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Ms. Tamera L. Ripperda
Director
Exempt Organizations
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

**Re: Global Animal Partnership
EIN: 20-2234609**

**The Humane Society of the United States
EIN: 53-0225390**

Dear Ms. Ripperda:

I am writing to alert the IRS to apparent use of charitable funds by a private operating foundation for the impermissible private benefit of one of its disqualified persons.

Facts—Introduction

Global Animal Partnership is a private operating foundation founded by, and with contributions from, Whole Foods Market. Global Animal Partnership's sole substantial activity appears to be the operation of a program to certify that certain food products sold by Whole Foods Market. In addition, Whole Foods Market may be paying fees to Global Animal Partnership to provide services that benefit Whole Foods Market.

Whole Foods Market Corporation ("Whole Foods") is a Texas-based chain of premium supermarkets that promotes itself as "America's Healthiest Grocery Store." Whole Foods provides both traditional groceries and meat and poultry products, as well as prepared foods. In 2005, Whole Foods founded Global Animal Partnership (GAP), a tax-exempt organization whose principal activity is developing and promoting its "5-Step® Animal Welfare Rating Standards." In turn, the Standards' principal use appears to be to certify that meat products sold by Whole Foods Market satisfy the Standards. Whole Foods' founder and long-time CEO, John Mackey, was a board member of GAP until 2014.

John Mackey also serves on the board of the Humane Society of the United States, EIN: 53-0225390, which is exempt from federal income tax under §501(c)(3) The Humane Society of the

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United States has promoted GAP standards and used charitable funds to launch brand attacks on companies that do not adhere to GAP standards. The Humane Society's CEO, Wayne Pacelle, also serves on the board of the Global Animal Partnership, and HSUS has a history of intimidation campaigns.¹

In summary, HSUS uses tax-exempt funds to benefit the private interests of Whole Foods by attempting to intimidate Whole Foods' competitors into adopting stringent and costly GAP standards. This stands to increase Whole Foods' business (in part through promotion of GAP products, presently available nearly exclusively at Whole Foods) and harm its competitors' business (by cajoling them to buying higher-cost GAP products).

For these reasons, we request the IRS take immediate action to investigate and stop the unlawful use of charitable funds, revoke the exemption of Global Animal Partnership, and assess any applicable taxes and penalties on The Humane Society of the United States and Whole Foods Market.



¹ In 2014, the Humane Society settled a racketeering and fraud lawsuit filed under the federal RICO Act for nearly \$11 million. See *Feld Entertainment v. Animal Welfare Institute et al.*, No. 07-1532 (D.D.C.) (Hon. Emmet G. Sullivan presiding) and <http://www.mdcourts.gov/opinions/cosa/2016/2598s14.pdf>.

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Analysis

GAP is an arm of Whole Foods Corporation and serves Whole Foods' business interests.

Global Animal Partnership was founded in 2005 as the Animal Compassion Foundation, a private foundation. Its legal address at founding was Whole Foods' headquarters in Austin, Texas. In 2007, the IRS recognized that GAP was exempt from income tax under §501(c)(3), and a private foundation described in §509. According to tax records,² Whole Foods was responsible for 75% of donations to ACF/GAP through 2009.

Whole Foods provided the seed money for GAP—reportedly 5% of one day's sales—and announced the appointment of GAP's initial executive director, Anne Malleau. Malleau is still GAP's executive director and states on her LinkedIn profile that she is employed as the "Global Meat Coordinator" at Whole Foods.³ GAP and Whole Foods were so intertwined that the *New York Times* referred to GAP's original organization as the "*Whole Foods Animal Compassion Foundation*" (emphasis added).⁴ Whole Foods' founder and long-time CEO served on GAP's Board of Directors until 2014. He appears to have been succeeded by Whole Foods' President, A.C. Gallo.

GAP does not appear to have any significant presence outside of Whole Foods.⁵ Indeed, it seems that GAP exists solely to perpetuate Whole Foods' interest in selling a differentiated kind of meat. Since 2011, all fresh pork, chicken, turkey and beef sold at Whole Foods has come from farms that are certified by Global Animal Partnership. According to Professor James McWilliams, a vegan

² Global Animal Partnership/Animal Compassion Foundation (EIN: 20-2234609) Form 990's FY 2005-2009, Accessed April 26, 2017 on CitizenAudit.com

³ "Supermarket News : Spotlight on Animal Care Reflects Consumer Concerns," *Certified Humane Blog*, May 2, 2005, accessed April 12, 2017, <http://certifiedhumane.org/supermarket-news-spotlight-on-animal-care-reflects-consumer-concerns/>

⁴ Kim Severson, "Preservation's Progress," *New York Times*, November 7, 2007, accessed April 12, 2017, <http://www.nytimes.com/2007/11/07/dining/07turk.html>

⁵ GAP's website mentions only three other "retail" users, Tender and True Pet Nutrition, Redlaw Sauce Co., and Boulder Natural Meats, <http://www.globalanimalpartnership.org/5-step-partners/retailers-and-foodservice>, accessed April 25, 2017. Tender and True doesn't even have an online retail presence, selling through www.pet360.com, and numerous unrelated retailers. Redlaw Sauce Co. is a one-location business in Golden Colorado (Denver suburbs), <http://www.redlawsauce.com/visit-us>, that claims to donate 5% of its profits to GAP. <http://www.redlawsauce.com/shop>. Boulder Natural Meats is a poultry processing company located in Denver, Colorado. <http://bouldernaturalmeats.com/company-description/>. All sites accessed April 25, 2017.

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commentator, Whole Foods CEO John Mackey “played a direct role in helping to design these [GAP] standards.”⁶

In an effort to bolster marketing claims of perceived wholesomeness, Whole Foods created GAP to certify that the supply chain of its product offerings used ethical practices. While the public benefit of certification is not clear,⁷ Whole Foods substantially benefits from the limited scope of GAP, in clear violation of Treas. Reg. §1.501(c)(3)-1(d)(1)(ii). Regardless of whether GAP’s stated purpose is within the scope of §501(c)(3), its true purpose is to increase the perceived value of meat products sold by Whole Foods Markets. Whole Foods ensures that this purpose is satisfied by providing nearly all of GAP’s financial and other support and simply uses GAP as a screen to encourage consumers to purchase meat from Whole Foods instead of its competitors.

According to GAP’s 2014 Form 990, 91 percent of GAP’s total revenue came from Whole Foods Market.⁸ According to the explanation page of a grant by the Open Philosophy Project to GAP, direct support for GAP from Whole Foods was replaced in 2015 by providing two full-time staff members and payment for labeling.⁹

Regardless of the sincerity of belief of those involved at GAP, *est. of Hawaii v. Commissioner*, 71 T.C. 1067, 1081-82 (1979), clearly established that exempt entities cannot exist for the benefit of non-exempt purposes. Similar to *est. of Hawaii*, by paying the salary of the **executive director** of GAP, Whole Foods exerts significant control of GAP’s activities and improperly steers business to Whole Foods.

Moreover, the precedent established by Rev. Rul. 76-206, 1976-1 C.B. 154 that even in cases when a third-party creates, manages, and operates an exempt organization with zero contact from a for-profit entity if that organization’s direct or indirect actions adds a benefit that is either quantitative or qualitative to a for-profit business then the organization is serving a private rather than public interest. In this case, GAP was created and is operated by employees of Whole Foods and its actions directly benefit Whole Foods in a qualitative— through added value in marketing materials — and a quantitative manner through the sheer scale and dependence of Whole Foods for its continued existence.

⁶ James McWilliams, “Double dipping on Welfare Labeling,” *The Pitchfork*, March 28, 2013, accessed April 26, 2017

⁷ Dave Sjeklocha, “Whole Foods’ Welfare Ratings Have Big Credibility Gap,” *Beef Magazine*, April 2, 2011, accessed April 25, 2017, <http://www.beefmagazine.com/health/vets-opinion/0422-whole-foods-welfare-ratings>.

⁸ Global Animal Partnership, Form 990, FY 2014, accessed April 26, 2017
http://pdfs.citizenaudit.org/2015_06_Pf/20-2234609_990PF_201412.pdf

⁹ Open Philanthropy Project, *Global Animal Partnership – General Support*,
<http://www.openphilanthropy.org/focus/us-policy/farm-animal-welfare/global-animal-partnership-general-support>

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HSUS Uses Tax-Exempt Funds to Promote GAP and Intimidate Businesses

If GAP can be viewed as the “carrot” for companies, The Humane Society of the United States is the “stick.” HSUS has a history of intimidation campaigns (outlined below) against companies that do not agree to pledge to buy animal products in a manner acceptable to HSUS.

With respect to meat, that “acceptable” manner is compliance with GAP’s standards. As a 2016 Boston Globe article noted, HSUS CEO Wayne Pacelle “hopes to nudge major supermarkets to join Whole Foods in adopting the Global Animal Partnership meat-rating standards.”¹⁰ HSUS has coordinated announcements with companies pledging to buy GAP-certified products, including Panera,¹¹ Aramark, and Compass Group.¹² Chipotle reportedly worked with HSUS in committing to buy only GAP-certified chicken.¹³ Quiznos, in pledging to buy only GAP-certified chicken by 2024, stated it had worked with HSUS in creating the policy.¹⁴

Indeed, HSUS’s endorsements of GAP go back years. A May/June 2014 article in an official magazine of HSUS includes a quote from vice president Joe Maxwell endorsing GAP products:

*If shelters choose to serve animal products at their events, Maxwell says, they can send a positive message by making sure that the food comes from farms that have high standards for animal care. Rather than buying meat produced by factory farms, for example, shelters can look for Certified Humane or Global Animal Partnership-certified products.*¹⁵

In a separate 2011 interview, Maxwell noted:

¹⁰ Scot Lehigh, “Encouraging News on Animal Welfare,” *Boston Globe*, April 29, 2016, accessed April 12, 2017, <https://www.bostonglobe.com/opinion/2016/04/28/encouraging-news-animal-welfare/FLyfXJoYMvAToaEOIBioQN/story.html>.

¹¹ “Panera Bread® Broadens Leadership on Animal Welfare Issues,” last modified December 20, 2016, <https://globenewswire.com/news-release/2016/12/20/899115/0/en/Panera-Bread-Broadens-Leadership-on-Animal-Welfare-Issues.html>.

¹² “Two large foodservice companies commit to slower-growing broilers,” *Feedstuffs*, November 03, 2016, accessed April 12, 2017, <http://www.feedstuffs.com/story-two-large-foodservice-companies-commit-slower-growing-broilers-45-148798>.

¹³ Danika Washington, “Chipotle Instituting New Animal Welfare Practices For Chicken Suppliers,” *Denver Post*, January 13, 2017, accessed April 12, 2017, <http://www.denverpost.com/2017/01/13/chipotle-chicken-welfare/>.

¹⁴ “Quiznos Commits to Betterment of Chicken Welfare,” last modified Feb 23, 2017, <http://www.prnewswire.com/news-releases/quiznos-commits-to-betterment-of-chicken-welfare-300412834.html>.

¹⁵ James Hettinger, “To Protect...and serve? Shelters Wrestle with the Issue of Humane Menus for their Events,” *Animal Sheltering*, May-June, 2014, accessed April 12, 2017, <https://www.animalsheltering.org/magazine/articles/protectand-serve>

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The HSUS promotes family farmers and independent ranchers in transitioning their animal livestock production to such programs as Global Animal Partnership. These standards are a cornerstone to Whole Foods Markets...¹⁶

Simultaneously, HSUS has made it clear that companies that don't make pledges to buy GAP chicken face brand attacks.

On January 5, 2017, HSUS CEO Wayne Pacelle declared, "Our purpose in 2017 will be to lead, to push and pull, to coax and cajole, to celebrate, and, where necessary, *to confront*." (Emphasis added.)¹⁷

HSUS's plans for "confronting" are centered on intimidating food companies. Pacelle also writes, "We're gearing up for 2017 to be the year when the fate of the broiler chicken turned dramatically for the better."

Translation: HSUS's major campaign involves intimidating companies into changing the kind of chicken they buy, and pushing them to a standard that benefits Whole Foods/GAP.

HSUS Has History of Intimidation Tactics

HSUS has long used public smear campaigns in an effort to intimidate restaurants and grocery stores. HSUS has launched campaigns such as "IHOP Cruelty" and "Caged for Publix" to pressure companies into changing corporate policies. Even companies that agree to HSUS demands can face continued attacks. After Costco agreed to switch to cage-free eggs, HSUS still launched a smear campaign accusing Costco of not moving quickly enough.¹⁸

HSUS has also ventured into activity of questionable legality. In 2014, HSUS and two of its employees settled with Feld Entertainment, owner of Ringling Bros Circus, in a civil RICO case. Feld brought the case after discovering HSUS had secretly paid a witness who lied under oath

¹⁶ Chuck Jolley, "Jolley: 5 Minutes with Joe Maxwell, HSUS Dir. Of Rural Outreach," *Drovers*, December 30, 2011, accessed April 12, 2017, <http://www.cattlenetwork.com/news/industry/jolley-5-minutes-joe-maxwell-hsus-dir-rural-outreach>.

¹⁷ Wayne Pacelle, "An Open Letter – Looking Back, and Charging Ahead in 2017," *Wayne Pacelle's Blog*, January 5, 2017, accessed April 12, 2017, <http://blog.humanesociety.org/wayne/2017/01/open-letter-looking-back-charging-ahead-2017.html>.

¹⁸ Wayne Pacelle, "Breaking News: HSUS Investigation Exposes Cruelty and Filth at Costco Egg Supplier," *Wayne Pacelle's Blog*, June 9, 2015, accessed April 26, 2017, <http://blog.humanesociety.org/wayne/2017/01/open-letter-looking-back-charging-ahead-2017.html>.

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in separate litigation against Feld. In total, Feld obtained \$25 million from various animal-rights groups; HSUS's share of the settlement was about \$11 million.¹⁹

Moreover, several HSUS employees have spoken out in favor of the Animal Liberation Front, which the FBI has designated a domestic terror organization.²⁰ The Chief Operating Officer of HSUS has written, "A perfect example of effective rebellion is an Animal Liberation Front raid on a laboratory that frees puppies from its confines and exposes video footage of the researchers torturing the animals. Sure, the activists broke the law, but all of their activities focused directly on saving animals."²¹

HSUS Operates in Concert with Other Groups to Coerce Whole Foods' Competition

A number of HSUS-allied groups have made explicit threats to companies to adopt GAP standards. A major restaurant brand was explicitly threatened with a national brand attack unless it pledged to adopt GAP standards. A copy of the "shakedown" threat follows this letter.²²

These corporate intimidation campaigns have a common funding source: the Open Philanthropy Project (OPP), which is a joint venture between Good Ventures (EIN: 46-1008520) and GiveWell (EIN:20-8625442). Tellingly, OPP's program officer for food issue grants is a former special advisor to the HSUS CEO.

OPP funds not only HSUS's corporate campaigns, but those of Compassion in World Farming USA (CIWF-USA) (whose executive director, Leah Garces, is on the board of GAP), Mercy for Animals (MFA), and The Humane League (THL).²³

In 2016, OPP gave \$3 million apiece to MFA and THL with \$1 million going to "broiler chicken welfare corporate campaigns," another million going to "international cage-free advocacy," and the last million going to "corporate cage-free campaigns." HSUS received \$1 million for the

¹⁹ The Fund for Animals, Inc. v. National Union Fire Insurance Company of Pittsburgh, PA, Court of Special Appeals of Maryland, No 2598, 2014, <http://www.mdcourts.gov/opinions/cosa/2016/2598s14.pdf>, accessed April 26, 2017

²⁰ John E. Lewis, Statement to the Senate Judiciary Committee, Hearing, May 18, 2004, <https://archives.fbi.gov/archives/news/testimony/animal-rights-extremism-and-ecoterrorism>, Accessed April 26, 2017

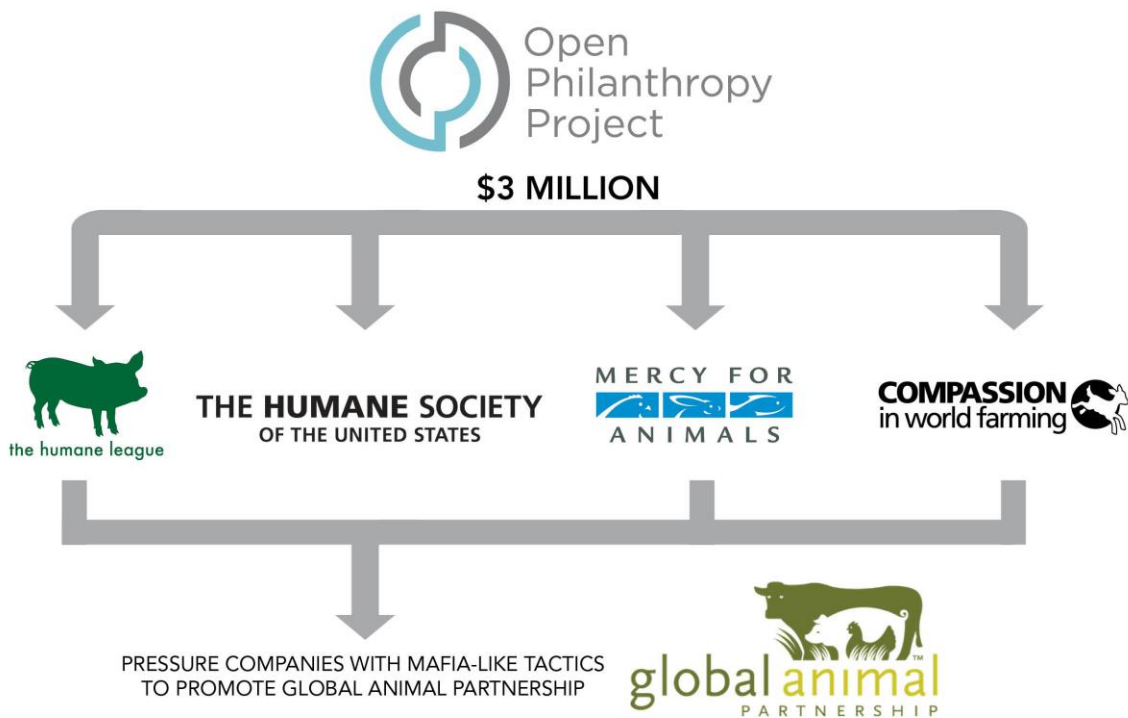
²¹ Mike Markarian, "Nationals and Grassroots," *Abolitionist*, Issue #4, 1997

²² For privacy reasons, we have redacted identifying information of the recipient.

²³ Grants Database, "Open Philanthropy Project, Accessed on April 26, 2017, http://www.openphilanthropy.org/giving/grants?keys=general+support&field_org_name_value_selective=All&field_focus_area_target_id_selective=531&field_date_value%5Bvalue%5D%5Byear%5D=

“broiler welfare corporate campaign,” with an additional \$500,000 for the “corporate cage-free campaign.” And CIWF-USA received \$550,000 in general support.

These groups admittedly work in concert. Just as HSUS does, THL, CIWF-USA, and MFA bully and attack the brands of companies in order to induce them to make pledges about animal protein sourcing. In March 2017, all four of the organizations signed onto a joint statement that laid out “three versions of broiler welfare policy language” that are acceptable. All three were completely dependent on the usage of GAP standards.²⁴



The Humane League also has a history of unlawful activity. The group has been the subject to a number of restraining orders. The Humane League’s founder was also convicted of making threats of terrorism.²⁵

HSUS Has Ties to GAP

²⁴ “Joint Animal Protection Organization Statement on Broiler Chicken Welfare issues,” last modified March 2017, <http://poultryprogress.com/docs/Statement.pdf>.

²⁵ See: Commonwealth of Pennsylvania v. Nicholas Cooney. Docket number: MC-51-CR-0315061-2006

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In 2009, Miyun Park, who was then HSUS's vice president for farm issues, left HSUS to become the executive director of GAP, which was then a fledgling organization. She served there for more than four years.

HSUS President and CEO Wayne Pacelle sits on the board of GAP. HSUS, according to GAP's 2014 990, donated \$25,000 to GAP. Pacelle has stated that he offered Whole Foods' CEO John Mackey a spot on HSUS's board at the same time Pacelle was offered a position on GAP's board.²⁶

HSUS and Whole Foods co-financed a documentary *At the Fork*, which promotes GAP through a segment advocating for animal labeling that includes statements from Mackey, Pacelle, Malleau, and Leah Garces advocating for animal welfare labeling and GAP. The movie concludes with one of its three main tenants: "refuse to buy animal products unless they are certified higher welfare."²⁷

Promotion of GAP Serves Whole Foods' Private Interests

Since its founding, GAP has been inextricably linked to Whole Foods, to the point where even today a Whole Foods employee runs GAP. Promotion of GAP by HSUS is promotion of Whole Foods' brand.

By creating GAP, Whole Foods sought to control an organization whose purported purpose was to ensure animal welfare standards, when in fact it was the lynchpin of a marketing strategy aimed at cornering particular market segments for niche animal products. HSUS's use of tax-exempt donations to further GAP therefore furthers Whole Foods' business interests. If these products become more prevalent, the cost to Whole Foods will decline. Additionally, promotion of GAP products serves Whole Foods because, presently, Whole Foods is nearly the only place the public can buy these products.

The intimidation campaign by HSUS *et al.* also benefits Whole Foods' bottom line by increasing the cost of animal products for competitors, which will strengthen Whole Foods' hold on the premium grocery market. By working to coerce competitors and intimidate suppliers, HSUS and Whole Foods have worked in tandem, through GAP, to improperly benefit Whole Foods Markets at the expense of its competitors.

HSUS Has Used Tax-Exempt Funds to Lobby for Whole Foods' Private Benefit

HSUS ran a campaign for Massachusetts Question 3 in order to restrict the sale and production of conventionally raised pork and eggs to benefit Whole Foods, and indirectly, John Mackey. As to

²⁶ Wayne Pacelle, "Whole Foods Deserves Whole Praise for Anti-Factory Farming Leadership," *Wayne Pacelle's Blog*, September 28, 2015, Accessed April 26, 2017

²⁷John Papola, *At The Fork*, Amazon Prime Video, (2016) Accessed April 26, 2017, at 1:30:55.

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Mr. Mackey, this was an indirect excess benefit transaction because of his service as a director of both HSUS and Whole Foods. Please refer to my October 21, 2016 complaint that I sent to you, which I've attached, for further information.²⁸

Conclusion

The evidence described in this letter above demonstrates that charitable funds have been used to promote private interests in violation of federal regulations. We trust that the TE/GE Division will investigate the charities and disqualified persons in question, revoke GAP's exemption, and impose appropriate excise taxes on those disqualified persons who have improperly benefitted from the activities of GAP and HSUS.

Sincerely,

Will Coggin
Research Director
Center for Consumer Freedom
1090 Vermont Ave. N.W.
Suite 800
Washington, D.C. 20005

Enclosures

²⁸ Will Coggin, letter to Tamera L. Ripperda, October 21, 2016

JOINT ANIMAL PROTECTION ORGANIZATION STATEMENT ON BROILER CHICKEN WELFARE ISSUES

March 2017

To Whom It May Concern:

As you may know, we, the undersigned organizations, work individually with many food companies. In the course of that engagement, we're sometimes asked by companies if our groups can speak with one voice. That generally isn't possible—our groups don't necessarily work in tandem, and often disagree on issues, tactics, and more.

That said, you may be pleased to know that, while we often are not in agreement with one another, we *have* reached agreement on what the most pressing welfare concerns related to broiler production are, and how to best mitigate those concerns. Toward that end, we've reached three versions of broiler welfare policy language—each of which addresses the four main welfare concerns associated with broiler production, and each of us all agree represents meaningful progress. Those versions are laid out below. Thank you for your interest in this issue.

Sincerely,

Animal Equality
Compassion in World Farming USA
Compassion Over Killing
Mercy For Animals
The American Society for the Prevention of Cruelty to Animals (ASPCA)
The Humane League
The Humane Society of the United States (HSUS)
World Animal Protection

VERSION ONE:

By 2024, we will source only chickens certified by Global Animal Partnership (GAP) and require all chickens to be processed in a manner that avoids live-dumping and live-shackling, and instead utilizes a pre-shackle, multi-step controlled-atmosphere processing system that's widely hailed as more humane.

VERSION TWO:

By 2024, we will require our chicken suppliers to do the following for 100% of our products:

- a) Transition to strains of birds approved by GAP based on measurably improved welfare outcomes.
- b) Reduce stocking density to a maximum of 6 lbs./sq. ft. (per GAP standards), and prohibit broiler cages.
- c) Provide birds enriched environments including litter, lighting, and enrichment that meets GAP's new standards.
- d) Process chickens in a manner that avoids pre-stun handling and instead utilizes a multi-step controlled-atmosphere processing system that induces an irreversible stun.
- e) Demonstrate compliance with the above standards via third party auditing.

VERSION THREE:

By 2024, we'll ensure 100% of our chicken is produced under Global Animal Partnership's (GAP) standards for broiler breed/strain, environment (including lighting, litter, and enrichments) and stocking density (including no cages). We'll also ensure that by 2024, all chickens in our supply system be processed in a manner that avoids live-dumping and live-shackling of birds, and instead utilizes a pre-shackle multi-step controlled-atmosphere processing system that's widely hailed as more humane. And we'll demonstrate compliance with the above standards via third party auditing

From: Brian Alexander [mailto:briana@mercyforanimals.org]

Sent: [REDACTED]

To: [REDACTED]

Subject: Negative Publicity Campaign Targeting [REDACTED]

[REDACTED]:

We at Mercy For Animals are disappointed that no one from your company has engaged in dialogue with our organization regarding [REDACTED]' public statement on broiler chicken welfare. Having attempted contact by phone and email, and searched your website and public documents, we find no evidence that you have a broiler chicken policy in place, or that you require your chicken suppliers to meet the essential welfare standards committed to by Chipotle and Panera Bread, among other companies.

Please let us know the status of your broiler chicken welfare policy. If we do not hear from you by [REDACTED] we will assume that you do not have an adequate broiler policy established, and will commence our campaign as planned on [REDACTED]

The campaign will educate consumers about animal cruelty in your supply chain with actions including the following:

- Running large-scale advertising campaigns targeting your customers and directing them to our campaign website
- Organizing consumer boycotts of your company and leafleting by volunteers in front of and near [REDACTED] locations
- Using geolocation technology to precisely target hundreds of [REDACTED] locations and deliver mobile ads to the smartphones of customers as they enter your restaurants
- Submitting letters to the editor in community newspapers in the areas you serve to educate the public about [REDACTED] support of animal cruelty
- Releasing to the media letters from celebrity supporters calling on [REDACTED] to stop supporting animal cruelty
- Running TV advertisements and full-page print newspaper appeals criticizing [REDACTED] continued support of animal cruelty

It is still our sincere hope that [REDACTED] will demonstrate its commitment to corporate social responsibility by publicly releasing a broiler chicken welfare policy.

To discuss this urgent issue, please contact Brent Cox, vice president of corporate outreach, at 303-210-5552 or brentc@mercyforanimals.org.

Sincerely,

Brian Alexander
Campaign Coordinator
Mercy For Animals
202.460.0068

Mercy For Animals is dedicated to preventing cruelty to farmed animals and promoting compassionate food choices and policies through undercover investigations, legal advocacy, corporate outreach, and educational campaigns.

This communication (including any attachments) may contain confidential or privileged information. If you are not the intended recipient, or believe that you have received this communication in error, please do not print, copy, disseminate, disclose or otherwise use this information. Also, please notify the sender by email that you have received this transmission in error, and delete this email from your system. Thank you.

The Center For Consumer Freedom[®]

October 26, 2016

Tamera Ripperda
Director
Exempt Organizations
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

COMPLAINT

Dear Director Ripperda:

I am writing to alert the IRS to apparent use of charitable funds for impermissible private benefit.

The Humane Society of the United States (EIN: 53-0225390) is a §501(c)(3) organization, headquartered in Washington, D.C., and billing itself as an animal rights organization. HSUS is currently the principal financial backer of a ballot measure in Massachusetts, Question 3, which would effectively ban the sale of almost all eggs and pork in the state by 2022. A copy of the initiative is enclosed. As of October 20, 2016, HSUS has spent \$2.1 million to promote the Question 3.

This money appears to impermissibly benefit John Mackey, who is a director, and therefore a “disqualified person” (as defined in §4958), of HSUS.

In addition to being a director of HSUS, Mr. Mackey is the co-CEO of Whole Foods Market, and the co-founder of a “cage-free” certification program, Global Animal Partnership. Global Animal Partnership certifies certain foods, including eggs and pork, as having been humanely raised. Mr. Mackey helped co-found Global Animal Partnership, and HSUS’ CEO Wayne Pacelle sits on GAP’s board. According to GAP’s most recently available Form 990 (2014), 91 percent of GAP’s total revenue came from Whole Foods Market.¹

Question 3 is written in such a way that will unquestionably benefit Whole Foods and Global Animal Partnership. Whole Foods sells only “cage-free” eggs and pork, and Global Animal Partnership certifies only “cage-free” eggs and pork. Question 3 would ban the production or sale in Massachusetts of eggs and pork that are not produced or raised in “cage-free” facilities.

The effect would be to prohibit the sale in Massachusetts of approximately 85-90% of eggs and pork produced in the United States. In essence, Question 3 eliminates Whole Foods’ competitors from the marketplace for eggs and pork in an entire state.

If Question 3 passes, it is unclear whether Whole Foods’ competitors would be able to stock compliant eggs and pork products in Massachusetts by 2022. To be able to do so, the egg and pork suppliers of other supermarkets would have to invest millions of dollars in building new farming facilities. The resulting increases in wholesale, and thus retail, prices would give Whole Foods a clear competitive advantage over other supermarkets in Massachusetts.

¹ Mackey also sat on the GAP board as of 2014, according to the Form 990, but he is not currently on GAP’s website.

Lastly, Question 3 does not serve any conceivable charitable purpose. The measure hurts average Americans by limiting their food choices and likely increasing costs; it hurts farmers and retail businesses by eliminating a supply chain; and “cage-free” environments expose animals to incidents of inter-animal fighting and lead to higher animal mortality rates.

In light of the potential effect on the market for eggs and pork, it appears that Whole Foods Market and Global Animal Partnership may have conspired to reduce the supply of eggs and pork in Massachusetts, which would violate both federal and state antitrust laws.

Based on this evidence, HSUS’s expenditure of at least \$2.1 million of tax-exempt funds has the primary purpose of benefitting Mr. Mackey, a “disqualified person” of HSUS, as defined under §4958 of the Internal Revenue Code Section 4946, in his capacity as co-CEO of Whole Foods Market. (To the best of our knowledge, Whole Foods Market is not a disqualified person of HSUS, because Mr. Mackey and his family do not own at least 35% of WFM’s stock.)

The Treasury Inspector General for Tax Administration has previously received a letter from six congressmen in 2010 regarding potentially improper lobbying by HSUS. Additionally, then-director Lois Lerner received a letter from Congressman Blaine Luetkemeyer about the same matter. Since that time, the attorney general of Oklahoma has publicly issued a warning about HSUS, and the Council of State Governments’ Midwest caucus has called for investigations of HSUS.

We hope that the IRS will open an investigation into this matter and take appropriate action.

Sincerely,

Will Coggin
Managing Director
Enclosures