

**FALSE STATEMENTS OF FACT IN PLAINTIFFS' RULE 11 MOTION
AND SUPPORTING MEMORANDUM¹**

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Motion at 2.	"FEI has a track record of filing motions based on completely unfounded accusations for improper purposes. Indeed, the Virginia Supreme Court recently upheld sanctions against attorneys for FEI's Chief Executive Officer Kenneth Feld for tactics that mirror what FEI has done here."	Plaintiffs cite nothing here or in the memorandum to support the claim of an FEI "track record." FEI was never a party to the Virginia case, nor was FEI ever sanctioned in that case.
Mem. at 1.	"FEI's improper tactics are well established by its own internal documents which show that this kind of razed earth strategy is precisely what this corporation has for many years done to those who criticize the company and its operation of the circus: it 'attacks' them with 'lawsuits' and charges of 'money irregularities' to 'keep[] up the pressure . . . [so] <u>they will spend more of their resources in defending their actions.</u> "	<p>There is no evidence of any "lawsuit" by FEI against any of its critics. Plaintiffs cite no case in which FEI has sued any animal rights organization or any other "critic." There is no evidence of FEI accusing any of its critics of "money irregularities." Indeed, the proposed RICO counterclaim would be the first and only instance in which FEI has made any such claim against an animal rights group or other "critic."</p> <p>Plaintiffs cite the Long Term Animal Plan Task Force report. As has already been explained, at least twice in this case, this document is more than 10 years old, and this "plan" was never adopted or implemented by FEI. Response in Opposition to Rider's Motion for a Protective Order With Respect to Certain Financial Information at 16 (May 15, 2007) ("FEI Opp. to Rider Motion for Protective Order") and Ex. 9 thereto (Docket No. 146); Reply in Support of Defendant Feld Entertainment, Inc.'s Expedited</p>

¹ Plaintiffs' Motion Under Rule 11 Against Defendants [*sic*] and Their Counsel Concerning the Baseless Allegations Included in Their Proposed Counterclaim and Unclean Hands Defense and for Their Scurrilous Attacks on Plaintiff Tom Rider ("Motion") and Memorandum in Support of Motion ("Mem.") (Aug. 3, 2007) (Docket No. 163).

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		Motion to Enforce the Court's Order of September 26, 2005 at 10 n. 5 (July 3, 2007) ("FEI Reply on Mot. to Enforce") (Docket No. 158).
Mem. at 2 n. 1.	"Although FEI was not found liable for any damages under Virginia law, the fundamental facts of FEI's infiltration, spying, and removal of confidential information were not disputed."	FEI was not a party to the <i>PETA</i> case and therefore could not have been found liable for anything. The facts about what happened obviously were disputed since a jury trial was held on the issue, and the jury found for the defendant. The allegations of "infiltration, spying, and removal of confidential information" were directly disputed in the testimony of the defendant. Ex. 101, <i>PETA v. Feld</i> , Trial Tr. at 2355-56, 2368-69, 2397-98 (K. Feld). Furthermore, PETA's claims of "infiltration, spying and removal of confidential" information" were put before a jury, and the jury found for the defendant. Ex. 102, <i>PETA v. Feld</i> , Jury Verdict and Special Interrogatories (Mar. 15, 2006) (also attached as Ex. 46 to Reply in Support of Motion to Compel Documents Subpoenaed from the Wildlife Advocacy Project (Oct. 6, 2006) ("FEI Reply in Support of WAP Mot. to Compel") (Docket No. 95)). PETA's appeal of the jury verdict against it was refused by the Virginia Supreme Court. Ex. 103, <i>PETA v. Feld</i> , Disposition (Va. Dec. 18, 2006).
Mem. at 3.	"Since Mr. Rider left the circus, he has been traveling around the country speaking out about the abuse that he witnessed when he worked there."	Rider left the employment of FEI in November 1999 to work for another circus act operated by Daniel Raffo that traveled in Europe. That act involved some of the same elephants and the same alleged elephant abusers that Rider claims he witnessed when he was on FEI's Blue Unit. Ex. 73, Rider Dep. at 177-82.

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Mem. at 9-10 n.5; 29 n.15.	<p>“[Defendant] decided to <u>omit</u> Mr. Rider’s alleged misconduct in talking to the press from their recently filed ‘Expedited Motion to Enforce The Court’s September 26, 2005 Order’ in which they allege that the <u>other</u> plaintiffs have ‘abused the discovery process’ by referencing non-confidential documents produced in discovery on their websites. <u>See</u> Docket No. 152. Evidently, defendants and their counsel realized that they could not have it both ways – <u>i.e.</u>, they could not insist to this Court that Mr. Rider was ‘not’ engaging in any ‘media and public relations efforts,’ as alleged in their proposed RICO counterclaim, PCC ¶ 73, and at the same time demand that the Court order Mr. Rider to <u>stop</u> making ‘statements to the press’ about defendants’ abuse of their elephants.”</p> <p>* * *</p> <p>“FEI and its counsel evidently now recognize this reality, which is why their recent motion asking this Court to halt plaintiffs’ media efforts omits any reference to the specific demand made in the April 30, 2007 letter concerning Mr. Rider’s activities.”</p>	<p>Rider’s actions are at issue in the motion to enforce. <i>See</i> FEI Reply on Mot. to Enforce at 10-11. As has already been explained, Rider was not addressed in the opening motion -- not because of some purported recognition that defendant could not “have it both ways” -- but because FEI suspected, but did not then have direct evidence, that Rider was also involved in the abuse of the discovery process. <i>Id.</i> at 10 n.6. Rider has since confirmed that he was heavily involved in plaintiffs’ abuse of the discovery process. <i>Id.</i> at 10-11; Notice of Supplemental Authority by Feld Entertainment, Inc. (July 18, 2007) (Docket No. 160). Furthermore, counsel for FEI rejected the assertion that Rider could not be spokesman and a bribed witness at the same time in the correspondence that preceded the motion to enforce. FEI Reply on Mot. to Enforce at 10 n.6. The assertion that FEI counsel “recognized” some kind of inconsistency between Rider’s violations of the Court’s September 26, 2005 order and the fact that he is a compensated witness therefore is false.</p> <p>Plaintiffs have done considerably more than “reference” discovery documents “on their websites.” They have given the documents in their entirety to the press. Plaintiffs failed to disclose that fact to the Court in their memorandum in opposition to the Motion to Enforce and have failed to disclose it here.</p> <p>Nowhere in FEI’s Motion to Enforce the brief in support, the reply brief or the proposed order is there any request that the Court order plaintiffs to “<u>stop</u> making ‘statements to the press’ about</p>

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		defendants' abuse of their elephants." The motion seeks an order to stop plaintiffs from referring – outside the litigation – to material produced in discovery in this case by FEI.
Mem. at 14.	"Thus, their proposed counterclaim does not include any evidence that anyone has stated that he or she . . . has paid him [Rider] to be a plaintiff in this case."	Paragraph 46 of the proposed counterclaim refers to a December 21, 2001 letter from ASPCA describing a \$6000 payment to WAP for the "Tom Ryder [<i>sic</i>] project" to pay for Rider's "work on the Ringling Brothers' circus tour <i>and litigation</i> ." Ex. 1, Annotated RICO CC ¶ 46 (citing Ex. 10, ASPCA letter to WAP (12/21/01)) (Emphasis added). Paragraphs 110 and 111 of the proposed counterclaim describe three payments made by API to WAP to support the " <i>Ringling Brothers and Barnum & Bailey Case</i> ," and paragraph 136 notes that API changed the word " <i>Case</i> " to "PR Efforts" after FEI filed its motion to compel subpoena compliance against WAP. Ex. 1, Annotated RICO CC ¶¶ 110-111, 136 (citing Exs. 43, 48, and 54, API Letters to WAP (4/21/06, 7/20/06, 1/3/07)) (Emphasis added). Paragraph 120 of the proposed counterclaim quotes from an email by Katherine Meyer soliciting payments of the funds at issue (which eventually were paid to Rider) in which Meyer comments upon Rider's " <i>total commitment to the lawsuit</i> ." Ex. 1, Annotated RICO CC ¶ 120 (citing Ex. 16, Meyer E-mail to Org. Pls. (11/5/03)) (Emphasis added).
Mem. at 13 n. 7.	"Thus, although the Court of Appeals only addressed the standing of Mr. Rider when it held that this case should proceed . . . the other plaintiffs to this action have also alleged Article III standing – of precisely the kind	Judge Sullivan's ruling that the organizational plaintiffs have no standing based on "informational injury" was left undisturbed on appeal. <i>ASPCA v. Ringling Bros. and Barnum & Bailey Circus</i> , 317 F.3d 334, 336 &

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	that was recently upheld by a district court in California.”	338 (D.C. Cir. 2003). The district court’s ruling binds the plaintiffs unless and until it is either reconsidered by that court or overruled by the D.C. Circuit.
Mem. at 14	“Therefore, because, according to defendants’ own proposed RICO complaint, the ‘illegal’ scheme to ‘bribe’ Mr. Rider to make false standing allegations did not begin until 2001 – a year <u>after</u> those standing allegations were first made – defendants’ insistence that Mr. Rider has only made those allegations in exchange for ‘bribes’ is demonstrably false on that basis alone.”	Paragraph 32 of the proposed counterclaim specifically alleges that Rider has been paid by one or more of the current or former plaintiffs in this case from and after the filing of the original complaint on July 11, 2000 and that in May 2001, the current organizational plaintiffs took over the funding of an ongoing program to pay Rider. Ex. 1, Annotated RICO CC ¶ 32 (citing Ex. 7, Weisberg Email to Hawk (5/7/01); Ex. 8, Rider Letter to PAWS (5/14/01); Ex. 73, Rider Dep. at 204-11)). The record also is undisputed that Rider began receiving compensation from former plaintiff the Performing Animal Welfare Society in March 2000. Ex. 73, Rider Dep. at 204-05.
Mem. at 15	“[S]ee also <u>Williams & Connolly</u> [sic], 643 S.E. 2d at 136-40 (upholding sanctions against other Feld counsel . . .”).	Counsel for FEI in the present case do not represent Kenneth Feld in any pending matter and did not at the time that the <i>Williams & Connolly</i> decision was issued or the actions addressed in that opinion occurred.
Mem. at 27-28	Describing the money paid to Rider as “funding that amounts to less than \$20,000 a year . . .”	WAP’s own Form 1099’s for 2004 and 2005 show total annual payments to Rider of \$23,940 and \$33,600, respectively, and Rider admits that WAP paid him at least as much in 2006 as it paid him in 2005. Ex. 73, Rider Dep. at 123-24, 136-37; Ex. 83, WAP 1099 Forms to Rider.
Mem. at 30	“See Transcript of September 16, 2005 Hearing at 29-30 (‘Your Honor, we have Tom Rider, a plaintiff in this	Rider has received money from <i>all</i> of Katherine Meyer’s clients in this case, not just “some” of them. The van is

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	case, he's going around the country in his own van, he gets money from some of the clients and some other organizations to speak out and say what really happened when he worked there')"	Rider's, but only because Meyer sent him a \$5500 check from WAP to pay for it. Ex. 31, Meyer Letter to Rider (4/12/05); Ex. 73, Rider Dep. at 142-43.
Mem. at 31.	"See . . . <u>Williams & Connolly</u> , 643 S.E.2d at 146 (FEI lawyers sanctioned for '[c]ontemptuous language and distorted representations')"	FEI was not sanctioned, and no filing in that case on behalf of non-party FEI was the subject of sanctions.
Mem. at 32.	"Defendants, of course, have no actual evidence that Mr. Rider has 'destroyed' any relevant documents in this case."	<p>The Declaration of Lisa Joiner ¶ 5 (May 7, 2007) documents an admission by counsel for Rider that Rider was not keeping responsive documents during at least part of the time in which this case has been pending. Ex. 32 to Reply in Support of FEI's Motion to Compel Discovery from Plaintiff Tom Rider and for Sanctions, Including Dismissal (May 7, 2007) (Docket No. 144). The Meyer declaration admits that Rider did not keep WAP documents dated prior to March 2004. "Not keeping" is synonymous with "destruction."</p> <p>In addition, neither Rider nor plaintiffs have ever denied the assertion that Rider has destroyed documents responsive to FEI's production requests, nor has Rider come forward with a declaration or other sworn statement to the effect that he has not in fact destroyed documents that are responsive to FEI's production requests. Furthermore, Rider has failed to produce documents that a third party (WAP) has confirmed exist, that Rider once had, that are responsive to FEI's production requests and as to which Rider had an affirmative obligation as a plaintiff in this case to preserve. The failure to deny an assertion of fact</p>

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		when there is a duty to do so and the failure to perform when there is a duty to do so both have evidentiary significance.
Mem. at 34.	“[S]ee also <i>Williams & Connolly</i> , 643 S.E.2d at 146 (sanctions upheld against FEI attorneys where trial court found that certain representations made ‘didn’t even happen, and the rest of them were either twisted or distorted’).”	FEI was not sanctioned, and no filing in that case on behalf of non-party FEI was the subject of sanctions.
Mem. at 37.	Characterizing Rider’s omission of the “child custody” cases from his interrogatory answer as “inadvertent.”	The Rider declaration that plaintiffs cite states that “I did not mention these custody disputes in my Answer to Interrogatory No. 7 because, when I was providing that answer, it did not even occur to me that those kinds of matters are ‘civil litigation.’ I am not a lawyer and did not realize that filings in court concerning marital disputes are ‘civil litigation.’” Declaration of Tom Rider ¶¶ 3-4 (Nov. 2, 2007 [<i>sic</i>]) (Ex. G to Docket No. 106). Thus, the information was known to Rider but intentionally not included on the basis of what he claims now he understood then as “civil litigation.” The omission was deliberate, not “inadvertent.” Notably, this misdated declaration was not made by Rider “under pain of perjury” as required by 28 U.S.C. § 1746.
Mem. at 40	“Indeed, it is now absolutely clear that this is precisely the scorched earth approach that FEI uses to discredit its critics – <i>i.e.</i> , it attacks them with contemptuous accusations, bogus lawsuits, and similar tactics to tarnish their reputations, make them spend money, take the focus off its own misconduct, and generally harass them	There is no evidence, and plaintiffs cite none, that FEI has ever sued any of its critics or made contemptuous statements about them. The implied link that plaintiffs make to the <i>Williams & Connolly</i> case is false because FEI was not a party to the <i>PETA v. Feld</i> case, and no filing in that litigation on behalf of non-party FEI was the subject

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	into ceasing the conduct that FEI dislikes.”	of sanctions. The other claimed actions -- forcing adversaries to spend money, etc. – all are based on a document outlining a actions that the record in this case shows were never undertaken. FEI Opp. to Rider Motion for Protective Order at 16 and Ex. 9 thereto; FEI Reply on Mot. to Enforce at 10 n.5.
Mem. at 41 n.23.	<p>“FEI’s Chief Executive Officer, Kenneth Feld . . . [has] admitted that they have conducted ‘covert’ operations against animal protection groups that criticize the circus”</p> <p>“FEI also hired a former CIA official to spy on animal groups”</p>	<p>Nothing cited here shows that Kenneth Feld has ever made such an “admission.” Indeed, he testified to precisely the opposite in <i>PETA v. Feld</i>. Ex. 101, <i>PETA v. Feld</i>, Trial Tr. at 2355-56, 2368-69, 2397-98 (K. Feld).</p> <p>Plaintiffs cite nothing for the claim that Clare George was hired to “spy” or did in fact “spy” on any “animal group.” In fact, George’s activities had nothing to do with animal rights or animal rights groups. <i>Id.</i> at 2339, 2346, 2349 (K. Feld).</p>
Mem. at 42	Plaintiffs cite the transcript of a July 30, 2004 hearing in <i>PETA v. Feld</i> for the proposition that the court sustained a demurrer with respect to a “baseless” abuse of process counterclaim by Kenneth Feld against PETA, thereby implying that the counterclaim was dismissed.	In a portion of the same hearing (pp. 24-25) – that plaintiffs <i>omit</i> from the hearing excerpts attached to their brief – the court granted Feld leave to replead his counterclaim which he did, and the amended abuse of process counterclaim against PETA survived a second demurrer by PETA. Ex. 99, <i>PETA v. Feld</i> , Hearing Tr. at 24-25 (7/30/04); Ex. 100, <i>PETA v. Feld</i> , Hearing Tr. at 13-14 (10/8/04). Feld’s counterclaim was ultimately tried and submitted to the jury in that case. Ex. 102, <i>PETA v. Feld</i> , Jury Verdict and Special Interrogatories (Mar. 15, 2006) (also attached as Ex. 46 to Reply in Support of WAP Mot. to Compel (Docket No. 95). Thus, the assertion that a “completely baseless counter-

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		<p>claim against PETA” by Feld for abuse of process was dismissed by the Virginia court is false. The counterclaim had enough basis to warrant a trial to, and decision by, a jury. In fact, during the trial at the close of Feld’s evidence, the court denied PETA’s motion to strike the counterclaim which is the Virginia equivalent to a Rule 50 motion for judgment. Ex. 101, <i>PETA v. Feld</i>, Trial Tr. at 2526 (court denial of motion to strike).</p>
Mem. at 42	<p>“FEI’s own internal document reveals that attacking animal protection groups with ‘lawsuits’ and charges of ‘money irregularities’ is one of FEI’s key strategies for diminishing the effectiveness of such groups, since this requires them to ‘spend more of their resources defending their actions,’ than in criticizing the circus.”</p>	<p>There is no evidence that this “is” or ever was FEI’s strategy. The cited document is more than ten years old and describes actions that the record in this case shows were never carried out. FEI Opp. to Rider Motion for Protective Order at 16 and Ex. 9 thereto; FEI Reply on Mot. to Enforce at 10 n. 5. Plaintiffs cite no lawsuit filed by FEI against any animal protection group or any instance in which FEI has charged an animal protection group with “money irregularities.”</p>