

DANIEL V. STEENSON
[Idaho State Bar No. 4332]
DAVID P. CLAIBORNE
[Idaho State Bar No. 6579]
SAWTOOTH-LAW OFFICES, PLLC
Golden Eagle Building
1101 W. River St., Ste. 110
P. O. Box 7985
Boise, Idaho 83707
Telephone: (208) 629-7447
Facsimile: (208) 629-7559
E-mail: dan@sawtoothlaw.com, david@sawtoothlaw.com

Attorneys for Applicant for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO (SOUTHERN DIVISION)

ANIMAL LEGAL DEFENSE FUND, et al.

Plaintiffs,

vs.

C.L. BUTCH OTTER, in his official
capacity as Governor of Idaho; and
LAWRENCE WASDEN, in his official
capacity as Attorney General of Idaho;

Defendants;

and

**THE IDAHO DAIRYMEN'S
ASSOCIATION, INC.**, an Idaho nonprofit
corporation;

Applicant for Intervention.

Case No. 1:14-cv-104-BLW

**AFFIDAVIT OF APPLICANT FOR
INTERVENTION IN SUPPORT OF
MOTION TO INTERVENE AS PARTY-
DEFENDANT**

STATE OF IDAHO)
) ss.
COUNTY OF TWIN FALLS)

BOB NAEREBOUT, being first duly sworn upon oath, deposes and states the following in **SUPPORT** of the *Motion to Intervene as Party-Defendant*, which is filed herewith.

1. I am an individual over the age of eighteen, a resident of the State of Idaho, and have personal knowledge of the facts set forth herein, believing them all to be true and correct to the best of my knowledge and belief.

2. I am the Executive Director of The Idaho Dairymen’s Association, Inc. (herein “IDA”), which is an Idaho nonprofit corporation duly existing and operating in the State of Idaho since July 5, 1944. As such, I am fully familiar with, knowledgeable of, and acquainted with its organizational history, documents, records, membership, and activities of it and its members.

3. Every dairy farmer, or dairy producer, in the State of Idaho is a member of the IDA.

4. The overarching purpose of the IDA is to develop and sustain an economically viable Idaho dairy industry and to promote dairy interests in the State of Idaho. The IDA regularly considers and act upon problems and issues concerning the welfare of the dairy industry of Idaho and the United States in general. Finally, the IDA is authorized to perform all other acts as are necessary to give effect to the purposes of the IDA as may be authorized by law.

5. The IDA is also regularly, thoroughly and cooperatively involved at local, state, regional and federal levels to protect and promote the legislative, regulatory and legal interests of its members - the dairy farmers of Idaho. The foregoing often involves the IDA promoting and defending the interests of the Idaho dairy industry and Idaho dairy farmers in administrative and legal processes that may, or have the potential to, impact the dairy industry.

6. The Idaho dairy industry is an essential element of, and stabilizing force to, the Idaho economy. In 2012, on-farm cash receipts from dairy products produced in Idaho amounted to \$2.421 billion, ranking dairy as Idaho's largest single agriculture industry. The Idaho dairy industry employs an estimated 22,730 persons, and its supporting, allied industries employ an estimated 13,470 persons. Idaho is the second largest dairy producing state in western United States, and ranks fourth among all states. As of January, 2014, Idaho had 526 dairy farm operations that produce 13.4 billion pounds of milk per year, from 541,587 cows. All of these operations are members of the IDA.

7. One of IDA's members has recently been subjected to interference by an "undercover investigator" affiliated with Mercy for Animals, an animal activist group focused on promoting a vegetarian diet. The "undercover investigator" obtained employment with the dairy operation by misrepresenting his true identity, misrepresenting himself as a person who was genuinely interested in employment with the dairy operation, and failing to disclose his true intention to make audio and video recordings of the dairy operation's

activities, without the dairy operator's knowledge or consent, for the purpose of recording and exposing what the undercover investigator considered to be animal cruelty. The "undercover investigator" made recordings of conduct by certain employees that was not known to the dairy operator, but failed to immediately report to the dairy operator or to local or state authorities the conduct he recorded, allowing additional animal abuse to occur and depriving the animals of immediate care and treatment. After witnessing the conduct, the investigator gave his recordings to Mercy for Animals. Thereafter, Mercy for Animals provided edited recordings to the Idaho State Department of Agriculture ("ISDA"), which immediately investigated the recorded incidents and informed the dairy operator. After the ISDA and the local law enforcement authorities investigated and charged the offending employees, and after the dairy operator took corrective action, Mercy for Animals then publicized portions of the edited recordings in the media and advocated to one or more of the dairy operator's customers that they discontinue purchasing milk products supplied by the dairy operator.

8. In direct response to repeated media publication of the edited recordings by Mercy for Animals, the Humane Society of the United States and others, the dairy operator has received multiple threats of death and harm to himself and to members of his family from late 2012 to the present.
9. Reporting, investigation and prosecution of animal cruelty is comprehensively addressed by Idaho's animal cruelty statutes, codified in Idaho Code sections 25-3501 et seq. Idaho's animal cruelty law is administered by ISDA, and enforced by ISDA in

conjunction with local law enforcement authorities.

10. During this past legislative session of the Idaho Legislature, IDA worked with other agricultural associations, the Idaho Attorney General's office and several legislators to develop Senate Bill 1337 (now Idaho Code section 18-7042) to address the type of interference described above, as well as other forms of interference faced by Idaho agricultural operations. The legislation was based on existing Idaho statutes in which the Idaho Legislature has acted to protect private property and privacy interests from wrongful interference, including Idaho Code section 18-7040, prohibiting wrongful interference with agricultural research facilities, and Idaho Code section 21-213, prohibiting the use of "drones" to record individuals without their written consent. Working with the Idaho Attorney General's office, care was taken to ensure that the legislation addresses interference by wrongful conduct, without impairing First Amendment rights.

11. The Complaint filed in this case contains statements that one or more of the Plaintiffs intend to conduct "undercover investigations" of dairy and other agricultural operations, similar to the "undercover investigation" conducted by or in association with Mercy for Animals discussed above. These statements emphasize the need for the protection provided by Senate Bill 1337, and IDA's vital interest in the outcome of this litigation.

Your affiant says nothing further.


DATED this 18th day of April, 2014.

THE IDAHO DAIRYMEN'S
ASSOCIATION, INC.

by: 
Bob Naerebout

SUBSCRIBED AND SWORN to before me this 18th day of April, 2014.




NOTARY PUBLIC
Residing at Meridian, ID
My commission expires 12-23-2014

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following on this 18th day of April, 2014 by the following method:

JUSTIN MARCEAU
ATTORNEY AT LAW
2255 E. Evans. Ave.
Denver, CO 80210
Telephone: (303) 871-6449
Facsimile: n/a
E-Mail: jmarceau@law.du.edu
Attorneys for Plaintiffs

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail or CM/ECF

MARIA E. ANDRADE
ANDRADE LEGAL, INC.
PO Box 2109
Boise, ID 83701
Telephone: (208)342-5100
Facsimile: (208) 342-5101
E-Mail: mandrade@andradelegal.com
Attorneys for Plaintiffs

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail or CM/ECF

MATTHEW G. LIEBMAN
ANIMAL LEGAL DEFENSE FUND
170 E. Cotati Avenue
Cotati, CA 94931
Telephone: (707) 795-2533 ext. 1028
Facsimile: n/a
E-Mail: mliebman@aldf.org
Attorneys for Plaintiffs

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail or CM/ECF

MATTHEW DANIEL STRUGAR
ATTORNEY AT LAW
2154 W. Sunset Blvd.
Los Angeles, CA 90026
Telephone: (323) 210-2263
Facsimile: n/a
E-Mail: matthew-s@petaf.org
Attorneys for Plaintiffs

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail or CM/ECF

**RICHARD ALAN EPPINK
AMERICAN CIVIL LIBERTIES UNION
OF IDAHO FOUNDATION**

PO Box 1897
Boise, ID 83701
Telephone: (208) 344-9750 ext. 1202
Facsimile: (208) 344-7201
E-Mail: reppink@acluidaho.org
Attorneys for Plaintiffs

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail or CM/ECF

**PAIGE M. TOMASELLI
CENTER OF FOOD SAFETY**

303 Sacramento Street, 2nd Floor
San Francisco, CA 94111
Telephone: (415) 826-2770
Facsimile: n/a
E-Mail: ptomaselli@centerforfoodsafety.org
Attorneys for Plaintiffs

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail or CM/ECF

**THOMAS C. PERRY
CALLY A. YOUNGER
COUNSEL TO THE GOVERNOR
OFFICE OF THE GOVERNOR**

State Capitol
PO Box 83720
Boise, ID 83720
Telephone: (208) 334-2100
Facsimile: (208) 334-3454
E-Mail: tom.perry@gov.idaho.gov
cally.younger@gov.idaho.gov
Attorneys for Defendant - Otter

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail or CM/ECF

CLAY R. SMITH
CARL J. WITHROE
IDAHO ATTORNEY GENERAL
PO Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-4118
Facsimile: (208) 854-8073
E-Mail: clay.smith@ag.idaho.gov
carl.withroe@ag.idaho.gov
Attorneys for Defendant - Wasden

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail or CM/ECF

_____/s/_____
Daniel V. Steenson
David P. Claiborne