

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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

**PLAINTIFFS’ NOTICE OF FILING A LIST OF DISCOVERY  
MATTERS THAT NEED TO BE RESOLVED BY THE MAGISTRATE JUDGE**

At the September 19, 2007 status conference, plaintiffs’ counsel suggested submitting a list of discovery matters that need to be resolved in this case so that the parties can meet Judge Sullivan’s December 31, 2007 cut-off date for all discovery, and Magistrate Facciola suggested that such a list would be helpful. Although plaintiffs have tried to obtain a list that both sides agree on, see attached Letter to Lisa Joiner from Katherine Meyer (October 15, 2007) (Attachment 1), defendant has not yet gotten back to plaintiffs on this matter. Therefore, with the knowledge of defendant’s counsel, plaintiffs are submitting their own list to the Court, with the caveat that defendant may disagree with items on this list and have additional matters that they wish to add to it. However, because plaintiffs are concerned about the strict timetable for discovery, they are anxious to have the Magistrate Judge resolve these matters as soon as possible.<sup>1</sup>

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<sup>1</sup> This list does not include the outstanding inspection issues that, pursuant to Judge Facciola’s September 25, 2007 Order, the parties are currently discussing. Should the parties not be able to reach agreement on those issues soon, they will also need to be resolved by the Court.

**List of Discovery Matters That Need To Be Resolved**

- 1) **Fact witness list.** The parties need a date on which they are required to exchange their lists of fact witnesses whom they expect to present at a trial, with a summary of the testimony of each such witness. Plaintiffs had suggested that this be done by October 22, 2007. In addition, once the parties have exchanged fact witness lists, they may want to stipulate to further increasing the number of fact depositions that each side may take. See Docket No. 203.
- 2) **Subpoenas versus Deposition Notices.** Plaintiffs would like to resolve the issue of whether employees of the parties must be subpoenaed to appear at a deposition or whether they can simply be served with a notice of deposition under Rule 30. It is plaintiffs' position that the parties should agree that all employees of the parties may be served with notices pursuant to Rule 30, and that subpoenas should not be required. Defendant disagrees with this position and to date has required plaintiffs to serve all of its employees with subpoenas.
- 3) **Expert Schedule.** The parties need to resolve the procedure and dates that will apply to the exchange of expert reports and the time-frame for expert depositions. The parties have a difference of opinion on this issue. Plaintiffs take the position, as originally agreed upon by the parties in their December 2003 Stipulated Pre-Trial Schedule (Attachment 2), that the parties should simultaneously exchange initial expert reports, then take depositions of the experts, and then exchange rebuttal reports. Defendant takes the position that the plaintiffs should provide their expert reports first, defendant should then provide its reports, the plaintiffs should provide their rebuttal reports, and the parties should then take expert depositions.<sup>2</sup>
- 4) **Third Party Subpoena Notifications.** Plaintiffs want it made clear that the parties are to serve each other with copies of all Rule 45 subpoenas to non-parties in a timely fashion.
- 5) **Plaintiff's outstanding discovery:** The parties need to agree on a date on which Mr. Rider will be deposed by defendant concerning the matters that Judge Sullivan ruled in his August 23, 2007 Order could be provided subject to a protective order (i.e., his military record and arrest and conviction record). See Order (Docket No. 178) at 2.

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<sup>2</sup> Plaintiffs would agree to taking all expert depositions after all reports have been exchanged.

- 6) **Defendant's outstanding discovery:**
- a) There needs to be a resolution of the discovery deficiencies raised by plaintiffs in their June 14, 2007 letter, and further discussed by the parties in letters dated June 29, 2007, and September 17, 2007 (Attachments 3-5);
  - b) Defendant still has not provided plaintiffs with approximately 60-70 videotapes that plaintiffs have requested, which are addressed in our letter to defendant's counsel dated July 27, 2007, and which, by letter dated August 3, 2007, defendant's counsel represented were being copied (See attached letters between counsel dated July 27, 2007 and August 3, 2007) (Attachments 6-7).
- 7) **Supplemental Discovery:** The parties need to agree on a date by which the parties will provide supplemental discovery responses to bring their Interrogatory and Document Production Requests up to date. Plaintiffs have suggested that this date be no later than November 16, 2007.

Respectfully submitted,

/s/ Katherine A. Meyer  
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