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TO: Susan Roy
FROM: Tonya Fisher, USDA
AWA-04-0027

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) AWA Docket No. 04-0027
)
)
THE UNIVERSITY OF CALIFORNIA)
SAN FRANCISCO,)
a public educational institution,)
)
) Respondent.) **FIRST AMENDED COMPLAINT**

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

JURISDICTIONAL ALLEGATIONS

1. The University of California, San Francisco ("UCSF"), is a public educational institution whose address is University of California, San Francisco, San Francisco, California 94143. Respondent UCSF is governed by The Regents of the University of California, whose General Counsel is James E. Holst, Office of the General Counsel of The Regents of the University of California, 1111 Franklin Street, Oakland, California 94607. At all times mentioned herein, said respondent was registered and operating as a research facility under the Act, and was assigned registration number 93-R-0440.

ALLEGATIONS REGARDING THE SIZE OF RESPONDENT'S BUSINESS,
THE GRAVITY OF THE ALLEGED VIOLATIONS,
RESPONDENT'S GOOD FAITH AND RESPONDENT'S COMPLIANCE HISTORY

2. Respondent is a member of the University of California public university system, which currently has 201,000 students and 160,000 faculty and staff. The University of California's

2003-2004 operations budget was \$10,294,379,000. Respondent has three sites (Parnassus Heights Campus, Hunter's Point, San Francisco General Hospital) where it houses animals. The gravity of respondent's violations is great. Respondent's violations directly affected the health and well-being of animals. On October 6, 1999, APHIS sent respondent a Letter of Warning identifying violations of the Regulations from November 25, 1998 through September 8, 1999. On December 21, 2000, APHIS and the respondent entered into a stipulation in connection with alleged violations of the Regulations from June through September 2000, whereby respondent agreed to pay a fine of \$2,000.

ALLEGED VIOLATIONS OF THE RESEARCH FACILITY REGULATIONS

3. On or about the following dates, respondent violated the Regulations governing the Institutional Animal Care and Use Committee of research facilities (9 C.F.R. § 2.31):

a. May 17-25, 2001. Respondent failed to ensure that its Institutional Animal Care and Use Committee ("IACUC") determined that proposed activities involving surgery include appropriate pre-operative care, and specifically, respondent's IACUC failed to disapprove the conduct of major survival surgery on an animal that was already under veterinary medical care. 9 C.F.R. § 2.31(d)(1)(ix).

b. May 17-25, 2001. Respondent failed to have its IACUC conduct continuing reviews of activities covered by the Regulations at appropriate intervals, and specifically, the IACUC's did not review to the most current procedures used on animals in protocol A 832-05293. 9 C.F.R. § 2.31(d)(5).

c. May 17-25, 2001. Respondent failed to ensure that a proposal to conduct an activity involving animals contained a complete description of the proposed use of the procedures designed to ensure that discomfort and pain to animals will be limited to that

which is unavoidable for the conduct of scientifically-valuable research, and specifically, protocol A11378-18525 did not do so, in that it did not describe which analgesics were to be administered, and how. 9 C.F.R. § 2.31(e)(4).

d. May 17-25, 2001. Respondent failed to have its IACUC review and approve its activities using animals, and specifically, respondent conducted research activities using a sheep in protocol A 7095-08716, which required respondent to use local anesthesia on the surgical incision line of a ewe and her fetus, as well as analgesics for two days after the surgery; respondent failed both to use local anesthesia and post-operative analgesics as required, thereby altering the protocol's requirement. 9 C.F.R. § 2.31(c)(7).

e. November 13, 2001. Respondent failed to have its IACUC review and approve its activities using animals, and specifically, respondent's investigator conducted research activities using a lamb used in protocol A8046-12070-06A, without the review and approval of respondent's IACUC of the alteration of that protocol's requirement for post-surgical monitoring of the animal every 15 to 30 minutes until the animal demonstrates that it is awake by standing up, and thereafter every 1 to 1½ hours until the animal was feeding and ambulatory. Respondent altered that requirement by not monitoring a lamb that was recovering from a surgical procedure, as required. 9 C.F.R. § 2.31(c)(7).

f. November 13, 2001. Respondent failed to have its IACUC review and approve its activities using animals, and specifically, respondent's investigator conducted research activities using a second lamb used in protocol A8046-12070-06A, without the review and approval of respondent's IACUC of the alteration of that protocol's requirement for post-surgical monitoring of the animal every 15 to 30 minutes until the animal demonstrates that

it is awake by standing up, and thereafter every 1 to 1½ hours until the animal was feeding and ambulatory. Respondent altered that requirement by not monitoring a lamb that was recovering from a surgical procedure, as required. 9 C.F.R. § 2.31(c)(7).

g. January 28, 2002. Respondent failed to have its IACUC prepare reports of its evaluations, as required, and specifically, the IACUC had no means by which it could adequately identify the nature and extent of respondent's adherence to the Regulations, and monitor the correction of deficiencies. 9 C.F.R. § 2.31(c)(3).

h. January 28, 2002. Respondent failed to have its IACUC review and approve its activities using animals, and specifically, respondent conducted research activities using animals in its "water restriction" protocol, which required respondent to establish the baseline weight of primates used in the protocol during the first week of water restriction, and thereafter to adjust those weights semi-annually; respondent failed to adjust the baseline weights for several primates, thus altering the protocol's requirement. 9 C.F.R. § 2.31(c)(7).

i. August 6, 2002. Respondent failed to have its IACUC review and approve its activities using animals, and specifically, respondent conducted research activities using animals in amended protocol A11378-18525, which required respondent to administer a second dose of analgesics to all animals, and altered that amended protocol by failing to provide the required second dosage of analgesics. 9 C.F.R. § 2.31(c)(7).

j. August 6, 2002. Respondent failed to have its IACUC review and approve its activities using animals, and specifically, respondent conducted research activities using animals in amended protocol A11378-18525, which provides for a single unilateral intra-carotid MPTP injection procedure per animal, and altered that amended protocol by using a

single animals for more than one such injection procedure. 9 C.F.R. § 2.31(c)(7).

k. August 6, 2002. Respondent made a significant change in an ongoing activity without actually proposing the change to its IACUC, and specifically, respondent altered amended protocol A11378-18525, which provides that a second dose of analgesics is to be administered to all animals, by failing to provide the required second dosage of analgesics. 9 C.F.R. § 2.31(e).

l. August 6, 2002. Respondent failed to ensure that its IACUC determined that the principal investigator had considered alternatives to procedures that may cause more than momentary or slight pain or distress to animals used in proposed activities, and specifically, respondent's IACUC failed to determine that the principal investigator had considered alternatives to the procedures involved in the marmoset breeding protocol, which required animals to have multiple consecutive pregnancies while at the same time nursing infants, and whether there were alternatives that would cause less pain or distress; one 400-gram marmoset gave birth, in a forty-month period, seven times to 14 babies, six of which died; by July 2002, she weighed 283 grams, and was lethargic; approximately one week later, after she and one newborn were separated from the group cage, she was thin, and clearly depressed. By August, the infant was lethargic, non-responsive, and detached from its mother, and was euthanized. The mother was later euthanized, as well. 9 C.F.R. § 2.31(d)(1)(ii).

m. October 24, 2002. Respondent failed to have its IACUC prepare reports of its evaluations, as required, and specifically, respondent failed to have a majority of the members of respondent's IACUC sign the IACUC's report and program reviews, and instead, had its attending veterinarian sign them. 9 C.F.R. § 2.31(c)(3).

n. February 3-4, 2003. Respondent failed to have its IACUC review and approve its activities using animals, and specifically, respondent's investigator conducted research activities using animals in protocol A1033 00538 15, without the review and approval of respondent's IACUC of the alteration of that protocol's requirement for post-surgical monitoring of primates every 30 minutes until the animal demonstrates that it is awake by sitting up, and thereafter every 1 to 2 hours until the animal takes food and water from the investigator. Respondent altered that requirement by not monitoring a primate that was recovering from anesthesia at all from 6:30 p.m. on February 3, 2003 until 7:40 a.m. the following morning. 9 C.F.R. § 2.31(c)(7).

o. February 3-4, 2003. Respondent failed to ensure that a proposal to conduct an activity involving animals contained a complete description of the proposed use of the animals, and specifically, protocol A1033 00538 15, did not do so, in that it did not describe respondent's investigator's concerns about the protocol's analgesic regime, thereby precluding respondent's IACUC from making an informed determination that the proposed activities involving animals would avoid or minimize their discomfort and pain, and that any procedures that caused more than slight pain or distress would be performed with appropriate analgesics, and, consequently, no post-operative analgesics were provided to an animal that had undergone a craniotomy. 9 C.F.R. § 2.31(e).

p. February 3-4, 2003. Respondent failed to ensure that a proposal to conduct an activity involving animals contained a complete description of the proposed use of the animals, and specifically, protocol A1033 00538 15, did not do so, in that it did not describe either the number or the size of the burr-holes that respondent intended to make in the skulls

of animals, thereby precluding respondent's IACUC from making a determination that the proposed procedures would avoid or minimize pain and distress. 9 C.F.R. § 2.31(e).

q. April 16, 2003. Respondent failed to have its IACUC review and approve its activities using animals, and specifically, respondent's investigator conducted research activities using animals in protocol A1451-10741-09, without the review and approval of respondent's IACUC of the alteration of that protocol's requirement for post-procedural monitoring of animals two days after the commencement of such procedures, and specifically, respondent's veterinary staff altered that requirement by failing to monitor such animals as originally required by the protocol. 9 C.F.R. § 2.31(c)(7).

r. April 16, 2003. Respondent failed to have its IACUC review and approve its activities using animals, and specifically, respondent's investigator conducted research activities using animals in protocol A1451-10741-09, without the review and approval of respondent's IACUC of the alteration of that protocol's requirement for euthanasia in accordance with protocol specifications. 9 C.F.R. § 2.31(c)(7).

s. April 16, 2003. Respondent failed to ensure that its IACUC determined that significant changes in ongoing activities using animals met the requirement that procedures avoid or minimize discomfort, distress and pain to the animals, and that animals that would otherwise experience severe or chronic pain or distress than cannot be relieved will be painlessly euthanized at the end of the procedure, and specifically, respondent's IACUC failed to disapprove the failure of respondent's investigator to painlessly euthanize a moribund rabbit used in protocol A1451-10741-09, where the investigator altered the protocol's euthanasia requirement without the review and approval of respondent's IACUC. 9 C.F.R.

§§ 2.31(d)(1)(i), (v).

t. December 5, 2003. Respondent failed to ensure that its IACUC determined that significant changes in ongoing activities using animals met the requirement that procedures avoid or minimize discomfort, distress and pain to the animals, and specifically, respondent's IACUC failed to disapprove the continued utilization of an animal in protocol A886-00094 (respondent's water restriction regime), which protocol required that an animal with greater than 10% weight loss would be provided with increased food and fluids, and an animal used in this protocol lost approximately 15% of its body weight, but was not provided with increased food and fluids. 9 C.F.R. § 2.31(d)(1)(i).

u. December 5, 2003. Respondent failed to ensure that its IACUC determined that significant changes in ongoing activities using animals met the requirement that medical care for animals would be available and provided as necessary by a qualified veterinarian, and specifically, respondent's IACUC failed to disapprove the lack of veterinary medical care provided to an animal in protocol A886-00094, despite the animal's loss of approximately 15% of its body weight over an eight-month period of time. 9 C.F.R. § 2.31(d)(1)(vii).

v. December 5, 2003. Respondent failed to ensure that its IACUC determined that proposed activities using animals were in accordance with the Regulations absent acceptable justification in writing, and that significant changes met the Regulations' requirements, and specifically, researchers using animals in activities under respondent's protocol 407-00139 euthanized animals by exsanguination, a method of euthanasia that was not described in the protocol, and may cause more than slight pain or distress to animals, and the protocol contained no description of a search for alternatives to such a method of

euthanasia. 9 C.F.R. § 2.31(d)(1)(ii).

w. December 5, 2003. Respondent's proposal to conduct an activity using animals did not contain a complete description of the euthanasia method to be used on animals, and specifically, respondent's protocol 407-00139 did not include a complete description of the method of euthanasia to be performed on the animals used in that protocol thereby precluding respondent's IACUC from making a determination that the proposed procedures would avoid or minimize pain and distress. 9 C.F.R. § 2.31(e).

4. On or about the following dates, respondent violated the Regulations governing personnel qualifications (9 C.F.R. § 2.32):

a. February 3-4, 2003. Respondent failed to ensure that its personnel involved in animal care, treatment and use were qualified to perform their duties, and specifically, respondent's personnel appeared to lack adequate training in humane methods of animal maintenance and experimentation, including proper handling and care, proper post-procedural care, and the intent and requirements of the Act. 9 C.F.R. § 2.32.

b. April 16, 2003. Respondent failed to ensure that its personnel involved in animal care, treatment and use were qualified to perform their duties, and specifically, respondent's personnel appeared to lack adequate training in humane methods of animal maintenance and experimentation, including proper handling and care, proper post-procedural care, and the intent and requirements of the Act. 9 C.F.R. § 2.32.

5. On or about the following dates, respondent violated the Regulations governing veterinary care (9 C.F.R. § 2.32):

a. May 17-25, 2001. Respondent failed to maintain a program of adequate

veterinary care that included daily observation of all animals and a mechanism to convey accurate information to the attending veterinarian, and specifically, respondent's personnel failed to observe a ewe that was suffering from diarrhea as often as necessary and to convey the condition of the ewe to respondent's attending veterinarian. 9 C.F.R. § 2.33(b)(3).

b. May 17-25, 2001. Respondent failed to maintain a program of adequate veterinary care that included the use of appropriate methods to treat diseases, and specifically, respondent subjected a ewe that was already under veterinary medical treatment to major survival surgery. 9 C.F.R. § 2.33(b)(2).

c. May 17-25, 2001. Respondent failed to maintain a program of adequate veterinary care that included the use of appropriate methods to control and treat diseases, and specifically, respondent failed to make and keep records of the condition of a sheep that was exhibiting abnormal respiration. 9 C.F.R. § 2.33(b)(2).

d. May 17-25, 2001. Respondent failed to maintain a program of adequate veterinary care that included the use of appropriate methods to control and treat diseases, and specifically, respondent failed to make and keep records of the condition of a sheep that exhibited torticollis. 9 C.F.R. § 2.33(b)(2).

e. November 13, 2001. Respondent failed to maintain a program of adequate veterinary care that included daily observation of all animals and a mechanism to convey accurate information to the attending veterinarian, and specifically, respondent's personnel failed to observe a lamb used in protocol A8046-12070-06A as often as necessary and convey the condition of the lamb to respondent's attending veterinarian. 9 C.F.R. § 2.33(b)(3).

f. November 13, 2001. Respondent failed to maintain a program of adequate

veterinary care that included daily observation of all animals and a mechanism to convey accurate information to the attending veterinarian, and specifically, respondent's personnel failed to observe a second lamb used in protocol A8046-12070-06A as often as necessary and convey the condition of the lamb to respondent's attending veterinarian. 9 C.F.R. § 2.33(b)(3).

g. November 13, 2001. Respondent failed to maintain a program of adequate veterinary care that included adequate post-procedural care in accordance with current established veterinary medical and nursing procedures, and specifically, failed to provide adequate post-procedural care to a lamb used in protocol A8046-12070-06A. 9 C.F.R. § 2.33(b)(5).

h. November 13, 2001. Respondent failed to maintain a program of adequate veterinary care that included adequate post-procedural care in accordance with current established veterinary medical and nursing procedures, and specifically, failed to provide adequate post-procedural care to a second lamb used in protocol A8046-12070-06A. 9 C.F.R. § 2.33(b)(5).

i. January 28, 2002. Respondent failed to maintain a program of adequate veterinary care that included daily observation of all animals and a mechanism to convey accurate information to the attending veterinarian, and specifically, respondent failed to notify its attending veterinarian promptly of the actual weight loss of primates used in respondent's "water restriction" protocol. 9 C.F.R. § 2.33(b)(3).

j. January 28, 2002. Respondent failed to maintain a program of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat

diseases and injuries, and specifically, respondent failed to label syringes to identify their contents. 9 C.F.R. § 2.33(b)(2).

k. January 28, 2002. Respondent failed to maintain a program of adequate veterinary care that included guidance to principal investigators and other personnel involved in the care and use of animals regarding immobilization, and tranquilization, and specifically, respondent failed to keep controlled substances (such as Ketamine) in a secure location. 9 C.F.R. § 2.33(b)(4).

l. August 6, 2002. Respondent failed to maintain a program of adequate veterinary care that included guidance to principal investigators and other personnel involved in the care and use of animals regarding handling, and specifically, regarding the handling of a marmoset mother, and her offspring. 9 C.F.R. § 2.33(b)(4).

m. August 6, 2002. Respondent failed to maintain a program of adequate veterinary care that included guidance to principal investigators and other personnel involved in the care and use of animals regarding analgesia, and specifically, respondent failed to provide a second dose of analgesics to all animals in protocol A1138-18525. 9 C.F.R. § 2.33(b)(4).

n. August 6, 2002. Respondent failed to maintain a program of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose and treat diseases and injuries, and specifically, respondent failed to make, keep, and maintain accurate records of the weight of marmosets. 9 C.F.R. § 2.33(b)(2).

o. August 6, 2002. Respondent failed to have its attending veterinarian provide adequate care to its animals, and specifically, respondent failed to have its attending

veterinarian treat a marmoset that was observed to be experiencing a marked weight loss. 9 C.F.R. § 2.33(a).

p. August 6, 2002. Respondent failed to have its attending veterinarian provide adequate care to its animals, and specifically, respondent failed to have its attending veterinarian treat a female marmoset that was observed to be thin and depressed. 9 C.F.R. § 2.33(a).

q. October 24, 2002. Respondent failed to maintain a program of adequate veterinary care that included daily observation of all animals and a mechanism to convey accurate information to the attending veterinarian, and specifically, respondent's personnel failed to note that they observed animals for three days, from October 21, 2002, through October 24, 2002. 9 C.F.R. § 2.33(b)(3).

r. February 3-4, 2003. Respondent failed to maintain a program of adequate veterinary care that included the availability of appropriate personnel to comply with the Regulations, and specifically, respondent lacked appropriate personnel to monitor a primate that was recovering from anesthesia in accordance with protocol A1033 00538 15, as it was originally approved by the IACUC. 9 C.F.R. § 2.33(b)(1).

s. February 3-4, 2003. Respondent failed to maintain a program of adequate veterinary care that included adequate post-procedural care in accordance with current established veterinary medical and nursing procedures, and specifically, failed to provide adequate post-procedural care to a primate used in protocol A1033 00538 15. 9 C.F.R. § 2.33(b)(5).

t. February 3-4, 2003. Respondent failed to maintain a program of adequate

veterinary care that included daily observation of all animals and a mechanism to convey accurate information to the attending veterinarian, and specifically, respondent's personnel failed to make accurate records of their observations of animals, and at least one of respondent's daily records, viewed at 11.30 a.m, on February 4, 2003, noted that respondent's personnel had checked animals during the afternoon of February 4, 2003. 9 C.F.R. § 2.33(b)(3).

u. April 16, 2003. Respondent failed to maintain a program of adequate veterinary care that included daily observation of all animals and a mechanism to convey accurate information to the attending veterinarian, and specifically, respondent's personnel failed to monitor a rabbit that was lying in its cage and unable to move, after being used in protocol A1451-10741-09, and failed to convey information regarding the rabbit to respondent's attending veterinarian. 9 C.F.R. § 2.33(b)(3).

v. April 16, 2003. Respondent failed to maintain a program of adequate veterinary care that included adequate post-procedural care in accordance with current established veterinary medical and nursing procedures, and specifically, failed to provide adequate post-procedural care to a rabbit used in protocol A1451-10741-09. 9 C.F.R. § 2.33(b)(5).

w. December 5, 2003. Respondent failed to have an attending veterinarian provide adequate veterinary care to an animal in protocol A886-00094 that had suffered an acute weight loss. 9 C.F.R. § 2.33(b)(3).

x. December 5, 2003. Respondent failed to maintain a program of adequate veterinary care that included daily observation of all animals and a mechanism to convey

accurate information to the attending veterinarian, and specifically, respondent failed to inform its attending veterinarian that an animal in protocol A886-00094 had suffered an acute weight loss. 9 C.F.R. § 2.33(b)(3).

6. On or about the following dates, respondent violated section 2.38(f) of the Regulations governing the handling of animals (9 C.F.R. § 2.38(f)), as follows:

a. May 17-25, 2001. Respondent failed to handle animals as carefully as possible in a manner that does not cause behavioral stress, physical harm or unnecessary discomfort, and specifically, respondent subjected a ewe that was already being treated for diarrhea to major survival surgery. 9 C.F.R. § 2.38(f)(1).

b. November 13, 2001. Respondent failed to handle animals as carefully as possible in a manner that does not cause behavioral stress, physical harm or unnecessary discomfort, and specifically, respondent completed a surgical procedure on a lamb in protocol A8046-12070-06A at 12:30 p.m., and observed the animal once, at 1:00 p.m., but failed to observe the animal again until the lamb was observed frothing at the mouth and having difficulty breathing. 9 C.F.R. § 2.38(f)(1).

c. November 13, 2001. Respondent failed to handle animals as carefully as possible in a manner that does not cause behavioral stress, physical harm or unnecessary discomfort, and specifically, respondent completed a surgical procedure on a second lamb in protocol A8046-12070-06A at 12:15 p.m., and observed the animal once, at 1:35 p.m., but failed to observe the animal again until 5:15 p.m. 9 C.F.R. § 2.38(f)(1).

d. January 28, 2002. Respondent failed to handle animals as carefully as possible in a manner that does not cause physical harm or unnecessary discomfort, and

specifically, respondent failed to ensure that primates used in respondent's "water restriction" protocol were not in distress or need of veterinary medical care, as a result of weight loss. 9 C.F.R. § 2.38(f)(1).

e. August 6, 2002. Respondent failed to handle animals as carefully as possible in a manner that does not cause physical harm or unnecessary discomfort, and specifically, respondent failed to provide a second dose of analgesics to all animals in protocol A1138-18525. 9 C.F.R. § 2.38(f)(1).

f. August 6, 2002. Respondent failed to handle animals as carefully as possible in a manner that does not cause behavioral stress, physical harm or unnecessary discomfort, and specifically, respondent handled an a marmoset mother, and her offspring, in a manner that in fact caused behavioral stress, physical harm and unnecessary discomfort. 9 C.F.R. § 2.38(f)(1).

g. August 6, 2002. Respondent failed to handle animals as carefully as possible in a manner that does not cause physical harm or unnecessary discomfort, and specifically, respondent performed multiple unilateral intracarotid MPTP injection procedures on the same animals in protocol A1138-18525. 9 C.F.R. § 2.38(f)(1).

h. February 3-4, 2003. Respondent failed to handle animals as carefully as possible in a manner that does not cause physical harm or unnecessary discomfort, and specifically, respondent's investigator and his staff failed to adequately monitor a primate recovering from pentobarbital anesthesia so as to determine whether the animal was in distress or need of veterinary medical care, and personnel did not check on this animal from 6:30 p.m. on February 3, 2003 until 7:40 a.m. the following morning. 9 C.F.R. § 2.38(f)(1).

i. February 3-4, 2003. Respondent failed to handle animals as carefully as possible in a manner that does not cause physical harm or unnecessary discomfort, and specifically, respondent's investigator provided no post-operative analgesics to an animal that had undergone a craniotomy. 9 C.F.R. § 2.38(f)(1).

j. April 16, 2003. Respondent failed to handle animals as carefully as possible in a manner that does not cause physical harm or unnecessary discomfort, and specifically, failed to treat or painlessly euthanize a moribund rabbit that had been used in protocol A1451-10741-09 and was lying in its cage, unable to move, while respondent's researchers performed procedures on other animals in the same room. 9 C.F.R. § 2.38(f)(1).

k. December 5, 2003. Respondent failed to handle animals as carefully as possible in a manner that does not cause physical harm or unnecessary discomfort, and specifically, researchers using animals in activities under respondent's protocol 407-00139 euthanized animals by exsanguination, without determining whether there were methods of euthanasia that would avoid or minimize discomfort, pain and distress. 9 C.F.R. § 2.38(f)(1).

7. On or about the following dates, respondent violated section 2.38(k) of the Regulations (9 C.F.R. § 2.38), by failing to meet the minimum standards for humane handling, care and treatment of dogs and cats, as follows:

a. August 6, 2002. Respondent failed to sanitize primary enclosures for dogs and cats by washing them in hot water (at least 180 degrees Fahrenheit) and soap or detergent, and specifically, respondent's mechanical cage washer lacks any temperature indicator. 9 C.F.R. § 3.11(b)(3).

a. February 3-4, 2003. Respondent failed to keep its premises where housing

facilities are located clean and in good repair to protect the animals from injury and to facilitate the required husbandry practices, and specifically, the ceiling of respondent's cage wash room was covered with condensation, allowing contaminants to drip from the ceiling into cleaned and sanitized animal enclosures for dogs and cats. 9 C.F.R. § 3.11(c).

8. On or about the following dates, respondent violated section 2.38(k) of the Regulations (9 C.F.R. § 2.38), by failing to meet the minimum standards for humane handling, care and treatment of guinea pigs and hamsters, as follows:

a. August 6, 2002. Respondent failed to sanitize primary enclosures for guinea pigs and hamster by washing them in hot water (at least 180 degrees Fahrenheit) and soap or detergent, and specifically, respondent's mechanical cage washer lacks any temperature indicator. 9 C.F.R. § 3.31(a)(4).

b. February 3-4, 2003. Respondent failed to keep its premises where housing facilities are located clean and in good repair to protect the animals from injury and to facilitate the required husbandry practices, and specifically, the ceiling of respondent's cage wash room was covered with condensation, allowing contaminants to drip from the ceiling into cleaned and sanitized animal enclosures for guinea pigs and hamsters. 9 C.F.R. § 3.31(b).

9. On or about the following dates, respondent violated section 2.38(k) of the Regulations (9 C.F.R. § 2.38), by failing to meet the minimum standards for humane handling, care and treatment of rabbits, as follows:

a. January 28, 2002. Respondent failed to store supplies of food in facilities that adequately protect them from infestation and contamination, and specifically, failed to adequately seal a bag of open rabbit feed, which bag was stored on the floor adjacent to the

surgical suite. 9 C.F.R. § 3.50(c).

b. January 28, 2002. Respondent failed to provide for the removal and disposal of animal and food wastes, and specifically, failed to clean rabbit enclosures for several weeks, which enclosures contained animal waste and other debris. 9 C.F.R. § 3.50(d).

c. January 28, 2002. Respondent failed to keep primary enclosures for rabbits reasonably free of excreta by periodic cleaning, and specifically, failed to clean the enclosures for several weeks. 9 C.F.R. § 3.56(a)(1).

d. January 28, 2002. Respondent failed to remove soiled litter from primary enclosures for rabbits and replace it with clean litter at least once a week, and specifically, failed for over two weeks to remove soiled litter from at least one rabbit enclosure with a solid floors, and replace it with fresh litter. 9 C.F.R. § 3.56(a)(2).

e. January 28, 2002. Respondent failed to sanitize primary enclosures for rabbits by washing them in hot water (at least 180 degrees Fahrenheit) and soap or detergent, by washing all soiled surfaces with a detergent solution followed by a disinfectant, or by live steam or flame, and specifically, respondent attempted to sanitize such enclosures using only "Fantastic," a household cleanser. 9 C.F.R. § 3.56(b)(3).

e. August 6, 2002. Respondent failed to sanitize primary enclosures for rabbits by washing them in hot water (at least 180 degrees Fahrenheit) and soap or detergent, by washing all soiled surfaces with a detergent solution followed by a disinfectant, or by live steam or flame, and specifically, respondent's mechanical cage washer lacks any temperature indicator. 9 C.F.R. § 3.56(b)(3).

f. February 3-4, 2003. Respondent failed to keep its premises where housing

facilities are located clean and in good repair to protect the animals from injury and to facilitate the required husbandry practices, and specifically, the ceiling of respondent's cage wash room was covered with condensation, allowing contaminants to drip from the ceiling into cleaned and sanitized animal enclosures for rabbits. 9 C.F.R. § 3.56(c).

10. On or about the following dates, respondent violated section 2.38(k) of the Regulations (9 C.F.R. § 2.38), by failing to meet the minimum standards for humane handling, care and treatment of nonhuman primates, as follows:

a. August 6, 2002. Respondent failed to sanitize primary enclosures for nonhuman primates by washing them in hot water (at least 180 degrees Fahrenheit) and soap or detergent, and specifically, respondent's mechanical cage washer lacks any temperature indicator. 9 C.F.R. § 3.84(b)(3).

b. February 3-4, 2003. Respondent failed to keep its premises where housing facilities are located clean and in good repair to protect the animals from injury and to facilitate the required husbandry practices, and specifically, the ceiling of respondent's cage wash room was covered with condensation, allowing contaminants to drip from the ceiling into cleaned and sanitized animal enclosures for nonhuman primates. 9 C.F.R. § 3.84(c).

c. February 3-4, 2003. Respondent failed to keep food receptacles clean and sanitized, and specifically, the cutting boards that respondent used to prepare food for primates were not cleaned and sanitized, and had turned brown as a result. 9 C.F.R. § 3.82(d).

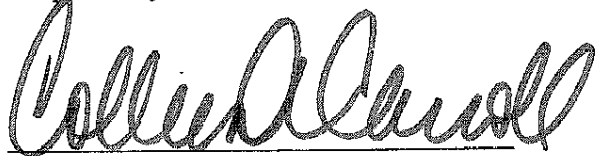
11. On or about the following dates, respondent violated section 2.38(k) of the Regulations (9 C.F.R. § 2.38), by failing to meet the minimum standards for humane handling, care and treatment of other warm-blooded animals, as follows:

a. February 3-4, 2003. Respondent failed to keep its premises where housing facilities are located clean and in good repair to protect the animals from injury and to facilitate the required husbandry practices, and specifically, the ceiling of respondent's cage wash room was covered with condensation, allowing contaminants to drip from the ceiling into cleaned and sanitized animal enclosures for animals other than dogs, cats, nonhuman primates, rabbits, guinea pigs and hamsters. 9 C.F.R. § 3.131(c).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondent has in fact violated the Act and the regulations issued under the Act, this amended 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 amended complaint.

The Animal and Plant Health Inspection Service requests that unless the respondent fails to file an answer within the time allowed therefore, or files an answer admitting all the material allegations of this amended 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 requiring the respondent to cease and desist from violating the Act and the Regulations and Standards issued thereunder; and assessing civil penalties against in accordance with section 19 of the Act (7 U.S.C. § 2149).

Respectfully submitted,



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