

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

PEOPLE FOR THE ETHICAL TREATMENT OF
ANIMALS, INC.,

Plaintiff,

v.

DADE CITY’S WILD THINGS, INC., STEARNS
ZOOLOGICAL RESCUE & REHAB CENTER,
INC. D/B/A DADE CITY’S WILD THINGS,
KATHRYN P. STEARNS, AND RANDALL E.
STEARNS,

Defendants.

Civ. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is a citizen suit, brought pursuant to Section 11(g)(1)(A) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g)(1)(A), to address ongoing violations of the ESA and its implementing regulations arising out of the operation of Dade City’s Wild Things, Inc., and Stearns Zoological Rescue & Rehab Center, Inc., d/b/a Dade City’s Wild Things (together “DCWT”), both located in Dade City, Florida.

2. DCWT is a zoo that –s numerous species of animals, including endangered tigers. The facility offers the public a variety of “animal encounters” with various animals, including tiger cubs.

3. PETA brings suit against DCWT and its principals Kathryn P. Stearns and Randall E. Stearns (collectively “Defendants”) for “taking” tigers in violation of the ESA and its implementing regulations. Specifically, Defendants prematurely separate cubs from their mothers within days of birth to exploit them for public encounters; force unwilling cubs to interact with the public for profit; force unwilling cubs to swim with the public for profit; use

abusive methods to compel the cubs' participation in these profitable encounters; and house tigers in woefully inadequate enclosures. These practices "harm" and "harass" the tiger cubs in violation of the ESA's "take" prohibition by causing them pain and discomfort; impairing their development; exposing them to a high risk of illness and injury; distressing them; depriving them of the companionship and care of their mothers; and preventing them from carrying out their natural behaviors.

I. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to Section 11(g) of the ESA, 16 U.S.C. § 1540(g), and 28 U.S.C. § 1331.

5. PETA provided notice of its intent to sue Defendants on June 22, 2016, at least sixty days in advance of the filing of this Complaint, as required by the ESA. 16 U.S.C. § 1540(g)(2)(A)(i). PETA mailed to Defendants, the Secretary of the Interior, and the Director of the U.S. Fish and Wildlife Service ("FWS") a notice of violation and intent to file suit ("Notice of Intent"), attached hereto as Exhibit A. More than sixty days have passed since the Notice of Intent was served on Defendants and these agencies.

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

7. The Secretary of the Interior has not commenced an action against Defendants to impose a penalty pursuant to the ESA or its implementing regulations, and the United States has not commenced a criminal prosecution against Defendants to redress a violation of the ESA or its implementing regulations.

8. Venue is appropriate in the Middle District of Florida, pursuant to 16 U.S.C. § 1540(g)(3)(A), because the violations of the ESA set forth herein occurred, and continue to occur, within this judicial district.

II. PARTIES

9. Plaintiff People for the Ethical Treatment of Animals, Inc. (“PETA”) is a Virginia non-stock corporation and animal protection charity pursuant to Section 501(c)(3) of the Internal Revenue Code, with its headquarters located in Norfolk, Virginia.

10. Defendant Dade City’s Wild Things, Inc. (“Dade City”), is a not-for-profit corporation organized under the laws of Florida, with its headquarters in Dade City, Florida.

11. Defendant Stearns Zoological Rescue & Rehab Center, Inc., d/b/a Dade City’s Wild Things (“Stearns Zoological”) is a not-for-profit corporation organized under the laws of Florida, with its headquarters in Dade City, Florida.

12. Defendant Kathryn P. Stearns is, upon information and belief, a resident of Pasco County, Florida. Ms. Stearns is the Executive Director of Dade City and a member of the Board of Directors of Stearns Zoological. Ms. Stearns acts on DCWT’s behalf by, among other things, supervising animal care, managing and creating protocols for animal encounters with the public, and participating in United States Department of Agriculture (“USDA”) and state inspections.

13. Defendant Randall E. Stearns is, upon information and belief, a resident of Pasco County, Florida. Mr. Stearns is the President of both Dade City and Stearns Zoological and oversees animal training for public encounters at DCWT.

III. STATUTORY BACKGROUND

14. The ESA defines an “endangered species” as “any species which is in danger of extinction.” 16 U.S.C. § 1532(6).

15. Section 9 of the ESA prohibits the “take” of any endangered species. *Id.* § 1538(a)(1)(B).

16. The ESA defines the term “take” to include “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). The term “harm” includes an act which “kills or injures” an endangered or threatened animal. 50 C.F.R. § 17.3. The term “harass” includes an “intentional or negligent act or omission which creates the likelihood of injury [to an endangered animal] by annoying [her] to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” *Id.*

17. Under the ESA, it is unlawful to possess any endangered species that has been unlawfully taken in violation of Section 9(a)(1)(B). 16 U.S.C. § 1538(a)(1)(D).

18. The ESA’s prohibitions apply to endangered animals held in captivity as well as those in the wild. *See, e.g.*, 80 Fed. Reg. 7380, 7385 (Feb. 10, 2015) (“[T]he ESA does not allow for captive held animals to be assigned separate legal status from their wild counterparts on the basis of their captive status.”); *id.* (“captive members of a listed species are also subject to the relevant provisions of section 9 of the ESA as warranted”).

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

20. The ESA allows citizens to bring suit to enjoin “any person . . . who is alleged to be in violation” of the “take” provisions of the statute. 16 U.S.C. § 1540(g)(1)(A).

IV. BACKGROUND

21. DCWT exhibits over 300 birds, fish, reptiles, and mammals at its Florida zoo. Tigers are among the species held by DCWT. Tigers are listed as endangered under the ESA. 50 C.F.R. § 17.11(h).

22. DCWT does not possess a permit from the Secretary of the Interior to “take” endangered tigers under 16 U.S.C. § 1539(a)(1)(A).

23. Tigers are apex predators and are the largest of all cat species. As few as 3,200 exist in the wild today, and their numbers are at an all-time low. More than ninety-seven percent of wild tigers have been lost in just over a century.

24. DCWT charges \$19.99 per person for a ten-minute “group encounter” with an endangered tiger cub. During the encounter, as many as two dozen people may pet, play, pick up, hold, and kiss the cub. Group encounters can only be purchased in conjunction with a tour or package. Guests who prefer to interact one-on-one with a cub can pay \$299 per couple for a “private encounter.”

25. Guests can also pay \$200 per person to swim with a tiger cub. Swim-with-a-tiger sessions involve interacting with a cub in and out of a chlorinated pool for up to thirty minutes.

26. DCWT and its principals Kathryn and Randall Stearns often begin using tiger cubs in public encounters when they are less than three weeks old, and continue to use them in encounters until they are approximately six-months old.

27. To ensure a constant supply of cubs for use in its lucrative public encounters, DCWT breeds and purchases tiger cubs.

A. DEFENDANTS HARM AND HARASS ENDANGERED TIGER CUBS BY PREMATURELY SEPARATING THEM FROM THEIR MOTHERS.

28. Defendants prematurely separate tiger cubs from their mothers to exploit them in profitable public encounters. For example, Defendants recently separated four tiger cubs from their mothers within days of birth. All four cubs were later used in cub encounters. DCWT also recently obtained a one-week-old white tiger cub from an Oklahoma facility, leaving her mother behind. Defendants then used this white tiger cub in dozens of encounters and swim-with-a-tiger sessions. Defendants have also separated at least three tiger cubs from their mothers within days of their birth at DCWT in order to transfer them to for-profit facilities, including an amusement park in Ohio.

29. Defendant Kathryn Stearns is responsible for handling newborn tigers at DCWT in the first days after their birth. On information and belief, Ms. Stearns directs that the cubs be separated from their mothers prematurely in order to ensure that they are acclimated to human handling so that they can be used in public encounters and swim-with-a-tiger sessions. *See* Section IV.B *infra* for further discussion of public encounters.

30. Prematurely separating tiger cubs from their mothers psychologically and physically injures them and prevents them from engaging in species-typical behaviors.

31. Experts do not condone prematurely removing a tiger cub from her mother and agree that cubs should be left with their mothers until species-typical age of dispersal. In the wild, tiger cubs are not weaned until approximately six-months old and remain with their mothers for nearly two years. Cubs open their eyes for the first time six to fourteen days after

they are born, and cannot thermoregulate independently of their mothers until they are several weeks old.

32. A tiger cub's immune system is insufficient to protect her from most communicable diseases until she is approximately eight weeks old. Unlike their domestic counterparts, there are no vaccines approved to protect tiger cubs from common communicable diseases.

33. The Association of Zoos and Aquariums ("AZA") is the premier zoological accrediting body in the United States and accredits all major U.S. zoos. The AZA oversees organized captive breeding programs called Species Survival Plans. The AZA's Tiger Species Survival Plan declares that "cubs should be raised by their mother" because "she does a better job" and the cubs "grow[] up to be better adjusted behaviorally."

34. The Tiger Species Survival Plan further recommends that mothers be allowed to raise their cubs because hand-raised cubs often develop hair loss, experience depressed growth, suffer nutritional deficiencies, and have higher mortality.

35. Infectious diseases are a major cause of death in very young tiger cubs. Illness is exacerbated by the stress of weaning, exposure to pathogenic organisms in the immediate environment, and immature immune system. Accordingly, people who may have cats or dogs at home can easily transmit pathogenic bacteria, viruses, and parasites to the tiger cubs.

36. Placing immune compromised tiger cubs in direct contact with the public poses significant risks to the cubs' health, welfare and safety.

37. According to tiger experts, hand-raising in an isolated zoo nursery environment may also result in severe behavioral inadequacies. In particular, hand-reared animals go on to display atypical behaviors and do not develop the social skills necessary to interact with other

tigers. Hand-reared captive big cats are also less likely to reproduce than big cats raised by their mothers. In fact, the majority of hand-reared female tigers have not produced offspring.

38. In AZA accredited zoos, the removal and hand-rearing of tiger cubs is considered an emergency measure to be put into practice only when all else has failed. In light of the nutritional, developmental, and behavioral benefits associated with parental rearing, there is near consensus among tiger experts that tiger cubs should never be separated from their mothers for exhibition purposes.

39. The National Association of State Public Health Veterinarians recommends that the public be prohibited from having direct contact with tigers due to the risk of injury and illness.

40. In addition to interfering with the tigers' behavioral patterns and causing them physical and psychological injury, prematurely separating tiger cubs from their mothers for use in lucrative public encounters falls well below the minimum standards for facilities and care required under the Animal Welfare Act ("AWA"), 7 U.S.C. §§ 2131-59.

B. DEFENDANTS HARM AND HARASS ENDANGERED TIGER CUBS BY USING THEM IN PUBLIC ENCOUNTERS.

41. Defendants also harm and harass tiger cubs, and prevent them from engaging in species-typical behaviors, by routinely using the cubs in public encounters, where they are in close proximity to—and forced to submit to being held, touched, pet, and kissed by—numerous patrons nearly every day.

42. DCWT's public-encounter program was created by Defendant Kathryn Stearns. Ms. Stearns is likewise responsible for supervising its implementation (including, for example, by creating schedules for swims and participating in the creation of protocols for encounters).

43. Defendant Randall Stearns oversees certain aspects of animal care for DCWT, including, in particular, animal training for public encounters.

44. Mr. Stearns also regularly interacts with the tigers at DCWT, including by leading swim-with-a-tiger encounters between tigers and members of the public. Mr. Stearns also transports tigers and handles them during media interviews.

45. Experts recognize that forced proximity to and contact with humans can be detrimental to wild animals' psychological and physical health. Studies of tigers and other big cats in zoos and circuses suggest that proximity to the public causes these cats stress. Indeed, studies on a wide range of species—from pygmy goats to black rhinos to orangutans—have found that proximity to humans is a source of stress for the animals. Stress in animals compromises immunity, impairs coronary health, alters brain structure and function, impairs reproduction, stunts growth, reduces body weight, and increases abnormal behaviors.

46. Studies also suggest that interacting with audiences—as the tiger cubs at DCWT are forced to do daily—is more stressful to animals than merely being on display.

47. Ronald Tilson, who served as Director of Conservation for the Minnesota Zoo for twenty-one years, and coordinated the AZA's Tiger Species Survival Plan from 1987 to 2011, also explained in an affidavit to the USDA that “[b]ig cats normally sleep up to 80% of every 24-hour day, but public handling severely interrupts this sleep cycle, causing exhaustion, anxiety, irritability, and associated physiological consequences that compromise[] their immune system.” According to Tilson, requiring tigers “to be active and visible during . . . opening hours when visitors are present, which conflicts with their natural activity pattern,” is a likely cause of chronic stress.

48. On July 17, 2015, the USDA filed suit against the defendant Stearns Zoological for numerous violations of the AWA. Among these, the USDA alleges that Stearns Zoological “willfully” violated the AWA regulations by forcing tiger cubs to swim with members of the public, despite the cubs’ “visibl[e] stress[.]” and “obvious discomfort, as exhibited by . . . vocalizing and repeated attempts to exit the pool.” In one instance, a USDA inspector describes:

[T]he cub . . . was reluctant to move to the edge of the pool and the handler pulled him by the leash. The cub was later passed from the side of the pool to the handler inside the pool and the cub was apparently under distress by vocalizing and moving around when handled inside the pool in apparent discomfort. After swimming for [a] short distance the cub swam towards the handler located at the pool wall and extended his paws towards the edge of the pool apparently wanting to get out of the pool. Instead of pulling the cat out of the water and stopping the encounter the handler decided to continue with the swimming.

The USDA’s complaint asserts that Stearns Zoological failed to comply with the agency’s earlier instruction “not to force an animal to perform any interaction that the animal does not want to perform, in order to prevent unnecessary discomfort and/or behavioral stress.”

49. On numerous occasions since being cited by the USDA for forcing tigers to perform, DCWT staff have prevented clearly distressed tiger cubs (regularly displaying distress by hissing and crying) from leaving the pool by dragging unwilling cubs into the pool, pulling on their leashes, grabbing their tails, dragging them by the feet, or holding the skin of their necks. Defendants’ actions harm and harass tiger cubs.

50. Depending on the age and size of the tiger cubs, public encounters at DCWT entail cubs being petted, picked up, held, and, according to the facility’s website, “cuddled” by multiple patrons. Groups of eight or ten people are routine. A staff member will either restrain a smaller cub on a table while guests touch her, or pick up a larger cub and walk her around from person to person, or pass the cub around from person to person to be held,

touched, hugged, and kissed by each in turn. Even after instructing guests not to, staff members will sometimes allow guests to put toys in the cubs' faces or grab their faces. In addition to these activities, swim-with-a-tiger sessions also entail a cub swimming up and down the pool several times, next to a patron.

51. DCWT often schedules back-to-back encounters, forcing the tiger cubs to interact with numerous people over the course of a day. For instance, Defendants used the same tiger cub in at least two private encounters, two or more group encounters, and swim sessions with seventeen guests in a single day.

52. During encounters at DCWT, tiger cubs often exhibit signs of distress, such as crying, growling, struggling to break free, and attempting to escape.

53. Using tiger cubs in public interactions inflicts psychological and physical harm on them.

54. According to a witness, DCWT broke a female tiger cub's tail by dragging her body by the tail. The witness was told that this cub's injury was not an isolated event.

55. In one instance, a distressed cub tried to escape by swimming to the side of the pool in any direction, but a staff member continuously restrained her by pulling on the cub's leash and holding onto the base of her tail. The staff member repeatedly pushed the cub down as the cub tried to climb on her to escape the pool.

56. In another swim session, the same tiger cub tried to escape, but a staff member restrained her. An employee voiced concern that the tiger was tired, but the first employee kept the tiger in the pool. The cub was panting audibly, and, at one point, her head went under the water for approximately two seconds.

57. In back-to-back swim sessions, two smaller tiger cubs tried to swim to the edge of the pool, but a staff member carried them away from the edge, as the cubs cried. The same day, a third cub frantically tried to swim away from a staff member, but the staff member held onto the cub's tail. A witness saw the cub's mouth and nose go under water. This cub kept trying to climb up the employee's body to escape. Later that day, a fourth tiger cub repeatedly tried to get out the pool while being recorded by DCWT, but was restrained by a staff member. Defendant Kathryn Stearns threw a floatation device into the water so that the tiger cub could play with it, but the cub swam away from it. When the staff member tried to put the cub on the floatation device, the cub hissed. After approximately ten minutes, the tiger cub escaped but was forced back in when Kathryn Stearns told an employee to "just dump [the cub's] ass in the water."

58. During private and group encounters, staff regularly place cubs on their sides so that guests can touch their bodies, and then restrain struggling cubs in place by putting stuffed toys in their faces and holding the toys down or holding the cubs' heads to the ground by their collars. Staff has also been instructed to pinch the cubs' ears and noses to keep them in line. One employee slammed cubs to the ground to prevent them from getting up during public encounters.

59. On one recent occasion, a staff member pinched the ears of an uncooperative cub several times during an encounter and then forcefully flipped the cub onto her side by grabbing the cub's neck. The sound of the cub's body striking the ground was audible.

60. On another occasion, a cub attempted to run away several times, but the staff member grabbed her each time and pulled her back to lie in front of a guest. The staff

member pinched the top of the tiger cub's head to force the cub to participate in the interaction.

61. During a third recent group encounter, a staff member repeatedly picked up a cub and held her in front of the guests, even as the cub cried and struggled to get away. The cub bit at the employee's arms and face to escape. At one point, the cub tried to run away, and the staff member grabbed her by the base of the tail and forcefully pulled her back.

62. According to experts, preventing animals from responding to fearful situations by avoiding or escaping them is a cause of chronic stress.

63. Similarly, the USDA complaint charges Stearns Zoological with "using physical abuse to handle or work animals," in violation of the AWA regulations, for lowering a tiger cub into the pool by the tiger's tail; pulling two cubs' tails to restrain them; pulling a cub out of the pool by the tiger's front leg; and holding a cub aloft by the neck.

64. Over many months, witnesses observed DCWT staff repeatedly holding onto and pulling the tiger cubs by the cubs' tails; grabbing the cubs by the skin on the back of their necks; pulling them by the front feet; pinching their ears and nose; and even slamming their bodies to the ground.

65. In addition to risking physical injury to the cubs, according to a report commissioned by the Royal Society for the Prevention of Cruelty to Animals ("RSPCA"), "[a]versive handling" is "known to cause welfare problems" in a wide range of species as a "result of chronic stress." Indeed, "even mildly aversive stimuli can have long-term effects if they are sustained, frequent and/or unpredictable."

66. Forcing tiger cubs to interact with patrons for profit—and using abusive methods to compel the cubs' compliance—inflicts psychological and physical harm on them.

67. These practices also significantly disrupt and impair the tiger cubs' normal behavioral patterns, and fall well below the AWA's minimum standards for facilities and care.

C. DEFENDANTS HARM AND HARASS ENDANGERED TIGERS BY HOUSING THEM IN WOEFULLY INADEQUATE ENCLOSURES.

68. Defendants harm and harass tigers at DCWT by depriving them of necessary space; forcing them to live on unnatural, concrete surfaces, with inadequate drainage; failing to provide them with shade and hiding places; depriving them of access to clean pools or other bodies of clean water; and failing to provide them proper enrichment.

69. A wild tiger's home range can spread over seven to 1,000 square kilometers, and tigers travel widely, from five to thirty kilometers daily in ordinary circumstances, and occasionally even fifty to sixty kilometers. Scientific studies show that species with large territories, like tigers, are particularly vulnerable to stress in captivity, and that small enclosures are detrimental to tigers' because of the animals' inability to cover large distances in their enclosures. Tigers in larger enclosures explore more and pace less often—both key indicators of adequate welfare.

70. In addition, as one study recently summarized, “[a] larger enclosure not only provides appropriate space for exercise, but it also allows animal keepers and zoo designers to implement a wider variety of enrichment items”—items that stimulate an animal's psychological and physiological well-being. “Smaller enclosures are restricted in the amount of useable space, which makes it difficult to provide captive animals with a wide variety of enrichment.”

71. DCWT harms and harasses endangered tigers by housing them in inappropriately small enclosures. On information and belief, there are fourteen tiger enclosures at DCWT,

one of which is only used to hold tigers temporarily when they are moved between exhibits. The median size of the adult enclosures is approximately 177 square feet. Five of these enclosures are under 200 square feet, and two measure only approximately 125 square feet.

72. Researchers recommend that tiger enclosures be at least 10,000 square feet. This is twice as large as the largest enclosure at DCWT.

73. Defendants also harm and harass tigers at DCWT by housing them on cement floors that cause footpad injuries, arthritis, trauma to bony prominences, and are more likely to lead to incidence of disease and parasites than soft, natural surfaces. By contrast, natural substrate is known to stimulate natural behaviors in captive tigers, reducing stereotypic behavior (such as pacing, a key indicator of poor welfare) and increasing exploratory behaviors.

74. At least three of the tiger enclosures at DCWT have entirely concrete floors, while two have partially concrete floors. According to an employee, one of the tigers' feet bled for weeks after the enclosure was surfaced with concrete.

75. The AZA recommends that natural substrates such as grass and dirt be used for outdoor enclosures housing big cats and that the use of unnatural concrete surfaces be avoided.

76. DCWT also harms and harasses endangered tigers by housing them in enclosures with inadequate drainage. The USDA complaint states that DCWT "willfully" violated the AWA standards by failing to provide "a method to rapidly eliminate excess water from tiger enclosures, which had an accumulation of mud and water."

77. DCWT also harms and harasses endangered tigers by depriving them of clean pools or other bodies of clean water in which the tigers could choose to submerge or swim.

As one recent study concluded, “access to a water pool with abundant clean water substantially enhances” adult captive tigers’ “overall welfare.” Studies demonstrate that the presence of a water body enhances tiger well-being by dramatically decreasing stereotypic pacing and increasing exploratory behaviors.” The AZA states that “[a] pool is considered to be [a] very important” element of a tiger enclosure.

78. The quality of the water in the pool is critical. According to researchers, “only [the] presence of a water pool with clean water encourages tigers to perform behaviours considered as indicators of enhanced welfare.”

79. Many of the tigers at DCWT have no regular access to a pool or other body of water. On information and belief, six enclosures, holding ten adult tigers, do not include a pool or other body of water at all. Several of the pools are rusted and dirty. An enclosure holding two adult tigers has a dirty, rusted pool, which doesn’t hold water, and a circular enclosure holding four adult tigers has a pool that never has water in it.

80. DCWT also harms and harasses endangered tigers by depriving them of adequate enrichment.

81. Environmental enrichment is provided by manipulating an animal’s environment to various items and spaces that will stimulate his or her physical and psychological well-being. Enrichment encourages natural behaviors in captive tigers and reduces stereotypies. Experts agree that tigers should have access to a wide variety of forms of enrichment, including natural substrate and vegetation, water features, rocks, toys, and resting areas at different heights.

82. On information and belief, Defendant Kathy Stearns is responsible for supervising enrichment for the tigers at DCWT and for decision-making with respect to the design of the enclosures.

83. Some of the enclosures at DCWT fail to include any enrichment items nor, upon information and belief, are novel forms of enrichment provided. Others lack adequate forms of enrichment. For example, one enclosure housing two adult tigers recently included five balls—four of which were split open and/or flattened; a tire with tooth and claw marks all over it; a roofed wooden structure, which the tigers sometimes lay on (the roof was approximately two feet above the ground); and a pool. The pool had approximately five inches of water at the bottom, which contained many leaves, and approximately two inches of sand, as well as a large hole in its side that kept it from holding water.

84. These enclosures also fail to provide tigers with shade and hiding places, which are critical to the psychological and physical welfare of the animals.

85. Housing tigers in small enclosures, with concrete floors and inadequate drainage, no access to a clean body of water, and inadequate forms of enrichment also creates a high likelihood of future injury and significantly disrupts and impairs the tigers' normal behavioral patterns.

86. These practices do not meet the minimum standards for facilities and care under the AWA.

D. DEFENDANTS' BUSINESS MODEL LEADS TO AN INEVITABLE CYCLE OF ESA VIOLATIONS.

87. DCWT's regular cycle of breeding, prematurely separating, and then disposing of cubs once the cubs are too old to be used in such programs "harm[s]" and "harass[es]" the animals in violation of the "take" prohibition of the ESA.

88. DCWT breeds tiger cubs for the purposes of its public encounters and swim-with-a-tiger sessions, and for selling, trading, or otherwise disposing of them.

89. DCWT's conduct in relation to breeding tiger cubs leads to a number of impermissible harms described in paragraphs 21 through 88 above.

V. PETA'S EFFORTS TO COMBAT DEFENDANTS' ESA VIOLATIONS

A. FRUSTRATION OF PETA'S MISSION.

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

91. To achieve its objectives of ending the abuse and neglect of animals used for entertainment, PETA uses public education, cruelty investigation, research, animal rescue, legislation, special events, celebrity involvement, protest campaigns, and lawsuits to enforce laws enacted to protect animals. It brings this suit on its own behalf to protect its organizational resources.

92. By unlawfully harming and harassing endangered tigers, Defendants directly frustrate PETA's mission to eliminate the use and abuse of animals for entertainment. Unlawfully harming and harassing endangered tigers increases the animals subject to abuse and neglect in entertainment. If PETA prevails in this action, Defendants will no longer be able to maintain tigers in unlawful conditions, and their use and abuse of tiger cubs in public encounters and swim-with-a-tiger sessions, as well as their abusive methods of forcing the cubs' compliance will come to an end.

93. Unlawfully forcing tiger cubs to participate in public encounters and swim-with-a-tiger programs also frustrates PETA's mission by incentivizing DCWT's regular cycle of

breeding, prematurely separating, and disposing of cubs, particularly once the cubs are too old to be used in such programs any more. This practice is widely recognized to contribute to captive-tiger overpopulation in the U.S., where, according to the FWS's deputy assistant director for law enforcement, only about 3.5% of captive tigers are held in AZA-accredited facilities, and credible sanctuaries are bursting at the seams with tigers rescued from unaccredited zoos and private owners. If PETA prevails in this action, DCWT will likely breed far fewer tigers, thereby ending its continual cycle of "takes" of tiger cubs under the ESA and reducing the number of captive-tigers held in inadequate and non-AZA accredited sanctuaries.

94. Continuing to harm and harass the endangered tigers at DCWT without repercussion under the ESA also creates the incorrect public impression that Defendants—and, more generally, similar zoos—are engaged in conduct that is consistent with animal welfare when they force tigers to participate in public encounters and swim-with-a-tiger sessions. This conduct is not acceptable, not consistent with animal welfare, and constitutes animal abuse, mistreatment or neglect. This public misimpression is amplified by the media attention that DCWT's swim-with-a-tiger sessions and other public encounters have received in such outlets as the New York Daily News and Daily Mail Online, the most visited newspaper website in the world, with over 189.5 million visitors per month, and 11.7 million visitors daily. This frustrates PETA's mission by making it harder to persuade the public that it should not tolerate the use of animals in entertainment. If PETA prevails in this action, (a) PETA will not have to counteract the misimpression, and (b) it will be easier for PETA to educate the public that Defendants' practices are inconsistent with the ESA and animal welfare.

95. The considerable media attention that DCWT continues to receive for its swim-with-a-tiger sessions and other public encounters—and the fees Defendants are able to charge for these attractions—also creates significant incentives for other facilities to start their own swim-with-a-tiger and other public-encounter programs. This frustrates PETA’s mission by expanding cruel forms of entertainment. It also frustrates PETA’s mission by encouraging other facilities to regularly breed cubs for short-term use—a recognized cause of captive-tiger overpopulation in the U.S. If PETA prevails in this action, other facilities will be discouraged from instituting their own swim-with-a-tiger and other public-encounter programs that harm and harass endangered tiger cubs.

B. IMPAIRMENT OF PETA’S ACTIVITIES AND DIVERSION OF ITS RESOURCES.

96. PETA also regularly rescues animals from inhumane and abusive situations, and places them in sanctuaries or other homes. In the past four years alone, PETA has rescued at least sixty-three captive wild animals, from at least thirteen different facilities, and placed them in sanctuaries.

97. DCWT plays a large role in the captive-tiger overpopulation crisis as one of a relatively few exhibitors who are breeding cubs for public encounters and fueling the overpopulation problem. In addition, DCWT also plays a role in the overpopulation crisis by selling many of the tiger cubs it regularly breeds to other exhibitors for use in public encounters and to so-called “backyard breeders.” Indeed, Defendant Kathryn Stearns maintains a waiting list for facilities wanting tiger cubs and has indicated that DCWT charges \$4,000 for each animal.

98. By engaging in a regular cycle of breeding, prematurely separating, and disposing of tiger cubs, and selling cubs to those who will irresponsibly manage and breed them,

DCWT impairs PETA's activities by significantly contributing to captive-tiger overpopulation, which makes it harder for PETA to rescue endangered tigers. There are currently many more captive tigers that require homes in the United States than places in sanctuaries with the knowledge, facilities, and resources to provide long-term humane, safe, and appropriate care for these complex species. Many reputable sanctuaries lack financial reserves for even more than one-to three-months operating expenses, and are not equipped to keep taking on more animals without additional financial assistance.

99. As a result, PETA has been forced to divert resources to counteract DCWT's unlawful activities, and try to slow the cycle of breeding, premature separation, and disposal of tiger cubs, so that overpopulation does not continue to impair PETA's ability to rescue tigers. PETA has been forced to divert these resources from its other animal rescue, cruelty investigation, advocacy, and education projects.

100. If PETA does not prevail in this action, DCWT and other exhibitors encouraged by DCWT's success will likely continue to fuel captive-tiger overpopulation by breeding, prematurely separating, and disposing of tiger cubs, and PETA will have to continue to divert resources to counteract DCWT's unlawful activities.

101. Another of PETA's primary activities is educating the public about the conditions of captive animals used in entertainment.

102. Again, continuing to harm and harass the endangered tigers at DCWT without repercussion under the ESA creates the incorrect public impression that Defendants—and, more generally, similar zoos—can abuse, neglect and mistreat animals, and that forcing tigers to participate in public encounters and swim-with-a-tiger sessions is consistent with animal welfare. This incorrect public impression is amplified by the media attention that

DCWT's swim-with-a-tiger sessions and other public encounters have received in such outlets as the New York Daily News and Daily Mail Online. This impairs PETA's activities by making it harder for PETA to educate the public that the conditions at facilities like DCWT, in fact, harm and harass endangered animals.

103. As a result, PETA has been forced to divert resources in order to counteract the public impression that DCWT's practices are consistent with the ESA and animal welfare. Among other activities, PETA has submitted approximately a dozen complaints about DCWT to government agencies; alerted venues planning on hosting animals from DCWT to Defendants' abuse; posted multiple posts on the PETA.org blog; drafted a letter to a celebrity photographed posing with a tiger cub used by DCWT; drafted letters to news outlets that have promoted DCWT's tiger encounters and other activities; compiled and published a factsheet on PETA's website about DCWT's history of animal-welfare violations; and submitted letters to the editor. In order to compile accurate information about DCWT to share with the public and its members, PETA has tracked and gathered DCWT's USDA inspection reports; arranged for activists to visit DCWT; monitored DCWT's Facebook page and website; and submitted and paid for multiple public records requests related to the facility and reviewed numerous responsive documents.

104. If PETA prevails in this action, the public will learn that Defendants' practices are inconsistent with the ESA and animal welfare, and PETA will no longer have to divert resources to counteract the incorrect public impression caused by Defendants' unlawful acts.

105. PETA's additional efforts and the resulting expenditures would not be necessary but for Defendants' unlawful taking of endangered tigers.

VI. CLAIMS FOR RELIEF

COUNT ONE: UNLAWFUL TAKE OF ENDANGERED TIGERS

106. The allegations set forth in the preceding paragraphs are hereby realleged and incorporated by reference herein.

107. Defendants' ongoing practices of prematurely separating endangered tiger cubs from their mothers; using cubs in public encounters, including swim-with-a-tiger sessions; forcing unwilling cubs to participate in public encounters; using abusive methods to ensure the cubs' compliance in public encounters; and housing tigers in woefully inadequate enclosures violates the "take" prohibition of Section 9 of the ESA, 16 U.S.C. § 1538(a)(1)(B).

108. Pursuant to 16 U.S.C. § 1540(g)(1)(A), this Court has the authority to issue an injunction prohibiting Defendants from further violating 16 U.S.C. § 1538(a)(1)(B), and ordering them to relinquish possession of the tigers to a reputable sanctuary.

COUNT TWO: UNLAWFUL POSSESSION OF TAKEN TIGERS

109. The allegations set forth in the preceding paragraphs are hereby realleged and incorporated by reference herein.

110. Defendants' continued possession of the tigers in its custody, who have been taken as set forth above, constitutes a violation of 16 U.S.C. § 1538(a)(1)(D).

111. Pursuant to 16 U.S.C. § 1540(g)(1)(A), this Court has the authority to issue an injunction prohibiting Defendants from further violating 16 U.S.C. § 1538(a)(1)(D), and ordering them to relinquish possession of the tigers to a reputable sanctuary.

RELIEF REQUESTED

WHEREFORE, PETA respectfully requests that the Court grant the following relief:

- a. Enter a declaratory judgment that Defendants' treatment of endangered tigers and tiger cubs violates the ESA's prohibition on the "take" of an endangered species set forth in 16 U.S.C. § 1538(a)(1)(B) and corresponding regulations;
- b. Enter a declaratory judgment that Defendants have violated and continue to violate 16 U.S.C. § 1538(a)(1)(D) and corresponding regulations by possessing endangered tigers and tiger cubs who have been unlawfully taken by Defendants;
- c. Enjoin Defendants pursuant to 16 U.S.C. § 1540(g)(1)(A) from continuing to violate the ESA and its implementing regulations with respect to endangered tigers and tiger cubs;
- d. Enjoin Defendants from owning or possessing any endangered tigers in the future;
- e. Award PETA its reasonable attorneys' and expert fees and costs for this action; and
- f. Grant such other and further relief as the Court deems just and proper.

Date: October 12, 2016

Respectfully submitted,

*Trial Counsel for People for the Ethical
Treatment of Animals, Inc.*