

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, and DOES
I-10

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

PIA SALK, LAWRENCE HANSEN, NANCY HARRISON, RICHARD
MC LELLAN, MARK NIBLACK, JACQUELYN WILSON

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
COUNTY OF SAN FRANCISCO, 400 MCALLISTER STREET,
SAN FRANCISCO, CA 94102-4514

CASE NUMBER
(Número de caso)

07-265615

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

COREY EVANS, ESQ. (CSB #218789), EVANS & PAGE, 55 NEW MONTGOMERY STREET, SUITE
607, SAN FRANCISCO, CA 94105

DATE:
(Fecha)

JUL 31 2007

Clerk, by
(Secretario)

COURT CLERK

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

- 4. by personal delivery on (date):

[SEAL]

1 Corey Evans, Esq. (CSB #218789)
 EVANS & PAGE
 2 55 New Montgomery Street, Suite 607
 San Francisco, CA 94105
 3 Telephone: (415) 896-5072
 Facsimile: (415) 358-5855

4 Daniel Kinburn, Esq. (*pro hac vice application pending*)
 5 PHYSICIANS COMMITTEE FOR RESPONSIBLE MEDICINE
 5100 Wisconsin Avenue, NW, Suite 400
 6 Washington, DC 20016
 Telephone: (202) 686-2210
 7 Facsimile: (202) 686-2215

8 Attorneys for Plaintiffs PIA SALK, LAWRENCE HANSEN,
 NANCY HARRISON, RICHARD MC LELLAN,
 9 MARK NIBLACK, JACQUELYN WILSON

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN FRANCISCO

12 PIA SALK, LAWRENCE HANSEN, NANCY
 HARRISON, RICHARD MC LELLAN, MARK
 13 NIBLACK, JACQUELYN WILSON,

14 Plaintiffs,

15 v.

16 THE REGENTS OF THE UNIVERSITY OF
 CALIFORNIA, and DOES 1-10,

17 Defendants.

Case No. 07-35615

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

(UNLIMITED JURISDICTION)

INTRODUCTION

20 1. Plaintiffs bring this action for declaratory and injunctive relief pursuant to
 21 Code of Civil Procedure section 526a ("CCP 526a") and California common law against
 22 the University of California, San Francisco ("UCSF"), by and through defendant The
 23 Regents of the University of California ("The Regents") (UCSF and The Regents
 24 collectively referred to as "Defendants"), to declare unlawful and enjoin Defendants from
 25 permitting and carrying out research activities that violate the federal Animal Welfare Act,
 26 7 U.S.C. §§ 2131-2159 ("AWA" or "the Act").

27 2. Congress passed the AWA to ensure that operators of research facilities
 28 provide humane care and treatment to animals. To that end, the Act requires every

ENDORSED
 FILED
 San Francisco County Superior Court

JUL 31 2007

GORDON PARKILL, Clerk
 BY: CRISTINA E. BAUTISTA

CASE MANAGEMENT CONFERENCE SET

DEC 28 2007 - 9:00 AM

DEPARTMENT 212

1 research facility to create a committee, commonly known as an Institutional Animal Care
2 and Use Committee ("IACUC"), to oversee compliance with the Act.

3 3. The Department of Agriculture ("USDA") enforces the AWA through the
4 Animal and Plant Health Inspection Service ("APHIS"), which periodically inspects each
5 research facility. In September 2005, the USDA's Office of Inspector General issued an
6 *Audit Report*, highlighting the repeated failure of IACUCs to detect, report, and correct
7 serious deficiencies in research programs. Specifically, the report concluded that certain
8 IACUCs do not effectively monitor animal care activities or review protocols. (Office of
9 Inspector General, USDA, Audit Report ii-iii (2005), *available at*
10 <http://www.usda.gov/oig/webdocs/33002-03-SF.pdf>.) The report also stated that most
11 veterinary medical officers who inspected research facilities found that IACUCS do not
12 effectively monitor "the search for alternative research, veterinary care, review of painful
13 procedures, and the researchers' use of animals." (*Id.* at p. iii.) Further, the report found
14 that some "IACUCs did not ensure that unnecessary or repetitive experiments would not
15 be performed on laboratory animals." (*Id.* at p. 19.) The report also found that research
16 facilities that are fined by USDA for violating the AWA, "consider the monetary stipulation
17 as a normal cost of conducting business rather than as a deterrent for violating the AWA."
18 (*Id.* at p. 10.)

19 4. Because Defendants have failed to comply with the AWA in precisely the
20 manner described in the *Audit Report*, and because Defendants' actions have resulted
21 and will continue to result in the use of public funds to perform research activities that
22 violate federal law, Plaintiffs seek an order from this Court restraining the "illegal
23 expenditure of, waste of," and "injury to, the estate, funds, or other property" of the
24 People of California pursuant to CCP 526a and common law taxpayer standing
25 principles.

26 PARTIES

27 5. Plaintiff Pia Salk, Psy.D., is a citizen and resident of the city of Santa
28 Monica and the county of Los Angeles. Dr. Salk received her B.A. in psychology from the

1 University of Michigan, her M.A. in clinical psychology from Georgia State University, and
2 her doctorate in clinical psychology from Phillips Graduate Institute. Dr. Salk co-founded
3 Animal Rescue New Orleans following Hurricane Katrina and assisted in providing
4 documentation and support for pet evacuation legislation currently under consideration in
5 Louisiana. Dr. Salk has been assessed and has paid taxes to the State of California
6 within one year of the commencement of this action. As a taxpayer, Dr. Salk has no
7 administrative remedies to exhaust.

8 6. Plaintiff Lawrence Hansen, M.D., has been a citizen and resident of the City
9 and County of San Diego for more than two decades. Dr. Hansen is Professor of
10 Neurosciences and Pathology at the University of California, San Diego ("UCSD") and
11 has been a member of the UCSD faculty since 1986. Dr. Hansen's primary research
12 focus is Alzheimer's Disease and he has authored or co-authored more than forty
13 publications. Dr. Hansen has been assessed and has paid taxes to the State of
14 California within one year of the commencement of this action. As a taxpayer, Dr.
15 Hansen has no administrative remedies to exhaust.

16 7. Plaintiff Nancy Harrison, M.D., has been a citizen and resident of the City
17 and County of San Diego for 21 years. Dr. Harrison is a pathologist in private practice
18 and completed her residency in pathology at UCSD from 1986 until 1991. Dr. Harrison
19 has been assessed and has paid taxes to the State of California within one year of the
20 commencement of this action. As a taxpayer, Dr. Harrison has no administrative
21 remedies to exhaust.

22 8. Plaintiff Richard Mc Lellan, M.D., is a citizen and resident of the City and
23 County of Los Angeles. Dr. Mc Lellan is a retired physician whose specialty is
24 emergency medicine. Dr. Mc Lellan has lived in the State of California for 61 years and
25 received his undergraduate degree from the University of California, Berkeley. Dr. Mc
26 Lellan has been assessed and has paid taxes to the State of California within one year of
27 the commencement of this action. As a taxpayer, Dr. Mc Lellan has no administrative
28 remedies to exhaust.

1 9. Plaintiff Mark Niblack, M.D., is a citizen and resident of the City and County of San
2 Diego. Dr. Niblack is a retired anesthesiologist who performs peer review and serves on
3 the Medical Executive Committee of two outpatient surgical centers. Dr. Niblack earned
4 his undergraduate degree at the University of California, Los Angeles and received his
5 medical degree from UCSD. Dr. Niblack has lived in the State of California for 49 years.
6 Dr. Niblack has been assessed and has paid taxes to the State of California within one
7 year of the commencement of this action. As a taxpayer, Dr. Niblack has no
8 administrative remedies to exhaust.

9 10. Plaintiff Jacquelyn Wilson, M.D., D.A.B.F.M., is a citizen and resident of the
10 City of Escondido and the County of San Diego. Dr. Wilson is a consultant physician in
11 integrative medicine and homeopathy and has been reappointed as Voluntary Clinical
12 Instructor in the Department of Family and Preventive Medicine at the UCSD School of
13 Medicine. Dr. Wilson has lived in the State of California for 37 years. Dr. Wilson has
14 been assessed and has paid taxes to the State of California within one year of the
15 commencement of this action. As a taxpayer, Dr. Wilson has no administrative remedies
16 to exhaust.

17 11. UCSF is a public educational institution that is governed by The Regents, a
18 California constitutional corporation organized under Article IX, Section 9 of the California
19 constitution. UCSF is a member of the University of California public university system,
20 which has a state-funded budget of \$3.077 billion for the 2006-2007 school year. (Press
21 Release, Office of the President, University of California, *Governor Signs 2006-07 State*
22 *Budget, Providing UC Funding for Student Enrollment Growth Without Fee Increases*
23 (June 30, 2006), available at <http://www.universityofcalifornia.edu/news/2006/jun30.html>.)
24 The 2005-2006 University of California budget designated \$529,832,000 for "support for
25 the University's core research[.] . . . The State provides a substantial portion of the funds
26 for building and maintaining facilities, laboratories, and equipment that supports teaching,
27 workforce development and tech transfer." (Office of the President, University of
28 /

1 California, *2006-07 Budget for Current Operations* 156, 159 (2005), available at
2 <http://www.ucop.edu/budget/rbudget/200607/200607-budgetforcurrentoperations.pdf>.)

3 12. Defendants sued herein under the fictitious names DOE 1 through 10,
4 inclusive, are individuals, corporations, or other separate legal entities acting on
5 Defendants' behalf, or in concert with them, with respect to the matters alleged. Plaintiffs
6 are ignorant of the true names or capacities of the defendants sued herein under such
7 fictitious names.

8 JURISDICTION AND VENUE

9 13. CCP 526a grants this Court jurisdiction to issue injunctive relief restraining
10 the use of public funds to pay for research activities that, by design or neglect of duty,
11 violate the law. Code of Civil Procedure section 1060 grants this Court jurisdiction to
12 grant declaratory relief.

13 14. Defendants are entities of the State of California. This action is brought in
14 the City and County of San Francisco, wherein the Attorney General maintains an office.
15 Therefore, venue is proper in this district pursuant to Code of Civil Procedure section 401.

16 RELEVANT LAW AND FACTS

17 A. The Animal Welfare Act Imposes Significant Duties on Defendants.

18 15. One of the stated purposes of the AWA is "to insure that animals intended
19 for use in research facilities . . . are provided humane care and treatment." (7 U.S.C. §
20 2131(1).)

21 16. The AWA provides that the Secretary of Agriculture "shall promulgate
22 standards to govern the humane handling, care, treatment, and transportation of animals
23 by . . . research facilities." (7 U.S.C. § 2143(a)(1).)

24 17. The AWA defines a research facility as the following:

25 [A]ny school (except an elementary or secondary school),
26 institution, organization, or person that uses or intends to use
27 live animals in research, tests, or experiments, and that (1)
28 purchases or transports live animals in commerce, or (2)
receives funds under a grant, award, loan, or contract from a
department, agency, or instrumentality of the United States for
the purpose of carrying out research, tests, or experiments . . .

1 (7 U.S.C. § 2132(e).)

2 18. The AWA requires every research facility to register with the Secretary of
3 Agriculture (7 U.S.C. § 2136) and "agree to comply with the regulations and standards"
4 promulgated under the Act (9 C.F.R. § 2.30(b)).

5 19. Each research facility must "show upon inspection, and to report at least
6 annually, that the provisions of this Act are being followed and that professionally
7 acceptable standards governing the care, treatment, and use of animals are being
8 followed by the research facility during actual research or experimentation." (7 U.S.C. §
9 2143(a)(7)(A).)

10 20. Each research facility must establish a committee, appointed by the chief
11 executive officer of the facility, "to provide representation for general community interests
12 in the proper care and treatment of animals." (*Id.* § 2143(b)(1); see also 9 C.F.R. §
13 2.31(a).)

14 21. This committee, known as an IACUC, must semiannually review the
15 "condition of animals to ensure compliance with the provisions of this Act to minimize pain
16 and distress to animals." (7 U.S.C. § 2143(b)(3)(B).)

17 22. One of the primary responsibilities of the IACUC is to "[r]eview and approve,
18 require modifications in (to secure approval), or withhold approval of those components of
19 proposed activities related to the care and use of animals." (9 C.F.R. §§ 2.31(c)(6),
20 2.31(d).)

21 23. Specifically,

22 [T]he IACUC shall determine that the proposed activities or
23 significant changes in ongoing activities meet the following
requirements:

24 (i) Procedures involving animals will avoid or minimize
25 discomfort, distress, and pain to the animals;

26 (ii) The principal investigator has considered alternatives to
27 procedures that may cause more than momentary or slight
28 pain or distress to the animals, and has provided a written
narrative description of the methods and sources, e. g., the
Animal Welfare Information Center, used to determine that
alternatives were not available;

1 (iii) The principal investigator has provided written assurance
2 that the activities do not unnecessarily duplicate previous
experiments.

3 (*Id.* § 2.31(d); see also 7 U.S.C. §§ 2143(a)(3)(A), (a)(3)(B).)

4 24. Additionally, “[a] proposal to conduct an activity involving animals, or to
5 make a significant change in an ongoing activity involving animals, must contain . . . [a]
6 description of procedures designed to assure that discomfort and pain to animals will be
7 limited to that which is unavoidable for the conduct of scientifically valuable research.” (9
8 C.F.R. § 2.31(e)(4).)

9 25. The IACUC may suspend activities that it has previously reviewed. (9
10 C.F.R. § 2.31(d)(6).)

11 26. The AWA tasks the Secretary of the USDA, through APHIS, with the
12 responsibility of inspecting each research facility at least once per year, with follow-up
13 inspections as necessary based on deficiencies and deviations from the requirements of
14 the Act. (7 U.S.C. § 2146(a); 9 C.F.R. § 2.38(b).)

15 27. Any research facility “that violates any provision of this Act, or any rule,
16 regulation, or standard . . . may be assessed a civil penalty by the Secretary of not more
17 than [\$3,750] for each such violation, and the Secretary may also make an order that
18 such person shall cease and desist from continuing such violation.” (7 U.S.C. § 2149(b);
19 7 C.F.R. § 3.91(b)(2)(ii) (adjusting civil monetary penalty to take account of inflation).)

20 **B. Defendants Consistently Fail to Comply with the AWA.**

21 28. Defendants operate a research facility, as defined by 7 U.S.C. section
22 2132(e).

23 29. Defendants’ IACUC consists of 15 members, including 3 members of the
24 public. (Ara Tahmassian, Associate Chancellor, Research, letter to Michael Sinclair and
25 Lee Paiva, Feb. 21, 2006).)

26 30. From 1998 through 2005, APHIS periodically inspected Defendants’
27 research facility locations, producing a report for each inspection. (See APHIS, USDA

28 /

1 inspection reports dated February 4, 1998, through October 28, 1998, attached hereto as
2 Exh. A.)

3 31. The APHIS inspection reports for the period February 4, 1998, through
4 September 27-28, 2000, identified at least 57 violations of the AWA. (See *id.*) Of those,
5 24 concerned Defendants' failure to properly conduct IACUC activities, 5 related to
6 Defendants' failure to ensure that their personnel were qualified to perform their duties,
7 10 concerned Defendants' failure to provide adequate veterinary care, 2 concerned
8 Defendants' failure to properly handle and feed animals, and 16 arose out of Defendants'
9 failure to maintain their facility in accordance with the Act. Of these, 15 violations were
10 repeats of previous violations. (See *id.*)

11 32. In the inspection report dated August 31 - September 8, 1999, APHIS
12 stated, "This report and the deficiencies identified indicate that the IACUC does not have
13 an adequate program for the humane care and use of animals. . . . If the IACUC
14 continues to accept, [sic] unacceptable conditions, they are not doing their jobs." (*Id.*)

15 33. On October 9, 1999, APHIS sent UCSF a "Letter of Warning" identifying
16 violations of AWA regulations from November 25, 1998, through September 8, 1999.
17 (See USDA First Am. Compl. ¶ 2, AWA Docket No. 04-0027 (Nov. 4, 2004) (amended
18 administrative complaint filed against UCSF by USDA, attached hereto as Exh. B).)

19 34. The APHIS inspection report dated September 27-28, 2000, responded to a
20 complaint received by APHIS regarding an experiment in which researchers bolted metal
21 restraining devices into the heads of monkeys, drilled holes into their skulls, and attached
22 data recording devices to monitor the monkeys while they "worked," for hours at a time,
23 for rewards, such as drinking water. (See Exh. A.) Researchers strapped the monkeys
24 into restraining chairs and placed the chairs onto a turntable that rotated them periodically
25 while the monkeys were expected to move their eyes in a certain pattern to receive juice.
26 Researchers then attached wire coils to the monkeys' eyes to monitor eye position. The
27 principal investigator, Stephen Lisberger, had conducted variants of the same experiment
28 on dozens of monkeys for more than two decades.

1 35. In the report, APHIS cited UCSF for "inadequate documentation that the
2 investigator thoroughly considered alternatives . . . that might help minimize distress."
3 (*Id.*) The report noted that the nutritional requirements for the monkeys had not been met
4 for either food or water. (See *id.*) The report further stated that UCSF had failed to
5 review certain of the investigator's procedural records that "clearly indicated that the
6 study was not in compliance." (*Id.*)

7 36. On December 21, 2000, APHIS and UCSF entered into a stipulation in
8 connection with the alleged violations of AWA regulations from June 2000 through
9 September 2000, whereby UCSF agreed to pay a fine of \$2,000. (See Exh. B ¶ 2.)

10 37. The APHIS inspection report dated January 28, 2002, cited UCSF for
11 multiple violations of the Animal Welfare Act, including several related to the
12 aforementioned monkey experiments conducted by Stephen Lisberger, and stated that
13 the "IACUC has not put a plan into effect where they can adequately monitor violations or
14 non compliances that are identified during their review or facility inspections." (Exh. A.)

15 38. The APHIS inspection report dated February 4, 2003, cited UCSF's
16 continued failure to comply with the AWA and noted long-standing deficiencies such as
17 lack of adequate veterinary care, lack of proper training of animal care personnel, and
18 lack of adequate oversight of animal care and use. (See *id.*) Specifically, the inspection
19 report described one experiment in which a nonhuman primate's skull was cut open
20 without the administration of post-surgical pain relief and another in which researchers
21 drilled four holes into a nonhuman primate's skull without the required determination from
22 UCSF that the procedure minimized pain and distress. (See *id.*)

23 39. Similarly, the APHIS inspection report dated April 17, 2003, cited UCSF for
24 violations relating to IACUC oversight and provision of adequate veterinary care. (See
25 *id.*)

26 40. On or about August 31, 2004, the administrator of APHIS filed an
27 administrative complaint against UCSF, alleging 61 violations of AWA regulations from
28 May 17, 2001 to February 4, 2003. (See USDA Compl., AWA Docket No. 04-0027 (Aug.

1 31, 2004) (attached hereto as Exh. C.) Of these, 16 violations concerned UCSF's failure
2 to properly conduct IACUC activities, 1 related to UCSF's failure to ensure that its
3 personnel were qualified to perform their duties, 20 concerned UCSF's failure to provide
4 adequate veterinary care, 9 concerned UCSF's failure to handle animals as carefully as
5 possible, and 15 arose out of UCSF's failure to meet minimum standards for humane
6 handling, care, and treatment of animals. (*Ibid.*) The complaint stated that the "gravity of
7 [UCSF's] violations is great." (*Id.* at ¶ 2.)

8 41. On or about November 4, 2004, the administrator of APHIS filed an
9 amended administrative complaint against UCSF, alleging 75 violations of AWA
10 regulations from May 17, 2001 to December 5, 2003. (See Exh. B.) Of these, 23
11 violations concerned UCSF's failure to properly conduct IACUC activities, 2 related to
12 UCSF's failure to ensure that its personnel were qualified to perform their duties, 24
13 concerned UCSF's failure to provide adequate veterinary care, 11 concerned UCSF's
14 failure to handle animals as carefully as possible, and 15 arose out of UCSF's failure to
15 meet minimum standards for humane handling, care, and treatment of animals. (*Ibid.*)
16 The complaint stated that the "gravity of [UCSF's] violations is great" and that UCSF's
17 "violations directly affected the health and well-being of animals." (*Id.* at ¶ 2.)

18 42. The APHIS inspection report dated July 13, 2005, initiated in response to a
19 complaint about a nonhuman primate's severe weight loss, cited UCSF for failure to
20 provide adequate veterinary care. (See Exh. A.)

21 43. On or about September 23, 2005, UCSF and USDA negotiated a settlement
22 agreement in which UCSF was assessed a civil penalty of \$92,500, reportedly the fourth-
23 largest settlement amount ever paid to USDA for violations of the AWA. (Tali Woodward,
24 *Animal Instincts*, San Francisco Bay Guardian, (Sept. 28, 2005).)

25 44. From April 11, 2005, to October 28, 2005, APHIS continued to periodically
26 inspect UCSF's facility. (See Exh. A.) The APHIS inspection reports for this period
27 identified at least 9 violations of the AWA. (*Ibid.*) Of these, 1 concerned UCSF's failure
28 to properly conduct IACUC activities, 3 concerned UCSF's failure to provide adequate

1 veterinary care, and 5 concerned UCSF's failure to handle animals as carefully as
2 possible or meet minimum standards for humane handling, care, and treatment of
3 animals. (See *id.*)

4 45. The APHIS inspection report dated April 11, 2005, cited UCSF for failing to
5 treat a dog that suffered from multiple lesions for several days and for housing a large
6 macaque monkey in a small enclosure that did not provide space "to make normal
7 postural adjustments." (*Id.*)

8 46. On or about December 12, 2005, UCSF, represented by Ara Tahmassian,
9 Associate Vice Chancellor, Research; Paul Takayama, executive director of Community
10 and Governmental Relations; Linda Noble, Chair, Institutional Animal Care and Use
11 Committee; and Jeffrey Olgin, Chief, Cardiac Electrophysiology, met with California State
12 Senator Jackie Speier, her District Director Margo Rosen, and members of the public,
13 including employees of the Physicians Committee for Responsible Medicine ("PCRM").

14 47. In this meeting, PCRM presented its findings related to two research
15 protocols performed by Dr. Olgin and approved by UCSF.

16 48. One study, entitled *The Effects of Congestive Heart Failure on*
17 *Electrophysiology and Remodeling*, called for the artificial inducement, in dogs, of atrial
18 fibrillation, a rhythm abnormality of the upper chambers of the heart (atria) in which the
19 normal regular rhythm is replaced by an irregular, often rapid, rhythm that is less
20 effective. The stated intent of this study was to test the hypothesis that congestive heart
21 failure produces atrial fibrosis-replacement of atrial muscle with scar tissue, which impairs
22 both the function and the electrical characteristics of the atrium-which in turn leads to
23 atrial fibrillation. A basic review of scientific literature, as required by 9 C.F.R. section
24 2.31(d), would have revealed that scientists are already aware, from evaluations in
25 humans, that congestive heart failure produces atrial fibrosis, thus contributing directly to
26 atrial fibrillation. Nevertheless, in 2004, UCSF approved this scientifically irrelevant
27 research activity to go forward on 198 dogs, despite the AWA's mandate that researchers
28 "assure that discomfort and pain to animals will be limited to that which is unavoidable for

1 the conduct of scientifically valuable research.” (9 C.F.R. § 2.31(e)(4).) Further, PCRM
2 identified various “alternatives to procedures that may cause more than momentary or
3 slight pain or distress to the animals” that Dr. Olgin had neither identified nor considered
4 in his regulatory-mandated written narrative to the IACUC. (See 9 C.F.R. § 2.31(d)(ii).)

5 49. Another study, entitled *Remodeling in Atrial Fibrillation*, proposed to study
6 the time course of structural and electrical changes in the heart that lead to development
7 of chronic atrial fibrillation. The basic review of scientific literature required by 9 C.F.R.
8 section 2.31(d) would have revealed voluminous evidence to Dr. Olgin and UCSF that
9 scientists already have conducted similar studies in dogs, other non-human animals, and
10 humans. Yet, despite the AWA's mandate that researchers assure that research
11 “activities do not unnecessarily duplicate previous experiments” (9 C.F.R. § 2.31(d)(iii)),
12 UCSF approved this unnecessary and duplicative research activity to go forward on 550
13 dogs.

14 50. During the meeting, UCSF defended its approval of the dog research.
15 Speaking on behalf of UCSF, Dr. Noble and Dr. Olgin stated that it is the responsibility of
16 funding agencies, such as the National Institutes of Health (“NIH”)—and not UCSF—to
17 review the researchers' mandated searches for alternatives to animal use and the
18 unnecessary duplication of previous research as well as the researchers' narrative
19 justifications based on those searches.

20 51. Dr. Noble and Dr. Olgin further stated that UCSF did not have the expertise
21 to perform such scientific merit review duties, and was not required to do so.

22 52. By letter dated May 12, 2006, PCRM reiterated UCSF's responsibilities
23 under the AWA and again set forth UCSF's failure to ensure that approved research
24 activities do not unnecessarily duplicate prior research and that approved research
25 activities adequately consider alternatives to painful procedures. (John J. Pippin, Senior
26 Medical and Research Adviser, PCRM, letter to Linda J. Noble, Chair, IACUC, UCSF,
27 May 12, 2006 (attached hereto as Exh. D).)

28 /

1 53. In the letter, addressed to Dr. Noble and copied to Dr. Tahmassian, Dr.
2 Olgin and Senator Speier, PCRМ summarized UCSF's statements from the meeting of
3 December 12, 2005, as follows:

4 During our meeting, we discussed the UCSF IACUC's failure
5 to adhere to the Act's requirements for approving animal
6 research protocols. The most egregious violations are the
7 failure to require documentation of the mandated literature
8 search for alternatives to animal use, the unnecessary
9 duplication of previous research, and the failure to require
10 detailed narrative justifications based on such searches.

11 Perhaps most troubling were statements from you and
12 principal investigator Dr. Jeffrey Olgin that this type of review is
13 not the responsibility of the IACUC. Instead, you stated that
14 such review is the responsibility of funding agencies, such as
15 NIH, that have an in-depth understanding of the research.

16 ...

17 It is discouraging that UCSF's IACUC is unwilling and
18 unprepared to fulfill these important responsibilities. It is even
19 more disturbing that, as the IACUC Chair and the principal
20 investigator, respectively, you and Dr. Olgin are unaware of the
21 IACUC's duties and openly acknowledge that you are not
22 staffed to perform them.

23 (*ibid.*) PCRМ's letter concluded with the following request: "If I am mistaken with respect
24 to your statements at our meeting, please let me know immediately." (*ibid.*)

25 54. By letter dated June 22, 2006, UCSF responded to PCRМ's letter of May
26 12, 2006, by categorically rejecting PCRМ's statements regarding the "role and
27 responsibilities of UCSF's Institutional Animal Care and Use Committee." UCSF again
28 asserted that scientific merit review as it relates to animal use is the responsibility of
government agencies and private foundations-and not UCSF. (Ara Tahmassian,
Associate Chancellor, Research, letter to John J. Pippin, Senior Medical and Research
Adviser, PCRМ, June 22, 2006 (attached hereto as Exh. E).) UCSF did not deny or
challenge PCRМ's characterizations of UCSF's statements during the meeting of
December 12, 2005. (See *ibid.*)

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1 **C. Defendants' State-Funded Violations of the AWA Constitute Unlawful**
2 **Expenditures.**

3 55. Plaintiffs are informed and believe, and on that basis allege, that
4 Defendants expend and have expended State funds to build, maintain, equip, and
5 operate Defendants' research facility.

6 56. Plaintiffs are informed and believe, and on that basis allege, that
7 Defendants expend and have expended State funds to hire employees to build, maintain,
8 equip, and operate Defendants' research facility.

9 57. As set forth above, Plaintiffs are informed and believe, and on that basis
10 allege, that from 1998 until at least 2005, Defendants permitted research activities to be
11 undertaken in violation of the AWA at their state-funded, state-operated, and state-staffed
12 research facility, despite continued efforts by APHIS to compel Defendants to comply with
13 the Act.

14 58. In truth and in fact, Defendants must, pursuant to the AWA and its
15 implementing regulations, require documentation of a literature search for alternatives to
16 animal use, avoid unnecessary duplication of previous research, and require detailed
17 narratives relating to the search for alternatives and duplication of prior research.

18 59. Defendants deny, however, that they are responsible for adhering to the
19 clear mandate of the AWA and its implementing regulations.

20 60. Instead, Defendants claim that an agency's decision to fund a research
21 activity signifies, ipso facto, that the activity does not unnecessarily duplicate previous
22 research, that the activity minimizes pain and distress to animals, and that the principal
23 investigator has provided sufficiently detailed narratives relating to the search for
24 alternatives and duplication of prior research.

25 61. Defendants' assertions run counter to federal guidelines; although principal
26 investigators may apply for a grant from NIH without IACUC approval, NIH will not
27 release any funds until after the IACUC has approved the proposed research activities.
28 (See Laboratory Animal Welfare: Change in PHS Policy on Humane Care and Use of

1 Laboratory Animals, 67 Fed. Reg. 51,289, 51,289-51,290 (Aug. 7, 2002); Office of
2 Laboratory Animal Welfare, NIH, Public Health Service Policy on Humane Care and Use
3 of Animals 19 (2002) (setting forth requirements for PHS awarding units in section V. B.),
4 *available at* [http://grants1.nih.gov/grants/olaw/references/ PHSPolicyLabAnimals.pdf](http://grants1.nih.gov/grants/olaw/references/PHSPolicyLabAnimals.pdf);
5 Office of Laboratory Animal Welfare, NIH, ARENA/OLAW Institutional Animal Care and
6 Use Committee Guidebook 23 (2002), *available at*
7 <http://grants.nih.gov/grants/olaw/GuideBook.pdf>.) Furthermore, "in no way is [NIH] peer
8 review intended to supersede or serve as a replacement for IACUC approval." (67 Fed.
9 Reg. at 51,290 (Aug. 7, 2002).)

10 62. As set forth above, UCSF's documented violations of the AWA already have
11 resulted in settlement fines totaling nearly \$100,000.

12 63. Plaintiffs are informed and believe, and on that basis allege, that UCSF
13 used State funds to pay these settlement fines.

14 64. Plaintiffs are informed and believe, and on that basis allege, that
15 Defendants will continue to permit research activities to be undertaken in violation of the
16 AWA at their state-funded, state-operated, and state-staffed research facility.

17 65. Plaintiffs are informed and believe, and on that basis allege, that
18 Defendants have expended and threaten to expend public money for a wasteful and
19 illegal purpose by paying State employees to evaluate and approve research protocols
20 that violate the AWA.

21 66. Plaintiffs are informed and believe, and on that basis allege, that
22 Defendants will use state funds to pay settlement fines arising out of their future violations
23 of the AWA.

24 67. Plaintiffs are informed and believe, and on that basis allege, that
25 Defendants have wasted and unlawfully used public funds, and injured the public fisc—
26 and threaten to continue wasting and unlawfully using public funds, and injuring the public
27 fisc—by failing to perform their duties under the AWA.

28 /

1 68. There is no question that Defendants have failed to perform their duties
2 under the AWA because the USDA, through its inspection reports, administrative
3 complaint, and civil penalty assessment, already has determined that UCSF has violated
4 and consistently violates the AWA. Therefore, there is no need for any third-party agency
5 to make future difficult policy decisions. Such decisions already have been made, and no
6 further police or investigative involvement is required.

7 69. The claims contained herein are not political in nature. The legislative
8 branch of the government, here the United States Congress, has made a specific
9 decision through the AWA to require each research facility to perform certain statutorily-
10 mandated functions. Defendants have failed and refused to carry out their mandated
11 duties under the AWA.

12 70. Rather than question the legislature's judgment, this complaint seeks to
13 uphold Congress's intent by requiring Defendants to adhere to the AWA. Because
14 Congress mandated compliance with the AWA, it is not within Defendants' discretion to
15 ignore the AWA's requirements. Defendants have a duty to uphold the law according to
16 Congress's mandate. Defendants have no discretion to injure the public fisc by
17 expending public money and resources in a manner contrary to that required by the
18 AWA.

19 71. The actions challenged herein are solely those of public officials. This
20 lawsuit does not challenge illegal conduct by anyone who is not a public official.

21
22 **FIRST CAUSE OF ACTION**

23 **Declaratory and Injunctive Relief**
24 **[Cal. Code Civ. Proc. Section 526a]**

25 72. Plaintiffs reallege and incorporate by reference herein each and every
26 allegation of the preceding paragraphs.

27 73. CCP 526a and common law taxpayer standing principles authorize a
28 taxpayer citizen to maintain an "action to obtain a judgment, restraining and preventing

1 any illegal expenditure of, waste of," and "injury to, the estate, funds, or other property" of
2 the People of California. The Supremacy Clause of the United States Constitution
3 provides that "the Laws of the United States . . . shall be the supreme Law of the Land."
4 (U.S. Const., art. VI, cl. 2.) Thus, taxpayers may challenge expenditures that are contrary
5 to both state and federal law.

6 74. Defendants have wasted and unlawfully used public funds and injured the
7 public fisc—and threaten to continue wasting and unlawfully using public funds and
8 injuring the public fisc—by failing to ensure that research activities at Defendants'
9 research facility are performed in compliance with the AWA.

10 75. Pursuant to California Code of Civil Procedure Section 526a, an actual,
11 present controversy exists relating to the legal rights and duties of the respective parties
12 for which Plaintiffs have no other adequate remedy at law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray that this honorable Court:

15 a. Adjudge and declare that the acts, omissions, practices, and conditions
16 described above are unlawful;

17 b. Enjoin Defendants and Defendants' agents, employees, and all persons
18 acting in concert with them from operating Defendants' research facility until Defendants
19 can guarantee compliance with the AWA;

20 c. Appoint an independent monitor to oversee UCSF's IACUC and ensure
21 adherence to the AWA;

22 d. Award Plaintiffs the costs of suit and reasonable attorneys' fees and
23 litigation expenses;

24 e. Retain jurisdiction of this case until Defendants have fully complied with the
25 orders of this Court and there is reasonable assurance that Defendants will continue to
26 comply in the future absent continuing jurisdiction; and

27 /

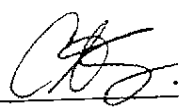
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1 f. Grant such other and further relief as the Court deems just and proper.

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DATED: July 31, 2007

EVANS & PAGE

By: 

Corey Evans, Esq.
Attorney for Plaintiffs

PHYSICIANS COMMITTEE FOR
RESPONSIBLE MEDICINE

By:  / CAE

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