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May 7, 2008

The Honorable Larry D. Morse II
District Attorney, Merced County
2150 M Street
Merced, CA 95340

Re: Petition for Enforcement of California Animal Cruelty Laws at Gemperle Enterprises Egg Laying and Packing Facilities

Dear District Attorney Morse:

I am writing to direct your attention to shocking neglect and suffering at an egg laying and packing operation in Merced County, California, as recently witnessed and documented on video by an investigator from Mercy For Animals (MFA), a nonprofit animal advocacy organization. The conditions at the Gemperle Enterprises facilities constitute a violation of California's animal cruelty laws, California Penal Code §§ 596-600. With this Petition, we are providing the enclosed 35 minute DVD titled "Conditions at Gemperle Enterprises" for your review. This DVD contains video evidence of the content outlined in this letter. We urge your office to take immediate action to address the ongoing neglect of animals, and we respectfully request that Gemperle Enterprises be prosecuted to the fullest extent allowable under California law.

Investigation

From January 2, 2008 to February 23, 2008, MFA conducted a formal investigation of conditions at Gemperle Enterprises, an egg laying and packing company with several sites in Merced County and Stanislaus County. The MFA investigator worked in construction and maintenance for Gemperle Enterprises and documented ongoing patterns of neglect of the hens while performing his employment duties. The video footage was predominantly filmed at the Gemperle Enterprises facilities located at 17265 Schendel Road, Delhi, California (hereafter referred to as "Schendel") and at 9488 Lander Avenue, Hilmar, California (hereafter referred to as "Channing").

The investigator did construction and maintenance work at 20473 W. Bradbury Road, Turlock, California, and 18524 August Avenue, Hilmar, California. He did not film at these two sites, but he observed needless suffering similar to that witnessed at the other Gemperle facilities. The investigator did not film at the headquarters, located at 10218 Lander Avenue, Turlock, California, but the investigator informed MFA that birds were also present at this location.

Violations Observed

California's animal cruelty laws, found in Sections 596 to 600 of the California Penal Code, dictate that neglect of animals and needless suffering of animals subjects an owner of those animals to criminal prosecution. Under Section 599(b), which defines "animal," chickens are included in the protections of the animal cruelty laws. *People v. Baniqued*, 85 Cal. App. 4th 13, 1010 Cal. Rptr. 2d 835 (3d Dist. 2000), has clarified and affirmed the inclusion of birds in the definition of "animal." Dr. Sara Shields, Ph.D., who holds a doctoral degree in Animal Behavior from the University of California, Davis and has more than ten years of experience as a research scientist, teacher, and consultant in animal welfare, with an emphasis on the well-being of poultry, states, "It is well established in the scientific literature that birds are fully capable of feeling pain and of suffering. All avian species have a highly developed nervous system with complex nociceptive (pain) capacity."¹

Particularly relevant to the neglect and needless suffering observed at the Gemperle Enterprises facilities, Section 597(a) makes it a crime to permit an animal to be left without "proper care and attention" and Section 597(b) prohibits subjecting "any animal to needless suffering" and "fail[ing] to provide the animal with proper food, drink, or shelter or protection from the weather."

The video footage from Gemperle Enterprises shows clear evidence of neglect and needless suffering: sick and injured birds deprived of veterinary treatment or proper euthanization; birds abandoned and deprived of food and drink; birds lacking proper care or attention, living in conditions of filth, including dead birds left in cages with living birds and feces matted on the feathers of birds. These practices violate California's animal cruelty laws.

Evidence

Needless suffering befalls the birds owned by—and under the presumptive "care" of—Gemperle Enterprises as a result of the widespread neglect practiced by the company and its operatives. As indicated above, the video footage evidences this needless suffering by showing specific examples of birds deprived of care and attention, deprived of food and drink, and deprived of veterinary treatment or euthanasia.

MFA's investigative findings, consisting of daily observations documented in field notes, as well as extensive video documentation, are summarized below. We have provided video footage edited to correspond to the field notes excerpted below. The complete unedited video footage and field notes are available immediately on request, and the MFA investigator is available to assist your office upon request and at your convenience.

The following are examples of the neglect and needless suffering documented by the investigator:

1. Letter from Dr. Sara Shields, Ph.D., Professor of Animal Sciences at the University of Nebraska, Lincoln, to Nathan Runkle, MFA (April 12, 2008).

January 30, 2008

- I walked through house # 5 today, going through several rows of cages and seeing a variety of sick birds. Many birds had feces stains on their feathers and were missing feathers on their rear ends, stomachs, chests and necks. Chicken in the barn had curling toenails that were about three inches long. I saw two hens with infected left eyes. One had swollen eyelids and the eyeball was secreting a clear discharge, and the other's eye was swollen shut with the eyelids pushed about 10 times farther out than they should have been. (January 30, 2008, Channing, **Video Incident # 1**)

January 31, 2008

- In house # 5 I saw a hen with what appeared to be a large tumor on the left side of her face about half the size of a golf ball. (January 31, 2008, Channing, **Video Incident # 2**)

February 1, 2008

- I saw a hen with a recessed left eye and swollen eyelids in house # 5, which I pointed out to Miguel, who dismissed the problem and put the bird back in her cage after viewing her. (February 1, 2008, Channing, **Video Incident # 3**)
- In house # 3 I saw another hen with a recessed left eye and swollen eyelids, resembling the condition I saw in the hen with a recessed eye in house # 5 today with Miguel. (February 1, 2008, Channing, **Video Incident # 4**)

February 4, 2008

- I saw a variety of health concerns in the houses. In house # 5, I saw a hen, who was stuck under the front rail of her cage. Her right wing was wrapped around a wire, and she was breathing shallowly without moving much as I maneuvered her out of the wire. I took her out of the cage and observed her, seeing that her crest was purple on its ends and most of the feathers on her back were worn down to nothing but down. I put her back on her flooring, where she lay immobile with her head resting on the wire, not moving as other hens stepped on her in the cage. In this condition, she could not access food or water. (February 4, 2008, Channing, **Video Incident # 5**)
- In house # 6 I saw a bird with a large bloody sore on the left side of her head. The sore was about half an inch in diameter and appeared to be a gouge through her flesh that was covered in a thick scab. I showed the hen to Miguel, who shrugged and told me to put her back in her cage. I also saw a hen in house # 6 with torn, bloody feathers covering the left side of her neck from her jaw to about four inches down her neck. (February 4, 2008, Channing, **Video Incident # 6**)

- Over 30 chickens were in the manure pit below house # 6, with no wholesome food or water available to them. I saw over 20 chickens running around primarily in one flock, with about a dozen other birds walking around the manure piles. I saw the hen with a crippled left leg bent backwards that I saw on Friday, 2/1/08. She limped across part of the manure pit away from me as I observed her. I also saw many dead hens littering the manure pit floor. (February 4, 2008, Channing, **Video Incident # 7**)

February 9, 2008

- I began work in house # 4. About 14 crippled hens were on the floor with broken legs and/or wings, or were lethargic and unable to move. As Jim Robinson walked down aisle 3 and told me how to repair troughs, he did not acknowledge the crippled birds in any way, some of whom kicked their legs and flapped their wings feebly as we walked by. (February 9, 2008, Schendel, **Video Incident # 8**)
- I also found several crippled hens in the cages of house #4, who could not walk on their own and were being trampled on by the other hens in their cages. (February 9, 2008, Schendel, **Video Incident # 9**)
- In house # 4 I saw a hen with a bloody sore about half an inch in diameter on the top of her head, a hen with an infected, injured right eye that was swollen, another hen with small, bloody scabs on her eyelids, and a hen with small, hard, tumor-like growths on the right side of her face. (February 9, 2008, Schendel, **Video Incident # 10**)

February 16, 2008

- In house # 4 I saw four crippled hens as I entered the house, all of whom were unable to stand or walk. (February 16, 2008, Schendel, **Video Incident #11**)
- I found a hen with her head stuck under the wire of the front of her cage. She appeared to be unable to free herself, making it impossible for her to access food or water. (February 16, 2008, Schendel, **Video Incident #12**)
- I also found another hen with dried purple skin in large patches on her right side and a broken right wing with a bulge under her skin that kept the wing permanently up past a 45 degree angle. I put the hen on the ground and tried to lift her up, but she fell back down and would not stand. I found this injured hen with her head stuck under the cages' front rail. In this condition, she could not access food or water. (February 16, 2008, Schendel, **Video Incident # 13**)

- Another hen had a wound over 2.5 inches in diameter that looked like a crater and spanned from the top of her body to more than an inch over the skin of her right side. Bloody scabs covered the purple wound, and the hen would do nothing but lie on her left side, unable to get up, stand, or walk. I found this injured hen with her head stuck under the cages' front rail. In this condition, she could not access food or water. (February 16, 2008, Schendel, **Video Incident # 14**)
- A fifth bird's neck was severely bent to the right, touching her shoulder. She would turn her head but not lift her neck, appearing unable to do so. (February 16, 2008, Schendel, **Video Incident # 15**)
- I found three hens trapped in their cages. Once I removed them, they all appeared lethargic and unable to stand. (February 16, 2008, Schendel, **Video Incident # 16**)
- There were a number of hens with large prolapses covered in blood in house # 3. Wet blood was coating the feathers of their rear ends around the prolapses. (February 16, 2008, Schendel, **Video Incident # 17**)

February 23, 2008

- I found a hen that was in the back of a cage, lying on the wire floor and being trampled by other birds. I pulled her out and she did not raise her head or flap her wings, so I set her on the ground and she collapsed. I also found a crippled hen in the cage aisle. (February 23, 2008, Channing, **Video Incident # 18**)

The enclosed video documentation also illustrates the general conditions of the facility, including hens covered in feces, corpses left to rot in cages with live birds, and workers violently shoving birds into, and pulling them out of, cages. A number of scenes depicting workers killing birds is also included.

This evidence compiled by MFA's investigator reveals a pervasive pattern of neglect that blatantly violates the standard of proper care and attention required for animals under California law. Gemperle Enterprises has facilitated and fostered the neglect and needless suffering of animals and demonstrated a lack of regard for animal welfare.

Expert Analysis

Experts in the field of veterinary medicine and animal behavior, whose statements are attached, unequivocally declare that the neglect documented herein falls far outside the parameters of accepted standards for proper animal care, and, moreover, is inherently cruel and a violation of California animal cruelty laws.

Dr. Sara Shields, Ph.D., who holds a doctoral degree in Animal Behavior from the University of California, Davis, and has more than ten years of experience as a research scientist, teacher, and consultant in animal welfare, with an emphasis on the well-being of poultry, states that “[s]everely injured animals who will not receive treatment and are unlikely to recover should be euthanized immediately. It is unacceptable to place or leave an injured bird in a cage where she will languish indefinitely without treatment.”² Further, she states, “Hens can become trapped or injured by loose wires, poorly designed fixtures, or facilities in need of repair. Given the extremely low ratio of farm personnel to hens on a typical commercial egg operation, individual hens who have become injured are likely to remain unnoticed and unattended. Some hens shown in the video have injuries, infections, cloacal prolapses, and show signs of possible disease. Many of the injured birds are clearly suffering, and some are without a doubt in great pain.”³

Dr. Christi Cambor, DVM, who holds a doctorate in Veterinary Medicine from University of California, Davis, and a Bachelor of Science in Animal Biology, also evaluated the footage from Gemperle Enterprises:

Within the footage there are numerous scenes that depict chickens in extreme physical distress. There are multiple shots of moribund chickens with ailments ranging from broken limbs to abscessed cloacae to illness so severe the birds are unable to open their eyes or stand. The presence of animals in such poor conditions without any apparent method to detect them or provide them with an instant death is extremely concerning. These animals are left to essentially linger and die of these painful ailments within the confines of the battery cage [there are shots of decaying carcasses being pulled from cages with live hens] which is not only inconsistent with even the most basic animal welfare standards but also presents serious public health concerns.⁴

Dr. Ned C. Buyukmihci, DVM, and Emeritus Professor of Veterinary Medicine at the University of California, Davis, who has over 35 years of experience, much of it involving farmed animals, including chickens, states:

Sick hens were shown with a variety of conditions including cloacal prolapse and other injuries. These birds should have been removed and either treated or killed humanely in order to mitigate the suffering they would experience. Because some of the conditions depicted were long-standing, it suggested that this was not being done.

Crippled hens were shown lying in the aisles of the facility. These hens had no access to water or food. If they were being left there for more than a few hours, this would result in further suffering for them. They should have either been killed immediately or removed to a location where they could get proper care.

2, 3. Letter from Dr. Sara Shields, Ph.D., Professor of Animal Sciences at the University of Nebraska, Lincoln, to Nathan Runkle, MFA (April 12, 2008).

4. Letter from Dr. Christi Cambor, DVM, practicing veterinarian with doctorate in Veterinary Medicine from University of California, to Nathan Runkle, MFA (April 27, 2008).

There is no question that the manner in which the chickens were treated was cruel by any normal definition of the word and resulted in suffering for the birds. The treatment of the hens violated norms of conduct with respect to animal welfare and veterinary care. None of this was necessary in order to pursue the purpose of the facility. As such, it seems to me that this would constitute a violation of applicable animal cruelty laws.⁵

Immediate Action by District Attorney's Office Urged

Gemperle Enterprises subjects the animals in its facilities to needless suffering by its failure to provide proper care and attention to the birds as required by California law. We trust that your office will carefully and earnestly review the evidence we have submitted and hold Gemperle Enterprises accountable for the cruelty and severe neglect perpetrated against the animals in its care.

The needless suffering witnessed and documented at Gemperle Enterprises did not result from isolated incidents but from the general and broad-scale failure of the ownership of the egg laying and packing enterprise to provide proper care and attention and proper veterinary treatment and euthanasia. Therefore, we urge immediate action by the Merced County District Attorney's Office to prosecute the perpetrators of the cruelty documented herein and to prevent the furtherance of neglect and needless suffering at the several Gemperle Enterprises facilities.

Furthermore, we have copied Birgit Fladager, District Attorney of Stanislaus County, on this Petition. The evidence gathered by the MFA investigator demonstrates a pattern of neglect perpetuated by Gemperle Enterprises among its multiple locations. The headquarters of Gemperle Enterprises (10218 Lander Avenue, Turlock, California) and at least one facility (20473 W. Bradbury Rd., Turlock, California) are located in Stanislaus County. Given the presence of Gemperle Enterprises in Stanislaus County, we believe that the Stanislaus County District Attorney's Office will most certainly take this matter under careful consideration.

We look to you to take a leadership role in this urgent and important matter and respectfully request that this honorable office fulfill the intention of the Legislature to prevent the needless neglect and suffering of animals.

I am at your disposal to discuss the points detailed above. You can contact me directly via phone at 937-470-9454 or by email at NathanR@MercyForAnimals.org.

Sincerely,



Nathan Runkle
Executive Director

5. Le□
(April 25, 2008).

CC:

Birgit Fladager
District Attorney, Stanislaus County
832 12th Street, Suite 300
Modesto, CA 95354

Attachments:

A. Photographic Evidence

B. "Conditions at Gemperle Enterprises" DVD, 35 Minutes

C. Letter from Dr. Nedim Buyukmihci, VMD, Emeritus Professor of Veterinary Medicine, University of California, to Nathan Runkle, MFA (April 25, 2008).

D. Letter from Dr. Sara Shields, Ph.D., Professor of Animal Sciences at the University of Nebraska, Lincoln, to Nathan Runkle, MFA (April 12, 2008).

E. Letter from Dr. Christi Cambler, DVM, practicing veterinarian with doctorate in Veterinary Medicine from University of California, to Nathan Runkle, MFA (April 27, 2008).

Photographic Evidence



Live hen suffering from untreated cloacal prolapse.



Live hen suffering from untreated wound.



Rotting corpse of hen neglected in cage with live birds.



Hens living in filth and excrement in battery cage.



Live hens suffering from untreated facial and sinus infections.



(L) Live hen suffering from untreated cloacal prolapse. (R) Live hen suffering from untreated bloody open wound to head and neck.



(L) Lethargic hen unable to stand, found trapped under the feeding rail of her cage without access to food or water. (R) Crippled hen found in cage aisle without access to food or water.