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 9 *and Farm Sanctuary, Inc.*

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UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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

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Plaintiffs,

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v.

22 KAMALA D. HARRIS, solely in her official
 capacity as Attorney General of California;
 23 KAREN ROSS, solely in her official
 capacity as Secretary of the California
 24 Department of Food and Agriculture,

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Defendants.

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

**ANIMAL LEGAL DEFENSE FUND,
 COMPASSION OVER KILLING, INC.
 AND FARM SANCTUARY, INC.’S
 NOTICE OF MOTION AND MOTION
 FOR LEAVE TO FILE *AMICUS CURIAE*
 BRIEF IN SUPPORT OF DEFENDANTS’
 MOTION TO DISMISS;
 MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: June 6, 2014

Time: 10:00 a.m.

Judge: Kimberly J. Mueller

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 6, 2014, at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Kimberly J. Mueller, in the United States District Court for the Eastern District of California, Sacramento Division, located at 501 I Street, Sacramento, California in Courtroom No. 3, Animal Legal Defense Fund (“ALDF”), Compassion over Killing, Inc. (“COK”), and Farm Sanctuary, Inc. (“Farm Sanctuary”; together *Amici*) will, and hereby do, move for leave to file an *amicus curiae* brief in support of Defendants’ Motion to Dismiss (Dkt. No. 41).

As set forth in *Amici*’s Motion, the Court should grant leave to file an *amicus curiae* brief because *Amici* have a substantial interest in the case and will provide unique information to assist the Court in resolving the issues raised by Defendants’ motion to dismiss. This Motion is based upon this Notice, the Memorandum of Points and Authorities in support, the proposed brief attached hereto as Exhibit A, the previously-filed Request for Judicial Notice (Dkt. No. 42), and any further evidence and argument that the Court may receive at or before the hearing.

Counsel for *Amici* conferred with counsel for the parties to this action before bringing this Motion. Defendants Harris and Ross and Plaintiffs the States of Missouri, Kentucky, Oklahoma, and Iowa do not oppose *Amici*’s filing of an *amicus curiae* brief. As of the time of this notice, *Amici* had not yet heard back from the States of Nebraska and Alabama whether they object.

Dated: April 22, 2014.

Respectfully submitted,

/s/ Diane L. McGimsey

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MEMORANDUM OF POINTS AND AUTHORITIES

The Animal Legal Defense Fund (“ALDF”), Compassion Over Killing, Inc. (“COK”), and Farm Sanctuary, Inc. (“Farm Sanctuary”; together, *Amici*) hereby request leave to file the attached *amicus curiae* brief in support of (i) Defendants Harris and Ross’ Motion to Dismiss First Amended Complaint (ECF Dkt. No. 36) and (ii) proposed Intervenor the Humane Society of the United States’ Proposed Motion to Dismiss Plaintiffs’ Complaint for Lack of Subject Matter Jurisdiction and Failure to State a Claim (ECF Dkt. No. 27-2) (together, the “Motions to Dismiss”).

I. LEGAL STANDARD.

A “district court has broad discretion to appoint *amicus curiae*.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). “Generally, courts have exercised great liberality in permitting an *amicus curiae* to file a brief in a pending case . . . an individual seeking to appear as *amicus* must merely make a showing that his participation is useful to or otherwise desirable to the court.” *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (quoting *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990)). Here, the proposed *amicus curiae* have a substantial interest in the case and will provide unique information and valuable perspectives to assist the Court in resolving the important issues raised by this case.

II. EACH OF THE PROPOSED *AMICI* HAS A SIGNIFICANT INTEREST IN THIS CASE.

Amici are a diverse group of animal welfare organizations who were strong supporters of both Proposition 2 and AB 1437. Each *Amici* has spent substantial time, financial resources, and institutional goodwill fighting to stop the practice of raising egg-laying hens in “battery cages,” in which the hens do not have room to spread their wings or turn around. AB 1437 is a significant milestone in this fight, and a ruling in favor of Plaintiffs would undo much of *Amici*’s efforts and thereby significantly injure *Amici* and their members.

ALDF is a nonprofit corporation that advocates for the interests of animals through the legal system, and is actively involved in matters relating to the protection and

1 humane treatment of animals nationwide. ALDF has a special interest in the right of states to
2 enact and enforce animal cruelty laws. It is very experienced with challenges brought against
3 animal welfare laws throughout the country, including constitutional challenges based on the
4 dormant Commerce Clause. For example, ALDF, along with Farm Sanctuary, was granted leave
5 to file an *amicus curiae* brief by the Ninth Circuit in support of the constitutionality of
6 California's ban on the sale of foie gras, Case No. 12-56822 (9th Cir.), which was also
7 challenged on dormant Commerce Clause grounds. ALDF also actively works to help enforce
8 state animal welfare regulations similar to those at issue in this case; for example, ALDF has
9 investigated violations of California's foie gras ban and brought lawsuits against restaurants who
10 violated the ban.

11 Farm Sanctuary is a national nonprofit corporation with over 250,000 members
12 and supporters nationwide. Farm Sanctuary is the nation's largest farm animal rescue and
13 protection organization, and is dedicated to ending the suffering of animals used in the
14 production of food. Having rescued and rehabilitated hens raised in battery cages, Farm
15 Sanctuary has first-hand knowledge of the inhumane conditions associated with battery cages.

16 COK is a national nonprofit that has been working to prevent cruelty to animals in
17 agriculture since 1995. COK brings specialized knowledge of farm conditions in California
18 based on its investigations of farming operations, such as Cal-Cruz Hatcheries in Santa Cruz,
19 which ceased operations following an investigation and lawsuit brought by COK. COK has also
20 conducted multiple investigations of egg production facilities outside of California that use
21 battery cages. COK is currently litigating, along with ALDF, petitions to the U.S. Department of
22 Agriculture, the Food and Drug Administration, and the Federal Trade Commission, asking those
23 agencies to mandate egg labeling to provide consumers with information about how the hens are
24 housed.

25 **III. THE PROPOSED *AMICUS CURIAE* BRIEF WILL ASSIST THE COURT IN**
26 **RESOLVING THIS CASE.**

27 While *Amici* support the well-reasoned arguments in Defendant's and proposed
28 Intervenor's Motions to Dismiss, the attached proposed brief focuses on two issues that the
previously-submitted briefs do not focus on. Both of these issues could be integral to the Court's

1 decision regarding the legal sufficiency of Plaintiffs’ First Amended Complaint. *Amici* have
2 endeavored to complement Defendant’s and proposed Intervenor’s briefs and avoid overlapping
3 with them in the presentation of issues.

4 *First, Amici’s* brief addresses in detail California’s legitimate state interests in
5 passing AB 1437. Specifically, *Amici’s* brief provides legal authority establishing that
6 preventing animal cruelty and protecting public health are legitimate state interests, and that AB
7 1437 furthers those interests. While the parties’ briefs focus on the fact that Plaintiffs have not
8 adequately alleged that AB 1437 significantly burdens interstate commerce—and *Amici* concur
9 with that position—*Amici’s* additional information regarding California’s legitimate interests
10 will assist the Court should the Court determine that it is necessary to weigh California’s
11 interests in passing AB 1437.

12 *Second, Amici* provide additional information to the Court regarding Plaintiffs’
13 claim that the stated purposes for AB 1437 were pretextual. *Amici* address in detail the
14 allegations in the First Amended Complaint that AB 1437 was enacted for the purpose of
15 disadvantaging out-of-state egg producers, and specifically address each of the exhibits
16 submitted by Plaintiffs that allegedly evidence pretext. Further, *Amici* highlight additional
17 legislative history showing that the California legislature passed AB 1437 for the stated
18 purposes.

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CONCLUSION

1 Because of each *Amici's* history and experience with regard to the humane
2 treatment of egg-laying hens, and because *Amici's* proposed brief addresses issues that the
3 parties' briefs do not focus on, *Amici* believe that their insight will aid this Court in considering
4 the Motions to Dismiss, and respectfully request that the Court grant *Amici's* Motion for Leave
5 to File the proposed *Amicus Curiae* brief attached hereto as Exhibit A.

6 Dated: April 22, 2014

Respectfully submitted,

8 /s/ Diane L. McGimsey

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