

March 17, 2025

Certified Mail - Return Receipt Requested

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The Honorable Doug Burgum

Secretary of the Interior
U.S. Department of the Interior
1849 C St. NW
Washington, DC 20240

Martha Williams

Director, U.S. Fish & Wildlife Service
1849 C St. NW, Rm. 3331
Washington, DC 20240

**Re: Notice of Intent to File Citizen Suit Pursuant to the Endangered Species Act for Violations
at The Barry R. Kirshner Wildlife Foundation**

Dear Ms. Kirshner:

Pursuant to Section 11 of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g)(2)(A)(i), this letter constitutes notice that People for the Ethical Treatment of Animals, Inc. (“PETA”) intends to commence a lawsuit against The Barry R. Kirshner Wildlife Foundation and Roberta Kirshner (collectively, “Kirshner”), Sean Castro, Brian Thomas (a/k/a Brian Thomas Castro), Janra Enterprises (d/b/a Terrific, LLC), Megan E. Swartz, Big Cat Refuge, Ryan Carlson, and John-Thomas Terlitsky in the United States District Court for the Eastern District of California, for chronic and ongoing violations of the ESA and its implementing regulations.¹ PETA has engaged the law firm of O’Melveny & Myers LLP, which has offices in San Francisco, to assist in filing and prosecuting any such suit.

Roberta Kirshner, with the assistance of staff or volunteers, operates Kirshner Wildlife. Kirshner’s physical location is 4995 Durham-Pentz Road in Oroville, California. PETA intends to file suit under the ESA in response to the “take”² of the following ESA-protected animals (collectively, the “Listed

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).

Species”), for which allegations are set forth in more detail in the corresponding numbered sections below:

- I. Ring-tailed lemurs
- II. Tigers
- III. Lions
- IV. Lion/Tiger Hybrids
- V. Leopards
- VI. Snow Leopards
- VII. Clouded Leopards
- VIII. Cheetahs
- IX. An Ocelot

Kirshner takes the Listed Species by (1) failing to provide them with adequate environmental enrichment, (2) housing them in inappropriate social groupings, (3) failing to provide them with adequate, appropriate nutrition, (4) failing to keep them in sanitary conditions, (5) housing them in small, insecure, and generally inappropriate and unsafe enclosures, (6) failing to provide them with relief from unsafe weather conditions such as extreme heat, (7) exposing them to unsafe handling and physical abuse, (8) forcing them to interact with members of the public, and (9) failing to provide them with adequate veterinary care. Altogether, these acts harass, harm, and—at times—kill Listed Species.

If Kirshner wishes to correct the ESA violations described below and avoid litigation, it should immediately contact the undersigned counsel within sixty days to make arrangements for the transfer of the Listed Species housed at Kirshner or owned by Kirshner or any of the other potential defendants listed above to reputable facilities. In this regard, PETA will secure, arrange, and pay for the placement, transport, and veterinary care necessary for these animals’ relocation to adequate facilities where they may express species-typical behaviors in safe, sanitary, and enriching environments and receive proper nutrition and veterinary care.

The Endangered Species Act

Take

The ESA prohibits the “take” of endangered and most threatened species within the United States.³ Congress devised the scope of a “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.”⁴ As noted above, “take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”⁵ Federal regulations define “harass” as “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 which include, but are not limited to, breeding, feeding, or sheltering.”⁶ “Harm” refers to “an act which actually kills or injures wildlife,” including “by

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

⁴ *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”).

⁵ 16 U.S.C. § 1532(19).

⁶ 50 C.F.R. § 17.3.

significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”⁷ The ESA applies equally to endangered and threatened species living in captivity as in the wild.⁸

Listed Species

Kirshner has kept and continues to keep or own animals that, depending on subspecies classification, are either threatened or endangered. Ring-tailed lemurs, tigers, snow leopards, clouded leopards, cheetahs, and ocelots are listed as endangered under the ESA wherever they are found.⁹ 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.¹⁰ The ESA prohibits takes of each subspecies.¹¹ Courts have found that all lions, regardless of subspecies, hybrid status, or captive status, are fully protected under the ESA.¹² Leopards are listed as endangered, except in particular geographic locales (not relevant here) where they are listed as threatened.¹³

I. Kirshner Takes Ring-Tailed Lemurs in Violation of the ESA

Kirshner has, over the years, routinely confined the ring-tailed lemurs in its care in conditions that harm, harass, and ultimately kill them. Specifically, Kirshner has deprived its ESA-protected ring-tailed lemurs of proper social groupings, environmental enrichment, nutrition, basic sanitation, safe handling, and veterinary care. On information and belief, Kirshner has kept Lulu—the only surviving ring-tailed lemur Kirshner owns—without a single companion, relegating this highly social animal to a life of total isolation. These conditions have caused physical and psychological injury to the lemurs and created a likelihood of further injury by significantly interfering with their essential behavioral patterns in violation of the ESA.¹⁴ On information and belief, these deplorable living conditions have killed multiple ring-tailed lemurs at Kirshner.

A. Kirshner harms, harasses, and, on information and belief, kills ring-tailed lemurs by denying them proper social groupings and environmental enrichment.

Kirshner has denied its ring-tailed lemurs, including Lulu, proper social groupings and adequate environmental enrichment. Because lemurs are a highly social species with advanced cognitive abilities, Kirshner’s practice of housing them in isolation without adequate enrichment injures them physically and psychologically, disrupts their normal behavior patterns in a manner that creates a likelihood of further injury, and has, on information and belief, killed ring-tailed lemurs.

On the brink of extinction, wild ring-tailed lemurs are found only in the southwest portion of Madagascar.¹⁵ Well-adapted to both terrestrial and arboreal movement, they are known to spend time in all layers of their natural habitats.¹⁶ It is not natural for ring-tailed lemurs to live alone. In the wild, they

⁷ *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).

⁸ *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”).

⁹ 50 C.F.R. § 17.11(h).

¹⁰ *Id.*

¹¹ *Id.*, § 17.40(r).

¹² *United States v. Lowe*, No. 20-CV-0423-JFH, 2021 WL 149838, at *4-5 (E.D. Okla. Jan. 15, 2021); *PETA v. Tri-State Zoological Park of W. Maryland, Inc.*, No. 1:17-CV-02148-PX, 2018 WL 5761689, at *5 (D. Md. Nov. 1, 2018).

¹³ 50 C.F.R. § 17.11(h).

¹⁴ *See PETA v. Tri-State Zoological Park*, 424 F.Supp.3d 404, 414 (D. Md. 2019) (finding zoos treatment of lemurs constitutes a take in violation of the ESA); *Kuehl v. Sellner*, 161 F.Supp.3d 678 (N.D. Iowa 2016) (same).

¹⁵ *See Sellner*, 161 F.Supp.3d at 703; C.B. Mowry & J.L. Campbell, Nutrition, in: *Ring-tailed Lemur (Lemur catta) Husbandry Manual 2* (American Ass’n of Zoos & Aquariums, 2001) at 2.

¹⁶ *Id.*

typically live in well-bonded, female-dominated social groups of seven to thirty individuals.¹⁷ As such, a goal of the American Association of Zoos and Aquariums (“AZA”)¹⁸ is to prevent the solitary housing of social lemur subspecies like ring-tailed lemurs wherever possible.¹⁹

To meet their most basic physical and psychological needs, in addition to appropriate social groupings, ring-tailed lemurs require environmental enrichment. The federal Animal Welfare Act (“AWA”) mandates that “[t]he physical environment in the primary enclosures must be enriched by providing means of expressing noninjurious species-typical activities.”²⁰ “Examples of environmental enrichments include providing perches, swings, mirrors, and other increased cage complexities; providing objects to manipulate; varied food items; using foraging or task-oriented feeding methods; and providing interaction with the care giver or other familiar and knowledgeable person consistent with personnel safety precautions.”²¹ The AWA further requires exhibitors to “develop, document, and follow an appropriate plan for environmental enhancement adequate to promote the psychological well-being of nonhuman primates,” such as ring-tailed lemurs.²² At a minimum, this plan “must include specific provisions to address the social needs of nonhuman primates of species known to exist in social groups in nature.”²³ While environmental enrichment alone is insufficient to mitigate the deleterious effects of isolation, the AWA provides that “individually housed nonhuman primates that are unable to see and hear nonhuman primates of their own or compatible species” must be given “special attention regarding enhancement of their environment.”²⁴

Despite well-established authority on the social and environmental needs of ring-tailed lemurs and in contravention of generally accepted animal husbandry practices and minimum standards of care set by the regulations implementing the AWA, Kirshner has routinely housed lemurs either alone or with only one companion, and has been cited by the USDA for keeping Lulu in total isolation.²⁵ As explained by the federal district courts in *PETA v. Tri-State* and *Kuehl v. Sellner*, the practice of housing lemurs in isolation constitutes a “take” under the ESA because it does not meet the bare minimum standards of care for nonhuman primates under the AWA, is not a generally accepted husbandry practice, and “visits permanent psychological and physical injury on a species born to engage in constant interaction with his kind.”²⁶

¹⁷ See *Tri-State*, 424 F.Supp.3d at 414; R. Ethan Pride, *Optimal Group Size and Seasonal Stress in Ring-tailed Lemurs* (*Lemur catta*) 16 Behav. Ecol. 550 (2005).

¹⁸ The AZA is a zoological accreditation organization comprised of animal welfare, conservation, and zoological professionals that establishes professional accreditation standards for zoological facilities based on modern and accepted animal welfare and husbandry science and professional standards.

¹⁹ See Ass’n of Zoos and Aquariums, *Eulemur Care Manual* (2013), at 24.

²⁰ 9 C.F.R. § 3.81(b). The AWA sets forth the standards for proper care and treatment of exhibited animals. *Graham v. San Antonio Zoological Soc’y*, 261 F.Supp.3d 711, 738 (W.D. Tex. 2017). Unlike the ESA, there is no citizen-suit provision within the AWA. Instead, the AWA charges the Secretary of Agriculture (within the USDA) with the administration and enforcement of the AWA. See 7 U.S.C. §§ 2146, 2132(b). In considering the interplay between the AWA and the ESA in ESA citizen suits, courts recognize that the AWA and the ESA “are separate, complimentary statutes, and although they overlap and cover the same subject matter, claims under the ESA are not precluded by the AWA.” See *PETA v. Wildlife in Need and Wildlife in Deed*, 476 F.Supp.3d 765, 781 (S.D. Ind. 2020) (reiterating holding from Order Denying Def.’s Motion to Dismiss (ECF No. 88) at 6-8 (S.D. Ind. Feb. 8, 2018)). Because the definition of “harass” under the regulations implementing the ESA contains an exception for generally accepted, AWA compliant animal husbandry practices not likely to result in injury, courts consider whether an exhibitor’s practice complies with the AWA for the purpose of determining whether a “take” has occurred within the meaning of the ESA. See *id.*

²¹ 9 C.F.R. § 3.81(b).

²² 9 C.F.R. § 3.81.

²³ 9 C.F.R. § 3.81(a).

²⁴ 9 C.F.R. § 3.81(c).

²⁵ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 15, 2022).

²⁶ See *Sellner*, 161 F.Supp.3d at 710–11; *Tri-State*, 424 F.Supp.3d at 433.

Indeed, isolating ring-tailed lemurs by depriving them of appropriate socialization causes these social animals to suffer, and has been shown to cause behavioral abnormalities and physiological changes.²⁷

Exacerbating the psychological torment caused by isolation, Kirshner has established a longstanding practice of denying the lemurs in its care—including Lulu—adequate environmental enrichment, subjecting each of the lemurs to a lonely life in a barren cage completely devoid of complexity and novel items for intellectual stimulation. The few items that are provided—such as a life-size plastic toddler’s car—are insufficient to satisfy a lemur’s complex psychological needs. Moreover, the poor physical condition of these limited enrichment items suggests that they are not used, cleaned, or rotated regularly to ensure novelty. As such, Kirshner has denied its ring-tailed lemurs, including Lulu, an environment that allows them to express essential natural behaviors like species-typical exploration, play, and foraging.

On information and belief, Kirshner’s practice of housing lemurs in isolation has persisted since at least 2012, at which time a lemur named Shaka was kept alone in an indoor cage for a year because her hand was deformed, and Ms. Kirshner believed she should have been isolated while she learned to use it. Shaka died shortly after she was moved out of isolation and exposed to the outdoors. Moreover, inspectors from the USDA’s Animal and Plant Health Inspection Service (“APHIS”) have been advising Kirshner for years that failing to provide adequate environmental enrichment for lemurs violates the AWA.²⁸ Indeed, in 2014, the USDA cited Kirshner for having “no written plan of environmental enhancement” for the two lemurs alive at the time.²⁹ In 2022, the USDA cited Kirshner for keeping Lulu in complete isolation, noting: “[a] recent death of a ring-tailed lemur left a single ring-tailed lemur at the facility. The individual is unable to see and hear nonhuman primates of their own or compatible species, and this circumstance is not addressed in the environmental enhancement plan to promote psychological well-being of nonhuman primates.”³⁰ On information and belief, Kirshner continued to house Lulu in complete isolation long after the USDA cited Kirshner for failing to provide her adequate companionship and enrichment.

Kirshner’s cruel practice of socially isolating ring-tailed lemurs and confining them in cramped, barren enclosures without adequate means of physical or psychological stimulation has injured ring-tailed lemurs, including Lulu, and created a likelihood of further injury by significantly interfering with the lemurs’ behavioral patterns. On information and belief, chronic deprivation of companionship and psychological stimulation also has killed many of the ring-tailed lemurs who have been confined at Kirshner over the years.

As the court found in *Tri-State*, deprivation of adequate social groupings and environmental enrichment exposes lemurs to chronic distress and anxiety, which in turn disrupts homeostasis and the functioning of the kidney, liver, heart, and skin, leading to increased rates of disease, suffering, and death.³¹ The deprivation of social groups and environmental enrichment further causes “frustration,

²⁷ *Id.* See also Pride, *Optimal Group Size and Seasonal Stress in Ring-tailed Lemurs* (Lemur catta) 16 Behav. Ecol. 550 (2005) (explaining female ring-tailed lemurs in groups that were atypically small or large for their habitat type had higher mean cortisol levels—a biomarker for stress in ring-tailed lemurs—compared to ring-tailed lemurs in typically-sized groups).

²⁸ The AWA charges the Secretary of Agriculture (within the USDA) with the administration and enforcement of the AWA. See 7 U.S.C. §§ 2146, 2132(b); see also *Tri-State Zoological Park*, 2018 WL 434229, at *4. Much of the administrative and enforcement responsibility has been delegated to APHIS, which is a department within the USDA. *People for the Ethical Treatment of Animals, Inc. v. Miami Seaquarium*, 879 F.3d 1142, 1149-50 (11th Cir. 2018). APHIS is responsible for establishing regulations for the handling and care of animals and issuing licenses to animal exhibitors. See *id.* at 1149-50; see also 7 U.S.C. § 2133.

²⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

³⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 15, 2022).

³¹ *PETA v. Tri-State*, 397 F.Supp.3d 768, 773 (D. Md. 2019).

boredom, depression, lethargy, aggression, and impaired learning and coping,” which disrupt lemurs’ species-typical behaviors, such as “marking, foraging, grooming, exploring, and vigilance,” which in turn creates a likelihood of further injury.³² Accordingly, by depriving the lemurs of the social interaction and intellectual stimulation necessary to prevent physical and psychological injury, Kirshner has taken Chez, Austin, Ilia, Shaka, Zuki, and at least four other lemurs who have disappeared from Kirshner unaccounted for—and is engaged in an ongoing take of Lulu—in violation of the ESA.³³

Furthermore, it would not remedy the above-described violations, but would instead lead to separate and additional ESA violations, for Kirshner to obtain other lemurs or to be entrusted with transferring the lemurs in its custody to another facility or private party.³⁴

B. Kirshner harms, harasses, and on information and belief, kills ring-tailed lemurs by failing to provide them with adequate nutrition.

Kirshner has denied the lemurs in its care—including Lulu—adequate feeding and nutrition. This failure has harmed, harassed, and, on information and belief, killed multiple lemurs in violation of the ESA.

The 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.”³⁵ Generally accepted animal husbandry practices require that exhibitors like Kirshner feed ring-tailed lemurs a combination of commercial primate biscuit, fresh produce and locally available browse.³⁶ Federal regulations implementing the AWA require that lemurs’ food “be prepared with consideration for the age, species, condition, size, and type of the animal.”³⁷ Kirshner does not meet any of these basic standards. Indeed, the USDA has in the past cited Kirshner for having “no feeding plan by species approved by a veterinarian.”³⁸ According to APHIS inspectors, during inspection “what was being fed was unclear, as it seemed to depend somewhat on daily donated foodstuffs. There was a letter from the veterinarian stating that she had reviewed the diet and that it was appropriate, but it was unclear what that approved diet was since it was not documented.”³⁹

Moreover, the USDA has cited Kirshner for failing to keep produce—a critical part of lemurs’ diets—free from contamination. During the course of one inspection, APHIS found that “produce [was] stored in the garage without refrigeration [and] was found to have significant molding and deterioration,” and noted in its report that some animals were being fed moldy food.⁴⁰ During the same inspection, APHIS also found that food was “being fed on wooden planks that are not being adequately cleaned between feedings;” the food preparation area had worn surfaces, worn cutting boards, and rusty cutting implements; freezers had accumulated meat juice and other substances that required cleaning; areas used

³² *Id.*

³³ See 16 U.S.C. § 1538(a)(1)(B), (G); 50 C.F.R. §§ 17.11(h), 17.21(c)(1); *Tri-State*, 424 F.Supp.3d at 433 (finding that lack of social and environmental enrichment constituted a take by causing physical and psychological injury); *Sellner*, 161 F.Supp.3d at 713, 718 (holding that facility violated the ESA by isolating a ring-tailed lemur in a small enclosure without the opportunity to socialize with other members of her species and ordering the zoo to transfer lemurs to an appropriate facility).

³⁴ See, e.g., *Elephant Justice Project v. Woodland Park Zoological Soc’y, Inc.* No. C15-0451-JCC, 2015 WL 12564233 (W.D. Wash. Apr. 7, 2015).

³⁵ 9 C.F.R. § 3.129(a).

³⁶ See Mowry & Campbell, Nutrition, in: *Ring-tailed Lemur Husbandry Manual* 2 at 3.

³⁷ See *id.*

³⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

³⁹ *Id.*

⁴⁰ *Id.*

to store food were found to be cluttered, dusty, and/or showing signs of mice infestation; bags and containers of food were broken or left open with spilled food present; and hazardous substances, like chemicals and an unprotected rodent bait block, were stored next to the animals' food.⁴¹

According to the court in *PETA v. Lowe*, failing to provide ESA-protected species tailored, nutritionally-sufficient diets and feeding them deteriorating food constitutes a “take” in violation of the ESA.⁴² Since 2012, the USDA has documented Kirshner’s failures to provide the animals in its care with adequate feeding and nutrition on eight separate occasions, including as recently as June 2024.⁴³ On information and belief, Kirshner harmed and harassed the lemurs by providing food that was deteriorating and therefore affirmatively dangerous, and by failing to implement a species-specific veterinarian-approved feeding plan. This interfered with the lemurs’ ability to engage in species-typical food handling and processing such that it created a likelihood of further injury. Because Kirshner’s practice of denying ring-tailed lemurs adequate nutrition has persisted for at least a decade, these conditions have injured and, on information and belief, killed multiple lemurs who died in Kirshner’s care during this period.

C. Kirshner harms, harasses and, on information and belief, kills ring-tailed lemurs by denying them a sanitary environment.

Kirshner deprives the ring-tailed lemurs in its care of a sanitary environment. Lack of sanitation harms, harasses, and can ultimately kill lemurs by exposing them to disease, physically and psychologically injuring them, and significantly interfering with their normal behavioral patterns, which in turn creates a likelihood of further injury.

The USDA has cited Kirshner numerous times for failing to meet even the most basic sanitation standards within its facility. Inadequate sanitation practices that impact the living conditions for ring-tailed lemurs at Kirshner include the following:

- Kirshner failed to discard containers of standing water throughout the facility, some of which were observed to be very dark in color, putrid smelling, and filled with aquatic insects.⁴⁴
- During the course of an inspection, non-frozen meat was left out without refrigeration for more than an hour. Unrefrigerated produce was found to have significant molding and deterioration, and some animals were being fed moldy food. The animals were fed from wooden planks that were not adequately cleaned between feedings. The food preparation area had worn surfaces, worn cutting boards, and rusty cutting implements.⁴⁵
- Food storage areas had chemicals stored next to foodstuffs, including bleach, paint, bags of cement, and car batteries. Food storage areas had many food bags or containers that were open and some had spilled food present. Three freezers had accumulated meat juice or other material and required cleaning. There was a rodent bait block sitting unprotected adjacent to foodstuffs in a food storage shed.⁴⁶
- In a garage used for food storage, there was accumulated clutter consisting of cardboard boxes and miscellaneous discarded items. In the food preparation area where the sinks and meat cutting boards were located, there were tarps and cardboard boxes piled on the ground. In the three

⁴¹ *Id.*

⁴² *PETA v. Jeffrey L. Lowe*, No. CIV-21-0671-F, ECF No. 483 (Findings of Fact and Conclusions of Law), ¶ 9 (W.D. Okla. Feb. 25, 2022).

⁴³ Official Warning: Notice of Alleged Violation, APHIS, Roberta Kirshner, case no. CA240175 (USDA June 6, 2024); Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024), (USDA Jan. 8, 2024), (USDA June 26, 2017), (USDA June 7, 2017), (USDA Apr. 26, 2017), (USDA Apr. 3, 2014); Sworn Affidavits re condition of lion Sampson (USDA 2012).

⁴⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

⁴⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

⁴⁶ *Id.*

additional food storage structures, bags of feed were piled up and broken open, and the areas had accumulated dust and debris.⁴⁷

- In the outdoor cleaning area, buckets, bowls, crates, and cages were found to be dirty, and appeared not to have been cleaned for more than a day, with accumulated rainwater and decomposing organic material present.⁴⁸
- The food storage area showed evidence of mice infestation.⁴⁹
- Kirshner allowed grass and weeds to grow up to knee height in certain areas, including between some of the animals' enclosures and the perimeter fence. APHIS inspectors noted these overgrown grasses and weeds "could allow harborage of pests and vermin that could affect the health and well-being of the animals" and instructed Kirshner that "[p]remises shall be kept clean and in good repair in order to protect animals from injury. Weeds, grasses and bushes must be controlled to facilitate cleaning of the premises and to reduce or eliminate breeding and living areas for rodents and other pests and vermin."⁵⁰

Moreover, photographs from site visits show that Kirshner has routinely allowed algae to accumulate between layers of substrate in close proximity to several Listed Species, including in and around the ring-tailed lemurs' enclosure.

Ring-tailed lemurs require sanitary environments to avoid unreasonably high risks of disease transmission and other physical injuries. Moreover, prevailing conditions such as poison traps, organic waste, insect and rodent infestation, mold, and dangerous surfaces create a likelihood of physical injury and death if lemurs come in contact with them. Additionally, because ring-tailed lemurs rely heavily on scent cues and olfactory communication, chronic exposure to unsanitary conditions is particularly likely to cause them psychological injury. As the court noted in *PETA v. Tri-State*, unsanitary conditions in, near, and surrounding a lemur's enclosure "interfere with the lemurs' olfactory senses, to which they are highly attuned."⁵¹ A lemur living in a smelly, unsanitary environment is therefore similar "to a human being in a room where there is constantly white noise being amplified."⁵² As a result, in addition to causing or contributing to physical injury, distress, disease, and even death, unsanitary conditions significantly impair a lemur's ability to exhibit normal species-typical behavior, which in turn creates a likelihood of further injury.⁵³ Accordingly, Kirshner's ongoing failure to provide the lemurs in its care with a non-injurious and sanitary environment constitutes a prohibited "take" in violation of the ESA because it actually physically and psychologically injures the lemurs and interferes with their ability to express species-typical behavior, thereby creating a likelihood of additional physical and psychological injury.

D. Kirshner harms and harasses ring-tailed lemurs by subjecting them to improper handling and public contact.

Kirshner's enclosures are insufficient to safely secure the lemurs, which exposes them to harm and harassment by staff during feeding and cleaning times and makes them vulnerable to public contact. Public contact exposes lemurs to disease and physical harm by humans and other animals, which creates a likelihood of additional physical and psychological injury. On information and belief, Kirshner's lemur enclosures are not equipped with a lockout or transfer area, so there is no separate space where the lemurs can retreat or be safely confined when volunteers enter their enclosures for cleaning and feeding. Indeed, a video taken in 2017 depicts a Kirshner volunteer entering the enclosure of a solitary lemur while

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

⁵¹ *Sellner*, 161 F.Supp.3d at 703 (internal quotations omitted).

⁵² *Id.* (internal quotations omitted).

⁵³ *See Tri-State*, 424 F.Supp.3d at 433.

clapping loudly, yelling “NO! GET BACK!”, wielding a broom, and jabbing at the lemur who, having no lockout, transfer area, or other means to retreat or hide, jumps frantically around the enclosure. Another video from 2019 depicts a similar interaction involving a different Kirshner volunteer and a now-deceased lemur named Ilea.

Additionally, Kirshner has failed to provide adequate barriers from the public and has facilitated inappropriate public contact with lemurs. Even though forced contact with humans has been shown to cause distress and fear and reduce species-typical behavior in non-human primates,⁵⁴ on information and belief, Kirshner has permitted members of the public to engage in direct contact with ring-tailed lemurs for photo opportunities.

Exposing the lemurs to inappropriate and stressful handling and forcing them to interact physically with members of the public constitutes a “take” because it causes them physical and psychological injury and significantly disrupts their normal behavioral patterns, which in turn creates a risk of further physical and psychological injury.

E. Kirshner harms, harasses, and, on information and belief, kills ring-tailed lemurs by denying them adequate veterinary care and medicating them without a veterinarian’s input.

Kirshner harms, harasses, and on information and belief kills ring-tailed lemurs by failing to provide them with adequate veterinary care. Deprivation of appropriate veterinary care harms and harasses ring-tailed lemurs by causing them to suffer needless physical and psychological injury and creating a likelihood of further injury by interfering with their ability to engage in essential behavioral patterns. Additionally, by covering up ring-tailed lemurs’ deaths and failing to perform necropsies, Kirshner violates generally accepted standards of care even after the lemurs have died. According to the court in *PETA v. Tri-State*, “[p]erforming a necropsy is a basic standard of care, especially on an animal protected by the ESA.”⁵⁵ Such post-mortem examinations “provide a definitive diagnosis for cause of death and help the zoo understand the cause and prevent it from affecting other animals.”⁵⁶

According to statements of former volunteers in a complaint filed with the USDA, Kirshner injured and ultimately killed at least two lemurs, Shaka and Zuki, by denying them veterinary care.⁵⁷ On information and belief, Shaka was exhibiting signs of illness, including sleeping excessively and refusing to eat for days, but instead of seeking prompt veterinary attention, Ms. Kirshner (who is not a veterinarian) requested that volunteers provide Shaka with an intravenous fluid containing electrolytes and water. By the time Ms. Kirshner finally instructed a volunteer to bring Shaka to a veterinarian, Shaka was terminally ill and died. No necropsy was performed, and according to a former volunteer, Kirshner provided incomplete and inconsistent details about Shaka’s death. A few weeks later, Zuki, who had shared an enclosure with Shaka, began exhibiting similar symptoms and died slowly over the course of several weeks without veterinary attention. Ms. Kirshner attributed Zuki’s death to kidney stones.

Lack of adequate veterinary care is a chronic, facility-wide issue that has resulted in illness, injury and ultimately death for countless animals at Kirshner. Moreover, because Kirshner has failed in the past to perform necropsies on lemurs who have died in its care, it failed to learn their causes of death and was thereby less able to prevent those conditions from injuring other lemurs. The USDA has cited Kirshner for failing to provide adequate veterinary care to numerous animals during 10 separate

⁵⁴ See Kathleen Morgan & Chris Tromborg, *Sources of Stress in Captivity*, 102 *Applied Animal Behav. Sci.* 262, 280 (2007).

⁵⁵ See *Tri-State*, 424 F.Supp.3d 404, n. 4.

⁵⁶ *Id.*

⁵⁷ Animal Welfare Complaint re Roberta Kirshner, Compl. No. W13-188, at 4-5 (PETA July 31, 2013).

inspections between 2014 and 2024.⁵⁸ On information and belief, Kirshner's longstanding practice of denying its animals veterinary care has killed at least five ring-tailed lemurs who died in Kirshner's care.

Accordingly, Kirshner has harmed, harassed and, on information and belief, killed lemurs by denying them veterinary attention, medicating or otherwise treating them without veterinary consultation, and failing to perform necropsies.

II. Kirshner Takes Tigers in Violation of the ESA

Kirshner's chronic failure to provide tigers with proper enrichment, nutrition, sanitation, and housing, as well as its practice of subjecting the tigers to improper handling, harassment by the public, and physical abuse, injures them and interrupts their normal behavioral patterns in a manner that creates a likelihood of further injury. On information and belief, Kirshner's treatment of endangered tigers also has killed several tigers. In sum, Kirshner has taken tigers by harming, harassing, and, on information and belief, killing them, and is engaging in an ongoing take of David Alan II, Lapua, Adara, Zuri, Savara, and Dana in violation of the ESA.

A. Kirshner harms, harasses, and, on information and belief, kills tigers by depriving them of environmental enrichment.

Kirshner fails to provide the tigers in its care with adequate, species-specific environmental enrichment. By depriving these tigers of an environment in which they can express natural behaviors, Kirshner injures them, creates a likelihood of further injury by disrupting their normal behavioral patterns and has, on information and belief, killed tigers.

In the wild, tigers occupy a variety of habitats, typically consisting of dense vegetative cover with sufficient populations of ungulates for prey.⁵⁹ Within these ranges, tigers are free to engage in natural behaviors such as swimming, climbing, stalking, and hunting.⁶⁰ Tigers generally are solitary; however, they come together for breeding and occasionally to socialize.⁶¹

Captive environments without adequate enrichment to allow tigers to express natural behaviors have a detrimental effect on their physical and psychological well-being.⁶² Enrichment is therefore necessary to deter injurious behaviors like self-mutilation and fence chewing and stereotypic behaviors like repetitive pacing, rubbing, vocalizing, and head swinging.⁶³

Enrichment plans for captive tigers are difficult to develop due to tigers' complex hunting, feeding, and spatial needs.⁶⁴ In inadequate captive conditions, thwarted hunting prospects alone appear to cause carnivores like tigers to suffer stress.⁶⁵ Accordingly, enclosures should be comprised of relatively large, complex outdoor space and include water features like pools, moats, and running streams; natural

⁵⁸ See Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 14, 2024), (USDA Feb. 12, 2024), (USDA Jan. 12, 2024), (USDA Jan. 8, 2024), (USDA Nov. 1, 2021), (USDA Aug. 11, 2021), (USDA June 26, 2017), (USDA June 7, 2017), (USDA Apr. 26, 2017), (USDA Apr. 3, 2014).

⁵⁹ J. Goodrich et al., *Panthera tigris* (The IUCN Red List of Threatened Species, 2022), <http://iucnredlist.org/species/15955/214862019>.

⁶⁰ Ass'n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016), at 11.

⁶¹ *Id.* at 28.

⁶² See Morgan & Tromborg, *Sources of Stress in Captivity* at 264; see also Monika S. Szokalski et al., *Enrichment for Captive Tigers (Panthera tigris): Current Knowledge and Future Directions*, 139 *Applied Animal Behav. Sci.* 1 (2012).

⁶³ *Id.*

⁶⁴ See Leticia S. Resende et al., *The Influence of Feeding Enrichment on the Behavior of Small Felids (Carnivora: Felidae) in Captivity*, 26 *Zoologia* 601 (2009).

⁶⁵ Morgan & Tromborg, *Sources of Stress in Captivity* at 284.

vegetation; and trees or other natural substrate objects for nail grooming.⁶⁶ Environmental enrichment plans should incorporate enhancements like whole-carass feeding, regular introduction of new smells, and frequent rotation of structural features and toys/enrichment objects within the enclosure.⁶⁷

On information and belief, Kirshner fails to provide the tigers with species-specific enrichment and appropriate, natural, and complex enclosures. Instead, Kirshner confines its tigers to tiny, barren cages—measuring, on information and belief, no larger than 20 feet by 20 feet—with no natural foliage, grass, ledges, or adequate structural features that would allow tigers to engage in natural behaviors such as climbing, stalking, and hiding. There are no pools adequate for swimming and when water basins are provided for cooling, they are too small and shallow for the tigers to use. As noted by the court in *PETA v. Tri-State*, lack of adequate enrichment for tigers causes frustration and distress, which in turn leads to chronic stress, hypertension, respiratory and cardiac distress, suppression of the immune system, atrophy of the hippocampus, myopathy, injury, and ultimately death.⁶⁸ Moreover, confining tigers to enclosures that are too small to exercise and denying them pools adequate for fully immersing during periods of extreme heat harms and harasses them by causing them physical and psychological injury and significantly impairing their ability to exhibit natural, species-typical behaviors, thereby creating a risk of further injury.

B. Kirshner harms, harasses, and, on information and belief, kills tigers by denying them adequate nutrition.

Kirshner denies the tigers in its care proper nutrition. This failure harms, harasses, and has, on information and belief, killed several tigers in violation of the ESA.

The 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.”⁶⁹ Diets “shall be prepared with consideration for the age, species, condition, size, and type of the animal.”⁷⁰ According to husbandry guidelines applicable to tigers, diets that consist primarily of muscle meat, chicken, or turkey necks are not nutritionally balanced.⁷¹

Evidently unable or unwilling to observe these minimal standards, Kirshner has been causing or contributing to the diet-related injuries and deaths of tigers for many years. Indeed, USDA inspection reports show that Kirshner has routinely failed to meet the bare minimum standards regarding food safety and nutrition. For example, APHIS inspectors found on one occasion that non-frozen meat was left out without refrigeration for more than an hour, food was being consumed on wooden planks that were not adequately cleaned between feedings, food preparation areas were worn and cutting implements were rusty, freezers used to store food were accumulating meat juice and required cleaning, bags of feed were piled up and broken open in areas that had accumulated dust and debris, and foodstuffs were stored next to hazardous items such as bleach, cement, car batteries, and rodent bait.⁷²

In addition to these food safety hazards, the USDA has cited Kirshner numerous times for failing to provide the felids in its care, including tigers, with the nutrition required to maintain them in good

⁶⁶ Ass’n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016) at 11.

⁶⁷ *Id.*

⁶⁸ *Tri-State*, 424 F.Supp.3d 404 at 418.

⁶⁹ 9 C.F.R. § 3.129(a).

⁷⁰ *Id.*

⁷¹ Global Federation of Animal Sanctuaries, *Standards for Felid Sanctuaries* § N-2.m.

⁷² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

health.⁷³ These failures caused big cats at Kirshner, including the tiger Shyra, to suffer from metabolic bone disease (“MBD”)—a progressive illness caused by nutritive deficiencies that manifests as decreased muscle mass, pain, lameness and ultimately, pathologic bone fractures. Kirshner fed Shyra a nutrient-deficient diet without proper supplementation to support healthy growth from the time she was born at the facility until she was confiscated by the California Department of Fish and Wildlife in February of 2024. As the USDA explained in a citation it issued in February 2024: “Shyra has metabolic bone disease most likely caused by lack of calcium supplementation in the diet which has caused her weakness and the radiologically confirmed chronic fractures. . . . On inspection, Shyra did not have normal ambulation, she had progressive weakness, walking a few steps with her hind end lower than her front end and then dragging her hind legs behind her [I]t is presumed that the fractures associated with her condition are painful.”⁷⁴ The USDA cited Kirshner for feeding Shyra supplements that were expired and given in quantities far below the manufacturer’s guideline—finding that Shyra was provided only 0-2 grams of supplements per meal when 18-27 grams per meal was required to support healthy growth.⁷⁵

Additionally, the USDA noted that Kirshner failed to maintain any records of the amount of supplement provided to Shyra, or the mix of muscle to bone-in meat, to enable the inspector to review for compliance after discovering Shyra’s lameness and apparent malnutrition during a previous inspection.⁷⁶ After repeated failures to provide Shyra with appropriate nutrition, the USDA issued Kirshner an Official Warning stating that the USDA had evidence that Kirshner violated federal law, specifically the AWA’s mandate that food must be sufficiently nutritious and free from contamination.⁷⁷ USDA reports dating back to 2012 show that Kirshner’s practice of depriving its animals of adequate nutrition has harmed several of its big cats by causing or contributing to MBD and other diet-related illnesses.⁷⁸

An additional health concern related to the diet of Kirshner’s tigers is body condition and body weight. The AZA standards direct that—since captive tigers do not exert the same degree of physical effort as their wild counterparts—management of diet in regard to body weight should be a major focus of tiger nutrition standards. Many of the tigers at Kirshner are overweight. Among other issues, USDA inspection reports show that the overweight big cats at Kirshner, including a tiger, exhibited signs of discomfort and labored breathing in hot weather compared to normal-weight animals.⁷⁹ Moreover, overweight body condition, and confinement in cramped enclosures like those at Kirshner which impede the cats’ ability to exercise, can both cause and exacerbate osteoarthritis.

As a consequence of chronic malnutrition, among other abysmal conditions at Kirshner, numerous tigers are malformed and chronically injured. Based on the frequency with which big cats at Kirshner exhibit signs of unhealthy growth, pathological bone fractures, and lameness indicative of MBD—which is fatal if left untreated—chronic malnutrition has been creating a likelihood of injury for years, has actually caused bodily injury, and, on information and belief, has killed tigers.

⁷³ Official Warning: Notice of Alleged Violation, APHIS, Roberta Kirshner, case no. CA240175 (USDA June 6, 2024); Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024), (USDA Jan. 8, 2024), (USDA June 26, 2017), (USDA June 7, 2017), (USDA Apr. 26, 2017), (USDA Apr. 3, 2014); Sworn Affidavits re condition of lion Sampson (USDA 2012).

⁷⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Official Warning: Notice of Alleged Violation, APHIS, Roberta Kirshner, case no. CA240175 (USDA June 6, 2024).

⁷⁸ Official Warning: Notice of Alleged Violation, APHIS, Roberta Kirshner, case no. CA240175 (USDA June 6, 2024); Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024), (USDA Jan. 8, 2024), (USDA June 26, 2017), (USDA June 7, 2017), (USDA Apr. 26, 2017); Sworn Affidavits re condition of lion Samson (USDA 2012).

⁷⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021).

C. Kirshner harms, harasses, and, on information and belief, kills tigers by denying them sanitary conditions.

Kirshner confines its ESA-protected tigers in unsanitary conditions. These conditions constitute harm and harassment under the ESA because they cause physical and psychological injury to the tigers and interfere with their ability to engage in normal behavior in a manner that creates the likelihood of injury and illness, actually physically and psychologically injures them, and on information and belief, has killed tigers.

Tigers require sanitary living spaces and uncontaminated food and water. Because the contamination of natural substrates (such as those within Kirshner's tiger enclosures) over time can expose tigers to potentially dangerous concentrations of pathogens, AZA standards direct that substrates should be spot-cleaned daily and contaminated substrates should be removed periodically and replaced with clean materials.⁸⁰ Under generally accepted husbandry guidelines for tigers, "all water provided to the animals must be potable, and changed as appropriate to remain fresh and uncontaminated."⁸¹

USDA inspection records and eyewitness accounts show that Kirshner has long been and still is either unwilling or unable to comply with these minimal requirements. Indeed, the USDA has cited Kirshner for this failure repeatedly. The USDA's findings that directly relate to the sanitation of the tigers' environment include the following violations:

- Kirshner held two tigers in a lockout that was heavily used and contained a damaged and dirty water container, dried-out food attracting flies, and puddles and a layer of fur on the dirt floor. Neither tiger was able to avoid the saturated areas of the enclosure and their paws were dirty.⁸² The tiger lockout was maintained in such unsanitary conditions that the water container, fur, and standing water on the dirt floor could not be adequately cleaned to prevent contamination and minimize disease hazards to the tigers.⁸³
- Staff used a stick to remove leftover food items and solid excreta by moving it to the edge of the lockout because there was no alternate entrance to access the lockout in order to safely clean it.⁸⁴
- Kirshner failed to discard containers of standing water throughout the facility, which was observed to be very dark in color, putrid smelling, and filled with aquatic insects.⁸⁵
- At the time of inspection, non-frozen meat was left out without refrigeration for more than an hour.⁸⁶
- Food was being served on wooden planks that were not adequately cleaned between feedings. The food preparation area had worn surfaces and cutting boards and rusty cutting implements.⁸⁷
- Some food storage areas had chemicals stored next to foodstuffs, including bleach, paint, bags of cement, and car batteries. Food storage areas had many food bags or containers that were open and some had spilled food present. Three freezers had accumulated meat juice or other material and required cleaning. There was a rodent bait block sitting unprotected adjacent to stored and spilled foodstuffs in a food storage shed.⁸⁸
- In a garage used for food storage, there was accumulated clutter consisting of cardboard boxes and miscellaneous discarded items. In the food preparation area where the sinks and meat cutting

⁸⁰ Ass'n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016) at 13.

⁸¹ *Id.* at 10.

⁸² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 22, 2021).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 20, 2016).

⁸⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

⁸⁷ *Id.*

⁸⁸ *Id.*

boards are located, there were tarps and cardboard boxes piled on the ground. In the three additional food storage structures, bags of feed were piled up and broken open, and the areas had accumulated dust and debris.⁸⁹

- In the outdoor area used to clean food receptacles, crates, and cages, these items were found to be dirty, and appeared not to have been cleaned for more than a day, with accumulated rainwater and decomposing organic material present.⁹⁰
- A food storage area showed signs of mice infestation.⁹¹

Further, despite tiger husbandry guidelines directing that natural substrate be spot cleaned daily and replaced periodically to reduce the concentration of pathogens, photographs from numerous site visits over a span of several years depict contaminated substrate in tigers' enclosures covered up by layers of fresh substrate, and large areas of algae can be seen growing between the layers of the substrate and around the perimeter of the enclosure.

Kirshner's failure to keep the tigers' enclosures clean and sanitized, remove standing water, maintain food preparation areas in a sanitary condition, and control vermin infestation violates USDA regulations and fails to meet generally accepted practices of animal care. Confining these tigers in unsanitary conditions creates a likelihood of injury by significantly impeding tigers' ability to express species-typical behavior, actually injures tigers, and has, on information and belief, ultimately killed tigers at Kirshner. As such, Kirshner's failure to provide the tigers with basic sanitation constitutes a prohibited "take" in violation of the ESA.

D. Kirshner harms, harasses, and, on information and belief, kills tigers by denying them safe and appropriate housing.

Kirshner does not provide safe and adequate housing for its endangered tigers. Unsafe and inappropriate housing harms, harasses, and has, on information and belief, killed tigers by causing physical and psychological injury and interfering with their normal behavioral patterns in a manner likely to cause further injuries.

Generally accepted husbandry practices call for a minimum of 1,200 square feet of space for outdoor solitary tiger enclosures.⁹² Kirshner fails to meet these and other standards for safe and appropriate housing. On information and belief, the tiger enclosures are approximately 20 feet long by 20 feet wide (i.e., only 400 square feet). This small area is not sufficient for tigers to engage in species-typical behaviors such as roaming, seeking refuge, and swimming.

Kirshner also has been cited by the USDA for failing to maintain a perimeter fence for the tigers that complies with the requirements for potentially dangerous animals, thereby creating a likelihood of escape, bodily injury, and unauthorized entry by the public.⁹³ On another occasion, APHIS inspectors found that several items, including fence panels, decks, and ladders were left leaning up against the fence surrounding the large carnivores' enclosures, decreasing the effective height of the perimeter fence and increasing the likelihood of escape.⁹⁴

Additionally, Kirshner has failed to maintain the tigers' enclosures in good repair and free of items that create a likelihood of ingestion and other bodily injuries. Numerous USDA citations have confirmed that Kirshner houses its tigers in dilapidated enclosures that are affirmatively dangerous. The USDA has found on two separate occasions (including as recently as 2024) that the den boxes for large

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Global Federation of Animal Sanctuaries, *Standards for Felid Sanctuaries* § H-1.1.

⁹³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 21, 2023).

⁹⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

cats had damage to the exterior surfaces, leaving large protruding wood splinters, exposed screws, and holes, and thereby increasing the risk of injury and entrapment of the animals.⁹⁵ The USDA also has cited Kirshner for leaving tarps on top of a tiger enclosure that had become so tattered and shredded that there were pieces of tarp hanging down into the enclosures, thereby creating a likelihood of ingestion and posing a serious health risk.⁹⁶

Moreover, Kirshner has denied at least one tiger, Shyra—who was injured as a result of the nutritive-deficient diet she received at Kirshner—appropriate bedding and adequate padding to support her recovery in direct violation of the orders of veterinarians and APHIS inspectors. The USDA cited Kirshner for this failure in February of 2024, finding that Shyra—who was suffering from apparent MBD—had in her enclosure only a carpet for traction with 2-3 sheets and what appeared to be a fleece blanket. At a previous inspection, Shyra had a sheet, fleece blanket and a pillow, which she had shredded. APHIS inspectors counseled Kirshner on ingestion risk and inadequate padding, and directed Kirshner to “follow the directions of the veterinarians to appropriately treat the diseases and injuries that Shyra has.”⁹⁷

As with the rest of its ESA-protected animals, Kirshner also denies its tigers adequate means of thermoregulation by failing to provide sufficient means of cooling during periods of extreme heat. Extreme weather conditions in poor housing expose the tigers to overheating, which injures them and interferes with their normal behavior in a manner that creates a likelihood of further injury. The USDA has cited Kirshner upon finding that its tigers exhibited signs of overheating and discomfort, while trapped inside their cages in temperatures over 100 degrees, without access to pools, fans, increased ventilation, frozen treats, or any other means of relief.⁹⁸

Failure to provide these tigers safe and appropriate housing denies them the ability to engage in normal behaviors, creates a likelihood of physical and psychological injury and, on information and belief, has killed several tigers in Kirshner’s care. Specifically, by denying them adequate space to exercise, failing to maintain safe and adequate perimeter fences, housing them in dilapidated cages containing affirmatively dangerous items, and exposing them to extreme heat without providing sufficient cooling methods, Kirshner injures them physically and psychologically and interferes with their ability to engage in normal behaviors such as roaming, running, seeking refuge, and swimming, which in turn creates a likelihood of further physical and psychological injury.

E. Kirshner harms, harasses, and, on information and belief, kills tigers by facilitating inappropriate contact with the public.

Kirshner harms, harasses, and has, on information and belief, killed tigers by facilitating inappropriate contact between tigers and members of the public. For captive animals like Kirshner’s tigers, “forced proximity to or contact with humans can be deleterious to animal well-being.”⁹⁹ Encouraging close contact with tigers is opposed by mainstream animal welfare professionals and conservationists, and contravenes generally accepted animal husbandry standards.¹⁰⁰ Federal regulations explicitly require that exhibited animals “be handled so there is a minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.”¹⁰¹ As such, allowing members of the public to make

⁹⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

⁹⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

⁹⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 14, 2024).

⁹⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021).

⁹⁹ See Morgan & Tromborg, *Sources of Stress in Captivity* at 280.

¹⁰⁰ Ass’n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016) at 77.

¹⁰¹ 9 C.F.R. § 2.131(c)(1).

physical contact with the tigers violates AWA regulations and interferes with their normal behavioral patterns in violation of the ESA.¹⁰²

Kirshner's signage outside certain tigers' enclosures shows that Kirshner was aware that public exhibition caused the tigers psychological injury. Specifically, Kirshner posted signs outside Zuri and Savara's cages which read: "[She] is a sensitive cat and can get upset easily. If she is agitated, please walk away so that she can calm down." Nonetheless, Kirshner's tigers are confined in exposed enclosures with no opportunity to hide or retreat. Such placement contravenes generally accepted husbandry practices, injures the tigers, and interferes with their normal behavior patterns in a manner that creates a likelihood of further injury because it causes distress and induces constant fear of threats without sufficient means to escape or hide.

Nonetheless, Kirshner has over the years permitted (and routinely charged) members of the public to pet, hold, and bottle feed tiger cubs, hand feed tigers, walk tigers on leashes, and enter adult tigers' enclosures. Indeed, Kirshner has directly solicited such public contact with its ESA-protected tigers, posting advertisements around its facility that read, for example, "Photos available with a BABY TIGER! \$50 for a couple \$35 for an individual" and "Support your local sanctuary by taking a photo with a baby." Photographs obtained by the Butte County Department of Public Health depict members of the public handling tiger cubs inside houses and cars.

Additionally, despite the fact that the AZA opposes direct contact between tigers and the public,¹⁰³ Kirshner has in the past hosted and attended numerous public exhibitions where tigers were subjected to forced public contact. These events included a Kirshner cub event at Shriner's Children's Hospital, the Feather Falls Casino "block party" in Oroville California, an Auto World Sale at a local mall, and a harvest festival. On information and belief, Kirshner also has traveled with young tiger and leopard cubs to exhibit them on television programs such as Jimmy Kimmel Live, during which time they were confined to cramped cages for 8-10 hours at a time and exhibited in front of studio audiences.

By denying tigers the ability to remove themselves from stressful situations, Kirshner harms and harasses tigers by exposing them to physically injurious conditions as well as acute and chronic distress, which can cause permanent neural/physiological changes that can impair learning, coping mechanisms, and memory function for the remainder of the animals' lives, thereby causing both immediate and long-term psychological and physiological injury.¹⁰⁴ As one federal district court noted in *PETA v. Wildlife in Need and Wildlife in Deed*, forcing big cat cubs into direct contact with the public harms and harasses the cubs by depriving them of sleep, forcing them to eat in an extremely stressful environment, and subjecting them to public handling and abusive disciplinary measures.¹⁰⁵ Such forced public contact "constitutes harassment because it creates a likelihood of injury to Big Cat Cubs by annoying them to such an extent as to significantly disrupt normal behavior patterns. And such conduct harms Big Cat Cubs because it actually injures them."¹⁰⁶ Kirshner's practice of subjecting its tigers to rough handling and forced public contact likewise caused these tigers acute distress, as evidenced by various photographs and videos of such interactions where Kirshner's tigers can be seen physically struggling against restraint by members of the public. On information and belief, these harassing conditions are so pervasive and longstanding that they have caused injury and contributed to the deaths of numerous tigers. As such, Kirshner's practice of forcing tigers into proximity with the public constitutes a prohibited "take" in violation of the ESA.

¹⁰² As of December 2022, the practice of allowing direct contact between tigers and members of the public is illegal under the Big Cat Public Safety Act. 50 C.F.R. § 14.254.

¹⁰³ Ass'n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016) at 77.

¹⁰⁴ See *PETA v. Wildlife in Need and Wildlife in Deed*, 476 F.Supp.3d 765, 784 (S.D. Ind. 2020).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

F. Kirshner harms, harasses, and on information and belief kills tigers by denying them adequate veterinary care.

Kirshner fails to provide its ESA-protected tigers with adequate veterinary care. Lack of veterinary care harasses and harms tigers by causing them actual injury and by creating a likelihood of further injury from untreated health issues and from impairments to their ability to engage in normal behavioral patterns. On information and belief, failure to provide timely and appropriate veterinary care and comply with veterinarians' instructions has killed several tigers in Kirshner's care.

Routine veterinary care is essential to timely diagnose and treat disease, injury, and distress in tigers.¹⁰⁷ Tigers should have regular check-ups, preventative care, and access to emergency veterinary services as needed.¹⁰⁸ Further, generally accepted husbandry practices call for animals to be kept in adequate body 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 such as obesity.¹⁰⁹

Kirshner denied Shyra adequate veterinary care from the time she was born at the facility until her confiscation in February of 2024. Shyra suffered from MBD, which, as discussed above, causes decreased muscle mass, chronic pain, limb deformities, lameness, pathological bone fractures, and if left unremedied, death. On information and belief, Shyra developed MBD as a result of the nutrient-deficient diet she received under Kirshner's care. Her condition required adequate and consistent veterinary treatment from a specialist with experience in big cat nutrition, which she did not receive while in Kirshner's care.

During a USDA inspection in January 2024, Shyra was documented to have weakness in her hind end and referred by Kirshner's attending veterinarian to specialists, who found that Shyra had sustained several fractures due to her MBD and noted that MBD "is commonly due to calcium-deficient diets such as boneless meat without appropriate supplements."¹¹⁰

During follow-up inspections in February 2024, an APHIS inspector found that Kirshner had not followed veterinarians' instructions regarding nutrition and enclosure modification.¹¹¹ One follow-up inspection report noted: "Shyra has metabolic bone disease most likely caused by lack of calcium supplementation in the diet which has caused her weakness and the radiologically confirmed chronic fractures. On inspection Shyra did not have normal ambulation, she had progressive weakness, walking a few steps with her hind end lower than her front end and then dragging her hind legs behind her . . . [I]t is presumed that the fractures associated with her condition are painful. Appropriate supplementation must be provided to maintain animals in good health."¹¹²

To help treat her condition, a veterinarian recommended that Shyra be placed on an exercise restriction plan, that she have "access to bedding that is safe (and not at risk of ingestion) that provides adequate padding (ex. straw/hay)" and that Kirshner follow a plan of "rest and limited movement" for Shyra.¹¹³ Upon inspection, the APHIS official noted that Kirshner continued to provide Shyra with fleece blankets which "were an ingestion risk and did not provide adequate padding" and a pillow, which Shyra shredded.¹¹⁴ The inspection report again noted that Kirshner "should follow the directions of the

¹⁰⁷ Ass'n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016) at 39.

¹⁰⁸ *Id.*

¹⁰⁹ *See id.* at 36-37.

¹¹⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024).

¹¹¹ *Id.*; Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 14, 2024).

¹¹² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024).

¹¹³ *Id.*

¹¹⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 14, 2024).

veterinarians to appropriately treat the diseases and injuries that Shyra has.”¹¹⁵ Ultimately, Shyra suffered at the hands of Kirshner in a manner indisputably constituting a “take” under the ESA. Shyra was confiscated by the California Department of Fish and Wildlife in early 2024 and has since been transferred to a reputable sanctuary where she now, on information and belief, lives a healthy and enriching life.

Shyra was not the first tiger denied veterinary care by Kirshner. Kirshner also denied a tiger named Dana adequate veterinary care, which caused her injury. During a routine inspection, an APHIS inspector cited Kirshner upon finding that her left eye “appeared painful, with a protruding third eyelid, redness, and staining on the face from discharge. The eye had not been evaluated by a veterinarian, nor was it currently under treatment.”¹¹⁶

Lack of appropriate veterinary care constitutes harm and harassment under the ESA. The tigers in Kirshner’s possession have suffered actual physical and psychological injuries and, on information and belief, death due to these deficiencies. Kirshner’s practice of denying its tigers adequate veterinary care also creates a likelihood of further injury by significantly impairing the tigers’ normal behavioral patterns.

III. Kirshner Wildlife Takes Lions in Violation of the ESA

Kirshner harms, harasses, and, on information and belief, kills lions by depriving them of adequate environmental enrichment and social groupings, nutrition, housing, sanitation, and veterinary care, and by exposing them to unsafe handling and public contact. In doing so, Kirshner 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, Kirshner has previously taken lions and is engaged in an ongoing take of four lions by harming and harassing them in violation of the ESA.

A. Kirshner harms, harasses, and, on information and belief, has killed lions by denying them proper social groupings and adequate environmental enrichment.

Kirshner denies the lions in its care adequate socialization and enrichment. Withholding companionship and enrichment harms lions by injuring them psychologically and physically. A lack of appropriate social grouping and enrichment also harasses lions by impairing essential behavioral patterns in a way that creates a likelihood of further injury.

Lions inhabit various environments, including open woodlands, dense bush, scrublands, and tall grasslands.¹¹⁷ Their ideal habitat offers ample cover for hunting and denning.¹¹⁸ In the wild, lions usually hunt at night, traveling distances from one to eight miles depending on food availability.¹¹⁹ Female lions, who are the primary hunters, often tackle prey much larger than themselves through stalking and ambush.¹²⁰ Lion cubs are good climbers and are known to play in trees.¹²¹

Lions are typically organized into social groups known as prides. For African lions, a typical pride consists of five to nine related adult females and their young, along with two to six males (who are unrelated to the females but often related to each other). Female lions are notably social and often form

¹¹⁵ *Id.*

¹¹⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

¹¹⁷ Ass’n of Zoos and Aquariums, Lion Care Manual (2012) at 11.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 12.

¹²¹ *Id.* at 11.

close bonds with relatives such as mothers and daughters or siblings.¹²² They generally remain in their natal prides throughout their lives.¹²³

To meet the physical and psychological needs of captive lions, it is crucial to provide opportunities for social interactions with compatible lions as well as sufficient and appropriate environmental enrichment. The AZA recommends that lions be provided with “large spacious enclosures designed to encourage species-appropriate behaviors such as resting, walking, hunting, stalking, grooming, playing, breeding, etc.”¹²⁴ These enclosures “should be planted with grasses and bushes for visual privacy from guests and conspecifics [i.e., other lions], trees for shade, and include various substrates, surfaces to mark, deadfall for scratching, and other aspects in their enclosure that will change their pathways and create complex behavioral opportunities.”¹²⁵ Additionally, the enclosures should be structured to allow each lion to “retreat from conspecifics through the use of visual barriers, such as rock outcroppings, hills, and foliage, without limiting an animal’s access to food, water, heat, or shade.”¹²⁶

Kirshner’s lions—including Lucie, Leyah, and Samson—have been forced to live alone in small, barren enclosures lacking any forms of enrichment necessary to prevent physical and psychological harm. The other surviving lion Kirshner owns, a 12-year-old African lioness named Amari who suffers from facial paralysis, has been forced to live in a cramped, barren enclosure with a male African leopard, Axle, who Kirshner describes as Amari’s “service animal.”

Lucie, Leyah, Samson, and Amari were denied proper social groupings and have lived in social isolation from the time they arrived at Kirshner. Unlike their wild counterparts, these lions have been denied the companionship of their natal pride from the time they were acquired by Kirshner. This isolation is particularly detrimental for Lucie and Leyah, given the highly social nature of female lions.

Compounding the effects of social isolation, the surviving lions—along with at least five lions who died in Kirshner’s care and numerous others who were “transferred” from the facility—have been denied enrichment adequate to allow them to engage in forage, play, and other species-typical behaviors.

On information and belief, Kirshner’s big cats, including the lions, are housed in rows of small barren enclosures without natural foliage, topographical variation, or complexity of any kind. On information and belief, the lion enclosures measure no larger than 20 feet long and 20 feet wide (i.e., 400 square feet), drastically smaller than the majority of lion exhibits surveyed by the AZA which are over 10,000 square feet. According to the AZA, 10,000 square feet “should be considered the minimum size for new [lion] exhibits.”¹²⁷ Photographs and videos obtained from numerous site visits to Kirshner over the years show that structural features and enrichment items adequate for physical and psychological stimulation are seldom (if ever) included in Kirshner’s lion enclosures. For climbing and hiding opportunities, the lions are typically provided with only a small wooden den box or platform. Their enclosures rarely contain pools adequate for submerging or cooling, and there are virtually no enrichment items inside the enclosures other than the occasional tree stump or ball.

Confined in these dismal conditions, the lions at Kirshner are frequently observed pacing inside their enclosures, sometimes—on information and belief—for hours at a time. This abnormal repetitive behavior is consistent with psychological distress. Distress that is chronic and acute can suppress a lion’s immune responses and increase susceptibility to pathogens, exposing lions to further exertion and distress

¹²² *Id.* at 34.

¹²³ *Id.* at 12.

¹²⁴ *Id.* at 18.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 18-19.

and creating a likelihood of illness, infection, and even death.¹²⁸ On information and belief, Kirshner's practice of confining its lions in small, virtually barren enclosures without sufficient environmental features, shelters, or enhancements has caused or contributed to the injuries and deaths of multiple lions by preventing them from engaging in essential behaviors, which, as the court found in *PETA v. Lowe*, leads to both acute and chronic physical and psychological injury.¹²⁹

By confining the lions to barren enclosures lacking sufficient environmental features, shelters, or enhancements designed to encourage natural movement and species-typical behaviors, and by failing to provide social and psychological stimulation fundamental to lions' physical, social, and psychological well-being, Kirshner's actions harmed, harassed, and, on information and belief, killed lions by causing and contributing to wounds, limb abnormalities, and chronic and acute stress, and by interfering with normal behavioral patterns in a manner that creates a likelihood of further injury. As the court held in *PETA v. Lowe*, such grave deficiencies in the lions' environment constitute a prohibited "take" in violation of the ESA.¹³⁰

B. Kirshner harms, harasses, and, on information and belief, has killed lions by denying them adequate nutrition.

Kirshner does not provide its endangered lions with adequate nutrition. Failing to provide lions with proper diets harms and harasses them by causing painful bone fractures, limb deformities, injuries to the lions' growth and immune systems, and ultimately death. Moreover, these and other conditions brought on by inadequate feeding and nutrition significantly interfere with the lions' normal behavioral patterns, creating a likelihood of further injury.

Lion caretakers should be trained to meet the dietary needs of lions.¹³¹ The AWA 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 good health."¹³² At all times, potable water should be available to lions in containers that are "cleaned and disinfected daily."¹³³ According to husbandry guidelines, feeding lions diets that contain high percentages of boneless muscle meat and poultry products is inadequate because such diets may be nutritionally unbalanced.¹³⁴

Kirshner staff appear to be untrained and unable to provide for the dietary needs of lions, and as a likely result of Kirshner's inexperience with big cat nutrition, lions are deprived of appropriate diets and consistent access to clean, potable water. Countless eyewitness accounts show that the water bowls in the lions' enclosures are frequently tipped over, empty, or very low on water. Most egregiously, the USDA has cited Kirshner for diet and nutrition related deficiencies affecting the health and welfare of its endangered animals (including lions) in eight separate reports, including an Official Warning, between 2012 and 2024.¹³⁵ The USDA citations regarding the chronic failure to provide adequate nutrition to lions in Kirshner's care include, in part, the following:

¹²⁸ See Expert Report of Jay Pratte, *PETA v. Wildlife in Need and Wildlife in Deed*, No. 4:17-cv-00186-RLY-DML, ECF No. 317-1, ¶ 277 (S.D. Ind. Apr. 24, 2020).

¹²⁹ See Findings of Fact and Conclusions of Law, *PETA v. Jeffrey L. Lowe*, No. CIV-21-0671-F, ECF No. 483, ¶ 14-16 (W.D. Okla. Feb. 25, 2022).

¹³⁰ *Id.*

¹³¹ Ass'n of Zoos and Aquariums, *Lion Care Manual* (2012) at 69.

¹³² 9 C.F.R. § 3.129(a).

¹³³ *Id.* at 13.

¹³⁴ Global Federation of Animal Sanctuaries, *Standards for Felid Sanctuaries* § N-2.m.

¹³⁵ See Official Warning: Notice of Alleged Violation, APHIS, Roberta Kirshner, case no. CA240175 (USDA June 6, 2024); Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024), (USDA Jan. 8, 2024), (USDA June 26, 2017), (USDA June 7, 2017), (USDA Apr. 26, 2017), (USDA Apr. 3, 2014); Sworn Affidavits re condition of lion Sampson (USDA 2012).

- There was no feeding plan for exotic cats available for review at the facility.¹³⁶
- At the time of inspection, Lucie—then a five-month-old cub—had a pan of food that consisted entirely of muscle meat without bone. She was exhibiting intermittent lameness, which could be a sign of metabolic bone disease. When the inspector asked to see Lucie’s dietary supplements, there were no open containers of calcium supplement present. Kirshner had two unopened sealed bags of white powder, which she stated was a calcium supplement, but the bags were not labeled, and it was uncertain what form of calcium they might be, or how much should be fed to a lion cub. When asked how much calcium she was feeding this cub, Kirshner stated that it depended on various circumstances. The supplements were being stored in Kirshner’s home, rather than in the food preparation area. There were no posted feeding instructions present.¹³⁷
- No diagnostics had been performed on Lucie since her arrival at Kirshner. Kirshner stated that Lucie had been seen by veterinarians, who expressed the view that the cub would “grow out of it.” There was no consideration of metabolic bone disease, or other orthopedic problems.¹³⁸
- The diet plan to ensure optimal bone growth and development in growing cubs was still not being followed for Lucie on a follow-up inspection nearly three months later. The USDA found Lucie to be lame and in discomfort at the time of inspection. Kirshner had not determined how many scoops of the powdered calcium carbonate and powdered calcium gluconate supplements would be equal to the specified number of required grams. It was discovered that Kirshner had been giving Lucie about 30 grams of calcium gluconate daily when the required daily dose was 100 grams.¹³⁹
- At a follow-up inspection in June 2017, Lucie was unwilling to stand and clearly in discomfort. She was on pain medication, but her condition had not improved.¹⁴⁰
- During yet another follow-up inspection for Lucie, the inspector found that radiographs and blood work “showed thinned bone cortices, which is typically seen in metabolic bone disease, which can be caused by a dietary deficiency. Lucie was able to stand only momentarily, with great reluctance, and she was not able to walk, but does crawl. Her condition has not significantly improved since the last inspection.” The inspector added “[a]t the time of the previous inspection, Kirshner was asked to have a consultant veterinarian with a higher level of expertise with big cat nutrition and medicine review every aspect of this case and to determine an appropriate treatment plan including specific guidance about medical care, treatment, diagnostics, diet and nutritional supplements for this animal[,]” but Kirshner did not comply with this request.¹⁴¹

Kirshner’s failure to provide its lions with adequate nutrition violates the AWA, contravenes generally-accepted husbandry practices, and harms and harasses lions within the meaning of the ESA by causing them to suffer from malnutrition-induced bodily injury.¹⁴² Indeed, inadequate nutrition for big cats can lead to severe chronic conditions, including MBD, neural dysfunction, poor metabolism and weight issues, immune suppression, poor skin/coat/nail structure and quality, and ocular degeneration and impairment.¹⁴³ On information and belief, Lucie and Samson both suffer from MBD, Lucie suffers from neural dysfunction, Samson is obese, and Leyah is blind.

¹³⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 26, 2017).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 7, 2017).

¹⁴⁰ *Id.*

¹⁴¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 26, 2017).

¹⁴² *PETA v. Jeffrey L. Lowe*, No. CIV-21-0671-F, Findings of Fact and Conclusions of Law (ECF No. 483) at 6, 12. (W.D. Okla. Feb. 25, 2022) (holding Lowe’s past acts denying lions adequate nutrition violated the ESA and its implementing regulations).

¹⁴³ See Expert Report of Jay Pratte, *PETA v. Wildlife in Need and Wildlife in Deed* at ¶ 212.

Kirshner's website claims that Lucie—who was acquired by Kirshner as a cub—"came to the Foundation because she suffered a head trauma which caused cranial nerve damage" and "is considered a choker because her brain is unable to properly tell her how to chew and swallow her food."¹⁴⁴ Kirshner further claims on its website that Lucie "had to be removed from her mother at one day of age because of her head trauma" and was transferred to Kirshner because Kirshner "had more resources to help with her recovery." Samson, who likewise has been at Kirshner since infancy, also exhibits clear signs of MBD. However, Kirshner claims on its website that Samson instead suffers from a congenital disorder "that causes the bones to be extremely fragile" and that Kirshner is "the first facility to do any research with exotic big cats regarding this condition."¹⁴⁵ These claims directly contradict the reports of APHIS inspectors, which show that Kirshner not only lacked sufficient knowledge of big cat nutrition, but also repeatedly failed to comply with USDA directives regarding proper vitamin supplementation, and did not seek consultation from a veterinarian with adequate knowledge of big cat nutrition and medicine regarding the lions' diet-related conditions when directed to do so by the agency.¹⁴⁶

On information and belief, Kirshner's longstanding practice of denying its lions adequate nutrition contributed to the premature deaths of at least two cubs, including Ani and her sister Northgate, who were acquired by Kirshner at just 11 days old. Kirshner claimed on its website that Northgate "was born with her kneecap out of place" and a leg "fused" in one position, "which leaves her leg four inches shorter than the others."¹⁴⁷ Kirshner's website further claims that "[w]ith proper nutrition, veterinary care, and consistent physical therapy provided by playing with her sister Ani, [Northgate] has no pain and has developed her own way of getting around."¹⁴⁸ Before her death, Northgate was observed in February 2019 limping in her cage with bowed front legs and a deformed back leg curled up toward her body. According to the USDA, bowed legs, stunted growth, and misshapen limbs are telltale signs of MBD "in cats fed calcium-deficient diets such as boneless or ground turkey, beef, or chicken without appropriate supplements."¹⁴⁹

Although Kirshner was informed on countless occasions that diets consisting primarily of boneless muscle meat and poultry products were likely linked to the alarmingly high rate of metabolic bone disease in its big cats, according to eyewitness accounts, Kirshner continued to feed the lions nutritionally-deficient diets—such as meals consisting primarily of rotisserie chicken.

By failing to provide lions with an adequate and appropriate diet, Kirshner takes lions by causing or contributing to malnutrition-induced illness, bodily injury, and death, and by interfering with the lions' healthy development and normal behavioral patterns in a manner that creates a likelihood of further injury.

C. Kirshner harms, harasses, and, on information and belief, has killed lions by denying them safe and appropriate housing.

Kirshner confines lions in unsafe and inappropriate housing. This housing harms and harasses the lions by causing physical and psychological injury and posing an ongoing safety risk that creates a likelihood of further injury by interfering with their normal behavioral patterns.

¹⁴⁴ Kirshner, LUCIE THE LION, www.kirshner.org, <https://www.kirshner.org/lucie-the-lion> (last visited Feb. 12, 2025).

¹⁴⁵ Kirshner, SAMSON – AFRICAN LION, www.kirshner.org, <https://www.kirshner.org/samson-african-lion> (last visited Feb. 12, 2025).

¹⁴⁶ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 26, 2017).

¹⁴⁷ Kirshner, NORTHGATE – BARBARY LION, www.kirshner.org, <https://www.kirshner.org/northgate-barbary-lion> (last visited Feb. 12, 2025).

¹⁴⁸ *Id.*

¹⁴⁹ USDA, *Metabolic Bone Disease in Nondomestic Cats*, <https://www.aphis.usda.gov/sites/default/files/acacids-big-cats-ac-18-018.pdf> (last visited Sep. 13, 2024).

Kirshner fails to maintain proper lion enclosures and has routinely denied lions—including Lucie, Leyah, Samson, and Amari—safe and appropriate housing. Kirshner’s unwillingness or inability to maintain proper enclosures for its lions causes the lions bodily injury and creates a likelihood of escape, improper contact with the public, and further physical and psychological injury. The USDA has cited Kirshner on two occasions for failing to maintain adequate perimeter fences, thereby creating a likelihood of escape and unauthorized entry by the public.¹⁵⁰

Within their enclosures, Kirshner’s lions are solitarily confined, on information and belief, to an area no larger than 20 feet by 20 feet. These cramped enclosures are often in disrepair and contain damaged, affirmatively dangerous items and surfaces—conditions which create a likelihood of physical injury and death if the lions make contact with them. The USDA has cited Kirshner on two separate occasions for failing to maintain enclosures in acceptable conditions, finding that den boxes for large cats had damage to the exterior surfaces leaving large protruding wood splinters, exposed screws, and holes, thereby increasing the risk of injury and entrapment.¹⁵¹

According to USDA citations and eyewitness reports, Kirshner has denied lions protection from extreme weather since at least 2014. For the past 11 years, lions have repeatedly been observed in cages without fans, pools, misters, or sufficient shade during heatwaves when temperatures reached above 100 degrees. The USDA citations regarding the lions’ deficient housing include the following findings:

- Kirshner failed to maintain a perimeter fence around the lion enclosures that met the height requirement for potentially dangerous animals.¹⁵²
- Several items (e.g., fence panels, decks, and a ladder) were left leaning up against the fence surrounding the large carnivores’ enclosures, decreasing the effective height of the fence and thereby increasing the likelihood of escape.¹⁵³
- During a public exhibition, a 16-week-old lion was handled by a member of the public on an open porch 140 feet from an open gate leading to a two-lane road. The lion, who was not contained by a harness or leash, was of sufficient size and age to escape, thereby risking the safety of the lion and the public.¹⁵⁴
- On a day when the temperature reached 106 degrees outside, deck surfaces in enclosures reached 127 degrees, and shaded parts of the enclosures reached 105 degrees. There were no basins of water, increased ventilation, fans, misters, pools, frozen treats, or any other means of thermoregulation, causing discomfort and threatening the health of the animals.¹⁵⁵

Additionally, eyewitness accounts and inspection photos from the Butte County Department of Health show that several lions have in the past been confined in Roberta Kirshner’s house and garage. On information and belief, Kirshner also has confined lion cubs, including Samson, in horse trailers without proper ventilation for extended periods of time. Moreover, eyewitness accounts and photographic evidence obtained during site visits show that the lion enclosures are so structurally deficient that they injure lions by exposing them to hazardous items and surfaces and dangerous ingestible materials. For

¹⁵⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 21, 2023); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

¹⁵¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

¹⁵² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 21, 2023).

¹⁵³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

¹⁵⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 20, 2016). As of December 2022, the practice of allowing direct contact between lions and members of the public is illegal under the Big Cat Public Safety Act. 50 C.F.R. § 14.254.

¹⁵⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 1, 2014).

example, lions have been observed chewing on pieces of splintered wood, and tattered tarps and cloth coverings have been seen hanging into the lions' enclosures.

Confining lions in poor housing harms, harasses, and, on information and belief, kills them by exposing them to the risk of hazardous ingestion, bodily injury, overheating, and unsafe interactions with the public, which prohibit the lions from expressing normal behavioral patterns such that it creates a likelihood of further psychological and physical injury.

D. Kirshner harms, harasses, and, on information and belief, has killed lions by denying them sanitary conditions.

Kirshner denies its lions a sanitary environment. Lack of sanitation harms and harasses the lions by injuring them and interfering with their normal behavioral patterns in a way that is likely to cause further physical and psychological injury. On information and belief, chronic exposure to unsanitary conditions has killed lions at Kirshner. Kirshner has been cited eight times by the USDA for failing to meet basic sanitation standards. The USDA citations regarding unsanitary conditions impacting the lions include the following findings:¹⁵⁶

- Kirshner failed to discard containers of standing water, which was observed to be very dark in color, putrid smelling, and filled with aquatic insects.¹⁵⁷
- At the time of inspection, non-frozen meat was left out without refrigeration for more than an hour. Unrefrigerated food was found to have significant molding and deterioration. The food was consumed on wooden planks that were not adequately cleaned between feedings. The food preparation area had worn surfaces, worn cutting boards, and rusty cutting implements.¹⁵⁸
- Some food storage areas had chemicals stored next to foodstuffs, including bleach, paint, bags of cement, and car batteries.¹⁵⁹
- Food storage areas had many food bags or containers that were open and some had spilled food present. Freezers had accumulated meat juice or other material and required cleaning.¹⁶⁰
- There was a rodent bait block sitting unprotected adjacent to foodstuffs in a food storage shed.¹⁶¹
- Buckets, bowls, crates, and cages were found to be dirty, and had accumulated standing water and decomposing organic material.¹⁶²
- The food storage area showed signs of mice infestation.¹⁶³

¹⁵⁶ This list includes citations for inadequate sanitation practices that negatively impact the lions as well as other ESA-protected animals at Kirshner. Sanitation deficiencies across Kirshner's facility, including in food storage and preparation areas and the areas surrounding the lions' enclosures, create health risks for the lions, including exposure to pathogens from spoiled/contaminated food and pathogen-carrying insects and rodents. *See Tri-State*, 424 F.Supp.3d at 408-12 (considering facility-wide sanitation problems—such as filthy food preparation and storage areas, the presence of rotten or contaminated food, and the attraction of insects and free-roaming animals—as relevant to court's consideration of whether Defendants violated the ESA with respect to Listed Species at its facility). *See also Kuehl v. Sellner*, 161 F.Supp.3d at 700-01 (considering unsanitary conditions surrounding or in close proximity to the enclosures of Listed Species, general lack of cleanliness throughout the facility, and exhibitors' apparent inability to "keep up with the demands of providing clean water and sanitary conditions" for all of its animals, including the Listed Species, relevant to court's consideration of whether Defendants violated the ESA with respect to Listed Species at its facility).

¹⁵⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

¹⁵⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

- Kirshner allowed grass and weeds to grow up to knee height in certain areas, including between some of the animals' enclosures and the perimeter fence. APHIS inspectors noted these overgrown grasses and weeds "could allow harborage of pests and vermin that could affect the health and well-being of the animals."¹⁶⁴

Such conditions harm and harass lions by causing them to suffer bodily injury, disease, and chronic and acute distress. Lack of sanitation is especially physically taxing to animals at Kirshner because these animals, including the lion Leyah, frequently have untreated wounds; the unsanitary conditions at Kirshner's facility exacerbate these injuries, as untreated wounds and lesions exposed to an unreasonably high amount of pathogens create a likelihood of infection.¹⁶⁵ On information and belief, these conditions have killed lions at Kirshner's facility. Accordingly, Kirshner's unwillingness or inability to maintain a sanitary environment for the lions harms, harasses, and, on information and belief, has killed lions in violation of the ESA.

E. Kirshner harms, harasses, and, on information and belief, has killed lions by denying them adequate veterinary care.

Kirshner has long denied its ESA-protected big cats—including Leyah, Lucie, and Samson—adequate veterinary care. Lack of veterinary care harasses and harms lions by causing or contributing to actual injury and death and by creating a likelihood of further injury from untreated medical issues. 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.¹⁶⁶ Generally accepted husbandry standards for lions call for veterinary care to be available at all times in order to address signs of distress, disease, or injury in a prompt fashion.¹⁶⁷

Lions at Kirshner have long suffered from wounds, lesions, and other bodily injuries for which they did not receive appropriate veterinary attention. And, as recently as February of 2024, the USDA cited Kirshner for failing to communicate medical issues to an attending veterinarian upon finding an untreated and unreported wound on Leyah's face.¹⁶⁸ On multiple occasions between 2018 and 2022, visitors documented similar untreated wounds on other areas of Leyah's body.

Moreover, as with many of Kirshner's big cats, the USDA has cited Kirshner in connection with lameness, chronic fractures, and limb deformities among lions, noting that such issues are likely to be indicators of MBD caused by chronic malnutrition. Kirshner's failure to consult veterinarians with adequate expertise in big cat nutrition has caused a high rate of MBD among its lions, and even after the USDA explicitly ordered Kirshner to pursue consultation with a veterinarian experienced with big cat nutrition to address Lucie's health issues, she failed to do so.¹⁶⁹ Lucie and Samson, who Kirshner acquired as very young cubs, continue to exhibit signs of diet-related illness well into their adult lives, including misshapen limbs, obesity, abnormal gait, and apparent discomfort.

Moreover, according to statements from former volunteers documented in a complaint filed with the USDA, rather than consulting a veterinarian qualified to properly diagnose and treat lions, Ms. Kirshner asked various volunteers on numerous occasions to obtain human medications for the lions, essentially for the purpose of drugging the lions to provide temporary relief for chronic pain caused by

¹⁶⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

¹⁶⁵ See Expert Report of Jay Pratte, *PETA v. Wildlife in Need and Wildlife in Deed* at ¶ 244 (noting that wounds and lesions on lion cubs create especially high levels of risk of infection, disease and further stress when exposed to unsanitary conditions).

¹⁶⁶ Ass'n of Zoos and Aquariums, *Lion Care Manual* (2012) at 69.

¹⁶⁷ *Id.* at 60.

¹⁶⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024).

¹⁶⁹ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 26, 2017); Inspection Report (USDA June 7, 2017); Inspection Report (USDA Apr. 26, 2017).

untreated underlying health and welfare issues.¹⁷⁰ According to the complaint, Ms. Kirshner requested that medications like B12 shots, painkillers, and even a volunteer's personal morphine medication be obtained for use on Samson, and informed two volunteers that she was medicating a lion named Mala with marijuana.¹⁷¹

Kirshner's failure to provide adequate veterinary care harms and harasses the lions by causing them injury and/or death and by creating a likelihood of further injury from untreated medical issues.

F. Kirshner harms, harasses, and, on information and belief, has killed lions by failing to maintain adequate barriers and subjecting them to inappropriate public contact and physical abuse.

Kirshner has exposed lions to dangerous, inappropriate, and physically abusive handling both within their enclosures and during public exhibitions. Unsafe and inappropriate forced proximity to and physical contact with humans harms and harasses lions by injuring them and interfering with their normal behavioral patterns in a manner likely to cause further injury. On information and belief, chronic rough handling and forced proximity to the public has killed lions at Kirshner.

USDA citations confirm that Kirshner has in the past risked the safety of lions and the public by engaging in and facilitating improper handling practices. In one inspection report, an APHIS inspector documented an incident where a male lion cub named Atlas was "handled by a member of the public on an open porch at the facility."¹⁷² Photographs of the incident showed Atlas "being held off the ground by a standing individual who grasped [his] chest under the front legs. There was no harness or leash on the lion. In one photograph the lion appeared to be struggling and pushing away from the individual holding him."¹⁷³ The inspector noted that the incident occurred in very close proximity to an open gate and that at the time of inspection, Atlas was of sufficient size and strength to "cause harm to, or escape from, a member of the public."¹⁷⁴

Moreover, photographs from former volunteers, visitors, and the Butte County Department of Health show that Kirshner has, over the years, routinely allowed members of the public to hold, walk, play with, enter the enclosures of, and conduct photoshoots with numerous lions under its care.

Most egregiously, on information and belief, Kirshner forced at least one lion, likely Samson, to be handled by members of the public during a photoshoot while severely injured. In correspondence between California Department of Fish and Wildlife employees regarding questionable transfers of animals to and from Kirshner's facility, one employee noted that Roberta Kirshner "was fined by USDA last year for a couple of things. Some controversy surrounding her facility regarding a lion cub she was exhibiting and was selling photo shoots while it was injured."

Numerous accounts from visitors and former volunteers show that Kirshner's lions also were subjected to direct physical abuse by their caretakers. On information and belief, on multiple occasions, Kirshner staff (including Roberta Kirshner herself) agitated and hit Samson with a broom to scare him into using his back legs while his bones were broken due to MBD. Volunteers were also instructed, on information and belief, to spray a mixture of water and vodka into Samson's eyes while he was a cub in order to get him to back off from the volunteers.

Kirshner's ongoing practice of exposing endangered lions to forced proximity with the public and physical abuse during handling constitutes a prohibited "take" in violation of the ESA by actually

¹⁷⁰ See Animal Welfare Complaint re Roberta Kirshner, Compl. No. W13-188, at 4-5 (PETA July 31, 2013).

¹⁷¹ *Id.*

¹⁷² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 20, 2016).

¹⁷³ *Id.*

¹⁷⁴ *Id.*

physically and psychologically injuring the lions, interrupting their behavioral patterns in a manner that creates a likelihood of additional physical and psychological injury, and, on information and belief, killing lions.

IV. Kirshner Takes Lion/Tiger Hybrids in Violation of the ESA

Kirshner's chronic failure to provide its lion/tiger hybrids with proper enrichment, adequately implemented nutritional protocols, safe and appropriate caging and housing, basic sanitation, and adequate veterinary care injures the lion/tiger hybrids and deprives them of the ability to engage in natural behaviors in a way that is likely to cause further injury. Thus, Kirshner takes lion/tiger hybrids by harming and harassing them in violation of the ESA. Kirshner's acts and omissions also, on information and belief, have violated the ESA by killing lion/tiger hybrids.

A. Kirshner harms and harasses lion/tiger hybrids by denying them adequate environmental enrichment.

Kirshner denies its lion/tiger hybrids adequate environmental enrichment and appropriate, natural, and complex enclosures necessary for them to engage in natural behaviors. Withholding environmental enrichment harms lion/tiger hybrids by injuring them psychologically and physically and harasses them by significantly impairing essential behavioral patterns, which in turn creates a likelihood of further injury.

Kirshner's lion/tiger hybrids are denied enrichment adequate to allow them to engage in forage, play, and other natural behaviors. On information and belief, Kirshner's lion/tiger hybrids are housed in small, barren enclosures without natural foliage, topographical variation, or complexity of any kind. On information and belief, the lion/tiger hybrid enclosures measure no larger than 20 feet long by 20 feet wide. As with the other big cats at Kirshner, lion/tiger hybrids are deprived of structures sufficient for climbing, jumping, hiding, observing their surroundings, or sheltering from extreme weather. The hybrid enclosures also lack appropriate enrichment items and water basins adequate for submerging or cooling.

As a likely result of the deprivation of adequate environmental enrichment and opportunities to exercise, photographs and videos from site visits show that lion/tiger hybrids at Kirshner frequently exhibit signs of psychological distress manifested by repetitive stereotypic behaviors, and some are obese.

By denying the lion/tiger hybrids adequate environmental enrichment necessary to prevent physical and psychological injury, Kirshner's actions physically and psychologically injure lion/tiger hybrids, interfere with their normal behavioral patterns such that it creates a likelihood of further injury, and have, on information and belief, killed lion/tiger hybrids.

B. Kirshner harms and harasses lion/tiger hybrids by denying them adequate nutrition.

Kirshner does not provide its lion/tiger hybrids with adequate feeding and nutrition, which injures the hybrids physically and psychologically and creates a likelihood of further injury by significantly disrupting normal behavioral patterns. Chronic malnutrition also has, on information and belief, killed lion/tiger hybrids.

Lack of adequate nutrition harms the lion/tiger hybrids because poor nutrition impairs physical and psychological health and leads to poor body condition and diet-related illness in big cats (including lion/tiger hybrids). Indeed, lack of adequate nutrition has caused diet-related injury to lion/tiger hybrids, including a hybrid that, according to the USDA, exhibited signs of excess discomfort and labored breathing compared to normal-weight animals in hot temperatures.¹⁷⁵ Moreover, on information and

¹⁷⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug 11, 2021).

belief, lion/tiger hybrids suffering from the effects of inadequate nutrition have experienced psychological distress at Kirshner, as evidenced by abnormal repetitive behaviors such as pacing.

Additionally, USDA inspection reports show that Kirshner has failed to meet the bare minimum standards for food safety applicable to the lion/tiger hybrids.¹⁷⁶

Food that is nutritionally adequate and safe to consume is fundamental to the physical and psychological wellbeing of big cats like Kirshner's lion/tiger hybrids. By failing to provide them with adequately implemented nutritional protocols, Kirshner injures the hybrids physically and psychologically and interferes with their normal behavioral patterns in a manner that creates a likelihood of further injury.

C. Kirshner harms, harasses, and, on information and belief, has killed lion/tiger hybrids by denying them sanitary conditions.

Kirshner confines its lion/tiger hybrids in unsanitary conditions. These conditions constitute harm and harassment under the ESA because they physically and psychologically injure the hybrids, interfere with the hybrids' ability to engage in normal behavioral patterns in a manner that creates a risk of further injury, and, on information and belief, have killed lion/tiger hybrids.

The USDA also has repeatedly cited Kirshner for its unwillingness or inability to comply with even the most basic sanitation requirements applicable to the lion/tiger hybrids.¹⁷⁷ The unsanitary conditions noted in these citations include failing to remove containers of putrid-smelling, insect-infested water;¹⁷⁸ allowing grass and weeds—which APHIS inspectors noted “could allow harborage of pests and vermin that could affect the health and well-being of the animals”—to grow to knee height between some enclosures and the perimeter fence;¹⁷⁹ leaving unfrozen meat and moldy, deteriorated food in the food preparation area; using worn surfaces and rusty cutting implements to prepare food; storing food next to rodent bait blocks and chemicals including bleach, paint, bags of cement, and car batteries; allowing meat juice to accumulate in freezers; allowing clutter, trash, broken bags of feed, dust, and debris to accumulate

¹⁷⁶ For example, APHIS inspectors found on one occasion that non-frozen meat was left out without refrigeration for more than an hour, food was being consumed on wooden planks that were not adequately cleaned between feedings, food preparation areas were worn and cutting implements were rusty, freezers used to store food were accumulating meat juice and required cleaning, bags of feed were piled up and broken open in areas that had accumulated dust and debris, and foodstuffs were stored next to hazardous items such as bleach, cement, car batteries, and rodent bait. Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014). As discussed above, facility-wide unsafe food handling practices applicable to all animals, including the hybrids, are relevant for the purpose of determining whether Kirshner's inadequate sanitation harmed and/or harassed Kirshner's hybrids, because unsanitary conditions in food storage and preparation areas and lack of adequate food safety create health risks for the hybrids, including exposure to pathogens from spoiled/contaminated food and pathogen-carrying insects and rodents. See *Tri-State*, 424 F.Supp.3d at 408-12; *Sellner*, 161 F.Supp.3d at 700-01.

¹⁷⁷ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014). These citations reflect inadequate sanitation practices that negatively impact the hybrids and other animals at Kirshner. Sanitation deficiencies across Kirshner's facility, including in food storage and preparation areas and the areas surrounding the hybrids' enclosures, create health risks for the hybrids, including exposure to pathogens from spoiled/contaminated food and pathogen-carrying insects and rodents. See Expert Report of Jay Pratte, *PETA v. Wildlife in Need and Wildlife in Deed*, at ¶¶ 224-26, 233. As discussed above, unsanitary conditions surrounding or in close proximity to hybrid enclosures and general lack of cleanliness throughout the facility are relevant for the purpose of deciding whether Kirshner harmed and harassed hybrids by failing to provide adequate sanitation, because such conditions create health risks for the hybrids whether or not they are specific to the hybrid enclosures. See *Tri-State*, 424 F.Supp.3d at 408-12; *Sellner*, 161 F.Supp.3d at 700-01.

¹⁷⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

¹⁷⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

in food storage areas; and leaving dirty food receptacles, crates, and cages to accumulate water and decomposing organic material in an outdoor food receptacle cleaning area.¹⁸⁰

Kirshner's failure to provide a sanitary environment for its lion/tiger hybrids harms and harasses the hybrids by directly impacting their ability to exhibit normal behaviors and by causing physical injury and disease through increased exposure to pathogens and affirmatively dangerous conditions. Accordingly, Kirshner's continued failure to provide the lion/tiger hybrids in its care with a non-injurious and sanitary environment constitutes a prohibited "take" in violation of the ESA because it actually physically and psychologically injures them and interrupts their behavioral patterns in a manner that creates a likelihood of additional physical and psychological injury.

D. Kirshner harms and harasses lion/tiger hybrids by denying them safe and appropriate housing.

Kirshner fails to provide adequate enclosures for the lion/tiger hybrids in its care. Kirshner's unwillingness or inability to house the lion/tiger hybrids safely and appropriately causes them physical and psychological injury and impedes their normal behavioral patterns such that it creates a likelihood of further physical and psychological injury.

The USDA has repeatedly cited Kirshner for denying its animals, including the lion/tiger hybrids, safe and appropriate housing. Specifically, APHIS inspectors found that Kirshner failed to maintain a perimeter fence around the big cats' enclosures that met the height requirement for potentially dangerous animals;¹⁸¹ left items, including fence panels, decks, and ladders, leaning up against the fence surrounding the enclosures of the largest carnivores, decreasing the effective height of the fence and thereby increasing the likelihood of escape;¹⁸² and failed to repair damage to big cat enclosures, including large protruding wood splinters, exposed screws, and holes, thereby increasing the risk of injury and entrapment of the animals.¹⁸³ These failures actually injure the lion/tiger hybrids and annoy them to an extent that impedes their normal behavioral patterns, which creates a likelihood of further injury.

The USDA also has cited Kirshner numerous times for failing to provide its animals, including the lion/tiger hybrids, with adequate means of cooling during periods of extreme heat.¹⁸⁴

By confining lion/tiger hybrids in unsafe enclosures that pose risks of bodily injury, prevent the hybrids from escaping extreme weather, and inhibit their ability to express natural behaviors, Kirshner causes the lion/tiger hybrids physical and psychological injury and significantly disrupts their normal behavioral patterns in a manner that is likely to cause further injury.

E. Kirshner harms and harasses lion/tiger hybrids by denying them adequate veterinary care.

Kirshner fails to provide lion/tiger hybrids adequate veterinary care. Lack of veterinary care harasses and harms the lion/tiger hybrids by causing them actual injury, significantly disrupting their normal behavioral patterns, and creating a likelihood of further injury from inadequately treated medical issues.

More particularly and most recently, in 2024, the USDA cited Kirshner for failing to provide a lion/tiger hybrid named Isaac with adequate veterinary care upon finding that he had two 3-inch-by-2-

¹⁸⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

¹⁸¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 21, 2023).

¹⁸² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

¹⁸³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

¹⁸⁴ Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021), (USDA Aug. 15, 2019), (USDA Aug. 1, 2014).

inch wounds with serosanguinous discharge on one of his front legs, wounds which appeared to be older than the volunteers' notes suggested and had not been communicated to the attending veterinarian.¹⁸⁵

Moreover, on information and belief, like many other big cats at Kirshner, some lion/tiger hybrids suffer from gait abnormalities—a likely indicator of an inadequately treated health condition such as MBD—and frequently exhibit signs of psychological injury, including chronic distress as evidenced by abnormal repetitive pacing behavior.

This lack of adequate veterinary care constitutes harm and harassment under the ESA because it causes lion/tiger hybrids in Kirshner's possession to suffer actual physical and psychological injuries and, on information and belief, creates a likelihood of further injury by significantly impairing their normal behavioral patterns.

F. Kirshner has harmed and harassed lion/tiger hybrids by failing to provide adequate barriers from the public.

Kirshner has harmed and harassed lion/tiger hybrids by failing to maintain adequate boundaries with the public. In captive felids like Kirshner's hybrids, forced proximity to or contact with humans has been shown to be deleterious to psychological well-being, decrease overall activity levels, and cause stress and agitation.¹⁸⁶

On information and belief, Kirshner has allowed members of the public to come into direct contact with, hold, and take photographs with Kirshner's lion/tiger hybrids. Such forced public contact constitutes harm and harassment because it psychologically and physically injures them and creates a likelihood of injury by annoying them to such an extent as to significantly disrupt their normal behavior patterns.¹⁸⁷

As such, by exposing its lion/tiger hybrids to forced proximity with the public, Kirshner's actions constitute a "take" in violation of the ESA.

V. Kirshner Takes Leopards in Violation of the ESA

Kirshner's chronic failure to provide its endangered leopards with proper enrichment and social grouping, adequately implemented nutritional protocols, safe and appropriate caging and housing, basic sanitation, and adequate veterinary care injures them and deprives them of the ability to engage in normal behavioral patterns in a way that is likely to cause further injury. Thus, Kirshner takes leopards by harming and harassing them in violation of the ESA. Kirshner's acts and omissions also, on information and belief, have violated the ESA by killing leopards.

A. Kirshner harms, harasses, and on information and belief kills leopards by denying them proper social groupings and adequate environmental enrichment.

Kirshner harms and harasses leopards by denying them proper social groupings and environmental enrichment, which causes physical injury, chronic and acute stress, and, on information and belief, death. Moreover, these inadequacies interfere with leopards' normal behavioral patterns in a way that creates a likelihood of further injury to them.

¹⁸⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024).

¹⁸⁶ Morgan & Tromborg, *Sources of Stress in Captivity* at 279-280. Moreover, as of December 2022, the practice of allowing direct contact between big cats and members of the public is illegal under the Big Cat Public Safety Act. 50 C.F.R. § 14.254.

¹⁸⁷ See *PETA v. Wildlife in Need and Wildlife in Deed*, 476 F.Supp.3d 765, 784 (S.D. Ind. 2020).

In the wild, leopards have a very wide habitat tolerance and are the only African felids occupying both rainforest and desert habitats.¹⁸⁸ They are most successful in woodland, grassland savanna, and forest habitats, but also are widely found in mountain, coastal scrub, shrubland, semi-desert, and desert habitats.¹⁸⁹ Leopards communicate primarily through olfactory cues, and they frequently scent mark through cheek rubbing and spraying.¹⁹⁰ They rely on broken terrain varied in contour and vegetation as cover for hunting and refuge.¹⁹¹ The leopard is a tremendous climber, with uniquely powerful forequarters and double joints to assist vertical lift.¹⁹² Leopards climb trees to hunt and flush out arboreal prey, and retreat to trees when threatened and to haul kills to avoid theft by other predators.¹⁹³

As such, enclosure design should incorporate vegetation for cover, hiding areas, and various opportunities for the leopards to climb, rest, and observe their environment above ground level.¹⁹⁴ Environmental enrichment plans should be designed to allow leopards to engage in normal behaviors such as natural movement, exploration, foraging, and marking.¹⁹⁵ Additionally, caretakers should refrain from direct contact and stressful handling practices during feeding and enclosure maintenance in order to ensure the psychological wellbeing of leopards during interactions.

In a study of captive leopards, enrichment programs that included providing larger enclosures; placing elevated wooden platforms, pools, large tree logs, tree cover, stones, and dens; introducing olfactory cues to enhance exploration and marking; hiding food; and occasional social interaction with compatible animals significantly reduced the prevalence of repetitive stereotypic behaviors.¹⁹⁶ The study also found that stereotypic prevalence decreased when keepers exhibited positive attitudes when interacting with the leopards.¹⁹⁷

Denying leopards proper social groupings and environmental enrichment robs leopards of the opportunity to express normal behaviors, and can result in distress, disturbances, and altered behavioral patterns, including development of repetitive stereotypic behaviors.¹⁹⁸

On information and belief, like the other ESA-listed big cats at Kirshner, Kirshner's endangered leopards are confined to tiny, barren enclosures of no more than 20 by 20 feet, with no trees, natural foliage, stones, grass, or other complexity of any kind. The enclosures rarely contain climbing structures, pools, or other forms of enrichment that would allow the leopards to engage in normal behaviors. Enrichment items, when provided, are typically useless because the items—such as plastic children's toys and balls—are unrelated to the leopards' species-specific needs. Moreover, Kirshner has denied Axle appropriate social grouping by confining him to a small enclosure with a lion for whom Axle acts, according to Kirshner, as a "service animal."

Likely because the leopards have been deprived of adequate social groupings, space, and environmental enrichment (among other essentials), photographic and video evidence obtained during site visits to Kirshner shows that the leopards frequently engage in stereotypic behaviors, such as repetitive

¹⁸⁸ Hunter et al., *Panthera Pardus*, The Mammals of Africa: Volume V: Carnivores, Pangolins, Equids and Rhinoceroses 159, 161 (2013).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 165.

¹⁹¹ *Id.* at 161.

¹⁹² *Id.* at 162.

¹⁹³ *Id.*

¹⁹⁴ Lyons et al., *The Effects of Physical Characteristics of the Environment and Feeding Regime on the Behavior of Captive Felids*, Zoo Biology 16:71-83, 77 (1997).

¹⁹⁵ Vashisth et al., *Factors influencing the behaviour of common leopard (Panthera pardus) in captivity*, Journal of Wildlife and Biodiversity 8(2): 225-45, 227 (2024).

¹⁹⁶ *Id.* at 229, 237-39.

¹⁹⁷ *Id.* at 237-38.

¹⁹⁸ *Id.* at 238.

pacing and head swinging. Additionally, on information and belief, because the leopards are confined to their cages, where they have no opportunity to run, jump, climb, or exercise, at least two of the leopards at Kirshner—Axle and Tshuma—are visibly overweight and in poor body condition. Overweight body condition in leopards causes a slate of short and long-term medical conditions, including “[l]iver, kidney, and other internal organ failures; [a]rthritis and other painful joint and spine conditions; [r]espiratory distress; [h]eart disease and reduced circulatory efficiency; hygromas at joints, [which are] the result of repeated joint trauma on hard surfaces that[] regularly swell with fluid; [p]ossible hyperkeratosis—thickening of the skin at joints increasing the risk of infection; and [r]educed ability to thermoregulate effectively.”¹⁹⁹ Indeed, one USDA inspection report noted that a leopard was visibly uncomfortable in the heat and was observed engaging in continued panting and open-mouthed breathing.²⁰⁰

By failing to provide the leopards with an enriched environment where they can express natural behavioral patterns, Kirshner takes leopards in violation of the ESA. Kirshner’s actions injure the leopards physically and psychologically—as evidenced by poor body condition and abnormal repetitive behaviors—and interfere with their behavioral patterns in such a way that creates a likelihood of further injury. On information and belief, these chronic and harassing conditions have killed at least two leopards in Kirshner’s care.

B. Kirshner harms, harasses, and, on information and belief, kills leopards by denying them adequate nutrition.

Kirshner does not provide its endangered leopards with adequately implemented nutritional protocols. The lack of adequate nutrition creates a likelihood of injury by interfering with leopards’ normal behavioral patterns, causes them physical and psychological injury, and, on information and belief, has killed leopards.

The USDA has repeatedly cited Kirshner for deficiencies in its nutritional program,²⁰¹ and visitors have documented an ongoing lack of access to clean potable water in the leopards’ enclosures, as water receptacles are often low, empty, tipped over, or dirty.

Lack of adequate nutrition for big cats leads to severe chronic conditions, including immune suppression, poor skin and coat condition, and obesity, which in turn causes respiratory distress. Nutritional deficiencies also interfere with the leopards’ normal behavioral patterns in a manner that creates a likelihood of further injury. Visitors to Kirshner have observed leopards with poor skin and coat quality, including prominent hair loss and visible skin irritation. Additionally, two of Kirshner’s leopards, Tshuma and Axle, are overweight. As noted above, overweight body condition in leopards results in a host of medical issues, including organ damage, arthritis and other painful joint and spine conditions, reduced ability to thermoregulate effectively, and respiratory distress,²⁰² and the USDA has cited Kirshner for violations of the AWA upon observing labored open-mouthed breathing and continuous panting of a leopard during inspection.²⁰³

Proper nutrition is fundamental to the physical and psychological well-being of leopards. By failing to provide these leopards with an appropriate diet, Kirshner takes leopards by physically and psychologically injuring them and creating a likelihood of future injury. Kirshner’s history of denying big cats a proper diet has, on information and belief, killed two leopards under Kirshner’s care.

¹⁹⁹ See Expert Report of Jay Pratte, *PETA v. Wildlife in Need and Wildlife in Deed* at ¶ 184.

²⁰⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug 11, 2021).

²⁰¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 26, 2017); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 25, 2014).

²⁰² See Expert Report of Jay Pratte, *PETA v. Wildlife in Need and Wildlife in Deed* at ¶ 184.

²⁰³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug 11, 2021).

C. Kirshner harms, harasses, and, on information and belief, kills leopards by denying them a sanitary environment.

Kirshner does not provide a sanitary environment for leopards. Lack of sanitation harms and harasses leopards by interfering with their normal behavioral patterns in a way that causes direct physical and psychological injury and also creates a likelihood of future injury. On information and belief, these conditions have killed leopards.

The USDA has cited Kirshner for its unwillingness or inability to comply with even the most basic sanitation requirements applicable to the leopards.²⁰⁴ The unsanitary conditions noted in these citations include failing to remove containers of putrid-smelling, insect-infested water;²⁰⁵ allowing grass and weeds—which APHIS inspectors noted “could allow harborage of pests and vermin that could affect the health and well-being of the animals”—to grow to knee height between some enclosures and the perimeter fence;²⁰⁶ leaving unfrozen meat and moldy, deteriorated food in the food preparation area; using worn surfaces and rusty cutting implements to prepare food; storing food next to rodent bait blocks and chemicals, including bleach, paint, bags of cement, and car batteries; allowing meat juice to accumulate in freezers; allowing clutter, trash, broken bags of feed, dust, and debris to accumulate in food storage areas; and leaving dirty food receptacles, crates, and cages to accumulate water and decomposing organic material in an outdoor food receptacle cleaning area.²⁰⁷

Inadequate sanitation poses constant health risks for the leopards and creates a likelihood of injury from increased exposure to pathogens and bacteria, which lead to infection, disease, chronic stress, and even death. Moreover, as federal district courts found in *PETA v. Tri-State* and *Kuehl v. Sellner*, ESA-listed species that rely heavily on smell (such as leopards) are especially impacted by unsanitary conditions because olfactory cues are among their primary methods of communication.²⁰⁸

Accordingly, inadequate sanitation at Kirshner harasses and harms the leopards in violation of the ESA by directly impeding their ability to exhibit normal species-typical behavior, such as olfactory communication and scent marking, and, on information and belief, causes physical injury, disease, and death through increased exposure to pathogens and chronic distress. Kirshner’s continued failure to provide leopards in its care with a non-injurious and sanitary environment thus constitutes a prohibited “take” in violation of the ESA because it actually physically and psychologically injures the leopards and interrupts their behavioral patterns in a manner that creates a likelihood of additional physical and psychological injury.

D. Kirshner harms, harasses, and, on information and belief, kills leopards by denying them safe and appropriate housing.

Kirshner does not provide its ESA-protected leopards with adequate housing. Unsafe and inappropriate housing leads, on information and belief, to direct injury and death. It also harasses leopards by interfering with species-typical behavioral patterns, thereby increasing the likelihood of further physical and psychological injury.

On information and belief, Kirshner does not provide sufficient space for the leopards to engage in natural behaviors such as hiding from humans, stalking, roaming, running, and playing. Kirshner’s regular practice of confining its animals to their exposed cages in periods of extreme weather without any means of thermoregulation further harms and harasses leopards by causing them actual injury and

²⁰⁴ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²⁰⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²⁰⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

²⁰⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²⁰⁸ See *PETA v. Tri-State Zoological Park*, 424 F.Supp.3d at 414; *Kuehl v. Sellner*, 161 F.Supp.3d 678.

creating a likelihood of further injury from excess heat that impairs their normal behavioral patterns. The USDA has cited Kirshner on three separate occasions for failing to implement cooling protocols when temperatures reached 100 degrees or above, documenting in one citation report that an overweight leopard was seen exhibiting signs of overheating and respiratory distress.²⁰⁹

Moreover, Kirshner's routine neglect in repairing damage to enclosures creates a likelihood of physical injury to the leopards. Indeed, the USDA has cited Kirshner for failing to maintain the leopard Tshuma's enclosure in good repair, which created the likelihood that he would ingest dangerous materials and thereby posed "a serious health risk."²¹⁰ Kirshner also has been cited for failing to repair structural damage in the big cat enclosures generally,²¹¹ and for failing to maintain perimeter fences in a manner adequate to safely secure its large carnivores, thereby risking the safety of the animals and the public.²¹²

Most egregiously, in February 2021, Kirshner's failure to provide safe and adequate housing for the leopards caused a leopard named Royal to attack and injure a volunteer who entered his enclosure—which was not equipped with a lockout, in contravention of professionally accepted husbandry practices—and then escape his enclosure. A few months later, in June 2021, The USDA cited Kirshner upon finding "[a] longtime volunteer was not able to follow the facility protocols and professionally accepted husbandry practices due to the facility housing a leopard in an enclosure without a lockout."²¹³

Kirshner's failure to provide adequate and safe enclosures for the leopards constitutes a prohibited "take" in violation of the ESA. Specifically, by denying them adequate space to engage in species-typical behaviors, failing to maintain safe and adequate perimeter fences, housing them in dilapidated cages containing affirmatively dangerous items, and exposing them to extreme heat without adequate shade covering or cooling mechanisms, Kirshner has injured and, on information and belief, killed leopards. This conduct injures Kirshner's surviving leopards—Axle, Royal, Amur, and Tshuma—and interferes with their ability to engage in normal behaviors, thereby creating a likelihood of further physical and psychological injury.

E. Kirshner harms, harasses, and, on information and belief, kills leopards by failing to maintain adequate barriers from the public.

Kirshner harms and harasses ESA-protected leopards by failing to maintain adequate boundaries between the leopards and the public. Forced proximity to or contact with humans has been shown to decrease overall activity levels, and cause distress and agitation in captive felids.²¹⁴ Inadequate barriers and forced interaction with the public thus harms and harasses leopards by injuring them and interfering with their normal behavioral patterns in a manner that creates a likelihood of further injury and has, on information and belief, killed leopards.

On information and belief, Kirshner has allowed members of the public to come in direct contact with, hold, and take photographs with leopards at Kirshner's facility and during off-site exhibitions. Furthermore, on information and belief, Kirshner has subjected leopards to injury by transporting them in stressful conditions for television appearances, including confining them in small cages for 8-10 hours of travel at a time and forcing them to appear before studio audiences.

Kirshner's ongoing practice of exposing the leopards to improper handling and public contact injures the leopards physically and psychologically, interrupts their behavioral patterns in a manner that

²⁰⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021).

²¹⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²¹¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

²¹² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

²¹³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 22, 2021).

²¹⁴ See Morgan & Tromborg, *Sources of Stress in Captivity* at 280.

creates a likelihood of further injury, and has, on information and belief, killed leopards. Accordingly, Kirshner's failure in this regard constitutes a prohibited "take" in violation of the ESA.

F. Kirshner harms, harasses, and, on information and belief, has killed leopards by denying them adequate veterinary care.

Kirshner has a long, well-documented history of causing its animals to suffer by depriving them of adequate veterinary care.²¹⁵ On information and belief, this includes numerous instances of denying veterinary care to its leopards. Lack of veterinary care harasses and harms the leopards by injuring them and creating a likelihood of further injury by significantly impeding their normal behavioral patterns. Additionally, on information and belief, chronic denial of veterinary care has killed leopards at Kirshner.

On information and belief, during countless site visits since at least 2013, Kirshner's leopards have repeatedly been observed suffering from various physical conditions indicative of underlying medical issues. These conditions have included, for example, significant hair loss, visibly raw and inflamed skin, obesity, and respiratory distress.

Kirshner's unwillingness or inability to provide leopards with adequate veterinary care harms and harasses them by causing actual physical and psychological injury and interrupting their behavioral patterns in a manner that creates a likelihood of further injury. On information and belief, by repeatedly failing to provide adequate veterinary care, Kirshner has killed leopards under its care.

VI. Kirshner Takes Snow Leopards in Violation of the ESA

Kirshner confines its snow leopards in conditions that harm, harass, and, on information and belief, kill them. Specifically, Kirshner fails to meet their needs for social and environmental enrichment, confines them in inadequate and unsanitary housing, and denies them properly implemented nutritional protocols and adequate veterinary care. These circumstances injure snow leopards and interfere with their expression of essential behavioral patterns in a manner that creates a likelihood of further injury and, on information and belief, has killed snow leopards in violation of the ESA.

A. Kirshner has harmed, harassed, and, on information and belief, killed snow leopards by depriving them of proper social groupings and environmental enrichment.

Kirshner has failed to provide its endangered snow leopards with proper social groupings and adequate environmental enrichment. This deficiency harms and harasses the snow leopards by causing physical and psychological injury, disrupting their normal behavioral patterns, causing a likelihood of further physical and psychological injury, and, on information and belief, ultimately killing snow leopards.

Snow leopards naturally inhabit rugged, mountainous regions across Central and South Asia, including the Himalayas, the Tibetan Plateau, and parts of the Karakoram and Pamir ranges.²¹⁶ They are adapted to cold, high-altitude environments, and prefer steep, rocky terrain with ample cover provided by cliffs, boulders, and sparse vegetation, which aids in both hunting and avoiding detection by prey and competitors.²¹⁷ Snow leopards are some of the most skilled climbers among the big cats, using their strong, muscular forelimbs, flexibility, and enhanced rotatory capabilities to effectively navigate their

²¹⁵ The USDA has cited Kirshner for failing to provide adequate veterinary care to numerous animals during 10 separate inspections between 2014 and 2024. *See* Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 14, 2024), (USDA Feb. 12, 2024), (USDA Jan. 12, 2024), (USDA Jan. 8, 2024), (USDA Nov. 1, 2021), (USDA Aug. 11, 2021), (USDA June 26, 2017), (USDA June 7, 2017), (USDA Apr. 26, 2017), (USDA Apr. 3, 2014).

²¹⁶ T. McCarthy et al., *Panthera uncia* (The IUCN Red List of Threatened Species, 2017), <http://iucnredlist.org/species/22732/50664030>.

²¹⁷ *Id.*

complex mountain environments.²¹⁸ Snow leopards have enhanced leaping capabilities and have been known to jump as far as 15 meters.²¹⁹ They are also skilled runners, able to engage in rapid pursuit and traverse rocky terrain to hunt down prey.²²⁰ They are mostly solitary and communicate primarily through vocalizations, scent marking, and scraping the ground with their claws.²²¹

Accordingly, snow leopard enclosures should include varied terrain, hiding areas, and various opportunities for the leopards to climb, rest, and observe their environment above ground level.²²² Environmental enrichment plans should be designed to allow snow leopards to engage in species-typical behaviors, such as running, jumping, climbing, exploring, and marking.

Kirshner has in the past confined incompatible snow leopards together in the same enclosure, which, on information and belief, killed a young snow leopard named Caroline. According to a former volunteer, Ms. Kirshner was attempting to breed the snow leopards and kept them in a cage together for weeks, during which time the male snow leopard repeatedly attacked Caroline and prevented her from eating. Even after Caroline began showing signs of physical and psychological injury, Kirshner did not separate the snow leopards or call a veterinarian. Caroline was found dead in the shared enclosure and, on information and belief, put in a bag and carried off Kirshner's property by a volunteer.

Moreover, Kirshner's endangered snow leopards are denied any means of environmental enrichment in their cramped enclosures—which are completely devoid of natural foliage, boulders, varied terrain, or other forms of complexity that occur in their natural habitats. The enclosures rarely contain climbing structures, pools, or other forms of enrichment that would allow the snow leopards to engage in normal behaviors.

As a likely result of the deprivation of adequate social groupings, space, and environmental enrichment, the snow leopards at Kirshner exhibit signs of psychological distress manifested by repetitive stereotypic behaviors. Additionally, on information and belief, because the snow leopards are confined to cramped, barren cages, where they have no opportunity to run, jump, climb, exercise, or engage in other forms of species-typical movement, many of the snow leopards confined at Kirshner over the years have been observed in poor body condition and/or visibly suffering from mobility issues—such as walking with abnormal gaits and exhibiting signs of limb weakness and intermittent lameness.

By placing the snow leopards in incompatible social groupings and denying them the environmental enrichments necessary to prevent physical and psychological injury, Kirshner's actions have injured the snow leopards, created a likelihood of further injury by significantly interfering with their normal behavioral patterns, and, on information and belief, have killed snow leopards.

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

Kirshner does not provide its snow leopards with adequate nutrition. The lack of adequate nutrition injures the snow leopards, creates a likelihood of further injury by significantly disrupting normal behavioral patterns, and has, on information and belief, killed snow leopards.

²¹⁸ H. Smith et al., *Functional Adaptations in the Forelimb of the Snow Leopard (Panthera uncia)*, 61 Integrative and Compar. Anim. Biology Sci. No. 5, 1852, 1862 (2015).

²¹⁹ *Id.* at 1853.

²²⁰ *Id.*

²²¹ Fox & Chundawat, *What is a Snow Leopard? Behavior and Ecology, Snow Leopards, Biodiversity of the World: Conserv. from Genes to Landscapes*, 13–15 (2016).

²²² Lyons et al., *The Effects of Physical Characteristics of the Environment and Feeding Regime on the Behavior of Captive Felids*, *Zoo Biology* 16:71-83, 77 (1997).

The USDA has, in the past, cited Kirshner for failing to adequately implement nutritional protocols for its endangered felids, including the snow leopards.²²³ Lack of adequate nutrition harms the snow leopards, because poor nutrition impairs their physical and psychological health and leads to metabolic bone disease, poor metabolism, and weight issues.

On information and belief, lack of adequate nutrition caused physical injury to at least one snow leopard, Fredrick, who was observed during multiple site visits between 2018 and 2021 to be physically injured and in poor body condition; specifically, Fredrick appeared to be underweight, walked with an abnormal gait, and exhibited signs of limb weakness consistent with malnutrition-induced illnesses like MBD. Moreover, in addition to physical injury, Fredrick and numerous other now-deceased snow leopards suffered psychological injury at Kirshner, as evidenced by abnormal repetitive behaviors such as pacing, which can be a sign of psychological distress caused by malnutrition.²²⁴

Moreover, USDA inspection reports show that Kirshner has failed to meet basic food safety standards applicable to the snow leopards. For example, APHIS inspectors found on one occasion that non-frozen meat was left out without refrigeration for more than an hour, food was being served on wooden planks that were not adequately cleaned between feedings, food preparation areas were worn and cutting implements were rusty, freezers used to store food were accumulating meat juice and required cleaning, bags of feed were piled up and broken open in areas that had accumulated dust and debris, and foodstuffs were stored next to hazardous items such as bleach, cement, car batteries, and rodent bait.²²⁵

Proper nutrition is fundamental to the physical and psychological wellbeing of snow leopards. By failing to provide its snow leopards with adequately implemented nutritional protocols, Kirshner has injured them physically and psychologically and created a likelihood of further injury by significantly interfering with their normal behavioral patterns. On information and belief, chronic malnutrition has killed at least six snow leopards at Kirshner's facility since 2012, three of whom have died within the past three years.

C. Kirshner has harmed, harassed, and, on information and belief, killed snow leopards by denying them a sanitary environment.

Kirshner fails to provide a sanitary environment for the snow leopards. Lack of sanitation harms and harasses snow leopards by injuring them, interfering with their normal behavioral patterns, and exposing them to disease, pathogens, infections, and acute and chronic psychological distress, creating a likelihood of further physical and psychological injury. On information and belief, chronic exposure to unsanitary conditions also has killed snow leopards.

The USDA has cited Kirshner for its unwillingness or inability to comply with even the most basic sanitation requirements applicable to the snow leopards on multiple occasions.²²⁶ The unsanitary conditions noted in these citations include failing to discard containers of putrid-smelling, insect-infested water;²²⁷ allowing grass and weeds—which APHIS inspectors noted “could allow harborage of pests and vermin that could affect the health and well-being of the animals”—to grow to knee height between some enclosures and the perimeter fence;²²⁸ leaving unfrozen meat and moldy, deteriorated food in the food preparation area; using worn surfaces and rusty cutting implements to prepare food; storing food next to rodent bait blocks and chemicals including bleach, paint, bags of cement, and car batteries; allowing meat

²²³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 26, 2017); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 25, 2014).

²²⁴ See Morgan & Tromborg, *Sources of Stress in Captivity* at 283, 287.

²²⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²²⁶ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²²⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²²⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

juice to accumulate in freezers; allowing clutter, trash, broken bags of feed, dust, and debris to accumulate in food storage areas; and leaving dirty food receptacles, crates, and cages to accumulate water and decomposing organic material in the cleaning area.²²⁹

These unsanitary conditions directly impact the snow leopards' ability to exhibit normal species-typical behavior and, on information and belief, have caused physical injury, disease, and death from increased exposure to pathogens and chronic distress.²³⁰ Likewise, prevailing conditions such as uncovered poison traps, organic waste, insect and rodent infestation, mold, and dangerous surfaces create a likelihood of physical injury and death if snow leopards make contact with such conditions.

Accordingly, Kirshner's ongoing failure to provide snow leopards in its care with a non-injurious and sanitary environment constitutes a prohibited "take" in violation of the ESA because it physically and psychologically injures the snow leopards, interrupts their behavioral patterns in a manner that creates a likelihood of additional physical and psychological injury and, on information and belief, has killed snow leopards.

D. Kirshner has harmed, harassed, and, on information and belief, killed snow leopards by denying them safe and appropriate housing.

Kirshner has failed to provide adequate enclosures for the snow leopards in its care. Kirshner's unwillingness or inability to house the snow leopards safely and appropriately causes them physical and psychological injury and impedes their normal behavioral patterns such that it creates a likelihood of escape, improper contact with the public, and further physical and psychological injury. On information and belief, chronic confinement in dilapidated and affirmatively dangerous housing at Kirshner has killed snow leopards.

The USDA has repeatedly cited Kirshner for failing to provide adequate caging and housing for the animals at its facility, including the snow leopards. The violations include placing items that could be used to jump against or near perimeter fences surrounding the largest carnivores' enclosures,²³¹ and failing to repair damage in big cat enclosures, leaving large protruding wood splinters, exposed screws, and holes.²³² These failures have injured the snow leopards and created a likelihood of further injury by significantly impeding their normal behavioral patterns.

The USDA also has cited Kirshner on three separate occasions between 2014 and 2021 for failing to provide the snow leopards with means of cooling during periods of extreme heat.²³³ Kirshner's rampant unwillingness or inability to provide cooling mechanisms for the snow leopards during heat waves is particularly egregious because snow leopards are adapted to cold climates and thus are particularly vulnerable to injury from prolonged exposure to extreme heat. Indeed, according to a former volunteer, in 2013, a snow leopard died as a result of being confined in an outdoor enclosure during a period of extreme heat and surrounding forest fires.

By confining snow leopards in unsafe enclosures that pose risks of bodily injury and do not allow them to express natural behaviors, Kirshner has injured snow leopards and significantly disrupted their normal behavioral patterns in a manner likely to cause further physical and psychological injury. On

²²⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²³⁰ See *Tri-State*, 424 F.Supp.3d at 433.

²³¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

²³² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

²³³ Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021), (USDA Aug. 15, 2019), (USDA Aug. 1, 2014).

information and belief, chronic confinement in unsafe enclosures without adequate protection from extreme heat has killed snow leopards at Kirshner.

E. Kirshner has harmed, harassed, and, on information and belief, killed snow leopards by denying them adequate veterinary care.

Kirshner fails to provide its snow leopards with adequate veterinary care. Lack of veterinary care harms and harasses snow leopards by injuring them and significantly impairing their normal behavioral patterns, which in turn creates a risk of further injury. Additionally, chronic deprivation of adequate veterinary care has, on information and belief, killed snow leopards at Kirshner.

On information and belief, like many other big cats at Kirshner, the snow leopards suffer from limb weakness and gait abnormalities. Frederick, for example, has been frequently observed pacing and limping with apparent hind limb weakness and an abnormal gait—indicators of an inadequately treated health condition such as MBD. Based on eyewitness accounts, snow leopards at Kirshner also frequently exhibit signs of psychological injury, including chronic distress, as evidenced by abnormal repetitive pacing.

Persistent, untreated injuries can weaken animals and shorten their lifespans. Lack of adequate veterinary care is a chronic, facility-wide issue that has injured and killed numerous animals at Kirshner. Indeed, the USDA has cited Kirshner for failing to provide adequate veterinary care to numerous animals during 10 separate inspections between 2014 and 2024.²³⁴ On information and belief, these conditions have injured and ultimately killed numerous snow leopards at Kirshner.

Accordingly, Kirshner's failure to provide snow leopards at its facility with adequate veterinary care has harmed and harassed the snow leopards by physically and psychologically injuring them and creating a likelihood of further injury by significantly impeding their normal behaviors. On information and belief, chronic deprivation of adequate veterinary care has killed six snow leopards who have died under Kirshner's care since 2012.

F. Kirshner has harmed and harassed snow leopards by failing to maintain adequate barriers and exposing snow leopards to inappropriate public contact.

Additionally, Kirshner fails to provide adequate barriers between snow leopards and the public and facilitates direct contact with members of the public. Unsafe and inappropriate forced proximity to and physical contact with the public harms and harasses snow leopards by injuring them and interfering with their normal behavioral patterns in a manner likely to cause further injury to the snow leopards.

The USDA has cited Kirshner for unsafe handling practices upon finding that a longtime Kirshner volunteer took a snow leopard to her place of employment, a juvenile detention facility, for exhibition.²³⁵ While at this event, two of the volunteer's adult coworkers were photographed holding the snow leopard.²³⁶ According to APHIS inspectors, the "five-month-old potentially dangerous snow leopard was too large and too mature to be safely handled by members of the public."²³⁷

Kirshner's ongoing practice of facilitating inappropriate and unsafe contact between snow leopards and the public injures the snow leopards and interrupts their behavioral patterns in a manner that

²³⁴ See Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 14, 2024), (USDA Feb. 12, 2024), (USDA Jan. 12, 2024), (USDA Jan. 8, 2024), (USDA Nov. 1, 2021), (USDA Aug. 11, 2021), (USDA June 26, 2017), (USDA June 7, 2017), (USDA Apr. 26, 2017), (USDA Apr. 3, 2014).

²³⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 4, 2022).

²³⁶ *Id.*

²³⁷ *Id.*

creates a likelihood of additional physical and psychological injury. Accordingly, Kirshner's actions in this regard constitute a prohibited "take" in violation of the ESA.

VII. Kirshner Takes Clouded Leopards in Violation of the ESA

Kirshner harms, harasses, and, on information and belief, has killed at least five clouded leopards by depriving them of adequate enrichment and social groupings, safe and appropriate caging and housing, nutrition, sanitation, and veterinary care. Accordingly, Kirshner has taken multiple clouded leopards and is engaged in an ongoing take of its sole surviving clouded leopard, Bow, in violation of the ESA.

A. Kirshner harms, harasses, and, on information and belief, kills clouded leopards by depriving them of environmental enrichment.

Kirshner harms and harasses clouded leopards by denying them adequate environmental enrichment. Lack of enrichment causes physical and psychological injury and interferes with normal behaviors such that it creates a likelihood of further physical and psychological injury. On information and belief, these deficiencies have killed clouded leopards.

Clouded leopards are native to Southeast Asia, residing in a range of forested habitats.²³⁸ Clouded leopards are skilled climbers with arboreal adaptations to aid in scaling up and running headfirst down trees to hunt and escape predators.²³⁹ Their diet primarily consists of small to medium-sized prey, including birds, rodents, and ungulates, which they often hunt from trees.²⁴⁰ Additionally, clouded leopards rely on scent marking and vocalizations for communication.²⁴¹

Accordingly, clouded leopards should be housed in enclosures that include varied terrain, hiding areas, and various opportunities for the clouded leopards to climb, rest, and observe their environment above ground level.²⁴² Environmental enrichment plans should be designed to allow clouded leopards to engage in normal behaviors such as running, jumping, climbing, exploring, and marking.

On information and belief, Kirshner's clouded leopards are confined to cramped enclosures devoid of natural foliage, varied terrain, or other forms of complexity that occur in their natural habitats. The enclosures rarely contain appropriate climbing structures, pools, or other forms of enrichment that would allow the clouded leopards to engage in normal behaviors. If enrichment items are provided, the items are not species-specific and are therefore useless. Additionally, the enclosures do not provide the clouded leopards with sufficient opportunities to retreat or seek refuge from severe weather.

As recognized by the court in *PETA v Tri-State*, lack of adequate enrichment for captive felids causes frustration and distress, which can in turn lead to hypertension, respiratory and cardiac distress, suppression of the immune system, susceptibility to injury, and ultimately death.²⁴³ As a likely result of confinement in a barren environment without opportunities to exercise, many of the clouded leopards confined at Kirshner over the years have been in poor body condition. Moreover, the clouded leopards confined at Kirshner have routinely exhibited signs of respiratory distress, including excess panting and labored breathing. On information and belief, clouded leopards at Kirshner are visibly psychologically disturbed and regularly engage in abnormal repetitive behaviors such as pacing.

²³⁸ Chiang et al., *A Review of our Current Knowledge of Clouded Leopards (Neofelis nebulosa)*, 2 Int'l J. of Avian & Wildlife Bio., Nov. 30, 2017, at 4.

²³⁹ *Id.* at 3-4.

²⁴⁰ Smithsonian's National Zoo & Conservation Biology Institute, *Clouded leopard (Neofelis nebulosa) Fact Sheet*, <https://nationalzoo.si.edu/animals/clouded-leopard> (last visited Sept. 13, 2024).

²⁴¹ Chiang, *A Review of our Current Knowledge of Clouded Leopards* at 3-4.

²⁴² Lyons et al., *The Effects of Physical Characteristics of the Environment and Feeding Regime on the Behavior of Captive Felids*, *Zoo Biology* 16:71-83, 77 (1997).

²⁴³ *See Tri-State*, 424 F.Supp.3d at 418.

By denying the clouded leopards the environmental enrichment necessary to prevent psychological and physical injury, Kirshner takes clouded leopards by injuring them physically and psychologically and impeding their ability to express species-typical behavior, creating a likelihood of further physical and psychological injury and, on information and belief, ultimately killing them.

B. Kirshner harms, harasses, and, on information and belief, kills clouded leopards by denying them adequate nutrition.

Kirshner does not provide its clouded leopards with adequately implemented nutritional protocols. The lack of adequate nutrition creates a likelihood of injury by significantly disrupting normal behavioral patterns, causes physical and psychological injury, and has, on information and belief, killed clouded leopards.

The USDA has cited Kirshner for its failure to adequately implement nutritional protocols, including failing to provide a feeding plan,²⁴⁴ failing to develop a veterinarian-approved diet, failing to record information about the animals' diets, and seemingly depending on daily donated foodstuffs to determine what animals would eat on a given day.²⁴⁵

Inadequate nutrition for captive felids like Kirshner's clouded leopards leads to severe chronic conditions, including MBD, neural dysfunction, poor metabolism and weight issues, immune suppression, poor skin/coat/nail structure and quality, and ocular degeneration and impairment.²⁴⁶ Three clouded leopards have died at Kirshner since 2021 and photographs obtained from a site visit in May of 2024 show that the only surviving clouded leopard, Bow, is obese. Obesity in felids "results in short- and long-term medical complications, including (but not limited to) [l]iver, kidney, and other internal organ failures; [a]rthritis and other painful joint and spine conditions; [r]espiratory distress; [h]eart disease and reduced circulatory efficiency; hygromas at joints, [which are] the result of repeated joint trauma on hard surfaces that[] regularly swell with fluid; [p]ossible hyperkeratosis—thickening of the skin at joints increasing the risk of infection; and [r]educed ability to thermoregulate effectively."²⁴⁷ Kirshner has long kept clouded leopards in poor body condition, and USDA inspection reports show that these clouded leopards have exhibited signs of physical discomfort and respiratory distress in high temperatures as a result of excess body weight.²⁴⁸ Additionally, video evidence obtained during site visits to Kirshner over the years show that the clouded leopards suffer psychological distress, as evidenced by abnormal repetitive behaviors. Lack of adequate nutrition can cause or contribute to abnormal repetitive behaviors.²⁴⁹

Proper nutrition is fundamental to the physical and psychological well-being of clouded leopards. By failing to implement appropriate nutritional protocols and denying these animals an adequate and appropriate diet, Kirshner takes clouded leopards by injuring them physically and psychologically, interfering with normal behaviors thereby creating a likelihood of further physical and psychological injury, and, on information and belief, killing them.

C. Kirshner harms and harasses clouded leopards by denying them safe and appropriate housing.

Kirshner does not provide the clouded leopards with safe and adequate housing. Inappropriate housing and unsafe conditions have harmed, and, on information and belief, killed numerous clouded

²⁴⁴ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 26, 2017).

²⁴⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²⁴⁶ See Expert Report of Jay Pratte, *PETA v. Wildlife in Need and Wildlife in Deed* at ¶ 212.

²⁴⁷ See *id.* at ¶ 184.

²⁴⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 15, 2019).

²⁴⁹ See Morgan & Tromborg, *Sources of Stress in Captivity* at 283, 287.

leopards at Kirshner, and have harassed them by significantly interfering with their species-typical behavioral patterns, thereby creating a likelihood of further physical and psychological injury. These conditions continue to cause physical and psychological injury to Bow, Kirshner's only surviving clouded leopard.

The USDA has cited Kirshner multiple times for failing to provide adequate housing for its exotic cats, including by placing items against or near perimeter fences surrounding the largest carnivores' enclosures (and thereby decreasing the effective height of the fence),²⁵⁰ and for failing to repair damage in some exotic cat enclosures, leaving large protruding wood splinters, exposed screws, and holes.²⁵¹ These failures created a likelihood of physical injury for the clouded leopards.

The USDA also cited Kirshner on three separate occasions between 2014 and 2021 for failing to provide the clouded leopards with adequate shelter and cooling mechanisms during periods of extreme heat.²⁵² Kirshner's routine practice of confining ESA-protected animals to cramped metal cages in the sun during triple-digit heat waves without sufficient shade covering or adequate means of cooling has caused them heat-induced injury, including labored breathing, lethargy, and apparent physical discomfort. These conditions have significantly impaired the clouded leopards' ability to express normal behavioral patterns, thereby causing a likelihood of further injury.

Confining clouded leopards in poor housing that exposes them to hazardous materials and extreme weather injures them, creates a likelihood of further psychological and physical injury by significantly interfering with their normal behavioral patterns, and, on information and belief, has killed clouded leopards. Accordingly, Kirshner's failure to provide safe and adequate housing for the clouded leopards in its care constitutes a "take" in violation of the ESA.

D. Kirshner harms, harasses, and, on information and belief, kills clouded leopards by denying them a sanitary environment.

Kirshner does not provide sanitary conditions for the clouded leopards. Lack of sanitation harms, harasses, and, on information and belief, kills clouded leopards by injuring them physically and psychologically and interfering with their normal behavioral patterns in a way that creates a likelihood of further injury.

The USDA has cited Kirshner for its unwillingness or inability to comply with basic sanitation requirements applicable to the clouded leopards on numerous occasions. These violations include failing to remove containers of putrid-smelling, insect-infested water;²⁵³ allowing grass and weeds—which APHIS inspectors noted "could allow harborage of pests and vermin that could affect the health and well-being of the animals"—to grow to knee height between some enclosures and the perimeter fence;²⁵⁴ leaving unfrozen meat and moldy, deteriorated food in the food preparation area; using worn surfaces and rusty cutting implements to prepare food; storing food next to rodent bait blocks and chemicals including bleach, paint, bags of cement, and car batteries; allowing meat juice to accumulate in freezers; allowing clutter, trash, broken bags of feed, dust, and debris to accumulate in food storage areas; and leaving dirty food receptacles, crates, and cages to accumulate water and decomposing organic material in the cleaning area.²⁵⁵

²⁵⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

²⁵¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

²⁵² See Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021), (USDA Aug. 15, 2019), (USDA Aug. 1, 2014).

²⁵³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²⁵⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

²⁵⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

Inadequate sanitation poses constant health risks for the clouded leopards and creates a likelihood of injury from increased exposure to pathogens and bacteria, which lead to infection, disease, chronic stress, and on information and belief, death. As established by federal district courts in *Kuehl v. Sellner* and *PETA v. Tri-State*, unsanitary conditions are particularly injurious to animals who, like clouded leopards, rely heavily on scent marking and olfactory cues to communicate.²⁵⁶ As a result of the unsanitary conditions at Kirshner, on information and belief, clouded leopards exhibit signs of psychological injuries including chronic and acute distress in the form of abnormal repetitive behaviors.

By confining clouded leopards in a filthy environment where they are chronically exposed to conditions that physically and psychologically injure them and interfere with natural behaviors in a manner that creates a likelihood of injury, Kirshner harms, harasses, and has, on information and belief, killed clouded leopards in violation of the ESA.

VIII. Kirshner Takes Cheetahs in Violation of the ESA

In 2019, Kirshner acquired two ten-week-old female cheetahs from a wildlife dealer. In Kirshner's care since infancy, cheetah sisters Mema and Paradise were denied proper enrichment, nutrition, veterinary care, food, shelter, and sanitation for their entire lives. By depriving the cheetahs of their most basic needs, Kirshner injures cheetahs and significantly interferes with their normal behavioral patterns, and, on information and belief, has killed Paradise. Accordingly, Kirshner's treatment of cheetahs constitutes a "take" in violation of the ESA.

A. Kirshner harms, harasses, and has, on information and belief, killed cheetahs by denying them adequate environmental enrichment.

Kirshner fails to provide cheetahs with adequate enrichment. By depriving its cheetahs of an environment in which they can express natural behaviors, Kirshner physically and psychologically injures them, disrupts their normal behavioral patterns in a manner that creates a likelihood of further injury and, on information and belief, ultimately killed Paradise.

Cheetahs are native to various regions across Africa, including savannas, grasslands, and open woodlands.²⁵⁷ They are renowned for their incredible speed and adapted to a life of high-speed chases, typically inhabiting areas with open terrain that allows for their rapid acceleration and sustained sprints.²⁵⁸ Their diet mainly consists of small to medium-sized ungulates, which they hunt by relying on their exceptional acceleration to catch prey in short bursts.²⁵⁹

To promote the physical and psychological well-being of cheetahs, enrichment plans should include natural and complex enclosures and environmental enrichment, including whole-carcass feeding, novel toys/objects, introduction of new smells, enclosure rotations, pools, and adequate space to run.

On information and belief, Mema and Paradise were confined to a small, barren cage with no natural foliage or topography that in any way approximates their natural environment. The enrichment items Kirshner occasionally provides—such as plastic children's toys or balls—are not species-specific, novel, or sufficiently stimulating to satisfy cheetahs' complex psychological needs. The cheetah enclosure is, on information and belief, no larger than 20 feet long by 20 feet wide and therefore grossly inadequate for cheetahs to fulfill their need to run.

²⁵⁶ See *PETA v. Tri-State Zoological Park*, 424 F.Supp.3d 404, 414 (D. Md. 2019); *Kuehl v. Sellner*, 161 F.Supp.3d 678 (N.D. Iowa 2016).

²⁵⁷ Durant et al., *Acinonyx jubatus* (The IUCN Red List of Threatened Species, 2024), <http://iucnredlist.org/species/219/259025524>.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

As a result of the complete deprivation of exercise and enrichment, on information and belief, Paradise frequently engaged in repetitive stereotypic pacing inside her enclosure before she died. Her surviving sister, Mema, is overweight and engages in similar stereotypic behavior.

By depriving cheetahs of an environment in which they could express these natural behaviors and engage in psychological stimulation necessary to prevent physical, social, and psychological injury, Kirshner injures cheetahs, creates a likelihood of further injury by significantly disrupting their normal behavioral patterns, and has, on information and belief, killed at least one cheetah. As such, Kirshner's treatment of cheetahs constitutes a prohibited "take" in violation of the ESA.

B. On information and belief, Kirshner harms, harasses, and kills cheetahs by denying them adequate nutrition.

On information and belief, Kirshner does not provide its endangered cheetahs with adequate nutrition. The lack of adequate nutrition injured the cheetahs by contributing to the apparent diet-related illness of Mema and, on information and belief, ultimately killing Paradise. Additionally, Kirshner's failure to provide the cheetahs with proper nutrition creates a likelihood of further injury to Mema by significantly disrupting her normal behavioral patterns.

Lack of adequate nutrition harmed Mema and Paradise because poor nutrition impairs physical health in cheetahs.²⁶⁰ Lack of adequate nutrition also harassed the cheetahs by causing them psychological distress (as evidenced by Paradise's and Mema's abnormal repetitive pacing), and interfering with their natural behaviors, in turn creating a risk of further injury.

Kirshner's website claims that Mema and Paradise "came to the Foundation due to issues with [their] front legs as well as a vitamin deficiency that affected [their] sight," and that they "should regain most or all of their sight within the next few years with help of our nutritional program."²⁶¹ Kirshner's claim that Paradise and Mema came to its facility for nutritive rehabilitation is especially specious given that (1) Kirshner acquired them as young cubs from a well-known wildlife dealer, and (2) the USDA cited Kirshner for diet and nutrition related deficiencies affecting the health and welfare of its endangered felids in eight separate reports, including an Official Warning, between 2012 and 2024.²⁶²

Just like Shyra, Lucie, Samson, and, on information and belief, countless other big cats who have developed MBD under Kirshner's care, it is far more likely that Kirshner's failure to provide adequate nutrition caused or contributed to Paradise and Mema's diet-related illnesses. Like Paradise and Mema, Shyra, Lucie, and Samson all have been under Kirshner's care, and therefore subject to its "nutritional program," since their infancy.

On information and belief, like the other endangered cats with MBD who were either born at Kirshner's facility or acquired by Kirshner as infants, Mema has deformed limbs, suffers intermittent lameness, and limps while pacing in her enclosure.

Accordingly, by failing to provide cheetahs with adequate nutrition, Kirshner physically and psychologically injures them, interferes with their normal behavioral patterns such that it creates a likelihood of further injury, and, on information and belief, has killed at least one cheetah.

²⁶⁰ See Expert Report of Jay Pratte, *PETA v. Wildlife in Need and Wildlife in Deed* at ¶ 212.

²⁶¹ Kirshner, MEMA – CHEETAH, [www.kirshner.org, https://www.kirshner.org/mema-cheetah](https://www.kirshner.org/mema-cheetah) (last visited Feb. 28, 2025).

²⁶² See Official Warning: Notice of Alleged Violation, APHIS, Roberta Kirshner, case no. CA240175 (USDA June 6, 2024); Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024), (USDA Jan. 8, 2024), (USDA June 26, 2017), (USDA June 7, 2017), (USDA Apr. 26, 2017), (USDA Apr. 3, 2014); Sworn Affidavits re condition of lion Sampson (USDA 2012).

C. Kirshner harms, harasses, and, on information and belief, kills cheetahs by denying them basic sanitation.

Kirshner denies endangered cheetahs a sanitary environment. Lack of sanitation harms, harasses, and kills cheetahs by injuring them and interfering with their normal behavioral patterns in a way that creates a likelihood of further injury and death.

The USDA has repeatedly cited Kirshner for risking the health and wellbeing of its animals, including the cheetahs, by failing to comply with basic sanitation requirements.²⁶³ The USDA's findings regarding the unsanitary conditions at Kirshner's facility include the following violations:

- Kirshner failed to discard containers of standing water throughout the facility, which was observed to be very dark in color, putrid smelling, and filled with aquatic insects.²⁶⁴
- At the time of inspection, non-frozen meat was left out without refrigeration for more than an hour. Unrefrigerated food was found to have significant molding and deterioration, and some animals were being fed moldy food. The food was being served on wooden planks that are not adequately cleaned between feedings. The food preparation area had worn surfaces, worn cutting boards, and rusty cutting implements.²⁶⁵
- Food storage areas had chemicals stored next to foodstuffs, including bleach, paint, bags of cement, and car batteries. Food storage areas had many food bags or containers that were open and some had spilled food present. Three freezers had accumulated meat juice or other material and required cleaning. There was a rodent bait block sitting unprotected adjacent to stored and spilled foodstuffs in a food storage shed.²⁶⁶
- In a garage used for food storage, there was accumulated clutter consisting of cardboard boxes and miscellaneous discarded items. In the food preparation area where the sinks and meat cutting boards were located, there were tarps and cardboard boxes piled on the ground. In the three additional food storage structures, bags of feed were piled up and broken open, and the areas had accumulated dust and debris.²⁶⁷
- In the outdoor area used to clean food receptacles such as buckets and bowls, and crates and cages, these items were found to be dirty, and appeared not to have been cleaned for more than a day, with accumulated rainwater and decomposing organic material present.²⁶⁸
- There was evidence of mice infestation in the food storage area.²⁶⁹
- Kirshner allowed grass and weeds—which APHIS inspectors noted “could allow harborage of pests and vermin that could affect the health and well-being of the animals”—to grow to knee height between some enclosures and the perimeter fence.²⁷⁰

Lack of sanitation exposes the cheetahs to disease, infection, and chronic stress, and can cause death. Likewise, prevailing conditions such as uncovered poison traps, organic waste, insect and rodent infestation, mold, and dangerous surfaces creates a likelihood of physical injury and death if the cheetahs make contact with them.

Accordingly, Kirshner's failure to provide a sanitary environment for the cheetahs harms and harasses them, because these conditions cause actual physical and psychological injury and, on

²⁶³ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024), (USDA Mar. 30, 2022).

²⁶⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²⁶⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

information and belief, killed Paradise. Moreover, unsanitary conditions at Kirshner interfere with the cheetahs' ability to engage in normal behaviors in a manner that creates a likelihood of further injury.

D. Kirshner harms, harasses, and has, on information and belief, has killed cheetahs by denying them safe and adequate housing.

Kirshner does not provide the cheetahs with safe and adequate housing. The inappropriate housing and unsafe conditions at Kirshner harm, harass, and kill cheetahs by causing direct physical and psychological injury and death and impeding their ability to engage in normal behavioral patterns, creating a likelihood of further physical and psychological injury.

On information and belief, Kirshner does not provide sufficient space for the cheetahs to engage in species-typical behaviors and fails to repair damaged elements of their enclosure, which physically and psychologically injures them and creates a likelihood of further injury. The USDA has cited Kirshner for failing to repair damage—including large protruding wood splinters, exposed screws, and holes—inside exotic cat enclosures on two occasions since Kirshner acquired Paradise and Mema in 2019.²⁷¹

Furthermore, Kirshner's regular practice of confining its animals without any means of thermoregulation during periods of extreme heat further harmed and harassed the cheetahs by causing them injury and creating a likelihood of further injury by significantly impairing their normal behavioral patterns. Indeed, the USDA has cited Kirshner for failing to effectuate *any* of the measures in its cooling protocol on days when the temperature reached 100 degrees or higher with extreme heat warnings in effect.²⁷²

Failure to provide the cheetahs with safe and appropriate housing injures them physically and psychologically, denies them the ability to engage in normal behaviors creating a likelihood of further physical and psychological injury, and has, on information and belief, killed at least one cheetah.

IX. Kirshner Has Taken an Ocelot in Violation of the ESA

Kirshner harmed, harassed and, on information and belief, killed an ocelot by depriving her of environmental enrichment, basic sanitation, and adequate housing. These deficiencies also deprived the ocelot of the ability to engage in normal behavioral patterns in a manner that created the likelihood of further physical and psychological injury. Accordingly, Kirshner took an ocelot in violation of the ESA.

A. Kirshner harmed, harassed, and, on information and belief, killed an ocelot by depriving her of adequate environmental enrichment.

Kirshner denied its ocelot, Gabriela, sufficient environmental enrichment. Failing to provide her with adequate enrichment harmed and harassed her because it caused her psychological injury, created a likelihood of further injury by significantly interfering with her normal behavioral patterns, and, on information and belief, ultimately killed her.

In the wild, ocelots occupy a wide spectrum of habitats ranging from scrublands to tropical rain forests. The various habitats have one important feature in common: well-structured vegetation cover.²⁷³ Ocelots are excellent climbers and frequently hunt and sleep in trees.²⁷⁴ They hunt during slow, extensive

²⁷¹ Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024), (USDA Mar. 30, 2022).

²⁷² See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 15, 2019); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 1, 2014).

²⁷³ Murray & Gardner, *Leopardus pardalis*, Mammalian Species 548:1-10, 4 (1997).

²⁷⁴ *Id.* at 4, 6.

walks and typically claw at logs and scent mark across their home ranges and along the trails they patrol.²⁷⁵

Accordingly, enclosure design should incorporate vegetation for cover, hiding areas, scratch logs, and various opportunities for ocelots to climb, rest, and observe their environment above ground level. Environmental enrichment plans should be designed to allow ocelots to engage in normal behaviors such as natural movement, exploration, scratching, and marking.

On information and belief, Gabriela was confined to a small, virtually empty cage with no natural foliage, trees, climbing structures, or vegetation for cover. Moreover, Gabriela was rarely if ever provided with enrichment items, and the only elevated surfaces in her enclosure consisted of a small wooden den box and a tiny wooden stool no more than a foot and a half off the ground and barely large enough for her to sit on. Gabriela's enclosure was, on information and belief, no larger than 20 feet long by 20 feet wide, surrounded by four walls of metal fencing without adequate opportunity to seek refuge from extreme weather.

As a likely result of the complete deprivation of exercise, enrichment, and opportunities to climb and engage in other species-typical behavior, Gabriela exhibited signs of psychological distress, frustration, and boredom evidenced by stereotypic repetitive pacing inside her enclosure before her death.

By depriving Gabriela of an environment in which she could express natural behaviors and engage in physical and psychological stimulation necessary to prevent injury, Kirshner injured her, created a likelihood of further injury by disrupting her normal behavioral patterns, and, on information and belief, killed her. As such, Kirshner's failure to provide Gabriela with environmental enrichment constituted a prohibited "take" in violation of the ESA.

B. Kirshner harmed, harassed, and, on information and belief, killed an ocelot by denying her a sanitary environment.

Kirshner did not provide sanitary conditions for Gabriela. Lack of sanitation harmed and harassed her by causing her physical and psychological injury and significantly interfering with her normal behavioral patterns. Chronic exposure to unsanitary conditions, on information and belief, ultimately killed Gabriela.

USDA repeatedly cited Kirshner for failing to observe basic sanitation requirements applicable to Gabriela. These violations include failing to remove containers of putrid-smelling, insect-infested water;²⁷⁶ allowing grass and weeds—which APHIS inspectors noted "could allow harborage of pests and vermin that could affect the health and well-being of the animals"—to grow to knee height between some enclosures and the perimeter fence;²⁷⁷ leaving unfrozen meat and moldy, deteriorated food in the food preparation area; using worn surfaces and rusty cutting implements to prepare food; storing food next to rodent bait blocks and chemicals including bleach, paint, bags of cement, and car batteries; allowing meat juice to accumulate in freezers; allowing clutter, trash, broken bags of feed, dust, and debris to accumulate in food storage areas; and leaving dirty food receptacles, crates, and cages to accumulate water and decomposing organic material in the cleaning area.²⁷⁸

Inadequate sanitation poses constant health risks, including increased exposure to pathogens and bacteria, which lead to infection, disease, chronic stress, and death. Moreover, prevailing conditions such as uncovered poison traps, organic waste, insect and rodent infestation, mold, and dangerous surfaces

²⁷⁵ *Id.* at 6.

²⁷⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²⁷⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

²⁷⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

created a likelihood of—and on information and belief actually caused—physical and psychological injury and death to Gabriela.

Chronic confinement in filthy conditions at Kirshner caused Gabriela to suffer physical and psychological injury and impeded her ability to engage in normal behaviors as evidenced by her abnormal repetitive pacing and, on information and belief, ultimately killed her. Accordingly, by failing to provide Gabriela a sanitary environment, Kirshner took her in violation of the ESA.

C. Kirshner harmed, harassed, and, on information and belief, killed an ocelot by denying her safe and appropriate housing.

Kirshner denied Gabriela safe and adequate housing. The inappropriate housing and unsafe conditions led to direct injury and harassed her by significantly interfering with her normal behavioral patterns, thereby creating a likelihood of further physical and psychological injury. On information and belief, chronic and severe deficiencies in the ocelot's environment—including inadequate protection from extreme heat and exposure to damaged and/or contaminated surfaces—ultimately killed Gabriela.

Specifically, on information and belief, Kirshner confined Gabriela to a barren, cramped enclosure where she suffered injury and chronic distress and was unable to engage in natural behaviors such as hiding from humans, roaming, and climbing. Moreover, Kirshner's routine practice of confining its animals to their exposed cages in periods of extreme weather without any means of thermoregulation or protection from unsafe weather conditions further harmed and harassed Gabriela and contributed to her death by causing her injury and creating a likelihood of further injury by impairing her normal behavioral patterns. The USDA cited Kirshner on three separate occasions for exposing its felids (which include Gabriela), to the risk of overheating. The citations included failing to implement *any* of the measures in the facility cooling protocol in 100 degree weather when an extreme heat warning was in effect,²⁷⁹ failing to provide water basins or providing basins that were so small and shallow that the animals could not fit into them;²⁸⁰ and denying felids any means of cooling during 106 degree weather during which time they were observed to be panting, visibly uncomfortable, and lethargic.²⁸¹

Accordingly, Kirshner's failure to provide Gabriela with safe housing constitutes a prohibited "take" in violation of the ESA because it injured her, created a likelihood of further injury by significantly interfering with her essential behavioral patterns, and, on information and belief, ultimately killed her.

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.

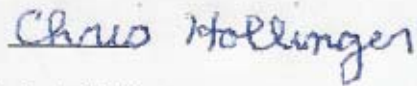
During the sixty-day notice period, PETA is willing to discuss a mutually agreeable remedy. Specifically, PETA is willing to bear all costs associated with relocating the surviving threatened and endangered animals at Kirshner, as well as all other animals at the facility, to reputable facilities. If Kirshner wishes to pursue this remedy in the absence of litigation, please contact me by phone at (415) 984-8906 or by e-mail at chollinger@omm.com in order to facilitate placement. If settlement is not possible, PETA will seek injunctive relief in the United States District Court for the Eastern District of California to enforce the ESA. They will also ask the Court to award costs and fees, including attorneys' fees.

²⁷⁹ Focused Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021).

²⁸⁰ Focused Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 15, 2019).

²⁸¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 1, 2014).

Sincerely,



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