

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
SAVAGE KINGDOM, INC., a Florida)	AWA Docket No. 02-0003
corporation; RARE FELINE BREEDING)	
CENTER, INC., a Florida corporation; and)	
ROBERT E. BAUDY, an individual,)	
)	
Respondents)	Decision and Order

Decision Summary

[1] In this Decision, I determine that the Respondents, on July 31, 2001, failed to handle the adult male tiger Tijik (Ti)¹ in accordance with the requirements of the Animal Welfare Act regulation then found at 9 C.F.R. § 2.131(a)(1). Numerous additional violations of the Animal Welfare Act regulations and standards were also proved at the hearing. I conclude that Animal Welfare Act license revocation and the related remedies that APHIS requested are necessary, and that any lesser remedies would not be adequate. Consequently, I order Respondent Savage Kingdom, Inc.'s Animal Welfare Act license revoked, and I order that Respondent Rare Feline Breeding Center, Inc. and Respondent Robert E. Baudy not be licensed during the revocation. Revocation under the Animal Welfare Act is a permanent remedy.

¹ Ti, full name "Tijick", was a 318-pound male tiger who measured 72 inches from nose to rump, and 35 inches estimated height at the fore-shoulder. CX 13.

The Complaint

[2] The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (APHIS). APHIS initiated this case under the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq.* (the AWA or the Act); the regulations, 9 C.F.R. § 1.1 *et seq.* (the Regulations); and the standards, 9 C.F.R. § 3.1 *et seq.* (the Standards). APHIS seeks license revocation and related remedies from three “persons”, Respondent Savage Kingdom, Inc. (Savage Kingdom), Respondent Rare Feline Breeding Center, Inc. (Rare Feline Breeding), and Respondent Robert E. Baudy (Mr. Baudy). “The Respondents” refers to all three Respondents (Savage Kingdom, Rare Feline Breeding, and Mr. Baudy), collectively.

[3] Specifically, APHIS seeks (a) an order that the Respondents cease and desist from violating the AWA and the Regulations and Standards; (b) an order revoking Savage Kingdom’s AWA license, number 58-A-0106; and (c) an order pursuant to 9 C.F.R. § 2.9 that Mr. Baudy and Rare Feline Breeding “will not be licensed within the period during which the order of revocation is in effect” based on the finding that Mr. Baudy was an officer and agent of Savage Kingdom and that Rare Feline Breeding was an agent of Savage Kingdom, and that both Mr. Baudy and Rare Feline Breeding were responsible for or participated in the violations upon which the license revocation is based.

Introduction

[4] Savage Kingdom, Inc. is a Florida domestic stock corporation that breeds exotic and wild felines and sells them to institutions, zoos, and circuses.² Savage Kingdom holds Animal

² Tr. 1043:23, 1047:18, CX 2.

Welfare Act license number 58-A-0106, issued to “SAVAGE KINGDOM, INC.”³ Rare Feline Breeding Center, Inc. is a Florida nonprofit corporation that breeds exotic and wild felines and sells them to institutions, zoos and circuses.⁴ ⁵ Savage Kingdom uses the name Rare Feline Breeding on its own correspondence, invoices and forms.⁶ Robert E. Baudy is an individual who breeds exotic and wild felines and sells them to institutions, zoos and circuses.⁷ Mr. Baudy was the President and “owner” of both Savage Kingdom and Rare Feline Breeding.⁸

[5] When APHIS inspected the Respondents’ compound on Tuesday, July 24, 2001, the Respondents’ inventory included approximately 24 tigers, 5 leopards, 7 Florida panthers, and 3 bobcats. CX 4. The APHIS Veterinary Medical Officer (“VMO”) inspecting the Respondents’ compound, Tom Callahan, D.V.M., noted inadequacies on July 24, 2001, especially regarding repairs (general deterioration of the wood throughout the facility, rotting, causing structural

³ CX 2, 12.

⁴ Tr. 1043:23, 1047:18, CX 2.

⁵ Tr. 788:25 - 790:16 (Mr. Brandolini) (actual business of Rare Feline Breeding is to breed animals).

⁶ CX 10a, 10b, 29, 30, 32, Tr. 982:10-21 (Mr. Brandolini was the general manager of Savage Kingdom and was the general manager of Rare Feline Breeding; both used the same tigers and the same property); Tr.1395:18-25, 1396:14-17, 1397:3-8.

⁷ Tr. 1043:11 - 1044:7 (since 1977, Mr. Baudy has been engaged exclusively in breeding); 1050:20 - 1051:4 (“leasing” tigers to zoos for exhibition); 1114:19 - 1115:6 (sales of animals to circus performers).

⁸ CX 2, 12, 21; Tr. 1219:11 - 1221:3; 982:22 - 985:15 (Mr. Brandolini) (Mr. Baudy is the “owner” of Savage Kingdom and Rare Feline Breeding); 1039:8 - 1040:6; 1043:11 - 1044:7; 1036:2-19 (Mr. Baudy owns the land where Savage Kingdom and Rare Feline Breeding do business); 982:6-21 (Mr. Brandolini) (both Savage Kingdom and Rare Feline Breeding use the same property and the same tigers).

strength problems), housekeeping (cleaning), some pest control, and the perimeter fence. Tr. 928, 1584, 1598; CX 4, CX 5.

[6] The Respondents' volunteer general manager, Paul D. Brandolini ("Mr. Brandolini"), accompanied Dr. Callahan on July 24, 2001, taking notes on things Dr. Callahan said needed attention. Tr. 928, CX 6. Repairing and replacing wood and wire were constant at the Respondents' compound (Florida's climate and the urinating by the cats took their toll), and Mr. Brandolini took notes also regarding needed repairs that were not mentioned by Dr. Callahan.

[7] In 1995 Mr. Brandolini had begun working as a volunteer at the Respondents' compound, but was soon being paid as an independent contractor. In late 1996 Mr. Brandolini became the Respondents' general manager. In approximately January 2000 when Mr. Brandolini began his full-time job as a field appraiser for the Property Appraiser's Office, Sumter County, Florida, Mr. Brandolini was still general manager for the Respondents and still regarded himself as an independent contractor but he was no longer being paid (a volunteer). Tr. 981-86, 1003-05.

[8] Dr. Callahan had not specified a deficiency in the guillotine doors within Tijik's enclosure on July 24, 2001. Tr. 1599. Rather, Mr. Brandolini specified the guillotine doors within Tijik's enclosure on his own list. Within Ti's enclosure, the guillotine doors connected Ti's paddock (exercise yard) to each of four dens (also called "lock-downs"). That repair job, fixing the guillotine doors within Tijik's enclosure on July 31, 2001, led to disaster.

[9] Mr. Brandolini had noticed from outside Ti's enclosure that the guillotine doors from Ti's paddock (exercise yard) into Ti's dens had been gnawed from the bottom. Tr. 934, 936-37. Neither Dr. Callahan nor Mr. Brandolini had been inside any of the four dens. Neither of them knew the condition inside any of the four dens. Tr. 937, 1583.

[10] Mr. Brandolini had prepared a work plan from his notes, and on Thursday, July 26, 2001, Mr. Brandolini got together three others who did work at the Respondents' compound and gave each of them a list of things that needed to be repaired and talked with them about the list. Tr. 96, 103, 934-35; CX 7 (the list), CX 6.

[11] The three others were Mr. Vincent Lowe, a volunteer handyman worker at the compound ("Mr. Lowe"); Ms. Lesa Lucas, a teammate volunteer worker of Mr. Lowe's ("Ms. Lucas"), and Ms. Candace Amelia "Candy" Watson (Ms. Watson), a paid worker at the compound who fed and watered the cats and cleaned their cages. Tr. 935.

[12] Mr. Brandolini told the three that they should not do anything to Ti's cage; that he, Mr. Brandolini, would not be at the compound that Saturday (July 28, 2001); that they should wait until the next Saturday (August 4) when he and other volunteers would be there; that he would then "put Ti up" (put Ti in a transfer cage), and then they would work on Ti's enclosure. Tr. 933-935. CX 6. Mr. Brandolini "didn't go into details on which doors or anything, because [he] was going to be there". Tr. 936.

[13] The next thing Mr. Brandolini knew, he got a phone call that Mr. Lowe was dead. CX 6.

[14] Mr. Lowe was killed by Ti on July 31, 2001. Mr. Baudy realized that neither he nor anyone else could reach Mr. Lowe where he lay in Den 2 without being vulnerable to attack from Ti, and he did not know whether Ti could get out of his enclosure through the Den 1 walk-in door that Ms. Lucas had left open, so Mr. Baudy destroyed Ti. As Mr. Baudy put it, I lost two friends that day. I conclude that both deaths were caused by what Mr. Lowe did and the Respondents' failure to stop him.

[15] The Respondents' duties under the Animal Welfare Act, to handle Ti properly and to supervise Mr. Lowe adequately, were so seriously breached on July 31, 2001, that nothing less than license revocation and related remedies suffice.

Procedural History

[16] APHIS filed the complaint on October 3, 2001. The Respondents timely filed their answer and requested an hearing. The case was reassigned to me, U.S. Administrative Law Judge Jill S. Clifton, on October 16, 2002, in view of the pending retirement of U.S.

Administrative Law Judge Dorothea A. Baker.

[17] The hearing was held in Orlando, Florida during nine days in 2003 (January 15-17, May 28-30, June 30, and July 1-2, 2003). APHIS was represented by Colleen A. Carroll, Esq. and Bernadette R. Juarez, Esq., both with the Office of the General Counsel, Marketing Division, United States Department of Agriculture, Washington, D.C. 20250-1417. The Respondents were represented by Charles R. Mayer, Esq., P.O. Box 267, Highland City, Florida 33846. The transcript is cited as "Tr." The proposed transcript corrections filed by Complainant on February 2, 2004, are accepted. Additional transcript corrections, on my own motion, are reflected in quotations from the transcript found in this Decision.

[18] APHIS called 13 witnesses: Ms. Charmain M. Zordan (Tr. 24-64, 451-514, 1691-1700); Dr. Sam Gulino (M.D.) (Tr. 65-77); Ms. Lesa Michelle Lucas (Tr. 79-209, 370-449); Ms. Victoria Elston (Tr. 210-240); Ms. Mary Christine ("Christine") Lowe (Tr. 241-272); Mr. John Raymond Lehnhardt (Tr. 278-342); Dr. John Victor Mounger (D.V.M.) (Tr. 342-365); Baron Julius von Uhl (Tr. 525-558); Dr. Robert Brandes (D.V.M.) (Tr. 558-629); Dr. Elizabeth Goldentyer (D.V.M.) (Tr. 646-680); Dr. Ronald Zaidlicz (D.V.M.) (Tr. 718-765); Dr. Thomas

Callahan (D.V.M.) (Tr. 1581-1609, 1655-1682); and Lt. Richard Kenneth Brown (Tr. 1611-1651).

[19] The Respondents called two witnesses: Mr. Paul D. Brandolini (Tr. 770-863, 872-1015); and Mr. Robert E. Baudy (Tr. 1015-1070, 1098-1175, 1218-1351, 1371-1402, 1411-1489, 1498-1545, 1702-1705).

[20] The following Complainant's (APHIS's) exhibits were admitted into evidence: CX 1-CX 2; CX 3a-d; CX 4-CX 9 (*see* Tr. 1701-02); CX 10a-b (both color and black-and-white, Tr. 1558); CX 11 (both color and black-and-white, Tr. 1558, Tr. 1566-67); CX 12-CX 14; CX 15a-k; CX 16a-t; CX 17a-e; CX 18a-g; CX 19; CX 20 (*but see* CX 38, which is more complete, Tr. 1568, 1701); CX 21; CX 22A (the notes dated January 4, 1998; *see* Tr. 347-49); CX 23a-b (*but see* Tr. 682-87 regarding CX 23b depicting Ti on the day that he died but after changes were probably made to the position of the table or to Ti's position); CX 24; CX 25 (admitted in part, *see* Tr. 1552-60); CX 26 (admitted in part, *see* Tr. 1552-60); CX 27-CX 32; CX 33 (admitted in part, including first and last pages, and including pages 32-36, page 78 line 20 through page 79 line 15, and page 18 line 12 through page 21 line 8, Tr. 1552-60); CX 34 (admitted in part, the only thing I excluded is that letter about the insurance, *see* Tr. 1552-60); CX 35 (admitted in part, including first and last pages and other pages covered in testimony, Tr. 1552-60); CX 36a-b (CX 36b is partially redacted, *see* Tr. 1562); CX 37; CX 37A (Tr. 1565), CX 37B (Tr. 1564); CX 38 (more complete than CX 20, Tr. 1567-73); CX 39; and CX 40.

[21] The following Respondents' exhibits were admitted into evidence: RX 2 through RX 8. Tr. 977-79. (RX-1, a publication by Safe-Capture International, Inc.; and RX 9, a book authored by Mr. Baudy, were not admitted into evidence but remain part of the record.)

[22] The Transcript is contained in nine volumes,

Volumes I - IX (January 15-17, May 28-30, June 30, and July 1-2, 2003):

Volume	2003	Pages	rec'd by Hearing Clerk
I	January 15	1-274	February 7, 2003
II	January 16	275-521	August 13, 2003
III	January 17	522-692	August 13, 2003
IV	May 28	693-865	June 16, 2003
V	May 29	866-1080	June 16, 2003
VI	May 30	1081-1203	June 16, 2003
VII	June 30	1204-1353	July 18, 2003
VIII	July 1	1354-1492	July 18, 2003
IX	July 2	1493-1707	July 18, 2003.

[23] Both parties submitted briefs. APHIS's opening brief was filed February 2, 2004. The Respondents' response ("Reply Brief") was filed August 3, 2004. APHIS's Reply Brief was filed November 5, 2004.

[24] APHIS's Notice re: Animal Death was filed on January 27, 2006. The contents of this Notice I have disregarded for purposes of this Decision. I regard this Notice as APHIS's counsel's encouragement to me to issue a Decision. I apologize to the parties that this Decision is about a year-and-a-half overdue.

Discussion

[25] APHIS argued that the deaths of Vincent Lowe and Ti on July 31, 2001 were the inevitable result of the Respondents' actions. Opening brief at p. 6.

[26] This Discussion begins with the Respondents' most serious failures to comply with the Regulations. *See* paragraph [1].

HANDLING REGULATIONS

[27] **The Respondents' Failures on July 31, 2001, Caused the Tiger Ti to Suffer Trauma, Behavioral Stress, Physical Harm, and Unnecessary Discomfort. The Respondents were Required Under the Regulations to Handle Ti as Carefully as Possible in a Manner that Did Not Cause Ti Trauma, Behavioral Stress, Physical Harm, or Unnecessary Discomfort. 9 C.F.R. § 2.131(a)(1).**

[28] With a crowbar, the Respondents' volunteer Mr. Lowe struck in the vicinity of Ti's head at the wire and wood barriers separating him from Ti, in an attempt to intimidate Ti and get him to back off. Mr. Lowe thereby caused trauma, behavioral stress, physical harm, and unnecessary discomfort to Ti, in violation of 9 C.F.R. § 2.131(a)(1).

[29] Mr. Lowe was hard working, self-sufficient, and a get-the-job-done type of man, but he was ill-prepared for, and not properly suited for, the task he undertook, accompanied by Ms. Lucas, on the morning of July 31, 2001. This was the task of making repairs within Ti's enclosure while Ti was still within his enclosure. Mr. Lowe made mistake after mistake. For the purposes of the Animal Welfare Act, what Mr. Lowe did wrong, the Respondents are responsible for. He was their volunteer. The Respondents left him unsupervised.

[30] Mr. Baudy authorized and instructed Mr. Lowe, accompanied by Ms. Lucas, to make the repairs, without providing adequate supervision.⁹ The Respondents had made no meaningful

⁹ Tr. 1517-1518 (Mr. Baudy testified, "... the cat was supposed to be penned up. About an hour later (around noon) I went to smoke a cigarette outside my apartment, and from a distance I could see the tiger in the lock down (den 3 or 4) on the south side, but from 100 yards. And so I said well he did what he could, and then I went back to my paperwork.") *See also* Tr. 391-392, 1140, 1520-1521.

safety inspection of the interior of the enclosures before Mr. Lowe, accompanied by Ms. Lucas, commenced working.¹⁰

[31] John Raymond Lehnhardt, an impressive expert regarding big cats, testified that a person should never be in a situation repairing the very barrier that separates and protects him from a tiger.¹¹ The Respondents did not isolate Ti from the enclosure during the repairs, but allowed, permitted, and acquiesced in Mr. Lowe making repairs as he did. Mr. Lowe placed Ti in Den 3, then repaired Den 1,¹² and commenced repairing Den 2.

[32] The Respondents, by letting Mr. Lowe go it alone, failed to handle Ti properly, violating 9 C.F.R. § 2.131(a)(1). *See* paragraph [27].

[33] Lt. Brown's Report of Investigation (CX 37A) provided the most reliable evidence of what Mr. Baudy reported on the day Mr. Lowe was killed. During Lt. Brown's interview of Mr. Baudy during the afternoon of July 31, 2001, Lt. Brown noted what Mr. Baudy said, and Lt. Brown testified that quotation marks in his report show an exact quote of what Mr. Baudy said. Lt. Brown unequivocally was sure that the portion in quotation marks is what Mr. Baudy said to him. Tr. 1641-42. Lt. Brown's Report includes:

Mr. Robert Baudy. Mr. Baudy advised that he was at his apartment when Lesa (Mrs. Lucas) came running through the door shouting "Call 911, get your gun, Ti (the tiger) just ripped out Vince's throat!" Baudy grabbed his H&K, model HK300, .22 WMR, serial #016672 rifle and climbed into the white pickup truck

¹⁰ Tr. 119:23 - 120:3, 938:2-13; 1397:14 - 1398:25 ("I did not check the cage"); 1514:14 - 1515:8.

¹¹ Tr. 295:2-14, 301:22 - 302:7 (Lehnhardt).

¹² Tr. 121:13-16; 122:17-24.

that Lucas had driven from the attack site. Lucas drove them both back to the cage. Baudy found the tiger inside the exercise paddock. Baudy said that because he was concerned that the tiger might try and attack him and because he could not get to Mr. Lowe, the victim, without risking his own life, he shot the tiger twice, once in the neck and once in the head. He then checked the tiger by touching it with a pipe he had extended through the cage wire. When he was satisfied the tiger was dead, he went to check on Mr. Lowe to see if he had survived the attack. Mr. Baudy advised that it was obvious to him that Mr. Lowe had not survived. Mr. Baudy also stated that he did not understand why the tiger was in the 3rd lock-down, because he had told them “to put the tiger in the 4th one.” Mr. Baudy completed a written statement.

CX 37A, pp. 1-2.

[34] Even before Ti killed Mr. Lowe, and Mr. Baudy shortly thereafter killed Ti, Ti had suffered trauma, behavioral stress, physical harm, and unnecessary discomfort while Ti was confined in Den 3 and Mr. Lowe was working in Den 2. Mistake #1: Mr. Lowe should have waited for Mr. Brandolini, who was qualified to handle Ti. Mr. Brandolini was going to use a transfer cage to remove Ti from his enclosure while work was being done within Ti’s enclosure. The Respondents permitted Mr. Lowe to proceed on Tuesday, July 31, instead of waiting four more days until Saturday, when Mr. Brandolini would again be at the Respondents’ compound. Mr. Brandolini had said not to proceed without him (and other volunteers, who would have been able to help use the transfer cage).

[35] Mistake #2: The Respondents failed to use a transfer cage, to remove Ti from his enclosure altogether. The Respondents had a transfer cage, which Mr. Brandolini knew how to

use, Mr. Lowe knew how to use, and Mr. Baudy knew how to use. Mistake #3: Mr. Baudy instead told Mr. Lowe to put Ti in Den 4 (within Ti's enclosure, too near the work to be done).

[36] Not only did the Respondents permit Mr. Lowe to proceed, they permitted him to proceed unsupervised. Mr. Lowe had had exposure at the Respondents' compound for less than two months, part-time. He was not trained to handle a tiger and was not expected to handle a tiger. Mr. Lowe had been observed on the Respondents' compound teasing cats including tigers to get them to lunge at him with only a fence between them. Mistake #4: Mr. Lowe was an inappropriate choice of personnel to interact with Ti.

[37] Not only did Mr. Baudy permit Mr. Lowe to proceed, Mr. Baudy returned to his residence on the compound to do paperwork, instead of watching and advising. Mistake #5: After Mr. Baudy instructed Mr. Lowe to put Ti in Den 4, Mr. Lowe was on his own. Mr. Baudy failed to supervise and so was unaware that Mr. Lowe had put Ti in Den 3 instead, closer to the repair work. Mr. Baudy said he did observe from 100 yards away, outside his apartment, when he paused from his paperwork for a smoke break. From that distance he could see that Ti was in Den 4 or Den 3. Tr. 1517-18.

[38] When Mr. Lowe and Ms. Lucas thought that the guillotine door from Den 4 into the exercise paddock was nailed shut, they thought they could not put Ti into Den 4. [That guillotine door was not actually nailed shut, but the rain swollen wood kept it from opening. Mr. Baudy opined it could have been pried open with a crowbar.] Mistake #6: Mr. Lowe (and Ms. Lucas) failed to realize that Ti could have been placed in Den 4 from Den 3. Ti could have been brought into Den 3 from the exercise paddock, and then into Den 4 from Den 3; the connecting door between Den 3 and Den 4 did work. CX 37A. There would then have been one empty den, Den 3, between Ti and Mr. Lowe.

[39] Ti was agitated by Mr. Lowe's presence, noise, and threatening behavior (hammering the wood, shouting, and hitting the den dividers with his crowbar).¹³ Perhaps Mr. Lowe's aggressive behavior aggravated Ti; perhaps the smell of cougars on Mr. Lowe aggravated Ti; perhaps the smell of marijuana on Mr. Lowe aggravated Ti; at any rate, Ti was not at ease in the presence of Mr. Lowe, never had been. (Ti didn't like Mr. Lowe and had stalked him and charged him. Tr. 95-96, 99-100.) Mistake #7: Mr. Lowe refused Ms. Lucas's offers to do things differently; Ms. Lucas was willing to do the work in place of Mr. Lowe, who obviously upset Ti. Ms. Lucas knew how to calm Ti.

[40] Ms. Lucas's description of how Mr. Lowe struck at or near the tiger with a crowbar (even though Ms. Lucas testified that Mr. Lowe did not hit the tiger but only near the tiger), persuades me that Ti suffered trauma, behavioral stress, physical harm, and unnecessary discomfort, even before he was shot to death by Mr. Baudy, as a result of his improper handling by Mr. Lowe.¹⁴ After Ti was dead, Mr. Baudy observed trauma, not from gunshot, on Ti's head.¹⁵ Mr. Baudy also noted blood and hair on the hammer that lay near Mr. Lowe's body. That blood and hair more probably than not were Ti's. The tiger's necropsy (autopsy) report¹⁶ confirms Mr. Baudy's observations.

¹³ Tr. 137:25 - 138:7, 138:15-20, 416:19 - 417:22, 419:5-21, 420:10-20.

¹⁴ Tr. 417:12 - 420:23.

¹⁵ Tr. 1149:20 - 1150:20, 1154:22-24; CX 13, pp. 3 & 5.

¹⁶ CX 13 at p. 3; Tr. 137:25 - 138:7, 138:15-20; 416:19 - 417:22, 419:5-21, 420:10-20.

[41] I find that the Respondents' unsupervised volunteer, Mr. Lowe, struck the tiger with the crowbar (and probably the hammer) and caused trauma and physical harm to the tiger, and behavioral stress and unnecessary discomfort to the tiger, in violation of 9 C.F.R. § 2.131(a)(1).

[42] Mr. Mayer cross examined Ms. Lesa Lucas about her observations while Mr. Vincent Lowe was working in Den 2 on July 31, 2001. The following excerpt is from Tr. 414-36:

Mr. Mayer: And after that you and Vince (Lowe) were in den box two and I guess Vince was attempting to remove the guillotine door frame or unit in den box two, between den box two and the exercise area.

Ms. Lucas: Yes.

Mr. Mayer: I think you testified Ti became upset in some kind of way?

Ms. Lucas: Yes.

Mr. Mayer: You were able to speak to Ti and calm him at least initially?

Ms. Lucas: I went around the outside and called Ti to me and he would come to me and let me pet him. But he was so focused on Vince that I couldn't hold his attention.

Mr. Mayer: Yeah, but you went back into den box two and sat up on the bench?

Ms. Lucas: Yes, I did.

Mr. Mayer: Okay. And Ti was on the bench in den box three?

Ms. Lucas: Yes.

Mr. Mayer: And he was unsettled or Ti was uneasy at that time or was not calm, is that correct?

Ms. Lucas: No, he was calm.

Mr. Mayer: Okay.

Ms. Lucas: With me sitting beside him.

Mr. Mayer: Okay. And you talked to him through the caging material?

Ms. Lucas: Yeah, I usually talked to the cats.

Mr. Mayer: And did you fondle any portion of his fur at that time?

Ms. Lucas: Not from inside two. Only when I was outside. I didn't pet Ti. I don't recall ever petting Ti from two to three.

Mr. Mayer: But you did sit up on the bench on den box two next to den box three?

Ms. Lucas: Yes, I did.

Mr. Mayer: And Ti was on the bench also in den box three?

Ms. Lucas: Yes.

Mr. Mayer: Did you see a hole at that time as you sat there?

Ms. Lucas: No, I did not.

Mr. Mayer: Thereafter, you got off the den box table, true?

Ms. Lucas: Yes.

Mr. Mayer: What happened next?

Ms. Lucas: I got off the table and went to get Vince's crowbar and when I came back he got under the bench and was trying to use the crowbar . . .

Mr. Mayer: Why did you go get the crowbar?

Ms. Lucas: Well, actually we were only in there a few minutes. It happened very fast. We took the cable off, the eye bolt off guillotine door two. And when we raised it it hit the roof, we couldn't get it off because the bench was there. The bottom would not come above the bench. So Vince got under there and was going to try to pull it out the bottom. At that time when he was messing with that I was sitting on the bench with Ti. And then he told me to, when he was trying to lift it and it would not come out. So he told me to get his crowbar and when I did I got

down, went and got his crowbar out of his truck and gave it to him and that's when he got under the bench. And then he started to remove the frame.

Mr. Mayer: And Ti became more restless at that point?

Ms. Lucas: Ti got down off the bench and started pacing the floor again like he was earlier, passing back and forth.

Mr. Mayer: Okay. Restless and upset?

Ms. Lucas: Just very restless. Just stalking Vince. He was stalking back and forth.

Mr. Mayer: And it got to the point where Vince came out from under the front table, correct?

And said nein to Ti and struck at the fencing material, is that correct?

Ms. Lucas: When Vince was on the floor in a crouch position, Ti had already been passing him for a minute or so, pacing back and forth, stalking him. He went under the back bench, Ti did in his cage, where the wire separates the two and three and grabbed the wire at the floor and started to pull it into him, cracking the board attached to the wire. And that's when Vince got up and hit the wire beside Ti saying nein. Look Ti was underneath and that's when Vince hit the wire and said nein to him as Robert instructed to do.

Mr. Mayer: And he hit the wire with the crowbar, is that correct?

Ms. Lucas: Yes, he did.

Mr. Mayer: And that was above or below the bench?

Ms. Lucas: I believe it was below the bench.

Mr. Mayer: Okay.

Ms. Lucas: Where Ti was at.

Mr. Mayer: Okay. And were you able to see that blow?

Ms. Lucas: I was still in the cage. I saw it.

Mr. Mayer: And in fact, the tiger was up against the fence at the time?

Ms. Lucas: He had the fence in his mouth, underneath the bench.

....

Mr. Mayer: But he hit the fence where the tiger was pulling at it, isn't that true?

Ms. Lucas: Beside where he was pulling at it.

Mr. Mayer: And said nein, correct?

Ms. Lucas: Yes.

Mr. Mayer: And did the tiger back off at that point?

Ms. Lucas: Yes.

Mr. Mayer: But came again?

Ms. Lucas: Yes, he did.

Mr. Mayer: And Vince struck it again?

Ms. Lucas: Ti hit the interlocking door. And Vince dropped the wooden door.

Mr. Mayer: Is the interlocking door, when you say interlocking door there is a regular door between two and three and there's also a guillotine door there, is that correct?

Ms. Lucas: Yes.

Mr. Mayer: If you say interlocking door, which do you mean?

Ms. Lucas: The interlocking door. The regular door. A tall, regular door that a human can walk through.

Mr. Mayer: And he struck at the door?

Ms. Lucas: Yes, he did. Ti hit that side of the door. Vince hit our side of the door with the crowbar.

....

Mr. Mayer: Then I think you testified the tiger made another rush at or toward the guillotine door between two and three.

Ms. Lucas: Yes, he did.

Mr. Mayer: And Vince struck again a third time?

Ms. Lucas: Yes, he did, the side of the guillotine door. He didn't hit the wooden door, guillotine door. And when he hit the interlocking door all the wood fell off the top of the door. And there was wire there. But when the tiger hit the interlocking door, he hit the guillotine door, he hit the side of the guillotine door.

Mr. Mayer: The interlocking door had wire on it also, didn't it?

Ms. Lucas: I know the top portion did. I didn't know it did. Because when the wood fell off I thought Ti was coming through and then I saw it had wire on it. The whole door, I don't know if it does. I just know the upper part, probably this much of it. I don't know how much. I'm guessing, maybe, this much fell down, of wood.

[witness demonstrates the size with her hands; Judge says witness is showing roughly two feet by three feet; Mr. Mayer says witness is showing approximately a one-and-a-half foot by two foot area]

Mr. Mayer: After that third strike what specifically happened?

Ms. Lucas: Vince hit the side of the guillotine door telling Ti nein and he went and laid up on the bench. His bench in the back, Ti did.

Mr. Mayer: And where were you at that time?

Ms. Lucas: Still in the cage.

Mr. Mayer: What were you doing at that time?

Ms. Lucas: I was asking Vince to go out and to let me take the guillotine door off because Ti doesn't have a problem with me. And he was pushing me to go out of the cage. And stating that he didn't want me to be in there.

Mr. Mayer: He apparently appreciated some danger.

Ms. Lucas: We knew there was danger.

Mr. Mayer: I'm sorry.

Ms. Lucas: Yes, in precaution I would say.

Mr. Mayer: And he asked you to leave and did you?

Ms. Lucas: Yes, I did.

Mr. Mayer: And what did he do?

Ms. Lucas: I stepped out and pushed the door shut and he went back under the bench.

....

Mr. Mayer: And you closed the door between den box one and two?

Ms. Lucas: Yes, I did.

Mr. Mayer: And did you see what Vince did then?

Ms. Lucas: Yes, I did.

Mr. Mayer: What did he do?

Ms. Lucas: Got back under the bench, continued to take the guillotine track off.

Mr. Mayer: And was it that point that you noticed a hole in the fencing material between den box three and two?

Ms. Lucas: When I stepped out Vince went to go under the bench again. I looked over at Ti to see his temperament, just to check on Ti and that's when I got a quick glimpse of what appeared

to be possibly a hole, maybe this big. That melon sized hole, somewhere in his neck or face area. I only saw it for a quick second.

Mr. Mayer: That is above the bench or below the bench?

Ms. Lucas: Above the bench.

Mr. Mayer: Okay. So it was definitely above and not intersecting the bench?

Ms. Lucas: It's above the bench. Ti's laying on the bench. It's chest high, face high to Ti. So it's above the bench.

Mr. Mayer: But you'd never seen that hole before?

Ms. Lucas: No.

Mr. Mayer: Even when you were sitting on that bench?

Ms. Lucas: No.

Mr. Mayer: Didn't in fact that hole, wasn't that hole in fact created when Vince slammed that fencing material with the crowbar?

Ms. Lucas: No.

....

Ms. Lucas: I would not know that.

....

Ms. Lucas: That the hole was created, I don't know that.

Mr. Mayer: And after you said there's a hole what did Vincent do? Was he still in a crouch when you said it?

Ms. Lucas: Yes, he was. He was still under the bench.

Mr. Mayer: Well, is the bench in the back and a table in the front?

Ms. Lucas: They appear to be the same to me.

Mr. Mayer: The same height?

Ms. Lucas: I believe so.

Mr. Mayer: But he was in a crouch under the front table or bench?

Ms. Lucas: Yes, sir.

Mr. Mayer: Okay. And what did he do when you said there's a hole?

Ms. Lucas: He pulled the guillotine door off and . . .

Mr. Mayer: Let me just stop you there. He had been trying to get the guillotine door off, right?

. . . .

Ms. Lucas: Yes.

Mr. Mayer: And was having some difficulty with it?

Ms. Lucas: Yes.

. . . .

Mr. Mayer: Suddenly got the guillotine door off.

Ms. Lucas: After he had pried part of the framing off with a crowbar. Yes, it came off.

. . . .

Mr. Mayer: Okay. When he pushed you out the door into den box one, Ti was up on the bench in den box three.

Ms. Lucas: Yes, he was.

Mr. Mayer: You were in den box one or did you leave the cage entirely?

Ms. Lucas: No, I stayed in den box one up against the wire to the left of the interlocking door between one and two.

Mr. Mayer: All right.

Ms. Lucas: On the left side.

Mr. Mayer: And from that position you could only see Mr. Lowe in so far as that he was not under the table or bench in that area?

Ms. Lucas: I didn't get the last part of that.

Mr. Mayer: If he was under the table in front of the den box . . .

Ms. Lucas: I could see him under the bench still.

Mr. Mayer: Well, the bench was covering a good portion of him, wasn't it?

Ms. Lucas: Yes, it was. I could see his back. I probably couldn't see his hands on the guillotine door itself but I could see Vince was working on the door.

Mr. Mayer: You close the door and then you stood at den box one and looked into den box two?

Ms. Lucas: Yes.

Mr. Mayer: And you saw Vince do what? After he pushed you out the door?

Ms. Lucas: After he pushed me out the door, I had just shut the door and he told me to lock the door, it just has like a little clip. Robert used a little, push button, the little clips like you hang your keys or whatever on. I don't know, anyway, and the clip was broke on it. So there was no way to lock that door. And he said lock the door. You couldn't lock that door. I looked up at Ti and all this happened within seconds. I don't know how long a period of time but I just happened to see that there appeared to be a hole in the fence and maybe this area, maybe his high chest, face, maybe neck, face, arm area, I think. And that's the area, when I said Vince, there's a hole in the fence and he pulled the guillotine door off, just ripped it off the wall underneath the bench and went over and put it over the hole.

Mr. Mayer: And asked you to get a hammer?

Ms. Lucas: And asked, yes. As soon as he put it up there. He had to lean over because the bench is there. It's like in the center and he put the board over it, the guillotine door over it and said get my hammer.

Mr. Mayer: At that point then was the tiger anyway through that hole?

Ms. Lucas: At what point?

Mr. Mayer: At the point when he placed the guillotine door up against the area, which you indicated somehow that there was a hole there.

Ms. Lucas: No, the tiger wasn't . . .

Mr. Mayer: Did you tell him where the hole was?

Ms. Carroll: I believe he cut off the witness's answer.

Administrative Law Judge: I agree. You said no, there wasn't. And if you'd go ahead and finish.

Ms. Lucas: Okay. I'd like to explain that. Vince placed the board on the hole and said get my hammer. Ti was not in the cage or even trying to come through the cage when Vince put the board over the hole. As soon as he said get my hammer, I didn't even have time to move to get the hammer when Ti pushed on the board and instantly I saw his head and neck was like that quick through the cage. And so no, he was not any part of him through the cage when he put the board up, if that was your question.

Mr. Mayer: How did Vince know where the hole was?

Ms. Lucas: I don't know how he knew.

Mr. Mayer: You simply said there's a hole?

Ms. Lucas: That's it.

Mr. Mayer: After the tiger attacked, you left den box one and went all the way out, correct?

Ms. Lucas: Say that again. I'm sorry, I missed the beginning of that.

Mr. Mayer: After the tiger came partly through you described that he was lifted up by the tiger and down and you saw the tiger injury or other maul or do damage to Vince, correct?

Ms. Lucas: Yes.

Mr. Mayer: You then did not attempt to get into that den box two, did you?

Ms. Lucas: Yes. When Ti dropped Vince and walked out and laid down beside the guillotine door on the outside, yes, that was in the door to go in to get the gun.

Mr. Mayer: Did you go in?

Ms. Lucas: I believe I took a step inside and it was the sunlight that caught my attention, although I just saw Vince rip the guillotine door off, I still opened the door and stepped in and it didn't become apparent, even though I saw the tiger walk out, I believe that it was the sunlight that caught my attention that was coming through the guillotine door under the bench and realized Ti can come back in. And stepped back out because the gun was probably four feet away.

Mr. Mayer: And you closed the door between one and two?

Ms. Lucas: Yes, I did.

Mr. Mayer: And then what did you do?

Ms. Lucas: I went out of den box one leaving the external door open, not thinking to close it and got in the truck and drove to get Robert (Mr. Baudy).

Mr. Mayer: And when you got there you were highly excited? Actually you were near hysterical, wasn't that true?

Ms. Lucas: No, I wouldn't say I was, I'm never hysterical. I wasn't hysterical ever on the compound, until the police arrived and I started crying. But no, I'm not a hysterical person. But would you like me to explain?

....

Ms. Lucas: I already had gone through the screen porch area and burst through Robert's main door to his house that he uses as a main door, when his dog, Yellow Dog, went hysterical, from me just barging in the house so suddenly and I said Robert, call 911, Ti ripped Vincent's throat out. I wasn't screaming but I'm sure there was some tone to my voice. And I'm sure I was excited.

....

Ms. Lucas: When I burst through the door I told Robert call 911, Ti just ripped Vincent's throat out. Robert replied let's go see. And I told him that I believed he needed to bring his gun because the cat can get out. And Robert went over and got two guns and said let's walk. And I asked him to let's drive because Vince was bleeding out. And then we got in the truck and he said drive slow because the guns were loaded.

Tr. 414-36.

[43] I rely on Ms. Lucas and Mr. Baudy for the narrative of what I consider to be the essential core of this case, the conditions and happenings of July 31, 2001. The conditions and happenings of July 31, 2001 are critically important because they are the basis for revocation and related remedies. If the Respondents had not failed so totally on July 31, 2001, I likely would not find revocation necessary.

[44] Both Ms. Lucas and Mr. Baudy are credible witnesses, as was each witness who testified before me. At times Ms. Lucas's testimony was mistaken, and at times Mr. Baudy's testimony

was mistaken. At times Ms. Lucas's testimony conflicts with Mr. Baudy's testimony. The conclusions I reach are unaffected by these discrepancies, because the bottom line for me is that the Respondents allowed and contributed to the horrible mishandling of Ti in violation of 9 C.F.R. § 2.131(a)(1); and the Respondents utterly failed to supervise Mr. Lowe, in violation of 9 C.F.R. § 2.40(b)(1), which requires appropriate personnel; and of 9 C.F.R. § 2.100(a) incorporating 9 C.F.R. § 3.132, which requires a sufficient number of adequately trained employees under a supervisor who has a background in animal care. Mr. Baudy could have been that supervisor, who could have prevented Mr. Lowe's inadequacies from causing his own death and that of Ti, but Mr. Baudy was 100 yards away doing paperwork.

[45] Mr. Baudy's first language is French, and his ability to hear (during our hearing) was not always adequate. At times I (and others) had some difficulty understanding Mr. Baudy during the hearing, and at times during the hearing Mr. Baudy had some difficulty understanding others or with recall. Mr. Baudy was able to correct his erroneous testimony that Ti had been skinned before the necropsy. Tr. 1509-11. Mr. Baudy was able to correct the mistaken assertion from Ms. Zordan's interview that he shot Ti "blank" in the head - - "blank" was not what he meant. Tr. 1698. Mr. Baudy testified both that he had to shoot Ti because Mr. Lowe might still be alive (Tr. 1142) and that when he shot Ti he knew Mr. Lowe was dead (Tr. 1544). [Both statements have some truth in them, 'though they are apparently conflicting.]

[46] Mr. Mayer: You explained that the tiger was raging back and forth along the south side of the . . .

Mr. Baudy: The acre size cage.

Mr. Mayer: Okay. What else did you observe at that time?

Mr. Baudy: Well, I observed a door opened up, a walk-in door. And I otherwise was very, very concerned about that tiger escaping or coming back through the open door and attacking me or attacking the girl.

Mr. Mayer: Were you able to observe Mr. Lowe at all?

Mr. Baudy: From a distance.

Mr. Mayer: And what did you observe from a distance?

Mr. Baudy: He was laying down but I couldn't see any wound, you know, from where I was standing there.

Mr. Mayer: And based on your observations, what did you conclude?

Mr. Baudy: I concluded that I should euthanize this animal.

Mr. Mayer: Why?

Mr. Baudy: Because there was no way to quickly get to Mr. Lowe, and he was down and obviously in bad shape.

Mr. Mayer: And so what did you then do to euthanize the animal?

Mr. Baudy: I shot the animal with the Magnum rifle.

Tr. 1142.

[47] Mr. Baudy: "As soon I realized that Mr. Lowe was dead, the only way I could get to him, by then I realized he was dead. But I had to destroy the tiger, because I didn't know if the tiger could get out of the cage, attack Lesa, attack me, and it didn't make me happy to destroy this animal, not at all. But it is something that I had to do in my own conscience."

Tr. 1544.

[48] Ms. Lucas's testimony contained some mistakes. Ms. Lucas was mistaken when she thought the guillotine doors within Ti's enclosure had to be repaired right away to meet an

APHIS deadline; APHIS had not specified any requirement regarding those guillotine doors.

Ms. Lucas was mistaken when she thought the guillotine door from Den 4 to the exercise paddock was nailed shut; it is true that Mr. Lowe failed to get it to open.

[49] Lt. Brown's testimony persuades me that Mr. Baudy did report to Lt. Brown on July 31, 2001, that after Ms. Lucas drove to Mr. Baudy's apartment on the compound to get him, Lesa (Mrs. Lucas) came running through the door shouting "Call 911, get your gun, Ti (the tiger) just ripped out Vince's throat!"

[50] Throughout this Decision I have chosen not to rely on portions of the record that I consider to be flawed or unreliable. Selective perception and selective memory are inherent in anyone's recounting of events, and traumatic events affect what a person focuses on and which memories predominate. Neither Ms. Lucas nor Mr. Baudy gave entirely accurate testimony, and neither had entirely accurate recall. At times, their testimony conflicts with their own prior statements. Nevertheless, each was a reliable and valuable witness.

[51] When Mr. Lowe failed to heed Mr. Brandolini's request to wait until Mr. Brandolini could be there, Mr. Baudy knew that Mr. Lowe was proceeding with the repairs of the tiger's habitat with the tiger in the immediate vicinity.¹⁷ John Lehnhardt,¹⁸ a person experienced with and expert in zoology, stated that captive tigers may react negatively to over stimulus or stimulus that's new by becoming aggressive, harming themselves or other animals.

¹⁷ Tr. 1521:5-10.

¹⁸ Tr. 295:2-14, 301:22 - 302:7. Mr. Lehnhardt is "responsible for animal care, welfare and safety and maintenance of the animal enclosures and structures for Disney's Animal Kingdom." *Id.*, 280:8-16. He was a zoo keeper at Lincoln Park Zoo in Chicago, Illinois, for four years, was an elephant trainer at the Calgary Zoo in Western Canada, Calgary Alberta for eight years, and was a supervisory biologist and collection manager at the National Zoo in Washington, D.C., for nine years. *Id.*, 279:10 - 280:6.

[52] The following is an excerpt from JOHN LEHNHARDT's testimony:

A. . . . two animals that have gotten along absolutely normally will suddenly go at each other because there's a disturbance, something that is really scaring them or disturbing them and they will act aggressively. . . . either hurting themselves in some way, attacking the bars, you know, attacking the enclosure, attacking a cage mate, increases with new stimulus and changes of environment . . .

Tr. 291:11-25.

Q. . . you talked about, . . . to minimize the effect of changes in their environment. And can you explain what you mean by that?

A. . . . We (may) need to remove the animals from this area. . . Or we can say, well, this isn't going to be as great, we think they'll be fine, we will move them down x-number of enclosures away from whenever the disturbance is going to occur.

Tr. 292:1-17.

[53] The Respondents through their volunteer Mr. Lowe, failed to handle the tiger Ti carefully, in a manner that did not cause Ti trauma, behavioral stress, physical harm, or unnecessary discomfort. Further, the resulting destruction of Ti by gunshot caused Ti trauma and physical harm (and a quick death, that I conclude did not cause Ti pain. *See* paragraphs [94] through [110] regarding euthanization).

VETERINARY CARE REGULATIONS

[54] **The Respondents Failed to Establish and Maintain a Program of Veterinary Care that Included the Availability of Appropriate Facilities. 9 C.F.R. § 2.40(b)(1).**

[55] The Respondents admitted that on July 24 and July 31, 2001, they failed to adequately maintain an enclosure used to house one of several tigers, in violation of 9 C.F.R. § 2.40(b)(1).

Brief filed August 3, 2004, at page 17. (After July 31, 2001, the Respondents no longer used Ti's enclosure.) Mr. Baudy testified that Ti's enclosure was originally designed to hold clouded leopards with a weight of approximately 65 pounds.¹⁹ The cage was not originally built for tigers,²⁰ but Mr. Baudy testified that the wire had been reinforced, several times. The weight of the tiger it contained on July 31, 2001 was 318 pounds.²¹

[56] APHIS Veterinary Medical Officer ("VMO") Robert Brandes inspected Ti's enclosure on August 2, 2001 (2 days after the fatal injuries) and observed deteriorated chain-link fencing, decayed wood, a hole in the metal roof caused by rust, and improperly installed fencing.²² There were breaks in the chain link fence.²³ The lock down area (Den 3) immediately next to Den 2 where Mr. Lowe was working had a break in the chain link fence between the exercise yard and the Den 3 outer wall.²⁴

[57] The Respondents contended that the wire barrier between Dens 2 and 3 separating the tiger and Mr. Lowe was weakened by Mr. Lowe repeatedly hitting on it with a hammer or crowbar.²⁵ The Respondents did not contend that Mr. Lowe struck the outside facing wire on

¹⁹ Tr. 1254:17-23.

²⁰ Tr. 1254: 7.

²¹ CX 13, 38.

²² CX 1, Tr. 562:11-16, 565:14-21, 567:11-15.

²³ Tr. 568:6-10.

²⁴ CX 16p.

²⁵ Tr. 417:13-18.

Den 3 and had no explanation for the broken enclosure wire for the outside facing wire of Den 3.

[58] If the tiger used the same techniques that allowed him to breach the wire barrier between Den 2 and Den 3, the tiger could have breached the Den 3 wire (where he was being held) to the exercise area, circled around and back into Den 2 and easily have attacked Mr. Lowe through the Den 2 shift (guillotine) door that Mr. Lowe had removed for repair. Considering the testimony of Dr. Brandes, I conclude that the Den 3 wire was weakened and/or broken by deterioration and lack of proper maintenance, in violation of the Regulations.

[59] **The Respondents Failed to Establish and Maintain a Program of Veterinary Care that Included the Availability of Appropriate Personnel. 9 C.F.R. § 2.40(b)(1).**

[60] The Respondents are required to have suitable personnel on hand to perform the necessary tasks related to the care of the animals covered by AWA license 58-A-0106. On July 31, 2001, when the tiger Ti's enclosure was undergoing repair, Mr. Lowe intended to repair a guillotine door (shift door) in Den 2.²⁶ Mr. Lowe and Ms. Lucas had been given a typed repair list which included the repair of the guillotine type of shift door in Den 2.²⁷ At the time of the repairs on July 31, 2001, Mr. Lowe and Ms. Lucas had no direct supervision and were left to plan and execute the work themselves.²⁸

²⁶ Tr. 381:22 - 382:11.

²⁷ CX 7, Tr. 382:19 - 383:3, 384:24 - 385:4, 1416:23 - 1417:6.

²⁸ Tr. 391:22 - 392:4.

[61] APHIS's witnesses, John Lehnhardt and Baron Julius von Uhl, said that maintenance should always be performed by supervised maintenance personnel and never near big cats.²⁹

[62] The Respondents contended that Mr. Lowe and Ms. Lucas “ignored the specific instructions of Paul Brandolini to defer the repairs necessary or desirable for Ti's den boxes in Ti’s enclosure until he, Mr. Brandolini, was present.”³⁰ The Respondents argue that Mr. Lowe and Ms. Lucas were specifically instructed to wait for Mr. Brandolini to be physically present to help move and contain the tiger during repairs. Mr. Brandolini said the Respondents owned or had ready access to a “transfer cage” or “squeeze cage” - - a durable device to humanely immobilize the tiger for various maintenance and veterinarian activities.³¹ The Respondents argue that they can not be responsible or liable for workers who intentionally disregard safety rules, fail to use appropriate equipment, and/or fail to follow instructions in a manner which is unforeseen.

[63] The requirement to comply with 9 C.F.R. § 2.40(b)(1) does not rest upon the common law of torts, but foreseeability is a factor worth considering. I conclude that, for the purpose of the Animal Welfare Act, the Respondents are required to assume that their volunteers may make foolish choices, foolish moves. Tigers in particular are so dangerous that even experienced tiger handlers are vulnerable to attack. The Respondents, consequently, are required to protect their animals from foreseeable danger such as resulted from allowing their volunteer Mr. Lowe to proceed as he did, unsupervised as he was, on July 31, 2001.

²⁹ Tr. 291:16-25, 313: 23-25, 539:14-17, 539:2-5.

³⁰ Respondents’ brief at pp. 6-7.

³¹ Tr. 802:23 - 803:17.

[64] The Respondents' opinions of Mr. Lowe's "foolhardy," "reckless" behavior³² may have been enhanced after the events of July 31, 2001, but Mr. Lowe had antagonized the cats on the Respondents' compound before July 31. Further, Mr. Baudy knew that Mr. Lowe and Ms. Lucas were working on repairs to the tiger's enclosure on July 31, 2001 without any direct supervision, and he knew that Mr. Brandolini had told them to wait until he could be there. Yet he let them proceed.

[65] Mr. Baudy knew on July 31, 2001 that the Respondents' volunteer Mr. Lowe had chosen to disobey Mr. Brandolini's earlier instructions not to perform the repair of Ti's den enclosures until there was additional help.³³ Mr. Baudy further knew or should have known that to work around the tiger Ti when he would be under stress enhanced the danger to both the tiger and his handlers.

[66] The following is an excerpt from ROBERT BAUDY's testimony:

Q. Okay. Mr. Baudy, you testified that you instructed -- this is -- you testified that you instructed Vince Lowe on July 31, 2001 to shift the cat into lockdown number four. Is that correct?

[Note: the "cat" is the tiger Ti and lockdown number four is Den 4 of Ti's enclosure.³⁴]

A. Yes.

Tr. 1397:9-13.

A. . . . And later on they told me they could not - - that the guillotine door was not working. I said, look you get a crowbar. You get a hammer. You free this guillotine door. . . .

³² Respondents' brief at 5.

³³ Tr. 1193:3-14.

³⁴ See RX 8.

Tr. 1397:21-24.

Q. Why on the day that Vince Lowe died, why did you not insist that he wait?

A. They (Mr. Lowe and Ms. Lucas) had a list of things to do and the three or four repairs were suggested, but they tell me this is being taken care we will do that tomorrow and we are going to work on it. I said why do you want to work on that cage at this time. They said we already cut the guillotine door. So I let them go, but I double checked from a distance which I do all the time. And the cat was cool, and I didn't hear no screaming, so I went back to my paperwork.

Tr. 1520-21.

[67] Mr. Baudy contemplated that there was potential danger to his workers, Mr. Lowe and Ms. Lucas. In anticipation of a potential tiger - man confrontation, Mr. Baudy apparently advised Mr. Lowe to take his gun with him to do the repair work.

[68] The following is from LESA LUCAS's testimony:

A. Well he told Vince to bring his gun and that if Tjik [Ti] came in to shoot to kill. He didn't -- we weren't really -- we weren't going to move the cat. I know we talked about it and he really didn't want to move the cat. And I know Vince talked to him about hitting him with some Ropum (ph) or Valium, but he just told him to bring his gun, you know, and if he came in just shoot to kill so we did. I mean Vince has a gun anyway, but he brought his 357 I think. That's what he brought this time and made sure he had extra bullets. . . . And I know that when we were in the cage had it holstered but he had the holster unsnapped and had it half out already pulled up so he was ready in case Ti did come through.

Tr. 126:22 - 127:12.

[69] The following is from ROBERT BAUDY's testimony:

Q. Prior in the day did you tell Vincent Lowe to take the gun with him?

A. He carried a gun all the time, several guns.

Tr. 1157:3-7.

[70] Mr. Baudy as the owner of Savage Kingdom and Rare Feling Breeding had the authority to stop the progress of the repair work before the fatal injury occurred, but he did not.

[71] from ROBERT BAUDY's testimony:

Q. And if during 2001, you saw someone doing something at the compound that you didn't like, you had the power to say, stop. Is that right?

A. Yes.

Q. And in 2001, if there was a person on the compound doing something that you didn't like, and you told them to stop, and they didn't, you have the power to kick them off the property. Didn't you?

A. That is right.

Tr. 1226:15-23.

Q. Were you in charge --- in 2001, were you in charge of Vince Lowe?

Mr. Baudy: Yes, I am.

Q. And were you his boss, b-o-s-s, in 2001 when he was on your compound?

A. Yes.

Tr. 1228:1-6.

[72] I find that on July 31, 2001, the Respondents allowed Mr. Lowe and Ms. Lucas to proceed in the repair of Dens 1 and 2 of Ti's enclosure without supervision and thereby failed to have appropriate personnel available, in violation of 9 C.F.R. § 2.40(b)(1).

[73] Although I have already found the Respondents in violation of 9 C.F.R. § 2.40(b)(1) on two grounds, failure to have appropriate facilities available, and failure to have appropriate

personnel available, I do not find that the Respondents failed to have appropriate equipment available. Consequently, I find that one aspect of APHIS's allegations of violation of 9 C.F.R. § 2.40(b)(1) not sustained by a preponderance of the evidence.

[74] I conclude that APHIS did not sustain by a preponderance of the evidence the allegation of a violation of 9 C.F.R. § 2.40(b)(1) relating to availability of appropriate equipment on July 31, 2001. APHIS alleges that the Respondents failed to have available a squeeze cage, a dart gun, and working telephones.³⁵

[75] Regarding a squeeze cage (transfer cage), Paul Brandolini, the manager at the Respondents' facility, testified that the transfer cage was on the premises³⁶ and that it was in compliance with the [Florida] Fish and Game Commission.³⁷ He testified that Mr. Lowe and Ms. Lucas assisted with and were familiar with the animal transfer process.³⁸

[76] No squeeze cage was used, and Ti entered Den 2 through a hole in the wire dividing Den 3 from Den 2, killed Mr. Lowe,³⁹ then left the dens and sat quietly in the exercise paddock.⁴⁰ The Respondents had no protocol or equipment (such as a immediately available telephone or

³⁵ APHIS's brief at page 14.

³⁶ Tr. 803:23-25

³⁷ Tr. 811:2-4.

³⁸ Tr. 805:13-24.

³⁹ Tr. 139:11 - 141:13.

⁴⁰ Tr. 141:15-17.

Walkie-Talkie) in place in case of an emergency (other than to “tell Mr. Baudy”).⁴¹ After Ti attacked Mr. Lowe, Ms. Lucas drove to Mr. Baudy’s residence to tell him of the attack. Mr. Baudy got his 22 caliber – Magnum gun, and they returned to Ti’s enclosure.

[77] Regarding a dart gun, Mr. Brandolini testified that the Respondents had a dart gun at the compound.⁴² He stated that because the tranquilizing drugs are Federally regulated it would take approximately a half-hour to get the drugs to the compound to immobilize the cat.⁴³ Regarding working telephones, after the tiger and Mr. Lowe were dead⁴⁴ Ms. Lucas and Mr. Baudy did make calls from the Respondents’ land based telephone line(s) to the local 911 dispatch or sheriff. The regulations do not identify a requirement for immediate telephone access from each animal enclosure or describe the nature or location of communication equipment.

[78] **On July 31, 2001, the Respondents willfully violated 9 C.F.R. § 2.40(b)(2) by failing to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent injuries (specifically, the Respondents allowed inadequately trained volunteers with inadequate supervision to handle the adult male tiger called Ti).**

[79] Both Mr. Lowe and the tiger Ti sustained fatal injuries. It is not clear to me that humans are protected under the provisions of the Animal Welfare Act Regulation 9 C.F.R. § 2.40(b)(2).

⁴¹ Tr. 212:3-10.

⁴² Tr. 811: 23 - 25.

⁴³ Tr. 811:24 - 812:3.

⁴⁴ CX 36b, Answer # 6.

Humans of course are not included in the definition of animals whose care is regulated under the Animal Welfare Act. 9 C.F.R. § 1.1. The definition of “animal” includes nonhuman primates and intentionally avoids humans.

[80] The necropsy (autopsy) of the tiger Ti indicates to me that he was injured other than by gunshot by Mr. Baudy. I am persuaded by the preponderance of the evidence that Ti was injured by Mr. Lowe during Mr. Lowe’s efforts to repair of the guillotine door.

[81] The autopsy of Ti reported under OTHER EVIDENCE OF INJURY: A 2 centimeter linear shallow laceration lies 2 inches left of the lateral canthus of the left eye. Irregular abrasions involve the nose, and shallow linear lacerations extend along the skin superior to the nose. A 9 x 4.5 centimeter abrasion lies on the left side of the torso, anterior to the left forelimb. Within this area of abrasion are three parallel linear areas of abrasion.

CX 13 at page 3. 38 REF Lab No:21343-01-R.

[82] The ultimate injury to Ti here was his fatal injury. It is predictable that if a tiger may leave its normal confinement area and begin to endanger humans, the animal can be subjected to harsh disciplinary measures or even death.

[83] The Regulations contemplate that if humans are protected from the animals, then the risk is lessened that the animals will be severely disciplined or even destroyed. Here, Mr. Baudy killed the tiger so that Mr. Lowe could be rescued or retrieved at the earliest possible moment, and also to ensure the safety of Ms. Lucas and himself (given the open walk-in door, Tr. 433.).

[84] I conclude that the tiger Ti's death resulted from the Respondents’ failure on July 31, 2001, to utilize the proper methods to prevent injuries to the tiger; the Respondents failed to safely contain the tiger Ti during a period when routine maintenance on the tiger's habitat was required. 9 C.F.R. § 2.40(b)(2).

[85] **On July 31, 2001, the Respondents willfully violated 9 C.F.R. § 2.40(b)(4) by failing to establish and maintain programs of adequate veterinary care that included adequate guidance to personnel involved in the care and use of animals regarding handling, tranquilization, and euthanasia (concerning adult male tigers such as Ti).**

[86] The Respondents agree that there is no written safety manual on the handling of tigers at Savage Kingdom, Inc.⁴⁵ There is no evidence that the Respondents had an active training program in place for animal handlers at or near the time of the incident on July 31, 2001.⁴⁶

[87] The Respondents presented no evidence that they “trained” Mr. Lowe or Ms. Lucas in the handling of animals. Handling means: Petting, feeding, watering, cleaning, manipulating, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working and moving, or similar activity with respect to any animal.⁴⁷

[88] Paul Brandolini was Respondents’ manager, but he was an unpaid volunteer⁴⁸ who did his volunteer work “when needed” by the Respondents (“It could be one time a month, and it could be three times a month, or it could be three times a day. I never kept track, because I volunteered. It was just when I worked.”) Tr. 1003. *See also* Tr. 1004-05. Mr. Brandolini was not on duty on July 31, 2001.⁴⁹

⁴⁵ Tr. 1373:22-24.

⁴⁶ Tr. 656:5-24.

⁴⁷ 9 C.F.R. § 1.1.

⁴⁸ Tr. 981:7, 986:1-4.

⁴⁹ Tr. 992:13 - 993:13.

[89] I conclude that the Respondents failed to provide adequate guidance to personnel in the handling of tigers, in violation of 9 C.F.R. § 2.40(b)(4).

[90] APHIS alleged that the Respondents did not give adequate guidance regarding the tranquilization of animals.

[91] The Respondents' Program of Veterinary Care dated June 11, 2001 and prepared by John V. Mounger, D.V.M., includes:

C.2. DESCRIBE CAPTURE AND RESTRAINT METHOD(S)

Squeeze cage with valium-ketamine is usual method. We sometimes transfer to clinic and administer isoflurane. Dart gun and Telazol are kept available.

CX 22.

[92] Neither the Respondents nor their Veterinary Care Program stated that any volunteer was trained to administer tranquilizers. Paul Brandolini stated that Mr. Lowe and Ms. Lucas did have some experience in the use of squeeze cages. When the Respondents acquiesced to allow Mr. Lowe and Ms. Lucas to work on Dens 1 and 2 on July 31, 2001, it was the Respondents' duty to supervise the relocation or tranquilization of the tiger, if necessary, during that period of construction, to relieve the stress on the animal. The Respondents did not follow their own Veterinary Care Plan regarding the tranquilization of animals during the repair of their habitat.

[93] The Respondents' failure to relocate or to tranquilize the tiger during the repair work was a violation of 9 C.F.R. § 2.40(b)(4).

[94] The Respondents' Program of Veterinary Care dated June 11, 2001 and prepared by John V. Mounger, D.V.M. states:

D. EUTHANASIA

I. SICK DISEASED, INJURED OR LAME ANIMALS SHALL BE PROVIDED WITH VETERINARY CARE OR EUTHANIZED. EUTHANSIA WILL BE IN ACCORDANCE WITH THE AVMA RECOMMENDATIONS AND WILL BE CARRIED OUT BY THE FOLLOWING:

Veterinarian

Licensee/Registrant

CX 22.

[95] American Veterinarian Medical Association (“AVMA”) Guidelines on Euthanasia include:

“[f]or the gunshot to the head as a method of euthanasia in captive animals, the firearm should be aimed so that the projectile enters the brain, causing instant loss of consciousness.”

[96] from PAUL BRANDOLINI’s testimony:

Q. Was euthanasia apart of the training that you received from Mr. Baudy?

A. We never had anything like that. Euthanasia, you mean for cats?

Q. In general.

Q. Mr. Brandolini, the question was whether euthanasia was part of the training you received from Mr. Baudy.

A. No.

Tr. 1014:24 - 1015:10.

[97] APHIS alleges that the method of euthanasia chosen by the Respondents was (a) not required and unnecessary because the emergency of Mr. Lowe’s injury had passed; and (b) if euthanasia was necessary, it was improperly administered.

[98] The Respondents did not contend that its volunteers received training in euthanasia.

[99] I find the following conditions to be true on July 31, 2001 at the time Mr. Baudy arrived at Ti's cage after Ms. Lucas came to get him.

(a) Ms. Lucas had said Mr. Lowe was in the cage with his throat ripped out.

(b) Mr. Lowe's condition was dying or dead.

(c) The normal time for emergency personnel and/or police to arrive was known to be many minutes away.

(d) Mr. Baudy knew that Ti had been in the proximity of Mr. Lowe while the repair work on the den was proceeding.

(e) Ti was in his enclosure when Mr. Baudy arrived, but instead of being in one of his lock-down dens, was in his exercise paddock.

(f) Mr. Baudy knew that Ti was previously inside one of his lock-down dens and from his exercise paddock was free to re-enter the den where Mr. Lowe lay.⁵⁰

(g) The walk-in door to Den 1 was open. Tr. 433.

(h) Still confined in his exercise paddock, Ti began galloping toward Mr. Baudy.

[100] Motivated to reach Mr. Lowe⁵¹ and being unsure whether Ti could breach his enclosure, Mr. Baudy decided to kill Ti. The tiger got up from his position and started moving fast

⁵⁰ Tr. 1142:6-9.

⁵¹ Tr. 1501:22.

(galloping)⁵² toward Mr. Baudy and Ms. Lucas. Mr. Baudy shot Ti twice from a distance of 30 feet and killed Ti.⁵³ Mr. Baudy determined that Mr. Lowe was dead.⁵⁴

[101] Mr. Brandolini explained the emergency circumstances when Mr. Baudy arrived with Ms. Lucas and had to assess quickly whether to destroy Ti: Mr. Brandolini explained why tranquilizing Ti was not a option where a man's life was in peril or jeopardy at that time. Tr. 811-812. Mr. Brandolini explained why getting Ti into another cage was not an option at that point. Tr. 812.

[102] Mr. Brandolini: I mean you know you use what you have available at the time. There is no way to put the cat back up into another cage because, you know, if a cat's excited, one, he's not going to go into the cage and in that instance there, from what I read of Lesa's (Ms. Lucas's) statement, they put him in #3 because they couldn't get him in #4. Well, if they couldn't get him in #4, #3 had a hole in the cage, it would not matter if the cat went inside. He'd come right back on top of Vince again. You know it's just a complete circle around. And if they put it in #1, it's not necessarily that -- the door was supposedly broke at that time between 1 and 2 -- then there was no way to contain the cat. Tr. 812:5-18.

[103] Mr. Baudy's decision to fire his rifle to kill Ti, in order to access Mr. Lowe without being exposed to attack by Ti, was reasonable and appropriate. Mr. Baudy was a skilled marksman and could expect to shoot accurately from that distance to kill Ti without causing Ti to suffer. [It

⁵² Tr. 1501:24 - 1503:10-16.

⁵³ Tr. 1504:9-12; CX 8, 9; Tr. 1150:18-19.

⁵⁴ Tr. 1544:19-23; 437:9-13.

goes without saying that the situation Mr. Baudy confronted should never have happened in the first place.]

[104] In hindsight, Ti could have been left alive. Mr. Lowe was already dead, and access to his body could have been achieved by spending enough time to contain or immobilize Ti. Ms. Lucas had left the walk-in door to Den 1 open, but that door could have been closed. (The walk-in door between Den 2 and Den 1 was closed.) Tr. 433.

[105] Mr. Baudy had no opportunity to puzzle through all those factors, which were not clear upon his arrival. Consequently, under the circumstances, I find that Mr. Baudy's decision to use a gun to kill Ti was reasonable and appropriate.

[106] Respondents' Veterinarian Plan dated June 11, 2001 provided for Mr. Baudy to euthanize.⁵⁵

[107] The necropsy (autopsy) of the tiger revealed that the second 22 Magnum bullet had penetrated Ti's cranial skull and fragmented inside achieving the desired result of instantaneous unconsciousness of the tiger.⁵⁶ The second shot penetrated the skull about one and one-half inches above the right eye.⁵⁷

[108] APHIS is concerned with the first shot with the 22 Magnum, the non-fatal shot, fired from a distance of up to 30 feet according to Mr. Baudy, aimed at Ti's neck (spinal cord).

[109] Mr. Baudy described the details of the shooting variously, and I include here what I regard as reliable:

⁵⁵ CX 22, page 3, D.

⁵⁶ CX 13, page 3 “. . .extensively fragmented projectiles within the head”

⁵⁷ CX 13, 38. Tr. 65:24 – 67:22, 71:17-23.

ROBERT BAUDY

A. . . .I had to pick very carefully and very quickly because the animal was in fast motion. And so I waited until he turned to my right and went to the left, and made sure there was no traffic on [route] 48, and I had to do that in seconds, and then I shot.

Tr. 1143:3-7.

Q. How long between shots?

A. It was the same fraction of a second. The gun is a semi-automatic.

Tr. 1143:17-19.

Q. When Ti was shot and dropped, do you have an opinion as to whether the tiger felt any pain from those two bullet wounds?

A. Not at all. It lasted a fraction of a second, and the tiger dropped just like a switch, on, off.

Lying dead.

Tr. 1162:12-17.

A. Well, he dropped dead in his tracks. I mean there was no convulsion or nothing, no reaction. And we must keep in mind I've destroyed lots of animals always, and normally one single brain shot for 40 years.

Tr. 1163:3-7.

A. . . . the tiger was in the exercise cage and was moving quickly toward me. I was standing outside the cage, approximately 30 feet from the animal. I immediately fired a neck shot first, and the tiger moved about 40 feet from the first shot and was coming at me when I dropped him with a brain shot.

Tr. 1308:4-9.

Q. . . . is it your testimony here today that the tiger did not move after you fired the first shot?

Yes or no?

A. There was a slight motion, you know. . .

Tr. 1312: 16-20.

Q. How much motion was there?

A. I would say, in distance, about 3 feet.

Tr. 1313:7-11.

Q. Mr. Baudy, was the tiger coming at you when you fired the second shot --- yes or no?

A. No. The tiger was in a profile position when I shot him.

Tr. 1314:10-13

A. The tiger was very excited, and in a killing mood. I got the first shot into the neck. He did not fall. He got more aggravated, and came around. I then I shot him . . . Both shots were less than two seconds. He dropped and was dead.

CX 8, Tr. 1324:19-21.

A. My intention was to have the neck shot because a neck shot, if it is done right in the spine would have basically the same effect as a brain shot.

Q. But the first shot had that effect?

A. It happened in a fraction of a second.

Q. And so was there movement of the animal from profile to head on between the shots?

A. No, the tiger was coming extremely erratic, he was galloping with the head towards me, that when he would move to the end of the run he had to turn. And so I had to very quickly make up my mind when I would destroy and where I would destroy the animal.

Tr. 1503:2-14.

[110] Considering the various versions of the timing and aiming point of the first shot, I find that Mr. Baudy intended that his first shot be a neck shot when the tiger was in profile at a distance of approximately 30 feet. The first shot was not fatal and the tiger was then killed with a second shot to the brain. The time between the two shots was very fast, perhaps a fraction of a second, up to two seconds. Mr. Baudy's testimony was that after the first shot, and before the second shot, the tiger, which was at a distance from him of - variously from 3 feet to 40 feet, continued to move toward him. I believe the testimony of those witnesses who opined that Ti probably felt no pain from the bullets. While Mr. Baudy was an extremely proficient marksman, I must conclude that during the interval between the two shots, brief as it was, Ti was wounded, not euthanized. Consequently, I find that the Respondents were in violation of 9 C.F.R. § 2.40(b)(4) for failure to follow the Veterinary Plan for euthanization.

HANDLING DURING PUBLIC EXHIBITION

[111] APHIS asks me to find that there was “public exhibition” and a “general viewing public” at Respondents’ compound on July 31, 2001. Taking the evidence as a whole, I do not so find.

[112] Consequently, there are four alleged violations that I conclude were **not** proved by a preponderance of the evidence:

the alleged violation of 9 C.F.R. § 2.131(b)(1) on July 31, 2001 regarding handling during public exhibition (requiring sufficient distance or barriers between the general viewing public and the adult male tiger called Ti);

the alleged violation of 9 C.F.R. § 2.131(c)(1) on July 31, 2001 regarding exhibiting (requiring conditions consistent with the good health and well-being of the adult male tiger called Ti);

the alleged violation of 9 C.F.R. § 2.131(c)(2) on July 31, 2001 regarding exhibiting the adult male tiger called Ti (requiring a responsible, knowledgeable, and readily identifiable employee or attendant present at all times during public contact); and

the alleged violation of 9 C.F.R. § 2.131(c)(3) on July 31, 2001 regarding publicly exhibiting the adult male tiger called Ti (requiring the direct control and supervision of a knowledgeable and experienced animal handler).

MR. LOWE AND MS. LUCAS WERE VOLUNTEERS AT RESPONDENTS' COMPOUND

[113] APHIS argues that Mr. Lowe and Ms. Lucas were members of the public.⁵⁸ During public exhibition of the animal, 9 C.F.R. § 2.131(b)(1) provides, and the Judicial Officer of USDA has held, that the “exhibited animals must be handled in a manner that assures not only their safety but also the safety of the public.”⁵⁹

[114] The Respondents are responsible for supervising their visitors, volunteers, employees, and sub-contractors to the degree necessary to ensure that they utilize the proper equipment and tiger handling procedures as required to protect the animals from unnecessary harm. To the extent that an employee or unpaid volunteer does not follow instructions or has in the past not followed instructions, the employer's duty to closely supervise the work increases.⁶⁰ Mr. Lucas,

⁵⁸ APHIS's brief at p. 15.

⁵⁹ *The International Siberian Tiger Foundation, et al.* 61 Agric. Dec. 53, 77.

⁶⁰ See Tr. 126:22 - 127:12, 1157:3-7, 1226:15-23, 1228:1-6, 1397:9-13, 1397:21-24, 1521:5-10.

a volunteer, was under Mr. Baudy's control.⁶¹ The Respondents had some awareness that Mr. Lowe was careless,⁶² reckless, and disobedient.⁶³

[115] The Respondents contend that Mr. Lowe and Ms. Lucas were not members of the public. I agree. The evidence proves that they were unpaid volunteers⁶⁴ who had access to Respondents' compound and to Respondents' animals including Ti in a way that the general public did not have access. Mr. Lowe and Ms. Lucas were in a relationship with the Respondents that is different from that of the general public.

[116] As volunteer workers on Respondents' compound, Mr. Lowe and Ms. Lucas had responsibilities and knowledge that members of the public did not have. There were expectations of Mr. Lowe and Ms. Lucas that would not have been appropriate for the general public.

[117] Prior to May 2001, Mr. Baudy was acquainted with Mr. Lowe, who held a Florida Fish and Game Commission Class II license⁶⁵ and owned cougars.

[118] Mr. Lowe and Ms. Lucas came to the Respondents' compound to borrow a "squeeze" cage or transfer cage (a large durable device used for the containment of a animal). Ms. Lucas

⁶¹ Tr. 1228:1-6.

⁶² Tr. 129:3-10.

⁶³ Tr. 1230:15-20, 1231:5-6, 1231:17-20, 1232:9-20, 1233:6-10, 1235:3-14, 1237:6 - 1238:7, 1238:19-24, 1239:9 - 1241:25, 1243:13 - 1244:17.

⁶⁴ Tr. 1228:8-11.

⁶⁵ Tr. 85:21.

wanted to apply for a Class I license from the Florida Fish and Game Commission.⁶⁶ Mr. Lowe and Ms. Lucas requested the opportunity to perform volunteer work at Respondents' compound, in expectation of the Respondents' certification that Ms. Lucas had acquired 1000 hours of handling large cats. They began coming to the Respondents' compound in approximately June of 2001 to perform various tasks, including facilities maintenance.⁶⁷

[119] Both Mr. Lowe and Ms. Lucas signed "Visitor Liability Release Forms".⁶⁸ Entry onto the Respondents' compound was limited and required completion of such a waiver form⁶⁹ (and to answer questions posed by Mr. Baudy about one's use of alcohol and/or drugs, and criminal record).⁷⁰

[120] The Respondents have used various waiver forms that seek virtually identical information,⁷¹ and the forms are not varied to distinguish visiting members of the public from volunteers or sub-contractors.⁷²

⁶⁶ Tr. 86:24-25.

⁶⁷ CX 10a, 10b; Tr. 82:2 - 84:3.

⁶⁸ CX 10a, 10b. Mr. Lowe's form (CX 10a) is signed by Vincent Lowe, even though the form is filled out "Vincent T. Williams" and "Vincent T. William."

⁶⁹ Tr. 212:6-9. (Vicki Elston) (There is "a document to be signed -- everybody has to sign whether they're a visitor or whether they're a friend or coming for business or whatever.")

⁷⁰ Tr. 1372:2-11, 1373:14-16, 1375:2-8.

⁷¹ CX 10a, 10b; Cf. CX 32. See Tr. 1382:6 - 1383:18. The driver's license number and the state of driver's license only appear on more recent forms.

⁷² The "Volunteer and/or Subcontractor Agreement" and the "Visitor Liability Release Form" are essentially identical, seeking the person's full name, address, phone number, social security number, driver's license, and the state of drivers license. Tr. 1372:22-24, 1289:22 - 1290:15.

[121] APHIS introduced evidence that at least 90 persons have visited, volunteered, or contracted to work at the Respondents' facility since 1994.⁷³ Here, the volunteers Mr. Lowe and Ms. Lucas were performing services for the Respondents in part in expectation of Ms. Lucas acquiring a Class I certification statement by the Respondents that she had worked 1000 hours with large cats.⁷⁴

[122] Mr. Baudy testified that he has personally instructed over 400 people to handle dangerous animals.⁷⁵ Mr. Baudy admitted that the purpose of the waiver forms is not to screen people, but to limit the Respondents' liability.⁷⁶ The Respondents had no specific qualifications for entry onto the compound and had no safety training manual, according to Mr. Baudy.⁷⁷

FACILITIES AND OPERATING STANDARDS

[123] **On July 24, 2001 and July 31, 2001, the Respondents willfully violated 9 C.F.R. § 2.100(a), by failing to construct their facilities of such material and of such strength as appropriate for the adult male tiger called Ti, and by failing to ensure that their housing facility for the adult male tiger called Ti was structurally sound and maintained in good repair to protect the Ti from injury and to contain Ti (9 C.F.R. 3.125(a)).**

[124] Section 3.125 of the Standards, in part, provides:

⁷³ CX 32.

⁷⁴ Tr. 86:12-23, Tr. 791:4-11.

⁷⁵ Tr. 1112:11-13.

⁷⁶ Tr. 1388:24 - 1389:14.

⁷⁷ Tr. 1373:5 - 1374:15.

(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 contain the animals.⁷⁸

[125] The Respondents failed to construct Ti's enclosure with appropriate materials of adequate strength. APHIS Veterinary Medical Officer ("VMO") Robert Brandes testified that he inspected Ti's enclosure on August 2, 2001, and observed, among other things, deteriorated chain-link fencing, decayed wood, a hole in the metal roof caused by rust, and improperly-installed fencing.⁷⁹ Dr. Brandes observed "general deterioration of the enclosure and the den holding areas" evidenced by: "deteriorating wood and rotting wood. The portions of the chain link were rotted. The wooden surfaces were not structurally sound any more. They seemed to have discoloration and a general rotting."⁸⁰

[126] The fencing in the enclosure was "severely pitted and rusty," with "holes in the chain link" caused by "metal fatigue due to the deteriorating rust."⁸¹ Dr. Brandes concluded that the hole that Ti came through into Den 2 "was a long-standing hole. . . . It may have not been that

⁷⁸ 9 C.F.R. § 3.125(a).

⁷⁹ CX 1; Tr. 562:5-7, 562:12-16, 565:21-566:4, 604:7 - 605:3. Dr. Brandes has been an APHIS veterinarian for approximately 11 and a half years, was previously a VMO with the USDA's Food Safety Inspection Service, and was in private practice. *Id.*, 559:18 - 560:9.

⁸⁰ Tr. 562:5-7, 562:12-16, CX 1.

⁸¹ Tr. 565:15-21, CX 1.

big, but it was certainly a hole there, because the integrity of the metal . . . was compromised.”⁸²

Both Dr. Brandes and Ms. Zordan testified that the wire ends were rusty, not newly-broken.⁸³

The metal roof in Ti’s enclosure was “rusted so bad that it just has a hole in it.”⁸⁴ The enclosure’s wooden frames, resting surfaces, and doors were also deteriorated.⁸⁵ There were areas of likely wood fungus, the door hinge was rusted and pitted, and the door was rotted.⁸⁶ Ti was able to crack a board between Den 2 and Den 3 with his teeth.⁸⁷

[127] APHIS VMO Thomas Callahan had inspected the Respondents’ facility on July 24, 2001 and also observed a lack of structural strength.⁸⁸

[128] John Lehnhardt testified that he designs and maintains his animal enclosures to be functional and to provide safety options to shift animals. In contrast, Ti’s enclosure did not function because it was not structurally-sound or well-maintained. The enclosure consisted of four “lock down” dens, numbered 1, 2, 3 and 4 (from south to north), plus an outdoor, circular

⁸² Tr. 566:14-19, CX 16h-16n, 16p (broken chainlink fencing on the left and right side of the wood panel); CX 16t (broken chainlink fencing above and to the right of the cracked wood panel). APHIS Investigator Charmain Zordan accompanied Dr. Brandes during the August 2, 2001, inspection and photographed Ti’s enclosure. Tr. 481:21 - 487:6.

⁸³ Tr. 566:4-14, 482:19-23, 482:7-9.

⁸⁴ Tr. 565:21-24, 569:2-5, CX 1, 16o, 16r, 37a at 4.

⁸⁵ Tr. 565:24 - 566:4; CX 1, CX 16b -16g.

⁸⁶ Tr. 570:23 - 571:9; 571:15-21, CX 16c - 16d.

⁸⁷ Tr. 417:8-12, 125:22 - 126:2; CX 16n.

⁸⁸ CX 4, 5; Tr. 1582:6 - 1586:16; 1598:2-8, 1598:12-19.

fenced paddock.⁸⁹ Each den led directly into its neighboring dens. Mr. Baudy admitted that it was not originally-designed to accommodate tigers.⁹⁰ Ti's enclosure was the oldest enclosure at the Respondents' facility.⁹¹ It was made of wood and wire, which had deteriorated over time.

[129] The Respondents failed to maintain Ti's enclosure in good repair to protect Ti from injuries and contain him. The den enclosures were so deteriorated that they could not keep Ti contained. The structural strength of the enclosure was compromised with broken chain link, because "for chain link to work properly, it has to be interwoven. Once you ruin that locking mechanism, it can spread very easily."⁹² Dr. Brandes also identified gaps between the paddock fence and the ground footers, which could permit escape.⁹³ Mr. Brandolini agreed that there were gaps.⁹⁴ Dr. Brandes concluded that the paddock could not adequately contain a tiger.⁹⁵

[130] Respondents' compound lacked appropriate facilities because it was inadequately maintained, non-functional for effective containment of large felines (tigers) and lacked adequate structural strength to contain the tiger Ti.

⁸⁹ CX 15, 16; Tr. 461:23 - 491:9.

⁹⁰ Tr. 1246:21-24; 1254:7-8; 1254:17-19, 22-23.

⁹¹ Tr. 1251:22 - 1252:1.

⁹² CX 1, 15; Tr. 568:6-10, 567:12-15, 567:22 - 568:3; *see also* CX 17d; Tr. 604:7 - 605:3 (improperly installed cattle panel).

⁹³ CX 17a - 17c, Tr. 572:6-9, CX 1.

⁹⁴ Tr. 95:23 - 96:5; 97:16; CX 17e (Lucas) (Ti grabbed and lifted the paddock fencing with his claw).

⁹⁵ Tr. 572:22 - 573:1.

[131] APHIS argues that even Mr. Baudy considered the paddock fence insufficient to contain Ti.⁹⁶ I believe APHIS's counsel misunderstood Mr. Baudy's testimony. The walk-in door that Ms. Lucas left open, to Den 1, was the reason for Mr. Baudy's concern that Ti might get out, as I understand the evidence.⁹⁷ ⁹⁸ With the evidence presented by the APHIS VMOs, APHIS did prove that the paddock area of Ti's enclosure was enclosed by a structurally-unsound fence.

[132] **On July 24, 2001, July 31, 2001, and August 2, 2001, the Respondents willfully violated 9 C.F.R. § 2.100(a), by failing to enclose their outdoor housing facilities by a perimeter fence of sufficient height (eight feet high) to keep animals and unauthorized persons out, and to serve as a secondary containment system for animals housed inside the facility (9 C.F.R. § 3.127(d)).**

[133] Section 3.127 of the Standards, in part, provides:

(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 person 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

⁹⁶ Tr. 1544. (Mr. Baudy testified, "As soon I realized that Mr. Lowe was dead, the only way I could get to him, by then I realized he was dead. But I had to destroy the tiger, because I didn't know if the tiger could get out of the cage, attack Lesa, attack me, and it didn't make me happy to destroy this animal, not at all. But it is something that I had to do in my own conscience.")

⁹⁷ Tr. 1544:19-23, 437:9-13, 1541:7-9, 1341:18 - 1342:19; *See also* Answer, at ¶ 9.

⁹⁸ Tr. 1544:19-23. Dr. Brandes identified broken chain link and gaps between the paddock fence and the ground footers which could permit escape. Tr. 572:6-9, 568:6-10, 567:12-15, 567:22 - 568:3; 604:7 - 605:3 (providing an example of improperly installed cattle panel); CX 1, 15, 17c - 17d.

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....⁹⁹

[134] The Respondents failed to enclose their outdoor facilities with a perimeter fence of sufficient height to keep animals and unauthorized persons out and to serve as secondary containment system for animals inside the facility. Dr. Brandes identified numerous areas of deteriorated, rusted, and broken perimeter fencing, and testified that it would not contain a 300-pound tiger. Tr. 575-76, CX 1. Both Dr. Brandes and Ms. Zordan testified that the portions of the fencing that they photographed on August 2, 2001 were representative of the overall, long-term deterioration.¹⁰⁰

⁹⁹ 9 C.F.R. § 3.127(d).

¹⁰⁰ *Id.*; Tr. 508:21 - 509:1, 575:23 - 576:4. The Respondents assert that they were given a correct date and corrected the perimeter fence problem after July 31, 2001. Tr. 1137:15-19; 842:1 - 863:17; 892:20 - 897:9, 898:25 - 906:8; 925:17 - 926:17, 584:3-18, 910:4-6. That an inspection report contains a correction date, and the Respondents may have taken remedial action, does not mean that there was no violation.

A correction date does not exculpate a Respondent from the violation, and while corrections are to be encouraged and may be taken into account when determining the sanction to be imposed, a correction does not eliminate the fact that a violation occurred and does not provide a basis for dismissal of the alleged violation. *In re Marilyn Shepherd*, 57 Agric. Dec. 242, 274 (1998); *In re John D. Davenport*, 57 Agric. Dec. 189, 219 (1998); *In re Samuel Zimmerman*, 56 Agric. Dec. 1419, 1456 n.8 (1997), *aff'd*, 173 F.3d 422 (1998); *In re David M. Zimmerman*, 56 Agric. Dec. 433, 466 (1997), *review denied*, 156 F.3d 1227 (1998), *In re Volpe Vito, Inc.*, 56 Agric. Dec. 269, 272-73 (1997) (Order Denying Pet. for Recons.), *aff'd*, 172 F.3d 51 (1999) (unpublished); *In re John Walker*, 56 Agric. Dec. 350, 367 (1997); *In re Mary Meyers*, 56 Agric. Dec. 322, 348 (1997); *In re Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 142 (1996); *In re Pet Paradise, Inc.*, 51 Agric. Dec. 1047, 1070 (1992), *aff'd*, 61 F.3d 907 (7th Cir. 1995) (not to be cited per 7th Circuit Rule 53(b)(2)); *In re George Russell*, 60 Agric. Dec. 41 (2001).

ANIMAL HEALTH AND HUSBANDRY STANDARDS

[135] **On July 24, 2001, the Respondents willfully violated 9 C.F.R. § 2.100(a), by failing to keep premises clean and in good repair in order to protect the animals contained therein and to facilitate the prescribed husbandry practices set forth in subpart F of the Standards (9 C.F.R. § 3.131(c)).**

[136] Section 3.131 of the Standards, in part, provides:

(c) *Housekeeping.* Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this subpart. Accumulations of trash shall be placed in designated areas and cleared as necessary to protect the health of the animals.¹⁰¹

[137] The Respondents failed to keep their premises clean and in good repair. The photographs of the facility taken on August 2, 2001 reveal, among other things, that the enclosure in which the Respondents housed Ti was neither clean nor in good repair.¹⁰² Dr. Callahan noted that there were “many ants” in the food preparation room,¹⁰³ a problem that the Respondents concede.¹⁰⁴

¹⁰¹ 9 C.F.R. § 3.131(c).

¹⁰² CX 16.

¹⁰³ CX 4.

¹⁰⁴ Tr. 884:15-21; 818:5-7, 877:16 - 878:7, CX 7. *Compare In re Volpe Vito, Inc.*, 56 Agric. Dec. 116, 211-12 (1997) (where items similar to those described in Mr. Brandolini’s list, including the presence of paper and wood around the facility, constituted a violation of section 3.131(c) of the Regulations).

[138] **On July 31, 2001, the Respondents willfully violated 9 C.F.R. § 2.100(a), by failing to use a sufficient number of adequately trained employees to maintain the professionally acceptable level of husbandry practices set forth in subpart F of the Standards, under a supervisor who has a background in animal care (9 C.F.R. § 3.132).**

[139] By allowing Mr. Lowe to proceed with the work inside Ti's enclosure on July 31, 2001, when Mr. Brandolini was not there, the Respondents lost the opportunity to have Mr. Brandolini supervise. The Respondents lost their other opportunity for supervision when Mr. Baudy failed to supervise. The Respondents had no other potential supervisors with a background in animal care.

[140] Mr. Lowe was not adequately trained for the task he undertook, of making repairs within Ti's enclosure while Ti was still within his enclosure.

[141] The Respondents failed to use a sufficient number of adequately trained employees to maintain the professionally acceptable level of husbandry practices. This is evidenced by how much work there was to be done and by how few people, paid or volunteer, were on the Respondents' compound to do the work. Candy Watson and a butcher were the only paid employees in July 2001. Tr. 89:20 - 90:3, 1014:5-18, 1074. While Candy Watson may have been adequately trained for the work she did, feeding and watering and cleaning, there was so much more to be done. Neither Candy Watson nor the butcher testified at the hearing. (On the ninth day of the hearing, the Respondents considering calling Ms. Watson as a witness, but she was not present, and a delay would have resulted. At that point, I could not accommodate a delay. Tr. 1545-47.)

PRIOR ENFORCEMENT ACTION RESULTED IN CONSENT DECISION

[142] This is the second enforcement action brought against Respondents Robert E. Baudy and Rare Feline Breeding for failing to comply with the Act, the Regulations and the Standards. Respondents Robert E. Baudy and Rare Feline Breeding were the respondents in In re Rare Feline Breeding Center, Inc., and Robert E. Baudy.¹⁰⁵

[143] At the hearing in this case, Mr. Baudy contended that the earlier case concerned “some dirty water bowl[s], what I call minor things.”¹⁰⁶ Mr. Baudy minimized the alleged violations in that case. The complaint alleged serious, multiple violations of the veterinary care and record-keeping requirements¹⁰⁷ and noncompliance with the minimum standards for housing and providing environmental enrichment for non-human primates, and for housing, feeding, watering, sanitation, and minimum employees for felines.¹⁰⁸

[144] The consent decision signed by Mr. Baudy for himself and on behalf of Rare Feline Breeding Center, Inc. required Mr. Baudy and Rare Feline Breeding to construct and maintain structurally sound housing facilities for animals to protect the animals from injury and contain them securely, to keep the premises clean and in good repair, to employ a sufficient number of adequately-trained employees and to establish and maintain programs of disease control and

¹⁰⁵ 53 Agric. Dec. 635 (March 14, 1994) (Animal Welfare Act Docket No. 93-36) (consent decision).

¹⁰⁶ Tr. 1120-1121.

¹⁰⁷ 9 C.F.R. § 2.40, 2.75.

¹⁰⁸ 9 C.F.R. § 2.100, 3.78, 3.81, 3.84, 3.125, 3.127, 3.129, 3.130, 3.131, 3.132). *See* CX 31 (complaint and consent decision).

prevention and euthanasia.¹⁰⁹ Mr. Baudy and Rare Feling Breeding had not fully complied with that order, and remained in partial non-compliance with the Regulations and Standards, as of Dr. Callahan's inspection March 21, 2002.¹¹⁰

Findings of Fact and Conclusions

[145] The Secretary of Agriculture has jurisdiction.

[146] Respondent Savage Kingdom, Inc., is a Florida domestic stock corporation that has the business address of Post Office Box 100, Center Hill, Florida 33514, and that has as its agent for service of process (Respondent) Robert E. Baudy, State Highway 48, Post Office Box 100, Center Hill, Florida 33514. At all times mentioned herein, said Respondent was operating as a dealer, as that term is defined in the Act and the Regulations, under AWA license number 58-A-0106, issued to "SAVAGE KINGDOM, INC."

[147] Respondent Rare Feline Breeding Center, Inc., is an inactive Florida nonprofit corporation that has the business address of Post Office Box 100, Center Hill, Florida 33514, and that has as its agent for service of process Respondent Robert E. Baudy, State Highway 48, Post Office Box 100, Center Hill, Florida 33514. At all times mentioned herein, said Respondent was operating as a dealer (CX 29, Tr. 1549, CX 30), as that term is defined in the Act and the Regulations.

[148] Respondent Robert E. Baudy is an individual whose business address is Post Office Box 100, Center Hill, Florida 33514. At all times mentioned herein, said Respondent was operating

¹⁰⁹ Id.

¹¹⁰ Tr. 1604:16-21.

as a dealer, as that term is defined in the Act and the Regulations, and was a principal in or proprietor of Respondents Savage Kingdom, Inc., and Rare Feline Breeding Center, Inc.

[149] On **July 31, 2001**, the Respondents willfully violated 9 C.F.R. § 2.131(a)(1) by failing to **handle the adult male tiger called Ti carefully, causing Ti trauma, physical harm, behavioral stress, and unnecessary discomfort**, and placing Ti in a position where Ti was able to attack and kill Vincent Lowe, and where Ti was killed shortly thereafter. *See* paragraphs [27] through [53].

[150] On **July 31, 2001**, the Respondents willfully violated 9 C.F.R. § 2.40(b)(1) by failing to establish and maintain programs of adequate veterinary care that included the availability of **appropriate facilities** (specifically, the Respondents housed the adult male tiger called Ti in inadequately maintained enclosures), and **appropriate personnel** (specifically, the Respondents allowed unqualified persons to handle the adult male tiger called Ti), to comply with the Regulations and Standards. *See* paragraphs [54] through [77].

[151] On **July 31, 2001**, the Respondents willfully violated 9 C.F.R. § 2.40(b)(2) by failing to establish and maintain programs of adequate veterinary care that included the use of **appropriate methods to prevent injuries** (specifically, the Respondents allowed inadequately trained volunteers with inadequate supervision to handle the adult male tiger called Ti). *See* paragraphs [78] through [84].

[152] On **July 31, 2001**, the Respondents willfully violated 9 C.F.R. § 2.40(b)(4) by failing to establish and maintain programs of adequate veterinary care that included adequate guidance to personnel involved in the care and use of animals regarding **handling, tranquilization, and euthanasia**, each concerning adult male tigers such as Ti. *See* paragraphs [85] through [110].

[153] On **July 24, 2001 and July 31, 2001**, the Respondents willfully violated 9 C.F.R. § 2.100(a), by failing to **construct their facilities of such material and of such strength** as appropriate for the adult male tiger called Ti, and by failing to ensure that their housing facility for the adult male tiger called Ti was **structurally sound and maintained in good repair** to protect the Ti from injury and to contain Ti (9 C.F.R. 3.125(a)). *See* paragraphs [123] through [131].

[154] On **July 24, 2001, July 31, 2001, and August 2, 2001**, the Respondents willfully violated 9 C.F.R. § 2.100(a), by failing to enclose their outdoor housing facilities by a **perimeter fence** of sufficient height (eight feet high) to keep animals and unauthorized persons out, and to serve as a secondary containment system for animals housed inside the facility (9 C.F.R. § 3.127(d)). *See* paragraphs [132] through [134].

[155] On **July 24, 2001**, the Respondents willfully violated 9 C.F.R. § 2.100(a), by failing to **keep premises clean and in good repair** in order to protect the animals contained therein and to facilitate the prescribed husbandry practices set forth in subpart F of the Standards (9 C.F.R. § 3.131(c)). *See* paragraphs [135] through [137].

[156] On **July 31, 2001**, the Respondents willfully violated 9 C.F.R. § 2.100(a), by failing to use a **sufficient number of adequately trained employees to maintain the professionally acceptable level of husbandry practices** set forth in subpart F of the Standards, **under a supervisor who has a background in animal care** (9 C.F.R. § 3.132). *See* paragraphs [138] through [141].

[157] Respondents Robert E. Baudy and Rare Feline Breeding Center, Inc. were respondents in *In re Rare Feline Breeding Center, Inc., and Robert E. Baudy*, 53 Agric. Dec. 635 (March 14, 1994) (Animal Welfare Act Docket No. 93-36) (consent decision). Pursuant to the consent

decision and order, Mr. Baudy and Rare Feline Breeding were specifically ordered to cease and desist from, among other things, “[f]ailing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury, contain them securely, and restrict other animals from entering,” “[f]ailing to keep the premises clean and in good repair . . .,” “[f]ailing to utilize a sufficient number of trained employees to maintain the prescribed level of husbandry practices,” and “[f]ailing to establish and maintain programs of disease control and prevention, euthanasia” *See* paragraphs [142] through [144].

[158] During the hearing it was clear that the Respondents had invested much time and money in improving the enclosures at their compound, including the perimeter fence. *See* Mr. Brandolini’s testimony. During Mr. Brandolini’s years at Respondents’ compound, he had never experienced any escape from Respondents’ compound. The affection and respect shown Mr. Baudy by volunteers such as Mr. Brandolini and Ms. Elston, and by big cat handling expert Baron Julius von Uhl, were evident at the hearing. What outweighs all other evidence, though, is all that happened on July 31, 2001. For the purpose of the Animal Welfare Act, I find the Respondents responsible for all that happened on July 31, 2001, and I conclude that Animal Welfare Act license revocation and the related remedies that APHIS requested are necessary, and any lesser remedies would not be adequate.

Order

[159] Animal Welfare Act license number 58-A-0106, issued to Respondent “SAVAGE KINGDOM, INC.” is **revoked** effective on the day after this Decision becomes final. *See* paragraph [165].

[160] Respondent Rare Feline Breeding Center, Inc. will not be licensed during the revocation described in paragraph [159], because Respondent Rare Feline Breeding Center, Inc. was Respondent Savage Kingdom, Inc.'s agent that was responsible for or participated in the violations upon which Savage Kingdom, Inc.'s license revocation is based. *See* section 2.9 of the Regulations (9 C.F.R. § 2.9).

[161] Respondent Robert E. Baudy will not be licensed during the revocation described in paragraph [159], because Respondent Robert E. Baudy was Respondent Savage Kingdom, Inc.'s officer and agent who was responsible for or participated in the violations upon which Savage Kingdom, Inc.'s license revocation is based. *See* section 2.9 of the Regulations (9 C.F.R. § 2.9).

[162] The following **cease and desist** provisions of this Order (paragraphs [163] and [164]) shall be effective on the day after this Decision becomes final. *See* paragraph [165].

[163] Respondent Savage Kingdom, Inc., Respondent Rare Feline Breeding Center, Inc., and Respondent Robert E. Baudy, their 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 Standards issued thereunder.

[164] Respondent Savage Kingdom, Inc., Respondent Rare Feline Breeding Center, Inc., and Respondent Robert E. Baudy, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from engaging in any activity for which a license is required under the Act or Regulations without being licensed as required.

Finality

[165] This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after

service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 6th day of July 2006

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Bldg Room 1031
1400 Independence Ave SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the

time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145