UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, et al.,	)	
Plaintiffs,	)	
v.	)	**Civ. No. 03-2006 (EGS/JMF)**
RINGLING BROTHERS AND BARNUM & BAILEY CIRCUS, et al.,	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL COMPLAINT ADDING THREE FORMER RINGLING BROTHERS EMPLOYEES AS ADDITIONAL PLAINTIFFS

Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, plaintiffs move for leave to file the attached Second Supplemental Complaint in this case for the sole purpose of adding as additional plaintiffs three former Ringling Brothers' employees who recently worked for Ringling Brothers' "Red Unit" during 2004-2006 – Archele Hundley, Robert Tom, Jr., and Margaret Tom. As demonstrated in the accompanying memorandum of law, these former employees' claims against defendant arising under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq., concerning the "take" of Asian elephants by abusing them with bull hooks and keeping them chained for most of the day and night, are identical to those of the existing plaintiffs, as supplemented by additional, more recent evidence of the same continuing violations of the statute.

Therefore, especially because these three individuals could file their own related lawsuit against defendant challenging these violations of the ESA, which would only add to the number of cases on this Court's docket, it would serve the interest of judicial economy and efficiency to

allow plaintiffs to add these three individuals as additional plaintiffs. Moreover, allowing plaintiffs to add these plaintiffs is especially appropriate in light of this Court's recent ruling that plaintiffs may only seek relief in this case with respect to the "Pre-Act" elephants – i.e., those elephants obtained by defendant (or someone else) prior to the date the Asian elephant was listed as endangered under the ESA. See Memorandum Opinion (August 23, 2007) (Docket No. 173). All three of these new plaintiffs have witnessed defendant's mistreatment of such "Pre-Act" elephants.

As further demonstrated in the accompanying memorandum, defendant will not be prejudiced by granting this motion, since plaintiffs informed defendant on March 29, 2007 that plaintiffs intend to rely on all three of these individuals as fact witnesses, and hence defendant will presumably need to take discovery from them in any event, and the new plaintiffs are willing to provide all other discovery that is required of other parties to the litigation within the time-frame set by this Court in its recent ruling. See Order (August 23, 2007) (Docket No. 178).

Counsel for defendant has informed counsel for plaintiffs that they will oppose this motion.

Respectfully submitted,

/s/ Katherine A. Meyer
Katherine A. Meyer
(D.C. Bar No. 244301)
Kimberly D. Ockene
(D.C. Bar No. 461191)
Tanya M. Sanerib
(D.C. Bar No. 473506)

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

August 29, 2007

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Plaintiffs,	)	
v.	)	**Civ. No. 03-2006 (EGS/JMF)**
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Defendants.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL COMPLAINT ADDING THREE FORMER RINGLING BROTHERS EMPLOYEES AS PLAINTIFFS

Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, plaintiffs have moved for leave to file a Second Supplemental Complaint in this action under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq., for the sole purpose of adding three new individual plaintiffs – Archele Hundley, Robert Tom, Jr., and Margaret Tom. For the reasons demonstrated below, and particularly now that the Court has limited the claims that may be pursued to only the "Pre-Act" elephants at issue, the motion should be granted. See Memorandum Opinion (August 23, 2007) (Docket No. 173).

BACKGROUND

In this ESA case, plaintiffs – the American Society for the Prevention of Cruelty to Animals, the Fund for Animals, the Animal Welfare Institute, the Animal Protection Institute, and Tom Rider – challenge routine, continuing practices of Feld Entertainment, Inc., owner of the Ringling Brothers and Barnum & Bailey Circus ("Ringling Bros."), which plaintiffs allege unlawfully "take" endangered Asian elephants in violation of Section 9 of the ESA, 16 U.S.C. §

1538(a), and that statute's implementing regulations. In particular, plaintiffs allege that Ringling Bros. illegally "takes" the elephants – i.e., harms, harasses, and wounds them, 16 U.S.C. § 1532(19) (definition of "take") – by beating and striking the elephants with sharp bull hooks, keeping them chained for long periods of time, and forcibly removing baby elephants from their mothers with ropes and chains before they are naturally weaned. Complaint ¶¶ 62-83. Plaintiffs allege that defendant engages in these unlawful actions on a daily basis, throughout the country. Complaint ¶¶ 1, 91.

The original Complaint was filed by the American Society for the Prevention of Cruelty to Animals, the Fund for Animals, the Animal Welfare Institute, and Tom Rider. On February 22, 2006, this Court granted plaintiffs' motion to file a Supplemental Complaint to add the Animal Protection Institute as an additional plaintiff. See Order (Docket No. 60).

As set forth in the new proposed Supplemental Complaint, Robert Tom, Jr., Margaret Tom, and Archele Hundley are all former employees of Ringling Bros., who recently left the circus. See Proposed Second Supplemental Complaint ¶¶ 3, 9, 15 (Exhibit 1). Mr. and Mrs. Tom worked at the circus for approximately two years until August 2006; Ms. Hundley worked at the circus from approximately April 20, 2006 until June 27, 2006. See id. All three of these former employees worked for Ringling Bros.' "Red Unit," and they all became emotionally attached to the Asian elephants who travel with that Unit. See id. However, all three of these former employees also witnessed routine abuse of the elephants by Ringling Bros.' employees: they observed both high-level and low-level personnel beat, strike, and hit the elephants with sharp bull hooks behind the animals' ears, on their heads and legs, and on other parts of their bodies, and they also saw the elephants chained for many hours at a time. See id. ¶¶ 4, 10, 16.

According to these former employees, such mistreatment "was part of the circus's routine, accepted way of treating these animals." See id.

On March 29, 2007, plaintiffs notified defendant that they intend to rely on these three individuals as fact witnesses in this case, see Letter to Lisa Joiner (Exhibit 2), and, on March 30, 2007, pursuant to the notice provisions of the ESA, 16 U.S.C. § 1540(g)(2)(A), these three former Ringling employees sent defendant and the Secretary of the Interior the requisite notice letter alleging the same unlawful practices that are the subject of this pending litigation. See Letter to Kenneth Feld from Katherine A. Meyer (March 30, 2007) (Exhibit 3). In that letter, the former employees notified defendant Feld Entertainment, Inc. that Ringling Bros.' use of the bull hook and the continuous chaining of the elephants – which these former employees witnessed during 2004-2006 – constitute the unlawful "take" of Asian elephants in violation of Section 9, because this treatment "harms," "harasses," and "wounds" the animals. See id. at 1-2; see also 16 U.S.C. § 1532(19) (definition of "take").

The former employees also incorporated by reference the notice letters that had previously been sent to defendant regarding this matter, and asserted that the bull hook and chaining practices that they witnessed during 2004-2006 "are precisely the same kind of bull hook and chaining practices included in [these prior notice] letters, and yet these illegal activities continue day after day at the Ringling Bros. circus." See Exhibit 3. Accordingly, as required by the ESA as a precondition to pursuing a citizen suit, Ms. Hundley and Mr. and Mrs. Tom put defendant on notice of its "additional and continuing violations of the law." Id. However, they have not received any response to that notice letter. Therefore, now that the sixty days has expired from the date these former Ringling employees sent their notice letter to defendant, they

seek to join the pending lawsuit as additional plaintiffs.

ARGUMENT

Rule 15(d) provides that "[u]pon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." See also United States v. Hicks, 283 F.3d 380, 385 (D.C. Cir. 2002) (same) (quoting Rule 15(d)). Such supplemental pleadings enable courts to award complete relief in one action by avoiding additional costs, delay, and the waste of judicial resources. See New Amsterdam Cas. Co. v. Waller, 323 F.2d 20, 28-29 (4th Cir. 1963).

Hence, motions to supplement pleadings "are to be 'freely granted when doing so will promote the economic and speedy disposition of the entire controversy between the parties, will not cause undue delay or trial inconvenience, and will not prejudice the rights of any of the other parties to the action.'" Hall v. C.I.A., 437 F.3d 94, 101 (D. C. Cir. 2006) (quoting Wright et al., Federal Practice and Procedure § 1504, at 186-87); see also Banks v. York, 448 F. Supp. 2d 213, 214 (D.D.C. 2003) ("the court should freely grant a party's request to file a supplemental pleading 'when the supplemental facts connect it to the original pleading'") (internal citations omitted). Moreover, under Rule 15, the burden is generally on the non-moving party to persuade the court that the motion should be denied. See Dove v. Washington Metro. Area Transit Auth., 221 F.R.D. 246, 247 (D.D.C. 2004); Nurriddin v. Goldin, 382 F. Supp. 2d 79, 88 (D.D.C. 2005).

Here, as explained above, since the original Complaint in this case was filed, these three individuals became employed by Ringling Bros., had the opportunity to be around and observe the Asian elephants on the Red Unit, became emotionally attached to these animals, and saw them routinely mistreated by Ringling Bros.' employees in a manner that constitutes a "take" under Section 9 of the ESA. They therefore sent defendant a formal notice letter in accordance with the ESA concerning the same ongoing unlawful activities under the ESA that are the subject of the pending Complaint, with more recent personal accounts of such violations – and at the Red Unit, versus the "Blue Unit" where plaintiff Tom Rider was employed. Therefore, plaintiffs seek to have these individuals, who will testify in this case in any event and who could file a related case advancing the same claims as the existing plaintiffs, join this pending lawsuit as additional plaintiffs.[1]

Plaintiffs wish to add these three individuals as plaintiffs particularly in light of this Court's recent summary judgment ruling which narrowed the scope of plaintiffs' claims to only those animals who were obtained by defendant (or others) prior to the date Asian elephants were listed as endangered under the ESA (the "Pre-Act" elephants), see Memorandum Opinion (August 23, 2007) (Docket No. 173), and because defendant takes the position that the current individual plaintiff Tom Rider only has Article III standing with respect to those elephants who traveled with Ringling Bros.' "Blue Unit" between 1997 and 1999. See, e.g., Def.'s Opp'n to Plfs' Mot. to Compel Defs. to Comply With Rule 34 Request for Inspections (Docket No. 105) at 9. The proposed three additional plaintiffs all worked with Ringling Bros.' "Red Unit," and all

[1] Ringling Bros. has two principal traveling shows that include performing elephants – the "Blue Unit" and "Red Unit."

formed emotional bonds with "Pre-Act" elephants. See also ASPCA v. Ringing Bros., 317 F.3d 334, 336038 (D.C. Cir. 2003) (sustaining an emotional attachment to particular elephants as a basis for Article III standing). Accordingly, especially in view of the Court's recent ruling delineating the scope of the claims that plaintiffs may assert under the ESA, plaintiffs should be allowed to add individual plaintiffs who personally observed, and are being harmed by, unlawful conduct with respect to the category of animals the Court has ruled may be the focus of a Section 9 claim.[2]

It is well established that where supplementation of a Complaint does not change the claims that have been asserted against defendant, adding a new party is ordinarily appropriate. See, e.g., Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 227 (1964); Gomez v. Wilson, 477 F.2d 411, 417 (D.C. Cir. 1973); United Public Workers of America v. Local No. 312, 94 F. Supp. 538, 542 (E.D. Mich. 1950) ("Rule 15(d) . . . authorizes the Court to permit a party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading [which] could also include the addition of parties plaintiff") (emphasis added). Indeed, while these three individuals could file their own lawsuit against defendant and seek to consolidate their case with this one, there is no reason to add more cases to this Court's docket when these individuals can be added as additional plaintiffs to the pending claims simply by supplementing the existing Complaint. For the same reasons, the Court previously allowed plaintiffs to supplement their Complaint by adding the

[2] Plaintiffs realize that the Court has eliminated their claims with respect to the elephants subject to the "captive-bred wildlife permit," and accordingly plaintiffs will not pursue those claims. Nevertheless, plaintiffs have retained all of their claims for purposes of the proposed Supplemental Complaint in the event that any of the claims with respect to the captive-bred elephants are reinstated by either this Court or the Court of Appeals at some point in the future.

Animal Protection Institute as an additional plaintiff last year. See Docket No. 60.

Defendant will not be prejudiced by the granting of this motion for several reasons. First, plaintiffs informed defendant's counsel on March 29, 2007 that plaintiffs intend to rely on all three of these individuals as fact witnesses in this case, see Exhibit 2, and hence defendant has already had five months to take discovery from these individuals. Moreover, these individuals will abide by all other appropriate discovery that is required of parties, and will do so within the discovery time-frame recently set by the Court, which allows discovery to continue until the end of this year. See Order (August 23, 2007) (Docket No. 178). Accordingly, should these individuals be added as parties, defendant will have broader discovery rights with respect to them – i.e., defendant will be able to serve them with document production requests and interrogatories to test their allegations of recent elephant mistreatment, and will not be confined simply to taking depositions, as is the case with fact witnesses. See Fed. R. Civ. P. 33 and 34. In short, because defendant has known of these witnesses for many months, received formal notice of their allegations five months ago, and there are still four more months before discovery closes in this case, defendant will not suffer any prejudice if the motion is granted.[3]

Finally, plaintiffs have not unduly delayed filing this motion. These individuals did not go public about the abuse they witnessed at Ringling Bros. until last fall. Moreover, once they decided to pursue their claims, they sent defendant a 60-day notice letter as required by the ESA,

[3] Moreover, any contention by defendant that adding these plaintiffs would unfairly delay the final resolution of this case would be completely belied by the fact that a mere five days after this Court denied defendant's motion to add a RICO counterclaim against plaintiffs on the grounds that the motion to add the counterclaim was "made with a dilatory motive, would result in undue delay, and would prejudice the [plaintiffs]," see Memorandum Opinion (August 23, 2007) (Document 176) at 4, defendant nevertheless has apparently already filed those same claims in another court. See Feld Entertainment Press Release (August 28, 2007) (Exhibit 4).

and those 60 days expired on May 31, 2007. Although plaintiffs were prepared to file their motion to add these three individuals as plaintiffs during the first part of August, they refrained from doing so when this Court issued its Order staying all further discovery until the Court ruled on defendant's motion for summary judgment. See Order (August 10, 2007). However, now that the Court has issued its ruling on that motion, and the stay of discovery has accordingly been lifted, plaintiffs have acted as quickly as possible to file this motion.

CONCLUSION

For the foregoing reasons, plaintiffs' motion to supplement the Complaint in this case should be granted.

Respectfully submitted,

/s/ Katherine A. Meyer
Katherine A. Meyer
(D.C. Bar No. 244301)
Kimberly D. Ockene
(D.C. Bar No. 461191)
Tanya M. Sanerib
(D.C. Bar No. 473506)
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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