

**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. 03-2006 (EGS/JMF)**

**DEFENDANT'S MOTION TO ENFORCE THE COURT'S AUGUST 23, 2007 ORDER**

**EXHIBIT 2**

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October 12, 2007

**By Electronic and First Class Mail**

George Gasper  
Fulbright & Jaworski  
801 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Re: ASPCA et al. v. Ringling Bros.  
Civ. No. 03-2006 (EGS/JMF)

Dear Mr. Gasper:

I am writing in response to your October 3, 2007 letter regarding Mr. Rider's recent supplemental production and declaration that were submitted to you in response to Judge Sullivan's August 23, 2007 Order ("Discovery Order") (Docket No. 178).

Mr. Rider has complied with the Discovery Order in all respects. He has provided you with a sworn declaration identifying "to the extent [he] can recall" any "responsive documents that were once in [his] possession (since July 11, 2000) but have been discarded, destroyed, or given to other persons or otherwise not produced," and he has also provided a "description of each such document." As Mr. Rider explains in that declaration, the only records that he can recall that he may have once had in his possession that he cannot locate were "some sort of receipt" he was asked to sign regarding grant money that he received by wire transfer prior to March 30, 2004 – the date of defendant's discovery requests. Declaration of Tom Rider ¶ 3. Pursuant to Judge Sullivan's Order, Mr. Rider has also explained to the best of his ability why he does not have any of those particular records. *Id.* However, since he does not recall having had possession of any particular receipt, but can only recall that he "may" have had some of them, he simply is not in a position to identify these records with any more specificity than he has done in his declaration. On the other hand, the organizational plaintiffs have provided you with information concerning these wire transfers. As to any other records, including receipts for wire



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transfers that he received after March 30, 2004, Mr. Rider does not recall ever having any such records.

Your statement that Mr. Rider's declaration "acknowledges" that he "destroyed" "responsive documents," is completely untrue. Mr. Rider did not acknowledge that the records he describes were "responsive" – indeed, since those records pre-dated defendant's March 30, 2004 discovery requests, any such records that were no longer in his possession on March 30, 2004, could not possibly have been "responsive" to requests that he had not yet received. See Rider Declaration ¶ 3. As Mr. Rider also explains, he did not keep those particular records that he may have had in his possession prior to March 30, 2004, because he "did not know that such records had anything to do with the plaintiffs' claims in this case or defendant's defenses." Id.; see also Arista Records, Inc. v. Sakfield Holding Co., 314 F. Supp. 2d 27, 34, n.3 (D.D.C. 2004) (explaining that a litigant is only required to preserve those documents that it "knows, or reasonably should know, [are] relevant to the action"). Nor does Mr. Rider state any where in his declaration that he has ever "destroyed" any records. Hence, there simply is no grounds for defendant's insistence that Mr. Rider's failure to keep the particular records he describes in his declaration – i.e. receipts concerning wire transfers the he received prior to March 30, 2004 – amounts to an admission that he "destroyed" "responsive documents."<sup>1</sup>

Mr. Rider has nothing to add to his response to Interrogatories No. 24. He has identified all of the information requested by that Interrogatory to the best of his knowledge and recollection. Mr. Rider also has nothing to add to his response to Interrogatory No. 4. The only communications that he has not disclosed are those that Judge Sullivan has ordered need not be disclosed – i.e., those that are privileged either as attorney-client or work-product communications, including under the "common interest doctrine," Discovery Order at 3, or communications "about media or legislative strategies" that the Court has held are irrelevant. Discovery Order at 4.

Mr. Rider has also complied with his obligation to produce "[a]ll responsive documents and information concerning his income and payments from other animal advocates and animal advocacy organizations" as required by Judge Sullivan's Discovery Order.

Mr. Rider has now provided you with copies of 1099s and cover letters he received from the Wildlife Advocacy Project. As a grantee of the organization, Mr. Rider could certainly request copies of these particular records. However, Mr. Rider does not have possession,

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<sup>1</sup> On the other hand, we note that defendant does admit that it has destroyed "health certificates" for the elephants at issue in this case after it was served with discovery in this case, even though the health of the elephants is clearly "relevant to the action," Arista Records, 314 F. Supp. 2d at 34, and Judge Sullivan has ruled that such records are also "responsive" to plaintiffs' discovery requests. See Letter from Michelle Pardo to Kimberly Ockene (June 29, 2007) at 7-8.

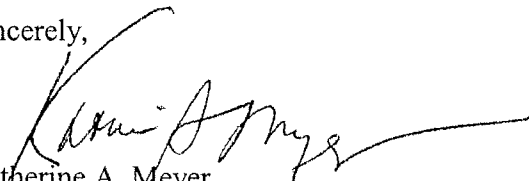
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custody, or control of any records of that organization.

Mr. Rider did not “neglect” to produce “his state income tax returns for 2005-2006.” He was advised by the preparer of those returns that the state of Florida, which is regarded as his state of residence for those years, does not require such returns.

I trust that this letter answers your questions about Mr. Rider’s supplemental production. If you have any further questions about these matters, I suggest that you ask Mr. Rider these questions when you take his deposition.

Sincerely,



Katherine A. Meyer