

**United States District Court
District of South Carolina
–Florence Division–**

People for the Ethical Treatment of Animals, Inc.,
Matthew Howard; and Lexie Jordan,

Plaintiffs,

v.

Waccatee Zoological Farm; Kathleen Futrell (in her
individual capacity and as the personal
representative of the Estate of Archie Futrell); Jeff
Futrell; Dakota Futrell Stienecker; and Austin
Futrell,

Defendants.

Civil Action No. 4:22-cv-01337-JD

PLAINTIFFS' EMERGENCY MOTION FOR PRESERVATION OF ANIMALS

Plaintiffs People for the Ethical Treatment of Animals, Inc. (“PETA”), Matthew Howard, and Lexie Jordan, through counsel, move this Court under its inherent authority to manage its proceedings and preserve evidence to enter an order (1) clarifying that Defendants are barred from unilateral transfers of evidence, including animals; (2) requiring Defendants to disclose the present location of all animals that have been in their possession since the April 26, 2022 pendency of this litigation; (3) requiring Defendants to confirm whether they maintain ownership and control of all such animals; (4) requiring transferees, who Defendants must inform of this order, not to further transfer these animals without leave of the Court; (5) permitting immediate discovery including document requests and depositions of Defendants and any transferees regarding animal transfers, not to count against the ten deposition limit found in Fed. R. Civ. P. 30(a)(2)(A(i)); and (6) issuing an order requiring Defendants to, after a reasonable discovery period, show cause why sanctions such as but not limited to default judgment should not issue for Defendants’ contempt of their obligations to preserve relevant evidence.

INTRODUCTION

Without warning to this Court or to Plaintiffs, or cooperation with Plaintiffs' multiple subsequent efforts to meet and confer, Defendants have taken it upon themselves to secretly transfer the central evidence in this litigation—animals kept at Waccatee Zoological Farm (“Waccatee”)—from their premises. According to Defendant’s counsel, Waccatee has closed, “discontinue[d]” further operations,” and sent its animals to Zootastic Park of Lake Norman (“Zootastic”), a roadside zoo based in North Carolina. This is particularly concerning because of Zootastic’s atrocious record of animal care—including, as determined by the United States Department of Agriculture (“USDA”), responsibility for gruesome animal deaths and injuries, animal escapes, animal attacks on both humans and other animals, inadequate veterinary care, and unsafe and unsanitary environments.

This is not the first time defendants in litigation concerning captive animals have engaged in similar conduct. Federal courts recognize that the captive animals at issue in Endangered Species Act and public nuisance litigation *are evidence*. See, e.g., *PETA v. Dade City’s Wild Things, Inc.*, No. 8:16-cv-2899-T-36AAS, 2020 WL 897988, at *10-*13 (M.D. Fla. Feb. 25, 2020). Parties to such litigation have a duty to preserve and avoid spoliation of those animals. In prior cases involving a party’s attempted unilateral transfer of captive animals at issue to third parties, such spoliation has been treated accordingly.

Defendants knew this. On July 22, 2022, Plaintiffs wrote to counsel for Defendants and reminded Defendants of their continuing obligation to preserve evidence, including but not limited to the animals at issue. Exhibit A. Over the past several days, Plaintiffs have learned that this reminder went unheeded. Defendants instead chose to engage in secret unilateral animal transfers, necessitating the instant motion practice. In order to ensure Defendants’ actions do not further

derail this litigation, this Court should, at a minimum, issue orders reiterating basic evidence preservation obligations and permitting Plaintiffs, and this Court, to determine the location and status of the animals at issue. Further relief may then be required, such as but not limited to default judgment.

BACKGROUND

On December 22, 2021, Plaintiffs fulfilled their obligation to notify Defendants of their intent to file suit regarding violations of the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531–44, and further notified Defendants of their intent to bring claims with respect to non-ESA animals at Waccatee. ECF No. 1-8. On April 26, 2022, Plaintiffs filed this lawsuit. ECF No. 1. The lawsuit alleges that Defendants’ practices with respect to the more than 460 animals at their facility violate the ESA and South Carolina public nuisance law. The complaint seeks appropriate declaratory and injunctive relief including the transfer of these animals to reputable facilities. *Id.*

Since then, Plaintiffs engaged Defendants in what they believed were good-faith efforts to settle this litigation. These efforts stalled suddenly in the summer of 2022 after Defendants adopted a policy of radio silence. Plaintiffs served Defendants on June 30, 2022. Defendant Kathleen Futrell, representing herself to be the sole owner and proprietor of Waccatee and the property on which it operates, filed her Answer on July 21, 2022.

Alarmed by Defendants’ sudden disengagement with settlement talks, Plaintiffs wrote to counsel for Defendants on July 22, 2022 to remind Defendants of their continuing obligations to preserve evidence. Ex. A. Plaintiffs explained, with representative citations, that precedent establishes that preservation obligations extend to the animals at issue. *Id.* Plaintiffs closed by offering to discuss evidence preservation issues further, and reiterated their readiness to continue settlement negotiations. *Id.* Plaintiffs received no response.

On September 7, 2022, Plaintiffs began receiving reports of Waccatee’s closure, and of animal disappearances. That same day, counsel for Plaintiffs contacted counsel for Defendants seeking an explanation. Exhibit B. Plaintiffs Lexie Jordan and Matthew Howard then drove by Waccatee on September 7 and September 8, 2022 to see for themselves what was reported on the internet. Plaintiffs confirmed, while remaining on public property, that numerous animals appeared to be missing and that animal transfers appeared to be occurring. Howard Decl., at ¶¶ 3-5; Jordan Decl., at ¶¶ 4-5.

Subsequent statements published on social media further corroborate these observations. On September 10, 2020, an individual representing himself as a supporter of Defendants with apparent knowledge of their intent stated that Waccatee is permanently closed. Jordan Decl., at ¶ 7. On September 11, 2022, an individual reported on social media that they observed bison being transported from the premises “stumbling and fighting to get away.” *Id.*, at ¶ 8.

Local media has also corroborated these reports. For example, a local news station reported on September 8, 2022 that Defendant Jeff Futrell told them Waccatee “closed for renovations,” but that he became “combative” when asked about the impact on the animals and refused to elaborate when asked about the animals’ habitats. K. Accettula, *Waccatee Zoo closed for renovations*, WBTW (Sept. 8, 2022), available at <https://www.wbtw.com/news/grand-strand/horry-county/waccatee-zoo-closed-for-renovations/>.

PETA further corroborated these reports by, starting on September 9, 2022, assigning a private investigator to make further observations of Waccatee from public vantage points. Peet Decl., at ¶¶ 2-3; Todd Decl., at ¶¶ 2-3. This investigator determined that some number of animals are being transported from Waccatee by individuals associated with Zootastic. Peet Decl., at ¶¶ 4-

5; Todd Decl., at ¶¶ 4-9. PETA also discovered that Waccatee appears to be inaccessible via its website and publicly listed phone number. Peet Decl., at ¶ 7.

Finally, counsel for Defendants wrote to PETA after the close of business on September 12, 2022. Exhibit C. He confirmed that Waccatee is now closed and has “discontinue[d] further operations.” *Id.* He further confirmed that Defendants “made arrangements to transfer its animals to the custody of the Zootastic Park[.]” *Id.*

ARGUMENT

The central issue in this case is the welfare and protection of the animals at Waccatee. ECF No. 1. As should be obvious, and as Plaintiffs took the initiative in explaining to Defendants, this requires the preservation of these animals. Ex. A. Defendants’ sudden, secretive transfers of animals—many to an out-of-state roadside zoo of equal disrepute—throws the status of both these animals and this litigation into doubt. In so doing, it appears to be an attempt to frustrate this Court’s ability to provide complete relief under the ESA and South Carolina public nuisance law. In order to ensure that these animals are preserved for trial, and that Plaintiffs are not unduly prejudiced, this Court should issue orders sufficient to preserve any remaining animals and permit Plaintiffs and this Court to determine the ongoing location and status of the animals at issue. This Court should also issue an order to show cause to determine, after a reasonable discovery period, whether further relief such as but not limited to default judgment is required to remedy Defendants’ apparent brazen undermining of this Court’s authority.

I. Evidence Preservation Obligations Have Clearly Attached

A party’s obligation to preserve evidence attaches when they know, or should know, that the evidence “was or could be relevant in litigation.” *QueTel Corp. v. Abbas*, 819 F. App’x 154, 156 (4th Cir. 2020). Plaintiffs notified Defendants of the likelihood of litigation with respect to all

animals at Waccatee on December 22, 2021. ECF No. 1-8, at 3. This lawsuit has been pending since April 26, 2022. ECF No. 1. This is sufficient to establish Defendants' affirmative obligations to preserve evidence. *QuelTel*, 819 Fed. App'x at 156 (affirming spoliation order with respect to destruction of computer containing key evidence that occurred after receipt of cease-and-desist letter notifying defendants of potential litigation).

II. Preservation Obligations Extend to the Animals at Issue

Defendants are not the first defendants in federal ESA and public nuisance litigation to attempt to undermine a court's authority via secretive, strategically timed animal transfers. As a result, there is ample federal precedent establishing that evidence preservation obligations extend to animals such as those at issue in this case.

In *Dade City's*, for example, the court affirmed that defendants' attempt to undermine a site inspection order by failing to preserve tigers "in their current state and location" and relocating them to another facility justified default judgment against defendants, dismissal of defendants' counterclaims, and monetary sanctions. 2020 WL 897988, at *10-*13. In so holding, the court rejected an argument that because animals are not "inanimate objects capable of being preserved in a static state," they are not subject to basic preservation obligations. *Id.* at *10. The court explained that, even though defendants cannot "prevent . . . the tigers' aging," what "the Court reasonably expected . . . was for Defendants to preserve what they knew they were required to preserve and what was in their control to preserve." *Id.* Similarly, in *PETA v. Wildlife in Need and Wildlife in Deed, Inc.*, ("*WIN*"), defendants argued that animals were not tangible evidence. No. 4:17-CV-00186-RLY, 2019 WL 3342087, at *3 (S.D. Ind. July 25, 2019). The court explained, however, that the purpose of evidence preservation obligations in this context was "to preserve the animals—themselves" because "this case is about the alleged harm suffered by the [animals]." *Id.*

Fourth Circuit precedent contains similar conclusions. The District of Maryland held in November 2021 that animals subject to public nuisance litigation could not be transferred, even in “the ordinary course of business.” *Collins v. Tri-State Zoological Park of W. Maryland, Inc.*, No. 1:20-CV-01225-PX, 2021 WL 5416533, at *5 (D. Md. Nov. 19, 2021). Instead, even normal course animal transfers would need to be “reasonably suspended to allow for the collection of evidence or, alternatively, at least coordinated with interested parties before taking place.” *Id.*

Relevant precedent is not limited to prior PETA litigation. For example, in *Animal Legal Defense Fund, Inc. (“ALDF”) v. Lucas*, a federal court found that a leopard’s being “in the possession and control of [defendant] at all relevant times, and as outlined in the Complaint . . . his condition, care and treatment while at [defendant’s facility] are unmistakably relevant” created sufficient preconditions for an award of spoliation sanctions. No. 2:19-40, 2021 WL 4035152, at *4 (W.D. Pa. Sep. 3, 2021). *See also* Order Prohibiting Spoliation and Preserving Evidence, *ALDF v. Special Memories Zoo, LLC*, No. 20-C-216 (E.D. Wisc. May 19, 2020), ECF No. 23.

Here, Plaintiffs’ Complaint describes, in exhaustive detail, the animals at issue and the extent to which their conditions, care, and treatment at Waccatee are violations of the ESA and public nuisance under South Carolina law. *See, e.g.*, ECF No. 1 at ¶¶ 51-216. Defendant Kathleen Futrell, in her Answer, admits allegations regarding the number of animals at issue, *see* ECF No. 8, at ¶ 51, and makes a number of representations about the conditions, care, and treatment of these animals at Waccatee. *See, e.g.*, ECF No. 8, at ¶¶ 70, 76, 82, 86, 88-89, 92-93, 95, 100, 109, 113, 116, 130, 143, 156, 159, 165, 168, 208, 212, 216, 230, 232-36. In case there was any ambiguity, however, Plaintiffs wrote to counsel for Defendants in July to put them further on notice. Ex. A. There is no question that Defendants, prior to engaging in secretive unilateral animal transfers, understood—or should have understood—their obligation to preserve these animals.

III. Defendants' Unilateral Transfers Violate Evidence Preservation Obligations and Prejudice Plaintiffs

In the above cases, the sudden and secretive nature of defendants' conduct, including in facilitating transfers, was critical to findings that they violated their evidence preservation obligations. In *Dade City's*, for example, the court found that defendant's obligations did not allow them to engage in "the rushed disposition of [these animals] over the course of a few days." 2020 WL 897988, at *10. The *WIN* decision, concerning (at that point) paper-only transfers of the animals, recognized that a requirement to "preserve" animals meant "Defendants or any party acting in concert with Defendants must not transfer, move, or relocate any [animal] before this litigation comes to an end." 2019 WL 3342087, at *2. Defendants' failures in *Collins* "to undertake such notification and coordination" necessary to allow for adequate documenting and inspection of the animals and their living conditions, and to allow for "coordinat[ion] with receiving facilities," "deprived Plaintiffs of . . . relevant evidence at least as to those animals." *Id.* And in *Lucas*, once again, the defendant's acting "without notice to [plaintiff]" while "armed with the knowledge that [the animal's] condition was at issue" was a critical factor. *Id.* at *6.

Here, Defendants did not notify or attempt to coordinate animal transfers with Plaintiffs. Counsel for Defendants has now confirmed the worst case scenario—that animals have been transferred in secret, many to a dilapidated out of state roadside zoo. Ex. C. *See also* Jordan Decl, at ¶¶ 4-8; Howard Decl, at ¶¶ 3-5; Peet Decl., at ¶¶ 2-6; Todd Decl., at ¶¶ 3-9.

Defendants' actions are likely to inflict irreparable harm on Plaintiffs and these animals. As explained above, and consistent with similar precedent, the central questions in this case involve these animals' living conditions in their current location—evidence which may now go undocumented. *Supra*, § II. As precedent cited above further reflects, plaintiffs in such cases expect to have the opportunity to inspect the animals at issue in their habitats. *See, e.g., Dade City's*, 2020

WL 897988 at 2-*3; *Collins*, 2021 WL 5416533 at *3-*4. Defendants' actions have already compromised this crucial process.

Plaintiffs also fear the irreparable harm Defendants' actions will inflict on these animals. During the chaos of Defendants' animal transfers, a number of animals appear to have escaped, with one being observed on a public road. Howard Decl., at ¶ 5; Jordan Decl., at ¶ 6. An observer described seeing bison "stumbling and fighting to get away." Jordan Decl., at ¶ 8. In the *Dade City's* case, three tigers died during transport. *PETA v. Dade City's Wild Things, Inc.*, No. 8:16-CV-2899-T-36AAS, 2019 WL 8495846, at *10 (M.D. Fla. July 30, 2019).

Defendants' conduct has also created urgent questions as to the quality of care these animals are receiving or will receive at transfer locations. The cases cited above include multiple instances in which animals were improperly transferred to a notorious facility in Oklahoma operated by two convicted felons, Joseph Maldonado-Passage (a/k/a "Joe Exotic") and Jeff Lowe. *Dade City's II*, 2019 WL 8495846, at *2-*7; *WIN*, 2019 WL 3342087, at *1-*4. In the *WIN* case, husbandry provided by Jeff Lowe to the improperly transferred animals was so deficient that it was later determined by a federal court to have killed a transferred lion shortly before her scheduled rescue, to have inflicted permanent serious injury on the surviving animals, and to have generally amounted to "appalling cruelty." *PETA v. Lowe*, No. CIV-21-0671-F, 2022 WL 576560 (W.D. Okla. Feb. 25, 2022).

Here, Defendants have confirmed many of these animals are now at Zootastic. Ex. C. This is cause for extreme concern. Even by the standards of unaccredited roadside zoos, Zootastic has shown a shocking failure to meet the minimum federal standards for the care of animals established by the Animal Welfare Act. Recent violations reported by the USDA include incidents in which the USDA deemed Zootastic responsible for:

- Gruesome animal deaths and injuries, such as from attacks by other animals, frostbite, self-mutilation, and flesh eating maggots;
- Animal escapes, including an incident in which a kinkajou was killed by a lion cub;
- Animal attacks on humans, including an incident in which a wildebeest charged and attacked an employee, causing major injuries requiring surgery;
- Inadequate veterinary care, including numerous reports of open wounds, scabbing, limping, swelling, ocular discharge, and hair loss going untreated; and
- Unsafe and unsanitary environments, including habitats in which animals have been exposed to live electrical cords, piles of old feces, and other dangerous debris.

See Peet Decl., at ¶ 6; Peet Exhibit C. Given this context, Plaintiffs fear that Defendant’s actions have caused, or are likely to cause, additional harms amounting to egregious violations of the ESA and public nuisance law.

In addition, Plaintiffs’ lawsuit seeks the permanent transfer of these animals to appropriate, reputable facilities. ECF No. 1, at 61. While, for reasons elaborated below, Plaintiffs do not believe that transfers anywhere within the United States would strip this Court of its authority to issue such a remedy in this case, a common thread running through similar precedent is defendants’ mistaken belief that such transfers can moot federal captive animal litigation. *See, e.g., WIN*, 2019 WL 3342087, at *2 n.2 (“[*WIN* defendants] also take the position that the transfer of title to the Big Cats moots the present controversy because Defendants no longer own the Big Cats. But they still are responsible for preserving them for this litigation, and there very much exists a dispute between PETA and Defendants.”); Minute Order, *Special Memories*, No. 1:20-cv-00216-WCG (E.D. Wis. Sep. 17, 2020), ECF No. 41 (denying motion to dismiss on mootness grounds following defendants’ transfer of animals at issue). These concerns are heightened here, given the USDA has

previously cited Zootastic for illegal animal sales, including of species at issue in this litigation. Peet Exhibit C. At the very least, Defendants' conduct has increased the complication involved in eventual court-ordered animal transfers. As has occurred before, these unauthorized transfers—likely to parties with little heed of the ESA and other laws protecting animals—may ultimately require the joinder of an unknown number of additional defendants.

IV. This Court Can and Should Issue Orders to Mitigate the Damage Caused by Defendants' Actions

This Court has inherent authority to issue orders sufficient to protect evidence, and mitigate the extent to which Defendants' actions will cause evidence to be lost or destroyed. *See, e.g., Career Counseling, Inc. v. Amsterdam Printing & Litho, Inc.*, No. 3:15-CV-05061-JMC, 2016 WL 11725395, at *1 (D.S.C. May 13, 2016) (issuing preservation order).

An order further clarifying that Defendants and transferees, who Defendants should be required to inform of such an order, cannot transfer animals would do little more than reiterate already existing obligations. *See, e.g., WIN*, 2019 WL 3342087, at *3-*4 (recognizing that “[a] court order that binds a defendant may also bind a nonparty” when the nonparty has actual knowledge of the court's order and is “acting in concert with the named party,” and requiring transferee to abide by animal preservation orders); *Pueblo of Laguna v. United States*, 60 Fed. Cl. 133, 138 (2004) (“In the court's view, a document preservation order is no more an injunction than an order requiring a party to identify witnesses or to produce documents in discovery.”).

This Court can further mitigate the harm done by Defendants with a small number of additional limited orders. Such orders would require Defendants to disclose where all their animals are and who presently has control of them. It is also appropriate to permit Plaintiffs to conduct limited discovery regarding preservation and animals' current status, without prejudicing Plaintiffs' right to future merits discovery after the issuance of an appropriate scheduling order.

This would enable Plaintiffs to begin investigating the current degree of risk to the health, safety, and welfare of these animals, whether joinder of additional defendants is necessary, and what steps would be required to ensure appropriate final relief upon the resolution of this lawsuit.

Other federal courts have similarly mitigated the damage done by secretive animal transfers. In the *Dade City's* case, for example, the court found defendants' conduct to be so egregious that it justified default judgment and sanctions, with animals ending up at reputable sanctuaries. 2020 WL 897988, at *10-*15. In the final disposition of claims against *WIN* defendants, that court ruled that animals improperly transferred to Oklahoma would be subject to transfer along with those animals remaining at defendants' facility. *WIN*, No. 4:17-cv-00186-RLY (S.D. Ind. Sep. 15, 2020), ECF No.414 ("In light of the evidence discussed more thoroughly in the court's summary judgment order, the ESA authorizes the court to transfer all of the *WIN* Defendants' Big Cats, which the court determines to mean all Big Cats that have been within the ownership, possession, custody, or control of any of the *WIN* Defendants in Indiana, or any of their agents or any other people or entities under their direct or indirect control, during the pendency of this litigation, including the lion in the possession of Daniel Chambers, and the four lions in defendant Jeffrey L. Lowe's possession that were within the ownership, possession, custody, or control of the *WIN* Defendants."). In *Lucas*, which involved spoliation of animal remains that should have been subject to necropsy, the court granted plaintiff an adverse inference. *Lucas*, 2021 WL 4035152, at *4-*7. In sum, these cases support a conclusion that this Court may fashion remedies appropriate to the circumstances at hand.

This Court should also require Defendants to, after a reasonable discovery period, show cause why sanctions such as but not limited to default judgment should not issue for Defendants' contempt of their obligations to preserve relevant evidence. Defendants' actions, particularly in

light of their foreknowledge, raises obvious questions about their culpability. Plaintiffs and this Court should have the benefit of a full record in order to evaluate the necessity and appropriateness of sanctions.

CONCLUSION

For the foregoing reasons, PETA respectfully requests the Court enter an order (1) clarifying that Defendants are barred from unilateral transfers of evidence, including animals; (2) requiring Defendants to disclose the present location of all animals that have been in their possession since the April 26, 2022 pendency of this litigation; (3) requiring Defendants to confirm whether they maintain ownership and control of all such animals; (4) requiring transferees, who Defendants must inform of this order, not to further transfer animals without leave of the Court; (5) permitting immediate discovery including document requests and depositions of Defendants and any transferees regarding animal transfers, not to count against the ten deposition limit found in Fed. R. Civ. P. 30(a)(2)(A(i)); and (6) issuing an order requiring Defendants to, after a reasonable discovery period, show cause why sanctions such as but not limited to default judgment should not issue for Defendants' contempt of their obligations to preserve relevant evidence

Dated: September 12, 2022

/s/ Stacie C. Knight
Stacie C. Knight
S.C. Bar No. 77968
D.C. No. 10411
WINSTON & STRAWN LLP
300 South Tryon Street, 16th Floor
Charlotte, NC 28202
(704) 350-7700; (704) 350-7800 (fax)
sknight@winston.com

Jonathan Brightbill*
Kyllan Gilmore*
Sharon Lin*
WINSTON & STRAWN LLP
1901 L Street NW
Washington, DC 20036

(202) 282-5855; (202) 282-5100 (fax)
jbrightbill@winston.com
kgilmore@winston.com
slin@winston.com
Caitlin Hawks
Asher Smith
Aaron Frazier
PETA FOUNDATION
1536 16th Street NW
Washington, DC 20036
(202) 540-2179
CaitlinH@petaf.org
AsherS@petaf.org
AaronF@petaf.org

*Pro hac vice applications to be submitted

*Counsel for Plaintiffs PETA, Matthew Howard
and Lexie Jordan*

EXHIBIT A

WINSTON
& STRAWN
LLP

North America Europe Asia

1901 L Street, NW
Washington, DC 20036
T +1 202 282 5000
F +1 202 282 5100

July 22, 2022

VIA EMAIL

Reese R. Boyd, III
Davis & Boyd, LLC
1110 London St, Suite 201
Myrtle Beach, SC 29577

**Re: People for the Ethical Treatment of Animals, Inc., et al. v. Waccatee
Zoological Farm, et al., Case No. 4:22-cv-01337-JD**

Counsel:

Now that the complaint in this matter has been served and answered, Plaintiffs write to remind Defendants' of their continuing obligations to preserve evidence, including during the period prior to commencement of discovery in this case. *See, e.g., QueTel Corp. v. Abbas*, 819 F. App'x 154, 156 (4th Cir. 2020) (in copyright dispute, affirming sanctions against defendant for pre-discovery period destruction of computer defendant allegedly used to create the disputed software). This preservation obligation extends but is not limited to documents (both physical and electronic), video footage, and the animals at issue in this case. *See, e.g., PETA v. Dade City's Wild Things, Inc., et al.*, No. 8:16-cv-2899-T-36AAS, 2020 WL 897988 (M.D. Fla. Feb. 25, 2020) (ordering sanctions in Endangered Species Act matter after the Defendants transferred the tigers at issue to third parties during the pendency of the case); 2020 WL 6938636 (M.D. Fla. Nov. 25, 2020) (determining fees). *See also ALDF v. Special Memories Zoo LLC, et al.*, No. 1:20-cv-00216-WCG (E.D. Wis. Sep. 17, 2020) (ECF No. 41) (denying motion to dismiss on mootness grounds following Defendants' transfer of animals at issue), 2021 WL 101121 (E.D. Wis. Jan. 12, 2021) (granting default judgment as to both Endangered Species Act and public nuisance claims); Memorandum Opinion and Order, *ALDF v. Lucas*, No. 2:19-40, 2020 WL 7027609 (W.D. Pa. Sep. 3, 2021) (granting adverse inference after defendant euthanized without notice, failed to preserve the remains of, and destroyed the body of a leopard at issue in the case).

If you have any questions or concerns in regards to the foregoing, please do not hesitate to contact me. Plaintiffs also remain ready and willing to engage in continuing settlement negotiations in this matter and eagerly await Defendants' response to their proposed terms.

Sincerely,



Sharon Lin

EXHIBIT B

Asher Smith

From: Asher Smith
Sent: Thursday, September 8, 2022 6:24 PM
To: Reese Boyd III
Cc: Brightbill, Jonathan D.; Lin, Sharon; Gilmore, Kyllan; Caitlin Hawks; Aaron Frazier
Subject: PETA et al v. Waccatee Zoological Farm et al (22-cv-1337)

Importance: High

Reese,

As mentioned on the voicemail we left, Plaintiffs are aware of numerous reports that animals have been transferred from Waccatee. **Please confirm or deny by start of business on Monday, September 12, 2022 whether such transfers are occurring, have occurred, or are anticipated.**

If you do not provide adequate assurances, Plaintiffs will have no choice but to seek emergency relief up to and including default judgment in Plaintiffs' favor and sanctions. As explained in our July 22, 2022 correspondence, Defendants' continuing obligations to preserve evidence extends to all animals at issue in this case. Failure to meet such obligations—in addition to creating further potential bases for liability under the Endangered Species Act and Public Nuisance law—can and has resulted in default judgment, monetary penalties, and other sanctions.

We expect to hear from you imminently. Plaintiffs reserve all rights.

Sincerely,

Asher

Asher Smith | Director of Litigation
PETA Foundation
1536 16th St. NW
Washington, DC 20036
202-540-2177 (office)
516-528-3109 (mobile)
AsherS@petaf.org

Home Office: New York, NY.
Admitted to practice law in New York.

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EXHIBIT C

DAVIS & BOYD, LLC

Attorneys & Counselors at Law

BRET H. DAVIS, JD*, CPA
JULIE A. OLIVER, JD, LL.M.

* Licensed in SC and NC

1110 London Street, Suite 201
Myrtle Beach, SC 29577

Mailing Address:
Post Office Box 70517
Myrtle Beach, SC 29572

REESE R. BOYD, III, JD*
KELLY M. TUREK, JD, LL.M.**

*Certified Mediator and Arbitrator

**Licensed in SC and GA

Telephone: (843) 839-9800
Facsimile: (843) 839-9801
www.davisboydlaw.com

September 12, 2022

Mr. Asher Smith
Director of Litigation
PETA Foundation
1536 16th St. NW
Washington, DC 20036

Re: PETA, et al. v. Waccatee Zoological Farm, et al.
Case Number: 4:22-cv-01337
Our File Number: 022.016

Dear Asher:

To follow up on your inquiries regarding the status of our matter, and the animals at my Client's facility, please be advised as follows:

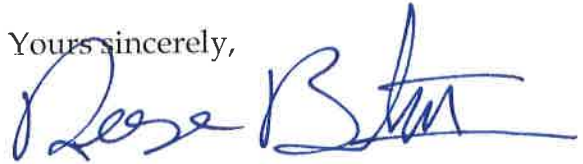
- (1) Because of the ongoing expense of this litigation and other considerations, my client has determined that its only feasible option is to close the Zoo and discontinue further operations;
- (2) The USDA license for the Waccatee Zoological Farm expired on September 12, 2022, and the Zoo did not seek a renewal of this license;
- (3) My client received a final inspection of its facilities from the U.S. Department of Agriculture on August 30, 2022; and

Mr. Asher Smith
September 12, 2022
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- (4) Many of the animals at my Client's facility were on loan to the Waccatee Zoological Farm from the Zootastic Park of Lake Norman, located in Troutman, North Carolina. As my client's permitting to operate its facility has expired as of today, my Client made arrangements to transfer its animals to the custody of the Zootastic Park (which, as noted, already owned certain of the animals in question).

If you have any questions or would like to discuss this matter further, please feel free to contact me at your convenience.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Reese R. Boyd, III". The signature is fluid and cursive, with a prominent initial "R" and "B".

Reese R. Boyd, III

RRB/cmp

cc: Kyllan Gilmore, Esq.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
–Florence Division–**

People for the Ethical Treatment of Animals, Inc.,
Matthew Howard; and Lexie Jordan,

Plaintiffs,

v.

Waccatee Zoological Farm; Kathleen Futrell (in her
individual capacity and as the personal
representative of the Estate of Archie Futrell); Jeff
Futrell; Dakota Futrell Stienecker; and Austin
Futrell,

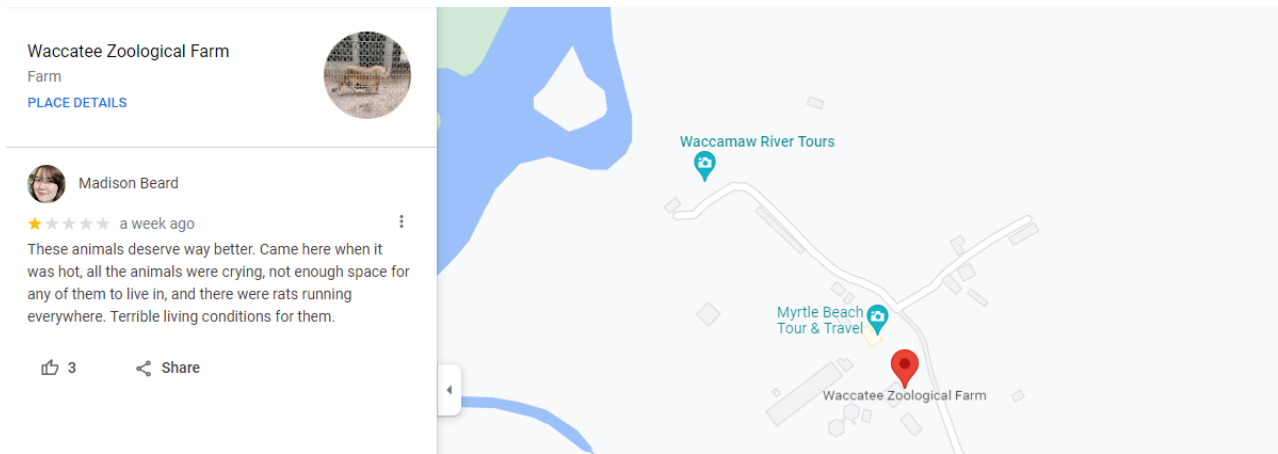
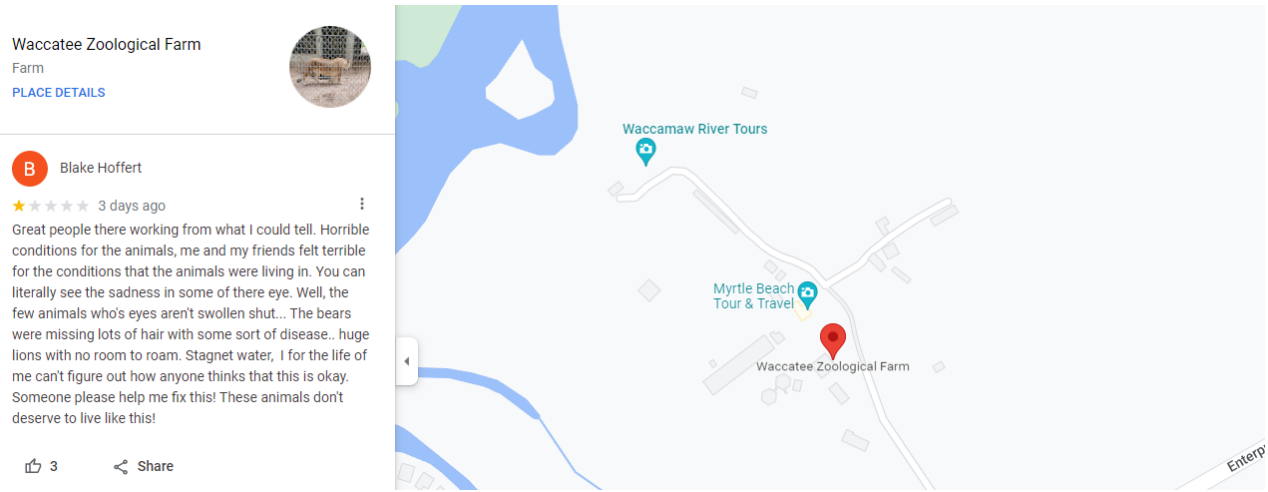
Defendants.

Civil Action No. 4:22-cv-01337-JD

DECLARATION OF LEXIE JORDAN

I, Lexie Jordan, hereby state as follows:

1. I am over the age of 18 years and competent to testify to the facts set forth below. I have personal knowledge of the facts and matters set forth below.
2. On September 7, 2022 I became aware of reports of the closure of Waccatee Zoological Farm (“Waccatee”), as well as the disappearance of animals normally visible from public vantage points.
3. This surprised me greatly, since my understanding is that Waccatee was open to the public earlier this same week. For example, I regularly check reviews of Waccatee, and recall seeing Google reviews of Waccatee that I believed reflected visits made this past week. Below are true and accurate screenshots of two such reviews:



4. Because of my affinity and concern for the animals at Waccatee, I drove by Waccatee in the middle of the day on September 8, 2022 to investigate. I saw a number of vehicles, including what I recognized to be horse trailers that I understand can be used to transport animals.

5. Animals normally visible from public vantage points were missing.

6. I did see a number of wild turkeys in the front of the facility, and also saw one or two that may have escaped the premises. I saw one wild turkey on the public road.

7. Attached as Exhibit A is a true and accurate copy of a Facebook post published by a user

identified as James Sargent that I observed and preserved on September 10, 2022.

8. Attached as Exhibit B is a true and accurate copy of a Facebook comment published by a user identified as Melissa Malone Constable that I observed and preserved on September 11, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of September, 2022, in Myrtle Beach, South Carolina.

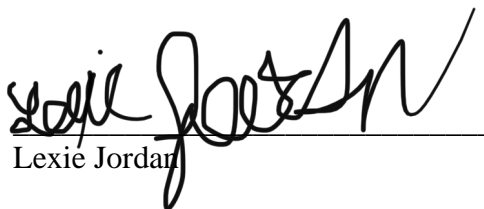

Lexie Jordan

EXHIBIT A

James Sargent

...

4h · 🌐

😞 I knew it was coming, but it still sucks. Waccatee Zoo is closed. They will not be reopening. The owner is retiring and done with fighting the haters. She is 80+ years old and has given many people the opportunity to see her beloved animals up close and personal. She has not been able to attend to her animals in some time and has had to depend on others to help her. Her son stepped in to help, but it was never his "baby". These were her personal animals on her personal property that she allowed the public to come and see for a small entrance fee. She was not a state funded zoo with millions of dollars to spend, it was a privately owned zoo and sometimes I don't think people realized that. For what it was, I think it was great, but I also admit I haven't been there to walk around in years. I helped them with animals periodically, but usually only payed attention to what we were dealing with. But I spent tons of time there growing up and I guarantee you it was one of my most favorite places. Literally went at least 3 times a week all through high school. I had so many great memories and experiences there. A huge THANK YOU to Mrs Kathleen for always welcoming me with open arms and literally opening your personal collection of animals to me and our community for so many years.

Those that are happy it closed, you won, don't care to hear you cheer about it on my post thank you. I'm sure any animal keeper will tell you it sucks to have to depend on others to care for your animals, especially if you physically can not check up on the helpers to make sure things are done right 🙄



🙄😞👍 84

46 Comments 3 Shares

👍 Like

💬 Comment

➦ Share



Sondra Rachel
Mary Irene

Like Reply 4h



Stan Perry
 Sorry to hear. I enjoyed it many times. She was real friendly. Maybe if more people knew this they'd helped more. Sad for her having to lose her wild pets
 Where will all the animals go to

Like Reply 4h



Kerah Conti

Are they selling? I know one of the grandsons was also in a bad motorcycle accident and couldn't do much for a while either

Like Reply 4h



Jenny Paradis

Kerah Conti he's made a pretty good recovery he's doing well.

Like Reply 4h



Kerah Conti

Jenny Paradis good!! I was there a couple of months ago I believed and asked about him. I remembered him from school.

Just so sad.

Like Reply 4h



Jenny Paradis

She's not reselling her land. That is her family property been in her family for Generations. I was working there until I moved to the upstate.

Like Reply 4h



Reply to Kerah Conti...



Mitch Bauer

sorry to hear enjoyed the place many times

Like Reply 4h



Michael Staggs

I haven't been there in years, but growing up this was a MUST anytime we were in the area. Loved this zoo. Sad to see it go.

Like Reply 4h



Amy Slavko

This makes me sad. My son is now 13 yrs old but we visited a lot when he was little. We were there last summer and enjoyed as always.

Like Reply 4h



Tyler Martin

What's the plan for rehoming all their animals?



Like Reply 4h Edited

↳  Tyler Martin replied · 2 Replies 3h

 Kevin Brown

Sorry to see it go. So difficult in today's environment for the old school true animal lover.

Like Reply 4h



 Donna Bigness

Went there a lot when the boys were younger. Enjoyed it so very much . I wish we could have all pitched in as a community to help her stay open. I wish nothing but the best for her and her family. If I can help in any way , please let them know I will. Thank you for letting us know .

Like Reply 4h

 Ben Faircloth

I'll buy it, who do I talk to

Like Reply 4h



 Kristie Haswell

Do you know where they are going?

Like Reply 4h

 Viola Stone

Damn.... Sad.... I enjoyed going. Right around the corner from me. 😞 are they selling the land or they just letting it sit??

Like Reply 4h




 Tracy Jones

Yeah that sucks i went there and took my son and neices so sad

Like Reply 4h

The comment Denise Niznik is replying to has been deleted.

↳  Denise Niznik

Prasanta Ghosh scammer

Like Reply 4h

The comment Tracy Jones is replying to has been deleted.

↳  Tracy Jones

Prasanta Ghosh I know that's bs I tried plus this as nothing to do with the zoo

Like Reply 4h

↳ 

Reply to Tracy Jones...





Jenny Paradis

All the people there that want to talk crap about the place they don't seem to realize that the animals that we had there were animals that nobody wanted. A lot of them came with health issues and we're taking care of and instead of having them euthanized we took them in. It's probably about 80% of the animals out there were animals that nobody wanted anymore. Or people got caught with animals that we're illegal and brought them to us. It's just really sad and heartbreaking and I really hate that this has to happen. And I understand she is so sick and tired of fighting and fighting it's time for her to rest.

Like Reply 4h



Dan Daniels

Jenny Paradis let her know, the guy from Columbia with the deer thanks about her! I will always love her place.

Like Reply 4h



Jenny Paradis

Dan Daniels I will. I moved up to Clemson area back in February but I do talk to her some but this was kind of a shock

Like Reply 4h



Reply to Jenny Paradis...



Dan Daniels

Sad to hear, I've been visiting for many years, one of my favorite places. I used to love to go see Chico watch his TV and drink his bottles of water. So sad when he passed. I miss seeing the 13ft giant gator, when he came to visit.

Like Reply 4h



James Sargent

The animals are gone, I do not know what she did with them as they are her personal property to do with as she wishes.

Like Reply 4h Edited



Susan Floyd

James Sargent Are they all gone?

Like Reply 3h



James Sargent

Susan only some peacocks and turkeys.

Like Reply 2h



Reply to James Sargent...



Dan Daniels

I liked sitting on the back porch talking with the owner for minutes on end.

Like Reply 4h



Jim Shivers

Too sad

Like Reply 4h



Sondra Rachel

I hope developers don't try to buy the land 😞

Like Reply 4h



Dan Daniels

Sondra Rachel you know they will. I hope she holds out, I know she didn't like the developments taking over.

Like Reply 4h



Kim Herrmann Lineweber

Sondra Rachel unfortunately that is exactly what we have heard is happening.

The last 7-8 years the place got in really bad shape. I hated to see as I too enjoyed it many years ago.

I wish the family a peaceful nights sleep with their decision as I know it had to be so tough to do.

Like Reply 3h



Reply to Sondra Rachel...



Dave Brant

Awe, that sad. I have a lot of memories there.

Sharon Martin Myers

Like Reply 4h



Quenton Hellmann

I never got to go there sadly ive always wanted too

Like Reply 4h



Denise Niznik

Sad took kids there for so long

Like Reply 4h



David Griffith

Peta suckks

Like Reply 3h



Leah Harmon

I was wondering we're all the deer were in the front area. This is sad . As I to enjoyed this locally owned zoo for many yrs. I grew up next to this place. And would chase the peacocks back into her property when they would escape. Mrs. Kathleen would thank us by letting us come in and see Chico watch wrestling and give him a coke. He loved his coke cola!!! Change is sad . I wish her the best . Thanks for the great childhood memories . The zoo will be missed.

Like Reply 2h



Jessie Elia

Prynce Shemz 😞😞😞😞

Like Reply 2h



Prynce Shemz

Jessie Elia It's sad that they're closing baby but I'm glad we still got to go together tho 🙌❤️

Like Reply 7m



Reply to Jessie Elia...



Sarah Kiwidinok

I've struggled with the idea of getting a zoological permit and doing similar. And worry over PETA, hsus, etc ruining it along with people who are expecting state funded fancy enclosures and amenities.

Like Reply 1h



James Sargent

Sarah Kiwidinok it is probably not worth the head ache. I know a gentleman that opened a serpentarium and he had a woman that would literally call authorities to complain there was no toys in the cages for the snakes.

Like Reply 1h



Sarah Kiwidinok

James Sargent no way 🤔🤔🤔🤔👁️

Like Reply 1h



Reply to Sarah Kiwidinok...



Mel Cox

We loved that place it was cool to just walk around and feed a bunch of animals

Like Reply 1h



Don Mcdougal

If I had known I would have tried to help

Like Reply 1h



Stacey Chapman

Very nice write up **James Sargent** . I enjoyed going there as well

Like Reply 58m



Sharon A. McKenzie

This is so sad. I took many students on field trips to Waccatee when I taught in Florence County. For a privately owned zoo, it was actually good. People who are glad that it closed, in support of PeTA, probably fail to realize that to PeTA, ALL zoos are evil. They want ALL zoos, including the big state-supported zoos like Riverbanks and San Diego, closed, and the animals either released or put down. PeTA opposes pet ownership, animal-based agriculture, and animal use/contact by humans of any sort. They literally believe that animals are better off dead than sharing space with humans in any capacity, and in keeping with that belief, they kill more than 90% of the animals that fall into their vile hands, yet the public is willing to believe their claims about Waccatee.

Like Reply

EXHIBIT B

9:14



Close Waccatee Zoo

2d · 🌐



Any one have any information?

Last night, around 6:30pm, some folks witnessed cows and bison being loaded onto trucks at the "zoo".

Taking them to the slaughterhouse?

[#closethehellhole](#) [#animalcruelty](#) [#RoadsideZoo](#)



🙄👍😱 11

1 Share

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Melissa Malone Constable

I saw this too as I was driving by and was curious/worried - thought the bison they were trying to get in the trailer was sick or something bc it was stumbling and fighting to get away - also thought maybe they had to shoot it w a tranquilizer to get it in the trailer - hopefully just relocating due to the closure

4m Like Reply



Vicki Sloan



Write a comment...



Home



Watch



Marketplace



Feeds



Notifications



Menu

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
–Florence Division–**

People for the Ethical Treatment of Animals, Inc.,
Matthew Howard; and Lexie Jordan,

Plaintiffs,

v.

Waccatee Zoological Farm; Kathleen Futrell (in her
individual capacity and as the personal
representative of the Estate of Archie Futrell); Jeff
Futrell; Dakota Futrell Stienecker; and Austin
Futrell,

Defendants.

Civil Action No. 4:22-cv-01337-JD

DECLARATION OF MATTHEW HOWARD

I, Matthew Howard, hereby state as follows:

1. I am over the age of 18 years and competent to testify to the facts set forth below. I have personal knowledge of the facts and matters set forth below.
2. On September 7, 2022 I became aware of reports of the closure of Waccatee Zoological Farm (“Waccatee”), as well as the disappearance of animals normally visible from public vantage points.
3. Because of my affinity and concern for the animals at Waccatee, I drove by Waccatee that night to investigate. I remained within the vicinity of Waccatee—on a public road—for more than two hours, leaving after 9:00 p.m.
4. During my September 7, 2022 visit, I confirmed that many animals typically visible from the public road were nowhere to be seen. I saw numerous trucks and trailers parked by and entering the premises. I recognized a number of the trailers as horse trailers that I understand can be used to

transport animals.

5. I returned in the middle of the day on September 8, 2022. Many vehicles were still there. The same animals who appeared to be missing the prior night were still not visible. I did see a number of wild turkeys in the front of the facility, and also saw one or two that may have escaped the premises. I saw one wild turkey on the public road.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ¹⁰th day of September, 2022, in Myrtle Beach, South Carolina.



Matthew Howard

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
–Florence Division–**

People for the Ethical Treatment of Animals, Inc.,
Matthew Howard; and Lexie Jordan,

Plaintiffs,

v.

Waccatee Zoological Farm; Kathleen Futrell (in her
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representative of the Estate of Archie Futrell); Jeff
Futrell; Dakota Futrell Stienecker; and Austin
Futrell,

Defendants.

Civil Action No. 4:22-cv-01337-JD

DECLARATION OF BRITTANY PEET

I, Brittany Peet, hereby state as follows:

1. I am General Counsel, Captive Animal Law Enforcement at the PETA Foundation. I am over the age of 18 years and competent to testify to the facts set forth below. I have personal knowledge of the facts and matters set forth below.

2. On September 7, 2022 I became aware of reports of the closure of Waccatee Zoological Farm (“Waccatee”), as well as the disappearance of animals normally visible from public vantage points. After receiving further information corroborating these reports—including from local media outlets and from Plaintiffs Lexie Jordan and Matthew Howard—I retained, on behalf of Plaintiff People for the Ethical Treatment of Animals, Inc. (“PETA”), Global Investigative Services, Inc. (“GIS”), a South Carolina corporation and licensed detective agency on September 9, 2022.

3. I assigned GIS with making further observations of Waccatee from public vantage points. Specifically, I assigned GIS with determining—occasionally, throughout that weekend—if transport

vehicles were present at Waccatee and, if so, to document the vehicles, including make, model, license plate information, description of persons present, and animals observed. PETA's goal in doing so was to further corroborate the reports referenced above and to discover, to the extent possible, where and by whom animals kept at Waccatee were being transported.

4. Attached as Exhibit A is a true and accurate copy of an image provided to PETA by GIS. I understand, based on my personal knowledge, that the individuals pictured therein are Jeff Futrell and Scottie Brown, the owner of a facility called Zootastic Park of Lake Norman based in Troutman, North Carolina ("Zootastic").

5. Attached as Exhibit B are true and accurate copies of images provided to PETA by GIS. I understand, based on my personal knowledge, that vehicles depicted therein, including in the image clearly showing an animal being transported, bear logos and other identifiers associated with Zootastic.

6. Attached as Exhibit C is a factsheet produced and distributed by PETA regarding Zootastic. Factsheets such as this are routinely created by staff under my supervision for use and distribution by PETA, and are routinely updated by my staff in the ordinary course of business based on my staff's routine monitoring of publicly available information, including but not limited to inspection reports issued by the United States Department of Agriculture, relating to captive animal facilities at or near the time of their discovery of such information.

7. On September 12, 2022 I attempted to visit Waccatee's website. The website no longer appears to exist. I also tried to call a publicly listed phone number for Waccatee and received no answer.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of September, 2022, in Lansing, Michigan.

Brittany Peet Digitally signed by Brittany Peet
DN: cn=Brittany Peet, o=FSAP,
ou=Captive Animal Law Enforcement,
email=brittany@petaf.org, c=US
Date: 2022.09.12 11:17:11 -0400

Brittany Peet

EXHIBIT A



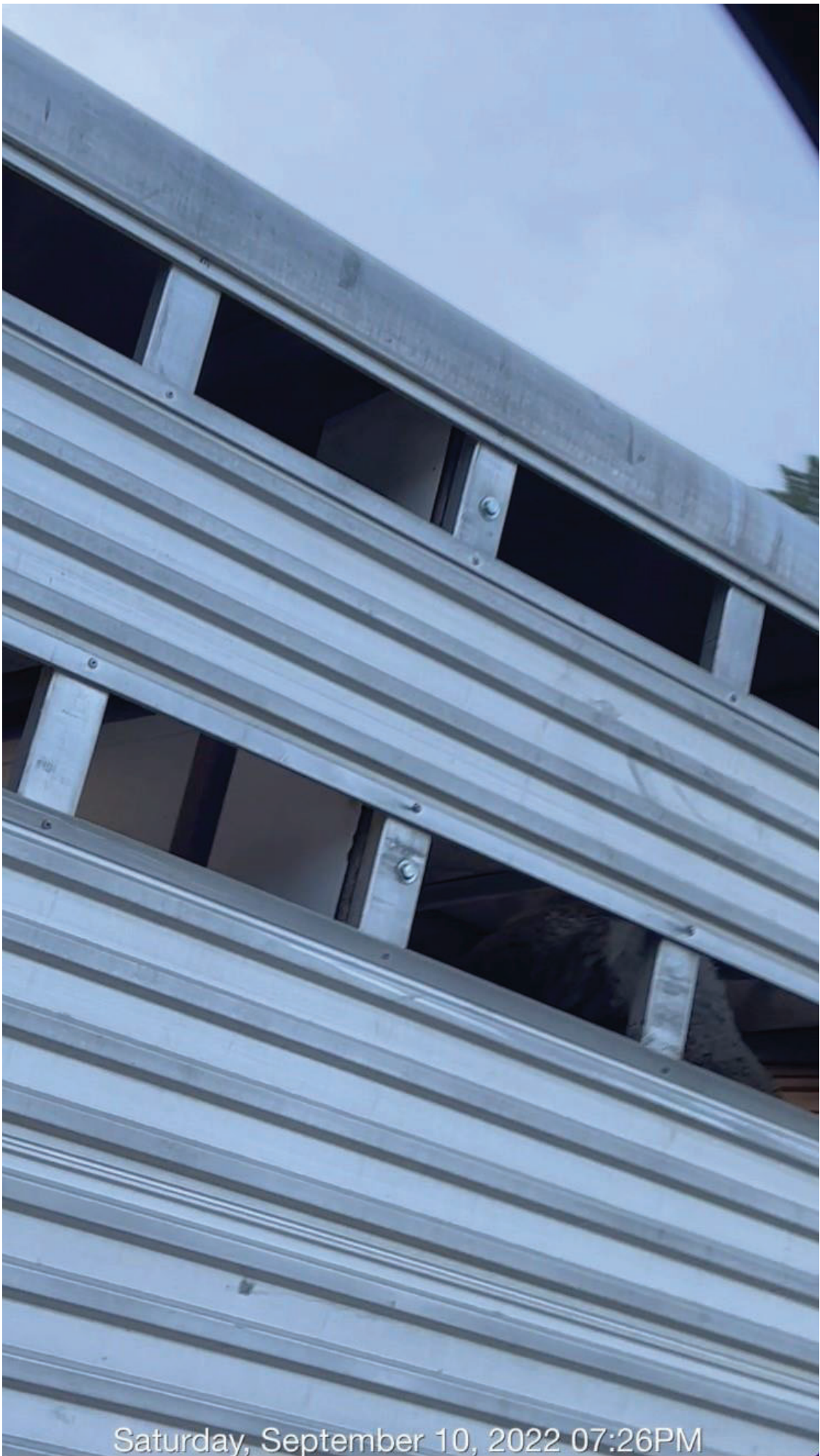
EXHIBIT B











Saturday, September 10, 2022 07:26PM

EXHIBIT C

Zootastic Park of Lake Norman

448 Pilch Rd., Troutman, NC 28166

Zootastic Park of Lake Norman, owned by Scottie Brown, has failed to meet minimum federal standards for the care of animals used in exhibition, as established by the Animal Welfare Act (AWA). The U.S. Department of Agriculture (USDA) has cited the facility for failing to provide animals with adequate veterinary care, failing to maintain housing facilities in a structurally sound manner that prevents injury to the animals, and “euthanizing” rabbits by hitting them with hammers. There have been several incidents at Zootastic in which animals escaped from enclosures, including two capybaras, 20 goats, and a kinkajou who was killed by a lion club. In addition, two humans were injured by animals at the park: A man was bitten by a tiger cub when the park allowed improper handling of the cub by the public, and a woman was hospitalized after an attack by a wildebeest. In November 2016, the USDA issued Zootastic a penalty of \$7,450 for numerous violations of the AWA.

March 11, 2022: The USDA issued Zootastic a critical citation for failing to provide a lemur, a De Brazza’s monkey, and a capuchin monkey with adequate shelter and appropriate heating during several very cold days. The three primates were housed in enclosures that provided “an unmonitored level of heating and the animals were not confined to warmed shelters during periods of severe cold.” Temperatures of 21, 19, 25, and 22 degrees respectively, were recorded for the four days in January when the incidents occurred. All three primates experienced

frostbite injuries. “The lemur’s hand was injured and remain[ed] contracted while the De Brazza’s and capuchin suffered the loss of their tail tips,” the report said.

The USDA also issued Zootastic a repeat citation for failing to address suspected black mold in the binturong enclosure. At the time of inspection, dark brown/black material was visible across about a quarter of the ceiling.

The facility was further cited for failing to maintain the howler monkey enclosure in good repair. During the inspection, the young howler monkey was seen hugging a live electric cord that was connected to a heating pad. Another citation was issued because the facility was not following the attending veterinarian’s directions of care and not involving them in the initiation of medical treatment, which indicated that the attending veterinarian did “not have the appropriate authority to provide adequate veterinary care to the animals at this facility.” The attending veterinarian “expressed concerns by phone about the facility staff’s lack of follow-through and documentation of delivery of medications and/or treatments prescribed for the animals.” Staff did not use the necessary forms or document medical treatments so that the attending veterinarian could evaluate the animals’ care. Records from October 21, 2021, to March 8, 2022, detailed “five instances of staff initiating antibiotic and/or medical treatment for animals without prior consultation with the [attending veterinarian].” The USDA also cited the facility for failing to have acquisition and disposition records for 21 animals and for failing to have an adequate number of attendants during periods of public contact with animals. During the inspection, the facility was seen to hold public contact sessions with numerous visitors and only one attendant available. In addition, the doors to the public contact area and the animal enclosures therein, the

Zootastic Park of Lake Norman

primary enclosure in the upper barn, and the large barn in the drive-through area that contained dangerous ungulates were not locked to prevent unattended patrons from entering.

August 12, 2021: The USDA issued Zootastic a repeat citation for failing to provide the following animals with adequate veterinary care:

- A Prevost's squirrel whose tail was amputated because of ongoing self-mutilation had a 1-centimeter-by-2-centimeter wound on the tail. The attending veterinarian had not been made aware of the wound before the inspection.
- Three wolves had open wounds and thick scabbing along the tips of their ears, consistent with chronic flystrike. The wolves were not under the medical care of the attending veterinarian, who had not been notified of the severity of the wounds.

Zootastic also received a repeat citation for failing to have an effective "pest" control program. Multiple rats were seen feeding from the fresh produce bowl in the cavy/chicken enclosure.

July 29, 2021: The USDA issued Zootastic an official warning and notice of alleged violation for failing to have an adequate program in place for veterinary care and the daily observation of all animals to assess their health and well-being. (See the March 30, 2021, entry.)

June 15, 2021: The USDA cited Zootastic for failing to clean the primate enclosures properly. The squirrel monkey, patas monkey, red-handed tamarin, vervet, and spider monkey enclosures contained excessive amounts of feces and debris build-up. The facility was also cited for failing to keep two enclosures in good repair, resulting in a risk of injury to animals – one of the elevated ramps in the lynx

enclosure had a decomposing, crumbling board with an exposed, approximately 1-inch-long nail or screw protruding, and the shelter in the goat/llama petting zoo area had an approximately 2-inch-long exposed metal edge at about shoulder height to the animals. The USDA also cited Zootastic for failing to have an effective program for "pest" control. An excessive number of flies were present in the food preparation area, baby room, and multiple enclosures.

March 30, 2021: The USDA issued Zootastic a direct citation for failing to identify that five goats on public display in the petting zoo were significantly lame. The attending veterinarian stated that she hadn't been notified of these lame goats and no corrective actions had been initiated for them.

January 6, 2021: The USDA issued Zootastic a repeat citation for storing three containers of excessively moldy strawberries in the food preparation cooler.

November 13, 2019: The USDA cited Zootastic for failing to handle a 6-month-old tiger named Sheldon as carefully as possible with minimal risk of harm to the animal and the public while exhibiting at the Sheldon's K9s Fall Festival in Mooresville, North Carolina, on October 12, 2019. Video footage from the event showed that the tiger remained lying on his or her side, panting and mostly unresponsive to external activity. When stimulated, the tiger did not respond with normal feline behavior. This may have been because of general exhaustion, heat exhaustion, and/or sedation, and exhibiting the tiger in this condition could harm the animal's health and well-being. The tiger weighed approximately 50 pounds at the time and was restrained by a harness and leash without sufficient physical barriers to protect both the animal and the public.

April 3, 2018: The USDA cited Zootastic for repeat violations for failing to discard

Zootastic Park of Lake Norman

expired drugs and failing to store produce properly. The inspector noted that it was spoiled and stored on shelves contaminated with brown grime and white filmy material. Zootastic was also cited for allowing unsupervised public feeding and contact with animals.

November 17, 2016: The USDA issued Zootastic a penalty of \$7,450 for nine violations of the AWA, including for failing to have adequately trained employees experienced in animal handling (a wildebeest charged and attacked an employee, causing major injuries requiring surgery), failing to maintain an adequate perimeter fence without gaps around the drive-through area, failing to construct enclosures in a way that prevents escapes (a kinkajou escaped and was killed by a lion cub), failing to maintain structurally sound facilities, failing to maintain complete and accurate acquisition and disposition records, failing to remove excess buildup of fecal material in enclosures housing chinchillas, failing to keep the premises clean, failing to store food properly, and failing to provide the following animals with adequate veterinary care: a tiger with an exposed tail wound, a liliger with significant hair loss over approximately 40 percent of his body, and a tiger cub with significant swelling around her eyes, yellow ocular discharge, and patches of hair loss.

September 26, 2016: The USDA cited Zootastic for failing to have an adequate barrier fence to prevent direct contact between the public and the hyenas and failing to repair the following items: broken fencing and protruding wires in the enclosure housing a porcupine, deteriorating wood in the enclosure housing pigs, exposed insulation in the enclosure housing raccoons, sharp wire ends in the enclosure housing tigers, and protruding screws in the enclosure housing a camel, a llama, and an eland. The facility was also cited for a repeat violation for failing to store

food properly. The food-storage area contained multiple bags of food that were torn open or chewed through, and food that had been spilled onto the floor had become moldy.

July 5, 2016: The USDA cited Zootastic for repeat violations, including failing to maintain accurate acquisition and disposition records for multiple animals, failing to remove an excessive buildup of fecal material from two enclosures housing chinchillas, and failing to clean the treatment room and food-preparation room properly. They contained grime, litter, spilled medications, dirty walls, and an excessive buildup of dust.

The facility was also cited for failing to provide the following animals with veterinary care: a tiger with a tail wound that was at least six days old and was bleeding during the inspection; a liliger with significant hair loss over approximately 40 percent of his body and areas of thickened, reddened skin on his paws; and a tiger cub with swelling around her eyes, a yellow ocular discharge, and two areas of hair loss on her rear quarters. The facility was also cited for having four expired medications present in the treatment area; failing to shear approximately 25 llamas and alpacas and 14 sheep who had long, heavy, and/or matted coats; failing to have records of disposition for several tiger cubs available for inspection; failing to clean the water receptacle in the enclosure housing the macaque, which had dirty water, brown film, and floating pieces of debris; failing to label items in the freezer with the content and date; failing to store feed and bales of hay properly; failing to provide the lions and cougars with adequate shade from the sun; and failing to have proper ventilation in the enclosure housing the lions. Both the cougars and the lions were panting.

May 19, 2015: The USDA cited Zootastic for a repeat violation following a kinkajou

Zootastic Park of Lake Norman

escape that occurred on February 3, 2015, in which the kinkajou was killed by a lion cub. The facility was also cited for failing to document births and acquisitions properly and failing to clean the following areas properly: the barn housing the giraffes, which had a large wet area and piles of feces; the enclosure housing the tigers, which had piles of old feces, feathers, dirt, and evidence of rodents; the enclosure housing alpacas and a pony, which had a wet areas and feces; the enclosure housing goats and pigs, which had a pile of dirty bedding and dried-up feces; and multiple other areas throughout the facility with excessive amounts of feces.

March 13, 2015: The USDA cited Zootastic for failing to provide records of acquisition for animals who were taken to an offsite location.

February 11, 2015: The USDA cited Zootastic for a repeat violation for failing to maintain the following structures in good repair: a wall separating camels from other animals that had a hole in it, a pasture with an area where animals could access a large amount of scrap metal and miscellaneous items, and areas of the enclosure housing the servals with “wire panel points” sticking into the housing area.

November 5, 2014: The USDA cited Zootastic for repeat violations for failing to repair gaps under the perimeter fence and failing to maintain sufficient enclosures to contain the animals, resulting in the escape of two capybaras. The facility was also cited for failing to have properly trained employees and failing to have sufficient barriers between the public and animals, which allowed a wildebeest to charge at an employee, causing major injuries requiring hospitalization and surgery.

September 10, 2014: The USDA cited Zootastic for failing to prevent the escape of approximately 20 goats who were running

loose in the public area, failing to repair gaps under the perimeter fence and the fence around the hyenas, and failing to provide two capybaras with a pool of adequate size for their aquatic needs.

April 10, 2014: The USDA cited Zootastic for failing to clean a room housing multiple animals. It had trash on the floor and a strong odor.

January 6, 2014: The USDA issued an official warning to Zootastic for operating as an exhibitor after its USDA license had been canceled.

November 15, 2013: The USDA cited Zootastic for failing to have proper public barriers for over 35 animals (a small child was knocked down by a bison who hit the fence); failing to repair structural defects, gaps, holes, and missing panels on multiple enclosures; failing to store feed bags properly, some of which had holes from vermin; failing to clean a walk-in cooler that had an unpleasant odor and contained unsealed “damp and stained” produce; failing to provide a zebra with adequate shelter from inclement weather; failing to have adequate perimeter fencing for the enclosures housing a bear and hoofstock; and failing to clean the following areas: an enclosure housing hoofstock that contained an accumulation of feces, portions of the walls in the enclosures housing kinkajous and lemurs that had dirty smears, and areas of the enclosure housing the porcupine that had numerous mice.

July 31, 2013: The USDA cited Zootastic for having numerous flies in the feed-storage room.

March 28, 2013: The USDA cited Zootastic for leaving a door unlocked to a room housing a lion cub in the gift shop and improperly handling animals—a customer was allowed to lie on the floor with a white tiger cub and was bit on the nose. The

Zootastic Park of Lake Norman

facility was also cited for failing to dispose of spoiled food, failing to store raw meat properly, failing to keep food-storage areas clean and free of odor, failing to maintain the enclosure housing the rabbits in good repair (five or six rabbits escaped), and failing to provide a goat with a diet to maintain good body condition. The goat had recently given birth and was observed to be thin, with sunken flanks, visible ribs, and thin hindquarters.

March 27, 2013: The USDA issued an official warning to Zootastic for violations committed between May 18, 2011, and June 14, 2011, including failing to have a complete written program of veterinary care, failing to comply with the veterinary-care program, failing to have sufficient barriers between animals and the public, failing to provide animals with appropriate shelter from weather conditions, and failing to establish and maintain acquisition and disposition records.

December 13, 2012: The USDA cited Zootastic for purchasing an adult zebra from an individual who wasn't licensed by the USDA, housing guinea pigs outdoors in 30-degree temperatures without approval, housing guinea pigs and prairie dogs together, failing to store raw meat properly, and failing to provide goats with a shelter that was large enough for all of them.

June 14, 2011: The USDA cited Zootastic for killing seven rabbits by hitting them on the head with a hammer, as that isn't an acceptable method of euthanasia. The facility was also cited for repeat violations for failing to dispose of expired drugs, failing to test the blackbuck annually for tuberculosis, failing to have acquisition paperwork for a vervet monkey, failing to have a sufficient barrier around the enclosures housing coatimundis, and failing to have a barrier around a tiger cub. The inspector observed the tiger cub climbing out of the pen several times. The facility

was also cited for failing to repair gaps in the perimeter fence surrounding a tiger.

May 18, 2011: The USDA cited Zootastic for failing to include all animals in the written program of veterinary care; failing to perform fecal tests on animals every quarter (a capybara died in January 2011 from internal parasites); failing to dispose of expired drugs; failing to have an acquisition record for a vervet monkey; failing to have sufficient barriers for a coatimundi, a bear cub, and a 4½-week-old white tiger cub who was too young for public contact; failing to provide two rabbits with a sufficient amount of floor space; failing to have a sufficient barrier surrounding a vervet monkey; failing to test a monkey, who is used for public contact, for the herpes B virus and tuberculosis; failing to have an experienced primate handler with the monkey during public contact; failing to provide for the social needs of a singly housed monkey; failing to store feed properly; failing to provide a bear cub with clean water; and failing to use suitable material in the enclosure housing a bear cub. The enclosure had only chicken wire mesh across the front of the cage, and the bear had rubbed against it so much that there was a raw spot on his nose. The facility was also cited for a repeat violation for failing to provide six alpacas with shelter from the elements.

January 20, 2011: The USDA cited Zootastic for failing to provide a llama with shelter from inclement weather.

November 16, 2010: The USDA issued an official warning to Zootastic for violations committed between June 9, 2010, and August 23, 2010, including failing to establish and maintain programs of adequate veterinary care and failing to have sufficient barriers between animals and the public.

September 22, 2010: The USDA cited

Zootastic Park of Lake Norman

Zootastic for failing to have a written program of veterinary care for new veterinarians to evaluate, failing to maintain records of death for a goat and a prairie dog, and failing to demonstrate adequate experience with and knowledge about two juvenile tigers.

August 23, 2010: The USDA cited Zootastic for failing to have an updated program of veterinary care addressing new species, failing to consult a veterinarian about a vaccination/deworming program for a thin 13-week-old tiger cub, failing to provide an extremely thin goat with veterinary care (the animal reportedly hadn't been eating well), failing to demonstrate adequate experience with and knowledge about two juvenile tigers, failing to have an attendant present to supervise public contact with animals, failing to have a primary enclosure for two rabbits who were running loose in the barn area, failing to store feed bags properly (they were open and had mouse droppings next to them), and failing to provide goats, sheep, and donkeys with adequate shelter. The facility was also cited for a repeat violation for failing to have a public barrier present for the coatimundi, the porcupines, the serval, and two juvenile tigers. "One young calf" had ringworm lesions and, because of a lack of an adequate barrier, could possibly spread the condition through contact with the public.

June 9, 2010: The USDA cited Zootastic for failing to have public barriers for a coatimundi and porcupine and failing to have a health certificate, an adequate public barrier, and an enrichment plan for two rhesus macaques. The facility was also cited for a repeat violation for housing a coatimundi in an enclosure that only had chicken wire covering the front, with small holes that could allow rain to drip in. Coatimundis are strong diggers, and chicken wire is not appropriate caging material.

January 14, 2010: The USDA cited Zootastic for failing to house a kangaroo in an enclosure that allowed adequate freedom of movement, failing to store food properly, and housing two porcupines in an enclosure with exposed points from a broken wire, which could injure them.

July 27, 2009: The USDA cited Zootastic for failing to have a completed program of veterinary care, failing to have a barrier around the enclosure housing the coatimundi, and failing to have a perimeter fence surrounding all enclosures.

July 21, 2008: The USDA cited Scottie Brown for selling several mammals, including a camel, a kangaroo, and nilgai, at an auction without a USDA license.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
–Florence Division–**

People for the Ethical Treatment of Animals, Inc.,
Matthew Howard; and Lexie Jordan,

Plaintiffs,

v.

Waccatee Zoological Farm; Kathleen Futrell (in her
individual capacity and as the personal
representative of the Estate of Archie Futrell); Jeff
Futrell; Dakota Futrell Stienecker; and Austin
Futrell,

Defendants.

Civil Action No. 4:22-cv-01337-JD

DECLARATION OF ROBERT TODD

I, Robert Todd, hereby state as follows:

1. I own Global Investigative Services, Inc. (“GIS”), a South Carolina corporation and licensed detective agency. I am over the age of 18 years and competent to testify to the facts set forth below. I have personal knowledge of the facts and matters set forth below.

2. On September 9, 2022, I was retained, through GIS, on behalf of Plaintiff People for the Ethical Treatment of Animals, Inc. (“PETA”).

3. I was assigned to observe Waccatee Zoological Farm (“Waccatee”) from public vantage points. Specifically, I was assigned to observe that night and, occasionally, throughout the weekend if transport vehicles were present at Waccatee and, if so, to document the vehicles, including make, model, license plate information, description of persons present, and animals observed. I did so between September 9, 2022 and September 12, 2022, along with an employee, Matt Winters, under my supervision.

4. Attached as Exhibit A is a true and accurate copy of an image my employee captured on September 10, 2022.

5. Attached as Exhibit B is a true and accurate copy of an image my employee captured on September 10, 2022.

6. Attached as Exhibit C is a true and accurate copy of an image my employee captured on September 10, 2022.

7. Attached as Exhibit D is a true and accurate copy of an image my employee captured on September 10, 2022.

8. Attached as Exhibit E is a true and accurate copy of an image I captured on September 10, 2022.

9. Attached as Exhibit F is a true and accurate copy of an image my employee captured on September 10, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of September, 2022, in Myrtle Beach, South Carolina.

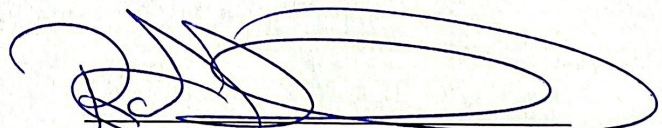

Robert Todd

EXHIBIT A



EXHIBIT B



EXHIBIT C



EXHIBIT D



EXHIBIT E



EXHIBIT F



Saturday, September 10, 2022 07:26PM

**United States District Court
District of South Carolina
–Florence Division–**

People for the Ethical Treatment of Animals, Inc.,
Matthew Howard; and Lexie Jordan,

Plaintiffs,

v.

Waccatee Zoological Farm; Kathleen Futrell (in
her individual capacity and as the personal
representative of the Estate of Archie Futrell);
Jeff Futrell; Dakota Futrell Stienecker; and Austin
Futrell,

Defendants.

Civil Action No. 4:22-cv-01337-JD

[PROPOSED] ORDER

This matter coming before the Court on Plaintiffs’ Emergency Motion for Preservation of
Animals (the “Motion”), all parties given due notice, and the Court being fully advised,

IT IS HEREBY ORDERED:

1. The Motion is granted;
2. Defendants are barred from unilateral transfers of evidence, including animals;
3. Defendants must immediately inform transferees of this order, and file confirmation that they have done so within three days of the issuance of this order;
4. Any transferees are barred from additional transfers of animals without leave of this Court;
5. Within seven days of the issuance of this order, Defendants must disclose the present location, including the address and, if applicable, the recipient, of all animals that have been in their possession since the April 26, 2022 pendency of this litigation;
6. Within seven days of the issuance of this order, Defendants must confirm whether they maintain ownership and control of all such animals;

7. Plaintiffs may, upon issuance of this Order, conduct discovery including but not limited to requests for production of documents to and depositions of Defendants and any parties who received or who are in possession of any such animals regarding the preservation, transfer, and status of all such animals. Any such depositions are not to count against any limit on the number of depositions found in Fed. R. Civ. P. 30; and
8. Within sixty days of the issuance of this Order, Defendants must show cause why sanctions such as but not limited to default judgment should not issue based on the conduct referred to in the Motion.

Date: _____

Judge, United States District Court