

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.

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Case No. 03-2006 (EGS/JMF)

DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION UNDER RULE 11

EXHIBIT 5

**PLAINTIFFS' EFFORTS TO COVER-UP PAYMENTS TO RIDER
THROUGHOUT DISCOVERY IN THE ESA ACTION**

#	Deficiency	Citation ¹
1	ASPCA omitted all of its direct payments to Rider from its original interrogatory responses.	Mot. at 6, 10, 35-36.
2	ASPCA omitted all of its direct payments to Rider from its supplemental interrogatory responses.	Mot. at 35-36.
3	ASPCA has not produced documents relating to the payments it made directly to Rider during 2002-2003 (or the laptop and cell phone with which it provided him).	Mot. at 35.
4	ASPCA has not produced documents relating to the fund-raiser it held for Tom Rider.	Mot. at 35.
5	ASPCA has not produced documents relating to its payments to WAP (including documents that FEI has since obtained from alternative sources).	Mot. at 38.
6	ASPCA has asserted an attorney-client privilege for communications about this lawsuit with third parties (including their co-plaintiffs) even when attorneys were not present.	Mot. at 38; Reply at 4-6.
7	ASPCA omitted numerous non-privileged conversations with Rider from its original interrogatory responses (including those that ASPCA later testified about that clearly are not privileged)	Mot. at 10, 18-20; Reply at 4 n.2.
8	ASPCA omitted all of its communications with WAP from its original interrogatory responses.	Mot. at 19, 23-25; Reply at 4 n.2.
9	ASPCA omitted all of its communications with WAP from its supplemental interrogatory responses.	Mot. at 23-25; Reply at 4 n.2.
10	ASPCA refused to produce information on the basis that it was "confidential and proprietary" even though FEI offered to accept it subject to a protective order.	Mot. at 39-41; Reply at 21-23.

¹ The Organizational Plaintiffs' discovery deficiencies are further discussed in FEI's Motion to Compel Discovery From the Organizational Plaintiffs and API (5/29/07) ("Mot.") and the Reply Thereto (7/13/07) ("Reply"). Rider's discovery deficiencies are further discussed in FEI's Motion to Compel Discovery From Tom Rider and for Sanctions, Including Dismissal (3/20/07) ("Mot.") and the Reply Thereto (5/7/07) ("Reply").

#	Deficiency	Citation
11	ASPCA asserted two separate objections (an alleged attorney-client privilege and an alleged "confidential and proprietary" objection) in its discovery responses that were withdrawn as merely over-inclusive when asked to actually substantiate them. One of these objections was not even withdrawn during the parties' lengthy meet and confer process; it was only withdrawn after FEI sought the Court's assistance.	Mot. at 33 n.12; Reply at 21-23.
12	ASPCA has asserted an alleged First Amendment privilege (almost three years after FEI's discovery requests) only after FEI discovered that certain documents and information were not produced.	Mot. at 20-23; Reply at 8-12.
13	ASPCA has not provided a privilege log for any documents allegedly protected by the First Amendment.	Mot. at 31-34; Reply at 5 n.11.
14	ASPCA has refused to individually log any documents allegedly protected by the attorney-client privilege and allegedly involving this litigation.	Mot. at 31-34; Reply at 12-16.
15	AWI omitted all of its direct payments to Rider from its original interrogatory responses.	Mot. at 6, 10, 36.
16	AWI omitted all of its direct payments to Rider from its supplemental interrogatory responses.	Mot. at 36.
17	AWI has not produced documents relating to the payments it made directly to Rider in 2001, 2004, and 2005.	Mot. at 38; Reply at 19.
18	AWI omitted all of its payments to WAP from its original interrogatory responses.	Mot. at 6.
19	AWI omitted certain payments to WAP from its supplemental interrogatory responses.	Mot. at 12.
20	AWI withheld documents relating to its payments to WAP prior to June 2004 until FEI obtained them from alternative sources and specifically requested that AWI cure its prior deficiency.	Mot. at 12, 38.

#	Deficiency	Citation
21	AWI has not produced documents (other than the invitation) relating to the fund-raiser it held for Tom Rider.	Mot. at 35.
22	AWI has asserted an attorney-client privilege for communications about this lawsuit with third parties (including their co-plaintiffs) even when attorneys were not present.	Mot. at 18-20.
23	AWI omitted numerous non-privileged conversations with Rider from its original interrogatory responses (including those that AWI later testified about that clearly are not privileged).	Mot. at 11, 18-20; Reply at 4 n.2.
24	AWI omitted all of its communications with WAP from its original interrogatory responses.	Mot. at 23-25; Reply at 4 n.2.
25	AWI has asserted the attorney-client privilege in lieu of stating whether Rider was employed when its President, Cathy Liss, first met him.	Mot. at 9.
26	AWI has asserted an alleged First Amendment privilege (almost three years after FEI's discovery requests) only after FEI discovered that certain documents and information were not produced.	Mot. at 20-23; Reply at 8-12.
27	AWI has not provided a privilege log for any documents allegedly protected by the First Amendment.	Mot. at 31-34; Reply at 5 n.11.
28	AWI has refused to individually log any documents allegedly protected by the attorney-client privilege and allegedly involving this litigation.	Mot. at 31-34; Reply at 12-16.
29	FFA omitted all of its payments to Rider from its original interrogatory responses.	Mot. at 6, 10, 36.
30	FFA omitted all of its payments to Rider from its supplemental interrogatory responses.	Mot. at 36.
31	FFA has not produced documents relating to its payments to Rider.	Mot. at 38.
32	FFA has asserted an attorney-client privilege for communications about this lawsuit with third parties (including their co-plaintiffs) even when attorneys were not present.	Mot. at 18-20; Reply at 4-6.

#	Deficiency	Citation
33	FFA has asserted an alleged First Amendment privilege (almost three years after FEI's discovery requests) only after FEI discovered that certain documents and information were not produced.	Mot. at 20-23; Reply at 8-12.
34	FFA has not provided a privilege log for any documents allegedly protected by the First Amendment.	Mot. at 31-34; Reply at 5 n.11.
35	FFA has refused to individually log any documents allegedly protected by the attorney-client privilege and allegedly involving this litigation.	Mot. at 31-34; Reply at 12-16.
36	Neither ASPCA, nor AWI, nor FFA has disclosed in its interrogatory responses that they discussed in 2001 and again in 2003 how they would divide the cost of funding Rider after he quit his job at PAWS.	Mot. at 10.
37	API has asserted an attorney-client privilege for communications about this lawsuit with third parties (including their co-plaintiffs) even when attorneys were not present.	Mot. at 18-20.
38	API has not provided a privilege log for any documents allegedly protected by the First Amendment.	Mot. at 31-34; Reply at 5 n.11.
39	API has refused to individually log any documents allegedly protected by the attorney-client privilege and allegedly involving this litigation.	Mot. at 31-34; ; Reply at 12-16.
40	Rider admittedly has not preserved documents pre-dating June 2004 relating to payments he has received.	Reply at 3.2
41	Rider presumably has failed to preserve documents post-dating June 2004 relating to payments he has received.	Mot. at 16-19; Reply at 3-4.
42	Rider submitted a false interrogatory response indicating that he has not received compensation from other animal advocates.	Mot. at 10-11; Reply at 7.

² See also Declaration of Katherine Meyer, Attached as Exhibit 1 to Pls.' Opposition to FEI's Motion to Compel Discovery From Tom Rider and For Sanctions, Including Dismissal (4/19/07), at ¶ 3.

#	Deficiency	Citation
43	Rider has not produced all of the documents relating to payments he has received from WAP, nor has he produced all of his communications with WAP.	Mot. at 21-25.
44	Rider has refused to produce certain documents on the basis that a protective order is needed, yet he has never provided a proposed order to FEI, nor did he seek one from this Court until after FEI moved to compel.	Mot. at 22 n.14; Reply at 7-11.
45	Rider has refused to produce documents within his possession, custody, control (including those that exist in his attorney's office).	Mot. at 19-21; Reply at 6-7.
46	Rider omitted all of his communications with WAP from his original interrogatory responses.	Mot. at 34; Reply at 19-20.
47	Rider has asserted an attorney-client privilege for communications about this lawsuit with third parties (including his co-plaintiffs) even when attorneys were not present.	Mot. at 25-32; Reply 12-14.
48	In lieu of describing each of his communications with other animal advocates, Rider frivolously incorporated by reference the entire internet.	Mot. at 35.
49	Rider has not provided a privilege log for any documents allegedly protected by the First Amendment.	Mot. at 37-39; Reply at 21-22.
50	Rider has refused to individually log any documents allegedly protected by the attorney-client privilege and allegedly involving this litigation.	Mot. at 37-39; Reply at 21-22.