

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

PEOPLE FOR THE ETHICAL TREATMENT OF
ANIMALS, INC.,

Plaintiff,

v.

Civ. No. 8:16-cv-2899-CEH-AAS

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.

**PLAINTIFF’S SECOND AMENDED 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 exhibits 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 tigers in violation of the ESA's "take" prohibition by causing them pain and discomfort; exposing them to a high risk of serious illness and injury; distressing them, which poses a threat of serious harm; preventing them from carrying out their natural behaviors; impairing the cubs' development; and depriving the cubs of the companionship and care of their mothers.

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.*, 78 FR 33790, 33792 (June 5, 2013) (“The Act does not allow for captive-held animals to be assigned separate legal status from their wild counterparts on the basis of captive state . . .”).

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 approximately 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 these encounters, as many as two dozen people may interact with the tiger cub in a variety of ways including petting, playing with, picking up, holding, and / or kissing 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 a fee, typically \$200 per person, to swim with a tiger cub. Swim-with-a-tiger sessions last up to 30 minutes and involve interacting with a cub in and out of a chlorinated pool.

26. DCWT and its principals Kathryn and Randall Stearns often begin using tiger cubs in public encounters when they are less than four weeks old and have used at least one cub when she was just two weeks old. The cubs are often used 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 poses a threat of serious harm to both the mothers and the cubs as it 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 twelve days after

they are born, and have difficulty thermoregulating independently of their mothers until they are several weeks old.

32. Nursing plays a crucial role in ensuring a tiger cub's health, because the mother's milk contains antibodies that are lacking in the cub's immune system. Depriving cubs of these antibodies poses a threat of serious harm as newborns and very young cubs require these antibodies to protect them against communicable diseases. They do not begin making their own antibodies until they are approximately eight weeks old, at which time vaccines may be introduced to begin building the cubs' immunities from common communicable diseases. Vaccinations must be administered at least twice, weeks apart, before the cubs will make sufficient antibodies to protect themselves from disease.

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 ("SSP"). The SSP advises against hand-rearing tiger cubs. According to the SSP's Tiger Care Manual, "cubs should be hand-raised only when parent-rearing is not possible due to maternal neglect or health reasons" and zoos should attempt to identify and eradicate the cause of this neglect before the next litter is born.

34. Electing to hand-raise cubs in the absence of maternal neglect or health reasons, and / or continuing to breed tigers with an unresolved history of maternal neglect poses a serious threat of harm because hand-raised cubs suffer or are at greater risk of suffering serious impairment or injury. For instance, experts note that hand-raised cubs are impaired psychologically and behaviorally as compared to mother-raised cubs. Because hand-raised cubs do not receive lessons that would be taught to them by their parents, their learning skills

are impaired, their brains develop differently, and they are significantly less likely to engage in species-typical behaviors. Hand-raising cubs also creates unnecessary health risks, such that hand-raised cubs often 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 systems.

36. Placing very young tiger cubs in direct contact with the public poses a threat of serious harm as it creates significant risks to the cubs' health, welfare, and safety.

37. According to tiger experts, hand-raising tigers poses a threat of serious harm as it may 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, for example, are less likely to reproduce than big cats raised by their mothers, in part because hand-reared cats may not have learned species-specific cues they may encounter during breeding. Hand-reared big cats are also less psychologically and behaviorally prepared to appropriately rear cubs, in part because they have not experienced species typical nurturing, and they are thereby less likely to successfully rear their own young.

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 behavioral or medical conditions dictate. 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 posing a threat of serious harm by interfering with the tigers' behavioral patterns and causing them physical and psychological injury, prematurely separating tiger cubs from their mothers for use in public encounters falls well below generally accepted standards and 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 denying animals choice and forcing them to have contact with humans can be detrimental to wild animals' psychological and physical health. This, in turn, poses a threat of serious physical harm as distress 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 denying animals the ability to make choices, such as by forcing them to interact with audiences—as the tiger cubs at DCWT are forced to do almost daily—causes the animals greater distress 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 distress.

48. On July 17, 2015, the USDA filed suit against the defendant Stearns Zoological for numerous violations of the AWA. Among these, the USDA alleged 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.” On February 15, 2017, after a hearing on the merits, then Chief Administrative Law Judge Bobbie McCartney sustained nearly all of the USDA’s allegations and held that defendants’ “baby tiger swim

program is not consistent with the requirements of 9 C.F.R. § 2.131(c)(3) that “[y]oung or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.” Judge McCartney ordered Stearns Zoological to cease and desist this program, assessed a \$21,000 civil penalty, and ordered a 60-day suspension of the facility’s exhibitor’s license.

49. On numerous occasions since being cited by the USDA for forcing tigers to perform, DCWT staff have created a threat of serious harm by preventing clearly distressed tiger cubs (regularly displaying distress through body posture and / or by hissing or 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, attempting to escape, or adopting body postures that experts recognize indicate distress.

53. Using tiger cubs in public interactions poses a threat of serious psychological and physical harm as it increases distress and places them at higher risk of acute and chronic medical issues up to and including aspiration pneumonia or drowning if the cubs' heads go beneath the surface of the water.

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 distress.

63. Likewise, experts agree that animals must be provided choice and control to ensure their psychological well-being.

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 posing a risk of 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." Experts agree that the use of positive punishment—physically aversive stimulation to coerce behavior—causes short and long term deleterious effects on animals and thereby poses a threat of serious harm.

66. Forcing tiger cubs to interact with patrons inflicts psychological harm on them, causing them acute and chronic distress. Using abusive methods to compel the cubs' compliance inflicts physical harm on them and causes further distress.

67. These practices do not just pose a threat of serious harm, they also significantly disrupt and impair the tiger cubs' normal behavioral patterns, and fall well below generally accepted standards and 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 species-appropriate psychological and environmental enhancement or stimulation. These conditions fall below generally accepted standards and subject the tigers to a threat of serious harm.

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 distress in captivity, and that small enclosures are detrimental to tigers because of the animals' inability to experience appropriate natural behaviors in their enclosures. Recognizing this, reputable zoos have been working to provide tigers larger enclosures. Tigers in larger enclosures explore more and pace stereotypically 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 that pose a threat of serious psychological and physical harm in part by

causing the tigers distress. On information and belief, five of the enclosures that have been used to hold adult tigers at DCWT are under 200 square feet, and two measure only approximately 125 square feet.

72. The AZA Tiger Care Manual recommends that all tiger enclosures should include “[r]elatively large, complex outdoor spaces” including “natural vegetation” and “[t]rees or other natural substrate objects to allow nail grooming.” The manual also makes specific “spatial recommendations,” which call for enclosure sizes that, on information and belief, far exceed the size of the tiger enclosures at DCWT.

73. Defendants also harm and harass tigers at DCWT by housing them on cement floors that pose a threat of serious harm because they cause footpad injuries and trauma to bony prominences, and aggravate arthritis or other conditions associated with aging. By contrast, natural substrate is known to stimulate natural behaviors in captive tigers, reducing stereotypic behavior (such as stereotypic 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 tiger’s 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, a condition that poses a threat of serious harm. The USDA complaint stated, and Judge McCartney, found 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.” According to experts, forcing tigers to live in wet conditions that they cannot avoid causes them both acute and chronic psychological and behavioral distress and places them at risk of injury or illness and thereby poses a threat of serious harm.

77. DCWT also harms and harasses endangered tigers by housing them in enclosures that do not have clean pools or other bodies of clean water in which the tigers could choose to submerge themselves or swim. The AZA Tiger Care Manual states that all tiger enclosures should have a pool, moat, or running stream. Including a pool with abundant clean water in a tiger’s primary enclosure has been shown to “substantially enhance[]” adult captive tigers’ “overall welfare” and “encourages tigers to perform behaviours considered as indicators of enhanced welfare.” Studies demonstrate that allowing tigers voluntary access to a body of water in a tiger’s primary enclosure enhances tiger well-being by dramatically decreasing stereotypic pacing and increasing exploratory behaviors.

78. In contrast, providing tigers with occasional and often forced access to a chlorinated pool of water in forced proximity to humans does not facilitate the performance of natural behaviors and instead causes the tigers acute and chronic distress and places them at risk of injury and thereby poses a threat of serious harm.

79. Many of the adult tigers at DCWT have no regular access to a pool or other body of water in their primary enclosures, which poses a threat of serious harm to the tigers’ well-being. On information and belief, many enclosures do not include a pool or other body of water at all. Where pools are provided, they are inadequate to facilitate species-typical

behavior. For example, several of the pools are rusted and dirty, at least one of these rusted pools doesn't hold water, and another pool has never had water in it.

80. DCWT also harms and harasses endangered tigers by depriving them of appropriate psychological and environmental enhancement or stimulation.

81. Environmental enrichment is provided by manipulating an animal's environment through various items and opportunities 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 species-appropriate forms of enrichment. Failing to provide adequate enrichment falls below generally accepted standards and poses a threat of serious harm to the tigers' psychological and physical well-being. Plastic enrichment items that are provided are, on information and belief, sometimes left in the enclosures long after they have been damaged by the tigers, which falls below generally accepted standards and poses a threat of serious physical harm as it increases the risk that tigers will be injured by catching a tooth or claw on the broken plastic or by ingesting the broken pieces, which could lead to an obstruction in the tiger's gastrointestinal tract.

84. These enclosures also fail to provide tigers with shade and hiding places, which falls below generally accepted standards and poses a threat of serious harm as shade and protection from the weather are necessary to prevent serious physical harm and hiding places or visual barriers are critical to the animals' psychological welfare.

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 poses a threat of serious harm as it creates a high likelihood of future injury, medical concerns or complications, and significantly disrupts and impairs the tigers' normal behavioral patterns, causing them acute and chronic distress.

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 by creating a threat of serious harm 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 has a pattern and practice of disposing of tigers under conditions that pose a threat of serious harm to them. For example, without any consideration for the tigers' safety and welfare, in July 2017, over the space of three days, DCWT disposed of two dozen tigers that were too old for use in public encounters. The tigers were solely moved to avoid a court ordered site inspection. At the direction of Kathy Stearns, nineteen of these tigers were shipped approximately 1200 miles from Dade City, Florida, to a facility in Wynnewood,

Oklahoma, that, like DCWT, breeds tigers for use in tiger cub encounters. These nineteen tigers were harmed and harassed because the conditions of transport, which fell below generally accepted standards and the standards of care under the AWA, subjected the tigers to a serious risk of harm and caused them to suffer psychological and physical injuries including extreme and prolonged distress, dehydration, and, for three cubs who were born during the transport, actual death.

90. The transport took place during the heat of summer, and the tigers were shipped in a multi-level metal cattle trailer that did not have any fans or other forms of climate control. The tigers were also not provided water receptacles to ensure they had sufficient access to drinking water during the trip, which took more than eighteen hours, and the tigers were not otherwise provide proper husbandry for as many as 52 hours, between Friday afternoon when the first tigers were loaded and Sunday evening when they were unloaded. As a result, when the tigers arrived they were dehydrated and in “bad shape.” Shipping tigers in the heat of summer in a metal trailer without climate control or sufficient access to drinking water harmed and harassed the tigers by posing a serious threat of harm, causing them to suffer psychological and physical harm in the form of distress and dehydration.

91. The tigers were also not individually caged on the transport trailer, as is consistent with zoological industry standards of care for safe transport. Depriving the tigers of the ability to escape from each other during the transport posed a threat of serious harm as the tigers could have wounded each other.

92. At least one of the tigers was known to be pregnant, and an additional two tigers were suspected of being pregnant, when they left Florida for Oklahoma. Because zoological industry standards dictate and experts agree that pregnant tigers should not be sedated or

transported long distances absent medical necessity, DCWT concealed this information from the veterinarian who helped sedate the tigers so that they could be loaded on the transport trailer. One of the pregnant tigers later gave birth on the transport trailer to at least three cubs, all of whom died either because, on information and belief, the egregious conditions left the mother tiger unable or unwilling to care for her cubs, or because the transport conditions caused the tiger to go into labor prematurely. Sedating and transporting a pregnant tiger long distances poses a threat of serious harm to the mother tiger and her cubs, as is evident by the cubs' death.

93. DCWT's conduct in relation to breeding tiger cubs leads to or poses the threat of a number of impermissible and serious harms described in paragraphs 21 through 92 above.

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

A. FRUSTRATION OF PETA'S MISSION.

94. 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."

95. 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.

96. 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.

97. 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 former 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.

98. 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 non-AZA accredited 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 hand-rearing of cubs and 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 in 2014. 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.

99. 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.

100. PETA also regularly rescues animals from inhumane and abusive situations, and places them in sanctuaries or other homes. In the space of just four and a half years, PETA has rescued at least sixty-five captive wild animals, from at least fifteen different facilities, and placed them in sanctuaries.

101. 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.

102. 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.

103. 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.

104. 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.

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

106. 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.

107. 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.

108. 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.

109. 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

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

111. 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).

112. 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

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

114. 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).

115. 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. Appoint a special master or guardian ad litem to determine the most appropriate placement for the forfeited animals, consistent with the animals' best interests, at wildlife sanctuaries that are accredited by the Global Federation of Animal Sanctuaries or are otherwise reputable and that will provide animals with multi-acre naturalistic habitats;
- f. Award PETA its reasonable attorneys' and expert fees and costs for this action; and
- g. Grant such other and further relief as the Court deems just and proper.

Date: June 7, 2018

Respectfully submitted,

/s/ Marcos E. Hasbun

Marcos E. Hasbun

Fla. Bar No. 0145270

Justin R. Cochran

Fla. Bar No. 110342

Zuckerman Spaeder LLP

101 E. Kennedy Blvd., Suite 1200

Tampa, FL 33602

Tel: (813) 221-1010

Fax: (813) 223-7961

mhasbun@zuckerman.com

jcochran@zuckerman.com

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of June, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to all counsel of record that are registered with the Court's CM/ECF system.

/s/ Marcos E. Hasbun

Marcos E. Hasbun