## 1 2 3 4 5 BEFORE THE KERN COUNTY 6 7 ENVIRONMENTAL HEALTH SERVICES DEPARTMENT 8 In the Matter of 9 WRITTEN DECISION AND FINDINGS ANITA GILBERT, 10 11 Appellant. 12 13 This matter of the appeal of the seizure of certain animals by the Kern County 14 15 Animal Control Department ("the Department") came on for hearing on August 28, 2008. 16 The appellant, Anita Gilbert ("Gilbert") was not present but was represented by, Mr. 17 Campbell, Esq.; the Department was represented by Mr. Charles Collins, Esq. The 18 parties were provided with an opportunity to present such documentary and oral 19 evidence and argument as each deemed appropriate and the matter was submitted for 20 consideration by the undersigned acting as the Hearing Officer. 21 In reaching my determination on the appeal of Anita Gilbert, I have made the 22 following findings: 23 1. On July 16, 2008, the Department, per the "Return To Search Warrant 24

Document," seized 18 live dogs and 33 live cats from the property of Anita Gilbert under

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the authority of Penal Code section 597.1 upon the Department's determination that prompt action was necessary for the health or safety of the animal.

- 2. Written notice of the seizure was provided by the Department to Gilbert on July 16, 2008. (Exhibits 19, 20, 21, 22 to the hearing in this matter).
- 3. Gilbert has timely filed a request for a postsiezure hearing under Penal Code Section 597.1 and both Gilbert and the Department agreed to meet on this date. A prior hearing was convened on July 25, 2008 wherein Gilbert and her attorney at that time, George Boyle, requested a postponement; that postponement was granted. Mr. Campbell requested an additional delay stating Gilbert was hospitalized and unable to attend this hearing. Campbell said he did not know in which what hospital Gilbert was being treated and he was relying on information from Gilbert via telephone conversations. Mr. Collins said there were active warrants for Gilbert's arrest and argued Gilbert is a fugitive from justice and the hearing should proceed. My decision was to proceed with the hearing.
- 4. In considering the evidence presented and the testimony of the witnesses, I found Animal Control Officer Sugg to be credible in descriptions of conditions at Gilbert's facility as were her comments about the appearance and condition of the animals seized. Sugg's expertise, training, and experience, along with evidence shown to me made a valid argument that she had a reasonable belief that prompt action on her part was necessary.

Sugg described responding to investigate a complaint that animals were being housed under substandard conditions at a warehouse-type structure in Tehachapi

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on July 15, 2008. When she arrived, she could smell a stench of feces, urine, and rotting animal carcasses. Blowflies, which are indicative of the presence of rotting meat, were flying around the building. Gilbert responded to the door and spoke with Sugg but eventually denied Sugg further entry to conduct an investigation. Sugg was nearly overwhelmed by the odors coming from the building when she was speaking with Gilbert. Sugg could see and hear dogs inside of the building and saw cans of rotting food. She noted seeing a Chihuahua kept inside of a filthy dog crate. Sugg left the location and secured a warrant returning on July 16, 2008.

Sugg said she, other Animal Control Officers and deputies from the Kern County Sheriff's Department served a search warrant at a building suspected of housing animals kept in inhumane conditions. Gilbert was present when officers arrived and was subsequently arrested and transported to jail.

Sugg said the stench of ammonia (from concentrated animal urine), feces and dead animals induced "dry heaving" and made it difficult for the responding officers do their jobs inside the building. The interior had many flies flying around while cockroaches and beetles were on the floor and walls. She noted in her reports that cockroaches and beetles were commonly seen inside of crates and cages along with small dogs and cats. Windows were covered by plywood and the floors were covered with garbage and fecal sludge. The interior was foul smelling, dark, and humid. Sugg's report (Exhibit 16) describes a kennel area in which dogs were confined. The area was dark, lacked ventilation and the floor was covered with water and fecal stains; the floor

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and walls were covered with black mold. She found a Rottweiler that had hair sticky from urine and matted with feces.

Some cats were loose among the garbage and filth inside the building.

Some of those cats were described as being diseased and suffering from long-term exposure to the environment.

Some animals were in small plastic crates whose bottoms were like shallow cesspools over spilling and leaking foul mixtures of fecal sludge, urine, rotted food and no drinking water. In one example (Exhibit 2), a Chihuahua was confined inside of a small plastic carrier in which so much fecal material, sludge, and pet-food cans were piled that the dog was restricted from movement. This long-term confinement caused atrophy of the hind legs. Sugg stated that some animals were in crates that had so much fecal accumulation that they (the animals) "were actually pressed up against the top."

Sugg's testimony and written documents submitted by Mr. Collins (for example case report - Exhibit 16; photographs) provide a graphic scene of long-term neglect and abuse. The case report presents descriptions of animals seized from the structure and are consistent with Sugg's and Beaver's testimony. Descriptions include a cat diagnosed by Dr. Billingsley D.V.M. as having eye, mouth and respiratory ulcers probably caused by long-term exposure to ammonia-rich air. Animals confined in crates were emaciated and had paws and underbellies soaked with urine and caked fecal

sludge. One Chihuahua removed from a small cage had a leg that was "flopping around." Dr. Billingsley D.V.M. diagnosed the dog as having a broken leg that had gone untreated. Other animals were described as having respiratory distress, eye ulcers, discharges and flea infestations. Some animals were euthanized at the scene to prevent further suffering.

I asked Sugg if Gilbert made any statements to her before being transported to Jail. Sugg said Gilbert said it "wasn't her fault." Sugg did not elaborate further saying that Gilbert refused to talk.

In considering the evidence presented and the testimony of the witnesses, I found Animal Control registered veterinary technician Lori Beaver to be credible in descriptions of conditions at Gilbert's facility as were her comments about the appearance and condition of the animals seized. Beaver's expertise, training, and experience, along with evidence shown to me made a valid argument that she had a reasonable belief that prompt action part was necessary to protect the health of the animals found at Gilbert's facility.

Beaver said she had been a vet technician for "thirty four years" and the conditions inside the building were the "most horrendous I have ever seen." She described cats with ocular and nasal discharges along with "severe" respiratory problems. In her opinion those conditions were probably due to the "environment"

inside of the building. She further described animals that had urine-stained coats and others that were "covered" in feces.

Mr. Collins submitted a brief in support of "Request for a Finding of Fact Establishing the Amount of the Cost of the Seizure and the Cost of Caring for and Treating the Seized Animals." Collins argued Gilbert was responsible for all charges incurred by Animal Control and should pay those charges. Campbell said Gilbert is agreeable to paying all charges but differed on the number of animals for which Gilbert should be held responsible. Campbell said some of the animals were euthanized by Animal Control and Gilbert should not be responsible for care or treatment of more than 48 animals. Collins said that number is agreeable to him.

Mr. Campbell said he had no evidence to counter what was offered by Sugg and did not offer a defense.

At issue for this hearing is whether Sugg had reasonable grounds to believe prompt action was required to protect the health and safety of the animals found at the building. Testimony and her report depict Gilbert as an evasive, uncooperative, caretaker who was actively attempting to hide her actions. Conditions inside the building were horrific and animals seized by the Animal Control Officers showed signs of long-term neglect and abuse from being confined in a filthy and toxic environment.

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It is clear to me that Sugg had reasonable grounds to seize all animals from the building. The Animal Control officers were not just prudent in their actions to rescue the animals from the building, they were heroic. Testimony and written evidence documents the Animal Control officers suffered nausea, dizziness and headaches from their relatively brief exposure to the foul air inside the building. They also describe receiving skin burns from ammonia-laced sludge as well as flea bites from the parasites that were on the animals.

Evidentiary photographs (Exhibits 3, 4, 9, 12,) show crates, many of which according to Sugg, housed suffering sickly animals sitting in filth and piles of empty food cans. Seeing the juxtaposition of crated animals sitting like trash among piles of garbage and filth suggest to me an irony between the perverted mentality capable of this long term abuse and Mr. Campbell's comments that his client is deeply concerned for the welfare of her animals; it simply doesn't jibe.

The record should show that Anita Gilbert telephoned me on July 24, 2008 and attempted to argue her case. I told her I would not discuss her case and her call was not appropriate contact. Gilbert would not stop arguing her case and I hung up on her. Gilbert arrived at my office at 2:20 on July 25, 2008 and again attempted to argue her case. I escorted her out of the office area and told her to save her arguments until the hearing, which was held at 3:00 pm. Gilbert telephoned me on the afternoon of September 2, 2008, said her attorney did not represent her properly and attempted to argue her case. I again explained to Gilbert that this was not an appropriate contact

Anita Gilbert.

and again had to hang up on her. Gilbert called back after about 15 minutes and left a phone message again attempting to argue her case. In all four encounters with Gilbert it was clear to me that she was attempting to influence my decision. Additionally, two persons (Susan Marlowe and Gwen Francis) acting on behalf of Anita Gilbert sent to me, unsolicited fax's on September 3 and September 4 in an inappropriate attempt to participate in the hearing process. None of my contacts with Gilbert or the fax's had any impact on my decision in this hearing; the case presented by Animal Control is overwhelming.

5. Therefore, I have concluded that the seizure of the animals from Gilbert on July 16, 2008 was valid and the Animal Control Officers acted with a reasonable belief that prompt action was necessary to protect the health or safety of the animal they seized. I further conclude that all costs incurred by Animal Control in this case including the ongoing care and medical treatment of 48 animals are valid and the responsibility of

## ORDER

Based on the foregoing findings, and good cause appearing therefore, the seizure of the animals from Anita Gilbert was justified.

Dated: September 5, 2008

Brian Pitts

Environmental Health Services Department

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