



USDA-APHIS-Animal Care



ANIMAL WELFARE COMPLAINT

Complaint No. AC20-239	Date Entered: 20-Apr-20	Processed By: SPR
Referred To: McFadden/McKinnie		Reply Due: 22-May-20
Facility or Person Complaint Filed Against		
Name: Tri State Zoological Park of Western Maryland		Customer No.: 15730
Address: 12605 Moores Hollow Road		Email Address:
City: Cumberland	State: MD	Phone No.: (301)724-2400
Complainant Information		
Name: Zeynep Graves		Organization:
Address:		Email Address: (b) (6), (b) (7)(C), (b) (7)(D) @petaf.org
City:	State:	Phone No.: (b) (6), (b) (7)(C), (b) (7)(D)
How was the Complaint received? Email		
Details of Complaint: <u>SEE ATTACHED</u>		
<p>Results: A records review and conversations with the owner, the attending veterinarian, and other veterinarians were conducted to address the following concerns in the complaint.</p> <ul style="list-style-type: none">Kumar (tiger): Kumar was treated palliative without a diagnosis for 9 days under the consultation of several veterinarians. The attending veterinarian discussed with the owner that the tiger's prognosis was poor and strongly recommended euthanasia or sedation for diagnostics on several phone conversations and animal examinations. The licensee elected to forgo just diagnostics to find a referral facility that would perform diagnostics and surgery. Kumar passed away on July 7, 2019. Kuma was scheduled for the diagnostics at a referral facility the next day. The licensee did not give the attending veterinarian the proper authority as outlined in the AWA regulations. See inspection report dated _____. India (tiger): The attending veterinarian tentatively diagnosed gastrointestinal disease or a pyometra. The attending veterinarian recommended on multiple occasions sedation for a diagnostic ultrasound and expressed that if pyometra "she will die" and her "prognosis is poor" to "grave". After 48hrs, the attending veterinarian recommended India be referred to a facility that could perform both diagnostics and surgery. India died the day of the scheduled referral appointment after being treated with antibiotics for 4 days. The licensee did not give the attending veterinarian the proper authority as outlined in the AWA regulations. See inspection report dated _____. 		



USDA-APHIS-Animal Care



Flies seemed to have a particular affinity to India who was housed with 2 other tigers who were not affected by fly bites.

- Cayenne (tiger) – The owner sought veterinary evaluations each time he noticed a decrease in Cayenne's appetite. The tiger was under treatment prescribed by the attending veterinarian. Cayenne was sedated for an ultrasound and x-rays on June 4, 2020. She went into cardiac arrest after being sedated but was revived. She appeared normal while anesthetized and had begun to recover. She was discovered dead while still recovering from the anesthesia. The necropsy report revealed hepatopathy and age-related lipid changes leading to poor metabolism of the anesthetic drugs and the precipitation of sudden cardiovascular collapse.
- Cheyanne (tiger): No significant illness throughout her 17 years at the facility. She is no longer at the facility as of February 6, 2020.
- Mowgli (tiger): A diagnosis for the skin condition was made by the attending veterinarian and several treatment options were tried. An effective topical treatment, in addition to changes in husbandry practices, continued to be the plan for the skin condition when there is a flare-up. He is no longer at the facility as of February 6, 2020.
- Lion (Mbube): "Bu" was under the care of the attending veterinarian. Bloodwork revealed low testosterone levels. A treatment plan was established and executed in consultation with several exotic animal veterinarians. An inspection citation was written on a routine inspection in 2016 to ensure a proper diagnosis and treatment plan was established.
- Peka (lion): Peka had been diagnosed and treated for metabolic bone disease under the direction of an exotic veterinarian as a cub. She has been evaluated by veterinarians over the years and been on an appropriate diet. During a routine visit in October 2019, the attending veterinarian noted some muscular / skeletal changes in the limbs. Treatment with NSAID for possible arthritis was started and continued until the animal was sent to another facility on February 6, 2020.
- Suzie and Sally (bears) –The attending veterinarian stated the bears have severe dental disease. The veterinary recommendation was perform dental work as soon as possible as the bears may be in pain. (No However, the owner decided not to treat due to the age of the bears and would consider treatment if the bears showed signs of pain such as refusing to eat. The licensee did not give the attending veterinarian the proper authority as outlined in the AWA regulations. See inspection report dated_____
- Dodger (capuchin): The hairless spot mentioned in the complaint has been assessed by several veterinarians, including those with experience and a background with exotic animals and nonhuman primates. The spot is not related to self-injurious behavior or disease but as the result of rubbing against a surface when in a sitting position. According to expert veterinarians this is something commonly seen in non-human primates in captive situations.
- Spazz (Squirrel Monkey): Came to the facility with a group as was housed. He is the last surviving squirrel monkey from the group and was house with an agouti for a number of years. He has been single house with no cage mate for 5 years. Enrichment includes human interactions with enclosure structures and food provided in different ways. No stereotypic behavior has been noted.



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- Bandit (ring-tailed lemur): Bandit was under veterinary care for his chronic respiratory illness. The owner took Bandit to the attending veterinarian after noticing blood around the genitalia.

While at Tri-state Zoo, he was pair housed and received enrichment in accordance with the facility enrichment plan.

- Alfredo (ring-tailed lemur): After its cage mate died, the owner found a new home for Alfredo so he would not be housed alone. While at Tri-state Zoo he was pair housed and received enrichment in accordance with the facility enrichment plan.

NOTE: Concerns prior to 2018 were addressed and/or appropriately evaluated at the time of inspection. Facility, cleaning and sanitization, pest control, and feeding concerns will be evaluated at the next inspection.

Application Kit Provided:

Yes:

No:

Inspector: Gloria McFadden, VMO	Date: 1-Sep-20
Reviewed By: Jeffrey Shepherd, SACS	Date: 30-Oct-20



Animal and Plant
Health Inspection
Service

Animal Care
4700 River Road
Riverdale, MD 20737

April 20, 2020

(b) (6), (b) (7)(C), (b) (7)(D)

Peta

(b) (6), (b) (7)
(C), (b) (7)(D) @petaf.org

Dear Complainant,

Thank you for your correspondence dated 31-Mar-20. We are reviewing your concerns and assigned tracking number AC20-239. Please allow us enough time (30 to 60 days) to thoroughly look into your concerns. You may submit a request to the Animal and Plant Health Inspection Service (APHIS) Freedom of Information Act (FOIA) office to obtain any publically available information regarding our review.

FOLA Requests can be submitted three ways:

1. Web Request Form: <https://efoia-pal.usda.gov/App/Home.aspx>
2. Fax: 301-734-5941
3. US Mail:
USDA- APHIS- FOIA
4700 River Road, Unit 50
Riverdale, MD 20737

Should you have any questions regarding the APHIS FOIA process or need assistance using the Web Request Form **please contact the APHIS FOIA office at 301-851-4102**.

Animal Care is a program within the U.S. Department of Agriculture (USDA) that directs activities to ensure compliance with and enforcement of the Animal Welfare Act and the Horse Protection Act. Animal Care establishes standards of humane treatment for regulated animals and monitors and achieves compliance through inspections, enforcement, education, and cooperative efforts under the Acts.

Please be assured that we will look into your concern(s) and take appropriate action(s).

Thank you for your interest into the humane treatment of these animals.

Sincerely,



Betty Goldentyer
Associate Deputy Administrator
Animal Care

From: [Gibbens, Robert - APHIS](#)
To: [APHIS-AnimalCare](#)
Subject: Fwd: Request for Termination and/or Nonrenewal of Tri-State Zoo's AWA license (51-C-0064)
Date: Tuesday, March 31, 2020 6:12:58 PM
Attachments: [2020-03-31 Request for termination-nonrenewal of Tri-State Zoological Park of Western Maryland's \(51-C-0064\) exhibitor's license \(00352218xB39F9\).PDF](#)

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From: (b) (6), (b) (7)(C), (b) (7)(D)@petaf.org>
Sent: Tuesday, March 31, 2020 5:54 PM
To: Gibbens, Robert - APHIS
Cc: Vaden, Stephen - OGC, Washington, DC; 'aceast@aphis.usda.gov'
Subject: Request for Termination and/or Nonrenewal of Tri-State Zoo's AWA license (51-C-0064)

Dear Dr. Gibbens,

Please see the attached request to terminate and/or deny the renewal of Tri-State Zoological Park of Western Maryland's AWA license, which expires on April 30, 2020. The exhibits to the attached request are available at the following Dropbox link:

<https://www.dropbox.com/sh/jvafq718ll5wul7/AABv7SAX12ai3F7kgX98lPnsa?dl=0>. Please let me know if you have difficulties accessing the exhibits.

Thank you.

(b) (6), (b) (7)(C), (b) (7)(D)

Litigation Manager
PETA Foundation
2154 W. Sunset Blvd.
Los Angeles, CA 90026
T: (b) (6), (b) (7)(C), (b) (7)(D)
F: (b) (6), (b) (7)(C), (b) (7)(D)

This message may be protected by the attorney-client privilege and/or the attorney work product doctrine. If you believe you have received this message in error, please do not read it. Please reply to the sender that it has been sent in error and delete all copies of the message and its attachments. Thank you.

March 31, 2020

Robert M. Gibbens, D.V.M.
Director, Animal Welfare Operations
USDA-APHIS-Animal Care

Via e-mail: robert.m.gibbens@usda.gov

Re: Request for Nonrenewal and/or Termination of Tri-State Zoological Park of Western Maryland Inc.'s Animal Welfare Act License

Dear Dr. Gibbens:

On behalf of People for the Ethical Treatment of Animals, Inc. (PETA) and its more than 6.5 million members and supporters, I am writing to request that the USDA terminate and/or deny the renewal of Animal Welfare Act (AWA) exhibitor license number 51-C-0064, issued to Tri-State Zoological Park of Western Maryland, Inc. ("Tri-State"), a roadside zoo owned and operated by Robert Candy.

The USDA cannot lawfully renew Tri-State's license, which is set to expire on April 30, 2020. As part of the renewal process, Tri-State must certify that its facility "is in compliance with the regulations and standards" of the AWA. 9 C.F.R. § 2.2(b). Regardless of what Tri-State certifies, its operations are grossly and consistently out of compliance with AWA standards. *See Animal Legal Defense Fund, Inc. v. Perdue*, 872 F. 3d 602, 619 (D.C. Cir. 2017). As detailed in the attached appendix, a recent memorandum opinion by the United States District Court for the District of Maryland, which describes the conditions at Tri-State as "fetid and dystopic," and evidence presented at the trial which resulted in that opinion, highlight some of Tri-State's egregious AWA violations, many of which persist. *See People for Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of W. Maryland, Inc.*, (No. 17-02148), 2019 WL 7185560, at 2 (D. Md. Dec. 26, 2019) (hereinafter, "Mem. Op.") [Exh. 1].

When the record before the agency is replete with evidence documenting that an exhibitor's self-certification of compliance with the AWA is blatantly false, it is arbitrary and capricious for the USDA to rely on that certification for demonstrating that the facility complies with AWA standards—a requirement for issuing a license. 7 U.S.C. § 2133; *Perdue*, 872 F.3d at 619. Because the USDA cannot rely on the exhibitor's self-certification of compliance, and because the evidence shows Tri-State's operations are "routinely and currently out of compliance with AWA standards," the USDA cannot lawfully issue a renewal. *Perdue*, 872 F.3d at 620.

In addition, the USDA should terminate Tri-State's license because Tri-State, along with Mr. Candy, have flagrantly violated federal laws pertaining to the welfare of animals. *See* 9 C.F.R. § 2.11(a)(6) (prohibiting the issuance of AWA licenses to anyone who has been found to violate Federal or State laws pertaining to the

PEOPLE FOR
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510-763-PETA

PETA FOUNDATION IS AN
OPERATING NAME OF FOUNDATION
TO SUPPORT ANIMAL PROTECTION.

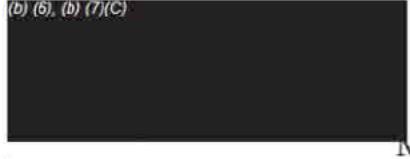
AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

ownership or welfare of animals); *see also id.* at § 2.12 (authorizing license termination on this basis). Specifically, following a six-day bench trial, a federal judge found that Tri-State violated the Endangered Species Act , 16 U.S.C. §§ 1531-11544, and its implementing regulations by, *inter alia*, denying animals proper veterinary care, failing to meet the animals' basic nutritional needs, and keeping the animals in chronically filthy environments. *See* Exh. 1, Mem. Op.

Indeed—as evidenced by the U.S. District Court’s order, which permanently enjoined Tri-State and Mr. Candy from owning or possessing any federally-protected species and terminated their ownership and possessory rights in the lion and tigers at Tri-State, as well as by evidence that surfaced during the pendency of that matter—renewal of Tri-State’s license would be contrary to the purposes of the AWA and would be arbitrary, capricious, and an abuse of discretion.

(b) (6), (b) (7)(C)



Manager

(b) (6), (b) (7)(C), (b) (7)(D)

@petaf.org | 323-210-2263

Attachment

cc: aceast@aphis.usda.gov

Stephen Vaden, General Counsel, USDA (stephen.vaden@ogc.usda.gov)

APPENDIX

I. Background

Tri-State has a long history of violating the Animal Welfare Act (“AWA”) and demonstrated inability to provide proper care for its animals—as evidenced, in part, by multiple premature deaths marked by horrific suffering and neglect at its facility, *see Section II infra*, and its more than seventy AWA citations issued by the USDA since 2008.¹ Indeed, Tri-State’s chronic and willful disregard for animal welfare led to a forty-five day suspension of the facility’s AWA license in 2013 and an official warning against the facility in 2015.² Recent evidence outlined herein confirms Tri-State’s ongoing AWA violations and flagrant disregard for the welfare of animals in its care.

Some of Tri-State’s most egregious conduct negatively affecting the welfare of the animals in its care was highlighted in PETA’s recent lawsuit against Tri-State, Robert Candy, and Animal Park, Care & Rescue, Inc. (the “Defendants”), in which PETA alleged and proved numerous violations of the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-11544, and its implementing regulations. *People for the Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of Western Maryland, Inc.*, No. 17-02148 (D. Md. 2019) (the “ESA Action”). The summary judgment and trial orders in the ESA Action, as well as the evidence that surfaced in that case, demonstrate Tri-State’s complete disregard for the welfare of the animals in its care—a pattern of neglect that is underscored by the deaths of one lemur (Bandit), three tigers (Cayenne, Kumar, and India), and one lion (Mbube aka “Bu”), who all suffered greatly prior to death. Indeed, since PETA notified Tri-State of its intent to file suit in December 2016, five of the nine animals at issue in the ESA Action “died early and tragic deaths,” Exh. 1, Mem. Op. at 10—each of whom was denied adequate veterinary care in addition to other basic necessities required under both the ESA and the AWA.

On December 26, 2019, following a six-day bench trial in the ESA Action, the United States District Court for the District of Maryland found in favor of PETA on all theories of liability presented at trial. *Id.* at 1. The court—which described the conditions of the animals at Tri-State as “fetid and dystopic” and noted that “[f]ilth and feces dominate Tri-State,” *id.* at 2—entered a declaration that Defendants violated the ESA and its implementing regulations by unlawfully taking nine federally protected animals and by possessing two tigers and one lion who were unlawfully taken. Order at 1-2, *People for the Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of Western Maryland, Inc.*, No. 17-02148 (D. Md. Dec. 26, 2019) [Exh. 5]. The court also enjoined Defendants from continuing to violate the ESA, and enjoined Defendants, their officers, agents, and others from owning, acquiring, or possessing any endangered or threatened

¹ Compendium of Tri-State’s non-compliant USDA Inspection Reports [Exh. 2].

² Tri-State Zoological Park of Western Maryland, Inc. et al., AWA Docket No. 11-0222, 72 Agric. Dec. 128 (U.S.D.A. Mar. 22, 2013) (Decision and Order) [Exh. 3]; USDA, Official Warning Violation of Federal Regulations, Tri-State Zoological Park of Western Maryland (51-C-0064), Case No. MD150021 (May 28, 2015) [Exh. 4].

species of animals in the future. *Id.* at 2.³ The surviving tigers and lion have since been transferred to The Wild Animal Sanctuary (84-C-0019) per the court’s order.

As explained below, Tri-State’s license should be revoked and renewal of its license would be arbitrary, capricious, and an abuse of discretion, and contrary to the purposes of the AWA.

II. The USDA should terminate Tri-State’s license due to violations of federal law.

The USDA should terminate Tri-State’s license due to its recent flagrant violations of federal laws pertaining to the welfare of animals. Specifically, AWA regulations provide that:

A license will not be issued to any applicant who: . . . has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. § 2.11(a)(6); *see also id.* at § 2.12 (authorizing license termination on these bases).

On December 26, 2019, the United States District Court for the District of Maryland found, in part, that Tri-State and Mr. Candy violated the ESA by unlawfully “taking” each of the nine federally-protected animals at issue, and continued to violate the ESA by unlawfully taking the surviving big cats, Peka, Cheyenne, and Mowgli. *See Exh. 1, Mem. Op.* at 21. The ESA Action revealed Tri-State’s chronic failure to provide animals in its care with necessary veterinary care, safe, sanitary environments, adequate nutrition, and species-appropriate shelter from the elements, social groups, and enrichment. As the court explained, “[t]he uncontested testimony reflects that every animal at issue suffered under Tri-State’s living conditions,” *id.* at 1, and “the evidence overwhelmingly demonstrates that every protected animal has been harassed, harmed, or both in a most grievous fashion at Tri-State,” *id.* at 17. The court’s specific findings are as follows:

- Tiger (Kumar): The tiger Kumar—who died on July 7, 2019—was downed for ten days, during which “he received no meaningful care.” *Id.* at 12. Tri-State did not give the tiger any pain management, despite Kumar’s pain and obvious distress. *Id.* Instead of euthanizing Kumar, per the attending veterinarian’s recommendation, “[Mr.] Candy chose instead to let Kumar suffer.” *Id.* “[T]en days after first being found down and immobile and seven days after being unable to eat food without being syringed into his mouth, Kumar died.” *Id.* “[T]he manner of [the tiger Kumar’s] death indisputably demonstrates that Defendants harmed him. His necropsy reflects that he suffered for months before his death, from broken, pulp-exposed teeth, ulcerated gums, and a punctured lip. . . . Similarly,

³ Although an appeal is currently pending in the Fourth Circuit, Tri-State has not challenged the District Court’s findings that it has violated the ESA. Brief of Defendants-Appellants at 6-7, *People for the Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of Western Maryland, Inc.*, Case No. 20-1010 (4th Cir. 2020) [Exh. 6]. Moreover, despite the appeal, the United States Court of Appeals for the Fourth Circuit rejected Tri-State’s request to prevent the animals’ transfer to The Wild Animal Sanctuary pending conclusion of the appeal. Order, *People for the Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of Western Maryland, Inc.*, Case No. 20-1010 (4th Cir. Jan. 27, 2020) [Exh. 7].

Kumar's paws and hind leg were pocked with ulcers most likely caused by the filthy concrete on which Kumar had dragged his body while Defendants left him to suffer after his spinal stroke. Defendants' complete failure to treat Kumar's mouth and paws, while leaving him to languish in filthy surroundings, caused injury to Kumar and disrupted his normal behaviors such that he was both harmed and harassed in violation of the ESA." *Id.* at 20 (internal record citations omitted). "The lack of veterinary care during the days leading up to [the tiger] Kumar's death also injured Kumar and significantly disrupted his normal behaviors, such that it constitutes both harm and harassment under the ESA." *Id.*

- Tiger (India): The tiger India was also "harassed and harmed directly by Defendants." *Id.* at 20. India died of sepsis on August 14, 2019, and pathology reports indicated that painful "pus-filled pockets had formed in her heart, tongue, and diaphragm." *Id.* at 13. "For *more than a month*, Defendants allowed the virulent infection to ravage India. She barely ate or moved yet was given no care. In fact, Candy expressly refused to secure medical treatment—even when Dr. Duncan [Tri-State's attending veterinarian] told him that failure to do so would lead to her death. And, while opting to ignore treatment, Defendants simultaneously failed to provide her with *anything* to ease her severe pain. . . . Unquestionably Defendants are directly responsible for India's death. Their violation of the ESA is patent." *Id.* at 20 (internal record citations omitted).
- Tigers: "[D]efendants['] provision of squalid living conditions harassed the tigers. The tigers' concrete dens, in which they have been confined for their entire lives, defy generally accepted husbandry practices. The record evidence shows the swimming pool den as a dirty, dilapidated pen. The water in the outdoor enclosures is similarly filthy, static and filled with feces. The water in the indoor enclosures, too, is dirty and sits in uncleared bowls. Failure to clean routinely the animals' enclosures squarely disregards industry standards" *Id.* at 19 (internal record citations omitted).
- Tigers: "[T]he barren enclosures and lack of enrichment deprive the tigers of their ability to 'engage in their natural behaviors . . .' Further, the 'lack of enrichment leads to boredom and the development of abnormal behaviors such as pacing, excessive grooming, and other potentially self-injurious behaviors.' The enclosures are also deficient in that their lack of insulation and adequate cooling and shade puts the tigers at risk of hypothermia, dehydration, and damage to the cats' pads and mucous membranes, as well as overheating, . . . heat sickness, and stroke. Overall, the tigers' enclosures are so far removed from their natural habits and from accepted husbandry practices that they significantly disrupt a multitude of typical tiger behaviors and put the tigers at a high likelihood of injury. As such, they constitute 'harassment' of all the tigers (dead and alive) and violate the ESA." *Id.* at 19 (internal record citations omitted).
- Tiger (Mowgli): "[The tiger] Mowgli is obese. His muscles are flaccid. He has suffered for years with a skin infection that can easily be diagnosed, but has yet to be, and which is likely easily treated, but has not been. . . . Defendants have injured Mowgli and as such, have harassed and harmed him in violation of the ESA." *Id.* at 20.

- Lions: “[T]ri-State’s deplorable conditions have harassed [lions] Peka and Mbube. Each has lived in isolation and were given no ‘social interactions [that] are integral to the well-being of lions.’ For years, neither Bu or Peka had any chance to engage in a wide range of normal social behaviors, such as grooming, stalking, hunting, and play. Their enclosures are barren. They are exposed to harsh temperatures with little reprieve. . . . The creation and perpetuation of drastic conditions has foster[e]d the likelihood of serious injury to Peka ‘by annoying it to such an extent as to significantly disrupt normal behavioral patterns.’” *Id.* at 18 (internal record citations omitted).
- Lion (Peka): “It is undisputed that [the lion] Peka . . . suffers from an abnormal gait yet has never been examined or treated for it. The abnormal gait likely causes Peka discomfort and pain and puts her at risk of further joint problems such as degenerative joint disease. . . . Defendants’ failure to diagnose and treat Peka’s gait abnormality constitutes harassment under the ESA.” *Id.* at 15, 18 (internal record citations omitted).
- Lion (Mbube): “The uncontested evidence . . . reveals that [the lion] Bu met a slow and painful demise without any real veterinary care. . . . For Bu’s entire life, Defendants provided him no veterinary care. . . . It is without question that Defendants have harmed Mbube, to the point of a painful death, and in violation of the ESA.” *Id.* at 10, 19.⁴
- Lemurs (Bandit and Alfredo): “Defendants subjected [lemurs] Bandit and Alfredo to an onslaught of environmental assaults that harassed and harmed them. Bandit lived largely in isolation and contrary to his normal species behavior. He, and later with Alfredo, were deprived of any real opportunity to act as lemurs do. In a stark environment, Bandit and Alfredo could not forage, explore, mark, or engage in other normal behaviors. Defendants further harassed the lemurs by surrounding them with filth and a natural predator. Smells of lingering urine and feces disrupted their olfactory communications and their ability to scent-mark and put them at high risk of physical pain and permanent physical damage to their mucous membranes. Defendants also failed to protect the lemurs from the elements for nearly half of calendar year 2015. . . . The lemurs’ isolating, barren, freezing, dirty, stress-inducing enclosure essentially stripped Bandit and Alfredo of almost of all of their natural behaviors, creating a high likelihood of both psychological and physical injury. As such, Defendants harassed both Bandit and Alfredo in violation of the ESA.” *Id.* at 21 (internal record citations omitted).
- Lemur (Bandit): The lemur “Bandit . . . suffered from a protracted respiratory infection for nearly two years, from 2016 till his death in January 2018. . . . It is also beyond dispute that Bandit exhibited signs of significant distress. Both [experts] opine that Bandit’s ripping at his penis represented a long-term condition due to chronic stress and anxiety. Because Bandit suffered no underlying medical condition to explain his mutilated genitals, and in combination with the deplorable conditions in which Bandit lived every day—isolation or

⁴ On October 6, 2016, the USDA cited Tri-State for failing to provide the lion Mbube with adequate veterinary care and directed Tri-State to have a veterinarian with exotic cat experience examine the lion by October 10, 2016. Exh. 2, *supra* note 1 at 82. Critically, as trial evidence in the ESA Action revealed, Tri-State failed to comply with the USDA’s simple directive. *See e.g., id.; see also* Exh. 1, Mem. Op. at 10.

near isolation, stinky filth, predators nearby—the Court credits PETA’s experts’ conclusion that Bandit’s self-mutilation was in ‘response to chronic distress.’ . . . [D]efendants’ chronic lack of care to [lemur] Bandit harmed him. The Court further finds that Bandit’s self-mutilation was mostly likely the result of significant distress that was the natural byproduct of his living at Tri-State. Because Defendants confined Bandit to an environment that disrupted his normal behaviors leading to his self-mutilation, and because they then failed to monitor, treat, and alleviate those life-threatening and ultimately fatal injuries, they have both harmed and harassed Bandit in violation of the ESA.” *Id.* at 11-12, 21 (internal record citations omitted).

In addition to the above holdings, the court also found at the summary judgment stage of the ESA Action that Tri-State violated federal law by failing to provide a now-deceased tiger named Cayenne with adequate veterinary care. *People for the Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of W. Maryland, Inc.*, 397 F. Supp. 3d 768, 776 (D. Md. 2019) [Exh. 8]. Specifically, the court held that “‘Cayenne died due to the lack of basic veterinary care,’” after being anesthetized by Tri-State’s attending veterinarian, Dr. Gale Duncan, who admitted that “she lacked *any* specialized experience or training in medical care for tigers.” *Id.* (internal quotation marks omitted). Cayenne went into respiratory arrest after Dr. Duncan put her under anesthesia. *Id.* at 773. Instead of reversing the anesthesia, Dr. Duncan continued with diagnostics despite the fact that she “lacked the skills or equipment” to provide Cayenne with necessary support while under anesthesia. *Id.* at 774. Then, “despite the high risk of an adverse reaction during the recovery period, Dr. Duncan left Cayenne unattended during anesthetic recovery, where she suffered from a heart attack and died. *Id.* at 776.

The District Court’s opinions in the ESA Action highlights Tri-State’s “flagrant and persistent violations” of federal law. See Exh. 1, Mem. Op. at 1. In light these years’ long, egregious violations, as well as Tri-State’s demonstrated unfitness for licensure, the USDA should terminate Tri-State’s license.

III. Renewing Tri-State’s AWA license would violate the APA.

Agency action is unlawful under the Administrative Procedure act (APA) if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious in violation of the APA “if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency.” *Perdue*, 872 F.3d at 611 (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)) (alteration in original).

As detailed below, Tri-State is not in compliance with the AWA and cannot demonstrate compliance with the AWA and the regulations promulgated to ensure the humane care of animals. While the USDA only conducted one inspection at Tri-State this past year, the facility’s history of chronic noncompliance and its current, ongoing noncompliance are demonstrated extensively in the evidence attached herein and discussed below.

A. Tri-State routinely denies animals adequate veterinary care.

Tri-State has demonstrated a pattern of failing to adequately prevent and treat serious, and in some cases *fatal*, health problems, which has persisted since Tri-State’s last license renewal. Despite Tri-State’s obligation to provide adequate veterinary care for its animals in accordance with AWA regulations, *see* 9 C.F.R. § 2.40, the court in the ESA Action, which had an independent duty to assess compliance with the AWA for the purposes of ESA liability, *see Graham v. San Antonio Zoological Soc’y*, 261 F. Supp. 3d 711, 744 (W.D. Tex. 2017), determined that “[Tri-State] never came close to complying with this regulation.” Ex. 1, Mem. Op. at 3 (emphasis added). The following incidents exemplify Tri-State’s chronic and ongoing failure to provide animals in its care with adequate veterinary care:

- In September 2019, two Himalayan bears at Tri-State were observed to suffer from “obvious chronic, severe and painful dental disease.”⁵ At that time, the bears were also observed chewing on the enclosure fencing, which veterinary expert, Dr. Kim Haddad, opined “further traumatiz[es] their teeth.”⁶ When these concerns were brought to the attention of Mr. Candy and his attending veterinarian, Dr. Duncan, Mr. Candy responded that the bears belonged to another zoo. Even if this were the case, AWA regulations mandate that Tri-State—who has had custody of these bears for *at least 6 years*⁷—provide adequate veterinary care to the animals in its care.
- Kumar the tiger was denied adequate veterinary care for a prolonged period before his untimely, long and painful death on July 7, 2019. Exh. 1, Mem. Op. at 12. Kumar—who went down on June 27, 2019, and could not stand or eat—was observed dragging himself approximately 30 feet across his enclosure. *Id.* Tri-State’s attending veterinarian “strongly recommended euthanasia,” but Tri-State did not heed her advice. Necropsy results revealed that Kumar suffered from chronic, untreated conditions that could have been easily addressed in a timely fashion if Kumar had been provided with appropriate veterinary care. For example, Kumar’s mouth was “riddled with ulcers, cuts, and other injuries . . . Large portions of two canine teeth were missing, exposing raw pulp. One canine tooth had punctured Kumar’s mandible, creating a deep, penetrating wound.” *Id.* at 13 (internal record citations omitted). The ulcers, broken teeth, and wounds were “chronic” and “consistently painful.” *Id.* Kumar also suffered from painful ulcers and lesions on his paw pads and hind legs, which “presented as having developed over time.” *Id.* He also suffered from a distended colon and “a two-centimeter long tear and hemorrhaging in the membrane of his abdominal cavity.” *Id.* Not only did Tri-State deny Kumar adequate and timely veterinary care, thereby allowing these painful conditions to persist for many years, his suffering was also inexcusably prolonged due to Mr. Candy’s refusal to comply with his attending veterinarian Dr. Duncan’s advice to euthanize Kumar.

⁵ Supplemental Expert Report of Kim Haddad (Oct. 29, 2019) at 22-24 [Exh. 9].

⁶ *Id.*

⁷ See USDA Inspection Report Inventory (Nov. 6, 2014) [Exh. 10].

- The tiger India—who did not receive *any* routine examinations or preventative veterinary care, *id.* at 13—was denied adequate veterinary care throughout her life and up until her untimely death. While alive, India suffered from chronic flystrike: “[her] ears had been eaten so badly and for so long that the veterinarian who performed her necropsy believed that her ears had been ‘surgically truncated.’” *Id.* at 14. Despite this fact, Tri-State “did not take steps to rectify the source of the problem. . . .” *Id.* Evidence in the ESA Action further showed that India died on August 14, 2019, of myocarditis and sepsis, the latter of which was “likely due to an untreated or poorly treated bacterial infection and . . . the myocarditis was in turn the result of the sepsis,” according to the pathologist that Tri-State engaged. *Id.* 13. Veterinary expert Dr. Kim Haddad opined that India’s enlarged heart is a condition that is “‘considered incredibly painful . . . like having a heart attack,’” and that the “pus-filled pockets in her heart and diaphragm made her every breath painful.” *Id.* at 13-14. A month before India’s death, Mr. Candy’s notes reflected that India ate three times, and post-mortem records indicated that, at the time of death, her “intestinal tract was completely empty, and she was pale and icteric.” *Id.* at 13. India was not examined by a veterinarian until she was gravely ill. *Id.* And even then, Mr. Candy declined to comply with Tri-State’s attending veterinarian Dr. Duncan’s recommendation that he transfer India to a facility that could conduct further diagnostics and surgery. Despite India’s “incredibly painful” conditions, India received no pain management and no palliative care. *Id.* at 14.
- The tiger Cayenne also died due to the lack of appropriate veterinary care. AWA regulations require attending veterinarians to have experience “in the care and management of the species being attended,” 9 C.F.R. § 1.1, and for licensees to maintain programs of veterinary care that include “[t]he use of appropriate methods to . . . diagnose . . . diseases,” 9 C.F.R. § 2.40(b)(2). In direct violation of these regulations, Cayenne was anesthetized for a simple blood test and x-rays by Dr. Duncan, who “lacked *any* specialized experience or training in medical care for tigers” and did not have access to standard monitoring equipment or anesthetic reversal agent in contravention of generally accepted standards of veterinary care. Exh. 8, *People for the Ethical Treatment of Animals, Inc.*, 397 F. Supp. 3d at 774-76. Cayenne—who had already experienced respiratory arrest soon after being anesthetized—was left unattended during recovery while Dr. Duncan vaccinated a free-roaming domestic cat at Tri-State. *Id.* at 773-74. When Dr. Duncan returned, Cayenne was dead. *Id.* at 774.
- The tiger Mowgli was left to suffer from a reoccurring skin condition, which “manifests itself in red, itchy hotspots and large patches of lost fur.” Exh. 1, Mem. Op. at 15. Mowgli’s skin condition was credited to be caused by Tri-State’s “dereliction” including confining him to an enclosure that was “uninsulated, damp, rarely cleaned, and filled with feces and rotting carcasses.” *Id.* at 16. At trial, Tri-State “produced no record evidence that Mowgli has *ever* had a routine examination by a veterinarian or received basic vaccinations.” *Id.*
- Tri-State denied the lion Peka adequate veterinary care by failing to have a veterinarian properly examine or treat her abnormal gait. As the court in the ESA Action found, Peka’s “abnormal gait likely causes Peka discomfort and pain and puts her at risk of further joint problems such as degenerative joint disease.” *Id.* at 15.

- The lemur Bandit was also denied adequate veterinary care. During his life, he suffered from “untreated pain” stemming from a “protracted respiratory infection for nearly two years, from 2016 till his death in January 2018.” Exh. 1, Mem. Op. at 11. Bandit was also found to have “exhibited signs of significant distress,” including by self-mutilating by tearing off part of his genitals. *Id.* at 12. According to veterinary and animal behavior experts, Bandit’s self-mutilation “represented a long-term condition due to chronic stress and anxiety.” *Id.* Veterinary records produced by Tri-State indicated that Bandit did not receive “any [veterinary] examinations until the day of his death,” when he was “bleeding from the genital area” and hypothermic. *Id.* at 11.
- Tri-State also failed to have a veterinarian examine a Japanese macaque, Mrs. Mack, until she had a baseball-sized firm mass and maggots in her vaginal area.⁸ When her condition was finally brought to Tri-State’s then-attending veterinarian Dr. Fox’s attention in April 2017, Mrs. Mack was “down-n-out”—“prognosis poor.”⁹ Mrs. Mack subsequently died.¹⁰

B. Tri-State routinely denies animals adequate nutrition.

Tri-State has also demonstrated a pattern of failing to provide animals with wholesome, appropriate food in direct contravention of AWA regulations, which mandate that: “[f]ood . . . be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health,” and that “diet[s] . . . be prepared with consideration for the age, species, condition, size, and type of the animal.” 9 C.F.R. § 3.129(a). The following are examples of Tri-State’s failure to abide with this basic regulation:

- In the ESA Action, the court found that Tri-State failed to provide for the lion and tigers’ “basic nutritional needs.” Exh. 1, Mem. Op. at 9. This was evidenced, in part, by pathological findings for tigers India and Cayenne, which showed they had “abnormal amounts of fat around their vital organs, which was likely due to “chronic nutritional imbalances.”¹¹
- During the pendency of the ESA Action, Mr. Candy “admitted to allowing carcasses to remain in the Big Cats’ enclosures for up to three days, or six times as long as recommended by the USDA.” *Id.* at 8. As the District Court found, Tri-State’s “repeated defiance of USDA [nutritional] guidelines presents not only loss in nutritional value but also places the Big Cats at risk of ‘serious [gastrointestinal] diseases’ including sepsis, from which India succumbed.” *Id.*
- Tri-State was also found to handle frozen meats fed to the animals at Tri-State in a manner that defies USDA’s Manual on Handling Frozen/Thawed Meat and Prey Items Fed to

⁸ Patient Record [Exh. 11].

⁹ *Id.*

¹⁰ Deposition Transcript of Robert Candy (excerpt) (Mar. 16, 2018) at 112:7-113:1 (testifying that the male Japanese macaque was transferred to another facility in 2017 after the female macaque died) [Exh. 12].

¹¹ Trial Transcript, Vol. 3 (excerpt) (Nov. 20, 2018) at 13:11-15 [Exh. 13].

Captive Exotic Animals. Specifically, Mr. Candy thaws meat in a heated furnace room under the reptile exhibit. The meat, which is exposed to free-roaming domestic cats who “foraged freely atop the packages,” is subsequently fed to animals at Tri-State. *Id.* at 9.

- In May 2018, Tri-State’s attending veterinarian noted that a miniature horse was “[s]everely underweight,” “weak [and] borderline cachectic.”¹² According to Mr. Candy, the horse reportedly “loses weight every winter – possibly being shoved out of [the] way by larger goats and other horse.”¹³ Although not regulated by the AWA, *see* 9 C.F.R. § 1.1 (defining “animal”), the relatively recent condition of this miniature horse is another example of Tri-State’s inability or unwillingness to provide animals in its care with appropriate nutrition.

C. Tri-State denies animals safe, sanitary enclosures.

Tri-State’s chronic AWA non-compliance is further underscored by the facility’s persistent failure to properly clean the animal enclosures, implement a “safe and effective” pest control program, and to prevent excessive water from pooling in the enclosures, in violation of 9 C.F.R. §§ 1.319 and § 3.127(c). As evidenced by the following references to the District Court’s findings in the ESA Action and related evidence presented in that case, Tri-State is routinely and, on information and belief, currently out of compliance with the AWA sanitation and outdoor facility regulations:

- The District Court found that the tigers’ outdoor enclosures, described as a “fetid cesspool,” “contained piles of feces . . . and large spots of urine residue accumulated over time.” Exh. 1, Mem. Op. at 3, 8. Pools provided for swimming were found to be “filthy, static, and filled with feces.” *Id.* at 19. The indoor enclosures were likewise found to be filthy: “tufts of fur coated rusted bars, and carcasses, bones, feathers, fur, and debris mixed with dirty straw.” *Id.* at 3. Mowgli the tiger’s den was further described as “damp, rarely cleaned, and filled with feces and rotting carcasses.” *Id.* at 16. As the District Court aptly noted: “The filthy state of the tiger’s enclosures is shocking but not surprising—no protocol or schedule for cleaning and sanitation of the tigers’ enclosures exists at Tri-State.” *Id.* at 19.
- The District Court further found that in the reptile room, where a squirrel monkey is held, “decaying remnants of fruits and vegetables were scattered across the floor, and there were [] large smears of feces, presumably from the sulcata [tortoises].” *Id.* at 2 (alterations in original).
- As recently as September 22, 2019, the water in the outdoor portion of the bear enclosure was observed to be filthy.¹⁴ A member of the public observed the pool in a similar condition

¹² Mountainview Veterinary Service, Patient History Report (May 29, 2018) at 2 [Exh. 14].

¹³ *Id.*

¹⁴ Exh. 9, Supplemental Expert Report of Kim Haddad (Oct. 29, 2019) at 22 (noting that the bears were confined to a “barren enclosure with a pool of filthy water.”).

in July 2018. At that time, the pool water was described as “covered in green algae and scum.”¹⁵

- During a March 3, 2018, court ordered site inspection, animal behavior expert, Mr. Jay Pratte observed and documented “standing water in many animal exhibits, indicative of a clear lack of drainage and persisting muddy conditions.”¹⁶ Mr. Pratte also observed “clear presence of rodent activity and damage throughout facility: access holes chewed through wood, feces left on surfaces, paths and holes in ground in and around animal exhibits.”¹⁷

* * * *

Tri-State’s current and routine noncompliance with the AWA and its implementing regulations, demonstrates the entity’s complete disregard for the AWA and its unfitness to be licensed. As evidenced by the attached exhibits, Tri-State’s operations are “routinely and currently out of compliance with AWA standards,” and thus cannot be lawfully issued a renewal. *Perdue*, 872 F.3d at 620. Indeed, renewal of Tri-State’s license would be arbitrary, capricious, an abuse of discretion, and contrary to the purposes of the AWA.

IV. CONCLUSION

Because the USDA cannot rely on Tri-State’s self-certification of compliance, and because the evidence shows that Tri-State routinely fails to comply with AWA standards and has operated in flagrant violation of federal law, the USDA must terminate and/or not renew Tri-State’s license.

¹⁵ See, e.g., Declaration of Connie Collins (Aug. 27, 2018) at ¶ 8 [Exh. 15].

¹⁶ Expert Report of Jay Pratte re Tri-State Zoological Park of Western Maryland (June 2018) at 79 [Exh. 16]. *See also id.* at 83 (photos of standing water and mud in animal enclosures).

¹⁷ *Id.* at 80.

Due to an ongoing lawsuit with PETA, we have concern about the welfare of our two tigers and lioness that have been removed from The Tristate Zoo/Animal Park Care and Rescue. Cheyenne is a 17-year-old general tiger, Mowgli is a 10.5-year-old white tiger, and Peka is an almost 9-year-old lioness. PETA, using exaggerated and untrue information, was allowed to remove and transfer our three cats, taking them to The Wild Animal Sanctuary in Keenesburg, Colorado. The following is a record of their transfer on 2/5/2020 and a recent visit on 2/29/2020, by Bob Candy and Jessica Candy-Simmons. We request further investigation into the improper care at The Wild Animal Sanctuary and by PETA.

There are some concerns pertaining to the removal of our three big cats. PETA's vet, Dr. Denver, came to inspect them for transport and just did a visual check – for only about 15-20 minutes total time. There was no physical inspection, blood tests done, or weights gotten in order to give the proper dose of sedation.

On 2/5/2020, Pat Craig, his son, three PETA representatives (Britany Peet and two lawyers) and a veterinarian and their intern came to The Tristate Zoo to remove and transport our cats. Sedation was given by dart gun and jab pole/syringe. We inquired about the sedation given and were refused that information by PETA. We did warn them that Mowgli has had some concerns under sedation in the past (takes a long time to come out of it).

Cheyenne was the first to be sedated. She was carried out by Pat and his son and assisted by PETA's lawyers – this is concerning because a non-trained PETA representative going into a tiger pen is a violation and a danger to themselves and the tiger. She was loaded into a 6x6 rolling cage and left sitting outside the trailer while the others were sedated.

Mowgli was second to be sedated. It was done in a similar fashion as Cheyenne -dart gun then jab pole/syringe. [The actual dart is still in the enclosure at The Tristate Zoo, it was not removed by PETA or Pat -which is a danger to anyone going in there. We do have pictures if needed]. Mowgli, well over 500lbs, was dragged out on a large sling by the same four people. There is evidence of the need to drag due to the hay on the floor being drug along with him. Also, because the construction of the doorways are not in line, they needed to bend him to be able to maneuver going around the corners. Plus, the doors are only three feet wide, so to fit a very large tiger and four people, they are not all fitting thru at the same time. Once out, he was also placed into a 6x6 rolling cage and sat next to Cheyenne in an open area. Though both sedated, the tigers were left unsupervised by PETA's veterinarian while going to sedate the lioness Peka.

Peka was darted with the rifle inside her housing but was not locked in so stumbled out into her open area. She then needed hit again with the jab pole -which scared her and made her jump and flip around. The same people carried her out of her enclosure and across the tiger bridge (~150 feet?) and placed in a 6x6 rolling cage also.

Still sedated, the cages were then loaded onto a 24-30 foot trailer; Cheyenne first - putting a solid barrier in-between her and Mowgli, then another barrier between him and Peka, then an empty cage to fill the trailer. It would have been very difficult to get to Mowgli or Peka if a problem arose. We inquired if a Vet would be going along for the transport -PETA refused to answer, but we believe no Vet went along for the 2.5 day trip. (Dr. Denver lives in Port Deposit, Maryland, about 200 miles the other

direction). We do not know when the cats came out of sedation or how/what they were given for food or water for those 2.5 days (plus laying in any feces). *They had not received any food 24hrs prior to removal as instructed for safe transport/sedation. Our cats were removed on Wednesday 2/5, and although The Wild Animal Sanctuary reported on Facebook that the cats arrived safely on Thursday 2/6, PETA reported to the courts that they arrived on Friday 2/7.

In Summary, we have the following concerns:

- Why was PETA allowed to “police” the transport, they have no authority.
- We find a problem with elderly and healthy animals being sedated and transported long distances without valid medical reasons.
- The actual sedation and movement (dragging and lifting, plus the dart gun and jab pole could be traumatic) was harmful.
- The lack of proper inspection done by PETA’s vet before transport and the lack of Vet supervision once sedated and during travel.
- Use of untrained and physically incapable staff from PETA (2 lawyers and a representative) to enter and assist in moving our cats.

Bob Candy and daughter Jessica Candy-Simmons made a surprise trip out to Colorado to visit The Wild Animal Sanctuary and see the condition of our cats with our own eyes. (Neither Pat Craig nor PETA will give any information besides “they arrived safely”). Upon arrival, Pat Craig and an associate would not allow us to take any pictures or videos so -yet they video recorded us the entire time so they we could not “falsify” anything. We believe this is due to our surprise visit and seeing the animal’s true conditions.

Our first stop was to see our Lioness Peka. Unfortunately, we found her to be in poor condition. She had been moved to the vet clinic and they found out her albumin levels were low -which can be attributed to nutrition issues and stress/shock (she had been eating and drinking fine while at The Tristate Zoo). She had multiple injuries to her body -missing hair and cuts to her tail, left back leg and forehead, and her nose looked raw and bleeding. She seemed very disoriented also, very confused and scared and did not respond right away to our voices as she always had done. PETA’s vet had cleared all three for travel - with no issues. USDA Inspector/Animal Care Specialist, Dr. Jamilon Niemann, inspected the cats the day before they were taken and observed no issues either. Therefore, Peka’s condition was caused during transport or while at The Sanctuary -but after 24 days, the seriousness of her injuries are concerning, they should be healed up by now if was “just bumped around” during transport. Pat did not mention any injuries upon arrival, just that he was surprised that she liked the male lion in the cage next to her. [Jess also took pictures of the cats within a few days of them leaving The Tristate Zoo, can send if you like]. Pat and his veterinarians agreed that she has been walking fine and did not observe any issue about a muscle problem in her leg, as PETA reported. He also stated that no blood tests had been given to any of the three upon arrival, because they seemed fine and there was no reason too. (Another issue PETA reported).

We next visited Cheyenne and Mowgli -they were being held in 16x16(?) chain link cages, located inside a large field, with only a concrete culvert pipe in each as housing. There was no shade, heat, enrichment or ledges to climb. Both of their water tubs were empty (started filling right as we arrived....) and there was hay on the ground. Neither had a catch cage so unsure how they clean them and put in the hay and food. Mowgli showed no signs of the reported (by PETA) skin condition but Pat agreed that it is common in White tigers. The cages are a concern because even though they meet the USDA minimum standards, our tigers come from much larger enclosures at The Tristate Zoo, with enrichment, toys and ledges to climb on.

Cheyenne, a 17-year-old tigress, has been at The Tristate zoo her whole life and has been observed by the USDA, and considered very healthy. She recognized us immediately and started licking our hands and chuffing while we pet her, and was heartbreaking watching her, watch us leave. We are unsure how long she has been in this small cage, but Pat said he MAY just let her out into the field area that her cage is located inside -alone, off the path of visitors, with no trees/shade and currently no enrichment or ledges in it. The sanctuary only has 8-foot-high fencing around its fields, which she may be able to get out of. Mowgli, a 10.5-year-old white tiger, also recognized us and was lovey and playful to us. He is in the same situation as Cheyenne but ut we are unsure of his future habitat.

A large cat that has lived its entire life surrounded and loved by humans, will not benefit or thrive by changing its natural behavior, being put into an empty lonely field, with minimal human interaction. (Many of their animals do not look like they would be visible to any visitors). For a tiger at least, "Natural" would be a jungle or forest -with trees to climb or at least man-made ledges to lay on.

In Summary:

- Upon the cat's arrival at The Wild Animal Sanctuary, they have been living in inadequate areas and not given the proper care.
- Peka, the lioness, has suffered and shows evidence of a number of injuries that were not visible before she left The Tristate Zoo and there is also now evidence this has caused possible neurological issues and stress.
- Cheyenne and Mowgli are now in small cages with no shade, heat, enrichment, trees or ledges - how long have they been in these and for how much longer will they be? Pat has claimed they will both be placed alone in their new areas, so why not place them in a larger one already? Plus their water tubs were both empty when we arrived and just happened to be filling them as we were there? And where will Peka be going into?
- There is a big concern for our cat's futures if they stay at The Wild Animal Sanctuary. Their "Good care" has been well documented by USDA and our Veterinarian's while at The Tristate Zoo. PETA's reason for removing Peka was for her "abnormal love for owner Bob Candy causing brain atrophy" -though she showed no signs of distress until she was at the Sanctuary. We consider moving them as harm and harassment. Or under the Endangered Species Act – TAKE. They were used to human interaction and enrichment and affection – to be taken and placed alone in a barren field of nothing with limited human interaction. We also do not believe the Sanctuary offers a "Natural Setting" as they claim. Larger spaces do not equal a more natural setting – and tigers enjoy trees and water, not open empty fields.

We believe that The Wild Animal Sanctuary may serve a purpose but categorizing all large mammals as having the same natural behaviors is inaccurate. Natural Behavior is how EACH develops, just like a person, you learn as you grow, and this upsets their "natural behavior" being ripped away from all they know -especially elderly animals.



USDA, APHIS, Animal Care



ANIMAL WELFARE COMPLAINT

Complaint No. AC21-109	Date Entered 2-Jan-21	Received By Robert Baxter
Referred To Jeffrey Shepherd	Reply Due 1-Feb-21	

Facility or Person Complaint Filed Against

Name TRISTATE ZOOLOGICAL PARK OF WESTERN MARYLAND	Customer/License/Registration No. 15730 / 51-C-0064		
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Address 12605 MOORES HOLLOW ROAD	City CUMBERLAND	State MD	Zip	Phone No 240-727-8051
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Complainant

Name (b) (6), (b) (7)(C), (b) (7)(D)	Organization PETA Foundation
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Address	City	State	Zip	Phone No./Email address (b) (6), (b) (7)(C), (b) (7)(D) petaf.org
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How was complaint received?
E-mail

Details of Complaint: See Attached

Results: An inspection of animals and facilities were conducted at the Tri-state Zoo on January 8, 2021. At the time of inspection all animals received wholesome food; had access to water; and were evaluated by the attending veterinarian on the regularly scheduled visit. All animals were housed in appropriate enclosures.

Himalayan Black Bears

A care plan for the bears was developed by the attending veterinarian during a routine facility visit in October 2020. In December 2020, the attending veterinarian and a veterinarian that works for an AZA accredited facility that has experience with exotics performed physical examinations, took blood for testing, and did dental work for both Suzie and Sally. The bear in the Facebook photo is "Suzie". The attending veterinarian stated that the left eye does have some opacity that was consistent with an immature cataract. According to several veterinarians, the cataract is not causing any pain or discomfort to the animal and Suzie does not appear to be having any difficulty maneuvering normally in her enclosure. Due to their advanced age, both bears will be monitored for any age-related changes.

Application packet provided? Yes No

INSPECTOR

Gloria S. McFadden

DATE

22-Jan-21

REVIEWED BY

Jeffrey Shepherd, SACS

DATE

22-Jan-21



Animal and Plant
Health Inspection
Service

Animal Care

Fort Collins Office
2150 Centre Avenue
Building B, 3W11
Fort Collins, CO 80526
Phone: 970-494-7478

January 2, 2021

(b) (6), (b) (7)(C), (b) (7)(D)

Dear Complainant,

Thank you for your correspondence dated December 18, 2020. We are reviewing your concerns and assigned tracking number AC21-109. Please allow us enough time (30 to 60 days) to thoroughly look into your concerns. You may submit a request to the Animal and Plant Health Inspection Service (APHIS) Freedom of Information Act (FOIA) office to obtain any publicly available information regarding our review.

FOIA Requests can be submitted three ways:

1. Web Request Form: <https://efoia-pal.usda.gov/App/Home.aspx>
2. Fax: 301-734-5941
3. US Mail:
USDA- APHIS- FOIA
4700 River Road, Unit 50
Riverdale, MD 20737

Should you have any questions regarding the APHIS FOIA process or need assistance using the Web Request Form **please contact the APHIS FOIA office at 301-851-4102**.

Animal Care is a program within the U.S. Department of Agriculture (USDA) that directs activities to ensure compliance with and enforcement of the Animal Welfare Act and the Horse Protection Act. Animal Care establishes standards of humane treatment for regulated animals and monitors and achieves compliance through inspections, enforcement, education, and cooperative efforts under the Acts.

Please be assured that we will look into your concern(s) and take appropriate action(s).

Thank you for your interest into the humane treatment of these animals.

Sincerely,

Elizabeth Goldentyer, D.V.M.
Deputy Administrator
USDA, APHIS, Animal Care

From: (b) (6), (b) (7)(C), (b) (7)
To: (D)
Cc: APHIS-AnimalCare
Subject: D'Ambrosio, Andrea - APHIS
Date: Request to investigate Tri State Zoological Park, Lic. No. 51-C-0064
Attachments: Friday, December 18, 2020 6:41:18 PM
[Ex. 2 Dkt.182 MemorandumOpinion_PETAv.Tri-StateZoo.pdf](#)
[Ex. 3 Dkt. 138 Memorandum Opinion.pdf](#)
[2020-12-18 Request to Investigate Tri-State Zoo 51-C-0064.pdf](#)
[Ex. 1 2020-12-13 Jessica Candy Simmons FB bear photo 2.pdf](#)

Dear USDA Animal Care,

Please see the attached correspondence, sent on behalf of (b) (6), (b) (7)(C), (b) (7)(D) for PETA, requesting an inspection of Tri State Zoological Park (license number 51-C-0064). Thank you for your timely attention to this matter. Please inform me of the complaint number your agency assigns to this correspondence.

Regards,

(b) (6), (b) (7)(C), (b) (7)(D)

Captive Animal Law Enforcement
PETA Foundation

(b) (6), (b) (7)(C), (b) (7)(D)

December 18, 2020

USDA/APHIS/Animal Care

Via e-mail: Animalcare@usda.gov

Re: Request for Investigation of Apparent Animal Welfare Act Violations
at Tri State Zoological Park Of Western Maryland (License No. 51-C-0064)

Dear USDA Animal Care:

I am writing on behalf of PETA to request that the U.S. Department of Agriculture investigate Tri State Zoological Park Of Western Maryland ("Tri-State," License No. 51-C-0064) for a Himalayan black bear in apparent need of veterinary care in violation of the Animal Welfare Act (AWA).

On December 13, 2020, Jessica Candy Simmons posted photos on [Facebook](#) of two Himalayan black bears named Suzi and Sally at Tri-State. One of the bears appears to have opacity of both eyes, lateral strabismus of the right eye (lateral deviation/eye is turned to the side instead of facing forward) with a prominent/raised third eyelid, all indicators of prominent ocular disease. (*See Ex. 1.*) The opacity of the left eye is consistent with corneal ulceration due to trauma, entropion, distichia or other causes, although uveitis and an underlying condition may also be present and, if left untreated, either condition can lead to severe complications including chronic pain and blindness. The lateral strabismus, prominent third eyelid and opacity of the right eye is equally concerning and warrants immediate evaluation as this presentation can also indicate a painful and serious underlying condition that can have severe consequences if not treated.

In my twelve years of clinical and research experience with Asiatic black bears, including serving as the senior veterinarian at an accredited sanctuary overseas, providing veterinary care to over 170 rescued bears, the majority of whom were Asiatic black bears, I have diagnosed, treated, and managed multiple bears with various forms of ocular disease and attest that bears are impressively stoic and hide pain. It is therefore imperative that a thorough ophthalmic examination by a trained and qualified veterinarian with experience handling, anesthetizing, and treating bears, ideally in consultation with an ophthalmologist, is needed in addition to performing a comprehensive physical examination and appropriate diagnostics to institute timely and appropriate treatment, including appropriate analgesia/pain management.

Please inspect this bear and her veterinary records, and ensure that she is receiving adequate veterinary care pursuant to 9 C.F.R. § 2.40. As required by 9 C.F.R. § 2.40, please also ensure that Tri-State consults with a qualified veterinarian who is trained and experienced in treating bears as Tri-State's most recent known attending veterinarian lacked training and experience with big cats and primates, and appeared to have very limited experience with other exotic animals. (*See Ex. 2, pg. 7 and Ex. 3, pg. 6.*) In fact, the United States District Court for the District of Maryland found that her inadequate care of at least one tiger at Tri-State led to that tiger's death and stated

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that "the provision of veterinary care remained grossly inadequate" under her care. (See Ex. 2, pg. 9 and Ex. 3, pg. 7-8.)

Please ensure that all animals at Tri-State are being provided with adequate veterinary care, space, shelter, food, and water and are otherwise handled in accordance with the AWA. Please also hold Tri-State fully accountable for all violations that you discover during your inspection.

Thank you for your attention to this important matter. Please inform me of the complaint number that your agency assigns to this correspondence.

Very truly yours,

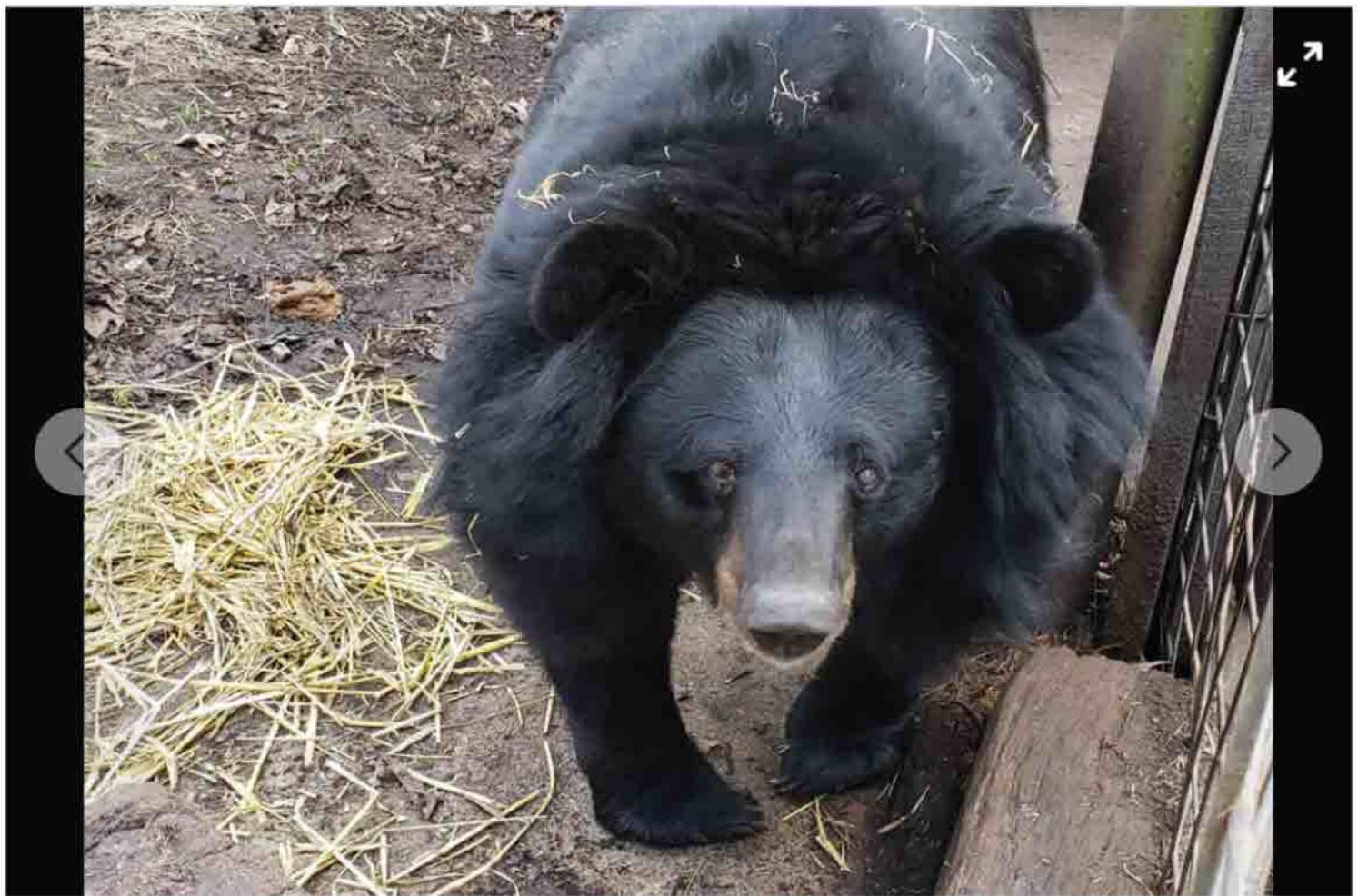
(b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D)

Wildlife Veterinarian, Captive Animal Law Enforcement

(b) (6), (b) (7)(C), (b) (7)(D)

cc: Andrea D'Ambrosio, Animal Care Inspector, (andrea.d'ambrosio@aphis.usda.gov)



Jessica Candy Simmons

Yesterday at 10:35 AM · Cumberland, MD ·

...

— at Tri-State Zoological Park.

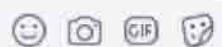
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.,

*

Plaintiff,

*

v.

Civil Action No. 8:17-cv-02148-PX

TRI-STATE ZOOLOGICAL PARK OF
WESTERN MARYLAND, INC., *et al.*,

*

Defendants.

*

MEMORANDUM OPINION

This opinion and order follow a six-day bench trial brought by People for the Ethical Treatment of Animals (“PETA”) against Defendants Tri-State Zoological Park of Western Maryland Inc., Animal Park, Care & Rescue, Inc., and Robert Candy (collectively, “Tri-State”), the owners and operators of a zoological park in Cumberland, Maryland. ECF No. 26 ¶¶ 12–14. The animals protected under the Endangered Species Act (ESA)—the lions, tigers, and lemurs—are the subject of this lawsuit. ECF No. 1 ¶¶ 2–3.

Shortly before this lawsuit began, Tri-State was home to two lemurs, Bandit and Alfredo; five tigers, Cheyenne, Cayenne, India, Kumar, and Mowgli; and two lions, Peka and Mbube. Since 2016, five of the nine animals, more than half of the protected species, have died at Tri-State. Alfredo has been transferred to the Maryland Zoo (JX7 at 3), and only Cheyenne, Mowgli, and Peka remain alive and at Tri-State.

PETA initiated suit on July 31, 2017, alleging violations of the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* ECF No. 1. The suit proceeded to summary judgment and on July 8, 2019, this Court granted in part and denied in part summary judgment in PETA’s favor. ECF No. 138.

At trial, PETA argued that Defendants have violated the ESA by subjecting the protected animals to harm and harassment. PETA contended that Defendants have committed a “take” as understood in the ESA arising from Tri-State’s provision of unsanitary living conditions, poor diets, substandard veterinary care, and inadequate shelter and enrichment. Trial exposed Tri-State and Candy’s flagrant and persistent violations of the ESA. For the following reasons, and based on the following facts, the Court finds in favor of PETA on all theories of liability.

I. Findings of Fact¹

A. General Conditions Affecting the Protected Species

1. The Zoo Grounds

The uncontested testimony reflects that every animal at issue suffered under Tri-State’s living conditions. The zoo is situated on sixteen acres of what used to be an old campground. Trial Tr. vol 5, 11. Past the ramshackle entrance are a range of enclosures and buildings that house its approximately fifty animals. Trial Tr. vol. 5, 21–22; JX37. These include a gated farm animal enclosure, a reptile room and a kinkajou room, both situated around the corner of a kitchen in which food is prepared, an aviary across the path from the reptile room, an approximately six-foot diameter pool for large alligators, and a group of small primate enclosures. *See generally* JX37. And, of course, the zoo houses separate enclosures for the tigers, lions, and lemurs.

Trial evidence demonstrated that since PETA began its investigation, the animals have

¹ The evidence presented at trial largely consisted of PETA’s undercover visits (December 11 and 12, 2014; January 28, 2015; and March 5, 2015) (Trial Tr. vol 1, 53); PETA’s site inspections conducted after this lawsuit commenced (March 3, 2018 and September 22, 2019) (ECF No. 34; PX84; ECF No. 145); the expert testimony and reports of Dr. Kim Haddad, a veterinarian with education and training in small primates and Big Cats, and Mr. Jay Pratte, a specialist in the field of animal husbandry; records kept by Tri-State; and abundant video and photographic evidence obtained by PETA during the course of its many visits to the facility. The Court also admitted deposition testimony of several witnesses, including Connie Collins, Stuart Henstock, Christopher Fontes, and Brittany Peet. On behalf of Tri-State, the Court heard from Robert Candy, Tri-State’s owner and founder.

been housed in fetid and dystopic conditions. Filth and feces dominate Tri-State. PETA's undercover investigation in 2014 and 2015 documented animal excrement throughout the zoo grounds—in the kitchen where animal food is prepared, the room that houses the reptile exhibits, the grounds generally, and in each of the protected animals' enclosures. *See generally* PX20–24; PX30; PX45–47; PX74; PX77; *see also* photos below (documenting feces and decaying vegetables in kinkajou cages and the aviary across more than a month).



Kinkajou cage, PX45 at :53 (12/12/2014)



Kinkajou cage, PX46 at :59 (1/28/2015)



Kinkajou cage, PX45 at 1:13 (12/12/2014)



Kinkajou cage, PX46 at :51 (1/28/2015)



Aviary, PX76 at :12 (12/12/2014)



Aviary, PX47 at :38 (1/28/2015)

Rotting vegetables spilled over large receptacles, decaying meat sat in piles outside the kitchen and in the furnace room under the nearby reptile house, and decomposing carcasses were left for days in the enclosures for the tigers and lions (collectively “Big Cats”). *See generally* PX21–22; PX27; PX73–74; PX77. General filth coated the kitchen, from the walls and sink to the refrigerator. PX75; Trial Tr. vol. 2, 101. A trashcan filled with waste stood uncovered. *Id.*



Moldy sweet potatoes
PX75 at :14 (12/11/2014)



Uncovered kitchen trashcan
PX75 at :09 (12/11/2014)

Outside the kitchen, piles of donated produce lay unrefrigerated, many in a state of decay and long past their expiration dates. PX73; PX19; PX17; Trial Tr. Vol. 1, 80, 97, 100. Free-roaming cats, chickens, and ducks took turns scavenging the piles. *Id.*



Food stored in piled boxes outside the kitchen, PX17 (3/4/2015); PX 32 (12/11/2014)



In the reptile room, just feet away from the kitchen, “decaying remnants of fruits and vegetables were scattered across the floor, and there were [] large smears of feces, presumably from the sulcatas [tortoises].” PX74 at :00–2:09, 2:27–3:50; Trial Tr. vol. 1, 78–80. Rotten scraps of vegetables and feces scattered the marmoset cage, which is stationed in the reptile

room. PX77; Trial Tr. vol. 1, 92. Of the rooms near the kitchen, PETA investigator Stuart Henstock stated that they “smelled horrendous, [] an almost choking smell of feces” and of “rotting vegetables.” Trial Tr. vol. 1, 79, 89.



Accumulation of feces and rotten scraps of vegetables in the marmoset cage, located in the reptile room
PX77 at :47, 12/12/2014.

In the indoor tiger enclosures, tufts of fur coated rusted bars, and carcasses, bones, feathers, fur, and debris mixed with dirty straw. Trial Tr. vol. 1, 138–39, 144.



Mowgli's indoor enclosure, PX27 (12/14/14)



Cheyenne's indoor enclosure, PX20 (1/28/15)

The tigers' outdoor enclosures contained piles of feces, discolored water sources filled with decaying leaves, and large spots of urine residue accumulated over time. PX31; Trial Tr. vol. 1, 76; Trial Tr. vol. 4, 34.



Tiger enclosure, PX24 at 1:39 (12/12/14)



Tiger enclosure, PX16 (9/11/16)

Throughout the grounds, free-roaming animals traipsed between rooms and enclosures. See generally PX11; PX12; PX19; PX74; PX75; Trial Tr. vol. 1, 135. Scores of domestic cats, many of whom are unvaccinated, sported matted and unkempt fur along with crusted, watery, or bloody discharge seeping from their eyes, nose, or ears. JX39, Candy 30(b)(6) Dep. 336; PX12 at 1; Trial Tr. vol. 2, 66–68, 101–102. The cat in the screenshot below, for example, had “obvious ocular discharge,” according to Dr. Haddad. Trial Tr. vol. 2, 102.



Cat in kitchen, PX25 at 27 (12/11/14)

Candy and zoo volunteers take no precautions to minimize the filth or stop the spread of disease. Tri-State has no areas designated for cleaning that are standard at zoos and sanctuaries, such as footbaths and cleaning receptacles. Trial Tr. vol. 4, 10–11. Perhaps PETA investigators Stuart Henstock and Chris Fontes said it best: that even though they had visited dozens of zoos and sanctuaries combined, Tri-State was “the dirtiest” and “worst place” they had ever seen. Trial Tr. vol. 1, 101, 149.²

2. Inadequate Veterinary Care

Tri-State has never provided adequate veterinary care to its lemurs, tigers, and lions. The

² Although Tri-State attempted to clean in preparation of the 2018 and 2019 site visits, the conditions improved only marginally. See, e.g., PX11 at 18:29; Trial Tr. vol. 2, 105–06.

Animal Welfare Act (AWA) governing Tri-State's USDA-issued exhibitors license requires that Tri-State secure an attending veterinarian with species-specific training and experience. *See* 9 C.F.R. § 2.40(a) ("Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section."); 9 C.F.R. § 1.1 (defining attending veterinarian as a person who "has received training and/or experience in the care and management of *the species being attended*") (emphasis added). Defendants never came close to complying with this regulation.

Between 2009 and 2018, Tri-State employed Dr. Timothy Fox as the attending veterinarian. JX39, Fox Dep. 8–9. After PETA initiated suit, Dr. Fox was no longer willing to serve as the zoo's veterinarian, and he was replaced with Dr. Gale Duncan. Neither Dr. Fox nor Dr. Duncan had acquired any formal or informal training, education, or experience working with Big Cats or primates other than the animals at Tri-State. "I'm just a regular old veterinarian [,] I'm not a specialty in any of those zoo animals," Dr. Fox admitted. JX39, Fox Dep. 28. Dr. Duncan readily conceded that she did not have any experience with Big Cats or lemurs apart from some training in veterinary school. ECF No. 138 at 6.

Unsurprisingly, Dr. Fox and Dr. Duncan, in concert with Candy, utterly failed to implement a satisfactory program of veterinary care for the lions, tigers, and lemurs. The AWA provides that "each exhibitor shall establish and maintain programs of adequate veterinary care that include . . . the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries . . ." 9 C.F.R. § 2.40(b)(2). The Program of Veterinary Care (PVC) must be written, reviewed on an annual basis, and modified as needed. Trial Tr. vol. 2, 47, 77. Similarly, as is standard in any medical field, the provision of medical services must be documented contemporaneously. Applying here is the old adage, "if it is not written down, it did

not happen.” PX69 at 52; Trial Tr. vol. 3, 153.

Stunningly, Tri-State maintained only 86 pages of medical records in connection with Dr. Fox’s veterinary care for the *last decade* and for the *entire zoo population*.³ PX4. Some of the 86 pages are invoices or duplicates. Trial Tr. vol. 2, 73–74. Only 121 pages of records are associated with Dr. Duncan’s care. PX5. This shallow sheaf makes a mockery of the simple requirement that exhibitors maintain “documentation for all covered animals showing that current medical problems and existing chronic conditions are being addressed, and/or receiving proper care.” PX52 at 150 (USDA Animal Welfare Inspection Guide).

Although Tri-State minimizes the significance of its record-keeping failures, the fact remains that lack of such documentation detrimentally affects animal care. As Dr. Haddad explained, Big Cats especially do not manifest obvious signs of illness until their conditions are serious, if not terminal. Trial Tr. vol. 2, 72. Early detection and treatment of illness depends on recording seemingly trivial changes in animal behavior and appearance. Provision of related veterinary care must likewise receive the same careful documentation to ensure the animals receive proper and consistent care. Trial Tr. vol. 4, 7.

Tri-State has also abdicated its responsibility to provide its animals preventative or palliative care. Preventative care is fundamental to an adequate veterinary plan because “it [is] much easier to prevent disease than it is to treat it once [disease has] manifested itself. . . . The sooner you intervene in any kind of medical condition or illness, the much higher the likelihood of a successful outcome.” Trial Tr. vol. 2, 53. Preventative care requires, at a minimum, routine physical examination, blood tests, fecal examinations, and immunizations. Trial Tr. vol. 2, 54–56. Tri-State failed to provide any of it.

³ Although the zoo currently has approximately fifty animals in its care, it had “three times that much back in 2010.” Trial Tr. vol. 5, 22.

As to routine examinations, Tri-State records reflect little to no routine care for the animals. PX2 at 11–12. In 2014, Dr. Fox logged one visit to the zoo, and did not return for eleven months. *Id.* In 2015, he visited just twice. *Id.* Dr. Fox then waited an entire year to return and only did so for a focused evaluation of a terminally-ill Mbube in 2016. *Id.*; Trial Tr. vol. 2, 78–84. Another *year and a half* passed with no visits to evaluate *any* of the fifty-plus animals at Tri-State. PX2 at 11–12. In 2018, Dr. Duncan visited for the first time, *id.*, and Cayenne’s death at Dr. Duncan’s hands followed soon after. ECF No. 138 at 12. Even accepting Candy’s representations that he discussed with Dr. Fox and Dr. Duncan the animals’ care as needed, the consistent lack of in-person evaluations shows clearly that the provision of veterinary care remained grossly inadequate.

As a more concrete example, no record exists that any of the Big Cats received routine vaccinations for common and highly communicable diseases like rabies, panleukopenia, calicivirus, herpesvirus, as well as vaccines for distemper and feline leukemia virus, which are commonly administered to high-risk Big Cats. PX69 at 32; Trial Tr. vol. 2, 61–64. As grounds for not giving basic preventative vaccinations, Dr. Fox claimed “self-preservation...[g]iving a tiger a shot, that’s difficult” and “I don’t believe they are required to have any.” JX39, Fox Dep. 76. No record exists of routine fecal or blood tests performed on any of the animals at issue.

When the animals became sick, Tri-State utterly failed to provide adequate and timely care. 9 C.F.R. § 2.40(b)(2) requires the maintenance of programs of care that include the availability of emergency, weekend, and holiday medical assistance when needed. In addition, palliative treatment and pain management for serious illnesses is a basic standard of care that should be offered even if the cause of the underlying symptoms is unknown. See PX69 at 13. Failure to do so may exacerbate a condition and interfere with an animal’s ability to engage in

species-typical behavior. *Id.* Yet all the animals at issue have suffered from longstanding, chronic conditions for which veterinary care was always too little and far too late. Tri-State's "pattern of waiting until animals are very, very ill before either bringing it to the attention of the veterinarian or until the veterinarian actually comes out to look at the animals" has, according to PETA's experts, contributed to long and painful deaths of five endangered species. Trial Tr. vol. 2, 30.⁴

3. Lack of Enrichment

Overall the Big Cats and lemurs at Tri-State have lived in a bacteria-ridden wasteland, and in stark contrast to their natural habitats. General animal husbandry practices in the industry require that any exhibitor who chooses to keep captive such animals must provide adequate shelter and enrichment that resembles their natural habitat. Candy and Tri-State made no meaningful effort to even come close to industry standards. To illustrate the harm that Defendants have visited -- and continue to visit -- on the animals, the following section addresses each species separately.

a. Ring-Tailed Lemurs (Bandit and Alfredo)

Ring-tailed lemurs come from Madagascar, a tropical and lush island country in Africa. PX70 at 59. Lemurs naturally are social and highly developed. They travel in packs of seven to as many as thirty and enjoy complex social structures. *Id.* at 72. Accordingly, basic animal husbandry standards require that lemurs in captivity should be housed in groups of at least four to seven. *Id.* at 72–73; Trial Tr. vol. 4, 92–93. Forcing a lemur to live a solitary existence, as

⁴ Defendants violated generally accepted standards of care even after some of the animals at issue died. Performing a necropsy is a basic standard of care, especially on an animal protected under the ESA. Trial Tr. vol. 2, 136. Necropsies provide a definitive diagnosis for cause of death and help the zoo understand the cause and prevent it from affecting other animals. Trial Tr. vol. 2, 150. Yet Defendants failed to perform necropsies on Mbube and Bandit, even though both may have died from communicable diseases that could have infected their peer species or other animals at Tri-State.

was done to Bandit, visits permanent psychological and physical injury on a species born to engage in constant interaction with his kind. Trial Tr. vol. 2, 147–48; Trial Tr. vol. 4, 93.

The Madagascar habitat is complex and varied, such that lemurs have evolved to respond to and interact with its complex surroundings. PX70 at 59. For example, foraging, exploring, marking, and grooming are natural species-specific behavior developed in conjunction with their environment.



Lemur enclosure, PX12 at 12 (3/3/18)

Exhibitors who choose to care for lemurs must endeavor to replicate their natural habitat so that the animals may replicate their species-specific behaviors—which is to say, so they can simply *be* lemurs.

At Tri-State, the lemur enclosure, while sufficiently large, was barren and at odds with the lemurs' natural habitat. PX13; PX12 at 12; Trial Tr. vol. 4, 95–96. Defendants also never developed any real enrichment plan for the lemurs. Rather, Defendants' “enrichment” plan consisted of a single written page with four nondescript bullet points under “activities,” and no goals or appropriate list of usable items. PX2 at 20; Trial Tr. vol. 4, 94. The “plan” never

comported with generally accepted husbandry practices, and no evidence suggests that it was ever designed to provide the lemurs any opportunity to engage in the vast array of complex and diverse behaviors known to its species. *Cf.* PX70 at 102–07 (multi-page list from a small facility outlining dozens of items and opportunities to offer lemurs to elicit a wide-range of species typical behavior). Moreover, in the decade since the “plan” was created, it has never been updated.

In practice, too, Defendants failed its enrichment obligations to its lemurs. Animal husbandry standards call for complex enclosures with “horizontal platforms, horizontal bars, tree branches, hanging tires, plastic chains, and nest boxes,” PX69 at 7, along with a dynamic variety of sensory objects. *See* PX70 at 102. Yet at Tri-State, the enclosure was bare, with only a few dirty, old toys that hung in the enclosure *for years*. Trial Tr. vol. 4, 95; *See* PX30 at :50, JX19 at :44, PX13, PX11 at 6:35 (each depicting the same children’s toy hanging in the lemurs’ enclosure on December 11, 2014; January 28, 2015; September 16, 2015; and March 3, 2018, respectively). Moreover, the toys were often hazardous or unsanitary to the point of serving as disease carriers. Trial Tr. vol. 4, 97.

The Court credits the testimony of PETA’s animal husbandry expert, Mr. Jay Pratte, whose over 25 years of training, education, and experience aided this Court in its fact-finding mission. PX70 at 1. As Pratte opines, Defendants exhibited a stunning ignorance as to how to provide the lemurs an environment remotely appropriate to their species. Pratte found that Defendants did not have “any process, information, research done...into how [to]...alleviate these [] problems, let alone that they were even aware that they were a problem to begin with.” Trial Tr. vol. 4, 99.

Rather than being provided enrichment, the lemurs experienced a daily onslaught of

environmental horrors. Lemurs naturally are “olfactory” animals. They engage in scent marking and communication. Indeed, smelling is “inherent to their communication, to how they interact with one another, to detecting potential threats or resources in the environment.” Trial Tr. vol. 4, 100. Smells of dung and urine are not only “inherently irritating and stressful” to the lemurs, but also “obscure their ability to understand what’s happening in the world around them, and so [] directly impacts their ability to exhibit normal species-typical behavior.” Trial Tr. vol. 4, 100. In fact, exposure to such offending smells can cause lemurs physical pain and permanent damage to their mucous membranes. Trial Tr. vol. 4, 100.

At Tri-State, the lemurs were surrounded by filth that undoubtedly created a significant impediment to their ability to communicate. In their own enclosures stood feces and bird waste. Trial Tr. vol. 4, 89–90. Just feet away, the potbelly pig enclosure was piled with foul-smelling pig feces. Trial Tr. vol. 1, 67; PX30 at 4:52–5:30. Directly behind them was another fecal-ridden enclosure housing two barking dogs, PX30 at 3:26; Trial Tr. vol. 1, 66, or more aptly put, “a direct predator ten feet away that is vocalizing” and thus presenting a “constant source of distress.” Trial Tr. vol. 4, 85–87; JX19.

Moreover, the lemur enclosure’s indoor section gave little real shelter from the elements. Lemurs come from a tropical climate, and therefore do not have insulating coats to maintain internal body temperatures when exposed to the cold. PX70 at 61. Accordingly, for exhibitors who choose to house lemurs, the Association of Zoos and Aquariums (“AZA”) guidelines advise that lemurs not be subjected to temperatures below 45 degrees for longer than four hours, and that they should always have access to adequate supplemental heat. Trial Tr. vol. 2, 140; PX69 at 9. Exposure to such temperatures negatively affects lemurs’ health, which can lead to hypotension, suppressed appetite, and increased vulnerability to disease. Trial Tr. vol. 2, 144;

PX70 at 61.

Cumberland in the winter is decidedly not like Madagascar. Snow falls and temperatures dip below freezing several months of the year. JX19; Trial Tr. vol. 4, 86. In 2015 alone, the animals at Tri-State were exposed to temperatures below 45 degrees for four consecutive hours for 149 days. JX17. The lemurs had little refuge from this cold. For “insulation,” Candy provided two electric heaters and one heat lamp stationed below just one portion of the enclosure. PX70 at 61; Trial Tr. vol. 5, 225–26. Candy would monitor the temperature not by thermometer, but by whether the drinking water in the enclosure had frozen. JX39, Candy Dep. 151. No credible evidence exists that the heat source protected the lemurs from prolonged exposure to cold temperatures that are directly at odds with the climate of their African homeland.

b. Lions (Mbube and Peka)

The lions live in a similarly dissonant environment at Tri-State. Although lions come from far warmer regions than Cumberland, Maryland, at Tri-State they are forced to withstand temperature extremes without proper provision. The lion enclosures allow the cats to travel freely between an indoor and outdoor area in their respective enclosures, DX1 at 7–8, but neither area offers remotely sufficient protection from Maryland temperatures. The indoor enclosures are uninsulated and unheated. Trial Tr. vol. 4, 41, 45; JX39, Candy Dep. Tr. at 133–35. Outdoors, the lions have little shelter from the snow, sleet, wind, or freezing rain.

Exposing Big Cats to inappropriately cold temperatures can lead to hypothermia, dehydration, and damage to the cats’ pads and mucous membranes. PX70 at 9. Big Cats must have access to heated or cooled areas when ambient temperature falls below 30 degrees Fahrenheit, adjusted for windchill, or rises above 85 degrees Fahrenheit; greater caution must be

exercised with elderly, infant, and disabled Big Cats. PX121 at 18 (Global Federation of Animal Sanctuary (“GFAS”) standards); JX17. For the Big Cats and at Tri-State, Candy monitors the temperature in the Cat enclosures by just “feeling it.” JX39, Candy Dep. Tr. at 135.

The summer months are equally brutal on the cats. A few sparse trees and a single wall provide inadequate shade, especially on days when the temperatures creep into the 80s and 90s. *Compare* DX1 at 33 with Trial Tr. vol. 4, 25. As a result, the Cats are at risk for overheating, dehydration, heat sickness, and stroke. PX70 at 9.⁵

As for enrichment needs, lions are a highly social species who travel in prides of as many as 40 lions. They enjoy a complex social structure in which together they stalk, hunt, play, and rear young. PX70 at 22; PX69 at 38. Solitude is extremely stressful for lions and disrupts their natural social behaviors; PETA’s experts opine that keeping a lion in solitude does not meet commonly accepted zoological practices. PX69 at 38 (Dr. Haddad); PX70 at 23 (Mr. Pratte).

Yet at Tri-State, Peka has lived alone in her enclosure since 2011. Trial Tr. vol. 5, 94. Prior to his death, Mbube also spent most of his life in solitude. *Id.* Even though Mbube and Peka lived at Tri-State together for several years, Defendants were never able to house them in the same enclosure. *Id.*

The outdoor areas for the two lions included nothing to engage them. No enrichment plan existed for the lions because, according to Candy, the Big Cats “make their own fun.” JX39, Candy Dep. 366. Mbube had one ball. Trial Tr. vol. 4, 40. Peka’s balls are punctured and dirty, as is her old, stuffed teddy bear. PX84 at 57:22–1:05:00; Trial Tr. vol. 4, 76–80. Rather than providing meaningful enrichment, these random, dirty toys were dangerous and unsanitary.

⁵ The tigers suffer from the same exposure to the elements. The tigers must retreat into wooden uninsulated holding areas that have gaps in the wood and brick, and which are hotter than the ambient temperature in the summer and unheated in the winter. Trial Tr. vol. 4, 45; JX39, Candy Dep. Tr. at 119–20; PX70 at 36.

Trial Tr. vol. 4, 79. As Mr. Pratte aptly noted, a lion forced to live in solitude with a single ball for company is tantamount to confining a human in a single room with a single book for years on end. Trial Tr. vol. 4, 40. “That’s all you get. That’s the only choice you have provided to you” if you are a lion at Tri-State. *Id.*



Peka's enclosure, PX85 at 115 (9/22/19)

c. Tigers (Cheyenne, Mowgli, Cayenne, Kumar, and India)

Tigers, in contrast to the lions, are generally solitary animals who should not be housed together. Trial Tr. vol. 4, 63; PX70 at 52. But Tri-State, inexplicably, housed three sibling tigers together since they were cubs, and until each met their untimely deaths. When they were alive, the two sisters, India and Cheyenne, as well as brother Kumar, were all sexually active and non-contracepted. PX69 at 18. Veterinary records reflect evidence of mating activity between India and her brother, and in direct violation of generally accepted animal husbandry practices. PX5 at 118. The tiger siblings’ forced cohabitation ran contrary to their basic and natural instincts, which manifested in obvious signs of stress such as overt conflict and stereotypic pacing, as well as an imbalance in feeding. Trial Tr. vol. 4, 64–66; PX70 at 52. Kumar, the brother, feasted, while the sisters went without. At their deaths, each sister showed signs of poor nutrition. Trial Tr. vol. 2, 85–86; PX70 at 52–53; JX39, Woolard Dep. 258.

As for enrichment, the tigers lived in a fetid cesspool. The tigers’ den was previously a

summer camp concrete swimming pool, and has since been repurposed by Candy to hold the tigers in captivity. With little grass or foliage, the tigers lived for years in conditions bearing little resemblance to their natural habitat. PX16, Trial Tr. vol. 4, 21–22. Due to the barren enclosure, they were given little opportunity to do what tigers do—conceal, hunt, prowl, stalk, or rest. PX 70 at 30; Trial Tr. vol. 4, 21–22, 150. Moreover, because the pool sinks below ground, the tigers were confronted constantly with visitors peering into the exhibit from above. Trial Tr. vol. 4, 21. Such placement violates generally accepted husbandry practices because it induces constant fear of threats without means to escape or hide. *Id.*



Tiger outdoor enclosure, PX33 (12/11/2014)



Tiger outdoor enclosure, PX24 (12/12/2014)

Like the lions, Tri-State gave the tigers nothing remotely resembling adequate enrichment. Rather, they had bowling balls for play that were never changed or cleaned and were broken and jagged in places. PX16; Trial Tr. vol. 4, 76; PX70 at 30–31. Lack of adequate enrichment for Big Cats can cause frustration and distress, which can, in turn, manifest as stress, hypertension, respiratory and cardiac distress, suppression of the immune system, atrophy of the hippocampus, myopathy, injury, and ultimately death. PX70 at 55–56; PX69 at 17. Such a barren environment fails to “stimulate normal species-typical behaviors in any meaningful way.” Trial Tr. vol. 4, 40. Cf. PX70 at 30 (noting that zoos meeting industry standards would include for tigers visual barriers affording privacy, varied substrates for marking and scratching, barriers

to weather, and ledges and platforms for resting and vigilance).

4. Inadequate and Unhealthy Food

The food at Tri-State is commensurate with its other deficiencies. Tri-State feeds its Big Cats carcasses donated by hunters or delivered as roadkill. Trial Tr. vol. 2, 88, 95. The USDA discourages use of roadkill as food; however, if roadkill is used, it must not be left out more than 12 hours or the risk of spoilage materially increases. PX58 at 36 (2017 USDA Animal Care Policy Manual); Trial Tr. vol. 2, 96. Tri-State maintains no record of the freshness or source of roadkill nor does it employ any reliable method of evaluating the roadkill for disease or contamination. Trial Tr. vol. 2, 96, 101; *Cf.* PX 58 at 36–37 (manual requiring that roadkill be evaluated for signs of disease, chemicals, and other issues). Although Candy attests to knowing when roadkill is fresh, his methods are rudimentary at best. Trial Tr. vol. 5, 40 (explaining that if the dead animal’s “legs are sticking straight up in the air[,] [i]t’s the sun dial effect and so we don’t take those”).

Candy has also admitted to allowing carcasses to remain in the Big Cats’ enclosures for up to three days, or six times as long as recommended by the USDA. JX39, Candy 30(b)(6) Dep. 169 (stating that on at least one occasion, Mbube consumed a deer carcass over “more than three days” and subsequently stating that “[i]t’s usually only for a couple of days we’ll leave a carcass sitting there.”). Notably, the Defendants’ repeated defiance of USDA guidelines presents not only loss in nutritional value but also places the Big Cats at risk of “serious [gastrointestinal] diseases” including sepsis, from which India succumbed. Trial Tr. vol. 2, 96–101.

Nor does Tri-State employ generally accepted standards in handling frozen meats fed to the Big Cats. According to the USDA, “the thawing process is crucial to the product’s final quality ... [i]ncorrect thawing increases the potential for nutrient loss, lipid peroxidation

(rancidity), microbial buildup, and loss of palatability.” PX57 at 10 (2001 USDA Manual on Handing Frozen/ Thawed Meat and Prey Items Fed to Captive Exotic Animals). Meats must be thawed under refrigeration,” “never...at room temperature” and not “in standing water,” in order to maintain freshness and nutritional integrity. *Id.* at 36–37.

Robust evidence demonstrates that Candy defies these standards. In 2014 and again in 2018, PETA representatives documented piles of grocery store meat, some expired, left to thaw in a heated room under the reptile exhibit while domestic cats foraged freely atop the packages. Trial Tr. vol. 2, 86–87, 107–11; PX11 at 22:00–22:35. Although Candy at trial maintained that such meats were not fed to the Big Cats, he testified otherwise in his deposition and to the PETA representatives. JX39, Candy Dep. 258–59 (stating that some of the meat stored in the furnace room under the reptile exhibit goes to the Big Cats). The Court credits that the Big Cats were indeed exposed to such rotting, putrid meats.



Donated food in furnace room, PX11 at 22:09 (left) and 22:31 (right) (3/3/2018)

Critically, Candy and Tri-State persisted in feeding the Big Cats dangerous spoiled food and ignored the ready availability of “[a] number of commercially prepared diets...appropriate for the varying needs for exotic or wild felids.” PX58 at 36 (USDA Animal Care Policy Manual). Nor did Tri-State ever enlist the assistance of a trained veterinarian, preferably in

consultation with a nutritionist, to make sure the Big Cats were given a safe and balanced food supply. *Cf. id.* Tri-State maintains no records of written diets, or the use of supplements, but does have a record of feeding their Big Cats vastly outsized amounts of processed meats and roadkill, which also controversies husbandry standards. In short, the Big Cats were not provided “basic nutritional needs,” Trial Tr. vol. 2, 88, 93–95, the absence of which “result[s] in skeletal, structural damage, neurologic problems, or other potentially irreversible health problems including death.” PX58 at 36.

Fresh water, too, is scarce for the tigers. Records show that the pools in the outdoor enclosures are chronically filthy. PX24 at 6:30–7:05; PX33; Trial Tr. vol. 1, 166. Water in the indoor enclosures is similarly dirty and confined to small dog bowls. *See, e.g.*, PX28. Tigers tend to defecate in the pools they sip from and failure to regularly clean the water sources “expose them to a variety of enteric pathogens and put them at risk of disease.” PX69 at 20. Unsurprisingly, no one at Tri-State tests the water supply in the tigers’ enclosure. *See JX39*, Candy Dep. 168 (“Q. Is [the water in the tigers’ pool] tested at all? A. No.”).



Tiger drinks from feces-lined pool, PX 24 at 6:50 and 7:00 (12/12/2014)

The lemur’s diet, like those of the Big Cats, was also deficient. Lemurs should eat “[a]ssorted fruits and vegetables, mazuri leaf-eater primate biscuits, . . . a grain/seed mix.” PX69 at 14. They should not eat foods high in sugar and starch, which “can contribute to diarrhea,

obesity, dental decay, and diabetes.” *Id.* However, at Tri-State, Bandit and Alfredo were regularly fed grapes, gummy bears, and baked goods. *See, e.g.*, JX39, Candy Dep. 215, 393–94 (discussing treating the lemurs with baked goods, such as cupcakes, every day); JX 39, Candy 30(b)(6) Dep. 371. No evidence demonstrated that Defendants knew or cared about feeding the lemurs properly.

B. Deaths at Tri-State

In just over three years, *five* of the nine ESA protected animals at Tri-State have died early and tragic deaths. The Court incorporates its determinations at the summary judgment stage regarding Cayenne’s death, which corroborate Defendants’ other ESA violations, but will not repeat those facts here. However, the deaths of the other four animals remain critical to understanding why Defendants have so flagrantly violated the ESA. The Court, therefore, summarizes its findings of fact as to each animal in order of their deaths.

1. Mbube, the Lion

Mbube (also known as “Bu”) was born March 15, 2005, lived most of his life in solitude, and was euthanized on December 15, 2016. At the time of his death, Bu was only 11 years old, well short of a captive lion’s average lifespan of 16 to 18 years old. PX1 at 9; Trial Tr. vol. 2, 161. Although the Court does not know exactly what killed Bu, that is in part because Tri-State chose not to perform a necropsy on him. The uncontested evidence, however, reveals that Bu met a slow and painful demise without any real veterinary care.

On August 2, 2016, Candy first noted that Bu’s mane was “darkening [in] color” and thinning. Bu was also “eating less.” PX1 at 13. As of that date, Bu had lost so much weight that Candy could see his “bare hips protruding more than normal” and noted Bu experienced “watering from the eyes.” PX1 at 17. Candy did not seek any veterinary help for Bu.

Bu's condition persisted. So later in August, Candy called Dr. Fox. Dr. Fox never examined Bu in person, and instead gave his *own personal prescription of testosterone* to Candy, who then administered it to the lion. Trial Tr. vol. 5, 209; PX1 at 13, 17; JX39, Fox Dep. 306; PX10 at 82. Not surprisingly, Bu's condition worsened.



Bu, healthy, PX35



Bu on September 11, 2016, JX34

Based on a review of the above right-hand photo, taken on or around September 11, 2016, Dr. Haddad opined that Bu was emaciated. Trial Tr. vol. 2, 170. "You can see very prominent pelvic bones. His femur is sticking out. You can see his vertebra along his spine. You can see his ribcage." Trial Tr. vol. 2, 169. Again, Dr. Fox prescribed an antibiotic, Clindamycin, to Bu without having first examined the lion. Trial Tr. vol. 5, 67; PX1 at 13.

Another month passed without any improvement in Bu's condition. Defendants' dereliction as to Bu led to the USDA citing Tri-State and Candy for failure to provide the lion adequate veterinary care. PX10 at 82. As the USDA report notes, Bu "is not in good health or body condition. He appears thin and the pelvic bones are prominent. His coat is rough and has turned a dark brown. And the mane has thinned, as would be seen on a one-year old lion. There is also a watery discharge around the lion's eyes." *Id.*⁶

⁶ In fact, the USDA has cited Tri-State for dozens of violations, some of which resulted in a 45-day suspension of the zoo's license. See PX10; JX8.

On October 11, 2016, a couple days after the USDA visit—and more than two months after Candy observed Bu in dire physical straits—Dr. Fox finally examined Bu, PX3 at 10, and performed blood tests two days later. *Id.*; PX4 at 25. Although Dr. Fox speculated that Bu may be suffering from hypothyroidism, Addison’s disease, or a pituitary tumor, his speculations were plainly off-base. JX39, Fox Dep. 72, 180; 305 PX1 at 14. As Dr. Haddad noted, not only are such conditions extremely rare in Big Cats, the test results did not support Dr. Fox’s tentative diagnoses. Trial Tr. vol. 2, 172–75. Rather, according to Dr. Haddad, the blood test, combined with the physical condition of Mbube, signaled anemia, which could be caused by other diseases or conditions. Trial Tr. vol. 2, 174. Without further tests (which were never performed), Bu’s condition could not be definitively diagnosed. Trial Tr. vol. 2, 175; *see also* PX69 at 60 (“When test results like this occur, the generally accepted practice is to perform additional diagnostic testing to get an actual diagnosis, and then treat the underlying disease.”).

Two more months passed. Bu continued to worsen. By December, he could not stand or walk properly, and was not eating or drinking. PX1 at 15. Bu was also falling over, “causing numerous cuts [and] abrasions (largest bleed from tail).” *Id.*; PX69 at 62. Yet Tri-State and Candy did nothing to treat Bu’s medical condition or make him comfortable with palliative care. Trial Tr. vol. 2, 177. Bu was euthanized two days later on December 15, 2016. PX1 at 15. Although Candy and Dr. Fox lamented the “mystery” of Bu’s condition, Defendants declined to perform a necropsy on Bu, which would have provided important evidence regarding his cause of death.

2. Bandit, the Lemur

Bandit was born August 18, 2005, lived most of his life alone and died on January 15, 2018. PX1 at 1. The scant medical records reveal that Bandit never received any preventative

veterinary care, such as regular check-ups, vaccinations, or routine tests. Records from 2006 reflect that he received one fecal test. PX1 at 2.

Bandit, however, suffered from a protracted respiratory infection for nearly two years, from 2016 till his death in January 2018. *See* Trial Tr. vol. 5, 83–85; PX1 at 3–6 (Candy writing “congestion” and “still concern with breathing, making a gurgling sound, no drainage from eyes, nor sinuses); PX4 at 40 (record of prescriptions given to Bandit); PX4 at 39 (record from hospital noting “shallow breathing” as the reason for the initial January 15, 2018 visit). Although Candy says otherwise, no medical record supports that Bandit received *any* examinations until the day of his death. Rather, the records more clearly reflect that Dr. Fox prescribed Bandit a series of medications, again without examining the animal, as was evidently custom at Tri-State.

Compare PX1 at 3 and PX4 at 40 (noting prescriptions) *with* JX39, Fox Dep. 281 (“Q: But you don’t have any record of why you would have dispensed it? A: No, it may have been in one of those conversations he came in and asked questions and we said to try this to see if it improved.”).⁷

On January 14, 2018, Bandit was first observed “bleeding from genital area” where he had “torn skin and bites.” PX1 at 4. Candy took Bandit to Dr. Fox the next day, who documented “torn prepuce, damage to penis tip.” PX4 at 38. In layperson’s terms, Bandit had ripped off his own penis. JX39, Fox Dep. 289–90, 375–76. On the same visit, Dr. Fox took x-rays of Bandit, and diagnosed Bandit with disc disease on his vertebra. PX4 at 83–85, 38.

It was at this same visit that Bandit died. JX11 at 15. Defendants now assert, with *no* medical support, that Bandit died from “cancer.” PX1 at 1; JX11 at 15 (Defendants’ response to

⁷ Bandit also experienced wide fluctuations in his weight over a short period of time, from three pounds to as much as six. PX4 at 40; PX1 at 3. On the day he died, Bandit weighed 4.1 pounds. PX4 at 38. According to Dr. Haddad, “[t]his degree of weight loss is suggestive of an undiagnosed and untreated underlying disease condition.” PX69 at 12.

interrogatories: “He died of cancer during a visit to the veterinarian...The tumor was a degenerative tissue disease affecting the mouth and sinus cavities and was not operable.”); *Cf.* Trial Tr. vol. 2, 126–27 (Dr. Haddad noting that, of the evidence provided, none points to cancer). And again, Defendants chose not to perform a necropsy on Bandit, even though Candy has kept Bandit’s body, wrapped in a trash bag, in a freezer on zoo grounds and for reasons not altogether clear to the Court. JX11 at 5; Trial Tr. vol. 2, 136, 150. The Court does not credit that Bandit died of “cancer.”

The Court does credit, however, that at the time of Bandit’s death, he likely was in “a lot of pain” and hypothermic. JX39, Fox Dep. at 260–62. In fact, evidence shows Bandit was suffering from untreated pain stemming from his unresolved respiratory infection. PX4 at 39. However, like all the other protected animals who died long deaths at Tri-State, no record evidence reflects Bandit having received any palliative care. PX69 at 13.

It is also beyond dispute that Bandit exhibited signs of significant distress. Both Dr. Haddad and Mr. Pratte opine that Bandit’s ripping at his penis represented a long-term condition due to chronic stress and anxiety. *See* Trial Tr. vol. 2, 137 (Dr. Haddad) (“self-mutilation is a well-known cause or presentation of result of chronic stress and anxiety... [s]o it’s most likely that he did this to himself, and I would say my suspicion would be that it was due to stress and anxiety”); Trial Tr. vol. 2, 138 (Dr. Haddad) (“I did not see anything to suggest that there was a medical problem that caused him to in this one instance bite at his genitals. So there’s definitely an underlying most likely psychological problem. Again, stress, anxiety would be my conclusion as what caused him to self-mutilate himself.”); Trial Tr. vol. 4, 101 (Mr. Pratte) (“I think that Dr. Haddad was correct with a high probability that this was behavioral.”). Because Bandit suffered no underlying medical condition to explain his mutilated genitals, and in

combination with the deplorable conditions in which Bandit lived every day—isolation or near isolation, stinky filth, predators nearby—the Court credits PETA’s experts’ conclusion that Bandit’s self-mutilation was in “response to chronic distress.” Trial Tr. vol. 4, 102.

3. Kumar, the Tiger

Kumar was born at Tri-State on March 24, 2007, along with his siblings India and Cayenne. PX1 at 38. Cheyenne, who remains at Tri-State, is their mother. Trial Tr. vol. 5, 100. Kumar died on July 7, 2019, at 12 years old, well short of the average life span of tigers, who live into their teens and twenties in captivity. PX6 at 1; Trial Tr. vol. 2, 161.

Kumar’s necropsy revealed that Kumar died of a spinal infarct, or stroke of the spine. It is a rare condition and cannot be attributable to Defendants’ acts or omissions. Trial Tr. vol. 2, 208–09. However, the other findings on the necropsy, in concert with the record evidence submitted at trial, show clearly that Kumar died a long, painful death resulting from his years of captivity in a fetid, concrete swimming pool.

On June 27, 2019, Candy noted that Kumar “was down” in an area where the cats usually defecated. PX1 at 53. Two hours later, Kumar had still not moved. *Id.* Candy notified Dr. Fox’s replacement, Dr. Duncan, who evaluated Kumar and gave him steroids, by injection, although the course of treatment was not medically indicated. *Id.* At that point, Kumar could not stand or lift his head normally; he leaned on the platform for support and had been incapacitated for eight hours. PX1 at 53; PX5 at 106.

The next morning, Candy noted that Kumar had dragged himself roughly 30 feet across his enclosure; he had also chewed on both wood and meat. PX1 at 53. In the days to follow, Kumar’s condition continued to deteriorate. He had difficulty raising his head and could not get up. *Id.* at 54–55. Then, he had to be hand-fed. *Id.* at 55. On July 1, 2017, Kumar was given,

without explanation, another steroid shot. *Id.* at 56. He could not stand and he could not eat. Candy had to syringe blended food and water directly into his mouth. *Id.* Kumar's condition remained the same for seven more days, till his death on July 7, 2019. *Id.* at 57.

For the *ten days* Kumar was down, he received no meaningful care. Although Dr. Duncan recommended on her first visit on June 27, 2019 that Kumar be euthanized if he did not improve, Candy and Tri-State never gave the tiger anything to manage his pain and obvious distress. PX5 at 106. Five days later, on July 2, 2019, Dr. Duncan again noted that Kumar "remains completely unable to rise" and "strongly recommended euthanasia" to put Kumar out of his pain and suffering. PX5 at 104. The "humane thing to do," Dr. Haddad opined, would have been to euthanize Kumar as Dr. Duncan recommended. Trial Tr. vol. 2, 211. Candy chose instead to let Kumar suffer.

Alternatively, "[a]t the very minimum," Kumar "should have been given something for pain." Trial Tr. vol. 2, 210. Candy did not. PX5 at 104.⁸ On July 7, ten days after first being found down and immobile and seven days after being unable to eat without food being syringed into his mouth, Kumar died.

The other results of Kumar's necropsy bespeak the horribly painful way in which he died. Kumar's mouth was riddled with ulcers, cuts, and other injuries at the time of his death. Large portions of two canine teeth were missing, exposing the raw pulp. PX6 at 2, 10. One canine tooth had punctured Kumar's mandible, creating a deep, penetrating wound. Trial Tr. vol. 2, 194. His gums were heavily inflamed, and, deep sores lined his mouth. PX6 at 2, 10; Trial Tr.

⁸ See also Trial Tr. vol. 2, 212 ("Q: And do you see any recommendation by Dr. Duncan in her entries at this point in time, July 2, 2009, recommending palliative care, pain meds, anything, something to make him more comfortable? A: No. Unfortunately, no" "Q: Just one last question. Pain meds for a tiger, I mean, are they expensive? A: They don't have to be. You can—aspirin can be given to cats. That's pretty cheap. They are injectable. There's a whole variety of medications that could be tried. So there is no excuse to not give pain medication.").

vol. 2, 191–97. The ulcers, broken teeth, wounds, and inflamed gums were not only chronic, but consistently painful. Trial Tr. vol. 2, 191–97.

Figure 3. Oral cavity/teeth. There were fractures of the left maxillary and mandibular canines (arrows).



Necropsy photo of Kumar, PX6 at 10

Kumar also had open and painful ulcers and lesions on each of his paw pads and the side of his hind legs. PX6 at 6. The ulcers and lesions were consistent with walking and laying on concrete his whole life and then becoming infected through exposure to the filth and feces in his enclosures. Trial Tr. vol. 2, 197–200. As Dr. Haddad noted, Kumar’s ulcers presented as having developed over time, Trial Tr. vol. 3, 142. The skin from the padding under Kumar’s toes was also “gone...falling off...unhealthy.” Trial Tr. vol. 3, 156.

At the time of death, painful ulcers also lined Kumar’s stomach, which was empty but for some grass and wood. PX6 at 6; Trial Tr. vol. 2, 204–07. Kumar’s colon was distended by firm feces composed predominantly of large mats of fur, and there was a two-centimeter long tear and hemorrhaging in the membrane of his abdominal cavity. *Id.* Dr. Haddad opined that given the state of Kumar’s numerous infections, administering steroids was not recommended, and without also prescribing medication to protect Kumar’s stomach, the steroids quite likely contributed to his severe stomach condition. Trial Tr. vol. 2, 204–07.

4. India, the Tiger

India was born March 24, 2007 and died August 14, 2019, just over a month after her brother Kumar and at an age significantly younger than the average life expectancy for tigers held in captivity. PX1 at 41; PX7 at 1. Prior to her death, she did not receive any routine examinations or preventative veterinary care.

India died of sepsis and myocarditis (enlarged heart). PX7 at 3. Sepsis is a severe systemic bacterial infection that tigers simply do not contract in captivity. Trial Tr. vol. 3, 9, 28; PX69 at 104. Sepsis ravaged India's body so intensely that pus-filled pockets had formed in her heart, tongue, and diaphragm. PX7 at 3; Trial Tr. vol. 3, 27. The pathologist report notes that the sepsis was likely due to an untreated or poorly treated bacterial infection and that the myocarditis was in turn the result of the sepsis. PX7 at 3. Dr. Haddad opines that India's sepsis was likely brought about by exposure to contaminated food or water and perpetuated by poor sanitary conditions and a lack of preventative care. Trial Tr. vol. 3, 10–11.

India's suffering was great, needless, and ignored. In the month before her death, she ate hardly anything; at the time of her death, her intestinal tract was completely empty, and she was pale and icteric. PX7 at 3. Icterus is either caused by liver disease or the result of a prolonged period of anorexia, the latter of which was the likely culprit. PX69 at 104. Additionally, the pus-filled pockets in her heart and diaphragm made her every breath painful.

Despite these symptoms, Tri-State and Candy ignored India's serious condition. Although she had not eaten much during July, Candy summoned no veterinary assistance. By the time Dr. Duncan saw India in the beginning on August 10, 2019, the cat was already sick. That day alone, she had not moved, ate, or drank, and, atypically, had allowed Candy to enter her pen. PX7 at 3; PX5 at 118. Indisputably, India was gravely ill. Trial Tr. vol. 3, 19.

Blood tests on India revealed that she was suffering from a severe infection⁹ necessitating immediate aggressive, broad spectrum antibiotic therapy, as well as fluid therapy and pain medication. PX5 at 119; PX69 at 102; Trial Tr. vol. 3, 21. Defendants, however, did nothing for three more days. PX5 at 115–119. India’s condition deteriorated rapidly, and on August 12 and 13, after India had stopped eating and eliminating her bowels, Dr. Duncan urged immediate transfer to a facility that could conduct further diagnostics and life-saving surgery. PX5 at 115. Candy declined—even when Dr. Duncan stated that India “will likely die without a referral.” *Id.*

Not only did Defendants neglect to treat India’s infections, they also did nothing to make her comfortable. For over a month, India ate little to nothing as a virulent infection ravaged her body. Her heart was enlarged, which is “considered incredibly painful. It’s like having a heart attack.” Trial Tr. vol. 3, 20. The diaphragm was similarly infected and filled with pus—“so every time she took a breath, she was in pain.” *Id.* India received no palliative care. Not even aspirin. *Id.*

Defendants’ abject neglect of India was not confined to her last month. Throughout her life, flies feasted on India’s ears. PX1 at 44 (Candy noting “[t]ips of ears raw. prob due to flies”); PX1 at 43 (2017 medical record stating “continue to treat ears for scratches/ flies”); Trial Tr. vol. 1, 166 (2018 Zoo visitor describing tiger’s ears covered in flies and dripping blood). Defendants offered India minimal treatment for her ears (sprays and cleaning) but did not take steps to rectify the source of the problem (likely, sanitation issues), even though Candy noted that the problem was reoccurring. PX1 at 43–44.

Ear conditions like this, according to Dr. Haddad, are entirely preventable through proper

⁹ Dr. Duncan offered a potential diagnosis of pyometra, an infection of uterus, on August 10, 2019, PX5 at 118, which according to Dr. Haddad was a reasonable hypothesis that needed to be further explored and ruled out, but Defendants took no such action.

sanitation and treatment. Trial Tr. vol. 3, 31. Remarkably, India's ears had been eaten so badly and for so long that the veterinarian who performed her necropsy believed that her ears had been "surgically truncated." PX7 at 4. No record evidence suggests India had undergone such surgery. Instead, India's "ear tips were so chronically eaten away by flies that it appeared to the pathologist as though someone had actually cut off some of that tissue." Trial Tr. vol. 3, 28.

C. The Three Living Protected Animals Currently at Tri-State

1. Peka, the Lion

Peka, born April 21, 2011, came to the zoo when she was two days old. PX1 at 23. Since then, she has lived in solitary confinement, in a barren enclosure devoid of meaningful enrichment, completely divorced from her natural pride habitat. PX69 at 37–38. Peka, as a female lion, is particularly social. PX69 at 38. PETA's experts agree that Peka's solitary confinement produces a constant source of stress and negatively impacts her physical and psychological health—conditions magnified by little to no enrichment. PX69 at 38–41. Peka's stress is evident from a well-worn path on the perimeter of her enclosure. PX69 at 41. Despite having a sizeable plot of land to roam, Peka has paced back and forth and worn the grass down to the dirt. *Id.*

Stereotypic pacing is a generally accepted sign of stress in Big Cats and should be addressed promptly. PX70 at 10. No evidence exists that Defendants have done anything to rectify Peka's stress, or even that they have recognized that she is in distress.

It is undisputed that Peka also suffers from an abnormal gait yet has never been examined or treated for it. PX70 at 16; Trial Tr. vol. 2, 180; PX69 at 51. The abnormal gait likely causes Peka discomfort and pain and puts her at risk of further joint problems such as degenerative joint disease. Trial Tr. vol. 3, 134; PX70 at 16; PX69 at 51. But because Peka has received no regular

veterinary care and was taken from her mother immediately after her birth, Defendants' chronic inattention has put Peka in a black box as to her health status. PX69 at 46–47; Trial Tr. vol. 2, 178–80.

2. Cheyenne, the Tiger

Cheyenne was born March 2003, and like Peka, her health remains a mystery because Defendants have provided her no health care. PX1 at 45. She has lost all three cubs, Cayenne, Kumar, and India. And yet even after their terrible deaths, Defendants have not performed any laboratory testing, nutritional assessment, or other physical examination to protect Cheyenne from a similar fate. PX69 at 109. She has also not been tested for feline viral diseases, nor has she received any of the recommended feline vaccines. *Id.* However, Cheyenne remains in the same deplorable conditions as the other four dead Big Cats.

3. Mowgli, the White Tiger

Mowgli is a white tiger, born July 31, 2009 and acquired by Tri-State shortly after. PX1 at 34. Mowgli has suffered for many years and continues to suffer from a reoccurring skin condition. PX1 at 35 (medical form from 2014, 2015, 2016, and 2017 stating that skin condition is an “annual concern”); JX39, Candy Dep. Tr. at 296 (testifying that they treat Mowgli’s skin condition every year). Defendants speculate that Mowgli has either rain rot or ringworm. PX1 at 35–36; Trial Tr. vol. 5, 97 (“We had that tested with a skin scrapping and some hair tissue, and I was told it was either rain rot or ringworm”). Despite Defendants’ belief that these two conditions are the same, Trial Tr. vol. 5, 98, they are markedly different. Ringworm is a fungal infection with a range of treatments. PX70 at 42. Rain rot is a bacterial infection, requiring a completely different medical course of treatment. *Id.* A definitive diagnosis is easily obtained through a skin biopsy. Defendants have not obtained the biopsy and nothing in the record

suggests their disinclination will change in the future. Trial Tr. vol. 3, 33–34; PX70 at 42.

Mowgli's skin condition manifests itself in red, itchy hotspots and large patches of lost fur. JX20. The condition creates a risk of additional infections as the loss of fur allows bacteria—plentiful in Mowgli's unsanitary enclosure—to enter his skin and proliferate, and the constant rubbing of his skin across the deteriorating wood in his enclosure drives bacteria further into his lesions. Trial Tr. vol. 3, 32, 35. In addition, because Mowgli is a white tiger, he suffers from an already compromised immune system, making him especially susceptible to disease, and thus, especially vulnerable to Defendants' inadequate care. PX69 at 20.

The Court credits that Mowgli's skin condition has been caused and exacerbated by Defendants' dereliction. Trial Tr. vol. 4, 35–36; Trial Tr. vol. 3, 36. His enclosures are uninsulated, damp, rarely cleaned, and filled with feces and rotting carcasses. *See* PX27. He is fed contaminated food and is constantly exposed to diseases from humans, free-roaming cats, and other animals. Defendants have not taken any meaningful steps to change Mowgli's environment since this litigation began almost three years ago.



Mowgli, JX20 at :04 (1/28/2015)



Mowgli, PX85 at 95 (9/22/2019)

Of the screenshot on the left, Dr. Haddad opined, "Where we see the pink, those are patches of hair loss. So alopecia...[i]t's a hard to see here, but it is moist. So he's got a secondary bacterial infection happening already. . . he's continually rubbing his body against this plywood wall because it's extremely itchy. He's very uncomfortable. And by doing that, he's continuing to basically drive bacteria into his skin, which is going to create an even worse bacterial infection." Trial Tr. vol. 3, 35.

Mowgli is also severely overweight. *See* right-hand photo above (taken Sept. 22, 2019).

His body condition score is 7 on a scale of 1 through 9, with 9 being morbidly obese. PX69 at 106. He is flabby and untoned, also reflecting muscle loss. *Id.* Like the other protected animals at Tri-State, nothing is known about Mowgli's medical history. As a white tiger, Mowgli is immune-compromised and thus susceptible to diseases, and despite his suffering for years with an obvious skin condition, Defendants have produced no record evidence that Mowgli has *ever* had a routine examination by a veterinarian or received basic vaccinations. PX69 at 107.

D. The Lone Escapee: Alfredo, the Lemur

Alfredo's birthday is unknown (though Candy guesses he is nine years old), and he was acquired by Defendants on June 11, 2012. PX1 at 7; JX7 at 1. He shared an enclosure with Bandit for five and a half years, before Bandit's death on January 15, 2018. Alfredo was then transferred to the Maryland Zoo on March 1, 2018, by agreement. JX7 at 3. Thus, even though Alfredo is not currently at Tri-State, the Court must reach whether he had been subjected to a take in so far as Defendants may seek to return Alfredo to Tri-State.

The Maryland Zoo, prior to receiving Alfredo, asked Candy for medical records so that they could plan for his stay. JX7 at 5. Candy responded by email, "He is pretty easy. No medical form as he has never been sick nor needed any vet care while at our zoo." *Id.* Indeed, no medical records for Alfredo exist for his entire six years at Tri-State. Clearly, Alfredo had undergone no preventative care at Tri-State—despite being housed in a barren enclosure surrounded by olfactory (urine, feces, decaying leaves) and auditory (dog barking) stressors. Candy's assumption raises the obvious question posed by Dr. Haddad: How do they know Alfredo's never been sick, if they've never examined him? Trial Tr. vol. 2, 155.

By contrast, Alfredo's first month at the Maryland Zoo generated 19 pages of veterinary records. JX6 at 1–19. Alfredo's "first couple of weeks [at the Maryland Zoo]" provided "more

care than he received...for his entire life [] at Tri-State.” Trial Tr. vol. 2, 157.

II. Standard of Review

The Endangered Species Act (“ESA”) protects covered animals, which include lions, tigers, and lemurs, from an unlawful taking. 16 U.S.C. § 1538(a)(1)(B); 50 C.F.R. §§ 17.11, 17.21(c), 17.31(a). The ESA also prohibits possession of unlawfully taken lions, tigers, and lemurs. 16 U.S.C. § 1538(a)(1)(D).

To “take” a species means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). A “take” must be construed in the ““broadest possible manner”” to provide maximum protection under the Act. *Babbitt v. Sweet Home Chapter of Communities for a Great Or.*, 515 U.S. 687, 704 (1995) (quoting S. Rep. No. 93-307, at 7 (1973), reprinted in 1973 U.S.C.C.A.N. 2989, 2995).

One manner in which an animal is subject to a take under the ESA is if the animal is harassed. To “harass” a covered animal means to intentionally or negligently “create[] the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns.” 50 C.F.R. § 17.3. Pertinent to this matter, inadequate housing and care of lemurs and tigers may constitute “harassment” as defined under the ESA. *Kuehl v. Sellner*, 161 F. Supp. 3d 678 (N.D. Iowa 2016), *aff’d*, 887 F.3d 845 (8th Cir. 2018).

An animal is also “taken” if he is harmed. Harm “means an act which actually kills or injures wildlife.” 50 C.F.R. § 17.3. The ESA also prohibits attempted harm, and as such, manifests that the statute is “designed to include claims of future injury.” *Animal Welfare Inst. v. Beech Ridge Energy LLC*, 675 F. Supp. 2d 540, 563 (D. Md. 2009), *judgment amended*, No. 09-1519 (RWT), 2010 WL 11484179 (D. Md. Jan. 26, 2010); *see also People for Ethical Treatment of Animals, Inc. v. Miami Seaquarium*, 879 F.3d 1142, 1150 (11th Cir.), *adhered to on denial of*

reh'g sub nom. People for the Ethical Treatment of Animals, Inc. v. Miami Seaquarium, 905 F.3d 1307 (11th Cir. 2018) (reading “harm” to also include a *threat* of serious harm).

The Court recognizes that the interpretation of the ESA as to the degree of injury or potential injury necessary to constitute harassment or harm is scant and in disharmony. In *Graham v. San Antonio Zoological Soc'y*, for example, the court determined that harm or harassment under the ESA requires “more than any minor injury or harm in the literal sense” but “comes short of requiring a ‘grave threat.’” 261 F. Supp. 3d 711, 743 (W.D. Tex. 2017). However, at least one other court has required proof of “threat of serious harm,” although not limited just to “deadly or potentially deadly harm.” *Miami Seaquarium*, 879 F.3d at 1150. This Court need not wade into this debate because, as more fully explained below, the evidence overwhelmingly demonstrates that every protected animal has been harassed, harmed, or both in a most grievous fashion at Tri-State.

III. Analysis

A. Standing

As a preliminary matter, the Court addresses PETA’s standing to bring this suit. At trial, Defendants argued that PETA had not suffered a sufficiently concrete and particularized injury to confer standing. Based on the record evidence, however, the Court finds that PETA indisputably has standing.

PETA as an organization may establish what is known as organizational standing on its own behalf. *Equal Rights Ctr. v. Equity Residential*, 798 F. Supp. 2d 707, 719 (D. Md. 2011). Organizational standing is conferred where the defendants’ misconduct causes injury to the organization by frustrating the organizational mission, thus requiring the organization to divert resources in response. *Id.* at 720; *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).

The record evidence at trial demonstrates that PETA’s mission has been frustrated through its protracted involvement in attempting to prevent the abuse of protected species and correct the misperception that Tri-State properly cares for the same. *Compare Trial Tr. vol. 4, 181–82* (Brittany Peet, Director of the Captive Animal Law Enforcement Division of PETA, noting that PETA’s mission requires it to protect and rescue animals from conditions of abuse and neglect) and *id.* at 183 (noting that Defendants’ actions have impaired this mission) with *People for the Ethical Treatment of Animals, Inc. v. Miami Seaquarium*, 189 F. Supp. 3d 1327, 1338 (S.D. Fla. 2016), *aff’d*, 879 F.3d 1142, 1146 n.5 (11th Cir. 2018), *adhered to on denial of reh’g*, No. 16-14814-BB, 2018 WL 4903081 (11th Cir. Oct. 9, 2018) (finding that the alleged “take” of an animal is in “direct conflict with PETA’s mission of protecting animals” and therefore evidence in favor of satisfying the “injury in fact” element of the standing analysis); *Compare Trial Tr. vol. 4, 183–87* (Peet citing examples of how Defendants deceptively hold themselves out to be a sanctuary, thereby creating the public misperception that their animal welfare standards are acceptable, if not laudable) with *Organic Consumers Assoc. v. Sanderson Farms, Inc.*, 284 F. Supp. 3d 1005, 1011 (N.D. Cal. 2018) (finding standing for organizations that promote organic consumption in suit against company that deceptively labeled products as “natural”).

The record evidence also establishes that PETA has diverted significant resources in response to Tri-State’s actions. Trial Tr. vol. 4, 188–214 (Peet testifying that since 2006, PETA has complained to the USDA and other regulatory agencies, monitored inspection records, raised awareness of Defendants’ actions through media, and filed lawsuits—all of which occupy a significant amount of time and resources). The Court thus finds that PETA has standing to bring this suit.

B. Defendants Have Subjected the Protected Animals to a Take

The dead animals at Tri-State share frighteningly similar experiences that, in retrospect, foreshadow their early deaths. All lived in squalid conditions, languished with no enrichment, failed to receive preventative care, were evaluated by a veterinarian only when on the brink of death, were misdiagnosed, and received no pain management to ease their suffering. The remaining animals live in the same conditions as did their predecessors, only they are lucky to have survived thus far. The Court finds that each of the protected animals has been subjected to a take under the ESA, as addressed by species below.

1. The Lions

The Court finds that Tri-State's deplorable conditions have harassed Peka and Mbube. Each has lived in isolation and were given no "social interactions [that] are integral to the well-being of lions." PX70 at 22. For years, neither Bu or Peka had any chance to engage in a wide range of normal social behaviors, such as grooming, stalking, hunting, and play. PX69 at 38. Their enclosures are barren. They are exposed to harsh temperatures with little reprieve. A well-worn path in the enclosure reflects that the stress of such an environment resulted in repetitive pacing. PX69 at 41. Peka, the only living lion, is in indefinite isolation. She lives, in short, wholly contrary to how nature intended. The creation and perpetuation of drastic conditions has fostered the likelihood of serious injury to Peka "by annoying it to such an extent as to significantly disrupt normal behavioral patterns." 50 C.F.R. § 17.3.

The Court further finds that Defendants' failure to diagnose and treat Peka's gait abnormality constitutes harassment under the ESA. Peka's longstanding condition likely causes her chronic pain and interferes with species-typical behaviors, including walking, roaming, and scratching. Trial Tr. vol. 2, 180; PX69 at 51. Peka's gait abnormality is obvious to Defendants,

yet nothing has been done to treat Peka—ever—despite the availability of simple diagnostic tools such as an x-ray. Trial Tr. vol. 2, 181–83. Refusing to treat Peka has likely exacerbated her condition in such a manner that significantly interferes with her normal species behavior. Thus, Defendants have subjected Peka to a take under the ESA.

Defendants have likewise taken Bu. For Bu’s entire life, Defendants provided him no veterinary care. *See supra* Section I.B.1. At the end of his life, he suffered for months before Defendants even notified a singular, patently unqualified veterinarian. By this point, Bu was starving. He was emaciated. He had received so little attention that the USDA required that Defendants provide Bu adequate veterinary care under penalties of losing their exhibitor license. Defendants anemic attempts to comply with the USDA are reflected in the results. Nearing death, Bu was at one point so weak that he was constantly falling over, cutting and bruising his own body. *See supra* Section I.B.1. It is without question that Defendants have harmed Mbube, to the point of a painful death, and in violation of the ESA.¹⁰

2. The Tigers

The Court next finds that Defendants provision of squalid living conditions harassed the tigers. The tigers’ concrete dens, in which they have been confined for their entire lives, defy generally accepted husbandry practices. The record evidence shows the swimming pool den as a dirty, dilapidated pen. The water in the outdoor enclosures is similarly filthy, static, and filled with feces. *See supra* Section I.A.3.c. The water in the indoor enclosures, too, is dirty and sits in uncleaned bowls. *Id.* Failure to clean routinely the animals’ enclosures squarely disregards industry standards. *See* PX93 at 13 (Tiger Care Manual from the AZA stating, under “cleaning

¹⁰ Defendants also harassed Bu. Failing to provide veterinary care for months—to a point where Bu lay weak, injured, and emaciated—significantly disrupted Bu’s normal behavior patterns of eating, walking, grooming, and play.

and sanitation,” that “dirt and grass substrates in outdoor enclosures should be spot-cleaned daily. Hard surface enclosures, both inside and out, should be cleaned daily and disinfected routinely”); see *also* Trial Tr. vol. 4, 34. The filthy state of the tiger’s enclosures is shocking but not surprising—no protocol or schedule for cleaning and sanitation of the tigers’ enclosures exists at Tri-State. PX69 at 19.

Tri-State’s lack of sanitation for the tigers “puts them at risk of bacterial infection as well as other diseases that could be spread due to the attraction of rodents and insects to the feces and food waste.” PX69 at 21. This risk is not just hypothetical—at least two of the tigers (India and Mowgli) contracted diseases (sepsis and ringworm or rain rot) consistent with unhygienic conditions. Poor sanitation with a track record of causing infection and death creates an ongoing and serious threat of injury for the tigers.

According to AZA standards, tiger enclosures should be designed with a variety of vegetation, water sources, trees, and natural substrates to offer them the chance to exhibit natural behaviors. PX93 at 12. Exposure to concrete should be minimal, and they should be provided with a complex and changing enrichment. PX69 at 16. The tigers’ enclosures at Tri-State stands in direct contrast to these standards. It is, in short, a concrete jungle. *See supra* Section I.A.3.c. As a result, the barren enclosures and lack of enrichment deprive the tigers of their ability to “engage in their natural behaviors such as stalking through brush or grasses, scratching on trees or deadfall, [and] exploring different vantage points on platforms.” PX69 at 17. Further, the “lack of enrichment leads to boredom and the development of abnormal behaviors such as pacing, excessive grooming, and other potentially self-injurious behaviors.” PX69 at 17. The enclosures are also deficient in that their lack of insulation and adequate cooling and shade puts the tigers at risk of hypothermia, dehydration, and damage to the cats’ pads and mucous

membranes, as well as overheating, dehydration, heat sickness, and stroke. PX70 at 9, 36. Overall, the tigers' enclosures are so far removed from their natural habits and from accepted husbandry practices that they significantly disrupt a multitude of typical tiger behaviors and put the tigers at a high likelihood of injury. As such, they constitute "harassment" of all the tigers (dead and alive) and violate the ESA.

As to Kumar, the manner of his death indisputably demonstrates that Defendants harmed him. His necropsy reflects that he suffered for months before his death, from broken, pulp-exposed teeth, ulcerated gums, and a punctured lip. PX6 at 2, 10; Trial Tr. vol. 2, 191–97. The condition of his mouth was undoubtedly painful, such that it "affected [his] ability and desire to eat," one of his most basic functions, as well as his ability to groom himself. Trial Tr. vol. 2, 191–97. Similarly, Kumar's paws and hind leg were pocked with ulcers most likely caused by the filthy concrete on which Kumar had dragged his body while Defendants left him to suffer after his spinal stroke. PX6 at 6; Trial Tr. vol. 2, 197–200. Defendants' complete failure to treat Kumar's mouth and paws, while leaving him to languish in filthy surroundings, caused injury to Kumar and disrupted his normal behaviors such that he was both harmed and harassed in violation of the ESA.

The lack of veterinary care during the days leading up to Kumar's death also injured Kumar and significantly disrupted his normal behaviors, such that it constitutes both harm and harassment under the ESA. Kumar was "down" for ten days. He did not eat. He had to drag his body across the enclosure. Yet he received *no* adequate evaluation, treatment, or pain management, which unnecessarily prolonged whatever illnesses he endured. *See supra* Section I.B.3. His health was worsened, in fact, by the decision to treat him with steroids, without any medical reason to do so and without medication to protect his stomach. Trial Tr. vol. 2, 204–07.

His necropsy reveals stomach ulcers, a distended colon, and hemorrhaging in the membrane around his abdominal cavity—all painful injuries that were likely a direct cause of inadequate veterinary care. *See supra* Section I.B.3. Defendants’ take of Kumar is beyond any doubt to this Court.

India, too, was harassed and harmed directly by Defendants. India died of sepsis, an infection of colossal proportions not seen in cats in captivity. Trial Tr. vol. 3, 28 (Dr. Haddad) (“Sepsis doesn’t happen in zoos. Tigers don’t die of sepsis. This is just unbelievable to me.”). For *more than a month*, Defendants allowed the virulent infection to ravage India. *See supra* Section I.B.4. She barely ate or moved yet was given no care. *Id.* In fact, Candy expressly refused to secure medical treatment—even when Dr. Duncan told him that failure to do so would lead to her death. PX5 at 115. And, while opting to ignore treatment, Defendants simultaneously failed to provide her with *anything* to ease her severe pain. India’s myocarditis and pus-filled pockets in her heart and diaphragm meant she experienced *daily* pain “similar to a heart attack” and that occurred “every time she took a breath.” Trial Tr. vol. 3, 20. And at the time of her death, India’s ears had been so mangled by flies that the veterinarian who performed the necropsy mistakenly believed her ears had been surgically truncated. *See supra* Section I.B.4. Unquestionably Defendants are directly responsible for India’s death. Their violation of the ESA is patent. Defendants have thus subjected India to a take under the ESA.

Although Mowgli is thankfully alive, it is the result of good fortune and in spite of Defendants’ lack of care. Mowgli is obese. His muscles are flaccid. He has suffered for years with a skin infection that can easily be diagnosed, but has yet to be, and which is likely easily treated, but has not been. *See supra* Section I.B.5. Video evidence shows Mowgli in obvious discomfort as he rubs his coat continuously across deteriorating wood in his damp enclosure. *Id.*

As he is a white tiger, his caretakers must be ever more vigilant to avoid disease and infection. Trial Tr. vol. 4, 35. Yet he has lived, for years, in the same environment as did Kumar and India, two victims of obvious painful infections. Defendants have injured Mowgli and as such, have harassed and harmed him in violation of the ESA.

3. Lemurs

Defendants subjected Bandit and Alfredo to an onslaught of environmental assaults that harassed and harmed them. Bandit lived largely in isolation and contrary to his normal species behavior. PX70 at 72–73; Trial Tr. vol 4, 92–93. He, and later with Alfredo, were deprived of any real opportunity to act as lemurs do. PX70 at 59. In a stark environment, Bandit and Alfredo could not forage, explore, mark, or engage in other normal behaviors. PX69 at 7. Defendants further harassed the lemurs by surrounding them with filth and a natural predator. *See supra* Section I.A.3.a. Smells of lingering urine and feces disrupted their olfactory communication and their ability to scent-mark and put them at high risk of physical pain and permanent physical damage to their mucous membranes. *Id.* Defendants also failed to protect the lemurs from the elements for nearly half of calendar year 2015. *Id.* Exposure to such temperature visits harm on lemurs' health, including hypotension, suppressed appetite, and increased vulnerability to disease. Trial Tr. vol. 2, 144; PX70 at 61.

The lemurs' isolating, barren, freezing, dirty, stress-inducing enclosure essentially stripped Bandit and Alfredo of almost of all their natural behaviors, creating a high likelihood of both psychological and physical injury. PX69 at 8; *see supra* Section I.A.3.a. As such, Defendants harassed both Bandit and Alfredo in violation of the ESA.

To be sure, Bandit's life and death provides the best evidence as to Defendants' ESA violations with regard to the lemurs. Bandit suffered for months with a poorly treated respiratory

infection. His weight fluctuated significantly. *See supra* Section I.B.2. Toward the end of his life, and for no medical *physical* reason, Bandit bit, picked, and tore at his own penis. *Id.* Bandit’s death, in subfreezing temperatures and for reasons not fully known, bespeak his hard life at Tri-State.

The Court finds that Defendants’ chronic lack of care to Bandit harmed him. The Court further finds that Bandit’s self-mutilation was mostly likely the result of significant distress that was the natural byproduct of his living at Tri-State. *See id.*; Trial Tr. vol 2, 137–138. Because Defendants confined Bandit to an environment that disrupted his normal behaviors leading to his self-mutilation, and because they then failed to monitor, treat, and alleviate those life-threatening and ultimately fatal injuries, they have both harmed and harassed Bandit in violation of the ESA.

As for Alfredo’s future, based on the totality of the evidence, if he were returned to Tri-State, he would be once again subjected to the same deplorable conditions that caused him to be harassed in the first instance. Nothing in the record suggests that Alfredo would withstand Tri-State any better than Bandit did. By contrast, Alfredo’s current placement at the Maryland Zoo provides him a welcome reprieve.

In sum, the Court finds that Defendants have unlawfully “taken” or continue to “take” all animals at issue—Cayenne, Mbube, Bandit, Kumar, India, Mowgli, Peka, Alfredo, and Cheyenne—in violation of the Endangered Species Act. Therefore, the Court finds in favor of PETA on all theories of liability.

IV. Relief

Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and the ESA, the Court will enter by separate order a declaration that Defendants have violated the ESA by unlawfully taking nine federally protected animals, and continue to violate the ESA by unlawfully taking the

remaining Big Cats and by continuing to possess the Big Cats who have been unlawfully taken. The Court further will enjoin Defendants, pursuant to 16 U.S.C. § 1540(g), from continuing to violate the ESA with respect to the animals at issue; permanently enjoin Defendants from owning or possessing any endangered or threatened species; and terminate Defendants' ownership and possessory rights in the animals at issue. Finally, the Court will order that Defendants must immediately transfer ownership and custody of the surviving animals to The Wild Animal Sanctuary (TWAS).

On December 10, 2019, Defendants moved to stay relief pending appeal. ECF No. 178. They argue that injunctive relief would cause Defendants irreparable harm and that a substantial likelihood exists that they will prevail on appeal. The Court flatly disagrees that based on this record, and all prior rulings, Defendants are likely to succeed on appeal. Moreover, the Court does not credit that Defendants will suffer irreparable harm. In fact, the record bears out quite the opposite: Defendants' protracted and flagrant violations of the ESA render it likely that the remaining protected animals will be irreparably harmed were the Court to stay its order pending appeal.

Finally, the public interest, which the Court must consider, counsels in favor of denying Defendants' requested stay. *See Hilton v. Braunschweil*, 481 U.S. 770, 776 (1987). Regarding enforcement of the ESA as a matter of public interest, "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." *Salix v. U.S. Forest Service*, 995 F. Supp. 2d 1148, 1155 (D. Mont. 2014), *aff'd sum nom Cottonwood Envl. Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075 (9th Cir. 2015) (quoting *TVA v. Hill*, 437 U.S. 153, 194 (1978)). The Court finds that the public interest is best served by ensuring that the remaining protected animals are not forced to

endure life at Tri-State any further. Defendants' motion for stay (ECF No. 178) is therefore DENIED.¹¹

A separate order follows.

12/26/2019
Date

/S/
Paula Xinis
United States District Judge

¹¹ Because the Court will address separately the propriety of assessing fees and costs, Defendants may raise separately any request for this Court to stay any such award pending appeal.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.,

*

Plaintiff,

*

v.

Civil Action No. 1:17-cv-02148-PX

TRI-STATE ZOOLOGICAL PARK OF
WESTERN MARYLAND, INC., *et al.*,

*

Defendants.

*

MEMORANDUM OPINION

Pending before the Court is Plaintiff People for the Ethical Treatment of Animals, Inc. (“PETA”)’s Motion for Summary Judgment. ECF No. 99. The motion is fully briefed, and a hearing was held on June 28, 2019, during which time the Court ruled orally on all but this motion. *See Loc. R. 105.6.* After thorough review of the pleadings, and based on additional information learned at the hearing, the Court grants in part and denies in part summary judgment in PETA’s favor and will schedule trial on the remaining matters.

The gravamen of PETA’s claims is that Tri-State Zoological Park of Western Maryland, Inc., Animal Park, Care & Rescue, Inc., and Robert Candy (collectively, “the Zoo”) harassed and harmed the lions, tigers, and lemurs by providing inadequate veterinary care, shelter, and environmental enrichment. On July 31, 2017, PETA filed suit against the Zoo, alleging violations of the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* ECF No. 1. At the close of discovery, the parties filed cross-motions for summary judgment. ECF Nos. 99 & 114. The Zoo moved to strike a supplemental affidavit filed by PETA. ECF No. 130. PETA moved to exclude or strike three of the Zoo’s experts, portions of Candy’s affidavit, and the Zoo’s reply, arguing that it functioned as an impermissible surreply. ECF Nos. 94, 95, 96, 119, 125. PETA, however,

did not move to exclude Candy as an expert witness in the relevant areas of zookeeping, animal husbandry and care of the lemurs and big cats.

At the June 28, 2019 hearing, the Court granted PETA's motions to exclude the Zoo's experts, denied the motion to strike the reply, and granted in part and denied in part the motion to strike portions of Candy's affidavit. The Court also denied the Zoo's motion to strike and motion for summary judgment. The sole remaining motion for resolution is PETA's motion for summary judgment. ECF No. 99.

I. Background

Defendants own and operate a zoological park in Cumberland, Maryland. ECF No. 26 ¶¶ 12–14. The Zoo currently holds approximately 50 animals. ECF No. 99-20 at 35. Those protected under the ESA—the lions, tigers, and lemurs—are the subject of this lawsuit. ECF No. 1 ¶¶ 2–3.

The Zoo was home to two lemurs, Bandit and Alfredo; five tigers, Cheyenne, Cayenne, India, Kumar, and Mowgli, and two lions, Peka and Mbube. ECF No. 99-17 at 35–36. Since 2016, three of the nine animals, or a full one-third of the protected species, have died at the Zoo. According to PETA, the Defendants are squarely to blame for these deaths. PETA alleges that Defendants violated the ESA as to each category of protected species (lions, tigers, and lemurs), and grounds its theory of liability in the Zoo's provision of inadequate shelter, enrichment and veterinary care. The Court first summarizes the pertinent facts as to each liability theory and then discusses whether summary judgment is warranted as to the claimed deficiencies.

A. Shelter at the Zoo

The lions and tigers (collectively, “big cats”) live in enclosures that allow travel between outdoor and indoor portions. ECF No. 114-3 at 7–8. None of the big cat enclosures are heated

or have insulation in the walls or ceiling. ECF No. 99-17 at 119–20, 135. Rather, the Zoo provides hay or straw in the enclosures for warmth and heats Peka’s drinking water to prevent it from freezing. ECF No. 99-21 at 15; ECF No. 99-17 at 135. The Zoo annually experiences snow, ice, and subfreezing temperatures, but has not installed thermometers to measure the ambient air temperature or humidity. ECF No. 99-21 at 15; ECF No. 99-17 at 120, 135. Instead, the Zoo gauges air by “feel” and by noting if the drinking water is frozen. ECF No. 99-17 at 135.

Lions and most subspecies of tigers have not evolved a thick, insulating coat to maintain appropriate internal body temperatures in the cold. ECF No. 99-47 at 9, 35. Amur tigers, however, can grow a thick, insulating coat. *Id.* at 35. Although it is unclear what subspecies of tigers are at the Zoo, some evidence suggests that Mowgli is a Bengal, not an Amur. *Id.* Exposing big cats to inappropriately cold temperatures can lead to hypothermia, dehydration, and damage to the cats’ pads and mucous membranes. *Id.* at 9, 36.

The enclosures provide the big cats some limited shade from the walls and the indoor portions of their enclosures. ECF No. 114-3 at 33. However, lack of climate control or insulation in the structure causes the enclosed areas of the lion shelter to be hotter than the outdoor, ambient temperature. ECF No. 99-47 at 9. Exposing big cats to inappropriately hot temperatures can lead to overheating, dehydration, heat sickness, and stroke. *Id.* at 9, 36. For lions, this exposure is likely to result in tissue injuries, psychological distress, and eventually death. *Id.* at 9. Candy contends, however, that the big cats were not exposed to such inappropriate temperatures at the Zoo. *See* ECF No. 114-3 at 23, 34.

Peka has lived alone in her enclosure since 2011. ECF No. 99-17 at 127; ECF No. 99-16 at 356. Peka could previously view, hear, and smell Mbube, prior to his death in 2016. ECF No.

114-3 at 31. Although the Zoo planned to find another lion to keep Peka company, the Zoo has decided not to pursue such plans. *Id.*

Lions are a highly social species. ECF No. 99-47 at 22. Lion prides can reach up to 40 lions, and lions frequently communicate, stalk, hunt, play, and rear young together. *Id.*; ECF No. 99-10 at 38. PETA's experts opine that keeping a lion in solitude does not meet commonly accepted zoological practices. ECF No. 99-10 at 38; ECF No. 99-47 at 23. Solitude is extremely stressful for lions and disrupts natural social behaviors. ECF No. 99-10 at 38; ECF No. 99-47 at 23. Some evidence suggests that Peka is in distress as displayed through her abnormal interactions with Candy. ECF No. 99-10 at 38. Candy, however, who has cared for Peka since infancy, disputes that Peka shows signs of stress. ECF No. 114-3 at 22.

The lemurs were housed in a small enclosure that only provided shade inside the shelter and at the top of the cage, despite the risks of heat sickness and dehydration. ECF No. 99-47 at 61. The appropriate temperature for lemurs is above 70 degrees Fahrenheit. *Id.* When temperatures dip below 65 degrees, lemurs must be provided shelter with adequate heat. ECF No. 99-10 at 9. If the temperature falls below 48 degrees, lemurs must be kept indoors. *Id.* The indoor portion of the lemur enclosure is not insulated and has two electric heaters and one heat lamp. ECF No. 99-47 at 61; ECF No. 99-17 at 151. The record is not clear as to whether the heaters are temperature controlled. Compare ECF No. 99-17 at 152, with ECF No. 99-29 at 68. Zoo staff monitored the temperature by checking whether the lemurs' drinking water had frozen. ECF No. 99-17 at 152. At least once, the lemurs were permitted outside with snow on the ground. ECF No. 99-40. And on the day Bandit died in January, his body was at a subnormal temperature. ECF No. 99-20 at 197. In fact, the Zoo's treating veterinarian at the time, Dr. Timothy Fox, described Bandit as "freezing" when presented for treatment on the day of his

death. *Id.* at 262.

B. Environmental Enrichment

The Zoo does not employ a formal written enrichment plan for the big cats because Candy believes the big cats “make their own fun.” ECF No. 99-17 at 367. Peka has a stuffed bear that she has carried around for years, which Candy attests is enriching. ECF No. 114-3 at 32. The tigers have old tires and bowling balls, which are not offered at accredited facilities because of the risk of injury to the animals. ECF No. 99-47 at 31. The big cats also receive Christmas trees, carcasses, barrels, and cardboard containers. ECF No. 114-3 at 32. No evidence suggests that the Zoo frequently alternates or rotates out the items. The Zoo is largely a static environment except for visitors who pass by the animal enclosures.

It is generally accepted that big cat enrichment tools and techniques must be changed frequently because the enrichment value of any given item dissipates over time, and after five days, offers no value at all. ECF No. 99-47 at 101. Lack of adequate enrichment for big cats can cause frustration and distress, which can, in turn, manifest as stress, hypertension, respiratory and cardiac distress, suppression of the immune system, atrophy of the hippocampus, myopathy, injury, and ultimately death. ECF No. 99-47 at 26, 55–56; ECF No. 99-10 at 17.

As for the lemurs, Bandit lived alone for years before the Zoo acquired Alfredo. ECF No. 99-17 at 192, 194. In captivity, lemurs should be housed in groups of four to seven, and their counterparts in the wild live in troops of 7 to 30. ECF No. 99-47 at 72–73. For additional enrichment, the Zoo hid the lemurs’ food and treats once a week to encourage foraging. ECF No. 99-17 at 215. Once every two weeks, the Zoo rolled hard-boiled eggs through the lemur cage. ECF No. 99-29 at 70. Once every two months, the Zoo hand-fed the lemurs grapes and gummi bears. *Id.* at 69. At an unknown frequency, the Zoo held a cup for the lemurs to drink.

ECF No. 99-15 at 89. The lemurs were provided with firehoses, a mirror, tree branches, weathered children's toys, and barrels hung at a height too high for terrestrial, ring-tailed lemurs. *Id.*; ECF No. 99-47 at 59; *see also* ECF No. 99-17 at 217 (noting that “[m]ost time lemurs have no interest in toys”). Nothing new was added to the lemurs’ enrichment plan between 2011 and 2017, despite Alfredo joining the Zoo in 2012. ECF No. 99-17 at 223, 194.

A lack of enrichment for lemurs leads to frustration, boredom, depression, lethargy, aggression, and impaired learning and coping. ECF No. 99-47 at 74–75. These experiences disrupt lemurs’ species-typical behaviors, which include marking, foraging, grooming, exploring, and vigilance. *Id.* at 75. At least one of the Zoo’s lemurs was observed abnormally rubbing his face and forearm. ECF No. 99-10 at 7. The Zoo also admitted that Bandit had damaged his own genitals in an act of self-mutilation shortly before his death. ECF 99-34 at 14; ECF No. 99-20 at 282, 376. A lack of enrichment also disrupts homeostasis and the functioning of the kidney, liver, heart, and skin, leading to increased rates of disease, suffering, and death. ECF No. 99-10 at 8.

C. Veterinary Care

Between 2009 and 2018, Dr. Timothy Fox acted as the Zoo’s veterinarian, and Dr. Gale Duncan replaced him on April 3, 2018. ECF No. 99-20 at 8–9; ECF No. 99-24 at 16. Neither Fox nor Duncan had acquired any formal or informal training, education or experience working with big cats or primates outside caring for the animals at the Zoo. ECF No. 99-20 at 28 (Fox) (“I’m just a regular old veterinarian. I’m not a specialty in any of those zoo animals.”); ECF No. 99-24 at 33–34 (Duncan) (“I did not have any past experience beyond what we are taught in vet school.”).

Fox and Duncan adopted a Program of Veterinary Care (“PVC”) that required veterinary

visits every three months. ECF No. 99-15 at 92. However, in practice, the Zoo often did not comply with its own plan. See *id.* at 101–04 (showing gaps of approximately 5, 6, 8, 9, 11, and 12 months between veterinary visits). Further the PVC did not call for any vaccinations of the big cats, nor any regular weight, fecal, blood, or dental examinations. *Id.* at 94. The PVC in this respect contravened generally accepted practices for providing care to the big cats, which require vaccinating big cats for rabies, panleukopenia, calicivirus, herpesvirus, and high-risk big cats for distemper and feline leukemia virus. ECF No. 99-10 at 32. Generally accepted husbandry practices also entail annual examinations of young and healthy animals, and semi-annual examinations of senior animals or animals with health issues. *Id.* at 26. Such preventative screening remains particularly important for wild animals like the big cats because they typically do not manifest their illnesses until the disease is well-progressed. ECF No. 99-20 at 48; ECF No. 99-24 at 98.

Big cats are put at risk of contracting potentially life-threatening diseases if they come into contact with free-roaming animals, including domestic cats, chickens, ducks, and peacocks—all of which roam the Zoo grounds. ECF No. 99-16 at 328, 330; ECF No. 99-17 at 377. At least one of the Zoo’s domestic cats suffers feline immunodeficiency virus, which puts the big cats in jeopardy of contracting the virus. ECF No. 99-38 at 8; ECF No. 99-10 at 33. In addition to spreading disease, free-roaming animals frustrate the big cats who cannot prevent the entry of these animals into their enclosures and cannot catch the animals when they are outside the perimeter. ECF No. 99-47 at 21, 48.

One instance involving substandard veterinary care at the Zoo deserves special attention. In May 2018, Cayenne began to suffer from poor appetite and lethargy. ECF No. 99-24 at 10. Duncan anesthetized Cayenne to take x-rays and draw blood. ECF No. 99-30 at 191–92. While

under anesthesia, Cayenne went into respiratory arrest. ECF No. 19-19 at 4. Duncan injected epinephrine and performed chest compressions, which resuscitated the tiger. *Id.* As a result, however, Cayenne remained at a heightened risk of injury or death while sedated. ECF No. 99-10 at 30. Generally accepted standards of veterinary care required immediately providing Cayenne with intravenous fluids and respiratory support. *Id.* at 84. If these options were not available, proper protocol dictated that Duncan reverse the anesthesia administration. *Id.*

Tragically for Cayenne, Duncan lacked the skills or equipment to do either. She had no supplemental oxygen, intubation tubes, bags to help Cayenne breathe, an intravenous catheter, fluids, or a written emergency plan. ECF No. 99-30 at 204–07. Nor did Duncan have a pulse oximeter to measure tissue perfusion or oxygenation, a doppler to measure blood pressure, or ECG to measure the heart. *Id.* at 205. Duncan had only a thermometer and stethoscope. *Id.* at 204. Yet Duncan kept Cayenne under anesthesia and proceeded with the examination. *Id.* at 191–92. After Cayenne had been under anesthesia for about sixty minutes, Duncan left the room for five to ten minutes to vaccinate one of the domestic cats at the Zoo. *Id.* at 213. Alone and unattended, Cayenne had a heart attack and died. ECF No. 19-19 at 4.

Other big cats died or suffer from chronic illness at the Zoo. One lion, Mbube, died from disputed causes after significant weight loss and mane thinning. *Compare* ECF No. 19-15 at 9 (diagnosing Mbube with cancer), *with* ECF No. 99-10 at 59 (describing a range of conditions that Mbube could have experienced); *see also* ECF No. 114-3 at 14–16 (disputing PETA’s allegations of inadequate veterinary care for Mbube). Peka, the surviving lion, has been diagnosed with an abnormal gait of unknown origin. ECF No. 99-47 at 16. The ears of another tiger, India, are repeatedly bit by flies. ECF No. 99-17 at 307. To combat the flies, the Zoo implemented a pest-control program of disputed effectiveness. ECF No. 114-3 at 31. The white

tiger, Mowgli, annually experiences ringworm, a fungal infection that typically occurs in immunocompromised felines or those housed in damp, unsanitary conditions. ECF No. 99-17 at 297; ECF No. 99-10 at 81.

II. Standard of Review

Summary judgment is appropriate when the Court, construing all evidence and drawing all reasonable inferences in the light most favorable to the non-moving party, finds no genuine dispute exists as to any material fact, thereby entitling the movant to judgment as a matter of law. Fed. R. Civ. P. 56(a); see *In re Family Dollar FLSA Litig.*, 637 F.3d 508, 512 (4th Cir. 2011). Summary judgment must be granted “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

“In responding to a proper motion for summary judgment,” the opposing party “must present evidence of specific facts from which the finder of fact could reasonably find for him or her.” *Venugopal v. Shire Labs.*, 334 F. Supp. 2d 835, 840 (D. Md. 2004), *aff’d sub nom. Venugopal v. Shire Labs., Inc.*, 134 F. App’x 627 (4th Cir. 2005) (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 252 (1986); *Celotex*, 477 U.S. at 322–23)). Genuine disputes of material fact are not created “through mere speculation or the building of one inference upon another.” *Othentec Ltd. v. Phelan*, 526 F.3d 135, 140 (4th Cir. 2008) (quoting *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985)). Where a party’s statement of a fact is “blatantly contradicted by the record, so that no reasonable jury could believe it,” the Court credits the record. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

III. Analysis

PETA contends that summary judgment is warranted for each category of endangered

species at the Zoo under the Endangered Species Act. Apart from a single, narrow, ground involving veterinary care as to Cayenne, the Court cannot agree.

The Endangered Species Act (“ESA”) protects such covered animals as lions, tigers, and lemurs from an unlawful taking. 16 U.S.C. § 1538(a)(1)(B); 50 C.F.R. §§ 17.11, 17.21(c), 17.31(a). The ESA also prohibits possession of unlawfully taken lions, tigers, and lemurs. 16 U.S.C. § 1538(a)(1)(D). To “take” a species means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). A “take” must be construed in the “‘broadest possible manner’” to provide maximum protection under the Act. *Babbitt v. Sweet Home Chapter of Communities for a Great Or.*, 515 U.S. 687, 704 (1995) (quoting S. Rep. No. 93-307, at 7 (1973), reprinted in 1973 U.S.C.C.A.N. 2989, 2995).

One manner in which an animal is subject to a take under the ESA is if the animal is harassed. To “harass” a covered animal means to intentionally or negligently “create[] the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns.” 50 C.F.R. § 17.3. Excluded from the definition of harassment are practices that fall within generally accepted animal husbandry standards and that comply with the Animal Welfare Act (“AWA”). *Hill v. Coggins*, 867 F.3d 499, 509 (4th Cir. 2017), *cert. denied*, 138 S. Ct. 1003 (2018); *see also* Captive-bred Wildlife Regulation, 63 Fed. Reg. 48,634-02, 48,638 (Sept. 11, 1998) (noting that the exception was intended to exclude “normal husbandry practices that are not likely to result in injury”).¹

An animal is also “taken” if he is harmed. Harm “means an act which actually kills or injures wildlife.” 50 C.F.R. § 17.3. To establish harm, a plaintiff must prove, by a

¹ The Animal Welfare Act is a separate animal protection statute that can only be enforced by the Secretary of Agriculture. 7 U.S.C. §§ 2131, 2146.

preponderance of the evidence, that the act is “reasonably certain to imminently harm, kill, or wound” the species. *Animal Welfare Inst. v. Beech Ridge Energy LLC*, 675 F. Supp. 2d 540, 563 (D. Md. 2009), *judgment amended*, No. 09-1519 (RWT), 2010 WL 11484179 (D. Md. Jan. 26, 2010).² To demonstrate an animal was “harmed,” therefore, demands more than showing the animal was “harassed.” *Hill*, 867 F.3d at 511.

With these definitions in mind, PETA advances three primary theories of liability as to the Zoo and asks the Court to grant summary judgment as to each. First, that the Zoo’s provision of substandard shelter harassed the big cats and lemurs; second that the lack of any meaningful enrichment plan for the protected animals amounted to harassment; and third, the provision of inadequate veterinary harmed Cayenne in that it caused her death and resulted in ongoing harm or harassment as to the other big cats and lemurs. The Court addresses each in turn.

A. Inadequate Veterinary Care for the Big Cats

PETA contends that the Zoo’s inadequate veterinary care killed Cayenne, and thus “harmed” her under the ESA. AWA regulations compel the Zoo to provide Cayenne with an attending veterinarian with training or experience in caring for tigers. *See* 9 C.F.R. § 2.40(a) (“Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section.”); 9 C.F.R. § 1.1 (defining attending veterinarian as a person who “has received training and/or experience in the care and management of the species being attended”). Dr. Duncan, who cared for Cayenne at the time of

² Courts dispute how severe harassment or harm must be to become actionable. *Compare Graham v. San Antonio Zoological Soc'y*, 261 F. Supp. 3d 711, 743 (W.D. Tex. 2017) (requiring “more than any minor injury or harm in the literal sense [and] some notion of significance . . . short of requiring a ‘grave threat’”), with *People for Ethical Treatment of Animals, Inc. v. Miami Seaquarium*, 879 F.3d 1142, 1150 (11th Cir.), *adhered to on denial of reh'g sub nom., People for the Ethical Treatment of Animals, Inc. v. Miami Seaquarium*, 905 F.3d 1307 (11th Cir. 2018) (requiring a “threat of serious harm”). Because the death of an animal satisfies either standard, and genuine issues of material fact preclude summary on the other grounds, the Court need not resolve this legal question at this juncture.

her death, admitted to the Zoo that she lacked *any* specialized experience or training in medical care for tigers. ECF No. 99-24 at 33–34. Duncan, a recent graduate from veterinary school, had taken no specialized courses in big cats and before the Zoo, never treated big cats. Rather, she practiced on small cats and dogs, and examined the occasional horse. Indeed, Duncan’s primary source for learning about big cat feeding practices went no further than watching documentaries aired on Animal Planet. ECF No. 94-6 at 99–100.

Duncan’s lack of training and experience with big cats showed in her care of Cayenne. No sooner did Duncan put Cayenne under anesthesia, Cayenne went into respiratory arrest. ECF No. 19-19 at 4. The unrebutted record evidence demonstrates that Duncan should have immediately reversed the anesthesia. ECF No. 99-10 at 84.³ Duncan did not have the proper equipment to proceed with such a risky immobilization—she could not provide Cayenne with intravenous fluids or respiratory support. *Id.* Duncan also lacked the requisite equipment to monitor Cayenne’s oxygenation, blood pressure, and heart. ECF No. 99-30 at 204–07; ECF No. 99-10 at 83 (noting that these types of monitoring equipment are “the most basic requirements” for anesthetizing a tiger).

Then, after completing the diagnostics, Duncan left Cayenne alone to recover from the anesthesia, despite the high risk of an adverse reaction during the recovery period. ECF No. 99-30 at 191–92; ECF No. 99-10 at 84 (“The most critical times during anesthesia are induction and recovery.”). While she was alone, Cayenne suffered a heart attack and died. ECF No. 19-19 at 4.

It is without dispute in the record that “Cayenne died due to the lack of basic veterinary care.” ECF No. 99-10 at 84. Cayenne’s death constituted harm, and as such, the Zoo unlawfully

³ As stated at the hearing, the Court accepts both Dr. Kim Haddad and Dr. Jay Pratte as experts in their relevant fields regarding care of lions, tigers, and lemurs.

took Cayenne. *See* 50 C.F.R. § 17.3; *see also Kuehl v. Sellner*, 161 F. Supp. 3d. 678, 716 (N.D. Iowa 2016), *aff'd*, 887 F.3d 845 (8th Cir. 2018) (finding that untimely and inappropriate veterinary care harmed tigers). Accordingly, PETA is entitled to summary judgment on the claim that Cayenne was subject to a take, in violation of the ESA.

PETA also contends that Mbube's death, Mowgli's ringworm, Peka's gait, and the overarching lack of specialized training or experience and adequate preventative care program constitute a take as a matter of law. ECF No. 120 at 53–54. Regarding Mowgli's annually recurring ringworm, the Court cannot grant summary judgment in PETA's favor. PETA's veterinary expert, Dr. Haddad, opines that ringworm "typically occurs in poorly managed facilities." ECF No. 99-10 at 81. However, Haddad also concedes that ringworm can manifest in "immunocompromised" big cats *or* when they live in damp, unsanitary conditions. *Id.* Taking all reasonable inferences in the light most favorable to the Zoo, a genuine issue of disputed fact exists as to the causal connection between Mowgli's ringworm and the Zoo's inadequate veterinary care. *See* ECF No. 99-30 at 138 (noting that white tigers are genetically predisposed to a number of health problems); *see also* 50 C.F.R. § 17.3 (defining harm as "an act which actually kills or injures wildlife").

PETA further argues that no genuine disputed issue of fact exists as to the lack of preventative veterinary care harassing the big cats, as well as the potential exposure to disease from the free-roaming animals. The Court disagrees. PETA must demonstrate that lack of care "annoyed" the big cats "to such an extent as to significantly disrupt normal behavioral patterns." *See* 50 C.F.R. § 17.3. Importantly, as a matter of law, harassment does not merely constitute a likelihood of injury—the injury must be caused by an annoyance that is significantly disruptive to normal behavior. *Id.* To read the definition otherwise would render meaningless the word

“annoy.” *See Hill*, 867 F.3d at 509 & n.5. Although in the end PETA may be able to demonstrate that the lack of adequate veterinary care did harass the big cats as defined in the regulation, this question is best left for trial.⁴

Finally, as to the other allegations of harm or harassment due to inadequate veterinary care, at this stage, PETA cannot overcome the disputed facts on whether the Zoo provided inadequate care to Mbube, leading to his death (ECF No. 114-3 at 14–16); whether the Zoo inadequately treated Peka’s abnormal gait (ECF No. 99-47 at 16); and whether the Zoo employed an inadequate pest control program, leading to the fly bites on India’s ears. ECF No. 99-17 at 307. Altogether, summary judgment is granted in part and denied in part on whether the Zoo unlawfully took big cats by providing inadequate veterinary care.⁵

B. Inadequate Shelter

PETA also argues that the record evidence, viewed most favorably to the Zoo, supports that the Zoo’s provision of inadequate shelter harasses the big cats and lemurs by exposing them to inappropriately hot and cold temperatures. However, the parties’ have generated competing evidence as to whether the big cat enclosures were sufficiently insulated or provided for adequate shade to protect the big cats from extreme weather. *Compare* ECF Nos. 99-10 at 42, 99-47 at 9, *with* ECF No. 114-3 at 23, 33. Similarly, competing evidence exists as to the adequacy of the lemurs’ shelter. *Compare* ECF No. 99-47 at 61, *with* ECF No. 99-29 at 68. When “considering a summary judgment motion, the court may not make credibility determinations,” and so cannot find, as a matter of law, that PETA prevails. *See Courtney-Pope v. Bd. of Educ. of Carroll Cty.*,

⁴ PETA argues that the free-roaming animals annoy the big cats because their mere presence causes psychological distress. This annoyance, however, is distinct from the threats posed by disease transmission, and so is analyzed separately.

⁵ PETA concedes that, on a summary judgment standard, disputed material facts exist precluding summary judgment on whether substandard veterinary care of the lemurs rose to the level of a take. ECF No. 120 at 40–41 & n.17. This liability theory will proceed to trial.

304 F. Supp. 3d 480, 489 (D. Md. 2018). Summary judgment is denied on these grounds.

C. Insufficient enrichment

PETA next argues that the Zoo harmed and harassed the animals by providing insufficient environmental enrichment. Although PETA presents a robust record supporting the causal connection between lack of enrichment and the physical and psychological distress such deficiencies visit on the big cats and lemurs (ECF No. 99-47 at 26, 55–56, 110; ECF No. 99-10 at 15–17), certain evidence raises at this stage a genuine dispute as to whether the Zoo actually provided adequate enrichment. *Compare* ECF No. 99-10 at 15, 37; ECF No. 99-47 at 24, 54, 74, *with* ECF No. 114-3 at 9, 30. The parties also dispute whether Peka’s social isolation and the presence of free-roaming animals has harassed or harmed the protected species. *Compare*, ECF No. 99-10 at 38–39; ECF No. 99-47 at 21, 48, *with* ECF No. 114-3 at 12, 25. Given these disputes of fact, the Court cannot enter judgment in PETA’s favor on these additional grounds.

IV. Conclusion

For the foregoing reasons, the Court grants in part and denies in part PETA’s motion for summary judgment. ECF No. 99. A separate Order follows.

7/08/2019

Date

/S/

Paula Xinis
United States District Judge



Inspection Report

TRI STATE ZOOLOGICAL PARK OF WESTERN MARYLAND
12605 MOORES HOLLOW ROAD
CUMBERLAND, MD 21502

Customer ID: 15730
Certificate: 51-C-0064
Site: 001

TRI STATE ZOOLOGICAL PARK
OF WESTERN MARYLAND

Type: ROUTINE INSPECTION
Date: 08-JAN-2021

3.127(d)

Facilities, outdoor.

The new back gate, which is a section of the property perimeter fence, is only 5 feet in height. The space between the rungs in the gate range between 7-9 inches and a 9 inch gap exists between the ground and the bottom of the left panel of the gate. The gap and the spacing between rungs are wide enough for unwanted animals to easily pass through or under the gate. The height of the fence is insufficient to keep the public from entering the property during times when the zoo is closed. The perimeter fences must be at least six feet and designed in a manner that prevents people and animals from going under it or through it and having contact with the animals during non-exhibition times. Modifications must be made to the gate that would increase the height to six (6) feet and reduce the size of the spacing between rungs and the gap to restrict the entry of unwanted animals and unauthorized persons. Correct by January 22, 2021

3.81

Environment enhancement to promote psychological well-being.

An appropriate environmental enhancement plan is being followed as directed by a former attending veterinarian.

However, the current plan has not been reviewed and directed by the new attending veterinarian. The facility attending veterinarian must be a part of the development of the plan to ensure all social and psychological needs of the squirrel monkey and the capuchin are met. An environment enhancement plan, to include the environmental enrichment and

Prepared By: GLORIA MCFADDEN

USDA, APHIS, Animal Care

Date:

15-JAN-2021

Title: VETERINARY MEDICAL
OFFICER

Received by Title: Licensee

Date:

15-JAN-2021



Inspection Report

special considerations for the single housed non-human primates, must be directed by the current attending veterinarian and documented. Correct by January 29, 2021.

This inspection and exit interview were conducted with the licensee.

Prepared By: GLORIA MCFADDEN **Date:**
15-JAN-2021
Title: VETERINARY MEDICAL
OFFICER USDA, APHIS, Animal Care

Received by Title: Licensee

Date:
15-JAN-2021



Species Inspected

Cust No	Cert No	Site	Site Name	Inspection
15730	51-C-0064	001	TRI STATE ZOOLOGICAL PARK OF WESTERN MARYLAND.	08-JAN-2021

Count	Scientific Name	Common Name
000003	<i>Capra hircus</i>	DOMESTIC GOAT
000004	<i>Sus scrofa domestica</i>	DOMESTIC PIG / POTBELLY PIG / MICRO PIG
000001	<i>Ovis aries aries</i>	SHEEP INCLUDING ALL DOMESTIC BREEDS
000001	<i>Canis lupus</i>	GRAY WOLF / GREY WOLF / TIMBER WOLF
000001	<i>Lynx rufus</i>	BOBCAT
000001	<i>Erethizon dorsatum</i>	NORTH AMERICAN PORCUPINE
000001	<i>Lama pacos</i>	ALPACA
000002	<i>Ursus thibetanus</i>	ASIATIC BLACK BEAR
000002	<i>Potos flavus</i>	KINKAJOU
000002	<i>Nasua nasua</i>	SOUTH AMERICAN COATI
000001	<i>Canis lupus hallstromi</i>	NEW GUINEA SINGING DOG
000001	<i>Didelphis virginiana</i>	VIRGINIA OPOSSUM
000001	<i>Procyon lotor</i>	RACCOON
000001	<i>Cebus capucinus</i>	WHITE-HEADED / WHITE-THROATED CAPUCHIN
000001	<i>Saimiri sciureus</i>	COMMON SQUIRREL MONKEY
000001	<i>Vulpes lagopus</i>	ARCTIC FOX
000001	<i>Mephitis mephitis</i>	STRIPED SKUNK
000025	Total	

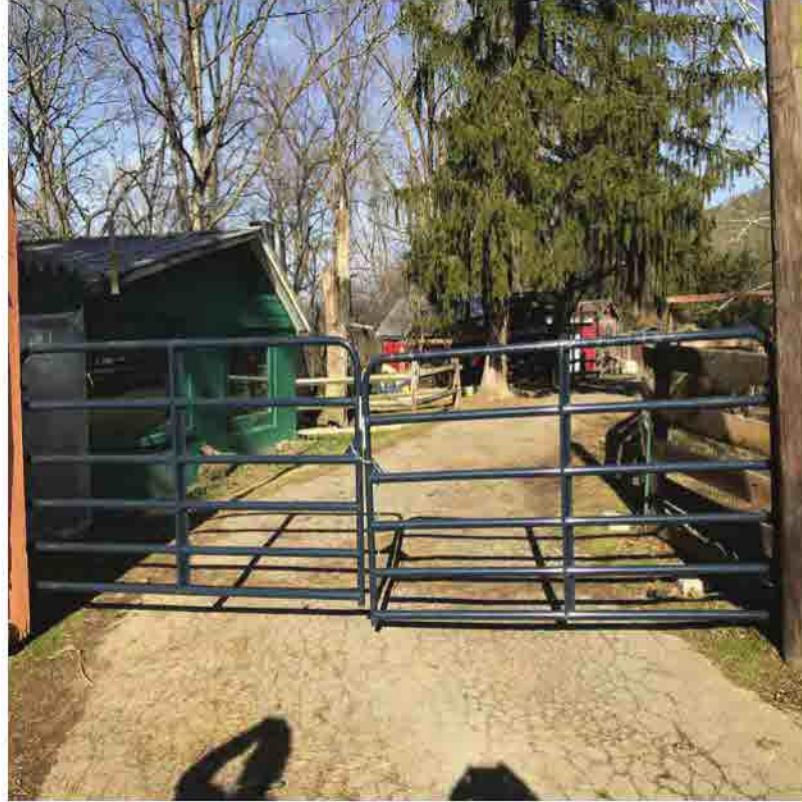


United States Department of Agriculture
Animal and Plant Health Inspection Service

Customer: 15730
Inspection Date: 08-Jan-2021

Species Inspected

Cust No	Cert No	Site	Site Name	Inspection
15730	51-C-0064	001	TRI STATE ZOOLOGICAL PARK OF WESTERN MARYLAND	08-JAN-2021



CFR:3.127(d)

Photographer: Gloria S McFadden

Date and Time: Thu Jan 14 18:36:00
GMT 2021

Inspection No: 2016090000509955

Certificate: 51-C-0064

Legal Name: TRI STATE ZOOLOGICAL PARK OF WESTERN
MARYLAND

Facility Name: TRI STATE ZOOLOGICAL PARK OF
WESTERN MARYLAND

Description: New Back gate (portion of perimeter fence): The height of the the gate is five (5) feet. The space between the rungs are 7-9 inches. There is a 9 inch gap from the ground to the bottom of the left side of the gate.

From: [Robert Baxter](#)
To: [McFadden, Gloria S - APHIS](#)
Subject: Complaint Initiated
Date: Saturday, January 2, 2021 12:13:54 PM

Task

To: GLORIA MCFADDEN

Robert Baxter has assigned you the following task:

Subject: Complaint Initiated
Account: TRI STATE ZOOLOGICAL PARK OF WESTERN MARYLAND
Due Date: 2/1/2021
Priority: Normal

For more details, click the following link:

(b) (6), (b) (7)(C)

From: [McFadden, Gloria S - APHIS](#)
To: [Shepherd, Jeffrey A - APHIS](#)
Subject: FW: Complaint Initiated - Tri-state Zoo
Date: Tuesday, January 5, 2021 8:24:00 PM
Attachments: [AC21-19 Complaint Form.pdf](#)
[AC21-109.pdf](#)

This complaint is more of the same investigation. With some items I can address on inspection. We should discuss this one as it is one of the facilities that had a PETA case against them that lead to the tigers and a lion being confiscated by the state. And, PETA is still seeking to try and confiscate the rest of the animals.

The county is green and has two primates. I would definitely want to do this as a team inspection.

From: Robert Baxter <robert.baxter@usda.gov>
Sent: Saturday, January 2, 2021 12:14 PM
To: McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
Subject: Complaint Initiated

Task

To: GLORIA MCFADDEN

Robert Baxter has assigned you the following task:

Subject: Complaint Initiated
Account: TRI STATE ZOOLOGICAL PARK OF WESTERN MARYLAND
Due Date: 2/1/2021
Priority: Normal

For more details, click the following link:

(b) (6), (b) (7)(C)





USDA-APHIS-Animal Care



ANIMAL WELFARE COMPLAINT		
Complaint No. AC21-109	Date Entered: January 2, 2021	Processed By: Robert Baxter
Referred To: Jeffrey Shepherd		Reply Due: February 1, 2021
Facility or Person Complaint Filed Against		
Name: TRI STATE ZOOLOGICAL PARK OF WESTERN MARYLAND		Customer No.: 15730
Address: 12605 MOORES HOLLOW ROAD		Email Address:
City: CUMBERLAND	State: MD	Phone No.: 240-727-8051
Complainant Information		
Name: (b) (6), (b) (7)(C), (b) (7)(D)		Organization: PETA Foundation
Address:		Email Address: (b) (6), (b) (7) (C), (b) (7)(D) @petaf.org
City:	State:	Phone No.: (b) (6), (b) (7)(C), (b) (7) (D)
How was the Complaint received? Email		
Details of Complaint: See attached		
Results: Referred to inspector		
Application Kit Provided: Yes: No:		
Inspector: GLORIA MCFADDEN		Date: February 1, 2021
Reviewed By: Robert Baxter		Date: January 2, 2021

From: [McFadden, Gloria S - APHIS](#)
To: [Shepherd, Jeffrey A - APHIS](#)
Subject: Plan This Week - GMcFadden
Date: Monday, January 11, 2021 11:50:00 AM

Hi!

I am have been busy this morning.

I did get to for an inspection at Tri-state Zoo in Friday. I would like to speak with you later today about my findings and the complaints. I have an appointment to speak with the vet at 1:30pm today.

As for my schedule for the week, this is the plan:

Tri-state inspection/report

Janice Cohen 328395 inspection

Calvert Maritime Museum 2865 or Echoes of Nature 326509 inspection (possible)

(b) (6), (b) (7)(C) [REDACTED]

AC Basic Presentation on Research with Carol Clarke for George Washington University (wed)

GOV Maintenance paperwork to fleet manager, renewal call and follow-up

Gloria S. McFadden, VMO

USDA, APHIS, AC

301-330-1537 (office)

(b) (6), (b) (7)(C) [REDACTED] (cell)

From: [McFadden, Gloria S - APHIS](#)
To: [Shepherd, Jeffrey A - APHIS](#)
Subject: RE: Complaint Initiated - Tri-state Zoo
Date: Wednesday, January 6, 2021 11:27:00 AM

Hi!

Since I won't be taking the GOV in for the recall fix, I am going to reach out to the GSA Leased Vehicle manager about the dead battery because they can make all the arrangements and have all charges go through them. Then I won't have to use the fleet or purchase card if the battery has to be replaced.

From: McFadden, Gloria S - APHIS
Sent: Tuesday, January 5, 2021 8:25 PM
To: Shepherd, Jeffrey A - APHIS <jeffrey.shepherd@usda.gov>
Subject: FW: Complaint Initiated - Tri-state Zoo

This complaint is more of the same investigation. With some items I can address on inspection. We should discuss this one as it is one of the facilities that had a PETA case against them that lead to the tigers and a lion being confiscated by the state. And, PETA is still seeking to try and confiscate the rest of the animals.

The county is green and has two primates. I would definitely want to do this as a team inspection.

From: Robert Baxter <robert.baxter@usda.gov>
Sent: Saturday, January 2, 2021 12:14 PM
To: McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
Subject: Complaint Initiated

Task

To: GLORIA MCFADDEN

Robert Baxter has assigned you the following task:

Subject: Complaint Initiated
Account: TRI STATE ZOOLOGICAL PARK OF WESTERN MARYLAND
Due Date: 2/1/2021
Priority: Normal

For more details, click the following link:

(b) (6), (b) (7)(C)

From: [Shepherd, Jeffrey A - APHIS](#)
To: [McFadden, Gloria S - APHIS](#)
Subject: RE: Complaint Initiated - Tri-state Zoo
Date: Wednesday, January 6, 2021 11:52:33 AM

That sounds good to me, thanks for the update Gloria!

Jeff Shepherd, DVM
Supervisory Animal Care Specialist
USDA APHIS Animal Care
Work (559) 772-7447
jeffrey.shepherd@usda.gov

From: McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
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To: Shepherd, Jeffrey A - APHIS <jeffrey.shepherd@usda.gov>
Subject: RE: Complaint Initiated - Tri-state Zoo

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Sent: Saturday, January 2, 2021 12:14 PM
To: McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
Subject: Complaint Initiated

Task

To: GLORIA MCFADDEN

Robert Baxter has assigned you the following task:

Subject: Complaint Initiated

Account: TRI STATE ZOOLOGICAL PARK OF WESTERN MARYLAND

Due Date: 2/1/2021

Priority: Normal

For more details, click the following link:

(b) (6), (b) (7)(C)



From: [Shepherd, Jeffrey A - APHIS](#)
To: [McFadden, Gloria S - APHIS](#)
Subject: RE: Plan This Week - GMcFadden
Date: Monday, January 11, 2021 11:53:08 AM

Hey Gloria, looks like a good plan for the week. Touch base with me after you speak to the AV and we can set up a time to talk after that. My schedule is pretty open this afternoon.

Thanks!

Jeff Shepherd, DVM
Supervisory Animal Care Specialist
USDA APHIS Animal Care
Work (559) 772-7447
jeffrey.shepherd@usda.gov

From: McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
Sent: Monday, January 11, 2021 11:51 AM
To: Shepherd, Jeffrey A - APHIS <jeffrey.shepherd@usda.gov>
Subject: Plan This Week - GMcFadden

Hi!

I am have been busy this morning.

I did get to for an inspection at Tri-state Zoo in Friday. I would like to speak with you later today about my findings and the complaints. I have an appointment to speak with the vet at 1:30pm today.

As for my schedule for the week, this is the plan:

Tri-state inspection/report
Janice Cohen 328395 inspection
Calvert Maritime Museum 2865 or Echoes of Nature 326509 inspection (possible)
Fit Test (Tues)
AC Basic Presentation on Research with Carol Clarke for George Washington University (wed)
GOV Maintenance paperwork to fleet manager, renewal call and follow-up

Gloria S. McFadden, VMO
USDA, APHIS, AC
301-330-1537 (office)
(b) (6), (b) (7)(C) (cell)

From: Shepherd, Jeffrey A - APHIS
To: McFadden, Gloria S - APHIS
Subject: RE: Tri-state Zoo Complaint AC21-109
Date: Friday, January 22, 2021 12:47:37 PM
Attachments: [Tri-state Zoo AC21-109 Response.doc](#)

Hey Gloria,

Attached FYI.

Jeff Shepherd, DVM
Supervisory Animal Care Specialist
USDA APHIS Animal Care
Work (559) 772-7447
jeffrey.shepherd@usda.gov

From: McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
Sent: Friday, January 22, 2021 10:16 AM
To: Shepherd, Jeffrey A - APHIS <jeffrey.shepherd@usda.gov>
Subject: Re: Tri-state Zoo Complaint AC21-109

Great!

Honestly, with e-file and all the changes, I have no idea how to process anything. So much to figure out.

Get [Outlook for iOS](#)

From: Shepherd, Jeffrey A - APHIS <jeffrey.shepherd@usda.gov>
Sent: Friday, January 22, 2021 9:45:56 AM
To: McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
Subject: RE: Tri-state Zoo Complaint AC21-109

Hey Gloria, this works perfect and it is how I prefer the complaint responses. I can upload this document to eFile, once I enter my name in the reviewed section.

Thank you and I will let you know if I have any questions.

Jeff Shepherd, DVM
Supervisory Animal Care Specialist
USDA APHIS Animal Care
Work (559) 772-7447
jeffrey.shepherd@usda.gov

From: McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
Sent: Friday, January 22, 2021 8:26 AM
To: Shepherd, Jeffrey A - APHIS <jeffrey.shepherd@usda.gov>

Subject: Tri-state Zoo Complaint AC21-109

Hi!

I have attached the complaint response. I tried to enter the information into the form that I received but was unable to edit the pdf. Then I thought that I was supposed to do it in e-file. I did try that but I couldn't enter all of the information in the response field. So, I am sending the complaint response the old way.

Let me know your thoughts about the complaint and how I should process the complaint response.

Gloria S. McFadden, VMO

USDA, APHIS, AC

301-330-1537 (office)

(b) (6), (b) (7)(C) (cell)

From: [McFadden, Gloria S - APHIS](#)
To: [Shepherd, Jeffrey A - APHIS](#)
Subject: RE: Tri-state Zoo Complaint AC21-109
Date: Friday, January 22, 2021 4:25:00 PM

Thank you.

From: Shepherd, Jeffrey A - APHIS <jeffrey.shepherd@usda.gov>
Sent: Friday, January 22, 2021 12:46 PM
To: McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
Subject: RE: Tri-state Zoo Complaint AC21-109

Hey Gloria,

Attached FYI.

Jeff Shepherd, DVM
Supervisory Animal Care Specialist
USDA APHIS Animal Care
Work (559) 772-7447
jeffrey.shepherd@usda.gov

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USDA, APHIS, AC
301-330-1537 (office)
(b) (6); (b) (7)(C) [REDACTED] (cell)

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Work (559) 772-7447
jeffrey.shepherd@usda.gov

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Gloria S. McFadden, VMO
USDA, APHIS, AC
301-330-1537 (office)
(b) (6), (b) (7)(C) (cell)

From: [Shepherd, Jeffrey A - APHIS](#)
To: [McFadden, Gloria S - APHIS](#)
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Jeff Shepherd, DVM
Supervisory Animal Care Specialist
USDA APHIS Animal Care
Work (559) 772-7447
jeffrey.shepherd@usda.gov

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Gloria S. McFadden, VMO
USDA, APHIS, AC
301-330-1537 (office)
(b) (6), (b) (7)(C) (cell)

From: Shepherd, Jeffrey A - APHIS
To: Ford, SaMonia M - APHIS
Subject: RE: 20-04592
Date: Monday, April 19, 2021 4:59:00 PM
Attachments: AC20-239 - Reply.docm

Hey SaMonia! Here is the complaint reply that should have been uploaded. Like I said on the phone we wanted to get a response up but couldn't get out to inspect because of COVID, the 1/8 report is the most recent inspection.

Thanks,

Jeff Shepherd, DVM
Supervisory Animal Care Specialist
USDA APHIS Animal Care
Work (559) 772-7447
jeffrey.shepherd@usda.gov

From: Ford, SaMonia M - APHIS <samonia.m.ford@usda.gov>
Sent: Monday, April 19, 2021 4:28 PM
To: Shepherd, Jeffrey A - APHIS <jeffrey.shepherd@usda.gov>
Cc: McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
Subject: RE: 20-04592

Hi Dr. Shepherd,

Thank you for the update. When you have a moment, could you give me a call about this complaint? I want to be sure that I formulate our response accordingly.

Thank you,
SaMonia Ford
Government Information Specialist
Program Support
USDA APHIS Animal Care
Phone: (919)855-7121

From: Shepherd, Jeffrey A - APHIS <jeffrey.shepherd@usda.gov>
Sent: Monday, April 19, 2021 4:02 PM
To: Ford, SaMonia M - APHIS <samonia.m.ford@usda.gov>; McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
Subject: RE: 20-04592

Hey SaMonia, this is a draft reply that was accidentally uploaded. We ended up not conducting an inspection because of COVID but were able to communicate with the AV on the complaint and closed it out for the end of the fiscal year with the information we had. The inspector was able to

make it out and inspect the facility on 1/8/21 and addressed the remainder of the complaint.

Please let me know what I need to do to rectify this error.

Thanks,

Jeff Shepherd, DVM
Supervisory Animal Care Specialist
USDA APHIS Animal Care
Work (559) 772-7447
jeffrey.shepherd@usda.gov

From: Ford, SaMonia M - APHIS <samonia.m.ford@usda.gov>
Sent: Monday, April 19, 2021 3:42 PM
To: McFadden, Gloria S - APHIS <gloria.s.mcfadden@usda.gov>
Cc: Shepherd, Jeffrey A - APHIS <jeffrey.shepherd@usda.gov>
Subject: FW: 20-04592

Good afternoon Gloria,

Could you forward me the inspection reports referenced on the attached complaint. The complaint reads as "See inspection report dated _____." I was not able to find an inspection report to correlate with this complaint from 2017-2019.

Thank you,
SaMonia Ford
Government Information Specialist
Program Support
USDA APHIS Animal Care
Phone: (919)855-7121

From: Wade, Tamara M - APHIS <tamara.m.wade@usda.gov>
Sent: Monday, April 19, 2021 12:20 PM
To: Ford, SaMonia M - APHIS <samonia.m.ford@usda.gov>
Subject: FW: 20-04592

Please see the requesters concerns below.

Thanks in advance.

From: Teresa Marshall (PETA Foundation) <teresam@petaf.org>
Sent: Friday, April 16, 2021 4:41 PM

To: Wade, Tamara M - APHIS <tamara.m.wade@usda.gov>

Subject: RE: 20-04592

Hi Tamara and Happy Friday Finally!

I have a question on one of the items in this response (attached). On this complaint response it mentions citations for the below and has an inspection date space noted but with no date. Can you provide the IR or inspection date? I am not finding any correlating IRs online or in our files.

- Kumar (tiger): Kumar was treated palliative without a diagnosis for 9 days under the consultation of several veterinarians. The attending veterinarian discussed with the owner that the tiger's prognosis was poor and strongly recommended euthanasia or sedation for diagnostics on several phone conversations and animal examinations. The licensee elected to forgo just diagnostics to find a referral facility that would perform diagnostics and surgery. Kumar passed away on July 7, 2019. Kumar was scheduled for the diagnostics at a referral facility the next day. The licensee did not give the attending veterinarian the proper authority as outlined in the AWA regulations. See [inspection report dated _____](#).

- India (tiger): The attending veterinarian tentatively diagnosed gastrointestinal disease or a pyometra. The attending veterinarian recommended on multiple occasions sedation for a diagnostic ultrasound and expressed that if pyometra "she will die" and her "prognosis is poor" to "grave".

After

48hrs, the attending veterinarian recommended India be referred to a facility that could perform both diagnostics and surgery. India died the day of the scheduled referral appointment after being treated with antibiotics for 4 days. The licensee did not give the attending veterinarian the proper authority as outlined in the AWA regulations. See [inspection report dated _____](#).

Thanks for any help on this and have a great weekend!

Teresa Marshall
Senior Information Officer
Captive Animal Law Enforcement
PETA Foundation
(757) 628-0784 (fax)

(b) (6), (b) (7)(C) (cell)

"The soul is the same in all living creatures, although the body of each is different." - Hippocrates

From: Wade, Tamara M - APHIS <tamara.m.wade@usda.gov>

Sent: Tuesday, April 13, 2021 12:24 PM

To: Teresa Marshall (PETA Foundation) <teresam@petaf.org>

Subject: 20-04592

The attached closes out your request. Have a blessed day.

Thank you

Tamara

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From: [McFadden, Gloria S - APHIS](#)
To: [Shepherd, Jeffrey A - APHIS](#)
Subject: Tri-state Zoo Complaint AC21-109
Date: Friday, January 22, 2021 8:25:00 AM
Attachments: [Tri-state Zoo AC21-109 Response.doc](#)

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Gloria S. McFadden, VMO
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