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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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AMERICAN SOCIETY FOR THE Docket No. CA 03-2006
PREVENTION OF CRUELTY TO
ANIMALS, ET AL

Plaintiffs,

v. Washington, D.C.
May 30, 2008
9:30 a.m.

RINGLING BROTHERS AND BARNUM
& BAILEY CIRCUS, ET AL

Defendant.

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EVIDENTIARY HEARING

BEFORE THE HONORABLE JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: Meyer Glitzenstein & Crystal
By: Mr. Robert Glitzenstein
Ms. Katherine A. Meyer
Ms. Kimberly Denise Ockene
1601 Connecticut Ave, N.W., Suite 700
Washington, D.C. 20009
202.364.4092

Paul, Hastings, Janofsky & Walker, LLP
By: Mr. Mark Koehn
Mr. Matt Stowe
875 15th Street, N.W.
Washington, D.C. 20005
202.551.1876

The Humane Society of the United States
By: Mr. Jonathan R. Lovvorn
2100 L Street, N.W.
Washington, D.C. 20037
202.955.3669

1 For the Defendants: Fulbright & Jaworski, LLP
2 By: Mr. John M. Simpson
3 Ms. Lisa Zeiler Joiner
4 Mr. George A. Gasper
5 Ms. Kara L. Petteway
6 801 Pennsylvania Ave., N.W.
7 Washington, D.C. 20004
8 202.662.0200

9 Court Reporter: Catalina Kerr, RPR
10 U.S. District Courthouse
11 Room 6716
12 Washington, D.C. 20001
13 202.354.3258

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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:30 A.M.; OPEN COURT.)

3 THE DEPUTY CLERK: All rise. This honorable court
4 is now in session. Please be seated everyone and come to
5 order. Good morning, everyone.

6 THE COURT: Good morning.

7 MR. SIMPSON: Good morning, Your Honor.

8 THE DEPUTY CLERK: This is Civil Case 03-2006,
9 American Society for the Prevention of Cruelty to Animals, et
10 al versus Ringling Brothers and Barnum & Bailey Circus, et al.
11 This is an evidentiary hearing. Would the parties identify
12 themselves and the parties they represent for the record,
13 beginning with the Plaintiffs.

14 MR. GLITZENSTEIN: Good morning, Your Honor. Eric
15 Glitzenstein on behalf of Plaintiffs.

16 THE COURT: Yes, good morning.

17 MS. MEYER: Katherine Meyer for the Plaintiffs, Your
18 Honor.

19 THE COURT: Good morning.

20 MS. OCKENE: Kimberly Ockene for the Plaintiffs.

21 MR. STOWE: Matt Stowe and Mark Koehn representing
22 the Humane Society.

23 THE COURT: Yes.

24 MR. SIMPSON: John Simpson for the Defendant, Your
25 Honor.

1 THE COURT: Mr. Simpson.

2 MS. JOINER: Lisa Joiner for Defendant, Your Honor.

3 THE COURT: Thank you.

4 MR. GASPER: Good morning, Your Honor. George
5 Gasper for the Defendant.

6 MS. PETTEWAY: Kara Petteway for Defendant.

7 THE COURT: Okay. Call your next witness, please.

8 MR. GASPER: At this time we call Michael Markarian
9 to resume his testimony.

10 THE COURT: Mr. Markarian.

11 Are there any other witnesses in the courtroom?

12 THE DEPUTY CLERK: Raise your right hand, sir.

13 (WITNESS SWORN BY THE DEPUTY CLERK.)

14 MARK MARKARIAN,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION (CONT'D.)

17 BY MR. GASPER:

18 Q Good morning, Mr. Markarian. You are president of Fund
19 For Animals, or FFA; isn't that right?

20 A Yes.

21 Q And do you recall, sir, being in the courtroom on March
22 6, 2008, to provide testimony in this matter?

23 A Yes, I do.

24 Q You testified at that time, sir, that you spend on
25 average one hour per week on FFA matters; is that right?

1 A Yes.

2 Q You also serve as executive vice president of the Humane
3 Society of the United States; isn't that right?

4 A Yes.

5 Q And HSUS pays your salary, not FFA, correct?

6 A That's right.

7 Q Sir, you signed all of FFA's interrogatory responses in
8 this case, didn't you?

9 A Yes.

10 Q And you swore under oath that they were all true and
11 correct; isn't that right?

12 A Yes.

13 Q And you also are FFA's 30(b)6 deponent in this case;
14 isn't that right?

15 A That's right.

16 Q And you took the same oath to tell the truth at that
17 time; is that correct?

18 A That's correct.

19 Q And, sir, you also are in charge of both FFA's and HSUS'
20 search for documents in this case; isn't that right?

21 A That's right.

22 Q And you submitted declarations on behalf of both FFA and
23 HSUS in response to court orders; isn't that right?

24 A Yes.

25 MR. GASPER: Your Honor, may I approach the witness?

1 THE COURT: Certainly.

2 Q (BY MR. GASPER) Mr. Markarian, this is a transcript of
3 your testimony on March 6, 2008.

4 MR. GASPER: And Your Honor, we have a copy for the
5 Court, if I may pass that up.

6 THE COURT: Thank you very much.

7 Q (BY MR. GASPER) Mr. Markarian, if you can look at this
8 document, on the cover page it indicates that this is the
9 transcript from March 6, 2008; do you see that?

10 A Yes, I do.

11 Q And then the next page, which is page 50 of the
12 transcript, picks up where your testimony began; do you see
13 that?

14 A Yes.

15 Q Okay. Can you please turn to page 63?

16 A (Witness complies.)

17 Q If I can turn your attention, sir, to line 21. On March
18 6 you were asked if it was your understanding that Fund For
19 Animals has produced all of the documents in its or HSUS'
20 files that concern payments to or for Tom Rider; and you
21 answered, "Yes, it is." Was that your testimony?

22 A Yes.

23 Q And you were asked, sir, (reading) Has FFA produced all
24 the documents in its or HSUS' files -- continuing on to page
25 64 -- that concern communications regarding the subject matter

1 of this lawsuit?

2 You answered, (reading) Excuse me. Yes, it has.

3 Was that your testimony?

4 A Yes.

5 Q Sir, you were then asked, (reading) Has Fund For Animals
6 identified in its interrogatory responses all the internal
7 communications it has had concerning payments to Tom Rider?

8 You answered, (reading) Yes.

9 You were then asked, (reading) Has Fund For Animals
10 identified in its interrogatory responses all the
11 communications it has had with HSUS concerning payments to Tom
12 Rider?

13 You answered, (reading) Yes, I believe so.

14 And finally --

15 MR. STOWE: Objection, Your Honor. This is
16 redundant, and there is no relevance to it so far.

17 THE COURT: Assuming that's an objection, it's
18 overruled.

19 Q (BY MR. GASPER) Sir, you were asked, (reading) Has Fund
20 For Animals identified in its interrogatory responses all the
21 communications it had with other organizations concerning
22 payments for Tom Rider?

23 And you answered, (reading) Yes.

24 Was that your testimony?

25 A Yes.

1 Q Sir, please turn to page 78. Line 24 you were asked,
2 (reading) You think they're in there; is that your testimony?

3 And your answer was, (reading) We have produced
4 every document that related to payments to Tom Rider.

5 Do you see that, sir?

6 A Yes, I do.

7 Q And that was your testimony on March 6, was it not?

8 A Yes, that's right.

9 Q Please turn to page 72. And line 5, sir, there's an "A"
10 at the start there, but it actually should be a question. The
11 question was, (reading) And you produced all of those; is
12 that your testimony?

13 And you answered, (Reading) I don't recall finding
14 any documents electronically that related to payments to Tom
15 Rider.

16 Was that your testimony?

17 A Yes.

18 MR. GLITZENSTEIN: Your Honor, this is not an
19 objection, but can he just have a moment to read the context?

20 THE COURT: You're going too fast, Mr. Gasper,
21 please.

22 MR. GASPER: That's fine.

23 Q (BY MR. GASPER) Mr. Markarian, please take --

24 THE COURT: Hold it. What page are you on?

25 MR. GASPER: This is at page 72, Your Honor.

1 THE COURT: What line?

2 MR. GASPER: The question is at line 5. There is an
3 "A" in the transcript. It should be a "Q."

4 THE COURT: Okay. Take a moment and read your
5 testimony. And then after you're done, just indicate you're
6 ready and then he'll ask you a question.

7 A (Witness complies.) Okay.

8 Q (BY MR. GASPER) Sir, was it your testimony on March 6
9 that you do not recall finding any documents electronically
10 that related to payments to Tom Rider?

11 A Yes.

12 Q Please turn to page 89. Sir, I'm going to ask you a
13 question about lines 4 through 6. Please take a look at page
14 89, and let me know when you are ready to be asked a question
15 about lines 4 through 6.

16 A Okay.

17 Q Sir, on March 6, you were asked, (reading) What about
18 yourself, sir, have you ever received or sent an e-mail
19 concerning payments to Tom Rider?

20 And you answered under oath, (reading) Not that I'm
21 aware of.

22 Was that your testimony?

23 A That's right.

24 MR. GASPER: Your Honor, may I approach the witness?

25 THE COURT: Sure.

1 Q (BY MR. GASPER) Mr. Markarian, I just handed you a
2 binder containing some of Defendants' exhibits in this matter.
3 Can you please turn to Defendants' Exhibit 51.

4 A Okay.

5 Q Have you seen this document before?

6 A It doesn't look familiar to me. It's from 2003, but I
7 could have seen it in the past.

8 THE COURT: I'm sorry, sir, your voice dropped and I
9 did not hear you.

10 THE WITNESS: Sorry, Your Honor. I said that it
11 does not look familiar to me. It's from 2003, but it's
12 possible that I might have seen it in the past.

13 Q (BY MR. GASPER) Mr. Markarian, this is an e-mail that
14 was addressed to you at "mmarkarian@fund.org"; is that
15 correct?

16 A Yes, that's correct.

17 Q And that was your e-mail address at that time?

18 A That's correct.

19 Q Do you have any reason to believe you did not receive
20 this e-mail?

21 A No, I don't.

22 Q Sir, in that third paragraph, this e-mail refers to
23 payments to Mr. Rider; is that correct?

24 A That's right.

25 Q So, sir, this is an e-mail about payments to Mr. Rider

1 that you received; isn't that correct?

2 A It appears to be.

3 Q And in fact, sir, in that third paragraph, this is an
4 e-mail from Katherine Meyer; is that correct?

5 A Yes, it looks to be that.

6 Q And in the third paragraph, Ms. Meyer notes that she's
7 very impressed with his, that's Mr. Rider's, total commitment
8 to this lawsuit; isn't that correct?

9 A That's right.

10 Q Now, Fund For Animals did not produce this document, did
11 it?

12 A No.

13 Q Neither did HSUS; isn't that right?

14 A No.

15 Q And neither did any of the Plaintiffs in this case; isn't
16 that right?

17 MR. GLITZENSTEIN: Your Honor, I object. I'm not
18 sure Mr. Markarian is in a position to assess what the
19 Plaintiffs, as a whole, produced in the case.

20 THE COURT: I don't know. Overruled.

21 A I don't know what the other Plaintiffs produced. I do
22 know that this particular e-mail did not turn up in a search
23 of Fund For Animals or HSUS electronics files.

24 Q (BY MR. GASPER) Sir, do you know what page 1 of 3 is?

25 A I'm sorry?

1 Q At the top of this document, it says, "page 2 of 3."

2 A Right.

3 Q Do you know where page 1 of 3 is?

4 A It's not in this binder, no.

5 Q Correct. And you -- so you have no idea where page 1 of
6 3 is to this document?

7 A No, I don't.

8 Q Sir, did you search for e-mails relating to payments to
9 Mr. Rider?

10 A Yes.

11 Q But you did not produce this document; isn't that
12 correct?

13 A I did not have this document. I presume that I would not
14 have saved a -- an e-mail from 2003 that dealt with this.

15 Q Sir, your testimony, sir, is that you did not save
16 documents in 2003 that related to payments to Mr. Rider?

17 A When I searched for electronic e-mails related to
18 Mr. Rider, I did not have this particular e-mail, so my -- my
19 presumption is that this was long ago deleted sometime between
20 2003 and the present.

21 Q Was it your practice, sir, to preserve all documents
22 relating to payments to Mr. Rider?

23 A We did not have any policy regarding e-mail retention at
24 that time.

25 Q Sir, was it your practice to preserve documents relating

1 to Mr. Rider?

2 A Not particularly.

3 Q Had there come a point at any time since 2000 in which
4 you began saving all of your documents about payments to
5 Mr. Rider?

6 A There were -- there were times when our attorneys
7 instructed us to save any documents that were related to this
8 litigation or to Mr. Rider, but at 2003, I was not in the
9 practice of saving every e-mail that I received.

10 Q Sir, and in the Court's August 23, 2007 order, are you
11 familiar with that?

12 A Yes.

13 Q And pursuant to that, you signed a declaration saying
14 that you're not aware of any documents that have been
15 destroyed about payments to Mr. Rider; isn't that correct?

16 A That's right.

17 Q Sir, you did not mention this e-mail, did you?

18 A I was not aware of this particular e-mail. It was not
19 intentionally destroyed. I routinely do not save every single
20 e-mail I receive. I delete e-mails from time to time. I
21 don't save every piece of communication that comes across my
22 desk, so the fact that these e-mails were not in my possession
23 does not mean that they were intentionally discarded or that I
24 remembered them being discarded.

25 Q What other e-mails about payments to Mr. Rider have you

1 discarded?

2 A I don't recall.

3 Q Sir, this communication about payments to Mr. Rider was
4 not described in FFA's interrogatories; isn't that correct?

5 A I believe that's correct.

6 Q I'm sorry, you believe it's in there or it's not in
7 there?

8 A I believe you are correct, that this was not included
9 because we did not have a copy of it.

10 Q All right. But, sir, you testified last time that all of
11 your communications about payments to Mr. Rider were disclosed
12 in the interrogatories; isn't that correct?

13 A All of the payments that were produced in our searches
14 and that we could remember were produced.

15 Q Sir, last time you were here on March 6, you didn't
16 indicate that all of your communications that you found were
17 produced. Your testimony was that they were all produced;
18 isn't that correct?

19 A Yes. You hadn't yet showed me this e-mail, which I was
20 not aware of.

21 Q So your testimony before was not accurate; is that
22 correct?

23 A It was accurate to the extent of my knowledge that we
24 produced every single document in our possession that related
25 to Tom Rider, related to payments to Tom Rider.

1 Q Having seen this document, sir, it is no longer true in
2 your mind that FFA produced all payments relating to payments
3 to --

4 MR. STOWE: Objection, Your Honor.

5 THE COURT: Wait a minute. Let him finish the
6 question before you make your objection. Let's start all
7 over.

8 MR. STOWE: I'm sorry, Your Honor. It's just they
9 go so fast.

10 THE COURT: And when you speak to me, stand. Let's
11 start all over again. Ask your question.

12 MR. GASPER: I will slow down, Your Honor.

13 Q (BY MR. GASPER) Mr. Markarian, you just testified that
14 your prior answer was before you had seen this document; is
15 that correct?

16 A Yes.

17 Q Having now seen this document, it is not true that FFA
18 has produced all of its documents about payments to Mr. Rider,
19 is it?

20 A It is true that we produced every single document that
21 was in our possession. This document, which you have shown
22 me, was not in my possession.

23 Q And sir, it is not true, is it, that all of your
24 communications were disclosed in your interrogatory responses,
25 is it?

1 A It's true that we disclosed every communication that we
2 had recollection of. The fact that I didn't remember a brief
3 e-mail from November 2003 is -- is not indicative that this
4 was discarded or not mentioned intentionally.

5 Q Last time you were here, sir, you were asked if FFA has
6 identified in its interrogatory responses all communications
7 it has had with other organizations concerning payments for
8 Tom Rider, and you answered "yes"; isn't that true?

9 A That's right.

10 Q You did not say, "Yes, as to all the ones we found," did
11 you?

12 MR. GLITZENSTEIN: Your Honor, could he show him the
13 interrogatory answers that he's referring to?

14 THE COURT: You can do that on redirect. Overruled.

15 A I believe that's right.

16 Q (BY MR. GASPER) Now, sir, after receiving this e-mail,
17 did you respond to Ms. Meyer?

18 A I don't recall.

19 Q Well, in paragraph 3 she asks for your ideas as to how to
20 raise more money; isn't that correct?

21 A Yes, it looks that way.

22 Q You don't recall if you responded to her?

23 A I don't.

24 Q Did you talk to Ms. Weisberg or Ms. Liss about this
25 e-mail?

1 A I don't recall.

2 Q Did you talk to anyone within FFA about this e-mail?

3 A I don't know.

4 Q Sir, on paragraph 2, Ms. Meyer states that she's
5 attaching a copy of a fundraising letter. Do you see that?

6 A Yes.

7 Q FFA didn't produce that fundraising letter either to us,
8 did it?

9 A I don't believe we possessed that fundraising letter.

10 Q But sir, it was attached to this e-mail; isn't that
11 correct?

12 A I don't know whether it was.

13 MR. GLITZENSTEIN: Your Honor, for the record, that
14 e-mail -- that attachment, in fact, is in the record and it's
15 part of the exhibits that were filed by Plaintiffs, so we can
16 get into this on direct if you wish, but...

17 THE COURT: We'll do it. Thank you. Go ahead.

18 Q (BY MR. GASPER) Mr. Markarian, did you discuss the
19 fundraising letter with anyone?

20 A I don't recall.

21 Q It's not in there.

22 MR. GASPER: Your Honor, may I approach?

23 THE COURT: Sure.

24 Q (BY MR. GASPER) Mr. Markarian, I just handed you a
25 binder of Plaintiffs exhibits in this case. Can you please

1 turn to Plaintiffs' Exhibit D.

2 A I'm sorry, you said "D"?

3 Q "D" as in dog, yes.

4 A Okay.

5 Q This, sir, is documents produced by FFA in this case, is
6 it not?

7 A It appears to be, yes.

8 Q And you see the "F" Bates number at the bottom?

9 A Yes.

10 Q Sir, where, in this attachment, is the fundraising letter
11 that was attached to Ms. Meyer's November 2003 e-mail?

12 A I don't know that it's here.

13 Q Okay.

14 A There is a fundraising proposal from December 2003.

15 Q Correct. But if you look at Exhibit 51, Ms. Meyer's
16 e-mail is in November of 2003; isn't that right?

17 A That's right.

18 Q So this wouldn't be that letter?

19 A Probably not.

20 Q And in fact, sir, you don't see anything else in Exhibit
21 D that appears to be the letter that your lawyer sent you
22 about raising money for Tom Rider?

23 A No, I don't.

24 Q Thank you.

25 MR. GASPER: Your Honor, may I approach?

1 THE COURT: Sure.

2 Q (BY MR. GASPER) Mr. Markarian, I just removed, for your
3 convenience, the binder of Plaintiffs' exhibits, but I left the
4 binder of Defendants' exhibits up there. Can you please turn
5 to Defendants' Exhibit 52.

6 A Okay.

7 Q Sir, please take a look at this document and let me know
8 if you've seen it before.

9 A Yes, I have.

10 Q And what is this document?

11 A This -- this document dated July 22nd, 2004, is a note
12 from me -- No, I'm sorry. From Marian Probst of the Fund For
13 Animals, to me, regarding a check for \$500 to Tom Rider.

14 Q Sir, this document seems to indicate, does it not, that
15 the ASPCA was going to pay Mr. Rider \$500 but it couldn't get
16 the money timely; is that right?

17 A That's correct.

18 Q How did FFA learn that ASPCA wouldn't be able to send the
19 money?

20 A I don't recall how we would have learned that, but my --
21 my assumption is that Marian Probst spoke with someone at the
22 ASPCA regarding this check.

23 Q That communication, sir, is not reflected in FFA's
24 interrogatories, is it?

25 A I don't recall.

1 Q Do you think it is?

2 A I don't know.

3 Q Okay. Well, we'll get to the interrogatory responses.

4 With whom do you believe Ms. Probst spoke with at
5 the ASPCA?

6 A I don't know.

7 Q Now, sir, so did you and Ms. Probst discuss this issue?

8 A Yes, we did.

9 Q And that communication is not disclosed in your
10 interrogatory response, is it?

11 A Well, this document is disclosed, which describes the
12 communication.

13 Q Sir, did you or anyone else within FFA talk to anyone at
14 AWI about this issue?

15 A Not to my knowledge.

16 Q Did you or anyone at FFA talk to anyone at the Wildlife
17 Advocacy Project at Meyer Glitzenstein & Crystal about this
18 payment?

19 A Not to my knowledge.

20 Q Did you ask Ms. Probst whether or not she had
21 communications about this payment?

22 A I don't recall.

23 Q Did anyone at FFA talk to Mr. Rider about this money?

24 A I did.

25 Q And so this thousand dollars was sent directly to

1 Mr. Rider; is that correct?

2 A That's correct.

3 Q But, sir, those communications are not disclosed in your
4 interrogatory responses, are they?

5 A Those communications were discussed in my 2005 deposition
6 in this case. I don't recall whether they are also described
7 in the interrogatories.

8 Q But, sir, they are communications with Mr. Rider; is that
9 correct?

10 A That's right.

11 Q Did Fund For Animals get any receipts for this thousand
12 dollars that it sent to Mr. Rider?

13 A I don't recall.

14 MR. GASPER: Your Honor, may I approach?

15 THE COURT: Sure.

16 Q (BY MR. GASPER) Mr. Markarian, I've just handed you
17 another binder of Defendants' exhibits, and I'd ask you to turn
18 to Defendants' Exhibit No. 33. This is your deposition on
19 behalf of Fund For Animals in June 2005; is that correct?

20 A Yes, that's right.

21 Q And at this deposition, sir, you testified on behalf of
22 Fund For Animals; is that correct?

23 A That's correct.

24 Q And you were charged, sir, with providing the company's
25 or the entity's testimony; isn't that right?

1 A Yes.

2 Q Please turn to page 158 of the transcript. I'm going to
3 ask you a question on page 158 around line 16 through 19.
4 Please take as much time as you need to review the page and
5 let me know when you're ready to proceed.

6 A Yes, I see it.

7 Q Okay. Sir, you were asked in June of 2005, (reading)
8 Did he submit any receipts for those -- that thousand dollars?

9 And you answered, under oath, (reading) I believe
10 that we did receive one receipt from him.

11 Do you see that?

12 A I do see it, yeah.

13 Q Sir, did FFA produce any receipts to us for this
14 thousand-dollar payment?

15 A No, we could not locate any receipts.

16 Q Was that -- and has any receipt described in your
17 declaration in response to the Court's August 23rd, 2007
18 order?

19 A Not to my knowledge, no.

20 Q And sir, when I asked you on March 6 whether or not all
21 documents relating to payments had been produced, you said
22 "yes," didn't you?

23 A Yes.

24 Q You didn't mention this receipt, did you?

25 A We did not locate a receipt in any of our searches.

1 Q Sir, just jumping back to Exhibit 52. It's the document
2 about the thousand-dollar payment. It's actually a two-page
3 exhibit, and on page 2 there's a redaction.

4 Can you please explain the type of information
5 that's been redacted out.

6 A Well, it's a very blurry photocopy, but the redacted bar
7 appears to be the payee's information.

8 Q Is it your understanding, sir, this was paid to Tom
9 Rider?

10 A Yes, that's correct.

11 Q And that this check was issued payable to Tom Rider?

12 A That's my understanding.

13 Q Sir, please turn to Defendants' Exhibit 85.

14 MR. GASPER: Your Honor, may I approach?

15 THE COURT: Sure.

16 MR. GASPER: I'll take one of those binders out of
17 your way.

18 THE WITNESS: Which one?

19 MR. GASPER: This one.

20 A 85?

21 Q (BY MR. GASPER) Yes, sir, 85.

22 A Okay.

23 Q If you can take a minute, sir, and look at the exhibit,
24 and let me know when you're ready to proceed.

25 A Okay.

1 Q What are the -- what are these documents?

2 A They appear to be invoices from Meyer & Glitzenstein.

3 Q And sir, there are portions on here, are there not, that
4 reflect payments made to Tom Rider that were ultimately
5 charged to Fund For Animals?

6 A Yes, that's correct.

7 Q Sir, these documents -- and if you look at the first
8 one -- begins June 14, 2001. Do you see that?

9 A Yes, yes.

10 Q The last one runs through April 11th, 2003; isn't that
11 correct?

12 A That's right.

13 Q These were not produced, sir, in FFA's June 2004 document
14 production, were they?

15 A I don't believe so.

16 Q And they were not produced in FFA's January 2007 document
17 production, were they?

18 A Not to my knowledge.

19 Q And sir, they were only produced after we had to go get a
20 court order in this case; isn't that right?

21 A Yes. Our initial understanding of the document requests
22 was to produce payments directly to Tom Rider, which is why we
23 produced those checks from 2004 that were sent directly to
24 Mr. Rider.

25 When the Court clarified that it also wanted

1 documents to other parties that were related to Tom Rider, we
2 expanded our search and produced further documents.

3 Q Sir, these documents were not produced prior to
4 September 2007, were they?

5 A I don't recall.

6 Q Okay. Now, you were responsible for FFA's document
7 search and production; isn't that right?

8 A That's right.

9 Q So you gathered up documents and turned them over to your
10 lawyers; isn't that correct?

11 A That's correct.

12 Q And your understanding, sir, would have been that subject
13 to objections, any responsive and non-privileged documents
14 were going to be produced; isn't that correct?

15 A Yes.

16 Q Did you review FFA's privilege log in this case?

17 A I don't recall whether I did.

18 Q Did you review correspondence between your lawyers and
19 FEI's counsel about the document productions?

20 A I may have. I don't remember.

21 Q Now, sir, please turn to Defendants' Exhibit 8. I'm
22 going to have to get you another binder.

23 Sir, Defendants' Exhibit 8 is the Plaintiffs'
24 supplemental privilege log produced in January of '07. Have
25 you seen this before?

1 A I don't recall seeing it.

2 Q Okay. Now, sir, if I can direct your attention to page
3 2. There's an entry for invoices. It's the fourth box on
4 page 2. Do you see that, sir?

5 A Yes, I do.

6 Q And it's an -- invoices from MGC, that's Meyer
7 Glitzenstein & Crystal, correct?

8 A Yes.

9 Q To clients for invoices related to work in this case;
10 isn't that right?

11 A Yes.

12 Q And so, sir, in January of 2007, FFA was taking the
13 position that all of these invoices were entirely privileged;
14 isn't that correct?

15 A That's right.

16 Q Okay. Sir, please turn to Defendants' Exhibit 46.

17 MR. GASPER: Your Honor, may I approach?

18 THE COURT: Yeah.

19 Q (BY MR. GASPER) Did you find Exhibit 46, sir?

20 A Yes.

21 Q This is a December 15th, 2006 letter to me from Kathy
22 Meyer. Have you seen this before?

23 A I don't -- I don't know whether I have.

24 Q Okay. Well, let me direct your attention to page 5. In
25 the paragraph that begins fourth towards the bottom of the

1 page; do you see that?

2 A Yes.

3 Q Were you aware, sir, that in December of 2006, FEI was
4 told the Plaintiffs have no non-privileged portions of the
5 invoices from our firm that reflect monies filtered through it
6 for payments to Mr. Rider?

7 A That appears to be correct.

8 Q Okay. So, sir, in December 2006 --

9 MR. GLITZENSTEIN: I assume his answer was it is
10 correct that he didn't know what was in that letter.

11 THE COURT: I don't know.

12 MR. GLITZENSTEIN: I'm not sure what the question
13 was.

14 A I'm not familiar with this document.

15 Q (BY MR. GASPER) Were you aware that FFA's outside
16 counsel told FEI in December of 2006 that there were no
17 non-privileged portions of the invoices?

18 A I was not aware of it.

19 Q Were you aware, sir, that in January of 2007, FFA's
20 privilege log purported the claim privilege over all these
21 invoices?

22 A I wasn't aware of the privilege log until you showed it
23 to me a few minutes ago.

24 Q Sir, you are the person responsible for FFA's document
25 search; is that correct?

1 A That's right.

2 Q Sir, if you can flip back to Defendants' Exhibit 85 and
3 go back to the invoices. The payments that are reflected in
4 these invoices, sir, did you discuss them at all with anyone
5 else?

6 A I don't recall.

7 Q You don't recall whether or not you discussed these
8 payments with anyone at Wildlife Advocacy Project?

9 A These are payments from 2001. I don't remember
10 discussing the payments seven years ago.

11 Q Well, sir, you received an invoice asking Fund For
12 Animals to pay money that was being given to Tom Rider; isn't
13 that correct?

14 A Yes.

15 Q And these invoices were paid; isn't that correct?

16 A That's right.

17 Q And sir, it's your testimony that you don't recall
18 whether or not you would have discussed this with anyone
19 before getting the invoice?

20 A I'm presuming that I agreed to pay those portions of the
21 invoices that were related to Tom Rider's media and
22 campaigning efforts. That is something that I would have
23 agreed to.

24 Q Do you recall anyone asking you if you would pay?

25 A I don't recall the discussions.

1 Q But you presume that you agreed to it; is that correct?

2 A That's right.

3 Q Sir, let's take a look at page 4501. It's F04501. Do
4 you see that page, sir?

5 A Yes.

6 Q Now, under the line "shared expense," it references a
7 wire transfer to be divided by all three groups. Do you see
8 that?

9 A Yes.

10 Q But under the line "special expense," it indicates wire
11 transfer to Tom Rider to be paid by ASPCA. Do you see that?

12 A Yes, I do.

13 Q Sir, is it also your presumption then that there were
14 communications with ASPCA that it would pay that money?

15 A Yes.

16 Q And sir, the "divided by all three groups," is it also
17 your presumption that someone asked you, "Would you be willing
18 to pay this wire transfer"?

19 A Yes.

20 Q And sir, none of these communications about these
21 invoices are in FFA's interrogatory responses; isn't that
22 correct?

23 A I believe that's correct.

24 MR. GASPER: Your Honor, I'm sorry, may I approach,
25 again?

1 THE COURT: Sure.

2 THE WITNESS: Are there anymore cups that I could --

3 THE COURT: Cups.

4 MR. GASPER: Is there water in here?

5 THE WITNESS: I think so. Maybe not. Thank you.

6 Q (BY MR. GASPER) Sir, I'm sorry, earlier we looked at
7 Defendants' Exhibit 8, which is the January 2007 privilege log,
8 and I had one other question.

9 You see an entry for where it says, "E-mails, 2004
10 to December 31st, 2006"?

11 A Yes.

12 Q "Between and among Plaintiffs' attorneys and clients,"
13 and under the description is "communications regarding
14 litigation, advice, recommendations and strategy." Do you see
15 that?

16 A Yes.

17 Q Has FFA had e-mails with any of the Plaintiffs about this
18 litigation in which Meyer Glitzenstein & Crystal were not
19 included?

20 A Not to my knowledge.

21 Q Well, is it your understanding, sir, that if there were
22 such documents, that this privilege entry permits FFA to
23 withhold those?

24 MR. GLITZENSTEIN: Your Honor, it's asking for a
25 legal conclusion.

1 THE COURT: Well, Mr. Gasper, you've lost me. Why
2 are the entries on a privilege log a violation of a court
3 order issued in August 2007?

4 MR. GASPER: We're trying to establish, Your Honor,
5 whether or not all communications have been disclosed, and
6 during the motion to compel briefing there was argument as to
7 whether or not communications among the clients, outside the
8 presence of counsel, were privileged, and so I want to ask
9 Mr. Markarian as whether or not --

10 THE COURT: I thought the focus of your -- of the
11 inquiry today was whether or not Plaintiffs had failed to
12 comply with that portion of Judge Sullivan's order that
13 indicated information with reference to payments made to Rider
14 had to be complied with.

15 So why would a privilege log submitted by lawyers
16 have anything to do with that?

17 MR. GASPER: I want to make sure that there are no
18 payment documents being withheld on the basis of this entry,
19 that's all.

20 THE COURT: But he didn't create the privilege log.

21 MR. GASPER: Okay. I just wanted to establish, Your
22 Honor, whether or not he was aware that that was a basis. If
23 he doesn't know, he doesn't know, but it would be
24 irresponsible for me not to ask the question.

25 THE COURT: Do you understand the question?

1 THE WITNESS: I believe so, Your Honor.

2 THE COURT: Can you answer it?

3 A I don't know.

4 Q (BY MR. GASPER) Okay. Thank you. Mr. Markarian, who is
5 Roger Kindler?

6 A Roger Kindler is the general counsel and chief legal
7 officer for the Humane Society of the United States.

8 Q Does he have any title or position with the Fund For
9 Animals?

10 A I believe he is also general counsel for the Fund For
11 Animals.

12 Q You are president of Fund For Animals; is that correct?

13 A That's correct.

14 Q And are you sure whether or not Mr. Kindler is general
15 counsel of Fund For Animals?

16 A I believe that that's correct.

17 Q But you're not sure?

18 A I'm not 100 percent sure, frankly.

19 Q Sir, can you please turn back to your hearing transcript
20 that we started with at the beginning of today?

21 A Yeah.

22 Q I'm sorry, Mr. Markarian, it's the single document not in
23 the binder.

24 A Okay.

25 Q On page 60 of this transcript, I'm going to ask you

1 questions relating to lines 11 through 22, but please take a
2 look at page 60 and let me know when you're ready to proceed.

3 A Okay.

4 Q Sir, on March 6, you were asked, (reading) Anyone other
5 than Mr. Lovvorn, yourself and Mr. Eddy been involved in this
6 lawsuit on behalf of the Fund For Animals since January 2,
7 2005?

8 You answered, (reading) Not that I'm aware.

9 You were asked, (reading) Has Mr. Kindler worked at
10 all in this litigation?

11 And you answered, (reading) Mr. Kindler --

12 COURT REPORTER: I'm sorry, Mr. Gasper, I lost you.
13 Mr. Kindler...

14 Q (BY MR. GASPER) (Reading) Mr. Kindler is involved in
15 the corporate governance of the organization, has been
16 involved in responding to subpoena requests. I'm not aware
17 that he has been involved in the offense of litigation matters
18 in this case.

19 Finally, sir, you were asked, (reading) You don't
20 know, sir, if he has ever spoken to the board of directors
21 about this litigation?

22 You answered, (reading) I'm not aware of that.

23 Is that right?

24 A That's correct.

25 MR. GASPER: May I approach, Your Honor?

1 THE COURT: Yes.

2 MR. GASPER: Your Honor, we have a copy of this for
3 the Court as well. This was attached to FEI's motion to
4 compel against HSUS, hence the header at the top reflecting
5 that it's Document 192.

6 Q (BY MR. GASPER) Mr. Markarian, have you seen this
7 document before?

8 A Yes.

9 Q And what is it?

10 A These are minutes of the Fund For Animals' Board of
11 Directors Meeting.

12 Q And did you attend this meeting, sir?

13 A Yes.

14 Q And if you can flip to page 2, it appears you give a
15 report on the, quote, FFA and HSUS since merger; isn't that
16 correct?

17 A Yes.

18 Q And then on page 3, sir, it says, (reading) Kindler,
19 colon, privileged discussion and analysis of developments in
20 Ringling Brothers' litigation.

21 Do you see that?

22 A Yes.

23 Q So it does appear, sir, that Mr. Kindler has spoken to
24 the FFA board about this litigation; isn't that right?

25 A That's correct.

1 Q And you were present for that discussion; isn't that
2 right?

3 A Yes, that's right.

4 Q Sir, are you aware that HSUS produced this document to
5 us?

6 A Yes.

7 Q But FFA did not produce this document; isn't that right?

8 A I don't recall.

9 Q Who creates the FFA board minutes?

10 A I believe that my assistant, Sheryl Dempsey, created
11 these minutes.

12 Q Is she employed by HSUS?

13 A Yes.

14 Q And to whom are the board minutes circulated?

15 A To the Fund For Animals' Board of Directors and Officers.

16 Q Is there any FFA officers and directors that also are
17 directors, officers or employees of HSUS?

18 A Yes.

19 Q Now, sir, last time you were here you testified that this
20 litigation was discussed multiple times by the FFA board,
21 didn't you?

22 A Yes, I believe so.

23 Q Yet neither FFA nor HSUS have produced any board minutes
24 to us other than this one; isn't that right?

25 A I believe that's correct.

1 MR. GASPER: Your Honor, may I approach?

2 THE COURT: Yes.

3 MR. GASPER: I'll take the other binder out of your
4 way.

5 Q (BY MR. GASPER) Mr. Markarian, please turn again to
6 Defendants' Exhibit D, and in particular, I would like to
7 direct your attention to a page that's Bates labeled F04489.
8 These are in numerical order.

9 A Okay.

10 Q Have you seen this document before?

11 A Yes.

12 Q And what is it?

13 A This is a letter to the Wildlife Advocacy Project
14 regarding a donation from the Fund For Animals for media
15 outreach and other press related efforts in support of the
16 pending case concerning Ringling Brothers Circus.

17 Q Okay. Now, sir, this letter enclosed a check to the
18 Wildlife Advocacy Project with money that was given to Tom
19 Rider; isn't that right?

20 A This letter was enclosed with a check to the Wildlife
21 Advocacy Project for a media campaign regarding circus issues.
22 We don't know how much of that was given to Tom Rider or used
23 for other media purposes.

24 Q Do you know, sir, if anyone other than Tom Rider has
25 received money from the Wildlife Advocacy Project since

1 July 2006 for this campaign?

2 A I don't know.

3 Q Sir, this letter was issued on HSUS letterhead; is that
4 right?

5 A That's correct.

6 Q And the check was drawn on an HSUS bank account; isn't
7 that right?

8 A It was a check from the Fund For Animals, which was
9 processed by the HSUS accounting department.

10 Q And whose name would be on the bank account? HSUS?

11 A I believe it would be from an HSUS account, which would
12 be -- which would be allocated toward the Fund For Animals.

13 Q In fact, sir, on the next page it reflects that this came
14 out of the Fund For Animals' litigation account; isn't that
15 right?

16 A Yes, that appears to be correct.

17 Q Okay. Sir, this letter dated July 2006 was not produced
18 until September 2007; isn't that right?

19 A I believe that's correct.

20 Q It was not in the prior production until the Court order;
21 isn't that correct?

22 A I believe that's true.

23 Q Sir, where did FFA get this document from in order to
24 produce it in September 2007?

25 A I don't recall precisely which files these documents

1 would have been located in. We searched numerous files in
2 different departments.

3 Q You don't know, sir, if this was from Mr. Lovvorn's
4 files?

5 A I don't recall.

6 Q Did you find this document prior to September 2007?

7 A I don't know.

8 Q But it wasn't produced until then; isn't that right?

9 A That appears to be true.

10 Q Now, it was only produced, in fact, after we subpoenaed
11 HSUS; isn't that right?

12 A I don't know.

13 Q Now, this letter on page 4489, this is the type of letter
14 that Mr. Lovvorn sent with each of the checks; isn't that
15 correct?

16 A It's possible.

17 Q And he sent multiple letters like this; isn't that right?

18 A I don't know.

19 Q You don't know. Well, sir, do you see anywhere in
20 Exhibit D where there is another letter like this that FFA
21 produced?

22 A I don't see any other letters. The checks were either
23 sent without a letter or the copies of those letters were not
24 retained by the Fund For Animals.

25 Q Sir, please take a look at Defendants' Exhibit -- let me

1 ask one more question, and we'll get to Defendants' exhibit.

2 Did you and Mr. Lovvorn discuss these payments,
3 because on the next page it appears as though the check was
4 delivered to you; isn't that correct?

5 A I signed the check request, that's correct.

6 Q Now, this says, "Deliver to Mike Markarian"; isn't that
7 correct?

8 A I'm sorry, I lost which page you're on.

9 Q At the bottom of the disbursement request form dated
10 7/17/06, it says, "Deliver to Mike Markarian." It's circled.

11 A The check request form was delivered to me so I could
12 sign it and approve it. The check itself was sent to the
13 Wildlife Advocacy Project, which is in the "payable to"
14 address fields at the top.

15 Q Sir, did you and Mr. Lovvorn discuss this payment?

16 A Yes.

17 Q And that -- those discussions are not reflected in your
18 interrogatories responses, are they?

19 A Not to my knowledge.

20 Q But last time you were here, sir, under oath, you told me
21 all communications were in your interrogatory responses; isn't
22 that right?

23 A I believe so.

24 Q Sir, please turn to Defendants' Exhibit 65.

25 MR. GASPER: Your Honor, may I approach?

1 THE COURT: Yes.

2 Q (BY MR. GASPER) Sir, do you see Defendants' Exhibit 65?

3 A Yes.

4 Q And this appears to be a letter from Mr. Lovvorn to
5 Mr. Glitzenstein on HSUS letterhead; isn't that right?

6 A That's correct.

7 Q Sir, did -- FFA did not produce this letter to us, did
8 it?

9 A Not to my knowledge.

10 Q And neither did HSUS, did it?

11 A I don't believe so.

12 Q Sir, you were responsible for HSUS' production in this
13 case; isn't that right?

14 A Yes.

15 Q And this document was not in HSUS' production; isn't that
16 right?

17 A It was not produced in our searches. We did not have a
18 copy of it.

19 Q Okay. But, sir, this is a document concerning payments
20 to Mr. Rider; isn't that right?

21 A It appears to be, yes.

22 Q And you declared, under oath, that both FFA and HSUS have
23 produced everything; isn't that right?

24 A Everything in our possession, yes.

25 Q But neither entity produced this one?

1 A Not to my knowledge.

2 Q Okay. Please turn to Defendants' Exhibit 64,
3 Mr. Markarian. Have you seen this before?

4 A Yes.

5 Q What is this document?

6 A This is an invitation for a fundraiser regarding elephant
7 issues.

8 Q And sir, do you see on page 3 that this invitation
9 discusses this lawsuit in paragraph 2?

10 A Yes, I do.

11 Q And in the last sentence it asks for help to raise money
12 to successfully wage this battle; is that right?

13 A That's correct.

14 Q Money from this fundraiser was ultimately given to the
15 Wildlife Advocacy Project; isn't that right?

16 A I don't know.

17 Q You're not aware, sir, of how the money was disbursed?

18 A No, I'm not.

19 Q Were you involved in any way in this fundraiser?

20 A Peripherally. No, we did not have much involvement. We
21 did send some invitations to donors in California who we
22 thought might be interested in the event, but we did not have
23 any involvement in collecting the funds or disbursing them.

24 Q Did anyone at FFA have knowledge as to where the money
25 was going to go?

1 A Not to my knowledge.

2 Q Did anyone at FFA have communications with other people
3 about this fundraiser?

4 A I don't know.

5 Q Did you ask whether or not there were communications
6 about this fundraiser in connection with providing your
7 interrogatory responses?

8 A This -- this fundraiser was not something that we had
9 much involvement with at all. It was in 2005, I -- I do
10 recall sending some invitations to donors of ours in
11 California, but we did not have much involvement in this
12 event.

13 Q Did anyone from FFA attend the fundraiser?

14 A Not to my knowledge.

15 Q Did anyone from HSUS attend the fundraiser?

16 A Yes, I believe Mr. Wayne Pacelle attended the event and
17 spoke at the fundraiser, as he routinely does at events for
18 various animal charities and humane societies around the
19 country as a guest speaker.

20 Q Did anyone, other than Mr. Pacelle, attend the fundraiser
21 from HSUS?

22 A I don't recall.

23 Q Sir, on page 2, it references that there will be an
24 eyewitness account of elephant abuse by Tom Rider. Do you see
25 that?

1 A Yes, I do.

2 Q Is it your understanding that Mr. Rider attended the
3 fundraiser?

4 A Based on this invitation, it appears that he did. I was
5 not present, so I don't know for certain whether he attended
6 or not.

7 Q And you don't know whether, sir, anyone from FFA or HSUS
8 spoke to Mr. Rider?

9 A I don't recall.

10 MR. GASPER: May I approach one more time, Your
11 Honor?

12 THE COURT: Sure.

13 MR. GASPER: Your Honor, I just handed Mr. Markarian
14 a copy of the 12/3/2007 order in this case pertaining to HSUS.
15 I have copies for Plaintiffs' counsel if they want. I have
16 copies for Your Honor if you'd like it as well.

17 THE COURT: Let me see it.

18 Q (BY MR. GASPER) Mr. Markarian, I just want to direct
19 your attention to page 2 of that order. Paragraph 4, it says,
20 quote, The HSUS will produce all documents that refer, reflect
21 or relate to Tom Rider, including all communications with or
22 to him in documents that pertain to payments made to him.

23 Do you see that?

24 A Yes.

25 Q If you can please go back to your hearing transcript

1 where we started earlier today. Please turn to page 64. I'm
2 going to ask you a question about line 24 that continues on to
3 the next page. Please review the context of that portion and
4 let me know when you're ready to proceed.

5 THE COURT: Where are you, sir, what line and page?

6 MR. GASPER: Page 64, line 24, Your Honor.

7 A Okay.

8 Q (BY MR. GASPER) Sir, on March 6, you were asked,
9 (reading) Is it your understanding that the Humane Society has
10 produced all the documents in its or its employees' files that
11 refer, reflect or relate to Tom Rider?

12 And you answered "yes."

13 Was that your testimony?

14 A Yes.

15 Q And then, sir, on page 91, I would like to direct your
16 attention to line 21. Please let me know when you're ready to
17 proceed.

18 A Okay.

19 Q You were asked the question about documents relating to
20 payments to WAP, and you responded, (reading) As I said, we
21 queried several members of the program staff who had worked at
22 some level on circus related issues and we asked them to
23 search their files, and there were no documents that were
24 related to Mr. Rider to the Wildlife Advocacy Project.

25 Was that your testimony?

1 A Yes.

2 Q Sir, on the next page, on line 4, you were asked,
3 (reading) There were no e-mails reflecting or referring or
4 relating to Mr. Rider?

5 And you answered, (reading) Not to my knowledge.

6 Is that correct?

7 A Yes.

8 Q Okay. Sir, one more on page 89. I would like to ask you
9 a question about lines 1 through 3. Please let me know when
10 you're ready to proceed.

11 A Okay.

12 Q You were asked on March 6th, (reading) Is it your
13 understanding that he -- this is referring to Jonathan
14 Lovvorn -- has no e-mails referring or reflecting or relating
15 to Mr. Rider?

16 And you answered, (reading) That's my
17 understanding.

18 Was that your testimony?

19 A Yes.

20 Q Please turn to Defendants' Exhibit 69, sir. It's the
21 white binder in front of you.

22 A I'm sorry, which number?

23 Q 69.

24 A Okay.

25 Q Sir, this is an e-mail from Leslie Mink dated January 26,

1 2006; is that right?

2 A That's correct.

3 Q And it's an e-mail that was sent to Jonathan Lovvorn;
4 isn't that right?

5 A It appears to be.

6 Q And it was an e-mail that also was sent to Ethan Eddy,
7 another HSUS employee; isn't that right?

8 A It appears so, yes.

9 Q And in the first sentence of that e-mail, (reading) Here
10 is the link for the Omaha World article that Tom did
11 yesterday.

12 That's referring to Mr. Rider; isn't that correct?

13 A It appears to be, yes.

14 Q And neither HSUS nor FFA produced this document to us;
15 isn't that right?

16 A We did not have a copy of this document or else we would
17 have produced it.

18 Q But HSUS nor FFA produced this document to us; isn't that
19 right?

20 A That's my understanding.

21 Q And please turn to Defendants' Exhibit 72. Sir, this is
22 another e-mail from Lesley Mink also to Jonathan Lovvorn;
23 isn't that right?

24 A It appears so, yes.

25 Q The subject line says, "Tom Rider"; isn't that right?

1 A Yes, it does.

2 Q And this document was not produced either by FFA or HSUS;
3 isn't that right?

4 A I don't believe it does. A one-sentence e-mail that
5 mentions that Tom is appearing on MPR today at 9:45 a.m.
6 Pacific time is not something that I would view as something
7 that needs to be saved.

8 Q It wasn't produced, was it?

9 A No.

10 Q Sir, I would like to direct your attention to your
11 interrogatory responses.

12 MR. GASPER: May I approach, Your Honor?

13 THE COURT: Sure.

14 MR. GASPER: Starts at 25.

15 Q (BY MR. GASPER) The first interrogatory response, sir,
16 is Defendants' Exhibit 25.

17 THE COURT: Where is my copy?

18 MR. GASPER: I'm sorry. These were part of the
19 exhibits we submitted previously. We do have a spare copy at
20 the table, though.

21 THE COURT: Just tell me, what are they attached to
22 or appending to?

23 MR. GASPER: I'm sorry, this is Defendants'
24 Exhibit 25. It's FFA's first interrogatory responses.

25 THE COURT: I'm sorry, the motion only has --

1 MR. GASPER: I'm sorry, Your Honor. On
2 February 15th, both parties submitted exhibits for the
3 Court.

4 THE COURT: They're not up here? Oh, they're over
5 in this box.

6 MR. GASPER: I'm sorry, Your Honor?

7 THE COURT: In this box?

8 MR. GASPER: I'm not sure where the Court's copies
9 are.

10 THE COURT: What number did you say it was?

11 MR. GASPER: 25, Your Honor.

12 THE COURT: That's the interrogatories, right?

13 MR. GASPER: Correct.

14 THE COURT: I got it. Thank you.

15 Q (BY MR. GASPER) Mr. Markarian, on the last page of
16 Exhibit 25, that's your signature of verifying the truth of the
17 responses; isn't that correct?

18 A That's correct.

19 Q And that's dated June of 2004?

20 A That's right.

21 Q And at that time, FFA had paid MG -- its law firm, MGC,
22 money that was given to Tom Rider; isn't that right?

23 A At that time, yes.

24 Q Okay. If you can turn to Interrogatory No. 19 at the
25 bottom of page 29.

1 A All right. 19.

2 Q Correct, on page 29.

3 A I don't know that I have --

4 Q I'm sorry, Mr. Markarian, we're still on the same
5 exhibit. It appears like you flipped away from Exhibit 25.

6 A 25. Page 29?

7 Q Yes.

8 A Okay.

9 Q Exhibit 25, page 29.

10 A I see. Okay.

11 Q Sir, you testified previously that all of FFA's
12 communications about payments were disclosed in the
13 interrogatory responses; is that correct?

14 A That's correct.

15 Q Where in Interrogatory No. 19 is there reference to FFA's
16 communications about payments to Mr. Rider?

17 MR. GLITZENSTEIN: Your Honor, just for the record,
18 this is three years before the order that's at issue in the
19 case.

20 THE COURT: Thank you.

21 MR. GLITZENSTEIN: I'm not entirely clear what the
22 purpose of this is.

23 THE COURT: Well, let's see where Mr. Gasper goes
24 with this. Go ahead, Mr. Gasper.

25 A At this time, in 2004, we were discussing in our

1 responses any payments made directly to Mr. Rider. We were
2 not including payments that were made to other parties that
3 may have been used for media campaign regarding circus issues
4 and may have been given to Tom Rider in that process.

5 Q (BY MR. GASPER) And sir, so they also were not in your
6 January 2007 interrogatory responses; is that right?

7 A That's my understanding, yes.

8 Q Okay. So which interrogatory responses do you think
9 they're included in? The September 2007 responses?

10 A Excuse me. In our September 2007 responses, after the
11 Court made it clear that it wanted information not just on
12 payments directly to Tom Rider but also payments to other
13 parties, we included everything that was in our possession and
14 in the recollection of our staff that related to payments to
15 the Wildlife Advocacy Project and other parties related to
16 this issue.

17 Q Okay. Well, let's take a look at the September responses
18 then. It's Exhibit 27. On the next to last page, sir, is
19 that your signature declaring, under perjury, that the
20 following are true and correct?

21 A Yes, that's correct.

22 Q Where in -- and Interrogatory No. 19 is on page 11; do
23 you see that? Where in this response, sir, does FFA identify
24 its communications about payments that you told me on March 6,
25 2008, were in the interrogatory responses?

1 MR. GLITZENSTEIN: Your Honor, for the record, we
2 can do this on direct, and I don't know if you want to do it
3 now and save time. Interrogatory 21 is actually the one where
4 the Fund provided answers on the payments.

5 THE COURT: Thank you. I was thinking of that. I
6 was looking.

7 MR. GASPER: Your Honor, we'll get to the payments,
8 but right now we're focused on the communications that
9 Mr. Markarian had --

10 THE COURT: Go ahead. Proceed.

11 Q (BY MR. GASPER) Where in -- In Interrogatory No. 19, is
12 there a reference, sir, to any communications about payments?

13 A No, there's not.

14 Q Thank you. And sir, if you can flip to Interrogatory No.
15 16. And it appears, sir, correct, that there is no response
16 to Interrogatory No. 16 in September of 2007; isn't that
17 right? It jumps from No. 15 to No. 19; isn't that right?

18 A That's correct.

19 Q Okay. Sir, you aware that Interrogatory No. 16 asks the
20 Plaintiffs for information about all communications with Tom
21 Rider?

22 A Yes.

23 Q Did FFA disclose its communications with Tom Rider about
24 all the payments?

25 A Yes, all the communications that we could recall.

1 Q All the communications you could recall, not every
2 communication?

3 A I'm not aware that there were any communications that
4 were excluded.

5 Q Well, you spoke to Mr. Rider about that thousand dollars
6 in July of 2004; isn't that right?

7 A That's right.

8 Q But that's not in your interrogatory responses, is it?

9 A I don't recall.

10 Q Okay. Well, the only interrogatory response it could be,
11 sir, is Exhibit 26 and we could take the time to look at
12 Interrogatory No. 16.

13 A (Witness reviewing.)

14 Q Sir, having now reviewed this response, it's true that
15 your communications with Mr. Rider about that thousand dollars
16 are not in this interrogatory response; isn't that correct?

17 A It appears to not be located here. This is a
18 communication with Mr. Rider, which I discussed in my
19 deposition in 2005. We produced the two checks that were
20 related to that discussion. I'm not sure how many times you'd
21 like us to comment on the same conversation.

22 Q You testified -- you signed these under oath that they
23 were true and correct, did you not?

24 A That's correct.

25 Q And you told me and you told this court on March 6 under

1 oath that all communications about payments had been
2 disclosed; isn't that correct?

3 A That's right.

4 Q And this communication, for example, is not included in
5 your response, is it?

6 A It doesn't appear to be in this response, no.

7 Q Thank you. Please turn to Defendants' Exhibit 42.

8 A This goes to 32.

9 Q I'm sorry. I'll get you the other binder.

10 MR. GASPER: May I approach, Your Honor?

11 THE COURT: Yes.

12 Q (BY MR. GASPER) Do you recognize this document, sir?

13 A Yes, I do.

14 Q Do you see there in the first paragraph, this is your
15 declaration to the Court in response to the August order; is
16 that correct?

17 A That's right.

18 Q And in the first paragraph, you state, (reading) To the
19 best of my knowledge, the Fund has now produced all records in
20 its possession, custody or control that are responsive to
21 Defendants' document production requests and required by this
22 court's order.

23 Do you see that?

24 A Yes.

25 Q What did you mean by "required by this court's order"?

1 MR. GLITZENSTEIN: Your Honor, we object on
2 attorney/client and work product grounds. We've gone through
3 this at the last time and that would necessarily reflect
4 his --

5 THE COURT: Let him say it, and I want Mr. Markarian
6 to answer the question, and then you can make your objection.

7 Repeat the question, Madam Reporter.

8 COURT REPORTER: (Reading) What did you mean by
9 "required by this court's order"?

10 A In consultation with our attorneys, any documents that
11 were responsive to the Court's request.

12 Q (BY MR. GASPER) Specifically, sir, what did you mean by
13 the phrase "required by this court's order"?

14 MR. GLITZENSTEIN: Same objection, Your Honor. I
15 think if he came to that conclusion in consultation with
16 counsel --

17 THE COURT: Yeah, but he can read.

18 Did you read the August 23rd, 2007 order,
19 Mr. Markarian?

20 THE WITNESS: Yes.

21 THE COURT: All right. And do you know what Judge
22 Sullivan required?

23 THE WITNESS: Yes.

24 THE COURT: And what did you mean to say by that
25 first sentence? That you had read the order and you had

1 complied with it?

2 THE WITNESS: Yes, that's right.

3 THE COURT: Thank you.

4 Q (BY MR. GASPER) Did you understand the order, sir, to
5 require the production of all documents concerning payments?

6 A Yes.

7 Q But we've --

8 THE COURT: Payments to Mr. Rider. Not payments,
9 payments to Rider.

10 Q (BY MR. GASPER) Payments to Rider.

11 A Yes, that's correct.

12 Q And we've gone through several examples this morning of
13 documents that you did not produce; isn't that correct?

14 A Documents that were not in our possession and did not
15 turn up during our multiple exhaustive searches.

16 Q But your understanding, sir, is that order requires you
17 to produce all documents concerning payments to Tom Rider;
18 isn't that right?

19 A All documents in our possession, yes.

20 MR. GASPER: Your Honor, may I approach?

21 THE COURT: Yes.

22 Q (BY MR. GASPER) It's Defendants' Exhibit 33 that we're
23 going to. Mr. Markarian, this is again your deposition
24 testimony we talked about earlier. Do you still recognize it
25 as your testimony under oath?

1 A Yes, I do.

2 Q Please turn to page 157.

3 THE COURT: What page?

4 MR. GASPER: 157.

5 Q (BY MR. GASPER) I would like to ask you questions from
6 line 20 on 157 through the start of 158. Please review those
7 pages and let know when you're ready to proceed.

8 A (Witness reviewing.) Okay.

9 Q Sir, in 2005, you were asked, (reading) Has the Fund
10 ever -- has the Fund ever paid Mr. Rider any money?

11 You answered, (reading) Yes.

12 And you were asked, (reading) On how many
13 occasions?

14 And you answered, (reading) I believe there was one
15 occasion, last July of 2004 we gave Mr. Rider \$1,000 to assist
16 with his travel expenses to participate in the Denver press
17 conference, which I mentioned earlier.

18 Was that your testimony?

19 A Yes.

20 Q Now, sir, in June of 2005, FFA had already made several
21 payments to Meyer Glitzenstein & Crystal for Mr. Rider, too,
22 didn't it?

23 A That's correct.

24 Q But you didn't disclose those at that time, did you?

25 A We disclosed payments that were made directly to

1 Mr. Rider. That's how I understood the question. And I
2 answered that we had given him \$1,000 in 2004 and those are
3 the two checks for \$500 each, which we had previously
4 discussed.

5 Q Sir, you didn't mention those payments at that time, did
6 you?

7 THE COURT: What payment?

8 MR. GASPER: The payments to Meyer Glitzenstein &
9 Crystal for Rider.

10 THE COURT: And when were those payments made?

11 MR. GASPER: Dated 2001 to 2003.

12 THE COURT: And how do they violate an order issued
13 in 2007?

14 MR. GASPER: Your Honor, there is a response and
15 interrogatory that Mr. Markarian attempts to explain this away
16 in his interrogatory response in response to the Court's
17 order.

18 THE COURT: He interprets -- what's the
19 interrogatory -- the order, right? So it's a supplemental
20 response post-August 23rd, 2007 that was issued today.

21 MR. GASPER: Correct.

22 THE COURT: Why do I care about what he said --

23 MR. GASPER: There is still --

24 THE COURT: Don't interrupt me.

25 MR. GASPER: I'm sorry, Your Honor.

1 THE COURT: Why do I care about what he said in
2 2005?

3 MR. GASPER: There is still something missing in the
4 September 2007 order. We can jump --

5 THE COURT: Please get to it.

6 MR. GASPER: Thank you, Your Honor. I apologize.

7 Q (BY MR. GASPER) Mr. Markarian, please turn to Exhibit
8 27.

9 THE COURT: What number is that?

10 MR. GASPER: Exhibit 27, Your Honor.

11 A I'm sorry. I don't think I have 27.

12 MR. GASPER: I'm sorry. May I approach, Your Honor?

13 THE COURT: Yes.

14 Q (BY MR. GASPER) Mr. Markarian, if I can direct your
15 attention to page 13, footnote 1. Do you see that?

16 A Yes.

17 Q Sir, this is a footnote explaining that in your June 2005
18 deposition you do not disclose the payments to MGC; isn't that
19 correct?

20 A As I said, I understood the question in my deposition to
21 inquire as to payments that were made directly to Mr. Rider,
22 not payments that were made to any other party.

23 Q Okay. But at that time, in June 2005, you've also made
24 payments to Wildlife Advocacy Project for Mr. Rider; isn't
25 that right?

1 A We made payments to the Wildlife Advocacy Project for
2 media campaign regarding circus issues. The money was not to
3 be used exclusively for Mr. Rider. We're not sure whether it
4 was used for other purposes as well.

5 Q Okay. Sir, prior to September 2007, FFA did not disclose
6 any of its payments to or for Mr. Rider; isn't that right?

7 A That's my understanding.

8 Q Okay. Do you understand why they were not produced until
9 September 2007?

10 Let me ask it this way, sir. Turn to page 12 of
11 Exhibit 27. It's actually at the bottom of page 11. You
12 stated, (reading) The Fund did not originally view this
13 information as responsive to this interrogatory because the
14 Fund believed the interrogatory's reference to resource you
15 have expended from 1997 to the present in advocating better
16 treatment for animals held in captivity, including animals
17 used for entertainment purposes, referred only to funds
18 expended by the Fund's own staff to advocate for elephants as
19 opposed to grants for other activists or nonprofits. The Fund
20 makes donations to a number of individuals and nonprofits each
21 year and does not consider advocacy undertaken by grantees to
22 be Fund advocacy.

23 Do you see that?

24 A Yes, I do.

25 Q Is it your understanding, sir, that the payments to Rider

1 were not identified previously because they were donations to
2 somebody else and not Fund For Animals' expenses?

3 A Yes, that's correct.

4 Q And that was what you indicated under penalty of perjury
5 in response to the Court's August order?

6 A Yes, that's right.

7 Q Sir, please turn to Exhibit 25.

8 THE DEPUTY CLERK: Could Your Honor excuse me.

9 Could you please just slow down a little bit for the
10 court reporter.

11 MR. GASPER: Sure.

12 Q (BY MR. GASPER) Mr. Markarian, on page 31 of your
13 June 2004 interrogatory responses, you answer Interrogatory No.
14 21, I would like to direct your attention to page 33. Are you
15 on page 33, sir?

16 A Yes.

17 Q Do you see in the middle of the page it says, (reading)
18 The Fund made a donation to the Captive Wild Animal Protection
19 Coalition of \$2,000 in 2003?

20 A Yes.

21 Q And so that was included in your 2004 interrogatory
22 responses; is that correct?

23 A That's right.

24 Q Mr. Markarian, has Fund For Animals instructed its
25 employees to preserve all documents relevant to this

1 litigation?

2 A Yes, it did, in 2005, I believe.

3 Q 2005. Was that the first time employees were instructed
4 to preserve documents?

5 A Yes, I believe so.

6 Q Have FFA employees been instructed to preserve all
7 documents concerning payments to Mr. Rider?

8 A Yes.

9 Q When was that?

10 A I don't recall.

11 Q Have HSUS employees been instructed to preserve all
12 documents relating to payments to Mr. Rider?

13 A Yes.

14 Q When was that?

15 A I believe in 2007.

16 Q Sir, what, if anything, have you done to prepare for your
17 testimony since taking the stand on March 6th?

18 A I -- I read the transcript from the March 6th portion of
19 my testimony and I re-read some of our interrogatory
20 responses.

21 Q Did you review any documents, other than the
22 interrogatory responses?

23 A My transcript. I believe that's it.

24 Q Did you speak to anyone about your testimony either on
25 March 6th or today?

1 A I asked Roger Kindler if we were allowed to prepare for
2 today's hearing and he informed me that we could not discuss
3 my testimony but that I should feel free to review the
4 documents on my own.

5 Q Thank you. And did you discuss your testimony with
6 anyone other than Roger Kindler?

7 A No, I didn't.

8 MR. GASPER: Thank you. Your Honor, we have nothing
9 further.

10 THE COURT: Take a break. Resume at 11:00 o'clock.
11 Do not discuss your testimony with anyone, sir.

12 THE DEPUTY CLERK: All rise.

13 (A BRIEF RECESS WAS TAKEN.)

14 THE DEPUTY CLERK: Okay. Please remain seated
15 everyone. Court is back in session.

16 THE COURT: Cross-examine. Mr. Markarian, where are
17 you?

18 MR. GLITZENSTEIN: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. GLITZENSTEIN:

21 Q Good morning, Mr. Markarian.

22 A Good morning.

23 Q And other than that conversation you referred to with
24 Mr. Kindler, is it correct, just to make sure we all
25 understand it, you have had no conversations with any of your

1 counsel since your March 2008 testimony?

2 A That's correct.

3 Q Mr. Markarian, can you turn to the black binder, which
4 was Plaintiffs' Exhibit Volume II.

5 MR. GLITZENSTEIN: Your Honor, this was referred to
6 in the initial examination, and this is what's behind Tab D.

7 THE COURT: "B" as in boy?

8 MR. GLITZENSTEIN: Excuse me, "D" as in dog.

9 Q (BY MR. GLITZENSTEIN) And you were asked questions about
10 this set of documents. Mr. Markarian, is it your
11 understanding that these documents are documents that were
12 produced by the Fund For Animals in response to the discovery
13 request in Judge Sullivan's order?

14 A Yes.

15 MR. GLITZENSTEIN: Your Honor, I would like to move
16 the admission of this set of documents. I believe we're up to
17 Plaintiffs' Exhibit 8.

18 THE COURT: Hearing no objection, they're admitted.

19 (PLAINTIFFS' EXHIBIT 8 ADMITTED.)

20 Q (BY MR. GLITZENSTEIN) Mr. Markarian, could you return --
21 I think you were asked about this. It is Defendants'
22 Exhibit 45.

23 MR. GLITZENSTEIN: Your Honor, I know this gets a
24 little unwieldy, but this is Defendants' set of exhibits which
25 I think is the white binder. We're using those.

1 Q (BY MR. GLITZENSTEIN) Do you still have those?

2 A I don't have those up here any longer.

3 MR. GLITZENSTEIN: May I approach, Your Honor?

4 THE COURT: Certainly.

5 MR. GLITZENSTEIN: I believe this was already
6 admitted into evidence, Your Honor.

7 THE COURT: Yeah.

8 Q (BY MR. GLITZENSTEIN) And if you take a look,
9 Mr. Markarian, there is a declaration that you submit in a
10 declaration from Ms. Berg?

11 A Berge.

12 Q Berge. Who is identified as the controller of HSUS?

13 A Yes.

14 Q And if you look over at page 2 through 3 of her
15 declaration, there is a description of a 3,000-dollar payment
16 to the Wildlife Advocacy Project made in July 2005. Do you
17 see that? I think specifically paragraph 9 refers to the
18 specific payment.

19 A Yes, I see it.

20 Q Okay. Does this declaration accurately reflect your
21 understanding about the efforts to find documentation as to
22 that particular payment?

23 A Yes. The Humane Society of the United States' accounting
24 department processes about 23,000 or more checks per year, and
25 best efforts are made to retain documentation on each check

1 that's processed. We do not have documentation on this
2 particular check. Several staff of our accounting department
3 spent several hours searching in various locations where they
4 felt it could have been misfiled, but they were unable to
5 locate it.

6 Q Do you believe that a strenuous effort was made to find
7 documentation concerning that payment?

8 A Yes. At great expense to the Humane Society of the
9 United States, the organization made exhaustive efforts to try
10 to find these documents.

11 Q Other than that payment, as described in that
12 declaration, do you believe that what's now been marked as
13 Plaintiffs' Exhibit 8 behind Tab D reflects all payments that
14 have gone to Mr. Rider, either directly or indirectly
15 emanating from the Fund For Animals or the Humane Society of
16 the United States?

17 A Yes, it does.

18 Q Do you believe that's true with a high degree of
19 confidence?

20 A Yes, I'm very confident that that's true.

21 Q And why can you say that?

22 A Because there have been numerous searches. We have
23 searched several departments and the files of several
24 employees multiple times, both print documents and electronic
25 files, and we are confident that we've produced everything in

1 our possession that relates to any payments to Tom Rider.

2 Q Do you believe the organization has expended significant
3 effort in taking -- taking -- excuse me -- carrying out that
4 search in response to Judge Sullivan's August 2007 order?

5 A Yes. I believe we've spent tens of thousands of dollars
6 in staff time and other resources to comply with the order.

7 Q Would it be possible to estimate about how much staff
8 time you've expended?

9 A It's difficult to estimate because of the number of staff
10 involved and the number of hours involved in these exhaustive
11 searches.

12 Q Do you believe that your search and effort to carry out
13 the terms of the order diverted the organization's attention
14 away from other matters that it was engaging in?

15 A Yes, it absolutely diverted our attention from our
16 programmatic mission to protect animals.

17 Q So why did you carry -- Why did you do that at the
18 expense of the programmatic mission?

19 A Because we felt it was necessary to comply with the
20 Court's order.

21 Q Did you -- do you believe that both the Fund For Animals
22 and Humane Society did thorough searches for documents
23 responsive to their respective discovery requests?

24 A Yes, both organizations conducted exhaustive searches in
25 response to these requests.

1 Q Is it your opinion that both organizations carried out
2 good faith searches and efforts to implement Judge Sullivan's
3 order?

4 A Yes, it is.

5 Q And Judge Facciola's order?

6 A Yes, it is.

7 Q Mr. Markarian, if you could turn in Defendants' volume --
8 unfortunately, I think it's a different volume with
9 Defendants' exhibits, and I'm going to ask you to take a look
10 at the interrogatory responses again.

11 MR. GLITZENSTEIN: Which, Your Honor, were referred
12 to before, and they are Exhibits 25, 26, 27 and 28 of
13 Defendants' exhibits.

14 A I don't have that --

15 Q (BY MR. GLITZENSTEIN) Do you have that volume?

16 A -- binder.

17 MR. GLITZENSTEIN: May I approach, Your Honor?

18 THE COURT: Yes.

19 A 25, you say?

20 Q (BY MR. GLITZENSTEIN) Actually, Mr. Markarian, if you
21 could first look at No. 27, which you were asked about. And
22 take a look, if you could, at Interrogatory No. 21. It's page
23 11 of the response.

24 A Yes.

25 Q And if you could actually read the interrogatory that is

1 being posed there, I'd appreciate that.

2 A The -- the question?

3 Q Yes, please.

4 A (Reading) Identify each resource that you have expended
5 from 1997 to the present in advocating better treatment for
6 animals held in captivity, including animals used for
7 entertainment purposes as alleged in the complaint, including
8 the amount and purpose of each expenditure.

9 Q Okay. Now, between pages 11 and 14 in response to that
10 interrogatory, did the Fund attempt to identify all
11 expenditures that went to Mr. Rider either directly or
12 indirectly?

13 If you want to take some time to read through those
14 pages and give a complete answer, that would be appreciated.

15 A Yes. The Fund For Animals provided details here about
16 two payments that were made directly to Mr. Rider in 2004, and
17 additionally, to payments that were made to the Wildlife
18 Advocacy Project as contributions for its advocacy and public
19 education work on the issue of treatment of elephants held in
20 captivity, understanding that some of those funds may have
21 been used to support Mr. Riders' media campaign on circus
22 issues.

23 And we also detailed on several occasions in 2001,
24 2002, and 2003, the Fund provided funds indirectly to
25 Mr. Rider through reimbursements to Meyer Glitzenstein.

1 Q Do you believe that this represents, since you're the
2 person who signed the interrogatory answers, a good faith
3 effort to identify all of the expenditures that went to
4 Mr. Rider either directly or indirectly?

5 A Yes, I believe it's a complete accounting of expenditures
6 that went from a Fund For Animals either directly or
7 indirectly to Mr. Rider.

8 Q Do you believe that that's true with a high degree of
9 confidence?

10 A Yes, absolutely.

11 Q And why can you say that?

12 A Because we've searched exhaustively for our records of
13 any payments that were made to Mr. Rider or to other
14 organizations in relation to Mr. Rider's efforts and we
15 believe that this is the extent of all payments that have been
16 made back to 2001.

17 Q Did you come across any payments in your search for
18 documents and other materials and exclude them from your
19 answer?

20 A We did -- we did come across one payment from the Humane
21 Society of the United States to the Wildlife Advocacy Project.
22 There was a grant related to work to protect manatees. We did
23 not feel that that was responsive because it had no relation
24 to Mr. Rider or to circus related issues.

25 Q Is that the only one you can think of?

1 A That's the only one I can think of.

2 Q Now, if you would turn over to Exhibit 28, which is a
3 supplemental interrogatory response, and can you read actually
4 what Interrogatory No. 19 asks for?

5 A (Reading) Describe each communication you have had since
6 1996 with any other animal advocates or animal advocacy
7 organizations about the presentation of elephants in circuses
8 or about the treatment of elephants at any circus, including
9 Ringling Brothers and Barnum & Bailey Circus.

10 Q All right. And again, looking at No. 21, if you can take
11 a look at the end of that answer that you provided in response
12 to that interrogatory, could you read the last line of that
13 response? And that's over on page 8.

14 A (Reading) Since those responses were submitted, the Fund
15 has provided no additional funds for the media and public
16 education campaign, either directly or indirectly.

17 Q Okay. And it also refers to your September 2007
18 responses as reflecting the funding. Is that still your
19 understanding that that was an accurate response?

20 A Yes, that's my understanding.

21 MR. GLITZENSTEIN: Your Honor, not to belabor the
22 interrogatory issue overly much, there were references, I
23 think, to several sets of the interrogatory answers, and it
24 seems to me that the most efficient thing to do, with the
25 Court's permission, is simply to have admitted into

1 evidence -- I don't believe any of the actual interrogatory
2 answers were formally admitted into evidence when they were
3 referred to. And just for purposes of clarity, these would be
4 Defendants' Exhibit 25, Defendants' Exhibit 26, Defendants'
5 Exhibit 27, and Defendants' Exhibit 28, and we would simply
6 move to have those admitted into evidence, and then obviously
7 the parties can make whatever arguments later as to what they
8 cover or don't cover.

9 THE COURT: Hearing no objection, they will be
10 admitted. 25 through 28 are admitted.

11 (DEFENDANTS' EXHIBITS 25 THROUGH 28 ADMITTED.)

12 Q (BY MR. GLITZENSTEIN) Just for purposes of clarity, you
13 testified a moment ago about your overall search for documents.

14 Do you believe you engaged in a conscientious, good
15 faith search for e-mails in response to Judge Sullivan's 2007
16 order?

17 A Yes, I do.

18 Q And did the organization spend a considerable period of
19 time on that search, in particular?

20 A Yes, it did.

21 THE COURT: Mr. Markarian, be more specific. How
22 did you conduct the search of e-mails? On a server basis,
23 individual basis, computer basis, how did you do it?

24 THE WITNESS: We asked individual staff members who
25 had been involved in this litigation or who may have had some

1 communication with Mr. Rider, because they worked on circus
2 related issues or captive elephant issues, to search their
3 individual e-mail files.

4 THE COURT: And the search was -- how was that
5 conducted? By each individual?

6 THE WITNESS: It was conducted by each individual.

7 THE COURT: And could you be more precise as to what
8 they were told to search for.

9 THE WITNESS: They were told to search for any
10 electronic files that related to Mr. Rider, payments to
11 Mr. Rider or to this litigation.

12 THE COURT: And after they did so, who got the
13 results of their search? Where did the results go?

14 THE WITNESS: To our attorneys.

15 THE COURT: Did you filter them before they went to
16 the attorneys?

17 THE WITNESS: No, I did not.

18 THE COURT: So they went from the staff to the
19 attorneys?

20 THE WITNESS: That's correct.

21 THE COURT: By e-mail also?

22 THE WITNESS: I'm not sure, Your Honor. They may
23 have printed the documents.

24 THE COURT: Thank you, sir.

25 Q (BY MR. GLITZENSTEIN) Mr. Markarian, if you had

1 recollected any particular document that had been destroyed or
2 lost, would you have identified that in your declaration that
3 you filed regarding document retention that Judge Sullivan
4 ordered you to file?

5 A Yes, I would have. I was not aware of any particular
6 documents that would have been discarded or destroyed.

7 MR. GLITZENSTEIN: I have nothing further, Your
8 Honor.

9 THE COURT: Thank you, sir.

10 Any redirect?

11 MR. GASPER: No redirect, Your Honor.

12 THE COURT: You may step down, sir. Thank you for
13 your time.

14 THE WITNESS: Thank you.

15 MR. GLITZENSTEIN: Your Honor, I just want to make
16 sure that my colleagues that represent HSUS --

17 MR. STOWE: No questions.

18 THE COURT: Thank you. Call your next witness,
19 please.

20 MS. JOINER: Call Cathy Liss, Your Honor.

21 THE COURT: Ms. Liss, please.

22 MR. GASPER: Your Honor, may I approach the stand to
23 retrieve our exhibits?

24 THE COURT: You may.

25 MR. GASPER: Thank you.

1 THE COURT: Ms. Liss, take the stand, please.

2 (WITNESS SWORN BY THE DEPUTY CLERK.)

3 CATHY LISS,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. JOINER:

7 Q Good morning, Ms. Liss.

8 A Good morning.

9 Q Would you state your name for us, please, and spell your
10 last name.

11 A Yes. My name is Cathy Liss, spelled Cathy with a "C" and
12 last name is Liss, L-I-S-S.

13 Q What is your position at the Animal Welfare Institute?

14 A I currently serve as its president.

15 Q And how long have you held that position?

16 A Since 2002.

17 Q And did you have any position with the Animal Welfare
18 Institute prior to that?

19 A Prior to that I served as executive director and various
20 positions previous to that. I've been with the group about 25
21 years.

22 Q Okay. How long were you the executive director?

23 A My best recollection would be at least 10 years.

24 Q Okay. Did AWI ever have any communications with any of
25 the co-Plaintiffs in this case regarding funding for

1 Mr. Rider?

2 A Sorry, could you repeat the question?

3 Q Sure. Did -- I'm sorry. If I use AWI to mean Animal
4 Welfare Institute, is that okay?

5 A Sure.

6 Q Did AWI ever have any communications with any of the
7 co-Plaintiffs in this case regarding funding for Mr. Rider?

8 A Yes.

9 Q And when did those begin?

10 A To the best of my knowledge, sometime maybe 2001.

11 Q And were those communications oral or written or both?

12 A It might vary. Whatever we had, we certainly provided.
13 For the most part, I guess there were a lot of oral
14 discussions, but certainly any monies provided, there were
15 records maintained for that, and those have been provided to
16 the Court.

17 Q Were the oral discussions in person?

18 A Okay. And sorry, could you give the full breadth of the
19 question so I make sure I answer properly.

20 Q Sure. Well, I think you just said that they were both.
21 Regarding communications for Mr. Rider's funding, there were
22 oral communications as well as records, right?

23 A There could be some of both, but are you speaking between
24 whom? That's what I'm not clear on.

25 Q Okay. Well, maybe we can flush it out a little bit.

1 A Sure.

2 Q You said that these communications started in
3 approximately 2001.

4 A That's correct.

5 Q And did you participate in them in 2001?

6 A Yes.

7 Q Okay.

8 A Around 2001 or 2002. I couldn't be sure about the exact
9 time.

10 Q Did you have any conference calls regarding funding for
11 Mr. Rider?

12 A I guess what I'm not clear on is there was a time when we
13 provided some support directly to Mr. Rider for his media
14 efforts, and whether that's what you're referring to, that's
15 what I'm not clear about.

16 Q I see. Okay. So are you meaning that there were
17 communications that AWI had directly with Mr. Rider?

18 A Yes.

19 Q Okay. And did those communications begin in 2001?

20 A I couldn't speak to all of them because some may have
21 well been with Christine Stevens, the founder and president of
22 the organization. As far as myself, the earliest recollection
23 would be around 2002, and yes, that would be by phone.

24 Q And how frequently did you talk with Mr. Rider by phone?

25 A Myself, not very often. A few times.

1 Q A few times total since 2002?

2 A 2002 to the present or --

3 Q Okay. Well, you said "a few times," so I'm trying to
4 figure out, did you mean a few times in 2002?

5 A Over around 2002, I would guess. It's been a long time.
6 It's hard for me to really say, given the length of time.

7 Q Okay. Have those conversations that you started having
8 with Mr. Rider in 2002, have they continued to the present?

9 A No, really since Tracy Silverman came on and joined the
10 Animal Welfare Institute, she has been the one to primarily be
11 in touch with and communication with Tom Rider.

12 Q Okay. And I believe that Ms. Silverman started with AWI
13 in February of 2005?

14 A Yes, that's correct.

15 Q Okay. So then would it be accurate that you had your
16 conversations with Mr. Rider from the period 2002 to 2005?

17 A And Christine Stevens, as I say, might well have, but...

18 Q Okay. And those conversations were over the phone?

19 A Yes.

20 Q And you discussed funding with Mr. Rider during those?

21 A We discussed providing support to enable him to cover
22 expenses to do media at various locations.

23 Q So would he call you and ask for funding; is that how it
24 worked?

25 A He might have. He was following the circus around

1 working to get media. We are a small organization and don't
2 have a media department, so he was really an ideal person to
3 engage in this, having witnessed things firsthand, and may
4 have just needed support to get from one location to another
5 to follow the circus, might have some good media leads he was
6 hoping to follow up on. Alternatively, if we had leads, we
7 might recommend something.

8 Q Did you have any written communications with Mr. Rider
9 regarding his funding?

10 A No, not with him, that I recall. I mean, he was
11 traveling, so typically there wouldn't be written and I don't
12 believe he's ever had a computer.

13 Q Now, did you also say that you, during this period, 2002
14 to 2005, were you funding him directly, did you say that?

15 A We did provide some modest support to him directly to
16 enable him to travel, yes.

17 Q And --

18 A And again, the documentation regarding that has been
19 provided.

20 Q Okay. And how did you make payments to Mr. Rider?

21 A I have to think if I can recall how it was actually done.
22 Actually, initially, I couldn't -- I can't recall how it was
23 done. Are you talking about over the length of time or again,
24 what time period, at least initially?

25 Q Well, when AWI funded Mr. Rider directly, were those

1 payments, for example, made by cash, by check, by -- what were
2 the means of payment?

3 A All right. I believe some were by check. I mean,
4 whatever documentation we have for the means to provide it,
5 again, was provided. There were checks. We provided copies
6 of those checks.

7 Q Okay. So -- now, setting aside Mr. Rider. The other
8 co-Plaintiffs in the case, the Fund For Animals and the
9 Animal -- excuse me -- the ASPCA, did you have any
10 communications with them regarding funding for Mr. Rider?

11 A Over the course of time related to his work on media,
12 yes.

13 Q And when did those communications begin?

14 A I really don't recall.

15 Q Would they have occurred, for example, before
16 Ms. Silverman arrived in 2005?

17 A Yes.

18 Q Okay. Would they have occurred with Ms. Stevens?

19 A That, I couldn't speak to Ms. Stevens' involvement.

20 Q Okay.

21 A And she passed away in late 2002, so...

22 Q So at this point you're not sure when your communications
23 with the other organizational Plaintiffs began regarding the
24 funding for Mr. Rider?

25 A That's correct. I mean, I would -- it would be a guess,

1 so I really couldn't say.

2 Q Were those communications with the other organizational
3 Plaintiffs over the phone?

4 A Yes.

5 Q Were they conference calls?

6 A Yes.

7 Q Do you remember how frequently you had them?

8 A No.

9 Q Are you able to approximate on a monthly basis?

10 A Not very often, that I can recollect.

11 Q And were there ever any e-mails or other documentation
12 that you communicated with the organizational Plaintiffs
13 regarding funding for Mr. Rider?

14 A Again, all documents that we were able to come up with
15 from the organization were provided to counsel. All documents
16 related to any possible funding that went to Mr. Rider were
17 provided to the Court.

18 Q And when were those documents provided to your counsel?

19 A I mean, sometime prior to when they were due in the
20 court.

21 Q Did you participate in trying to gather documents to turn
22 over to your counsel?

23 A Yes, prior to the time that Tracy Silverman was on our
24 staff, yes.

25 Q Do you remember the other persons who participated in the

1 telephone calls that you had regarding funding for Mr. Rider?

2 A Since I wouldn't be able to recollect the specific phone
3 conversation, you know, it would be guesswork. I mean, there
4 were principal people involved over time.

5 Q Do you remember the name of any person who was on any of
6 those phone calls that you had regarding funding for
7 Mr. Rider?

8 A It would have been -- I mean, regarding media discussions
9 would have been Mike Markarian and Lisa Weisberg.

10 Q And after Ms. Silverman arrived, did you participate in
11 any other telephone calls with the organizational Plaintiffs
12 regarding funding for Mr. Rider?

13 A I may have participated in one as a transition to Tracy
14 assuming the responsibilities.

15 Q And do you remember anything about the funding for
16 Mr. Rider that was discussed during your phone calls that you
17 had with Mr. Markarian and Ms. Weisberg?

18 A No. Again, any media related discussions had to do with
19 the strategy for where we might have different media
20 connections or which locations might best serve us.

21 Q Okay. Was Mr. Rider ever on any of these phone calls
22 when you were talking to Ms. Weisberg or Mr. Markarian?

23 A Not that I can recall, no.

24 Q Okay. Did you make any notes of those conversations?

25 A Not that I recall, no. If there were any such notes, it

1 was provided to counsel.

2 Q So you're not sure whether you made them?

3 A As I said, to the best of my recollection, no.

4 Q Okay. Did you make any notes of your conversations with
5 Mr. Rider?

6 A No. To the best of my recollection, no.

7 Q Okay. And did AWI ever have any communications with
8 anybody from the Wildlife Advocacy Project regarding funding
9 for Mr. Rider?

10 A Yes. I mean, I recall having received a written proposal
11 regarding media.

12 Q Were there any other written communications that you had
13 with the Wildlife Advocacy Project regarding Mr. Rider's
14 funding?

15 A Perhaps, if support was provided for media efforts, there
16 would have been acknowledgment of that support.

17 Q I'm sorry, could you repeat that?

18 A If there was support provided for media.

19 Q And when you say "support for media," what do you mean?

20 A To cover expenses associated with doing media events
21 around various circus performances.

22 Q Financial support, is that what you mean?

23 A Yes.

24 Q Okay. Did you ever have any e-mail communications with
25 anybody at the Wildlife Advocacy Project regarding Mr. Rider's

1 funding?

2 A Not that I recall, no.

3 Q Okay. And did you ever have any oral communications with
4 anybody at the Wildlife Advocacy Project regarding Mr. Rider's
5 funding?

6 A I imagine that might have been but there wouldn't be
7 specific discussions that I would recall.

8 Q Do you know the time frame when you started having those
9 discussions with the Wildlife Advocacy Project?

10 A No, other than that it was likely the time period between
11 2002 and Tracy at 2005, somewhere within there, but I couldn't
12 say when.

13 Q Did you continue to have those conversations after
14 Ms. Silverman arrived in 2005?

15 A I did not, no.

16 Q Okay. And did you take any notes of your conversations
17 with the Wildlife Advocacy Project?

18 A No.

19 Q And who from the Wildlife Advocacy Project did you talk
20 to?

21 A I would -- Sorry. It's just been so long. It's hard to
22 tell. It might have been Kathy Meyer, but I couldn't say.

23 Q Was there anybody else, other than Ms. Meyer, at the
24 Wildlife Advocacy Project that you would have talked to?

25 A Not that I recall.

1 Q And did AWI ever have any communications with anybody
2 from the Humane Society of the U.S. regarding funding for
3 Rider?

4 A No. It was the Plaintiffs in the suit.

5 Q Okay. I need to get you a binder. I would like to turn
6 to FEI Exhibit 51.

7 MS. JOINER: May I approach, Your Honor?

8 THE COURT: Yeah.

9 Q (BY MS. JOINER) Would you take a moment to look at that,
10 and let me know when you're ready, please. Are you ready?

11 A Sure.

12 Q Okay. Do you recognize Exhibit 51?

13 A No.

14 Q Okay. If you look at the middle of the page, this is --
15 this is dated November 5th, 2003, and in the "to" line, it
16 says, "Cathy Liss," and has the address "cathy@awionline.org."
17 Was that your e-mail address?

18 A Yes, it is.

19 Q At that time?

20 A Yes, it is.

21 Q And it is still?

22 A Yes, it is.

23 Q Okay. Do you have any reason to believe why you would
24 not have received this?

25 A No.

1 Q Okay. Do you know whether you received any other e-mails
2 regarding funding for Mr. Rider?

3 A No. Again, if there were any documents related to the
4 case, they would have been provided.

5 Q When did you take -- first take steps to save your
6 documents for this case?

7 A From the time the suit was filed.

8 Q And by that do you mean 2000 --

9 A I should say I regularly save e-mails, period.

10 THE COURT: I'm sorry, Ms. Liss, could you say that
11 again?

12 THE WITNESS: Sure. I typically save e-mails. I'm
13 a hoarder that way, I guess.

14 Q (BY MS. JOINER) Okay. So you typically save your
15 e-mails. That's your practice, right?

16 A That's correct.

17 Q And from the time this suit was filed when you said that,
18 did you mean 2000?

19 A I would guess from about that time forward, yes, if there
20 were e-mails.

21 Q Okay. Did you save this particular e-mail?

22 A As I said, clearly it was sent to me. I get a tremendous
23 volume of e-mails, both as executive director and perhaps more
24 so as president, so I don't recall having seen it, but clearly
25 it came in. I believe it references a fundraising report that

1 I am familiar with.

2 Q Okay. Did you search your e-mails to produce them for
3 this case?

4 A Yes, yes, absolutely.

5 Q And was this one of them that you found when you searched
6 your e-mails?

7 A I don't believe so, but if I had, I provided it to
8 counsel. Whatever I found, I provided to counsel.

9 Q Are you familiar with the AWI documents that counsel
10 produced to the Defendant in this case?

11 A Not the full breadth of documents provided, no.

12 Q Okay. And the Lisa Weisberg that's listed on the "to"
13 line in this e-mail is the same Lisa Weisberg that you
14 previously said you had telephone conversations with, correct?

15 A Yes.

16 Q And the same for Mr. Markarian that's listed there as
17 well?

18 A Yes.

19 Q Okay. Is it your testimony that you don't have any other
20 e-mails regarding funding for Mr. Rider?

21 A All I can again reiterate is whatever I possibly could
22 find, I provided to counsel. I engaged in a good faith effort
23 to find everything I might have conducting the broadest
24 possible search I could for documents.

25 Q What kind of documents were you searching for?

1 A I would enter various search terms and look for anything
2 related to what was requested.

3 Q And what were the search terms that you used?

4 A I might not be able to recall the full breadth of search
5 terms but certainly obvious ones, that would be "Ringling,"
6 "elephants," "Rider," "circus."

7 Q And then, as the documents that you found as a result of
8 those search terms, you then provided to your counsel; is that
9 correct?

10 A That's correct.

11 Q AWI is a 501(c)(3) tax exempt group; is that right?

12 A That's correct.

13 Q Okay. Do you have audited financial statements?

14 A Yes, we do.

15 Q Okay. Does AWI have an accountant?

16 A Yes, we do.

17 Q And what about auditors?

18 A They conduct the audit.

19 Q Okay. Does the accountant prepare AWI's tax returns?

20 A Yes.

21 Q Okay. If you could look now at FEI53, please.

22 THE COURT: Is that 53?

23 MS. JOINER: Yes, sir.

24 THE COURT: You having difficulty finding it, ma'am?

25 THE WITNESS: It just seemed to be multiple pages,

1 so I didn't know if I was supposed to look for a certain page
2 in there.

3 Q (BY MS. JOINER) Yes, have you found Document 53?

4 A Yes.

5 Q Okay. What is this document?

6 A It's a 994.

7 Q Okay. Is this AWI's tax return for the period July 1,
8 2000 through June 30th, 2001?

9 A Yes, it is.

10 Q Okay. And if you look at 9952, at the bottom, have you
11 found that page?

12 A Yes.

13 Q It says, (reading) The books are in the care of Shirley
14 Avnet located at 1501 Broadway, New York, New York.

15 A Yes.

16 Q Who is Shirley Avnet?

17 A She was our bookkeeper at that time.

18 Q Is she still the bookkeeper now?

19 A No, she's retired.

20 Q Okay. Did somebody take her job?

21 A Yes, out of our headquarters in Alexandria.

22 Q Okay. And who does that now?

23 A Actually, in the interim, we had an individual Jill, and
24 we have a new woman who just started a few weeks ago, Regina.

25 Q Okay. So when you say Jill, is that Jill Umphlett?

1 A Yes.

2 Q And how long was Jill Umphlett the bookkeeper?

3 A I would imagine a few years. Actually, before her, was
4 also a Susan Tomiak Millward.

5 Q Susan Millward before Jill Umphlett?

6 A Yes. She was the one who transitioned from -- after
7 Shirley.

8 Q Okay.

9 A When I say "transition," that's moving records down from
10 New York to the D.C. area.

11 Q Okay. Then if you would turn next please to 9967. If I
12 understood you correctly, Ms. Avnet's records were sent down
13 to Ms. Millward; is that right?

14 A That's correct.

15 Q Okay. Have you found 9967?

16 A Yes, I have.

17 Q Okay. I wanted to direct your attention to Statement 6,
18 which is "Cash, Grants and Allocations," which begins on 9967.

19 A Yes.

20 Q And then you turn over to the next page, 9968.

21 A Yes.

22 Q And do you see the last listing there, it says under the
23 column -- you have to look at the page before you get the
24 column, but under the column of classification it says,
25 "Environmental," and then donor's name, "Tom Rider," donee's

1 relationship, "none," and for the amount of \$1,102.

2 A Yes.

3 Q You see that?

4 A Uh-huh.

5 Q Okay. This is spelled "R-Y-D-E-R," but that's the same
6 Tom Rider that is the co-Plaintiff in the case?

7 A Yes.

8 Q Okay. And how was this 1,102-dollar distribution payment
9 to Mr. Rider made?

10 A I couldn't speak to that. Certainly this was provided
11 demonstrating the monies were provided to Tom to cover
12 expenses. I can't say more than that.

13 Q Okay. So do you know where the underlying documentation
14 is regarding these funds?

15 A Likely that answer rests with Christine Stevens.

16 Q Okay.

17 A But certainly we went through an exhaustive search and
18 provided whatever documents we could.

19 Q Does AWI no longer have Ms. Stevens' files?

20 A We have all the files, yes.

21 Q Did anybody search her files?

22 A Sorry. We are founded in 1951. We have extensive files.
23 Yes, we certainly had a thorough and exhaustive search for all
24 materials.

25 Q Okay. So in Ms. Stevens' files, were there any of the

1 documents related to this 1100-dollar payment made to
2 Mr. Rider?

3 A No.

4 Q So you're not able to say at this time whether this was
5 one payment or multiple payments?

6 A That's correct.

7 Q And you're not able to say at this time how these
8 payments were made?

9 A That's correct.

10 Q And you're not able to say at this time where the
11 receipts are for these payments?

12 A If there were receipts, I couldn't even say that.

13 Q Okay. Who at AWI knew about the payments to Mr. Rider?

14 A From the beginning through to the present?

15 Q That's correct.

16 A In the beginning, while Christine was alive, it would be
17 either Christine or myself as individuals authorized to make
18 payments, and following her death, it would be myself. And
19 once Tracy Silverman was on board, likely she would know.

20 Q Were there any other individuals at AWI that knew about
21 the payments?

22 A Obviously, the bookkeepers from whom these records came.

23 Q Are those the persons that we just identified?

24 A Yes.

25 Q Are there any others?

1 A That's the only bookkeepers we've had.

2 Q And who at AWI had the ability to authorize the payments
3 to Mr. Rider?

4 A Again, as I said, either Christine Stevens or myself.

5 Q Does AWI have a board of directors?

6 A Yes, it does.

7 Q And were they advised of the payments to Mr. Rider?

8 A No. That generally, as I understand it, in my working
9 relationship with the board, is for very small sums of money.
10 It's not something that I would go to the board about.

11 Q I'm not sure I understood that. For you only have to go
12 to the board if it's a large sum of money?

13 A That's correct. There were generally various activities
14 in the breadth of activities and trust my judgment currently
15 as president and previously Christine's judgment as president.

16 Q Okay. So you -- did you attend the board meetings for
17 AWI?

18 A Yes, I did.

19 Q Okay. So there were never any discussions about payments
20 to Mr. Rider at the board meetings?

21 A Not to my recollection. And again, part of the search
22 that we did included minutes of AWI board of director
23 meetings.

24 Q Okay. This -- these payments that are reflected here in
25 Exhibit 53, is that the first time that payments were made to

1 Mr. Rider by AWI?

2 A To the best of my recollection, yes.

3 Q Okay. So they would have began in 2000 sometime?

4 A This is for 2000, 2001, so sometime during that time
5 period.

6 Q Okay. Did AWI ever issue a 1099 to Mr. Rider?

7 A Not that I'm aware of. This was a grant, I believe.

8 Q Okay. I need to get you another book.

9 MS. JOINER: If I can approach, Your Honor.

10 THE COURT: Yeah.

11 Q (BY MS. JOINER) If you could turn to Tab C, which a
12 compilation for the -- all transit of documents so we can walk
13 through them.

14 A Okay.

15 Q And I'd like to turn to 9972, which is towards the back
16 of this tab.

17 THE DEPUTY CLERK: What tab?

18 MS. JOINER: Tab C.

19 Q (BY MS. JOINER) And this is actually AWI9927 and 9990 as
20 an excerpt from the July 1, 2004, to June 30th, 2005 tax
21 return for AWI. Do you see that?

22 A Yes.

23 Q Okay. And then if you turn to the second page of this
24 again, it indicates that AWI paid Mr. Rider \$1,208. Do you
25 see that?

1 A Yes, I do.

2 Q And how were those payments made to Mr. Rider?

3 A I couldn't say, unless there was the documentation
4 provided here. For any checks that were made, copies were
5 provided.

6 Q Okay. At this time, are you able to say whether that was
7 one payment or multiple payments?

8 A I couldn't say.

9 Q And are you at this time able to say how those payments
10 were made, by what means?

11 A Again, the documentation was provided. I would defer to
12 that over my recollection.

13 Q Okay. And then, a couple of lines below that, it
14 indicates that a payment was made to the Wildlife Advocacy
15 Project in the amount of \$8,000. Do you see that?

16 A Yes.

17 Q And those funds were for what purpose?

18 A For media work that was being done by Tom.

19 Q So just based on the two tax returns that we've looked at
20 so far, by June 30th, 2005, AWI had paid over \$10,000 either
21 directly or indirectly to Mr. Rider; is that correct?

22 A Yes. Again, we don't have a PR department and viewed
23 that as a tremendously good deal for getting press.

24 Q Okay. And that amount was contrary to the deposition
25 testimony that you gave back in May of 2005, isn't it?

1 A I'd --

2 MR. GLITZENSTEIN: Your Honor --

3 THE COURT: Direct the witness' attention to the
4 portion of the deposition which you claim impeached.

5 MS. JOINER: Certainly. And let me back up to --
6 I'll stick the notice in there as well, okay.

7 Q (BY MS. JOINER) If you would turn first, please, to
8 FEI88. I'm sorry, that's the white binder underneath.

9 A Okay.

10 Q Have you found that?

11 A Yes.

12 Q Okay. Do you recognize this document?

13 A I have a notice of deposition.

14 Q Right. It's the notice of deposition for the Animal
15 Welfare Institute, and if you turn about five pages back,
16 there is an attachment that has the subject matters for
17 inquiry. Do you see that?

18 A Yes.

19 Q Okay. And there are a total of 20 different subject
20 matters; is that correct?

21 A Yes.

22 Q Okay. No. 1 on those subject matters is all financial
23 relationships between AWI and other Plaintiffs during the
24 relevant time period. Do you see that?

25 A Yes.

1 Q It also included, at No. 14, AWI's communications with
2 any former employee, consultant or contractor of Defendant
3 during the relevant time period. Do you see that?

4 A Yes.

5 Q And No. 15, subject matter was the circumstances
6 surrounding an amount of any money or other form of
7 remuneration, reimbursement for coverage for expenses paid by
8 any Plaintiff or any animal activist, any former employee,
9 consultant or contractor of Defendant during the relevant time
10 period. Do you see that?

11 A Yes.

12 Q Okay. So if you would like to turn now to exhibit --

13 MS. JOINER: If I can approach, Your Honor.

14 THE COURT: Sure.

15 Q (BY MS. JOINER) Exhibit 32.

16 A Okay. Are we done with this?

17 Q Set it right here. 32 in that one is the AWI deposition
18 transcript. Okay. Have you found it?

19 A Yes.

20 Q All right. You were the designated 30(b)6 witness for
21 AWI; is that correct?

22 A Yes, it is.

23 Q And this deposition occurred on May 18th, 2005; is that
24 correct?

25 A Yes.

1 Q Okay. If you look at page 9, lines 1 through 3, it says,
2 (reading) Are you prepared to testify today about all of the
3 topics that are on that list?

4 And the answer was, (reading) Yes, I am.

5 Do you see that?

6 A Yes.

7 Q Okay. That was your testimony, correct?

8 A Yes.

9 Q And at that time you also believed that you were familiar
10 with the topics in the notice?

11 A Yes.

12 Q Okay. You testified at this deposition that AWI had only
13 paid Rider --

14 THE COURT: I want the line and the page.

15 MS. JOINER: I'm sorry.

16 Q (BY MS. JOINER) Let's go to page 138, please. Have you
17 found it?

18 A Yes, I have.

19 Q Okay. If you would take a look, please, at 138, line 20
20 through 139, line 4. So the question was asked at page 138,
21 line 20, (reading) Has Animal Welfare Institute ever paid any
22 money to -- ever paid Mr. Rider any money?

23 (Reading) Answer, Yes.

24 (Reading) How much did they pay him?

25 (Reading) Answer, A couple of thousand dollars.

1 (Reading) Question, When was that?

2 (Reading) Answer, Over the course of five years,
3 roughly from 2000 forward.

4 And then if you go down to page 139 at 17. The
5 question is asked, (reading) Well, my question was, when was
6 the last time you made a payment to him?

7 Line 19, (reading) At some point in 2005. I don't
8 recall the date specifically.

9 (Reading) Question, So within the last
10 four-and-a-half months?

11 (Reading) Answer, Yes.

12 And then in page 140, the question is asked at line
13 9. Do you see that?

14 A Yes.

15 Q Okay. (Reading) Tell me all the events for which you
16 paid his transportation costs so he could go speak.

17 (Reading) Answer, I couldn't tell you. It's not
18 very many.

19 (Reading) Question, What do you mean by 'not very
20 many'? How many are we talking about?

21 (Reading) Answer, Given that it's \$2,000 for hotel
22 and transportation, it doesn't go very far. Maybe three.

23 That was your testimony at the time?

24 A Yes.

25 Q Right. So you testified there were three-thousand

1 dollars' worth of payments to Mr. Rider, and we've just looked
2 at tax returns that put that number at approximately 10,000?

3 A My understanding was that this whole line of questioning
4 related to payments made directly from the Animal Welfare
5 Institute to Mr. Rider. These were responses in relation to
6 that.

7 Q I see. So you thought that, for instance, payments made
8 from AWI to the Wildlife Advocacy Project would not be
9 included?

10 A That's correct.

11 Q Okay. And if we look back at those tax returns, you
12 thought that the \$8,000 to the Wildlife Advocacy Project was
13 not responsive to the question that was asked here; is that
14 right?

15 A Correct.

16 MR. GLITZENSTEIN: Your Honor, just for the record,
17 this was all recognized in response to Judge Sullivan's 2007
18 order, so we can continue to talk about what was said in 2005
19 if Your Honor wants to allow this to continue, but in terms
20 of what we are here for, this is all acknowledged in response
21 to the 2007 order we thought was the purpose of this hearing.

22 THE COURT: Thank you. Proceed.

23 Q (BY MS. JOINER) If you would turn back, please, to now
24 the black binder. I am losing my binders. Sorry.

25 Okay. If you would turn back to Tab C. Have you

1 found that?

2 A Yes.

3 Q Okay. I wanted to direct your attention to the very
4 first four pages in that exhibit, so these are Bates labeled
5 6494 through 6497.

6 A Okay.

7 Q Have you found those?

8 A Yes.

9 Q Okay. Can you tell us the dates on these four checks?

10 A October 4th, 2004; November 18th, 2004; March 4th,
11 2005; and March 25th, 2005.

12 Q And who signed these checks?

13 A I did.

14 Q All right. And who are they payable to?

15 A Wildlife Advocacy Project.

16 Q And if you look at the November 18th, 2004 check, which
17 is 6495, have you found that?

18 A Yes.

19 Q Okay. What does the "for" line say?

20 A Tom Rider campaign.

21 Q Okay. So this was a check to the Wildlife Advocacy
22 Project for Mr. Rider?

23 A For the media campaign that Mr. Rider was engaged in,
24 yes.

25 Q Okay. And if you turn to the March 25, 2005 check, which

1 is 6497. Have you found that?

2 A Yes.

3 Q And what does the "for" line on that say?

4 A Tom Rider. Again, these are all for the same, and I
5 should point out that's not my handwriting, but it's all for
6 the media campaign.

7 Q All four of the checks?

8 A That's correct.

9 Q All right. So if you turn back then to your deposition,
10 to page 139. Have you found that?

11 A Yes.

12 Q Okay. Line 17, the question is asked, (reading) Well,
13 my question was, when was the last time you made a payment to
14 him?

15 (Reading) Answer, At some point in 2005. I don't
16 recall the date specifically.

17 Are these four checks here to the Wildlife Advocacy
18 Project the ones that you were referring to in your
19 deposition?

20 A I don't believe so. What I was referring to here, to the
21 best of my recollection, is payments that would have been made
22 directly to Tom, and if so, it would be reliant upon physical
23 documentation that was provided to the Court.

24 Q So you think that there are checks in 2000 -- the portion
25 from January 1, 2005 to May 18th, 2005 where AWI paid

1 Mr. Rider directly?

2 MR. GLITZENSTEIN: Your Honor, I object. I think
3 she's not only answered the question, but again, the relevance
4 to the 2007 --

5 THE COURT: Objection overruled. Can you answer
6 that question, Ms. Liss?

7 THE WITNESS: I mean, I can't speak to what -- what
8 I was speaking of then. My understanding is I was referring
9 to payments made directly to Tom, so I would guess that my
10 recollection at that time was that, yes, a payment was made
11 directly to Tom that clearly I was not speaking of payments
12 made through Wildlife Advocacy Project. This was direct
13 payments to Tom Rider.

14 Q (BY MS. JOINER) And does AWI still have documentation
15 regarding that payment?

16 A Again, any and all records regarding any financial
17 payments were provided to the Court following a very
18 exhaustive search.

19 Q The documents were provided were the ones that were still
20 in existence; is that correct?

21 A That's correct. And I should add, all our records are
22 maintained, particularly financial records.

23 Q Who maintains them?

24 A They are maintained at the Animal Welfare Institute
25 headquarters.

1 Q And which person does that?

2 A The bookkeeper is the principal.

3 Q And I'm sorry, you said a new bookkeeper just started?

4 A Just started a few weeks ago.

5 Q And what is that person's name?

6 A Regina.

7 Q What's her last name?

8 A I was afraid you were going to ask that. I'm afraid I
9 don't know.

10 Q Okay. So would she have inherited the files from her
11 predecessor in that position?

12 A Yes, that's correct.

13 Q Okay. And were those files searched in response to the
14 document requests in this case?

15 A Yes, they were.

16 Q Okay. Now, I'd like you to turn, if you would, please,
17 in Tab C to 9932 to 9939. Have you found those?

18 A Yes.

19 Q Okay. Were these particular -- First of all, let me ask
20 you if you recognize these documents.

21 A Yes, I do.

22 Q What are they?

23 A They are bills provided by Meyer & Glitzenstein.

24 Q To whom?

25 A In this particular case, 9932, to me at the Animal

1 Welfare Institute.

2 Q And then the next one, 9934, is addressed to whom?

3 A Lisa Weisberg at the ASPCA.

4 Q Okay. And the next one at 9936 is addressed to whom?

5 A Lisa Weisberg again at the ASPCA.

6 Q And then the 9938 invoice is addressed to whom?

7 A Me at the Animal Welfare Institute.

8 Q Okay. So we're looking at four invoices here; is that
9 correct?

10 A Yes.

11 Q Okay. Were these invoices actually produced from AWI's
12 own files?

13 A I couldn't say. Certainly, if we had them in our files,
14 we would have provided them.

15 Q If you look at the first one that's dated April 11, 2003,
16 what is the amount paid for Mr. Rider?

17 A \$300.

18 Q Okay. And how would that payment have been made?

19 A By check.

20 Q Okay. I guess I should back up. Was that payment
21 actually made?

22 A The one to Tom, I couldn't say how that was made to Tom.
23 To Meyer & Glitzenstein, as payment of that portion of the
24 bill, would have been by check.

25 Q Would have been by check. Okay. Would there have been

1 any other correspondence or documents that went along with
2 that?

3 A No.

4 Q And did you have any communications with anybody about
5 this bill?

6 A Not that I recall, no.

7 Q Did anybody ever explain to you that the law firm of
8 Meyer Glitzenstein was going to provide money to Mr. Rider and
9 then AWI would be billed for it?

10 A Yes, certainly I knew that in advance.

11 Q And who did you have that conversation with?

12 A I don't recall a specific conversation.

13 Q Well, how would you know that in advance then?

14 A Because I would have been forewarned about an item
15 occurring in a bill, so that would tell me that would be the
16 natural sequence of events.

17 Q And who would have forewarned you?

18 A Somebody at Meyer & Glitzenstein. Again, likely Kathy
19 Meyer, but I couldn't say with certainty.

20 Q Are there any other documents that are related to this
21 invoice?

22 A Documents related to this invoice, not that I'm aware of.

23 Q Yes, for instance, would there have been like a cover
24 letter that would have come with the invoice?

25 A No, I don't think so.

1 Q Okay. Thank you. If you would turn now to the next one,
2 which is dated July 20th, 2001. This is actually addressed
3 to the ASPCA; is that correct?

4 A Yes.

5 Q Okay. How did AWI get this bill?

6 A Given that it was addressed to ASPCA, I couldn't say for
7 certain whether she forwarded it or whether Meyer &
8 Glitzenstein might have forwarded.

9 Q If you look down at the bottom, it says, "a shared
10 expense." Do you see that? \$600 to be shared between ASPCA,
11 AWI and the Fund. Could you explain for us please what "a
12 shared expense" is?

13 A It means that the various groups listed there agreed to
14 pool resources in order to conduct various media that Tom was
15 engaged in at that time.

16 Q Okay. So what was AWI's share of that expense?

17 A It would have -- I mean, it -- let's see. I would
18 imagine it was \$200.

19 Q And did you know about that before you received this
20 bill?

21 A Again, I would imagine I did.

22 Q Okay. Was conversation with anybody?

23 A I don't recall a specific conversation. I mean, it's
24 2001.

25 Q Okay.

1 A And in fact --

2 Q Did AWI pay this 200-dollar amount?

3 A Pardon?

4 Q Who -- did AWI pay its share of the \$600?

5 A I presume so. We pay our bills.

6 Q Okay. Well, and who would the amount have been paid to?

7 A Meyer & Glitzenstein.

8 Q Would it have been paid to Meyer & Glitzenstein or to

9 ASPCA?

10 A I don't recall. I know that the bills typically were
11 sent to ASPCA as the lead group with each group paying a
12 portion of their share. To the best of my recollection, the
13 monies were paid directly to Meyer & Glitzenstein, but I can't
14 say for sure.

15 Q Thank you. Do you know where the cover sheet for this
16 invoice is?

17 A I don't believe there are cover sheets for -- I mean,
18 there is just the straight invoice.

19 Q Okay. Can you turn, please, to FEI23.

20 A Is that a white --

21 THE COURT: Where can she find that?

22 MS. JOINER: Oh, I'm sorry. May I approach?

23 THE COURT: Sure.

24 Q (BY MS. JOINER) Have you found it?

25 A Yes.

1 Q Okay. I wanted to direct your attention to the -- Well,
2 first of all, let's -- I guess we better put the date into
3 this.

4 If you turn to page 14. What's the date of these
5 supplemental responses?

6 A December 24th, 2007.

7 Q I'm sorry, did you say December?

8 A I'm sorry, September.

9 Q September 24th, 2007. And if you turn to the next
10 page, who signed the verification on behalf of AWI?

11 A Tracy Silverman.

12 Q Okay. Now, I wanted to direct your attention to
13 Interrogatory No. 21, which actually begins on page 11. And
14 it's fairly lengthy. I want to go specifically to page 13,
15 but let me know when you're ready to do that.

16 A Okay.

17 Q Okay. Can you turn to page 13. Have you found it?

18 A Yes.

19 Q And I'm looking about the middle of the page, and I'll
20 just read the sentence that I'm focusing on. It says,
21 (reading) Some of these invoices are addressed to the
22 American Society for the Prevention of Cruelty to Animals,
23 because at the time, the Meyer & Glitzenstein billing system
24 created one detailed bill for all three Plaintiffs'
25 organizations addressed to the ASPCA as the lead Plaintiff and

1 each individual group received a cover sheet specifying the
2 amount that group was being billed, as well as any specific
3 expenses charged only to that group.

4 Did I read that accurately?

5 A Yes.

6 Q Okay. So the question is, where is the cover sheet for
7 the bill that we just looked at?

8 A Again, all I can say is whatever documentation we had was
9 provided to counsel.

10 Q So right now you don't know?

11 A That's correct.

12 Q Okay. And if you would turn, please -- I'm sorry, we
13 have to go back to the binder now with the bills in it, which
14 is Tab C, and I want to turn to the next invoice, which is
15 January 3, 2002.

16 A Okay.

17 Q Have you found that?

18 A Yes.

19 Q Okay. So I'm looking at -- it's actually AWI9936 and 37,
20 correct? Have you found it?

21 A Yes.

22 Q Okay. So this is a January 3, 2002 invoice which
23 indicates another shared expense down at the bottom. And
24 where is the -- do you know where the cover sheet for this
25 particular invoice is?

1 A Again, it would be the same response. If there was a
2 cover sheet that accompanied it and we had in our possession,
3 it was supplied to counsel.

4 Q Okay. At the time of these invoices that we have been
5 looking at, you were aware that Mr. Rider's expenses were
6 being shared by other groups; is that right?

7 A That's correct.

8 Q If you would turn, please, now, back to FEI Exhibit 32,
9 and I want to direct your attention to the testimony on page
10 142.

11 A Sorry, which?

12 Q Have you --

13 MS. JOINER: I'm sorry, may I approach?

14 A If you tell me which color binder.

15 Q (BY MS. JOINER) It's a white binder, No. 32. Did you
16 find it?

17 A Yes.

18 Q Okay. So I wanted to look at page 142, lines 20 through
19 25. Have you found that?

20 A Yes.

21 Q Okay. So the question was asked, (reading) Do you know
22 if any other animal welfare organizations have provided
23 similar reimbursements to Mr. Rider?

24 (Reading) Answer, I don't know.

25 (Reading) Question, You never discussed it with

1 him?

2 (Reading) Answer, I imagine. I don't know.

3 That was the testimony at your deposition in May 18,
4 2005; is that correct?

5 A Right. Again, that relates to payments made specifically
6 and directly to Mr. Rider.

7 Q Okay. And the invoices that we just looked at contained
8 shared expenses between AWI, ASPCA and the Fund For Animals?

9 A That went out directly from AWI to Mr. Rider.

10 Q If you would look, please, at page 141, beginning with
11 line 25, continuing through page 142 to line 6. Have you
12 found that?

13 A Yes.

14 Q Okay. So the question was asked, (reading) On the times
15 that you've reimbursed him, are you -- has it been only the
16 Animal Welfare Institute that was paying for his travel
17 expenses?

18 (Reading) Answer, To my knowledge, yes.

19 (Reading) Question, You were not aware that you
20 were sharing his expenses with some other organization?

21 (Reading) Answer, That's correct.

22 A Right. That these were again specific payments made by
23 AWI to ensure that he could attend specific events.

24 Q Did I read your testimony accurately?

25 A Yes, that's correct.

1 Q If you would turn next, please, to -- back to Tab C in
2 the black book, at 9940. This is also, just for the record,
3 has been marked as FEI76. If you would take a minute and look
4 at 9940 through 9944.

5 A Okay.

6 Q Have you found them?

7 A Uh-huh.

8 Q Okay. Do you recognize these documents?

9 A Yes.

10 Q What are they?

11 A Capital One credit card bills for the Animal Welfare
12 Institute.

13 Q Issued in your name; is that right?

14 A That's correct.

15 Q Okay. And the first page is dated, looks like,
16 February 2 to March 1, 2005; is that correct? Do you see that
17 on page -- I'm looking at --

18 A Yes.

19 Q -- 9940.

20 A Yes.

21 Q If you look down about halfway down on the page on the
22 left-hand side, do you recognize the handwriting there?

23 THE COURT: You see where it says "1208"?

24 A Right. That's not my handwriting there, I can tell you
25 that.

1 Q (BY MS. JOINER) Do you recognize it? Do you know who
2 wrote that?

3 A I couldn't tell you with certainty, no.

4 Q Okay. Do you know what the "1208 Tom Rider Grant"
5 designation on this document means?

6 A Certainly it would be for work he had done relating to
7 media.

8 Q Okay. If you turn to the next page, there are two
9 entries, one for \$655 and one for 553. Do you see that?

10 A Yes.

11 Q Are those wire transfers to Mr. Rider?

12 A Yes.

13 Q Okay. And I just want to make sure. If you know, is the
14 handwritten notation on the first page for the 1208, is that
15 simply the addition of the two payments on the next page, the
16 sum of those two payments; is that what that is?

17 A Certainly, if that's what it adds up to. It's not my
18 handwriting, but that would be my guess.

19 Q Okay. It's possible but we're not sure; is that
20 accurate?

21 A Yes.

22 Q Okay.

23 THE COURT: No. That two numbers result in a third
24 number is something we all can be sure of, right?

25 MS. JOINER: Exactly. I don't know if that's what

1 it means to reference.

2 THE COURT: In an uncertain universe, that's one
3 thing we can be sure of.

4 MS. JOINER: You are correct.

5 Q (BY MS. JOINER) So back to the two wire transfers on the
6 second page.

7 A Uh-huh.

8 Q Where are the receipts for those?

9 A Again, if we had them in our possession, they would have
10 been provided.

11 Q Okay. So at this time you don't know?

12 A Again, all I can say is that if we had them, we provided
13 them.

14 Q Okay. Oh, I'm sorry, go ahead.

15 A No, I wasn't the one who would have arranged for wire
16 transfers. I would have authorized it but didn't actually
17 make them.

18 Q And who was the person that would arrange for the wire
19 transfers?

20 A Whoever was the bookkeeper at that time.

21 Q Okay. And do you know whether the bookkeeper's files
22 were searched for any kind of receipt for the wire transfers?

23 A Yes, all files were searched.

24 Q Okay. And then if you turn to the next page, which is
25 9942, do you recognize this document?

1 A I'm sorry, the page numbers are off. Is it --

2 Q Yeah, they're cut off a little bit. What I'm looking at
3 is a City Business Platinum Select Card invoice.

4 A Yes.

5 Q Have you found that?

6 A Yes.

7 Q Okay. And what's the date on that invoice?

8 A December 1 to January 2, 2007.

9 Q Okay. And is this again an Animal Welfare Institute
10 credit card in your name?

11 A Yes, it is.

12 Q And if you would turn over to one more page.

13 A Uh-huh.

14 Q There is an entry for 1,657.58. Do you see that?

15 A Yes.

16 Q Okay. Do you know what this was for?

17 A Certainly, to the best of my recollection, that would be
18 repairs that were done to the vehicle that Tom uses to travel
19 around the country.

20 Q Okay. And do you know whether there was any
21 correspondence that was related to this?

22 A No. I wouldn't imagine there was.

23 Q Okay. Would there have been an invoice?

24 A Not that I recall. And again, if there was, it would
25 have been provided.

1 Q Okay. So at this time you're not sure whether there were
2 any other documents related to this?

3 A The only thing I can say that I'm fairly certain about is
4 that his vehicle broke down in California, and he wasn't able
5 to continue doing media work unless we got his vehicle
6 running, and we wanted to get his vehicle running.

7 Q Okay. Is there anybody else at the Animal Welfare
8 Institute that has a credit card that they use to use for the
9 purpose of making payments to Mr. Rider?

10 A To the best of my knowledge, nobody else has put any
11 payments to Tom on a credit card, and again, if that had been
12 done, it would have been provided.

13 Q Okay. And I should -- I should rephrase, payments to or
14 for Mr. Rider on a credit card?

15 A Right.

16 Q Okay.

17 THE COURT: Counsel, how much more do you have?

18 MS. JOINER: 10, 15 minutes, I think, to finish up
19 before lunch, if you prefer.

20 THE COURT: No, we'll break for lunch right now.

21 1:45, please.

22 Ms. Liss, you're under oath. Please do not discuss
23 your testimony with anyone or permit anyone to discuss it with
24 you. 1:45.

25 THE DEPUTY CLERK: All rise.

1 (A LUNCH BREAK WAS TAKEN.)

2 THE DEPUTY CLERK: All right. Court is back in
3 session. Be seated, everyone.

4 THE COURT: You may resume, Counsel.

5 MS. JOINER: Thank you.

6 Q (BY MS. JOINER) Ms. Liss, if you would go back to the
7 Tab C in the black notebook.

8 A Uh-huh.

9 Q And I wanted to ask you about AWI6038, which is close
10 towards the front.

11 A 6038?

12 Q Yes. You finding it?

13 A No. Under C?

14 Q Yeah.

15 MS. JOINER: Can I approach, Your Honor?

16 THE COURT: Surely.

17 Q (BY MS. JOINER) And I think you had testified earlier
18 that there was a proposal; is that right?

19 A Yes.

20 Q Is this the proposal you had in mind?

21 A Yes, it is.

22 Q Okay. What is the date of this proposal?

23 A December 11th, 2003.

24 Q Okay. And it's from Katherine Meyer at the Wildlife
25 Advocacy Project to you at the Animal Welfare Institute; is

1 that correct?

2 A Yes.

3 Q Okay. And the first sentence of that says, (reading)
4 Enclosed, as we discussed, is a grant proposal.

5 Who had that conversation? Was it just you and Ms.
6 Meyer?

7 A To the best of my recollection, it was a conference call.

8 Q Okay. And who was on the call?

9 A Again, to the best of my recollection, Lisa Weisberg at
10 ASPCA and Mike Markarian at the Fund.

11 Q And what was discussed about the grant proposal?

12 A Just that one was going to be prepared.

13 Q And if you turn to the second page of the proposal, which
14 is 6040. Have you found that?

15 A Yes.

16 Q Okay. It indicates that in the last paragraph, the
17 request for the proposal was \$10,000; is that correct?

18 A Yes.

19 Q Okay. Did AWI actually pay the full \$10,000?

20 A I don't believe so, but I would have to tally up the
21 checks that are -- were provided to be sure.

22 Q Okay.

23 A I would defer to the documents provided.

24 Q All right. If you turn to the next page, 6041, was this
25 attached to the proposal as part of the activities that

1 Mr. Rider would be doing?

2 A Yes.

3 Q And the proposal would go to fund these kinds of
4 activities?

5 A No. I believe this was past media that he had obtained.

6 Q Okay. And would the proposal be for doing the similar
7 kinds of --

8 A Yes.

9 Q -- activities?

10 A Showing the success of his abilities to get press and
11 that he would continue in the same vein.

12 Q Okay. Then if you turn to the next page, which is 6058,
13 this is a letter from you to Ms. Meyer at the Wildlife
14 Advocacy Project dated February 13th, 2004. And what was
15 the actual amount of the award that AWI made to the Wildlife
16 Advocacy Project in response to this proposal?

17 A \$2,500.

18 Q Okay. Were there any other proposals that were made by
19 the Wildlife Advocacy Project?

20 A Not that I'm aware of.

21 Q And were there any other letters, like the one we're
22 looking at here, 6058, that were sent from you at the Animal
23 Welfare Institute to the Wildlife Advocacy Project?

24 A Again, not that I recall, but had I found them, I would
25 have provided that.

1 Q Okay. If you could turn now, please, to FEI21, which is
2 in the white binder. You find it?

3 A Yes.

4 Q Okay. If you turn to page 30, what is the date of this
5 response -- AWI's response to interrogatories?

6 A June 9th, 2004.

7 Q Okay. And on the last page on page 31, is that your
8 verification?

9 A Yes, it is.

10 Q Did you help prepare and respond to these interrogatory
11 responses?

12 A Yes, I did.

13 Q Okay. If you would turn to page 24, please. It's
14 Interrogatory No. 16.

15 A Okay.

16 Q Okay. Specifically looking at the last two sentences,
17 there is only one reference here to a meeting with Mr. Rider;
18 is that correct?

19 A Yes.

20 Q But I believe you testified earlier that by this point in
21 time you had had phone conversations with him as well; is that
22 correct?

23 A Yes. I believe, in responding on this one, given the
24 broad question, I took it in the context of personal meetings.
25 So these were all personal meetings with anybody that was a

1 former or current employee of Ringling Brothers.

2 Q Okay. So you interpreted "communication" to be personal
3 meetings. And then if you turn, the next one I would like to
4 direct your attention to is No. 19, which begins on page 26.

5 MR. GLITZENSTEIN: Your Honor, again, for the
6 record, we object to questions about a June 2004 interrogatory
7 response when we're here in a proceeding on a response to an
8 August 2007 order.

9 THE COURT: Thank you, sir.

10 Q (BY MS. JOINER) Have you found that one?

11 A Yes.

12 Q Would you review it and let me know when you've had time
13 to do so, please.

14 A (Witness reviewing.)

15 Q Okay. Have you had time to review it?

16 A Yes.

17 Q This particular response does not make any mention of the
18 Wildlife Advocacy Project or any communications with them; is
19 that correct?

20 A That's correct.

21 Q And then if you would turn, please, to Interrogatory No.
22 21, which is page 28 to 29.

23 A If I could back up, though, it does -- 27, at least, does
24 reference a report that was prepared by the Wildlife Advocacy
25 Project.

1 Q Okay. Can you tell me where you're referencing, please.

2 A Middle of page 27.

3 Q Okay. Can you --

4 A Sanctioned abuse.

5 Q Government sanctioned abuse?

6 A Yes.

7 Q And that was prepared by the Wildlife Advocacy Project?

8 A Yes.

9 Q Okay. Can you turn -- are you done?

10 A Yeah.

11 Q Okay. I didn't want to cut you off. Can you turn to
12 Interrogatory No. 21, please.

13 A Yes.

14 Q Have you read that?

15 A Yes.

16 Q Okay. And I just wanted to check. The resources that
17 are listed here that AWI has expended, do these numbers in any
18 way include the payments that AWI had made at this time to or
19 for Mr. Rider?

20 A I would have -- I mean, I can only surmise with the total
21 figure I have, given that that was an approximate figure of --
22 for all work done related to improving conditions for captive
23 animals, that in preparing my response to this, I used, as a
24 reference document, the annual reports of the Animal Welfare
25 Institute, and as I mentioned, we don't have a PR department,

1 and therefore, there wasn't a category for that, and that's
2 why that may have been overlooked.

3 Q Okay. So these -- these numbers would then be exclusive
4 of the amounts paid to Mr. Rider by AWI?

5 A The detailed items listed here are for work product for
6 staff within the Animal Welfare Institute, and that was the --
7 appears to be the focus of the material I was providing here.
8 I couldn't say with any kind of certainty whether the 437
9 includes or excludes Tom, given it was clearly not in my mind
10 at the time that I prepared this.

11 Q Okay. Thank you. And then the last one, please, if you
12 would turn to Interrogatory No. 22. And again, it's the same
13 question, which is the resources that are contained in this
14 response. Do they include the monies paid to Mr. Rider by AWI
15 at this time, monies paid to or for Mr. Rider?

16 A Sorry. I'm sorry, repeat your question.

17 Q I'm sorry. I should have made sure you were done.

18 A No, I had --

19 Q You had a chance to look at those?

20 A Yes.

21 Q So it's the same question here, which is, are the amounts
22 that are listed in the response to this interrogatory, do they
23 contain the amounts that AWI had paid to or for Mr. Rider?

24 A That, I don't believe that we ever went to Tom Rider to
25 collect information like this. It was purely in a media

1 related capacity that he did any work for us.

2 Q Okay.

3 MS. JOINER: Thank you, Ms. Liss.

4 I have nothing further, Your Honor.

5 THE COURT: Any questions?

6 MR. GLITZENSTEIN: I do, Your Honor, but only a few.

7 CROSS-EXAMINATION

8 BY MR. GLITZENSTEIN:

9 Q Ms. Liss, can you turn to what is Exhibit 22 in the same
10 binder that you've been looking at. And do you see at the end
11 of that exhibit, which is one of Defendants' exhibits, the
12 date that's on page 17, the response to these interrogatories.

13 A Yes, January 31st, 2007.

14 MR. GLITZENSTEIN: Okay. And Your Honor, I just
15 move the admission of these set of interrogatories.

16 THE COURT: Hearing no objection, they will be
17 admitted.

18 (DEFENDANT'S EXHIBIT 22 ADMITTED.)

19 Q (BY MR. GLITZENSTEIN) Ms. Liss, if you can take a look
20 at pages 15 through 16, the response to Interrogatory No. 21,
21 and actually I'd ask you to focus on the paragraph over on
22 page 16, the first full paragraph where it begins with "AWI
23 has made contributions." Do you see that?

24 A Yes.

25 Q Could you read that paragraph?

1 A (Reading) AWI has made contributions to the Wildlife
2 Advocacy Project for the --

3 THE COURT: Slower, slower.

4 THE WITNESS: Sorry.

5 A (Reading) -- for the Advocacy work for public education
6 on the issue of the treatment of elephants held in captivity.
7 Documents reflecting these contributions have been produced by
8 AWI and are hereby incorporated by reference, AWI06494-06506.

9 Q (BY MR. GLITZENSTEIN) And if you look back to page 14,
10 the same set of interrogatories, and look at the response --
11 supplemental response to Interrogatory No. 19, and if you could
12 begin reading, I'd say it's -- well, I'll begin the paragraph
13 on the part I'm talking about and then perhaps you can pick
14 up.

15 It says, (reading) AWI has also had conversations
16 with the other Plaintiffs about their legislative and media
17 strategies.

18 Do you see that?

19 A Yes.

20 Q Could you continue reading it slowly, please, for us and
21 the Court, from that point up until the end of that paragraph.

22 A (Reading) AWI has also had conversations with other
23 Plaintiffs about their legislative and media strategies for
24 halting the abuse and mistreatment of circus elephants and
25 educating the public about this issue. Additional details of

1 such conversations are irrelevant on their -- and their
2 disclosure -- excuse me -- would impose an undue burden on AWI
3 and would infringe upon AWI and the other Plaintiffs' First
4 Amendment rights of association and expression. AWI is
5 producing supplemental documents concerning its financial
6 contribution to this effort. Ms. Silverman has also had
7 conversations with Katherine Meyer in her capacity as an
8 official of the Wildlife Advocacy Project concerning Tom
9 Rider's media and public education work for the Wildlife
10 Advocacy Project.

11 Q Okay. So it's your understanding that this was done in
12 January 2007, which do you understand that Judge Sullivan's
13 order was August 2007?

14 A Yes.

15 Q Okay. And in terms of the documents that were referred
16 to on page 16 and incorporated by reference, do you see that
17 reference to AWI06494 through 06506?

18 A Yes.

19 Q If you could take a look again at what's been marked
20 Plaintiffs' Exhibit 7, which again is Tab C in the black
21 binder.

22 A Okay.

23 Q And if you could take just a look at the documents that
24 are marked -- most of them are in the upper right-hand corner,
25 some are in the bottom right-hand corner, but from the ones

1 that are marked 0694, which is the first one that begins up
2 through 06506.

3 A (Witness reviewing.)

4 Q Now, do those documents reflect payments, as far as you
5 understand, from Animal Welfare Institute to the Wildlife
6 Advocacy Project?

7 A Yes, they do.

8 Q And do you have an opinion about whether they are the
9 same contributions that are referred to in the interrogatory
10 answers?

11 A Yes.

12 Q As far as you know?

13 A Yes, I believe they are.

14 Q Ms. Liss, if you could look over at Exhibit 23.

15 MR. GLITZENSTEIN: And Your Honor, this one has
16 already been admitted into evidence, I believe, Defendants'
17 Exhibit 23.

18 THE COURT: Thank you.

19 Q (BY MR. GLITZENSTEIN) And Ms. Liss, if you can take a
20 look at in particular pages 11 through 14, the supplemental
21 response to Interrogatory No. 21, and my question is whether
22 you believe -- and if you could take -- if you need to take a
23 couple of minutes just to peruse it to make sure your answer
24 is complete, whether you believe this does reflect an accurate
25 accounting, to the best of your knowledge, of all the funds

1 that have gone to Mr. Rider from AWI either directly or
2 indirectly?

3 A Yes, that is, and that followed an exhaustive search.

4 Q Just to be clear, as of the date of that interrogatory
5 response is what I'm asking you.

6 MR. GLITZENSTEIN: Which was, for the record,
7 September 24th, 2007, Your Honor.

8 A Yes.

9 THE COURT: Thank you.

10 Q (BY MR. GLITZENSTEIN) And if you look at page 13, in
11 particular, there is a description of the invoices that I think
12 you were asked about by Defendants' counsel, the Meyer
13 Glitzenstein invoices, and if you look down at footnote 1,
14 there's a statement that specifically refers to your May 2005
15 deposition. Can you read that footnote in the interrogatory
16 responses.

17 A (Reading) At her May 2005 deposition, Ms. Liss was
18 asked, 'Has Animal Welfare Institute ever paid Mr. Rider any
19 money?' Transcript of May 18, 2005, deposition of Cathy Liss
20 at 138. Ms. Liss did not identify these specific funds at the
21 time because she did not think of them as direct payments by
22 the organization to Mr. Rider.

23 Q And is that an accurate statement of your --

24 A Absolutely.

25 Q -- your position on that? And if you could turn over to

1 exhibit -- Defendants' Exhibit 24.

2 MR. GLITZENSTEIN: Which, for the record, is dated
3 January 30th, 2008, and is another supplemental AWI response
4 to interrogatories, Your Honor.

5 THE COURT: Thank you.

6 MR. GLITZENSTEIN: And we would move the admission
7 of this one as well.

8 THE COURT: Hearing no objection, it will be
9 admitted.

10 (DEFENDANTS' EXHIBIT 24 ADMITTED.)

11 Q (BY MR. GLITZENSTEIN) If you could look over at
12 Interrogatory No. 16, and about the middle of that page there
13 is a line that begins -- after referring to Mr. Rider, "they
14 have also had numerous discussions." Can you read the rest --
15 that beginning at that point, if you can see that and then
16 read to the rest of that paragraph, please.

17 A (Reading) They have also had numerous discussions
18 concerning their mutual efforts to obtain media and
19 legislative interest in the plight of circus elephants, all of
20 which have been ruled to be irrelevant by the Court and are
21 also protected by AWI's First Amendment right of association.
22 In addition, Ms. Silverman has had conversations with
23 Mr. Rider concerning his location so that either AWI or the
24 Wildlife Advocacy Project can send him funds to enable him to
25 pursue his public education and media campaign.

1 Q And then over on page 9 of the same interrogatory, which
2 is response -- supplemental response to Interrogatory No. 21,
3 there is a description of AWI's additional funding to
4 Mr. Rider directly or indirectly. Can you just read to
5 yourself that paragraph and indicate whether you believe, as
6 far as you know, it's an accurate supplemental statement as to
7 the -- any funding that's gone to Mr. Rider from AWI in any
8 form, again, as of the date of this interrogatory response.

9 A (Witness reading document.) Yes.

10 Q Okay. If you could look over at Exhibit 32, which is the
11 transcript of your deposition, and looking over at page 141
12 where you were asked some questions about your interaction
13 with Mr. Rider and the payments to Mr. Rider, do you see
14 page -- going from 11 to 18, and specifically, I would ask you
15 about the part of your -- your colloquy where you were asked a
16 question, (reading) Was it always at your initiative you
17 contributed towards it?

18 (Reading) No.

19 (Reading) Whose initiative was it?

20 (Reading) Answer, It might have been his, too.

21 (Reading) Question, He approached you to ask you to
22 contribute?

23 (Reading) Answer, Yes.

24 (Reading) Question, Has he ever asked for anything
25 more than his travel expenses?

1 (Reading) Answer, No.

2 Do you believe that this reflected an effort on your
3 part to be honest and forthcoming about your interactions with
4 Mr. Rider?

5 A Absolutely.

6 Q And going back to Tab C in the black binder, Plaintiffs'
7 Exhibit 7 again. If you've had a chance to peruse the whole
8 set of materials, do you believe that they reflect, at least
9 as of discovery cutoff in this case and as far as you know,
10 all funding which has gone to Mr. Rider from AWI either
11 directly or indirectly?

12 A Yes. We searched quite thoroughly, and I'm quite
13 comfortable that this represents any monies provided for media
14 work by Tom Rider.

15 Q And you're quite comfortable because why?

16 A Because we're, again, a relatively small office. We were
17 very thorough in our search for the information.

18 Q And from your standpoint, as head of the organization, do
19 you believe that the organization committed substantial
20 resources to engage in that search?

21 A Absolutely.

22 Q Why do you say that?

23 A It took a great deal of time to go through files, to look
24 and be as thorough as we might, particularly going back over
25 many years, including pulling out the old archives from New

1 York and going through those as well.

2 Q What did that entail, pulling up the old archives from
3 New York?

4 A Just bringing back boxes from warehouses where we store
5 older financial records and going through them and spent a
6 number of days.

7 Q And considering your small organization, do you believe
8 that this made it difficult for your organization to carry out
9 some other activities that you regarded as important?

10 A Certainly, that we set aside a great deal of time, that
11 we're small with a very heavy workload and -- but felt it
12 important, obviously, to do a complete and thorough search.

13 Q Okay. And just looking at a few of the documents that
14 Defense counsel referred to, she referred to a Capital One
15 credit card statement, AWI09940, if you could look at that
16 one. I think you've already seen it, but I just want to make
17 sure.

18 A Uh-huh.

19 Q It's the one that has the handwritten notes about 1208.

20 A Uh-huh.

21 Q A Tom Rider.

22 A Yes.

23 Q And is it your understanding that this document was
24 produced to Defendant in this case?

25 A Absolutely.

1 Q And if you look over at AWI09942, it's another one of the
2 Platinum Select. Is it your understanding that this document
3 was in fact produced to AW -- to FEI?

4 A Yes.

5 Q And if you look over at the 990, which is AWI09948, which
6 is a 2000 990, is it your understanding that this document was
7 in fact produced by AWI to FEI?

8 A Yes, it was.

9 MR. GLITZENSTEIN: Apologize for all the acronyms,
10 Your Honor.

11 THE COURT: That's okay. If I have to remind you
12 it's a joke, it's probably not a joke.

13 MR. GLITZENSTEIN: I'm sometimes slow on the uptake.

14 THE COURT: Very good catch.

15 Q (BY MR. GLITZENSTEIN) And then over AWI09972, which is a
16 2004 990 that you were asked about, is it your understanding
17 that this was also produced by AWI to Defendant?

18 A Yes.

19 MR. GLITZENSTEIN: If I could take one second, Your
20 Honor.

21 THE COURT: Sure.

22 (PAUSE.)

23 MR. GLITZENSTEIN: I have nothing further, Your
24 Honor.

25 THE COURT: Any additional questions, please.

1 MR. STOWE: None from the Humane Society, Your
2 Honor.

3 THE COURT: Thank you, sir.

4 MS. JOINER: Very briefly.

5 REDIRECT EXAMINATION

6 BY MS. JOINER:

7 Q Still looking at that same Tab C that your counsel was
8 asking you about. Do you know when these documents were
9 actually produced?

10 A The exact date, no.

11 Q Okay. And I think you had testified earlier that you
12 took all the documents that you could find and gave them to
13 your counsel.

14 A That's correct.

15 Q Okay. And Tab C that we're looking at here, is that a
16 smaller amount of documents than what you gave to your
17 counsel?

18 A I couldn't say.

19 MS. JOINER: Okay. That's all. Thank you.

20 THE COURT: Thank you very much, Ms. Liss. You're
21 excused, ma'am.

22 THE WITNESS: Thank you.

23 THE COURT: Call your next witness.

24 MR. SIMPSON: Your Honor, at this time we were going
25 to call Tom Rider.

1 I understand he's not here; is that correct?

2 MR. GLITZENSTEIN: That's correct.

3 MR. SIMPSON: In that event, we would tender certain
4 parts of his deposition.

5 THE COURT: That's fine. I have, I believe, advised
6 you I've already read his entire deposition, but if you want
7 to put it back in evidence, that's fine.

8 MR. GLITZENSTEIN: Your Honor --

9 MR. SIMPSON: My suggestion would be simply to hand
10 the parts that we want to designate to the Court rather than
11 read them from the stand.

12 THE COURT: Yes. I have already reviewed
13 Mr. Rider's deposition, but that's fine. If you just want to
14 read them into the record, that's fine.

15 MR. SIMPSON: You want me to read the cites?

16 THE COURT: Yes.

17 MR. SIMPSON: All right. I'm going to be reading
18 first from Defendants' Exhibit 35, which is the deposition of
19 Tom Rider taken October 12th, 2006.

20 I think maybe just the lines and the page numbers,
21 Your Honor.

22 THE COURT: That will be fine.

23 MR. SIMPSON: All right. Okay. Page 118, line 20
24 through page 122, line 12; 123, line 4 through 141, line 8;
25 141, line 22 through 145, line 12; page 147, line 7 through

1 152, line 9; page 152, line 10 through 153, line 2; page 153,
2 line 3 through 153, line 22; 155, line 6 through 155, line 22;
3 page 206, line 2 through 211, line 3.

4 And then the next series of designations are from
5 the deposition of Tom Rider taken December 18th and 19th,
6 2007, which is in the compilation as Defendants' Exhibit 36.

7 Page 181, line 16 through 191, line 17; page 191,
8 line 21 through 193, line 1; page 211, line 13 through 213,
9 line 3; page 215, line 13 through 224, line 2; page 464, line
10 17 through 469, line 4; page 469, line 20 through 472, line
11 14; 473, line 12 through 477, line 20; 485, line 11 through
12 491, line 20; 494, line 2 through 495, line 17; 498, line 18
13 through 520, line 5; page 56, line 6 through 538, line 9; page
14 550, line 7 through 553, line 1; page 553, line 6 through 558,
15 line 9; and page 676, line 21 through 677, line 17.

16 We had other designations for other witnesses. I
17 don't know whether you want to cover them at this time or not.

18 THE COURT: As long as they're in writing somewhere
19 and part of the record. Where are they?

20 MR. SIMPSON: These are all exhibits. This would be
21 from the deposition of Lisa Weisberg, which is Defendants'
22 Exhibit 34.

23 MR. GLITZENSTEIN: Your Honor, I think -- Mr. Rider,
24 I don't know how you want to handle this. I've got some
25 counter-designations on him.

1 THE COURT: We'll do them all at once.

2 MR. GLITZENSTEIN: Okay.

3 THE COURT: Okay. We're going to Weisberg, 34.

4 MR. SIMPSON: Ms. Weisberg is Defendants 34, page
5 10, line 23 through 11, line 19; page 42, line 11 through 49,
6 line 18; page 51, line 2 through 52, line 20; 56, line 1
7 through 56, line 16; page 57, line 8 through 57, line 14; page
8 166, line 2 through 169, line 24; page 204, line 24 through
9 206, line 8.

10 The next deposition is that of -- it's the 30(b)6
11 deposition of FFA, which is Michael Markarian, which is
12 Defendants' Exhibit 33, designate page 22, line 8 through 22,
13 line 25; 29, line 2 through 30, line 17; 32, line 21 through
14 34, line 13; 59, line 25 through 61, line 21; 86, line 16
15 through 88, line 21; page 90, line 21 through 91, line 5; page
16 93, line 3 through 93, line 21; 94, line 6 through 96, line 3;
17 97, line -- excuse me -- 157, line 20 through 159, line 8;
18 164, line 25 through 166, line 16; 171, line 1 through 172,
19 line 24.

20 And finally, the 30(b)6 deposition of the Animal
21 Welfare Institute, Ms. Cathy Liss, Defendants' Exhibit 32.
22 Page 131, line 8 through 132, line 4; 133, line 8 through 135,
23 line 13; 138, line 18 through 139, line 4; 139, line 14
24 through 142, line 16; 142, line 20 through 150, line -- excuse
25 me -- line 10.

1 THE COURT: Thank you, sir.

2 MR. SIMPSON: And I just -- before he gets up, I
3 want to make an objection to their designations of Rider's
4 deposition. It's our position, Your Honor, that they have not
5 satisfied the requirements under Federal Rule of Civil
6 Procedure 32 for offering the deposition of their own client,
7 while an adverse party, such as a Defendant, can offer the
8 deposition of the other party for any purpose. The
9 circumstances in which one can offer his own deposition are
10 very limited.

11 Rule 32 makes it clear that you have to either
12 demonstrate that he's dead, mentally incompetent,
13 incarcerated, out of the country or that there are exceptional
14 circumstances why he could not testify at trial.

15 Mr. Rider testified in his deposition and I've
16 designated that as into the record already that he would
17 accept a subpoena for a trial in this case. I went through
18 the Rule 32 grounds with him when he was deposed in 2006, and
19 he said there was no reason in the next two years that he
20 couldn't show up at a live hearing in this case.

21 We requested that Plaintiffs accept a subpoena for
22 him. They would not do so. We've attempted to subpoena him.
23 We've been unsuccessful. So we think in these circumstances
24 they have procured his absence and they should not be allowed
25 to use his deposition.

1 THE COURT: Thank you, sir.

2 MR. GLITZENSTEIN: May I respond to that, briefly,
3 Your Honor?

4 THE COURT: Certainly.

5 MR. GLITZENSTEIN: Even putting aside Your Honor's
6 prior ruling on the topic on January 8 of this year, which
7 obviously we think is dispositive, the easy answer is Rule
8 32 -- Rule 32(a)6, Your Honor, specifically provides that if a
9 party offers in evidence part of a deposition, an adverse
10 party may require the offerer to introduce other parts that in
11 fairness should be considered with the part introduced and any
12 party may itself introduce any other parts.

13 So if Your Honor is going to rely on any of their
14 parts of the deposition, I think the rule clearly contemplates
15 our ability to rely on any other parts. But in this case, the
16 precise reason, as Your Honor may recall, we brought up Tom
17 Rider's deposition in lieu of his live testimony is the
18 possibility that we presented to the Court, was because Your
19 Honor indicated that just several days before January 8 you
20 had read his deposition in its entirety and you described it,
21 indeed, as exhaustive on various matters, including
22 Mr. Rider's discussion of his funding for his public education
23 campaign.

24 That's exactly why we asked Your Honor's permission
25 to rely upon the deposition in lieu of being compelled to

1 produce him while making clear that if Your Honor had asked us
2 to do that, we certainly would have, so I think, taken
3 together, those are sufficient responses to the concern about
4 relying on his deposition.

5 Having said that, Your Honor, what I would suggest
6 as a matter of fairness, and I think this applies to actually
7 all of the depositions, is since they have been lodged with
8 the Court in their entirety by Defendants as exhibits,
9 Mr. Rider's, for example, 36, but the other ones that were
10 referred to by Mr. Simpson are also lodged with the Court, why
11 don't we just have those entire deposition transcripts, accept
12 them into evidence, and the parties, rather than going through
13 line by line responses, can rely upon whatever parts they deem
14 appropriate.

15 To make life easier, in terms of Mr. Rider, in
16 addition to that -- or maybe I should stop there and see if
17 the other side has any objection to that.

18 THE COURT: Any objection?

19 MR. SIMPSON: I don't object to that, Your Honor,
20 other than to make the point that whether Rider's deposition
21 comes in in the way I designated or in its entirety, I was
22 still not allowed to ask questions about matters that were
23 going to be talked about at this hearing. I was -- he was
24 instructed not to answer those questions and this deposition
25 was taken before we had notice that there would be this

1 hearing, so to say that that's an adequate substitute for him
2 testifying at trial, we would object to that.

3 THE COURT: All right. Subject to that objection,
4 it will be -- Defendants' Exhibit 36 will be admitted into
5 evidence.

6 (DEFENDANTS' EXHIBIT 36 ADMITTED.)

7 MR. GLITZENSTEIN: Just for the record, Your Honor,
8 we believe he was exhaustively examined on his search for
9 documents. What he said was that he produced everything he
10 could find in his van, and the only objections were when he
11 was asked specifically about attorney/client communications.
12 That's our position.

13 So, but in addition, Your Honor, just to facilitate
14 your review of Mr. Rider's materials, we have excerpted and
15 could make a separate exhibit, which would be Plaintiffs'
16 Exhibit 9, those pages that we believe are most pertinent,
17 obviously, in any post-hearing briefing, we would isolate that
18 which we would ask Your Honor to rely upon, but with that
19 objection, we would make a separate exhibit, what would be
20 Plaintiffs' Exhibit 9 and which would be the Rider excerpts.

21 THE COURT: Subject to the objections previously
22 made, it will be accepted.

23 (PLAINTIFFS' EXHIBIT 9 ADMITTED.)

24 THE COURT: Any additional evidence by Defendants?

25 MR. SIMPSON: The only lives witnesses we were going

1 to call are witnesses Your Honor requested.

2 THE COURT: Very well. I'm going to proceed to
3 that.

4 First of all, Mr. Lovvorn to the witness -- to the
5 podium, please.

6 MR. GLITZENSTEIN: Your Honor, should I hand these
7 to the court reporter?

8 THE COURT: Or my clerk.

9 MR. LOVVORN: Good afternoon, Your Honor.

10 JONATHAN LOVVORN,
11 called by the Court to testify as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q State your full name for the record.

15 A Jonathan Lovvorn, L-O-V-V-O-R-N.

16 Q Mr. Lovvorn, how do you say it, Lovvorn?

17 A Yes, sir.

18 Q Mr. Lovvorn, are you a member of the bar of the Court?

19 A Yes, I am, sir.

20 Q How long have you been admitted to the bar?

21 A I was admitted to the bar of the District of Columbia in
22 1998, Your Honor.

23 Q And more specifically, a member of the bar of this court?

24 A Yes, in 1998 as well, Your Honor.

25 Q What is your present position or occupation, sir?

1 A I serve as vice president of Animal Protection Litigation
2 for the Humane Society of the United States.

3 Q And how long have you had that position, sir?

4 A Since 2005, Your Honor.

5 Q All right. As you know from my order, I indicated I was
6 going to ask you some questions and I wanted to direct your
7 attention specifically to that portion of Defendants' brief in
8 which they challenge your right to call yourself counsel of
9 record in this case. Are you counsel of record?

10 A Yes, I am, Your Honor.

11 Q To whom?

12 A I am counsel of record to all the Plaintiffs in the case.

13 Q How do I know that, sir?

14 A I entered my appearance when I signed the original
15 complaint in this action.

16 Q And you signed the complaint?

17 A Yes, Your Honor.

18 Q All right. Sir, as you know from reading this document
19 as well -- You were present during the testimony today?

20 A Yes, Your Honor.

21 Q Were you also here on March 6?

22 A I was, Your Honor.

23 Q Okay. So you're familiar with the testimony in this
24 case?

25 A Yes, sir.

1 Q And you know the testimony has been directed to the
2 question of whether or not there was compliance with Judge
3 Sullivan's order of August 23rd, 1997, and my order of
4 December 31st, I believe, 2007, which dealt with payments
5 made to a man named Tom Rider. You understand that?

6 A Yes, Your Honor.

7 Q What if any involvement did you have in making those
8 payments, sir?

9 A Payments to Tom Rider, Your Honor?

10 Q Indeed.

11 A I've had no involvement with payments to Tom Rider. The
12 only payments I'm aware of to Tom Rider pre-date my arrival at
13 the Humane Society in 2005, and those were to Fund For Animal
14 payments that Mr. Markarian testified to.

15 I was involved in three or four, maybe five grants
16 to the Wildlife Advocacy Project, which Defendants have
17 referred to as payments to Rider.

18 Q Well, don't -- don't -- I don't care about their
19 characterization, but I've just heard from Ms. Liss, as I
20 heard from other witnesses, that there came a time where I
21 understand there was an agreement that contributions would be
22 made to the Wife Wildlife project which would have as their
23 purpose supporting Mr. Rider's activities. Is that true?

24 A Your Honor, my only knowledge of any such agreement would
25 have been in my counsel as my role as counsel of record to the

1 Plaintiffs.

2 Q Yes.

3 A I'm not aware of any specific agreement. There was an
4 agreement to run a media campaign.

5 Q Yeah.

6 A And that that would need funding.

7 Q And how would that be funded, sir?

8 A The media campaign was funded by donations from various
9 organizations, including the Plaintiffs in this case, Your
10 Honor.

11 Q All right. And what if any role did you play in that
12 decision?

13 A The decision to conduct the media campaign?

14 Q That's right, sir.

15 A None, Your Honor. At that time I was serving as counsel
16 of record at the law firm Meyer & Glitzenstein, which is now
17 Meyer Glitzenstein & Crystal and had no involvement in that
18 process.

19 Q All right. Did there come a time when you became aware
20 of an obligation to collect documents pursuant to the order of
21 Judge Sullivan of August 23rd, 2007?

22 A Yes, Your Honor.

23 Q How did you become aware of that obligation?

24 A I read the order when it was issued on ECF, Your Honor.

25 Q Did you subsequently review my order of December -- in

1 December of 2007?

2 A I did, Your Honor.

3 Q Okay. Were you familiar with the obligations imposed by
4 both those orders?

5 A What?

6 Q Were you familiar with the obligations imposed by both
7 those orders?

8 A Yes, Your Honor. Although with regard to Your Honor's
9 order directing the Humane Society, I do not represent the
10 Humane Society with regard to the Rule 45 subpoena, so I'm
11 less familiar with that order and the search than I am with
12 the Fund For Animals' related orders.

13 Q Okay. Did you ever have to conduct the search to bring
14 about complete compliance with the two orders, one by Sullivan
15 and one by Facciola?

16 A I did not conduct them myself, Your Honor, but I am
17 familiar with both charges.

18 Q And what is the nature of your familiarity, sir?

19 A The search that took place in late August and September
20 with regard to Judge Sullivan's order directed to the
21 Plaintiffs was undertaken by one of my subordinates, Ethan
22 Eddy, in cooperation with Michael Markarian. It was conducted
23 under my direction, although I did not carry it out
24 specifically.

25 Q Okay. Did you review the documents after they were

1 collected?

2 A Some of them, Your Honor. Ethan Eddy had primary
3 responsibility for reviewing those documents.

4 Q All right. Did you exclude any of the documents that
5 were discovered?

6 A I didn't exclude any of the documents that I reviewed,
7 Your Honor, and I don't believe any were excluded.

8 Q What happened to those documents?

9 A The documents --

10 Q Where did they go?

11 A Oh, the documents were collected by Mr. Eddy and then
12 transferred on to counsel at Meyer Glitzenstein & Crystal.

13 Q By you or Eddy?

14 A By Mr. Eddy.

15 Q Okay. And you did not exclude anything?

16 A No, Your Honor.

17 Q You didn't remove anything, sir?

18 A No.

19 Q Did you destroy anything, sir?

20 A No, Your Honor.

21 Q And you make those representations to me as an officer of
22 this court?

23 A Yes, Your Honor.

24 Q You appreciate if those representations are false or they
25 are determined to be false, I can bring about your disbarment?

1 A Yes, Your Honor.

2 Q Thank you, sir.

3 THE COURT: Ms. Meyer.

4 KATHERINE MEYER,

5 called by the Court to testify as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q Would you state your full name for the record, ma'am.

9 A Katherine Ann Meyer.

10 Q I keep getting it wrong. Is it Meyer or Mayor?

11 A Meyer.

12 Q Meyer. Ms. Meyer, are you a member of the bar of the
13 Court?

14 A Yes, I am.

15 Q How long you been a member of the bar of the Court?

16 A Since 1976.

17 Q You're a member of the bar of this court as well?

18 A Yes.

19 Q Okay. And I take it you're presently a partner in the
20 law firm that bears your name?

21 A Yes.

22 Q How long have you been a partner in that firm?

23 A Since 1993.

24 Q Okay. And are you a principal of the firm?

25 A Yes, I am.

1 Q All right. I directed your attention in my order to
2 Defendants' submission in this case. Is that not so?

3 A Yes.

4 Q And you know that their concern is that -- as it's
5 addressed I believe in pages 16 and 17 -- I'm sorry. I don't
6 have the pages right. Excuse me.

7 Pages 14 through 16, as you know from reading it,
8 the representations there are made concerning a certain search
9 for electronic documents, specifically e-mail, and in it the
10 Defendants expressed their amazement that the search only
11 produced, I think, one e-mail from you in your correspondence
12 pertaining to the matters at issue in this lawsuit. Are you
13 familiar with that part of the brief?

14 A Yes.

15 Q Please tell me your reaction to that and whether there is
16 any justification to my concluding that that would show, on
17 its face, a failure to comply with any order issued in this
18 case.

19 A Well, my reaction to that, Your Honor, is that the only
20 context in which I was responsible for producing any records
21 at all, including my e-mail, was as an officer of the Wildlife
22 Advocacy Project in response to subpoenas that were issued to
23 the Wildlife Advocacy Project.

24 And in responding to those subpoenas, I did a
25 thorough search of the electronic mail where such records

1 would be kept. In fact, I went beyond that, Your Honor. I
2 not only looked in all my Wildlife Advocacy Project folders
3 prior -- just to make sure, perhaps I -- I got them all. I
4 actually also looked in all my Tom Rider e-mail communications
5 and I also looked in all of my D'Arcy Kemnitz e-mail
6 communication, since she had served as the executive director
7 to the Wildlife Advocacy Project. It is my practice to keep
8 my Wildlife Advocacy Project e-mails in separate folders, and
9 we gave them what we had that was responsive to the subpoena.

10 Q All right. Did you, in doing that, delete any e-mail,
11 either in whole or in part because, for example, it was
12 privileged?

13 A No, I did not, Your Honor.

14 Q Did you delete it for any reason whatsoever?

15 A No, Your Honor.

16 Q Okay. Did you play any role in the collection of paper
17 documents in response to -- in the supplemental response, I
18 should say, to either Judge Sullivan's order or my order?

19 A I did.

20 Q What was your role in that process?

21 A Actually, my role was -- Kim Ockene and I actually
22 divided up the collection of the documents, and she handled
23 principally the organizational clients and I handled
24 Mr. Rider, so my main responsibility was to make sure
25 Mr. Rider had complied with his obligations with respect to

1 what Judge Sullivan ordered.

2 In addition, of course, I consulted with Ms. Ockene
3 and the other attorneys in my firm as to our, you know, our
4 construction of the order and what was required, et cetera.
5 So, to that extent, I was -- I was -- sort of had a
6 supervisory role, I guess, to some extent with respect to all
7 of the production.

8 Q Now, you are -- are you an officer of the Wildlife
9 Advocacy Project?

10 A Yes, I am.

11 Q What position is that, ma'am?

12 A Secretary.

13 Q All right. In your capacity as --

14 A And a board member. I'm sorry.

15 Q Secretary and board member. Did you collect, in that
16 capacity as secretary, documents from the Wildlife Advocacy
17 Project?

18 A Yes.

19 Q Okay. And in terms of those documents, were they both
20 electronic and paper; do you remember?

21 A Now I'm confused about what you're asking me. In
22 response to...

23 Q There came a time, I take it, or did there come a time --
24 don't let me put words in your mouth.

25 A Yes.

1 Q Did there come a time when you believe you had an
2 obligation to comply with Judge Sullivan's order of July 23rd,
3 2007?

4 A Yes.

5 Q Okay. And then, obviously, there came a time when you
6 had a similar obligation with reference to my order of
7 December 3rd, 2007.

8 A Yes.

9 Q And in response to those two orders, did you, in your
10 capacity of secretary of Wildlife Advocacy Project, begin a
11 process which attempted to detect documents that would be
12 responsive to both of those orders?

13 A Yes.

14 Q Okay. What did you do?

15 A I looked through all of my paper documents and all of my
16 Wildlife Advocacy Project electronic mail to make sure that
17 all information concerning payments to Mr. Rider were produced
18 to the Defendant, and I'm absolutely confident that we
19 produced all such documents, Your Honor.

20 Q Did you remove any documents because they were
21 privileged?

22 A No, Your Honor.

23 Q Did you remove any documents for any reason?

24 A No, Your Honor.

25 Q So the compilation of documents you made is the complete

1 compilation of the documents you gathered; is that true?

2 A Yes.

3 Q And you make that representation to me as an officer of
4 this court?

5 A Yes.

6 Q And you appreciate that if that representation is false,
7 I will seek your disbarment?

8 A Yes.

9 Q Thank you, Ms. Meyer.

10 MR. GLITZENSTEIN: Can I just bring one matter to
11 Your Honor's attention.

12 THE COURT: Yeah, I'm going to take a brief recess,
13 but please tell me what it is.

14 MR. GLITZENSTEIN: Okay. This is going to be part
15 of our case if you want to -- we're not going to have a long
16 case to present.

17 THE COURT: Present your case. Go ahead.

18 MR. GLITZENSTEIN: Or I can do that afterwards.

19 THE COURT: No, I prefer you proceed with your case.

20 MR. SIMPSON: If we could just enter our exhibits
21 into evidence, Your Honor.

22 THE COURT: Sure.

23 MR. GLITZENSTEIN: I'm sorry. I thought you were
24 done.

25 THE COURT: Are they all collected? Ms. Joiner?

1 MS. JOINER: There are two ways to do it. We could
2 wholesale move the documents in that we used as exhibits, and
3 I don't know if Plaintiffs will stipulate to that.

4 THE COURT: Have you checked with the clerk as to
5 what is already in evidence?

6 MS. JOINER: Well, we've -- I have not. I mean, if
7 you want to take a break and --

8 THE COURT: Why don't you do that in a moment.
9 During the break, we will take that, and I will reopen your
10 case for the limited purpose of taking those exhibits so we
11 don't waste time.

12 MS. JOINER: Thank you.

13 THE COURT: You have the case, sir.

14 MR. GLITZENSTEIN: Your Honor, there is one
15 additional exhibit we would like to introduce, which is FEI's
16 RICO complaint against my clients and the Wildlife Advocacy
17 Project.

18 THE COURT: Is that document filed in the Court --
19 this court?

20 MR. GLITZENSTEIN: It is, Your Honor.

21 THE COURT: I will take judicial notice of its
22 existence. Thank you.

23 MR. GLITZENSTEIN: I appreciate that, Your Honor.
24 And the only other thing I wanted to mention is, the Wildlife
25 Advocacy Project, obviously, is not a target of this

1 particular motion. Nonetheless, as a courtesy to the Court,
2 we have compiled materials produced by the Wildlife Advocacy
3 Project.

4 I would not move them into evidence because I don't
5 want to make any suggestion that they are a party to this
6 proceeding, but I just want to simply make Your Honor aware
7 that if I can tell you the tab, I'll just -- if I could just
8 do that. I'll take one second.

9 THE COURT: Thank you.

10 (PAUSE.)

11 MR. GLITZENSTEIN: I'm sorry, Your Honor. Those are
12 documents that are behind Tab H.

13 THE COURT: H.

14 MR. GLITZENSTEIN: In case you wanted to just
15 consult that for whatever reason. We have nothing further.

16 THE COURT: Have they been admitted, sir?

17 MR. GLITZENSTEIN: Again, my inclination was --
18 unless Your Honor thinks that we should do this, was not to
19 admit them into evidence but simply make them available to the
20 Court.

21 THE COURT: Thank you, sir.

22 MR. GLITZENSTEIN: And that's all I was suggesting.

23 THE COURT: You have the case. You wish to call
24 witnesses?

25 MR. GLITZENSTEIN: No, Your Honor.

1 THE COURT: Okay. So you rest?

2 MR. GLITZENSTEIN: We rest, Your Honor.

3 THE COURT: Both sides have rested. All right.

4 We'll take a break. Would both parties please confer with the

5 clerk and make sure that they have accurately a list -- an

6 accurate list of the exhibits that have not been admitted.

7 We'll resume in about 15 minutes. Thank you.

8 THE DEPUTY CLERK: Court stands in recess for 15

9 minutes.

10 (A BRIEF RECESS WAS TAKEN.)

11 THE DEPUTY CLERK: E remain seated. Court is back

12 in session.

13 THE COURT: Thank you, Madam Clerk. Both sides

14 having rested, the court reporter tells me she's relatively

15 well caught up, should have a transcript of today's

16 proceedings rather quickly if it's ordered today, as I hope it

17 will be.

18 I would like to have findings of fact from the

19 Movant to Defendants in 14 days after receipt of the

20 transcript. I would like that to be findings of fact and

21 conclusions of law and a memorandum in support.

22 14 days later I would like Plaintiffs to reply.

23 Plaintiffs do not, underline "not," do not have to submit

24 proposed findings of fact if they do not wish, but they

25 certainly may speak to the question of whether, for example,

1 Defendants have made it -- the adequate showing under the law.
2 With reference to the contempt briefing, briefing will end
3 with those two motions -- those two submissions.

4 MR. GLITZENSTEIN: Yes, I'm having trouble following
5 that. I apologize. So they have 14 days for their proposed
6 findings and conclusions, and we have 14 days thereafter for
7 our submission, whatever it might be.

8 THE COURT: All right. That's fine.

9 MR. GLITZENSTEIN: Thank you.

10 THE COURT: But I'm just saying, thankfully, we
11 already have the transcript of the initial hearing, the March
12 6th hearing, right?

13 MR. GLITZENSTEIN: The first two days, yes, Your
14 Honor.

15 THE COURT: First two days. All right. I want a
16 complete transcript. Okay.

17 I have now lined up on my desk all of the
18 outstanding motions in this case, which I am going to get to
19 tomorrow morning. The record will reflect that tomorrow is a
20 Saturday.

21 The record will reflect that it might be a very good
22 idea right now to make sure that the motions and the
23 opposition are with substantial justification because if they
24 are not, it may prove to be a very expensive Saturday. Word
25 to the wise is sufficient. Of course, if you could hedge your

1 bet by betting on Big Brown, the seventh race at Belmont --
2 oh, but the race is going off two to three, so that may not be
3 the best possible bet, but seriously, if anybody has any
4 reason to believe or wishes to consult with the other side as
5 to whether some of the issues in dispute among you can be
6 resolved, I'd appreciate you doing so.

7 If not, as I say, I may require substantial briefing
8 afterwards on whether I should impose sanctions or take other
9 action. All right.

10 MR. GLITZENSTEIN: Yes, Your Honor. Just one final
11 point on the process for resolving this hearing. After we
12 make our submission, we had suggested earlier on that if there
13 was a need for the parties to have a -- an oral argument on
14 the application.

15 THE COURT: I'll take that, yeah. You can make
16 that.

17 MR. GLITZENSTEIN: We ask Your Honor to consider
18 that, and we'll make that clear if we think that's necessary.

19 THE COURT: All right. You guys are busy. Don't
20 you have about 18 depositions to do in experts?

21 MR. GLITZENSTEIN: Yes, Your Honor.

22 THE COURT: All right. The Court's familiarity with
23 the odds of tomorrow's race is not an indication the Court has
24 any familiarity with horse racing. That would, of course, be
25 beneath its judicial dignity. I just read that in the

1 newspaper.

2 (LAUGHTER.)

3 MR. GLITZENSTEIN: Appreciate that.

4 MS. JOINER: The exhibits.

5 THE COURT: You know, it's interesting, my father
6 used to play the stock market and the horses, and he always
7 said there were many advantages to playing the horses. One,
8 you got some sun, and two, you met a much nicer class of
9 people.

10 (LAUGHTER.)

11 THE DEPUTY CLERK: Judge, there is some exhibits
12 Defense counsel wanted to put on the record.

13 THE COURT: Counsel, you want to put something on
14 the record?

15 THE DEPUTY CLERK: That she did not move in.

16 THE COURT: All right.

17 MS. JOINER: Yes.

18 THE DEPUTY CLERK: There is quite a bit.

19 MS. JOINER: I think that we've actually worked our
20 way through these.

21 MR. GLITZENSTEIN: Your Honor, we can try to do this
22 by way of stipulation and submit it to the Court early next
23 week or read it now, whatever is easier.

24 THE COURT: What is it?

25 MR. GLITZENSTEIN: It is the additional exhibits

1 that have not previously been moved into evidence. I think
2 are all Defendants' exhibits.

3 THE COURT: Just note them for the record.

4 MS. JOINER: Okay.

5 THE COURT: Is there any objection to them being
6 admitted?

7 MR. GLITZENSTEIN: Not the ones that we discussed,
8 Your Honor.

9 MS. JOINER: Right. I'll go through by number. I
10 don't think there are. I'll go through by number and we'll
11 just pop them in.

12 FEI1 through I believe -- 1 through 16, correct?

13 MR. GLITZENSTEIN: That's fine.

14 MS. JOINER: Okay. I would like to move for the
15 admission of those.

16 THE COURT: Hearing no objection, they're admitted.

17 (FEI EXHIBITS 1 THROUGH 16 ADMITTED.)

18 MS. JOINER: Next one is FEI29.

19 THE COURT: Hearing no objection, it's admitted.

20 (FEI EXHIBIT 29 ADMITTED.)

21 THE DEPUTY CLERK: Okay. She's going to go -- there
22 is a whole bunch. There is a whole series.

23 MS. JOINER: FEI30 through 33.

24 THE COURT: Hearing no objection, they're admitted.

25 (FEI EXHIBITS 30 THROUGH 33 ADMITTED.)

1 MS. JOINER: FEI34, 35, 36, and 37.

2 MR. GLITZENSTEIN: No, I don't believe 37 had agreed
3 to.

4 MS. JOINER: Oh, I'm sorry. FEI34 through 36.

5 THE COURT: You are offering -- you're not offering
6 37 but you are offering 38?

7 MS. JOINER: Correct.

8 THE COURT: Hearing no objection, those are
9 admitted.

10 (FEI EXHIBITS 34, 35, 36, 38 ADMITTED.)

11 MS. JOINER: Okay. FEI40.

12 THE COURT: Admitted.

13 (FEI EXHIBIT 40 ADMITTED.)

14 MS. JOINER: And FEI41 through 44.

15 THE COURT: Admitted.

16 (FEI EXHIBITS 41 THROUGH 44 ADMITTED.)

17 MS. JOINER: FEI46.

18 THE COURT: Admitted.

19 (FEI EXHIBIT 46 ADMITTED.)

20 MS. JOINER: FEI51 and 52.

21 THE COURT: Admitted.

22 (FEI EXHIBITS 51 AND 52 ADMITTED.)

23 MS. JOINER: FEI56.

24 THE COURT: Admitted.

25 (FEI EXHIBIT 56 ADMITTED.)

1 MS. JOINER: FEI58 and 59.

2 THE COURT: Admitted.

3 (FEI EXHIBITS 58 AND 59 ADMITTED.)

4 MS. JOINER: FEI65.

5 THE COURT: Admitted.

6 (FEI EXHIBIT 65 ADMITTED.)

7 MS. JOINER: FEI69.

8 THE COURT: Admitted.

9 (FEI EXHIBIT 69 ADMITTED.)

10 MS. JOINER: FEI72.

11 THE COURT: Admitted.

12 (FEI EXHIBIT 72 ADMITTED.)

13 MS. JOINER: FEI74.

14 THE COURT: Admitted.

15 (FEI EXHIBIT 74 ADMITTED.)

16 MS. JOINER: And looks like FEI75 and 76.

17 THE COURT: Admitted.

18 (FEI EXHIBITS 75 AND 76 ADMITTED.)

19 MS. JOINER: And FEI85.

20 THE COURT: Admitted.

21 (FEI EXHIBIT 85 ADMITTED.)

22 MS. JOINER: FEI88.

23 THE COURT: Admitted.

24 (FEI EXHIBIT 88 ADMITTED.)

25 MS. JOINER: FEI90.

1 THE COURT: Admitted.

2 (FEI EXHIBIT 90 ADMITTED.)

3 MS. JOINER: And FEI92.

4 THE COURT: Admitted.

5 (FEI EXHIBIT 92 ADMITTED.)

6 MS. JOINER: And then we get to the -- 94, Your
7 Honor, was already conditionally admitted but we had to go
8 back and look and check. I have a copy that I can --

9 THE COURT: Please.

10 MS. JOINER: -- hand up for you now.

11 THE COURT: Can I see it, please?

12 MS. JOINER: For the Court. These were the original
13 documents -- copies of the documents that were subpoenaed from
14 MGC.

15 THE DEPUTY CLERK: That's in.

16 MS. JOINER: Yeah, it was, conditionally.

17 THE COURT: Any objection?

18 MR. GLITZENSTEIN: No, Your Honor.

19 THE COURT: Admitted.

20 (FEI EXHIBIT 94 ADMITTED.)

21 MS. JOINER: And then we also have what we'd like to
22 move in as a subpart to that, which is 94A, which were some
23 additional documents that were located.

24 THE DEPUTY CLERK: This is it.

25 MR. GLITZENSTEIN: Just to be clear, Your Honor,

1 these are documents that we had produced copies of and we
2 found some additional originals that had been subpoenaed, so
3 we made those available to the Court.

4 THE COURT: Thank you, sir. That's admitted.

5 (FEI EXHIBIT 94A ADMITTED.)

6 MS. JOINER: Thank you. And then FEI95, which were
7 documents subpoenaed from the Wildlife Advocacy Project which
8 Your Honor had conditionally admitted, and this is the Court's
9 copy.

10 THE COURT: Thank you, ma'am.

11 MR. GLITZENSTEIN: No objection, Your Honor.

12 THE COURT: All right. That's admitted. 95 is
13 admitted. Thank you.

14 (FEI EXHIBIT 95 ADMITTED.)

15 THE DEPUTY CLERK: Okay. You want him to have
16 these?

17 MS. JOINER: Yes, please.

18 THE DEPUTY CLERK: She would like for you to have
19 these.

20 THE COURT: Thank you very much, ma'am.

21 MS. JOINER: And then one more. Since we had the
22 Plaintiffs marking their designations, we marked ours as
23 Defense 96, which I gave a copy of right there.

24 THE COURT: That will be admitted.

25 (DEFENDANTS' EXHIBIT 96 ADMITTED.)

1 THE DEPUTY CLERK: That's the Court's copy.

2 THE COURT: Thank you, ma'am.

3 MS. JOINER: Thank you, Your Honor.

4 THE COURT: Yes, Ms. Meyer.

5 MS. MEYER: Your Honor, in light of your raising
6 concerns about pending motions, the Plaintiffs are willing to
7 withdraw the motion seeking reimbursement for the Gary
8 Jacobson deposition in light of the modest amount of money at
9 issue in that motion.

10 THE COURT: Thank you, Counsel, very much. Now you
11 can spend the money on the race.

12 (LAUGHTER.)

13 THE COURT: Thank you. Good day.

14 THE DEPUTY CLERK: I was going to ask you to leave
15 those.

16 THE COURT: I am leaving everything in case you want
17 to clean up, and then I'll come in later.

18 THE DEPUTY CLERK: Okay. Judge, thank you. This
19 honorable court is now adjourned.

20 (PROCEEDINGS END AT 3:30 P.M.)

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CERTIFICATE OF REPORTER

I, Catalina Kerr, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Catalina Kerr

Date