

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
–Northern Division–**

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.
501 Front St.
Norfolk, VA 23510,

Plaintiff,

v.

TRI-STATE ZOOLOGICAL PARK OF
WESTERN MARYLAND, INC.
12605 Moores Hollow Rd.
Cumberland, Allegany County, MD 21502;

ANIMAL PARK, CARE & RESCUE, INC.
10105 Cottage Inn Ln.
Cumberland, Allegany County, MD 21502;

AND

ROBERT L. CANDY
12605 Moores Hollow Rd.
Cumberland, Allegany County, MD 21502,

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This is a citizen lawsuit, brought pursuant to Section 11(g)(1)(A) of the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, to address ongoing violations of the ESA and its implementing regulations arising out of Defendants’ operation of Tri-State Zoological Park of Western Maryland, Inc., and Animal Park,

Care & Rescue, Inc. (together “Tri-State Zoo”), both located in Cumberland, Maryland.

2. Tri-State Zoo is an unaccredited roadside zoo that confines and exhibits numerous species of animals, including ring-tailed lemurs, tigers, and a lion.

3. Plaintiff, People for the Ethical Treatment of Animals, Inc. (“PETA”), brings suit against Tri-State Zoo and its principal Robert (“Bob”) L. Candy (collectively “Defendants”) for their ongoing “take” of two (2) ring-tailed lemurs, five (5) tigers (Mowgli, Cheyenne, and Cheyenne’s three (3) offspring, Kumar, Cayenne, and India), and one (1) African lion (Peka) in violation of the ESA and its implementing regulations.

4. Specifically, Defendants confine the two ring-tailed lemurs in a woefully inadequate enclosure, void of necessary enrichment and environmental enhancement; deprive them of appropriate companionship; and deny them a safe, sanitary environment. Defendants also confine five tigers in decrepit enclosures without proper enrichment, food, potable water, shelter, or sanitation; expose them to disease hazards from free-roaming animals; force them to engage in inappropriate interactions with the public; and deprive Kumar, Cayenne, and India of an appropriate social group. Defendants confine the lion, Peka, without proper enrichment, food, shelter, housing, and sanitation; expose her to disease hazards from free-roaming animals; and subject her to unnatural and disruptive interactions with the public. Following the death of a second lion, Mbube, which

was publicized on February 18, 2017, Defendants now also confine Peka in complete social isolation.

5. These practices “harm” and “harass” the ring-tailed lemurs, tigers, and lion in violation of the ESA’s “take” prohibition by causing them psychological harm and distress; injuring them; and significantly disrupting and impairing them from carrying out their natural behaviors in a manner that puts their physical and psychological well-being at risk of further injury.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to the citizen suit provision of the ESA, 16 U.S.C. § 1540(g), and has federal question jurisdiction under 28 U.S.C. § 1331.

7. PETA provided notice regarding the violations alleged in this Complaint and intent to file suit (“Notice of Intent”), attached hereto as Exhibit A, to Defendants, the Secretary of the Interior, and the Director of the U.S. Fish and Wildlife Service (“FWS”) on December 20, 2016. Following the death of the lion Mbube, PETA amended its Notice of Intent (“Amended Notice of Intent”) and served that amended notice on Defendants and the other parties listed above on March 30, 2017 (attached hereto as Exhibit B). PETA served its Amended Notice of Intent more than sixty days prior to the filing of this action. 16 U.S.C. § 1540(g)(2)(A)(i).

8. Defendants have not remedied the violations set out in the sixty-day Amended Notice of Intent.

9. The Secretary of the Interior has not commenced an action against Defendants to impose a penalty pursuant to the ESA or its implementing regulations, and the United States has not commenced a criminal prosecution against Defendants to redress a violation of the ESA or its implementing regulations. 16 U.S.C. § 1540(g)(2)(A)(ii)–(iii).

10. Venue is proper in the District of Maryland because the violations of the ESA alleged in this Complaint have occurred, and continue to occur, within this judicial district. 16 U.S.C. § 1540(g)(3)(A).

III. THE PARTIES

11. PETA is a Virginia non-stock corporation and animal protection charity pursuant to Section 501(c)(3) of the Internal Revenue Code. Its headquarters are located in Norfolk, Virginia.

12. Defendant Animal Park, Care & Rescue, Inc. (“Animal Park”) is a Maryland corporation located at 10105 Cottage Inn. Ln., Cumberland, MD 21502. On information and belief, Animal Park owns the ring-tailed lemurs, tigers, and the lion that are the subject of this action.

13. Defendant Tri-State Zoological Park of Western Maryland, Inc. (“Tri-State Zoological Park”) is a Maryland corporation located at 12605 Moores Hollow Rd., Cumberland, MD 21502. Tri-State Zoological Park exhibits the ring-tailed lemurs, tigers, and the lion that are the subject of this action.

14. Defendant Robert “Bob” L. Candy is, on information and belief, a resident of Allegany County, Maryland. Mr. Candy is and was at all relevant times

the registered agent and principal of Tri-State Zoological Park and Animal Park. Mr. Candy acts on behalf of Tri-State Zoological Park and Animal Park by, among other things, overseeing their day-to-day operations, managing animal care, and acting as the primary animal care giver, supervising volunteers, and participating in U.S. Department of Agriculture (“USDA”) inspections.

IV. STATUTORY BACKGROUND

15. The ESA defines an “endangered species” as “any species which is in danger of extinction,” 16 U.S.C. § 1532(6), and a “threatened species” as “any species which is likely to become an endangered species within the foreseeable future,” *id.* § 1532(20).

16. The ESA prohibits the “take” of any endangered species, or any threatened species unless otherwise provided by a Section 4(d) special rule, within the United States. *Id.* § 1538(a)(1)(B), (G); 50 C.F.R. §§ 17.21, 17.31(a).

17. The ESA defines the term “take” to include “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19).

18. The term “harm” is defined by regulation as an act which “kills or injures” an endangered or threatened animal. 50 C.F.R. § 17.3. The term “harass” is defined by regulation to include 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.*

19. Under the ESA, it is also unlawful to possess any endangered species, or any threatened species unless otherwise provided by a Section 4(d) special rule, that has been unlawfully taken. 16 U.S.C. § 1538(a)(1)(D), (G); 50 C.F.R. §§ 17.21(d), 17.31(a).

20. Ring-tailed lemurs and tigers are listed as “endangered” under the ESA. 50 C.F.R. § 17.11(h). Lions are listed as either “endangered” or “threatened” depending upon their subspecies—the subspecies *Panthera leo leo* is listed as “endangered” and the subspecies *Panthera leo melanochaita* is listed as “threatened.” *Id.* §§ 17.11(h), 17.40(r). PETA does not know the subspecies of the lion at issue; however, the “take” and the possession of unlawfully taken members of both subspecies is prohibited by the ESA. *Id.* §§ 17.21, 17.31(a), 17.40(r).

21. The ESA authorizes the Secretary of the Interior to issue a permit for any act that is otherwise prohibited by 16 U.S.C. § 1538, but only if such act is “for scientific purposes or to enhance the propagation or survival of the affected species” and other strict requirements are met. 16 U.S.C. § 1539(a)(1)(A), (c), (d).

22. The ESA allows citizens to bring suit to enjoin “any person . . . who is alleged to be in violation” of the “take” provisions of the statute or of a regulation promulgated under the statute. *Id.* § 1540(g)(1)(A).

V. FACTUAL BACKGROUND

23. Tri-State Zoo is an unaccredited roadside zoo in Cumberland, Maryland. Tri-State Zoo confines and exhibits numerous birds, reptiles, and mammals, including endangered and threatened animals, and charges the public a

nominal fee to view and interact with those animals. Ring-tailed lemurs, tigers, and a lion, are among the species held by Tri-State Zoo.

24. On information and belief, Defendants do not possess a permit from the Secretary of the Interior to “take” ring-tailed lemurs, tigers, or lions under 16 U.S.C. § 1539(a)(1)(A).

25. Many of the animals—including the animals at issue in this action—at Tri-State Zoo are frequently denied the most basic necessities, including wholesome food, potable water, veterinary care, and daily care by staff experienced in animal care and husbandry. The animals are confined to wholly inadequate enclosures that are chronically littered with animal and food waste, and void of proper enrichment.

26. Over the past ten years, the USDA has issued Defendants numerous citations for failing to meet even the most minimal requirements for proper care of its animals under the federal Animal Welfare Act (“AWA”), 7 U.S.C. § 2143(a)(2). The inspection reports detail Defendants’ ongoing disregard for the welfare of its animals and demonstrated inability to provide proper care for them. Defendants’ chronic and willful disregard for the welfare of their animals led to a forty-five day suspension of the facility’s AWA license in 2013. Even after its license was suspended, Defendants continued to disregard the AWA’s minimum standards of care, resulting in an official warning against the facility in 2015.

27. Defendants charge a nominal fee for admission to the zoo, and are not open year around. As such, on information and belief, they are not financially

viable, and otherwise lack the resources and ability to adequately provide for the animals. In this regard, Defendants are, on information and belief, financially unable to purchase adequate, appropriate, and nutritious food for the animals, and instead rely, in large part, on substandard food donated by others to feed the animals.

28. Defendants are further, on information and belief, financially unable to hire trained and experienced employees to care for the animals; instead, they rely, in large part, on untrained and inexperienced volunteers in an attempt to care for the animals. At times, these same volunteers are provided shelter in the zoo's premises in exchange for their volunteer work.

29. Defendants' apparent financial weaknesses also preclude them from providing adequate and clean enclosures, sufficient enrichment, and necessary veterinary care to the animals. In other words, even if Defendants wanted to provide adequate care to the animals, they simply are not, on information and belief, financially able to do so. This likely explains, at least in some part, Defendants' chronic violations of the most basic standards of care, and failure to provide proper care for all animals at Tri-State Zoo.

A. DEFENDANTS HARM AND HARASS ENDANGERED RING-TAILED LEMURS BY DENYING THEM AN APPROPRIATE SOCIAL GROUP

30. Ring-tailed lemurs are highly social animals with advanced cognitive abilities. In nature, ring-tailed lemurs live in large social groups ranging in size from eight to twenty individuals. Traveling in groups, they roam about their range each day foraging for food.

31. In order to ensure their physical and psychological health, captive lemurs must be provided with the opportunity to socialize with other lemurs and with necessary environmental enrichment. Housing ring-tailed lemurs with only a single companion of their species is not an appropriate social group, and does not meet the generally accepted animal husbandry practice in lemur care. Isolating lemurs by depriving them of appropriate socialization is extremely harmful and causes these social animals acute and chronic physical and psychological injuries, including injuries resulting from stress and psychological detachment. Social isolation also causes a likelihood of injury by depriving them of the opportunity to express their normal repertoire of behaviors and driving the development of behavioral abnormalities.

32. The USDA has acknowledged that “[s]ocial interactions are considered to be one of the most important factors influencing the psychological well-being of most nonhuman primates.” USDA, Animal & Plant Health Inspection Serv., *Final Report on Environment Enhancement to Promote the Psychological Well-Being of Nonhuman Primates* § IV.A (1999). Companions provide *more* than just social company. They supply “environmental novelty, multi-sensory stimulation, something to manipulate, and opportunities for cognitive challenge and control.” *Id.* § IV.A.10.

33. For this reason, the AWA requires that—at a minimum—exhibitors of nonhuman primates have an environmental enhancement plan that “must include

specific provisions to address the social needs of nonhuman primates of species known to exist in social groups in nature.” 9 C.F.R. § 3.81(a).

34. Defendants keep two endangered ring-tailed lemurs at Tri-State Zoo. Defendants harm and harass these ring-tailed lemurs, each a member of an intelligent and highly developed social species, by denying them the opportunity to interact with other members of their species, and thereby depriving them of appropriate socialization with lemur companions that would allow them to express a wide range of normal lemur behaviors, including socializing, bonding, exploring, playing, as well as other social interaction and adjustments.

35. Although Tri-State Zoo currently houses two ring-tailed lemurs in the same enclosure, a single companion is not an adequate social group for these highly social animals.

36. Depriving the ring-tailed lemurs of an appropriate social group injures them by denying them companionship and stimulation that is fundamental to their physical and psychological well-being, and harasses them by significantly disrupting their normal behaviors in a way that is likely to result in injury—all of which constitutes, and will continue to constitute, a “take” in violation of the ESA.

B. DEFENDANTS HARM AND HARASS ENDANGERED RING-TAILED LEMURS BY DENYING THEM ADEQUATE ENVIRONMENTAL ENRICHMENT

37. In addition to the companionship of other members of their species, captive ring-tailed lemurs must be provided with extensive, varied, and well-planned environmental enrichment (i.e. the opportunity to engage in species-typical behavior). In the wild, the territories of ring-tailed lemurs range from fourteen to

fifty-six acres in size, which they roam about each day. Ring-tailed lemurs spend a portion of their time on the ground, but they are known to spend time climbing and foraging in trees.

38. In recognition of the unique social, psychological, and physical needs of primates, regulations issued by the USDA, which set the “minimum requirements” for both endangered and non-endangered captive animals used in exhibitions under the AWA, expressly require animal exhibitors to “develop, document, and follow an appropriate plan for environmental enhancement adequate to promote the psychological well-being of nonhuman primates,” that is “in accordance with the currently accepted professional standards as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian.” 9 C.F.R. § 3.81. These mandatory enhancement plans must address the social needs of nonhuman primates and provide an environment that allows them to express a “full range” of species-typical behaviors. USDA, Animal & Plant Health Inspection Serv., *Final Report on Env’t Enhancement to Promote the Psychological Well-Being of Nonhuman Primates* § II.E (1999); *see also* 9 C.F.R. § 3.81.

39. Despite the well-established scientific literature documenting the environmental needs of ring-tailed lemurs and the minimum standards provided by AWA regulation, Defendants continue to confine two endangered ring-tailed lemurs in an inappropriate environment and without appropriate enrichment, and therefore wholly fail to meet the lemurs’ complex cognitive needs and fail to provide the essential elements of captive primate husbandry.

40. The USDA has cited Tri-State Zoo for its failure to provide appropriate environmental enrichment to ring-tailed lemurs, and for its failure to maintain an environmental enrichment plan for any of the primates at Tri-State Zoo, including lemurs, as mandated by the AWA.

41. Specifically, Defendants confine the lemurs to a barren cage, with only a wooden perch, a few branches, and plastic toys, which, on information and belief, have not been changed in over a year. Such barren conditions are harmful to their physical and psychological health, and cause or are likely to cause injury, including multiple acute and chronic psychological and physiological injuries resulting from their inability to express a full range of natural behaviors such as species-typical roaming, foraging, play, and deriving intellectual stimulation from a varied habitat. Deprivation of species appropriate environmental enrichment also causes a likelihood of injury by driving aberrant behaviors, including, for example, social withdrawal, displaced aggression, and changes in motivation and learning.

42. The conditions in which these ring-tailed lemurs are kept thus constitute, and will continue to constitute, a “take” in violation of the ESA.

C. DEFENDANTS HARM AND HARASS ENDANGERED RING-TAILED LEMURS BY DENYING THEM A SAFE, SANITARY ENVIRONMENT

43. Animal husbandry guides provide that captive ring-tailed lemurs should be housed in temperatures ranging from 64.4 °F to 78.8 °F (18-26 °C).

44. On information and belief, Defendants fail to confine the ring-tailed lemurs in an adequately temperature-controlled environment when outdoor temperatures fall below safe levels. Failure to protect the lemurs from inclement

weather “takes” them under the ESA in that it causes injury, including injury resulting from exposure to frost and cold temperatures. It also is likely to cause injury to them by annoying them to such an extent as to significantly disrupt their ability to engage in normal behavioral patterns, in part because they must divert their focus and energy to try to maintain appropriate body temperatures.

45. Moreover, 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 purpose. Unsanitary enclosures are known to interfere with the lemurs’ olfactory senses, and have been likened to humans trying to have a conversation over the phone while in a noisy room. Such conditions may lead to miscommunication, stress, and frustration by preventing lemurs from satisfying instinctive urges and engaging in innate behaviors. The thwarted ability to communicate appropriately using scent gland mechanisms may also cause blockages, infections, and abscesses.

46. Unsanitary conditions also pose a serious threat to lemurs’ health and welfare, including by increasing their risk of contracting parasites, and both species-specific and zoonotic diseases. The USDA specifically mandates that “[e]xcreta and food waste must be removed from inside each primary enclosure daily” and that “[i]f 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.” 9 C.F.R. § 3.84.

47. Defendants continue to deny the lemurs a clean, sanitary environment, and Tri-State Zoo has been cited by the USDA for this chronic failure. Specifically, the USDA has cited Tri-State Zoo for failing to keep the lemur enclosure in good repair to facilitate cleaning and eliminate areas where pests could live and hide, and where water could pool; excessive debris, bird feces, and clutter near the lemur enclosure; excessive amounts of feces and material build-up on surfaces in the lemur enclosure (and other animal enclosures); and untreated wood surfaces in the lemur enclosure that were neither waterproof nor readily cleanable.

48. The accumulation of feces, food waste, and the presence of pests in the lemur enclosure and in surrounding areas are exceptionally harmful to their health and well-being, and cause or are likely to cause injury by exposing them to associated health risks. It also directly inhibits the lemurs' ability to properly communicate, further denying them the opportunity to engage in normal behavior patterns and thereby causing them psychological harm.

49. Defendants' ongoing failure to provide these lemurs with a safe, sanitary environment constitutes a "take" in violation of the ESA and falls well below the minimum standards for facilities as required by AWA regulation. *See* 9 C.F.R. § 3.84.

D. DEFENDANTS HARM AND HARASS ENDANGERED TIGERS BY DENYING THEM SAFE, APPROPRIATE CAGING AND HOUSING AND ADEQUATE ENRICHMENT

50. In the wild, tigers' territories range from 7.72mi² to 154.44mi², depending on the availability of prey. Within these ranges, tigers are free to engage in natural behaviors such as swimming, climbing, stalking, and predation. They

occupy a variety of habitats, typically comprising dense vegetative cover, sufficient prey populations, and access to water. Tigers are generally solitary; however, they are known to come together for breeding, feeding, and sometimes to socialize and travel in groups.

51. Tigers require large, environmentally rich, natural spaces that allow them to express a wide range of behaviors. Captive environments that do not provide the environmental enrichment necessary to promote the expression of a full range of species-typical behaviors have a detrimental effect on the animals' physical and psychological well-being. The lack of species appropriate enrichment programs can lead to harmful behaviors like self-mutilation, stereotypical behaviors such as repetitive pacing and rubbing, or behaviors like fence chewing that may cause broken teeth.

52. Enrichment plans for captive carnivores, including tigers, are difficult to develop due to these animals' natural feeding and hunting behaviors and spatial needs. In inadequate captive conditions, thwarted hunting prospects alone appear to cause carnivores like tigers to suffer stress, which causes physical and psychological injury. Accordingly, 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.

53. Defendants harm and harass endangered tigers by confining them to a pit (that used to be a swimming pool) with adjacent dens, denying them an

appropriate, natural and complex enclosure, and frustrating their natural instincts. The tigers are confined to their dens—one of which reportedly measures approximately twenty feet by ten feet—overnight, and therefore do not even have access to the rest of their small enclosures at a time when they are naturally most active.

54. Defendants also harm and harass tigers by depriving them adequate enrichment. Mowgli and Cheyenne, who are both singly housed, are, on information and belief, provided with a small tub of water and bowling balls. Cheyenne is also provided with a tire. Tires, without more, and bowling balls are not species appropriate enrichment because they do not promote the daily expression of a range of natural behaviors, including, for example, predatory and investigatory behaviors, and bowling balls are universally recognized as harmful because they may lead to injuries such as broken teeth.

55. Further, items introduced to the tigers' enclosures are, on information and belief, not routinely rotated, cleaned, evaluated, and reassessed—a fundamental requirement for any environmental enrichment plan to ensure the promotion of a range of species-specific behavior. The tiger enclosures at Tri-State Zoo do not encourage the tigers to engage in instinctual and species-specific behaviors, including natural hunting behaviors such as stalking and predation, and are therefore inadequate to provide for the tigers' physiological and psychological well-being.

56. Moreover, Defendants deny these endangered tigers clean pools in which the tigers could choose to submerge or swim. Swimming is a part of tigers' natural behavioral repertoire and allows them to cool down. A pool filled with clean water is considered to be a very important element of a captive tiger enclosure. The quality of the water in the pool, however, is critical. According to animal behavior scientists, only a pool with clean water encourages tigers to exhibit behaviors that are considered indicators of adequate welfare.

57. The sibling tigers at Tri-State Zoo do not have access to a clean pool of water. The small pool in their enclosure is constantly contaminated with urine and feces. Indeed, during an AWA enforcement proceeding, Defendant Candy referred to a pool in a tiger enclosure as the tigers' toilet. The constant squalid state of this pool negates any enriching qualities, violates general standards of animal care, and interferes with the animals' behavior in a way that is likely to result in injury.

58. When occupying the outdoor portion of the enclosures, the tigers are also denied appropriate shelter from the elements. The AWA requires that tigers be provided with adequate shelter from inclement weather, 9 C.F.R. § 3.127(b), and sufficient shade from direct sunlight, *id.* § 3.127(a). The USDA has cited Tri-State Zoo for failing to provide endangered tigers with adequate shelter from winter temperatures. On information and belief, the tigers' outdoor enclosures, with the exception of Mowgli's enclosure, also do not provide them with adequate shade from the sun, contrary to generally accepted animal care standards and AWA regulation. *See* 9 C.F.R. § 3.127(a). Denying captive tigers necessities such as appropriate

shelter physically harms them, and significantly disrupts their normal behaviors, including sheltering and resting behaviors, in a way that puts their physical and psychological well-being at risk of injury.

59. Despite the established authority on the environmental needs of tigers, Defendants continue to confine Mowgli, Cheyenne, Kumar, Cayenne, and India in inappropriate and unsafe environments, without necessary enrichment, and therefore wholly fail to meet their physical, social, and psychological needs. These inadequate conditions cause the tigers to suffer psychological injury, and at least three of the tigers, Mowgli, Cayenne, and India, now display stereotypic pacing. The tigers' conditions further harm the tigers' physical and psychological health by depriving them of the ability to express a full range of natural behaviors such as simulated predatory behaviors, investigatory behaviors, and social avoidance behaviors, including the autonomy to choose to engage with or avoid others, which are central to their physical and psychological well-being. Further, Defendants harass tigers at Tri-State Zoo by depriving the tigers the ability to express natural hunting behaviors such as stalking and predation, creating a likelihood of injury to them by annoying the tigers to such an extent as to significantly disrupt normal feeding behavioral patterns.

60. The conditions in which these tigers are kept thus constitute, and will continue to constitute, a "take" in violation of the ESA.

E. DEFENDANTS HARM AND HARASS ENDANGERED TIGERS BY DENYING THEM APPROPRIATE SOCIAL GROUPS

61. Tigers in the wild typically leave their mother's side at age two or three to find their own territory, and are generally solitary creatures. As such—except under very specific conditions where animals have a high degree of autonomy—group housing of adult tigers is contrary to generally accepted animal husbandry practices.

62. Defendants harm and harass endangered tigers by denying sibling tigers Cayenne and India—two sexually mature females—and Kumar—a sexually mature male—who are all intact, an appropriate environment, by housing them together. This particular setting poses significant harm to any future offspring because the tigers are related to one another, raising the likelihood of inbreeding, which is a major cause of deleterious mutations.

63. Additionally, these tigers have reportedly been observed to fight with one another, and thus are incompatible and ill-suited for group housing for that reason as well.

64. As Cayenne, Kumar, and India mature, their inability to escape one another and express social avoidance behaviors harms their physical and psychological well-being. Further, their inappropriate social groups are also likely to cause physical or psychological injury as a result of being maintained in extremely stressful conditions. Stress in animals is known to cause physical and psychological injury and increase abnormal behaviors. Indeed, Cayenne and India,

the two females, are already known to exhibit stereotypic pacing behavior, which is a tell-tale sign of poor psychological welfare and may result in physical injury.

65. Despite established authority on the social needs of captive tigers, Defendants continue to house Cayenne, India, and Kumar in an inappropriate social group, resulting in harm and harassment under the ESA.

F. DEFENDANTS HARM AND HARASS ENDANGERED TIGERS BY DENYING THEM ADEQUATE NUTRITION

66. Basic tenets of animal care mandate that captive animals be provided with adequate and appropriate diets and potable water. The AWA requires that, at a minimum, food “be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. The diet shall be prepared with consideration for the age, species, condition, size, and type of the animal.” 9 C.F.R. § 3129(a); *see also* USDA, APHIS, *Nutrition for Nondomestic Felids, Policy No. 16* (2011). According to industry guidelines, feeding tigers diets that contain high percentages of poultry products or muscle meat are of concern because they may be nutritionally unbalanced. Fresh clean drinking water should also always be available to tigers, in containers that are cleaned and disinfected daily.

67. Defendants harm and harass tigers at Tri-State Zoo by failing to provide the tigers with a veterinarian-approved diet, and by failing to provide them with clean drinking water, creating a likelihood of injury to them and interfering with their normal feeding behaviors. Denying these tigers adequately implemented

nutrition protocols—which is fundamental to the physical and psychological well-being of any captive animal—constitutes a “take” in violation of the ESA.

G. DEFENDANTS HARM AND HARASS ENDANGERED TIGERS BY DENYING THEM SAFE, SANITARY ENVIRONMENTS

68. Defendants harm and harass tigers at Tri-State Zoo by failing to keep the tigers’ enclosures clean, sanitized, and in good repair; and failing to timely remove animal and food waste from the enclosures.

69. AWA regulations and generally accepted practices of animal care require that natural substrates in outdoor enclosures be spot-cleaned daily, and that hard surfaces of indoor and outdoor enclosures be cleaned daily and disinfected routinely. *See* 9 C.F.R. §§ 3.125(d), 3.131.

70. The failure to properly clean dirt and concrete substrates increases the risk of contamination with micro-organisms and parasites, exposing the animals to potential pathogens, increased odors, and the attraction of pests. Accordingly, the failure to timely remove feces from a tiger’s enclosure is an egregious deficiency, constituting a risk to the animals’ health and mental well-being.

71. The tiger enclosures at Tri-State Zoo have both concrete and dirt substrates. Although concrete substrates can normally be cleaned and disinfected with ease, the cracks and holes in Tri-State Zoo’s concrete floors make effective cleaning and sanitizing impossible.

72. Defendants do not provide the tigers with a clean and sanitary environment and Tri-State Zoo has been repeatedly cited by the USDA for its chronic failure to do so. Indeed, from 2006 to 2015, Tri-State Zoo was cited multiple

times for chronic noncompliance with AWA regulations regarding waste accumulation and general sanitation with respect to its tiger enclosures.

73. Moreover, there are a number of free-roaming feral and/or domestic cats at Tri-State Zoo. The tigers' exposure to these cats increases disease hazards, ranging from distemper to toxoplasmosis. On information and belief, at least one of the free roaming cats at Tri-State Zoo carries feline immunodeficiency virus (FIV), thus exposing all of the felines, including tigers and the lion, to FIV.

74. Confining Mowgli, Cheyenne, Cayenne, Kumar, and India in unsanitary enclosures that are constantly in disrepair, as well as failing to control the possible transmission of disease from free roaming animals, continually puts the tigers' health and welfare at risk by creating a high likelihood of future injury or sickness. These practices do not meet the minimum standards of care under the AWA and constitute a "take" in violation of the ESA.

H. DEFENDANTS HARASS ENDANGERED TIGERS BY FACILITATING INAPPROPRIATE PUBLIC CONTACT

75. Defendants harm and harass tigers by granting members of the public access to the "off-exhibit" areas of the enclosures and facilitating direct contact with adult tigers. In fact, Mr. Candy has expressed that he encourages public contact with the tigers in order to "keep them friendly."

76. Encouraging close public contact with adult tigers violates AWA regulations, is opposed by experts in the field, and contravenes generally accepted animal husbandry standards. Federal regulations explicitly require 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.” 9 C.F.R. § 2.131(c)(1). USDA policy clarifies that public contact with juvenile or adult tigers violates this regulation.

77. For captive animals such as Tri-State Zoo’s tigers, proximity to, or contact with, humans is a source of stress and can be extremely harmful to animal well-being. Stress in animals compromises immunity, impairs coronary health, alters brain structure and function, impairs reproduction, stunts growth, reduces body weight, shortens lifespan, and increases abnormal behaviors.

78. Further, given that tigers spend over three-quarters of their day resting and sleeping, physical contact forces tigers to reduce resting time and is therefore inherently disruptive to their normal behavior in a way that is likely to result in injury.

79. On March 22, 2013, a Judicial Officer sustained the USDA’s allegations that the defendants Tri-State Zoological Park and Mr. Candy had willfully violated numerous AWA regulations, including 9 C.F.R. § 2.131(c)(1), by allowing the public to come into close proximity to the tigers and a lion, posing a risk of serious harm to the animals and the viewing public.

80. Despite being cited and sued by the USDA, Defendants have not stopped their unlawful behavior. They continue to grant the public, including unpaid and untrained volunteers, access to “off-exhibit” areas of the tigers’ enclosures and allow the public to make physical contact with the tigers. Not only

does the direct public contact harm and harass the tigers, but the practice of giving visitors access to the tigers' dens and denying the tigers an opportunity to retreat to an area in which they are away from the public is known to cause significant distress to captive tigers.

81. Indeed, Mowgli was observed pacing, a well-recognized sign of psychological stress and suffering, in his den while the Defendants allowed the public to observe him from an off-exhibit area of the enclosure.

82. Forcing these solitary predators to interact with humans, and denying them the opportunity to escape from public interaction, violates AWA regulations and is not a generally accepted animal husbandry practice. This practice psychologically harms them, creates a likelihood of injury to them, and annoys them, by significantly disrupting their normal behavioral patterns, in violation of the ESA's "take" prohibition.

I. DEFENDANTS HARM AND HARASS A LION BY DENYING HER ADEQUATE ENRICHMENT AND SOCIAL GROUPING

83. In the wild, a lion's habitat includes open woodlands, thick bush, scrub, and tall grassy areas. Ideal habitats provide sufficient cover to facilitate hunting and denning. Wild lions mainly hunt at night, traversing distances ranging from one to eight miles each night, depending on the availability of food. Female lions do most of the hunting in social groups by stalking and ambushing prey, frequently taking prey much larger than themselves.

84. Lions are highly social and live in large social groups called prides. For African lions like Peka, a typical pride structure includes five to nine related adult

females and their offspring plus two to six males who are unrelated to the females but frequently related to each other. Female lions typically stay in their natal prides their entire lives and often develop preferred groupings between close relatives such as mother/daughter or siblings. Despite their social nature, however, lions need to be able to leave a social structure and choose their social grouping.

85. Meeting the physical and psychological needs of captive lions requires providing them with the opportunity to socialize with compatible lions, and providing them with necessary environmental enrichment so that they are able to express a full range of natural behaviors.

86. The Association of Zoos & Aquariums (“AZA”) recommends that captive lions be provided with “large spacious enclosures designed to encourage species appropriate behaviors such as resting, walking, hunting, stalking, grooming, playing, breeding, etc.” Ass’n of Zoos & Aquariums, *Lion Care Manual* 18 (2012). All enclosures should allow lions to retreat from conspecifics and provide visual privacy from humans “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.” *Id.*

87. In addition to providing social privacy, enclosures should provide shade and 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.” *Id.*

88. Defendants harm and harass Peka by confining her in a barren enclosure, which is wholly unable to meet her complex physical, psychological, or

social needs. The lion enclosure at Tri-State Zoo presents a stark contrast to a lion's natural environment, and is void of any source of enrichment. The lack of visual barriers in her sterile enclosure denies her visual privacy from the public and the ability to engage in instinctual and species-specific behaviors such as stalking and hiding. The failure to provide captive lions sufficient retreat space to escape the gaze of visitors violates generally accepted husbandry standards and is a significant potential source of stress—which, on its own, can cause a multitude of physical and psychological injuries. Further, by depriving Peka the ability to express natural hunting behaviors such as stalking and predation, Defendants harass Peka by creating a likelihood of injury to her by annoying her to such an extent as to significantly disrupt normal feeding behavioral patterns.

89. Defendants also harm and harass Peka by confining her in social isolation and denying her a proper social group. Unlike Peka's wild counterparts, she has been denied the companionship of her natal pride—and the company of any lions at all, except for the now deceased Mbube, who she could see through a chain link fence—since she was acquired by Tri-State Zoo. Social isolation is harmful for all social animals, and is particularly detrimental for lions, given their highly social nature.

90. Despite the well-recognized environmental and social needs of lions, Defendants continue to socially isolate Peka in an enclosure devoid of any meaningful enrichment and visual barriers, depriving her of an environment in which she can express the full range of behaviors these apex predators exhibit in

nature, including, for example, species-typical social interaction and the ability to make social choice, investigatory behaviors, and predatory behaviors. These inadequate conditions cause Peka distress—of which her stereotypic pacing is but one tell-tale sign—and are otherwise harmful to her physical and psychological health.

91. Depriving Peka of the social interaction and psychological stimulation fundamental to her physical and psychological well-being, Defendants' actions constitute, and will continue to constitute, a "take" in violation of the ESA.

J. Defendants Harm and Harass Peka by Denying Her Adequate Nutrition

92. Wholesome food and potable water are the most basic necessities for captive animals. The AWA requires that, at a minimum, food "be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. The diet shall be prepared with consideration for the age, species, condition, size, and type of the animal." 9 C.F.R. § 3.129(a); *see also* USDA, APHIS, *Nutrition for Nondomestic Felids, Policy No. 16* (2011). According to industry guidelines, feeding lions diets that contain high percentages of poultry products or muscle meat are of concern because they may be nutritionally unbalanced. Further, fresh clean drinking water should also always be available to lions, in containers that are cleaned and disinfected daily.

93. Tri-State Zoo has been specifically cited by the USDA for failing to provide lions with a veterinary-approved diet, noting concerns regarding the

quantity of chicken being fed to the big cats, as well as for failing to provide them with clean, potable water.

94. Denying Peka adequate nutrition and fresh water is extremely harmful to her physical health, and causes, or is likely to cause, injury by interfering with her normal feeding behaviors and therefore constitutes a “take” in violation of the ESA.

K. Defendants Harm and Harass Peka by Denying Her Safe, Appropriate Caging and Housing

95. Defendants harm and harass Peka by denying her adequate shelter from the elements. In fact, Tri-State Zoo has been cited by the USDA for failing to provide adequate shade in the lion enclosure. Generally accepted animal care standards mandate that lions have access to shade, especially during warmer months. According to experts, access to multiple areas that provide retreat space and shade are vital to the physical and psychological welfare of big cats in captivity.

96. Defendants’ ongoing failure to provide Peka with adequate shade exposes her to many associated ailments, including overheating, serious eye problems, and blindness. Such conditions are harmful to her physical and psychological health, and cause or are likely to cause injury by denying her the ability to engage in normal behaviors such as sheltering, hiding, and resting without risking overexposure to the sun.

L. DEFENDANTS HARM AND HARASS PEKA BY DENYING HER A SAFE, SANITARY ENVIRONMENT

97. AWA regulations and generally accepted practices of animal care require that animal and food waste be timely removed from enclosures, and that natural substrates be spot-cleaned daily. 9 C.F.R. §§ 3.125(d), 3.131. Contamination of natural substrates over time can expose big cats to dangerous concentrations of pathogens, and therefore generally accepted standards of animal husbandry require the periodic removal of contaminated substrates. The failure to properly clean natural substrates increases the risk of contamination with micro-organisms and parasites, exposing big cats to potential pathogens, increased odors, and the attraction of pests.

98. Defendants harm and harass Peka by failing to timely remove animal and food waste from the enclosure, and Tri-State Zoo has been cited by the USDA for this failure. The ongoing failure to timely remove feces from Peka's enclosure is an egregious deficiency, jeopardizing the animal's health and mental well-being.

99. Defendants also harm and harass Peka by exposing her to possible disease hazards from free-roaming animals, including at least one free roaming-cat that, on information and belief, carries FIV.

100. Housing Peka in unsanitary enclosures, as well as failing to protect Peka from the risk of disease transmitted by free-roaming animals, threatens her health and welfare by creating a high likelihood of future injury or sickness. These conditions and omissions unequivocally violate AWA regulations, fail to meet

generally accepted practices of animal care, and constitute a “take” in violation of the ESA.

M. DEFENDANTS HARASS PEKA BY FACILITATING INAPPROPRIATE PUBLIC CONTACT

101. Defendants harass Peka by granting members of the public access to her primary enclosure, and facilitating and encouraging members of the public to make physical contact with her.

102. AWA regulations require 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.” 9 C.F.R. § 2.131(c)(1). USDA policy clarifies that public contact with juvenile or adult lions violates this regulation.

103. Experts recognize that forced proximity to, and contact with, humans is a source of stress and can be extremely harmful to animal well-being. Stress in animals compromises immunity, impairs coronary health, alters brain structure and function, impairs reproduction, stunts growth, reduces body weight, shortens lifespan, and increases abnormal behaviors.

104. Given that lions spend approximately twenty hours per day resting and sleeping, physical contact forces lions to reduce resting time, and is therefore inherently disruptive to their normal behavior patterns, and places them at risk for injury.

105. By granting members of the public access to Peka’s primary enclosure, and allowing members of the public to make physical contact with her, Defendants

harass Peka by creating a likelihood of injury to her, and annoying her by significantly disrupting her normal behavior pattern. Such conduct is also harmful to her physical and psychological health and constitutes a “take” in violation of the ESA, is in express violation of the AWA regulations, and contravenes generally accepted husbandry practices.

N. DEFENDANTS’ FAILURE TO PROVIDE ADEQUATE VETERINARY CARE IS EVIDENCED BY THE CIRCUMSTANCES OF MBUBE’S DEATH

106. Before his death, a second lion in Defendants’ care, Mbube, was emaciated and suffering from a condition that was left undiagnosed as of October 6, 2016. At that time, the USDA cited Tri-State Zoo for failing to provide Mbube with adequate veterinary care and mandated that he be examined by a veterinarian with exotic cat experience.

107. Failure to provide timely and appropriate veterinary care violates AWA regulations and fails to meet generally accepted standards of animal care. 9 C.F.R. § 2.40(a).

108. Generally accepted standards of animal husbandry call for animals exhibited in zoos to “be maintained within the range of moderate body condition scores (4-6 on a 9 point scale),” because more extreme body conditions are associated with increased health risks, poor reproductive performance, and reduced longevity. Ass’n of Zoos & Aquariums, *Lion Care Manual* 54 (2012). The visibility of Mbube’s bones, including his vertebrae, scapula, shoulder, hip, and other joints, puts his body condition at a 1 or 2 on the AZA’s 9 point scale.

109. Defendants' failure to provide animals at Tri-State Zoo with adequate care, including veterinary care, is a pattern, evidenced, in part, by their failure to timely and adequately address Mbube's health and the deterioration of his body condition. Indeed, this failure was one of the many critical failures that led to a forty-five day suspension of the facility's AWA license in 2013.

VI. DEFENDANTS' ACTIONS HAVE PERCEPTIBLY IMPAIRED PETA'S ACTIVITIES AND PROGRAMS, AND FORCED IT TO DIVERT RESOURCES

A. PETA'S MISSION AND PROGRAMS

110. PETA is dedicated to protecting animals, including animals used in entertainment, from abuse, neglect, and cruelty. PETA's mission statement reads, in part, "Animals are not ours to . . . use for entertainment."

111. To achieve its objectives of ending the abuse and neglect of animals used for entertainment, PETA pursues several programs, including public education, cruelty investigation, research, animal rescue, legislation, special events, celebrity involvement, and protest campaigns. It brings this suit on its own behalf to protect its programs, which have been perceptibly impaired by Tri-State Zoo's actions.

112. By unlawfully harming and harassing federally protected ring-tailed lemurs, tigers, and a lion, Defendants directly frustrate PETA's mission to eliminate the abuse and neglect of animals for entertainment. Unlawfully harming and harassing threatened and endangered animals increases the animals subject to abuse and neglect in entertainment. If PETA prevails in this action, Defendants

will no longer be able to maintain federally protected animals in unlawful conditions.

113. Moreover, by falsely presenting themselves as a refuge for abandoned and unwanted endangered and threatened animals, Defendants create the incorrect public impression that the Defendants are providing an essential rescue service and that but for the Defendants' efforts, the federally protected animals at Tri-State Zoo would not be adequately provided for. Continuing to harm and harass the federally protected animals at Tri-State Zoo without repercussion under the ESA thus creates the incorrect public impression that Defendants are engaged in conduct that is consistent with animal welfare when they confine animals to unsanitary, barren enclosures and allow the public to make physical contact with apex predators. This conduct is not acceptable; not consistent with animal welfare; constitutes animal abuse, mistreatment or neglect; and, as alleged in this Complaint, violates the ESA. This frustrates PETA's programs by making it harder to persuade the public that it should not tolerate the use of animals in entertainment. If PETA prevails in this action, PETA will not have to counteract the misimpression created by Defendants.

B. IMPAIRMENT OF PETA'S ACTIVITIES AND DIVERSION OF ITS RESOURCES

114. Continuing to harm and harass the threatened and endangered animals at Tri-State Zoo without repercussion under the ESA creates the incorrect public impression that the conditions in which these animals are kept are humane and lawful and that Defendants can lawfully abuse, neglect, and mistreat animals.

115. As a result, PETA has been forced to divert resources in order to counteract the public impression that Tri-State Zoo's practices are consistent with the ESA and animal welfare. Among other activities, in order to counteract this public impression, PETA has been and continues to be forced to: submit complaints about Tri-State Zoo to government agencies; post multiple posts on the PETA.org blog; review and respond to complaints from the public about Tri-State Zoo; compile and publish information on PETA's website about Tri-State Zoo's history of animal-welfare violations; and distribute press releases on Tri-State Zoo's AWA violations. PETA has also filed and litigated a lawsuit over Tri-State Zoo's AWA license renewal, and has sent an attorney to meet with Mr. Candy to offer to find the animals homes at reputable sanctuaries.

116. In order to compile accurate information about Tri-State Zoo to share with the public and its members, as well as to counteract the public impression that Tri-State Zoo's practices are consistent with the ESA and animal welfare, PETA has been and continues to be forced to: track and gather Tri-State Zoo's USDA inspection reports; arrange for staff and activists to visit Tri-State Zoo; monitor Tri-State Zoo's social media pages and website; and submit multiple public records

requests related to the facility and review and analyze numerous responsive documents.

117. PETA has also been and continues to be forced to undertake all of the actions listed in the preceding two paragraphs, and is therefore compelled to divert resources, to address the Defendants' unlawful "take" of the animals who are the subject of this action.

118. PETA's ongoing need to expend resources to investigate and counteract the Defendants' unlawful harm and harassment of federally protected animals has perceptibly impaired PETA's ability to advance its mission. Specifically, the expenses incurred identifying and counteracting the Defendants' illegal activity has forced PETA to divert resources away from campaigns against other non-accredited roadside zoos and traveling animal shows with egregious records of animal neglect and abuse, and from funding animal rescues, among other efforts.

119. If PETA prevails in this action, the Defendants will no longer be able to maintain the animals at issue in conditions that are inconsistent with the ESA and animal welfare, and PETA will no longer have to divert resources to counteract the incorrect public impression caused by Defendants' unlawful acts or to counteract the unlawful acts themselves.

120. PETA's additional efforts and the resulting expenditures would not be necessary but for Defendants' unlawful taking of federally protected ring-tailed lemurs, tigers, and a lion.

VII. CLAIMS FOR RELIEF

Count I—Unlawful “Take” of Protected Species

121. PETA incorporates by reference all allegations of the Complaint.

122. The Endangered Species Act, 16 U.S.C. § 1538(a)(1)(B), (G) and its implementing regulations, 50 C.F.R. §§ 17.21, 17.31(a), prohibit the “take” of “any [listed] species” not otherwise provided for by a Section 4(d) special rule, within the United States without a permit.

123. Defendants have violated and continue to violate the ESA and its implementing regulations by taking two ring-tailed lemurs, five tigers, and a lion within the meaning of the ESA, without a permit, at Tri-State Zoo.

124. This Court has the authority to issue an injunction prohibiting Defendants from committing further violations of the ESA and ordering them to relinquish possession of Mowgli, Cheyenne, Kumar, Cayenne, India, Peka, and the two ring-tailed lemurs to appropriate reputable sanctuaries. 16 U.S.C. § 1540(g)(1)(a).

Count II—Unlawful Possession of Protected Species

125. PETA incorporates by reference all allegations of the Complaint.

126. The Endangered Species Act, 16 U.S.C. § 1538(a)(1)(D), (G) and implementing regulations, 50 C.F.R. §§ 17.21(d), 17.31(a), prohibit the possession, by any means whatsoever, of any species taken in violation of the ESA.

127. Defendants have violated and continue to violate the ESA and its implementing regulations by possessing and continuing to possess unlawfully taken

species, including two ring-tailed lemurs, five tigers, and one lion, within the meaning of 16 U.S.C. § 1538(a)(1)(D) and (G).

128. This Court has the authority to issue an injunction prohibiting Defendants from continuing to possess two ring-tailed lemurs, five tigers, and one lion in violation of 16 U.S.C. § 1538(a)(1)(D) and (G) and 50 C.F.R. §§ 17.21(d), 17.31(a), 17.40(r), and ordering them to relinquish possession of these animals to appropriate reputable sanctuaries. 16 U.S.C. § 1540(g)(1)(A).

Relief Requested

WHEREFORE, PETA respectfully requests that this Court:

A. Declare that Defendants are violating the ESA by illegally taking two ring-tailed lemurs, five tigers (Mowgli, Cheyenne, Kumar, Cayenne, and India), and one lion (Peka), 16 U.S.C. § 1538(a)(1)(B); 50 C.F.R. §§ 17.21(c), 17.31(a), 17.40(r);

B. Declare that Defendants have violated and continue to violate the ESA by possessing two ring-tailed lemurs, five tigers (Mowgli, Cheyenne, Kumar, Cayenne, and India), and one lion (Peka), who have been illegally taken, 16 U.S.C. § 1538(a)(1)(D), (G); 50 C.F.R. §§ 17.21(d), 17.31(a), 17.40(r);

C. Enjoin Defendants from continuing to violate the ESA and its implementing regulations with respect to two ring-tailed lemurs, five tigers (Mowgli, Cheyenne, Kumar, Cayenne, and India), and one lion (Peka), including the prohibitions on taking a listed species and possessing a listed species that has been unlawfully taken;

D. Enjoin Defendants from owning or possessing endangered or threatened species in the future;

E. Enter a permanent injunction against Defendants that terminates all Defendants' ownership and possessory rights with respect to two ring-tailed lemurs, five tigers (Mowgli, Cheyenne, Kumar, Cayenne, and India), and one lion (Peka);

F. Appoint a special master or guardian ad litem to identify reputable wildlife sanctuaries and to determine the most appropriate placement for the forfeited animals, consistent with the animals' best interests;

G. Award PETA reasonable attorneys' fees and litigation costs for this action, 16 U.S.C. § 1540(g)(4); and

H. Grant PETA such other and further relief as the Court deems just and proper.

Date July 31, 2017
Baltimore, Maryland

Respectfully submitted,

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