

STATE OF INDIANA)	MARION SUPERIOR COURT
)ss:	CIVIL DIVISION 12
COUNTY OF MARION)	CAUSE NO. 49D12-2002-PL-006192

STATE OF INDIANA,

Plaintiff,

v.

WILDLIFE IN NEED and

WILDLIFE IN DEED, INC.,
TIMOTHY STARK, and
MELISA LANE,

Defendants.

**FINDINGS, CONCLUSIONS, ORDER
AND JUDGMENT**

SUMMARY

Plaintiff State of Indiana (“State”), seeks judgment against Defendants Melisa Lane (“Lane”) and Timothy Stark (“Stark”) for violation of the Nonprofit Corporations Act, Ind. Code § 23-17-13, *et seq.*, by breaching their fiduciary duties as members of the Board of Directors of Defendant Wildlife in Need and Wildlife in Deed, Inc. (“WIN”) and by

misusing WIN's corporate form for personal enrichment. In addition to establishing personal liability against Lane and Stark under the Nonprofit Corporations Act, the State also seeks to establish personal liability by piercing of the corporate veil. The State further seeks judgment against Lane and Stark for violation of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5, *et seq.*, for deceptively soliciting donations for WIN. The State also seeks an order outlining the scope of the corporate receivership ordered on November 11, 2020.

After hearing, the Court finds Judgment should enter against Defendant Stark in his personal capacity. At the end of its case in chief, the State moved to dismiss Lane, and the Court granted the motion. Previously, a default judgment was entered against Defendant Wildlife in Need and Wildlife in Deed, Inc. ("WIN") on November 4, 2020.

The Court further **DENIES** Defendant Stark's pending motions, Motion for Rule to Show Cause and Motion for Default Judgment, Motion for Reconsideration, Motion for Emergency Inspection, and Motion for Clarification of Animal Ownership.

An Order defining the scope of the corporate receivership of Van T. Willis will issue contemporaneously and separately from this judgment.

The Court **FINDS, CONCLUDES** and **ORDERS** as follows:

FINDINGS

1. WIN is a nonprofit, public benefit corporation incorporated under the Indiana Nonprofit Corporations Act in August of 1999. [Plaintiff's Exh. 2532]

2. In its Articles of Incorporation, WIN states as its purpose "WINAWIDI is a non-profit organization dedicated to the rescue and rehabilitation of all wildlife (mammals, birds, reptiles, etc.). The main objectives is [sic]to return the creature to the wild. Friends of WINAWIDI, a

community of Human Supporters, believes that public education about the importance of habitat preservation and conservation is a natural outgrowth of appropriate care of injured or abandoned wildlife.” [Plaintiff’s Exh. 2532]

3. Regarding the distribution of assets on dissolution and final liquidation, WIN states in its Articles of Incorporation: “If the corporation WINAWIDI is dissolved, all of its property remaining after payment and discharge of its obligations shall be transferred and conveyed to the Carnivore Preservation Trust in North Carolina if it is then an organization described in Section 501(c)(3) of the Internal Revenue Code, or if the Carnivore Preservation Trust in North Carolina is not then so described or does not accept the property, then to such other organization or organizations so described as may be selected by the Board of Directors.” [Plaintiff’s Exh. 2532]

4. Stark testified he did not believe the Carnivore Preservation Trust still existed and he believed WIN did not actually have to distribute its

assets on dissolution to the entity specified in its Articles of Incorporation.

[Tr. at 193:3–5, 12–13]

5. WIN's principal office address is 3320 Jack Teeple Road, Charlestown, Indiana, 47111. [Plaintiff's Exh. 2532]

6. Stark's personal residence also is located at 3320 Jack Teeple Road, Charlestown, IN 47111. [Tr. at 47:10–14]

7. Prior to their divorce in September 2019, Stark and Lane jointly owned the properties at 3320 and 3328 Jack Teeple Road. Currently, Stark owns the property at 3320 Jack Teeple Road, Charlestown, Indiana, 47111 and Lane owns the property at 3328 Jack Teeple Road, Charlestown, Indiana, 47111. [Tr. at 54:22 – 55:1]

8. WIN used the properties at 3320 and 3328 Jack Teeple Road to house animals and to conduct fundraising and educational events. [Tr. at 58:14–16]

9. WIN paid for improvements on the real property at 3320 and 3328 Jack Teeple Road for the purposes of housing and exhibiting animals.

[Tr. at 59:12–22] Those improvements were part of the security for a personal line of credit in Stark and Lane’s name. [Tr. at 60:24 – 61:1]

10. Lane had a written agreement with WIN allowing WIN to use her property at 3328 Jack Teeple Road for WIN purposes. The agreement was made in 2020, after her divorce from Stark and after the State’s lawsuit was commenced. No other written agreements between WIN and Lane or Stark for WIN’s use of their property ever existed. [Tr. at 55:17 – 56:10]

11. Stark was the President and a member of the Board of Directors of WIN. [Plaintiff’s Exh. 1629, p.9] [Tr. at 34:15–16]

12. Lane was the Secretary/Treasurer and a member of the Board of Directors of WIN until after her divorce from Stark in approximately September 2019. [Plaintiff’s Exh. 1629, p.9] [Tr. at 34:22–24]

13. WIN sought to accomplish its educational mission, in part, through events where it exhibited a variety of animals with which the public was allowed to interact. [Tr. at 28:11–13]

14. WIN sold tickets to attend its animal encounter event sessions for \$25 per person. [Tr. at 31:21]

15. On average, 25 people attended each session. [Tr. at 31:4–5]

16. WIN also charged \$20 for attendees to have their pictures taken with the animals. [Tr. at 33:1–5]

17. Except during months when weather did not permit, multiple animal encounter sessions were held each week. Approximately two sessions were held on Friday nights, and sessions were held throughout the entire day on Saturdays and Sundays. [Tr. at 30:2–6]

18. WIN had the money from ticket sales deposited daily into their bank account, and the number of deposits from Eventbrite into the bank

account demonstrates the minimum number of the events WIN held. [Tr. at 29:10–14, Plaintiff’s Exhibits 580, 583, 931]

19. In approximately 2013, WIN began a program it called “Tiger Baby Playtime,” which offered animal encounter events that included interactions with tiger cubs. [Tr. at 212:1–2]

20. Prior to Tiger Baby Playtime, WIN’s revenue never exceeded \$100,000 per year. [Tr. at 136:15–16]

21. WIN’s revenue increased significantly starting in approximately 2014 because of the Tiger Baby Playtime events. [Tr. at 140:1–3, 129:2–7, 211:25 – 212:1]

22. In some years, WIN’s revenue exceeded one million dollars. [Tr. at 224:15–17]

23. On its tax returns for tax year 2017, WIN reported revenue of \$1,039,968 for 2017 and revenue of \$1,270,536 for the previous year, 2016.

[Plaintiff’s Exh. 1629]

24. As evidence of how many attendees WIN had for its animal encounter events with the introduction of Tiger Baby Playtime, WIN's tax returns for the tax year 2017 stated: "At the wildlife facility, we conduct events and present programs to educate the public about the importance of preservation and conservation of all wilflife [sic] and habitats. These programs reached 33687 individuals during 2017." [Plaintiff's Exh. 1629 at 4]

25. WIN reported ownership of substantial assets on its tax returns in order to take advantage of depreciation. In 2019, those assets included: (1) an Isuzu White Box Truck with a basis of \$6,975, a John Deere Excavator with a basis of \$26,606, a Ford Black dump truck with a basis of \$11,500, a Caterpillar 953 bulldozer with a basis of \$24,000, a Caterpillar 60' HD Open with a basis of \$3,500, a Kubota RTV-X1100 CRL-A utility vehicle with a basis of \$19,200, a Wildcat Camper with a basis of \$13,000, a Big Tex trailer with a basis of \$10,500, a John Deere 333E Compact Track Loader with a basis of \$64,000, a John Deer 650H LT bull dozer with a basis of \$38,000, a

Dodge Truck with a basis of \$31,814, a JCB 506 Tank Handler with a basis of \$21,000, and a 2017 John Deere 333 G Compact Track Loader with a basis of \$68,950. [Plaintiff's Exhibit 1106]

26. Tiger Baby Playtime events and other animal encounter events were advertised on WIN's Facebook page as fundraising events for WIN. [Tr. at 149:19 – 150:4]

27. Signs with "Wildlife in Need" on them were located on the property at 3320 Jack Teeple Road and on the building in which Tiger Baby Playtime and other animal encounters occurred. [Tr. at 159:10–19]

28. Tiger Baby Playtime was staffed with WIN volunteers who wore WIN t-shirts. [Tr. at 159:1–9]

29. Proceeds from the ticket sales for Tiger Baby Playtime were deposited in WIN's bank account. [Tr. at 29:10–14]

30. Stark testified that before WIN began earning money through Tiger Baby Playtime, he and Lane personally paid for or received as

donations some of the animals housed on his property. However, Stark presented no evidence besides his own testimony regarding the sources of funds for any animal at WIN. [Tr. t 211:13–17, 213:4–20]

31. After WIN started earning money through Tiger Baby Playtime, animals were acquired using money from WIN's bank account. [Tr. at 210:1–23]

32. Since about 2016, the number of animals at WIN increased from approximately 43 to 293. In other words, over 83% of the 293 animals were purchased using monies derived from Tiger Baby Playtime. [Tr. at 210:9–11] [Preliminary Injunction, March 2, 2020 (finding of fact adopting ¶14 of the Complaint)]

33. Some of the animals purchased by WIN were very expensive. [Tr. at 211:8–12]

34. By way of example, \$7,000 from WIN's bank account was used to purchase two Asian Small-clawed Otters on or about May 7, 2016 from Zootastic. [Plaintiff's Exhibits 865.2; 583 at 59]

35. Also, \$20,000 from WIN's bank account was used to purchase two DeBrazza monkeys on or about May 20, 2017 from Omar Villareal. [Plaintiff's Exhibits 865.1, 580 at 10]

36. Stark claims personal ownership of all of the animals at issue in this litigation, including all animals purchased with WIN funds..

37. Stark maintains it was necessary that the animals be owned by him personally because WIN lacked any USDA license to exhibit or own animals. [Tr. at 210:16-17]

38. No corporate records exist to indicate that any animals purchased by WIN were transferred to Stark and were transferred to him as an authorized WIN distribution.

39. WIN was able to obtain its own USDA license to exhibit animals, and was not prohibited from doing so. *See* 7 U.S.C. § 2132(a), (h) (defining “exhibitor” as “any person . . . exhibiting any animals . . . to the public for compensation” where “person” includes “any . . . corporation.”)

40. The tax returns for year 2017 also indicates that WIN spent \$1,014,018 on “Animal Care.” [Plaintiff’s Exh. 1629] That is, WIN paid for the care and feeding of the animals Stark claims to own.

41. On February 12, 2018, a preliminary injunction prohibiting WIN and Stark from using tiger and lion cubs in public encounters was entered in *People for Ethical Treatment of Animals, Inc. v. Wildlife in Need & Wildlife in Deed, Inc.*, No. 17–CV–00186, 2018 WL 828461, at *8 (S.D. Ind. Feb. 12, 2018).

42. Between February 2019 and August 2019, Stark lived in Oklahoma. [Tr. at 97:2–3, 217:21–23]

43. Stark did not tell Lane that he planned to move to Oklahoma until just before he left Indiana. [Tr. at 97:15–16]

44. Stark told Lane he was going to Oklahoma to start a business venture with Jeff Lowe, but he did not tell her details of his plans. Lane believed at the time of the move that Stark's plans in Oklahoma were temporary and that Stark was to be paid by Jeff Lowe for Stark's work on a project. [Tr, at 99:7–21, 221:1]

45. Stark intended to start a new business with Jeff Lowe in Oklahoma and transfer all of WIN's assets, including animals purchased by WIN, to the new business. [Tr. at 219:16 – 220:5]

46. Stark maintains that as long as he was going to transfer WIN's assets to another nonprofit, it was legal. He further testified that no nonprofit has yet been organized in Oklahoma. [Tr. at 220:3–8]

47. Stark did not seek or obtain Board of Directors' approval to transport WIN equipment and animals to or from Oklahoma at any time. [Tr. at 163:10–12, 220:16–25]

48. Stark did not tell the WIN Board of Directors of his plans to transfer all of WIN's assets to a planned business with Lowe, and the Board never voted to permit Stark to transfer WIN's assets to a new business. [Tr. at 163:10–12, 220:16–25]

49. Stark did not inform the WIN Board of Directors of any or all details associated with the Oklahoma venture. [Tr. at 163:10–12, 220:16–25]

50. Stark took animals purchased by WIN to Oklahoma. [Tr. at 217:1–2, 220:13–15]

51. On one trip by Stark from Indiana to Oklahoma, approximately 15–20 animals died in transport. [Tr. at 217:8–20]

52. Stark took heavy equipment belonging to WIN to Oklahoma. [Tr. at 107:14–18, 216:22–25]

53. Stark wrongly believed that as long as the equipment was being used for purposes related to animals in Oklahoma, the use was permissible.

[Tr. at 216:8–17]

54. Stark used WIN's funds to pay for at least two pieces of heavy equipment to be shipped to Oklahoma and for one of them to be shipped back to Indiana. The transport was paid via wire transfers in amounts of \$4,750, \$3,600, and \$3,600 out of WIN accounts. [Plaintiff's Exhibits 1641, 1642, 1643] Stark presented no evidence that the WIN Board was aware of or approved these expenditures.

55. One of those pieces of equipment broke down in Oklahoma and was not returned to Indiana. [Tr. at 218:5–21]

56. Stark charged personal expenses while in Oklahoma to his personal credit card, which was paid off with money from WIN's bank account. [Plaintiff's Exhibits 580, p.73; 2393.5; 2393.1]

57. The planned business venture with Lowe fell through, and Stark returned to Indiana in August 2019. [Tr. at 217:23–25]

58. On February 3, 2020, the Chief Administrative Law Judge for the United States Department of Agriculture (“USDA”) revoked Stark’s license to exhibit all animals subject to the Animal Welfare Act. [Order Granting State’s Motion for Removal of Animals Pending a Final Judgment (August 11, 2020) (finding of fact adopting ¶15 from the State’s Motion for Removal of Animals Pending a Final Judgment); *In Re: Timothy L. Stark & Wildlife in Need & Wildlife in Deed, Inc.*, No. AWA Docket No. 16–0124, 2020 WL 836675, at *100 (U.S.D.A. Feb. 3, 2020)¹]

59. In the order revoking Stark’s exhibitor’s license, the USDA found over 100 violations of the Animal Welfare Act. *In Re: Stark*, 2020 WL 836675 at 93–99. [Preliminary Injunction, March 2, 2020 (finding of fact adopting ¶140 of the Complaint)]

¹ The Court takes judicial notice of this public document from the United States Department of Agriculture.

60. The USDA decision revoking Stark's license was affirmed by the USDA Judicial Officer on April 8, 2020. [Order Granting State's Motion for Removal of Animals Pending a Final Judgment (August 11, 2020) (finding of fact adopting ¶6 from the State's Motion for Removal of Animals Pending a Final Judgment)] [*In Re: Timothy L. Stark & Wildlife in Need & Wildlife in Deed, Inc.*, No. AWA Docket Nos. 16-0124, 16-0125, 2020 WL 8174371, at *8 (U.S.D.A. Apr. 8, 2020)²]

61. On August 5, 2020, the United States Seventh Circuit Court of Appeals denied Starks petition for judicial review of the USDA's order. [Order Granting State's Motion for Removal of Animals Pending a Final Judgment (August 11, 2020) (finding of fact adopting ¶9 from the State's Motion for Removal of Animals Pending a Final Judgment)]

62. With his petition seeking a stay of the revocation of his license pending judicial review, Stark submitted an affidavit in which he stated: "I

² The Court takes judicial notice of this public document from the United States Department of Agriculture.

and my business keep, house, and maintain numerous exotic animals in a private facility . . . The financial resources needed to cover the significant expense of such constant and daily care, feeding, and attention come directly from revenues generated by our public exhibition of the animals enabling the animals to survive.” [Order Granting State’s Motion for Removal of Animals Pending a Final Judgment (August 11, 2020) (finding of fact adopting ¶18 from the State’s Motion for Removal of Animals Pending a Final Judgment)]

63. After the Seventh Circuit ruling, WIN and Stark were no longer legally allowed to exhibit animals and therefore no longer able to continue the animal encounters that Stark wrote were the primary source of revenue for WIN and utilized to care for the animals. Stark refused to testify as to how he would care for the animals if returned to him and no evidence was offered indicating Stark had the ability to do so at this point in time. [Tr. at 230:6–9]

64. On August 3, 2020, partial summary judgment was granted in favor of People for the Ethical Treatment of Animals (“PETA”) in its lawsuit brought under the Endangered Species Act in federal court against WIN and Stark. [*People for Ethical Treatment of Animals, Inc. v. Wildlife in Need & Wildlife in Deed, Inc.*, 476 F. Supp. 3d 765 (S.D. Ind. 2020)]

65. That court issued injunctive relief authorizing PETA to remove the lions, tigers, and lion–tiger hybrids from WIN’s property. [Modified Permanent Injunction, *PETA v. Wildlife in Need & Wildlife in Deed, Inc.*, 17–cv–00186, ECF 415 (September 15, 2020)³]

66. This Court ordered an inspection of WIN’s premises and the animal, which was submitted on March 6, 2020.. The Inspection Report detailed the “substandard” conditions and treatment that the animals were held in. [Defendant’s Exhibit C at 4; 13–15] The Inspection Report contained numerous examples of animals that, even from brief inspections, showed

³ The Court takes judicial notice of this public document from the U.S. District Court, Southern District of Indiana.

severe health and nutrition issues including obesity, psychological trauma, lack of nutritional planning, and lack of access to clean drinking water.

[Defendant's Exhibit C at 10–12] The facilities observed at WIN during the inspection were inadequate to meet the animals' physical and mental needs, were "filthy" and not "constructed to any codes", lacked "proper shelter and heat" for animal safety, and posed safety hazards both animal and human occupants. [Defendant's Exhibit C at 13–15; 16–20; 30–31] The inspection also revealed that the record keeping at WIN was entirely "insufficient" to ensure proper veterinary and nutritional care was being undertaken for each animal. [Defendant's Exhibit C at 27–29] Further, the inspection revealed that animals often went without proper veterinary care, even when serious injuries or conditions occurred. [Defendant's Exhibit C at 27–29]

67. On August 28, 2020, this Court ordered that all animals in dispute in this matter—other than the lions, tigers, and lion–tiger hybrids

subject to the federal injunction—be removed from WIN and placed in the custody of temporary receivers to be appointed at a later date. [Order Granting State’s Motion for Removal of Animals Pending a Final Judgment (August 28, 2020)]

68. On September 10, 2020, this Court appointed the Indianapolis Zoological Society, Inc. (“IZS”) as a temporary animal receiver over the animals in dispute in this matter and ordered the removal of the animals be accomplished on dates between September 11 and September 18, 2020. [Order Appointing Receiver (September 10, 2020)]

69. Stark was held in contempt on September 16, 2020 for removing animals from 3320 Jack Teeple Drive to prevent IZS from taking possession of them. [Order of Contempt and Remand of Defendant Timothy Stark to Marion County Sheriff, September 16, 2020] Stark has yet to respond to the Court’s directive to account for missing animals in any meaningful way.

70. At Stark's direction, WIN's Board of Directors voted to dissolve WIN on or about September 22, 2020. The Articles of Dissolution were signed on October 27, 2020. [Tr. at 165:15–22, 166:22–25]

71. Counsel for WIN moved to withdraw his appearance for WIN, and the motion was granted on October 5, 2020. No other counsel has made an appearance for WIN.

72. A default judgment was entered by this Court against WIN on November 4, 2020. [Order on State's Motion to Sanctions and Contempt of Stark (November 4, 2020)]

73. On November 12, 2020, the Court appointed Van T. Willis as Corporate Receiver of WIN to wind down the corporation. The State and the Corporate Receiver submitted a proposed order outlining the scope of the Corporate Receiver's powers and duties. [Order Granting Receivership (November 12, 2020)]

74. Stark claims he was never paid a salary by WIN and probably told this to attendees of events. [Tr. at 54:9–14, 159:23 – 160:1, 192:3–4]

75. Stark testified that he received no other wages from WIN. But Stark admitted he routinely used WIN's money to pay for meals, gasoline, and other subsistence for himself. [Tr. at 204:12–19] Stark has not claimed receipt of income to tax authorities. [Tr. at 225:3–5]

76. WIN paid all the utility bills at 3320 and 3328 Jack Teeple Road, including the portions of the bills attributable to Stark's personal residence. [Tr. at 202:1–16]

77. The property taxes for 3320 and 3328 Jack Teeple Road payable in the fall of 2019 were paid from WIN's bank account. [Tr. at 61:10–24]

78. Stark's personal credit card statements were regularly paid with funds from WIN's bank account. Such payments included:

- a. On August 8, 2017, a payment of \$3,929.25 was made by check from WIN's bank account to pay off Chase credit card, account number ending in 4863, held jointly by Tim Stark and Melisa Lane. [Plaintiff's Exhibits 580, p.17; and 2404, p.1] The Chase statement on which that payment appears includes dozens of purchases at restaurants as well as gasoline purchases.
- b. On August 9, 2018, a payment of \$2,728.64 was made from WIN's bank account to pay off Chase credit card, account number ending in 4863, held jointly by Tim Stark and Melisa Lane. [Plaintiff's Exhibits 580, p.43; 2428, p.1] The Chase statement on which that payment appears includes dozens of purchases at restaurants as well as gasoline purchases.
- c. Payments of \$3,500, \$5,000, and \$5,261.45, were made from WIN's bank account on August 26, September 9, and September 12, 2019, respectively, toward the Chase credit card

account number ending in 4863, held jointly by Tim Stark and Melisa Lane. [Plaintiff's Exhibit 580, pp. 79–80; 2472, p.3] The Chase statement on which those payments appear includes many purchases at restaurants as well as gasoline purchases, many in the state of Oklahoma during Stark's time in that state. It also included a payment to REMC, the local electricity provider.

- d. On October 30, 2019, a payment of \$2,729.94 was made from WIN's bank account toward a Chase credit card, account number ending in 5820, held jointly by Tim Stark and Melisa Lane. [Plaintiff's Exhibit 580, p. 6; 2468, p.3] The Chase statement on which the payment appears includes multiple purchases at restaurants as well as gasoline purchases and a payment to Dish Network (television provider).

e. On July 17, 2019, a payment of \$3,198.05 was made from WIN's bank account to pay a Discover credit card, account ending in 2877, held by Tim Stark. [Plaintiff's Exhibits 580, p.73; 2393.5, p.3] The Discover card statement for the month ending June 23, 2019 contains thousands of dollars of charges from Home Depot, Tractor Supply Company, and other equipment stores in and around Thackerville, Oklahoma. [Plaintiff's Exhibit 2393.1, p. 3]

79. Members of WIN's Board of Directors gathered together as volunteers on the property, but the Board did not hold regular business meetings at which it voted on resolutions. [Tr. at 44:16–20, 45:22 – 46:1]

80. The Board also did not regularly and consistently record minutes, did not vote on resolutions, did not prepare or review yearly budgets or financial statements, did not review WIN's tax returns before filing, and did not review the bylaws. [Tr. at 151:18 – 153:6, 154:14 – 156:8]

81. At no time did WIN's Board of Directors authorize any of Stark's conduct described herein.

82. WIN's Board exercised no meaningful oversight over Stark and how he conducted WIN's business or used WIN's assets.

83. Stark testified that he frequently says, "I am WIN." He testified further that by that statement he meant: "I can close down WIN just like that. All I've got to do is say is, 'you're not using any of my crap. You no longer have property. You no longer have a license. You no longer have nothing. So done.'" [Tr. at 225:16–22]

84. Stark believes that he could spend WIN's money in any way he saw fit. [Tr. at 228:25 – 229:3]

85. Although the Court ordered WIN dissolved, WIN's bank and credit card accounts have not yet been closed and are still being used by Stark. [Tr. at 209:17–22] Stark continues to utilize these accounts for his personal benefit. [Tr. at 208:4–7]

86. WIN's Facebook page remains active and still allows fundraising for WIN. [Tr. at 221:9–11]

87. Stark refused at the hearing to state whether any of WIN's heavy equipment has been sold since the Court ordered WIN be dissolved. [Tr. at 215:3–25]

88. Stark refuses to acknowledge that the court has issued judgment against WIN and has appointed a Corporate Receiver to wind its affairs down. [Tr. at 189:16 – 190:18]

CONCLUSIONS

89. The Indiana Nonprofit Corporations Act (“INCA”) governs the rights, privileges, immunities, and franchises of nonprofit corporations incorporated thereunder. Ind. Code § 23–17–1–1.

90. The Indiana Attorney General is vested with authority under INCA to seek certain remedies against a nonprofit corporation if the

corporation has continued to exceed or abuse the authority that has been conferred upon it by law, if the corporation's assets are being misapplied or wasted, and if the corporation is unable to fulfill its purpose. Ind. Code § 23-17-24-1(a).

91. Judicial dissolution of a nonprofit corporation is among the remedies available under INCA and was requested by the State. Winding down a nonprofit corporation necessarily follows dissolution.

92. WIN has failed to retain counsel and, as a corporate entity, cannot appear pro se. Ind. Code § 34-9-1-1(a). Stark is not an attorney and cannot represent WIN. Stark separately has no standing to request reconsideration of any orders issued against WIN.

93. Judicial dissolution of WIN is appropriate regardless of WIN's voluntary dissolution or its default. Judgment has issued against WIN for violations of the INCA. Corporate assets were directly applied through payments made by WIN for the personal benefit of Stark, including for

payments of Stark's living expenses while in Oklahoma, payments for Stark's business venture while in Oklahoma, payments for personal meals, payments of utilities at his personal residence, and payment of his personal property taxes. Additionally, WIN's loss of its ability to fundraise through exhibiting animals demonstrates that it is no longer able to fulfill its purpose.

94. Stark should be held personally liable for breaching his fiduciary duties as a member of the Board of Directors of WIN and therefore should be ordered to return assets wrongfully obtained from WIN, including all animals in dispute.

95. Remedies available under the INCA include injunctive relief. Ind. Code § 23-17-24-1.5(b). A court's authority to grant injunctive relief encompasses ordering disgorgement of ill-gotten gains, which in this instance would include all animals acquired during the years WIN operated beginning in 1999. *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) (holding that the injunctive relief provision of the Emergency Price Control

Act of 1942 authorized monetary equitable relief); *see also Indiana State Bar Ass'n v. Northouse*, 848 N.E.2d 668 (Ind. 2006) (noting injunctive relief can encompass affirmative action and holding that fees obtained through the wrongful sale of financial organization books must be refunded).

96. As with all corporations, directors of a nonprofit have fiduciary duties including a duty of care and a duty of loyalty as embodied in Ind. Code § 23-17-13-1, which requires that a director act “in good faith,” “with the care an ordinarily prudent person in a like position would exercise under similar circumstances,” and “in a manner the director reasonably believes to be in the best interests of the corporation.” The duty of loyalty generally includes a duty to refrain from self-dealing and from misapplication of corporate assets when a fiduciary’s interests conflict with the corporation’s interests. Restatement of the Law of Charitable Nonprofit Org. § 2.02 TD No 1 (2016). The duty of care is generally a duty of proper oversight and of being sufficiently informed when making important decisions for the

corporation, and breaches of the duty include misapplying or wasting corporate assets. Restatement of the Law of Charitable Nonprofit Org. § 2.03 TD No 1 (2016).

97. The Indiana Attorney General is vested under INCA with authority to seek certain remedies—including injunctive relief—against directors who have breached their fiduciary duties to the nonprofit corporation. Ind. Code § 23–17–24–1.5(b), (c). A director may be held personally liable if a breach of a fiduciary duty is willful or reckless. Ind. Code § 23–17–13–1(d).

98. Stark breached his fiduciary duties as a member of WIN’s Board of Directors and as WIN’s President. Stark routinely failed to act in WIN’s best interest, including but not limited to taking assets belonging to WIN to be used in a private venture in Oklahoma, causing the death of numerous WIN animals in transport to Oklahoma, conduct resulting in the finding of multiple violations of the Animal Welfare Act by the USDA, leaving

at least one piece of heavy equipment in Oklahoma, routinely using WIN's funds for his personal sustenance without any corporate oversight or record keeping of the activity, using WIN funds to make improvements to real property not owned by WIN and using that property to secure a line of personal credit, using WIN funds to pay for utilities utilized solely for his benefit, and using WIN funds to pay thousands of dollars of personal credit card debt. Stark diverted WIN assets to be used for personal gain to an outrageous extent. The Court finds that Stark's misconduct involving WIN assets breached fiduciary duties owed to WIN and was not only reckless but rises to the level of willful behavior as he intended to act solely in his own interests and not those of WIN.

99. Stark breached his fiduciary duties by allowing WIN to make distributions of WIN assets to himself. INCA provides that a nonprofit "corporation may not make distributions," Ind. Code § 23-17-21-1, where a "distribution" is "a direct or an indirect transfer of money or other property

or incurrence or transfer of indebtedness by a corporation to or for the benefit of a person.” Ind. Code § 23-17-2-10(a). A director who assents to a distribution is personally liable to the corporation for the amount of the distribution that is illegal. Ind. Code § 23-17-13-4(a).

100. Stark further breached his fiduciary duties by failing to inform the Board of Directors of his intent to transfer all of WIN’s assets to a new business in Oklahoma. INCA provides that the Board of Directors must vote to approve the sale or other disposition of “all or substantially all” of a nonprofit corporation’s assets and must receive notice that such vote will be held at a meeting of the Board of Directors. Ind. Code § 23-17-20-2. For purposes of this section, assets to be disposed of constitute “all or substantially all” of the corporation’s assets if they “represent the [corporation’s] largest, most significant, and single most valuable possession” or the sale would “severely hamper’ the [corporation’s] ability to carry out its mission” or “fundamentally change the nature of the

corporation” or “substantially affect the existence and purpose of the corporation.” *Butcher v. Girl Scouts of Tribal Trails Council, Inc.*, 779 N.E.2d 946, 950 (Ind. Ct. App. 2002).

101. The Court concludes that Stark’s plans to transfer all or substantially all of WIN’s assets to a new business in Oklahoma triggered the requirement that a meeting be held at which the Board of Directors vote to approve the transfer and triggered the requirement that the Board of Directors be given notice prior to the meeting that a vote is to be held. The Court concludes that Stark’s planning and, in fact, undertaking to transfer WIN’s assets without first notifying the Board of those plans and obtaining approval through a vote of the Board constitutes a breach of Stark’s fiduciary duty to act in the best interest of WIN. Further, this breach was willful as Stark intended to keep the Board uninformed about his planned transfer of all of WIN’s assets to another business he planned to organize.

as “any person ... exhibiting any animals ... to the public for compensation, ... and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not.” 7 U.S.C. § 2132(h). “Person” includes “any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.” 7 U.S.C. § 2132(a). Accordingly, WIN could have obtained its own license.

105. WIN, in fact, acted as an exhibitor by advertising the animal encounter events under its own name, staffing the events with its volunteers, adorning the property and building in which the events were held with WIN signs, and receiving the compensation from the events, thus requiring it to obtain a license. Stark’s purported ownership of the animals could not relieve WIN of its obligation to obtain its own license and therefore provides no support for finding that the animals belonged to Stark. *See In Re: Timothy L. Stark & Wildlife in Need & Wildlife in Deed, Inc.*, No. AWA Docket No. 16–

0124, 2020 WL 836675, at *1 (U.S.D.A. Feb. 3, 2020) (finding that WIN was an unlicensed exhibitor).

106. As WIN has been dissolved and does not possess any licensing from the state or the USDA, it lacks the means to possess or properly care for the animals it owns. Additionally, WIN failed to properly care for the animals in the past. Accordingly, the temporary receivership of the animals with IZS should be made permanent and IZS should make proper reports to the Court regarding the care and disposition of the animals.

107. IZS should be empowered to place the animals with custodians and facilities of its choosing, based on its professional expertise in the field.

108. Any missing animals subject to the Court's September 16, 2020 Order that are recovered should be included in the IZS permanent receivership.

109.

110. As IZS and its custodians have expended money and resources assisting in the removal and care of WIN's animals, IZS and its custodians will be entitled to petition Van T. Willis, the receiver of WIN, for reimbursement for those costs from WIN's assets consistent with the Court's September 10, 2020 Order appointing the IZS as the Animal Receiver.

111. Piercing the corporate veil is appropriate where a corporation is used as an alter ego by a corporate officer. A plaintiff may establish that the corporation was an alter ego through evidence of any of the following: (1) undercapitalization; (2) absence of corporate records; (3) fraudulent representation by corporation shareholders or directors; (4) use of the corporation to promote fraud, injustice or illegal activities; (5) payment by the corporation of individual obligations; (6) commingling of assets and affairs; (7) failure to observe required corporate formalities; or (8) other shareholder acts or conduct ignoring, controlling, or manipulating the corporate form. *Aronson v. Price*, 644 N.E.2d 864, 867 (Ind. 1994).

112. Piercing the corporate veil and holding Stark personally liable is appropriate. WIN, through Stark, solicited donations purportedly for its stated corporate purpose, but Stark ultimately had no intention of reasonably, adequately fulfilling that purpose and fraudulently used the donations for personal gain. WIN paid Stark's personal obligations. WIN's Board of Directors failed meaningfully to engage in any corporate formalities. Finally, Stark commingled WIN and his assets and affairs, for example by Stark's utilizing WIN equipment and animals in attempting to start a private zoo in Oklahoma.

113. The State fails to show sufficient evidence for its claims under the Deceptive Consumer Sales Act ("DCSA"). Ind. Code § 24-5-0.5-4(c).

It is **ORDERED, ADJUDGED** and **DECREED** by the Court that the Defendant Timothy Stark's Motion for Clarification of Animal Ownership of December 16, 2020 is **DENIED**, Motion for Animal Inventory of December 22, 2020 is **DENIED**, Motion for Rule to Show Cause and Motion for Default

Judgment of December 29, 2020 is **DENIED**, Motion for Reconsideration or January 8, 2021 is **DENIED**, and Motion for Emergency Inspection of January 26, 2021 is **DENIED**.

The Court enters Judgment for Plaintiff and against Defendant Stark.

A separate order outlining the scope of the corporate receivership of Van T.

Willis over WIN will be issued separately. Judgment against Defendant

Stark and Defendant WIN is **FINAL**.

The following relief is **ORDERED**:

- a. Timothy Stark is permanently enjoined from acquiring, owning, and exhibiting any exotic or native animals, including all mammals, birds, reptiles and amphibians.
- b. Timothy Stark is required to return to WIN all funds and assets misappropriated from WIN in an amount and inventory to be determined by the Corporate Receiver, Van T. Willis.