

**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
TEMPORARY RESTRAINING ORDER

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EXHIBIT LIST

Dkt. 28-1	Exhibit A	Declaration of Brittany Peet (“Decl. Peet”)
Dkt. 28-2		Attachment 1: PETA’s 2018 Request submitted to USDA
Dkt. 28-3		Attachment 2: Dkt. No. 378 (Order granting PETA’s cross-motion for partial SJ)
Dkt. 28-4	Exhibit B	New York Times Article, dated November 20, 2020
Dkt. 28-5	Exhibit C	Declaration of Morris Smith (“Decl. Smith”)
		Attachment: Cameo Exhibition Content
Dkt. 28-6	Exhibit D	Declaration of Theodore Melott (“Decl. Melott”)
		Attachment: OnlyFans Exhibition Content
Dkt. 28-7	Exhibit E	Declaration of Kyle Hogan (“Decl. Hogan”)
		Attachment 1: OnlyFans statements
		Attachment 2: Cameo statements
		Attachment 3: filming statements
		Attachment 4: future plans to exhibit statements
Dkt. 28-8	Exhibit F	Declaration of Dr. JoAnne Green (“Decl. Dr. Green”)
Dkt. 28-9	Exhibit G	Declaration of Dr. Jennifer Devine Fritzler (“Decl. Dr. Devine”)
Dkt. 28-9 (part 1), 28-10 (part 2), 28-11 (part 3), & 28-12 (part 4)		Attachment: Dr. Devine’s Veterinary Records
Dkt. 28-13	Exhibit H	Declaration of IES Investigator McLaughlin regarding Dr. Gilmore, 07/01/20 (“Decl. IES Investigator McLaughlin regarding Dr. Gilmore, dated July 1, 2020”)
Dkt. 28-14	Exhibit I	Declaration of Betty Goldentyer (“Decl. Goldentyer”)
Dkt. 28-15	Exhibit J	June 2020 Inspection Report
Dkt. 28-16	Exhibit K	Declaration of Dr. Laurie Gage (“Decl. Dr. Gage”)
		Attachment: Dr. Laurie Gage’s Curriculum Vitae

Dkt. 28-17	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
		Attachment 3: November 18, 2020 Video of Nala
Dkt. 28-18	Exhibit M	Jeffrey Lowe Affidavit, dated July 8, 2020
Dkt. 28-19	Exhibit N	Declaration of Dr. Debbie Cunningham (“Decl. Dr. Cunningham”)
Dkt. 28-20	Exhibit O	Declaration of Pat Craig (“Decl. Craig”)
Dkt. 28-21	Exhibit P	July 2020 Inspection Report
Dkt. 28-22	Exhibit Q	Declaration of Natalie A. Popovic (“Decl. Popovic”)
		Attachment: Ayeesha Necropsy Report
Dkt. 28-23	Exhibit R	Declaration of Taylor Logan (“Decl. Logan”)
Dkt. 28-24	Exhibit S	Declaration of Hannah Grace (“Decl. Grace”)
Dkt. 28-25	Exhibit T	Declaration of IES Investigator McLaughlin regarding Dr. Gilmore, 09/21/20 (“Decl. IES Investigator McLaughlin regarding Dr. Gilmore, dated September 21, 2020”)
		Attachment: Dr. Gilmore’s veterinary records
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Dkt. 28-27	Exhibit V	August 21, 2020 Inventory (provided by Lowe)
Dkt. 28-28	Exhibit W	June 5, 2019 Inventory “page 13 of 22” (provided by Lowe)
Dkt. 28-29	Exhibit X	Suspension Letter
Dkt. 28-30	Exhibit Y	Amended Administrative Complaint
Dkt. 28-31	Exhibit Z	Second Declaration of Theodore Melott (“Second Decl. Melott”)
		Attachment 1: YouTube and Cameo Exhibition Content
		Attachment 2: OnlyFans statements
Dkt. 28-32	Exhibit AA	Daily Mail Article, dated December 4, 2020

Dkt. 28-33	Exhibit BB	December 15, 2020 Inspection Report
Dkt. 28-34	Exhibit CC	December 22, 2020 Letter from Goldentyer to Attorney Card
Dkt. 28-35	Exhibit DD	December 16, 2020 Inventory (provided by Lowes)
Dkt. 28-36	Exhibit EE	Second Declaration of Dr. Debbie Cunningham (“Second Decl. Dr. Cunningham”)
Dkt. 28-37	Exhibit FF	Declaration of Dr. Gwendalyn Maginnis (“Decl. Dr. Maginnis”)
		Attachment 1: Dr. Maginnis’ Curriculum Vitae
	Exhibit GG	Second Declaration of Dr. Laurie Gage (“Second Decl. Dr. Gage”)
		Attachment 1: Dr. Gage’s Curriculum Vitae
		Attachment 2: USDA Animal Care Aid: Nondomestic Cats: Metabolic Bone Disease, issued April 2019
	Exhibit HH	Declaration of Dr. Ashley Durham
		Attachment 1: Ada Veterinary Clinic Veterinary Records
		Attachment 2: Oklahoma Animal Disease Diagnostic Laboratory’s December 22, 2020 Necropsy Report for male tiger cub
	Exhibit II	Attorney Card’s Declaration in <i>PETA v. Lowe</i> , No. 20-cv-1076, Dkt. No. 35-1 (W.D. Ok. Dec. 22, 2020)
	Exhibit JJ	December 21, 2020 email exchange between Attorney Strippoli and Attorney Card (“December 21, 2020 email exchange”)
	Exhibit KK	December 29-30, 2020 email exchange between Attorney Strippoli and Drs. More & Mitchell (“email exchange with Drs. More & Mitchell”)

INTRODUCTION

The United States hereby respectfully requests Rule 65(b) temporary, emergency relief pending hearing on its recently-filed Motion for Preliminary Injunction. Dkt. 27.

Defendants Jeffrey and Lauren Lowe, Greater Wynnewood Exotic Animal Park, LLC (“GWEAP”), and Tiger King, LLC have a history of disregarding the health and safety of the exotic and other animals in their care, custody, possession, or control. This includes repeated and consistent malnourishment of their animals and, in particular, the Big Cats. As a result of Defendants’ mistreatment, the animals are not merely unhealthy but are suffering life-threatening conditions, even death. And even when malnourished animals might, with proper care, be nurtured back to health, Defendants are callously euthanizing injured or unhealthy animals. The United States respectfully asks that this immediately be stopped.

Pursuant to stipulation, Dkt. 23, approved by this Court, Dkt. 25, the U.S. Department of Agriculture (“USDA”) Animal and Plant Inspection Service (“APHIS”) conducted its first inspection of Defendants’ “Tiger King Park” on December 15, 2020. Incredibly, just a week later, a young male tiger from this zoo was euthanized. This young male tiger suffered complications from easily preventable malnutrition. The condition was caused by Defendants’ continued failure to provide adequate nutrition and a balanced diet for animals at the facility.

This tiger—housed with other young Big Cats in a cage much too small for this species and age—was deprived of sufficient calcium, resultantly suffered a broken leg, and was brought to a veterinarian on an ad hoc basis. This Endangered Species Act (“ESA”)-protected animal seemingly did not even need to be euthanized. *See* Exh. GG, ¶ 13



(Second Decl. Dr. Gage) (“[I]f diagnosed in a timely manner, it is highly likely that the tiger would have recovered with the appropriate care, exercise, and diet.”). But Defendants and their agents could not be bothered to spend the time or money required to rehabilitate the animal, *see* Exh. HH, ¶ 9, Att. 1, even while knowingly subject to this civil enforcement action and a court-ordered stipulation.

As this recent incident further proves, the animals at the Tiger King Park are nothing more than a means for Defendants to profit. They consistently show that they are not interested in investing in proper nutrition or preventative care—required by federal law—for their animals. As a result, in the past six months, at least three young Big Cats that the United States knows of from Defendants’ facilities have suffered from life-threatening conditions, with two ultimately dying, from being fed nutritionally deficient diets. Dkt. 28-17 (Decl. Dr. Thompson) (regarding Nala); Dkt 28-22, Att. 1 (Ayeesha Necropsy Report); Exh. HH & Att. 1, 2 (Decl. Dr. Durham, veterinary records and necropsy report on deceased male tiger). This evidence and Defendants’ terrible track record of misconduct overall shows that eleven young Big Cats remaining at the Thackerville facility are similarly at risk. Defendants lack an attending veterinarian, program of veterinary care, and other basic elements for the animals’ care, which places the young Big Cats imminently at risk of nutritional disorders, accidents, and even death. There is “good cause” for a Court order that these eleven young Big Cats immediately be moved to reputable facilities identified by the United States and USDA to ensure their health and wellbeing.¹ *See* Fed. R. Civ. P. 65(b)(1). In light of the ages of these Big Cats, we also request that the Court order the animals’ mothers be moved to the facilities with their respective cubs.

The United States is likely to succeed on the merits of its ESA and Animal Welfare Act (“AWA”) claims. Defendants are harassing and harming and, thereby taking, ESA-protected tigers in violation of the ESA by failing to provide adequate food and nutrition. *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

¹ Based on information provided during the December 15, 2020 inspection and the inventory provided by Defendants on December 16, 2020, and taking into consideration the subsequent death of one young male tiger from the facility located at 2149 Jimbo Road, Thackerville, Oklahoma (“Thackerville facility”), there should be eleven Big Cats under the age of one year remaining at the facility. *See* Dkt. 28-35 (December 16, 2020 Inventory). Although Defendants’ inventory provided on December 16, 2020, does not include a young female tiger named Bubbles, during the inspection the inspectors noted a tiger named Bubbles based on information provided by Defendants. In the inspection report for the December 15, 2020 inspection, the APHIS inspectors noted that there were 63 tigers at the facility. *See* Dkt. 28-33 at 11. In the December 16, 2020 inventory, however, there are only 62 tigers listed. *See* Dkt. 28-35. Bubbles is listed on the August 21, 2020 inventory provided by the Lowes as a littermate of Moose and Abby, all of whom were born on 04/02/2020. *See* Dkt. 28-35 at 23. Presumably Bubbles was inadvertently left of the December 16, 2020 inventory. Thus, we include her in our request for relief. According to the inventory, all of those animals are tigers. *Id.* at pages 9, 11, 12, and 14.

Cir. Jan. 7, 2020). Further, Defendants are exhibitors who continue to place the health of animals in their care in “serious danger” by failing to provide them adequate food and nutrition in violation of the AWA. *See Kuehl v. Sellner*, 161 F. Supp. 3d 678 (N.D. Iowa 2016), *aff’d* 887 F.3d 845, 852 (8th Cir. 2018).

Because Defendants have repeatedly disregarded the health and wellbeing of their animals by providing inadequate food and nutrition, the balance of equities and public interest tips sharply in favor of moving the few animals that are at greatest risk of nutritional disorders to ensure that these animals remain alive and well. *See* Exh. GG, ¶¶ 5-9 (explaining why young Big Cats, especially at Thackerville, are a susceptible class). The United States asks the Court to order Defendants to immediately relinquish all Big Cats, 1-year-old or younger, in their care, custody, possession, or control and those animals’ mothers to the United States for temporary placement at reputable facilities.

STATEMENT OF THE CASE

I. Statutory and Regulatory Background

A. 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, 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), *cert. denied*, *Coggins v. Hill*, 138 S. Ct. 1003 (2018). 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.*²

B. 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, and treatment 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); 9 C.F.R. § 1.1.³ 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

² Notably, Congress contemplated this type of remedy—i.e., relinquishment of taken animals—under the ESA. *See* 16 U.S.C. § 1540(e)(4)(A) (providing that all wildlife “taken” contrary to the provision of the ESA or its implementing regulations “shall be subject to forfeiture to the United States”).

³ “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.

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).

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. *See* 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 (“TRO”) or injunction to prevent any such person from operating in violation of the Act’s requirements. 7 U.S.C. § 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).

II. Factual Background

A. The Defendants Fail to Provide Big Cat Cubs Adequate Nutrition.

APHIS inspectors have documented at least three incidents in which Defendants failed to feed Big Cats a nutritionally balanced diet that resulted in severe injury or death of a tiger. One female lion, Nala, suffered from a Vitamin A and Thiamine deficiency. Dkt. 28-17, Att. 1 (CSU Veterinary Record); Dkt. 28-16 ¶ 10 (Decl. Dr. Gage). Vitamin A deficiencies cause abnormalities in the 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* Dkt. 28-16 ¶¶ 10-11; Dkt. 28-17 ¶¶ 4-14 (Decl. Dr. Thompson). In the June 2020 inspection, Nala’s body condition was so poor that APHIS inspectors believed her to be a 4-5-month-old juvenile when she was, in fact, 10 months old. Dkt. 28-15, p. 4. Due to Nala’s dire condition, APHIS stopped the inspection and directed the Lowes to immediately obtain veterinary care. *Id.*

Pursuant to a court order in another case,⁴ Nala was transferred to a wildlife sanctuary in

⁴ *See* Dkt. 28-1; *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 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. After granting PETA’s cross-motion for partial summary judgment, the court entered a permanent injunction terminating Stark’s ownership rights,

Colorado and was evaluated by Colorado State University (“CSU”). Dkt 28-17, ¶ 7 & Att. 1. CSU found that Nala was underweight and undersized for her age. *Id.* ¶ 4 & Att. 1. She had difficulty standing and was lame. *Id.* ¶ 5 & Att. 1; *see* Dkt. 28-1, ¶ 8 (<https://youtu.be/zIy9--KkGIU>) (video of Nala upon arrival in Colorado) (last visited Dec. 30, 2020)). She was found to have a significant vitamin A deficiency. Dkt. 28-17, ¶ 10 & Att. 1. CSU concluded that Nala suffered from historical poor husbandry and gave her a fair to poor prognosis. *Id.*, Att. 1. CSU also concluded that her poor body condition was likely due to poor nutrition. *Id.*

Defendants also failed to provide a properly balanced diet to a young lion-tiger hybrid named Ayeesha. Ayeesha was born on October 31, 2019 at GWEAP. Dkt. 28-11, Att. 1, p. 336. Ayeesha was a weak and distressed cub, and unable to nurse. *Id.*, p. 338. When she was finally separated from her mother in December 2019, Ayeesha was suffering from dehydration and malnutrition. *Id.*; *see also* Dkt. 28-16 ¶¶ 7-9. Despite this, Ayeesha was not provided veterinary care until the end of December. *See* Dkt. 28-11, p. 338. At that point, Ayeesha was in such bad condition that she required hospitalization and a feeding tube. *Id.*

Because Ayeesha 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. *Id.*, p. 336-56, 431-90; *see also* Dkt. 28-16, ¶¶ 7-9. In July 2020, she was diagnosed with metabolic bone disease and had bilateral distal femoral fractures, humeral fractures, and diffuse osteopenia; “[n]utritional intervention [was] considered essential.” Dkt. 28-12, p. 474. She also had roundworms. *Id.*, p. 459. After failing to heed the advice of their consulting veterinarian to keep Ayeesha in a medical hold and instead placing her in an outdoor enclosure, Ayeesha suffered from an additional fracture. Dkt. 28-9, ¶ 10; Dkt. 28-19, ¶ 5 (Decl. Dr. Cunningham). By the end of September 2020, the situation had become grave. Defendants took Ayeesha to see a consulting veterinarian because she was not eating and was immobile. Dr. Devine found maggots on her rectal area. Dkt. 28-12, p. 459, 461, 467. The Lowes transported Ayeesha to Tiger Haven in Tennessee. Ayeesha was euthanized there shortly after her arrival. Dkt. 28-22 & Att. 1.⁵

including to the four lions in Lowe’s custody. Dkt. 28-1, ¶¶ 3-6, Dkt. No. 379.

⁵ Defendants’ failure to provide adequate nutrition extends to other animals, like Gizzy, a female grizzly bear who was emaciated. Dkt. 28-15, p. 4-5; Dkt. 28-20, ¶ 6 (Decl. Craig); Dkt. 28-17, ¶ 16; Dkt. 28-23 (Decl. Logan).

Defendants' failure to provide their Big Cats a nutritionally balanced diet continues to this day. Just one week ago, the United States learned that Defendants euthanized a male tiger cub that was diagnosed with metabolic bone disease.⁶ *See* Exh. HH, Att. 1 (Ada Veterinary Clinic Records). Specifically, on December 21, 2020, a 25-pound, purported eight-week-old male tiger cub from the Thackerville facility was brought to the Ada Veterinary Clinic by Eric Yano. Exh. HH ¶¶ 5, 6 & Att. 1.⁷ This cub was referred to by the name "Daniel." Exh. HH, Att. 1. Dr. Ashley Durham examined the cub. *Id.*, Att. 1. Upon arrival, the tiger cub was lethargic; it could not bear weight on its left rear leg; and it had no appetite. *Id.* The cub also had a distended and painful abdomen, diarrhea, and possible ringworm. *Id.* Radiographs revealed a complete femoral fracture of the left rear leg and "[a] decrease in bone density seen throughout the skeleton." *Id.* The presumptive diagnosis was metabolic bone disease. *Id.* Mr. Yano directed Dr. Durham to euthanize the cub. *Id.* Given the condition of the tiger cub and that "compliance for correction of the nutritional deficiency might have been an issue," Dr. Durham euthanized the tiger cub. *Id.*; *see also* Exh. HH, ¶ 9. Notably, Dr. Durham "told Mr. Yano that the other cubs [at the Thackerville facility] needed to be evaluated and nutritional changes needed to be implemented *immediately.*" *Id.*, Att. 1 (emphasis added).

The tiger cub's body was sent to Oklahoma Animal Disease Diagnostic Lab for a necropsy. The necropsy report confirms that the cub suffered from metabolic bone disease. Exh. HH, Att. 2 (male tiger cub necropsy report). The necropsy report notes that the most common cause in young, growing animals "is due to improper dietary ratios of calcium, phosphorous, and vitamin D." *Id.*, p.1. Metabolic bone disease caused "severe, diffuse, [and] chronic osteomalacia," which is the softening and thinning of the bones, in the male tiger cub's femur,

⁶ Although Defendants were obligated by a stipulated order issued by this Court to inform the United States before euthanizing this tiger, Defendants did not disclose the animal's illness, its injury, or the fact that one of their associates intended to elect euthanasia. *See* Dkt. 23.

⁷ Eric Yano brought the tiger cub into the clinic and gave the client name "Stephens, Lane LLC," but with the same address as the Thackerville facility: 21469 Jimbo Road, Thackerville, OK, 73459. Exh. HH, Att. 1. Upon information and belief, Mr. Yano is a business associate of the Lowes. Despite representing that he was the owner of the tiger cub, he did not know the name or gender of the animal, what formula it was allegedly being fed, or the fate or location of the cub's littermate(s). Exh. HH, Att. 1. He is also represented by counsel for Defendants, at least in the action filed by People for the Ethical Treatment of Animals ("PETA") in the Western District. *See PETA v. Lowe*, No. 20-cv-1076, Dkt. No. 34 (W.D. Okla. Dec. 22, 2020).

humerus, radius, and ribs. *Id.* Further, the tiger cub’s left femur had a “severe, acute to subacute, focal, complete, comminuted, transverse fracture.” *Id.* What is more, the pathologist found the tiger’s stomach contained only white, boneless meat—a diet that is well known to be deficient in calcium and vitamin D. *See* Exh. KK (email exchange with Drs. More & Mitchell); Exh. GG, ¶ 7.

Put simply, Defendants should have known the diet they are feeding their Big Cats is nutritionally inadequate. Three cubs—Nala, Ayeesha, and “Daniel”—have been seriously injured by the same painful and preventable nutritional disorder, metabolic bone disease, in a matter of months. And yet Defendants continue to feed their Big Cats a nutritionally inadequate diet. The APHIS inspectors, in fact, noted this

failure in the inspection of the Thackerville facility that took place as a result of the Court-approved stipulation.

Dkt 28-33, p. 6-8 (Dec. 15, 2020

Inspection Report). During that inspection, the inspectors observed Big Cats being fed a boneless chicken diet,



which is inadequate. Exh. GG, ¶ 8 & Att. 2 (Metabolic Bone Disease in Nondomestic Cats).

Although the facility representative said that the Big Cats were also being fed deer and cows as well as calcium and other supplements, there was no evidence that this was the case. *See* Dkt. 28-33 at 6-8. Indeed, the only supplement that could be produced for examination was “Gleam & Gain,” a horse weight gain supplement that “does not provide the nutrients necessary to create a nutritionally balanced diet for Big Cats.” Exh. GG, ¶ 8.

B. USDA Enforcement of the AWA at the Wynnewood Facility.

As Defendants demonstrated previously, the APHIS Administrator suspended Jeffrey Lowe’s license (73-C-0230) for 21 days, effective immediately after service of the suspension letter. *See* Dkt 28-29. On August 17, 2020, USDA filed an administrative complaint seeking permanent revocation of Jeffrey Lowe’s AWA license and imposition of civil penalties. Dkt. 28-30 (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. *Id.* 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 premises in Wynnewood, Oklahoma per a court order from the Western District of Oklahoma. *Big Cat Rescue Corp. v. Schreibvogel*, Case No. 16-cv-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.”⁸ 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, Mr. 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.

Dkt. 28-2, p. 204.

Although Mr. Lowe surrendered his AWA exhibitor license and has since claimed he is no longer exhibiting, evidence shows that the Lowes are using Tiger King Park to exhibit animals to members of the public. For example, the Lowes allowed a member of the public and her 6-year-old son onto the Thackerville property to see, interact with, and film the animals, Dkt. 28-31, ¶ 3, Att. 1; members of a film crew to film the animals at the zoo as part of Season 2 of Tiger King, Dkt. 28-31, Att. 1 & 2; Dkt. 28-7, Att. 3 & 4; and members of the press to photograph animals at the Thackerville facility, Dkt. 28-32. 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.” Dkt. 28-5, Att. 1; Dkt. 28-6, Att. 1; Dkt. 28-31, Att. 1. Moreover, the Lowes intend to turn the Thackerville facility into Lowe’s “dream Tiger King Park,” Dkt. 28-32, 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

⁸ On May 15, 2020, Tiger King, LLC was registered with the trade name “Tiger King Park” as an Oklahoma limited liability company with its principal place of business identified as the address of the facility in Thackerville.

in just a few months (March 2021). Dkt. 28-31, ¶¶ 3, 5-9; Dkt. 28-7, Att. 4. The Lowes are building small cabins to rent out as “a bed and breakfast with big cats roaring in the background.” Dkt. 28-32, p. 15; Dkt. 28-31, ¶ 3.

D. Defendants Violated the Court Approved Stipulation When They Euthanized a Tiger Cub Without Conferring with the United States or Obtaining Court Approval.

Defendants continue to evade APHIS’ oversight of the health and welfare of their animals even after the United States brought this suit. Rather than defend against the United States’ first motion for preliminary injunction, Defendants agreed to a stipulation that included, among others, the following terms: (1) Defendants are required to provide an inventory of all animals covered by the AWA, excluding common dogs, cats, guinea pigs, hamsters, or rabbits, or the ESA “in Defendants’ possession, custody, or control as of November 25, 2020”; and (2) a prohibition on Defendants acquiring or disposing of any animals on the inventory provided to the United States on December 16, 2020. Dkt. No. 23, ¶¶ 1, 2. The Court approved this stipulation. Dkt. No. 24. Defendants’ counsel recently represented to the district court for the Western District of Oklahoma that the APHIS inspectors took pictures of “every animal at the park.” *PETA v. Lowe*, No. 20-cv-1076, Dkt. No. 35-1, ¶ 5 (W.D. Ok. Dec. 22, 2020). He acknowledged that, under the stipulation, the “Government could inspect the entirety of the Thackerville property as well as every animal on it.” *Id.* ¶ 3. Finally, he stated that, “[t]o the best of my knowledge, the inventory provided to the Government and attached to the Rule 60 Motion was true and correct.” *Id.* ¶ 6.

On the inventory provided by Defendants on December 16, 2020, there were 5 tigers under 6 months listed: Daniel (male, born 08/21/2020); Shadow (female, born 09/05/2020); Chanel (male, born 09/05/2020); Caesar (male, born 11/28/2020; Mirage (male, born 11/28/2020). Dkt. 28-35. Notably, none of these tigers is eight weeks and five days old. Although there is a male tiger named Daniel on the inventory, if the inventory is in fact true and correct, that animal would be 17 weeks of age. For a 17-week-old tiger to weigh 25 pounds, the animal would have to be extremely malnourished. *See* Exh. GG, ¶¶ 10-11. Further, an 8-week-old tiger would not weigh as much as 25 pounds. In light of the information provided in the veterinary records, it is also possible that the animal euthanized was “Chanel.” *See* Exh. GG, ¶ 11.

The evening of December 21, 2020, USDA received information from a veterinarian that an associate of the Lowes had been looking for a veterinarian to euthanize a tiger. Counsel for the Government promptly emailed Defendants' counsel to request accurate information about the situation. Exh JJ (December 21, 2020 email exchange). Although counsel responded shortly thereafter that he would "look into it," to date, he has not substantively responded to the Government's request for information. *Id.*

Further, despite being under a court-approved stipulation prohibiting them from disposing of any animals on the inventory without conferring with the United States and seeking leave of court, Defendants failed to comply with that term. Dkt. No. 23, ¶ 2. AWA regulations make clear that "disposal" includes the euthanasia of any animal covered by the Act. *See* 9 C.F.R. § 2.75(b)(1) (requiring exhibitors to make, keep and maintain records correctly disclosing information concerning animals "transported, sold, euthanized, or otherwise disposed of"). Had Defendants complied with the terms of the stipulation and conferred with the United States, the male tiger cub's life could have been saved—animals diagnosed with metabolic bone disease can recover fully when provided appropriate diet and care. *See* Exh. GG, ¶ 13. But instead of abiding their obligations under a court-approved stipulation, Defendants chose to forgo providing medical care to an animal that was injured as a result of their improper care.

In light of the Lowes' history of refusing to provide adequate nutrition and care to their Big Cats, recently resulting in the suffering and/or death of at least three young Big Cats, and their apparent contempt for the court-approved stipulation, the United States respectfully requests that the Court order Defendants to immediately surrender the Big Cats 1-year old or younger listed on the December 16, 2020 inventory to Plaintiff so that the United States may ensure the health and wellbeing of these animals.

ARGUMENT

The United States is entitled to a TRO. Fed. R. Civ. P. 65(b). "The requirements for a TRO issuance are essentially the same as those for a preliminary injunction order." *Curtis v. Oliver*, Case No. 20-cv-0748-JB-JHR, 2020 WL 4734980, at *40 (D.N.M. Aug. 14, 2020) (citation omitted); 13 Moore's Federal Practice ¶ 65.36(1), at 65-83 (3d ed. 2004). The primary differences between a TRO and a preliminary injunction are that a TRO may issue without notice to the opposing party and that TROs are initially limited in duration to fourteen days. Fed. R. Civ. P. 65(b)(1)-(2). "In issuing a preliminary injunction, a court is primarily attempting to

preserve the power to render a meaningful decision on the merits.’” *Keirnan v. Utah Transit Auth.*, 339 F.3d 1217, 1220 (10th Cir. 2003) (quoting *Tri-State Generation & Transmission Ass’n v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir. 1986)). “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 TRO.

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

The United States will succeed in proving that Defendants are violating the ESA and, in the alternative, the AWA. First, the Lowes “take”—by both “harm” and “harassment”—ESA-protected animals in violation of the ESA, particularly by providing poor nutrition to the animals causing serious health issues and even death. *See Tri-State Zoo*, 424 F. Supp. 3d at 412. 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.

A. The United States Is Likely to Succeed on its Claims that Defendants Are Unlawfully Taking Tigers in Violation of the ESA.

The United States is likely to succeed on its claims that Defendants are unlawfully taking young Big Cats, specifically tigers, in violation of the ESA. Congress defined “take” to include actions that “harm” or “harass” ESA-protected animals. *See* 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); *see also Kuehl*, 161 F. Supp. 3d at 716 (“Any act which injures a protected animal constitutes ‘harm’ within the definition of ‘take’ in the [ESA]”) (citation omitted). “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.* § 17.3(c).⁹ Tigers are protected by these prohibitions. 50 C.F.R. §

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 Animal Welfare Act. 50 C.F.R. § 17.3. As shown

17.11(h) (listing tigers as “endangered species”). Here, the evidence overwhelmingly demonstrates that Defendants are harming and harassing the young tigers, by providing them a nutrient-deficient diet, which makes them highly susceptible to metabolic bone disease and other nutritional disorders. *See* Exh. GG, ¶¶ 3-5; 7-9.

The Big Cats at the Thackerville facility are being provided with nutrient-deficient diets, which causes them to suffer from nutritional disorders and has resulted in extraordinary suffering and even death. *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 ‘result[s] in skeletal, structural damage, neurological problems, or other potentially irreversible health problems including death.’”) (alteration in original) (internal citations omitted). Nala, a lion cub, was malnourished, underweight, and developmentally stunted. Dkt. 28-17, ¶¶ 4-11 & Att. 1; Dkt. 28-15, p. 3-4; Dkt. 28-10 & 28-11, p. 238-71; Dkt. 28-16, ¶¶ 10-11. 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. Dkt. 28-16, ¶¶ 10-11; Dkt. 28-17, 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, entitled, *Lion Rescued From Jeff Lowe Can Barely Walk*, YouTube (Sept. 22, 2020): <https://youtu.be/zIy9--KkGIU> (last visited Dec. 30, 2020). *See* Dkt. 28-1, ¶¶ 7-9. She also suffered from several painful fractures and immediately was prescribed pain medication after being taken out of Defendants’ care. Dkt. 28-17, Att. 1. While she may never fully recover, in a mere two months of being provided a nutritionally complete diet, Nala’s mobility has improved dramatically. Dkt. 28-17, *compare* Att. 2 (September 30, 2020 Video of Nala), *with* Att. 3 (November 18, 2020 Video of Nala).

Months after being made aware that their juvenile Big Cats were suffering as a result of being fed nutrient-deficient diets, little has changed. *See* Dkt. 28-9. The APHIS inspectors observed Big Cats being fed a boneless chicken diet. Dkt. 28-33. Metabolic bone disease frequently develops when Big Cats are fed a diet of boneless or ground turkey, beef, or chicken. Exh. GG, ¶ 7. Diets consisting primarily of these boneless meats are frequently deficient in calcium and vitamin D and, therefore, must be augmented by calcium and vitamin supplements. *Id.*; *see also id.*, Att. 2. Although the facility representative claimed that the Big Cats were also

above, Defendants practices do not meet AWA standards.

being fed deer and cows as well as calcium and other supplements, there was no evidence at the zoo of either. *See* Dkt. 28-33, p. 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 to ESA-protected tigers constitute an unlawful take under the ESA. *See Nat'l Wildlife Fed'n v. Burlington N. R.R., Inc.*, 23 F.3d 1508, 1512 (9th Cir. 1994). And there can be no doubt this misconduct has occurred and will continue to occur absent an order from this Court.

Even if the animals were receiving meat with bones or supplements, "take" within the meaning of the ESA is still occurring because Defendants are not providing those necessary elements of a nutritionally complete diet in sufficient quantities or frequency to stave off nutritional disorders. This is evident by the fact that just a week after the inspection, Defendants euthanized a tiger for metabolic bone disease. Mr. Yano took a young male tiger from the Thackerville facility to Ada Veterinary Clinic for emergency care. Exh. HH, & Att. 1 (listing the owner's address as the Thackerville facility). Mr. Yano referred to the young male tiger as "Daniel." *Id.* Although Mr. Yano claimed that the animal was on formula, Exh. HH & Att. 1, which would have provided the animal some immediate protection from nutritional disorders, the pathologists who conducted the necropsy after the tiger was euthanized found "white meat with no overt signs of bones" in the tiger cub's stomach. Exh. KK. It is unsurprising that a week after the inspectors found only boneless chicken at the Thackerville facility, that the tiger would die with only white meat in its stomach.

Mr. Yano also claimed that the tiger was only 8 weeks of age. Exh. HH & Att. 1. However, the veterinary clinic weighed the animal and found him to be 25 pounds. As an initial matter, opposing counsel has represented that, during the December 15, 2020 inspection, the APHIS inspectors observed every animal at the Thackerville facility and those animals are identified on the inventory provided by Defendants on December 16, 2020. Exh. II. In light of the fact that Defendants are not permitted to acquire any additional animals, we assume that the animal Mr. Yano brought to the veterinary clinic on December 21, 2020, is listed on the inventory. *See* Dkt. 23, ¶ 2. The December 16, 2020 inventory does not list an eight-week-old tiger. Dkt. 28-35. In any event, a 25-pound tiger is too big to be only eight weeks old. Exh. GG, ¶ 10. It is possible the animal brought in for metabolic bone disease is the approximately 15-week old male, Chanel, listed on the inventory. Dkt. 28-35. This would be troubling in itself because a

25-pound 15-week old tiger would be very small for his age or perhaps suffering from stunted growth. Exh. GG, ¶ 11. “Stunted growth is consistent with being fed a poor diet and may be one of the clinical signs seen with a diagnosis of metabolic bone disease.” *Id.*

Radiographs (x-rays) confirmed that the “young tiger’s bones had significant losses in bone density, which is consistent with a diagnosis of metabolic bone disease.” Exh. GG, ¶ 12; Exh. HH & Att. 1. Additionally, the tiger had a femoral fracture of the left rear leg, which prevented the animal from bearing weight on that leg. Exh. HH, Att. 1. “When Big Cats’ bones are deficient in calcium, their bones are fragile and can break with very little exertion or pressure. The animals may appear normal to an observer until their first bone fracture, which would then cause them significant pain and cause them to exhibit lameness or a reluctance to move.” Exh. GG, ¶ 9. Thus, Defendants’ actions in failing to provide the young tiger with even the basic nutrients he needed likely caused the animal significant pain and constitutes harm to that animal.

Even more disturbing than knowingly and repeatedly feeding animals in your care a diet devoid of the nutrients necessary for survival, is euthanizing an animal who likely could have recovered with an appropriate diet and care. Exh. GG, ¶ 13. If detected early, the animal has a very good chance of making a full recovery and can be treated with cage rest, restricted exercise, supplemental calcium, and a balanced diet. *Id.* The consulting veterinarian discussed the possibility of a referral for correction of nutritional deficiencies and evaluation of the fracture, but had concerns that the owner would not comply with these recommendations. *See* Exh. HH, ¶ 9. The ESA categorically prohibits the unlawful killing of endangered species, including tigers. *See* 16 U.S.C. § 1532(19); *id.* § 1538(a)(1)(B).

In light of Defendants’ history of providing nutrient-deficient diets to their animals, the APHIS inspectors’ observations on December 15, 2020, and the veterinary records and preliminary necropsy report for the dead tiger, it is reasonable to assume that all of Defendants’ young Big Cats have been physically harmed by Defendants’ failure to provide those animals with adequate nutrition and care. *See* Exh. HH, ¶ 10 (warning Mr. Yano that “nutritional changes needed to be implemented immediately” at the Thackerville facility); Exh. GG, ¶¶ 4-5, 8-9 (noting that all young Big Cats at the Thackerville facility are “especially at risk of developing metabolic bone disease”).

Even if the Court concludes that the young tigers at the Thackerville facility have not yet

been “harmed” by Defendants’ actions, the evidence unequivocally establishes that the animals have been harassed, which is a “less demanding” standard. *Hill*, 867 F.3d at 511. Harassment includes any “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). Here, the omission is Defendants’ failure to provide their Big Cats with adequate nutrition, which places the animals at great risk of developing painful nutritional disorders, such as metabolic bone disease. Exh. GG, ¶¶ 8-9.

Moreover, if the case of the young tiger who was euthanized last week is any indication of the fate that awaits the other young tigers at the Thackerville facility, those animals are at grave risk of being killed. This overwhelming evidence shows that the United States is likely to succeed in establishing that Defendants have unlawfully taken and continue to unlawfully take ESA-protected young tigers.

B. The United States Is Likely to Succeed on its Claim that Defendants Are Placing the Health of the Young Big Cats in Serious Danger in Violation of the AWA.

The AWA provides that district courts shall issue a TRO 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).

The United States has already established that Defendants’ consistent failure to provide an adequate, nutritiously complete diet to their young Big Cats has placed those animals in serious danger of suffering from neurological abnormalities, painful fractures, lameness, and death. Exh. GG, ¶¶ 3-4. In less than four months, at least two of the Defendants’ Big Cats have died and one suffered greatly from being fed a nutrient-deficient diet. *Id.* ¶ 4. Moreover, the fact that Defendants attempted to circumvent the court-approved stipulation requiring them to alert the United States and the Court to any situation which may result in the disposal of an animal underscores the danger facing the remaining young Big Cats at the Thackerville facility. The December 15, 2020 inspection and the recent euthanasia of the male tiger demonstrate that the Lowes are still failing to provide adequate nutrition to the animals currently at the zoo, thereby placing their health in “serious danger.”

As detailed below, Defendants are exhibitors that have amassed a long list of AWA violations. Accordingly, the Court “shall...issue a temporary restraining order.” 7 U.S.C. §

2159(b).¹⁰

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, 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 viewing, *regardless of compensation.*” 9 C.F.R. § 1.1 (emphasis added). Indeed, even Jeffrey Lowe concedes Tiger King Park is a zoo. Dkt. 28-31, ¶ 7, Att. 1 (“we’re building a zoo here in Thackerville, it will open”); Dkt. 28-32, p.14 (“it’s going to be bigger and better than the zoo in Wynnewood”).

The Lowes have exhibited animals at the zoo to members of the public including a woman and her 6-year-old son, film crew(s), and the press. Dkt. 28-31, Att. 1 & 2; Dkt. 28-32. Moreover, the Lowes plan to open their “dream Tiger King Park” in March 2021. Dkt. 28-32, p. 8; Dkt. 28-31, Att. 1; *see* <https://www.officialtigerking.com/tiger-king-park> (last visited Dec. 30, 2020). The Lowes have already begun building small cabins with the intent to have 40 to rent “as a bed and breakfast with big cats roaring in the background” and have encouraged the public to visit. Dkt. 28-31, p. 14, Dkt. 28-31, ¶¶ 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. Dkt. 28-5, Att. 1 (Cameo exhibition); Dkt. 28-6, Att. 1 (OnlyFans exhibition); Dkt. 28-31, Att. 1 & 2. Additionally, they solicit public compensation for the new Thackerville facility and sell Tiger King-related apparel. Dkt. 29-7; *see* <https://shop.officialtigerking.com/> (last visited Dec. 30, 2020).

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)

¹⁰ If the Court issues a TRO under 7 U.S.C. § 2159(b), the order “shall remain in effect until [the administrative complaint is dismissed] by the Secretary or until an order to cease and desist made thereon by the Secretary has become final and effective or is set aside on appellate review.” *Id.*

(AWA purposes 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 to 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, treatment, and transportation by exhibitors. This has not only put the health of animals in “serious danger,” it has repeatedly resulted in actual death.

A program of adequate veterinary care is a cornerstone of the AWA regulatory program to assure humane care and treatment for animals. Dkt. 28-14, ¶ 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. Dkt. 28-14, ¶ 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. Dkt. 28-8; Dkt. 28-9, ¶ 3; Dkt. 28-13, ¶¶ 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.” Dkt. 28-33 at 4; *see also* 9 C.F.R. § 1.1 (definition of “attending veterinarian”).¹¹

Additionally, Defendants’ animals have suffered from easily preventable or treatable conditions, which frequently have caused their untimely death. Dkt. 28-16, ¶¶ 4, 8, 10; *see generally* Dkt. 28-17. This includes the animals being malnourished. Defendants are required to

¹¹ The Lowes told the APHIS inspectors that they were in talks with several veterinarians, which is a common refrain from the Lowes. *See* Dkt. 28-18.

provide food for their animals that is “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) (emphasis added). Further, the “diet shall be prepared with consideration for the age, species, condition, size, and type of the animal.” *Id.* As discussed above, Defendants consistently fail to meet the most basic needs of their Big Cats by failing to provide them with food of sufficient “nutritive value.”

Defendants’ failure to provide their animals with adequate nutrition is compounded by the fact that they do not employ an attending veterinarian. Attending veterinarians are essential to ensuring appropriate nutrition for animals, especially exotic animals. Dkt. 28-14, ¶ 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 if the AWA’s standards were met. 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 in violation of the AWA.

And there is no reason to believe that any protestation to the contrary by the Lowes now is anything but the smoke and mirrors that Mr. Lowe has previously described. *See Nat’l Wildlife Fed’n*, 23 F.3d at 1512 (“Past takings are indeed instructive, especially if there is evidence that future similar takings are likely”).

II. Irreparable Harm Is Likely Absent An Injunction.

Defendants’ continued failure to provide adequate nutrition to their Big Cats is creating irreparable harm to the particularly susceptible eleven¹² young tigers listed on their December 16, 2020 inventory. Unless the Court orders that these tigers be immediately removed from the Thackerville facility and placed with facilities selected by the United States, the animals in Defendants’ care, custody, possession, or control will suffer irreparable harm. Their health is in serious danger and ESA-protected tigers will continue to be harmed and harassed in violation of the ESA. *See, e.g., Nat’l Wildlife Fed’n*, 23 F.3d at 1512.

¹² There are eleven Big Cats under the age of one year listed on the December 16, 2020 inventory. Dkt. 28-35. Assuming that either Daniel or Chanel were euthanized on December 21, 2020, there should remain eleven young Big Cats at the Thackerville facility.

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 a TRO to restrain the violations. 7 U.S.C. § 2159(b); *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 has 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. Co. 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) (citation omitted). 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) (citation omitted). “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*, 916 F.3d 792, 806 (10th Cir. 2019) (citation omitted). 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) (citation omitted).

Although all Big Cats at the Thackerville facility are at risk of nutritional disorders, such as metabolic bone disease, “young Big Cats under the age of 1 year are especially at risk because these animals are growing rapidly and, thus, require a calcium-rich diet to support bone growth.” Exh. GG, ¶ 5. “Metabolic bone disease in young Big Cats can lead to the inability to walk or stand, bone fractures, stunted growth, misshaped limbs, neurological conditions, and death.” *Id.*

“A young Big Cat’s bones can decalcify in just a few weeks when fed an inadequate diet. When Big Cats’ bones are deficient in calcium, their bones are fragile and can break with very little exertion or pressure. The animals may appear normal to an observer until their first bone fracture, which would then cause them significant pain and cause them to exhibit lameness or a reluctance to move.” Exh. GG, ¶ 9. For example, according to the veterinary records, Mr. Yano claimed that the tiger’s symptoms started that day and within hours the animal was dead. Exh. HH, Att. 1. Because the initial visible signs of metabolic bone disease often appear suddenly and can immediately cause the animals significant pain, waiting for those signs to appear before removing the animals from Defendants’ care would cause irreparable harm.

The concern that irreparable harm will occur if the eleven tigers are not removed immediately is particularly great where, as here, a young tiger was euthanized despite the existence of a court-approved stipulation prohibiting Defendants from disposing of any animals on the December 16, 2020 inventory without first conferring with the United States and leave of court. Dkt. 23, ¶ 2. Moreover, in the hands of Defendants and their agents (or persons who are in active concert with Defendants), even an animal who could recover with appropriate care, exercise, and diet was nevertheless quickly euthanized. *See* Exh. HH, ¶ 9 & Att. 1; Exh. GG, ¶ 13. The veterinarian discussed with Mr. Yano “a referral for correction of nutritional deficiencies and evaluation of the fracture.” Exh. HH, ¶ 9. But Mr. Yano “elected to euthanize” the tiger from the Thackerville facility. Exh. HH, Att. 1.

As demonstrated above, Defendants’ actions have a significant risk of injuring or even killing the eleven young tigers in their care, custody, possession, or control. There is no evidence that this longstanding misconduct will abate voluntarily. Defendants have been aware since at least July 2020 they were providing their Big Cats a nutritionally deficient diet and, yet, six months later they have not adjusted the animals’ diets. Dkt. 28-9. And in light of the fact that Defendants have shown contempt for the terms of the existing court-approved stipulation, there is no reason to think that will provide adequate nutrition to the tigers regardless of what they may now say.

Further, 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.”) (alterations in original) (internal citations omitted); *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”).

A TRO is necessary to 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 the United States cannot ensure the health and wellbeing of the eleven young tigers identified in this motion, 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 order removing the young tigers from the Thackerville facility, Defendants’ inadequate care will continue and there is a significant chance that this will cost animals their lives.

III. The Balance of Equities and Public Interest Tip Sharply In Favor of Restraining Defendants from Continuing to Harm and Harass ESA-Protected Young Big Cats and Place Their Health in Serious Danger.

When weighing the equities and public interest, the scale strongly tips in favor of granting the United States’ request for a TRO. 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). Similarly, 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”). And it is always in the public interest to have citizens follow the law and not financially profit from their law-breaking endeavors. The public interest in preventing this ongoing harm to ESA-Protected young Big Cats, as evinced by Congress’ intent in enacting both statutes, far outweighs the minimal impositions Defendants will incur if the presently sought TRO is granted.

The United States merely wishes to ensure the health and wellbeing of the young Big Cats currently in Defendants’ care, custody, possession, or control. Specifically, the United States requests that the Court issue an order temporarily transferring all Big Cats one year or younger from the Thackerville facility to reputable facilities selected by the United States to ensure their health and wellbeing. Based on the inventory that Defendants provided, this would

include the following animals: Odeza, Pleiades, Daniel (if he is still alive), Shadow, Chanel (if he is still alive), Mirage, Caesar, Moose, Abby, Bubbles, Maggie, and Leigha. Dkt. 28-35. Notably, pursuant to the court approved stipulation, Defendants are prohibited from acquiring any animals, which includes births. Dkt. 23, ¶ 2, Dkt. 25; *see also* Animal Care Inspection Guide, Chapter 4.12.5.6, (U.S. Dep't of Agric. 2020), https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf. So, unless there are Big Cats currently pregnant or the December 2020 Inventory Defendants provided was incorrect, the United States' TRO request is and will continue to be narrowly tailored and specific to these young Big Cats. Fed. R. Civ. P. 65(d)(1) (requiring specificity). This is a small fraction of the nearly 150 animals in Defendants' care, custody, possession, or control.

Further, based on their involvement with the recently euthanized male tiger cub, representation of ownership, and overlapping physical address with the Lowes, the United States requests that the Court's TRO also bind Eric Yano and Stephens, Lane LLC. *See* Fed. R. Civ. P. 65(d)(2)(B)-(C) (authorizing the Court's TRO to bind the parties' officers, agents, servants, employees, attorneys, and other persons who are in active concert or participation with the parties or their officers, agents, servants, employees, and attorneys); Exh. HH & Att. 1.

Based on the foregoing, the United States is entitled to a temporary restraining order to immediately relinquish all Big Cats, one-year-old or younger, in Defendants' care, custody, possession, or control as well as the animals' respective mothers to the United States for temporary placement at reputable facilities.

CONCLUSION

For the aforementioned reasons, the United States requests that the Court grant the limited, TRO now requested.

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