

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

UNITED STATES ASSOCIATION
OF REPTILE KEEPERS, FLORIDA
CHAPTER, JOSH BARGER, AQUATIC N
EXOTIC, INC., MARK & KIM BELL,
REPTILE INDUSTRIES, INC., HECTOR BARRIOS,
HECTOR’S HABITAT, LLC, PATRICK C.
CANNAROZZI, MYSTIC REPTILES, LLC,
ANTHONY & RENEE CAPORALE, JESSE
HARDIN, JESSE’S JUNGLE, JASON HOOD,
MICHELLE WATTS & JOHN MCHUGH, EGG
TOOTH REPTILES, BRUCE & LAURA ROBERTS,
ZOO MOM SCIENCE, LLC, MARTIN SPILKIN,
and DIALUP LLC,

Case No. _____

Plaintiffs,

v.

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,
RODNEY BARRETO, in his official
capacity as the Chairman of the Florida
Fish and Wildlife Conservation
Commission, and ERIC SUTTON, in his
official capacity as Executive Director
of the Florida Fish and Wildlife Commission,

Defendants.

_____ /

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs United States Association of Reptile Keepers, Florida Chapter (“USARK Florida”), and Josh Barger, Aquatic N Exotic, Inc., Mark and Kim Bell, Reptile Industries, Inc., Hector Berrios, Hector’s Habitat, LLC, Patrick C. Cannarozzi, Mystic Reptiles, LLC, Anthony and Renee Caporale, Jesse Hardin, Jesse’s Jungle, Jason Hood, Michelle Watts and John McHugh, Egg Tooth Reptiles, Bruce and Laura Roberts, Zoo Mom Science, LLC, Martin Spilkin, and Dialup, LLC (collectively, the “Individual Plaintiffs,” and together with USARK Florida,

“Plaintiffs”) sue Defendants Florida Fish and Wildlife Conservation Commission (“the Commission”), Rodney Barreto, in his official capacity as the Chairman of the Commission (“the Chairman”), and Eric Sutton, in his official capacity as the Executive Director of the Commission (“the Executive Director”), seeking: (1) a declaration that the Commission’s amendments to Chapter 68-5, Florida Administrative Code, are arbitrary and capricious and lack a rational basis; (2) a declaration that the Commission’s rulemaking failed to afford procedural due process in the promulgation and adoption of the challenged rule amendments; and (3) injunctive relief enjoining enforcement and implementation of the challenged rule amendments and requiring the Commission, the Chairman, and the Executive Director to afford procedural due process. In support, Plaintiffs state as follows:

NATURE OF ACTION

1. This is a lawsuit for declaratory and injunctive relief, in which Plaintiffs challenge the Commission’s adoption of amendments to Rules 68-5.004, 68-5.006, 68-5.007, and 68-5.008, Florida Administrative Code (the “Amended Rules”). Copies of the Amended Rules as originally proposed and a Notice of Change reflecting significant revisions to proposed Rule 68-5.007 are attached as **Composite Exhibit A**.

2. In short, the challenged Amended Rules would do as follows:

- a. remove Burmese pythons, reticulated pythons, Northern African pythons, Southern African pythons, amethystine pythons, scrub pythons, green anacondas, and Nile monitors from the so-called Conditional Species List (Rule 68-5.004);
- b. add the reptiles listed above, along with green iguanas and tegu lizards, to the Prohibited Species List (Rule 68-5.006);

- c. substantially revise the regulations applicable to the possession of Prohibited Species (Rule 68-5.007); and
- d. revise certain requirements with respect to relinquishing non-native pets in light of the above changes (Rule 68-5.008).

3. The Amended Rules' ultimate effect would be to dispossess owners of their animals and end the commercial pet trade for certain reptiles. All the Individual Plaintiffs and a substantial number of USARK Florida members own and transact business with at least one of the reptiles impacted by the changes.

4. The Commission's Amended Rules are arbitrary and capricious and lack a rational basis, and in adopting the Amended Rules, the Commission failed to adhere to the rulemaking procedures it created to ensure due process. More specifically, and without limitation, the Commission:

- a. adopted the arbitrary and capricious Amended Rules that are unsupported by logic as there is no competent evidence that the Amended Rules will further the claimed goal of reducing the impacts of non-native species;
- b. failed to afford Plaintiffs the requested draw-out proceeding, which was specifically designed to ensure credible, scientific data supports the Commission's classification of species;
- c. failed to prepare a statement of estimated regulatory costs that complies with the Commission's own due process procedures;
- d. failed to consider and adopt less costly regulatory alternatives that would accomplish the Commission's objectives without destroying an entire industry and dispossessing hundreds of individuals of their personal property; and

e. failed to follow its own due process procedures at the February 25, 2021 meeting.

5. As a result of the Amended Rules, Plaintiffs will suffer not only losses in revenue from the breeding, trade, import, export, and sale of the impacted species but also in some circumstances will be required to surrender, relocate, or euthanize their beloved reptiles. Plaintiffs will also be deprived of the expected economic benefits of raising the affected reptiles to maturity and selling offspring, as well as the significant investments they have made to comply with the existing Commission regulations which authorized commercial use of these species subject to stringent requirements.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under sections 26.012 and 86.011, Florida Statutes, Florida Administrative Code Rule 68-1.008(5)(c)1., and 42 U.S.C. § 1983. *See Crocker v. Pleasant*, 778 So. 2d 978, 982-83 & n.6 (Fla. 2001); *Lloyd v. Page*, 474 So. 2d 865, 867-68 (Fla. 1st DCA 1985).

7. Venue lies in this Court because the Commission maintains its principal headquarters and resides in Leon County, and the causes of action accrued in this county. *See* § 47.011, Fla. Stat.

PARTIES

8. Plaintiff USARK Florida is a non-profit trade organization which represents and promotes the reptile industry—an industry that generates approximately \$160 million in revenue every year in this state. USARK Florida’s goals and objectives are to facilitate cooperation between government agencies, the scientific community, and the private sector in order to produce policy proposals that will effectively address important wild animal life husbandry and

conservation issues. Thus, the Amended Rules are within USARK Florida's general scope of interest and activity. A substantial number of USARK Florida's members keep, possess, import, export, sell, and breed reptiles, including but not limited to Burmese pythons, reticulated pythons, green iguanas, and tegu lizards, and therefore will be and are substantially affected by the challenged Amended Rules. USARK Florida serves as the united voice for reptile keepers in Florida and has associational standing.

9. All Individual Plaintiffs are members of USARK Florida and own, are in possession of, or transact business with at least one reptile subject to the Amended Rules, and as such are businesses and individuals who are adversely affected by the Amended Rules. Before the Amended Rules became effective, the ownership, possession, and breeding of these reptiles and transaction of business involving these reptiles were lawful.

10. Plaintiff Josh Barger is an individual and resident of Martin County, Florida. He owns and operates Plaintiff Aquatic N Exotic, Inc., a business entity which has maintained a Class III wildlife license including a Conditional Species permit with the Commission. Mr. Barger through his business possesses and transacts business with tegu lizards, Burmese pythons, and reticulated pythons.

11. Plaintiffs Mark and Kim Bell are individuals and residents of Collier County, Florida. They own and operate Plaintiff Reptile Industries, Inc., which has maintained a Class III wildlife license including a Conditional Species permit with the Commission. The Bells through their business possess and transact business with tegu lizards and have maintained Conditional Species permits authorizing them to possess and transact business with reticulated pythons, Burmese pythons, and Nile monitors, among other reptiles.

12. Plaintiff Hector Berrios is an individual and resident of Pinellas County, Florida. He owns and operates Plaintiff business Hector's Habitat, LLC, which has maintained a Class III wildlife license with the Commission. Mr. Berrios through his business possesses and transacts business with tegu lizards.

13. Plaintiffs Anthony and Renee Caporale are individuals and residents of DeSoto County, Florida. The Caporales maintain a Class III wildlife license including a Conditional Species permit in the name of Ms. Caporale. The Caporales possess and transact business with reticulated pythons and Burmese/Indian pythons.

14. Plaintiff Patrick C. (Chris) Cannarozzi is an individual and resident of Alachua County. Mr. Cannarozzi owns and operates Plaintiff Mystic Reptiles, LLC, which has maintained a Class III wildlife license with the Commission including a Conditional Species permit. Mr. Cannarozzi possesses and transacts business with reticulated pythons.

15. Plaintiff Jesse Hardin is an individual and resident of Charlotte County, Florida. Mr. Hardin owns and operates Plaintiff business Jesse's Jungle, which has maintained a Class III wildlife license with the Commission. Mr. Hardin through his business possesses and transacts business with tegu lizards.

16. Plaintiff Jason Hood is an individual and resident of Indian River County. He has maintained a Class III license with the Commission and possesses and transacts business with tegu lizards.

17. Plaintiffs John McHugh and Michelle Watts ("McHughs") are individuals and residents of St. Johns County. They own and operate Plaintiff business Egg Tooth Reptiles. Mr. McHugh has maintained a Class III wildlife license including a Conditional Species permit with

the Commission, and the McHughs possess and transact business with Burmese/Indian pythons and reticulated pythons.

18. Plaintiffs Bruce and Laura Roberts are individuals and residents of Seminole County, Florida. They own and operate Plaintiff business Zoo Mom Science, LLC, which has maintained a Class III wildlife license with the Commission. The Robertses and their business possess and transact business with tegu lizards.

19. Plaintiff Martin Spilkin is an individual and resident of Broward County, Florida. Mr. Spilkin owns and operates Plaintiff business Dialup LLC, which has maintained a Class III wildlife license with the Commission. Mr. Spilkin and his business possess and transact business with green iguanas and tegu lizards.

20. Defendant Florida Fish and Wildlife Conservation Commission is a governmental agency, created by the Florida Constitution, which adopted the Amended Rules and is charged with enforcing the Amended Rules.

21. Defendant Rodney Barreto is the appointed Chairman of the Commission and is sued in his official capacity as Chairman. Mr. Barreto is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law.

22. Defendant Eric Sutton is the Executive Director of the Commission and is sued in his official capacity as Executive Director. Mr. Sutton is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law.

GENERAL ALLEGATIONS

Background Concerning the Application of Due Process to the Commission

23. Prior to the creation of the Florida Fish and Wildlife Commission, the regulation of wild animal life including captive wildlife was reserved to the Florida Game and Fresh Water Fish

Commission (“Game Commission”). The Game Commission was created in 1943 as an independent, constitutionally-created agency vested with “the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.” Clay Henderson, *The Conservation Amendment*, 52 Fla. L. Rev. 285, 294 (2000). Given its constitutional stature, the Game Commission was not subject to the Administrative Procedure Act (“APA”) when acting pursuant to constitutionally-derived authority. See § 120.52(1)(b), Fla. Stat. (1998) (“agency” for purposes of the APA applies to the Game Commission only “when acting pursuant to statutory authority derived from the Legislature”). The APA is designed to ensure that executive agencies afford due process to individuals when making administrative decisions, but it applies to only administrative actions arising from exercises of legislative authority.

24. That the Game Commission was not subject to the APA was of great concern to the 1998 Constitution Revision Commission (“1998 CRC”). The 1998 CRC put forward Proposal 45, a constitutional amendment that would streamline the state’s regulation of wild animal and marine life by merging the Game Commission with the statutorily-created Florida Marine Fisheries Commission to create the Florida Fish and Wildlife Conservation Commission. In doing so, the 1998 CRC recommended constitutional language that would require the newly-formed Commission to adopt due process procedures to “increase[] citizen access to the new commission.” Fla. S. Jour. 261-262 (CRC Sess. 1998) (Statement of Intent Regarding Conservation of Natural Resources and Creation of Fish and Wildlife Conservation Commission).¹

25. In explaining the rationale for this recommendation, Commissioner James Harold Thompson stated that it was critical for those regulated by the Commission to have the opportunity to be heard, as many individuals’ very livelihoods would depend on the Commission’s regulations.

¹ Available at https://fall.law.fsu.edu/new_crc/pdf/crc30.pdf.

Commissioner Thompson also pressed that the Commission’s decisions must be based on “scientific research and data.” Florida Constitution Revision Comm’n Meeting Nov. 14, 1997 Tr. 75:7-76:3 (comments by Commissioner Thompson).²

26. In 1999, Florida voters approved the CRC’s proposed amendment of article IV, section 9 of the Florida Constitution, including the requirement that the Commission afford “due process” in its decisionmaking. As article IV, section 9 still states today, “[t]he commission *shall* establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions.” Art. IV, § 9, Fla. Const. (emphasis added).

27. After Florida voters approved the amendment, the Florida Legislature implemented changes necessary to the creation of the Commission and also expressly required the Commission to implement rules pursuant to section 120.52, Florida Statutes, for even its constitutional responsibilities. *See* Ch. 99-245, § 1, at 5, Laws of Fla. (codified at § 20.331, Fla. Stat.) Specifically, the Legislature required the Commission to “implement a system of adequate due process procedures to be accorded to any party, as defined in s. 120.52, whose substantial interests will be affected by any action of the [Commission] in the performance of its constitutional duties or responsibilities.” *Id.* The Legislature also “encourage[d]” the Commission to use provisions of the APA when adopting rules. *Id.* Finally, the Legislature directed the Commission to report to the Legislature on how it intended to implement “adequate due process” by December 1, 1999. *Id.*

28. The Commission responded by adopting certain due process procedures through policies, not formal rules. The adequacy of these procedures was soon subject to criticism. *See, e.g.,* Bob L. Harris, et al., *Wanted: Due Process from the Florida Fish and Wildlife Conservation*

² Available at https://fall.law.fsu.edu/new_crc/minutes/crcminutes111497.html.

Commission, The Florida Bar Administrative Law Section Newsletter, Vol. XXIX, No. 1 (Sept. 2007).³ The Commission through its general counsel responded to this criticism, stating that the Commission’s conduct comported with due process principles, and assured constituents that its rules would “be supported by *the best information available*.” See James V. Antista, *FWC Met Due Process Standards in Shark Feeding Case*, The Florida Bar Administrative Law Section Newsletter, Vol. XXIX, No. 2, at 4 (Dec. 2007) (emphasis added).⁴

29. Nevertheless, the 2007 Florida Legislature required the Commission to formally adopt its due process procedures verbatim in rule, rather than by policy or by reference to procedures found outside of the rule. See Ch. 2007-223, Laws of Fla. (amending § 20.331, Fla. Stat.); Fla. H.R. Pol’y & Budget Council, CS for HB 7173 Staff Analysis (2007) Post-Meeting Analysis 2 (Apr. 26, 2007) (observing that the Commission’s mere incorporation of the processes by reference in a rule unnecessarily “require[d] further research by an interested party to ascertain the actual due process procedures of the FWC”).⁵

30. The Commission responded by formally adopting its due process procedures in Florida Administrative Code Rule 68-1.008 (the “Due Process Rule”), effective January 8, 2008.

The Commission’s Due Process Procedures

31. Through the Due Process Rule, the Commission has agreed to adhere to the 2007 APA⁶ in several respects, including in issuing notices of rule development and rulemaking and holding rule development workshops. Fla. Admin. Code R. 68-1.008(5)(b)3., 4.

³ Available at <http://flaadminlaw.org/wp-content/uploads/2017/10/Adm-9-07.pdf>.

⁴ Available at <http://flaadminlaw.org/wp-content/uploads/2017/10/Adm-12-07.pdf>.

⁵ Available at <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7173b.PBC.doc&DocumentType=Analysis&BillNumber=7173&Session=2007>.

⁶ Under section 120.54(1)(i)1., Florida Statutes (2007), rules incorporating materials by reference—like the APA—incorporate only that material as it exists on the date the rule is adopted. Consequently, the 2007 APA applies with respect to the provisions of the APA incorporated by the Commission in the Due Process Rule adopted in January

32. Of importance here, the Commission also expressly stated that it “shall prepare statements of estimated regulatory cost and statements of lower cost regulatory alternative in accordance with the APA.” *Id.* R. 68.1008(5)(b)4.

33. The Due Process Rule acknowledges that the Commission’s rules derived from constitutional authority are not subject to administrative rule challenges under the APA. *Id.* R. 68.1008(5)(c)1. Instead, the Commission’s rules promulgated using constitutional authority may be challenged in either or both (1) declaratory or injunctive relief actions in circuit court or (2) through a draw-out hearing. *Id.*

34. A draw-out hearing is a “special hearing which may be provided upon request of a party if the agency determines that the rulemaking proceeding is inadequate to protect the person’s substantial interests and the normal public hearing on a proposed rule does not provide that person with an adequate opportunity to protect their interests.” *Id.* R. 68.1008(5)(c)1.c. A draw-out proceeding consists of a hearing before an administrative law judge, the preparation of a record, and the transmittal to and review of that record by the Commission. *Id.* R. 68-1.008(5)(d).

35. The Commission notes that the draw-out hearing process is particularly appropriate when deciding how a species should be classified because the determination of whether a species warrants a certain classification “is a decision which must be based upon *credible biological data* and therefore, an evidentiary hearing, such as a draw-out, may be useful.” *Id.* (emphasis added).

36. The Commission has also adopted certain policies to ensure the public has an opportunity to be heard at Commission meetings.

37. Pursuant to those policies, “[a]ll persons who request an opportunity to speak at a Commission workshop or meeting will be allowed to speak within the following Commission

2008, absent amendment of that rule. This is also consistent with the position taken by the Commission in other litigation regarding its rulemaking authority.

guidelines.” Public Comment at Commission Workshops and Meetings, <https://myfwc.com/about/commission/meeting-protocol/>. Notably, “[w]hen a large number of people wish to speak, the Chairman may limit the time for each speaker, or the time allotted to public comment on specific agenda items, *in order to ensure that all speakers are heard within the time allotted for the meeting.*” *Id.* (emphasis added).

The Commission’s Regulation of Conditional Non-native Reptile Species including Burmese Pythons, Reticulated Pythons, and Nile Monitors Before April 29, 2021

38. No one disputes that non-native, invasive species are a problem everywhere, including in Florida. Non-native invasive species in Florida run the gamut from Burmese pythons to Cane toads to domestic cats.⁷

39. Non-native invasive species are also not a new problem in Florida. Many non-native species have already established themselves in certain parts of the state. Burmese pythons, for instance, were first introduced to the state in 1979 and reached an established population in south Florida in the 1980s. *See* Kenneth L. Krysko et al., *New Verified Nonindigenous Amphibians and Reptiles in Florida through 2015, with a Summary of Over 152 Years of Introductions*, 23(2) *IRCF Reptiles & Amphibians J.* 110, 122 (Aug. 2016). Unfortunately, “[i]n most instances, once introductions have been allowed to establish, no amount of money or effort can change the situation.” *Id.* at 110.

⁷ *See* Matt Morrison, *Killer Cats: The Invasive Species in Your Backyard*, CBS News (Oct. 27, 2018), <https://www.cbsnews.com/news/cats-invasive-species-in-your-backyard-cbsn-originals/> (“Domestic cats are directly responsible for the extinction of a number of animal species around the world, including 33 bird species. In the U.S., the popular pet is estimated to kill over 1 billion birds and over 6 billion other small animals every year. While the biggest threat are currently posed by feral cats—domesticated breeds that don’t have an owner and aren’t socialized to humans—even common house cats that are well cared for and fed will hunt and kill if let outside.”); *see also, e.g.*, David Ovalle, *We rescued an orphaned baby bird in Miami. Turns out, we did everything wrong*, Miami Herald (May 12, 2021), <https://www.miamiherald.com/news/local/environment/article251014374.html> (quoting Ron Magill, communications director at Zoo Miami and wildlife expert: “People don’t realize that the single most dangerous invasive species in the country is the feral cat.”).

40. Prior to 2007, the Commission did not require permits or licensure to possess non-venomous, non-native reptiles. In 2007, however, the Commission and industry stakeholders came together through a technical advisory group in order to craft regulations addressing the possession and use of certain non-native reptile species, then designated “Reptiles of Concern.” These regulations were designed to foster responsible pet ownership and a responsible commercial pet trade; at the time, the Commission’s view was that a highly regulated industry was preferable to an underground one. *See* Scott Hardin, Florida Fish & Wildlife Conservation Commission, *Managing Non-Native Wildlife in Florida: State Perspective, Policy and Practice*, Managing Vertebrate Invasive Species, USDA National Wildlife Research Center Symposia at 43 (2007).⁸

41. Since that time, and until April 29, 2021, the Commission has authorized the Individual Plaintiffs and many USARK Florida members to possess, sell, import, export, and breed certain non-native reptile species subject to stringent regulations for Reptiles of Concern, which are now known as Conditional Non-native Species (“Conditional Species”).

42. Pursuant to Chapter 68-5 of the Florida Administrative Code, the Commission has designated as Conditional Species certain snakes and lizards, specifically Burmese pythons, reticulated pythons, Northern African pythons, Southern African pythons, Amethystine pythons, scrub pythons, green anacondas, and Nile monitors. Fla. Admin. Code R. 68-5.004(3), (4).⁹

43. Conditional Species are tightly controlled by the Commission’s extensive regulatory framework and may, with proper permitting and pursuant to rigorous standards, be imported and possessed for commercial use. *See* Fla. Admin. Code R. 68-5.005. As examples,

⁸ Available at https://digitalcommons.unl.edu/nwrcinvasive/14/?utm_source=digitalcommons.unl.edu%2Fnwrcinvasive%2F14&utm_medium=PDF&utm_campaign=PDFCoverPages.

⁹ Unless stated otherwise, references to provisions of Chapter 68-5, Florida Administrative Code, refer to those rules in effect prior to April 29, 2021.

snakes and lizards that are designated as Conditional Species must be kept under strict caging requirements in escape-proof enclosures inspected and approved by the Commission, and must be permanently identified with a passive integrated transponder tag or microchip. *Id.* R. 68-5.005(5). Those holding Conditional Species permits for the possession and sale of snakes and lizards must submit a Captive Wildlife Disaster and Critical Incident Plan to the Commission and maintain accurate records of inventory, recording each and every birth, death, sale, and transfer. *Id.* The Commission has also reserved for itself broad authority to inspect snake and lizard Conditional Species held in captivity as well as the facilities holding them at any time. *Id.*

44. Importantly, Conditional Species cannot be kept for private purposes and must qualify under one of the listed conditions, such as use for research, commercial import or export, or education. *See id.* R. 68-5.005.

45. At a February 2019 meeting, the Commission confirmed the need to work closely with the industry in crafting regulations addressing non-native reptile species, including those designated as Conditional Species and already embedded in the pet trade. Commissioners and Commission staff also assured stakeholders at the same meeting that, in the context of adding one other reptile species to the Prohibited Species List—a list that bans most possession and use of animals so designated—that this was not “opening the faucet” or “setting precedent” of adding more species to the Prohibited Species List. The Commission’s Director of the Division of Habitat and Species Conservation Kipp Froelich specifically stated that with moving such embedded species to the Prohibited Species List, “the juice wouldn’t be worth the squeeze, [as these animals such as the Burmese python] are already in the environment . . . , and it really would have economic

impacts” on numerous individuals and families that depend on that industry. *See* Feb. 21, 2019 Commission Meeting (46:30-48:05).¹⁰

46. In reliance upon the existence of the Conditional Species program and the Commission’s assurance it would continue those regulations, a substantial number of USARK Florida members and Individual Plaintiffs have expended thousands if not millions of dollars to assure their compliance with these regulations.

47. Given the nature of these animals, many of those permittees including the Individual Plaintiffs and a substantial number of USARK Florida members have forged longstanding relationships with their reptiles, as these reptiles require a substantial amount of work and nurturing to get them to the point of producing offspring.

The Commission’s Regulation of Tegu Lizards and Green Iguanas Before April 29, 2021

48. Prior to April 29, 2021, green iguanas and tegu lizards were not designated as Conditional Species or Prohibited Species, but were subject to other Commission regulations.

49. Tegu lizards are a large species of lizard not native to Florida. Although the tegu lizard was not designated as a Conditional Species or Prohibited Species before April 29, 2021, a person was required to possess a Class III wildlife license from the Commission to sell a tegu lizard or use it for public exhibition in Florida under the then-applicable regulations. Tegu lizards can be bred to have colors and patterns not typically seen in wild animals. These color and pattern variances are referred to as morphs and examples include anerythrism (lack of red color pigment) and albinism (lack of black color pigment).

50. Green iguanas are lizards that are typically green but can also be found in other colors. Like tegu lizards, green iguanas were not designated as a Conditional Species or Prohibited

¹⁰ Available at <https://thefloridachannel.org/videos/2-21-19-florida-fish-wildlife-conservation-commission-part-3/>.

Species before April 29, 2021, but a person was required to possess a Class III wildlife license to sell green iguanas or display them for public exhibition.

51. Under the Commission's regulations in existence prior to April 29, 2021, appropriately licensed persons could breed green iguanas and tegu lizards using outdoor facilities.

52. Florida's commercial tegu lizard and green iguana industry alone generates between \$7 million and \$12 million in revenue each year, although the Commission has incorrectly represented that the industry generates only \$620,000. *See* Commission Statement on Estimated Regulatory Costs, Dec. 2020, at 11-12.

The Commission's Amendments to Chapter 68-5, Florida Administrative Code

53. The existing regulations have worked, and the Commission did not seek to change these regulations until after the Florida Legislature passed legislation that would largely outlaw the commercial trade of these reptiles.

54. In 2020, the Legislature enacted and Governor DeSantis approved Senate Bill 1414, which amended section 379.372, Florida Statutes, to effectively repeal the Conditional Species program and end the possession of Burmese pythons, reticulated pythons, Nile monitors, green iguanas, and tegu lizards, among others, for commercial use. A Florida circuit court struck SB 1414 as unconstitutional, and no appeal was taken from the order. Order Granting Plaintiffs' Amended Motion for Partial Summary Judgment, *U.S. Ass'n of Reptile Keepers v. Fla. Fish & Wildlife Conservation Comm'n*, No. 2020 CA 001277 (Fla. 2d Cir. Ct. Sept. 24, 2020).

55. Nevertheless, the Commission moved forward with rulemaking that would do much of what SB 1414 proposed to do.¹¹ Under the Amended Rules, all non-native snakes and lizards currently part of the Conditional Species program would be moved to the Prohibited

¹¹ As explained later, however, the Amended Rules were subsequently modified late in the rulemaking process without explanation to be more restrictive than the 2020 legislation that was invalidated.

Species List. Additionally, tegu lizards and green iguanas would be placed on the Prohibited Species List. As a consequence of these changes, these reptile species may no longer be owned or possessed for commercial use, and Plaintiffs must stop possessing, selling, importing, exporting, and breeding these reptiles, subject to limited exception.

56. The Amended Rules became effective on April 29, 2021.

57. The Amended Rules authorize different grace periods by which existing permittees and licensees must come into compliance. With respect to green iguanas and tegu lizards, certain entities are exempted from the prohibition for a limited period of time, but they are only exempt to breed and sell iguanas and tegus until June 30, 2024. Practically speaking, however, those “exempted” will not be able to continue their activities, as the Amended Rules will require those exempted to move all breeding activities, which are currently outdoors for most breeders, to indoor facilities within 90 days of the effective date of the Amended Rules. Regardless, to the extent those exempted can continue commercial use and possession in some respects, after June 30, 2024, no additional breeding is authorized. Any eggs produced after the date must be destroyed immediately. Fla. Admin. Code R. 68-5.007(4) (effective Apr. 29, 2021).

58. With respect to the other non-native reptile species impacted by the Amended Rules, including Burmese pythons, reticulated pythons, and Nile monitors, those permittees impacted will have a mere 90 days from the effective date of the Amended Rules to come into compliance. Fla. Admin. Code R. 68-5.007(13) (effective Apr. 29, 2021). Thus, many of the Individual Plaintiffs and USARK Florida members not otherwise exempt from the Amended Rules’ changes must surrender, relocate, or even euthanize their reptiles and stop all commercial use of the affected reptiles by **July 28, 2021**.

The Commission's Rulemaking Process

59. As noted above, notwithstanding a circuit court's determination that SB 1414 was unconstitutional, the Commission moved forward in promulgating the Amended Rules, which would largely do what SB 1414 proposed to do. The Amended Rules as initially proposed were published in the Florida Administrative Register on September 14, 2020.

60. In September 2020, the Commission published a statement of estimated regulatory costs ("SERC") concerning the Amended Rules in an attempt to estimate their financial impact upon the Commission, the industry, and others, particularly small businesses. *See* § 120.541(2), Fla. Stat. (2007). Per the SERC, the Commission's stated reason for the Amended Rules' "[e]nhanced regulations" was "because of the threats that the Burmese pythons, reticulated pythons, amethystine python[s], scrub pythons, North African pythons, Southern African pythons, green anacondas, Nile monitor lizards, tegus (all species) and green iguanas pose to Florida's ecology, economy or human health and safety." A copy of the Commission's September 2020 SERC is attached as **Exhibit B**.

61. The analysis presented in the SERC was largely cursory and superficial. As just one example, the Commission staff preparing the SERC relied on an "internet search" to erroneously estimate the financial impact to the commercial pet trade industry rather than reaching out to the individuals within the industry who receive annual permits and licenses from the Commission and are thus known to the Commission. (Ex. B at 3.)

62. USARK Florida timely submitted written comments on the SERC to the Commission. A copy of USARK Florida's October 5, 2020 written comments is attached as **Exhibit C**. USARK Florida noted that the SERC largely failed to explain how the Amended Rules would reduce the harms caused by invasive non-native reptile species in Florida, particularly for

those species that were established in the state long before the Commission's implementation of the Conditional Species Program in 2007. USARK Florida also observed that of the species affected by the Amended Rules that are not established in Florida, such as reticulated pythons and green anacondas, there are good reasons to doubt they would or could become established. Furthermore, the fact that the Commission had carved out exceptions to allow continued commercial sale and breeding for tegus and green iguanas—but none for reticulated pythons and the other Conditional Species reptiles—underscored the arbitrariness of the Commission's distinctions.

63. USARK Florida also demonstrated, with the support of an economist, that the Commission's SERC did not comport with the Due Process Rule because the SERC failed to provide a good faith estimate of those affected, failed to provide a good faith estimate of the transactional costs to be felt by the industry, and also more generally failed to establish any connection between the Amended Rules and the Commission's regulatory costs. To the last point, the SERC both grossly understated the Amended Rules' impact on the industry and overstated governmental entities' regulatory costs that the Commission suggested would be reduced as a result of the adoption of the Amended Rules.

64. USARK Florida also proposed three lower cost regulatory alternatives ("LCRAs") that would better accomplish the Commission's stated goal of addressing emerging invasive species issues, while not destroying the reptile industry and the livelihoods of the many individuals and families it supports. Specifically, USARK Florida offered the following LCRAs: (1) continue with the existing regulations of snakes and lizards designated as Conditional Species, green iguanas, and tegu lizards, which had proven successful; (2) add tegu lizards to the Conditional Species List, thereby subjecting them to the same stringent regulations already applicable to

reptiles like the Burmese python; or (3) add both iguanas and tegu lizards to the Conditional Species List.

65. USARK Florida also asked the Commission to consider appointment of a technical advisory group as it did with the original Reptiles of Concern regulations in order to craft any rule changes.

66. Finally, in accordance with the Due Process Rule, USARK Florida requested a draw-out hearing, observing that such a proceeding is particularly warranted here because Plaintiffs' substantial interests will be impacted by the Amended Rules.

67. In December 2020, the Commission responded with an "updated" SERC ("Amended SERC") that rejected the LCRA's proposed by USARK Florida and, in doing so, changed the objectives of the Proposed Rules. A copy of the Amended SERC is attached as **Exhibit D**. Instead of addressing USARK Florida's proposed LCRA's within the Commission's original goal of reducing the impacts associated with the reptile species at issue, the Commission rejected each LCRA for the stated reason that the LCRA would not "*eliminate commercial breeding in order to reduce risks to Florida's native species.*" (Ex. D at 15 (emphasis added).)

68. The Commission's response to each of the concerns presented by USARK Florida also amounted to simply a concession that the Commission did not do, and was unwilling to do, any further research into the reptile industry because the Commission's goal is to eliminate the industry with the enactment of the Amended Rules.

69. By separate letter, the Commission's General Counsel denied USARK Florida's request for a draw-out hearing, stating that USARK Florida had not "provide[d] adequate reason to believe that [USARK Florida's members'] due process rights are not protected in this rule development process." Indeed, the General Counsel stated that "[a]ll members of the public,

including USARK Florida, have had and will continue to have ample opportunity to present their case to the FWC, including Commissioners.” The General Counsel advised that “[i]ndividuals will also be provided an opportunity to speak during the public Commission meeting/hearing.” As will be explained later, this proved to be untrue.¹² A copy of the Commission’s General Counsel’s November 30, 2020 letter denying the request for a draw-out hearing is attached as **Exhibit E**.¹³

70. USARK Florida submitted supplemental comments to the Commission in February 2021, ahead of the Commission’s meeting to consider the Amended Rules, pointing out the concerns outlined above with respect to the Commission’s Amended SERC and rejection of USARK Florida’s proposed LCRAs. USARK Florida also attached written comments prepared by an economist, commenting on the additional shortcomings of the Amended SERC, and a scientist, who opined that the Amended Rules would not further the Commission’s original stated goal of reducing impacts associated with the non-native species at issue. A copy of USARK Florida’s supplemental comments with attachments is attached as **Exhibit F**.

The Commission’s February 25, 2021 Meeting

71. The Commission staff held workshops and some meetings with stakeholders, but was not interested in engaging with stakeholders on how to revise the Amended Rules. Few Commissioners attended the staff hearings and workshops, and even when Commissioners did attend, they only passively listened to comments. The only opportunity at which the public was invited to engage with all of the Commissioners regarding the Amended Rules was the meeting at which the Commission formally considered adopting the already-crafted Amended Rules, held on

¹² Counsel for USARK Florida asked the Commission’s General Counsel prior to that final public meeting that USARK Florida, and particularly its economic and scientific experts, be provided a reasonable time to address the Commission at the hearing. The General Counsel denied this request.

¹³ Notably, the letter does not indicate that the Commission itself had denied the request or that the General Counsel was authorized to make that decision on behalf of the Commission.

February 25, 2021 by video conferencing. Plaintiffs and the public were not permitted to attend the meeting in person or by video.

72. After a presentation by staff, the Chairman allotted two hours for public comment, with each commenter given three minutes each to speak. Though the meeting was held as a video conference, where Commissioners and staff were permitted to appear by video, commenters were not permitted to appear by video or in person. Instead, commenters were forced to call into a separate telephone conference line if they wished to offer public comment at the meeting.

73. The public comment portion of the meeting proved chaotic, with numerous technical issues. It was not entirely clear the order in which the Commission took public comment; in some instances, it appears that the Commission may have selected the speakers from which the Commission wanted to hear, including comments taken from multiple representatives of the same association supportive of the Amended Rules.

74. As examples, the first six callers from whom the Commission took public comment spoke in support of the Amended Rules. The first caller—who spoke in support of the Amended Rules—was permitted to use 6 minutes and 46 seconds for public comment, notwithstanding the fact that speakers were allotted only three minutes.

75. At the end of the two hours originally allotted for public comment, the Chairman announced that going forward, speakers would have only two minutes each in which to make comments.

76. After three hours total had expired, the Commission cut off additional testimony and thereby denied numerous opponents—USARK Florida members and representatives—the opportunity to speak, including but not limited to Plaintiff Jason Hood, USARK Florida board members Elizabeth Wisneski and Michael Barrera, and scientist and expert Rick Engeman, who

intended to offer evidence contrary to the Commission staff's presentations. It also was not clear how the Commission determined which members of the public would receive the opportunity to speak, as many if not all of the opponents had called in prior to the start of the hearing and waited for their turn as the Commission instructed, a turn that would never come.

77. There was also no opportunity to object to this denial of the opportunity to be heard because the public was not allowed to attend the hearing in person or to attend via video, and interested persons could speak only if their phone line was opened by Commission staff, and there was no way to request that the line be opened in order to register an objection.

78. Notwithstanding that numerous persons had not yet had the opportunity to be heard, the Commission closed the public comment period and voted to approve the Amended Rules.

The March 15, 2021 Notice of Change and Significant Revisions to the Amended Rules

79. On March 15, 2021, the Commission published a Notice of Change in the Florida Administrative Register documenting some significant revisions to Rule 68-5.007. Of most relevance here, the Commission added late in the process, and after the preparation of the SERC and Amended SERC, two entirely new provisions that, upon information and belief, were not supported by the record of public hearings held on the rules, proposed in response to written material received on or before the date of the final public hearing, or proposed in response to an objection by the Joint Administrative Procedures Committee:

- a. A new prohibition on the outdoor breeding of Prohibited Species—which would include under the Amended Rules green iguanas and tegu lizards (Composite Ex. A at 13 (new Fla. Admin. Code R. 68-5.007(7)(c)3.a.)); and
- b. A new sunset provision for those individuals and businesses allowed to continue commercial use of green iguanas and tegu lizards: under the Notice of

Change, and as now in stated in Rule 68-5.007 effective on April 29, 2021, such entities may continue to breed iguanas and tegus only until June 30, 2024 (Composite Ex. A at 11 (new Fla. Admin. Code R. 68-5.007(4)(a)3.)).

80. Under the Amended Rules as originally proposed, those exempted for continued commercial use did not face any sunset on that use and were not prohibited from outdoor breeding. In fact, most iguana and tegu breeding currently occurs outdoors. Practically speaking, it will be impossible to come into compliance with these requirements within the allowed timeframe given the inordinate expense required to build large enough indoor facilities to accomplish this breeding, which is permitted for only three more years. The impacts of these changes were not addressed in either the original SERC or the Amended SERC.

81. The Commission filed the Amended Rules for adoption with the Florida Secretary of State on April 9, 2021. The Amended Rules became effective 20 days later, or on April 29, 2021.

The Amended Rules Will Dispossess Plaintiffs of Their Animals and End an Entire Industry

82. As a consequence of the Amended Rules, the Individual Plaintiffs and a substantial number of USARK Florida's members will suffer irreparable harm. The Individual Plaintiffs and a substantial number of USARK Florida's members have been in compliance with the Conditional Species program and the Commission's other regulations authorizing the possession and commercial use of iguanas and tegus for many years, some for more than a decade. They face the imminent destruction of their animals and businesses. Many will be forced to surrender their reptiles, which in numerous instances include irreplaceable animals that have been specially bred for their genetics over the course of decades. Some owners will be forced to hastily relocate their animals, and may in some instances have no other recourse but to euthanize these animals in an

attempt to abide with the Amended Rules. All of the owners will experience a loss of consortium with their unique animals.

83. All conditions precedent to bringing this action, if any, have occurred, been performed, or waived.

84. Plaintiffs have retained the law firm of Holland & Knight LLP to represent them in this action and are obligated to pay the firm a reasonable fee for its services.

COUNT I

Declaratory Relief under Article I, Section 9, Florida Constitution The Commission Failed to Afford Procedural Due Process During Rulemaking

85. Plaintiffs incorporate by reference paragraphs 1-84 as if fully set forth herein.

86. This is an action for declaratory relief under Chapter 86, Florida Statutes.

87. Plaintiffs seek a declaration as to the constitutionality and validity of the process by which the Amended Rules were adopted under the Commission's Due Process Rule, the 2007 APA as incorporated into the Due Process Rule, and article I, section 9 of the Florida Constitution.

88. To accord affected individuals procedural due process, the Commission has adopted the Due Process Rule and the 2007 APA in certain respects when promulgating rules using constitutional authority.

The Commission Failed to Comply with Its Due Process Rule in Rejecting the Request for a Draw-Out Hearing

89. The Due Process Rule provides that upon timely request, a party may request a draw-out hearing when the rulemaking proceeding is inadequate to protect that party's substantial interests and the normal public hearing on the proposed rule does not provide that party with an adequate opportunity to protect their interests. Fla. Admin. Code R. 68-1.008(5)(c)1.c.

90. USARK Florida timely requested a draw-out hearing on behalf of its members whose substantial interests are affected by the Amended Rules. The decision whether the impacted species should be re-classified as Prohibited Species within the Commission’s Amended Rules is the exact situation for which the draw-out procedure is meant to apply.

91. The Commission’s General Counsel—with no indication she had been delegated the ability to make this decision—unduly rejected the draw-out request, purportedly based on the claim that the rulemaking process afforded all the due process that was required—representations that turned out to be untrue.

92. In addition, that rulemaking process did not involve any evidentiary hearing at which credible biological data was presented to justify the Amended Rules—which Plaintiffs would have received under the draw-out procedure. Other than the opportunity to submit written comments and to speak at the Commission staff’s workshops (which were not typically attended by the Commissioners), there was no opportunity for Plaintiffs and other USARK Florida members to ask questions and get meaningful responses regarding the purported scientific data on which the Commission relied to craft and adopt the Amended Rules.

93. A key reason for the denial of the requested draw-out hearing was the representation that “[i]ndividuals will also be provided an opportunity to speak during the public Commission meeting/hearing.” (Ex. E at 2.) That proved to be untrue. The only “hearing” attended by all the Commissioners was chaotic, of relatively limited duration, and by telephone. It did not afford a meaningful opportunity for USARK Florida and many of its affected members to present and explain the reasons, including the scientific data, that demonstrate the Amended Rules will not have the desired effect of limiting non-native species in the wild in Florida but would have

substantial adverse impacts on Plaintiffs' interests. Indeed, many individuals were denied the opportunity to speak.

94. The Commission has adopted procedures that provide that "all persons who request an opportunity to speak at a Commission workshop or meeting will be allowed to speak." Even when there is a large number of speakers, the Commission's policies state that the Chairman may impose a time limit for all public comment "in order to ensure that all speakers are provided an opportunity to speak within the time allotted for the Commission meeting." There is no authorization to deny persons the opportunity to speak.

95. Not all speakers—including many USARK Florida members and a scientist speaking in opposition to the Amended Rules—who wished to speak at the Commission's February 25, 2021 meeting were granted an opportunity to speak. For this reason too, the Commission violated its own due process procedures and should have determined that its rulemaking proceeding failed to afford substantially-affected persons an adequate opportunity to be heard and to protect their interests, warranting the holding of a draw-out hearing, as requested by USARK Florida.

96. By failing to comply with its own public participation policies and erroneously denying a draw-out hearing, the Commission violated its Due Process Rule and consequently failed to provide the procedural due process to which Plaintiffs are entitled.

The Commission Failed to Comply with Its Due Process Rule in Preparation of the SERC and Consideration of USARK Florida's LCRAs

97. To afford affected individuals procedural due process, the Commission has adopted the Due Process Rule and the 2007 APA in certain respects when promulgating rules derived from constitutional authority. Under the Commission's Due Process Rule, the Commission has obligated itself to comply with the 2007 APA in the preparation of SERCs and in responding to

proposed LCRA. The failure to comply with these requirements is a material failure to follow the applicable rulemaking procedures or requirements as set forth in the 2007 APA and the Commission's own Due Process Rule. *See* § 120.541(1)(b), Fla. Stat.

98. Under section 120.541(2), Florida Statutes (2007), a SERC "shall" include certain items, including: a good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule; a good faith estimate of the transactional costs likely to be incurred by individuals and entities required to comply with the requirements of the rule; and an analysis of the impact on small businesses.

99. The Commission purportedly prepared a SERC in compliance with these requirements and does not dispute that the Amended Rules will impact small businesses within the meaning of the 2007 APA.

100. The Commission's SERC and Amended SERC, however, fail to contain good faith estimates of those impacted and the transactional costs likely to be incurred, and provides a cursory analysis of the Amended Rules' impact on small businesses. They also failed to address the impacts of the late changes to the Amended Rules made through the March 15, 2021 Notice of Change.

101. A substantially affected person, within 21 days after publication of the rule notice, may submit to an agency a good faith written proposal for a LCRA to a proposed rule that substantially accomplishes the objectives sought by the rule. *See* § 120.541(1)(a), Fla. Stat. Upon the submission of an LCRA, the agency shall revise its prior SERC and either adopt the alternative or give a statement of reasons for rejecting the alternative in favor of the proposed rule. *Id.* § 120.541(1)(b).

102. USARK Florida timely submitted three LCRAs for the Commission's consideration that would substantially accomplish the objectives of the Amended Rules.

103. The Commission rejected these LCRAs for not accomplishing the objectives of the Rules, but did so by improperly changing the objectives of the Amended Rules. Thus, the Commission did not reject the LCRAs based upon the previously stated objectives in the initial SERC.

104. In rejecting the LCRAs, the Commission made clear its true goal: to end the commercial reptile industry, not to address impacts by non-native species in Florida.

105. The Commission should have but failed to adopt one of USARK Florida's LCRAs.

The Commission Did Not Comply with the 2007 APA in Significantly Revising the Amended Rules After the Final Public Hearing

106. Pursuant to the 2007 APA, after a final public hearing is held on the proposed rule, any change in the proposed rule must be filed at least 21 days before the rule's adoption, and, if it is anything other than a technical change, such change "***must*** be supported by the record of public hearings held on the rule, ***must*** be in response to written material received on or before the date of the final public hearing, or ***must*** be in response to a proposed objection by the [Joint Administrative Procedures C]ommittee." § 120.54(3)(d)1., Fla. Stat. (2007) (emphasis added).

107. After the final public hearing was held on February 25, 2021, regarding the Amended Rules, the Commission published a Notice of Change dated March 15, 2021, which revised Rule 68-5.007 in significant respects. First, the Amended Rules as revised require all Prohibited Species, including newly-designated tegu lizards and green iguanas, to be bred indoors, and outdoor breeding is strictly prohibited. Those wishing to retrofit or build enclosures to meet the new requirements have a limited period of time to do so. Second, the Amended Rules as

revised ban the commercial use and possession of tegu lizards and green iguanas starting on June 30, 2024.

108. These changes were not addressed in any of the Commission's purported SERCs.

109. Upon information and belief, these changes are not supported by the record of public hearings held on the rules, made in response to written material received on or before the date of the final public hearing, or made in response to a proposed objection by the Joint Administrative Procedures Committee.

110. Consequently, the Commission violated the 2007 APA, and thus its own Due Process Rule and procedural due process.

111. A bona fide dispute exists between Plaintiffs and the Commission as to whether the process by which the Amended Rules were adopted violates the APA, the Commission's Due Process Rule and other due process procedures, and the constitutional principles of due process.

112. As a result of this dispute, Plaintiffs are in doubt as to whether the Commission may enforce the unconstitutional Amended Rules, as under those Amended Rules, Plaintiffs are now prohibited from keeping, possessing, importing, selling, bartering, trading, and breeding Conditional Species, tegu lizards, and green iguanas for commercial use with limited exception.

113. Under the circumstances, there is a bona fide, actual, present, and practical need of a judicial declaration to remove these doubts.

114. The declaratory relief sought deals with present, ascertainable facts and is not merely seeking legal advice by the Court or answers to questions propounded for mere curiosity.

115. Plaintiffs' rights to keep, possess, import, sell, barter, trade, and breed Conditional Species, tegu lizards, and green iguanas depend upon whether the process by which the Amended Rules were adopted renders them unconstitutional.

116. Plaintiffs are not required to exhaust any administrative remedies because challenges to rules promulgated using the Commission's constitutional authority may be challenged only in state circuit court. *See* Fla. Admin. Code R. 68-1.008(1), (5)(c).

117. The relief requested is the type appropriate for USARK Florida to receive on behalf of its members.

118. The Commission is before this Court by proper process. The Commission, charged with enforcing the Amended Rules, has an adverse and antagonistic interest in the subject matter of this complaint.

COUNT II

Declaratory Judgment under Article I, Section 9, Florida Constitution The Rules Are Arbitrary and Capricious and Impermissibly Impair Vested Rights

119. Plaintiffs incorporate by reference paragraphs 1-84 as if fully set forth herein.

120. This is an action for declaratory relief under Chapter 86, Florida Statutes.

121. Plaintiffs seek a declaration as to the constitutionality and validity of the Amended Rules under the Commission's Due Process Rule, the 2007 APA as incorporated into the Due Process Rule, and article I, section 9 of the Florida Constitution.

122. To accord impacted individuals with substantive and procedural due process, the Commission has adopted the Due Process Rule and the 2007 APA in certain respects when promulgating rules derived from constitutional authority. Under the Commission's adoption of such procedures, rules may not be arbitrary or capricious and may be directly challenged in circuit court by declaratory and injunctive action. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational. § 120.52(8)(e), Fla. Stat. (2007).

123. The Amended Rules are arbitrary and capricious and unsupported by logic because the Commission has not shown that the Amended Rules will reduce the impacts associated with non-native reptile species in Florida.

124. The Commission has demonstrated no need to ban the species at issue—particularly those that were already strictly regulated by the Commission’s Conditional Species program requirements—nor has it demonstrated that such a ban will actually address impacts associated with these species in Florida.

125. The Amended Rules are particularly arbitrary in treating some reptiles differently than others. Under the Amended Rules, all commercial use of Burmese pythons, reticulated pythons, Northern African pythons, Southern African pythons, amethystine pythons, scrub pythons, green anacondas, and Nile monitors must cease on the effective date of the Amended Rules, and affected permittees have only 90 days to come into compliance with the Amended Rules. With respect to green iguanas and tegu lizards, however, the Commission has arbitrarily authorized personal possession in some instances, as well as limited commercial use until 2024 under significantly restrictive conditions with which licensees must comply within a short timeframe after the effective date of the Amended Rules.

126. Additionally, the late revisions made through the Notice of Change prohibiting outdoor breeding, imposing extreme caging requirements, and imposing a three-year sunset on the temporary authorization for continued commercial use of tegu lizards and green iguanas are likewise arbitrary and capricious as there is no demonstrated need for them. Likewise, the costs of these new and unnecessary requirements are so great as to be not worth incurring if they may be in place for only three years.

127. Furthermore, despite the Commission's commitment to follow the "best information available" in adopting rules using constitutional authority, the Commission's rulemaking process reveals that the Commission not only ignored but refused to listen to contrary scientific evidence, including from USARK Florida's expert, who would have testified that the Amended Rules will not accomplish the Commission's stated goal of addressing non-native species' impacts on Florida's ecology, economy, or human health and safety.

128. The Amended Rules are also constitutionally impermissible because they impair vested rights. The Commission has made clear that the Amended Rules will apply retroactively to even existing licenses and permits that are otherwise in good standing even after the effective date of the Amended Rules and not scheduled to expire until after the grace period ends. Because at least one Plaintiff and other USARK Florida members have vested rights in their existing licenses, the Court should refuse to retroactively apply the Amended Rules at least as to them.

129. A bona fide dispute exists between Plaintiffs and the Commission as to whether the Amended Rules violate the APA, the Commission's Due Process Rule, and the constitutional principles of due process.

130. As a result of this dispute, Plaintiffs are in doubt as to whether the Commission may enforce the unconstitutional Amended Rules as under it Plaintiffs are now prohibited from keeping, possessing, importing, selling, bartering, trading, and breeding Conditional Species, tegu lizards, and green iguanas for commercial use with limited exception.

131. Under the circumstances, there is a bona fide, actual, present, and practical need of a judicial declaration to remove these doubts.

132. The declaratory relief sought deals with present, ascertainable facts and is not merely seeking legal advice by the Court or answers to questions propounded for mere curiosity.

133. Plaintiffs' rights to keep, possess, import, sell, barter, trade, and breed Conditional Species, tegu lizards, and green iguanas depend upon whether the Amended Rules are unconstitutional.

134. Plaintiffs are not required to exhaust any administrative remedies because challenges to rules promulgated using the Commission's constitutional authority may be brought only in state circuit court. *See Fla. Admin. Code R. 68-1.008(1), (5)(c).*

135. The relief requested is the type appropriate for USARK Florida to receive on behalf of its members.

136. The Commission is before this Court by proper process. The Commission, charged enforcing with the Amended Rules, has an adverse and antagonistic interest in the subject matter of this complaint.

COUNT III

U.S. Const. Amend. XIV, § 1, 42 U.S.C. § 1983 The Commission's Rulemaking Failed to Afford Procedural Due Process

137. Plaintiffs incorporate by reference paragraphs 1-84 as if fully set forth herein.

138. This is an action for relief under 42 U.S.C. § 1983.

139. Plaintiffs have constitutionally-protected property interests in their businesses and livelihoods, their personal property, and their licenses and/or permits to commercially operate under the Conditional Species Program and with respect to tegu lizards and green iguanas. Under the Amended Rules, most Plaintiffs must in short order stop breeding and selling certain reptiles, depriving them of their businesses and livelihoods, and they will be forced to give up their personal property, their reptiles.

140. Under the Due Process Clause of the U.S. Constitution, a state may not deprive "any person of . . . property, without due process of law." U.S. Const. amend. XIV, § 1. Through

the Due Process Rule, the Commission has acknowledged that its exercise of executive and regulatory authority must comport with due process and it has set forth procedures for affording due process within the meaning of the U.S. Constitution and Florida Constitution.

141. An agency's failure to follow its own due process rules is a due process violation. *See Byle v. Pasco Cty. ex rel. Bd. of Cty. Comm'rs*, 970 So. 2d 366, 367–68 (Fla. 2d DCA 2007).

142. As detailed in paragraphs 59-81 and 89-110, the process followed by the Commission including its Chairman and Executive Director in adopting the Amended Rules was constitutionally inadequate.

143. Compliance with the Due Process Rule after deprivation of Plaintiffs' property interests would also be constitutionally inadequate.

144. Plaintiffs are not required to exhaust any administrative remedies because challenges to rules promulgated using the Commission's constitutional authority may be challenged only in state circuit court. *See Fla. Admin. Code R. 68-1.008(1), (5)(c)*.

145. The relief requested is the type appropriate for USARK Florida to receive on behalf of its members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment in their favor and that this Court:

(A) declare the Amended Rules are unconstitutional under article IV, section 9 of the Florida Constitution and the Fourteenth Amendment of the U.S. Constitution;

(B) declare that the Commission failed to afford due process in adopting the Amended Rules in violation of article IV, section 9 of the Florida Constitution and the Fourteenth Amendment of the U.S. Constitution;

(C) enjoin the Commission, and all persons acting under its direction or in concert with it, from implementing or enforcing the Amended Rules;

(D) require the Commission, the Chairman, and the Executive Director to afford Plaintiffs due process, including not limited to a draw-out hearing as required by the Commission's Due Process Rule; and

(E) order such other and further relief as this Court may deem appropriate, including costs as provided in section 86.081, Florida Statutes, and Plaintiffs' attorneys' fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted on May 28, 2021.

HOLLAND & KNIGHT LLP

/s/Tiffany A. Roddenberry

Nathan A. Adams, IV
Florida Bar No. 90492
Tiffany A. Roddenberry
Florida Bar No. 92524
Lawrence E. Sellers, Jr.
Florida Bar No. 300241
315 South Calhoun Street, Suite 600
Tallahassee, Florida 32301
Telephone: (850) 224-7000
Facsimile: (850) 224-8832
larry.sellers@hklaw.com
nathan.adams@hklaw.com
tiffany.roddenberry@hklaw.com

Counsel for Plaintiffs