

PLAINTIFFS' EXHIBIT 3

To Plaintiffs' Opposition to Defendants' Motion to
Compel Discovery from Plaintiff Tom Rider and For
Sanctions, Including Dismissal
Civ. No. 03-2006 (EGS/JMF)

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By Electronic Delivery

Joshua D. Wolson, Esq.
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004

Re: ASPCA, et al. v. Ringling Bros. et al., Case No. 03-2006 (EGS)

Dear Josh:

I am writing to confirm the agreements we reached during our September 19, 2005 and September 22, 2005 discussions concerning defendants' responses to plaintiffs' March 30, 2004 discovery requests. Although these agreements were already memorialized in the parties' September 23, 2005 Joint Status Report Regarding Discovery, we are concerned that defendants have not yet complied with many of these agreements. Accordingly, I am reiterating that you agreed to the following on behalf of defendants:

1. Identification of individuals and employment responsibilities. Defendants agreed to add to the list of employees who work(ed) with elephants a column indicating with which unit of the circus each employee works or worked. Defendants will also provide plaintiffs with a list of individuals who have been hired from Puerto Rico since 1996, regardless of whether they presently work or ever worked with elephants. Defendants will also provide plaintiffs with a list of job titles that are encompassed within defendants' definition of "direct responsibilities" for elephants, as used in defendants' March 3, 2005 Supplemental Responses to Plaintiffs' Interrogatory Nos. 5, 8, 9, 18 and Document Request Nos. 9 and 10.

2. Information related to Asian elephants in defendants' custody. Defendants agreed to produce documents and information concerning the Asian elephants who are or were in defendants' custody since 1996 for whom information has not yet been produced, including for the elephants listed on page 5 of plaintiffs' April 5, 2005 Notice of Filing. Defendants will produce such information regardless of whether a particular elephant in defendants' custody was actually owned by defendants. Plaintiffs note that defendants'



recent production contained some records concerning some of these animals. However, plaintiffs request that defendants inform plaintiffs whether the records that have been produced constitute the entirety of the records concerning these animals.

3. Information related to defendants' alleged conservation efforts. Defendants have assured plaintiffs that they have produced – or will search for and produce – all information related to what defendants consider to be their efforts to conserve Asian elephants in the wild. Defendants have assured plaintiffs that defendants will not attempt to rely in this litigation on information relating to alleged conservation efforts that defendants had not already produced to plaintiffs.

Defendants also will no longer rest on their claim that plaintiffs' request for information related to defendants' elephant breeding efforts is overbroad as a basis for not searching for such information, and will search for and produce all information related to defendants' efforts to breed Asian elephants. Such information will include, but not be limited to, the type of information listed on page 18 of Plaintiffs' Reply in Support of Plaintiffs' Motion to Compel Discovery Responses, and listed in plaintiffs' Interrogatory Number 11.

4. Information related to tuberculosis. Defendants have agreed to withdraw their objection, for purposes of discovery, to producing information related to tuberculosis in elephants, and will search for and produce all such information, or expressly claim a privilege for any such information. This material would be in addition to any information concerning tuberculosis that is contained in the medical records defendants have already produced, for example separate files on tuberculosis maintained by defendants apart from laboratory reports or the like for particular animals.

5. Information related to plaintiffs' report. Defendants have agreed to withdraw their objection, for purposes of discovery, to producing information related to the matters discussed in plaintiffs' report entitled "Government Sanctioned Abuse, How the United States Department of Agriculture Allows Ringling Brothers Circus to Systematically Mistreat Elephants," and will search for and produce all such information. This includes information, according to your letter of October 20, 2005, concerning the trial of Mark Gebel.

Compliance with this discovery request should also include, among other things, a search for and production of any information concerning the treatment, personality, or management of the elephants named Nicole and Karen (discussed in Chapters 3 and 7 of the Report); any information concerning the Santa Clara Humane Society's 1999 inspections of Ringling Bros.' elephants (Chapter 6); any information concerning Tom Rider's complaint to the USDA (Chapter 7); and any information concerning the complaints filed with the USDA by Citizens for Cruelty Free Circuses concerning Ringling Bros.' handlers' abuse of baby elephants (Chapter 9). Such information would include any correspondence with the USDA regarding these matters, and any internal memoranda or internal correspondence of any kind concerning these matters.

6. Video, audio, and other recordings. With respect to videos or other recordings in defendants' possession, defendants have agreed to initially make available to plaintiffs the approximately 150 recordings that defendants have determined are responsive to plaintiffs' request. Plaintiffs expect to arrange for someone to go to the offices of Covington & Burling by mid-December or January to begin reviewing these recordings. Once we have confirmed this person's availability, we will contact you to finalize arrangements.

With respect to the thousands of recordings that defendants have located but not yet reviewed for responsiveness, defendants agreed to generate a list of the recordings (by title), if at all possible. Plaintiffs have not yet received that list. When plaintiffs receive this list, they will indicate to defendants which recordings they would like to review for responsiveness. For purposes of this review, plaintiffs have agreed to enter into a confidentiality agreement with defendants that would protect the confidentiality of the information obtained during that review that is ultimately determined not to be responsive to plaintiffs' discovery requests.

Defendants have also agreed to search for and determine (and inform plaintiffs) whether any additional recordings are in the possession of the Center for Elephant Conservation ("CEC"), any employee or agent of the CEC, or in the possession of any other officer, employee, or agent of Feld Entertainment that are responsive to plaintiffs' discovery requests, and in particular that concern any of the subject areas listed in plaintiffs' meet and confer letter of October 19, 2004, at 6 – i.e., elephant births, training sessions, training methods, separation of baby elephants from their mothers, breeding of elephants, rehearsals of elephants, or efforts to have mother elephants interact with their offspring.

Plaintiffs will definitely need copies of all recordings on which defendants intend to rely in this litigation.

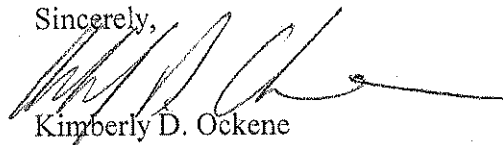
7. Plaintiffs' "identification" requests. Plaintiffs have agreed to forego responses to their interrogatory sub-parts that ask defendants to "identify" documents, provided that defendants confirm that they have produced or will produce documents responsive to the corresponding document requests. Defendants have agreed no longer to object to the number of interrogatories plaintiffs have propounded, and to answer the remaining interrogatories and sub-parts. Plaintiffs request that defendants confirm that they have in fact responded to all of the remaining interrogatories and sub-parts in full.

It has been over two months since defendants agreed to these discovery obligations. However to date, defendants have not followed through on these agreements. Accordingly, if we do not receive the agreed-upon information by December 23, plaintiffs intend to present the matter to Judge Facciola.¹

¹ Today we received a box of documents from you that we have not yet had an opportunity to review. If any of these records are being produced in response to the above agreements, plaintiffs request that defendants indicate as such on or before

Finally, the box of documents that we received from you today apparently includes additional medical records for some of the animals. However, pursuant to Judge Sullivan's order of September 26, 2005, defendants were required to produce all such medical records by September 28, 2005. Therefore, we need to know whether there are still additional medical records that have not yet been produced, and, if so, when all such records will in fact be produced to plaintiffs.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. D. Ockene', with a long horizontal flourish extending to the right.

Kimberly D. Ockene

December 23. In addition, plaintiffs request that with any future productions defendants indicate the particular discovery requests or agreements to which the records are responsive.