

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Holly Fujie

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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES ~ CENTRAL DISTRICT  
12

13 **Save Our Birds,**

14 Plaintiff

15 vs.

16 **Dr. Annette Jones**, in her official capacity as  
17 State Veterinarian for the State of California;  
18 **California Dept. of Food and Agriculture**;  
19 and DOES 1 through 25, inclusive,

20 Defendants.

Case No.:

**Complaint for Injunctive Relief**

[CCP § 526; Food & Agr. Code § 9562]

21 Plaintiff Save Our Birds alleges as follows:

22 1. Defendant Dr. Annette Jones, the State Veterinarian for the State of California, has  
23 imposed a quarantine of poultry in Los Angeles, Riverside, and San Bernardino Counties. In  
24 connection with the quarantine, she has ordered euthanizations of healthy birds in the quarantine  
25 area. The California Department of Food and Agriculture (CDFA), perhaps in cooperation with  
26 other agencies, has carried out these euthanizations.

27 2. Due to poor communication by Defendant Jones, CDFA, and their offices, the  
28 justification for euthanizations of healthy animals has not been adequately communicated to the  
public. There is public doubt as to whether the euthanizations are justified.

1 3. Regardless of whether the euthanizations are justified, state law, CDFA policies and  
2 regulations, and common decency all require that euthanizations be conducted humanely. This  
3 has not happened. CDFA agents have not followed their own regulations and accepted guidelines  
4 setting forth requirements for humane euthanasia.

5 4. Through this action, Plaintiff seeks to stop inhumane euthanization practices until it can  
6 be ascertained that the euthanizations are justified, that Defendants have a plan to ensure that  
7 euthanizations are performed humanely, and there is oversight to ensure the humane  
8 euthanization plan is followed.

9  
10 **PARTIES**

11 5. Plaintiff **SAVE OUR BIRDS** is an unincorporated association having its principal place  
12 of business in the County of Riverside, State of California. Save Our Birds has members in Los  
13 Angeles, Riverside, and San Bernardino Counties who own chickens and other birds in the  
14 quarantine area. Save Our Birds members' have had their birds euthanized, own birds that are  
15 subject to existing euthanasia orders, and/or live in fear that their pets will be forcibly euthanized  
16 in an inhumane manner, without cause or notice, at some future date.

17 6. Defendant **DR. ANNETTE JONES** ("JONES" or "STATE VETERINARIAN") is,  
18 and at all relevant times mentioned in this Complaint was, the State Veterinarian for the State of  
19 California. She is sued in her official capacity and has her principal place of business in the  
20 County of Sacramento.

21 7. Defendant **CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE**  
22 ("CDFA") is an executive branch department of the State of California and has its principle  
23 place of business in the County of Sacramento. Relevant to this case, CDFA has field offices in  
24 the counties of Los Angeles, Riverside, and San Bernardino.

25 8. The true names of Defendant DOES 1 through 25, inclusive, are unknown to Plaintiff,  
26 who therefore brings this action against DOES 1 through 25, inclusive, by such fictitious names  
27 and will seek leave of this Complaint to show their true names, identities, and capacities when  
28 they have been ascertained.

1 9. Except as otherwise alleged, Plaintiff is informed and believes that all defendants and/or  
2 their employees and agents were each other's agents and were, at all relevant times, acting in the  
3 course of their agency relationship.

4 **JURISDICTION AND VENUE**

5 10. The Los Angeles County Superior Court is the proper venue because the acts complained  
6 of which are the subject of this Complaint, have occurred or will occur, in part, in the County of  
7 Los Angeles.

8 11. Moreover, the Los Angeles County Superior Court is the proper venue because this case  
9 is a suit against a California state agency and the Attorney General for the State of California has  
10 an office in the County of Los Angeles. (Code Civ. Proc. § 401.)

11 12. Furthermore, the acts complained of which are the subject of this Complaint, have also  
12 occurred or will also occur, in the Counties of Riverside and San Bernardino. Since the Attorney  
13 General does not have offices in Riverside or San Bernardino Counties, Los Angeles County is  
14 the closest location to Riverside or San Bernardino County in which this action may be filed.

15 13. Pursuant to Los Angeles County Superior Court Local Rule 2.3, subdivision (a)(1)(B),  
16 this action may be filed in the Central District both as a matter of right and because the Attorney  
17 General's office is in the Central District.

18 14. The relief sought is within the jurisdiction of this Court.

19 **FACTS COMMON TO ALL CAUSES OF ACTION**

20 15. The primary concern in this case is the inhumane euthanization of chickens and other  
21 birds kept as backyard pets in Southern California.

22 16. The American Veterinary Medical Association (AVMA) describes the term  
23 "euthanasia" as being derived from the Greek terms *eu*, meaning good, and *thanatos*, meaning  
24 death. (American Veterinary Medical Assn., AVMA Guidelines for the Euthanasia of Animals:  
25 2013 Edition (2013) (Euthanasia Guidelines) p. 6.) The guidelines acknowledge that there is  
26 debate as to whether term "euthanasia" appropriately describes the killing of animals at the end  
27 of laboratory experiments and unwanted shelter animals.  
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1 17. This debate would include the circumstances described herein where the government is  
2 killing healthy animals against owners' wishes. To Plaintiff's membership, there is nothing  
3 "good" in the killing of their beloved pets. Thus, "euthanasia" is not an appropriate term to  
4 describe the killings that have occurred.

5 18. Nonetheless, despite their caveat, AVMA uses the term "euthanasia" to refer not only to  
6 "good" killings but also to the humane killing of any animal for any proper purpose. (Euthanasia  
7 Guidelines at pp. 6-7.) For this reason, Plaintiff uses the term "euthanasia" to describe what  
8 *should be* a humane process conducted in accordance with state law rather than a killing that is  
9 "good."

10 **A. Plaintiff is informed and believes that Dr. Jones's quarantine and destruction orders are**  
11 **not permitted by Food and Agricultural Code section 9562.**

12 19. This cases arises under Food and Agricultural Code section 9562, which provides for a  
13 quarantine if the State Veterinarian "believes, **upon any basis reasonably supportable by**  
14 **standard epidemiological practice or credible scientific research**, that a population of  
15 domestic animals or food product from animals has contracted, or may carry, an illness, infection,  
16 pathogen, contagion, toxin, or condition that, without intervention, could transmit an illness that  
17 could kill or seriously damage other animals or humans, including, in addition to the original  
18 condition, those clinically plausible secondary illnesses, infections, pathogens, contagions, toxins,  
19 or conditions arising from the effects of the original." (Emphasis added.)

20 20. In connection with such a quarantine, the State Veterinarian has the power to order the  
21 destruction of animals. (Food & Agr. Code § 9562, subd. (b)(3).)

22 21. The State Veterinarian has imposed a quarantine on poultry<sup>1</sup> in Los Angeles County and  
23 parts of Riverside and San Bernardino Counties in a purported attempt to combat a virulent  
24 Newcastle Disease (vND).  
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28 <sup>1</sup> Food and Agricultural Code section 9503 defines "poultry" as including all domestic fowl, wild fowl, and captive birds.

1 22. As part of her quarantine, she has ordered destruction of approximately 1.2 million birds.  
2 Under her orders, birds are being destroyed on an almost daily basis. This is euphemistically  
3 described as “depopulation.”

4 23. Guidelines published by the AVMA describe “depopulation” as “the rapid destruction of  
5 a population of animals in response to urgent circumstances with as much consideration given to  
6 the welfare of animals as practicable.” (American Veterinary Medical Assn., AVMA Guidelines  
7 for the Depopulation of Animals: 2019 Edition (2019) (Depopulation Guidelines) p. 4.) The  
8 guidelines describe the need to balance animal welfare against risk to humans and highlight the  
9 importance of maintaining public trust and confidence. (*Ibid.*) Indeed, “[t]he intentional killing of  
10 healthy animals,” which has occurred here, “is a serious concern for the public.” (Euthanasia  
11 Guidelines, *supra*, at p. 8.)

12 24. Dr. Jones and CDFA have been criticized by government officials for failing to adequately  
13 inform the public about the justification for her quarantine and destruction orders. In an email,  
14 Dr. Jones admitted that these failures have “caused problems.” As a result of these failures,  
15 Defendants have lost public trust and confidence, if they ever had it.

16 25. Distrust and skepticism stem from requests made by Plaintiff’s members and others for  
17 documents and records that would demonstrate the basis for Dr. Jones’s beliefs (that justify the  
18 quarantine order), as supported by standard epidemiological practice or credible scientific  
19 research. Given the public’s constitutional right to public records (Cal. Const., art. I, § 3), surely  
20 Defendants would have provided this documentation if it existed. Therefore, it is on this basis  
21 that Plaintiff is informed and believes that Dr. Jones cannot justify the quarantine based on the  
22 standards set forth in section 9562 of the Food and Agricultural Code.

23 **B. Even if the quarantine and destruction orders are proper, Defendants’ execution of the**  
24 **orders does not comply with California law.**

25 26. The AVMA guidelines, which were prepared in cooperation with the United States  
26 Department of Agriculture, stress the importance of complying with state and federal law.  
27 (Depopulation Guidelines, *supra*, at pp. 5-6.) To this end, to the extent that state law is more  
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1 restrictive than the guidelines, state law must control. Thus, the guidelines set forth the  
2 minimum standards for humane euthanasia.

3 27. An overriding principle of the AVMA guidelines is that animals designated for  
4 depopulation must be “treated with respect and handled appropriately.” (Depopulation  
5 Guidelines, *supra*, at p. 5.)

6 28. In addition to their standards of care for animals, the guidelines give significant attention  
7 to the bond between humans and their animals. This calls for sensitivity and requires respect for  
8 the animals’ human owners. (Depopulation Guidelines at p. 6.)

### 9 **Overview of Depopulation Methods & Procedural Requirements**

10 29. Depopulation methods are evaluated based on their “1) ability to induce loss of  
11 consciousness followed by death with the minimum of pain and distress; 2) time required to  
12 induce loss of consciousness; 3) reliability and irreversibility of the methods resulting in death of  
13 the animal; 4) safety of personnel; 5) compatibility with the safety of other humans, animals, and  
14 the environment; 6) potential psychological or emotional impacts on personnel; 7) ability to  
15 maintain equipment in proper working order; 8) legal and religious requirements; 9) sensitivity to  
16 public sentiment regarding the destruction of large numbers of animals; and 10) availability of  
17 agents and carcass processing to handle the volume.” (Depopulation Guidelines at p. 8.)

18 30. The various depopulation methods are broken down into three categories: preferred  
19 methods, methods that are permitted in constrained circumstances, and methods that are not  
20 recommended. (Depopulation Guidelines at p. 8.)

- 21 a. Preferred methods “are given highest priority and should be utilized preferentially  
22 when emergency response plans are developed and when circumstances allow  
23 reasonable implementation during emergencies.” (Depopulation Guidelines at  
24 p. 8.) When time allows, the Depopulation Guidelines incorporate AMVA  
25 Guidelines for Euthanasia. (*Ibid.*)  
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- 1           b. Methods that are permitted in constrained circumstances are permitted only  
2           “when the circumstances of the emergency are deemed to constrain the ability to  
3           reasonably implement a preferred method.” (Depopulation Guidelines at p. 8.)  
4           c. Methods that are not recommended should be considered only when none of the  
5           other options can be implemented and “the risk of doing nothing is deemed likely  
6           to have a reasonable chance of resulting in significantly more animal suffering than  
7           that associated with the proposed depopulation technique.” (Depopulation  
8           Guidelines at p. 8.) Examples include building collapse and large scale radiological  
9           events. (*Ibid.*)

10           31. Here, preferred methods should always be implemented. The so-called “emergency” is  
11 not a true emergency in the urgent sense of the word. Instead, the situation is a *year-long* response  
12 to a purported outbreak of disease. Defendants have had sufficient time to plan for and reasonably  
13 implement preferred methods in a way that might not have been possible in response to an  
14 unplanned natural disaster.

15           32. Of the factors used to evaluate a depopulation method, the most important is minimizing  
16 or eliminating “anxiety, pain, and distress before loss of consciousness.” (Depopulation  
17 Guidelines at p. 9.) Distress “may be created by the method itself or by the conditions under  
18 which the method is applied and may manifest behaviorally ... or physiologically.” (*Ibid.*)

19           33. Human factors must also be considered as to minimize the psychological distress to  
20 animal owners. (Depopulation Guidelines at p. 11.) Plans must include “properly trained and  
21 well-equipped individuals to respond to the link between humans and animals” and the decision  
22 to depopulate “must be mindful of the emotional impact of the procedure” on owners. (*Ibid.*)  
23 “[J]ustification for the mass destruction of animals should be communicated in a transparent and  
24 honest way.” (*Id.* at p. 12.)

25           34. Ultimately, regardless of the depopulation method chosen, “[p]ersonnel who depopulate  
26 animals must demonstrate proficiency in the use of the technique in a closely supervised  
27 environment.” (Depopulation Guidelines at p. 8.) “Experience in the humane restraint of the  
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1 species is critical.” (*Ibid.*) This is a “learned skill that requires training, respect, and self-  
2 awareness.” (*Id.* at p. 12.) “Personnel must also possess a temperament that does not lead to  
3 callousness and abuse.” (*Ibid.*)

#### 4 **Modern Trends for Depopulation of Backyard Pets**

5 35. The majority of the 1.2 million birds destroyed pursuant to Defendants’ orders have been  
6 part of commercial flocks. Indeed, commercial poultry operations are the main focus of the  
7 Depopulation Guidelines, *supra*, as they relate to poultry. However, the destruction orders have  
8 also applied to backyard pets, including those that tested negative for vND. These birds are  
9 addressed in section 6.6 of the guidelines, which specifically focuses on “companion, life-style, or  
10 high value birds.” (*Id.* at p. 55.)

11 36. Concern for backyard pets arose in connection with a 2002 quarantine and depopulation  
12 relating to the Newcastle Disease. At that time, one of Dr. Jones’s predecessors, Dr. Richard E.  
13 Breitmyer, observed that “the sheer volume of these backyard birds has been eye-opening to us.”  
14 He noted that “Some of these birds, including chickens, are like pets to these people. It’s  
15 amazing how emotionally attached people get to them.”

16 37. As populations in the quarantine area continue to shift from rural to suburban, the  
17 number of backyard birds kept as pets has increased. Similarly, as society’s affection for pets has  
18 increased, so too has owners’ affection for their pet birds, whether chickens or other species. For  
19 most back-yard chicken owners, their birds are more like pets than livestock and afforded the  
20 same level of affection as more traditional companion animals.

21 38. The AVMA’s Euthanasia Guidelines, *supra*, recognized changing concerns for animal  
22 welfare. (*Id.* at pp. 5 & 14) “This is evident both nationally and internationally in recent  
23 protections afforded animals in laws and regulations as well as corporate policies and societal  
24 attitudes.” (*Ibid.*)  
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1 39. California law on the treatment of animals has, similarly, generally kept pace with  
2 changing attitudes about animals. One example is 2018's Proposition 12, the Farm Animal  
3 Confinement Initiative, which increased safeguards for egg producing chickens.

4 40. To extent CDFA is employing the methods it has always used or is employing methods  
5 used on commercial flocks on backyard pets, it has failed to keep pace with changing attitudes  
6 that are reflected in AVMA guidelines and state law. Methods that might have been acceptable in  
7 at one point in history, are by today's standards or changed circumstances, inhumane if not cruel.

8  
9 **Depopulation Methods Appropriate for Companion Birds**

10 41. For companion birds, preferred methods described include captive bolt gun,  
11 containerized gassing, ingested or injected agents, and cervical dislocation. (Depopulation  
12 Guidelines, *supra*, at p. 55.) Given the long-term duration of the quarantine event, it is unlikely  
13 that any constrained circumstance method could be permitted. But if it were, methods permitted  
14 in constrained circumstances include water-based foam generators, water-based foam nozzles,  
15 compressed air foam, decapitation, and gun shot. (*Ibid.*) Methods that are not recommended, and  
16 therefore should not be used, include ventilation shutdown, controlled demolition,  
17 exsanguination, and whole-house gassing. (*Ibid.*)

18 42. Defendants have been observed using containerized gassing, gun shot, and blunt force  
19 trauma, a method not addressed in the depopulation guidelines but considered, and disapproved  
20 of, in AVMA's Euthanasia Guidelines, *supra*. (*Id.* at p. 63.) For reasons stated below,  
21 Defendant's use or execution of these methods is inhumane and is, therefore, improper  
22 destruction under Food and Agricultural Code section 9562.

23 **43. Defendants have used containerized gassing in a manner that is inhumane and**  
24 **unreasonably increases suffering for animals and humans.**

25 44. Containerized gassing shows one area where state law is more restrictive than the  
26 Depopulation Guidelines, *supra*. The guidelines allow for euthanasia with carbon monoxide. (See  
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28

1 e.g. *id.* at p. 19.) This is prohibited by state law. (Pen. Code § 597u; see also Cal. Code Regs.,  
2 tit. 3, §§ 1246.4 & 1246.5 [specifying gasses that are allowed].)

3 45. Containerized gassing involves catching the animals and placing them into a container  
4 that is filled with gas. The container must be sufficiently airtight such that it can hold an adequate  
5 concentration of gas for long enough to ensure the death of the birds placed inside. (Depopulation  
6 Guidelines at p. 58.)

7 46. Defendants' means of implementing containerized gassing is inhumane because it does  
8 not comply with the AVMA guidelines or analogous state regulations. (See Cal. Code Regs., tit.  
9 3, § 1246.4 et seq.)

10 47. The container Defendants use is a trash can. Birds are, almost literally, thrown into the  
11 can and piled one on top of another. Birds are held that way until the can is sufficiently full. Then  
12 the can is capped, and it is filled with gas.

13 48. For containerized gassing, AVMA guidelines require, among other things, (A) properly  
14 working equipment because "[l]eaky or faulty equipment may lead to slow, distressful death, and  
15 (B) that animals be "restrained or separated so they will not hurt themselves or others."  
16 (Euthanasia Guidelines, *supra*, at p. 19.)

17 49. Defendants' practices do not satisfy AVMA requirements because

- 18  
19 a. Piling birds one on top of another in a trash can is not sufficient restraint or  
20 separation that will prevent injury. If anything, Defendants' practice is likely to  
21 increase injury prior to death.  
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23 b. Furthermore, the time that passes from the placement of the first bird into the can  
24 to the time that gas is finally administered is too long. This is the time of the most  
25 serious distress, and the distress can be minimized if not avoided by using  
26 equipment intended for the process.  
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1 50. While the guidelines contemplate trashcans as a euthanasia container, they do not  
2 endorse this practice (Depopulation Guidelines at p. 58), perhaps for the reasons stated above.  
3 Instead, a MAK Cart is preferred. (*Ibid.*)

4 51. MAK Carts were designed for the purpose of depopulating small flocks of poultry.  
5 (Depopulation Guidelines at p. 58.) With a MAK Cart, birds are placed into individual chambers  
6 prefilled with gas where they lose consciousness in 30-60 seconds. (*Ibid.*) There are windows that  
7 allow operators to see the birds without opening, preventing the mixture of gas and air, which  
8 would increase the amount of time to kill the birds. (*Ibid.*) MAK Carts are also very efficient. In  
9 eight hours, a crew of 12 could humanely kill 30,000 chickens. (*Ibid.*)

10 52. But even if the AVMA guidelines permit trashcans as a container for containerized  
11 gassing, California law requires more. Analogous CDFA regulations require execution of  
12 containerized gassing with gas chambers that are more like MAK Carts than trashcans. (Cal.  
13 Code Regs., tit. 3, § 1246.4.)

14 53. This is consistent with state policies that require more than the bare minimum of AVMA  
15 standards, as evidenced in part by the November 2018 passage of Proposition 12 establishing  
16 spacing requirements for egg laying hens. If state policies require better treatment of animals in  
17 life, then those standards should also apply at the time of their death. Moreover, even if a lesser  
18 standard applies in a commercial environment, such practices are not humane under the  
19 circumstances presented here, where backyard pets are killed in front of their owners and the  
20 state has had a year to plan its approach.

21 54. Requiring the use of MAK Carts (or something similar) is not unreasonable under the  
22 circumstances because CDFA has (or should have) been planning this depopulation since the  
23 quarantine was first issued in 2018, if not earlier. Even if trashcans might have been permitted in  
24 the early stages of the quarantine, enough time has passed that Defendants should be held to a  
25 higher standard. At this time, there is no excuse for the makeshift equipment Defendants  
26 continue to use.  
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1       **55. Defendants’ use of gun shots as a euthanasia method is not supported by the**  
2 **Depopulation Guidelines.**

3       56. Gun shot is only authorized in constrained circumstances and “is acceptable with  
4 conditions for free-ranging poultry and ratites [e.g. ostrich and emu] when capture or restraint  
5 would potentially be highly stressful for the animal or dangerous for humans. Gun shot is not  
6 recommended for captive poultry when restraint is feasible.” (Euthanasia Guidelines at p. 63.)

7       57. No such constrained circumstances apply because, among other reasons, the amount of  
8 time that has passed since the quarantine was established. If exigent circumstances exist because  
9 of an inability to plan, there is no such exigency here. Defendants have had ample time to plan.

10       58. But even if there were constrained circumstances, the conditions that justify gun shot do  
11 not exist. Thus, if there truly were constrained circumstances, Defendant’s must choose another  
12 method.  
13

14       59. Gun shot is not appropriate, in large part, because the birds are captive and easily caught.  
15 Indeed, CDFAs agents have been observed restraining birds for the purpose of shooting them. If  
16 the birds can be caught and restrained for the purpose of shooting them, then the containerized  
17 gassing method should be used because gun shot is only appropriate when birds cannot be caught.

18       60. Given the ease and preference for containerized gassing combined with the observed  
19 behavior and demeanor of CDFAs agents, it appears that Defendants may engage in gun shot as a  
20 killing method out of callousness and for the purpose of abusing owners they have perceived as  
21 interfering with their activities.

22       61. Other factors weighing against use of gun shot include the lack of proper training and skill  
23 by Defendants’ agents. Plaintiff is informed and believes that CDFAs agents receive less than two  
24 days of training and have observed CDFAs agents leaving weapons unattended and  
25 indiscriminately pointing loaded weapons at no target in particular. Their behavior and improper  
26 use of the weapons is indicative of someone who has not had sufficient training. Furthermore, the  
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1 close proximity of houses, other outbuildings, people, and non-quarantined animals precludes the  
2 use of gun shot as a safe and viable means of euthanization.

3 62. On balance, virtually every factor that must be considered to support the use of firearms  
4 weighs in favor of using some other means of killing the birds in question. (See Depopulation  
5 Guidelines, *supra*, appendix B, pp. 89-93 [discussion of relevant factors].)

6 **63. Defendants’ use of blunt force trauma is not supported by any AVMA guideline and**  
7 **has been performed in a manner that would justify animal cruelty charges against the**  
8 **involved CDFA agents.**

9  
10 64. CDFA agents have been observed smashing chicks, presumably (but not necessarily) their  
11 skulls, on the ground with their feet. AVMA guidelines describe this method of killing (Plaintiff is  
12 averse to describing this as “euthanasia”) as blunt force trauma.

13 65. If allowed, this method is not preferred. “AVMA encourages those using manually  
14 applied blunt force trauma to the head as a euthanasia method to actively search for alternative  
15 methods.” (Euthanasia Guidelines, *supra*, at p. 36.)

16 66. Cervical dislocation is an alternative physical method of euthanasia that is preferred over  
17 blunt force trauma. “Cervical dislocation is the luxation [displacement] of the cervical vertebrae  
18 without primary crushing of the vertebrae and spinal cord. Properly implemented, cervical  
19 dislocation causes rapid loss of consciousness.” (Depopulation Guidelines, *supra*, at p. 61.)

20  
21 67. Cervical dislocation is appropriate for smaller birds that are up to five pounds. With  
22 cervical dislocation as an alternative, blunt force trauma is not appropriate for birds less than five  
23 pounds. (Depopulation Guidelines at p. 61.) The chicks described above are less than five  
24 pounds.

25 68. As explained above, containerized gassing is the preferred way to kill the chicks Plaintiff  
26 describes. But if a manual method were necessary, AVMA guidelines require cervical dislocation  
27 because of the chicks’ small size. Cervical dislocation is more humane for the birds, the person  
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1 performing the euthanasia, those who observe the killing, and a society that expects forced  
2 euthanizations to be performed humanely. (Euthanasia Guidelines at pp. 36 & 38.)

3 69. The blunt force trauma performed on chicks, as well as other CDFA actions, invokes the  
4 criminal provisions of Penal Code section 597. This section demonstrates the state's objective of  
5 protecting animals by criminalizing animal cruelty. This section specifically prohibits malicious  
6 killing and torture of animals. Even if CDFA's killings are justified, its failure execute the killings  
7 in a humane manner may be described as malicious torture and justify criminal charges.

8 70. While it is unusual for government actors be charged and convicted of animal cruelty  
9 arising out their conduct when performing euthanizations on behalf of the state, it has happened.  
10 In *Tennessee v. Stewart* (Tenn.Crim.App. Jun. 4, 2015) No. W2013-02562-CCA-R3-CD [2015  
11 Tenn.Crim.App. LEXIS 438], a Tennessee appellate court upheld the animal cruelty conviction  
12 of a government employee charged with improperly using a catchpole leash to choke dogs while  
13 transporting them to the euthanasia room.

14 71. Here, the blunt force trauma described above combined with the apparent joy taken by  
15 CDFA agents who taunted owners while engaging in the killings suggests the necessary criminal  
16 intent to substantiate malicious animal cruelty charges. Indeed, improperly smashing chicks or  
17 holding birds to the ground with one's boot to shoot them is at least as bad as the behavior  
18 described in *Tennessee v. Stewart*, if not worse.

19 72. Another similar example is the CDFA agent recorded on video holding a chicken to the  
20 ground while he prepared to shoot it at close range. The chicken was observed in distress,  
21 flapping its wings and trying to escape. This chicken had been captured and it would have taken  
22 less effort to place it into a container for gassing than it did to hold it down and shoot it,  
23 dangerously close to people and animals who could have been harmed if a bullet ricocheted.

24 73. The actions described above are malicious because they are intended to punish and  
25 traumatize owners perceived as uncooperative because they have questioned the validity and  
26 necessity of Dr. Jones's poorly communicated orders. The CDFA agents' malicious intent is  
27 demonstrated their apparent joy in the conduct of the inhumane killings and their failure to use  
28

1 more humane methods. Since easier and more humane methods were already being used at the  
2 same location, it took the agents *more effort* to inhumanely kill the birds than it would have if they  
3 used a humane option.

4 74. It is worth noting that these are not long-time employees, known and trusted by CDFA  
5 and presumed to be acting properly but are instead, poorly trained temporary workers hired  
6 without sufficient background checks and put into the field without sufficient training.

7 75. Ultimately, conduct need not be criminal in order to be illegally inhumane. Conduct need  
8 not violate Penal Code section 597 to be an improper exercise of power conferred by Food and  
9 Agricultural Code section 9562. Thus, regardless of the applicability of Penal Code section 597,  
10 the conduct in question is inhumane and must not be allowed.

11 **FIRST CAUSE OF ACTION**  
12 Food & Agr. Code § 9562

13 76. Plaintiff realleges and incorporates by reference each preceding paragraph.

14 77. Food and Agricultural Code section 9562 only permits a quarantine and related  
15 destruction orders if the State Veterinarian believes, upon a basis “reasonably supportable by  
16 standard epidemiological practice or credible scientific research, that a population of domestic  
17 animals or food product from animals has contracted, or may carry, an illness, infection,  
18 pathogen, contagion, toxin, or condition that, without intervention, could transmit an illness that  
19 could kill or seriously damage other animals or humans, including, in addition to the original  
20 condition, those clinically plausible secondary illnesses, infections, pathogens, contagions, toxins,  
21 or conditions arising from the effects of the original.”

22 78. Plaintiffs’ membership has requested, as is their right under Article I, section 3 of the  
23 California Constitution, documentation that would demonstrate the basis for Defendant’s belief.  
24 She has failed to produce the requested documentation. On this basis, Plaintiff is informed and  
25 believes the quarantine and related destruction orders are not authorized by the Code.  
26

27 79. Regardless, implicit in section 9562 and CDFA regulations is a requirement that  
28 euthanizations performed in connection with a depopulation or destruction order be performed

1 humanely. Inhumane euthanizations are not authorized as a means of destruction under the  
2 Code.

3 80. As explained above, Defendants have been observed euthanizing animals in an inhumane  
4 manner. Their inhumane activity has been reported to media and other government officials but  
5 continues unabated despite public concern over the behavior. On this basis, Plaintiff is informed  
6 and believes that Defendants' intend to continue inhumane euthanizations for the duration of the  
7 quarantine unless this Court orders them otherwise.

8 81. Defendants' have engaged in inhumane killings of pets in front of the pets' owners,  
9 children included. Their behavior causes irreversible emotional scarring and distress to the  
10 human owners who are losing their pets.

11 82. A corner stone of euthanasia is its irreversibility. (Depopulation Guidelines, *supra*, at  
12 p. 8.) Death is permanent. The fair market cash value of a pet is generally very small. It is the  
13 emotional value that is high. Pet owners might spend thousands of dollars on veterinary care to  
14 save a pet they couldn't otherwise sell if they tried. In this regard, pets are priceless. While it is  
15 possible to ascertain the value of each bird in a commercial flock and reimburse commercial  
16 operations for the killings, a nominal reimbursement for the cash value of a pet cannot consider  
17 its emotional value. In this way, the killing of a pet causes such irreparable harm that it should be  
18 prevented if it can be avoided.

19 83. The irreparable nature of the harm intensifies when pet owners observe or know that their  
20 pet was killed in an inhumane manner by a government actor. There is no adequate remedy that  
21 can cure the knowledge that a beloved pet's final moments were filled with fear and pain that  
22 occurred only because the government actors carrying out the killings failed to follow state laws  
23 requiring the humane treatment of their pets.

24 84. This is not only a concern for the owners and their families but also for society at large.  
25 Californians have demonstrated their intent, both through the Legislature as well as their  
26 initiative right, to treat animals humanely. The government's failure to implement this policy  
27 provides irreparable harm to society at large.  
28



1 85. Furthermore, restraint is necessary to prevent a multiplicity of proceedings. If every  
2 owner sues for the emotional distress or other harms Defendants might cause, there will likely be  
3 numerous lawsuits. An injunction to prevent the conduct in the first instance will avoid those  
4 proceedings.

5 86. Under these circumstances, the only remedy is to ensure that future killings are  
6 conducted humanely, in accordance with state law.  
7  
8

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiff prays that the Court

11 1. Issue a temporary restraining order and/or preliminary injunction saying all depopulation  
12 orders until (a) justification for the quarantine and/or depopulation orders can be established, or  
13 (b) there is an approved plan to execute depopulation orders in a humane manner;

14 2. Issue a permanent injunction staying (a) all depopulation and quarantine activity that is  
15 without justification and/or (b) all inhumane euthanizations;

16 3. Award Plaintiff's costs of suit and reasonable attorneys' fees under Code of Civil  
17 Procedure section 1021.5; and

18 4. Award Such other and further relief as the Court deems proper.  
19  
20

21 DATE: May 28, 2019

Respectfully Submitted,  
LAW OFFICE OF CHAD D. MORGAN

22  
23 By: 

24 Chad D. Morgan Esq.  
25 Attorney for Plaintiff, Save Our Birds  
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