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FILED
Superior Court Of California
County Of Los Angeles

JUN 29 2015

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16 People for the Ethical Treatment of Animals, Inc. and Tracy Reiman

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES**

19 PEOPLE FOR THE ETHICAL TREATMENT OF
20 ANIMALS, INC. and TRACY REIMAN,

Case No. **BS 15 6139**

21 Petitioners,

22 v.

**Verified Petition for Writ of
Mandate**

23 KAREN ROSS, Secretary of the California
24 Department of Food and Agriculture, in her
25 Official Capacity; THE CALIFORNIA
26 DEPARTMENT OF FOOD AND AGRICULTURE;
27 DOUGLAS HEPPER, Chief of the Meat,
28 Poultry and Egg Safety Branch of the
California Department of Food and
Agriculture, in his Official Capacity, and
DOES 1 Through 20,

Respondents.

RECEIPT #1: 68H53479017
DATE PAID: 06/29/15 09:18 AM
PAYMENT: \$435.00 \$10
RECEIVED:
CHECK: \$0.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$435.00

CIT/CASE: BS156139
LEA/DEF#:

People for the Ethical Treatment of Animals, Inc. ("PETA"), and California citizen Tracy Reiman (together, "Petitioners") bring this action on behalf of themselves and the public, to

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1 California. Hepper is responsible for oversight and management of the Branch. He is sued in his
2 official capacity.

3 6. Petitioners are unaware of the true names and capacities of respondents Does 1 -
4 20, and sue such respondents herein by fictitious names. Upon information and belief, the
5 fictitiously named respondents are public officials or agencies who act in concert with the
6 Department, and who are also responsible, in whole or in part, for implementing and/or
7 enforcing the HSL and regulations promulgated thereunder. When Petitioners determine the true
8 identities and capacities of these respondents, Petitioners will, with leave of the Court if
9 necessary, amend this Petition to insert such identities and capacities.

10 **Jurisdiction and Venue**

11 7. Pursuant to California Code of Civil Procedure § 1085, this Court has jurisdiction
12 to issue a writ of mandate to set aside Respondents' unlawful regulations and actions relating to
13 the HSL and to compel Respondents to comply with the mandatory duties imposed upon them by
14 the HSL and regulations promulgated thereunder.

15 8. This suit is properly filed in this Court pursuant to section 393(b) of the Code of
16 Civil Procedure because this cause of action or part thereof arose in Los Angeles County and the
17 effects of Respondents' unlawful conduct are felt here.

18 **Private Attorney General Doctrine**

19 9. Petitioners bring this action as private attorneys general pursuant to California
20 Code of Civil Procedure § 1021.5, and any other applicable legal theory, to enforce important
21 rights affecting the public interest.

22 10. Granting the relief requested in this Petition will confer significant benefits on the
23 general public by, among other things, requiring Respondents to comply with the HSL, thereby
24 ensuring that tens of millions of animals are not illegally killed in California's slaughterhouses
25 each year. Granting the relief requested in this Petition will result in the enforcement of
26 important rights affecting the public interest by preventing industry-wide systemic violations of
27 the HSL and the Penal Code's prohibition against animal cruelty.
28

1 **Department Regulations Promulgated Pursuant to the HSL**

2 16. Pursuant to HSL's legislative mandate, the Department adopted regulations
3 governing the handling and killing of poultry at California's slaughterhouses, which include the
4 following mandatory requirements:

- 5 a. "Slaughter and handling of poultry shall be performed by operators in a proper
6 and humane manner." Cal. Code Regs. tit. 3, § 1246.2(g).
- 7 b. "Each poultry slaughter establishment shall ensure that poultry handlers,
8 slaughterers, and operators have been instructed in the humane methods of
9 handling poultry . . . before being assigned to such duties." *Id.*, § 1246.2(h).
- 10 c. All slaughter "shall be performed in accordance with approved methods of
11 humane poultry slaughter as provided in this article." *Id.*, § 1246.
- 12 d. "Poultry shall be stunned, rendered unconscious, or killed before being bled[.]"
13 *Id.*, see also *id.*, § 1246.2(d) ("Poultry shall be stunned, rendered unconscious, or
14 killed before bleeding").
- 15 e. "'Stunning' means to humanely render any domesticated fowl . . . insensible to
16 pain to a level of surgical anesthesia or unconsciousness." *Id.*, § 1246.1(d).
- 17 f. "'Surgical anesthesia' means the induction of an animal to a level of insensibility
18 to pain that would allow immediate and simultaneous severance of both carotid
19 arteries with a sharp instrument." *Id.*, § 1246.1(f).
- 20 g. "Stunned poultry shall remain in a state of surgical anesthesia through completion
21 of the bleeding process." *Id.*, § 1246.2(d).

22 17. At least in theory, stunning can be accomplished by several methods.
23 Disregarding the scientific data to the contrary, the Department has declared that "[e]lectrical
24 stunning" is an "acceptable and practical humane method[] for use in the stunning and slaughter
25 of poultry." *Id.*, § 1246.3(a)(2). In making this declaration, the Department exceeded the scope of
26 its authority and acted contrary to the HSL.

27 18. As summarized herein, there is no sound scientific data to support the
28 Department's determination that the types of electrical stunning procedures used in U.S.

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1 slaughter plants are effective to produce a consistent, immediate stun that renders birds
2 insensible to pain to a level of surgical anesthesia. Therefore, the Department's approval of this
3 method of stunning violates the HSL's unequivocal legislative mandate that animals must be
4 rendered "insensible to pain" before being cut and bled.

5 19. In connection with the use of electrical stunning, the Department also imposed the
6 following (equally illusory and, in practice, largely unattainable and unenforced) requirements:

7 a. "The application of electric current to stun . . . shall be performed by operators so
8 as to assure . . . humane application." Cal. Code Regs. tit. 3, § 1246.6(d).

9 b. "The electric current shall be administered so as to produce effective surgical
10 anesthesia[.]" *Id.*, § 1246.6(e).

11 c. "When electric current is used to stun the poultry, sufficient electric current shall
12 be applied to the poultry during stunning to produce a state of surgical anesthesia
13 or unconsciousness through the completion of bleeding." *Id.*, § 1246.7.

14 20. As described herein and upon information and belief, the Respondents have failed
15 to enforce the Department's own mandate that electrical stunning is *only* permitted *if* it assures
16 humane treatment and *if* it results in a state of effective surgical anesthesia through completion of
17 bleeding.

18 21. Indeed, as described herein and upon information and belief, the Respondents
19 lack information about how electrical stunning is performed in the vast majority of poultry
20 slaughter plants in this State, because of their complete abdication of inspection and enforcement
21 responsibilities with respect to poultry slaughter plants subject to federal inspection.

22 22. In response to a May 5, 2015 Public Records Act Request for all records
23 "reflecting or relating to Poultry Inspections in California to determine whether slaughter and
24 handling of poultry for slaughter complies or complied with the California Humane Slaughter
25 Law, Cal. Food & Agr. Code, §§ 19501-19503 and California administrative regulations
26 promulgated thereunder," the Department advised PETA on or about May 29, 2015, that the
27 only responsive records in its possession related to "poultry plants that handle live poultry," *i.e.*,
28 establishments that sell live poultry and slaughter them for a customer, and "poultry plants that

1 are exempt from routine review." The Department identified not a single responsive record in its
2 possession relating to slaughterhouses in California subject to federal inspection.

3 23. Likewise, the Department advised PETA on or about May 29, 2015, that the only
4 responsive records in the Department's possession that reflect (i) incidents of inhumane slaughter
5 of poultry in California; (ii) inhumane treatment of poultry in California, as a result of improper
6 stunning; and (iii) communications relating to violations, and/or enforcement of the HSL pertains
7 to "poultry plants that handle live poultry," *i.e.*, establishments that sell live poultry and slaughter
8 them for a customer, and "poultry plants that are exempt from routine review." The Department
9 identified not a single responsive record in its possession relating to slaughterhouses in
10 California subject to federal inspection.

11 **Lack of Inspection and Enforcement**

12 24. To ensure proper enforcement of the HSL, the Legislature required the
13 Department to provide suitable methods for inspecting animals slaughtered in accordance with
14 the HSL "through cooperation with the United States Department of Agriculture ['USDA'] in the
15 enforcement of Public Law 85-765 [the federal humane slaughter act, 7 U.S.C. § 1901 *et seq.*]
16 and by means of appropriate regulations." Pub. Cont. Code § 10323 (footnote omitted, emphasis
17 added).

18 25. Instead of ensuring compliance with the HSL through appropriate regulations and
19 contracts with the USDA, the Department has simply surrendered to the USDA all inspection
20 responsibilities of California's slaughterhouses, except for a few establishments that are not
21 subject to federal inspection.

22 26. Because federal law does not require that poultry be slaughtered humanely, the
23 Department's abdication of inspection and enforcement responsibilities to federal agents has left
24 an estimated 250 million birds annually without the protections accorded to them by state law:

- 25 a. In contrast to the HSL, the federal humane slaughter act, 7 U.S.C. § 1901 *et seq.*,
26 does not apply to poultry.
- 27 b. In contrast to the HSL, the Federal Poultry Products Inspection Act, 21 U.S.C. §
28 451 *et seq.* (1957), contains no requirements for humane slaughter of poultry.

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1 c. In contrast to the HSL, there exists no federal statute or administrative regulation
2 that matches the HSL's mandatory requirement that poultry must rendered
3 insensible to pain before being cut and bled.

4 27. Upon information and belief, the Department does not enforce compliance with
5 the HSL or any regulations promulgated thereunder with respect to an estimated number of
6 250,000,000 birds killed annually in California's slaughterhouses, that are inspected by federal
7 agents (the USDA's Food Safety and Inspection Service), in accordance with federal law only.

8 28. Inspections by federal agents do not fulfill the HSL's requirement for adequate
9 inspection and enforcement of California state laws and regulations pertaining to humane
10 slaughter of poultry. Among other things, based on a review of information available in the
11 public domain, including information provided by USDA in its so-called "FOIA Reading Room"
12 and documents reflecting training materials and inspection reports published by USDA's Food
13 Safety and Inspection Service:

- 14 a. there is no evidence that federal agents or agencies are trained, or required, to
15 determine if California's slaughterhouses comply with the HSL; and
16 b. there is no evidence that federal agents or agencies are required to take action to
17 enforce compliance with the HSL;
18 c. there is no evidence that federal agents or agencies determine if birds in
19 California's slaughterhouses are rendered insensible to pain before they are cut
20 and bled, or take enforcement actions to punish or deter such instances.

21 29. Upon information and belief, the Department has never taken any action – and in
22 the future intends to take no action – to enforce the HSL with respect to any establishments in
23 California that are subject to inspection under the Federal Poultry Products Inspection Act.

24 30. Indeed, given that the Department has said it has no records pertaining to whether
25 poultry is slaughtered humanely in California's federally inspected poultry slaughter plants, and
26 that it has no records reflecting communications with USDA about the enforcement of the HSL
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1 in California's slaughter plants, the Department has neither the knowledge, nor the means, to
2 ensure effective compliance with the HSL in such establishments.

3 **Electrical Stunning is Not a "Practical" or "Humane" Method for Accomplishing the**
4 **HSL's Mandate that Poultry Must Be Insensible to Pain before Being Slaughtered**

5 31. Historically, the development of electrical stunning devices was reportedly driven
6 more by the need to facilitate processing and automation of slaughter than by concern for the
7 animals.

8 32. Electrical water-bath stunning is believed to be the most common method for
9 stunning birds in California's commercial slaughterhouses where large throughput rates are
10 required and slaughtering is highly mechanized.

11 33. Upon information and belief, the slaughter practices reported in the scientific
12 literature, described in paragraphs 34 through 63, below, apply not only to facilities in the United
13 States, generally, but to those in California, specifically.

14 34. Most birds arrive at slaughter plants in transportation crates on trucks, where they
15 are unloaded onto a conveyor belt by dumping them out of their crates or forcefully removing
16 birds with metal poles. Workers then slam the birds' legs into metal shackles and hang the
17 animals upside down. Because shackles do not always match the size of the birds' legs, their legs
18 are sometimes broken when workers force them to fit into the shackles. Additionally, because the
19 birds often continue to struggle to escape their shackles, they may suffer further bruising,
20 lacerations and dislocations, including hemorrhaging in the leg, thigh and breast.

21 35. The birds then move along the slaughter line to a shallow trough filled with salty
22 water. The water is electrified, and the birds' heads are supposed to be dragged through the water
23 to stun them.

24 36. Even before they are stunned, many birds inadvertently receive painful electric
25 shocks. This can happen when a bird's leading wing makes contact with the electrified water
26 before the head, or if wing-flapping occurs at the entrance to the stunner. Turkeys are especially
27 prone to pre-stun shocks, because their wings hang lower than their head when hung inverted on
28 a shackle.

1 37. The shock when birds' heads are dragged through the electrified water is not
2 intended to kill them, but merely to induce seizures (convulsions) that supposedly render them
3 unconscious and insensible to pain.

4 38. Although it is possible *in theory* to calculate precise parameters for electric
5 stunning (including voltage, wave form, pulse width, frequency, current and dimensions of
6 water-bath) to induce immediate unconsciousness in a laboratory setting, this is not possible *in*
7 *practice* in commercial slaughter houses, for the reasons described herein.

8 39. It has been estimated that about one-third of birds are not effectively stunned.

9 40. It has been reported that the electrical parameters of stun-baths at poultry
10 slaughter plants vary widely, and the *actual* electrical settings used in U.S. slaughter plants do
11 not consistently produce an effective stun in all the birds, for a number of reasons.

12 41. First, there is an inherent conflict between achieving effective electrical stunning
13 and the commercial incentive for a good looking corpse (in industry parlance, high-quality
14 carcass and meat free of defects). Electrical settings associated with effective stunning are also
15 associated with a higher incidence of exploded or damaged viscera, red wing tips, blemishes and
16 blood splashing. Such undesirable economic effects can be reduced by reducing the stunning
17 current.

18 42. However, reducing the current decreases the reliability with which the birds are
19 stunned. Because federal laws do not require effective stunning before slaughter, and lower
20 currents enhance "product quality," most electrical stunning in U.S. slaughterhouses is reportedly
21 performed at relatively low voltages, rather than at settings that are more likely to produce
22 effective surgical anesthesia, according to scientific data.

23 43. In one study using an average current level that is common in U.S.
24 slaughterhouses, only 36% of chickens had electroencephalogram (EEG) results indicative of
25 effective stunning.

26 44. Contrary to the Department's apparent belief, scientists have opined that "it is
27 doubtful" that the settings used in the U.S. "would produce an effective stun immediately."
28

1 45. Second, even if slaughterhouse operators *wanted* to choose effective electrical
2 stunning over profits, the precise settings necessary to produce an instantaneous state of
3 unconsciousness and insensibility are practically impossible to achieve in automated large scale
4 operations, contrary to what the Department has concluded.

5 46. The electrified water-bath may contain up to 20 birds at any one time. By design,
6 all such "communal" bath stunning systems (which are standard in the industry) suffer from the
7 same fundamental constraint in that many birds are connected to the same circuitry at the same
8 time. In such systems, the current levels experienced by individual birds simply cannot be
9 controlled.

10 47. Variation in electrical resistance in the current pathway caused by natural
11 variability among birds causes differences in the amount of current that individual birds receive
12 as they pass through the water-bath. Variations can be due to many factors, including body size,
13 body muscle and fat content, and plumage condition. Whether the feathers are wet, dry, or dirty,
14 the depth of immersion, and the tightness of shackles are also important factors. Electrical
15 variables also affect current flow. Mineral content, dirt, and brine concentration all affect the
16 conductivity of the water-bath.

17 48. Especially given the commercial kill line speeds, it is impossible to isolate each
18 bird long enough to deliver precisely the preset current that scientific data recommends for
19 effective electrical stunning.

20 49. Third, even if (in theory) adequate settings were used and each bird could be
21 sufficiently isolated to receive this precise adequate current, a significant percentage of birds will
22 still be stunned inadequately or not stunned at all (in practice), because they are conveyed
23 through the stunner without ever making complete contact with the electrified water-bath.

24 50. Birds can miss the stunner if they flap their wings or struggle and lift their heads,
25 if the height of the stunner is not correctly adjusted, or if birds are too short to reach the water-
26 bath.

27 51. Birds who miss the stunner or make incomplete contact with the stunner may
28 remain conscious or regain consciousness when their necks are cut.

1 52. Fourth, birds may appear to the naked eye to be properly stunned, when in fact,
2 they are not. When passed through an electrical water-bath stunner, birds may appear to have
3 types of seizures that are visually indistinguishable from effectively stunned birds. Both
4 effectively stunned birds and ineffectively stunned birds exhibit tonic seizures and other outward
5 signs such as lack of breathing and loss of muscle tone, indistinguishable to the eye.

6 53. Birds that appear stunned based on outward physical signs may in actuality be
7 merely in a state of electrically induced muscle paralysis, rather than unconsciousness and
8 insensibility. This would obviously cause pain and suffering, and these birds would remain
9 sensible and able to feel pain during their subsequent slaughter and the throat-cutting step, in
10 violation of the HSL.

11 54. In short, the Department's declaration that electrical stunning is a "humane" and
12 "practical" method for effective stunning in commercial poultry slaughterhouses is unsupported
13 by the evidence and contradicted by the scientific data.

14 55. It has been widely documented in the scientific community that stunning birds
15 using a multiple-bird, electrified water-bath system is a complex task and that cannot be – and
16 has not been – adequately controlled in high-throughput commercial slaughterhouses.

17 56. As a result, when the electric stunning process is used in commercial
18 slaughterhouses in California, upon information and belief, approximately one third of birds
19 (tens of millions annually) receive an insufficient electric current to render them unconscious
20 before cutting and bleeding, in violation of the HSL, and the Department's mandate that "[t]he
21 electric current shall be administered so as to produce effective surgical anesthesia[.]" Cal. Code
22 Regs. tit. 3, § 1246.6(e).

23 57. The next step after electrical stunning is the cutting and bleeding process. This
24 involves severing the blood vessels within the neck of the bird (both carotid arteries and jugular
25 veins) by a deep ventral cut. This is typically accomplished by automatic neck cutters.

26 58. Effective severance of blood vessels is not always possible when using automated
27 neck-cutting machines because birds' necks differ in size. Inadequately stunned birds may also
28 miss the blades by lifting their heads or flapping their wings.

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1 59. If the cuts do not sever both their jugular and the carotid arteries, the birds may
2 not exsanguinate rapidly enough and may recover mobility (and consciousness, assuming that
3 consciousness was lost as a result of the electric water-bath).

4 60. From the throat-slitter, the birds move to the "bleed-out tunnel" where they are
5 supposed to remain until they die from blood loss. During bleeding, the birds lose up to half of
6 their blood and eventually suffer brain failure and death.

7 61. Birds who were inadequately stunned and/or have twisted away from *both* the
8 electrical bath and the cutting machine will remain fully conscious throughout the bleed-out
9 process.

10 62. After the bleed-out tunnel, the line carries the birds into the scalding tank, which
11 is a tank of hot water designed to facilitate the removal of feathers. If birds avoided the cutting
12 machine, or their necks were inadequately slit, and/or they have not yet died from
13 exsanguination, they are dropped into the scalding tank alive.

14 63. It has been reported that at some slaughter plants up to 3 percent of all birds (in
15 California, this would men up to 7.5 million birds annually) may enter the scalding tanks alive.

16 64. Notwithstanding these facts, Respondents completely abdicated their mandatory
17 duties under the HSL to protect birds in California from such horrific deaths.

18 65. Upon information and belief, Respondents have taken no action to prevent,
19 investigate, or impose appropriate sanctions for such illegal killings at federally inspected
20 slaughterhouses in California.

21 66. Therefore, unless the Court grants the relief requested in this action, the
22 protections accorded by the HSL to the hundreds of millions of birds slaughtered annually in
23 California, will remain an illusion.

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First Cause of Action

Writ of Mandate Pursuant to Civ. Proc. Code § 1085

Unlawful Adoption of Cal. Code Regs. Tit. 3, § 1246.3(A)(2)

All Petitioners Against All Respondents

67. Petitioners re-allege and incorporate by reference each and every allegation in this Petition.

68. Pursuant to Gov't Code § 11342.2, administrative regulations that alter, amend, or enlarge a statute or impair its scope are void, and courts must strike such regulations down as unlawful. *See also* Food & Agric. Code § 14 (“Whenever, pursuant to this code, any state department, officer, board, agency, or commission is authorized to adopt rules and regulations, such regulations shall be adopted in accordance with Chapter 3.5 [of the Government Code]. . .”).

69. Cal. Code Regs. tit. 3, § 1246.3(a)(2), which declares electrical stunning to be an “acceptable and practical humane method” for stunning poultry, alters and impairs the scope of the HSL because it predictably and unavoidably results in a large percentage of birds being cut and bled without being rendered insensible to a degree of surgical anesthesia.

70. Therefore, by adopting Cal. Code Regs. tit. 3, § 1246.3(a)(2) and by designating electrical stunning as a permitted “humane” method for stunning poultry, the Department acted inconsistent and in conflict with the HSL’s mandatory requirement that poultry “shall be rendered insensible to pain . . . before being cut[.]” Food & Agric. Code § 19501(a).

71. Furthermore, to the extent that the Department’s regulations condone conduct that is prohibited by the Penal Code, the Penal Code must prevail over the administrative regulations.

72. By designating electrical stunning as permissible in poultry slaughterhouses, even though electrical stunning will predictably cause tens of millions of birds to be tortured, tormented, mutilated and cruelly killed each year, the Department violated its clear, present, and ministerial duty to implement only regulations that do not conflict with section 597(b) of the Penal Code.

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1 80. The Respondents failed to comply with these mandatory duties in at least the
2 following respects:

3 81. With respect to slaughterhouses in California that are subject to inspection under
4 the Federal Poultry Products Inspection Act, upon information and belief, the Respondents failed
5 to determine the extent of compliance with, and/or failed to enforce, the mandatory requirements
6 that:

- 7 a. slaughter of poultry shall be performed "in a proper and humane manner," as
8 required by section 1246.2(g);
- 9 b. slaughter shall be "performed in accordance with approved methods of humane
10 poultry slaughter as provided in this article," as required by section 1246;
- 11 c. poultry shall be "stunned, rendered unconscious, or killed" before being bled, as
12 required by sections 1246 and 1246.2(d);
- 13 d. before being cut and bled, poultry shall be rendered "insensible to pain to a level
14 of surgical anesthesia or unconsciousness," as required by section 1246.1(d);
- 15 e. stunned poultry shall remain in a state of surgical anesthesia "through completion
16 of the bleeding process," as required by section 1246.2(d).

17 82. Petitioners have a clear, present and substantial right to have the Respondents
18 perform their legal duties under California law. Petitioners also have a clear, present and
19 substantial right to restrain the Respondents from engaging in the unlawful performance of their
20 duties or from engaging in an action that is unreasonable and arbitrary so as to indicate an abuse
21 of discretion as a matter of law.

22 83. Petitioners are "beneficially interested" parties within the meaning of Code of
23 Civil Procedure § 1086 and entitled to obtain relief in mandamus because this cause of action
24 involves a public right and the object of the action is to procure enforcement of a public duty.

25 84. Petitioners lack a plain, speedy, and adequate remedy at law, except by way of a
26 writ of mandate pursuant to Code of Civil Procedure section 1085.

27 WHEREFORE, Petitioners pray for relief as set forth below.
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Third (Alternative) Cause of Action
Writ of Mandate Pursuant to Civ. Proc. Code § 1085
Unlawful Failure to Enforce Regulations Relating to Electrical Stunning
All Petitioners Against All Respondents

85. Petitioners re-allege and incorporate by reference each and every allegation in this Petition.

86. Only to the extent that this Court finds that the Department lawfully adopted Cal. Code Regs. tit. 3, § 1246.3(a)(2), and that the Department has the authority to permit electrical stunning of poultry pursuant to the HSL, Petitioners assert, in the alternative, that pursuant to Food & Agric. Code §§ 19503 and 19501.5 and Pub. Cont. Code § 10323, Respondents have a clear, present and usually ministerial duty to enforce the regulations pertaining to electrical stunning, and that the Respondents failed to comply with their mandatory duty in at least the following respects:

87. With respect to all facilities where poultry is slaughtered in California, upon information and belief, when electrical current is used to stun the poultry, the Respondents failed to determine the extent of compliance with, and/or failed to enforce, the mandatory requirements that:

- a. the application of electric current to stun "shall be performed by operators so as to assure . . . humane application," as required by section 1246.6(d);
- b. the electric current "shall be administered so as to produce effective surgical anesthesia," as required by section 1246.6(e);
- c. sufficient electric current "shall be applied to the poultry during stunning to produce a state of surgical anesthesia or unconsciousness through the completion of bleeding," as required by section 1246.7.

88. Petitioners have a clear, present and substantial right to have the Respondents perform their legal duties under California law. Petitioners also have a clear, present and substantial right to restrain the Respondents from engaging in the unlawful performance of their

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1 duties or from engaging in an action that is unreasonable and arbitrary so as to indicate an abuse
2 of discretion as a matter of law.

3 89. Petitioners are "beneficially interested" parties within the meaning of Code of
4 Civil Procedure § 1086 and entitled to obtain relief in mandamus because this cause of action
5 involves a public right and the object of the action is to procure enforcement of a public duty.

6 90. Petitioners lack a plain, speedy, and adequate remedy at law, except by way of a
7 writ of mandate pursuant to Code of Civil Procedure § 1085.

8 WHEREFORE, Petitioners pray for relief as set forth below.

9 **Prayer for Relief**

10 WHEREFORE, Petitioners pray for relief as follows:

- 11 a. On the First Cause of Action, that the Court issue a writ of mandate ordering the
12 Department to vacate and set aside its approval of electrical stunning of poultry in
13 section 1246.3(a)(2).
- 14 b. On the Second Cause of Action, that the Court issue a writ of mandate ordering
15 the Respondents to determine whether California poultry slaughterhouses are in
16 compliance with regulations adopted pursuant to the HSL, and to take appropriate
17 enforcement actions for violations of those regulations, including:
- 18 i. that slaughter of poultry shall be performed "in a proper and humane
19 manner," as required by section 1246.2(g);
- 20 ii. that slaughter shall be "performed in accordance with approved methods
21 of humane poultry slaughter as provided in this article," as required by
22 section 1246;
- 23 iii. that poultry shall be "stunned, rendered unconscious, or killed" before
24 being bled, as required by sections 1246 and 1246.2(d);
- 25 iv. that before being cut and bled, poultry shall be rendered "insensible to
26 pain to a level of surgical anesthesia or unconsciousness," as required by
27 section 1246.1(d); and
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v. that stunned poultry shall remain in a state of surgical anesthesia "through completion of the bleeding process," as required by section 1246.2(d).

c. On the Third (Alternative) Cause of Action, only to the extent that the use of electrical stunning of poultry is deemed lawful and the relief requested in the First Cause of Action is not granted, that the Court issue a writ of mandate ordering the Respondents to determine the extent of compliance with, and to enforce the mandatory requirements of, the following mandatory provisions with respect to all facilities where electrical stunning is used in connection with slaughtering poultry in California:

i. that the application of electric current to stun "shall be performed by operators so as to assure . . . humane application," as required by section 1246.6(d);

ii. that the electric current "shall be administered so as to produce effective surgical anesthesia," as required by section 1246.6(e); and

iii. that sufficient electric current "shall be applied to the poultry during stunning to produce a state of surgical anesthesia or unconsciousness through the completion of bleeding," as required by section 1246.7.

d. That the Court exercise continuing jurisdiction over this action to ensure that the Respondents comply fully with the writ of mandate of this Court;

e. That the Court award Petitioners costs of suit;

f. That the Court award Petitioners attorneys' fees as authorized by California Code of Civil Procedure Section 1021.5 and other provisions of law; and

g. That the Court grant Petitioners such other relief as the Court deems just and proper.

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06/29/2015

1 DATED: June 28, 2015

Respectfully Submitted,

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3 
4 Matthew Strugar (State Bar No. 232951)

PETA Foundation

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Attorneys for Petitioners

06/29/2015

VERIFICATION C.C.P. 446

I, the undersigned say:

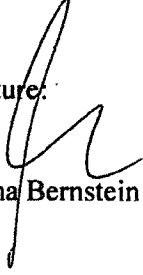
I am one of the attorneys for the petitioners in this action and verify this pleading for the petitioners because it is beyond the ken of lay persons, since it requires an application of the law to the facts as well as a review of data reported in scientific journals. Petitioners have therefore marshaled the information set forth herein with the aid of counsel. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof and that the same is true of my own knowledge, except as to matters which are therein stated upon information and belief, and as to those matters that I believe them to be true.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on June 23, 2015, at Las Vegas, NV.

STATE OF NEVADA
CLARK COUNTY

Signature:


Martina Bernstein

06/29/2015