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Attorneys for Petitioner

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF YOLO

12 THE HUMANE SOCIETY OF THE UNITED
13 STATES,

14 Petitioner,

15 v.

16 THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a corporation; JAKE
17 MCGUIRE, an individual; FRED TAKEMIYA,
an individual; and DANIEL SUMNER, an
18 individual,

19 Respondents.

CASE NO.:

**VERIFIED PETITION FOR WRIT OF
MANDATE**

DATE: _____

TIME: _____

DEPT: _____

20
21 I. INTRODUCTION

22 Petitioner is requesting that this Court issue a Writ of Mandate directing Respondents to
23 provide the following records:

- 24 • Records regarding the funding, preparation, release and publication of the study
25 entitled *Economic Effects of Proposed Restrictions on Egg-laying Hen Housing in*
26 *California*, authored by Daniel A. Summer, J. Thomas Rosen-Molina, William A.
27 Matthews, Joy A. Mench and Kurt R. Richter and published by the University of
28 California Agricultural Issues Center;

- 1 • any and all records regarding Initiative measure 07-0041, *The Prevention of Farm*
- 2 *animal Cruelty Act* (“proposed initiative”);
- 3 • any correspondence with the American Egg Board, including any funding provided
- 4 to the University of California; and
- 5 • any records regarding all University of California practices, policies and regulations
- 6 concerning participation in political campaigns by University employees or its
- 7 agents.

8 Respondents have violated California’s Public Records Act (“CPRA”) by not producing the
9 requested documents; and by failing to issue a determination letter to Petitioner regarding whether
10 Respondents will disclose the documents and/or seek exemptions to disclosure. Approximately a
11 month and a half after receiving Petitioner’s first document request letter, Respondents admitted to
12 not even beginning a search to gather the responsive documents. Petitioner are concerned that
13 Respondents could be purposefully delaying for political reasons. At a minimum, Respondents are
14 making no effort to promptly disclose the documents, which is required by California law.

15 Petitioner is also requesting that this Court enforce the mandatory attorney fee provision in
16 the CPRA and award Respondents costs and attorney’s fees for bringing this action to vindicate
17 Petitioner’s right to access public records.

18 II. PARTIES TO THIS ACTION

- 19 1. Petitioner The Humane Society of the United States (“The HSUS”) is a non-profit
20 corporation having its headquarters at 2100 L St. NW, Washington D.C. 20037 and
21 maintaining offices in Sacramento and Hollywood.
- 22 2. Respondent Regents of the University of California (“Regents”), is a corporation
23 empowered under the California Constitution to administer the University of California
24 Davis (“UCD”), which is in the County of Yolo.
- 25 3. The University of California Agricultural Issues Center (“Respondent AIC”) is an agency of
26 the University of California. The Center is located in Davis and is responsible for
27 publishing the study entitled *Economic Effects of Proposed Restrictions on Egg-laying Hen*
28 *Housing in California*. The study, its funding, its preparation and publishing is, in part, the

1 subject of the records sought by Petitioner.

2 4. Respondent Jake McGuire is the Controller and Business Services Director for the Office of
3 the Vice-President of the Agriculture and Natural Resources department and is employed by
4 Respondent Regents.

5 5. Respondent Fred Takemiya is University Counsel and is employed by Respondent Regents.

6 6. Respondent Daniel Sumner is the Director of the AIC and is employed by UC, and as such
7 is also under the direction of Respondent Regents.

8 7. Each of the Respondents was and is the agent, servant, and/or employee of Respondent
9 Regents and/or AIC and/or UCD; and each of them, in doing the things hereinafter alleged,
10 was acting in the course and scope of such agency and/or employment.

11 III. STATEMENT OF FACTS

12 **A. Background**

13 8. On November 4, 2008, California voters will vote on Initiative measure 07-0041, *The*
14 *Prevention of Farm Animal Cruelty Act*. If passed, the law will phase out the intensive
15 confinement of veal calves, pregnant pigs and egg-laying hens on California farms.

16 9. On July 22, 2008, in an apparent attempt to unlawfully campaign against the measure,
17 Respondent AIC published a study entitled *Economic Effects of Proposed Restrictions on*
18 *Egg-laying Hen Housing in California*. The study purports to analyze the impact of the
19 initiative on the state of California. The report, and its accompanying press release,
20 characterizes the proposed initiative as having a negative economic effect on California
21 citizens.

22 **B. Petitioner's Records Requests and Communications With Respondents**

23 10. On July 24, 2008, Petitioner wrote to Daniel Sumner at AIC requesting certain public
24 records pursuant to the California Public Records Act (hereinafter "CPRA") section 6250, *et*
25 *seq.* (Petitioner's July 24, 2008 request is attached to the Declaration of Peter J. Petersan
26 ["Petersan Decl.,"] as Exhibit 1 ["Exhibit 1"]). Petitioner requested records concerning the
27 publication of the report by the Respondents, any records concerning Initiative Measure 07-
28 0041, *The Prevention of Farm Animal Cruelty Act*, any communication the Respondents

1 have had with the American Egg Board, and any policies that employees or agents of
2 Respondents must adhere to regarding their involvement with state election activities. The
3 requested records are as follows:

- 4 • Any and all records (including but not limited to correspondence, memoranda, e-mail,
5 reports and studies) regarding the funding of the study entitled *Economic Effects of*
6 *Proposed Restrictions on Egg-laying Hen Housing in California*, authored by Daniel A.
7 Summer, J. Thomas Rosen-Molina, William A. Matthews, Joy A. Mench and Kurt R.
8 Richter and published by the University of California Agricultural Issues Center, July,
9 2008. Any response to this request must include, but not be limited to, the entire cost of
10 producing this report;
- 11 • Any and all records (including but not limited to correspondence, memoranda, e-mail,
12 reports and studies) regarding the preparation of the study entitled *Economic Effects of*
13 *Proposed Restrictions on Egg-laying Hen Housing in California*, authored by Daniel A.
14 Summer, J. Thomas Rosen-Molina, William A. Matthews, Joy A. Mench and Kurt R.
15 Richter and published by the University of California Agricultural Issues Center, July,
16 2008. Any response to this request must include, but not be limited to:
 - 17 ○ When the study was started;
 - 18 ○ An entire list of all staff, students, consultants, volunteers or other personnel
19 who contributed in any way to this study or the accompanying press release; and
 - 20 ○ The total amount of staff, consultant, volunteer or other personnel time
21 committed to this study;
- 22 • Any and all records (including but not limited to correspondence, memoranda, e-mail,
23 reports and studies) regarding the release and publication of the report entitled *Economic*
24 *Effects of Proposed Restrictions on Egg-laying Hen Housing in California*, authored by
25 Daniel A. Summer, J. Thomas Rosen-Molina, William A. Matthews, Joy A. Mench and
26 Kurt R. Richter and published by the University of California Agricultural Issues
27 Center, July, 2008. Any response to this request must include, but not be limited to:
 - 28 ○ All previous drafts and working copies of the above mentioned report;
 - A list containing the names of each and every individual that reviewed the
report, in whole or in part, prior to its publication, and any notes, comments or
edits made by each reviewing individual;
 - A list containing the names of each and every individual that reviewed the press
release accompanying the report, in whole or in part, prior to its release, and any
notes, comments or edits made by each reviewing individual;
- Any and all records (including but not limited to correspondence, memoranda, e-mail,
reports and studies) regarding Initiative Measure 07-0041, *The Prevention of Farm
Animal Cruelty Act*;
- Any and all records (including but not limited to correspondence, memoranda, e-mail,
reports and studies) regarding any correspondence or other communication with or
concerning the American Egg Board (AEB) and any funding from the AEB to the
University of California or, more specifically, the Agricultural Issues Center; and
- Any and all records (including but not limited to correspondence, memoranda, e-mail,
reports and studies) regarding all practices, policies and regulations concerning
participation in political campaigns by university employees or agents. Any response to

1 this request must include, but not be limited to, correspondence concerning and
2 limitations on such activities.

3 11. Jake McGuire, on behalf of Respondent Regents, sent a letter dated July 30, 2008, to
4 Petitioner, in response to Petitioner's July 24, 2008 request. (Letter is attached to the
5 Petersan Decl. as Exhibit 2 ["Exhibit 2"].) Mr. McGuire's letter stated that the estimated
6 date for production of the documents was October 1, 2008. However, Mr. McGuire's letter
7 also states that the requested materials may be exempt from disclosure.

8 12. Petitioner, believing that Respondents delay is meant to keep Respondents from receiving
9 documents until after the election, sent a follow up letter to AIC on August 5, 2008,
10 indicating that the timeline suggested in its letter amounted to a denial of the documents as
11 the estimated document release date's proximity to the date of the election would not afford
12 Petitioner sufficient time to review the documents. (Petitioner's response is attached to the
13 Petersan Decl. as Exhibit 3 ["Exhibit 3"].)

14 13. Furthermore, because AIC's communication of July 30, 2008 (Exhibit 2) seemed to indicate
15 that only personnel in the University of California Agriculture and Natural Resources
16 department received notification of the initial request, and because the request was meant to
17 reach personnel at the University of California-Davis as well, Petitioner sent a second, near
18 identical, request to Charles F. Robinson, General Counsel of the University of California,
19 dated August 5, 2008. (Petitioner's second request is attached to the Petersan Decl. as
20 Exhibit 4 ["Exhibit 4"]). This request seeks:

- 21 • Any and all records (including but not limited to correspondence, memoranda, e-mail,
22 reports and studies) regarding the funding of the study entitled *Economic Effects of*
23 *Proposed Restrictions on Egg-laying Hen Housing in California*, authored by Daniel A.
24 Summer, J. Thomas Rosen-Molina, William A. Matthews, Joy A. Mench and Kurt R.
25 Richter and published by the University of California Agricultural Issues Center, July,
26 2008. Any response to this request must include, but not be limited to, the entire cost of
27 producing this report;
- 28 • Any and all records (including but not limited to correspondence, memoranda, e-mail,
reports and studies) regarding the preparation of the study entitled *Economic Effects of*
Proposed Restrictions on Egg-laying Hen Housing in California, authored by Daniel A.
Summer, J. Thomas Rosen-Molina, William A. Matthews, Joy A. Mench and Kurt R.
Richter and published by the University of California Agricultural Issues Center, July,
2008. Any response to this request must include, but not be limited to:

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- When the study was started;
 - An entire list of all staff, students, consultants, volunteers or other personnel who contributed in any way to this study or the accompanying press release; and
 - The total amount of staff, consultant, volunteer or other personnel time committed to this study;
- Any and all records (including but not limited to correspondence, memoranda, e-mail, reports and studies) regarding the release and publication of the report entitled *Economic Effects of Proposed Restrictions on Egg-laying Hen Housing in California*, authored by Daniel A. Summer, J. Thomas Rosen-Molina, William A. Matthews, Joy A. Mench and Kurt R. Richter and published by the University of California Agricultural Issues Center, July, 2008. Any response to this request must include, but not be limited to:
 - All previous drafts and working copies of the above mentioned report;
 - All university documents describing the report, including but not limited to memoranda, staff newsletters, press releases, website reports, and published statements by university agents or employees);
 - A list containing the names of each and every individual that reviewed the report, in whole or in part, prior to its publication, and any notes, comments or edits made by each reviewing individual;
 - A list containing the names of each and every individual that reviewed the press release accompanying the report, in whole or in part, prior to its release, and any notes, comments or edits made by each reviewing individual;
 - Any and all records (including but not limited to correspondence, memoranda, e-mail, reports and studies) regarding Initiative Measure 07-0041, *The Prevention of Farm Animal Cruelty Act*;
 - Any and all records (including but not limited to correspondence, memoranda, e-mail, reports and studies) regarding any correspondence or other communication with or concerning the American Egg Board (AEB) and any funding from the AEB to the University of California or any of its departments; and
 - Any and all records (including but not limited to correspondence, memoranda, e-mail, reports and studies) regarding all practices, policies and regulations concerning participation in political campaigns by university employees or agents. Any response to this request must include, but not be limited to, correspondence concerning and limitations on such activities.

14. Respondent Regents sent a letter dated August 15, 2008, indicating they had received Petitioner’s request of August 5, 2008, (Respondent Regent’s letter is attached to the Petersan Decl. as Exhibit 5 [“Exhibit 5”]). Respondent’s letter informed The HSUS that it had received the request of August 5, 2008. However, the letter does not qualify as a response under CPRA section 6253(b) as it does not determine “in whole or in part” whether the request “seeks copies of disclosable public records in possession of the agency” nor does it “state the estimated date and time when the records will be made available.”

1 15. On September 3, 2008, Peter Petersan, an employee of The HSUS, spoke with Lynette
2 Temple who identified herself as working for Respondent Regents' campus counsel's
3 office. Ms. Temple indicated that she has both of The HSUS's requests and is responsible
4 for fulfilling them. Ms. Temple indicated that she had not started searching for any of the
5 requested documents and asked Mr. Petersan if he knew where the documents might be in
6 the university system.

7 16. Ms. Temple told Mr. Petersan that searching the "whole universe of the university" is
8 impossible and would be an "exercise in futility." Regarding the first request in both letters,
9 she said that "there is no way of obtaining information regarding the report without
10 contacting every department." She asked Mr. Petersan if he could tell her from whom
11 specifically at the university she should talk with to acquire the requested documents, or
12 what department she should speak with. She asked Mr. Petersan if she should start by
13 contacting the authors of the report or if he was aware of another person or department that
14 she should contact first. In response to Ms. Temple's questions, Mr. Petersan reminded her
15 that the report was published by AIC and that seemed like a logical place to look for
16 documents related to the report and the press release. Ms. Temple also asked where she
17 should look to find documents regarding any funding by the American Egg Board. After
18 she asked Mr. Petersan several times who else she should speak to or where else she should
19 look for documents, he indicated that he is not familiar with the internal workings of the
20 university and did not know specifically who she should speak to. He also told her that the
21 only information that he has is what is in Respondents' report and press release and, based
22 on those documents, he have no further insight as to where records might be located.

23 17. In the September 3, 2008 conversation, Ms. Temple indicated that once she began to collect
24 documents, there may be exemptions that apply and that she would have to make that
25 determination when she reviews the documents. It was clear from the conversation that Ms.
26 Temple had not compiled or looked for any documents. She also made it clear that the
27 university had not made any determination as to what, if any, documents would be
28 produced; and what, if any, legal exemptions the university would assert to disclosing any

1 or all of the documents requested.

2 18. At the time of the filing of this petition, Petitioner has not received any records from
3 Respondents.

4 19. At the time of the filing of this petition, Petitioner has not received any further
5 communication than what is described herein.

6 20. The requested records are stored and maintained in the City of Davis in Yolo County.

7 21. Respondents are state agents or agencies within the meaning of CPRA section 6250, *et seq.*,
8 and the records requested by the Petitioner are public records as defined in CPRA section
9 6252.

10 **C. Respondents Are in Violation of California’s Public Records Act**

11 22. Respondents are required under CPRA section 6250, *et seq.*, to provide the Petitioner with
12 the requested records. Respondents have violated CPRA section 6250, *et seq.*, by not
13 providing adequate responses within 10 days as required by law and by refusing to produce
14 the requested records in a prompt manner.

15 23. Respondents letters to Petitioner (dated July 30th and August 15th, 2008), do not meet the
16 “determination” requirement in the CPRA because they fail to indicate whether documents
17 will be disclosed to Petitioner; and whether Respondent Regents are asserting any
18 exemptions to the CPRA’s disclosure requirements. Instead of issuing “determination”
19 letters, Respondent Regents’ letters are the equivalent of notifications to Petitioner that
20 Petitioner’s requests have been received and are being reviewed, which is not a permissible
21 means of response under California Law. Respondents’ letters even admit that they are not
22 determinations, by including the statement “not a determination.”

23 24. Respondents’ August 15th letter impermissibly seeks an open-ended extension of time to
24 make a determination. This practice is specifically forbidden under the CPRA, which states
25 that the maximum extension allowed is fourteen (14) days, however, the CPRA requires that
26 if the extension is used, the agency must provide the exact date when the future response
27 will be sent to the requester, which cannot be later than fourteen days. Respondents’ August
28 15th letter does not state when a future response will be issued, and Respondents never sent

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a follow-up determination letter.

25. Respondents violated the CPRA by failing to promptly (within the mandatory ten-day response timeframe set by the California legislature [] notify Petitioner of any exemption that they are claiming

26. Respondents violated the CPRA by failing to promptly make documents available. It has been nearly one and a half (1½) months since Respondents received Petitioner’s first CPRA request dated July 24, 2008, and Respondents (via Ms. Temple) confirmed that as of September 3, 2008, they have not begun to look for responsive documents.

IV. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that:

- a. After hearing on this petition, this Court issue a peremptory writ commanding all of the Respondents to provide copies of all of the requested records referenced in this Petition; and
- b. Petitioner be awarded costs of this action and attorney’s fees; and
- c. Other relief be granted as this Court considers just and proper.

Dated: September 5, 2008

Respectfully submitted,
EVANS & PAGE

By: 
Corey A. Evans
Attorney for Petitioner

Dated: September 5, 2008

**THE HUMANE SOCIETY
OF THE UNITED STATES**

By: _____
Peter Brandt
Attorney for Petitioner

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VERIFICATION

I, Peter J. Petersan, am the representative of The HSUS who requested the documents in the above entitled action. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge.

I declare under penalty of perjury, in accordance with the laws of the State of California, that the foregoing is true and correct and that this declaration was executed on September 5, 2008 in Washington, District of Columbia.

Peter J. Petersan