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UNITED STATES DEPARTMENT OF AGRICULTURE 4 AM 11: 10

BEFORE THE SECRETARY OF AGRICULTURE

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In re:	)	AWA Docket No. 12- <u>0109</u>
	)	
CITY OF TOPEKA, a municipal agency	)	
doing business as TOPEKA ZOOLOGICAL	)	
PARK and TOPEKA ZOO,	)	
	)	
Respondent.	)	COMPLAINT

There is reason to believe that the respondent named herein has willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.) (the "Act" or "AWA"), and the regulations issued pursuant thereto (9 C.F.R. § 1.1 et seq.) (the "Regulations"). Therefore, the Administrator of the Animal and Plant Health Inspection Service ("APHIS"), issues this complaint alleging the following:

JURISDICTIONAL ALLEGATIONS

1. The City of Topeka is a municipal agency that operates and does business as Topeka Zoological Park, and Topeka Zoo ("Topeka Zoo"), and whose mailing address is 635 S.W. Gage Boulevard, Topeka, Kansas 66606. At all times mentioned herein, respondent Topeka Zoo was operating as an exhibitor, as that term is used in the Act and the Regulations, and held Animal Welfare Act license 48-C-0003.

2. Respondent Topeka Zoo owns and operates a zoo exhibiting more than one hundred animals to the public. The gravity of the violations herein is great. The violations include repeated noncompliance with the Regulations and Standards governing veterinary care, handling, housing and husbandry. At least nine infant, juvenile or young adult animals (three flying foxes, a Southern tamandua<sup>1</sup>, a juvenile lion, a Pallas's cat, a Harlequin rabbit, a pronghorn antelope, and a chevrotain) died during the period of time identified in this complaint. Topeka Zoo was a respondent in a

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<sup>1</sup>A species of anteater from South America.

previous AWA enforcement proceeding (*In re Topeka Zoological Park*, AWA Docket No. 98-0041 (Consent Decision and Order, Nov. 3, 1998)).

### ALLEGED VIOLATIONS

3. APHIS conducted unannounced inspections of respondent's facilities, records and animals on April 25, 2007, May 27, 2008, August 12 and September 28, 2009, January 11, April 12, May 10, July 26 and November 16, 2010, and March 14 and July 11, 2011. APHIS documented noncompliance with the Regulations and Standards on each of these eleven occasions.

4. On three separate occasions, respondent failed handle animals as carefully as possible, and failed to meet the minimum Standards for separation, housing incompatible animals in the same enclosure, in willful violation of the Regulations, 9 C.F.R. §§ 2.100(a), 2.131(b)(1), as follows:

a. On or about December 13, 2006, respondent housed an Indian Flying Fox (Lalita) in an enclosure housing an alligator, whereupon the alligator killed the fox. 9 C.F.R. § 3.133.

b. On or about December 26, 2006, respondent housed an Indian Flying Fox (Ace) in an enclosure housing an alligator, whereupon the alligator killed the fox. 9 C.F.R. § 3.133.

c. On or about February 12, 2007, respondent housed an Indian Flying Fox (Sunda) in an enclosure housing an alligator, whereupon the alligator killed the fox. 9 C.F.R. § 3.133.

5. On April 25, 2007, respondent failed to establish and maintain programs of veterinary care that included the use of appropriate methods to prevent diseases and injuries, and specifically, a giraffe with a hoof injury that requires frequent trimming had not received adequate foot care, and

the affected hoof was overgrown and curling inward due to lack of trimming, and the giraffe's affected limb was observed to be bending inward, in willful violation of the Regulations. 9 C.F.R. § 2.40(b)(2).

6. On April 25, 2007, respondent failed to meet the minimum Standards in willful violation of the Regulations, 9 C.F.R. § 2.100(a), as follows:

a. Food receptacles in the Jungle Cat building had not been cleaned of leftover pieces of raw meat that were trapped in between the feeder and enclosure. 9 C.F.R. § 3.129(b).

b. Respondent failed to establish and maintain an effective pest control program and specifically there was evidence of rodents in the hallway behind the lemur and porcupine enclosures. 9 C.F.R. §§ 3.84(d), 3.131(d).

7. On or about June 24, 2007, respondent failed to establish and maintain programs of veterinary care that included the use of appropriate methods to prevent injuries and failed to handle a 17-day old lion (Cub 2) as carefully as possible in a manner that would not cause trauma, discomfort or physical pain, in willful violation of the Regulations and specifically the lion was in a compromised condition and respondent housed it in an enclosure containing a three-foot tall platform; the lion ascended the platform and then fell off onto its back, causing internal hemorrhage, and was found dead several hours later, having received no medical treatment. 9 C.F.R. §§ 2.40(b)(2), 2.131(b)(1).

8. On or about July 19, 2007, respondent failed to provide adequate veterinary care to an animal, and to establish and maintain programs of veterinary care that included the use of appropriate methods to prevent diseases and injuries, daily observation of animals to assess their

well-being, and a mechanism of direct and frequent communication with respondent's attending veterinarian, in willful violation of the Regulations, and specifically, a six-year-old Harlequin rabbit (Pogo) died on July 19, 2007, by euthanasia due to severe maggot infestation caused by fecal matter adhered to fur around the rabbit's perineum, which infestation had gone unreported by respondent's animal handlers. 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).

9. On or about January 7, 2008, respondent failed to establish and maintain programs of veterinary care that included the use of appropriate methods to treat and prevent diseases and injuries and failed to handle a chevrotain as carefully as possible in a manner that would not cause trauma, or physical pain, in willful violation of the Regulations. 9 C.F.R. §§ 2.40(b)(2), 2.131(b)(1).

10. On May 27, 2008, respondent handled two tamarins and a tamandua during public exhibition without minimal risk of harm to the animals and to the public, and specifically, respondent displayed the animals in an enclosure that was less than an arm's length from the public barrier, and which permitted the public to have access to the animals contained therein, in willful violation of the Regulations. 9 C.F.R. § 2.131(c)(1).

11. On or about July 28, 2008, respondent failed to provide adequate veterinary care to an animal, and failed to establish and maintain programs of veterinary care that included the use of appropriate methods to prevent diseases and injuries, daily observation of animals to assess their well-being, and a mechanism of direct and frequent communication with respondent's attending veterinarian, in willful violation of the Regulations and, specifically, a six-year-old Pallas's cat (Rasputin) died on July 28, 2008, after having been observed to have reduced appetite and abnormal behavior during the preceding eight days, Rasputin received no veterinary care or examination, and post-mortem tests revealed that he suffered from "endotoxemia secondary to maggot infestation,"

among other conditions. 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).

12. On or about July 28, 2008, respondent failed to handle a pronghorn antelope as carefully as possible in a manner that would not cause trauma, or physical pain, in willful violation of the Regulations; specifically, a six-year-old pronghorn (Tristan) that was recovering from treatment for an abscess, had decreased appetite and had been observed as lethargic, was housed overnight on July 27, 2008, with rest of pronghorn herd and found dead the following morning. 9 C.F.R. § 2.131(b)(1).

13. On or about January 15, 2009, respondent failed to provide adequate veterinary care to an animal, and failed to establish and maintain programs of veterinary care that included the use of appropriate methods to prevent diseases and injuries, daily observation of animals to assess their well-being, and a mechanism of direct and frequent communication with respondent's attending veterinarian, in willful violation of the Regulations; specifically, a two-and-a-half-year-old Southern Tamandua (Anthony) died on January 15, 2009, from pneumonia, for which Anthony had received no treatment. 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).

14. On August 12, 2009, respondent failed to establish and maintain programs of veterinary care that included the use of appropriate methods to prevent diseases and injuries; specifically, respondent maintained for use with animals two vials of anesthetic drugs, Yobine and medetomidine, which drugs had expired June 2009 and November 2008, respectively, in willful violation of the Regulations. 9 C.F.R. § 2.40(b)(2).

15. On August 12, 2009, respondent failed to meet the minimum Standards in willful violation of the Regulations, 9 C.F.R. § 2.100(a), as follows:

a. There was an open trash can containing waste material in the area dedicated

to food storage and food preparation for nonhuman primates and other animals. 9 C.F.R. §§ 3.75(e), 3.75(f), 3.125(c), 3.125(d).

b. Respondent failed to establish and maintain an effective pest control program for nonhuman primates, as there was significant evidence of rodents in the enclosure housing two tamarins and the inspectors observed mice inside that enclosure. 9 C.F.R. § 3.84(d).

c. Respondent failed to establish and maintain an effective pest control program and specifically, the inspectors observed mice in the enclosure housing two porcupines and the enclosure housing two chevrotains, and observed an excessive amount of flies in the enclosure housing an armadillo. 9 C.F.R. § 3.131(d).

d. Respondent housed incompatible animals (sloths and porcupines) in the same enclosure, resulting in the sloths being quilled by the porcupines on multiple occasions. 9 C.F.R. § 3.133.

16. On or about August 31, 2009, respondent failed to handle animals as carefully as possible in a manner that would not cause trauma, discomfort, stress or physical pain, in willful violation of the Regulations, and specifically, a male orangutan (Mawas) was allowed to enter the enclosure housing a female orangutan (Daisy), the two orangutans were known to be incompatible with each other, and Mawas injured Daisy. 9 C.F.R. § 2.131(b)(1).

17. On or about December 17, 2009, respondent failed to establish and maintain programs of veterinary care that included the use of appropriate methods to prevent injuries, and adequate guidance to personnel involved in the care of animals regarding handling and immobilization, and failed to handle a four-year-old fishing cat (Parvati) as expeditiously and as carefully as possible in a manner that would not cause trauma, discomfort, stress, or physical pain, in willful violation of the

Regulations; specifically, in advance of performing a physical examination of Parvati, respondent's employees were unable to transfer Parvati out of her enclosure, and injured her mouth during their attempts to do so, respondent's veterinary staff was twice unsuccessful in administering immobilization drugs, and Parvati's feet were injured during these processes, exposing bone and requiring stitches and additional medications. 9 C.F.R. §§ 2.40(b)(2), 2.131(b)(1).

18. On or about January 11, 2010, respondent failed to provide adequate veterinary care to animals, failed to employ an attending veterinarian under formal arrangements that include a written program of veterinary care and regularly-scheduled visits to respondent's premises, failed to ensure that an attending veterinarian had appropriate authority, and failed to establish and maintain programs of veterinary care that included the use of appropriate methods to prevent diseases and injuries in willful violation of the Regulations. 9 C.F.R. §§ 2.40(a), 2.40(a)(1), 2.40(a)(2), 2.40(b)(2).

19. On January 11, 2010, respondent failed to meet the minimum Standards in willful violation of the Regulations, 9 C.F.R. § 2.100(a), as follows:

- a. An exhaust fan in a room housing lemurs was in disrepair. 9 C.F.R. § 3.75(a).
- b. Respondent failed to develop, document and follow a plan for enhancing the psychological well-being of nonhuman primates, and specifically, housed both a gorilla and a golden lion tamarin individually, without a written plan to address their specific needs as singly-housed nonhuman primates. 9 C.F.R. § 3.81(c).
- c. Respondent's environmental enhancement plan was overly broad and did not address the specific needs of non-human primates in respondent's custody. 9 C.F.R. § 3.81.
- d. Respondent failed to establish and maintain an effective pest control program

and specifically, the inspectors observed numerous flies in the enclosure housing two porcupines. 9 C.F.R. § 3.131(d).

20. On or about January 1, 2010, through April 12, 2010, in willful violation of the Regulations, respondent failed to maintain programs of veterinary care that included the availability of appropriate personnel and the use of appropriate methods to prevent diseases and injuries, and failed to meet the minimum Standards (9 C.F.R. § 3.132), in failing to employ a sufficient number of adequately trained employees to provide minimally-appropriate husbandry to respondent's elephants, and specifically, failed to inspect the elephants' feet and to bathe the elephants as frequently as necessary. 9 C.F.R. §§ 2.40(b)(1), 2.40(b)(2), 2.100(a).

21. On five occasions in 2010 (March 13, March 29, April 17, June 4 and June 11), respondent failed to handle animals as carefully as possible in a manner that would not cause trauma, discomfort, stress or physical pain, in willful violation of the Regulations, and specifically, foreign objects (a map, a stuffed toy, sunglasses, a plastic tumbler, a "sippy cup," and a plastic bottle) were introduced by the public into the enclosure housing bears, were not immediately removed, and all or part of these objects were available to and/or ingested by the bears. 9 C.F.R. § 2.131(b)(1).

22. On or about April 12, 2010, respondent failed to employ an attending veterinarian under formal arrangements that include a written program of veterinary care and regularly-scheduled visits to respondent's premises, in willful violation of the Regulations. 9 C.F.R. §§ 2.40(a)(1).

23. On or about April 12, 2010, respondent failed to handle animals as carefully as possible in a manner that would not cause trauma, discomfort, stress or physical pain, in willful violation of the Regulations, and specifically, locked a male hippopotamus out of its pool on April 12, 2010, and APHIS inspectors were advised that the hippopotamus was regularly locked out or the

pool area, and denied access to the water for up to eight hours at a time. 9 C.F.R. § 2.131(b)(1).

24. On April 12, 2010, respondent handled a fishing cat during public exhibition without minimal risk of harm to the animal and to the public, in willful violation of the Regulations, and specifically, there was an inadequate barrier between the fishing cat enclosure and the public, and the enclosure was easily accessible by the public. 9 C.F.R. § 2.131(c)(1).

25. On April 12, 2010, respondent failed to meet the minimum Standards in willful violation of the Regulations, 9 C.F.R. § 2.100(a), as follows:

- a. The lemur enclosure had excessive rust. 9 C.F.R. § 3.75(c)(1)(i).
- b. The lemurs had no perches or areas for climbing. 9 C.F.R. § 3.81(b).
- c. Respondent failed to store food supplies in a manner that protected them from contamination. 9 C.F.R. § 3.125(c).

26. On or about May 6, 2010, respondent failed to handle a bobcat as carefully as possible, and handled a bobcat during public exhibition without minimal risk of harm to the animal and to the public, in willful violation of the Regulations; specifically, a bobcat was discovered to be missing from his enclosure at 6:30 a.m., and was not located after an initial search of the premises, and respondent opened the facility to the public at 9:40 a.m., while the bobcat was still outside of its enclosure. 9 C.F.R. §§ 2.131(b)(1), 2.131(c)(1).

27. On or about August 2009, May 6, 2010, and May 17, 2010, respondent failed to meet the minimum Standards (9 C.F.R. § 3.127(d)), and, specifically, respondent's perimeter fence was not constructed in such a way as to prevent the ingress of unauthorized persons, in willful violation of the Regulations. 9 C.F.R. § 2.100(a).

28. On or about July 26, 2010, respondent failed to meet the minimum Standards in

willful violation of the Regulations, 9 C.F.R. § 2.100(a), as follows:

a. Respondent failed to establish and maintain an effective pest control program and specifically, the inspectors observed numerous flies in the enclosure housing a female gorilla, and respondent had no fly abatement program in place. 9 C.F.R. § 3.84(d).

b. There were areas of peeling paint and rust on the bars and portions of the concrete walls of the hippopotamus enclosure, which areas had become embedded with hair, fecal matter and grime. 9 C.F.R. § 3.131(c).

c. Respondent failed to establish and maintain an effective pest control program and specifically, the inspectors observed flies in the enclosure housing two female lions, both lions were observed shaking their heads and twitching their ears, and there were numerous flies around their ears, both lions had lesions on their ears consistent with repeated fly bites, and the enclosure had not been treated for flying insects. 9 C.F.R. § 3.131(d).

29. On or about September 13, 2010, through September 20, 2010, respondent failed to establish and maintain programs of veterinary care that included daily observation of animals to assess their well-being, in willful violation of the Regulations and, specifically, failed to observe a sloth for seven days 9 C.F.R. § 2.40(b)(3).

30. On or about November 16, 2010 and July 11, 2011, respondent failed to meet the minimum Standards for housing facilities (9 C.F.R. § 3.127(d)) in willful violation of the Regulations and, specifically, failed to construct and maintain an adequate perimeter fence behind the black bear exhibit. 9 C.F.R. § 2.100(a).

31. On November 16, 2010, respondent handled a Pallas's cat during public exhibition without minimal risk of harm to the animal and to the public, in willful violation of the Regulations,

and specifically, there was an inadequate barrier between the cat enclosure and the public, and the enclosure was easily accessible by the public. 9 C.F.R. § 2.131(c)(1).

32. On or about March 14, 2011, respondent failed to meet the minimum Standards in willful violation of the Regulations, 9 C.F.R. § 2.100(a), as follows:

a. Respondent failed to store supplies of food and bedding in a manner that protects them from contamination or soiling. 9 C.F.R. § 3.125(c).

b. Respondent failed to provide a suitable method for draining excess water, and specifically, the inspectors observed areas of standing water in four sections of the mountain lion enclosure. 9 C.F.R. § 3.127(c).

c. Respondent failed to construct and maintain an adequate perimeter fence behind the black bear exhibit. 9 C.F.R. § 3.127(d).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondent has in fact willfully violated the Act and the regulations issued under the Act, this complaint shall be served upon the respondent. The respondent shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

The Animal and Plant Health Inspection Service requests that unless the respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and that such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order that respondent

cease and desist from violating the Act and the regulations and standards issued thereunder, assessing civil penalties against respondent in accordance with section 19 of the Act (7 U.S.C. § 2149), and suspending or revoking AWA license 48-C-0003.

Done at Washington, D.C.  
this 12<sup>th</sup> day of December 2011

  
*Acting* Administrator  
Animal and Plant Health Inspection Service

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