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Re: Notice of Intent to File Citizen Suit Pursuant to the Endangered Species Act

Dear Ms. Sankey, Mr. Sankey, Secretary Bernhardt, and Director Skipwith:

Pursuant to Section 11 of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g)(2)(A)(i), this letter constitutes notice that People for the Ethical Treatment of Animals, Inc. (“PETA”) and the Animal Legal Defense Fund (“ALDF,” and together, the “Complainants”) intend to file suit after the expiration of the 60-day notice period against Rachelle Sankey, individually and in her capacity as Vice President, Treasurer, and Secretary of Reigleman Enterprises, Inc. (“Reigleman”) d/b/a Pymatuning Deer Park, a Pennsylvania corporation located at 842 E. Jamestown Rd., Jamestown, PA 16134, and as Owner and Operator of Pymatuning Deer Park (the “Park”), located at 804 E. Jamestown Rd., Jamestown, PA 16134, and licensed as Pymatuning Deer Park, Inc., and against Bruce Sankey, individually and in his capacity as President of Reigleman Enterprises, Inc., and as Director of Pymatuning Deer Park (collectively, “Pymatuning”), in federal district court pursuant to 16 U.S.C. § 1540(g)(1)(A) for chronic and ongoing violations of the ESA, 16 U.S.C. § 1538(a)(1)(B), (G) and its implementing regulation, 50 C.F.R. § 17.21.

The Complainants intend to file suit under the ESA against Pymatuning to challenge and enjoin the facility's ongoing "take" of the following endangered species, none of which Pymatuning holds a permit to "take": lions, including Buddy and Missa; tigers, including Snowy and Nila; ring-tailed lemurs; a solitary black-and-white ruffed lemur; three gray wolves; a military macaw; and a Mikado pheasant, unless Pymatuning agrees to allow their transfers to reputable facilities and agrees never to acquire additional endangered animals in the future.

In addition to violating the ESA as to certain endangered and threatened species at the Park, Pymatuning subjects all the animals confined there—particularly Bosco the bear—to conditions that constitute a public nuisance under Pennsylvania state law, and this has caused special harm to the Complainants.

If Pymatuning wishes to correct the violations described below and avoid litigation, it should immediately contact K&L Gates LLP to facilitate the transfer of the animals at issue within sixty (60) days to reputable facilities where they may express species-typical behaviors in safe, sanitary, and enriching environments. Should Pymatuning exercise this option, the Complainants will secure, arrange, and pay for the placement, transport, and veterinary care necessary for the animals' relocation to reputable facilities.

I. The Endangered Species Act.

The ESA prohibits the "take" of endangered and threatened species within the United States.¹ "The term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."² "'Take' is defined . . . in the broadest possible manner to include every conceivable way in which a person can take or attempt to take any fish or wildlife."³ The ESA applies equally to endangered and threatened species living in captivity.⁴ The ESA prohibits the possession of an unlawfully taken animal.⁵

Tigers, lemurs, gray wolves, military macaws, and Mikado pheasants are listed as "endangered" under the ESA.⁶ Lions are listed as either "endangered" or "threatened" depending upon their

¹ 16 U.S.C. § 1538(a)(1)(B), (G); 50 C.F.R. §§ 17.21, 17.31(a).

² 16 U.S.C. § 1532(19).

³ *Babbitt v. Sweet Home Chapter of Communities for a Great Or.*, 515 U.S. 687, 704-05 (1995) (citing S. Rep. No. 93-307, p. 7 (1973)); U.S. Code Cong. & Admin. News 1973, pp. 2989, 2995); see also H.R. Rep. No. 93-412, pp. 11, 15 (1973) (the House Report stated that "the broadest possible terms" were used to define restrictions on takings and includes "harassment, whether intentional or not").

⁴ See, e.g., 80 Fed. Reg. 7380, 7385 (Feb. 10, 2015) ("[T]he ESA does not allow for captive held animals to be assigned separate legal status from their wild counterparts on the basis of their captive status.").

⁵ 16 U.S.C. § 1538(a)(1)(D); 50 C.F.R. § 17.21(d).

⁶ 50 C.F.R. § 17.11(h). Gray wolves are currently listed as endangered when found in certain states, which include Pennsylvania. *Id.* Although the Fish and Wildlife Service plans to delist gray wolves beginning on January 4, 2021, 85 Fed. Reg. 69778-69895 (Nov. 3, 2020), litigation challenging the rule is likely. See Center for Biological Diversity, Legal Step Challenges Trump Administration's Removal of

subspecies—the subspecies *Panthera leo* is listed as “endangered” and the subspecies *Panthera leo melanochaita* is listed as “threatened”—both to which the “take” prohibition applies.⁷

As described below, the conditions in which Pymatuning maintains the endangered animals in its custody “harm”⁸ and “harass”⁹ those animals in violation of Section 9 of the ESA, 16 U.S.C. § 1538(a)(1)(B), (G), and its implementing regulation, 50 C.F.R. § 17.21(c)(1).

II. Pymatuning takes Big Cats in violation of the Endangered Species Act.

Pymatuning confines lions and tigers (collectively, “Big Cats”) in inadequate enclosures without proper space, enrichment, veterinary care, sanitation, nutrition, safety, and trained and experienced staff and thereby deprives them of the ability to engage in normal behavioral patterns and causes them to suffer injury or creates a likelihood they will be injured. Accordingly, Pymatuning “takes” and has “taken” endangered Big Cats by harming and harassing them in direct violation of the ESA.¹⁰

A. Pymatuning harms and harasses Big Cats by failing to provide them with adequate space and enrichment, subjecting them to injury and the likelihood of further injury.

Generally accepted husbandry practices dictate that Big Cats be provided with adequate space and enrichment to promote species-appropriate behaviors. Small enclosures are detrimental to tigers because of the animals’ inability to cover large distances in the enclosures.¹¹ A typical tiger exhibit, according to the Association of Zoos and Aquariums (the “AZA”), the nation’s premier zoological accrediting organization, is between 2,500 and 10,000 square feet, with an average of 5,500 square feet.¹² “A larger enclosure not only provides appropriate space for exercise, but it also allows animal keepers and zoo designers to implement a wider variety of enrichment items Smaller enclosures are restricted in the amount of useable space, which

Gray Wolf Protection (Nov. 5, 2020), *available at* <https://biologicaldiversity.org/w/news/press-releases/legal-step-challenges-trump-administrations-removal-of-gray-wolf-protection-2020-11-05/>.

⁷ 50 C.F.R. §§ 17.11(h), 17.21(c), 17.31(a); *see also id.* § 17.40(r) (members of the threatened subspecies *Panthera leo melanochaita* are subject to the protections of a special rule that incorporates the take prohibition).

⁸ “Harm” is defined by regulation as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” 50 C.F.R. § 17.3.

⁹ “Harass” is defined by regulation as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” *Id.*

¹⁰ 16 U.S.C. § 1532(19).

¹¹ Ass’n of Zoos & Aquariums (“AZA”), *Tiger Care Manual* 72 (2016) (showing “a positive correlation between the size of the enclosure and the total distance covered by the animals”).

¹² *Id.* at 12.

makes it difficult to provide captive animals with a wide variety of enrichment.”¹³ Accordingly, studies show that tigers in larger enclosures explore more and pace less often.¹⁴ Even enclosures with adequate space require enrichment opportunities for tigers to engage in species-specific behaviors. The AZA recommends that “[t]he development of enrichment initiatives should focus on promoting species-appropriate behaviors [such as stalking, hunting, playing, or foraging] in tigers and providing them with choice and control within their exhibit environment.”¹⁵ Small enclosures—such as those at the Park—are detrimental to tigers because of the animals’ inability to cover large distances in the enclosures.¹⁶

The majority of lion exhibits are over 10,000 square feet, which the AZA states “should be considered the minimum size for new exhibits.”¹⁷ The AZA recommends offering lions “large spacious enclosures designed to encourage species-appropriate behaviors such as resting, walking, hunting, stalking, grooming, playing, breeding, etc.”¹⁸ All enclosures should allow lions to “retreat from conspecifics through the use of visual barriers, such as rock outcroppings, hills, and foliage, without limiting an animal’s access to food, water, heat, or shade.”¹⁹ In addition to providing social privacy, enclosures should include “various substrates, surfaces to mark, deadfall for scratching, and other aspects in their enclosure that will change their pathways and create complex behavioral opportunities.”²⁰ And lions in captivity should be provided “a complex exhibit that gives them choices and a way to control their environment” through an enrichment program that targets species-appropriate behaviors.²¹ Likewise, for tigers, “[t]he development of enrichment initiatives should focus on promoting species-appropriate behaviors [such as

¹³ Leigh Pitsko, *Wild Tigers in Captivity: A Study of the Effects of Captive Environment on Tiger Behavior* 29 (2003) (unpublished Master’s thesis, Virginia Polytechnic Institute and State University), <http://hdl.handle.net/10919/32620>; see also Monika S. Szokalski et al., *Enrichment for Captive Tigers (Panthera Tigris): Current Knowledge and Future Directions*, 139 *Applied Animal Behav. Sci.* 1, 5 (2012) (citing M.J. Bashaw et al., *To Hunt or Not to Hunt? A Feeding Enrichment Experiment with Captive Large Felids*, 22 *Zoo Biology* 189-98 (2003)); B.C. White, *Activity Based Exhibition of Five Mammalian Species: Evaluation of Behavioral Changes*, 22 *Zoo Biology* 269-85 (2003); J. Lyons et al., *The Effects of Physical Characteristics of the Environment and Feeding Regime on the Behavior of Captive Felids*, 16 *Zoo Biology* 71-83 (1997).

¹⁴ Pitsko, *supra* n.13, at 29; accord Szokalski et al., *supra* n.13, at 5.

¹⁵ AZA, *Tiger Care Manual*, *supra* n.11, at 72.

¹⁶ *Id.* (showing “a positive correlation between the size of the enclosure and the total distance covered by the animals”).

¹⁷ AZA, *Lion Care Manual* 18 (2012).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 98.

stalking, hunting, playing, or foraging] and providing tigers with choice and control within their exhibit environment.”²²

Because of Big Cats’ vulnerability to stress in captivity, enrichment is necessary to deter harmful behaviors like self-mutilation, stereotypical behaviors such as pacing and rubbing, or behaviors like fence chewing that may cause broken teeth.²³ Pacing, for example, is a stereotypic behavior that indicates psychological distress and is likely caused from inadequate living conditions,²⁴ including forcing naturally far-ranging animals to live in cramped enclosures with limited to no opportunities to express species-specific behaviors.²⁵ Because thwarted hunting prospects alone appear to cause carnivores like Big Cats to suffer stress,²⁶ reputable facilities develop enrichment plans designed to allow the animals to simulate natural feeding and hunting behaviors.²⁷ Enrichment plans should include natural and complex enclosures and environmental enrichment including whole-carcass feeding, novel toys/objects, scratch logs, introduction of new smells, enclosure rotations, pools, and adequate space to run. These plans aim to provide stimulating physical and mental activities by introducing a variety of environmental enrichment items such as bones or deceased whole prey items for feeding, pools for swimming, toys that are kept novel by changing them regularly, scratch logs, different substrates to investigate and lie in, the introduction of new smells, enclosure rotations, and adequate space to run. In the wild or in a reputable sanctuary, a Big Cat would have the ability to exercise, explore, and engage in other species-typical behaviors.

Pymatuning does not provide Big Cats in its custody with the necessary space, naturalistic and complex enclosures, and varied enrichment that would prevent physical and psychological harms to the animals. Instead, Pymatuning confines Big Cats to small, virtually barren enclosures that offer little to no variety, privacy, or choice and control, that do not provide adequate opportunities to retreat from conspecifics or humans or to engage in important natural and species-typical behaviors such as swimming, stalking, and simulated predation.²⁸ The enclosures lack appropriate dens, which would allow the Big Cats to retreat from conspecifics and constant human surveillance. As a result, Big Cats at Pymatuning engage in harmful stereotypical behaviors as well as depressed species-typical behavior and evidence

²² AZA, *Tiger Care Manual*, *supra* n.11, at 72.

²³ Stereotypies, which are commonly recognized as a sign of psychological distress, are identified by the lack of function for the behavior.

²⁴ Georgia Jane Mason, *Stereotypies and Suffering*, 25 *Behav. Processes* 103–04 (Dec. 1991).

²⁵ Ros Clubb & Georgia Jane Mason, *Natural Behavioural Biology as a Risk Factor in Carnivore Welfare: How Analysing Species Differences Could Help Zoos Improve Enclosures*, 102.3-4 *Applied Animal Behav. Sci.* 303-28 (2007).

²⁶ Kathleen Morgan & Chris Tromborg, *Sources of Stress in Captivity*, 102 *Applied Animal Behav. Sci.* 262, 284 (2007).

²⁷ Letícia S. Resende et al., *The Influence of Feeding Enrichment on the Behavior of Small Felids (Carnivora: Felidae) in Captivity*, 26 *Zoologia* 601 (2009).

²⁸ See Morgan & Tromborg, *supra* n.26, at 264; see also Szokalski et al., *supra* n.13, at 1.

psychological distress. Pymatuning is responsible for the conditions that create these injuries by significantly impairing Big Cats' essential behavioral patterns, including feeding and sheltering, and thereby harms Big Cats in violation of the ESA. The disruption to Big Cats' normal behavioral patterns creates a likelihood they will further injure themselves and thus, also constitutes harassment of Big Cats in violation of the ESA.

Moreover, the enclosures do not comply with generally accepted husbandry practices. As described above, the AZA prescribes standards for providing an adequate amount of space and enrichment to captive Big Cats. Likewise, the animal care regulations promulgated by the U.S. Department of Agriculture ("USDA"), which set the minimum requirements for both endangered and non-endangered captive animals exhibited under the Animal Welfare Act ("AWA"), 7 U.S.C. § 2143(a)(2), require that "[e]nclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement," and state that "[i]nadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns."²⁹ Pymatuning does not satisfy even this minimum requirement.

The enclosures' lack of enrichment falls so far short of generally accepted husbandry practices that Pymatuning has been cited by the USDA for failing to provide a lion with adequate light sufficient to support a diurnal light cycle or routine inspection and cleaning. In contrast, the AZA recommends that, "[b]ecause of their large size and activity patterns, lions should be maintained in outdoor enclosures under conditions of natural light."³⁰ Pymatuning's failure to provide adequate lighting to this lion is indicative of a pattern and practice of confining animals in conditions that fail to meet their basic needs. Additionally, a female lion at Pymatuning injured a male lion, which may have been caused by boredom as a result of inadequate enrichment in the enclosure.

B. Pymatuning harms and harasses Big Cats by failing to provide them with appropriate veterinary care, subjecting them to injury and the likelihood of further injury.

Pymatuning harms and harasses Big Cats by depriving them of appropriate veterinary care, leading to the injury of Big Cats in its custody and the likelihood of further injury, in violation of the ESA. For example, Pymatuning failed to provide appropriate veterinary care to Scruffy, an adult tiger, whom Pymatuning killed by gunshot. After facility representatives noticed his health declining rapidly, Pymatuning's veterinarian visually inspected Scruffy, indicated the likely diagnosis was renal failure, and recommended killing him by gunshot, as the veterinarian was apparently either unwilling or unable to sedate or "euthanize" him properly. Pymatuning's program of veterinary care provided for gunshot and barbiturate overdose as primary forms of euthanasia, despite American Veterinary Medical Association ("AVMA") guidelines indicating

²⁹ 9 C.F.R. § 3.128.

³⁰ AZA, *Lion Care Manual*, *supra* n.17, at 14.

that gunshot is only acceptable in an emergency situation, and “should not be used when other methods are available and practicable.”³¹ Moreover, killing a big cat by gunshot requires “highly skilled personnel trained in the use of firearms,” appropriate firearms and bullets, and well-maintained equipment, and can create suffering if more than one shot is required.³² No diagnostics were performed that may have provided a medically manageable diagnosis, and no necropsy was performed to diagnose his illness, so it is impossible to say whether Scruffy’s death was medically necessary. By killing Scruffy without retaining a veterinarian who could have provided him with proper diagnostics, treatment, or euthanasia, Pymatuning harmed him in violation of the ESA.

Pymatuning has a pattern and practice of failing to provide Big Cats appropriate veterinary care, resulting in injury and the likelihood of further injury, *e.g.*, from not receiving necessary treatment. For example, it has been cited numerous times by the USDA:

- When Scruffy was shot, Pymatuning had a lion confined to the adjacent holding area. The lion was trapped, unable to escape the sound of the firearm, which would have inflicted distress and discomfort.
- Pymatuning failed to provide adequate veterinary care to a juvenile lion who was injured on his hindquarters by a female adult lion. Pymatuning’s veterinarian did not assess the lion to determine the extent of his injury but prescribed a course of antibiotics without examining the animal. Pymatuning later failed to provide enough lighting to determine if the lion’s injury was healing.
- Pymatuning failed to have the veterinarian re-evaluate the diets for a white tiger and a leopard, both of whom appeared to be obese with no visible neck, with fat deposits over their spines, and distended abdomens.
- Pymatuning failed to provide adequate veterinary care to a juvenile lion with signs of decreased muscle mass in the hind-end, ataxia, and a one-inch by one-inch lesion on his right hip.

Pymatuning’s routine failure to provide appropriate veterinary care does not comply with generally accepted husbandry practices. Even the AWA, which sets forth the bare minimum standards of care, mandates that captive animals be provided with appropriate veterinary care, including appropriate facilities and personnel, appropriate methods to prevent, control, diagnose, and treat disease, and daily observation of animals.³³ And captive animals should be

³¹ American Veterinary Medical Association, *AVMA Guidelines for the Euthanasia of Animals* 45 (2013); see also *id.* at 80 (“Methods that are classified as being unacceptable for use in comparable domestic species are unacceptable for use in wild mammals that are not deeply anesthetized.”).

³² *Id.* at 34, 36-37.

³³ 9 C.F.R. § 2.140.

handled “in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.”³⁴

Pymatuning’s failure to provide appropriate veterinary care causes Big Cats in its custody injuries, including trauma and death, as well as the likelihood of further injury, and harms and harasses Big Cats in violation of the ESA.

C. Pymatuning harasses Big Cats by failing to provide them with adequate sanitation, subjecting them to the likelihood of injury.

Pymatuning confines Big Cats in unsanitary conditions that create a likelihood of injury and thus harasses them in violation of the ESA. Generally accepted husbandry practices require strict sanitation. Even the AWA’s bare minimum standards of care require that captive animals must be given a sanitary environment and requires, for example, that “water receptacles . . . be kept clean and sanitary,” “excreta . . . be removed from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and to reduce odors,” and “premises be kept clean and in good repair in order to protect the animals from injury.”³⁵ Pymatuning fails to comply with generally accepted husbandry practices or even meet these minimum requirements. Instead, Pymatuning has a pattern and practice of confining Big Cats in extremely dirty and soiled enclosures that create a health hazard and risk injury to the animals. For example, it has been cited numerous times by the USDA:

- Pymatuning repeatedly failed to remove carcass materials, which accumulated in the enclosures confining the tigers and lions.
- Pymatuning failed to clean the water receptacle in the enclosures confining the tigers and lions for so long that they became covered in algae and debris.
- Pymatuning failed to clean the den in the lion enclosure.
- Pymatuning failed to clean the enclosure confining the lions for so long that algae and grime accumulated on the concrete floors and it became “extremely soiled.”
- Pymatuning failed to adequately ventilate the indoor housing areas provided to the tigers and lions, which resulted in a strong ammonia smell.

Pymatuning’s failure to provide adequate sanitation creates the likelihood of injury and harasses Big Cats in violation of the ESA.

³⁴ *Id.* § 2.131(b)(1).

³⁵ *Id.* §§ 3.130, 3.131(a), 3.131(c).

D. Pymatuning harasses Big Cats by failing to provide them adequate nutrition, subjecting them to the likelihood of injury.

Pymatuning fails to provide Big Cats with adequate nutrition, creating a likelihood of injury, and thus harasses the Big Cats in violation of the ESA. Generally accepted husbandry practices dictate that animals be provided a species-appropriate, nutritionally complete diet. Under the AWA's bare minimum standards of care, "food shall be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health," and "[t]he diet shall be prepared with consideration for the age, species, condition, size, and type of the animal."³⁶ Pymatuning fails to comply with generally accepted husbandry practices or even meet these minimum requirements. Rather, it provides Big Cats in its custody an inappropriate diet that leads to health risks, including obesity and vitamin deficiency, and the potential for additional injuries. Pymatuning's pattern and practice of denying Big Cats adequate nutrition is demonstrated in part by the following instances for which it has been cited by the USDA:

- Pymatuning repeatedly failed to provide a diet plan to transition tiger cubs to an adult diet. Tiger cubs are at high risk for developing potentially deadly vitamin and calcium deficiencies if not given an appropriate diet.
- Pymatuning failed to provide a supplement to the tigers such that their diet is not nutritionally complete, leading to the risk of metabolic bone disease and other painful conditions.
- Pymatuning fed tigers and lions a diet composed primarily of frozen chickens. According to industry guidelines, feeding tigers diets which contain high percentages of poultry products may be nutritionally unbalanced.³⁷ Moreover, the frozen chickens were repeatedly allowed to thaw outside at an unsafe temperature, resulting in a risk of disease.
- Pymatuning failed to clean the feeding pans used to feed raw meat to lions such that the pans were contaminated with raw chickens each time the pan was used.

Pymatuning's failure to provide adequate nutrition creates the likelihood of injury and harasses Big Cats in violation of the ESA.

E. Pymatuning harms and harasses Big Cats by lacking necessary expertise and training to appropriately care for them.

On information and belief, Pymatuning lacks staff with the necessary experience and training to appropriately care for Big Cats. The staff's lack of experience and training is evidenced by the lack of space and enrichment in the enclosures, and the lack of appropriate veterinary care, sanitation, and nutrition provided to the Big Cats. Experience and training are required, for

³⁶ *Id.* § 3.129(a).

³⁷ Global Federation of Animal Sanctuaries, *Standards for Felid Sanctuaries* § N-2.m (July 2013).

example, to introduce Big Cats who will be living with one another in an enclosure, including by taking into account the Big Cats' potential for compatibility. Under the AWA's bare minimum standards of care, "[a]nimals housed in the same primary enclosure must be compatible," and "[a]nimals shall not be housed near animals that interfere with their health or cause them discomfort."³⁸ Contrary to these standards, Pymatuning housed two lions together in conditions that resulted in one lion injuring the other. According to the USDA's citation, Pymatuning lacked the facilities to adequately separate them, which resulted in inadequate cleaning and sanitation. This instance is an example of inadequate training and experience in Big Cat care by Pymatuning's staff harming Big Cats.

Pymatuning's failure to provide Big Cats care by staff with appropriate training and experience injures and creates the likelihood of further injury and thereby harms and harasses Big Cats in violation of the ESA.

III. Pymatuning takes lemurs in violation of the Endangered Species Act.

Pymatuning confines endangered ring-tailed lemurs and a solitary black-and-white ruffed lemur to inadequate enclosures without proper space, enrichment, socialization, safety, sanitation, and trained and experienced staff, and thereby deprives them of the ability to engage in normal behavioral patterns and causes them to suffer injury or creates a likelihood they will be injured. Accordingly, Pymatuning "takes" and has "taken" endangered lemurs by harming and harassing them in direct violation of the ESA.³⁹

A. Pymatuning harms and harasses lemurs by failing to provide them adequate space and enrichment, subjecting them to injury and the likelihood of further injury.

Pymatuning harms and harasses lemurs by depriving them of appropriate space and enrichment, leading to injury and the likelihood of further injury, in violation of the ESA. Generally accepted husbandry practices dictate that animals be provided enclosures with adequate space and enrichment to engage in species-appropriate behavior. Even the AWA, which sets forth the bare minimum standards of care, requires that enclosures "provide sufficient space for the nonhuman primates to make normal postural adjustments with freedom of movement."⁴⁰ Enrichment is particularly important to primates, as the AWA requires animal exhibitors to "develop, document, and follow an appropriate plan for environmental enhancement adequate to promote the psychological well-being of nonhuman primates."⁴¹ These environmental enhancement plans must include "specific provisions to address the social

³⁸ 9 C.F.R. § 3.133.

³⁹ 16 U.S.C. § 1532(19).

⁴⁰ 9 C.F.R. § 3.80(a)(2)(xi).

⁴¹ *Id.* § 3.81.

needs of nonhuman primates of species known to exist in social groups in nature.”⁴² And “[t]he physical environment in the primary enclosures must be enriched by providing means of expressing non-injurious species-typical activities.”⁴³

Pymatuning fails to comply with generally accepted husbandry practices or even meet these minimum requirements. It confines lemurs in its custody to small enclosures with static environments, denying them the ability to express normal behaviors such as roaming and deriving intellectual stimulation from a varied habitat. Pymatuning therefore fails to meet the complex cognitive needs of lemurs, prevents the lemurs from engaging in species-specific behavior, and fails to ensure the physical, psychological, and social health of the lemurs in its custody through adequate enrichment and environmental enhancement.

As a result, lemurs at Pymatuning engage in harmful stereotypical behaviors and evidence psychological distress. In a citation documenting Pymatuning’s pattern and practice of confining lemurs to inadequate enclosures, the USDA observed one lemur in a cage—lacking even a single item that would add cage complexity or foraging opportunities—exhibiting the stereotypical behavior of bouncing off the enclosure sides in an agitated state, a behavior that indicates the lemurs are denied adequate space. The USDA also cited Pymatuning for its failure to provide any environmental enrichment in an enclosure confining two ring-tailed lemurs.

Pymatuning is responsible for the conditions that create these injuries by significantly impairing lemurs’ essential behavioral patterns, and it thereby harms lemurs in violation of the ESA. The disruption to lemurs’ normal behavioral patterns creates a likelihood they will further injure themselves and thus also constitutes harassment of lemurs in violation of the ESA.

B. Pymatuning harms and harasses lemurs by failing to provide them adequate socialization, subjecting them to injury and the likelihood of further injury.

Pymatuning denies lemurs adequate socialization, leading to psychological injuries that are so distressing that they place the lemurs at significant risk for physical injuries as well, thus harming and harassing lemurs in violation of the ESA. Generally accepted husbandry practices dictate that primates be afforded social housing in accordance with the species’ needs. Thus, even under the AWA’s bare minimum standards of care, social housing of primates “must be in accordance with currently accepted professional standards, as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian.”⁴⁴ These mandatory

⁴² *Id.* § 3.81(a).

⁴³ *Id.* § 3.81(c).

⁴⁴ *Id.* § 3.81(a).

enhancement programs aim to give nonhuman primates “an environment in which they can express the wide range of behaviors practiced by others of their species in nature.”⁴⁵

Despite the established authority on the social needs of lemurs in order to avoid psychological harm and the minimum standards provided by USDA regulation, Pymatuning subjects endangered lemurs to a life of social isolation and psychological distress and the risk of further harm and injury. For example, the black-and-white ruffed lemur is housed alone, with no other conspecifics, in an area where he or she cannot see any other primates. This fails to meet the lemur’s social needs. Depriving lemurs of the social interaction fundamental to their physical, social, and psychological well-being leads to psychological distress and harmful stereotypical behaviors, and significantly disrupts essential behavioral patterns, creating the likelihood of further psychological harm and the risk of injury.⁴⁶ Moreover, Pymatuning may not remedy the violations by obtaining other lemurs or transferring the lemurs in its custody to another zoo or private party through interstate transactions, as this would instead lead to separate ESA violations absent a permit issued only for limited purposes, not including for private ownership or public display.⁴⁷ Accordingly, the lemurs will not have their social needs met unless they are relocated.

Pymatuning’s failure to provide adequate socialization subjects endangered lemurs to injury and the likelihood of further injury and thus harms and harasses lemurs in violation of the ESA.

C. Pymatuning harasses lemurs by failing to provide them adequate safety, subjecting them to the likelihood of injury.

Pymatuning houses lemurs in conditions that harass them in violation of the ESA. Generally accepted husbandry practices dictate that primates be provided strictly safe housing that will not lead to injury. Thus, even the AWA’s bare minimum standards of care require that “[a]ny surfaces that come in contact with nonhuman primates must . . . [b]e free of jagged edges or sharp points that might injure the animals.”⁴⁸ Pymatuning’s pattern and practice of confining lemurs to injurious conditions has been documented by the USDA, which cited Pymatuning for failing to fix a cracked swing in the enclosure confining the lemurs, thereby creating a risk of injury. Pymatuning also places ropes in the enclosure that have slack and contain balls at the

⁴⁵ U.S. Department of Agriculture, Animal & Plant Health Inspection Serv., *Final Report on Env’t Enhancement to Promote the Psychological Well-Being of Nonhuman Primates* § II.E (1999).

⁴⁶ See 16 U.S.C. § 1538(a)(1)(B), (G); 50 C.F.R. §§ 17.11(h), 17.21(c)(1); *Kuehl v. Sellner*, 161 F. Supp. 3d 678, 713, 718 (N.D. Iowa 2016) (holding that zoo violated the ESA by isolating a ring-tailed lemur in a small enclosure without the opportunity to socialize with other members of her species and ordering the zoo to transfer the lemurs to an appropriate facility).

⁴⁷ See, e.g., *Elephant Justice Project v. Woodland Park Zoological Soc’y, Inc.*, No. C15-0451-JCC, 2015 WL 12564233 (W.D. Wash. Apr. 7, 2015).

⁴⁸ 9 C.F.R. § 3.75(c)(1).

end, creating a risk of entanglement. Pymatuning's failure to provide adequate safety subjects lemurs to the likelihood of injury and thus harasses them in violation of the ESA.

D. Pymatuning harms and harasses lemurs by failing to provide them adequate sanitation, subjecting them to injury and the likelihood of further injury.

Lemurs have many different ways of communicating with one another and olfactory (smell-oriented) communication is one of the most important. Lemurs produce unique scents for this very purpose. Unsanitary conditions in, near, and surrounding enclosures "interfere with the lemurs' olfactory senses, to which they are highly attuned."⁴⁹ According to Dr. Peter Klopfer, an expert in the behavior and care of lemurs, forcing lemurs to live in an unsanitary environment is similar "to humans being in a room where there is constantly white noise being amplified."⁵⁰ Pymatuning does not provide adequate sanitation to the lemurs it confines, subjecting lemurs to psychological distress, health risks, and likelihood of further distress and injury, thus harming and harassing them in violation of the ESA.

The inadequacy of space in the enclosure noted above also makes proper sanitation impossible. Because removal of scents can induce stress in lemurs, the enclosure must be cleaned in portions to avoid removing all scents in the enclosure and stressing the lemurs. However, the enclosure at Pymatuning is too small to effectively clean in portions, resulting in either the lemurs living in a filthy enclosure or becoming overly stressed by the removal of scents when the enclosure is cleaned.

Generally accepted husbandry practices require strict sanitation. Even under the AWA's bare minimum standards of care, captive animals must receive adequate sanitation. For example, it mandates that "excreta . . . be removed from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and to reduce odors," "[a]n effective program for control of [pests] . . . be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas," and "supplies of food and bedding must be stored in a manner that protects the supplies from spoilage, contamination, and vermin infestation."⁵¹ Pymatuning fails to comply with generally accepted husbandry practices or meet even these minimum requirements. Instead, Pymatuning has a pattern and practice of confining lemurs in extremely dirty and soiled enclosures that cause psychological distress, create health hazards, and risk further distress and injury to the animals. For example, it has been cited numerous times by the USDA:

- Pymatuning failed to prevent an excessive amount of fruit flies in the enclosure.

⁴⁹ *Kuehl v. Sellner*, 161 F. Supp. 3d 678, 703 (N.D. Iowa 2016) (internal quotation marks and citation omitted).

⁵⁰ *Id.* (internal quotation marks and citation omitted).

⁵¹ 9 C.F.R. §§ 3.75(e); 3.84(a); 3.84(d).

- Pymatuning failed to clean a “filthy” refrigerator in the primate area.
- Pymatuning failed to clean up food waste and fecal material, causing it to accumulate on the floor and shelving platforms. The accumulation of feces and waste in the enclosure and surrounding areas not only violates the AWA, it puts the lemurs’ health and welfare at risk and interferes with their ability to properly communicate, further denying them the opportunity to engage in normal behavior patterns.⁵²

Pymatuning is responsible for conditions that create psychological injuries, and it thereby harms lemurs in violation of the ESA. It also creates a likelihood the lemurs will suffer further distress and physically injure themselves and thus also constitutes harassment of lemurs in violation of the ESA.

E. Pymatuning harasses lemurs by lacking necessary expertise and training to appropriately care for them.

On information and belief, Pymatuning lacks staff with the necessary experience and training to appropriately care for lemurs. The lack of experience and training of Pymatuning’s staff is evidenced by the lack of space and enrichment in the enclosure as well as the lack of socialization, safety, and sanitation provided to the lemurs. Pymatuning’s failure to provide staff with appropriate skills to care for lemurs creates the likelihood of injury and harasses them in violation of the ESA.

IV. Pymatuning takes gray wolves in violation of the Endangered Species Act.

Pymatuning confines endangered gray wolves to inadequate enclosures without proper space, enrichment, socialization, safety, sanitation, and trained and experienced staff and thereby deprives them of the ability to engage in normal behavioral patterns and causes them to suffer injury or creates a likelihood they will be injured. Accordingly, Pymatuning “takes” and has “taken” endangered gray wolves by harming and harassing them in direct violation of the ESA.⁵³

A. Pymatuning harasses gray wolves by failing to provide them adequate space and enrichment, subjecting them to the likelihood of injury.

Pymatuning deprives gray wolves of appropriate space and enrichment, leading to the likelihood of injury and thus harasses them in violation of the ESA. Gray wolves cover vast territory in the wild,⁵⁴ and the AZA therefore recognizes the importance of a large habitat for wolves, noting that “[c]anids kept in undersized areas may show diminished well-being as evidenced by pacing,

⁵² 9 C.F.R. § 3.84 (“Excreta and food waste must be removed from inside each primary enclosure daily If the species of the nonhuman primates housed in the primary enclosure engages in scent marking, hard surfaces in the primary enclosure must be spot-cleaned daily.”).

⁵³ 16 U.S.C. § 1532(19).

⁵⁴ See Western Wildlife Outreach, *Wolf Ecology and Behavior*, <http://westernwildlife.org/gray-wolf-outreach-project/biology-behavior-4/> (last visited October 3, 2019).

aggression, nervousness, poor reproduction, and poor care of offspring. An appropriately sized enclosure is dependent upon the size of the social group, the reproductive state of the individuals in a social grouping, and the enclosure complexity.”⁵⁵ Even the AWA, which sets forth the bare minimum standards of care, requires that “[e]nclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement,” and states that “[i]nadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.”⁵⁶ Pymatuning fails to comply with generally accepted husbandry practices or even meet these minimum requirements. Rather, it confines the gray wolves in its custody to a small enclosure with limited or no enrichment, denying the gray wolves the ability to express species-appropriate behaviors. Documenting one example of this pattern and practice, the USDA cited Pymatuning for failing to provide adequate space to wolves after finding three juvenile wolves confined to a ten-foot by ten-foot enclosure. Confined to such a small space, the wolves were unable to make normal postural adjustments and were at increased risk of fighting over lack of space. Also, the USDA noted a chewed-up drinking water bucket; this may indicate a lack of other enrichment in the enclosure.

Pymatuning is responsible for the conditions that significantly disrupt gray wolves’ normal behavioral patterns, including feeding and sheltering, risking injury to the wolves, and it thereby harasses gray wolves in violation of the ESA.

B. Pymatuning harms and harasses gray wolves by failing to provide them adequate socialization, subjecting them to injury and the likelihood of further injury.

Pymatuning denies gray wolves adequate socialization, leading to psychological distress and the likelihood of further injury, thus harming and harassing gray wolves in violation of the ESA. Wolves are highly social animals that live in packs.⁵⁷ “[S]pecies-appropriate socialization is critical given the importance that dominance interactions generally play in normal day-to-day interactions.”⁵⁸ That is why the AZA recommends that “[c]areful consideration should be given to ensure that animal group structures and sizes meet the social, physical, and psychological well-being of those animals and facilitate species-appropriate behaviors.”⁵⁹ Generally accepted husbandry practices dictate that gray wolves be afforded housing in social groups in accordance with the species’ needs. Upon information and belief, Pymatuning subjects endangered gray wolves to a life of social isolation and psychological distress and the risk of further harm and injury by housing an adult gray wolf in isolation with no other gray wolves, while two other gray wolves are housed as a pair. Depriving wolves of the social interaction fundamental to their

⁵⁵ See AZA, *Large Canid Care Manual* 11 (2012).

⁵⁶ 9 C.F.R. § 3.128.

⁵⁷ See Western Wildlife Outreach, *supra* n.54.

⁵⁸ AZA, *Large Canid Care Manual*, *supra* n.55, at 60.

⁵⁹ *Id.* at 23.

physical, social, and psychological well-being significantly disrupts their normal behavioral patterns and is likely to cause injury.⁶⁰ Because wolves generally do not fare well in captivity, in part because enclosures cannot meet their needs, wolf management requires expertise, which citations from the USDA indicate that Pymatuning lacks.

Moreover, Pymatuning may not remedy the violations by obtaining other gray wolves or transferring the gray wolves in its custody to another zoo or private party through interstate transactions, as this would instead lead to separate ESA violations, absent a permit issued only for limited purposes, not including for private ownership or public display.⁶¹ Further, integrating new wolves requires expertise and training, which upon information and belief staff at Pymatuning lack, and is not always possible.

Upon information and belief, Pymatuning's failure to provide adequate socialization subjects gray wolves to injury and the likelihood of further injury and thus harms and harasses gray wolves in violation of the ESA.

C. Pymatuning harasses gray wolves by failing to provide them adequate sanitation, subjecting them to the likelihood of injury.

Pymatuning confines gray wolves in unsanitary conditions that create a likelihood of injury and thus harasses the wolves in violation of the ESA. Generally accepted husbandry practices require strict sanitation. Even the AWA, which sets forth the bare minimum standards of care, dictates that captive animals be given a sanitary environment and mandates, for example, that "water receptacles . . . be kept clean and sanitary."⁶² Pymatuning fails to comply with generally accepted husbandry practices or even meet these minimum requirements. Instead, Pymatuning has a pattern and practice of confining gray wolves in unsanitary conditions that create a health hazard and risk injury to the gray wolves. For example, the USDA has cited Pymatuning for providing wolves only a chewed-up drinking water bucket, which can hold dirt and debris and cannot be appropriately cleaned and sanitized.

Pymatuning's failure to provide adequate sanitation creates the likelihood of further injury and harasses gray wolves in violation of the ESA.

D. Pymatuning harasses wolves by lacking necessary expertise and training to appropriately care for them.

On information and belief, Pymatuning lacks staff with the necessary experience and training to appropriately care for gray wolves. The lack of experience and training of Pymatuning's staff is evidenced by the lack of space and enrichment, socialization, and sanitation provided to the

⁶⁰ See 16 U.S.C. § 1538(a)(1)(B), (G); 50 C.F.R. §§ 17.11(h), 17.21(c)(1).

⁶¹ See, e.g., *Elephant Justice Project v. Woodland Park Zoological Soc'y, Inc.*, No. C15-0451-JCC, 2015 WL 12564233 (W.D. Wash. Apr. 7, 2015).

⁶² 9 C.F.R. §§ 3.130, 3.131(a), 3.131(c).

wolves. Pymatuning's failure to provide staff with appropriate skills to care for wolves creates the likelihood of injury and harasses them in violation of the ESA.

V. Pymatuning takes a military macaw in violation of the Endangered Species Act.

Pymatuning confines a military macaw to an inadequate enclosure without proper space and enrichment and deprives the macaw of trained and experienced staff, and thereby deprives the bird of the ability to engage in normal behavioral patterns and causes the macaw to suffer injury or creates a likelihood the macaw will be injured. Accordingly, Pymatuning "takes" and has "taken" this endangered macaw by harming and harassing the bird in direct violation of the ESA.⁶³

A. Pymatuning harms and harasses a military macaw by failing to provide adequate space and enrichment, subjecting the bird to the likelihood of injury.

Pymatuning houses a military macaw in a small cage with a blue and gold macaw. According to the Association of Avian Veterinarians (the "AAV"), macaws "need a huge amount of space" and require "stimulating environmental enrichment . . . [with] toys, social interaction and foraging opportunities."⁶⁴ Toys "should be rotated frequently to prevent boredom."⁶⁵ In contrast, Pymatuning confines the macaws to a small cage with limited enrichment.

Denying these macaws proper space and enrichment injures them psychologically. Pymatuning is responsible for the conditions that create these injuries by significantly impairing the military macaw's essential behavioral patterns, and it thereby harms the macaw in violation of the ESA. The disruption to the macaw's normal behavioral patterns creates a likelihood they will further injure themselves and thus also constitutes harassment in violation of the ESA.

B. Pymatuning harasses the macaw by lacking necessary expertise and training to appropriately care for him.

On information and belief, Pymatuning lacks staff with the necessary experience and training to appropriately care for macaws. Staff's lack of experience and training is evidenced by the lack of space and enrichment provided to the macaws. Pymatuning's failure to provide staff with appropriate skills to care for macaws creates the likelihood of injury and harasses the military macaw in violation of the ESA.

⁶³ 16 U.S.C. § 1532(19).

⁶⁴ AZA Galliformes Taxon Advisory Group, Regional Collection Plan, 2nd Edition, 2011-2016, *available at* https://ams.aza.org/iweb/upload/RCP_Galliformes2012-bc483ef3.pdf.

⁶⁵ *Id.*

VI. Pymatuning takes a Mikado pheasant in violation of the Endangered Species Act.

Pymatuning confines a Mikado pheasant to an inadequate enclosure without proper space and enrichment and deprives the pheasant of trained and experienced staff, and thereby deprives the bird of the ability to engage in normal behavioral patterns and causes the pheasant to suffer injury or creates a likelihood the pheasant will be injured. Accordingly, Pymatuning “takes” and has “taken” this endangered pheasant by harming and harassing the bird in direct violation of the ESA.⁶⁶

A. Pymatuning harms and harasses a Mikado pheasant by failing to provide adequate space and enrichment, subjecting the bird to the likelihood of injury.

Pymatuning houses a Mikado pheasant in a virtually barren enclosure with a variety of other birds, including a peacock who recently suffered from an apparently untreated and potentially contagious eye ailment. In the wild, Mikado pheasants are endemic to Taiwan and live in thick, dense forests of bamboo.⁶⁷ They often walk and forage for food including various fruit, leaves, vegetation, seeds and they hunt invertebrates.⁶⁸ When disturbed, they seek out shelter within surrounding shrubs.⁶⁹ Captive pheasants should be provided a well-planted and grassy enclosure with plenty of shade and a separate shelter that is at least 400 square feet.⁷⁰ Since Mikado pheasants tend to reside in small flocks, single bird exhibits or exhibits without conspecific companionship should be avoided. In contrast, Pymatuning confines the Mikado pheasant to a virtually barren enclosure, crowded with other birds, that offers limited enrichment.

Denying this Mikado pheasant proper space and enrichment injures the bird psychologically. Pymatuning is responsible for the conditions that create these injuries by significantly impairing the Mikado pheasant’s essential behavioral patterns, and it thereby harms the pheasant in violation of the ESA. The disruption to the Mikado pheasant’s normal behavioral patterns creates a likelihood the bird will be further injured and subjected to chronic stress, which weakens the immune system, thereby predisposing the bird to infectious disease and a shorter lifespan. This constitutes harassment in violation of the ESA.

⁶⁶ 16 U.S.C. § 1532(19).

⁶⁷ BeautyOfBirds, Keeping and Breeding the Mikado Pheasant, *available at* <https://www.beautyofbirds.com/mikadopheasants.html>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Morishita, Teresa Y., Chapter 18 - Galliformes, *Fowler’s Zoo and Wild Animal Medicine*, Vol. 8 (R. Eric Miller & Murray E. Fowler, eds. 2015) at 144.

B. Pymatuning harasses the Mikado pheasant by lacking necessary expertise and training to appropriately care for him.

On information and belief, Pymatuning lacks staff with the necessary experience and training to appropriately care for the Mikado pheasant. Staff's lack of experience and training is evidenced by the lack of space and enrichment provided to the Mikado pheasant and by the fact that the pheasant was recently housed with a peacock who had a potentially infectious and apparently untreated eye condition. Pymatuning's lack of a proper infectious disease prevention and quarantine protocol predisposes the pheasant to a wide variety of infectious diseases that can be spread between the peacock and the pheasant.⁷¹ Pymatuning's failure to provide staff with appropriate skills to quarantine sick birds or otherwise properly care for the Mikado pheasant creates the likelihood of injury and harasses the Mikado pheasant in violation of the ESA.

VII. Pymatuning Deer Park's confinement of animals is a public nuisance under Pennsylvania state law.

In addition to the examples of failing to provide adequate care above, Pymatuning fails to provide adequate care to the other animals in its custody including one or more of the following mammals: African crusted porcupine, wild water buffalo, black-tailed prairie dog, bobcat, Reeves' muntjac, coatimundi, plains zebra, dromedary, domestic yak, elk, fennec fox, nilgai, American black bear, red-necked wallaby, zebu, black spider monkey, tufted capuchin, common marmoset, olive baboon, Zanzibar Sykes' monkey, alpaca, cow or ox, donkey, goat, sheep or mouflon, deer, and puma. Pymatuning also inadequately cares for a number of parakeets confined in a barn, where the birds are subjected to unsupervised public feeding, physical harm, and harassment from guests.

Although these animals are not currently protected under the Endangered Species Act, Pymatuning's pattern and practice of mistreatment of the animals in its custody indicates that it is unfit to properly care for captive wildlife and violates regulations promulgated by the Pennsylvania Game Commission (the "Commission") that require the "humane care and treatment" of wildlife and prohibit their "maltreatment, mistreatment or neglect."⁷² Pymatuning's violations of Pennsylvania's wildlife protection laws are legally actionable because they constitute a public nuisance.

As the Pennsylvania Supreme Court recognized long ago, "[a] legislative proscription, such as that found in the cruelty to animals statute, is declarative of the public policy and is tantamount to calling the proscribed matter prejudicial to the interests of the public. Injury to the public is the

⁷¹ See *id.* at 148-49 (pheasants are susceptible to avian influenza virus, avian pox virus, rotaviruses, and equine encephalitis and may also laryngotracheitis).

⁷² 58 Pa. Code § 147.281.

essence of a public nuisance. Therefore, [animal cruelty is] properly enjoined as being contrary to law and prejudicial to the interests of the public.”⁷³

A. Pymatuning confines Bosco the bear in conditions that constitute a public nuisance.

The black bear kept at Pymatuning, named Bosco, is of special concern, as he is primarily confined to a virtually barren concrete pit that inhibits his every natural instinct. Bosco is unable to perform natural activities such as scratching or climbing. Pymatuning’s mistreatment of Bosco violates the Commission’s regulations and is a public nuisance, as demonstrated below by selected evidence set forth concerning the bear pit, Bosco, and Mama Bear, another bear who was confined with Bosco in the pit prior to her death.

1. Pymatuning fails to provide timely medical attention to Bosco, violating state law.

The Commission requires that “sick or unsightly” wildlife “be removed from public display and immediately given professional medical attention.”⁷⁴ Pymatuning has failed to meet this basic standard. For example, indicative of the pattern and practice of denying bears confined at Pymatuning adequate veterinary care, the USDA cited Pymatuning for failing to contact a veterinarian to determine the cause or develop a treatment plan for Mama Bear’s arthritis, painful movements, and reluctance to walk due to her arthritis. Bosco has also been observed with signs of arthritis, such as walking stiffly. By failing to provide Bosco appropriate medical care, Pymatuning violates state law and creates a public nuisance.

2. Pymatuning mistreats and neglects Bosco by providing him inadequate space, enrichment, and comfort, thereby violating state law.

The Commission prohibits confining wildlife “in a manner which results in maltreatment, mistreatment or neglect.”⁷⁵ It also requires that enclosures “have bedding required for the comfort and protection from inclement weather.”⁷⁶ But Pymatuning keeps Bosco in a barren concrete pit with no protection from the elements, virtually no enrichment, and only a small area on natural ground that is difficult for Bosco to access, falling far short of the standard set by state law. Only in the past few years has Pymatuning added a tiny wooden platform to the enclosure. But the substrate of the entire pit is still composed entirely of concrete. As Bosco’s mobility continues to decrease due to the progression of his apparent arthritis, and upon information and belief, Pymatuning’s failure to treat it, along with the concrete on which he is

⁷³ *Pa. Soc. for Prevention of Cruelty to Animals v. Bravo Enters., Inc.*, 428 Pa. 350, 360 (Pa. 1968).

⁷⁴ 58 Pa. Code § 147.287.

⁷⁵ *Id.* § 147.281(b).

⁷⁶ *Id.* § 147.284(b).

forced to walk, climbing onto the wooden platform will become increasingly challenging, if not impossible, for Bosco.

The USDA has repeatedly cited Pymatuning for its failure to address the inadequate bear enclosure. For example, Pymatuning has been repeatedly cited for not having soft areas or hay or anything in the enclosure that would allow a bear to rub against to shed excess fur. On information and belief, the bear pit also lacks a denning area where Bosco would hibernate. As a result of his inability to hibernate, Bosco is at risk of disruption to his metabolism, obesity, thyroid issues, and behavioral problems. The bear pit also lacks opportunities for Bosco to engage in species-typical behavior, such as digging and climbing. Although Bosco is apparently arthritic, he would have engaged in physical activities when his condition otherwise allowed. While Bosco's condition has worsened, the bear pit still lacks basic comforts that would mitigate his pain such as a straw bed. Instead, Pymatuning has a pattern and practice of housing Bosco and other bears before him in inhumane conditions in total disregard for their needs. In Mama Bear's case, for example, her arthritis forced her to crawl on her elbows in order to retrieve food thrown into the bear pit by the public.

The bear pit's inadequacy is demonstrated in part by the injuries observed in Bosco and Mama Bear that are consistent with an inadequate enclosure. The USDA noted that Mama Bear was breathing heavily while resting, moving forward on her front limbs and elbows, and was slow to stand. Her movements appeared painful when she stood up and laid down and Pymatuning staff believed she had arthritis. The bear's signs of debility were "consistent with being housed exclusively on concrete." Bosco has endured the same conditions as Mama Bear. Nevertheless, Pymatuning has failed to meaningfully address the bear enclosure as Bosco still lives in an almost totally barren, concrete pit.

As a result of the improper environment, including inadequate enrichment in the bear pit, Bosco and Mama Bear were observed engaging in stereotypical behavior, including repeated pacing, spinning in circles, and biting the cage on the perimeter of the enclosure. These behaviors indicate psychological distress and inadequate space and enrichment. By forcing Bosco to live in an inadequate enclosure devoid of proper space, enrichment, comfort, or even basic substrate, Pymatuning mistreats Bosco and violates state law and creates a public nuisance.

3. *Pymatuning confines Bosco in an unsanitary manner, violating state law.*

The Commission requires that wildlife "be kept in a sanitary manner," that "[c]lean, fresh water shall be provided daily," and that "[w]ater containers shall be cleaned and disinfected daily."⁷⁷ However, Bosco is confined to an enclosure that is not only small, barren, and concrete, it is unsanitary, posing additional health risks to him. Indicative of Pymatuning's pattern and practice of denying Bosco adequate sanitation, the USDA cited Pymatuning for allowing excessive green to black algae and organic buildup in the bear pit's only water source. The USDA further cited

⁷⁷ *Id.* § 147.283(a), (c).

Pymatuning for failing to clean the bear pit for months, creating an accumulation of algae along the walls. In addition, free-roaming animals are able to access the pit, as is evidenced by the feces that has accumulated on the wall at the top of pit. Exposing Bosco to other animals and failing to remove their feces creates a risk that Bosco will be exposed to zoonotic disease. Pymatuning also feeds Bosco on the ground on the sloped concrete at the front of the pit, an area that is difficult for Bosco to access and where his germs from his urine and feces are likely to accumulate. By failing to provide Bosco adequate sanitation, Pymatuning violates state law and creates a public nuisance.

B. Pymatuning’s mistreatment and neglect of young animals constitutes a public nuisance.

Pymatuning has a pattern and practice of confining very young animals such as bear cubs and kangaroo joeys to enclosures in a manner that “results in maltreatment, mistreatment or neglect,” contrary to the Commission’s regulations, and in doing so creates a public nuisance.⁷⁸ Placing young animals in enclosures for public viewing causes harm to the animals at a critical juncture in their development. For example, the young animals are separated from their mothers as infants, well before they are naturally weaned, causing distress to the young animals and their mothers and other physical and psychological health problems. Maternal separation alters the young animals’ normal feeding behaviors and other natural behaviors that, had they been allowed to remain with their mothers, they would have learned from their mothers. Failure to appropriately quarantine young animals jeopardizes their health and leads to lifelong impairment of their immunity.

Indicative of a pattern and practice of disregard for young animals’ welfare, the USDA has cited Pymatuning for its failure to recognize the signs of distress in bear cubs. Inspectors observed two bear cubs engaging in the abnormal behavior of paw sucking and ear sucking over an extended period. In fact, one cub’s ear was soaked and there was an indication of hair loss on the ear. These behaviors are a coping mechanism due to stress and can lead to further injury such as physical hot spots or ear infection. But Pymatuning’s staff stated to inspectors that all their hand-reared cubs exhibit this behavior and they were not concerned with it. The USDA opined that Pymatuning’s staff did not recognize this as an abnormal behavior pattern. The USDA has further cited Pymatuning for the bear cub enclosure itself, which it noted was concrete and did not contain any soft pads.

C. Pymatuning confines animals to conditions that constitute a public nuisance.

Pymatuning generally confines animals at the Park in conditions that violate state regulations relating to “safeguards for . . . humane care and treatment, adequate housing and nutrition, sanitation, safety, acquisition and disposal of wildlife and exotic wildlife held as part of a

⁷⁸ See *id.* § 147.281(b).

menagerie,” and thereby constitute a public nuisance.⁷⁹ Pymatuning lacks sufficient staff to properly care for and clean up after the hundreds of animals held at the Park. Pymatuning also routinely confines animals in conditions that deny them everything that is natural and important to them. For instance, pigs at the Park are confined on concrete, where they cannot wallow. Cows and other grazing animals are confined in muddy enclosures without grass to eat. Social animals, including a small horse, are confined without companions. Large intelligent birds, including macaws, are kept in cages without adequate enrichment and in which they cannot fly. Cougars are held in small enclosures without space to roam or climb and without the opportunity to retreat from each other or the public. Primates are denied proper enrichment and space. Indeed, the primate enrichment appears to be comprised primarily of toys appropriate only for infants. And baboons are provided a tiny enclosure, far too crowded for the number of baboons present. Reptiles are denied adequate shelter. For example, tortoises compete for a single heat pad and lack a covering from the rain. The following, though they are a small fraction of the total AWA violations for which Pymatuning has been cited, also violate state regulations and are indicative of a pattern and practice of disregard for the welfare of animals confined at the Park:

- State regulations provide that “[w]ildlife . . . shall be kept in a sanitary manner.”⁸⁰ However, a decomposed animal carcass was found in the deer enclosure. And Pymatuning failed to remove an accumulation of old carcasses in the enclosure confining the cougar.
- State regulations provide that “[f]ecal and food waste shall be removed from cages and dens daily,” “[h]ard floors shall be scrubbed and disinfected at least weekly,” and “[l]arge pens and paddocks with dirt floors shall be raked every 3 days and the waste removed.”⁸¹ State regulations also require that “[p]rocedures for sanitation, water disposal and proper disposition of feces and other waste material shall be in compliance with the requirements of local, State or Federal authorities.”⁸² The relevant federal regulation, the AWA, provides that excreta be removed from enclosures “to minimize disease hazards and to reduce orders.”⁸³ But Pymatuning allowed a “very deep layer” of feces, hay, and debris to accumulate in the enclosures confining the zebra and zebu. Pymatuning also failed to remove a buildup of food and fecal material from the enclosure confining the porcupine. And Pymatuning staff failed to remove fecal material from the enclosure confining the gibbon.

⁷⁹ *Id.* § 147.281(a).

⁸⁰ *Id.* § 147.283(a).

⁸¹ *Id.* § 147.283(d).

⁸² *Id.* § 147.283(f).

⁸³ 9 C.F.R. § 3.131(a).

- State regulations require adequate nutrition for wildlife held in captivity.⁸⁴ The USDA found that Pymatuning provided an inadequate diet to goats whose hip bones and spine were “markedly protruding.”
- State regulations require that “[a] suitable shield for protection against the hot sun rays shall be provided on outside enclosures.”⁸⁵ The enclosure confining the marmosets did not allow them to get out of direct sunlight.
- State regulations require that sick wildlife “shall be removed from public display and immediately given professional medical attention”⁸⁶ The USDA found that Pymatuning failed to treat or have a veterinarian assess or treat two Fennec foxes who had hair loss on their backs and who had a history of hair loss and failed to contact a veterinarian about a capybara whose hind leg was atrophied.
- State regulations contain a general prohibition against “maintain[ing] wildlife, in confinement, in an unsanitary or unsafe condition or in a manner which results in maltreatment, mistreatment or neglect.”⁸⁷ The USDA found that Pymatuning housed incompatible animals together, lacked an environmental enrichment program for the primates it confined, failed to adequately enrich enclosures confining marmosets such that they suffered hair loss on their tails due to over-grooming, and failed to adequately enrich enclosures confining Sykes monkeys such that they exhibited abnormal behavior, including walking in a circle and moving their head in a circle.

D. Pymatuning’s practice of allowing direct public contact with animals endangers both the animals’ and the public’s safety and constitutes a public nuisance.

Pymatuning’s practice of allowing direct public contact with animals, including unsupervised feeding, constitutes a public nuisance because it endangers the safety and health of the animals and violates state regulations providing for “safeguards for public safety.”⁸⁸ Pymatuning allows its customers to feed the animals confined there in an unregulated environment, and provides food that is unsuitable for the various species. For example, at the entrance of the Park, Pymatuning sells human food (Wasa brand crackers) and chimpanzee food (Mazuri Primate Growth & Repro Biscuitto) for customers to feed the animals. Inside the Park, Pymatuning sells what appears to be fruity sugar cereal in dispensers. The feeding is not supervised or regulated. As a result, animals at the Park are given unknown, inconsistent quantities of foods not designed for their species, endangering their health. The unpredictable nature of public feeding and presence of food thrown out of reach can produce additional stress in the animals. In

⁸⁴ 58 Pa. Code § 147.281(a).

⁸⁵ *Id.* § 147.284(b).

⁸⁶ *Id.* § 147.287.

⁸⁷ *Id.* § 147.281(b).

⁸⁸ *Id.* § 147.281(a).

addition, there are no facilities for hand washing or sanitizing. The only restroom available to patrons is outside the entrance of the Park. As a result, animals and patrons are at risk of transmitting zoonotic diseases.

The Commission prohibits directly exposing wildlife to the public with very limited exceptions.⁸⁹ But many of the enclosures at Pymatuning provide improper perimeter fencing to enclose the animals—further exacerbating the risks. For example, during a USDA inspection, several visitors were trying to feed a coatimundi through the fence surrounding the enclosure. Inspectors were also able to reach over the barrier between the public and the enclosure confining cougars, and in doing so were able to grab onto the fencing and potentially have contact with the cats. Other USDA inspection reports detail gaps in fences allowing for potential escape. This is a particular concern given Pymatuning's practice of providing customers with food and encouraging them to feed the animals without supervision. The AWA, which sets forth bare minimum standards of care, requires that exhibited animals “be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.”⁹⁰ The AZA also states that “hand-feeding in free contact situations is not recommended.”⁹¹ But the USDA found that Pymatuning inadequately supervised the public while they were feeding animals at the Park.

Pymatuning's encouragement of direct public contact with the animals also violates the Commission's regulations providing for “safeguards for . . . humane care and treatment . . . [and] safety . . . of wildlife” and thereby constitutes a public nuisance.⁹² For example, Pymatuning confines parakeets, or budgies, to the “Budgie Barn,” a crowded indoor barn where the budgies are subjected to unsupervised public feeding, screaming children, and trampling by members of the public. According to the AAV, budgies are prone to “[i]njuries due to handling by small children.”⁹³ They also require “stimulating environmental enrichment . . . [with] toys, social interaction and foraging opportunities.”⁹⁴ However, the barn does not even appear to provide a sufficient number of perches for the birds to rest simultaneously, forcing the birds to compete for space, as they do for food. The crowded conditions also concentrate the birds' waste, increasing the risk of transmission of disease to the public. In addition to violating state

⁸⁹ *Id.* § 147.282(c). State regulations provide only three exceptions from this prohibition: (1) public contact with “[r]uminant animals”; (2) public contact with “[o]rgan grinder monkeys, trained performing chimpanzees and elephants if under the immediate control of the handler to preclude danger to the public”; and (3) “[w]ildlife other than members of the families Ursidae, Felidae and wild Canidae when exhibited on a stage or in an arena, [which] may be removed from their cage by the exhibitor in a manner precluding danger to the public. Other human contact with the wildlife is prohibited.” *Id.* § 147.282(c), (d).

⁹⁰ 9 C.F.R. § 2.131(c)(1).

⁹¹ AZA, *Large Canid Care Manual*, *supra* n.56, at 65.

⁹² 58 Pa. Code § 147.281(a).

⁹³ AVA, *Budgies* (2015).

⁹⁴ *Id.*

regulations against exposing wildlife to the public, the Budgie Barn “results in maltreatment, mistreatment or neglect” of the birds in further violation of state law.⁹⁵

Pymatuning’s practices jeopardize both the animals’ and the public’s safety and violate Pennsylvania state law prohibiting the maltreatment, mistreatment, and neglect of animals. This creates a public nuisance.

E. Pymatuning’s use of gunshot as “euthanasia” constitutes a public nuisance.

Pymatuning’s use of gunshot in place of proper euthanasia is prohibited by Pennsylvania law. The state provides that “[n]o animal shall be destroyed by means of . . . [u]nacceptable agents and methods published in the most current version of the American Veterinary Medical Association’s Guidelines on Euthanasia.”⁹⁶ Nevertheless, Pymatuning has killed at least one animal by gunshot in violation of these guidelines. The USDA cited Pymatuning by killing Scruffy, an adult tiger, by gunshot and further stated that Pymatuning’s program of veterinary care provided for gunshot and barbiturate overdose as primary forms of euthanasia. The most recent AVMA guidelines indicate that gunshot is only acceptable in an emergency situation, and “should not be used when other methods are available and practicable.”⁹⁷ On information and belief, Scruffy’s death was not an emergency situation, nor were other methods unavailable and impracticable. Moreover, killing a big cat by gunshot requires “highly skilled personnel trained in the use of firearms,” appropriate firearms and bullets, and well-maintained equipment, and can create suffering if more than one shot is required.⁹⁸ On information and belief, Pymatuning staff lacks the requisite skill and training in firearms. Pymatuning’s use of gunshot as a means to kill animals creates a risk of suffering to the animals it is trying to kill if a shot is misplaced, and also creates a risk of suffering to nearby animals. The USDA noted that when Scruffy was shot, Pymatuning had a lion confined to the adjacent holding area. The lion was trapped, unable to escape the sound of the firearm, which would have inflicted distress and discomfort.

Pymatuning’s euthanasia policy violates Pennsylvania state law prohibiting methods deemed unacceptable by the AVMA and constitutes a public nuisance.

* * *

Please be advised that the conditions set forth herein constitute a public nuisance, and with respect to the lions, tigers, lemurs, and gray wolves, they violate the ESA’s “take” prohibition. Unless these violations cease immediately, the Complainants will file suit against Pymatuning

⁹⁵ See *id.* § 147.281(b).

⁹⁶ 3 P.S. § 328.301.

⁹⁷ American Veterinary Medical Association, *AVMA Guidelines for the Euthanasia of Animals* 45 (2013); see also *id.* at 80 (“Methods that are classified as being unacceptable for use in comparable domestic species are unacceptable for use in wild mammals that are not deeply anesthetized.”).

⁹⁸ *Id.* at 34, 36-37.

under the ESA at the expiration of sixty (60) days. Pursuant to the ESA, the Complainants will seek declaratory relief and an injunction against continued violations, including, but not limited to, a court order requiring the transfer of the aforementioned animals to reputable facilities identified by a special master or guardian ad litem. The Complainants will also seek their attorneys' fees and litigation costs. The Complainants will also pursue similar relief for the remaining animals based on allegations that the Park constitutes a public nuisance under Pennsylvania state law.

In the interim, PETA demands Pymatuning agree to enter a preservation order in this matter containing the following terms: (i) Pymatuning agrees to preserve and not to harm, harass, transfer, or kill any animal in their possession, excepting euthanasia that is either strictly necessary to prevent suffering, as directed by the attending veterinarian, or to protect public safety; and (ii) Pymatuning agrees to preserve and not destroy any and all evidence, documents, tangible items and electronic data that are the subject of or relevant to the violations addressed in this letter.

Please confirm by February 1, 2021, that Pymatuning agrees to enter into a preservation order as described herein.

During the sixty-day notice period, the Complainants are willing to discuss a mutually agreeable remedy for the violations addressed in this letter. Specifically, the Complainants are willing to bear all costs associated with relocating the animals to reputable facilities. If Pymatuning wishes to pursue this remedy in the absence of litigation, please contact me by phone at (412) 355-6344 or by e-mail at jessica.moran@kligates.com in order to facilitate placement.

Very truly yours,



Jessica L.G. Moran