

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

People for the Ethical Treatment of Animals, Inc.;
Matthew Howard; and Lexie Jordan,

Plaintiffs,

v.

Waccatee Zoological Farm; Kathleen Futrell (in
her individual capacity and as the personal
representative of the Estate of Archie Futrell);
Jeff Futrell; Dakota Futrell Stienecker; and Austin
Futrell,

Defendants.

Civil Action No.

Complaint for Injunctive and Other Relief

People for the Ethical Treatment of Animals, Inc. (“PETA”), Matthew Howard, and Lexie Jordan (collectively, “Plaintiffs”) bring suit against Waccatee Zoological Farm (“Waccatee Zoo” or “Waccatee”), Kathleen Futrell, Jeff Futrell, the Estate of Archie Futrell, Dakota Futrell Stienecker, and Austin Futrell (collectively, “Defendants”) under Section 11(g)(1)(A) of the Endangered Species Act (“ESA”) (*see* 16 U.S.C. §§ 1531–44), and South Carolina public nuisance law.

I. Introduction

1. Defendants together are responsible for the operation of one of the worst roadside zoos in America. Defendants confine and exhibit over 460 animals of various species. The conditions at Defendants’ facility deprive these animals of necessities—including adequate veterinary care, shelter, food, and water—they require to live without needless suffering.

2. The conditions at Defendants' facility are so harmful to some of the animals there that the government recently took administrative action against Defendants. On February 28, 2022, the United States Department of Agriculture ("USDA") fined Defendant Kathleen Futrell (dba Waccatee Zoological Farm) \$7,800 in response to numerous alleged regulatory violations documented by USDA inspectors throughout 2020 and 2021 concerning the conditions of some of the animals or animal enclosures at Waccatee Zoo. *See* Ex. 1.

3. On a regular basis, PETA has received shocking and detailed complaints from members of the public who have visited Waccatee Zoo in person. These complainants have called for an end to the animal suffering seen and heard at Waccatee. Altogether, PETA has received over 150 complaints from the public about Waccatee. Many express shock and disbelief that Defendants are still permitted to operate.

4. Years of eyewitness accounts from government inspectors, patrons, and other visitors describe the deplorable conditions caused by Defendants' actions and omissions. Day after day, animals at Waccatee sway and pace back and forth—unnatural behaviors that signify the animals' needs are not being met. Many animals experience negative stress due to small, insufficiently enriched spaces that provide little to do, offer inadequate opportunities to socialize, and are affirmatively dangerous. Negative stress that is acute and chronic can suppress a body's immune responses and increase susceptibility to pathogens, exposing animals to further exertion and negative stress and amplifying the risk of illness, infection, or even death.

5. One tiger, Lila, died in 2021 or late 2020 after losing nearly all her fur. Lila became so emaciated that much of her skeleton—including her vertebrae, scapula, shoulder, hip, and other joints—was visible through her skin. *See* Exs. 2 and 3.

6. Like Lila, many other animals at Waccatee have experienced severe hair loss and emaciation. Numerous animals struggle to walk, both because their bones and muscles have wasted away from malnutrition and, in many instances, because Defendants have allowed their hooves to become strikingly overgrown. Isolated, frustrated, and bored animals exhibit alarming and repetitive behavior, indicating that they are experiencing psychological distress.

7. Some examples—among the small subset of deficiencies fully captured in photographs or video—are shown below, as well as in the attached **Exhibits 2-7**:



Exhibit 2: Front view of Lila the tiger with hair loss and curved spine. December 17, 2020.



Exhibit 3: Side view of Lila the tiger with hair loss and curved spine. December 17, 2020.

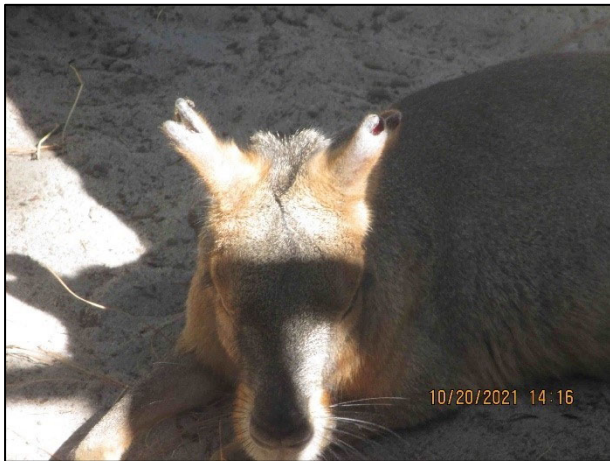


Exhibit 4: Patagonian cavy with crusted ulcerative lesions on ears. October 20, 2021. Photo by USDA.

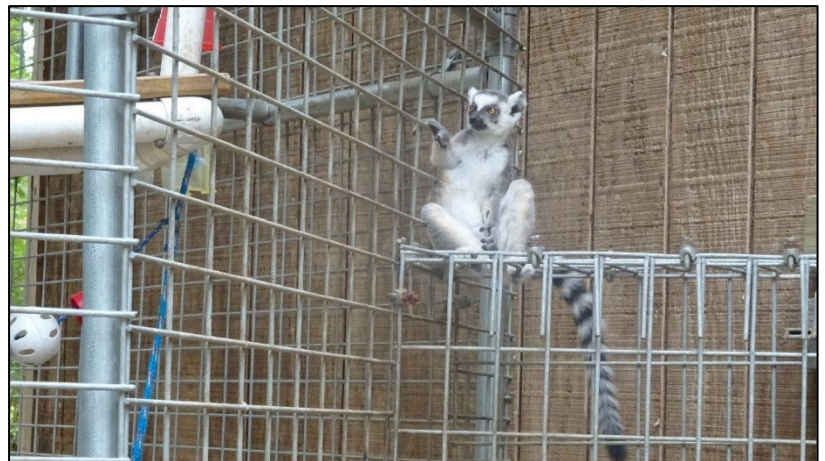


Exhibit 5: A lemur pup outside of enclosure. June 5, 2019.



Exhibit 6: Sha-Sha the pig-tailed macaque with eye issue. June 29, 2021.



Exhibit 7: A donkey with open, ulcerated wounds on leg. June 5, 2019.

8. Defendants’ conduct wounds, harms, harasses, and, on information and belief, kills protected animals (collectively the “Listed Species”). The Listed Species include tigers, lions, ring-tailed lemurs, parrots (Salmon-crested cockatoo, Scarlet macaw, White cockatoo, and Yellow-Crested cockatoo), and a scimitar-horned oryx. This violates the ESA’s “take” prohibition.

9. Specifically, Defendants cause Listed Species psychological harm and distress amounting to injury; inflict physical injury on them; and significantly disrupt their normal behaviors in a manner that puts their physical and psychological well-being at risk of likely further injury. On information and belief, Defendants’ conduct also caused the death of tigers at their facility. Additionally, Defendants possess taken members of Listed Species in violation of the ESA and, on information and belief, sell taken ring-tailed lemur individuals and lion parts in violation of the ESA.

10. Defendants’ abuse is not limited to ESA-protected animals. Plaintiffs also bring suit against Defendants for violation of South Carolina public nuisance law through, in significant part, deficient care amounting to inhumane cruelty of all animals in their possession.

II. Jurisdiction and Venue

11. The Court has personal jurisdiction over Ms. Kathleen Futrell and Mr. Jeff Futrell because they reside in the District of South Carolina and conduct their business within this District. The Court has personal jurisdiction over Mr. Austin Futrell and Ms. Dakota Futrell Stienecker because they reside in the District of South Carolina. On information and belief, the personal representative of Archie Futrell's estate also resides in South Carolina. This Court also has personal jurisdiction over Waccatee Zoological Farm.

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

13. Plaintiffs provided notice regarding the violations alleged in this Complaint and their intent to file suit ("Notice of Intent"). It is attached as **Exhibit 8**. Plaintiffs sent this Notice of Intent to Defendants, the Secretary of the Interior, and the Director of the U.S. Fish and Wildlife Service ("FWS") on December 22, 2021. Plaintiffs served their Notice of Intent more than sixty days prior to the filing of this action. 16 U.S.C. § 1540(g)(2)(A)(i).

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

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

16. Venue is proper in the District of South Carolina because the alleged ESA violations have occurred, and continue to occur, within this judicial district. 16 U.S.C.

§ 1540(g)(3)(A).

17. This Court has supplemental jurisdiction over the South Carolina state law claims under 28 U.S.C. § 1367(a). This Court has original jurisdiction under 16 U.S.C. § 1540(g), and 28 U.S.C. § 1331. The state law claims are so related to the underlying federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

18. Venue for public nuisance claims is appropriate in this judicial district under 28 U.S.C. § 1391. All defendants are residents of the State of South Carolina and the public nuisance alleged in this Complaint occurred, and continues to occur, on premises located in this judicial district.

19. Assignment to the Florence Division is proper because natural defendants reside in the Florence Division. A substantial part of the events or omissions giving rise to claims occurs in the same division. L. Civ. R. 3.0(A)(1)(D.S.C.).

III. Parties

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

21. Matthew Howard is a resident of Horry County, South Carolina who derives personal, recreational, educational, and aesthetic benefits from being in the presence of animals and observing animals in humane settings. Mr. Howard visited Waccatee Zoo several times from childhood through adulthood, where he observed and developed aesthetic and emotional connections to many of the animals including, but not limited to, primates, felids, and reptiles he recognizes by name. Due to the mistreatment and suffering that he witnessed, he has suffered concrete injury to his personal, aesthetic, recreational, and educational interests in observing

these animals in humane settings. He also suffered economic injury associated with Defendants' entrance fee. Because of his appreciation, attachment to, and concern for these animals, he wishes to see the mistreatment of these animals stopped, including via transfer to humane settings where he intends to return to visit them.

22. Lexie Jordan is a resident of Horry County, South Carolina who derives personal, recreational, educational, and aesthetic benefits from being in the presence of animals and observing animals in humane settings. Ms. Jordan visited Waccatee Zoo at least five times, where she observed and developed aesthetic and emotional connections to many of the animals, including but not limited to felids she recognizes by name. Due to the mistreatment and suffering that she witnessed, she has suffered concrete injury to her personal, aesthetic, recreational, and educational interests in observing these animals in humane settings. She also suffered economic injury associated with Defendants' entrance fee. Because of her appreciation, attachment to, and concern for these animals, she wishes to see the mistreatment of these animals stopped, including via transfer to humane settings where she intends to return to visit them.

23. Defendant Waccatee Zoo is located at 8500 Enterprise Road, Myrtle Beach, SC 29588. It was established in 1988 and operates under a C-Class USDA exhibitor license (56-C-0230).

24. Defendant Kathleen Futrell is a resident of Horry County, South Carolina. Ms. Futrell acts on behalf of Waccatee Zoo by, among other things, overseeing day-to-day operations, managing animal care, and participating in USDA inspections.

25. Ms. Kathleen Futrell is the personal representative of the Estate of Archie Futrell. Archie Futrell co-owned and operated Waccatee with his wife Ms. Kathleen Futrell until his death on April 8, 2011.

26. Defendant Jeff Futrell is a resident of Horry County, South Carolina. Mr. Futrell acts on behalf of Waccatee Zoo by, among other things, overseeing day-to-day operations, managing animal care, and participating in USDA inspections. He is the agent for Ms. Futrell's General Durable Power of Attorney. Mr. Jeff Futrell is Kathleen Futrell's son.

27. Defendant Austin Futrell is a resident of Horry County, South Carolina. He is an alternative co-agent for Ms. Futrell's General Durable Power of Attorney. Mr. Austin Futrell is Kathleen Futrell's grandson and Mr. Jeff Futrell's son.

28. On information and belief, Mr. Futrell acts on behalf of Waccatee Zoo by, among other things, being involved in day-to-day operations and animal care. Mr. Futrell is sufficiently involved in animal care that, in October 2015, he was—as reported by Mr. Futrell's colleagues with the South Carolina Division of the Sons of Confederate Veterans—“attacked and hooked in the leg” by a buffalo, sustaining “serious damage.”

29. Defendant Dakota Futrell Stienecker is a resident of Horry County, South Carolina. She is an alternative co-agent for Ms. Futrell's General Durable Power of Attorney. Ms. Stienecker is Kathleen Futrell's granddaughter and Mr. Jeff Futrell's daughter.

IV. Statutory Background

A. Endangered Species Act

30. Wildlife subject to the ESA include any listed member of the animal kingdom, including any mammal or part, product, or the dead body or parts of mammals. 16 U.S.C. § 1532(8).

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

32. “Take” includes “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19).

33. “Wound” is defined as inflicting a physical injury, including in a manner that pierces or lacerates skin. *See Graham v. San Antonio Zoological Soc’y*, 261 F. Supp. 3d 711, 741 n.15 (W.D. Tex. 2017) (citation omitted). *See also* Findings of Fact and Conclusions of Law, *PETA v. Lowe*, Case No. 5:21-cv-00671-F (Feb. 25, 2022), ECF No. 483 at 11; *PETA v. Wildlife in Need & Wildlife in Deed, Inc.*, No. 4:17-cv-00186-RLY-DML, 2018 WL 828461, at *6 (S.D. Ind. Feb. 12, 2018).

34. “Harm” is defined by regulation as an act which “kills or injures” an endangered or threatened animal. 50 C.F.R. § 17.3.

35. “Harass” is defined by regulation to include an “intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.”¹ *Id.*

36. Under the ESA, it is also unlawful for a person to “possess, sell, deliver, carry, transport, or ship, by any means whatsoever” any ESA-protected species that has been taken in violation of the Act. 16 U.S.C. § 1538(a)(1)(D). *See also* 50 C.F.R. §§ 17.21(d), 17.31, 17.40(r).

37. Likewise, it is unlawful to “deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity,” or “sell or offer for sale in interstate or foreign commerce” any listed species. 16 U.S.C. §

¹ The exemption articulated in the definition of “harass” is not applicable to the instant case, as Defendants’ conduct is likely to result (and, as alleged, frequently has resulted) in injury, does not constitute generally accepted animal husbandry, and does not meet or exceed the minimum standards for facilities and care under the Animal Welfare Act.

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

38. Ring-tailed lemurs, scimitar-horned oryxes, tigers, and yellow-crested cockatoos are listed as endangered under the ESA. 50 C.F.R. § 17.11(h).

39. Salmon-crested cockatoos, also known as Moluccan cockatoos, and white cockatoos are listed as threatened under the ESA. 50 C.F.R. § 17.11(h).

40. 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. 50 C.F.R. § 17.11(h). The ESA prohibits takes of each subspecies. *Id.*

41. One subspecies of scarlet macaw (*cyanopterus*) is endangered and another subspecies (*macao*) is threatened. 50 C.F.R. § 17.11(h). Hybrids of the subspecies are listed as threatened. *Id.*

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

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

B. South Carolina Public Nuisance, State Anti-Cruelty Law, and Federal Animal Welfare Act

44. Under South Carolina statute, “[a] person who erects, establishes, continues, maintains, uses, owns, occupies, leases, or releases any building or other place used for the purposes of lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace in this State is guilty of a nuisance.”

S.C. CODE ANN. § 15-43-10(A). “[C]ontinuous breach of the peace” includes “pattern[s] of repeated acts or conduct which... directly [disturb] the public peace.” S.C. CODE ANN. § 15-43-10(B).

45. South Carolina allows private enforcement of its statutory nuisance law. Under the statute, “[w]henver a nuisance is kept, maintained or exists... any citizen of the State may maintain an action in equity in the name of the State... to enjoin perpetually such nuisance, the person conducting or maintaining the nuisance and the owner or agent of the building or ground upon which the nuisance exists.” S.C. CODE ANN. § 15-43-20.

46. Further, a business can become a nuisance by the manner in which it is conducted.

47. Under South Carolina common law, a public nuisance exists where acts or conditions subvert public order, decency, or morals. Further, if a party maintains a place where laws are publicly, repeatedly, persistently, and intentionally violated, then such place is a common or public nuisance.

48. In the State of South Carolina, it is unlawful to knowingly or intentionally “[ill-treat] an animal,” “[deprive] an animal of necessary sustenance or shelter,” or “[inflict] unnecessary pain or suffering upon an animal, or by omission or commission knowingly or intentionally [cause the] acts to be done.” S.C. CODE ANN. § 47-1-40(A). *See also* S.C. CODE ANN. § 47-1-40(B) (prohibiting the infliction of “excessive or repeated unnecessary pain or suffering upon an animal” by acts or omissions).

49. The Animal Welfare Act (“AWA”), 7 U.S.C. §§ 2131-2159, and its implementing regulations establish bare minimum federal protections for certain categories of animals in captivity that include provisions for veterinary care, adequate shelter, and sanitation.

V. Factual Allegations

50. Waccatee Zoo is an unaccredited roadside zoo in Myrtle Beach, South Carolina.

51. At Waccatee, Defendants confine and exhibit over 460 animals, including mammals, birds, and reptiles, and charge the public entrance fees to view and interact with the animals.

52. Animals at Waccatee Zoo are frequently denied the most basic necessities, including wholesome food, potable water, adequate veterinary care, and daily care by staff experienced in generally accepted animal husbandry practices.

53. The enclosures confining animals at Waccatee Zoo are inadequate and unsanitary, chronically littered with animal and food waste, void of proper environmental enrichment, and often in disrepair.

54. On information and belief, Defendants do not possess a permit from the Secretary of the Interior to “take” Listed Species under 16 U.S.C. § 1539(a)(1)(A).

55. Since 1992, the USDA has cited Waccatee Zoo for more than 100 violations of AWA requirements. USDA inspection reports, including as referenced or described above and below, detail Defendants’ ongoing disregard for the welfare of its animals and demonstrated inability to provide proper care for them. These USDA inspection reports do not even capture *all* violations of the AWA and, in fact, wholly omit several species of animals at Waccatee that the AWA does not regulate.

56. The USDA fined Waccatee \$7,800 on February 28, 2022 in response to six alleged AWA violations concerning the conditions of the animals or the animal enclosures documented throughout 2020 and 2021. *See* Ex. 1. Specifically, the USDA fined Waccatee in response to the following conditions:

- a. two llamas and one zebu with significantly overgrown hooves, indicating a failure by Waccatee to provide the animals with adequate veterinary care (observed during the March 5, 2020 Inspection);
- b. a Dall ram with significantly overgrown dewclaws and hooves, thick layers of crusting above each hoof, and ulcerative lesions with fresh blood on all four limbs, indicating again a prolonged failure by Waccatee to provide the animals with adequate veterinary care (observed during the Oct. 22, 2020 Inspection);
- c. murky, green water in the dromedary camel's drinking water receptacle thus leaving the camel without access to potable water (observed during the Oct. 22, 2020 Inspection);
- d. llamas at Waccatee with significantly overgrown hooves and toenails that were overgrown and deviating to the side, indicating continued failure by Waccatee to provide adequate veterinary care (observed during the Jan. 26, 2021 Inspection);
- e. two Aoudad sheep limping, indicating Waccatee is improperly denying veterinary care to the animals (observed during the May 5, 2021 Inspection);
and
- f. cloudy, brown water with clumps of brown and green plantlike material, as well as brown sludge, in the drinking water receptacles in the Aoudad sheep and fallow deer enclosures (observed during the May 5, 2021 Inspection). *Id.*

57. Photographs and videos by Waccatee visitors also show AWA violations and takes of ESA-protected species, in addition to similar deficiencies with respect to other species.

58. The instances described below include examples of how Defendants take Listed Species by failing to provide them with adequate veterinary care; failing to provide them with adequate, appropriate nutrition; housing them in small, insecure, and generally inappropriate and unsafe enclosures; failing to maintain them in sanitary conditions; failing to provide them with adequate environmental enrichment; and housing them in inappropriate social groupings.

A. Defendants take Listed Species in violation of the ESA.

i. Defendants wounded, harmed, harassed, and, on information and belief, killed tigers by denying them adequate veterinary care.

59. Routine veterinary care is essential to timely diagnose and treat disease, injury, or negative stress in tigers.

60. Tigers exhibited in captive facilities should 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.

61. On information and belief, Waccatee did not provide sufficient veterinary care to Lila or Akshara. Both tigers exhibited chronic abnormal repetitive behaviors indicative of severe psychological distress.

62. The cats suffered repeated injuries and illnesses requiring appropriate veterinary treatment that, on information and belief, Defendants did not provide.

63. Lila suffered progressive hair loss and skin issues that persisted for at least a year prior to her death. *See* Exs. 2 and 3. Before her death, Lila was emaciated, having a likely body condition score of 1 on a 5-point scale, itself indicative of a failure to address near-death conditions.

64. Defendants failed to provide Lila and Akshara with adequate and appropriate veterinary care as evidenced by abnormal repetitive behavior, Lila's physical deterioration, and

failure to adequately treat other conditions. Failure to provide timely and appropriate veterinary care harmed, harassed, and, on information and belief, contributed to their deaths.

ii. Defendants wounded, harmed, harassed, and, on information and belief, killed tigers by denying them adequate nutrition.

65. Basic tenets of animal care mandate that captive animals be provided with adequate and appropriate diets and potable water. The AWA requires, at a minimum, that food “be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health.” 9 C.F.R. § 3.129(a). Diets provided to tigers “shall be prepared with consideration for the age, species, condition size, and type of the animal” as well. *Id.* According to established industry guidelines, feeding tigers diets that contain high percentages of poultry products or muscle meat is problematic because they may be nutritionally unbalanced. Clean drinking water should always be available to tigers, in containers that are cleaned and disinfected daily.

66. On information and belief, Defendants did not provide sufficient nutrition to tigers. For example, the USDA specifically cited Waccatee for failing to provide felids with a veterinarian-approved diet, or even a sufficient written feeding plan. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), p. 4.

67. On information and belief, Waccatee fed Lila and Akshara an unbalanced, insufficient diet. In addition to being high in poultry products, the diet these tigers received was insufficient to prevent deadly muscle wasting and emaciation. As explained earlier in this Complaint, exhibited tigers should 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. Before her death, Lila’s vertebrae, scapula, shoulder, hip, and other joints were visible.

68. Defendants, on information and belief, also failed to provide tigers with continuous access to clean drinking water. Visitors to Waccatee have observed empty and unsanitary water vessels in tiger enclosures.

69. Defendants failed to provide tigers with adequate nutrition and water. This failure both injured the tigers and created a likelihood of further injury by interfering with their normal feeding behaviors, and thus wounded, harmed, harassed, and, on information and belief, contributed to the deaths of Lila and Akshara in violation of the ESA.

iii. Defendants wounded, harmed, and harassed, and, on information and belief, killed tigers by denying them appropriate housing.

70. Tigers require large, environmentally rich, natural spaces that allow them to express a wide range of behaviors. Captive environments that do not provide the environmental enrichment necessary to promote the expression of a full range of species-typical behaviors have a detrimental effect on the animals' physical and psychological well-being.

71. On information and belief, tiger enclosures at Waccatee Zoo were 30 feet long, 20 feet wide, and 10 feet high with limited access to a pool. The pool was in an enclosed, common area and shared with black bears, and not generally available to Lila and Akshara. The pool's chronic low levels and poor water quality also reduced the tigers' opportunities to swim.

72. The enclosures were too small to meet the needs of tigers in order for them to engage in species-typical behaviors such as roaming, seeking refuge, and swimming.

73. Poor housing also exposed Lila and Akshara to a likelihood of bodily injury. On information and belief, the rear portion of the enclosures appeared to only provide protection from three sides, leaving the front exposed to inclement weather and other environmental conditions. Defendants did not provide misting units, fans, or other means of thermoregulation for the tigers. Lila was left particularly vulnerable by inadequate shelter when she lost a majority

of her fur as her ability to maintain body heat was reduced. The enclosures also exposed Lila and Akshara to risk of disease and physical injury from humans, including members of the public, or other animals.

74. Defendants failed to maintain enclosures in good condition, leaving wood and wires exposed. Those exposed wires and sharp wood created a likelihood of injury to Akshara and Lila by actually injuring them and by interfering with normal behavioral patterns in manner likely to cause further injury.

75. Defendants wounded, harmed, harassed, and, on information and belief, contributed to the deaths of tigers through poor housing.

iv. Defendants wounded, harmed, harassed, and, on information and belief, killed tigers by denying them sanitary space.

76. Natural substrates, such as those within Waccatee Zoo's tiger enclosures, and other surfaces should be spot-cleaned daily. Pools for tiger use should be designed for maintaining high water quality and for ease of cleaning and sanitizing, as tigers tend to defecate in water. Under generally accepted husbandry practices, all water provided to the animals must be potable, and changed as appropriate to remain fresh and uncontaminated.

77. On information and belief, Defendants failed to remove feces and food wastes in a timely manner.

78. On information and belief, Defendants failed to properly clean substrates within tiger enclosures. The failure to clean the surfaces created risks of injurious odors and contamination with microbes, exposing Lila and Akshara to potential pathogens.

79. Defendants failed to eliminate stagnant, muddy water that accumulated in tiger enclosure space. *See* 9 C.F.R. § 3.52(e) (Requiring "a suitable method... to rapidly eliminate excess water" in outdoor enclosures for big cats such as tigers). This standing water exposed

tigers to additional health risks including exposure to potential pathogens.

80. The tigers' enclosure pool routinely contained stagnant, filthy water. The pool's condition exposed the animals to potentially contaminated water and risk of injury to tigers.

81. Defendants' failure to provide Lila and Akshara with a sanitary environment wounded, harmed, and harassed them and, on information and belief, contributed to their deaths.

v. Defendants harmed, harassed, and, on information and belief, killed tigers by denying them adequate environmental enrichment.

82. Insufficient enrichment deprives tigers of the ability to engage in species-typical behaviors, which causes negative stress and likewise deprives them of the ability to exercise, which risks physical harm. To address this, appropriate programs of environmental enrichment are necessary to prevent injurious behaviors, such as self-mutilation, and abnormal repetitive behaviors, such as pacing, indicative of severe psychological distress.

83. To meet the physical and psychological needs of tigers, exhibits should include enrichment elements such as relatively large, complex outdoor space; natural vegetation; and trees or other natural substrate objects to allow nail grooming. Enrichment plans should include natural and complex enclosures and environmental enrichment including whole-carcass feeding, novel toys/objects, scratch logs, introduction of new smells, pools, and adequate spaces to run, and places to retreat from view. Further, enrichment should be rotated on a consistent and routine basis to retain the tigers' interest and to better reflect the varied experiences they would have in natural settings.

84. Defendants failed to provide appropriate enrichment for Lila and Akshara. The tiger enclosures lacked complexity, natural vegetation, and natural substrates for nail grooming. Denying tigers an appropriate, natural, and complex enclosure frustrated their natural instincts. Defendants did not provide Lila and Akshara opportunities to swim, stalk, and engage in other

natural behaviors. The pool provided for tigers, which was shared with the adjacent bear enclosure, was woefully inadequate, as the water was consistently at a low level and unsanitary.

85. The reduced opportunities to swim, stalk, and engage in other natural behaviors due to inadequate enrichment also reduced Lila and Akshara's abilities to maintain moderate body conditions. Poor body condition increases health risks and reduces longevity.

86. The minimal enrichment items provided were not functional for big cats and were consistently dirty. The condition of this limited enrichment suggests that it was frequently unused or not rotated to ensure novelty. Visitors to Waccatee observed Lila pacing back and forth up to the end of her life. Repetitive pacing is consistent with psychological distress that is likely caused by a lack of space, environmental complexity, and sensory stimulation.

87. By depriving the tigers of an environment in which they could express natural behaviors, Defendants disrupted their normal behavioral patterns such that it created a likelihood of injury and, on information and belief, caused psychological and ultimately physical injury while also contributing to the tigers' deaths.

vi. Defendants wounded, harmed, harassed, and, on information and belief, killed tigers by denying them appropriate social groupings.

88. Tigers are generally solitary animals. Accordingly, except under very specific conditions where animals have a high degree of autonomy, group housing of adult tigers is contrary to generally accepted animal husbandry practices.

89. On information and belief, Waccatee Zoo harmed tigers by placing them in improper social settings. For example, during an inspection on May 24, 2016, USDA noted that Waccatee had housed Lila and Akshara together for 11 years. USDA advised that "measures need to be taken to protect the female from excessive male roughness and from injuries" after learning that Akshara attacked Lila in a failed breeding attempt. The failed breeding attempt

resulted in a two-inch wound on Lila's body.

90. Defendants also placed the tiger and lion enclosures side-by-side without sufficient visual barriers. Placing tigers and lions in close proximity without appropriate modifications induced negative stress among the animals.

91. Placing Lila and Akshara in improper social contexts led to physical injury and added additional negative stress to their lives. By depriving tigers of appropriate social groups, Waccatee's actions harmed and harassed tigers, as well as, on information and belief, contributed to their deaths.

vii. Defendants wound, harm, and harass lions by denying them adequate veterinary care.

92. Facilities housing lions should provide regular and adequate veterinary care. Generally accepted husbandry practices call for veterinary care to be available at all times in order to address signs of negative stress, disease, or injury in a prompt fashion.

93. Princess and Simba have experienced documented wounds and physical problems. The USDA cited Waccatee for Simba's incoordination, and noted that such an issue can be an indicator of poor health, including potentially fatal nutritional deficiencies such as metabolic bone disease. Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), p. 1. Specific observations from USDA inspectors included that Simba's hocks are abnormally dropped, that there is a swinging out of his legs as he moves, and that there is a swaying to his rear gait.

94. Zoo visitors have also reported fur loss and wound issues on Simba's face and wounds on Princess's face.

95. Simba and Princess have been observed pacing listlessly in their enclosures, demonstrating a failure to meet psychological veterinary needs.

96. Defendants' failure to provide adequate veterinary care creates the likelihood of injury and actually injures both Princess and Simba.

viii. Defendants wound, harm, and harass lions by denying them adequately implemented nutrition protocols.

97. Lion caretakers must be trained to meet the dietary needs of lions. AWA regulation requires, at a minimum, 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." 9 C.F.R. § 3.129(a). Diets should "be prepared with consideration for the age, species, condition, size, and type of the animal." *Id.* According to generally accepted husbandry practices, feeding lions diets that contain high percentages of poultry products or muscle meat is of concern because such diets may be nutritionally unbalanced. At all times, potable water should also be available to lions in containers that are cleaned and disinfected daily. *See* 9 C.F.R. § 3.130 (explaining that under the AWA "[f]requency of watering shall consider age, species, condition, size, and type of the animal.")

98. On information and belief, Defendants deny lions an appropriate diet and consistent access to clean potable water. USDA has cited Waccatee Zoo for failing to provide felids in its care with a veterinarian-approved diet, or even a sufficient written feeding plan. Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), p. 4.

99. Defendants' failure to provide lions adequate nutrition wounds, harms, and harasses them because poor nutrition creates the likelihood of injury and is actually deleterious to the animals' physical and psychological health.

ix. Defendants wound, harm, and harass lions by denying them safe and appropriate housing.

100. Lions need adequate space to engage in species-typical behaviors such as concealing themselves from humans, foraging, stalking, roaming, running, and playing. Enclosures should be in good repair to prevent injuries to animals.

101. On information and belief, the two lion enclosures at Waccatee Zoo are 20 feet long, 25 feet wide, and 12 feet tall each. This space is inadequate for lions due to its size, lack of complexity, and dangerousness.

102. Poor housing also exposes lions to a likelihood of bodily injury. Defendants routinely fail to repair damaged lion enclosure spaces. Exposed wires and rough material expose lions to a likely risk of harm via physical injury. These spaces also expose lions to risk of disease and physical injury from humans, including members of the public, or other animals.

103. Defendants' failure to keep Princess and Simba in adequate and safe enclosures wounds and harms them by direct injury and harasses them by exposing them to a likelihood of physical and psychological injury, including by impairing normal sheltering patterns.

x. Defendants wound, harm, and harass lions by keeping them in unsanitary conditions.

104. Generally accepted animal husbandry practices call for natural substrates and other surfaces within lion enclosures to be spot-cleaned daily. *See, e.g.*, 9 C.F.R. §§ 3.125(d), 3.131. Hard surface enclosures for lions should be cleaned daily, and cleaned with detergent and disinfectant on a regularly scheduled basis.

105. Concerning drainage, the AWA requires, at a minimum, that "a suitable method shall be provided to rapidly eliminate excess water" in outdoor enclosures for big cats such as lions. 9 C.F.R. § 3.52(e).

106. Defendants harm and harass lions through unsanitary enclosures. On information and belief, Defendants do not clean or sanitize the lion enclosures in accordance with generally accepted husbandry practices. Zoo staff allow food and feces, and thus injurious odors, to remain in enclosures. Failure to clean surfaces creates risks of injurious odors and contamination with microbes, exposing Simba and Princess to potential pathogens.

107. Water drainage issues within enclosures harm and harass lions by creating unsanitary, muddy floors. This standing water exposes Simba and Princess to additional health risks including exposure to potential pathogens.

108. By confining lions in unsanitary conditions that continually put their health and welfare at risk, Defendants harm and harass Princess and Simba by causing physical and psychological injury, and interfering with normal behavioral patterns that create a likelihood of physical and psychological injury.

xi. Defendants wound, harm, and harass lions by denying them adequate enrichment.

109. A lion's natural habitat includes open woodlands, thick brush, and tall grassy areas. In captive settings, generally accepted husbandry practices require that lions be allowed to retreat from conspecifics through the use of visual barriers, such as rock outcroppings, hills, and foliage, without limiting the animal's access to food, water, heat, or shade. Enclosures should also provide various substrates, surfaces to mark, deadfall for scratching, and other components that will change their pathways and create complex behavioral opportunities.

110. Enrichment plans for lions should include natural and complex enclosures and environmental enrichment including whole-carcass feeding, novel toys/objects, scratch logs, introduction of new smells, pools, and adequate spaces to run, and places to retreat from view.

Further, enrichment should be rotated on a consistent and routine basis to retain interest and to better reflect the varied experiences lions would have in natural settings.

111. Defendants fail to provide any appropriate enrichment necessary for lions to forage, play, and engage in other species appropriate behavior. Moreover, Defendants confine lions to barren enclosures, which are wholly unable to meet their complex physical, psychological, or social needs. The lion enclosures at Waccatee Zoo present a stark contrast to a lion's natural environment, and are void of adequate enrichment. The lack of visual barriers deny Simba and Princess visual privacy from the public and the ability to engage in instinctual and species-specific behaviors such as stalking and hiding. The failure to provide captive lions sufficient retreat space to escape the gaze of visitors violates generally accepted husbandry standards and is a significant potential source of negative stress—which, on its own, can cause a multitude of physical and psychological injuries. Further, by depriving Princess and Simba of the ability to express natural hunting behaviors such as stalking and predation, Defendants harass them by creating a likelihood of injury to them by annoying them to such an extent as to significantly disrupt normal feeding behavioral patterns.

112. Simba and Princess are housed in small enclosures with mud floors that lack complexity and provide only minor—and wholly inadequate—enrichment. Princess is, on information and belief, provided with a bowling ball as a source of enrichment. Simba is provided with a tire. Tires, without modification, and bowling balls are not species-appropriate enrichment because they do not promote the daily expression of a range of natural behaviors, including, for example, predatory and investigatory behaviors, and bowling balls are universally recognized as harmful because they may lead to injuries such as broken teeth. Tires also create a risk of perforation of the digestive tract if ingested.

113. As a likely result of the deficiencies in their environments, visitors to Waccatee often see Simba and Princess pacing back and forth within their enclosures.

114. Defendants' ongoing failure to provide lions with environmental complexity denies them the ability to engage in normal behaviors, which harms the lions by direct psychological injury and creates the likelihood of physical injury.

xii. Defendants wound, harm, and harass lions by denying them appropriate social groupings.

115. Lions are typically found in large social groups called prides. For African lions, a typical pride structure includes five to nine related adult females and their offspring plus two to six males who are unrelated to the females but frequently related to each other.

116. Unlike their counterparts in the wild, Princess and Simba are housed alone without species-appropriate social groupings. This isolation is particularly detrimental for lions given their highly social nature. This isolation is likely a further source of the ongoing, repetitive pacing described above indicating severe psychological distress.

117. Failing to provide Princess and Simba proper social groups wounds, harms, and harasses them because the failures create the likelihood of injury and causes physical and psychological injuries the lions.

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

118. On information and belief, Waccatee fails to provide lemurs sufficient veterinary care. Some lemurs are overweight or possess abnormal masses on their chest and belly areas which may be indicative of a lack of veterinary care, as well as poor nutrition. Untreated conditions injure lemurs and interfere with normal behavioral patterns in a way that can lead to further injury.

119. Lack of veterinary care harasses and harms lemurs both by causing them actual injury and by creating a likelihood of further injury from untreated health and welfare issues that impair their normal behavioral patterns.

xiv. Defendants wound, harm, and harass lemurs by failing to follow species-specific nutrition protocols.

120. According to generally accepted husbandry practices, lemurs should be provided with fresh browse daily to promote natural feeding behaviors.

121. On information and belief, Waccatee does not provide lemurs an adequate diet. Staff leave food that is covered in flies within enclosures. Defendants also, on information and belief, allow the public to feed animals improper food with minimal staff presence to observe visitor behavior.

122. Further indicating improper diets, one or more ring-tailed lemurs at Waccatee have been observed to be noticeably overweight.

123. Denying lemurs a species-appropriate diet creates a likelihood of injury by significantly disrupting normal feeding behaviors. The lack of adequate nutrition, on information and belief, also causes physical and psychological injury.

xv. Defendants wound, harm, and harass ring-tailed lemurs by denying them safe and appropriate housing.

124. Ring-tailed lemurs require specific ambient temperatures in their environment. Generally accepted animal husbandry practices for lemurs require captive lemurs to be housed exclusively indoors when temperatures fall below approximately 48°F (8.9°C).

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

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

126. Defendants do not heat lemur spaces safely. For example, Defendants use an unsafe and inadequate space heater to warm the lemur enclosure in the antique barn. The heater is dangerously stacked on top of boxes and crates outside of the enclosure space, which is a fire hazard and is insufficient to heat the entire enclosure. On information and belief, the placement of the heater also creates an unsafe hot spot on the metal fencing of the enclosure. This hot spot creates the likelihood of injury to lemurs.

127. Defendants also leave exposed wiring in and around lemur enclosure space. Exposed wire is harmful to ring-tailed lemurs because they can injure themselves on the exposed wiring. Likewise, Defendants, as discussed below, create another injury risk to lemurs by keeping poison rodent traps in the enclosure.

128. Defendants' enclosures are insufficient to secure the animals, making lemurs vulnerable to public contact. *See Ex. 5*. The USDA noted this problem as early as November 12, 2003. *See Inspection Report, APHIS, Archie Futrell and Waccatee Zoo, 56-C-0029 (U.S.D.A. Nov. 12, 2003), p. 1*. The agency similarly noted in 2008 that the lemurs held in the barn enclosure "do not have a complete public barrier." *Inspection Report, APHIS, Archie Futrell, 56-C-0029 (U.S.D.A. Jun. 18, 2008), p. 2*. Nevertheless, juvenile lemurs continue to be observed outside of their enclosures. Public contact exposes lemurs to disease and physical injury by humans or other animals.

129. Defendants' failure to provide lemurs safe housing wounds, harms, and harasses them by interfering with their normal behavioral patterns in a manner likely to cause further injury and by actually injuring lemurs.

xvi. Defendants wound, harm, and harass lemurs by failing to provide a sanitary environment for them.

130. Unsanitary conditions in, near, and surrounding a lemur's enclosure "interfere with the lemurs' olfactory senses, to which they are highly attuned." *Kuehl v. Sellner*, 161 F. Supp. 3d 678, 703 (N.D. Iowa 2016).

131. The USDA documented poor sanitary conditions for lemurs at Waccatee as early as November 2003. Inspection Report, APHIS, Archie Futrell and Waccatee Zoo, 56-C-0029 (U.S.D.A. Nov. 12, 2003), p. 2. *See also* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 2, 2012).

132. Because Defendants fail to keep enclosures in clean and sanitary conditions, lemurs are left with dirty boards to walk on. As alleged above, food left for the lemurs is frequently covered in insects. Failure to clean surfaces creates risks of injurious odors and contamination with microbes, exposing lemurs to potential pathogens.

133. Defendants have and continue to allow dirt, dust, cobwebs, and mold to accumulate in the lemur enclosures located in the antique barn. There are also wasp nests in the barn near the lemur enclosure and holes in the ceiling in the barn enclosure. Holes in the roof of the lemur barn enclosure encourage mold, mildew, and exposure to the elements. Failure to clean surfaces creates risks of injurious odors and contamination with microbes, exposing lemurs to potential pathogens. The presence of wasp nests and holes in the enclosure amplify the risk of harm to lemurs.

134. As recently as January 2022, the USDA cited Defendants for failing to clean and sanitize enclosures housing ring-tailed lemurs and tufted capuchins, thus enabling bugs, insects, and pests to thrive. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Jan. 12, 2022), p. 1.

135. On information and belief, Defendants fail to regularly remove old food and feces from the lemur enclosures. The facility also allows dried urine to remain in enclosures. Failing to remove old food and feces creates risks of injurious odors and contamination with microbes, exposing lemurs to potential pathogens.

136. These unsanitary conditions induce negative stress to the lemurs because they require clean environments to exhibit normal behaviors.

137. On February 6, 2017, the USDA cited Waccatee for mice feces found in multiple areas with a live mouse seen on a shelf containing feed bags. Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Feb. 6, 2017). The inspection report mentioned that rodent holes were seen around several enclosures. *Id.* Mice can transmit diseases to lemurs. On information and belief, pest control issues at Waccatee continue to persist. Defendants also keep poison traps in lemur enclosures, thus putting lemurs at risk of poisoning.

138. By confining ring-tailed lemurs in unsanitary conditions that continually put their health and welfare at risk, Defendants harm and harass ring-tailed lemurs by causing physical and psychological injury, and interfering with normal behavioral patterns that create a likelihood of physical and psychological injury.

xvii. Defendants wound, harm, and harass lemurs through inadequate environmental enrichment.

139. Captive ring-tailed lemurs must be provided with extensive, varied and well-

planned environmental enrichment (i.e. the opportunity to engage in species-typical behavior).

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

141. Defendants do not provide adequate enrichment for lemurs. On information and belief, Defendants harm and harass ring-tailed lemurs by depriving them of enrichment. Lack of enrichment injures lemurs and interferes with their normal behaviors in a way that leads to the likelihood of further injury.

142. In at least two lemur enclosures, Defendants confine the lemurs in sparse conditions with plastic toys, which, on information and belief, are not changed regularly. Such barren conditions are harmful to lemur physical and psychological health, and cause or are likely to cause injury, including multiple acute and chronic psychological and physiological injuries resulting from their inability to express a full range of natural behaviors such as species-typical roaming, foraging, play, and deriving intellectual stimulation from a varied habitat.

Deprivation of species-appropriate environmental enrichment also causes a likelihood of injury by driving aberrant behaviors, including, for example, social withdrawal, displaced aggression, and changes in motivation and learning.

143. The condition of the limited enrichment items suggests that these items are frequently unused and not rotated to ensure novelty. Further corroborating this inference are USDA citations regarding lack of enrichment for lemurs dating back more than two decades:

- a. Failing to provide enough manipulable objects to non-human primates.
 Inspection Report, APHIS, Archie Futrell and Waccatee Zoo, 56-C-0029
 (U.S.D.A. Nov. 12, 2003), p. 1;
- b. Failing to provide foraging devices and methods to promote foraging for food.
Id.; and
- c. Vague and incomplete environmental enhancement plan for primates.
 Inspection Report, APHIS, Archie Futrell and Waccatee Zoo, 56-C-0029
 (U.S.D.A. Sept. 25, 2001), p. 1.

144. Defendants' poorly enriched environments deny lemurs the ability to express normal behaviors. Defendants' actions interrupt lemur behaviors in a manner that both actually injures them and creates the likelihood of physical and psychological injury.

xviii. Defendants harm and harass lemurs through mixed-species exhibits.

145. Defendants harm lemurs by housing them with members of incompatible species. Waccatee houses at least one intercontinental primate with lemurs. Housing ring-tailed lemurs and other primate species together can cause distress to both species as they have different social patterns. Primates from other continents than lemurs can also expose lemurs to the deadly Herpes-B virus and other infectious diseases.

146. In June 2021, chickens were also documented in the lemur enclosure on two dates. The lemurs' proximity to these chickens exposes them to disease hazards and additional negative stress.

147. Defendants' co-housing of members of incompatible species interrupts lemur behaviors in a manner that creates the likelihood of physical and psychological injury to them. The presence of incompatible peers also injures the lemurs psychologically and, ultimately, physically.

xix. Defendants harm and harass parrots by denying them adequate veterinary care.

148. Delilah the scarlet macaw has both an overgrown beak and nails, which are in need of—but, on information and belief, have not received—veterinary attention.

149. Parrots at Waccatee Zoo suffer from feather damage. On information and belief, damage to the birds' feathers is indicative of disease or self-mutilation.

150. Lack of adequate veterinary care harms and harasses parrots by injuring the animals and interfering with their normal behavior in a manner that increases the likelihood of additional physical and psychological injury.

xx. Defendants wound, harm, and harass parrots by denying them adequate nutrition.

151. On information and belief, Defendants harm parrots by failing to provide adequate, species-specific nutrition and access to potable water. Parrots at Waccatee Zoo are left without fresh food and water, and left with food that is covered in flies.

152. By failing to provide ESA-protected parrots with an adequate and appropriate diet, as well as fresh water, Defendants create a likelihood of injury by significantly disrupting

normal behavioral patterns. The lack of adequate nutrition, on information and belief, also causes physical and psychological injury.

xxi. Defendants wound, harm, and harass parrots by denying them safe and appropriate housing.

153. Defendants keep ESA-listed parrots in cages that are too small. These small cages prevent birds from being able to fly and from exhibiting normal behavioral patterns in a manner likely to cause injury. Depriving birds of the ability to fly is a source of negative stress and causes poor welfare.

154. Defendants hold parrots in small, cramped cages that prevent them from fully opening their wings.

155. The parrots are also exposed to continuous artificial light, placed in sight of predators, and forced to be near unpredictable noise from gift shop traffic.

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

xxii. Defendants wound, harm, and harass parrots by denying them sanitary conditions.

157. Parrot and other bird cages are consistently unclean. Defendants leave soiled newspapers at the bottom of bird enclosures, allowing accumulation of feces and food waste. Defendants' failure to keep enclosures clean creates risks of injurious odors and contamination with microbes, exposing birds to potential pathogens.

158. The few enrichment materials are often soiled. The perches in the parrot cages are often dirty. Dirty, soiled enrichment materials expose birds to potential pathogens by creating risks of injurious odors and contamination with harmful microorganisms. Defendants' failure to

remove food waste, allowing flies to consume food in parrot enclosures, also creates a sanitation hazard by creating risks of injurious odors and contamination with microbes, exposing birds to potential pathogens.

159. Defendants' failure to maintain sanitary cages wounds, harms, and harasses birds by causing actual injury, and interfering with normal behavioral patterns in a way that is likely to cause physical and psychological injury and by exposing them to increased risk of pathogens, amplifying the risk of illness, infection, or even death.

xxiii. Defendants wound, harm, and harass parrots by denying them adequate environmental enrichment.

160. Defendants, on information and belief, hold several parrots (including a white cockatoo, a yellow-crested cockatoo, a salmon-crested cockatoo named Cream, and a scarlet macaw named Delilah) in its gift shop within small cages.

161. On information and belief, the parrot cages have little enrichment, most of it static and inappropriate. Enclosures are often littered with refuse items, such as dirty towels, soda bottles, and old paper boxes.

162. Delilah's cage only has a hanging piece of wood, a couple of hanging chains, a rope, and a plastic bottle. These materials offer little stimulation and the plastic bottles and chains pose a safety hazard.

163. Defendants do not provide visual barriers for parrots to retreat from stressors or to hide from view from other birds or people. There is no space to distance themselves or seek quiet refuge from environmental stressors.

164. Defendants do not provide diverse perches, which puts parrots at risk of bumblefoot. Two of the parrots only have one perch. None of the parrots at Waccatee have

access to water baths or dust baths.

165. By failing to provide enrichment, Defendants injure the birds psychologically and impair essential behavioral patterns in a manner that creates a likelihood of physical and psychological injury.

xxiv. Defendants harm and harass parrots by denying them adequate social groupings.

166. Macaws and cockatoos are social animals. In the wild, they live in large flocks.

167. Defendants wound, harm, and harass Delilah, Cream, and the other ESA-listed cockatoos by housing them alone. Housing social species in isolation without direct access to compatible members of their own species is a source of chronic negative stress and frustration, and is a serious welfare concern for the parrots.

168. By failing to provide appropriate social groupings, Defendants directly injure parrots psychologically and harass parrots by impairing essential behavioral patterns in a way that creates a risk of injury.

xxv. Defendants harm and harass a scimitar-horned oryx by denying adequate veterinary care.

169. Defendants chronically neglect hoof care for ungulates throughout the facility. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Jan. 26, 2021), p. 1; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Oct. 22, 2020), p. 1; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Mar. 5, 2020), p. 1; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), p. 1; Inspection Report, APHIS, Archie Futrell, 56-C-0029 (U.S.D.A. Aug. 18, 2010), p. 1. On information and belief, their failure to provide hoof care extends to the oryx.

170. The oryx at Waccatee has also paced in the enclosure in an abnormal, repetitive fashion indicative of severe psychological distress.

171. On information and belief, Defendants deny adequate veterinary care to a scimitar-horned oryx as indicated by the deficiencies described above. Defendants' failure to address hoof and psychological conditions injure the animal and interfere with normal activities in a way that can lead to injury.

xxvi. Defendants wound, harm, and harass a scimitar-horned oryx through inadequate nutrition.

172. On information and belief, Defendants fail to provide the oryx with adequate nutrition. Lack of adequate nutrition can cause or contribute to physical, mental, and immune health problems.

173. This denial harms the animal's physical and psychological health in violation of the ESA. Lack of adequate nutrition harasses the animal by significantly disrupting normal behavioral patterns in a manner that creates a likelihood of injury.

xxvii. Defendants wound, harm, and harass a scimitar-horned oryx through inappropriate enclosure space.

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

175. Defendants significantly disrupt the animal's normal behavioral patterns by confining the oryx in an inadequate enclosure in a manner likely to cause, and that, on information and belief, actually causes, further physical and psychological injury.

xxviii. Defendants wound, harm, and harass a scimitar-horned oryx through lack of sanitation.

176. Defendants' chronic lack of cleanliness throughout the facility and, on information and belief, within the oryx enclosure, harms and harasses the animal.

177. Poor sanitation across the grounds and in or near the oryx enclosure creates harassing odors as well as a likelihood of disease transmission. Water drainage issues within enclosures, on information and belief, harm and harass the scimitar-horned oryx.

178. Defendants harass the scimitar-horned oryx by exposing the animal to muddy areas and standing water, thus creating the likelihood of injury or sickness and, on information and belief, actually causing injury and sickness.

xxix. Defendants, on information and belief, wound, harm, and harass an oryx by failing to provide environmental enrichment.

179. On information and belief, Defendants do not provide enrichment for the scimitar-horned oryx. Defendants keep the oryx in an enclosure, alone, with minimal enrichment. Lack of enrichment harms the oryx psychologically and harasses the oryx by interfering with normal behavioral patterns in a way that creates the likelihood of injury.

xxx. Defendants harm and harass an oryx by housing the animal without conspecific companionship.

180. Generally accepted husbandry practices call for oryxes held in captivity to be housed in harem groups (one male, several females), multi-male groups (several males, several females), bachelor groups (several males), or all-female groups (if necessary). These same generally accepted practices do not recommend housing oryxes singularly.

181. Defendants harm and harass a scimitar-horned oryx by housing the animal alone. On information and belief, this social isolation contributes to conditions including the abnormal

repetitive pacing described above, which indicates that this animal is likely experiencing negative stress by living away from other scimitar-horned oryxes.

182. By depriving the scimitar-horned oryx social interaction fundamental to psychological and ultimately physical well-being, Defendants create a likelihood of, and on information and believe have caused, physical and psychological injury.

B. Defendants sell taken Listed Species and taken animal parts in violation of the ESA.

183. On information and belief, Defendants sell lion parts and lemur pups in violation of the ESA.

184. Defendants have sold or attempted to sell lion hair in their gift shop. On information and belief, the lion hair came from lions that were, as detailed above, taken in violation of the ESA.

185. On information and belief, Waccatee sells ESA-protected ring-tailed lemurs who, as detailed above, were taken in violation of the ESA. Comparing USDA's reports on Waccatee's lemur inventory with photo evidence of lemur pups at Waccatee suggests that lemur pups are disappearing before USDA officials can include the pups in the lemur population.

186. Defendants' sales of lion hair and lemur pups violate the ESA.

C. Waccatee Zoo is a public nuisance.

187. By engaging in unlawful and immoral activity, Waccatee works hurt, inconvenience, and damage on Plaintiffs, the Myrtle Beach community, and the general public, which interferes with the enjoyment of life and property and harms the community reputation and local economy.

188. Waccatee Zoo is a public nuisance, including a per se public nuisance, because it engages in *malum in se* mistreatment of animals, as described in this Complaint.

189. Defendants continuously breach the peace and subvert public decency and morals through their mistreatment animals and operation of Waccatee Zoo.

190. Waccatee is also a public nuisance by virtue of how it operates, which through its unlawful and unethical activities.

191. Waccatee is open to the public and is located and operated in a manner where members of the public are likely to come within range of its influence and the inevitable and undoubted harm it causes to the local community and its economy and reputation.

192. In addition to the harm shared by the public, Plaintiffs have suffered special injury as a result of Waccatee being and operating as a public nuisance, as described further in this Complaint.

i. Defendants' failure to provide animals with adequate veterinary care is a public nuisance.

193. USDA inspection reports detail Defendants' pattern of disregarding animal welfare and demonstrated failure to provide proper care for animals. These violations concern issues of serious neglect, including, for example, failure to provide adequate veterinary care. For example, as recently as 2021, the USDA cited Waccatee Zoo for:

- a. An aoudad sheep's forelimb lameness that impaired the animal's ability to move within the enclosure. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 5, 2021), p. 1; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Oct. 20, 2021), p. 1;
- b. Overgrown llama hooves with toenails "strikingly overgrown, deviating to the side." Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Jan. 26, 2021), p. 1; and

- c. Ulcerative lesions with crusting on the distal ear tips of two Patagonian cavies. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Oct. 20, 2021), p. 1. *See also* Ex. 4.

194. The above deficiencies reflect not only specific incidents of neglect, but also routine failures of behavioral, medical, or other welfare monitoring that, on information and belief, cause all animals at Waccatee to suffer from preventable injuries and illnesses. For example, USDA inspectors have regularly noted Defendants' failure to notice conditions or confirm that daily observation of animals had occurred. On information and belief, these and similar conditions also cause all of the animals at Waccatee to experience prolonged negative stress.

195. Defendants have a practice of depriving animals of timely and appropriate veterinary care. In addition to the examples discussed above, Defendants neglected to seek veterinary assistance for the leopards Liza and Eolis even after USDA inspectors observed one of these leopards bleeding, with "both ear pinnae completely swollen," and, "when she shakes her head, fluid sounds can be heard." Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Feb. 18, 2014).

196. Defendants' illegal conduct with respect to non-Listed Species is further evidenced by:

- a. A Dall ram with "significantly overgrown dewclaws with profound amounts of crusting and ulcerative lesions encompassing all four distal limbs," in addition to many other instances of overgrown hooves contributing to a likelihood of pain, discomfort, lameness, and long-term malformations. *See, e.g.*, Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Jan.

- 27, 2021), p. 1; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Oct. 22, 2020), p. 1; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Mar. 5, 2020), p. 1;
- b. Red fox with a gumball-sized growth on the left forelimb. *See id.*;
 - c. A cynomolgus macaque with bare skin indicative of past frost bite. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Mar. 28, 2018), pp. 1-2;
 - d. Abnormal repetitive behaviors of two black bears. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Mar. 28, 2018), p. 1;
 - e. Abnormal repetitive behaviors of hamadryas baboons and other primates. *See, e.g.,* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), p. 2;
 - f. Persistent eye issues suffering by Sha-Sha, a pig-tailed macaque. *See* Ex. 6;
 - g. A sulcata tortoise with a deformed and splitting shell;
 - h. Loss of hair or feathers on multiple animals (including a squirrel monkey, ostrich, capuchin, and cow);
 - i. Wounds on various animals (including the back of a bison, face of a deer, and on the leg of a donkey). *See* Ex. 7; and
 - j. Limping birds, including a golden pheasant and turkey.

197. By depriving animals of necessary veterinary care, Defendants maintain a place where the South Carolina anti-cruelty statute is publicly, repeatedly, persistently, and intentionally violated; continuously breach the peace; and subvert public order, decency, and morals, thereby creating a public nuisance.

ii. Defendants' failure to provide animals with adequate nutrition and water is a public nuisance.

198. In addition to the examples discussed above, Defendants' illegal conduct with respect to non-Listed Species is evidenced by Defendants' chronic failure to provide animals in their care with adequate food and water, or even sufficient written plans for doing so. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 5, 2021), p. 2; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Oct. 22, 2020), p. 2; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), p. 4.

199. Waccatee Zoo also provides generic food pellets to visitors upon entry and through coin-operated vending machines. These food pellets do not provide species-specific nutrition to animals. On information and belief, visitors offer food to animals throughout the facility. As mentioned in a January 2022 USDA inspection report, Defendants allow aged and deteriorating food to remain in the coin-operated vending machines, which can lead to food contamination, digestive issues and other health problems. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Jan. 12, 2022), p. 1. Public feeding also causes the abnormal repetitive behavior of begging.

200. Likewise, visitors continue to observe animals at Waccatee Zoo without potable water and left without appropriate food. For example, Defendants failed to provide clean, potable water to chickens, goats, and a pig.

201. Defendants fail to provide animals adequate nutrition as evidenced by animals with weight problems including an overweight cougar and an underweight Patagonian cavy.

202. On information and belief, there are no formal protocols in place to ensure that Waccatee workers perform their assigned duties or to ensure that animals routinely receive fresh water. By depriving animals of adequate nutrition and water, Defendants maintain a place where

the South Carolina anti-cruelty statute is publicly, repeatedly, persistently, and intentionally violated; continuously breach the peace; and subvert public order, decency, and morals, thereby creating a public nuisance.

iii. Defendants' failure to provide animals with adequate shelter is a public nuisance.

203. Despite state and federal requirements, Defendants confine animals in inadequate and unsafe housing. For example, in addition to the examples discussed above, Defendants' illegal conduct with respect to non-Listed Species is evidenced by USDA citations of Waccatee for inadequate enclosure space for animals including primates, cougars, bears, and various hoofstock. For example, a capuchin escaped in full view of USDA inspectors during one recent inspection. Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 5, 2021), p. 1. During another inspection, USDA inspectors observed loose and broken fencing along the zebra primary enclosure "that allowed the fence to sway back and forth, approximately 35 degrees" and posed a risk of injury to zebras. Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Oct. 20, 2021), p. 2.

204. Defendants have denied numerous other animals adequate space in their enclosures, including birds and snakes.

205. Not only are animals denied adequate space and security, but they are also denied adequate shelter from the elements. For example, in March 2020, the USDA cited Waccatee for soiled and muddy shelters for the peccaries and zebu. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Mar. 5, 2020), p. 1. *See also* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Dec. 28, 2017), p. 1 (citing Waccatee for failing to provide adequate shelter for multiple animals, including foxes, cougars, a raccoon, a porcupine, a serval, a potbelly pig, a capybara, peccaries, goats, sheep, and cows).

206. Defendants do not heat reptile spaces safely. For example, Defendants use unsafe and inadequate space heaters in the alligator and iguana enclosures. They also use open wiring in the iguana enclosure.

207. The deficiencies of the enclosures are exacerbated by the fact that several of them are also in disrepair. Defendants fail to fix leaking roofs, thus denying animals adequate protection from rain. For example, in May 2017, the USDA cited Waccatee for failing to repair and replace animal enclosures. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 9, 2017), p. 2.

208. By depriving animals of necessary shelter, Defendants maintain a place where the South Carolina anti-cruelty statute is publicly, repeatedly, persistently, and intentionally violated; continuously breach the peace; and subvert public order, decency, and morals, thereby creating a public nuisance.

iv. Defendants' failure to provide animals proper sanitation is a public nuisance.

209. Defendants chronically fail to keep Waccatee Zoo clean. In addition to the examples discussed above, Defendants' illegal conduct with respect to non-Listed Species is evidenced by USDA citations of Waccatee for poor sanitation. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. May 5, 2021), p. 1; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Oct. 22, 2020), p. 2; Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Jun. 26, 2019), p. 1.

210. Defendants' failure to routinely clean animal enclosures and the facility has created many problems, including the following:

- a. Feces accumulation in animal enclosures;
- b. Mud and standing water in animal enclosures;

- c. Mice and fly infestations;
- d. Mold and mildew in and on enclosures; and
- e. Accumulation of waste, debris, and standing water in areas used by Waccatee visitors.

211. On information and belief, there are no formal protocols in place to ensure that Waccatee workers perform their assigned duties or to ensure that all of the animal enclosures are routinely cleaned.

212. By depriving animals of sanitation, Defendants maintain a place where the South Carolina anti-cruelty statute is publicly, repeatedly, persistently, and intentionally violated; continuously breach the peace; and subvert public order, decency, and morals, thereby creating a public nuisance.

v. Defendants' failure to provide environmental enrichment and appropriate social groupings is a public nuisance.

213. Lack of enrichment and proper social groupings has led animals at Waccatee Zoo to engage in abnormal repetitive behavior. For example, in addition to the examples discussed above in paragraph 196, Defendants' illegal conduct with respect to non-Listed Species is evidenced by abnormal repetitive pacing in a manner indicative of severe psychological distress by black bears, a cougar, and other animals.

214. A baboon named Lil Trix has also exhibited abnormal repetitive behavior through erratic head swaying, self-injurious behavior, and pacing in cramped enclosure space. Another baboon named Jocko has paced in an enclosure space. A capuchin has engaged in self-biting, self-clutching, drooling, and shaking. Such behavior is indicative of physiological distress and insufficient enrichment.

215. The USDA has noted various failures to provide the proper enrichment and social groupings for animals confined at Waccatee. *See* Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Mar. 28, 2018), pp 1 (insufficient bear habitat); Inspection Report, APHIS, Archie Futrell and Kathleen Futrell, 56-C-0029 (U.S.D.A. Jun. 14, 2010) (housing primates such as Sha-Sha alone without written exemptions); Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Mar. 28, 2018), p. 2 (inadequate environmental enhancement for primates).

216. By depriving animals of appropriate enrichment and companionship, Defendants maintain a place where the South Carolina anti-cruelty statute is publicly, repeatedly, persistently, and intentionally violated; continuously breach the peace; and subvert public order, decency, and morals, thereby creating a public nuisance.

vi. Defendants' failure to abide by state and local laws is a public nuisance.

217. As described in preceding paragraphs of this complaint, Defendants knowingly ill-treat, deny sustenance or shelter, and inflict unnecessary pain or suffering on animals. Such conduct violates South Carolina's anti-cruelty law.

218. Failure to abide by South Carolina's anti-cruelty law breaches the peace and demonstrates a subversion of public order, decency, and morals.

219. Likewise, Defendants are not in compliance with the terms of their South Carolina Department of Natural Resources ("SCDNR") permit for black bears Spook and Care Bear.

220. Waccatee's permit to keep black bears requires Defendants to provide humane housing conditions, opportunities for a normal range of behaviors, clean water and enclosures, appropriate food, adequate veterinary care, and general compliance with federal and state law.

As described in preceding paragraphs of this complaint, Defendants violate the black bear permit through their ill-treatment of Spook and Care Bear.

221. Failure to abide by SCDNR permits breaches the peace and demonstrates a subversion of public order, decency, and morals.

222. Defendants also violate South Carolina's law prohibiting possession of big cats. South Carolina state law prohibits possession of big cats. *See* S.C. CODE ANN. § 47-2-30(A). Defendants are not protected by that law's grandfather clause, because Waccatee Zoo was not in compliance with the AWA when the law went into effect.

223. Failure to abide by state law prohibiting big cat possession breaches the peace and demonstrates a subversion of public order, decency, and morals.

224. In addition to unsafe conditions including failures of fire safety discussed above, Defendants also failed a Horry County code fire inspection on or about November 9, 2021 due to, among other violations, a lack of conduit or MC cable for the pond picnic area and the exterior electrical components of the concession stand.

225. Failure to abide by the state fire code breaches the peace and demonstrates a subversion of public order.

vii. Defendants' breach of the peace and subversion of public order, decency, and morals harms the economy and reputation of the local community.

226. Studies show that consumers today are highly influenced by online reviews when making travel-related decisions, including choice of destination. One study conducted by the International University of Applied Sciences (IUBH) and the travel company TUI Group, for example, found that 83% of travelers say that online reviews play an "important" or "very

important” role in making travel-related decisions and bookings.²

227. Reviews of Waccatee Zoo on the most widely used online review sites, including Google, Yelp, TripAdvisor, and Expedia, are frequently (and historically) negative, and almost every bad review expresses anger, shock, or sadness over the zoo’s treatment of its animals. *See* Ex. 9 (screenshot example of most recent negative reviews of the zoo on popular review platforms). Past and recent reviews regularly describe and upload pictures of the abuses and awful conditions at the zoo. Many reviewers call on others to boycott the zoo and authorities to shut it down.³ And many of these reviews are left by “Local Guides” or other online users recognized for the regularity and reliability of their reviews. As one Google “Local Guide” who has posted 33 verified online reviews recently summarized: “The living conditions of these animals are horrendous [and they] need to be seized and relocated to a legit zoo. . . .” *Id.* at 2.⁴ Waccatee is identified on TripAdvisor and other travel websites as something in Myrtle Beach that tourists should consider visiting with their families, encouraging prospective tourists to research and read online reviews of the zoo.⁵ Those reviews explain to them that Waccatee is “the saddest place in Myrtle Beach” and they should “[f]ind a zoo to visit in another area of the

²*The Use and Impact of Online Travel Reviews – and How to Handle Negative Ones*, Union (Mar. 22, 2022, 10:00 AM), <https://union.co/articles/importance-of-reviews-for-travel-and-tourism-brands> (reporting other studies making similar findings, including a Harvard Business Review report that for every one-star increase that a business gets on Yelp, it sees a 5%-9% increase in revenue).

³ *See* Ex. 9 at 3 (“The best thing that can happen to this place is to find a decent home for the poor animals and burn the place to the ground. . . Myrtle Beach, County and State officials PLEASE CLOSE THIS PLACE DOWN. [It] give[s] our country’s fine zoo’s [sic] a bad name.”).

⁴ Google Reviews lists ten terms that reviewers “often mention” in Waccatee reviews, including “animal abuse,” “sad,” “depressed,” and “cages.” *Id.* at 1.

⁵ *See* TripAdvisor.com (Mar. 22, 2022, 11:14 AM), https://www.tripadvisor.com/Attractions-g54359-Activities-Myrtle_Beach_South_Carolina.html (including Waccatee Zoo on its list of “Things to Do in Myrtle Beach,” available at; USA Today 10Best (same).

state or another state entirely. . . .” *Id.* at 8, 5.

228. Change.org maintains an online community Facebook page called “Close Waccatee Zoo” with over 3,000 followers dedicated to bringing an end to the zoo’s abuses.⁶ The local Myrtle Beach online news also covers the zoo’s practices and complaints made against it, furthering the online reputational damage to the community and dissuading prospective tourists from visiting the area.

229. As noted in the complaint’s introduction, PETA has received over 150 complaints from the public about Waccatee. One Virginia-based tourist reported to PETA that the conditions at Waccatee during her June 2021 visit were “deplorable.” After her July 2021 visit, a visitor from Myrtle Beach told PETA that “[m]y daughter and I left [Waccatee Zoo] crying for these poor creatures. It was by far the absolute [worst] thing I have ever encountered. I do not understand how they are still operational.” *See also* Ex. 9 at 2 (“I wish I had read the reviews before going. I’m shocked that this place has been allowed to remain open! . . . I’m contacting PETA to see if there is anything they can do.”). The growing recognition by the public in online reviews and social media that Waccatee Zoo is a nuisance that continuously violates law and morality by abusing and mistreating animals, and the online movement to discourage visitors and criticize authorities for failing to act, negatively affect the reputation of the Myrtle Beach community and harm the local tourist industry and economy.

D. Defendants lack the funds to provide adequate care to animals.

230. On information and belief, Waccatee’s dilapidated facilities and poor animal husbandry reflect a lack of funds to correct the deficiencies described in this complaint

⁶ *Close Waccatee Zoo*, Facebook (Mar. 22, 2022, 11:13 AM), <https://www.facebook.com/CloseWaccateeZoo>.

amounting to “takes” under the ESA and illegal conduct under South Carolina public nuisance law. Likewise, on information and belief, this lack of funds has caused, and is continuing to cause, such deficiencies.

231. Defendants are, on information and belief, financially unable to hire trained and experienced employees to care for the animals; instead, they rely, in large part, on untrained and inexperienced persons to care for the animals. Visitors to Waccatee report that the premises lack an adequate number of appropriately trained staff to care for animals and ensure safety. On information and belief, this causes and creates a likelihood of injury, including but not limited to disease and physical injury, from humans, including members of the public, or other animals. Defendants are also unable to finance regular farrier and veterinary care necessary for the health and maintenance of animals at Waccatee.

232. Defendants are, on information and belief, financially unable to purchase adequate and appropriate nutrition for animals at the facility.

233. Defendants are, on information and belief, financially unable to provide adequate and clean enclosures, sufficient enrichment, and necessary veterinary care to the animals.

E. Defendants’ misconduct is part of a pattern and practice that has been ongoing for many years.

234. Defendants have a long history of mistreating all animals under their care, including with respect to animals who died at Waccatee prior to the period discussed above. These include the mistreatment of other animals protected by the Endangered Species Act, including a chimpanzee named Chico and two leopards named Liza and Eolis.⁷

⁷ Chimpanzees are listed as endangered under the ESA. *See* 50 C.F.R. § 17.11(h). Leopards are listed as endangered, except in particular geographic locales where they are listed as threatened. *See id.*

235. Chico lived at Waccatee Zoo until his death on November 3, 2015. Defendants failed to meet minimum standards of care for Chico as evidenced by USDA citations. *See* Inspection Report, APHIS, Archie Futrell and Kathleen Futrell, 56-C-0029 (U.S.D.A. Jun. 14, 2010). Prior to Chico's death, PETA had repeatedly offered to facilitate his placement at accredited chimpanzee sanctuaries, at no cost to the Futrell family, and to cover all related expenses during Chico's life.

236. Defendants failed to provide sufficient care to two leopards named Liza and Eolis. *See, e.g.*, Inspection Report, APHIS, Kathleen Futrell, 56-C-0230 (U.S.D.A. Feb. 18, 2014). On information and belief, Defendants' failure to properly care for Liza and Eolis contributed to their deaths.

237. This history, along with the other incidents and examples described above, demonstrates that Defendants are either unable or unwilling to provide the animals in their possession with the care those animals require.

VI. Defendants' mistreatment and neglect of captive animals causes Plaintiffs Lexie Jordan and Matt Howard distress, anguish, and injury.

238. Ms. Jordan and Mr. Howard derive personal, recreational, educational, and aesthetic benefits from being in the presence of animals and observing animals in humane settings.

239. Ms. Jordan and Mr. Howard reside in Waccatee Zoo's market area.

240. Mr. Howard has visited Waccatee on several occasions, including but not limited to school trips to Waccatee he was taken on as a child. Over the years, he developed affinities toward animals including but not limited to Chico (before he passed away), Lila (before she passed away), Princess, Simba, Jerry (a milksnake), and Handsome (a baboon) at Waccatee. He has witnessed the deplorable conditions to which Defendants subject animals.

241. The conditions at Waccatee have also caused Mr. Howard to suffer injury to his personal property in the form of the loss of money he paid out of his own funds to gain admission to Waccatee.

242. Ms. Jordan has visited Waccatee at least five times. She developed affinities toward animals including but not limited to Lila (before she passed away), Simba, Princess, and all animals at the facility. Waccatee's treatment of animals has been emotionally taxing on Ms. Jordan. She has devoted significant effort trying to improve the animals' situation. Ms. Jordan has participated in advocacy efforts, including protests and social media campaigns, to inform and educate the public about the mistreatment of animals occurring at Waccatee Zoo.

243. The conditions at Waccatee have also caused Ms. Jordan to suffer injury to her personal property in the form of the loss of money she paid out of her own funds to gain admission to Waccatee.

244. Mr. Howard and Ms. Jordan each suffered a special injury due to their respective purchases of admission tickets to Waccatee because, as alleged herein, Waccatee is a public nuisance.

245. Mr. Howard and Ms. Jordan also suffer special injuries due to Waccatee Zoo's reputational impacts on the community. They experienced particularly severe distress and anguish as a result of their visits to Defendants' property, which upset them too much to return to visit the animals in their current conditions as frequently as they would have otherwise.

246. As individuals who visited animals confined at Waccatee Zoo, formed specific emotional attachments to them, and made efforts on behalf of animals to improve their conditions, Ms. Jordan and Mr. Howard have suffered significant and particularized injuries, different in kind and degree than those suffered by the general public because of Defendants'

unreasonable and unlawful conduct.

247. Defendants have injured and continue to injure Mr. Howard and Ms. Jordan's personal, aesthetic, recreational, and educational interests by depriving them of a right to personally observe animals living in humane settings and inflicted economic injury to Mr. Howard and Ms. Jordan via Waccatee's entrance fee.

248. Because Mr. Howard and Ms. Jordan appreciate, are attached to, and are concerned about animal welfare, they wish to see animals currently confined by Defendants in humane settings and avoid seeing them in inhumane settings.

249. If animals were no longer mistreated and were given humane settings at Waccatee Zoo, or were transferred to an appropriate sanctuary or other reputable facility where they were no longer mistreated and where they lived in humane settings, Mr. Howard and Ms. Jordan would return to visit the animals.

VII. Defendants' actions have perceptibly impaired PETA's mission, forced PETA to divert resources, and caused special injury.

A. PETA's Mission and Programs

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

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

252. Absent exceptional circumstances, PETA devotes its charitable resources to educating and persuading the public to voluntarily refrain from participating in otherwise legal conduct that nevertheless harms animals (such as eating meat or wearing leather), and to documenting technically legal but troubling treatment of animals, in order to, among other goals, push for revisions to existing regulations and laws for the benefit of the animals.

253. PETA does not, absent exceptional circumstances, devote its charitable resources to educating and persuading the public to refrain from illegal conduct, because the law itself already prohibits such conduct, incentivizes the public to refrain from such conduct, and provides mechanisms for public authorities to investigate and prosecute such conduct.

254. But when PETA is presented with evidence of illegal, severe mistreatment of animals, PETA's mission requires it to divert its charitable resources from its normal programs targeting legal conduct, to efforts sufficient to end the illegal conduct at issue as well as counteract any public misimpressions created by the illegal conduct.

B. Impairment of PETA's Mission and Diversion of Its Resources

255. Defendants, both by operating in the manner described above and via explicit marketing, falsely present themselves as a lawfully run establishment. Defendants purchase advertising claiming that Waccatee is "100% compliant with rules and regulations," which appears in publicly circulated tourist literature. Defendants also place ads on tourist websites and brochures at in-person visitor centers and public establishments. By falsely presenting themselves as a lawfully run establishment without remedy under the ESA or state law, Defendants create the incorrect public impression that Defendants' practices are humane and lawful and that Defendants can lawfully abuse, neglect, and mistreat animals.

256. Defendants' very public misconduct also impairs PETA's mission because it

increases the quantity of animals being mistreated (thus requiring PETA to address *more* instances of mistreatment without any increase in resources to do so). Furthermore, Defendants' misconduct makes it more difficult to persuade members of the public that mistreatment of animals is unacceptable (thus making it harder for PETA to successfully address *any* particular instance of mistreatment).

257. As a result, PETA has been forced to divert significant resources in order to counteract both the direct harm to the animals and the public impression that Waccatee Zoo's practices are consistent with the ESA, state law, and regard for animal welfare. Among other activities, in order to counteract Waccatee's mistreatment of animals and the public misimpression that mistreatment creates, PETA has been and continues to be forced to:

- a. Submit complaints about Waccatee Zoo to government agencies;
- b. Create blog posts about Waccatee;
- c. Conduct a letter-writing campaign to key stakeholders;
- d. Purchase digital, print, radio, and TV ads to counteract Defendants' false messaging;
- e. Review and respond to complaints from the public about Waccatee Zoo, including over 150 complaints from members of the public regarding the conditions and treatment of animals at Waccatee Zoo from 2000 to the present day;
- f. Contact Horry County Animal Control for welfare check requests;
- g. Contact the South Carolina Law Enforcement Division to request investigations;

- h. Compile and publish information on PETA's website about Waccatee Zoo's history of animal-welfare violations; and
- i. Distribute press releases about Waccatee Zoo's AWA violations.

258. In order to compile accurate information about Waccatee Zoo to share with the public and its members, as well as to counteract the public impression that Waccatee Zoo's practices are consistent with state law, the ESA, animal welfare, peace, public order, decency, and morals, PETA has been and continues to be forced to divert resources it would not otherwise expend in such a manner to:

- a. Monitor news and relevant articles about Waccatee Zoo;
- b. Track and gather Waccatee Zoo's USDA inspection reports;
- c. Arrange for experts, staff, and PETA members and supporters to visit Waccatee Zoo;
- d. Review video and photographic documentation of problems at Waccatee Zoo;
- e. Monitor social media pages and websites with information about Waccatee Zoo; and
- f. Submit public records requests related to the facility and review and analyze numerous responsive documents.

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

260. PETA's ongoing need to expend extensive resources to investigate and counteract Defendants' unlawful treatment of animals has perceptibly impaired PETA's ability to advance its mission. Specifically, the expenses incurred by identifying and counteracting Defendants'

illegal activity has forced PETA to divert extensive resources away from campaigns against other non-accredited roadside zoos and traveling animal shows with egregious records of animal neglect and abuse, and from funding animal rescues, among other efforts.

261. If PETA prevails in this action, Defendants will no longer be able to maintain the animals at issue in conditions that are inconsistent with state law, the ESA, and animal welfare, and PETA will no longer have to divert resources to counteract the impairment of its mission via the incorrect public impressions caused by Defendants' unlawful acts, or the unlawful acts themselves.

262. PETA's additional efforts and the resulting expenditures would not be necessary but for Defendants' taking of federally protected animals and unlawful public nuisance.

263. PETA's diversion of significant resources in order to counteract both direct harm to the animals and the public impression that Waccatee Zoo's practices are consistent with the ESA, state law, and regard for animal welfare is a special injury, differing from that suffered by the general public.

VIII. Claims for Relief

Count I—Unlawful “Take” of ESA-Protected Species

264. Plaintiffs incorporate by reference all allegations of the Complaint.

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

266. Defendants have violated and continue to violate the ESA and its implementing regulations by taking Listed Species within the meaning of the ESA, without a permit, at Waccatee Zoo.

267. This Court has the authority to issue an injunction prohibiting and preventing Defendants from committing further violations of the ESA and ordering them to relinquish possession of lions, ring-tailed lemurs, parrots, and a scimitar-horned oryx to appropriate reputable facilities. 16 U.S.C. § 1540(g)(1)(a).

Count II—Unlawful Possession of Protected Species

268. Plaintiffs incorporate by reference all allegations of the Complaint.

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

270. Defendants have violated and continue to violate the ESA and its implementing regulations by possessing and continuing to possess unlawfully taken species, including lions, ring-tailed lemurs, parrots, and a scimitar-horned oryx, within the meaning of 16 U.S.C. § 1538(a)(1)(D) and (G).

271. This Court has the authority to issue an injunction prohibiting and preventing Defendants from continuing to possess lions, ring-tailed lemurs, parrots, and a scimitar-horned oryx in violation of 16 U.S.C. § 1538(a)(1)(D) and (G) and 50 C.F.R. §§ 17.21(d), 17.31(a), 17.40(r), and ordering them to relinquish possession of these animals to appropriate reputable facilities. 16 U.S.C. § 1540(g)(1)(A).

Count III—Unlawful Sale of Taken Species

272. Plaintiffs incorporate by reference all allegations of the Complaint.

273. Defendants have violated and continue to violate the ESA and its implementing regulations by selling unlawfully taken species, including ring-tailed lemur pups and lion parts.

274. This Court has the authority to issue an injunction prohibiting and preventing Defendants from continuing to sell ring-tailed lemur pups and lion parts in violation of 16 U.S.C. §§ 1538(a)(1)(D) and (F).

Count IV—Public Nuisance

275. Plaintiffs incorporate by reference all allegations of the Complaint.

276. Waccatee Zoo is a public nuisance, including a per se public nuisance, that works hurt, inconvenience, and damage on Plaintiffs and the public by committing *malum in se* abuses against animals.

277. Waccatee Zoo is a public nuisance because it is operated in such a way that it hurts, inconveniences, and damages Plaintiffs and the public by continuously breaching the peace and subverting public order, standards of decency, and morals.

278. Waccatee Zoo is a public nuisance because its operation violates state and federal law as well as federal law and regulation.

279. Waccatee is open to the public and operated in a location and manner that is likely to and does impact and influence the public.

280. As a direct and proximate result of Defendants' creation of a public nuisance, the local community and general public have been and continue to be harmed.

281. As a direct and proximate result of Defendants' creation of a public nuisance, Plaintiffs have suffered harm different in kind and degree than that suffered by members of the public.

282. Mr. Howard and Ms. Jordan have particular emotional attachments to confined animals at Waccatee and incurred injuries including but not limited to economic injury

associated with Waccatee's entrance fee and aesthetic, recreational, educational, and personal harm to their interests in seeing animals in humane, safe, and psychologically enriching settings.

283. PETA has incurred economic damages including but not limited to the use of its resources to investigate and counteract Defendants' unlawful conduct and to counteract the incorrect public impression caused by Defendants' unlawful acts.

284. If unabated, Defendants' conduct will inevitably and undoubtedly continue to threaten the rights of Plaintiffs and the general public. Equitable relief, including transfer of the animals to a bona fide sanctuary or otherwise appropriate zoological facilities and an injunction prohibiting Defendants from obtaining other animals, would redress ongoing harms to Plaintiffs by Defendants' conduct at Waccatee Zoo.

Relief Requested

Plaintiffs respectfully request that this Court:

A. Declare that Defendants violated the ESA by illegally taking Listed Species. 16 U.S.C. § 1538(a)(1)(B); 50 C.F.R. §§ 17.21(c), 17.31(a), 17.40(r);

B. Declare that Defendants have violated and continue to violate the ESA by possessing lions, ring-tailed lemurs, parrots, and a scimitar-horned oryx who have been illegally taken, 16 U.S.C. § 1538(a)(1)(D), (G); 50 C.F.R. §§ 17.21(d), 17.31(a), 17.40(r);

C. Enjoin Defendants from continuing to violate the ESA and its implementing regulations with respect to lions, ring-tailed lemurs, parrots, and a scimitar-horned oryx, including the prohibitions on taking a listed species and possessing a listed species that has been unlawfully taken;

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

E. Declare that Defendants have violated and continue to violate the ESA by selling ESA-protected animals and animal parts that have been illegally taken, 16 U.S.C.

§ 1538(a)(1)(D);

F. Declare that Defendants' operation of Waccatee is a public nuisance under South Carolina law;

G. Enjoin Defendants from continuing to violate the ESA and its implementing regulations through unlawful sales or potential sales of ESA-protected animals and animal parts;

H. Enjoin Defendants from:

- a. maintaining a public nuisance, namely by confining animals in inhumane and unsafe conditions;
- b. obtaining or exhibiting other animals; and
- c. holding Waccatee out as a reputable zoo.

I. Enter a permanent injunction against Defendants that terminates all Defendants' ownership and possessory rights with respect to the animals confined at Waccatee or Defendants' real property;

J. Order the animals transferred to reputable facilities or sanctuaries that the Court determines are the most appropriate placement for the forfeited animals, consistent with the animals' best interests;

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

L. Grant PETA such other and further relief as the Court deems just and proper, including as necessary to prevent future harm to protected animals as intended by Congress.

Dated: April 26, 2022

/s/ Stacie C. Knight

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**Pro hac vice applications to be submitted*

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