



Texas Non-Profit Corporation Act<sup>2</sup>, the Texas Miscellaneous Corporation Laws Act<sup>3</sup>, and acting within the scope of his duty to protect the public interest in charitable funds held in trust for the public.

### 3.0 JURISDICTION AND VENUE

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

### 4.0 PARTIES

4.1 Greg Abbott, Attorney General of the State of Texas, is the petitioner in this suit, acting on behalf of the public interest in charity. The Attorney General's principal office is located at 209 West 14th Street, 8th Floor, Austin, Texas 78701.

4.2 Defendant, the Mitte Foundation, is a Texas, nonprofit corporation with its principal place of business in Travis County, Texas. Service of process by serving its registered agent for service is not necessary at this time as it is understood that counsel for the Mitte Foundation will accept service.

### 5.0 STATEMENT OF FACTS

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TEX.REV.CIV.STAT.ANN., Arts. 1396-1.01 through 1396-11.02. In this pleading, the articles of the Non-Profit Corporation Act are cited as "NPCA, Art. X.XX," e.g., TEX.REV.CIV.STAT.ANN., Art. 1396-1.01 is cited as "NPCA, Art. 1.01."

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TEX.REV.CIV.STAT.ANN., Arts. 1302-1.01 through 1302-7.09. In this pleading, the articles of the Miscellaneous Corporation laws Act are cited as "MCLA, Art. X.XX," e.g., TEX.REV.CIV.STAT.ANN., Art. 1302-1.01 is cited as "MCLA, Art. 1.01."

5.1 The Mitte Foundation is a Texas nonprofit corporation founded by Roy F. and Joann Cole Mitte in 1994. Historically, the Mitte Foundation's activities have included: providing scholarships to higher education institutions for qualified individuals; providing academic grants to selected higher education institutions for academic programs; and making awards or grants to or for the benefit of qualified nonprofit charitable, educational, scientific, or religious organizations, or other programs or projects administered by those organizations.

5.2 At the time of its original incorporation in 1994, the affairs and business of the corporation were managed by the Board of Directors. The two members of the Mitte Foundation at the time of the original incorporation, Roy F. and Joann Cole Mitte served on the original Board of Directors. In 2003, the Articles of Incorporation were amended to add Michael Scott Mitte ("Scott Mitte") as the third member of the corporation. In 2004, the Articles of Incorporation were amended to state "Management of the business and affairs of the corporation shall be vested in the members of the corporation. The corporation may limit the authority of the Board of Directors to whatever extent as may be set forth in the Articles of Incorporation and Bylaws."

5.3 By 2008, following the deaths of Roy F. and Joann Cole Mitte, Scott Mitte was the sole member of the Mitte Foundation.

5.4 On March 24, 2008, Scott Mitte was arrested for a second time for possession of cocaine. Scott Mitte's first arrest had not been revealed to the Board of Directors of the Mitte Foundation. The second arrest was revealed and discussed.

5.5 Following the reporting of Scott Mitte's arrest the Office of the Attorney General opened an investigation of the Mitte Foundation on April 24, 2008, sending out a request to examine documents pursuant to the Texas Miscellaneous Corporation Laws Act.

5.6 The Attorney General's extensive investigation of the Mitte Foundation and Scott Mitte's role in the Mitte Foundation revealed the following improper actions by Scott Mitte in his capacity as a member and officer of the Mitte Foundation:

- a. improper use of Mitte Foundation credit cards for private use by Scott Mitte;
- b. improper personal use of Foundation property by Scott Mitte;
- c. Scott Mitte's failure to secure board approval for \$90,000 worth of renovations to the carriage house property behind the main Mitte Foundation offices, at a time when the Foundation was in financial difficulty;
- d. Scott Mitte's authorization and acceptance of excessive executive compensation;
- e. failure of the members of the Mitte Foundation to conduct a meaningful salary and performance review for Scott Mitte;
- f. failure to review the performance of Scott Mitte in his role as Mitte Foundation president,
- g. improper spending of Mitte Foundation assets on travel by Scott Mitte;
- h. breach of the duty of loyalty by Scott Mitte in his insistence on receiving full pay and benefits while taking a year's leave of absence in lieu of stepping down as requested by certain member of the Board;
- i. poor management and investing of Mitte Foundation funds by Scott Mitte;
- j. poor oversight by members of the Mitte Foundation over finances of the Mitte Foundation;
- k. retaliatory removal of a dissenting director by Scott Mitte.

5.7 In the face of pressure from the Attorney General's Office, Scott Mitte resigned as a Member, Officer, and Director of the Mitte Foundation.

## 6.0 CAUSES OF ACTION

### Violations of the NPCA

6.1 The Attorney General reasserts the factual allegations contained in paragraphs 5.1 to 5.7 above.

6.2 The Mitte Foundation is a non-profit, charitable corporation based in the State of Texas and holds its assets in charitable trust on behalf of the public subject to the statutory duties of officers and directors. The Mitte Foundation itself has a fiduciary duty to the public and other statutory duties imposed by the Non-Profit Corporation Act ("NPCA").

6.3 The Mitte Foundation violated Art. 2.24 of the NPCA by distributing the assets of the corporation to Scott Mitte as an officer and employee of the corporation, in excess of reasonable compensation for services provided in furtherance of the charitable mission of the corporation.

6.4 This violation of the NPCA by the Mitte Foundation amounts to a breach of its fiduciary duties to the public.

### Common Law Breach of Fiduciary Duty

6.5 The Attorney General reasserts the factual allegations contained in paragraphs 5.11 above.

6.6 As the Mitte Foundation holds its assets in trust for the benefit of the public and for the charitable purposes for which the non-profit corporate entity is dedicated, the Mitte Foundation owes a fiduciary duty to the citizens of the State of Texas to use the nonprofit

corporate assets held for the mission and purposes intended, and for no other. Since the Mitte Foundation has failed to properly hold these assets in trust, it has breached its fiduciary duties.

### **Injunctive Relief Sought**

6.7 Based on the above-recited facts, the Attorney General requests that the Court issue a Temporary Injunction and after trial hereof, a Permanent Injunction enjoining the Board from allowing Scott Mitte to participate in the Mitte Foundation as member of the Board of Directors, an Officer, or an employee. Based on Scott Mitte's past breaches of fiduciary duty, the Attorney General believes that it would be in the best interests of the foundation and the public's interest in charity that Mr. Mitte's be barred from any type of further participation in the affairs of the Mitte Foundation.

6.8 The Attorney General's sworn petition demonstrates that he has pleaded a cause of action upon which he will probably prevail on the merits. There is no remedy at law which will adequately protect the public's interest in charity. The granting of the extraordinary relief requested is in the public interest because it will protect the public's interest in charity.

### **7.0 ATTORNEYS FEES**

7.1 Due to the acts of the Mitte Foundation, the Attorney General has found it necessary to investigate and prosecute this action. Consequently, the Attorney General requests that this Court adjudge against The Mitte Foundation, all attorneys' fees, investigators' fees and costs of court pursuant to TEX.GOV'T. CODE ANN., § 402.006(c), TEX.PROP. CODE ANN. §§ 123.005(b), and § 14.064.

**PRAYER**

WHEREFORE, Attorney General Greg Abbott, on behalf of the public interest in charity, respectfully prays the Court:

1. To waive citation as it is anticipated this cause will be resolved through an agreed judgment;
2. Award all relief, whether legal or equitable, as may be necessary to vindicate the public's interest in charity; and
3. Award the Attorney General his costs of court, including his reasonable attorneys fees and investigatory expenses.

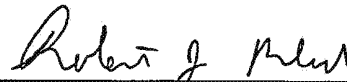
Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

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First Assistant Attorney General

JEFF L. ROSE  
Deputy First Assistant Attorney General

PAUL D. CARMONA, Chief  
Consumer Protection and Public Health Division



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No. \_\_\_\_\_

ATTORNEY GENERAL GREG  
ABBOTT,  
ON BEHALF OF THE PUBLIC  
INTEREST IN CHARITY,

*Plaintiff*

v.

THE ROY F. AND JOANN COLE MITTE  
FOUNDATION, A NONPROFIT  
CORPORATION

*Defendant*

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**AGREED JUDGMENT**

COMES NOW, Plaintiff, Attorney General Greg Abbott, ("Attorney General"), on behalf of the public interest in charity, and Defendant, the Roy F. and Joann Cole Mitte Foundation, a Texas nonprofit corporation, and consent to the entry of the following AGREED JUDGMENT, and would show as follows:

The Office of the Attorney General of Texas ("OAG") on behalf of the public interest in charity and as the enforcement authority over charitable nonprofit corporations, filed this action against the Roy F. and Joann Cole Mitte Foundation ("Mitte Foundation") to address certain issues related to the performance and breaches of duty by Scott Mitte in his role as the sole member and CEO of the Foundation. The Mitte Foundation has fully cooperated with the Attorney General in reviewing and revising its articles of incorporation, bylaws, corporate policies and corporate procedures, to address the Attorney General's concerns.

Specifically, the Mitte Foundation has voluntarily made the following changes and agrees to maintain these changes in the future:



1. Amendment of the Articles of Incorporation of the Mitte Foundation, to eliminate the member class from the corporation;

2. Amendment of the Articles of Incorporation of the Mitte Foundation to change the corporation from a member managed and controlled nonprofit corporation, to a nonprofit corporation managed and controlled by its board of directors;

3. Acceptance of the resignation of Chief Executive Officer, Lifetime Chairman of the Board of Directors, and Lifetime Board of Directors member, Michael Scott Mitte ("Scott Mitte");

3. Amendment of the Articles of Incorporation and Bylaws to remove all provisions specifically related to Scott Mitte;

4. Amendment of the Bylaws to raise the age at which Roy F. Mitte III and LaciAnne Cole Carriere shall become lifetime directors from age eighteen to twenty-one;

**Mitte Foundation further agrees to:**

1. Maintain a lifetime prohibition on Scott Mitte serving as:

(a) a member of the Mitte Foundation Board of Directors;

(b) a Mitte Foundation corporate officer;

(c) a Mitte Foundation employee;

(d) an honorary director of the Mitte Foundation Board of Directors; or

(e) a member of a committee or a committee chair;

2. The Mitte Foundation agrees to pay to Scott Mitte no more than \$8,837.32 for the purpose of reimbursement of continuing medical insurance benefits as a final settlement of any potential claims. The Board further agrees that Scott Mitte will not be the recipient of any Mitte Foundation funds now or in the future;

3. The Mitte Foundation agrees to expand the board of directors from four directors to seven directors with the addition of three additional directors to be selected within one year from the date this Judgment is signed;

4. The Mitte Foundation agrees to use its best efforts in seeking qualified outside directors to serve on the Mitte Foundation board;

5. The Mitte Foundation shall maintain no less than eight board directors at such time as all three of the lifetime directors of the Mitte Foundation have assumed their positions on the board, at the age of 21. At all times for the duration of the Mitte Foundation, the number of directors shall not be less than eight;

6. The Mitte Foundation agrees that its lifetime directors Roy F. Mitte III and Lacianna Cole Carriere shall obtain training in foundation and nonprofit management, prior to joining the board;

7. The Mitte Foundation agrees to pay the Attorney General's office \$25,000 for its Attorney's fees and costs of investigation.

All other relief sought by the OAG is dismissed with prejudice. Each party is to bear its own taxable costs.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
PRESIDING JUDGE

Agreed and Accepted by:

Office of the Attorney General of Texas

By: Robert J. Blech  
Robert J. Blech  
State Bar No. 00790320  
Assistant Attorney General  
Charitable Trusts Section  
Consumer Protection Division  
Office of the Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548  
Phone: (512) 475-4360  
Fax: (512) 322-0578

Agreed as to Form:

Attorneys for the Roy F. and Joann Cole Mitte Foundation

By: Shane W. Hudson  
Shane W. Hudson  
State Bar No. 24049129  
Fizer, Beck, Webster, Bentley & Scroggins, P.C.  
1330 Post Oak Boulevard, Suite 2900  
Houston, Texas 77056  
Phone: (713) 840-7710  
Fax: (713) 963-8469

Agreed and Accepted:

The Roy F. and Joann Cole Mitte Foundation

By: *[Signature]*

Dilum Chandrasoma  
President, the Roy F. And Joann Cole Mitte Foundation

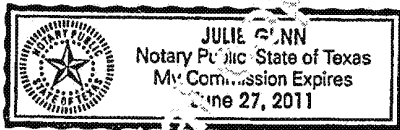
Authorized Agent for the Roy f. and Joann Cole Mitte Foundation

THE STATE OF TEXAS §  
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COUNTY OF §

On this 21<sup>st</sup> day of April 2009, before me, the undersigned authority, personally appeared Dilum Chandrasoma, who is personally known to me and acknowledged himself/herself to be an authorized agent for the Roy F. And Joann Cole Mitte Foundation, and he, as such an agent, being authorized to do so, executed the foregoing Agreed Judgment for the purpose and consideration therein contained by signing for the Roy F. And Joann Cole Mitte Foundation by himself as an agent for such.

In witness whereof, I hereunto set my hand and official seal.

*[Signature]*  
Notary Public, State of Texas



My Commission Expires: 6/27/11