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**THIRTIETH ANNUAL STETSON INTERNATIONAL ENVIRONMENTAL MOOT  
COURT COMPETITION, 2025-2026**

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**THE INTERNATIONAL COURT OF JUSTICE**

**AT THE PEACE PALACE,**

**THE HAGUE, THE NETHERLANDS**



**THE CASE CONCERNING  
QUESTIONS RELATING TO PRIOR INFORMED CONSENT AND BENEFIT  
SHARING IN THE CONTEXT OF DE-EXTINCTION**

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**SOVEREIGN STATE OF ANECOYON**

***(APPLICANT)***

**V**

**SOVEREIGN STATE OF RIDUS**

***(RESPONDENT)***

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**MEMORIAL FOR THE APPLICANT**

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## LIST OF ABBREVIATIONS

CBD	Convention on Biological Diversity
CBD 16/2	CBD Decision 16/2
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
Clarifications	Clarifications to the 30th Annual Stetson International Environmental Moot Court Competition Record
COP	Conference of Parties
DSI	Digital Sequence Information
Guide to the CBD	A Guide to the Convention on Biological Diversity
Guide to the Nagoya Protocol on ABS	An Explanatory Guide to the Nagoya Protocol on Access and Benefit-sharing
Guide to the Cali Fund	Guide to the Cali Fund: Sharing the Benefits of Genetic Data from Nature
ICESCR	International Covenant on Economic, Social and Cultural Rights
ISIC	International Standard Industrial Classification of all Economic Activities
IUCN	International Union for Conservation of Nature
MAT	Mutually Agreed Terms
Nagoya Protocol	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization
OECD	Organisation for Economic Co-operation and Development
OED	Oxford English Dictionary
Record	30th Annual Stetson International Environmental Moot Court Competition Record
SAP	Sidney Animal Park
VCLT	Vienna Convention on the Law of Treaties

## **QUESTIONS PRESENTED**

### **I. QUESTIONS REGARDING PRIOR INFORMED CONSENT:**

- A. Whether Ridus's conduct complied with the prior informed consent provisions of the CBD and Nagoya Protocol, to the extent they are applicable; and
- B. Whether Anecoyon's refusal to consent based on its objections to de-extinction is counter to the CBD's objectives

### **II. QUESTIONS REGARDING BENEFIT SHARING:**

- A. Whether, as an initial matter, DSI used for de-extinction activities is "biotechnology" for purposes of the CBD and the Nagoya Protocol; and
- B. If so, whether SAP is a user of DSI on genetic resources for purposes of CBD 16/2 and whether SAP is engaged in commercial activity covered by a sector currently listed in CBD 16/2.

## **STATEMENT OF JURISDICTION**

On 14 July 2025, in accordance with Article 40 of the Statute of the ICJ, Anecoyon and Ridus (collectively known as “the Parties”) submitted to the ICJ by Special Agreement, questions relating to prior informed consent and benefit sharing in the context of de-extinction.

The Registrar of the ICJ has acknowledged receipt of the Special Agreement to the Parties on 28 July 2025, pursuant to Article 26 of the Rules of Court.

The Parties have accepted the jurisdiction of the ICJ. Accordingly, they request the Court to adjudge the merits of this case following the rules and principles of general international law, as well as any applicable treaties. The Parties further request this Court to determine the legal consequences, including the rights and obligations of the Parties arising from any judgement on the questions presented in this matter.

## STATEMENT OF FACTS

Following the dissolution of the Kingdom of Mammuthus, Anecoyon and Ridus emerged as independent neighboring States, with the Incilius River as a border.<sup>1</sup> Under the World Bank's classification system, Anecoyon is a lower-middle income country whereas Ridus is a high-income country.<sup>2</sup> Both States are parties to the CBD, Nagoya Protocol, VCLT, and CITES.<sup>3</sup>

At the heart of the dispute lies the Royal Panther, a transboundary species which once inhabited the regions which now comprises the territory of Anecoyon and Ridus but went extinct approximately 6,000 years ago.<sup>4</sup> Crucially, the best-preserved fossils of the Royal Panther are found in Anecoyon.<sup>5</sup> In 2009, Anecoyon loaned the best-preserved fossil of the Royal Panther to the National Museum of Ridus, a state organ, for a 20-year period "for the purposes of education and scientific research."<sup>6</sup> This was for the purposes of the newly opened wing devoted to the history of the Panthera in the Museum.<sup>7</sup>

In 2022, the National Museum of Ridus announced that it was commencing a de-extinction project to create the Royal Panther using DNA extracted from the fossil.<sup>8</sup> This resulted in an exchange of diplomatic notes between 27 September and 9 November 2022 with negotiations concluding in October 2023.<sup>9</sup> Anecoyon maintained that the provisions on PIC of the CBD and Nagoya Protocol were applicable and that the loan agreement did not constitute informed consent and requested for the return of the fossil in December 2023.<sup>10</sup> Anecoyon also passed

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<sup>1</sup> Record para. 2.

<sup>2</sup> Record paras. 3-4.

<sup>3</sup> Record paras. 8-11, 14.

<sup>4</sup> Record para. 7.

<sup>5</sup> Record para. 6.

<sup>6</sup> Record para. 15.

<sup>7</sup> Clarifications, Q 11.

<sup>8</sup> Record para. 16.

<sup>9</sup> Record paras. 18-24.

<sup>10</sup> Record para. 24.

national legislation prohibiting the use of genetic resources from its territory for the purposes of de-extinction.<sup>11</sup> Ridus, however, was of the position that PIC was unnecessary and that the Nagoya Protocol could not be applied retroactively. Ridus also maintained that, if there was any PIC requirement, the loan agreement satisfied any such requirement.<sup>12</sup>

Despite Anecoyon making its objections known, Ridus contracted with a private company, Salols Co., and proceeded with the de-extinction project.<sup>13</sup> As a result, on 19 December 2024, two panthers, named Ixchel and Itzamna were produced.<sup>14</sup> These panthers are currently housed in SAP which charges visitors an additional observation fee, on top of the entrance fee, generating a substantial and sustained revenue stream.<sup>15</sup>

Consequently, on 22 April 2025, Anecoyon's Minister of Foreign Affairs called on Ridus to require SAP's contribution to the Cali Fund – the multilateral mechanism for benefit sharing.<sup>16</sup> Ridus has also publicly endorsed the Cali Fund and stated that it would require commercial entities in its jurisdiction to contribute to the fund.<sup>17</sup> However, in response, Ridus asserted that the CBD and Nagoya Protocol do not apply to de-extinction projects.<sup>18</sup> Further, it stated that SAP is not required to contribute to the Cali Fund as it is merely providing habitat care for the two panthers and that zoos are generally non-commercial activities.<sup>19</sup> This is despite the fact that the SAP is one of the largest tourist destinations in Ridus generating annual sales of 130 million USD – of which 4 million USD are from panther observation fees.<sup>20</sup>

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<sup>11</sup> Record para. 24.

<sup>12</sup> Record para. 21.

<sup>13</sup> Record paras. 29-30.

<sup>14</sup> Record para. 32.

<sup>15</sup> Record para. 45.

<sup>16</sup> Record para. 38.

<sup>17</sup> Record para. 13.

<sup>18</sup> Record para. 39.

<sup>19</sup> Record paras. 40-41.

<sup>20</sup> Record para. 45.

Following the failure of further negotiations in 2025, Anecoyon and Ridus agreed to submit questions regarding prior informed consent and benefit sharing to the ICJ for resolution.<sup>21</sup> For the purposes of this dispute, Ridus has conceded that SAP meets the financial threshold for a commercial entity to be required to contribute to the Cali Fund.<sup>22</sup>

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<sup>21</sup> Record para. 44.

<sup>22</sup> Record para. 45.

## SUMMARY OF ARGUMENTS

### **I. Ridus has violated the requirements on PIC in the Nagoya Protocol and CBD**

Under Article 6 Nagoya Protocol, the PIC requirement is triggered at the point of utilization of the genetic resources and the PIC of Anecoyon is required as it is the “country providing genetic resources”. Consequently, Ridus’s failure to obtain the PIC of Anecoyon is a violation. Alternatively, CBD Article 15 imposes a separate PIC requirement. To this end, Ridus cannot argue that this requirement is satisfied as a de-extinction project does not fall within the meaning of “scientific research” under the loan agreement.

Furthermore, Article 15(2) CBD only requires States to provide access to genetic resources for environmentally sound uses – a subjective criterion to be determined by the providing State. In this regard, Anecoyon is of the position that such a de-extinction project is not environmentally sound as it risks animal welfare, has unknown ecological impacts, and raises moral hazards. This is circumscribed by requiring States not to impose restrictions counter to the CBD’s objectives – an objective limit. Anecoyon’s reasons for refusing to consent is not counter to the CBD’s objectives of conservation, the fair and equitable sharing of benefits, and the sustainable use of genetic resources.

### **II. SAP meets the requirements for benefit-sharing for the purposes of CBD 16/2**

Preliminarily, the ordinary meaning of “biotechnology” under the CBD and Nagoya Protocol includes DSI used for de-extinction. Additionally, an evolutionary interpretation of the term would result in the same conclusion. Next, SAP’s housing of the Royal Panthers falls within the meaning of “utilization of genetic resources” within the Nagoya Protocol and CBD. This makes it a user of DSI on genetic resources for the purposes of CBD 16/2, triggering benefit sharing obligations. SAP also falls within the “animal and plant breeding” sector for the

purposes of CBD 16/2. Furthermore, SAP's act of charging an observation fee for the Royal Panthers, on top of the entrance fees, together with its scale of operation indicates that it was engaged in a commercial activity for the purposes of CBD 16/2.

## ARGUMENTS

### **I. Ridus has violated the PIC requirements in the Nagoya Protocol and CBD**

Under the Nagoya Protocol and the CBD, access to genetic resources for their utilization requires the PIC of the country providing such resources.<sup>23</sup> Ridus accessed the Royal Panther fossil loaned to it for DNA extraction and DSI use without the PIC of Anecoyon. This constitutes a violation of the PIC requirements under both the Nagoya Protocol and the CBD. Ridus cannot argue that Anecoyon's refusal to consent to the de-extinction is counter to the objectives of the CBD as well.

#### ***A. Ridus failed to obtain PIC for the DNA extraction and DSI use of the Royal Panther fossil***

Ridus's acts of DNA extraction and DSI usage of the Royal Panther fossil are subject to the PIC of Anecoyon under the Nagoya Protocol and CBD.<sup>24</sup> Article 6 of the Nagoya Protocol states that a country accessing genetic resources for their utilization requires the PIC of the "Party providing such resources",<sup>25</sup> which was not obtained. Alternatively, Article 15 of the CBD imposes a separate PIC requirement on Ridus which cannot be satisfied by the loan agreement.<sup>26</sup>

#### ***(1) Article 6 of the Nagoya Protocol applies and was violated***

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<sup>23</sup> *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* art. 6(1), Oct. 29, 2010, UNEP/CBD/COP/DEC/X/1 [Hereinafter "Nagoya Protocol"]; *Convention on Biological Diversity*, art. 2, June 5, 1992, 1760 U.N.T.S. 79 [Hereinafter "CBD"].

<sup>24</sup> Nagoya Protocol art. 6(1); CBD art. 2.

<sup>25</sup> Nagoya Protocol art. 6(1).

<sup>26</sup> CBD art. 15.

Presently, Article 6 of the Nagoya Protocol applies as Anecoyon is the “country providing genetic resources” and Ridus’s DNA extraction and DSI use constitutes “utilization” of those resources. Furthermore, Article 11 of the Nagoya Protocol does not grant Ridus a claim over the Royal Panther fossil.

(a) Anecoyon is the “country providing genetic resources” within meaning of Article 2 of the CBD

A “country providing genetic resources”<sup>27</sup> includes a country supplying “genetic resources” collected from “*in-situ* sources, including populations of both wild and domesticated species”.<sup>28</sup> “Genetic resources” is defined as “genetic material of [...] value”<sup>29</sup> and only needs to contain “functional units of heredity”,<sup>30</sup> which the Royal Panther fossil constitutes as it contains DNA of the Royal Panther.<sup>31</sup> The term “*in-situ*” describes conditions where genetic resources “exist within ecosystems and natural habitats”.<sup>32</sup> Since the fossil was found in Anecoyon where the Royal Panther once inhabited,<sup>33</sup> the fossil was collected from an *in-situ* source.

Ridus is wrong to allege that the definition of “country providing genetic resources” in Article 2 of the CBD does not cover resources collected from extinct species.<sup>34</sup> While Article 2 of the CBD references “wild and domesticated” species, which appear to imply that the species

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<sup>27</sup> CBD art. 2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Record para. 16.

<sup>32</sup> CBD art. 2.

<sup>33</sup> Record para. 15.

<sup>34</sup> Record para. 21.

referred to are extant, the preposition “including” suggests that these extant species are but a type of *in-situ* source; nothing precludes extinct species from being an *in-situ* source.

(b) Ridus’s “utilization” of the fossil triggered the PIC requirement which was not satisfied. Ridus’s obligation to seek PIC from Anecoyon arose on 16 August 2022 when it intended to utilize the fossil for DNA extraction.<sup>35</sup> The syntax of “access [...] for their utilization” frames utilization as a corollary to obtaining access which should be collectively subject to the PIC requirement. Further, the formation of an intention to utilize the genetic resources at a “downstream stage of research” has been characterized as an “*a posteriori* quasi access situation”,<sup>36</sup> which suggests that the requirements which apply to access should also apply to utilization. Thus, even if utilization was not initially intended, the PIC requirement was triggered once the intention formed. Consequently, there is no issue of retroactivity as alleged by Ridus since utilization only occurred in 2022, after Ridus ratified the Nagoya Protocol in 2015.<sup>37</sup>

PIC requires the provider country to be informed in advance and in detail about the planned research or bioprospecting activity.<sup>38</sup> However, Ridus failed to notify Anecoyon that it would extract DNA from the fossil until after the fact.<sup>39</sup> Further, Anecoyon enacted national legislation prohibiting the use of the fossil in December 2023,<sup>40</sup> thus it clearly did not consent to any subsequent utilization for de-extinction purposes. Despite this, Ridus proceeded with

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<sup>35</sup> Record para. 16.

<sup>36</sup> Thomas Greiber et al., *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization: A Guide to the Nagoya Protocol* [Hereinafter “Guide to the Nagoya Protocol on ABS”] at pg. 97 (2012).

<sup>37</sup> Record para. 11.

<sup>38</sup> Guide to the Nagoya Protocol on ABS at pg. 95.

<sup>39</sup> Record para. 16.

<sup>40</sup> Record para. 24.

genome sequencing,<sup>41</sup> violating the PIC requirement. In any event, since Article 6(1) of the Nagoya Protocol subjects any access to “domestic access [...] legislation” in recognition of the providing Party’s “sovereign rights”,<sup>42</sup> Ridus had clearly contravened Article 6(1) by disregarding Anecoyon’s national legislation.

(c) Article 11 of the Nagoya Protocol does not grant Ridus a claim over the fossil

Ridus is wrong to allege that it has a claim to the DNA under Article 11 of the Nagoya Protocol because the Royal Panther was a transboundary species.<sup>43</sup> However, even if Royal Panther fossils have been found in both Anecoyon and Ridus”,<sup>44</sup> Anecoyon and Ridus do not have the “same” genetic resources. Two territories have the “same” genetic resources when the populations of a species in these territories share the “specific genetic or biochemical characteristics utilized”.<sup>45</sup> Here, the “best preserved specimens” are found in Anecoyon due to the differences in geologic and climatic conditions.<sup>46</sup>

Even if the resources are the same across both countries, Anecoyon is only obliged to endeavor to cooperate.<sup>47</sup> Article 11 of the Nagoya Protocol is a best-efforts clause that only encourages Parties to cooperate<sup>48</sup> and does not grant Ridus a right to Anecoyon’s genetic resource.

(2) *Alternatively, Article 15 of the CBD was violated*

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<sup>41</sup> Record para. 16.

<sup>42</sup> Nagoya Protocol art. 6(1).

<sup>43</sup> Record para. 21.

<sup>44</sup> Record para. 6.

<sup>45</sup> Guide to the Nagoya Protocol on ABS at pg. 134.

<sup>46</sup> Record para. 6.

<sup>47</sup> Nagoya Protocol art. 11.

<sup>48</sup> Guide to the Nagoya Protocol on ABS at pg. 134.

Even if Article 6 of the Nagoya Protocol does not apply, access to genetic resources is nonetheless subject to PIC of the providing Party under Article 15(5) of the CBD.<sup>49</sup> This access is conditioned by MATs.<sup>50</sup> While MATs are not defined in the CBD, “limitations on the possible use of the material” are recognized as “typical MATs”.<sup>51</sup> Since the statement that the fossil loan was “for the purposes of education and scientific research” scopes the use of the fossil, it is an MAT.

(a) A de-extinction project does not constitute “scientific research” within the loan agreement

Research refers to “the investigation and study of the genetic [...] composition of genetic resources in order to establish facts and reach conclusions.”<sup>52</sup> This is contrasted against “development”, which “includes the creation of innovations and practical applications”.<sup>53</sup> As the de-extinction project involves the creation of new proxy panther species, it falls under “development” rather than “research”.

Crucially, the COP made this distinction as early as 2002 when the Bonn Guidelines was adopted. The Bonn Guidelines recognizes “research” as a use of genetic resources that is distinct from “development”.<sup>54</sup> Therefore, by the time Anecoyon and Ridus agreed to limit use of the fossil to “scientific research” in 2009, they had intended to exclude “development” use

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<sup>49</sup> CBD art. 15(5).

<sup>50</sup> CBD art. 15(4).

<sup>51</sup> *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilization*, UNEP/CBD/COP/6/24, art. 44(b) (2002) [Hereinafter “*Bonn Guidelines*”].

<sup>52</sup> Guide to the Nagoya Protocol on ABS at pg. 65.

<sup>53</sup> *Id.*

<sup>54</sup> *Bonn Guidelines* paras. 36(f), (i).

cases such as the de-extinction project. Accordingly, by proceeding with the de-extinction project, Ridus did not adhere to the MATs established under the loan agreement.

(b) A “change in use” requires further and fresh PIC

Further, pursuant to Article 16(b)(v) read with Article 34 of the Bonn Guidelines, any change in the use of genetic resources requires new PIC and MATs.<sup>55</sup> The Bonn Guidelines, having been adopted by consensus at COP6 through Decision VI/24, constitute “subsequent agreement” within the meaning of Article 31(3)(a) of the VCLT.<sup>56</sup> Consequently, once Ridus exceeded the purposes for which consent was originally informed and granted, its continued use of the resources constituted a breach of Article 15(5) of the CBD.

***B. Anecoyon’s refusal to consent is not counter to the objectives of the CBD***

Article 15(2) of the CBD states that Parties are required to “facilitate access to genetic resources for environmentally sound uses...and not to impose restrictions that run counter to the objectives”<sup>57</sup> of the CBD. Whether a use is “environmentally sound” is a subjective element based on each State’s own definition.<sup>58</sup> Hence, Anecoyon is within its rights to refuse access to the Royal Panther fossil for uses which it deems to not be environmentally sound.

However, Anecoyon cannot impose restrictions on access to the fossil which is counter to the objectives of the CBD. Here, Anecoyon’s refusal is not counter to the objectives of the CBD

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<sup>55</sup> *Bonn Guidelines* paras. 16(b)(v) and 34.

<sup>56</sup> *Draft Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties*, U.N. Doc. A/71/10, concl. 11 (2016).

<sup>57</sup> CBD art. 15(2).

<sup>58</sup> Lyle Glowka et al., *A Guide to the Convention on Biological Diversity* 42 (1994) [Hereinafter “Guide to the CBD”].

i.e. the conservation of biological diversity, sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of its resources.<sup>59</sup>

(1) *Anecoyon's refusal is not counter to the conservation of biological diversity*

Ridus contends that Anecoyon has acted contrary to the CBD's objectives, as reflected in Articles 8, 9, and 12, by refusing to consent to the de-extinction project.<sup>60</sup> These articles describe how the conservation of biological diversity is carried out.<sup>61</sup> However, Ridus's de-extinction project is not a form of conservation contemplated by the CBD, i.e. *in-situ* and *ex-situ* conservation.<sup>62</sup>

First, Ridus's de-extinction project is not *in-situ* conservation. *In-situ* conservation is the conservation of threatened species and viable populations, i.e. extant species,<sup>63</sup> within their natural habitats.<sup>64</sup> However, de-extinction projects involve the creation of organisms through artificial processes like genetic engineering and genome sequencing outside of their natural habitats.<sup>65</sup>

Second, Ridus's de-extinction project is not *ex-situ* conservation. *Ex-situ* conservation involves preserving components of biological diversity outside their natural habitats.<sup>66</sup> The focus is on reintroduction of species into their natural environments, as *ex-situ* conservation is meant to complement *in-situ* conservation.<sup>67</sup> However, Ridus's de-extinction project was developed as

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<sup>59</sup> CBD art. 1.

<sup>60</sup> Record para. 25.

<sup>61</sup> CBD arts. 8, 9, 12.

<sup>62</sup> CBD preamble.

<sup>63</sup> Record para. 26; Guide to the CBD; IUCN Species Survival Commission, *IUCN Red List Categories and Criteria: Version 3.1* 4 (2d ed. 2012).

<sup>64</sup> CBD art. 2.

<sup>65</sup> Record paras. 28-31.

<sup>66</sup> CBD art. 2.

<sup>67</sup> CBD art. 9.

part of an eco-tourism initiative confined to protected areas.<sup>68</sup> The genetically engineered animals, Ixchel and Itzama, are exhibited at SAP – the country’s largest tourist destination.<sup>69</sup> These suggest that the project is not a genuine conservation effort intended to restore the Royal Panthers to their natural habitats.<sup>70</sup>

(2) *Anecoyon’s refusal is not counter to ensuring sustainable use of biological diversity*

Article 12 of the CBD also reflects the CBD’s objective of ensuring sustainable use of biological resources.<sup>71</sup> This includes preventing biological resources from being used in a manner and at a rate that causes their long-term decline.<sup>72</sup> De-extinction is one such use that threatens to deplete already scarce biological resources.

De-extinction projects are based on the false premise that extinct species can be resurrected.<sup>73</sup> The term “de-extinction” implies that extinct species can be resurrected in their original genetic, behavioral, and physiological form.<sup>74</sup> In reality, however, no scientific technique is capable of producing living specimens that are identical to the extinct species.<sup>75</sup> At best, revived animals may resemble the original species, but they inevitably still differ due to genetic, epigenetic, behavioral, physiological, and other variations.<sup>76</sup> As a result, de-extinction projects constitute

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<sup>68</sup> Record para. 36.

<sup>69</sup> Record para. 33.

<sup>70</sup> IUCN Species Survival Commission, *IUCN SSC Guiding Principles on Creating Proxies of Extinct Species for Conservation Benefit 2* (2016) [Hereinafter “*IUCN Guiding Principles on Creating Proxies*”].

<sup>71</sup> CBD art. 12.

<sup>72</sup> CBD art. 2.

<sup>73</sup> Record para. 26.

<sup>74</sup> *IUCN Guiding Principles on Creating Proxies*, at pg. 1.

<sup>75</sup> Erin Okuno, *Frankenstein’s Mammoth: Anticipating the Global Legal Framework For De-Extinction* 43 *Ecology L.Q.* 581, 592 (2016).

<sup>76</sup> *IUCN Guiding Principles on Creating Proxies*, at pg. 1.

an unnecessary drain of biological resources, as the resources are being expended on a pursuit that is ultimately fruitless.

(3) *Anecoyon's refusal is not counter to ensuring fair and equitable benefit sharing*

As part of the objective to share benefits arising from the use of genetic resources, Parties to the CBD are required to facilitate access to genetic resources found within their territory.<sup>77</sup> This is only if the intended use of the resource is environmentally sound,<sup>78</sup> which is to be subjectively determined by the country providing the genetic resource.<sup>79</sup> In Anecoyon's view, Ridus's de-extinction project cannot be considered environmentally sound. De-extinction poses risks to animal welfare, may lead to unknown ecological consequences, and poses moral hazards.<sup>80</sup>

First, genetic engineering procedures have been shown to frequently result in impaired health in animals – putting animal welfare at risk.<sup>81</sup> These risks are amplified in de-extinction activities, where the genetic composition of the extinct species is only partially understood.<sup>82</sup> Moreover, the process also poses substantial risks to gestational surrogates like the North American cougar used to incubate the Royal Panthers, as maternal-fetal incompatibility commonly arises when the fetus belongs to a different species.<sup>83</sup>

De-extinction projects could also result in unknown and potentially severe ecological risks.<sup>84</sup> Animals produced through such projects should be regarded as novel species because they have

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<sup>77</sup> CBD art. 1.

<sup>78</sup> CBD art. 5.

<sup>79</sup> Guide to CBD, at pg. 76.

<sup>80</sup> Record para. 18.

<sup>81</sup> Heather Browning, *Won't Somebody Please Think of the Mammoths? De-extinction and Animal Welfare* 31 Agric. Environ. Ethics. 785, 789 (2019).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*, at 790.

<sup>84</sup> IUCN *Guiding Principles on Creating Proxies*, at pgs. 8-9.

unfamiliar ecological traits and have no recent evolutionary history in the areas they are reintroduced in.<sup>85</sup> The release of these novel species risks harmful, unpredictable interactions with biotic and abiotic elements in the ecosystem.<sup>86</sup> Such risks significantly increase the likelihood of ecological imbalance and long-term biodiversity loss.<sup>87</sup>

De-extinction projects also introduce moral hazards that undermine genuine efforts to protect biological diversity.<sup>88</sup> Public support for conservation has long been driven by the understanding that extinction is irreversible, creating a sense of urgency to preserve threatened species.<sup>89</sup> The very prospect of de-extinction, however, risks weakening this imperative by promoting the misconception that species can easily be brought back.<sup>90</sup> Such an attitude may foster complacency and reduce public and political support for the protection of extant species.<sup>91</sup> Accordingly, Anecoyon's refusal to consent to the de-extinction project is not counter to the objectives of the CBD.

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<sup>85</sup> *Id.*, at pg. 8.

<sup>86</sup> *Id.*, at pg. 9.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Shlomo Cohen, *The Ethics of De-Extinction* 8 *NanoEthics* 165, 168 (2014).

<sup>90</sup> *Id.*

<sup>91</sup> *IUCN Guiding Principles on Creating Proxies*, at pg. 8.

## II. SAP meets the requirements for benefit sharing for the purposes of CBD 16/2

Ridus cannot rely on definitional technicalities to circumvent benefit-sharing obligations under the CBD and Nagoya Protocol. First, the ordinary meaning of “biotechnology” includes DSI used for de-extinction for the purposes of these international instruments. Second, SAP is a user of DSI on genetic resources, and it was engaged in a commercial activity covered by a sector listed in the CBD 16/2.

### A. *The ordinary meaning of “biotechnology” includes DSI used for de-extinction activities*

In interpreting the term “biotechnology”, regard must be had to the VCLT.<sup>92</sup> The term shall be interpreted in good faith in accordance with the ordinary meaning to be given to it in its context and under the object and purpose of the treaty as per Article 31 of the VCLT.<sup>93</sup> Recourse may be had to supplementary means of interpretation under Article 32 of the VCLT to confirm such meaning.<sup>94</sup>

Applying this framework, DSI used for de-extinction meets all the requirements to be considered “biotechnology”. Alternatively, an evolutionary interpretation of “biotechnology” should include DSI used for de-extinction activities.

#### (1) *All three requirements are met for DSI used for de-extinction to be “biotechnology”*

The definition of “biotechnology” in the CBD and Nagoya Protocol sets out three cumulative requirements:<sup>95</sup> (a) a technological application that uses biological systems, living organisms,

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<sup>92</sup> *Vienna Convention on the Law of Treaties*, May 23, 1969, 1155 U.N.T.S. 331 [Hereinafter “VCLT”].

<sup>93</sup> VCLT art. 31.

<sup>94</sup> VCLT art. 32.

<sup>95</sup> CBD art. 2; Nagoya Protocol art. 2.

or derivatives thereof to; (b) make or modify products or processes; (c) for specific use. DSI used for de-extinction meets all these requirements.

(a) DSI is a “technological application that uses biological systems or derivatives thereof”

The Guide to the Cali Fund defines DSI as the “digital representation of genetic material, such as DNA and RNA sequences.”<sup>96</sup> It further states that DSI “is crucial for research across various fields..., and biotechnology.”<sup>97</sup> CBD 16/2 also considers the benefit-sharing obligations arising from the use of DSI on genetic resources.<sup>98</sup> Thus, simply on the plain and ordinary meaning, DSI would satisfy the first requirement to be considered “biotechnology”.

Ridus may argue that DSI is merely digital information detached from the original genetic resource and therefore falls outside “biological systems or derivatives thereof”. However, such an argument overlooks the object and purpose of the treaties.<sup>99</sup> One of the objectives of the CBD and Nagoya Protocol is to ensure equitable sharing of benefits arising from the utilization of genetic resources in all their forms.<sup>100</sup> A restrictive interpretation which excludes DSI would undermine this purpose.<sup>101</sup> It would allow for the misappropriation and deprivation of provider States of their rightful share of benefits based solely on a distinction between digital and physical forms of information.<sup>102</sup>

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<sup>96</sup> Convention on Biological Diversity Secretariat, *Guide to the Cali Fund* (n.d.) [Hereinafter “Guide to the Cali Fund”]; Record Footnote 1.

<sup>97</sup> Guide to the Cali Fund.

<sup>98</sup> Convention on Biological Diversity Conference of the Parties, *Decision 16/2* (2024) [Hereinafter “CBD 16/2”].

<sup>99</sup> VCLT art. 31(1).

<sup>100</sup> CBD art. 1; Nagoya Protocol art. 1.

<sup>101</sup> Frank Irikefe Akpoviri, Syarul Nataqain Baharum & Zinatul Ashiqin Zainol, *Digital Sequence Information and the Access and Benefit-Sharing Obligation of the Convention on Biological Diversity*, 17 *NanoEthics* (1) 1–33 (2023).

<sup>102</sup> *Id.*

(b) Animals created from de-extinction projects are “products” for the purpose of “biotechnology”

Ridus wrongly objects that the Royal Panthers produced from the de-extinction project cannot be classified as “products” given that they are living animals.<sup>103</sup> The OED defines “product” as “a thing produced during a natural, chemical or industrial process”<sup>104</sup> which does not distinguish between living or non-living things.

First, the CBD refers to living modified organisms “resulting from” biotechnology.<sup>105</sup> The Guide to the CBD further acknowledges that biotechnology can be applied to “impregnate animals with embryos from other valuable animals, isolate genes from one organism and insert them into another”.<sup>106</sup> Such a process would result in a living animal as the end product. Similarly, Salols Co. utilized the DSI and CRISPR technologies to implant an embryo resembling the traits of the Royal Panther in a North American cougar.<sup>107</sup> Consequently, the resulting animals created from this process should be considered products.

(c) Lastly, de-extinction activities fall within the ambit of “specific use”

“Utilization” is an alternative form of the word “use”.<sup>108</sup> “Utilization of genetic resources” is in turn defined as conducting “research and development [...] through the application of biotechnology...” in Article 2 of the Nagoya Protocol.<sup>109</sup> De-extinction constitutes such “research”<sup>110</sup> and “development”<sup>111</sup>. As de-extinction involves collecting genetic information

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<sup>103</sup> Record para. 39.

<sup>104</sup> OED, definition of “product”.

<sup>105</sup> CBD art. 8.

<sup>106</sup> *Id.*

<sup>107</sup> Record para. 31.

<sup>108</sup> Guide to the Nagoya Protocol on ABS at pg. 65.

<sup>109</sup> Nagoya Protocol art. 2.

<sup>110</sup> Guide to the Nagoya Protocol on ABS at pg. 65.

<sup>111</sup> *Id.*

from the Royal Panther fossil and representing it as DSI, before using the constructed DSI to create new proxy species, Ridus's de-extinction project clearly constitutes research and development.

Crucially, parties to the Nagoya Protocol intended for "specific use" to comprehensively cover "all possible uses".<sup>112</sup> This includes uses emerging from new scientific advancements.<sup>113</sup> Accordingly, de-extinction is still caught within the wide ambit of "specific use" given its broad application.

(2) *Alternatively, an evolutionary interpretation of "biotechnology" would include DSI used for de-extinction activities*

Evolutionary interpretation is crucial to ensure that environmental treaty terms remain relevant and effective with the advancements in science.<sup>114</sup> This interpretive approach was applied in *Gabčíkovo-Nagymaros*.<sup>115</sup> For this approach to apply, two conditions must be satisfied: (a) the term is defined broadly; and (b) the parties must have intended for the term to have an evolutionary meaning.<sup>116</sup> Presently, both requirements are satisfied and a dynamic reading of "biotechnology" includes DSI used for de-extinction.

(a) Both requirements for evolutionary interpretation to apply are satisfied

First, both the CBD and the Nagoya Protocol define "biotechnology" using broad terms such as "technological applications" and "products or processes". Second, both instruments

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 I.C.J. 7 (Sept. 25) [Hereinafter "*Gabčíkovo-Nagymaros*"], Oliver Dörr & Kirsten Schmalenbach, eds., *Vienna Convention on the Law of Treaties: A Commentary* (2d ed. 2018) at pg. 572 [Hereinafter "*Dörr*"].

<sup>115</sup> *Gabčíkovo-Nagymaros*.

<sup>116</sup> *Id.*

establish that the terms are meant to be interpreted dynamically and in accordance with scientific advancements.<sup>117</sup> In the preamble to the CBD, signatory parties have acknowledged the “the general lack of information and knowledge regarding biological diversity”.<sup>118</sup> Hence, they cannot have expected static definitions to apply to the treaty terms. Additionally, it is also stated that the terms are to be interpreted dynamically with changes in science in the Guide to the Nagoya Protocol on ABS.<sup>119</sup> Such intention is also supported given the broad terms used and the environmental nature of the treaty.<sup>120</sup>

(b) An evolutionary interpretation of “biotechnology” includes DSI used for de-extinction

In interpreting “biotechnology” dynamically, the term is not limited by what parties had intended or contemplated at the time of signing the CBD and Nagoya Protocol. As such, it becomes irrelevant that the Nagoya Protocol did not consider de-extinction activities as Ridus claims.<sup>121</sup> The inquiry is whether, taking a dynamic approach, DSI used for de-extinction activities can be considered “biotechnology”. To exclude DSI on the basis that such technology was not envisioned at the time the treaty’s entry into force would create a lacuna in the benefit-sharing regime in the Nagoya Protocol.<sup>122</sup> Additionally, several jurisdictions have also legislated that DSI use carries with it the obligation of equitable benefit-sharing.<sup>123</sup> Therefore, DSI used for de-extinction activities must fall within “biotechnology” when adopting an evolutionary interpretation.

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<sup>117</sup> Guide to the CBD; Guide to the Nagoya Protocol on ABS.

<sup>118</sup> CBD preamble.

<sup>119</sup> Guide to Nagoya Protocol on ABS.

<sup>120</sup> *Dörr* at pg. 572.

<sup>121</sup> Record para. 39.

<sup>122</sup> Frank Irikefe Akpoviri, Syarul Nataqain Baharum & Zinatul Ashiqin Zainol, *Digital Sequence Information and the Access and Benefit-Sharing Obligation of the Convention on Biological Diversity*, 17 *NanoEthics* (1) 1–33 (2023).

<sup>123</sup> *Id.*

**B. SAP meets the conditions for benefit sharing for the purposes of CBD 16/2**

Ridus wrongly asserts that SAP is merely providing habitat and care for the Royal Panthers and is not a user of DSI on genetic resources. Furthermore, it falls within a sector listed under Enclosure I in CBD 16/2. SAP's activities are also commercial in nature. As such, SAP satisfies the conditions for the sharing of monetary benefits to the Cali Fund for the purposes of CBD 16/2.

*(1) SAP is a user of DSI on genetic resources*

For the purposes of CBD 16/2, any user of DSI on genetic resources must be understood as engaging in the “utilization of genetic resources” within the meaning of the CBD and the Nagoya Protocol. This interpretation is warranted because CBD 16/2 serves to operationalize the multilateral benefit-sharing mechanism envisaged under these instruments.<sup>124</sup> By linking DSI use to “utilization” as defined in the treaties, which includes applications of biotechnology,<sup>125</sup> CBD 16/2 ensures that benefit-sharing obligations are triggered in accordance with the CBD and Nagoya Protocol frameworks.

Furthermore, the Group of Legal and Technical Experts on Concepts, Terms, Working Definitions and Sectoral Approaches established a non-exhaustive list of uses of genetic resources.<sup>126</sup> While this list was not included in the Nagoya Protocol, as the term “utilization” was deemed to be sufficiently broad,<sup>127</sup> it is instructive of what parties believed was already covered. In this regard, the list includes, *inter alia*, the “breeding and selection; propagation or

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<sup>124</sup> Record para. 13.

<sup>125</sup> Nagoya Protocol art. 2.

<sup>126</sup> Group of Legal & Technical Experts on Concepts, Terms, Working Definitions & Sectoral Approaches, Report of the Meeting, U.N. Doc. UNEP/CBD/WG-ABS/7/2 (Dec. 12, 2008).

<sup>127</sup> Guide to the Nagoya Protocol on ABS at pg2. 63-64.

cultivation in the form received”.<sup>128</sup> This includes the breeding and propagation of animals resulting from the use of DSI on genetic resources. Presently, SAP is housing the Royal Panthers to raise and propagate the second and succeeding generations of Royal Panthers.<sup>129</sup> This falls within what the parties contemplated by using term “utilization of genetic resources”. Thus, SAP is a user of DSI on genetic resources since, as earlier established, DSI used for de-extinction is biotechnology.

(2) *SAP falls within the indicative sectors of CBD 16/2*

Besides being a user of DSI on genetic resources, SAP must also fall within a sector which directly or indirectly benefits from the use of the DSI. In this regard, SAP falls within the “animal and plant breeding” sector listed in CBD 16/2. SAP runs a captive breeding program for transboundary species that migrate between Anecoyon and Ridus,<sup>130</sup> which is properly classified as animal breeding.<sup>131</sup> This includes but is not limited to livestock rearing.<sup>132</sup>

Ridus cannot argue that SAP does not fall within this sector simply because it is classified as a “Botanical and Zoological Gardens” under ISIC. In any case, even under ISIC, SAP should be classified under the “animal production” group which relates to the “animal and plant breeding” sector in CBD 16/2.

(a) The ISIC classifications and the sectors in CBD 16/2 are not mutually exclusive

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<sup>128</sup> Group of Legal & Technical Experts on Concepts, Terms, Working Definitions & Sectoral Approaches, Report of the Meeting, U.N. Doc. UNEP/CBD/WG-ABS/7/2 (Dec. 12, 2008).

<sup>129</sup> Record para. 34.

<sup>130</sup> Record para. 35.

<sup>131</sup> Scoping Study on the Potential Future Commercial Use of Digital Sequence Information on Genetic Resources, U.N. Doc. CBD/DSI/INF/ – (UNEP-WCMC & CBD Secretariat, draft presented Sept. 2024).

<sup>132</sup> *Id.*

Ridus wrongly relies on ISIC to establish that SAP is not a user of DSI on genetic resources but is instead classified under “Botanical and Zoological Gardens”.<sup>133</sup> This is because classification under ISIC and the list of sectors in CBD 16/2 are not mutually exclusive. Enclosure I in CBD 16/2 takes reference from ISIC but does not rely on it as its sole authority. The sectors of “nutraceuticals”, “biotechnology”, “information, scientific and technical services”, and “animal and plant breeding” do not have directly corresponding ISIC classifications.<sup>134</sup> Reference to the ISIC aims to facilitate consistency with existing international economic classifications, but there is no intention to align to them entirely.<sup>135</sup> This reflects that ISIC is not determinative of an entity’s classification for the purposes of CBD 16/2. Hence, even if SAP falls under “Botanical and Zoological Gardens” under ISIC, it can still fall within the meaning of “animal and plant breeding” under CBD 16/2.

(b) In any case, SAP can be classified under the “animal production” group of ISIC

Under ISIC, “animal production” includes “raising (farming) and breeding of all animals”. SAP’s captive breeding programs is similar to the European Association of Zoos and Aquaria’s Ex-situ Program and the Association of Zoos and Aquariums’ Species Survival Plan.<sup>136</sup> This aim of these programs is to maintain a “genetically diverse, demographically varied, and biologically sound population.”<sup>137</sup> As such, SAP falls within the “animal production” group of ISIC and not the “Botanical and Zoological” category.

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<sup>133</sup> Record para. 40.

<sup>134</sup> United Nations, International Standard Industrial Classification of All Economic Activities, Rev. 4, U.N. Doc. ST/ESA/STAT/SER.M/4/Rev.4 (2008) [Hereinafter “ISIC”].

<sup>135</sup> Open-ended Working Group on the Post-2020 Global Biodiversity Framework, Digital Sequence Information on Genetic Resources, U.N. Doc. CBD/WG2020/DSI/7/3, para. 27 (2022).

<sup>136</sup> Clarifications, Q4.

<sup>137</sup> Association of Zoos & Aquariums, Species Survival Plan Programs, <https://www.aza.org/species-survival-plan-programs>.

(3) *SAP is engaged in a commercial activity for the purposes of CBD 16/2*

SAP's activities, i.e., the charging of admission and observation fees, falls within the ordinary meaning of "commercial". Furthermore, for the purposes of CBD 16/2, only a financial benefit needs to be derived from the use of DSI on genetic resources – there is no requirement for a profit to be made. Lastly, Ridus cannot argue that SAP is not engaged in a commercial activity by reason of the definition provided in CITES Resolution 5.10.

(a) *SAP charges visitors an entrance and observation fee*

Charging visitors an entrance and observation fee falls within the OED's definition of commercial, which is to be "engaged in commerce or trade".<sup>138</sup> The OED's definition is instructive as it gives effect to the plain and ordinary meaning of "commercial" under Article 31(1) VCLT.<sup>139</sup> An activity characterized as engaging in commerce or trade is one for which "a price (other than a token price) is paid", as held by the ICJ in *Costa Rica v Nicaragua*.<sup>140</sup> At SAP, visitors are charged a fee of USD 40.00 to observe the Royal Panthers, in addition to an entrance fee of USD 119.00.<sup>141</sup> The fees charged are not nominal but constitute meaningful payments for access to SAP's services and experiences.

(b) *SAP receives a financial benefit from the use of DSI*

Ridus cannot argue that SAP's activities are non-commercial simply because it operates as a non-profit organization.<sup>142</sup> SAP also sells food, drinks and gifts amounting to USD 7 million. This evinces a clear intention to market the Royal Panthers and itself as a tourist destination

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<sup>138</sup> OED, Definition of "Commercial".

<sup>139</sup> VCLT art. 31(1).

<sup>140</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment, 2015 I.C.J. 665, [71].

<sup>141</sup> Record para. 34.

<sup>142</sup> Record para. 41.

and receive a financial benefit. The fact that the revenue generated is reinvested into the care of the Royal Panthers and other captive breeding programs does not negate the commercial nature of those activities. Furthermore, CBD 16/2 explicitly refers to “revenue” as a relevant threshold, in addition to “profit”, in determining when access and benefit-sharing obligations arise.<sup>143</sup> This supports the view that the key consideration is whether the activity yields any financial benefit directly to the organization – not whether there is profit being made.

This is also in line with the Scoping Study on the Potential Future Commercial Use of Digital Sequence Information on Genetic Resources, which stated that those who are making a financial benefit should make a financial contribution to the multilateral fund.<sup>144</sup> Accordingly, even though SAP reinvests its revenue into conservation initiatives,<sup>145</sup> the act of charging visitors and receiving a financial benefit brings its operations within the scope of commercial activity for the purposes of CBD 16/2.

(c) CITES Resolution 5.0 is irrelevant

Ridus argues that SAP is a non-profit zoo whose activities are generally viewed as non-commercial under CITES Resolution 5.10.<sup>146</sup> However, CITES Resolution 5.10 is irrelevant because its purpose and objective is different from that of CBD 16/2. Under the CITES, deeming non-profit entities such as zoos as not acting for “primarily commercial purposes” is to manage the physical movement of specimens through permit waivers.<sup>147</sup> On the other hand,

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<sup>143</sup> CBD 16/2, Annex para. 3; Record para. 37.

<sup>144</sup> Scoping Study on the Potential Future Commercial Use of Digital Sequence Information on Genetic Resources, U.N. Doc. CBD/DSI/INF/ – (UNEP-WCMC & CBD Secretariat, draft presented Sept. 2024).

<sup>145</sup> Record para. 35.

<sup>146</sup> Record para. 41.

<sup>147</sup> CITES Conference of the Parties, Resolution Conf. 5.10 (Rev. CoP19), Definition of “Primarily Commercial Purposes,” annex (as revised) (adopted Nov. 22, 1985; most recently revised Nov. 25, 2022).

CBD 16/2 concerns the use of DSI and the corresponding benefit-sharing obligations that users have.<sup>148</sup> Thus, the distinction between “commercial” and “non-commercial” in CITES only serves administrative relief which are still subject to further requirements.<sup>149</sup> It does not express a rule about who needs to contribute after benefiting from biodiversity for the purposes of CBD 16/2.

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<sup>148</sup> CBD 16/2 Preamble.

<sup>149</sup>*Id.*

## **CONCLUSION AND PRAYER FOR RELIEF**

The Applicant, Anecoyon, respectfully requests for the Court to adjudge and declare that:

1. Ridus's conduct with respect to the de-extinction project using the Royal Panther fossil violated the PIC provisions of the CBD and Nagoya Protocol, and
2. SAP meets the requirements for benefit sharing obligations for the purposes of CBD 16/2.

Respectfully submitted,

**AGENTS FOR THE APPLICANT**