

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Docket No. 12-0277
	)	
Gus White, a/k/a Gustave L. White, III,	)	
d/b/a Collins Exotic Animal Orphanage,	)	
	)	
Respondent	)	<b>Decision and Order</b>

**PROCEDURAL HISTORY**

On March 9, 2012, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding by filing a Complaint. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued pursuant to the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151).

The Administrator alleges, during the period May 24, 2007, to the date of the issuance of the Complaint on March 3, 2012, Gus White willfully violated the Animal Welfare Act and the Regulations.<sup>1</sup> On April 4, 2012, Mr. White filed an Answer to Complaint in which Mr. White denied the material allegations of the Complaint.

On December 11-13, 2012, Administrative Law Judge Janice K. Bullard [hereinafter the

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<sup>1</sup>Compl. ¶¶ II-XII at 2-10.

ALJ] conducted a hearing in Hattiesburg, Mississippi. Mr. White appeared pro se, but was assisted by his son, Gustave L. White, IV [hereinafter Mr. White, IV], Collins, Mississippi. Sharlene A. Deskins, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator.<sup>2</sup>

On April 26, 2013, after the parties had an opportunity to submit post-hearing briefs, the ALJ filed a Decision and Order in which the ALJ: (1) concluded Mr. White violated the Animal Welfare Act and the Regulations, as alleged in paragraphs III, IV(A), IV(B), IV(D)(2), IV(D)(6) as it relates to the structural integrity of animal enclosures, IV(D)(7), V(A), VI(A), VI(B), VI(C), VI(D)(1), VI(D)(2), VI(D)(3), VII(A)(1), VIII, IX(4), IX(5), IX(6), X, and XII of the Complaint; (2) concluded the Administrator failed to prove by a preponderance of the evidence that Mr. White violated the Animal Welfare Act and the Regulations, as alleged in paragraphs II(A), II(B), II(C), IV(C), IV(D)(1), IV(D)(3), IV(D)(4), IV(D)(5), IV(D)(6) as it relates to structural defects of the roof of a building, VI(D)(4), VI(D)(5), VII(A)(2), VII(A)(3), IX(1), IX(2), IX(3), IX(7), and XI of the Complaint; (3) ordered Mr. White to cease and desist from further violations of the Animal Welfare Act and the Regulations; and (4) revoked Animal Welfare Act license number 51-C-0064.<sup>3</sup>

On May 22, 2013, the Administrator filed “Complainant’s Appeal Petition and Motion for Extension of Time” [hereinafter Administrator’s Appeal Petition] in which the Administrator

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<sup>2</sup>References to the transcript of the December 11-13, 2012, hearing are indicated as “Tr.” and the page number. The Administrator’s exhibits are identified as “CX” and the exhibit number.

<sup>3</sup>ALJ’s Decision and Order at 38-41.

requested an extension of time to file a memorandum in support of the Administrator's Appeal Petition. I granted the Administrator's request for an extension of time,<sup>4</sup> and on July 19, 2013, the Administrator filed "Complainant's Brief in Support of Its Appeal Petition" [hereinafter Administrator's Appeal Brief]. On May 28, 2013, Mr. White filed "Respondent's Appeal Petition and Motion for Extension of Time" [hereinafter Mr. White's Appeal Petition] in which Mr. White requested an extension of time to file a memorandum in support of Mr. White's Appeal Petition. I granted Mr. White's request for an extension of time,<sup>5</sup> and on June 21, 2013, Mr. White filed "Memorandum in Support of Notice of the Respondent's Appeal Petition" [hereinafter Mr. White's Appeal Brief]. On July 24, 2013, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

Based upon a careful consideration of the record, I adopt the ALJ's Decision and Order as the final decision— except that: (1) I conclude Mr. White did not violate 9 C.F.R. § 3.125(a) on September 8, 2010, as alleged in paragraph IV(D)(6) of the Complaint; (2) I conclude Mr. White violated 9 C.F.R. § 3.131(a) on March 23, 2010, as alleged in paragraph VI(D)(5) of the Complaint; (3) I conclude Mr. White violated 9 C.F.R. § 3.125(a) on January 21, 2010, as alleged in paragraph VII(A)(2) of the Complaint; (4) I conclude Mr. White violated 9 C.F.R. § 2.131(c)(1) on July 11, 2008, as alleged in paragraph XI of the Complaint; (5) I assess

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<sup>4</sup>"Order Extending Time for Filing a Memorandum in Support of the Administrator's Appeal Petition," filed May 23, 2013; and "Order Extending Time for Filing a Memorandum in Support of the Administrator's Appeal Petition," filed June 21, 2013.

<sup>5</sup>"Order Extending Time for Filing a Memorandum in Support of Respondent's Appeal Petition," filed May 29, 2013.

Mr. White a \$39,375 civil penalty; and (6) I revoke Animal Welfare Act license number 65-C-0012.

## **DECISION**

### **A. Admissions**

Mr. White admits he is an individual residing in Collins, Mississippi, and operates an animal exhibition under the business name Collins Exotic Animal Orphanage. Mr. White further admits, at all times material to this proceeding, he operated as an “exhibitor” as that term is defined in the Animal Welfare Act and the Regulations and he holds, and at all times material to this proceeding held, Animal Welfare Act license number 65-C-0012.

### **B. Summary of Factual History**

Mr. White has worked with animals all of his life and has learned animal care from experience, lectures, books, and animal experts (Tr. at 918-19). Mr. White has exhibited animals at facilities in Slidell, Louisiana, and then at the current site in Collins, Mississippi, as well as at public lectures (Tr. at 624, 919). Mr. White has held an Animal Welfare Act license for 43 years (Tr. at 624-25, 919-20). Mr. White has experience with all kinds of animals, including exotic cats (Tr. at 931).

Mr. White has experienced deteriorating health in recent years that has limited his daily hands-on oversight of Collins Exotic Animal Orphanage, but he visits the site often, as his home is located on the property where the animal exhibit is situated (Tr. at 929). Mr. White’s wife, Bettye White, is now the primary caretaker for the animals, and Mr. White, IV, also is very involved in caring for the animals and maintaining buildings and structures (Tr. at 932-33). In addition to Mr. White’s wife and son, three people regularly volunteer to work at Collins Exotic

Animal Orphanage (Tr. at 932-33). Mr. White provides instructions to his wife, his son, and the volunteers regarding the operation of Collins Exotic Animal Orphanage (Tr. at 933).

Mrs. White was raised on a farm and is familiar with the care of typical farm animals (Tr. at 816). Mrs. White has worked with her husband at his animal exhibition facilities for more than 30 years and developed her animal-handling expertise through her experience (Tr. at 625-26). Mrs. White helped to hand-raise a variety of animals from birth (Tr. at 626). Mr. White, IV, was raised in a home adjacent to Collins Exotic Animal Orphanage and has been around and worked with animals his entire life (Tr. at 978). Mr. White, IV, was trained to feed and care for animals by his parents and the volunteers and learned the habits of animals and learned to observe animal behavior from his parents and the volunteers (Tr. at 978-79, 988). Mr. White, IV, did not diagnose or treat animals, but discussed his observations with his parents, who would decide whether to consult a veterinarian to provide treatment to animals (Tr. at 991). One of the volunteers, Jennifer Farmer, is a biologist who has formal training in animal care and who has worked at Collins Exotic Animal Orphanage for years (Tr. at 1026-28).

Veterinary care for Mr. White's animals is provided by Dr. Melissa Ainsworth, who volunteers her services to Mr. White (CX 43). Dr. Ainsworth visits Collins Exotic Animal Orphanage several times a year, dropping by when she is in the area or coming to the facility when Mrs. White asks for a visit (Tr. at 631).

On January 25, 2012, the Mississippi Department of Wildlife, Fisheries & Parks confiscated Mr. White's larger animals (Tr. at 728). Mr. White challenged the confiscation and a state court ruled the confiscation of Mr. White's animals was illegal (Tr. at 729); however, at the time of the hearing in this proceeding, the confiscated animals had not been returned to

Mr. White and the only animals regulated under the Animal Welfare Act that were at Collins Exotic Animal Orphanage were one coyote-hybrid, rabbits, and a kinkajou (Tr. at 729).

### **C. The Animal Welfare Act and the Regulations**

The purpose of the Animal Welfare Act, as it relates to exhibited animals, is to ensure that the animals are provided humane care and treatment. 7 U.S.C. § 2131. The Secretary of Agriculture is authorized to promulgate regulations to govern the humane handling, care, treatment, and transportation of animals. 7 U.S.C. §§ 2143(a), 2151. The Animal Welfare Act requires exhibitors to be licensed and requires the maintenance of records regarding the purchase, sale, transfer, and transportation of regulated animals. 7 U.S.C. §§ 2133-34, 2140. Each exhibitor is required to allow inspection by Animal and Plant Health Inspection Service [hereinafter APHIS] employees to assure the exhibitor is complying with the Animal Welfare Act and the Regulations. 7 U.S.C. § 2146(a); 9 C.F.R. § 2.126.

Violations of the Animal Welfare Act or the Regulations by licensees may result in the assessment of civil penalties, the issuance of cease and desist orders, and the suspension or revocation of Animal Welfare Act licenses. 7 U.S.C. § 2149. Each exhibitor is liable for violations of the Animal Welfare Act by agents or employees of the exhibitor. 7 U.S.C. § 2139.

The Regulations provide requirements for licensing, recordkeeping, and veterinary care, as well as standards for the humane handling, care, treatment, and transportation of covered animals. The Regulations set forth specific requirements regarding facilities where animals are housed, feeding and watering of animals, and sanitation.

## D. The Cited Violations

### 1. Handling Animals 9 C.F.R. § 2.131(c)(1)

The Regulations require exhibitors to handle animals during public exhibition, as follows:

#### § 2.131 Handling of animals.

. . . .

(c)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.

9 C.F.R. § 2.131(c)(1). The Administrator alleges Mr. White willfully violated 9 C.F.R. § 2.131(c)(1) on July 11, 2008, March 23, 2010, and September 8, 2010.<sup>6</sup>

On July 11, 2008, APHIS inspector Dr. Tami Howard found the barrier fence in front of the leopard enclosure could be easily moved to allow the public access to the animals (Tr. at 173-74; CX 16-CX 17). Mrs. White explained that she and her son were replacing the railing in front of the leopard enclosure when the inspectors arrived and the railing may not have looked solid (Tr. at 689). The railing installation was completed immediately after the inspectors left (Tr. at 690). While Mr. White's immediate correction of the violation is commendable and I impose no civil penalty for the violation, I conclude the Administrator proved by a preponderance of the evidence that Mr. White willfully violated 9 C.F.R. § 2.131(c)(1) on July 11, 2008, as alleged in paragraph XI of the Complaint.

On September 8, 2010, Dr. Howard observed that the construction of the barrier next to the enclosure for a tiger named "Stave" was not sufficient to prevent the public from access to

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<sup>6</sup>Compl. ¶¶ IV(C), VI(C), XI at 4, 6, 10.

the tiger (Tr. at 149, 547; CX 7 at 3, CX 9 at 14). Dr. Howard explained that, although the problem was with the construction of the fence, the potential for breach of a barrier brought the defect under a “handling” violation (Tr. at 547-48). Mrs. White testified that several fence posts and gates were at the back of the tiger’s enclosure that restricted access to the tiger (Tr. at 653-54). I accord weight to Mrs. White’s testimony and conclude the Administrator did not prove by a preponderance of the evidence that, on September 8, 2010, Mr. White violated 9 C.F.R. § 2.131(c)(1), as alleged in paragraph IV(C) of the Complaint.

On March 23, 2010, Dr. Howard cited Mr. White for the condition of the barrier fence in the coyote-mix area (Tr. at 209). Dr. Howard considered the fence flimsy and unstable and inadequate to prevent contact between the public and the animals (CX 26 at 3, CX 27 at 5). Dr. Kirsten, a supervisory animal care specialist for APHIS, recalled that wires were broken from the post, making the fence very unstable (Tr. at 379-80). Mrs. White disagreed that the fence could have been easily broken and asserted it would have been easier to climb over the fence than to have tampered with the fence (Tr. at 697-98).

The evidence supports the Administrator’s contention that the barrier between the public and the coyotes was inadequate, and I conclude the Administrator proved by a preponderance of the evidence that Mr. White willfully violated 9 C.F.R. § 2.131(c)(1) on March 23, 2010, as alleged in paragraph VI(C) of the Complaint.

## **2. Housing Facilities 9 C.F.R. §§ 3.1(a) and 3.125(a)**

The Regulations require that housing facilities meet structural requirements, as follows:

### **§ 3.1 Housing facilities, general.**

(a) *Structure; construction.* Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept

in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering.

**§ 3.125 Facilities, general.**

(a) *Structural strength.* The facility must be constructed of such material and of such strength as appropriate for the animals involved. The indoor and outdoor housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals.

9 C.F.R. §§ 3.1(a), .125(a). The Administrator alleges Mr. White willfully violated 9 C.F.R. § 3.1(a) on September 24, 2009, and January 21, 2010,<sup>7</sup> and alleges Mr. White willfully violated 9 C.F.R. § 3.125(a) on January 21, 2010, March 23, 2010, and September 8, 2010.<sup>8</sup>

On September 24, 2009, Dr. Howard observed insufficient substrate in the wolf-hybrid enclosure and cited Mr. White for a violation of 9 C.F.R. § 3.1(a) (Tr. at 183-84; CX 22 at 1, CX 23 at 3-4). Mrs. White testified she regularly added clay to the floor of the wolf-hybrid enclosure because wolf-hybrids liked to dig (Tr. at 721-22). Ms. Williamson testified that she helped Mrs. White put dirt in enclosures twice a week (Tr. at 577). However, Ms. Williamson testified that, since 2006, she only goes to Collins Exotic Animal Orphanage one or two days per week, and, while she is there, her work has been limited to supervisory work and work in the office (Tr. at 561). I find Mrs. White's and Ms. Williamson's testimony regarding the standard operating procedure at Collins Exotic Animal Orphanage is not sufficiently specific to overcome the Administrator's evidence of the condition of the wolf-hybrid enclosure on September 24, 2009. Therefore, I conclude the Administrator proved by a preponderance of the evidence that,

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<sup>7</sup>Compl. ¶¶ VII(A)(1), IX(6) at 7, 9.

<sup>8</sup>Compl. ¶¶ IV(D)(6), VI(D)(1), VII(A)(2) at 5-8.

on September 24, 2009, Mr. White willfully violated 9 C.F.R. § 3.1(a), as alleged in paragraph IX(6) of the Complaint.

On the inspection conducted on January 21, 2010, Dr. Howard cited Mr. White for a violation of 9 C.F.R. § 3.125(a) for the condition of the floors in the tigers' enclosures. The tiger named "Stave" was lying in mud, and Dr. Howard believed the floor needed additional substrate to comply with 9 C.F.R. § 3.125(a) (Tr. at 195-96; CX 24 at 1, CX 25 at 4, 6-8). Dr. Howard found similar unsatisfactory conditions in the wolf-hybrid enclosure and cited Mr. White for a violation of 9 C.F.R. § 3.1(a) (Tr. at 195; CX 24 at 1, CX 25 at 1). On March 23, 2010, the enclosures for the tiger named "Stave" and the tiger named "India" needed additional substrate (Tr. at 209-13; CX 26 at 4, CX 27 at 13, 16). Dr. Kirsten agreed with Dr. Howard's assessment (Tr. at 398).

Mrs. White disagreed that the tigers' enclosures were hazardous to the tigers, as the tigers were responsible for creating pools of water when they finished swimming (Tr. at 727). She also did not agree with the citation for the floor of the tiger Stave's enclosure and explained, if she added too much dirt, it would run off because the enclosure was situated on an incline (Tr. at 727-28). She routinely put dirt in the cages with the help of volunteer Geraldine Williamson (Tr. at 577-78). Mrs. White considered moving Stave's enclosure, but the Mississippi Department of Wildlife, Fisheries & Parks confiscated Mr. White's big cats on January 25, 2012 (Tr. at 728). Mrs. White explained that the wolves liked to dig (Tr. at 728). I conclude the Administrator proved by a preponderance of the evidence that, on January 21, 2010, Mr. White willfully violated 9 C.F.R. § 3.1(a), as alleged in paragraph VII(A)(1) of the Complaint and willfully violated 9 C.F.R. § 3.125(a), as alleged in paragraph VII(A)(2) of the

## Complaint.

On March 23, 2010, Dr. Howard cited Mr. White for multiple violations of structural requirements. Dr. Howard found rotted posts at the bottom of both cougars' (Delilah and Star) enclosures that were not anchored in the ground. Dr. Howard observed that a perch in the leopards' enclosure was broken. The cyclone fence around the tiger India's enclosure was on the outside of the vertical posts and not clamped to the posts, which compromised the strength of the fence. There was also a gap at the bottom of the left end of the enclosure big enough to allow the tiger to pass its paw through, presenting a hazard to passers-by. There were broken resting platforms in both the tiger Brother's and the jungle cat Gypsy's enclosures. Dr. Kirsten also observed structural defects during the March 23, 2010, inspection (Tr. at 381-83).

Mrs. White admitted that posts at the bottom of the cougars' enclosures had some rot, but since they were not support posts, she did not believe there was a danger to structural integrity (Tr. at 702). Mrs. White also agreed that resting perches were broken (Tr. at 703). She explained that the cyclone fence was constructed as it was to allow an inside metal perch to be bolted to the fencing, but she had her son change the fencing to address the inspectors' concerns (Tr. at 703-04). Mrs. White did not disagree that there was a gap in fencing, but she did not think it presented a problem because no one generally went to that area of the enclosure (Tr. at 704). The Administrator established that Mr. White violated the structural standards pertaining to broken perches, poorly constructed fencing, and compromised fence posts. I conclude the Administrator proved by a preponderance of the evidence that, on March 23, 2010, Mr. White willfully violated 9 C.F.R. § 3.125(a), as alleged in paragraph VI(D)(1).

Upon inspection conducted on September 8, 2010, Dr. Howard cited Mr. White for a

violation of 9 C.F.R. § 3.125(a) because large dead trees within the exhibition space posed a danger to animal enclosures. Dr. Howard testified that Mrs. White acknowledged the trees had to come down, and the inspector believed that the attending veterinarian recommended the removal of the trees (Tr. at 151; CX 7 at 3, CX 9 at 8). Dr. Kirsten testified that Dr. Ainsworth's records documented the recommendation to remove the trees (Tr. at 396). Mrs. White denied that Dr. Ainsworth had recommended removal of the trees, but rather, offered assistance when Mrs. White told her that she had been cited for the trees (Tr. at 660). Dr. Ainsworth's friends removed the trees at no cost to Mr. White (Tr. at 661). I accord weight to the testimony that the trees were a danger to the structural integrity of animal enclosures, but find no evidence that, on September 8, 2010, the animal enclosures did not meet the requirements of 9 C.F.R. § 3.125(a).

Also, during the September 8, 2010, inspection, Dr. Howard observed holes in the ceiling of the building housing food storage freezers that she believed could compromise the food. She also believed that the sagging ceiling presented a safety hazard to people who might hit their heads when entering the building (Tr. at 152; CX 7 at 4, CX 9 at 13).

At the time of the September 8, 2010, inspection, the structure had a second roof on top of the roof that had leaked in the past. There were no leaks, and if there were, the food was protected because it was kept in freezers (Tr. at 663). Animals were not kept in the building and the building did not present a danger to animals or to people (Tr. at 663-64). Despite his belief that there was no problem with the building, Mr. White covered freezers with tarps at Dr. Howard's suggestion and eventually moved the freezers to a new room at a different location (Tr. at 664-65).

I find the evidence fails to establish that the condition of the structure containing the freezers was unsound. The Administrator failed to prove by a preponderance of the evidence the allegation that, on September 8, 2010, Mr. White violated 9 C.F.R. § 3.125(a), as alleged in paragraph IV(D)(6) of the Complaint.

### 3. Storage of Food and Bedding 9 C.F.R. § 3.125(c)

The Regulations require the storage of food and bedding, as follows:

#### § 3.125 Facilities, general.

....  
 (c) *Storage.* Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against deterioration, molding, or contamination by vermin. Refrigeration shall be provided for supplies of perishable food.

9 C.F.R. § 3.125(c). The Administrator alleges Mr. White willfully violated 9 C.F.R. § 3.125(c) on September 8, 2010.<sup>9</sup>

Dr. Howard testified that on September 8, 2010, she observed that food stored in Mr. White's freezers had partially defrosted in violation of 9 C.F.R. § 3.125(c). Dr. Howard concluded that the freezers were not working properly, which placed food in danger of being spoiled. The thermometer on the cooler read 50° Fahrenheit, which is too warm. Dr. Howard also saw a dirty bucket of vitamins and items that were stored in disarray on a rack in the cooler (Tr. at 152-54; CX 7 at 4, CX 9 at 2, 5, 10). Dr. Kirsten recalled that someone explained that the circuit breaker had been inadvertently turned off (Tr. at 400).

Mrs. White believed the circuit breaker had been tripped because her son had been using

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<sup>9</sup>Compl. ¶ IV(D)(5) at 4-5.

a power washer. The meat was not entirely thawed out, and it was not her procedure to shut off power to the freezer to thaw meat. She usually cut meat up and moved it to the cooler to defrost. She never experienced problems with the quality of the meat (Tr. at 666-72). Mrs. White did not know why the thermometer showed the cooler temperature in the 50's, as it usually read in the 40's unless the door was left open during cleaning (Tr. at 671-72). She stored empty plastic bags in the freezer because she had nowhere else to store the empty plastic bags (Tr. at 673-74). Mrs. White explained that the bucket that the inspectors saw was used to mix vitamins and residue from the meat that was mixed with the vitamins sometimes got in the bucket. She washed the bucket several times a week (Tr. at 674-75).

The practices described by Dr. Howard in her inspection report reflect some careless handling of vitamins and storage of items; however, I conclude the Administrator did not prove by a preponderance of the evidence that Mr. White violated 9 C.F.R. § 3.125(c), on September 8, 2010, as alleged in paragraph IV(D)(5) of the Complaint.

#### **4. Waste Disposal 9 C.F.R. § 3.125(d)**

The Regulations require exhibitors to dispose of waste, as follows:

##### **§ 3.125 Facilities, general.**

....

(d) *Waste disposal.* Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease hazards. The disposal facilities and any disposal of animal and food wastes, bedding, dead animals, trash, and debris shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.

9 C.F.R. § 3.125(d). The Administrator alleges Mr. White willfully violated 9 C.F.R. § 3.125(d)

on September 8, 2010.<sup>10</sup>

On September 8, 2010, Dr. Howard cited Mr. White for a failure to promptly remove food waste from the kinkajou enclosure (Tr. at 154; CX 7 at 4, CX 9 at 3). Dr. Kirsten believed the food was moldy and insect covered and the kinkajou enclosure should have been more promptly cleaned (Tr. at 400). Mrs. White disagreed that food for the kinkajou was moldy, though she had seen fruit left overnight get ripe (Tr. at 675-76). She cleaned the kinkajou's enclosure every morning (Tr. at 677).

The evidence is in equipoise, and I conclude the Administrator did not prove by a preponderance of the evidence that Mr. White violated 9 C.F.R. § 3.125(d), on September 8, 2010, as alleged in paragraph IV(D)(4) of the Complaint.

#### **5. Shelter from Sunlight and Inclement Weather 9 C.F.R. § 3.127(a)-(b)**

The Regulations require exhibitors to provide animals shelter from sunlight and inclement weather, as follows:

##### **§ 3.127 Facilities, outdoor.**

(a) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort of the animals, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight.

(b) *Shelter from inclement weather.* Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided for all animals kept outdoors to afford them protection and to prevent discomfort to such animals. Individual animals shall be acclimated before they are exposed to the extremes of the individual climate.

9 C.F.R. § 3.127(a)-(b). The Administrator alleges Mr. White willfully violated 9 C.F.R.

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<sup>10</sup>Compl. ¶ IV(D)(4) at 4.

§ 3.127(a) on September 8, 2010,<sup>11</sup> and alleges Mr. White willfully violated 9 C.F.R. § 3.127(b) on March 23, 2010.<sup>12</sup>

At the inspection of March 23, 2010, Dr. Howard cited Mr. White for failing to provide appropriate shelter from inclement weather to two cougars (CX 26 at 4, CX 27 at 17-18). Dr. Howard testified that the overhang from roofing and a cover over a perch were not sufficient to allow the cougars to escape from driving rain. She also did not think that the opening in a rock formation provided comfortable space for a cougar to shelter (Tr. at 213-14). Dr. Kirsten agreed with Dr. Howard (Tr. at 385).

Mrs. White testified, until the March 23, 2010, inspection, no one had pointed out a problem with the cougars' habitat. She thought the tin overhang on the enclosure provided sufficient cover, but after being cited for violating 9 C.F.R. § 3.127(b), she installed a dog igloo in the enclosure for shelter (Tr. at 709-11). While Mr. White's correction of the violation is commendable and I impose no civil penalty for the violation, I conclude the Administrator proved by a preponderance of the evidence that Mr. White willfully violated 9 C.F.R. § 3.127(b) on March 23, 2010, as alleged in paragraph VI(D)(2) of the Complaint.

In paragraph IV(D)(1) of the Complaint, the Administrator alleges Mr. White violated 9 C.F.R. § 3.127(a) on September 8, 2010; however, the Complaint describes the violation as a failure to maintain structurally sound facilities. Since 9 C.F.R. § 3.127(a) pertains to providing shade to allow animals to protect themselves from sunlight, I dismiss paragraph IV(D)(1) of the

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<sup>11</sup>Compl. ¶ IV(D)(1) at 4.

<sup>12</sup>Compl. ¶ VI(D)(2) at 6.

Complaint.

## 6. Facilities and Primary Enclosures for Rabbits 9 C.F.R. §§ 3.52 and 3.53

The Regulations require exhibitors to provide rabbits shelter, as follows:

### § 3.52 Facilities, outdoor.

....

(b) *Shelter from rain or snow.* Rabbits kept outdoors shall be provided with access to shelter to allow them to remain dry during rain or snow.

### § 3.53 Primary enclosures.

All primary enclosures for rabbits shall conform to the following requirements:

(a) *General.* . . . .

(2) Primary enclosures shall be constructed and maintained so as to enable the rabbits to remain dry and clean.

....

(c) *Space requirements for primary enclosures acquired on or after August 15, 1990.* . . . .

(2) Each rabbit housed in a primary enclosure shall be provided a minimum amount of floor space, exclusive of the space taken up by food and water receptacles, in accordance with the . . . table [in 9 C.F.R. § 3.53(c)(2).]

9 C.F.R. §§ 3.52(b), .53(a)(2), (c)(2). The Administrator alleges Mr. White willfully violated

9 C.F.R. § 3.52(b) and 9 C.F.R. § 3.53(a)(2) and (c)(2) on September 24, 2009.<sup>13</sup>

On September 24, 2009, Dr. Howard cited Mr. White for violations of 9 C.F.R. § 3.53(a)(2) and (c)(2) because she believed the primary enclosure for rabbits did not allow the rabbits to remain dry and clean and did not meet the minimum floor space requirements (CX 22 at 2-3). Dr. Howard also cited Mr. White for a violation of 9 C.F.R. § 3.52(b) because she believed the outdoor enclosure for rabbits did not provide for dry ground for the rabbits (CX 22 at 2). Dr. Howard testified that the box that served as the rabbit enclosure was placed directly

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<sup>13</sup> Compl. ¶¶ IX(1), IX(2), IX(3) at 8-9.

on the ground and did not protect the animals from recent rain accumulation and the box was too small for all of the rabbits to occupy comfortably (Tr. at 185). Mrs. White denied this contention because, in addition to the box, there was a concrete cage that the rabbits could enter (Tr. at 721-23). I find that the evidence is in equipoise, and I conclude the Administrator did not prove that Mr. White violated 9 C.F.R. § 3.52(b) or 9 C.F.R. § 3.53(a)(2) and (c)(2), on September 24, 2009, as alleged in paragraphs IX(1), IX(2), and IX(3) of the Complaint.

### **7. Drainage of Facilities 9 C.F.R. § 3.127(c)**

The Regulations require drainage of excess water from outdoor facilities, as follows:

#### **§ 3.127 Facilities, outdoor.**

.....  
 (c) *Drainage.* A suitable method shall be provided to rapidly eliminate excess water. The method of drainage shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.

9 C.F.R. § 3.127(c). The Administrator alleges Mr. White willfully violated 9 C.F.R. § 3.127(c) on September 24, 2009, and January 21, 2010.<sup>14</sup>

On September 24, 2009, Dr. Howard saw the tiger named “Stave” lying in mud and learned from Mrs. White that a drain may have been blocked (Tr. at 190-91). Dr. Howard conveyed her opinion that standing water presented a health hazard and proper drainage must be provided (Tr. at 191). Dr. Kirsten observed drainage problems when he was at Collins Exotic Animal Orphanage on March 23, 2010 (Tr. at 383-84).

Dr. Howard cited Mr. White for repeat violations of 9 C.F.R. § 3.127(c) on the inspection

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<sup>14</sup>Compl. ¶¶ VII(A)(3), IX(7) at 8-9.

conducted on January 21, 2010 (CX 24 at 1-2, CX 25 at 3-4, 6). Dr. Howard testified that she suspected drainage problems at Mr. White's facility and intentionally scheduled an inspection after it had rained (Tr. at 318-20). She found significant pooling of water in the leopards' enclosure and observed one of the cats lying in water (Tr. at 196). Dr. Howard testified that standing water presents a health hazard for animals, and she directed Mr. White to correct the problem (Tr. at 196-97). On that date, Dr. Howard also observed pools of water in the tiger Stave's enclosure that needed to be resolved (Tr. at 197).

It is axiomatic that inspections of outdoor facilities conducted on rainy days will often reveal pools of water; however, the issue is whether the exhibitor has provided a suitable method to rapidly eliminate excess water. I conclude the Administrator failed to prove by a preponderance of the evidence that, on September 24, 2009, and on January 21, 2010, Mr. White failed to provide a suitable method to rapidly eliminate excess water in violation of 9 C.F.R. § 3.127(c), as alleged in paragraphs VII(A)(3) and IX(7) of the Complaint.

#### **8. Perimeter Fence 9 C.F.R. § 3.127(d)**

The Regulations require exhibitors to enclose outdoor facilities with a perimeter fence, as follows:

##### **§ 3.127 Facilities, outdoor.**

....  
 (d) *Perimeter fence.* . . . [A]ll outdoor housing facilities . . . must be enclosed by a perimeter fence that is of sufficient height to keep animals and unauthorized persons out. Fences less than 8 feet high for potentially dangerous animals, such as, but not limited to, large felines (e.g., lions, tigers, leopards, cougars, etc.), bears, wolves, rhinoceros, and elephants, or less than 6 feet high for other animals must be approved in writing by the Administrator. The fence must be constructed so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it or under it and having contact with the animals in the facility, and so that it can function as a secondary

containment system for the animals in the facility. It must be of sufficient distance from the outside of the primary enclosure to prevent physical contact between animals inside the enclosure and animals or persons outside the perimeter fence. Such fence less than 3 feet in distance from the primary enclosure must be approved in writing by the Administrator.

9 C.F.R. § 3.127(d). The Administrator alleges Mr. White willfully violated 9 C.F.R. § 3.127(d) on March 23, 2010, and September 8, 2010.<sup>15</sup>

On March 23, 2010, Dr. Howard cited Mr. White for failing to have a perimeter fence of sufficient height (CX 26 at 5, CX 27 at 19). The fence is required to be at least 8 feet in height to prevent animals from escaping as well as to prevent unauthorized individuals from having contact with the animals (Tr. at 385-86). Dr. Kirsten did not believe that Mr. White's fence adequately met those goals (Tr. at 386-87).

Dr. Howard recalled her inspection of September 8, 2010, which disclosed portions of Mr. White's perimeter fence that did not meet the 8-foot height required by 9 C.F.R. § 3.127(d) (Tr. at 154-55; CX 7 at 5, CX 9 at 6-7, 9, 17-19). In addition, Dr. Howard observed deficits in the fence, such as openings at the bottom and areas where the fence was not fixed to posts (Tr. at 155). Dr. Howard stated that she considered the problems a repeat violation because she had previously cited Mr. White for problems with the perimeter fence, even though the problems may not have been the same (Tr. at 157). Dr. Howard explained that she did not have the ability to measure the entire perimeter fence, but her sample measurements on September 8, 2010, revealed the perimeter fence was not the required height (Tr. at 287-88). The inspector also rejected Mr. White's contention that bamboo represented a natural perimeter fence (CX 11).

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<sup>15</sup> Compl. ¶¶ IV(D)(2), VI(D)(3) at 4, 7.

Mrs. White testified that the perimeter fence was inspected at every inspection, and Mr. White was not always cited for conditions that had never changed (Tr. at 676-78). She nevertheless did not contest that there were sections of the fence that buckled and that she considered bamboo an adequate perimeter fence. I conclude the Administrator proved by a preponderance of the evidence that Mr. White willfully violated 9 C.F.R. § 3.127(d) on March 23, 2010, and September 8, 2010, as alleged in paragraphs IV(D)(2) and VI(D)(3) of the Complaint.

#### **9. Food 9 C.F.R. § 3.129(a)**

The Regulations require exhibitors to provide food to animals, as follows:

##### **§ 3.129 Feeding.**

(a) The food shall be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. The diet shall be prepared with consideration for the age, species, condition, size, and type of animal. Animals shall be fed at least once a day except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices.

9 C.F.R. § 3.129(a). The Administrator alleges Mr. White willfully violated 9 C.F.R. § 3.129(a) on March 23, 2010, and September 8, 2010.<sup>16</sup>

On March 23, 2010, Dr. Howard could not determine whether chicken parts in greenish liquid in an unmarked bucket were meant as food or were meant to be discarded (Tr. at 216-17). Although Mrs. White advised that the chicken was left over and would be thrown away, Dr. Howard believed there was the potential for someone to feed the chicken parts to animals

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<sup>16</sup>Compl. ¶¶ IV(D)(3), VI(D)(4) at 4, 7.

because the bucket was not marked and she cited Mr. White for violating 9 C.F.R. § 3.129(a) (Tr. at 217; CX 26 at 5, CX 27 at 22).

I decline to accord substantial weight to Dr. Howard's conclusion and credit Mrs. White's testimony that she and her son fed the animals. I find it improbable that either of them would mistake good food for food that must be discarded. I conclude the Administrator failed to prove by a preponderance of the evidence that Mr. White violated 9 C.F.R. § 3.129(a) on March 23, 2010, as alleged in paragraph VI(D)(4) of the Complaint.

When Dr. Howard inspected Collins Exotic Animal Orphanage on September 8, 2010, she concluded Mr. White was feeding the big cats a diet comprised primarily of chicken backs, which are not nutritionally adequate for large cats (Tr. at 158). Mr. White was told by APHIS' big cat specialist, Dr. Laurie Gage, that chicken backs were not appropriate (Tr. at 158).

Mrs. White assured Dr. Howard that they had run out of the usual feed of chicken legs and also advised that the diet was supplemented with venison, but Dr. Howard saw very little venison at the time of inspection and Dr. Howard observed that the cougars remained thin (Tr. at 159).

Dr. Howard cited Mr. White for failure to provide appropriate food (CX 7 at 6, CX 9 at 11, 20).

Mrs. White asserted she fed the cats a variety of meat and chicken backs were just one source of food (Tr. at 684). On the day of the September 8, 2010, inspection, Mrs. White mistakenly believed that only chicken backs were available, but her son showed her other meat later that day. The following day, Mrs. White showed leg quarters in the freezer to Dr. Howard, who told her that the citation had already been included in the inspection report (Tr. at 684-85).

APHIS investigator Stevie Harris interviewed one of the Collins Exotic Animal Orphanage volunteers, Timothy Chisolm, who said chicken was the primary source of the cats'

diet (CX 41). Mr. Chisolm obtained donated chicken from a chicken producer, and he believed the cats were fed primarily chicken backs in 2010.

I accord substantial weight to Mrs. White's explanation that the cougars' weight had fluctuated from the time they came to Collins Exotic Animal Orphanage (Tr. at 686). I note that in a "Complaint Response" authored by Dr. Howard on July 11, 2008, Dr. Howard "found all of the animals in decent condition. In fact, most of the animals are more towards being overweight." (CX 18). I decline to accord substantial weight to a conclusion about the quality of food on September 8, 2010, which appears to be based upon a mistaken comment made by Mrs. White.

I accord no weight to Mr. Chisolm's statements made in 2010 because those statements may reflect bias against Mr. White. I credit Mrs. White's testimony that Mr. Chisolm lived on the White's property and volunteered at Collins Exotic Animal Orphanage until he and Mr. White, IV, argued in early 2010, whereupon, Mr. Chisolm left the facility (Tr. at 846-47).

I conclude the Administrator did not prove by a preponderance of the evidence that Mr. White violated 9 C.F.R. § 3.129(a) on September 8, 2010, as alleged in paragraph IV(D)(3) of the Complaint.

#### **10. Feeding Rabbits 9 C.F.R. § 3.54**

The Regulations require exhibitors to feed rabbits, as follows:

##### **§ 3.54 Feeding.**

(a) Rabbits shall be fed at least once each day except as otherwise might be required to provide adequate veterinary care. The food shall be free from contamination, wholesome, palatable and of sufficient quantity and nutritive value to meet the normal daily requirements for the condition and size of the rabbit.

(b) Food receptacles shall be accessible to all rabbits in a primary enclosure and shall be located so as to minimize contamination by excreta. All

food receptacles shall be kept clean and sanitized at least once every 2 weeks. If self feeders are used for the feeding of dry feed, measures must be taken to prevent molding, deterioration or caking of the feed.

9 C.F.R. § 3.54. The Administrator alleges Mr. White willfully violated 9 C.F.R. § 3.54(a) on September 24, 2009,<sup>17</sup> and willfully violated 9 C.F.R. § 3.54(b) on September 24, 2009, and September 8, 2010.<sup>18</sup>

The inspection of September 24, 2009, revealed the lack of a food receptacle for rabbits. Their food was left on the ground, which increased the risk of food contamination, and Dr. Howard cited Mr. White for violations of 9 C.F.R. § 3.54 (a) and (b) (Tr. at 187-88; CX 22 at 3). Dr. Howard cited Mr. White again on September 8, 2010, for violations pertaining to rabbit feed. Dr. Howard found old produce, pellets, and excreta in the food tray for five rabbits. She believed the trays were not positioned so as to minimize contamination (Tr. at 150; CX 7 at 3). Dr. Kirsten recalled that the food receptacles for the rabbits were contaminated (Tr. at 396).

Mrs. White speculated that her son had removed the rabbits' feeding tray from the enclosure when the inspectors conducted their inspection (Tr. at 725). She also explained that “[s]ome of [the feed] does fall on the ground sometimes when you throw it in there” (Tr. at 725).

Mr. White's explanation for the condition of the rabbits' enclosure and feeding methods does not demonstrate a reasonable effort to assure that the food is free from contamination. I conclude the Administrator proved by a preponderance of the evidence that, on September 24,

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<sup>17</sup>Compl. ¶ IX(4) at 9.

<sup>18</sup>Compl. ¶¶ IV(D)(7), IX(5) at 5, 9.

2009, Mr. White willfully violated 9 C.F.R. § 3.54(a), as alleged in paragraph IX(4) of the Complaint and that, on September 24, 2009, and September 8, 2010, Mr. White willfully violated 9 C.F.R. § 3.54(b), as alleged in paragraphs IV(D)(7) and IX(5) of the Complaint.

## 11. Sanitation 9 C.F.R. § 3.131(a)

The Regulations require sanitation, as follows:

### § 3.131 Sanitation.

(a) *Cleaning of enclosures.* Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and to reduce odors. When enclosures are cleaned by hosing or flushing, adequate measures shall be taken to protect animals confined in such enclosures from being directly sprayed with the stream of water or wetted involuntarily.

9 C.F.R. § 3.131(a). The Administrator alleges Mr. White willfully violated 9 C.F.R. § 3.131(a) on March 23, 2010.<sup>19</sup>

On March 23, 2010, Dr. Howard cited Mr. White for unsanitary conditions within the shelter box housing Mr. White's kinkajou because she found the enclosure was excessively soiled and stained (CX 26 at 5-6, CX 27 at 23). Dr. Howard testified that her inspection report and accompanying photograph adequately explained the conditions that led to the citation she issued (Tr. at 217-18). Dr. Kirsten similarly found the enclosure excessively dirty (Tr. at 389).

Ms. Williamson testified that the kinkajou's cage was cleaned every morning (Tr. at 569). I find Ms. Williamson's testimony regarding the standard operating procedure at Collins Exotic Animal Orphanage is not sufficiently specific to overcome the Administrator's evidence of the condition of the kinkajou enclosure on March 23, 2010. Moreover, Ms. Williamson testified that, since 2006, she only goes to Collins Exotic Animal Orphanage one or two days per week and her work has been limited to supervisory work and work in the office (Tr. at 561). Even

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<sup>19</sup>Compl. ¶ VI(D)(5) at 7.

more specifically, Ms. Williamson testified she was not at Collins Exotic Animal Orphanage in 2010 (Tr. at 606). Therefore, I conclude the Administrator proved by a preponderance of the evidence that, on March 23, 2010, Mr. White willfully violated 9 C.F.R. § 3.131(a), as alleged in paragraph VI(D)(5) of the Complaint.

## **12. Employees 9 C.F.R. §§ 3.12, 3.85, and 3.132**

The Regulations require that exhibitors utilize a sufficient number of trained employees, as follows:

### **§ 3.12 Employees**

Each person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) maintaining dogs and cats must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide for husbandry and care, or handle animals, must be supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards.

### **§ 3.85 Employees**

Every person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) maintaining nonhuman primates must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide husbandry practices and care, or handle nonhuman primates, must be trained and supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of nonhuman primates to supervise others. The employer must be certain that the supervisor can perform to these standards.

### **§ 3.132 Employees.**

A sufficient number of adequately trained employees shall be utilized to maintain the professionally acceptable level of husbandry practices set forth in this subpart. Such practices shall be under a supervisor who has a background in animal care.

9 C.F.R. §§ 3.12, .85, .132. The Administrator alleges from May 24, 2007, and continuing to

the date of the issuance of the Complaint on March 3, 2012, Mr. White willfully violated 9 C.F.R. §§ 3.12,<sup>20</sup> 3.85,<sup>21</sup> and 3.132.<sup>22</sup>

Based upon her years of experience inspecting Collins Exotic Animal Orphanage, Dr. Howard concluded Mr. White did not have sufficient help to keep the facility well maintained (Tr. at 225-26). Although Dr. Howard acknowledged that the Regulations do not require a particular number of employees, she believed the repeated problems she observed with drainage, with the perimeter fence, and with structures and enclosures in disrepair would have been avoided with more help at Collins Exotic Animal Orphanage (Tr. at 226-27).

Dr. Howard further testified she was unable to ascertain the expertise of the few people she regularly saw at the facility (Tr. at 228). She knew that Mr. White had experience with animals, but she believed he directed Collins Exotic Animal Orphanage from his house, and Mrs. White was primarily responsible for the animals, with the help of her son (Tr. at 229). Dr. Howard observed some volunteers at the facility, but she had no knowledge of how volunteers were trained or their experience with animals (Tr. at 228).

Dr. Kirsten had only observed Mrs. White and Mr. White, IV, at Collins Exotic Animal Orphanage with the exception of one occasion when he saw another person helping (Tr. at 405-06). Dr. Kirsten believed that Mrs. White was not in the best of health, and Mr. White, IV, was very young when the doctor first visited the facility. Dr. Kirsten concluded

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<sup>20</sup>Compl. ¶ II(C) at 2-3.

<sup>21</sup>Compl. ¶ II(B) at 2.

<sup>22</sup>Compl. ¶ II(A) at 2.

that Collins Exotic Animal Orphanage was inadequately staffed for the amount of work required to maintain the facility, feed and care for the animals, and attend to the medical needs of the animals (Tr. at 406-07).

Volunteer Geraldine Williamson has worked at Collins Exotic Animal Orphanage since approximately 1986 (Tr. at 560). She had worked with animals for many years, beginning as a teenager helping her local veterinarian (Tr. at 559). She generally reported to Collins Exotic Animal Orphanage at about 8:00 a.m. and a number of volunteers would come later in the day and were assigned chores that did not involve feeding the animals (Tr. at 571-73). She was trained by Mr. White. Since 2006, Ms. Williamson no longer works at Collins Exotic Animal Orphanage eight hours a day or visits the facility every day.

Ms. Williamson continues to help the Collins Exotic Animal Orphanage's veterinarian, Dr. Ainsworth, at her office, and has treated animals at Collins Exotic Animal Orphanage pursuant to Dr. Ainsworth's instructions to Mrs. White (Tr. at 597-99). In recent years, Ms. Williamson has helped with paper work and administration and organizing volunteers (Tr. at 606). Ms. Williamson was not involved with Collins Exotic Animal Orphanage in 2010, but she estimated there were at least five other volunteers at the facility in 2009 (Tr. at 607).

Mr. White, who founded Collins Exotic Animal Orphanage, has worked with animals all of his life (Tr. at 918-19). He is self-taught, though he has read widely about animal care and attended classes and lectures (Tr. at 919). He worked with animal experts, such as Marlin Perkins, has trained fire and police departments about safety and animals, and has held an Animal Welfare Act license for 43 years (Tr. at 919). Mr. White's health no longer allows him to do daily maintenance, but he visits the facility, which is adjacent to his home, regularly and is

in daily contact with his wife, who has primary responsibility for the daily functions of Collins Exotic Animal Orphanage (Tr. at 928-29, 932-33). His wife and son do most of the work at the facility with the help of volunteers (Tr. at 932-34). Mr. White testified that his wife worked with veterinarians to treat animals.

Dr. Kirsten hypothesized that many of the violations cited by Dr. Howard would not have occurred if Mr. White had employed more workers (Tr. at 465-66), but did not say how many employees would be considered sufficient to run a facility with an area of less than one acre. The record clearly establishes that the facility depended on volunteer workers and donations. Mr. Chisolm donated time and money to the facility, and Jonathan Cornwell hired itinerant workmen to remove trees at the facility and donated a used truck to the Mr. White. Mr. White relied upon the volunteer services of a veterinarian. The record also establishes that, with the declining health of Mr. White and long-term volunteer worker Ms. Williamson, the facility lost resources during the period encompassed by the inspections at issue in this proceeding. At the same time, Mr. White, IV, was able to take on more chores as his adolescence advanced. With the exception of a brief absence, Mr. Chisolm continued to perform maintenance work at the facility. Other volunteers do work, and a biologist regularly volunteers.

Despite the perceived lack of resources, Mr. White was able to correct many of the structural and facility maintenance violations cited by inspectors. Dr. Howard was unable to articulate APHIS' expectation of what constitutes a well trained and experienced individual, but Dr. Howard conceded that individuals would not need as much training if experienced supervisors were on the premises (Tr. at 497-98). Dr. Howard's answers to repeated questions about whether Mrs. White's 32 years of experience represented adequate training were not

responsive.

Dr. Howard appeared reluctant to acknowledge Mrs. White's experience, and she overlooked the significance of Mr. White's presence and his supervision of the facility. In alleging that Collins Exotic Animal Orphanage did not have adequate numbers of properly trained employees, the Administrator appears to have overlooked the one standard articulated by Dr. Howard—that individuals working for experienced supervisors could have less training. I find Mrs. White and Mr. White were very experienced supervisors; therefore, the persons working for them could have less training than otherwise would be required.

I conclude the Administrator did not establish by a preponderance of the evidence that Mr. White failed to employ an adequate number of trained employees during the period May 24, 2007, and continuing to March 3, 2012, in violation of 9 C.F.R. § 3.12, as alleged in paragraph II(C) of the Complaint, and in violation of 9 C.F.R. § 3.132, as alleged in paragraph II(A) of the Complaint.

The Administrator alleges Mr. White failed to employ adequate employees to care for nonhuman primates in violation of 9 C.F.R. § 3.85. Dr. Howard testified that there were nonhuman primates at Mr. White's home but not on display at Collins Exotic Animal Orphanage (Tr. at 501); therefore, the allegation in paragraph II(B) of the Complaint that Mr. White violated 9 C.F.R. § 3.85 from May 24, 2007, and continuing to March 3, 2012, is dismissed.

### **13. Veterinary Care 9 C.F.R. § 2.40**

The Regulations require that each exhibitor have an attending veterinarian who provides adequate veterinary care, as follows:

**§ 2.40 Attending veterinarian and adequate veterinary care (dealers and exhibitors).**

(a) Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section.

(1) Each dealer and exhibitor shall employ an attending veterinarian under formal arrangements. In the case of a part-time attending veterinarian or consultant arrangements, the formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the premises of the dealer or exhibitor; and

(2) Each dealer and exhibitor shall assure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.

(b) Each dealer or exhibitor shall establish and maintain programs of adequate veterinary care that include:

(1) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this subchapter;

(2) The use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care;

(3) Daily observation of all animals to assess their health and well-being; *Provided, however,* That daily observation of animals may be accomplished by someone other than the attending veterinarian; and *Provided, further,* That a mechanism of direct and frequent communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian;

(4) Adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization, and euthanasia; and

(5) Adequate pre-procedural and post-procedural care in accordance with established veterinary medical and nursing procedures.

9 C.F.R. § 2.40. The Administrator alleges Mr. White willfully violated 9 C.F.R. § 2.40 on November 6, 2008, December 10-11, 2009, March 23, 2010, September 8, 2010, and April 19, 2011.<sup>23</sup>

The Administrator relied upon several incidents as evidence of Mr. White's violations of

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<sup>23</sup>Compl. ¶¶ III, IV(A), VI(A), VIII, X at 3, 5, 8-10.

9 C.F.R. § 2.40. On April 3, 2008, Dr. Howard observed a discharge from both eyes of a caracal that appeared to cause discomfort to the cat (CX 21). Mrs. White advised that the condition was long-standing and that she was treating the caracal as instructed by the veterinarian, but she agreed to call Dr. Ainsworth (CX 21). At a later inspection on November 6, 2008, the caracal's eyes had not improved (Tr. at 301). Mrs. White advised that she had called the veterinarian and was following treatment advice (Tr. at 301-02; CX 19). Dr. Howard acknowledged that the caracal had the problem for some time, but she believed that the condition had worsened based upon the caracal's behavior, and she felt it should be examined by a veterinarian (Tr. at 174-76, 302). Dr. Howard explained that the animal's temperament might have interfered with proper treatment (Tr. at 302-03).

During the November 6, 2008, inspection, Dr. Howard also observed what she believed to be a lesion on the skin of the wolf-hybrid named "Olive" (Tr. at 176, 303; CX 19). Mrs. White believed the skin condition was due to shedding, but Dr. Howard did not agree with that assessment, and believed the animal needed to be seen by a veterinarian (Tr. at 303-04).

On December 11, 2009, a volunteer at Collins Exotic Animal Orphanage observed Olive with a distended abdomen and in distress (Tr. at 202). The volunteer spoke to Mrs. White about the animal. Mrs. White stated she had observed the condition of the animal on December 10, 2009, and believed the wolf may have been pregnant. On December 12, 2009, Mrs. White reported the animal's condition to Dr. Ainsworth, who planned to examine Olive if her condition had not improved. Olive was found dead on Sunday, December 13, 2009 (Tr. at 202-03).

Dr. Howard testified that these circumstances demonstrated a violation of 9 C.F.R. § 2.40. Mrs. White did not contact Dr. Ainsworth until two days after she observed Olive's

condition (Tr. at 203-04). Dr. Howard believed Mr. White should have called Dr. Ainsworth earlier and made sure that Olive was seen, particularly given the range of ailments that Dr. Ainsworth speculated as the cause of Olive's symptoms (Tr. at 205-08). No necropsy was performed, and it was impossible to ascertain the cause of Olive's death (Tr. at 208).

On September 8, 2010, Dr. Howard cited Mr. White with failing to provide proper veterinary care to a cougar named Delilah who was euthanized five days after euthanasia was recommended by the facility's veterinarian (Tr. at 141-43; CX 7 at 1). The tiger named "Sister" developed a limp, and Mrs. White advised that Dr. Ainsworth prescribed prednisone after examining the animal on May 26, 2010, though no records were maintained about how treatment was given (Tr. at 143, 392-93; CX 7 at 1). The leopard named "Amber" had a lesion on her rump, and Mrs. White acknowledged she had not consulted the veterinarian about the condition because the lesion was observed on a holiday weekend (Tr. at 145-46, 394; CX 7 at 2, CX 9 at 15).

Dr. Kirsten visited Dr. Ainsworth to see her records, particularly those involving the cougar that Dr. Ainsworth had recommended euthanizing (Tr. at 390-91). Dr. Kirsten believed Mrs. White's delay in euthanizing the cougar constituted a violation of the Animal Welfare Act because it flaunted the authority of the attending veterinarian (Tr. at 392). Dr. Kirsten similarly found fault with Mrs. White's failure to call Dr. Ainsworth over a weekend to consult about a lesion on one of the leopard's tail (Tr. at 394). Dr. Kirsten observed that the Animal Welfare Act requires licensees to have access to emergency care at all times (Tr. at 394).

Dr. Howard, accompanied by APHIS investigator Stevie Harris, conducted an inspection of Mr. White's facility on April 19, 2011, and learned that an older jungle cat had died in

December 2010, and an older leopard had died in February 2011, both of unknown causes (CX 1). In addition, a dingo died in January 2011. No necropsy was performed on any of the three animals to determine the cause of death (CX 1-CX 2). In a three-page report dated April 19, 2011, Dr. Howard summarized her findings, noting that Mr. White did not contact the veterinarian upon the death of any of the animals, which died without apparent illness or injury (CX 3).

On March 23, 2010, Dr. Howard was accompanied on inspection of the facility by Dr. Kirsten, Dr. Laurie Gage, and other APHIS employees in response to a complaint (Tr. at 199).<sup>24</sup> A discharge was observed on rabbits' ears; a leopard named "Smokey" had a three-inch lesion on his tail; and the caracal named "Sonny" appeared to be lame (Tr. at 199-201). Although Mrs. White had consulted Dr. Ainsworth by telephone about the leopard's lesion, she had not contacted Dr. Ainsworth about the rabbits or the caracal (Tr. at 201). Mr. White was given the deadline of March 26, 2010, for the animals to be examined and treated by a veterinarian. Dr. Howard also cited Mr. White for violating 9 C.F.R. § 2.40 for the events leading to Olive's death (Tr. at 202).

Dr. Kirsten agreed with the conclusion that animals appeared in need of veterinary care when he was at Collins Exotic Animal Orphanage for the inspection of March 23, 2010 (Tr. at 372-79). Dr. Kirsten did not believe that Mr. White had an appropriate plan for veterinary care, noting that Mrs. White did not keep records of treatment of animals, but relied

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<sup>24</sup>Dr. Kirsten testified that the complaint that instigated this inspection was made by a volunteer who worked at Collins Exotic Animal Orphanage (Tr. at 374).

solely upon her memory (Tr. at 373). Dr. Kirsten and Dr. Howard visited Dr. Ainsworth to see her treatment records and to determine whether Mr. White communicated with the veterinarian about the condition of his animals (Tr. at 373-74). Dr. Kirsten recalled that Mrs. White expressed reluctance to call the veterinarian because Mr. White did not pay for veterinary services and Mrs. White felt guilty (Tr. at 377).

Dr. Kirsten upheld Dr. Howard's April 19, 2011, citations for failure to provide adequate veterinary care with respect to the animals that died without explanation when Mr. White appealed that citation (CX 4). Dr. Kirsten testified that a necropsy was necessary in a situation in which three animals died without explanation over a three-month period, considering that they had received no prior veterinary care (Tr. at 404). The Regulations require that each exhibitor establish and maintain programs of veterinary care that include the use of appropriate methods to diagnose diseases and injuries, and Mr. White failed to diagnose the cause of the deaths of these three animals (Tr. at 404-05).

The totality of the evidence demonstrates that Mr. White failed to maintain an adequate plan for veterinary care and failed to provide prompt and adequate treatment and care to animals. Dr. Ainsworth has donated her services as attending veterinarian to Collins Exotic Animal Orphanage since approximately 1994 (CX 43). Dr. Ainsworth visits Collins Exotic Animal Orphanage approximately four times annually. Dr. Ainsworth attends to animals in person, when necessary, but most issues raised by Mr. White are "handled over the phone or during [her] next visit." (CX 43). There was no formal plan for care for all of the facility's animals, since Dr. Ainsworth believed her "regular health maintenance program [was for] the cats and dogs." (CX 43).

Dr. Ainsworth's affidavit is consistent with the testimony. Ms. Williamson and Mrs. White confirmed that Dr. Ainsworth did not come to the facility frequently. The record demonstrates that Mrs. White was slow to contact Dr. Ainsworth and did not contact her at all in some circumstances that seemed to require a consultation with or an examination by a veterinarian. The evidence establishes that certain conditions were not properly diagnosed (condition of Olive's skin and the ailment that led to her death); and certain conditions were not promptly treated (tail sucking of the leopard; rabbits' ear problems; caracal's eye problems; animals' limps) (CX 43a at 1). The treatment records kept by Dr. Ainsworth show only eight documented exchanges with Mr. White during the period from May 10, 2005, until March 25, 2010 (CX 43(a)).

I conclude Mr. White was less than vigilant about assuring that animals were provided adequate veterinary care. Mr. White's casual approach to animal care is manifested by sores on a rabbit's ear that were not timely treated; lesions on a leopard's rump that were not adequately treated; a caracal's ocular problems that were poorly treated for an extended period of time; and animals limping for no documented reason. Dr. Ainsworth's records reflect that some of the calls from Mr. White were obviously prompted by APHIS' inspection (e.g., call made about a rabbit's ear on March 23, 2010 (CX 26 at 1, CX 27 at 1, CX 43(a))).

Although the Regulations do not require necropsy to determine the cause of death of animals, the unexplained deaths of three animals in a three-month period, without any documented medical condition, cast suspicion on Mr. White's compliance with 9 C.F.R. § 2.40. Consultation with Dr. Ainsworth about the deaths would have been prudent, and Dr. Ainsworth's treatment records reflect that she had been consulted in the past about animal deaths (CX 43(a)).

I credit Mrs. White's testimony that she occasionally consulted a veterinarian with experience with exotic animals when Dr. Ainsworth could not be reached. Dr. Ainsworth confirmed as much in her affidavit (CX 43). The record indicates Mr. and Mrs. White believed they had the requisite expertise and experience to care for the animals without too much guidance from a veterinarian. In some instances, it appears Mrs. White made extra efforts to extend the life of an animal, such as when she delayed euthanizing the cougar, Delilah. However, Mr. White's failure to develop, maintain, and follow a program of veterinary care is supported by a preponderance of the evidence, and I conclude that, on November 6, 2008, December 10-11, 2009, March 23, 2010, September 8, 2010, and April 19, 2011, Mr. White willfully violated 9 C.F.R. § 2.40, as alleged in paragraphs III, IV(A), VI(A), VIII, and X of the Complaint.

#### **14. Records 9 C.F.R. § 2.75(b)**

The Regulations require exhibitors to make, keep, and maintain records, as follows:

##### **§ 2.75 Records: Dealers and exhibitors.**

....

(b)(1) Every . . . exhibitor shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning animals other than dogs and cats, purchased or otherwise acquired, owned, held, leased, or otherwise in his or her possession or under his or her control, or which is transported, sold, euthanized, or otherwise disposed of by that . . . exhibitor. The records shall include any offspring born of any animal while in his or her possession or under his or her control.

- (i) The name and address of the person from whom the animals were purchased or otherwise acquired;
- (ii) The USDA license or registration number of the person if he or she is licensed or registered under the Act;
- (iii) The vehicle license number and State, and the driver's license number (or photographic identification card for nondrivers issued by a State) and State of the person, if he or she is not licensed or registered under the Act;
- (iv) The name and address of the person to whom an animal was sold or

given;

- (v) The date of purchase, acquisition, sale, or disposal of the animal(s);
- (vi) The species of the animal(s); and
- (vii) The number of animals in the shipment.

9 C.F.R. § 2.75(b)(1). The Administrator alleges Mr. White willfully violated 9 C.F.R. § 2.75(b)(1) on May 24, 2007, March 23, 2010, March 26, 2010, and September 8, 2010.<sup>25</sup>

On March 23, 2010, Dr. Howard was accompanied by a number of other APHIS employees to inspect Collins Exotic Animal Orphanage in response to a complaint and observed a possum for which no records were kept (CX 31). On September 8, 2010, Dr. Howard cited Mr. White for failing to keep records for rabbits (Tr. at 146; CX 7 at 2). In addition, records for other animals were incomplete (Tr. at 147-48). Mr. White had documented on a record for a dingo “papers missing taken by USDA or Wildlife.” (CX 9 at 12). Dr. Howard authored a memorandum in which she noted that Mrs. White acknowledged receiving copies of photocopied records from the previous inspection, but nevertheless maintained that records were missing, speculating that employees of the United States Department of Agriculture or the Mississippi Department of Wildlife, Fisheries & Parks took the records (CX 10 at 1). The records were incomplete and reconstructed, and Dr. Howard concluded that hardly any original records were available. The records did not match previously photographed records (CX 10).

In addition, Mr. White’s acquisition records raised questions about the provenance of certain animals (CX 12-CX 14, CX 40). Acquisition records dated May 24, 2007, identified Barry Weddleton, Jr., from Slidell, Louisiana, as the donor of a wolf-hybrid (CX 13) and a

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<sup>25</sup>Compl. ¶¶ IV(B), V(A), VI(B), XII at 3, 5-6, 10.

coatimundi (CX 40). In an interview with APHIS investigator Bob Stiles, Mr. Weddleton admitted he knew Mr. White, but asserted he did not sell or donate any animals to Mr. White (Tr. at 470-73; CX 12).

Jonathan Cornwell testified that he donated a coatimundi that was less than one year old to Collins Exotic Animal Orphanage sometime in 2007 (Tr. at 70-72). Geraldine Williamson testified that an older coatimundi was donated to the facility by a man who identified himself as Mr. White's "friend from Slidell." (Tr. at 581-82). The donor was not Mr. Cornwell, whom Ms. Williamson knew (Tr. at 583). The male coatimundi that was left with Ms. Williamson was the only coatimundi kept by the facility (Tr. at 610). Mr. Cornwell promised to donate a female coatimundi to Collins Exotic Animal Orphanage but he never did (Tr. at 610, 843). Mr. White's only coatimundi was an older animal that was donated in 2007 and that died a few years later (Tr. at 843-45).

I am unable to determine the source of the coatimundi from the record. The preponderance of the evidence establishes that the coatimundi was not donated by the individual identified on the acquisition papers. Mr. White did not confirm the identity of the unnamed donor nor did Mr. White confirm any information about the animal, but conjectured that Mr. Weddleton had left the animal. Mr. Weddleton's father denied that assertion, explaining that his son had known Mr. White years before, but had lived in Oklahoma for 20 years (CX 14)

I need not determine whether the coatimundi was in fact donated by Mr. Cornwell to conclude the records were improperly maintained. His testimony was not entirely credible. Moreover, I cannot fully credit the testimony of Mrs. White or Ms. Williamson on this issue. Whatever the source of the animal, the evidence suggests that the acquisition record was

fabricated in violation of 9 C.F.R. § 2.75(b)(1).

Mr. White's records regarding the source of rabbits are similarly unreliable. Mrs. White admitted she did not know the donor of the rabbits and instead used the name of a friend who raised rabbits (Tr. at 695-96), in violation of the recordkeeping requirements in 9 C.F.R. § 2.75(b)(1).

Other records were missing or reconstituted and Mr. White's contention that they were removed by employees of a government agency does not constitute a valid defense to the requirement to maintain records. Mr. White's recordkeeping system is deficient. In addition to the problems with animal acquisition records, incomplete records were kept of losses of animals when they left the facility or died. I conclude the Administrator proved by a preponderance of the evidence that on May 24, 2007, March 23, 2010, March 26, 2010, and September 8, 2010, Mr. White willfully violated 9 C.F.R. § 2.75(b)(1), as alleged in paragraphs IV(B), V(A), VI(B), and XII of the Complaint.

#### **E. Sanctions**

The purpose of assessing civil penalties is not to punish violators, but to deter the violator, as well as others, from similar behavior.<sup>26</sup> When determining the amount of the civil penalty to be assessed for violations of the Animal Welfare Act and the Regulations, the Secretary of Agriculture is required to give due consideration to four factors: (1) the size of the business of the person involved, (2) the gravity of the violations, (3) the person's good faith, and

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<sup>26</sup>*In re David M. Zimmerman*, 56 Agric. Dec. 433, 461 (1997), *aff'd*, 156 F.3d 1227 (3d Cir. 1998) (Table), printed in 57 Agric. Dec. 46 (1998).

(4) the history of previous violations.<sup>27</sup>

I find Mr. White operates a small business. Mr. White's violations of the Animal Welfare Act and the Regulations are grave. The record establishes that Mr. White willfully violated the Animal Welfare Act on repeated occasions. Mr. White failed to develop and follow a plan for veterinary care that led to the failure to diagnose the cause of a wolf-hybrid's symptoms and eventual death. Mr. White's approach to consulting the facility's attending veterinarian resulted in the failure of prompt diagnosis for a rabbit's ear condition, a caracal's eye condition, and lesions on a leopard's rump, as well as the proper treatment for a leopard's tail-sucking habit. Three animals died over a three-month period without consultation with a veterinarian. Mr. White's perimeter fence and other structures did not meet standards for soundness and, at times, Mr. White failed to meet the required feeding and sanitation standards.

Moreover, the record establishes that Mr. White repeatedly violated the Animal Welfare Act and the Regulations during almost a four-year period, May 24, 2007, through April 19, 2011, indicating a lack of good faith. Finally, Mr. White has a history of previous violations. Mr. White's ongoing pattern of violations, established in this proceeding, constitutes a history of previous violations for the purposes of 7 U.S.C. § 2149(b). Further, in a previous proceeding, Mr. White was found to have violated the Animal Welfare Act and the Regulations and ordered to cease and desist from violating the Animal Welfare Act and the Regulations.<sup>28</sup>

The United States Department of Agriculture's sanction policy is set forth in *In re S.S.*

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<sup>27</sup>7 U.S.C. § 2149(b).

<sup>28</sup>*In re Gus White III*, 49 Agric. Dec. 123 (1990).

*Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are generally entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. However, I have repeatedly stated the recommendations of administrative officials as to the sanction are not controlling, and, in appropriate circumstances, the sanction imposed may be considerably less, or different, than that recommended by administrative officials.<sup>29</sup>

The Administrator, one of the officials charged with administering the Animal Welfare Act, recommends that I issue an order requiring Mr. White to cease and desist from violations of the Animal Welfare Act and the Regulations, assessing Mr. White a \$99,000 civil penalty, and revoking Mr. White's Animal Welfare Act license (Animal Welfare Act license number 65-C-0012).

Based upon the record before me, I agree with the Administrator that issuance of a cease and desist order against Mr. White and revocation of Mr. White's Animal Welfare Act license are necessary to ensure Mr. White's compliance with the Animal Welfare Act and the Regulations in the future, to deter others from violating the Animal Welfare Act and the

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<sup>29</sup>*In re Craig A. Perry* (Decision as to Craig A. Perry and Perry's Wilderness Ranch & Zoo, Inc.), \_\_ Agric. Dec. \_\_, slip op. at 20-21 (Sept. 6, 2013); *In re Lee Marvin Greenly* (Decision as to Lee Marvin Greenly and Minnesota Wildlife Connection, Inc.), \_\_ Agric. Dec. \_\_, slip op. at 33-34 (Aug. 5, 2013), *appeal docketed*, No. 13-2882 (8th Cir. Aug. 23, 2013); *In re Sam Mazzola*, 68 Agric. Dec. 822, 849 (2009), *dismissed*, 2010 WL 2988902 (6th Cir. Oct. 27, 2010); *In re Lorenza Pearson*, 68 Agric. Dec. 685, 731 (2009), *aff'd*, 411 F. App'x 866 (6th Cir. 2011).

Regulations, and to thereby fulfill the remedial purposes of the Animal Welfare Act. Moreover, I find assessment of a civil penalty is warranted in law and justified by the facts.

I conclude Mr. White committed 22 violations of the Animal Welfare Act and the Regulations during the period May 24, 2007, through April 19, 2011.<sup>30</sup> Mr. White could be assessed a maximum civil penalty of \$213,750 for 22 violations of the Animal Welfare Act and the Regulations.<sup>31</sup> After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the factors required to be considered in 7 U.S.C. § 2149(b) and the remedial purposes of the Animal Welfare Act, I

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<sup>30</sup>The Animal Welfare Act provides that each violation and each day during which a violation continues shall be a separate offense. 7 U.S.C. § 2149(b).

<sup>31</sup>Prior to June 18, 2008, the Animal Welfare Act authorized the Secretary of Agriculture to assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act and the Regulations (7 U.S.C. § 2149(b)). However, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), provides that the head of each agency shall, by regulation, adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency by increasing the maximum civil penalty for each civil monetary penalty by a cost-of-living adjustment. The Secretary of Agriculture, by regulation, adjusted the civil monetary penalty that may be assessed under 7 U.S.C. § 2149(b) for each violation of the Animal Welfare Act and the Regulations occurring after June 23, 2005, by increasing the maximum civil penalty to \$3,750 (7 C.F.R. § 3.91(b)(2)(ii) (2008)). This maximum civil penalty was in effect until June 18, 2008, when the Animal Welfare Act was amended to authorize the Secretary of Agriculture to assess a civil penalty of not more than \$10,000 for each violation of the Animal Welfare Act and the Regulations. Thus, the Secretary of Agriculture is authorized to assess Mr. White a civil penalty of not more than \$3,750 for his violation of the Animal Welfare Act and the Regulations that occurred on May 24, 2007, and a civil penalty of not more than \$10,000 for each of his 21 violations of the Animal Welfare Act and the Regulations that occurred after June 18, 2008.

conclude a \$39,375 civil penalty is appropriate and necessary to ensure Mr. White's compliance with the Animal Welfare Act and the Regulations in the future, to deter others from violating the Animal Welfare Act and the Regulations, and to thereby fulfill the remedial purposes of the Animal Welfare Act.<sup>32</sup>

#### **F. Mr. White's Appeal Petition**

Mr. White raises two issues in Mr. White's Appeal Petition. First, Mr. White asserts the ALJ's failure to dismiss all of the violations of the Animal Welfare Act and the Regulations alleged in the Complaint, is error (Mr. White's Appeal Pet. at 1).

As the proponent of an order, the Administrator has the burden of proof in this proceeding,<sup>33</sup> and the standard of proof by which the burden of persuasion is met in an administrative proceeding conducted under the Animal Welfare Act is preponderance of the evidence.<sup>34</sup> The ALJ concluded that the Administrator proved by a preponderance of the

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<sup>32</sup>I assess Mr. White a civil penalty of \$5,000 for each of his five violations of 9 C.F.R. § 2.40; a civil penalty of \$1,000 for 14 of Mr. White's violations of the Regulations that occurred after June 18, 2008; and a civil penalty of \$375 for Mr. White's violation of 9 C.F.R. § 2.75(b)(1) that occurred on May 24, 2007. I do not assess any civil penalty for Mr. White's July 11, 2008, violation of 9 C.F.R. § 2.131(c)(1) or for Mr. White's March 23, 2010, violation of 9 C.F.R. § 3.127(b).

<sup>33</sup>5 U.S.C. § 556(d).

<sup>34</sup>*Herman & MacLean v. Huddleston*, 459 U.S. 375, 387-92 (1983); *Steadman v. SEC*, 450 U.S. 91, 92-104 (1981); *In re Tri-State Zoological Park of Western Maryland*, \_\_ Agric. Dec. \_\_, slip op. at 62 (Mar. 22, 2013); *In re Lorenza Pearson*, 68 Agric. Dec. 685, 727-28 (2009), *aff'd*, 411 F. App'x 866 (6th Cir. 2011); *In re Jerome Schmidt*, 66 Agric. Dec. 159, 178 (2007).

evidence that Mr. White violated the Animal Welfare Act and the Regulations, as alleged in paragraphs III, IV(A), IV(B), IV(D)(2), IV(D)(6) as it relates to the structural integrity of animal enclosures, IV(D)(7), V(A), VI(A), VI(B), VI(C), VI(D)(1), VI(D)(2), VI(D)(3), VII(A)(1), VIII, IX(4), IX(5), IX(6), X, and XII of the Complaint.<sup>35</sup> Mr. White addresses each of these conclusions of law (Mr. White’s Appeal Brief at 4-16); however, except for the ALJ’s conclusion that Mr. White violated 9 C.F.R. § 3.125(a) on September 8, 2010,<sup>36</sup> as alleged in paragraph IV(D)(6) of the Complaint, I find Mr. White’s contention that the ALJ’s conclusions of law are error, have no merit.

The Administrator alleges Mr. White violated 9 C.F.R. § 3.125(a) on September 8, 2010.<sup>37</sup> The ALJ concluded Mr. White violated 9 C.F.R. § 3.125(a) on September 8, 2010, by failing to remove dead trees which “represent a danger to the structural integrity of fencing[.]”<sup>38</sup> The Regulations require that the facility must be constructed of such material and of such strength as appropriate for the animals involved.<sup>39</sup> I agree with Mr. White’s contention that the existence of a danger to the structural integrity of animal enclosures is not sufficient to establish that, at the time of the September 8, 2010, inspection, the animal enclosures were not constructed of such material and of such strength as appropriate for the animals involved, in violation of

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<sup>35</sup>ALJ’s Decision and Order Conclusions of Law ¶ 3(a)-(j) at 40.

<sup>36</sup>ALJ’s Decision and Order Conclusions of Law ¶ 3(d) at 40.

<sup>37</sup>Compl. ¶ IV(D)(6) at 5.

<sup>38</sup>ALJ’s Decision and Order at 11.

<sup>39</sup>9 C.F.R. § 3.125(a).

9 C.F.R. § 3.125(a). Therefore, I do not adopt the ALJ's conclusion that Mr. White violated 9 C.F.R. § 3.125(a) on September 8, 2010.

Second, Mr. White contends the ALJ's revocation of Mr. White's Animal Welfare Act license, is error (Mr. White's Appeal Pet. at 1). Mr. White argues the ALJ's revocation of his Animal Welfare Act license is a "severe overreaction" and the ALJ must have misunderstood the testimony of Mrs. White and the other witnesses (Mr. White's Appeal Brief at 16).

The ALJ did not revoke Mr. White's Animal Welfare Act license. Mr. White holds, and at all times material to this proceeding held, Animal Welfare Act license number 65-C-0012 (CX 39). The ALJ revoked Animal Welfare Act license number 51-C-0064.<sup>40</sup> I find no evidence that Mr. White holds or ever held Animal Welfare Act license number 51-C-0064. Therefore, I reject Mr. White's contention that the ALJ's revocation of Mr. White's Animal Welfare Act license, is error.

Even if I were to find that the ALJ revoked Mr. White's Animal Welfare Act license, I would reject Mr. White's contention that the revocation constitutes a "severe overreaction." As discussed in this Decision and Order, *supra*, I conclude revocation of Mr. White's Animal Welfare Act license is necessary to ensure Mr. White's compliance with the Animal Welfare Act and the Regulations in the future, to deter others from violating the Animal Welfare Act and the Regulations, and to thereby fulfill the remedial purposes of the Animal Welfare Act.

### **G. The Administrator's Appeal Petition**

The Administrator raises 10 issues in the Administrator's Appeal Petition. First, the

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<sup>40</sup>ALJ's Decision and Order at 41.

Administrator contends the ALJ erroneously dismissed the allegation in paragraph XI of the Complaint that Mr. White violated 9 C.F.R. § 2.131(c)(1) on July 11, 2008, based upon Mr. White's subsequent correction of the violation (Administrator's Appeal Brief at 3).

The correction of a violation of the Animal Welfare Act or the Regulations is to be encouraged and may be taken into account when determining the sanction to be imposed for the violation. However, each Animal Welfare Act licensee must always be in compliance in all respects with the Animal Welfare Act and the Regulations and the correction of a violation does not eliminate the fact that the violation occurred.<sup>41</sup> Therefore, I reject the ALJ's basis for dismissing the allegation in paragraph XI of the Complaint that Mr. White violated 9 C.F.R. § 2.131(c)(1) on July 11, 2008.

Second, the Administrator contends the ALJ erroneously dismissed the allegation in paragraph IV(D)(5) of the Complaint that Mr. White violated 9 C.F.R. § 3.125(c) on September 8, 2010, based upon Mr. White's explanation of the reasons for the violation (Administrator's Appeal Brief at 3-4).

An explanation of the reasons for a violation of the Animal Welfare Act or the Regulations may be taken into account when determining the sanction to be imposed for the violation of the Animal Welfare Act or the Regulations. However, each Animal Welfare Act

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<sup>41</sup>*In re Lee Marvin Greenly* (Decision as to Lee Marvin Greenly and Minnesota Wildlife Connection), \_\_ Agric. Dec. \_\_, slip op. at 30 (Aug. 5, 2013), *appeal docketed*, No. 13-2882 (8th Cir. Aug. 23, 2013); *In re Tri-State Zoological Park of Western Maryland, Inc.*, \_\_ Agric. Dec. \_\_, slip op. at 63 (Mar. 22, 2013); *In re Lorenza Pearson*, 68 Agric. Dec. 685, 727-28 (2009), *aff'd*, 411 F. App'x 866 (6th Cir. 2011); *In re Jewel Bond*, 65 Agric. Dec. 92, 109 (2006), *aff'd per curiam*, 275 F. App'x 547 (8th Cir. 2008).

licensee must always be in compliance in all respects with the Animal Welfare Act and the Regulations and an explanation of the reasons for a violation does not eliminate the fact that the violation occurred. However, the ALJ's Decision and Order does not indicate that she would have found Mr. White's storage of items in violation of 9 C.F.R. § 3.125(c), but for the explanation provided by Mr. White. Instead, the ALJ only found "the practices described by Dr. Howard in her inspection report [(CX 7)] reflect some careless handling of vitamins and storage of items[.]"<sup>42</sup> Some careless handling of vitamins and storage of items does not, by itself, constitute a violation of 9 C.F.R. § 3.125(c). Therefore, I do not find the ALJ's dismissal of the violation of 9 C.F.R. § 3.125(c), alleged in paragraph IV(D)(5) of the Complaint, is error.

Third, the Administrator contends the ALJ erroneously dismissed the allegation that, on September 24, 2009, Mr. White violated 9 C.F.R. § 3.125(a) (Administrator's Appeal Brief at 4-5).

The Administrator does not allege that Mr. White violated 9 C.F.R. § 3.125(a) on September 24, 2009.<sup>43</sup> Therefore, I reject the Administrator's contention that the ALJ erroneously dismissed the Administrator's allegation that Mr. White violated 9 C.F.R. § 3.125(a) on September 24, 2009.

Fourth, the Administrator contends the ALJ erroneously dismissed the allegations that, on September 24, 2009, Mr. White violated 9 C.F.R. §§ 3.52(b), 3.53(a)(2), 3.53(b), 3.53(c)(2), and 3.54(a) (Administrator's Appeal Brief at 5).

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<sup>42</sup>ALJ's Decision and Order at 13.

<sup>43</sup>Compl. ¶ IX at 8-9.

As an initial matter, the Administrator did not allege that Mr. White violated 9 C.F.R. § 3.53(b) on September 24, 2009.<sup>44</sup> Moreover, the ALJ concluded that Mr. White violated 9 C.F.R. § 3.54(a) on September 24, 2009.<sup>45</sup> Therefore, I reject the Administrator's contention that the ALJ erroneously dismissed the Administrator's allegations that Mr. White violated 9 C.F.R. §§ 3.53(b) and 3.54(a) on September 24, 2009.

As for the Administrator's contention that the ALJ erroneously dismissed the allegations in paragraphs IX(1), IX(2), and IX(3) of the Complaint that Mr. White violated 9 C.F.R. §§ 3.52(b), 3.53(a)(2), and 3.53(c)(2), the ALJ properly weighed the evidence and concluded the Administrator failed to prove by a preponderance of the evidence that Mr. White violated 9 C.F.R. §§ 3.52(b), 3.53(a)(2), and 3.53(c)(2) on September 24, 2009; therefore, I reject the Administrator's contention that the ALJ's dismissal of the allegations in paragraphs IX(1), IX(2), and IX(3) of the Complaint, is error.

Fifth, the Administrator contends the ALJ erroneously dismissed the allegation in paragraph IV(D)(3) of the Complaint that, on September 8, 2010, in violation of 9 C.F.R. § 3.129(a), Mr. White failed to provide animals with wholesome and uncontaminated food (Administrator's Appeal Brief at 6).

Dr. Howard cited Mr. White for a violation of 9 C.F.R. § 3.129(a) on September 8, 2010, based upon her finding that the primary meat source for the big cats was chicken backs (CX 7 at 6). However, Mr. White introduced evidence that the cats were also fed venison and

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<sup>44</sup>Compl. ¶ IX at 8-9.

<sup>45</sup>ALJ's Decision and Order Conclusions of Law ¶ 3(g) at 40.

that chicken leg quarters were available on September 8, 2010. The ALJ properly weighed this conflicting evidence and concluded the Administrator failed to prove by a preponderance of the evidence that Mr. White violated 9 C.F.R. § 3.129(a) on September 8, 2010. Therefore, I reject the Administrator's contention that the ALJ erroneously dismissed the allegation in paragraph IV(D)(3) of the Complaint that, on September 8, 2010, Mr. White violated 9 C.F.R. § 3.129(a).

Sixth, the Administrator contends the ALJ erroneously dismissed the allegation in paragraph VI(D)(4) of the Complaint that, on March 23, 2010, in violation of 9 C.F.R. § 3.129(a), Mr. White failed to provide animals with wholesome, palatable food that was free of contamination and of sufficient quantity and nutritive value to maintain the animals (Administrator's Appeal Brief at 7).

Dr. Howard cited Mr. White for a violation of 9 C.F.R. § 3.129(a) on March 23, 2010, based upon the existence of a plastic bucket in the food cooler that contained chicken leg quarters of questionable quality for feeding (Tr. 216-17; CX 26 at 5). The ALJ properly weighed this evidence against testimony that the chicken in the plastic bucket was not food for the animals, but was waste that would not be fed to animals and concluded that the Administrator failed to prove by a preponderance of the evidence that Mr. White violated 9 C.F.R. § 3.129(a) on March 23, 2010. Therefore, I reject the Administrator's contention that the ALJ erroneously dismissed the allegation in paragraph VI(D)(4) of the Complaint that, on March 23, 2010, Mr. White violated 9 C.F.R. § 3.129(a). However, I agree with the Administrator's assertion that the ALJ's reliance on the fact that Mr. White was not regularly cited for a violation of 9 C.F.R. § 3.129(a) as a basis for dismissal of the allegation, is misplaced, and I do not adopt the ALJ's discussion regarding the frequency with which Mr. White was cited for violating 9 C.F.R.

§ 3.129(a).

Seventh, the Administrator urges removal of the ALJ's discussion of a violation of 9 C.F.R. § 3.131(c) on September 8, 2010, because the Administrator did not allege that Mr. White violated 9 C.F.R. § 3.131(c) on September 8, 2010 (Administrator's Appeal Brief at 7-8).

I agree with the Administrator's assertion that the Complaint contains no allegation that Mr. White failed to provide for removal of animal and food wastes in violation of 9 C.F.R. § 3.131(c) on September 8, 2010; however, the Administrator did allege that, on September 8, 2010, Mr. White failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris in violation of 9 C.F.R. § 3.125(d).<sup>46</sup> The ALJ's discussion, which the Administrator believes must be removed, relates to the allegation in paragraph IV(D)(4) of the Complaint that Mr. White violated 9 C.F.R. § 3.125(d) on September 8, 2010. Therefore, I reject the Administrator's request that I remove the ALJ's discussion of the allegation in paragraph IV(D)(4) of the Complaint.

Eighth, the Administrator contends the ALJ erroneously dismissed the allegation in paragraph VI(D)(5) of the Complaint that, on March 23, 2010, in violation of 9 C.F.R. § 3.131(a), Mr. White failed to remove excreta from primary enclosures as often as necessary to prevent contamination of animals contained in the primary enclosures and to minimize disease hazards (Administrator's Appeal Brief at 8-9).

Dr. Howard cited Mr. White for a violation of 9 C.F.R. § 3.131(a) on March 23, 2010,

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<sup>46</sup>Compl. ¶ IV(D)(4) at 4.

based upon her observation that, in the kinkajou enclosure, a barrel in a shelter box was excessively soiled and stained (Tr. at 217-18; CX 26 at 5-6, CX 27 at 23). Dr. Howard testified that her inspection report and the accompanying photograph adequately explained the conditions that led to the citation she issued (Tr. at 217-18). Dr. Kirsten similarly found the kinkajou enclosure excessively dirty (Tr. at 389).

The ALJ based the dismissal of the allegation that Mr. White violated 9 C.F.R. § 3.131(a) on March 23, 2010, on Ms. Williamson's testimony that the kinkajou's cage was cleaned every morning (Tr. at 569). As an initial matter, Ms. Williamson's testimony regarding standard operating procedure at Collins Exotic Animal Orphanage is not sufficiently specific to overcome the Administrator's evidence of the condition of the kinkajou enclosure on March 23, 2010. Moreover, Ms. Williamson testified that, since 2006, she only goes to Collins Exotic Animal Orphanage one or two days per week and her work is limited to supervisory work and work in the office (Tr. at 561). Even more specifically, Ms. Williamson testified she was not at Collins Exotic Animal Orphanage in 2010 (Tr. at 606). Under these circumstances, I agree with the Administrator that the ALJ's dismissal of the allegation in paragraph VI(D)(5) of the Complaint that, on March 23, 2010, Mr. White violated 9 C.F.R. § 3.131(a), is error. I conclude the Administrator proved by a preponderance of the evidence that Mr. White violated 9 C.F.R. § 3.131(a) on March 23, 2010, as alleged in paragraph VI(D)(5) of the Complaint.

Ninth, the Administrator contends the ALJ erroneously dismissed the allegations in paragraphs II(A) and II(C) of the Complaint that, from May 24, 2007, and continuing to March 3, 2012, Mr. White failed to have a sufficient number of adequately trained employees under a supervisor who has a background in animal care to maintain the professionally

acceptable level of husbandry practices set forth in the Regulations, in violation of 9 C.F.R. §§ 3.12 and 3.132 (Administrator's Appeal Brief at 9-13).

As an initial matter, the inspections of Collins Exotic Animal Orphanage that are the subject of this proceeding occurred during the period May 24, 2007, through April 19, 2011; therefore, I find no basis upon which to conclude that Mr. White violated 9 C.F.R. § 3.12 or 9 C.F.R. § 3.132 after April 19, 2011. Moreover, Mr. White was not cited for a violation of 9 C.F.R. § 3.12 or 9 C.F.R. § 3.132 on the inspection reports applicable to the inspections that are the subject of this proceeding.<sup>47</sup> Under these circumstances, despite the testimony regarding the general condition of Collins Exotic Animal Orphanage, I reject the Administrator's contention that the ALJ erroneously dismissed the alleged violation of 9 C.F.R. § 3.132 in paragraph II(A) of the Complaint and the alleged violation of 9 C.F.R. § 3.12 in paragraph II(C) of the Complaint.

Tenth, the Administrator contends the ALJ's failure to assess Mr. White a civil penalty, is error (Administrator's Appeal Pet. at 1).

I find assessment of a civil penalty is warranted in law and justified by the facts, and, after examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the factors required to be considered in

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<sup>47</sup>See CX 16 applicable to the July 11, 2008, inspection; CX 19 applicable to the November 6, 2008, inspection; CX 22 applicable to the September 24, 2009, inspection; CX 24 applicable to the January 21, 2010, inspection; CX 26 applicable to the March 23, 2010, inspection; CX 30 applicable to the March 26, 2010, inspection; CX 7 applicable to the September 8, 2010, inspection; and CX 1 and CX 2 applicable to the April 19, 2011, inspection.

7 U.S.C. § 2149(b) and the remedial purposes of the Animal Welfare Act, I conclude a \$39,375 civil penalty is appropriate and necessary to ensure Mr. White's compliance with the Animal Welfare Act and the Regulations in the future, to deter others from violating the Animal Welfare Act and the Regulations, and to thereby fulfill the remedial purposes of the Animal Welfare Act.

#### **H. Findings of Fact**

1. Gustave L. White, III, also known as Gus White, is an individual who holds, and at all times material to this proceeding held, Animal Welfare Act license number 65-C-0012 to exhibit animals under the Animal Welfare Act.

2. Mr. White operates a facility named Collins Exotic Animal Orphanage in Collins, Mississippi, at which Mr. White exhibits animals to the public.

3. Mr. White directs and supervises the operation of Collins Exotic Animal Orphanage, but no longer does the heavy manual work involved in maintaining the facility and caring for the animals.

4. Mr. White has a lifetime of experience caring for animals.

5. Mr. White's wife, Bettye White, and son, Gustave L. White, IV, are the primary caretakers of Collins Exotic Animal Orphanage and the animals at the facility.

6. Mrs. White has cared for animals along with her husband for 32 years.

7. Mr. White, IV, was raised in a home adjacent to Collins Exotic Animal Orphanage and has been around animals and worked with animals for his entire life. Mr. White, IV, was trained to feed and care for animals by his parents and by volunteers at Collins Exotic Animal Orphanage.

8. A number of volunteers regularly assist with the maintenance and administration

of Collins Exotic Animal Orphanage.

9. Mrs. White is responsible for maintaining the records at Collins Exotic Animal Orphanage.

10. Dr. Melissa Ainsworth serves as the attending veterinarian at Collins Exotic Animal Orphanage on a volunteer basis and offers advice primarily over the telephone.

11. APHIS employees conducted inspections of Mr. White's facility, records, and animals on May 24, 2007, July 11, 2008, November 6, 2008, September 24, 2009, December 10-11, 2009, January 21, 2010, March 23, 2010, March 26, 2010, September 8, 2010, and April 19, 2011.

12. During each of the inspections identified in Finding of Fact number 11, APHIS inspectors cited Mr. White for violations of the Regulations.

13. On or about May 24, 2007, Mr. White failed to maintain complete records showing the acquisition, disposition, and identification of animals.

14. On or about July 11, 2008, Mr. White failed, during a public exhibition, to maintain a sufficient distance or barrier between the animals and the general viewing public to assure the safety of the animals and the viewing public.

15. On or about November 6, 2008, Mr. White failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, including, but not limited to, a wolf-hybrid named "Olive" that was observed with a brownish discharge in both eyes and a caracal named "Pretty Boy" that was observed to have an ocular condition.

16. On or about September 24, 2009, Mr. White failed to provide food for rabbits that was free of contamination, wholesome, palatable, and of sufficient quantity and nutritive value for the rabbits.

17. On or about September 24, 2009, Mr. White failed to keep food receptacles for rabbits clean and sanitized and failed to locate food receptacles for rabbits so as to minimize contamination by excreta.

18. On or about September 24, 2009, Mr. White's housing facilities for dogs were not constructed so they were structurally sound and maintained in good repair.

19. On or about December 10-11, 2009, Mr. White failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to an animal in need of care. A wolf-hybrid named "Olive" was observed with a distended abdomen and in distress, but was not provided veterinary care. Olive was found dead on December 13, 2009.

20. On or about January 21, 2010, Mr. White's housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the dogs from injury, contain the dogs, and restrict other animals from entering.

21. On or about January 21, 2010, Mr. White's facility was not constructed of such material and such strength and was not maintained in good repair to protect animals from injury and to contain animals.

22. On or about March 23, 2010, Mr. White failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and

assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care.

23. On or about March 23, 2010, Mr. White failed to maintain complete records showing the acquisition, disposition, and identification of animals.

24. On or about March 23, 2010, Mr. White, during public exhibition, did not maintain a sufficient distance or barrier between coyotes and the general viewing public to assure the safety of the coyotes and the viewing public.

25. On or about March 23, 2010, Mr. White's facilities for cougars and tigers were not structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.

26. On or about March 23, 2010, Mr. White failed to provide natural or artificial shelter appropriate to the local climatic conditions for cougars kept outdoors to afford the cougars protection and to prevent discomfort to the cougars.

27. On or about March 23, 2010, Mr. White failed to enclose all outdoor housing facilities for animals with a perimeter fence of sufficient height.

28. On or about March 23, 2010, Mr. White failed to remove excreta from a primary enclosure as often as necessary to prevent contamination of a kinkajou contained in the primary enclosure and to minimize disease hazards.

29. On or about March 26, 2010, Mr. White failed to maintain complete records showing the acquisition, disposition, and identification of animals.

30. On or about September 8, 2010, Mr. White failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and

assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care.

31. On or about September 8, 2010, Mr. White failed to maintain complete records showing the acquisition, disposition, and identification of animals.

32. On or about September 8, 2010, Mr. White failed to enclose all outdoor housing facilities for animals with a perimeter fence of sufficient height.

33. On or about September 8, 2010, Mr. White failed to keep food receptacles for rabbits clean and sanitized and failed to locate food receptacles for rabbits so as to minimize contamination by excreta.

34. On or about April 19, 2011, Mr. White failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine.

### **I. Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction over this matter.
2. At all times material to this proceeding, Mr. White was an “exhibitor” as that term is defined in the Animal Welfare Act and the Regulations.
3. The following violations alleged in the Complaint are dismissed for lack of proof by a preponderance of the evidence:
  - a. A violation of 9 C.F.R. § 3.132, alleged in paragraph II(A) of the Complaint to have occurred from May 24, 2007, and continuing to the date of the issuance of the Complaint on March 3, 2012;
  - b. A violation of 9 C.F.R. § 3.85, alleged in paragraph II(B) of the Complaint to have occurred from May 24, 2007, and continuing to the date of the

issuance of the Complaint on March 3, 2012;

c. A violation of 9 C.F.R. § 3.12, alleged in paragraph II(C) of the Complaint to have occurred from May 24, 2007, and continuing to the date of the issuance of the Complaint on March 3, 2012;

d. A violation of 9 C.F.R. § 2.131(c)(1), alleged in paragraph IV(C) of the Complaint to have occurred on or about September 8, 2010;

e. A violation of 9 C.F.R. § 3.127(a), alleged in paragraph IV(D)(1) of the Complaint to have occurred on or about September 8, 2010;

f. Violations of 9 C.F.R. § 3.129(a), alleged in paragraph IV(D)(3) of the Complaint to have occurred on or about September 8, 2010, and alleged in paragraph VI(D)(4) of the Complaint to have occurred on or about March 23, 2010;

g. A violation of 9 C.F.R. § 3.125(d), alleged in paragraph IV(D)(4) of the Complaint to have occurred on or about September 8, 2010;

h. A violation of 9 C.F.R. § 3.125(c), alleged in paragraph IV(D)(5) of the Complaint to have occurred on or about September 8, 2010;

i. A violation of 9 C.F.R. § 3.125(a), alleged in paragraph IV(D)(6) of the Complaint to have occurred on or about September 8, 2010;

j. Violations of 9 C.F.R. § 3.127(c), alleged in paragraph VII(A)(3) of the Complaint to have occurred on or about January 21, 2010, and alleged in paragraph IX(7) of the Complaint to have occurred on or about September 24, 2009;

k. A violation of 9 C.F.R. § 3.52(b), alleged in paragraph IX(1) of the Complaint to have occurred on or about September 24, 2009;

l. A violation of 9 C.F.R. § 3.53(a)(2), alleged in paragraph IX(2) of the Complaint to have occurred on or about September 24, 2009; and

m. A violation of 9 C.F.R. § 3.53(c)(2), alleged in paragraph IX(3) of the Complaint to have occurred on or about September 24, 2009.

4. The following violations alleged in the Complaint to have been committed by Mr. White are established by a preponderance of the evidence:

a. On or about May 24, 2007, Mr. White failed to maintain complete records showing the acquisition, disposition, and identification of animals, in willful violation of 7 U.S.C. § 2140 and 9 C.F.R. § 2.75(b)(1);

b. On or about July 11, 2008, during public exhibition of an animal, Mr. White did not maintain a sufficient distance or barrier between the animal and the general viewing public to assure the safety of the animal and the viewing public, in willful violation of 9 C.F.R. § 2.131(c)(1);

c. On or about November 6, 2008, Mr. White failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, including, but not limited to, a wolf-hybrid named “Olive” that was observed with a brownish discharge in both eyes and a caracal named “Pretty Boy” that was observed to have an ocular condition, in willful violation of 9 C.F.R. § 2.40;

d. On or about September 24, 2009, Mr. White failed to provide food for rabbits that was free of contamination, wholesome, palatable, and of sufficient quantity and nutritive value for the rabbits, in willful violation of 9 C.F.R. § 3.54(a);

e. On or about September 24, 2009, Mr. White failed to keep food receptacles for rabbits clean and sanitized and failed to locate food receptacles for rabbits so as to minimize contamination by excreta, in willful violation of 9 C.F.R. § 3.54(b);

f. On or about September 24, 2009, Mr. White's housing facilities for dogs were not constructed so that they were structurally sound and maintained in good repair, in willful violation of 9 C.F.R. § 3.1(a);

g. On or about December 10-11, 2009, Mr. White failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to an animal in need of care, in willful violation of 9 C.F.R. § 2.40;

h. On or about January 21, 2010, Mr. White's housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the dogs from injury, contain the dogs, and restrict other animals from entering, in willful violation of 9 C.F.R. § 3.1(a);

i. On or about January 21, 2010, Mr. White's facility was not constructed of such material and of such strength and was not maintained in good

repair to protect the animals from injury and to contain the animals, in willful violation of 9 C.F.R. § 3.125(a);

j. On or about March 23, 2010, Mr. White failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in willful violation of 9 C.F.R. § 2.40;

k. On or about March 23, 2010, Mr. White failed to maintain complete records showing the acquisition, disposition, and identification of animals, in willful violation of 7 U.S.C. § 2140 and 9 C.F.R. § 2.75(b)(1);

l. On or about March 23, 2010, during public exhibition of coyotes, Mr. White did not maintain a sufficient distance or barrier between the coyotes and the general viewing public to assure the safety of the coyotes and the viewing public, in willful violation of 9 C.F.R. § 2.131(c)(1);

m. On or about March 23, 2010, Mr. White's facilities for cougars and tigers were not structurally sound and maintained in good repair to protect the animals from injury and to contain the animals, in willful violation of 9 C.F.R. § 3.125(a);

n. On or about March 23, 2010, Mr. White failed to provide natural or artificial shelter appropriate to the local climatic conditions for cougars kept outdoors to afford the cougars protection and to prevent discomfort to the cougars, in willful violation of 9 C.F.R. § 3.127(b);

o. On or about March 23, 2010, Mr. White failed to enclose all outdoor housing facilities for animals with a perimeter fence of sufficient height, in willful violation of 9 C.F.R. § 3.127(d);

p. On or about March 23, 2010, Mr. White failed to remove excreta from a primary enclosure as often as necessary to prevent contamination of a kinkajou contained in the primary enclosure and to minimize disease hazards, in willful violation of 9 C.F.R. § 3.131(a);

q. On or about March 26, 2010, Mr. White failed to maintain complete records showing the acquisition, disposition, and identification of animals, in willful violation of 7 U.S.C. § 2140 and 9 C.F.R. § 2.75(b)(1);

r. On or about September 8, 2010, Mr. White failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in willful violation of 9 C.F.R. § 2.40;

s. On or about September 8, 2010, Mr. White failed to maintain complete records showing the acquisition, disposition, and identification of animals, in willful violation of 7 U.S.C. § 2140 and 9 C.F.R. § 2.75(b)(1);

t. On or about September 8, 2010, Mr. White failed to enclose all outdoor housing facilities for animals with a perimeter fence of sufficient height, in willful violation of 9 C.F.R. § 3.127(d);

u. On or about September 8, 2010, Mr. White failed to keep food

receptacles for rabbits clean and sanitized and failed to locate food receptacles for rabbits so as to minimize contamination by excreta, in willful violation of 9 C.F.R. § 3.54(b); and

v. On or about April 19, 2011, Mr. White failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of 9 C.F.R. § 2.40(a)(2).

5. An order instructing Mr. White to cease and desist from violations of the Animal Welfare Act and the Regulations is appropriate.

6. An order assessing Mr. White a \$39,375 civil penalty is appropriate.

7. Revocation of Mr. White's Animal Welfare Act license (Animal Welfare Act license number 65-C-0012) is appropriate.

For the foregoing reasons, the following Order is issued.

### **ORDER**

1. Mr. White, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and, in particular, shall cease and desist from:

a. failing to maintain complete records showing the acquisition, disposition, and identification of animals;

b. failing to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine;

c. failing to provide veterinary care to animals in need of care;

- d. failing to provide food for rabbits that is free of contamination, wholesome, palatable, and of sufficient quantity and nutritive value for the rabbits;
- e. failing to keep food receptacles for rabbits clean and sanitized;
- f. failing to locate food receptacles for rabbits so as to minimize contamination by excreta;
- g. failing to construct housing facilities for animals so that they are structurally sound;
- h. failing to maintain housing facilities for animals in good repair;
- i. failing, during public exhibition, to maintain a sufficient distance or barrier between animals and the general viewing public to assure the safety of the animals and the viewing public;
- j. failing to provide natural or artificial shelter appropriate to the local climatic conditions for animals kept outdoors to afford the animals protection and to prevent discomfort to the animals;
- k. failing to enclose all outdoor housing facilities for animals with a perimeter fence of sufficient height; and
- l. failing to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained in the primary enclosures and to minimize disease hazards.

Paragraph one of this Order shall become effective upon service of this Order on Mr. White.

2. Mr. White's Animal Welfare Act license (Animal Welfare Act license number 65-C-0012) is revoked.

Paragraph two of this Order shall become effective 60 days after service of this Order on Mr. White.

3. Mr. White is assessed a \$39,375 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

Sharlene A. Deskins  
United States Department of Agriculture  
Office of the General Counsel  
Marketing, Regulatory, and Food Safety Division  
1400 Independence Avenue, SW  
Room 2343-South Building  
Washington, DC 20250-1417

Payment of the civil penalty shall be sent to, and received by, Ms. Deskins within 60 days after service of this Order on Mr. White. Mr. White shall state on the certified check or money order that payment is in reference to AWA Docket No. 12-0277.

#### **RIGHT TO JUDICIAL REVIEW**

Mr. White has the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. § 2341-2350.

Mr. White must seek judicial review within 60 days after entry of the Order in this Decision and Order.<sup>48</sup> The date of entry of the Order in this Decision and Order is May 13, 2014.

Done at Washington, DC

May 13, 2014

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William G. Jenson  
Judicial Officer

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<sup>48</sup>7 U.S.C. § 2149(c).