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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**ANIMAL LEGAL DEFENSE FUND,  
ANIMAL WELFARE INSTITUTE,  
VALERIE BUCHANAN, JANE GARRISON,  
AND NANCY MEGNA**

Plaintiffs,

v.

**ANN M. VENEMAN**, in her official capacity as  
Secretary, United States Department of Agriculture,  
**BOBBY R. ACORD**, in his official capacity as  
Administrator, Animal and Plant Health  
Inspection Service, and  
**DR. CHESTER A. GIPSON**, in his  
official capacity as Deputy Administrator,  
Animal Care Program, United States  
Department of Agriculture,

Defendants.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**ADMINISTRATIVE PROCEDURE  
ACT CASE**

1. This suit challenges the failure of the Animal and Plant Health Inspection Service (APHIS) of the United State Department of Agriculture to make a final decision concerning the defendants' proposed "Policy On Environment Enhancement For Nonhuman Primates." See 64 Fed. Reg. 38,145 (July 15, 1999) (Policy). APHIS determined at least seven years ago that APHIS enforcement officials and the regulated community urgently need such a policy to insure that primates are housed in "physical environments adequate to promote the[ir] psychological well-being," as required by the Animal Welfare

1 Act (AWA). 7 U.S.C. § 2143. By failing to make a final decision on the proposed Policy, defendants are  
2 violating the Animal Welfare Act, 7 U.S.C. § 2143, and are unreasonably delaying and/or unlawfully  
3 withholding agency action in violation of the Administrative Procedure Act, 5 U.S.C. § 706(1).

#### 4 **JURISDICTION AND VENUE**

5 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. Venue is proper  
6 in this judicial district pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 703.

#### 7 **INTRADISTRICT ASSIGNMENT**

8 3. Assignment is appropriate in San Francisco because plaintiff Animal Legal Defense Fund  
9 maintains its offices in Sonoma County, California.

#### 10 **PARTIES**

11 4. **Plaintiff Animal Legal Defense Fund** (ALDF) is a non-profit corporation founded in  
12 1979 to protect the lives and interests of animals through the enforcement of laws enacted to protect  
13 animals, and through the provision of information to others desiring to protect the lives and interest of  
14 animals. Based in Petaluma California, ALDF has approximately 100,000 members nationwide, including  
15 lawyers, law professors, law students, and other individuals interested in protecting the lives and interests  
16 of primates. ALDF conducts legal educational programs and seminars for its members, other members of  
17 the legal profession, and the general public regarding animal welfare law, including those that protect  
18 primates, and has dedicated significant resources to improving the welfare of primates. Among other  
19 activities, ALDF submitted comments on the regulation now published at 9 C.F.R. § 3.81, as well as the  
20 proposed Policy. In addition, ALDF has requested under the Freedom of Information Act, 5 U.S.C. §  
21 552, copies of inspection reports and the annual reports of regulated facilities. APHIS's unreasonable  
22 delay in finalizing the proposed Policy impairs ALDF's ability to promote the well-being of primates.

23 5. ALDF sues on behalf of its members, who include individuals who visit primates in zoos  
24 regulated under the Animal Welfare Act, and whose aesthetic enjoyment of these animals is harmed by the  
25 lack of environments that promote the psychological well-being of primates. APHIS's unreasonable delay  
26 in finalizing the proposed Policy harms ALDF's members because, as APHIS itself has determined, the  
27 Policy when finalized would improve the psychological well-being of primates, thereby reducing the level of  
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1 abnormal, stereotypic and/or injurious behaviors exhibited by primates whom ALDF's members wish to  
2 observe and study in humane conditions.

3         **6. Plaintiff Animal Welfare Institute** (AWI) is a non-profit, charitable and educational  
4 corporation, exempted from taxation under 26 U.S.C. § 501(c)(3) to advance the welfare of animals.  
5 Founded in 1951, AWI has always devoted significant resources to make humane housing environments a  
6 reality for animals in captivity, including primates in research facilities, zoos, other exhibitions, and animal  
7 dealerships. AWI promotes its objectives by publishing technical and scientific materials, including  
8 COMFORTABLE QUARTERS FOR LABORATORY ANIMALS (9<sup>th</sup> ed. 2002) and ENVIRONMENTAL  
9 ENRICHMENT FOR CAGED RHESUS MACAQUES: A PHOTOGRAPHIC DOCUMENTATION AND LITERATURE  
10 REVIEW (2d ed. 2001). AWI disseminates its publications for free – via outreach, counseling, and  
11 education activities – to a discrete audience, namely those who can affect directly the conditions in which  
12 animals live. This audience includes animal care technicians in research facilities, zoo keepers, attending  
13 veterinarians, as well as APHIS's inspectors and administrators.

14         **7.** In addition, APHIS solicited AWI's technical and scientific advice when developing the  
15 standards for an environment that would promote primate psychological well-being, and when developing  
16 the proposed Policy at issue in this case. The proposed Policy references the environmental enrichment  
17 publications of AWI's employee, Viktor Reinhardt, D.V.M., more than any other source. APHIS has also  
18 solicited AWI's technical and scientific advice to assist in the training of APHIS's new field inspectors.  
19 AWI sues on its own behalf.

20         **8.** APHIS's unreasonable delay in finalizing the proposed Policy impairs AWI's programs,  
21 activities, and resources because, as a result of being asked by APHIS to provide its expertise on this  
22 matter, AWI was required to shift its resources to that task and away from its other programs and  
23 activities. Defendants' delay also permits problems to persist that APHIS has identified and deemed to be  
24 "urgent," including the fact that many regulated entities still do not know how to develop or implement a  
25 plan that complies with current professional standards, that many inspectors remain unable to judge  
26 compliance with those standards, and that many primates continue to live in environments devoid of  
27 enhancement that do not promote their psychological well-being.

1           9.       As a result of these persisting problems, the demand for AWI's technical and scientific  
2 publications and services has increased, particularly for those publications and services that concern what  
3 the current professional standards are and what methods will achieve those standards. To respond to this  
4 demand, AWI has been forced to devote more of its limited resources to those publications and activities.

5           10.      Also as a result of these persisting problems, the effectiveness of AWI's activities aimed at  
6 promoting humane housing environments for primates has been impaired. In particular, APHIS's failure to  
7 act for over seven years – in the face of APHIS's public acknowledgment that urgent problems persist –  
8 creates the perception that unenriched or minimally enriched environments for primates are adequate.  
9 Thus, management at many regulated facilities do not make adequate environmental enhancement a  
10 priority, thereby reinforcing the effects of APHIS's delay. To counteract this perception, AWI has had to  
11 devote additional resources to perform outreach and to educate management at regulated facilities, animal  
12 care personnel, and APHIS's inspectors as to the professionally accepted standards of humane housing  
13 that provide adequately enriched environments. Further, AWI devotes significant resources to educate  
14 those people on the methods of environmental enhancement that do promote psychological well-being.  
15 AWI has been compelled to dedicate more of its scarce resources to outreach to convince regulated  
16 entities to provide primates environmental enrichment regardless of whether such enrichment is specifically  
17 required under APHIS's regulations. For example, AWI devotes significant time and money to educate  
18 management and animal care staff at research facilities that scientific research is not viable if based on data  
19 collected from primates experiencing distress, fear, anxiety, discomfort, or depression; such experiences  
20 skew data, rendering it useless.

21           11.      All of the foregoing activities have been at the expense of other AWI activities.

22           12.      If APHIS takes final action that corrects these urgent problems, AWI would no longer  
23 have to compensate for APHIS's failure to act, and its publishing activities and services would cease to be  
24 impaired.

25           13.      **Plaintiff Valerie Buchanan** is a long-time volunteer and advocate for primates, especially  
26 chimpanzees. While living in Zambia, Ms. Buchanan volunteered at the Chimfunshi Wildlife Orphanage  
27 where she worked with orphaned juvenile chimpanzees. She also worked on a program to promote the  
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1 psychological well-being of two singly housed chimpanzees in the Kumasi Zoo in Ghana. In this country,  
2 she has worked on the passage of local ordinances to further the protection of animals, including  
3 chimpanzees. All of these efforts have been motivated by Ms. Buchanan's interest in and commitment to  
4 improving the lives of animals, including primates.

5       14. For the past 15 years, Ms. Buchanan has visited numerous zoos and sanctuaries in the  
6 United States and in Africa. She enjoys visiting, observing, and interacting with primates, especially  
7 chimpanzees. It gives her great pleasure to watch chimpanzees exhibiting a wide-range of species-typical  
8 behavior. She is also interested in assuring that the public receive accurate information about the physical,  
9 social, and psychological needs of chimpanzees.

10       15. In recent years Ms. Buchanan has developed a particularly close emotional attachment to  
11 Terry, a 20-year-old male chimpanzee who lives alone at the Southern Nevada Zoological-Botanical Park,  
12 which is the closest park to Ms. Buchanan's home that houses primates. Ms. Buchanan regularly visits  
13 Terry, typically every other month, and will continue to do so.

14       16. Ms. Buchanan first observed Terry in October 2000. Although from at least age 3 to age  
15 12 Terry lived with another young male chimpanzee named Simon, Simon died within two weeks after he  
16 and Terry arrived at the zoo in 1995. Terry has not only been housed alone since that time, but he lacks  
17 even visual contact with any nonhuman primate, let alone another chimpanzee. A glass window separates  
18 him from zoo visitors.

19       17. During her visits, Ms. Buchanan observes Terry to be listless. He often lies still on his bed  
20 holding his blanket. Based on her experiences observing chimpanzees, Ms. Buchanan believes that this is  
21 not species-typical behavior, particularly for a young-adult male chimpanzee. Among other things, Ms.  
22 Buchanan is concerned that Terry is rarely able to groom, an activity he particularly enjoys. The only times  
23 Ms. Buchanan sees Terry animated is when his former trainer visits and the two of them groom each other  
24 inside Terry's enclosure; when the trainer leaves, Terry climbs up in his cage and watches the trainer's car  
25 until it exits the parking lot. One time, at the park curator's invitation and under his supervision, Ms.  
26 Buchanan groomed Terry through the bars of his enclosure; Terry reached out and held her hand.

1           18.     Terry's environment and species-atypical behaviors injure Ms. Buchanan's interests in  
2 observing and enjoying chimpanzees, particularly Terry, engaging in a wide range of species-typical  
3 behaviors. Indeed, based on her observations of Terry and his environment, she sees that his  
4 psychological well-being is deteriorating. She is also concerned that the zoo, which states that its mission  
5 is to educate children and the general public about endangered species and habitat protection, is  
6 misinforming children and the public about chimpanzees by exhibiting Terry in an environment that does not  
7 promote chimpanzee-typical behavior.

8           19.     After Ms. Buchanan's first visit to the zoo, she wrote to APHIS expressing concern about  
9 Terry. APHIS responded in January 2001 that the zoo was in compliance with the Animal Welfare Act  
10 and its implementing regulations although APHIS stated the agency "would prefer that he have the  
11 companionship of another chimpanzee . . . ."

12           20.     APHIS's unreasonable delay in finalizing the proposed Policy harms Ms. Buchanan  
13 because, as APHIS itself determined, the Policy when finalized would improve the psychological well-  
14 being of primates including Terry, thereby reducing the level of abnormal, stereotypic and/or injurious  
15 behaviors exhibited by Terry and other primates whom Ms. Buchanan enjoys observing and studying in  
16 humane conditions.

17           21.     **Plaintiff Jane Garrison** is an exotic animal consultant. Among many other organizations,  
18 the Smithsonian Institution and the American Zoo and Aquarium Association (AZA) have invited her to  
19 speak on exotic animal issues, and APHIS has invited her to participate in U.S. Department of Agriculture  
20 meetings concerning primates. In addition, at the request of the Smithsonian Institution, she has written a  
21 chapter on elephant care for a forthcoming book *Elephant and Ethics* (Smithsonian Institution Press), and  
22 she has written a section on primates in roadside zoos for the *Gap Census*, to be published in 2003. Prior  
23 to becoming a consultant, Ms. Garrison worked for six years as an Elephant and Exotic Animal Specialist  
24 in the Research, Investigations and Rescue Department of the People for the Ethical Treatment of Animals,  
25 where she observed numerous chimpanzees and other primates in Animal Welfare Act-licensed  
26 exhibitions. In both positions, she has relied on AWI's publications concerning primates.

1           22.     Ms. Garrison derives great pleasure from visiting and observing primates who live in  
2 environments that permit them to exhibit a wide range of species-typical behavior, and promote their  
3 psychological well-being. Ms. Garrison is also dedicated to educating animal care takers, owners of  
4 regulated entities, and the public about the physical, social, and psychological needs of primates and how  
5 to satisfy those needs.

6           23.     After moving to South Carolina in April 2001, Ms. Garrison began visiting the Waccatee  
7 Zoo outside of Myrtle Beach. As a result of these visits, she has developed an emotional attachment to  
8 Chico, an approximately 25-year-old male chimpanzee who is housed alone at the zoo and whom she  
9 routinely visits every few months. She plans to continue this routine.

10          24.     During these visits, Ms. Garrison has regularly observed Chico living alone in a cage which  
11 she understands has been his home for the past 20 years – almost his entire life so far. The cage consists  
12 solely of iron bars and a concrete floor. It contains one climbing bar. The cage measures approximately  
13 eight feet by ten feet. It appears to Ms. Garrison that he is given no opportunity to forage for food or  
14 manipulate objects or materials, and has no materials with which to create a nest at night. He also had no  
15 way to completely escape from public view, and cannot see or touch other primates, let alone other  
16 chimpanzees.

17          25.     During her visits, Ms. Garrison has observed Chico swaying back and forth when sitting,  
18 or clenching the bars of his cage and rocking forward. At times, she has seen him bobbing his head up and  
19 down, and at others, pacing back and forth. Several times, Ms. Garrison has witnessed Chico throwing  
20 his feces at visitors and throwing popcorn back at visitors who had thrown some into his cage. Based on  
21 her experience observing chimpanzees Ms. Garrison believes that these behaviors are stereotypic and are  
22 signs of distress and frustration in chimpanzees.

23          26.     Chico's living conditions and stereotypic behaviors injure Ms. Garrison's interests in  
24 observing and enjoying chimpanzees, particularly Chico, exhibiting a wide range of species-typical  
25 behaviors. She is distressed that Chico, who will likely live another 20 to 30 years, exhibits behaviors that  
26 indicate his psychological well-being is already severely compromised and that it is deteriorating.

1           27.     Based on her own expertise, Ms. Garrison has observed, both at this road side zoo and at  
2 other Animal Welfare Act-regulated facilities, that the existing regulations in 9 C.F.R. § 3.81 are  
3 inadequate to guide an inspector in determining the psychological well-being of primates, or the adequacy  
4 of the primates' physical environment.

5           28.     APHIS's unreasonable delay in finalizing the proposed Policy harms Ms. Garrison  
6 because, as APHIS itself has determined, the Policy when finalized would improve the psychological well-  
7 being of primates including Chico, thereby reducing the level of abnormal, stereotypic and/or injurious  
8 behaviors exhibited by Chico and other primates whom Ms. Garrison enjoys observing and studying.

9           29.     **Plaintiff Nancy Megna** has a bachelor degree in Psychology with a concentration in  
10 primates, and has been working with primates in laboratory settings for over a decade. Ms. Megna is  
11 dedicated to promoting the psychological well-being of primates, especially those used in research, has  
12 worked tirelessly to improve the conditions of the primates housed at each of the facilities at which she has  
13 been employed, and has developed emotional attachments to a number of primates with whom she has  
14 worked.

15           30.     In 1991, Ms. Megna volunteered a couple of weekends a month at the Laboratory for  
16 Experimental Medicine and Surgery in Primates (LEMSIP) in Sterling Forest, New York. From 1992 to  
17 1997, Ms. Megna was employed at LEMSIP as a Lab Aide in the chimpanzee nursery. There, her job  
18 responsibilities were to care for approximately 30 to 45 chimpanzees who ranged in age from new-borns  
19 to 8 year olds. She developed a special attached to a chimpanzee named Norma, born in December  
20 1992, who came to the nursery days after her captive mother rejected her. Norma was placed in isolation,  
21 and, for at least the first six months of her life, Norma was not in physical or visual contact with another  
22 chimpanzee. Instead, at an age when a chimpanzee infant would be in almost continuous bodily contact  
23 with her mother, and would be interacting with family members, Norma's only intermittent contact was  
24 with lab aides. In part due to her isolation, Norma frequently rocked herself in her cage, and became  
25 skittish to the point where she would only allow Ms. Megna to hold her. Ms. Megna believes that Norma,  
26 having been deprived of a nurturing and stimulating environment at a critical stage of her life, became a  
27 nervous, fearful chimpanzee. In 1996, Norma was transferred to a facility licensed under the Animal  
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1 Welfare Act as an exhibitor, and presently lives in conditions that fail to promote her psychological well-  
2 being. Ms. Megna has kept informed about Norma's living conditions, and very much wants to visit  
3 Norma as soon and as often as she can to continue their relationship.

4         31. From 1998 to 2002, Ms. Megna was employed as a Research Specialist at Yerkes Field  
5 Station (Yerkes) in Lawrenceville, Georgia. There, she developed an emotional attachment to Natalie, a  
6 young rhesus macaque, when she was responsible for observing the behaviors of certain research subjects  
7 living in a group of approximately 120 rhesus macaques. Natalie, who was born into this group in 2000,  
8 was one of the subjects. As a result of social deprivation as well as physical traumas, Ms. Megna  
9 observed that Natalie became leery, nervous, and insecure around other primates, and lacked appropriate  
10 social behaviors. Ms. Megna also observed that Natalie was maimed repeatedly in large part due to the  
11 lack of an environment adequate to promote the psychological well-being of Natalie and the other primates  
12 with whom she was housed. As a result, Natalie was hospitalized four times during her first year of life.  
13 Ms. Megna was concerned that Natalie, separated so often and for so long from her mother and her family  
14 at a formative stage, would fail to develop appropriate social skills for a rhesus macaque. She worked to  
15 improve Natalie's situation by proposing various methods to reduce the abnormally high level of aggression  
16 and serious woundings that were occurring in Natalie's group. Many of her suggestions derived from the  
17 publications of AWI and the counseling she sought from AWI's Dr. Reinhardt. Since leaving Yerkes in  
18 2002, Ms. Megna has kept informed about Natalie's conditions and behaviors, and desires to visit Natalie  
19 as soon and as often as she can to continue their relationship.

20         32. During her eleven years working with primates in research facilities, Ms. Megna observed  
21 that the existing regulations in 9 C.F.R. § 3.81 are inadequate for an inspector to judge the psychological  
22 well-being of primates, judge the adequacy of the primates' physical environment, or for facility staff to  
23 develop or implement an adequate plan. Thus, while working in these research facilities, Ms. Megna  
24 trained herself, her supervisors, and her co-workers on environmental enrichment techniques relying in  
25 large part on AWI's publications and counseling services. Now an active board member of the  
26 Laboratory Primate Advocacy Group, Inc., Ms. Megna helps educate current primate care technicians  
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1 about how to report violations of the Animal Welfare Act and its implementing regulations, as well as the  
2 methods that promote psychological well-being of primates.

3 33. Based on Ms. Megna's education and experience, she is able to detect direct physical  
4 manifestations of inhumane living conditions and negative effects on primate behavior. The inhumane  
5 treatment of primates that Ms. Megna has observed, in particular the lack of environments that promoted  
6 their psychological well-being – which causes abnormal, stereotypic, and/or injurious behaviors – causes  
7 Ms. Megna severe emotional and aesthetic harm. These injuries forced her to leave her career in research  
8 in 2002. She desires and plans to work with and care for primates in general and with her former charges  
9 in particular. However, she is psychologically unable to do so as long as they are in research facilities that  
10 fail to promote the psychological well-being of primates. Ms. Megna has visited and will continue to visit  
11 primates for whom she cared, so that she can continue her personal relationship with them, enjoy their  
12 company, and learn more about primate behavior from them.

13 34. APHIS's unreasonable delay in finalizing the proposed Policy harms Ms. Megna because,  
14 as APHIS itself determined, the Policy when finalized would improve the psychological well-being of  
15 primates including Norma and Natalie, thereby reducing the level of abnormal, stereotypic and/or injurious  
16 behaviors exhibited by or inflicted on Norma, Natalie, and other primates whom Ms. Megna enjoys  
17 observing, caring for, working with, and studying in humane conditions. APHIS's delay also harms Ms.  
18 Megna by postponing her recovery from her emotional and aesthetic injuries due to witnessing the  
19 abnormal, stereotypic, and/or injurious behavior of these and other primates housed in unenhanced  
20 environments for over 11 years. Improving these primates' psychological well-being is necessary for Ms.  
21 Megna to recover from her injuries.

22 35. **Defendant Ann M. Veneman** is the United States Secretary of Agriculture (Secretary),  
23 and is the official ultimately responsible for the administration of the Animal Welfare Act.

24 36. **Defendant Bobby R. Acord** is the Administrator of APHIS, the agency that issued the  
25 proposed Policy and that is responsible for making a final decision on the proposed Policy.

26 37. **Defendant Chester A. Gipson, D.V.M.**, is the Deputy Administrator of APHIS's  
27 Animal Care Program, and is the official directly responsible for issuing the proposed Policy.  
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**STATUTORY FRAMEWORK AND FACTS  
GIVING RISE TO PLAINTIFFS' CLAIMS FOR RELIEF**

**A. Primates In The United States And Their Psychological Needs**

38. No species of non-human primate (hereafter "primates") is indigenous to the United States. However, according to APHIS, at least 100,000 primates are in this country, representing primarily 30 species. Some primates come here directly from their natural habitats in Asia, Africa, and Central and South America. Others have been bred and raised in captivity in the United States. The majority are housed in research facilities. The species comprising the greatest number in research is the rhesus macaque. All species of great apes are in facilities subject to the Animal Welfare Act. Chimpanzees predominate both in research and in exhibitions.

39. Regardless of differences in their species or origin, primates share a common set of psychological needs. First, primates are highly social. APHIS has concluded that "[s]ocial interactions are considered to be one of the most important factors influencing the psychological well-being of most nonhuman primates." See FINAL REPORT ON ENVIRONMENT ENHANCEMENT TO PROMOTE THE PSYCHOLOGICAL WELL-BEING OF NON-HUMAN PRIMATES (APHIS 1999) (FINAL REPORT) at 17; 9 C.F.R. § 3.81(a). APHIS has also determined that "[n]early all primates have some tendency to seek the company of their own kind at times other than mating . . . ." FINAL REPORT at 17. For example, chimpanzees in the wild live in communities that may range from 40 to 60 individuals, while rhesus macaques live in groups of 20 to 200 individuals.

40. According to APHIS, primates "are very much physical contact animals." FINAL REPORT at 25. Grooming is a critical form of contact. Thus, "[s]ocial grooming can account for 10-13% of the daily activity of rhesus macaques . . . [and scientists have] found that grooming was the most frequent social interaction in rhesus monkey troops in various habitats, generally beginning immediately after the first feeding period in the morning and continuing throughout the day." Id. at 19. One grooming bout observed between a wild chimpanzee and her adult son lasted 2 hours and 45 minutes." Id. Grooming has a calming effect on primates.

41. Other forms of physical contact also contribute to psychological well-being. For example, if "wild chimpanzees are frightened by an unaccustomed sound, they usually seek physical contact with

1 companions, touching, embracing, or kissing. The same calming effect of physical contact is seen with  
2 captive chimpanzees.” Id. at 45. Another “important primate behavior[] associated with social living is the  
3 wealth of signals that communicate emotional states or other information between individuals. The signals  
4 may be visual, vocal, olfactory, or tactile. They can convey dominance, submission, intent to attack,  
5 anxiety, reconciliation, reassurance, alliance, sexual receptivity, a solicitation for grooming or play, a  
6 willingness to nurse, territorial boundaries, and so on . . . .” Id. at 19.

7         42.       Second, primates are physiologically and anatomically adapted to live in a complex, three-  
8 dimensional, dynamic environment and are capable of many modes of locomotion. All primates are  
9 climbers, even those that are more terrestrial than arboreal. All the great apes as well as many monkeys  
10 swing by their arms, branch to branch. Many have been observed walking, galloping, and leaping.

11         43.       Third, primates are biologically programmed to spend most of their waking hours  
12 gathering and processing food. In the wild, primates spend between 25% to 90% of their waking hours  
13 foraging for and eating food. Given the opportunity in captivity, many will devote significant time to  
14 stalking insects or prying them out of logs or other devices.

15         44.       Primate psychological well-being is not static, but rather cumulative. Psychological well-  
16 being begins at birth. It has been documented, for example, that in many species infants raised without  
17 mothers in a nursery setting exhibit various abnormal behaviors as juveniles and adults. “These include  
18 self-aggression, self-clasping, bizarre postures, rocking, regurgitation with reingestion, locomotor  
19 stereotypies, and others.” Id. at 27.

20         45.       When deprived of social companionship, primates develop signs of depression and  
21 frustration. Social deprivation can be so distressing that primates may develop behavioral pathologies;  
22 they pinch themselves repeatedly until their skin is raw; others bite and tear themselves; some exhibit  
23 repetitive stereotypic self-grooming or violent self-rocking. Isolated primates may also eat and drink to  
24 excess, or, alternatively, they may become anorexic.

25         46.       Healthy primates kept in barren or minimally enriched environments, who have no  
26 opportunity to engage in species-typical movements such as climbing or perching, will become apathetic or  
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1 restless. Some develop stereotypical behaviors such as repetitively walking back and forth, rocking, and  
2 similar abnormal behaviors.

3 47. Overcrowded and underenriched facilities foster other abnormal, stereotypic and/or  
4 injurious behaviors. According to experts, “[f]orcing the animals to live in a confined, inadequately  
5 structured environment is bound to provoke conflicts.” VIKTOR AND ANNIE REINHART, ENVIRONMENTAL  
6 ENRICHMENT OF CAGED MACAQUES: A PHOTOGRAPHIC DOCUMENTATION AND LITERATURE REVIEW,  
7 at 12 (2d ed. 2001). Indeed, “[o]vert aggressive conflicts are rather common in groups kept in research  
8 laboratories.” *Id.* at 13. Such conflicts may result in trauma ranging from superficial abrasions to multiple  
9 wounds or lacerations, sometimes leading to life-threatening loss of blood and shock[;] . . . Mortality  
10 caused by fighting may occur at a rate of 10 or even more deaths per 100 group members per year.” *Id.*  
11 at 12. Among other factors to reduce conflict due to group housing, APHIS determined that primates so  
12 housed should live in enclosures in which the individuals can “avoid social threats or other noxious stimuli  
13 by maintaining sufficient distance or making use of visual barriers, partitions, privacy areas, and escape  
14 routes.” FINAL REPORT at 35.

15 **B. The Animal Welfare Act**

16 48. Congress enacted the original Animal Welfare Act in 1966, and passed strengthening  
17 amendments in 1970, 1976, 1985, and 1990, largely due to the urging of Plaintiff AWI. 7 U.S.C.  
18 § 2131, *et seq.* For each bill, representatives of AWI testified on the inhumane conditions of animals in  
19 research, zoos, and other facilities, and proposed detailed methods to improve those conditions.

20 49. In enacting the Animal Welfare Act Congress declared that the statute was “necessary” to  
21 “insure that animals intended for use in research facilities or for exhibition purposes . . . are provided  
22 humane care and treatment.” *Id.* § 2131. Primates have always been express beneficiaries of this statute.  
23 7 U.S.C. § 2132(g).

24 50. Recognizing that the psychological needs of primates are a critical component of their  
25 welfare, in 1985 Congress mandated that the Secretary of Agriculture “shall promulgate standards to  
26 govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities  
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1 and exhibitors,” and directed that those standards “shall include . . . minimum requirements . . . for a  
2 physical environment adequate to promote the psychological well-being of primates.” 7 U.S.C. § 2143(a).

3 51. Congress authorized and directed the Secretary to consult outside experts in promulgating  
4 and enforcing these standards. 7 U.S.C. § 2143(a)(5).

5 52. Congress mandated that the Secretary inspect regulated facilities for violations of “any  
6 provision of this Act . . . or any regulation or standard issued thereunder.” 7 U.S.C. § 2146(a).

7 53. Congress mandated that the Secretary require research facilities to train “animal care  
8 technicians, and other personnel involved with animal care and treatment” on “the humane practice of  
9 animal maintenance and experimentation” and “methods whereby deficiencies in animal care and treatment  
10 should be reported.” 7 U.S.C. § 2143(d)(1), (4).

11  
12 **C. APHIS's Implementation of the Animal Welfare Act**

13 **i. The Environment Enhancement Regulation**

14 54. Acknowledging the “intent of Congress . . . was to provide for the enhanced well-being of  
15 animals covered under the Act, and in particular . . . to promote the psychological well-being of nonhuman  
16 primates,” in 1991 APHIS promulgated the regulation now found at 9 C.F.R.  
17 § 3.81. See 56 Fed. Reg. 6426, 6428 (1991).

18 55. In issuing the regulation, APHIS explained that it had determined that “the psychological  
19 well-being of nonhuman primates involves a balance of several factors or areas of concern.” Id. at 6428.  
20 APHIS further explained: “This concept involves sufficient space for the animals; methods to stimulate the  
21 animals and occupy some of their time, both physically and mentally (i.e., environment enrichment); and  
22 methods of social interaction with other nonhuman primates or humans.” Id.

23 56. Section 3.81 requires that regulated entities “must develop, document, and follow an  
24 appropriate plan for environmental enhancement adequate to promote the psychological well-being of  
25 nonhuman primates.” It further directs that the “plan must be in accordance with the currently accepted  
26 professional standards as cited in appropriate professional journals or reference

1 guides . . . .” The regulation also specifies five subject areas that the plan must address: social grouping;  
2 environmental enrichment (physical environment); special considerations of certain primates; restraint  
3 devices used in research protocols; and exemptions of certain primates from the plan. Consideration of  
4 species-typical behavior is included as a minimum standard. 9 C.F.R. § 3.81.

5 57. APHIS described the regulation as setting “performance-based” standards. According to  
6 APHIS, section 3.81 specified a result that the regulated entities must meet – *i.e.*, psychological well-being  
7 of primates. However, regulated entities are authorized to develop specific procedures for meeting that  
8 standard. These decisions must be in accordance with “current professional standards and be documented  
9 in performance plans.” 64 Fed. Reg. at 38,146.

10 **ii. APHIS’s Conclusion that Further Guidance is Necessary**

11 58. As early as December 1996, APHIS determined that “urgent” problems existed with  
12 compliance and enforcement of the performance-based standards in 9 C.F.R. § 3.81. APHIS surveyed  
13 inspectors and other field staff involved in inspections to assess the effectiveness of the performance-based  
14 standards. In a report released in December 1996, APHIS stated, among other things, that half of the  
15 surveyed inspectors “said the primate environmental enrichment criteria were not useful” to judge whether  
16 facilities were providing an adequate environment to promote primate psychological well-being. USDA  
17 EMPLOYEE OPINIONS ON THE EFFECTIVENESS OF PERFORMANCE-BASED STANDARDS FOR ANIMAL  
18 CARE FACILITIES (APHIS 1996).

19 59. In 1997, APHIS further determined that inspectors experienced difficulty in assessing  
20 whether the plans were actually implemented; “often” did not cite facilities for conditions not in accord with  
21 the Animal Welfare Act; and perceived the performance standards to be unenforceable. APHIS’s  
22 inspectors also reported that dealers, exhibitors, and research facilities did not understand how to develop  
23 an adequate enrichment plan. The inspectors reported finding, among other compliance problems, “too  
24 many” psychological well-being programs that were “minimalistic and one-sided;” contained “low levels of  
25 appropriate social grouping” “especially . . . at research facilities and among small exhibitors,” and  
26 practices that perpetuated socially incompetent individual primates and abnormal behavior.

1           60.     APHIS devoted significant federal resources to respond to “the urgency of these  
2 problems.” Over the course of several years, a team of ten Department of Agriculture employees  
3 interviewed inspectors, evaluated some facilities’ psychological well-being plans, reviewed enforcement  
4 case histories, reviewed the available primate literature, professional journals, and reference guides, and  
5 consulted veterinarians and primatologists, including Plaintiff AWI. As a result of these efforts, APHIS  
6 concluded that inspectors and the regulated facilities required additional information and clarification.

7           61.     According to APHIS, species-typical behavior should be the goal of a psychological  
8 enhancement plan, and to achieve this objective “it is important for the animal to be able to express a  
9 ‘normal repertoire’ or a ‘full range’ of normal behavior – a range that is complete and balanced.” FINAL  
10 REPORT at 13. This goal requires facilities to take steps to ensure their primates have: appropriate social  
11 companionship; opportunities to engage in species-appropriate foraging, exploration and other activities;  
12 housing that permits appropriate movements; and positive interactions with human care takers. To address  
13 these criteria, APHIS identified five “critical elements” that must be properly addressed in any  
14 environmental enhancement plan: (a) social grouping; (b) social needs of infants; (c) structure and  
15 substrate; (d) foraging opportunities; and (e) manipulanda. Id. at 14.

16           **iii.     APHIS's Proposed Policy On Environment Enhancement**  
17           **For Nonhuman Primates**

18           62.     On July 15, 1999 APHIS issued in the Federal Register a proposed Policy that would  
19 address these problems, and solicited public comment on the proposed Policy. 64 Fed. Reg. 38,145  
20 (1999). According to the APHIS, the Policy “represents what [the agency] believe[s] are the currently  
21 accepted professional standards for promoting the psychological well-being of non-human primates  
22 through enhancement of the primates’ environment.” Id. at 38,146.

23           63.     APHIS explained that such a Policy is “necessary” both because regulated facilities do  
24 “not necessarily understand how to develop an environment enhancement plan,” and because APHIS’s  
25 inspectors have sought “information and clarification on how to judge whether someone was meeting the  
26 requirements in § 3.81.” Id. at 38,146. Therefore, APHIS explained that the Policy was developed to  
27 clarify what the agency believes “must be considered and included in the plan in order for dealers,  
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1 exhibitors, and research facilities to adequately promote the psychological well-being of non-human  
2 primates.” Id. (emphasis added).

3 64. The proposed Policy would provide that “[d]ealers, exhibitors and research facilities who  
4 house nonhuman primates will meet the requirements of § 3.81 if they develop and follow an environment  
5 enhancement plan [ ] in accordance with this policy.” Id. at 38,147 (emphasis added). Alternatively, the  
6 proposed Policy would provide that a regulated entity would be able to seek APHIS's approval of an  
7 environment enhancement plan that deviates from the Policy. Id.

8 65. The proposed Policy addresses the five “critical elements” that APHIS determined would  
9 have to be addressed in an environment enhancement plan for a regulated entity to satisfy the requirements  
10 of 9 C.F.R. § 3.81. First, the plan would have to “address the social needs of nonhuman primates” for  
11 species “known to exist in social groups in nature.” Id. at 38,147. This means that primates known to be  
12 social in nature should be housed with other primates, and that housing “should maximize opportunities for  
13 a full range of species-appropriate contact.” Id. Although the proposed Policy stresses the importance of  
14 such housing for chimpanzees, gorillas, gibbons and siamangs, species “which seem to suffer particularly  
15 from being housed individually,” it provides that even where such housing is not possible the primates  
16 should be provided as much appropriate contact as is possible. Id. The proposed Policy would also  
17 require that the enhancement plan “include procedures for introduction, separation, and socialization,  
18 including minimizing unnecessary separations for established compatible pairs or groups . . . .” Id.

19 66. Second, the proposed Policy would require that the enhancement plan provide “special  
20 attention [ ] to infants and young juveniles.” Id. The proposed Policy states that “[i]n most situations, the  
21 optimal environment for infant development is one that allows the infant to remain with its biological mother  
22 through weaning in the company of a species-normal social group.” Id. at 38,148. To meet this “critical  
23 element,” the proposed Policy would require that the enhancement plan for facilities with breeding groups  
24 of primates include “a program to ensure species-typical sensory, motor, psychological and social  
25 development of infants.” Id.

26 67. Third, the proposed Policy would require that the facilities provide adequate housing,  
27 including the enclosure (structure) and the furnishings within it (substrate). The proposed Policy would  
28

1 require that primates be able to engage in species-typical movements, and postures for resting, sleeping,  
2 feeding, exploring and playing. Id.

3 68. Fourth, the proposed Policy would require that the enhancement plan provide for adequate  
4 foraging opportunities, since “[w]orking for food is one of the most frequently found species-typical  
5 activities for nonhuman primates.” Id. at 38,149. Thus, according to the proposed Policy, for each  
6 primate, “on a daily basis,” the plan should permit the primate to engage in “some type of time-consuming  
7 foraging” activity, such as puzzle feeders or burying food. Id.

8 69. Fifth, the proposed Policy would require that the enhancement plan provide for  
9 “manipulanda” – objects that the primates can manipulate with their hands – since such objects “have  
10 been shown to be effective in increasing species-appropriate behavior and decreasing abnormal behavior.”  
11 Id. at 38,149.

12 70. In addition to these “critical elements,” the proposed Policy would require that the  
13 enhancement plan must also address such items as: the “scientific justification for all aspects of the plan,  
14 including professional journals and reference guides consulted;” “appropriate levels of novelty” – *i.e.*,  
15 variety in the objects or situations provided for psychological well-being; control over the environment,  
16 such as the ability to open doors or choose to be inside or outside; and sensory stimulation, both in terms  
17 of adequately stimulating all five senses and permitting primates to avoid overstimulation that may prove  
18 stressful. The proposed Policy would also provide that where a facility deviates from the enhancement  
19 plan “additional enrichment must be provided as compensation,” and that primates in “persistent  
20 psychological distress” would have to be treated by a formally trained primate behaviorist or veterinarian.  
21 Id.

22 71. The comment period on the proposed Policy ended on October 13, 1999. 64 Fed. Reg.  
23 48,568 (1999). More than 200 sets of comments were submitted, including comments by plaintiffs AWI  
24 and ALDF supporting the proposed Policy. Numerous scientists also submitted comments in favor of the  
25 proposed Policy. Furthermore, many regulated entities submitted comments expressing support for the  
26 Policy as a means to better define the steps they need to take to comply with the Animal Welfare Act.

72. To date – almost four years later – APHIS still has not made a final decision on the proposed Policy. Therefore, according to APHIS itself, there continues to be “confusion among the regulated public concerning on what basis they will be judged by inspectors as meeting or not meeting the requirements” of 9 C.F.R. § 3.81, 64 Fed Reg. at 38,146; APHIS inspectors continue to have trouble enforcing the standards intended to ensure “the psychological well-being of primates” as required by the Animal Welfare Act, 7 U.S.C. § 2143(a); and thousands of primates in research facilities, zoos and other entities continue to suffer in isolation and substandard environments.

## CLAIMS FOR RELIEF

### Claim One

73. Having determined at least seven years ago that their own inspectors and the regulated facilities “urgently” needed “necessary” additional guidance on primate psychological well-being, and having issued a proposed Policy to address those needs almost four years ago, defendants’ failure to make a final decision on the proposed Policy violates the mandate of the Animal Welfare Act to promulgate standards to “promote the psychological well-being of primates,” 7 U.S.C. § 2143(a), and constitutes agency action “unlawfully withheld or unreasonably delayed” in violation of the Administrative Procedure Act. 5 U.S.C. § 706(1).

74. These violations have caused and are continuing to cause plaintiffs the injuries described in ¶¶ 4-34 above.

### Claim Two

75. By failing to make a final decision on the proposed Policy that APHIS itself determined is “necessary” and “urgently needed” to promote the psychological well-being of primates as required by the Animal Welfare Act, 7 U.S.C. § 2143(a), APHIS has “unlawfully withheld or unreasonably delayed” agency action in violation of the Administrative Procedure Act. 5 U.S.C. § 706(1).

76. These violations have caused and are continuing to cause plaintiffs the injuries described in ¶¶ 4-34 above.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiffs respectfully request that this Court:

- 3 1. declare that defendants are violating the Animal Welfare Act, 7 U.S.C. § 2143(a), and the  
4 Administrative Procedure Act, 5 U.S.C. § 706;
- 5 2. direct defendants to make a final decision regarding the proposed Policy within 30 days;
- 6 3. retain jurisdiction of this matter until defendants have fulfilled their obligations under the  
7 Animal Welfare Act and the Administrative Procedure Act;
- 8 4. award plaintiffs their costs, attorneys' fees, and other disbursements for this action,  
9 including any expert witness fees; and
- 10 5. grant plaintiffs such other relief as this Court deems just and equitable.
- 11

12 Dated: July 22, 2003

Respectfully submitted,

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14  
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**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

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