

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

Plaintiffs,

v.

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

Defendants.

Case No. 1:03-cv-02006 (EGS/JMF)

**DEFENDANT’S RESPONSE TO “PLAINTIFFS’ NOTICE OF FILING AN  
ADDITIONAL EXHIBIT IN SUPPORT OF THEIR OPPOSITION TO  
DEFENDANTS’ [SIC] MOTION FOR SUMMARY JUDGMENT”**

Defendant Feld Entertainment, Inc. (“FEI”) hereby responds to Plaintiffs’ Notice of Filing an Additional Exhibit in Support of Their Opposition to Defendants’ [Sic] Motion for Summary Judgment (“Notice”) (Docket No. 122).

Plaintiffs submit the transcript of the Deposition of Gerald R. Ramos (Jan. 24, 2007) (“Ramos Dep.”), *id.*, Ex. NN, on the pretext that it purportedly shows “that there are material issues in dispute in this case and that defendants [sic] are not entitled to judgment as a matter of law.” Notice at 3. Ramos’ deposition is totally immaterial to FEI’s motion for summary judgment. What Ramos claims he saw or did not see in his six (6) days of employment with FEI has nothing to do with the straightforward, and purely legal, issues presented by FEI’s motion. That motion raises two questions: whether the Asian elephants at issue in this lawsuit are either (i) excluded from the “taking” prohibition of the Endangered Species Act by the express exception for “pre-Act” species, *see* 16 U.S.C. § 1538(b)(1) (2000); 50 C.F.R. § 17.4 (2005); or (ii) were

bred in captivity in the United States and currently are subject to a valid captive-bred wildlife permit issued by the United States Fish and Wildlife Service authorizing FEI to “take” them. *See* Docket No. 82. Neither of these issues turns upon the treatment that plaintiffs claim the elephants receive. Rather, they depend solely upon the language, purpose and history of the statute and regulations and the accompanying case law. As it was with plaintiffs’ summary judgment opposition, the Notice is simply a smokescreen that attempts to divert the Court’s attention from legal points that plaintiffs cannot refute.<sup>1</sup>

Even if Ramos’ testimony were material to the summary judgment motion, and it is not, there is no reason to credit anything he says. Ramos has an extensive criminal record involving crimes of dishonesty – a record that, in his deposition, he admitted having falsified when he applied for employment with FEI. Ramos Dep. at 47-48. Ramos was convicted of interstate transportation of funds obtained through fraud and wire fraud and was sentenced to, and served, fourteen (14) years in federal prison. Ramos Dep. at 33-36. Ramos’ crimes occurred in the course of apparently one of the largest real estate frauds in the history of Southern California, which involved twenty-five (25) defendants who were charged with fraud and racketeering. *See* “Probe of Land Scam Ending; Lenders Lost \$250 Million,” ORANGE COUNTY REGISTER (Dec. 14, 1990) (Ex. 1 hereto).

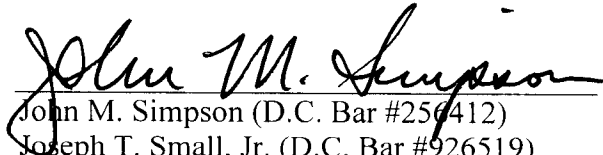
Moreover, after he was released from federal prison, Ramos violated his probation and went back to jail, serving another two (2) years. Ramos Dep. at 36-37. In this regard, Ramos appears to have perjured himself in his deposition. He testified that

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<sup>1</sup> Similarly, the Hundley and Tom affidavits that plaintiffs submitted on November 22, 2006, *see* Docket No. 113, are also immaterial. Neither affidavit addresses any of the issues raised by FEI’s summary judgment motion. Moreover, these purported witnesses worked with horses; neither had anything to do with elephants and neither has any qualification that would make them competent to comment upon elephant handling.

he violated his probation by working in a casino in Arizona. Ramos Dep. at 37. However, the record of Ramos' criminal case indicates that, notwithstanding the probation condition that Ramos not "commit another Federal, state or local crime, on July 2, 1999, in Bullhead City Justice Court, Case No. FR990429, Gerald R. Ramos was convicted of shoplifting, in violation of Section 13-1805 of the Arizona Penal Code." *United States v. Ramos*, No. 86-00466 (C.D. Cal.), Petition for Bench Warrant (Sep. 7, 1999); *see also id.*, Judgment and Commitment Order Following Revocation of Supervised Release (Feb. 8, 2000) (Ex. 2 hereto). Ramos also failed to report his arrest to his probation officer and failed to make restitution payments as required by the court in the federal criminal case. *Id.* None of this had to do with Ramos' "working in a casino" – a fact mentioned nowhere in the petition by the probation officer *Id.* While it certainly is curious that plaintiffs would associate themselves with, and embrace the statements of, a convicted felon, the proffered testimony is beside the point.

Respectfully submitted,



John M. Simpson (D.C. Bar #256412)  
Joseph T. Small, Jr. (D.C. Bar #926519)  
Lisa Zeiler Joiner (D.C. Bar #465210)  
Michelle C. Pardo (D.C. Bar #456004)  
George A. Gasper (D.C. Bar # 488988)

FULBRIGHT & JAWORSKI L.L.P.  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Telephone: (202) 662-0200  
Facsimile: (202) 662-4643

ATTORNEYS FOR DEFENDANT  
FELD ENTERTAINMENT, INC.

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