MA Bar No.694582)
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20530
Tel.: (202) 616-8101
Fax: (202) 616-8470
Email: daniel.j.halainen@usdoj.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

SUNRISE FOODS INTERNATIONAL INC., Plaintiff, v. SONNY PERDUE, in his official capacity as Secretary of Agriculture, *et al.*, Defendants.	Case No. 2:18-cv-00688-JAM-EFB **DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND EXPEDITED DISCOVERY** [Declarations of Dickins Chun, Osama El-Lissy, Marie Martin, and Omar Sultan filed concurrently herewith] JUDGE: The Hon. John A. Mendez

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

RULES

INTRODUCTION

When federal agencies act carefully in accordance with law to protect U.S. agriculture from the prospect of pest contamination by a shipment of an improperly identified prohibited commodity, an importer is not entitled to preliminary relief that would release that prohibited product into the domestic agricultural stream. Such relief is particularly inappropriate when the importer rushes into court weeks after the creation of the supposed emergency about which it sues, and especially when that putative emergency is occasioned by the fact that the entry documents that accompanied the product at the border incorrectly identified the shipment's country of origin—and the actual countries of origin are quarantined. Because Plaintiff here seeks relief under such circumstances, its request for an emergency order should be denied.

Early last month, Defendant U.S. Customs and Border Protection ("CBP") inspected Plaintiff Sunrise International Inc.'s shipment of cracked corn from Turkey to ensure that the corn was safe and legal to enter into the country. Together with Defendant U.S. Department of Agriculture ("USDA"), CBP concluded that the shipment contained prohibited corn seed originating from Russia, Kazakhstan, and Moldova, countries that are subject to plant pest quarantine regulations, and denied entry on March 12, 2018. Plaintiff now asks this Court, on an emergency basis, to irrevocably reverse this determination by ordering Defendants to permit entry of this prohibited, potentially high-risk corn under a temporary restraining order ("TRO").

As an initial matter, Plaintiff's failure to seek relief at an earlier date is sufficient cause to deny the motion under L.R. 231(b). If Defendants' denial of entry on March 12 created the sort of emergency for which Plaintiff could afford to wait almost a month before seeking relief, Plaintiff could have filed for a preliminary injunction, which would have given the Court time for more studied consideration of the legal issues and the relative equities on a less breathless

schedule. Moreover, Plaintiff seeks relief beyond the proper scope of an order *pendente lite*. The relief Plaintiff seeks would not preserve, but rather would alter the status quo by requiring Defendants to permit entry of a commodity that USDA has not evaluated for plant pest risk and has not granted market access in the United States. Compelling that action would effectively end this case by awarding Plaintiff the ultimate relief sought in the complaint.

In any event, Plaintiff has not satisfied the requirements for any kind of preliminary relief. Plaintiff argues that Defendants' denial of entry was unreasonable, unlawful, and procedurally improper under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706. But Plaintiff cannot establish a likelihood of success on that claim because Defendants acted well within their statutory and regulatory authority to deny entry of a product subject to clear quarantine regulations. Plaintiff can succeed on this claim only by persuading this Court to second-guess the trained CBP agricultural inspectors who personally evaluated samples from all four holds of the shipment and the USDA officials they consulted.

Even if Plaintiff could establish a likelihood of success, the risks to the public interest greatly outweigh the monetary harm Plaintiff relies on to justify their request for extraordinary injunctive relief. The costs Plaintiff has incurred while the cargo remains on its vessel are not the sort of irreparable injury that courts have recognized in awarding preliminary relief. Weighing against those harms are potentially irreparable consequences for U.S. agriculture. The risks of contamination and plant pests become harms as soon as Plaintiff is allowed to bring the corn into the country. The full extent of these risks is not entirely known, precisely because the agency has not had an opportunity to fully study it, and they cannot be reversed once the decision has been made to allow them on U.S. soil. Altering the status quo by requiring entry is firmly against the public interest, and the TRO must be denied.

BACKGROUND

I. Statutory and Regulatory Background.

A. The Plant Protection Act and Q-41.

The Plant Protection Act ("PPA"), 7 U.S.C. §§ 7701 *et seq.*, delegates broad authority to the Secretary of Agriculture to prohibit or restrict the importation or movement of any plant or plant product when necessary to prevent the introduction into the United States of any plant pest. *Id.* § 7712(a). Under the PPA, the Secretary may issue regulations "to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States," *id.* § 7711(a), and the Secretary has delegated that authority to the Animal and Plant Health Inspection Service ("APHIS"). *See* 7 C.F.R. §§ 2.22(a), 2.80(a)(36), 371.3.

Two longstanding quarantine regulations, known respectively as Q-24 and Q-41, specify the conditions under which corn can be imported safely into the United States. *See* 7 C.F.R. §§ 319.24, 319.41. In Q-41, USDA explains its determination that "dangerous plant pests . . . as well as plant diseases not heretofore widely prevalent or distributed within and throughout the United States, exist" in countries throughout the world, including in Europe and Asia. *Id.* § 319.41(a). These plant pests "may be introduced into this country through importations of the stalks or other parts of Indian corn or maize, broomcorn, and related plants." *Id.* Accordingly, "to prevent the introduction of these plant pests," Q-41 provides that "[t]he raw or unmanufactured stalk and all other parts of Indian corn or maize (Zea mays L.)" "may not be imported into the United States" except in accordance with Q-41. *Id.* § 319.41(b).

The Q-41 regulations provide that an importer must obtain a permit from USDA to bring corn seed into the United States, with the sole exception of corn originating in New Zealand. 7 C.F.R. § 319.41-1 through 319.41-3. USDA issues permits to import corn seed for purposes

other than planting from Argentina, Canada, Paraguay, Romania, Turkey, and Uruguay, but importation of corn seed from all other countries is prohibited. *See* Declaration of Osama El-Lissy ("El-Lissy Decl.") ¶¶ 14-15 (attached herewith); Declaration of Marie Martin ("Martin Decl.") ¶ 5 (attached herewith). Prohibited products are "subject to remedial measures the Secretary determines to be necessary to prevent the spread of plant pests," 7 U.S.C. § 7712(c)(3), and the Secretary has determined that products "that are unloaded, landed, or otherwise brought or moved into or through the United States" may be "seized, destroyed, or otherwise disposed of" pursuant to the PPA. 7 C.F.R. § 352.3; *see also* 7 U.S.C. § 7714.

USDA regulations are enforced at ports of entry by CBP, a component of the Department of Homeland Security entrusted with import and entry inspection responsibilities. 6 U.S.C. § 231(a), (b)(4), (d)(1); *see also* El-Lissy Decl. ¶ 21; Declaration of Omar Sultan ("Sultan Decl.") ¶ 4 (attached herewith). By regulation, covered imports "shall be subject to inspection by an inspector at the port of first arrival." 7 C.F.R. § 300.105(a); *see also id.* § 319.41-5. CBP and USDA work collaboratively to ensure that imports of agricultural products meet regulatory requirements and are safe and legal to enter into the country. Sultan Decl. ¶ 4. USDA provides training to CBP on these agricultural inspection functions, and CBP exercises delegated authority to conduct those inspections. El-Lissy Decl. ¶¶ 21-22; Martin Decl. ¶ 9. CBP also has authority to issue an Emergency Action Notification (EAN) and deny entry of cargo that is determined to be noncompliant with any applicable USDA restrictions on imports. El-Lissy Decl. ¶ 22.

B. USDA Manuals.

USDA promulgated two relevant manuals to provide guidance for the CBP officials who inspect agricultural imports of plants and plant products at ports of entry. *See* El-Lissy Decl. ¶ 16. The first is the Seeds Not for Planting Manual ("SNFPM"). *See* SNFPM, ECF No. 10-1.

This manual "informs CBP agricultural specialists, [USDA] officers, and their managers about how to regulate commercial and noncommercial shipments of seeds that are *not* for planting." SNFPM at 1-12. Corn is "regulated to prevent the entry of exotic plant diseases." *Id.* at 3-16. The SNFPM thus provides the background, procedures, and reference tables for the importation of unprocessed corn seed. El-Lissy Decl. ¶ 16; *see also* Martin Decl. ¶ 6. The relevant reference table, Table 3-11, explains that corn seed (*Zea mays*) harvested from listed countries—including Russia, Kazakhstan, and Moldova—is prohibited entry under Q-24 and Q-41. SNFPM at 3-18.

The SNFPM also provides guidance for inspectors that discover prohibited corn seed as a contaminant in a shipment of other seeds. SNFPM at 2-16; *see also* El-Lissy Decl. ¶ 19; Martin Decl. ¶ 7. Two reference tables, Tables 2-8 and 2-10, lay out the different actions that inspectors can take. SNFPM at 2-16, 2-18; *see also* Martin Decl. ¶ 7 & Ex. 10. Shipments contaminated with corn seed that is likely to be released into the environment (*e.g.*, when used as animal feed) are prohibited entry unless the importer has a valid permit for corn seed or the shipment can be appropriately cleaned or treated. SNFPM at 2-18; *see also* El-Lissy Decl. ¶ 16; Martin Decl. ¶ 7 & Ex. 10. Even where the seed is not likely to be released into the environment (*e.g.*, when used as a spice), the manual tolerates only 28 seeds of contaminant per quart. SNFPM at 2-16.

The second USDA manual is the Miscellaneous and Processed Products Manual ("MPPM"). *See* MPPM, ECF No. 10-2. The MPPM covers "all processed articles of plant and nonplant sources that could serve to introduce exotic pests," including "[p]roducts that result from the harvesting and milling of field crops." MPPM at 1-2; *see also* El-Lissy Decl. ¶¶ 16-17. For purposes of this manual, "processed" means a "plant or plant part prepared, treated, or converted by being subjected to some physical or chemical procedure beyond harvesting." MPPM at Glossary-13. Further, "processed seed" is defined as "seed subjected to any degree of

alteration beyond harvesting (e.g., cracked corn is considered processed)." MPPM at Glossary-13. Several reference tables provide further guidance for CBP agriculture specialists.

First, Table 3-36 provides the basic framework for processed corn, explaining that although corn seeds are prohibited entry under Q-24 and Q-41, processed corn—that is, corn products and by-products of grain milling, including cracked corn—may be released after inspection. MPPM at 3-28; *see also* El-Lissy Decl. ¶ 19; Martin Decl. ¶ 8 & Ex. 8. That inspection includes a determination of the "makeup of the shipment," including identifying "specifically what is in the shipment." MPPM at 2-3. When inspecting a product manifested as processed corn seed, an agriculture specialist would, of course, determine whether the makeup of the shipment is actually processed seed. El-Lissy Decl. ¶ 17.

Second, Table 3-153 provides guidance on what qualifies as processed corn seed. MPPM at 3-126; *see also* El-Lissy Decl. ¶ 19; Martin Decl. ¶ 8. As made clear in the MPPM Index, Table 3-153 is the appropriate reference table for evaluating shipments of processed corn seeds, *e.g.*, cracked corn. *Id.* at Index-4. Table 3-153 explains that processed corn seeds must be "[s]o thoroughly processed that **all** pests and pathogens would have been destroyed (e.g., roasted)." *Id.* at 3-136. This level of processing is required to mitigate the risk that the corn is a pathway for the introduction of quarantine pests. El-Lissy Decl. ¶¶ 30-32. If the cargo does not meet the entry requirements due to insufficient processing, it may be rejected or destroyed. *Id.* ¶ 19.

Third, Table 3-136 provides inspectors with guidance on dried corn seeds. MPPM at 3-105; *see also* El-Lissy Decl. ¶ 18. Although limited in scope, this table illustrates the level of processing required to establish that corn seed is properly processed. Specifically, Table 3-136, footnote 2, reiterates that "[*a*]*ll* milled corn products are admissible *without* a permit" where "the kernel is milled such that the endosperm is exposed by crushing." MPPM at 3-105. But "each

shipment is subject to inspection and *must* be found to contain 28 *or fewer unhulled* seeds per quart of milled corn." *Id.* "Shipment found to contain *greater than* this level of contamination will be refused entry." *Id.* In other words, a shipment of processed corn must contain no greater than 28 whole kernels of corn seed per quart—roughly one percent of the total amount. *See* El-Lissy Decl. ¶ 19. Otherwise, Q-41's prohibition controls.

II. Factual Background.

Plaintiff Sunrise Foods International Inc. is "one of the largest wholesalers of organic agri-food commodities in the world." Declaration of Jacob Neufeld ("Neufeld Decl.") ¶ 4, ECF No. 9. Since May 2015, Plaintiff has held a USDA permit to import corn seed for purposes other than planting from Argentina, Canada, Paraguay, Romania, Turkey, and Uruguay. Martin Decl. ¶¶ 10-11. This permit, which is valid through May 2018, states the authorized conditions for import and expressly specifies that corn seed "is prohibited" from a number of countries, including Russia, Kazakhstan, and Moldova. *Id.* ¶ 11 & Ex. 2. The list concludes: "THIS PERMIT DOES NOT AUTHORIZE THE IMPORTATION OF CORN SEED FROM ANY OF THESE COUNTRIES." *Id.* Ex. 2. Sunrise is a "regular" importer of certified organic cracked corn to the United States from a Turkish supplier. Neufeld Decl. ¶ 5. In the United States, Plaintiff "distributes the cracked corn to various customers, who then further process it into animal feed, typically poultry and dairy feed." *Id.* ¶ 8.

In February 2018, Plaintiff contacted CBP officials in San Francisco about a shipment of foreign corn on the vessel MV Mountpark. Sultan Decl. ¶ 5. The bills of lading for the MV Mountpark listed, *inter alia*, four holds of certified organic cracked corn. *Id.* ¶¶ 6-7. The cargo was sampled by a surveyor in late February, and the samples were then delivered to a CBP-contracted facility where imported cargo is made available for inspection. *Id.* ¶¶ 8-9. On March

1, 2018, four CBP agriculture specialists examined the cargo samples and advised the supervisory agriculture specialist, Omar Sultan, that the samples contained a significant quantity of whole kernels of corn. *Id.* ¶ 10; *see also* El-Lissy Decl. ¶ 35. Sultan then visited the facility with two of the agriculture specialists to examine the corn. Sultan Decl. ¶ 10. Two photographs were taken of the corn from one of the cargo holds, and the agriculture specialists confirmed that all four of the cargo holds contained similar amounts of whole kernels. *Id.*

CBP then examined the entry documents and noted that they contained a commercial invoice from Diasub FZE ("Diasub") with certificates of origin from Turkey. Sultan Decl. ¶ 11. Diasub is a division of Plaintiff's Turkish supplier. Neufeld Decl. ¶ 8. Although imports of corn seed from Turkey are permissible with a permit, CBP officials in San Francisco had previous experience with a Diasub shipment of corn seed with certificates of origin from Turkey that actually originated from Kazakhstan, a prohibited country. Sultan Decl. ¶ 12. Accordingly, CBP asked USDA to advise whether USDA could confirm the country of origin for the corn in Plaintiff's shipment. Martin Decl. ¶ 12; Sultan Decl. ¶ 13. Pending a response from USDA, CBP lifted the holds on the master bills of lading, permitting the MV Mountpark to proceed to Stockton. Sultan Decl. ¶¶ 14-15. CBP took this action with the understanding that enforcement options would still be available should USDA's inquiry identify any issues.

USDA officials from APHIS, the component charged with administering the Plant Protection Act, then requested the shipment's farm production origin information from USDA's National Organic Program (NOP). Martin Decl. ¶¶ 13-14. NOP, which is a separate regulatory program, has access to certificates of organic operation for foreign organic commodities, which identify the commodities' country of origin. *Id.* ¶ 13. On March 12, 2018, NOP obtained the relevant certificates, which identify Russia, Kazakhstan, and Moldova as the shipment's farm

production origins—not Turkey. *Id.* ¶ 15 & Ex. 6. USDA communicated this information about the country of origin to CBP later on March 12. *Id.* ¶ 15; Sultan Decl. ¶ 16.

After learning that the corn originated from prohibited countries, not Turkey, CBP consulted with USDA regarding the status of the corn—specifically, whether samples containing a significant quantity of whole corn kernels would meet the APHIS standards for "cracked corn." Martin Decl. ¶ 16. USDA responded that for cracked corn, APHIS requires commercial grain milling of a uniform consistency in order to mitigate the plant pest risk that serves as the basis for the Q-41 prohibition on importation of corn seed. *Id.* ¶ 17. Photographed samples of corn from the MV Mountpark did not appear to meet the standard for cracked corn, and USDA instructed CBP that EANs should issue. *Id.* ¶ 17; Sultan Decl. ¶ 18.

Thus, on March 12, after consulting with USDA, CBP issued Emergency Action Notifications (EANs) for the four holds of corn on the MV Mountpark containing prohibited product. Martin Decl. ¶ 19 & Ex. 7; Sultan Decl. ¶ 19. In the EANs, CBP notified Plaintiff that the commodities in these four holds did not meet the requirements for cracked corn and had been determined to originate in Russia, Kazakhstan, and Moldova. Martin Decl. ¶ 19 & Ex. 7. Because imports of corn seed from these countries are prohibited under Q-41, the EANs denied entry and required Plaintiff to either re-export or destroy the commodities. *See id.*

On March 15, CBP advised USDA that Plaintiff proposed to send the prohibited commodity to a domestic grinder in Stockton, California, for further processing, with the aim of achieving an enterable commodity. Martin Decl. ¶ 23. The facility in question, Penny Newman, has a compliance agreement with USDA to grind foreign grain contaminated with foreign noxious weeds. *Id.* USDA concluded that processing at Penny Newman was not feasible because the facility's compliance agreement is for grinding otherwise enterable grain

contaminated with foreign noxious weed, not to grind prohibited commodities that lack a controlled import permit and are subject to quarantine regulations based on plant pest risk. *Id.* ¶ 24; El-Lissy Decl. ¶ 36. The SNFPM provides for further processing only of shipments of otherwise enterable products where USDA is familiar with the risks in the country of origin. El-Lissy Decl. ¶ 36. In other words, prohibited product that is not enterable cannot be processed domestically to *make* it enterable because USDA must first conduct a thorough assessment of plant pest risk in order to determine the appropriate risk mitigation. *Id.* In any event, USDA concluded that grinding prohibited product at a domestic facility could create significant phytosanitary risks, and the government lacked the necessary resources to oversee processing and ensure the necessary level of safeguarding. *Id.* ¶ 36; Martin Decl. ¶ 24. Accordingly, USDA informed CBP on March 15, that the EANs should be followed, as the corn was not enterable into the United States. Martin Decl. ¶ 25.

In April 2018, USDA and CBP conducted additional testing of the samples taken from all four holds of the MV Mountpark to ensure that Defendants had reached the proper conclusion about whether the shipment was prohibited product that could not safely enter into the United States. *See* Declaration of Dickins Chun ("Chun Decl.") ¶ 5. Defendants tested one-quart subsamples of a sample taken from each hold. *See id.* ¶¶ 9-11. This additional testing revealed between 1,786 and 2,178 whole kernels per quart, or roughly 46% to 56% whole kernels per subsample. *Id.* ¶ 11. These findings confirmed that Defendants' earlier conclusion was entirely rational and necessary in light of the potential plant pest risk.

III. Procedural Background.

On March 29, 2018, Plaintiff filed this action challenging the EANs as unreasonable, unlawful, and procedurally unsound under the Administrative Procedure Act ("APA"), 5 U.S.C.

§ 706, and seeking declaratory relief. *See* Compl., ECF No. 1. On the evening of April 8, 2018—nearly a month after CBP issued the EANs—Plaintiff filed the instant motion for a TRO and for expedited discovery. *See Ex Parte* Mot., ECF No. 8.

STANDARD OF REVIEW

"The standard for relief applicable to a temporary restraining order is the same as for a preliminary injunction." *San Luis & Delta-Mendota Water Auth. v. Salazar*, 693 F. Supp. 2d 1145, 1149 (E.D. Cal. 2010). To obtain a temporary restraining order, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). The Ninth Circuit employs a "sliding scale approach," such that "a strong showing of one element may offset a lesser showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). "Preliminary injunctive relief 'is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.'" *Herrejon v. Ocwen Loan Servicing, LLC*, 980 F. Supp. 2d 1186, 1209 (E.D. Cal. 2013) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)).

ARGUMENT

I. Plaintiff Has Not Justified Its Decision to Seek Relief on an Emergency Basis.

This Court's Local Rules expressly warn against "seeking last-minute relief by motion for temporary restraining order" when a plaintiff "could have sought relief by motion for preliminary injunction at an earlier date." L.R. 231(b). Here, Plaintiff seeks review of the four Emergency Action Notifications (EANs) issued by Defendants on March 12. Pl.'s Mem. of Points & Auth. ("TRO Mem.") 1, ECF No. 8. Any alleged harms Plaintiff now seeks to address

began at that point. *See id.* Plaintiff filed its complaint 17 days later, on March 29, Compl. at 19, and filed its motion for a TRO ten days after that, on April 8. TRO Mem. 1. In the interim, Plaintiff could have sought relief by motion for preliminary injunction.

Plaintiff points to no new, impending event that it seeks to forestall and no status quo that will be altered should a TRO fail to issue today or tomorrow, as opposed to two or three weeks ago—or two or three weeks from now. Plaintiff simply seeks a faster resolution of its claim. Accordingly, under L.R. 231(b), the motion for a TRO should be denied. *Occupy Sacramento v. City of Sacramento*, No. 2:11-cv-02873, 2011 WL 5374748, at *4 (E.D. Cal. Nov. 4, 2011) (declining to issue TRO where plaintiffs waited twenty-five days to file motion); *see also, e.g.*, *Murphy v. U.S. Forest Serv.*, No. 2:13-cv-2315, 2013 WL 12174044, at *1 (E.D. Cal. Nov. 15, 2013) (declining to issue TRO where plaintiff waited a month to challenge government action).

II. Plaintiff Improperly Seeks Ultimate, Mandatory Relief at the TRO Stage.

Plaintiff also seeks a highly disfavored "mandatory" injunction that would require Defendants to take action and alter the status quo. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015); *see also, e.g.*, *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984). Such mandatory injunctions at the preliminary stages of a lawsuit "are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Am. Freedom Def. Initiative v. King Cty.*, 796 F.3d 1165, 1173 (9th Cir. 2015). Plaintiff claims to seek an order preserving the status quo by restraining enforcement of the EANs, but in actual effect, the relief sought would compel the agency to take action—immediately granting entry to over 25,000 metric tons of corn posing potentially significant plant pest risks. The status quo is "the last, uncontested status which preceded the pending controversy," *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009), and here the controversy arises

from the EANs issued on March 12. This shipment of corn had not entered the country at that point. By Plaintiff's own account, the "last uncontested status" was at a point when the corn was still on the MV Mountpark, where it remains today. TRO Mem. 14.[1]

Even more problematic, the mandatory relief sought here would effectively grant plaintiffs full relief on their claims; it is not "temporary" at all. Once the shipment of corn on the MV Mountpark has entered the country and the domestic stream of commerce, Plaintiff will have obtained all the relief it seeks. Defendants' denial of entry through the four EANs issued on March 12 would effectively be moot. The Ninth Circuit has called "judgment on the merits in the guise of preliminary relief" a "highly inappropriate" result. *Senate of State of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992). Plaintiff asks for ultimate relief in this action mere days after it filed an emergency motion challenging an action taken four weeks prior, and that simply is not appropriate at the TRO stage.

III. Plaintiff Fails to Establish a Likelihood of Success on the Merits.

Even setting aside these threshold defects, Plaintiff has not established a likelihood of success on the merits, *Winter*, 555 U.S. at 20, because Plaintiff has not demonstrated that the

---

[1] Plaintiff invites the Court to conceive of the "status quo" as the lack of a determination that the corn was prohibited product and claims that it seeks to preserve that status through an order requiring entry. But that "status quo" was at a point before Defendants had all the relevant information—namely, evidence that the corn originated in Russia, Kazakhstan, and Moldova, not Turkey. Plaintiff seeks to pin the status quo at a point immediately before it became clear that any unprocessed corn was prohibited product, at which point Defendants had only incorrect information about the country of origin from the entry documents, and that self-serving definition of "status quo" cannot carry the day. Regardless, Plaintiff overstates the import of CBP's decision to lift the hold on the bills of lading; lifting that hold by no means prevented CBP from taking an enforcement action should evidence requiring regulatory action surface.

EANs are unlawful in violation of the APA, 5 U.S.C. § 706. TRO Mem. 14-19. Because Plaintiff has not demonstrated a likelihood of success on any of its claims,[2] no TRO can issue.

A. Defendants' decision to issue the EANs was not arbitrary and capricious.

Under the APA, a reviewing court may set aside an agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A). The decision to issue the EANs readily survives that standard.

Judicial review of the agencies' decisionmaking is "deferential," as "the court cannot substitute its judgment for that of the agency." *Harlan Land Co. v. U.S. Dep't of Agric.*, 186 F. Supp. 2d 1076, 1084 (E.D. Cal. 2001). Rather, the Court "must determine whether the decision was based on the relevant factors and whether there has been a clear error in judgment." *Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 573 (9th Cir. 1998). A reviewing court "must be at its most deferential when reviewing scientific judgments and technical analyses within the agency's expertise." *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1075 (9th Cir. 2011). And the Ninth Circuit has made clear that courts properly defer to USDA's expertise with respect to agricultural imports, including under the PPA. *See, e.g.*, *Cactus Corner, LLC v. U.S. Dep't of Agric.*, 450 F.3d 428, 434-35 (9th Cir. 2006); *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agric.*, 415 F.3d 1078, 1093-94 (9th Cir. 2005) (emphasizing USDA's "wide discretion in dealing with the importation of plant and animal products"). Indeed, "[t]he PPA provides [USDA] with

---

[2] Plaintiff's claim for declaratory relief, TRO Mem. 18-19, rests on its substantive claims under the APA. *See, e.g.*, *Allstate Ins. Co. v. Am. Reliable Ins. Co.*, No. 17-cv-871, 2017 WL 1153041, at *4 (E.D. Cal. Mar. 28, 2017) ("To obtain a declaratory judgment, Plaintiff must have properly pleaded an underlying substantive claim."); *Ponthieux v. Bank of Am.*, No. 2:14-cv-412, 2015 WL 673805, at *5 (E.D. Cal. Feb. 17, 2015) ("Declaratory relief is a remedy, not an independent cause of action."). Because Plaintiff cannot show a likelihood of success on the APA counts, it cannot show a likelihood of success on the count seeking a declaratory judgment.

meaningful enforcement measures and wide discretion to effectuate its policies." *Cactus Corner, LLC v. U.S. Dep't of Agric.*, 346 F. Supp. 2d 1075, 1117 (E.D. Cal. 2004). Accordingly, the Court should defer to the agencies' technical judgments about the potential plant risks.

1. Defendants reasonably denied entry after finding prohibited product.

Defendants' decisionmaking process in this case is straightforward, despite Plaintiff's efforts to confuse the matter. Plaintiff sought to import cracked corn, which does not require a permit regardless of its country of origin. El-Lissy Decl. ¶ 19. CBP inspected samples from Plaintiff's shipment of cracked corn and concluded that they contained significant quantities of whole corn kernels—that is, corn seed. *Id.* ¶ 34; Sultan Decl. ¶ 10. Unlike cracked corn, the country of origin *does* matter for imports of corn seed. 7 C.F.R. § 319.41; Martin Decl. ¶¶ 6, 11. Accordingly, CBP sought to verify the shipment's country of origin, particularly given past experiences with Plaintiff's supplier. Sultan Decl. ¶¶ 12-13. While waiting for USDA to verify the country of origin, CBP lifted its hold on the shipment pending further information.[3] *Id.* ¶ 14.

After USDA verified that the cargo did not come from the country identified in the entry documents, but instead originated from Russia, Kazakhstan, and Moldova, any corn seed in the shipment was prohibited product, 7 C.F.R. § 319.41, as USDA does not issue import permits for those countries. El-Lissy Decl. ¶¶ 14-15; Martin Decl. Ex. 2. CBP then consulted with USDA to confirm that corn seed identified during the inspection would constitute prohibited product. Martin Decl. ¶ 17; Sultan Decl. ¶ 17. USDA confirmed that corn seed that is not sufficiently ground does not meet the requirements for cracked corn because cracking is required to mitigate

[3] Plaintiff suggests that CBP initially cleared the shipment for entry and USDA overrode that decision. *See, e.g.*, TRO Mem. 15. In reality, CBP lifted the hold on the bills of lading pending receipt of further information that CBP had requested from USDA to determine whether any detrimental information would warrant an enforcement action. Sultan Decl. ¶¶ 13-15.

plant pest risk. *Id.* Accordingly, because CBP had identified a significant quantity of prohibited product, Defendants issued the EANs. Sultan Decl. ¶ 19; Martin Decl. ¶ 22.

The decision to order destruction or re-exportation was, at worst, a reasonable conclusion based on a consideration of the relevant information, and the Court may appropriately defer to that decision rather than substituting its own judgment—particularly given the technical nature of agricultural inspections at ports of entry. *N. Plains Res. Council, Inc.*, 668 F.3d at 1075. The determination that this shipment did not meet entry requirements was based on an in-person inspection of samples from all four cargo holds by four CBP agriculture specialists and a supervisory agriculture specialist, in consultation with officials at USDA. *See* Sultan Decl. ¶¶ 10, 17; Martin Decl. ¶¶ 21-22. Q-41 clearly prohibits entry of corn seed from quarantined countries, 7 C.F.R. § 319.41, and Defendants reasonably concluded based on the available evidence that entry of the shipment was prohibited. Additional testing by USDA and CBP in April provided further support for this decision. Chun Decl. ¶¶ 8-10. Testing of one-quart subsamples from each hold's sample established between 1,786 and 2,327 whole kernels per quart, ranging from 46% to 56% of the subsample, *id.* ¶ 10, far beyond the 29-kernel per quart contaminant threshold provided for in the manuals.

2. Plaintiff's arguments are meritless because Defendants complied with the manuals and applied the appropriate standards.

The gravamen of Plaintiff's claim is that Defendants failed to consistently apply the USDA manuals when evaluating the shipment and lacked a reasonable justification for denying entry. The two USDA manuals are guidance documents that aid agriculture inspectors in exercising their judgment when enforcing quarantine regulations, and USDA and CBP complied with this guidance when determining that this shipment was prohibited entry. As discussed above, the SNFPM explains that corn seed originating in Russia, Kazakhstan, and Moldova is

prohibited entry, and when an inspection reveals prohibited corn seed in an otherwise enterable shipment, that shipment should be denied entry, except in certain circumstances where the level of contamination is negligible or can be mitigated feasibly. SNFPM at 2-16, 3-18. Turning to the MPPM leads to the same conclusion. Cracked corn is a processed seed not subject to the same strict prohibitions as corn seed, but simply manifesting a shipment as cracked corn is not sufficient to pass inspection. MPPM at 2-3, 2-28. Rather, an inspector may evaluate the shipment to determine whether it meets the standards for processed seed, which requires processing that is sufficiently thorough to mitigate the plant pest risk. *Id.* at 3-136. Defendants reasonably concluded, consistent with the manuals, that Plaintiff's shipment—containing a significant proportion of whole kernels—did not meet that standard.

Plaintiff also seems to suggest that Defendants acted arbitrarily by not applying the Federal Grain Inspection Service (FGIS) standards for evaluating corn. While plaintiffs acknowledge that the FGIS is wholly separate from APHIS, TRO Mem. 7, they suggest that FGIS definitions should be applied to APHIS. *Id.* at 9-10, 16. That suggestion is misplaced. FGIS operates under the authority of the U.S. Grain Standards Act, 7 U.S.C. §§ 71 *et seq.*, which authorizes USDA to establish and maintain *quality* standards for grains generally, but not *safety* standards for imports. The FGIS regulations broadly define "corn" as "grain that consists of 50 percent or more of whole kernels of shelled dent corn and/or shelled flint corn (Zea mays L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act." 7 C.F.R. § 810.401. Shipments with less than 50 percent corn seed would not qualify to be certified by the FGIS as "corn," and Plaintiff points to a FGIS Directive (9180.70) for cracked corn, which defines cracked corn by reference to corn—in effect, suggesting that any cracked corn shipment with less than 50 percent corn seed should be

permitted entry. TRO Mem. at 7. Plaintiff's shipment would not even meet this standard, as testing from three holds revealed whole kernels in excess of 50 percent. Chun Decl. ¶ 10. But more importantly, the FGIS standards are inapposite, as they are not safety standards. APHIS is the sole agency within USDA that regulates plant products to prevent plant pests and diseases, and APHIS regulations control whether the shipment is safe to enter the country.

B. Defendants acted within their statutory authority.

Next, Plaintiff claims that CBP issued the EANs "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C). Specifically, Plaintiff suggests that Defendants acted in excess of authority conferred by 7 U.S.C. §§ 7711(b) and 7712(b). TRO Mem. 17. Both provisions direct USDA to ensure that certain regulations are promulgated "based on sound science and are transparent and accessible." 7 U.S.C. §§ 7711(b), 7712(b). That is not a grant of authority; it is a procedural standard. *See Cactus Corner*, 346 F. Supp. 2d at 1117-18. Plaintiff seems to be saying that Defendants did not act in *accordance* with the transparency standard, but even that claim makes little sense. Plaintiff is challenging EANs, not the promulgation of any regulation, and these provisions expressly apply only to the process for promulgating codified regulations. *See, e.g.*, *Intercitrus, Ibertrade Commercial Corp. v. U.S. Dep't of Agric.*, No. 02-cv-1061, 2002 WL 1870467, at *5 (E.D. Pa. Aug. 13, 2002) (contrasting promulgating codified regulations with "[t]he need to issue an order, particularly one directed to public safety or health, [which] may often be urgent and time-sensitive" in concluding that § 7712(b) did not apply to import suspension).

Plaintiff also suggests that Defendants exceeded their statutory authority under 7 U.S.C. § 7714(d), which provides that plants and plant products shall not be destroyed or re-exported "unless, *in the opinion of* [*USDA*], there is no less drastic action that is feasible and that would be

adequate to prevent the dissemination of any plant pest." *Id.* (emphasis added). In Plaintiff's view, Defendants exceeded their authority by issuing EANs rather than letting Plaintiff process the corn domestically. TRO Mem. 18. Again, Plaintiff mistakenly characterizes this claim as a question of statutory "authority" when Plaintiff's real contention is that Defendants did not act in accordance with law. But even that claim, if brought, is meritless. Section 7714(d) employs a deferential and discretionary standard, resting entirely on USDA's "opinion" about what is feasible and adequate for safety. *Intercitrus, Ibertrade Commercial Corp.*, 2002 WL 1870467, at *5 ("Significantly, Congress has provided that the application of these constraints [under § 7714] in any particular instance is substantially committed to the judgment of the Secretary[.]"). And USDA properly concluded that, in its opinion, domestic processing of prohibited product from foreign countries presenting unknowable (and therefore significant) risks of plant pests is neither feasible nor adequate to prevent dissemination of plant pests. Martin Decl. ¶¶ 24-25; *see also* El-Lissy Decl. ¶¶ 36-42. In any event, judicial review generally is not available under the APA when a decision "is committed to agency discretion by law." 5 U.S.C. § 701(a)(2); *see, e.g.*, *City & Cty. San Francisco v. U.S. Dep't of Transp.*, 796 F.3d 993, 1001-02 (9th Cir. 2015).

C. Defendants observed the relevant procedures required by law.

Lastly, Plaintiff contends that Defendants issued the EANs "without the observance of procedure required by law." 7 U.S.C. § 706(2)(C). Whatever "existing procedures" Plaintiff may be referring to, Plaintiff fails to identify an affirmative legal mandate (as opposed to internal guidance) that Defendants failed to observe. TRO Mem. 18. Instead, Plaintiff gestures toward alleged inconsistencies with guidance in the manuals. *Id.* But as explained above, Plaintiff has not demonstrated that Defendants failed to abide by any of the guidance set forth in the manuals.

IV. Plaintiff Fails to Satisfy Its Burden to Show Irreparable Harm.

Plaintiff's motion for a TRO also should be denied because Plaintiff has not "demonstrate[d]" that it will be "immediate[ly]" and "irreparabl[y]" harmed if this case proceeds in the normal course. *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). The primary basis for Plaintiff's irreparable harm claim is that it will suffer economic injury. TRO Mem. 19-20. But it is well settled that economic loss does not constitute irreparable harm, as economic losses generally can be recovered through a remedy at law. *Sampson v. Murray*, 415 U.S. 61, 61-62 (1974); *Elias v. Connett*, 908 F.2d 526, 531 (9th Cir. 1990). Here, Plaintiff itself points out that the PPA provides for "an action against the United States to recover just compensation" where a plant or plant product is "destroyed or otherwise disposed of" without statutory authorization. TRO Mem. 19 n.1 (quoting 7 U.S.C. § 7716(a)). That point is fatal to any claim of irreparable harm from complying with the EANs.

Plaintiff also relies on costs Plaintiff is incurring from *not* complying with the EANs—that is, the costs of docking in San Francisco. TRO Mem. 19. Plaintiff suggests that recovery of these costs would be barred by sovereign immunity, causing irreparable economic harm. As an initial matter, any such costs are a self-inflicted injury arising from Plaintiff's choice not to comply with the EANs. *K.D. v. Oakley Union Elementary Sch. Dist.*, No. 07-cv-829, 2008 WL 360460, at *11 (N.D. Cal. Feb. 8, 2008) ("[H]arm is not irreparable if self-inflicted."). And although economic harm may sometimes support preliminary relief in cases where immunity bars damages, *Idaho v. Coeur d'Alene Tribe*, 794 F.3d 1039, 1046 (9th Cir. 2015), it is not the case that *any* alleged economic losses suffice to establish irreparable harm. *Ariz. Hosp. & Healthcare Ass'n v. Betlach*, 865 F. Supp. 2d 984, 998 (D. Ariz. 2012) ("[A]n inability to recover monetary losses may not alone be sufficient to establish irreparable harm."). The Ninth

Circuit has found irreparable harm from monetary losses only where plaintiffs demonstrate "they will lose *considerable* revenue" barred from recovery by sovereign immunity. *Cal. Pharmacists Ass'n v. Maxwell-Jolly*, 596 F.3d 1098, 1113-14 (9th Cir. 2010) (emphasis added), *vacated on other grounds*, *Douglas v. Indep. Living Ctr. of S. Cal., Inc.*, 565 U.S. 606, 615 (2012).

Accordingly, in a case where sovereign immunity bars damages, "Plaintiff must establish not only that it will lose revenues that cannot be recuperated . . . but also that the lost revenues will be 'considerable.'" *Ariz. Hosp.*, 865 F. Supp. 2d at 998-99; *see also, e.g.*, *Air Transp. Ass'n of Am., Inc. v. Exp.-Imp. Bank of U.S.*, 840 F. Supp. 2d 327, 335 (D.D.C. 2012). And to support a finding of irreparable harm for preliminary relief, any losses must be viewed in the context of Plaintiff's overall business. For example, one district court in this Circuit concluded that an alleged monetary loss of nearly $800,000 was not "considerable" because it represented less than one percent of the plaintiff's combined revenues for that year. *Ariz. Hosp.*, 865 F. Supp. 2d at 1000. Here, Plaintiff has made no such showing of *considerable* loss, whether from the costs of docking in San Francisco or intangible harm to its business relationships (for which the only factual support is a conclusory assertion, Neufeld Decl. ¶ 27)—particularly given that Plaintiff is "one of the largest wholesalers of organic agri-food commodities in the world" and "trades over 500,000 metric tons of products" annually. Neufeld Decl. ¶ 4.

V. The Public Interest Weighs Heavily Against Issuing a TRO.

Plaintiff's motion also should be denied because the relief Plaintiff seeks is contrary to the public interest and the balance of the equities. When the federal government is the defendant in a lawsuit, these two factors of the TRO analysis merge, as the federal government represents the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("[T]he harm to the opposing party and weighing

the public interest . . . merge when the Government is the opposing party."). Here, Plaintiff asks the Court to weigh its costs of docking the MV Mountpark in San Francisco and potential harm to its reputation against the government's weighty interest in ensuring proper enforcement of the law and the protection of U.S. agriculture against the potential introduction of plant pests.

The risks posed by allowing entry of foreign plants are significant. Before plants may be authorized for importation into the United States, USDA engages in a rigorous, risk-based process of evaluation. El-Lissy Decl. ¶ 23. The exporting country must formally request authorization and provide the information necessary for USDA to conduct a pest risk analysis. *Id.*; *see also* 7 C.F.R. § 319.5. USDA then conducts a pest risk assessment in line with international standards, evaluating quarantine pest risks in the exporting country and whether the pest is likely to be introduced and established in the United States. El-Lissy Decl. ¶ 24. USDA then recommends mitigations and opens the risk assessment for public comment. *Id.* ¶ 25. After addressing comments, USDA issues a final rule or notice. Only after this rigorous process may new commodities be authorized for import. *Id.* A country's pest status is not set in stone, and this rigorous process helps ensure that USDA has all the necessary information to sufficiently understand the nature of any evolving risks. *Id.* ¶¶ 26-29.

Unprocessed corn seed is no different. As outlined in the applicable regulations, corn seed can present significant quarantine pest risks; a recent pest risk assessment identified just such risks in Ukraine, for example. El-Lissy Decl. ¶ 30. Plaintiff's shipment contains corn seed from Russia, Kazakhstan, and Moldova, all of which are prohibited countries for which import is not authorized. *Id.* ¶ 33. And this corn seed is not merely a negligible contaminant in an otherwise enterable shipment. Testing of samples from each cargo hold indicates that roughly *half* of the shipment is prohibited product subject to quarantine. Chun Decl. ¶ 10. USDA has

not assessed the plant pest risk of unprocessed corn seed from these three countries, and without sufficient time to assess the pest complex and develop a mitigation strategy, any regulatory action would be based on incomplete information. El-Lissy Decl. ¶ 33. Where USDA cannot sufficiently understand what is required to mitigate risk, Defendants cannot permit importation of a commodity—hence the quarantine regulations. *Id.* ¶ 29.

Plaintiff seeks an order that would throw this rigorous regulatory regime out the window and allow entry of a 25,000 metric ton shipment of corn—roughly half unprocessed corn seed—without any of the careful assessment necessary to protect domestic interests and safeguard against the spread of plant pests. Plaintiff nowhere denies that the corn originated from these prohibited countries, nor that its shipment contains a significant volume of whole corn kernels. And Plaintiff's proposed alternative—grinding this massive shipment of corn at a domestic facility—cannot sufficiently mitigate the unknown risks posed by entry. El-Lissy Decl. ¶ 36. Grinding this shipment at Penny Newman could take three to four months, during which time the prohibited corn would present significant risks of spreading quarantine pests to unground corn at the facility. *Id.* ¶¶ 37-38. The shipment, which is a bulk storage shipment, would also need to be discharged from the hold of the vessel to the facility, raising a risk of spillage during the unloading process—particularly given the volume. *Id.* ¶¶ 40-41. And without understanding the plant pest risks, USDA cannot develop an appropriate mitigation strategy. *Id.* ¶ 39.

In sum, an order requiring entry of thousands of metric tons of prohibited corn from quarantined countries would raise significant plant pest risks, and Defendants would risk setting a precedent that such prohibited products could be shipped to ports of entry and then processed domestically. El-Lissy Decl. ¶ 43. That kind of precedent would significantly increase the risk

of plant pests and diseases threatening domestic resources. *Id.* The public interest, and the balance of equities, thus tilts sharply in Defendants' favor.

VI. Discovery on an APA Claim Is Improper.

Lastly, Plaintiff seeks expedited discovery. TRO Mem. 23. Discovery of any sort is inappropriate in an APA matter, much less *expedited* discovery. Judicial review in APA actions is based on the administrative record before the agency at the time of its decision. 5 U.S.C. §§ 704, 706. Thus, it is well established that "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court," and discovery is inappropriate. *Camp v. Pitts*, 411 U.S. 138, 142 (1973) (*per curiam*).

To that end, the Ninth Circuit has made clear that "a court reviewing agency action under the APA must limit its review to the administrative record." *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 992 (9th Cir. 2014); *see also, e.g.*, *Nat. Res. Def. Council, Inc. v. U.S. Forest Serv.*, 634 F. Supp. 2d 1045, 1054 (E.D. Cal. 2007) ("[T]he court should review the agency's actions based on the administrative record presented by the agency."). This rule "ensures that the reviewing court affords sufficient deference to the agency's decision." *San Luis*, 776 F.3d at 992. The Ninth Circuit has recognized certain exceptions where "supplementing an administrative record may be justified," but "'these exceptions are narrowly construed and applied' to ensure they do not undermine the general rule limiting review to the administrative record." *Ctr. for Biological Diversity v. Skalski*, 61 F. Supp. 3d 945, 951 (E.D. Cal. 2014) (quoting *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2008)).

Plaintiff has not justified a departure from the general rule. Although Plaintiff briefly alights on the narrow exceptions, Plaintiff makes no argument that any apply. TRO Mem. 23-24 (citing *Public Power Council v. Johnson*, 674 F.2d 792, 793 (9th Cir. 1982)). And it is difficult

to envision how a court could find them to apply when the agency has not yet been afforded the opportunity to compile the record in the first place.[4] This Court should decline Plaintiff's invitation to depart from the general and well-established rule that discovery is inappropriate in APA matters when Plaintiff has not even explained why that rule is inapplicable here.

CONCLUSION

For any, and certainly all, of these reasons the Court should deny Plaintiff's motion for a temporary restraining order and expedited discovery.

Dated: April 12, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

MCGREGOR W. SCOTT
United States Attorney

ERIC R. WOMACK
Assistant Branch Director

/s/ Daniel Halainen
DANIEL HALAINEN
Trial Attorney (MA Bar 694582)
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20530
(202) 616-8101 (office)
daniel.j.halainen@usdoj.gov

Attorneys for Defendants

[4] Defendants respectfully request sufficient time to expeditiously assemble an administrative record, which generally would be served no earlier than Defendants' response to the complaint, sixty days from service on the U.S. Attorney. Fed. R. Civ. P. 12(a)(2).

CERTIFICATE OF SERVICE

I hereby certify on the 12th day of April, 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF system for filing.

/s/ Daniel Halainen
DANIEL HALAINEN