

1 BRUCE A. WAGMAN (CSB No. 159987)
2 BWagman@schiffhardin.com
3 SCHIFF HARDIN LLP
4 One Market, Spear Street Tower
5 Thirty-Second Floor
6 San Francisco, CA 94105
7 Telephone: (415) 901-8700
8 Facsimile: (415) 901-8701

9 J. SCOTT BALLENGER (*pro hac vice pending*)
10 Scott.ballenger@lw.com
11 LATHAM & WATKINS LLP
12 555 Eleventh Street, NW, Ste. 1000
13 Washington, D.C. 20004
14 Telephone: (202) 637-2145
15 Facsimile: (202) 637-2201

16 PETER A. BRANDT (CSB No. 241287)
17 pbrandt@humanesociety.org
18 REBECCA CARY (CSB No. 268519)
19 rcary@humanesociety.org
20 THE HUMANE SOCIETY OF THE
21 UNITED STATES
22 2100 L Street, NW
23 Washington, D.C. 20037
24 Telephone: (202) 452-1100
25 Facsimile: (202) 676-2357

26 *Counsel for Proposed Defendant-Intervenor*
27 *The Humane Society of the United States*

28 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

29 THE STATE OF MISSOURI, ex rel., Chris
30 Koster, Attorney General; THE STATE OF
31 NEBRASKA, ex rel. Jon Bruning, Attorney
32 General; THE STATE OF OKLAHOMA, ex
33 rel. E. Scott Pruitt, Attorney General; THE
34 STATE OF ALABAMA, ex rel. Luther
35 Strange, Attorney General; THE
36 COMMONWEALTH OF KENTUCKY, ex
37 rel. Jack Conway, Attorney General; and
38 TERRY E. BRANSTAD, Governor of the
State of Iowa,

Plaintiffs,

v.

Case No. 2:14-cv-00341-KJM-KJN

**[PROPOSED] ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Date: April 25, 2014
Time: 10:00 a.m.
Judge: Kimberly J. Mueller

1 KAMALA D. HARRIS, in her official
2 capacity as Attorney General of California;
3 KAREN ROSS, in her official capacity as
4 Secretary of the California Department of
5 Food and Agriculture,

6 Defendants,

7 and

8 THE HUMANE SOCIETY OF THE UNITED
9 STATES,

10 Defendant-Intervenor

11 **[PROPOSED] ANSWER AND AFFIRMATIVE DEFENSES OF**
12 **THE HUMANE SOCIETY OF THE UNITED STATES**

13 Pursuant to Federal Rule of Procedure 24(c), Defendant-Intervenor The Humane Society
14 of the United States (“HSUS”) submits this Answer and Affirmative Defenses to Plaintiffs’
15 Complaint to accompany HSUS’ Motion for Leave to Intervene.

16 **JURISDICTION**

- 17 1. This paragraph contains legal conclusions to which no response is required.
18 2. This paragraph contains legal conclusions to which no response is required.

19 **NATURE OF THE CASE**

- 20 3. HSUS admits the first two sentences and the fourth sentence. HSUS is without
21 sufficient knowledge or information to confirm or deny the allegations in the third sentence.
22 4. This paragraph contains Plaintiffs’ characterization of California Health and Safety
23 Code Section 25990(a)-(b), to which no response is required. HSUS refers the Court to that
24 section for a full and accurate statement of its provisions. *See* Cal. Health & Saf. Code
25 § 25990(a)-(b).
26 5. HSUS denies the first sentence. To the extent that Plaintiffs speculate in the
27 second sentence as to the motives of the California Legislature, HSUS is without sufficient
28 knowledge or information to confirm or deny the allegations. To the extent that the second
sentence contains Plaintiffs’ characterization of California bill AB 1437, no response is required,

1 and HSUS refers the Court that bill for a full and accurate statement of its provisions. *See* AB
2 1437.

3 6. HSUS is without sufficient knowledge or information to confirm or deny the
4 allegations in the first three sentences. HSUS denies the last two sentences.

5 7. Deny.

6 8. This paragraph contains legal conclusions to which no response is required.

7 **THE PARTIES**

8 9. Admit.

9 10. This paragraph contains legal conclusions to which no response is required. To
10 the extent that a response is required, HSUS denies the allegation.

11 11. Deny.

12 12. HSUS is without sufficient knowledge or information to confirm or deny this
13 allegation.

14 13. Deny.

15 14. This paragraph contains legal conclusions to which no response is required.

16 15. This paragraph sets forth Plaintiffs' characterization of the relief they seek, to
17 which no response is required. HSUS denies that Plaintiffs are entitled to the relief requested, or
18 to any other relief.

19 16. Admit.

20 17. This paragraph contains legal conclusions to which no response is required. To
21 the extent that a response is required, HSUS denies the allegation.

22 18. HSUS is without sufficient knowledge or information to confirm or deny this
23 allegation.

24 19. Deny.

25 20. This paragraph sets forth Plaintiffs' characterization of the relief they seek, to
26 which no response is required. HSUS denies that Plaintiffs are entitled to the relief requested, or
27 to any other relief.

28 ///

1 21. Admit.

2 22. This paragraph contains legal conclusions to which no response is required. To
3 the extent that a response is required, HSUS denies the allegation.

4 23. HSUS is without sufficient knowledge or information to confirm or deny this
5 allegation.

6 24. Deny.

7 25. This paragraph sets forth Plaintiffs' characterization of the relief they seek, to
8 which no response is required. HSUS denies that Plaintiffs are entitled to the relief requested, or
9 to any other relief.

10 26. Admit.

11 27. This paragraph contains legal conclusions to which no response is required. To
12 the extent that a response is required, HSUS denies the allegation.

13 28. HSUS is without sufficient knowledge or information to confirm or deny this
14 allegation.

15 29. Deny.

16 30. This paragraph sets forth Plaintiffs' characterization of the relief they seek, to
17 which no response is required. HSUS denies that Plaintiffs are entitled to the relief requested, or
18 to any other relief.

19 31. Admit.

20 32. This paragraph contains legal conclusions to which no response is required. To
21 the extent that a response is required, HSUS denies the allegation.

22 33. HSUS is without sufficient knowledge or information to confirm or deny this
23 allegation.

24 34. Deny.

25 35. This paragraph sets forth Plaintiffs' characterization of the relief they seek, to
26 which no response is required. HSUS denies that Plaintiffs are entitled to the relief requested, or
27 to any other relief.

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1 36. Admit the first sentence. The second sentence contains legal conclusions to which
2 no response is required. To the extent that a response is required, HSUS denies the allegation.

3 37. HSUS is without sufficient knowledge or information to confirm or deny this
4 allegation.

5 38. HSUS is without sufficient knowledge or information to confirm or deny this
6 allegation.

7 39. HSUS is without sufficient knowledge or information to confirm or deny this
8 allegation.

9 40. HSUS is without sufficient knowledge or information to confirm or deny this
10 allegation.

11 41. HSUS is without sufficient knowledge or information to confirm or deny this
12 allegation.

13 42. Deny.

14 43. Deny.

15 44. This paragraph sets forth Plaintiffs' characterization of the relief they seek, to
16 which no response is required. HSUS denies that Plaintiffs are entitled to the relief requested, or
17 to any other relief.

18 45. Admit.

19 46. Admit.

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

21 48. Admit.

22 49. Admit.

23 50. This paragraph contains legal conclusions to which no response is required.

24 **FACTUAL ALLEGATIONS**

25 51. HSUS is without sufficient knowledge or information to confirm or deny this
26 allegation.

27 52. HSUS is without sufficient knowledge or information to confirm or deny this
28 allegation.

1 53. HSUS is without sufficient knowledge or information to confirm or deny this
2 allegation.

3 54. Deny. The source Plaintiffs cite states, “there is no production data available for
4 some States,” including Missouri. Compl. Exh. E at 5. It also only supports an inference that
5 Missouri sends 415 million shell eggs (the only eggs covered by AB 1437) to California. *Id.*

6 55. HSUS is without sufficient knowledge or information to confirm or deny this
7 allegation.

8 56. Admit

9 57. This paragraph contains Plaintiffs’ characterization of California Health and Safety
10 Code sections 25990 through 25994, to which no response is required. HSUS refers the Court to
11 those sections for a full and accurate statement of their provisions. *See* Cal. Health & Saf. Code
12 §§ 25990-25994.

13 58. HSUS admits that one study has reached this conclusion. HSUS denies the
14 accuracy of that conclusion.

15 59. Deny. The study Plaintiffs cite found that compliance with the CDFA regulations
16 implementing Prop 2 would only increase production costs by 12.48%, not “at least 20%.”

17 60. This paragraph contains Plaintiffs’ characterization of California Health and Safety
18 Code sections 25990 through 25994, to which no response is required. HSUS refers the Court to
19 those sections for a full and accurate statement of their provisions. *See* Cal. Health & Saf. Code
20 §§ 25990-25994. To the extent that Plaintiffs speculate as to why Prop 2 goes into force in 2015,
21 HSUS denies that allegation.

22 61. Deny.

23 62. This paragraph contains Plaintiffs’ characterization of Article II, section 10,
24 subdivision (c) of the California Constitution, to which no response is required. HSUS refers the
25 Court to the Article for a full and accurate statement of its provisions. *See* Cal. Const. Art. II,
26 § 10(c).

27 63. This paragraph contains Plaintiffs’ characterization of California Health and Safety
28 Code sections 25995 through 25997, to which no response is required. HSUS refers the Court to

1 those sections for a full and accurate statement of their provisions. *See* Cal. Health & Saf. Code
2 §§ 25995-25997.

3 64. HSUS denies the first sentence. The remainder of the paragraph contains
4 Plaintiffs' characterization of California Health and Safety Code sections 25996 and 25997, to
5 which no response is required. HSUS refers the Court to those sections for a full and accurate
6 statement of their provisions. *See* Cal. Health & Saf. Code §§ 25996-25997.

7 65. This paragraph contains Plaintiffs' characterization of California Department of
8 Food and Agriculture Regulation Section 1350(d)(1), to which no response is required. HSUS
9 refers the Court to the regulation for a full and accurate statement of its provisions. *See* 3 Cal.
10 ADC § 1350(d)(1).

11 66. Deny.

12 67. This paragraph contains Plaintiffs' characterization of California Health and Safety
13 Code sections 25990 through 25997, to which no response is required. HSUS refers the Court to
14 those sections for a full and accurate statement of their provisions. *See* Cal. Health & Saf. Code
15 §§ 25990-25997.

16 68. This paragraph contains Plaintiffs' characterization of California Health and Safety
17 Code Section 25995(e), to which no response is required. HSUS refers the Court to the section
18 for a full and accurate statement of its provisions. *See* Cal. Health & Saf. Code § 25995(e).

19 69. Deny.

20 70. This paragraph contains portions of a Bill Analysis on AB 1437 by the California
21 Assembly Committee on Appropriations, the entirety of which is the best evidence of its contents.
22 HSUS refers the Court to the full bill. *See* AB 1437. To the extent that Plaintiffs speculate at AB
23 1437's "true purpose" by selectively quoting from the legislative history, HSUS denies the
24 allegations.

25 71. This paragraph contains portions of an Enrolled Bill Report on AB 1437 by the
26 California Health and Human Services Agency, the entirety of which is the best evidence of its
27 contents. To the extent that Plaintiffs speculate at AB 1437's purposes based on a report prepared

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1 after its passage through the California Legislature by an agency not involved in drafting the bill,
2 HSUS denies the allegations.

3 72. This paragraph contains portions of an Enrolled Bill Report on AB 1437 by the
4 California Department of Food and Agriculture, the entirety of which is the best evidence of its
5 contents. To the extent that Plaintiffs speculate at AB 1437's purposes based on a report prepared
6 after its passage through the California Legislature by an agency not involved in drafting the bill,
7 HSUS denies the allegations.

8 73. Deny the first sentence claiming an "absence of any scientific evidence"
9 supporting the law. This paragraph also contains portions of an Enrolled Bill Report on AB 1437
10 by the California Department of Food and Agriculture, the entirety of which is the best evidence
11 of its contents. To the extent that Plaintiffs speculate at AB 1437's purposes based on a report
12 prepared after its passage through the California Legislature by an agency not involved in drafting
13 the bill, HSUS denies the allegations.

14 74. This paragraph contains portions of an Enrolled Bill Report on AB 1437 by the
15 California Department of Food and Agriculture, the entirety of which is the best evidence of its
16 contents. To the extent that Plaintiffs speculate at AB 1437's purposes based on a report prepared
17 after its passage through the California Legislature by an agency not involved in drafting the bill,
18 HSUS denies the allegations.

19 75. This paragraph contains portions of a news report on Governor Schwarzenegger's
20 signing statement for AB 1437, the entirety of which is the best evidence of its contents. To the
21 extent that Plaintiffs interpret a statement about "humane treatment" and "animal welfare" as one
22 solely about "protecting California farmers from the market effects of Prop 2," HSUS denies the
23 logic and the allegations.

24 76. This paragraph contains legal conclusions to which no response is required. To
25 the extent that a response is required, HSUS denies the allegation.

26 77. This paragraph contains portions of Section 1031 of the Egg Products Inspection
27 Act, the entirety of which is the best evidence of its contents. To the extent that Plaintiffs
28 speculate at the EPIA's purposes, HSUS denies the allegations.

1 78. This paragraph contains Section 1032 of the Egg Products Inspection Act, the
2 entirety of which is the best evidence of its contents. To the extent that Plaintiffs speculate at the
3 legal effect of this section, HSUS denies the allegations.

4 79. This paragraph contains legal conclusions to which no response is required. The
5 paragraph also contains portions of Section 1052(b) of the Egg Products Inspection Act, the
6 entirety of which is the best evidence of its contents. To the extent that Plaintiffs speculate at the
7 legal effect of this section, HSUS denies the allegations.

8 80. This paragraph contains Plaintiffs' characterization of the EPIA and USDA
9 regulations, to which no response is required. HSUS refers the Court to those laws and
10 regulations for a full and accurate statement of their provisions. *See* 21 U.S.C. § 1031 et seq. and
11 7 C.F.R. § 57.1.

12 81. This paragraph contains legal conclusions to which no response is required. To
13 the extent that a response is required, HSUS denies the allegations.

14 82. Deny.

15 83. HSUS admits that Prop 2 requires larger hen enclosures within California. But
16 HSUS denies that the "sole effect of AB 1437 will be the extraterritorial regulation of egg
17 production." HSUS denies that AB 14347 will have any extraterritorial reach.

18 84. Deny.

19 85. HSUS is without sufficient knowledge or information to confirm or deny
20 Missouri's allegations about future egg prices in California (sentence one), future variations in
21 egg demand (sentence two), whether Missouri farmers can adjust to supply and demand
22 (sentences three and four), or how Missouri farmers may respond when AB 1437 comes into
23 force (sentence five). HSUS denies the allegations that AB 1437 will necessarily increase egg
24 prices in Missouri (sentence one) and that Missouri egg producers "cannot simply maintain
25 separate facilities for California-bound eggs" (sentence two).

26 86. HSUS is without sufficient knowledge or information to confirm or deny this
27 unsupported allegation.

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1 87. Deny.

2 88. Sentence one contains a legal conclusion to which no response is required. HSUS
3 is without sufficient knowledge or information to confirm or deny the speculative allegations in
4 the remainder of the paragraph.

5 89. Sentence one contains a legal conclusion to which no response is required.
6 Sentence two contains Plaintiffs' characterization of AB 1437, to which no response is required.
7 To the extent that Plaintiffs claim that Missouri farmers "will face criminal sanctions . . . unless
8 they take action now," HSUS denies the allegation as contradicted by the terms of the law.

9 90. HSUS is without sufficient knowledge or information to confirm or deny these
10 allegations.

11 91. HSUS denies the allegations in sentence one. HSUS is without sufficient
12 knowledge or information to confirm or deny the allegations in sentence two.

13 92. HSUS denies the allegations in sentences one and two. In sentence three, HSUS
14 admits that "maintaining the status quo costs nothing now[.]" But HSUS is without sufficient
15 knowledge or information to predict the effect on egg producers if the law is upheld.

16 93. Sentence one contains a legal conclusion to which no response is required. To the
17 extent that a response is required, HSUS denies the allegations. HSUS denies the allegations in
18 sentences two and three. HSUS is without sufficient knowledge or information to confirm or
19 deny the speculative allegations in sentence four.

20 94. This paragraph contains legal conclusions to which no response is required. To
21 the extent that a response is required, HSUS denies the allegations.

22 **COUNT I: ALLEGED VIOLATION OF THE COMMERCE CLAUSE**

23 95. To the extent that Plaintiffs incorporate all preceding paragraphs, HSUS refers the
24 Court to its responses in paragraphs 1-94 of this Proposed Answer.

25 96. This paragraph contains Plaintiffs' characterization of the Commerce Clause of the
26 United States Constitution, to which no response is required. HSUS refers the Court to the
27 Clause for a full and accurate statement of its provisions. *See* U.S. Const. Art. I, § 8.

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1 97. This paragraph contains legal conclusions to which no response is required. To
2 the extent that a response is required, HSUS denies the allegations.

3 98. This paragraph contains legal conclusions to which no response is required. To
4 the extent that a response is required, HSUS denies the allegations.

5 99. This paragraph contains legal conclusions to which no response is required. To
6 the extent that a response is required, HSUS denies the allegations.

7 100. Deny.

8 101. This paragraph sets forth Plaintiffs' characterization of the relief they seek, to
9 which no response is required. HSUS denies that Plaintiffs are entitled to the relief requested, or
10 to any other relief.

11 **COUNT II: ALLEGED FEDERAL PREEMPTION**

12 102. To the extent that Plaintiffs incorporate all preceding paragraphs, HSUS refers the
13 Court to its responses in paragraphs 1-101 of this Proposed Answer.

14 103. This paragraph contains legal conclusions to which no response is required. To
15 the extent that a response is required, HSUS denies the allegations.

16 104. This paragraph contains legal conclusions to which no response is required. To
17 the extent that a response is required, HSUS denies the allegations.

18 105. This paragraph sets forth Plaintiffs' characterization of the relief they seek, to
19 which no response is required. HSUS denies that Plaintiffs are entitled to the relief requested, or
20 to any other relief.

21 **REQUEST FOR RELIEF**

22 The remainder of the complaint constitutes a request for relief to which no response is
23 required. HSUS denies that Plaintiffs are entitled to the relief requested, or to any other relief.
24 HSUS also denies all allegations in the Complaint not expressly admitted, qualified, or denied
25 above.

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

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1 dismissed with prejudice and that Defendant-Intervenors be given such other relief as the Court
2 deems just and proper.

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4 Dated: March 25, 2014

SCHIFF HARDIN LLP

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6 By: /s/ Bruce A. Wagman
Bruce A. Wagman

7
8 J. SCOTT BALLENGER
Scott.ballenger@lw.com
9 LATHAM & WATKINS LLP
555 Eleventh Street, NW, Ste. 1000
10 Washington, D.C. 20004
Telephone: (202) 637-2145
11 Facsimile: (202) 637-2201

12 PETER A. BRANDT
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13 REBECCA CARY
rcary@humanesociety.org
14 THE HUMANE SOCIETY OF THE
UNITED STATES
15 2100 L Street, NW
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16 Telephone: (202) 452-1100
Facsimile: (202) 676-2357

17 Attorneys for Proposed Defendant-Intervenor
18 *The Humane Society of the United States*

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