

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AWA Docket No. 09-0175  
)  
Bodie S. Knapp, an individual, d/b/a )  
The Wild Side, )  
)  
Respondent ) **Decision and Order**

**PROCEDURAL HISTORY**

On August 19, 2009, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding by filing a Complaint. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued pursuant to the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Administrator filed an Amended Complaint, and on November 17, 2010, the Administrator filed a Second Amended Complaint, which is the operative pleading in this

proceeding. The Administrator alleges: (1) during the period November 2005 through September 25, 2010, Bodie S. Knapp operated as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c);<sup>1</sup> and (2) by virtue of Mr. Knapp’s operation as a dealer without an Animal Welfare Act license, Mr. Knapp knowingly failed to obey cease and desist orders issued by the Secretary of Agriculture in *In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668 (2005), and *In re Coastal Bend Zoological Ass’n.*, 65 Agric. Dec. 993 (2006).<sup>2</sup> On December 8, 2010, Mr. Knapp filed Respondent’s Answer to Complainant’s Second Amended Complaint in which Mr. Knapp denied the material allegations of the Second Amended Complaint.

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<sup>1</sup>The Administrator alleges specific dates on which Mr. Knapp offered for sale, delivered for transportation, transported, sold, bought, or negotiated the purchase or sale of 428 animals, during the period November 2005 through September 25, 2010 (Second Amended Compl. at 4-9 ¶ 7).

<sup>2</sup>Second Amended Compl. at 1-3 ¶¶ 2-6.

On June 21, 2011, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] conducted a hearing in Corpus Christi, Texas. Phillip Westergren represented Mr. Knapp. Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator. At the hearing, the Administrator called six witnesses and Mr. Knapp called three witnesses.<sup>3</sup> The Administrator introduced 25 exhibits which were received into evidence,<sup>4</sup> and Mr. Knapp introduced 10 exhibits which were received into evidence.<sup>5</sup>

On September 27, 2011, after the parties submitted post-hearing briefs, the Chief ALJ filed a Decision and Order in which the Chief ALJ: (1) concluded Mr. Knapp sold 15 animals without an Animal Welfare Act license in violation of the Animal Welfare Act and the Regulations; (2) ordered Mr. Knapp to cease and desist from further violations of the Animal Welfare Act and the Regulations; (3) assessed Mr. Knapp a \$15,000 civil penalty for Mr. Knapp's violations of the Animal Welfare Act and the Regulations; and (4) ordered counsel for Mr. Knapp to submit a petition for award of attorney fees and expenses pursuant to the Equal Access to Justice Act (5 U.S.C. § 504) and the Procedures Relating to Awards

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<sup>3</sup>References to the transcript are indicated as "Tr." and the page number.

<sup>4</sup>The Administrator's exhibits are identified as "CX" and the exhibit number.

<sup>5</sup>Mr. Knapp's exhibits are identified as "RX" and the exhibit number.

Under the Equal Access to Justice Act in Proceedings Before the Department (7 C.F.R. §§ 1.180-.203) [hereinafter the EAJA Rules of Practice].<sup>6</sup>

On December 5, 2011, the Administrator filed Complainant's Petition for Appeal of Initial Decision as to Respondent Bodie S. Knapp [hereinafter the Administrator's Appeal Petition]. On February 28, 2012, Mr. Knapp filed Respondent's Response to Complainant's Appeal Petition Respondent's Appeal Petition (Cross Points) [hereinafter Mr. Knapp's Response and Appeal Petition]. On March 27, 2012, the Administrator filed Complainant's Response to Cross-Appeal by Respondent Bodie S. Knapp, and on April 9, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

## DECISION

### Statutory and Regulatory Framework

The Animal Welfare Act is a comprehensive statutory scheme, the purpose of which is to regulate the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using animals for research or experimental purposes or for exhibition purposes or holding animals for sale as pets or for any

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<sup>6</sup>Chief ALJ's Decision and Order at 21-23.

such purpose or use (7 U.S.C. § 2131). Specifically, Congress intended the Animal Welfare Act:

**§ 2131. Congressional statement of policy**

....

- (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.

7 U.S.C. § 2131. The Animal Welfare Act requires all dealers to obtain an Animal Welfare Act license, as follows:

**§ 2134. Valid license for dealers and exhibitors required**

No dealer . . . shall sell or offer to sell or transport or offer for transportation, in commerce, to any research facility or for exhibition or for use as a pet any animal, or buy, sell, offer to buy or sell, transport or offer for transportation, in commerce, to or from another dealer or exhibitor under this chapter any animals, unless and until such dealer or exhibitor shall have obtained a license from the Secretary and such license shall not have been suspended or revoked.

7 U.S.C. § 2134. The Animal Welfare Act defines the term “dealer,” as follows:

**§ 2132. Definitions**

When used in this chapter—

....

(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[.]

7 U.S.C. § 2132(f). The Regulations require any person operating or intending to operate as a dealer to have an Animal Welfare Act license, but exempt any person who buys animals solely for his or her own use or enjoyment, as follows:

**§ 2.1 Requirements and application.**

(a)(1) Any person operating or intending to operate as a dealer, . . . except persons who are exempted from the licensing requirements under paragraph (a)(3) of this section, must have a valid license.

. . . .

(3) The following persons are exempt from the licensing requirements under section 2 or section 3 of the Act:

. . . .

(viii) Any person who buys animals solely for his or her own use or enjoyment and does not sell or exhibit animals, or is not otherwise required to obtain a license[.]

9 C.F.R. § 2.1(a)(1), (a)(3)(viii).

The Regulations further prohibit any person whose Animal Welfare Act license has been revoked from buying, selling, transporting, exhibiting, or delivering for transportation any animal during the period of revocation (9 C.F.R. § 2.10(c)).

The Animal Welfare Act defines the term “animal,” as follows:

## § 2132. Definitions

When used in this chapter—

. . . .

(g) The term “animal” means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warmblooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term excludes (1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research, (2) horses not used for research purposes, and (3) other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With

respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes[.]

7 U.S.C. § 2132(g).

The Regulations define the terms “animal,” “exotic animal,” “farm animal,” and “wild animal,” as follows:

### § 1.1 Definitions.

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

.. . .

*Animal* means any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research; horses not used for research purposes; and other farm animals, such as, but not limited to, livestock or poultry used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs, including those used for hunting, security, or breeding purposes.

....

*Exotic animal* means any animal not identified in the definition of “animal” provided in this part that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad. This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, camels, antelope, anteaters, kangaroos, and water buffalo, and species of foreign domestic cattle, such as Ankole, Gayal, and Yak.

*Farm animal* means any domestic species of cattle, sheep, swine, goats, llamas, or horses, which are normally and have historically, been kept and raised on farms in the United States, and used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. The term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and animals such as horses and llamas when used solely as work and pack animals.

.....

*Wild animal* means any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its territories, or possessions. This term includes, but is not limited to, animals such as: Deer, skunk, opossum, raccoon, mink, armadillo, coyote, squirrel, fox, wolf.

9 C.F.R. § 1.1.

### Discussion

Mr. Knapp is a former holder of Animal Welfare Act license number 74-C-0533 with a history of previous violations of the Animal Welfare Act. A complaint was first filed against Mr. Knapp by the Administrator on March 17, 2004, in *In re Coastal Bend Zoological Ass'n.*, AWA Docket No. 04-0015. During the pendency of that proceeding, the Administrator filed a second complaint against Mr. Knapp in *In re Bodie S. Knapp*, AWA Docket No. 04-0029. Mr. Knapp failed to answer that complaint in a timely manner and, pursuant to the Rules of Practice, by such failure was deemed to have admitted willfully committing 84 violations of the Animal Welfare Act and the Regulations. I ordered Mr. Knapp to cease and desist from future violations of the Animal Welfare Act and the Regulations and revoked Mr. Knapp's

Animal Welfare Act license<sup>7</sup> and, subsequently, denied Mr. Knapp's motion for reconsideration.<sup>8</sup> On September 10, 2005, following denial of Mr. Knapp's motion for reconsideration, revocation of Mr. Knapp's Animal Welfare Act license became effective.

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<sup>7</sup>*In re Bodie S. Knapp*, 64 Agric. Dec. 253 (2005).

<sup>8</sup>*In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668 (2005).

Administrative Law Judge Victor W. Palmer [hereinafter ALJ Palmer] presided over the hearing in *Coastal Bend Zoological Ass'n.*, and entered his decision on August 31, 2006.<sup>9</sup> Although ALJ Palmer found Mr. Knapp's violations, which resulted in the overdosing and subsequent death of two lions and two tigers, particularly egregious, he only assessed Mr. Knapp a \$5,000 civil penalty.

The Second Amended Complaint filed in this proceeding alleges that, in 30 transactions, Mr. Knapp, without the required Animal Welfare Act license, sold, purchased, offered for sale or purchase, delivered for transportation, transported, or negotiated for sale or purchase 428 animals during the period November 2005 through September 25, 2010.

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<sup>9</sup>*In re Coastal Bend Zoological Ass'n.*, 65 Agric. Dec. 993 (2006).

Four of the alleged violations involve Mr. Knapp's October 14, 2006, April 1, 2007, August 15, 2007, and August 27, 2007, transactions with Christian Bayne Gray.<sup>10</sup> Mr. Gray failed to appear as a witness. The documentary evidence proffered by the Administrator was recanted and subjected to question in a subsequent affidavit obtained from Mr. Gray by Mr. Knapp.<sup>11</sup> The Chief ALJ found the documentary evidence irreconcilable and inadequate to support findings that Mr. Knapp violated the Animal Welfare Act and the Regulations as alleged in paragraphs 7h, 7i, 7j, and 7k of the Second Amended Complaint. On appeal, the Administrator contends the Chief ALJ's dismissal of the violations alleged in paragraphs 7h, 7i, 7j, and 7k of the Second Amended Complaint, is error (Administrator's Appeal Pet. at 24-26 ¶ IIA4).

After a careful review of the record, I agree with the Chief ALJ's findings that the documentary evidence introduced by the Administrator was recanted and subjected to question in a subsequent affidavit obtained from Mr. Gray (RX 5) and that the evidence is inadequate to support findings that Mr. Knapp violated the Regulations as alleged in paragraphs 7h, 7i, 7j, and 7k of the Second Amended Complaint.

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<sup>10</sup>Second Amended Compl. at 5 ¶¶ 7h-7k.

<sup>11</sup>RX 5.

Mr. Knapp asserts no violations occurred as to the remaining allegations on the grounds that no Animal Welfare Act license was required for the transactions because:

(a) Mr. Knapp had a right to sell a camel to Kimberly G. Finley to close out his exhibitor's business; (b) the transaction with the Texas Zoo was not a sale, but rather a gift; (c) a number of the animals involved were farm animals specifically excluded from regulation under the Animal Welfare Act; (d) the animals purchased by Mr. Knapp were intended for his own enjoyment as permitted by 9 C.F.R. § 2.1(a)(3)(viii); (e) an Animal Welfare Act license is not required for any person who sells 10 or fewer exotic hoofstock in any 12-month period; and (f) an Animal Welfare Act license is not required for sales of animals through auctions where the intended use of the animals sold is unknown.

The Chief ALJ rejected Mr. Knapp's claim that he had a right to sell a camel to Kimberly G. Finley, as alleged in paragraph 7e of the Second Amended Complaint, to close out his exhibitor's business. The Chief ALJ stated, while Mr. Knapp could have sold the camel before revocation of his Animal Welfare Act license became effective or with the permission of the Animal and Plant Health Inspection Service after the date the revocation of his Animal Welfare Act license became effective, the sale was a regulated transaction requiring an Animal Welfare Act license and was effected in November 2005 more than a month after the September 10, 2005, effective date of the revocation of Mr. Knapp's Animal Welfare Act license.

On appeal, Mr. Knapp contends the Chief ALJ erroneously concluded that Mr. Knapp's November 2005 sale of a camel to Ms. Finley without an Animal Welfare Act license violated the Animal Welfare Act and the Regulations, as alleged in paragraph 7e of the Second Amended Complaint, because there is no evidence that Ms. Finley is an exhibitor who used, or intended to use, the camel for a regulated purpose (Mr. Knapp's Response and Appeal Pet. at 17 ¶ 12).

Ms. Finley states in her affidavit: "I am an exhibitor of Exotic Animals. I operate a petting zoo, with pony and camel rides." (CX 7 at 1.) Moreover, Ms. Finley's spouse was an Animal Welfare Act licensee who predictably would exhibit the animal.<sup>12</sup> Therefore, I reject Mr. Knapp's contention that there is no evidence that Ms. Finley is an exhibitor who used, or intended to use, the camel purchased from Mr. Knapp for a regulated purpose, and I reject Mr. Knapp's contention that the Chief ALJ's conclusion that Mr. Knapp sold a camel to Kimberly G. Finley without an Animal Welfare Act license, in violation of Animal Welfare Act and the Regulations, is error.

Mr. Knapp claims no violation of the Animal Welfare Act occurred as a result of the September 10, 2006, transaction with the Texas Zoo as he gave the two lemurs to the Texas

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<sup>12</sup>The camel in question had been gelded and accordingly could not be used for breeding purposes and had been used in the past as a "ride" camel. Mr. Knapp and his wife, Jennifer Knapp, acknowledged that they expected the camel to continue to be used to give rides. (Tr. 185-86, 216.)

Zoo and the Texas Zoo, on a later date without consideration, gave him two zebras (Tr. 202-06). Mr. Knapp's claim of donating the lemurs is refuted by the APHIS Form 7020 which is signed by Mr. Knapp identifying him as the "owner" and the disposition is described as an exchange or transfer (CX 1). Therefore, I find Mr. Knapp violated the Animal Welfare Act and the Regulations as alleged in paragraph 7a of the Second Amended Complaint.

Mr. Knapp asserts many of the violations alleged in the Second Amended Complaint relate to his sale of farm animals, which are not regulated under the Animal Welfare Act.<sup>13</sup> The Chief ALJ agreed with Mr. Knapp and found that 41 animals which Mr. Knapp sold were farm animals and not regulated under the Animal Welfare Act. Consequently, the Chief ALJ dismissed the violations alleged in paragraph 7l; 7o, as it relates to Mr. Knapp's sale of 1 alpaca, 1 aoudad, 3 ibex, and 3 pygmy goats; 7q, as it relates to Mr. Knapp's sale of 6 pigs; 7s, as it relates to Mr. Knapp's sale of 1 zebu and 15 sheep; 7u, as it relates to Mr. Knapp's sale of 2 bearded pigs, 2 goats, and 1 llama; 7w; and 7y, as it relates to Mr. Knapp's sale of 2 watusi. The Administrator contends the Chief ALJ's finding that Mr. Knapp sold farm animals that are not covered by the Animal Welfare Act, is error (Administrator's Appeal Pet. at 14-20 ¶ IIA1).

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<sup>13</sup>7 U.S.C. § 2132(g).

The Administrator correctly points out that domestic species of cattle, sheep, swine, goats, and llamas are not per se exempt from regulation under the Animal Welfare Act as farm animals. Instead, the term “farm animal” only applies to domestic species of cattle, sheep, swine, goats, and llamas that are used, or intended for use, for certain specified purposes and are normally and have historically been kept on farms in the United States. However, the Chief ALJ did not conclude, as the Administrator indicates, that domestic species of cattle, sheep, swine, goats, and llamas are per se farm animals.

I find the record is not clear regarding the issue of whether the species of cattle, sheep, swine, goats, and llamas which Mr. Knapp purchased and sold were farm animals and exempt from regulation under the Animal Welfare Act. Therefore, I give Mr. Knapp the benefit of the doubt and dismiss all the alleged violations regarding his purchases and sales of cattle, sheep, swine, goats, and llamas. Specifically, I dismiss the violations alleged in paragraphs 7l; 7m, as it relates to Mr. Knapp’s purchase of 8 cattle; 7o, as it relates to Mr. Knapp’s sale of 6 goats; 7p, as it relates to Mr. Knapp’s purchase of 12 goats, 3 cattle, and 16 sheep; 7q, as it relates to Mr. Knapp’s sale of 6 pigs; 7r, as it relates to Mr. Knapp’s purchase of 1 llama, 4 goats, 1 pig, 6 sheep, and 16 cattle; 7s, as it relates to Mr. Knapp’s sale of 1 cattle and 15 sheep; 7t, as it relates to Mr. Knapp’s purchase of 6 cattle, 2 sheep, and 2 goats; 7u, as it relates to Mr. Knapp’s sale of 2 pigs, 2 goats, and 1 llama; 7v, as it relates to Mr. Knapp’s purchase of 4 llamas and 4 goats; 7w; 7x, as it relates to Mr. Knapp’s purchase of 2 cattle,

6 llamas, and 2 goats; 7y, as it relates to Mr. Knapp's sale of 2 cattle; 7z, as it relates to Mr. Knapp's purchase of 10 cattle, 6 llamas, 3 goats, and 6 sheep; 7bb, as it relates to Mr. Knapp's purchase of 6 llamas, 1 goat, and 1 cattle; and 7dd, as it relates to Mr. Knapp's purchase of 4 sheep, 4 goats, 1 llama, and 11 cattle.

Relying upon the licensing exemptions set forth in the Animal Care Resource Guide Dealer Inspection Guide published by the Animal and Plant Health Inspection Service (RX 2), Mr. Knapp argued that his sales of hoofstock do not require an Animal Welfare Act license. Policy #23 of that publication identifies transactions that do not require an Animal Welfare Act license,<sup>14</sup> as follows:

*Hoofstock* [Policy #23]

A license is **not** required for any person who sells *wild/exotic hoofstock*, such as deer, elk and bison:

- for nonregulated purposes
- to game ranches
- to private collectors for breeding purposes only
- 10 or fewer wild/exotic hoofstock in a 12-month period for regulated purposes.

RX 2 (emphasis in original).

Mr. Knapp did not exceed the quantity threshold specified in Policy #23 in any given 12-month period, and the Chief ALJ dismissed the violations alleged in paragraphs 7d; 7g; 7q,

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<sup>14</sup>Policy #23 remained in effect at all times pertinent to the violations alleged in the Second Amended Complaint. Policy #23 has since been superseded by Policy #8 of the Animal Care Resource Guide, March 25, 2011 (RX 3).

as it relates to Mr. Knapp's sale of two zebras, one wildebeest, and one addax; 7s, as it relates to Mr. Knapp's sale of three buffalo, one addax, and three nilgai; 7y, as it relates to Mr. Knapp's sale of three buffalo and one deer; and 7aa, as it relates to Mr. Knapp's sale of one buffalo. The Administrator contends the Chief ALJ's finding that Mr. Knapp's sales of hoofstock are exempt from regulation under the Animal Welfare Act, is error (Administrator's Appeal Pet. at 22-24 ¶ IIA3).

The Chief ALJ based his conclusion that Mr. Knapp's sales of hoofstock are exempt from regulation under the Animal Welfare Act on the Animal and Plant Health Inspection Service Animal Care Resource Guide (RX 2). However, neither the Animal Welfare Act nor the Regulations contain a "10-hoofstock per year" exemption. Therefore, I find Mr. Knapp's sales of hoofstock, as alleged in paragraphs 7d, 7g, 7q, 7s, 7y, and 7aa of the Second Amended Complaint, without an Animal Welfare Act license, violated 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a) and 2.10(c). However, I agree with the Chief ALJ that the Animal and Plant Health Inspection Service Animal Care Resource Guide (RX 2) unambiguously exempts limited sales of hoofstock made for regulated purposes; therefore, I assess no civil penalty for Mr. Knapp's sales of hoofstock in violation of the Animal Welfare Act and the Regulations.

Of the 30 allegations contained in the Second Amended Complaint, 14 of the allegations involve Mr. Knapp's purchases of animals. Mr. Knapp contends he bought these animals for his sole enjoyment and, pursuant to 9 C.F.R. § 2.1(a)(3)(viii), he is not required

to have an Animal Welfare Act license for these purchases. The Chief ALJ agreed with Mr. Knapp and dismissed all of the allegations that Mr. Knapp purchased animals in violation of the Animal Welfare Act and the Regulations. The Administrator contends the Chief ALJ's conclusion that Mr. Knapp's purchases of animals were exempt from regulation under the Animal Welfare Act because the purchases were for Mr. Knapp's personal enjoyment, is error (Administrator's Appeal Pet. at 20-22 ¶ IIA2).

The Regulations provide that a person who buys animals solely for his own use or enjoyment and does not sell or exhibit animals (or is not otherwise required to obtain an Animal Welfare Act license) is not required to obtain an Animal Welfare Act license (9 C.F.R. § 2.1(a)(3)(viii)). Mr. Knapp did not solely purchase animals for his own enjoyment. The evidence establishes and the Chief ALJ found that Mr. Knapp sold animals for regulated purposes. Therefore, I find the Chief ALJ's conclusion that Mr. Knapp's purchases of animals were exempt from regulation, is error, and I find Mr. Knapp's purchases of animals, without an Animal Welfare Act license, violated 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

### The Administrator's Appeal Petition

The Administrator raises seven issues in the Administrator's Appeal Petition which have not been addressed in this Decision and Order, *supra*. First, the Administrator contends the Chief ALJ's calculation of the number of Mr. Knapp's violations, is error (Administrator's Appeal Pet. at 26-27 ¶ IIB).

The Chief ALJ found that Mr. Knapp committed eight violations of the Animal Welfare Act and the Regulations.<sup>15</sup> The Chief ALJ concluded that each of the eight transactions which he found to be in violation of the Animal Welfare Act and the Regulations constituted a violation of the Animal Welfare Act and the Regulations. However, when determining the number of violations committed by a person who purchases and sells animals without a required Animal Welfare Act license, each animal purchased or sold constitutes a separate violation of the Animal Welfare Act and the Regulations.<sup>16</sup> Therefore, I reject the Chief ALJ's conclusion that Mr. Knapp committed eight violations of the Animal Welfare Act and the Regulations. Instead, I find that Mr. Knapp purchased and sold 235 animals in violation of the Animal Welfare Act and the Regulations; thus, Mr. Knapp committed 235 violations of the Animal Welfare Act and the Regulations.

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<sup>15</sup>Chief ALJ's Decision and Order at 17.

<sup>16</sup>*In re J. Wayne Shaffer*, 60 Agric. Dec. 444, 479 (2001).

Second, the Administrator contends the Chief ALJ erroneously failed to assess Mr. Knapp the maximum civil penalty for his violations of the Animal Welfare Act and the Regulations (Administrator's Appeal Pet. at 28-30 ¶ IIC).

The Chief ALJ assessed Mr. Knapp a \$15,000 civil penalty based upon Mr. Knapp's financial condition.<sup>17</sup> When determining the amount of the civil penalty to be assessed for violations of the Animal Welfare Act and the Regulations, the Secretary of Agriculture is required to give due consideration to four factors: (1) the size of the business of the person involved, (2) the gravity of the violations, (3) the person's good faith, and (4) the history of previous violations.<sup>18</sup> A violator's financial condition is not one of the factors considered by the Secretary of Agriculture when determining the amount of the civil penalty.<sup>19</sup> Therefore, the Chief ALJ's consideration of Mr. Knapp's financial condition when determining the amount of the civil penalty to be assessed against Mr. Knapp, is error.

Based upon the 235 animals which Mr. Knapp purchased and sold during the period November 2005 through September 25, 2010, I find Mr. Knapp's dealer operation was mid-sized. Operation as a dealer without an Animal Welfare Act license is a serious violation because enforcement of the Animal Welfare Act and the Regulations depends upon

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<sup>17</sup>Chief ALJ's Decision and Order at 17.

<sup>18</sup>7 U.S.C. § 2149(b).

<sup>19</sup>*See In re James J. Everhart*, 56 Agric. Dec. 1400, 1416-17 (1997).

the identification of persons operating as dealers. During almost a 5-year period, Mr. Knapp operated as a dealer without obtaining the required Animal Welfare Act license.

Mr. Knapp's failure to obtain the required Animal Welfare Act license hampered the Secretary of Agriculture's ability to identify Mr. Knapp as a dealer and thwarted the Secretary of Agriculture's ability to carry out the purposes of the Animal Welfare Act. Mr. Knapp's conduct during this 5-year period reveals a consistent disregard for, and unwillingness to abide by, the requirements of the Animal Welfare Act and the Regulations. Thus, I conclude Mr. Knapp lacked good faith. Finally, Mr. Knapp has a history of previous violations of the Animal Welfare Act and the Regulations as evidenced by *In re Bodie S. Knapp*, 64 Agric. Dec. 253 (2005), *In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668 (2005), *In re Coastal Bend Zoological Ass'n.*, 65 Agric. Dec. 993 (2006), and the ongoing pattern of Mr. Knapp's violations in this case.

The United States Department of Agriculture's 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 generally entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry.

The Administrator, one of the officials charged with administering the Animal Welfare Act, recommends that I assess Mr. Knapp the maximum civil penalty for his violations of the Animal Welfare Act and the Regulations (Administrator's Appeal Pet. at 30 ¶ IIC).

Each animal which Mr. Knapp purchased or sold without the required Animal Welfare Act license constitutes a separate violation of the Animal Welfare Act and the Regulations. I conclude Mr. Knapp committed 235 violations of the Animal Welfare Act and the Regulations during the period November 2005 through September 25, 2010. However, for the reasons explained in this Decision and Order, *supra*, I assess no civil penalty for Mr. Knapp's sales of 21 hoofstock as alleged in paragraphs 7d, 7g, 7q, 7s, 7y, and 7aa of the Second Amended Complaint; therefore, I assess Mr. Knapp a civil penalty for only 214 of his violations of the Animal Welfare Act and the Regulations. Mr. Knapp could be assessed a maximum civil penalty of \$1,902,500 for the 214 violations of the Animal Welfare Act and the Regulations.<sup>20</sup>

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<sup>20</sup>Prior to June 18, 2008, the Animal Welfare Act, authorized the Secretary of Agriculture to assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act and the Regulations (7 U.S.C. § 2149(b)). However, the Federal Civil Penalties

However, in addition to his recommendation that I assess Mr. Knapp the maximum civil penalty for his violations of the Animal Welfare Act and the Regulations, the Administrator proposed assessment of a \$75,000 civil penalty against Mr. Knapp for his violations of the Animal Welfare Act and the Regulations.<sup>21</sup> The Administrator failed to explain the \$1,827,500 discrepancy between his two recommendations. Therefore, I give no weight to the Administrator's disparate recommendations.

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Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note) provides that the head of each agency shall, by regulation, adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency by increasing the maximum civil penalty for each civil monetary penalty by a cost-of-living adjustment. Effective June 23, 2005, the Secretary of Agriculture, by regulation, adjusted the civil monetary penalty that may be assessed under 7 U.S.C. § 2149(b) for each violation of the Animal Welfare Act and the Regulations by increasing the maximum civil penalty from \$2,500 to \$3,750 (7 C.F.R. § 3.91(b)(2)(ii) (2006)). On June 18, 2008, Congress amended 7 U.S.C. § 2149(b) to provide that the Secretary of Agriculture may assess a civil penalty of not more than \$10,000 for each violation of the Animal Welfare Act and the Regulations (Pub. L. No. 110-246 § 14214, 122 Stat. 1664, 2228 (2008)). Thus, the Secretary of Agriculture may assess Mr. Knapp a civil penalty of no more than \$3,750 for each of Mr. Knapp's 38 violations of the Animal Welfare Act and the Regulations that occurred before June 18, 2008, and a civil penalty of no more than \$10,000 for each of Mr. Knapp's 176 violations of the Animal Welfare Act and the Regulations that occurred after June 18, 2008.

<sup>21</sup>Complainant's Proposed Findings of Fact, Conclusions of Law, and Order, and Brief in Support Thereof at 32.

After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the factors required to be considered in 7 U.S.C. § 2149(b) and the remedial purposes of the Animal Welfare Act, I conclude a \$42,800 civil penalty for 214 of Mr. Knapp's violations of the Animal Welfare Act and the Regulations is appropriate and necessary to ensure Mr. Knapp's compliance with the Animal Welfare Act and the Regulations in the future, to deter others from violating the Animal Welfare Act and the Regulations, and to thereby fulfill the remedial purposes of the Animal Welfare Act.<sup>22</sup>

Third, the Administrator contends the Chief ALJ erroneously failed to assess Mr. Knapp a civil penalty for violating the cease and desist orders issued by the Secretary of Agriculture in *In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668 (2005), and *In re Coastal Bend Zoological Ass'n.*, 65 Agric. Dec. 993 (2006) (Administrator's Appeal Pet. at 30-31 ¶ IID).

The Chief ALJ assessed Mr. Knapp a \$15,000 civil penalty for Mr. Knapp's violations of the Animal Welfare Act and the Regulations.<sup>23</sup> However, Mr. Knapp's violations of the Animal Welfare Act and the Regulations also constitute knowing failures to obey the cease

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<sup>22</sup>I assess Mr. Knapp a civil penalty of \$200 for each animal, except for 21 hoofstock, that Mr. Knapp purchased or sold in violation of the Animal Welfare Act and the Regulations.

<sup>23</sup>Chief ALJ's Decision and Order at 17, 23.

and desist orders issued by the Secretary of Agriculture in *In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668 (2005), and *In re Coastal Bend Zoological Ass'n.*, 65 Agric. Dec. 993 (2006).

The Animal Welfare Act leaves no room for discretion regarding the assessment of a civil penalty for a knowing failure to obey a cease and desist order:

**§ 2149. Violations by licensees**

- ....
- (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 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.

7 U.S.C. § 2149(b). Effective September 2, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture increased the civil penalty for a knowing failure to obey a cease and desist order from \$1,500 to \$1,650.<sup>24</sup> Therefore, the civil penalty required to be assessed for Mr. Knapp's 214 knowing failures to obey the cease and desist orders issued by the Secretary of Agriculture

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<sup>24</sup>7 C.F.R. § 3.91(b)(2)(v) (2005); 7 C.F.R. § 3.91(b)(2)(ii) (2006).

in *In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668 (2005), and *In re Coastal Bend Zoological Ass'n.*, 65 Agric. Dec. 993 (2006), is \$353,100.

Fourth, the Administrator contends the Chief ALJ erroneously failed to find that Mr. Knapp's violations of the Animal Welfare Act and the Regulations were willful (Administrator's Appeal Pet. at 31 ¶ IIE at 31).

A willful act is an act in which the violator intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or acts with careless disregard of statutory requirements.<sup>25</sup> The record establishes that Mr. Knapp's purchases and sales of animals, without an Animal Welfare Act license, were intentional. Therefore, I conclude Mr. Knapp's violations of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c) were willful.

Fifth, the Administrator contends, under the Rules of Practice, he had an absolute right to amend the Second Amended Complaint, and the Chief ALJ erroneously denied the

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<sup>25</sup>*In re Terranova Enterprises, Inc.* (Decision as to Craig Perry and Perry's Wilderness Ranch & Zoo, Inc.), \_\_\_ Agric. Dec. \_\_\_, slip op. at 6 (July 19, 2012); *In re Kathy Jo Bauck*, 68 Agric. Dec. 853, 860-61 (2009), *appeal dismissed*, No. 10-1138 (8th Cir. Feb. 24, 2010); *In re D&H Pet Farms, Inc.*, 68 Agric. Dec. 798, 812-13 (2009); *In re Jewel Bond*, 65 Agric. Dec. 92, 107 (2006), *aff'd per curiam*, 275 F. App'x 547 (8th Cir. 2008); *In re James E. Stephens*, 58 Agric. Dec. 149, 180 (1999); *In re Arab Stock Yard, Inc.*, 37 Agric. Dec. 293, 306 (1978), *aff'd mem.*, 582 F.2d 39 (5th Cir. 1978).

Administrator's May 18, 2011, Motion to Correct Second Amended Complaint  
(Administrator's Appeal Pet. at 31-33 ¶ IIF).

On May 18, 2011, the Administrator filed a Motion to Correct Second Amended Complaint, which, if granted, would have corrected the Second Amended Complaint to add allegations that Mr. Knapp willfully violated the Animal Welfare Act and the Regulations, on December 1, 2007, when he sold two warthogs to Trager Snake Farm, Inc., and/or Helen Moreno and a palm civet to Trager Snake Farm, Inc. On June 7, 2011, Mr. Knapp filed an objection to the Administrator's Motion to Correct Second Amended Complaint. On June 8, 2011, the Chief ALJ denied the Administrator's Motion to Correct Second Amended Complaint stating the Administrator had failed to show good cause for the correction (Summary of Teleconference and Order, filed June 8, 2011).

The Administrator contends, as no motion for hearing had been filed prior to his filing the Motion to Correct Second Amended Complaint, he had an absolute right under the Rules of Practice to amend the Second Amended Complaint. The Rules of Practice provide, as follows:

**1.137 Amendment of complaint, petition for review, or answer; joinder of related matters.**

(a) *Amendment.* At any time prior to the filing of a motion for a hearing, the complaint, petition for review, answer, or response to petition for review may be amended. Thereafter, such an amendment may be made with

consent of the parties, or as authorized by the Judge upon a showing of good cause.

7 C.F.R. § 1.137(a). Mr. Knapp argues the Administrator did not have an absolute right to amend the Second Amended Complaint because he (Mr. Knapp) filed multiple requests for a hearing prior to the date the Administrator filed the Motion to Correct Second Amended Complaint (Mr. Knapp's Response and Appeal at 13-14). However, the requests for hearing cited by Mr. Knapp are included in Mr. Knapp's answers to the Complaint, the Amended Complaint, and the Second Amended Complaint,<sup>26</sup> and the Judicial Officer has held that a request for hearing in a complaint or an answer is not the same as a motion for hearing referred to in 7 C.F.R. § 1.137(a).<sup>27</sup> Nonetheless, I conclude the Administrator did not have an absolute right to amend the Second Amended Complaint as Mr. Knapp filed a motion to continue the hearing on February 12, 2010, long before the Administrator filed the Motion to Correct Second Amended Complaint. Therefore, I reject the Administrator's contention that the Chief ALJ erroneously denied the Administrator's May 18, 2011, Motion to Correct Second Amended Complaint.

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<sup>26</sup>See Answer of Bodie S. Knapp Request for Hearing at 7, filed September 11, 2009; Answer of Bodie S. Knapp to Complainant's Amended Complaint Hearing Requested at 9, filed March 17, 2010; and Respondent's Answer to Complainant's Second Amended Complaint at 15, filed December 8, 2010.

<sup>27</sup>*In re Paul L. Meacham* (Ruling on Certified Question), 47 Agric. Dec. 1708 (1988).

Sixth, the Administrator contends the Chief ALJ erroneously permitted Mr. Knapp to deny facts that he had agreed to in a written stipulation (Administrator's Appeal Pet. at 33 ¶ IIG).

Mr. Knapp stipulated to the facts in paragraphs 7d-7f and 7l-7dd of the Second Amended Complaint (Stipulation as to Witnesses and Exhibits at 2 ¶ D, filed June 15, 2011; Respondent Knapp's Request for Verbatim Recording and Clarification of Stipulation, filed June 17, 2011). I find nothing in the Chief ALJ's Decision and Order indicating that the Chief ALJ treated the stipulated facts as disputed. To the contrary, the Chief ALJ specifically referenced Mr. Knapp's stipulation, as follows:

Respondent denies certain of the allegations and takes the position that the other transactions, the greatest number of which were the subject of a stipulation, fall beyond the parameters of regulated conduct.

Chief ALJ's Decision and Order at 7 (footnote omitted). Therefore, I reject the Administrator's contention that the Chief ALJ erroneously permitted Mr. Knapp to deny facts to which he had previously stipulated.

Seventh, the Administrator contends the Chief ALJ erroneously made Equal Access to Justice Act rulings (Administrator's Appeal Pet. at 33 ¶ IIH).

The Chief ALJ concluded that the award of attorney fees and other expenses to Mr. Knapp under the Equal Access to Justice Act (5 U.S.C. § 504) is warranted.<sup>28</sup> This

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<sup>28</sup>Chief ALJ's Decision and Order at 17, 22.

proceeding is administrative disciplinary proceeding instituted by the Administrator under the Animal Welfare Act and the Regulations. At the time the Chief ALJ determined that an award of attorney fees and other expenses was warranted, Mr. Knapp had not applied for attorney fees and other expenses in accordance the Equal Access to Justice Act and the EAJA Rules of Practice and there had been no final disposition of this proceeding.<sup>29</sup> Therefore, I conclude the Chief ALJ's determination that the award of attorney fees and other expenses to Mr. Knapp under the Equal Access to Justice Act is warranted, was premature, and I do not adopt the Chief ALJ's determination regarding the award of attorney fees and other expenses.

### **Mr. Knapp's Response and Appeal Petition**

Mr. Knapp raises three issues in his Response and Appeal Petition which have not been addressed in this Decision and Order, *supra*. First, Mr. Knapp contends the Chief ALJ erroneously concluded that Mr. Knapp's sales of animals through auctions, where the intended end use of the animals is unknown, violated the Animal Welfare Act and the Regulations (Mr. Knapp's Response and Appeal Pet. at 15-17 ¶¶ 11-12).

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<sup>29</sup>The Equal Access to Justice Act and the EAJA Rules of Practice provide that a party may only request attorney fees and other expenses within 30 days after final disposition of a proceeding (5 U.S.C. § 504(a)(2); 7 C.F.R. § 1.193). *See also In re Craig Perry* (Second Remand Order), \_\_ Agric. Dec. \_\_, slip op. at 4-5 (Feb. 22, 2013); *In re Bodie S. Knapp* (Ruling Granting the Administrator's Mot. to Strike Mr. Knapp's Pet. for Attorney Fees and Other Expenses), \_\_ Agric. Dec. \_\_, slip op. at 2-3 (Jan. 31, 2012); *In re Asakawa Farms*, 50 Agric. Dec. 1144, 1164 (1991), *dismissed*, No. CV-F-91-686-OWW (E.D. Cal. Sept. 28, 1993).

The Chief ALJ rejected Mr. Knapp's argument that his sales of, or offers to sell, one kinkajou on July 12, 2008, one camel on September 27, 2008, one guanaco on April 10, 2009, three camels on April 10, 2010, four guanaco on July 10, 2010, and two camels on September 25, 2010, to or at Lolli Brothers Livestock Market, Inc., were not violations of the Animal Welfare Act and the Regulations because the intended end use of the animals is unknown. I conclude the Chief ALJ correctly inferred, based on the value of the animals and the relative rarity of these animals, that these animals sold or offered for sale by Mr. Knapp to or at Lolli Brothers Livestock Market, Inc., were used, or intended to be used, for a regulated purpose.

Second, Mr. Knapp contends the Administrator did not allege that Mr. Knapp sold two kinkajou on July 12, 2008; therefore, the Chief ALJ's conclusion that Mr. Knapp sold two kinkajou on July 12, 2008, in violation of the Animal Welfare Act and the Regulations, is error (Mr. Knapp's Response and Appeal Pet. at 16 ¶ 11).

The Administrator alleged that Mr. Knapp sold two kinkajou on July 12, 2008, as follows:

- o. July 12, 2008. Respondent offered for sale, delivered for transportation, transported, sold, or negotiated the sale of 10 animals (one alpaca, two kinkajou, one aoudad, three ibex, and three Pygmy goats), to or at Lolli Brothers Livestock Market, Inc., Macon, Missouri.

Second Amended Compl. at 6 ¶ 7o (footnotes omitted). Moreover, the record supports a finding that Mr. Knapp offered two kinkajou for sale to or at Lolli Brothers Livestock Market,

Inc., in Macon, Missouri, on July 12, 2008 (CX 29 at 1). Therefore, I reject Mr. Knapp's contention that the Chief ALJ erroneously concluded that Mr. Knapp sold two kinkajou on July 12, 2008, in violation of the Animal Welfare Act and the Regulations.

Third, Mr. Knapp, relying on the definition of the term "animal" in 7 U.S.C. § 2132(g), contends he is exempt from the Animal Welfare Act licensing requirements because he breeds and sells species of animals other than dogs, as follows:

When the Act includes dogs as a category that are to be considered animals regardless of their purpose for breeding, it means that other creatures are not to be so considered. And that means that since all of the creatures Bodie Knapp transported were those he actually bred at his breeding facility, or used in his breeding program, they were not animals under the Act.

Mr. Knapp's Response and Appeal Pet. at 18 ¶ 12.

The Animal Welfare Act specifically authorizes the Secretary of Agriculture to issue Animal Welfare Act licenses to breeders of animals other than dogs<sup>30</sup> and the Regulations specifically provide for issuance of Class "A" licenses to animal breeders.<sup>31</sup> The term "animal," as defined in the Animal Welfare Act, includes any warm-blooded animal, with certain species-specific exclusions and use-specific exclusions.<sup>32</sup> The definition of the term "animal" does not exclude warm-blooded animals used for breeding and the fact that the

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<sup>30</sup>7 U.S.C. § 2133.

<sup>31</sup>9 C.F.R. §§ 1.1 (*Class "A" licensee*); 2.6(b)(1).

<sup>32</sup>7 U.S.C. § 2132(g).

definition of the term “animal” specifically provides that the term “animal” means all dogs, including dogs used for hunting, security, and breeding, does not mean that other warm-blooded animals used for hunting, security, and breeding are not “animals” as that term is defined in the Animal Welfare Act. Therefore, I reject Mr. Knapp’s interpretation of the definition of the term “animal” in 7 U.S.C. § 2132(g).

Based upon the record before me, the following Findings of Fact and Conclusions of Law are entered.

#### **Findings of Fact**

1. Mr. Knapp is an individual residing in the State of Texas.
2. Mr. Knapp has a mailing address in Beesville, Texas.
3. At times, Mr. Knapp has done business as “The Wild Side” and “Wayne’s World Safari.”
4. Prior to September 10, 2005, Mr. Knapp was licensed under the Animal Welfare Act as an “exhibitor,” as that term is defined in the Animal Welfare Act and the Regulations, and held Animal Welfare Act license number 74-C-0533.
5. The Administrator has previously instituted disciplinary administrative proceedings against Mr. Knapp for violations of the Animal Welfare Act and the Regulations.
6. In *In re Bodie S. Knapp*, 64 Agric. Dec. 253 (2005), the Judicial Office:
  - (a) found that Mr. Knapp committed 84 willful violations of the Animal Welfare Act and the

Regulations during the period March 13, 2002, through March 13, 2004; (b) ordered Mr. Knapp to cease and desist from violating the Animal Welfare Act and the Regulations; and (c) revoked Mr. Knapp's Animal Welfare Act license (Animal Welfare Act license number 74-C-0533).

7. In *In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668 (2005), the Judicial Officer denied Mr. Knapp's motion for reconsideration of *In re Bodie S. Knapp*, 64 Agric. Dec. 253 (2005).

8. In *In re Coastal Bend Zoological Ass'n.*, 65 Agric. Dec. 993 (2006), ALJ Palmer: (a) found that Mr. Knapp violated the Animal Welfare Act and the Regulations on December 11, 2003, and December 17, 2003; (b) ordered Mr. Knapp to cease and desist from violating the Animal Welfare Act and the Regulations; and (c) assessed Mr. Knapp a \$5,000 civil penalty.

9. Mr. Knapp has not held an Animal Welfare Act license since September 10, 2005, the date the order in *In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668 (2005), revoking Mr. Knapp's Animal Welfare Act license became effective.

10. In November 2005, Mr. Knapp sold one camel to Kimberly G. Finley, in New Caney, Texas.

11. On September 10, 2006, Mr. Knapp sold two lemurs to the Texas Zoo, in Victoria, Texas.

12. On September 10, 2006, Mr. Knapp bought two zebras from the Texas Zoo, in Victoria, Texas.
13. On October 13, 2006, Mr. Knapp bought two animals (one eland and one Pere David) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.
14. On October 27, 2006, Mr. Knapp sold one blackbuck to or at Huntsville Exotic Sales, Inc., Huntsville, Texas.
15. On May 2, 2006, Mr. Knapp bought two warthogs from Buddy Jordan, NBJ Zoological Park, Spring Branch, Texas.
16. In February 2006, Mr. Knapp sold four addax to Victor E. Garrett, d/b/a Arbuckle Wilderness, Davis, Oklahoma.
17. On April 12, 2008, Mr. Knapp bought 27 animals (1 cavy, 1 camel, and 25 miniature donkeys) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.
18. On May 16, 2008, Mr. Knapp bought two water buffalo from Lupa Game Farm, Inc., Ludlow, Massachusetts.
19. On July 12, 2008, Mr. Knapp sold four animals (one alpaca, two kinkajou, and one aoudad) to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.
20. On July 12, 2008, Mr. Knapp bought 18 animals (one wallaroo, one squirrel monkey, three ferrets, seven dwarf hamsters, five camels, and one buffalo) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

21. On September 27, 2008, Mr. Knapp sold five animals (one camel, two zebras, one wildebeest, and one addax) to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

22. On September 27, 2008, Mr. Knapp bought 46 animals (1 alpaca, 6 camels, 3 zebras, 1 addax, 23 gerbils, 8 spiny mice, 1 wallaroo, 1 coatimundi, and 2 buffalo) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

23. On April 10, 2009, Mr. Knapp sold eight animals (three buffalo, one guanaco, one addax, and three nilgai) to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

24. On April 10, 2009, Mr. Knapp bought 32 animals (11 hedgehogs, 4 chinchilla, 3 rabbits, 1 Netherland dwarf, 4 alpaca, 2 camels, 3 zebras, and 4 wildebeest) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

25. On July 11, 2009, Mr. Knapp sold four chinchilla to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

26. On July 11, 2009, Mr. Knapp bought 11 animals (one chinchilla, one dingo, five camels, one aoudad, and three oryx) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

27. On September 26, 2009, Mr. Knapp bought 21 animals (eight rabbits, six alpacas, three camels, one zebra, two wallaroos, and one kudu) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

28. On April 10, 2010, Mr. Knapp sold seven animals (three buffalo, three camels, and one Axis deer) to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

29. On April 10, 2010, Mr. Knapp bought eight animals (three alpaca, three camels, one kangaroo, and one Bennet wallaby) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

30. On July 10, 2010, Mr. Knapp sold five animals (four guanaco and one buffalo) to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

31. On July 10, 2010, Mr. Knapp bought 14 animals (two flying squirrels, six alpacas, one camel, three zebras, and two yak) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

32. On September 25, 2010, Mr. Knapp sold two camels to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

33. On September 25, 2010, Mr. Knapp bought eight animals (four camels, one zebra, and three oryx) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri.

### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.

2. In November 2005, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, sold one camel to Kimberly G. Finley, in New Caney, Texas, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

3. On September 10, 2006, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, sold two lemurs to the Texas Zoo, in Victoria, Texas, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

4. On September 10, 2006, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought two zebras from the Texas Zoo, in Victoria, Texas, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

5. On October 13, 2006, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought two animals (one eland and one Pere David) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

6. On October 27, 2006, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, sold one blackbuck to or at Huntsville

Exotic Sales, Inc., Huntsville, Texas, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

7. On May 2, 2006, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought two warthogs from Buddy Jordan, NBJ Zoological Park, Spring Branch, Texas, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

8. In February 2006, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, sold four addax to Victor E. Garrett, d/b/a Arbuckle Wilderness, Davis, Oklahoma, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

9. On April 12, 2008, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought 27 animals (1 cavy, 1 camel, and 25 miniature donkeys) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

10. On May 16, 2008, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought two water buffalo from Lupa Game Farm, Inc., Ludlow, Massachusetts, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

11. On July 12, 2008, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, sold four animals (one alpaca, two kinkajou, and one aoudad) to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

12. On July 12, 2008, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought 18 animals (one wallaroo, one squirrel monkey, three ferrets, seven dwarf hamsters, five camels, and one buffalo) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

13. On September 27, 2008, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, sold five animals (one camel, two zebras, one wildebeest, and one addax) to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

14. On September 27, 2008, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought 46 animals (1 alpaca, 6 camels, 3 zebras, 1 addax, 23 gerbils, 8 spiny mice, 1 wallaroo, 1 coatimundi, and 2 buffalo) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal

Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

15. On April 10, 2009, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, sold eight animals (three buffalo, one guanaco, one addax, and three nilgai) to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

16. On April 10, 2009, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought 32 animals (11 hedgehogs, 4 chinchilla, 3 rabbits, 1 Netherland dwarf, 4 alpaca, 2 camels, 3 zebras, and 4 wildebeest) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

17. On July 11, 2009, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, sold four chinchilla to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

18. On July 11, 2009, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought 11 animals (one chinchilla, one dingo,

five camels, one aoudad, and three oryx) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

19. On September 26, 2009, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought 21 animals (eight rabbits, six alpacas, three camels, one zebra, two wallaroos, and one kudu) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

20. On April 10, 2010, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, sold seven animals (three buffalo, three camels, and one Axis deer) to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

21. On April 10, 2010, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought eight animals (three alpaca, three camels, one kangaroo, and one Bennet wallaby) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

22. On July 10, 2010, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, sold five animals (four guanaco and one buffalo) to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

23. On July 10, 2010, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought 14 animals (two flying squirrels, six alpacas, one camel, three zebras, and two yak) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

24. On September 25, 2010, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, sold two camels to or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

25. On September 25, 2010, Mr. Knapp, operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, bought eight animals (four camels, one zebra, and three oryx) from or at Lolli Brothers Livestock Market, Inc., in Macon, Missouri, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).

26. Each animal which Mr. Knapp purchased or sold without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c), constitutes a knowingly failure by Mr. Knapp to obey cease and desist orders entered against him by the Secretary of Agriculture in *In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668 (2005), and *In re Coastal Bend Zoological Ass'n.*, 65 Agric. Dec. 993 (2006).

### **Mr. Knapp's Request for Oral Argument**

Mr. Knapp's request for oral argument (Mr. Knapp's Response and Appeal Pet. at 20), which the Judicial Officer may grant, refuse, or limit,<sup>30</sup> is refused because the issues are not complex and oral argument would serve no useful purpose.

### **Criminal Prosecution of Mr. Knapp**

This proceeding is the third administrative proceeding brought under the Animal Welfare Act against Mr. Knapp. As evidenced in this proceeding, the orders issued by the Secretary of Agriculture against Mr. Knapp in *In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668 (2005), and *In re Coastal Bend Zoological Ass'n.*, 65 Agric. Dec. 993 (2006), have not deterred Mr. Knapp from continuing to violate the Animal Welfare Act and the Regulations. If Mr. Knapp knowingly violates the Animal Welfare Act or the

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<sup>30</sup>7 C.F.R. § 1.145(d).

Regulations in the future, I would urge the Administrator to consider referring the matter for criminal prosecution in accordance with 7 U.S.C. § 2149(d).

For the foregoing reasons, the following Order is issued.

### ORDER

1. Bodie S. Knapp, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and, in particular, shall cease and desist from operating as a dealer without an Animal Welfare Act license.

Paragraph 1 of this Order shall become effective upon service of this Order on Bodie S. Knapp.

2. Bodie S. Knapp is assessed a \$395,900 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, Regulatory, and Food Safety Division  
1400 Independence Avenue, SW  
Room 2343-South Building  
Washington, DC 20250-1417

Payment of the civil penalty shall be sent to, and received by, Ms. Carroll within 60 days after service of this Order on Bodie S. Knapp. Bodie S. Knapp shall state on the certified check or money order that payment is in reference to AWA Docket No. 09-0175.

## RIGHT TO JUDICIAL REVIEW

Bodie S. Knapp has the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. § 2341-2350. Bodie S. Knapp must seek judicial review within 60 days after entry of the Order in this Decision and Order.<sup>31</sup> The date of entry of the Order in this Decision and Order is June 3, 2013.

Done at Washington, DC

June 3, 2013

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William G. Jenson  
Judicial Officer

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<sup>31</sup>7 U.S.C. § 2149(c).