

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA**

PEOPLE FOR THE ETHICAL	)	
TREATMENT OF ANIMALS, INC.,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
WILDLIFE IN NEED AND	)	
WILDLIFE IN DEED, INC.,	)	
TIMOTHY L. STARK,	)	
MELISA D. STARK, AND	)	
JEFF LOWE,	)	
	)	
Defendants.	)	

Case No. 4:17-cv-00186-RLY-DML

**BRIEF IN SUPPORT OF PETA’S EMERGENCY  
MOTION FOR PRESERVATION OF BIG CATS**

Plaintiff People for the Ethical Treatment of Animals, Inc. (“**PETA**”), through its counsel, moves the Court under its inherent authority to manage its proceedings and preserve evidence and Fed. R. Civ. P. 37(b)(2)(A) to enter an order setting a prompt hearing date on which it will hear evidence regarding reputable wildlife sanctuaries accredited by the Global Federation of Animal Sanctuaries (“**GFAS**”) to preserve the lions, tigers, and hybrids thereof (“**Big Cats**”) at issue in this litigation.

**PRELIMINARY STATEMENT**

Two Big Cats at the Wildlife in Need (“**WIN**”) facility—a young female lion, Nera, and an elderly tiger, Jomba—died last week. Evidence produced by Defendants Tim Stark, Melisa Stark, and WIN (collectively, “**WIN Defendants**”) shows that at least one of these Big Cats—Nera—likely died because of WIN Defendants’ grossly inadequate medical care. Mr. Stark also admits that he does not have a veterinarian willing to physically examine the Big Cats, and that this state of affairs killed Nera.

When pressed, WIN Defendants have refused to make a number of required disclosures—including even who the Big Cats’ current veterinarian is, if they exist at all. They have also engaged in a willful refusal to conduct basic diagnostic or post-mortem procedures that would shed light on the risks faced by the remaining Big Cats.

These circumstances—as well as SARS-CoV-2, the novel coronavirus that causes COVID-19 in humans and that is transmissible to Big Cats—support a conclusion that the remaining Big Cats at WIN face imminent risk of death. In order to keep these Big Cats alive through trial, this Court should send them to a qualified sanctuary pending a resolution of this matter on the merits.

## **BACKGROUND**

On September 18, 2017, this Court issued an agreed evidence preservation order, which requires Defendants to preserve all tangible evidence “relating to (and including) the tigers, lions, and hybrids thereof” in their possession, custody, and control. *See* Consent Order Preserving Evidence and Withdrawing Rule 27 Petition, *PETA v. Wildlife in Need and Wildlife in Deed, Inc., et al.*, No. 4:17-MC-00003-RLY-DML (S.D. Ind. Sept. 18, 2017), ECF No. 27 (“**Preservation Order**”).

On July 25, 2019 this Court entered an order clarifying the Preservation Order. Specifically, this Court clarified that the Preservation Order “means that Defendants must protect and maintain the Big Cats in their current state absent a court order that says otherwise.” ECF No. 239 (“**Clarification Order**”) at 6. This is because “the purpose of the preservation order was to preserve the animals—themselves.” *Id.*

On May 12, 2020 PETA learned that two Big Cats at WIN, under the care of WIN Defendants, had died. These Big Cats were a young female lion, Nera, and an adult male tiger,

Jomba. PETA learned this from two videos in which Mr. Stark, addressing a social media audience, stated that WIN Defendants “could not provide veterinary care.” The videos are identified as 00333.MTS and 00340.MTS and will be referred to, respectively, as **Exhibit 1** and **Exhibit 2** and filed separately.

Counsel for PETA immediately wrote to Mr. Stark and Clay Culotta, counsel for Ms. Stark and WIN, to confirm these deaths. *See* May 12, 2020 letter from A. Smith at 1-2, attached as **Exhibit 3**. PETA also requested clarification on the identity of WIN Defendants’ attending veterinarian for the Big Cats,<sup>1</sup> and for WIN Defendants to follow generally accepted husbandry practices by performing necropsies for Jomba and Nera to determine why they died. *Id.* at 2.

On May 14, 2020, Mr. Culotta replied to PETA. *See* May 14, 2020 letter from C. Culotta, attached as **Exhibit 4**. Mr. Culotta refused to identify the Big Cats’ attending veterinarian and stated that WIN Defendants would not be performing necropsies. *Id.* at 1. Instead, Mr. Culotta advised that PETA call Mr. Stark directly. *Id.* Mr. Culotta’s letter also included medical records listing WIN Defendants’ course of treatment for Nera. *Id.* at 3-4. These records were silent on the precise causes of death of Nera and Jomba and the methods of euthanasia used, if any. *Id.*

Counsel for PETA immediately wrote back for clarification as to Mr. Culotta’s refusal to name the Big Cats’ attending veterinarian. May 15, 2020 letter from A. Smith at 1-2, attached as

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<sup>1</sup> The last word from WIN Defendants with respect to who the attending veterinarian is for the Big Cats had been that “Dr. [Kurt] Oliver has not resigned his position and remains WIN’s Big Cat veterinarian. . . . [I]f medical care was necessary, Dr. Oliver would be contacted to perform those services.” ECF No. 215 at 3. That was on May 22, 2019. That PETA only discovered this was not the case after two Big Cats died is yet another instance of contempt for this Court’s orders. *See, e.g.*, ECF Nos. 191 at 2, 178 at 2, 113 at 3 n.2, 94 at 1, and 73 at 2 (acknowledging WIN Defendants’ contempt for discovery orders). This Court ordered WIN Defendants to respond, without objection, to PETA’s discovery requests. *See* ECF Nos. 51 and 113. *See also* Fed. R. Civ. P. 26(e)(1)(A), (B) (requiring parties to supplement interrogatories “in a timely manner”). PETA’s requests included interrogatories and requests for production pertaining to veterinary care. ECF No. 47-1 at 5-7.

PETA is still evaluating how to respond to these discovery issues—as well as other newly-revealed misconduct, including threats by Mr. Stark to “slice every f\*cking one of [PETA’s] goddamn throats,” *see* Ex. 1 (expletive censored)—while it addresses the life or death matter of the Big Cats’ continued presence at WIN.

**Exhibit 5.** PETA reiterated its requests for the veterinarian's name, credentials, place of business, written program of veterinary care, availability to WIN in emergencies, and an explanation of why they did not appear to be called to treat or euthanize either Nera or Jomba. *Id.* at 2. Counsel for PETA also requested WIN Defendants clarify the precise causes of death of Nera and Jomba and the methods of euthanasia used, if any. *Id.* at 2.

Mr. Stark responded via email on May 15, 2020. May 15, 2020 email from T. Stark, attached as **Exhibit 6.** He refused to identify the Big Cats' attending veterinarian. While he acknowledged guidance from the United States Department of Agriculture ("**USDA**") requiring necropsies, he stated that "[i]t's still my choice," that "[n]o necropsy will be performed," that Nera had "already been buried," and that Jomba "died of old age, end of discussion !!!!" *Id.*

Mr. Culotta responded further on May 18, 2020. May 18, 2020 letter from C. Culotta, attached as **Exhibit 7.** Mr. Culotta again refused to identify the Big Cats' attending veterinarian, stating "at this point you will need to bring that up directly with Mr. Stark." *Id.* at 1. He otherwise did not address PETA's factual questions beyond stating "it is still my understanding that Nera's cause of death is unknown and that Jomba's was simply old age. Again, Mr. Stark is the best source to get more specific detail." *Id.*

The parties held a meet and confer on May 19, 2020. Mr. Stark, Mr. Culotta, and Jessica Amin, a WIN staff member responsible for providing care to Big Cats, were present on behalf of WIN Defendants. Declaration of Asher Smith, attached as **Exhibit 8,** at ¶ 2.

During the meet and confer, Mr. Stark refused to identify an attending veterinarian for the Big Cats, stating it is "none of your damn business." *Id.* at ¶ 3. He likewise refused to state whether anyone had fulfilled the legal requirement of signing a written program of veterinary care for the Big Cats. *Id.* When informed that he was required to disclose this information under orders of this

Court, Mr. Stark stated “Oh well, tough sh\*t, I’m not doing it. . . I don’t give a sh\*t what’s court ordered.” *Id.* at ¶ 4. He later admitted that “I can’t get a vet to set foot on my property” and expressed a belief that this state of affairs caused Nera’s death. *Id.* at ¶ 5.

Mr. Stark also volunteered that he did not consider this Court’s Preservation Order or Clarification Order binding because “believe it or not, animals are not tangible evidence, I don’t give a shit what Judge Young says.” *Id.* at ¶ 6.

Mr. Stark confirmed that he would not be performing necropsies and that both Nera and Jomba had been buried. *Id.* at ¶ 9. Mr. Stark also stated that neither Nera nor Jomba were euthanized, *id.* at ¶ 8, that there were no medical treatment records for Jomba because he did not see a reason to do so given Jomba’s advanced age, *id.* at ¶ 7, that the only cause of death he was willing to identify for Jomba was “old age,” *id.*, and that he refused to elaborate on Nera’s cause of death beyond describing it as “natural causes” because, in his words, “it’s natural for everything to die.” *Id.* at ¶ 6.

At no point during the meet and confer did Mr. Culotta or Ms. Amin disagree with, clarify, or otherwise address any of Mr. Stark’s statements. *Id.* at ¶ 11.

On May 20, 2020, Mr. Stark filed a notice with this Court regarding the deaths of Nera and Jomba. ECF No. 336. In this notice, Mr. Stark admitted that Nera died due to lack of veterinary care. *Id.* at 1.

## ARGUMENT

This Court has established a clear priority: protecting the Big Cats currently at WIN. *See* Preservation Order; Clarification Order at 6. WIN Defendants’ actions—and the actions they have willfully refused to take—support the conclusion they are unable to keep the Big Cats preserved. WIN Defendants still refuse to acknowledge that this Court’s evidence preservation orders even

apply to the Big Cats. Ex. 8 at ¶¶ 6, 11.

In order to ensure that these Big Cats are preserved for trial and that PETA is not unduly prejudiced, this Court should set a prompt hearing date on which it will hear evidence regarding reputable wildlife sanctuaries accredited by GFAS to preserve the Big Cats. *See, e.g., Hunting Energy Servs., Inc. v. Kavadas*, No. 3:15-CV-228 JD, 2018 WL 4539818, at \*4 (N.D. Ind. Sept. 20, 2018) (holding that, even “[a]bsent a finding of bad faith, a court can take lesser measures as may be necessary to cure any prejudice if a party has failed to take reasonable steps to preserve evidence”). *Cf. Fair Hous. Ctr. of Cent. Indiana, Inc. v. Smitley*, No. 1:16-CV-880-WTL-DML, 2018 WL 348154, at \*5 (S.D. Ind. Jan. 10, 2018) (recognizing that the court “has the inherent authority to manage judicial proceedings and to regulate the conduct of those appearing before it”) (citing *Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772, 781 (7th Cir. 2016)).

**I. WIN Defendants’ Limited Disclosures Show They Provide Inadequate Medical Care That Poses Fatal Risk to the Big Cats**

Mr. Stark acknowledges that WIN Defendants “could not provide veterinary care” to Nera, Ex. 1, that “I can’t get a vet to set foot on my property,” Ex. 8 at ¶ 5, and that Nera died due to lack of veterinary care. ECF No. 336 at 1. These statements are borne out by the limited disclosures made by WIN Defendants concerning the deaths of Nera and Jomba. *See* Ex. 4 at 3-4.

These disclosures establish that WIN Defendants cannot provide either the minimum legal standards of medical care required by the Animal Welfare Act (“*AWA*”), 7 U.S.C. § 2143 (requiring licensed exhibitors to adhere to the USDA’s standards of adequate veterinary care); 9 C.F.R. §§ 2.40(a)(1)-(5), (b)(1)-(5) (defining adequate veterinary care to require an attending veterinarian for the Big Cats who has sufficient credentials and training or experiences in the species being attended, provides adequate treatment and euthanasia, and is available in case of emergencies), or the minimum standards of medical care required to keep even young Big Cats

alive. Declaration of Dr. Jennifer Conrad, DVM, attached as **Exhibit 9**, at ¶ 9 (“Based on the information I reviewed, I conclude, to a reasonable degree of veterinary and scientific certainty, that the young lioness Nera received inadequate veterinary care that alone was sufficient to cause her death regardless of her underlying illness.”).

Despite first observing Nera’s symptoms on April 30, 2020, at no point did WIN Defendants bring a veterinarian on to WIN’s property to examine Nera. *See* Ex. 4 at 3-4. *See also* Ex. 8 at ¶ 5 (“I can’t get a vet to set foot on my property.”); ECF No. 336 at 1. Nor did they undertake any generally accepted veterinary methods in order to diagnose Nera. Ex. 9 at ¶¶ 10, 21 (“The records do not indicate any lab work nor radiographs taken. . . . The records do not indicate that Mr. Stark or his staff gathered or analyzed a blood sample from Nera. I believe this would have been among the steps in a course of treatment that would have been considered by a competent Big Cat veterinarian. I would have drawn and analyzed blood at the earliest opportunity in this case, had Nera been my patient. This would have been a proper and necessary step to diagnose Nera and to determine an adequate veterinary medical response to her underlying condition.”).

Instead, in order to treat Nera, WIN Defendants commenced almost *daily* administration of Depo-Medrol—a long-acting steroid intended to be administered *monthly*. *Id.* at ¶¶ 11-13. This decision could have been “alone sufficient to cause Nera’s premature death.” *Id.* at 13. Depo-Medrol likely suppressed Nera’s immune system—reducing her ability to fight off her initial cause of illness—and likely contributed to common side effects such as congestive heart failure, difficulty breathing caused by heart failure, lack of appetite, electrolyte imbalances, muscle weakness, and gait abnormalities. *Id.* at ¶¶ 11-13. Because Depo-Medrol is long-acting, there would have been no way to reverse these side effects. *Id.* at ¶ 11. Such a course of treatment falls

below any threshold of competent veterinary care. *Id.* at ¶ 13.

The other medications WIN Defendants appear to have administered on a trial-and-error basis were no more helpful. *Id.* at ¶¶ 14-15, 19-20. The records produced by WIN Defendants indicate they administered Penject, an antibiotic, at doses even larger than those intended for large animals such as horses and cattle. *Id.* at ¶ 14. They also indicate that WIN Defendants administered a vitamin B supplement at inappropriate doses. *Id.* at ¶ 19. This error may have caused a number of Nera's reported symptoms. *Id.*

That this is not the first time a Big Cat has died at WIN after WIN Defendants treated them in a manner more appropriate for horses underscores the risk to the remaining Big Cats. WIN Defendants and their former Big Cat veterinarian, Dr. Rick Pelphrey, caused the deaths of two tiger cubs in significant part by administering a topical treatment intended for racehorses as part of the cubs' declawing aftercare. *See* ECF No. 316 (brief in support of PETA's motion for partial summary judgment) at 11-13 and 29-30.

WIN Defendants' lackadaisical attitude toward diagnosis—and, after the deaths of Nera and Jomba, toward discovering precise causes of death via necropsies—was itself inadequate veterinary care. Mr. Stark's dismissal of Big Cat causes of death as "old age" and "natural causes," *see* Ex. 8 at ¶¶ 6-7, are contrary to adequate veterinary practice. Ex. 9 at ¶ 23 ("I strongly believe that immediate necropsies were required—not only of Nera, but also of Jomba, a male tiger aged 20-to-22 years old, who died the day after Nera and apparently suffered from respiratory distress before he succumbed. . . . Lions are remarkably resilient to illness. Anytime a lion, and particularly a young lion such as Nera, who was housed with other lions, dies of unknown causes, a necropsy is indicated, and I believe required to provide adequate veterinary care. That another Big Cat died the following day of unknown causes—regardless of Jomba's advanced age—further underscores



the urgent need for necropsies to determine cause of death and to contain or mitigate any transmissible pathogen that may be present at the facility.”). *See also, e.g.,* USDA, *USDA Animal Care Inspection Guide*,<sup>2</sup> § 4.12.5.7 (explaining that failure to perform necropsies in the event of “unexplained mortality” may be inadequate veterinary care under 9 C.F.R. § 2.40); AZA, *2020 Accreditation Standards & Related Policies*,<sup>3</sup> § 2.5.1 (2020) (“Deceased animals should be necropsied to determine the cause of death for tracking morbidity and mortality trends.”). The decision and order revoking Mr. Stark and WIN’s license to exhibit animals found WIN Defendants’ numerous failures to seek necropsies to be inadequate veterinary care as a matter of law. *See* ECF No. 301-2 (Decision and Order, *In re Timothy L. Stark, et al.*, AWA Docket Nos. 16-0124 and 16-0125) at 43-47, 157-158.

WIN Defendants’ approach is all the more reckless given the current pandemic. The Centers for Disease Control and Prevention (“**CDC**”) advises that SARS-CoV-2, the novel coronavirus that causes COVID-19 in humans, “can spread from people to animals.” *See* CDC, *COVID-19 and Animals*, Coronavirus Disease 2019 (COVID-19) (April 30, 2020).<sup>4</sup> SARS-CoV-2 causes lethargy, breathing difficulties, inappetence, and weakness in Big Cats—all symptoms Nera exhibited, according to WIN Defendants’ medical treatment log. Ex. 9 at ¶ 16. Government and industry bodies such as the USDA and the Association of Zoos and Aquariums (“**AZA**”) have advised licensed and accredited facilities to take a number of precautions against transmission to Big Cats. *See* AZA News Releases, *AZA and AAZV Statement on COVID-19 Positive Tiger in New York* (April 6, 2020)<sup>5</sup>; Animal and Plant Health Inspection Service (“**APHIS**”), *USDA Statement*

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<sup>2</sup> [https://www.aphis.usda.gov/animal\\_welfare/downloads/Animal-Care-Inspection-Guide.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf).

<sup>3</sup> <https://assets.speakcdn.com/assets/2332/aza-accreditation-standards.pdf>.

<sup>4</sup> <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/animals.html>.SARS-CoV-2.

<sup>5</sup> <https://www.aza.org/aza-news-releases/posts/aza-and-azav-statement-on-covid-19-positive-tiger-in-new-york>.

*on the Confirmation of COVID-19 in a Tiger in New York* (last updated May 13, 2020)<sup>6</sup>; J. Haworth, *8 big cats confirmed tested positive for coronavirus at NY zoo*, ABCNews (Apr. 23, 2020).<sup>7</sup> The USDA stated yesterday that it would soon issue even more guidance urging further precaution and once again instructing licensees to consult with their attending veterinarian “in order to protect the health and welfare of susceptible felids.” *See* May 19, 2020 letter from K. Shea.<sup>8</sup>

In light of these concerns, any competent veterinarian would have, at the very least, taken the minimal steps of diagnosing and performing necropsies on Nera and Jomba—both for Nera and Jomba’s benefit and to protect their other Big Cats. Ex. 9 at ¶¶ 18-23. This need is particularly acute at WIN, where WIN Defendants’ remaining Big Cats are particularly vulnerable given the effects of maternal separation on their immune systems. *See, e.g.*, Ex. 9 at ¶ 24; ECF No. 316 at 17-21, 31-35, 37-38.

The lack of any medical treatment records with respect to Jomba, *see* Ex. 8 at ¶ 7, also falls below the minimum threshold of adequate veterinary care. The decision and order revoking Mr. Stark and WIN’s license to exhibit animals has already found WIN Defendants’ habit of “never” seeking veterinary care for Jomba to fall below the legal threshold of adequate veterinary care. *See* ECF No. 301-2 at 39-41. The USDA held that “[Mr.] Stark’s contentions that a veterinarian’s opinion was not needed since he did not observe [Jomba] having any problems eating or signs of pain is inadequate to counterbalance [the USDA’s] evidence that [Jomba] should have been examined by a veterinarian.” *Id.* at 41. Further repetition of these practices poses fatal risk to the remaining Big Cats.

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<sup>6</sup> [https://www.aphis.usda.gov/aphis/newsroom/news/sa\\_by\\_date/sa-2020/ny-zoo-covid-19](https://www.aphis.usda.gov/aphis/newsroom/news/sa_by_date/sa-2020/ny-zoo-covid-19).

<sup>7</sup> <https://abcnews.go.com/US/big-cats-test-positive-covid-19-zookeeper-accidentally/story?id=70303070>.

<sup>8</sup> <https://www.peta.org/wp-content/uploads/2020/05/APHIS-Response-to-PETA-petition.pdf>.

Taken together, these failures establish that WIN Defendants cannot preserve the Big Cats at WIN under the terms required by this Court's orders.

**II. WIN Defendants' Failure to Conduct Basic Diagnostic and Post-Mortem Procedures Justifies a Conclusion They Cannot Preserve the Big Cats**

WIN Defendants' failures to identify a veterinarian responsible for the Big Cats, to record any medical observations relating to Jomba, to conduct basic diagnostic tests, or to perform necropsies have prejudiced PETA and the Big Cats by foreclosing more definitive conclusions regarding the Big Cats' present risk. *See, e.g.*, Ex. 9 at ¶¶ 10, 21-23, 25.

This failure is not due to ignorance. WIN Defendants are sufficiently aware of their legal requirement to have a written program of veterinary care for all of their animals signed by an attending veterinarian that they have, in the past, resorted to forging such forms. *See* ECF No. 301-2 at 22-25 (finding this forgery violated of 9 C.F.R. §§ 2.126(a)(2) and 2.40(a)(1)).

Likewise, guidance from the USDA and AZA regarding necropsies is publicly available. WIN Defendants were party to the USDA's license revocation proceeding, which culminated in a 183 page decision based on 101 admitted exhibits and more than 2,000 pages of hearing transcripts from the live testimony of 25 witnesses. ECF No. 301-2. PETA brought the resources above to WIN Defendants' attention early enough for WIN Defendants to have performed effective necropsies on Nera and Jomba. *See* Ex. 3 at 2; Ex. 5 at 2.

Instead, WIN Defendants made a willful choice to ignore relevant guidance and to not to learn why Nera and Jomba died. *See* Ex. 8 at ¶¶ 6-7, 9. *See also* Ex. 6 ("The USDA suggests that you do necropsies for unexplained deaths. Now if I have another big cat come down with the same symptoms and die, then I WILL at that time choose to have a necropsy done. Or not. It's still my choice. . . . Also the USDA decision is just that, a decision. It is not final. . . . Nera was unexplained. Simple as that !!!! No necropsy will be performed. She has already been buried. As far as Jomba

is concerned, he was 22 years old. He died of old age, end of discussion !!!!”).

This failure should have consequences. Despite their assertions to the contrary, *see* Ex. 8 at ¶ 6, WIN Defendants were required to preserve all tangible evidence, including the Big Cats and any evidence pertaining to causes of death.<sup>9</sup> Preservation Order; Clarification Order. Because WIN Defendants chose not to disclose the identity or produce current information regarding an attending veterinarian for the Big Cats, or conduct basic diagnostic and post-mortem procedures on Nera and Jomba—procedures required by relevant husbandry standards—this Court should take as established that WIN Defendants cannot presently protect the Big Cats. *See* Fed. R. Civ. P. 37(b)(2)(A)(i), (ii) (allowing that, if a party fails to obey court orders or participate in required discovery, a court may deem “that the matters embraced in the order or other designated facts be taken as established for purposes of the action . . . [or] prohibit[] the disobedient party from supporting or opposing designated claims or defenses”). Conclusions this Court should take as established include:

- That the WIN Defendants do not currently have an attending veterinarian for the Big Cats who has signed a written program of veterinary care, as required by the AWA, *see* 9 C.F.R. § 2.40(a)(1);
- That any veterinarian who WIN Defendants may consult with respect to the Big Cats is not capable of providing adequate veterinary care, either as defined by the AWA, *see* 7 U.S.C. § 2143; 9 C.F.R. §§ 2.40(a)(1)-(5), (b)(1)-(5), or by the minimum standards necessary to keep the Big Cats alive;
- That WIN Defendants did nothing to meaningfully diagnose Nera before

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<sup>9</sup> PETA’s discovery requests seek information regarding causes of Big Cat deaths. *See* ECF No. 47-1 at 7 (requesting, in Interrogatory No. 7, information regarding causes of death). WIN Defendants were ordered by this Court to provide such information without objection. ECF Nos. 51 and 113.

administering a cocktail of inappropriate drugs, Ex. 9 at ¶¶ 10-21;

- That Nera or Jomba’s medical conditions might have been effectively treated, and their deaths prevented, by the provision of adequate veterinary care, *id.* at ¶¶ 21-23; Ex. 8 at ¶ 7; ECF No. 336 at 1;
- That Nera and Jomba were killed, at least in part, by WIN Defendants’ inadequate medical care, Ex. 9 at ¶¶ 9-14, 19-20, 25, or lack thereof, Ex. 8 at ¶ 7;
- That the drug dosages administered by WIN Defendants were inappropriate for Nera’s body condition and weight, Ex. 9 at ¶ 22 (noting that a necropsy would be necessary in order to draw conclusions about Nera’s body condition and weight were rendered impossible “because, in the video recorded by Mr. Stark and his staff, Nera’s body was almost entirely covered by a Confederate battle flag.”);
- That premature maternal separation may have contributed to Nera’s demise due to a weakened immune system, *id.* at ¶ 24; and
- That the underlying conditions that afflicted Nera and Jomba may include infectious disease that poses risks to other Big Cats at WIN, *id.* at ¶ 23.

There is recent precedent under the Endangered Species Act for reaching such conclusions due to lack of necropsies. *See People for Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of W. Maryland, Inc.*, 424 F. Supp. 3d 404, 413-422 (D. Md. 2019) (“Defendants violated generally accepted standards of care even after some of the animals at issue died. Performing a necropsy is a basic standard of care, especially on an animal protected under the ESA. . . . Defendants chose not to perform a necropsy on Bandit . . . The Court does not credit that Bandit died of ‘cancer.’” (citations omitted)).

All of these conclusions—amply supported by WIN Defendants’ records and admissions

and by Dr. Conrad's testimony—support a finding that preservation of the Big Cats requires their prompt transfer to a qualified sanctuary.

### CONCLUSION

For the foregoing reasons, PETA respectfully requests the Court enter an order setting a prompt hearing date on which it will hear evidence regarding reputable wildlife sanctuaries accredited by GFAS to preserve the Big Cats at issue in this litigation.

Dated: May 20, 2020

Respectfully Submitted,

**PEOPLE FOR THE ETHICAL  
TREATMENT OF ANIMALS, INC.**

By: /s/ Asher Smith  
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**CERTIFICATE OF SERVICE**

I, Paul Olszowka an attorney, certify that on May 20, 2020, the foregoing document and its Exhibits 3 to 9 were served via the Court's ECF system to the attorney of record for the Defendants in this case, J. Clayton Culotta, 815 E. Market Street, New Albany, IN 47150, clay@culottalaw.com, and via electronic mail to Defendant Timothy L. Stark, pro se, 3320 Jack Teeple Road, Charlestown, IN 47111, wildlifeinneed@aol.com, and to Jeff Lowe, 25803 N County Road 3250, Wynnewood, OK 73098, returnprice@hotmail.com. I further certify that Exhibits 1 and 2 will be sent by overnight courier.

Dated: May 20, 2020

/s/ Paul Olszowka

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