

been regularly inspected by the federal government, and Plaintiffs have never been found out of compliance with any of these laws. The tigers are maintained in accordance with all applicable zoological industry standards. The tigers are in perfect health and receive bi-monthly veterinary care and monitoring – more medical care and attention than the average human receives.

3. The Defendants knew all of this and one of them actually was shown Plaintiffs’ “back of the house” tiger operation. Yet ALDF and its co-conspirators embarked on a campaign of defamation, abuse of the legal process, tortious interference and other wrongful conduct to essentially extort Plaintiffs – on pain of damage to the brand, loss of customers and being sued under the Endangered Species Act – into giving up the tigers, taking them from the only home and caregivers they have ever known and sending them to a “sanctuary.” These Defendants must be required to account for their wrongful and malicious actions before a Harris County jury.

III. PARTIES

4. Landry’s is a privately held corporation organized and existing under the laws of the State of Delaware. It maintains a principal place of business in Harris County at 1510 W. Loop South, Houston, Texas 77027. Houston Aquarium, Inc. is a privately held corporation organized and existing under the laws of the State of Texas. It maintains a principal place of business in Harris County at 1510 W. Loop South, Houston, Texas 77027. It owns and operates the Downtown Aquarium – Houston (“Downtown Aquarium”) located at 410 Bagby Street, Houston, Texas 77002.

5. ALDF purports to be a 501(c)(3) organization, incorporated in the State of California, with its principal office located at 170 E. Cotati Avenue, Cotati, California 94931. ALDF’s agent for service is Stephen E. Wells, who is located at 170 E. Cotati Avenue, Cotati, California 94931.

6. Carney Anne Nasser is an individual and the Senior Counsel for Wildlife and Regulatory Affairs at ALDF. On information and belief, she is a citizen of and resides in Louisiana and resides in Orleans Parish, Louisiana at 1008 Eleonore Street, New Orleans, Louisiana 70115-4311.

7. Cheryl Conley is an individual who resides in Montgomery County, Texas at 8974 Stone Oak Drive, Montgomery, Texas 77316-6920.

IV. VENUE AND JURISDICTION

8. Venue is proper in Harris County, Texas, under the Texas Civil Practice Remedies Code § 15.017 and § 15.002 because Plaintiffs resided in Harris County, Texas at the time the causes of action accrued and all, or a substantial part of, the events giving rise to the claims herein occurred and are occurring in Harris County, Texas.

9. The Texas long-arm statute authorizes personal jurisdiction over ALDF and Nasser because both have engaged in conduct in Harris County, Texas, that forms the basis of this lawsuit.

10. The monetary relief requested by Plaintiffs is within the jurisdictional limits of this Court.

V. REQUEST FOR DISCLOSURE

11. Pursuant to Rule 194, Plaintiffs request the Defendants to disclose, within 50 days of the service of this request, all of the information or material described in Rule 194.2.

VI. BACKGROUND

12. Landry's is one of America's leading dining, entertainment, gaming and hospitality groups. Landry's owns and operates more than 500 properties, including more than 40 unique brands such as Landry's Seafood, Chart House, Saltgrass Steak House, Bubba Gump Shrimp Co., Claim Jumper, Morton's The Steakhouse, McCormick & Schmick's, Mastro's

Restaurants, and Rainforest Café. Landry's also owns and operates numerous hotel properties and other entertainment destinations.

13. The Downtown Aquarium opened in 2003. The Downtown Aquarium is a high-profile six (6) acre entertainment complex in Houston with an aquarium and geographic exhibits, a restaurant built around a 500,000 gallon aquatic wonderland, and is home to more than 300 species of aquatic life from around the globe.

14. The Downtown Aquarium is also home to four (4) white Bengal tigers (*Panthera tigris tigris*). These tigers are captive bred and came to the Downtown Aquarium when they were cubs, where they have lived their lives ever since. Each of the tigers is 12 years old.

15. The Downtown Aquarium facility is licensed by the United States Department of Agriculture ("USDA") as a Class C exhibitor and its license is in good standing with the USDA. It is regulated and inspected regularly by the USDA, which administers the Animal Welfare Act – the primary federal statute governing the health and welfare of captive animals that are subject to a Class C exhibitor's license. The Downtown Aquarium has never been cited for a non-compliance with the AWA nor has it had any Animal Welfare Act violations related to the care of its tigers or any other animal.

16. Plaintiffs' facility is accredited by two independent accrediting organizations, the Association of Zoos and Aquariums ("AZA") and the Zoological Association of America ("ZAA"). AZA accredited facilities follow high standards of animal management and care including living environments, social groupings, health and nutrition. Plaintiffs' facility received its reaccreditation by the AZA in 2015. ZAA accredited facilities follow professional standards in husbandry, animal care, safety and ethics. Both accrediting organizations impose standards above and beyond what is required by the federal Animal Welfare Act.

17. Defendant ALDF is an animal rights organization that uses litigation as the centerpiece of its tactics to advance its mission. According to ALDF's website, ALDF frequently brings litigation in its own name as well as assisting with other groups' litigation, such as assisting the Nonhuman Rights Project's writ of *habeas corpus* that sought to give chimpanzees the legal status of humans.

18. ALDF routinely runs social media and other campaigns against businesses and organizations that involve animals. If such entities do not yield to ALDF's demands, ALDF sues them.

A. Overview of Defendants' Conduct

19. Defendants have engaged in a coordinated and ongoing series of tortious actions that have directly harmed Plaintiffs. Defendants' actions include, but are not limited to, defaming and disparaging Landry's, Houston Aquarium, Inc., the Downtown Aquarium, its animal caregivers and staff and the four (4) tigers that live in this facility and interfering with Plaintiffs' business and professional relationships and reputation.

20. Each of the Defendants has proactively taken unlawful action against Plaintiffs in Harris County, Texas. As stated more fully below, Conley gained access to and toured the Downtown Aquarium, which is located in Harris County, Texas, under false pretenses. Nasser, on behalf of herself and ALDF, also visited the Downtown Aquarium and photographed the tigers which she published with her false and defamatory statements against Plaintiffs. ALDF, Nasser and Conley proactively sent a 60-day Notice letter to Defendants at Defendants' places of business in Harris County, Texas, and to media outlets, including the *Houston Chronicle*, which is located in Harris County, Texas. Each of Defendants' defamatory and disparaging campaign to discredit and influence Plaintiffs' reputation and business was aimed at customers visiting and doing business with Landry's restaurants and other establishments and with the Downtown

Aquarium. The effects of Defendants' unlawful conduct affected Plaintiffs, which conduct business in Harris County, Texas.

21. Defendants have made deliberately false and malicious statements about many aspects of the tigers and their habitat, including that Plaintiffs' tigers are kept in "deplorable" conditions, that Plaintiffs have "harm[ed the tigers'] physical health and psychological well-being," and "caused the tigers serious mental and physical harm," that the tigers are "at risk for serious, long term, debilitating injuries," and are subjected to "species-inappropriate living conditions that violate the [Endangered Species Act]."

22. Defendants have falsely accused Plaintiffs of violating federal law, including but not limited to the Endangered Species Act. Defendants published this false statement through ALDF's publicly available website, social media postings, media communications, and interviews. Additionally, Defendants' false statements regarding Plaintiffs' treatment of its tigers are tantamount to accusing Plaintiffs of engaging in criminal behavior.

23. Defendants have deliberately and intentionally distributed false information to Plaintiffs' potential and current customers and assailed Plaintiffs' business character and animal care practices. Defendants published these false statements through ALDF's website (www.aldf.org), the website of their lawyers (Irvine & Conner) who at all times material hereto have acted as agents for Defendants, social media (e.g. Facebook, Twitter); and through email and oral conversations with the media, such as the *Houston Chronicle*, ABC-Denver7 News, and *The Dodo*.

24. Defendants have intentionally engaged in tortious conduct in order to coerce Plaintiffs to give up their lawfully-held and lawfully-exhibited tigers and send them to a "sanctuary" of ALDF's choosing. Defendants have represented that if Plaintiffs do not yield to

their demands, ALDF and Conley will bring a lawsuit in federal court pursuant to the Endangered Species Act.

25. Defendants have no good faith basis to bring an Endangered Species Act case against Plaintiffs where, as here, there are no Animal Welfare Act violations and no USDA findings of non-compliance.

26. The Downtown Aquarium's USDA inspection history is perfect. Since its opening, the Downtown Aquarium has not had a single non-compliance. The last two (2) years of USDA inspection reports are publicly available on USDA's Animal and Plant Health Inspection Service website. In addition, all of Plaintiffs' inspection reports since 2004 are freely available under the federal Freedom of Information Act and true correct copies are attached hereto as Exhibit A. Both ALDF and Nasser are well-versed in USDA procedures and in the FOIA and have a history of requesting and receiving information pursuant to the FOIA about animal exhibitors.

27. ALDF and Nasser either accessed Plaintiffs' USDA inspection reports and disregarded what those reports said or they did not review them at all – contrary to ALDF and Nasser's consistent practice of accessing and using such documents to their advantage in litigation.

28. Forfeiture of an exhibitor's animals is not a remedy that is available to a private party in a citizen suit under the Endangered Species Act. Only the Secretary of the Interior has the authority to seek forfeiture under the Endangered Species Act.

29. Defendants' defamatory and disparaging statements were made in various forms, including by posting false content to the ALDF website, engaging in various forms of social media (e.g. Facebook, Twitter), preparing and distributing false statements in a Notice Letter to

federal agencies and local Texas government officials and legislators, and making false statements to the media. Defendants' conduct includes making statements to Plaintiffs' potential customers and persons who have current, pending and/or reasonably probable future business relationships with Plaintiffs.

30. Defendants have engaged in an ongoing series of tortious actions that have directly harmed Plaintiffs.

31. That Defendants knew that their defamatory statements were untrue rests in major part on the fact that Conley, under false pretenses, actually gained access to a "back of the house" or "off exhibit" tour of Plaintiffs' tiger facilities in Harris County, Texas. On or about March 7, 2015, Conley contacted Plaintiffs' public relations firm to request a private tour of the tiger facilities. In making this request, she indicated that she owned a radio station and that she had plans to use the information to do a "behind-the-scenes look at the aquarium" during a segment on her wildlife radio show. On information and belief, Conley never produced such a story and this pretense of gaining admission was false. Had Conley revealed the real purpose of her visit – to obtain information and photographs that she would later utilize in work her conspiratorial acts with the other Defendants – Plaintiffs would never have permitted her entry to the facilities. General admission guests to the Downtown-Aquarium are not provided with this in-depth experience and the opportunity to view the tiger habitats that are "off exhibit." During Conley's private tour on or about March 26, 2015, Conley observed the condition of the facility, the tigers, tiger staff, and had the opportunity to take photographs and ask questions. She was provided extensive knowledge by one of the tiger trainers about the tigers' routine, enrichment, health and welfare. Conley therefore had actual knowledge that many of the statements that Defendants later made about the tigers' condition and surroundings were not true.

32. In fact, the real, but undisclosed, purpose of Conley's visit was to gather information and photographs that she could use, along with the other Defendants, in a campaign to defame Plaintiffs and coerce them into giving up their lawfully-held tigers.

33. Had Conley not falsely represented the purpose of her visit, Plaintiffs would not have provided her with access in the form of a back-of-the-house tour to areas of the facility that are not open to other guests.

34. Conley had been opposed to Plaintiffs' exhibition of the tigers prior to her defamatory statements. On February 20, 2016, while protesting at the Downtown Aquarium, Conley told a staff member at the Downtown Aquarium that she knew the tigers were well-cared for. This is directly contrary to her defamatory statements about Plaintiffs.

35. All of the statements described below, regardless of which Defendant made them, were made while each Defendant was acting as the agent of the other Defendants and/or in an ongoing conspiracy with the other Defendants.

B. Defendants' Specific Statements

36. The false statements made by Defendants against Plaintiffs publicly and falsely accused Plaintiffs of violating federal law, including but not limited to the Endangered Species Act, maintaining Plaintiffs' tigers in substandard, species-inappropriate and/or deplorable conditions, harming the physical and psychological well-being of the tigers, and exposing the tigers to future risk of injury.

37. Defendants made these statements deliberately and/or with reckless disregard for the truth and acted with malice in making these statements.

C. 60-Day Notice Letter

38. On or about September 19, 2016, ALDF and Conley, by and through their attorneys and agents, Irvine & Conner and Nasser, Sr. Counsel for Wildlife and Regulatory

Affairs for the ALDF, sent a 60-day Notice Letter to Plaintiffs and to the United States Department of the Interior (“Interior”) and the U.S. Fish and Wildlife Service (“FWS”). A true and correct copy of the letter is attached hereto as Exhibit B. (“Notice Letter”). The Notice Letter purports to give Plaintiffs and the agencies notice of ALDF’s and Conley’s intent to file a lawsuit pursuant to the citizen suit provision of the Endangered Species Act, 16 U.S.C. § 1540(g).

39. The Defendants gratuitously copied Mayor Sylvester Turner, of the City of Houston, on the letter. No portion of the Endangered Species Act notice requirement involves any local government official. Neither Mayor Turner nor his office has any role in administering or enforcing the Endangered Species Act.

40. The Notice Letter was dated September 19, 2016 and was sent “Via Certified Mail, Return Receipt Requested.”

41. On or before September 19, 2016 – before Plaintiffs actually received the Notice Letter and before either Interior or the FWS could have received the Notice Letter – Defendants began an orchestrated media campaign to distribute the Notice Letter to various media outlets, along with a press release from ALDF, posting these statements on their agent’s (Irvine & Conner), website, and to various social media platforms, such as Facebook and Twitter.

42. Defendants’ 11-page, single-spaced letter, couched as notice of their claims under the Endangered Species Act, is rife with defamatory and disparaging statements about Plaintiffs’ tiger exhibit and facility and virtually every aspect of its tiger care. The Notice Letter as a whole is false and defamatory to Plaintiffs. The Notice Letter also contains multiple statements that, standing alone, are false and defamatory to Plaintiffs.

43. Among other statements, Defendants stated in the Notice Letter that “Landry’s has deprived these tigers access to sunlight, fresh air, natural surfaces, and species appropriate environmental enrichment.” This is false and defamatory.

44. All four tigers have access to natural light through both windows and skylights. Both Conley and Nasser have taken photographs of the tiger habitat which show the light sources and have made these photos public. During Conley’s private tour, she specifically inquired about the sources of light and the windows and skylights were pointed out to her. In addition, the tiger facility offers the tigers other substrates, such as sod and wood chips. Plaintiffs’ tigers are provided with species-appropriate enrichment through an in-depth enrichment program that allows tigers to exhibit natural behaviors. As part of Conley’s tour of the tiger facility, many aspects of the tiger’s care, including the enrichment program, were shown and explained to Conley. That Defendants deliberately ignored this information and embarked upon coordinated efforts to defame Plaintiffs, is evidence that it was done with malice.

45. Defendants stated in the Notice Letter that “the tigers cannot jump or run and live entirely on unnatural and unyielding surfaces.”

46. This statement is false. The tigers’ habitat affords them the ability to climb, jump, run, swim and make normal postural adjustments. The surfaces that the tigers are exposed to on and off exhibit are varied, such as sod and wood chips.

47. Defendants stated in the Notice Letter that:

The Tiger Exhibit lacks any naturalistic features or enrichment and does not offer the tigers any opportunities to mimic their natural behaviors, such as stalk or hunt, or hide from public view. For example, there are no tree trunks on which the tigers can sharpen their claws and no species-appropriate toys that would allow them to stalk, chase or pounce.

48. These statements are also false. Among other reasons, the statements are refuted by the very YouTube video that is falsely referenced in the Notice Letter as showing tiger

“aggression.” The animal’s interaction with the guests behind the glass is neither abnormal nor aggressive. The claimed “lack” of enrichment is false because, for enrichment purposes, tigers on exhibit are provided with logs with which they can interact. Nasser herself took photographs of the tiger habitat, and those photographs were provided to *The Dodo* by Nasser and credited to Nasser. The photographs are featured with statements from Nasser and plainly show the log. See <https://www.thedodo.com/white-tigers-downtown-aquarium-houston-2014116306.html> (9/23/2016). Accusing Plaintiffs of not offering a surface for the tigers to sharpen their claws, in light of Nasser’s own photo, is further evidence of the deliberate falsity of Defendants’ statements. Further, the tiger habitat includes a water feature, which provides the tigers an opportunity to swim and play – facts that are conveniently omitted from the Notice Letter but also visible in Nasser’s own photos. The tigers also have the choice to climb their trees, rest on their platform or hide in the corner of the exhibit away from the glass. In addition, complex, species-appropriate enrichment is provided to tigers both on and off exhibit and include climbing trees, swimming, playing with balls, hunting for hidden food, resting in hammocks, using scratch posts, sensory (scent) enrichment, and participating in training and interactive sessions with staff and veterinarians. Additionally, publicly available photos on the Downtown Aquarium’s Facebook page clearly show enrichment items and the water and tree features in the tiger habitat.

49. Defendants stated in the Notice Letter that “[l]iving on unnatural, unyielding concrete also increases the cats’ risk of painful foot, joint, muscle, and circulatory problems and ulcerated or cracked footpads.”

50. These statements are also false. Defendants baldly link concrete substrates to increased incidents of hip muscle tears, lameness, foot, joint, muscle and circulatory problems, poor muscle tone, and other painful injuries in tigers and insinuate that Plaintiffs’ tigers suffer

from these maladies. In fact, Plaintiffs' tigers are in excellent health and do not suffer from any of these issues. Conley had the opportunity to see the body condition of the tigers firsthand during her VIP visit to the facility. Notwithstanding this information, Defendants have made deliberately false statements about the tigers' health.

51. Defendants stated in the Notice Letter that “[i]ndeed, the tigers have been observed pacing and lunging at the glass wall separating the tigers from the public—all common stress responses for tigers living in close confinement with no ability to seek privacy from the viewing public.”

52. These statements are also false. The tigers at the Downtown Aquarium are not housed in “close confinement” nor are any of their behaviors indicative of stress. In fact, a program of behavioral management and operant conditioning training is in place to actively engage the tigers and prevent any type of stress or negative behaviors. Defendants' characterization of the tigers' interest in the glass portion of the enclosure conveniently ignores the tigers' choice to engage with caregivers and seek human interaction, all of which they have known since birth and life in human care.

53. Defendants stated in the Notice Letter that:

During the week, only one tiger is permitted inside the public tiger exhibit at a time, while three remaining tigers are locked in the Tiger Holding Area. This means that on average, the tigers are locked in a metal cage for a minimum of 75% of the time on weekdays—perhaps more, if tigers only are permitted in the Exhibit during opening hours. On the weekends, two tigers are put on display, meaning that the tigers spend an average of no less than 50% of the weekend locked in a metal cage.

54. These statements are also false. Defendants deliberately misrepresented the manner in which the tigers are grouped and the amount of time spent in various parts of the facility. In fact, tigers are paired up at various times and pairings in the exhibit are not limited to weekend time periods. Because the facility is equipped with sufficient staff and caregivers, the

tigers are moved around frequently. Plaintiffs offer their tigers “choices,” *i.e.* multiple opportunities to go onto the exhibit to interact with their enrichment. They are never forced to go on to the exhibit if they prefer to remain in the off exhibit areas. When tigers are resting or off exhibit, they have access to multiple holding areas.

55. Defendants stated in the Notice Letter that “[w]hether in the public Tiger Exhibit or Tiger Holding Area, Nero, Marina, Coral and Reef do not receive adequate species-appropriate enrichment.”

56. These statements are also false. Plaintiffs provide an extensive enrichment program which is documented by the Zoological Information Management System (ZIMS) record-keeping system. Species-appropriate enrichment is also required by Plaintiffs’ AZA accreditation, which has always been successfully renewed. The fact that Conley’s VIP tour of the facility included details about tiger enrichment illustrates the malice and bad faith inherent in these statements. Additionally, publicly available photos on the Downtown Aquarium’s Facebook page clearly show enrichment items in the tiger habitat.

57. Defendants stated in their Notice Letter that:

As a result of these unnatural conditions, the four tigers experience pervasive stress and exhibit stereotypic behaviors not observed in the wild, such as incessant pacing. They also have exhibited overly aggressive behavior, a sign of stress associated with confinement.

58. These statements are also false. The tigers housed at the Downtown Aquarium do not exhibit stereotypical behaviors and extensive enrichment programs are in place to make sure the animals are provided with species-appropriate stimulation on a daily basis. Defendants’ citation to the opinions of two “zoologists” (one of whom frequently testifies on behalf of animal rights organizations and neither of whom is an independent source) about tigers in captivity generally is irrelevant. These zoologists have never seen, nor examined, Plaintiffs’

tigers and connecting their “opinions” to the health or well-being of Plaintiffs’ tigers is completely disingenuous. These individuals’ lack of competence is illustrated by their apparent willingness to form an opinion on the basis of a 30-second video snippet. Notably, no qualified veterinarian who has actually examined Plaintiffs’ tigers or studied their care or enrichment program has made this conclusion. The groundless conclusion that these tigers are experiencing “pervasive stress” or other stereotypic behaviors or any “psychological” issues is baseless and false.

59. Despite the fact that Plaintiffs’ USDA inspection history is publicly available and accessible through FOIA (a process which ALDF, and in particular Nasser, regularly engages in prior to bringing Endangered Species Act lawsuits), the Defendants avoid any reference to Plaintiffs stellar compliance history. In addition to FOIA, inspection reports for the last two (2) years are available publicly on the USDA website. Plaintiffs’ inspection reports are completely pristine, with not a single non-compliance from any inspection. In fact, since the tigers arrived at the facility in 2004, the USDA inspections have not yielded a single violation, either with respect to animal health, veterinary care or the facility itself. Defendants either accessed Plaintiffs’ clean inspection history, deliberately disregarded it, and proceeded in bad faith with their defamatory accusations, or deliberately chose to ignore readily available public information before making these false accusations.

60. Since it opened in 2003, Plaintiffs’ tiger facility has been accredited by the AZA, an accrediting body for zoos and aquariums for over 40 years. The facility was reaccredited in March of 2015. Less than ten percent (10%) of the 2,800 wildlife exhibitors licensed by USDA under the AWA meet the more comprehensive standards of AZA accreditation.

61. According to AZA’s website, the AZA’s Accreditation Commission evaluates:

every zoo or aquarium to make sure it meets AZA's standards for animal management and care, including living environments, social groupings, health, and nutrition. We also make sure that animals are provided with enrichment, which stimulates each animal's natural behavior and provides variety in their daily routine. The Accreditation Commission also evaluates the veterinary program, involvement in conservation and research, education programs, safety policies and procedures, security, physical facilities, guest services, and the quality of the institution's staff. And because a zoo or aquarium needs a strong foundation in order to continue to meet high standards, accreditation also evaluates each institution's finances, its governing authority, and its support organization.

<https://www.aza.org/becoming-accredited> (visited 9/22/2016).

62. Plaintiffs' facility is also accredited by the ZAA since 2015 and is in compliance with its standards, which primarily focus on animal husbandry and management.

63. As a whole, Defendants' Notice Letter is false and defamatory as to Plaintiffs.

D. Press Release

64. On or about September 19, 2016, ALDF posted or caused to be posted to its website, www.aldf.org, a press release to their "press room" page titled "Landry's, Inc. is Served Notice of Intent to Sue for Endangered Species Act Violations." A true and correct copy of the press release is attached hereto as Exhibit C. The press release was marked "for immediate release" and provided the contact information for an ALDF contact, Natalia Lima. The press release as a whole is false and defamatory to Plaintiffs.

65. Prominently featured at the top of the page on which the press release appears is a red "DONATE" button.

66. This tactic of attempting to raise money through false statements that damage the reputation of Plaintiffs, whose tigers are maintained in complete compliance with all applicable laws, is outrageous and indicative of malice.

67. In this press release, ALDF falsely stated that Plaintiffs have committed "Endangered Species Act Violations" and that they have brought "harm and harassment to a

federally listed species: four tigers” and that ALDF intended to sue “for violations of the Endangered Species Act (ESA).” These statements accuse Plaintiffs of violating, at a minimum, the Endangered Species Act.

68. The press release further falsely stated that the tigers are being “kept in deplorable conditions at the Aquarium.”

69. The press release further falsely stated that Plaintiffs’ “species-inappropriate living conditions violate the ESA.”

70. The press release further falsely stated that “at no point do the tigers have the opportunity to run, jump, or engage in the full range of their natural behaviors.”

71. The press release further falsely stated that the tigers are living in “dungeon-like conditions” that “harm their physical health and psychological wellbeing and deny them much that is natural and important to a tiger” and that Plaintiffs “caused the tigers serious mental and physical harm.”

72. The press release further falsely stated that Plaintiffs’ tigers are “at risk for serious long term, debilitating injuries from being forced to live on slippery, unyielding concrete their entire lives.”

73. The press release further falsely stated that Plaintiffs are “sacrificing the wellbeing of an endangered species for the sake of tourist dollars.”

74. The press release threatened that unless Plaintiffs give up their tigers to a location of ALDF’s choosing, ALDF will bring a lawsuit against Plaintiffs in federal court. There is no remedy in federal court afforded to a private plaintiff to compel forfeiture of an endangered species. ALDF and Nasser and their agent attorneys have significant experience in

dealing with the Endangered Species Act. Nevertheless, they deliberately proceeded with this threat even though the judicial remedy they seek is non-existent.

75. At the end of the press release, ALDF included a link to a copy of the Notice Letter, which repeats these and additional defamatory statements.

76. For all of the reasons cited above in paragraphs 43 through 63, the statements in the ALDF press release are false and defamatory.

77. This press release as a whole is false and defamatory to Plaintiffs.

E. Social Media Activity

78. On or about September 19, 2016 at 11:44 pm, ALDF posted or caused to be posted to its Facebook page this false and defamatory statement:

The Animal Legal Defense Fund sent a notice of intent to sue Landrys, Inc. and the Houston Aquarium for violating the Endangered Species Act by confining four tigers to a substandard concrete enclosure. We have secured placement for these cats at reputable sanctuaries where they will feel sunshine on their backs and something other than concrete under their paws.

79. On or about September 20, 2016 at 12:36 pm, ALDF posted or caused to be posted to its Facebook page this false and defamatory statement:

The Animal Legal Defense Fund sent a notice of intent to sue Landrys, Inc. and the Houston Aquarium for violating the Endangered Species Act by confining four tigers to a substandard concrete enclosure.

80. The posting includes a link to a *Houston Chronicle* article and what purports to be a photograph of one of Plaintiffs' tigers.

81. On or about September 20, 2016 at 1:40 pm, ALDF posted or caused to be posted to its Facebook this false and defamatory statement:

Tigers are complex apex predators with specific biological, environmental and enrichment needs. Landry's, Inc. should stick to the restaurant business and leave the housing of tigers to those who are able to provide big cats with proper care and naturalistic habitats rather than sacrificing the wellbeing of an endangered species for the sake of tourist dollars.

82. The posting was accompanied by a photograph of a white tiger that appears to be the same photograph of one of Plaintiffs' tigers that is credited to Conley and is included in the Notice Letter.

83. On or about September 27, 2016, ALDF posted or caused to be posted to its Facebook page this false and defamatory statement:

The tigers held captive at Houston's Downtown Aquarium are denied so much that is natural and important to a member of their species. The Animal Legal Defense Fund is offering to rehome the four white tigers in lieu of litigation.

84. The posting was accompanied by a photograph of what appears to be a tiger from the Downtown Aquarium and contains a link to People Magazine's Pets Facebook page.

85. On or about September 29, 2016, ALDF posted or caused to be posted to its Facebook page this false and defamatory statement: "The conditions these tigers endure at Houston's Downtown Aquarium deny them much that is natural and important to a tiger." The posting was accompanied by a photograph of what appears to be a tiger from the Downtown Aquarium and contains a link to KHOU.com.

86. On or about September 19, 2016, Nasser sent this false and defamatory tweet using the social media platform Twitter:

Carney Anne Nasser @NOLAVeganDiva – Sept 19
Today @ALDF sent a notice of intent to sue @LandrysInc and
@Aquarium Houston 4 #EndangeredSpeciesAct violations.

87. This tweet contained a link to an article by a Denver news outlet and a photograph of the outside of the Downtown Aquarium.

88. On or about September 20, 2016, Stephen E. Wells, the Executive Director of the ALDF, sent this false and defamatory tweet using the social media platform Twitter:

4 neglected white tigers are living in horrible conditions at an aquarium.
@ALDF intends to sue. Aldf.us/2cQCjFa

89. “Aldf.us/2cQCjFa” is a live link to a 9/19/2016 article in the *Houston Chronicle* about Plaintiffs’ white tigers.

F. Statements to the Media

90. Defendants made false and defamatory statements to members of the media which were subsequently published in various publications.

91. Defendants made false and defamatory statements to one or more individuals at the *Houston Chronicle* about Plaintiffs’ tigers. These statements were subsequently published on September 19, 2016. A true and correct copy is attached hereto as Exhibit D. Both Nasser and Executive Director of ALDF Stephen Wells are individually quoted in the article.

92. Defendants’ contact with and false and defamatory statements to the *Houston Chronicle* were carried out in a deliberately calculated manner so that Defendants could achieve the maximum press value and at the same time limit Plaintiffs’ ability to counter their defamatory statements. Defendants did this by sending an “embargoed” copy of the ALDF press release, along with a copy of Defendants’ Notice Letter, to a reporter with the *Houston Chronicle* before either document was made known to Plaintiffs.

93. On information and belief, the “embargoed” copy of the press release was shared by ALDF with other media outlets as well.

94. Nasser also made false and defamatory statements to *The Dodo*, which is a website containing articles with animals and animal care content, and *The Dodo* subsequently published an article, titled “White Tigers Stuck in Aquarium Haven’t Felt the Sun in 12 Years,” which contains ALDF and Nasser’s false and defamatory statements from the press release, the Notice Letter, and further defamatory statements by Nasser.

95. *The Dodo* article also contained photos that are credited to “Carney Anne Nasser.” These photos purport to be photos of tigers that Nasser took inside of Plaintiffs’ tiger

facility. The Nasser photos show tigers with excellent body condition in clean, well-kept environments. The Nasser photos also show logs in the tiger enclosure, trees for climbing, windows with natural light, and a swimming pool—all directly contrary to Defendants’ claims about the tigers not having a proper environment or enrichment items.

96. Nasser and/or ALDF also made false and defamatory statements to ABC-Denver⁷ about Plaintiffs and their tigers on or before September 19, 2016. These statements were published by ABC-Denver 7 on September 19, 2016 and contain references to the defamatory Notice Letter as well as additional false statements. A true and correct copy is attached hereto as Exhibit E. In ABC-Denver⁷’s online article, Nasser also ties the threatened Endangered Species Act litigation against the Downtown Aquarium’s tiger facility to Plaintiffs’ tigers housed at the Downtown Aquarium—Denver. Nasser, who is identified as an “ALDF spokesman,” thereby extended her false accusation of illegal activity by Plaintiffs to the additional Landry’s facility in Denver. Neither Nasser nor ALDF claims to have ever visited or examined the Denver facility.

97. All of these disseminations of false statements about Plaintiffs – on social media, ALDF’s website, and other outlets – are part of ALDF’s regular practice of seeking publicity in order to raise donations from the public. This tactic of attempting to raise donation money through false statements that damage the reputation of a business whose tigers are maintained in complete compliance with all applicable laws is outrageous.

G. Website Material

98. Defendants’ agent, the law firm of Irvine & Conner PLLC (“Irvine & Conner”), has also published defamatory statements about Plaintiffs. Irvine & Conner maintains a website at www.irvineconner.com. On its website, Irvine & Conner maintains a page called “news and blog.” On or about September 19, 2016, and before Plaintiffs or the Department of Interior or

FWS received the Notice Letter, Irvine & Conner posted, or caused to be posted, the following to its “news and blog” page: “Irvine & Conner and Animal Legal Defense Fund Serve Landry’s Inc. Notice of Intent to Sue for Endangered Species Act Violations.”

99. Irvine & Conner also posted, or caused to be posted, a photo of a white tiger which is credited to Cheryl Conley. Irvine & Conner also posted, or caused to be posted, a list of seven (7) media outlets and article titles, all of which contain defamatory statements made by Defendants about Plaintiffs. Each of these articles contain links to PDF documents or live links that direct the reader directly to the article on the media outlet’s hosted website.

100. Irvine & Conner also posted, or caused to be posted, a live link on its “news and blog” page which directs the reader to ALDF’s 9/19/2016 defamatory press release about Plaintiffs.

101. The postings on Irvine & Conner’s website as a whole are false and defamatory to Plaintiffs. These postings by Irvine & Conner were on behalf of and/or at the direction of Defendants.

H. Damage to Plaintiffs’ Business and Reputation

102. Defendants’ statements about Plaintiffs, made in multiple public forums, were made deliberately, or with reckless disregard of the truth, and with actual malice.

103. As a result of Defendants’ defamatory and disparaging statements, Plaintiffs’ reputation and business character have been impugned and its business relationships with patrons and visitors have been damaged.

104. As a result of Defendants’ defamatory and disparaging statements and other tortious acts, Plaintiffs have endured complaints and negative customer feedback in the form of telephone calls, verbal complaints and social media comments and activity.

105. Public comments in response to media and social media postings that include Defendants' defamatory statements about Plaintiffs have indicated that members of the public will no longer patronize Plaintiffs' establishments and/or will "boycott" Plaintiffs' locations.

106. In at least one instance, Plaintiffs lost a booking of a private event due to the false and disparaging statements made by Defendants which resulted in a monetary loss to Plaintiffs.

107. Defendants are well-aware that Plaintiffs operate a restaurant and amusement park complex and that this involves the sale of tickets, food and beverages, and special event access. This is publicly displayed on Plaintiffs' website. Defendants therefore would have known that falsely defaming and disparaging Plaintiffs' business would interfere with and/or damage its relationships with its customers and contracts.

VII. CAUSES OF ACTION

A. DEFAMATION

108. The preceding paragraphs are hereby incorporated by reference.

109. By knowingly, maliciously, or negligently publishing false and disparaging statements concerning Plaintiffs to third parties through in-person meetings, social media and websites, and through the news-media, both orally and in print, ALDF, Conley, and Nasser defamed Plaintiffs. ALDF, Conley, and Nasser's actions constitute defamation *per se*. The false allegation that Plaintiffs – animal exhibitors licensed in good standing under federal law – have mistreated or harmed their tigers, prejudices Plaintiffs in their trade or business. The false allegation that Plaintiffs have violated the Endangered Species Act is a false allegation that Plaintiffs have committed a crime or engaged in criminal activity. Furthermore, even if such statements were not defamatory *per se*, they are defamatory because they injure Plaintiffs' reputation by holding them up to contempt, ridicule and scorn within the community.

Specifically, ALDF, Conley, and Nasser committed inappropriate acts well outside of the scope of the Endangered Species Act's citizen-suit provision by sending their Notice Letter to the news-media under embargo *before* sending it to Plaintiffs; sending their Notice Letter to public officials in Houston; publishing the content of their Notice Letter on public websites and social media accounts and holding the content out as factually accurate; disseminating the allegations within their Notice Letter as facts to the general public before the judicial process could take place; coordinating a public attack on Plaintiffs' reputation and business practices based entirely on the unproven and baseless allegations of their Notice Letter; and maliciously committing other defamatory acts. As a direct and proximate result of the Defendants' actions, Plaintiffs suffered both general and special damages, including but not limited to reputational damage and lost profits from cancelled events. Because ALDF, Conley, and Nasser's actions were reckless, malicious, and in bad faith, Plaintiffs also seek exemplary damages to the maximum extent allowed by Texas law.

B. BUSINESS DISPARAGEMENT

110. The preceding paragraphs are hereby incorporated by reference.

111. By knowingly and maliciously publishing false and disparaging statements concerning Plaintiffs' economic interests to third parties through in-person meetings, social media and websites, and the news-media, both orally and in print, ALDF, Conley, and Nasser disparaged Plaintiffs' businesses. ALDF, Conley, and Nasser's actions constitute business disparagement. Specifically, ALDF, Conley, and Nasser committed inappropriate acts well outside of the scope of the Endangered Species Act's citizen-suit provision by sending their Notice Letter to the news-media under embargo *before* sending it to Plaintiffs; sending their Notice Letter to public officials in Houston; publishing the content of their Notice Letter on public websites and social media accounts and holding the content out as factually accurate;

disseminating the allegations within their Notice Letter as facts to the general public before the judicial process could take place; coordinating a public attack on Plaintiffs' business practices based entirely on the unproven and baseless allegations of their Notice Letter; and maliciously committing other disparaging acts. ALDF, Conley, and Nasser's disparaging comments were communicated without privilege or justification. As a direct and proximate result of the Defendants' actions, Plaintiffs suffered special damages, including but not limited to lost profits from cancelled events. Because ALDF, Conley, and Nasser's actions were reckless, malicious, and in bad faith, Plaintiffs also seek exemplary damages to the maximum extent allowed by Texas law.

C. TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS

112. The preceding paragraphs are hereby incorporated by reference.

113. By committing independently tortious acts – including but not limited to trespassing at the Downtown Aquarium as well as purposefully publishing false and disparaging statements concerning Plaintiffs through in-person meetings, social media and websites, and through the news-media, both orally and in print – ALDF, Conley, and Nasser willfully and intentionally interfered with Plaintiffs' prospective business relationships without justification. ALDF, Conley, and Nasser's actions constitute tortious interference with prospective business relations. Prior to ALDF, Conley, and Nasser's independently tortious acts, there was a reasonable probability that Plaintiffs would have entered into business relationships with third parties. ALDF, Conley, and Nasser had actual knowledge of Plaintiffs' prospective business relationships. Consequently, Plaintiffs suffered actual damages including but not limited to the lost benefits of prospective business relationships as well as economic injury. Because ALDF, Conley, and Nasser's actions were reckless, malicious, and in bad faith, Plaintiffs also seek exemplary damages to the maximum extent allowed by Texas law.

D. ABUSE OF PROCESS

114. The preceding paragraphs are hereby incorporated by reference.

115. ALDF, Conley, and Nasser's actions constitute abuse of process. On or around September 19, 2016, ALDF, Conley, and Nasser served Plaintiffs with their Notice Letter under the Endangered Species Act's citizen suit provision, 16 U.S.C. § 1540(g). The Notice Letter informed Plaintiffs of ALDF's and Conley's intent to file suit against Plaintiffs. This Notice Letter was served by or on behalf of Defendants purportedly as part of the process prescribed by the Endangered Species Act for the initiation of a citizen suit under that statute. ALDF, Conley, and Nasser made improper use of their Notice Letter before and/or after it was served on Plaintiffs by publishing it in the news-media, issuing press releases about it, sending it to and meeting with public officials in Houston, Texas, as well as committing other inappropriate acts intended to accomplish ends outside of the scope of the Endangered Species Act's citizen-suit provision with the improper intent to compel Plaintiffs to give up possession of its four (4) white tigers against their will. ALDF, Conley, and Nasser had an improper ulterior motive in using their Notice Letter. As a direct and proximate result of ALDF, Conley, and Nasser's improper use of their Notice Letter, Plaintiffs suffered actual injury. Because ALDF, Conley, and Nasser's actions were reckless, malicious, and in bad faith, Plaintiffs also seek exemplary damages to the maximum extent allowed by Texas law.

E. TRESPASS

116. The preceding paragraphs are hereby incorporated by reference.

117. By knowingly misrepresenting the nature of her visit to the Downtown Aquarium, Conley induced Plaintiffs' consent for Conley to go on a back-of-the-house tour of the tiger facilities at the Downtown Aquarium. On information and belief, Conley never produced a show about Plaintiffs' facility. The real nature of Conley's visit was unknown to

Plaintiffs. Had Plaintiffs known the real nature of Conley's visit, consent would not have been given. Consequently, Plaintiffs' consent was not effective. Conley therefore intentionally, voluntarily, and physically entered Plaintiffs' property without Plaintiffs' effective consent. Conley's trespass caused injury to Plaintiffs' rights of possession. Because Conley's actions were reckless, malicious, and in bad faith, Plaintiffs also seek exemplary damages to the maximum extent allowed by Texas law.

F. CIVIL CONSPIRACY

118. The preceding paragraphs are hereby incorporated by reference.

119. ALDF, Conley, and Nasser, acting in concert, committed overt, affirmative acts with a shared purpose to unlawfully deprive Plaintiffs of their legal rights and to accomplish the causes of action listed in this Section: Defamation, Business Disparagement, Tortious Interference with Prospective Business Relationships, Abuse of Process, and Trespass. In addition, ALDF, Conley, and Nasser, acting in concert, committed overt, affirmative acts with a shared purpose to accomplish theft, as defined in Texas Civil Practice & Remedies Code § 134.002(2) and Texas Penal Code § 31.03(a). Specifically, by sending their Notice Letter to the news-media under embargo *before* sending it to Plaintiffs; sending their Notice Letter to public officials in Houston; publishing the content of their Notice Letter on public websites and social media accounts and holding the content out as factually accurate; disseminating the allegations within their Notice Letter as facts to the general public before the judicial process could take place; coordinating a public attack on Plaintiffs' reputations and business practices based entirely on the unproven and baseless allegations of their Notice Letter; as well as committing other inappropriate acts outside of the scope of the Endangered Species Act's citizen-suit provision, ALDF, Conley, and Nasser sought to unlawfully extort and compel Plaintiffs to transfer title to their property – four (4) white tigers – to another without Plaintiffs' effective consent. Plaintiffs

have been injured as a direct and proximate result of the wrongful conduct emanating from this civil conspiracy. Because ALDF, Conley, and Nasser's actions were reckless, malicious, and in bad faith, Plaintiffs also seek exemplary damages to the maximum extent allowed by Texas law.

G. DECLARATORY JUDGMENT

120. The preceding paragraphs are hereby incorporated by reference.

121. In addition to the causes of action listed above, Plaintiffs seek a declaratory judgment under the Uniform Declaratory Judgments Act ("UDJA") decreeing that ALDF, Conley, and Nasser's above-referenced actions and statements are false, disparaging, and defamatory; requiring ALDF, Conley, and Nasser to retract the statements; and enjoining ALDF, Conley, and Nasser from further defaming or disparaging Plaintiffs.

VIII. DAMAGES

122. For purposes of compliance with Texas Rule of Civil Procedure 47, Plaintiffs seek damages within the jurisdictional limits of this Court in form of both monetary and non-monetary relief. Specifically, Plaintiffs seek monetary relief as set forth in Rule 47(c)(3) of the Texas Rules of Civil Procedure and demand judgment for all the other relief to which they are deemed entitled.

123. Plaintiffs also request exemplary damages to the maximum extent allowed under Texas law.

IX. ATTORNEY'S FEES

124. As a result of the facts alleged above, Plaintiffs have retained the law firm of Norton Rose Fulbright US LLP to represent them in this action. Plaintiffs will incur reasonable, equitable, and just attorney's fees for the prosecution of this action. An award of reasonable and necessary attorney's fees as well as all court costs is authorized under Texas Civil Practice and

Remedies Code § 37.009. Plaintiffs therefore request all reasonable and necessary attorney's fees as well as all court costs.

X. JURY TRIAL

125. Plaintiffs demand a jury trial pursuant to Texas Rule of Civil Procedure 216.

XI. PRAYER FOR RELIEF

Wherefore, premises considered, Plaintiffs pray that ALDF, Conley, and Nasser be commanded to appear and answer, and that Plaintiffs have and recover the following from ALDF, Conley and Nasser:

- 1) The general and special damages described above, including but not limited to reputational damage, lost profits from cancelled events, lost benefits of contracts, lost benefits of prospective business relationships, and economic injury;
- 2) Exemplary damages in a sum to be determined by the Court and finders of fact in an amount reasonable and necessary to punish ALDF, Conley, and Nasser for their reckless, malicious, and bad faith conduct and to deter future misconduct;
- 3) Attorneys' fees, costs of suit, pre-judgment and post-judgment interest in the maximum amount allowed by law;
- 4) The declaratory and injunctive relief described above; and

Any and all other relief Plaintiffs may show themselves entitled to in law or equity.

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