

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE DISTRICT ATTORNEY



George Gascón
District Attorney

JUNE D. CRAVETT
Assistant Chief District Attorney
DIRECT DIAL: (415) 551-9537
E-MAIL: JUNE.CRAVETT@SFGOV.ORG

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The Honorable Katherine Feinstein
Presiding Judge
Superior Court of California
City and County of San Francisco
400 McAllister Street, Room 206
San Francisco, CA 94102-4512

Re: In the Matter of the 2011-2012 Civil Grand Jury—District Attorney's Response

Dear Judge Feinstein:

I write to provide the District Attorney's Office response to Findings 2 and 7, and to Recommendation 3, of the Civil Grand Jury's report entitled "Surcharges and Healthy San Francisco: Healthy for Whom?"

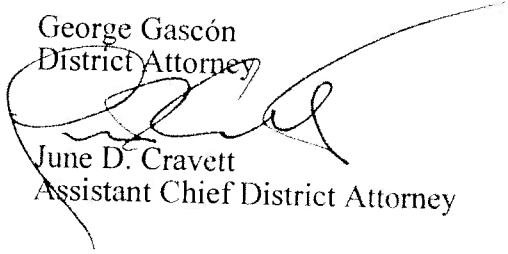
Finding 2 states: "The City has not investigated health care related surcharges to determine whether or not employers are generating profits from these surcharges." We disagree with this finding as it relates to the District Attorney's Office. In October 2011 we opened a preliminary review into this issue. That review is still pending.

Finding 7 states: "Consumer fraud is committed if the consumer's receipt states that a surcharge is being assessed for a stated purpose and is not being used for that purpose." We disagree with this finding as phrased. We would agree with a finding phrased as follows: Consumer fraud is committed if the consumer's receipt states that a surcharge is being assessed for a stated purpose and there is sufficient evidence to prove that: (1) the surcharge was not used for the stated purpose; and (2) the business knew at the time the payment was received that the surcharge would not be used for the stated purpose.

Recommendation 3 states: "The District Attorney open an investigation to review the Jury's survey findings for possible consumer fraud." We agree that the Jury's survey findings should be considered and analyzed as part of our ongoing review of the issue. The extent to which these findings will be useful depends on whether the underlying documents from which the data were derived are made available to our office for review.

Respectfully,

George Gascón
District Attorney


June D. Cravett
Assistant Chief District Attorney

WHITE COLLAR CRIME DIVISION

732 BRANNAN STREET · SAN FRANCISCO, CALIFORNIA 94103
RECEPTION: (415) 553-1752 · FACSIMILE: (415) 551-9504