

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
BOSTON DIVISION**

FRIENDS OF RUTH & EMILY, INC.)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	
CITY OF NEW BEDFORD,)	
MASSACHUSETTS)	
Defendant)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. Since 2010, the Defendant City embarked on plans for the Buttonwood Park Zoo that were contrary to the will of its citizens. It attempted to use the two Asian elephants, Ruth and Emily, as placeholders while it acquired more elephants in the future. That plan was abandoned after many residents attended hearings and spoke against the plan as it would change the face of Buttonwood Park, in which the Zoo is located.

2. Plaintiff Friends have repeatedly requested that Ruth and Emily be allowed to retire at The Elephant Sanctuary in Hohenwald, TN, a 2,700-acre natural reserve that takes in sick, needy and elderly elephants. The Sanctuary allows elephants to be elephants, not exhibits.

3. Ruth and Emily are members of an endangered species. Their exhibit at the Zoo does nothing to teach people about endangered species, nor even about elephants in the wild, nor even conservation. Instead, people learn that elephants are disposable spectacles and toys for their

children that can be held in substandard and dangerous conditions that causes them to suffer just for human amusement and "selfies."

4. Because of the Zoo's practices and the cold New Bedford climate, Ruth and Emily have spent 20 years out of the past 30 years locked in the barn. They are put inside the barn by 4:30 p.m. and not allowed back outside until 7:30 to 8:30 a.m. the next day. When temperatures drop below 40 degrees Fahrenheit, the elephants must be monitored for hypothermia. During snow storms and frigid conditions, the elephants are kept inside, sometimes for days at a time.

5. By 2013, the Defendant City agreed to close the elephant exhibit after Ruth and Emily die, stating it is too cold a climate and too small a space to keep elephants. Citizens, including members of the Plaintiff Friends, asked, "Why wait?"

6. The Defendant City had no response, and ignored a (paper) petition signed by over 2,500 New Bedford residents and an online petition signed by over 75,000 people online.

7. As Ruth and Emily age, their needs are greater and are not being met by the Defendant City. They spend at least 16 hours a day every day standing, walking, sleeping and eating in their own considerable waste. As a result of their captivity at the Zoo, they suffer a slew of chronic foot problems, gastric problems, food deprivation, skin problems and other illnesses that may lead to premature death.

8. The Plaintiff Friends file this citizens' suit to enjoin the Defendant City from violating the ESA through keeping, confining, exhibiting and so injuring Ruth and Emily; and seeks declaratory and injunctive relief for the release of Ruth and Emily to The Elephant Sanctuary.

Complaint

9. Plaintiff, Friends of Ruth and Emily, Inc., a volunteer nonprofit organization and public charity, represented by its founder and president, Joyce Rowley, on behalf of the

organization (hereafter referred to as "Plaintiffs") file this complaint against Defendant City of New Bedford, MA owner of Buttonwood Park Zoo located on its city parkland (the "Zoo") pursuant to the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531-1544. Plaintiffs seek declaratory and injunctive relief against the Zoo for "taking" endangered Asian elephants Ruth and Emily, who are forced to reside at the Zoo against their will, in violation of Section 9 of the ESA, 16 U.S.C. § 1538(a)(1)(B),(D).

10. The Zoo engages in these unlawful activities through (1) keeping Ruth & Emily in a facility (the "Exhibit") that interferes with normal behavior; (2) confining them in a small enclosure and even smaller "barn" with bars and hard substrates that cause physical and psychological harm; (3) preventing them from having appropriate social interactions with each other and other elephants; (4) failing to protect Ruth from Emily's aggression which causes Ruth physical and psychological harm; (5) failing to provide adequate veterinary care which harms both Ruth and Emily; (6) failing to provide proper food and enrichment. Each of these conditions is an ongoing violation of Section 9 of the ESA, 16 U.S.C. Section 1538(a) et seq.

11. Plaintiffs provided the required statutory notice to the Zoo that the conditions that Ruth and Emily are kept violate the ESA. More than 60 days have passed since the notice was served on the Zoo and the violations have not been corrected.

12. A study may be underway to "privatize" the zoo. Plaintiffs enjoin the Defendant City from transferring any part of their property rights to Ruth and Emily from any such "privatization" as the funding for the study came well after the 60-day Notice to Sue and was likely an attempt to avoid Ruth's and Emily's transfer to a sanctuary by court decree.

Parties

13. Plaintiffs are the Friends of Ruth & Emily, Inc., ("Friends"), an incorporated nonprofit

organization and a public charity. It has dozens of members and 100 donors that support the effort to have Ruth and Emily removed from the Zoo.

14. Joyce Rowley is a member, founder and president of the Friends of Ruth & Emily, Inc. She has resided in New Bedford, MA for over five years and in the Zoo's market area for 11 years. She is also a member of the Buttonwood Park Zoological Society located at the Zoo. Ms. Rowley visited the Zoo on a near daily basis for the past three and one-half years to observe Ruth and Emily and communicates with them regularly. Prior to that she visited the Zoo on a weekly and monthly basis since 2010.

15. Ms. Rowley has developed an aesthetic, emotional, and spiritual relationship with Ruth and Emily over the years. Any enjoyment she has from befriending the elephants is greatly diminished by observing their ongoing suffering from their captivity.

16. Plaintiff Friends have demonstrated, protested, and handed out educational literature at the Zoo, the area outside of the Exhibit to inform and educate the public about Ruth and Emily's living conditions over the past five years.

17. Plaintiff Friends' members have voiced concerns through letters to the local newspapers, social media and email about Ruth's and Emily's health and living conditions at the Zoo.

18. Plaintiff Friends' members derive scientific, educational, spiritual and emotional benefits from observing elephants in the wild and in their native lands, but find that those benefits are greatly diminished observing Ruth and Emily at the Zoo.

19. Plaintiff Friends¹ were so concerned that they raised \$800 in 2015 to have "Ele-coats" handmade and shipped to the Zoo for Ruth and Emily to wear in the winter, when they are forced to stand on exhibit in snow, ice and freezing temperatures.

20. Plaintiff Friends were so concerned about the lack of medical care for Ruth that they raised approximately \$2,000 to bring a veterinarian with 40 years of elephant expertise to the Zoo in 2015. The Zoo refused to allow the veterinarian to examine Ruth and Emily or to visit the inside of the barn. Ruth continues to limp to this day without treatment.

21. The Plaintiffs' injuries will be redressed through the relief sought.

22. Defendant City of New Bedford, MA is the owner of the land that Buttonwood Park Zoo is situated on and the building and structures on the Exhibit. The Zoo is a department in the City, and has been for the entire period that elephants were kept there. The staff that work with Ruth and Emily are city employees, including the veterinarian(s).

23. In 1968, the City purchased Emily from the Southwick Zoo in Mendon, MA. In 1986, the U.S. Department of Agriculture (U.S.D.A.) Animal and Plant Health Inspection Services (APHIS) Animal Care Division transferred ownership of Ruth to the City of New Bedford.

24. In 2013, the Mayor realigned the Parks & Recreation Division and removed the Zoo from the Parks Commission's jurisdiction. The Zoo is now an independent department and directly under the Mayor's jurisdiction alone. On information and belief, the City is only responsible party for the unlawful acts and violations of the ESA described here.

Jurisdiction and Venue

25. This Court has jurisdiction over this case pursuant to the ESA 16 U.S.C. §1540(g) and 28 U.S.C. § 1331 (federal question).

26. Venue in this Court is proper pursuant to 16 U.S.C. § 1540(g)(3)(A) because the violations occurred and continue to occur in Bristol County, in this District. Further, venue is proper under 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claims occurred within this District and Division, and all parties reside in this District and

Division.

27. Plaintiff moves for a change of venue to the Worcester District, the next closest division. The City's mayor is a former federal prosecutor who worked in the U.S. District Courts, Boston Division for many years before becoming New Bedford's mayor in 2012. On information and belief, Plaintiffs will not have a fair and impartial review of this matter without the change of venue.

Factual Background

28. Affected species. Asian elephants (*Elephas maximus*) have been listed as endangered species under the ESA since 1976.⁴¹ Fed. Reg. 24062, 24066 (June 14, 1976). The Asian elephant was listed on Appendix I to the Convention on the International Trade in Endangered Species of Wild Fauna and Flora ("CITES") at the time that the Convention took effect on July 1, 1975. See CITES, Appendix I.

29. Asian elephants naturally inhabit tropical and subtropical broadleaf forest and scrub forest. Elephants are physically vigorous and non-territorial, routinely covering 20 miles or more foraging, exploring, socializing, and seeking out resources in a core home range of 1,500 to 11,000 sq. miles.

30. Asian elephants are extremely sociable, forming groups of related females that are led by the oldest female. Female Asian elephants are highly dependent upon relationships with other elephants, relationships that last a lifetime. That affinity for being with other elephants is a basic elephant need.

31. Elephants' feet are crucial to their daily health and welfare. Elephants' feet have thick pads on the bottom that, in nature, protect their feet from the rough surface of the savannah or jungle floor. Elephants' feet, legs and joints have evolved for extensive walking. Female

elephants move continuously for approximately 20 out of every 24 hours. Elephants' footpads and nails grow constantly, and are kept clean and healthy only through regular walking. Experts identify foot disease and arthritis in captive Asian elephants as a cause of premature death. If an elephant can't stand, its own weight crushes its internal organs.

32. An elephant's trunk is used to breathe, drink, eat, to vocalize in communication, and for defense and offense. The trunk is used to smell, an important behavior evolved to help elephants find water during dry seasons. The trunk is also used to "dust" an important means of removing insects and preventing insect bites. Dusting also provides skin protection from the sun, as elephants have thin skin that can sunburn from overexposure. An elephant's trunk is also used to pick up sticks to scratch itself and to "browse" or pull down branches in feeding. Its trunk is also used to assist itself when rising from a prone position and for balance when napping.

33. Behaviorally, an elephant's trunk is used to show affection to other elephants, to help its young, and to lift other elephants that have difficulty standing.

34. Elephants use their tails to communicate, remove insects from areas they cannot reach with their trunk or through dusting, and for balance.

35. Elephants' ears are used as thermoregulators, to help cool the elephant through a complex vascular system. The ears are also used to communicate with other elephants and are often used in greeting.

36. There are only two elephants at the Zoo, known as Ruth and Emily. It is well documented that they do not get along.

37. RUTH. Ruth is a 56-year-old Asian elephant that was captured in 1961. She is the smaller but older of the two elephants, weighing about 6,400 lbs. She may be the subspecies *Sumatran*. Ruth was taken to Benson's Wild Animal Farm in New Hampshire, whose records

indicate she was born in 1960, birth country unknown. At Benson's, Ruth was socialized with at least three other elephants: Liz and Queenie who were close in age to Ruth, and an older female Betsy.

38. In 1978, Ruth was sold to Brian Watson, who owned a menagerie in New Hampshire, and rented the animals out for parades, children's parties and commercials. In 1986, Watson was under investigation for several animal deaths at a farm he rented, and his smaller animals were confiscated by the U.S.D.A. Watson stole his animals back and put them and Ruth in a trailer. He later abandoned the trailer at a Danvers, MA refuse transfer station.

39. The U.S.D.A. confiscated Ruth and transferred her ownership to the Zoo on or about October 26, 1986.

40. Ruth suffers from chronic foot problems such as abscesses, cracked nails, and also from chronic arthritis in her feet and joints as a direct result of confinement in the barn for 16 hours each day, and for days at a time in the winter.

41. In the past, the Zoo used chains and shackles on Ruth's and Emily's legs to restrain her overnight. The chaining of elephants is known to cause "stereotypic" behavior among captive elephants or repetitive meaningless motion such as swaying, head bobbing, stepping backwards and forwards or circling. Elephants in the wild, and captive elephants that have not been chained, do not exhibit stereotypy.

42. Ruth exhibits abnormal stereotypical behaviors indicative of distress on a daily or near-daily basis, including rocking back and forth and swinging her head and trunk, holding the end of her trunk in her mouth, false eating (throwing her trunk at her mouth without food), swinging her head in circular patterns with her mouth open, and even has been observed eating while rocking and swaying. Ruth has been observed exhibiting stereotypy in the barn as well as

the yard.

43. The Zoo has claimed this is "anticipatory" behavior when she is expecting to be fed or given a treat. However, Ruth has been observed exhibiting stereotypy even while eating and after being fed and when there is nothing to anticipate.

44. Ruth's trunk is partially damaged and she cannot control the mid-section. The Zoo claims that it happened prior to her arrival, but a photograph of her in the New Bedford Standard Times at the time of her arrival shows her lifting and holding her trunk in a manner that she can no longer perform.

Ruth's inability to use her trunk normally makes it difficult for her to eat, drink, gather browse, and engage in other natural behavioral activities such as scratching herself or using a stick to do so, or to defend herself.

45. Ruth has been attacked repeatedly several times a year by her conspecific, Emily, who outweighs her by about 2,000 lbs. She is unable to defend herself with her trunk, and there is nowhere to escape in the enclosure. There have been 36 attacks by Emily against Ruth recorded by the Zoo between 2005 to 2015, when the Zoo stopped recording them. These included Emily hitting, biting, headbutting, shoving and pushing Ruth down. Often these attacks left Ruth with injuries such as broken skin and lacerations. In 2006, Emily bit 6-1/2" off Ruth's tail. As noted above, an elephant's tail prevents insect bites and helps an elephant balance and communicate.

46. There have been approximately four more attacks in the past two years witnessed and recorded by Friends The last two were on September 4, 2017 and September 6, 2017.

47. On January 2-3, 2014, Ruth suffered hypothermia and severe frostbite when the Zoo failed to lock the barn during a blizzard. It is unknown exactly how long she was outside, but it was believed to be at least for a 1-1/2 hour duration while temperatures were below zero, snow

was falling in a "white-out" condition, and there were gale force winds.

48. As a result, Ruth lost skin on her trunk, vulva, and both ears and in particular, lost of several inches of her left ear due to frostbite; developed thickening from frostbite scarring both ears, and had to undergo surgery to remove 5" of her tail due to frostbite and another 5" of her tail due osteomyelitis, a painful bone infection. The frostbite also led to multiple secondary infections causing lesions and boils on her ears, tail, vulva, and back legs for almost a year.

49. The Zoo was fined \$777 by the U.S.D.A. APHIS Animal Care Division for a direct violation of the Animal Welfare Act of 1966 et seq, for failing to shelter Ruth during the blizzard, and causing her injuries. (Exhibit 1.)

50. When acquired by the Zoo, their records note Ruth is "afraid of hooks," or bullhooks. The bullhook is a long stick with a metal hook at the end, resembling a fire poker. However, the Zoo's records indicate that they verbally and physically disciplined Ruth once each year from 2001 to 2012, and hit her with a bullhook repeatedly on her right front leg as part of the physical "discipline."

51. In May 2014, Ruth began limping on her right front leg. This severe condition was undiagnosed and left untreated until May 2015. She continues to limp, and was denied access to medication from October 2016 to August 2017, and again in September 2017. The Zoo also failed to take radiographs (x-rays) or thermal imaging that would help assess her medical condition. Other than sporadic laser therapy, Ruth received no medical treatment despite her obvious pain.

52. A USDA APHIS Animal Care inspection report dated November 2016 stated that the Zoo veterinarian was treating Ruth with non-steroidal anti-inflammatories. Ruth received one injection of ibuprofen on October 20, 2016 and nothing further until August 2017, a month after

a second complaint was filed with USDA. The records show ibuprofen was administered three and one-half times, and discontinued. Ruth continues to move slowly and to limp.

53. EMILY. Emily is a 53-year-old female Asian elephant who was captured in Thailand. She was acquired by the Zoo at age four from Southwick Zoo in 1968. From 1968 to 1983, she confined alone and was chained in a dirt yard for eight hours or more. The Zoo operated on a pellet basis to feed the animals, and when pellets ran out, zoogoers threw paper, plastic and lit cigarettes at Emily to watch her eat, according to a local newspaper article at the time.

54. In 1983, the U.S.D.A. APHIS Animal Care Division ordered the Zoo to send her to Baton Rouge Zoo due to the Zoo's lack of adequate shelter for her, and to construct a new barn for her. Emily was "trained" there by Allen Campbell, a notorious elephant trainer. News reports indicate Emily was sent to Baton Rouge for "discipline training." According to a prior zoo director, Campbell demonstrated that Emily had a "dominant" character by placing her in a small area with a larger African elephant with "two dozen zoo directors" watching. Emily charged the larger elephant. She was also attacked by a larger female Asian elephant, Savannah.

55. These conditions prevented Emily from learning social behaviors normal to elephants. As a result, when she returned to the Zoo in 1986, she began attacking Ruth after Ruth arrived. She now attacks Ruth over food, space, and a favored tree. Her most recent recorded attacks occurred on September 4, 2017 with Zoo staff present and on September 6, 2017.

56. At 8,200 pounds, Emily outweighs Ruth by about 2,000 pounds, and is taller than her. She is likely the subspecies *Indian* due to her larger size, and pigmentation on her trunk and ears. As noted earlier, Emily has attacked Ruth 40 times in the past 11 years. Emily has not voluntarily shown affiliative behavior towards Ruth in the 30 years they have been housed together.

57. Emily suffers from chronic arthritis in her feet and joints, and also suffers from

pressure sores on her face and haunches from being housed on concrete flooring for 26 years and hard substrate for the past five. Her toe nails have occasional cracks.

58. Emily exhibits abnormal stereotypical behavior, too. In winter months, she will back into the empty water feature and rock and sway her head and trunk for hours at a time. She has also been observed pacing in circles when not allowed into the barn and standing and swinging her head, trunk and body at the locked door of the barn. Emily now sways and circles her head from side to side in anger, as on September 6, 2017 before attacked Ruth.

B. The Zoo's Elephant Exhibit. The Exhibit is one of the smallest in the country at under 20,000 square feet of area accessible to Ruth and Emily. Up until recently, the 31-year-old concrete barn had a 1200 s.f. stall and an 800 s.f. stall separated by post and cable; a tool shed area, and a protected viewing area. Renovations to the interior divided the two stalls into smaller stalls and a center walkway, and an "elephant restraining device" or ERD. All of the living space is now enclosed by vertical bars.

59. The barn's concrete floor was partially removed and replaced with a sand and dirt floor in October 2012. The barn's dirt floor becomes compacted by the weight of two 4-ton elephants standing and walking on it. Additionally, it is hosed down, but it is unclear whether this removes the elephants' waste entirely. It is replaced with new material approximately every month except in the winter.

60. The exterior yard is comprised of hard-packed sand/dirt and a 100,000-gallon concrete pool in the middle of the exhibit. There are two open air timber shade structures, one on each side of the pool. They do not provide protection from rain, sleet, or snow, nor much actual shade.

61. The water feature doubles as a water supply when the elephants are gated off from

the area near the barn. This is done during the summer and high volume visitor days for the benefit of the zoogoers. The elephants must snake their trunks through a wooden pole fence to drink and draw water to cool off. There is no other water feature in the outer area to use for drinking or cooling.

62. There are no automatic drinking facilities in the barn. On off-hours, the elephants are watered by two large plastic tubs. There is a concrete water tank outside of the barn, but the elephants rarely use it. It freezes over in the winter.

63. The compacted sand/dirt throughout the exhibit and barn is harmful to Ruth and Emily's sensitive feet and cannot be kept clean. Both Ruth & Emily have had staphylococcus bacterial infections on their skin since the dirt floor was put in.

64. Zoo staff do not clean the elephant barn on off hours. Therefore, Ruth and Emily walk, stand, sleep and eat in their own waste for the 16 hour periods that the Zoo is closed. Elephants defecate up to 150 pounds of dung and urinate up to 40 gallons per day each. It is unclear whether the Zoo has equipment that can removed the fetid soil in the barn now that the vertical bars are in place due to the lack of space to turn around.

65. The Zoo has no equipment in the barn or the yard to lift either elephant if it goes "down." And elephant that can't stand dies under its own weight.

C. Alternatives: The Elephant Sanctuary

66. All zoos operate on an 8-hour day and leave animals alone overnight. Further, few zoos have the space, facilities, staff or experience to accept two older elephants with health and behavioral issues. Integration to a new herd¹ or environment is exceptionally hard in zoos, where space is limited and there is a push to put elephants on exhibit before they have fully acclimated to their new environment and other elephants--a process that may take months.

67. There are two existing U.S. sanctuaries licensed to house elephants--the Performing Animals Welfare Society (PAWS) Sanctuary in California and TES in Hohenwald, TN. A third is being developed in Georgia and is scheduled to be ready by next spring.

68. TES is the closest sanctuary and is able to take in Ruth and Emily. It is licensed by U.S.D.A. APHIS Animal Care Division and certified by the Global Federation of Sanctuaries Association. It is certified by the trade organization, the Association of Zoos & Aquariums (AZA).

69. TES has the facilities, staff and space to accomodate Ruth and Emily. They have a director of veterinary care, an associate veterinarian, registered veterinary technicians, a director of elephant husbandry, an elephant care manager, and 15 caregivers for their 10 elephants that reside on site; two caregivers stay overnight. Unlike the zoo, this staff is solely dedicated to the care of the elephants as there are no other animals on site.

70. The 15-year-old Asian elephant barn is 9,000 s.f. It has a concrete floor, individual radiant heaters in each stall, multiple access points to the outside, and automatic waterers. The barn is large and airy with good lighting throughout. It also has a hoist that runs down the middle of the building accessible to stalls on each side and which has a capacity to lift 12,000 lbs.

72. The outdoor facilities include smaller fenced yards of five to seven acres for new elephants, and 2,000 acres overall for the Asian herd. There is a warming/cooling shed that also allows for medical examinations in the field. There are also digital cameras throughout the habitat so caretakers can locate elephants.

74. TES has taken in over 27 elephants in the past 21 years of operation. All came from zoos and circuses and all had health and behavioral issues. TES currently has two Asian elephants resident: 69-year-old Shirley and 52-year-old Tarra. Three African elephants are

housed on 400 acres elsewhere at TES and have a separate barn. Four quarantined Asian elephants that were exposed to human tuberculosis prior to coming to TES, are housed on 300 acres on the property. They also have a separate barn and medical facilities. The quarantined elephants would not interact with Ruth and Emily.

75. The Asian habitat has ponds, a 14-acre lake, forests, and grasslands/meadows. It is in a remote location and closed to the public. However, digital videocameras are connected to the TES website for the public to view and enjoy the sight of elephants swimming in the lake, sleeping and grazing on a sunny hill, browsing on tree branches and otherwise engaging in natural behaviors at www.elephants.com.

Statutory and Regulatory Framework

76. In enacting the ESA, Congress declared that species in danger of extinction are of “esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.” 16 U.S.C. § 1531(a)(3). Accordingly, the purpose of the Act is to provide for the conservation of such endangered species. *Id.* § 1531(b).

77. An “endangered species” is “any species which is in danger of extinction.” *Id.* § 1532(6).

78. Section 9 of the ESA prohibits the “taking” of any endangered species, *Id.* § 1538(a)(1)(B), and also makes it unlawful “to possess” any endangered species that has been unlawfully “taken.” *Id.* § 1538(a)(1)(D).

79. The term “take” is broadly defined by the Act as “to harass, harm, pursue, hunt, shoot, wound, kill,¹ trap, capture, or collect, or to attempt to engage in any such conduct.” *Id.* § 1532(19). The term “harm” includes any act that “kills or injures” an endangered animal. 50 C.F.R. § 17.3. Subject to certain limited exceptions for captive animals, the term “harass”

includes an “intentional or negligent act or omission which creates the likelihood of injury [to an endangered animal] by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” *Id.*

80. Section 10 of the ESA authorizes the federal Fish and Wildlife Service to issue a permit for any act that is otherwise prohibited by Section 9, but only if such act is “for scientific purposes or to enhance the propagation or survival of the affected species.” 16 U.S.C. § 1539(a)(1)(A). On information and belief, the Zoo does not currently have a permit under Section 10 of the ESA to take or possess Ruth and Emily in the ways described here.

Plaintiffs re-allege and incorporate by reference the foregoing paragraphs as if fully set forth herein.

Plaintiffs are entitled to Injunctive Relief

81. Plaintiffs will suffer irreparable injury if the Zoo does not agree to transport Ruth and Emily to The Elephant Sanctuary in Tennessee. Plaintiffs do suffer, and will continue to suffer, actual injuries as the Exhibit causes substantial aesthetic, emotional, spiritual, and recreational harm to all Plaintiffs, and physical, psychological, and emotional harm to Ruth and Emily. This harm is irreparable because it cannot be measured, as Plaintiffs cannot be adequately compensated for the losses they are currently suffering.

82. There is no adequate remedy at law. The legal remedy is merely illusory in that simply declaring that the Zoo’s treatment of Ruth and Emily violates Section 9 of the ESA does not, in and of itself, remedy the injuries Plaintiffs have suffered and continue to suffer.

83. There is a substantial likelihood that Plaintiffs will succeed on the merits of this case. For the numerous reasons discussed below, the Zoo’s treatment of Ruth and Emily violates Section 9 of the ESA and must be prohibited through a declaratory judgment and injunctive

relief.

84. The injuries Plaintiffs face significantly outweigh any injury that the Zoo may sustain as a result of the injunctive relief. The Zoo has repeatedly claimed that there will be no more elephants at the Zoo after Ruth and Emily die and their exhibit will be replaced by rhinoceroses. In fact, the Zoo's Master Plan presented in August 2016 shows just that. During recent barn renovations, the bars were built into the floor to prevent rhinoceroses from digging under them.

85. Therefore, retaining Ruth and Emily while they suffer daily serves no real purpose. The physical, psychological, and emotional harm to Ruth and Emily overshadow the Zoo's self-interest in keeping them at the Zoo until the rhinoceroses arrive.

86. The beneficial effect of injunctive relief on non-parties, such as the 2,500 New Bedford residents who signed the petition and the 75,000+ people worldwide who signed a similar petition online but are not official members of the Friends will likewise substantially outweigh any injury to the Zoo.

87. The injunctive relief Plaintiffs seek will not adversely affect public policy or the public interest. Rather, enjoining the Zoo from continuing to violate the ESA with respect to its possession and treatment of Ruth and Emily will cause a desirable result. Supporting the ESA through prohibiting the Zoo from treating two members of an endangered species as disposable toys for people to gawk at despite their obvious agony and suffering will positively affect public policy and public interest in protecting endangered animals and promoting the "esthetic, ecological, educational, historical, recreational, and scientific value" that the ESA acknowledges such animals provide to the American people.

Count 1. The Zoo is harming and harassing Ruth and Emily in violation of the ESA by failing to provide adequate shelter.

88. The Zoo harasses Ruth and Emily by confining them in a facility that significantly disrupts their normal behavioral patterns, including sheltering. 50 C.F.R. S 17.3. Ruth and Emily are routinely kept or locked outside in inclement weather without access to shelter, and this causes them discomfort

89. Zoo harms Ruth and Emily by possessing and exhibiting them in a cold, snowy climate causing long periods of confinement, exhibiting them in the snow and ice, often without adequate shelter from inclement weather, which cause Ruth and Emily to suffer from, among other harms, chronic joint and ankle osteoarthritis, foot abscesses, and other skin and foot conditions. Ruth's hypothermia, frostbite and loss of skin, ear, and tail tissue was a direct result of this harm and a direct violation of the Animal Welfare Act for failing to protect Ruth from the effects of a blizzard in 2014.

90. This harassment is not a generally accepted husbandry practice that meets or exceeds minimum standards for facilities and care under the Animal Welfare Act. Animal Welfare Act regulations. See 9 CFR S 3.127 (Facilities, outdoor...(b) Shelter from inclement weather. Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided for all animals kept outdoors to afford them protection and to prevent discomfort to such animals."

Count II. The Zoo is harming and harassing Ruth and Emily in violation of the ESA by failing to provide adequate space.

91. The Zoo harms and harasses Ruth and Emily by confining them in a small exhibit

with inappropriately hard substrates that disrupt their normal behavioral patterns.

92. Ruth and Emily are confined in the 2,000 s.f. area of the concrete elephant barn stalls for 16 hours per day.

93. Ruth and Emily are unable to avoid contact with their own urine and feces when confined in the barn, leading to “urine scald,” a painful skin condition, and infections in their feet.

94. Ruth and Emily must also lie and sleep in their own waste, something that is unnatural to their species.

95. Ruth and Emily display neurotic repetitive behaviors--outward signs of trauma, stress and crushing boredom--as a result of the inadequate facility that the Zoo confines them in. The stereotypic behaviors exhibited by both elephants as described above are a result of the harm and harassment.

96. Emily's aggression towards Ruth as a result of the boredom and frustration of the small barn as documented in videotapes taken by the Zoo in 2007. This behavior is a direct result of the harm and harassment.

97. Ruth's injuries received from exposure to subzero temperatures, galeforce winds, sleet and snow on the night of January 2, 2014 described above, are a result of the harm and harassment.

98. The harassment described above is not a generally accepted husbandry practice that meets or exceeds minimum standards for facilities and care under the Animal Welfare Act. See 9 CFR S 3.125 (the facility in which the Zoo keeps Ruth and Emily be constructed of “such material and of such strength as appropriate for the animals involved. The indoor and outdoor housing facilities shall be structurally sound and shall be maintained in good repair to protect the

animals from injury and *to contain the animals.*”) And see 9 CFR S 3.128 (“Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. *Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.*” Emphasis added)

Count III: The Zoo is harming and harassing Ruth and Emily in violation of the ESA by failing to provide adequate social opportunities.

99. The Zoo harms and harasses Ruth and Emily by failing to provide them with opportunities to socialize with other elephants. Such socialization is an essential behavior pattern in and of itself, and lack of socialization opportunities for Ruth and Emily significantly impairs other essential behavioral patterns. Emily's life at the Zoo--first 14 years of social isolation, then the past 30 years with only one other elephant, Ruth, who is of a different subspecies and whom she has displayed repeated aggression towards, has deprived her of a normal social life, the center of an elephant's behavioral existence.

100. Although Ruth was socialized when she was young, after spending seven years alone with an owner who then abandoned her, she was put in with an elephant who is not of the same subspecies who constantly attacked her for the past 30 years, and attacked her 40 times just in the past 11 years. This dysfunctional pairing deprived her of a normal social life.

101. This harassment is not a generally accepted animal husbandry practice. The Zoo sought and received a variance from the Association of Zoos and Aquariums standards for appropriate elephant social groups due to Ruth's health conditions and Emily's aggression.¹ However, the Animal Welfare Act does not allow for “variances.” See 9 CFR 3.128.

Count IV: The Zoo is harming and harassing Ruth and Emily in violation of the ESA by

failing to prevent Ruth from being attacked.

102. The Zoo harms and harasses Ruth by failing to remove her from an unsafe condition. Despite dozens of attacks by Emily against Ruth recorded by zoo staff in the past ten years, the Zoo kept Emily in with Ruth while she was recuperating from surgical amputation of 10" of her tail between November 2014 through April 2015. Zoo staff witnessed Emily attack Ruth just five days after her tail was amputated in 2014, and that it caused her sutures to be loosened. Emily continued to go after Ruth's tail for the next six months, as witnessed by the Zoo veterinarian, who consulted with the head elephant keeper about ways to keep the wound clean in light of Emily's attacks.

103. An "independent panel review" of zoo industry consultants commissioned by the Zoo in August 2015 did not address whether Emily's attacks and Ruth's injuries met the AWA Part III Subpart F Section 1.133, Separation. In fact, the panel did not use *any* standard to make its review.

104. Emily continues to display aggression towards Ruth, and Ruth continues to experience discomfort and physical harm from it. In August and in November 2016, Emily headbutt Ruth causing her to bellow. Again as recently as September 4, 2017 Emily pushed and headbutt Ruth with Zoo staff present and again on September 6, 2017, Emily pushed Ruth and bit her haunches.

105. The harassment and harm described above is not a generally accepted animal husbandry practice that meets or exceeds Animal Welfare Act standards. See Animal Welfare Act, 9 CFR S 3.133 ("Separation. Animals housed in the same enclosure must be compatible. Animals shall not be housed near animals that interfere with their health or cause them discomfort.")

**Count V: The Zoo is harming and harassing Ruth and Emily in violation of the ESA
by inadequate veterinary care.**

106. The Zoo harms and harasses Ruth and Emily by failing to provide adequate veterinary care. In the past three years, the Zoo has had no on-site veterinarian for 18 months.

107. In January 2014, one week after Ruth was found in the blizzard, and despite Ruth's skin beginning to slough off her ears, tail and vulva, the Zoo veterinarian resigned to take a position in Hawai'i. As a result, when Ruth developed secondary infections of staphylococcus and streptococcus, the order for antibiotics was not properly filled or administered for over two weeks. The infections became entrenched, and she developed painful boils on the raw tissue of her ears, tail, vulva where her skin had sloughed off and on her legs, causing her grave harm. Secondary infections can be fatal to hypothermia patients.

108. The Zoo did not hire an on-site veterinarian until June 2014, during which time Ruth suffered an injury to her right front leg which went unnoticed and undiagnosed for over a year. The new veterinarian did not have previous professional employment at a zoo other than externships and failed to recognize the severity of Ruth's condition until May 2015, when she began administering the pain reliever banamine. That veterinarian then left in June 2015.

109. The Zoo was without a veterinarian, despite Ruth's ailments, until June 2016. The new veterinarian also did not have professional employment at a zoo other than externships. The Zoo's veterinary technician left in January 2016. Due to the lack of expertise on the part of veterinary staff, Ruth's and Emily's medical and behavioral health issues went unnoticed, undiagnosed and unreported.

110. After a gastrointestinal blockage in July 2016, Ruth was removed from the pain reliever that had helped alleviate the pain in her right front leg. Despite her obvious pain and two

complaints to the U.S.D.A., the current veterinarian did not prescribe any pain reliever. A consultant veterinarian recently put Ruth back on the pain reliever in August 2017, but she was not given the full dose and it was discontinued in September 2017.

111. The harassment and harm described above is not a generally accepted animal husbandry practice that meets or exceeds Animal Welfare Act standards. See Animal Welfare Act, 9 CFR S 2.40, Attending veterinarian care.

Count VI: The Zoo is harming and harassing Ruth and Emily in violation of the ESA caused by improper feeding and lack of enrichment.

112. The Zoo harms and harasses Ruth and Emily by feeding them almost exclusively pellets and dry hay and failing to provide them with adequate amounts of fresh or “wet” browse or similar enrichment, and by failing to have automatic watering facilities inside the barn for the 16 hour periods when they are confined.

113. The Zoo’s improper feeding and failure to provide related enrichment and water significantly impairs Ruth’s and Emily’s essential behaviors, including feeding and hydration, and negatively impacts their health. As a result of improper feeding, Ruth and Emily became obese and then were required to go on a diet, forcing them to go through periodic food deprivation and stomach disorders.

114. The food deprivation triggers Emily’s aggression, and on a near-daily basis Ruth is shoved, shouldered or intimidated away from her food. Oftentimes Ruth engages in stereotypic behaviors when this occurs.

115. The harassment described above is not a generally accepted animal husbandry practice that meets or exceeds Animal Welfare Act standards. See 9 C.F.R. 3.129(a) (“The food shall be wholesome, palatable, and free from contamination and of sufficient quantity and

nutritive value to maintain all animals in good health. The diet shall be prepared with consideration for the age, species, condition, size and type of the animal.”)

COUNT VII: Declaratory Judgment

116. Plaintiffs reallege and incorporate by reference the foregoing paragraphs as if fully set forth herein.

117. Plaintiffs bring this suit for declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Declaratory relief is available because this is a civil case of actual controversy for which this Court can declare rights and legal relations of the interested parties.

118. An actual controversy exists between Plaintiffs and the Zoo regarding whether the Zoo’s treatment of Plaintiffs Ruth and Emily violates Section 9 of the Endangered Species Act.

119. Plaintiffs seek a declaration that the Zoo’s current treatment of Ruth and Emily violates Section 9 of the Endangered Species Act.

Conditions Precedent

120. All conditions precedent to Plaintiffs’ claims for relief have been performed or have occurred.

Demand for Jury Trial

121. Plaintiffs, pursuant to Rule 38 of the Federal Rules of Civil Procedure, request a trial by jury of any issues so triable.

Prayer for Relief

The conditions under which the Zoo maintains Ruth and Emily as described in detail above, take Ruth and Emily in violation of Section 9 of the ESA, 16 U.S.C. §1538(a)(1)(B). These unlawful activities injure all Plaintiffs.

For the same reasons, the Zoo is currently in possession of two endangered Asian elephants who has been unlawfully taken, in violation of Section 9 of the ESA, 16 U.S.C. § 1538(a)(1)(D).

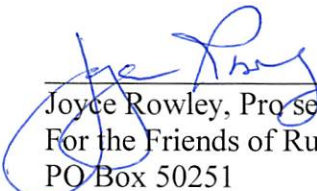
These unlawful activities also injure Plaintiffs as described above.

WHEREFORE, Plaintiffs request that this Court enter a judgment:

1. Declaring that the Zoo's treatment of Ruth and Emily violates Section 9 of the ESA;
2. Enjoining the Zoo from euthanizing either elephant until such time as an independent veterinarian from an elephant sanctuary has assessed their health;
3. Enjoining the Zoo from continuing to violate the ESA with respect to its treatment of Ruth and Emily;
4. Enjoining the Zoo from continuing to possess Ruth and Emily in violation of the ESA;
5. Enjoining the Zoo from transferring ownership to a private third party such as the Buttonwood Park Zoological Society;
6. Allowing a third party independent veterinarian from The Elephant Sanctuary or similar sanctuary to inspect Ruth and Emily to assess their health;
7. Awarding Plaintiffs their reasonable attorneys' fees and costs in this action pursuant to 16 U.S.C. §1540; and
8. Granting Plaintiffs such other and further relief as may be just and proper.

Date: September 20, 2017

Respectfully submitted



Joyce Rowley, Pro se
For the Friends of Ruth & Emily, Inc.
PO Box 50251
New Bedford, MA 02745