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January 4, 2005

BY FACSIMILE AND FIRST CLASS MAIL

Kimberly D. Ockene, Esq.
Meyer & Glitzenstein
1601 Connecticut Avenue N.W., Suite 700
Washington, D.C. 20036

Re: *ASPCA et al. v. Ringling Bros. and Barnum & Bailey Circus et al.*, No. 03-2006 (D.D.C.)

Dear Kim:

I write in response to your letter of December 22, 2004. That letter articulates positions that differ from those that plaintiffs took during our meet and confer conference on November 15, and it raises additional concerns about defendants' discovery responses for the first time.

Timing of Production

Your letter purports to require defendants to provide all additional documents and/or interrogatory responses prior to the status conference scheduled for January 11, 2005. This is not realistic. Gathering, assembling, and reviewing the additional information that plaintiffs have requested imposes a substantial burden upon our clients – a burden that must be balanced against on-going business activities. While we are working diligently to collect this information, it has not been possible to gather and review all of it since our meet and confer meeting – particularly in light of the intervening holidays. We will produce information to you on a rolling basis, including some additional materials prior to the status conference. But our production will not be complete at that time.

Identification of Documents

Plaintiffs' belated attempt to renew their request that Defendants "identify" documents that are responsive to each request is improper and contrary to the discussions we had at the November 15 meeting. If defendants were required to "identify" the documents in their production that relate to each request served by plaintiffs, they would face a burden greater than that required by Federal Rule of Civil Procedure 34(b), which expressly permits a party not to identify the records that are responsive to each request, so long as they are produced as they are kept in the ordinary course of business. Moreover, the position articulated in your letter is

contrary to the one you took at the November 15 meeting, when you acknowledged defendants' right to produce such records as kept, without identifying the request to which they are responsive. Finally, even if the interrogatories seeking "identification" of records were valid, each such request would constitute a separate interrogatory and would take plaintiffs well beyond the 25 interrogatories permitted by Federal Rule of Civil Procedure 33(a).

Relevant Time Frame

I did not say at the November 15 meeting that defendants imposed a cut-off date of 1996 only as an issue of convenience. Rather, in explaining defendants' undue burden objection, I explained that the older the documents, the more burdensome it is to locate and review them. I also told you that we do not see the relevance of actions ten years or more in the past. Although you characterize information more than a decade past as "highly relevant," plaintiffs have yet to explain why such dated information is relevant to whether any of defendants' actions during the period in suit constituted a "take" under the Endangered Species Act, or why its relevance justifies the substantial cost of attempting to locate and review such information. If plaintiffs will offer such an explanation for any specific discovery request, we will consider that explanation.

Interrogatory No. 5

Your reservation of the right to seek information about additional employees is directly contrary to the agreement we reached on this interrogatory during the November 15 meeting. At that time, I explained defendants' position that plaintiffs' request for a list of all employees who "worked with" the elephants was vague, ambiguous, and overbroad, and that we were unsure what the term meant. Kathy Meyer stated that the specific categories set forth in the interrogatory – barn men, handlers, trainers, performers, wardrobe personnel, and floor crew – represented all of the categories of employees in which plaintiffs were interested. I told you at the time that we would endeavor to provide you with a list of the employees in those categories for the relevant time frames, on the condition that plaintiffs agree that they had given us a complete list of the categories in which they were interested. After some thought, you asked to add "transportation personnel" as an additional category, and I agreed. We have been attempting to gather information on these employees – an extremely burdensome process – and we remain willing to provide it to you if plaintiffs will adhere to the agreement we previously reached. But we will not produce additional information to you absent such an agreement limiting plaintiffs' vague, open-ended interrogatory.

If there are employees for which you do not believe we have provided complete information in response to Interrogatory Nos. 3, 4, or 5, please identify them.

Interrogatory No. 8/Document Request Nos. 8 and 16

We are searching for the materials that you have requested, which we understand is not limited to medical records or any subset of elephants (other than elephants owned or leased by defendants). However, before producing any additional or more detailed medical records, we ask plaintiffs to consent to the production of such materials under a protective order that will limit the dissemination of such information, which defendants consider to be confidential. If plaintiffs are willing to agree to such a protective order, we will provide you with a draft order, which we would hope to provide to Judge Sullivan as an agreed-upon form of order.

Interrogatory No. 11

We have worked with our clients to ensure that they have undertaken a search for documents that is reasonable in scope. We will provide you with information about the scope of the search relating to this request if you have questions about it.

Interrogatory No. 15/Document Request No. 23

You are correct that these requests do not themselves refer to USDA investigations. However, each of the chapters in the "report" that is Tab C of plaintiffs' discovery responses refers to a USDA investigation of defendants – indeed, the executive summary of the report itself states that the document "traces nine different [USDA] investigations ...." To the extent that plaintiffs intend the reference to "investigations, cases, and fact-finding matters" in these requests to refer to other than the USDA investigations in question, such an interpretation would render the requests vague, ambiguous, overbroad, and unduly burdensome.

In addition, we have reviewed the subjects listed in Tab C of the discovery requests, and we see no basis for plaintiffs' request for documents relating to tuberculosis in elephants. This case is about the practices that plaintiffs identify in the complaint as constituting "takes" under the Endangered Species Act. There is no allegation in the complaint that relates to tuberculosis; accordingly, such documents are neither relevant to nor reasonably calculated to lead to the discovery of admissible evidence relating to any claim or defense in this case.

Interrogatory No. 17/Document Request No. 25

Your letter again seeks to backtrack on statements that Kathy Meyer made at the November 15 meeting. At that time, Kathy stated that the six categories set forth in your letter dated October 19, 2004, represented the full scope of video tapes that plaintiffs sought in response to these requests. We have identified over 150 video tapes that might be responsive to these categories, and we have begun to review those tapes to determine whether they are responsive to the categories in your letter. However, we will not agree to undertake this substantial burden absent some agreement from the plaintiffs to limit the scope of these requests which, as initially worded, implicated at least 1,700 videotapes and was therefore overbroad and

unduly burdensome. Please confirm that you will adhere to the agreement that we reached on November 15.

Document Request No. 5

We will produce any responsive, non-privileged documents in our clients' possession that relate to Mr. Rider. As I explained at our November 15 meeting, however, publicly available documents relating to Mr. Rider gathered by counsel as part of this case are not responsive to your request, and, to the extent such documents exist, we will not produce them. We continue to object to any attempt to withhold Mr. Rider from a properly noticed deposition and to the suggestion in your letter that plaintiffs can decide when defendants have "complied with this Request in full."

Document Request No. 6

You have offered no explanation as to why the drafts of advertising copy or information about the amount of money spent on advertising is relevant to any claim or defense of any party. We remain willing to provide exemplars of actual advertisements used since 2000, if plaintiffs will accept such production in satisfaction of this request.

Document Request Nos. 9-10

These requests seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence regarding the claim or defense of any party in this litigation. Nonetheless, we remain willing to produce documents to allow plaintiffs to identify the projects in question. You have offered no explanation why such documents will not be sufficient for plaintiffs' purposes.

Document Request No. 11

Your letter raises for the first time the issue of documents in the possession of Sells-Floto. This belated request has not been the subject of any previous meet and confer communications, despite the fact that defendants objected last June to producing materials in Sells-Floto's possession. In any event, plaintiffs' have shown no basis for seeking documents relating to Sells-Floto. Contrary to your "understanding," Sells-Floto is an independent corporate entity and not a party to this action. Accordingly, plaintiffs have no legal basis to seek documents from Sells-Floto. Moreover, no documents in Sells-Floto's possession could be relevant to any party's claims or defenses in this action.

Document Request Nos. 13-23

Defendants do not see the need to enter into any stipulations regarding these, or any other, document requests. Defendants will comply with plaintiffs' discovery requests to the

extent required by the Federal Rules of Civil Procedure, consistent with their objections. No more is required.

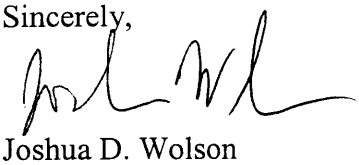
Document Request No. 24

Plaintiffs' reservation of this request is improper. Plaintiffs have acknowledged that they should obtain the products in question on their own. Accordingly, there is no basis to allow this request to languish, open-ended and without resolution. Plaintiffs should withdraw this request.

* * *

We do not believe that the majority of these issues should require intervention by the Court. In any event, we do not view most of these issues as ripe for motions to compel, as we do not believe that we have exhausted our discussions. We hope to hear back from you, and we expect that plaintiffs will agree to adhere to the agreements that we reached at our November 15 meeting.

Sincerely,



Joshua D. Wolson