

STATE OF INDIANA
IN THE MARION COUNTY SUPERIOR COURT

CAUSE NUMBER

STATE OF INDIANA,

Plaintiff,

v.

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

Defendants.

**MOTION FOR PRELIMINARY
INJUNCTION**

Attorney General Curtis T. Hill Jr., by Deputy Attorneys General Philip G. Rizzo and Tamara L. Weaver, respectfully moves the Court pursuant to Rule 65 of the Indiana Rules of Trial Procedure, Indiana Code § 24-5-0.5-4(c) and Indiana Code § 23-17-24-1.5 to issue a Preliminary Injunction enjoining Timothy Stark, Melisa Lane, Wildlife in Need and Wildlife In Deed Inc., and any of its agents (collectively, “WIN”) from removing animals or disposing of or transferring any other assets from WIN; ordering WIN to ensure proper and adequate care to all animals located at 3320 Jack Teeple Road, Charlestown, Indiana and any other location where WIN keeps and/or exhibits animals; and to allow an expedited inspection of documents and inspection of the entire property at 3320 Jack Teeple Road, Charlestown, Indiana and any other location where WIN keeps and/or exhibits animals, to be

conducted by an animal welfare expert of the State's choosing on an accelerated discovery schedule.

The State of Indiana ("State"), in support of its Motion for Preliminary Injunction ("Motion") states as follows:

1. On February 11, 2020, the State filed its Complaint seeking removal of officers from WIN, return of misappropriated assets, judicial dissolution of WIN, court appointed receivership of WIN, and a prohibition on WIN acquiring and/or exhibiting exotic or native animals.
2. The allegations of the State's Complaint are incorporated herein and made a part of this Motion by reference.
3. WIN director Timothy Stark has a history of hoarding animals in deplorable living conditions, abuse and neglect of animals, trafficking of animals, hiding animals from government authorities, and attempting to move WIN animals out of state.
4. The State has reason to believe animals at WIN are living in deplorable conditions and a prompt inspection of WIN's facilities by an animal welfare expert is needed to determine whether the animals at WIN are in imminent danger of illness or death during the pendency of the lawsuit.
5. The State is, contemporaneously with its Motion and Complaint, serving upon WIN a Rule 34 request for entry upon land for inspection and other purposes and a Rule 34 request to inspect and copy animal acquisition and disposition records.

6. A headcount of animals at WIN is necessary at this time because the State has reason to believe WIN may dispose of animals and other WIN assets during the pendency of the lawsuit.
7. A preliminary injunction enjoining WIN and its agents from removing animals and any other assets from WIN pending this lawsuit's proceedings is necessary due to WIN having a history of hiding animals from USDA inspectors and transferring WIN animals out of state.
8. Further, it is necessary to promptly obtain a headcount of animals at the beginning of this litigation through an inspection because Timothy Stark has told multiple WIN employees that he intends to shoot WIN animals if the government attempts to take the animals away from WIN.
9. The findings in a February 3, 2020 U.S. Department of Agriculture ALJ Order revoking Timothy Stark's USDA exhibitor license show repeated violations of the Animal Welfare Act and a history of willful non-compliance which harm WIN animals and WIN as a nonprofit corporation.
10. Unless a preliminary injunction is ordered, WIN animals and assets may be disposed of by WIN or its agents in anticipation of ordering of the relief requested in the State's complaint.
11. The State believes that Timothy Stark will continue to abuse and dispose of WIN animals and misappropriate WIN assets if a preliminary injunction is not entered.

12. A “preliminary injunction” is a remedy that is used to preserve the status quo as it existed prior to a controversy pending a full determination on the merits of that controversy. *U.S. Land Services, Inc. v. U.S. Surveyor, Inc.*, 826 N.E.2d 49, 66-67 (Ind. Ct. App. 2005);
13. The decision to grant a preliminary injunction is measured by the following factors: (1) whether the movant's remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (2) whether the movant has at least a reasonable likelihood of success at trial by establishing a prima facie case; (3) whether the threatened injury to the movant outweighs the potential harm to the non-movant that would result from the granting of an injunction; and (4) the public interest would not be disserved by the granting of a preliminary injunction. *Kosciusko Cty. Cmty. Fair, Inc. v. Clemens*, 116 N.E.3d 1131, 1137 (Ind. Ct. App. 2018);
14. The above standard is modified when the moving party, here the State, invokes the *per se* rule. The *per se* rule provides that when the acts sought to be enjoined are unlawful or clearly against the public interest, the State need not show irreparable harm or a balance of hardship in its favor. *Indiana Alcohol & Tobacco Comm’n.*, 945 N.E.2d 187, 197 (Ind. Ct. App. 2011); *City of Gary v. Stream Pollution Control Bd.*, 422 N.E.2d 312 (Ind. Ct. App. 1981).
15. WIN’s violations of the Indiana Nonprofit Corporations Act and the Deceptive Consumer Sales Act set forth in the State’s Complaint and sought to be

enjoined are unlawful or clearly against the public interest and *per se* irreparable.

16. There is substantial likelihood that the State will prevail on the merits of its Complaint in this action.
17. WIN's violations of the Indiana Nonprofit Corporations Act and the Deceptive Consumer Sales Act set forth in the State's Complaint and sought to be enjoined are unlawful and clearly against the public interest and the State need not show a balance of hardship in its favor.
18. The State does not have an adequate remedy at law to protect the public interest.
19. Plaintiff, the State, is a governmental organization and is not required to offer security pursuant to Rule 65(C) of the Indiana Rules of Trial Procedure.

WHEREFORE, the State requests the Court issue an order for a preliminary injunction ordering the following:

- a. WIN and its agents are enjoined from removing animals from their current location and/or disposing of or transferring any other assets from WIN;
- b. WIN must provide proper and adequate care, including requisite food and veterinary care for all animals located at 3320 Jack Teeple Road, Charlestown, Indiana and any other location where WIN keeps and/or exhibits animals;

- c. WIN must provide access to documents and permit entry per the State's Rule 34 request within 3 days of the Court's directing the same; and
- d. all other just and proper relief.

Respectfully submitted,

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