

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE  
PREVENTION OF CRUELTY TO  
ANIMALS, et al.,

Plaintiffs,

v.

FELD ENTERTAINMENT, INC.

Defendant.

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Case No. 1:03-CV-02006 (EGS/JMF)

**NOTICE OF ISSUES FOR STATUS CONFERENCE**

Defendant Feld Entertainment, Inc. (“FEI”) hereby submits a summary of issues for the Court’s consideration in connection with the September 19, 2007 status conference, which may assist with streamlining certain matters:

**I. Current Status of Case**

Elephants at Issue The Court’s Orders specifically state that the twenty-one (21) Captive Bred Wildlife (“CBW”) elephants will not be subjected to the inspection. 8/23/07 Summary Judgment Order at 23 (8/23/07) (Docket #173); Discovery Order at 10 (8/23/07) (“plaintiffs are only entitled to inspect those elephants which are not subject to a valid captive-bred wildlife permit.”). Thus, the remaining Pre-Act elephants are the only remaining elephants that may be subject to an inspection. The names of the Pre-Act elephants (and their current locations) are as follows:

<u>CEC:</u>	<u>Williston</u>	<u>Blue Unit</u>	<u>Red Unit</u>
Alana	Calcutta I	*Karen	Asia
Charlie	Putzi	Minyak	Assan
Emma	Siam I	*Nicole	Baby
Icky II			Bananna
*Jewell			Banko
Josky			Sarah
Louie			Siam II
*Lutzi			Toby
Mala			
*Mysore			
Rajah			
Sally			
Sid			
*Susan			
Tova			
Vance			
Zina			

Elephants with an “\*” asterisk are the only elephants for which plaintiffs have standing, i.e., those elephants with which Rider claims he has an emotional attachment.

FEI has objected to the inspection on grounds of standing, a jurisdictional issue which establishes the parameters of this case and is not subject to waiver.<sup>1</sup> FEI maintains that the inspections should therefore be limited to the 6 elephants listed above (Jewel, Lutzi, Mysore, Susan, Karen and Nicole) that reside at the Center for Elephant Conservation (“CEC”) and the Blue Unit. There is no basis for a Williston or Red Unit inspection in this injunction case.

#### Legal Issue Remaining

Furthermore, the Complaint contests three actions: (1) use of the bullhook, tethering, and weaning of baby elephants. (Am. Cmpl. ¶ 96). FEI has not and will not in the future wean any elephants other than CBW (captive-bred wildlife) elephants. Thus, the weaning issue is no longer part of the case. Summary Judgment Order at 23 (8/23/07) (Docket #173); Discovery

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<sup>1</sup> As it does not appear that the Court ruled on this during summary judgment, FEI has again raised the issue for the Court’s consideration in its Motion to Reconsider (9/5/07).

Order at 10 (8/23/07) (“plaintiffs are only entitled to inspect those elephants which are not subject to a valid captive-bred wildlife permit.”). No inspection related to weaning is relevant.

**II. Disclosure Issues**

As indicated in the briefing, Plaintiffs have not yet disclosed key information with respect to their inspection request, including:

- (1) the identity and credentials/qualifications of each person plaintiff wants to bring to/conduct the inspection;
- (2) a precise description of each “test” or procedure that plaintiffs wish to perform on an elephant including the method for each “test” or procedure and its purpose.

Without such disclosures, an inspection with the requisite degree of particularity, that provides FEI with its due process, is impossible.

**III. Specific Inspection Issues**

- A. Dates and Location of Inspection
- B. Handling of/Interacting with elephants
- C. Time frame for each inspection
- D. Limitations on photographing/videotaping
- E. Safety issues around elephants
- F. Issues with respect to particular elephants
- G. Disruption of operations and animal husbandry and daily routines
- H. Requirement that FEI employees perform aspects of the inspection for plaintiffs  
(on and off camera)
- I. Areas of Facility and/or traveling unit venue that are relevant for inspection
- J. Release of Liability / Damage to FEI property

**III. Confidentiality / Protective Order Issues**

FEI seeks two forms of protection: (1) that certain aspects of the request by plaintiffs, which are not reasonably calculated to lead to the discovery of admissible evidence, not be had at all. Examples of this would include inspection of the veterinary offices, medicine, training tools and equipment; (2) that all material gathered during the inspection be placed under a confidentiality order. The CEC and Williston, for example, are non-public facilities and also serve as private residences. The layout and identity of FEI's facilities, units and employees is a security issue. Given plaintiffs longstanding practice of improperly disseminating discovery materials produced in this case to feed their propaganda machine rather than using it for any legitimate purpose in this case, the inspection should be confidential.<sup>2</sup>

Dated this 19<sup>th</sup> day of September, 2007.

Respectfully submitted,



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<sup>2</sup> API's release from yesterday is simply the latest example of plaintiffs' misusing discovery from this case to spread public misinformation about FEI. This is an abuse of process and is interfering with FEI's right to a fair trial. See <http://www.api4animals.org/press.php?p=1292&more=1> "Federal court documents spotlight critic's claims as circus arrives in Sacramento" (9/19/07).