

CAUSE NO. D-1-GN-19-003623

VIKAS DUMRA and SARAH DUMRA,
Individually and As Next Friends and
Natural Parents of LILLI DUMRA, *a*
Minor,

Plaintiffs,

v.

AUSTIN AQUARIUM, LLC

Defendant.

§
§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

201ST JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION, JURY DEMAND
AND REQUEST FOR DISCLOSURE
WITH APPENDIX: PLAINTIFF'S DISCOVERY REQUESTS TO DEFENDANT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW VIKAS DUMRA and SARAH DUMRA, INDIVIDUALLY AND AS NEXT FRIENDS AND NATURAL PARENTS OF LILLI DUMRA, A MINOR, hereafter referred to as "Plaintiffs," and file this, their Original Petition against AUSTIN AQUARIUM, LLC, hereafter referred to as "Defendant," and for cause of action would show the following unto the Court:

DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively plead that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiffs seeks monetary relief over \$100,000.

CLAIM FOR RELIEF

2. Plaintiffs seek monetary relief over \$100,000 but not more than \$200,000.

THE PARTIES

3. Plaintiffs VIKAS DUMRA and SARAH DUMRA are individuals residing in Travis County, Texas, and are the natural parents of the minor Plaintiff LILLI DUMRA.

4. Defendant AUSTIN AQUARIUM, LLC. Is a domestic limited liability corporation having its principal place of business in Travis County, Texas and may be served with citation via its registered agent as follows:

**MS. CRYSTAL COVINO
2832 Grimes Ranch Road
Austin, TX 78732**

Alternatively, Defendant may be served anywhere its agent is otherwise found.

JURISDICTION AND VENUE

5. This court has jurisdiction over this case, and the damages sought are within the jurisdictional limits of this court. Venue is proper in Travis County, Texas, because all or a substantial part of the events giving rise to the cause of action occurred here.

FACTS

6. The subject matter of this suit is a wild exotic animal (lemur) bite that occurred at the premises of the Austin Aquarium. On or about November 11, 2018, Plaintiff LILLI DUMRA was present, as an invitee, on the Austin Aquarium premises located at 13530 N. Highway 183 in Austin, Texas. The premises are owned, controlled and operated by Defendant.

7. Plaintiff entered Defendant's premises with Defendant's knowledge and for their mutual benefit.

Defendant exhibits a wide variety of amphibians and birds, a variety of cold water and tropical fish including sharks and stingrays as well as many reptiles, ring-tailed lemurs, and other wild exotic creatures.



This photo was posted on Defendant's social media page on June 3, 2019 showing a preview of its lemur exhibit.

Defendant encourages invitees to hand-feed sharks, rays, birds, and fish, and to get up close and personal with their kangaroos and lemurs.

While the minor Plaintiff was in the process of enjoying the educational experience offered by the Defendant, one of the lemurs bit the minor Plaintiff causing injury to her left hand.

Agents on behalf of Defendant initially informed Plaintiffs that the animal that bit their daughter was properly vaccinated—however, Plaintiffs were later informed by Mr. Ammon

Corvino (a presumed owner or operator of Defendant's business) that the lemur was not vaccinated.

Plaintiffs took minor, Lilli, to a clinic for medical attention and were suggested by the clinic to call animal control. Austin Animal Control Services responded to the call and opened an investigation under File No. 38707.

Due to the bite being caused by an animal without a record of vaccination, Plaintiffs incurred large medical costs associated with diagnostic testing of the bite made the basis of this lawsuit.



This photo is an exemplar (in no way intended to imply that one of these animals was the animal that bit Plaintiff) of what the teeth of a lemur look like.

CAUSES OF ACTION

COUNT I: PREMISES LIABILITY

8. Defendant created this dangerous condition, i.e., dangerous wild exotic animals on the premises, and Defendant made no efforts to reduce or eliminate the unreasonably dangerous condition, and instead encouraged Plaintiffs to feed the wild, exotic, and unreasonably dangerous animal.

As a result of the lemur bite, Plaintiff sustained significant personal injuries.

COUNT II: NEGLIGENCE

9. Plaintiff alleges that upon the occasion in question, Defendant failed to use ordinary care by various acts and omissions, and was strictly liable in one or more of the following ways:

- a. Failure to keep its premises reasonably safe for invitees;
- b. Failure to give adequate warning to Plaintiffs of the unreasonably dangerous conditions;
- c. Failure to adequately train their employees in locating, preventing, reducing, eliminating, and warning about unreasonably dangerous conditions; and
- d. Failure to adequately supervise their employees to ensure they are locating, preventing, reducing, eliminating, and warning about unreasonably dangerous conditions.

10. Each and all of the above stated acts and/or omissions, taken together or individually, constitute negligence and the same are a direct and proximate and/or producing cause of the injuries and damages sustained by Plaintiff.

DAMAGES

11. As a result of the incident described above, minor Plaintiff LILLI DUMRA suffered personal injuries including physical pain, mental anguish, and physical disfigurement, and will, with reasonable probability, continue to do so in the future by reason of the nature and severity of her injuries and disfigurement. Plaintiffs, VIKAS DUMRA and SARAH DUMRA have incurred medical expenses in the past and will, with reasonable probability, continue to incur medical expenses in the future as a result of their daughter's injuries. Plaintiffs request the trier of fact to award damages as set forth above.

PREJUDGMENT INTEREST

13. Plaintiffs plead for prejudgment interest as allowed by Art.5069-1.05 §6 (a) of V.A.T.S.). Plaintiffs specifically plead prejudgment interest as an element of damages that Defendant should be legally obligated to pay as a result of the bodily injuries and damages incurred by Plaintiffs.

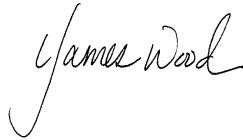
REQUEST FOR DISCLOSURE

14. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or materials described in Rule 194.2. Further, Plaintiff propounds the attached PLAINTIFF'S REQUESTS FOR ADMISSIONS, INTERROGATORIES, and REQUESTS FOR PRODUCTION TO DEFENDANT (attached hereto) and request that Defendant respond to same after the expiration of 50 days from the date of service of this original petition and discovery requests.

PRAYER

Plaintiffs pray that Defendant be cited to appear and answer herein; that they have a trial by the Court; that they have judgment against Defendant for a sum within the jurisdictional limits of the Court, with interest both pre-judgment and post-judgment; for costs of suit; and for such other and further relief, general and special, legal and equitable, to which Plaintiffs may be justly entitled.

Respectfully submitted,

A handwritten signature in cursive script that reads "James Wood".

By: _____

L. JAMES WOOD
Texas Bar No. 24076785
1515 W. 6th Street
Austin, Texas 78703
Phone: (512) 692-9266
Fax: (512) 686-3152
james@jwoodlegal.com

ATTORNEY FOR PLAINTIFF

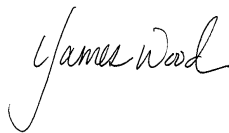
APPENDIX

**PLAINTIFF'S REQUESTS FOR ADMISSIONS,
INTERROGATORIES, and REQUESTS FOR PRODUCTION TO DEFENDANT**

TO: Defendant AUSTIN AQUARIUM, LLC, by and through its agent for service, CRYSTAL COVINO, 2832 Grimes Ranch Road, Austin, TX 78732

Plaintiffs, VIKAS DUMRA and SARAH DUMRA, INDIVIDUALLY AND AS NEXT FRIENDS AND NATURAL PARENTS OF LILLI DUMRA, A MINOR, hereby serve these Requests for Admissions, Interrogatories, and Requests for Production to Defendant Elizabeth Sarmiento. Full disclosure is to be made within (50) days after the service of this document in accordance with the Texas Rules of Civil Procedure. These Requests are continuing in character so as to require you to file supplemental answers if you obtain further or different information than that set forth in your answers prior to trial.

Respectfully submitted,



By: _____

L. JAMES WOOD
Texas Bar No. 24076785
james@long-wood.com

MARK W. LONG
Texas Bar No. 12521950
mark@long-wood.com

LONG WOOD LLP
1515 W. 6th Street
Austin, Texas 78703
P: 512.329.5005
F: 737.931.1512

ATTORNEYS FOR PLAINTIFFS

INSTRUCTIONS

Pursuant to the provisions of Tex. R. Civ. P. Rule 190.3, Plaintiff serves upon Defendant, by and through Defendant's attorney, this set of disclosure requests, written interrogatories, requests for production, and request for admissions, and requests that Defendant answer the disclosure requests, interrogatories, admissions, and produce for inspection and copying (unless otherwise indicated) the documents and things set out below. Pursuant to Rule 190 and 193, you are requested to (1) number each item which will be produced pursuant to these Requests for Disclosure, Written Interrogatories and Request for Production with a separate and distinct number or similar identifying designation and (2) to file your written response to these requests for disclosure, written interrogatories, and request for production stating, with regard to each numbered request, the identification or exhibit numbers of the specific items being answered or produced in response to each such Request for Disclosure, Written Interrogatory, or Request for Production. Documents or things which are required to be produced in response to more than one request may be listed by number in response to each request, but the document or thing itself need only be produced one time. All documents or things to be produced are to be forwarded to the undersigned attorneys attached to or together with your written response.

DEFINITIONS

As used herein, the following terms shall have the meanings indicated below:

- A. "You" and "Yours" means AUSTIN AQUARIUM, LLC.
- B. "Defendant" means AUSTIN AQUARIUM, LLC.

C. "Plaintiffs" means VIKAS DUMRA and SARAH DUMRA, INDIVIDUALLY AND AS NEXT FRIENDS AND NATURAL PARENTS OF LILLI DUMRA, A MINOR.

D. Unless indicated otherwise by context, the terms "**incident**" and "**incident in question**" refers to the November 11, 2018, lemur bite sustained by Lilli Dumra at your premises.

E. "Communication" means any contact between two or more persons or companies and shall include, without limitation, written contact by means such as letters, memoranda, telegrams, telex, E-mail, and oral contact by such means such as face-to-face meetings and telephone conversations. However, this term is not meant to include any contact that is claimed as exempt from discovery as party communication, attorney-client privilege, or under any other exemption.

REQUESTS FOR ADMISSIONS

Admit or deny the truth of the following statements:

1. Admit that AUSTIN AQUARIUM, LLC is the correct name of Defendant.
2. Admit that service of process on Defendant was properly achieved.
3. Admit that you were the owner or lessee and/or in possession of the premises located at 13530 N. Highway 183, Austin, Texas 78750.
4. Admit that Plaintiffs were invitees to the premises located at 133530 N. Highway 183, Austin, Texas 78750 on November 11, 2018.
5. Admit that the same lemur that bit Plaintiff Lilli Dumra has bitten other patrons.
6. Admit that any other lemur at Austin Aquarium has bitten other patrons.

INTERROGATORIES

INTERROGATORY 1: Please identify yourself by providing the following information:

- a. your legal name;
- b. any and all names used for “doing business as” and/or fictitious names which you have ever used for any reason;
- g. the state of incorporation; and
- h. the identity (full name, address, and telephone number) of your current corporate officers.

INTERROGATORY 2: Please state the name of the management and/or management team of Austin Aquarium, LLC.

INTERROGATORY 3: Identify all insurance policies relevant to this suit. (This interrogatory is for identification purposes and does not count toward plaintiff’s total allotted interrogatories pursuant to *Tex. R. Civ. P. 190.2(b)(3).*)

INTERROGATORY 4: Describe in your own words how the incident occurred. Please include in your answer what your claim or contention will be regarding the cause or contributing causes of the incident, if any, including a statement in detail of the facts or information upon which any such contention is based.

INTERROGATORY 5: Identify the employee, agent or representative of Austin Aquarium that was present at the time and date of the incident made the basis of this lawsuit.

INTERROGATORY 6: Is the person identified in your answer to Interrogatory 5 above an employee of Austin Aquarium, LLC? If not, please state what entity employed or contracted with the person identified in your answer to Interrogatory 5 above on the date of the incident in question.

INTERROGATORY 7: With regard to the incident in question, please state the name of the immediate supervisor of the person identified in your answer to Interrogatory 5 above.

INTERROGATORY 8: Please describe each and every incident involving an injury sustained by an invitee as the result of interaction with any animal, bird, fish and/or reptile which occurred at the Austin Aquarium in the five (5) years preceding the incident made the basis of this lawsuit., by providing the following information with respect to each such incident:

- a. the date of each such incident;
- b. the place (on the Austin Aquarium premises located at 13530 N. Highway 183, Austin, Texas 78750) of each such incident;
- c. the names of all persons involved in each such incident; and
- d. a brief description of how each such incident occurred.

INTERROGATORY 9: Please describe, in detail, your contentions regarding how and why the incident occurred between minor Plaintiff Lilli Dumra and the lemur on November 11, 2018. Please include the following information in your answer:

- a. a description of all factual contentions, if any, regarding any and all acts or omissions of the person identified by you in your answer to Interrogatory 5 above; and
- b. a description of all factual contentions, if any, regarding all conduct on your part which you undertook in order to attempt to avoid or prevent the incident.

INTERROGATORY NO. 10:

With respect to any and all of your consulting experts [as defined by Rule 192.7(d)] in this case whose mental impressions or opinions have been reviewed by a testifying expert, please identify (name, address, and telephone number) each such person and provide the following information with regard to each such person:

- a. the facts known by the expert that relate to or form the basis of the expert's mental impressions and opinions formed or made in connection with the instant lawsuit, regardless of when and how the factual information was acquired;
- b. the expert's mental impressions and opinions formed or made in connection with the instant lawsuit, and a description of the methods used to derive such mental impressions and opinions; and
- c. the identity of all documents, tangible things, reports, models, and data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of a testifying expert's testimony.

INTERROGATORY 11: Please identify all physicians, doctors, clinics, hospitals, psychiatrists, psychologists, chiropractors, physical therapists, and other health care providers and/or health care facilities from whom you have obtained any records concerning Plaintiff, including, but not limited to, records obtained by you or your agents through response(s) to depositions by written questions, subpoenas duces tecum, or written authorizations.

INTERROGATORY 12: With respect to any and all persons who are identified in this lawsuit by Plaintiffs and/or Defendant as persons having knowledge of relevant facts, in

connection with responses to request for disclosure under Rule 194.2(e) of the Texas Rules of Civil Procedure, please identify any and all of those persons who you may attempt to impeach, as a witness, with evidence of conviction of a crime, and with regard to each such person, please provide the advance written notice of intent to use such evidence, as required by Rule 609(f) of the Texas Rules of Evidence.

INTERROGATORY 13: Please describe with particularity, including cause numbers and style of cases, all personal injury litigation and/or personal injury claims in which you have been involved as a party, with any person, corporation, partnership, agency or other entity within the past ten (10) years.

VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Affiant, known to me to be the person whose name is subscribed to the foregoing Answers designed to be used in the above numbered and styled cause who, after being by me first duly sworn, upon oath deposed and said that the matters stated therein are true and correct to the best of their knowledge.

AUSTIN AQUARIUM, LLC

BY: _____
Title: _____

SUBSCRIBED AND SWORN TO BEFORE ME by the said Affiant on this the _____ day of _____ 20____. to certify which, witness my hand and seal of office.

Notary Public, State of Texas

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

Copies of any licenses and/or permits issued by the State of Texas Parks and Wildlife or United States Fish and Wildlife Service required for possession of fish, birds, mammals, and/or reptiles displayed at Austin Aquarium, LLC.

REQUEST NO. 2:

Copies of any and all photographs, slides, and/or video tape recordings or films in existence of the following subjects, whether photographed separately or in conjunction with any other subject listed, and indicate which of such photographs, video tapes or films may be used as evidence at the trial of this suit:

- a. The scene of the incident in question;
- b. The events concerning this lawsuit;
- c. Any party or witness to the incident in question; and
- d. The animals involved in the incident in question.

All of the items requested above should relate to the time period immediately before, after, or at the time of the incident in question, not including attorney work product.

REQUEST NO. 3:

Any and all photographs or other electronic images that contain images of the underlying facts or that Defendant intends to offer into evidence at trial.

REQUEST NO. 4:

Any and all photographs, movies, videotapes or other visual reproductions that Defendant has of the parties, persons with knowledge of relevant facts, the facilities, mechanisms or items involved, or seen at the scene of the incident in question.

REQUEST NO. 5:

Copies of any and all statements made by ANY Plaintiff concerning the subject matter of this lawsuit, including any written statement signed or otherwise adopted or approved by Plaintiff and any stenographic, mechanical, electrical or other type of recording or any transcription thereof.

REQUEST NO. 6:

Any and all drawings, surveys, plats, maps or sketches of the scene of the incident in question.

REQUEST NO. 7:

Any document, photograph, or other physical evidence that will be used or offered at trial.

REQUEST NO. 8:

The entire claim and investigation file, including but not limited to, statements, reports, videotapes, drawings, memoranda, photographs, and documents, regarding the incident in

question generated or obtained by Defendant, Defendant's agents, or Defendant's insurers in the ordinary course of business, prepared prior to the filing of Plaintiff's Original Petition.

REQUEST NO. 9:

The entire claim and investigation file, including but not limited to, statements, reports, videotapes, drawings, memoranda, photographs, and documents, regarding the incident in question generated or obtained by Defendant, Defendant's agents, or Defendant's insurers, before Defendant's anticipation of litigation.

REQUEST NO. 10:

Copies of any reports or memos, including police reports, damage reports to insurance companies, incident reports or other reports, produced by or issued by any person regarding the incident in question, Plaintiff's injuries and/or damages, not including attorney work product, which reports were made prior to your anticipation of this litigation.

REQUEST NO. 11:

Copies of any statements made by your agents, employees, representatives, and/or servants which pertain to the facts, circumstances and events surrounding the incident in question.

REQUEST NO. 12:

A copy of each primary, umbrella, and excess insurance policy or agreement, including the declarations page, which was in effect at the time of the incident in question including all non-waiver agreements, reservation of rights letters, or other documents or communications regarding any contractual obligations owed by you.

REQUEST NO. 13:

A copy of each primary, umbrella, and excess insurance policy or agreement, including the declarations page, which may provide coverage to satisfy all or part of any judgment which may be rendered in this litigation including all non-waiver agreements, reservation of rights letters, or other documents or communications regarding any contractual obligations owed by you.

REQUEST NO. 14:

All documents regarding Plaintiffs' employment history, status, performance, or compensation obtained by Defendant via an authorization signed by plaintiffs, subpoena, deposition on written questions, or otherwise.

REQUEST NO. 15:

All documents regarding Plaintiff Lilli Dumra's medical status, treatment or history obtained by Defendant via an authorization signed by Plaintiff, subpoena, deposition on written questions or otherwise.

REQUEST NO. 16:

All documents regarding Plaintiffs' financial status, earnings history, and tax payment history obtained by Defendant via an authorization signed by Plaintiff, subpoena, deposition on written questions, or otherwise.

REQUEST NO. 17:

All documents regarding Plaintiffs' claims history obtained by Defendant via an authorization signed by Plaintiff, subpoena, deposition on written questions, or otherwise.

REQUEST NO. 18:

All documents, records, reports, notations, or memoranda regarding Plaintiff from persons or entities that compile claim information, to include but not limited to, insurance claims, unemployment claims, social security claims, and worker's compensation claims.

REQUEST NO. 19:

All statements or documents that show the identity of any witness to the incident in question, or any person with knowledge of relevant facts concerning the incident in question, the events leading up to it, or any damage sustained by Plaintiff.

REQUEST NO. 20:

Any information relating to any arrest or conviction to be used for impeachment purposes against any party, witness, and/or person with knowledge of relevant facts named in discovery information provided by or to Defendant before trial. Please include the name of the person convicted, the offense for which he or she was arrested or convicted, the year of such arrest or conviction, the court of such conviction, and the disposition of the case or allegation.

REQUEST NO. 21:

A copy of the document which led to your anticipation of litigation regarding the incident in question.

REQUEST NO. 22:

A copy of any and all visually recorded observations, videotape recordings, surveillance tape recordings, and/or photographs which govern any of the activities of Plaintiff since the time of the incident in question, and a copy of any and all documentation which pertains thereto.

REQUEST NO. 23:

All discovery obtained from nonparties to this suit, either informally or pursuant to the provisions of TRCP 205.

REQUEST NO. 24:

If Defendant contends that any condition, act, omission whatsoever contributes to the claims of Plaintiff made the subject matter of this lawsuit, produce all documents, photographs, and tangible things that support such contention, including any such data or information that exists in electronic or magnetic form.

REQUEST NO. 25:

Produce all incident or occurrence reports regardless of when created, drafted and/or filed pertaining to the Defendant in this lawsuit including any such data or information that exists in electronic or magnetic form.

REQUEST NO. 26:

All documents regarding police, military police, fire, and other related investigations related to the incident in question.

REQUEST NO. 27:

If you contend that any act or omission on the part of the Plaintiffs contributed to the incident in question, please provide a copy of any and all documents which relate to or support your contention.

REQUEST NO. 28:

A copy of all diaries, notes, letters, or papers you, your agents, representatives, employees, and/or servants have written, recorded, or prepared since the incident in question, concerning the incident in question.

REQUEST NO. 29:

Copies of any pleadings from personal injury lawsuits similar to the incident in question, wherein you have been sued during the last five (5) years.

REQUEST NO. 30:

If any person, party, firm, company or other organization is claiming that coverage is limited, reduced or unavailable for the incident in question, produce all documents relating to said defenses to coverage or claims that coverage is limited, reduced or unavailable, including any such data or information that exists in electronic or magnetic form.

REQUEST NO. 31:

All documents relating to reservation of rights or denial of coverage on the part of any insurance carrier for the Defendant with respect to the incident in question.

REQUEST NO. 32:

Any correspondence or other documents you have received from Plaintiffs in this suit.

REQUEST NO. 33:

Pursuant to Rule 192.5(c)(4) of the Texas Rules of Civil Procedure, all photographs and electronic images which you intend to offer into evidence at the trial of the instant lawsuit.

REQUEST NO. 34:

Copies of any document or statement that any witness of the Defendant will use or Defendant anticipates may use to refresh his or her memory, either for deposition or trial.

REQUEST NO. 35:

Copies of all certified public records and/or reports which are applicable or relevant to this cause under TRE 803(8) and/or TRE 902(4) and/or TRE 1005.

REQUEST NO. 36:

All policies and procedures in force and effect on November 11, 2018, regarding animal, bird, fish, and/or reptile interaction with invitees.

REQUEST NO. 37:

All documents concerning training given to employees, servants, agents and/or representatives regarding animal, bird, fish and/or reptile interaction with invitees.

REQUEST NO. 38:

All documents reflecting any change in the policies and procedures concerning animal, bird, fish and/or reptile interaction with invitees after the date of the incident in question.

REQUEST NO. 39:

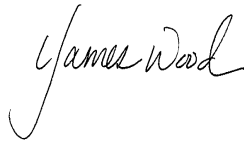
All incident reports involving animal, bird, fish and/or reptile interactions with invitees at Austin Aquarium for the five (5) years preceding the incident made the basis of this suit.

REQUEST NO. 40:

Any security and/or surveillance videotapes or digital images of the Plaintiffs and the scene of the incident made the basis of this lawsuit.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing Plaintiff's Request for Admissions, Interrogatories, and Request for Production has been served upon Defendant concurrently with the Original Petition in accordance with the Texas Rules of Civil Procedure.



By: _____
L. JAMES WOOD