

SENT VIA REGULAR MAIL

January 27, 2011

George C. Gascón, District Attorney
Office of the District Attorney
850 Bryant Street, Room 322
San Francisco, CA 94103

Re: Animal Cruelty Violations of Raymond Young at Farmers' Market

Dear Mr. Gascón:

This firm represents Alex Felsing and Andrew Zollman in connection with the assault and battery and civil rights violations perpetrated against them by live bird vendor Raymond Young on the basis of their constitutionally protected free speech activities and their sexual orientation. That case is proceeding in San Francisco Superior Court as Case No. CGC-11-507626.

The injuries sustained by Mr. Felsing and Mr. Zollman arose out of their protest of the treatment of live chickens being sold at the Farmers' Market by Raymond Young. Mr. Felsing and Mr. Zollman believe the way Raymond Young treats the birds he sells at the Farmers' Market violates Penal Code §597(b).

It is our understanding your Office has given the legal opinion that poultry is exempt from the animal cruelty provisions of the Penal Code. We write seeking clarification because we are surprised by this legal conclusion, if, in fact, it is your Office's position.

The exemption argument under Penal Code §597.3, depends upon that section's definition of the word "animal". Since such definition seems to exempt poultry, poultry appears to be exempt from the prohibitions contained in §597.3. Yet, such definition is expressly limited in its application to only §597.3:

(b) As used in this section:

(1) "Animal" means frogs, turtles, and birds sold for the purpose of human consumption, with the exception of poultry (underline emphasis added).

Cal. Pen. Code §597.3(b)(1).

However, Penal Code §597.3 is only one section in Title 14, entitled "Malicious Mischief", that comprises sections 594 through 625c. Another section within Title 14 is Penal Code §597, which includes a subsection (b) that is directly applicable to our clients' allegations against Raymond Young for animal cruelty.

Like §597.3, §597 uses the word "animal" in its prohibitions against abuse of the same; however, unlike §597.3, §597 does not define its use of the word "animal".

Upon basic research into the issue, it is evident that §599b defines the word "animal" in every section within Title 14, unless that section (like §597.3) uses its own definition: "In this title, the word "animal" includes every dumb creature..." Cal. Pen. Code §599b. Therefore, it is clear

that the definition of the word “animal” in §597.3 only has application in that section of Title 14, while the definition in §599b governs other sections of Title 14 (like §597(b)).

What, then, is meant by “every dumb creature”?

The Court of Appeals exhaustively and thoughtfully analyzed and answered that question, thus: “section 599b, defining an ‘animal’ as including ‘every dumb creature,’ includes roosters and other birds...” *People v. Baniqued* (2000) 85 Cal. App. 4th 13, 28.


Although it is an archaic phrase, it’s very clear what the legislature intended “dumb creature” to mean, as indicated by the legislative history of Penal Code 599b:

2. Legislative Intent

Roosters and other birds fall within the statutory definition of "every dumb creature" (Pen C § 599b) and thus qualify as an "animal" for purposes of the animal cruelty statute (Pen C § 597). The plain language of the statute showed that the Legislature did not intend to restrict the phrase "dumb creature" to mammals.

Cal. Pen. Code § 599b.

Certainly, a chicken is a type of bird. Mr. Felsing and Mr. Zollman have copious documentation of Raymond Young’s abuse of the chickens he sells at the Farmers’ Market, including, not giving them enough water, air, space and food, as well as, not giving them adequate protection from the elements and physical abuse such as picking them up by their wing and sometimes worse.

Mr. Felsing and Mr. Zollman’s complaints therefore merit investigation by your office whether formal criminal charges should be brought against Raymond Young pursuant to § 597: 

§ 597. Cruelty to animals

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars (\$20,000).

Cal. Pen. Code § 597.

Accordingly, Mr. Felsing and Mr. Zollman would like to meet with you or your representatives to discuss these issues. We would be amenable to hosting such a meeting. Please indicate a suitable time and date when such a meeting would be convenient for you.

Regards,

Gonzalez & Leigh, LLP,

By: _____
Matt Gonzalez



George Gascón
District Attorney

JEFFREY ROSS
General Litigation,
Managing Attorney
DIRECT DIAL: (415) 553-1880
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February 7, 2011

Matt Gonzalez
Gonzalez & Leigh, LLP
744 Montgomery Street, Fifth Floor
San Francisco, CA 94111

Re: Your letter of 1/27/11 regarding allegations of animal cruelty against Raymond Young at Farmers' Market

Dear Mr. Gonzalez:

Thank you for sharing your concerns and opinions regarding the treatment of chickens by Raymond Young, a live animal market vendor here in San Francisco. As much as we agree with you that the treatment of these animals appears inhumane, there is nothing we can do to prosecute these allegations under the current laws in California.

In your letter you state that it is your understanding that our office has opined that poultry is exempt from the animal cruelty provisions of the Penal Code. Our office has never expressed such an opinion. Penal Code section 597 is the general animal cruelty statute and is applicable to all animals including chickens. The issue is not whether chickens fall within the Penal Code section definition of "animal" of 599b, nor does it depend as you assert on section 597.3's definition of animal. The legal impediment to our charging a case against Mr. Young is one of statutory construction. It is whether in the context of a live animal market, Mr. Young's alleged treatment of his poultry is exempt from prosecution under the terms of the more specific statute, Penal Code section 597.3.

Our analysis of statutory construction is guided by the rule of *ejusdem generis*. The rule has been held to mean that to the extent a specific statute is inconsistent with a general statute covering the same subject matter, the specific statute must be read as an exception to the more general statute (See *Pettus v. Cole* (1996) 49 Cal.App.4th 402.) The rule has particular application to criminal statutes and is stringently applied in that context (*People v. Gordon* (2001) 90 Cal.App.4th 1409, porcelain spark plug chip is not a burglar's tool under Penal Code section 466. Superseded by subsequent statutory change to P.C. §466.) This concept has been codified in California Code of Civil Procedure section 1859:

In the construction of a statute the intention of the Legislature, and in the construction of the instrument the intention of the parties, is to be pursued, if possible; and when a general and [a] particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

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The case cited by you, *People v. Baniqued* (2000) 85 Cal.App.4th 13 underscores this very principal. The court there found that roosters fell within the 599b definition of “every dumb creature” and that Baniqued was therefore subject to prosecution of the general animal cruelty statute of 597. The court recognized that the general principle of law that a specific statute prevails over a general one when the two sections cannot be reconciled (*Id.* at p. 29, citation omitted.)

The doctrine that a specific statute precludes any prosecution under a general statute is a rule designed to ascertain and carry out legislative intent. (*People v. Jenkins* (1980) 28 Cal.3d 494, 505.) The fact that the Legislature has enacted a specific statute covering much the same ground as a more general law is a powerful indication that the Legislature intended the specific provision alone to apply. (*Ibid.*)

The legislative history of Penal Code section 597.3 reveals that the statute created a new crime. (2000 Cal AB 2479, Digest – originally numbered 597.2 renumbered as 597.3 without changing the substance of the section, 2001 Cal SB 205.)

Penal Code section 597.3 covers much the same subject as Penal Code section 597, but with more particularity. The former prohibits animals from being “confined, held, or displayed in a manner that results, or is likely to result, in injury, starvation, dehydration, or suffocation” (P.C. §597.3(a)(2).) This type of treatment is proscribed by the more general language of Penal Code section 597(b) which prohibits a person from failing “to provide the animal with proper food, drink, or shelter...” The general language of 597 which also prohibits a person from maliciously or intentionally maiming, mutilating, or torturing any animal (P.C. §597(c)), has its more specific analogue in section 597.3 which provides that “...no animal will be dismembered, flayed, cut open, or have its skin, scales, feathers, or shell removed while the animal is still alive” (P.C. §597.3(a)(1).)

Section 597.3, however, specifically addresses the treatment of animals at live animal markets, and by its terms exempts poultry from its proscriptions. In other words, things that cannot be done to other animals may be lawfully done to poultry at a live animal market. The Merriam-Webster definition of poultry is “domesticated birds kept for eggs or meat”. Chickens are poultry. Chickens are thus exempt from the proscriptions of 597.3. This abhorrent result is a manifest expression that the Legislature intended to preclude application of the general statute to the targeted conduct by enacting 597.3 (*People v. Jenkins, supra*, 28 Cal.3d at pp. 505-506.) Since Penal Code section 597.3 is more specific and cannot be reconciled with 597, the latter must yield to the former.

Since Mr. Young’s activities are taking place at a live animal market as defined in the code, his treatment of the poultry he sells there is subject to the specific provisions of Penal Code section 597.3 and not the general limitations of Penal Code section 597. As troubling as his alleged treatment of his chickens may be, his conduct is effectively shielded by Penal Code section 597.3. The rule of statutory construction in this context means that we cannot prosecute his alleged conduct under Penal Code section 597. In any such criminal action brought by our office, 597.3 would be a complete defense and could support a demurrer to the complaint.

The only solution to this troubling problem requires a legislative correction to the code. Presumably Mr. Young is able to sell his chickens here by permission of a local government agency. Perhaps the most immediate course to remedying this issue is for concerned citizens to urge the appropriate agency to withdraw their approval of his permit or license to sell live chickens in San Francisco.

The District Attorney’s Office prosecutes individuals who violate animal cruelty laws. The statutes on animal cruelty very specifically make exceptions regarding the handling of live poultry that is marketed for human consumption. Those statutes mandate what prosecutors can

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and cannot pursue. Without a change to state law, there is no legal means to prosecute the matter in question.

Very truly yours,

George Gascón
District Attorney

A handwritten signature in black ink, appearing to read "Jeffrey Ross", written over the printed name.

Jeffrey Ross
Assistant District Attorney

SENT VIA REGULAR MAIL

February 11, 2011

Jeffrey Ross
Assistant District Attorney
Office of the District Attorney
850 Bryant Street, Room 322
San Francisco, CA 94103

Re: Animal Cruelty Violations of Raymond Young at Farmers' Market;
Your February 7, 2011 Letter

Dear Mr. Ross:

This firm acknowledges receipt of your February 7, 2011 letter responding to ours of January 27, 2010.

While we appreciate your thoughtful response, we still think you are mistaken about Penal Code §597.3 providing an exemption to Raymond Young from prosecution under Penal Code §597¹.

First, your argument regarding statutory construction, i.e., the specific statute prevails over the general statute, only becomes subject to analysis if the language of the statutes are ambiguous or inconsistent with each other. *Solberg v. Superior Court* (1977) 19 Cal.3d 182, 198 (“When statutory language is thus clear and unambiguous there is no need for construction, and courts should not indulge in it.”); *Warne v. Harkness* (1963) 60 Cal. 2d 579, 588.

Here, there is no language that is ambiguous, and thus, a court would be required to regard the plain meaning of the statute as what the legislature intended and apply the law as written. *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715. Unless you perceive an ambiguity that this office does not, we disagree with you that a court would rule against your prosecution of Raymond Young on a demurrer since a court may not look beyond the unambiguous language of the respective statutes to engage in the statutory construction you have outlined. Furthermore, as detailed below, these two statutes are not inconsistent.

Therefore, the rule of statutory construction that a specific statute prevails over a general statute does not apply.

Second, even if resort to rules of statutory construction is appropriate, the law recognizes a presumption against implied repeal of statutes and must undertake to reconcile potential conflicts whenever they arise. *In re Thierry S.* (1977) 19 Cal.3d 727, 744. Furthermore, this presumption cannot be overcome unless there is “no rational basis for harmonizing the two statutes” and they

¹ You appear to concede that Raymond Young’s actions may be prosecutable under §597 if they occur outside the farmer’s market: “Since Mr. Young’s activities are taking place at a live animal market as defined in the code, his treatment of the poultry he sells there is subject to the specific provisions of Penal Code section 597.3 and not the general limitations of Penal Code section 597.” Therefore, if Raymond Young violates §597 in the manner in which he transports his chickens to and from the live market, would your office prosecute him for it?

are “irreconcilable, clearly repugnant, and so inconsistent as to prevent their concurrent operation”. *Id*; *Warne v. Harkness, supra*, (1963) 60 Cal.2d at 587-588. In addition, your statutory construction of the statutes in a way that would preclude prosecution of Raymond Young for violating §597 negates the legal effect of that section – the least favorable outcome of statutory construction. *People v. Craft* (1986) 41 Cal.3d 554, 561 (“An interpretation that renders related provisions nugatory must be avoided”).

Therefore, even if the statute(s) is ambiguous or inconsistent, if there is any way they may operate together, a court would be obliged to uphold both as co-extensive in operation. We believe the statutes are complementary to each other and that neither precludes operation of the other.

As you correctly pointed out, §597.3 only applies to an operator of a “live animal market”. While the phrase “live animal market” is defined within that statute, a part of that definition is the word “market” which is not further defined therein. Perusing a number of dictionaries online, the noun “market” is defined as a place where buying and selling occurs. In the context of the farmers’ market at UN Plaza, that place is the permitted area granted to Heart of the City Farmers’ Market (“HOCFM”), and that permittee is also the operator of said market.

Therefore, the plain meaning of §597.3, at most, could only exempt prosecution of HOCFM for its merchants violating §597 in the way they treat their chickens. Since HOCFM is the only operator of the market, they are the only ones who may enjoy an exemption from prosecution of a violation of §597, assuming one exists in regard to them allowing their merchants to abuse chickens².

Such an interpretation avoids the otherwise absurd, and, in your words, “abhorrent” interpretation of §597.3 exempting all prosecutions pursuant to §597 for cruelty to chickens occurring at a live animal market, since it is reasonable to assume that the legislature intended that an operator of a market who allows one of its merchants to engage in cruelty to animals should be subject to less punishment than one who directly causes such cruelty.

The plain meaning of the statutes themselves support such an interpretation since an operator’s violation of §597.3 is subject to prosecution for an infraction only, subject to a fine of no more than \$1,000 with no possibility of incarceration, whereas, the one who directly causes such animal cruelty in violation of §597 would be subject to prosecution for a misdemeanor or felony with possible incarceration and/or a fine of up to \$20,000.

In short, it makes sense that the legislature would punish the direct wrongdoer more harshly than the one who simply allows it to happen. Thus, the two statutes may be read together in a harmonious manner and enforced independently of each other since they prosecute different persons for different acts or omissions.

Clearly, §597.3 requires HOCFM to “provide” that no one violate its proscriptions, the exemption of chickens notwithstanding. Such language is further evidence that the legislature intended operators of live animal markets to be subject to §597.3, but not the seller, who remains subject to the animal cruelty proscriptions of §597.

²The permit granted limited authority over the place where the market occurs only to HOCFM.

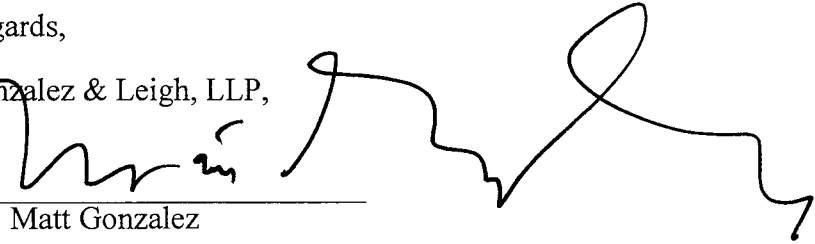
Furthermore, such interpretation helps avoid absurd results, while your statutory construction encourages absurd results, since, for example, it would presumably prevent your office from prosecuting actions such as cock fighting within the farmers' market since you would be powerless to make an arrest for violation of §597. The legislature could not have intended such an absurd result. *Amador Valley Joint Union High Sch. Dist. V. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 ("The literal language of enactments may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers.").

Therefore, we encourage you to indicate why such a reasonable interpretation for the concurrent operation of both statutes would nonetheless exempt Raymond Young from prosecution. *Metropolitan Water Dist. v. Adams* (1948) 32 Cal.2d 620, 630-631 (if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed).

Regards,

Gonzalez & Leigh, LLP,

By:



Matt Gonzalez

Memo No: M07-188634 Memo ID: P186292 Memo ID Type: PERSON_ID

Memo Date: 01/10/07 Memo Type: INVESTIGAT Memo Subtype:

Memo Text:

1/10/07 THIS R/O SELLS CHICKENS AT THE FARMERS MARKET. COMP RE. PUTTING THEM IN BAGS AND THROWING THEM ON THE FLOOR. R/O DENIES THIS. GAVE HAND OUT. RE. LIVE MARKET RESPONSIBILITIES. ES20

4/26/09 PER TO AC21, I INV THE SELLING OF CHICKENS AT THE FARMERS MARKET AT CIVIC CENTER. THERE WAS MANY CAGES WITH 8 CHICKENS INSIDE. MOST WITHOUT WATER. THERE WERE SOME WITH A CONTAINER, BUT THEY WERE LOW W/ WATER OR EMPTY. TOOK PHOTOS. JH22

Memo LISTBOX:

MEMO_NO MEMO_DATE MEMO_TYPE MEMO_SUBTYPE MEMO_TEXT

Memo No: M08-213301 Memo ID: P147714 Memo ID Type: PERSON_ID

Memo Date: 08/13/08 Memo Type: INVESTIGAT Memo Subtype:

Memo Text:

08/12/08 RESPONDED TO COMPLAINT #C08-007929 FOR R/O SELLING CHICKENS AT FARMER'S MKT. THAT WERE IN CRAMPED CAGES AND IN DIRECT SUNLIGHT. FOUND ONLY A FEW IN DIRECT SUNLIGHT IN CAGE THAT LARGE WOMAN WAS SITTING ON. I ORDERED THEM TO BE MOVED TO SHADE. INSIDE TRUCK FOUND BIRDS OVERCROWDED IN CRATES (COUNTED 17 IN ONE THAT MEASURED APPROX. 4 X 3' / 8" HIGH). I ADVISED R/O OF OVERCROWDING AND HE SAID HE WAS TOLD TO ONLY BE CONCERNED WHEN BIRDS ARE "BREATHING WITH MOUTHS OPEN". I HAD DIFFICULTY GETTING ACCURATE COUNT SO I ASKED R/O TO REMOVE SOME AND PLACE IN SEPARATE CAGES. HE BEGAN GRABBING THEM VIOLENTLY AND STUFFING INTO WIRE CAGES (WITH ROUGH EDGES) WITH NO REGARD FOR EXTENDED WINGS OR NECKS. I ORDERED HIM TO HANDLE THEM MORE GENTLY AND HE SAID "YOU HAVE TO UNDERSTAND, THESE ARE SOLD FOR FOOD, NOT PETS." I ADVISED THAT HE STILL HAD TO HANDLE HUMANELY. NO WATER PRESENT. R/O SAID HE WAS TOLD BY ACC. THAT HE WAS ONLY REQUIRED TO GIVE LETTUCE DURING TRIP OVER FROM FARM (IN STOCKTON). AC8 ASSISTED. I TRIED TO ISSUE WRITTEN WARN. ALLOWING MAX 6 LG. BIRDS OR 8 SM. BIRDS IN CRATES AT A TIME, WATER PROVIDED AT MARKET, WIRE CAGES REPAIRED. R/O REFUSED TO SIGN DUE TO MAX. PER AC8 I WAS TOLD TO MODIFY WARNING TO SAY "REDUCE NO. OF BIRDS" AND R/O SAID HE WILL REDUCE TO 13 / SIGNED MODIFIED WRITTEN WARN #W-2724. I WILL FOLLOW-UP NEXT WEEK TO ENSURE COMPLIANCE AND FURTHER EDUCATE. -DB19

08/20/08 MET WITH R/O TO FOLLOW-UP ON PREVIOUS WARN. HAD WATER PROVIDED FOR 1/2 OF THE BIRDS - EMPTY BOWLS FOR THE REST - INSTRUCTED TO FILL. HAD DONE SOME CAGE REPAIR BUT SAW WIRES STILL STICKING THRU TO INSIDE. R/O HAD 13 BIRDS IN CRATES AND 4 IN WIRE CAGES. ONE WIRE CAGE BENT AND TOO SMALL - INSTRUCTED TO TAKE SOME OUT. WHEN R/O GRABBED BIRDS HE HANDLED ROUGHLY AND I AGAIN ADVISED TO HANDLE HUMANELY. ISSUED WRITTEN WARN #W-2726 INSTRUCTING R/O TO FINISH CAGE REPAIRS / ALWAYS PROVIDE WATER / (PER AC14) PUT NO MORE THAN 8 LG. BIRDS OR 10 SM. BIRDS IN CRATE AT MARKET. R/O REFUSED TO SIGN. I ADVISED THAT EVEN SO, IF VIOLATIONS SEEN HE WILL BE CITED. -DB19

4/8/09 ASSISTED SFPD OFFICER MACMAHON FOR 597 COMPLAINT AGAINST RAYMOND YOUNG AT UNITED NATIONS PLAZA. I SAW CHICKENS OVER CROWDED IN SMALL CAGES IN THE TRUCK. 4 CHICKENS PER CAGE CLIMBING ON TOP OF EACH OTHER WITHOUT ADEQUATE ROOM TO MOVE. NO WATER PRESENT. FOUND ONE CHICKEN IN A BAG SET OFF TO THE SIDE. YOUNG SAID IT WAS INJURED BY THE OTHER CHICKENS INSIDE THE SMALL CAGE. (CONTINU...)

Memo LISTBOX:

MEMO_NO MEMO_DATE MEMO_TYPE MEMO_SUBTYPE MEMO_TEXT

Memo No: M09-223702 Memo ID: A263934 Memo ID Type: ANIMAL_ID

Memo Date: 04/08/09 Memo Type: INVESTIGAT Memo Subtype:

Memo Text:

4/8/09 ASSISTED SFPD OFFICER MACMAHON FOR 597 COMPLAINT AGAINST RAYMOND YOUNG AT UNITED NATIONS PLAZA. I SAW CHICKENS OVER CROWDED IN SMALL CAGES IN THE TRUCK. 4 CHICKENS PER CAGE CLIMBING ON TOP OF EACH OTHER WITHOUT ADEQUATE ROOM TO MOVE. NO WATER PRESENT. FOUND ONE CHICKEN IN A BAG SET OFF TO THE SIDE. YOUNG SAID IT WAS INJURED BY THE OTHER CHICKENS INSIDE THE SMALL CAGE. YOUNG SIGNED O/S FORM FOR INJURED CHICKEN. ISSUED VERBAL WARNING THAT HE MUST PROVIDE HUMANE CARE FOR ANY INJURED ANIMAL IMMEDIATELY. ALSO ISSUED WARNING FOR CORRECT OVER-CROWDING (LESS THAN 4 CHICKENS IN SMALL CAGES), TO PROVIDE WATER AND TO NOT LEAVE THE BIRDS IN DIRECT SUNLIGHT. GAVE PD AND R/P COPIES OF PC 597.2. BACK AT SHELTER, VET STAFF FOUND CHICKEN TO BE VERY THIN WITH A LARGE OPEN WOUND ON ITS SIDE. PTS. DR. BING IS DOING A NECROPSY FOR OUR RECORDS. WILL ADVISE LB21. AR7

Memo LISTBOX:

MEMO_NO MEMO_DATE MEMO_TYPE MEMO_SUBTYPE MEMO_TEXT

Memo No: M09-223701 Memo ID: P147714 Memo ID Type: PERSON_ID

Memo Date: 04/08/09 Memo Type: INVESTIGAT Memo Subtype:

Memo Text:

4/8/09 CONT..... YOUNG SIGNED O/S FORM FOR INJURED CHICKEN. ISSUED VERBAL WARNING THAT HE MUST PROVIDE HUMANE CARE FOR ANY INJURED ANIMAL IMMEDIATELY. ALSO ISSUED WARNING FOR CORRECT OVER-CROWDING (LESS THAN 4 CHICKENS IN SMALL CAGES), TO PROVIDE WATER AND TO NOT LEAVE THE BIRDS IN DIRECT SUNLIGHT. GAVE PD AND R/P COPIES OF PC 597.2. BACK AT SHELTER, VET STAFF FOUND CHICKEN TO BE VERY THIN WITH A LARGE OPEN WOUND ON ITS SIDE. PTS. DR. BING IS DOING A NECROPSY FOR OUR RECORDS. WILL ADVISE LB21. AR7

4/8/09 COMPLAINANT ANDREW ZOLLMAN 297-0207 REQUEST RECORDS ON THIS REPORT. SENT 4/9/09. KAT

4/22/09 1035AM CITED RAYMOND K. YOUNG THIS MORNING AT UN PLAZA FOR 795 COUNTS (INFRACTION) OF PC 597.3 (c). CITATION # 00763334. YOUNG WAS SELLING CHICKENS PACKED 15 TO A CRATE. THERE WERE 53 CRATES FILLED WITH LIVE CHICKES. THE BIRDS WERE UNABLE TO ADEQUATELY STAND UP OR TURN. THERE WAS NO WATER OR WATER CONTAINERS FOR ANY OF THE CHICKENS. MOST OF THE CHICKENS WERE PANTING AND LAYING ON THEIR SIDES. YOUNG HAD BEGUN SELLING THE CHICKENS AT APPROXIMATELY 630 AM. AND SAID HE HAD BROUGHT 100 CRATES OF CHICKENS IN HIS TRUCK FROM MODESTO. INSTRUCTED YOUNG AND HIS WORKERS TO SEPARATE CHICKENS SO THAT THERE WERE ONLY 8 CHICKENS PER CRATE AND TO PLACE WATER IN EACH CRATE. I HAD YOUNG SIGN O/S FORM FOR THREE CHICKENS, TWO OF WHICH WERE DEAD, THE THIRD ONE WAS INJURED FROM OVERCROWDING. I ASKED YOUNG IF HE RECALLED MY WARNING TO HIM ON 4/8/09 TO CALL US OR PROVIDE VET TREATMENT TO ANY INJURED BIRD IMMEDIATELY, HE ADMITTED HE DID BUT HAD NOT COMPLIED. DR. BING WILL DO NECROPSIES AGAIN FOR OUR RECORDS. PHOTOS TAKEN ON SCENE OF THE CONDITIONS. *YOUNG WAS ISSUED A WRITTEN WARNING W-2724 ON 8/12/08 AND W-2726 ON 8/20/08 TO COMPLY WITH PROVISIONS OF PC 597.3 BY DB19. AR7

5/21/09 RECITED RAYMOND YOUNG ON 5/20/09 FOR 597(b) MISD PER VG14. 597.3 DOES NOT INCLUDE CHICKENS. AR7

5/27/09 WHILE INVESTIGATING ANOTHER GAMEBIRD SELLER AT FARMERS MARKET I WAS FLAGGED DOWN REGARDING RAYMOND HAVING OVERCROWDED CAGES. I MET WITH RAYMOND AND DISCUSSED WHY I WAS THERE. RAYMOND SHOWED ME THE CAGES AND THE BIRDS WERE NOT OVERCROWDED AND HAD WATER IN CAGES. I ADVISE RAYMOND THAT I DID NO SEE ANY VIOLATIONS. RP ADVISED OF NO VIOLATIONS. CASE CLOSED. LB21

Memo LISTBOX:

MEMO_NO MEMO_DATE MEMO_TYPE MEMO_SUBTYPE MEMO_TEXT

Memo No: M10-247240 Memo ID: P147714 Memo ID Type: PERSON_ID

Memo Date: 07/21/10 Memo Type: INVESTIGAT Memo Subtype:

Memo Text:

7/21/10 MET WITH LISA O'MALLEY OF SF ENVIORONMENTAL HEALTH TO INSPECT THIS VENDOR. MYSELF AND LT. BROWN TOOK PHOTOS AND FOUND THEY HAD TOO MANY BIRDS IN THE WIRE CAGES, SO WE MET WITH CHRISTINA YOUNG AND TOLD HER THAT THERE ARE TO BE NO MORE THAN 4 PER WIRE CAGE AND 8 PER YELLOW PLASTIC CAGE. ALL BIRDS SEEMED HEALTHY AND FREE OF INJURY. THEY ALL HAD WATER. ISSUED HER OUR ORIGINAL AGREEMENT AGAIN AND TOLD HER ME, LT. BROWN AND SGT. JOHNSON WOULD BE THE OFFICERS RESPONDING TO ANY COMPLAINTS. REMINDED HER THAT IF THERE ARE ANY INJURED BIRDS, THEY ARE TO BE TRANSPORTED TO OUR SHELTER FOR EUTHANASIA IMMEDIATELY. IF THEY ARE FOUND TO BE IN POSSESSION OF ANY INJURED BIRDS, THEY WILL BE CITED. MET WITH CHRISTINE ADAMS AND SHE HEARD EVERYTHING WE TOLD CHRISTINA AND SHE WILL CALL IF THEY ARE IN VIOLATION. SHE SAID THAT IF THEY ARE CITED AGAIN, THEY WILL BE SUSPENDED. VG14

10/27/10 6:45AM MET WITH RAYMOND SAW ABOUT 50 BIRDS PREBAGGED IN PLASTIC BAGS, I THEN LOOKED IN TRUCK AND SAW WIRED CAGES WITH 8 BIRDS WHICH SHOULD ONLY BE 4. YELLOW CAGES HAD MORE THAN 8 BIRDS I ADVISED RAYMOND THAT IN JULY WHEN WE MET WITH HIS DAUGHTER THIS WAS THE AGREEMENT. HE TOLD ME THAT HIS DAUGHTER IS NO LONGER IN THE BUSINESS AND SHE DID NOT RELAY THAT INFORMATION TO HIM. ALL BIRDS HEALTHY AND HAD WATER I DID SEE ONE ROOSTER WHICH WAS ALSO HEALTHY. I THEN MET WITH JOHN RODRIGUEZ THE MARKET ASSISTANT MANAGER SINCE CHRISTINE WAS ON VACATION UNTIL NEXT WEDNESDAY. I SHOWED HIM CONDITIONS OF BIRDS AND ADVISED HIM THAT THE CAGES WERE OVERCROWDED. JOHN TOLD ME THAT HE WOULD DOCUMENT THIS VISIT AND REPORT IT BACK TO CHRISTINE WHEN SHE IS BACK FROM VACATION. I THEN INSTRUCTED RAYMOND TO REMOVE BIRDS FROM BAGS AND PUT BACK IN CAGES AND TO REMOVE BIRDS FROM OVERCROWDED CAGES AS WELL. RAYMOND DID TELL ME THAT HE GOT A PREORDER PHONE CALL FOR 30 BIRDS THAT IS WHY HE HAD THEM PREBAGGED. I TOLD HIM THAT HE NEEDS TO WAIT UNTIL THE CUSTOMERS IS PRESENT BUYING BIRDS BEFORE PLACING IN BAGS. I THEN TOLD RAYMOND THAT I WOULD BE REPORTING BACK TO MY SUPERVISOR ON MY FINDINGS. LB21

Memo LISTBOX:

MEMO_NO MEMO_DATE MEMO_TYPE MEMO_SUBTYPE MEMO_TEXT

Memo No: M10-252992 Memo ID: P147714 Memo ID Type: PERSON_ID

Memo Date: 11/08/10 Memo Type: INVESTIGAT Memo Subtype:

Memo Text:

10/31/10 MET WITH RAYMOND TO DO A FOLLOW-UP TO LAST WEEKS VISIT. RAYMOND HAD ABOUT 20 BIRDS PRE-BAGGED I ADVISED RAYMOND THAT HE CAN NOT PRE-BAG BIRDS AT ALL. RAYMOND MISUNDERSTOOD ME PRIOR HE THOUGHT THAT IT WAS OK TO PRE-BAG AS LONG AS THEY WERE NOT IN PLASTIC BAGS. I RECHECKED ALL THE CAGES AND THE CAGES WERE NOT OVERCROWDED 8 TO EACH YELLOW CAGE AND 4 TO THE WIRE CAGES. I ISSUED RAYMOND WRITTEN WARNING #7152 FOR NO PRE-BAGGING OF BIRDS AND NO OVER CROWDED CAGES ONLY 8 BIRDS PER YELLOW CAGE AND 4 BIRDS IN THE WIRED CAGES. RAYMOND ACKNOWLEDGED WHAT I WAS REQUESTING HIM TO FOLLOW. LB21

1/30/11 WENT OUT TO FOLLOW UP ON A COMPLAINT THAT THE BIRDS ARE BEING PRE-BAGGED IN PLASTIC. WHEN I ARRIVED AT 5AM THERE WERE SEVERAL BIRDS IN FRONT THAT WERE PRE-BAGGED IN PAPER BAGS. LEFT AND CAME BACK AT 6:10 AND SAW THE DAUGHTER CHRISTINA HANDING ANOTNER WORKER PLASTIC BAGE AND THE BIRDS IN PAPER BAGE WERE THEN PLACED IN THE PLASTIC BAGS. MET WITH CHRISTINE ADAMS OF THE HEART OF THE CITY AND SHE WAS SITTING IN FRONT OF THIS VENDOR MAKING SURE THEY WERE FOLLOWING THE RULES. SHE TOLD ME THAT THEY WERE INSTRUCTED BY THE HEALTH DEPARTMENT THE BIRDS MUST BE IN THE PLASTIC BAGS DUE TO THE FECES. TOLD HER WE MAY BE SETTING UP A METTING WITH HER, THE HEALTH DEPT AND US TO DISCUSS UPDATING THE GUIDLINES. VG14

Memo LISTBOX:

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