



October 1, 2020

Via Electronic Mail

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street NE
Washington, DC 20549

Re: Tyson Foods Inc. – Shareholder Proposal submitted by The Humane Society of the United States

Ladies and Gentlemen:

This letter is submitted by Tyson Foods, Inc., a Delaware corporation (the “Company”), pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from its proxy materials for its 2021 Annual Meeting of Shareholders (the “2021 Annual Meeting”) a shareholder proposal (the “Proposal”) and statement in support thereof submitted by The Humane Society of the United States (the “Proponent”) on August 14, 2020. This letter is being submitted to the Commission within the time period required under Rule 14a-8(j).

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008), this letter and its exhibits are being submitted via email to *shareholderproposals@sec.gov*. A copy of this letter and its exhibits will also be sent to the Proponent.

The Company hereby respectfully requests that the staff of the Division of Corporation Finance (the “Staff”) confirm that it will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its 2021 Annual Meeting proxy materials for the reasons set forth below.



THE PROPOSAL

The Proposal and the statement in support thereof read as follows:

Risk Disclosure Proposal

In 2018, California passed a law (“Proposition 12”) requiring specific animal welfare standards for some pork produced or sold statewide.

In 2019, a Tyson Senior Vice President filed a declaration with the United States District Court for the Central District of California (“the declaration”) testifying under penalty of perjury that Proposition 12 will “cause severe harm to Tyson” and “will increase Tyson’s distribution costs,” “add additional cost and complexity, at every step” and “make Tyson’s processing and distribution operations significantly more complicated and costly.” Tyson will have to “incur significant costs,” “implement expensive changes” and “pay higher prices,” the declaration claims, and Tyson’s ability to recover some of “those increased costs will be highly constrained.”

The declaration concludes: “Proposition 12 could force Tyson to exit, in whole or in part, from the California market for whole pork products. In doing so, Tyson would be harmed by losing millions of dollars in annual sales it makes into California. The forced exit from a major market such as California further would harm Tyson’s relationships with its customers for whole pork products. Tyson depends on brand recognition and consumer goodwill to win and retain customers. The disappearance of Tyson’s pork products from store shelves in California would harm Tyson’s relationships with its customers . . . [and] Tyson will be forced to expend many millions of dollars and substantial time and effort ensuring compliance with Proposition 12 or suffer the harm of being forced out of the California market.”

However, none of Tyson’s 10-K or 10-Q reports mention Proposition 12, let alone disclose it as a risk to the company or its shareholders. Similarly, in those reports and on earnings calls, Tyson states that it has no supply-side issues with supplying pork to the markets in which it operates. These omissions and affirmative statements necessarily mean that, in fact, the company does not—despite the aforementioned declaration—face any material losses attributable to compliance or noncompliance with Proposition 12. After all, if the company did face the “severe harm” and losses described in the declaration, shareholders would have been entitled, under federal securities law, to a full risk disclosure from management.



RESOLVED: shareholders request that Tyson Foods confirm that the company faces no material losses from compliance or noncompliance with Proposition 12. If the company cannot so confirm, then shareholders request a risk analysis of any decision to comply or not to comply with Proposition 12, including the risks inherent in the company's failure to disclose such risks in its 10-K and 10-Q reports. These disclosures should be made within three months of the 2021 annual meeting, at reasonable cost, and omit proprietary information.

BASIS FOR EXCLUSION OF THE PROPOSAL

The Company believes that it may omit the Proposal from its proxy materials for the 2021 Annual Meeting under (i) Rule 14a-8(i)(4) because the Proposal relates to the redress of a personal claim or grievance against the Company and is meant to further a personal interest which is not shared by other shareholders at large and (ii) Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company's ordinary business operations.

ANALYSIS

I. The Company may omit the Proposal pursuant to Rule 14a-8(i)(4) because it relates to the redress of a personal claim or grievance against the Company.

Under Rule 14a-8(i)(4), a proposal may be excluded if it (i) relates to the redress of a personal claim or grievance against the registrant or any other person or (ii) is designed to result in a benefit to the proponent or to further a personal interest, which other shareholders at large do not share. The Commission has stated that Rule 14a-8(i)(4) is designed to "insure that the security holder proposal process [is] not abused by proponents attempting to achieve personal ends that are not necessarily in the common interest of the issuer's shareholders generally." Exchange Act Release No 20091 (Aug. 16, 1983). Moreover, the Commission has noted that "[t]he cost and time involved in dealing with" a shareholder proposal involving a personal grievance or furthering a personal interest not shared by other shareholders is "a disservice to the interests of the issuer and its security holders at large." Exchange Act Release No. 19135 (Oct. 14, 1982).

As indicated in its supporting statement, the Proposal stems from a litigation matter pending in the District Court for the Central District of California. In October 2019, the North American Meat Institute, a trade organization of which the Company is a member, filed a complaint in the District Court for the Central District of California against certain California state government officials questioning the constitutionality of Proposition 12, a California initiative that imposes unprecedented regulations dictating the conditions of confinement for breeding sows and veal calves (the "Proposition 12 Litigation"). The Proponent filed a motion to intervene in the Proposition 12 Litigation. The motion was granted and the Proponent is now a



defendant in the Proposition 12 Litigation. A copy of the complaint is attached as **Exhibit A** hereto and a copy of the Proponent's motion to intervene and the order approving the motion are attached as **Exhibit B** hereto.

The Proponent is much more than simply an interested party in the Proposition 12 Litigation. Proponent injected itself as a defendant and is actively litigating the matter, including answering the complaint and asking the court for judgment in its favor on the pleadings (copies of both filings are attached as **Exhibits C and D**). Here, the Proponent impermissibly seeks to use the shareholder proposal process to gain advantage and further its personal litigation goals. To that end, the Proposal's supporting statement focuses almost entirely on a declaration filed by a Tyson representative in support of the Proposition 12 plaintiff's motion for a preliminary injunction ("Tyson Declaration"). The resolution portion of the Proposal requests that the Company address statements made in that Tyson Declaration. Statements made in litigation, however, should be addressed in the litigation rather than through the shareholder proposal process. The shareholder proposal process is intended to provide a method to voice issues common to shareholders generally, and not meant to be used as a mechanism to gain a strategic advantage in litigation. Specifically, the Proposal requests a confirmation from the Company that seeks to either undermine the Tyson Declaration or provide the Proponent with fodder that the Proponent will try to use to its advantage in the Proposition 12 Litigation. This is exactly the type of proposal that Rule 14a-8(i)(4) is meant to prevent. Company shareholders at large do not share the same interest as the Proponent in the Proposition 12 Litigation that underscores the Proposal. Any grievance the Proponent has concerning the Proposition 12 Litigation should be addressed with the court within the litigation itself.

The Proponent's Proposal is similar to other proposals for which the Staff concurred in exclusion under Rule 14a-8(i)(4) where "the facts presented by the issuer" demonstrate that "the proponent is using the proposal as a tactic designed to redress a personal grievance or further a personal interest." Exchange Act Release No. 19135 (Oct. 14, 1982). The Staff has repeatedly concurred in the exclusion of proposals that appeared to include a facially neutral resolution, but where the facts demonstrated that the proposal's true intent was to further a personal interest or redress a personal claim or grievance. *See, e.g., General Electric Company* (Feb. 28, 2020) (concurring in the exclusion of a proposal to hire an investment bank to explore the sale of the company submitted by a former employee who had a history of complaints against the company after the employment relationship was terminated); *State Street Corp.* (Jan. 5, 2007) (concurring in the exclusion of a proposal that the company separate the positions of chairman and CEO submitted by a former employee after that employee was ejected from the company's previous annual meeting for disruptive conduct and engaged in a lengthy campaign of public harassment against the company and its CEO); *MGM Mirage* (Mar. 19, 2001) (concurring in the exclusion of a proposal that would require the company to adopt a written policy regarding political contributions and furnish a list of any of its political contributions submitted on behalf of a proponent who had filed a number of lawsuits against the company based on the company's



decisions to deny the proponent credit at the company's casino and, subsequently, to bar the proponent from the company's casino); *International Business Machines Corp.* (Jan. 31, 1995) (concurring in the exclusion of a proposal to institute an arbitration mechanism to settle customer complaints brought by a customer who had an ongoing complaint against the company in connection with the purchase of a software product).

By submitting this Proposal, the Proponent is using the shareholder process to both (i) redress a personal grievance that is being litigated in the District Court for the Central District of California and (ii) further a personal interest (gaining a strategic advantage in the Proposition 12 Litigation), which other shareholders at large do not share.

II. The Company may omit the Proposal pursuant to Rule 14a-8(i)(7) because it deals with matters related to the Company's ordinary business operations.

Rule 14a-8(i)(7) provides that a company may omit a shareholder proposal from its proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." According to the Commission, the term "ordinary business" in this context "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998). The Commission applies two central considerations for determining whether the ordinary business exclusion applies: (1) whether the subject matter of the proposal relates to a task so fundamental to management's ability to run a company on a day-to-day basis that it could not, as a practical matter, be subject to direct shareholder oversight; and (2) the degree to which the proposal seeks to micro-manage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. In seeking to (i) affect the Company's disclosures in its reporting and (ii) probe into the Company's legal compliance, both of which are squarely within management's exercise of business judgment, the Proposal implicates the two central considerations listed above.

A. Decisions Regarding Disclosures in a Company's SEC Filings are Ordinary Business Matters.

The Staff has consistently found that proposals seeking additional detailed disclosures or information around a company's disclosure strategy are excludable under Rule 14a-8(i)(7). *See, e.g., Eli Lilly & Co.* (Jan. 13, 2017) (concurring in the exclusion of a proposal to report all lawsuits the company has been involved in worldwide in the company's Form 10-K); *Union Pacific Corp.* (Jan. 28, 2005) (concurring in the exclusion of a proposal recommending that the board include revenue and on-time performance data from passenger operations in the annual report as relating to ordinary business matters (i.e., presentation of financial information));



Amerinst Insurance Group, Ltd. (Apr. 14, 2005) (concurring in the exclusion of a proposal requiring company to provide a full, complete and adequate disclosure of the accounting, each calendar quarter, of its line items and amounts of operating and management expenses as relating to ordinary business matters); *Otter Tail Corp.* (Jan. 13, 2004) (concurring in the exclusion of a proposal asking that the company prominently publish all statements referring to goodwill impairments in its annual financial reports); *Johnson Controls, Inc.* (Oct. 26, 1999) (concurring in the exclusion of a proposal recommending disclosure of “goodwill-net” in future consolidated statements of financial position as relating to ordinary business matters); *Baxter International, Inc.* (Feb. 20, 1992) (concurring in the exclusion of a proposal seeking disclosure regarding ongoing litigation as relating to ordinary business matters).

Here, as in the examples above, the Proposal relates to the Company’s disclosure practices and strategies in its quarterly and annual reporting obligations to the Commission. The Proposal’s supporting statement notes that “none of Tyson’s 10-K or 10-Q reports mention Proposition 12” and then the Proposal goes on to request that the Company disclose the “risks inherent in the company’s failure to disclose” risks related to compliance or non-compliance with Proposition 12 “in its 10-K and 10-Q reports.” Taken as a whole, the Proposal is attempting to both (i) request that the Company disclose decisions and risks regarding Proposition 12 and (ii) seek an explanation from management as to its decision to not include certain disclosures in its quarterly and annual reports; neither of these matters is appropriate for a shareholder proposal as they both relate to ordinary business matters.

B. Decisions Regarding Compliance Matters are Ordinary Business Matters.

The Staff has repeatedly concurred in the exclusion of proposals relating to a company’s legal compliance program on the grounds that a company’s compliance with laws and regulations is a matter of ordinary business operations. *See, e.g., Corrections Corporation of America* (Mar. 18, 2013) (concurring in the exclusion of a proposal requesting that the board make disclosures concerning the company’s potential conversion into a REIT and related compliance with IRS rules regarding REITs because the proposal relates to the company’s legal compliance program); *Haliburton Company* (Mar. 10, 2006) (concurring in the exclusion of a proposal requesting a report addressing the potential impact of certain violations and investigations on the company’s reputation and stock value and how the company intended to prevent further violations because the proposal dealt with the ordinary business of conducting a legal compliance program); *Refac* (Mar. 27, 2002) (concurring in the exclusion of a proposal requesting improved corporate disclosure practices, including disclosure of the number of shareholders of record of the company and the result of voting at the annual meeting because it dealt with ordinary business matters).

The Proposal requests that the Company “confirm” that it “faces no material losses from compliance or noncompliance with Proposition 12” and that it provide a risk analysis regarding



its decision on compliance or non-compliance with Proposition 12. The Proposal seeks oversight of judgment of the Company's compliance with laws as well as disclosure of the Company's decision-making process regarding matters of legal compliance. These are the very types of subject matters that cannot be made subject to direct shareholder oversight as they probe too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment. The manner in which the Company decides to comply with various laws and regulations is, at its core, fundamental to management's ability to run the Company on a day-to-day basis and should not, as a practicable matter, be subject to stockholder oversight.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2021 Annual Meeting proxy materials.

We would be happy to provide you with any additional information and answer any questions that you might have regarding this subject. If we can be of any further assistance on this matter, please do not hesitate to call me at 479-200-4067 or email me at Adam.Deckinger@tyson.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Deckinger', written over a white background.

Adam Deckinger
Vice President and
Associate General Counsel

cc: Matthew Prescott, The Humane Society of the United States
(mprescott@humanesociety.org)

John P. Kelsh, Partner, Sidley Austin LLP
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Exhibit A

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17 *Attorneys for Plaintiff*

18 **UNITED STATES DISTRICT COURT**
19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

20 NORTH AMERICAN MEAT INSTITUTE,

21 Plaintiff,

22 v.

23 XAVIER BECERRA, in his official
24 capacity as Attorney General of California,
25 KAREN ROSS, in her official capacity as
26 Secretary of the California Department of
27 Food and Agriculture, and SUSAN
28 FANELLI, in her official capacity as Acting
Director of the California Department of
Public Health,

Defendants.

Case No. 2:19-cv-8569

**COMPLAINT FOR DECLARATORY
AND PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF**

1 Comes now Plaintiff North American Meat Institute (“Plaintiff” or the “Meat Insti-
2 tute”), by and through its attorneys, and states as follows:

3 **INTRODUCTION AND SUMMARY**

4 1. This is an action for declaratory, injunctive and other relief brought by Plaintiff
5 against California’s Attorney General, Xavier Becerra, the Secretary of the California De-
6 partment of Food and Agriculture, Karen Ross, and the Acting Director of the California
7 Department of Public Health, Susan Fanelli, in their official capacities. This case is about
8 whether California can insulate its farmers from out-of-state competition and project its
9 agricultural regulations beyond its borders in an effort to transform the interstate and inter-
10 national market for pork and veal by banning the sale of wholesome meats imported from
11 other States and countries unless farmers in those States and countries comply with burden-
12 some animal-confinement requirements that California voters adopted in Proposition 12.
13 Under longstanding Supreme Court precedent, the answer to that question is no.

14 2. Plaintiff challenges Proposition 12’s sales ban, California Health & Safety
15 Code § 25990(b), as applied to pork and veal imported into California from other States and
16 countries. Plaintiff seeks preliminary and permanent injunctive enjoining the implementa-
17 tion and enforcement of the sales ban, and a declaration that the sales ban is unlawful under
18 federal law. Absent preliminary and permanent injunctive relief, Plaintiff’s members will
19 suffer irreparable harm.

20 3. Proposition 12 is a ballot initiative adopted by California voters in late 2018
21 that imposes unprecedented regulations dictating the conditions of confinement for breed-
22 ing sows and veal calves produced throughout the country.

23 4. Proposition 12’s sales ban violates the United States Constitution.

24 5. First, Proposition 12’s sales ban violates the Commerce Clause by erecting a
25 protectionist trade barrier whose purpose and effect are to shield California producers from
26 out-of-state competition. The purpose of the sales ban is to “level the playing field” between
27 California producers and out-of-state producers, and it does so by stripping away the com-
28 petitive advantage out-of-state producers would have if they could sell their products in

1 California without complying with costly confinement requirements that apply directly to
2 California producers. Moreover, as described below, Proposition 12 tilts the playing field
3 markedly in favor of in-state producers and against out-of-state competitors.

4 6. Second, Proposition 12's sales ban violates the Commerce Clause and the fed-
5 eral structure of the United States Constitution by directly regulating interstate and foreign
6 commerce and extraterritorial conduct, including the confinement conditions of animals lo-
7 cated on farms outside of California. California lacks authority to regulate farming practices
8 outside California, and it cannot condition access to its market as a means to control how
9 farm animals are confined in other States and countries. That is precisely what Proposition
10 12's sales ban does—it projects California law worldwide by banning the in-state sale of
11 wholesome veal and pork imported from other States and countries unless out-of-state pro-
12 ducers comply with California's farm animal-confinement requirements outside of Califor-
13 nia.

14 7. Third, Proposition 12's sales ban violates the Commerce Clause by imposing
15 substantial burdens on interstate commerce that are clearly excessive in relation to any le-
16 gitimate local benefits. Because Proposition 12's confinement requirements for veal calves
17 and breeding sows go well beyond current industry standards, the sales ban requires pro-
18 ducers to spend millions of dollars building California-compliant facilities and/or slash out-
19 put, or to abandon the California market. The resulting harms, which will be borne primarily
20 by out-of-state businesses, are not justified by any legitimate local interest.

21 **THE PARTIES**

22 **PLAINTIFF**

23 8. The North American Meat Institute is the nation's oldest and largest trade as-
24 sociation representing packers and processors of beef, pork, lamb, veal, turkey, and pro-
25 cessed meat products. Meat Institute member companies account for more than 95% of the
26 United States output of these products. The Meat Institute's purposes include, *inter alia*,
27 advocacy on behalf of its members in connection with legislation and regulation affecting
28 the meat industry. The Meat Institute's members sell pork and veal throughout California

1 and one or members has operations in Los Angeles, California.

2 9. The Meat Institute brings this suit on behalf of itself and its members. One or
3 more of its members possesses standing to sue in its own right. Many of the Meat Institute's
4 members own and raise hogs and veal calves in various States across the country and sell
5 pork and veal to customers in California. Meat Institute members are regulated and harmed
6 by Proposition 12's sales ban with respect to sales of pork and veal in California.

7 10. Proposition 12's regulation of the confinement of animals outside of California
8 is of vital concern to the Meat Institute's members.

9 11. Neither the claims asserted nor the relief sought in the Complaint requires the
10 participation of any individual member of the Meat Institute.

11 **DEFENDANTS**

12 12. Defendant Xavier Becerra is the Attorney General of the State of California.
13 Defendant Becerra is responsible for the enforcement of Proposition 12 and is sued in his
14 official capacity only.

15 13. Defendant Karen Ross is the Secretary of the California Department of Food
16 and Agriculture, which is responsible for implementation of Proposition 12. Defendant Ross
17 is sued in her official capacity only.

18 14. Defendant Susan Fanelli is the Acting Director of the California Department
19 of Public Health, which is responsible for implementation of Proposition 12. Defendant
20 Fanelli is sued in her official capacity only.

21 **JURISDICTION AND VENUE**

22 15. Subject matter jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343 because
23 this case arises under the Constitution and laws of the United States.

24 16. The Court has authority to enjoin enforcement of Proposition 12's sales ban
25 under 42 U.S.C. § 1983, and to grant preliminary and permanent injunctive relief and de-
26 claratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

27 17. Venue is proper in this Court under 28 U.S.C. § 1391(b). A substantial part of
28 the events giving rise to the claims herein occurred within this judicial district because the

1 Meat Institute’s members import pork and veal subject to Proposition 12 into this judicial
2 district. Further, Defendants maintain their offices within this judicial district.

3 **LEGAL AND FACTUAL BACKGROUND**

4 **A. Proposition 2 and Assembly Bill 1437**

5 18. In November 2008, California voters enacted Proposition 2, a ballot initiative
6 entitled the Prevention of Farm Animal Cruelty Act, to “prohibit the cruel confinement of
7 farm animals.”

8 19. Effective January 1, 2015, Proposition 2 prohibited California farmers from
9 confining pregnant pigs, calves raised for veal, and egg-laying hens in a manner that pre-
10 vented them from lying down, standing up, and fully extending their limbs, or from turning
11 around freely. *See* Cal. Health & Safety Code § 25990 *et seq.*

12 20. California farmers were given six years to restructure their farming practices
13 to come into compliance with the confinement standards of Proposition 2. *See* Prop. 2, Of-
14 ficial Voter’s Information Guide (reproducing proponents’ argument that farmers would
15 have “ample time” to comply).

16 21. In 2010, the California legislature enacted Assembly Bill 1437 (“AB 1437”),
17 which extended Proposition 2’s confinement requirements for egg-laying hens to out-of-
18 state farmers by prohibiting the sale in California of a shelled egg for human consumption
19 if it was the product of an egg-laying hen confined on a farm or place that was not in com-
20 pliance with Proposition 2’s confinement requirements. Cal. Health & Safety Code § 25996.

21 22. AB 1437’s legislative history explained that “the intent of this legislation [was]
22 to level the playing field so that in-state producers [we]re not disadvantaged” by competi-
23 tion from out-of-state farmers not subject to the same costly confinement requirements. *See*
24 Cal. Assembly Comm. on Agriculture, Bill Analysis of AB 1437, at 1 (May 13, 2009).

25 **B. Proposition 12**

26 23. In November 2018, California voters enacted Proposition 12, a ballot initiative
27 promoted by animal welfare groups.

28 24. Proposition 12’s stated purpose is “to prevent animal cruelty by phasing out

1 extreme methods of farm animal confinement, which also threaten the health and safety of
2 California consumers, and increase the risk of foodborne illness and associated negative
3 fiscal impacts on the State of California.” Proposition 12, § 2.

4 25. Proposition 12 was not accompanied by any legislative findings and does not
5 cite any evidence that meat from veal calves or breeding sows—or meat from the offspring
6 of such sows—housed in a way that does not comply with Proposition 12 poses any in-
7 creased risk of foodborne illness or other harms to California consumers.

8 26. Proposition 12’s central prohibition applies only to California farmers. It pro-
9 vides that “[a] farm owner or operator within the state shall not knowingly cause any cov-
10 ered animal to be confined in a cruel manner.” Health & Safety Code § 25990(a).

11 27. “Covered animal” means “any calf raised for veal, breeding pig, or egg-laying
12 hen who is kept on a farm.” *Id.* § 25991(f).

13 28. “Farm” means “the land, building, support facilities, and other equipment that
14 are wholly or partially used for the commercial production of animals or animal products
15 used for food or fiber.” *Id.* § 25991(i).

16 29. The definition of “farm” excludes “live animal markets” and “establishments
17 at which mandatory inspection is provided under the Federal Meat Inspection Act (21
18 U.S.C. Sec. 601 *et seq.*)” *Id.*

19 30. Under Proposition 12, “Confined in a cruel manner” means:

20 (1) Confining a covered animal in a manner that prevents the animal from lying
21 down, standing up, fully extending the animal’s limbs, or turning around
22 freely.

23 (2) After December 31, 2019, confining a calf raised for veal with less than 43
24 square feet of usable floorspace per calf.

25 (3) After December 31, 2021, confining a breeding pig with less than 24 square
26 feet of usable floorspace per pig.

27 *Id.* § 25991(e)(1)–(3).

28 31. These confinement requirements are subject to a number of exceptions. They

1 do not apply during medical research, veterinary care, transportation, exhibitions, slaughter,
2 or during temporary periods for animal husbandry. *Id.* § 25992(a)–(e), (g). And they do not
3 apply to a breeding pig during the five-day period prior to its expected date of giving birth
4 and during any day that it is nursing piglets. *Id.* § 25992(f).

5 32. Proposition 12 also includes a sales ban designed to extend the statute’s hous-
6 ing requirements to out-of-state producers who sell products in California. As relevant here,
7 the sales ban provides that “[a] business owner or operator shall not knowingly engage in
8 the sale within the state” of any “(1) Whole veal meat that the business owner or operator
9 knows or should know is the meat of a covered animal who was confined in a cruel manner,”
10 or (2) “Whole pork meat that the business owner or operator knows or should know is the
11 meat of a covered animal who was confined in a cruel manner, or is the meat of immediate
12 offspring of a covered animal who was confined in a cruel manner.” *Id.* § 25990(b)(1)–(2).

13 33. The term “sale” means “a commercial sale by a business that sells any item
14 covered by this chapter, but does not include any sale undertaken at an establishment at
15 which mandatory inspection is provided under the Federal Meat Inspection Act.” *Id.*
16 § 25991(o).

17 34. A “sale” is “deemed to occur at the location where the buyer takes physical
18 possession of [a covered] item.” *Id.* The sales ban applies to most uncooked pork and veal,
19 but does not apply to “combination food products, including soups, sandwiches, pizzas,
20 hotdogs, or similar processed or prepared food products.” *Id.* § 25991(u)–(v).

21 35. Violation of the sales ban is a misdemeanor punishable by a fine of up to \$1000
22 and up to 180 days’ imprisonment in the county jail. *Id.* § 25993(b).

23 36. An action to enforce the sales ban is subject to a good-faith defense if the
24 “business owner or operator relied in good faith upon a written certification by the supplier
25 that the whole veal meat [or] whole pork meat ... at issue was not derived from a covered
26 animal who was confined in a cruel manner, or from the immediate offspring of a breeding
27 pig who was confined in a cruel manner.” *Id.* § 25993.1.

28

1 **C. Legislative Analyst’s Office Report For Proposition 12.**

2 37. The Legislative Analyst’s Office (“LAO”) prepared a report on Proposition 12.
3 *See* <https://lao.ca.gov/BallotAnalysis/Proposition?number=12&year=2018>.

4 38. The LAO observed that “agriculture is a major industry in California,” (em-
5 phasis and capitalization omitted),” with “California farms produc[ing] more food—such
6 as fruit, vegetables, nuts, meat, and eggs—than in any other state.”

7 39. The LAO further observed that “Californians also buy food produced in other
8 states, including most of the eggs and pork they eat.” The LAO noted that the “sales ban
9 applies to products from animals raised in California or out-of-state.”

10 40. With regard to Proposition 12’s fiscal impacts, the LAO concluded that “[t]his
11 measure would likely result in an increase in prices for eggs, pork, and veal for two reasons.”
12 First, it “would result in many farmers having to remodel or build new housing for ani-
13 mals—such as by installing cage-free housing for hens. In some cases, this housing also
14 could be more expensive to run on an ongoing basis. Much of these increased costs are
15 likely to be passed through to consumers who purchase the products.”

16 41. “Second, it could take several years for enough farmers in California and other
17 states to change their housing systems to meet the measure’s requirements. If in the future
18 farmers cannot produce enough eggs, pork, and veal to meet the demand in California, these
19 shortfalls would lead to an increase in prices until farmers can meet demand.”

20 **D. Implementing Regulations**

21 42. Proposition 12 requires the California Department of Food and Agriculture
22 (“CDFA”) and the State Department of Public Health to promulgate implementing rules
23 and regulations by September 1, 2019. Health & Safety Code § 25993. The Meat Institute
24 submitted comments explaining, among other things, the sales ban’s constitutional infirmity
25 and the many harms it will cause to pork and veal producers and consumers.

26 43. On September 23, 2019, CDFA informed the Meat Institute that it planned to
27 issue a Notice of Proposed Action by the end of 2019, and that regulations implementing
28 Proposition 12 would be finalized between 6 to 12 months thereafter.

1 **CLAIMS FOR RELIEF**

2 **FIRST CLAIM**

3 **(Discrimination in Violation of the Commerce Clause)**

4 44. The prior paragraphs of the Complaint are incorporated by reference.

5 45. Proposition 12's sales ban violates the Commerce Clause of the United States
6 Constitution by discriminating against out-of-state producers, distributors and sellers of
7 pork and veal.

8 46. Proposition 12's sales ban violates the Commerce Clause because its purpose
9 and effect are to protect in-state California producers from out-of-state competitors.

10 47. Proposition 12's sales ban confers a benefit on in-state producers by seeking
11 to level the playing field. It imposes regulatory burdens on out-of-state producers so that in-
12 state producers are not disadvantaged by competition from out-of-state producers who are
13 not subject to Proposition 2's confinement requirements. Cal. Assembly Comm. on Agri-
14 culture, Bill Analysis of AB 1437, at 1 (May 13, 2009).

15 48. The intended and inevitable effect of Proposition 12's sales ban is to protect
16 in-state California producers from bearing costs not borne by out-of-state competitors. It
17 does so by subjecting those out-of-state competitors to Proposition 12's confinement stand-
18 ards as a condition of selling pork and veal in California.

19 49. Proposition 12's sales ban operates as an impermissible protectionist trade bar-
20 rier, blocking the flow of goods in interstate commerce unless out-of-state producers com-
21 ply with California's regulations. The sales ban neutralizes the cost advantage out-of-state
22 producers would have if they could sell their products in California without complying with
23 the confinement requirements that California imposes on its own producers.

24 50. Proposition 12's sales ban imposes significant burdens on the Meat Institute's
25 members in connection with their conduct of interstate commerce.

26 51. Proposition 12's sales ban is discriminatory in two other respects because it
27 tilts the playing field markedly in favor of in-state producers.

28 52. First, if Proposition 12's prohibition on confinement that prevents an animal

1 from “turning around freely” (the “turnaround” standard) is construed to take immediate
2 effect, then the sales ban would disadvantage out-of-state producers, who were given no
3 lead time to change their operations to come into compliance. In contrast, in-state producers
4 were given more than six years’ lead time to come into compliance with the “turnaround”
5 standard when it was first imposed on California farmers by Proposition 2. Specifically,
6 Proposition 2 was adopted in November 2008 but did not become effective until January
7 2015. *See* Prop. 2, Official Voter’s Information Guide (reproducing proponents’ argument
8 that farmers would have “ample time” to comply).

9 53. Second, if Proposition 12’s confinement restrictions do not apply to calves that
10 are “culled” from California dairy farms for slaughter and marketed as “bob” veal (on the
11 ground that such calves are not “raised for veal” by California dairy farmers), then the sales
12 ban would give California bob veal producers a competitive advantage over out-of-state
13 milk-fed veal producers.

14 54. Proposition 12’s sales ban violates the Commerce Clause because California
15 cannot carry its burden of demonstrating, under rigorous scrutiny, that it has no other means
16 to advance a legitimate local interest.

17 55. California cannot justify the sales ban as a means of ensuring regulatory parity
18 for in-state and out-of-state producers whose products are sold in California.

19 56. Nor does California have a valid interest in protecting its producers from the
20 competitive disadvantage its confinement requirements create by subjecting out-of-state
21 competitors to those same standards.

22 57. Further, California has no legitimate local interest in how farm animals are
23 housed in other States and countries. California has no authority to regulate the conditions
24 under which farm animals are housed outside its borders.

25 58. California also cannot justify the sales ban as a consumer health and safety
26 measure. No scientific evidence establishes a causal link between Proposition 12’s confine-
27 ment requirements and a diminished risk of foodborne illness from pork or veal. This is
28

1 especially true regarding Proposition 12’s ban on the sale of “the meat of immediate off-
2 spring of a covered animal who was confined in a cruel manner.” Health & Safety Code §
3 25990(b)(2). There is no connection between a sow’s confinement conditions and any risk
4 of foodborne illness from the meat of her offspring. Piglets spend only a few weeks with
5 the sow while nursing, during which time Proposition 12’s confinement requirements do
6 not apply. *Id.* § 25992(f) (providing that Proposition 12’s requirements do not apply “[t]o a
7 breeding pig during the five-day period prior to the breeding pig’s expected date of giving
8 birth, and any day that the breeding pig is nursing piglets”).

9 59. Moreover, there is already an extensive scheme of federal regulation in place
10 to ensure meat safety. The Federal Meat Inspection Act (“FMIA”), 21 U.S.C. § 601 *et seq.*,
11 requires the Department of Agriculture to inspect all cattle and swine slaughtered and pro-
12 cessed for human consumption, and “establishes an elaborate system of inspecting live an-
13 imals and carcasses in order to prevent the shipment of impure, unwholesome, and unfit
14 meat and meat-food products.” *Nat’l Meat Ass’n v. Harris*, 565 U.S. 452, 455–56 (2012)
15 (internal quotation marks and alterations omitted).

16 60. Attempts to justify Proposition 12’s sales ban as a health and safety measure
17 are further undermined by the exceptions to the ban. The sales ban applies to “whole pork
18 meat” and “whole veal meat,” Health & Safety Code § 25990(b)(1)–(2), which are defined
19 to exclude “combination food products, including soups, sandwiches, pizzas, hotdogs, or
20 similar processed or prepared food products,” *id.* § 25991(u)–(v). In addition, the sales ban
21 exempts “any sale undertaken at an establishment at which mandatory inspection is pro-
22 vided under the Federal Meat Inspection Act.” *Id.* § 25991(o); *see also id.* § 25991(i) (de-
23 fining “farm” to exclude such establishments). The confinement requirements also do not
24 apply to live animal markets, *id.* § 25991(i); during medical research, veterinary care, trans-
25 portation, exhibition, or slaughter, *id.* § 25992(a)–(e); during temporary periods for animal
26 husbandry purposes, subject to specified caps, *id.* § 25992(g); or to a breeding pig during
27 the five-day period prior to its expected date of giving birth and any day it is nursing piglets,
28 *id.* § 25992(f). These numerous exceptions belie any notion that the prohibited sales pose a

1 genuine danger to public health or safety.

2 61. California also has nondiscriminatory alternatives to Proposition 12's sales
3 ban. If it is concerned that the prohibited sales pose a health and safety risk not already
4 adequately addressed by the federal inspection scheme, it can subject whole pork and veal
5 meat imported into the State to additional inspection at the point of sale to consumers. *See,*
6 *e.g.*, Health & Safety Code § 114035. And it can promote consumer education to help ensure
7 the safe handling and cooking of raw meats. What it cannot do is ban interstate trade in pork
8 and veal based on unfounded assertions that farming practices in other States and countries
9 pose speculative risks to California consumers' health and safety.

10 62. Defendants are purporting to act within the scope of their authority under State
11 law in enforcing and implementing Proposition 12.

12 63. Defendants are liable to the Meat Institute for proper redress under 42 U.S.C.
13 § 1983 because Proposition 12's sales ban deprives the Meat Institute's members of the
14 rights, privileges, and immunities secured by the United States Constitution.

15 64. The Meat Institute has no adequate remedy at law.

16 **SECOND CLAIM**

17 **(Impermissible Extraterritorial Regulation)**

18 65. The prior paragraphs of the Complaint are incorporated by reference.

19 66. Proposition 12's sales ban violates the constitutional prohibition on extraterri-
20 torial state regulation.

21 67. The prohibition on extraterritorial regulation stems from both the Commerce
22 Clause and the federal structure of the Constitution. Under the Commerce Clause and the
23 federal structure of the Constitution, States and localities may not attach restrictions to im-
24 ports in order to control commerce in other States and countries because doing so would
25 extend their police power beyond their jurisdictional bounds.

26 68. Proposition 12 violates that restriction because it bans the sale of imported
27 products based on the conditions under which those products were produced in other states
28 and countries. Proposition 12 dictates farming practices in other States by conditioning the

1 sale of imported pork and veal in California on adherence to California’s confinement re-
2 quirements upon pain of criminal or civil penalty.

3 69. California may not regulate out-of-state farming practices by banning the sale
4 in California of wholesome meats imported from other States unless the producer complied
5 with California’s confinement regulations.

6 70. California cannot use the in-state sale of a product as a jurisdictional “hook”
7 to regulate upstream commercial practices that occur in other States simply because Cali-
8 fornia finds those practices objectionable.

9 71. The unconstitutionality of Proposition 12’s sales ban is further confirmed be-
10 cause if every State enacted a similar sales ban, producers would be forced to choose be-
11 tween complying with the most restrictive confinement regulation, segregating their opera-
12 tions to serve different States, or abandoning certain markets altogether.

13 72. Proposition 12’s sales ban, on its face and in its practical effect, regulates the
14 channels of interstate and foreign commerce and the use of these channels of interstate and
15 foreign commerce.

16 73. By regulating interstate and foreign commerce that occurs wholly outside of
17 California, Proposition 12’s sales ban violates the Commerce Clause of the United States
18 Constitution and the principles of interstate federalism embodied in the federal structure of
19 the United States Constitution.

20 74. Defendants are purporting to act within the scope of their authority under State
21 law in enforcing and implementing Proposition 12.

22 75. Defendants are liable to the Meat Institute for proper redress under 42 U.S.C.
23 § 1983 because Proposition 12’s sales ban deprives the Meat Institute’s members of the
24 rights, privileges, and immunities secured by the United States Constitution.

25 76. The Meat Institute has no adequate remedy at law.
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THIRD CLAIM

(Excessive Burden in Violation of the Commerce Clause)

77. The prior paragraphs of the Complaint are incorporated by reference.

78. Proposition 12's sales ban violates the Commerce Clause by imposing unreasonable burdens on interstate and foreign commerce that are clearly excessive when measured against any legitimate local benefits.

79. Proposition 12's sales ban substantially burdens the interstate and international market for veal and pork. Compliance with Proposition 12's confinement requirements would require extensive and costly changes to current industry practices regarding the production, processing and distribution of veal and pork.

80. Plaintiff's members will be required to restructure their facilities to comply with Proposition 12's confinement standards at great cost. Further, Plaintiff's members will be required to modify their own farms and to ensure that the facilities of the farmers upon whom they rely for pork and veal comply with Proposition 12's confinement standards.

81. The sales ban will cost the veal and pork industries hundreds of millions of dollars, and compliance would require independent farmers, packers, and distributors to restructure operations from coast to coast.

82. To compensate producers for their increased costs, processors and distributors will have to pay a premium for Proposition 12-compliant animals, and those that do not wish to follow Proposition 12 on a nationwide basis will have to reorganize slaughter, packing, and distribution operations to segregate animals and products that comply with the law from those that do not.

83. Proposition 12's sales ban imposes a substantial barrier to interstate commerce and may close off the California market to a large swath of integrated producers and the independent farmers upon which they rely to provide whole pork to their customers in California.

84. Proposition 12's sales ban presents out-of-state veal and pork producers with

1 a Hobson's choice: either comply with Proposition 12's confinement requirements by mak-
2 ing costly alterations to their facilities or slashing output, or be forced from the California
3 market. Either way, the result will be less veal and pork, produced, processed, and distrib-
4 uted less efficiently, to fewer customers, at higher prices.

5 85. The burdens impose by Proposition 12's sales ban clearly exceed any legiti-
6 mate local benefit as the sales ban is not justified by any valid public welfare, consumer
7 protection or pro-competitive purpose.

8 86. First, California has no legitimate local interest in regulating farming condi-
9 tions in other States and countries, or in preventing California consumers from buying im-
10 ported products that are produced under conditions California disfavors.

11 87. Second, the sales ban's purported role in preventing foodborne illness is illu-
12 sory as there is no scientific causal link between Proposition 12's confinement requirements
13 and the risk of foodborne illness from whole pork or veal meat imported into California

14 88. Defendants are purporting to act within the scope of their authority under State
15 law in enforcing and implementing Proposition 12's sales ban.

16 89. Defendants are liable to the Meat Institute for proper redress under 42 U.S.C.
17 § 1983 because Proposition 12's sales ban deprives Plaintiff's members of the rights, priv-
18 ileges, and immunities secured by the United States Constitution.

19 90. The Meat Institute has no adequate remedy at law.

20 **RELIEF REQUESTED**

21 WHEREFORE, Plaintiff respectfully requests the following relief:

- 22 A. A declaratory judgment, pursuant to 28 U.S.C. § 2201, that Proposition 12's
23 sales ban, as applied to veal and pork from outside California, violates the
24 United States Constitution and is unenforceable;
- 25 B. A preliminary and permanent injunction enjoining the Defendants from imple-
26 menting or enforcing the sales ban as applied to veal or pork from outside of
27 California;
- 28 C. An order awarding Plaintiff its costs and attorneys' fees pursuant to 42 U.S.C.

1 § 1988; and

2 D. Such other and further relief as the Court deems just and proper.

3
4 Respectfully submitted,

5
6 DATED: October 4, 2019

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7
8 /s/ Sean A. Commons

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19 *Animal Legal Defense Fund, Animal Equality,*
20 *The Humane League, Farm Sanctuary,*
21 *Compassion in World Farming USA,*
22 *Compassion Over Killing*

23 UNITED STATES DISTRICT COURT
24 FOR THE CENTRAL DISTRICT OF CALIFORNIA

25 NORTH AMERICAN MEAT
26 INSTITUTE,

27 Plaintiff,

28 v.

XAVIER BECERRA, in his official
capacity as Attorney General of
California, KAREN ROSS, in her
official capacity as Secretary of the
California Department of Food and
Agriculture, and SONIA ANGELL, in
her official capacity as Acting
Director of the California Department
of Public Health,

Defendants.

Case No. 2:19-cv-08569-CAS (FFMx)

**PROPOSED DEFENDANT-
INTERVENORS' MEMORANDUM
OF POINTS & AUTHORITIES IN
SUPPORT OF MOTION TO
INTERVENE**

The Honorable Christina A. Snyder
Date: November 18, 2019
Time: 10:00 a.m.
Location: Courtroom 8D

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1 **I. INTRODUCTION**

2 Pursuant to Federal Rule of Civil Procedure 24, The Humane Society of the
 3 United States (“HSUS”), the Animal Legal Defense Fund (“ALDF”), Animal
 4 Equality, The Humane League, Farm Sanctuary, Compassion in World Farming
 5 USA, and Compassion Over Killing (“COK”) (collectively “Proposed Defendant-
 6 Intervenors”) respectfully request leave to intervene in the above-captioned matter,
 7 a constitutional challenge to a California animal cruelty law which Proposed
 8 Defendant-Intervenors were instrumental in passing and which, if overturned, will
 9 cause them and their members immediate and certain harm to their particular
 10 organizational interests in preventing animal cruelty.

11 Proposed Defendant-Intervenors will be directly affected by the outcome of
 12 this case. They can also provide critical and unique legal and factual perspectives
 13 on the matter, as many have done in prior similar matters.¹ Accordingly, as
 14 described more fully below, Proposed Defendant-Intervenors satisfy the standards
 15 for both intervention as a matter of right and permissive intervention, and request
 16 that their intervention be granted.

17 **II. BACKGROUND**

18 **A. Passage of Proposition 12.**

19 On November 6, 2018, California Proposition 12, codified as the Prevention
 20 of Cruelty to Farm Animals Act (“Proposition 12” or “the Act”), was on the ballot
 21 in California as an initiated state statute and was overwhelmingly approved. Cal.

22 ¹ For example, Proposed Defendant-Intervenor HSUS has previously participated in
 23 many other federal and state cases that challenged animal protection laws in
 24 California on Constitutional grounds, in cooperation with and without duplicating
 25 the State defendants’ efforts. *See, e.g., National Meat Ass’n v. Harris, et al.*, No.
 26 1:08-cv-01963 (E.D. Cal.); *JS West Milling Co., Inc. v. California*, No. 10-04225
 27 (Cal. Sup. Ct. Fresno County); *Cramer v. Brown, et al.*, No. 2:12-cv-03130 (C.D.
 28 Cal.); *Asian Am. Rights Comm. v. Brown et al.*, No. 12-517723 (Cal. Sup. Ct., San
 Francisco County); *Nat’l Audubon Soc’y, et al. v. Gray Davis, et al.*, No. 3:98-cv-
 04610 (N.D. Cal.); *Mary Mendibourne, et al. v. John McCamman, et al.*, No. 46349
 (Cal. Sup. Ct. Lassen County); *Chinatown Neighborhood Assoc. et al., v. Edmund
 Brown, et al.*, No. 4:12-cv-03759 (N.D. Cal.); *State of Missouri, et al. v. Kamala D.
 Harris, et al.*, No. 2:14-cv-00341 (E.D. Cal.).

1 Health & Safety Code §§ 25990-25994. The Act bans the confinement of pregnant
2 pigs, calves raised for veal, and egg-laying hens in a manner that does not allow
3 them to turn around freely, lie down, stand up, or fully extend their limbs, and
4 prohibits the sale of products from animals raised in this manner. *Id.* The Act
5 enhances the welfare of animals otherwise subjected to extreme confinement for
6 their entire lives by prohibiting the production and sale of food products from
7 animals confined in a cruel manner, as defined by the Act. *Id.* § 25991. The Act’s
8 effective dates are staggered, with prohibitions on the confinement of veal calves
9 and egg-laying hens beginning in 2020 and restrictions on the confinement of
10 breeding pigs and additional standards for egg-laying hens beginning in 2022. *Id.* §
11 25991.

12 The express purpose of Proposition 12 is to prevent cruelty associated with
13 extreme confinement practices. The Act states:

14 The purpose of this Act is to prevent animal cruelty by
15 phasing out extreme methods of farm animal
16 confinement, which also threaten the health and safety of
17 California consumers, and increase the risk of foodborne
illness and associated negative fiscal impacts on the State
of California.

18 2018 Cal. Legis. Serv. Prop. 12 SEC. 2.

19 **B. The Interests of the Proposed Defendant-Intervenors.**

20 Proposed Defendant-Intervenor HSUS is a national nonprofit animal
21 protection organization headquartered in Washington, D.C., with millions of
22 members and constituents, including over one million members and constituents in
23 California. Declaration of Josh Balk (“Balk Decl.”) ¶ 3. The HSUS actively
24 advocates against inhumane practices that harm farm animals, including veal
25 calves, breeding pigs, and egg-laying hens, *id.* ¶ 4, and HSUS’ Farm Animal
26 Protection campaign works to inform its members and the public about the threats
27 caused by such practices. *Id.* To advance these goals, HSUS was the primary
28 author and a chief proponent of Proposition 12. *Id.* ¶ 6.

1 Proposed Defendant-Intervenor ALDF was a registered supporter and active
2 proponent of Proposition 12. Declaration of Stephen Wells (“Wells Decl.”) ¶¶ 7-8.
3 ALDF is a national nonprofit animal protection organization founded in 1979 that
4 uses education, public outreach, investigations, legislation, and litigation to protect
5 the lives and advance the interests of animals, including those raised for food. *Id.* ¶
6 2. Headquartered in Cotati, California, ALDF is supported by hundreds of
7 dedicated volunteer attorneys and more than 200,000 members and supporters
8 nationwide, including approximately 35,000 in California. *Id.* ALDF files high-
9 impact lawsuits to protect animals from harm, provides free legal assistance and
10 training to prosecutors in their fight against animal cruelty, supports animal
11 protection legislation, and provides resources and opportunities to law students and
12 professionals to advance the field of animal law. *Id.* For decades, ALDF has been
13 actively involved in matters pertaining to the protection and humane treatment of
14 animals used for meat, eggs, and dairy products in California. *Id.* ¶¶ 3-6. ALDF
15 has directed substantial time and organizational resources towards this goal, up to
16 and including its significant devotion of resources and staff time to supporting
17 Proposition 12. *Id.* ¶¶ 7-8.

18 Proposed Defendant-Intervenor Animal Equality is an international nonprofit
19 animal protection organization with its U.S. headquarters in Los Angeles,
20 California. Declaration of Sarah Hanneken (“Hanneken Decl.”) ¶ 2. The
21 organization has over 1,700 members and supporters nationwide, roughly one-third
22 of whom reside in California. *Id.* Animal Equality's mission is to end cruelty to
23 farmed animals. *Id.* ¶ 3. To that end, Animal Equality expends significant
24 resources to educate consumers about the inhumane treatment of animals inside
25 industrial agriculture operations and to urge governments and corporations to
26 implement meaningful protections for these animals—particularly in regard to the
27 conditions in which they are confined. *Id.* ¶ 4. Recognizing that cruel conditions of
28 confinement are especially widespread in the egg, pork, and veal industries, Animal

1 Equality has dedicated special attention to legal and political reform in these
2 sectors. *Id.* ¶ 5. Through petitions, social media, films, newsletters, undercover
3 investigations, email alerts, and legal advocacy, Animal Equality mobilizes its
4 supporters to manifest a world in which all animals are respected and protected. *Id.*
5 ¶ 3.

6 Proposed Defendant-Intervenor The Humane League is a nonprofit animal
7 protection organization organized under the laws of Pennsylvania, with over
8 275,000 supporters across the United States, including over 30,000 supporters in
9 California. Declaration of Wendy Watts (“Watts Decl.”) ¶ 2. The Humane League
10 exists to end the abuse of animals raised for food through institutional and
11 individual change. *See id.* ¶ 3. Institutionally, The Humane League works to
12 influence the world’s largest food companies to create and implement animal
13 welfare policies that abolish the worst forms of abuse and reduce the suffering of
14 billions of animals. *Id.* ¶ 3. The Humane League also works to enact laws that ban
15 the confinement and inhumane treatment of farm animals. *Id.* Individually, The
16 Humane League educates its supporters, consumers, and the general public about
17 the impact of farming practices on animal welfare, individual and public health, and
18 the environment. *Id.*

19 Proposed Defendant-Intervenor Farm Sanctuary is a national non-profit
20 corporation organized pursuant to the laws of the state of Delaware, with its
21 principal place of business in Watkins Glen, New York. Declaration of Gene Baur
22 (“Baur Decl.”) ¶ 3. Farm Sanctuary is a farm animal rescue and protection
23 organization dedicated to ending the suffering of animals raised for food. *Id.* ¶ 4.
24 The organization has over 800,000 nationwide members and supporters, including
25 over 38,000 California residents. *Id.* ¶ 3. It also operates a farm animal sanctuary
26 in southern California. Farm Sanctuary invests considerable resources advocating
27 for farm animal health and welfare, educating its members, visitors, and the public
28 about farm animal issues, and rescuing farm animals from cruelty. *Id.* ¶ 5. Farm

1 Sanctuary has committed resources to farm animal protection ballot initiatives,
2 including California’s Proposition 12. *Id.* In addition to gathering signatures to
3 qualify Proposition 12 for the ballot and urging its supporters to help gather
4 signatures, Farm Sanctuary committed human and financial resources to producing
5 videos encouraging voters to support Proposition 12, which were promoted across
6 Farm Sanctuary’s social media platforms. *Id.* Farm Sanctuary also committed
7 resources to educating its constituents and members of the public about Proposition
8 12 through e-mail communications and social media posts encouraging support of
9 Proposition 12. *Id.*

10 Proposed Defendant-Intervenor Compassion in World Farming USA is a
11 national non-profit corporation organized pursuant to the laws of Georgia with its
12 principal place of business in Decatur, Georgia. Declaration of Cynthia von
13 Schlichten (“von Schlichten Decl.”) ¶ 2. Compassion in World Farming USA is an
14 animal protection organization dedicated to ending factory farming and the most
15 inhumane farming practices. *Id.* ¶ 3. The organization has over 200,000 members
16 and supporters, including over 10,000 California residents. *Id.* ¶ 2. Compassion in
17 World Farming USA works to instill and promote more humane farming practices
18 through corporate engagement and by providing public awareness on legislative,
19 regulatory, and industry issues relevant to its mission. *Id.* ¶ 3.

20 Proposed Defendant-Intervenor Compassion Over Killing (“COK”) is a
21 nonprofit organization incorporated in Delaware with its principal place of business
22 in the District of Columbia and an office in Los Angeles, California. Declaration of
23 Will Lowrey (“Lowrey Decl.”) ¶ 3. Founded in 1995, COK’s organizational
24 mission is to end cruelty to farmed animals and promote vegan eating as a way to
25 build a kinder world for all creatures, human and nonhuman. *Id.* ¶ 5. In
26 furtherance of that goal, COK advocates against government policies that
27 encourage or allow cruelty to farmed animals; conducts public education on the
28 realities of industrialized animal agriculture; and coordinates public campaigns to

1 encourage the adoption of vegan diets. *Id.* ¶ 6. COK has more than 55,000
2 members and supporters across the United States, including in California. *Id.* ¶ 4.

3 In furtherance of these organizations’ interests, Proposed Defendant-
4 Intervenor expended time and resources toward the passage of Proposition 12, a
5 measure of which Proposed Defendant-Intervenor HSUS was the primary author.
6 Balk Decl. at ¶ 6. Proposed Defendant-Intervenor invested substantial
7 organizational resources into drafting the Act, collecting ballot initiative signatures,
8 and mobilizing support for its passages. *See, e.g.*, Balk Decl. ¶ 6; Wells Decl. ¶¶ 7-
9 8; Hanneken Decl. ¶¶ 6-7; Watts Decl. ¶ 4; Baur Decl. ¶ 5; von Schlichten Decl. ¶¶
10 4-5; Lowrey Decl. ¶¶ 7-9. Invalidation of Proposition 12 would impede these
11 organizations’ efforts to support state laws banning the sale of other cruelly
12 produced goods, including shark fins, foie gras, fur, and horse meat—all of which
13 HSUS and many of the other Proposed Defendant-Intervenor have repeatedly
14 defended in public campaigns and court. Balk Decl. ¶ 6; Wells Decl. ¶¶ 3-5;
15 Hanneken Decl. ¶¶ 3-5; Watts Decl. ¶ 3. A loss here for California would require
16 Proposed Defendant-Intervenor to expend considerable financial and human
17 resources promoting substitute legislation or administrative action at the federal
18 level to address these concerns. Balk Decl. ¶ 8; Wells Decl. ¶ 10; Hanneken Decl. ¶
19 8; Watts Decl. ¶ 6; Baur Decl. ¶ 6; von Schlichten Decl. ¶ 6; Lowrey Decl. ¶ 10.
20 Proposed Defendant-Intervenor thus have direct and substantial interests in the
21 outcome of this litigation.

22 Further, Proposed Defendant-Intervenor’s interests in the subject matter of
23 this litigation may not be adequately represented by California, which represents all
24 stakeholders, including the agriculture industry. That is, while Proposed
25 Defendant-Intervenor’s entry into the case will not in any way enlarge the issues
26 before the Court, Proposed Defendant-Intervenor will likely make arguments that
27 California will not make. California must balance competing political and
28 economic constraints in defending the law. For example, California may not want

1 to argue that selling veal from calves raised in veal crates with less than 43 square
2 feet of floor space is inherently cruel, since the State is allowing the sale of those
3 products until the end of this year. *See* Cal. Health & Safety Code § 25991. By
4 contrast, Proposed Defendant-Intervenors have supported laws like Proposition 12
5 and can bring a perspective on those laws that the State may not have. Proposed
6 Defendant-Intervenors also can assist the Court in its analysis because they have
7 extensive experience, not shared by California, regarding the right of states to
8 restrict the sale of cruelly produced goods and in preventing cruelty to pregnant
9 pigs, calves raised for veal, and egg-laying hens. As advocates for farm animals for
10 several decades, Proposed Defendant-Intervenors will also bring a wealth of
11 expertise with respect to animal cruelty legislation like Prop 12, and also have a
12 wealth of knowledge on animal welfare and pig, calf, and hen welfare issues that
13 the State may not possess. *See, e.g.*, Balk Decl. ¶¶ 4-5; Wells Decl. ¶¶ 2, 11;
14 Hanneken Decl. ¶¶ 3-5; Watts Decl. ¶ 3; Baur Decl. ¶ 4; von Schlichten Decl. ¶ 3;
15 Lowrey Decl. ¶¶ 5-6. Thus, Proposed Defendant-Intervenors will bring important
16 facts and unique legal arguments to the Court in this litigation.

17 **III. ARGUMENT**

18 **A. Proposed Defendant-Intervenors Are Entitled to Intervene As a** 19 **Matter of Right.**

20 Proposed Defendant-Intervenors easily meet the standard for intervention as
21 of right. In the Ninth Circuit, an application for intervention under Rule 24(a)(2) is
22 governed by a four-part test:

- 23 (1) [T]he motion must be timely; (2) the applicant must
24 claim a “significantly protectable” interest relating to the
25 property or transaction which is the subject of the action;
26 (3) the applicant must be so situated that the disposition of
27 the action may as a practical matter impair or impede its
28 ability to protect that interest; and (4) the applicant’s
interest must be inadequately represented by the parties to
the action.

California ex rel. Lockyer v. United States, 450 F.3d 436, 440-41 (9th Cir. 2006)

1 (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993), *abrogated on*
2 *other grounds by Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir.
3 2011)). The requirements of Rule 24 are to be “construed broadly in favor of
4 intervention.” *United States v. Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996).

5 **1. The Motion to Intervene is Timely.**

6 “In determining whether a motion for intervention is timely, we consider
7 three factors: ‘(1) the stage of the proceeding at which an applicant seeks to
8 intervene; (2) the prejudice to other parties; and (3) the reason for and length of the
9 delay.’” *County of Orange v. Air California*, 799 F.2d 535, 537 (9th Cir. 1986)
10 (quoting *League of United Latin American Citizens v. Wilson*, 131 F.3d 1297, 1302
11 (9th Cir. 1997)). Proposed Defendant-Intervenors easily satisfy the “timeliness”
12 factor, as the motion to intervene was filed within one month after Plaintiff
13 commenced this action and before the State Defendants have filed a responsive
14 pleading, and before any substantive decisions have been rendered. Upon learning
15 of the lawsuit, Proposed Defendant-Intervenors acted as quickly as possible to seek
16 party status so that they might protect their substantial interests in this matter. In
17 order to conserve the Court’s and the parties’ resources, Proposed Defendant-
18 Intervenor HSUS then assembled a coalition of six other groups to file together and
19 avoid multiple intervention motions. Moreover, there is clearly no prejudice to any
20 party by granting Proposed Defendant-Intervenors’ motion to intervene at this early
21 stage in the proceedings. Plaintiff filed this lawsuit and request for injunction on
22 October 4, 2019. No hearing has been held on the injunctive relief, and the State
23 Defendants’ response to the request was filed just one day ago on October 28,
24 2019.²

25
26
27 ² A hearing on Plaintiff’s motion for preliminary injunction has been set for
28 November 18, 2019 at 10:00 AM before this Court. *See* Dkt. No. 15. The State
Defendants’ responsive pleading is due November 27, 2019 pursuant to an order
granting a stipulated extension. *See* Dkt. No. 22.

1 **2. Proposed Defendant-Intervenors Have a Significantly**
2 **Protectable Interest in Defending Proposition 12.**

3 Proposed Defendant-Intervenors also have a “significantly protectable
4 interest relating to the . . . transaction which is the subject of the action.” *California*
5 *ex rel. Lockyer*, 450 F.3d 440-41, *abrogated on other grounds by Wilderness Soc’y*,
6 630 F.3d 1173. The interest requirement “is primarily a practical guide to
7 disposing of lawsuits by involving as many apparently concerned persons as is
8 compatible with efficiency and due process,” *S. Cal. Edison Co. v. Lynch*, 307 F.3d
9 794, 803 (9th Cir. 2002) (quotation omitted), and applicants need not demonstrate a
10 “specific legal or equitable interest” in the suit. *United States v. City of Los*
11 *Angeles*, 288 F.3d 391, 398 (9th Cir. 2002). Instead, a proposed intervenor need
12 only show: “(1) it asserts an interest that is protected under some law, and (2) there
13 is a ‘relationship’ between its legally protected interest and the plaintiff’s claims,”
14 *i.e.*, that the “resolution of the plaintiff’s claims actually will affect the applicant.”
15 *Id.* (quotation omitted).

16 Here, Proposed Defendant-Intervenors undeniably have a “significant
17 protectable interest” in upholding Proposition 12 because Proposed Defendant-
18 Intervenors were architects, supporters, and chief proponents of the initiative. *See*
19 *Balk Decl.* ¶¶ 7-8; *Wells Decl.* ¶¶ 7-9; *Hanneken Decl.* ¶¶ 6-8; *Watts Decl.* ¶¶ 4-6;
20 *Baur Decl.* ¶¶ 5-6; *von Schlichten Decl.* ¶¶ 4-6; *Lowrey Decl.* ¶¶ 7-10. As the
21 Ninth Circuit and other federal courts have repeatedly held, proponents and active
22 supporters of legislative measures, like Proposed Defendant-Intervenors here, have
23 a sufficient “protectable interest” to intervene to defend those measures.
24 Specifically, a “public interest group [i]s entitled as a matter of right to intervene in
25 an action challenging the legality of a measure which it has supported.” *Sagebrush*
26 *Rebellion, Inc. v. Watt*, 713 F.2d 525, 527 (9th Cir. 1983); *see also Prete v.*
27 *Bradbury*, 438 F.3d 949, 955 (9th Cir. 2006) (same; “main supporter” of
28 legislation); *Wash. State Bldg. & Const. Trades Council, AFL-CIO v. Spellman*,

1 684 F.3d 627, 630 (9th Cir. 1982) (“public interest group that sponsored the
2 initiative, was entitled to intervention as a matter of right under Rule 24(a)”); *Vivid*
3 *Entertainment, LLC v. Fielding*, 2013 WL 1628704, at *4 (C.D.Cal. 2013). There
4 is no reason to depart from this Circuit’s precedent here.

5 Proposed Defendant-Intervenors were undoubtedly the “main supporter[s]
6 and chief proponents of the law.” *Prete*, 438 F.3d at 955. They directly assisted in
7 both drafting the language and promoting passage of the initiative, and expended
8 substantial resources to assist in its passage. *See* Balk Decl. ¶ 6; Wells Decl. ¶¶ 7-
9 9; Hanneken Decl. ¶¶ 6-8; Watts Decl. ¶¶ 4-5; Baur Decl. ¶ 5; von Schlichten Decl.
10 ¶¶ 4-5; Lowrey Decl. ¶¶ 7-9. Proposed Defendant-Intervenors were all active
11 supporters of Proposition 12 in the months leading up to and well after the passage
12 of the Act. *Id.*

13 **3. Proposed Defendant-Intervenors’ Interests Will Be**
14 **Impaired If Plaintiff Succeeds in Invalidating Section**
25990(b).

15 Proposed Defendant-Intervenors also satisfy the intervention requirements
16 because the “disposition of the action may as a practical matter impair or impede”
17 Proposed Defendant-Intervenors’ “ability to protect [their] interest.” *Wetlands*
18 *Action Network*, 222 F.3d at 1113; Fed. R. Civ. P. 24(a). Rule 24(a) does not
19 require that the applicant’s interest be actually or legally impaired, only that the
20 applicant “be substantially affected in a practical sense.” *Southwest Ctr. For*
21 *Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2011) (quotation omitted).
22 Here, Plaintiff’s lawsuit threatens to undo the results of Proposed Defendant-
23 Intervenors’ extensive and costly advocacy efforts with respect to the passage of
24 Proposition 12.

25 Section 25990(b) is a critical component of the Proposed Defendant-
26 Intervenors’ broader campaign to eradicate extreme confinement practices.
27 Protecting farm animals is central to each of their missions, and in furtherance of
28 these missions the Proposed Defendant-Intervenors spent significant time and

1 resources to secure passage of Proposition 12. *See, e.g.*, Balk Decl. ¶¶ 4-6; Wells
2 Decl. ¶¶ 7-9; Hanneken Decl. ¶¶ 3-7; Watts Decl. ¶¶ 3-5; Baur Decl. ¶¶ 4-5; von
3 Schlichten Decl. ¶ 3-5; Lowrey Decl. ¶¶ 5-9. If the Court enjoins section
4 25990(b), extensive advocacy, legal, staffing, and monetary commitments to the
5 passage and preservation of Proposition 12 would be nullified. *See, e.g.*, Balk Decl.
6 ¶¶ 7-8; Wells Decl., ¶¶ 7-10; Hanneken Decl. ¶ 8; Watts Decl. ¶ 6; Baur Decl. ¶ 6;
7 von Schlichten Decl. ¶ 6; Lowrey Decl. ¶ 10; *see also Sagebrush Rebellion*, 713
8 F.2d at 528 (finding there was “no serious dispute” that applicant’s interest might
9 be impaired if proponents of measure were not allowed to intervene in challenge to
10 that measure); *see also Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1398
11 (9th Cir. 1995) (finding impairment where action could lead to reversal of
12 administrative decision actively supported by applicants for intervention).

13 If the Court entered the requested injunction, Proposed Defendant-
14 Intervenors would need to expend additional resources to secure alternative farm
15 animal protections. *See, e.g.*, Balk Decl. ¶¶ 7-8; Wells Decl., ¶¶ 8-10; Hanneken
16 Decl. ¶ 8; Watts Decl. ¶ 6; Baur Decl. ¶ 6; von Schlichten Decl. ¶ 6; Lowrey Decl. ¶
17 10. These efforts could include drafting and advocating for new legislation,
18 reactivating grassroots engagement of members and supporters, and conducting
19 investigations into farm animal practices to expose cruel confinement practices and
20 generate support for protective measures. *Id.*

21 The loss of section 25990(b) could also harm the Proposed Defendant-
22 Intervenors’ efforts to pass and preserve sales bans in other states, which would
23 undercut Proposed Defendant-Intervenors’ institutional campaigns and could lead
24 to additional cruel treatment of farm animals who are raised in extreme
25 confinement. *See California Trucking Ass’n v. Becerra*, No. 318-CV-02458-
26 BENBLM, 2019 WL 202313, at *2 (S.D. Cal. Jan. 14, 2019) (citing *Allied*
27 *Concrete*, 904 F.3d 1053, 1068 (S.D. Cal. 2018); *Californians for Safe and*
28 *Competitive Dump Truck Trans. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998)

1 (“invalidation of the . . . law being challenged would impair [intervenor] and its
2 members' interests.”).

3 For example, a negative outcome here could impact the implementation and
4 enforcement of similar laws in other states, such as Question 3 in Massachusetts, a
5 ballot initiative passed in 2016 that, like Proposition 12, prohibits the sale of pork,
6 veal, or eggs from animals held in extreme confinement. *See* Mass. Gen. Laws
7 Ann. ch. 129 App. §§ 1 *et seq.*

8 **4. Proposed Defendant-Intervenors Interests Are Not**
9 **Adequately Represented by Any of the Parties.**

10 Proposed Defendant-Intervenors’ interests diverge in important respects from
11 those of State Defendants, and are not “adequately represented by existing parties.”
12 Fed. R. Civ. P. 24(a). Specifically, while the State Defendants’ interest is in the
13 administration of their legal obligations on behalf of the general public, including
14 the meat industry, Proposed Defendant-Intervenors have a narrower interest in
15 advocating for prevention of cruelty to animals and the interests of their members.

16 This test is a low bar to intervention: an applicant need only demonstrate that
17 representation of its interest by existing parties “may be” inadequate. *Trbovich v.*
18 *United Mine Workers of Am.*, 404 U.S. 528, 528 n.10 (1972). “The burden of
19 making this showing is minimal.” *Sagebrush Rebellion*, 713 F.2d at 528. In
20 determining whether a proposed intervenor is adequately represented, the Court
21 should

22 consider whether the interest of a present party is such
23 that it will undoubtedly make all the intervenor’s
24 arguments; whether the present party is capable and
25 willing to make such arguments; and whether the
26 intervenor would offer any necessary elements to the
27 proceeding that the other parties would neglect.

26 *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1498-99 (9th Cir.
27 1995), *abrogated on other grounds by Wilderness Soc’y*, 630 F.3d 1173.

28 The Ninth Circuit has granted intervention in many instances where, as here,

1 the proposed intervenors have an interest that is different than that of the
2 government, the result of which is that the government may not make all the
3 proposed intervenor’s arguments. *California ex rel. Lockyer*, 450 F.3d at 440-41,
4 *abrogated on other grounds by Wilderness Soc’y*, 630 F.3d 1173 (granting
5 intervention where government defendant could offer limiting construction in
6 defense of state); *Southwest Ctr. For Biological Diversity v. Berg*, 268 F.3d 810,
7 822 (9th Cir. 2011) (government did not adequately represent interests of building
8 trade association because of government’s broader range of considerations); *Forest*
9 *Conservation Council*, 66 F.3d at 1499, *abrogated on other grounds by Wilderness*
10 *Soc’y*, 630 F.3d 1173 (noting that the federal government represents a “broader
11 view” than the interest of a state and county).

12 Proposed Defendant-Intervenors’ interests are not coextensive with those of
13 State Defendants in this litigation. State Defendants’ interests are in the
14 administration of their legal obligations, as they are charged with enforcing the laws
15 enacted by the California legislature on behalf of the public at large, which includes
16 the meat industry. But they have no specific mandate to advocate for the humane
17 treatment of animals, nor do they represent humane interests above others. State
18 Defendants’ interests may also be motivated by unrelated factors, including
19 financial, political, or other pressures. On the other hand, defense of Proposition 12
20 is central to the basic missions of Proposed Defendant-Intervenors to ensure that
21 egregious animal cruelty is prevented and prohibited.

22 While both the Defendants and the Proposed Defendant-Intervenors have an
23 interest in preserving Proposition 12, the Proposed Defendant-Intervenors’ interests
24 are broader. As described above, the outcome of this litigation has implications for
25 the Proposed Defendant-Intervenors’ efforts to preserve and support existing state
26 farm animal protections and sales bans and to continue to advocate for other
27 similar bans – interests that Defendants do not possess. Thus, beyond mere defense
28 of the law, the Proposed Defendant-Intervenors are intervening because of the

1 potentially precedential nature of this case and the impact it could have on their
2 work elsewhere. While Defendants would understandably advocate for any ruling
3 that preserves Proposition 12, the Proposed Defendant-Intervenors may advocate
4 for specific rulings that would help preserve other (similar but not necessarily
5 identical) laws. *See California Trucking Ass'n v. Becerra*, No. 318-CV-02458-
6 BENBLM, 2019 WL 202313, at *3 (S.D. Cal. Jan. 14, 2019) (“courts recognize
7 that the interests of . . . intervenors in protecting their members are more “narrow”
8 and “parochial” than California State officials’ broad and more abstract interest in
9 defending the laws of the State”).

10 Additionally, due to decades of experience both litigating and advocating for
11 the humane treatment of farm animals, and working to enforce anti-cruelty laws,
12 Proposed Defendant-Intervenors bring to bear extensive factual and legal
13 knowledge that may not be shared in full by State Defendants. Since Proposed
14 Defendant-Intervenors meet the “minimal” showing necessary on this factor,
15 *Trbovich*, 404 U.S. at 538 n.10, and also satisfy all other requirements under Rule
16 24(a), this Court should grant their motion to intervene as of right.

17 **B. In the Alternative, Proposed Defendant-Intervenors Should Be**
18 **Granted Permissive Intervention.**

19 Although Proposed Defendant-Intervenors satisfy the criteria for intervention
20 of right under Rule 24(a), in the alternative, this Court should exercise its discretion
21 and allow the applicants to intervene permissively under Rule 24(b). A court may
22 grant permissive intervention “where the applicant for intervention shows (1)
23 independent grounds for jurisdiction; (2) the motion is timely; and (3) the
24 applicant’s claim or defense, and the main action, have a question of law or a
25 question of fact in common.” *United States v. City of Los Angeles*, 288 F.3d at 403
26 (citations omitted). This Court has an independent ground for jurisdiction based on
27 the federal questions raised in the complaint, *see* 28 U.S.C. § 1331, and as
28 discussed above, Proposed Defendant-Intervenors’ application is timely and will

1 not prejudice the parties or cause any undue delay. *See Freedom from Religion*
2 *Foundation, Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011) (“the independent
3 jurisdictional grounds requirement does not apply to proposed intervenors in
4 federal-question cases when the proposed intervenor is not raising new claims.”).

5 Most importantly, Proposed Defendant-Intervenors’ defenses and the main
6 action have more than a “question of law or a question of fact in common.” *Id.*
7 Indeed, Proposed Defendant-Intervenors’ defenses are based solely on legal
8 arguments as to the insufficiency of the claims raised by the Plaintiff. Thus,
9 Proposed Defendant-Intervenors should be allowed to intervene permissively under
10 Rule 24(b) even if intervention as of right is not granted.

11 **IV. CONCLUSION**

12 For the foregoing reasons, Proposed Defendant-Intervenors’ motion to
13 intervene should be granted.

14 Dated: October 29, 2019

RILEY SAFER LLP

16 /s/ Bruce A. Wagman

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20 *Intervenors*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

‘O’

Case No.	2:19-CV-08569-CAS (FFMx)	Date	November 22, 2019
Title	N. AMERICAN MEAT INSTITUTE V. BECERRA, ET AL.		

A. Proposed Intervenors’ Motion To Intervene

Intervenors propose to intervene in this action as of right, and permissively. See MTI. NAMI does not oppose the motion to intervene, subject to certain conditions regarding case management to which the intervenors have agreed. See ECF No. 38.

The Court finds and concludes that intervenors have established the three elements necessary to intervene with the Court’s permission pursuant to Rule 24(b): (1) intervenors’ application—filed 25 days after the action commenced—is timely, and NAMI’s consent indicates that intervenors’ participation in the case will not cause prejudice to any opposing party; (2) there are independent grounds for jurisdiction because this is a federal question case and intervenors do not propose to raise any new claims, see Freedom from Religion Foundation, Inc. v. Geithner, 644 F.3d 836, 844 (9th Cir. 2011); and (3) the intervenors’ represent that their defenses are based on the same legal arguments that the state has raised, such that there are questions of law and fact in common between their defense and the main action. See San Jose Mercury News, Inc., 187 F.3d at 1100.

The intervenors’ motion is accordingly **GRANTED**. The intervenors shall be permitted to intervene in this action pursuant to parties’ stipulated conditions: (1) the intervenors will abide by the same deadlines applicable to the original defendants; (2) the intervenors will make joint filings (rather than separate, individual filings); and (3) the proposed intervenors will not seek discovery from NAMI or its members, and NAMI will not seek discovery from the proposed intervenors or their members, except that both NAMI and the intervenors may ask questions at depositions, if any.

B. NAMI’s Motion For A Preliminary Injunction

NAMI moves for a preliminary injunction on all three of its asserted claims for relief pursuant to the Commerce Clause. See PI at 7-23. According to NAMI, unless the Court enjoins Proposition 12, its members will suffer irreparable harm in the form of constitutional injury, and noncompensable money damages. Id. at 24-25. California opposes on grounds that NAMI is unlikely to succeed on its claims because it lacks associational standing, see PI Opp. at 5-6, because the Ninth Circuit and the Supreme Court has rejected each of its substantive theories of relief, id. at 6-18, and because NAMI’s members injuries would not, in any event, be irreparable, id. at 18-20.

Exhibit C

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The Humane Society of the United States, Animal
Legal Defense Fund, Animal Equality, The Humane
League, Farm Sanctuary, Compassion in World
Farming USA, Compassion Over Killing*

13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15
16 NORTH AMERICAN MEAT
17 INSTITUTE,

18 Plaintiff,

19 v.

20 XAVIER BECERRA, in his official
21 capacity as Attorney General of
22 California, KAREN ROSS, in her
23 official capacity as Secretary of the
24 California Department of Food and
25 Agriculture, and SONIA ANGELL, in
26 her official capacity as Acting
27 Director of the California Department
28 of Public Health,

Defendants,

and

Case No. 2:19-cv-08569-CAS (FFMx)

**ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S
COMPLAINT**

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THE HUMANE SOCIETY OF THE
UNITED STATES, ANIMAL
LEGAL DEFENSE FUND, ANIMAL
EQUALITY, FARM SANCTUARY,

COMPASSION IN WORLD
FARMING USA, THE HUMANE
LEAGUE, and COMPASSION
OVER KILLING,

Defendant-Intervenors.

ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANT-INTERVENORS

Pursuant to Federal Rule of Procedure 24(c), the Humane Society of the United States, the Animal Legal Defense Fund, Animal Equality, Farm Sanctuary, Compassion in World Farming USA, The Humane League, and Compassion Over Killing (collectively, “Defendant-Intervenors”) submit this Answer and Affirmative Defenses to Plaintiff’s Complaint to accompany Defendant-Intervenors’ Motion for Leave to Intervene.

INTRODUCTION AND SUMMARY

1. This paragraph sets forth Plaintiff’s characterization of the nature and basis of Plaintiff’s action to which no response is required. In addition, to the extent that the second sentence contains Plaintiff’s characterization of Section 25990 of Title 13.8 of the California Health & Safety Code (“Proposition 12”) no response is required and the Court is referred to that act for a full and accurate statement of its provisions. Cal. Health & Safety Code § 25990. To the extent an answer is required for these allegations, Intervenor-Defendants deny them.

2. This paragraph sets forth Plaintiff’s characterization of the nature and basis

1 of Plaintiff's action to which no response is required. To the extent that the second
2 sentence contains Plaintiff's characterization of Section 25990(b), no response is
3 required and the Court is referred to this act for a full and accurate statement of
4 their provisions. Cal. Health & Safety Code § 25990. To the extent an answer is
5 required for these allegations, Intervenor-Defendants deny them.

6 3. This paragraph contains Plaintiff's characterization of Proposition 12, to
7 which no response is required. Defendant-Intervenors refer the Court to that act for
8 a full and accurate statement of its provisions. *See* Cal. Health & Safety Code §
9 25990. To the extent an answer is required for these allegations, Intervenor-
10 Defendants deny them.

11 4. This paragraph contains Plaintiff's characterization of Proposition 12 and
12 legal conclusions, to which no response is required. Defendant-Intervenors refer the
13 Court to that act for a full and accurate statement of its provisions. *See* Cal. Health
14 & Safety Code § 25990. To the extent an answer is required for these allegations,
15 Intervenor-Defendants deny that Proposition 12 violates the United States
16 Constitution.

17 5. This paragraph contains Plaintiff's characterization of Proposition 12 and
18 legal conclusions and baseless conclusions of fact, to which no response is required.
19 Defendant-Intervenors refer the Court to that act for a full and accurate statement of
20 its provisions. *See* Cal. Health & Safety Code § 25990. To the extent an answer is
21 required for these allegations, Intervenor-Defendants deny each allegation in this
22 paragraph.

23 6. This paragraph contains Plaintiff's characterization of Proposition 12, and
24 legal conclusions to which no response is required. Defendant-Intervenors refer the
25 Court to that section for a full and accurate statement of its provisions. *See* Cal.
26 Health & Safety Code § 25990. To the extent an answer is required for these
27 allegations, Intervenor-Defendants deny each allegation in this paragraph.

28 7. This paragraph contains Plaintiff's characterization of Proposition 12, and

1 legal conclusions to which no response is required. Defendant-Intervenors refer the
2 Court to that section for a full and accurate statement of its provisions. *See* Cal.
3 Health & Safety Code § 25990. To the extent an answer is required for these
4 allegations, Defendant-Intervenors deny each allegation in this paragraph.

5 ///
6 ///

7 **THE PARTIES**

8 **PLAINTIFF**

9 8. Defendant-Intervenors are without sufficient knowledge or information to
10 confirm or deny this allegation.

11 9. The second sentence of this paragraph contains a legal conclusion to which
12 no response is required. In addition, Defendant-Intervenors are without knowledge
13 or information sufficient to confirm or deny the allegations in the first, third and
14 fourth sentences of this paragraph, and to the extent an answer is required for these
15 allegations, Intervenor-Defendants deny each.

16 10. Defendant-Intervenors are without sufficient knowledge or information to
17 confirm or deny this allegation. This allegation contains a legal conclusion to which
18 no response is required. To the extent an answer is required for these allegations,
19 Defendant-Intervenors deny each.

20 11. This paragraph contains legal conclusions to which no response is required.

21 **DEFENDANTS**

- 22 12. Admit.
- 23 13. Admit.
- 24 14. Admit.

25 **JURISDICTION AND VENUE**

26 15. This paragraph contains a legal conclusion to which no response is
27 required.

28 16. This paragraph contains legal conclusions to which no response is

1 required.

2 17. The first sentence of this paragraph contains a legal conclusion to which no
3 response is required. In addition, Defendant-Intervenors are without knowledge or
4 information sufficient to confirm or deny the allegations in the second sentence of
5 this paragraph.

6 ///

7 **LEGAL AND FACTUAL BACKGROUND**

8 **A. Proposition 2 and Assembly Bill 1437**

9 18. Admit.

10 19. Admit.

11 20. This paragraph contains Plaintiff's characterization of Proposition 2, to
12 which no response is required, and the Court is referred to that section for a full and
13 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25996. To the
14 extent an answer is required for these allegations, Defendant-Intervenors deny each.

15 21. This paragraph contains Plaintiff's characterization of AB 1437, to which no
16 response is required, and the Court is referred to that section for a full and accurate
17 statement of its provisions. *See* Cal. Health & Safety Code § 25996. To the extent
18 an answer is required for these allegations, Defendant-Intervenors deny each.

19 22. This paragraph contains Plaintiff's characterization of AB 1437, to which no
20 response is required, and the Court is referred to that section for a full and accurate
21 statement of its provisions. *See* Cal. Health & Safety Code § 25996. To the extent
22 an answer is required for these allegations, Defendant-Intervenors deny each.

23 **B. Proposition 12**

24 23. Admit.

25 24. Admit.

26 25. Deny.

27 26. This paragraph contains Plaintiff's characterization of Proposition 12, to
28 which no response is required, and the Court is referred to that act for a full and

1 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25990. To the
2 extent an answer is required for these allegations, Defendant-Intervenors deny each.

3 27. This paragraph contains Plaintiff's characterization of Proposition 12, to
4 which no response is required, and the Court is referred to that act for a full and
5 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25991.

6 28. This paragraph contains Plaintiff's characterization of Proposition 12, to
7 which no response is required, and the Court is referred to that act for a full and
8 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25991.

9 29. This paragraph contains Plaintiff's characterization of Proposition 12, to
10 which no response is required, and the Court is referred to that act for a full and
11 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25991.

12 30. This paragraph contains Plaintiff's characterization of Proposition 12, to
13 which no response is required, and the Court is referred to that act for a full and
14 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25991.

15 31. This paragraph contains Plaintiff's characterization of Proposition 12, to
16 which no response is required, and the Court is referred to that section for a full and
17 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25992.

18 32. The first sentence contains a legal conclusion to which no response is
19 required, to the extent a response is required, this allegation is denied. The second
20 sentence of this paragraph contains Plaintiff's characterization of Proposition 12, to
21 which no response is required, and the Court is referred to that section for a full and
22 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25990.

23 33. This paragraph contains Plaintiff's characterization of Proposition 12, to
24 which no response is required, and the Court is referred to that section for a full and
25 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25991.

26 34. The first and second sentences of this paragraph contain legal conclusions
27 and Plaintiff's characterization of Proposition 12, to which no response is required,
28 and the Court is referred to that section for a full and accurate statement of its

1 provisions. *See* Cal. Health & Safety Code § 25991. To the extent a response to
2 these allegations is required, Defendant-Intervenors deny each.

3 35. This paragraph contains Plaintiff's characterization of Proposition 12, to
4 which no response is required, and the Court is referred to that section for a full and
5 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25993.

6 36. This paragraph contains Plaintiff's characterization of Proposition 12, to
7 which no response is required, and the Court is referred to that section for a full and
8 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25993.

9 **C. Legislative Analyst's Office Report For Proposition 12.**

10 37. Admit.

11 38. Admit.

12 39. Admit.

13 40. This paragraph contains Plaintiff's characterization of a Legislative
14 Analyst's Office report, to which no response is required, and the Court is referred
15 to that section for a full and accurate statement of its provisions. *See*
16 <https://lao.ca.gov/BallotAnalysis/Proposition?number=12&year=2018>.

17 41. This paragraph contains Plaintiff's characterization of a Legislative
18 Analyst's Office report, to which no response is required, and the Court is referred
19 to that section for a full and accurate statement of its provisions. *See*
20 <https://lao.ca.gov/BallotAnalysis/Proposition?number=12&year=2018>.

21 **D. Implementing Regulations**

22 42. The first sentence of this paragraph contains Plaintiff's characterization of
23 Proposition 12, to which no response is required, and the Court is referred to that
24 section for a full and accurate statement of its provisions. *See* Cal. Health & Safety
25 Code § 25993. In addition, Defendant-Intervenors are without knowledge or
26 information sufficient to confirm or deny the allegations in the second sentence of
27 this paragraph, to the extent a response is required Defendant-Intervenors deny this
28 allegation.

1 43. Defendant-Intervenors are without sufficient knowledge or information to
2 confirm or deny this allegation.

3 **CLAIMS FOR RELIEF**

4 **FIRST CLAIM**

5 **(Discrimination in Violation of the Commerce Clause)**

6 44. To the extent Plaintiff realleges and incorporates all preceding paragraphs,
7 Defendant-Intervenors refer the Court to their responses to the specific preceding
8 paragraphs.

9 45. This paragraph contains a legal conclusion to which no response is required.
10 To the extent a response is required, Defendant-Intervenors deny the allegations.

11 46. his paragraph contains a legal conclusion to which no response is required.
12 To the extent a response is required, Defendant-Intervenors deny the allegations.

13 47. Defendant-Intervenors deny the allegations in the first sentence. This
14 paragraph includes Plaintiff’s characterization of Proposition 12, to which no
15 response is required and the Court is referred to that act for a full and accurate
16 statement of its provisions. *See* Cal. Health & Safety Code § 25990, *et seq.* This
17 paragraph also includes Plaintiff’s characterization of legislative documents
18 pertaining to a law (AB 1437) not challenged by Plaintiff to which no response is
19 required and the Court is referred to those documents for a full and accurate
20 statement of their provisions. *See* Cal. Assembly Comm. On Agriculture, Bill
21 Analysis of AB 1437, at 1 (May 13, 2009).

22 48. This paragraph includes Plaintiff’s characterization of Proposition 12, to
23 which no response is required and the Court is referred to that act for a full and
24 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25990, *et seq.*

25 49. The first sentence includes legal conclusions to which no response is
26 required, to the extent a response is required, Defendant-Intervenors deny these
27 allegations. Defendant-Intervenors deny the allegations in the second sentence of
28 this paragraph. This paragraph includes Plaintiff’s characterization of Proposition

1 12, to which no response is required, and the Court is referred to that act for a full
2 and accurate statement of its provisions. *See* Cal. Health & Safety Code § 25990, *et*
3 *seq.*

4 50. Defendant-Intervenors are without sufficient knowledge or information to
5 confirm or deny this allegation. To the extent a response is required to these
6 allegations, Defendant-Intervenors deny each.

7 51. This paragraph includes legal conclusions to which no response is required,
8 to the extent a response is required, Defendant-Intervenors deny these allegations.
9 This paragraph includes Plaintiff's characterization of Proposition 12, to which no
10 response is required and the Court is referred to that act for a full and accurate
11 statement of its provisions. *See* Cal. Health & Safety Code § 25990, *et seq.*

12 52. This paragraph includes Plaintiff's characterization of Proposition 12, to
13 which no response is required and the Court is referred to that act for a full and
14 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25990, *et seq.*

15 53. This paragraph includes Plaintiff's characterization of Proposition 12, to
16 which no response is required and the Court is referred to that act for a full and
17 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25990, *et seq.*

18 54. This paragraph contains a legal conclusion to which no response is required.
19 To the extent a response is required, Defendant-Intervenors deny the allegations.

20 55. Deny.

21 56. Deny.

22 57. Deny.

23 58. Deny.

24 59. The first sentence of this paragraph is denied. The second sentence of this
25 paragraph includes Plaintiff's characterization of the FMIA, to which no response is
26 required, and the Court is referred to that act for a full and accurate statement of its
27 provisions. *See* 21 U.S.C. § 601 *et seq.*

28 60. This paragraph includes Plaintiff's characterization of Proposition 12, to

1 which no response is required, and the Court is referred to that act for a full and
2 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25990, *et seq.*
3 Defendant-Intervenors deny the last sentence of this paragraph.

4 61. This paragraph contains legal conclusions to which no response is required.
5 To the extent a response is required, Defendant-Intervenors deny the allegations.

6 62. Defendant-Intervenors are without sufficient knowledge or information to
7 confirm or deny this allegation.

8 63. This paragraph contains legal conclusions to which no response is required.
9 To the extent a response is required, Defendant-Intervenors deny the allegations.

10 64. This paragraph contains a legal conclusion to which no response is required.
11 To the extent a response is required, Defendant-Intervenors deny the allegations.

12 **SECOND CLAIM**

13 **(Impermissible Extraterritorial Regulation)**

14 65. To the extent Plaintiff realleges and incorporates all preceding paragraphs,
15 Defendant-Intervenors refer the Court to their responses to the specific preceding
16 paragraphs.

17 66. This paragraph contains a legal conclusion to which no response is required.
18 To the extent a response is required, Defendant-Intervenors deny the allegations.

19 67. This paragraph contains legal conclusions to which no response is required.
20 To the extent a response is required, Defendant-Intervenors deny each allegation.

21 68. This paragraph contains legal conclusions to which no response is required.
22 To the extent a response is required, Defendant-Intervenors deny the allegations.

23 69. This paragraph contains a legal conclusion to which no response is required.
24 To the extent a response is required, Defendant-Intervenors deny the allegations.

25 70. This paragraph contains a legal conclusion to which no response is required.
26 To the extent a response is required, Defendant-Intervenors deny the allegations.

27 71. This paragraph contains a legal conclusion to which no response is required.
28 To the extent a response is required, Defendant-Intervenors deny the allegations.

1 72. This paragraph contains a legal conclusion to which no response is required.
2 To the extent a response is required, Defendant-Intervenors deny the allegations.

3 73. This paragraph contains a legal conclusion to which no response is required.
4 To the extent a response is required, Defendant-Intervenors deny the allegations.

5 74. Defendant-Intervenors are without sufficient knowledge or information to
6 confirm or deny this allegation.

7 75. This paragraph contains a legal conclusion to which no response is required.
8 To the extent a response is required, Defendant-Intervenors deny the allegations.

9 76. This paragraph contains a legal conclusion to which no response is required.
10 To the extent a response is required, Defendant-Intervenors deny the allegations.

11 **THIRD CLAIM**

12 **(Excessive Burden in Violation of the Commerce Clause)**

13 77. To the extent Plaintiff realleges and incorporates all preceding paragraphs,
14 Defendant-Intervenors refer the Court to its responses to the specific preceding
15 paragraphs.

16 78. This paragraph contains a legal conclusion to which no response is required.
17 To the extent a response is required, Defendant-Intervenors deny the allegations.

18 79. This paragraph contains Plaintiff's characterization of Proposition 12, to
19 which no response is required, and the Court is referred to that regulation for a full
20 and accurate statement of its provisions. *See* Cal. Health & Safety Code § 25990, *et*
21 *seq.* To the extent a response is required, Defendant-Intervenors deny the
22 allegations. Defendant-Intervenors deny the allegations in the second sentence.

23 80. Defendant-Intervenors are without sufficient knowledge or information to
24 confirm or deny these allegations.

25 81. Defendant-Intervenors are without sufficient knowledge or information to
26 confirm or deny these allegations.

27 82. Defendant-Intervenors are without sufficient knowledge or information to
28 confirm or deny these allegations.

1 83. This paragraph contains Plaintiff’s characterization of Proposition 12, to
2 which no response is required, and the Court is referred to that act for a full and
3 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25990, *et seq.*

4 84. This paragraph contains Plaintiff’s characterization of Proposition 12, to
5 which no response is required, and the Court is referred to that act for a full and
6 accurate statement of its provisions. *See* Cal. Health & Safety Code § 25990, *et seq.*
7 Defendant-Intervenors deny the allegations in the second sentence.

8 85. This paragraph contains legal conclusions to which no response is required.
9 To the extent a response is required, Defendant-Intervenors deny the allegations.

10 86. This paragraph contains a legal conclusion to which no response is required.
11 To the extent a response is required, Defendant-Intervenors deny the allegations.

12 87. Deny.

13 88. Defendant-Intervenors are without sufficient knowledge or information to
14 confirm or deny this allegation.

15 89. This paragraph contains a legal conclusion to which no response is required.
16 To the extent a response is required, Defendant-Intervenors deny the allegations.

17 90. This paragraph contains a legal conclusion to which no response is required.
18 To the extent a response is required, Defendant-Intervenors deny the allegations.

19 **RELIEF REQUESTED**

20 The balance of the Complaint constitutes a prayer for relief to which no
21 answer is required. Defendant-Intervenors deny that Plaintiff is entitled to the relief
22 requested, or to any relief whatsoever.

23 Defendant-Intervenors hereby deny all allegations not expressly admitted or
24 denied.

25 **FIRST AFFIRMATIVE DEFENSE**

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

27 **SECOND AFFIRMATIVE DEFENSE**

28 Plaintiff’s action and request for injunctive relief are barred because Plaintiff

1 has an adequate remedy at law.

2 **THIRD AFFIRMATIVE DEFENSE**

3 Plaintiff's action and request for injunctive relief are barred by the doctrine
4 of waiver.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 Plaintiff's action and request for injunctive relief are barred by the doctrine
7 of estoppel.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 Plaintiff's Complaint is barred because plaintiff has not suffered any injury
10 or damage.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 Plaintiff's Complaint is barred because its action is not ripe for adjudication.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 Plaintiff knowingly, voluntarily and unreasonably undertook to encounter
15 each of the risks and hazards, if any, referred to in the Complaint and each alleged
16 cause of action, and this undertaking proximately caused and contributed to any
17 loss, injury or damages incurred by Plaintiff.

18 THEREFORE, having fully answered, Defendant-Intervenors assert that
19 Plaintiff is not entitled to the relief requested, or to any relief whatsoever,
20 and requests that this action be dismissed with prejudice and that Defendant-
21 Intervenor be given such other relief as the Court deems just and proper.

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Dated: October 29, 2019

RILEY SAFER HOLMES &
CANCILA LLP

/s/ Bruce A. Wagman

Bruce A. Wagman (CSB No. 159987)
BWagman@rshc-law.com
RILEY SAFER HOLMES &
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*Counsel for Proposed Defendant-
Intervenors*

Exhibit D

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10 *Attorneys for Defendant-Intervenors*
11 *The Humane Society of the United States,*
12 *Animal Legal Defense Fund, Animal Equality,*
13 *The Humane League, Farm Sanctuary,*
Compassion in World Farming USA,
Compassion Over Killing

14 UNITED STATES DISTRICT COURT
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 NORTH AMERICAN MEAT
18 INSTITUTE,

19 Plaintiff,

20 v.

21 XAVIER BECERRA, in his official
22 capacity as Attorney General of
California, KAREN ROSS, in her
23 official capacity as Secretary of the
California Department of Food and
24 Agriculture, and SONIA ANGELL, in
25 her official capacity as Acting
26 Director of the California Department
of Public Health,

27 Defendants,
28

Case No. 2:19-cv-08569-CAS (FFMx)

**NOTICE OF MOTION AND
MOTION FOR JUDGMENT ON
THE PLEADINGS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

The Honorable Christina A. Snyder
Date: February 24, 2020
Time: 10:00 a.m.
Location: Courtroom 8D

1 The Humane Society of the United
2 States, Animal Legal Defendant
3 Fund, Animal Equality, The Human
4 League, Farm Sanctuary, Compassion
5 in World Farming USA, Compassion
6 Over Killing,

7 Defendant-
8 Intervenor.

9 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

10 **PLEASE TAKE NOTICE** that on February 24, 2020, at 10 a.m., or as soon
11 thereafter as the matter may be heard before the Honorable Christina A. Snyder in
12 courtroom 8D of the United States District Court for the Central District of
13 California located at First Street Court House, 350 W. First Street, 8th Floor, Los
14 Angeles, CA 90012, The Humane Society of the United States, the Animal Legal
15 Defense Fund, Animal Equality, The Humane League, Farm Sanctuary,
16 Compassion in World Farming USA, and Compassion Over Killing (collectively
17 “Defendant-Intervenors”) will move this Court pursuant to Rule 12(c) of the
18 Federal Rules of Civil Procedure for an order dismissing Plaintiff’s complaint with
19 prejudice. The grounds for this motion are that Plaintiff fails to state a claim upon
20 which relief can be granted.

21 This Motion is based on this Notice of Motion and Motion, the supporting
22 Memorandum of Points and Authorities, records and papers filed in this action,
23 such matters as the Court may judicially notice, and such further evidence or
24 argument as may be presented at or before the hearing of this motion.

25 Dated: November 27, 2019

RILEY SAFER HOLMES &
CANCILA LLP

26 By: */s/ Bruce A. Wagman*

BRUCE A. WAGMAN (CSB
#159987)

bwagman@rshc-law.com

Attorneys for Defendant-Intervenors

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In light of the Court’s November 22, 2019 ruling on Plaintiff’s motion for a preliminary injunction, this case is ripe for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, as a matter of law. In order to ease the paperwork burden on the Court, this memorandum will not repeat arguments from the preliminary injunction briefing, and will instead focus on the key facts and legal issues relevant to dismissal under the standard of review applicable to motions for judgment on the pleadings.

As discussed in this Court’s ruling, Proposition 12 “is intended to prevent animal cruelty by phasing out extreme methods of farm animal confinement.” Dkt. # 66 at 4 (internal citation omitted). Proposition 12 “does not have a discriminatory purpose that would invalidate it per se” and “does not, in its contemplated application, impose ‘differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.’” Dkt. # 66 at 13. Thus, it does not discriminate against out-of-state commerce. Proposition 12 simply evenhandedly “applies to in-state conduct—sales of meat products in California—not conduct that takes place wholly outside of California,” and therefore does not regulate extraterritorially. *Id.* at 21-22. And there simply “is no serious argument that Proposition 12 imposes any substantial burden on interstate commerce.” *Id.* at 25. Indeed, Proposition 12 is “directed to *how* meat products are produced, not *where*, and compliance with Proposition 12 does not require a farmer, packer, or processor to move its operations to California.” *Id.* Therefore, even taking all of the allegations in the complaint as true, Plaintiff’s claim fails as a matter of law.

II. STATEMENT OF FACTS

A more complete background of the facts of this matter is provided in Intervenor’s Memorandum of Points & Authorities In Opposition to Plaintiff’s Motion for A Preliminary Injunction (Dkt. #25), and, therefore, only a few key facts

1 relevant to this motion are provided here.

2 **A. California’s Prior Animal Welfare Legislation**

3 In 2008 and 2010 California took the first steps toward excluding cruel
4 products from its marketplace through the enactment of two laws—Proposition 2
5 and AB 1437, respectively. Proposition 2 had the primary purpose of “prevent[ing]
6 animal cruelty by phasing our extreme methods of farm animal confinement.” Cal.
7 Health & Safety Code § 25990. Proposition 2 also generally required covered
8 animals (including egg-laying hens, calves raised for veal, and pigs during
9 pregnancy) in California to be able to lie down, stand up, fully extend their limbs
10 and turn around freely. Cal. Health & Safety Code § 25991.

11 Proposition 2 did not include any numeric space requirement for covered
12 animals, nor did it include any sales restrictions; the 2008 ballot initiative
13 prohibited producers in the state from tethering or confining covered animals in a
14 way that prevented the animals from being able to engage in those behaviors
15 described in Section 25991.

16 In 2010, California’s Legislature passed AB 1437 to require that all eggs sold
17 in the state come from Proposition 2-compliant conditions—wherever the eggs
18 were produced. Cal. Health & Safety Code § 25996. As the Act’s official findings
19 explain, the Legislature passed AB 1437 “to protect California consumers from the
20 deleterious health, safety, and welfare effects of the sale and consumption of eggs
21 derived from egg-laying hens that are exposed to significant stress and may result in
22 increased exposure to disease and pathogens including salmonella.” *Id.* at §
23 25995(e).

24 Thus, prior to the 2018 passage of Proposition 12 and via combination of the
25 2008 ballot initiative and the 2010 legislative action, California required behavioral
26 (not numeric minimum space requirement) standards for animals raised by in-state
27 producers, and required that all eggs sold in the state—regardless of where they
28 were produced—were sourced from hens raised in Proposition 2-compliant

1 conditions.

2 **B. Voters Upgrade California’s Humane Legislative Framework**

3 In November of 2018, California voters again took humane legislation into
 4 their own hands and enacted Proposition 12, which for the first time sets a higher
 5 bar than Proposition 2 for animal welfare for both in-state and out-of-state
 6 producers. Proposition 12 provides that “farm owner[s] or operator[s] *within the*
 7 *State of California*” not knowingly confine covered animals “in a cruel manner.”
 8 Cal. Health & Safety Code § 25990(a) (emphasis added). “Confined in a cruel
 9 manner” is defined to mean not only the same behavioral standards of Proposition 2
 10 (*i.e.*, lying down, standing up, fully extending limbs, turning around freely), but
 11 also requires explicit amounts of usable floor space per animal: confinement with at
 12 least 43 square feet of usable floor space for calves raised for veal and at least 24
 13 square feet of usable floorspace per pig after December 31, 2019 and December 31,
 14 2021, respectively. *Id.* § 25991(e)(1)-(3).

15 Thus, prior to Proposition 12’s enactment, California imposed no numeric
 16 space allotment per animal, and Proposition 12 added those standards to the
 17 existing behavior-based standards. After Proposition 12 goes into effect, in-state
 18 and out-of-state producers that wish to sell their products in California will have the
 19 same amount of time to make any changes necessary to production practices in
 20 order to comply with Proposition 12’s new requirements. Proposition 12’s sales
 21 provision—as relevant here—requires business owners and operators to not
 22 knowingly engage in the sale *within the state* of any “(1) Whole veal meat that the
 23 business owner or operator knows or should know is the meat of a covered animal
 24 who was confined in a cruel manner,” or “(2) Whole pork meat that the business
 25 owner or operator knows or should know is the meat of a covered animal who was
 26 confined in a cruel manner, or is the meat of immediate offspring of a covered
 27 animal who was confined in a cruel manner.” *Id.* § 25990(b)(1)-(2). Like the
 28 production provision, “confined in a cruel manner” includes both the behavioral

1 standards established by Proposition 2 (which did not formerly apply to sales of
2 pork or veal products) and numeric usable space requirements for covered animals
3 described above.

4 The dates for implementation of Proposition 12’s production and sales
5 requirements apply to all covered products sold in California, regardless of where
6 those products originate. Moreover, in-state and out-of-state businesses all have the
7 same interval of time (from Proposition 12’s passage to the effective dates for each
8 type of covered product) to implement the Proposition 12 requirements if they wish
9 to sell their products in the California market.

10 Proposition 12 directs the California Department of Food and Agriculture
11 and the California Department of Public Health to “jointly promulgate rules and
12 regulations for the implementation of [Proposition 12] by September 1, 2019” *Id.* §
13 25993. These regulations have not yet been promulgated. While the provision
14 does not specify what these regulations must ultimately contain, it does not give the
15 agencies the authority to change the even-handed effective dates of Proposition 12
16 that are explicitly stated in Section 25991(e)(1)-(3).

17 **III. LEGAL STANDARD**

18 “Because a Rule 12(c) motion is functionally identical to a Rule 12(b)(6)
19 motion, the same standard of review applies to motions brought under either rule.”
20 *Gregg v. Hawaii, Dep 't of Pub. Safety*, 870 F.3d 883, 887 (9th Cir. 2017) (internal
21 citations and quotations omitted). “A judgment on the pleadings is properly
22 granted when, taking all the allegations in the pleadings as true, the moving party is
23 entitled to judgment as a matter of law.” *Id.*

24 **IV. ARGUMENT**

25 As described in the Court’s ruling on Plaintiff’s motion for a preliminary
26 injunction, Plaintiff has not raised a valid dormant Commerce Clause claim because
27 Plaintiff “fail[ed] to raise any questions on the merits of its three commerce
28 claims.” Dkt. # 66 at 25. *See Pacific Northwest Venison Producers v. Smitch*, 20

1 F.3d 1008, 1012 (9th Cir. 1994). The test for whether a law runs afoul of the
2 dormant Commerce Clause has two parts. First, the court must determine if the law
3 at issue “directly regulates or discriminates against interstate commerce” or if “its
4 effect is to favor in-state economic interests over out-of-state interests.” *Brown-*
5 *Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 579 (1986);
6 *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon*,
7 511 U.S. 93, 99 (1994) (discrimination “means differential treatment of in-state and
8 out-of-state economic interests that benefits the former and burdens the latter”).

9 If the law regulates in-state and out-of-state activities equally, and only
10 indirectly affects interstate commerce, the Court must then examine whether the
11 State’s interest is legitimate and whether the burden on interstate commerce clearly
12 exceeds the putative local benefits.” *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142
13 (1970). Proposition 12 is entirely permissible under this standard. Indeed, this
14 Court has already found that Plaintiff failed to raise any serious questions on the
15 merits of its dormant Commerce Clause claims. Dkt. # 66.

16 Plaintiff has split its dormant Commerce Clause argument into three separate
17 claims, all of which rely on a misreading of controlling law. Whether Plaintiff has
18 one Commerce Clause claim or three, though, it has not alleged what it must in
19 order to move this case forward, nor could it, and thus its claims are ripe for
20 dismissal.

21 **A. Proposition 12 Does Not Have a Discriminatory Purpose**

22 There are no facts in existence with which Plaintiff could show a
23 discriminatory purpose of Proposition 12. As the Court noted in its ruling, there is
24 no evidence “to justify an inference that the alleged ‘bad intent’ behind AB1437,” a
25 California law not at issue here upon which Plaintiff relies, “is the same ‘bad intent’
26 that motivated Proposition 12.” Dkt. # 66 at 11. Rather, the Court concluded that
27 “Proposition 12 does not have a discriminatory purpose that would invalidate it *per*
28 *se.*” *Id.* at 13. Indeed, as the Court noted, it is obligated to “assume that the

1 objectives articulated by the legislature are actual purposes of the statute, unless an
2 examination of the circumstances forces us to conclude that they could not have
3 been a goal of the legislation.” *Id.*, citing *Minnesota v. Clover Leaf Creamery Co.*,
4 449 U.S. 456, 463 n.7 (1981) (internal citation and marks omitted). Because
5 Plaintiff could not produce anything to show California voters did not have animal
6 welfare goals in enacting Proposition 12, Plaintiff has not and could not show a
7 discriminatory purpose.

8 **B. Proposition 12 Does Not Have a Discriminatory Effect**

9 Plaintiff’s claim as to differential treatment, which is really improperly
10 focused on the irremediable cost to its individual members, fails as a matter of law.
11 The Court already found that there is no impermissible discriminatory effect
12 because “Proposition 12 does not, in its contemplated application, impose
13 ‘differential treatment of in-state and out-of-state economic interests that benefits
14 the former and burdens the latter.’” Dkt. # 66 at 13, citing *Oregon Waste Systems,*
15 *Inc. v. Department of Environmental Quality of Oregon*, 511 U.S. 93, 99 (1994).
16 The Court noted that “Proposition 12 is nearly analogous to the in-state sales
17 prohibition on food products derived from force-fed birds that the Ninth Circuit
18 refused to enjoin” in *Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*,
19 729 F. 3d 937, 948-49 (9th Cir. 2013), *cert. denied*, 135 S. Ct 398. (2014). Dkt. #
20 66 at 13-14 (citing that court’s determination that “the sales prohibition’s economic
21 impact does not depend on *where* the items were produced, but rather *how* they
22 were produced” and noting that “*Eleveurs* is, in every material respect, on all fours
23 with the instant challenge, and its holding directs the Court to the conclusion that
24 Proposition 12 does not have a discriminatory effect that requires *per se*
25 invalidation”). The Court also found that “what NAMI characterizes as a
26 competitive advantage is ultimately just a preferred method of production,” which
27 is not a constitutional right and is not guaranteed by the Commerce Clause. Dkt. #
28 66, citing *Nat’l Ass’n of Optometrists & Opticians v. Harris*, 682 F.3d 1144, 1151

1 (9th Cir. 2012; *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 123-27
2 (1978). Because costs of complying with Proposition 12 do not amount to a
3 violation of the Commerce Clause, Plaintiff’s discriminatory effect claim fails as a
4 matter of law and the Court need go no further.

5 Although Plaintiff alleges that Proposition 12 somehow provided problematic
6 “lead time” to in-state producers, this issue can also be decided as a matter of law,
7 because it simply does not amount to a violation of the Commerce Clause for the
8 state’s health, safety, and moral laws to evolve over time. As this Court noted,
9 Plaintiff “cites no case law for the proposition that a statute can have a
10 discriminatory effect if a prior statute, imposing the same regulatory obligations,
11 gives in-state entities more time to comply.” Dkt. # 66 at 19 n.9. In enacting
12 Proposition 12, California built upon its long history of animal protection, most
13 recently reflected in laws like Proposition 2, and the new law(the only law at issue
14 in this case) requires a wholly new set of standards that are in addition to those
15 established in 2008 by Proposition 2. The numeric/space standards of Proposition
16 12 create a new baseline—they guarantee a new minimum space standard never
17 suggested or addressed by Proposition 2. So even if California producers are now
18 fully compliant with Proposition 2, they will need to ensure that their confinement
19 practices are compliant with the new Proposition 12 standards, and have the same
20 amount of time to do it as out-of-state producers. Simply put, Proposition 12 is the
21 first time that veal and pork producers—whether in-state or out-of-state—must
22 refrain from cruelly confining animals in spaces smaller than the standards set forth
23 in Proposition 12 in order to sell their products in the state. Plaintiff’s claim that
24 this creates a constitutional problem proves too much, because were Plaintiff
25 correct, it would be a constitutional problem every time a state builds upon
26 protections for its citizens it had previously enacted. For example, the state’s 1971
27 law requiring adequate exercise area could be said to have given in-state producers
28 lead-time when it comes to Proposition 12. Cal. Penal Code § 597t. And any

1 health and safety laws involving toxic chemicals or other harmful substances could
 2 constitute “lead time” over states with lesser standards. Thus, to cry
 3 unconstitutional foul any time certain compliance obligations fall on in-state
 4 entities before additional obligations fall on out-of-state entities leads to absurd
 5 results.

6 Because the undisputed facts show that all producers who wish to sell in the
 7 state have to comply with the new standards of Proposition 12 at the same time,
 8 Plaintiff’s allegation that there is a constitutional problem with some fabricated
 9 “lead time” injury fails as a matter of law.

10 **C. Proposition 12 Does Not Directly Regulate Extraterritorial Conduct**

11 Plaintiff’s extraterritoriality theory fails as a matter of law, because
 12 Proposition 12 simply does not regulate out-of-state activity. As the Court noted in
 13 its prior ruling, “NAMI has not raised any serious questions on the merits of its
 14 extraterritoriality claim.” Dkt. # 66 at 23. Plaintiff “does not contend that
 15 Proposition 12 attempts to control the price of veal or pork, or link prices paid for
 16 veal or pork in California to those paid out of state.” *Id.* at 20. And the Supreme
 17 Court has “indicated that the extraterritoriality doctrine’s application is essentially
 18 limited to cases involving the sorts of price-setting statutes that those cases
 19 addressed.” *Id.* at 19, citing *Pharm. Research & Mfrs. Of Am. v. Walsh*, 538 U.S.
 20 644, 669 (2003); *Chinatown Neighborhood Ass’n v. Harris*, 794 F. 3d 1136, 1146
 21 (9th Cir. 2015) (noting that the extraterritoriality doctrine is “not applicable to a
 22 statute that does not dictate the price of a product and does not tie the price of its in-
 23 state products to out-of-state prices”). The Court further noted that even if the
 24 extraterritoriality doctrine were applied to non-price regulations such as Proposition
 25 12, its “in-state sales prohibition only applies to ‘in-state conduct’—sales of meat
 26 products in California— not conduct that takes place ‘wholly outside of
 27 California’” and that Proposition 12 is “accordingly a perfectly lawful exercise of
 28 California’s ‘state sovereignty protected by the Constitution.’” Dkt. # 66 at 21-22,

1 citing *Rocky Mountain Farmers Union v. Corey*, 913 F.3d 940, 952 (9th Cir. 2019)
 2 (internal citations omitted).

3 As with its other efforts to squeeze a Commerce Clause claim out of the fair
 4 application of a law to in-state conduct, Plaintiff fails to establish that the law
 5 regulates in an impermissible extraterritorial manner.

6 **D. Proposition 12 Does Not Levy a Substantial Burden on Interstate**
 7 **Commerce**

8 Plaintiff's claim that there is a substantial burden on interstate commerce
 9 fails as a matter of law, because the impacts they are claiming are only on
 10 individual companies, and not on the market as a whole, as the Ninth Circuit
 11 requires. Under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), a plaintiff "must
 12 first show that the statute imposes a substantial burden before the court will
 13 determine whether the benefits of the challenge laws are illusory," or otherwise
 14 inadequate to justify the burden. *Eleveurs*, 729 F.3d at 951-52 (internal quotation
 15 omitted). As the Court noted in its ruling, however, "there is no serious argument
 16 that Proposition 12 imposes any substantial burden on interstate commerce, as that
 17 term is understood." Dkt. # 66 at 25. The Court very clearly found that
 18 "Proposition 12 does not present the potential for inconsistent regulation of
 19 activities that require a uniform system of regulation" and that the alleged burdens
 20 pled by Plaintiff "do not demonstrate that Proposition 12 will interfere with the
 21 flow of veal or pork products into California inasmuch as they demonstrate
 22 NAMI's disappointment that Proposition 12 'precludes a preferred, more profitable
 23 method of operating in a retail market.'" *Id.*, citing *Optometrists*, 682 F.3d at 1155.
 24 The Court further found that Proposition 12 does not impose barriers to conducting
 25 commerce across state lines similar to those in *Pike* because "it is directed to *how*
 26 meat products are produced, not *where*, and compliance with Proposition 12 does
 27 not require a farmer, packer, or processor to move its operations to California."
 28 Rather, Proposition 12 "applies evenly no matter where production takes place" and

1 Plaintiff’s allegations as to a “substantial burden” are “ultimately a complaint about
2 the cost of complying with Proposition 12’s requirements.” Dkt. # 66 at 25. This is
3 insufficient under *Pike*, as the Court noted. *Id.*, citing *S. Pac. Transp. Co. v. Pub.*
4 *Utilities Comm’n of State of Cal.*, 647 F. Supp. 1220, 1227 (N.D. Cal. 1986), *aff’d*,
5 820 F. 2d 1111 (9th Cir. 1987).

6 Because Plaintiff can only at most point to impacts on individual producers,
7 rather than the market as a whole, its claim that there is a substantial burden on
8 interstate commerce fails as a matter of law.

9 **V. CONCLUSION**

10 For the foregoing reasons, Plaintiff’s claim is ripe for dismissal as a matter of
11 law and the Court should dismiss Plaintiff’s complaint with prejudice.

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