

ZOOCATS ZOOLOGICAL SYSTEMS, and SPECIALIZED SPECIES HUMANE SOCIETY, INC., and ZOO AMERICA, INC., and TECHNOLOGY SPECIALTIES & RESEARCH GROUP, INC., (hereinafter collectively referred to as “**ZOOCATS, ET AL.**”) and **MARCUS CLINE-HINES COOK, (individually and in his capacity as an Officer and Director of ZOOCATS, INC., d/b/a ZOOLOGICAL STUDIES GROUP a/k/a ZOOCATS ZOOLOGICAL SYSTEMS, and SPECIALIZED SPECIES HUMANE SOCIETY, INC., and ZOO AMERICA, INC., and TECHNOLOGY SPECIALTIES & RESEARCH GROUP, INC.),** and would respectfully show the court the following:

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 2 of Texas Civil Procedure Rule 190.

II. JURISDICTION

2. This court has jurisdiction over the parties and subject matter pursuant to §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act (“DTPA”), TEX. BUS. & COM. CODE § 17.41 *et seq.* (West 2002).

III. VENUE

3. Venue of this action is proper in Kaufman County on the basis of §17.47(b) of the DTPA because Defendants have conducted business in Kaufman County.

4. Venue of this action also lies in Kaufman County on the basis of §123.005(a) of the TEX. PROP. CODE (Vernon Supp. 2002) because this case alleges a breach of charitable trust fiduciary duties.

5. Venue of this action also lies in Kaufman County on the basis of §15.002(a)(1) and (3) of the TEX. CIV. PRAC. & REM. CODE (West 2001) because all or a substantial part of the events

or omissions giving rise to this cause of action occurred in Kaufman County and non-profit corporate Defendants **ZOOCATS, ET AL.** are charitable, non-profit corporations with principal offices in Kaufman County.

IV. THE PARTIES

6. Plaintiff, the **STATE OF TEXAS**, is represented by and through the Attorney General through his Consumer Protection Division. Article 4 §22 of the Constitution of the State of Texas charges the Attorney General, *inter alia*, with taking such action in the courts in the name of the State as may be proper and necessary... and as may be required by law. The Attorney General, through his Consumer Protection Division, in the name of the **STATE OF TEXAS**, and in the public interest is authorized to bring this suit under the authority granted to him by:

- A. §17.47 of the DTPA, upon the grounds that Defendants have engaged in false, misleading or deceptive acts and practices in the conduct of trade or commerce as defined and declared unlawful by §17.46 (a) and (b) of the DTPA;
- B. the Texas Non-Profit Corporation Act , TEX. CIV. STAT. Articles1396-1.01 *et seq.*; and the Texas Miscellaneous Corporation Laws Act, TEX. CIV. STAT. Articles1302-5.01 *et seq.*, for violations of the laws applicable to nonprofit corporations;
- C. the common law authority of the Attorney General for the State of Texas to enforce and protect public charitable trusts upon the grounds that Defendants have knowingly committed fraud and misrepresentation; have breached the common law fiduciary duties owed by trustees or managerial agents of charitable organizations; and have otherwise violated charitable trust obligations; and
- D. the common law authority of the Attorney General for the State of Texas pursuant to the doctrine of *parens patriae* upon the grounds that Defendants are exercising powers not authorized by law and are failing to perform such other duties required by law.

7. Defendant **ZOOCATS, INC., d/b/a ZOOLOGICAL STUDIES GROUP a/k/a ZOOCATS ZOOLOGICAL SYSTEMS**, (“ZOOCATS”) is a Texas charitable, non-profit, corporation with its headquarters and principal place of business at 1781 River Oak, Kaufman, Texas

75142. Defendant **ZOOCATS** may be served with process by serving its President Marcus Cline-Hines Cook at 1781 River Oak, Kaufman, Texas 75142. Defendant **ZOOCATS** also uses the addresses of 25 Highland Park Village, Suite 100, Dallas, Texas 75206 and 2701 West 15th Street, Suite 100, Plano, Texas 75075 both of which are private mailbox businesses. In addition, based upon U.S. Department of Agriculture, APHIS Form No. 7020 Record of Acquisition, Disposition or Transport of Animals, which are also signed by Defendant **COOK**, Defendant **ZOOCATS** uses several additional locations to keep or house its dangerous wild animals including, but not limited to, the following: 10039 Goodyear, Dallas, Texas 75229; 2021 Rock Creek Drive, Grand Prairie, Texas 75050; 3611 Curt Drive, Arlington, Texas 76016; and 75 Highland Park Village, Suite 100, Dallas, Texas 75205. Attached are APHIS Form 7020 as **EXHIBIT A** and are incorporated by reference. Further, based upon information and belief, Defendant **ZOOCATS** also keeps or houses animals at exhibit sites during an exhibition. Non-profit corporate Defendant **ZOOCATS** transacts or has transacted business in Kaufman County, Texas through the operation, advertising, transporting, exhibiting, and sale and/or offer for sale of dangerous wild animals and the soliciting, accepting, and/or giving of monetary or dangerous wild animal donations in Kaufman County and at various locations throughout Texas.

8. Defendant **SPECIALIZED SPECIES HUMANE SOCIETY, INC.** (“**SSHS**”) is a Texas charitable, non-profit, corporation with its headquarters and principal place of business at 1781 River Oak, Kaufman, Texas 75142. Defendant **SSHS** may be served with process by serving its President Marcus Cline-Hines Cook at 1781 River Oak, Kaufman, Texas 75142. The charitable mission and specific business of Defendant **SSHS** is unknown, however, upon information and belief, **SSHS** is related to Defendants **ZOOCATS** and **COOK** and is involved in the activities which the Attorney General herein complains are contrary to the laws of the State of Texas.

9. Defendant **ZOO AMERICA, INC.**, (“**ZOO AMERICA**”) is a Texas charitable, non-profit, corporation with its headquarters and principal place of business at 25 Highland Park Village, Suites 100-155, Dallas, Texas 75205-2789. This is the address of a private mailbox company, Mailboxes Etc., which is also used by Defendant **ZOOCATS**. Defendant **ZOO AMERICA** may be served with process by serving its Director Marcus Cline-Hines Cook at 1781 River Oak, Kaufman, Texas 75142. The charitable mission and specific business of Defendant **ZOO AMERICA** is unknown, however, upon information and belief, Defendant **ZOO AMERICA** is related to Defendants **ZOOCATS** and **COOK** and is involved in the activities which the Attorney General herein complains are contrary to the laws of the State of Texas.

10. Defendant **TECHNOLOGY SPECIALTIES & RESEARCH GROUP, INC.**, (“**TS&RG**”) is a Texas charitable, non-profit, corporation with its headquarters and principal place of business at 2701 West 15th Street, Suite 100, Plano, Texas 75075, which is a private mail box company. This address is also used by Defendant **ZOOCATS**. The corporate charter for charitable, non-profit corporate Defendant **TS&RG** was forfeited by the Texas Secretary of State. The continued operation, charitable mission, and specific business of Defendant **TS&RG** is unknown, however, upon information and belief, **TS&RG** is related to Defendants **ZOOCATS** and **COOK** and is involved in the activities which the Attorney General herein complains are contrary to the laws of the State of Texas. Accordingly, Defendant **TS&RG** may be served with process by serving its registered agent Marcus Cline-Hines Cook at 1781 River Oak, Kaufman, Texas 75142.

11. Based upon information and belief, the **STATE OF TEXAS** has reason to believe that there are additional businesses or charitable, non-profit corporations, related to Defendants **ZOOCATS, ET AL., and MARCUS CLINE-HINES COOK**, and that these businesses or charitable, non-profit corporations are involved in the activities which the Attorney General herein

complains are contrary to the laws of the State of Texas. Possible related businesses or charitable, non-profit corporations include, but are not limited to, **LEOPARD ONE ZOOLOGICAL CENTER** and **JUNGLE CATS UNLIMITED**. These unknown businesses or charitable, non-profit corporations including, but not limited to **LEOPARD ONE ZOOLOGICAL CENTER** and **JUNGLE CATS UNLIMITED** are hereinafter included by reference in the caption “**ZOOCATS, ET AL.**”

12. Defendant **MARCUS CLINE-HINES COOK** (“**COOK**”) is the President of the charitable, non-profit corporate Defendants **ZOOCATS** and **SSHS**, and one of the directors of **ZOOCATS**, **SSHS**, and **ZOO AMERICA**, as well as the registered agent for **TS&RG**, and may be served with process at his residence at 1781 River Oak, Kaufman, Texas 75142. At all times relevant to this Petition, Defendant **COOK**, acting alone or in concert with others, has formulated, directed, controlled, had the authority to control or participated in the acts and practices of the charitable, non-profit corporate Defendants **ZOOCATS, ET AL.** including the acts and practices set forth in this Petition. Defendant **COOK** transacts or has transacted business in Kaufman County, Texas through the operation, advertising, transporting, exhibiting, and sale and/or offer for sale of dangerous wild animals and the soliciting, accepting, and/or giving of monetary or dangerous wild animal donations in Kaufman County.

V. PUBLIC INTEREST

13. Because Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe that Defendants have caused and will cause immediate and irreparable injury including, but not limited to the risk of physical injury or disease, loss and damage to the **STATE OF TEXAS** and its citizens and will also cause adverse effects to legitimate business enterprises which conduct their trade and commerce in a lawful manner within

this State. Moreover, the general public of the State of Texas has an interest in the administration of assets dedicated for charitable purposes. As the public's representative, the Attorney General has the right and duty to seek an accounting of the use of such funds held by charitable entities. The managerial agents of such charitable entities are responsible for ensuring that funds so dedicated are used for a proper purpose pursuant to their fiduciary duties to administer and account for the funds for the charitable benefit of the public in compliance with law. As the Attorney General has reason to believe that the Defendants have engaged in the inappropriate and unlawful practices set forth herein, and will continue to do so but for these legal proceedings, these proceedings are in the interest of the public of this State.

VI. TRADE AND COMMERCE

14. Defendants are engaged in "trade" and "commerce" as defined by § 17.45(6) of the DTPA, in that they operate, advertise, transport, exhibit, and sell and/or offer for sale dangerous wild animals and solicit, accept, and/or give monetary or dangerous wild animal donations in the State of Texas. Defendants further engage in soliciting charitable donations from the public.

VII. NO NOTICE BEFORE SUIT REQUIRED

15. Section 17.47(a) of the DTPA does not require notice to Defendants before suit when the Consumer Protection Division of the Office of the Attorney General is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants would destroy relevant records and secrete assets if prior notice of this suit were given.

16. The Texas Attorney General has issued Civil Investigative Demands to Defendants, pursuant to §17.61 of the DTPA. The Texas Attorney General has not otherwise informed

Defendants **ZOOCATS, ET AL.** and **COOK** of the alleged conduct claimed to violate the DTPA, pursuant to §17.47(a), because the Consumer Protection Division of the Attorney General for the State of Texas has reason to believe that Defendants would evade service of process, transport the dangerous wild animals to unknown locations, and/or destroy relevant records, and that such emergency exists that immediate and irreparable injury, loss, or damage would occur if prior contact were made.

17. Additionally, the potential for loss of the nonprofit, charitable assets held by Defendants, to the detriment of the public of Texas and the specific donors of such assets, is great. Such assets may be permanently dissipated, lost or secreted, or the subject animals harmed or possibly released, if prior notice is given of this action.

VIII. ACTS OF AGENTS

18. Whenever in this petition it is alleged that Defendants did any act or thing, it is meant that **ZOOCATS, INC., d/b/a ZOOLOGICAL STUDIES GROUP a/k/a ZOOCATS ZOOLOGICAL SYSTEMS, and SPECIALIZED SPECIES HUMANE SOCIETY, INC., and ZOO AMERICA, INC., and TECHNOLOGY SPECIALTIES & RESEARCH GROUP, INC., and MARCUS CLINE-HINES COOK, (individually and in his capacity as an Officer and Director of ZOOCATS, INC., d/b/a ZOOLOGICAL STUDIES GROUP a/k/a ZOOCATS ZOOLOGICAL SYSTEMS, and SPECIALIZED SPECIES HUMANE SOCIETY, INC., and ZOO AMERICA, INC., and TECHNOLOGY SPECIALTIES & RESEARCH GROUP, INC.),** performed or participated in such act or thing or that such act was performed by the officers, directors, agents or employees of Defendants and in each instance, the officers, directors, agents or employees of Defendants were then authorized to and did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of Defendants.

IX. NATURE OF DEFENDANTS' CONDUCT

19. Defendants **ZOOCATS, ET AL.** and **COOK** permit the public to hold, touch and feed tiger cubs and other young dangerous wild animals, and for a fee have their photograph taken while doing so. Defendants advertise that they provide services of this type for theme exhibits to educational facilities, corporate and commercial events, weddings, children's birthday parties, commercials, and media events. Defendants **ZOOCATS, ET AL.** and **COOK** also solicit and accept donations intended for the National Fish and Wildlife Foundation Save the Tiger Fund without authority to do so and without forwarding said donations. Recent exhibits where the public has been permitted by Defendants **ZOOCATS, ET AL.** and **COOK** to handle and interact with dangerous wild animals include: (1) the Prestonwood Christian Academy and the Prestonwood Christian Academy Annual Auction; (2) the Mesquite Rodeo; and (3) the Dallas ArtFest.

20. Defendant **COOK** is a director of non-profit corporate Defendant **ZOOCATS, ET AL.** and directs and manages the day-to-day operations of the charitable, non-profit corporate Defendant. Defendants **ZOOCATS, ET AL.** is located at 1781 River Oak, Kaufman, Texas 75142, which is also the residence of Defendant **COOK**. Defendants **ZOOCATS, ET AL.** have two additional common directors, JANICE COOK and MELVIN COOK, who are believed to be relatives of Defendant **COOK**. Defendants **COOK** and **ZOOCATS, ET AL.** operate, advertise, transport, exhibit, and sell and/or offer for sale dangerous wild animals and solicit, accept, and/or give monetary or dangerous wild animal donations to consumers in Texas.

21. Defendant **COOK**, as President of **ZOOCATS, ET AL.** and a member of its Board, has the responsibility for the overall management and oversight of charitable, non-profit corporate Defendants **ZOOCATS, ET AL.**, including compliance with all state and federal statutes regulating deceptive trade practices and non-profit corporations. As a result, Defendant **COOK** directs and

controls or has the authority to direct and control and has personal knowledge of the day-to-day activities of charitable, non-profit corporate Defendants **ZOOCATS, ET AL.**

22. Upon information and belief charitable, non-profit corporate Defendants **SSHS, ZOO AMERICA,** and **TS&RG** are related to Defendants **ZOOCATS** and **COOK** and are involved in the activities which the Attorney General herein complains are contrary to the laws of the State of Texas. Accordingly, the conduct attributed to charitable, non-profit corporate Defendant **ZOOCATS** is attributed to charitable, non-profit corporate Defendants **SSHS, ZOO AMERICA,** and **TS&RG.**

A. Defendants Deceive Consumers Placing Them in Immediate Danger of Physical Harm

23. Defendants **ZOOCATS, ET AL.** and **COOK,** place the public in immediate danger of obvious and unobvious physical harm. Defendants deceive the public as to the safety of their exhibits and their safety record, thereby placing the public in danger of immediate physical harm of injury and/or disease.

1. Defendants Deceive the Public as to the Safety of Their Exhibits

24. The possibility that the dangerous wild animals exhibited by Defendants **ZOOCATS, ET AL.** and **COOK** will cause injury to the public is not imaginary. Dangerous wild animals may not only attack, bite, or scratch while being handled by the public, but may also expose the public to dangerous diseases and infection. Further, wild animals are extremely unpredictable. A fact sheet listing reported incidents involving captive big cats and a sampling of newspaper articles reporting attacks on humans by tigers cubs and/or adult tigers during exhibits similar to Defendants' exhibits are attached as **EXHIBIT B** and incorporated by reference.

25. Large cats represent inherent danger because of their size and predator instincts. All large cats pose significant threats to handlers and the public when absolute control cannot be

maintained. Due to their size and strength, greater ability is required to restrain and control these large cats, even those at a young age (e.g. 2-6 months of age), than that required for a similar-aged domestic pet. Further, big cats are not domesticated species, such as dogs and cats, but tamed. Taming is a one-generation process that is often facilitated by bottle feeding while domestication is a multi-generation process (usually hundreds of generations), which involves physical and psychological adaptations. As domesticated species, dogs and cats have had their predatory instincts modified to an acceptable degree so that they can coexist with mankind. As tamed animals, large cats possess a much stronger inclination to revert to predatory instincts. In addition, large cats prefer prey animals that are vulnerable. When given a choice that will naturally chose prey that is weaker, smaller, sicker or slower than other members of the prey grouping. The affidavit of James M. Jensen, D.V.M. is attached as **EXHIBIT C** and incorporated by reference.

26. Small children as well as adults are potentially exposed to injury by the close contact with juvenile big cats during Defendants **ZOOCATS', ET AL.** and **COOK'S** exhibits. In addition to the risk of a bite or scratch, feline bite wounds and scratches are notorious for bacterial infection. Even injuries that seem insignificant can result in dangerous infections. Further, interaction between the public and Defendants' large cats poses the risk of disease transmission. Big cats are significant carriers of Salmonella bacteria carrying this bacterial pathogen in their intestines without showing signs of illness. Humans, especially human children, are susceptible to Salmonella and often experience severe, and occasionally life-threatening enteritis. Strict sanitation of surroundings and disinfection must be maintained to avoid Salmonella infection. People should also wash their hands or use a hand antiseptic product after handling suspect animals. Large cats also pose a public health threat because they have intestinal roundworms. Toxocara cati and Toxascaris leonina are capable of causing larval migration in humans. The infective larva can exist on the cat's fur or in the

environment. When the organism invades the human body it migrates until the body “walls off” the parasite. Children are more susceptible to this parasite than adults. These two roundworms are difficult to eradicate from a contaminated environment because of their ability to shed large numbers eggs and because of the hardiness of their eggs. See **EXHIBIT C**, the affidavit of James Jensen, D.V.M.

27. Defendants **ZOOCATS, ET AL.** and **COOK** exhibit dangerous wild animals to the public and permit the public, regardless of age, to interact with the wild animals. During these exhibits, Defendants **ZOOCATS, et al.** and **COOK** permit the public to touch, hold, and feed tiger cubs and other dangerous wild animals. Defendants **ZOOCATS, ET AL.** and **COOK** also permit multiple children to simultaneously interact with the tiger cubs. Further, Defendants **ZOOCATS, ET AL.** and **COOK** permit inexperienced individuals to exhibit and care for the dangerous wild animals thereby increasing the inherent risk.

28. In addition, Defendants’ **ZOOCATS, ET AL.** and **COOK** permit the public to have their photographs taken with the tiger cubs during public exhibitions. At times, when the photograph is being taken, the animal handlers stand several feet away from the tiger cub and the child(ren), and have no direct control over the animals. This practice clearly endangers the public, by placing them at risk of an attack and by exposing them to dangerous diseases.

29. On July 12, 2002 and July 20, 2002, Brett Shipp of WFAA Channel 8 (“Channel 8”) interviewed Defendant **COOK** regarding Defendants **ZOOCATS’, ET AL.** and **COOK’S** “Tiger Encounter” exhibit at Six Flags Over Texas (“Six Flags”). The “Tiger Encounter” exhibit allowed the public to hold, touch and feed tiger cubs and have their photograph taken while doing so for \$10.00, and for an additional \$5.00 consumers could keep the digital photograph disk. During a televised interview with Channel 8, Defendant **COOK** was asked what would prevent a tiger cub

from reaching up and scratching or biting someone holding, petting, or feeding the cubs. Defendant **COOK'S** televised response was that “it would be the same principle as if you were holding a small kitten, a domestic cat, because their structure and body weights are almost the same, almost identical to these [tiger cubs].”

2. Defendants Falsely Represent That They Have a Perfect Safety Record.

30. Defendants **ZOOCATS, ET AL.** and **COOK** falsely advertise that they have a perfect safety record. Brochures and advertisements for Defendants state that “[their] public safety record is perfect!” and that they “[meet] the highest of animal care standards.” However, Defendant **ZOOCATS, ET AL.** and **COOK** have a history of USDA violations, including safety violations.

31. During a televised interview on or about July 20, 2002, with Defendant **COOK** regarding Defendant **ZOOCATS, ET AL.’** “Tiger Encounter” exhibit at Six Flags, Channel 8 asked “Has ZooCats been cited for anything at all?” Defendant **COOK'S** televised answer was that Defendant **ZOOCATS, ET AL.** has “never had any violations whatsoever.”

32. The USDA has cited Defendants **ZOOCATS, ET AL.** and **COOK** for approximately twenty-nine (29) violations on nine (9) different occasions from December 5, 2000 to September 30, 2002. These violations include, but are not limited to, the failure to keep tigers, including an adult, under the direct control of an experienced and knowledgeable animal handler during public contact, failure to maintain structurally sound facilities with a perimeter fence that has a secure latching and locking system, and the failure to provide a facility constructed of such material as appropriate for the animals involved. In fact, Defendants were cited for five (5) violations by the USDA on July 5, 2002, just days before Defendant **COOK** told Channel 8 in his televised interview that aired on July 20, 2002, that Defendant **ZOOCATS, ET AL.** had never been cited for any violations.

B. Defendants Falsely Represent That They Are Operated by Off-duty, Full-time Zoo Professionals.

33. Defendants **ZOOCATS, ET AL.** and **COOK** falsely advertise that they are operated by off-duty, full-time zoo professionals. Neither Defendant **COOK** nor his employees are off-duty zoo professionals. Further, Defendant **COOK** misrepresents his qualifications as well as those of his animal handlers or trainers.

1. Defendant COOK Misrepresents His Qualifications

34. Defendant **COOK** misleads consumers regarding his qualifications to handle and train dangerous wild animals. Defendant **COOK** falsely claims that he was granted a Bachelor of Science in Zoology from the University of Wexford in 1997 and that he holds a Certificate in Animal Science, which qualify him to handle and train dangerous wild animals.

35. Defendant **COOK'S** purported Bachelor of Science in Zoology from the University of Wexford is bogus. Copies of the transcript, degree, and a letter of recommendation from the University of Wexford are attached as **EXHIBITS D, E, and F**, and are incorporated by reference. The University of Wexford, which is located in Zurich, Switzerland, is nothing more than a “paper mill” that generates degrees for a fee without requiring the completion of course work. The Federal Trade Commission (“FTC”) has sued and obtained a Preliminary Injunction against the operators of the University of Wexford and fourteen (14) other universities alleging, in part, that they sell diplomas for non-accredited universities without the requirement of tests, classes, books, or interviews in a case styled FTC v. Mountain View Systems, et al., Case No. 03-CV-21-RMC (D.D.C.), in the United State District Court for the District of Columbia. The FTC further alleges that in exchange for payment the “university” operators provide the purchaser with a diploma, transcripts, and letters of recommendation as well as “back-up” information in the event that someone wishes to verify the diploma. A certified copy of the Preliminary Injunction and a declared

copy of the FTC's Second Amended Complaint are attached as **EXHIBITS G and H** and incorporated by reference. See also **EXHIBIT C, pages 7-10**.

36. Further, on December 11, 1998, the Texas Commission on Law Enforcement Officer Standards and Education ("Commission") issued an Order revoking Defendant **COOK'S** license as a peace officer because he submitted false documents to the Commission in 1993 and 1997 in an effort to obtain and maintain his licensure. A certified copy of the Order is attached as **EXHIBIT I** and incorporated by reference. The Commission found that Defendant **COOK** submitted a document purporting to be a high school diploma from North Mesquite High School with his application for licensure as a peace officer that was not generated by the North Mesquite High School. Further, the Commission found that Defendant **COOK** submitted an educational transcript that was not generated by Eastfield College or an educational institution by the name of Belvin Institute and Independent Study Program. This Order was issued well after the date that Defendant **COOK'S** Bachelor of Science in Zoology from the University of Wexford is purported to have been granted.

37. In addition, Defendant **COOK** suggests that he is qualified to train and handle dangerous wild animals based on his Certificate in Animal Science. Defendant **COOK** was awarded a career diploma from the International Correspondence School, a division of National Education Corporation ("ICS"), in 1994. ICS is a correspondence school, now called Education Direct. Education Direct no longer offers the Animal Science program. However, to be eligible to enroll in the Animal Science Program while it was offered, ICS required a minimum of an eighth (8th) grade education. **The Animal Science correspondence program was seven semester units and was designed to train students for entry-level animal care positions in pet stores, animal shelters, animal hospitals, veterinary offices, zoos, and ranches.** Upon completion of the program,

graduates were considered by ICS to be qualified to work under the supervision of a veterinarian or a zoologist in the provision of animal care. The Animal Science program was strictly a correspondence course; there was no practical experience provided. The affidavit of Gerald P. Skettino, the Manager of Student Services for Education Direct, is attached as **EXHIBIT J** and incorporated by reference.

2. Defendants' Employees are Inexperienced.

38. Defendants **ZOOCATS, ET AL.** and **COOK** falsely advertise that their handlers and trainers are “off-duty, full-time zoo professionals,” and that “Zoo professionals handle all the arrangements for your animal needs at your event.” In addition, during Defendant **COOK'S** televised interview with Channel 8, he misrepresented that all of Defendants' **ZOOCATS, et al.** employees have a minimum of one and a half years direct experience with the animals at Defendants' **ZOOCATS, ET AL.** facility. In fact, most of the employees of Defendants **ZOOCATS, ET AL.** and **COOK** have little or no experience in handling dangerous wild animals.

39. At Defendants' **ZOOCATS, ET AL.** “Tiger Encounter” exhibit at Six Flags, the public was permitted to handle and interact with tiger cubs. Defendants' **ZOOCATS, ET AL.** exhibit at Six Flags was part of a partnership with Jean Robb. On the first day of the exhibit at Six Flags, Rudy, Paige and Nia Segovia were present to run the exhibit. When asked by Jean Robb about their experience, Rudy and Paige Segovia indicated that they had no experience, and their sixteen (16) years old daughter, Nia Segovia, stated that her only experience was observing animals at the Dallas World Aquarium and the Dallas Zoo. In addition to the Segovia family, Defendants **ZOOCATS, ET AL.** and **COOK** had other employees running the “Tiger Encounter” exhibit and caring for the animals. Jean Robb also asked these employees about their experience and they told her that they

had no experience involving direct contact with the dangerous wild animals. The affidavit of Jean Robb is attached as **EXHIBIT K** and incorporated by reference.

C. Defendants Mislead Consumers about Their Sponsorship or Affiliation

40. The advertising of Defendants **ZOOCATS, ET AL.** and **COOK** causes confusion or misunderstanding as to Defendants **ZOOCATS, ET AL.** and **COOK** and their services source, sponsorship, approval, affiliation, connection, or association with the ExxonMobil and National Fish and Wildlife Foundation Save the Tiger Fund and the Dallas World Aquarium.

1. Defendants Falsely State That They Are Affiliated with ExxonMobil

41. Defendants **ZOOCATS, ET AL.** and **COOK** falsely advertise that they “are very proud to also teach the educational programs for the ExxonMobil’s ‘Save The Tiger Fund.’” See **attachment to EXHIBIT L**. This statement appears on Defendants **ZOOCATS’, ET AL.** and **COOK’S** brochures. Below this statement, Defendants **ZOOCATS, ETAL.** and **COOK** display the ExxonMobil trademark.

42. Defendants **ZOOCATS, ET AL.** and **COOK** are not affiliated with the ExxonMobil Save the Tiger Fund. The ExxonMobil Foundation along with the National Fish and Wildlife Foundation created the Save the Tiger Fund in 1995. Defendants **ZOOCATS, ET AL.** and **COOK** do not have permission from ExxonMobil to utilize their trademark. The affidavit of Bernard White, Senior Program Officer of the ExxonMobil Foundation is attached as **EXHIBIT L** and incorporated by reference.

2. Defendants Falsely Imply That They Are Affiliated with the National Fish and Wildlife Foundation Save the Tiger Fund

43. Defendants **ZOOCATS, ET AL.** and **COOK** falsely imply that they are affiliated with the National Fish and Wildlife Foundation (“NFW”) Save the Tiger Fund. Defendants **ZOOCATS, ET AL.** and **COOK** mislead the public by displaying the NFW logo on their promotional materials and letterhead.

44. NFW is a federally chartered non-profit, charitable corporation. Along with the ExxonMobil Foundation, NFW created the Save the Tiger Fund in 1995. At the time that the Save the Tiger Fund was created, its logo was designed and placed into use. The Save the Tiger Fund logo has been used exclusively by NFW for eight (8) years and is currently pending trademark protection. Defendants **ZOOCATS, ET AL.** and **COOK** are not affiliated with the NFW Save the Tiger Fund and have not received permission from NFW to use the Save the Tiger Fund logo. The affidavit of Tracy Frish, Director of the NFW Save the Tiger Fund, is attached as **EXHIBIT M** and incorporated by reference.

3. Defendants Falsely State That They Are Affiliated with the Dallas World Aquarium.

45. Defendants **ZOOCATS, ET AL.** and **COOK** falsely imply that they are affiliated with the Dallas World Aquarium, a private zoo in Dallas, Texas. Defendant **COOK** is a former employee of the Dallas World Aquarium, but neither Defendant **COOK** nor Defendant **ZOOCATS, ET AL.** are affiliated with the Dallas World Aquarium.

46. One source by which Defendants **ZOOCATS, ET AL.** and **COOK** obtain dangerous wild animals is through donations of said dangerous wild animals by other organizations, including zoos, animal refuges, and sanctuaries. Defendants **ZOOCATS, ET AL.** and **COOK** misrepresent to donating organizations that they are affiliated with the Dallas World Aquarium, that Defendant

COOK is second in the chain of command at the Dallas World Aquarium, and that Defendants **ZOOCATS, ET AL.** are an animal holding facility for the Dallas World Aquarium. The affidavit of Rick Schwartz of the Nashville Zoo at Grassmere (“Nashville Zoo”), is attached as **EXHIBIT N** and incorporated by reference. See also **EXHIBIT K**.

47. Defendant **COOK** is not second in command at the Dallas World Aquarium. The Dallas World Aquarium is owned and run by Daryl Richardson. However, from January 1998 to May 2002, Defendant **COOK** was employed by the Dallas World Aquarium. While working for the Dallas World Aquarium, Defendant **COOK’S** duties included the handling of dive operations, and the maintenance and security of the building and animals. Further, zoos typically do not donate their dangerous wild animals to private commercial exhibitors who will permit the public to interact with the animals; the animals are typically donated to refuges or sanctuaries. An organizational chart for the Dallas World Aquarium during the time Defendant **COOK** was employed there is attached as **EXHIBIT O** and incorporated by reference. See also **EXHIBIT N**.

D. Defendants Deceive Consumers into Giving Donations Intended for the Save the Tiger Fund to Defendants.

48. Defendants **ZOOCATS, ET AL.** and **COOK** falsely advertise that they are authorized to accept donations on behalf of the NFW Save the Tiger Fund and that donations given to Defendants **ZOOCATS, ET AL.** and **COOK** for that purpose will be forwarded to the Save the Tiger Fund. Defendants have created a Save the Tiger Fund donation form and distribute it at their events to the public in order to obtain donations.

49. In early 2003, Defendant **COOK** contacted the Director of the NFW Save the Tiger Fund to propose a “matching funds” program where Defendants **ZOOCATS, ET AL.** would collect donations for the Save the Tiger Fund and match those made by the public. This suggestion was

rejected by NFW because Defendants were not the type of business that NFW wished to be associated with. Accordingly, NFW instructed Defendant **COOK** not to proceed with any of his proposals. Then in February of 2003, NFW received a completed form printed on orange paper on which the NFW Save the Tiger Fund name and logo had been copied. The completed form indicated that a \$15.00 contribution had been made to the Save the Tiger Fund and attached was a receipt indicating payment had been made to Defendant **ZOOCATS, ET AL.** Later in March of 2003, NFW received a second completed form identical to the one received in February 2003. Handwritten on the form was the statement that the individual had given their donation while getting her photograph taken with a tiger cub. NFW Save the Tiger Fund has found no record of donations having been received from the individual contributors or Defendants **ZOOCATS, ET AL.** or **COOK**. See **EXHIBIT M.**

E. Defendants Split Exhibit Profits With Others

50. Defendants **ZOOCATS, ET AL.** and **COOK** permit the public to interact with dangerous wild animals and have their photograph taken while doing so, and use the animals in commercials and professional photo shoots for a fee. Defendants **ZOOCATS, ET AL.** and **COOK** have offered to and have entered into arrangements with others to share the profits generated at these exhibits and professional photo sessions.

51. Defendants **ZOOCATS, ET AL.** and **COOK** entered into a partnership with Jean Robb to run a “Tiger Encounter” Exhibit at Six Flags. As part of the agreement, Jean Robb was to receive 30% of the profits from the exhibit and Defendants **ZOOCATS, ET AL.** and **COOK** would receive 70% of the profits from the exhibit. In fact, Defendants **ZOOCATS, ET AL.** and **COOK** gave Jean Robb a ZooCats, Inc. check signed by Defendant **COOK** for \$4,000.00, as her share of the profits from the exhibit at Six Flags. See **EXHIBIT K.**

52. In addition, when Defendant **COOK** contacted Rick Schwartz of the Nashville Zoo at Grassmere (“Nashville Zoo”) to obtain permission to use a tiger cub on loan to Defendant **ZOOCATS, ET AL.** from the Nashville Zoo in a commercial, Defendant **COOK** offered to split the profits with the Nashville Zoo. The Nashville Zoo declined this. See **EXHIBIT N**.

F. Defendants Misrepresent That They Are Licensed as a Zoological Facility

53. Defendants **ZOOCATS, ET AL.** and **COOK** mislead the public by advertising that they have a “federally licensed zoological facility.” The USDA does not offer such a license, but does license exhibitors and register research facilities. Defendant **ZOOCATS**, has both a Class C Exhibitor’s License and is registered as a Class R Research Facility, but does not possess a zoological facility license since there is no such license. The use of “federally licensed zoological facility” coupled with Defendants **ZOOCATS’, ET AL.** and **COOK’S** other misrepresentations implies that Defendants are more akin to a city zoo than they actually are.

X. VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

54. Based on the conduct alleged in the preceding paragraphs, Defendants **ZOOCATS, ET AL.** and **COOK** have engaged in the operation, advertising, transporting, exhibiting, and sale and/or offer for sale of dangerous wild animals and the soliciting, accepting, and/or giving of monetary or dangerous wild animal donations, and in the course and conduct of trade and commerce have directly and indirectly engaged in false, misleading, or deceptive acts and practices declared unlawful by §17.46(a) and (b) of the DTPA, including but not limited to the following:

- A. Defendants engaged in false, misleading, or deceptive acts or practices in the operation, advertising, transporting, exhibiting, and sale and/or offer for sale of dangerous wild animals and the soliciting, accepting, and giving of monetary or dangerous wild animal donations in violation of §17.46(a) of the DTPA;
- B. Defendants engaged in false, misleading, or deceptive acts or practices within the meaning of §17.46(b) of the DTPA because:

- i. they have caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of §17.46(b)(2);
- ii. they have caused confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another in violation of §17.46(b)(3);
- iii. they have represented that their goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not in violation of §17.46(b)(5) of the DTPA; and
- iv. they failed to disclose information concerning goods or services which was known at the time of the transaction and failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered into had the information been disclosed in violation of §17.46(b)(24) of the DTPA.

XI. UNLAWFUL ACTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES ACT

55. Based on the conduct alleged in the preceding paragraphs, Defendants **ZOOCATS, ET AL.** and **COOK**, have engaged in the operation, advertising, transporting, exhibiting, and sale and/or offer for sale of dangerous wild animals and the soliciting, accepting, and giving of monetary or dangerous wild animal donations and in the course and conduct of trade and commerce have directly and indirectly engaged in false, misleading, or deceptive acts and practices declared unlawful by §17.46(a) and (b) of the DTPA as follows:

- A. causing confusion or misunderstanding, expressly or by implication, as to the source, sponsorship, approval, or certification by the United States Department of Agriculture (“USDA”);
- B. causing confusion or misunderstanding, expressly or by implication, as to Defendants’ affiliation, connection, or association with, or certification by the ExxonMobil Save the Tiger Fund;
- C. causing confusion or misunderstanding, expressly or by implication, as to Defendants’ affiliation, connection, or association with, or certification by the National Fish and Wildlife Foundation Save the Tiger Fund;

- D. causing confusion or misunderstanding, expressly or by implication, as to Defendants' affiliation, connection, or association with, or certification by the Dallas World Aquarium;
- E. falsely representing, expressly or by implication, that Defendants' services are sponsored, approved, or certified by the United States Department of Agriculture ("USDA");
- F. falsely representing, expressly or by implication, that Defendants' services are sponsored, approved, or certified by the ExxonMobil Save the Tiger Fund;
- G. falsely representing, expressly or by implication, that Defendants' services are sponsored, approved, or certified by the National Fish and Wildlife Foundation Save the Tiger Fund;
- H. falsely representing, expressly or by implication, that Defendants' services are sponsored, approved, or certified by the Dallas World Aquarium;
- I. falsely representing, expressly or by implication, that Defendants have a perfect safety record;
- J. falsely representing, expressly or by implication, that Defendants are operated by off-duty, full-time, zoo professionals;
- K. falsely representing, expressly or by implication, that Defendant Marcus Cline-Hines Cook has a Bachelor of Science in Zoology from an established, recognized, and accredited college or university;
- L. falsely representing, expressly or by implication, that Defendants are authorized to collect donations on behalf of the National Fish and Wildlife Foundation Save the Tiger Fund;
- M. falsely representing, expressly or by implication, that Defendants are an animal holding facility for the Dallas World Aquarium or any other private or public zoo;
- N. falsely representing, expressly or by implication, that Defendants are a federally licensed zoological facility;
- O. failing to disclose that the handling, petting, and/or feeding of wild animals including, but not limited to infant or juvenile wild animals, by the public is inherently dangerous;
- P. failing to disclose that Defendants are not in good-standing with the U.S. Department of Agriculture Animal and Plant Health Inspection Service;

- Q. failing to disclose that tigers are carriers of salmonella and round worm;
- R. failing to disclose that donations intended for the National Fish and Wildlife Foundation Save the Tiger Fund that are given to Defendants are not forwarded to the National Fish and Wildlife Foundation;
- S. failing to disclose that Defendant Marcus Cline-Hines Cook is not a zoologist and/or does not possess a Bachelor of Science in Zoology from an established, recognized, and accredited college or university;
- T. failing to disclose that the public will come into contact with dangerous diseases and bacteria when handling, petting, and/or feeding wild animals including, but not limited to infant or juvenile wild animals;
- U. failing to disclose that Defendants are not affiliated, connected, or associated with, or certified by the ExxonMobil Save the Tiger Fund;
- V. failing to disclose that Defendants are not affiliated, connected, or associated with, or certified by the National Fish and Wildlife Foundation Save the Tiger Fund;
- W. failing to disclose that Defendants are not affiliated, connected, or associated with, or certified by the Dallas World Aquarium or any other private or public zoo;
- X. failing to disclose that animals donated to Defendants may be exhibited to the public and that during such exhibits the public will be permitted to interact with the donated animals for a fee;
- Y. failing to disclose that Defendants' employees or volunteers are not experienced wild animal handlers or trainers;
- Z. failing to disclose that Defendants' employees or volunteers are not off-duty, full-time zoo professionals;
- AA. failing to disclose that Defendants are not authorized to accept donations on behalf of the National Fish and Wildlife Save the Tiger Fund; and
- BB. failing to disclose violation(s) found by the USDA when representing a "perfect safety record."

XII. VIOLATIONS OF THE NON-PROFIT CORPORATIONS ACT

56. Based on the conduct alleged in the preceding paragraphs, Defendant **COOK** has, through acts and omissions, violated the fiduciary duties imposed on directors and officers to use the

non-profit, charitable assets of the non-profit corporate Defendants solely for the purpose or purposes of the corporations as expressed in articles of incorporation (or other indenture documents), by failing to properly and sufficiently manage corporate assets, and to act in good faith, with ordinary care, and in a manner that directors and officers reasonably believe to be in the best interest of the non-profit corporation, as set-out in the Texas Non-Profit Corporation Act. *See* TEX. CIV. STAT. Articles 1396-2.01; 2.20; 2.22; 2.23; 2.23A; 2.26; 2.28; and 2.30. To the extent required by Texas law and the relief herein sought by the Attorney General on behalf of the public interest in charity, the above claim is made against Defendants **ZOOCATS, ET AL.**

57. Upon information and belief, Defendant **COOK** has also misappropriated charitable assets for his personal use, or allowed such to occur under his authority. Though reasonable compensation for services rendered may be paid by a nonprofit corporation, a nonprofit corporation may not allow any individual to profit from the assets held thereby as set-out in the Texas Non-Profit Corporation Act. *See* TEX. CIV. STAT. Articles 1396-2.24 and 2.25. To the extent required by Texas law and the relief herein sought by the Attorney General on behalf of the public interest in charity, the above claim is made against Defendants **ZOOCATS, ET AL.**

58. Based upon the Texas Non-Profit Corporations Act and the common law, Defendant **COOK** is liable to the non-profit, charitable corporate Defendants for compensatory damages in the amount of any dispensation of the non-profit corporate Defendant's assets over and above amounts determined to be reasonable compensation for services rendered. Defendant **COOK** is further liable for all taxes, fines, and other civil penalties and all actual and exemplary damages, including all pre-judgment and post-judgment interest on all awards of damages, civil penalties, and other recoveries as provided by law, to which the Attorney General, on behalf of the public interest in charity, may show himself entitled, as provided in Texas Miscellaneous Corporation Laws Act, TEX. CIV. STAT.

Articles 1302-5.01 *et seq.* To the extent required by Texas law and the relief herein sought by the Attorney General on behalf of the public interest in charity, the above claim is made against Defendants **ZOOCATS, ET AL.**

XIII. VIOLATIONS OF COMMON LAW FIDUCIARY DUTIES

59. Based on the conduct alleged in the preceding paragraphs, Defendant **COOK** has, by means of inappropriate and unlawful acts and omissions, breached his duties as a fiduciary or managerial agent of a charitable trust. Such acts by Defendant **COOK** violate the common law and statutory laws of the State of Texas pertaining to charitable organizations. The non-profit corporate Defendants hold their assets in trust for the benefit of the public and for the charitable purposes for which the non-profit corporate Defendants are dedicated. Defendant **COOK** thereby owes fiduciary duties to the citizens of the State of Texas, as well as to the non-profit corporate Defendants themselves, to use the non-profit corporate Defendants' assets for the purpose appropriately intended, and no other. A constructive trust should be imposed on all assets of the non-profit corporate Defendants which have been used for any other purpose. Based upon the common law charitable trust fiduciary duties, Defendant **COOK** is liable to the non-profit corporate Defendants for compensatory damages in the amount of any dispensation of the non-profit corporate Defendants' assets over and above amounts determined to be reasonable appropriate use of the assets for charitable purposes. Defendant **COOK** is further liable for all taxes, fines, and other civil penalties and all actual and exemplary damages, including all pre-judgment and post-judgment interest on all awards of damages, civil penalties, and other recoveries as provided by law, to which the Attorney General, on behalf of the public interest in charity, may show himself entitled. To the extent required by Texas law and the relief herein sought by the Attorney General on behalf of the public interest in charity, the above claim is made against Defendants **ZOOCATS, ET AL.**

XIV. FRAUD AND MISREPRESENTATION

60. Based on the conduct alleged in the preceding paragraphs, specifically the making of repeated and materially false representations to the public and to various granting authorities which were known to be false when made or made without knowledge of the truth of the matters asserted, Defendant **COOK** has committed common law fraud. Such false representations were made with the intention that they be acted upon by the parties to whom the misrepresentations were made. Donation granting authorities and the general public have relied on these misrepresentations in providing funds to **ZOOCATS, ET AL.** Reliance upon these false representations has resulted in injury to **ZOOCATS, ET AL.** and to the general public, in that funds allocated to specific purposes have not been properly used for said purposes.

XV. REQUEST FOR IMPOSITION OF CONSTRUCTIVE TRUST

61. When Defendant **COOK** misappropriated or misused charity-dedicated funds from the non-profit corporate Defendants in violation of his fiduciary duties, he invoked the principals of equity applicable to charity assets, including the law pertaining to the imposition of a constructive trust. Thus, based on the facts set forth in this Petition, the amounts misappropriated or misused by Defendant **COOK** are thus subject to the imposition by this Court of a constructive trust to be held solely for the specific charitable purposes of the non-profit corporate Defendants. To the extent required by Texas law and the relief herein sought by the Attorney General on behalf of the public interest in charity, the above claim is made against Defendants **ZOOCATS, ET AL.**

XVI. APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER

62. The Attorney General alleges that Defendants **ZOOCATS, ET AL.** and **COOK**, are in violation of the laws of the State of Texas, and unless immediately restrained by the Honorable

Court, that Defendants' continued operation, advertising, transporting, exhibiting, and sale and/or offer for sale of dangerous wild animals and the soliciting, accepting, and/or giving of monetary or dangerous wild animal donations threatens immediate and irreparable injury to consumers and the general public. Defendants should be immediately restrained. The Attorney General requests an *Ex Parte* Temporary Restraining Order, as indicated in the subsequent paragraphs.

63. Defendants **ZOOCATS, ET AL.** and **COOK** are scheduled to exhibit their dangerous wild animals at the Mesquite Rodeo from April 4, 2003 to October 4, 2003. An article in the Dallas Morning News on the "Tiger Encounter" exhibit at the Mesquite Rodeo describes the exhibit as one where participants are able to hold, touch and even feed tigers cubs and have a portrait taken while doing so. Attached as **EXHIBIT N** and incorporated by reference. Defendants **ZOOCATS'** and **COOK'S** exhibit poses a real danger of obvious and unobvious physical harm to the public, therefore, the Attorney General requests that the Honorable Court issue an *Ex Parte* Temporary Restraining Order restraining Defendants activities. Upon information and belief, Defendants **ZOOCATS, ET AL.** and **COOK** may also be exhibiting their dangerous wild animals at other public venues.

XVII. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

64. The Attorney General alleges that by reason of the foregoing, that Defendants **ZOOCATS, ET AL.** and **COOK**, are in violation of the laws of Texas, and unless immediately restrained by the Honorable Court, that Defendants' continued operation, advertising, transporting, exhibiting, and sale and/or offer for sale of dangerous wild animals and the soliciting, accepting, and/or giving of monetary or dangerous wild animal donations threatens immediate and irreparable injury to consumers and the general public. The Attorney General therefore requests a Temporary Injunction and Permanent Injunction as indicated in subsequent paragraphs.

65. By reason of the institution and operation of the acts and practices described herein above, Defendants have violated and will continue to violate the laws as alleged above. Defendants, unless restrained by this Honorable Court, will continue violating the laws of the State of Texas and injury, loss, and damage will result to the **STATE OF TEXAS** and to the general public.

XVIII. APPLICATION FOR *EX PARTE* TEMPORARY RECEIVER

66. The Attorney General alleges that by reason of the foregoing, that Defendants **ZOOCATS, ET AL.** and **COOK** are in violation of the laws of the State of Texas, and unless an *ex parte* receiver is appointed to take charge of the property and assets of **ZOOCATS, ET AL.** of any kind or nature, wherever situated, to receive and take charge of all the books, records and finances of **ZOOCATS, ET AL.**, to appropriately care for the animals in the charge of **ZOOCATS, ET AL.**, and to generally conduct the necessary business of **ZOOCATS, ET AL.**, pending a final hearing in this matter, Defendants continued operations threaten immediate and irreparable injury to consumers, the general public, donors, and the charitable trust. Therefore, the Attorney General requests that the Court appoint a temporary receiver to conserve the charitable, nonprofit assets of the non-profit corporate Defendants and to avoid damage to the interests of the parties and the public of the **STATE OF TEXAS**.

67. Based upon the above recitation of facts and in accordance with the principles of equity and the special powers of Texas courts in matters pertaining to charity such appointment of a receiver is necessary and proper. The appointment of a receiver for the non-profit, charitable corporations is specifically permitted by Texas law. No other adequate remedy is available at law or equity to accomplish these goals. The Attorney General seeks the appointment of a temporary receiver for the non-profit corporate Defendants pursuant to the Texas Rules of Civil Procedure, the Texas Civil Practice & Remedies Code, the Texas Miscellaneous Corporation Laws Act, the Texas

Non-Profit Corporations Act and the common law pertaining to charitable trusts (*see* particularly Article 1302-5.10 of the Miscellaneous Corporation Laws Act and Articles 1396-7.04 and/or 7.05 of the Texas Non-Profit Corporation Act).

68. The Attorney General requests that the temporary receiver, appointed during the pendency of this litigation, represent the interests of the charitable corporations and be given the authority and duties customarily given to corporate receivers to conduct any general business of the non-profit corporate Defendants. If the temporary receiver is appointed, the Court shall have and retain exclusive jurisdiction over the receivership and shall issue other and further orders pertaining thereto as necessary and just.

XIX. APPLICATION FOR *EX PARTE* ASSET FREEZE

69. The **STATE OF TEXAS** asks that the assets of Defendants **ZOOCATS, ET AL.** and **COOK** be frozen during the pendency of these legal proceedings to preserve monies or assets of any kind or nature, wherever situated, for proper charitable purposes. Unless an *ex parte* asset freeze is granted, said assets of Defendants may be lost, altered, removed or materially injured. The interests of the **STATE OF TEXAS** and the public require an *ex parte* asset freeze in light of the harmful activities of Defendants.

**XX. REQUEST TO CONDUCT DISCOVERY PRIOR TO
TEMPORARY INJUNCTION HEARING**

70. The Attorney General requests leave of this Court to conduct discovery including document requests and telephonic, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer. Any document requests and depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys.

71. On December 11, 2002, the Attorney General, on behalf of the **STATE OF TEXAS**, issued a Civil Investigative Demand (“CID”) on Defendants **ZOOCATS** and **COOK** pursuant §17.61 of the DTPA. Attached as **EXHIBITS Q and R** and incorporated by reference. On December 30, 2002, the Attorney General granted Defendants **ZOOCATS** and **COOK** an additional thirty (30) days to respond to the CID. On January 28, 2003, the Attorney General received Defendant **ZOOCATS’** response to the CID. The response was incomplete and accompanied by a letter making numerous objections. A copy of the accompanying letter is attached as **EXHIBIT S** and incorporated by reference. The Attorney General immediately responded advising Defendant **ZOOCATS** that pursuant to §17.61(g) of the DTPA objections to a CID must be made in the form of a petition stating good cause, filed with the district court, “before the return date specified in the demand or within twenty (20) days after the demand has been served, whichever period is shorter,” and that the specified time frame had expired. Attached as **EXHIBIT T** and incorporated by reference. On February 4, 2003, the Attorney General received Defendant **COOK’S** response to the CID. This response was also incomplete and accompanied by a letter that made numerous untimely objections. A copy of the accompanying letter is attached as **EXHIBIT U** and incorporated by reference. Accordingly, the Attorney General requests expedited discovery.

XXI. INJURY TO CONSUMERS

72. By means of the foregoing unlawful acts and practices, Defendants have acquired the money or property of identifiable persons or charitable donors in the State of Texas and elsewhere to whom such money or property should be restored, or in the alternative such money or property should be recovered from Defendants to be used as originally promised and represented. Defendants will continue to injure consumers, donors, and the charitable trust unless restrained.

XXII. DISGORGEMENT

73. All of Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefit that would be unjust for Defendants to retain, including all ill-gotten gains, benefits, or profits that are the result of Defendants' false, misleading, or deceptive conduct as described in the foregoing paragraphs. Defendants should be ordered to disgorge all monies fraudulently solicited together with all of the proceeds, profits, income, interest, and accessions thereto. All funds disgorged should be returned to **ZOOCATS, ET AL.**, for the benefit of the public and the animal welfare mission of **ZOOCATS, ET AL.**

XXIII. PRESERVATION OF RECORDS

74. The records of Defendants relating to the operation, advertising, transporting, exhibiting, and sale and/or offer for sale of dangerous wild animals and the soliciting, accepting, and/or giving of monetary or dangerous wild animal donations should be conserved and preserved during the pendency of these legal proceedings. Unless injunctive relief is granted, said records of Defendants **ZOOCATS, ET AL.** and **COOK** may be dissipated, lost, altered, removed or materially injured. The interests of the **STATE OF TEXAS** and the public require an injunction in light of the harmful activities of Defendants.

XXIV. THIS COURT'S POWER TO GRANT RELIEF

75. In addition to the statutory and common law equity powers of this Court in matters pertaining to charity and non-profit corporations (discussed *supra*), §17.47(b), (c) and (d) of the DTPA, empowers this Court to grant injunctive relief, civil penalties, and such other relief as the Court may deem appropriate to compensate identifiable persons for actual damages or to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice.

76. Section 402.006(c) of the TEX. GOV'T. CODE (Vernon 1990) and §123.005(a) of the TEX. PROP. CODE (Vernon Supp. 2002) empowers this court with the authority to grant the Attorney General the costs of court, reasonable attorney fees and such other relief to which the Attorney General and/or the **STATE OF TEXAS**, as Plaintiff herein, may be justly entitled.

XXV. PRAYER

WHEREFORE, Plaintiff, the Attorney General on behalf of the **STATE OF TEXAS**, prays that this Court as authorized by §17.47 of the DTPA, the Non-Profit Corporation Act, the Miscellaneous Corporation Laws Act, and the common law equity authority of the Court to enforce and protect public charitable trusts:

- A. Cite Defendants **ZOOCATS, INC., d/b/a ZOOLOGICAL STUDIES GROUP a/k/a ZOOCATS ZOOLOGICAL SYSTEMS, and SPECIALIZED SPECIES HUMANE SOCIETY, INC., ZOO AMERICA, INC., and TECHNOLOGY SPECIALTIES & RESEARCH GROUP, INC., and MARCUS CLINE-HINES COOK, (individually and in his capacity as an Officer and Director of ZOOCATS, INC., d/b/a ZOOLOGICAL STUDIES GROUP a/k/a ZOOCATS ZOOLOGICAL SYSTEMS, and SPECIALIZED SPECIES HUMANE SOCIETY, INC., ZOO AMERICA, INC., and TECHNOLOGY SPECIALTIES & RESEARCH GROUP, INC.)**, according to law to appear and answer herein;
- B. Grant Plaintiff's request for an *Ex Parte* Temporary Restraining Order;
- C. Grant Plaintiff's request for an *Ex Parte* Temporary Receiver;
- D. Grant Plaintiff's request for an *Ex Parte* Asset Freeze;
- E. Grant Plaintiff's request for expedited discovery;
- F. Grant Plaintiff's request for a Temporary Injunction hearing;
- G. Temporarily enjoin Defendants **ZOOCATS, ET AL. and MARCUS CLINE-HINES COOK, (individually and in his capacity as an Officer and Director of ZOOCATS, ET AL.)**, and by their officers, agents, servants, employees, subsidiaries and any person acting in concert or participation with Defendants **ZOOCATS, ET AL. and MARCUS CLINE-HINES COOK, (individually and in his capacity as an Officer and Director of ZOOCATS, ET AL.)**, from violating §17.46(a) and (b) of the DTPA as specified in the following paragraph;

H. Permanently enjoin Defendants **ZOOCATS, ET AL. and MARCUS CLINE-HINES COOK, (individually and in his capacity as an Officer and Director of ZOOCATS, ET AL.)**, and by their officers, agents, servants, employees, subsidiaries and any person acting in concert or participation with Defendants, upon final hearing, from violating §17.46(a) and (b) of the DTPA and from engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas as follows:

- (1) causing confusion or misunderstanding, expressly or by implication, as to the source, sponsorship, approval, or certification by the United States Department of Agriculture (“USDA”);
- (2) causing confusion or misunderstanding, expressly or by implication, as to Defendants’ affiliation, connection, or association with, or certification by the ExxonMobil Save the Tiger Fund;
- (3) causing confusion or misunderstanding, expressly or by implication, as to Defendants’ affiliation, connection, or association with, or certification by the National Fish and Wildlife Foundation Save the Tiger Fund;
- (4) causing confusion or misunderstanding, expressly or by implication, as to Defendants’ affiliation, connection, or association with, or certification by the Dallas World Aquarium;
- (5) falsely representing, expressly or by implication, that Defendants’ services are sponsored, approved, or certified by the United States Department of Agriculture (“USDA”);
- (6) falsely representing, expressly or by implication, that Defendants’ services are sponsored, approved, or certified by the ExxonMobil Save the Tiger Fund;
- (7) falsely representing, expressly or by implication, that Defendants’ services are sponsored, approved, or certified by the National Fish and Wildlife Foundation Save the Tiger Fund;
- (8) falsely representing, expressly or by implication, that Defendants’ services are sponsored, approved, or certified by the Dallas World Aquarium;
- (9) falsely representing, expressly or by implication, that Defendants have a perfect safety record;
- (10) falsely representing, expressly or by implication, that Defendants are operated by off-duty, full-time, zoo professionals;

- (11) falsely representing, expressly or by implication, that Defendant Marcus Cline-Hines Cook has a Bachelor of Science in Zoology from an established, recognized, and accredited college or university;
- (12) falsely representing, expressly or by implication, that Defendants are authorized to collect donations on behalf of the National Fish and Wildlife Foundation Save the Tiger Fund;
- (13) falsely representing, expressly or by implication, that Defendants are an animal holding facility for the Dallas World Aquarium or any other private or public zoo;
- (14) falsely representing that Defendants are a federally licensed zoological facility;
- (15) failing to disclose that the handling, petting, and/or feeding of wild animals including, but not limited to infant or juvenile wild animals, by the public is inherently dangerous;
- (16) failing to disclose that Defendants are not in good-standing with the U.S. Department of Agriculture Animal and Plant Health Inspection Service;
- (17) failing to disclose that tigers are carriers of salmonella and round worm;
- (18) failing to disclose that donations intended for the National Fish and Wildlife Foundation Save the Tiger Fund that are given to Defendants are not forwarded to the National Fish and Wildlife Foundation;
- (19) failing to disclose that Defendant Marcus Cline-Hines Cook is not a zoologist and/or does not possess a Bachelor of Science in Zoology from an established, recognized, and accredited college or university;
- (20) failing to disclose that the public will come into contact with dangerous diseases and bacteria when handling, petting, and/or feeding wild animals including, but not limited to infant or juvenile wild animals;
- (21) failing to disclose that Defendants are not affiliated, connected, or associated with, or certified by the ExxonMobil Save the Tiger Fund;
- (22) failing to disclose that Defendants are not affiliated, connected, or associated with, or certified by the National Fish and Wildlife Foundation Save the Tiger Fund;
- (23) failing to disclose that Defendants are not affiliated, connected, or associated with, or certified by the Dallas World Aquarium or any other private or public zoo;

- (24) failing to disclose that animals donated to Defendants may be exhibited to the public and that during such exhibits the public will be permitted to interact with the donated animals for a fee;
- (25) failing to disclose that Defendants' employees or volunteers are not experienced wild animal handlers or trainers;
- (26) failing to disclose that Defendants' employees or volunteers are not off-duty, full-time zoo professionals;
- (27) failing to disclose that Defendants are not authorized to accept donations on behalf of the National Fish and Wildlife Save the Tiger Fund;
- (28) failing to disclose violation(s) found by the USDA when representing a "perfect safety record";
- (29) continuing to permit the public to interact with, hold, pet, or feed dangerous wild animals;
- (30) continuing to use the ExxonMobil trademark;
- (31) continuing to use the National Fish and Wildlife Foundation Save the Tiger Fund mark or logo;
- (32) continuing to represent that Defendants teach the educational programs for ExxonMobil, the National Fish and Wildlife Foundation, and/or the Save the Tiger Fund;
- (33) continuing to represent that Defendant COOK is second in the chain of command or is in any way affiliated with the Dallas World Aquarium;
- (34) continuing to represent that Defendants are an animal holding facility for the Dallas World Aquarium;
- (35) continuing to expose the public to dangerous wild animals without first providing to business and the public a written disclosure statement including the following:
 - (a) warning of the inherent danger and unpredictability of the animals being exhibited;
 - (b) warning of the dangerous bacteria and diseases including, but not limited to salmonella, that the animals carry;

- (c) advising that individuals will need to disinfect any body parts and any physical areas that the animals may have come into contact with; and
 - (d) obtaining the signature of each individual on said written disclosure prior to their exposure to such animals.
- (36) continuing to exhibit dangerous wild animals while misrepresenting that an experienced and qualified animal handler or trainer, who has direct control over the animal(s), will be present at all times;
 - (37) continuing to solicit or accept donations without authorization from the appropriate entities on behalf of ExxonMobil, the National Fish and Wildlife Foundation, and/or the Save the Tiger Fund;
 - (38) making, publishing, disseminating, circulating or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine, or other publication, or on the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to Defendants' operations, which is untrue, deceptive or misleading; and
 - (39) transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices, or other written materials relating to Defendants' operations currently or hereafter in Defendants' possession, custody, or control except in response to further orders or subpoenas in this cause.
- I. Order a constructive trust to be placed upon all the assets of Defendants **ZOOCATS, ET AL.**;
 - J. Order Defendants **ZOOCATS, ET AL. and MARCUS CLINE-HINES COOK, (individually and in his capacity as an Officer and Director of ZOOCATS, ET AL.)** to restore all money or other property taken from identifiable persons by means of unlawful acts or practices or in the alternative such money or property should be recovered from Defendants to be used as originally promised and represented;
 - K. Order Defendants **ZOOCATS, ET AL. and MARCUS CLINE-HINES COOK, (individually and in his capacity as an Officer and Director of ZOOCATS, ET AL.)**, to disgorge all monies taken from consumers or charitable donors through deceptive practices, including all ill-gotten gains and benefits from violations of the DTPA and returned to the charitable non-profit corporation;
 - L. Award the Attorney General, on behalf of **ZOOCATS, ET AL.** and its charitable mission, compensatory damages in the amount of any dispensation of the non-profit corporate Defendant's assets over and above amounts determined to be reasonable

compensation for services rendered, or any amounts misappropriated by, Defendant **COOK**, and further award the Attorney General, on behalf of **ZOOCATS, ETAL.** and its charitable mission, all taxes, fines, and other civil penalties and all actual and exemplary damages, including all pre-judgment and post-judgment interest on all awards of damages, civil penalties, and other recoveries as provided by law, to which the Attorney General, on behalf of the public interest in charity, may show himself entitled.

- M. Award Plaintiff, the Attorney General, on behalf of the **STATE OF TEXAS**, civil penalties in the amount of \$2,000.00 per defendant per violation of the DTPA, not to exceed a total of \$10,000.00 per defendant, as provided in §17.47(c) of the DTPA;
- N. Award Plaintiff, the Attorney General, reasonable attorney fees and costs as provided in § 402.006(c) of the TEX. GOV'T. CODE and §123.005(a) of the TEX. PROP. CODE;
- O. Grant all other relief to which the Plaintiff may show itself entitled; and
- P. Grant such other and additional equitable relief as the Court may deem just and proper.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

[VERIFICATION FOLLOWS]

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned notary, on this day, personally appeared Everardo J. (“Jesse”) Cantu, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said he read the above Plaintiff’s Original Petition, Application for *Ex Parte* Temporary Restraining Order, Request for *Ex Parte* Appointment of Receiver, Application for *Ex Parte* Asset Freeze, Application for Expedited Discovery, and Application for Temporary and Permanent Injunction and the facts stated in it are within his personal knowledge and are true and correct to the best of his knowledge and belief or are supported by sworn affidavits or documents attached hereto and incorporated by reference.

EVERARDO J. CANTU

SUBSCRIBED AND SWORN to before me by Everardo J. (“Jesse”) Cantu on this _____ day of _____, 2003.

Notary Public in and for the State of Texas