No. 21-3057

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Animal Legal Defense Fund,
Plaintiff-Appellant,

v.

Special Memories Zoo, LLC,
Dona Wheeler, and Gretchen Crowe,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Wisconsin
No. 1:20-cv-00216-WCG
The Honorable Judge William C. Griesbach

APPELLANT'S BRIEF AND REQUIRED SHORT APPENDIX

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January 14, 2022

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 21-3057

Short Caption: Animal Legal Defense Fund v. Special Memories Zoo LLC, et al

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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Animal Legal Defense Fund

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Public Citizen Litigation Group, Animal Legal Defense Fund, Michael Best & Friedrich LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

None

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: s/ Michael T. Kirkpatrick Date: January 14, 2022

Attorney's Printed Name: Michael T. Kirkpatrick

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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N/A

Attorney's Signature: s/ Adina H. Rosenbaum Date: January 14, 2022

Attorney's Printed Name: Adina H. Rosenbaum

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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N/A

Attorney's Signature: s/ Ariel Flint Date: January 14, 2022

Attorney's Printed Name: Ariel Flint

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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N/A

Attorney's Signature: s/ Daniel Waltz Date: January 14, 2022

Attorney's Printed Name: Daniel Waltz

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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STATEMENT OF JURISDICTION

Animal Legal Defense Fund (ALDF) filed this action in the United States District Court for the Eastern District of Wisconsin on February 12, 2020, alleging violations of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531–44, and Wisconsin's public nuisance statute, Wis. Stat. § 823.01. R.1.[1] The district court had jurisdiction over the ESA claims under 28 U.S.C. § 1331, and over the state-law claim under 28 U.S.C. § 1367. On January 13, 2021, the district court entered a final judgment that disposed of all claims against all parties. App. 11.

On January 27, 2021, ALDF filed a timely motion for attorneys' fees and costs, R. 61, which the district court denied in full on October 7, 2021, App. 1. ALDF filed a timely notice of appeal on November 4, 2021. R. 78. This court has jurisdiction pursuant to 28 U.S.C. § 1291 and 28 U.S.C. § 1294(1).

[1] Citations to "R." refer to docket entries in the district court. Citations to "App." refer to the required short appendix attached to this brief.

STATEMENT OF THE ISSUE

Whether the district court erred by denying attorneys' fees and costs to a plaintiff who obtained a final judgment and permanent injunction in a case under the Endangered Species Act.

STATEMENT OF THE CASE

A. Statutory Background

The ESA makes it unlawful "for any person subject to the jurisdiction of the United States" to "take" any endangered or threatened species of wildlife within the United States, 16 U.S.C. § 1538(a)(1)(B), or to "possess" an endangered or threatened species that has been unlawfully "taken," *id.* § 1538(a)(1)(D). The ESA defines "take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct." *Id.* § 1532(19).

To aid in enforcement of the Act, the ESA allows "any person" to commence a civil suit "to enjoin any person ... who is alleged to be in violation" of the "take" provision of the Act or of a regulation promulgated under the Act. *Id.* § 1540(g)(1)(A). The ESA has a fee-shifting provision applicable to such citizen suits:

> The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs

> of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

Id. § 1540(g)(4).

B. Factual Background

Defendants-Appellees are Special Memories Zoo, LLC, Dona Wheeler, and Gretchen Crowe (the SMZ defendants).[2] Special Memories Zoo was an unaccredited animal exhibition facility located in Greenville, Wisconsin, with a secondary location in Hortonville, Wisconsin. R. 1 ¶ 17. The zoo was owned and operated by Gene Wheeler and Dona Wheeler, and managed by Gretchen Crowe. *Id.* ¶¶ 8–10. The Greenville facility operated as a zoo, displaying hundreds of animals to the public for a fee. The Hortonville facility housed animals, particularly during the offseason. *Id.* ¶ 17. The animals included endangered or threatened species protected by the ESA, such as ring-tailed lemurs, red-ruffed lemurs, gray wolves, tigers, lions, a black leopard, Canada lynx, and Japanese or snow macaques, as well as non-endangered animals, such as bears, baboons, monkeys, a giraffe, and numerous birds. *Id.* ¶ 1.

[2] Gene Wheeler was also named as a defendant in the district court but was dismissed from the case following his death. R. 41.

Plaintiff-Appellant ALDF is a non-profit organization with over 200,000 members and supporters nationwide that advocates for the protection of animals, including those used for entertainment and exhibition purposes. *Id.* ¶ 5. An ALDF member visited Special Memories Zoo and observed animals kept in cramped and squalid enclosures that failed to meet each animal's basic, species-specific needs. *Id.* ¶ 6. She experienced significant distress as a result of viewing the animals in such conditions, but she intended to view them again if the conditions improved or if the animals were moved to an appropriate facility. *Id.* ¶¶ 109–10.

Some of the conditions at the zoo were horrific. For example, an elderly lemur huddled in a corner with his head down for nearly a week before dying. *Id.* ¶ 22. The dead body of a newborn lemur was observed in a capuchin cage being tossed around by a male capuchin. *Id.* Many of the animals lacked access to adequate space, shelter, stimulation, or clean water, and some of the food provided to the animals was rancid, infested with maggots, and contaminated by live or dead rodents. *Id.* ¶¶ 41, 69, 94–97; R. 31 ¶¶ 3–32. ALDF obtained evidence that some animals

in the zoo's care starved to death, and others froze to death. R. 31 ¶¶ 3–32.

On September 10, 2019, pursuant to the pre-suit notice requirement of the ESA, 16 U.S.C. § 1540(g)(2)(A)(i), ALDF sent a letter to the SMZ defendants explaining that ALDF had evidence of ESA violations at their facilities. R. 1–1. ALDF sent a supplemental notice on October 1, 2019. R. 1–2. In both notices, ALDF offered to assist the zoo in remedying the violations by arranging for transfer of the animals to appropriate facilities at ALDF's expense. On November 8, 2019, the SMZ defendants responded, denying the allegations and threatening a countersuit. R. 73-4 at 2.

On March 24, 2020, a fire broke out at the SMZ defendants' barn. About a dozen domestic and exotic animals burned to death in the barn, including cows, goats, a camel, two bobcats, antelope, and other animals. R. 30-1 at 4–6; R. 30-2 at 4, 7, 11–13. Investigators called to the scene discovered the bodies of dozens of animals who were not in the barn and had died before the fire, including goats, a cow, a pig, and a tortoise. Their carcasses were in varying stages of decomposition. *Id.* Defendant Crowe—whose job it was to care for the animals—admitted to the

investigators that she had not checked on some of the animals for "a few months." R. 30-1 at 6. Investigators observed that many animals were still alive, including several types of monkeys and various other wildlife species. R. 30-2 at 11. During the investigator's interview, Ms. Crowe explained that the SMZ defendants had been getting rid of the animals protected by the ESA "in an effort to get the ALDF to back off."[3] R. 36 at 2–3.

C. Procedural Background

On February 12, 2020, ALDF filed this action against the SMZ defendants under the citizen-suit provision of the ESA and various Wisconsin laws. ALDF alleged that the conditions of the endangered and threatened species' confinement injured, harmed, and harassed the animals in violation of the ESA. App. 1–2. As to animals not covered by the ESA, ALDF alleged that the manner in which they were kept amounted to a public nuisance actionable under Wisconsin law. *Id.* at 2. Among other things, ALDF sought an injunction to abate the unlawful

[3] Some of the animals were transported across state lines to a zoo in Michigan where they were exhibited to the public for compensation, in apparent violation of the ESA's prohibition on transporting ESA-protected animals in interstate commerce without a valid permit. *See* 16 U.S.C. § 1538(a)(1)(E); R. 55 at 4–5.

conditions and prevent their recurrence, and an award of attorneys' fees and costs. *Id.*

On March 18, 2020, the SMZ defendants filed an answer denying that they had violated the ESA or created a public nuisance. App. 2; R. 8. In their answer, the SMZ defendants asserted their intention to transfer to a third-party the endangered or threatened animals protected by the ESA. The SMZ defendants admitted that they remained in possession of a Canada lynx and macaques, which are protected species. R. 8 ¶ 64; *id.* at 24 ¶ 5. The SMZ defendants filed a letter as an exhibit to their answer, asserting that they intended to "rehome" most of the zoo's animals, and not just the endangered and threatened species. App. 3; R. 8-1 at 1.

In May 2020, the SMZ defendants moved for a protective order seeking to avoid having to respond to discovery, R. 14; ALDF moved for an order to prevent spoliation of evidence, R. 16; and the SMZ defendants filed a motion to dismiss on grounds of mootness and failure to state a claim, R. 24. The district court granted ALDF's motion, R. 23, and denied both of defendants' motions, R. 41. The court explained that it was "unable to determine on the record before it that this case is moot," *id.* at 1, and it ordered additional discovery on that issue. In particular, the

court noted that, although the SMZ defendants asserted that they no longer had any animals except for pet dogs, they had not established that the endangered or threatened animals had been "irrevocably transferred to third parties and that all interest/rights of the defendants over the animals" had been terminated. *Id*.

ALDF then served additional discovery contemplated by the court's order, but the SMZ defendants did not respond to it. Instead, on November 6, 2020, they filed a letter requesting that the court enter judgment against them. R. 44. The court construed the letter "as an Offer of Judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure and a Motion for a Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure absolving defendants of any further obligation to respond to Plaintiff's discovery demands." R. 45. The SMZ defendants clarified that they were requesting that the court enter a default judgment against them and that they "no longer intend[] to provide any discovery or continue to defend themselves in this litigation as to the allegations made by the Plaintiff." R. 46 at 2.

On January 8, 2021, ALDF filed a motion for entry of default judgment, R. 55, which the court granted, in relevant part, by order of

January 12, 2021, App. 7. The court found that the SMZ defendants "did violate the ESA and that the zoo they operated did constitute a nuisance." App. 8. Based on those findings, the court permanently enjoined the SMZ defendants "from 1) maintaining a public nuisance by confining endangered, threatened, and not ESA-listed animals in inhumane and unsafe conditions; and 2) possessing or exhibiting animals (other than the dogs that are their personal pets) and participating in any business or entity that possesses or exhibits animals." App. 9–10. Pursuant to the order, the court entered judgment on January 13, 2021. App. 11.

On January 27, 2021, ALDF filed a motion for attorneys' fees and costs, R. 61, which the district court denied in full, App. 1. The court held that a fee award was not appropriate because 1) there were unresolved issues regarding standing and mootness; 2) the lawsuit had not necessarily caused the SMZ defendants to cease operations; 3) a defendant's ability to pay bars a fee award if it would cause the closure of a small zoo; and 4) fees should be denied to well-funded organizations that are not dependent on fee awards. App. 5–6.

SUMMARY OF ARGUMENT

ALDF brought this case against the SMZ defendants to stop them from violating the ESA and maintaining a public nuisance by failing to provide adequate care to hundreds of animals. ALDF obtained an enforceable final judgment and a permanent injunction that abates the ESA violations and the public nuisance and prevents their recurrence. Pursuant to the fee-shifting provision of the ESA, ALDF was entitled to an award of attorneys' fees and costs because ALDF achieved success on its ESA claims and no special circumstances would render such an award unjust. Nevertheless, the district court denied an award in full based on four factors that, as a matter of law, are insufficient to deny an award of fees to a successful ESA plaintiff.

This Court should reverse the district court's decision, hold that ALDF is entitled to an award of attorneys' fees and costs, and remand the case for a determination of the amount of attorneys' fees and costs that should be awarded.

STANDARD OF REVIEW

This Court reviews a district court's determination as to an award of attorneys' fees for an abuse of discretion, and it reviews de novo a

district court's legal analysis and methodology. *Anderson v. AB Painting & Sandblasting, Inc.*, 578 F.3d 542, 544 (7th Cir. 2009); *see Vega v. Chicago Park Dist.*, 12 F.4th 696, 702 (7th Cir. 2021) ("We review a district court's determination of attorney's fees under a highly deferential abuse of discretion standard. To the extent the appeal challenges the district court's application of the 'correct legal framework', we review de novo." (citations omitted)). Here, review is de novo because the district court's decision rests on errors of law.

ARGUMENT

I. An ESA plaintiff who achieves "some success" is entitled to an award of attorneys' fees.

Congress enacts fee-shifting statutes to encourage plaintiffs to serve as private attorneys general to enforce important public policies. *See*, *e.g.*, *Fox v. Vice*, 563 U.S. 826, 833 (2011); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983); *Newman v. Piggie Park Enter., Inc.*, 390 U.S. 400, 402 (1968). Most fee-shifting statutes provide for an award of attorneys' fees to a "prevailing party." A plaintiff "prevails" by obtaining an enforceable judgment that materially alters the legal relationship of the parties. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604 (2001) (citations omitted). The Supreme

Court has made clear that certain environmental statutes that provide for fee-shifting "when appropriate" are subject to a more generous standard than "prevailing party" statutes. *See Ruckelshaus v. Sierra Club*, 463 U.S. 680, 682 n.1 (1983) (listing seventeen federal statutes that provide for fee-shifting "when appropriate").

The ESA is such a statute. Its fee-shifting provision provides for an award of attorneys' fees "whenever the court determines such award is appropriate." 16 U.S.C. § 1540(g)(4). The "when appropriate" standard "was meant to expand the class of parties eligible for fee awards from prevailing parties to *partially prevailing* parties—parties achieving *some success,* even if not major success." *Ruckelshaus*, 463 U.S. at 688 (emphasis in original). Further, unlike "prevailing party" statutes that—since the Supreme Court's decision in *Buckhannon*—condition eligibility for fees on a judicially sanctioned change in the legal relationship of the parties, "when appropriate" statutes allow for an award of fees under the catalyst theory. *See, e.g.*, *Loggerhead Turtle v. Cnty. Council of Volusia Cnty., Fla.*, 307 F.3d 1318, 1327 (11th Cir. 2002) ("We hold as a matter of law that the Supreme Court's decision in *Buckhannon* does not prohibit use of the catalyst test as a basis for awarding attorney's fees and costs

under the 'whenever ... appropriate' fee-shifting provision of the [ESA]."); *Sierra Club v. EPA*, 322 F.3d 718, 719 (D.C. Cir. 2003) (holding that the "when appropriate" fee-shifting provision of the Clean Air Act permits awards to catalyst parties).

Here, ALDF has easily met the ESA standard for an award of fees. The district court entered final judgment for ALDF. The court's order states that the SMZ defendants "did violate the ESA and that the zoo they operated did constitute a nuisance." App. 8. Accordingly, the court permanently enjoined the SMZ defendants from "confining endangered, threatened, and not ESA-listed animals in inhumane and unsafe conditions" and "possessing or exhibiting animals (other than the dogs that are their personal pets) and participating in any business or entity that possesses or exhibits animals." App. 9–10. The permanent injunction prohibits the SMZ defendants from engaging in the activities that resulted in the ESA violations that ALDF sued to stop, and it prevents any recurrence of the unlawful conduct challenged by ALDF in the lawsuit.

Because ALDF obtained a final judgment and a permanent injunction providing the principal redress sought in its complaint

(abatement of the SMZ defendants' unlawful conduct), it necessarily achieved "some success," which is all that is required for a fee award under the ESA. *Ruckelshaus*, 463 U.S. at 688. Indeed, even if the stricter standard set forth in *Buckhannon* applied, it would easily be met here because ALDF obtained an enforceable judgment and permanent injunction.

A fee award in this circumstance is exactly what Congress intended when it enacted the ESA's citizen-suit provision allowing for enforcement by private parties, 16 U.S.C. § 1540(g)(1), and the fee-shifting provision incentivizing private parties to bring enforcement actions, 16 U.S.C. § 1540(g)(4). *See Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180–81 (1978). Indeed, by obtaining a permanent injunction, ALDF received *all* the relief available under the citizen-suit provision. *See Nat'l Wildlife Fed'n v. Burlington N. R.R., Inc.*, 23 F.3d 1508, 1513 (9th Cir. 1994) ("The remedy available to private citizens under the ESA is injunctive relief.").

II. This case presents no special circumstances that would make an award of attorneys' fees unjust.

"A court's decision whether to award attorneys' fees, although committed to a district court's discretion by statute, is quite narrow once prevailing party status has been determined." *King v. Ill. State Bd. of*

Elections, 410 F.3d 404, 424 (7th Cir. 2005) (cleaned up). Indeed, "[t]his Circuit has held that 'a prevailing plaintiff should receive fees almost as a matter of course.'" *Lenard v. Argento*, 699 F.2d 874, 899 (7th Cir. 1983) (quoting *Davis v. Murphy*, 587 F.2d 362, 364 (7th Cir. 1978)). "The fees should only be denied when special circumstances would render an award unjust." *Id.* at 899 (citing *Dawson v. Pastrick*, 600 F.2d 70, 79 (7th Cir. 1979)).

Although this Court's cases addressing the "special circumstances" exception arose in the context of "prevailing party" statutes, the same standard should apply to "when appropriate" statutes, such as the ESA. Thus, in *Saint John's Organic Farm v. Gem County Mosquito Abatement District*, 574 F.3d 1054 (9th Cir. 2009), the Ninth Circuit relied on Supreme Court case law to hold that the "special circumstances" standard that has long been applied to fee-shifting provisions in civil rights statutes is also used to determine whether an award of attorneys' fees is "appropriate" within the meaning of the fee-shifting provision of the Clean Water Act, 33 U.S.C. § 1365(d), and other environmental statutes that use the "when appropriate" standard, including the ESA, 16 U.S.C. § 1540(g)(4). *Saint John's Organic Farm*, 574 F.3d at 1058–63

(citing *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 560 (1986); *Ruckelshaus*, 463 U.S. at 691; *Piggie Park*, 390 U.S. at 402).

Here, the district court denied ALDF's motion for attorneys' fees for four reasons. None constitute special circumstances sufficient to overcome the strong presumption that fees should be awarded to a successful ESA plaintiff.

A. Speculation that the outcome might have been different if the defendants had made different litigation decisions is not a special circumstance.

The district court acknowledged that it "granted some of the relief ALDF requested," App. 5, but it asserted that "serious questions … remained concerning ALDF's Article III standing and whether the case had become moot." *Id.* The court stated that it had left such issues unresolved because the SMZ defendants had abandoned their defense and acquiesced to entry of final judgment for ALDF. *Id.*

Speculation that ALDF might not have prevailed had the defendants made different litigation decisions is not a special circumstance. If it were, courts faced with a post-judgment fee motion, rather than focusing on the actual outcome of the case, would have to

engage in the exercise of considering what issues might have arisen and what the outcome might have been had the defendants made different choices. Such an exercise would eviscerate the threshold question whether the plaintiff prevailed, and it would run counter to the Supreme Court's repeated admonition that "determination of fees 'should not result in a second major litigation.'" *Fox*, 563 U.S. at 838 (quoting *Hensley*, 461 U.S. at 437).

Here, the SMZ defendants never contested ALDF's standing with respect to the ESA claims, and the parties were engaged in discovery on the issue of mootness when the SMZ defendants stopped participating, gave up, and consented to have judgment entered against them. They were free to file a motion to dismiss for lack of standing (which they never did), or to renew their motion to dismiss on grounds of mootness (which the district court had earlier denied), but they chose not to do so. The SMZ defendants must live with the consequences of their strategic decisions. *See Envtl. Prot. Info. Ctr. v. Pac. Lumber Co.*, 103 Fed. Appx. 627, 630 (9th Cir. 2004) (affirming district court's award of attorneys' fees to an ESA plaintiff that obtained a preliminary injunction before its action was mooted where defendant chose to forego an interlocutory

appeal). To deny attorneys' fees to ALDF based on speculation that the case might have ended differently had the SMZ defendants filed and prevailed on additional motions would be patently unfair, because ALDF had no opportunity to respond to those never-filed motions or to appeal from any adverse decision on them.

In any event, there is no basis to conclude that ALDF lacked standing. ALDF had associational standing to invoke the citizen suit provision of the ESA on behalf of a member who witnessed the horrific conditions under which the SMZ defendants possessed endangered and threatened species, and who would visit the animals again if the conditions of their confinement were brought into compliance with the ESA. Numerous courts have found Article III standing in such circumstances. *See*, *e.g.*, *Hill v. Coggins*, 867 F.3d 499, 505–06 (4th Cir. 2017); *Animal Legal Def. Fund v. Glickman*, 154 F.3d 426, 431–444 (D.C. Cir. 1998) (en banc); *Collins v. Tri-State Zoological Park of W. Md., Inc.*, 514 F. Supp. 3d 773 , 778–80 (D. Md. 2021); *Animal Legal Def. Fund v. Olympic Game Farm, Inc.*, 387 F. Supp. 3d 1202, 1206–07 (W.D. Wash. 2019).

There is also no basis to conclude that the case was moot. The SMZ defendants' decision to cease operations after ALDF filed suit fits squarely within the voluntary cessation doctrine. *See*, *e.g.*, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 n.1 (2017) ("Voluntary cessation of a challenged practice does not moot a case unless subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." (cleaned up)). Further, even if the case had become moot once the SMZ defendants disposed of all the animals, ALDF would still be entitled to attorneys' fees under the catalyst theory, which allows for the recovery of attorneys' fees when the lawsuit stops short of final judgment due to intervening mootness. Although the Supreme Court has rejected application of the catalyst theory for "prevailing party" statutes, it is an appropriate basis for a fee award under "when appropriate" statutes like the ESA. *Loggerhead Turtle*, 307 F.3d at 1327; *Sierra Club*, 322 F.3d at 719.

B. Lack of causation is not a special circumstance that precludes a fee award.

In denying ALDF a fee award, the district court opined that ALDF "played at most only a small role" and "did not contribute substantially" to the outcome of the case because the SMZ defendants stated from the

outset of the litigation that they intended to shut down their operations. App. 5. Even if the court's observation were correct—it is not—ALDF would still be entitled to a fee award for its success in obtaining an enforceable final judgment and a permanent injunction. The Supreme Court has made clear that a prevailing plaintiff's right to attorneys' fees does not rest on causal theories. *Buckhannon*, 532 U.S. at 605–07, 609. Moreover, ALDF obtained a permanent injunction that goes beyond abating the unlawful conduct: It prohibits the SMZ defendants from ever again possessing or exhibiting animals. Thus, ALDF's lawsuit can hardly be characterized as superfluous.

In any event, there is little doubt that ALDF's lawsuit drove the SMZ defendants' decision to stop confining ESA-protected animals in cruel and unlawful conditions. Defendant Crowe admitted that the SMZ defendants were getting rid of their endangered and threatened species "in an effort to get the ALDF to back off." R. 36 at 2–3. If the SMZ defendants wanted to try to avoid a fee award by arguing that they would have shut down even without having been sued, they could have tried to avoid judgment by renewing their motion to dismiss the case as moot following discovery on that issue, and then, if successful, contesting

ALDF's entitlement to fees under the catalyst theory. The SMZ defendants chose to abandon their defense rather than participate in discovery and renew their motion, and they must live with the consequences of their choice. *See Loggerhead Turtle*, 307 F.3d at 1327 (holding catalyst theory is applicable to fee-shifting provision of the ESA).

C. ALDF's lawsuit served the goals of the ESA, and a defendant's ability to pay is not a special circumstance.

The district court also stated that it was denying attorneys' fees to ALDF because there is a "question of whether closing the Zoo furthered the goals of the ESA." App. 5. The district court's "question" misapprehended ALDF's motivation in bringing the ESA claims. ALDF did not bring the ESA claims in order to close the zoo. It brought them to stop the SMZ defendants from violating the ESA.[4] Abating violations is an obvious goal of the Act, and that is what ALDF's lawsuit achieved.

The ESA protects covered animals from cruelty and mistreatment by prohibiting conditions of confinement that "harass" or "harm" the

[4] Counts I and II of the Complaint seek "an injunction prohibiting the Zoo from committing further violations of the ESA and to compel the Zoo to remedy current violations of the ESA." R. 1 ¶¶ 122, 126. To be sure, ALDF proposed rehoming the animals to appropriate facilities as part of its Prayer for Relief, R. 1 at 36 ¶ H, but abatement of the violations did not necessarily require closure of the zoo.

animals. *See* 16 U.S.C. § 1538(a)(1)(B) (prohibiting the "take" of covered species); § 1532(19) (defining "take" to include "harass" or "harm"). By enacting the ESA, "Congress intended endangered species to be afforded the highest of priorities," *Tenn. Valley Auth.*, 437 U.S. at 194, which is why "take" is defined "in the broadest possible terms" to "include every conceivable way in which a person can 'take' or attempt to 'take' any fish or wildlife." *Babbitt v. Sweet Home Ch. of Cmtys. for a Great Or.*, 515 U.S. 687, 704 (1995) (quoting legislative history). Congress included in the ESA a citizen-suit provision, 16 U.S.C. § 1540(g)(1), and a fee-shifting provision, *id.* § 1540(g)(4), to encourage private attorneys general like ALDF to bring civil suits to abate violations of the ESA. *Tenn. Valley Auth.*, 437 U.S. at 180–81.

That the SMZ defendants chose to shut down the zoo rather than make improvements to abate the unlawful conditions—or attempt to prove that the conditions were not unlawful—was their choice. Thus, to the extent that a prevailing plaintiff's failure to serve the purposes of a statute can constitute a special circumstance that justifies the denial of attorneys' fees, it does not apply to this case.

The district court relied heavily on the Eighth Circuit's decision in *Kuehl v. Sellner*, 887 F.3d 845 (8th Cir. 2018). In *Kuehl*, the plaintiffs prevailed in an ESA case regarding four tigers and three lemurs housed at the Cricket Hollow Zoo. *Kuehl v. Sellner*, 161 F. Supp. 3d 678, 709 (N.D. Iowa 2016). The district court found that the defendants' ESA violations were "pervasive, long-standing, and ongoing," *id.* at 718, and likely to continue because the defendants lacked the ability and resources to properly care for the ESA-protected animals. *Id.* Thus, the district court entered an injunction requiring the defendants to transfer the tigers and lemurs to appropriate facilities and prohibiting the defendants from acquiring additional animals covered by the ESA. *Id.* Nevertheless, the district court declined to award any attorneys' fees. *Kuehl v. Sellner*, 2016 WL 3582085, *3 (N.D. Iowa June 28, 2016).

The Eighth Circuit affirmed the district court's decision on the merits, finding that the conditions at the Cricket Hollow Zoo harassed and harmed the lemurs and tigers in violation of the ESA. 887 F.3d at 851–54. The court also affirmed the denial of attorneys' fees, finding that special circumstances existed because the amount of fees at issue and the defendants' inability to pay would have the collateral effect of forcing the

closure of the zoo, which the court found to be inconsistent with the purpose of the ESA. *Kuehl*, 887 F.3d at 855–56.

Kuehl is wrongly decided and conflicts with decisions of this Court. First, to the extent *Kuehl* suggests that the ESA does not protect covered animals at "small, privately owned zoos," *id.*, it is wrong. The ESA regulates the conduct of private parties who possess endangered and threatened species, and it protects covered animals wherever found. *See*, *e.g.*, 50 C.F.R. § 17.11(d) (explaining that, in general, the protections of the ESA "apply to all individuals of the species, wherever found"). In several cases, plaintiffs have succeeded on the merits of ESA claims against small zoos that rest on the same type of violations at issue here. *See*, *e.g.*, *People for the Ethical Treatment of Animals, Inc. v. Wildlife in Need & Wildlife in Deed, Inc.*, 476 F. Supp. 3d 765, 785 (S.D. Ind. 2020); *People for the Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of W. Md., Inc.*, 424 F. Supp. 3d 404, 408 (D. Md. 2019).[5]

[5] The district court in *Wildlife in Need* awarded the plaintiff $696,091 in attorneys' fees and expenses under the ESA, and $37,907 in costs. R. 75-1 at 6. In *Tri-State*, the Fourth Circuit awarded the plaintiff $57,949 under the ESA for fees on appeal. Order, No. 20-1010 (4th Cir. Oct. 13, 2021). The plaintiff's motion for fees in the district court is pending.

Second, the Eighth Circuit's holding that a defendant's ability to pay is a "special circumstance" conflicts with decisions of this Court that hold just the opposite. *See Lenard*, 699 F.2d at 900 ("The ability to pay a fee award has been held not to be a special circumstance that would bar an award."); *Entm't Concepts, Inc. v. Maciejewski*, 631 F.2d 497, 507 (7th Cir. 1980) ("Ability to pay is not a 'special circumstance' that will bar an award of attorneys' fees to a successful plaintiff.").

Finally, awarding fees in this case would not have the effect of closing a small zoo because the SMZ defendants have ceased operations and have been permanently enjoined from ever again "participating in any business or entity that possesses or exhibits animals." App. 11.

D. An organizational plaintiff's funding is not a special circumstance.

The final reason offered by the district court to justify its denial of fees is that ALDF is a well-funded organization that receives charitable donations and is not dependent on fee awards.[6] App. 6. This Court in

[6] The district court, relying on an audited financial statement available on ALDF's website, found that ALDF had "revenue of nearly $30,000,000 in 2020." App. 6. Although ALDF's annual revenue is irrelevant, the financial statement reviewed by the court covered an eighteen-month period, not a one-year period.

Sierra Club v. Khanjee Holding, Inc., 655 F.3d 699, 708–09 (7th Cir. 2011), however, held that such facts do *not* preclude an award of fees.

In *Sierra Club*, a public interest organization prevailed in a citizen suit to enforce the Clean Air Act, which includes a "when appropriate" fee-shifting provision. This Court explained that the citizen-suit and fee-shifting provisions of the Clean Air Act show that Congress wanted to encourage meritorious litigation to aid in enforcement of the Act and recognized that public interest organizations would conduct a great deal of that litigation. *Id.* at 708 (citing *Nat. Res. Def. Council, Inc. v. EPA*, 484 F. 2d 1331, 1338 n. 7 (1st Cir. 1973)). "An award of fees was therefore proper." *Id.* at 709.

CONCLUSION

This Court should reverse the district court's order denying ALDF's motion for attorneys' fees and costs, and remand the case for the district court to determine the amount of attorneys' fees and costs to award to ALDF, including those incurred on appeal.

January 14, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)(B)

I hereby certify that the foregoing brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) and Circuit Rule 32(c). As calculated by my word processing software (Microsoft Word for Office 365), the brief contains 5,204 words.

/s/ Michael T. Kirkpatrick
Michael T. Kirkpatrick

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2022, I am electronically filing this brief through the ECF system, which will send a notice of electronic filing to counsel for all parties in this case.

/s/ Michael T. Kirkpatrick
Michael T. Kirkpatrick

CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), I hereby certify that all materials required by Circuit Rule 30(a) and (b) are included in the attached appendix.

/s/ Michael T. Kirkpatrick
Michael T. Kirkpatrick

APPENDIX

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

v. Case No. 20-C-216

SPECIAL MEMORIES ZOO, LLC,
DONA WHEELER, and
GRETCHEN CROWE,

Defendants.

ORDER DENYING MOTION FOR ATTORNEYS' FEES AND COSTS

Plaintiff Animal Legal Defense Fund (ALDF) has moved for an award of actual attorneys' fees and costs associated with its lawsuit against a private zoo located in Greenville, Wisconsin, and its owners and operators, alleging violations of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531–44, and Wisconsin's public nuisance statute, Wis. Stat. § 823.01. For the reasons that follow, ALDF's motion will be denied.

BACKGROUND

On February 12, 2020, ALDF filed this lawsuit against Special Memories Zoo, LLC, the Zoo's owners Gene and Donna Wheeler, and its manager Gretchen Crowe, seeking injunctive and declaratory relief. The 37-page complaint alleged that Defendants were keeping members of endangered and threatened species, including lemurs, gray wolves, tigers, lions, a black leopard, Canadian lynx, and Japanese macaques, as well as scores of non-endangered animals, such as bears, baboons, monkeys, a giraffe, and numerous birds, "in squalid conditions that fail to meet each animal's basic, species-specific needs." Compl. ¶¶ 1–3, Dkt. No. 1. The conditions of the endangered and threatened species' confinement, according to the complaint, "injure," "harm,"

and "harass" the animals, as those terms are defined by the ESA, thereby subjecting Defendants to civil and criminal penalties under 16 U.S.C. § 1540(a)–(b). *Id.* ¶ 20. As to animals not covered by the ESA, the complaint alleged that the manner in which they were kept amounted to a public nuisance actionable under Wis. Stat. § 823.01. *Id.* ¶¶ 128–30. Asserting its own Article III associational standing and that of its members, ALDF requested that the Court (1) declare that the Zoo was illegally taking and possessing federally threatened and endangered species in violation of the ESA; (2) enjoin Defendants from engaging in operations that caused the "take" of threatened and endangered species, possessing or acquiring threatened and endangered species, or maintaining a public nuisance; (3) permanently enjoin Defendants from owning or possessing any animals; (4) appoint a special master to rehome the animals at Defendants' expense; and (5) award attorneys' fees to ALDF.

On March 18, 2020, Defendants filed an answer essentially denying ALDF's allegations that they had violated the ESA or created a public nuisance. Defendants asserted that many of the alleged violations in the complaint were based on habitats that animals enjoyed in the wild and were not applicable to animals born and raised in captivity such as those at a private zoo. Defendants alleged that under the Animal Welfare Act (AWA), 7 U.S.C. §§ 2131 *et seq.*, the United States Department of Agriculture "oversees and regulates the activities and facilities at Special Memories Zoo" and that they were in full compliance with USDA's regulations. Answer ¶¶ 28–30, Dkt. No. 8. As affirmative defenses, Defendants asserted that ALDF lacked standing to bring its nuisance claims against them, that the Court lacked subject-matter jurisdiction, and that ALDF's ESA claims were moot, since Defendants already had or were in the process of transferring to a third party the endangered or threatened animals. *Id.* at 24.

Notwithstanding the denials and affirmative defenses set forth in their answer, counsel for Defendants contemporaneously filed a letter explaining that Defendants did not intend to defend

against ALDF's action. Counsel noted that it was well-known within the "small zoo community" that family-owned private zoos could not prevail against ALDF. Even if Defendants were to prevail on some claims, counsel noted, "the ALDF would likely continue to pursue similar claims against my clients until legal expenses became too exorbitant to continue fighting or the ALDF was successful. Public records make it clear that this is how the ALDF operates." Dkt. No. 8-1.

In addition to financial constraints, counsel explained that the Wheelers' age and health condition made a vigorous defense impossible. Counsel explained that the Zoo was owned and operated by Gene Wheeler and his wife Donna. Gretchen Crowe, who was also named as a defendant, was the manager. Gene Wheeler, who was 81 years old and had been experiencing health complications for some time, had been diagnosed with leukemia on March 12, 2020, and was undergoing chemotherapy. For these reasons, counsel explained that his clients had made the difficult decision to "rehome" the Zoo's animals, in particular, the endangered and threatened animals upon which this Court's jurisdiction was based. As of that time, counsel claimed that they had transferred or were in the process of transferring to a third party all of the endangered or threatened animals. Although he acknowledged that ALDF might see Defendants' removal of the animals as "some sort of strategy," counsel assured ALDF and the Court that "the decision to cease possession of endangered and protected animals is a permanent one." By providing the Court with this information, counsel stated it was his hope that "the ALDF and the defendants can come to a rapid resolution so Mr. Wheeler can focus on his health." *Id.*

Defendants began rehoming the animals over ALDF's protests and requested a protective order against ALDF's requests for information about the origin of and rehoming locations of the animals. Dkt. No. 14. On ALDF's motion, the Court entered an order preventing spoilation of evidence and ordering Defendants to notify ALDF prior to relocating any animals and to obtain permission from the Court for any transfers not agreed to by ALDF. Dkt. No. 23. Defendants

then moved to dismiss the complaint as moot because all of the animals had allegedly already been rehomed and the relief sought was no longer available, Dkt. No. 24, which the Court denied, along with their protective order request, Dkt. No. 41.

After this setback, Defendants filed a letter that the Court construed as an offer of settlement, asking that the Court enter judgment against them under certain conditions. Dkt. No. 44. ALDF would not agree to Defendants' offer, and instead filed a motion for entry of default judgment, Dkt. No. 55, which was partially granted. The Court's order denied ALDF's requests for declaratory judgment and an injunction against Defendants' selling or transferring animal exhibition equipment but granted ALDF's request to enjoin Defendants from maintaining a public nuisance, possessing or exhibiting animals other than pet dogs, and participating in the possession and exhibition of animals. Dkt. No. 59. ALDF then filed a bill of costs, along with this motion for attorneys' fees and costs totaling $72,172.56. Dkt. No. 61.

ANALYSIS

Under the ESA, 16 U.S.C. § 1540(g)(4), the court "may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate." An award is appropriate when a plaintiff has (1) prevailed on the merits and (2) contributed substantially to the goals of the Act in doing so. *Abramowitz v. U.S. E.P.A.*, 832 F.2d 1071, 1079 (9th Cir. 1987) (citing *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 682–84, (1983)). The Supreme Court has explained that when individual citizens act as "private attorneys general" to enforce important Congressional objectives, successful plaintiffs "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 402 (1968); *see also Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 560 (1986).

This is not an appropriate case for an award of attorneys' fees. Although the Court granted some of the relief ALDF requested, it did so despite serious questions that remained concerning ALDF's Article III standing and whether the case had become moot. The Court's intent was to dispose of the case without requiring the expenditure of additional time and resources to resolve threshold issues to claims for relief that Defendants ultimately had no interest or desire to contest.

Even assuming ALDF was the prevailing party, it did not contribute substantially to the result. From the outset of the litigation, Defendants had made clear that they were in the process of shutting down the family-owned Zoo and transferring the animals to other zoos capable of caring for them. Gene Wheeler, who held the license from the U.S. Department of Agriculture to conduct activities regulated under the AWA, died on July 29, 2020, and was dismissed from the case. By that time, Defendants had sold their animals and stopped conducting activity regulated by the AWA. Dkt. No. 54-1 at 4. Based on these facts, the Court concludes that ALDF played at most only a small role in causing Special Memories Zoo to cease doing business.

There is also the question of whether closing the Zoo furthered the goals of the ESA. In *Kuehl v. Sellner*, 887 F.3d 845 (8th Cir. 2018), the ALDF and several of its members filed an almost identical lawsuit against a private zoo in Iowa. Following a four-day bench trial, the district court ordered the endangered species be transferred to an appropriate facility licensed by the USDA (ironically, the transferee was Special Memories Zoo), but denied the plaintiffs' motion for attorneys' fees. The Eighth Circuit affirmed the district court's order denying fees, finding that a fee award would be inconsistent with the ESA's purpose. The court noted that Congress had enacted the ESA to protect endangered species, whereas the plaintiffs had used the Act as a vehicle to close a private zoo. *Id.* at 856–57. In affirming the district court's decision, the court of appeals acknowledged the lower court's concern over saddling the private zoo owners, whose good faith

failure to properly care for the animals was due to financial hardship, with the $240,000 legal bill the plaintiffs submitted:

> We, too, are concerned with plaintiffs' attempt, assisted as it is by at least five of such organizations, as evidenced by their corporate-level-counsel amici briefs, to fashion the Act into a weapon to close small, privately owned zoos—a circumstance never discussed during the Act's passage. We hold that those circumstances justify the district court's decision to deny the motion for attorney fees.

Id. at 856. Here, where Defendants informed ALDF at the very outset that it had no intent to mount a defense and planned to close its facility, there is even less reason to award fees and impose such a heavy financial obligation on Ms. Wheeler and Ms. Crowe.

Finally, it is important to note that ALDF is not dependent upon fee awards in order to bring such lawsuits. It issues press releases about cases like this to generate donations by members of the public who help fund its work. Dkt. No. 73-6. ALDF is a large national organization that boasted revenue of nearly $30,000,000 in 2020 according to its audited financial statements. *See* https://aldf.org/wp-content/uploads/2020/10/ALDF-2020-Finanical-Statement-Final.pdf (last visited October 5, 2021). Only a small part of its income is derived from fee awards.

Taking all these matters into consideration, the Court concludes that an award of attorneys' fees and costs in this case would be inappropriate. ALDF's motion for attorneys' fees and costs (Dkt. No. 61) is therefore **DENIED**.

SO ORDERED at Green Bay, Wisconsin this 6th day of October, 2021.

s/ William C. Griesbach
William C. Griesbach
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

v. Case No. 20-C-216

SPECIAL MEMORIES ZOO LLC,
DONA WHEELER, and GRETCHEN CROWE,

Defendants.

ORDER GRANTING-IN-PART MOTION FOR DEFAULT JUDGMENT

Plaintiff Animal Legal Defense Fund (ALDF) filed this action against Defendants Special Memories Zoo, LLC, its owners Gene and Dona Wheeler, and its manager Gretchen Crowe. The complaint alleges violations of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531–1534, and various Wisconsin laws. The Complaint further alleges that the zoo constituted a public nuisance. The Court has jurisdiction over the action pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a). The case is currently before the Court on the motion of ALDF for default judgment. Default was previously entered by the Clerk after Defendants advised ALDF that they no longer intended to continue defending the action.

The zoo was owned and operated by Gene Wheeler and Dona Wheeler in Greenville, Wisconsin, with a second location in Hortonville, Wisconsin, and was managed by Gretchen Crowe. Gene Wheeler, who was severely ill when the action commenced, died in June and has since been dismissed. Dona Wheeler, his widow, and Ms. Crowe, have expressed no interest in continuing the zoo and ownership of all of the remaining animals has been transferred to others.

Based upon the remaining defendants' failure to defend, ALDF applied for and was granted entry of default. ALDF then filed a motion for a default judgment in which it seeks declaratory and injunctive relief, and attorneys' fees.

The Court will deny the request for declaratory relief. This is not to say that Defendants did not violate the ESA and that the zoo they operated did not constitute a nuisance. Defendants have defaulted as to those issues, and based on their default, the Court hereby finds that the defendants did violate the ESA and that the operation of the zoo constituted a nuisance. This finding provides the basis for the injunctive relief ALDF has requested. But a finding of fact is not the same as a declaratory judgment. The Court sees no reason to enter a further declaration under the circumstances of this case.

The purpose of declaratory judgments is to provide "a means by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached the stage at which either party may seek a coercive remedy [such as a judgment for damages or an injunction] and in cases in which the party who could seek a coercive remedy has not yet done so." 10B CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, *Federal Practice and Procedure*, § 2751, 455–56 (3d ed.1998) (citing *Hyatt Int'l Corp. v. Coco*, 302 F.3d 707, 711 (7th Cir. 2002)). This is not such a case. ALDF was entitled to seek a coercive remedy, i.e., injunctive relief, when it commenced this action, and has moved for such relief without opposition from the defendants. Under these circumstances, declaratory relief would serve no purpose.

The injunctive relief ALDF seeks includes an injunction prohibiting Defendants from selling or otherwise transferring for use in the animal exhibition industry the various cages and improvements on the zoo property. This request will be denied. There is no allegation that the cages and improvements to the zoo property are themselves contraband or cannot be used for a

lawful purpose. Defendants obviously have no further use of them. If they can be sold or otherwise disposed of, Defendants should be free to do so. Of course, once title is transferred, Defendants will have no control over how the cages or other improvements will be used. If their use constitutes a violation of the law, the appropriate authorities or, if it involves harm to animals, ALDF can seek legal recourse. However, the Court sees no justification for depriving Defendants of whatever ability they have to sell or otherwise lawfully dispose of the cages or unidentified improvements to the zoo property.

The remaining injunctive relief sought by ALDF will be granted. This includes an injunction enjoining Defendants, their officers, agents, servants, and employees from 1) maintaining a public nuisance by confining endangered, threatened, and not ESA-listed animals in inhumane and unsafe conditions; and 2) possessing or exhibiting animals (other than the dogs that are their personal pets) and participating in any business or entity that possesses or exhibits animals.

ALDF has also requested that the judgment include an award of reasonable attorneys' fees and the litigation costs of the action. The question of whether ALDF is entitled to attorneys' fees and costs, and the amount thereof, is reserved for further motion practice following the entry of judgment.

Accordingly, ALDF's Motion for Entry of Default Judgment and Order, Dkt. No. 55, is GRANTED-IN-PART. The Clerk is directed to enter judgment enjoining Defendants, their officers, agents, servants, and employees as follows: Defendants Special Memories Zoo, LLC, Dona Wheeler, and Gretchen Crowe are hereby permanently enjoined from 1) maintaining a public nuisance by confining endangered, threatened, and not ESA-listed animals in inhumane and unsafe conditions; and 2) possessing or exhibiting animals (other than the dogs that are their personal

pets) and participating in any business or entity that possesses or exhibits animals. Statutory costs and fees are also awarded. The question of actual attorney's fees and litigation costs will wait for a decision of the Court on motion of the plaintiff.

SO ORDERED at Green Bay, Wisconsin this 12th day of January, 2021.

s/ William C. Griesbach
William C. Griesbach
United States District Judge

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

EASTERN DISTRICT OF WISCONSIN

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

v.

SPECIAL MEMORIES ZOO, LLC,
DONA WHEELER, and
GRETCHEN CROWE,

Defendants.

DEFAULT JUDGMENT
IN A CIVIL CASE
Case No. 20-C-216

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict

☒ **Decision by Court.** This action came before the Court for consideration.

IT IS HEREBY ORDERED AND ADJUDGED that Defendants Special Memories Zoo, LLC, Dona Wheeler, and Gretchen Crowe are hereby permanently enjoined from 1) maintaining a public nuisance by confining endangered, threatened, and not ESA-listed animals in inhumane and unsafe conditions; and 2) possessing or exhibiting animals (other than the dogs that are their personal pets) and participating in any business or entity that possesses or exhibits animals. Statutory costs and fees are also awarded.

Approved: s/ William C. Griesbach
WILLIAM C. GRIESBACH
United States District Judge

Dated: January 13, 2021

GINA M. COLLETTI
Clerk of Court

s/ Terri Lynn Ficek
(By) Deputy Clerk