

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AWA Docket No. 04-0033  
)  
For The Birds, Inc., an Idaho )  
corporation; and Jerry L. Korn, )  
an individual, and Susan F. Korn, )  
an individual, d/b/a For The Birds;) )  
and Ben Korn, an individual, ) **Decision and Order as to**  
) **For The Birds, Inc., and**  
Respondents ) **Jerry L. Korn**

**PROCEDURAL HISTORY**

Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on September 8, 2004. Complainant 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 under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142 (2004)) [hereinafter the Regulations and Standards]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges that during the period March 2001 through August 2003, For The Birds, Inc., Jerry L. Korn, Susan F. Korn, and Ben Korn willfully violated the Regulations and Standards (Compl. ¶¶ 8-52).

The Hearing Clerk served For The Birds, Inc., and Jerry L. Korn with the Complaint, the Rules of Practice, and a service letter on September 14, 2004.<sup>1</sup> The Hearing Clerk served Susan F. Korn with the Complaint, the Rules of Practice, and a service letter on September 29, 2004.<sup>2</sup> For The Birds, Inc., Jerry L. Korn, and Susan F. Korn failed to file answers to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)).

On January 19, 2005, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed: (1) a Motion for Adoption of Decision and Order as to Respondent Jerry L. Korn [hereinafter Motion for Default Decision as to Jerry L. Korn] and a proposed Decision and Order as to Respondent Jerry L. Korn [hereinafter Proposed Default Decision as to Jerry L. Korn]; (2) a Motion for Adoption of Decision and Order as to Respondent Susan F. Korn [hereinafter Motion for Default Decision as to Susan F. Korn] and a proposed Decision and Order as to Respondent Susan F. Korn [hereinafter Proposed Default Decision as to Susan F. Korn]; and (3) a Motion for

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<sup>1</sup>United States Postal Service Domestic Return Receipts for Article Number 7003 2260 0005 5721 4356 and Article Number 7003 2260 0005 5721 4349.

<sup>2</sup>United States Postal Service Domestic Return Receipt for Article Number 7003 2260 0005 5721 4431.

Adoption of Decision and Order as to For The Birds, Inc. [hereinafter Motion for Default Decision as to For The Birds, Inc.], and a proposed Decision and Order as to Respondent For The Birds, Inc. [hereinafter Proposed Default Decision as to For The Birds, Inc.]. On January 27, 2005, the Hearing Clerk served: (1) Jerry L. Korn with Complainant's Motion for Default Decision as to Jerry L. Korn, Complainant's Proposed Default Decision as to Jerry L. Korn, and a service letter; and (2) For The Birds, Inc., with Complainant's Motion for Default Decision as to For The Birds, Inc., Complainant's Proposed Default Decision as to For The Birds, Inc., and a service letter.<sup>3</sup> On February 16, 2005, Jerry L. Korn and For The Birds, Inc., filed objections to Complainant's Motion for Default Decision as to Jerry L. Korn, Complainant's Proposed Default Decision as to Jerry L. Korn, Complainant's Motion for Default Decision as to For The Birds, Inc., and Complainant's Proposed Default Decision as to For The Birds, Inc.<sup>4</sup> On February 25, 2005, the Hearing Clerk served Susan F. Korn with Complainant's Motion for Default Decision as to Susan F. Korn, Complainant's Proposed Default Decision as to Susan F. Korn, and a service letter.<sup>5</sup>

On February 25, 2005, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Decision and Order [hereinafter Initial Decision]: (1) concluding For

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<sup>3</sup>United States Postal Service Domestic Return Receipts for Article Number 7003 2260 0005 5721 3786 and Article Number 7003 2260 0005 5721 3779.

<sup>4</sup>Objection to Motion for Adoption of Decision and Order as to Respondents Jerry L. Korn, For the Birds, Inc., and Ben Korn; and Request for Telephonic Hearing.

<sup>5</sup>Memorandum to File from Tonya Fisher dated February 25, 2005.

The Birds, Inc., Jerry L. Korn, and Susan F. Korn willfully violated the Regulations and Standards; (2) directing For The Birds, Inc., Jerry L. Korn, and Susan F. Korn to cease and desist from violating the Animal Welfare Act and the Regulations and Standards; and (3) assessing For The Birds, Inc., Jerry L. Korn, and Susan F. Korn, jointly and severally, a \$28,050 civil penalty (Initial Decision at 21-30).

On March 11, 2005, Complainant filed Complainant's Appeal Petition. For The Birds, Inc., and Jerry L. Korn failed to file responses to Complainant's Appeal Petition. On May 26, 2005, Susan F. Korn filed a late-filed response to Complainant's Appeal Petition. On May 27, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision as to For The Birds, Inc., Jerry L. Korn, and Susan F. Korn.

Based upon a careful review of the record, I disagree with the ALJ's Initial Decision as it relates to Susan F. Korn,<sup>6</sup> the sanction imposed by the ALJ on For the Birds, Inc., and Jerry L. Korn, and a small number of the ALJ's findings of fact and

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<sup>6</sup>The record establishes the ALJ did not provide Susan F. Korn with 20 days within which to file objections to Complainant's Motion for Default Decision as to Susan F. Korn and Complainant's Proposed Default Decision as to Susan F. Korn, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Therefore, simultaneous with my filing this Decision and Order as to For The Birds, Inc., and Jerry L. Korn, I file a Remand Order as to Susan F. Korn remanding this proceeding, as it relates to Susan F. Korn, to the ALJ to provide Susan F. Korn an opportunity to file objections to Complainant's Motion for Default Decision as to Susan F. Korn and Complainant's Proposed Default Decision as to Susan F. Korn.

conclusions of law. Therefore, I do not adopt the ALJ's Initial Decision as the final Decision and Order as to For The Birds, Inc., and Jerry L. Korn.

**APPLICABLE STATUTORY AND REGULATORY PROVISIONS**

7 U.S.C.:

**TITLE 7—AGRICULTURE**

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**CHAPTER 54—TRANSPORTATION, SALE, AND HANDLING  
OF CERTAIN ANIMALS**

**§ 2131. Congressional statement of policy**

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

- (1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;
- (2) to assure the humane treatment of animals during transportation in commerce; and
- (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

## § 2132. Definitions

When used in this chapter—

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(f) The term “dealer” means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include—

(i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or

(ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than \$500 gross income from the sale of other animals during any calendar year[.]

....

(h) The term “exhibitor” means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary[.]

## § 2146. Administration and enforcement by Secretary

### (a) Investigations and inspections

The Secretary shall make such investigations or inspections as he deems necessary to determine whether any dealer, exhibitor, intermediate handler, carrier, research facility, or operator of an auction sale subject to section 2142 of this title, has violated or is violating any provision of this chapter or any regulation or standard issued thereunder, and for such purposes, the Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept pursuant to section 2140 of this title of any such dealer, exhibitor, intermediate handler, carrier, research facility, or operator of an auction sale.

## **§ 2149. Violations by licensees**

### **(a) Temporary license suspension; notice and hearing; revocation**

If the Secretary has reason to believe that any person licensed as a dealer, exhibitor, or operator of an auction sale subject to section 2142 of this title, has violated or is violating any provision of this chapter, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he may suspend such person's license temporarily, but not to exceed 21 days, and after notice and opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.

### **(b) Civil penalties for violation of any section, etc.; separate offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order**

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, that violates any provision of this chapter, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by the Secretary of not more than \$2,500 for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation. Each violation and each day during which a violation continues shall be a separate offense. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals. The Secretary shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed by a final order under this section, the Secretary shall request the Attorney General to institute a civil action in a district court of the United States or other United States court for any district in which such person is found or resides or transacts business, to collect the penalty, and such court shall have

jurisdiction to hear and decide any such action. Any person who knowingly fails to obey a cease and desist order made by the Secretary under this section shall be subject to a civil penalty of \$1,500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

**(c) Appeal of final order by aggrieved person; limitations; exclusive jurisdiction of United States Courts of Appeals**

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, aggrieved by a final order of the Secretary issued pursuant to this section may, within 60 days after entry of such an order, seek review of such order in the appropriate United States Court of Appeals in accordance with the provisions of sections 2341, 2343 through 2350 of title 28, and such court shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order.

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**§ 2151. Rules and regulations**

The Secretary is authorized to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter.

7 U.S.C. §§ 2131, 2132(f), (h), 2146, 2149(a)-(c), 2151.

28 U.S.C.:

**TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE**

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**PART VI—PARTICULAR PROCEEDINGS**

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**CHAPTER 163—FINES, PENALTIES AND FORFEITURES**

**§ 2461. Mode of recovery**

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FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT

SHORT TITLE

SECTION 1. This Act may be cited as the “Federal Civil Penalties Inflation Adjustment Act of 1990”.

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.—The Congress finds that—

(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;

(2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;

(3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and

(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

(b) PURPOSE—The purpose of this Act is to establish a mechanism that shall—

(1) allow for regular adjustment for inflation of civil monetary penalties;

- (2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and
- (3) improve the collection by the Federal Government of civil monetary penalties.

#### DEFINITIONS

SEC. 3. For purposes of this Act, the term—

- (1) “agency” means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal Service;
- (2) “civil monetary penalty” means any penalty, fine, or other sanction that—
  - (A)(i) is for a specific monetary amount as provided by Federal law; or
  - (ii) has a maximum amount provided for by Federal law; and
  - (B) is assessed or enforced by an agency pursuant to Federal law; and
  - (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and
- (3) “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

#### CIVIL MONETARY PENALTY INFLATION ADJUSTMENT REPORTS

SEC. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996 [Apr. 26, 1996], and at least once every 4 years thereafter—

- (1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], the Tariff Act of 1930 [19 U.S.C. 1202 et seq.], the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], or the Social Security Act [42 U.S.C. 301 et seq.], by the inflation adjustment described under section 5 of this Act; and
- (2) publish each such regulation in the Federal Register.

COST-OF-LIVING ADJUSTMENTS OF CIVIL  
MONETARY PENALTIES

SEC. 5. (a) ADJUSTMENT.—The inflation adjustment under section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest—

- (1) multiple of \$10 in the case of penalties less than or equal to \$100;
- (2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;
- (3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;
- (4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;
- (5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and
- (6) multiple of \$25,000 in the case of penalties greater than \$200,000.

(b) DEFINITION.—For purposes of subsection (a), the term “cost-of-living adjustment” means the percentage (if any) for each civil monetary penalty by which—

- (1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds
- (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

ANNUAL REPORT

SEC. 6. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.

LIMITATION ON INITIAL ADJUSTMENT.—The first adjustment of a civil monetary penalty . . . may not exceed 10 percent of such penalty.

7 C.F.R.:

**TITLE 7—AGRICULTURE**

**SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE**

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**PART 3—DEBT MANAGEMENT**

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**SUBPART E—ADJUSTED CIVIL MONETARY PENALTIES**

**§ 3.91 Adjusted civil monetary penalties.**

(a) *In general.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b), to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134).

(b) *Penalties—* . . . .

....

(2) *Animal and Plant Health Inspection Service.* . . . .

....

(v) Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$2,750; and knowing failure to obey a cease and desist order has a civil penalty of \$1,650.

7 C.F.R. § 3.91(a), (b)(2)(v).

9 C.F.R.:

**TITLE 9—ANIMALS AND ANIMAL PRODUCTS**

**CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE,  
DEPARTMENT OF AGRICULTURE**

**PART 1—DEFINITION OF TERMS**

**§ 1.1 Definitions.**

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

....

*Dealer* means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animal to a research facility, an exhibitor, or a dealer (wholesale); any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.

....

*Exhibitor* means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials,

coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

## **PART 2—REGULATIONS**

### **SUBPART A—LICENSING**

#### **§ 2.1 Requirements and application.**

(a)(1) Any person operating or desiring to operate as a dealer, exhibitor, or operator of an auction sale, except persons who are exempted from the licensing requirements under paragraph (a)(3) of this section, must have a valid license. A person must be 18 years of age or older to obtain a license. A person seeking a license shall apply on a form which will be furnished by the AC Regional Director in the State in which that person operates or intends to operate. The applicant shall provide the information requested on the application form, including a valid mailing address through which the licensee or applicant can be reached at all times, and a valid premises address where animals, animal facilities, equipment, and records may be inspected for compliance. The applicant shall file the completed application form with the AC Regional Director.

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#### **§ 2.10 Licensees whose licenses have been suspended or revoked.**

(a) Any person whose license has been suspended for any reason shall not be licensed in his or her own name or in any other manner within the period during which the order of suspension is in effect. No partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed during that period. Any person whose license has been suspended for any reason may apply to the AC Regional Director, in writing, for reinstatement of his or her license.

(b) Any person whose license has been revoked shall not be licensed in his or her own name or in any other manner; nor will any partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, be licensed.

(c) Any person whose license has been suspended or revoked shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during the period of suspension or revocation.

**SUBPART D—ATTENDING VETERINARIAN AND ADEQUATE VETERINARY CARE**

**§ 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.

## SUBPART G—RECORDS

### § 2.75 Records: Dealers and exhibitors.

....

(b)(1) Every dealer other than operators of auction sales and brokers to whom animals are consigned, and 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 dealer or 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 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.

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## SUBPART H—COMPLIANCE WITH STANDARDS AND HOLDING PERIOD

### § 2.100 Compliance with standards.

(a) Each dealer, exhibitor, operator of an auction sale, and intermediate handler shall comply in all respects with the regulations set forth in part 2 and the standards set forth in part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals.

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**SUBPART I—MISCELLANEOUS**

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**§ 2.126 Access and inspection of records and property.**

(a) Each dealer, exhibitor, intermediate handler, or carrier, shall, during business hours, allow APHIS officials:

....

(2) To examine records required to be kept by the Act and the regulations in this part[.]

....

**§ 2.131 Handling of animals.**

(a)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.

(2)(i) Physical abuse shall not be used to train, work, or otherwise handle animals.

....

(b)(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.

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(c)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during periods of public contact.

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## PART 3—STANDARDS

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### SUBPART D—SPECIFICATIONS FOR THE HUMANE HANDLING, CARE, TREATMENT, AND TRANSPORTATION OF NONHUMAN PRIMATES

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#### ANIMAL HEALTH AND HUSBANDRY STANDARDS

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#### **§ 3.83 Watering.**

Potable water must be provided in sufficient quantity to every nonhuman primate housed at the facility. If potable water is not continually available to the nonhuman primates, it must be offered to them as often as necessary to ensure their health and well-being, but no less than twice daily for at least 1 hour each time, unless otherwise required by the attending veterinarian, or as required by the research proposal approved by the Committee at research facilities. Water receptacles must be kept clean and sanitized in accordance with methods provided in § 3.84(b)(3) of this subpart at least once every 2 weeks or as often as necessary to keep them clean and free from contamination. Used water receptacles must be sanitized before they can be used to provide water to a different nonhuman primate or social grouping of nonhuman primates.

#### **§ 3.84 Cleaning, sanitization, housekeeping, and pest control.**

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(c) *Housekeeping for premises.* Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair in order to protect the nonhuman primates from injury, to facilitate the husbandry practices required in this subpart, and to reduce or eliminate breeding and living areas for rodents, pests, and vermin. Premises must be kept free of accumulations of trash, junk, waste, and discarded matter. Weeds, grass, and bushes must be controlled so as to facilitate cleaning of the premises and pest control.

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### § 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.

....

## **SUBPART F—SPECIFICATIONS FOR THE HUMANE HANDLING, CARE, TREATMENT, AND TRANSPORTATION OF WARMBLOODED ANIMALS OTHER THAN DOGS, CATS, RABBITS, HAMSTERS, GUINEA PIGS, NONHUMAN PRIMATES, AND MARINE MAMMALS**

### FACILITIES AND OPERATING STANDARDS

#### § 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.

....

(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.

(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.

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### § 3.126 Facilities, indoor.

....

(d) *Drainage*. A suitable sanitary method shall be provided to eliminate rapidly, excess water from indoor housing facilities. If drains are used, they shall be properly constructed and kept in good repair to avoid foul odors and installed so as to prevent any backup of sewage. 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.

### § 3.127 Facilities, outdoor.

....

(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.

(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.

(d) *Perimeter fence*. On or after May 17, 2000, all outdoor housing facilities (i.e., facilities not entirely indoors) 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 fences less than 3 feet in distance from the primary enclosure must be approved in writing by the Administrator. A perimeter fence is not required:

(1) Where the outside walls of the primary enclosure are made of sturdy, durable material, which may include certain types of concrete,

wood, plastic, metal, or glass, and are high enough and constructed in a manner that restricts entry by animals and unauthorized persons and the Administrator gives written approval; or

(2) Where the outdoor housing facility is protected by an effective natural barrier that restricts the animals to the facility and restricts entry by animals and unauthorized persons and the Administrator gives written approval; or

(3) Where appropriate alternative security measures are employed and the Administrator gives written approval; or

(4) For traveling facilities where appropriate alternative security measures are employed; or

(5) Where the outdoor housing facility houses only farm animals, such as, but not limited to, cows, sheep, goats, pigs, horses (for regulated purposes), or donkeys, and the facility has in place effective and customary containment and security measures.

### **§ 3.128 Space requirements.**

Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

## ANIMAL HEALTH AND HUSBANDRY STANDARDS

### **§ 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 the animal. Animals shall be fed at least once a day except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices.

(b) Food, and food receptacles, if used, shall be sufficient in quantity and located so as to be accessible to all animals in the enclosure and shall be placed so as to minimize contamination. Food receptacles shall be kept clean and sanitary at all times. If self-feeders are used, adequate measures shall be taken to prevent molding, contamination, and deterioration or caking of food.

### **§ 3.130 Watering.**

If potable water is not accessible to the animals at all times, it must be provided as often as necessary for the health and comfort of the animal. Frequency of watering shall consider age, species, condition, size, and type of the animal. All water receptacles shall be kept clean and sanitary.

### **§ 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 the animals confined in such enclosures from being directly sprayed with the stream of water or wetted involuntarily.

....

### **§ 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.

### **§ 3.133 Separation.**

Animals housed in the same primary enclosure must be compatible. Animals shall not be housed near animals that interfere with their health or cause them discomfort.

9 C.F.R. §§ 1.1; 2.1(a)(1), .10, .40, .75(b)(1), .100(a), .126(a)(2), .131(a)(1)-(2)(i), (b)(1), (c)(1)-(2); 3.83, .84(c), .85, .125(a), (c)-(d), .126(d), .127(b)-(d), .128-.131(a), .132-.133 (2004).

## **DECISION**

### **Statement of the Case**

For The Birds, Inc., and Jerry L. Korn failed to file answers to the Complaint within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the failure to file an answer or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact. This Decision and Order as to For The Birds, Inc., and Jerry L. Korn is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### **Findings of Fact**

1. For the Birds, Inc., is an Idaho corporation whose agent for service of process is Jerry L. Korn, 1506 Happy Valley Road, Nampa, Idaho 83687. At all times material to the allegations in the Complaint, For The Birds, Inc., was an “exhibitor” as that word is defined in the Animal Welfare Act and the Regulations and Standards.

2. Jerry L. Korn is an individual doing business as For the Birds and whose mailing address is 1506 Happy Valley Road, Nampa, Idaho 83687. At all times material to the allegations in the Complaint, Jerry L. Korn was an “exhibitor” as that word is

defined in the Animal Welfare Act and the Regulations and Standards. Between 2001 and May 23, 2003, Jerry L. Korn held Animal Welfare Act license number 82-C-0035 issued to “JERRY L. AND SUSAN F. KORN DBA FOR THE BIRDS,” which Animal Welfare Act license was cancelled on May 23, 2003, and has not been reinstated.

3. For The Birds, Inc., and Jerry L. Korn have a moderate-sized business, with approximately 50 animals, including farm, wild, and exotic animals: goats, llamas, giraffe, a camel, a bear, tigers, a mountain lion, lemurs, eland, elk, prairie dogs, rabbits, cats, dogs, and a kangaroo. The gravity of For The Birds, Inc.’s and Jerry L. Korn’s violations is great. The violations include repeated instances in which For The Birds, Inc., and Jerry L. Korn knowingly exhibited animals without having a valid Animal Welfare Act license and continuing instances of failures by For The Birds, Inc., and Jerry L. Korn to provide minimally-adequate veterinary care, food, water, and housing to animals and to handle animals carefully and in compliance with the Regulations and Standards (which failures have resulted in serious injuries and death to animals in For The Birds, Inc.’s and Jerry L. Korn’s custody). For The Birds, Inc., and Jerry L. Korn have continually failed to comply with the Regulations and Standards after having been repeatedly advised of deficiencies.

4. For The Birds, Inc., and Jerry L. Korn have not shown good faith. Jerry L. Korn has not provided notice of his current mailing address. Jerry L. Korn falsely represented to Animal and Plant Health Inspection Service officials that he had not received certified or registered mail. Moreover, For The Birds, Inc., and Jerry L. Korn

have demonstrated an unwillingness to comply with the prohibition in the Animal Welfare Act and the Regulations and Standards against exhibiting animals without having a valid Animal Welfare Act license.

5. For The Birds, Inc., and Jerry L. Korn do not have a history of previous violations.

6. Between March 15, 2001, and at least August 24, 2003, For The Birds, Inc., exhibited animals without having been licensed by the Secretary of Agriculture to do so. Specifically, For The Birds, Inc., continuously kept the animals at 1506 Happy Valley Road, Nampa, Idaho 83687, on display to the public. (9 C.F.R. §§ 2.1(a), .100(a).)

7. Between May 23, 2003, and at least August 24, 2003, Jerry L. Korn exhibited animals without having been licensed by the Secretary of Agriculture to do so. Specifically, Jerry L. Korn continuously kept the animals at 1506 Happy Valley Road, Nampa, Idaho 83687, on display to the public. (9 C.F.R. §§ 2.1(a), .100(a).)

8. Between May 23, 2003, and at least August 16, 2003, Jerry L. Korn operated as a “dealer” as that word is defined in the Animal Welfare Act and the Regulations and Standards without having been licensed by the Secretary of Agriculture to do so. Specifically, Jerry L. Korn delivered for transportation or transported, sold or negotiated the sale of a zebra, multiple elk, and llamas. (9 C.F.R. §§ 2.1(a), .100(a).)

9. On or about the following dates, For The Birds, Inc., and Jerry L. Korn failed to have an attending veterinarian provide adequate veterinary care to their animals:

- a. From October 2002 through June 2003, and on or about August 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to obtain any veterinary care for a giraffe whose hooves were overgrown (9 C.F.R. § 2.40(a)).
- b. From approximately May 2003 through August 2003, For The Birds, Inc., and Jerry L. Korn failed to obtain any veterinary care for a white Bengal tiger that was experiencing a rapid and extreme weight loss (9 C.F.R. § 2.40(a)).
- c. From approximately August 1, 2003, through August 16, 2003, For The Birds, Inc., and Jerry L. Korn failed to employ an attending veterinarian to provide adequate veterinary care to their animals. Specifically, For The Birds, Inc., and Jerry L. Korn failed to obtain any veterinary care for a tiger that was limping and whose left front paw was severely swollen. (9 C.F.R. § 2.40(a).)
- d. From approximately May 2003 through August 2003, For The Birds, Inc., and Jerry L. Korn failed to obtain any veterinary care for a camel with a golf-ball-sized abscess on the camel's lower left jaw (9 C.F.R. § 2.40(a)).
- e. From approximately May 2003 through August 2003, For The Birds, Inc., and Jerry L. Korn failed to employ an attending veterinarian to provide adequate veterinary care to their animals. Specifically, For The Birds, Inc., and Jerry L. Korn failed to obtain any veterinary care for a camel, after Jerry L. Korn lanced a golf-ball-sized abscess on the camel's lower left jaw, causing it to become a seeping, open wound that attracted a large number of flies. (9 C.F.R. § 2.40(a).)

f. On or about July 7, 2003, through July 9, 2003, For The Birds, Inc., and Jerry L. Korn failed to employ an attending veterinarian to provide adequate veterinary care to their animals. Specifically, on July 7, 2003, For The Birds, Inc., and Jerry L. Korn failed to obtain any veterinary care for a female snow leopard in obvious severe distress and bleeding from her vaginal and rectal area and a giraffe whose condition was reported directly to Jerry L. Korn, who took no action, which inaction resulted in, or contributed to, the animal's death on or about July 9, 2003. (9 C.F.R. § 2.40(a).)

g. In the spring 2002, For The Birds, Inc., and Jerry L. Korn failed to employ an attending veterinarian to provide adequate veterinary care to their animals. Specifically, For The Birds, Inc., and Jerry L. Korn failed to obtain any veterinary care for a pregnant llama resulting in, or contributing to, the death of the animal and her baby. (9 C.F.R. § 2.40(a).)

h. On or about August 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to employ an attending veterinarian to provide adequate veterinary care to their animals. Specifically, For The Birds, Inc., and Jerry L. Korn failed to obtain any veterinary care for an eland whose hooves were overgrown. (9 C.F.R. § 2.40(a).)

10. On or about March 7, 2001, April 3, 2002, May 22, 2002, July 2, 2002, August 27, 2002, and February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to employ a full-time attending veterinarian or a part-time attending veterinarian under

formal arrangements that include a written program of veterinary care (9 C.F.R. § 2.40(a)(1)).

11. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to ensure that their attending veterinarian had appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use (9 C.F.R. § 2.40(a)(2)).

12. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate facilities, including adequate enclosures and secure perimeter fences (9 C.F.R. § 2.40(b)(1)).

13. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate personnel, including an adequate number of employees trained in species-specific animal care and husbandry. Specifically, on or about August 2002, For The Birds, Inc., and Jerry L. Korn failed to have sufficient personnel to remove mud and excreta in the elk enclosure and allowed an aged elk to become trapped in the mud and excreta for several days, subjecting the elk to injury by a bull elk. (9 C.F.R. § 2.40(b)(1).)

14. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate equipment (9 C.F.R. § 2.40(b)(1)).

15. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate services, including veterinary services. Specifically, For The Birds, Inc., and Jerry L. Korn failed to have any veterinary services available for, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, and a pregnant llama and her baby. (9 C.F.R. § 2.40(b)(1).)

16. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to establish and maintain a program of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care. Specifically, For The Birds, Inc., and Jerry L. Korn failed to use appropriate methods to treat, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, and a pregnant llama and her baby. (9 C.F.R. § 2.40(b)(2).)

17. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to establish and maintain a program of adequate veterinary care that included a mechanism of direct and frequent communication with the attending veterinarian, so that timely and accurate information on problems of animal health, behavior, and well-being was conveyed to the attending veterinarian. Specifically, For The Birds, Inc., and Jerry L. Korn failed to communicate to their attending veterinarian animal health information regarding, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, and a pregnant llama and her baby. (9 C.F.R. § 2.40(b)(3).)

18. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to establish and maintain a program of adequate veterinary care that included daily observation of all animals to assess their health and well-being.

Specifically, For The Birds, Inc., and Jerry L. Korn failed to observe on a daily basis, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, and a pregnant llama and her baby, to assess their health and well-being. (9 C.F.R. § 2.40(b)(3).)

19. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to establish and maintain a program of adequate veterinary care that included adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, and tranquilization. Specifically, For The Birds, Inc., and Jerry L. Korn failed to train personnel (including Jerry L. Korn) in the care and handling of animals. (9 C.F.R. § 2.40(b)(4).)

20. On or about March 7, 2001, August 27, 2002, February 11, 2003, and February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to make, keep, and maintain records that fully and correctly disclose information concerning animals in For The Birds, Inc.'s and Jerry L. Korn's possession or under For The Birds, Inc.'s and Jerry L. Korn's control, or disposed of by For The Birds, Inc., and Jerry L. Korn (9 C.F.R. § 2.75(b)(1)).

21. On April 3, 2002, For The Birds, Inc., and Jerry L. Korn failed to allow Animal and Plant Health Inspection Service officials, during business hours, to examine

records required to be kept by the Animal Welfare Act and the Regulations and Standards (9 C.F.R. § 2.126(a)(2)).

22. On or about May 1, 2001 (tigers), May 10, 2001 (tiger - Raja), April 3, 2002 (giraffe), June 2002 (tiger - Raja), June 4, 2002 (tiger), June 25, 2002 (bear), August 2002 (elk), February 19, 2003 (tigers), May 6, 2003 (tigers, hoofstock, kangaroo), May 8, 2003 (tigers), May 13, 2003 (tigers), and July 23, 2003 (tiger), For The Birds, Inc., and Jerry L. Korn failed to handle animals as expeditiously and carefully as possible in a manner that would not cause trauma, unnecessary discomfort, behavioral stress, or physical harm (9 C.F.R. § 2.131(a)(1) (2004) [9 C.F.R. § 2.131(b)(1) (2005)]).

23. On May 6, 2003, For The Birds, Inc., and Jerry L. Korn used physical abuse to handle a tiger during an exhibition to the public (9 C.F.R. § 2.131(a)(2)(i) (2004) [9 C.F.R. § 2.131(b)(2)(i) (2005)]).

24. On May 1, 2001, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public. Specifically, For The Birds, Inc., and Jerry L. Korn exhibited an adult tiger (Raja) to the public without sufficient barrier or distance. (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)].)

25. On May 10, 2001, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to

the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public. Specifically, For The Birds, Inc., and Jerry L. Korn exhibited an adult tiger (Raja) to the public without sufficient barrier or distance. (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)].)

26. In June 2002, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public. Specifically, For The Birds, Inc., and Jerry L. Korn exhibited an adult tiger (Raja) to a child without sufficient barrier or distance. (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)].)

27. On June 4, 2002, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public. Specifically, For The Birds, Inc., and Jerry L. Korn exhibited adult tigers to children without any barrier or distance. (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)].)

28. On February 19, 2003, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public. Specifically,

For The Birds, Inc., and Jerry L. Korn exhibited adult tigers to the public without any barrier or distance. (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)].)

29. On May 13, 2003, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public. Specifically, For The Birds, Inc., and Jerry L. Korn exhibited adult tigers to the public without any barrier or distance. (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)].)

30. On May 6, 2003, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public. Specifically, For The Birds, Inc., and Jerry L. Korn exhibited two adult tigers to the public without any distance or barriers between the animals and the public (resulting in at least one injury to a member of the public). (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)].)

31. On May 6, 2003, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public. Specifically, For The Birds, Inc., and Jerry L. Korn exhibited adult and juvenile goats, a juvenile kangaroo, an eland, a giraffe, and a camel to the public without sufficient distance or barriers to protect

the animals from the public. (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)].)

32. On May 8, 2003, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)]).

33. On July 23, 2003, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public. Specifically, For The Birds, Inc., and Jerry L. Korn exhibited adult tigers to approximately 40 children without any distance or barriers between the animals and the public. (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)].)

34. On August 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public. Specifically, For The Birds, Inc., and Jerry L. Korn exhibited an adult giraffe and an adult eland to the public without any distance or barriers between the animals and the public. (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)].)

35. Between approximately May 2003 and August 16, 2003, For The Birds, Inc., and Jerry L. Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public. Specifically, For The Birds, Inc., and Jerry L. Korn regularly allowed customers to enter the primary enclosure containing two tigers without any distance or barriers between the animals and the public. (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)].)

36. On May 6, 2003, For The Birds, Inc., and Jerry L. Korn exhibited animals under conditions that were inconsistent with the animals' well-being. Specifically, For The Birds, Inc., and Jerry L. Korn exhibited tigers to the public outside of any enclosures and allowed personnel and the public to touch, tease, and harass animals, including an adult goat and her kids, an adult eland, a giraffe, and a juvenile kangaroo. (9 C.F.R. § 2.131(c)(1) (2004) [9 C.F.R. § 2.131(d)(1) (2005)].)

37. On or about the following dates, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum facilities and operating standards for nonhuman primates (9 C.F.R. §§ 3.75-.92), as follows:

a. On August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide any food to two lemurs (9 C.F.R. § 3.83).

b. On August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide potable water in sufficient quantity to nonhuman primates. Specifically, For The Birds, Inc., and Jerry L. Korn provided no water to two lemurs. (9 C.F.R. § 3.83.)

c. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to keep the premises clean and in good repair. Specifically, the building housing two lemurs needed cleaning, and the lemur enclosures had a large accumulation of cobwebs. (9 C.F.R. § 3.84(c).)

d. On February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to keep the premises clean and in good repair. Specifically, the building housing two lemurs needed cleaning, and the lemur enclosures had a large accumulation of cobwebs. (9 C.F.R. § 3.84(c).)

e. Between August 27, 2002, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to have enough employees to carry out the level of husbandry practices and care for nonhuman primates required by the Regulations and Standards (9 C.F.R. § 3.85).

38. On or about the following dates, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum general facilities standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding structural strength (9 C.F.R. § 3.125(a)), as follows:

a. On April 3, 2002, For The Birds, Inc., and Jerry L. Korn failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain them. Specifically, For The Birds, Inc., and Jerry L. Korn failed to repair torn metal in the eland enclosure.

b. On July 2, 2002, For The Birds, Inc., and Jerry L. Korn failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain them. Specifically, For The Birds, Inc., and Jerry L. Korn failed to construct the bear enclosure so that it contained the bear securely.

c. On July 2, 2002, For The Birds, Inc., and Jerry L. Korn failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain them. Specifically, For The Birds, Inc., and Jerry L. Korn failed to construct the tiger enclosure so that it contained the tigers securely.

d. On August 12, 2002, For The Birds, Inc., and Jerry L. Korn failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain them. Specifically, For The Birds, Inc., and Jerry L. Korn failed to repair exposed nails in camel enclosure.

e. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to maintain their housing facilities structurally sound and in good repair to protect the

animals housed in the facilities from injury and to contain them. Specifically, For The Birds, Inc., and Jerry L. Korn failed to repair jagged wire mesh in the tiger cub enclosure.

f. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain them. Specifically, For The Birds, Inc., and Jerry L. Korn failed to repair the gap between the frame and wire in the tiger cub enclosure.

g. On May 6, 2003, For The Birds, Inc., and Jerry L. Korn failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain them. Specifically, For The Birds, Inc., and Jerry L. Korn failed to repair broken wire in the enclosure housing a juvenile kangaroo.

h. On February 11, 2003, For The Birds, Inc., and Jerry L. Korn failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain them. Specifically, For The Birds, Inc., and Jerry L. Korn failed to repair the gate and handling chute in the enclosure housing a bull elk and a cow elk.

i. On February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed in the facilities from injury and to contain them. Specifically,

For The Birds, Inc., and Jerry L. Korn failed to repair the gate and handling chute in the enclosure housing a bull elk and a cow elk.

39. On or about the following dates, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum general facilities standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding storage (9 C.F.R. § 3.125(c)), as follows:

a. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to store supplies of food in facilities that adequately protected them from contamination.

b. In approximately June 2003, For The Birds, Inc., and Jerry L. Korn failed to store supplies of food and bedding in facilities that adequately protected them from contamination. Specifically, For The Birds, Inc., and Jerry L. Korn failed to protect food supplies from vermin, including the three to four rats found in the food preparation area.

c. In approximately June 2003, For The Birds, Inc., and Jerry L. Korn failed to store supplies of food and bedding in facilities that adequately protected them from contamination. Specifically, For The Birds, Inc., and Jerry L. Korn failed to dispose of rancid food in the food preparation area, leaving it out for days at a time.

d. In approximately June 2003, For The Birds, Inc., and Jerry L. Korn failed to store supplies of food and bedding in facilities that adequately protected them from deterioration and contamination. Specifically, For The Birds, Inc., and Jerry L. Korn failed to protect food supplies in the produce cooler, which contained countless live maggots.

e. In approximately June 2003, For The Birds, Inc., and Jerry L. Korn failed to store supplies of food and bedding in facilities that adequately protected them from deterioration and contamination. Specifically, For The Birds, Inc., and Jerry L. Korn failed to protect animal bedding supplies, which contained countless live maggots.

40. On or about the following dates, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum general facilities standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding waste disposal (9 C.F.R. § 3.125(d)), as follows:

a. On April 3, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove food waste (bones) from the tiger enclosure.

b. On April 3, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead

animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove excreta from the giraffe enclosure.

c. On July 2, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove debris from the prairie dog enclosure.

d. On August 12, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove waste and debris from the moat adjacent to the bear enclosure.

e. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove excreta and debris from the giraffe enclosure.

f. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove excreta and debris from the eland enclosure.

g. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead

animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove excreta and debris from the elk enclosure.

h. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove mouse droppings from the food preparation area.

i. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove debris and old bones from the tiger enclosure.

j. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove debris from the camel enclosure.

k. On February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove debris and excreta from the giraffe enclosure.

l. On February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead

animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove debris and excreta from the eland enclosure.

m. On February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove debris from the food preparation area.

n. On May 6, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove debris from the goat enclosure.

o. On February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove debris from the camel enclosure.

p. Between October 2002 and June 2003, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove excreta from the giraffe enclosure.

q. On August 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead

animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove debris and excreta from the camel enclosure.

r. On August 12, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Specifically, For The Birds, Inc., and Jerry L. Korn failed to remove waste and debris from the moat adjacent to the cougar enclosure.

41. On August 27, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals (9 C.F.R. §§ 3.125-.142). Specifically, For The Birds, Inc., and Jerry L. Korn failed to provide a suitable and sanitary method to eliminate rapidly excess water from indoor housing facilities for tigers. (9 C.F.R. § 3.126(d).)

42. On or about the following dates, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals (9 C.F.R. §§ 3.125-.142), by failing to comply with (9 C.F.R. § 3.127), as follows:

a. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide a bear housed outdoors with appropriate natural or artificial shelter (9 C.F.R. § 3.127(b)).

b. On November 8, 2002, For The Birds, Inc., and Jerry L. Korn failed to provide a bear housed outdoors with appropriate natural or artificial shelter (9 C.F.R. § 3.127(b)).

c. On February 11, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide a bear housed outdoors with appropriate natural or artificial shelter (9 C.F.R. § 3.127(b)).

d. On February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide a bear housed outdoors with appropriate natural or artificial shelter (9 C.F.R. § 3.127(b)).

e. On August 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide a bear housed outdoors with appropriate natural or artificial shelter (9 C.F.R. § 3.127(b)).

f. On February 11, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide a suitable method to eliminate rapidly excess water from the elk enclosure (9 C.F.R. § 3.127(c)).

g. On March 15, 2001, For The Birds, Inc., and Jerry L. Korn failed to construct a perimeter fence so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it. Specifically, there was no perimeter fence around the tiger and bear enclosures. (9 C.F.R. § 3.127(d).)

h. On April 3, 2002, For The Birds, Inc., and Jerry L. Korn failed to construct a perimeter fence so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it. Specifically, there was no perimeter fence around the mountain lion enclosure. (9 C.F.R. § 3.127(d).)

i. On April 3, 2002, For The Birds, Inc., and Jerry L. Korn failed to construct a perimeter fence so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it. Specifically, there was no perimeter fence around the snow leopard enclosure. (9 C.F.R. § 3.127(d).)

j. On July 2, 2002, For The Birds, Inc., and Jerry L. Korn failed to construct a perimeter fence so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it. Specifically, there was no perimeter fence around the tiger enclosure. (9 C.F.R. § 3.127(d).)

k. On July 2, 2002, For The Birds, Inc., and Jerry L. Korn failed to construct a perimeter fence so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it. Specifically, there was no perimeter fence around the bear enclosure. (9 C.F.R. § 3.127(d).)

l. On May 22, 2002, For The Birds, Inc., and Jerry L. Korn failed to construct a perimeter fence so that it protects the animals in the facility by

restricting animals and unauthorized persons from going through it. Specifically, there was no perimeter fence around the tiger enclosure. (9 C.F.R. § 3.127(d).)

m. On May 22, 2002, For The Birds, Inc., and Jerry L. Korn failed to construct a perimeter fence so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it. Specifically, there was no perimeter fence around the bear enclosure. (9 C.F.R. § 3.127(d).)

n. On August 27, 2002, For The Birds, Inc., and Jerry L. Korn failed to construct a perimeter fence so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it. Specifically, there was no perimeter fence around the bear enclosure. (9 C.F.R. § 3.127(d).)

o. On February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide a suitable method to eliminate rapidly excess water from the elk enclosure (9 C.F.R. § 3.127(c)).

43. On or about the following dates, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding space requirements (9 C.F.R. § 3.128), as follows:

a. Between October 2002 and May 30, 2003, For The Birds, Inc., and Jerry L. Korn failed to construct and maintain enclosures so as to provide sufficient space to allow each animal contained in the enclosures to make normal

postural and social adjustments. Specifically, For The Birds, Inc., and Jerry L. Korn failed to construct the giraffe enclosure so as to provide sufficient space for the animal to make normal postural adjustments.

b. On August 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to construct and maintain enclosures so as to provide sufficient space to allow each animal contained in the enclosures to make normal postural and social adjustments. Specifically, For The Birds, Inc., and Jerry L. Korn failed to construct the giraffe enclosure so as to provide sufficient space for the animal to make normal postural adjustments.

44. On or about the following dates, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding feeding (9 C.F.R. § 3.129), as follows:

a. Between March 2002 and February 2003, For The Birds, Inc., and Jerry L. Korn repeatedly failed to provide tigers with a sufficient quantity of wholesome, palatable food and routinely failed to feed tigers any food for 4 days in a row.

b. On or about April 3, 2002, For The Birds, Inc., and Jerry L. Korn failed to minimize contamination of food. Specifically, For The Birds, Inc., and Jerry L. Korn provided spoiled meat to tigers.

c. On or about August 15, 2003, For The Birds, Inc., and Jerry L. Korn failed to minimize contamination of food. Specifically, food for tigers was putrified and contained maggots.

d. On or about August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide animals with a sufficient quantity of food that was wholesome, palatable, and free from contamination. Specifically, For The Birds, Inc., and Jerry L. Korn failed to feed sufficient food to a giraffe, an eland, rabbits, a kangaroo, elk, tigers, and domestic cats, which animals were thin and hungry.

45. On or about the following dates, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding watering (9 C.F.R. § 3.130), as follows:

a. On or about May 22, 2002, For The Birds, Inc., and Jerry L. Korn failed to maintain water receptacles for the eland clean and sanitary. Specifically, For The Birds, Inc., and Jerry L. Korn allowed large clumps of algae to grow in the eland's water trough.

b. On or about July 2, 2002, For The Birds, Inc., and Jerry L. Korn failed to maintain water receptacles for the eland clean and sanitary. Specifically, For The Birds, Inc., and Jerry L. Korn allowed large clumps of algae to grow in the eland's water trough and failed to remove a dead bird from the trough.

c. On or about April 3, 2002, For The Birds, Inc., and Jerry L. Korn failed to maintain water receptacles for the eland clean and sanitary. Specifically, For The Birds, Inc., and Jerry L. Korn allowed large clumps of algae to grow in the eland's water trough and failed to remove a dead bird from the trough.

d. On or about July 2, 2002, For The Birds, Inc., and Jerry L. Korn failed to maintain water receptacles for the snow leopards clean and sanitary.

e. On or about August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to provide animals with potable water as often as necessary. Specifically, For The Birds, Inc., and Jerry L. Korn failed to provide adequate water to rabbits.

46. On or about the following dates, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding the cleaning of enclosures (9 C.F.R. § 3.131(a)), as follows:

a. On February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained in the enclosures and to minimize disease hazards and reduce odors. Specifically, the giraffe enclosure contained excessive fecal material.

b. On August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to remove excreta from primary enclosures as often as necessary to prevent

contamination of the animals contained in the enclosures and to minimize disease hazards and reduce odors. Specifically, the giraffe enclosure contained excessive fecal material.

c. On February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained in the enclosures and to minimize disease hazards and reduce odors. Specifically, the eland enclosure contained excessive fecal material.

d. On February 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained in the enclosures and to minimize disease hazards and reduce odors. Specifically, the enclosure housing the cow elk and bull elk contained excessive excreta.

e. On April 3, 2002, For The Birds, Inc., and Jerry L. Korn failed to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained in the enclosures and to minimize disease hazards and reduce odors. Specifically, the enclosure housing the giraffe contained excessive excreta.

f. On August 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained in the enclosures and to minimize disease

hazards and reduce odors. Specifically, the enclosure housing the camel contained excessive excreta.

g. On February 11, 2003, For The Birds, Inc., and Jerry L. Korn failed to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained in the enclosures and to minimize disease hazards and reduce odors. Specifically, the enclosure housing the cow elk and bull elk contained excessive excreta.

47. During 2002 and 2003, and specifically on July 2, 2002, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to have a sufficient number of adequately-trained employees to carry out the level of husbandry practices and care required by the Regulations and Standards (9 C.F.R. § 3.132).

48. During the spring and summer 2002, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by housing incompatible animals in the same enclosure. Specifically, For The Birds, Inc., and Jerry L. Korn housed a cow elk, which became trapped in mud and excreta, in the same enclosure as a bull elk which harassed and attacked the trapped elk. (9 C.F.R. § 3.133.)

### Conclusions of Law

1. By reason of the Findings of Fact, For The Birds, Inc., and Jerry L. Korn have willfully violated the Animal Welfare Act and the Regulations and Standards as set forth in paragraph 2 through paragraph 41 of these conclusions of law.

2. Between March 15, 2001, and at least August 24, 2003, For The Birds, Inc., willfully violated sections 2.1(a) and 2.100(a) of the Regulations and Standards (9 C.F.R. §§ 2.1(a), .100(a)) by exhibiting animals without an Animal Welfare Act license.

3. Between May 23, 2003, and at least August 24, 2003, Jerry L. Korn willfully violated sections 2.1(a) and 2.100(a) of the Regulations and Standards (9 C.F.R. §§ 2.1(a), .100(a)) by exhibiting animals without an Animal Welfare Act license.

4. Between May 23, 2003, and at least August 16, 2003, Jerry L. Korn willfully violated sections 2.1(a) and 2.100(a) of the Regulations and Standards (9 C.F.R. §§ 2.1(a), .100(a)) by operating as a dealer without an Animal Welfare Act license.

5. From October 2002 through June 2003, and on or about August 12, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)) by failing to obtain any veterinary care for a giraffe whose hooves were overgrown.

6. From approximately May 2003 through August 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)) by failing to obtain any veterinary care for a white Bengal tiger that was experiencing a rapid and extreme weight loss.

7. From approximately August 1, 2003, through August 16, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)) by failing to obtain any veterinary care for a tiger that was limping and whose left front paw was severely swollen.

8. From approximately May 2003 through August 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)) by failing to obtain any veterinary care for a camel with a golf-ball-sized abscess on the camel's lower left jaw.

9. From approximately May 2003 through August 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)) by failing to obtain any veterinary care for a camel, after Jerry L. Korn lanced a golf-ball-sized abscess on the camel's lower left jaw, causing it to become a seeping, open wound that attracted a large number of flies.

10. On or about July 7, 2003, through July 9, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)) by failing to obtain any veterinary care for a female snow leopard in obvious severe distress and bleeding from her vaginal and rectal area and a giraffe whose condition was reported directly to Jerry L. Korn, who took no action, which inaction resulted in, or contributed to, the animal's death on or about July 9, 2003.

11. In the spring 2002, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)) by failing to obtain

any veterinary care for a pregnant llama resulting in, or contributing to, the death of the animal and her baby.

12. On or about August 12, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)) by failing to obtain any veterinary care for an eland whose hooves were overgrown.

13. On or about March 7, 2001, April 3, 2002, May 22, 2002, July 2, 2002, August 27, 2002, and February 12, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(a)(1) of the Regulations and Standards (9 C.F.R. § 2.40(a)(1)) by failing to employ a full-time attending veterinarian or a part-time attending veterinarian under formal arrangements that included a written program of veterinary care.

14. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(a)(2) of the Regulations and Standards (9 C.F.R. § 2.40(a)(2)) by failing to ensure that their attending veterinarian had appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.

15. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(b)(1) of the Regulations and Standards (9 C.F.R. § 2.40(b)(1)) by failing to establish and maintain a program of adequate veterinary care that included the availability of appropriate facilities, including adequate enclosures and secure perimeter fences.

16. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(b)(1) of the Regulations and Standards (9 C.F.R. § 2.40(b)(1)) by failing to establish and maintain a program of adequate veterinary care that included the availability of appropriate personnel, equipment, and services.

17. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(b)(2) of the Regulations and Standards (9 C.F.R. § 2.40(b)(2)) by failing to establish and maintain a program of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care.

18. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(b)(3) of the Regulations and Standards (9 C.F.R. § 2.40(b)(3)) by failing to establish and maintain a program of adequate veterinary care that included daily observation of all animals to assess their health and well-being and a mechanism of direct and frequent communication with the attending veterinarian, so that timely and accurate information on problems of animal health, behavior, and well-being was conveyed to the attending veterinarian.

19. Between March 7, 2001, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.40(b)(4) of the Regulations and Standards (9 C.F.R. § 2.40(b)(4)) by failing to establish and maintain a program of adequate

veterinary care that included adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, and tranquilization.

20. On or about March 7, 2001, August 27, 2002, February 11, 2003, and February 12, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.75(b)(1) of the Regulations and Standards (9 C.F.R. § 2.75(b)(1)) by failing to make, keep, and maintain records that fully and correctly disclose information concerning animals in For The Birds, Inc.'s and Jerry L. Korn's possession or under For The Birds, Inc.'s and Jerry L. Korn's control, or disposed of by For The Birds, Inc., and Jerry L. Korn.

21. On April 3, 2002, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.126(a)(2) of the Regulations and Standards (9 C.F.R. § 2.126(a)(2)) by failing to allow Animal and Plant Health Inspection Service officials, during business hours, to examine records required to be kept by the Animal Welfare Act and the Regulations and Standards.

22. On or about May 1, 2001 (tigers), May 10, 2001 (tiger - Raja), April 3, 2002 (giraffe), June 2002 (tiger - Raja), June 4, 2002 (tiger), June 25, 2002 (bear), August 2002 (elk), February 19, 2003 (tigers), May 6, 2003 (tigers, hoofstock, kangaroo), May 8, 2003 (tigers), May 13, 2003 (tigers), and July 23, 2003 (tiger), For The Birds, Inc., and Jerry L. Korn willfully violated section 2.131(a)(1) of the Regulations and Standards (9 C.F.R. § 2.131(a)(1) (2004) [9 C.F.R. § 2.131(b)(1) (2005)]) by failing to handle

animals as expeditiously and carefully as possible in a manner that would not cause trauma, unnecessary discomfort, behavioral stress, or physical harm.

23. On May 6, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.131(a)(2)(i) of the Regulations and Standards (9 C.F.R. § 2.131(a)(2)(i) (2004) [9 C.F.R. § 2.131(b)(2)(i) (2005)]) by using physical abuse to handle a tiger during an exhibition to the public.

24. On May 1, 2001, on May 10, 2001, in June 2002 (one instance), on June 4, 2002, on February 19, 2003, on May 6, 2003 (two instances), on May 8, 2003, on May 13, 2003, on July 23, 2003, on August 12, 2003, and between May 2003 and August 16, 2003 (regularly), For The Birds, Inc., and Jerry L. Korn willfully violated section 2.131(b)(1) of the Regulations and Standards (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)]) by failing to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public.

25. On May 6, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.131(c)(1) of the Regulations and Standards (9 C.F.R. § 2.131(c)(1) (2004) [9 C.F.R. § 2.131(d)(1) (2005)]) by exhibiting animals under conditions that were inconsistent with the animals' well-being.

26. On August 24, 2003 (two instances), For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a))

by failing to meet the minimum standards for nonhuman primates in section 3.83 of the Regulations and Standards (9 C.F.R. § 3.83).

27. On August 27, 2002, and February 12, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum standards for nonhuman primates in section 3.84(c) of the Regulations and Standards (9 C.F.R. § 3.84(c)).

28. Between August 27, 2002, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to have enough employees to carry out the level of husbandry practices and care for nonhuman primates as required in section 3.85 of the Regulations and Standards (9 C.F.R. § 3.85).

29. On April 3, 2002, July 2, 2002 (two instances), August 12, 2002, August 27, 2002 (two instances), February 11, 2003, February 12, 2003, and May 6, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum facilities standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding structural strength of facilities in section 3.125(a) of the Regulations and Standards (9 C.F.R. § 3.125(a)).

30. On August 27, 2002, and in approximately June 2003 (four instances), For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum general facilities

standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding storage in section 3.125(c) of the Regulations and Standards (9 C.F.R. § 3.125(c)).

31. On April 3, 2002 (two instances), July 2, 2002, August 12, 2002 (two instances), August 27, 2002 (six instances), February 12, 2003 (four instances), May 6, 2003, and August 12, 2003, and between October 2002 and June 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum general facilities standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding waste disposal in section 3.125(d) of the Regulations and Standards (9 C.F.R. § 3.125(d)).

32. On August 27, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding drainage in section 3.126(d) of the Regulations and Standards (9 C.F.R. § 3.126(d)).

33. On August 27, 2002, November 8, 2002, February 11, 2003, February 12, 2003, and August 12, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman

primates, and marine mammals regarding shelter from inclement weather in section 3.127(b) of the Regulations and Standards (9 C.F.R. § 3.127(b)).

34. On February 11, 2003, and February 12, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding drainage of outdoor facilities in section 3.127(c) of the Regulations and Standards (9 C.F.R. § 3.127(c)).

35. On March 15, 2001, April 3, 2002 (two instances), May 22, 2002 (two instances), July 2, 2002 (two instances), and August 27, 2002, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding perimeter fencing in section 3.127(d) of the Regulations and Standards (9 C.F.R. § 3.127(d)).

36. Between October 2002 and May 30, 2003, and on August 12, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding space requirements in section 3.128 of the Regulations and Standards (9 C.F.R. § 3.128).

37. Between March 2002 and February 2003 (routinely), and on or about April 3, 2002, August 15, 2003, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding feeding in section 3.129 of the Regulations and Standards (9 C.F.R. § 3.129).

38. On or about April 3, 2002, May 22, 2002, July 2, 2002 (two instances), and August 24, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding watering in section 3.130 of the Regulations and Standards (9 C.F.R. § 3.130).

39. On April 3, 2002, February 11, 2003, February 12, 2003 (three instances), August 12, 2003, and August 24, 2003, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals regarding cleaning of enclosures in section 3.131(a) of the Regulations and Standards (9 C.F.R. § 3.131(a)).

40. During 2002 and 2003, and specifically on July 2, 2002, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to have a sufficient number of adequately-trained employees to carry out the level of husbandry practices and care as required by section 3.132 of the Regulations and Standards (9 C.F.R. § 3.132).

41. During spring and summer 2002, For The Birds, Inc., and Jerry L. Korn willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by housing incompatible animals in the same enclosure in violation of section 3.133 of the Regulations and Standards (9 C.F.R. § 3.133).

### **Complainant's Appeal Petition**

Complainant raises three issues in Complainant's Appeal Petition. First, Complainant contends the ALJ erroneously failed to issue conclusions of law that conform to the findings of fact and erroneously concluded For The Birds, Inc., Jerry L. Korn, and Susan F. Korn<sup>7</sup> committed violations of the Regulations and Standards that are not alleged in the Complaint. (Complainant's Appeal Pet. at 3-10.)

For The Birds, Inc., and Jerry L. Korn are deemed, by their failures to file timely answers, to have admitted the allegations of the Complaint.<sup>8</sup> There is no record that would support a conclusion that For The Birds, Inc., or Jerry L. Korn committed

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<sup>7</sup>See note 6.

<sup>8</sup>7 C.F.R. § 1.136(c).

violations of the Regulations and Standards other than those alleged in the Complaint; therefore, I do not adopt the ALJ's Initial Decision.

Second, Complainant contends the ALJ erroneously failed to revoke Jerry L. Korn's and Susan F. Korn's<sup>9</sup> Animal Welfare Act license (Complainant's Appeal Pet. at 10).

Jerry L. Korn is deemed, by his failure to file a timely answer to the Complaint, to have admitted at least 749 willful violations of the Regulations and Standards over a 2-year 5-month period. Many of these violations are very serious violations which jeopardized the health and well-being of Jerry L. Korn's animals. In light of the number and gravity of the violations and the period of time during which the violations occurred, I find revocation of Jerry L. Korn's Animal Welfare Act license appropriate and necessary to ensure Jerry L. Korn's compliance with the Animal Welfare Act and the Regulations and Standards in the future, to deter others from violating the Animal Welfare Act and the Regulations and Standards, and to fulfill the remedial purposes of the Animal Welfare Act.

Third, Complainant contends the \$28,050 civil penalty the ALJ assessed For The Birds, Inc., Jerry L. Korn, and Susan F. Korn,<sup>10</sup> jointly and severally, is inadequate.

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<sup>9</sup>See note 6.

<sup>10</sup>See note 6.

Complainant asserts For The Birds, Inc., Jerry L. Korn, and Susan F. Korn<sup>11</sup> should each be assessed a \$28,050 civil penalty. (Complainant's Appeal Pet. at 10-11.)

With respect to the civil monetary penalty, the Secretary of Agriculture is required to give due consideration to the size of the business of the person involved, the gravity of the violations, the person's good faith, and the history of previous violations.<sup>12</sup>

For The Birds, Inc., and Jerry L. Korn are deemed to have admitted they have a moderate-sized business with approximately 50 animals.<sup>13</sup> Many of For The Birds, Inc.'s and Jerry L. Korn's violations are serious violations which directly jeopardized the health and well-being of For The Birds, Inc.'s and Jerry L. Korn's animals. Moreover, For The Birds, Inc., and Jerry L. Korn are deemed to have admitted the gravity of their violations is great.<sup>14</sup>

For The Birds, Inc.'s and Jerry L. Korn's willful violations during the period March 2001 through August 2003, reveals a consistent disregard for, and unwillingness to abide by, the requirements of the Animal Welfare Act and the Regulations and Standards. An ongoing pattern of violations establishes a "history of previous violations" for the purposes of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) and a lack of good faith.

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<sup>11</sup>See note 6.

<sup>12</sup>7 U.S.C. § 2149(b).

<sup>13</sup>Compl. ¶ 5.

<sup>14</sup>Compl. ¶ 5.

The United States Department of Agriculture's current sanction policy is set forth in *In re S.S. 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 entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. *In re S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497.

Complainant seeks assessment of a \$28,050 civil penalty against For The Birds, Inc., and assessment of a \$28,050 civil penalty against Jerry L. Korn or 1 percent of the maximum civil penalty that Complainant asserts the Secretary of Agriculture may assess against For The Birds, Inc., and Jerry L. Korn.

I find For The Birds, Inc., committed at least 1,545 violations of the Regulations and Standards and Jerry L. Korn committed at least 749 violations of the Regulations and Standards. For The Birds, Inc., and Jerry L. Korn could be assessed a maximum civil

penalty of \$2,750 for each of their violations of the Regulations and Standards.<sup>15</sup> After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the requirements of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)), the remedial purposes of the Animal Welfare Act, and the recommendations of the administrative officials, I conclude that a cease and desist order, assessment of a \$28,050 civil penalty against For The Birds, Inc., and assessment of a \$20,597 civil penalty against Jerry L. Korn<sup>16</sup> are appropriate and necessary to ensure For The Birds, Inc.'s and Jerry L. Korn's compliance with the Animal Welfare Act and the Regulations and Standards in the future, to deter others from violating the Animal Welfare Act and the Regulations and Standards, and to fulfill the remedial purposes of the Animal Welfare Act.

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<sup>15</sup>Section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) provides that the Secretary of Agriculture may assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act and the Regulations and Standards. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture adjusted the civil penalty that may be assessed under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act and the Regulations and Standards by increasing the maximum civil penalty from \$2,500 to \$2,750 (7 C.F.R. § 3.91(b)(2)(v)). Therefore, For The Birds, Inc., could be assessed a maximum civil penalty of \$4,248,750, and Jerry L. Korn could be assessed a maximum civil penalty of \$2,059,750.

<sup>16</sup>The \$28,050 civil penalty which I assess For The Birds, Inc., represents the amount of the civil penalty that administrative officials recommended that I assess For The Birds, Inc., for its violations of the Regulations and Standards. The \$20,597 civil penalty which I assess Jerry L. Korn represents 1 percent of the maximum civil penalty which I conclude could be assessed against Jerry L. Korn for his violations of the Regulations and Standards.

### **Paragraph 12 of the Complaint**

Complainant alleges that, on February 11, 2003, Jerry L. Korn failed and refused to accept delivery of notice of registered or certified mail from the Animal and Plant Health Inspection Service, in willful violation of section 1.5 of the Regulations and Standards (9 C.F.R. § 1.5) (Compl. ¶ 12). No such provision existed on February 11, 2003; therefore, I decline to conclude that Jerry L. Korn violated section 1.5 of the Regulations and Standards (9 C.F.R. § 1.5) on February 11, 2003.

### **Paragraphs 13f and 13j of the Complaint**

Complainant alleges that, on or about August 12, 2003, For The Birds, Inc., and Jerry L. Korn failed to employ an attending veterinarian to care for their animals. Specifically, For The Birds, Inc., and Jerry L. Korn failed to obtain any veterinary care for a giraffe whose hooves were overgrown, in willful violation of section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)). (Compl. ¶¶ 13f, 13j.) Based on the limited record before me, it appears Complainant may have alleged the same violation twice. I give For The Birds, Inc., and Jerry L. Korn the benefit of my doubt and find only one violation of section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)) based upon For The Birds, Inc.'s and Jerry L. Korn's August 12, 2003, failure to obtain any veterinary care for a giraffe whose hooves were overgrown.

### **Paragraphs 50b and 50e of the Complaint**

Complainant alleges that, on or about August 24, 2003, For The Birds, Inc., and Jerry L. Korn failed to remove excreta from primary enclosures as often as necessary to

prevent contamination of the animals contained in the enclosures and to minimize disease hazards and reduce odors. Specifically, the giraffe enclosure contained excessive fecal material,<sup>17</sup> in willful violation of section 3.131(a) of the Regulations and Standards (9 C.F.R. § 3.131(a)). (Compl. ¶¶ 50b, 50e.) Based on the limited record before me, it appears Complainant may have alleged the same violation twice. I give For The Birds, Inc., and Jerry L. Korn the benefit of my doubt and find only one violation of section 3.131(a) of the Regulations and Standards (9 C.F.R. § 3.131(a)) based upon For The Birds, Inc.'s and Jerry L. Korn's August 24, 2003, failure to remove excessive fecal material from the giraffe enclosure.

#### **The Number of For The Birds, Inc.'s and Jerry L. Korn's Violations**

A few of Complainant's allegations are framed so that I cannot determine the exact number of For The Bird, Inc.'s and Jerry L. Korn's violations. For example, Complainant alleges between May 2003 and August 16, 2003, For The Birds, Inc., and Jerry L. Korn *regularly* allowed customers to enter the primary enclosure containing two tigers without any distance or barriers between the animals and the public, in willful violation of section 2.131(b)(1) of the Regulations and Standards (9 C.F.R. § 2.131(b)(1) (2004) [9 C.F.R. § 2.131(c)(1) (2005)]) (Compl. ¶ 39); Complainant alleges between March 2002 and February 2003, For The Birds, Inc., and Jerry L. Korn *repeatedly* failed to provide tigers with a sufficient quantity of wholesome, palatable food and *routinely* failed to feed tigers

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<sup>17</sup>Complainant uses the term "fecal material" in paragraph 50b of the Complaint and the word "excreta" in paragraph 50e of the Complaint.

for 4 days in a row, in willful violation of section 3.129 of the Regulations and Standards (9 C.F.R. § 3.129) (Compl. ¶ 48a); and, in some instances, Complainant's use of the words *approximately* and *between* makes the number of days during which a violation continued indeterminate (Compl. ¶¶ 13b, 13c, 13d, 13e, 44p).<sup>18</sup> In each instance, I have given For The Birds, Inc., and Jerry L. Korn the benefit of my doubt regarding the number of violations alleged and deemed to be admitted.

For the foregoing reasons, the following Order should be issued.

### **ORDER**

1. For The Birds, Inc., and Jerry L. Korn, their agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards.

Paragraph 1 of this Order shall become effective on the day after service of this Order on For The Birds, Inc., and Jerry L. Korn.

2. Jerry L. Korn's Animal Welfare Act license (Animal Welfare Act license number 82-C-0035) is revoked.

Paragraph 2 of this Order shall become effective on the 60th day after service of this Order on Jerry L. Korn.

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<sup>18</sup>Each violation and each day during which a violation continues constitutes a separate offense (7 U.S.C. § 2149(b)).

3. For The Birds, Inc., is assessed a \$28,050 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:

Colleen A. Carroll  
United States Department of Agriculture  
Office of the General Counsel  
Marketing 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, Colleen A. Carroll within 60 days after service of this Order on For The Birds, Inc. For The Birds, Inc., shall state on the certified check or money order that payment is in reference to AWA Docket No. 04-0033.

4. Jerry L. Korn is assessed a \$20,597 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:

Colleen A. Carroll  
United States Department of Agriculture  
Office of the General Counsel  
Marketing 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, Colleen A. Carroll within 60 days after service of this Order on Jerry L. Korn. Jerry L. Korn shall state on

the certified check or money order that payment is in reference to AWA Docket No. 04-0033.

### **RIGHT TO JUDICIAL REVIEW**

For The Birds, Inc., and Jerry L. Korn have the right to seek judicial review of this Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341, 2343-2350. Such court has exclusive jurisdiction to enjoin, to set aside, to suspend (in whole or in part), or to determine the validity of this Order. For The Birds, Inc., and Jerry L. Korn must seek judicial review within 60 days after entry of this Order.<sup>19</sup> The date of entry of this Order is June 22, 2005.

Done at Washington, DC

June 22, 2005

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William G. Jenson  
Judicial Officer

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<sup>19</sup>7 U.S.C. § 2149(c).