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.,	)	
Defendant.	)	

PLAINTIFFS' RESPONSE TO 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"

In its "Notice of Supplemental Points and Authorities In Opposition to Plaintiffs' Motion for Leave to File a Supplemental Complaint" (Docket No. 198) ("Def. Supp. Mem.") – which is in reality a supplemental brief that defendant Feld Entertainment Inc. ("FEI") filed without leave of Court – FEI does not make any additional legal argument for why the Court should deny plaintiffs' motion to supplement the Complaint by adding three additional former Ringling Brothers employees as plaintiffs in this case. As plaintiffs have noted, see Reply in Support of Pls.' Mot. For Leave To File A Supplemental Complaint at 2-3 (Docket No. 187), plaintiffs long ago informed defendant that each of these individuals will be fact witnesses in this case in any event, and, accordingly they will therefore already be the subject of discovery by defendant. Indeed, it is plaintiffs' understanding that defendant is already conducting such discovery, by subpoenaing records concerning these individuals from third parties.

Moreover, in sharp contrast to defendant's proposed RICO claim, which the Court held would be a distraction from this case because it would involve issues that are entirely collateral to the "narrow issue" before the Court – i.e., "whether or not defendant's treatment of its elephants constitutes a taking" under the Endangered Species Act ("ESA"), see Memorandum Opinion at 8 (August 23, 2007) (Docket No. 176) ("RICO Op.") – the allegations of elephant abuse and mistreatment by the proposed new individual plaintiffs overlap significantly with those asserted by the existing plaintiffs. Accordingly, it would make no sense, as FEI advocates, Def. Supp. Mem. at 2, for these individuals to file a separate, duplicative lawsuit that would almost certainly be consolidated with this case in any event.

Rather than offer any new "authority" or argument for denying the actual pending motion, defendant's "notice" is in fact a thinly veiled attempt to rehash defendant's motion to compel discovery from the plaintiffs – which the Court already granted in part on the issue of Tom Rider's funding – and to continue to harp on FEI's theory that Mr. Rider is being bribed for his participation in this case and is not genuinely conducting a public education campaign on behalf of the elephants, notwithstanding the extensive media coverage he has garnered and that has already been submitted to the Court. See, e.g., Pls.' Opp'n to Def.'s Mot. to Amend Answer to Add Counterclaim at 27-28 (Docket No.132). Although this theory has, at best, a tangential relationship to plaintiffs' motion to supplement, plaintiffs will briefly respond to FEI's "notice."[1]

As the Court knows, plaintiffs, as well as the Wildlife Advocacy Project ("WAP"), have previously disclosed the fact that they have been providing funding for Tom Rider to travel

[1] Mindful of the Court's admonition concerning the parties' "poisoned relationship," see Order at 12 (August 23, 2007) (Docket No. 178), plaintiffs will refrain from responding to each of defendant's ad hominem attacks on plaintiffs and their counsel.

around the country to educate the public, contact the media, and testify before legislative bodies concerning the mistreatment of circus elephants. See, e.g., RICO Op. at 7 (noting that "Plaintiffs' counsel admitted in open court on September 16, 2005 that the plaintiff organizations provided grants to Tom Rider to 'speak out about what really happened' when he worked at the circus") (citation omitted).

In response to the Court's recent discovery order – which denied much of defendant's motions to compel, but granted them in part – plaintiffs engaged in a further, comprehensive search for "all" documents and information "concerning payments to Tom Rider," including both direct and indirect payments. See Order at 6 (Aug. 23, 2007) (Docket No. 178) ("Discovery Order"). Thus, although defendant's discovery requests to the organizational plaintiffs did not specifically ask for all such information, and, accordingly plaintiffs did not originally view all such information as responsive to those requests, see Pls.' Opp'n to Def.'s Mot. to Compel Disc. from the Organizational Pls. at 28-29 (Docket No. 156), the Court has now made clear that it wanted plaintiffs to produce all information "concerning payments to Tom Rider," Discovery Order at 6, and plaintiffs have now complied with this directive to the best of their abilities.

As a result of undertaking this renewed search in compliance with the Court's recent Order, plaintiffs located some additional information about funding that was provided by the organizational plaintiffs to Mr. Rider that had not previously been disclosed to defendant, which according to defendant itself amounts to approximately $10,000 over several years. See Def. Supp. Mem. at 2. Although plaintiffs previously believed that they had provided defendant with the total amounts of funding that had been provided to Mr. Rider for his public education work since 2001, and made several statements to that effect in filings with the Court, after conducting

the specific search ordered by the Court, plaintiffs discovered they had overlooked this additional funding, which had not been provided directly to Mr. Rider, but instead had been billed to plaintiffs by their counsel as out-of-pocket costs for media work – not "legal bills" as suggested by defendant, Def. Supp. Mem. at 2 – that had been done by Mr. Rider more than three years ago in connection with the plaintiffs' overall advocacy work on this issue. Plaintiffs and their counsel apologize to the Court for making what, in retrospect, were overstatements concerning this matter.[2]

However, contrary to defendant's suggestion, see Def. Supp. Mem. at 1, the recently released information does not materially alter, and is entirely consistent with, what defendant already knew and what plaintiffs have certainly never sought to conceal – i.e., that plaintiffs, along with WAP, have been funding Mr. Rider's media and public education advocacy on behalf of the elephants for the last six and a half years. Indeed, although defendant suggests that the arrangement between the clients and their law firm is an "appalling" new revelation, Def. Supp. Mem. at 2, defendant has long known that this precise arrangement was employed by plaintiff ASPCA in the past as a way of funding Mr. Rider's efforts. See, e.g., Deposition of Lisa Weisberg at 224-26 (July 19, 2005). Thus, while defendant is certainly free to use this new information in its further attempt to impugn the credibility of Mr. Rider – indeed, as this Court has

[2] The additional funding was provided to Mr. Rider for use in connection with his media and public education work by way of wire transfers from the law firm Meyer & Glitzenstein, which then billed the amounts to the plaintiff organizations as media expenses. See Def. Supp. Mem. at 2-3. Although defendant deems this "dishonorable" in some fashion, id., it is not at all unusual for parties, especially those involved in public interest litigation, to conduct a public education and media campaign on the same subject as their litigation. Indeed, FEI has undoubtedly spent far more on its public relations in connection with the subject of this litigation than plaintiffs have spent on Mr. Rider's media work.

noted, "[t]hroughout its numerous discovery-related motions, defendant has shown that its efforts to obtain information to impugn plaintiff Tom Rider and learn every detail of the media and litigation strategies of its opponents are relentless," RICO Op. at 8 – defendant's renewed accusation that plaintiffs have engaged in a wholesale cover-up of Mr. Rider's funding is groundless, as this Court knows.[3]

In any event, now that the Court has granted defendant's motion to compel information on the issue of Mr. Rider's funding, and plaintiffs have complied with that Order, plaintiffs trust that the parties can return to litigating the "central issues" in this case – i.e., "whether or not defendant's treatment of elephants constitutes a 'taking' under the ESA." Discovery Order at 12. In that connection, once again, FEI has presented no persuasive reason why individuals who FEI has long known would be fact witnesses regarding "defendant's treatment of elephants," id., should not be added as plaintiffs instead of being put in the position of filing their own duplicative lawsuit.

Respectfully submitted,

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[3] Contrary to defendant's insistence that Mr. Rider "admits" that he "performed no 'media' or 'advocacy' work," in certain venues, Def. Supp. Mem. at 8-9, Mr. Rider has admitted nothing of the kind. Not only did Mr. Rider object to defendant's insistence that he "[d]escribe every communication" he ever had with any "members of the press," on the grounds that this would be unduly burdensome and irrelevant, see Mr. Rider's Supplemental Response to Interrogatories No. 5 (Def. Ex. 20), but this Court has now in fact ruled that "any documents or communications between Rider and others about media or legislative strategies is irrelevant to this litigation and would be over burdensome to produce." See Discovery Order at 4 (emphasis added).

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