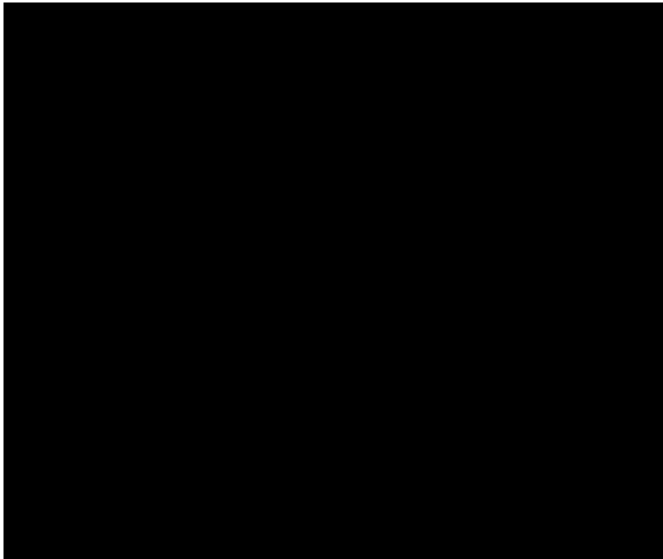


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*Attorneys for Proposed Defendant-Intervenors  
The Humane Society of the United States,  
Animal Legal Defense Fund, Animal Equality,  
The Humane League, Farm Sanctuary,  
Compassion in World Farming USA,  
Compassion Over Killing*

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

NORTH AMERICAN MEAT  
INSTITUTE,

Plaintiff,

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.<sup>1</sup> 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 <sup>1</sup> 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 (9<sup>th</sup> 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.<sup>2</sup>

25  
26  
27 <sup>2</sup> 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

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