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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

14 ANIMAL LEGAL DEFENSE FUND,  
15 STOP ANIMAL EXPLOITATION NOW,  
16 COMPANION ANIMAL PROTECTION  
17 SOCIETY, and ANIMAL FOLKS,

16 Plaintiffs,

17 v.

18 UNITED STATES DEPARTMENT OF  
19 AGRICULTURE and ANIMAL AND  
20 PLANT HEALTH INSPECTION  
21 SERVICES,

21 Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

22 **INTRODUCTION**

23 1. The United States Department of Agriculture’s (“USDA”) Animal and Plant  
24 Health Inspection Service (“APHIS”) maintained two online databases since the 2000s that  
25 provided the general public with access to several categories of Animal Welfare Act (“AWA”)  
26 records, including inspection reports, research facility annual reports, regulatory correspondence,  
27 lists of regulated entities, and enforcement records. The records at issue, described in more detail  
28

1 below, document APHIS’s activities to ensure that regulated entities—animal dealers, exhibitors,  
2 research laboratories, and intermediate handlers—meet their obligations to treat animals  
3 humanely. Importantly, the records also expose serious instances of animal abuse.

4         2. Suddenly on February 3, 2017, USDA announced—using language more aligned  
5 with Oceania from George Orwell’s *1984* than the United States of America—that it removed  
6 from its website all of these records, thereby decreasing the amount of available public  
7 information, based on its “commitment to being transparent [and] remaining responsive to our  
8 stakeholders’ informational needs . . . .”

9         3. Instead of advancing transparency and the public’s informational needs, USDA’s  
10 decision chokes a vital stream of information used by the public to effectively contest animal  
11 abuse and monitor the agency’s regulatory efficacy. Whereas the public could once access this  
12 important information with a few button clicks, USDA now demands that interested parties  
13 manage a burdensome Freedom of Information Act (“FOIA”) request process and wait months or  
14 even years for the same records. In addition, USDA previously accommodated privacy concerns  
15 by redacting private information from records before uploading them to the databases. Requiring  
16 the public to make FOIA requests for these same records therefore serves no purpose other than  
17 shielding unscrupulous facilities and USDA itself from public criticism.

18         4. USDA’s actions violate the law. By failing to publish these regulatory records,  
19 USDA is violating the affirmative disclosure requirements of FOIA, which mandate that final  
20 opinions or orders and frequently requested records be made available for public inspection in an  
21 electronic format. 5 U.S.C. § 552(a)(2)(A), (D). And, irrespective of its obligations to  
22 affirmatively post records, USDA’s sudden removal of two key databases from its website  
23 constitutes a final agency action that is arbitrary, capricious, and an abuse of discretion in  
24 violation of the Administrative Procedure Act (“APA”). 5 U.S.C. § 706(2).

25         5. Without access to the APHIS databases, the Plaintiffs suffer significant and  
26 irreparable injury to their ability to (1) use the records to hold the agency accountable in  
27 vigorously enforcing the AWA, (2) report to the public on the agency’s enforcement activities,  
28 and (3) inform the public about practices of regulated entities that drive consumer decision

1 making. Public oversight is particularly important with respect to AWA enforcement because the  
2 Office of the Inspector General (“OIG”) at USDA has frequently found that APHIS renders  
3 regulation ineffective by not aggressively pursuing enforcement actions against serious AWA  
4 violators and significantly discounting penalties when it does pursue them. *See, e.g.*, USDA  
5 OIG, *Animal and Plant Health Inspection Service Oversight of Research Facilities 2* (Dec. 2014),  
6 <https://www.usda.gov/oig/webdocs/33601-0001-41.pdf>; USDA OIG, *Animal and Plant Health*  
7 *Inspection Service Animal Care Program Inspections of Problematic Dealers 1–3* (May 2010),  
8 <https://www.usda.gov/oig/webdocs/33002-4-SF.pdf>; USDA OIG, *APHIS Animal Care Program*  
9 *Inspection and Enforcement Activities*, at i–iv (Sept. 2005),  
10 <https://www.usda.gov/oig/webdocs/33002-03-SF.pdf>.

11 6. Accordingly, Plaintiffs file this action seeking relief from USDA’s unlawful and  
12 alarming efforts to suppress information and stifle oversight of this important field of public  
13 interest.

#### 14 JURISDICTION AND VENUE

15 7. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C.  
16 §§ 552(a)(4)(B), 702.

17 8. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because  
18 Plaintiff Animal Legal Defense Fund’s principal place of business is in the Northern District of  
19 California.

#### 20 INTRADISTRICT ASSIGNMENT

21 9. Assignment to the San Francisco Division of the Northern District is proper under  
22 Northern District Local Rule 3-2, as Plaintiff Animal Legal Defense Fund’s principal place of  
23 business is in the Northern District of California and a substantial portion of the events or  
24 omissions giving rise to the claims alleged herein occurred in Sonoma County.

#### 25 PARTIES

##### 26 A. Plaintiff Animal Legal Defense Fund

27 10. Plaintiff Animal Legal Defense Fund (“ALDF”) is a national nonprofit  
28 organization headquartered in Cotati, California. Its mission is to protect the lives and advance

1 the interests of animals through the legal system. ALDF advances this mission by filing lawsuits  
2 to protect animals from harm, providing legal assistance and training to prosecutors in animal  
3 cruelty cases, supporting animal protection legislation, and providing resources and opportunities  
4 to the legal community to advance the emerging field of animal law.

5 11. In pursuit of these activities, ALDF regularly accessed and utilized APHIS's  
6 databases to review research facility annual reports, inspection reports, complaints, stipulated  
7 penalties, official warnings, and other records for all types of facilities regulated by the agency  
8 under the AWA. For example, ALDF used the databases to investigate inspection reports for  
9 Cricket Hollow Zoo, an exotic animal exhibitor in Iowa with years of chronic noncompliance  
10 with the AWA. ALDF used those inspection reports to develop a lawsuit and obtain an injunction  
11 under the Endangered Species Act against the facility for providing substandard care that  
12 amounted to an illegal "take" under that law. Concerned that USDA was allowing the substandard  
13 facility to continue operating, ALDF also asked USDA not to renew the facility's exhibitor  
14 license under the AWA and sued USDA over its decision to issue the license anyway. When  
15 USDA eventually initiated an enforcement action against Cricket Hollow Zoo, ALDF learned  
16 about that complaint through an APHIS database and promptly moved to intervene in the  
17 administrative proceeding. In tandem with these legal efforts, ALDF used the APHIS records to  
18 publicize problems at Cricket Hollow Zoo in furtherance of ALDF's broader mission to raise  
19 public awareness about substandard animal facilities.

20 12. ALDF's use of the APHIS databases in its Cricket Hollow Zoo actions exemplifies  
21 just one of many uses. ALDF used the databases to research unscrupulous dog breeders or "puppy  
22 mills" and publicize the results of that research in local media markets. ALDF relied on the  
23 databases in a settlement agreement it negotiated on behalf of consumers against Furry Babies, a  
24 Chicago-area pet store chain that sold sick puppy mill puppies to people. That settlement relies on  
25 the existence of the databases by prohibiting Furry Babies from selling puppies from breeders  
26 with critical or direct AWA violations in the last APHIS inspection report. ALDF also used the  
27 databases to develop and litigate a civil action against Santa Cruz Biotechnology, a research  
28 facility with years of chronic noncompliance with the AWA.

1           13.     Stated simply: ALDF frequently used the APHIS databases to pursue activities that  
2 advanced ALDF's mission.

3           14.     ALDF will suffer significant and irreparable injury as long as the agency fails to  
4 upload and maintain records on its public databases. Without access to the APHIS databases,  
5 ALDF has already been forced to issue FOIA requests for all records previously available for all  
6 facilities on the APHIS databases and will continue asking for those records as long as the  
7 databases remain offline. Managing voluminous FOIA requests and responses will consume  
8 significantly more staff time and resources than using the previously public APHIS databases.  
9 Depending on the availability of a fee waiver, ALDF may even be required to pay out-of-pocket  
10 fees to USDA to process their FOIA requests, though access to the APHIS databases was  
11 previously free. Additionally, ALDF has waited more than a year before receiving records  
12 requested from the agency under FOIA. This lapse of time will make the information that ALDF  
13 receives stale and less effective in advancing its advocacy efforts to protect animals.

14           15.     ALDF also represents their individual members, many of whom used the APHIS  
15 databases to ascertain whether businesses had a history of violations of the AWA prior to making  
16 purchasing or patronage decisions. Without the published databases, these members will likely  
17 not be able to use the FOIA process expeditiously enough to learn of a history of animal abuse in  
18 time to decide where to obtain a pet, for example, or whether to visit a zoo.

19 **B.     Plaintiff Stop Animal Exploitation Now**

20           16.     Plaintiff Stop Animal Exploitation Now ("SAEN") is a nonprofit organization  
21 headquartered in Ohio with a mission to end the abuse of animals in laboratories. SAEN primarily  
22 advances this mission by reviewing public records about facilities connected to the animal  
23 research industry, seeking law enforcement action against substandard facilities, and bringing  
24 egregious cases of animal mistreatment to the public's attention through the media.

25           17.     In pursuit of these activities, SAEN frequently used the APHIS databases to access  
26 all available categories of records about facilities connected to the animal research industry.  
27 SAEN's Executive Director, Michael Budkie, usually accessed the databases up to 10 times per  
28 day, and often issued press releases and filed law enforcement complaints no less than 24 hours

1 after the agency uploaded records about problematic facilities to the APHIS databases. SAEN's  
2 work utilizing the database records includes a multiyear campaign against Santa Cruz  
3 Biotechnology that recently culminated in USDA revoking its dealer license, canceling its  
4 research registration, and imposing a \$3.5 million fine.

5 18. SAEN will suffer significant and irreparable injury as long as the agency fails to  
6 upload and maintain records on its public databases. Without access to the APHIS databases,  
7 SAEN has already been forced to issue FOIA requests for previously available categories of  
8 records relating to research facilities, animal dealers, and animal transporters, and will continue  
9 asking for records as long as the databases remain offline. Managing voluminous FOIA requests  
10 will consume significantly more staff time and resources than using the APHIS databases. SAEN  
11 expects it will need to hire a new staff member simply to manage future FOIA requests as long as  
12 the databases remain offline.

13 19. Additionally, SAEN has waited more than a year before receiving records  
14 requested from the agency under FOIA. This lapse of time will make the information that SAEN  
15 receives stale and thus less effective in advancing its advocacy efforts to protect animals. This  
16 decrease in effectiveness and visibility will significantly diminish charitable donations to the  
17 organization. SAEN has received significant donations of money in the past directly attributable  
18 to visibility enabled by its ability to file timely complaints and garner media attention.

19 **C. Plaintiff Companion Animal Protection Society**

20 20. Plaintiff Companion Animal Protection Society ("CAPS") is a national nonprofit  
21 dedicated exclusively to protecting companion animals from cruelty in pet shops and puppy and  
22 kitten mills. CAPS addresses animal suffering through investigations, legislation, education,  
23 media relations, consumer assistance, and rescue.

24 21. In pursuit of these activities, CAPS frequently used the APHIS databases to access  
25 records about cat and dog dealers in furtherance of its advocacy. CAPS used inspection reports to  
26 support legislative efforts to enact local ordinances regulating retail pet stores by showing that  
27 substandard breeders and dealers sold animals to pet stores in the jurisdiction. Some ordinances  
28 that CAPS helped to enact prohibit the retail sale of cats and dogs from all breeders, including

1 ordinances in West Hollywood, San Diego, Los Angeles, and Glendale, California. Other  
2 ordinances require retail pet stores to keep recent inspection reports for the breeder of each animal  
3 in the store for prospective purchasers to review, including ordinances in New York City, Suffolk  
4 and Nassau Counties in New York, and Orland Park, Illinois. The Orland Park ordinance further  
5 requires the USDA website link to be posted so consumers can conduct their due diligence for  
6 USDA breeders in the now-defunct APHIS databases.

7 22. CAPS also used records from the APHIS databases to facilitate its watchdog role  
8 of the USDA. CAPS compares its own investigations with APHIS's inspection reports and refers  
9 discrepancies to the OIG. In part because of this work, the OIG issued a scathing report criticizing  
10 USDA's lackluster regulation of cat and dog dealers in May 2010. *See* USDA OIG, *Animal and*  
11 *Plant Health Inspection Service Animal Care Program Inspections of Problematic Dealers 1–3*  
12 (May 2010), <https://www.usda.gov/oig/webdocs/33002-4-SF.pdf>.

13 23. CAPS will suffer significant and irreparable injury as long as the agency fails to  
14 upload and maintain records on its public databases. Without access to the APHIS databases,  
15 CAPS has already been forced to issue FOIA requests for previously available categories of  
16 records relating to cat and dog breeders and dealers from ten different jurisdictions, and will  
17 continue asking for records as long as the databases remain offline. Managing voluminous FOIA  
18 requests to obtain records will consume significantly more staff time and resources than using the  
19 APHIS databases. Additionally, CAPS has waited more than a year before receiving records  
20 requested from the agency under FOIA. This lapse of time will make the records that CAPS  
21 obtains stale and thus less effective in advancing its advocacy efforts to protect animals.  
22 Moreover, the inability to obtain timely information frustrates local ordinances that CAPS helped  
23 to enact by making it difficult or impossible to verify whether kittens and puppies came from  
24 unscrupulous breeders.

25 **D. Plaintiff Animal Folks**

26 24. Plaintiff Animal Folks is a nonprofit organization with a mission to combat animal  
27 cruelty by improving how animal laws are enforced in Minnesota. It accomplishes this goal by  
28 using research and education and working collaboratively with state and local authorities to



1 develop new systems, including training, processes, and materials, that oversee animal issues and  
2 improve enforcement of animal laws, including data to support the creation of new laws or rules  
3 if needed.

4 25. Animal Folks frequently used the APHIS databases to review inspection reports,  
5 ad hoc reports, and enforcement actions pertaining to animal dealers, exhibitors, and research  
6 facilities in Minnesota, and out-of-state facilities connected to Minnesota. It used those records as  
7 the basis to identify areas of concern and seek law enforcement action, ask USDA to revoke  
8 licenses or bring facilities into compliance, create up-to-date reports for use in presentations and  
9 testimony to state and local lawmakers, and provide the public with timely information about  
10 large-scale commercial dog breeding.

11 26. Animal Folks will suffer significant and irreparable injury as long as APHIS fails  
12 to upload and maintain records on its databases. Without access to the APHIS databases, Animal  
13 Folks has already been forced to issue FOIA requests for previously available categories of  
14 records relating to breeders, dealers, exhibitors, and research facilities in Minnesota, and will  
15 continue asking for records as long as the databases remain offline. Managing voluminous FOIA  
16 requests to obtain records will consume significant staff time and resources. Additionally, Animal  
17 Folks has waited over a year before receiving records requested from APHIS under FOIA. This  
18 lapse of time will make the records that Animal Folks obtains stale and thus less effective in  
19 advancing its efforts to protect animals.

20 **E. Defendant United States Department of Agriculture**

21 27. Defendant USDA is an agency of the United States government with possession  
22 and control over the records that Plaintiffs seek.

23 **F. Defendant Animal and Plant Health Inspection Service**

24 28. Defendant APHIS, a subdivision of USDA, is an agency of the United States  
25 government with possession and control over the records that Plaintiffs seek. References to  
26 USDA in this complaint should be construed as a reference to APHIS, and references to APHIS  
27 should be construed as references to USDA. References to the “agency” should be construed as  
28 references to USDA and APHIS collectively.



**STATEMENT OF FACTS**

1  
2 29. The AWA establishes a regulatory framework to promote minimum standards for  
3 the humane treatment of animals by four general categories of commercial animal enterprises: (1)  
4 animal dealers, such as brokers who buy and sell animals, and facilities that breed animals for  
5 exhibition, sale, or research; (2) exhibitors, such as zoos and circuses; (3) animal research  
6 facilities; and (4) carriers and intermediate handlers, such as airlines that do not buy or sell  
7 animals but transport them for dealers. *See* 7 U.S.C. § 2132; 9 C.F.R. § 1.1.

8 30. APHIS is responsible for administering and enforcing the AWA and its  
9 implementing regulations on behalf of USDA. *See* 7 U.S.C. §§ 2131 *et seq.*; 9 C.F.R. §§ 1.1  
10 *et seq.*

11 31. Animal dealers and exhibitors must obtain and maintain a license from USDA to  
12 engage in regulated activities. 7 U.S.C. § 2133; 9 C.F.R. §§ 2.1, *et seq.* Research facilities,  
13 carriers, and intermediate handlers must maintain registration with the USDA to engage in  
14 regulated activities. 7 U.S.C. § 2136; 9 C.F.R. §§ 2.25, *et seq.*; 9 C.F.R. §§ 2.30, *et seq.*

15 32. In addition to complying with licensing and registration requirements, regulated  
16 entities must comply with other requirements such as providing minimum standards of care for  
17 animals and maintaining certain types of records. *See* 9 C.F.R. §§ 2.1 *et seq.*; 9 C.F.R. §§ 3.1, *et*  
18 *seq.* These standards of care include the provision of adequate shelter, nutrition, sanitization,  
19 exercise, and veterinary care. 9 C.F.R. §§ 3.1, *et seq.* The AWA regulations also prescribe  
20 Institutional Animal Care and Use Committee guidelines to promote consideration of whether  
21 animals used for scientific research are subject to unnecessary discomfort, pain, or distress. 9  
22 C.F.R. §§ 2.30, *et seq.*

23 33. All regulated entities under the AWA are subject to APHIS inspections, including  
24 pre-licensing inspections and unannounced compliance inspections. The agency prepares an  
25 inspection report in conjunction with each inspection. 9 C.F.R. § 2.3; *see also* USDA APHIS,  
26 *Animal Welfare Act Inspections*,  
27 [https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa\\_awa/ct\\_awa\\_inspections](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_awa/ct_awa_inspections) (last  
28 modified Feb. 17, 2017). Those inspection reports either demonstrate full regulatory compliance

1 or, if violations are found, note which regulatory provisions were violated, describe the nature of  
2 the violation, and set a deadline by which the issue must be corrected. USDA APHIS, *Fact Sheet:*  
3 *Animal Care Compliance Inspections* (Feb. 2012),  
4 [https://www.aphis.usda.gov/publications/animal\\_welfare/content/printable\\_version/fs\\_compliance\\_inspection.pdf](https://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/fs_compliance_inspection.pdf). On information and belief, between 2009 and February 3, 2017, APHIS  
5 published all such inspection reports on its website to a database called Animal Care Information  
6 Search (“ACIS”). APHIS published these inspection reports with minor redactions to protect  
7 personal privacy.  
8

9 34. Research facilities regulated under the AWA are required to submit annual reports  
10 to the agency, which include information about how many animals were used in research not  
11 involving pain or distress, how many animals were used in research involving pain or distress  
12 where anesthetics were used, and how many animals were used in research involving pain or  
13 distress without anesthetics. 9 C.F.R. § 2.36. On information and belief, between 2009 and  
14 February 3, 2017, APHIS published all such annual reports on its website via the ACIS database  
15 with minor redactions to protect personal privacy.

16 35. When APHIS finds that a regulated entity is violating the AWA, it can take a  
17 series of various types of enforcement actions. First, it can issue a “Letter of Information,” which  
18 is an informal warning letter documenting the violation and advising “that more stringent action  
19 may be taken if [the violator] remain[s] noncompliant.” USDA APHIS, *Animal Welfare Act*  
20 *Enforcement*,  
21 [https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/enforcementactions/SA\\_AC\\_Enforcement\\_Actions\\_AWA](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/enforcementactions/SA_AC_Enforcement_Actions_AWA) (last modified Feb. 3, 2017). Second, it can issue an “Official Warning  
22 Letter” that “provides notice to an individual and/or business that the Agency may seek a civil or  
23 criminal penalty if noncompliance is found in the future.” *Id.* Third, it can reach a voluntary  
24 settlement agreement (either designated as stipulations or pre-litigation settlements), which can  
25 include monetary and non-monetary penalties, and which results in APHIS closing the case.  
26 USDA APHIS, *Enforcement Glossary*, [https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies\\_performance\\_metrics/ies\\_enforcement\\_glossary](https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies_performance_metrics/ies_enforcement_glossary) (last modified Nov. 18, 2016).  
27  
28

1 Fourth, it can file an administrative complaint to initiate formal administrative proceedings. *Id.*  
2 On information and belief, for many years up until February 3, 2017, APHIS published all four of  
3 these types of enforcement orders on its website, with minor redactions to protect personal  
4 privacy, as part of a database entitled Enforcement Actions (“EA”).

5 36. If APHIS initiates formal administrative proceedings, an Administrative Law  
6 Judge (“ALJ”) hears the case. Those cases usually end in either a consent decision or a final ALJ  
7 decision. 7 C.F.R. §§ 1.138, 1.142(c). On information and belief, for many years up until  
8 February 3, 2017, APHIS published consent decisions and final ALJ decisions on its EA  
9 database, with minor redactions to protect personal privacy. Although the EA database has been  
10 removed, these records are currently still available on the website of the Office of the  
11 Administrative Law Judge for the Department of Agriculture. *See* Office of Administrative Law  
12 Judges, *OALJ Decisions*, <https://www.oaljdecisions.dm.usda.gov/current>.

13 37. On information and belief, APHIS published a list of all entities regulated under  
14 the AWA—licensees and registrants—on its website for several years.

15 38. On or about February 3, 2017, the agency announced it was “implementing actions  
16 to remove documents” from its website, including “inspection reports, research facility annual  
17 reports, regulatory correspondence (such as official warnings), lists of regulated entities, and  
18 enforcement records (such as pre-litigation settlement agreements and administrative complaints)  
19 that have not received final adjudication.” The agency’s announcement also stated that it would  
20 “review and redact, as necessary, the lists of licensees and registrants under the AWA.” Finally, it  
21 directed “those seeking information from APHIS regarding inspection reports, research facility  
22 annual reports, regulatory correspondence, and enforcement records” to “submit Freedom of  
23 Information Act requests for that information.” USDA APHIS, *Announcement*,  
24 <https://acis.aphis.edc.usda.gov/ords/f?p=116:1:5760383222747> (last modified Feb. 7, 2017).

25 39. On or about February 3, 2017, the agency completely removed the ACIS and EA  
26 databases from its website, thereby precluding the public from accessing the previously published  
27 inspection reports described in paragraph 33, research facility annual reports described in  
28

1 paragraph 34, and four types of enforcement orders listed in paragraph 35, without the need to file  
2 a FOIA request.

3 40. On or about February 17, 2017, APHIS appears to have re-published the annual  
4 reports for 2013, 2014, and 2015 only. *See* USDA APHIS, *Update to APHIS' Website Involving*  
5 *Animal Welfare Act Compliance Information* (Feb. 17, 2017),  
6 <https://content.govdelivery.com/accounts/USDAAPHIS/bulletins/187fe1d>.

7 41. As a result of taking down the ACIS and EA databases, APHIS is also no longer  
8 posting on its website new inspection reports described in paragraph 33, research facility annual  
9 reports described in paragraph 34 other than the three years' worth of reports that APHIS re-  
10 posted, or enforcement orders described in paragraph 35.

11 42. Filing a FOIA request for these records under 5 U.S.C. § 552(a)(3) would result in  
12 significant burdens for Plaintiffs and members of the general public. It will cause Plaintiffs to  
13 devote substantial staff time managing FOIA requests and processing responses. It will also cause  
14 significant delays in receiving the information. For example, although FOIA requires a response  
15 within 20 business days, last year the average time APHIS took to respond even to simple  
16 requests was 93 days. For complex requests, the average was 233 days. And these are averages;  
17 the longest time it took APHIS to respond to a request last year was over three years—1,201 days.  
18 USDA, *Department of Agriculture Freedom of Information Act Annual Report for Fiscal Year*  
19 *2016*, at 22, <https://www.dm.usda.gov/foia/reading.htm#reports> (follow "DOCX" hyperlink for  
20 USDA Annual FOIA Reports 2016). Moreover, these reported response times encompass only  
21 FOIA requests made when the ACIS and EA databases were still available to the public. APHIS  
22 is now likely to be inundated with FOIA requests for records that were previously available in  
23 those databases, thereby increasing APHIS's FOIA workload and presumably lengthening even  
24 further the processing times for FOIA requests. Waiting months—or sometimes years—for  
25 information about serious violations of the AWA would render ineffective Plaintiffs' oversight of  
26 agency enforcement and their mission to inform the public about AWA violations. Using the  
27 FOIA request process could also result in fees assessed to plaintiffs, thereby burdening their  
28 ability to access this information.

**CLAIMS FOR RELIEF**

**COUNT ONE**

**FOIA—FAILURE TO AFFIRMATIVELY DISCLOSE**

1  
2  
3  
4 43. Plaintiffs re-allege and incorporate by reference all previous paragraphs as if fully  
5 set forth herein.

6 44. Defendants USDA and APHIS violate FOIA by failing to comply with  
7 requirements to affirmatively disclose final opinions or orders, and frequently requested records.

8 45. FOIA requires agencies to “make available for public inspection in an electronic  
9 format” without the need for any predicate request, *inter alia*, all “final opinions” or “orders”  
10 issued in the “adjudication of cases.” 5 U.S.C. § 552(a)(2)(A). “Order” is defined as “the whole or  
11 a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of  
12 an agency in a matter other than rule making.” 5 U.S.C. § 551(6).

13 46. FOIA requires agencies to affirmatively disclose frequently requested records. It  
14 does so specifically by requiring agencies to “make available for public inspection in an  
15 electronic format” without the need for any predicate request, *inter alia*:

16 (D) copies of all records, regardless of form or format--

17 (i) that have been released to any person under  
18 paragraph (3); and

19 (ii) (I) that because of the nature of their subject  
20 matter, the agency determines have become or are  
likely to become the subject of subsequent requests  
for substantially the same records; or

21 (II) that have been requested 3 or more times.

22 5 U.S.C. § 552(a)(2)(D) (hereinafter referred to as “frequently requested records”). The USDA’s  
23 FOIA regulations further specify that in deciding whether records are likely to become the subject  
24 of subsequent requests, the agency should consider:

25 (i) Previous experience with similar records;

26 (ii) The particular characteristics of the records involved,  
27 including their nature and the type of information contained  
28 in them; and

- 1 (iii) The identity and number of requesters and whether there is  
2 widespread media, historical, academic, or commercial  
interest in the records.

3 7 C.F.R. § 1.4(a)(4). USDA regulations further provide only one condition under which the  
4 agency may remove from the public domain frequently requested records that have already been  
5 made available for public inspection: “Agencies may remove a record from this access medium  
6 when the appropriate official determines that it is unlikely there will be substantial further  
7 requests for that document.” 7 C.F.R. § 1.4(f).

8 47. Inspection reports, Letters of Information, Official Warning Letters, and voluntary  
9 settlement agreements described in Paragraphs 33 and 35 constitute orders required to be made  
10 available pursuant to 5 U.S.C. § 552(a)(2)(A) because they represent the agency’s conclusive  
11 determination about whether a regulated entity has violated the AWA. Inspection Reports  
12 document violations of the applicable regulations and instruct the licensee or registrant what  
13 corrective action must be taken. Official Warning Letters contain the heading, “VIOLATION OF  
14 FEDERAL REGULATIONS,” and APHIS explains that when it “issues an official warning, it  
15 closes the investigative file involving the alleged violation.” Similarly, APHIS explains that if a  
16 regulated party accepts a voluntary settlement agreement, it “closes its investigative file.” USDA  
17 APHIS, *Investigative and Enforcement Process*,  
18 [https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies\\_processes](https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies_processes) (last modified  
19 Oct. 28, 2016). These constitute orders that must be affirmatively disclosed under FOIA without  
20 the need for a member of the public to file a FOIA request.

21 48. All records previously published in the ACIS and EA databases—along with the  
22 list of licensees and registrants under the AWA—constitute frequently requested records under  
23 FOIA. The history of requests for these records and the nature of the records makes them likely  
24 the subject of future requests, and thus they are required to be made available pursuant to 5  
25 U.S.C. § 552(a)(2)(D) and 7 C.F.R. § 1.4(a)(4). On information and belief, these records were  
26 routinely requested and released under FOIA, 5 U.S.C. § 552(a)(3), prior to the time that APHIS  
27 began to publish those records online. Moreover, over the course of many years, Plaintiffs  
28

1 regularly used the records in the ACIS and EA databases to distribute information to their  
2 members and the public, demonstrating widespread interest in the records.

3 49. In 2009, APHIS publicly characterized inspection records as frequently requested  
4 records. USDA APHIS, *Letter from APHIS Acting Administrator and Associate Administrator to*  
5 *APHIS Management Team and Program Leaders Group* (June 19, 2009),  
6 <https://www.aphis.usda.gov/foia/downloads/APHIS%20Commitment%20to%20Transparency.pdf>  
7 f (“Animal Care began making facility inspection reports available to the public on the APHIS  
8 Web site. These were the most frequently requested APHIS records under the FOIA . . .”).  
9 Further, in 2015, APHIS responded to a FOIA request for enforcement records (specifically  
10 warning letters, complaints, decisions and orders, and stipulations) by asserting that such records  
11 “are frequently requested and as a result, APHIS, in compliance with the Electronic Freedom of  
12 Information Act Amendments of 1996, made the determination to provide the requested records  
13 on its agency website.” On information on belief, APHIS routinely made this determination in  
14 response to other requests for enforcement action records, inspection reports, and annual research  
15 facility reports that are no longer available on the ACIS and EA databases. Moreover, APHIS’s  
16 announcement regarding the removal of the ACIS and EA databases from its website does not  
17 include any finding that the records are unlikely to be the subject of future requests.

18 50. Plaintiffs have submitted FOIA requests for these records. Plaintiff ALDF has  
19 requested the categories of records previously published to the ACIS and EA databases in their  
20 totality, and will do so on a continuing basis. Plaintiff SAEN has requested ACIS and EA  
21 database records for all dealers, research facilities, and transporters, and will do so on a  
22 continuing basis. Plaintiff CAPS has requested ACIS and EA database records relating to cat and  
23 dog breeders and dealers from ten different jurisdictions, and will do so on a continuing basis.  
24 Plaintiff Animal Folks has requested the ACIS and EA database records for all Minnesota dealers  
25 (including breeders), exhibitors, and research facilities, and will do so on a continuing basis. On  
26 information and belief, other organizations and individuals have requested the categories of  
27 records previously published to the ACIS and EA databases, including in their totality, and will  
28 continue to request those records in on a continuing basis as long as the databases remain offline.



1           51.     Despite FOIA’s nondiscretionary mandate to affirmatively disclose these records  
2 to the public, no records previously published in the ACIS and EA databases are available to the  
3 public on APHIS’s website or in any other electronic format except final orders and consent  
4 decisions of the ALJ, which are only available through the Office of Administrative Law Judges  
5 website.

6           52.     Although the agency has not yet removed or redacted the list of licensees and  
7 registrants under the AWA, its announcement that it will “review and redact, as necessary, the  
8 lists of licensees and registrants under the AWA,” makes the threat of removal of information  
9 from this list “definite and concrete” rather than hypothetical, and this Court may thus issue relief  
10 under the Declaratory Judgment Act, 28 U.S.C. § 2201. *MedImmune Inc. v. Genentech, Inc.*, 549  
11 U.S. 118, 126 (2007); USDA APHIS, *Announcement*,  
12 <https://acis.aphis.edc.usda.gov/ords/f?p=116:1:5760383222747> (last modified Feb. 7, 2017).

13           53.     The agency deprived Plaintiffs access to several categories records which it is  
14 obligated to electronically publish under FOIA and threatened to deprive access to additional  
15 records.

16           54.     FOIA provides that “the district court of the United States in the district in which  
17 the complainant resides . . . has jurisdiction to enjoin the agency from withholding agency records  
18 and to order production of any agency records improperly withheld from the complainant.” 5  
19 U.S.C. § 552(a)(4)(B). There is, accordingly, a cause of action under FOIA for the violation of  
20 the affirmative disclosure requirements at 5 U.S.C. § 552(a)(2). The Court may therefore enjoin  
21 the agency from withholding those records by failing to make them available for public  
22 inspection in an electronic format as required under FOIA.

23           55.     Plaintiffs are entitled to a declaration that the agency must make categories of  
24 records previously published on the ACIS and EA databases publicly available in an electronic  
25 format.

26           56.     Plaintiffs are entitled to a declaration that the agency must make the list of  
27 licensees and registrants publicly available in an electronic format.  
28



**COUNT THREE**

**APA – DELETION OF DATABASES**

1  
2  
3 64. Plaintiffs re-allege and incorporate by reference all previous paragraphs as if fully  
4 set forth herein.

5 65. Regardless of whether the agency’s failure to make documents available for public  
6 inspection violates FOIA’s affirmative disclosure requirements, the agency’s decision to  
7 “implement actions to remove documents” by deleting the ACIS and EA databases constitutes an  
8 independent final agency action. USDA APHIS, *Announcement*,  
9 <https://acis.aphis.edc.usda.gov/ords/f?p=116:1:5760383222747> (last modified Feb. 7, 2017); 5  
10 U.S.C. § 704.

11 66. FOIA provides only a cause of action for a failure to make publicly available  
12 certain categories of records, but does not provide any cause of action for the removal of  
13 databases previously available on an agency’s website, and thus there is no adequate alternative  
14 remedy for Plaintiffs with respect to this final action.

15 67. Despite the agency’s February 7, 2017 “Editor’s Note” asserting that the “review  
16 of APHIS’ website has been ongoing” and that “adjustments may be made regarding information  
17 appropriate for release and posting,” the agency’s removal of whole databases from its website is  
18 not merely tentative in nature. Rather, it marks the “consummation” of the agency’s decision  
19 making process, and furthermore the “rights and obligations” of plaintiffs to have that  
20 information made affirmatively available have been determined, rendering the removal of the  
21 databases a final agency action reviewable under the APA. 5 U.S.C. § 704; *Bennett v. Spear*, 520  
22 U.S. 154, 177 (1997).

23 68. In taking down the ACIS and EA databases, the agency explained that it took such  
24 action “[b]ased on [its] commitment to being transparent, remaining responsive to our  
25 stakeholders’ informational needs, and maintaining the privacy rights of individuals . . . .” USDA  
26 APHIS, *Announcement*, <https://acis.aphis.edc.usda.gov/ords/f?p=116:1:5760383222747> (last  
27 modified Feb. 7, 2017).  
28

1 69. Removing databases that have been available to the public for years does not  
2 contribute to the agency’s transparency, as it renders agency enforcement of the AWA less, not  
3 more, transparent to the public.

4 70. Removing databases that have been available to the public for years does not  
5 respond to stakeholders’ informational needs, as it renders it more, not less, difficult to access  
6 agency information.

7 71. The agency already protected the privacy rights of individuals by redacting  
8 personally identifying information under 5 U.S.C. § 552(b)(6), (7)(C) prior to publishing any and  
9 all records on the ACIS and EA databases. Removing databases that have been available to the  
10 public for years thus does not advance privacy interests.

11 72. The agency’s removal of enforcement records from its website is arbitrary,  
12 capricious, and an abuse of discretion, in violation of the APA. 5 U.S.C. § 706.

13 73. As a result of this final action to remove the ACIS and EA databases, plaintiffs  
14 have been deprived of information in violation of the APA.

15 74. This Court should reverse and vacate this agency action—requiring the agency to  
16 return its practices to the status quo prior to February 3, 2017—and remand the matter to the  
17 agency. 5 U.S.C. § 706.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs request that this Court:

20 A) Declare that it is unlawful for Defendants to fail to make the categories of records  
21 previously published in the ACIS and EA databases publicly available in an electronic format;

22 B) Declare that Defendants may not lawfully remove the list of regulated entities  
23 under the AWA currently posted on their website;

24 C) Order Defendants to publish on their website the categories of records previously  
25 published in the ACIS and EA databases;

26 D) Order Defendants to produce the categories of records previously published in the  
27 ACIS and EA databases to Plaintiffs;

28

1 E) Reverse, vacate, and remand Defendants' removal of the categories of records  
2 previously published in the ACIS and EA databases;

3 F) Award Plaintiffs their costs and reasonable attorneys' fees pursuant to FOIA, 5  
4 U.S.C. § 552(a)(4)(E);

5 G) Award Plaintiffs their costs and reasonable attorneys' fees pursuant to the Equal  
6 Access to Justice Act, 28 U.S.C. § 2412; and

7 H) Grant such other and further relief as this Court may deem just and proper.  
8

9 DATED: February 23, 2017

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