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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT CALIFORNIA

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

18 Plaintiffs,

19 v.

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

24 Defendants,

25 and THE HUMANE SOCIETY OF THE
26 UNITED STATES and THE ASSOCIATION OF
27 CALIFORNIA EGG FARMERS,

28 Defendant-Intervenors.

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

**JOINT STATUS REPORT ON
THE PARTIES’ RULE 26(f)
CONFERENCE AND
PROPOSED DISCOVERY
PLAN**

Courtroom: 3, 15th floor
Judge: Hon. Kimberly J.
Mueller
Action Filed: 02/03/2014
Hearing Date: 06/12/2014

1 Plaintiffs Missouri, Nebraska, Kentucky, Oklahoma, Alabama, and Governor Branstad
2 (Plaintiffs); together with Defendants Attorney General Kamala D. Harris and Secretary Karen
3 Ross (California) and Defendant-Intervenors the Humane Society of the United States (HSUS)
4 and the Association of California Egg Farmers (ACEF), submit this Joint Status Report on the
5 Parties' Rule 26(f) Conference and Proposed Discovery Plan pursuant to the Court's February 4,
6 2014 Order Setting Status (Pretrial Scheduling) Conference on June 12, 2014, and its June 4,
7 2014 Minute Order extending the Parties' deadline for filing our joint status report until June 9,
8 2014.

9 **(a) Summary of claims and defenses**

10 Plaintiffs bring this two-count action to declare Cal. Health & Safety Code §§ 25996-97
11 and Cal. Code Regs, tit. 3, §1350(d)(1) (collectively, the "Shell Egg Laws") unconstitutional and
12 permanently enjoin their enforcement. Count I alleges that the Shell Egg Laws discriminate
13 against, directly control, and substantially burden the sale of eggs from Plaintiff States to
14 consumers in California in violation of the dormant Commerce Clause, U.S. Const. art. I, sec. 8.
15 Count II alleges that the Shell Egg Laws are also expressly preempted by the Egg Products
16 Inspection Act, 21 U.S.C. § 1031 et seq. California, HSUS, and ACEF contend that Plaintiffs
17 lack Article III standing to challenge the constitutionality of the Shell Egg Laws; that the Shell
18 Egg laws do not discriminate against, directly control, or substantially burden interstate
19 commerce; and that the Shell Egg Laws are not preempted by the Egg Products Inspection Act.

20 **(b) Status of service upon all defendants**

21 All Defendants have been served.

22 **(c) Possible joinder of additional parties**

23 The Parties do not anticipate joinder of any additional parties.

24 **(d) Contemplated amendments to pleadings**

25 Plaintiffs anticipate no further amendments to their Amended Complaint.

26 **(e) Statutory basis for jurisdiction and venue**

27 This case presents a federal question allegedly arising under the Commerce and
28 Supremacy Clauses of the Constitution of the United States, 42 U.S.C. §1983, and 42 U.S.C.

1 §1988. The Court has subject-matter jurisdiction under 28 U.S.C. §§1331 and 1343(a)(3).
2 Venue is proper in this Court under 28 U.S.C. §1391(b)(1) because the Attorney General of
3 California maintains an office within the Eastern District of California.

4 **(f) Anticipated discovery**

5 The parties anticipate conducting all forms of discovery permitted under Federal Rules of
6 Civil Procedure. They do not anticipate any need to deviate from the procedures or limits
7 imposed by those Rules.

8 **(g) Contemplated dispositive or other motions**

9 Both California and HSUS have pending motions to dismiss, and ACEF has a pending
10 motion to dismiss or for judgment on the pleadings. If the Amended Complaint survives these
11 motions, Plaintiffs anticipate moving for preliminary injunctive relief before the end of the year.
12 California, HSUS, and ACEF reserve all rights to oppose any request for preliminary injunctive
13 relief including, but not limited to, its timeliness. All parties anticipate moving for summary
14 judgment following discovery.

15 **(h) Proposed discovery and trial schedule**

16 The parties disagree about the time necessary to conduct discovery and resolve this case,
17 as set forth in the following alternative scheduling proposals:

18 Proposal from Plaintiffs, California, and HSUS

19 Plaintiffs, California, and HSUS believe they will need approximately ten months to
20 complete fact and expert discovery. Accordingly, they propose the following schedule:

- 21 • Rule 26(a)(1) Initial Disclosures due July 1, 2014
- 22 • Reports of Plaintiffs' experts due October 20, 2014
- 23 • Reports of Defendants' experts due November 20, 2014
- 24 • Deposition of Plaintiffs' experts concluded by January 31, 2015
- 25 • Deposition of Defendants' experts concluded by February 28, 2015
- 26 • All discovery (both fact and expert) closes April 1, 2015
- 27 • Dispositive motions due May 1, 2015
- 28 • Final Pretrial Conference on August 20, 2015

1 challenges to the Shell Egg Laws present only questions of law that can and should be resolved
 2 in connection with the pending motions to dismiss, which are scheduled to be heard August 22,
 3 2014.³ In the meantime, however, ACEF proposes an expedited schedule for conducting
 4 discovery and filing motions for summary judgment, so that this case can be resolved promptly
 5 in the event the Court concludes that consideration of factual material beyond the pleadings is
 6 required. ACEF believes its proposed schedule provides more than adequate time to complete
 7 discovery and would make it possible for this Court to issue a decision on the Parties' summary
 8 judgment motions in 2014 before the Shell Egg Laws take effect. Plaintiffs have also indicated
 9 that they seek guidance from the Court in advance of January 1, 2015. But rather than adopt an
 10 expedited schedule for litigating this case, Plaintiffs (along with California and HSUS) have
 11 proposed a schedule that calls for discovery to continue until April 1, 2015, with dispositive
 12 motions to follow. Instead of attempting to resolve the case in 2014 at summary judgment,
 13 Plaintiffs state that they plan at some later point in time to file a motion for a preliminary
 14 injunction, which they will ask the Court to resolve before January 1, 2015. ACEF respectfully
 15 suggests that, rather than plan months in advance to litigate a preliminary injunction motion, the
 16 parties should put themselves and the Court in a position to resolve Plaintiffs' challenges at
 17 summary judgment.

18 **(i) Methods that can be used from the outset to avoid unnecessary proof and**
 19 **cumulative evidence; anticipated restrictions on the use of expert testimony**

20 One or more of the Parties anticipates factual disputes concerning (a) the extent to which
 21 the Shell Egg Laws burden interstate commerce, (b) the extent to which the Shell Egg Laws
 22 benefit local interests in California, (c) whether the Shell Egg Laws' burden on interstate
 23 commerce outweighs their local benefits, (d) whether the Shell Egg Laws bestow an economic

likelihood of Plaintiffs' success on the merits before the end of this year. Plaintiffs did not file a motion for preliminary injunction on the same day they filed their complaint—nearly a year before the Shell Egg Laws' effective date—because there would have been nothing for the Court to enjoin at that time.

³ ACEF opposed the other parties' request to move the hearing from June 6 to August 22 and continues to believe that an earlier hearing would be in the interest of all parties and the Court.

1 advantage on California egg producers over egg producers outside of California, and (e) whether
2 the Shell Egg Laws have the practical effect of regulating the sale of eggs wholly outside
3 California. Defendants do not concede that resolution of Plaintiffs' constitutional and
4 preemption claims requires fact finding on these issues. The parties anticipate that they would
5 attempt to stipulate to many other facts prior to summary judgment and trial (should one be
6 necessary).

7 **(j) Special trial procedures**

8 The parties have not consented to have this case heard by a magistrate judge and do not
9 currently believe any special trial procedures are necessary.

10 **(k) Standard pretrial procedures**

11 The parties do not propose any modification of standard pre-trial procedures.

12 **(l) Related cases.**

13 The parties are not aware of any related cases pending in this district.

14 **(m) Timing of Settlement Discussions**

15 As this case concerns the constitutionality of California law, settlement negotiations
16 would not be productive.

17 **(n) Other matters**

18 As the relief sought by Plaintiffs in this case is equitable and declaratory in nature, there
19 will be no jury demand. The parties are not aware of any other matters to bring to the Court's
20 attention at this time.

21
22 Date: June 9, 2014

Respectfully submitted,

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24 Attorney General of Missouri

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Attorney General of California

25 /s/ J. Andrew Hirth
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