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Certified Mail - Return Receipt Requested

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Jeff Futrell
Estate of Archie B. Futrell
Waccatee Zoological Farm
8500 Enterprise Road
Myrtle Beach, SC 29588

Austin Futrell


Dakota Futrell Stienecker


Re: Notice of Intent to File Citizen Suit under the Endangered Species Act for Violations at Waccatee Zoological Farm

Dear Futrell Family:

People for the Ethical Treatment of Animals, Inc. (“PETA”), Matthew Howard, and Lexie Jordan intend to commence a lawsuit against Waccatee Zoo, Kathleen Futrell, Jeff Futrell, Austin Futrell, Dakota Futrell Stienecker, and the Estate of Archie Broughton Futrell (collectively “Waccatee Zoo” or “Waccatee”) for violating the Endangered Species Act (“ESA”). This suit will be brought in the United States District Court for the District of South Carolina for chronic and ongoing violations of the ESA and its implementing regulations.¹

Kathleen and Jeff Futrell, with the assistance of staff or volunteers, operate Waccatee Zoo. Archie Futrell also operated the facility until his death in 2011. Waccatee’s physical location is 8500 Enterprise Road in Myrtle Beach, South Carolina. PETA, Mr. Howard, and Ms. Jordan intend to file suit under the ESA in response to the “take”² of the following ESA-protected animals (collectively the “Listed Species”), for which allegations are described in more detail in the corresponding numbered sections below:

- I. Tigers (Lila and Akshara)
- II. Chimpanzee (Chico)
- III. Leopards (Liza and Eolis)

¹ See Endangered Species Act, 16 U.S.C. §§ 1531-1544; 50 C.F.R. § 17.21.

² The ESA defines “take” as: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct. See 16 U.S.C. § 1532(19).

- IV. Lions (Princess and Simba)
- V. Ring-tailed lemurs
- VI. Parrots: Salmon-crested cockatoo (Cream), Scarlet macaw (Delilah), White cockatoo, and Yellow-Crested cockatoo
- VII. Scimitar-horned oryx

Waccatee takes the Listed Species by (1) failing to provide them with adequate veterinary care, (2) failing to provide them with adequate, appropriate nutrition, (3) housing them in small, insecure, and generally inappropriate and unsafe enclosures, (4) failing to maintain them in sanitary conditions, (5) failing to provide them with adequate environmental enrichment, and (6) housing them in inappropriate social groupings. Altogether, these acts harass, harm, and—at times—kill Listed Species.

Further, on information and belief, Waccatee traffics taken animals and animal parts in violation of the ESA. Waccatee is also unable to financially provide for Listed Species in a manner compliant with the ESA, other applicable laws, and generally accepted husbandry practices.

If Waccatee wishes to avoid litigation, it should immediately contact undersigned counsel within sixty days to make arrangements for the transfer of animals housed at Waccatee to reputable facilities.³ In this regard, PETA will secure, arrange, and pay for the placement, transport, and veterinary care necessary for these animals' relocation to appropriate facilities, where they may express species-typical behaviors in safe, sanitary, and enriching environments.

Endangered Species Act

Take

The ESA prohibits the “take” of endangered and most threatened species within the United States.⁴ Congress conceived of take “in the broadest possible manner to include every conceivable way in which a person can take or attempt to take any fish or wildlife.”⁵ Take means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”⁶ Regulation defines “harm” as “an act which actually kills or injures wildlife,” including “by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”⁷ “Harass” is “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying them to such an extent as to significantly disrupt normal behavioral patterns

³ Plaintiffs anticipate bringing claims with respect to all animals at Waccatee, including animals not protected by ESA.

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

⁵ *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 704-05 (1995) (citing S. Rep. No. 93-307, at 7 (1973) (internal quotations omitted). *See also* H.R. Rep. No. 93-412, at 15 (1973) (“the broadest possible terms” were used to define restrictions on takings and to include “harassment, whether intentional or not”).

⁶ 16 U.S.C. § 1532(19).

⁷ 50 C.F.R. § 17.3.

which include, but are not limited to, breeding, feeding, or sheltering.”⁸ The ESA applies equally to endangered and threatened species living in captivity.⁹

Trafficking of Endangered and Threatened Species

Under the ESA, it is also unlawful for a person to “possess, sell, deliver, carry, transport, or ship, by any means whatsoever” any species that has been taken in violation of the Act.¹⁰ Likewise, it is unlawful to “deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity,” or “sell or offer for sale in interstate or foreign commerce” any listed species.¹¹

Wildlife subject to the ESA include any member of the animal kingdom listed by the U.S. Fish and Wildlife Service as “endangered” or “threatened,” including any mammal or part, product, or the dead body or parts of mammals.¹² Courts have acknowledged that animal parts are regulated under the ESA.¹³

Listed Species

Waccatee has kept and continues to keep animals that, depending on sub-species classification, are either threatened or endangered. Chimpanzees, ring-tailed lemurs, scimitar-horned oryxes, tigers, and yellow-crested cockatoos are listed as endangered under the ESA.¹⁴ Salmon-crested cockatoos, also known as Moluccan cockatoos, and white cockatoos are threatened.¹⁵

Lions are listed as either endangered or threatened depending on their subspecies. *Panthera leo leo* is listed as endangered while *Panthera leo melanochaita* is listed as threatened.¹⁶ The ESA prohibits takes of each subspecies.¹⁷ One subspecies of scarlet macaw (*Cyanopterus sp*) is endangered and another subspecies (*Macao sp*) is

⁸ *Id.* (mentioning, for captive wildlife, that “harass” excludes animal husbandry practices that are (1) generally accepted, (2) Animal Welfare Act compliant, and (3) not likely to result in injury).

⁹ *See, e.g.*, 80 Fed. Reg. 7380, 7385 (Feb. 10, 2015) (explaining that “the 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”).

¹⁰ 16 U.S.C. § 1538(a)(1)(D). *See also* 50 C.F.R. § 17.21(d), 17.31, 17.40(r).

¹¹ *Id.* at § 1538(a)(1)(E)-(G); 50 C.F.R. § 17.21(e), (f), 17.31, 17.40(r).

¹² 16 U.S.C. § 1532(8).

¹³ *See United States v. Hess*, 829 F.3d 700, 703 (8th Cir. 2016) (where defendant had been convicted under the Lacey Act for “knowingly engaging in conduct involving the sale and purchase of [black rhino horns] with a market value exceeding \$350 that was transported and sold in violation of the Endangered Species Act”); *United States v. Hill*, 896 F. Supp. 1057 (D. Colo. 1995) (United States District Court for the District of Colorado held that the ESA and Lacey Act, which restricted defendant’s sale of parts of protected rhinos, tigers, eagles, and leopards; did not constitute an unconstitutional taking).

¹⁴ 50 C.F.R. § 17.11(h).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*, 17.40(r).

threatened.¹⁸ Hybrids of the subspecies are listed as threatened.¹⁹ Leopards are listed as endangered, except in particular geographic locales where they are listed as threatened.²⁰

I. Waccatee has taken tigers in violation of the ESA.

Waccatee Zoo's chronic failure to provide Lila and Akshara with proper veterinary care, nutrition, housing and caging, sanitation, and environmental enrichment injured them, interrupted normal behavioral patterns, and created a likelihood of injury. As such, Waccatee Zoo has taken Lila and Akshara by harming, harassing, and, on information and belief, contributing to their deaths in violation of the ESA.

A. Waccatee harmed, harassed, and, on information and belief, killed tigers by denying them adequate veterinary care.

Waccatee failed to provide Lila and Akshara with adequate and appropriate veterinary care. Lack of veterinary care harassed and harmed tigers both by causing them actual injury and by creating a likelihood of further injury from untreated health and welfare issues that impaired their normal behavioral patterns. On information and belief, failure to provide timely and appropriate veterinary care also contributed to their deaths.

Routine veterinary care is essential to timely diagnose and treat disease, injury, or negative stress in tigers.²¹ Tigers should have regular check-ups, preventative care, and access to emergency veterinary services as needed.²² Further, generally accepted husbandry practices call for animals to be kept in adequate bodily condition. Generally accepted standards of animal husbandry recommend, for example, that tigers exhibited in captive facilities be maintained with a moderate body condition score (3 on a 5 point scale) due to increased health risks and reduced longevity associated with more extreme body conditions.²³

Waccatee housed at least two tigers in the past, Lila and Akshara. Lila died sometime after December 20, 2020. Akshara was last seen before 2018. On information and belief, Waccatee did not provide sufficient veterinary care to Lila or Akshara. Both tigers exhibited chronic abnormal repetitive behaviors indicative of psychological distress. The cats also suffered repeated injuries and illnesses requiring appropriate veterinary treatment that, on information and belief, they did not receive. Lila suffered progressive hair loss and skin issues that persisted for at least a year prior to her death. Before her death, Lila was emaciated and suffering from extensive hair loss. The visibility of Lila's bones, including her vertebrae, scapula, shoulder, hip and other joints,

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ AZA Tiger Species Survival Plan (2016). Tiger Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 39.

²² *Id.*

²³ *See Id.* at 36-37.

was of serious concern and likely put her body condition at a 1 on the Association of Zoos and Aquariums (“AZA”) 5 point scale.²⁴

Lack of appropriate veterinary care constitutes harm and harassment under the ESA. Lila and, on information and belief, Akshara suffered actual physical and psychological injuries due to lack of adequate veterinary care. The lack of veterinary care also created a likelihood of further injury from untreated health and welfare issues that impaired normal behavioral patterns. Ultimately, both tigers died in the care of Waccatee as they suffered in a manner constituting take under the ESA.

B. Waccatee harmed, harassed, and, on information and belief, killed tigers by denying them adequate nutrition.

Waccatee Zoo failed to provide tigers with proper nutrition. This failure harmed, harassed, and, on information and belief, contributed to the deaths of Lila and Akshara in violation of the ESA.

The Animal Welfare Act (“AWA”) requires that food “be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health.”²⁵ Diets provided to tigers “shall be prepared with consideration for the age, species, condition, size, and type of the animal” as well.²⁶ According to husbandry guidelines, feeding tigers diets that contain high percentages of poultry products is problematic because the diets may be nutritionally unbalanced.²⁷ Clean, potable drinking water should always be available to tigers, in containers that are “cleaned and disinfected daily.”²⁸

Waccatee has denied felids an adequate diet and potable water, thus injuring them. The United States Department of Agriculture (“USDA”) has specifically cited Waccatee for failing to provide felids with a veterinarian-approved diet. During an inspection, a USDA official noted that Waccatee lacked a “written feeding plan with specific composition and amounts of food items or supplementation” for felids.²⁹ On information and belief, Waccatee fed Lila and Akshara an unbalanced diet high in poultry products. As with the other Listed Species, Lila and Akshara’s diet was also compromised by the processed food Waccatee provides to guests. On information and belief, Waccatee failed to adequately watch visitors in order to prevent visitors from offering processed food to tigers. The processed food would not be appropriate species-specific nutrition for Lila and Akshara. Waccatee Zoo also, on information and belief, failed to provide tigers with constant access to clean drinking water. Visitors noted empty and unsanitary water vessels in the tiger enclosures. Lack of adequate nutrition caused physical as well as psychological harm. As explained in Parts I.A. and I.E. of this notice letter, tigers suffered psychological distress at Waccatee as evidenced by abnormal

²⁴ *Id.* at 56.

²⁵ 9 C.F.R. § 3.129(a).

²⁶ *Id.*

²⁷ Standards for Felid Sanctuaries (2019). Global Federation of Animal Sanctuaries, Phoenix, AZ. pp 15.

²⁸ AZA Tiger Species Survival Plan (2016). Tiger Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 32. *See also* 9 C.F.R. § 3.130.

²⁹ Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), pp 4.

repetitive behaviors. Lack of adequate nutrition can cause or contribute to abnormal repetitive behaviors.

Tigers require balanced nutrition for good health. Waccatee harmed and harassed Lila and Akshara by failing to provide appropriate nutrition. On information and belief, Waccatee also contributed to their deaths by failing to implement adequate nutritional protocols.

C. Waccatee Zoo harmed and harassed, and, on information and belief, killed tigers by denying them appropriate housing.

Waccatee did not provide safe and adequate housing for Akshara and Lila. Unsafe and inappropriate housing harmed and harassed the tigers because those conditions caused physical and psychological injury and interfered with their normal behavioral patterns in a manner likely to cause other injuries.

Generally accepted husbandry practices call for a minimum of 1,200 square feet of space for outdoor solitary tiger enclosures.³⁰ Waccatee Zoo failed to house tigers in a safe and appropriate manner. On information and belief, the tiger enclosures were 30 feet long, 20 feet wide, and 10 feet high with access to a pool that was intermittently shared with the black bears. This small area was not sufficient to meet the needs of tigers in order for them to engage in species-typical behaviors such as roaming, seeking refuge, and swimming. The back half of the enclosures appeared to only provide protection from three sides, leaving the front exposed to inclement weather and other environmental conditions. Extreme weather conditions in poor housing, on information and belief, exposed Lila and Akshara to risks of bodily injury. Waccatee did not provide misting systems, fans, or other means of thermoregulation for the tigers. Lila was left particularly vulnerable by inadequate shelter when she lost a majority of her fur as her ability to maintain body heat was reduced. Further, Waccatee failed to maintain enclosures in good condition, leaving wood and wires exposed. Those exposed wires and sharp wood created a likelihood of injury to Akshara and Lila both directly and by interfering with normal behavioral patterns.

Waccatee harassed, harmed, and, on information and belief, contributed to the deaths of tigers through poor housing. Failure to provide endangered animals with adequate and safe enclosures denied them the ability to engage in normal behaviors and created a likelihood of physical and psychological injury to them—contributing, on information and belief, to their deaths.

D. Waccatee Zoo harmed, harassed, and, on information and belief, killed tigers by denying them sanitary space.

Waccatee confined Lila and Akshara in unsanitary conditions. These conditions constituted harm and harassment under the ESA because they caused physical and psychological injury and interfered with their ability to engage in normal behavior in a manner that creates the likelihood of further injury or illness.

³⁰ Standards for Felid Sanctuaries (2019). Global Federation of Animal Sanctuaries, Phoenix, AZ. pp 2.

Tigers require sanitary living spaces. The AZA standards direct that natural substrates, such as those within Waccatee Zoo's tiger enclosures, should be spot-cleaned daily.³¹ The possible contamination of natural substrates over time can expose tigers "to potentially dangerous concentrations of pathogens," and therefore requires that contaminated substrates be removed periodically.³² Pools for tiger use "should be designed for maintaining high water quality . . . and for ease of cleaning and sanitizing, as tigers tend to defecate in water."³³ Under generally accepted husbandry guidelines, "all water provided to the animals must be potable, and changed as appropriate to remain fresh and uncontaminated."³⁴

Waccatee held tigers in unsanitary spaces. On information and belief, Waccatee Zoo failed to remove feces and food wastes in a timely manner. Failure to properly clean the substrate created risks of injurious odors and contamination with micro-organisms and parasites, exposing Lila and Akshara to potential pathogens.

Poor water quality and standing water issues, on information and belief, also harassed tigers. At Waccatee, the tigers shared a pool space with the adjacently housed captive bears.³⁵ This small pool almost always contained stagnant, filthy water. The pool's condition exposed the animals to potentially contaminated water and risk of injury to tigers. Standing water, apparently caused by improper drainage, also persisted in the tiger enclosures. This standing water was stagnant and exposed animals to additional health risks.

Waccatee's failure to provide Lila and Akshara with a sanitary environment harmed and harassed them. On information and belief, the failure also contributed to their deaths. Waccatee Zoo's failure to keep the tigers' enclosures clean, and sanitized caused physical and psychological injury and interfered with their normal behaviors in a manner that created likelihood of further injury and, on information and belief, contributed to their deaths.

E. Waccatee harmed, harassed, and, on information and belief, killed tigers by denying them adequate environmental enrichment and social grouping.

Waccatee failed to provide tigers with species-specific enrichment. By depriving Lila and Akshara of an environment in which they could express natural behaviors, Waccatee disrupted their normal behavioral patterns such that it created a likelihood of injury and, on information and belief, caused psychological and ultimately physical injury while also contributing to the tigers' deaths.

Captive tigers may develop physical and psychological injuries when confined to cramped enclosures that deny them the ability to engage in the normal tiger behaviors of roaming or stalking. Man-made environments that do not provide adequate enrichment have

³¹ AZA Tiger Species Survival Plan (2016). Tiger Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 13.

³² *Id.*

³³ *Id.* at 10.

³⁴ *Id.*

³⁵ On information and belief, the bears and tigers did not occupy the shared pool area at the same time.

a detrimental effect on physical and psychological well-being. Insufficient enrichment deprives tigers of the ability to engage in species-typical behaviors, which causes negative stress. To address this, appropriate programs of environmental enrichment are necessary to deter harmful behaviors such as self-mutilation and abnormal repetitive behaviors such as pacing.

To meet the physical and psychological needs of tigers, exhibits should include the following elements:

- Relatively large, complex outdoor space;
- Water pools, moats, and/or running streams;
- Natural vegetation; and
- Trees or other natural substrate objects to allow nail grooming.³⁶

Waccatee failed to provide appropriate enrichment for Lila and Akshara. The tiger enclosures lacked complexity, natural vegetation, and natural substrates for nail grooming. Waccatee's enclosure was not equipped to provide Lila and Akshara opportunities to swim, stalk, run, and engage in other natural behaviors. The provided pool, which was shared with the adjacent bear enclosure, was woefully inadequate. It failed to provide Lila and Akshara with constant access to a water feature for thermoregulation and to engage in natural behaviors. The water was consistently at a low level and unsanitary. The minimal enrichment available to the tigers was not functional for big cats and was consistently dirty. The condition of this limited enrichment suggests that it was unused or not rotated to ensure novelty. Lila was consistently documented pacing back and forth within her cage even up to the end of her life. This behavior is consistent with psychological distress that is likely caused by a lack of space, not enough environmental complexity, and insufficient sensory stimulation.

Tigers are generally solitary animals and, in the wild, typically leave their mother's side at age two or three to find their own territory. As such—absent very specific conditions where animals have a high degree of autonomy—group housing of adult tigers is contrary to generally accepted animal husbandry practices. On information and belief, Waccatee Zoo harmed tigers by placing them in improper social settings. During an inspection on May 24, 2016, USDA noted that Waccatee had housed Lila and Akshara together for 11 years.³⁷ USDA advised that “measures need to be taken to protect the female from excessive male roughness and from injuries” after learning that Akshara attacked Lila in a failed breeding attempt.³⁸ Placing Lila and Akshara in improper social contexts led to physical injury and added additional negative stress to their lives.

Negative stress that is chronic and acute can suppress a body's immune responses and increase susceptibility to pathogens, exposing tigers to further exertion and negative stress and amplifying the risk of illness, infection, or even death. By depriving endangered tigers of an environment in which they could express natural behaviors, as

³⁶ AZA Tiger Species Survival Plan (2016). Tiger Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 11.

³⁷ See Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 24, 2016), pp 1.

³⁸ *Id.*

well as psychological stimulation fundamental to their physical, social, and psychological well-being, Waccatee's actions harmed and harassed tigers, as well as, on information and belief, contributed to tiger deaths.

II. Waccatee took a chimpanzee in violation of the ESA.

Waccatee harmed, harassed, and potentially killed Chico by depriving him of veterinary care, nutrition, sanitation, adequate enrichment, and social groups. Waccatee Zoo deprived Chico of the ability to engage in normal behavioral patterns in a manner that created the likelihood of injury, caused him to suffer injury, and, on information and belief, contributed to his death. Accordingly, Waccatee Zoo took a chimpanzee in violation of the ESA.

A. Waccatee harmed, harassed, and, on information and belief, killed a chimpanzee by denying him adequate veterinary care.

On information and belief, Waccatee Zoo failed to provide Chico with appropriate veterinary care. Lack of veterinary care harassed and harmed Chico both by causing him actual injury and by creating a likelihood of further injury from untreated health and welfare issues that impaired his normal behavioral patterns. On information and belief, Waccatee's lack of adequate care contributed to Chico's early death.

Facilities housing captive chimpanzees should provide regular, veterinary checkups and emergency services as needed.³⁹ Cardiovascular disease is a well-recognized concern for captive male chimpanzees, and appropriate veterinary care includes screening for cardiovascular issues. Generally accepted husbandry standards call for veterinary coverage to be available at all times so signs of negative stress can be addressed promptly.⁴⁰ This is significant, in part, because negative stress that is acute and chronic can suppress a body's immune responses and increase susceptibility to pathogens, exposing a chimpanzee to further exertion and negative stress and amplifying the risk of illness, infection, or even death. Chimpanzees engaging in abnormal repetitive behaviors may be suffering from physical or psychological health problems and must be evaluated by a qualified veterinarian.

Visitors documented Chico exhibiting repetitive head-swaying, indicative of negative stress and psychological impairment. On information and belief, Waccatee did not provide adequate veterinary care to Chico in order to address his physical and psychological well-being. On information and belief, these omissions contributed to Chico's death.

Waccatee's failure to provide adequate veterinary care harmed and harassed Chico. This lack of care injured his physical and psychological health and, interfered with his normal behavioral patterns in a manner that created a likelihood of injury. On

³⁹ AZA Ape TAG 2010. Chimpanzee (*Pan troglodytes*) Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 34.

⁴⁰ *Id.*

information and belief, failure to provide veterinary care contributed to his death in violation of the ESA.

B. Waccatee harmed, harassed, and, on information and belief, potentially killed a chimpanzee by denying him appropriate nutrition.

On information and belief, Waccatee denied Chico adequate nutrition. This denial harmed his physical and psychological health in violation of the ESA. The lack of adequate nutrition created a likelihood of injury by significantly disrupting Chico's normal behavioral patterns. On information and belief, the lack of proper nutrition also contributed to his death.

In the wild, chimpanzees rely on fruit for their diet, but also eat leaves, pith, seeds, flowers, insects, and meat.⁴¹ Under generally accepted husbandry standards, facilities housing chimpanzees should work to provide food types that resemble the diet of wild chimpanzees as much as possible.⁴² Facilities should feed chimpanzees a balanced diet of fruits, vegetables, and dry food.⁴³

Waccatee visitors reported that Chico was fed items inappropriate for chimpanzees, such as canned soda. Waccatee also provided processed food to guests upon entry to the facility. These guests had the opportunity to feed animals without oversight. As explained in Parts II.A. and II.E. of this notice letter, Chico suffered psychological distress at Waccatee as evidenced by abnormal repetitive behaviors. Lack of adequate nutrition can cause or contribute to abnormal repetitive behaviors.

Proper nutritional protocols and their implementation are fundamental to the physical and psychological well-being of captive animals. Failing to provide proper nutrition harmed Chico by damaging his physical health. The lack of adequate nutrition harassed Chico by creating a likelihood of injury by significantly disrupting normal behavioral patterns. Poor nutrition, on information and belief, potentially contributed to Chico's death.

C. Waccatee Zoo harassed, harmed, and, on information and belief, killed Chico by denying him safe and appropriate housing.

Waccatee did not provide safe and adequate housing for Chico. Unsafe and inappropriate housing harmed Chico by causing direct injury. The conditions harassed him because they interfered with his normal behavioral patterns and created the likelihood of injury. On information and belief, Waccatee's lack of adequate care contributed to Chico's death.

Generally accepted husbandry practices detail design and size requirements for chimpanzee enclosures.⁴⁴ On information and belief, Waccatee Zoo kept Chico in unsafe and inappropriate housing. Chronic uncleanness, reliance on the outdoor enclosure

⁴¹ AZA Ape TAG 2010. Chimpanzee (*Pan troglodytes*) Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 29.

⁴² *Id.* at 29.

⁴³ *Id.* at 30.

⁴⁴ *See Id.* at pp 15-20.

tower, and exposure to members of the public created unsafe and inappropriate housing that interfered with his normal behavioral patterns. On information and belief, this interference both created a likelihood of injury to Chico and actually injured Chico.

Waccatee Zoo's failure to keep Chico in adequate and safe enclosure space harmed him directly and harassed him by impairing normal behavioral patterns which created a likelihood of physical and psychological injury. On information and belief, these conditions also contributed to his death.

D. Waccatee Zoo harmed, harassed, and, on information and belief, potentially killed a chimpanzee by denying him a sanitary enclosure.

Waccatee did not provide Chico sanitary housing. Chico's unsanitary enclosure harmed and harassed him by subjecting him to, and impeding his ability to engage in normal behaviors in his environment without being subjected to unnecessary sanitation-related health risks.

In accordance with generally accepted husbandry standards, outdoor chimpanzee enclosures with dirt substrate should be spot-cleaned on a regular basis.⁴⁵ Porous materials should be steam cleaned or replaced frequently.⁴⁶ Regular and effective cleaning practices reduce the presence of pathogens and help chimpanzees avoid contact with feces and food waste.⁴⁷

On information and belief, Waccatee allowed waste material to accumulate in Chico's enclosure in a manner inconsistent with generally accepted husbandry practices. Waccatee has a chronic, facility-wide problem with keeping facilities sanitary for animals. For example, the USDA noted that Waccatee left the enclosure area near Chico in an unkempt manner with accumulated trash and facility supplies.⁴⁸ The accumulation of material near his enclosure also posed a safety risk. Visitors have observed and continue to observe the buildup of waste material within and near enclosures housing animals. Excessive materials present physical safety hazards and places for mice, rats, and other animals who can pose risks to captive wildlife to reside.

Waccatee Zoo harassed Chico in violation of the ESA through its failure to provide adequate sanitation. The unsanitary conditions exposed Chico to pathogens and created a risk of further injury by rendering it impossible to engage in normal behavioral patterns in his enclosure without risking further exposure to those pathogens, and potentially contributed to Chico's death.

⁴⁵ *Id.* at 16.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See Inspection Report, APHIS, Archie Futrell and Waccatee Zoo, 56-C-0029 (U.S.D.A. Jan. 24, 2002).

E. Waccatee harassed, harmed, and, on information and belief, potentially killed a chimpanzee by housing him alone in an inadequate environment.

Waccatee housed Chico alone in a barren enclosure until his death on November 3, 2015. The isolated and bare environment harmed and harassed Chico by psychologically injuring him and interfering with his normal behavioral patterns in a way that created a likelihood of physical and psychological injury. On information and belief, these deficiencies potentially contributed to Chico's death.

Adequate enclosure space for chimpanzees must be useable and species appropriate, which can be accomplished via caging materials and useable vertical space, furnishings, and substrates. Environmental enhancement should include opportunities to express species-typical behaviors, such as foraging, nest-building, climbing, brachiating, play, and tool use.

For chimpanzees, exhibitors must have environmental enhancement plans with specific provisions that "address the social needs of nonhuman primates of species known to exist in social groups in nature."⁴⁹ These "provisions 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."⁵⁰ The AZA recommends that enrichment plans provide for varied husbandry routines, various manipulable objects, novelty, and sensory enrichment.⁵¹ Abnormal repetitive behaviors—repetitive, pointless movements that often indicate negative stress, psychosis, and poor welfare—are common among chimpanzees confined under inadequate conditions, particularly those held in solitary confinement. Likewise, denying animals the opportunity to engage in species-typical behavior, such as climbing, foraging, social grooming, and play, is a significant source of negative stress.

According to the world's leading experts, long-term solitary confinement is extremely distressing for chimpanzees, and those who are housed alone for long periods of time typically exhibit symptoms of depression, anxiety, and other psychological disturbances. In natural conditions, chimpanzees have dynamic associations within stable social units.⁵² Social units range from 20 to over 100 members that share a common area.⁵³ In nature, chimpanzees live in groups and interact with members of their community in complex ways. They lead active, stimulating lives and form deep and lasting social bonds, which are critical to their long-term health and psychological well-being.⁵⁴ Male chimpanzees remain with their natal families for their entire lives and form

⁴⁹ 9 C.F.R. § 3.81(a). *See also* 9 C.F.R. § 3.81(c)(4) (Requiring special attention for "[i]ndividually housed nonhuman primates that are unable to see and hear nonhuman primates of their own or compatible species.")

⁵⁰ *Id.*

⁵¹ AZA Ape TAG 2010. Chimpanzee (*Pan troglodytes*) Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 56-57.

⁵² *Id.* at 25.

⁵³ *Id.*

⁵⁴ *See Id.*

close social bonds with other males in order to hunt cooperatively, establish social order, protect their mates, and maintain territorial boundaries.

Even though Chico was a member of a highly social species, Waccatee Zoo held him in complete isolation during his many years of confinement at Waccatee. The USDA cited Waccatee for housing Chico alone without a written exemption from an attending veterinarian.⁵⁵ The USDA explained that Waccatee failed to state if any social housing with the same or compatible species was attempted.⁵⁶ Chico was left alone in an enclosure up until the end of his life.⁵⁷

Before his death, Chico engaged in abnormal repetitive behaviors indicative of negative stress. He exhibited repetitive head-swaying, which is consistent with psychological distress likely caused by a lack of appropriate conspecific companionship, space, environmental complexity, and sensory stimulation. His environment consisted mainly of a metal tower with a concrete floor, and on information and belief, little or no other enrichment.

Negative stress that is acute and chronic can suppress a body's immune responses and increase susceptibility to pathogens, exposing a chimpanzee to further exertion and negative stress and amplifying the risk of illness, infection, or even death. By failing to provide Chico with an enriched environment in which he could express natural behavioral patterns, as well as a social group fundamental to his social and psychological well-being, Waccatee Zoo took Chico in violation of the ESA. Waccatee Zoo's actions injured Chico psychologically and interfered with his behavioral patterns in such a way that created a likelihood of physical and psychological injury to Chico, as well as, on information and belief, potentially contributing to his death.

III. Waccatee took leopards in violation of the ESA.

On information and belief, Waccatee Zoo's chronic failure to provide two leopards, Liza and Eolis, with veterinary care, nutrition, and proper enrichment injured leopards and deprived them of the ability to engage in normal behavioral patterns in a way that was likely to produce further injury. Thus, Waccatee Zoo took Liza and Eolis by harming and harassing them in violation of the ESA. Waccatee's acts and omissions also, on information and belief, violated the ESA by contributing to the deaths of ESA-listed leopards.

A. Waccatee harmed, harassed, and, on information and belief, killed leopards by denying Liza and Eolis adequate veterinary care.

Waccatee failed to provide Liza and Eolis adequate veterinary care. Lack of veterinary care harassed and harmed leopards both by causing them actual injury and by creating a likelihood of further injury from untreated health and welfare issues that

⁵⁵ Inspection Report, APHIS, Archie Futrell and Kathleen Futrell, 56-C-0029 (U.S.D.A. Jun. 14, 2010).

⁵⁶ *Id.*

⁵⁷ Prior to his death, PETA had repeatedly offered to facilitate Chico's placement at accredited chimpanzee sanctuaries, at no cost to the Futrells, and to cover all related expenses during Chico's life.

impaired their normal behavioral patterns. On information and belief, the failure to provide adequate veterinary care contributed to the leopards' deaths.

One or both of the now-deceased leopards suffered veterinary issues with their face, eye, and ear. Visitors noted the prominent, swollen nature of at least one of the leopards' faces and eyes. The USDA noted veterinary care issues with one of the leopards, citing Waccatee for neglecting to seek additional veterinary assistance after an ear condition persisted for several weeks.⁵⁸ An inspector from the USDA noted that "the leopard has both ear pinnae completely swollen and when she shakes her head, fluid sounds can be heard."⁵⁹ The inspector also saw the leopard "rubbing her ears on the cages and has rubbed a slightly bloody [sic] raw area under the left ear."⁶⁰ The inspector mentioned that "the veterinarian should have been called out to see this animal" because existing treatment was ineffective.⁶¹ Persistent, untreated injuries can weaken animals and shorten their lifespans. At least one leopard at Waccatee exhibited abnormal repetitive pacing behavior, which is indicative of distress, including psychological harm.

Waccatee did not provide Liza and Eolis adequate veterinary care. The roadside zoo's omissions exacerbated existing conditions—specifically the ear condition the USDA documented. The failure to provide veterinary care also interrupted the leopards' behavioral patterns in a manner that created a likelihood of injury. These omissions, on information and belief, also contributed to Liza and Eolis' deaths.

B. Waccatee harmed harassed, and, on information and belief, killed leopards by denying them adequate nutrition.

On information and belief, Waccatee did not provide Liza and Eolis adequate nutrition. Failing to provide leopards proper nutrition injured the cats by exacerbating existing injuries. The lack of adequate nutrition created a likelihood of injury by significantly disrupting normal behavioral patterns. On information and belief, the failure to provide Liza and Eolis adequate nutrition also contributed to their deaths.

Liza and Eolis suffered from bodily injuries that indicate, on information and belief, poor nutrition. Lack of adequate nutrition impairs animals' abilities to heal from physical injuries. Visitors have documented injuries on the face of one or both leopards. The USDA cited Waccatee for not providing adequate nutrition to felids in its care.⁶² Lack of adequate nutrition harmed the animals, because poor nutrition impairs physical health in big cats. Waccatee Zoo visitors had the opportunity, on information and belief, to offer Liza and Eolis processed food pellets not suited to leopard consumption. Lack of adequate nutrition caused physical and psychological harm. As explained in Parts III.A. and III.E. of this notice letter, leopards suffered psychological distress at Waccatee as evidenced by abnormal repetitive behaviors. Lack of adequate nutrition can cause or contribute to abnormal repetitive behaviors.

⁵⁸ Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Feb. 18, 2014).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), pp 4.

Proper nutrition is fundamental to the physical and psychological well-being of leopards. By failing to provide these leopards with an adequate and appropriate diet, Waccatee Zoo took Liza and Eolis by harming and harassing them in violation of the ESA. Waccatee is also responsible, on information and belief, for the leopards' deaths by failing to provide adequate nutrition.

C. Waccatee Zoo harmed, harassed, and, on information and belief, killed leopards by denying them safe and appropriate housing.

Waccatee did not provide safe and adequate housing for Liza and Eolis. Unsafe and inappropriate housing harmed the animals through direct injury and harassed leopards because those conditions interfered with behavioral patterns in a manner that created a likelihood of injury to the animals. On information and belief, the conditions also contributed to the deaths of the leopards.

Felids require living conditions that are “species appropriate and replicate, in as much as possible, the felids’ wild habitat with a balance between hygiene and the species’ physiological and psychological needs.”⁶³ On information and belief, Waccatee Zoo kept Liza and Eolis in unsafe and inappropriate housing. Waccatee failed to provide the necessary space for the cats to engage in species-typical behaviors including concealing themselves from humans, foraging, stalking, roaming, running, and playing. The shelter is also inadequate because Waccatee routinely fails to repair damaged or inadequate enclosure spaces, including deficiencies likely to undermine insulation or temperature control. Exposed wires and rough material exposed leopards to a likely risk of harm in the form of physical injury.

Waccatee Zoo’s failure to keep Liza and Eolis in adequate and safe enclosures harassed them by impairing normal behavioral patterns which created a likelihood of physical and psychological injury and, on information and belief, harmed Liza and Eolis by causing actual injury. On information and belief, these conditions also contributed to their deaths.

D. Waccatee Zoo harmed, harassed, and, on information and belief, killed leopards by failing to provide a sanitary environment for them.

On information and belief, Waccatee did not provide sanitary enclosure space for leopards. Lack of sanitation harasses leopards by interfering with their normal behavioral patterns in a way that created a likelihood of injury. On information and belief, the conditions also contributed to the deaths of Eolis and Liza.

Sanitation in captive animal settings is important to ensure the well-being of animals. Unsanitary conditions create a risk of disease transmission and violate minimum standards of generally accepted husbandry practice.⁶⁴ Waccatee’s chronic uncleanness throughout the facility and, on information and belief, within Liza and Eolis’ enclosure,

⁶³ Standards for Felid Sanctuaries (2019). Global Federation of Animal Sanctuaries, Phoenix, AZ. pp 1.

⁶⁴ See 9 C.F.R. § 3.131.

harassed the animals. Poor sanitation across the facility and in or near the leopard enclosure created harassing odors as well as a likelihood of disease transmission.

Waccatee's failure to keep the leopard enclosure clean put the leopards' health and welfare at risk. Waccatee Zoo harassed Liza and Eolis by exposing them to dirty conditions thus creating a likelihood of injury or sickness and, on information and belief, harmed Liza and Eolis by causing actual injury. On information and belief, these conditions also contributed to their deaths.

E. Waccatee harmed, harassed, and, on information and belief, killed leopards by denying them adequate environmental enrichment and social grouping.

Waccatee Zoo provided insufficient environmental enrichment for leopards. Failing to provide Liza and Eolis proper enrichment harmed and harassed them, because the lack of enrichment injured leopards psychologically and interfered with their normal behavioral patterns in a way that created the likelihood of injury to both leopards.

Common habitats for leopards include tropical forests, grassland plains, deserts, and alpine areas. Well-designed enrichment is essential for captive leopards. Research involving captive leopards suggests that structural features, such as logs and trees, increase active behavior. Repetitive pacing by leopards in barren enclosure spaces can be due to sensory deprivation from the lack of space and complexity.

On information and belief, Waccatee kept Liza and Eolis in enclosures devoid of enrichment. No trees were in the enclosure and structural features, such as climbing furniture, were absent. Overall, the enclosure lacked the complexity needed to allow species-typical behaviors. Failing to provide Liza and Eolis proper enrichment harmed them by interfering with their normal behavioral patterns including climbing and jumping. At least one leopard also paced in the enclosure. Leopards are also generally considered to be a solitary species and are not suited for group housing. On information and belief, Waccatee housed Eolis and Liza together in a manner inconsistent with leopard behavior. Such an arrangement harmed the animals and interfered with their behavioral patterns in a manner likely to produce injury.

Negative stress that is acute and chronic can suppress a body's immune responses and increase susceptibility to pathogens, exposing leopards to further exertion and negative stress and amplifying the risk of illness, infection, or even death. By injuring the leopards psychologically, depriving leopards of an environment in which they could express natural behaviors, as well as psychological stimulation fundamental to their physical and psychological well-being, Waccatee's conduct harmed and harassed Liza and Eolis and, on information and belief, contributed to their deaths.

IV. Waccatee Zoo takes lions in violation of the ESA.

Keeping Princess and Simba without proper veterinary care, food, shelter, sanitation, environmental enrichment, or social groups, Waccatee Zoo causes these lions to suffer injury and deprives them of the ability to engage in normal behavioral patterns

in a way that is likely to cause further injury. Accordingly, Waccatee Zoo takes lions by harming and harassing them in violation of the ESA.

A. Waccatee harasses and harms lions by denying them adequate veterinary care.

Waccatee fails to provide Princess and Simba adequate veterinary care. Lack of veterinary care harasses and harms lions both by causing them actual injury and by creating a likelihood of further injury from untreated health and welfare issues that impaired their normal behavioral patterns.

Facilities housing lions should provide veterinary care in order to prevent and manage disease, disorders, and injury and provide treatment in hospital settings when necessary.⁶⁵ Generally accepted husbandry standards call for veterinary care to be available at all times in order to address signs of negative stress, disease, or injury in a prompt fashion.⁶⁶

Princess and Simba have experienced documented wounds and physical problems. The USDA cited Waccatee for Simba's incoordination, and noted that such an issue can be an indicator of poor health, including nutritional deficiencies such as metabolic bone disease.⁶⁷ The USDA inspection report explained that Simba's hocks are abnormally dropped, there is a swinging out of his legs as he moves, and there is a swaying to his rear gait.⁶⁸ Waccatee visitors have also reported loss of fur and wound issues on Simba's face, and wounds on Princess' face. On information and belief, Waccatee allows these problems to persist without appropriate veterinary attention.

These conditions are signs of inadequate veterinary care. Waccatee's failure to provide adequate veterinary care creates the likelihood of injury and actually injures both Princess and Simba.

B. Waccatee harasses and harms lions by denying them adequately implemented nutrition protocols.

On information and belief, Waccatee does not provide Princess and Simba adequate nutrition. Failing to provide lions proper nutrition harasses and harms them because poor nutrition creates the likelihood of injury and is actually deleterious to the animals' physical and psychological health.

Lion caretakers should be trained to meet the dietary needs of lions.⁶⁹ AWA regulation requires that food given to lions "be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in

⁶⁵ AZA Lion Species Survival Plan (2012). Lion Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 69.

⁶⁶ *Id.* at 60.

⁶⁷ Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), pp 1.

⁶⁸ *Id.*

⁶⁹ AZA Lion Species Survival Plan (2012). Lion Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 69.

good health.”⁷⁰ Diets should “be prepared with consideration for the age, species, condition, size, and type of the animal.”⁷¹ According to husbandry guidelines, feeding lions diets that contain high percentages of poultry products is of concern because such diets may be nutritionally unbalanced.⁷² At all times, potable water should also be available to lions in containers that are “cleaned and disinfected daily.”⁷³

On information and belief, Waccatee denies lions an appropriate diet and consistent access to clean potable water. Waccatee staff are untrained and unable to provide for the dietary needs of lions. USDA has cited Waccatee Zoo for failing to provide felids in its care with a veterinarian-approved diet. During an inspection, a USDA official noted that felids at Waccatee were fed assorted chicken parts, grocery meat, and Oasis supplementation.⁷⁴ On information and belief, this poorly balanced diet injures Princess and Simba. The official noted that the facility lacked a “written feeding plan with specific composition and amounts of food items or supplementation” for felids.⁷⁵ USDA further noted that Simba exhibited hind limb weakness and incoordination that could be caused by malnutrition.⁷⁶ On information and belief, Waccatee chronically neglects to provide Simba and Princess with clean drinking water. Lack of adequate nutrition causes physical and psychological harm. As explained in Parts IV.A. and IV.E. of this notice letter, lions suffer psychological distress at Waccatee as evidenced by abnormal repetitive behaviors. Lack of adequate nutrition can cause or contribute to abnormal repetitive behaviors.

Waccatee also provides processed food to guests upon entry to the facility. Guests have the opportunity to feed animals without consistent oversight. On information and belief, Listed Species, including lions, can be fed processed food by guests. The processed food provided by Waccatee does not provide species-specific nutrition to lions and impairs their feeding patterns.

Proper nutrition and access to water are fundamental to the physical and psychological well-being of any captive animal. By failing to provide lions with an adequate and appropriate diet, as well as fresh water, Waccatee Zoo takes Simba and Princess by harassing and harming them in violation of the ESA.

C. Waccatee Zoo harms and harasses lions by denying them safe and appropriate shelter.

Waccatee does not provide safe and adequate housing for Princess and Simba. Unsafe and inappropriate housing harms and harasses lions because those conditions

⁷⁰ 9 C.F.R. § 3.129(a).

⁷¹ *Id.*

⁷² Standards for Felid Sanctuaries (2019). Global Federation of Animal Sanctuaries, Phoenix, AZ. pp 15.

⁷³ *Id.* at 13. *See also* 9 C.F.R. § 3.130 (explaining that under the AWA “[f]requency of watering shall consider age, species, condition, size, and type of the animal.”)

⁷⁴ Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), pp 4.

⁷⁵ *Id.*

⁷⁶ *Id.*

impair normal behavioral patterns of lions and is likely to cause other injuries to the animals.

On information and belief, the two lion enclosures at Waccatee Zoo are 20 feet long, 25 feet wide, and 12 feet tall each. As members of an apex predator species, lions need more space than what Waccatee provides in order to engage in species-typical behaviors including concealing themselves from humans, foraging, stalking, roaming, running, and playing. The shelter is also inadequate because Waccatee routinely fails to repair damaged or inadequate enclosure spaces, including deficiencies likely to undermine insulation or temperature control. Exposed wires and rough material expose lions to a likely risk of harm in the form of physical injury.

Waccatee Zoo's failure to keep Princess and Simba in adequate and safe enclosures harms them directly and harasses them by impairing normal sheltering patterns which creates a likelihood of physical and psychological injury.

D. Waccatee Zoo harms and harasses lions by keeping them in unsanitary conditions.

Waccatee fails to maintain clean enclosure spaces for Princess and Simba. Unsanitary enclosures harm and harass lions, because the conditions interfere with normal behavioral patterns in a manner that creates a likelihood of and causes physical and psychological injury to the lions.

Proper sanitation decreases the likelihood of disease transmission and is a minimum standard of generally accepted husbandry. Possible contamination of natural substrates over time can expose big cats "to potentially dangerous concentrations of pathogens," and proper sanitation practices therefore require that contaminated substrates be removed periodically.⁷⁷ Animal care standards also indicate that natural substrates within lion enclosures be spot-cleaned daily.⁷⁸ Hard surface enclosures for lions "should be cleaned daily, and cleaned with detergent and disinfectant on a regularly scheduled basis."⁷⁹ Concerning drainage, the AWA requires that "a suitable method shall be provided to rapidly eliminate excess water" in outdoor enclosures for big cats like lions.⁸⁰

Waccatee harms and harasses lions through unsanitary enclosures. On information and belief, Waccatee does not clean or sanitize the lion enclosures in accordance with generally accepted husbandry standards. Waccatee staff allow food and feces, and thus injurious odors, to remain in enclosures. Water drainage issues within enclosures harms and harasses lions as well. Waccatee Zoo has chronic problems with standing water throughout the facility. Water accumulates within both lion enclosures creating unsanitary, muddy floors. Simba and Princess are left to wallow in muddy conditions due to drainage issues.

⁷⁷ AZA Lion Species Survival Plan (2012). Lion Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 15.

⁷⁸ *Id.* See also 9 C.F.R. § 3.125(d), 3.131.

⁷⁹ AZA Lion Species Survival Plan (2012). Lion Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 15.

⁸⁰ 9 C.F.R. § 3.52(e).

By confining lions in unsanitary conditions that continually put their health and welfare at risk, Waccatee Zoo harms and harasses Princess and Simba by causing, and interfering with normal behavioral patterns that create a likelihood of physical and psychological injury. Waccatee Zoo's ongoing failure to provide them with a sanitary environment constitutes a prohibited take in violation of the ESA.

E. Waccatee harasses and harms lions by denying them adequate enrichment and social grouping.

Waccatee Zoo does not provide sufficient enrichment and socialization for lions. Failing to provide Princess and Simba proper enrichment and social groups harasses and harms them because the failures create the likelihood of injury and actually injures the lions.

A lion's natural habitat includes open woodlands, thick bush, and tall grassy areas.⁸¹ An ideal habitat provides sufficient cover for hunting and denning. In captivity, lions "should [be allowed]... to retreat from conspecifics through the use of visual barriers, such as rock outcroppings, hills, and foliage, without limiting the animal's access to food, water, heat, or shade."⁸² Non-captive lions mainly hunt at night, covering distances ranging from one to eight miles, depending on the availability of food.⁸³ By contrast, it is established that lions restricted to small, unstimulating environments have less resting time and increased frequency of pacing and other manifestations of physiological and psychological injury. Access to multiple areas that provide hiding places nurtures the psychological and physical welfare of cats.

Waccatee fails to provide any appropriate enrichment necessary for lions that need to forage, play, and engage in other species appropriate behavior. Simba and Princess are housed in small enclosures with mud floors that lack complexity and provide only minor—and wholly inadequate—enrichment. Waccatee Zoo's ongoing failure to provide lions with environmental complexity denies them the ability to engage in normal behaviors such as adequate hiding, running and walking, playing, exploring, marking, and resting. In addition to this, the present enrichment is not functional for lions and is consistently dirty.⁸⁴ Princess is, on information and belief, provided with a bowling ball as a source of enrichment. Simba is provided with a tire. Tires and bowling balls are inadequate and dangerous enrichment, with bowling balls providing a risk of broken teeth and tires a risk of perforation of the digestive tract if ingested. These enrichments are also static and lack novelty. Enrichment is only meaningful when novel, so the same item within the enclosure over an extensive period of time has lost enrichment value.

As a likely result of the deficiencies in their environments, Simba and Princess are repeatedly seen pacing back and forth within their enclosures. This abnormal repetitive behavior is consistent with psychological distress that is likely caused by a lack of space and

⁸¹ AZA Lion Species Survival Plan (2012). Lion Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. p. 11.

⁸² *Id.* at 18.

⁸³ *Id.*

⁸⁴ *See also* Section IV.D (addressing sanitation issues).

environmental complexity, and insufficient stimulation. Limited enrichment inhibits Simba's and Princess' behavioral repertoires and is inadequate to provide for their physiological and psychological well-being.

Waccatee denies Princess and Simba a proper social group. Lions are typically found in large social groups called prides. For African lions, 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 are highly social—often developing preferred groupings between close relatives such as mother/daughter or siblings.⁸⁵ Female lions typically stay in their natal prides their entire lives.⁸⁶ Unlike her counterparts in the wild, Princess is housed alone and thus denied the companionship of a pride. This isolation is particularly detrimental for female lions given their highly social nature. Simba is also housed alone without the social structure characteristic of lions.

By depriving threatened and/or endangered animals of an environment in which they can express natural behaviors, as well as psychological stimulation fundamental to their physical, social, and psychological well-being, Waccatee's actions constitute a take in violation of the ESA. Waccatee Zoo continues to deny lions an environment in which they can express behaviors that these animals exhibit in nature, including appropriate species-typical social interaction. Waccatee Zoo's actions constitute a take in violation of the ESA.

V. Waccatee takes ring-tailed lemurs in violation of the ESA.

Waccatee Zoo confines endangered ring-tailed lemurs in conditions that harm and harass the animals. The conditions cause injury and interfere with essential behavioral patterns, which place the lemurs at risk for further injury in violation of the ESA. Waccatee fails to provide adequate shelter, adequate nutrition, sanitary environments for the lemurs, adequate enrichment, and houses lemurs with members of incompatible species.

A. On information and belief, Waccatee harms and harasses lemurs by denying them adequate veterinary care.

On information and belief, Waccatee Zoo denies adequate veterinary care to lemurs. Lack of veterinary care harasses and harms lemurs both by causing them actual injury and by creating a likelihood of further injury from untreated health and welfare issues that impaired their normal behavioral patterns.

Generally accepted animal husbandry practices call for veterinary coverage to be available to animals every day, at all times, so “that indications of disease, injury, or

⁸⁵ AZA Lion Species Survival Plan (2012). Lion Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 34.

⁸⁶ *Id.* at 12.

stress may be dealt with promptly.”⁸⁷ Untreated issues can harm lemurs directly and interfere with their normal behavioral patterns. On information and belief, Waccatee fails to provide lemurs sufficient veterinary care.

Waccatee’s failure to provide adequate veterinary care for lemurs harms and harasses them in violation of the ESA. Untreated conditions injure lemurs and interfere with normal activities in a way that can lead to further injury.

B. Waccatee Zoo harms and harasses lemurs by failing to follow species-specific nutrition protocols.

On information and belief, Waccatee does not follow appropriate nutrition protocols for ring-tailed lemurs. Without adequate nutrition, Waccatee maintains conditions that actually injure lemurs and harasses lemurs by significantly disrupting normal behavioral patterns in a manner that creates a likelihood of injury.

According to industry guidelines, lemurs should be provided with fresh browse (vegetation, such as twigs and young shoots) daily “to promote natural feeding behaviors.”⁸⁸ On information and belief, Waccatee does not provide adequate browse to lemurs every day. Staff leave food that is covered in flies within enclosures. Some lemurs are overweight or possess abnormal masses on their chest or belly area which may be indicative of nutritional issues. Waccatee also, on information and belief, allows the public to feed animals food provided by the facility with minimal staff presence to observe visitor behavior. Without adequate oversight, animals can be offered improper foods in a manner contrary to standard husbandry practices for lemurs. Lack of adequate nutrition causes physical and psychological harm. On information and belief, lemurs suffer psychological distress at Waccatee, in part, due to lack of adequate nutrition.

Waccatee fails to follow proper nutritional protocols to the detriment of lemurs. Denying lemurs a species appropriate diet creates a likelihood of injury by significantly disrupting normal feeding behaviors. The lack of proper nutrition, on information and belief, harms lemurs by causing physical and psychological injury as well.

C. Waccatee Zoo harms and harasses ring-tailed lemurs by denying them safe and appropriate housing.

Waccatee exposes lemurs to dangerous and inappropriate conditions within their enclosures. Unsafe and inappropriate enclosures harm and harass lemurs by injuring them and interfering with their normal behavioral patterns in a manner likely to cause further injury to animals.

Ring-tailed lemurs require specific ambient temperatures in their environment. The average temperature in southwestern Madagascar is about 86°F (30°C) during the

⁸⁷ AZA Accreditation Standard 2.1.2. 2022. The Accreditation Standards & Related Policies. Association of Zoos and Aquariums, Silver Spring, MD, <https://assets.speakcdn.com/assets/2332/aza-accreditation-standards.pdf>.

⁸⁸ See Standards for Prosimian Sanctuaries (2019). Global Federation of Animal Sanctuaries, Phoenix, AZ. pp 21.

summer and 75.2°F (24°C) during the winter. In the eastern portion of ring-tailed lemurs' range, temperatures can range between 19.4 to 78.8°F (-7° to 26°C). Animal husbandry guides for the Eulemur provide that captive Eulemurs should be housed exclusively indoors when temperatures fall below 48°F (8.9°C).⁸⁹ While Eulemurs and ring-tailed lemurs are not the same species, temperature variations and tolerance are similar across most lemur species.

Waccatee uses an unsafe and inadequate heat source for the lemur enclosure in the antique barn. A space heater is balanced on top of boxes and crates outside of the enclosure space, which is a fire hazard and is insufficient to heat the entire enclosure. The space heater's placement is in violation of the International Fire Code (IFC) § 603.09 (version 2021).⁹⁰ Further, on information and belief, the placement of the heater creates an unsafe hot spot on the metal fencing of the enclosure. This hot spot creates the likelihood of injury to lemurs. Waccatee Zoo has also used heat lamps in the lemur areas that contain combustible material in violation of IFC § 305.1 (version 2021). Further, Waccatee Zoo leaves exposed mesh wiring in and around lemur enclosure space. Exposed wire is harmful to ring-tailed lemurs, because they can injure themselves on the exposed wiring.

Waccatee's enclosures are insufficient to secure the animals, making lemurs vulnerable to public contact. Public contact exposes lemurs to disease and physical harm by humans or other animals that may pose a risk of injury to the lemurs. USDA noted this problem as far back as November 12, 2003 noting that "[a] juvenile ring lemur is going in and out through the wire panels of the colony's outdoor enclosure... [t]he enclosure needs to be made more secure with smaller openings to contain all the animals."⁹¹ USDA noted in 2008 that the lemurs held in the barn enclosure "do not have a complete public barrier."⁹² The inspector noted that "[i]t is still possible for adult members of the public to reach above these barrier fences and put their fingers into the lemur cage."⁹³ Juvenile lemurs continue to be observed outside of their enclosures. In June 2021, chickens were also documented in the lemur enclosure on two dates. The lemurs' exposure to these chickens exposes them to disease hazards, specifically the potential for salmonella.

Confining lemurs in inadequate enclosures causes the lemurs physical and psychological injuries, and significantly disrupts the animal's normal behavioral patterns in a manner likely to cause further injury in violation of the ESA.

⁸⁹ AZA Prosimian Taxon Advisory Group 2013. Eulemur Care Manual. Association of Zoos and Aquariums, Silver Spring, MD. pp 9.

⁹⁰ As of November 16, 2021, Waccatee has failed to resolve various fire code violations as evidence by its failure to pass a Horry County Code Enforcement fire code inspection.

⁹¹ Inspection Report, APHIS, Archie Futrell and Waccatee Zoo, 56-C-0029 (U.S.D.A. Nov. 12, 2003), pp 1.

⁹² Inspection Report, APHIS, Archie Futrell, 56-C-0029 (U.S.D.A. Jun. 18, 2008), pp 2.

⁹³ *Id.*

D. Waccatee Zoo harasses and harms lemurs by failing to provide a sanitary environment for them.

Waccatee denies ring-tailed lemurs sanitary enclosures. Lack of sanitation harasses lemurs by interfering with their normal behavioral patterns in such a manner that creates likelihood of injury and harms them.

Captive lemurs require clean environments. Lemurs have different ways of communicating with one another and olfactory (smell-oriented) communication is one of the most important. Lemurs produce unique scents for communication. Unsanitary conditions in, near, and surrounding a lemur's enclosure "interfere[s] with the lemurs' olfactory senses, to which they are highly attuned."⁹⁴ Lemurs living in an unsanitary environment is similar "to humans being in a room where there is constantly white noise being amplified."⁹⁵

Waccatee has and continues to allow dirt, dust, cobwebs, and mold to accumulate in the lemur enclosures located in its antique barn. There are also wasp nests in the barn near the lemur enclosure and holes in the ceiling in the barn enclosure. The USDA documented Waccatee's failure to maintain sanitary conditions for lemurs as early as November 2003.⁹⁶ In 2012, the USDA also noted the poor condition of a lemur enclosure: "[a] shift board in the lemur tower housing 15 lemurs is excessively worn and can no longer be sanitized."⁹⁷ On information and belief, Waccatee fails to regularly remove old food and feces from the lemur enclosures. The facility also allows dried urine to remain in enclosures. The facilities' overall lack of maintenance threatens lemurs as well, because the poor state of the entire facility impacts conditions near and surrounding lemur enclosures. These unsanitary conditions induce negative stress to the lemurs because they require clean environments to exhibit normal behaviors.

The presence of mice at Waccatee and lack of appropriate or safe control measures is also unsafe for ring-tailed lemurs. On February 6, 2017, the USDA cited Waccatee for mice feces found in multiple areas with a live mouse seen on a shelf containing feed bags.⁹⁸ The inspection report mentioned that rodent holes were seen around several enclosures.⁹⁹ The USDA noted that "[r]odent control measures need to be established and maintained in order to decrease the likelihood of disease transmission from wild rodents."¹⁰⁰ The mice issue at Waccatee has continued to persist, and mice droppings are frequently seen within the enclosures. Waccatee keeps poison traps in lemur enclosures, thus putting lemurs at risk of physiological injury and death if they make direct contact with the traps.

⁹⁴ *Sellner*, 161 F. Supp.3d at 703 (noting that feces and cobwebs interfered with lemurs' sense of smell) (internal quotations omitted).

⁹⁵ *Id.* (internal quotations omitted).

⁹⁶ Inspection Report, APHIS, Archie Futrell and Waccatee Zoo, 56-C-0029 (U.S.D.A. Nov. 12, 2003), pp 2. (noting that "[t]he indoor wooden shelter building for the two [male] lemurs has an excess accumulation of spiderwebs and mud dauber nests on the ceiling and upper walls.").

⁹⁷ Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 2, 2012).

⁹⁸ Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Feb. 6, 2017).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Waccatee's ongoing failure to provide lemurs with a non-injurious and sanitary environment constitutes a prohibited take in violation of the ESA. Waccatee Zoo actually injures the lemurs and interrupts their behavioral patterns in a manner that creates a likelihood of additional physical and psychological injury.

E. Waccatee Zoo harms and harasses lemurs through inadequate environmental enrichment and mixed-species exhibits.

Waccatee harms and harasses ring-tailed lemurs by depriving them of enrichment and proper peer groups. Lack of enrichment and mixed-species housing injure lemurs and interfere with their normal behaviors in a way that leads to the likelihood of further injury.

On the brink of extinction, wild ring-tailed lemurs are only found in the southwest portion of Madagascar. The territories of wild ring-tailed lemurs range from fourteen to fifty-six acres in size. Traveling in groups of eight to twenty individuals, they roam about their range each day foraging for food.¹⁰¹ Lemurs spend over one-third of their time on the ground, but they are known to spend time in all layers of their natural habitats. Ring-tailed lemurs are social animals with advanced cognitive abilities.

Waccatee does not provide adequate enrichment for lemurs. On information and belief, this lack of enrichment interferes with normal behavioral patterns such as roaming, species-typical exploration, play, and foraging. Lemurs at Waccatee live with little to no enrichment and the few items provided are not cleaned frequently. The condition of these limited enrichment items suggests that these items are unused and not rotated to ensure novelty. Regarding lemurs, the USDA has cited Waccatee for:

- Failing to provide enough manipulable objects to non-human primates.¹⁰²
- Failing to provide foraging devices and methods to promote foraging for food.¹⁰³
- Vague and incomplete environmental enhancement plan for primates.¹⁰⁴

Waccatee Zoo harms lemurs by housing them with members of incompatible species. Research has demonstrated that mixed-species exhibits can be traumatic for animals. Waccatee houses a macaque with lemurs. Housing ring-tailed lemurs and macaques together can cause distress to both species as they have different social patterns. Further, macaques can expose lemurs to the deadly Herpes-B virus and other infectious diseases.

¹⁰¹ See *Kuehl v. Sellner*, 161 F. Supp.3d 678 (N.D. Iowa 2016) (finding zoo's treatment of lemurs constituted unlawful take in violation of the ESA). See also C.B. Mowry & J.L. Campbell, Nutrition, in Ring-tailed Lemur (*Lemur catta*) Husbandry Manual 2 (American Ass'n of Zoos & Aquariums, 2001).

¹⁰² Inspection Report, APHIS, Archie Futrell and Waccatee Zoo, 56-C-0029 (U.S.D.A. Nov. 12, 2003), pp 1.

¹⁰³ *Id.*

¹⁰⁴ Inspection Report, APHIS, Archie Futrell and Waccatee Zoo, 56-C-0029 (U.S.D.A. Sept. 25, 2001), pp 1.

Negative stress that is acute and chronic can suppress a body's immune responses and increase susceptibility to pathogens, exposing lemurs to further exertion and negative stress and amplifying the risk of illness, infection, or even death. Waccatee's environments and placement of members of incompatible species deny lemurs the ability to express normal behaviors such as roaming, deriving intellectual stimulation from a varied habitat, or expressing a full range of natural behaviors such as species-typical exploration, play, and foraging, as well as social interaction and adjustments. Waccatee's actions interrupt lemur behaviors in a manner that creates the likelihood of physical and psychological injury to them. The presence of incompatible peers also injures the lemurs psychologically and, ultimately, physically.

VI. Waccatee takes parrots in violation of the ESA.

Waccatee Zoo houses ESA-listed parrots, in conditions that harm and harass animals. Waccatee fails to meet their medical needs, denies them proper nutrition, confines them in inadequate and unsanitary housing, does not provide parrots an enriched enclosure, and houses parrots alone. These circumstances injure parrots and interfere with essential behavioral patterns in a manner that results in risk of injury.

A. Waccatee harms and harasses parrots by denying them adequate veterinary care.

Waccatee denies ESA-listed parrots adequate veterinary care. Lack of veterinary care harasses and harms parrots both by causing them actual injury and by creating a likelihood of further injury from untreated health and welfare issues that impaired their normal behavioral patterns.

Facilities should provide veterinary care to captive birds from professionals trained or experienced in avian medicine.¹⁰⁵ Parrots have nails and beaks made of living tissue that continues to grow with the bird. Due to the nail growth, birds need regular nail trims. Nail trimming requires experience and specific tools. Beak trims also require trained and experienced professionals to be done safely. Overgrown nails make it harder for birds to perch properly while overgrown beaks interfere with normal feeding behavior in a manner that creates a likelihood of physical and psychological injury.

Captive parrots held in solitary confinement and in conditions that fail to meet generally accepted standards are prone to abnormal repetitive behaviors such as feather picking and auto-mutilation, as well as screaming, biting, and display of phobias. Feather loss can be caused by feather damaging behavior ("FDB"). Parrots with FDB chew, bite or pluck their own feathers with their beaks, which damages feathers and skin.

Birds at Waccatee suffer from a lack of adequate veterinary care. Delilah, the ESA-protected scarlet macaw at Waccatee, has both an overgrown beak and nails, which are in need of veterinary attention. Parrots at Waccatee Zoo also suffer from feather damage. On information and belief, damage to the birds' feathers is indicative of disease

¹⁰⁵ Association of Zoos and Aquariums, "AZA Comments on Establishing AWA Standards for Birds," APHIS-2020-0068, 8025 (Oct. 28, 2020), <https://www.regulations.gov/comment/APHIS-2020-0068-8025>.

or self-mutilation. The lack of care for these birds' claws and feathers demonstrates uncorrected medical problems and compromised welfare.

The physical and behavioral conditions of birds at Waccatee are signs that Waccatee harms and harasses parrots by failing to provide adequate veterinary care. This lack of care injures the animals and interferes with their normal behavior in a manner that increases the likelihood of additional physical and psychological injury.

B. Waccatee harms and harasses parrots by denying them adequate nutrition.

On information and belief, Waccatee does not provide parrots with adequate food and water. Failing to provide adequate nutrition harms birds because the omission injures the birds physically and psychologically. The omission harasses parrots by significantly disrupting normal feeding behaviors in a manner that creates a likelihood of injury.

Nutrition is a fundamental element of preventive avian care. Poor feather quality, feather picking, self-mutilation, and other physical conditions can be signs of malnutrition. AZA best practices also establish that "fresh potable water should be made available daily for birds to consume."¹⁰⁶ Parrots at Waccatee Zoo are left without fresh food and water, and left with food that is covered in flies. Lack of adequate nutrition causes physical and psychological harm. As explained in Part VI.A. of this notice letter, birds suffer psychological distress at Waccatee as evidenced by feather damaging behavior. Lack of adequate nutrition can cause or contribute to psychological distress.

On information and belief, Waccatee harasses and harms parrots by failing to provide proper nutrition and access to potable water. The lack of adequate nutrition injures birds by weakening their physical and psychological health. The lack of adequate nutrition harasses parrots by creating a likelihood of injury by significantly disrupting normal behavioral patterns.

C. Waccatee Zoo harasses and harms parrots by denying them safe and appropriate housing.

Waccatee places ESA-listed birds in unsafe, inappropriate housing. The housing harasses them by interfering with normal behavioral patterns in a manner that is likely to cause injury. The housing harms birds by, among other injuries, significantly altering flight and sheltering behavior patterns.

Enclosure size is important in parrot care. The AZA recommends that "small active perching bird species should have sufficient space and space complexity to allow for relatively normal flight/movement behavior."¹⁰⁷ Flight is a fundamental need for parrots' physical, behavioral, and psychological health and well-being. Depriving birds of the ability to fly is a source of negative stress and causes poor welfare. Insufficient space may "be indicated by evidence of malnutrition, poor condition, debility, stress, or

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

abnormal behavior patterns.”¹⁰⁸ Due to instinct, parrots remain on guard for potential predators. They are sensitive to changes in stimuli and require barriers to bright light. Bright light and other perceived stressors negatively impacts parrot welfare.

Waccatee keeps ESA-listed parrots in cages that are too small for the birds. These small cages prevent the birds from being able to fly and from exhibiting normal behavioral patterns. The birds at Waccatee are confined to cages so small that they have difficulty fully extending their wings without sustaining feather damage. The birds are also exposed to continuous artificial light, placed in sight of predators, and forced to be near unpredictable noise from gift shop traffic.

Waccatee harasses and harms parrots. Confining parrots in poor housing that does not allow animals to express normal behavior patterns creates a likelihood of psychological and physical injury to the animals and, on information and belief, actually injures the animals.

D. Waccatee Zoo harms and harasses parrots by denying them sanitary conditions.

Waccatee keeps ESA-protected parrots in unsanitary cages. Unsanitary cages harm and harass the birds by injuring them and by interfering with normal behavioral patterns in a way that is likely to cause physical and psychological injury.

Generally accepted husbandry practices prescribe that surfaces in contact with captive birds should be readily cleaned or replaced when excessively soiled.¹⁰⁹ Failure to maintain sanitary conditions creates the risk of disease transmission among birds. Bird keepers should remove excreta from primary enclosures “as often as necessary to prevent contamination of the birds contained therein and to minimize disease hazards and to reduce odors.”¹¹⁰ Enclosures with absorbent bedding “must be spot cleaned with sufficient frequency to ensure all birds the freedom to avoid contact with excreta, or as often as necessary to reduce disease hazards, insects, pests, and odors.”¹¹¹ Staff should regularly clean perches, bars, cage bottoms, sides, perching, ropes, and other enclosure objects.¹¹² The AZA recommends that food and water containers “must be kept clean and sanitary, including preventing the accumulation of biofilm.”¹¹³ All water receptacles should be kept clean and sanitary.¹¹⁴ The AZA prescribes that buildings and grounds be kept clean to protect the overall welfare of birds.¹¹⁵

Waccatee does not provide clean and sanitized homes for ESA-listed parrots. Parrot and other bird cages are consistently unclean with accumulation of feces and food waste. The little enrichment materials that exist in the cages are soiled. The perches in the

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

parrot cages are dirty. These conditions demonstrate a prolonged neglect of basic cleaning.

Dirty enclosures interrupt normal behavioral patterns in a manner that creates a likelihood of physical and psychological injury. Waccatee's ongoing failure to provide Cream, Delilah, and the other parrots with a sanitary environment, including non-soiled enrichment items and enclosures and lack of injurious odors, harms and harasses them by exposing them to increased risk of pathogens, amplifying the risk of illness, infection, or even death.

E. Waccatee harms and harasses parrots by denying them adequate environmental enrichment and social grouping.

Waccatee Zoo denies parrots adequate enrichment and socialization. Withholding enrichment and companionship harms parrots, because the loss injures the birds psychologically and physically. A lack of enrichment and appropriate social grouping also harasses parrots by impairing essential behavioral patterns in a way that creates a risk of injury.

Enrichment is essential to mitigate stress and boredom in captive parrots. Wild scarlet macaws and cockatoos live in tropical rainforests or deciduous forests where they spend their time in the tree canopy. These activities include flying for miles daily, climbing vegetation, foraging on plant life, socializing with individuals of their own species, and sleeping in trees. Features in captive settings can increase environmental complexity for captive animals, which facilitates normal behaviors and other aspects of biological functioning that ensures physical and psychological health. Parrots are prey species and, therefore, adapted to remain vigilant for potential predators. Visual barriers are a basic requirement to provide captive birds with a sense of security and the option to retreat or hide from other birds, from people, or other perceived stressors. Foraging opportunities are necessary to the welfare of captive parrots as they reduce fear response in them. Parrots are curious and intelligent and have an innate need to play. Perches for captive parrots should have an irregular surface in order to reduce the likelihood of causing bumblefoot (pododermatitis).¹¹⁶ Bumblefoot is a bacterial infection and inflammatory reaction on the feet of birds. Dust and water bathing are also important behaviors for birds to maintain feather health.

Waccatee fails to provide ESA-listed parrots with adequate environmental enrichment, which harasses and harms the parrots. Waccatee holds several parrots in its gift shop within small cages. They are housed in these cages alone and are not provided any larger enclosure spaces to explore. The parrot cages have little enrichment, most of it static and inappropriate. Enclosures feature refuse items, such as dirty towels, soda bottles, and old paper boxes. Delilah's cage only has a hanging piece of wood, a couple of hanging chains, a rope, and a plastic bottle. These materials offer little stimulation and the plastic bottles and chains pose a safety hazard. The lack of complexity reduces foraging opportunities that parrots need for good health. The facility does not provide visual barriers for the parrots to retreat from stressors or to hide from view from other

¹¹⁶ *Id.*

birds or people. There is no space to distance themselves or seek quiet refuge from environmental stressors. Their perches also lack variety, which puts them at risk of bumblefoot (a bacterial infection and inflammatory reaction that occurs on the feet of birds, rodents, and rabbits; it is known scientifically as “ulcerative pododermatitis”). The perch’s short length also provides minimal opportunities to perch or roost in a manner that is comfortable and healthy for their bodies. Two of the birds only have one perch. None of the parrots at Waccatee have access to water baths or dust baths.

Further, based on documented research, the lack of enrichment creates a likelihood of psychological and ultimately physical injury to the parrots at Waccatee, which is exacerbated by their solitary confinement. A lack of environmental enrichment is especially harmful to birds housed alone.¹¹⁷

Solitary parrots in inadequate enclosures are often bored and lonely. Due to their high intelligence, macaws and cockatoos are particularly susceptible to boredom and frustration and require planned and varied forms of enrichment that provide opportunities to manipulate objects, problem-solve, and to exercise choice and control over their time and environments.

Delilah, Cream, and the other ESA-listed cockatoos are kept in cages alone. Macaws and cockatoos are social animals that live in large flocks in the wild. Flocks provide security, opportunities for positive engagement, and social bonding. On information and belief, the parrots of Waccatee are distressed and frustrated, because they are denied socialization. Housing social species in isolation without direct access to compatible members of their own species is another source of chronic negative stress, frustration, and is a serious welfare concern for the parrots.

Negative stress that is acute and chronic can suppress a body’s immune responses and increase susceptibility to pathogens, exposing parrots to further exertion and negative stress and amplifying the risk of illness, infection, or even death. By depriving listed birds of an environment in which they can express natural behaviors and companionship, as well as psychological stimulation fundamental to their physical, social, and psychological well-being, Waccatee’s actions constitute a take in violation of the ESA. Waccatee Zoo injures the birds psychologically and impairs essential behavioral patterns in a manner that creates a likelihood of physical and psychological injury.

VII. Waccatee takes a scimitar-horned oryx in violation of the ESA.

Waccatee Zoo denies a scimitar-horned oryx (a type of large African antelope) adequate veterinary care, appropriate enclosure space, sanitation, and a proper social group. These failures harm and harass the oryx by injuring the animal and interfering with normal behaviors in a manner that is likely to cause injury.¹¹⁸

¹¹⁷ *Id.*

¹¹⁸ On information and belief, the scimitar-horned oryx at Waccatee is not subject to an exemption codified at 50 C.F.R. § 17.21(h).

A. Waccatee harms and harasses a scimitar-horned oryx by denying adequate veterinary care.

On information and belief, Waccatee Zoo denies adequate veterinary care to a scimitar-horned oryx. Lack of veterinary care harasses and harms the oryx both by causing the animal actual injury and by creating a likelihood of further injury from untreated health and welfare issues that impaired normal behavioral patterns.

Overgrown or cracked hooves are signs of ill health in scimitar-horned oryxes.¹¹⁹ Hoof problems also impair an animal's locomotion and interferes with normal behaviors. Untreated, overgrown hooves can also lead to foot infections, lameness, deep cracks, and other painful conditions. Trained farriers can maintain oryx hooves in appropriate condition, and experienced veterinarians can treat hoof related-issues. On information and belief, Waccatee fails to provide the oryx adequate veterinary care for hooves, and chronically neglects hoof care for other ungulates throughout the facility, including, on information and belief, the scimitar-horned oryx.¹²⁰ Overgrown hooves impede the animal's ability to walk and can be painful. The oryx at Waccatee has also paced back and forth in its enclosure in an abnormal, repetitive fashion.

Hoof care is essential for oryx health. Waccatee's failure to provide adequate veterinary care for the oryx harms and harasses the animal in violation of the ESA. These hoof and psychological conditions injure the animal and interfere with normal activities in a way that can lead to injury.

B. On information and belief, Waccatee harms and harasses the oryx by denying the animal adequate nutrition.

On information and belief, Waccatee denies the scimitar-horned oryx adequate nutrition. This denial harms the animal's physical and psychological health in violation of the ESA. Lack of adequate nutrition harasses the animal by significantly disrupting normal behavioral patterns in a manner that creates a likelihood of injury.

Under generally accepted husbandry practices, facilities housing oryxes should provide a specific diet.¹²¹ Facilities also should provide "[f]resh, clean water" to scimitar-horned oryxes "at all times."¹²² On information and belief, Waccatee fails to provide the oryx with adequate nutrition. Lack of adequate nutrition causes physical and psychological harm. As explained in Parts VII.A. and VII.E. of this notice letter, the oryx suffers psychological distress at Waccatee as evidenced by abnormal repetitive pacing.

¹¹⁹ Tania Gilbert and Tim Woodfine, eds., "The Biology, Husbandry and Conservation of Scimitar-horned Oryx (*Oryx dammah*)," Marwell Preservation Trust, 2004. pp 46.

¹²⁰ See Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Jan. 26, 2021), pp 1; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Oct. 22, 2020), pp 1; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Mar. 5, 2020), pp 1; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), pp 1; Inspection Report, APHIS, Archie Futrell, 56-C-0029 (U.S.D.A. Aug. 18, 2010), pp 1.

¹²¹ See Tania Gilbert and Tim Woodfine, eds., "The Biology, Husbandry and Conservation of Scimitar-horned Oryx (*Oryx dammah*)," Marwell Preservation Trust, 2004. pp 31.

¹²² *Id.*

Lack of adequate nutrition can cause or contribute to abnormal repetitive behaviors such as pacing.

Proper nutritional protocols and their implementation are fundamental to the physical and psychological well-being of captive animals. Failing to provide proper nutrition to the oryx harms and harasses the animal.

C. Waccatee Zoo harms and harasses a scimitar-horned oryx through inappropriate enclosure space.

On information and belief, Waccatee houses a scimitar-horned oryx in an unsafe and inappropriate enclosure. The enclosure harms and harasses the oryx because it injures the animal and disrupts the normal behavioral patterns in a manner that creates a likelihood of physical and psychological injury.

According to generally accepted husbandry practices, scimitar-horned oryxes require shelter from adverse weather.¹²³ The animals also require suitable substrates for hoof health. Suitable substrates include hardstands composed of compacted gravel or sand.¹²⁴ Without these features, oryxes feel overheated or cold in response to extreme weather. Their hooves also become overgrown, because hard surfaces ensure that hooves are well-maintained. Poor hoof quality is painful and impedes an oryx's ability to walk.

Waccatee Zoo, on information and belief, fails to provide the scimitar-horned oryx adequate enclosure space. The oryx resides in an open field with no apparent shelter. This means the oryx's behavioral patterns are interrupted by extreme weather. There is also a lack of hardstand, which threatens hoof health.

By confining an oryx in an unsafe enclosure that does not allow the animal to express natural behaviors, Waccatee significantly disrupts the animal's normal behavioral patterns in a manner likely to cause, and that, on information and belief, actually causes, further physical and psychological injury.

D. Waccatee Zoo harms and harasses a scimitar-horned oryx through lack of sanitation.

On information and belief, Waccatee does not provide sanitary enclosure space for the scimitar-horned oryx confined there. Lack of sanitation directly harms the oryx and harasses the oryx by interfering with normal behavioral patterns in a way that creates the likelihood of injury.

Sanitation in captive animal settings is important to ensure the well-being of animals. Unsanitary conditions create a risk of disease transmission and violate minimum standards of generally accepted husbandry practice.¹²⁵ Managing stormwater is a part of effective sanitation. Under the AWA, "a suitable method shall be provided to rapidly eliminate excess water" in outdoor enclosures for hooved animals.¹²⁶ For oryxes in

¹²³ *Id.* at pp 33.

¹²⁴ *Id.* at 34.

¹²⁵ *See* 9 C.F.R. § 3.131.

¹²⁶ *Id.* at § 3.127(c).

particular, “problems can occur if animals stand in wet or muddy areas for long periods.”¹²⁷

Waccatee’s chronic cleanliness problems throughout the facility and, on information and belief, within the oryx enclosure, harass the animal. The poor sanitation across the grounds and in or near the oryx enclosure creates harassing odors as well as a likelihood of disease transmission. Water drainage issues within enclosures, on information and belief, also harass the scimitar-horned oryx. Waccatee has chronic problems with standing water throughout the facility and in enclosures. Water accumulates outside and inside of animal enclosures creating unsanitary conditions that create the likelihood of disease transmission.

Waccatee Zoo’s failure to keep the oryx enclosure clean puts the animal’s health and welfare at risk. Waccatee Zoo harasses the scimitar-horned oryx by exposing the animal to muddy areas and standing water thus creating the likelihood of injury or sickness and, on information and belief, actually causing injury and sickness.

E. Waccatee Zoo harms and harasses an oryx by housing the animal in isolation without proper enrichment.

Waccatee Zoo denies the scimitar-horned oryx an appropriate social group. Failing to provide the scimitar-horned oryx socialization harms and harasses the animal because isolation causes psychological and ultimately physical injury and interferes with normal behavioral patterns in a manner that creates likelihood of injury.

Scimitar-horned oryxes historically resided in the northern edge of the Sahara and a semi-arid zone of the Sahara. Before they became extinct in the wild, scimitar-horned oryx herds ranged between 10-30 individuals.¹²⁸ Oryxes are social in nature and individuals were unlikely to have spent much, if any, time away from the herd.¹²⁹ A scimitar-horned oryx housed alone for an extended period of time “may not become socially competent and could develop aberrant or stereotypic [behavior].”¹³⁰ Husbandry guidelines recommend that oryxes in captivity be housed in harem groups (one male, several females), multi-male groups (several males, several females), bachelor groups (several males), or all female groups (if necessary).¹³¹ Housing single animals should be avoided.¹³² Furthermore, oryxes have enrichment needs that facilities must address in captive settings.

One scimitar-horned oryx lives at Waccatee Zoo. The oryx has no conspecific herd and lives in a space with little to no enrichment. Such arrangement injures the well-being of the animal. The oryx has been documented engaging in abnormal pacing

¹²⁷ Tania Gilbert and Tim Woodfine, eds., “The Biology, Husbandry and Conservation of Scimitar-horned Oryx (*Oryx dammah*),” Marwell Preservation Trust, 2004. pp 34.

¹²⁸ Tania Gilbert and Tim Woodfine, eds., “The Biology, Husbandry and Conservation of Scimitar-horned Oryx (*Oryx dammah*),” Marwell Preservation Trust, 2004. pp 4.

¹²⁹ *Id.* at 24.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

behavior, indicating that this animal is likely experiencing negative stress by living away from other scimitar-horned oryxes. Residing alone also interrupts the animal's normal behavioral patterns, and that interruption creates a likelihood of injury. Waccatee can only cure this harm by allowing the oryx to be transferred to another facility with other oryxes.

Negative stress that is acute and chronic can suppress a body's immune responses and increase susceptibility to pathogens, exposing an oryx to further exertion and negative stress and amplifying the risk of illness, infection, or even death. By depriving the scimitar-horned oryx social interaction fundamental to psychological and ultimately physical well-being, Waccatee Zoo's actions create a likelihood of, and on information and belief has caused, physical and psychological injury.

VIII. Waccatee sells taken Listed Species.

Waccatee violates the ESA by selling taken endangered and threatened animals. On information and belief, Waccatee sells lion parts and lemurs in violation of 16 U.S.C. § 1538(d), (e) and (f). Lion hair falls under the definition of wildlife under the Act and is thus subject to the ESA. Waccatee has sold or attempted to sell lion hair in its gift shop. On information and belief, the lion hair came from lions that were, as detailed above, taken in violation of the ESA. On information and belief, Waccatee sells ESA-protected ring-tailed lemurs who, as detailed above, were taken in violation of the ESA. Comparing USDA's reports on Waccatee's lemur inventory with photo evidence of lemur pups at Waccatee, suggests that lemurs are disappearing before USDA officials can include the animals in the lemur population. Waccatee's sales of lion hair and lemur pups violate the ESA.

IX. Waccatee lacks the funds to provide adequate care to Listed Species.

On information and belief, Waccatee's dilapidated and inadequate facilities and husbandry reflect a lack of funds to correct the above deficiencies—including, but not limited to, providing adequate nutrition, veterinary care, staffing, and facilities for Listed Species. Visitors to Waccatee report that the premises lack an adequate number of appropriately trained staff to care for animals and ensure safety. Lack of staff is documented in the October 2021 USDA inspection report where USDA notes that “[w]hile observing at least 12 separate groups of patrons moving throughout the zoo during a full day of inspection, neither inspector could locate any readily identifiable attendants present during public interactions with the animals... [t]he lack of attendants present during times of public contact increases the risk of injury to patrons and/or animals.”¹³³

¹³³ Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Oct. 20, 2021), pp 2.

Conclusion

Please be advised that the conditions described in this notice of intent to sue violate the ESA's prohibition on the take of protected species and its prohibition on the sale of taken species.

During the sixty-day notice period, PETA, Mr. Howard, and Ms. Jordan are willing to discuss a mutually agreeable remedy. Specifically, PETA is willing to bear all costs associated with relocating the surviving threatened and endangered animals at Waccatee, as well as all other animals at the facility, to reputable facilities. If Waccatee wishes to pursue this remedy in the absence of litigation, please contact me by phone at (202) 282-5000 or by e-mail at jbrightbill@winston.com in order to facilitate placement.

If settlement is not possible, PETA, Mr. Howard, and Ms. Jordan will seek injunctive relief in the United States District Court for the District of South Carolina to enforce the ESA. They will also ask the Court to award costs and fees, including attorneys' fees.

Sincerely,



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