

ENDORSED
FILED
ALAMEDA COUNTY
FEB 16 2017

CLERK OF THE SUPERIOR COURT
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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ALAMEDA**
14

15 HUMANE ARME, and ANIMAL LEGAL
DEFENSE FUND CRUELTY
16 PREVENTION UNIT

17 Plaintiffs,

18 v.

19 CALIFORNIA EXPOSITION AND STATE
FAIRS, REGENTS OF THE UNIVERSITY
20 OF CALIFORNIA, and DOES 1-10,

21 Defendants.
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Case No.

Rg 7849737

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

(UNLIMITED JURISDICTION)

BY FAX

PRELIMINARY STATEMENT

1
2 1. Plaintiffs HUMANE ARME and ANIMAL LEGAL DEFENSE FUND
3 CRUELTY PREVENTION UNIT (CPU) bring this action to enjoin Defendants’ unlawful
4 confinement of pigs without an adequate exercise area. Defendants California Exposition &
5 State Fairs (Cal Expo) and the Regents of the University of California (Regents) ordinarily
6 obtain and exhibit pregnant and nursing pigs at the California State Fair’s Livestock Nursery
7 Exhibit. Defendants confine these pigs in farrowing crates that are so small that the pigs
8 cannot even turn around or walk. The pigs are never let out for exercise while they are left in
9 the crates. These farrowing crates cause needless suffering by completely depriving the
10 exhibited pigs of the ability to engage in any exercise.

11 2. The Animal Legal Defense Fund (ALDF) and two other individual taxpayers
12 sued Defendants in 2013 under Code of Civil Procedure section 526a, which empowers
13 taxpayers to enjoin any “illegal expenditure of [public money]” by state entities. Code Civ.
14 Proc. § 526a; *Animal Legal Defense Fund v. California Exposition and State Fairs (Cal Expo)*
15 (2015) 239 Cal.App.4th 1286. The taxpayers in that lawsuit alleged that confining pigs for
16 weeks in farrowing crates without allowing them any exercise violated section 597t of the
17 state’s Penal Code, which prohibits such restrictive confinement: “[e]very person who keeps
18 an animal confined in an enclosed area shall provide it with an adequate exercise area.” Pen.
19 Code § 597t. The taxpayers also alleged this confinement violated Penal Code section 597(b),
20 which prohibits causing needless animal suffering.

21 3. The *Cal Expo* court was compelled by the procedural posture of that case to
22 assume that cruel confinement and needless suffering were actually occurring, but nonetheless
23 held that taxpayers’ general right under Code of Civil Procedure section 526a to enjoin illegal
24 expenditures by government entities was foreclosed in animal cruelty cases. The court
25 reasoned that Corporations Code section 10404 and Penal Code section 599a foreclosed the
26 taxpayers’ right to enjoin illegal expenditures because those sections provide a
27 “comprehensive statutory scheme that provides multiple avenues for the enforcement of
28 California’s animal cruelty laws.” *Id.* at 1297. In essence, the *Cal Expo* court instructed that

1 this statutory scheme was the *only* means to challenge taxpayer-funded animal cruelty.

2 4. Plaintiffs bring the present action according to that instruction by the *Cal Expo*
3 court.

4 5. Corporations Code section 10404 authorizes corporations for the prevention of
5 cruelty to animals (humane societies) that are specially incorporated pursuant to Corporations
6 Code section 10400 to “proffer a complaint against any person, before any court or magistrate
7 having jurisdiction, for the violation of any law relating to or affecting animals and [to] aid in
8 the prosecution of the offender before the court or magistrate.” Corp. Code §§ 10400 & 10404.
9 Section 10404 contemplates both civil and criminal prosecutorial authority.

10 6. Plaintiffs HUMANE ARME and CPU are humane societies specially
11 incorporated pursuant to Corporations Code section 10400. As such, Corporations Code
12 section 10404 empowers HUMANE ARME and CPU to enjoin any person from violating any
13 laws relating to or affecting animals.

14 7. Accordingly, HUMANE ARME and CPU bring this civil action for
15 declaratory and injunctive relief pursuant to the instructions in the *Cal Expo* opinion to restrain
16 Defendants from confining pigs in farrowing crates without an adequate exercise area in
17 violation of Penal Code sections 597t and 597(b).

18 **PARTIES**

19 8. Plaintiff HUMANE ARME is a non-profit humane society and corporation for
20 the prevention of cruelty to animals incorporated in California pursuant to Corporations Code
21 section 10400. HUMANE ARME is dedicated to investigating and prosecuting those who
22 harm animals in violation of the law.

23 9. Plaintiff CPU is a non-profit corporation for the prevention of cruelty to
24 animals incorporated in California pursuant to Corporations Code section 10400. CPU’s
25 purpose is to prevent cruelty to animals throughout the State of California by, among other
26 things, “proffering complaints against any person, before any court or magistrate having
27 jurisdiction, for the violation of any law relating to or affecting animals[.]”

28 10. Defendant Cal Expo is a state agency created and regulated by statute at Food

1 and Agriculture Code sections 3301 and headed by a Board of Directors. It is located on a ten
2 million square foot tract of state property in Sacramento County at 1600 Exposition
3 Boulevard, Sacramento, California 95815. Cal Expo is responsible for organizing the
4 California State Fair, which takes place for three weeks in July every year.

5 11. Every reference to Cal Expo includes a reference to individual agents acting
6 on its behalf.

7 12. Defendant Regents are a state entity created by California Constitution article
8 IX, section 9. The Regents are obliged to comply with general police power regulations and
9 matters of statewide concern not involving university affairs. The University of California
10 Davis School of Veterinary Medicine (the School) is a subdivision of the Regents.

11 13. Every reference to the School is also a reference to the Regents and individual
12 agents responsible for the alleged conduct acting on their behalf.

13 14. Defendants Cal Expo and Regents enter into a cooperative agreement every
14 year to set and manage the Livestock Nursery Exhibit at the annual California State Fair where
15 pregnant pigs and other animals are put on display for three weeks to give birth and nurse.
16 Cal Expo provides the land, housing, support infrastructure, and financial compensation. The
17 Regents provide animals, equipment, and staff. As part of this annual Livestock Nursery
18 Exhibit, Cal Expo and the Regents intentionally confine pigs for this exhibit in farrowing
19 crates that deprive the pigs of any exercise area in violation of Penal Code section 597t and
20 cause needless animal suffering in violation of Penal Code section 597(b).

21 15. Does 1 through 10, Defendants, are individuals, corporations, or other legal
22 entities acting on Defendants' behalf, or in concert with them, concerning the matters alleged.
23 Plaintiffs are unaware of the true names or capacities of Does 1 through 10 and sue them under
24 such fictitious names.

25 **JURISDICTION AND VENUE**

26 16. Corporations Code section 10404 provides a cause of action for specially-
27 incorporated humane societies such as HUMANE ARME and CPU to "proffer a complaint
28 against any person, before any court or magistrate having jurisdiction, for the violation of any

1 law relating to or affecting animals. . . .”

2 17. California Constitution Article 6, Section 10 generally provides superior courts
3 with original jurisdiction over such matters.

4 18. Code of Civil Procedure section 1060 gives this Court jurisdiction to grant
5 declaratory relief.

6 19. Venue is proper in Alameda County pursuant to Code of Civil Procedure
7 section 395(a) because the Regents principal office is located there. Code of Civil Procedure
8 section 401 further provides that venue is appropriate in this county because both defendants
9 are state entities and the Attorney General maintains an office in Alameda County.

10 **LEGAL AND FACTUAL BACKGROUND**

11 **A. CALIFORNIA’S ANIMAL CRUELTY LAWS**

12 20. California law provides a statutory scheme to protect animals from cruelty and
13 mistreatment codified at Penal Code sections 597, *et seq.* These animal cruelty laws reflect
14 the state’s concern for the protection of the health and well-being of animals.

15 21. The animal cruelty laws protect a broad range of species including all fish,
16 amphibians, reptiles, birds, and mammals. *See* Pen. Code §§ 597(c) & 599b. The laws do not
17 limit protection to animals traditionally kept as pets such as cats and dogs, but also extend
18 protection to farmed animals such as pigs.

19 22. Penal Code section 597t prohibits people from confining animals without an
20 adequate exercise: “[e]very person who keeps an animal confined in an enclosed area shall
21 provide [her] with an adequate exercise area.” Pen. Code § 597t. Any person who confines an
22 animal while intentionally or negligently failing to provide her with an adequate exercise area
23 violates this law.

24 23. The animal cruelty laws also generally provide that mistreatment occurs when
25 a person causes needless suffering: “whoever, having the charge or custody of any animal,
26 either as owner or otherwise, subjects any animal to needless suffering . . . [violates the animal
27 cruelty law].” Pen. Code § 597(b). Needless suffering may occur when an animal
28 unreasonably suffers for an illegitimate purpose, or when her suffering is disproportionate to

1 a purpose recognized as legitimate. A person whose act or omission causes needless suffering
2 violates this provision if a reasonably prudent person in their position would have foreseen
3 that the suffering would result.

4 24. The cruelty laws clarify that animal cruelty by the agent of a corporate entity
5 is imputed to the corporation as a whole: “[t]he knowledge and acts of any agent of, or person
6 employed by, a corporation in regard to animals transported, owned, or employed by, or in
7 the custody of, the corporation, must be held to be the act and knowledge of the corporation
8 as well as the agent or employee.” Pen. Code § 599b.

9 **B. CORPORATIONS CODE SECTION 10404 EMPOWERS HUMANE SOCIETIES TO**
10 **ENJOIN ANIMAL CRUELTY**

11 25. HUMANE ARME and CPU are California humane societies formed pursuant
12 to Corporations Code section 10400.

13 26. Organizations such as HUMANE ARME and CPU incorporated under Section
14 10400 “may proffer a complaint against any person, before any court or magistrate having
15 jurisdiction, for the violation of any law relating to or affecting animals and may aid in the
16 prosecution of the offender before the court or magistrate.” Corp. Code § 10404.

17 27. Section 10404 provides a cause of action for humane societies to “proffer a
18 complaint” against a person for the violation of laws relating to animals. This right to pursue
19 a civil remedy against a person harming an animal is necessary to ensure adequate protection
20 of the interests of the animal in cases where a district attorney cannot or will not criminally
21 prosecute the violator.

22 28. The California Legislature has conferred to HUMANE ARME and CPU the
23 power to proffer complaints in court to restrain violations of the animal cruelty law, which
24 Defendants violate.

25 **C. DEFENDANTS’ CONFINEMENT OF PIGS AT THE CALIFORNIA STATE FAIR**
26 **VIOLATES CALIFORNIA’S ANIMAL CRUELTY LAWS**

27 29. The California Legislature explicitly prohibits confining animals without an
28 adequate exercise area. Pen. Code § 597t. Defendants Cal Expo and the Regents violate this

1 important protection by customarily exhibiting pigs for weeks at the California State Fair in
2 farrowing crates that almost totally restrict all movement by the pigs, thereby wholly
3 depriving pigs of any exercise area.

4 30. Pigs possess remarkable intelligence and strong behavioral instincts. Pigs have
5 particularly strong instincts related to pregnancy, birth, and nursing. Pig pregnancy lasts for
6 approximately 115 days. Days before giving birth, expectant mothers – if given the
7 opportunity – will isolate themselves and build a nest by digging into the ground. After giving
8 birth, they will remain isolated for several days, nursing the newly born piglets. This process
9 is commonly referred to as farrowing.

10 31. Defendants Cal Expo and the Regents (via the School) organize many events,
11 exhibits, and other attractions for approximately three weeks at the California State Fair. One
12 of these attractions is the Livestock Nursery Exhibit where Defendants display pregnant,
13 birthing, and nursing pigs in farrowing crates. On information and belief this exhibit has
14 existed for decades.

15 32. This cooperative relationship between Cal Expo and the Regents regarding the
16 Livestock Nursery Exhibit is governed by a written agreement between the two entities and
17 is generally renewed every year shortly before the California State Fair. Under this agreement,
18 Cal Expo provides the land, tent, support infrastructure, and financial compensation for the
19 Regents. Cal Expo instructs the Regents to provide animals, equipment, and staff. This
20 includes an instruction to the Regents to exhibit several pigs for the duration of the California
21 State Fair and to provide farrowing crates to confine the pigs.

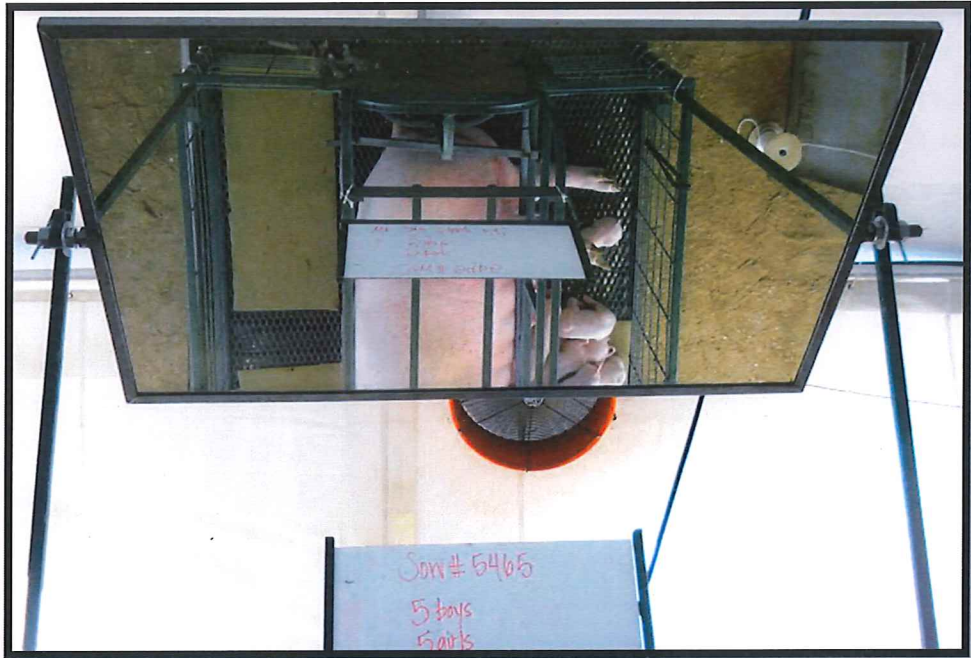
22 33. On information and belief, the Regents immediately place pregnant pigs in
23 farrowing crates supplied and positioned by the Regents when the pigs arrive at the Livestock
24 Nursery Exhibit. The farrowing crates are small metal stalls approximately five feet long and
25 three feet wide. These are also the approximate dimensions of the pigs themselves. On both
26 sides immediately adjacent to the mother's area are two enclosed areas for the piglets to live
27 once they are born. Metal bars separate the mother's section from the piglets' but provide an
28 opening so the piglets can nurse.

1 34. The farrowing crates are so small that the mother pigs cannot turn around or
2 walk at all. She can only stand up and lie down. On information and belief, the pigs remain
3 confined to the farrowing crates for the entire duration that they are at the fair, and are never
4 let out for any exercise. This restriction of movement deprives the pigs of the opportunity to
5 engage in any exercise whatsoever.

6 35. The following three photographs of pigs confined in farrowing crates by
7 Defendants at the Livestock Nursery Exhibit were taken during the 2013 California State Fair:



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36. Cal Expo and the Regents know or should know that the farrowing crates are so small that they deprive the pigs of the opportunity to turn around or walk, and thereby deprive the pigs of an adequate exercise area.

37. Additionally, Cal Expo and the Regents choose not to use alternatives to farrowing crates that eliminate this suffering with no additional detriment to the well-being of the mothers or piglets. For example, Cal Expo and the Regents could house one mother and her piglets in open pens. These pens are large enough to permit the pigs to walk around and exercise. There is no incidental detriment to the pigs' well-being, and piglet mortality is lower in open pens. Although open pens take up more space, Defendants could easily utilize them at the Livestock Nursery Exhibit.

38. The following photograph of an open pen alternative to farrowing crates with no incidental detriment to the welfare of the mother or her piglets was taken on July 5, 2013, at the Alameda County Fair:



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14 39. There are several other alternatives to farrowing crates that eliminate or
15 significantly mitigate the harms associated with farrowing crates, in addition to the open pen
16 alternative.

17 40. The recurring annual exhibition of pigs in farrowing crates at the California
18 State Fair has generated substantial public controversy. This public controversy has led to
19 increased awareness by head decision-makers at both Cal Expo and the Regents about the
20 suffering caused by the exhibit, as well as alternatives to eliminate or significantly mitigate
21 that suffering.

22 41. For example, Sacramento Councilmember Jay Schenirer sent a letter asking
23 Cal Expo to consider an alternative to farrowing crates at the California State Fair on May 6,
24 2013. This letter was sent to several persons including every member of the Cal Expo Board
25 of Directors and Dr. Annette Jones from the California Department of Food and Agriculture.
26 Councilmember Schenirer explained that pigs kept in farrowing crates “often suffer adverse
27 physical and psychological distress [including] decrease of appetite, chewing of the iron bars
28 and muscle atrophy from lack of movement.” Councilmember Schenirer concluded by asking

1 the California State Fair to consider an alternative method to the use of farrowing crates.

2 42. On information and belief, Cal Expo and the Regents receive other letters,
3 emails, and public feedback voicing similar concerns about pigs' inadequate exercise and
4 needless suffering caused by the use of farrowing crates and other practices associated with
5 the California State Fair's Livestock Nursery Exhibit. These letters, emails, and other public
6 feedback indicated alternatives that Cal Expo and the Regents could implement to eliminate
7 or significantly reduce suffering.

8 43. On information and belief, Cal Expo and the Regents considered this public
9 feedback and investigated the issues internally. On information and belief, Cal Expo and the
10 Regents nonetheless decided to use farrowing crates for the 2013 California State Fair in the
11 same manner as they have done previously despite the known deprivation of adequate
12 exercise, attendant suffering, and availability of non-detrimental alternatives.

13 44. Additionally, Defendants were subject to a lawsuit by ALDF and other
14 taxpayers challenging the legality of confining pigs in farrowing crates without providing an
15 adequate exercise area. Although that lawsuit was dismissed on procedural grounds, on
16 information and belief, it increased Defendants' knowledge and awareness about the problems
17 associated with farrowing crates.

18 45. On information and belief, concerns regarding the Porcine Epidemic Diarrhea
19 Virus (PEDv) caused the exhibit to be temporarily suspended in 2014, 2015, and 2016. These
20 temporary suspensions do not reflect a permanent change in the longstanding practice of
21 including a farrowing crate exhibit at the California State Fair. On information and belief, the
22 exhibit has existed for decades and will resume as per usual custom when the PEDv outbreak
23 abates.

24 46. On information and belief, Cal Expo and the Regents plan to continue and will
25 continue to confine pigs in farrowing crates without an adequate exercise area at the Livestock
26 Nursery Exhibit in future years unless this court issues an injunction.

1 **FIRST CAUSE OF ACTION**

2 **DECLARATORY AND INJUNCTIVE RELIEF**

3 **AGAINST ALL DEFENDANTS BASED ON**

4 **CORP. CODE § 10404**

5 47. The allegations in the preceding paragraphs are re-alleged and incorporated by
6 reference as if fully set forth herein.

7 48. Corporations Code section 10404 empowers humane societies specially
8 incorporated under Section 10400 to enjoin entities from violating laws related to or affecting
9 animals.

10 49. Specifically, Section 10404 authorizes humane societies to “proffer a
11 complaint against any person, before any court or magistrate having jurisdiction, for violation
12 of any law relating to or affecting animals.”

13 50. HUMANE ARME and CPU are humane societies incorporated under Section
14 10400 of the Corporations Code. Pursuant to Section 10404, HUMANE ARME and CPU
15 seek to enjoin two State of California entities from confining pigs without an adequate
16 exercise area at the California State Fair in violation of the animal cruelty laws.

17 51. Cal Expo and the Regents mistreat pigs at the California State Fair’s Livestock
18 Nursery Exhibit in violation of the animal cruelty laws.

19 52. Humane societies such as HUMANE ARME and CPU are entrusted with the
20 authority, via Corporations Code section 10404, to challenge this unlawful government
21 conduct as part of the “explicit and comprehensive legislative scheme for enforcement of
22 anticruelty laws.” *Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136, 143;
23 *see also Cal Expo*, 239 Cal.App.4th 1286; *Cal Expo*, 239 Cal.App.4th 1286.

24 53. Specifically, Cal Expo and the Regents harm animals by confining pigs
25 without adequate exercise and causing needless suffering in violation of the animal cruelty
26 laws codified at Penal Code sections 597, *et seq.*

27 54. Penal Code section 597t requires that “[e]very person who keeps an animal
28 confined in an enclosed area shall provide [her] with an adequate exercise area.” Pen. Code §

1 597t.

2 55. Pigs in the Livestock Nursery Exhibit who are placed in farrowing crates are
3 confined in an enclosed area without an adequate exercise area.

4 56. Cal Expo and the Regents are both responsible for keeping the pigs confined
5 in the farrowing crates. Cal Expo instructs the Regents to keep pigs in farrowing crates. In
6 turn, the Regents obtain the pigs, obtain the crates, and place the pigs inside the crates.

7 57. The farrowing crates do not allow the pigs to turn around or walk. The pigs are
8 confined to these farrowing crates and are never let out to walk around. Defendants thereby
9 confine the pigs without an adequate exercise area.

10 58. Cal Expo and the Regents knowingly confine the pigs to these farrowing crates
11 without the ability to turn around or walk. Cal Expo and the Regents know that alternatives
12 to farrowing crates exist that allow the pigs to turn and walk around without causing any
13 incidental harm to the mothers or their piglets.

14 59. Accordingly, Cal Expo and the Regents have violated and are continuing to
15 violate Penal Code section 597t by housing pigs in farrowing crates without providing them
16 any exercise, let alone adequate exercise.

17 60. In addition to Penal Code section 597t, which requires provision of an adequate
18 exercise area, Penal Code section 597(b) requires that “[w]hoever, having the charge or
19 custody of any animal, either as owner or otherwise, subjects any animal to needless suffering
20 . . . [violates this law].”

21 61. Cal Expo and the Regents both have charge or custody of the pigs during their
22 time at the Livestock Nursery Exhibit. Cal Expo owns the land and facilities where the pigs
23 are kept, and its agreement with the Regents requires the Regents to obtain pregnant pigs and
24 confine them in farrowing crates.

25 62. The Regents in fact obtain pregnant pigs and confine them in farrowing crates
26 at the Livestock Nursery Exhibit. The Regents also provide staff who oversee the Livestock
27 Nursery Exhibit during the day.

28 63. Confining pigs to farrowing crates causes suffering in several ways. Pigs are

1 prevented from turning around, walking, or standing up comfortably. Pigs experience stress
2 and depression due to frustration of their maternal instincts to build nests. On information and
3 belief, this suffering outwardly manifests itself as restlessness in view of agents from the
4 Regents and Cal Expo. This suffering is unnecessary and unjustified because Cal Expo and
5 the Regents could use larger pens that permit exercise. Alternative housing with this quality
6 can be utilized without any incidental harm to the mother or her piglets.

7 64. On information and belief, Cal Expo and the Regents know that the
8 confinement of the pigs causes suffering. On information and belief, they have acquired this
9 knowledge through public feedback, observation, and internal review. A reasonably prudent
10 person in Defendants' position would know that the confinement of pigs under these
11 circumstances causes suffering.

12 65. On information and belief, Cal Expo and the Regents are also aware due to
13 public feedback and internal review that alternatives exist that would eliminate or significantly
14 mitigate the pigs' suffering.

15 66. In sum, Cal Expo and the Regents mistreat pigs at the California State Fair's
16 Livestock Nursery Exhibit in violation of the animal cruelty laws. Specifically, Cal Expo and
17 the Regents offend the animal cruelty laws by confining the pigs without adequate exercise in
18 violation of Penal Code section 597t, and thereby causing needless suffering in violation of
19 Penal Code section 597(b).

20 67. HUMANE ARME and CPU are humane societies incorporated under
21 Corporations Code section 10404, and enjoy the right to proffer a complaint for relief against
22 Cal Expo and the Regents to enjoin violations of Penal Code sections 597(b) and 597t.

23 **PRAYER FOR RELIEF**

24 Plaintiff therefore requests that the Court grant the following relief:

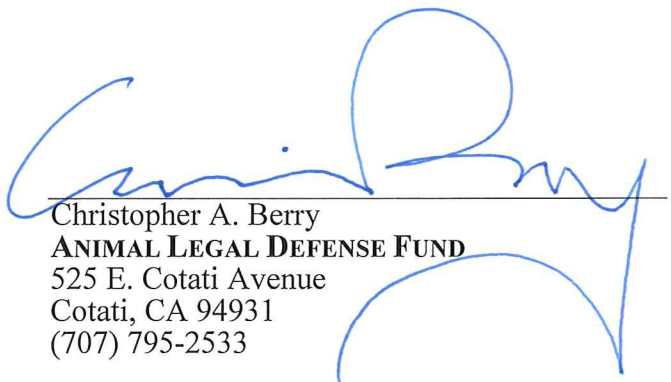
- 25 1. Enjoin Cal Expo and the Regents from confining pigs in farrowing crates or
26 similar areas without an adequate exercise area;
- 27 2. Declare that it is illegal for Cal Expo and the Regents to confine pigs in
28 farrowing crates or similar areas without an adequate exercise area;

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- 3. Award Plaintiffs all costs and reasonable attorneys' fees; and
- 4. Grant other and further relief as the Court deems just and proper.

Dated: February 16, 2017

Respectfully submitted,



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