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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:

KARL MITCHELL, an individual,  
Respondent.

AWA Docket No. 09-0845

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. Karl Mitchell is an individual whose mailing address is Post Office Box 1085, Pahrump, Nevada 89041. At all times mentioned herein, respondent Karl Mitchell was operating as an exhibitor as that term is defined in the Act. Respondent Karl Mitchell held AWA license number 88-C-0076 until October 7, 2001, when an order of the Secretary revoking said license became effective.

2. Respondent has previously violated the AWA and the Regulations. *In re Karl Mitchell*, 57 Agric. Dec. 972 (1998) (concluding that Karl Mitchell, doing business as All Acting Animals, violated the Animal Welfare Act and section 2.2(a) of the Regulations (9 C.F.R. § 2.2(a)), ordering Karl Mitchell to cease and desist from violating the Regulations, and assessing Karl Mitchell a \$750 civil penalty). On August 8, 2001, the Judicial Officer issued an Order Granting Complainant's Petition for Reconsideration in *In re Karl Mitchell, an individual; and All Acting Animals, a sole proprietorship or unincorporated association*, AWA Docket No. 01-0016. That Order provided, in part:

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"Animal Welfare Act license (Animal Welfare Act license number 88-C-0076) is revoked. The Animal Welfare Act license revocation provisions of this Order shall become effective on the 60<sup>th</sup> day after service of this Order on Respondents."<sup>1</sup>

Pursuant to section 1.147(c)(2) of the Rules of Practice applicable to proceedings under the Act (7 C.F.R. § 1.147(c)(2)), the Judicial Officer's Order was served August 8, 2001. Therefore the license revocation provisions of the Order became effective on October 7, 2001.

3. Respondent Karl Mitchell operates a moderate-size business exhibiting exotic animals for profit. The gravity of the violations alleged in this complaint is great. They include multitudinous instances in which the respondent willfully exhibited exotic animals to the public, despite having had his Animal Welfare Act license revoked over seven years ago, repeated instances in which respondent failed to handle animals safely, and the refusal to allow access to APHIS inspectors to conduct an inspection of respondent's facilities, animals and records.

ALLEGED VIOLATIONS 3/25/09  
March 25 RS

4. From April 14, 2004, through ~~April 13~~, 2009 (a total of 1,825 days), the respondent has continually operated as an exhibitor, as that term is defined in the Act and the Regulations, and has continually offered animals for exhibition, without having been issued a valid license by the Secretary of Agriculture, in willful violation of section 2134 of the Act (7 U.S.C. § 2134) and sections 2.1, 2.10(c), and 2.100(a) of the Regulations (9 C.F.R. §§ 2.1, 2.10(c), 2.100(a)).

5. The Judicial Officer's Order described in paragraph 2 above also required the respondent to "cease and desist from violating the Animal Welfare Act and the Regulations and Standards." The cease and desist provisions of the Order became effective on the day after service

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<sup>1</sup>60 Agric. Dec. 647 (August 8, 2001). The Judicial Officer's Order also assessed respondent a civil penalty of \$16,775, which the respondent has failed and refused to pay.

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of this Order on the respondent. Therefore, the effective date of the cease and desist order was August 9, 2001. On each of the dates set forth herein, the respondent knowingly failed to obey the cease and desist order made by the Secretary under section 2149(b) of the Act (7 U.S.C. § 2149(b)), in *In re Karl Mitchell, an individual; and All Acting Animals, a sole proprietorship or unincorporated association*. Therefore, pursuant to section 2149(b) of the Act, said respondent "shall be subject to a civil penalty of [\$1,650] for each offense, and each day during which such failure continues shall be deemed a separate offense." 7 U.S.C. § 2149(6).

6. On May 4, 2004, respondent failed to provide APHIS inspectors access to his facilities, records and animals, in willful violation of section 2146(a) of the Act (7 U.S.C. § 2146(a)) and section 2.126(a) of the Regulations (9 C.F.R. § 2.126(a)).

7. On or about April 14, 2004, and February 25, 2009, respondent failed to handle tigers as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, in willful violation of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)).<sup>2</sup>

8. On or about April 14, 2004, and February 25, 2009, respondent failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of section 2.131(c)(1) of the Regulations (9 C.F.R. § 2.131(c)(1)).<sup>3</sup>

WHEREFORE, it is hereby ordered that for the purpose of determining whether the

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<sup>2</sup>Formerly section 2.131(a)(1).

<sup>3</sup>Formerly section 2.131(b)(1).

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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, and assessing civil penalties against the respondent in accordance with section 19 of the Act (7 U.S.C. § 2149).

Done at Washington, D.C.  
this 25<sup>th</sup> day of March 2009

*Kevin Shea*  
Acting Administrator  
Animal and Plant Health Inspection Service

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