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in Interest Valley Meat Co., LLC
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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
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10 FRONT RANGE EQUINE RESCUE, THE
HUMANE SOCIETY OF THE UNITED
11 STATES, MARIN HUMANE SOCIETY,
HORSES FOR LIFE FOUNDATION,
12 RETURN TO FREEDOM, RAMONA
CORDOVA, KRYSTLE SMITH, CASSIE
13 GROSS, DEBORAH TRAHAN, and
BARBARA SINK,

14 Plaintiffs,

15 v.

16 TOM VILSACK, Secretary U.S.
Department of Agriculture; ELIZABETH A.
17 HAGEN, Under Secretary for Food Safety,
U.S. Department of Agriculture; and
18 ALFRED A. ALMANZA, Administrator,
Food Safety and Inspection Service, U.S.
19 Department of Agriculture,
20

21 Defendants.

CASE NO. 4:13-CV-03034-YGR

**MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE BY VALLEY
MEAT COMPANY, LLC**

22 **I. INTRODUCTION**

23 Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Valley Meat
24 Company, LLC ("Proposed Intervenor") seeks to intervene in the above-captioned action.
25 Proposed Intervenor's interests, which could be impaired by the outcome of this litigation,
26 in combination with the absence of adequate representation by the current defendants,
27 provide solid grounds for them to intervene as of right. Valley Meat Company, LLC is a
28 Real Party in Interest because it is one of the companies that Plaintiffs seek to obstruct

1 from receiving its Grant of Inspection from Defendants.¹

2 **II. PROCEDURAL AND FACTUAL BACKGROUND**

3 In the summer of 2011, the federal government recognized the unintended, but
4 devastating, impact the slaughter ban has had on the horse industry in a 2011 GAO
5 Report.² In the fall of 2011 in response to 2011 GAO Report Congress appropriately
6 reinstated funding for the inspection of equine species for processing for human
7 consumption. At that time Proposed Intervenor was an operating cattle processing
8 facility and immediately following the reinstatement of funding for inspection for horse
9 Proposed Intervenor began the consultation with USDA FSIS to make the necessary
10 modification and applications to obtain a Grant of Inspection for equine processing. In
11 late April 2012, Proposed Intervenor received notification from USDA FSIS that they had
12 satisfactorily completed the necessary modifications and permit requirements to be
13 issued a Grant of Inspection. However, USDA FSIS citing political pressure, some of
14 which was applied by some of the plaintiffs in this instant case, became non-
15 communicative and uncooperative failing to issue the grant of inspection as required by
16 the law. Over the months that followed, Proposed Intervenor sought to remedy the denial
17 of its grant of inspection by seeking the assistance of the agency and of Congress. After
18 exhausting those remedies to no avail, in late October 2012, Proposed Intervenor filed an
19 action in the Federal District Court of New Mexico under the Administrative Procedures

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21 ¹ The Attorney for Valley Meat Company, LLC, Mr. A. Blair Dunn attempted to obtain
22 concurrence to the Motion to Intervene from Plaintiffs' Counsel and Counsel for
23 Defendants. See Declaration of A. Blair Dunn in Support of Motion to Intervene by Valley
24 Meat Company, LLC.

25 ² U.S. Government Accountability Office, *Horse Welfare: Action Needed to Address*
26 *Unintended Consequences from Cessation of Domestic Slaughter* (June 2011), available
27 at <http://www.gao.gov/new.items/d11228.pdf>.

1 Act. (Valley Meat Company, LLC's Complaint for Declaratory and Injunctive Relief
2 attached hereto as Exhibit A) This action is still pending before the Federal District Court,
3 New Mexico, and in January 2013 plaintiffs in this action, HSUS and FRER, filed a
4 motion to intervene and complaint in intervention on largely identical grounds upon which
5 plaintiffs have brought this action. (HSUS and FRER Motion to Intervene, Memorandum
6 in Support of Motion to Intervene, and Complaint in Intervention is attached hereto as
7 Exhibit B)

8 **III. LEGAL STANDARD**

9 Federal Rule of Civil Procedure 24(a)(2) provides that intervention must be
10 allowed if a proposed intervenor claims an interest relating to the property or transaction
11 that is the subject of the action, and is so situated that disposing of the action may as a
12 practical matter impair or impede the movant's ability to protect its interest, unless
13 existing parties adequately represent that interest.

14 Thus, to intervene as a matter of right under rule 24(a)(2), "the movant must
15 show that: (i) the motion is timely; (ii) the movant claims an interest relating to the
16 property or transaction which is the subject of the action; (iii) the movant's interest
17 relating to the property may be impaired or impeded; and (iv) the movant's interest is not
18 adequately represented by existing parties." Prete v. Bradbury, 438 F.3d 949, 954 (9th
19 Cir.2006) (internal quotation marks and citation omitted); see also Berg, 268 F.3d at
20 817. While an applicant seeking to intervene has the burden to show that these four
21 elements are met, the requirements are broadly interpreted in favor of intervention.
22 Prete, 438 F.3d at 954. "In addition to mandating broad construction, our review is
23 guided primarily by practical considerations, not technical distinctions." Berg, 268 F.3d
24 at 818 (internal quotation marks and citation omitted). Review of the first three of the
25 elements is conducted at a practical, threshold inquiry. Greene v. United States, 996
26 F.2d 973, 976 (9th Cir.1993) The fourth element reviewed requires that an applicant
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1 must make a “compelling showing” of inadequacy of representation. Arakaki, 324 F.3d
2 at 1086. “There is also an assumption of adequacy when the government is acting on
3 behalf of a constituency that it represents,” which must be rebutted with a compelling
4 showing. *Id.*

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6 **IV. ARGUMENT**

7 **A. VALLEY SHOULD BE PERMITTED TO INTERVENE AS OF RIGHT**

8 **1. This Motion is Timely**

9 The are traditional features of a timely motion to intervene are that it was made at
10 an early stage of the proceedings, the parties would not have suffered prejudice from
11 the grant of intervention at that early stage, and intervention would not cause disruption
12 or delay in the proceedings. See Nw. Forest Res. Council v. Glickman, 82 F.3d 825, 836
13 (9th Cir.1996).

14
15 This action was filed on July 2, 2013. Immediately upon learning that Plaintiffs
16 had filed this lawsuit, Proposed Intervenor had conversations with their counsel, and
17 began to prepare this Motion to Intervene. In fact, Proposed Intervenor is now filing this
18 Motion to Intervene within one week of the initial filing of the case. As such, the motion
19 is certainly timely and there can be no prejudice due to the timing of this motion.

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21 **2. Proposed Intervenors Have Significant Interest at Stake**

22 “To demonstrate a significant protectable interest, an applicant must establish
23 that the interest is protectable under some law and that there is a relationship between
24 the legally protected interest and the claims at issue.” Nw. Forest Res. Council v.
25 Glickman, 82 F.3d 825, 837 (9th Cir.1996). Proposed Intervenor’s Grant of Inspection
26 and the issuance or the restraint from issuance of that Grant of Inspection is the very
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1 substantive object of this case. In fact, Proposed Intervenor's lawful operation of its
2 business is entirely dependent of the issuance of the Grant of Inspection. See
3 Declaration of Ricardo De Los Santos in Support of Valley Meat Company, LLC's
4 Motion to Intervene, at 3-6.

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6 **3. Disposition Of This Action Would Substantially Affect Proposed
Intervenor's Interest**

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8 "If an absentee would be substantially affected in a practical sense by the
9 determination made in an action, he should, as a general rule, be entitled to
10 intervene...." Fed.R.Civ.P. 24 advisory committee's note; see also Berg, 268 F.3d at
11 822 ("We follow the guidance of Rule 24 advisory committee notes...."). Under
12 similar circumstances, "[h]aving found that appellants have a significant protectable
13 interest, [this court had] little difficulty concluding that the disposition of th[e] case
14 may, as a practical matter, affect it." California ex rel. Lockyer v. United States, 450
15 F.3d 436, 442 (9th Cir.2006).

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17 In the present case the denial or restraint of Proposed Intervenor to have a Grant
18 of Inspection would completely block the ability of the business to operate. This would
19 effectively destroy the economic interests of Proposed Intervenor and cause legitimate
20 injury in fact. It is beyond argument that outcome of this action would certainly
21 substantially affect the interests of Proposed Intervenor.

22
23 **4. Absence of Adequate Representation**

24 While "[t]here is also an assumption of adequacy when the government is acting
25 on behalf of a constituency that it represents" (see Arakaki, 324 F.3d at 1086), the
26 Courts have recognized "the government's representation of the public interest may not
27 be 'identical to the individual parochial interest' of a particular group just because 'both
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1 entities occupy the same posture in the litigation.” WildEarth Guardians v. U.S. Forest
2 Serv., 573 F.3d 992, 996 (10th Cir.2009) (quoting Utah Ass'n of Cntys. v. Clinton, 255
3 F.3d 1246, 1256 (10th Cir.2001) In fact on this very same subject matter of this
4 particular Grant of Inspection Proposed Intervenor and Defendant are actually still
5 adverse parties in the existing action before the Federal District Court of New Mexico
6 which is on all fours with the Court’s discussion in Use v. Mont. Wilderness Ass'n, 647
7 F.3d 893, 80 Fed.R.Serv.3d 30 (9th Cir., 2011) wherein the Court recognized that
8 previous adverse position of the parties led to the satisfaction of the requirement that a
9 party would not be adequately represented. Clearly the expectation cannot be that
10 Proposed Intervenor’s interest will be adequately represented by a Defendant USDA
11 FSIS³ with whom Proposed Intervenor is adverse in another open case on the same
12 subject matter.
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15 **V. CONCLUSION**

16 For the above reasons, Valley Meat Company, LLC respectfully asks the Court to grant
17 its motion to intervene in this action as a matter of right.
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23 ³ Proposed Intervenor respectfully requests that the Court also take notice of the fact
24 Secretary Tom Vilsack, a defendant party to this litigation, has repeatedly stated a
25 position that is adverse to Proposed Intervenor. See
26 [http://www.foodsafetynews.com/2013/03/secretary-vilsack-says-congress-needs-an-](http://www.foodsafetynews.com/2013/03/secretary-vilsack-says-congress-needs-an-alternative-to-horse-slaughter/#.UdWoeW0kxDI)
27 [alternative-to-horse-slaughter/#.UdWoeW0kxDI](http://www.foodsafetynews.com/2013/03/secretary-vilsack-says-congress-needs-an-alternative-to-horse-slaughter/#.UdWoeW0kxDI)
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DATED: July 8, 2013

Respectfully submitted,

HANSON BRIDGETT LLP

By: /s/ Michael J. Van Zandt
MICHAEL J. VAN ZANDT (CA SBN: 96777)
Attorneys for Proposed Intervenor-Real Party
in Interest Valley Meat Co., LLC

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 425 Market Street, 26th Floor, San Francisco, CA 94105.

On July 8, 2013, I served true copies of the following document(s) described as

MEMORANDUM ISO MOTION TO INTERVENE BY VALLEY MEAT COMPANY, LLC

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 8, 2013, at San Francisco, California.

/s/ Keith Kiley _____
Keith Kiley