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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VIET

DR. ELLEN LEVINE,
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Castro Valley, CA 94546,

BEVERLY ULBRICH,
642 28th Street
San Francisco, CA 93131,

KRISTA KIELMAN,
59 Issaquah Dock
Sausalito, CA 94965,

IC 05 476

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

Administrative Procedure Act Case

Civ. No.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF - 1 -

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1 **GRETCHEN WALLERICH.**)
 2 125 Oakdale Avenue)
 3 Mill Valley, CA 94941.)

4 **KANDA BOYKIN.**)
 5 3 Janet Way # 23)
 6 Tiburon, CA 94920,)

7 **THE HUMANE SOCIETY OF THE**)
 8 **UNITED STATES,**)
 9 5301 Madison Avenue)
 10 Suite 202)
 11 Sacramento, CA 95841,)

12 **EAST BAY ANIMAL ADVOCATES,**)
 13 536 41st Street #18)
 14 Oakland, CA 94609,)

15 Plaintiffs,)

16 v.)

17 **MIKE JOHANNNS,** Secretary,)
 18 U.S. Department of Agriculture)
 19 1400 Independence Avenue, S.W.)
 20 Washington, DC 20250,)

21 Defendant.)

22 1. In this action, plaintiffs challenge the U.S. Department of Agriculture’s (“USDA” or “the
 23 agency”) decision to exclude chickens, turkeys, and other birds from the protections provided by
 24 the Humane Methods of Slaughter Act of 1958 (“HMSA of 1958” or “the Act”), 7 U.S.C. §§
 25 1901 *et seq.* – even though these species make up approximately 95 percent of all farm animals
 26 slaughtered for food in the United States. Because of USDA’s actions, the more than 8 billion
 27 chickens and other poultry slaughtered each year can lawfully be shackled upside-down, cut by
 28 mechanical blades, and immersed in scalding water *while fully conscious*. See USDA, Notice on
 the Treatment of Poultry Before Slaughter, 70 Fed. Reg. 56,524, 56,624-25 (Sept. 28, 2005)

(informing slaughterhouses and the public that the HMSA does not require “humane methods” for “handling and slaughter of poultry”); see also Donald McNeil, KFC Supplier Accused of Animal Cruelty, N.Y. TIMES, July 20, 2004 (reporting how workers at a major chicken slaughter plant engaged in “hundreds of acts of cruelty,” including “jumping up and down on live chickens, drop-kicking them like footballs and slamming them into walls” with the acquiescence of plant supervisors).

2. When Congress enacted the HMSA of 1958, it directed that all “cattle, calves, horses, mules, sheep, swine, *and other livestock*” be “rendered insensible to pain” before being processed for slaughter. 7 U.S.C. § 1902 (emphasis added). Nevertheless, USDA only extends the Act’s protections to “cattle, sheep, swine, goat, horse, mule, or other equine,” and excludes “other livestock” – including chickens and other birds. By excluding these species – even though the Webster’s Dictionary in use when Congress enacted the HMSA defined “livestock” as “domestic animals used or raised on a farm” – USDA has not only ignored the plain language of the HMSA of 1958, but has also rendered the “and other livestock” language of the HMSA essentially superfluous.

JURISDICTION

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it presents a federal question.

VENUE

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e).

INTRADISTRICT ASSIGNMENT

5. Pursuant to Civil L.R. 3-2(c) and (d), assignment is appropriate in the San Francisco or Oakland Divisions because many of the plaintiffs reside in this district and no real property is at issue in this action.

PARTIES

6. Plaintiff Ellen Levine, Ph.D., M.P.H., is a resident of Castro Valley, California, and has been a member of The Humane Society of the United States ("The HSUS") for many years. Dr. Levine is a regular consumer of poultry meat, including chicken and turkey, and will continue to purchase and consume poultry in the future. Dr. Levine is very concerned about eating bacterially contaminated poultry and the associated risk of contracting a food-borne illness. Dr. Levine is particularly concerned about contamination because she has been diagnosed with lupus – a chronic, inflammatory autoimmune disorder that causes her overactive immune system to attack healthy cells. Dr. Levine's medication, taken to slow the immune system, causes immune-deficiency, and thus makes Dr. Levine more susceptible to disease. Due to recent scientific research showing a link between bacterial contamination in consumer poultry meat and inhumane methods of poultry slaughter, Dr. Levine is concerned about consuming meat from inhumanely slaughtered birds. She is also concerned about consuming other foods that may have become contaminated with raw poultry fluids during preparation, thus causing secondary contamination.

7. Dr. Levine is injured by USDA's decision to exclude chickens, turkeys, and other birds from the protections provided by the HMSA of 1958, as well as the agency's September 28, 2005 notice informing slaughterhouses and the public that the HMSA of 1958 does not require "humane methods" for "handling and slaughter of poultry," because they increase the risk that Dr. Levine will become ill from the consumption of poultry products or secondary contamination. The use of inhumane slaughter methods, including electrically stunning shackled birds and scalding conscious birds, contributes to the level of illness-causing bacteria in poultry meat, and increases the risk that Dr. Levine may contract a food-borne illness from such pathogens as Campylobacter, Salmonella, and E. coli. Each time Dr. Levine consumes undercooked poultry, or foods that have come into contact with fluids from raw poultry, she is at a higher risk of contracting a food-borne illness if the bird was slaughtered inhumanely. As

1 described in Section IV, *infra*, Dr. Levine's injuries will be redressed if plaintiffs prevail because
2 the number of chickens and other birds slaughtered inhumanely will be reduced, thus decreasing
3 her risk of contracting food-borne illness.

4 8. Plaintiff Beverly Ulbrich is a resident of San Francisco, California, and is a member of
5 The HSUS. Ms. Ulbrich is a regular consumer of poultry products, including chicken, turkey,
6 and duck and will continue to purchase and consume poultry in the future. Ms. Ulbrich is
7 concerned about eating bacterially contaminated poultry meat and the associated risk of
8 contracting a food-borne illness. Due to recent scientific research showing a link between
9 bacterial contamination in consumer poultry meat and inhumane methods of poultry slaughter,
10 Ms. Ulbrich is particularly concerned about consuming meat from inhumanely slaughtered birds.
11 She is also concerned about consuming other foods that may have become contaminated with
12 raw poultry fluids during preparation, thus causing secondary contamination.

13 9. Ms. Ulbrich is injured by USDA's decision to exclude chickens, turkeys, and other birds
14 from the protections provided by the HMSA of 1958, as well as the agency's September 28,
15 2005 notice informing slaughterhouses and the public that the HMSA does not require "humane
16 methods" for "handling and slaughter of poultry," because they increase the risk that Ms. Ulbrich
17 will become ill from the consumption of poultry products or secondary contamination. The use
18 of inhumane slaughter methods, including electrically stunning shackled birds and scalding
19 conscious birds, contributes to the level of illness-causing bacteria in poultry meat and increases
20 the risk that Ms. Ulbrich may contract a food-borne illness from such pathogens as
21 *Campylobacter*, *Salmonella*, and *E. coli*. Each time Ms. Ulbrich consumes undercooked poultry,
22 or foods that have come into contact with fluids from raw poultry, she is at a higher risk of
23 contracting a food-borne illness if the bird was slaughtered inhumanely. As described in Section
24 IV, *infra*, Ms. Ulbrich's injuries will be redressed if plaintiffs prevail because the number of
25 chickens and other birds slaughtered inhumanely will be reduced, thus decreasing her risk of
26 contracting a food-borne illness.

10 Plaintiff Krista Kielman is a resident of Sausalito, California, and is a member of The
2 HSUS. Ms. Kielman is a regular consumer of chicken meat and occasionally consumes turkey,
3 and will continue to purchase and consume poultry in the future. Ms. Kielman is concerned
4 about eating bacterially contaminated poultry meat and the associated risk of contracting a food-
5 borne illness. Due to recent scientific research showing a link between bacterial contamination in
6 consumer poultry meat and inhumane methods of poultry slaughter, Ms. Kielman is particularly
7 concerned about consuming meat from inhumanely slaughtered birds.

8 11. Ms. Kielman is injured by USDA's decision to exclude chickens, turkeys, and other birds
9 from the protections provided by the HMSA of 1958, as well as the agency's September 28,
10 2005 notice informing slaughtering facilities and the public that the HMSA of 1958 does not
11 require "humane methods" for "handling and slaughter of poultry," because they increase the
12 risk that Ms. Kielman will become ill from the consumption of poultry products or secondary
13 contamination. The use of inhumane slaughter methods, including electrically stunning shackled
14 birds and scalding conscious birds, contributes to the level of illness-causing bacteria in poultry
15 meat and increases the risk that Ms. Kielman may contract a food-borne illness from such
16 pathogens as Campylobacter, Salmonella, and E. coli. Each time Ms. Kielman consumes
17 undercooked poultry, or foods that have come into contact with fluids from raw poultry, she is at
18 a higher risk of contracting a food-borne illness if the bird was slaughtered inhumanely. As
19 described in Section IV, *infra*, Ms. Kielman's injuries will be redressed if plaintiffs prevail
20 because the number of chickens and other birds slaughtered inhumanely will be reduced, thus
21 decreasing her risk of contracting a food-borne illness.

22 12. Plaintiff Gretchen Wallerich is a resident of Mill Valley, California, and is a member of
23 The HSUS. Ms. Wallerich is a regular consumer of poultry products, including chicken, and she
24 occasionally consumes turkey and duck, and will continue to purchase and consume poultry in
25 the future. Ms. Wallerich is concerned about eating bacterially contaminated poultry meat and
26 the associated risk of contracting a food-borne illness. Due to recent scientific research showing

1 a link between bacterial contamination in consumer poultry meat and inhumane methods of
2 poultry slaughter, Ms. Wallerich is particularly concerned about consuming meat from
3 inhumanely slaughtered birds. She is also concerned about consuming other foods that may have
4 become contaminated with raw poultry fluids during preparation, thus causing secondary
5 contamination.

6 13. Ms. Wallerich is injured by USDA's decision to exclude chickens, turkeys, and other
7 birds from the protections provided by the HMSA of 1958, as well as the agency's September
8 28, 2005 notice informing slaughtering facilities and the public that the HMSA of 1958 does not
9 require "humane methods" for "handling and slaughter of poultry," because they increase the
10 risk that Ms. Wallerich will become ill from the consumption of poultry products or secondary
11 contamination. The use of inhumane slaughter methods, including electrically stunning shackled
12 birds and scalding conscious birds, contributes to the level of illness-causing bacteria in poultry
13 meat and increases the risk that Ms. Wallerich may contract a food-borne illness from such
14 pathogens as *Campylobacter*, *Salmonella*, and *E. coli*. Each time Ms. Wallerich consumes
15 undercooked poultry, or foods that have come into contact with fluids from raw poultry, she is at
16 a higher risk of contracting a food-borne illness if the bird was slaughtered inhumanely. As
17 described in Section IV, *infra*, Ms. Wallerich's injuries will be redressed if plaintiffs prevail
18 because the number of chickens and other birds slaughtered inhumanely will be reduced, thus
19 decreasing her risk of contracting a food-borne illness.

20 14. Plaintiff Kanda Boykin is a resident of Tiburon, California, and is a member of East Bay
21 Animal Advocates ("EBAA"). Ms. Boykin is a regular consumer of poultry meat, including both
22 chicken and turkey, and will continue to purchase and consume poultry in the future. Ms. Boykin
23 is very concerned about eating bacterially contaminated poultry meat, and the associated risk of
24 contracting a food-borne illness. Due to recent scientific research showing a link between
25 bacterial contamination in consumer poultry meat and inhumane methods of poultry slaughter,
26 Ms. Boykin is particularly concerned about consuming meat from inhumanely slaughtered birds.

1 She is also concerned about consuming other foods that may have become contaminated with
2 raw poultry fluids during preparation, thus causing secondary contamination. Finally, Ms.
3 Boykin is concerned about her daughter and her grandchildren's consumption of meat from
4 inhumanely slaughtered birds and the increased risk that the meat may be contaminated.

5 15. Ms. Boykin and her family are injured by USDA's decision to exclude chickens, turkeys,
6 and birds from the protections provided by the HMSA, as well as the agency's September 28,
7 2005 notice informing slaughtering facilities and the public that the HMSA does not require
8 "humane methods" for "handling and slaughter of poultry," because they increase the risk that
9 Ms. Boykin and her family will become ill from the consumption of poultry products or
10 secondary contamination. The use of inhumane slaughter methods, including electrically
11 stunning shackled birds and scalding conscious birds, contributes to the level of illness-causing
12 bacteria in poultry meat and increases the risk that Ms. Boykin and her family may contract a
13 food-borne illness from such pathogens as *Campylobacter*, *Salmonella*, and *E. coli*. Each time
14 Ms. Boykin or the members of her family consume undercooked poultry or foods that have come
15 into contact with fluids from raw poultry, they are at a higher risk of contracting a food-borne
16 illness if the bird was inhumanely slaughtered. As described in Section IV, *infra*, Ms. Boykin's
17 injuries will be redressed if plaintiffs prevail because the number of chickens and other birds
18 inhumanely slaughtered will be reduced, thus decreasing Ms. Boykin and her family's risk of
19 contracting food-borne illnesses.

20 16. Plaintiff The Humane Society of the United States is a non-profit membership
21 organization with more than 9 million members and constituents. The HSUS brings this action
22 on behalf of its members. The HSUS is dedicated to protecting domestic and wild animals by
23 actively opposing those practices, projects, plans, and events that result in the cruel treatment of
24 animals. The HSUS invests considerable resources in advocating for farm animal welfare in
25 general, and humane treatment of birds raised and killed for food in particular. The HSUS
26 regularly educates its members and constituents, through newsletters, emails, action alerts, and
27

its website about the perils faced by poultry and other farm animals throughout their lives and during their deaths. The HSUS also issues reports documenting the impact current industrial farming and slaughter practices have on human health. Many of The HSUS's members and constituents regularly consume chicken, turkey, duck, and other poultry meat and will continue to purchase and consume poultry in the future.

17. The HSUS's members and constituents are injured by USDA's decision to exclude chickens, turkeys, and other poultry species from the protections provided by the HMSA of 1958, as well as the agency's September 28, 2005 notice informing slaughtering facilities and the public that the HMSA of 1958 does not require "humane methods" for "handling and slaughter of poultry," because the decision and the notice increase the risk that The HSUS's members and constituents will become ill from the consumption of poultry products. The use of inhumane slaughter methods, including electrically stunning shackled birds and scalding conscious birds, contributes to the level of illness-causing bacteria in poultry meat and increases the risk that The HSUS's members and constituents may contract a food-borne illness from such pathogens as *Campylobacter*, *Salmonella*, and *E. coli*. Each time The HSUS's members and constituents consume undercooked poultry or foods that have come into contact with fluids from raw poultry, these individuals are at a higher risk of contracting a food-borne illness if the bird was slaughtered inhumanely. As described in Section IV, *infra*, plaintiff's injuries will be redressed if plaintiffs prevail because the number of chickens and other birds slaughtered inhumanely will be reduced, thus decreasing the risk of HSUS members and constituents contracting food-borne illnesses.

18. East Bay Animal Advocates ("EBAA") is a non-profit organization based in the San Francisco Bay Area. California is home to one of the most industrious and concentrated animal agriculture areas in the world. Exposing animal cruelty in modern agriculture is of utmost importance to EBAA. Through direct aid and educational outreach, EBAA is dedicated to fighting and preventing animal abuse in California's agricultural industry, focusing primarily on

1 poultry welfare. Established in 2003, EBAA has 300 supporting members. Many of EBAA's
2 members regularly consume chicken, turkey, duck, and other poultry meat and will continue to
3 purchase and consume poultry in the future.

4 19. EBAA's members are injured by USDA's decision to exclude chickens, turkeys, and
5 other poultry species from the protections provided by the HMSA of 1958, as well as the
6 agency's September 28, 2005 notice informing slaughtering facilities and the public that the
7 HMSA of 1958 does not require "humane methods" for "handling and slaughter of poultry,"
8 because they increase the risk that they will become ill from the consumption of poultry
9 products. The use of inhumane slaughter methods, including electrically stunning shackled birds
10 and scalding conscious birds, contributes to the level of illness-causing bacteria in poultry meat
11 and thereby increases the risk that they may contract a food-borne illness from such pathogens as
12 *Campylobacter*, *Salmonella*, and *E. coli*. Each time the EBAA's members consume undercooked
13 poultry, or foods that have come into contact with fluids from raw poultry, these members are at
14 a higher risk of contracting a food-borne illness if the bird was inhumanely slaughtered. As
15 described in Section IV, *infra*, plaintiff's injuries will be redressed if plaintiffs prevail because
16 the number of chickens and other birds inhumanely slaughtered will be reduced, thus decreasing
17 the risk of EBAA members contracting food-borne illnesses.

18 20. Defendant Mike Johanns is the Secretary of the USDA and has ultimate responsibility for
19 implementing the HMSA.

20 STATUTORY AND FACTUAL BACKGROUND

21 I. The Humane Methods of Slaughter Act of 1958

22 21. When Upton Sinclair published The Jungle in 1906, the United States was awakened to
23 the immense cruelty taking place in slaughterhouses. The book graphically describes the Chicago
24 meatpacking industry, documenting unsanitary conditions, the butchering and mistreatment of
25 live animals, and the toll this cruelty took on slaughterhouse employees.

1 22. Public reaction to Sinclair's book was widespread and immediate. After President
2 Theodore Roosevelt read the book, he ordered an inspection of the meat industry and met
3 personally with Sinclair for advice on tightening regulation. Congress responded by enacting
4 both the Pure Food and Drug Act, which created the Food and Drug Administration, and the
5 Meat Inspection Act, which mandated federal inspection and minimum sanitary standards at
6 slaughterhouses, in 1906.

7 23. The 1906 legislation, however, did nothing to alter many of the inhumane and cruel
8 practices occurring at slaughterhouses.

9 24. By the early 1950s, slaughter practices continued to mirror the abhorrent practices
10 described in Sinclair's book. For example, an article published in the *New Republic* magazine in
11 1956, entitled "Still in the Jungle," described the then-current slaughter process, observing how
12 animals continued to be "strung up (conscious) by chains" secured around their legs, their throats
13 were cut using sawing motions, and some animals passed "still squealing into scalding vats" of
14 water.

15 25. These methods were particularly controversial because other countries had already made
16 substantial strides towards improving slaughter conditions for farm animals. For example, as
17 early as 1874, Switzerland required that animals be rendered insensible to pain before slaughter.
18 By the early 1950s, New Zealand and several countries across Europe had all enacted humane
19 slaughter legislation.

20 26. Frustrated by the lack of progress in the United States, humane organizations, including
21 The Humane Society of the United States, initiated a campaign in 1954 to reform slaughterhouse
22 cruelty. The humane organizations' efforts and immense public pressure prompted Congress to
23 consider the issue in depth between 1955 and 1958. Public demand for a humane slaughter bill
24 was so strong that when asked whether he would sign such a bill, President Dwight Eisenhower
25 stated, "if I went by mail, I'd think no one was interested in anything but humane slaughter."
26
27

1 27. The House Committee on Agriculture conducted a series of hearings and took testimony
2 from workers and humane associations who described the continued suffering in
3 slaughterhouses. The Committee visited several facilities to view killing practices first-hand.
4 Congressmen left with a vivid impression of the cruel and dirty work of slaughterhouse
5 employees, but also witnessed how progressive facilities employed more humane methods, like
6 anesthetizing pigs before slaughter.

7 28. In 1957, the House passed a bill requiring certification from all facilities that sell
8 livestock products to the federal government that the animals had been slaughtered humanely.
9 The Senate Committee on Agriculture and Forestry responded with a research-only bill that
10 contained no substantive provisions.

11 29. Floor debate on the bills was often very graphic. Senator Kefauver described the then-
12 current slaughter process nearly quoting the words of Upton Sinclair a half-century before:

13 I have witnessed . . . the terrible screaming as the animals are dragged aloft by one foot,
14 seen the grim struggle when the [slaughterhouse employee] knifes them, and observed in
15 this whole barbarous procedure a combination of pain and terror for animals and danger
16 and degradation for men which ought to have been stopped long ago in the United States
17 of America.

18 30. Congress finally enacted the House's version of the Humane Methods of Slaughter Act in
19 1958. The bill stated that Congress' primary purpose was to "prevent needless suffering" of
20 animals in slaughterhouses and to bring about "safer and better working conditions" for
21 slaughterhouse employees. As such, the HMSA of 1958 declares it is "the policy of the United
22 States that the slaughtering of livestock and the handling of livestock in connection with
23 slaughter shall be carried out only by humane methods." 7 U.S.C. § 1901.

24 31. To implement the humane policy, Congress deems only two methods of slaughter to be
25 humane. Under the first method, animals can be slaughtered in accordance with ritualistic,
26 religious slaughter, such as the Jewish Kosher method. 7 U.S.C. § 1902(b).

32. Under the second method, all livestock must be rendered insensible to pain before shackling or slaughtering. 7 U.S.C. § 1902(a). This method specifically prohibits shackling and hanging of conscious animals by their legs and cutting the throats of fully conscious animals to allow them to bleed.

33. The HMSA of 1958 explicitly requires that "cattle, calves, horses, mules, sheep, swine, and other livestock" be slaughtered in accordance with humane methods. 7 U.S.C. § 1902.

II. The 1978 Amendments to the Federal Meat Inspection Act and the FMIA Regulations

34. Unlike the HMSA of 1958 – which covers "cattle, calves, horses, mules, sheep, swine, and other livestock," 7 U.S.C. § 1902 – the Federal Meat Inspection Act of 1906 ("FMIA"), 21 U.S.C. §§ 601 et seq. only applies to "cattle, sheep, swine, goats, horses, mules, and other equines." 21 U.S.C. § 603.

35. In 1978, Congress amended the FMIA. *See* Pub. L. No. 95-445, 92 Stat. 1069 (1978). Although this Act was entitled the "Humane Methods of Slaughter Act of 1978," the measure did not repeal or replace the HMSA of 1958. Instead, the 1978 Act added a provision to the FMIA giving USDA authority to refuse inspection of meat under the FMIA "if the Secretary finds that any cattle, sheep, swine, goats, horses, mules or other equines have been slaughtered or handled . . . by any method not in accordance with the Act of August 27, 1958 [the HMSA of 1958]." 21 U.S.C. § 603(b).

36. The 1978 Act left unaffected section 1902 of the HMSA of 1958 – i.e., the provision declaring that "cattle, calves, horses, mules, sheep, swine, and other livestock" be slaughtered in accordance with humane methods. 7 U.S.C. § 1902.

37. Following the 1978 Amendments, USDA issued regulations to "implement[] the Humane Methods of Slaughter Act of 1978," which apply to cattle, sheep, swine, goats, horses, mules, and other equines slaughtered in establishments subject to inspection under the Federal Meat Inspection Act." 44 Fed. Reg. 37954, 37954 (June 29, 1979).

1 38. The current FMIA regulations, codified at 9 C.F.R. §§ 313 et seq., only apply humane
2 slaughter requirements to those species listed under the FMIA – i.e., “cattle, sheep, swine, goats,
3 horses, mules, and other equines slaughtered in establishments subject to inspection under the
4 Federal Meat Inspection Act.”

5 39. There are no current regulations implementing the provisions of the HMSA of 1958, 7
6 U.S.C. §§ 1901 et seq.

7 **III. Current Inhumane Methods of Poultry Slaughter**

8 40. More than 8 billion chickens, turkeys, ducks, and other birds are slaughtered each year in
9 the United States. Although facilities have become more automated, poultry slaughter practices
10 have remained substantially the same since Congress enacted the HMSA in the late 1950s.
11 Despite more humane alternatives, the current industrial poultry slaughter process often causes
12 extreme and unnecessary pain and suffering, as birds are routinely hung upside-down, cut, and
13 sometimes scalded while still fully conscious.

14 41. Professor Shai Barbut’s textbook, Poultry Products Processing: An Industry Guide
15 (2002), which is used in university food and animal science courses, provides a basic description
16 of the commercial poultry slaughter process. The process begins at the grower shed or farm
17 where the birds are raised. Workers catch the birds by hand, load them into transport crates, and
18 haul the birds to the slaughterhouse.

19 42. Upon arrival, slaughterhouse workers remove the birds from transport crates by either
20 pulling the birds out by hand, or tipping and “dumping” the crates so the birds fall out onto a
21 conveyor belt. According to a joint USDA and University of Georgia study entitled, “Reference
22 Guide for Solving Poultry Processing Problems” (1997), a substantial number of injuries occur
23 during catching, transport, and unloading, including broken leg bones. These injuries exacerbate
24 the birds’ pain later in the slaughter process, particularly during shackling.

25 43. The conveyor moves the birds to the shackling, or “live hang,” area where workers pick
26 up fully conscious birds from the conveyor belt, invert the animals, and place their legs into
27

1 metal shackles to hang the birds by their feet. The shackles are attached to an overhead conveyor,
2 or shackle line, which moves the birds across the slaughterhouse floor.

3 44. Although the HMSA of 1958 specifically requires that animals be rendered “insensible to
4 pain before shackling” poultry species are shackled and hung upside-down *before* being rendered
5 insensible to pain. 7 U.S.C. § 1902(a).

6 45. The “Scientific Report of the Scientific Panel for Animal Health and Welfare on a
7 Request from the Commission Related to Welfare Aspects of Animal Stunning and Killing
8 Methods” (2004), a recent study released by the European Union’s Food Safety Authority,
9 describes the animal welfare impacts of current poultry slaughter methods used in both the
10 United States and Europe. The report states that shackling is “extremely painful” for birds, and
11 reports that 15 percent of birds experience heightened pain during shackling due to pre-existing
12 lameness, often caused by mishandling during catching and transport.

13 46. Live shackling of animals was one of the cruel methods of slaughter described in both
14 Upton Sinclair’s novel in 1906 and on the floor of Congress during debate over the HMSA of
15 1958. Both describe animals being “strung up” and “drug aloft” across the slaughterhouse floor.

16 47. As described in the USDA’s handbook on poultry slaughter, Guidelines for Establishing
17 and Operating Broiler Processing Plants (1981), shackling and hanging fully conscious birds are
18 regular industry practices. Chickens often remain hanging for up to one minute before electric
19 stunning.

20 48. The birds are then dipped into a “stun bath” – an electrically charged water-bath. Contact
21 with the water sends an electric current through the bird intended to immobilize the animal to
22 facilitate neck cutting.

23 49. According to the European Food Safety Authority, birds frequently receive painful pre-
24 stun shocks when the panicking birds’ wings touch the stun bath before their heads are fully
25 immersed. Due to their large wingspan, turkeys’ wings hang lower than their heads while
26 shackled. A survey by poultry experts Stephen Wotton and Neville Gregory, entitled “Effect of
27

1 Electrical Stunning on Somatosensory Evoked Responses in the Turkey's Brain" (1991),
2 revealed that more than 80 percent of turkeys receive painful pre-stun electric shocks on the
3 slaughter line.

4 50. Often however, birds completely miss stunning, or the electric charge is not sufficient to
5 ensure birds are rendered unconscious, and thus the birds proceed through slaughter fully
6 conscious. In Processing of Poultry (1989), G.C. Mead describes the two ways in which
7 electrical stunning can fail to induce unconsciousness in birds.

8 51. First, shackling and inversion, as well as pre-stun shocks, can excite the birds, causing
9 wing flapping and attempts to climb the hanger. As the birds struggle, they may "miss being
10 stunned" completely. Smaller birds may miss stunning because the stun baths are positioned for
11 the typical heights of the birds, and other birds may miss stunning if hung improperly.

12 52. Second, the electrical voltage of the stun bath may be too low to adequately induce
13 unconsciousness. For example, Mead recommends that, due to welfare concerns, stunning should
14 elicit cardiac arrest, rather than simply immobilizing the birds, to ensure the animals are fully
15 unconscious throughout slaughter.

16 53. Barbut indicates that U.S. slaughterhouses often stun birds at only one quarter of the
17 electrical frequency recommended to elicit cardiac arrest. Lower electrical frequencies cannot
18 ensure the birds will be unconscious during neck cutting, bleeding, and scalding.

19 54. Birds not stunned at an electrical voltage that would induce cardiac arrest, or birds that
20 miss the stun bath entirely, often move to the killing machine still conscious, even though the
21 HMSA of 1958 specifically requires that animals "be rendered insensible to pain before
22 shackling or slaughtering." 7 U.S.C. § 1902(a).

23 55. After the killing machine cuts the birds' necks, birds must be provided sufficient time to
24 bleed to ensure loss of consciousness before reaching the scald vat. USDA's poultry slaughter
25 handbook recommends birds bleed for two and one-half minutes before scalding.

1 56. However, in Advances in Animal Welfare Science (1997), well-known animal expert Dr.
2 Temple Grandin notes that most poultry slaughterhouses in the United States bleed chickens for
3 60 seconds or less before moving the birds to the scald tank.

4 57. As USDA recognizes in its poultry slaughter handbook, improperly bled birds or birds
5 that "missed the killing process" sometimes enter the scald vat water while still breathing. These
6 birds are often still conscious when dipped into the scald vat water intended to loosen their
7 feathers.

8 58. After defeathering, the shackle moves the birds to the evisceration area, where a machine
9 cuts open the body cavity and removes the birds' internal organs. The carcass is then chilled,
10 processed, and packaged for shipping.

11 59. More humane methods of poultry slaughter exist. One humane method, called Controlled
12 Atmosphere Killing ("CAK"), uses gases to painlessly asphyxiate the birds, minimizing injury to
13 the birds, the carcasses, and the slaughterhouse workers. Under the best-practice CAK method,
14 when the birds arrive at the facility, workers do not remove or dump the birds from their crates,
15 but instead transfer the crates into an enclosed CAK chamber. The chamber fills with a mixture
16 of inert gases, such as nitrogen and argon, which kills the birds. Slaughter workers then shackle,
17 bleed, scald, and eviscerate the dead birds.

18 60. Professor Ian J.H. Duncan, regarded as the world's premiere poultry welfare scientist,
19 wrote of the CAK method: "In my opinion, this is the most stress-free, humane method of killing
20 poultry ever developed. The birds are quiet throughout the operation. They remain in the
21 transport crate until dead and the killing procedure itself is fast, painless, and efficient. There is
22 no risk of recovery from unconsciousness."

23 61. The CAK method also reduces injuries to the carcass, thereby increasing profitability.
24 CAK helps to significantly reduce bruising of birds as they are removed from the transport crates
25 and eliminates struggle throughout the remainder of the slaughter process, thereby reducing
26

1 broken appendages during shackling and ensuring the bird is not conscious when dropped into
2 the scald bath.

3 62. MBA Poultry, producer of the "Smart Chicken" brand, located in Tecumseh, Nebraska,
4 currently successfully employs a humane gas method to slaughter poultry.

5 **IV. Human Health Threats from Current Slaughter Practices**

6 63. In addition to causing unnecessary cruelty, current poultry slaughter practices increase
7 the human health risk of consuming bacterially contaminated poultry.

8 64. Uncooked and undercooked poultry meat often harbors several types of bacteria, which,
9 if consumed, can cause food-borne illnesses. The most common bacterial food-borne illnesses
10 are caused by Campylobacter, Salmonella, E. coli, and Listeria. Consuming these bacteria can
11 cause symptoms commonly associated with food poisoning, as well as other more serious
12 complications.

13 65. For example, each year in the United States, there are approximately 2.4 million human
14 cases of campylobacteriosis. According to USDA, consuming only 500 cells of Campylobacter
15 can cause fever, headache, and muscle pain, followed by diarrhea, stomach pain, and nausea.
16 Complications can include meningitis, urinary tract infections, and reactive arthritis.
17 Campylobacter contamination is also the most common cause of acute flacid paralysis, a
18 condition called Guillain-Barre syndrome. Campylobacter-related illnesses account for 5 percent
19 of food-related deaths annually.

20 66. USDA estimates that up to 3.8 million people contract salmonellosis each year.
21 Symptoms, which may last up to one week, include diarrhea, abdominal cramps, fever, chills,
22 headache, nausea, and vomiting. Salmonella infections can be life-threatening, particularly for
23 the very young, the elderly, and for persons with impaired immune systems.

24 67. A 2003 Consumer Reports study found that 49 percent of the chicken carcasses sold in
25 United States supermarkets were contaminated with Salmonella or Campylobacter, and 40
26 percent were contaminated with antibiotic-resistant strains of these bacteria.

68. According to USDA's poultry slaughter handbook, the level of bacteria on consumer poultry meat is related to the amount of bacterial contamination during poultry processing and slaughter.

69. Recent scientific studies indicate current inhumane methods of poultry slaughter can increase the level of bacterial contamination in the bird's carcass. Increased bacterial contamination is linked with three inhumane steps in the poultry slaughter process: removing birds from their transport crates, stunning birds in electrically charged water, and scalding fully conscious birds.

70. For example, poultry expert Mohan Raj, in his 1998 paper "Gas Killing," notes that birds sustain abrasions and cuts when dumped from transport crates. These scratches not only reduce the value of the carcass, but also become potential sites for microbial attachment.

71. Electrically stunning birds in water baths also increases the level of bacterial contamination in the carcass. According to poultry slaughter experts Gregory and Whittington's 1992 study entitled, "Inhalation of Water during Electrical Stunning in Chickens," birds inhale and defecate during the initial spasm of electrical shock in the stun bath. As USDA's poultry slaughter handbook notes, subsequent birds pass through the same stun bath water and may inhale the feces-contaminated water into their respiratory tracts. The handbook notes that fecal matter is a potential source of food-borne illness-causing bacteria.

72. Scalding of conscious birds also increases the level of bacterial contamination in the carcass. Because they are raised and transported in confined and close contact with other birds, the birds' feathers become caked with excrement and dirt. As the shackle line dips the birds into the scalding water, the debris, fecal matter, and bacteria enter the water. As USDA's poultry slaughter handbook notes, still-conscious birds may inhale upon entering the scald vat water, causing fecal contamination to enter their bodies and contaminating the carcass.

73. After scalding, the carcass is mechanically defeathered and eviscerated. Barbut notes that if evisceration machinery is misaligned, the machine may puncture the birds' internal organs,

1 including their lungs, allowing fecal matter inhaled during stunning and scalding to contaminate
2 the edible portions of the bird. USDA's poultry slaughter handbook indicates that proper
3 evisceration is "extremely critical to [avoiding] contamination of the carcass with fecal material
4 Since [fecal contamination is a] major source [] of food-poisoning bacteria, extreme
5 precautions are required."

6 74. Although the carcass is then rinsed, Mead notes in Processing of Poultry that washing the
7 carcass "removes only a fraction of the surface contaminants present, and even the most effective
8 post-evisceration spray washer is unlikely to achieve more than a 10-fold reduction [because]
9 washing does not readily remove attached organisms." Instead of depending on post-processing
10 cleaning to remove bacterial contamination, Mead recommends that "contact between bacteria
11 and the carcass should be kept to a minimum" prior to and throughout processing.

12 75. Contamination added during slaughtering and processing increases the likelihood that the
13 bacteria will remain on the final consumer product. If consumers eat contaminated meat that has
14 not been properly cooked, thus still containing active bacteria, or eat other foods that accidentally
15 come into contact with bacteria-contaminated poultry fluids, consumers have an increased risk of
16 contracting food-borne illnesses from the bacteria.

17 76. The evidence suggests that humane slaughter methods can significantly reduce these
18 risks. For example, the best-practice CAK method minimizes the risk of bacterial contamination
19 of the carcass during slaughter. Birds are killed before shackling, making electrical water-bath
20 stunning unnecessary. The birds are also dead during scalding, and thus cannot inhale scald vat
21 water, thereby eliminating two points of likely contamination.

22 **V. Recent Controversy Regarding the Lack of Federal Humane Regulations**
23 **Concerning Poultry Slaughter**

24 77. Because of these animal welfare and human health concerns, coupled with the fact that
25 USDA does not protect poultry under the HMSA of 1958, current poultry slaughter practices
26 have become highly controversial.

1 78. Recent abuses in poultry slaughter plants across the country have attracted national media
2 attention and significant public outcry. For example, a 2004 *New York Times* story graphically
3 reported horrific abuses at a Pilgrim's Pride chicken slaughter plant in Moorefield, West
4 Virginia. The article noted that workers jumped up and down on birds, drop-kicked birds like
5 footballs, "squeeze[ed] birds like water balloons to spray feces over other birds," and tore birds'
6 beaks off while plant supervisors witnessed and ignored the cruelty. Donald McNeil, KFC
7 Supplier Accused of Animal Cruelty, N.Y. TIMES, July 20, 2004. After viewing video footage of
8 these events, humane slaughter expert Dr. Temple Grandin called the behavior "absolutely
9 atrocious." Likewise, animal welfare expert Dr. Ian J.H. Duncan of the University of Guelph
10 called it "some of the worst scenes of animal cruelty" that he had ever witnessed. The workers
11 involved in the abuse were terminated but could not be prosecuted under federal law because of
12 USDA's failure to apply the HMSA of 1958 to poultry.

13 79. The Pilgrim's Pride case does not appear to be an isolated instance. For example, a 2004
14 investigation of a Perdue poultry slaughter plant in Maryland and a 2005 investigation of a
15 Tyson's slaughter plant in Alabama revealed similar abuses, including workers violently
16 throwing birds against slaughter plant walls and leaving birds to die on the conveyor belt during
17 lunch breaks.

18 80. The current method of slaughter is extremely fast-paced. Shackle lines move at high
19 speeds to ensure profitability, making the shackling of fully conscious animals extremely
20 frustrating for workers. As one slaughterhouse worker quoted in the *New York Times* article
21 notes, workers' frustration and aggravation results in abuse of the birds.

22 81. State cruelty laws are not adequate to address these abuses. Although each state has its
23 own animal cruelty statute, most of these codes exempt common agricultural practices, no matter
24 how abusive, and many of these laws do not apply to farm animals at all. Indeed, none of the
25 chicken abuse cases discussed above resulted in state cruelty charges against any of the persons
26
27

1 or corporations involved. Moreover, because of USDA's practice of excluding poultry from the
2 HMSA of 1958, these abhorrent actions are perfectly legal according to USDA.

3 82. These and other similar abuses have prompted the public to write thousands of the letters
4 to USDA requesting that the agency provide humane slaughter requirements for chickens,
5 turkeys, and other birds killed for human consumption. In addition, several members of Congress
6 have explored whether to take action legislatively to correct USDA's policy of excluding
7 chickens from the humane slaughter protections mandated by the HMSA of 1958.

8 **VI. USDA's Current Policy Excluding Poultry from the HMSA**

9 83. On September 28, 2005, in response to "considerable congressional and public interest in
10 the humane treatment of animals, including poultry," USDA issued a notice announcing the
11 agency's policy with regard to humane slaughter of chickens and other poultry species, and the
12 scope of the HMSA of 1958. See USDA, Notice on the Treatment of Poultry Before Slaughter,
13 70 Fed. Reg. 56,524, 56,624-25 (Sept. 28, 2005). The notice states that "no specific federal
14 humane handling and slaughter statute [exists] for poultry" and declares that the HMSA of 1958
15 does not require "humane methods" for "handling and slaughter of poultry."

16 84. In apparent recognition of the validity of widespread public and Congressional concern
17 about the humane treatment of poultry during slaughter, the USDA notice recommends some
18 purely voluntary measures producers may wish to take to more humanely slaughter poultry.

19 **PLAINTIFFS' CLAIMS FOR RELIEF**

20 **Violations of the HMSA of 1958 and the APA**

21 85. Plaintiffs incorporate herein by reference, as though fully set forth, all of the allegations
22 contained in paragraphs 1-86 above.

23 86. By excluding chickens, turkeys, and other poultry species from the protections provided
24 by the Humane Methods of Slaughter Act of 1958, 7 U.S.C. §§ 1901 et seq. – even though such
25 species constitute "other livestock" under the plain language of the Act – defendant has violated
26

the HMSA of 1958, abused its discretion, and acted arbitrarily and capriciously and not in accordance with law, in violation of the APA. 5 U.S.C. § 706.

87. Defendant's actions have injured, and will continue to injure, plaintiffs in the manner described in paragraphs 6 to 19 above.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs request that this Court enter an order:

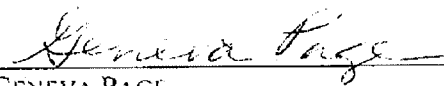
1. declaring USDA's practice of excluding chickens, turkeys, and other poultry species from the protections provided by the Humane Methods of Slaughter Act of 1958, 7 U.S.C. §§ 1901 et seq., to be arbitrary and capricious, and not in accordance with the HMSA of 1958 and the APA;
2. declaring unlawful and setting aside USDA's September 28, 2005 notice informing slaughtering facilities and the public that the Humane Methods of Slaughter Act of 1958, 7 U.S.C. §§ 1901 et seq. does not require "humane methods" for "handling and slaughter of poultry;"
3. enjoining USDA from excluding chickens, turkeys, and other poultry species from the protections provided by the Humane Methods of Slaughter Act of 1958, 7 U.S.C. §§ 1901 et seq.;
4. awarding plaintiffs their reasonable attorneys' fees and costs for this action; and
5. granting plaintiffs such other and further relief as may be just and proper.

Respectfully Submitted,



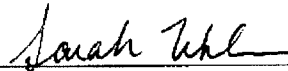
COREY EVANS
CA Bar No. 218789

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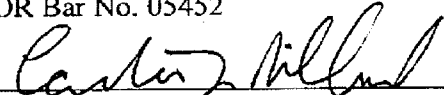


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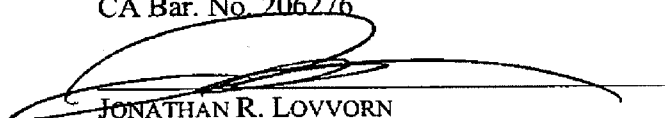
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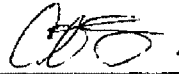
THE HUMANE SOCIETY OF THE UNITED STATES
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November 21, 2005

Attorneys for Plaintiffs

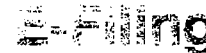
CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.



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November 21, 2005



CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law...

I. (a) PLAINTIFFS: Levine, Ellen G; Ulbrich, Beverly J; Kielman, Krista M; Wallerich, Gretchen R; Boykin, Kanda E; The Humane Society of the United States, East Bay Animal Advocates. (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF: Alameda County. (c) ATTORNEYS: See attachment.

II. BASIS OF JURISDICTION: 2 U.S. Government Defendant. 4 Diversity. III. CITIZENSHIP OF PRINCIPAL PARTIES: Citizen of This State (PTF DEF 1 1), Citizen of Another State (PTF DEF 2 2), Citizen or Subject of a Foreign Country (PTF DEF 3 3).

IV. ORIGIN: Original Proceeding.

V. NATURE OF SUIT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY): Administrative Procedure Act, 5 U.S.C. 555 et seq. Challenging USDA notice as arbitrary and capricious.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ [] CHECK YES only if demanded in complaint: UNDER F.R.C.P. 23 JURY DEMAND: YES [] NO [X]

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE":

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY) [X] SAN FRANCISCO/OAKLAND [] SAN JOSE

DATE: 11/21/05 SIGNATURE OF ATTORNEY OF RECORD: [Signature]

1(c) Attorneys (firm name, address, and telephone number)

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(202) 676-2334

United States District Court
NORTHERN DISTRICT OF CALIFORNIA

E-Filing

Levine, Ellen G., et al.

SUMMONS IN A CIVIL CASE

CASE NUMBER:

FILED

v.

Johanns, Mike,
Secretary, U.S. Department of Agriculture

C 05 4764

TO: (Name and address of defendant)

Mike Johanns
Secretary, U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Corey Evans
EVANS & PAGE
One Market Plaza
Spear Tower, Suite 3600
San Francisco, CA 94105

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Richard W. Wieking
CLERK

DATE November 21, 2005

Helen L. Almacer

(BY) DEPUTY CLERK