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7 SUPERIOR COURT OF CALIFORNIA  
8 COUNTY OF SONOMA

9 PEOPLE OF THE STATE OF  
10 CALIFORNIA,

11 Plaintiff,

12 v.

13 WAYNE HANSEN HSIUNG;  
14 PRIYA SAWHNEY; and  
15 CASSANDRA MORGAN KING

16 Defendants.

) Case No. SCR-721464-1  
)  
) NOTICE OF MOTION AND MOTION FOR  
) LEAVE TO FILE AMICUS CURIAE BRIEF IN  
) SUPPORT OF DEFENDANT WAYNE HSIUNG'S  
) MOTION TO COMPEL AND IN LIMINE;  
) MEMORANDUM OF POINTS AND  
) AUTHORITIES  
)  
) Hearing Date:  
) Hearing Time:  
) Courtroom: 10  
) Judge Laura Passaglia

17 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT ATTORNEY FOR  
18 THE COUNTY OF SONOMA:

19 NOTICE IS HEREBY GIVEN that amicus curiae PROFESSOR KRISTEN STILT moves this  
20 court for leave to file an amicus curiae brief in support of Defendant Wayne Hsiung's Motion to Compel  
21 and in Limine in the above-captioned matter. Professor Stilt also moves for leave to attend the hearing on  
22 the motion, scheduled on September 1, 2023, via Zoom.

23 Professor Stilt's motion is based on the attached amicus curiae brief, Mr. Hsiung's Motion to  
24 Compel and in Limine, and any evidence and argument taken at the hearing on this motion.  
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1 Dated: August 30, 2023

Respectfully submitted,

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5 Professor Kristen Stilt  
6 Harvard Law School  
7 Amicus Curiae  
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1 **MEMORANDUM IN SUPPORT**

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3 **AUTHOR’S BACKGROUND**

4 Kristen Stilt is a legal scholar and professor who teaches and researches extensively in Property  
5 Law, Animal Law, and comparative law. She is currently a Professor at Harvard Law School, where she  
6 serves as Faculty Director and Founder of Harvard’s Brooks McCormick Jr. Animal Law & Policy  
7 Program. Prior to that, she was a professor of law at Northwestern University and The University of  
8 Washington.

9  
10 Professor Stilt is the recipient of a Guggenheim Foundation Fellowship, a Harvard Radcliffe  
11 Institute Fellowship, and a Fulbright-Hays Dissertation Research Grant. She has published numerous book  
12 chapters and articles, and delivered many presentations, on the topic of animal law. She is under contract  
13 and in the process of authoring several books regarding animal law, including but not limited to the Oxford  
14 Handbook of Global Animal Law and an Animal Law & Policy Coursebook for students. She authored  
15 an amicus curiae brief that was adopted and cited extensively by the Constitutional Court of Ecuador in  
16 its January 2022 opinion in the widely publicized “Estrellita Monkey Case.”  
17  
18

19 Professor Stilt holds a J.D. from The University of Texas School of Law, where she was a member  
20 of Order of the Coif. She also holds a Ph.D. in History from Harvard University.  
21

22 **SUMMARY OF THE ARGUMENT**

23  
24 The necessity defense, as set forth in CALCRIM Sec. 3403, should be interpreted to apply when  
25 an individual is acting to prevent significant bodily harm or evil to an animal, including an agricultural  
26 animal, because animals are sentient beings who can feel pain and suffer bodily harm. This conclusion is  
27 supported by the public policy of the State of California and by the intent of the California legislature to  
28 aid animals in distress, even when doing so involves damage to property or trespassing, and even when

1 the animals in need of aid are agricultural animals. This public policy and legislative intent are exemplified  
2 in various California laws, three of which are discussed in this brief: the Vehicle Confinement Law<sup>1</sup>; the  
3 Good Samaritan Laws<sup>2</sup>; and the Impounded Animal Law.<sup>3</sup> Interpreting CALCRIM Sec. 3403 to apply  
4 only when an individual acts to prevent significant bodily harm or evil to a human would conflict with  
5 significant bodies of California law and would be inconsistent with California's clear expressions of public  
6 policy. Further, because preventing bodily harm to an animal is highly valued in the Vehicle Confinement  
7 Law, the Good Samaritan Laws, and the Impounded Animal Law, it would be an absurd and irrational  
8 result to reject the interpretation that preventing bodily harm to an animal can also serve as a basis for the  
9 necessity defense.  
10

## 11 12 13 **LAW & ANALYSIS**

### 14 **1. The Necessity Defense applies to actions taken to prevent harm to animals, including** 15 **agricultural animals.**

16 Necessity is an affirmative defense, derived from common law and based on public policy  
17 considerations. California clearly recognizes the necessity defense, as evidenced, in part, by a multitude  
18 of judicial decisions.<sup>4</sup> Jury Council of California Criminal Jury Instructions (CALCRIM) 2023 provides  
19 for the necessity defense in Section 3403. The defendant seeking the defense must prove that:  
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- 21 1. (He/She) acted in an emergency to prevent a significant bodily harm or evil to (himself/herself  
22 [or] someone else);  
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25 <sup>1</sup> Cal. Penal Code § 597.7(a).

26 <sup>2</sup> Cal. Health and Safety Code § 1799.109.

27 <sup>3</sup> Cal. Penal Code § 597(e).

28 <sup>4</sup> See, e.g., *In re Eichorn*, 69 Cal.App.4th 382 (1998); *People v. Kearns*, 55 Cal. App. 4th 1128, 64 Cal. Rptr. 2d 654 (1997), as modified on denial of reh'g (June 17, 1997); *People v. Pepper*, 41 Cal. App. 4th 1029, 48 Cal. Rptr. 2d 877, 880 (1996).

- 1 2. (He/She) had no adequate legal alternative;
- 2 3. The defendant's acts did not create a greater danger than the one avoided;
- 3 4. When the defendant acted, (he/she) actually believed that the act was reasonably necessary to
- 4 prevent the threatened harm or evil;
- 5 5. A reasonable person would also have believed that the act was necessary under the
- 6 circumstances; AND
- 7
- 8 6. The defendant did not substantially contribute to the emergency.<sup>5</sup>

9 The instructions further state that “[t]he defendant has the burden of proving this defense by a  
10 preponderance of the evidence.”<sup>6</sup> To meet this burden, the “defendant must prove that it is more likely  
11 than not that each of the six listed items is true.”<sup>7</sup> The court “must instruct” the jury on the necessity  
12 defense, and in fact has a “sua sponte duty” to do so, “when the defendant requests it and there is  
13 substantial evidence supporting the defense.”<sup>8</sup>

14  
15 The potential legal effect of a necessity defense is very precise: “Necessity does not negate any  
16 element of the crime, but rather represents a public policy decision not to punish a defendant despite proof  
17 of the crime.”<sup>9</sup> The necessity defense in the criminal context does not create immunity from civil liability.

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19 This amicus brief focuses on the first requirement of the necessity defense as stated in CALCRIM  
20 Sec. 3403. To meet it, the defendant must act to prevent “significant bodily harm or evil” to the actor

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24 <sup>5</sup> Judicial Council of California Criminal Jury Instruction 3403.

25 <sup>6</sup> *Id.*

26 <sup>7</sup> *Id.*

27 <sup>8</sup> *Id.* at “Bench Notes”; *See also Eichorn*, 69 Cal.App.4th at 389 (trial court reversed where “reasonable minds could differ  
whether defendant acted to prevent a ‘significant evil.’”); *People v. Pena*, 149 Cal. App. 3d Supp. 14, 28 (App. Dep’t Super Ct.  
1983) (trial court reversed where “the defense of justification was available to the [defendant] and the failure to so instruct the  
jury constituted prejudicial error.”).

28 <sup>9</sup> *People v. Heath*, 207 Cal.App.3d 892, 901 (1989).

1 himself/herself or to “someone else.”<sup>10</sup> California decisions addressing the necessity defense often speak  
2 in terms of the “harm or evil sought to be avoided”<sup>11</sup> or “prevent[ing] a significant evil”<sup>12</sup> without specific  
3 details about the individual (or individuals) who is being harmed or about to be harmed. These decisions  
4 thus do not foreclose the possibility that those individuals could be both human animals and non-human  
5 animals. While prevention of “evil” seems fairly broadly applicable, prevention of “bodily harm”  
6 necessarily means that an individual with a body that can suffer harm is being aided. The defendant may  
7 be acting to aid herself. She also may be acting to aid “someone else,” meaning some other individual  
8 who also has a body that is threatened by significant harm. “Someone else” does not refer to inanimate  
9 objects such as a car, a home, an iPhone, or other items in that category. Simply stated, if a car or an  
10 electronic device is on the verge of being damaged, a person may not take an action that constitutes a  
11 criminal offense to prevent the damage and expect that the necessity defense will be available because the  
12 defendant would not be able to meet the first requirement of the defense. The use of the language “someone  
13 else” is just one way to convey the basic idea of the necessity defense and is not an inherent or immutable  
14 way to express the requirements of the defense. Thus, the meaning of “someone else” in this requirement  
15 should include an animal, and this amicus brief will show that the necessity defense, as articulated in  
16 CALCRIM, applies to actions taken to prevent harm to animals, including agricultural animals.  
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20 Other California laws likewise indicate that the State of California recognizes that animals are  
21 sentient beings and that they feel pain and can suffer bodily harm. Further, it is the public policy of the  
22 State to aid animals in distress, even when doing so also involves damage to property or trespassing, and  
23 even when the animals in question are agricultural animals. The three examples discussed in this amicus  
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26 <sup>10</sup> Judicial Council of California Criminal Jury Instruction 3403.

27 <sup>11</sup> *Eichorn*, 69 Cal.App.4th at 383.

28 <sup>12</sup> *Pepper*, 41 Cal. App. 4th at 1035; *Eichorn*, 69 Cal.App.4th at 383.

1 brief are: (a) the Vehicle Confinement Law, (b) the Good Samaritan Laws, and (c) the Impounded Animal  
2 Law. These laws and their legislative histories demonstrate that the State of California recognizes that  
3 animals can suffer bodily harm and evil. Implicit and fundamental here is the recognition that animals,  
4 having living bodies, have interests, can fare better or worse, can feel pain, and as such are sentient beings.  
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7 **2. The Law of Animals Confined in Vehicles (“Vehicle Confinement Law” or “VCL”) supports**  
8 **the interpretation that the necessity defense applies to preventing harm to agricultural**  
9 **animals.**

10 The VCL is a demonstration of California’s public policy to aid animals in distress, even when  
11 doing so also involves damage to property, and even when the animals in question are agricultural animals,  
12 because these animals can suffer bodily harm and evil. Therefore, the VCL is consistent with and supports  
13 the understanding that the necessity defense applies to the prevention of harm to an animal. In addition,  
14 the VCL does not duplicate the necessity defense or suggest that the necessity defense does not apply to  
15 the prevention of harm to animals.  
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18  
19 **a. The VCL supports the interpretation that preventing bodily harm to animals is**  
20 **sufficient to meet the first requirement of the jury instruction on necessity.**

21 The Vehicle Confinement Law is based on a clear recognition that animals can suffer bodily harm  
22 and that preventing that harm is a desired goal. The VCL went into effect on September 24, 2016, and it  
23 involves both civil and criminal liability. On the civil side, the bill added Section 43.100 to the Civil Code  
24 to provide that “[t]here shall not be any civil liability on the part of, and no cause of action shall accrue  
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1 against, a person for property damage or trespass to a motor vehicle, if the damage was caused while the  
2 person was rescuing an animal in accordance with subdivision (b) of Section 597.7 of the Penal Code.”<sup>13</sup>

3 On the criminal side, the bill amended California Penal Code Section 597.7. When it was enacted  
4 in 2006, Section 597.7 established that “a person shall not leave or confine an animal in any unattended  
5 motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack  
6 of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected  
7 to cause suffering, disability, or death to the animal.”<sup>14</sup> The law permitted law enforcement to break into  
8 the vehicle to remove the animal.<sup>15</sup> However, the law was “silent on the ability of citizen bystanders to act  
9 to save the life of the animal in the same situation. As a practical matter, the only legally-sound options  
10 available to a bystander are to attempt to track down the owner or to call for help. Some might argue that  
11 a reasonable person in this situation would even go as far as to break into the car to save the animal’s life  
12 ... but, ultimately, there is no assurance that a court would agree if the person were to in fact be sued by  
13 the animal’s owner for the damage caused to their car.”<sup>16</sup>

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16 Animals continued to suffer and die in vehicles, leading to extensive legislative efforts in 2016 to  
17 amend the law along with public awareness efforts. The amendment’s author, Assemblyman Marc  
18 Steinorth, along with its co-sponsor, the Los Angeles County District Attorney’s Office, noted, “every  
19 year, hundreds of animals suffer, and many die, in Los Angeles County from being left in hot vehicles.  
20 Even when temperatures are in the low 70s and a car’s windows are left slightly open, a vehicle can heat  
21 up more than 40 degrees within an hour.”<sup>17</sup> Steinorth continued: “By the time a citizen spots an animal  
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25 <sup>13</sup> Assembly Bill No. 797, Chapter 554 (September 24, 2016), Section 1.

26 <sup>14</sup> Cal. Penal Code § 597.7(a) (West), discussed in Senate Committee on Public Safety on AB 797 (June 28, 2016).

27 <sup>15</sup> *Id.*

28 <sup>16</sup> Senate Judiciary Committee on AB 797 (June 13, 2016).

<sup>17</sup> Senate Committee on Public Safety on AB 797 (June 28, 2016) statement of author of AB 797 Steinorth; Senate Judiciary Committee on AB 797 (June 6, 2016), statement of the Los Angeles County District Attorney’s Office.



1 trapped in a hot vehicle the situation is often dire and requires immediate action. Because a call of this  
2 nature is not a priority for law enforcement, peace officers may not arrive in time. Due to the very limited  
3 resources of animal control agencies across the state, as much as animal control officers would like to  
4 respond quickly to a call of an animal in a hot vehicle, it is not always feasible.”<sup>18</sup> Individuals were calling  
5 “law enforcement hundreds of times per year to report dogs stuck suffering in hot cars. Unfortunately,  
6 these cases are not always the top priority of our law enforcement, and they may not arrive in time to save  
7 the animal’s life—meanwhile, the Good Samaritan citizen is left standing by, watching an animal suffer,  
8 scared to act out of a legitimate fear for legal repercussions.”<sup>19</sup>

10 The 2016 amendments aimed to not only provide specific guidance but indeed to “encourage  
11 bystanders to rescue endangered animals from vehicles and prevent unnecessary suffering and death of  
12 animals.”<sup>20</sup> To assuage the Good Samaritan citizens’ fear of legal repercussions, the amendment granted  
13 the right to remove the animal from the car to all people instead of only law enforcement, and provided  
14 that the rescuer is “not criminally liable” for the removal as long as the rescuer follows six required steps:  
15

- 16 (A) Determines the vehicle is locked or there is otherwise no reasonable manner for the  
17 animal to be removed from the vehicle.
- 18 (B) Has a good faith belief that forcible entry into the vehicle is necessary because the  
19 animal is in imminent danger of suffering harm if it is not immediately removed from  
20 the vehicle, and, based upon the circumstances known to the person at the time, the  
21 belief is a reasonable one.
- 22 (C) Has contacted a local law enforcement agency, the fire department, animal control, or  
23 the “911” emergency service prior to forcibly entering the vehicle.
- 24 (D) Remains with the animal in a safe location, out of the elements but reasonably close to  
25 the vehicle, until a peace officer, humane officer, animal control officer, or another  
26 emergency responder arrives.

27 <sup>18</sup> *Id.*

28 <sup>19</sup> Assembly Committee on Judiciary on AB 797 (August 23, 2016), Synopsis of Legislation.

<sup>20</sup> *Id.*

1 (E) Used no more force to enter the vehicle and remove the animal from the vehicle than  
2 was necessary under the circumstances.

3 (F) Immediately turns the animal over to a representative from law enforcement, animal  
4 control, or another emergency responder who responds to the scene.<sup>21</sup>

5 Thus, the amendments guided the would-be rescuer through the rescue process and established “qualified  
6 immunity from civil and criminal liability for property damage or trespass to a vehicle for any person who  
7 reasonably and in good faith takes prescribed steps to rescue an animal facing imminent danger from an  
8 unattended motor vehicle.”<sup>22</sup> The civil and criminal immunity “only extends to property damage or  
9 trespass to a vehicle, and not more broadly to rendering aid to the animal itself or any other liability that  
10 may arise.”<sup>23</sup>

11 The VCL supports the interpretation that preventing bodily harm to animals is sufficient to meet  
12 the first requirement of the jury instruction on necessity for three reasons. First, the VCL indicates that it  
13 is the public policy of the State to prevent significant bodily harm, or even death, to an animal who has  
14 been confined by a human in a place and at a time that causes grave danger to the animal. There is  
15 extensive scientific literature on the sentience of animals, meaning the ability of animals to feel pain.<sup>24</sup>  
16 This truth is so widely accepted that it did not even require elaboration in the VCL. The VCL added to  
17 the Penal Code the penalties for leaving an animal in a vehicle under dangerous conditions, and the degree  
18 of the penalty depends on whether the confined animal suffers “great bodily injury” or some lesser bodily  
19 injury.<sup>25</sup> This language is clear evidence that the State of California recognizes that an animal is capable  
20 of experiencing “great bodily injury,” such as when an animal suffocates to death confined in a vehicle,  
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24 \_\_\_\_\_  
25 <sup>21</sup> Cal. Penal Code, § 597.7(b)(2)(A)-(F).

26 <sup>22</sup> Assembly Committee on Judiciary on AB 797 (August 23, 2016), Synopsis of Legislation.

27 <sup>23</sup> *Id.*

28 <sup>24</sup> See, e.g., Donald Broom, *Animal Welfare Concepts*, in ROUTLEDGE HANDBOOK OF ANIMAL WELFARE 12-21 (Andrew Knight, Clive Philips, and Paula Sparks, eds., 2023).

<sup>25</sup> Cal. Penal Code §597.7(c).

1 which is a significant and fatal bodily injury. The first requirement for the necessity defense, as set forth  
2 in the jury instruction, uses nearly the exact same language – “significant bodily harm.” It would be  
3 inconsistent with California public policy and indeed an absurd and irrational result if preventing bodily  
4 harm to an animal was valued to such a high degree in the VCL but rejected in the necessity defense.

5  
6 Second, what was missing to make the prohibition on leaving animals confined in vehicles  
7 meaningful was to assure the public that if they cause property damage to the vehicle in the course of the  
8 rescue, they would have qualified immunity from civil and criminal liability, provided they follow the  
9 steps outlined in the law. Prior to the amendments’ enactment, when bystanders saw animals confined in  
10 cars, especially in hot weather, they were afraid of being sued or arrested for breaking car windows and  
11 otherwise trespassing and causing property damage to the car. The concern of these would-be rescuers  
12 was not about the rescue of the animal per se, because, after all, by causing that property damage they  
13 were literally saving the life of the animal inside the vehicle, not harming the animal.  
14

15 The legislative history shows that the civil and criminal immunity in the amended VCL does not  
16 apply “more broadly to rendering aid to the animal itself or any other liability that may arise.”<sup>26</sup> A person  
17 who, for example, breaks a car window to remove a suffering animal but then does not find water for the  
18 animal or move the animal to a cooler location could be held liable for harm he or she caused the animal.  
19 In fact, the VCL specifies that one of the requirements for the rescuer is that she “(D) remains with the  
20 animal in a safe location, out of the elements but reasonably close to the vehicle, until a peace officer,  
21 humane officer, animal control officer, or another emergency responder arrives.” The priority given to the  
22 safety of the animal rescued is seen clearly in this requirement.  
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25 There is no qualified immunity for a rescuer causing harm to the animal because the animal is a  
26 living, sentient being and has the potential to be caused significant bodily harm. An actor who  
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<sup>26</sup> Synopsis, Assembly Committee on Judiciary, Hearing August 23, 2016.

1 affirmatively or, in some cases through acts of omission, harms an animal, has potentially violated civil  
2 and criminal laws. The VCL explicitly reminds of this preexisting rule by adding 597.7(e), which states  
3 that a person can be prosecuted under both the VCL and Penal Code Section 597, which is the general  
4 statute prohibiting cruelty to animals, or under both the VCL and “any other provision of law, including  
5 city or county ordinances.”<sup>27</sup>

6  
7 Third, and related to the second, the VCL protects all animals who may be confined in a vehicle.  
8 While in many or even most cases, the need for the VCL pertains to situations when humans take their  
9 dogs or other companion animals in the car and then leave them in the parked vehicles, the VCL is not  
10 limited to dogs or even to companion animals. The VCL does not exclude any species, which indicates  
11 that the state recognizes that any animal who may be left in a vehicle could suffer significant bodily harm,  
12 depending on the conditions in which the animal was left.

13  
14 In fact, the legislature explicitly chose *not to exclude* any species of animal from the statute after  
15 considering doing so. In the legislative history, the Senate Judicial Committee notes state: “The authors  
16 may wish to amend this bill to apply to only domesticated or household animals, so as to avoid any  
17 unintended consequences or confusion as to damage caused to a motor vehicle hauling, for example,  
18 livestock, horses, or other agricultural animals.”<sup>28</sup> But in the language of the law as passed, the legislature  
19 did *not* choose to exclude qualified immunity for rescuers of agricultural animals. Subsection (f) states:  
20 “Nothing in this section shall be deemed to prohibit the transportation of horses, cattle, pigs, sheep,  
21 poultry, or other agricultural animals in motor vehicles designed to transport such animals for agricultural  
22 purposes.”<sup>29</sup> Thus, the law simply acknowledges that transporters of agricultural animals may continue to  
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27 <sup>27</sup> Cal. Penal Code § 597.7(e).

28 <sup>28</sup> Senate Judiciary Committee, Hearing on AB 797 (June 14, 2016).

29 <sup>29</sup> Cal. Penal Code § 597.7(f).

1 transport them provided they are in motor vehicles designed to transport those animals; the VCL does not  
2 change that. For example, an individual could be transporting her companion animal potbellied pig and  
3 park her vehicle with the pig inside in a way that violates the VCL. An individual could be transporting  
4 a pig from her farm to an auction for sale to a slaughterhouse and park her vehicle with the pig inside in a  
5 way that violates the VCL. In both cases, a rescuer who follows the necessary steps would gain the VCL's  
6 qualified immunity.  
7

8 Stated another way, the statute does not remove the rescuer's qualified immunity based on the  
9 species of the animal rescued. Indeed Section 597.7 (b)(1) uses the general language "an animal," which  
10 can only be interpreted to apply to any species of animal capable of being confined in a vehicle.<sup>30</sup> When  
11 amending the statute, the legislature directly considered how to handle the question of agricultural  
12 animals, and the legislature chose to keep qualified immunity intact for rescuers of such animals.  
13 Additionally, the mere fact that the legislature singled out agricultural animals in the statute is an  
14 acknowledgement that agricultural animals, just like companion animals, can suffer significant bodily  
15 harm.  
16

17 For these reasons, the VCL is consistent with and supports the understanding that the necessity  
18 defense applies to the prevention of harm to an animal.  
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20  
21 **b. The VCL does not duplicate the necessity defense or suggest that the necessity**  
22 **defense does not apply to the prevention of harm to animals.**  
23

24 Importantly, the VCL does not duplicate the necessity defense. Nor does the VCL suggest in any  
25 way that it was needed because the necessity defense does not apply to the prevention of harm to an  
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<sup>30</sup> Cal. Penal Code § 597.7(b)(1).

1 animal. Four arguments support the clear point that the VCL was needed alongside the pre-existing and  
2 available necessity defense that includes animals.

3 First, the VCL and the necessity defense operate at different points in the legal process, with  
4 significant results. The VCL offers immunity from liability, which is applicable earlier in a legal process  
5 in which an individual is alleged to have committed a civil wrong or criminal act. If the rescuer-defendant  
6 fails to prove the elements needed for immunity under the VCL, he or she can subsequently raise the  
7 affirmative defense. Put simply, immunity from liability is preferable from the perspective of the rescuer-  
8 defendant because it can operate earlier to dismiss the charges. The necessity defense still operates as a  
9 backstop, but having only a general necessity defense does not provide the specific guidance, protection,  
10 and assurance to the average rescuer who has no experience with the law and just happens to have parked  
11 in a shopping center parking lot, going about his daily affairs on a hot California day, and sees an animal  
12 confined in a vehicle dying from the heat.

15 Second, the two laws address different types of legal wrongs committed by the rescuer. The VCL  
16 only provides immunity for liability as a result of entering the car itself, such as damage to property or  
17 trespass with or without tangible damage. The six conditions in Section 597.7(b)(2)(A)-(F), above, are  
18 all related to accessing the vehicle in which the animal is confined. The conditions clearly indicate that  
19 the rescuer should try to find a way to open the vehicle (such as if the doors are unlocked) before forcibly  
20 entering, which would likely involve breaking a window or forcing open a door. In this limited context,  
21 the VCL provides both criminal and civil immunity. The necessity defense, on the other hand, is not  
22 limited to crimes associated with entering a car, and it does not create immunity from civil liability.

25 Third, the VCL was adopted to provide specific guidance to would-be rescuers and indeed to  
26 encourage individuals to rescue animals from vehicles. Section 597.7(a) prohibits confining an animal in  
27 an unattended motor vehicle under certain circumstances. But the legislature specifically did not want the  
28

1 public to understand that the only recourse for violations of this law is the fining and imprisonment of the  
2 animal’s owner. Indeed, allowing the confinement to take place and merely punishing the owner for doing  
3 it would mean in many cases that an animal had already suffered or even died. And further, based on the  
4 unsatisfactory results of relying only on officials to force open the vehicles, as the VCL initially provided  
5 in 2006, the legislature needed the public to take on an important role in rescuing animals suffering in  
6 vehicles. As such, the law encourages the public to act themselves. California officials continue to warn  
7 the public about the danger of leaving animals confined in unattended vehicles. They also continue to  
8 encourage rescue. As just one of many examples, California Highway Patrol Public Information Officer  
9 Tomas Martinez recently urged the public, “when it’s hot outside to be on the lookout for anyone who is  
10 leaving a pet unattended in a vehicle. You could help save an animal’s life.”<sup>31</sup>  
11

12  
13 Animals were suffering and indeed dying, and the public was hesitant to undertake the rescue  
14 themselves, even if the necessity defense would apply to any criminal charges filed against the rescuer.  
15 Given the general way that the necessity defense is stated, there was no guarantee that a court would allow  
16 it in the absence of clarity in the law about what steps the rescuer must follow. Further, the rescuing public,  
17 it seemed, was very concerned about the possibility of civil lawsuits by the vehicle owners for damage to  
18 the vehicles. And in both contexts, the VCL provides very specific guidance on what a rescuer must do  
19 to benefit from the law’s immunity, providing far more certainty than the more general language of the  
20 necessity defense.  
21

22 Fourth, and finally, a parallel provision to the VCL was enacted on January 1, 2021, to provide  
23 immunity from criminal liability for a person who takes “any reasonable steps that are necessary to remove  
24 a child from a motor vehicle if the person holds a reasonable belief that the child’s safety is in immediate  
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27 <sup>31</sup> Henry Flores, *Pets in Hot Cars: What Can You Do*, 23ABC (June 20, 2023), available at  
28 <https://www.turnto23.com/news/local-news/pets-in-hot-cars-what-can-you-do#:~:text=According%20to%20Tomas%20Martinez%20of,the%20life%20of%20a%20pet.>

1 danger from heat, cold, lack of adequate ventilation, or other circumstances that could reasonably be  
2 expected to cause suffering, disability, or death to the child.”<sup>32</sup> The six steps that the rescuer must follow  
3 in order to gain this immunity are nearly exactly the same as the six steps required under the VCL: “child”  
4 is substituted for “animal” and the references to “humane officer” and “animal control officer” are  
5 removed.<sup>33</sup> A “child” is defined as a “child who is six years of age or younger.”<sup>34</sup> It would be absurd to  
6 claim that the adoption of this law in 2021 means that prior to that time, the necessity defense did not  
7 apply when an individual rescued a young child from a vehicle when the child was choking on an object  
8 that had been left in the car, for example, and was in immediate danger of death. Rather, like it did with  
9 the VCL, the legislature used express immunity from liability to encourage the rescue of children by  
10 providing clear guidance and assurance to potential rescuers.  
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13 For all of these reasons, the VCL is a demonstration of California’s public policy to aid animals in  
14 distress, even when doing so also involves damage to property, and even when the animals in question are  
15 agricultural animals, because these animals can suffer bodily harm and evil. Therefore, the VCL is  
16 consistent with and supports the understanding that the necessity defense applies to the prevention of harm  
17 to an animal, without duplicating the necessity defense or suggesting that the necessity defense does not  
18 apply to the prevention of harm to animals.  
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27 <sup>32</sup> Cal. Health and Safety Code sec. 1799.101.

28 <sup>33</sup> *Id.*

<sup>34</sup> *Id.*



1                   **3. The Good Samaritan Laws support the interpretation that the necessity defense applies to**  
2                   **preventing harm to agricultural animals.**

3                   A set of laws intended to shield both official emergency responders and individual Good  
4 Samaritans from several kinds of liability also show the California legislature’s recognition that animals  
5 are sentient beings who can feel pain and suffer, that it is a human instinct to assist injured animals, and  
6 that animal life is valued and should be, and indeed is, protected by California law. Several kinds of  
7 immunity are provided to emergency responders (which includes law enforcement officials and  
8 emergency personnel) and other individuals who assist animals in emergency situations.  
9

10                   The first kind of immunity concerns immunity for emergency responders from criminal  
11 prosecution and from professional discipline under the Veterinary Medicine Practice Act. The legislature  
12 made several findings, including that “California residents receive comfort and unconditional love on a  
13 daily basis from their household pets, particularly dogs and cats” and that “personnel of some fire districts  
14 and other first responder agencies currently provide stabilizing, life-saving emergency care to dogs and  
15 cats, which violates the Veterinary Medicine Practice Act” because they are not licensed veterinarians.<sup>35</sup>  
16  
17 The California Health and Safety Code was amended in 2018, effective January 1, 2019, “to authorize  
18 emergency responders to provide, on a voluntary basis, basic first aid to dogs and cats without exposure  
19 to criminal prosecution or professional discipline for the unlawful practice of veterinary medicine.”<sup>36</sup> The  
20 section defines “basic first aid to dogs and cats” to mean “providing immediate medical care to a dog or  
21 cat by an emergency responder, in an emergency situation to which the emergency responder is  
22 responding, that is intended to stabilize the dog or cat so that the dog or cat can be transported by the  
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28 <sup>35</sup> Cal. Health and Safety Code § 1799.109(a)(1) & (5).

<sup>36</sup> Cal. Health and Safety Code § 1799.109(a)(6).

1 owner as soon as practical to a veterinarian for treatment ...”<sup>37</sup> The section also lists the ways in which  
2 the responder may aid the animal, which includes “administering oxygen” and “controlling hemorrhage  
3 with direct pressure” among others.<sup>38</sup>

4         Second, these same kinds of emergency responders are also immune from civil liability, but the  
5 wording is broader, referring to care provided to a “pet or other domesticated animal during an  
6 emergency.”<sup>39</sup> Like the criminal/veterinary malpractice immunity identified above, civil immunity for  
7 the treatment of animals was also added in 2018, effective January 1, 2019. However, rather than add a  
8 specific new provision for emergency responders providing “care to a pet or other domesticated animal  
9 during an emergency,” the section states that “Subdivision (a) of Section 1799.102 governs care provided  
10 by an emergency responder, or law enforcement and emergency personnel specified in this chapter.”<sup>40</sup>  
11 Section 1799.102 is the general law for civil damage liability in the context of emergency assistance.  
12 Section 1799.102(a) states, in part: “No person who in good faith, and not for compensation, renders  
13 emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damages  
14 resulting from any act or omission.”<sup>41</sup> Clearly, the reason for providing immunity of any kind to  
15 emergency responders is to encourage them to provide care. Thus, this law is a clear statement that not  
16 only pets but also all domesticated animals—which includes not only cats and dogs but also pigs, chickens,  
17 horses, donkeys, and other animals who have adapted over generations to live alongside humans—are  
18 sentient beings who deserve medical care when they need it.  
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25 <sup>37</sup> Cal. Health and Safety Code § 1799.109(e)(5).

26 <sup>38</sup> *Id.*

27 <sup>39</sup> Cal. Health and Safety Code § 1799.109(c)(2).

28 <sup>40</sup> *Id.*

<sup>41</sup> Cal. Health and Safety Code § 1799.102(a).

1 Third, the same 2018 law, effective January 1, 2019, provides for civil liability immunity for the  
2 broadest range of individuals: any person (other than a veterinarian or an emergency responder) who  
3 provides care to a pet or other domesticated animal during an emergency.<sup>42</sup> As with civil immunity for  
4 emergency responders, the “any person” category was added by reference to the general law for civil  
5 damage liability in the context of emergency assistance with the following language: “Subdivision (b) of  
6 Section 1799.102 governs care provided by any person other than [veterinarians or emergency  
7 responders].”<sup>43</sup> The language of Section 1799.102(b)(1) states that “It is the intent of the Legislature to  
8 encourage other *individuals* to volunteer, without compensation, to assist *others* in need during an  
9 emergency, while ensuring that those volunteers who provide care or assistance act responsibly.”<sup>44</sup> The  
10 term “others,” as specified by the law itself, refers to pets and all domesticated animals. This is clearly  
11 true even though “others” follows the “individuals” who are doing the assistance, and from the context,  
12 “individuals” indicates human beings. Relatedly, the term in the first element of the necessity defense is  
13 “someone else.” While different terms, they are similar enough to conclude that if the legislature found  
14 “others” to be a clear way to encompass animals, then “someone else” can also encompass animals. That  
15 is, terms such as “others” and “someone else” are sufficiently capacious in their contexts in California  
16 law, and these terms can and should encompass both humans and non-human animals.  
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27 <sup>42</sup> Cal. Health and Safety Code § 1799.109(c)(3).

28 <sup>43</sup> *Id.*

<sup>44</sup> Cal. Health and Safety Code § 1799.102(b)(1) (emphasis added).

1           **4. The Impounded Animal Law supports the interpretation that the necessity defense applies**  
2           **to preventing harm to agricultural animals.**

3           California’s Impounded Animal Law (IAL)<sup>45</sup> indicates a concern for domestic animals to the  
4 extent that actions that would otherwise be impermissible are permitted in order to save the animals from  
5 bodily harm. The IAL is based on a recognition that animals are sentient beings and can suffer from  
6 hunger, thirst, and overall neglect. It is applicable to all domestic, or domesticated, animals, which  
7 includes not only cats and dogs but also pigs, chickens, horses, donkeys, and other animals who have  
8 adapted over generations to live alongside humans. The IAL also recognizes that humans have great  
9 power over animals and have the capacity to cause them to suffer through confinement. In the case of the  
10 VCL, the animal is confined in a vehicle. The IAL, on the other hand, deals with situations in which  
11 humans confine animals in any type of confined space, and provides that “any person who impounds, or  
12 causes to be impounded in any animal shelter, any domestic animal, shall supply [the animal] during  
13 confinement with a sufficient quantity of good and wholesome food and water.”<sup>46</sup> Failure to meet this  
14 requirement is a misdemeanor.

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17           Like the VCL, the IAL provides requirements for the person in control of the animal, and then  
18 permits others to take action to rescue the animal if the controlling person does not meet those  
19 requirements:  
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21           In case any domestic animal is at any time so impounded and continues to be without  
22 necessary food and water for more than 12 consecutive hours, it is lawful for any person,  
23 from time to time, as may be deemed necessary, to enter into and upon any animal shelter  
24 in which the animal is confined, and supply it with necessary food and water so long as it  
25 remains so confined. That person is not liable for the entry and may collect the reasonable  
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27  
28 <sup>45</sup> Cal. Penal Code § 597e.

<sup>46</sup> *Id.*

1 cost of the food and water from the owner of the animal, and the animal is subject to  
2 enforcement of a money judgment for the reasonable cost of food and water.<sup>47</sup>

3 The rescuer in this case is provided with immunity for what would otherwise be a trespass. That immunity  
4 is a significant incentive for rescuers to provide food and water to animals in need. The IAL provides  
5 further encouragement for the potential rescuer by allowing her to collect the reasonable cost of the food  
6 and water from the person who has confined the animals.  
7

8 Thus, the IAL also demonstrates California's public policy to aid animals in distress, even when  
9 the animals in question are agricultural animals, because these animals can suffer bodily harm and evil.  
10 The IAL is therefore consistent with and supports the understanding that the necessity defense applies to  
11 the prevention of harm to agricultural animals.  
12

## 13 14 CONCLUSION

15 The State of California recognizes that animals are sentient beings and that they feel pain and can  
16 suffer bodily harm. Further, it is the public policy of the State to aid animals in distress, as evidenced by  
17 at least three laws discussed in this amicus brief: the Vehicle Confinement Law, the Good Samaritan  
18 Laws, and the Impounded Animal Law. Aiding animals in distress is encouraged in California, even when  
19 doing so involves damage to property or trespassing, and even when the animals in distress are agricultural  
20 animals. The necessity defense, as set forth in CALCRIM Sec. 3403, should be interpreted to apply when  
21 an individual is acting to prevent significant bodily harm or evil to a human animal or to a non-human  
22 animal, including agricultural animals. Interpreting CALCRIM Sec. 3403 to apply only when an  
23 individual acts to prevent significant bodily harm or evil to a human would conflict with significant bodies  
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28 <sup>47</sup> *Id.*

1 of California law and would be inconsistent with California's clear expressions of public policy. Further,  
2 because preventing bodily harm to an animal is highly valued in the Vehicle Confinement Law, the Good  
3 Samaritan Laws, and the Impounded Animal Law, it would be an absurd and irrational result to reject the  
4 interpretation that preventing bodily harm to an animal can also serve as a basis for the necessity defense.

5 For all foregoing reasons, Professor Stilt moves this court for leave to file an amicus curiae brief  
6 in support of Defendant Wayne Hsiung's Motion to Compel and in Limine in the above-captioned matter.  
7 Professor Stilt also moves for leave to attend the hearing on the motion, scheduled on September 1, 2023,  
8 via Zoom.  
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13 Dated: August 30, 2023

Respectfully submitted,

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Professor Kristen Stilt  
17 Harvard Law School  
18 Amicus Curiae  
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