

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

**NOTICE OF FILING**

A portion of the Court’s Order of August 28, 2007 Order (Doc. 178) (“Order”), addressed defendant’s July 26, 2005 subpoena to the non-party Wildlife Advocacy Project (“WAP”), and ordered WAP to take certain actions by September 24, 2007. See Order at 8-9. Accordingly, WAP is filing the attached Declaration to apprise the Court of how it has responded to the Court’s Order.

Respectfully submitted,

/s/  
\_\_\_\_\_  
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**DECLARATION OF ERIC R. GLITZENSTEIN**

1. I am the President of the Wildlife Advocacy Project (“WAP”), a non-profit organization created to assist grassroots advocates to educate the public concerning conditions confronted by both wild and captive animals. I am submitting this Declaration in response to the Court’s August 28, 2007 Order (Doc. 178) (“Order”), a portion of which addressed defendant’s July 26, 2005 subpoena to WAP. See Order at 8-9

2. I have overseen WAP’s response to the July 26, 2005 subpoena and I have reviewed that response to ensure compliance with the Court’s Order. Except for the document described in ¶ 3 and the updated disclosures described in ¶¶ 4, 5, WAP has previously disclosed in response to the July 26, 2005 subpoena all non-duplicative, non-privileged “information concerning the payments made to Tom Rider and the role of the organizational plaintiffs and WAP in those payments.” Order at 8.

3. In again searching the WAP documents to ensure compliance with the portion of

defendant's July 26, 2005 subpoena deemed relevant by the Court, I located a copy of one of the previously provided canceled checks (dated February 14, 2002) that has some handwriting on it. While this handwriting makes no specific reference to "elephants, defendant, or Tom Rider," Order at 9, out of an abundance of caution, this copy of the check is being provided to defendant along with a copy of this Declaration.

4. On February 2, 2007, defendant served on WAP a second subpoena that, as the Court held with regard to the first, "seeks a lot of information that is completely irrelevant" to this lawsuit, Order at 8, including, e.g., "[a]ll documents that refer, reflect, or relate to any communications of any kind . . . with any other animal advocate or animal advocacy organization . . . ." Feb. 2, 2007 Subpoena at ¶ 4. Nonetheless, WAP responded to the second subpoena by producing all WAP documents generated or obtained since the response to the first subpoena and through the date of the response (March 30, 2007) and that "relate[] to payments or donations for or to and expenses of Tom Rider in connection with this litigation or his public education efforts related to the Circus's treatment of elephants." Order at 8. I have again reviewed WAP's records and response and have located no additional non-duplicative non-privileged documents or information deemed relevant by the Court and that were in WAP's possession as of March 30, 2007. Subsequent to that date, WAP received additional receipts reflecting living and traveling expenses of Tom Rider in connection with his public education campaign around the country, including some receipts pertaining to such expenses incurred during the period covered by the February 2, 2007 subpoena. WAP is providing copies of all such receipts to defendant along with this Declaration.

5. Although defendant has issued no subpoena to WAP since February 2, 2007, in a

further effort to avoid burdening the Court with unnecessary litigation concerning third party discovery matters, WAP is voluntarily producing to defendant documents generated since the March 30, 2007 response to the second subpoena and that are of the same kind the Court has deemed relevant to this case.<sup>1</sup> Although the Court's ruling was limited to WAP's response to the July 2005 subpoena, to ensure that defendant has been apprised of "every financial transaction made by WAP concerning elephants, defendant, or Tom Rider," Order at 9, WAP is providing defendant, along with a copy of this Declaration, an updated version of the "transaction detail report" that is referred to in the Court's Order and that is current through September 24, 2007. Id. at 9. The financial information underlying the transaction detail reports exists, see Order at 9, and the report, along with the canceled checks, Form 1099s, and other documents that have been or are being furnished to defendant, "detail every financial transaction made by WAP concerning elephants, defendant, or Tom Rider." Id. WAP is voluntarily providing to defendant, along with this Declaration, the canceled checks, Form 1099, and other non-duplicative documents received or generated by WAP since March 30, 2007 reflecting WAP financial transactions concerning Tom Rider, elephants, and/or defendant.

6. The Court ruled that, in producing materials to defendant, WAP "may redact the names and identifying information of individual donors or organizations who are not parties to the litigation, attorneys for any of the parties or employees or officers of any of the plaintiff organizations or WAP," so long as WAP submits an affidavit attesting that "any donors are not

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<sup>1</sup> Defendant's second subpoena to WAP purported to impose a "continuing" burden on the organization to "updat[e] and/or supplement[]" its response to the subpoena "at least once every 120 days until the final resolution of the Litigation." Feb. 2, 2007 Subpoena at 4. As WAP has advised defendant, however, the Federal Rules of Civil Procedure impose no duty on a non-party to "update and/or supplement" a response to a subpoena.

plaintiffs' counsel, employees or officers of the organizational plaintiffs or employees or officer of WAP." Order at 8. I have again reviewed the identities and identifying information of all of the donors whose identities and identifying information are deleted from the updated transaction detail report and other documents provided to defendant, and none of the donors whose names or other identifying information has been deleted are "plaintiffs' counsel, employees or officers of the organizational plaintiffs or employees or officers of WAP." *Id.* at 9. In fact, WAP has provided defendant with more information than required by the Court's Order, because, in its responses to the subpoenas, plaintiffs voluntarily provided identities of "organizations" providing funding for Tom Rider's public education efforts that "are not parties to this litigation." Order at 8.<sup>2</sup>

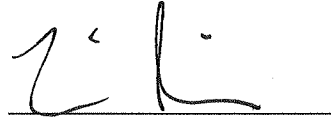
7. Beyond the materials previously produced to defendant and what is being provided to defendant along with this Declaration, WAP has located no additional non-privileged non-duplicative documents or information "related to payments or donations for or to and expenses of Tom Rider in connection with this litigation or his public education efforts related to the Circus's treatment of elephants." Order at 8. Nonetheless, should defendant have any questions or concerns regarding the completeness of WAP's production, WAP is willing (through outside counsel) to discuss such questions or concerns in a further effort to avoid litigation over this

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<sup>2</sup> Because WAP provided such organizational identities prior to the Court's ruling, it will not delete the same information previously provided from the updated transaction detail report. In addition to specifically demanding documents concerning the funding of Tom Rider's activities, the second subpoena also demands all documents "created or generated since May 12, 1997 that refer, reflect, or relate to anything of value that was requested by or on behalf of, given to, directed to, or made at the direction of any current or former employee of Defendant, including but not limited to" six identified individuals. As WAP has advised defendant's counsel, WAP had (and has) no such documents in its possession other than those pertaining to Tom Rider's public education campaign.

matter.

Pursuant to 28 U.S.C. § 1764, I declare under penalty perjury that the foregoing is true and correct to the best of my knowledge.



Eric R. Glitzenstein

Dated: September 24, 2007