

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION
OF CRUELTY TO ANIMALS, *et al.*,

Plaintiffs,

v.

RINGLING BROTHERS AND BARNUM & BAILEY
CIRCUS, *et al.*,

Defendants.

Civ. No. 03-2006
(EGS/JMF)

**PLAINTIFFS' NOTICE OF FILING SUPPLEMENTAL AFFIDAVITS
IN SUPPORT OF THEIR OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

In further support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (Docket No. 96), plaintiffs hereby give notice that, pursuant to Fed. R. Civ. P. 56(c), they are filing as Exhibits LL and MM to their Opposition, copies of sworn affidavits by two former Ringling Bros. Circus employees who recently left the circus, Archele Faye Hundley and Robert Tom Jr.

In their affidavits, Ms. Hundley and Mr. Tom both describe severe, and very recent, abuse of elephants at Ringling Bros., including a particularly horrific beating of an elephant by one of Ringling's senior elephant handlers that occurred between May 25 and June 6, 2006 in Tulsa, Oklahoma, and resulted in severe wounds to the elephant. See Tom Affidavit, Plaintiffs' Exhibit LL, ¶ 4 ("Sasha [Houcke] began aggressively hooking the elephant using two bullhooks at once. He hooked her behind the left ear and on the back. This attack resulted in severe wounds and the elephant began bleeding from the back and behind the ear and screaming in

pain”); Hundley Affidavit, Plaintiffs’ Exhibit MM ¶ 6 (“Sasha then inserted the bullhook into Baby’s ear canal and holding the bullhook’s handle with both hands, again pulled down with all of his weight. This incident lasted for approximately 30-45 minutes. Baby bled profusely from inside the ear and behind the earflap”).

Both former employees also state in their affidavits that the aggressive use of the bullhook takes place on a daily basis, and they also state that the Circus knows in advance when a USDA inspector is coming to inspect the Circus pursuant to the Animal Welfare Act. See Tom Aff. ¶¶ 5, 27, 32; Hundley Aff. ¶¶ 4, 23, 24. In addition, Ms. Hundley states in her affidavit that “[w]henever the public is not around, the elephants are chained up.” Hundley Aff. ¶ 19.

All of this testimony, and additional testimony in the affidavits that is not repeated here, further supports plaintiffs’ contention that defendants are certainly not entitled to summary judgment in this case, since defendants deny that they engage in any of these practices and insist that the only practices in which they do engage are “normal husbandry practices” for the care and treatment of Asian elephants who are being used “to enhance the propagation” of the species through a legitimate breeding program. See Defendants’ Summary Judgment Memorandum (Docket No. 82) at 27-29; see also Plaintiffs’ Summary Judgment Opp. at 27-38. Hence, this evidence further supports plaintiffs’ position that there are material issues in dispute in this case and that defendants are not entitled to judgment as a matter of law.

In addition, in view of this new evidence – which further corroborates plaintiffs’ allegations that the serious mistreatment of the Asian elephants continues to occur on a daily basis, in violation of the “take” prohibition of the Endangered Species Act, 16 U.S.C. § 1538(a) –

plaintiffs respectfully request that the Court set a trial date for this case.¹

Respectfully submitted,

/s/

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¹Pursuant to the Court's September 26, 2006 Order (Docket No. 94), discovery is continuing in this case. However, no trial date has yet been set by the Court. Accordingly, plaintiffs respectfully request that the Court set such a date for sometime during the summer of 2007, so that, in the event the Court denies defendants' pending motion for summary judgment, the merits of the case can be resolved expeditiously.