

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

v.

SPECIAL MEMORIES ZOO, LLC; GENE
WHEELER INDIVIDUALLY AND DBA
SPECIAL MEMORIES ZOO; DONA WHEELER;
AND GRETCHEN CROWE,

Defendants.

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff Animal Legal Defense Fund (“ALDF”), by and through its undersigned counsel, respectfully files the following Complaint and states as follows:

NATURE OF THE ACTION

1. This case is about the mistreatment and inadequate conditions of captivity of numerous animals at an unaccredited animal exhibition facility called Special Memories Zoo. These include both endangered or threatened species, like ring-tailed lemurs, red-ruffed lemurs, gray wolves, tigers, lions, a black leopard, Canada lynx, and Japanese or snow macaques, as well as hundreds of non-endangered animals, such as bears, baboons, monkeys, a giraffe, and numerous birds.

2. Special Memories Zoo is owned and operated by Defendants Gene Wheeler, Dona Wheeler, and their Zoo Manager Gretchen Crowe, as well as an affiliated limited liability company named Special Memories Zoo, LLC (hereinafter collectively referred to as “Special Memories Zoo” or the “Zoo”).

3. At Special Memories Zoo, members of the species referenced above and scores of other animals live in squalid conditions that fail to meet each animal's basic, species-specific needs. As detailed below and in ALDF's statutory notice of intent to sue letters—which are attached hereto and expressly incorporated herein—animals are housed throughout the facility in cramped enclosures that provide inadequate shelter from the elements, lack fresh water and suitable food, and force the animals held captive inside to live in complete or near-complete social isolation, without opportunities for physical enrichment.¹ Photographic evidence, visitor observations, former employee testimonials, and expert analysis indicate that the animals kept by Special Memories Zoo are experiencing both physical and psychological suffering as a direct result of the deprived conditions imposed on them by Special Memories Zoo.

4. By inflicting needless pain and suffering on the wide variety of endangered species and other animals kept at its facility, Special Memories Zoo violated the federal Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“ESA”), and State of Wisconsin captive wild animal welfare regulations and animal cruelty statutes. Furthermore, through its repeated violation of federal and state animal and wildlife protection laws on its premises, Special Memories Zoo creates a nuisance that is contrary and repugnant to the interests of the public. Accordingly, ALDF brings this action on behalf of its members, as well as the public at large, to ask the Court to enjoin Special Memories Zoo's unlawful conduct.

¹ “Enrichment” is a term used by animal behaviorists and veterinarians to refer to measures intended to give captive animals the opportunity to engage in their natural behaviors, such as searching for food or exploring new objects. Enrichment is essential to the physical, emotional, and psychological well-being of captive wild animals.

PARTIES

5. **Plaintiff Animal Legal Defense Fund (“ALDF”)** is a national non-profit organization headquartered in Cotati, California with over 200,000 members and supporters nationwide. ALDF pursues its mission of protecting the lives and advancing the interests of animals by persistently advocating for the protection of animals used and sold in commercial enterprises. ALDF frequently focuses on animal husbandry practices and the confinement of animals used for entertainment and exhibition purposes.

6. At least one ALDF member visited Special Memories Zoo, where she observed and developed aesthetic and emotional connections to the animals at Special Memories Zoo, including the ring-tailed lemurs, red-ruffed lemurs, gray wolves, tigers, lions, a black leopard, Canadian lynx, and Japanese or snow macaques, as well as many non-endangered or threatened animals, including bears, baboons, monkeys, a giraffe, numerous birds, and many other species. She became distressed and upset due to the animal mistreatment and suffering that they witnessed. Members of the public expressed similar concerns about the poor conditions at Special Memories Zoo.

7. ALDF brings this action on behalf of its members, as well as the public at large. The interests of ALDF members in observing and otherwise enjoying animals at Special Memories Zoo have been, and will continue to be, harmed by the mistreatment of animals by the operation and management of Special Memories Zoo. Additionally, the ongoing conditions and mistreatment of animals at Special Memories Zoo is a nuisance repugnant to the interests of the Wisconsin public at large. The relief sought in this lawsuit—including, but not limited to, the transfer of animals to a bona fide sanctuary—will redress ALDF and its members’ ongoing harms caused by the unlawful activities of Special Memories Zoo.

8. **Defendant Special Memories Zoo, LLC** is a Wisconsin limited liability company whose registered agent is Dona Wheeler at a registered office of W7013 Spring Road, Greenville, Wisconsin 54942-9704. Upon information and belief, Special Memories Zoo, LLC is an entity through which Gene and Dona Wheeler conduct some or all of their operations at Special Memories Zoo.

9. **Defendants Gene Wheeler and Dona Wheeler** are individuals who operate a so-called “zoo” called Special Memories Zoo at W7013 Spring Road, Greenville, Wisconsin 54942. *See* <http://www.specialmemorieszoo.info/>. Upon information and belief, Gene and Dona Wheeler reside in Hortonville, Wisconsin on real estate that is also a secondary licensed site under the Animal Welfare Act and is commonly referred to by Special Memories Zoo staff as the “Farm” as more fully discussed below.

10. **Defendant Gretchen Crowe** is an individual who upon information and belief operates as the Zoo Manager with primary day-to-day authority and control over the operations of Special Memories Zoo and the Farm. Upon information and belief, Ms. Crowe resides with the Wheelers at their Hortonville, Wisconsin home.

JURISDICTION AND VENUE

11. The Court has jurisdiction over this action under 28 U.S.C. § 1331 because ALDF alleges violations of federal law.

12. Pursuant to the ESA, 28 U.S.C. §§ 2201-2202, the Court is authorized to provide declaratory and injunctive relief. The ESA’s citizen suit provision further authorizes the Court to enjoin violations of the ESA and its implementing regulations. 16 U.S.C. § 1540.

13. ALDF provided notice to Special Memories Zoo of its intent to sue regarding all animals on September 10, 2019, more than sixty days in advance of this Complaint as required

by the ESA. *See* 16 U.S.C. § 1540(g)(2)(A); **Exhibit A** (September 10, 2019 notice of intent to sue letter). On October 1, 2019, ALDF provided Special Memories Zoo with further notice of its intent to assert ESA claims based on unlawful purchases or transactions involving endangered animals in interstate commerce, including specifically two tigers, and potentially other animals. *See* **Exhibit B** (October 1, 2019 notice of intent to sue letter). The content of both letters is expressly incorporated herein.

14. Upon information and belief, Special Memories Zoo neither applied for nor received any permit to lawfully “take” any federally listed species, nor has it remedied the violations set out in the notice of intent to sue letters.

15. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b), because Special Memories Zoo resides in this district and a substantial part of the events or omissions giving rise to the claims occurred in this district. ALDF may bring suit in this district because, under the ESA, venue is proper in the district where a violation occurs. 16 U.S.C. § 1540(g)(3)(A).

16. This Court has supplemental jurisdiction over the Wisconsin state law claims under 28 U.S.C. § 1367(a) because this Court has original jurisdiction under 28 U.S.C. § 1331 and 16 U.S.C. § 1540(g), and the state law claims are so related to the underlying federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

FACTS

17. Special Memories Zoo is an unaccredited animal exhibition facility located in Greenville, Wisconsin with a secondary location in Hortonville, Wisconsin. In its makeshift “zoo” in Greenville, Special Memories Zoo confines and exhibits many species of wildlife, including endangered species, which it displays to the public for a fee. Special Memories Zoo

also houses many species, particularly during the offseason, at its secondary “Farm” facility in Hortonville, Wisconsin. The conditions and treatment of individuals at the Farm facility are, upon information and belief, similarly inadequate to, if not more inadequate than, at the primary Greenville location.

18. Photographic evidence, visitor observations, and other evidence demonstrate that the *hundreds* of animals kept at Special Memories Zoo are housed in cramped and filthy enclosures that provide inadequate shelter from the elements, lack fresh water and suitable food, and force many of the animals held captive inside to live in complete or near-complete social isolation and under other unsuitable conditions.

19. The conditions of confinement, husbandry, veterinary care, and exhibition activities observed at Special Memories Zoo “injure,” “harm,” and “harass” many animals at Special Memories Zoo, as those terms are defined by the ESA. These activities are not consistent with generally accepted practices and are likely to inflict ongoing suffering and injury to these animals.

Ring-Tailed and Red-Ruffed Lemurs

20. The Zoo possesses and displays ring-tailed lemurs (*Lemur catta*) and red-ruffed lemurs (*Varecia rubra*) in conditions that cause them to suffer psychologically and physically and amount to an unlawful “take” in violation of the ESA. The United States Fish and Wildlife Service (“FWS”) lists all members of the family *Lemuridae*, including ring-tailed lemurs and red-ruffed lemurs, as endangered, wherever found. 50 C.F.R. § 17.11; 35 Fed. Reg. 8491, 8495 (June 2, 1970); 41 Fed. Reg. 26,019 (Jun. 24, 1976). An individual who “takes” a ring-tailed lemur or red-ruffed lemur violates the ESA’s Section 9 and is subject to civil and criminal penalties. 16 U.S.C. § 1540(a)–(b).

21. Lemurs are found in the wild in portions of Madagascar. They travel widely in search for food and roam within territories that range from several acres to over a hundred acres. Lemurs are highly social animals with advanced cognitive abilities. Ring-tailed lemurs typically live in social groups ranging from 8 to 20 individuals and red-ruffed lemurs in groups ranging from 2 to 30 individuals. Depriving lemurs of appropriate socialization causes the animals to suffer.

22. The Zoo harms and harasses its lemurs. The lemurs' housing is extremely cramped and filthy, with improper and insufficient provisions of food, water, and psychological enrichment objects. The primate enclosure at the Farm, in particular, does not have windows and the animals frequently rock their cages, sit depressed in the corners, pace in circles, or behave aggressively—all signs of immense stress. According to reports, one elderly lemur, after enduring recurring attacks, huddled in a corner with his head down for nearly a week until he died or was euthanized. The carcass of a second, newborn lemur was found in an adjacent capuchin cage where a male capuchin was tossing it around.

23. Confinement of lemurs under these conditions constitutes an unlawful “take” within the meaning of the ESA because the conditions “significantly disrupt [their] normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering,” resulting in prohibited “harassment.” 50 C.F.R. § 17.3. Confinement also injures these individuals physically and psychologically and therefore constitutes prohibited “harm” under the ESA. *Id.*

24. Upon information and belief, the Zoo neither applied for nor received any permit to lawfully “take” a ring-tailed or red-ruffed lemur.

25. The physical and psychological harm and harassment to these individuals caused by the Zoo will only exacerbate over time if not remedied by their prompt relocation to a proper sanctuary and integration into a lemur troop.

Gray Wolves

26. The Zoo possesses and displays gray wolves in conditions that amount to an unlawful “take” under the ESA.

27. The gray wolf is listed as endangered under the ESA throughout Wisconsin. 50 C.F.R. § 17.11; 43 Fed. Reg. 9607 (March 9, 1978) (listing gray wolves). An individual who “takes” a gray wolf violates the ESA’s Section 9 and is subject to civil and criminal penalties. 16 U.S.C. § 1540(a)–(b).

28. The FWS describes the gray wolf, *Canis lupus*, as “an integral component of the ecosystems to which it typically belongs.”²

29. Species with large territories, like gray wolves, are particularly vulnerable to stress in captivity. In the wild, wolf territories are typically between 200 and 500 square miles and may be as large as 1,000 square miles. Wolves spend about 35% of their time in transit, often traveling 20 to 30 miles per day, but covering over 100 miles a day when prey is scarce. The species requires large, environmentally complex spaces that allow the packs to express a wide range of natural movements and behaviors, from choosing den sites to hunting to avoiding competition and confrontation.

² See *Species Profile for Gray wolf (Canis lupus)*, U.S. FISH & WILDLIFE SERVICE, <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=A00D>.

30. Wolves are highly social animals that live in packs in their natural environment. Gray wolves live, travel, and hunt as part of this pack community, which is typically comprised of four to seven individuals.

31. The habitat and conditions at the Zoo are not conducive to these natural behaviors and therefore amount to harm and harassment of gray wolves housed at the Zoo.

32. For wolves in captivity, choice and control are the two most significant criteria for ensuring their welfare. To meet these needs, wolf enclosures must be large enough to allow a choice among different regions, to allow them to be visually separated from visitors, and to give them control over their activities. One particularly important aspect of choice and control for wolves is the ability to retreat from view.

33. At the Zoo, not only is the wolf enclosure small and lacking variety, the wolves often do not have access to clean water. It is also insufficient for other species-specific reasons. The impacts of the inhumane living conditions are palpable: people observed the wolves fighting and one wolf whimpering. This is the exact kind of suffering the ESA's take provision aims to prevent.

34. The confinement of wolves in these conditions "significantly disrupt[s] normal behavioral patterns" and therefore constitutes "harassment" under the ESA. 50 C.F.R. § 17.3. The wolves' confinement also injures them physically and psychologically and therefore constitutes "harm" under the ESA, as is acutely demonstrated by the recent observation of a wolf in an emaciated and lethargic state. *Id.* As a result, this constitutes a "take" under the ESA.

35. Upon information and belief, the Zoo neither applied for nor received any permit to lawfully "take" a gray wolf.

36. The physical and psychological harm caused by the Zoo's "harassment" and "harm" of these wolves will only exacerbate over time if not remedied by their prompt relocation to a proper sanctuary and integration into a wolf pack.

Tigers

37. The Zoo possesses and displays tigers in conditions that amount to an unlawful "take" under the ESA.

38. Tigers (*Panthera tigris*) are endangered wherever found. 50 C.F.R. § 17.11. An individual who "takes" a tiger violates the ESA's Section 9 and is subject to civil and criminal penalties. 16 U.S.C. § 1540(a)-(b).

39. Tigers are one of the largest living carnivores and their territories range from 27 to 32 square miles for females and 103 to 114 square miles for males. They are also a long-ranging species, known to travel over 400 miles to reach tiger populations in other areas. As with other long-ranging species with large territories, tigers are particularly vulnerable to stress in captivity, and stereotypical behavior in captive tigers correlates to the size and complexity of the enclosure. A 2014 study of 38 tigers in seven French zoological parks sought to quantify the influence of enclosure size on stereotypical pacing and found a significant negative correlation between the total distance paced and the enclosure size. Therefore, researchers have concluded that both large and enriched naturalistic enclosures are essential to preventing the onset of tigers' stereotypical behaviors.

40. Tigers are also avid swimmers, keeping cool on hot days by bathing in rivers and lakes and swimming up to 18 miles in a day. A 2017 study monitored 41 tigers at six zoos in India, measuring stereotypical behaviors and stress levels through fecal glucocorticoid metabolites, a biochemical marker of stress. Researchers concluded that large enclosures with a

pool with clean water are essential for tigers—they reduce stress and promote naturalistic behavior. Likewise, the Association of Zoos and Aquariums (AZA) Tiger Care Manual says that all tiger exhibits should include relatively large, complex outdoor space and water pools, moats, and/or running streams, and that the addition of a concrete pool is key in tiger exhibits.

41. Special Memories Zoo does not provide its tigers with the basic necessities of clean water, food, or straw: the water tanks are full of algae, the food is infested with maggots, and the straw is left soiled and unchanged for up to months on end. In addition, one visitor stated: “There was a tiger in a small cage that paced back and forth the entire time we were there.” That pacing is evidence of chronic stress and restlessness. The small cage is an insufficient habitat for a tiger. There is no space for the tigers to swim, run, or even stretch their legs—let alone engage in a normal range of social or stimulating activity.

42. Confinement of tigers under these conditions constitutes an unlawful “take” within the meaning of the ESA because the conditions “significantly disrupt [their] normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering,” resulting in prohibited “harassment.” 50 C.F.R. § 17.3. Confinement also injures these individuals physically and psychologically and therefore constitutes prohibited “harm” under the ESA. *Id.*

43. Upon information and belief, the Zoo neither applied for nor received any permit to lawfully “take” tigers.

44. The physical and psychological harm and harassment to these individuals caused by the Zoo will only exacerbate over time if not remedied by their prompt relocation to a proper sanctuary.

Black Leopard

45. The Zoo possesses and displays a black leopard in conditions that amount to an unlawful “take” under the ESA.

46. Black leopards (*panthera pardus*) are listed as endangered wherever found, except in certain portions of Africa where they are protected as threatened. 50 C.F.R. § 17.11; 37 Fed. Reg. 6476 (Mar. 30, 1972); 47 Fed. Reg. 4204 (Jan. 28, 1982). An individual who “takes” a black leopard violates the ESA’s Section 9 and is subject to civil and criminal penalties. 16 U.S.C. § 1540(a)–(b).

47. The leopard is the smallest of the large cats in the genus *Panthera*, though leopards vary in size across their range. Leopards can reach a maximum speed of 60 kilometers per hour, make horizontal leaps of 6 meters, and make vertical leaps of 3 meters.

48. Leopards have a polygynous mating system. Both sexes are territorial and defend their territories against individuals of the same sex, although there is some overlap. Males have a territory that encompasses the territories of several females. Although generally solitary, males and females will associate for several days during mating before separating again, and females will raise and nurture the resulting cubs for over a year.

49. Generally, the size of a leopard’s home range varies based upon prey availability, with larger home ranges found in locations where prey availability is low. Ranges typically span dozens of square kilometers and often exceed a hundred square kilometers (a distance that would cover more than 15% of Outagamie County, Wisconsin, where the Zoo is located).

50. Leopards naturally engage in stalking behaviors and prey on a wide range of other species, from beetles and rodents to large antelopes. Females and cubs tend to prey on smaller animals. Leopards attack prey by stalking and pouncing. Leopards can be active at night or

during the day (in Kenya and South Africa, 66% of leopard activity is nocturnal). Importantly, leopards often drag their prey up into trees, making the availability of three-dimensional space critical to an appropriate habitat.

51. As with the enclosures for the other large, endangered species at the Zoo and Farm, the leopard does not have adequate space or stimulation, including insufficient three-dimensional space. She is unable to engage in natural behaviors, and as a result, she suffers from chronic stress—evidenced by stereotypical behaviors. At an even more fundamental level, the Zoo fails to regularly clean the leopard’s water tanks. All of these conditions constitute “harm” under the ESA.

52. These unnatural conditions constitute a “take” because, as detailed above, they “significantly disrupt [her] normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering,” resulting in prohibited “harassment.” 50 C.F.R. § 17.3. Her confinement also injures her physically and psychologically and therefore constitutes “harm” under the ESA. *Id.*

53. Upon information and belief, the Zoo neither applied for nor received any permit to lawfully “take” a black leopard.

54. The physical and psychological harm and harassment caused by the Zoo will only exacerbate over time if not remedied by the leopard’s prompt relocation to a proper sanctuary.

Lions

55. The Zoo possesses and displays endangered lions in conditions that amount to an unlawful “take” under the ESA.

56. Lions (*Panthera leo leo* and *Panthera leo melanochaita*) are an endangered species. 50 C.F.R. § 17.11. An individual who “takes” a lion violates the ESA’s Section 9 and is subject to civil and criminal penalties. 16 U.S.C. § 1540(a)–(b).

57. When he was Director of the FWS, Dan Ashe described lions as “one of the planet’s most beloved species and an irreplaceable part of our shared global heritage.”

58. Lion home ranges vary by location from 8–17 square miles to over 800 square miles. Lions travel up to 8 miles a day. Lions are very social, with females and cubs living in prides averaging 4–6 adult females and up to 8 males with a lifelong alliance to the pride. The AZA manual sets a minimum of 10,000 square feet for lion enclosures. In addition, because lions are accustomed to a warm environment, the AZA manual calls for access to indoor enclosures or a supplemental heat source in temperatures below 50° F, yet Special Memories Zoo fails to provide adequate protections from such temperatures or adequate supplemental heat sources even though it is located in an area of the country that routinely has daily high temperatures well below 50° F during several winter months.

59. Captive felids, such as lions, have particularly high needs for environmental enrichments. Enrichments can enhance captive animals’ well-being by stimulating active behaviors and reducing stereotypical behaviors commonly seen in zoo felids. Because of the complexity of lions’ exploring and hunting in the wild, it remains difficult to provide fully for this complex array of behaviors within the captive setting.

60. Special Memories Zoo fails to provide its lions with even the most minimal environmental enrichments—let alone clean water tanks. Like the other species with large territories, the lions at the Zoo are suffering from deprivation and living in a constant state of stress.

61. Confinement of lions under these conditions constitutes an unlawful “take” within the meaning of the ESA because the conditions “significantly disrupt [their] normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering,” resulting in prohibited “harassment.” 50 C.F.R. § 17.3. Confinement also injures these individuals physically and psychologically and therefore constitutes prohibited “harm” under the ESA. *Id.*

62. Upon information and belief, the Zoo neither applied for nor received any permit to lawfully “take” lions.

63. The physical and psychological harm and harassment to these individuals caused by the Zoo will only exacerbate over time if not remedied by their prompt relocation to a proper sanctuary.

Canada Lynx

64. The Zoo possesses and displays Canada lynx in conditions that amount to an unlawful “take” under the ESA.

65. Canada lynx (*Lynx canadensis*) are listed as threatened “wherever found in the contiguous USA.” 50 C.F.R. § 17.11. ALDF recognizes that the FWS issued a special 4(d) rule that authorized unpermitted “takes” of captive born Canadian lynx, 50 C.F.R. § 17.40(k), yet this disparate treatment of wild and captive species is invalid as a matter of law because it directly conflicts with the statute’s requirements. *See* 63 Fed. Reg. 48634-02 at 48636 (Sept. 11, 1998) (recognizing the statutory term “take” was “defined by Congress in Section 3 of the Act” as applying to “endangered or threatened wildlife, whether wild or captive,” and therefore “the statutory term cannot be changed administratively” to exclude captive individuals); *see also Kuehl v. Sellner*, 887 F.3d 845, 852-53 (8th Cir. 2018) (recognizing the ESA applies to captive endangered species in affirming judgment against roadside zoo for violating the ESA).

Therefore, an individual who “takes” a Canada lynx violates the ESA’s Section 9 and is subject to civil and criminal penalties. 16 U.S.C. § 1540(a)–(b).

66. Regardless of the invalid federal split-listing of the Canada lynx, Special Memories Zoo’s treatment of the Canada lynx violates Wisconsin’s captive wild animal and cruelty statutes, which have specific provisions for lynx, and may also violate Wisconsin’s endangered species protections, to which the FWS regulation is inapplicable.

67. Canada lynx primarily inhabit the northern forests of Canada and Alaska, with smaller populations in the contiguous U.S. Canada lynx typically inhabit regions where snow cover continues for four months or more. Lynx density varies from one lynx per square mile to one lynx per 39 square miles—this depends on the availability of their primary food source, snowshoe hare. Home ranges vary in size and have been recorded from 3 to 302 square miles.

68. In 2013, researchers performed an exploratory analysis of housing and husbandry factors that may affect stress physiology in captive Canada lynx by measuring the biochemical stress marker fecal glucocorticoid metabolite (“FGM”) in 45 captive lynx across 22 institutions. Researchers identified three factors that were “strongly correlated” with stress response: (1) total area of enclosure; (2) sex of cage-mates; and (3) number of hiding locations. During the course of the study, one male was moved to a larger enclosure at the same institution, and FGM concentrations decreased notably following the move. Researchers ultimately concluded that bigger enclosures are likely better for lynx well-being.

69. The Zoo keeps Canada lynx in tiny, barren, unclean and foul-smelling enclosures with minimal to no snow cover, frustrating their natural behaviors. Confinement of the lynx under these conditions constitutes an unlawful “take” within the meaning of the ESA because the conditions “significantly disrupt [their] normal behavioral patterns which include, but are

not limited to, breeding, feeding, or sheltering,” resulting in prohibited “harassment.” 50 C.F.R. § 17.3. Confinement also injures these individuals physically and psychologically and therefore constitutes prohibited “harm” under the ESA. *Id.*

70. The physical and psychological harm and harassment to these individuals caused by the Zoo will only exacerbate over time if not remedied by their prompt relocation to a proper sanctuary.

Japanese Macaque / Snow Macaque

71. The Zoo possesses and displays Japanese macaques, also known as snow macaques, in conditions that amount to an unlawful “take” under the ESA.

72. The FWS lists the Japanese macaque as threatened wherever it is found. 50 C.F.R. § 17.11(h); 50 C.F.R. 17.40(c). As discussed with respect to the invalid split-listing of the Canada Lynx, the similar 4(d) rule regarding captive born Japanese macaques is equally invalid. 50 C.F.R. § 17.40(c). Wild Japanese macaques are subject to Section 9 of the ESA, and the FWS itself determined that protections must equally apply to captive and wild members of the same species. 78 Fed. Reg. 33790, 33793 (June 5, 2013). Therefore, an individual who “takes” a Japanese macaque violates the ESA’s Section 9 and is subject to civil and criminal penalties. 16 U.S.C. § 1540(a)–(b).

73. Japanese macaques typically live in large groups across broad expanses of forest land. In a comprehensive study of 117 groups of macaques, the average group size was 40.8 individuals and the smallest extreme was 10 individuals. Macaques form strong social bonds, especially the females, who often remain in the same troops throughout their lives. Although male Japanese macaques are much larger than females, the females choose their mates; they typically will not mate with the same males inside a 4–5 year period. Courtships last no more

than two days on average. Japanese macaques also engage in social activities, whether for survival—such as washing and peeling food together—or for fun, such as rolling snowballs. In captivity, environmental enrichment is vital because it can stimulate both the brain and body, provides novelty, and simulates behaviors found in the wild.

74. The home range of Japanese macaques averages 1.43 square miles per group. In evergreen broadleaf forests—the habitat in which Japanese macaques have the smallest home range—the smallest estimated home range for an individual is 14,000 square meters (over two and a half football fields). In the largest home range habitat, deciduous broadleaf forest, each individual Japanese macaque can use up to 790,000 square meters—nearly 148 football fields.

75. Special Memories Zoo's housing of two macaques—Bill and Sheri—subjects these endangered animals to harm and harassment. Whereas the very smallest groups of macaques in the wild consist of ten individuals, Bill and Sheri are housed either together or—currently—in complete isolation. By housing the macaques together, the Zoo subjected Sheri, the female, to having a stronger animal chase and bite her. Sheri was forced to live alone with a male for far longer than any courtship period would last, and far longer than any female macaque would be alone with a male in the wild. Because of the confinement and absence of other females, she had no ability to escape or seek protection from biting. Now, in isolation, Bill and Sheri have no social interactions whatsoever. They have no intellectual stimuli and their enclosures, in addition to being filthy, are far smaller and barer than even the most minimal home ranges that Japanese macaques typically inhabit. The macaques exhibit stereotypical behaviors, such as circling back and forth, rocking their cages, acting aggressively, and sitting depressed in a corner.

76. Confinement of the macaques under these conditions constitutes an unlawful “take” within the meaning of the ESA because the conditions “significantly disrupt [their] normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering,” resulting in prohibited “harassment.” 50 C.F.R. § 17.3. Confinement also injures these individuals physically and psychologically and therefore constitutes prohibited “harm” under the ESA. *Id.*

77. The physical and psychological harm and harassment to these individuals caused by the Zoo will only exacerbate over time if not remedied by their prompt relocation to a proper sanctuary.

Other Animals

78. Special Memories Zoo confines numerous other animals in inhumane and unsanitary conditions that results in mistreatment. Based on recent USDA inventories, Special Memories Zoo possesses and exhibits individuals of the following Animal Welfare Act regulated species, as well as numerous reptiles and birds that are not listed: Barbary Sheep (*Ammotragus lervia*), Blackbuck (*Antelope cervicapra*), Binturong (*Arctictis binguron*), Nilgai (*Boselaphus tragocamelus*), Common Marmoset (*Callithrix jacchus*), Black Tufted-Ear Marmoset (*Callithrix kuhlii*), Dromedary Camel (*Camelus dromedarius*), Domestic Goat (*Capra hircus*), Domestic Guinea Pig (*Cavia porcellus*), Cattle/cow/ox/watusi (*Bos taurus*), White-Headed/White-throated Capuchin (*Cebus Capucinus*), Domesticated Chinchilla (*Chinchilla lanigera*), Vervet (*Chlorocebus pygerythrus*), Hoffmann’s Two-toed Sloth (*Choloepus hoffmanni*), Black-Tailed Prairie Dog (*Cynomys ludovicianus*), Burchell’s/Grant’s/Chapman’s/Plains Zebra (*Equus quagga*), North American Porcupine (*Erethizon dorsatum*), Patas Monkey (*Erythrocebus patas*), Giraffe (*Giraffa camelopardalis*), Alpaca (*Lama pacos*),

Geoffroy's Cat (*Leopardus geoffroyi*), North American River Otter (*Lontra canadensis*), Northern/Eurasian Lynx (*Lynx lynx*), Bobcat (*Lynx rufus*), Crab-Eating Macaque/Cynomolgus Monkey (*Macaca fascicularis*), Rhesus Macaque (*Macaca mulatta*), Sulawesi Crested Macaque (*Macaca nigra*), Groundhog/Woodchuck (*Marmota monax*), Fisher (*Martes pennanti*), Striped Skunk (*Mephitis mephitis*), White-Nose Cotati (*Nasua narica*), Mountain Cotati (*Nasuella olivacea*), Domestic Rabbit/European Rabbit (*Oryctolagus cuniculus*), Red Kangaroo (*Osphranter rufus*), Sheep, including all domestic breeds (*Ovis aries aries*), Hamadryas Baboon (*Papio hamadryas*), Springhaas (*Pedetes capensis*), Sugar Glider (*Petaurus breviceps*), Raccoon (*Procyon lotor*), Common Squirrel Monkey (*Saimiri sciureus*), Brown Capuchin/Tufted Capuchin (*Sapajus appella*), Eastern Grey Squirrel (*Sciurus carolinensis*), Domestic Pig/Potbelly Pig/Micro Pig (*Sus scrofa domestica*), North American Black Bear (*Ursus americanus*), Syrian Brown Bear (*Ursus arctos syriacus*), and the Red Fox, which includes the Silver Fox and Cross Fox (*Vulpes vulpes*).

79. Special Memories Zoo's mistreatment of animals at the facility, along with its "take" of animals listed as endangered or threatened under the ESA, violates Wisconsin law and indicates that the facility is unfit to properly care for wild animals.

80. Under Wisconsin law, "[a]ny person, county, city, village or town may maintain an action to recover damages or to abate a public nuisance from which injuries peculiar to the complainant are suffered, so far as necessary to protect the complainant's rights and to obtain an injunction to prevent the same." Wis. Stat. Ann. § 823.01. "A public nuisance is a condition or activity which substantially or unduly interferes with the use of a public place or with the activities of an entire community." *Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co.*, 646 N.W.2d 777, 788 (Wis. 2002).

81. Wisconsin has statutory provisions directly addressing “pen specifications, humane handling, care, treatment and transportation of captive wild animals.” Wis. Adm. Code §§ NR 16.30(2)(a) (2017) (structure and construction), 16.30(2)(b) (housing facilities with food and bedding), 16.30(2)(c) (surfaces of enclosures), 16.30(2)(f) (pest control), 16.30(3)(a) (space for animals in pens), 16.30(3)(b) (protection from the elements and ventilation), 16.30(7) (species-specific environmental enrichment), 16.30(8) (feeding, watering, and food and water receptacles). In pertinent detail, enclosures must “protect the captive wild animals from injury, contain the animals securely and restrict other animals from entering” and “be free of any accumulation of trash, waste material, refuse, weeds and other discarded materials.” *Id.* § NR 16.30(2)

82. Moreover, the statute specifies that animals must be able to make “normal postural and social adjustments” and states that “inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress or abnormal behavior patterns.” *Id.* § NR 16.30(3)(a). Lastly, persons must offer captive wild animals potable water “not less than twice daily for at least one hour each time” and must feed the animals at least once daily with food that is “uncontaminated, wholesome, palatable and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. The diet shall be appropriate for the individual animal’s age and condition.” *Id.* § NR 16.30(8).

83. In addition to these standards for all captive wild animals, Wisconsin’s statute adds more detailed protections for the following animals at the Zoo and Farm: lynx, raccoons, bears, otter, bobcats, fox and fishers. *Id.* § NR 16.30(4), (7)(b), (9)(c). In pertinent detail, regarding bobcats, lynx, fox and fishers, license holders must “develop, document and follow an appropriate plan for environment enhancement adequate to promote the psychological well-

being of these captive wild animals . . . in accordance with the currently accepted professional standards as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian.” *Id.* § NR 16.30(7)(b). Raccoons must have, in addition to other accommodations, pens that are “designed and constructed of suitable materials” and “kept in good repair.” *Id.* § NR 16.30(4)(c).

84. Lastly, Wisconsin law addresses the “[e]xhibition of captive wild animals” and these provisions offer even stricter regulations than § NR 16.30, specifically regarding sanitation. *Id.* § NR 16.35. These provisions add that “[e]xcreta and food waste shall be removed from primary enclosures and from under primary enclosures as often as necessary to prevent an excessive accumulation” and “[p]rimary enclosures and food and water receptacles shall be cleaned and sanitized at least once every 2 weeks and more often if necessary.” *Id.* § NR 16.35(3).

85. In addition to the provisions addressing captive wild animals, Wisconsin has an animal cruelty statute that applies to “every living: (a) Warm-blooded creature, except a human being; (b) Reptile; or (c) Amphibian.” Wis. Stat. § 951.01 (emphasis added). Although Wisconsin’s cruelty laws cannot controvert its laws regulating captive wild animals, they are applicable and enforceable with respect to these animals. Wis. Stat. § 951.015(1),(2); *see also State v. Kuenzi*, 796 N.W.2d 222, 225 (Wis. App. 2011), review denied, 806 N.W.2d 637 (Wis. 2011) (recognizing that the language of Wisconsin’s animal cruelty statute, “on its face,” demonstrates the statute’s broad application to all animals).

86. Wisconsin’s statute defines cruelty as “causing unnecessary and excessive pain or suffering or unjustifiable injury or death.” Wis. Stat. § 951.01. It prohibits treating animals in a “cruel manner,” *Id.* § 951.02, and details additional requirements with which people in

possession of animals must comply. First, animals must have proper access to food, water, and shelter. *Id.* §§ 951.13 (food and water), 951.14 (shelter). Indoor shelters must be temperature controlled and ventilated while outdoor shelters must provide protection from sunlight and inclement weather. *Id.* § 951.14(1)-(2). All enclosures, both indoor and outdoor, must also abide by sanitation requirements including “periodic cleaning to remove excreta and other waste materials, dirt and trash.” *Id.* § 951.14(4). Finally, all enclosures must abide by structural and space requirements. *Id.* § 951.14(3). Structurally, people must maintain the enclosures so they can contain the animals and protect them from injury. *Id.* § 951.14(3)(a). Under the space requirements, animals must have “adequate freedom of movement.” *Id.* § 951.14(3)(b). In pertinent part, Section 951.14(3)(b) explains that “[i]nadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns.”

87. Special Memories Zoo’s violations of Wisconsin laws include, but are not limited to the following:

88. Wis. Admin. Code NR § 16.30(3)(a); Wis. Stat. §§ 951.02, 951.14(2),(3)(b): Confining animals to undersized enclosures that do not provide for “normal postural and social adjustments” or even “adequate freedom of movement.” Numerous public comments remark on how small the animals’ cages are. The Zoo animals’ abnormal behaviors demonstrate that these small cages impair the animals’ freedom of movement. In addition to the endangered species’ abnormal behaviors, detailed above: primates frequently rock their cages, sit depressed in the corners, pace in circles, or behave aggressively; a crane injured his wing so badly by flapping against an undersized cage that blood from the wing splattered across the barn; and parakeets die frequently from living in crowded conditions with other sick birds. These behaviors upset visitors, who commented online, for example, that “all of the animals seemed entirely

miserable” and “the big animals were especially sad.” Subjecting animals to such conditions is not only cruel on its face, it directly violates Wisconsin’s space provisions.

89. Wis. Admin. Code § NR 16.30(3); Wis. Stat. §§ 951.02, 951.14(3): There have been multiple reports of animals harming each other while under the care of Special Memories Zoo—specifically, male animals harming smaller females due to unnatural housing arrangements. Under Special Memories Zoo’s care: a male macaque named Cooper bit and wounded a female macaque’s upper right thigh, and the Zoo failed to separate the animals in a timely manner; a male Japanese macaque named Bill repeatedly harmed a female Japanese macaque named Sheri, and the Zoo failed to separate the animals in a timely manner; a male binturong bit a female binturong above her eye; a male blackbuck brutally injured a female blackbuck, and the Zoo failed to separate the animals—despite a keeper bringing the problem to Ms. Crowe’s attention; a male baboon fought with female baboons and the Zoo failed to keep them separated; a male capuchin was found tossing the carcass of a baby lemur; and one wolf constantly picks on a second, who is constantly heard whimpering. Among other concerns these incidents raise, they depict that the animals do not have space for “normal . . . social adjustments.”

90. Wis. Admin. Code § NR 16.30(7): The animals at the Zoo and on the Farm suffer from lack of enrichment. Inadequate enrichment for lynx, bobcats, fox, and fishers is a further violation of subsection b, which mandates specific forms of enhanced enrichment for these species.

91. Wis. Admin. Code. § NR 16.30(4),(7)(b),(9)(c): These provisions extend special protections to several species at the Zoo— lynx, raccoons, bears, otter, bobcats, fox, and fisher—and the Zoo’s enclosures do not meet Wisconsin’s specifications. Indeed, one visitor

described the animal homes as “too small cages on a concrete slab” and remarked that there were “[n]o habitat[s] whatsoever.”

92. Wis. Admin. Code §§ NR 16.35(3), 16.30(2); Wis. Stat. § 951.14(4): Special Memories Zoo does not instruct its staff to follow any cleaning schedule whatsoever. The giraffe’s cage, for example, went uncleaned for over a month and the tiger den went uncleaned for nearly three months. This directly violates Wisconsin’s bi-monthly “periodic cleaning” requirements. Making matters worse, Ms. Crowe not only fails to schedule cleanings as the law requires, but she further denied employees’ cleaning requests. Because the law requires cleaning “more often [than every two weeks] if necessary,” denying these requests is in itself a violation of Wisconsin law.

93. Wis. Admin. Code §§ NR 16.35(3), 16.30(2),(3)(b); Wis. Stat. §§ 951.02, 951.14(4): A second violation of Wisconsin’s sanitation provision results from the first—Special Memories Zoo fails to “remove excreta and other waste materials, dirt and trash so as to minimize health hazards” and “as often as necessary to prevent an excessive accumulation.” According to reports, the lynx and bear cages are “foul smelling” and the giraffe developed a cough from inadequate ventilation. Moreover, observers reported excessive piles of feces in numerous enclosures including those of raccoons, dogs, bobcat kittens, rabbits, otters, and tigers. Most egregiously, the raccoons often cling to the top corner wall of the cage so that they do not have to sit in feces, and a rabbit suffered from “urine scalding,” a condition where urine is allowed to soak on a rabbit’s body for a significant period of time causing potentially severe skin inflammation and hair loss.

94. Wis. Admin. Code §§ NR 16.35(3), 16.30(2)(e): A live rat was found in a bucket of meat that is fed to the big cats, wolves, and fishers, directly violating the requirements that food be properly stored and food receptacles be cleaned to prevent vermin infestation.

95. Wis. Admin. Code §§ NR 16.35(3), 16.30(8); Wis. Stat. §§ 951.13, 951.14(4): Water bowls and tanks for numerous animals at the Zoo and Farm are reportedly filthy because Ms. Crowe discourages workers from bringing water bowls out of the cages to clean them properly with soap and sponges. Filthy water bowls and tanks were reported in enclosures for bobcats, primates, lions, tigers, the leopard, raccoons, wolves, porcupines, camels, and goats. These water bowls and tanks are often coated in algae. A Humane Society of the United States (HSUS) complaint reported that the brown bears' water dish "resembles a watery sludge topped with an oily residue." Such conditions violate both the sanitation and water provisions of Wisconsin law.

96. Wis. Admin. Code § NR 16.30(8); Wis. Stat. §§ 951.13, 951.14(4): Special Memories Zoo fails to provide many of the animals with enough water. The pig at the Farm often does not have any water at all, and the Zoo received a direct noncompliance from the USDA after failing to adequately water the primates. Upon information and belief, the Zoo has no system for monitoring food, water, and supplements for any animals, and the Zoo Manager rejected employee suggestions to implement such a system. This can result in animals suffering from extreme thirst to the point they attempt to drink from visitors' water bottles.

97. Wis. Admin. Code § NR 16.30(8); Wis. Stat. § 951.13: Special Memories Zoo fed emus, ostriches, and rheas dog food for over half a month after it ran out of commercially-prepared ratite food. Likewise, bears are only fed dog food in the winter and fruits, bakery items, and breakfast cereal in the summer. Such food is not "appropriate for the individual

animal's age and condition" and was insufficient to "maintain animals in good health." Upon information and belief, there are frequently long delays of several days between the time Zoo employees notify the Zoo Manager regarding the exhaustion of food supplies and the time when the Zoo Manager would obtain more food. In addition, felids are often fed old, rancid meat that has been left unrefrigerated. Feeding animals in this way violates Wisconsin's mandate that animals receive "uncontaminated, wholesome, [and] palatable" food.

98. Wis. Admin. Code § NR 16.30(2); Wis. Stat. § 951.14(3)(a): Numerous escapes at the Zoo and Farm demonstrate that the animals' structures are inadequate. For example, a mother chinchilla and her two babies escaped into the reptile house because the cage door did not close properly. Although she discovered this problem, Ms. Crowe failed to remedy the situation and the chinchillas escaped a second time. In addition, as discussed above, a male capuchin was found tossing the dead body of a newborn lemur. Upon information and belief, bobcats are kept in dog kennels with just tiny clips to prevent their escape, and a tiger once was loose for 15 minutes outside of its habitat at the Zoo. Given these incidents, the Zoo is clearly violating Wisconsin's statutory provision that "housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals." It is also violating the captive wild animal regulations, which require pens that "contain the animals securely and restrict other animals from entering."

99. Wis. Stat. §§ 951.02, 951.14(1),(3)(b): The AZA Lion Care Manual states that lions should be provided access to minimum-sized indoor enclosures or a supplemental heat source in temperatures below 50 °F. Failure to provide adequate indoor enclosures or supplemental heat sources for lions in Greenville, Wisconsin—which regularly has daily high temperatures below freezing during winter months—constitutes failure to provide necessary

shelter in contravention of the criminal code. Likewise, the raccoon cage does not provide sufficient roofing to protect the animals from the elements, and the wolf enclosures are frequently muddy when it rains, demonstrating that they do not provide adequate protection from “inclement weather” or “shelter appropriate to the local climatic conditions.”

100. Wis. Admin. Code § NR 16.30(4)(c): This provision specifically requires raccoon pens to be “designed and constructed of suitable materials” and “kept in good repair.” The Zoo’s cage with a wire floor does not meet these standards. The raccoon cage also fails to protect the animals from the elements and egregiously violates sanitation conditions, as discussed above.

101. Wis. Stat. § 951.02: There are numerous reports of Special Memories Zoo failing to provide sick animals with appropriate—or even adequate—veterinary care, leading to severe injury and even death. According to complaints, these harmed animals include but are not limited to a kangaroo, 6–8 badgers, a macaque, a skunk, a spider monkey, two goats—including one baby—a cotamundi, and two lions. Ms. Crowe, the Zoo Manager, has likely covered up at least one of these incidences. These incidences demonstrate the direct harm Special Memories Zoo causes to animals.

102. Wis. Admin. Code. § NR 16.30(4)(c)2.d: This provision specifically requires otter enclosures to have 50 gallon pools, which the Zoo does not regularly provide. Indeed, former employees indicated that the water receptacle and pool for the otters is rarely cleaned or replaced with fresh water and is often covered in algae. The pool is drained during the winter months and the only other water source provided to the otters while their pool is drained is a bucket of drinking water. Otters are semi-aquatic animals whose natural behavior and movements cannot be satisfied in a small bucket.

103. Special Memories Zoo is additionally liable for violating local ordinances. Greenville, where the Zoo is located, and Hortonville, where the Wheelers and Ms. Crowe keep animals on the “Farm,” employ the same public-nuisance definition. The treatment of animals at the Zoo and Farm “[g]reatly offend[s] . . . public morals [and] decency” and therefore constitutes a public nuisance. Hortonville Ord. § 10.02; Greenville Ord. § 198-2. In addition, both town ordinances detail specific conditions that constitute public nuisances. The Farm in Hortonville violates the town’s ordinance because it is a “breeding place[] for insects and vermin” and emits “noxious odors.” The Zoo in Greenville is a “breeding place for vermin, insects, etc.,” emits “noxious odors,” and creates “unhealthy or unsanitary conditions.” Moreover, Greenville’s ordinances require all owners and caretakers of an animal to “provide it with adequate food, adequate water and adequate heating, cooling, ventilation, sanitation, shelter, and medical care consistent with the normal requirements of an animal’s size, species and breed.” Greenville Ord. § 76-14.

104. Wisconsin State Law aims to promote and extend the protections of the federal ESA. Wis. Stat. § 29.604(1); *Barnes v. Dep’t of Nat. Res.*, 516 N.W.2d 730, 735 (1994) (“From the statute’s statement of purpose . . . it is clear that the legislature intended this statute to complement the federal Endangered Species Act by strengthening the potential for the continued existence of endangered and threatened species within this state.”). Wisconsin’s endangered species list “consist[s] of three parts: wild animals and wild plants on the U.S. list of endangered and threatened foreign species; wild animals and wild plants on the U.S. list of endangered and threatened native species; and a list of endangered and threatened Wisconsin

species.” Wis. Stat. § 29.604(3).³ The statute prohibits any person from taking, transporting, possessing, processing or selling “any wild animal *specified by the department’s endangered and threatened species list*” within the state. Wis. Stat. § 29.604(4). Because the department’s list consists of federally endangered and threatened species, Special Memories Zoo’s violations of the ESA are also violations of Wisconsin’s endangered species protections.

105. Upon information and belief, and based on the overall conditions at the Zoo, its evident inability to properly care for animals, and its violations of local, state, and federal laws, each of these animals (and any other similarly confined animal whose presence at the Zoo is revealed through discovery) is suffering and is likely to continue suffering if not remedied promptly. The conditions imposed on these animals by the Zoo violate the state regulations and statutes described above and constitute a public nuisance.

ALDF’s Article III Associational Standing

106. As set forth above, ALDF brings this lawsuit to vindicate its own interests and the interests of its members, including the member whose visit to the Zoo is referenced in this Complaint.

107. ALDF’s stated organizational mission is “to advance the interests and protect the lives of animals through the legal system.” One of ALDF’s cornerstone issues is protecting members of threatened and endangered species from illegally inadequate housing, treatment, and conditions at commercial facilities such as unaccredited and inadequate zoos like Special Memories Zoo. Using the ESA, ALDF regularly engages in significant advocacy and public

³ To the extent that the FWS’s split-listings do not apply under Wisconsin state law, Wisconsin’s protections will extend to even more captive species, like the Canada lynx and Japanese macaque, than the ESA’s.

education efforts to raise awareness about the conditions in which threatened and endangered species are held in captivity and to improve their physical and mental well-being.

108. ALDF's members suffered and are suffering legally cognizable injuries as a result of observing with their own eyes the inadequate conditions in which the animals at the Zoo are kept. This includes many of the specific circumstances alleged above where animals were visibly suffering, including attempts by a thirsty giraffe to drink from one member's water bottle.

109. Specifically, the ALDF member who visited the Zoo was prevented from viewing and enjoying the animals kept there in appropriate conditions because the inadequate conditions described above persist.

110. ALDF's affected member who visited the Zoo fully intends to return to view the animals she met once conditions improve, but she is unable to do so because she experienced significant distress as a result of viewing the animals in current conditions, and those conditions continue to persist.

**COUNT I - UNLAWFUL "TAKE" OF ENDANGERED SPECIES UNDER THE
ENDANGERED SPECIES ACT**

111. Each and every allegation set forth above is incorporated herein by reference.

112. ALDF has Article III standing to assert this claim on behalf of itself and its member who personally visited the Zoo and suffered a cognizable injury as a result of observing the animals held in inadequate conditions with their own eyes.

113. Congress passed the ESA in recognition that species in danger of, or threatened with, extinction "are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people," and that the United States pledged to the international community "to conserve to the extent practicable various species of fish or wildlife and plants facing extinction." 16 U.S.C. § 1531(a)(3)-(4).

114. The ESA defines an “endangered species” as “any species which is in danger of extinction.” *Id.* § 1532(6).

115. The Act requires the Secretary of Interior to identify which species are endangered or threatened and list them accordingly. *Id.* § 1533. The Secretary fulfills this obligation through the FWS.

116. Section 9 of the ESA prohibits the “take” of endangered species. *Id.* § 1538(a)(1). Pursuant to its statutory authority to “by regulation prohibit with respect to any threatened species any act prohibited under [Section 9(a)(1)], in the case of fish or wildlife,” the Department of Interior has generally extended the take prohibition to species listed as threatened. 50 C.F.R. § 17.31.

117. The prohibitions of the ESA apply to endangered or threatened animals bred or kept in captivity as well as those in the wild. *See, e.g.*, 80 Fed. Reg. 7380, 7399 (Feb. 10, 2015) (“On its face the ESA does not treat captives differently. . . . Section 9[] of the ESA [prohibiting take] applies to endangered species regardless of their captive status.”); 50 C.F.R. § 17.3 (defining the “take” definition’s term “harass” in the context of captive animals).

118. The ESA defines “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). Congress intended for “take” to “be defined in the broadest possible manner to include every conceivable way in which a person can ‘take’ or attempt to ‘take’ any fish or wildlife.” S. Rep. No. 307, 93d Cong., 1st Sess. (1973), reprinted in 1973 U.S.C.C.A.N. 2989, 2995.

119. The Department of Interior defined the term “harass” to mean “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to

such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” 50 C.F.R. § 17.3. It defined the term “harm” to mean “an act which actually kills or injures wildlife.” *Id.*

120. Section 9 of the ESA makes it unlawful to “possess, sell, deliver, carry, transport, or ship” any endangered or threatened species that was unlawfully taken in violation of Section 9. 16 U.S.C. § 1538(a)(1)(D). In addition, Section 9 makes it unlawful to “deliver, receive, carry, transport, or ship in interstate or foreign commerce . . . in the course of commercial activity” any endangered or threatened species, regardless of whether the species was taken. *Id.* § 1538(a)(1)(E).

121. As detailed above, the Zoo violated and continues to violate the ESA and its implementing regulations by, at least, “taking” endangered ring-tailed lemurs, red-ruffed lemurs, gray wolves, tigers, lions, and a black leopard within the meaning of 16 U.S.C. § 1538(a)(1)(B), without a permit, at the Zoo. Additionally, because the split-listing for captive born Canada lynx and Japanese or snow macaques is invalid, the Zoo also violated and continues to violate the ESA and its implementing regulations by “taking” those threatened species without a permit.

122. This Court has the authority to issue an injunction prohibiting the Zoo from committing further violations of the ESA and to compel the Zoo to remedy current violations of the ESA. 16 U.S.C. § 1540(g)(1)(a). Moreover, this Court has the authority to award the costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the Court determines such award is appropriate. 16 U.S.C. § 1540(g)(4).

**COUNT II - UNLAWFUL POSSESSION OF PROTECTED SPECIES UNDER THE
ENDANGERED SPECIES ACT**

123. Each and every allegation set forth above is incorporated herein by reference.

124. The ESA, 16 U.S.C. § 1538(a)(1)(D), prohibits the possession, by any means whatsoever, of any species taken in violation of § 1538(a)(1)(B) and (C).

125. As detailed above, the Zoo violated and continues to violate the ESA and its implementing regulations by possessing and continuing to possess unlawfully taken species, including endangered ring-tailed lemurs, red-ruffed lemurs, gray wolves, tigers, lions, and a black leopard, as well as threatened Canada lynx and Japanese or snow macaques, within the meaning of 16 U.S.C. § 1538(a)(1)(D).

126. This Court has the authority to issue an injunction prohibiting the Zoo from committing further violations of the ESA and to compel the Zoo to remedy current violations of the ESA. 16 U.S.C. § 1540(g)(1)(a). Moreover, this Court has the authority to award the costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the Court determines such award is appropriate. 16 U.S.C. § 1540(g)(4).

COUNT III - PUBLIC NUISANCE

127. Each and every allegation set forth above is incorporated herein by reference.

128. In Wisconsin, “[a]ny person, county, city, village or town may maintain an action to recover damages or to abate a public nuisance from which injuries peculiar to the complainant are suffered, so far as necessary to protect the complainant’s rights and to obtain an injunction to prevent the same.” Wis. Stat. Ann. § 823.01. “A public nuisance is a condition or activity which substantially or unduly interferes with the use of a public place or with the activities of an entire community.” *Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co.*, 646 N.W.2d 777, 788 (Wis. 2002). Violation of a statute or even an ordinance is not necessary, but can be sufficient, to establish a public nuisance under Wisconsin Supreme Court precedent. *See State v. H. Samuels Co.*, 211 N.W.2d 417, 420–21 (1973).

129. As described above, Special Memories Zoo is violating Wisconsin animal cruelty statutes, captive wildlife regulations, Wisconsin's Endangered Species Act, and Greenville and Hortonville local ordinances.

130. Because of the ongoing harm caused to the animals and the risk that their improper captivity by the Zoo poses to public safety, the Zoo's unsafe confinement of its animals is an actionable public nuisance.

131. ALDF members have been injured by the Zoo's nuisance above and beyond the injury suffered by the public generally because they experienced significant distress as a result of visiting the Zoo for recreational purposes and to view the animals. Specifically, the ALDF member referenced above became distressed and upset due to the animal mistreatment and suffering that she witnessed. ALDF members' interests in observing and otherwise enjoying animals at the Zoo were and will continue to be harmed by the Zoo's mistreatment of animals through its operation and management of the Zoo.

132. The relief sought in this lawsuit—including, but not limited to, the transfer of animals to a bona fide sanctuary—will redress ALDF and its members' ongoing harms from the Zoo's activities at the Zoo. Specifically, the ALDF member would return to the Zoo if the treatment and conditions substantially improve to be in compliance with law, or would otherwise visit the animals if they are moved to a bona fide sanctuary.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ALDF respectfully prays for the following relief:

A. Declare that Special Memories Zoo is violating the ESA by illegally taking endangered ring-tailed lemurs, red-ruffed lemurs, gray wolves, tigers, lions, and a black leopard without a permit;

- B. Declare that Special Memories Zoo is violating the ESA by illegally taking threatened Canada lynx and Japanese or snow macaques without a permit;
- C. Declare that Special Memories Zoo is violating the ESA by possessing and continuing to possess individuals of endangered and threatened species that were illegally “taken”;
- D. Enjoin Special Memories Zoo from engaging in operations and activities that cause the “take” of the endangered ring-tailed lemurs, red-ruffed lemurs, gray wolves, tigers, lions, and black leopard, as well as threatened Canada lynx and Japanese or snow macaques;
- E. Enjoin Special Memories Zoo from possessing or acquiring endangered and threatened species that were illegally taken;
- F. Enjoin Special Memories Zoo from maintaining a public nuisance, namely by confining endangered, threatened, and non-endangered animals in inhumane and unsafe conditions;
- G. Enter a permanent injunction against Special Memories Zoo that terminates all Special Memories Zoo ownership and possessory rights in its animals;
- H. Appoint a special master or guardian ad litem to identify reputable wildlife sanctuaries and to determine the most appropriate placement for the forfeited animals, consistent with the animals’ best interests;
- I. Charge the cost of transferring and rehoming the forfeited animals to Special Memories Zoo;
- J. Enter a permanent injunction against Special Memories Zoo prohibiting Special Memories Zoo from obtaining other animals;
- K. Award ALDF its reasonable attorneys’ fees and litigation costs in this action; and

L. Grant ALDF such other and further relief the Court may deem just and proper.

Dated: February 12, 2020.

Respectfully submitted,

/s/ Laura M. Konkel

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Email: Margaret_Everson@fws.gov

Re: Notice of Intent to File Suit Pursuant to Endangered Species Act.

Dear Dona Wheeler, Gene Wheeler, Gretchen Crowe, David Bernhardt and Margaret Everson:

On behalf of the Animal Legal Defense Fund (“ALDF”)—and its more than 200,000 members and supporters, including in particular those in Wisconsin—and pursuant to Section 11(g) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), we write to provide notice that Gene Wheeler *dba* Special Memories Zoo, Dona Wheeler, their Zoo Manger Gretchen Crowe and Special Memories Zoo, LLC are violating the ESA’s prohibition against “tak[ing]” members of listed endangered and threatened species. The Wheelers and Ms. Crowe have violated the ESA’s take provision by harming and/or harassing numerous animals at Special Memories Zoo (the “Zoo”) and at their home in Hortonville, Wisconsin (the “Farm”).¹ *See id.* §§ 1538(a)(1), 1532(19). The evidence we have obtained demonstrates that animals of ESA-listed species at the Zoo are mentally and physically suffering in cramped, squalid, and deprived conditions without sufficient psychological and social enrichment.

This letter provides a summary of some of the evidence that demonstrates Special Memories Zoo is violating the ESA. It also outlines evidence establishing that *all*

¹ Unless the context dictates a different result, references to actions, violations, and other misconduct by “Special Memories Zoo” in this letter refers collectively to each of the identified targets of this letter: Special Memories Zoo, LLC, Gene Wheeler individually and *dba* Special Memories Zoo, Dona Wheeler, and their Zoo Manger Gretchen Crowe based on their actions at the Zoo and Farm facility.

animals at the Zoo and Farm are subject to conditions that constitute a public nuisance under Wisconsin state law, and one that has caused special harm to the ALDF and its members.

ALDF and its members are prepared to pursue litigation against Special Memories Zoo. The litigation would seek injunctive relief to ensure the transfer of every animal at the Zoo and Farm to an appropriate sanctuary that can provide a more naturalistic setting for the animals to express species-typical behavior in a safe and enriching environment.

To avoid the time and cost of litigation, ALDF is prepared to enter into a settlement of these claims with Special Memories Zoo.² ALDF offers to facilitate the transfer of all animals at the Zoo and Farm to reputable sanctuaries *at no cost to Special Memories Zoo*. ALDF would handle all of the arrangements for such a transfer, including securing and paying for the placement, transport, and necessary veterinary care provided Special Memories Zoo agrees not to obtain any additional animals.

I. Special Memories Zoo is violating the Endangered Species Act.

A. Requirements under the Endangered Species Act.

The ESA protects federally endangered and threatened species from harm and harassment. The ESA is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Finding that fish, wildlife, and plants “have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation . . . Congress intended endangered species to be afforded the highest of priorities.” *Tenn. Valley Auth.*, 437 U.S. at 174 (citation omitted).

The U.S. Fish and Wildlife Service (“FWS”), an agency that implements the ESA, lists species as “threatened” or “endangered” under the Act. 16 U.S.C. § 1533(a); *see also* 50 C.F.R. § 17.11. These designations trigger the ESA’s protections. *See In re Polar Bear ESA Listing & Section 4(d) Rule Litig.—MDL No. 1993*, 709 F.3d 1, 2 (D.C. Cir. 2013) (“When a species . . . is listed as either ‘threatened’ or ‘endangered’ under the Act, it is then subject to a host of protective measures designed to conserve the species.”).

“[S]ection 9, which imposes a blanket prohibition on the ‘take’ of any endangered species,” is “central to the ESA’s protections.” *Ctr. For Biological Diversity v. FWS*, 807 F.3d 1031, 1036 (9th Cir. 2015) (citing 16 U.S.C. § 1538(a)). This take prohibition also applies to species listed as threatened. *See* 50 CFR § 17.31(a) (extending the majority of ESA protections to threatened species; *Gibbs v. Babbitt*, 214 F.3d 483, 487 (4th Cir. 2000) (explaining the ESA take prohibition also applies to species listed as threatened). “The ESA expansively defines the term ‘take’ to include ‘harass, harm, pursue, hunt,

² This offer of assistance is addressed directly to Special Memories Zoo.

shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” *Hill v. Coggins*, 867 F.3d 499, 508 (4th Cir. 2017), *cert. denied*, 138 S. Ct. 1003, 200 L. Ed. 2d 253 (2018) (quoting 16 U.S.C. § 1532(19)). The Court has construed this definition “in the broadest possible manner to include every conceivable way in which a person can ‘take’ or attempt to ‘take’ any fish or wildlife.” *Sweet Home*, 515 U.S. at 704 (quoting S.Rep. No. 93–307, p. 7 (1973)).

FWS has issued regulations regarding some of the terms composing the definition of “take.” 50 C.F.R. § 17.3. The agency defines “harm” as “an act which actually kills or injures wildlife.” *Id.* It defines “harass” as “an intentional or negligent act which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.” *Id.* Harassment, harm, and other forms of “take” “clearly appl[y] to individual specimens or groups of specimens.” Captive-Bred Wildlife Regulation, 63 Fed. Reg. 48634, 48636 (Sept. 11, 1998).

The ESA’s take prohibitions apply to members of listed species living in captivity or in the wild. 79 Fed. Reg. 4313, 4317 (Jan. 27, 2014) (codified at 50 C.F.R. pt. 224) (“The ESA does not support the exclusion of captive members from a listing based solely on their status as captive . . . Section 9(a)(1)(A)–(G) of the ESA applies to endangered species regardless of their captive status.”); *see also* 16 U.S.C. § 1532(8) (defining “fish or wildlife” as “any member of the animal kingdom . . . without limitation”); 16 U.S.C. § 1538(b) (exempting only a narrow subset of captive animals from section 9 protections); *Hill*, 867 F.3d at 506–07 (finding captive grizzly bears are covered by the ESA); *Elephant Justice Proj. v. Woodland Park Zoological Soc’y, Inc.*, 2015 WL 12564233, *2–3 (W.D. Wash. Apr. 7, 2015) (finding a likelihood of success of claim that defendant zoo was performing an “unlawful take” of captive elephants); *People for the Ethical Treatment of Animals v. Tri-State Zoological Park of W. Md.* (“PETA”), 2018 WL 434229, *6 (D. Md. Jan. 16, 2018) (holding that at zoos, “the ESA provides for separate and heightened protections for the subset of captive animals that are threatened or endangered”).

Persons violating the ESA risk civil and criminal penalties. 16 U.S.C. § 1540(a)–(b). Private parties, including ALDF and its members, may bring enforcement actions 60 days after providing adequate notice of the violations to both the violator and the Secretary of the Interior. *Id.* § 1540(g). A court that finds violations of the ESA “take” prohibition has the authority to order the removal and relocation of captive animals to other, more protective facilities. *Tenn. Valley Auth.*, 437 U.S. at 193–95 (explaining that proper remedy for ESA violations is injunctive relief). As described below, because the Zoo and Farm have failed to obtain any permits authorizing the take of endangered or threatened species their conduct is a clear violation of Section 9 of the ESA.

B. Conditions and Activities at the Zoo and Farm are Continuing Violations of the Endangered Species Act.

The improper confinement of endangered and threatened species at the Zoo and Farm constitutes, and will continue to constitute, harm and harassment under the ESA. Of relevance to all the endangered species at the Zoo and Farm, spatial constraints in captive settings “result[] in welfare issues among captive animals,”³ and highly intelligent species and species with large territories are particularly vulnerable to stress in captivity.⁴ Inducing chronic stress constitutes a taking under the ESA because the “absence of chronic stress” is a prerequisite of animal welfare.⁵ Chronic stress “can have deleterious effects on an animal’s well-being, including the animal’s immune function, development, and reproductive function.”⁶ It may also harm an individual’s fitness by causing her tissues to atrophy.⁷

One sign of chronic stress in all animals is “the development of abnormal behaviors, such as abnormal stereotypical pacing behavior, best described as a repetitive, maladaptive, and apparently functionless behavior.”⁸ Stereotypic behavior in animals in zoos “suggests that the animal’s well-being may be compromised.”⁹ The behaviors of the endangered species and the Zoo and Farm demonstrate that, in addition to other harm and harassment, they are suffering from chronic stress resulting from their abhorrent living conditions.

This letter addresses the protected animals that ALDF and its members are

³ Janice Vaz, Edward J. Narayan, R. Dileep Kumar, K. Thenmozhi, Krishnamoorthy Thiyagesan, & Nagarajan Baskaran, *Prevalence and determinants of stereotypic behaviors and physiological stress among tigers and leopards in Indian zoos*, 12(4) PLoS One e0174711, 17–18 (2017) doi: 10.1371/journal.pone.0174711.

⁴ Grégory Breton & Salomé Barrot, *Influence of Enclosure Size on the Distances Covered and Paced by Captive Tigers* (*Panthera tigris*), 154 Applied Animal Behavior Science 66, 67 (2014), doi:10.1016/j.applanim.2014.02.007; see also Western Wildlife Outreach, *Wolf Ecology and Behavior*, Gray Wolf Outreach, <http://westernwildlife.org/gray-wolf-outreach-project/biology-behavior-4>. (discussing that stereotypic pacing, a stress behavior in captive animals, is “best predicted by the daily distance travelled in nature by the wild specimens.”)

⁵ Breton & Barrot, *supra* n.4 at 67.

⁶ Jessica M Keay, Jatinder Singh, Matthew C. Gaunt, & Taranjit Kaur, *Fecal Glucocorticoids and Their Metabolites as Indicators of Stress in Various Mammalian Species: A Literature Review*, 37(3) Journal of Zoo and Wildlife Medicine 234, 234 (2006), doi: 10.1638/05-050.1.

⁷ E. Möstl & R. Palme, *Hormones are Indicators of Stress*, 23 Domestic Animal Endocrinology 67, 68 (2002), doi: 10.1016/S0739-7240(02)00146-7.

⁸ Juliana Damasceno, Gelson Genaro, Thomas Quirke, Shannen McCarthy Sean McKeown, & Ruth O’Riordan, *The effects of intrinsic enrichment on captive felids*, 36(3) Zoo Biology 186, 186 (2017), doi: 10.1002/zoo.21361.

⁹ Julia Chosy, Megan Wilson, & Rachel Santymire, *Behavioral and physiological responses in felids to exhibit construction*, 33(4) Zoo Biology 267, 267 (2014), doi: 10.1002/zoo.21142.

aware of at the Zoo and Farm. To the extent that additional endangered or threatened species are at the Zoo or Farm, the facility's overall practices and conditions constitute a take of those protected species as well.¹⁰

1. Ring-Tailed and Red-Ruffed Lemurs

The Zoo and Farm possess and display ring-tailed lemurs (*Lemur catta*) and Red Ruffed Lemur (*Varecia rubra*) in conditions that cause them to suffer both psychologically and physically, in violation of the ESA. FWS lists all members of the family *Lemuridae* as endangered, wherever found. 50 C.F.R. § 17.11; 35 Fed. Reg. at 8495; 41 Fed. Reg. 26,019 (Jun. 24, 1976).

Lemurs are found in the wild in the southwest portion of Madagascar.¹¹ They travel widely in search of food and roam within territories ranging from 14 to 56 acres.¹² Lemurs are highly social animals with advanced cognitive abilities, and live in social groups ranging from 8 to 20 individuals. *See Kuehl v. Sellner*, 2018 WL 1733841, *1, *4 (8th Cir. Apr. 11, 2018) (affirming the district court's finding that a zoo had unlawfully "taken" two lemurs, based upon expert testimony that social isolation of members of the "very social species" leads to elevated noradrenaline levels, susceptibility to disease, and early death).¹³ Depriving lemurs of appropriate socialization causes the animals to suffer.¹⁴

Special Memories Zoo has harmed and harassed their lemurs. The lemurs' housing is extremely cramped and filthy, with improper and insufficient provisions of food, water, and psychological enrichment objects. The primate enclosure at the farm, in particular, does not have windows, and the animals frequently rock their cages, sit depressed in the corners, pace in circles or behave aggressively—all signs of immense

¹⁰ For instance, the Zoo possesses and displays White-Tailed Deer (*Odocoileus virginianus*), and Black-Handed Spider Monkeys (*Ateles geoffroyi*). Should any of these individuals be discovered to be a listed subspecies, such as Columbian White-Tailed Deer (*Odocoileus virginianus leucurus*), Key Deer (*Odocoileus virginianus clavium*), Red Spider Monkey (*Ateles geoffroyi panamensis*) or Black-browed Spider Monkey (*Ateles geoffroyi frontatus*), the ESA claims within this notice extend to those species as well.

¹¹ The population in the wild has plummeted, and ring-tailed lemurs are now one of the world's most endangered primates. *See* J.R. Platt, *Ring-Tailed Lemur Populations Have Crashed by 95 Percent*, Scientific American Blog, Jan. 13, 2017, at <https://blogs.scientificamerican.com/extinction-countdown/ring-tailed-lemur-crashe/> (describing how population has fallen to between 2,000 and 2,400 animals in 2017).

¹² *See* J.I. Pollock, *Spatial Distribution and Ranging Behavior in Lemurs*, in *The Study of Prosimian Behavior* 359, 379-80 (Doyle & Martin, eds., 1979).

¹³ *See also* C.B. Mowry & J.L. Campbell, *Nutrition*, in *Ring-Tailed Lemur (Lemur catta) Husbandry Manual 2* (Am. Ass'n of Zoos & Aquariums, 2001).

¹⁴ *See, e.g.*, R.E. Pride, *Optimal Group Size and Seasonal Stress in Ring-Tailed Lemurs (Lemur catta)*, 16 *Behavioral Ecology* 550 (2005) (finding females in groups that were atypically small or large for their habitat type had higher mean cortisol levels than typically sized groups).

stress. According to reports, one elderly lemur, after enduring recurring attacks, huddled in a corner with his head down for nearly a week until he died or was euthanized. The carcass of a second, newborn lemur was found in an adjacent capuchin cage, where a male capuchin was tossing it around.



2. Gray wolves.

The Zoo possesses and displays gray wolves in conditions that amount to a take under the ESA. Gray wolves (*Canis lupus*) are a protected endangered species in Wisconsin. 50 C.F.R. § 17.11. FWS describes the wolf as “an integral component of the ecosystems to which it typically belongs.”¹⁵ An individual who takes a wolf violates the ESA’s Section 9 and is subject to civil and criminal penalties. *See* 16 U.S.C. § 1540(a)–(b); *Hill*, 867 F.3d 499.

Species with large territories, like gray wolves, are particularly vulnerable to stress in captivity.¹⁶ In the wild, wolf territories are typically between 200 and 500 square miles, and may be as large as 1,000 square miles.¹⁷ Wolves spend about 35% of their time in transit, often travelling 20 to 30 miles per day, but covering over 100 miles a day when prey is scarce.¹⁸

In captivity, each wolf should have its own ten-square-mile area to maintain ideal health.¹⁹ Wolf enclosures should be large and varied so that the canids have choices about and control over their habitats²⁰ and more opportunities to “express their full range of natural, species-appropriate behaviors. Such variation can eliminate the stress and unnatural behaviors associated with housing in low quality environments.”²¹ As the AZA manual emphasizes, a key choice for wolves to have is the opportunity to retreat from view:

Enclosures should be large enough and contain sufficient visual barriers to provide the occupants with a degree of privacy and ability to avoid the public, staff, and each other when desired. When large canids do not have sufficient visual privacy or feeling of security, they are more likely to show stereotypic abnormal behavior, including pacing, spinning or twirling, excessive self-grooming (licking or chewing), and a range of other

¹⁵ U.S. Fish & Wildlife Service, *Species Profile for Gray wolf (Canis lupus)*, Environmental Conservation Online System, <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=A00D>.

¹⁶ Breton & Barrot, *supra* n.4 at 67; *see also* Western Wildlife Outreach, *Wolf Ecology and Behavior*, Gray Wolf Outreach, <http://westernwildlife.org/gray-wolf-outreach-project/biology-behavior-4>. (discussing that stereotypic pacing, a stress behavior in captive animals, is “best predicted by the daily distance travelled in nature by the wild specimens.”)

¹⁷ Western Wildlife Outreach, *supra* n.16.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Anne Frézard & Gilles Le Pape, *Contribution to the Welfare of Captive Wolves (Canis lupus lupus): A Behavioral Comparison of Six Wolf Packs*, 22 *Zoo Biology* 33, 43 (2003), doi: 10.1002/zoo.10070 (Noting that enclosures “must be large enough to allow a choice among different regions, to allow animals to be visually separated from the visitors, and to give them control over their activities.”).

²¹ Association of Zoos and Aquariums Canid Taxon Advisory Group 2012, *Large Canid (Canidae) Care Manual* 11 (2012).

abnormal or inappropriate behaviors and conditions such as increased agonistic interactions, diarrhea, hair loss, decreased appetite, weight loss, reproductive failure, or maternal neglect.²²

At Special Memories Zoo, not only is the wolf enclosure small and lacking variety, it is muddy and the wolves do not have access to clean water. It is also insufficient for other species-specific reasons. The impacts of the horrible living conditions are palpable: people have observed the wolves fighting and one wolf whimpering. This is the exact kind of suffering the ESA's take provision aims to prevent.

3. Tigers.

The Zoo possesses and displays tigers in conditions that amount to a take under the ESA. Tigers (*Panthera tigris*) are endangered wherever found. 50 C.F.R. § 17.11. To strengthen the protections for captive tigers under the ESA, FWS issued a recent rule to remove non-purebred tigers (inter-subspecific crossed or generic tigers) from the list of species exempt from registration under the Captive-bred Wildlife regulations. *See* U.S. Captive-Bred Inter-subspecific Crossed or Generic Tigers, 81 Fed. Reg. 19923 (Apr. 6, 2016). An individual who takes a tiger violates the ESA's Section 9 and is subject to civil and criminal penalties. *See* 16 U.S.C. § 1540(a)–(b).

Tigers are “one of the largest living carnivores,”²³ and their territories range from 27 to 32 square miles for females, and 103 to 114 square miles for males.²⁴ They are also a long-ranging species, known to travel over 400 miles to reach tiger populations in other areas.²⁵ As with other long-ranging species with large territories, tigers are particularly vulnerable to stress in captivity, and stereotypic behavior in captive tigers correlates to the size and complexity of the enclosure.²⁶ A 2014 study of 38 tigers in seven French zoological parks sought to quantify the influence of enclosure size on stereotypic pacing²⁷ and found “a significant negative correlation between the total [distance paced] and the enclosure size.”²⁸ Therefore, researchers have concluded that both large and enriched naturalistic enclosures are essential to preventing the onset of

²² *Id.*

²³ Breton & Barrot, *supra* n.4 at 67.

²⁴ Achara Simcharoen, Tommaso Savini, George A. Gale, Saksit Simcharoen, Somphot Duangchantrasiri, Somporn Pakpien, James L D Smith, *Female Tiger Panthera Tigris Home Range Size and Prey Abundance: Important Metrics for Management*, 48(3) ORYX 370 (2014), doi: 10.1017/S0030605312001408.

²⁵ Aditya Joshi, Srinivas Vaidyanathan, Samrat Mondol, Advait Edgaonkar & Uma Ramakrishnan, *Connectivity of Tiger (Panthera tigris) Populations in the Human-Influenced Forest Mosaic of Central India*, 8(11) PLoS ONE e77980 (2013), doi: 10.1371/journal.pone.0077980.

²⁶ *See* Breton & Barrot, *supra* n.4 at 67 (discussing that stereotypical pacing, a stress behavior in captive animals, is “best predicted by the daily distance travelled in nature by the wild specimens.”)

²⁷ Breton & Barrot, *supra* n.4 at 67.

²⁸ *Id.*

tigers' stereotypical behaviors.²⁹

Tigers are also avid swimmers, keeping cool on hot days by bathing in rivers and lakes, and swimming up to 18 miles in a day.³⁰ A 2017 study monitored 41 tigers at six zoos in India, measuring stereotypical behaviors and stress levels through fecal glucocorticoid metabolites, a biochemical marker of stress.³¹ Researchers concluded that large enclosures with a pool with clean water are “essential for tigers”—they reduce stress and promote naturalistic behavior.”³² Likewise, the AZA Tiger Care Manual says that all tiger exhibits should include relatively large, complex outdoor space, and water pools, moats, and/or running streams, and that “the addition of a concrete pool is key in tiger exhibits.”³³

Special Memories Zoo does not provide the tigers with the basic necessities of clean water, food, or straw: the water tanks are full of algae, the food is infested with maggots, and the straw is left soiled and unchanged for up to months on end. In addition, one visitor stated: “There was a tiger in a small cage that paced back and forth the entire time we were there.” That pacing is evidence of chronic stress and restlessness. The small cage is an insufficient habitat for a tiger. There is no space for the tiger to swim, run, or even stretch his legs—let alone engage in a normal range of social or stimulating activity. These conditions therefore constitute a take under the ESA.

4. Black Leopard

Leopards (*Panthera pardus*) are listed as endangered wherever found except in portions of Africa where they are protected as threatened. 50 C.F.R. § 17.11.³⁴ In their article in *Mammalian Species*, Andrew Stein and Virginia Hayssen lay out many of leopards' defining characteristics.³⁵ The leopard is the smallest of the large cats in the genus *Panthera*, though there are variations in sizes of leopards across their range. Males are generally larger than females: typically 30 to 62 kg compared to 21 to 54 kg for females. Fur color varies from yellow to black and is soft and thick, and leopards living in colder climates have longer hair. Leopards have well-developed musculature on the neck, forelimbs and chest and can drag a carcass more than double the leopard's

²⁹ See Vaz et al., *supra* n.3 at 2.

³⁰ Ronald M. Novak, *Walker's Mammals of the World* 825-828 (1999); see also John Seidensticker, Peter Jackson, Sarah Christie, *Riding the Tiger* (1999).

³¹ Vaz et al., *supra* n.3 at 3.

³² *Id.* at 21.

³³ Association of Zoos and Aquariums Tiger Species Survival Plan, *Tiger Care Manual* 11 (2016).

³⁴ See 37 FR 6476; Environmental Conservation Online System, *Species Profile for Leopard* (*Panthera pardus*), U.S. FISH & WILDLIFE SERVICE (last visited June 28, 2019), <https://ecos.fws.gov/ecp0/profile/speciesProfile?sId=156>

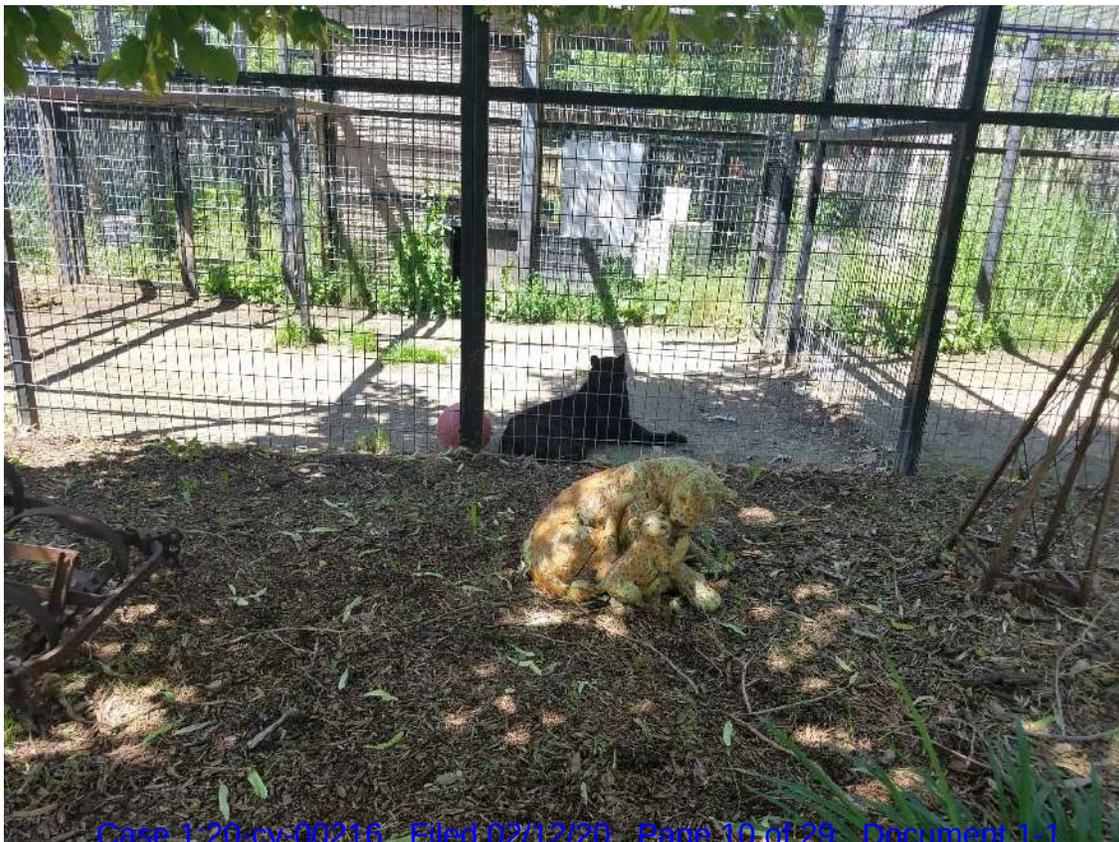
³⁵ See Andrew B. Stein & Virginia Hayssen, *Panthera pardus* (*Carnivora: Felidae*), *Mammalian Species*, Volume 45, Issue 900, 12 June 2013, Pages 30–48, <https://doi.org/10.1644/900.1>

body weight up a tree. Leopards can reach a maximum speed of 60 km per hour, make horizontal leaps of 6 m, and make vertical leaps of 3 m.

Leopards have a polygynous mating system. Both sexes are territorial: males have a territory that includes territories of several females, and both sexes defend their territories against individuals of the same sex (although there can be some overlap among same-sex territories). Although generally solitary, males and females will associate for several days during mating before separating again, and females will raise cubs for over a year. Generally, leopard home-range size varies according to prey availability—leopards have larger home ranges where prey availability is low. Ranges are typically in the dozens of square kilometers and often exceed a hundred square kilometers (over 5% the size of all of Outagamie County, Wisconsin).

Leopards naturally engage in stalking behaviors and prey on a wide range of other species, from beetles and rodents to large antelopes. Females and cubs tend to prey on smaller animals. Leopards attack prey by stalking and pouncing. Leopards can be active at night or during the day (i.e., in Kenya and South Africa, 66% of activity is nocturnal). Importantly, leopards often drag their prey up into trees, making the availability of 3-dimensional space critical to an appropriate habitat.

As with the enclosures for the other large, endangered species at the Zoo and Farm, the leopard does not have adequate space or stimulation, including insufficient three-dimensional space. She is unable to engage in natural behaviors, and as a result, she also suffers from chronic stress—evidenced by stereotypic behaviors. At an even more fundamental level, the Zoo fails to regularly clean the leopard's water tanks. All of these conditions constitute a harm under the ESA.





5. Lions.

The Zoo displays endangered lions in conditions that amount to a take under the ESA. Lions (*Panthera leo leo* and *Panthera leo melanochaita*) are an endangered species. 50 C.F.R. § 17.11. When he was Director of FWS, Dan Ashe described lions as “one of the planet’s most beloved species and an irreplaceable part of our shared global heritage.”³⁶ An individual who takes a lion violates the ESA’s Section 9 and is subject to civil and criminal penalties. *See* 16 U.S.C. § 1540(a)–(b).

Lion home ranges vary by location from 8–17 square miles to over 800 square miles.³⁷ Lions travel up to 8 miles a day.³⁸ Lions are very social, with females and cubs living in prides averaging 4–6 adult females, and up to 8 males with a lifelong alliance with the pride.³⁹ The AZA manual sets a minimum of 10,000 square feet for lion enclosures.⁴⁰ In addition, because lions are accustomed to a warm environment, the AZA manual calls for access to indoor enclosures or a supplemental heat source in temperatures below 50 °F.⁴¹ Yet Special Memories Zoo fails to provide adequate protections from such temperatures or adequate supplemental heat sources even though it is located in an area of the country that routinely has high daily temperatures below 50 °F during several winter months.

Captive felids, such as lions, have particularly high needs for environmental enrichments.⁴² Enrichments can “enhance captive animals’ well-being by stimulating active behaviors and reducing stereotypical behaviors commonly seen in zoo felids.”⁴³ Because of the complexity of lions’ exploring and hunting in the wild, “it remains difficult to provide fully for this complex array of behaviors within the captive setting.”⁴⁴

Special Memories Zoo fails to provide its lions with even the most minimal environmental enrichments—let alone clean water tanks. Like the other species with large territories, the lions at the Zoo are suffering from deprivation and living in a constant state of stress.

³⁶ U.S. Fish & Wildlife Service, *Lions Are Now Protected Under the Endangered Species Act*, Endangered Species (Dec. 23, 2015), <https://www.fws.gov/endangered/what-we-do/lion.html>.

³⁷ Monika B. Lehmann, Paul J. Funston, Cailey R. Owen & Rob Slotow, *Home Range Utilization and Territorial Behavior of Lions (Panthera Leo) on Karongwe Game Reserve*, South Africa, 3(12) PLoS One e3998, 4 (Dec. 22, 2008), doi: 10.1371/journal.pone.0003998.

³⁸ Möstl & Palme, *supra* n.7 at 68.

³⁹ San Diego Zoo, *Fact Sheet: African lion, Panthera leo* (Aug. 2005).

⁴⁰ Association of Zoos and Aquariums Lion Species Survival Plan, *Lion Care Manual* 19 (2012).

⁴¹ *Id.* at 13.

⁴² Thomas Quirke et al., *A comparative study of the speeds attained by captive cheetahs during the enrichment practice of the “cheetah run”*, 32(5) Zoo Biology 490, 490 (2013), doi: 10.1002/zoo.21082.

⁴³ Amy L. Skibiell, Heather S. Trevino, & Ken Naugher, *Comparison of Several Types of Enrichment for Captive Felids*, 26(5) Zoo Biology 371, 371 (2007), doi: 10.1002/zoo.20147.

⁴⁴ Quirke et al., *supra* n.42 at 490.





6. Canada Lynx.

The Zoo possesses and displays Canada lynx in conditions that amount to a take under the ESA. Canada lynx (*Lynx canadensis*) are listed as threatened “wherever found in the contiguous USA.” 50 C.F.R. § 17.11. ALDF recognizes that FWS issued a special 4(d) rule that authorized unpermitted “takes” of *captive* Canadian lynx, 50 C.F.R. § 17.40(k), yet this disparate treatment of wild and captive species is invalid as a matter of law because it directly conflicts with the statute’s requirements. *See* 63 Fed. Reg. 48634-02 at 48636 (Sept. 11, 1998) (recognizing the statutory term “take” was “defined by Congress in Section 3 of the Act” as applying to “endangered or threatened wildlife, whether wild or captive,” and therefore “the statutory term cannot be changed administratively” to exclude captive individuals); *see also Kuehl v. Sellner*, 887 F.3d 845, 852-53 (8th Cir. 2018) (recognizing the ESA applies to captive endangered species in affirming judgment against roadside zoo for violating ESA).

Regardless of the invalid federal split-listing of the Canada lynx, Special Memories Zoo’s treatment of the Canada lynx violates Wisconsin’s captive wild animal and cruelty statutes, which have specific provisions for lynx, and may also violate Wisconsin’s endangered species protections, to which the FWS regulation is

inapplicable.

Canada lynx primarily inhabit the northern forests of Canada and Alaska, with smaller populations in the contiguous U.S.⁴⁵ Canada lynx typically inhabit regions where snow cover continues for four months or more.⁴⁶ Lynx density varies from one lynx per square mile to one lynx per 39 square miles—this depends on the availability of their primary food source, snowshoe hare.⁴⁷ Home ranges vary in size and have been recorded from 3 to 302 square miles.⁴⁸

Captive Canada lynx have been found to have approximately double the levels of stress hormones as their wild counterparts.⁴⁹ “This result is generally attributed to higher levels of stress in captivity.”⁵⁰ As noted above, “chronically high stress levels can have deleterious effects on an animal’s well-being, including the animal’s immune function, development, and reproductive function.”⁵¹

In 2013, researchers performed “an exploratory analysis of housing and husbandry factors that may affect stress physiology in captive Canada lynx” by measuring the biochemical stress marker fecal glucocorticoid metabolite (“FGM”) in 45 captive lynx across 22 institutions.⁵² Researchers identified three factors that were “strongly correlated” with stress response: (1) total area of enclosure; (2) sex of cage-mates; and (3) number of hiding locations.⁵³ During the course of the study “one male was moved to a larger enclosure at the same institution and FGM concentrations decreased notably following the move.”⁵⁴ Researchers ultimately concluded that, “bigger enclosures are likely better for lynx well-being.”⁵⁵

The Zoo keeps Canada lynx in tiny, barren, unclean and foul-smelling enclosures with minimal to no snow cover, frustrating their natural behaviors. These conditions cause a measurable, physical stress response in Canada lynx. The conditions at the Zoo therefore amount to a taking.

⁴⁵ U.S. Fish & Wildlife Service, *Canada Lynx* (Lynx Canadensis), Endangered Species, Mammals (June 25, 2018), <https://www.fws.gov/mountain-prairie/es/canadaLynx.php>.

⁴⁶ *Id.*

⁴⁷ USDA Forest Service, *The Scientific Basis for Conserving Forest Carnivores: American Marten, Fisher, Lynx, and Wolverine in the Western United States, General Technical Report Rm. 254*, 82–83 (1994).

⁴⁸ *Id.*

⁴⁹ Kerry V. Fanson, Nadja C. Wielebnowski, Tanya M. Shenk, & Jeffrey R. Lucas, Comparative Patterns of Adrenal Activity in Captive and Wild Canada Lynx (Lynx Canadensis), 182 *Journal of Comparative Physiology B* 157, 163 (2012), doi: 10.1007/s00360-011-0597-8.

⁵⁰ *Id.*

⁵¹ Keay et al., *supra* n.6 at 234.

⁵² Fanson & Wielebnowski, *supra* n.49 at 159.

⁵³ *Id.* at 163.

⁵⁴ *Id.* at 164.

⁵⁵ *Id.*

7. Japanese Macaque/Snow Macaque

Special Memories Zoo possesses and displays Japanese macaques. The U.S. FWS lists the Japanese macaque as threatened wherever it is found. 50 C.F.R. § 17.11(h); 50 C.F.R. 17.40(c).⁵⁶ As discussed with respect to the invalid split-listing of the Canada Lynx, the similar 4(d) rule regarding captive Japanese macaques is equally invalid. *See* 50 C.F.R. § 17.40(c). Wild Japanese macaques are subject to Section 9 of the ESA, and FWS itself has determined that protections must equally apply to captive and wild members of the same species. *See* 78 Fed. Reg. 33790, 33793 (June 5, 2013). Regardless, the evidence establishes that the Zoo and Farm are a public nuisance under Wisconsin law with regard to their treatment of the Japanese macaques.

Japanese macaques typically live in large groups across broad expanses of forest land. In a comprehensive study of 117 groups of macaques, the average group size was 40.8 individuals and the smallest extreme was 10 individuals.⁵⁷ Macaques form strong social bonds, especially the females, who often remain in the same troops throughout their lives.⁵⁸ Although male Japanese macaques are much larger than females, the females choose their mates; they typically will not mate with the same males inside a 4–5 year period.⁵⁹ Courtships last no more than two days on average.⁶⁰ Japanese macaques also engage in social activities, whether for survival—such as washing and peeling food together—or for fun, such as rolling snowballs.⁶¹ In captivity, “Environmental enrichment is vital . . . It can stimulate both the brain and body, provides novelty and simulates behaviours found in the wild.”⁶²

The home range of Japanese macaques averages 1.43 mi² per group.⁶³ In evergreen broadleaf forests—the habitat in which Japanese macaques have the smallest home range—the smallest estimated home range for an individual is 14,000 square meters (over two and a half football fields).⁶⁴ In the largest home-range habitat, deciduous broadleaf forest, each individual Japanese macaque can use up to 790,000 square meters—nearly 148 football fields.⁶⁵

⁵⁶ Determination of 26 Species of Primates as Endangered (12) or Threatened (14); 41 Fed. Reg. 45990 (Oct. 19, 1976) (codified at 50 C.F.R. pt. 17).

⁵⁷ Jack Fooden & Mitsuru Aimi, *Systematic Review of Japanese Macaques*, *Macaca fuscata*, 104 *Fieldiana Zoology* 1, 51 (2005)

⁵⁸ Japanese Macaque, BLUE PLANET BIOMES (last visited June 27, 2019), https://blueplanetbiomes.org/japanese_macaque.php

⁵⁹ *Id.*

⁶⁰ Fooden & Aimi, *supra* n.57 at 59.

⁶¹ Blue Planet Biomes, *supra* n.58.

⁶² Primate Enrichment for Japanese Macaques, MONKEYS AND MOUNTAINS (last visited June 28, 2019) <https://monkeysandmountains.com/japanese-macaque-enrichment/>

⁶³ *See* Fooden & Aimi, *supra* n.57 at 52; Kurt Gron, *Japanese macaque: Macaca fuscata*, PRIMATE INFO NET (Apr. 26, 2007), http://pin.primate.wisc.edu/factsheets/entry/japanese_macaque

⁶⁴ *See* Fooden & Aimi, *supra* n.57 at 52.

⁶⁵ *See id.*

Special Memories Zoo's housing of two macaques—Bill and Sheri—subjects these endangered animals to harm and harassment. Whereas the very smallest groups of macaques in the wild consist of ten individuals, Bill and Sheri are housed either together or—currently—in complete isolation. By housing the macaques together, the Zoo subjected Sheri, the female, to having a stronger animal chase and bite her. Sheri was forced to live alone with a male far longer than any courtship period would last, and far longer than any female macaque would be alone with a male in the wild. Because of the confinement and absence of other females, she had no ability to escape or seek protection from biting. Now, in isolation, Bill and Sheri have no social interactions whatsoever. They have no intellectual stimuli and their enclosures, in addition to being filthy, are far smaller and barer than even the most minimal home ranges that Japanese macaques typically inhabit. The macaques exhibit stereotypic behaviors, such as circling back and forth, rocking their cages, acting aggressively and sitting depressed in a corner.



II. Special Memories Zoo is a Public Nuisance under Wisconsin State Law.

Special Memories Zoo possesses and displays hundreds of other animals.⁶⁶ Special Memories Zoo's mistreatment of some of the animals at the facility, along with its "take" of animals listed as endangered or threatened under the ESA, violates Wisconsin law and indicates that the facility is unfit to properly care for wild animals.

Under Wisconsin law, "[a]ny person, county, city, village or town may maintain an action to recover damages or to abate a public nuisance from which injuries peculiar to the complainant are suffered, so far as necessary to protect the complainant's rights and to obtain an injunction to prevent the same." Wis. Stat. Ann. § 823.01. "A public nuisance is a condition or activity which substantially or unduly interferes with the use of a public place or with the activities of an entire community." *Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co.*, 646 N.W.2d 777, 788 (Wis. 2002). Violation of a statute or even an ordinance is not necessary,⁶⁷ but can be sufficient, to establish a public nuisance under Wisconsin Supreme Court precedent. *See State v. H. Samuels Co.*, 211 N.W.2d 417, 420–21 (1973) ("[I]f repeated violations of a public statute as in Penney constitute a public nuisance, then the repeated violations of an ordinance [also] constitute a public nuisance [as a matter of law].")

Like in *H. Samuels Co.*, here Special Memories Zoo's repeated violations of statutes and ordinances as described below constitutes a *per se* public nuisance. *Id.* Likewise, in *State v. Seigel*, a Wisconsin appellate court held that firework stores violating Wisconsin's fireworks law were a *per se* public nuisance. 472 N.W.2d 584, 587 (Ct. App. 1991). In addition to the federal ESA violations described above, the following subsections identify Special Memories Zoo's violations of state laws at the Zoo and Farm. Each statutory violation makes the Zoo and Farm *per se* public nuisances.

A. Special Memories Zoo Violates Wisconsin's Laws Regulating Captive Wild Animals and Animal Cruelty.

Wisconsin has statutory provisions directly addressing "pen specifications, humane handling, care, treatment and transportation of captive wild animals." Wis. Adm. Code § NR 16.30(2)(a) (2017) (structure and construction); *Id.* § NR 16.30(2)(b) (housing facilities with food and bedding); *Id.* § NR 16.30(2)(c) (surfaces of enclosures); *Id.* § NR 16.30(2)(f) (pest control); *Id.* § NR 16.30(3)(a) (space for animals in pens); *Id.* § NR 16.30(3)(b) (protection from the elements and ventilation); *Id.* § NR 16.30(7) (species-specific environmental enrichment); *Id.* § NR 16.30(8) (feeding, watering, and food and water receptacles). In pertinent detail, enclosures must "protect the captive wild animals from injury, contain the animals securely and restrict other animals from

⁶⁶ *See* List of Species at Appendix 1. This includes at least one giraffe, which is a species the FWS has recently concluded likely warrants protection under the ESA. *See* <https://www.nytimes.com/2019/04/27/science/giraffes-endangered-species.html>.

⁶⁷ *See* Brigid W. Massaro, *Navigating the "Impenetrable Jungle": Statutory Limits on Wisconsin Public Nuisance Actions*, 90 Marquette L. R., 95 (2006).

entering,” and be “free of any accumulation of trash, waste material, refuse, weeds and other discarded materials.” *Id.* § NR 16.30(2).



Moreover, the statute specifies that animals must be able to make “normal postural and social adjustments,” and “inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress or abnormal behavior patterns.” *Id.* § NR 16.30(3)(a). Lastly, persons must offer captive wild animals potable water “not less than twice daily for at least one hour each time,” and must feed the animals at least once daily with food that is “uncontaminated, wholesome, palatable and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. The diet shall be appropriate for the individual animal's age and condition.” *Id.* § NR 16.30(8).

In addition to these standards for all captive wild animals, Wisconsin’s statute adds more detailed protections for the following animals at the Zoo and Farm: lynx, raccoons, bears, otter, bobcats, fox and fisher. *Id.* § NR 16.30(4),(7)(b),(9)(c). In pertinent detail, regarding bobcats, lynx, fox and fishers, license holders must “develop, document and follow an appropriate plan for environment enhancement adequate to promote the psychological well being of these captive wild animals . . . in accordance with the currently accepted professional standards as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian.” *Id.* § NR 16.30(7)(b). Raccoons must have, in addition to other accommodations, pens that are “designed and constructed of suitable materials” and “kept in good repair.” *Id.* § NR 16.30(4)(c).

Lastly, Wisconsin law addresses the “[e]xhibition of captive wild animals,” and these provisions offer even stricter regulations than § 16.30, specifically regarding sanitation. Wis. Admin. Code NR § 16.35. These provisions add that “[e]xcreta and food waste shall be removed from primary enclosures and from under primary enclosures as often as necessary to prevent an excessive accumulation,” and “Primary enclosures and food and water receptacles shall be cleaned and sanitized at least once every 2 weeks and more often if necessary.” *Id.* § 16.35(3).

In addition to the provisions addressing captive wild animals, Wisconsin has an animal cruelty statute that applies to “every living: (a) Warm-blooded creature, except a human being; (b) Reptile; or (c) Amphibian.” WIS. STAT. § 951.01 (emphasis added). Although Wisconsin’s cruelty laws cannot controvert its laws regulating captive wild animals, they are applicable and enforceable with respect to these animals. Wis. Stat. § 951.015(1),(2);⁶⁸ *see also State v. Kuenzi*, 796 N.W.2d 222, 225 (Wis. App. 2011), review denied by 806 N.W.2d 637 (Wis. 2011) (recognizing that the language of Wisconsin’s animal cruelty statute, “on its face,” demonstrates the statute’s broad application to all animals).

Wisconsin’s statute defines cruelty as “causing unnecessary and excessive pain or suffering or unjustifiable injury or death,” WIS. STAT. § 951.01. It prohibits treating animals in a “cruel manner,” WIS. STAT. § 951.02, and details additional requirements

⁶⁸ Wis. Stat. § 951.015(2) states, “*For purposes of enforcing this chapter as to wild animals subject to regulation under ch. 169*, a conservation warden has the same powers and duties that a law enforcement officer has under this chapter.” (emphasis added).

with which people in possession of animals must comply. First, animals must have proper access to food, water, and shelter. WIS STAT. § 951.13 (food and water); *Id.* § 951.14 (shelter). Indoor shelters must be temperature controlled and ventilated, while outdoor shelters must provide protection from sunlight and inclement weather. *Id.* § 951.14(1); *Id.* § 951.14(2). All enclosures, both indoor and outdoor, must also abide by sanitation requirements, including “periodic cleaning to remove excreta and other waste materials, dirt and trash.” *Id.* § 951.14(4). Finally, all enclosures must abide by structural and space requirements. *Id.* § 951.14(3). Structurally, people must maintain the enclosures so they can contain the animals and protect them from injury. *Id.* § 951.14(3)(a). Under the space requirements, animals must have “adequate freedom of movement.” *Id.* § 951.14(3)(b). In pertinent part, section 951.14(3)(b) explains that “[i]nadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns.”

In Wisconsin, any person who intentionally or negligently violates these provisions is guilty of a Class A misdemeanor, and anyone who treats an animal cruelly “resulting in the mutilation, disfigurement or death of [the] animal,” is guilty of a Class 1 felony. WIS. STAT. § 951.18.

Special Memories Zoo’s violations of Wisconsin laws include, but are not limited to:

- Wis. Admin. Code NR § 16.30(3)(a); WIS. STAT. §§ 951.02, 951.14(2),(3)(b): Confining animals to undersized enclosures does not provide for “normal postural and social adjustments” or even “adequate freedom of movement.” Numerous TripAdvisor comments remark on how small the animals’ cages are. The Zoo and Farm animals’ abnormal behaviors provide evidence that these small cages are impairing animals’ freedom of movement. In addition to the endangered species’ abnormal behaviors, detailed above: primates frequently rock their cages, sit depressed in the corners, pace in circles or behave aggressively; a crane injured his wing so badly by flapping against an undersized cage, that it splattered blood across the barn; and parakeets die frequently from living in crowded conditions with other sick birds. These behaviors upset visitors, who have commented online, for example, that “all of the animals seemed entirely miserable,” and “the big animals were especially sad.” Subjecting animals to such conditions is not only cruel on its face, it directly violates Wisconsin’s space provisions.
- Wis. Admin. Code NR § 16.30(3); WIS. STAT. §§ 951.02, 951.14(3): There have been multiple reports of animals harming each other while under the care of Special Memories Zoo—specifically, male animals harming smaller females due to unnatural housing arrangements. Under Special Memories Zoo’s care: a male macaque named Cooper bit and wounded a female macaque’s upper right thigh, and the Zoo failed to separate the animals in a timely manner; a male snow macaque named Bill repeatedly harmed a female snow macaque named Sheri, and the Zoo failed to separate the animals in a timely manner; a male

binturong bit a female above her eye; a male blackbuck brutally injured a female, and the Zoo failed to separate the animals—despite a keeper bringing the problem to Ms. Crowe’s attention; a male Baboon fought with female Baboons and the zoo failed to keep them separated; a male capuchin was found tossing the carcass of a baby lemur; and one wolf constantly picks on a second, who is constantly heard whimpering. Among other concerns these incidents raise, they depict that the animals do not have space for “normal . . . social adjustments.”

- Wis. Admin. Code NR § 16.30(7): The animals at the Zoo and on the Farm suffer from lack of enrichment. Inadequate enrichment for Lynx, bobcats, fox and fishers is a further violation of subsection b, which mandates specific forms of enhanced enrichment for these species.
- Wis. Admin. Code. § NR 16.30(4),(7)(b),(9)(c): The provisions extend special protections several species at the Zoo—lynx, raccoons, bears, otter, bobcats, fox and fisher—and these enclosures do not meet Wisconsin’s specifications. Indeed, one TripAdvisor comment described the animal homes as “too small cages on a concrete slab” and remarked that there were “[n]o habitat[s] whatsoever.”
- Wis. Admin. Code NR § 16.35(3); *Id.* § 16.30(2); WIS. STAT. § 951.14(4): Special Memories Zoo does not instruct the staff to follow any cleaning schedule whatsoever. The giraffe’s cage, for example, went uncleaned for over a month and the tiger den went uncleaned for nearly three. This directly violates Wisconsin’s bi-monthly, “periodic cleaning” requirements. Making matters worse, Ms. Crowe not only fails to schedule cleaning for as the law requires, but she has further denied employees’ cleaning requests. Because the law requires cleaning “more often [than every two weeks] if necessary,” denying these requests is in itself a violation of Wisconsin law.
- Wis. Admin. Code NR §§ 16.35(3), 16.30(2),(3)(b); WIS. STAT. §§ 951.02, 951.14(4): A second violation of Wisconsin’s sanitation provision results from the first—Special Memories Zoo fails to “remove excreta and other waste materials, dirt and trash so as to minimize health hazards” and “as often as necessary to prevent an excessive accumulation.” According to reports, the lynx and bear cages are “foul smelling,” and the giraffe developed a cough from inadequate ventilation. Moreover, observers have reported excessive piles of feces in numerous enclosures including those of: raccoons, dogs, bobcat kittens, rabbits, otters, and tigers. Most egregiously, the raccoons often cling to the top left corner wall of the cage so that they do not have to sit in feces, and a rabbit has suffered from “urine scalding.”
- Wis. Admin. Code NR §§ 16.35(3), 16.30(2)(e): A live rat was found in a bucket of meat that is fed to the big cats, wolves, and fishers, directly violating the provision that food must be stored and food receptacles must be cleaned to prevent vermin infestation.
- Wis. Admin. Code NR §§ 16.35(3), 16.30(8); WIS. STAT. §§ 951.13, 951.14(4):

Water bowls and tanks for numerous animals at the Zoo and Farm are reportedly filthy because Ms. Crowe discourages workers from bringing water bowls out of the cages to clean them properly with soap and sponges. Filthy water bowls and tanks have been reported in enclosures for: bobcats, primates, lions, tigers, the leopard, raccoons, wolves, porcupines, camels and goats. These water bowls and tanks are often coated in algae. An HSUS complaint reported that the brown bears' water dish "resembles a watery sludge topped with an oily residue." Such conditions violate both the sanitation and water provisions of Wisconsin law.





- Wis. Admin. Code NR § 16.30(8); WIS. STAT. §§ 951.13, 951.14(4): Special Memories Zoo fails to provide many of the animals with enough water. The pig at the Farm often does not have any water at all, and the Zoo received a direct noncompliance from USDA after failing to adequately water the primates.
- Wis. Admin. Code § NR 16.30(8); WIS. STAT. § 951.13: Special Memories Zoo fed emus, ostriches, and rheas dog food for over half a month after it ran out of commercially-prepared ratite food. Likewise, bears are only fed dog food in the winter and fruits and bakery items in the summer. Such food is not “appropriate for the individual animal's age and condition” and was insufficient to “maintain animals in good health.”
- In addition, felids are often fed old, rancid meat that has been left unrefrigerated. Feeding animals in this way violates Wisconsin’s mandate that animals receive “uncontaminated, wholesome, [and] palatable” food.
- Wis. Admin. Code § 16.30(2); WIS. STAT. § 951.14(3)(a): Numerous escapes at the Zoo and Farm show that the animals’ structures are inadequate. For example, a mother chinchilla and her two babies escaped into the reptile house because the cage door did not close properly. Although she discovered this problem, Ms.

Crowe failed to remedy the situation and the chinchillas escaped a second time. In addition, as discussed above, a male capuchin was found tossing the dead body of a newborn lemur. Given these incidents, the Zoo is clearly violating Wisconsin's statutory provision that "housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals." It is also violating the language of the captive wild animal regulations, requiring pens that "contain the animals securely and restrict other animals from entering."

- WIS. STAT. §§ 951.02, 951.14(1), (3)(b): The AZA Lion Care Manual states lions should be provided access to minimum-sized indoor enclosures or a supplemental heat source in temperatures below 50 °F. Failure to provide adequate indoor enclosures or supplemental heat sources for lions in Greenville, Wisconsin—which regularly has high daily temperatures below freezing during winter months—constitutes failure to provide necessary shelter in contravention of the criminal code. Likewise, the raccoon cage does not provide sufficient roofing to protect the animals from the elements, and the wolf enclosures are frequently muddy when it rains, demonstrating that they do not provide adequate protection from "inclement weather" or "shelter appropriate to the local climatic conditions."
- Wis. Admin. Code. § NR 16.30(4)(c): This provision specifically requires raccoon pens to be "designed and constructed of suitable materials" and "kept in good repair," and a cage with a wire floor does not meet these standards. The raccoon cage also fails to protect the animals from the elements and egregiously violates sanitation conditions, as discussed above.
- Wis. Admin. Code. § NR 16.30(4)(c)2.d: This provision specifically requires otter enclosures to have 50 gallon pools, which the Zoo does not regularly provide. Indeed, former employees have indicated that the water receptacle and pool for the otters is rarely cleaned or replaced with fresh water and is often covered in algae. The pool is drained during the winter months and the only other water source provided to the otters while their pool was drained was a bucket of drinking water. Otters are semi-aquatic animals whose natural behavior and movements cannot be satisfied in a small bucket.



- WIS. STAT. § 951.02: There are numerous reports of Special Memories Zoo failing to provide sick animals with appropriate—or even adequate—veterinary care, leading to severe injury and even death. According to complaints, these harmed animals include but are not limited to: a kangaroo, 6–8 badgers, a macaque, a skunk, a spider monkey, two goats—including one baby—a cotamundi, and two lions. Gretchen Crowe, the Zoo Manager, has likely covered up at least one of these incidences. These incidences demonstrate the direct harm Special Memories Zoo causes to animals.

B. Special Memories Zoo also Violates Greenville and Hortonville Town Ordinances Respectively.

Special Memories Zoo is additionally liable for violating local ordinances. Greenville, where the Zoo is located, and Hortonville, where the Wheeler’s and Ms. Crowe keep animals on their “Farm,” employ the same public-nuisance definition.⁶⁹ The treatment of animals at the Zoo and Farm “[g]reatly offend[s] . . . public morals [and] decency” and therefore constitutes a public nuisance under subsection 3. In addition, both town ordinances detail specific conditions that constitute public nuisances. The Farm in Hortonville violates the town’s ordinance because it is a “breeding place[] for insects and vermin” and emits “noxious odors.” The Zoo in Greenville is a “breeding place for vermin, insects, etc.,” emits “noxious odors,” and creates “unhealthy or unsanitary conditions.”

⁶⁹ A public nuisance is a thing, act, occupation, condition or use of property which continues for such length of time as to:

- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- (2) In any way render the public insecure in life or in the use of property.
- (3) Greatly offend the public morals or decency.
- (4) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property. GREENVILLE, WIS., CODE § 198-2 (2012); HORTONVILLE, WIS., CODE § 10.02.

C. Special Memories Zoo Violates Wisconsin’s Protections for Endangered and Threatened Species.

Wisconsin State Law aims to promote and extend the protections of the federal ESA; Wis. Stat. § 29.604(1); *Barnes v. Dep’t of Nat. Res.*, 516 N.W.2d 730, 735 (1994) (“From the statute’s statement of purpose . . . it is clear that the legislature intended this statute to complement the federal Endangered Species Act by strengthening the potential for the continued existence of endangered and threatened species within this state.”) Wisconsin’s endangered species list “consist[s] of three parts: wild animals and wild plants on the U.S. list of endangered and threatened foreign species; wild animals and wild plants on the U.S. list of endangered and threatened native species; and a list of endangered and threatened Wisconsin species.” Wis. Stat. § 29.604(3).⁷⁰ The statute prohibits any person from taking, transporting, possessing, processing or selling “any wild animal *specified by the department’s endangered and threatened species list*” within the state. Wis. Stat. § 29.604(4). Because the department’s list consists of federally endangered and threatened species, Special Memories Zoo’s violations of the ESA are also violations of Wisconsin’s endangered species protections.

D. Special Memories Zoo is Also a Public Nuisance Because it Poses a Risk to Humans.

The Zoo’s and Farm’s confinement of these animals constitutes a public nuisance not only because it is inhumane to the animals at issue, but also because it is unsafe to the public. There is high turnover of untrained employees, and as a result, numerous, dangerous animals have escaped their cages, including a tiger and a capuchin. Notably, the capuchin that escaped his cage for 2–3 hours was the same capuchin found, on a separate occasion, tossing around the dead body of a newborn lemur. Employees have also suffered bites from animals. Under such conditions, it is only a matter of time before employees, as well as visitors, suffer grave injury due to the poor conditions at the Zoo.

* * * *

⁷⁰ To the extent that the U.S. FWS’s split-listings do not apply under Wisconsin state law, Wisconsin’s protections will extend to even more captive species, like the Canada lynx and Japanese macaque, than the ESA’s.

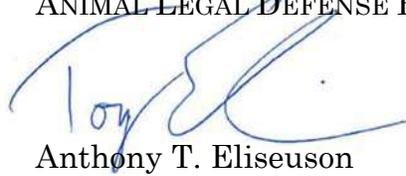
In sum, for the reasons outlined above, Special Memories Zoo violates the ESA and Wisconsin law. We urge Special Memories Zoo to accept ALDF's offer and allow all animals to be transferred to an appropriate and reputable sanctuary at no cost to Gene Wheeler, Dona Wheeler, Gretchen Crowe, or Special Memories Zoo, LLC.

If you are willing to work with ALDF to relocate the animals to sanctuary, please contact us—or have your attorney contact us—immediately so we can begin to make arrangements. My direct phone number and email address are listed below. If we do not hear from you about this possible resolution, or if Special Memories Zoo fails to cease its violations of the ESA and Wisconsin state law, please be advised that after 60 days, we intend to file suit to enforce these laws in efforts to end the animals' mistreatment and suffering.

Very truly yours,

ANIMAL LEGAL DEFENSE FUND

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Re: Notice of Intent to File Suit Pursuant to Endangered Species Act.

Dear Dona Wheeler, Gene Wheeler, Gretchen Crowe, David Bernhardt and Margaret Everson:

This letter supplements Animal Legal Defense Fund's September 10, 2019 letter. A copy of that prior letter is attached as Tab A for your convenience. In addition to all the points raised in that prior letter, this supplemental letter additionally places you on notice that, upon information and belief, Special Memories Zoo¹ is also in violation of the Endangered Species Act ("ESA") based on its knowing purchase or conspiracy to engage in unlawful transactions involving endangered animals in interstate commerce, at least including tigers and, potentially, other protected animals.

¹ This letter adopts all defined terms contained in the attached September 10, 2019 letter, including the collective definition of "Special Memories Zoo" contained in footnote 1 that applied to all targets of these letters, namely, Special Memories Zoo, LLC, Gene Wheeler individually and dba Special Memories Zoo, Dona Wheeler, and their Zoo Manger Gretchen Crowe.

As detailed in our prior letter, the ESA provides a legal framework for the protection of endangered and threatened wildlife found within the United States.² The ESA makes it illegal to “take” any endangered species of wildlife within the United States. 16 U.S.C. § 1538(a)(1)(B). “Take” is defined as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19).

The ESA also makes it illegal to “possess . . . any such species taken in violation of subparagraphs (B) and (C),” and to “deliver [or] receive . . . in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species.” 16 U.S.C. § 1538(a)(1)(D) & (E).³

Upon information and belief, we believe that the two tigers at Special Memories Zoo—and potentially other individuals—were illegally acquired in interstate commerce through transactions that violate these provisions of the ESA and other laws. Accordingly, this letter is notice that our claims intend to extend to these specific transactions and others that violate the above provisions of the ESA.

* * * *

² This includes all species and subspecies of tigers, *Panthera tigris*, who were listed as endangered under the ESA. 50 C.F.R. § 17.11. Similarly, all species of lemurs, *Lemuridae*, who were listed as endangered under the ESA. 50 C.F.R. § 17.11. And effective January 22, 2016, one subspecies of lion, *Panthera leo leo*, was listed as endangered under the ESA. 50 C.F.R. § 17.11, while another subspecies of lion, *Panthera leo melanochaita*, was listed as threatened under the ESA. 50 C.F.R. § 17.11. The prohibitions applicable to endangered species were also applicable to *Panthera leo melanochaita*. 50 C.F.R. §§ 17.40(r), 17.31(a), and 17.21.

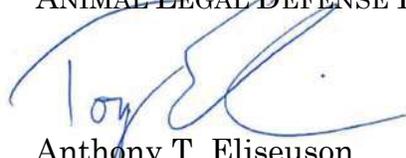
³ Conversely, the ESA makes it illegal to “sell or offer for sale in interstate or foreign commerce” any endangered species of wildlife. 16 U.S.C. § 1538(a)(1)(F). The ESA also makes it illegal for “any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense” under the ESA. 16 U.S.C. § 1538(g). Thus, to the extent Special Memories Zoo engaged in transactions in which it sold protected species, such transactions would also be unlawful.

We would like to take the opportunity of this supplemental notice letter to remind you that our prior offer as stated in our September 10, 2019 letter remains open. We urge you to accept that offer and allow each and every animal at Special Memories Zoo to be transferred to an appropriate reputable sanctuary at no cost to you. If you are willing to work with ALDF to relocate the animals to sanctuary, please contact us—or have your attorney contact us—immediately so we can begin to make arrangements. Please direct any and all communications to Tony Eliseuson, whose number and email address are listed below. If we do not hear from you about this possible resolution, or if Special Memories Zoo fails to cease its violations of the ESA and Wisconsin state law, please be advised that we fully intend to file suit to enforce the laws in efforts to end the animals' suffering.

Very truly yours,

ANIMAL LEGAL DEFENSE FUND

By:

A handwritten signature in blue ink, appearing to read "Tony Eliseuson", is written over the printed name and title.

Anthony T. Eliseuson
Senior Staff Attorney
aeliseuson@aldf.org
(707) 795-2533 ext. 1043

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

Place an "X" in the appropriate box (required): Green Bay Division Milwaukee Division

I. (a) PLAINTIFFS
ANIMAL LEGAL DEFENSE FUND

(b) County of Residence of First Listed Plaintiff Sonoma County, CA
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Michael Best & Friedrich LLP
 One South Pinckney Street, Suite 700, Madison, WI 53703
 608-257-3501

DEFENDANTS
SPECIAL MEMORIES ZOO, LLC, GENE WHEELER, dba SPECIAL MEMORIES ZOO, DONA WHEELER AND GRETCHEN CROWE

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input checked="" type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION		
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
16 U.S.C §§ 1531, 1532, 1533, 1538 and 1540

Brief description of cause:
Violations of Endangered Species Act

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ **CHECK YES only if demanded in complaint: JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 02/12/2020 SIGNATURE OF ATTORNEY OF RECORD: s/ Laura M. Konkel

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

Plaintiff(s)
v.
Defendant(s)
Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

STEPHEN C. DRIES, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons and the attached complaint for *(name of individual and title, if any)*:

were received by me on *(date)* _____.

I personally served the summons and the attached complaint on the individual at *(place)*:

_____ on *(date)* _____ ; or

I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons and the attached complaint on *(name of individual)* _____

who is designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

Plaintiff(s)
v.
Defendant(s)
Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

STEPHEN C. DRIES, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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_____ on *(date)* _____ ; or

I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons and the attached complaint on *(name of individual)* _____

who is designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

Plaintiff(s)
v.
Defendant(s)
Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

STEPHEN C. DRIES, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

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_____ on *(date)* _____ ; or

I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons and the attached complaint on *(name of individual)* _____

who is designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

Plaintiff(s)
v.
Defendant(s)
Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

STEPHEN C. DRIES, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

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_____ on *(date)* _____ ; or

I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons and the attached complaint on *(name of individual)* _____

who is designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.: