UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, ET AL.,

AND

ANIMAL PROTECTION INSTITUTE,
1122 S Street
Sacramento, CA 95814,

Plaintiffs,

v.

RINGLING BROS. AND BARNUM & BAILEY CIRCUS, ET AL.,

Defendants.

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

SUPPLEMENTAL COMPLAINT

1. This Supplemental Complaint adds the Animal Protection Institute as a plaintiff to this pending case under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq. against Ringling Brothers and Barnum & Bailey Circus ("Ringling Bros.") for "taking" endangered elephants -- i.e. harming, harassing, and wounding them -- in violation of the ESA and the regulations implementing that statute.

Jurisdiction

2. This Court has jurisdiction over this case pursuant to 16 U.S.C.§ 1540(g) and 28 U.S.C. § 1331.

Parties

3. The Animal Protection Institute ("API") is a non-profit membership organization dedicated to eliminating the abuse, neglect, and exploitation of animals, including animals used in entertainment. API has approximately 85,000 members and supporters throughout the United States, including Washington, D.C. It brings this action on its own behalf and on behalf of its members.

4. API spends substantial resources each year on advocating better treatment for animals held in captivity, including animals used in circuses. It routinely sends submissions to the federal government concerning the treatment of captive animals, particularly animals used in circuses, and it responds to requests for public comment from the federal government concerning animal welfare issues. API's members also routinely comment on such matters.

5. API publishes a magazine, on a quarterly basis, which goes to all of its members, and it operates a website on the world wide web. The magazine and website report on animal welfare issues, including legislative and regulatory matters affecting animals used for entertainment, and particularly animals used in circuses, and they also inform API's members about actions that can be taken to promote the protection and humane treatment of animals.

6. Defendants' unlawful actions in "taking" endangered elephants as described in the initial Complaint in this action, and as further described below, injure API and its members. Defendants' "taking" of elephants without permission from the Fish and Wildlife Service pursuant to the process created by section 10 of the Endangered Species Act violates API's and its members' statutory right to obtain the information generated by the section 10 process, and to participate in that process. In particular, defendants' unlawful actions cause API and its members

injury by depriving API of the ability to obtain and disseminate through its newsletter and website information regarding defendants' treatment of endangered elephants who are commercially exploited. In addition, because defendants "take" elephants without permission from the FWS -- and hence without public notice and comment as required by the ESA -- API must spend financial and other resources pursuing alternative sources of information about defendants' actions and treatment of elephants in order to obtain such information for use in its work, to disseminate to its members and the public, and to submit comments and other submissions to the agencies with jurisdiction over these matters. This requires API to spend its limited resources on monitoring the treatment of the elephants used by defendants when API could otherwise spend such resources on other animal protection projects that would benefit the organization as well as its members.

If API prevails in this case, Ringling will either no longer be allowed to use Asian elephants in its circus, will have to do so without engaging in acts that "take" those animals, or will have to seek permission from the FWS to engage in practices that constitute a "take" of the animals. Any such relief would redress API's injuries, and the injury to its members, by making it less likely that API would have to continue to spend substantial resources monitoring defendants' treatment of Asian elephants, reporting its findings to its members, the public, and regulatory authorities, and advocating for better treatment of these animals.

7. If API prevails in its claim for relief regarding forfeiture of the endangered elephants in defendants' possession, it will have a statutory right to a reward for furnishing information that leads to such forfeiture, pursuant to the ESA, 16 U.S.C. § 1540(d).

8. The defendants to this Supplemental Complaint are the same as the defendants to the Complaint in this action, and therefore paragraphs 25-35 of the Complaint are hereby incorporated by reference.

Relevant Facts

9. This case challenges the defendants' violations of the ESA, by engaging in actions that "take" endangered Asian elephants, including the routine beating and striking of elephants with bullhooks and other instruments; the chaining of elephants for long periods of time; and the forcible removal of baby elephants from their mothers before they are naturally weaned.

10. The same statutory and regulatory framework that is set forth in the Complaint, at ¶¶ 36 - 47, also applies to this Supplemental Complaint, and therefore, all of those paragraphs from the Complaint are hereby incorporated by reference. In addition, all of the factual allegations set forth in the Complaint at ¶¶ 48 - 95 also apply to this Supplemental Complaint and are therefore also hereby incorporated by reference.

11. On July 22, 2005, API sent a notice letter to Kenneth Feld, President of Ringling Brothers and Barnum & Bailey Circus, advising him that Ringling Bros. is in violation of the "take" prohibitions of Section 9 of the ESA, 16 U.S.C. § 1538(a), "since its elephant trainers and handlers routinely chain and confine their elephants, use the bullhook on their elephants, and forcibly separate baby elephants from their mothers." In support of these allegations, API relied on, expressly incorporated by reference, and attached the notice letters sent by the plaintiffs in this action and other animal protection groups on December 21, 1998, November 15, 1999, and April 12, 2001.

12. As to the allegations concerning the chaining and confinement of the elephants, API additionally relied on more recent eye-witness accounts of former Ringling Bros. employee Frank Hagan, who left the circus in August, 2004, as well as more recent video footage, and photographs taken as recently at January 26, 2005, which show that, within seconds of the elephants completing their walk from the train station to the arena where they were to perform, chains were placed on them. In addition, API noted that, when the elephants are traveling from location to location, they remain chained in the stock cars for as long as 2-3 days consecutively, and are not provided any opportunity to walk around, or otherwise to exercise.

13. As to the allegations concerning Ringling Bros.' use of the bullhook, API additionally relied on the recent eyewitness accounts of former Ringling Bros. employee Frank Hagan, and videotape footage, including, for example, the fact that, on September 3, 2004, a CBS affiliate in San Francisco aired recent footage of a Ringling Bros. handler striking an elephant with a bullhook.

14. As to the allegations concerning Ringling Bros.' forcible removal of baby elephants from their mothers, API relied on the fact that Ringling Bros.' employees themselves admitted to officials of the United States Department of Agriculture that such "separation" techniques were "routine" at defendants' breeding farm, which defendants refer to as the "Center for Elephant Conservation," and the additional fact that Ringling Bros. has continued to produce baby elephants at the CEC for use in its circus and does not allow those animals to be naturally weaned from their mothers or to stay with their mothers, as they would in the wild.

Claims for Relief

15. API's claims for relief are the same as those contained in the original Complaint at ¶¶ 96-97, and are therefore also hereby incorporated by reference.

WHEREFORE, plaintiff API requests that this Court grant it the same relief that has been requested by the other plaintiffs to this case, as stated at pages 21-22 of the Complaint.

Respectfully submitted,

Katherine A. Meyer
(D.C. Bar No. 244301)
Kimberly D. Ockene
(D.C. Bar No. 461191)
Eric R. Glitzenstein
(D.C. Bar No. 358287)

Meyer Glitzenstein & Crystal
1601 Connecticut Avenue, Suite 700
Washington, D.C. 20009
(202) 588-5206

Counsel for Plaintiffs

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