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January 19, 2005

By Facsimile and First Class Mail

Joshua Wolson
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Re: ASPCA v. Ringling Bros. and Barnum & Bailey Circus, et al.
Civ. No. 03-2006

Dear Josh:

I received your letter dated today. The defendants' initial discovery responses were due on June 9, 2004. It should not take this long for you to "determine whether your clients' files include any records . . . regarding Tom Rider." Therefore, as we explained to Judge Sullivan at the status conference on January 11, plaintiffs will be moving to compel the production of such records.

Although you state in your letter that you "continue to object to [our] request for documents not maintained by defendants that [you] have gathered in [your] capacity as defendants' litigation counsel," this is the first time you have explained your position on this matter with any clarity whatsoever. The mere fact that you objected to plaintiffs' definition of "Ringling" as "overbroad," certainly did not explain, nor justify, your position on this matter, particularly when both the plain language of Rule 34 and our own instruction – to which you did not object – very clearly require defendants to produce, or claim a privilege for, all requested records that are in defendants' "possession, custody or control." See Rule 34(a); Plaintiffs' Instruction No. 3 (emphasis added). Therefore, unless you are taking the position that documents "gathered by defendants' litigation counsel" for use in this litigation are, for some



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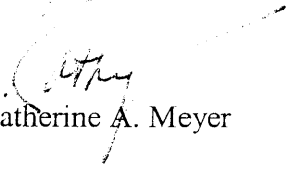
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reason, not under the "control" of your client – despite the fact that your client presumably paid you to gather those documents – any such documents must be either produced or listed on the privilege log. Accordingly, we will also be addressing this matter in our motion to compel.

Your letter raises the further question of whether it is defendants' position that records requested by plaintiffs that are in the possession of an in-house attorney for defendants also are not "responsive" to our discovery requests, and hence have neither been produced nor listed on defendants' privilege log. Please clarify whether this is also your position, based on your objection to the definition of "Ringling" as being overbroad, or for any other reason.

Finally, as you know, since defendants have never noticed the deposition of Tom Rider, plaintiffs have never been in the position of having to "decline" to make him available for a deposition. As part of the meet and confer process, as a courtesy, we simply advised you that the parties should attempt to resolve their dispute about plaintiffs' right to obtain the documents pertaining to Mr. Rider that they requested last March before defendants notice Mr. Rider's deposition, since it is plaintiffs' position that they are entitled to all such records before Mr. Rider is deposed. Again, to date, we have not received any such records, nor are any such records listed on defendants' privilege log, including the "employment" records that Mr. Gulland last week assured Judge Sullivan defendants "will" be providing us, and which you now state you are still "attempting" to locate.

Sincerely,



Katherine A. Meyer