

II.

AUTHORITY OF ATTORNEY GENERAL AND NATURE OF THIS SUIT

2.1 This suit is brought by the Attorney General pursuant to the authority granted him under Chapter 123 of the Texas Property Code, the Texas Non-Profit Corporation Act, the Texas Miscellaneous Corporation Laws Act, the Texas Deceptive Trade Practices – Consumer Protection Act, and acting within the scope of his duty to protect the public interest in public funds held in trust. This action is brought pursuant to authority and duty of the Attorney General prescribed by the Texas Constitution, statutes, and common law related to charitable entities, as set forth in this petition. *See* TEX. PROP. CODE ANN. ch. 123 (Vernon 1995 & Supp. 2002); Texas Non-Profit Corporation Act, TEX. REV. CIV. STAT. ANN. art. 1396-1.01 *et seq.* (Vernon 1997) now known as the Texas Business Organizations Code §§ 1.01 and 1.008 *et. seq.*; Texas Miscellaneous Corporation Laws Act, TEX. REV. CIV. STAT. ANN. art. 1302-1.01 *et seq.* (Vernon 1997) (“MCLA”) now known as the Texas Business Organizations Code §§1.01 and 1.008 *et. seq.*; Texas Deceptive Trade Practices – Consumer Protection Act (“DTPA”); TEX. BUS. & COM. CODE §17.41 *et seq.* (Vernon 1997).

2.2 The Attorney General alleges that corporate Defendant RDFC, and individual Defendants Guerrero and Ayala, individually and/or acting for and on behalf of RDFC, have engaged in various illegal and improper acts and practices, all in breach of their statutory and common law fiduciary duties relating to non-profit, charitable organizations. These acts and practices include failure to abide by the requirements of the Texas Non-Profit Corporation Act (Tex.Rev.Stat.Ann., Article 1396-1.01 *et seq.*) (“NPCA”) now known as the TEX. BUS. ORG. CODE §§ 1.01 and 1.008 *et. seq.*, the

Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code §17.41, *et seq.*) (“DTPA”), the Texas Miscellaneous Corporations Laws Act (Tex. Rev. Civ. Stat. Ann. art. 1302-1.01 *et seq.*) (“MCLA”) now known as the TEX. BUS. ORG. CODE §§ 1.01 and 1.008 *et. seq.*, and Texas common law. The Attorney General requests the Court to award all relief available at law.

2.3 The Attorney General further alleges that corporate Defendant RDFC and individual Defendants Guerrero and Ayala, individually and/or acting for and on behalf of RDFC, have engaged in various illegal and improper acts and practices, all in breach of their statutory duties and common law fiduciary duties relating to non-profit, charitable organizations. These acts and practices include the failure to account for RDFC’s non-profit, charitable assets, which include grants made to RDFC for its stated charitable purpose; alleged misappropriation of such assets for the personal gain of Defendants Guerrero and Ayala; failure to abide by the requirements of the NPCA and MCLA, and failure to appropriately fulfill the non-profit, charitable mission of RDFC. The Attorney General also asserts violations of the DTPA, based, *inter alia*, upon these same acts and practices and misrepresentations made to various funding sources and to the general public relating to the use of donated funds.

2.4 The Attorney General requests the Court to award all relief available at law.

III.

JURISDICTION AND VENUE

3. Jurisdiction in this Court is proper under § 115.001 of the Texas Property (Trust) Code and venue is proper in Travis County under §123.005(a) of the Texas Property (Trust) Code, because this is a proceeding brought by the Attorney General alleging, among other things, breach of fiduciary duty.

IV.

PARTIES

4.1 Greg Abbott, Attorney General of the State of Texas, is the petitioner in this suit, acting on behalf of the public interest in charity. The Attorney General's principal office is located at 300 West 15th Street, Austin, Texas 78701.

4.2 Defendant RDFC is a Washington, D.C. non-profit corporation operating under a Certificate of Authority to transact business in Texas as alleged specifically below, and may be served with process by serving its Registered Agent, The Prentice Hall Corporation System, Inc., located at 701 Brazos Street, Suite 1050, Austin, Texas 78701.

4.3 Defendant Guerrero is the President and Chief Executive Officer of RDFC and is an individual residing and doing business in Texas as alleged specifically below, and may be served with process at her place of business, RDFC, located at 230 Pereida Street, San Antonio, Texas 78210, or at her residence, located at 18006 Crystal Knoll, San Antonio, Texas 78258.

4.4 Defendant Ayala is the Chief Financial Officer of RDFC and is an individual residing and doing business in Texas as alleged specifically below, and may be served with process at her place of business, RDFC, located at 230 Pereida Street, San Antonio, Texas 78210, or at her residence, located at 378 County Road 574, Castroville, Texas 78009.

V.

PUBLIC INTEREST

5.1 The Attorney General has reason to believe that Defendants Guerrero and Ayala have engaged in, and will continue to engage in, the unlawful practices set forth below. The Attorney General further has reason to believe Defendants Guerrero and Ayala have caused and will cause

injury, loss and damage to the State of Texas, and will also cause adverse effects to Texas consumers, charitable donors and RDFC. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes, and is of the opinion, that these proceedings are in the public interest. In compliance with § 17.47 of the DTPA, Defendants have been contacted prior to suit and informed generally of the alleged wrongful conduct by means of Civil Investigative Demands and Requests to Examine documents issued to RDFC. Defendants Guerrero and Ayala also had actual notice of this request in their capacities as President/Chief Executive Officer and Chief Financial Officer, respectively.

VI.

ACT OF AGENTS

6. Whenever in this Petition it is alleged that Defendants did any act, it is meant that Defendants performed or participated in the act, or Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of Defendants.

VII.

STATEMENT OF FACTS

7.1 Defendant RDFC is organized under Section 501(c)(3) of the Internal Revenue Code and is a Washington, D.C. non-profit corporation established on September 23, 1977, headquartered in Texas, and operating under a Certificate of Authority to transact business in Texas since March 25, 1988. Its purpose, as stated on its Certificate of Authority, is rural economic development through the provision of financial and technical assistance to small businesses in rural areas. RDFC's current mission statement provides that RDFC "is to be a catalyst in building regional economic infrastructure by investing resources into local partners who can connect communities to the regional

and global markets” and that RDFC's vision “is to advance social equity by transforming capital markets to primarily serve communities of color in creating individual wealth.” The mission statement further provides that RDFC “is a capital and information resource for rural and historically under-served markets in the United States.”

7.2 Defendant Guerrero is the current President and Chief Executive Officer of RDFC and has been at all times relevant to the claims herein. Guerrero is also listed as the President and CEO of Artemis and serves on the board of directors of the National Association for Latino Community Asset Builders (“NALCAB”).

7.3 Defendant Ayala is the current Chief Financial Officer of RDFC and has been at all times relevant to the claims herein.

7.4 On September 7, 2004, the Office of the Attorney General issued a Civil Investigative Demand and Request to Examine (“CID”) to RDFC, requesting documents from and after fiscal year 2000, pursuant to the DTPA, the MCLA and Texas common law. The Attorney General issued supplemental CID’s on February 15, 2005 and August 31, 2005. The Attorney General also conducted on-site visits to inspect the requested documents at RDFC’s principal place of business in San Antonio.

7.5 Upon information and belief, Defendants Guerrero and Ayala have allowed themselves and other individuals associated with the charity to profit and otherwise inappropriately use the charitable assets, in breach of their fiduciary duties and in violation of other Texas laws as set forth in this petition.

Failure to Maintain Accurate Books and Records

7.6 Upon information and belief, Defendant RDFC, and Defendants Guerrero and Ayala in their

capacities as officers and fiduciaries of RDFC, have either intentionally withheld or negligently failed to maintain a complete and accurate set of books and records as required by the NPCA, as specifically described below. Such inadequate record-keeping is a breach of fiduciary duty to the public and a violation of Article 1396-2.23A of the NPCA and TEX. BUS. ORG. CODE §§ 22.352 - 22.355.

Failure to Account for Grant Funding

7.7 Defendants have failed to maintain true and accurate financial records with full and correct entries regarding income and expenditures, in accordance with generally accepted accounting practices. RDFC routinely requests and receives grant funding from private foundations, corporations and the federal government, many of which are designated for specific charitable program services. Corporate Defendant RDFC and individual Defendants Guerrero and Ayala, in their representative capacities as officers and fiduciaries, have intentionally or negligently failed to maintain records that adequately account for the expenditure of grant funds. Specifically, RDFC's financial records do not sufficiently tie grant-related expenditures to the corresponding funding source (grantor) or charitable program service the grant was intended to fund. Similarly, reports submitted by RDFC to its grantors showing use of the donated funds cannot be traced back to the corporation's financial records.

7.8 RDFC applied for and received a \$300,000 grant from the Houston Endowment in support of its Border Development Finance Initiative ("BDFI"), which was funded in three annual installments of \$100,000 in the years 2001, 2002 and 2003. The grant award provided that funds are to be used toward capacity-building activities in a 10-county area along the Texas/Mexico border. RDFC's reports to the Houston Endowment for fiscal years 2002 and 2003 indicated all funds from

the grant were expended, and that RDFC spent \$197,620 and \$128,327 during those two years, respectively, toward the purposes of this grant. RDFC's general ledgers, however, reflect only \$134,000 in expenses specifically allocated to BDFI for the entire 2001 through 2004 fiscal years. It is, therefore, impossible to verify the accuracy of RDFC's representations to the grantor regarding use of grant funds.

7.9 Likewise, RDFC's use of a \$50,000 grant from Levi Strauss Foundation cannot be traced to its financial records. The Levi Strauss Foundation specifically designated these funds to support "an assessment of training and employment opportunities for mono-lingual Spanish speaking displaced workers in El Paso." RDFC's report to the grantor includes an expense summary showing how grant funds were used. RDFC's general ledgers, however, contain no segregated expense account for the Levi Strauss Foundation or for the project funded by the grant, making it impossible to tie the listed expenditures to the funding source.

7.10 RDFC's general ledgers for fiscal years 2000 through 2004 also list numerous expenditures totaling over \$2,650,000 posted to expense accounts that are not designated as being tied to a specific charitable program or funding source. Defendants' intentional or negligent misrepresentations regarding use of funds from grantors such as the Houston Endowment and the Levi Strauss Foundation, and their failure to adequately account for such funds, constitutes a breach of fiduciary duty to the public and a violation of the NPCA and the DTPA.

Failure to Substantiate and Account For Expenditures Generally

7.11 From October 1, 2001 through September 30, 2004, RDFC had credit cards issued by three different banks. Twelve RDFC staff members, including Defendants Guerrero and Ayala, were authorized users on one or more of the accounts. Defendants Guerrero and Ayala, and other RDFC

staff members, used the credit cards on an almost daily basis for travel expenses, including airfare, meals, and lodging, and for retail purchases. The credit cards were also used extensively for meal purchases in San Antonio. Billing statements for this time period show 2,435 separate transactions and total expenditures of approximately \$337,000. Only approximately 12% of the total transactions were substantiated by receipts or other supporting documentation. Moreover, many of the expenditures that were supported by receipts failed to consistently include notations indicating the charitable purpose of the expenditures.

7.12 In a letter to RDFC's board of directors dated May 21, 2005 relating to the financial audit for fiscal year 2004, RDFC's independent auditors noted that "during our audit of credit card expenses, we noted that travel and entertainment expense documentation...did not meet the Internal Revenue Service's guidelines for deductibility or substantiation of those expenses. Numerous credit card charges were not supported by a receipt or an expense report."

7.13 The Attorney General's investigation discovered that RDFC had no clear and consistent method of coding credit card expenditures for accounting purposes. In the course of the Attorney General's investigation, notations were found for approximately 41% of the individual transactions indicating how the expense was coded for accounting purposes. These notations were found in varying places, including the monthly billing statements, receipts, invoices or other supporting documentation.

7.14 Defendants' manner of coding several expenditures is inaccurate and/or improper. For example, almost \$12,000 in restaurant charges in San Antonio are designated as "marketing expenses," even though notations for those charges documented by receipts make no reference to "marketing." Many of these meals are marked only as "manager meeting," "staff lunch," "birthday

lunch,” or “dinner and drinks” for various staff members. Also, several instances of travel by family of RDFC staff or consultants are coded as “staff travel.” By failing to substantiate credit card charges and other expenditures, and account for them in a clear and consistent manner, Defendants have breached their fiduciary duty to safeguard the assets of the charity and, as a result, they have violated the NPCA and the common law fiduciary duties relating to non-profit charitable organizations.

Failure to Account for Financial Activity of Affiliates

7.15 RDFC is affiliated with the National Association for Latino Community Asset Builders (“NALCAB”), a 501(c)(3) Texas non-profit corporation established on September 11, 2002. NALCAB is a membership-based, asset building organization for Latino communities throughout the United States. RDFC took responsibility for all of the administrative, programmatic and fiscal operations of NALCAB, including marketing, fund-raising, program development, accounting and fiscal management. NALCAB purports to operate under a management agreement with RDFC, but the agreement appears to have been fully executed only after the Attorney General requested a copy.

7.16 From October, 2002 through December, 2004, RDFC raised approximately \$460,000 in grant funding, conference sponsorships and membership dues to support NALCAB. However, NALCAB’s revenue and expenses are not adequately segregated on RDFC’s books. RDFC maintains a separate bank account for NALCAB, but not all grant funds designated for NALCAB were deposited into this account, nor were all NALCAB expenditures paid from this account. Likewise, RDFC appears to have expended more on NALCAB-related activities than what is specifically allocated to NALCAB on its general ledger. For example, RDFC’s IRS form 1099’s show that approximately \$115,000 was paid to consultants for services related to NALCAB, but the

general ledgers show only \$43,000 paid for marketing and professional fees associated with NALCAB.

7.17 RDFC is also affiliated with Artemis Housing Corporation (“Artemis”), a 501(c)(3) Texas non-profit corporation established on January 31, 2001. The stated purpose of Artemis is to provide for decent, affordable housing to low-income households. Artemis is headquartered in El Paso and had a nine-person staff in 2004.

7.18 RDFC’s 2004 general ledger indicates a year-end balance of \$120,000 in management fees accrued and owed by Artemis to RDFC. However, neither the balance nor the account appear on RDFC’s 2005 ledger. It is unclear whether the fees were paid or written off.

Other Material Weaknesses in RDFC Accounting Procedures and Internal Controls

7.19 RDFC’s most recent independent audit is for fiscal year ended September 30, 2003. It identifies numerous deficiencies, including: (1) failure to document travel and entertainment expenses; (2) lack of internal controls over cash receipts; and (3) violations of several loan covenant restrictions.

Misappropriation and Waste of Charitable Assets

Credit Card and Cash Purchases

7.20 Corporate Defendant RDFC, and individual Defendant Guerrero, in her representative capacity as an officer and fiduciary, have solicited and accepted donations from numerous grantors, representing that such funds would be used for the charitable purposes of RDFC, or for such specific charitable purposes as restricted by the donor. Upon information and belief, Defendants Guerrero and Ayala, and other RDFC employees, have diverted a substantial amount of such charitable funds and donations to purposes unrelated to RDFC’s charitable mission, as alleged specifically below.

Defendants Guerrero and Ayala have also inappropriately used the charity's assets for their own personal benefit and for the benefit of RDFC staff and family members, including, but not limited to, numerous credit card charges and cash disbursements for personal purchases and extravagant travel, as alleged below.

7.21 From September 2001 through August 2004, Defendants Guerrero and Ayala, and other RDFC staff, made approximately \$49,000 in charges on RDFC credit cards and through the writing of checks on RDFC accounts for expenses that were personal, excessive or unrelated to RDFC's mission. These charges and expenditures include the following: (1) \$3,500 for staff trips to Schlitterbahn and Splashtown; (2) over \$10,000 for San Antonio-based staff members to stay overnight at the Westin La Cantera Resort in San Antonio; (3) \$1,500 in credit card finance charges and over-limit fees; (4) \$2,500 in airfare for family members of the RDFC board of directors and staff, including Defendant Guerrero; and (5) \$670 at the Ooh La La Salon in San Antonio. These improper charges and payments also include the costs of lodging and meals related to trips for board member meetings in Seattle, Las Vegas and San Francisco, despite the fact that RDFC's principal place of business is in Texas, and during other staff trips. Such charges are deemed improper because they are considered excessive or occurred significantly before or after the meeting or other event. By allowing these expenses to occur, Defendants have breached their fiduciary duty to safeguard the assets of the charity.

7.22 From September 2001 through August 2004, corporate Defendant RDFC and individual Defendant Guerrero in her representative capacity as an officer and fiduciary, made or authorized over \$176,000 in primarily travel-related charges that are questionable. These charges include: (1) airfare to out-of-state locations for RDFC consultants, grantees and other unknown third parties; and

(2) travel for affiliate entity functions and costs associated with RDFC staff trips to locations such as California, New York and New Mexico. Many of the charges are questionable because the charitable purpose of the travel and/or expense is not known or is not sufficiently supported by receipts or other documentation. Expenditures for travel for clerical and/or administrative staff, multiple travelers for certain business functions, and the length of stay for certain business functions are also questionable. Questioned charges not related to travel include over \$25,000 spent by RDFC staff members at San Antonio restaurants, and approximately \$1,700 spent by RDFC's El Paso-based employee at restaurants in El Paso.

7.23 Likewise, from October 2000 through December 2004, corporate Defendant RDFC, and individual Defendant Guerrero in her representative capacity as an officer and fiduciary, made and/or authorized approximately \$318,000 in purchases by check, which are considered questionable. These purchases include: (1) over \$60,000 in lodging costs related to board meetings in San Francisco, Seattle, Las Vegas, Washington D.C. and San Antonio; (2) over \$25,000 in car allowances for several RDFC employees, including a \$400 per month car allowance to Defendant Guerrero; and (3) \$3,800 for flowers. This amount also includes approximately \$156,000 in travel-related expenses that are questioned because the charitable purpose of the travel and/or expense is not known or is not sufficiently supported by receipts or other documentation.

Consulting and Professional Fees

7.24 From October 2000 through December 2004, corporate Defendant RDFC, and individual Defendant Guerrero in her representative capacity as an officer and fiduciary, retained numerous consultants and other professionals to provide services to RDFC, NALCAB and Artemis Housing at a cost of approximately \$730,000. Of the total amount, \$447,000 is questionable due to the lack

of documentation supporting the expense and/or the necessity of incurring the expense.

Employee Salaries

7.25 RDFC's Form 990 for the fiscal year 2001 shows that RDFC had an operating deficit of \$131,247. RDFC's Form 990 for the fiscal year 2002 shows that the operating deficit increased for that year to \$544,470. Yet, during the following fiscal year (2003), after RDFC had suffered an increase in its operating loss of over 400%, Defendant Guerrero saw fit to give herself a raise in annual salary from \$103,500 to \$120,000. During the same year, Guerrero also authorized a substantial pay raise for Defendant Ayala in the amount of \$3,600, as well as for other RDFC employees in the total amount of \$24,750. Yet, during that same year, RDFC had a reported operating loss of \$467,816. By allowing these expenses to occur, Defendants have breached their fiduciary duty to safeguard the assets of the charity.

Loan Funding

7.26 In October 2002, RDFC received loan funding from Wells Fargo Bank ("Wells Fargo") in the form of a \$2.5 million "EQ2" or equity equivalent investment. The loan agreement states that the funds are to be used for community development objectives. Thereafter, Defendant Guerrero represented in writing to Wells Fargo that a portion of the loan was used to provide a \$290,000 loan to the Matthew Thompson family in San Diego "to help them build a unique home that is adapted to the needs of a family requiring a handicapped-accessible house." A portion of Wells Fargo loan proceeds were also used to acquire a 5,000 sq-foot building for RDFC headquarters. Defendants have failed to justify the charitable purpose of the Wells Fargo loan proceeds and, upon information and belief, Defendants' use of such proceeds does not fall within RDFC's community development mission or objectives.

7.27 Lorena Ayala, RDFC employee and the daughter of Defendant Ayala, loaned herself \$10,000 under the guise of a small business loan. The loan went unnoticed for over a year. After it was discovered RDFC terminated Lorena Ayala and notified the funder, the Small Business Administration. Maria Ayala has apparently agreed in writing to relinquish her retirement account as partial payment on the balance owed. However, documents provided by RDFC to the Attorney General indicate that this unauthorized loan remains unpaid. By allowing this loan to occur and failing to pursue its repayment, Defendants have breached their fiduciary duty to safeguard the assets of the charity.

VIII.

ATTORNEY GENERAL'S CLAIMS AND CAUSES OF ACTION

FIRST CAUSE OF ACTION, AGAINST DEFENDANTS RDFC, GUERRERO AND AYALA, FOR VIOLATIONS OF THE TEXAS NON-PROFIT CORPORATION ACT AND BREACH OF FIDUCIARY DUTY

8.1 The Attorney General reasserts the factual allegations contained in paragraphs 7.1 through 7.27 above.

8.2 RDFC is a non-profit corporation under the laws of the State of Texas and hold its assets in charitable trust subject to the common law fiduciary duties and statutory duties of officers and directors appurtenant thereto. Defendant RDFC itself is obligated to the people of the state of Texas under the fiduciary and other statutory duties imposed by the NPCA and by common law.

8.3 Defendants Guerrero and Ayala, in their capacities as RDFC's President/Chief Executive Officer and Chief Financial Officer, respectively, are subject to the fiduciary duties imposed by the NPCA and by common law.

8.4 Corporate Defendant RDFC, and individual Defendants Guerrero and Ayala, in their representative capacities as officers and fiduciaries, have, as alleged above, failed to properly maintain RDFC's books and records as required by Articles 1396-2.23 and 1396-2.23A of the NPCA now TEX. BUS. ORG. CODE §§3.151 and 22.351 - 22.355. Such inadequate financial record-keeping is a violation of the law and breach of fiduciary duty to the public.

**SECOND CAUSE OF ACTION, AGAINST
DEFENDANTS GUERRERO AND AYALA,
FOR BREACH OF FIDUCIARY DUTY**

8.5 The Attorney General reasserts the factual allegations contained in paragraphs 7.1 through 7.27 above.

8.6 RDFC is a non-profit corporation under the laws of the State of Texas and holds its assets in charitable trust subject to the common fiduciary duties and statutory duties of officers and directors appurtenant thereto. Defendant Guerrero, in her capacity as an officer and fiduciary of RDFC, is subject to the fiduciary duties imposed by the NPCA and by common law.

8.7 Funds solicited and collected from granting entities for the non-profit purpose of RDFC are impressed with a charitable trust. The law regarding charitable trust assets requires that such donated, public funds be used for the charitable purposes for which they were received. By soliciting and collecting funds from the general public and numerous grantors, while representing that these funds will be used for RDFC's charitable program services, Guerrero owes various fiduciary duties to the general public to disburse those funds and services accordingly and not otherwise. By failing to do so, Defendant Guerrero has breached her fiduciary duties to RDFC and to the general public.

8.8 Defendant Guerrero, in her capacity as an officer and fiduciary has, as alleged above, misappropriated and wasted the assets of RDFC through improper raises in salary at times during

which RDFC was operating at a loss. As a result, Defendant Guerrero has breached her fiduciary duty to RDFC and to the general public.

8.9 Defendants Guerrero and Ayala, in their capacities as officers and fiduciaries have, as alleged above, misappropriated and wasted the assets of RDFC through unauthorized and illegal credit card expenditures. As a result, Defendants Guerrero and Ayala have breached their fiduciary duties to RDFC and the public. Misappropriation of non-profit, charitable assets is a further and more egregious breach of fiduciary duties.

**THIRD CAUSE OF ACTION, AGAINST
DEFENDANTS GUERRERO AND AYALA,
FOR GROSSLY NEGLIGENT MISMANAGEMENT**

8.10 The Attorney General reasserts the factual allegations asserted in Paragraphs 7.1 through 7.27 above.

8.11 Defendant Guerrero has violated the special duty of care imposed upon her in her capacity as a fiduciary by failing to oversee the management and control of RDFC in accordance with the law governing non-profit charitable organizations, as alleged above. Defendant Guerrero has exercised her fiduciary duty in such a negligent and supine manner that her lack of diligence results in breach of her fiduciary duties and subjects her to damages as a result of her gross negligence.

8.12 Defendant Ayala has violated the special duty of care imposed upon her in her capacity as a fiduciary by failing to oversee the financial management of RDFC in accordance with the law governing non-profit charitable organizations, as alleged above. Defendant Ayala has exercised her fiduciary duty in such a negligent and supine manner that her lack of diligence results in breach of her fiduciary duties and subjects her to damages as a result of her gross negligence.

**FOURTH CAUSE OF ACTION, AGAINST
DEFENDANTS GUERRERO AND AYALA,
FOR NEGLIGENT MISMANAGEMENT**

8.13 The Attorney General reasserts the factual allegations asserted in Paragraphs 7.1 through 7.27 above.

8.14 Defendant Guerrero, in her management and oversight of RDFC, has breached the duty of care imposed upon her in her capacity as a fiduciary, as alleged above. Defendant Guerrero has failed to exercise her fiduciary duty in such a negligent manner that her lack of diligence caused harm to the corporation. For such harm, Defendant Guerrero's breach of fiduciary duty subjects her to damages as a result of her negligence.

8.15 Defendant Ayala, in her management and oversight of the finances of RDFC, has breached the duty of care imposed upon her in her capacity as a fiduciary, as alleged above. Defendant Ayala has failed to exercise her fiduciary duty in such a negligent manner that her lack of diligence caused harm to the corporation. For such harm, Defendant Ayala's breach of fiduciary duty subjects her to damages as a result of her negligence.

**FIFTH CAUSE OF ACTION, AGAINST
GUERRERO, FOR VIOLATIONS OF THE DTPA**

8.16 The Attorney General reasserts the factual allegations asserted in Paragraphs 7.1 through 7.27 above.

8.17 Defendant Guerrero, on behalf of RDFC has, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by § 17.45 (6) of the DTPA. Defendant Guerrero has, in the course of trade and commerce, engaged in false, misleading, and deceptive acts and practices declared unlawful in §§ 17.46 (a) and (b) of the DTPA. Such acts

include:

1. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not, in violation of § 17.46(b)(5) of the DTPA.
2. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, in violation of § 17.46(b)(12) of the DTPA.
3. Failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of § 17.46(b)(24) of the DTPA.

8.18 Specifically, Defendant Guerrero has, by means of the unlawful acts and practices described above, injured consumers and charitable donors in the State of Texas and elsewhere by obtaining money or other property from identifiable persons, including grant funding sources, to whom such money or property should be restored or, in the alternative, such money should be recovered from Defendant Guerrero for RDFC, to be used as originally promised and represented.

IX.

REQUEST FOR APPOINTMENT OF A TEMPORARY RECEIVER

9.1 In accordance with principles of equity, the special powers of Texas courts in matters pertaining to charity, and in light of the seriousness of the allegations raised in this pleading and potential for continual damage to the corporation, the appointment of a temporary receiver to conserve RDFC's assets and avoid damage to the interests of the public of the State of Texas is necessary. The appointment of a temporary receiver is authorized by Article 1396-7.04 and/or 7.05 of the NPCA and Article 1302-5.10 of the MCLA now TEX. BUS. ORG. CODE §§ 11.403 and/or 11.404.

9.2 The Attorney General requests that a temporary receiver be appointed to represent the interests of RDFC during the pendency of this litigation, and to choose legal representation for RDFC in this litigation solely for the benefit of the corporation; and order that such temporary receiver be given the authority and duty to conduct the general business of RDFC. No other adequate remedy is available at law or equity to accomplish these goals.

X.

TRIAL BY JURY

10. The Attorney General herein requests a jury trial. Pursuant to Attorney General Opinion No. MW-447 and No. MW-447A, the state is not required to pay fees or give any other security for the costs in advance.

XI.

ATTORNEYS' FEES

11. Due to the acts of Defendants RDFC, Guerrero and Ayala, the Attorney General has found it necessary to investigate and prosecute this action. Consequently, the Attorney General requests that this Court adjudge against Defendants, jointly and severally, all attorneys' fees, investigators' fees and costs of court pursuant to Section 402.006©) of the Texas Government Code and Section 123.005(b) of the Texas Property (Trust) Code.

XII.

RELIEF REQUESTED

12. Corporate Defendant RDFC and Defendants Guerrero and Ayala, individually or in a representative capacity for RDFC, have engaged in the unlawful acts and practices described above. Defendants have violated and will continue to violate the law as alleged in this Petition. After trial

of these matters, the Attorney General requests that this Court declare that all assets misapplied or misappropriated by Defendants are impressed with a constructive trust for the non-profit, charitable purpose of RDFC. The Attorney General makes other requests of the Court as set forth below.

WHEREFORE, Attorney General Greg Abbott, on behalf of the public interest, respectfully requests the following:

1. That Defendants RDFC, Gloria Guerrero and Maria Ayala, individually and in their capacities as President/Chief Executive Officer and Chief Financial Officer of RDFC, be cited according to law to appear and answer herein;
2. That the Court order Defendant RDFC to make a full and complete accounting to the Attorney General, performed by an independent accountant, in accordance with generally accepted accounting principles, to be approved by the Court, of all funds and assets solicited by and/or held by or for Defendant RDFC, the costs of which are to be assessed against RDFC.
3. That the Court order that all property of RDFC within this State at the time RDFC engaged in the unlawful acts and practices described above in Paragraphs 7.4 through 7.27, or which may thereafter come within this State, shall by reason of such violation, become liable for such fines or penalties and for costs of suit and costs of collection pursuant to Arts. 1302-5.07, 5.08 of the Texas Miscellaneous Corporation Laws Act, now the Tex. Bus. Org. Code §12.201 *et. seq* and that the State of Texas shall have a lien on all such property of RDFC from the date this suit is instituted.
4. That the Court order that funds accepted by RDFC from the citizens of Texas and from granting sources which were earmarked for a specific charitable purpose be held in a

constructive charitable trust, solely for the specific purposes to which they were intended.

5. That the Court adjudge damages against Defendant Guerrero, individually and in her representative capacity for RDFC, for breach of her common law fiduciary duties, violation of the NPCA, violations of the DTPA, and her negligent and grossly negligent management of RDFC and other violations of law, in favor of RDFC, for injuries to RDFC and to the public interest in charity;
6. That the Court adjudge damages against Defendant Ayala, individually and in her representative capacity for RDFC, for breach of her common law fiduciary duties, violation of the NPCA, and her negligent and grossly negligent management of RDFC and other violations of law, in favor of RDFC, for injuries to RDFC and to the public interest in charity;
7. That the Court adjudge against Defendant Guerrero, individually and in her representative capacity for RDFC, civil penalties in favor of the Attorney General in the amount of \$2000 for each of her violations of the DTPA as alleged above, up to a total of \$10,000.
8. That the Court adjudge against Defendant Guerrero exemplary damages in favor of the Attorney General for the benefit of the public interest in charity in an amount sufficient to punish her for her breaches of fiduciary duties to consumers and charitable donors;
9. That the Court adjudge against Defendant Ayala exemplary damages in favor of the Attorney General for the benefit of the public interest in charity in an amount sufficient to punish her for her breaches of fiduciary duties to consumers and charitable donors;
10. That the Court order Defendants, jointly and severally, to pay the Attorney General's

attorneys' fees and costs of court pursuant to §402.006(c) of the Texas Government Code and §123.005(b) of the Texas Property Code;

11. That the Court order Defendants, jointly and severally, to pay pre-judgment and post-judgment interest on all awards of, damages, civil penalties and other recoveries, as provided by law;
12. That the Court order that Defendant Guerrero be removed from her position as President and Chief Executive Officer of RDFC and from any other position she may have at RDFC, and that she be restrained from holding any position with RDFC in the future;
13. That the Court order that Defendant Ayala be removed from her position as Chief Financial Officer of RDFC and from any other position she may have at RDFC, and that she be restrained from holding any position with RDFC in the future;
14. That the Court appoint an appropriate, neutral third-party as temporary receiver in accordance with the requirements of Article 1396-7.04 and/or 7.05 of the NPCA, now the TEX. BUS. ORG. CODE §§ 11.403 and 11.404 and Article 1302-5.10 of the MCLA, now the TEX. BUS. ORG. CODE §12.251 *et. seq* to represent the interests of RDFC during the pendency of this litigation, and to choose legal representation for RDFC in this litigation solely for the benefit of the corporation; and order that such temporary receiver be given the authority and duty to conduct the general business of RDFC. In accordance with principles of equity, the special powers of Texas courts in matters pertaining to charity, and in light of the seriousness of the allegations raised in this pleading and potential for continual damage to the corporation, the appointment of a temporary receiver to conserve assets and avoid damage to interests of the public of the State of

Texas is necessary. No other adequate remedy is available at law or equity to accomplish these goals.

15. That the Court grant the Attorney General such further relief to which he may show himself justly entitled, on behalf of the public interest in charity.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY MCBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
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ATTORNEYS FOR ATTORNEY GENERAL on behalf of
THE PUBLIC INTEREST IN CHARITY

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Susan Galloway known to me to be the person whose name is subscribed to the following instrument and duly sworn by me, stated as follows:

1. that I am an investigator with the Charitable Trusts Section of the Consumer Protection and Public Health Division of the Office of the Attorney General;
2. that I am over the age of eighteen and fully competent to make this statement;
3. that I am duly authorized to make this verification; and
4. that I assisted in an investigation by the Charitable Trusts Section of the Consumer Protection Division of the Office of the Attorney General regarding the Rural Development & Finance Corporation, in which I reviewed various documents pertaining to the Defendants and spoke with witnesses. Based upon that investigation, documents provided, and other sources, I have reason to believe that the factual allegations contained in the foregoing Attorney General’s Verified Original Petition are true and correct.

Susan Galloway

This instrument was acknowledged before me on this _____ day of February, 2006, to certify which witness my hand and official seal.

Notary Public, State of Texas