

October 9, 2026

Certified Mail - Return Receipt Requested

Roberta Kirshner

c/o Patrick Ciocca, Esq.
2901 Cleveland Avenue
Suite 201
Santa Rosa, CA 95403

Barry R. Kirshner Wildlife Foundation

c/o Patrick Ciocca, Esq.
2901 Cleveland Avenue
Suite 201
Santa Rosa, CA 95403

Jacob Markow

d/b/a Wildlife Companions
2764 Olsen Road
Rio Vista, CA 94571

Jackie Johnston

d/b/a Johnston Family Farms Carriages and Trees
456-850 Honey View Lane
Milford, CA 96131

Dale Anderson

d/b/a Project Survival Cat Haven
38257 East Kings Canyon Road
Dunlap, CA 93621

Hayden Rosenaur

d/b/a Serengeti Ranch Co LLC
18600 Antioch Road
White City, OR 97503

Steve Martin

d/b/a Steve Martin's Working Wildlife
P.O. Box 40
Castaic, CA 91310

Rhea Gardner

d/b/a Spirit of Animals
3419 Soledad Canyon Road
Acton, CA 93510

The Honorable Doug Burgum

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

Brian Nesvik

Director, U.S. Fish & Wildlife Service
1849 C Street, NW; Room 3331
Washington, DC 20240

Re: Notice Of Intent To File Citizen Suit Pursuant To The Endangered Species Act For Taking, Possessing, Transporting, And Causing The Transportation Of Animals Previously Taken By The Barry R. Kirshner Wildlife Foundation

To The Above-Listed Parties:

Pursuant to Section 11 of the Endangered Species Act ("ESA" or the "Act"), 16 U.S.C. § 1540(g)(2)(A)(i),¹ this letter (the "Notice") constitutes notice that People for the Ethical Treatment of Animals, Inc. ("PETA") intends to add Jacob Markow, Jackie Johnston, Dale Anderson, Hayden Rosenaur, Steve Martin, and Rhea Gardner as defendants in the pending lawsuit captioned *People for the Ethical Treatment of Animals, Inc. v. The Barry R. Kirshner Wildlife Foundation, et al.* (Case No. 2:25-cv-01847; U.S.D.C. E.D. Cal.). These parties are identified collectively herein as the "Possessor Recipients."

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

Roberta Kirshner, with the assistance of paid staff and/or volunteers, operated The Barry R. Kirshner Wildlife Foundation (“Kirshner Wildlife” or “Kirshner”) at 4995 Durham-Pentz Road in Oroville, California. PETA has previously filed suit under the ESA in response to the “take”² of the following ESA-protected animals (collectively, the “Listed Species”), for which allegations were set forth in detail in its prior Notice of Intent and its Complaint in the pending lawsuit. Detailed allegations also are set forth 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 took 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 harassed, harmed, and—at times—killed Listed Species.

Roberta Kirshner and the Barry R. Kirshner Wildlife Foundation subsequently arranged private transfers of the surviving taken animals to the Possessor Recipients. The Possessor Recipients then transported, caused the transportation of, and/or possessed those animals in violation of the ESA. On information and belief, Jackie Johnston, Dale Anderson, and Hayden Rosenaur are in continued possession of taken animals in ongoing violation of the ESA.

The Endangered Species Act

Take

The ESA prohibits the “take” of endangered and most threatened species within the United States.³ Congress defined 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

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).

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).

significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.”⁶ The ESA applies equally to endangered/threatened species living in captivity as in the wild.⁷

Possessing, Transporting, and Causing the Transportation of Unlawfully Taken Animals

The ESA separately prohibits conduct involving animals that have already been unlawfully taken. Section 1538(a)(1)(D) makes it unlawful for any person to “possess, sell, deliver, carry, transport, or ship, by any means whatsoever,” any endangered species taken in violation of the Act.⁸ Section 1538(g) further makes it unlawful for any person to “attempt to commit, solicit another to commit, or cause to be committed” any offense prohibited by Section 1538.⁹ Thus, a person who causes another person to transport an unlawfully taken animal violates Section 1538(g) even if they do not physically transport the animal themselves. The regulations implementing the ESA make clear that any person who transports, causes the transport of, or possesses an animal that was previously taken violates the ESA, regardless of whether that person independently harms, harasses, kills, or otherwise takes or attempts to take an animal.¹⁰

Holding a permit issued by the United States Department of Agriculture (“USDA”) authorizing the possession or exhibition of Listed Species pursuant to the Animal Welfare Act (“AWA”) does not provide a defense to violations of the ESA’s prohibition on the possession of unlawfully taken animals.¹¹

Although Section 9 broadly prohibits the transportation and possession of unlawfully taken animals, the ESA provides a limited mechanism through which qualified, federally authorized persons may transport or possess taken animals in narrow circumstances. Specifically, Section 10 of the ESA provides a permitting mechanism through which the United States Fish and Wildlife Service (“FWS”) may authorize—on a case-by-case basis—specified activities that would otherwise be prohibited under the ESA, including the transportation and possession of previously taken animals.¹² Absent such authorization, private possessors of ESA-protected animals—including Kirshner and the Possessor Recipients—may not simply transfer unlawfully taken animals among themselves.

Section 10 authorization is a specialized and deliberately limited exception to the ESA’s prohibitions, not a routine license broadly available to roadside zoos and private collectors of federally protected animals. Each authorization requires individualized consideration by FWS, and Section 10 requires notice to be published in the Federal Register and an opportunity for public comment before an exemption may be granted.¹³ As explained below, on information and belief, neither Kirshner nor the Possessor Recipients held an applicable Section 10 exemption authorizing the transportation, causing of transportation, or possession of the unlawfully taken Listed Species alleged in this Notice.

⁶ 50 C.F.R. § 17.3 (noting, for captive wildlife, that “harass” excludes animal husbandry practices which are (1) generally accepted, (2) Animal Welfare Act-compliant, and (3) not likely to result in injury).

⁷ 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”).

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

⁹ 16 U.S.C. § 1538(g).

¹⁰ 50 C.F.R. §§ 17.21(d)(1), Example 1 to paragraph (d)(1) (if a person takes an endangered species and gives it to a second person and the second person then transports it to a third person, all three people have violated the ESA, “the first by illegally taking the [animal]; the second by transporting an illegally taken [animal]; and the third by possessing an illegally taken [animal].”).

¹¹ See 50 C.F.R. § 17.21(d)(2)-(4) (no exceptions for USDA permit holders); *Hill v. Coggins*, 867 F.3d 499, 509-510 (4th Cir. 2017) (AWA compliance is not a defense to ESA violations).

¹² See 16 U.S.C. § 1539(a)(1)(A); 50 C.F.R. § 17.22(a).

¹³ See *Friends of Animals v. Salazar*, 626 F. Supp. 2d 102, 115–16 (D.D.C. 2009); 16 U.S.C. § 1539(c).

Liability for any person who commits, attempts to commit, solicits another to commit, or causes such acts to be committed attaches the moment these violations occur, and each violation constitutes a separate offense.¹⁴ The ESA's general intent standard requires only that the act of transporting, causing the transportation of, or possessing an animal be undertaken knowingly.¹⁵ Accordingly, once an animal has been taken, downstream liability for any person who transports, possesses, or causes the transportation of that animal attaches regardless of whether that person was involved in the underlying take or knew a prior take occurred.¹⁶

Listed Species

Kirshner kept and owned animals which, depending on subspecies classification, were 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.¹⁷ 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.¹⁸ The ESA prohibits takes of each subspecies.¹⁹ Indeed, courts have found that all lions, regardless of subspecies, hybrid status, or captive status, are fully protected under the ESA.²⁰ Leopards are listed as endangered, except in particular geographic locales (not relevant here), where they are listed as threatened.²¹

I. Kirshner Took Ring-Tailed Lemurs In Violation Of The ESA

Kirshner, over the years, routinely confined the ring-tailed lemurs in its care in conditions which harmed, harassed, and ultimately killed them. Specifically, Kirshner 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 kept Lulu without a single companion, relegating this highly social animal to a life of total isolation. These conditions 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.²² On information and belief, these deplorable living conditions killed multiple ring-tailed lemurs at Kirshner.

A. Kirshner harmed, harassed, and, on information and belief, killed ring-tailed lemurs by denying them proper social groupings and environmental enrichment.

Kirshner 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 injured them physically and

¹⁴ See 16 U.S.C. §§ 1538, 1540(a)(1).

¹⁵ See *United States v. McKittrick*, 142 F.3d 1170, 1176–77 (9th Cir. 1998); *U.S. v. Ivey*, 949 F.2d 759, 766 (5th Cir. 1991); *U.S. Fish and Wildlife Service v. Berthelson*, 7 O.R.W. 106, 110 (F.W.S., 1993); *H.R. Rep. No. 95–1625*, 95th Cong., 2d Sess. 26 (1978).

¹⁶ See *McKittrick*, 142 F.3d at 1176 & n.4 (clarifying the ESA's general intent standard and noting that “[p]ossession of the [ESA-protected animal] does require that the [animal] be ‘taken in violation of the regulations,’ 50 C.F.R. § 17.84(i)(5), but there is no requirement that the person possessing the [animal] be the one who took it”).

¹⁷ 50 C.F.R. § 17.11(h).

¹⁸ *Id.*

¹⁹ *Id.* § 17.40(r).

²⁰ *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).

²¹ 50 C.F.R. § 17.11(h).

²² See *PETA v. Tri-State Zoological Park*, 424 F. Supp. 3d 404, 414 (D. Md. 2019) (finding zoo's treatment of lemurs constituted a take in violation of the ESA); *Kuehl v. Sellner*, 161 F. Supp. 3d 678 (N.D. Iowa 2016) (same).

psychologically, disrupted their normal behavior patterns in a manner that created a likelihood of further injury, and, 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.²³ Well-adapted to both terrestrial and arboreal movement, they are known to spend time in all layers of their natural habitats.²⁴ It is not natural for ring-tailed lemurs to live alone. In the wild, they typically live in well-bonded, female-dominated social groups of seven to thirty individuals.²⁵ As such, a goal of the American Association of Zoos and Aquariums (“AZA”)²⁶ is to prevent the solitary housing of social lemur subspecies, like ring-tailed lemurs, wherever possible.²⁷

To meet their most basic physical and psychological needs, in addition to appropriate social groupings, ring-tailed lemurs require environmental enrichment. The AWA and its implementing regulations mandate that “[t]he physical environment in the primary enclosures must be enriched by providing means of expressing noninjurious species-typical activities.”²⁸ “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.”²⁹ The AWA further requires animal 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.³⁰ At a minimum, such a plan “must include specific provisions to address the social needs of nonhuman primates of species known to exist in social groups in nature.”³¹ 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.”³²

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

²³ See *Sellner*, 161 F. Supp.3d at 703; C.B. Mowry & J.L. Campbell, Nutrition, in: *Ring-tailed Lemur (Lemur catta) Husbandry Manual 2* (Ass’n of Zoos & Aquariums, 2001) at 2.

²⁴ *Id.*

²⁵ 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).

²⁶ The AZA is a zoological accreditation organization, comprised of animal welfare, conservation, and zoological professionals, which establishes professional accreditation standards for zoological facilities based on modern and accepted animal-welfare and husbandry science and professional standards.

²⁷ See Ass’n of Zoos and Aquariums, *Eulemur Care Manual* (2013), at 24.

²⁸ 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, however, there is no citizen-suit provision within the AWA. Instead, the AWA charges the Secretary of Agriculture (within the U.S. Department of Agriculture) with the administration and enforcement of the AWA. See 7 U.S.C. §§ 2146, 2132(b). In considering the interplay between the AWA and 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 court’s Order denying defendant’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.*

²⁹ 9 C.F.R. § 3.81(b).

³⁰ *Id.*, § 3.81.

³¹ *Id.*, § 3.81(a).

³² *Id.*, § 3.81(c).

by the regulations implementing the AWA, Kirshner routinely housed lemurs either alone or with only one companion, and was cited by the USDA for keeping Lulu in total isolation.³³ 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.”³⁴ 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.³⁵

Exacerbating the psychological torment caused by isolation, Kirshner routinely denied the lemurs in its care—including Lulu—adequate environmental enrichment, which subjected 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 which were 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 were not used, cleaned, or rotated regularly to ensure novelty. As such, Kirshner denied its ring-tailed lemurs, specifically including Lulu, an environment which allowed 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 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 Shaka should have been isolated while learning to use her hand. 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”) advised Kirshner for years that failing to provide adequate environmental enrichment for lemurs violated the AWA.³⁶ Indeed, in 2014, the USDA cited Kirshner for having “no written plan of environmental enhancement” for the two lemurs in its possession and alive at the time.³⁷ 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.”³⁸ On information and belief, Kirshner continued to house Lulu in complete isolation long after the USDA cited Kirshner for failing to provide adequate companionship and enrichment for her.

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 injured ring-tailed lemurs, including Lulu, and created a likelihood of further injury by significantly interfering with their behavioral patterns. On information and belief, chronic deprivation of companionship and psychological stimulation also killed many of the ring-tailed lemurs who were confined at Kirshner over the years.

³³ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 15, 2022).

³⁴ See *Sellner*, 161 F. Supp. 3d at 710–11; *Tri-State*, 424 F. Supp. 3d at 433.

³⁵ *Id.* See also Pride, *Optimal Group Size and Seasonal Stress in Ring-tailed Lemurs* (Lemur catta), 16 Behav. Ecol. 550 (2005) (explaining that female ring-tailed lemurs in groups which are atypically small or large for their habitat type had higher mean cortisol levels—a bio-marker for stress in ring-tailed lemurs—compared to ring-tailed lemurs in typically sized groups).

³⁶ The AWA charges the Secretary of Agriculture with the administration and enforcement of the AWA. See 7 U.S.C. §§ 2146, 2132(b). Much of the Secretary’s 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.*; see also 7 U.S.C. § 2133.

³⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

³⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 15, 2022).

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.³⁹ The deprivation of social groups and environmental enrichment further causes “frustration, 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.⁴⁰ Accordingly, by depriving the lemurs of the social interaction and intellectual stimulation necessary to prevent physical and psychological injury, Kirshner took Chez, Austin, Ilia, Shaka, Zuki, Lulu, and at least four other lemurs who disappeared from Kirshner unaccounted for—all in violation of the ESA.⁴¹

B. Kirshner harmed, harassed, and, on information and belief, killed ring-tailed lemurs by failing to provide them with adequate nutrition.

Kirshner denied the lemurs in its care—including Lulu—adequate feeding and nutrition. This failure 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.”⁴² 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.⁴³ Federal regulations implementing the AWA require that lemurs’ food “be prepared with consideration for the age, species, condition, size, and type of the animal.”⁴⁴ Kirshner did not meet any of these basic standards. Indeed, the USDA has cited Kirshner for having “no feeding plan by species approved by a veterinarian.”⁴⁵ 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.”⁴⁶

Moreover, the USDA 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.⁴⁷ 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 to store food were found to be cluttered, dusty, and/or showing signs of mice infestation; bags and

³⁹ *PETA v. Tri-State*, 397 F. Supp. 3d 768, 773 (D. Md. 2019).

⁴⁰ *Id.*

⁴¹ 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).

⁴² 9 C.F.R. § 3.129(a).

⁴³ See Mowry & Campbell, Nutrition, in: *Ring-tailed Lemur Husbandry Manual* 2 at 3.

⁴⁴ See *id.*

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

⁴⁶ *Id.*

⁴⁷ *Id.*

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.⁴⁸

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.⁴⁹ Since 2012, the USDA documented that Kirshner failed to provide the animals in its care with adequate feeding and nutrition on eight separate occasions, most recently in June 2024.⁵⁰ 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 persisted for at least a decade, these conditions injured and, on information and belief, killed multiple lemurs who died in Kirshner's care during this period.

C. Kirshner harmed, harassed and, on information and belief, killed ring-tailed lemurs by denying them a sanitary environment.

Kirshner deprived the ring-tailed lemurs 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 cited Kirshner numerous times for failing to meet even the most basic sanitation standards within its facility. Inadequate sanitation practices that impacted the living conditions for ring-tailed lemurs at Kirshner included 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.⁵¹
- 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.⁵²
- 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.⁵³
- 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

⁴⁸ *Id.*

⁴⁹ *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).

⁵⁰ 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 Samson (USDA 2012).

⁵¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

⁵² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

⁵³ *Id.*

additional food storage structures, bags of feed were piled up and broken open, and the areas had accumulated dust and debris.⁵⁴

- 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.⁵⁵
- The food storage area showed evidence of mice infestation.⁵⁶
- 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."⁵⁷

Moreover, photographs from site visits show that Kirshner 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 *Kuehl v. Sellner*, unsanitary conditions in, near, and surrounding a lemur's enclosure "interfere with the lemurs' olfactory senses, to which they are highly attuned."⁵⁸ 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."⁵⁹ 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.⁶⁰ Accordingly, Kirshner's failure to provide the lemurs in its care with a non-injurious and sanitary environment constituted a prohibited "take" in violation of the ESA because it actually physically and psychologically injured the lemurs and interfered with their ability to express species-typical behavior, and thereby created a likelihood of additional physical and psychological injury.

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

Kirshner's enclosures were insufficient to safely secure the lemurs, which exposed them to harm and harassment by staff during feeding and cleaning times and made them vulnerable to public contact. Public contact exposed lemurs to disease and physical harm by humans and other animals, which created a likelihood of additional physical and psychological injury. On information and belief, Kirshner's lemur enclosures were not equipped with a lockout or transfer area, so there was no separate space where the lemurs could retreat or be safely confined when volunteers entered their enclosures for cleaning and feeding. Indeed, a video taken in 2017 depicted a Kirshner volunteer entering the enclosure of a solitary lemur while clapping loudly, yelling "NO! GET BACK!", wielding a broom, and jabbing at the lemur

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

⁵⁸ *Sellner*, 161 F. Supp. 3d at 703 (internal quotations omitted).

⁵⁹ *Id.* (internal quotations omitted).

⁶⁰ See *Tri-State*, 424 F. Supp. 3d at 433.

who, having no lockout, transfer area, or other means to retreat or hide, jumped frantically around the enclosure. Another video from 2019 depicted a similar interaction involving a different Kirshner volunteer and a now-deceased lemur named Ilea.

Additionally, Kirshner failed to provide adequate barriers from the public and 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,⁶¹ on information and belief, Kirshner 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 constituted a “take” because it caused them physical and psychological injury and significantly disrupted their normal behavioral patterns, which in turn created a risk of further physical and psychological injury.

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

Kirshner harmed, harassed, and on information and belief killed 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 violated generally accepted standards of care even after the lemurs 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.”⁶² 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.”⁶³

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.⁶⁴ 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 was a chronic, facility-wide issue that resulted in illness, injury and ultimately death for countless animals at Kirshner. Moreover, because Kirshner failed to perform necropsies on lemurs who 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 cited Kirshner for failing to provide adequate veterinary care to numerous animals during 10 separate inspections between 2014 and 2024.⁶⁵

⁶¹ See Kathleen Morgan & Chris Tromborg, *Sources of Stress in Captivity*, 102 *Applied Animal Behav. Sci.* 262, 280 (2007).

⁶² See *Tri-State*, 424 F. Supp. 3d at 413 n. 4.

⁶³ *Id.*

⁶⁴ Animal Welfare Complaint re Roberta Kirshner, Compl. No. W13-188, at 4-5 (PETA July 31, 2013).

⁶⁵ 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).

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

Accordingly, Kirshner 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 Took 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 killed several tigers. In sum, Kirshner took tigers by harming, harassing, and, on information and belief, killing them.

A. Kirshner harmed, harassed, and, on information and belief, killed tigers by depriving them of environmental enrichment.

Kirshner failed 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 injured them, created 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.⁶⁶ Within these ranges, tigers are free to engage in natural behaviors such as swimming, climbing, stalking, and hunting.⁶⁷ Tigers generally are solitary; however, they come together for breeding and occasionally to socialize.⁶⁸

Captive environments without adequate enrichment to allow tigers to express natural behaviors have a detrimental effect on their physical and psychological well-being.⁶⁹ 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.⁷⁰

Enrichment plans for captive tigers are difficult to develop due to tigers' complex hunting, feeding, and spatial needs.⁷¹ In inadequate captive conditions, thwarted hunting prospects alone appear to cause carnivores like tigers to suffer stress.⁷² Accordingly, enclosures should be comprised of relatively large, complex outdoor space and include water features like pools, moats, and running streams; natural vegetation; and trees or other natural substrate objects for nail grooming.⁷³ Environmental enrichment

⁶⁶ J. Goodrich et al., *Panthera tigris* (The IUCN Red List of Threatened Species, 2022), <http://iucnredlist.org/species/15955/214862019>.

⁶⁷ Ass'n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016), at 11.

⁶⁸ *Id.* at 28.

⁶⁹ 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).

⁷⁰ *Id.*

⁷¹ 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).

⁷² Morgan & Tromborg, *Sources of Stress in Captivity*, at 284.

⁷³ Ass'n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016) at 11.

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.⁷⁴

On information and belief, Kirshner failed to provide the tigers with species-specific enrichment and appropriate, natural, and complex enclosures. Instead, Kirshner confined 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 were no pools adequate for swimming and when water basins were provided for cooling, they were 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.⁷⁵ 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 harmed, harassed, and, on information and belief, killed tigers by denying them adequate nutrition.

Kirshner denied the tigers in its care proper nutrition. This failure harmed, harassed, and, 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.”⁷⁶ Diets “shall be prepared with consideration for the age, species, condition, size, and type of the animal.”⁷⁷ According to husbandry guidelines applicable to tigers, diets that consist primarily of muscle meat, chicken, or turkey necks are not nutritionally balanced.⁷⁸

Evidently unable or unwilling to observe these minimal standards, Kirshner caused or contributed to the diet-related injuries and deaths of tigers for many years. Indeed, USDA inspection reports show that Kirshner 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.⁷⁹

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 health.⁸⁰ These failures caused big cats at Kirshner, including the tiger Shyra, to suffer from metabolic

⁷⁴ *Id.*

⁷⁵ *Tri-State*, 424 F. Supp. 3d at 418.

⁷⁶ 9 C.F.R. § 3.129(a).

⁷⁷ *Id.*

⁷⁸ Global Federation of Animal Sanctuaries, *Standards for Felid Sanctuaries* § N-2.m.

⁷⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

⁸⁰ 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 Samson (USDA 2012).

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 (“CDFW”) 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.”⁸¹ 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.⁸²

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.⁸³ 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.⁸⁴ USDA reports dating back to 2012 show that Kirshner’s practice of depriving its animals of adequate nutrition harmed several of its big cats by causing or contributing to MBD and other diet-related illnesses.⁸⁵

CDFW’s separate investigation reached similar conclusions. Following a January 2024 inspection and subsequent veterinary examination, CDFW likewise found that Kirshner failed to provide Shyra with a wholesome diet prepared with consideration for her age, species, condition, and size and with sufficient nutritive value to maintain her in good health.⁸⁶ CDFW documented that Shyra suffered from metabolic bone disease, multiple fractures, bone deformities, hind-limb muscle atrophy, abnormal gait, and a dislocation between the skull and neck that placed her at increased risk of paralysis or death.⁸⁷ CDFW expressly concluded that “Shyra’s condition, lack of health care, and the extent of her deformities show that [Kirshner] did not provide her with a proper diet containing calcium and other necessary nutrients,” and “caused Shyra to suffer needlessly.”⁸⁸

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 were overweight. Among other issues, USDA inspection reports show that the overweight big cats at Kirshner, including a tiger, exhibited signs of

⁸¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Official Warning: Notice of Alleged Violation, APHIS, Roberta Kirshner, case no. CA240175 (USDA June 6, 2024).

⁸⁵ 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).

⁸⁶ CDFW, Notice of Denial of Barry Kirshner Wildlife Foundation’s 2024 Application for Restricted Species Native Species Exhibiting and Resident Exhibiting Permits (Permit Number 2496) 10-11 (Jan. 8, 2025).

⁸⁷ *Id.*

⁸⁸ *Id.* at 11.

discomfort and labored breathing in hot weather compared to normal-weight animals.⁸⁹ 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 exhibited signs of unhealthy growth, pathological bone fractures, and lameness indicative of MBD—which is fatal if left untreated—chronic malnutrition created a likelihood of injury for years, actually caused bodily injury, and, on information and belief, killed tigers.

C. Kirshner harmed, harassed, and, on information and belief, killed tigers by denying them sanitary conditions.

Kirshner confined 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.⁹⁰ 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."⁹¹

USDA inspection records and eyewitness accounts show that Kirshner was either unwilling or unable to comply with these minimal requirements. Indeed, the USDA 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.⁹² 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.⁹³
- 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.⁹⁴
- 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.⁹⁵
- At the time of inspection, non-frozen meat was left out without refrigeration for more than an hour.⁹⁶

⁸⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021).

⁹⁰ Ass'n of Zoos and Aquariums, Tiger (*Panthera tigris*) Care Manual (2016) at 13.

⁹¹ *Id.* at 10.

⁹² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 22, 2021).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 20, 2016).

⁹⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

- 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.⁹⁷
- 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.⁹⁸
- 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 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.⁹⁹
- 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.¹⁰⁰
- A food storage area showed signs of mice infestation.¹⁰¹

CDFW independently observed unsanitary conditions during a January 26, 2024 inspection. Specifically, CDFW found a six-to-eight-month-old tiger cub confined in a travel crate located inside a small enclosure, with accumulated feces inside the crate.¹⁰²

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 violated USDA regulations and failed to meet generally accepted practices of animal care. Confining these tigers in unsanitary conditions created a likelihood of injury by significantly impeding the tigers' ability to express species-typical behavior, actually injured tigers, and, on information and belief, killed multiple 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 harmed, harassed, and, on information and belief, killed tigers by denying them safe and appropriate housing.

Kirshner did not provide safe and adequate housing for its endangered tigers. Unsafe and inappropriate housing harmed, harassed, and 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.¹⁰³ Kirshner failed to meet these and other standards for safe and

⁹⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² CDFW, Notice of Denial of Barry Kirshner Wildlife Foundation's 2024 Application for Restricted Species Native Species Exhibiting and Resident Exhibiting Permits (Permit Number 2496) 7 (Jan. 8, 2025).

¹⁰³ Global Federation of Animal Sanctuaries, *Standards for Felid Sanctuaries* § H-1.1.

appropriate housing. On information and belief, the tiger enclosures were approximately twenty feet long by twenty feet wide (i.e., only 400 square feet) or smaller. During an inspection conducted by CDFW in January 2024, CDFW measured one enclosure housing a tiger named Tiger Lily at only twenty feet long by twelve feet wide, providing only 240 square feet of space, and another housing Shyra at only twelve feet long by ten feet nine inches wide—approximately 129 square feet.¹⁰⁴ These cramped cages did not even allow the tigers confined at Kirshner to take more than a few strides in any direction without encountering the enclosure boundary, much less engage in species-typical behaviors such as roaming, seeking refuge, or exploring their surroundings.

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.¹⁰⁵ 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.¹⁰⁶

Additionally, Kirshner 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 confirmed that Kirshner housed its tigers in dilapidated enclosures that are affirmatively dangerous. The USDA found on two separate occasions (including as recently as 2024) that the den boxes for large 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.¹⁰⁷ The USDA also 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.¹⁰⁸

Moreover, Kirshner denied at least one tiger, Shyra—who was injured as a result of the nutrient-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.”¹⁰⁹

As with the rest of its ESA-protected animals, Kirshner also denied 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 exposed the tigers to overheating, which injured them and interfered with their normal behavior in a manner that created a likelihood of further injury. The USDA cited Kirshner upon finding that its tigers exhibited signs of overheating and discomfort, while trapped

¹⁰⁴ CDFW, Notice of Denial of Barry Kirshner Wildlife Foundation's 2024 Application for Restricted Species Native Species Exhibiting and Resident Exhibiting Permits (Permit Number 2496) 7 (Jan. 8, 2025).

¹⁰⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 21, 2023).

¹⁰⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

¹⁰⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

¹⁰⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

¹⁰⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 14, 2024).

inside their cages in temperatures over 100 degrees, without access to pools, fans, increased ventilation, frozen treats, or any other means of relief.¹¹⁰

Failure to provide these tigers safe and appropriate housing denied them the ability to engage in normal behaviors, created a likelihood of physical and psychological injury and, on information and belief, 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 injured them physically and psychologically and interfered with their ability to engage in normal behaviors such as roaming, running, seeking refuge, and swimming, which in turn created a likelihood of further physical and psychological injury.

E. Kirshner harmed, harassed, and, on information and belief, killed tigers by facilitating inappropriate contact with the public.

Kirshner harmed, harassed, and, 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."¹¹¹ Encouraging close contact with tigers is opposed by mainstream animal welfare professionals and conservationists, and contravenes generally accepted animal husbandry standards.¹¹² 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."¹¹³ As such, allowing members of the public to make physical contact with the tigers violates AWA regulations and interferes with their normal behavioral patterns in violation of the ESA.¹¹⁴

Kirshner's signage outside certain tigers' enclosures showed that Kirshner was aware that public exhibition caused them 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 were confined in exposed enclosures with no opportunity to hide or retreat. Such placement contravenes generally accepted husbandry practices, injured the tigers, and interfered with their normal behavior patterns in a manner that created a likelihood of further injury because it caused distress and induced constant fear of threats without sufficient means to escape or hide.

Nonetheless, Kirshner 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 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,¹¹⁵ Kirshner hosted and attended numerous public exhibitions where tigers were subjected to forced

¹¹⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021).

¹¹¹ See Morgan & Tromborg, Sources of Stress in Captivity at 280.

¹¹² Ass'n of Zoos and Aquariums, Tiger (*Panthera tigris*) Care Manual (2016) at 77.

¹¹³ 9 C.F.R. § 2.131(c)(1).

¹¹⁴ 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.¹¹⁴

¹¹⁵ Ass'n of Zoos and Aquariums, Tiger (*Panthera tigris*) Care Manual (2016) at 77.

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 traveled with young tiger and leopard cubs to exhibit them on live television programs, 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 harmed and harassed 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.¹¹⁶ 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.¹¹⁷ 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."¹¹⁸

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.

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

Kirshner failed 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 also killed several tigers in Kirshner's care.

Routine veterinary care is essential to timely diagnose and treat disease, injury, and distress in tigers.¹¹⁹ Tigers should have regular check-ups, preventative care, and access to emergency veterinary services as needed.¹²⁰ 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.¹²¹

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

¹¹⁶ See *PETA v. Wildlife in Need and Wildlife in Deed*, 476 F. Supp. 3d 765, 784 (S.D. Ind. 2020).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Ass'n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016) at 39.

¹²⁰ *Id.*

¹²¹ See *id.* at 36-37.

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."¹²²

During follow-up inspections in February 2024, an APHIS inspector found that Kirshner had not followed veterinarians' instructions regarding nutrition and enclosure modification.¹²³ 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."¹²⁴

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.¹²⁵ 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.¹²⁶ The inspection report again noted that Kirshner "should follow the directions of the veterinarians to appropriately treat the diseases and injuries that Shyra has."¹²⁷

CDFW likewise found that Kirshner failed to provide adequate veterinary care and oversight.¹²⁸ After a January 2024 inspection, CDFW concluded that "lack of healthcare," along with Kirshner's other egregious failures, "caused Shyra to suffer needlessly."¹²⁹ CDFW also documented that Shyra had not received vaccinations and was not receiving heartworm prevention and noted that no written health-care logs existed for the tiger cubs at Kirshner.¹³⁰ Shyra was confiscated by CDFW 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."¹³¹

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

¹²² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024).

¹²³ *Id.*; Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 14, 2024).

¹²⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024).

¹²⁵ *Id.*

¹²⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 14, 2024).

¹²⁷ *Id.*

¹²⁸ CDFW, Notice of Denial of Barry Kirshner Wildlife Foundation's 2024 Application for Restricted Species Native Species Exhibiting and Resident Exhibiting Permits (Permit Number 2496) 10, 13 (Jan. 8, 2025).

¹²⁹ *Id.* at 11

¹³⁰ *Id.* at 8, 11, 13.

¹³¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

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 Took Lions in Violation of the ESA

Kirshner harmed, harassed, and, on information and belief, killed 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 caused these lions to suffer injury and deprived them of the ability to engage in normal behavioral patterns in a way that was likely to cause further injury. Accordingly, Kirshner took lions by harming and harassing them in violation of the ESA.

A. Kirshner harmed, harassed, and, on information and belief, killed lions by denying them proper social groupings and adequate environmental enrichment.

Kirshner denied 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.¹³² Their ideal habitat offers ample cover for hunting and denning.¹³³ In the wild, lions usually hunt at night, traveling distances from one to eight miles depending on food availability.¹³⁴ Female lions, who are the primary hunters, often tackle prey much larger than themselves through stalking and ambush.¹³⁵ Lion cubs are good climbers and are known to play in trees.¹³⁶

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 close bonds with relatives such as mothers and daughters or siblings.¹³⁷ They generally remain in their natal prides throughout their lives.¹³⁸

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."¹³⁹ 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."¹⁴⁰ 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."¹⁴¹

¹³² Ass'n of Zoos and Aquariums, Lion Care Manual (2012) at 11.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 12.

¹³⁶ *Id.* at 11.

¹³⁷ *Id.* at 34.

¹³⁸ *Id.* at 12.

¹³⁹ *Id.* at 18.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

Kirshner's lions—including Lucie, Leyah, and Samson—were 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 owned, a 12-year-old African lioness named Amari who suffers from facial paralysis, was forced to live in a cramped, barren enclosure with a male African leopard, Axel, who Kirshner described 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, were housed in rows of small barren enclosures without natural foliage, topographical variation, or complexity of any kind. On information and belief, the lion enclosures measured 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."¹⁴² 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 were seldom (if ever) included in Kirshner's lion enclosures. For climbing and hiding opportunities, the lions were typically provided with only a small wooden den box or platform. Their enclosures rarely contained pools adequate for submerging or cooling, and there were virtually no enrichment items inside the enclosures other than the occasional tree stump or ball.

Confined in these dismal conditions, the lions at Kirshner were 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 and creating a likelihood of illness, infection, and even death.¹⁴³ On information and belief, Kirshner's practice of confining its lions in small, virtually barren enclosures without sufficient environmental features, shelters, or enhancements 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.¹⁴⁴

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.¹⁴⁵

¹⁴² *Id.* at 18-19.

¹⁴³ 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).

¹⁴⁴ 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).

¹⁴⁵ *Id.*

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

Kirshner did 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.¹⁴⁶ 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."¹⁴⁷ At all times, potable water should be available to lions in containers that are "cleaned and disinfected daily."¹⁴⁸ 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.¹⁴⁹

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. Numerous 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 cited Kirshner on eleven occasions for failing to implement adequate feeding and nutritional protocols for felids, nine of which involve instances of MBD caused by malnutrition. The USDA citations regarding the chronic failure to provide adequate nutrition to lions in Kirshner's care include, in part, the following:

- There was no feeding plan for exotic cats available for review at the facility.¹⁵⁰
- 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.¹⁵¹
- 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.¹⁵²
- 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.¹⁵³

¹⁴⁶ Ass'n of Zoos and Aquariums, *Lion Care Manual* (2012) at 69.

¹⁴⁷ 9 C.F.R. § 3.129(a).

¹⁴⁸ Ass'n of Zoos and Aquariums, *Lion Care Manual* (2012) at 13.

¹⁴⁹ Global Federation of Animal Sanctuaries, *Standards for Felid Sanctuaries* § N-2.m.

¹⁵⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 26, 2017).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 7, 2017).

- 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.¹⁵⁴
- 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.¹⁵⁵

Kirshner’s failure to provide its lions with adequate nutrition violated the AWA, contravened generally-accepted husbandry practices, and harmed and harassed lions within the meaning of the ESA by causing them to suffer from malnutrition-induced bodily injury.¹⁵⁶ 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.¹⁵⁷ On information and belief, Lucie and Samson both suffer from MBD, Lucie suffers from neural dysfunction, Samson is obese, and Leyah is blind.

Kirshner’s website claimed 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.”¹⁵⁸ Kirshner further claimed 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 had been at Kirshner since infancy, also exhibited clear signs of MBD. However, Kirshner claimed on its website that Samson instead suffered from a congenital disorder “that causes the bones to be extremely fragile” and that Kirshner was “the first facility to do any research with exotic big cats regarding this condition.”¹⁵⁹ 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.¹⁶⁰

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.”¹⁶¹ Kirshner’s website further claimed that “[w]ith proper nutrition, veterinary

¹⁵⁴ *Id.*

¹⁵⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 26, 2017).

¹⁵⁶ *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).

¹⁵⁷ See Expert Report of Jay Pratte, *PETA v. Wildlife in Need and Wildlife in Deed* at ¶ 212.

¹⁵⁸ Kirshner, LUCIE THE LION, [www.kirshner.org, https://www.kirshner.org/lucie-the-lion](https://www.kirshner.org/lucie-the-lion) (last visited Feb. 12, 2025).

¹⁵⁹ Kirshner, SAMSON – AFRICAN LION, [www.kirshner.org, https://www.kirshner.org/samson-african-lion](https://www.kirshner.org/samson-african-lion) (last visited Feb. 12, 2025).

¹⁶⁰ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 26, 2017).

¹⁶¹ Kirshner, NORTHGATE – BARBARY LION, [www.kirshner.org, https://www.kirshner.org/northgate-barbary-lion](https://www.kirshner.org/northgate-barbary-lion) (last visited Feb. 12, 2025).

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.”¹⁶² 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 metabolic bone disease “in cats fed calcium-deficient diets such as boneless or ground turkey, beef, or chicken without appropriate supplements.”¹⁶³

Although Kirshner was informed on numerous 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 took 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 harmed, harassed, and, on information and belief, killed lions by denying them safe and appropriate housing.

Kirshner confined lions in unsafe and inappropriate housing. This housing harmed and harassed the lions by causing physical and psychological injury and posing an ongoing safety risk that created a likelihood of further injury by interfering with their normal behavioral patterns.

Kirshner failed to maintain proper lion enclosures and 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 caused the lions bodily injury and created a likelihood of escape, improper contact with the public, and further physical and psychological injury. The USDA cited Kirshner on two occasions for failing to maintain adequate perimeter fences, thereby creating a likelihood of escape and unauthorized entry by the public.¹⁶⁴

Kirshner also confined the lions alone in cramped, barren enclosures. During a January 2024 inspection, CDFW personnel measured Lucie’s enclosure at just fifteen feet long by fifteen feet wide—a mere 225 square feet.¹⁶⁵ That enclosure fell below California’s legally required minimum space for a single lion, and provided less than two-and-a-half percent of the 10,000 square feet recommended by the AZA as the minimum for outdoor lion exhibits.¹⁶⁶ Kirshner thus failed to provide Lucie even the legally required baseline space, let alone the sufficient space necessary to permit normal movement and species-typical behaviors.

These cramped enclosures were kept in disrepair and contained damaged, affirmatively dangerous items and surfaces—conditions which created a likelihood of physical injury and death if the lions made contact with them. The USDA 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

¹⁶² *Id.*

¹⁶³ 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).

¹⁶⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 21, 2023); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

¹⁶⁵ CDFW, Notice of Denial of Barry Kirshner Wildlife Foundation’s 2024 Application for Restricted Species Native Species Exhibiting and Resident Exhibiting Permits (Permit Number 2496) 7 (Jan. 8, 2025).

¹⁶⁶ *See id.*; Ass’n of Zoos and Aquariums, *Lion Care Manual* (2012) at 18-19.

large protruding wood splinters, exposed screws, and holes, thereby increasing the risk of injury and entrapment.¹⁶⁷

According to USDA citations and eyewitness reports, Kirshner 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.¹⁶⁸
- 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.¹⁶⁹
- 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.¹⁷⁰
- 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.¹⁷¹

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 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 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 harmed, harassed, and, on information and belief, killed lions by denying them sanitary conditions.

Kirshner denied its lions a sanitary environment. Lack of sanitation harms and harasses lions by injuring them and interfering with normal behavioral patterns in a way that is likely to cause further physical and psychological injury. On information and belief, poor sanitation also has killed lions.

¹⁶⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

¹⁶⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 21, 2023).

¹⁶⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

¹⁷⁰ 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.

¹⁷¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 1, 2014).

Kirshner was 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:¹⁷²

- Kirshner failed to discard containers of standing water, which was observed to be very dark in color, putrid smelling, and filled with aquatic insects.¹⁷³
- 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.¹⁷⁴
- Some food storage areas had chemicals stored next to foodstuffs, including bleach, paint, bags of cement, and car batteries.¹⁷⁵
- 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.¹⁷⁶
- There was a rodent bait block sitting unprotected adjacent to foodstuffs in a food storage shed.¹⁷⁷
- Buckets, bowls, crates, and cages were found to be dirty, and had accumulated standing water and decomposing organic material.¹⁷⁸
- The food storage area showed signs of mice infestation.¹⁷⁹
- 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."¹⁸⁰

Such conditions harm and harass lions by causing them to suffer bodily injury, disease, and chronic and acute distress. On information and belief, chronic exposure to unsanitary conditions also contributed to lion deaths at Kirshner. Lack of sanitation was especially physically taxing to animals at Kirshner because these animals, including the lion Leyah, frequently had untreated wounds; the unsanitary conditions at Kirshner's facility exacerbated these injuries, as untreated wounds and lesions exposed to an unreasonably high amount of pathogens create a likelihood of infection.¹⁸¹ Accordingly,

¹⁷² 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).

¹⁷³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

¹⁷⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

¹⁸¹ *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).

Kirshner's unwillingness or inability to maintain a sanitary environment for the lions harmed, harassed, and, on information and belief, killed lions at Kirshner's facility.

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

Kirshner 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 health 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.¹⁸² 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.¹⁸³

Lions at Kirshner 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.¹⁸⁴ 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 cited Kirshner in connection with lameness, chronic fractures, and limb deformities among lions, noting that such issues are likely to be indicators of metabolic bone disease caused by chronic malnutrition. Kirshner's failure to consult veterinarians with adequate expertise in big cat nutrition caused a high rate of metabolic bone disease 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.¹⁸⁵ Lucie and Samson, who Kirshner acquired as very young cubs, continued 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 in July 2013, 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 untreated underlying health and welfare issues. 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.¹⁸⁶

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

¹⁸² Ass'n of Zoos and Aquariums, *Lion Care Manual* (2012) at 69.

¹⁸³ *Id.* at 60.

¹⁸⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024).

¹⁸⁵ 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).

¹⁸⁶ Animal Welfare Complaint re Roberta Kirshner, Compl. No. W13-188, at 4-5 (PETA July 31, 2013).

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

Kirshner 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 also killed lions at Kirshner.

USDA citations confirmed that Kirshner 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.”¹⁸⁷ 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.”¹⁸⁸ 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.”¹⁸⁹

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 ESA-protected lions in 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 CDFW 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 metabolic bone disease. 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 practice of exposing endangered lions to forced proximity with the public and physical abuse during handling constituted a prohibited “take” in violation of the ESA by actually physically and psychologically injuring the lions, interrupting their behavioral patterns in a manner that created a likelihood of additional physical and psychological injury, and, on information and belief, killing lions.

IV. Kirshner Took 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 injured them and deprived them of the ability to engage in natural behaviors in a way that was likely to cause further injury. Thus, Kirshner took lion/tiger hybrids by harming and

¹⁸⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 20, 2016).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

harassing them in violation of the ESA. Kirshner's acts and omissions also, on information and belief, violated the ESA by killing lion/tiger hybrids.

A. Kirshner harmed and harassed lion/tiger hybrids by denying them adequate environmental enrichment.

Kirshner denied 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 were denied enrichment adequate to allow them to engage in forage, play, and other natural behaviors. On information and belief, Kirshner's lion/tiger hybrids were housed in small barren enclosures without natural foliage, topographical variation, or complexity of any kind. On information and belief, the lion/tiger hybrid enclosures measured no larger than 20 feet long by 20 feet wide. As with the other big cats at Kirshner, lion/tiger hybrids were deprived of structures sufficient for climbing, jumping, hiding, observing their surroundings, or sheltering from extreme weather. The hybrid enclosures also lacked 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 injured lion/tiger hybrids, interfered with their normal behavioral pattern such that it created a likelihood of further injury, and, on information and belief, killed lion/tiger hybrids.

B. Kirshner harmed and harassed lion/tiger hybrids by denying them adequate nutrition.

Kirshner did not provide its lion/tiger hybrids with adequate feeding and nutrition, which injured the hybrids physically and psychologically and created a likelihood of further injury by significantly disrupting normal behavioral patterns. Chronic malnutrition also, 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 in 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.¹⁹⁰ Moreover, on information and belief, lion/tiger hybrids suffering from the effects of inadequate nutrition experienced psychological distress at Kirshner, as evidenced by abnormal repetitive behaviors such as pacing.

Additionally, USDA inspection reports show that Kirshner failed to meet the bare minimum standards for food safety applicable to the lion/tiger hybrids.¹⁹¹

¹⁹⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug 11, 2021).

¹⁹¹ 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.

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 injured the hybrids physically and psychologically and interfered with their normal behavioral patterns in a manner that created a likelihood of further injury.

C. Kirshner harmed, harassed, and, on information and belief, killed lion/tiger hybrids by denying them sanitary conditions.

Kirshner confined its lion/tiger hybrids in unsanitary conditions. These conditions constituted harm and harassment under the ESA because they physically and psychologically injured the hybrids, interfered with the hybrids' ability to engage in normal behavioral patterns in a manner that created a risk of further injury, and, on information and belief, killed lion/tiger hybrids.

The USDA also repeatedly cited Kirshner for its unwillingness or inability to comply with even the most basic sanitation requirements applicable to the lion/tiger hybrids.¹⁹² The unsanitary conditions noted in these citations include failing to remove containers of putrid-smelling, insect-infested water;¹⁹³ 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;¹⁹⁴ 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.¹⁹⁵

Kirshner's failure to provide a sanitary environment for its lion/tiger hybrids harmed and harassed 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 failure to provide the lion/tiger hybrids in its care with a non-injurious and sanitary environment constituted a prohibited “take” in violation of the ESA because it actually physically

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.

¹⁹² *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.

¹⁹³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

¹⁹⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

¹⁹⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

and psychologically injured them and interrupted their behavioral patterns in a manner that created a likelihood of additional physical and psychological injury.

D. Kirshner harmed and harassed lion/tiger hybrids by denying them safe and appropriate housing.

Kirshner failed 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 caused them physical and psychological injury and impeded their normal behavioral patterns in a manner that created a likelihood of further physical and psychological injury.

Kirshner denied the lion-tiger hybrids in its care adequate space to engage in species-typical behavior by confining them in severely cramped, barren cages. During a January 2024 inspection, CDFW measured the enclosure confining the lion/tiger hybrid Isaac and determined that it was roughly fifteen feet long by fifteen feet wide, providing a total of only 225 square feet of space.¹⁹⁶ These conditions were grossly insufficient even for basic movement and ambulation and deprived Isaac of the ability to engage in species-typical behaviors such as locomotion, exploration, and seeking refuge.

The USDA likewise 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 lion/tiger hybrid enclosures that met the height requirement for potentially dangerous animals;¹⁹⁷ 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;¹⁹⁸ 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.¹⁹⁹ 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 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.²⁰⁰

By confining lion/tiger hybrids in unsafe enclosures that posed risks of bodily injury, prevented the hybrids from escaping extreme weather, and inhibited their ability to express natural behaviors, Kirshner caused the lion/tiger hybrids physical and psychological injury and significantly disrupted their normal behavioral patterns in a manner that was likely to cause further injury.

E. Kirshner harmed and harassed lion/tiger hybrids by denying them adequate veterinary care.

Kirshner failed 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 health issues.

More particularly and most recently, in early 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-

¹⁹⁶ CDFW, Notice of Denial of Barry Kirshner Wildlife Foundation's 2024 Application for Restricted Species Native Species Exhibiting and Resident Exhibiting Permits (Permit Number 2496) 7 (Jan. 8, 2025).

¹⁹⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA July 21, 2023).

¹⁹⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

¹⁹⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

²⁰⁰ Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021), (USDA Aug. 15, 2019), (USDA Aug. 1, 2014).

inch-by-2-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.²⁰¹

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 constituted harm and harassment under the ESA because it caused lion/tiger hybrids in Kirshner's possession to suffer actual physical and psychological injuries and, on information and belief, created a likelihood of further injury by significantly impairing their normal behavioral patterns.

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

Kirshner 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.²⁰²

On information and belief, Kirshner 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 constituted harm and harassment because it psychologically and physically injured them and created a likelihood of injury by annoying them to such an extent as to significantly disrupt their normal behavior patterns.²⁰³

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

V. Kirshner Took 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 injured them and deprived them of the ability to engage in normal behavioral patterns in a way that was likely to cause further injury. Thus, Kirshner took leopards by harming and harassing them in violation of the ESA. Kirshner's acts and omissions also, on information and belief, violated the ESA by killing leopards.

A. Kirshner harmed, harassed, and on information and belief killed leopards by denying them proper social groupings and adequate environmental enrichment.

Kirshner harmed and harassed leopards by denying them proper social groupings and environmental enrichment, which caused physical injury, chronic and acute stress, and, on information and belief, death. Moreover, these inadequacies interfered with leopards' normal behavioral patterns in a way that created the likelihood of further injury to them.

²⁰¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Feb. 12, 2024).

²⁰² See 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.

²⁰³ 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.²⁰⁴ 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.²⁰⁵ Leopards communicate primarily through olfactory cues, and they frequently scent mark through cheek rubbing and spraying.²⁰⁶ They rely on broken terrain varied in contour and vegetation as cover for hunting and refuge.²⁰⁷ The leopard is a tremendous climber, with uniquely powerful forequarters and double joints to assist vertical lift.²⁰⁸ 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.²⁰⁹

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.²¹⁰ Environmental enrichment plans should be designed to allow leopards to engage in normal behaviors such as natural movement, exploration, foraging, and marking.²¹¹ 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.²¹² The study also found that stereotypic prevalence decreased when keepers exhibited positive attitudes when interacting with the leopards.²¹³

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.²¹⁴

On information and belief, like the other ESA-listed big cats at Kirshner, Kirshner's endangered leopards were 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 contained climbing structures, pools, or other forms of enrichment that would allow the leopards to engage in normal behaviors. Enrichment items, when provided, were typically useless because the items, such as plastic children's toys and balls, are unrelated to the leopards' species-specific needs. Moreover, Kirshner denied Axel appropriate social grouping by confining him to a small enclosure with a lion for whom Axel 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 showed that the leopards frequently engage in stereotypic behaviors, such as repetitive

²⁰⁴ Hunter et al., *Panthera Pardus*, The Mammals of Africa: Volume V: Carnivores, Pangolins, Equids and Rhinoceroses 159, 161 (2013).

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 165.

²⁰⁷ *Id.* at 161.

²⁰⁸ *Id.* at 162.

²⁰⁹ *Id.*

²¹⁰ 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).

²¹¹ 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).

²¹² *Id.* at 229, 237-39.

²¹³ *Id.* at 237-38.

²¹⁴ *Id.* at 238.

pacing, growling, and head swinging. Additionally, on information and belief, because the leopards were confined to their cages, where they had no opportunity to run, jump, climb, or exercise, at least two of the leopards at Kirshner—Axel and Tshuma—were 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.”²¹⁵ 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.²¹⁶

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

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

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

The USDA repeatedly cited Kirshner for deficiencies in its nutritional program,²¹⁷ and visitors documented an ongoing lack of access to clean potable water in the leopards’ enclosures, as water receptacles were 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 behavior patterns in a manner that creates a likelihood of further injury. Visitors to Kirshner observed leopards with poor skin and coat quality, including prominent hair loss and visible skin irritation. Additionally, two of Kirshner’s leopards, Tshuma and Axel, were 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,²¹⁸ and the USDA cited Kirshner for violations of the AWA upon observing labored open-mouthed breathing and continuous panting of a leopard during inspection.²¹⁹

Proper nutrition is fundamental to the physical and psychological well-being of leopards. By failing to provide these leopards with an appropriate diet, Kirshner took leopards by physically and

²¹⁵ See Expert Report of Jay Pratte, PETA v. Wildlife in Need and Wildlife in Deed at ¶ 184.

²¹⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug 11, 2021).

²¹⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 26, 2017); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 25, 2014).

²¹⁸ See Expert Report of Jay Pratte, PETA v. Wildlife in Need and Wildlife in Deed at ¶ 184.

²¹⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug 11, 2021).

psychologically injuring them and creating a likelihood of future injury. Kirshner's history of denying big cats a proper diet, on information and belief, killed two leopards under Kirshner's care.

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

Kirshner did 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 also killed leopards.

The USDA cited Kirshner for its unwillingness or inability to comply with even the most basic sanitation requirements applicable to the leopards.²²⁰ The unsanitary conditions noted in these citations include failing to remove containers of putrid-smelling, insect-infested water;²²¹ 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;²²² 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.²²³

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.²²⁴

Accordingly, inadequate sanitation at Kirshner harassed and harmed 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, caused 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 constituted a prohibited “take” in violation of the ESA because it actually physically and psychologically injured the leopards and interrupted their behavioral patterns in a manner that created a likelihood of additional physical and psychological injury.

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

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

²²⁰ 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).

²²¹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²²² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

²²³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²²⁴ See *PETA v. Tri-State*, 424 F. Supp. 3d at 414; *Kuehl v. Sellner*, 161 F. Supp. 3d 678.

Leopards are wide-ranging predators that travel seven to eighteen miles in a single day in the wild.²²⁵ As noted above, they also possess exceptional arboreal capabilities and climb frequently, and therefore require access to vertical space, elevated resting areas, trees, and rocky outcrops to maintain their physical and psychological wellbeing in captivity.²²⁶

Kirshner nevertheless confined the leopards in its possession in severely cramped enclosures that deprived them of adequate space to move freely, explore, and engage in other species-typical behaviors. During a January 2024 inspection, CDFW measured one leopard's enclosure at merely twelve feet nine inches long by twelve feet wide—a total of 153 square feet.²²⁷ Confinement in such severely cramped cages harmed, harassed, and on information and belief ultimately killed leopards at Kirshner by restricting normal movement and removing opportunities to retreat, exposing them to sustained stress and other physical and psychological injuries and creating a likelihood of further injury by significantly disrupting essential behavioral patterns.

Kirshner's regular practice of confining the animals in its possession to their exposed cages in periods of extreme weather without any means of thermoregulation further harmed and harassed leopards by causing them actual injury and creating a likelihood of further injury from excess heat that impairs their normal behavioral patterns. The USDA 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.²²⁸

Moreover, Kirshner's routine neglect in repairing damage to enclosures created a likelihood of physical injury to the leopards. Indeed, the USDA 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."²²⁹ Kirshner also had been cited for failing to repair structural damage in the big cat enclosures generally,²³⁰ 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.²³¹

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."²³²

Kirshner's failure to provide adequate and safe enclosures for the leopards constituted 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

²²⁵ See Tatjana Y. Hubel et al., *Movement Patterns and Athletic Performance of Leopards in the Okavango Delta*, 285 Proc. Royal Soc'y B, article 20172622, at 1 (2018).

²²⁶ See 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); see also Avanti Mallapur et al., *Enclosure Design and Space Utilization by Indian Leopards in Four Zoos in Southern India*, 5 J. Applied Animal Welfare Sci. 111, 119 (2002).

²²⁷ CDFW, Notice of Denial of Barry Kirshner Wildlife Foundation's 2024 Application for Restricted Species Native Species Exhibiting and Resident Exhibiting Permits (Permit Number 2496) 7-8 (Jan. 8, 2025).

²²⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021).

²²⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²³⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

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

²³² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA June 22, 2021).

adequate shade covering or cooling mechanisms, Kirshner contributed to the injuries and deaths of multiple leopards. This conduct injured Kirshner’s surviving leopards—Axel, Royal, Amur, and Tshuma—and interfered with their ability to engage in normal behaviors, thereby creating a likelihood of further physical and psychological injury.

E. Kirshner harmed, harassed, and, on information and belief, killed leopards by failing to maintain adequate barriers from the public.

Kirshner harmed and harassed 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.²³³ Inadequate barriers and forced interaction with the public thus harmed and harassed leopards by injuring them and interfering with their normal behavioral patterns in a manner that created a likelihood of further injury and, on information and belief, killed leopards.

On information and belief, Kirshner 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 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 practice of exposing the leopards to improper handling and public contact injured the leopards physically and psychologically, interrupted their behavioral patterns in a manner that created a likelihood of further injury, and, on information and belief, killed leopards. Accordingly, Kirshner’s failure in this regard constituted a prohibited “take” in violation of the ESA.

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

Kirshner had a long, well-documented history of causing its animals to suffer by depriving them of adequate veterinary care.²³⁴ On information and belief, this included numerous instances of denying veterinary care to its leopards. Lack of veterinary care harassed and harmed 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 killed leopards at Kirshner.

On information and belief, during numerous 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 harmed and harassed them by causing actual physical and psychological injury and interrupting their behavioral patterns in a manner that created a likelihood of further injury. On information and belief, by repeatedly failing to provide adequate veterinary care, Kirshner killed leopards in its possession.

VI. Kirshner Took Snow Leopards in Violation of the ESA

Kirshner confined its snow leopards in conditions that harmed and harassed them. Specifically, Kirshner failed to meet their needs for social and environmental enrichment, confined them in inadequate

²³³ See Morgan & Tromborg, Sources of Stress in Captivity at 280.

²³⁴ 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).

and unsanitary housing, and denied them properly implemented nutritional protocols and adequate veterinary care. These circumstances injured snow leopards and interfered with their expression of essential behavioral patterns in a manner that created a likelihood of further injury and, on information and belief, killed snow leopards.

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

Kirshner failed to provide its endangered snow leopards with proper social groupings and adequate environmental enrichment. This deficiency harmed and harassed 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.²³⁵ 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.²³⁶ 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 complex mountain environments.²³⁷ Snow leopards have enhanced leaping capabilities and have been known to jump as far as 15 meters.²³⁸ They are also skilled runners, able to engage in rapid pursuit and traverse rocky terrain to hunt down prey.²³⁹ They are mostly solitary and communicate primarily through vocalizations, scent marking, and scraping the ground with their claws.²⁴⁰

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.²⁴¹ 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 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 attempted 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

²³⁵ T. McCarthy et al., *Panthera uncia* (The IUCN Red List of Threatened Species, 2017), <http://iucnredlist.org/species/22732/50664030>.

²³⁶ *Id.*

²³⁷ 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).

²³⁸ *Id.* at 1853.

²³⁹ *Id.*

²⁴⁰ Fox & Chundawat, *What is a Snow Leopard? Behavior and Ecology, Snow Leopards*, Biodiversity of the World: Conserv. from Genes to Landscapes, 13–15 (2016).

²⁴¹ 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).

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 exhibited signs of psychological distress manifested by repetitive stereotypic behaviors. Additionally, on information and belief, because the snow leopards were confined to cramped, barren cages, where they had 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 were 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 injured the snow leopards, created a likelihood of further injury by significantly interfering with their normal behavioral patterns, and, on information and belief, killed snow leopards.

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

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

The USDA cited Kirshner for failing to adequately implement nutritional protocols for its endangered felids, including the snow leopards.²⁴² Lack of adequate nutrition harms 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 excessive vocalizing, pawing, and pacing, which can be a sign of psychological distress caused by malnutrition.²⁴³

Moreover, USDA inspection reports showed that Kirshner 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.²⁴⁴

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 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 killed at least six

²⁴² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 26, 2017); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 25, 2014).

²⁴³ See Morgan & Tromborg, *Sources of Stress in Captivity* at 283, 287.

²⁴⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

snow leopards at Kirshner's facility since 2012, three of whom died within the last three years of Kirshner's operation.

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

Kirshner failed 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 killed snow leopards.

The USDA cited Kirshner for its unwillingness or inability to comply with even the most basic sanitation requirements applicable to the snow leopards on multiple occasions.²⁴⁵ The unsanitary conditions noted in these citations include failing to discard containers of putrid-smelling, insect-infested water;²⁴⁶ 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;²⁴⁷ 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.²⁴⁸

These unsanitary conditions directly impacted the snow leopards' ability to exhibit normal species-typical behavior and, on information and belief, caused physical injury, disease, and death from increased exposure to pathogens and chronic distress.²⁴⁹ Likewise, prevailing conditions such as uncovered poison traps, organic waste, insect and rodent infestation, mold, and dangerous surfaces created a likelihood of physical injury and death if snow leopards made contact with such conditions.

Accordingly, Kirshner's failure to provide snow leopards in its care with a non-injurious and sanitary environment constituted a prohibited “take” in violation of the ESA because it physically and psychologically injured them, interrupted their behavioral patterns in a manner that created a likelihood of additional physical and psychological injury and, on information and belief, killed snow leopards.

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

Kirshner 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 caused them physical and psychological injury and impeded their normal behavioral patterns such that it created a likelihood of escape, improper contact with the public, and further physical and psychological injury. On information and belief, inadequate housing at Kirshner also killed snow leopards.

The USDA repeatedly cited Kirshner for failing to provide adequate caging and housing. The violations include placing items that could be used to jump against or near perimeter fences surrounding

²⁴⁵ 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).

²⁴⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²⁴⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

²⁴⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²⁴⁹ See *Tri-State*, 424 F. Supp. 3d at 433.

the largest carnivores' enclosures,²⁵⁰ and failing to repair damage in some big cat enclosures, leaving large protruding wood splinters, exposed screws, and holes.²⁵¹ These failures injured the snow leopards and impeded their normal behavioral patterns such that it created a likelihood of further injury.

The USDA also 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.²⁵² 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 posed risks of bodily injury and did not allow them to express natural behaviors, Kirshner injured snow leopards and significantly disrupted the snow leopards' normal behavioral patterns in a manner likely to cause further physical and psychological injury. On information and belief, chronic confinement in unsafe enclosures without adequate protection from extreme heat killed snow leopards at Kirshner.

E. Kirshner harmed and harassed snow leopards by denying them adequate veterinary care.

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

On information and belief, like many other big cats at Kirshner, the snow leopards suffered from gait abnormalities. Fredrick, for example, had 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 exhibited 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 was a chronic, facility-wide issue that injured and killed numerous animals at Kirshner. Indeed, the USDA cited Kirshner for failing to provide adequate veterinary care to numerous animals during 10 separate inspections between 2014 and 2024.²⁵³ On information and belief, these conditions injured and ultimately killed numerous snow leopards at Kirshner.

Accordingly, Kirshner's failure to provide snow leopards at its facility with adequate veterinary care 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 killed six snow leopards who died under Kirshner's care since 2012.

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

²⁵³ 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).

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

Additionally, Kirshner failed to provide adequate barriers between snow leopards and the public and facilitated 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 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.²⁵⁴ While at this event, two of the volunteer's adult coworkers were photographed holding the snow leopard.²⁵⁵ 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."²⁵⁶

Kirshner's practice of facilitating inappropriate and unsafe contact between snow leopards and the public injured the snow leopards and interrupted their behavioral patterns in a manner that created a likelihood of additional physical and psychological injury. Accordingly, Kirshner's actions in this regard constituted a prohibited "take" in violation of the ESA.

VII. Kirshner Took Clouded Leopards in Violation of the ESA

Kirshner harmed, harassed, and, on information and belief, 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 took multiple clouded leopards and engaged in a take of its sole surviving clouded leopard, Bow, in violation of the ESA.

A. Kirshner harmed, harassed, and, on information and belief, killed clouded leopards by depriving them of environmental enrichment.

Kirshner harmed and harassed clouded leopards by denying them adequate environmental enrichment. Lack of enrichment caused physical and psychological injury and interfered with normal behavioral patterns in a manner that created a likelihood of further physical and psychological injury. On information and belief, these deficiencies killed clouded leopards.

Clouded leopards are native to Southeast Asia, residing in a range of forested habitats.²⁵⁷ Clouded leopards are skilled climbers with arboreal adaptations to aid in scaling up and running headfirst down trees to hunt and escape predators.²⁵⁸ Their diet primarily consists of small to medium-sized prey, including birds, rodents, and ungulates, which they often hunt from trees.²⁵⁹ Additionally, clouded leopards rely on scent marking and vocalizations for communication.²⁶⁰

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

²⁵⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 4, 2022).

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ 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.

²⁵⁸ *Id.* at 3–4.

²⁵⁹ 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).

²⁶⁰ Chiang, *A Review of our Current Knowledge of Clouded Leopards* at 3–4.

above ground level.²⁶¹ 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 were confined to cramped enclosures devoid of natural foliage, varied terrain, or other forms of complexity that occur in their natural habitats. The enclosures rarely contained appropriate climbing structures, pools, or other forms of enrichment that would allow the clouded leopards to engage in normal behaviors. If enrichment items were provided, the items were not species-specific and were therefore useless. The enclosures did 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.²⁶² 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 were in poor body condition. Moreover, the clouded leopards confined at Kirshner routinely exhibited signs of respiratory distress, including excess panting and labored breathing. On information and belief, clouded leopards at Kirshner also were visibly psychologically disturbed and regularly engaged in abnormal repetitive behaviors such as pacing.

By denying the clouded leopards the environmental enrichment necessary to prevent psychological and physical injury, Kirshner took 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 harmed, harassed, and on information and belief killed clouded leopards by denying them adequate nutrition.

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

The USDA cited Kirshner for its failure to adequately implement nutritional protocols, including failing to provide a feeding plan,²⁶³ 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.²⁶⁴

Inadequate nutrition for captive felids like Kirshner's clouded leopards 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.²⁶⁵ Three clouded leopards 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

²⁶¹ 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).

²⁶² See *Tri-State*, 424 F. Supp. 3d at 418.

²⁶³ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 26, 2017).

²⁶⁴ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²⁶⁵ See Expert Report of Jay Pratte, *PETA v. Wildlife in Need and Wildlife in Deed* at ¶ 212.

risk of infection; and [r]educed ability to thermoregulate effectively.”²⁶⁶ Kirshner long kept clouded leopards in poor body condition, and USDA inspection reports show that these clouded leopards exhibited signs of physical discomfort and respiratory distress in high temperatures as a result of excess body weight.²⁶⁷ Additionally, video evidence obtained during site visits to Kirshner over the years showed 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.²⁶⁸

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 took 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 harmed and harassed clouded leopards by denying them safe and appropriate housing.

Kirshner did not provide the clouded leopards with safe and adequate housing. Inappropriate housing and unsafe conditions harmed, and, on information and belief, killed numerous clouded leopards at Kirshner, and harassed them by significantly interfering with their species-typical behavioral patterns, thereby creating a likelihood of further physical and psychological injury. These conditions caused physical and psychological injury to Bow, Kirshner’s only surviving clouded leopard.

Clouded leopards are naturally wide-ranging felids, with documented home ranges of approximately eight to seventeen square miles.²⁶⁹ Vertical space is also important to their welfare, and ample space and greater enclosure height are directly associated with lower stress-hormone concentrations in captive clouded leopards.²⁷⁰

Kirshner nevertheless housed the clouded leopards in its possession in severely cramped enclosures that deprived them of the space necessary to prevent physical and psychological injury and engage in normal species-typical behaviors such as roaming, climbing, and seeking refuge. During a January 2024 inspection, CDFW found that two clouded leopards shared an enclosure measuring only approximately 150 square feet.²⁷¹ Kirshner’s confinement of clouded leopards in grossly undersized, barren enclosures restricted their ability to move freely, climb, explore, maintain separation from one another, and retreat from environmental or social stressors, thereby causing physical and psychological injury and significantly disrupting essential behavioral patterns, creating a likelihood of further injury.

Additionally, the USDA 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),²⁷² and for failing to

²⁶⁶ See *id.* ¶ 184.

²⁶⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 15, 2019).

²⁶⁸ See Morgan & Tromborg, *Sources of Stress in Captivity* at 283, 287.

²⁶⁹ See Lon I. Grassman, Jr. et al., *Ecology of Three Sympatric Felids in a Mixed Evergreen Forest in North-Central Thailand*, 86 J. Mammalogy 29, 29 (2005).

²⁷⁰ See Nadja C. Wielebnowski et al., *Noninvasive Assessment of Adrenal Activity Associated with Husbandry and Behavioral Factors in the North American Clouded Leopard Population*, 21 Zoo Biology 77, 77 (2002).

²⁷¹ CDFW, Notice of Denial of Barry Kirshner Wildlife Foundation’s 2024 Application for Restricted Species Native Species Exhibiting and Resident Exhibiting Permits (Permit Number 2496) 7, 13 (Jan. 8, 2025).

²⁷² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Nov. 1, 2021).

repair damage in some exotic cat enclosures, leaving large protruding wood splinters, exposed screws, and holes.²⁷³ 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.²⁷⁴ 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 caused them heat-induced injury, including labored breathing, lethargy, and apparent physical discomfort. These conditions also significantly impaired the clouded leopards' ability to express normal behavioral patterns, thereby causing a likelihood of further injury.

Confining clouded leopards in severely cramped, structurally deficient housing that exposed them to hazardous materials and extreme weather injured them, created a likelihood of further psychological and physical injury by significantly interfering with their normal behavioral patterns, and, on information and belief, killed clouded leopards. Accordingly, Kirshner's failure to provide safe and adequate housing for the clouded leopards confined at its facility constituted a "take" in violation of the ESA.

D. Kirshner harmed, harassed, and on information and belief killed clouded leopards by denying them a sanitary environment.

Kirshner did not provide sanitary conditions for the clouded leopards. Lack of sanitation harms, harasses, and on information and belief killed 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 cited Kirshner for its unwillingness or inability to comply with basic sanitation requirements applicable to the clouded leopards on numerous occasions. These violations included failing to remove containers of putrid-smelling, insect-infested water;²⁷⁵ 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;²⁷⁶ 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.²⁷⁷

Inadequate sanitation poses constant health risks for 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.²⁷⁸ As a result of the unsanitary conditions at Kirshner, on information and belief, clouded leopards exhibited signs of psychological injuries including chronic and acute distress in the form of abnormal repetitive behaviors.

²⁷³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024); Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

²⁷⁴ See Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021), (USDA Aug. 15, 2019), (USDA Aug. 1, 2014).

²⁷⁵ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²⁷⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

²⁷⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²⁷⁸ See *PETA v. Tri-State*, 424 F. Supp. 3d at 414; *Kuehl v. Sellner*, 161 F. Supp. 3d 678 (N.D. Iowa 2016).

By confining clouded leopards in a filthy environment where they were chronically exposed to conditions that physically and psychologically injured them and interfered with natural behaviors in a manner that created a likelihood of injury, Kirshner harmed, harassed, and, on information and belief, killed clouded leopards in violation of the ESA.

VIII. Kirshner Took 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 injured cheetahs and significantly interfered with their normal behavioral patterns, and, on information and belief, killed Paradise. Accordingly, Kirshner's treatment of cheetahs constituted a "take" in violation of the ESA.

A. Kirshner harmed, harassed, and, on information and belief, killed cheetahs by denying them adequate environmental enrichment.

Kirshner failed to provide cheetahs with adequate enrichment. By depriving its cheetahs of an environment in which they could express natural behaviors, Kirshner physically and psychologically injured them, disrupted their normal behavioral patterns in a manner that created 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.²⁷⁹ 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.²⁸⁰ 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.²⁸¹

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 approximated their natural environment. The enrichment items Kirshner occasionally provided its felids—such as plastic children's toys or balls—were not species-specific, novel, or sufficiently stimulating to satisfy cheetahs' complex psychological needs. The cheetah enclosure was, on information and belief, no larger than 20 feet long by 20 feet wide and was therefore grossly inadequate for cheetahs to fulfill their need to run.

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, was overweight and engaged in similar stereotypic behavior.

By depriving Paradise and Mema 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 injured the cheetahs, created a likelihood of further injury by significantly disrupting their normal behavioral patterns, and, on information and belief, killed at least one cheetah. As such, Kirshner's treatment of cheetahs constituted a prohibited "take" in violation of the ESA.

²⁷⁹ Durant et al., *Acinonyx jubatus* (The IUCN Red List of Threatened Species, 2024), <http://iucnredlist.org/species/219/259025524>.

²⁸⁰ *Id.*

²⁸¹ *Id.*

B. On information and belief, Kirshner harmed, harassed, and killed cheetahs by denying them adequate nutrition.

On information and belief, Kirshner did not provide its endangered cheetahs with adequate nutrition. The lack of adequate nutrition injured the cheetahs by contributing to the diet-related illness of Mema and the death of Paradise. Additionally, Kirshner's failure to provide the cheetahs with proper nutrition created 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.²⁸² 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 claimed 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."²⁸³ 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 2014 and 2024.²⁸⁴

Just like Shyra, Lucie, Samson, and, on information and belief, countless other big cats who 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 had 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 had deformed limbs, suffered intermittent lameness, and limped while pacing in her enclosure.

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

C. On information and belief, Kirshner harmed, harassed, and killed cheetahs by denying them basic sanitation.

Kirshner denied 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 repeatedly cited Kirshner for risking the health and wellbeing of its animals, including the cheetahs, by failing to comply with basic sanitation requirements.²⁸⁵ The USDA's findings regarding unsanitary conditions affecting the cheetahs include the following violations:

²⁸² See Expert Report of Jay Pratte, PETA v. Wildlife in Need and Wildlife in Deed at ¶ 212.

²⁸³ Kirshner, MEMA – CHEETAH, www.kirshner.org, <https://www.kirshner.org/mema-cheetah> (last visited Feb. 28, 2025).

²⁸⁴ See Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA): June 6, 2024; Feb. 12, 2024; Aug 11, 2021 (referencing overweight endangered felids); Aug. 15, 2019 (same); June 26, 2017; June 7, 2017; Apr. 26, 2017; Apr. 3, 2014.

²⁸⁵ See Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024), (USDA Mar. 30, 2022).

- 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.²⁸⁶
- 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.²⁸⁷
- 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.²⁸⁸
- 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.²⁸⁹
- 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.²⁹⁰
- There was evidence of mice infestation in the food storage area.²⁹¹
- 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.²⁹²

Lack of sanitation exposes 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 create a likelihood of physical injury and death if cheetahs make contact with such conditions.

Accordingly, Kirshner’s failure to provide a sanitary environment for the cheetahs harmed and harassed them, because these conditions caused actual physical and psychological injury and, on information and belief, killed Paradise. Moreover, unsanitary conditions at Kirshner interfered with the cheetahs’ ability to engage in normal behaviors in a manner that created a likelihood of further injury.

D. Kirshner harmed, harassed, and, on information and belief, killed cheetahs by denying them safe and adequate housing.

Kirshner did not provide the cheetahs with safe and adequate housing. The inappropriate housing and unsafe conditions harmed, harassed, and killed 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 did not provide sufficient space for the cheetahs to engage in species-typical behaviors and failed to repair damaged elements of their enclosure, which physically and

²⁸⁶ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²⁸⁷ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

psychologically injured them and created a likelihood of further injury. The USDA 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 2019.²⁹³

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 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.²⁹⁴

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

IX. Kirshner Took 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.²⁹⁵ Ocelots are excellent climbers and frequently hunt and sleep in trees.²⁹⁶ They hunt during slow, extensive walks and typically claw at logs and scent mark across their home ranges and along the trails they patrol.²⁹⁷

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 by 20 feet,

²⁹³ Inspection Reports, APHIS, Roberta Kirshner, 93-C-0504 (USDA Jan. 8, 2024), (USDA Mar. 30, 2022).

²⁹⁴ 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).

²⁹⁵ Murray & Gardner, *Leopardus pardalis*, Mammalian Species 548:1-10, 4 (1997).

²⁹⁶ *Id.* at 4, 6.

²⁹⁷ *Id.* at 6.

surrounded by 4 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.

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 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 ultimately, on information and belief, 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;²⁹⁸ 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;²⁹⁹ 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.³⁰⁰

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 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.

²⁹⁸ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Oct. 20, 2016).

²⁹⁹ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Mar. 30, 2022).

³⁰⁰ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Apr. 3, 2014).

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 felids, including 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,³⁰¹ failing to provide water basins or providing basins that were so small and shallow that the animals could not fit into them;³⁰² and denying felids any means of cooling during 106 degree weather during which time they were observed to be panting, visibly uncomfortable, and lethargic.³⁰³

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.

X. Kirshner Caused Taken Listed Species To Be Transferred To The Possessor Recipients, Who Then Transported, Caused The Transportation Of, Possessed, Took, Or Continue to Possess Them In Violation Of The ESA

In or around January 2025, CDFW notified Kirshner that it had denied renewal of Kirshner's Restricted Species Permit, which authorized Kirshner to possess restricted wildlife under California law. CDFW subsequently initiated a criminal investigation into the rampant animal-welfare violations occurring at Kirshner's Oroville facility. In response, Kirshner arranged and induced the transfer of the surviving Listed Species at its facility to unaccredited exhibitors and private animal collectors of its choosing, including Jacob Markow, Jackie Johnston, Dale Anderson, Hayden Rosenaur, and Steve Martin. Martin subsequently transferred possession of two leopards, four lions, and two lion/tiger hybrids to Rhea Gardner.

CDFW's denial documented repeated violations of California laws governing the possession, housing, care, and treatment of restricted wildlife, including Listed Species. For example, CDFW found that Kirshner bred and possessed tigers without the required permits; failed to report tiger cub births and the death of a tiger cub shortly after birth; maintained inaccurate and incomplete acquisition, disposition, veterinary, and animal-care records; and submitted false, inaccurate, or misleading information in permit-renewal applications.³⁰⁴ The findings also documented severe deprivation and resulting injury to Listed Species, including inadequate nutrition and unsanitary confinement affecting tigers, serious diet-related disease and injury, and enclosures for tigers, lions, lion/tiger hybrids, leopards, and clouded leopards that ranged in size from 129 to 240 square feet and therefore failed to meet even California's bare minimum space requirements for the type and number of animals confined within them.³⁰⁵

The documented deficiencies, including inadequate nutrition, deficient housing, unsanitary confinement, and inadequate veterinary care, caused injury and created a likelihood of further injury by significantly disrupting normal feeding, movement, sheltering, and other species-typical behavioral patterns. They also implicate the basic nutrition, housing, veterinary-care, daily-observation, and sanitation requirements reflected in federal AWA animal-care standards, confirming that Kirshner's

³⁰¹ Focused Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 11, 2021).

³⁰² Focused Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 15, 2019).

³⁰³ Inspection Report, APHIS, Roberta Kirshner, 93-C-0504 (USDA Aug. 1, 2014).

³⁰⁴ See CDFW, Notice of Denial of Barry Kirshner Wildlife Foundation's 2024 Application for Restricted Species Native Species Exhibiting and Resident Exhibiting Permits (Permit Number 2496) (Jan. 8, 2025).

³⁰⁵ See *id.*

practices fell well outside the ESA's regulatory exclusion for generally accepted, AWA-compliant husbandry practices.³⁰⁶ Together with the animal- and species-specific violations detailed in Sections I through IX of this Notice, CDFW's findings, issued shortly before the transfers began, further establish that Kirshner had harmed and harassed the surviving Listed Species before arranging their subsequent transfer to the Possessor Recipients.

Kirshner's harm and harassment of the surviving Listed Species carried consequences for anyone who subsequently transported, caused the transportation of, or possessed those animals. Once Kirshner took the Listed Species in the manner described above, the ESA and its implementing regulations prohibited their subsequent transportation and possession absent an applicable federal authorization or exception, and Section 1538(g) prohibited Kirshner from causing those transportation offenses to be committed.³⁰⁷ Under the ESA, Kirshner was therefore not authorized to address its permitting problems or attempt to circumvent CDFW's regulatory scrutiny by simply shuffling the Listed Species it had unlawfully taken to other private possessors until it was in the position to take them back.

That is nevertheless precisely what Kirshner did. Specifically, in February 2025, Kirshner caused the surviving unlawfully taken Listed Species to be collected from its Oroville facility and transported directly to preferred private recipients, with the stated intention of repossessing the animals once its permitting issues were resolved. Those transfers gave rise to additional, independent ESA violations: Markow and Martin caused unlawfully taken animals to be transported to their facilities in violation of 16 U.S.C. § 1538(g); Johnston, Anderson, and Rosenaur personally transported unlawfully taken animals in violation of 16 U.S.C. § 1538(a)(1)(D); and each Possessor Recipient possessed animals previously taken in violation of the ESA and its implementing regulations.³⁰⁸ As detailed below, Markow also independently took the five tigers transferred to him by harming and harassing them and, on information and belief, killing a tiger during the period in which the tigers were confined at his facility.

A. Jacob Markow caused the transport of, and possessed, five taken tigers, and harmed, harassed, and on information and belief killed tigers in violation of the ESA.

In February 2025, Kirshner and Markow caused five tigers—David Allen, Zuri, Lapua, Adara, and Savara—to be transported from Kirshner's Oroville facility to Markow's unaccredited facility, Wildlife Companions, in Rio Vista, California. After causing the previously taken tigers to be transported to his facility, Markow subsequently possessed them there for approximately sixteen months. As described in more detail below, during their confinement at Wildlife Companions, Markow denied these tigers safe and appropriate housing, environmental enrichment and, in Savara's case, timely and adequate veterinary care—thereby independently harming and harassing the tigers and, on information and belief, killing Savara in violation of the ESA.

After approximately sixteen months of possessing the tigers and confining them in woefully inadequate conditions, Markow contacted Oakland Zoo in or around June 2026 seeking to relinquish custody of the tigers. In response to Markow's request, Oakland Zoo arranged for all five tigers to be removed from Wildlife Companions and transported for evaluation, treatment, and stabilization.³⁰⁹ David

³⁰⁶ See 50 C.F.R. § 17.3 (noting, for captive wildlife, that "harass" excludes animal husbandry practices which are (1) generally accepted, (2) Animal Welfare Act-compliant, and (3) not likely to result in injury).

³⁰⁷ See 16 U.S.C. § 1538(a)(1)(D), (G), (g); 50 C.F.R. §§ 17.21(d)(1), 17.31.

³⁰⁸ See *id.*

³⁰⁹ In contrast to the roadside-zoo operators and private possessors involved in the unlawful transfer and possession of taken animals described in this Notice, Federal Register notices document that Oakland Zoo and its operators have repeatedly sought and obtained federal authorization to engage in activities involving protected animals that would otherwise be prohibited by Section 1538 of the ESA and its implementing regulations, including transport, possession, and other activities associated with rescue and recovery. Oakland Zoo also participates in the Wildlife Confiscations Network, a cooperative partnership between FWS and the AZA through which highly qualified and

Allen (now known as J.B.), and Lapua, (now known as Franklin), were subsequently transferred to the Performing Animal Welfare Society (“PAWS”) in San Andreas, California; Zuri was transferred to Turpentine Creek Wildlife Refuge in Eureka Springs, Arkansas; and Adara, (now known as Sitara), remains at Oakland Zoo. The fifth tiger, Savara, arrived at Oakland Zoo suffering from severe, debilitating medical conditions and was ultimately euthanized after intensive veterinary treatment failed to alleviate her suffering.

As detailed below, the condition of the tigers at the time they were removed from Wildlife Companions evidences the physical and psychological injuries and disruption of normal behavioral patterns they experienced while in Markow’s custody. Specifically, several of the tigers exhibited significant physical or behavioral impairments, including lameness, muscle atrophy, and unfamiliarity with basic features of an appropriate tiger environment. Savara was found to be suffering from profound mobility impairment, degenerative joint and spinal disease, substantial apparent pain, and significant bacterial pneumonia. Accordingly, in addition to violating the ESA by causing the transport of and possessing tigers previously taken by Kirshner, Markow independently took David Allen, Zuri, Lapua, Adara, and Savara by harming and harassing them and, on information and belief, killing Savara, in violation of the ESA.

1. Jacob Markow caused previously taken tigers to be transported and subsequently possessed them in violation of the ESA.

On February 7, 2025, Jacob Markow, identified in APHIS disposition records as the “buyer or receiver,” effectuated the transfer of David Allen, Zuri, Lapua, Adara, and Savara from Kirshner, identified as the “seller or donor,” by having them picked up at Kirshner’s facility by two individuals—Lisa Russell, and Peter Mincks—who drove them in the “buyer’s vehicle” from Kirshner’s facility in Oroville to Markow’s facility in Rio Vista.

Four days later, on February 11, 2025, Roberta Kirshner emailed CDFW personnel to inform them that all five of its tigers had been transferred to Jacob Markow. The same day, Markow emailed CDFW personnel requesting that CDFW “add the [tigers] to [his] inventory (arrived 2/8/2025-2/9/2025).” Markow further explained that the acquisition was “an instate transfer for all 5,” adding “[w]e have a boarding agreement for the animals to be cared for by my staff, but [Kirshner] will have periodic inspection permission. My understanding is that they were previously at Kirshner Wildlife up in Oroville.” Markow thereafter possessed David Allen, Zuri, Lapua, Adara, and Savara at Wildlife Companions for roughly sixteen months before relinquishing possession of the tigers to Oakland Zoo.

By arranging for David Allen, Zuri, Lapua, Adara, and Savara to be picked up at Kirshner’s facility and transported to Wildlife Companions by Lisa Russell and Peter Mincks, Markow caused the commission of transportation offenses prohibited by § 1538(a)(1)(D) and therefore violated § 1538(g). Markow’s subsequent possession of these unlawfully taken tigers independently violated § 1538(a)(1)(D), which prohibits any person from “possess[ing], sell[ing], deliver[ing], carry[ing], transport[ing], or ship[ping], by any means whatsoever, any such species taken in violation of [the ESA’s taking prohibitions].” On information and belief, Markow did not hold an applicable Section 10 permit or exemption authorizing him to cause the transportation of or possess taken tigers.

2. Jacob Markow harmed, harassed, and on information and belief killed tigers by denying them adequate housing.

carefully selected facilities assist with the rescue, care, and placement of confiscated animals, and hosts California’s statewide wildlife confiscations coordinator.

Separate and apart from his transportation and possession of previously taken tigers, Markow harmed and harassed David Allen, Zuri, Lapua, Adara, and Savara through the conditions in which he confined them. During the approximately sixteen months these tigers remained at Wildlife Companions, Markow failed to provide them with safe and appropriate housing. Prolonged confinement in inadequate, undersized enclosures physically and psychologically injured the tigers, interfered with their normal behavioral patterns in a manner that created a likelihood of further injury, and, on information and belief, killed Savara.

As discussed above in Sections II.A and II.D, *supra*, tigers require sufficiently spacious enclosures with appropriate substrate and physical features that permit normal movement and species-typical behavior.³¹⁰ After years of languishing in the cramped, barren cages at Kirshner, rather than alleviating the suffering caused by those conditions—on information and belief—Markow subjected the tigers to an additional sixteen months of woefully inadequate confinement in small, primarily concrete cages lacking adequate natural substrate, vegetation, and other basic features necessary for normal tiger movement and behavior.

Because tigers naturally range over large areas and travel substantial distances, they are particularly susceptible to the effects of restrictive confinement.³¹¹ Specifically, undersized enclosures are associated with reduced activity and exploration, diminished expression of natural behavior, and increased stereotypic behavior.³¹² Additionally, generally accepted husbandry practices caution against concrete flooring because its “porosity, abrasiveness, and hardness” can cause footpad injuries and trauma to bony prominences.³¹³ On information and belief, David Allen, Zuri, Lapua, Adara, and Savara were each confined in primary cages measuring approximately fifteen feet by thirty feet—less than forty percent of the minimum size called for by generally accepted husbandry practices and grossly insufficient to accommodate normal tiger movement and behavior. The undersized cages were also, on information and belief, primarily concrete and lacked adequate natural substrate.

The condition of the tigers after they finally left Wildlife Companions illustrates the physical consequences of that confinement. Adara, now known as Sitara, arrived at Oakland Zoo suffering from hind-limb lameness. Oakland Zoo personnel described her previous environment as a “very small space, a cage” in which she “only knew cement [and] dirt,” and explained the transfer to her new environment at Oakland Zoo as “the first time she’s ever accessed grass and a habitat that is suited to her needs.”³¹⁴ Zuri likewise left Wildlife Companions in compromised physical condition and arrived at Turpentine Creek Wildlife Refuge with muscle atrophy.

The consequences were most acute for Savara. By the time she left Wildlife Companions, she suffered from profound hind-limb lameness, proprioceptive deficits, significant muscle wasting, and advanced degenerative joint and spinal disease. Veterinary examination documented severe apparent pain and markedly thickened knees that produced grinding and crunching sounds upon manipulation. By the time Oakland Zoo assumed her care, Savara’s arthritis and spinal disease were causing “extreme lameness and neurologic deficits in her hind limbs” and determined to be “end-stage.”³¹⁵ Despite intensive

³¹⁰ See Ass’n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016) at 11–12; Global Federation of Animal Sanctuaries, *Standards for Felid Sanctuaries* § H-1.1.

³¹¹ See Grégory Breton & Salomé Barrot, *Influence of Enclosure Size on the Distances Covered and Paced by Captive Tigers (Panthera tigris)*, 154 *Applied Animal Behaviour Science* 66–75 (2014).

³¹² See *id.*

³¹³ See Ass’n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016) at 12.

³¹⁴ See Bay City News Serv., *Oakland: Zoo Welcomes New Rescued Tiger*, SFGATE (July 9, 2026), <https://www.sfgate.com/news/bayarea/article/oakland-zoo-welcomes-new-rescued-tiger-22340021.php>.

³¹⁵ See Oakland Zoo, *Oakland Zoo Welcomes New Female Tiger, As Part of a Big Cat Transfer, Continuing Decades-Long Commitment to Big Cat Rescue and Care* (July 9, 2026), <https://www.oaklandzoo.org/news/oakland-zoo-welcomes-new-female-tiger-as-part-of-a-big-cat-transfer/>.

veterinary treatment following her removal from Wildlife Companions, her condition did not respond sufficiently to treatment, and the veterinary and animal care teams at Oakland Zoo ultimately determined that “the kindest option for [Savara] was humane euthanasia.”³¹⁶

By confining these tigers in undersized, primarily concrete-floored cages without adequate natural substrate, Markow caused physical injury through prolonged exposure to hard, abrasive surfaces and severely restricted space and created a likelihood of further injury by significantly disrupting their ability to move normally and engage in species-typical behavior, and—on information and belief—ultimately killed Savara.

3. Markow harmed and harassed tigers by denying them adequate environmental enrichment.

Markow further harmed and harassed David Allen, Zuri, Lapua, Adara, and Savara by denying them adequate, species-specific environmental enrichment. As discussed above, captive tigers require opportunities to engage in species-typical behaviors such as swimming, climbing, stalking, hunting, and interacting with a varied and complex environment.³¹⁷ Captive environments that fail to provide adequate enrichment physically and psychologically injure tigers by depriving them of opportunities to develop sensory and cognitive abilities through interaction with their surroundings and limiting their behavioral options for coping with confinement related stress.³¹⁸

Markow subjected these tigers—already deprived of adequate enrichment for years at Kirshner—to another prolonged period of barren confinement. On information and belief, the primary cages in which Markow confined David Allen, Zuri, Lapua, Adara, and Savara lacked pools adequate for swimming, natural vegetation, varied terrain, and other environmental complexity, denying them meaningful opportunities to swim, explore, investigate their surroundings, or engage in other species-typical activities that an appropriately enriched environment facilitates.

In a July 2026 newsletter, representatives at PAWS described a dramatic change for David Allen and Lapua after they were removed from Markow’s facility and placed at PAWS’s sprawling sanctuary, where they were finally provided with spacious, naturalistic surroundings and adequate environmental enrichment that enabled them to engage in normal tiger behavior. PAWS explained that “[f]or years, these tigers lived in barren cages with little opportunity to express natural behaviors,” such that even the most basic features of an appropriate tiger environment were unfamiliar to them when they finally reached PAWS.³¹⁹ There, the tigers were placed in enclosures encompassing a spacious landscape containing grass, shaded resting areas, pools, and other environmental enrichments that provided opportunities to engage in normal behavior, likely for the first time in their lives. Lapua’s first experience in an enclosure providing consistent access to soft grass was so novel that PAWS described it as a “simple pleasure he had not experienced before.”³²⁰

Adara’s experience at Oakland Zoo further demonstrates the extent to which the tigers’ prior confinement had inhibited their ability to engage in species-typical behavior. Specifically, after her removal from Wildlife Companions, Adara had to acclimate to a habitat containing pools, a waterfall,

³¹⁶ See *id.*

³¹⁷ See *supra* Section II.A; see also Ass’n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016) at 11

³¹⁸ See *supra* Section II.A; see also Morgan & Tromborg, *Sources of Stress in Captivity*, 102 *Applied Animal Behaviour Science* at 264–65 (2007); Szokalski, *Enrichment for Captive Tigers*, 139 *Applied Animal Behaviour Science* 1.

³¹⁹ See PAWS, *Meet J.B. and Franklin, the Newest Tigers at PAWS*, PAWS July 2026 Newsletter, <https://myemail.constantcontact.com/PAWS--July-Newsletter--Meet-J-B--and-Franklin--the-Newest-Tigers-at-PAWS.html?soid=1101778242429&aid=PoOYoBsGyNk>.

³²⁰ See *id.*

vegetation, grass, and varied terrain. Oakland Zoo personnel explained that staff were assisting Adara in developing the skills necessary to navigate and interact with those unfamiliar surroundings and initiated a behavioral program designed to help her “build trust and resilience in response to negative experiences with past caretakers.”³²¹

By confining David Allen, Zuri, Lapua, Adara, and Savara for approximately sixteen months in barren enclosures devoid of adequate environmental enrichment, Markow harmed and harassed them by causing them physical and psychological injury and significantly disrupting their normal behavioral patterns in a manner that created a likelihood of further injury.

4. Markow harmed, harassed, and, on information and belief, killed Savara by denying her adequate veterinary care.

Markow denied Savara timely and adequate veterinary care while serious, painful, and debilitating medical conditions progressed during her confinement at his facility. That failure harmed and harassed Savara by causing physical injury and prolonged suffering and by significantly impairing normal behavioral patterns, including normal ambulation, in a manner that created a likelihood of further injury. On information and belief, Markow’s failure to provide adequate veterinary care ultimately killed Savara.

By the time Savara was removed from Wildlife Companions, she suffered from profound hind-limb lameness, proprioceptive deficits indicative of neurological disease, significant muscle wasting, and advanced degenerative joint and spinal disease. Veterinary examination further documented persistent signs of pain despite the administration of multiple pain medications, markedly thickened knees that produced grinding and crunching upon manipulation, and abnormalities in her ribs potentially indicative of metabolic bone disease.

As discussed in Section II.F, *supra*, routine veterinary care is essential to timely identify, diagnose, and treat disease, injury, and distress in tigers. Generally accepted tiger-care standards call for routine veterinary evaluations and targeted examinations when specific health problems arise.³²² These obligations are particularly important for aging tigers exhibiting lameness, stiffness, inactivity, or other signs of painful musculoskeletal injury and disease.³²³ Such symptoms are among the most important indicators of arthropathies in older tigers, conditions that can cause substantial pain, progressive decline, and ultimately death if not appropriately managed, and treatment is directed toward alleviating pain and maintaining an acceptable quality of life.³²⁴

Savara also was suffering from significant bacterial pneumonia at the time she was removed from Markow’s facility. Pneumonia is a serious respiratory illness that causes injury and inflammation to the lungs and interferes with respiratory and other bodily functions.³²⁵ Left untreated, bacterial pneumonia can cause fluid, inflammatory cells, fibrin, and bacteria to accumulate in the lungs’ air sacs, obstructing airways, interfering with normal breathing, and causing prolonged pain, discomfort, and weakness; and—without timely diagnosis and treatment—can kill tigers.³²⁶

³²¹ See Oakland Zoo, *Oakland Zoo Welcomes New Female Tiger, As Part of a Big Cat Transfer, Continuing Decades-Long Commitment to Big Cat Rescue and Care* (July 9, 2026), <https://www.oaklandzoo.org/news/oakland-zoo-welcomes-new-female-tiger-as-part-of-a-big-cat-transfer/>.

³²² See Ass’n of Zoos and Aquariums, *Tiger (Panthera tigris) Care Manual* (2016) at 43, 46–47.

³²³ See *id.* at 46–47; see also Bethany L. Krebs et al., *Managing Aged Animals in Zoos to Promote Positive Welfare: A Review and Future Directions*, 8 *Animals* 116 (2018).

³²⁴ See *id.*

³²⁵ See Francisco R. Carvallo et al., *Necrotizing Pneumonia and Pleuritis Associated with Extraintestinal Pathogenic Escherichia coli in a Tiger (Panthera tigris) Cub*, 22 *J. Veterinary Diagnostic Investigation* 136, 136–40 (2010).

³²⁶ *Id.*

When Oakland Zoo assumed Savara's care, its veterinary team provided intensive treatment, but her end-stage arthritis and spinal disease did not respond sufficiently to treatment. By that point, Savara's conditions were so painful and debilitating that even intensive veterinary intervention could not restore an acceptable quality of life, and veterinarians determined that euthanasia was necessary to alleviate her suffering.

By failing to provide Savara timely and adequate veterinary care for her severe musculoskeletal, neurological, and respiratory conditions, Markow harmed, harassed, and on information and belief killed Savara by causing her prolonged physical suffering and bodily injury and significantly impairing her normal behavioral patterns in a manner that created a likelihood of further injury. On information and belief, Markow's sustained failure to provide adequate veterinary intervention while Savara languished at his facility ultimately caused her painful and debilitating conditions to progress beyond the point at which they could be treated, and ultimately killed her.

B. Jackie Johnston transported, possessed, and, on information and belief, currently possesses a taken ring-tailed lemur in violation of the ESA.

Jackie Johnston collected Lulu—Kirshner's solitary ring-tailed lemur—from Kirshner's facility in Oroville and transported her to Johnston Family Farms Carriages and Trees—an unaccredited animal exhibition facility in Milford, California. A USDA APHIS Record of Acquisition, Disposition, or Transport reflects that on January 26, 2025, Jackie Johnston, identified as the "buyer or receiver," traveled to Kirshner's facility and collected Lulu from Kirshner, who was identified as the "seller or donor" of Lulu. The method of transport is listed on the acquisition records as delivery by "buyer's vehicle," with Jackie Johnston named as the driver of the vehicle.

Two days later, on January 28, 2025, Roberta Kirshner emailed CDFW providing "notice that on January 26, 2025 'Lulu' our female ring-tail lemur (Lemur catta) microchip# 956 000 015 108 624 was transferred to Jackie Johnston #REX-03291 Milford, CA 96131." The next day, on January 29, 2025, Jackie Johnston emailed CDFW personnel notifying them of the following: "On Sunday 1/26 we received a call from a representative of the Barry Kirshner Wildlife Foundation . . . They stated that they had lost their license and needed to place all animals at the facility and asked if we would take their ring tailed lemur. Being that we recently lost one of ours we agreed to pick up the lemur. She is Lulu, a female born in 2012 microchip number 956000015108624." Johnston's dealings with Kirshner continued after Lulu's transfer. CDFW records reflect that, less than two weeks later, Johnston returned to Kirshner's facility to acquire additional animals. After collecting Lulu and other animals from Kirshner and transporting them to her facility, Johnston informed CDFW that Kirshner had required her to sign a "contract" permitting Kirshner to "take these animals back at any time without notice or warning."

After collecting and transporting Lulu, Johnston continued to possess her for several months, not only in violation of the ESA's prohibition on the possession of taken animals, but also—at the time—without a USDA Class-C Exhibitor license, which is required to lawfully exhibit ring-tailed lemurs and other animals covered by the AWA. On June 25, 2025, CDFW personnel exchanged internal emails noting "Jackie Johnston . . . [h]as previously told LRB [the License and Revenue Branch] that she started the USDA permit application but per [USDA Veterinary Medical Officer] Dr. Frank, there has been no permit application submitted[.]" adding "when a facility does not have an active USDA permit, the USDA inspectors do not have permission to access the facilities' properties for inspections, therefore they cannot assess the welfare of the animals." On information and belief, Johnston continues to possess Lulu in ongoing violation of the ESA.

Johnston's act of transporting Lulu, and her continued possession of Lulu after Lulu was unlawfully taken by Kirshner, constitute violations of Section 1538(a)(1)(D) of the ESA, which independently prohibits any person from "possess[ing], sell[ing], deliver[ing], carry[ing], transport[ing], or ship[ping], by any means whatsoever, any such species taken in violation of [the ESA's taking

prohibition].” On information and belief, Johnston did not hold an applicable Section 10 permit or exemption authorizing her to transport or possess taken ring-tailed lemurs.

C. Dale Anderson transported, possessed, and, on information and belief, currently possesses two taken leopards in violation of the ESA.

Dale Anderson collected two taken leopards—Royal and Amur—from Kirshner’s facility and transported them to his facility, Project Survival Cat Haven, in Dunlap, California. An APHIS Record of Acquisition, Disposition, or Transport reflects that on February 8, 2025, Anderson, listed as the “buyer or receiver,” traveled to Kirshner’s facility in Oroville and acquired Royal and Amur from the Kirshner, identified in APHIS’s records as the “seller or donor” of Royal and Amur. The method of transport is listed on the acquisition records as delivery by “buyer’s vehicle,” with Dale Anderson listed as the driver of the vehicle.

Three days later, on February 11, 2025, Roberta Kirshner emailed CDFW personnel to inform them that Royal and Amur had been transferred to Dale Anderson. The same day, Anderson emailed CDFW: “This is to inform you that we picked up 2 Amur leopards from Barry R. Kirshner’s on Saturday,” adding “[t]hey are at Project Survival’s Cat Haven REX-02587.” On information and belief, Anderson continues to possess these taken leopards in ongoing violation of the ESA.

Anderson’s act of transporting Royal and Amur, and his continued possession of these unlawfully taken leopards, constitute violations of Section 1538(a)(1)(D) of the ESA, which prohibits any person from “possess[ing], sell[ing], deliver[ing], carry[ing], transport[ing], or ship[ping], by any means whatsoever, any such species taken in violation of [the ESA’s taking prohibition].” On information and belief, Anderson did not hold an applicable Section 10 permit or exemption authorizing him to transport or possess taken leopards.

D. Hayden Rosenaur transported, possessed, and, on information and belief, currently possesses a taken clouded leopard and a taken cheetah in violation of the ESA.

Hayden Rosenaur collected a taken clouded leopard and a taken cheetah—Bow and Mema—from Kirshner’s facility and transported them to his facility, Serengeti Ranch, in White City, Oregon. A USDA APHIS Record of Acquisition, Disposition, or Transport reflects that on February 6, 2025, Rosenaur, listed as the “buyer or receiver,” traveled to Kirshner’s facility in Oroville and acquired Bow and Mema from Kirshner, listed as the “seller or donor.” The method of transport is listed on the acquisition records as delivery by “buyer’s vehicle,” with Rosenaur listed as the driver of the vehicle.

Five days later, on February 11, 2025, Roberta Kirshner emailed CDFW personnel to inform them that Mema and Bow had been transferred to Hayden Rosenaur. On information and belief, Rosenaur continues to possess Bow and Mema in ongoing violation of the ESA.

Rosenaur’s act of transporting Bow and Mema, and his continued possession of these unlawfully taken animals, constitute violations of Section 1538(a)(1)(D) of the ESA, which prohibits any person from “possess[ing], sell[ing], deliver[ing], carry[ing], transport[ing], or ship[ping], by any means whatsoever, any such species taken in violation of [the ESA’s taking prohibitions].” On information and belief, Rosenaur did not hold an applicable Section 10 permit or exemption authorizing him to transport or possess taken clouded leopards or cheetahs.

E. Steve Martin caused the transportation of, and possessed, two taken leopards, four taken lions, and two taken lion/tiger hybrids in violation of the ESA.

Steve Martin took possession of numerous taken animals—leopards Tshuma and Axel, lion/tiger hybrids Isaac and Outlaw, and four lions, Amari, Samson, Leyah, and Lucie—and had them transported to his facility, Steve Martin’s Working Wildlife, in Frazier Park, California. USDA APHIS Records of

Acquisition, Disposition, or Transport reflect that between February 5 and February 9, 2025, Martin, listed as the “buyer or receiver,” effectuated the transfer of these taken animals from Kirshner, identified as the “seller or donor,” by having them picked up at Kirshner’s facility by two individuals—Lisa Russell and Chayton Gardner—who drove them in the “buyer’s vehicle” from Kirshner’s facility in Oroville to Martin’s facility in Frazier Park.

On February 11, 2025, Roberta Kirshner emailed CDFW personnel to inform them that these Listed Species had been transferred to Steve Martin. A month later, Deana Zvara, writing on behalf of Steve Martin’s Working Wildlife, emailed CDFW personnel informing them: “Our ranch in Frazier Park has sold (let me know if you would like the new owners’ contact information). Steve has officially moved all of his/Working Wildlifes animals up to Oregon.” Zvara also inquired about the process for an “exhibitor permit so Steve and the other trainers will be able to bring any of the animals back into California for future jobs,” further noting “[w]ith the ranch being now sold and Steve moving all the animals, we are discontinuing our CDFW permit.” CDFW responded, asking Zvara to “confirm if the animals recently acquired from the Barry Kirshner Wildlife Foundation (BKWF) have also been moved out of state,” noting that Steve Martin’s permit did not list any of the animals acquired from Kirshner, and requesting a “list [of] any restricted species that are still located at the ranch located in Frazier Park.”

On information and belief, as explained further below, Martin ultimately left Tshuma, Axel, Isaac, Outlaw, Amari, Samson, Leyah, and Lucie at the Frazier Park facility after selling the property and moving his own animals to Oregon, thereby relinquishing possession of the taken Listed Species he received from Kirshner to an animal exhibitor named Rhea Gardner, who continued to possess them at the Frazier Park facility without the requisite state permits until the animals were later confiscated by CDFW.

Martin’s act of causing Tshuma, Axel, Isaac, Outlaw, Amari, Samson, Leyah, and Lucie to be transported from Kirshner’s facility violated 16 U.S.C. § 1538(g), which prohibits any person from causing an offense prohibited by Section 9 of the ESA to be committed. Martin’s possession of these unlawfully taken Listed Species was likewise prohibited by the ESA and its implementing regulations.³²⁷ On information and belief, Martin did not hold an applicable Section 10 permit or exemption authorizing him to cause the transportation of, or possess, taken leopards, lions, or lion/tiger hybrids.

F. Rhea Gardner possessed two taken leopards, four taken lions, and two taken lion/tiger hybrids in violation of the ESA.

As explained above, after Martin sold the Frazier Park facility and moved his own animals to Oregon, Rhea Gardner took possession of the taken Listed Species Martin had previously acquired from Kirshner, and thereafter operated Martin’s former facility under the name Born to Be Free – A Wildlife Sanctuary. Gardner continued to possess Tshuma, Axel, Isaac, Outlaw, Amari, Samson, Leyah, and Lucie there until CDFW removed them in May 2025.

In May 2025, CDFW internally circulated a report regarding an “unpermitted facility in Frazier Park, CA.” The report noted that Steve Martin transferred ownership of his Frazier Park facility to Rhea Gardner. The facility, then renamed Born to be Free – A Wildlife Sanctuary, “acquired 16 live restricted species without holding a CDFW restricted species permit and is therefore in illegal possession of these animals. Thirteen of the 16 animals were placed at this site from the Barry R Kirshner Wildlife Sanctuary in February 2025 and the remaining 3 animals were acquired separately by the facility.” The report further noted: “The CDFW Wildlife Health Lab (WHL) is coordinating with CDFW law enforcement and recipient facilities to safely and efficiently move the following animals on 5/21/2025 – 5/22/2025 to the animals’ captive homes.” On May 22, 2025, CDFW confiscated the Listed Species—several of whom were in poor physical condition—and transferred them to permitted facilities.

³²⁷ See 16 U.S.C. § 1538(a)(1)(D), (G), (g); 50 C.F.R. §§ 17.21(d)(1), 17.31.

CDFW personnel subsequently forwarded their findings regarding the Listed Species (and other animals transferred by Kirshner to the Frazier Park facility) to the Ventura County District Attorney. The resulting stipulated judgment, approved by the Ventura County Superior Court, imposed a permanent injunction prohibiting Born to Be Free from possessing restricted species without a valid permit and required it to pay a \$10,000 civil penalty and reimburse CDFW \$40,000 for the expenses it incurred confiscating the animals. In a news release related to the enforcement action, the Ventura County District Attorney's office explained:

In early 2025, CDFW learned that Born to Be Free had taken possession of numerous restricted species, including lions, leopards, a bear, and other carnivores. Prior to incorporating her business on March 3, 2025, owner Rhea Gardner had already accepted the transfer of exotic animals from another organization. . . . On March 3, 2025, CDFW received multiple complaints that restricted animals were being housed at the site without proper authorization. A consent inspection conducted on March 18 confirmed that Born to Be Free was in possession of 15 restricted species, including African lions, leopards, a leopard-tiger hybrid, a lion-tiger hybrid, warthogs, a serval, a fishing cat, a European brown bear, and a wolf-dog hybrid. Born to Be Free did not possess a valid permit for any of these animals. . . . All restricted species were safely removed from the Born to Be Free facility on May 21 and 22, 2025, with assistance from the United States Department of Agriculture. The animals were relocated to multiple fully licensed and accredited sanctuaries across the country, including several facilities accredited by the Global Federation of Animal Sanctuaries. These placements ensure the animals now reside in appropriate long-term care environments that meet all state and federal standards.³²⁸

Gardner's possession of Tshuma, Axel, Isaac, Outlaw, Amari, Samson, Leyah, and Lucie after those animals had been unlawfully taken by Kirshner constituted violations of the ESA and its implementing regulations.³²⁹ On information and belief, Gardner did not hold an applicable Section 10 permit or exemption authorizing her to possess taken leopards, lions, or lion/tiger hybrids.

Conclusion

Please be advised that the conditions and activities described in this Notice violate the ESA's prohibitions on the take of protected species and the separate statutory and regulatory prohibitions on transporting and possessing animals previously taken in violation of the ESA, as well as 16 U.S.C. § 1538(g)'s prohibition on causing those offenses to be committed.

During the sixty-day notice period, PETA is willing to discuss a mutually agreeable remedy. Specifically, PETA is willing to coordinate the transfer of the surviving Listed Species to appropriate facilities by persons holding all federal authorizations required to transport and possess previously taken animals, and to bear all costs associated with such transfers. If any Possessor Recipient wishes to pursue this remedy in the absence of litigation, please contact Chris Hollinger 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. It will also ask the Court to award costs and fees, including attorneys' fees.

³²⁸ *Sanctuary Ordered to Pay Penalties for Housing Exotic Animals Without Permit*, Ventura Cnty. Dist. Att'y's Off. (Dec. 1, 2025), <https://www.vcdistrictattorney.com/wp-content/uploads/2025/12/Sanctuary-Ordered-to-Pay-Penalties-for-Housing-Exotic-Animals-Without-Permit>.

³²⁹ See 16 U.S.C. § 1538(a)(1)(D), (G); 50 C.F.R. §§ 17.21(d)(1), 17.31.

Sincerely,



Chris A. Hollinger
chollinger@omm.com

O'Melveny & Myers LLP
Two Embarcadero Center
28th Floor
San Francisco, CA 94111
415-984-8906

cc:

The Honorable Doug Burgum
Secretary of the Interior
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240



Raquel Panza
rpanza@petaf.org

PETA Foundation
1536 16th Street, NW
Washington, DC 20036

Brian Nesvik
Director
U.S. Fish & Wildlife Service
1849 C Street NW
Washington, DC 20240