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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ANIMAL LEGAL DEFENSE FUND,

Plaintiff;

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE and ANIMAL AND
PLANT HEALTH INSPECTION SERVICE,

Defendant.

Case No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Animal Legal Defense Fund (“ALDF”)—a non-profit organization dedicated to improving the lives and advancing the interests of animals through the legal system—by and through its undersigned counsel, and for its complaint against the United States Department of Agriculture, states as follows:

NATURE OF THE CASE

1
2 1. This is an action under the Freedom of Information Act (“FOIA” or the “Act”), 5
3 U.S.C. § 552, as amended, to require the United States Department of Agriculture’s Animal and
4 Plant Health Inspection Service (collectively “USDA”) to comply with its obligations under the
5 Act by producing records relating to ALDF’s prior April 7, 2017 urgent request for inspection
6 (“Request for Inspection” or “Request”) of Tiger Truck Stop, Inc. (“Tiger Truck Stop”).¹
7 ALDF’s Request was assigned number AC17-349.

8 2. Tiger Truck Stop houses a 17-year-old Siberian-Bengal Tiger named “Tony,”
9 who is the subject of ALDF’s Request for Inspection. According to a world-renowned
10 veterinarian with expertise in tigers, Tony is currently experiencing potentially severe health
11 issues, imminently threatening his life and physical well-being as further detailed below. It was
12 these well-founded concerns about potential life-threatening conditions that prompted ALDF’s
13 Request for Inspection.

14 3. ALDF’s Request asked the USDA to determine if Tiger Truck Stop was in
15 violation of the Animal Welfare Act for, *inter alia*, its failure to provide adequate veterinary
16 care for Tony, as well as to order independent veterinarian care to examine the potentially
17 severe health issues ALDF’s expert veterinarian had identified.

18 4. To learn more about the USDA’s consideration of ALDF’s urgent Request,
19 including whether any inspection had occurred, ALDF submitted an *expedited* FOIA request on
20 May 4, 2017—over nine weeks ago. ALDF’s FOIA request was assigned Case No. 2017-
21 APHIS-04149-F.

¹ Tiger Truck Stop is located at 76730 Garner Lane, Grosse Tete, LA 70740. Tiger Truck Stop is owned by Michael Sandlin, and its license number is 72-C-0196.

1 5. ALDF's request qualified for expedited processing. FOIA requires expedited
2 processing of requests for records "in cases in which the person requesting the records
3 demonstrates a compelling need." 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" exists
4 when "a failure to obtain requested records on an expedited basis . . . could reasonably be
5 expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. §
6 552(a)(6)(E)(v); 7 C.F.R. § 1.9 (same).

7 6. Here, the Animal Legal Defense Fund demonstrated its request met this standard
8 because the failure to expedite "could reasonably be expected to pose an imminent threat to the
9 life and physical safety of an individual," namely Tony.

10 7. USDA denied ALDF's request for expedited processing on May 11, 2017,
11 claiming Tony is not considered an "individual" whose life or physical safety faces imminent
12 risk, as is required for expediting processing, and asserting, without support, that "individual"
13 applied only to human beings. *See* Ex. B at B-1.

14 8. ALDF promptly appealed the USDA's denial of its expedited-processing request
15 within days of being notified of the denial *See* Ex. C. ALDF requested expedited treatment of
16 its appeal. *Id.*; *see* 7 C.F.R. § 1.9(a), (b). The USDA acknowledged its receipt of the appeal but
17 did not acknowledge ALDF's request for expedited treatment of the appeal. *See* Ex. D at D-1.
18 The agency set June 26, 2017 as the target response date—matching the statutory deadline
19 required for resolving *any* appeals—which was a de facto denial of the request to expedite the
20 appeal. *Id.*

21 9. Because the USDA has failed to comply with FOIA and its own implementing
22 regulations, ALDF brings this suit to compel the agency to: (1) grant ALDF's request for
23 expedited processing of FOIA Case No. 2017-APHIS-04149-F under 7 C.F.R. § 1.9(b)(1); and

(2) promptly process the FOIA request, and produce all responsive documents, or provide an appropriate final response within the time specified under FOIA.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

11. Venue lies in the Northern District of California pursuant to 5 U.S.C. § 552(a)(4)(B) because ALDF's principal place of business is within this district.

INTRADISTRICT ASSIGNMENT

12. Assignment to the San Francisco Division of the Northern District is proper under Northern District Local Rule 3-2, as Plaintiff Animal Legal Defense Fund's principal place of business is in the Northern District of California and a substantial portion of the events or omissions giving rise to the claims alleged herein occurred in Sonoma County.

PARTIES

13. Plaintiff ALDF is a national non-profit organization dedicated to protecting the lives and advancing the interests of animals through the legal system. Since its founding in 1979, ALDF has been, and continues to be, engaged in the charitable work of gathering and disseminating information to the public regarding animal protection issues, including the mistreatment of exotic cats used in circuses, roadside zoos, and other commercial enterprises. For example, ALDF's website (aldf.org) educates the public about the pattern of abuse and neglect of captive exotic animals by circuses and other exhibitors as documented by numerous sources, including: USDA inspection reports and other agency records, reports by concerned citizens, undercover investigations, and state and local law enforcement inspections and

1 enforcement actions. ALDF's principal place of business is Cotati, California. ALDF submitted
2 FOIA request No. 2017-APHIS-04149-F that is the subject of this action.

3 14. Defendant USDA is an agency of the United States within the meaning of 5
4 U.S.C. § 552(f)(1). The USDA, by and through its subcomponent, the Animal and Plant Health
5 Inspection Service ("APHIS"), has possession of, and control over, the information sought by
6 ALDF under FOIA.

7 15. Defendant APHIS is a subcomponent or subdivision of the USDA that has
8 possession of, and control over, the information sought by ALDF under FOIA.

9 **ALLEGATIONS**

10 **I. ALDF's Animal Protection Work and the Tiger Truck Stop.**

11 16. ALDF is dedicated to protecting the lives and advancing the interests of animals
12 through the legal system. To that end, ALDF coordinates life-saving efforts through strategic
13 impact litigation, administrative rulemaking, and public education. One of ALDF's core
14 missions is to disseminate information to the public about animal exploitation and abuse in
15 various industries. This good work is carried out through ALDF's staff and the voluntary efforts
16 of hundreds of lawyers in private practice, many of whom work at the nation's top law firms.

17 17. Through its day-to-day work advocating for animals, ALDF and its network of
18 pro bono attorneys have experienced firsthand the egregious abuse and neglect inflicted upon
19 captive exotic animals in industries as diverse as circuses, zoos, ice cream parlors, and other
20 commercial operations, including even truck stops.

21 18. ALDF has expended substantial resources in both time and money litigating
22 against the State of Louisiana and other governmental and private parties since 2010 in an effort
23 to enforce a Louisiana law known as the "Big Cat Ban," and to have Tony moved to an

1 appropriate naturalistic environment at a reputable sanctuary. ALDF's efforts are detailed on its
2 website, which are incorporated herein. *See* <http://aldf.org/tony> and [http://aldf.org/cases-](http://aldf.org/cases-campaigns/timelines/tony-the-tiger/)
3 [campaigns/timelines/tony-the-tiger/](http://aldf.org/cases-campaigns/timelines/tony-the-tiger/)

4 19. ALDF sent its request for inspection to the USDA—and seeks records regarding
5 that inspection—because its world-class veterinarian expert has reviewed photos and videos of
6 Tony that have caused her significant concern regarding his health and wellbeing. Based on
7 those videos and photos, it is apparent that Tony is struggling to walk normally. He is keeping
8 weight off his rear right foot to the point that it is having a significant impact to his gait, posture,
9 tail movement and, ultimately, it appears to be limiting his normal activity and behavior patterns.
10 This behavior suggests either a significant foot issue, pelvic limb pathology, or further evidence
11 of a potentially severe spinal issue. He is “crossing over,” which means his feet cross under his
12 body from side to side.

13 20. This video evidence has demonstrated two significant and potentially life-
14 threatening conditions with Tony. First, ALDF's expert believes Tony is suffering from a
15 moderate-severe ataxia, which is a clinical manifestation that implies dysfunction within the
16 neurological system, including gait abnormality, as well as lameness from an unknown cause.
17 Absent veterinarian intervention, this condition could lead to the point where Tony can no longer
18 walk, which might lead to him not eating, or even soaking himself in his own urine and feces,
19 which would be a critical potentially life-threatening situation. Second, Tony has a clearly
20 defined kyphosis of the thoraco-lumbar (T-L) spine. A kyphosis is an abnormal rounding of the
21 spine. Of particular concern is the upward arch that occurs in the mid-portion of Tony's T-L
22 spine, which is indicative of a minimum of arthritis, but it more likely has to do with
23 compensating to avoid weight or the stress of limited function on his pelvic limbs, most likely

1 due to pain.

2 **II. ALDF's FOIA Request.**

3 21. To learn more about the USDA's consideration of ALDF's Request for
4 Inspection, on May 4, 2017, ALDF issued a FOIA request to the agency's APHIS FOIA Office.
5 A true and accurate copy of the FOIA request is attached hereto as Exhibit A.

6 22. ALDF's FOIA request sought "copies of all records pertaining to the Animal
7 Legal Defense Fund's April 7, 2017 request for inspection regarding Tiger Truck Stop." *See* Ex.
8 A at A-2.

9 23. ALDF requested expedited processing of its FOIA request based on a reasonable
10 expectation that failure to obtain the requested records on an expedited basis poses an imminent
11 threat to Tony's life and physical safety. 5 U.S.C. § 552(a)(6)(E)(i)(I), (a)(6)(E)(v)(I); 7 C.F.R. §
12 1.9(b)(1).

13 24. ALDF based its request for expedited processing upon the express provisions of
14 FOIA and the USDA's own rules. Under 5 U.S.C. § 552(a)(6)(E)(i)(I), the USDA "shall ...
15 provid[e] for expedited processing of requests for records ... in cases in which the person
16 requesting the records demonstrates a compelling need" A "compelling need" exists where "a
17 failure to obtain requested records on an expedited basis ... could reasonably be expected to pose
18 an imminent threat to the life or physical safety of an individual..." *Id.* § 552(a)(6)(E)(v)(I); 7
19 C.F.R. § 1.9(b)(1).

20 25. The USDA denied ALDF's request for expedited processing on May 11, 2017,
21 claiming "Tony is not considered an 'individual' as it pertains to USDA's [FOIA]
22 regulations...." *See* Ex. B at B-1. A true and accurate copy of the USDA's denial is attached
23 hereto as Exhibit B.

26. The USDA's denial letter further explained: "If you [ALDF] are not satisfied with APHIS's response to your request for expedited processing, you may administratively appeal by writing to: Administrator[,], Animal and Plant Health Inspection Service[,], Ag Box 3401[,], Washington, DC 20250-3401[.] Your appeal must be postmarked or electronically transmitted within 90 days of the date of this response." Ex. B at B-2.

27. To date (over 9 weeks since ALDF submitted the FOIA request at issue), none of the records ALDF requested have been produced, nor has ALDF received any response claiming that these documents are somehow exempt from FOIA.

III. ALDF's FOIA Appeal.

28. Shortly after receiving the USDA's denial of its request for expedited processing, ALDF filed an administrative appeal of the denial pursuant to the agency's instructions. *See id.* A true and accurate copy of ALDF's appeal is attached hereto as Exhibit C. Due to the time-sensitive nature of the issue underlying the appeal (i.e. whether ALDF's request for expedited processing should be granted since Tony is an individual facing imminent threat of physical harm), ALDF requested expedited processing of its appeal. *See* Ex. C at C-1.

29. In its appeal, ALDF explained the USDA had "erroneously denied the Animal Legal Defense Fund's request for expedited processing" on the basis of the agency's inaccurate conclusion that "Tony is not an 'individual' for purposes of [FOIA]." *Id.* To support this assertion, ALDF explained: "Neither Congress nor the USDA expressly defined the term 'individual' in the context of a request for expedited processing under FOIA and, therefore, the plain meaning controls." *Id.* at C-2. To establish the term's plain meaning, ALDF cited to the *Merriam-Webster Dictionary's* definition of "individual," which *expressly* includes tigers. *Id.*

30. In addition to this uncannily apropos dictionary definition, ALDF supported its

1 appeal with citations to statutory provisions, court decisions, and public policy considerations.
2 Many of these materials are repeated here, *infra*, in support of this complaint.

3 31. The USDA acknowledged receipt of ALDF's appeal via email on May 30, 2017.
4 The agency cited May 26, 2017 as the date of receipt. A true and accurate copy of the USDA's
5 acknowledgement letter is attached hereto as Exhibit D.

6 32. More than 20 business days have passed since the USDA received ALDF's
7 appeal. To date, the agency has neither determined the appeal nor given any indication that it is
8 currently attempting to do so.

9 **IV. USDA's Failure to Timely Determine ALDF's FOIA Appeal Amounts to a**
10 **Constructive Denial, Thereby Exhausting ALDF's Administrative Remedies and**
11 **Making the Matter Ripe for Judicial Review.**

12 33. Under the Administrative Procedures Act ("APA"), an agency's failure to comply
13 with statutory deadlines is deemed an exhaustion of administrative remedies. Specifically in the
14 context of FOIA, a records requestor "shall be deemed to have exhausted his administrative
15 remedies with respect to such request if the agency fails to comply with the applicable time limit
16 provisions...." 5 U.S.C. § 552 (a)(6)(C).

17 34. Appeals of denials of expedited-processing requests must be given "expeditious
18 consideration." 5 U.S.C. § 552(a)(6)(E)(ii)(II); see also 7 C.F.R. § 1.9(a) ("If a request for
19 expedited processing is denied, the agency shall act expeditiously on any appeal of that
20 decision."). And, in any event, the USDA must "make a determination with respect to any appeal
21 within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of
22 such appeal." Id. § 552(a)(6)(A)(iii) (emphasis added).

23 35. The USDA did not respond to ALDF's FOIA appeal within 20 business days, let
24 alone give it expeditious consideration. By failing to expeditiously consider ALDF's FOIA
25 appeal on the matter of expedited processing, and by failing even to respond within 20 business

1 days, the USDA constructively denied ALDF's appeal. As such, ALDF has exhausted its
 2 administrative remedies and may therefore proceed to court.

3 36. The USDA received ALDF's appeal on Friday, May 26, 2017. See Ex. D at D-2.
 4 The agency was thus required to make a determination on the appeal no later than Monday, June
 5 26, 2017 (and arguably even sooner, presuming the window for "expeditious consideration" is
 6 shorter than the general 20-day deadline for determining appeals). See 5 U.S.C. §
 7 552(a)(6)(E)(ii)(II), (a)(6)(A)(ii); Elec. Privacy Info. Ctr. v. Dep't of Justice, 416 F. Supp. 2d 30,
 8 39 (D.D.C. 2006) (holding FOIA provision requiring agencies to process expedited requests for
 9 records as soon as practicable cannot be interpreted to impose a lower burden on the agency than
 10 would otherwise exist, and therefore an agency that violates the 20-day deadline applicable to
 11 standard FOIA requests presumptively also fails to process an expedited request "as soon as
 12 practicable"). Since the USDA failed even to meet the general 20-day deadline, ALDF has the
 13 right to consider its expedited appeal constructively denied and proceed to judicial review.

14 **V. USDA Erred in Refusing To Recognize Tony As An "Individual."**

15 37. Tony qualifies as an "individual" under 5 U.S.C. § 552(a)(6)(E)(v)(I) and 7
 16 C.F.R. § 1.9(b)(1), yet the USDA refuses to recognize him as such. See Ex. B at B-1 (arguing
 17 "there is no FOIA litigation where a court has determined that the term 'individual' should be
 18 applied to anything other than a person, including members of non-human species").

19 38. Neither Congress nor the USDA has expressly defined the term "individual" in the
 20 context of a request for expedited processing under FOIA. Therefore, the plain meaning of the
 21 term controls. See, e.g., *Watkins v. U.S. Bureau of Customs and Border Protection*, 643 F.3d
 22 1189, 1194 (9th Cir. 2011) (holding undefined terms in FOIA "are given their ordinary
 23 meanings"). The *Merriam-Webster Online Dictionary* defines the noun "individual" as "a single

1 organism as distinguished from a group.”² This definition expressly includes non-human animals.
 2 Indeed, one of the Dictionary’s usage examples *specifically applies the term to a tiger*: “The
 3 markings on tigers are unique to each individual.” [http://www.merriam-webster.com/dictionary/](http://www.merriam-webster.com/dictionary/individual/)
 4 *individual*

5 39. This plain reading of “individual” as extending beyond merely human beings is
 6 bolstered by FOIA’s express definition of the related term “person,” which broadly includes non-
 7 human entities such as a “partnership, corporation, association, or public or private organization
 8 other than an agency.” 5 U.S.C. § 551(2). Just as with the expressly defined term “person,” there
 9 is no basis to artificially limit the term “individual” to human beings for purposes of FOIA when
 10 the ordinary usage of that term more broadly captures non-human species.

11 40. Moreover, this plain reading of the statutory language is bolstered by the
 12 important public policy purposes underlying the right to expedited processing of FOIA requests.
 13 For one, there is a strong, federally recognized public interest in protecting the lives and well-
 14 being of non-human animals. *See, e.g., Humane Soc. of Rochester & Monroe Cty. v. Lyng*, 633 F.
 15 Supp. 480, 486 (W.D.N.Y. 1980) (“It has long been the public policy of this country to avoid
 16 unnecessary cruelty to animals.”); *see also United States v. Stevens*, 559 U.S. 460, 496 (2010)
 17 (Alito, J., dissenting) (recognizing our “society has long banned [acts of animal] cruelty”
 18 directed at “living creatures that experience excruciating pain”). In fact, at least one state’s
 19 highest court has acknowledged that *animals*, not just humans, can be “victims” whose suffering
 20 the state seeks to prevent. *State v. Nix*, 355 Or. 777, 334 P.3d 437 (2014), *vacated on other*
 21 *grounds*, 356 Or. 768, 345 P.3d 416 (2015) (holding the ordinary meaning of “victim” includes

² *individual, n.*, Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/individual> (last visited May 17, 2017); *see also individual, n.*, Cambridge University Press Dictionary, <http://dictionary.cambridge.org/us/dictionary/english/individual> (last visited May 17, 2017) (defining “individual” in noun form as “a single person or thing, esp. when compared to the group or set to which it belongs.”)

1 both human and non-human animals).

2 41. USDA's decision to disregard Tony as an individual is arbitrary, capricious, and
3 wrong as a matter of law as it directly conflicts with the plain meaning of that term. The agency
4 made this determination without any citation to authority or legislative intent.

5 **VI. USDA Erred In Denying ALDF's Request For Expedited Processing.**

6 42. An expedited review of ALDF's FOIA request was warranted because "a failure
7 to obtain [the] requested records on an expedited basis ... could reasonably be expected to pose
8 an imminent threat to the life or physical safety of an individual"—i.e. Tony. Thus, a
9 "compelling need" for the documents exists. 5 U.S.C. § 552(a)(6)(E)(i)(I), (a)(6)(E)(v)(I); 7
10 C.F.R. § 1.9(b)(1).

11 43. Given that Tony fits squarely within the meaning of an "individual" under FOIA's
12 expedited-processing provision, and ALDF's inability to obtain the requested records on an
13 expedited basis can reasonably be expected to pose an imminent threat to his life or physical
14 safety, the USDA erred in denying ALDF's expedited-processing request. 5 U.S.C.
15 552(a)(4)(A)(iii). The USDA's decision is therefore wrong as a matter of law. *See* 5 U.S.C. §
16 706.

17 **COUNT I**

18 **(Violation of FOIA)**

19 44. ALDF incorporates and realleges Paragraphs 1-43 as if set forth in full herein.

20 45. The USDA failed to comply with FOIA's provision allowing for expedited
21 processing of public records requests, and still to this date has not provided a final response or
22 document production in response to ALDF's FOIA request.

23 46. The USDA erred in determining Tony the Tiger is not an "individual" under 5

1 U.S.C. § 552(a)(6)(E)(v)(I), leading the agency to erroneously deny ALDF's request for
2 expedited processing.

3 47. The USDA's failure to grant ALDF's expedited-processing request is arbitrary,
4 capricious, and wrong as a matter of law.

5 48. The USDA's error of law and disregard for the expedited process under FOIA
6 may be mitigated by an order to immediately produce the requested documents.

7 49. The USDA should be ordered to acknowledge Tony is an "individual" whose life
8 and physical well-being face an imminent risk as a result of the agency's delay in producing the
9 requested records. To remedy this ongoing threat, the agency must immediately produce the
10 requested documents.

11 **RELIEF REQUESTED**

12 WHEREFORE, ALDF prays that this Court:

- 13 a) Enter judgment in favor of ALDF and against the USDA and APHIS;
- 14 b) Declare that the USDA and APHIS unlawfully failed to comply with FOIA in
15 denying ALDF's request for expedited processing of its May 4, 2017 FOIA
16 request;
- 17 c) Find that the USDA and APHIS's denial of ALDF's request for expedited
18 processing is arbitrary and capricious;
- 19 d) Declare that the term "individual" encompasses nonhuman animals;
- 20 e) Declare that Tony is an "individual" under FOIA;
- 21 f) Order expedited processing and production of records responsive to ALDF's May
22 4, 2017 FOIA request;
- 23 g) Enter a permanent injunction requiring USDA and APHIS to treat
24 nonhuman animals as "individuals" for purposes of processing FOIA
25 expedited-processing requests;
- 26 h) Award ALDF its costs and reasonable attorneys' fees in this action; and
- 27 i) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

DATED: July 11, 2017

By: /s/ Matthew Liebman

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