

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 FELD ENTERTAINMENT, INC.'S OPPOSITION TO PLAINTIFFS'  
MOTION TO COMPEL COMPLIANCE WITH A THIRD PARTY SUBPOENA  
SERVED ON PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS**

**EXHIBIT 6**

**FULBRIGHT & JAWORSKI L.L.P.**

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
801 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-2623  
WWW.FULBRIGHT.COM

LISA ZEILER JOINER  
PARTNER  
LJOINER@FULBRIGHT.COM

DIRECT DIAL: (202) 662-4501  
TELEPHONE: (202) 662-0200  
FACSIMILE: (202) 662-4643

January 25, 2008

***VIA E-MAIL & REGULAR MAIL***

Katherine A. Meyer  
Meyer Glitzenstein & Crystal  
1601 Connecticut Ave., N.W., Ste. 700  
Washington, D.C. 20009

Re: ASPCA, et al. v. Feld Entertainment, Inc., Civ. Action No. 1:03-cv-2006:  
Plaintiffs' Subpoenae to PETA

Dear Ms. Meyer:

On behalf of Feld Entertainment, Inc. ("FEI"), I am writing to put both you and Mr. Hirschkop on notice that FEI objects to the two subpoenae that plaintiffs purportedly served yesterday and Wednesday on PETA for deposition transcripts. FEI's objections are contained in the attached Notice. Pursuant to Paragraph 5 of the protective orders entered by the Court in Fairfax, you are both hereby advised the FEI objects to the production of all transcripts that it produced, provided and/or designated in the PETA v. Feld cases. Consequently, no production can occur until the relevant parties agree or a court determines otherwise pursuant to those protective orders. Please advise whether plaintiffs will withdraw the subpoenae voluntarily, or whether it will be necessary to file a motion to quash in this case.

Sincerely,



Lisa Zeiler Joiner

cc: Philip Hirschkop (via facsimile)  
Matthew Andelman (via facsimile)  
William Porter (via facsimile)



notice. FEI objects to Subpoena II as it attempts to expand the scope of Subpoena I by enlarging the transcripts requested (attempting to add Jerome Sowalsky), and due to the lack of reasonable notice (five days' notice) for the return date, Subpoena II violates the January 30, 2008 discovery cutoff set by the Court in this case.

2. FEI objects to Subpoena I & Subpoena II on the grounds that they violate protective orders entered by other courts with competent jurisdiction to do so. FEI objects to the production of any and all deposition transcripts identified in categories 1 and 2 of the Subpoena that are sealed and/or protected in any way by any of the various protective orders entered in People for the Ethical Treatment of Animals, Inc. v. Kenneth Feld, et al., No. 220181 (Cir. Ct. Fairfax County, Va.); People for the Ethical Treatment of Animals, Inc. v. Steven Kendall, et al., No. 204452 (Cir. Ct. Fairfax County, Va.); People for the Ethical Treatment of Animals, Inc. v. Kenneth Feld, et al., No. 204452 (Cir. Ct. Fairfax County, VA); Pottker, et al. v. Feld, et al., No. 99-8068 (D.C. Super. Ct.), and any other applicable protective order entered by any court.

3. FEI objects to Subpoena I & Subpoena II on the grounds that PETA is no longer lawfully in possession of any such transcripts called for by both subpoenae pursuant to Paragraph 9 of the protective orders entered in PETA v. Kenneth Feld, et al., At Law No. 204452 (2/23/04) & (3/11/04) and in PETA v. Kenneth Feld, At Law No. 220181 (5/7/04). Pursuant to such orders, PETA no longer has possession, custody or control of the transcripts sought by Subpoena I & Subpoena II. FEI objects to any transfer to PETA or plaintiffs at this time of any transcripts for purposes of producing such transcripts pursuant to Subpoena I & Subpoena II as unlawful. FEI further objects that Subpoena I & Subpoena II are issued to the wrong party in interest, PETA.

4. FEI objects to Subpoena I & Subpoena II as harassing, overbroad, an invasion of

privacy, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence as the subject matters of these law suits were not related to animals or the Endangered Species Act. For example, in the Pottker case, the D.C. Superior Court ordered that no discovery be had regarding animals or animal rights issues, and no such testimony was taken. Accordingly, Subpoena I and Subpoena II violate this Court's discovery order warning plaintiffs not to take discovery on matters extraneous to this litigation. See, e.g., Order at 2 (11/5/07) (advising plaintiffs that they would be sanctioned for attempting to question witness "about behaviors that are not at issue in this case").

5. FEI objects to Subpoena I & Subpoena II as a violation of and improper effort to circumvent the standing orders entered by the Court in this case, ASPCA, et al. v. Feld Entertainment, Inc., et al., to the extent that any testimony was provided in other cases that has been prohibited in this case. By way of example only and not as a complete list, testimony related to financial information has been precluded in this case pursuant to the Court's February 23, 2006 Order at 2. FEI objects to the production of any transcript, in whole or in part, that contains discovery regarding matters that are expressly prohibited by any court order in this case and/or not related to the subject matter of this case.

6. FEI reserves its right to move to quash this subpoena, and to take any and all action necessary to prosecute any and all violations of all applicable protective orders entered regarding the transcripts sought by the Subpoena.

Dated this 25<sup>th</sup> day of January, 2008.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa Zeiler Joiner". The signature is written in a cursive style and is positioned above a horizontal line.

John M. Simpson (D.C. Bar #256412)  
Joseph T. Small, Jr. (D.C. Bar #926519)  
Lisa Zeiler Joiner (D.C. Bar #465210)  
Michelle C. Pardo (D.C. Bar #456004)  
George A. Gasper (D.C. Bar #488988)

FULBRIGHT & JAWORSKI L.L.P.  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Telephone: (202) 662-0200  
Facsimile: (202) 662-4643

Counsel for Defendant Feld Entertainment, Inc.

**CERTIFICATE OF SERVICE**

I, Lisa Zeiler Joiner, do hereby certify that on January 25, 2008 the foregoing **Notice of Objection to Subpoenae** was served on the following in the manners stated below:

***VIA E-MAIL AND REGULAR U.S. MAIL to:***

Katherine Meyer, Esq.  
Meyer Glitzenstein & Crystal  
1601 Connecticut Ave., N.W., Ste. 700  
Washington, D.C. 20009  
Counsel for Plaintiffs

***VIA FACSIMILE AND REGULAR U.S. MAIL to:***

Philip J. Hirschkop, Esq.  
Hirschkop & Associates, P.C.  
908 King Street, Suite 200  
Alexandria, VA 22314-3013  
Facsimile: 703-548-3181  
Counsel for PETA

***VIA FACSIMILE AND REGULAR U.S. MAIL to:***

Matthew B. Andelman, Esq.  
Williams & Connolly LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005

William B. Porter, Esq.  
Blankingship & Keith, P.C.  
4020 University Drive, Ste. 300  
Fairfax, VA 22030  
Counsel for Kenneth J. Feld


  
Lisa Zeiler Joiner

EXHIBIT 1

To

**NOTICE OF OBJECTION TO  
SUBPOENAE**



**Joiner, Lisa**

---

**From:** Katherine Meyer [KatherineMeyer@meyerglitz.com]  
**Sent:** Wednesday, January 23, 2008 4:05 PM  
**To:** Joiner, Lisa  
**Subject:** FW: Attached image data.  
**Attachments:** 38353.pdf



38353.pdf (247 KB)

Hi Lisa - Please see attached.

Sincerely, Kathy

Katherine A. Meyer  
Meyer Glitzenstein & Crystal  
1601 Connecticut Ave., N.W.  
Suite 700  
Washington, D.C. 20009  
(202) 588-5206  
(202) 588-5049 (fax)

-----Original Message-----

**From:** Copier@meyerglitz.com [mailto:Copier@meyerglitz.com]  
**Sent:** Wednesday, January 23, 2008 11:59 AM  
**To:** Katherine Meyer  
**Subject:** Attached image data.

This is image data from the scanner.

**Meyer Glitzenstein & Crystal**  
1601 Connecticut Avenue, N.W.  
Suite 700  
Washington, D.C. 20009-1056

Katherine A. Meyer  
Eric R. Glitzenstein  
Howard M. Crystal  
Kimberly D. Ockene  
Tanya M. Sanerib  
Joshua R. Stebbins

Telephone (202) 588-5206  
Fax (202) 588-5049  
www.meyerglitz.com

January 23, 2008

**Sent by Electronic and First Class Mail**

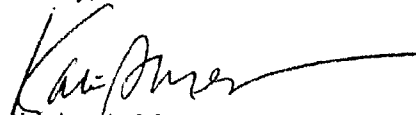
Lisa Zeiler Joiner  
Fulbright & Jaworski, L.L.P.  
801 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2623

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

Dear Ms. Joiner:

Enclosed is a copy of a subpoena that was served today on People for the Ethical Treatment of Animals.

Sincerely,

  
Katherine A. Meyer



AO88 (Rev. 12/06) Subpoena in a Civil Case

**Issued by the**  
**UNITED STATES DISTRICT COURT**  
 DISTRICT OF COLUMBIA

ASPCA, et al.

**SUBPOENA IN A CIVIL CASE**

V.

Ringling Brothers and Barnum & Bailey Circus, et al.

Case Number:<sup>1</sup> 03-2006 (D.D.C.) (EGS/JMF)

TO:

- YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

- YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

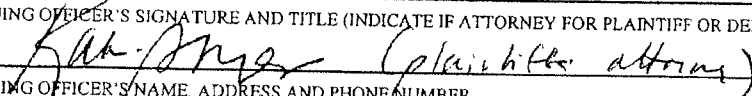
See Attachment

PLACE Meyer Glitzenstein & Crystal 1601 Connecticut Ave., N.W. Suite 700 Washington, D.C. 20009	DATE AND TIME 1/30/2008 2:00 am
---	------------------------------------

- YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  (plaintiff's attorney)	DATE 1/23/2008
---	-------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
 Katherine A. Meyer 1610 Connecticut Ave., N.W. Suite 700  
 Washington, D.C. 20009 (202) 588-5206

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number

AO88 (Rev. 12/06) Subpoena in a Civil Case

PROOF OF SERVICE

DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

SERVED

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_ DATE \_\_\_\_\_ SIGNATURE OF SERVER \_\_\_\_\_

ADDRESS OF SERVER \_\_\_\_\_

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises -- or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION )  
OF CRUELTY TO ANIMALS, *et al.*, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
RINGLING BROTHERS AND BARNUM & BAILEY )  
CIRCUS, *et al.*, )  
 )  
Defendant. )

Civ. No. 03-02006  
(EGS/JMF)

**ATTACHMENT TO SUBPOENA IN CIVIL CASE**

People for the Ethical Treatment of Animals ("PETA") is hereby commanded to produce and permit inspection and copying of the following documents:

- (1) All deposition transcripts for the following deponents in People for the Ethical Treatment of Animals, Inc. v. Kenneth Feld, et al., No. 220181 (Cir. Ct. Fairfax County, Va.), and People for the Ethical Treatment of Animals, Inc. v. Steven Kendall, et al., No. 204452 (Cir. Ct. Fairfax County, Va.): Kenneth Feld, Alan Bloom, Charles Smith, Steven Kendall, and Joel Kaplan.
- (2) All deposition transcripts in PETA's possession for the deponent Kenneth Feld taken in connection with the case Pottker, et al. v. Feld, et al., No. 99-008068 (D.C. Sup. Ct).

**EXHIBIT 2**

To

**NOTICE OF OBJECTION TO  
SUBPOENAE**

**Joiner, Lisa**

---

**From:** Kim Ockene [Kimockene@meyerglitz.com]  
**Sent:** Thursday, January 24, 2008 1:01 PM  
**To:** Joiner, Lisa  
**Cc:** Katherine Meyer  
**Subject:** ASPCA v. Ringling Bros.

**Attachments:** 38446.pdf



38446.pdf (247 KB)

Attached is the amended subpoena served on People for the Ethical Treatment of Animals.

AO88 (Rev. 12/06) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

ASPCA, et al.

**SUBPOENA IN A CIVIL CASE**

V.

Ringling Brothers and Barnum & Bailey Circus, et al.

Case Number:<sup>1</sup> 03-2006 (D.D.C.) (EGS/JMF)

TO: People for the Ethical Treatment of Animals

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Attachment

PLACE Meyer Glitzenstein & Crystal 1601 Connecticut Ave., N.W. Suite 700 Washington, D.C. 20009	DATE AND TIME 1/30/2008 2:00 pm
---	------------------------------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) (plaintiff's attorney)	DATE 1/24/2008
---	-------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
Katherine A. Meyer 1601 Connecticut Ave., N.W. Suite 700  
Washington, D.C. 20009 (202) 588-5206

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



AO88 (Rev. 12/06) Subpoena in a Civil Case

**PROOF OF SERVICE**

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made nor at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION	)	
OF CRUELTY TO ANIMALS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Civ. No. 03-02006
	)	(EGS/JMF)
RINGLING BROTHERS AND BARNUM & BAILEY	)	
CIRCUS, <i>et al.</i> ,	)	
	)	
Defendant.	)	

**ATTACHMENT TO SUBPOENA IN CIVIL CASE**

People for the Ethical Treatment of Animals (“PETA”) is hereby commanded to produce and permit inspection and copying of the following documents:

- (1) All depositions for the following deponents in People for the Ethical Treatment of Animals, Inc. v. Kenneth Feld, et al., No. 220181 (Cir. Ct. Fairfax County, Va.), and People for the Ethical Treatment of Animals, Inc. v. Steven Kendall, et al., No. 204452 (Cir. Ct. Fairfax County, Va.): Kenneth Feld, Alan Bloom, Charles Smith, Steven Kendall, Jerome Sowalsky, and Joel Kaplan.
- (2) All depositions in PETA’s possession for officials of Feld Entertainment Inc. taken in connection with the case Pottker, et al. v. Feld, et al., No. 99-008068 (D.C. Sup. Ct).