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13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 THE STATE OF MISSOURI, ex rel. Chris)
16 Koster, Attorney General; THE STATE OF)
17 NEBRASKA, ex rel. Jon Bruning, Attorney)
18 General; THE STATE OF OKLAHOMA,)
19 ex rel. E. Scott Pruitt, Attorney General;)
20 THE STATE OF ALABAMA, ex rel.)
21 Luther Strange, Attorney General; THE)
22 COMMONWEALTH OF KENTUCKY, ex)
23 rel. Jack Conway, Attorney General; and)
24 TERRY E. BRANSTAD, Governor of the)
25 State of Iowa,)

21 Plaintiffs,)

22 v.)

23 KAMALA D. HARRIS, in her 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,)

26 Defendants.)

CASE NO. 2:14-cv-00341-KJM-KJN

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO INTERVENE OF
PROPOSED DEFENDANT-INTERVENOR
ASSOCIATION OF CALIFORNIA EGG
FARMERS**

Date: May 9, 2014

Time: 10:00am

Before: Hon. Kimberly J. Mueller

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1 The Association of California Egg Farmers (“ACEF”) submits this memorandum in support
2 of its motion to intervene in support of Defendants under Federal Rule of Civil Procedure 24.
3 ACEF’s members are California egg farmers who have a direct and substantial interest in ensuring
4 that the California food safety and animal welfare provisions challenged in this action are upheld.
5 The challenged provisions ensure that egg-laying hens are not confined in overly-restrictive cages
6 and are designed to reduce the likelihood that contaminated eggs will be sold in California. It is
7 vitally important to ACEF’s members that these protections continue in effect and that consumers
8 remain confident that the eggs they purchase in California are produced to more humane standards
9 and are free of *Salmonella* and other pathogens. For the reasons explained below, ACEF should be
10 permitted to intervene in this action.¹

11 BACKGROUND

12 In this lawsuit, the states of Missouri, Nebraska, Oklahoma, Alabama, Kentucky, and Iowa
13 seek to invalidate and enjoin enforcement of two provisions of California law mandating minimum
14 space requirements for the enclosures of egg-laying hens in order to reduce contamination in the
15 eggs produced by these hens: (1) AB 1437, Cal. Health & Safety Code §§ 25995-25997.1; and
16 (2) California Department of Food and Agriculture Regulation § 1350(d)(1), Cal. Code Regs. tit. 3,
17 § 1350 (entitled “Shell Egg Food Safety”). Plaintiffs contend that the provisions impermissibly
18 regulate interstate commerce and are preempted by federal law. *See* First Amended Complaint To
19 Declare Invalid and Enjoin Enforcement of AB1437 and 3 CA ADC § 1350(d)(1) for Violating the
20 Commerce and Supremacy Clauses of the United States Constitution (Mar. 5, 2014, Dkt. 13).

21 Enacted in 2010, AB 1437 requires that all eggs sold in California come from hens that are
22 granted a minimum amount of enclosure space. *See* Cal. Health & Safety Code § 25996. It
23 provides:

24 Commencing January 1, 2015, a shelled egg shall not be sold or contracted for sale
25 for human consumption in California if the seller knows or should have known that

26 ¹ Counsel for ACEF conferred with counsel for the parties to this action regarding its motion to
27 intervene. Defendants Attorney General Harris and Secretary Ross, Proposed Defendant- Intervenor
28 the Humane Society of the United States, and Plaintiff Kentucky do not oppose ACEF’s motion.
Missouri and Iowa Governor Branstad oppose the motion. Counsel for ACEF had not received the
definitive position of Nebraska, Oklahoma, and Alabama at the time of the filing of this motion.

1 the egg is the product of an egg-laying hen that was confined on a farm or place that
2 is not in compliance with animal care standards set forth Chapter 13.8 (commencing
3 with Section 25990).

4 The California Code provision setting the enclosure standards referenced in AB 1437,
5 California Health and Safety Code § 25990, provides that “a person shall not tether or confine any
6 covered animal [including egg-laying hens], on a farm, for all or the majority of any day, in a
7 manner that prevents such animal from: (a) Lying down, standing up, and fully extending his or her
8 limbs; and (b) Turning around freely.” The provision codifies part of Proposition 2, an animal-
9 welfare initiative adopted by the California voters in 2008.²

10 AB 1437’s legislative findings explained that “food animals that are treated well and
11 provided with at least minimum accommodation of their natural behaviors and physical needs are
12 healthier and safer for human consumption.” Cal. Health & Safety Code § 25995(a). The
13 Legislature noted its intent to “protect California consumers from the deleterious[] health, safety,
14 and welfare effects of the sale and consumption of eggs derived from egg-laying hens that are
15 exposed to significant stress and may result in increased exposure to disease pathogens including
16 salmonella.” *Id.* § 25995(e).

17 Section 1350 of title 3 of the California Code of Regulations forbids egg handlers or
18 producers from “sell[ing] or contract[ing] to sell a shelled egg for human consumption in California”
19 if it comes from a hen kept in an enclosure with less than a specified amount of space per hen. Cal.
20 Code Regs. tit. 3, § 1350(d). It provides:

21 Commencing January 1, 2015, no egg handler or producer may sell or contract to sell
22 a shelled egg for human consumption in California if it is the product of an egg-
23 laying hen that was confined in an enclosure that fails to comply with the following
24 standards. For purposes of this section, an enclosure means any cage, crate, or other
25 structure used to confine egg-laying hens: (1) An enclosure containing nine (9) or
26 more egg-laying hens shall provide a minimum of 116 square inches of floor space
27 per bird. Enclosures containing eight (8) or fewer birds shall provide a minimum
28 amount of floor space per bird [according to a specified formula].

² See California Sec’y of State, *Official Voter Information Guide: California General Election, Tuesday, November 4, 2008* at 82 (Aug. 11, 2008) (text of Proposition 2), available at <http://vig.cdn.sos.ca.gov/2008/general/pdf-guide/vig-nov-2008-principal.pdf>.

1 Section 1350 was promulgated for the express purpose of preventing the spread of
 2 *Salmonella*.³ Indeed, the regulation was spurred by a mid-2010 outbreak of *Salmonella*-infected
 3 eggs, which ultimately led to nationwide recalls of more than a half-billion eggs.⁴ Although the
 4 infected eggs were ultimately traced to several Iowa farms, the outbreak sickened a number of
 5 California residents who consumed eggs imported from the Midwest.⁵ The recalls led to a
 6 significant reduction in egg consumption in California.⁶ “[N]ot only did consumers reduce their
 7 purchases of affected products, they also did not switch to unaffected products. As a result, overall
 8 egg purchases dropped.”⁷ See also Declaration of Debra Murdock ¶ 4, dated Apr. 7, 2014
 9 (“Murdock Decl.”). During the rulemaking process, the California Department of Food and
 10 Agriculture explained the “[b]enefit [o]f [the] [p]roposed [r]egulation[]”:

11 California consumers and the egg industry w[ill] benefit from this proposal because
 12 the Department is charged with the mission of assuring that healthful and wholesome
 13 eggs of known quality are sold in this state Monetary benefits would be the
 14 potential reduction of the occurrence of [*Salmonella*] in shell eggs which could cost
 15 the industry millions in recalling contaminated eggs from the marketplace and could
 16 lead to illnesses to the public. Nonmonetary benefits would be consumer confidence
 17 that comes from knowing that eggs sold in California meet the nation’s highest food
 18 safety standards and market stability derived from strong food borne illness

18 ³ See Office of Administrative Law, State of California, *Notice of Approval of Regulatory Action*
 19 (May 6, 2013) (“The purpose of adding section 1350 to the [California Code of Regulations] is to
 20 require egg producers and egg handlers to comply with food safety requirements in order to reduce
 21 the risk of *Salmonella* contamination in shell eggs sold for human consumption in California.”),
 22 available at <http://www.cdfr.ca.gov/ahfss/pdfs/regulations/STD400ApprovedText.pdf>.

21 ⁴ See California Dep’t of Food & Agric., *Initial Statement of Reasons* 2-3, 5 (July 2012) (explaining
 22 the problem § 1350 is intended to address), available at
 23 http://www.cdfr.ca.gov/ahfss/pdfs/regulations/Shell_Egg_Food_Safety_ISR_July_2012.pdf; CDC,
 24 *Multistate Outbreak of Human Salmonella Enteritidis Infections Associated with Shell Eggs (Final*
 25 *Update)* (Dec. 2, 2010), <http://www.cdc.gov/salmonella/enteritidis/index.html#investigation>.

25 ⁵ See CNN Wire Staff, *California traces salmonella infections back to May Prom* (Aug. 26, 2010),
 26 <http://www.cnn.com/2010/HEALTH/08/25/eggs.salmonella/>.

26 ⁶ See Toledo & Villas-Boas, *Foodborne Disease Outbreaks and Consumer Purchases*, U.C. Agric.
 27 & Resource Econ. Update, Sept.-Oct. 2013, at 3 (“[P]urchases of large traditional shell eggs
 28 significantly decreased by 10% in California in the month following the [2010 outbreak].”),
 available at http://giannini.ucop.edu/media/are-update/files/articles/V17N1_1.pdf.

⁷ *Id.* at 4.

1 prevention measures applied equally to all suppliers into California markets and clear
2 labeling of such products.⁸

3 Proposed Intervenor ACEF is a California nonprofit trade organization comprised of family-
4 owned and operated egg farms. *See* Murdock Decl. ¶ 2. California egg farmers produced roughly
5 4.5 billion of the eggs for sale in California in 2013. *Id.* ¶ 3. ACEF’s members constitute a
6 significant portion of the California egg industry. It is estimated that they are responsible for more
7 than 70% of the commercial egg-laying hens in California. *Id.* ACEF’s members are thus directly
8 affected by events or circumstances that reduce demand for eggs in California. *Id.* ¶ 4. A number of
9 ACEF’s members also produce eggs outside of California and import eggs into the State. *Id.* ¶ 5.
10 ACEF’s members are therefore subject to regulation under AB 1437 and Section 1350.

11 ACEF’s principal purposes are to engage in advocacy regarding policies affecting the egg
12 farming industry and to ensure the continued production of fresh and affordable eggs that meet the
13 food safety and animal care standards that consumers expect. Murdock Decl. ¶ 2. Since its
14 founding in 2009, ACEF has sought to establish clear standards that will govern the amount of
15 enclosure space required for egg-laying hens and to promote food safety. Among other things,
16 ACEF participated in the rulemaking process for Section 1350. *See* Letter from Arnold J. Riebli,
17 Bd. President of ACEF, to Tony Herrera, Program Supervisor, Egg Safety & Quality Mgmt.
18 Program, California Dep’t of Food & Agric. (Sept. 4, 2012) (on file with California Dep’t of Food &
19 Agric.) (entitled “Re: Public Comments on Proposed Regulations”). Section 1350 was an extension
20 of the existing California Egg Quality Assurance Program, a “voluntary pre-harvest food safety
21 program designed to ensure product quality and food safety associated with salmonella and chemical
22 residues in eggs,” which was established in 1995. California Dep’t of Food & Agric., *Initial*
23 *Statement of Reasons* 4-5 (“[I]n formulating this proposal, the Department is requiring components
24 from the existing, voluntary California Egg Quality Assurance Program....”). ACEF has been a
25 supporter of this program since shortly after the Association was founded. *Id.* at 5 (describing
26 ACEF’s president as stating that “the California egg industry has long been focused on food safety,

27 ⁸ California Dep’t of Food & Agric, *Revised Economic Assessment in 30-Day Notice of Modified*
28 *Text and Documents Added to the Rulemaking File* 6, 9 (Jan. 22, 2013), available at
http://www.cdffa.ca.gov/ahfss/pdfs/regulations/30_Day_Notice_Text_and_Docs.pdf

1 which is why” the program was developed). ACEF has also worked for many years to clarify the
2 requirements of Proposition 2, the California voter initiative enacted in 2008 that adopted the
3 standard subsequently referenced in AB 1437. *See* Cal. Health & Safety Code §§ 25990-25994.

4 ACEF supports AB 1437 and Section 1350 as important measures that reduce food safety
5 risks and enhance animal welfare.

6 ARGUMENT

7 Federal Rule of Civil Procedure 24 provides for intervention as of right when a proposed
8 intervenor files a timely motion demonstrating that it has a significant, protectable interest in the
9 subject matter of the lawsuit that will be impaired by an adverse judgment and that the existing
10 parties may not adequately represent its position. The Rule allows permissive intervention when a
11 proposed intervenor files a timely motion and asserts a claim or defense in the case that shares
12 common questions of law or fact with the claims or defenses of the parties to the action. ACEF
13 should be permitted to intervene both as of right and permissively.

14 I. ACEF IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT

15 Rule 24(a)(2) provides for intervention as a matter of right if “(1) the intervention
16 application is timely; (2) the applicant has a significant protectable interest relating to the property or
17 transaction that is the subject of the action; (3) the disposition of the action may, as a practical
18 matter, impair or impede the applicant’s ability to protect its interest; and (4) the existing parties
19 may not adequately represent the applicant’s interest.” *Citizens for Balanced Use v. Montana*
20 *Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011). These “requirements are broadly interpreted in
21 favor of intervention.” *Id.*; *see also Wilderness Soc’y v. United States Forest Serv.*, 630 F.3d 1173,
22 1179 (9th Cir. 2011) (en banc) (“[The Ninth Circuit’s] liberal policy in favor of intervention serves
23 both efficient resolution of issues and broadened access to the courts.”); 6 *Moore’s Federal Practice*
24 § 24.03[1][a], at 24-22 (Matthew Bender 3d ed. 2014) (“Rule 24 is to be construed liberally ... and
25 doubts resolved in favor of the proposed intervenor.”). All four requirements are satisfied in this
26 case.

1 **A. ACEF’s Motion To Intervene Is Timely**

2 ACEF’s motion to intervene is timely. The timeliness requirement “is left to the court’s
3 discretion and is ‘a flexible concept.’” *Zurich Am. Ins. Co. v. ACE Am. Ins. Co.*, Civ. No. S-11-
4 0881-KJM-DAD, 2012 WL 3884695, at *2 (E.D. Cal. Sept. 6, 2012) (quoting *United States v. Alisal*
5 *Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004)). The court considers three factors: “(1) the stage
6 of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and
7 (3) the reason for and length of the delay.” *Zurich*, 2012 WL 3884695, at *2 (internal quotation
8 marks omitted).

9 Here, ACEF filed its motion at the very beginning of proceedings, just over two months after
10 Plaintiffs filed their initial complaint (on February 3, 2014) and approximately one month after they
11 filed their first amended complaint (on March 5, 2014). *See Zurich*, 2012 WL 3884695, at *2
12 (motion to intervene was timely when filed ten months after the complaint). California has not yet
13 responded to the complaint; its response to the amended complaint is due tomorrow. Permitting
14 ACEF to intervene at this early stage would not prejudice the other parties to this case in any
15 respect. As required by Rule 24(c), ACEF has attached a proposed answer to the amended
16 complaint to its motion to intervene. ACEF expects very promptly to file a motion for judgment on
17 the pleadings under Rule 12(c) raising threshold legal challenges to Plaintiffs’ complaint. That
18 motion, the motion to dismiss of proposed intervenor Humane Society of the United States, and any
19 Rule 12 motion filed by California on April 9 can be consolidated and considered in a coordinated
20 fashion. ACEF’s intervention thus would not cause delay or “disruption ... in the proceedings.”
21 *See Citizens for Balanced Use*, 647 F.3d at 897 (motion timely even though filed *after* answer to
22 complaint).

23 **B. ACEF Has A Significant Protectable Interest**

24 ACEF has a significant, protectable interest in defending AB 1437 and Section 1350 from
25 challenge. The “protectable interest” requirement is a “practical, threshold inquiry[;] ... no specific
26 legal or equitable interest need be established.” *Citizens for Balanced Use*, 647 F.3d at 897
27 (alterations and internal quotation marks omitted); *see also Wilderness Soc’y*, 630 F.3d at 1179
28 (requirement is “primarily a practical guide to disposing of lawsuits by involving as many apparently

1 concerned persons as is compatible with efficiency and due process” (internal quotation marks
2 omitted)). “[A] prospective intervenor ‘has a sufficient interest for intervention purposes if it will
3 suffer a practical impairment of its interest as a result of the pending litigation.’” *Wilderness Soc’y*,
4 630 F.3d at 1179 (quoting *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir.
5 2006) (Kozinski, J.)).

6 It is well established that parties who benefit from a law or regulation have an interest in
7 intervening to defend the law or regulation from legal challenge. “[I]n cases challenging various
8 statutory schemes as unconstitutional or as improperly interpreted and applied, the courts have
9 recognized that the interests of those who are governed by those schemes are sufficient to support
10 intervention.” 7C Wright et al., *Federal Practice & Procedure: Civil 3d* § 1908.1 & n.45, at 336
11 (collecting cases). For example, in *Lockyer*, the court held that healthcare providers who opposed
12 providing abortion services had a sufficient interest to intervene in a suit seeking to invalidate a
13 federal law that did not give them “any enforceable rights” but effectively provided “an important
14 layer of protection against state criminal prosecution or loss of their medical licenses.” 450 F.3d at
15 441; *see also County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (a group of small
16 farmers had an “interest” in administrative proceeding related to reclamation laws that “provide[d]
17 small farmers ... with small tracts of land at nonspeculative prices”); *Air Conditioning Trade Ass’n*
18 *v. Baker*, Civ. No. S-12-132-KJM-DAD, 2012 WL 3205422, at *2, *3 (E.D. Cal. July 31, 2012)
19 (labor federation whose affiliates “co-sponsor[ed] most of the state-approved apprenticeship
20 programs in California” had a protectable interest in state law that “protect[ed] the labor market by
21 restricting the approval of new apprenticeship programs when there is no training need”); *California*
22 *Dump Truck Owners Ass’n v. Nichols*, 275 F.R.D. 303, 306-307 (E.D. Cal. 2011) (concluding that
23 environmental advocacy group had interest in challenged regulation and noting that “[i]t is enough
24 that the [group’s] members benefit from the [provision] by way of improved air quality and health”);
25 *cf. Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1248, 1252 (10th Cir. 2001) (finding group of
26 proposed intervenors, including environmental advocacy organizations and three private businesses,
27
28

1 had “interest” in suit to invalidate Presidential Proclamation establishing a monument in part due to
2 businesses’ “economic stake in [the monument’s] continued existence”).⁹

3 In this case, ACEF directly benefits from the food safety protections afforded by AB 1437
4 and Section 1350. As explained above, ACEF’s members constitute a significant portion of the
5 California egg industry. *See supra* at p. 4; Murdock Decl. ¶ 3 (70% of all hens). Any disruptions to
6 the market that decrease consumption of eggs has a direct and significant impact on ACEF’s
7 members. *See* Murdock Decl. ¶ 4. The 2010 *Salmonella* recall of eggs—which arose from
8 contamination at facilities in Iowa—had a significant impact on the California market, causing a
9 decrease in demand for eggs. *See id.* That decrease in demand for eggs directly injured ACEF and
10 its members. *See id.* The hen enclosure requirements of AB 1437 and Section 1350 are designed to
11 help mitigate the health risks associated with eggs such as *Salmonella*, the spread of which has been
12 a particular concern of ACEF. *See supra* pp. 2-5. AB 1437 and Section 1350 provide “an important
13 layer of protection against” the possibility of future egg-based *Salmonella* outbreaks in California—
14 outbreaks that ACEF has worked to prevent and that would cause consumers to purchase fewer eggs
15 from ACEF’s members. *Cf. Sierra Club v. Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994) (proposed
16 intervenor timber trade associations’ members had “protectable property interests in existing timber
17 contracts that are threatened by” United States Forest Service practices at issue in lawsuit). ACEF
18 and its members have a significant interest in defending these important provisions.

19 **C. ACEF’s Protectable Interest Would Be Impaired By An Adverse Decision**

20 ACEF’s protectable interest would be impaired by a ruling striking down AB 1437 and
21 Section 1350. Under this prong, “[i]f an absentee would be substantially affected in a practical
22

23 ⁹ *See also Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 730-731, 735 (D.C. Cir. 2003)
24 (Mongolian government agency that benefited from classification of argali sheep as “threatened”
25 rather than “endangered” had protectable interest in litigation challenging the “threatened”
26 determination); *Utahns for Better Transp. v. United States Dep’t of Transp.*, 295 F.3d 1111, 1112-
27 1113, 1115-1116 (10th Cir. 2002) (trade association whose members benefited from a challenged
28 government action and whose “interests w[ould] be substantially impaired” by the invalidation of
the action had a protectable interest); *Kleisser v. United States Forest Serv.*, 157 F.3d 964, 972 (3d
Cir. 1998) (school district and municipalities that would receive funds from receipts of approved
logging projects and companies that had or would likely have contracts to cut timber had interest in
litigation challenging approval of logging projects).

1 sense by the determination made in an action, he should, as a general rule, be entitled to intervene.”
2 *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (alteration in
3 original); *accord Citizens for Balanced Use*, 647 F.3d at 898. This requirement is not difficult to
4 satisfy: Once it is “found that [a proposed intervenor] ha[s] a significant protectable interest, [the
5 Ninth Circuit] ha[s] little difficulty concluding that the disposition of th[e] case may, as a practical
6 matter, affect it.” *Lockyer*, 450 F.3d at 442; *accord Citizens for Balanced Use*, 647 F.3d at 898.
7 ACEF’s interest in ensuring that contaminated eggs are not sold in California would be undermined
8 by an adverse judgment because AB 1437 and Section 1350 are designed to help protect against the
9 spread of *Salmonella* and other pathogens. If the provisions are invalidated, ACEF’s members will
10 lose the benefits of their protections for the industry.

11 **D. ACEF’s Interests May Not Be Adequately Represented**

12 ACEF’s interests in this litigation may not be adequately represented by the State of
13 California. This prong of the test is met “if the applicant shows that representation of his interest
14 ‘may be’ inadequate; ... the burden of making that showing should be treated as minimal.” *Trbovich*
15 *v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (emphasis added); *see also Citizens*
16 *for Balanced Use*, 647 F.3d at 900 (“We stress that intervention of right does not require an absolute
17 certainty ... that existing parties will not adequately represent its interests.”). The Ninth Circuit
18 considers three factors in making this determination: “(1) whether the interest of a present party is
19 such that it will undoubtedly make all of a proposed intervenor’s arguments; (2) whether the present
20 party is capable and willing to make such arguments; and (3) whether a proposed intervenor would
21 offer any necessary elements to the proceeding that other parties would neglect.” *Citizens for*
22 *Balanced Use*, 647 F.3d at 898; *see also 6 Moore’s Federal Practice* § 24.03[4][a][i], at 24-49 (“To
23 show inadequacy of representation, the movants must show that they bring something to the
24 litigation that otherwise would be ignored or overlooked if the matter were left to already-existing
25 parties.”).

26 Courts “frequently” conclude that the government is an inadequate representative “when one
27 group of citizens sues the government, challenging the validity of laws or regulations, and the
28 citizens who benefit from those laws or regulations wish to intervene and assert their own, particular

1 interests rather than the general, public good.” 6 *Moore’s Federal Practice* § 24.03[4][a][iv][B], at
2 24-58.1. For example, in *Sierra Club v. Espy*, 18 F.3d at 1203, 1207-1208, the Fifth Circuit held
3 that two trade associations made up of timber purchasers were not adequately represented by the
4 government in a suit brought by an environmental organization to bar certain timber sales. The
5 court explained that “[t]he government must represent the broad public interest, not just the
6 economic concerns of the timber industry.” *Id.* at 1208; *see also Forest Conservation Council v.*
7 *United States Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995) (quoting *Espy* and remarking that
8 “[t]he Forest Service is required to represent a broader view than the more narrow, parochial
9 interests of [proposed-intervenors] the State of Arizona and Apache County”), *abrogated on other*
10 *grounds by Wilderness Soc’y*, 630 F.3d at 1177, 1180.

11 Similarly, in *Utah Association of Counties v. Clinton*, 255 F.3d at 1248, 1256, the court
12 concluded that a group of entities, including several environmental associations, two hotels, and a
13 private company, seeking to intervene in a lawsuit brought to invalidate a Presidential Proclamation
14 establishing a national monument might not be adequately represented by the federal government.
15 The *Utah Association* court observed that “[i]n litigating on behalf of the general public, the
16 government is obligated to consider a broad spectrum of views, many of which may conflict with the
17 particular interest of the would-be intervenor” and approvingly cited “cases from other circuits
18 holding that an intervenor’s interest would not be adequately represented by a government entity that
19 must represent the broader public interest.” *Id.* at 1255-1256; *see also Citizens for Balanced Use*,
20 647 F.3d at 899 (citing *Utah Association* with approval and observing that “the government’s
21 representation of the public interest may not be ‘identical to the individual parochial interest’ of a
22 particular group just because ‘both entities occupy the same posture in the litigation’”).

23 As in *Espy* and other cases discussed above, ACEF’s interests diverge from the
24 government’s. California represents all stakeholders, including organizations like proposed
25 intervenor Humane Society, and the state has a tradition of anti-animal cruelty legislation. *E.g.*,
26 *Association des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 942 (9th Cir.
27 2013) (describing California’s ban on the sale of *foie gras*). But it also must take into account its
28 relationship with the Plaintiff states and the views of in-state business groups that might oppose AB

1 1437 and Section 1350. *Cf. Espy*, 18 F.3d at 1208 (“[T]he government must represent the broad
2 public interest.”); *Newdow v. Congress of the U.S.*, Civ. No. S-05-2339-FCD-PAN, 2006 WL
3 47307, at *4 (E.D. Cal. Jan. 6, 2006) (finding government actors “cannot necessarily be counted on
4 to make the same arguments as” a private organization due to the “various competing interests [they
5 must] consider in asserting arguments and defenses”). The fact that the current parties do not
6 adequately represent ACEF’s interests will not change if this court grants the Humane Society’s
7 motion to intervene. The Humane Society’s primary interest in this litigation is animal welfare,
8 whereas ACEF is also concerned with food safety issues. *See* Motion to Intervene at 11-12 (Mar.
9 26, 2014), Dkt. 27. Furthermore, the Humane Society has indicated it will not seek to defend
10 Section 1350. *See* Proposed Motion to Dismiss at 4-5 n.8 (Mar. 26, 2014), Dkt. 27-2.

11 Finally, ACEF adds a necessary element to the proceedings that is otherwise missing: the
12 perspective of private businesses that are well-versed in the need for food safety and that support the
13 positive health effects of AB 1437 and Section 1350. As an organization whose members are
14 responsible for 70% of the egg-laying hens in California and who have voluntarily followed
15 stringent food quality standards for nearly two decades, ACEF brings unique expertise to this
16 litigation: experience developing food safety solutions to protect consumer confidence in eggs. *See*
17 *6 Moore’s Federal Practice* § 24.03[5][a], at 24-60, 24-61 (although “the mere fact that a movant
18 has special expertise in a relevant area does not necessarily support mandatory intervention,” “courts
19 look favorably on intervention petitions offering a unique perspective”).

20 **II. ACEF IS ALSO ENTITLED TO PERMISSIVE INTERVENTION**

21 ACEF is also entitled to intervene permissively under Federal Rule of Civil Procedure
22 24(b)(1)(B). “[A] court may grant permissive intervention where the applicant for intervention
23 shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant’s
24 claim or defense, and the main action, have a question of law or a question of fact in common.”
25 *United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir. 2002). Once these requirements
26 are met, the court may exercise its sound discretion to permit intervention, ““consider[ing] whether
27 the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.””
28 *Pickup v. Brown*, Civ. No. 12-02497-KJM-EFB, 2012 WL 6024387, at *4 (E.D. Cal. Dec. 4, 2012);

1 *see also Perry v. Schwarzenegger*, 630 F.3d 898, 905 (9th Cir. 2011) (per curiam) (listing other
2 factors district court may consider, including “whether parties seeking intervention will
3 significantly contribute to full development of the underlying factual issues in the suit and to the just
4 and equitable adjudication of the legal questions presented” (quoting *Spangler v. Pasadena Bd. of*
5 *Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)); 6 *Moore’s Federal Practice* § 24.10[1], at 24-63
6 (“[T]he decision regarding whether to grant permissive intervention is always subject to the
7 inherently discretionary considerations of equity and judicial economy.”).

8 All three requirements for permissive intervention are satisfied in this case. First, “the
9 independent jurisdictional grounds requirement does not apply to proposed intervenors in federal-
10 question cases when the proposed intervenor is not raising new claims.” *Freedom from Religion*
11 *Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011). Plaintiffs filed suit under federal-
12 question jurisdiction, *see* Plaintiffs’ First Amended Complaint ¶ 1, and ACEF does not assert any
13 new claims. In any event, ACEF has a clear and direct financial interest in the litigation and thus
14 could easily establish standing. Second, the factors considered to determine whether Rule 24(b)’s
15 timeliness requirement is met are the same as for Rule 24(a). *See San Jose Mercury News, Inc. v.*
16 *United States Dist. Court—N. Dist. (San Jose)*, 187 F.3d 1096, 1101 (9th Cir. 1999). Although
17 courts are less “lenient in considering these factors” in the context of permissive intervention, *see*
18 *United States EEOC v. Central Cal. Found. for Health*, Civ. No. 10-01492-LJO-JLT, 2011 WL
19 149831, at *3 (E.D. Cal. Jan. 18, 2011), ACEF’s motion, filed just weeks after Plaintiffs’ amended
20 complaint, easily meets the timeliness requirement even under a stricter standard of review. Third,
21 ACEF’s and California’s positions have a “common question of law”: the constitutionality of AB
22 1437 and Section 1350. *See Pickup*, 2012 WL 6024387, at *4.

23 Because all three requirements are met, this Court should exercise its discretion to grant
24 ACEF leave to intervene. As discussed above, ACEF’s intervention will not delay proceedings and
25 will not prejudice Plaintiffs, who will be afforded ample opportunity to address any arguments
26 raised by ACEF in defense of AB 1437 and Section 1350. More broadly, permitting ACEF’s
27 intervention allows it to offer its distinctive perspective on the litigation and will serve the ends of
28 justice. Granting intervention permits ACEF to bring its specialized knowledge about food safety

1 and the economics of egg farming to this litigation. *See 6 Moore's Federal Practice* § 24.10[2][b],
2 at 24-67 (“Courts are particularly willing to grant permissive intervention in complex litigation when
3 the movant may be able to provide unique input that may be of value to the court ... ‘especially on
4 subjects within the special expertise of the intervenor.’”). Moreover, as discussed above, ACEF has
5 several important interests at stake this litigation, and neither California nor prospective intervenor
6 Humane Society adequately represent its position.

7 **CONCLUSION**

8 For the reasons given above, this Court should allow ACEF to intervene as a matter of right
9 or to permissively intervene.

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Respectfully submitted,

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