

**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.

Case No. 03-2006 (EGS/JMF)

**DEFENDANT’S NOTICE OF SUPPLEMENTAL POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS’ MOTION FOR LEAVE TO FILE A SUPPLEMENTAL
COMPLAINT ADDING THREE FORMER RINGLING BROTHERS EMPLOYEES AS
ADDITIONAL PLAINTIFFS**

On August 23, 2007, the Court granted defendant Feld Entertainment Inc.’s (“FEI’s”) motions to compel plaintiffs and the Wildlife Advocacy Project (“WAP”) to produce information wrongfully withheld for more than three years. Order (Aug. 23, 2007) (Docket No. 178). In response to that order (and after falsely and repeatedly representing that they had been “forthcoming” with their discovery responses), plaintiffs and WAP produced approximately *1,000* pages of documents, *44* revised interrogatory responses, and 6 Court-ordered declarations. This latest material not only bears heavily upon FEI’s defense in this case, but also supports FEI’s opposition to plaintiffs’ belated attempt to add three new plaintiffs. The Court-ordered production further confirms that this lawsuit is a sham, resting precariously upon plaintiff Tom Rider, who has been continuously paid by the other plaintiffs for his participation in this lawsuit. Because plaintiffs inappropriately withheld this discovery from FEI, it was denied its right to include such evidence in its Opposition to Plaintiffs’ Motion for Leave to Amend (“Opposition” or “Opp.”). Accordingly, FEI hereby submits this notice of supplemental points and authorities

in support of its Opposition based on the newly discovered evidence produced pursuant to the Court's August 23, 2007 Order ("Order").

Plaintiffs' eleventh-hour request to re-stock and add three new plaintiffs is a transparent effort to avoid dismissal for lack of standing, which the Court should do because of their scheme to pay Rider. To permit plaintiffs not only to avoid any consequences for their outrageous conduct but also to be rewarded by adding new plaintiffs to salvage the case is not appropriate. The newly-proposed plaintiffs should be told – just as FEI was told – to file a separate lawsuit if they have a claim, but that it is too late in the day and the equities are such that they cannot join this one.

The evidence that the Court compelled plaintiffs and WAP to produce is difficult to fathom in its scope, and is appalling in its nature. The material that plaintiffs, and their counsel, sought to hide for years is damning: It tells a story of dishonorable conduct that was set in motion to harm FEI, side-step the Constitution, and ultimately perpetrate a fraud on the court.

A. The Extent of The Payments to Rider (and Plaintiffs' Efforts to Conceal Them) is Greater than Previously Known

Plaintiffs' Court-ordered production confirms that there have been several, never-disclosed payments to Rider from his co-plaintiffs and counsel (worth more than ten thousand dollars) that have been hidden from FEI for more than three years. Such payments include money that was *sent directly to Rider from his counsel* and that was included as part of the organizational plaintiffs' *legal bills*. The Court-ordered production also revealed the numerous steps that plaintiffs have taken (including repeated false statements to the Court and under oath) to conceal the extent and, more importantly, the purpose of such payments.

- Plaintiffs' court-ordered production acknowledged for the first time that *payments to Rider were made directly by his counsel* (specifically, his counsel's law firm). Ex. 1, Rider's Latest Response to Inter. No. 24.
- The same law firm that signed and served Rider's false interrogatory response declaring that he had received *no compensation* from animal advocacy organizations in exchange for services rendered had itself previously issued Rider a 1099 identifying payments to him as "*nonemployee compensation.*" Compare Ex. 2, Rider's First Response to Inter. No. 24 with Ex. 3, Law Firm 1099. This is in addition to two similar 1099's previously issued by the purported "non-profit" organization (WAP) founded and operated by his counsel. Ex. 4, WAP 1099's.
- Plaintiffs' law firm billed each of the organizational plaintiffs for its payments to Rider, identifying them as *line-items on the firm's legal bills*. Ex. 5, Legal Bills From Law Firm Reflecting Payments to Rider.
- Just ten months ago, plaintiffs' counsel definitively represented that "plaintiffs have no 'non-privileged portions of the invoices from [our] firm that reflect monies filtered through it for payments to Mr. Rider.'" Ex. 6, Meyer letter to Gasper at 5 (12/15/06) (quoting Gasper letter to Meyer (11/22/06)). However, once the Court issued its order compelling production, *plaintiffs produced ten such invoices*. Ex. 5, Legal Bills From Law Firm Reflecting Payments to Rider.
- Neither FFA nor AWI ever disclosed that they made payments to Rider through their counsel. *All of these are payments to Rider (totaling almost \$10,000) by the organizational plaintiffs that had not been previously disclosed – notwithstanding*

*plaintiffs' repeated statements to FEI and this Court that all such payments had been disclosed.*¹

- FFA testified under oath that it only paid Rider once (in July 2004). FFA now admits, however, that it *made several payments to Rider through its counsel that it did not disclose during its deposition.* Compare Ex. 7, FFA Depo. at 157-59 with Ex. 5, Legal Bills From Law Firm Reflecting Payments to Rider. See also Ex. 8, FFA's Latest Response to Inter. No. 21 (recognizing that its latest response is facially inconsistent with its deposition testimony). FFA omitted the recently disclosed payments from *two* previous sworn interrogatory responses as well. Ex. 9, FFA's First and Second Response to Inter. No. 21.²
- AWI received invoices from its counsel's law firm that explicitly identified the payments to Rider as a *shared expense* among the organizational plaintiffs. See Ex. 5, Legal Bills From Law Firm Reflecting Payments to Rider; Ex. 10, AWI's

¹ See Pls. Opp. to FEI's Mot. to Compel Discovery From the Organizational Plaintiffs (6/27/07) at 4-5 ("Thus, *defendants already have ... the actual amounts of funding that the groups have donated for Mr. Rider's* media and educational campaign. ... Accordingly, *there is no information remaining to compel on this matter that would not simply duplicate information already provided*, without trampling on plaintiffs' First Amendment rights."); *id.* at 14 ("[T]he groups and WAP have already provided defendants with documents demonstrating the amounts of such funding for each group."); *id.* at 21 (*Plaintiffs have provided "defendants with information demonstrating the amount and source of funding Mr. Rider."*); *id.* at 27 ("As plaintiffs have repeatedly stated, *they have not withheld, and have never intended to withhold, any documents or information concerning the amounts of funding that the groups are providing either to Mr. Rider or to WAP ... Indeed, defendants now have a complete accounting of all of the funds the groups have provided for Mr. Rider's media work*, both directly and by way of donations to WAP, and all of defendants' complaints about missing information on this issue relate to defendants' desire to force plaintiffs to provide the same information in multiple formats – *i.e.*, in written, documentary, and oral form at depositions. However, *wasting the Court's and the parties' time in an attempt to compel plaintiffs to provide information that defendants already have is vexatious and harassing to say the least, and the Court should not tolerate this conduct.*"); *id.* at 29 ("[D]efendants had already obtained ... an accounting of all of the funding that the organizational plaintiffs had provided to Mr. Rider or to WAP."). The recently compelled production demonstrates that *all* of these statements were false.

² As a result of the apparent perjury that occurred in plaintiffs' depositions, those depositions cannot be considered "complete," and may well need to be resumed and/or redone. FEI reserves its right to seek leave from the Court to do so because of the interference with its fundamental right to discovery that was created by the false testimony.

Latest Response to Inter. No. 21. Previously, however, *AWI testified under oath that it was not aware that it was “sharing [Rider’s] expenses with some other organization.”* Ex. 11, AWI Depo. at 142.

- ASPCA recently produced three invoices from its counsel in 2003 for payments to Rider. Ex. 5, Legal Bills From Law Firm Reflecting Payments to Rider. Previously, however, ASPCA testified under oath that its payments to Rider in 2003 were “not through Meyer & Glitzenstein.” Ex. 12, ASPCA Depo. at 226-27.
- Similarly, ASPCA testified under oath that its payments to Rider stopped in May 2003. Ex. 12, ASPCA Depo. at 85, 226. Yet, ASPCA has produced receipts showing that it paid for Rider’s cell phone and internet access through the end of 2003 and ASPCA was billed by its counsel for a payment to Rider in November 2003. Ex. 13, ASPCA’s 2003 Receipts³; Ex. 5, Legal Bills From Law Firm Reflecting Payments to Rider.
- Like the organizational plaintiffs, Rider provided false deposition testimony under oath about the payments he has received. Rider, for example, previously testified that he used someone else’s credit card “*once or twice*” to pay for hotels. Ex. 15, Rider Depo. at 140-41. Documents produced by ASPCA, however, show that it happened *eight times in 2002 alone*. Ex. 16, ASPCA Credit Card Bills From 2002.
- Notwithstanding the Court order compelling plaintiffs to provide complete and honest discovery responses, *Rider’s recent list (submitted under oath) of payments*

³ FEI is awaiting additional documents from 2003 that may show additional payments but have not yet been produced. Ex. 14, ASPCA Decl. (stating that it has not yet tracked down its 2003 credit card receipts that would reflect expenses paid for Rider).

received from his co-plaintiffs remains inaccurate. Rider, for example, swears under oath that AWI paid him “approximately \$1,600.” Yet, AWI acknowledges under oath that it paid him \$2,952. Compare Ex. 1, Rider’s Latest Response to Inter. No. 24 with Ex. 10, AWI’s Latest Response to Inter. No. 21. Not only are AWI’s and Rider’s latest sworn responses inconsistent with each other, AWI’s latest response includes its numerous payments to Rider, all of which were previously omitted from its first two sworn interrogatory on this subject. Ex. 17, AWI’s First and Second Responses to Inter. No. 21. Again, it is now clear that *plaintiffs’ repeated assurances to this Court that they had disclosed all payments to Rider were entirely false.* See supra p.4 n.1.

- One of AWI’s payments to Rider aptly illustrates the efforts that have been undertaken to make the money trail hard to follow. In January 2006, AWI sought to provide Rider with \$500. *Instead of wiring the money to Rider itself, however, AWI issued a \$600 check to one of its employees who then cashed the check, personally wired \$500 to Rider, personally paid the wire transfer fee, and placed the remainder in AWI’s petty cash fund.* Ex. 10, AWI’s Latest Response to Inter. No. 21.
- *Rider admits under oath that he has spoliated evidence.* Specifically, he admits that he no longer has all of the documents relevant to this lawsuit – even those that were created or received by him *after this lawsuit was filed.* Ex. 18, Rider Decl. ¶ 3. Rider, moreover, acknowledges that he may not have kept all such documents even after FEI explicitly requested them four years after the lawsuit was filed. Id. ¶ 5.

- Like Rider, *ASPCA has admitted that it, too, has spoliated evidence*. ASPCA candidly acknowledges that it no longer has records of its inspections of FEI's circus from 1996 to 1997. Ex. 14, ASPCA Decl. ¶ 2(a). ASPCA claims that such records would have been destroyed pursuant to a six-year document retention policy. Thus, ASPCA would have destroyed these clearly relevant documents in 2002 or 2003 -- *two or three years after filing this lawsuit*. ASPCA, moreover, candidly admits that it no longer has documentation or receipts concerning the laptop it gave to Rider. *Id.* ¶ 2(c). The record also suggests that WAP, like Rider, has discarded documents relating to the payments made to Rider. Ex. 19, Gasper letter to Trister (9/26/07).

B. The Payments to Rider Bear No Relation to His Purported “Media” or “Advocacy” Work

For three years, plaintiffs have told FEI and this Court that the payments to Rider are nothing more than reimbursements for his expenses incurred in connection with a “media” and/or “public education” campaign.⁴ The Court-ordered production, however, proves that there is little connection between the payments to Rider and any such “campaign.” Rider’s whereabouts, as evidenced by the incomplete receipts produced, do not coincide with the circus schedule or the “media” services that he was supposedly rendering. In several months, for example, *Rider concedes under oath that he performed no such “campaign” activities*, but he nonetheless received \$500 per week from WAP even though all of his receipts place him in Los Angeles where no demonstrable “media” or “education” work has been identified. WAP, moreover, attempted to make several payments to Rider appear legitimate by calling them

⁴ See, e.g., Pls. Opp. to FEI’s Mot. for Leave to Amend (3/30/07) at 26 (“Mr. Rider in fact is using these funds to conduct a highly effective *media, public education, and grassroots advocacy effort* ...”).

“media” expenses for cities where FEI’s circus was scheduled to perform in the next few weeks. However, *Rider admits under oath not to have performed any such work in those cities and has produced no receipts demonstrating he was even there.* Finally, Rider’s own tax returns (that he finally filed in April 2007, years after they were overdue) now show that he has received more money from WAP and plaintiffs than he has spent on any “media” campaign. Thus, even if the Court were to believe the claim that all of Rider’s “expenses” truly were for some “media” campaign (which they were not), that theory does not account for all of the money he has been paid. In other words the evidence is clear that, at some level of funding, Rider is a paid plaintiff.

The Court-ordered production confirms the following undisputed facts:

- For twenty-two weeks in 2006, Rider was in Los Angeles, (except for a single trip to Chicago for which he has produced no receipts). During this time, the circus was not in Los Angeles and Rider admits that he performed no “media” or “advocacy” work. Ex. 20, Rider’s Supp. Response to Inter. Nos. 4-5; Ex. 21, Schedule of FEI’s Circus. Nonetheless, during these twenty-two weeks, *WAP sent Rider fourteen checks totaling \$12,300 and recorded them in its records as “Media in Los Angeles, CA.”* Ex. 22, WAP Ledger.
- Between September 18 and October 23, 2006, WAP sent Rider *five checks totaling \$4,500* for “media” in Canton, Toledo, Washington DC, Omaha, and Chicago. Ex. 22, WAP Ledger. While four of these five cities mirror the approximate location of FEI’s circus at that time, Ex. 21, Schedule of FEI’s Circus, Rider *has neither produced receipts showing he was even in those cities, nor alleged in his interrogatory response to have performed work in those cities at those times.* Ex. 20, Rider’s Supp. Response to Inter. Nos. 4-5. The city on WAP’s ledger that does

not correlate to the schedule of FEI's circus is Washington, DC. In October 2006, Rider was in Washington for his *deposition in this case*, not (according to his own sworn interrogatory response), for any purported "media" work. Ex. 20, Rider's Supp. Response to Inter. Nos. 4-5. Thus, according to WAP's accounting, Rider's deposition in this case is "*Media in Washington, DC.*"

- Similarly, in September 2005, *WAP sent Rider one \$500 check for "Media in Everett, WA" and another for "Media in Salt Lake City."* Ex. 22, WAP Ledger. Although WAP selected cities that mirror the schedule of FEI's circus (to make the payments appear legitimate), *neither Rider's receipts nor his interrogatory response place him in either state, let alone city.* Ex. 20, Rider's Supp. Response to Inter. Nos. 4-5. *The same thing happened* at the end of October 2005 when FEI's circus was scheduled to perform in Pittsburgh and Chicago, for which *Rider received \$1,000 earmarked for "media" in those cities despite his failure to allege that he performed any work there at that time.* Compare Ex. 22, WAP Ledger with Ex. 20, Rider's Supp. Response to Inter. Nos. 4-5.
- WAP's bogus accounting entries continue *to this day*. WAP sent Rider a \$1,000 check on August 20, 2007 for "Media in San Jose" and another on September 12, 2007 for "Media in Indianapolis" (both of which coincided with the schedule of FEI's circus). Ex. 22, WAP Ledger. Yet, Rider's receipts show that he left California on August 22nd, drove through Texas, and has been in Florida ever since (at least through the end of his receipts on September 14th). During this time, FEI's circus was not operating anywhere near Florida. Ex. 21, Schedule of FEI's Circus.

- There are *two whole months* in 2005 (November and December) for which it appears that Rider has produced *no receipts* and in which *he does not allege* in his interrogatory response to have conducted any media activities. Ex. 20, Rider's Supp. Response to Inter. Nos. 4-5. Nonetheless, *WAP sent him six checks totaling \$6,000 during these two months*. Ex. 22, WAP Ledger.
- Tax returns submitted by Rider show that the payments he receives *exceed* his actual expenses. In 2005 and 2006, for example, the payments to Rider for his "media" or "educational" work totaled \$66,500, yet his expenses (based on his own representation to the IRS) totaled only \$56,424. See Ex. 23, Rider's 2005-2006 Tax Returns.⁵ Thus, even if all of Rider's "expenses" are considered legitimate "media expenses" (which they are not), *Rider was still paid \$10,076 in the last two years for the only other activity he has engaged in, namely being a plaintiff in this case. Whether his services as a plaintiff for hire were purchased for \$10,000 or \$66,500, the result is the same.*
- Rider claims no expenses in his tax returns that would be consistent with any "media" or "advocacy" business. The only expenses he claims are his "car," "travel," and "meals/entertainment." Ex. 23, Rider's 2005-2006 Tax Returns. These are not business expenses, they are his *living* expenses. Indeed, Rider's receipts include only a handful of pages related to expenses that one would expect from a "media" campaign (e.g. videotape reproduction). In contrast, Rider has produced hundreds of pages of receipts for personal items such as groceries,

⁵ Rider actually had more income in 2006, but he failed to report it to the IRS. For example, Rider did not include the \$750 that AWI paid him directly, the \$1,650 that AWI paid for his "van" repairs, or the money spent by API on Rider's alleged trip to Nebraska. Compare Ex. 23, Rider's 2005-06 Tax Returns with Ex. 4, WAP 1099's; Ex. 10, AWI's Latest Response to Inter. No. 21 and Ex. 24, API's Latest Response to Inter. No. 21.

Christmas decorations, toiletries, and Blockbuster videos. Ex. 25, Sample of Rider's Receipts.

- Further undermining any claim that the payments to Rider are "media" expenses and not related to this lawsuit, FFA has produced documents showing that payments made to Rider by the Humane Society of the United States, Inc. (an entity that merged with FFA in 2005) were coded as "*litigation*" expenses for FFA, not "media" expenses. Ex. 26, Documents Produced by FFA.

CONCLUSION

The misconduct that has occurred is documented and undeniable. The recent Court-ordered document production further amplifies plaintiffs' track record of denying, obfuscating and hiding evidence of their unlawful payment scheme to an individual who is necessary to obtain standing. Having been caught, plaintiffs would now have this Court ignore their misconduct, and instead reward them by letting them add yet another set of plaintiffs to the case, so that this suit can proceed as if nothing untoward ever happened. Such an outcome would be a miscarriage of justice. The request to re-load and add new plaintiffs should be denied just as FEI's motion to amend was. For the reasons set forth herein and in FEI's Opposition, FEI respectfully requests that plaintiffs' Motion be denied.

Dated this 2nd day of October, 2007

Respectfully submitted,

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