



animals could embarrass defendants and injure their reputation. It would also embarrass defendants' veterinary staff, who would be publicly accused of providing deficient care to elephants based on mischaracterizations of, or out-of-context quotes from, their notes.

3. Defendants' employees are preparing research papers and articles on the topics of elephant gestation, parturition (birth), mother-infant bonding, and physiology. The medical records of defendants' elephants provide the foundation for these articles.

4. These articles will be of great value to both defendants and the elephant management community. However, if the data are released prior to publication of these articles, then the studies' value to both defendants and the elephant management community will be greatly diminished.

5. Plaintiffs' ability to prosecute this case will not be inhibited by entry of the protective order that defendants have requested. Plaintiffs would still receive the documents, and still be permitted to use them in this litigation – they would simply be barred from disclosing them to the public and causing defendants harm.

6. Because this information is confidential and disclosure of the material outside the scope of this case would cause the defendants and their current and former employees “annoyance, embarrassment, oppression, or undue burden,” and the entry of a protective order would in no way harm the plaintiffs' ability to prosecute this case, a protective order is appropriate in this case. *See* FRCP 26(c); *United States v. MWI Corp.*, 209 F.R.D. 21, 27 (D.D.C. 2002). Therefore, for the reasons stated at pp. 26-28 of Defendants' Opposition to Plaintiffs' Motion to Compel Defendants' Compliance with Plaintiffs' Discovery Requests, the Court should enter the accompanying protective order.

7. Counsel for defendants hereby certify that they have made good faith attempts to discuss with opposing counsel the resolution of the issue presented in this motion, and that they are

unable to reach agreement with plaintiffs' counsel on the disputed issue. Counsel for defendants have explained to opposing counsel that defendants are prepared to produce additional, more detailed veterinary records of elephants owned or leased by defendants if plaintiffs would agree to the entry of a protective order that would limit the dissemination of this information. (*See* Letter to Kimberly D. Ockene, Jan. 4, 2005, at 3). In their response to this offer, plaintiffs' counsel failed to provide a definitive answer regarding defendants' request for a confidentiality order, although plaintiffs' response suggested that they disagreed as to the need for such an order. (*See* Letter to Eugene Gulland and Joshua Wolson, Jan. 10, 2005, at 7). Plaintiffs' subsequent motion to compel appears to reject the idea of a protective order. Because defendants continue to believe that a protective order is necessary to limit the use of these documents to the above captioned case, they now find it necessary to involve the Court in this matter.

Respectfully Submitted,

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ATTORNEYS FOR DEFENDANTS

February 15, 2005

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of February, 2005, Defendants' Motion for a Protective Order was filed via the Court's CM/ECF system. Notice to all parties will be sent by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. In addition, a copy of the foregoing has been served as otherwise provided by operation of Local Rule on parties and/or counsel who have not registered on the Court's CM/ECF system.

/s/ Joshua D. Wolson