

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY LOWE,

LAUREN LOWE,

GREATER WYNNEWOOD EXOTIC ANIMAL
PARK, LLC, and

TIGER KING, LLC,

Defendants.

Case No. 6:20-cv-00423-JFH

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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Exhibit B	New York Times Article, dated November 20, 2020
Exhibit C	Declaration of Morris Smith (“Decl. Smith”)
	Attachment: Cameo Exhibition Content
Exhibit D	Declaration of Theodore Melott (“Decl. Melott”)
	Attachment: OnlyFans Exhibition Content
Exhibit E	Declaration of Kyle Hogan (“Decl. Hogan”)
	Attachment 1: OnlyFans statements
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Exhibit F	Declaration of Dr. JoAnne Green (“Decl. Dr. Green”)
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Exhibit H	Declaration of IES Investigator McLaughlin regarding Dr. Gilmore, 07/01/20 (“Decl. IES Investigator McLaughlin regarding Dr. Gilmore, dated July 1, 2020”)
Exhibit I	Declaration of Betty Goldentyer (“Decl. Goldentyer”)
Exhibit J	June 2020 Inspection Report
Exhibit K	Declaration of Dr. Laurie Gage (“Decl. Dr. Gage”)
	Attachment: Dr. Laurie Gage’s Curriculum Vitae
Exhibit L	Declaration Dr. Joyce Thompson (“Decl. Dr. Thompson”)
	Attachment 1: Colorado State University “CSU” veterinary records
	Attachment 2: September 30, 2020 Video of Nala

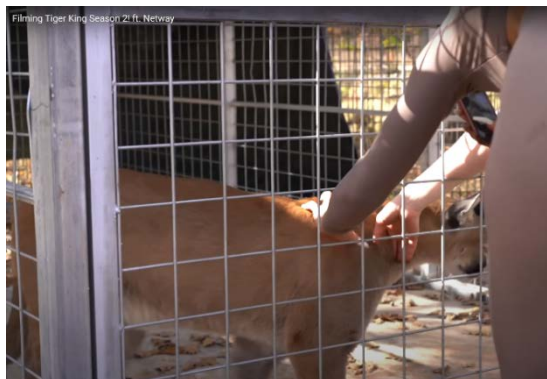
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Exhibit O	Declaration of Pat Craig (“Decl. Craig”)
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Exhibit Q	Declaration of Natalie A. Popovic (“Decl. Popovic”)
	Attachment: Ayesha Necropsy Report
Exhibit R	Declaration of Taylor Logan (“Decl. Logan”)
Exhibit S	Declaration of Hannah Grace (“Decl. Grace”)
Exhibit T	Declaration of IES Investigator McLaughlin regarding Dr. Gilmore, 09/21/20 (“Decl. IES Investigator McLaughlin regarding Dr. Gilmore, dated September 21, 2020”)
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INTRODUCTION

Defendants Jeffrey and Lauren Lowe, Greater Wynnewood Exotic Animal Park, LLC (“GWEAP”), and Tiger King, LLC operate a zoo in a rural, residential neighborhood in Thackerville, Oklahoma. The zoo currently houses around 150 animals, including Endangered Species Act (“ESA”) protected tigers, lions, hybrids thereof, lemurs, and other animals. Mr. Lowe brags of having “learned a lot about distracting, diverting attention, & using smoke and mirrors in the last few years. . . . [i]f we lose a lawsuit, we simply change the name and open another animal business someplace else, we all have multiple [U.S. Department of Agriculture (“USDA”)] licenses available.” Exhibit (“Exh.”) A, Attachment (“Att.”) 1, p. 204 (Decl. Peet). Mr. Lowe is once again engaged in such “smoke and mirrors” now.

In August 2020, to evade federal inspection and sanction for well-documented animal abuse, harm, and harassment, Jeffrey Lowe voluntarily terminated his USDA Animal Welfare Act (“AWA”) license 73-C-0230. Faced with this lawsuit and an initial threat of preliminary injunction, Mr. Lowe stipulated to certain injunctive relief. Dkt. 23. When doing so, Mr. Lowe represented to the United States and the Court that “no members of the public are visiting the facility and viewing the animals.” Dkt. 23. It is now clear that is untrue. The public is visiting “Tiger King Park,” viewing and even petting the animals, and posting it to the Internet. *See* Exh. Z (Second Decl. Melott & Att. 1 (YouTube & Cameo Video Exhibition Content)); Exh. AA (Daily Mail Article, dated December 4, 2020). This is a serious public safety issue. For example, none of the animal enclosures have AWA-required barriers that would prevent the public from coming into direct contact with dangerous animals. Exh. Z, ¶ 3, Att. 1 (*See* above YouTube footage of a woman at Tiger King Park sticking her hand in a cougar’s cage); *see also* Exh. CC (December 22, 2020 Letter from Goldentyer).



The truth is the Lowes never stopped exhibiting their animals. In fact, Defendants readily admitted to continuously exhibiting their animals in person to members of the press and filmmakers. Exh. Z & Att. 1 & 2 (OnlyFans Screenshot); Exh. AA. The Lowes also exhibit online through paid subscription services, including Cameo and OnlyFans. Exh. C (Decl. Smith) & Att. 1 (Cameo Exhibition Content); Exh. D (Decl. Melott) & Att. 1 (OnlyFans Exhibition

Content), Exh. Z, Att. 1 & 2. And the Lowes continuously market themselves as animal exhibitors to the public, advertising that they plan to open Tiger King Park to the public in March 2021. Exh. Z & Att. 1; Exh. AA; Exh. E (Decl. Hogan), Att. 3 & 4; *see* Tiger King Park From the Reality TV Show, Opening 2021, <https://www.officialtigerking.com/tiger-king-park> (last visited Dec. 23, 2020). The United States respectfully requests that all of this unlawful exhibition and other violations of the AWA and ESA be immediately enjoined.

The United States is likely to succeed. Defendants are required to possess a USDA-issued license to exhibit animals at their zoo. 7 U.S.C. § 2134. It is undisputed the Lowes lack one. Moreover, the Lowes have failed to construct required barriers around the enclosures to keep members of the public visiting the zoo, as well as the animals, safe. *See* 9 C.F.R. § 2.131(c).

Moreover, Defendants continue to place the health of animals in their care in “serious danger.” For example, during the December 15, 2020 inspection, the USDA Animal and Plant Health Inspection Service (“APHIS”) inspectors observed two macaques. This type of monkey is native to warm climates in South Asia. They were caged outside with inadequate shelter. Exh. BB at 9-10 (December 15, 2020 Inspection Report). One visibly suffered from the cold, at risk for frostbite and hypothermia. Exh. FF, ¶ 5 (Decl. Dr. Maginnis). Defendants were demanded to provide appropriate housing to protect the monkeys from winter temperatures. The Lowes have thus far refused to prove they have. This callous failure to understand and provide for the most basic needs for the health and safety of the animals in Defendants’ possession derives from another critical violation.



During the December 15 inspection (only obtained by threat of injunction), Defendants admitted they still have no attending veterinarian with species-specific training or experience under formal arrangements with their zoo. Nor did Defendants present a “written program of veterinary care.” 9 C.F.R. § 2.40(a)(1); Exh. BB at 4-5. It was also apparent that Defendants continue to provide inadequate food and nutrition to their animals. *See* Exh. BB at 6-8; *Kuehl v. Sellner*, 161 F. Supp. 3d 678 (N.D. Iowa 2016), *aff’d*, 887 F.3d 845, 852 (8th Cir. 2018). This misconduct is legally harassing and harming, and thereby taking, ESA-protected lions, tigers, and hybrids (collectively, “Big Cats”) in violation of the ESA. *See, e.g., People for Ethical Treatment of Animals (“PETA”), Inc. v. Tri-State Zoological Park of W. Md., Inc.*, 424 F. Supp.

3d 404, 412 (D. Md. 2019) (“Tri-State Zoo”), *appeal docketed*, No. 20-1010 (4th Cir. Jan. 7, 2020).

The Lowes’ “smoke and mirrors” will continue until a preliminary injunction is entered. On December 14, they stipulated to “routine inspections.” Dkt. 23. “Routine inspections” require presentation of documentation, such as acquisition and disposition records. *See* Animal Welfare Inspection Guide, 2-5, 4-9 (USDA 2020)

https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf.

One day later, the inspectors found several dozen animals were missing since Defendants last provided an animal inventory in August 2020. When APHIS inspectors asked for the disposition records with the whereabouts of the missing animals, Defendants refused. *See* Exh. BB at 8.

Defendants repeatedly show nothing but contempt for the safety and welfare of the public, their own animals, and the law. This now includes the recent judicially-ordered stipulation of this Court. The cruelty, neglect, harassment, and harm to the animals—including tropical monkeys exposed to winter temperatures—is irreparable and serves the public interest to stop. And the Lowes have put the public at risk by failing to construct required barriers around the enclosures of Big Cats and other dangerous animals, thereby allowing members of the public to come into direct contact with those animals.. The balance of harms tips strongly in favor of a preliminary injunction. The United States respectfully asks its motion be granted.

STATEMENT OF THE CASE

I. Statutory and Regulatory Background

A. Animal Welfare Act

Congress enacted the AWA to, *inter alia*, “insure that animals intended . . . for exhibition purposes . . . are provided humane care and treatment.” 7 U.S.C. § 2131(1). The AWA is administered by the Secretary of Agriculture (“Secretary” or “USDA”) through the Administrator of APHIS. *Id.* § 2132(b). The AWA authorizes the Secretary to “promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of [the AWA].” 7 U.S.C. § 2151. The Secretary has promulgated regulations and standards to govern the humane handling, care, treatment, and transportation by exhibitors.

The AWA defines an “exhibitor” as “any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the

Secretary, and such term includes . . . zoos exhibiting such animals whether operated for profit or not.” 7 U.S.C. § 2132(h).¹ Exhibitors must obtain and maintain a valid “Class C” license from the USDA. 7 U.S.C. § 2133; 9 C.F.R. §§ 1.1, 2.1-2.12. The AWA prohibits exhibitors from exhibiting any animals unless they “have obtained a license from the Secretary and such license shall not have been suspended or revoked.” 7 U.S.C. § 2134. Exhibitors must also, among others, maintain pertinent records and comply in all respects with the regulations and standards for the humane handling, care, treatment, housing, and transportation of animals. *Id.* §§ 2140, 2143; 9 C.F.R. §§ 2.8, 2.75(b)(1)-(3). For example, during public exhibition, there must be sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public. 9 C.F.R. § 2.131(c)(1).

The AWA directs the Secretary to conduct investigations or inspections as necessary to determine whether any exhibitor has violated or is violating any provision of the AWA or its regulations or standards. “[T]he Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept . . . of any . . . exhibitor. 7 U.S.C. § 2146(a). If an exhibitor “is placing the health of any animal in serious danger” in violation of the AWA, the Secretary shall notify the Attorney General, who may seek a temporary restraining order or injunction to prevent any such person from operating in violation of the Act’s requirements. *Id.* § 2159(a). The district court “shall, upon a proper showing, issue a temporary restraining order or injunction under subsection (a) without bond.” *Id.* § 2159(b). The United States district courts are also vested with jurisdiction “to enforce, and to prevent and restrain violations” of the Act. *Id.* § 2146(c).

B. Endangered Species Act

The ESA is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 698 (1995) (citation omitted). Among its protections, it is unlawful for any person to “take” any endangered “species of fish or wildlife.” 16 U.S.C. § 1538(a)(1)(B), 50 C.F.R. §§ 17.21(d), 17.31(a). “Take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap,

¹ “Zoo” is defined by regulation as “any park, building, cage, enclosure, or other structure or premise in which a live animal or animals are kept for public exhibition or viewing, regardless of compensation.” 9 C.F.R. § 1.1.

capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). The ESA likewise prohibits the violation of any regulation issued under the ESA pertaining to any species of fish or wildlife listed as threatened. *Id.* § 1538(a)(1)(G). These prohibitions apply to fish and wildlife held in captivity or a controlled environment. *Id.* § 1538(b) (identifying limited exceptions to the ESA Section 9 prohibitions for captive species, none applicable here). Tigers, lions, and hybrids in zoos are therefore protected by these prohibitions. 50 C.F.R. § 17.11(h) (listing tigers as “endangered” and lions as either “endangered” or “threatened” based upon their subspecies); 16 U.S.C. § 1532(8) (including offspring).

Congress defined the term “take” in the “broadest possible manner.” *Sweet Home*, 515 U.S. at 704-05 (citation omitted). The term “harm” is defined by regulation as “an act which actually kills or injures wildlife.” 50 C.F.R. § 17.3(c)(3). The term “harass” is “less demanding.” *Hill v. Coggins*, 867 F.3d 499, 511 (4th Cir. 2017). It requires only an “act or omission which creates the likelihood of injury to the 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.*” 50 C.F.R. § 17.3(c) (emphasis added); *see also* 63 Fed. Reg. 48,634, 48,638 (Sept. 11, 1998) (“maintaining animals in inadequate, unsafe or unsanitary conditions, physical mistreatment, and the like constitute harassment because such conditions might create the likelihood of injury or sickness [and] [t]he Act continues to afford protection to listed species that are not being treated in a humane manner”). This captive bred exemption is limited to the definition of “harass,” but not other types of takes, such as “harm.” *Kuehl*, 887 F.3d at 852. “Furthermore, if a facility fails to meet the standards outlined in the [AWA] regulations, the exemption does not apply.” *Id.*

II. Factual Background

A. The Lowes and GWEAP’s Mistreatment and Substandard Care of Animals.

From 2017 until August 2020, Jeffrey Lowe, together with Lauren Lowe and GWEAP, exhibited numerous wild and exotic animals, including ESA-protected animals, at a roadside zoo known as the Greater Wynnewood Exotic Animal Park in Wynnewood, Oklahoma (“Wynnewood facility”). As of August 2020, the Lowes had over 200 animals in their possession. This included around 115 ESA-protected animals, such as ESA-protected Big Cats, a grizzly bear, and ring-tailed lemurs. Exh. V (August 21, 2020 Inventory provided by Lowe). At the December 15, 2020 inspection, the Lowes were unaccountably down to around 150 animals.

The Lowes nevertheless have three new litters of Big Cats, with the whereabouts of a number of the missing animals unknown. *See* Exh. BB at 2.

The Lowes and GWEAP exhibited animals at the Wynnewood facility under an AWA exhibitor license, individually held by Jeffrey Lowe. *See* Exh. J (June 2020 Inspection Report).² On June 22, 2020 and July 8, 2020, APHIS inspectors conducted inspections of the Wynnewood facility and documented numerous AWA violations, including disturbing instances of inhumane treatment and substandard care of animals. Exh. J; Exh. P (July 2020 Inspection Report). Further investigation only served to confirm APHIS’s findings.

APHIS’s inspections and investigation revealed that since June 2018, Defendants had not employed an attending veterinarian under formal arrangements as required by AWA regulations. Exh. F (Decl. Dr. Green); Exh G, ¶ 3 (Decl. Dr. Devine); Exh. H, ¶¶ 4-5 (Decl. of IES Investigator McLaughlin regarding Dr. Thomas Gilmore 07/01/20). Rather, if Defendants consulted with a veterinarian at all, it was on an “as needed” basis. *See* Exh. H, ¶ 8; Exh. G, ¶ 3. This was often only after an animal had suffered and, at times, resulted in euthanasia due to the delay in seeking care for their animals. Defendants’ failure to have an attending veterinarian is devastating for the health of the animals. Attending veterinarians are essential to ensuring appropriate housing and nutrition for animals, especially exotic animals. Exh. I, ¶ 8 (Decl. Goldentyer); Exh. BB at 4, 6-9. Without proper guidance and monitoring by a veterinarian, there is a serious risk of malnutrition. Exh. BB at 6-8. This was the unfortunate result for animals at the Wynnewood facility. It is exemplified by the sickly condition of Big Cats Nala and Ayesha.

These Big Cats’ diets under Defendants’ care were so nutrient deficient that Nala and Ayesha suffered from numerous fractures, lameness, neurological problems and, in the case of Ayesha, death. Exh. K, ¶¶ 7-11 (Decl. Dr. Gage); Exh. G, Att. 1 (Dr. Devine’s Veterinary Records), p. 238-71 (Nala), p. 336-56, 431-90 (Ayesha); Exh. Q (Decl. Popovic) & Att. 1 (Ayesha Necropsy Report).³ Nala suffered from a Vitamin A and Thiamine deficiency. Exh. L, Att. 1 (CSU Veterinary Record); Exh. K, ¶ 10. Vitamin A deficiencies cause abnormalities in the

² Lauren Lowe and GWEAP operated under Jeffrey Lowe’s license.

³ The Lowes filed an objection to PETA’s Petition to Perpetuate Evidence, representing that the “21 animals [sent to Tiger Haven at the end of September] are alive and well; they are simply at a different location.” *PETA v. Lowe*, No. 20-cv-1076, Dkt. No. 17 (W.D. Ok. Nov. 12, 2020). This was false.. In fact, the evidence shows, at a minimum, that one of those animals—Ayesha—she had to be euthanized shortly after her arrival at Tiger Haven. Exh. Q & Att. 1.

cranial bones and progressive ataxia, a neurological sign consisting of lack of voluntary coordination of muscle movements and leads to abnormalities in an animal's gait. *See* Exh. K, ¶¶ 10-11; Exh. L, ¶¶ 4-14 (Decl. Dr. Thompson). Moreover, during the June 22, 2020 inspection, Nala's body condition was so poor, APHIS inspectors believed her to be a 4-5-month-old juvenile; in fact, she was 10 months old at the time. Exh. J, p. 4. She was "lethargic, depressed, and thin and would not get up out of the mud from the sitting position even after prompting." *Id.* "She had a string of purulent nasal discharge hanging from her right nostril and had an accumulation of green discharge in her eyes. Her respiration was shallow and rapid." *Id.* Due to the dire condition of Nala's health, APHIS stopped the inspection and directed the Lowes get immediate veterinary care for Nala. *Id.*

The Lowes later claimed they had an appointment scheduled with the veterinarian that morning for Nala. Exh. M, p. 3-4 (Affidavit – Jeffrey Lowe). But this was false. Exh. G, ¶ 6; Exh. N, ¶ 4 (Decl. Dr. Cunningham). When Dr. Devine finally saw Nala, she noted that Nala was underweight and the tips of her ears were ulcerated due to parasites and fleas. Exh. G, Att., p. 250-51. Dr. Devine diagnosed Nala with an upper respiratory infection, urinary tract infection, and dehydration, for which she was administered intravenous fluids. *Id.* at p. 238.



Pursuant to a court order in another case,⁴ Nala, along with two other lion cubs, was transferred to a wildlife sanctuary in Colorado in September 2020. Nala was evaluated by Colorado State University ("CSU"). Exh. L, ¶ 7 & Att. 1. CSU found that Nala was underweight

⁴ *See* Exh. A; *see also* *PETA v. Wildlife in Need and Wildlife in Deed, Inc.*, No. 4:17-cv-186-RLY-DML, Dkt. Nos. 416-417 (S.D. Ind. Aug. 3, 2020). In *Wildlife in Need*, the court ordered a Timothy Stark to maintain the status quo during an injunction by not disposing of any animals in his possession. 4:17-cv-186, Dkt. No. 239. In violation of the order, Stark left four neonatal lions with the Lowes, including Nala. Exh. A, ¶¶ 3-6, Dkt. No. 379.

and undersized for her age. Exh. L, ¶ 4 & Att. 1. Nala had difficulty standing and was lame. Exh. L, ¶ 5 & Att. 1; *see Lion Rescued From Jeff Lowe Can Barely Walk*, YouTube (Sep. 22, 2020) <https://youtu.be/zIy9--KkGIU> (Video of Nala upon arrival in Colorado); Exh. A. Nala was tested for a vitamin A deficiency. Her level was found to be 0.1 mcg/ml with a low normal level being 90 mcg/ml. Exh. L, ¶ 10 & Att. 1. CSU determined that she suffered from historical poor husbandry and her prognosis was fair to poor, pending response to husbandry improvement and healing from fractures. Exh. L, Att. 1. CSU concluded that her poor body condition was likely due to poor nutrition. *Id.*

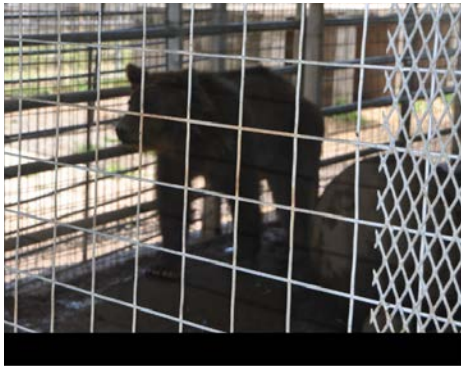
Defendants' inhumane treatment of the lion-tiger hybrid cub Ayesha was equally disturbing. Ayesha was born on October 31, 2019. Exh. G, Att. 1, p. 336. Yet, no one noticed the cub was weak, distressed, and unable to nurse until she was finally pulled from her mother on December 24, 2019, at which point she was already suffering from dehydration and malnutrition. *Id.*, p. 338; *see also* Exh. K, ¶¶ 7-9. Despite this condition, Ayesha was not scheduled to see a veterinarian until six days later. At that point, Ayesha was in such bad condition that she required hospitalization and a feeding tube because she was not eating. Exh. G, Att. 1, p. 338.

Because Ayesha had not been provided adequate nutrition or care, all of which could have been timely addressed by an attending veterinarian, her bones did not develop normally and her growth was stunted. Exh. G, Att., p. 336-56, 431-90; *see also* Exh. K, ¶¶ 7-9. In June 2020, Ayesha was 7 months old and weighed 60 pounds (normal weight for a 5-month-old cub). Exh. G, Att. 1, p. 450. At 8 months, Ayesha lost weight to 58.6 pounds. *Id.*, p. 452. At that point, in July 2020, she was diagnosed with metabolic bone disease⁵ and had bilateral distal femoral fractures, humeral fractures, and diffuse osteopenia; “[n]utritional intervention [was] considered essential.” *Id.*, p. 474. She also had roundworms. *Id.*, p. 459. After failing to heed the advice of their consulting veterinarian to keep Ayesha in a medical hold and instead placing her in an outdoor enclosure, Ayesha suffered from an additional fracture. Exh. G, ¶ 10; Exh. N, ¶ 5 (Decl. Dr. Cunningham). By the end of September 2020, she was not eating and was immobile. A veterinarian found maggots on the animal's rectal area. Exh. G, Att. 1, p. 459, 461, 467. Ayesha

⁵ This condition, caused by Big Cats being fed calcium-deficient diets, causes the Big Cats' bones to become weak and susceptible to fractures, animals to become lame, and may result in serious neurological problems that, if caught late, cannot be reversed. Exh. K, ¶ 8.

was taken to Tiger Haven in Tennessee, but euthanized shortly thereafter. Exh. Q & Att. 1.

At the June 22, 2020 inspection, APHIS inspectors also observed that Gizzy, a female grizzly bear, was emaciated and exhibiting a heightened and aggressive activity level. Exh. J, p. 4-5. “The spinous processes of the vertebral bodies and hip bones [were] easily visible.” *Id.* The APHIS inspector noted that proper nutrition is key in maintaining bear health and that other factors, such as internal parasites, must be ruled out. *Id.*, p. 5. The APHIS inspector mandated that Lowe communicate Gizzy’s “sub-optimal conditions” to the attending veterinarian, but there was none. *Id.* In early October, Gizzy was transported to a sanctuary in Colorado, still underweight and ravenous. Exh. O, ¶ 6 (Decl. Craig); Exh. L, ¶ 16. This malnutrition proved preventable. Exh. L, ¶ 16; Exh. R (Decl. Logan) (updated photos of Gizzy).



Defendants’ failure to employ an attending veterinarian also resulted in the death of at least two pregnant tigers: Dot and Mama. An attending veterinarian is essential to proactively monitoring and identifying medical problems in vulnerable animals, including pregnant animals, in order to avoid unnecessary complications or adverse health outcomes. Exh. I, ¶ 9. Between the ages of two and five, Defendants bred Dot five times. Exh. G, Att., p. 169. The final three litters resulted in stillbirths. *Id.* Although it is uncommon for tigers to have a litter of stillborn cubs, Defendants continued to breed Dot. Exh. K, ¶ 6. The Lowes only sought treatment for Dot when she required an emergency ovariectomy after the last litter of stillborns. Exh. G, Att. p. 170. Dot died two days later on June 21, 2020, due to complications from the surgery. *Id.*, p. 170-74; Exh. K, ¶ 6.

A similar fate befell a tiger named Mama when she was struggling to give birth. Although tigers typically give birth to their entire litter in 1-2 hours, Defendants allowed Mama to continue with labor for 48 hours before calling a consulting veterinarian to examine and treat her. Exh. G, Att. p. 94-96; Exh. K, ¶ 5. Forty-eight hours is an unreasonable length of time to

delay veterinary care for a tiger in labor. Exh. K, ¶ 5. Instead of seeking appropriate care, Defendants took her veterinary care into their own hands and gave Mama three doses of oxytocin acquired from an equine breeding facility. Exh. G, ¶ 8 & Att. p. 94. This hormone can increase the risk of uterine rupture. Exh. K, ¶ 5. Without qualified veterinary oversight, Mama's uterus ruptured, causing sepsis. Exh. K, ¶ 5; Exh. G, Att. p. 94-95. The tiger had to be euthanized. *Id.* A qualified, attending veterinarian could have proactively monitored the situation and timely conducted a C-section to save Mama's life and the lives of her offspring. *Id.*

Defendants' use of consulting veterinarians on an *ad hoc* basis often means that nothing can be done except to euthanize. In another example, Lizzie, an 11-year-old tiger, suffered from a subluxated disc, which caused her to have significant mobility issues. Exh. G, Att. p. 103-11. In about a month, Lizzie went from being lame in one limb to being immobile with wounds on her rear limbs going down to the bone. Exh. K, ¶ 14; Exh. G, Att. p. 103-04, 110-11. By the time Defendants had a veterinarian treat her, Lizzie was unable to use her back legs and had to be euthanized. *Id.* at 110-11. "If the problem had been diagnosed early, surgery is often a viable choice, or euthanasia may have been the other alternative, which, had it been done early in this disease, would have prevented this tiger from more than a month of unnecessary suffering." Exh. K, ¶ 14.

Promise, a 12 year old tiger, had been declining for about a month before the Lowes sought treatment for him. Exh. G, Att. p. 43-55; Exh. T, ¶ 5(b)(viii) (Decl. IES Investigator McLaughlin regarding Dr. Gilmore, September 21, 2020) & Att. p. 15, 38-39 (veterinary records). Defendants attempted to treat him with cannabidiol ("CBD") oil, which was not recommended by the veterinarians occasionally consulted. Exh. G, ¶ 7 & Att. p. 49; Exh. H, ¶ 5. Promise was unable to walk for two weeks and had large pressure sores on both hips and left stifle before Defendants finally sought veterinary treatment for him. Exh. G, Att. p. 43-55; Exh. T, Att. p. 38-39. By that time, the steroids he was given were insufficient and he was euthanized. Exh. T, Att. p. 39.

Lack of an attending veterinarian with experience or training in Big Cats similarly resulted in the untimely death of at least two Big Cats apparently suffering from renal failure: Petunia and Young Yi. Renal failure is typically a treatable condition and does not often lead to death in younger Big Cats. Exh. K, ¶ 12. In March 2019, Petunia, a 5-6-year-old female tiger, was euthanized, apparently for renal failure. Exh. G, Att. p. 81-82; Exh. T, Att. p. 31. Defendants

attempted to treat her with CBD oil before eventually calling a veterinarian. *See* Exh. H, ¶ 5. Young Yi, a lion-tiger hybrid, did not receive timely veterinary care. Young Yi died on or around June 13, 2020, at the age of 12. Exh. J, p.2. The Lowes provided to APHIS three falsified veterinary records, dated July 14, 2019, September 14, 2019, and May 18, 2020. *See* Exh. G, ¶ 11. No other records reflect Young Yi was examined or treated by any veterinarian before his death, despite exhibiting signs of illness. *See* Exh. J, p.2 (neither consulting veterinarian that occasionally treated Defendants' animals treated Young Yi).

Guidance from a qualified attending veterinarian also is vital to ensuring that the animals are properly handled and sedated. Errors can result in the death of the animal, as it did with a female lion-tiger hybrid as recently as October 3, 2020. Exh. I, ¶ 9; Exh. O, ¶ 6. On or around October 3, 2020, Defendants hired a veterinarian with no experience handling or treating Big Cats to assist with moving animals from Wynnewood to Thackerville. Defendants tranquilized a number of Big Cats and failed to monitor their condition. Exh. O, ¶ 6. In the case of one female lion-tiger hybrid, Defendants darted her three times with tranquilizers and failed to timely administer the reversing agent, resulting in overdose and death. *Id.* Jeffrey Lowe and the veterinarian called neither stayed to monitor her condition, nor had a reversal agent nearby for timely administration. *Id.* By the time the veterinarian called returned with the necessary reversal drug, it was too late: the hybrid had died. *Id.*

B. USDA Enforcement of the AWA at the Wynnewood Facility

In view of documented violations, by letter dated August 14, 2020, the APHIS Administrator suspended Jeffrey Lowe's license (73-C-0230) for 21 days, effective immediately after service of the suspension letter, pursuant to 7 U.S.C. § 2149(a). Exh. X. On August 17, 2020, USDA filed an administrative complaint seeking permanent revocation of Jeffrey Lowe's AWA license and imposition of civil penalties. Exh. Y (Amended Administrative Complaint). In response to the suspension and administrative action, Jeffrey Lowe voluntarily terminated his USDA Class C exhibitor license on August 21, 2020. USDA filed an amended administrative complaint on October 26, 2020. Exh. Y. The USDA administrative action is still ongoing.

C. Defendants Attempt to Avoid USDA Oversight While Continuing to Exhibit.

At the end of September 2020, Defendants were required to vacate the Wynnewood premises per a court order from the Western District of Oklahoma. *Big Cat Rescue Corp. v. Schreibvogel*, Case No. CIV 16-155-SLP, 2020 WL 2842845 (W.D. Okla. June 1, 2020).

Defendants moved between 100 to 200 animals to a new unlicensed facility located in Thackerville, Oklahoma, which they have dubbed “Tiger King Park.” Previously, Mr. Lowe declared to representatives of PETA that he would utilize evasive tactics, if necessary, to avoid legal liability for his conduct. In an email, Lowe wrote:

I’ve learned a lot about distracting, diverting attention, & using smoke and mirrors in the last few years. ... I promise you that guys like, me, Joe or Tim Stark will never roll over and give up. If we lose a lawsuit, we simply change the name and open another animal business someplace else, we all have multiple USDA licenses available. Or better yet, we all negotiate with Indians to put zoo’s inside their reservations and live displays in their casinos like I’ve been doing. That takes the USDA out of the equation entirely.

Exh. A, Att. 1, p. 204.

Although Mr. Lowe surrendered his AWA exhibitor license and has since claimed he is no longer exhibiting, this is untrue. The Lowes exhibit animals to the public at Tiger King Park: a woman and her 6-year-old son saw and interacted with the animals, Exh. Z., ¶ 3, Att. 1; members of a film crew filmed the animals for Season 2 of Tiger King, Exh. Z, ¶ 3, Att. 1 & 2; Exh. E, Att. 3 & 4; and members of the press photographed the animals. Exh. AA. The Lowes also exhibit animals, including lions and tigers, through paid online platforms such as “shout out” videos on the video-sharing platform, “Cameo,” and the paid subscription online platform “OnlyFans.” Exh. C, Att. 1; Exh. D, Att. 1; Exh. Z, Att. 1 & 2. Moreover, the Lowes intend to turn the Thackerville facility into Lowe’s “dream Tiger King Park,” Exh. AA, p. 8, which will be “bigger and better than the zoo in Wynnewood,” *id.* p. 14. The Lowes intend to open Tiger King Park to the public by March 2021. Exh. Z, ¶¶ 3, 5-9; Exh. E, Att. 4. The Lowes are building small cabins to rent out as “a bed and breakfast with big cats roaring in the background.” Exh. AA, p. 14; Exh. Z, ¶ 3.

D. Preliminary Findings of December 15, 2020 Inspection

By stipulation under threat of preliminary injunction, Dkt. 23, APHIS inspectors obtained their first look at “Tiger King Park” on December 15, 2020. Many legal violations were cited. Regarding the facility itself, the inspectors cited Defendants for a number of problems with the perimeter fence, including areas where the fence was not at least eight feet, which is the required height for the species maintained at the facility, and gaps of approximately two feet and 2.5 feet under the perimeter fence where it crossed a creek. Exh. BB at 5-6. The inspectors determined that the perimeter fence currently does not “protect[] the animals in the facility by restricting animals and unauthorized people from going through it or under it [or]. . . function as a secondary containment system for the animals in the facility.” *Id.* at 6.



Defendants still do not have an attending veterinarian conducting regularly scheduled visits to ensure the adequacy of all aspects of the care provided to the animals or a written program of veterinary care. Exh. BB at 4-5; 9 C.F.R. § 2.40(a)(1)-(2). In the absence of an attending veterinarian, the Lowes apparently had not noticed that one Big Cat was limping and exhibiting gait abnormalities. Exh. BB at 4. For other vulnerable animals, such as a senior wolf whose “hip bones were easily visible” and a thin lion, whose “spinous processes of the vertebral bodies and hip bones were easily visible,” the Lowes had no medical records to establish that the animals are being provided adequate veterinary care. Exh. BB at 2-3. Moreover, there are two dozen or more missing animals from prior APHIS accountings. These include Big Cat cubs and adults, a kangaroo, a sloth, skunks, bobcats, hedgehogs, and a wooly possum. Exh. BB at 2. When asked for the required records establishing the whereabouts of those animals, Defendants refused to produce. *See id.*

The APHIS inspectors also found two monkeys outdoors in wholly inadequate housing, putting the animals at risk for frostbite, hypothermia, and death. *Id.* at 9-10; *see also* Exh. FF ¶ 6. One had access to a metal crate; the other a blue plastic barrel that was open at both ends. Exh. BB at 10. Supplemental heat was provided by a forced air heater directed at a cinderblock wall between the two enclosures. The blue plastic barrel was mounted on the enclosure wall above the level of the heater. The inspectors determined that the setup did little more than forcibly blow

heated air into the open environment. In fact, one of the macaques was observed huddled against the cage—suffering. Exh. FF ¶5.



The Lowes also continue to provide a nutritionally-deficient diet to the Big Cats. Exh. BB at 6-8. Although the Defendants claimed that the Big Cats were being provided nutritional supplements, including calcium, the only supplement that could be produced for examination was “Gleam & Gain,” a horse weight gain supplement. Exh. BB at 7. Moreover, in preparation for feeding, frozen chicken breasts were removed from the food storage truck and were thawed on the ground. *Id.* at 7-8. Some of the cardboard boxes of chicken breasts were open and were not protected from contamination, dirt or pests. *Id.*⁶

ARGUMENT

The United States is entitled to a preliminary injunction “to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008), *accord Fish v. Kobach*, 840 F.3d 710, 723 (10th Cir. 2016). Because the United States demonstrates all four requirements, the Court should grant the preliminary injunction.

I. The United States Is Likely To Succeed On The Merits.

The United States will succeed in proving that Defendants are violating the law. First, the Lowes are unlicensed exhibitors. 7 U.S.C. § 2134. Second, the Lowes place animals in serious danger by failing to consistently maintain an attending veterinarian, and otherwise failing to provide appropriate food and care required by the AWA. *Kuehl*, 887 F.3d at 852. Third, the

⁶ These violations are merely those that have been sufficiently documented as of the filing of this motion. Just today, USDA received documentation showing that Daniel, a tiger cub, was euthanized on or around December 21, 2020. Defendants did not meet and confer before euthanizing this animal and, thus, the United States is just now obtaining key documents. *See* Dkt. 23, ¶ 2. The United States intends to file a supplement on this issue early next week once the USDA has had an opportunity to gather and evaluate the information.

Lowes “take”—by both “harm” and “harassment”—ESA-protected animal species in violation of the ESA. *See Tri-State Zoo*, 424 F. Supp. 3d at 412.

A. The United States Is Likely to Succeed on its Claim that Defendants Are Placing the Health of the Animals in Serious Danger in Violation of the AWA.

The AWA provides that district courts shall issue an injunction upon a showing that an exhibitor is placing an animal’s health in serious danger in violation of the AWA, its regulations, or standards. 7 U.S.C. § 2159(a), (b). As detailed above, Defendants are exhibitors that have amassed a long list of AWA violations. These have not just placed the health of animals under their care in serious danger. Many times, it resulted in actual death. The December 15, 2020 inspection showed that the Lowes are putting the public at risk, and still failing to provide adequate veterinary care to the animals. In the absence of documentation for the whereabouts of two dozen or more animals previously in the care of the Lowes, the Lowe’s callous history, and Mr. Lowe’s penchant for “smoke and mirrors,” it seems likely a number are now dead.

1. Defendants Are “Exhibitors.”

Defendants have been and continue to be exhibitors within the meaning of the AWA. Until August 2020, Jeffrey Lowe indisputably held an AWA exhibitor license. And, while Jeffrey Lowe has since relinquished that license in the mistaken belief that doing so would put him beyond AWA jurisdiction, Exh. A, Att. 1, p. 204, the only thing that changed as a factual matter is that Mr. Lowe went from being a licensed exhibitor to an unlicensed exhibitor. Defendants continue to exhibit animals to the public at Tiger King Park in Thackerville. The Tiger King Park constitutes a zoo because it consists of a “park, building, cage, enclosure, or other structure or premise in which a live animal or animals are kept for public exhibition or viewing, *regardless of compensation.*” 9 C.F.R. § 1.1 (emphasis added). Indeed, even Jeffrey Lowe concedes Tiger King Park is a zoo. Exh. Z, ¶ 7, Att. 1 (“we’re building the zoo here in Thackerville, it will open”); Exh. AA, p.14 (“it’s going to be bigger and better than the zoo in Wynnewood”).

The Lowes exhibit animals to members of the public at the zoo, including to a woman and 6-year-old son, film crew(s), and the press. Exh. Z, Att. 1 & 2; Exh. AA. The Lowes declare their plan to open their “dream Tiger King Park” in March 2021. Exh. AA, p. 8; Exh. Z, Att. 1; *see* Tiger King Park From the Reality TV Show, Opening 2021,

<https://www.officialtigerking.com/tiger-king-park>. The Lowes constructed small cabins with the

intent to have 40 to rent as a bed and breakfast and encourage the public to visit. Exh. AA, p. 14, Exh. Z, ¶¶ 3, 5-6, Att. 1. Defendants also continue to exhibit animals to the public for profit through various online means, including paid subscription services Cameo and OnlyFans. Exh. C, Att. 1 (Cameo exhibition); Exh. D, Att. 1 (OnlyFans exhibition); Exh. Z, Att. 1 & 2. Additionally, they solicit public compensation for the new Thackerville facility and sell Tiger King-related apparel. Exh. E, Att. 4, at 60-64; *see* <https://shop.officialtigerking.com>.

While Defendants may have relinquished their AWA license, they still must meet the statutory requirements for the business of exhibition under the AWA. *See* 7 U.S.C. § 2131(1) (Purpose of AWA is to “insure that animals *intended* . . . for exhibition purposes . . . are provided humane care and treatment”) (emphasis added). The statute contains no distinctions or caveats based on whether the public exhibition is via in-person visiting of zoos or through some other exhibition method. *See* 7 U.S.C. § 2132(h). For these reasons, the United States is likely to succeed on its claim that Defendants are exhibiting without a license in violation of 7 U.S.C. § 2134, and the Court should prevent them from doing so. *See* 7 U.S.C. § 2146(c).

2. Defendants Fail To Comply With AWA Requirements.

Defendants have repeatedly failed to comply with the AWA, including the requirements governing the humane handling, care, and treatment by exhibitors. This not only put the health of the public and animals in “serious danger,” it resulted in actual death of animals at the zoo. A program of adequate veterinary care is a cornerstone of the AWA regulatory program to assure humane care and treatment for animals. Exh. I, ¶ 5. Each exhibitor shall have an “attending veterinarian,” who must have “appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.” 9 C.F.R. § 2.40(a)(2). The attending veterinarian must also have training and/or experience in the care and management of the specific species being attended and have direct or delegated authority for activities involving animals at the facility. *Id.* § 1.1. These requirements are essential to protect the animals’ health and well-being. Exh. I, ¶ 5.

Even as licensed exhibitors, Defendants failed to consistently employ an “attending veterinarian” under formal arrangements that include “a written program of veterinary care and regularly scheduled visits” to the zoo. Exh. F; Exh G, ¶ 3; Exh. H, ¶¶ 4-5. During the December 15, 2020 inspection, the Lowes confirmed that they still have no “attending veterinarian” and, thus, have not developed with a qualified veterinarian a “written program of veterinary care.”

Exh. BB at 4; *see also* 9 C.F.R. § 1.1 (definition of “attending veterinarian”).⁷ An attending veterinarian who was making “regularly scheduled visits to the premises” would likely have noticed that the monkeys were at risk of frostbite, hypothermia, and even death as a result of their wholly inadequate outdoor housing, Exh. BB at 10; Django, a lion-tiger hybrid, was lame, *id.* at 4; and the Lowes are providing their Big Cats with a nutritionally-deficient diet of potentially contaminated boneless chicken, leading some to suffer from such conditions as metabolic bone disease, *id.* at 7-8. An attending veterinarian making regularly scheduled visits to Tiger King Park would also ensure that the animals at the facility were receiving adequate, timely veterinary care reducing the likelihood that so many animals would be “missing” from the zoo in a matter of months. *Compare* Exh. DD, *with* Exh. V.

Even when Defendants have in the past consulted with veterinarians, delay in seeking veterinary care often caused the animal to suffer and at times necessitated euthanasia. *See* Exh. H, ¶¶ 8-9; Exh G, ¶ 3 (Decl. Dr. Devine);⁸ *see also* *Tri-State Zoo*, 424 F. Supp. 3d at 412 (finding inadequate veterinary care when the veterinarian did not have species-specific training or experience); *see* 9 C.F.R. §§ 1.1, 2.40(a). Defendants’ failure to have an attending veterinarian places the health of the animals in their care, custody, possession or control in “serious danger.” Exh. I, ¶¶ 10-12. This warrants the requested injunction under 7 U.S.C. § 2159.

Defendants’ animals have suffered from easily preventable or treatable conditions, which frequently have caused their untimely death. Exh. K, ¶¶ 4, 8, 10; *see generally* Exh. L. This includes the animals being malnourished. Attending veterinarians are essential to ensuring appropriate nutrition for animals, especially exotic animals. Exh. I, ¶ 8. Without proper guidance and monitoring by a veterinarian, there is a serious risk of malnutrition. *Id.* Malnutrition and parasitism often co-exist and, without proper medical treatment, can lead to serious medical conditions or death. *Id.* As set out above, Defendants’ failure in this regard caused serious adverse and deadly health conditions for animals in their care, which would have been preventable under the AWA’s standards.

⁷ The Lowes told the APHIS inspectors that they were in talks with several veterinarians, which is a common refrain from the Lowes. *See* Exh. M.

⁸ Further, it is unlikely that either of the consulting veterinarians would meet the regulatory requirements for an attending veterinarian. *See Tri-State Zoo*, 424 F. Supp. 3d at 412 (finding inadequate veterinary care when the veterinarian did not have species-specific training or experience); *see* 9 C.F.R. §§ 1.1, 2.40(a).

Similarly sad, yet predictable, outcomes, arose from Defendants' failure to employ an attending veterinarian to proactively monitor and identify medical problems in vulnerable animals, including pregnant animals. Exh. I, ¶ 9; *see supra* at 9-10 (describing suffering and death of animals arising from failing to properly care for pregnant and other vulnerable animals). Defendants' failure to comply with AWA requirements for properly handling and sedating animals for transport also resulted in the death of a female lion-tiger hybrid as recently as October 3, 2020. In short, as the USDA's experts attest hereto and the additional evidence shows, Defendants are placing the health of animals in their care in serious danger.

AWA regulations also require that each exhibitor establish and maintain with the attending veterinarian written programs of adequate veterinary care. 9 C.F.R. § 2.40(a)(1). Adequate veterinary medical care for animals requires a program of preventive care, a plan for emergency care, and guidance to personnel who care for the animals. Exh. I, ¶ 5. Yet, Defendants do not have a written program of veterinary care that they established and maintain with an attending veterinarian. Exh. BB at 4. This, too, has placed and continues to place the health of the animals in their care, custody, possession, or control in serious danger. Exh. I, ¶ 5; *see Tri-State Zoo*, 424 F. Supp. 3d at 412 (finding inadequate veterinarian care when the exhibitor and veterinarian "utterly failed to implement a satisfactory program of veterinary care for the lions, tigers, and lemurs"). As detailed above, had a program of veterinary care been in place and followed, someone would have noticed and reported to the attending veterinarian that Nala was underweight, lethargic, and having respiratory problems. Or, seen that Ayeesha was weak, distressed, and unable to nurse. Mama was abnormally laboring. And, Lizzie was dragging her back legs before it caused wounds down to her bone. Petunia could not walk. Similarly, an adequate program should have guided personnel involved with the care and use of animals regarding handling, and tranquilization. 9 C.F.R. § 2.40(b)(4). Had this guidance been in place and followed, the improper tranquilization of the female lion-tiger hybrid—as recently as October 3, 2020—which resulted in her death, could have been prevented. And the sad stories of Gizzy, and Dot, and Promise, and Young Yi are equally bad.

In sum, had Defendants maintained required programs of veterinary care, many of the harms their animals suffered, including death, could have been avoided. And there is no reason to believe that any protestation to the contrary by the Lowes now is anything but their smoke and mirrors. *See Nat'l Wildlife Fed'n v. Burlington N. R.R.*, 23 F.3d 1508, 1512 (9th Cir. 1994)

(“Past takings are indeed instructive, especially if there is evidence that future similar takings are likely”). The United States will succeed in showing that Defendants’ longstanding failure to establish and maintain a program of veterinary care, among many other regulations, has placed and continues to place the health of animals in serious danger and violates the AWA. Exh. I, ¶ 5; *see Tri-State Zoo*, 424 F. Supp. 3d at 412 (finding inadequate veterinarian care when the exhibitor and veterinarian “utterly failed to implement a satisfactory program of veterinary care for the lions, tigers, and lemurs”); *Kuehl*, 887 F.3d at 852.

Beyond that, Defendants’ unsafe enclosures are putting the public—both inside and outside the facility—at risk. There are no required barriers between the animals’ enclosures and the public, thus placing both at risk from interactions with these dangerous animals. *See* Exh. CC; 9 C.F.R. § 2.131(c)(1) (purpose of public barriers is “to assure the safety of animals and the public”). Without these barriers, members of the public can, and indeed have, approached the animal enclosures and touched the animals, including dangerous Big Cats. Exh. CC; Exh. Z, ¶ 3, Att. 1. The December 15, 2020 inspection report cited Defendants for having a deficient perimeter fence with areas failing to meet the minimum height requirement and large gaps. Exh. BB at 5-6. These issues with the perimeter fence can “provide unwanted and unauthorized people and animals access to the facility”, and prevent the fence from “function[ing] as a secondary containment system.” *Id.* at 6.

B. The United States Is Likely to Succeed on its Claims that Defendants Have Unlawfully Taken ESA-Protected Animals In Violation of the ESA.

The United States is also likely to succeed on its claims that Defendants have taken ESA-protected species, in particular ESA-protected Big Cats, in violation of the ESA. ESA “take” includes “harm” and “harass.” 16 U.S.C. § 1532(19). Harm is further defined by regulation as an act which “kills or injures” an endangered or threatened animal. 50 C.F.R. § 17.3(c)(3). “Harass” is defined by regulation to include an “intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” *Id.* § 17.3⁹; *see also Kuehl*, 161 F. Supp. 3d at 716 (“Any act which injures a protected animal

⁹ The regulatory definition provides that when applied to captive wildlife, “harass” does not include generally accepted animal husbandry practices that meet or exceed the minimum standards for facilities and care under the AWA. 50 C.F.R. § 17.3(c)(1).

constitutes ‘harm’ within the definition of ‘take’ in the [ESA]”) (citation omitted). Here, the evidence overwhelmingly demonstrates that Defendants injured or killed ESA-protected Big Cats, and thus have taken these animals through both harm and harassment in numerous ways.

As detailed above, Defendants’ inadequate care harmed the lion cubs, including Nala. These and other animals were provided with nutrient-deficient diets, which caused them extraordinary suffering in violation of the ESA. *See Tri-State Zoo*, 424 F. Supp. 3d at 419-20 (finding that “the Big Cats were not provided ‘basic nutritional needs’, the absence of which ‘results in skeletal, structural damage, neurological problems, or other potentially irreversible health problems including death’”). Indeed, Nala was ataxic, which is a neurological sign consisting of lack of voluntary coordination of muscle movements that leads to abnormalities in an animal’s gait. Exh. K, ¶¶ 10-11; Exh. L, Att. 1. This aspect of Nala’s condition is apparent in the following video taken shortly after the animal’s arrival at Wild Animal Sanctuary in Colorado: <https://youtu.be/zly9--KkGIU>. *See* Exh. A, ¶¶ 7-9. She also suffered from fractures and was immediately prescribed pain medication once out of Defendants’ care. Exh. L, Att. 1.

Months after being made aware that their juvenile Big Cats were suffering as a result of being fed nutrient-deficient diets, little has changed. The APHIS inspectors observed Big Cats being fed a boneless chicken diet, which is inadequate. *See* *Metabolic Bone Disease in Nondomestic Cats*, https://www.aphis.usda.gov/animal_welfare/downloads/dangerous-animals/ACaids_BigCats2_4.19_AC-18-018.pdf. Although the facility representatives said that the Big Cats were also being fed deer and cows as well as calcium and other supplements, there was no evidence at the zoo of either. *See* Exh. BB at 6-8. Defendants’ failure to provide adequate nutrition and care, resulting in metabolic bone disease, neurological abnormalities, fractures, lameness, and even death harms ESA-protected Big Cats. These harms, even to ESA-protected species in captivity, constitute an unlawful take under the ESA. *See Nat’l Wildlife Fed’n*, 23 F.3d at 1512. There can be no doubt this misconduct has occurred and will continue to occur.

Defendants also harm and harass, and thereby take, ESA-protected Big Cats by failing to provide adequate and timely veterinarian care. *See, supra*, at 5-12. As detailed above, at least seven Big Cats—Lizzie, Promise, Petunia, Young Yi, Dot, Mama, and a female hybrid—died from Defendants’ inadequate and insufficient veterinarian care. *See Kuehl*, 161 F. Supp. 3d at 716 (holding that a roadside zoo harmed tigers by “delayed or prevented adequate treatment, thus resulting in ‘injury’ to the tigers.”).

Defendants also subjected ESA-protected Big Cats to harm by unsanitary conditions. These conditions included the improper or delayed disposal of decomposing carcasses, attracting large numbers of flies which then attack the Big Cats—leaving painful fly strike ulcerations. At the June 2020 inspection, APHIS inspectors found a large pile of wood debris in the back of the park containing the partially burned carcass of Young Yi, with a black tarp covering the deceased tiger Dot. Exh. J, p. 5. There was “a foul odor of decomposing flesh and many flies present on the Board and surrounding areas.” *Id.* The flies thus caused fly strikes, which are “large patches of painful ulceration on the ears and legs,” on many species, including Big Cats. *Id.* The ulcerated areas were red, scabbed, and some “exuded pus or fresher blood.” *Id.*; *see also PETA*, No. 4:17-cv-186-RLY-DML, Dkt. No. 408-12 (Decl. Grace with fly strike photos, June 21, 2020). Even assuming, *arguendo*, that this did not constitute harm, this certainly constitutes harassment. *Kuehl*, 887 F.3d at 853-54 (finding unsanitary conditions at roadside zoo constituted harassment); *Tri-State Zoo*, 424 F. Supp. 3d at 431 (same).

Defendants have also failed to maintain sanitary conditions with regard to their storage of meat fed to their animals. Just a week ago, APHIS inspectors observed chicken breasts being thawed on the ground outside, with some of the boxes open and not protected in any way from contamination from dirt or pests. Exh. BB at 7-8. During the July 8, 2020 inspection, the APHIS inspectors noticed an odor of decaying flesh. Exh. P, p. 4. When questioned about the odor, the Wynnewood facility representative identified a broken down refrigerator truck containing open boxes of rotting meat. *Id.* at 11 & 13. The temperature inside the truck was greater than 85 degrees Fahrenheit. *Id.* Yet the Wynnewood facility had no other on-site refrigeration or freezer in which to store meat for the animals. *Id.* at 4. Weeks later during another visit to the Wynnewood facility, the APHIS inspectors observed a large amount of packaged chicken sitting in the sun surrounded by flies. Exh. N, ¶ 7. There is no doubt Defendants intended this rotting food for the animals.

These unsanitary conditions similarly harassed, if not harmed, the ESA-protected Big Cats by attracting flies, which then attack the animals. The fact that the Lowes have, on multiple occasions, failed to store meat properly calls into question whether the Lowes ever consistently ensure that the food they provide to ESA-protected animals is free from contamination and of sufficient quality to maintain all animals in good health. In sum, there is extensive evidence that Defendants harmed and harassed ESA-protected Big Cats in violation of the ESA take

prohibition. The United States will succeed on the merits.

II. Irreparable Harm Is Likely Absent An Injunction.

Defendants' continued unlawful exhibition of animals without federal oversight or compliance is creating irreparable harm to the animals in Defendants' possession. This harm, harassment, and inadequate care is certain to continue absent a preliminary injunction. *See, e.g., Nat'l Wildlife Fed'n*, 23 F.3d at 1512. Defendants also place the public at risk.

Under the AWA, once a showing is made that an exhibitor is placing the health of any animal in serious danger in violation of the AWA's requirements, the Court must issue an injunction to restrain the violations. 7 U.S.C. § 2159(b) ("The court *shall*, upon a proper showing, issue a temporary restraining order or injunction under subsection (a) without bond.") (emphasis added); *see also Forest Guardians v. Babbitt*, 174 F.3d 1178, 1187 (10th Cir. 1999) ("The Supreme Court and this circuit have made clear that when a statute uses the word 'shall,' Congress imposed a mandatory duty upon the subject of the command.") (citation omitted). In other words, the statute mandates injunctive relief as a remedy for a violation of the statute, regulations, or standards that results in serious danger to the health of an animal. In this circumstance, courts may presume irreparable injury. *See First W. Cap. Mgmt. v. Malamed*, 874 F.3d 1136, 1140 (10th Cir. 2017) (holding that "[c]ourts may presume irreparable harm only when a party is seeking an injunction under a statute that *mandates* injunctive relief as a remedy for a violation of the statute). As the Tenth Circuit has noted, "[w]hen Congress passes such a statute, it effectively withdraws the courts' traditional discretion to determine whether such relief is warranted." *Id.* Because the United States demonstrates that Defendants placed and are placing the health of the animals in their care, custody, possession, and control, in serious danger, *see supra*, irreparable injury is presumed.

Regardless, placing the animals' health in serious danger, as well as taking ESA-protected Big Cats, constitutes irreparable harm for which there is no adequate remedy in law. To show a threat of irreparable harm, a plaintiff must demonstrate "a significant risk" of harm "that cannot be compensated after the fact by monetary damages." *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009). "What makes an injury 'irreparable' is the inadequacy of, and the difficulty of calculating, a monetary remedy after a full trial." *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 806 (10th Cir. 2019). Irreparable harm also occurs if "the district court cannot remedy [the injury] following a final determination on the

merits.” *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001).

Here, as demonstrated above, Defendants’ actions have a significant risk of injuring or even killing the animals in their care. There is no evidence that this longstanding misconduct will abate voluntarily. This is not the type of injury that can be compensated after the fact by monetary damages. *See Kuehl v. Sellner*, No. 16-CV-2078-LRR, 2016 WL 9114915, at *2 (N.D. Iowa July 21, 2016) (“Dr. Ross states that ‘the African lioness appears thin, has poor body condition, and displays abnormal posture. . . [which] could be indicators of compromised wellbeing.’ Based on the affidavits, Plaintiffs have sufficiently demonstrated that irreparable injury may occur.”) (alteration in original); *Red Wolf Coal. v. N.C. Wildlife Res. Comm’n*, No. 2:13-CV-60-BO, 2014 WL 1922234, at *9 (E.D.N.C. May 13, 2014) (“Certainly money damages cannot remedy the red wolf mortalities brought about by coyote hunting[.]”).

Unless the Court enjoins or restrains Defendants’ conduct, the animals in their care will suffer irreparable harm. Their health is in serious danger—and ESA-Protected Big Cats will continue to be harmed and harassed in violation of the ESA. It is beyond dispute that Defendants neither have an attending veterinarian nor have followed a program of veterinary care established and maintained with an attending veterinarian. Exh. F; Exh. G, ¶ 3; Exh. H, ¶¶ 4-5, 8; Exh. J, p. 1; Exh. P, p. 1. And, again, Defendants’ habit, pattern, and practice of failing to provide adequate nutrition and timely veterinary care has resulted in injury and even death to a number of their animals, including ESA-protected animals such as Nala, Gizzy, Dot, Mama, Lizzie, Promise, Petunia, and Young Yi.

A preliminary injunction is necessary to determine and maintain the *status quo* pending the United States obtaining the relief it is seeking in the complaint; namely, termination of Defendants’ rights to own and possess animals for exhibition. If USDA cannot determine exactly how many and what animals are present and require proper care during the litigation, some may die before this case is over. Even if the animals do not perish, the United States wants them to be in healthy condition when they are removed from Defendants’ custody so that they can have normal lives once they are placed elsewhere. In the absence of an injunction, Defendants’ inadequate care will continue—or Defendants may sell, destroy, or otherwise dispose of animals that are the subject to and evidence of their violations.

Further, absent an injunction prohibiting Defendants from exhibiting, there is a substantial risk of irreparable harm to the public because there are no public barriers in place at

the Thackerville facility. The purpose of the required public barriers between animals and the public is “to assure the safety of animals and the public.” 9 C.F.R. § 2.131(c)(1). While Defendants insist that they do not need the barriers because they are not exhibiting, as demonstrated above, this is not true. *See* Dkt. No. 23, ¶ 3.c. Defendants continue to exhibit at their zoo by allowing members of the public—including children, film crews, and the press—to view the animals. Exh. Z, Att. 1, Exh. AA. Without these barriers, it is possible for members of the public to approach the animal enclosures and touch the animals, including dangerous Big Cats. Exh. CC. Indeed, this troublesome scenario has already occurred. Exh. Z, ¶ 3, Att. 1 (YouTube video showing a woman reaching her hand into enclosure and petting a cougar). The animals are dangerous, the risk to life and limb is serious, and the injury would be irreparable.

III. The Balance of Equities and Public Interest Tip Sharply In Favor of Enjoining Defendants.

When weighing the equities and public interest, the scale strongly tips in favor of providing the United States the preliminary injunctive relief requested. Congress made explicitly clear in its statement of policy for the AWA that animals used for exhibition must be treated and cared for in a humane manner. *See* 7 U.S.C. § 2131(2) (One purpose of the AWA is “to assure the humane treatment of animals”). Similarly, in passing the ESA, “Congress has spoken in the plainest of words, making it abundantly clear that the balance has been struck in favor of affording endangered species the highest of priorities.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 194 (1978). It is always in the public interest for citizens to follow the law and not financially profit from their law-breaking endeavors. The public interest in preventing harm to animals, including ESA-Protected Big Cats, as evinced by Congress’ intent in enacting both statutes, far outweighs the minimal impositions Defendants will incur if the presently sought preliminary injunction is granted. Further, the United States seeks to ensure the safety of the public. Defendants continue to flout the law by unlawfully exhibiting without an AWA license. To make matters worse, the Tiger King Park lacks the necessary barriers to ensure that members of the public invited to the zoo maintain a safe distance from the animal enclosures. Exh. CC.

The United States’ requested relief is tailored to ensuring the safety of the public and the health of the animals in Defendants’ care, custody, possession or control before the Court decides the merits of the case. *See* Fed. R. Civ. P. 65(d). Specifically, the United States requests that pending adjudication of its claims, the Court order Defendants to: (1) immediately cease

exhibiting animals without a USDA exhibitor’s license; (2) within 14 days of the Court’s order, retain a qualified attending veterinarian under formal arrangements consistent with the requirements of 9 C.F.R. §§ 1.1, 2.40; (3) within 7 days of the Court’s order, provide acquisition and disposition records for any and all animals added to or missing from the Lowes’ inventories since June 22, 2020, to help determine the whereabouts and condition of missing animals; (4) within 7 days of any animal being treated by a veterinarian, submit complete and accurate veterinary records to the undersigned attorneys; and (5) within 7 days of any change to the December 16, 2020 animal inventory, including the birth or death of any animal, submit acquisition and disposition records to the undersigned attorneys.¹⁰

These requests include minor administrative tasks that will not impose a heavy burden on Defendants. For example, under the AWA, Defendants are required to maintain acquisition and disposition records concerning animals “purchased or otherwise acquired, owned, held, leased, or otherwise in his or her possession or under his or her control, or which is transported, sold, euthanized, or otherwise disposed of” by that exhibitor. 9 C.F.R. § 2.75(b)(1). Similarly, submitting veterinary records, should there be any, is not so onerous when compared to ensuring the health, safety, and well-being of around 150 animals. Further, in light of the fact that Mr. Lowe voluntarily terminated his AWA exhibitor license, prohibiting Defendants from allowing members of the public to access the zoo amounts to a preservation of the status quo and cannot be said to negatively impact Defendants.

CONCLUSION

Based on the foregoing, the United States is entitled to a preliminary injunction prohibiting Defendants from violating the AWA by exhibiting without a license and placing the health of the animals in their care in “serious danger,” and from violating the ESA by unlawfully taking ESA-protected Big Cats.

¹⁰ The United States planned to seek a temporary restraining order to address the macaques’ inadequate outdoor shelter but, during a meet and confer, Defendants’ counsel represented that Defendants would bring the macaques indoors whenever the temperature dropped below 45 degrees Fahrenheit. Based on this representation, we are not asking for relief at this time, but reserve the right to do so should Defendants not comply. Similarly, based on information obtained by the United States during future inspections, *see* Dkt. 23 ¶ 4, and through disclosed documents, the United States may need to return to seek more specific, supplemental relief.

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