

CERTIFICATE OF SERVICE

SNBL USA, Ltd, Respondent

Docket: 16-0187

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct and this is to certify that a copy of the COMPLAINANT'S MOTION TO SEAL COMPLAINT AND PROPOSED ORDER has been furnished and was served upon the following parties on November 3, 2016 by the following:

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Respectfully Submitted,



Eliuth Morón

Legal Assistant

USDA/Office of Administrative Law Judges

Hearing Clerk's Office

1400 Independence Ave., SW, Room 1031-S

Washington, DC 20250-9203

Phone: 202-720-4443

UNITED STATES DEPARTMENT OF AGRICULTURE

2016 NOV -3 PM 12: 37

BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

In re:)	AWA Docket 16-0187
)	
SNBL USA, LTD., a Washington)	
corporation,)	
)	COMPLAINANT'S MOTION
)	TO SEAL COMPLAINT
Respondent.)	AND PROPOSED ORDER

Complainant requests an order to seal the complaint filed in the above-captioned matter and substitute a redacted version of the complaint for the one currently in the record. This request is made pursuant to sections 1.143 and 1.144(c) of the Rules of Practice governing proceedings under the Animal Welfare Act (7 C.F.R. §§ 1.143, 1.144(c)), on all of the pleadings and papers filed, and on the following:

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(Act or AWA), by a complaint filed by APHIS on September 26, 2016, alleging that Respondent violated the Act and the regulations promulgated under the Act. Respondent was served with the complaint by receipt of the certified mail package on October 6, 2016.

Compelling reasons exist to seal the complaint as it contains potential confidential business information related to respondent's operations. Complainant's counsel has conferred with respondent's counsel, and both have agreed to the specific proposed redactions to the complaint. A proposed redacted complaint is attaching for filing into the record in place of the previously filed complaint.

For the foregoing reasons set forth herein, the Complainant respectfully moves for the following proposed order:

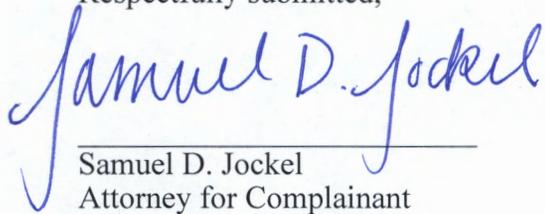
1. The Office of the Hearing Clerk is directed to place the original complaint in this matter,

filed on September 26, 2016, under seal, and available for review only by the Administrative Law Judge, the Judicial Officer and any reviewing court.

2. The Office of the Hearing Clerk is directed to substitute the redacted complaint for the one currently in the record.

DATED: November 3, 2016

Respectfully submitted,



Samuel D. Jockel
Attorney for Complainant

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket 16-0 187
)
SNBL USA, LTD., a Washington corporation,)
)
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.) (Act or AWA), and the regulations issued thereunder (9 C.F.R. § 1.1 et seq.) (Regulations). Therefore, the Administrator of the Animal and Plant Health Inspection Service (APHIS) issues this complaint alleging the following:

JURISDICTIONAL ALLEGATIONS

1. SNBL USA, LTD., is a Washington corporation whose registered agent for service of process is [REDACTED], 6605 Merrill Creek Pkwy, Everett, Washington 98203.
2. At all times mentioned herein, Respondent was a dealer, as that term is defined in the Act and Regulations, and held AWA license number 91-B-0078.
3. At all times mentioned herein, Respondent was a research facility, as that term is defined in the Act and the Regulations, and held AWA registration number 91-R-0053.

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

4. Respondent breeds non-human primates and uses those animals for the purpose of research or testing. Respondent operates two facilities in the United States: a breeding and research facility in Everett, Washington, and a breeding, holding, import, and research facility in Alice, Texas. Respondent reported to APHIS that it sold [REDACTED] in 2015, and Respondent reported to APHIS that it sold [REDACTED]

in 2014. Respondent reported to APHIS that in 2015 [REDACTED] animals for research, and reported that in 2014 [REDACTED] animals for research.

5. On January 23, 2008, Respondent resolved alleged violations of the AWA pursuant to the stipulation provisions of the Regulations and paid a civil penalty of \$12,937. On September 23, 2009, Respondent resolved alleged violations of the AWA pursuant to the stipulation provisions of the Regulations and paid a civil penalty of \$1,406.

6. Despite having been advised on multiple occasions by APHIS of noncompliance with the Regulations and the standards promulgated under the Act (9 C.F.R. Part 3) (Standards), Respondent has continued to fail to meet the minimum requirements. In 2010, APHIS officials obtained records that showed that three animals in Respondent's custody died and one animal escaped: (1) On January 8, 2010, an infant nonhuman primate escaped its primary enclosure through a chain link fence that was large enough to allow the escape; (2) On January 25, 2010, an infant nonhuman primate escaped its primary enclosure through a similar chain link fence, and died, with its head stuck on the outside panel of an enclosure; (3) On September 9, 2010, a nonhuman primate (HV22) reached through the wires on its fencing, pulled the cable for the guillotine door into its enclosure, became entangled in the cable and died by strangulation; and (4) On October 25, 2010, a nonhuman primate (PeR2) reached through the wires and mesh on its fencing, pulled a cable for the guillotine door into its enclosure, became entangled in the cable and was found dead, with the cable wrapped around its neck.

7. The gravity of the violations alleged in this complaint is great and includes 38 deaths of nonhuman primates and repeated instances in which Respondent failed to provide adequate veterinary care to animals and failed to meet the minimum standards for its facilities. Respondent's alleged violations occurred over an extended period of time from December 26,

2011 through May 4, 2016.

ALLEGED VIOLATIONS

8. On or about December 10, 2015, Respondent, in connection with four separate protocols, proposed to conduct an activity involving animals, or to make a significant change in an ongoing activity involving animals, without an adequate rationale for the number of animals to be used in those protocols, in violation of the Regulations, 9 C.F.R. § 2.31(e)(2).

9. On or about May 4, 2016, Respondent, in connection with two separate protocols proposed to conduct an activity involving animals, or to make a significant change in an ongoing activity involving animals, without an adequate rationale for the number of animals to be used in those protocols, in violation of the Regulations, 9 C.F.R. § 2.31(e)(2).

10. On or about May 4, 2016, Respondent failed to ensure that training and instruction was made available to Respondent's personnel, and that the qualifications of Respondent's personnel were reviewed with sufficient frequency to fulfill Respondent's responsibilities under the Regulations, in violation of the Regulations, 9 C.F.R. § 2.32(b), and specifically, Respondent's records with respect to a liver biopsy procedure in which six macaques died indicate that personnel were inadequately trained.

11. On or about the following dates, Respondent failed to provide adequate veterinary care to animals and/or failed to establish programs of adequate veterinary care that included the availability of appropriate facilities, personnel, equipment, equipment and services, the use of appropriate methods to prevent, control, and treat diseases and injuries, and/or daily observation of all animals, in violation of the veterinary care Regulations applicable to research facilities, 9 C.F.R. § 2.33, and/or in willful violation of the veterinary care Regulations applicable to dealers, 9 C.F.R. § 2.40, as follows:

a. October 1-9, 2013. Respondent shipped [REDACTED] long-tailed macaques from [REDACTED] to Houston Texas. Upon their arrival on October 1, 2013, SNBL veterinarians observed that the animals were thirsty and some appeared weak, thin, and in poorer body condition than animals received in previous shipments. Respondents did not provide veterinary medical care to the macaques, but sent [REDACTED] of them to Alice, Texas, and [REDACTED] of them to Everett, Washington by common carrier, [REDACTED]. None of Respondent's veterinary staff accompanied the shipment to Washington. Five macaques died before arrival, 17 died or were euthanized shortly after arrival, on October 4, 2013, and three more macaques died over the next five days. The 25 macaques that died or were euthanized suffered multiple organ failure caused by dehydration and hypoglycemia. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 2.33(b)(3), 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(3)).

b. October 2, 2015. Respondent restrained a cynomolgus macaque (animal #10 in study 265.42) in a procedure cage but failed to observe that the macaque's head was stuck in the cage, resulting in the macaque's suffocating to death. 9 C.F.R. §§ 2.33(b)(1), 2.33(b)(3), 2.40(b)(3), 2.40(b)(1).

12. On June 11-14, 2012, Respondent failed to handle animals as carefully as possible, in a manner that does not cause them behavioral stress, physical harm, or unnecessary discomfort, in willful violation of the Regulations applicable to dealers, 9 C.F.R. § 2.131(b)(1), and/or in violation of the Regulations applicable to research facilities, 9 C.F.R. § 2.38(f)(1). Specifically, Respondent's method of capture of nonhuman primates, which involved entering the enclosure to net the animal for sedation, resulted in the death of two pigtail macaques from hyperthermia: AQ2 was captured on June 11, 2012 and thereafter was found collapsed in her

field cage and died on June 12, 2012; HA04 had seizures on June 11, 2012 after having been captured earlier that day and was euthanized on June 14, 2012.

13. On or about the following dates, Respondent willfully violated the Regulation applicable to dealers (9 C.F.R. § 2.100(a)) by failing to meet the minimum standards for nonhuman primates:

a. July 10, 2013. Respondent failed to keep the housing facilities for its nonhuman primates in good repair, and specifically, a bolt was missing from an upper support pole in Building 3G. 9 C.F.R. § 3.75(a).

b. July 10, 2013. Respondent failed to keep the housing facilities for its nonhuman primates in good repair, and specifically, there were two holes in the metal ceiling of many of the enclosures in the IO buildings. 9 C.F.R. § 3.75(a).

c. July 10, 2013. Respondent failed to keep housing facilities for its nonhuman primates in good repair so as to contain them, and specifically, the ceiling in the hospital ward was low enough that animals housed in the top cages could reach the ceiling tile, and doors on the top cages could not open completely. 9 C.F.R. § 3.75(a).

d. July 10, 2013. Respondent failed to keep the housing facilities for its nonhuman primates in good repair, and specifically, the metal flashing surrounding the frame of a door, which was utilized by the animals, was pulled away from the side wall in several of the buildings, exposing sharp points. 9 C.F.R. §§ 3.75(a), 3.75(c)(1)(ii).

e. July 10, 2013. Respondent failed to keep the housing facilities for its nonhuman primates in good repair, and specifically, broken tie wires, with sharp points, were found on the chain link fence on the inside enclosures of several buildings. 9 C.F.R. §§ 3.75(a), 3.75(c)(1)(ii).

- f. July 10, 2013. Respondent failed to remove rust in many of the IO buildings as APHIS inspectors observed rust on the galvanized metal ceiling in several enclosures, on the chains on swings and an enrichment ladder, and on the support poles on the chain link fencing inside of the enclosures. 9 C.F.R. §§ 3.75(a), 3.75(c)(1)(i).
- g. July 10, 2013. Respondent failed to remove or replace chewed and broken plastic swings, provided to macaques for enrichment, in several enclosures (Building 12 D, Building 5 N, Building 3 P and F), which had rough edges and large holes, as well as chewed and broken plastic play slides in Building 5, where a bolt was observed to be exposed. 9 C.F.R. §§ 3.75(c)(1), 3.75(c)(1)(ii), 3.75(c)(2).
- h. July 10, 2013. The laminate on the lower edge of the cabinets in the treatment room in MB was chipped. 9 C.F.R. §§ 3.75(c)(1), 3.75(c)(2).
- i. July 10, 2013. The cement floor in the outdoor area was eroding at the entrance to the indoor shelter in many of the IO buildings and in 11 G, underlying rebar was exposed, and water was observed to be pooling in the eroded areas. 9 C.F.R. §§ 3.75(c)(1)(ii), 3.75(c)(2), 3.75(f).
- j. February 11, 2016. Two enrichment devices in two enclosures were damaged and had jagged plastic edges. 9 C.F.R. §§ 3.75(c)(1), 3.75(c)(1)(ii), 3.75(c)(2).
- k. April 30, 2012. The cement floor in the outdoor area was eroding at the entrance to the inside shelter in several enclosures, and water was observed to be pooling in the eroded areas. 9 C.F.R. §§ 3.75(c)(2), 3.75(f).
- l. February 6, 2013. Paint in Building 1 was observed to be peeling off the walls of several indoor housing enclosures. 9 C.F.R. § 3.75(c)(2).
- m. July 10, 2013. The cement on the wall by the perch in enclosure 12B was

pitted. 9 C.F.R. § 3.75(c)(2).

n. July 10, 2013. Paint on the walls in both indoor and outdoor sections of some enclosures in Building 2 and 3 was observed to be peeling off. 9 C.F.R. § 3.75(c)(2).

o. July 10, 2013. There was a pool of standing water containing dark material in two outdoor enclosures in Building 3. 9 C.F.R. § 3.84(a).

p. July 10, 2013. Mold was growing on the surface of air vents in the hospital ward in Building 11. 9 C.F.R. § 3.84(c).

14. On or about May 5, 2014, Respondent violated the Regulation applicable to research facilities (9 C.F.R. § 2.38(k)), by failing to meet the minimum standards for nonhuman primates, 9 C.F.R. § 3.84(c), by failing to clean and sanitize portions of the cage wash area in the Q building, where debris from dirty cages was on the floor and being tracked into the hallway near the animal rooms.

15. On or about the following dates, Respondent willfully violated the Regulation applicable to dealers (9 C.F.R. § 2.100(a)) and/or violated the Regulation applicable to research facilities (9 C.F.R. § 2.38(k)), by failing to meet the minimum standards for nonhuman primates:

a. December 10, 2015. Several floors, including the floor in room A121, were observed to have peeling paint. 9 C.F.R. § 3.75(c)(2).

b. December 26, 2011. Respondent discovered a six-week-old male nonhuman primate trapped in the fencing on top of an adjoining enclosure after it had escaped its primary enclosure through a two-inch gap between a chain link section and the wall, and animals within the adjoining cage had attempted to pull the animal through the fencing, causing the animal to be entangled and incur trauma to his body. The infant

was found severely depressed, hypothermic, barely breathing and dehydrated, and it subsequently died that afternoon from a combination of trauma and hypothermia. 9 C.F.R. § 3.80(a)(2)(iii).

c. On or about May 8, 2013. Respondent housed incompatible nonhuman primates in the same enclosure, and specifically, a male pigtail macaque (Z13039) sustained severe trauma to his left foot and thigh in a fight with a cage mate, and was subsequently euthanized. 9 C.F.R. § 3.81(a)(3).

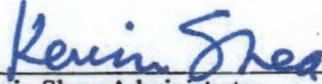
d. On or about May 24, 2013. Respondent housed incompatible nonhuman primates in the same enclosure, and specifically, a male pigtail macaque (Z12383) died after sustaining trauma on his head and body following a fight with a cage mate. 9 C.F.R. § 3.81(a)(3).

e. October 1-9, 2013. Respondent transported [REDACTED] long-tailed macaques in commerce and for purposes other than to receive veterinary care, despite observing that the macaques were thirsty, and some of the individuals were obviously weak, ill, or in physical distress. 9 C.F.R. § 3.90(c).

WHEREFORE, it is ordered that for the purpose of determining whether Respondent has willfully violated the Act and the Regulations issued under the Act, this complaint shall be served upon Respondent. 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. APHIS requests that this proceeding be conducted 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 (7

U.S.C. § 2149) and warranted under the circumstances.

Done at Washington, D.C.
this 22nd day of Sept. 2016



Kevin Shea, Administrator
Animal and Plant Health Inspection Service

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