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24 **UNITED STATES DISTRICT COURT  
25 FOR THE EASTERN DISTRICT OF CALIFORNIA**

26 NATIONAL MEAT ASSOCIATION, et  
27 al.

28 Plaintiffs,

v.

EDMUND GERALD BROWN, et al.

Defendants.

Case No. 1:08-cv-01963-LJO-DLB

**PROPOSED DEFENDANT-  
INTERVENORS' MEMORANDUM  
OF POINTS & AUTHORITIES IN  
SUPPORT OF MOTION TO  
INTERVENE**

Date: February 24, 2009

Time: 8:30 a.m.

Courtroom: 4

Judge: Hon. Lawrence J. O'Neill

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1 **INTRODUCTION**

2 Pursuant to Federal Rule of Civil Procedure 24, The Humane Society of the  
3 United States (“HSUS”), Farm Sanctuary Inc. (“Farm Sanctuary”), the Humane  
4 Farming Association (“HFA”), and the Animal Legal Defense Fund (“ALDF”)  
5 (collectively “Proposed Defendant-Intervenors”) respectfully request leave to  
6 intervene in the above-captioned matter, a constitutional challenge to a California  
7 animal cruelty law which Proposed Defendant-Intervenors were instrumental in  
8 passing, and without which Proposed Defendant-Intervenors and their members  
9 will face immediate and certain harm to their personal and organizational interests  
10 in preventing animal cruelty and protecting the safety of the food supply.  
11 Alternatively, Proposed Defendant-Intervenors seek permissive intervention  
12 pursuant to Rule 24(b).

13 **BACKGROUND**

14 On January 30, 2008, Proposed Defendant-Intervenor HSUS released the  
15 results of an undercover investigation of the slaughter and processing  
16 establishment of Hallmark Meat Packing Company and Westland Meat Company,  
17 Inc. (collectively “Hallmark/Westland”), located in Chino, California. Declaration of  
18 Nancy Perry ¶ 12 (Ex. 3 to Proposed Defendant-Intervenors’ Motion to Intervene  
19 (hereinafter “Perry Decl.”)). The investigation revealed flagrant, systemic, and  
20 egregious acts of animal cruelty, which not only caused substantial pain and  
21 suffering to the animals involved, but also jeopardized the safety of the food supply.

22 Specifically, the investigation documented abusive practices being used to  
23 force animals to slaughter who were too sick or injured to stand and walk on their  
24 own (commonly referred to as “downed,” “downer,” or “nonambulatory”). These  
25 practices included “ramming cows with the blades of a forklift, jabbing them in the  
26 eyes, applying painful electrical shocks to sensitive areas, dragging them with  
27 chains pulled by heavy machinery, and torturing them with a high-pressure water  
28 hose to simulate drowning, all in attempts to force crippled animals through the

1 slaughter process.” *Id.* ¶ 22 (Att. E). All of these actions took place at a facility  
2 inspected by the federal government, and while federal inspectors were present at  
3 the facility. *Id.*

4 The slaughter of animals too sick or injured to walk jeopardizes human  
5 health because they are at a heightened risk for food-borne transmissible diseases.  
6 Declaration of Michael Greger, M.D. ¶ 8 (Ex. 4 to Proposed Defendant-Intervenors’  
7 Motion to Intervene (hereinafter “Greger Decl.”)). The United States Department of  
8 Agriculture (“USDA”), several studies, and numerous experts have concluded that  
9 these animals can have underlying health problems that pose an increased food  
10 safety risk to consumers, such as bovine spongiform encephalopathy (“mad cow  
11 disease” or “BSE”) and swine flu, and can pose an increased risk of food-borne  
12 transmissible conditions including *E. coli* O157:H7, *Salmonella*, and  
13 *Campylobacter*. *Id.* ¶¶ 8-21.

14 The abusive practices documented at Hallmark/Westland were not isolated  
15 incidents. Proposed Defendant-Intervenor Farm Sanctuary has documented similar  
16 animal cruelty at Hallmark/Westland for more than 15 years. Perry Decl. ¶ 11.  
17 Farm Sanctuary’s investigation of Hallmark/Westland in 1993 was one of the  
18 triggering events for the original enactment of the law challenged in this case. *Id.*  
19 In addition, inhumane animal handling practices are routinely documented at  
20 slaughterhouses and other establishments in California, including the  
21 slaughterhouse of Clougherty Packing (a subsidiary of Hormel Foods Corporation),  
22 the only member of Plaintiff National Meat Association (“NMA”) to provide  
23 declarations in support of the motion for preliminary injunctive relief.<sup>1</sup>

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24  
25 <sup>1</sup> Declaration of Michael Terrill in Support of Plaintiff NMA’s Motion for Preliminary Injunction ¶¶  
26 1-2; Declaration of Glee Goodner in Support of Plaintiff NMA’s Motion for Preliminary Injunction ¶  
27 1. Inhumane handling practices have been documented repeatedly at the Clougherty Packing  
28 facility in Vernon, California. These include one instance in which a conscious pig was shackled and  
bled while still alive, and the slaughter line was not stopped to eliminate the animal’s suffering. Att.  
A to Declaration of Russ Mead ¶ 3 (Ex. 5 to Proposed Defendant-Intervenors’ Motion to Intervene  
(hereinafter “Mead Decl.”)). On another occasion, the facility was cited for having an inhumane  
condition in the pig holding pen. *Id.* ¶ 4 (Att. B).

1 Not surprisingly, the public outrage in the wake of HSUS's 2008 release  
2 regarding its investigation of Hallmark/Westland was enormous. The abuse at  
3 Hallmark/Westland triggered the recall of more than 143 million pounds of the  
4 potentially tainted meat – the largest beef recall in U.S. history to date – millions of  
5 pounds of which went to federal nutrition programs, including the National School  
6 Lunch Program. Perry Decl. ¶¶ 13-15.

7 The San Bernardino County District Attorney's Office also brought criminal  
8 animal cruelty charges against two employees of Hallmark/Westland for unlawfully  
9 moving a downed animal in violation of former California Penal Code section 599f.  
10 *Id.* ¶ 18. Each of the defendants pled guilty, including pen manager Daniel  
11 Navarro, who was convicted on June 20, 2008 of two counts of violating former  
12 section 599f, as well as two counts of felony animal cruelty. *Id.* ¶¶ 20, 28.

13 Soon after HSUS released its investigation of Hallmark/Westland,  
14 Assemblymember Paul Krekorian introduced A.B. 2098 to strengthen section 599f.  
15 *Id.* ¶ 17. HSUS President and CEO Wayne Pacelle, HFA National Director Bradley  
16 Miller, and San Bernardino County District Attorney Michael Ramos testified in  
17 favor of A.B. 2098 at an Assembly hearing held on April 1, 2008. *Id.* ¶¶ 21-24. Their  
18 testimony described the animal cruelty and food safety risks posed by  
19 nonambulatory animals, particularly the kinds of abuses documented at  
20 Hallmark/Westland, as well as the inadequacy of current section 599f for  
21 preventing and prosecuting such abuses. *Id.* In May 2008, the California Assembly  
22 unanimously passed A.B. 2098, and Governor Arnold Schwarzenegger signed the  
23 measure into law on July 22, 2008. *Id.* ¶¶ 27, 29. Plaintiffs reportedly knew about  
24 A.B. 2098 last year, but took no position on the bill. *Id.* ¶ 32.

25 The amendments to section 599f make several changes in furtherance of  
26 California's interests in preventing animal cruelty and protecting food safety. When  
27 section 599f was enacted in 1994, it did not prohibit federally-inspected  
28 slaughterhouses from receiving nonambulatory animals. 1994 Cal. Legis. Serv. Ch.

1 600 (S.B. 692) (former § 599f(a)) (Att. A to Declaration of Peter A. Brandt ¶ 2 (Ex. 6  
2 to Proposed Defendant-Intervenors’ Motion to Intervene (hereinafter “Brandt  
3 Decl.”)). The amendments to section 599f altered this language to prohibit *all*  
4 slaughterhouses, stockyards, auctions, market agencies, and dealers from “buy[ing],  
5 sell[ing], or receiv[ing] a nonambulatory animal.” Cal. Penal Code § 599f(a) (Att. B  
6 to Brandt Decl. ¶ 3). The amendments also strengthened the law by prohibiting  
7 slaughterhouses from “process[ing], butcher[ing], or sell[ing] meat or products of  
8 nonambulatory animals for human consumption.” *Id.* § 599f(b). In addition, the  
9 2008 amendments make it unlawful for any person to “sell, consign, or ship” a  
10 nonambulatory animal to slaughterhouses and other establishments, or to accept  
11 such animals for transport or delivery to slaughterhouses or other establishments.  
12 *Id.* § 599f(f), (g). Finally, the amendments increased the penalties for violations of  
13 section 599f. *Id.* § 599f(h).

14 On December 23, 2008, more than five months after A.B. 2098 was enacted,  
15 Plaintiff NMA brought this action for declaratory and injunctive relief, and filed a  
16 motion for a preliminary injunction. On December 24, 2008, American Meat  
17 Institute filed an application to intervene as a plaintiff, which was granted on  
18 January 5, 2009. Proposed Defendant-Intervenors seek leave to intervene only one  
19 month later, before the deadline has expired for the State Defendants to respond to  
20 Plaintiff NMA’s motion for a preliminary injunction.

21 Proposed Defendant-Intervenor HSUS is a nonprofit animal protection  
22 organization headquartered in Washington, D.C., with over 10 million members  
23 and constituents, including over 1,250,000 supporters in California. Perry Decl. ¶ 3.  
24 HSUS actively advocates against practices that harm farm animals, including those  
25 raised for meat, eggs, and milk, and strives to inform its members about the threats  
26 caused by such practices, including the potential public health problems associated  
27 with the practice of slaughtering diseased and disabled animals for human  
28 consumption. *Id.* ¶ 6.



1 Proposed Defendant-Intervenor Farm Sanctuary is a national non-profit  
2 corporation organized pursuant to the laws of the state of Delaware, with its  
3 principal place of business in Watkins Glen, New York. *Id.* ¶ 7. Farm Sanctuary is  
4 a farm animal rescue and protection organization dedicated to ending the suffering  
5 of animals used in food. The organization has over 100,000 members and  
6 supporters, including over 34,000 California residents. It also operates a farm  
7 animal shelter in northern California. Farm Sanctuary invests considerable  
8 resources advocating for farm animal health and welfare, educating its members,  
9 visitors, and the public about farm animal issues, and rescuing farm animals from  
10 cruelty. Much of its advocacy work focuses on the issue of nonambulatory livestock.  
11 *Id.*

12 Proposed Defendant-Intervenor HFA is a California non-profit organization  
13 dedicated to the protection of farm animals, human health, and the environment.  
14 HFA has over 225,000 members nationwide, including approximately 45,000 in  
15 California. Since 1985, HFA has conducted extensive cruelty investigations  
16 regarding downed animals at stockyards and slaughterhouses. HFA also operates  
17 Suwanna Ranch, a 5,000 acre farm animal rescue and rehabilitation center in Elk  
18 Creek, California. *Id.* ¶ 8.

19 Proposed Defendant-Intervenor ALDF is a non-profit corporation founded in  
20 1979 to protect the lives and advance the interests of animals through the legal  
21 system. *Id.* ¶ 9. ALDF's headquarters are located in Cotati, California. With  
22 approximately 110,000 members nationwide, and more than 9,000 members in  
23 California, ALDF includes lawyers, law professors, law students, and other  
24 similarly interested individuals. Together they work peacefully and within legal  
25 boundaries to stop animal abuse and encourage the protection of animals. ALDF  
26 has been active in matters involving the protection and humane treatment of  
27 animals used for meat and dairy products in California, and was a strong supporter  
28 of recent legislation improving the treatment of farm animals in California. ALDF

1 files lawsuits to enforce existing animal protection laws, provides free legal  
2 assistance to prosecutors handling cruelty cases, works to strengthen state anti-  
3 cruelty statutes, and provides public education through seminars, workshops, and  
4 other outreach efforts. *Id.*

## 5 ARGUMENT

### 6 **A. Proposed Defendant-Intervenors Are Entitled to Intervene As a** 7 **Matter of Right.**

8 The Proposed Defendant-Intervenors easily meet the standard for  
9 intervention as of right. In the Ninth Circuit, an application for intervention under  
10 Rule 24(a)(2) is governed by a four-part test:

11 (1) The motion must be timely; (2) the applicant must claim a  
12 “significantly protectable” interest relating to the property or  
13 transaction which is the subject of the action; (3) the applicant must be  
14 so situated that the disposition of the action may as a practical matter  
15 impair or impede its ability to protect that interest; and (4) the  
applicant’s interest must be inadequately represented by the parties to  
the action.

16 *California ex rel. Lockyer v. United States*, 450 F.3d 436, 440-41 (9th Cir. 2006)  
17 (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993)). The  
18 requirements of Rule 24 are to be “construed broadly in favor of intervention.”  
19 *United States v. Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996).

#### 20 **1. The Motion to Intervene is Timely.**

21 Proposed Defendant-Intervenors easily satisfy the “timeliness” factor, as the  
22 motion to intervene was filed within one month after Plaintiff NMA commenced  
23 this action, and before any hearings or substantive decisions have been entered.  
24 The Proposed Defendant-Intervenors acted as quickly as possible through three  
25 federal holidays to seek party status so that they might protect their substantial  
26 interests in the matter. In addition to considering the length of the delay, the court  
27 also considers the stage of the proceedings and the prejudice to the other parties in  
28 allowing intervention. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d

1 1297, 1302 (9th Cir. 1997). Plaintiff NMA filed its lawsuit on December 23, 2008,  
2 along with a motion for preliminary injunction.<sup>2</sup> No hearing has been held on the  
3 motion for a preliminary injunction at this time, nor has the deadline for State  
4 Defendants to respond to the motion for a preliminary injunction expired.<sup>3</sup> There is  
5 clearly no prejudice to any party by granting Proposed Defendant-Intervenors'  
6 motion to intervene at this early stage in the proceedings.

7 **2. Proposed Defendant-Intervenors Have a Significantly**  
8 **Protectable Interest in Defending Amended Section 599f.**

9 Proposed Defendant-Intervenors also have a “significantly protectable  
10 interest relating to the . . . transaction which is the subject of the action.” *Wetlands*  
11 *Action Network v. United States Army Corps of Eng’rs*, 222 F.3d 1105, 1113 (9th  
12 Cir. 2000). The interest requirement “is primarily a practical guide to disposing of  
13 lawsuits by involving as many apparently concerned persons as is compatible with  
14 efficiency and due process,” *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir.  
15 2002), and applicants need not demonstrate a “specific legal or equitable interest”  
16 in the suit. *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002).  
17 Instead, a proposed intervenor need only show: “(1) it asserts an interest that is  
18 protected under some law, and (2) there is a ‘relationship’ between its legally  
19 protected interest and the plaintiff’s claims,” i.e., that the “resolution of the  
20 plaintiff’s claims actually will affect the applicant.” *Id.* (quotation omitted).

21 Here, Proposed Defendant-Intervenors undeniably have a “significantly  
22 protectable interest” in upholding the 2008 amendments to section 599f because  
23 Proposed Defendant-Intervenors have exposed the problems in the meat industry  
24 that led to its enactment, and were also major proponents of the legislation. *See*  
25 *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir. 1983) (public interest

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26  
27 <sup>2</sup> NMA subsequently filed an amended motion for a preliminary injunction on December 30, 2008,  
in which it noticed its motion for January 28, 2009.

28 <sup>3</sup> The State Defendants’ response is due by January 28, 2009, based on the Court’s grant of their  
application for an extension of the preliminary injunction hearing date, which is now February 11,  
2009.

1 group has significantly protectable interest in defending legality of measures it  
2 supports). In addition, Proposed Defendant-Intervenors have an interest in  
3 representing their members' protectable interests in minimizing the risk of  
4 contracting food-borne diseases carried in nonambulatory livestock by prohibiting  
5 the meat of these animals from entering the food supply. Perry Decl. ¶ 10; Greger  
6 Decl. ¶ 22.

7  
8 **a. As the Main Proponents of the Legislation, Proposed**  
9 **Defendant-Intervenors Have a Significant Protectable**  
10 **Interest in Upholding Section 599f.**

11 As the Ninth Circuit and other federal courts have repeatedly held,  
12 proponents and active supporters of legislative measures, like Proposed Defendant-  
13 Intervenors here, have a sufficient “protectable interest” to intervene to defend  
14 those measures. Specifically, a “public interest group [i]s entitled *as a matter of*  
15 *right* to intervene in an action challenging the legality of a measure which it had  
16 supported.” *Sagebrush Rebellion*, 713 F.2d at 527 (emphasis added); *see also Prete*  
17 *v. Bradbury*, 438 F.3d 949, 955 (9th Cir. 2006) (Oregon AFL-CIO, as the “main  
18 supporter” of legislation, had a significantly protectable interest “in defending the  
19 legality of a measure it had supported”); *Wash. State Bldg. & Const. Trades*  
20 *Council, AFL-CIO v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982) (holding that “the  
21 public interest group that sponsored [radioactive waste] initiative[ ] was entitled to  
22 intervention as a matter of right under Rule 24(a)”)<sup>4</sup> There is no reason to depart  
23 from this Circuit’s precedent here.

24 Proposed Defendant-Intervenors were undoubtedly the “main supporter[s]”  
25 and chief proponents of amendments to section 599f. *Prete*, 438 F.3d at 955. They  
26 directly assisted in both drafting the language and promoting passage of the bill.

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27 <sup>4</sup> *See also Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997) (permitting  
28 intervention as of right based on intervenor’s role in the political process that resulted in adoption of  
the contested amendments); *S. Dak. Farm Bureau, Inc. v. South Dakota*, 189 F.R.D. 560, 564-65  
(D.S.D. 1999) (nonprofit organization that invested time and money in legislative efforts had “vested  
interests” in defending legislation and could permissively intervene).

1 See Perry Decl. ¶¶ 16, 21-23, 30. Proposed Defendant-Intervenors spearheaded the  
2 effort to advocate for the bill and expended substantial resources to assist its  
3 passage. *Id.*

4 As the legislative history of section 599f amendments demonstrates, it was  
5 Proposed Defendant-Intervenors' investigation and disclosure of the ongoing  
6 atrocious treatment at the Hallmark/Westland slaughter facility in Chino,  
7 California that prompted the California State Legislature to upgrade section 599f.  
8 See *id.* ¶¶ 17, 21-25; *Fresno County v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980)  
9 (finding interest group had sufficient protectable interest to intervene in part  
10 because the group was "in fact [ ] responsible for the [challenged regulations] being  
11 promulgated in the first instance"). Furthermore, Proposed Defendant-Intervenor  
12 Farm Sanctuary was the driving force behind the version of section 599f enacted in  
13 1994. Perry Decl. ¶ 11.

14 **b. Proposed Defendant-Intervenors' Members Have a**  
15 **Significantly Protectable Interest in Minimizing Risk**  
16 **of Illness Associated with Meat from Nonambulatory**  
17 **Animals.**

18 In addition to Proposed Defendant-Intervenors' institutional interests in  
19 defending the section 599f amendments, Proposed Defendant-Intervenors also  
20 represent their members' interests in reducing the risk of contracting serious food-  
21 borne illness. Food safety and public health are "significantly protectable interests"  
22 sufficient for intervention as of right. See *Pub. Citizen v. Fed. Trade Comm'n*, 869  
23 F.2d 1541 (D.C. Cir. 1989) (holding organizations had sufficient interest for  
24 intervention because of members' increased risk of being induced to smoke or being  
25 exposed to the smoking of others); see also Perry Decl. ¶ 10; Greger Decl. ¶ 22.

26 Additionally, the Ninth and other circuits have recognized that increased  
27 risk itself, particularly risk to human health, constitutes a cognizable injury for  
28 purposes of Article III standing. See *Ecological Rights Found. v. Pac. Lumber Co.*,  
230 F.3d 1141, 1151 (9th Cir. 2000) ("an increased risk of harm can itself be injury

1 in fact sufficient for standing”); *Ocean Advocates v. United States Army Corps of*  
2 *Eng’rs*, 402 F.3d 846, 860 (9th Cir. 2005) (increased risk of oil spill due to increased  
3 oil tanker traffic from dock extension sufficient to establish Article III injury).  
4 Because “the Article III standing requirements are more stringent than those for  
5 intervention under rule 24(a), [the] determination that [applicants] have standing  
6 under Article III compels the conclusion that they have an adequate interest” for  
7 intervention. *Yniguez v. Arizona*, 939 F.2d 727, 735 (9th Cir. 1991), *vacated as moot*  
8 *by Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997); *Coalition of*  
9 *Ariz./N. Mex. Counties for Stable Econ. Growth v. Dep’t of Interior*, 100 F.3d 837,  
10 842 (10th Cir. 1996).

11 In *Baur v. Veneman*, the Second Circuit specifically recognized that the  
12 increased risk of disease transmission resulting from nonambulatory cattle  
13 entering the food supply is a cognizable injury for Article III standing. 352 F.3d  
14 625, 633 (2d Cir. 2003). Similarly, Proposed Defendant-Intervenors’ members that  
15 consume meat products, including products from downed cattle and other  
16 nonambulatory livestock, have a well-founded concern that the meat may harbor  
17 and transmit BSE or other transmissible food-borne diseases. *See Perry Decl.* ¶ 10;  
18 *Greger Decl.* ¶ 22. Consuming BSE prions increases the risk of a human  
19 neurological disease known as variant Creutzfeldt-Jakob disease (“vCJD”), a  
20 progressive, invariably fatal disease for which there is no known effective  
21 treatment or cure. *See Greger Decl.* ¶ 11. Nonambulatory animals may also be at  
22 higher risk for harboring other food-borne transmissible pathogens, including *E.*  
23 *coli* O157:H7, *Salmonella*, *Campylobacter*, and anthrax. *Id.* ¶¶ 15-21.

24 If nonambulatory animals enter the food supply, Proposed Defendant-  
25 Intervenors’ members are placed at an increased risk of contracting these food-  
26 borne illnesses each time they eat meat. These interests are precisely the kinds of  
27 interests that courts have routinely recognized as “legally cognizable” under Article  
28 III standing jurisprudence and thus sufficient to justify intervention in a lawsuit.

1 *Baur*, 352 F.3d at 633; *see also Levine v. Johanns*, No. C 05-04764 MHP, Mem. &  
2 Order at 11 (N.D. Cal. 2006) (Sept. 6, 2006) (finding “Ninth Circuit cases are  
3 substantially in accord with” *Baur* and finding HSUS’s members had alleged  
4 sufficient Article III injury of increased risk of food-borne illness from certain  
5 slaughter practices) (Att. C to Brandt Decl. ¶ 4).

6  
7 **3. Proposed Defendant-Intervenors’ Interests Will Be  
Impaired If Plaintiffs Succeed in Invalidating Section 599f.**

8 The “disposition of the action may as a practical matter impair or impede”  
9 Proposed Defendant-Intervenors’ “ability to protect [their] interest.” *Wetlands*  
10 *Action Network*, 222 F.3d at 1113; Fed. R. Civ. P. 24(a). Rule 24(a) does not require  
11 that the applicant’s interest be actually or legally impaired, only that the applicant  
12 be “substantially affected in a practical sense.” *Southwest Ctr. for Biological*  
13 *Diversity*, 268 F.3d 810, 822 (9th Cir. 2001) (quotation omitted). Here, Plaintiffs’  
14 lawsuit threatens to undo the results of Proposed Defendant-Intervenors’ extensive  
15 advocacy efforts, and also allow meat from nonambulatory animals into the food  
16 supply, increasing Proposed Defendant-Intervenors’ members’ risk of contracting a  
17 food-borne disease.

18 If the Court enjoins the section 599f amendments or finds that California  
19 lacks the authority to regulate nonambulatory animals through section 599f, *see*  
20 *NMA Compl.* at 15 (seeking declaratory and permanent injunctive relief from  
21 section 599f), Proposed Defendant-Intervenors’ extensive investigative, legal,  
22 staffing, and monetary commitments to the passage and amendment of section 599f  
23 would be nullified. *Perry Decl.* ¶¶ 11-30. There is no question that if Plaintiffs’ case  
24 is successful, disposition of the case will impair Proposed Defendant-Intervenors’  
25 interests. *See Sagebrush Rebellion*, 713 F.2d at 528 (finding there was “no serious  
26 dispute” that applicant’s interest might be impaired if proponents of measure were  
27 not allowed to intervene in challenge to that measure); *Idaho Farm Bureau Fed’n v.*  
28 *Babbitt*, 58 F.3d 1392, 1398 (9th Cir. 1995) (finding impairment where action could

1 lead to reversal of administrative decision actively supported by applicants for  
2 intervention).

3 Plaintiffs' lawsuit also harms Proposed Defendant-Intervenors' interest in  
4 protecting their members from increased risk of food-borne disease from  
5 nonambulatory animal meat. Under amended section 599f, slaughterhouses are  
6 prohibited from receiving nonambulatory animals for human consumption, and  
7 from selling meat from such animals. Cal. Penal Code § 599f(a), (b). If Plaintiffs'  
8 action successfully invalidates this law, meat from nonambulatory animals will  
9 enter the food supply, thus increasing Proposed Defendant-Intervenors' members'  
10 risk of contracting food-borne illnesses associated with nonambulatory animals. *See*  
11 Greger Decl. ¶ 22. These threats impair Proposed Defendant-Intervenors' members'  
12 interests in food safety and public health within the meaning of Rule 24(a). *See*  
13 *Sagebrush Rebellion*, 713 F.2d at 528 (impairment demonstrated where “[a]n  
14 adverse decision” reversing government’s decision to conserve lands “would impair  
15 the [applicants’] interest in preservation of birds and their habitat”); *Levine v.*  
16 *Johanns*, Mem. & Order at 11 (finding “credible” HSUS’s allegations that, without  
17 regulation, allowing certain slaughter methods will increase risk of food-borne  
18 illness) (Att. C to Brandt Decl. ¶ 4). Finally, Proposed Defendant-Intervenors have  
19 “no other means to protect” against impairment of these interests short of  
20 intervention in this suit. *California ex rel. Lockyer*, 450 F.3d at 445.

21 **4. Proposed Defendant-Intervenors’ Interests Are Not**  
22 **Adequately Represented by Any of the Parties.**

23 Proposed Defendant-Intervenors can also demonstrate that their interests,  
24 which diverge in important respects from those of State Defendants, are not  
25 “adequately represented by existing parties.” Fed. R. Civ. P. 24(a). Specifically,  
26 while State Defendants’ interest is the administration of their legal obligations on  
27 behalf of the general public, including the meat industry, Proposed Defendant-  
28



1 Intervenor have a narrower interest in advocating for preventing cruelty to  
2 animals and protecting the safety of the food supply on behalf of their members.

3 An applicant need only demonstrate that representation of its interests by  
4 existing parties “*may be*” inadequate. *Trbovich v. United Mine Workers of Am.*, 404  
5 U.S. 528, 538 n. 10 (1972) (emphasis added). “The burden of making this showing is  
6 minimal.” *Sagebrush Rebellion*, 713 F.2d at 528; *see also Nat’l Ass’n of Home*  
7 *Builders v. San Joaquin Valley Unified Air Pollution Dist.*, 2007 WL 2757995 (E.D.  
8 Cal. 2007) (Beck, J.) (Att. D to Brandt Decl. ¶ 5). In determining whether a  
9 proposed intervenor is adequately represented, the court should “consider whether  
10 the interest of a present party is such that it will undoubtedly make all the  
11 intervenor’s arguments; whether the present party is capable and willing to make  
12 such arguments; and whether the intervenor would offer any necessary elements to  
13 the proceedings that other parties would neglect.” *Forest Serv. Conservation*  
14 *Council v. United States Forest Serv.*, 66 F.3d 1489, 1498-99 (9th Cir. 1995).

15 The Ninth Circuit has granted intervention in many instances where, as  
16 here, the proposed intervenors have an interest that is *narrower* than that of the  
17 government, the result of which is that the government may not make all the  
18 proposed intervenor’s arguments. *California ex rel. Lockyer*, 450 F.3d 436 (granting  
19 intervention where government defendant could offer limiting construction in  
20 defense of statute); *Southwest Ctr. for Biological Diversity*, 268 F.3d 810 (holding  
21 that government did not adequately represent interests of building trade  
22 association because of government’s broader range of considerations); *Forest Serv.*  
23 *Conservation Council*, 66 F.3d at 1499 (noting that the federal government  
24 represents a “broader view” than the interests of a state and county); *see also Nat’l*  
25 *Ass’n of Home Builders*, 2007 WL 2757995 at \*5 (granting intervention for  
26 organizations to defend environmental regulations where the government had “a  
27 much broader interest in balancing the need for regulations with economic  
28

1 considerations” and its interests were therefore “not coextensive” with those of the  
2 proposed intervenors) (Att. D to Brandt Decl. ¶ 5).

3 Similarly, here Proposed Defendant-Intervenors’ interests are not  
4 coextensive with those of State Defendants in this litigation. State Defendants’  
5 interest is in the administration of their legal obligations, as they are charged with  
6 enforcing laws enacted by the California Legislature on behalf of the public at  
7 large, which includes the meat industry. But they have no specific mandate to  
8 advocate for the humane treatment of animals, or for the interests of individual  
9 members of the public. State Defendants’ interests may be motivated by unrelated  
10 factors, including financial, political, and other pressures. On the other hand,  
11 defense of section 599f is central to the mission of Proposed Defendant-Intervenors  
12 to ensure that the egregious animal cruelty documented at Hallmark/Westland is  
13 prohibited and subject to prosecution in California, and that diseased and illness-  
14 inducing meat is not delivered to their members.

15 Additionally, due to decades of experience litigating over and advocating for  
16 the humane treatment of farm animals – nonambulatory animals in particular –  
17 Proposed Defendant-Intervenors bring to bear extensive factual and legal  
18 knowledge that may not be shared in full by State Defendants. Specifically, HSUS  
19 has litigated – and helped defeat – two nearly identical challenges asserting that  
20 the Federal Meat Inspection Act, 21 U.S.C. § 601 *et seq.*, preempts state laws limiting  
21 the types of animals who may be slaughtered for human consumption. *See Cavel*  
22 *Int’l, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007), *cert. denied*, 128 S.Ct. 2950  
23 (2008); *Empacadora de Carnes De Fresnillo, S.A. De C.V. v. Curry*, 476 F.3d 326  
24 (5th Cir. 2007), *cert. denied*, 127 S.Ct. 2443 (2007). Additionally, HSUS worked  
25 closely with the San Bernardino District Attorney’s office following the  
26 Hallmark/Westland investigation to help secure the conviction of two employees for  
27 violations of former section 599f – the very statute at issue in this case. Perry Decl.  
28 ¶ 18. Since Proposed Defendant-Intervenors meet the “minimal” showing necessary

1 on this factor, *Trbovich*, 404 U.S. at 538 n.10, and also satisfy all other  
2 requirements under Rule 24(a), this Court should grant their motion to intervene  
3 as of right.

4 **B. In the Alternative, Proposed Defendant-Intervenors Should Be**  
5 **Granted Permissive Intervention.**

6 Although Proposed Defendant-Intervenors satisfy the criteria for  
7 intervention of right under Rule 24(a), in the alternative, this Court should exercise  
8 its discretion and allow the applicants to intervene permissively under Rule 24(b).  
9 A court may grant permissive intervention “where the applicant for intervention  
10 shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the  
11 applicant’s claim or defense, and the main action, have a question of law or a  
12 question of fact in common.” *United States v. City of Los Angeles*, 288 F.3d at 403  
13 (citations omitted). This court has an independent ground for jurisdiction based on  
14 the federal questions raised in the amended complaint, and as discussed above,  
15 Proposed Defendant-Intervenors’ application is timely and will not prejudice the  
16 parties or cause any undue delay. Most importantly, Proposed Defendant-  
17 Intervenors’ defenses and the main action have more than a “question of law or a  
18 question of fact in common.” *Id.* Indeed, Proposed Defendant-Intervenors’ defenses  
19 are based solely on legal arguments as to the insufficiency of the claims raised by  
20 the Plaintiffs.

21 Additionally, permissive intervention under Rule 24(b)(2) is clearly  
22 warranted in this case because Proposed Defendant-Intervenors will  
23 unquestionably contribute argument and factual materials that will greatly assist  
24 the full adjudication of this matter. *Prete*, 438 F.3d at 958 n. 13 (noting that where  
25 “a private party has greater first hand knowledge of the impact of legislation on  
26 private individuals than the government . . . [s]uch knowledge *may support* a trial  
27 judge’s discretionary grant of permissive intervention” (emphasis in original));  
28 *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1111 (9th Cir. 2002)

1 (permissive intervention was appropriate because “the presence of Defendant-  
2 Intervenor would assist the court in its orderly procedures leading to the  
3 resolution of this case, which impacted large and varied interests”). Indeed, it is  
4 difficult to see how the Court could equitably resolve the issues raised by the  
5 Plaintiffs here without fully considering the unique perspective of the organizations  
6 that were the primary driving force behind the enactment of the California state  
7 law under attack.

8 **CONCLUSION**

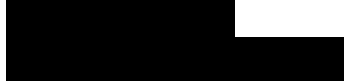
9 For the foregoing reasons, Proposed Defendant-Intervenor’s motion to  
10 intervene should be granted.

11 DATED: January 27, 2009

12 Respectfully submitted,

13 /s/ Peter A. Brandt

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