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September 16, 2015

Via email: Carter.Smith@tpwd.texas.gov

Carter Smith
Executive Director
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744.

Re: Notice of substantial chance of litigation

Dear Mr. Smith,

This firm and the firm of Ramirez Law Offices, P.C., have been retained to represent certain individuals who have an interest in protecting their rights in captive-bred deer in light of the Texas Parks & Wildlife Department's "emergency" regulatory scheme regarding Chronic Wasting Disease (CWD). The purpose of this letter is to put you on notice that there is a substantial chance that the following claims will be filed:

- (1) a declaratory judgment to resolve the dispute with the Parks & Wildlife Department over whether deer breeders have an ownership interest in their captive-bred deer;
- (2) a declaratory judgment and injunctive relief to remedy possible past and future violations of the Texas Open Meetings Act (TOMA), both with respect to the "advisory" committees involved with the CWD regulations and with respect to communications between the members of the Parks & Wildlife Commission and others in numbers of less than a quorum for the purpose of engaging in secret deliberations in violation of the TOMA;
- (3) a writ of mandamus or injunction and declaratory judgment pursuant to the APA to remedy the Parks & Wildlife Department's summary suspension of its existing rules allowing the movement of captive-bred deer that comply with Texas Animal Health Commission rules;
- (4) a writ of mandamus or injunction and declaratory judgment pursuant to the APA to remedy the Parks & Wildlife Department's "emergency" rules because there is insufficient factual basis to establish an emergency and because the rules exceed the Parks & Wildlife Department's statutory authority and conflict with the statutes and regulations of the Texas Animal Health Commission (TAHC); and

Mr. Carter Smith
September 16, 2015
Page 2

(5) in the alternative, assuming arguendo that the rules are within the Parks & Wildlife Department's statutory authority, to establish that the applicable Parks & Wildlife Code provisions are unconstitutional as applied because the regulatory scheme violates the constitutional rights of deer breeders and their customers to due process and equal protection.

When there is a substantial chance that claims will be filed, the party against whom the claims may be filed has a common law duty to preserve evidence in the party's possession or control that will be material and relevant to the claims. *Brookshire Bros. v. Aldridge*, 438 S.W.3d 9, 20 (Tex. 2014). In addition, the Penal Code and state laws such as the Texas Public Information Act (TPIA) prohibit the destruction of government information.

The Parks & Wildlife Department, including you and your staff, will be asked to produce hard copy and electronically stored information in the anticipated litigation, including information that may be slated for routine destruction under the state records retention laws. Any routine (and non-routine) destruction of information must be suspended. This preservation request includes, but is not limited to, all emails (whether on state-issued computers or otherwise), texts (whether on state-issued phones or otherwise), social media posts and comments and the like that relate to CWD and the captive-bred deer industry. This will also include all electronic communications you, your staff, and any advisory committee members have had with any Parks & Wildlife Commission members and ex-officio and "emeritus" members related to CWD and the captive-bred deer industry.

Your prompt attention to this matter is appreciated. We would also be glad to visit with you about the claims we anticipate filing in an effort to resolve the matter.

Sincerely,



Jennifer S. Riggs

Cc: Mr. Gary Ramirez
Ms. Ann Bright
Mr. Dee Ellis
Mr. Gene Snelson