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15 IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

16 THE HUMANE SOCIETY OF THE UNITED
17 STATES, SHARI LESKOWITZ, ED
LEVINSON, VALERIE MIZHURA, and
18 TAMMY LEE WONG,

19 Plaintiffs,

20 v.

21 CALIFORNIA STATE BOARD OF
22 EQUALIZATION, a California State Agency,
and STEVE WESTLY in his official capacity as
23 State Controller,

24 Defendants.

CIVIL ACTION NO. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF PURSUANT
TO CALIFORNIA CODE OF CIVIL
PROCEDURE SECTION 526a

1 **INTRODUCTION**

2 1. Plaintiffs bring this action for declaratory and injunctive relief pursuant to Code of
3 Civil Procedure section 526a (“CCP 526a”) and California common law against defendants
4 California Board of Equalization (“BOE”) and Steve Westly in his official capacity as
5 Controller (“Controller”), to declare unlawful and enjoin the BOE’s policy and practice of
6 granting a tax exemption to agricultural producers who both purchase and use confinement
7 systems for laying hens—so-called “battery cages”—that, by design, confine animals in an
8 “enclosed area” without providing “an adequate exercise area,” in violation of section 597t and
9 other provisions of the California Penal Code.

10 2. Although the Taxation and Revenue Code (“Tax Code”) authorizes the BOE to
11 allow purchasers of agricultural equipment to claim a partial sales or use tax exemption when
12 purchasing agricultural equipment, the BOE has long recognized that, in administering the
13 sales and use taxes, its “discretion must be exercised so as not to confer permissive authority
14 on a person to embark on, or continue, an illegal activity.” State Board of Equalization, Sales
15 and Use Tax Annotations 410.0202 (1985).

16 3. Because this is precisely what defendants are doing here—and because their actions
17 have resulted and will continue to result in the use of public funds to subsidize an animal
18 confinement method that violates State law—plaintiffs seek an order from this Court
19 restraining the “illegal expenditure of, waste of,” and “injury to, the estate, funds, or other
20 property” of the People of California pursuant to CCP 526a and common law taxpayer
21 standing principles.

22 4. Moreover, because the BOE has inexplicably refused plaintiffs’ request for public
23 records concerning the nature and scope of its practice of allowing tax exemptions for such
24 confinement equipment, The HSUS has separately petitioned for a Writ of Alternative
25 Mandate seeking an order directing the BOE to provide plaintiffs with public records the BOE

1 has unlawfully withheld from The HSUS in violation of the California Public Records Act,
2 Government Code section 6258.

3 **PARTIES**

4 5. Plaintiff The Humane Society of the United States (“The HSUS”) is a non-profit
5 charitable organization that promotes the protection of all animals. The HSUS maintains its
6 headquarters in Washington D.C., and has two regional offices in California. The HSUS is the
7 largest animal protection organization in the United States, representing over 9.5 million
8 members and constituents, including more than 900,000 members and constituents residing in
9 California. The HSUS’s mission is to foster the humane treatment of all animals, including
10 farm animals, through several program initiatives. The HSUS actively advocates against
11 practices that injure, harass, or abuse animals, and provides the public with information
12 regarding the inhumane treatment of farm animals on a wide spectrum of topics, including the
13 effects of intensive confinement on hens. Defendants’ violations of law are causing continued
14 harm to millions of hens in California, and are harming The HSUS and its members’ interests
15 in the lawful and humane treatment of these animals. The HSUS has been assessed and has
16 paid taxes to the State of California within one year of the commencement of this action. As a
17 taxpayer, plaintiff The HSUS has no administrative remedies to exhaust, and if there were
18 administrative remedies, exhaustion would be futile. The HSUS brings this action on behalf of
19 itself and its adversely affected members who are citizens and residents of California and who
20 pay State taxes.

21 6. Plaintiff Shari Leskowitz has been a citizen and resident of the City and County of
22 San Francisco since 2004. Ms. Leskowitz has been assessed and has paid taxes to the State of
23 California within one year of the commencement of this action. As a taxpayer, plaintiff
24 Leskowitz has no administrative remedies to exhaust.

25 7. Plaintiff Ed Levinson has been a citizen and resident of Marin County since 1995.
Mr. Levinson is a member of The Humane Society of the United States. Mr. Levinson has

1 been assessed and has paid taxes to the State of California within one year of the
2 commencement of this action. As a taxpayer, plaintiff Levinson has no administrative
3 remedies.

4 8. Plaintiff Valerie Mizhura has been a citizen and resident of Marin County since
5 2000. Ms. Mizhura is a member of The Humane Society of The United States. Ms. Mizhura
6 has been assessed and has paid taxes to the State of California within one year of the
7 commencement of this action. As a taxpayer, plaintiff Mizhura has no administrative remedies
8 to exhaust.

9 9. Plaintiff Tammy L. Wong has been a citizen and resident of the city of Montara in
10 the County of San Mateo since 1998. Ms. Wong has been assessed and has paid taxes to the
11 State of California within one year of the commencement of this action. As a taxpayer,
12 plaintiff Wong has no administrative remedies to exhaust.

13 10. Defendant State Controller Steve Westly is the Chief Financial Officer of
14 California. Controller Westly is responsible for ensuring that the State's \$100-billion budget is
15 spent properly and in accordance with State law.

16 11. Defendant BOE is charged with administration of California's sales and use taxes
17 and administration of the statutory exemption for farm equipment and machinery from those
18 taxes. CAL. REV. & TAX. CODE §§ 7051 et seq.; 6356.5 (West 2005). The BOE is responsible
19 for all aspects of administering the sales and use taxes, including making decisions concerning
20 which purchases qualify for the agricultural tax exemption from the sales and use taxes, and
21 for ensuring that such exemptions are granted in accordance with State law.

22 **JURISDICTION AND VENUE**

23 12. CCP 526a grants this Court jurisdiction to issue injunctive relief restraining the
24 grant of tax exemptions to purchasers of items, the use of which, by design, violates
25 California's animal cruelty code. Section 1060 of the Code of Civil Procedure grants this
Court jurisdiction to grant declaratory relief.

1 13. Defendant BOE is an entity of the State of California, and defendant Westly is an
2 officer of the State of California. This action is brought in the City and County of San
3 Francisco, wherein the Attorney General maintains an office. Therefore, venue is proper in this
4 district pursuant to Code of Civil Procedure section 401.

5 **RELEVANT LAW AND FACTS**

6 I. Statutes and Regulations

7 A. The California Penal Code

8 14. Penal Code section 597t provides that “[e]very person who keeps an animal
9 confined in an enclosed area shall provide it with an adequate exercise area.”

10 15. Penal Code section 597(b) prohibits “tortur[ing], torment[ing], depriv[ing] of
11 necessary sustenance, drink, or shelter, cruelly beat[ing], mutilat[ing], or cruelly kill[ing] any
12 animal.” In addition, 597(b) prohibits “subject[ing] any animal to needless suffering, or
13 inflict[ing] unnecessary cruelty upon the animal, or in any manner abus[ing] any animal.”

14 16. Penal Code section 599b contains the statutory definitions applicable to sections
15 597t and 597(b) of the Penal Code, and defines the term “animal” as “every dumb creature.”

16 B. The California Tax Code

17 17. Section 6051 of the Tax Code imposes a sales tax, computed as a percentage of
18 gross receipts, upon all retailers for the privilege of selling tangible personal property at retail
19 in California, except where the sale is of property specifically exempted by statute. CAL. REV.
20 & TAX. CODE § 6051. In addition, the Tax Code further provides that it “shall be presumed
21 that all gross receipts are subject to sales tax unless the contrary is established” Id. at §
22 6091 (West 2005).

23 18. California does not assess sales tax on sales made by out-of-State retailers, but Tax
24 Code section 6201 does impose a use tax on items sold by out-of-State retailers, if the item will
25 be used, consumed, given away, or stored in California—unless the sale is of property
specifically exempted by statute. Id. at § 6201. As with the sales tax, section 6241 of the Tax

1 Code provides that “it shall be presumed that tangible personal property sold by any person for
2 delivery in this State is sold for storage, use, or other consumption in this State until the
3 contrary is established.” Id. at § 6241.

4 19. In 2001, the State of California enacted section 6356.5 of the Revenue and
5 Taxation Code, which generally exempts from the State’s sales and use taxes a “qualified
6 person’s” purchases of “any tool, machine, equipment, appliance, device or apparatus used in
7 the conduct of agricultural operations” so long as these items will be used “primarily in
8 producing and harvesting agricultural products” (hereinafter referred to as the “Agricultural
9 Tax Exemption”). Id. at §§ 6356.5(a), (b)(1)-(2); 411.

10 20. The Agricultural Tax Exemption provided by section 6356.5 exempts qualified
11 purchases from the State’s “general fund” portion of the sales and use taxes. CAL. REV. & TAX.
12 CODE § 6356.5(c)(2); see also, California State Board of Equalization, Tax Tips For the
13 Agricultural Industry, publication No. 66, 14 (2004) (“Tax Tips”). Currently California’s sales
14 and use taxes are both 7.25% (subject to minor local deviations), and the State’s general fund
15 portion of this percentage represents 5.25%. See Tax Tips at 14. Thus, qualifying tax exempt
16 purchases are currently exempt from 5.25% of California’s sales or use tax respectively.

17 21. Subdivision (d) of section 6356.5 directs the BOE to implement the Agricultural
18 Tax Exemption program. CAL. REV. & TAX. CODE § 6356.5(d).

19 C. The State Board of Equalization’s Tax Regulations

20 22. In 2002, the BOE implemented the Agricultural Tax Exemption by issuing
21 regulations codified at Title 18 section 1533.1 of the California Code of Regulations. These
22 regulations allow purchasers to avoid the 5.25% State general fund portion of the sales and use
23 taxes on purchases of both agricultural equipment and structures. CAL. CODE REGS. tit. 18, §
24 1533.1(a), (b) (2005). As reported in 2002 by the *Modesto Bee*, agricultural interest groups
25 urged the BOE to draft these regulations to expressly allow tax exemptions for improvements
to real property such as battery-cage buildings. Richard T. Estrada, Modesto, Calif.—Area

1 Farmers May Get Tax Exemption, *Modesto Bee*, Jan. 11, 2002. Indeed, one industry
2 representative told the *Modesto Bee* that as a result of the newly available tax exemption for
3 farm animal structures, California poultry interests expected to “save up to \$600,000” on
4 construction of new structures in 2002 alone. Id.

5 23. The BOE’s regulations require that purchasers actually put their agricultural
6 equipment and structures to use in order to claim the exemption. Thus, both sale and use of
7 such items are requisites to tax exemption. CAL. CODE REGS. tit. 18, § 1533.1(a), (b).

8 24. To qualify for the tax exemption, farm animal buildings must be designed and used
9 exclusively for a singular agricultural purpose related to a single animal species. Id. at
10 1533.1(b)(1)(A). For example, a battery-cage shed designed and used to accommodate cages
11 and equipment associated with cage-confining hens would qualify for the exemption, whereas
12 a shed designed for many uses that might at some point be used to confine hens in battery
13 cages would not qualify for tax exemption. Id. Thus, a purchaser must commit an agricultural
14 structure to a single, exclusive use and build the structure accordingly in order to claim the tax
15 exemption.

16 D. The State Board of Equalization’s Administration of the Agricultural
17 Tax Exemption

18 25. Plaintiffs are informed and believe, and on that basis allege, that in 2004,
19 defendant allowed a California battery-cage operator to claim a tax exemption amounting to
20 approximately \$35,000 to \$45,000 for the purchase of battery cages.

21 26. Plaintiffs are informed and believe, and on that basis allege, that the BOE and the
22 Controller have expended and/or threaten to expend public money for a wasteful and illegal
23 purpose by paying State employees for their time spent evaluating, approving, and enforcing
24 tax exemptions for battery cages designed and used to criminally harm animals.

25 27. Plaintiffs are informed and believe, and on that basis allege, that the BOE has
wasted and unlawfully used public funds, and injured the public fisc -- and threatens to
continue wasting and unlawfully using public funds, and injuring the public fisc -- by choosing

1 not to collect tax revenue on purchases of battery cages that are both designed and used to
2 criminally harm animals.

3 28. Plaintiffs are informed and believe, and on that basis allege, that the BOE's
4 expenditures, pursuant to its policy and practice of requiring actual use of an agricultural
5 product to claim a tax exemption, directly result in violations of section 597t of the Penal Code
6 which prohibits keeping "an animal confined in an enclosed area" without "provid[ing] it with
7 an adequate exercise area" and Penal Code section 597(b) prohibiting "tortur[ing],
8 torment[ing], depriv[ing] of necessary sustenance, drink, or . . . cruelly kill[ing] any animal,"
9 and also prohibits "subject[ing] any animal to needless suffering, or inflict[ing] unnecessary
10 cruelty upon the animal, or in any manner abus[ing] any animal." CAL. PENAL CODE §§
11 597(b); 597t.

12 29. Plaintiffs are informed and believe, and on that basis allege, that the expenditures
13 and threatened expenditures of State funds described in paragraphs 25 through 28 either cause,
14 or threaten to cause, violations of the State cruelty code because they make battery cages more
15 affordable and thereby increase the number of hens who can be battery-cage confined.

16 30. Defendants have no discretion to injure the public fisc by depriving the State of tax
17 revenue or to expend public money in a manner contrary to the public policy of preventing
18 animal cruelty as expressed in sections 597(b) and 597t of the Penal Code.

19 II. Unlawful Confinement

20 31. Plaintiffs are informed and believe, and on that basis allege, that approximately
21 95% of egg-laying hens in California are raised in conventional battery-cage confinement
22 systems.

23 32. Plaintiffs are informed and believe, and on that basis allege, that hens in battery
24 cages are not provided with an adequate exercise area.

25 33. Plaintiffs are informed and believe, and on that basis allege, that hens in battery
cages endure pain, physical injury, and abuse as a result of battery-cage confinement.

1 34. Plaintiffs are informed and believe, and on that basis allege, that a typical battery-
2 cage shed in California contains thousands of cages in which three to ten hens are continuously
3 confined for nearly their entire lives.

4 35. Plaintiffs are informed and believe, and on that basis allege, that the majority of
5 egg-laying hens in California are confined in battery cages at approximately 16 weeks of age
6 and are thereafter continuously confined in battery cages until they are removed once their egg
7 production slows, typically at 18 to 20 months of age, and they are then transported to
8 slaughter or otherwise killed.

9 36. The floor area of typical hen battery cages measures approximately 16 inches by
10 18 inches.

11 37. California egg-layer facilities typically consist of one or more battery-cage sheds,
12 with each shed containing tens of thousands of caged hens. According to the guide *Egg-type*
13 *Layer Flock Care Practices* (“Flock Practices”) produced by the University of California,
14 Davis, the average California battery-cage shed confines 125,000 hens. Donald Bell et al.,
15 California Poultry Workgroup University of California Cooperative Extension, *Egg-type Layer*
16 *Flock Care Practices*, 2 (University of California, Davis 2nd ed. 1998).

17 38. According to *Flock Practices*, in 1998 there were 200 commercial egg producers in
18 California. *Id.* In 2005, approximately 19 million egg-laying hens were confined in battery
19 cages in California. University of California, Davis, Animal Science, *Egg Statistics 2005*,
20 table 5, available at <http://animalscience.ucdavis.edu/Avian/eggstat1005.xls>.

21 39. The United Egg Producers (“UEP”)—a trade group representing 80% of all
22 commercial egg producers in the United States, including at least 27 producers operating in
23 California—has developed stocking-density guidelines for hens that allow the birds to be
24 caged at densities affording each bird a mere 67 square inches of cage space, *i.e.*, less space
25 than the size of a letter size sheet of paper. United Egg Producers, *United Egg Producers*
Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 13 (2003).

1 40. Joy Mench Ph.D., one of the authors of the United Egg Producers’ stocking density
2 guidelines and a University of California, Davis, professor of Animal Science specializing in
3 animal welfare assessment, has acknowledged that the 67 square inches of space recommended
4 by the UEP denies the birds the space they need to “perform normal comfort behaviors.” Joy
5 Mench et al., *Farm Animals and Their Welfare in 2000*, in STATE OF THE ANIMALS 2001 93-94
6 (Deborah J. Salem & Andrew N. Rowan, eds. 2001). Doctor Mench observed that some
7 countries recommend “60-80 square inches per hen, barely enough for the hen to turn around
8 and not enough for her to perform normal comfort behaviors; however many hens are allowed
9 less than even that meager amount.” *Id.* (emphasis added).

10 41. Moreover, Doctor Mench noted that the UEP’s recommended space allowance
11 would have been more generous if the UEP would have “given more weight to the information
12 from the preference testing and use of space studies, since these indicate that hens need and
13 want more space than 72 square inches.” Joy Mench & J.C. Swanson, *Developing Science-*
14 *Based Animal Welfare Guidelines*, 5 (2000) (emphasis added). In fact, according to a 1989
15 study by Doctors Marian Stamp Dawkins and S. Hardie, hens need an average of 72 square
16 inches just to stand freely, 178 square inches to preen, 197 square inches to turn around, and
17 291 square inches to flap their wings. Marian Stamp Dawkins & S. Hardie, *Space Needs of*
18 *Laying Hens*, 30 *British Poultry Science* 413-16 (1989). In summarizing the findings of the
19 Dawkins and Hardie study and other use of space studies, Doctor Mench observed, “These
20 studies showed that light and medium-hybrid hens need about 71-75 [square inches] of space
21 per hen just to stand and lie down.” Joy Mench & J.C. Swanson, *Developing Science-Based*
22 *Animal Welfare Guidelines*, 2 (2000) (emphasis added); see also, Michael R. Baxter, *The*
23 *Welfare Problems of Laying Hens in Battery-cages*, 134 *The Veterinary Record* 617 (1994)
24 (“The space available in a battery-cage does not allow hens even to stand still in the way they
25 would in a more spacious environment.”).

1 42. Studies performed by the University of California demonstrate that death rate
2 increases considerably as the space afforded to caged hens decreases, indicating that tighter
3 confinement increases death rate and compromises hen welfare. In summarizing five
4 University of California studies involving thousands of hens confined in 12- by 18-inch cages
5 (providing 216 square inches of floor space) for 46 weeks, Don Bell, a University of California
6 Extension poultry specialist, reported in 1988 that the average death rate of 10.5% in cages
7 confining four hens (54 square inches per hen) was consistently higher than the death rate of
8 7.6% in cages confining three hens (72 square inches per hen). In some of these studies, the
9 death rate in cages housing four hens was more than double that of those cages housing three
10 hens—leading Bell to conclude that, in all five studies, “considerably less mortality was
11 observed in the 3-hen cages.” Cooperative Extension University of California, *The Effects of*
12 *Cage Density, Housing and Strain of Chickens on Various Performance Parameters (Report*
13 *#1)*, Progress in Poultry No. 36, p. 15, June 1988.

14 43. Thus, even when cared for by State-employed poultry experts, hens allowed less
15 than 72 square inches of space died as a result of confinement. Accordingly, Bell noted in an
16 undated and unpublished piece that “[n]umerous studies have demonstrated time and again that
17 additional birds . . . increase mortality. Our analysis of 45 experiments conducted across the
18 US and Europe show . . . 3.9% higher mortality rates for each addition of one bird per cage.”
19 Bell D., Economic Implications of Controversial Layer Management Programs (unpublished,
20 cited by: Joy Mench & J.C. Swanson, *Developing Science-Based Animal Welfare Guidelines*, 4
21 (2000).

22 44. Osteoporosis and fractures, caused in large part by hens’ inability to exercise, are
23 exceedingly common among cage-confined hens. In a review of relevant scientific literature,
24 Doctor A. Bruce Webster noted that in some studies, between 80% and 89% of caged laying
25 hens suffered from osteoporosis. Accordingly, Doctor Webster concluded, “Osteoporosis
appears to be inevitable in highly productive caged laying hens.” Bruce Webster, *Welfare*

1 *Implications of Avian Osteoporosis*, 83 Poultry Science 184, 188 (2004). In its “Report on the
2 Welfare of Laying Hens,” (1996) the European Union’s Scientific Veterinarian Committee
3 wrote of cage layer hen osteoporosis that “it is generally accepted that restriction of movement
4 is the main cause of bone fragility.” See also, FRANK JORDAN et al., POULTRY DISEASES 477
5 (Harcourt Publishers Ltd. 5th ed. 2002) (“Giving birds more exercise can considerably improve
6 bone quality. Nutrition, in contrast is relatively ineffective in preventing osteoporosis.”).

7 45. Several published studies have established that in order to maintain bone health,
8 hens need exercise such as flying, wing-flapping and walking—activities which are essentially
9 impossible for battery-caged hens. In a study comparing the bone strength of hens within
10 different housing systems Doctors T.G. Knowles and D.M. Broom found that flight and wing-
11 flapping was “impossible” for battery-caged hens, and as a consequence, the tibia (leg bones)
12 and humeri (wing bones) in caged hens were significantly weakened due to osteoporosis
13 brought on by inactivity. T.G. Knowles & D.M. Broom, *Limb Bone Strength and Movement in*
14 *Laying Hens From Different Housing Systems*, 126 *The Veterinary Record* 354-56 (1990).
15 Indeed, Doctors Knowles and Broom conclude that the European Union’s minimum space
16 allowance of 450 square centimeters per hen (70 square inches), in effect in 1990, “does not
17 ensure the birds sufficient freedom of movement to allow adequate bone loading to develop
18 normal bone strength.” Id. at 356. See also G. Norgard-Nielsen, *Bone Strength of Laying Hens*
19 *Kept In An Alternative System, Compared With Hens in Cages and On Deep-Litter*, 31 *British*
20 *Poultry Science* 81 (1990) (“Keeping hens in cages thus restricts their movements, especially
21 wing movements, to the degree that bone strength is greatly reduced.”). Similarly, Doctor
22 Michael Baxter, expert on animal housing, concluded in 1994 that “[t]he fact that hens are
23 restricted from exercising to such an extent that they are unable to maintain the strength of
24 their bones is probably the greatest single indictment of the battery-cage. The increased
25 incidence of bone breakage which results is a serious welfare insult.” Michael R. Baxter, *The*

1 *Welfare Problems of Laying Hens in Battery-cages*, 134 *The Veterinary Record* 617, 618
2 (1994).

3 46. A typical 16 inch by 18 inch hen battery cage provides 288 square inches of floor
4 space. Thus, even a solitary hen confined in such a cage would be unable to adequately
5 exercise because she would not have the 291 square inches needed just to flap her wings.
6 Marian Stamp Dawkins & S. Hardie, *Space Needs of Laying Hens*, 30 *British Poultry Science*
7 413-16 (1989) (hens need at least 291 square inches of space to flap their wings). Moreover, a
8 solitary hen confined in a typical battery cage would be denied adequate exercise because she
9 would be entirely prevented from flying.

10 47. As a result of osteoporosis, caged hens can suffer protracted deaths due to food
11 and/or water deprivation after suffering immobilizing bone fractures. *Diseases of Poultry*, a
12 textbook widely used in veterinary science programs and at the University of California,
13 Davis, describes this problem, known as “Cage Layer Fatigue,” as “the most significant
14 disease of the skeleton in modern chickens used for egg production.” Cage Layer Fatigue-
15 afflicted hens “initially are found paralyzed in their cages. They often are alert but later
16 become depressed and die from dehydration.” *DISEASES OF POULTRY*, 835 (B.W. Calnek et al.,
17 eds. Iowa State University Press, 9th ed. 1991).

18 48. Hens confined in battery cages suffer unnecessarily due to inherent flaws in the
19 battery-cage system. Addressing a seminar on laying hen welfare organized by the European
20 Conference Group on the Protection of Farm Animals, Doctor Klaus Vestergaard of
21 Denmark’s Royal Veterinary and Agricultural University noted in 1992 that “[t]he scientific
22 results that have been accumulating over the last twelve years have supported the view that the
23 battery hen suffers unnecessarily and that the causes are inherent in the battery-cage system.”
24 (emphasis added). Similarly, the suffering battery hens endure has been described as “torture”
25 by Nobel Prize winner and noted father of modern ethology Doctor Konrad Lorenz. Konrad

1 Lorenz, *Animals Are Sentient Beings: Konrad Lorenz on Instinct and Modern Factory*
2 *Farming*, 34:47 Der Spiegel 264 (Nov. 17, 1980).

3 49. For these and related reasons, several national and international governmental
4 bodies have long condemned the use of battery cages. As long ago as 1981, the United
5 Kingdom House of Commons Agriculture Committee condemned the use of battery cages.
6 House of Commons, First Report from the Agriculture Committee, Session 1980-81: Animal
7 Welfare in Poultry, Pig, and Veal Calf Production, London, Her Majesty's Stationery Office
8 (1981). In 1997, the Farm Animal Welfare Commission ("FAWC"), a U.K. governmental
9 advisory body, reported that it "believes strongly that conventional cages with a minimum
10 space allowance of 450cm²/hen, [70 square inches] as prescribed in the present EC Directive
11 (88/166/EEC), are unacceptable and that more space must be provided as a matter of urgency."

12 Farm Animal Welfare Council, PB No. 3221 (1997), at
13 <http://www.fawc.org.uk/reports/layhens/lhgre028.htm>. (emphasis added).

14 50. The European Commission's Scientific Veterinary Committee, a European Union
15 advisory body, has twice condemned the use of cages—first in 1992 and again in 1996.
16 Scientific Veterinary Committee (Animal Welfare Section), *Report of the European*
17 *Commission's on the Welfare of Laying Hens Kept in Different Production Systems*,
18 Commission of the European Communities Directorate-General for Agriculture (1992);
19 Scientific Veterinary Committee (Animal Welfare Section), *Report on the Welfare of Laying*
20 *Hens*, Commission of the European Communities Directorate-General for Agriculture (1996).

21 51. The European Union and several nations have banned conventional battery cages
22 in recognition that confining hens in conventional battery cages is inherently cruel. In 1999,
23 the European Union enacted legislation which bans conventional battery cage use beginning in
24 2012 and which also effected an immediate increase in the mandatory minimum space
25 allowance per hen from 550 square centimeters (85 square inches) to 750 square centimeters
(116 square inches) per hen. Council Directive 1999/74/EC *Laying Down Minimum Standards*

1 *for the Protection of Laying Hens*, L 203 Official Journal of the European Communities, 53-57
2 (Aug. 3, 1999) In the past 30 years, Switzerland, Austria, and Sweden have all enacted
3 legislation banning conventional battery cages, with varying respective phase-in dates for such
4 bans. Switzerland: State Federal Act on Animal Protection of March 9, 1978 (State as Per
5 Nov. 1, 1995) art. 24b; 25; Austria: Federal Act on the Protection of Animals, chptr. 2 § 18
6 (2004); Sweden: The Animal Welfare Act, 1988:539 § 9 (2004).

7 52. Battery-cage housing is not required in order to produce eggs. Several California
8 egg producers successfully market cage-free eggs, such as Judy's Family Farm, Eggology,
9 Clover Stornetta Farms, and Chino Valley Ranchers. Most large egg producers have cage-free
10 facilities in addition to their battery-cage operations, such as Hidden Villa Ranch and Nocal
11 Foods. In addition, several major retailers, food suppliers, and universities—including Whole
12 Foods Market, Wild Oats Natural Marketplace, Trader Joe's, Bon Appétit Management
13 Company, University of Rochester, and the University of New Hampshire—have recently
14 either completely eliminated or dramatically reduced their reliance on eggs from caged birds.

15 III. The HSUS's Public Records Act Request

16 53. On October 6, 2005, The HSUS wrote to defendant BOE requesting copies of
17 public records pursuant to Government Code section 6250 et seq. The HSUS requested copies
18 of Partial Exemption Certificates pertaining to, among other things, purchases or leases of
19 equipment designed to remove parts of chickens' beaks; to confine poultry and sows; to
20 castrate animals; or to cut-off their tails or horns. On October 14, 2005, a BOE Disclosure
21 Officer replied in writing and denied The HSUS's request on the basis that "[t]he exemption
22 certificate information you requested is confidential pursuant to California Revenue and
23 Taxation Code section 7056 and therefore exempt from disclosure under California
24 Government Code section 6254(k)." To date, The HSUS has not received any records
25 concerning the BOE's administration of the Agricultural Tax Exemption.

1 CAUSES OF ACTION

2 COUNT 1

3 **Code of Civil Procedure Section 526a: Granting Tax Exemptions for Purchases of**
4 **Battery Cages Used to Confine Hens in Violation of Penal Code Section 597t**

5 54. Plaintiffs reallege and incorporate by reference herein each and every allegation of
6 the preceding paragraphs.

7 55. The BOE and the Controller have wasted and unlawfully used public funds, and
8 injured the public fisc -- and threaten to continue wasting and unlawfully using public funds,
9 and injuring the public fisc -- by failing to collect tax revenue due to the State on purchases of
10 battery cages that are both designed and used to confine animals in violation of Penal Code
11 section 597t's prohibition on keeping "an animal confined in an enclosed area" without
12 "provid[ing] it with an adequate exercise area."

13 COUNT 2

14 **Code of Civil Procedure Section 526a: Granting Tax Exemptions for Purchases of**
15 **Battery Cages Used to Confine Hens in Violation of Penal Code Section 597(b)**

16 56. Plaintiffs reallege and incorporate by reference herein each and every allegation of
17 the preceding paragraphs.

18 57. The BOE and the Controller have wasted and unlawfully used public funds, and
19 injured the public fisc -- and threaten to continue wasting and unlawfully using public funds,
20 and injuring the public fisc -- by failing to collect tax revenue due to the State on purchases of
21 battery cages that are both designed and used to confine animals in violation of Penal Code
22 section 597(b)'s prohibition on "tortur[ing], torment[ing], depriv[ing] of necessary sustenance,
23 drink, or . . . cruelly kill[ing] any animal," and also "subject[ing] any animal to needless
24 suffering, or inflict[ing] unnecessary cruelty upon the animal, or in any manner abus[ing] any
25 animal." CAL. PENAL CODE § 597(b).

1 **COUNT 3**

2 **Code of Civil Procedure Section 526a: Expenditure of Public Money in Administering**
3 **Tax Exemptions for Purchases of Battery Cages Used to Confine Hens in Violation of**
4 **Penal Code Sections 597t and 597(b)**

5 58. Plaintiffs reallege and incorporate by reference herein each and every allegation of
6 the preceding paragraphs.

7 59. The BOE and the Controller have expended and/or threaten to expend public
8 money for a wasteful and illegal purpose by paying State employees for time spent evaluating,
9 approving, and enforcing tax exemptions for battery cages that are both designed and used to
10 confine animals in violation of Penal Code sections 597t and 597(b).

11 **PRAYER FOR RELIEF**

12 WHEREFORE, the plaintiffs request that this Court grant the following relief:

13 (a) Adjudge and declare that the acts, omissions, practices, and
14 conditions described above are unlawful;

15 (b) enjoin defendants and defendants' agents, employees, and all
16 persons acting in concert with them from allowing tax exemptions on
17 the purchases of battery cages used to unlawfully confine egg-laying
18 hens;

19 (c) enjoin defendants and defendants' agents, employees, and all
20 persons acting in concert with them from paying State employees for
21 time spent evaluating, approving, and enforcing tax exemptions on the
22 purchases of battery cages used to unlawfully confine egg-laying hens;

23 (d) award plaintiffs the costs of this suit and reasonable attorneys' fees
24 and litigation expenses;

25 (e) retain jurisdiction of this case until defendants have fully complied
with the orders of this Court, and there is reasonable assurance that

1 defendants will continue to comply in the future absent continuing
2 jurisdiction; and

3 (f) award such other and further relief as the Court deems just and
4 proper.

5 Dated: February 1, 2006

6 Respectfully Submitted by Attorneys for Petitioner,

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