

information for himself beyond his name including, but not limited to, his social security number or home address.” Order (8/23/07) at 3.

2. The Court’s August 23, 2007 Order required Mr. Rider to produce all such documents “within his possession, custody, or control, including but not limited to, documents in the files of his attorneys.” Order (8/23/07) at 3.
3. If Mr. Rider did not produce any Court-ordered documents on the basis that copies of such documents were previously produced by someone else, the Court’s August 23, 2007 Order required him to provide: “A precise identification, by bates number, of any documents produced by Rider or his co-plaintiffs that are incorporated by reference into his response to interrogatories or document requests.” Order (8/23/07) at 4.
4. The Court’s August 23, 2007 Order required Mr. Rider to produce: “Complete and truthful answers to interrogatories 2, 4, 7, and 24 with the exception of any information the Court has already found to be irrelevant or otherwise not subject to discovery as outlined above.” Order (8/23/07) at 4.
5. The Court’s August 23, 2007 Order required plaintiffs the American Society for the Prevention of Cruelty to Animals (“ASPCA”), the Animal Welfare Institute (“AWI”), the Fund for Animals (“FFA”) and the Animal Protection Institute (“API”) (the “Organizational Plaintiffs”) to produce: “All responsive documents and information concerning payments to Tom Rider, regardless of whether such payments were made directly to him or indirectly through other means such as WAP [Wildlife Advocacy Project], except that plaintiffs may redact the names of individual donors or organizations unless they are parties to this litigation, attorneys for any of the parties, or employees or officers of any of the plaintiff organizations or WAP.” Order (8/23/07) at 6-7.

6. The Court's August 23, 2007 Order required the Organizational Plaintiffs to produce: "All responsive documents and information concerning relevant, non-privileged communications regarding the subject matter of this lawsuit between plaintiffs, Rider, WAP, and plaintiffs' counsel, except that plaintiffs need not produce documents or further information related to any media or legislative strategies or communications or any documents or information about litigation strategy or communications that are properly protected by the attorney-client or work product privileges, including under the 'common interest doctrine' as defined by this Circuit." Order (8/23/07) at 7.
7. If either Mr. Rider or the Organizational Plaintiffs withheld any Court-ordered documents on the basis of privilege, they were required by the Court's August 23, 2007 Order to provide a privilege log for such documents. Order (8/23/07) at 4, 7 (Rider and the Organizational Plaintiffs shall provide: "A privilege log that complies with the law of this Circuit, is consistent with the privilege log provided by defendant, and provides a description of the authors, addressees, and contents sufficient to adequately assess the claim of privilege.").
8. The Court's August 23, 2007 Order required both Mr. Rider and the Organizational Plaintiffs to provide: "A sworn declaration or affidavit identifying, to the extent plaintiffs can recall, any responsive documents that were once in plaintiffs' possession but have been discarded, destroyed, or given to other persons or otherwise not produced, together with a description of each such document and an explanation of why it was discarded, destroyed, spoliated or otherwise disposed of." Order (8/23/07) at 7 (pertaining to Organizational Plaintiffs). *See also* Order at 3 (pertaining to Mr. Rider).

9. The Court's August 23, 2007 Order concluded that Mr. Rider's funding and the role of the Organizational Plaintiffs and WAP in such funding is relevant to this case and that defendant Feld Entertainment, Inc. ("FEI") is entitled to such information. Order (8/23/07) at 4 ("The Court finds that Rider's funding for his public education and litigation efforts related to defendants is relevant."); *id.* at 5 ("As Rider is a plaintiff in this case and the financing of his public campaign regarding the treatment of elephants is relevant to his credibility in this case, Rider's relevant financial information shall be produced without a protective order but with appropriate redactions approved by this Order."); *id.* at 8 ("Defendant, however, is entitled to information concerning the payments made to Tom Rider and the role of the organizational plaintiffs and WAP in those payments.").
10. The Court's December 3, 2007 Order (DE 247) required HSUS to produce all documents "that pertain to Tom Rider's 'funding for his public education and litigation efforts' provided the funding came from 'a party, any attorney for any of the parties, or any officer or employee of the plaintiff organizations or WAP' or that pertain to payments made to Rider by any such person, with the understanding that the names of donors will be redacted if the donor is not 'a party, any attorney for any of the parties, or any officer or employee of the plaintiff organizations or WAP.'" Order (12/3/07) at 1-2.
11. The Court's December 3, 2007 Order required HSUS to produce "all documents that 'refer, reflect or relate' to Tom Rider, including all communications with or to him, and documents that pertain to payments made to him." Order (12/3/07) at 2.
12. The Court's December 3, 2007 Order required HSUS to produce "any documents that fall within Judge Sullivan's August 23, 2007, order that pertain to WAP [DE 178 at 8] that are in HSUS's possession, custody, or control." Order (12/3/07) at 2. This information

consisted of “non-privileged documents related to ‘payments or donations for or to and expenses of Tom Rider in connection with this litigation or his public relations efforts in connection with this litigation or his public education efforts related to the Circus’s treatment of elephants.’” Mem. Op. (12/3/07) at 5.

II. THE PAYMENTS TO MR. RIDER AND THE RELATED COMMUNICATIONS

13. Plaintiffs ASPCA, AWI, FFA, and API have made payments to or for plaintiff Tom Rider totaling approximately \$120,000.00. FEI Exs. 19, 23, 24, 27, 30, 58. These payments began in 2001 and have continued through the present. FEI Exs. 19, 23, 24, 27, 30, 58, 83-85; *see also* FEI Ex. 36 (Rider Dep.) (12/18-19/07) at 487-88 & 535. Originally, payments were made to Mr. Rider through the law firm of Meyer Glitzenstein & Crystal (“MGC”). FEI Exs. 83-85. At some point in time, the payments stopped being made through MGC and were made through WAP. FEI Exs. 19, 23, 27, 30, 58. At various times, moreover, the Organizational Plaintiffs paid Mr. Rider directly. FEI Exs. 14, 19, 23, 24, 27, 30.
14. Given the time period involved and the ways in which the payment activities changed, it is likely that plaintiffs would have had written or electronic communications about various aspects of these payments, such as why Mr. Rider was being paid, how much he should be paid, what (if anything) he was expected to do in return for the payments, which organization would make which payments, why the money was first sent through MGC, why the money was then sent through WAP, why ASPCA decided to stop making such payments, and what the other organizations were told about that decision, etc. The documents that plaintiffs did produce show that such communications in fact occurred. However, plaintiffs have produced little or no communications of any kind concerning these payments.

15. The only email communication among the plaintiffs about the payments to Mr. Rider that was produced was produced by WAP. FEI Ex. 51. That single email was sent by WAP to ASPCA, AWI and FFA. *Id.* None of the Organizational Plaintiffs produced this document. Pl. Exs. 1, 7, 8 [Tabs B, C, D]. None of the Organizational Plaintiffs accounted for it in their Court-ordered declarations. FEI Exs. 41, 42 & 44. No one, including WAP, has produced page one of this email. Pl. Exs. 1, 7, 8 [Tabs B, C, D]; FEI Ex. 51. The Organizational Plaintiffs testified that they communicated among each other via email in the past and that there was no agreement that emails about payments to Mr. Rider would not be exchanged. Hearing Tr. (2/26/08) at 58-60 & 64-65 (L. Weisberg); *id.* at 103-04 (N. Paquette); *id.* at 194 & 203-04 (T. Silverman). It is not credible that FEI Ex. 51 was the only email ever sent or received among the Organizational Plaintiffs concerning payments to Mr. Rider.
16. The only internal email communication of an Organizational Plaintiff about the payments to Mr. Rider that was produced were two emails produced by ASPCA. FEI Exs. 54 & 55; Pl. Exs. 1, 3, 7, 8 [Tabs B, C, D, E]. The Organizational Plaintiffs testified that most if not all of the individuals involved with the payments to Mr. Rider had computers and/or communicated by means of email. Hearing Tr. (2/26/08) at 57-60 (L. Weisberg); *id.* at 203-05 (T. Silverman). It is not credible that FEI Ex. 54 and FEI Ex. 55 were the only email communications internal to any of the Organizational Plaintiffs concerning the payments to Mr. Rider.
17. The Organizational Plaintiffs participated in conference calls among each other to discuss the payments to Mr. Rider. Hearing Tr. (2/26/08) at 115-117 & 121-22 (N. Paquette), 195 & 213-14 (T. Silverman); Hearing Tr. (3/6/08) at 9 (T. Silverman); Hearing Tr. (5/30/08)

(C. Liss) at 81-83, 120. These communications were not disclosed in plaintiffs' interrogatory responses. FEI Exs. 17-31. It is not credible that each and every one of these communications, in their entirety, constituted media strategy and that the portions of said communications concerning the payments to Mr. Rider could not be described or produced in partially redacted form without revealing media strategy.

18. Each of the Organizational Plaintiffs was asked during cross-examination by their counsel whether the documents that each organization produced reflected all of the payments that said organization made to or for Mr. Rider; and, they all testified in the affirmative. Hearing Tr. (2/26/08) at 74-75 (ASPCA), 151 (API); Hearing Tr. (3/6/08) at 47 (AWI); Hearing Tr. (5/30/08) at 67 (FFA). A set of documents that reflects all payments made is not equivalent to all documents that concern those payments. Documents "concerning payments to Tom Rider" are the operative terms in the Court's August 23, 2007 Order. Order (8/23/07) at 6-7. AWI and API did not testify on cross-examination or otherwise that they had in fact produced all documents concerning payments to Mr. Rider. ASPCA and FFA did testify that they had done so on direct examination, Hearing Tr. (2/26/08) at 20 (L. Weisberg) & Hearing Tr. (3/6/08) at 63-64 (M. Markarian), but for the reasons stated in Finding of Fact Nos. 46-69 and 101-126 the Court does not find this testimony to be credible.

III. THE HISTORY OF MR. RIDER'S DISCOVERY RESPONSES

19. Interrogatory No. 24 asked Mr. Rider to: "Identify all income, funds, compensation, other money or items, including, without limitation, food, clothing, shelter, or transportation, you have ever received from any animal advocate or animal advocacy organization. If the

money or items were given to you as compensation for services rendered, describe the service rendered and the amount of compensation.” FEI Ex. 11 at 7.

20. In June 2004, Mr. Rider objected to this interrogatory but also stated under oath that “I have not received any such compensation.” FEI Ex. 12 at 39.
21. Mr. Rider’s June 2004 response to Interrogatory No. 24 was false. As of June 2004, Mr. Rider had received at least three Internal Revenue Service (“IRS”) Forms 1099 from wildlife advocates or advocacy groups. FEI Exs. 60 (WAP 2002 & 2003), 62 (MGC 2001), 35 (Rider Dep.) (10/12/06) at 123-27, 36 (Rider Dep.) (12/18-19/07) at 464-68, 550-57. Each of these 1099’s stated that money had been paid to Mr. Rider and described the money as “nonemployee compensation.” *Id.*
22. Mr. Rider’s Court-ordered response to Interrogatory No. 24 was served on or about September 24, 2007. FEI Ex. 14. That answer remains incomplete. For example, Mr. Rider stated under oath that AWI paid him “approximately \$1,600” (excluding money paid for van repairs in December 2006). *Id.* at 13-16. AWI, however, stated under oath in its Court-ordered interrogatory responses that it had paid Mr. Rider \$2,952.00 (excluding money paid for van repairs in December 2006). FEI Ex. 23 at 11-14. Mr. Rider did not correct this error in his January 30, 2008 interrogatory responses. FEI Ex. 15 at 10.
23. Interrogatory No. 4 asked Mr. Rider to: “Describe every communication you have had regarding defendants with any and all animal advocates or animal advocacy groups prior to working for defendants, while working for defendants, or since leaving defendants’ employment.” FEI Ex. 11 at 4. Mr. Rider conceded in his earlier responses that communications with animal advocacy organizations about his alleged media campaign concerning FEI are responsive to Interrogatory No. 4 by including such communications in

his response. For example, Mr. Rider's January 31, 2007 response includes a brief reference to a conversation at a 2005 fundraiser with Wayne Pacelle (CEO of HSUS). FEI Ex. 13 at 6.

24. Mr. Rider's Court-ordered response to Interrogatory No. 4 was served on or about September 24, 2007. FEI Ex. 14. That answer remains incomplete. As detailed more fully in Findings of Fact Nos. 25-30, Mr. Rider has not included known communications about the payments to him in this interrogatory answer.
25. Mr. Rider was deposed on December 18-19, 2007. At deposition, Mr. Rider testified about multiple conversations he had with Katherine Meyer regarding his funding (both when it began in 2001 and later in 2003 when WAP took it over). FEI Ex. 36 (Rider Dep.) (12/18-19/07) at 181-91, 485-91, 494-95. Mr. Rider testified about such conversations without any claim of privilege. *Id.* Mr. Rider did not disclose these communications in his Court-ordered, or any prior, responses to Interrogatory No. 4. FEI Exs. 12-14. After FEI filed its Motion to Enforce the Court's August 23, 2007 Order (DE 223) and the Court requested an evidentiary hearing on that Motion, Mr. Rider supplemented his response to Interrogatory No. 4 to state that he had conversations with, *inter alia*, Ms. Meyer "for the purpose of telling [her] which address to use to send" the payments to him. FEI Ex. 15 at 2. This amended and belated response still does not describe all of their communications (which began in 2001) concerning payments. For example, Mr. Rider's response does not describe any communications that he had with Ms. Meyer about the inception of the payments to him in 2001. *Compare* FEI Ex. 36 (Rider Dep.) (12/18-19/07) at 181-91 487-88 *with* FEI Exs. 12-15.

26. FEI did not have notice of the evidentiary hearing prior to Mr. Rider's deposition. Mr. Rider did not appear at the evidentiary hearings held on February 26, 2008, March 6, 2008, and May 30, 2008. Counsel for FEI asked Mr. Rider's counsel to accept service of a subpoena for Mr. Rider's testimony. They refused to do so. Hearing Tr. (5/30/08) at 136-37, 140-43. Mr. Rider previously testified that he would accept a subpoena. FEI Ex. 35 (Rider Dep.) (10/12/06) at 119-22.
27. ASPCA paid Mr. Rider (directly or indirectly) at least \$25,000.00 from 2001-2003. Pl. Ex. 1 [Tab B]; FEI Exs. 19, 58, 77 & 83. Lisa Weisberg (ASPCA) testified that she had conversations with Mr. Rider about the funding provided to him by the ASPCA. Hearing Tr. (2/26/08) at 48-49; FEI Ex. 34 (ASPCA Dep.) at 166-69. Mr. Rider did not disclose these communications in his Court-ordered, or any other responses to Interrogatory No. 4. FEI Exs. 12-15.
28. Ms. Tracy Silverman of AWI testified that she has had oral communications with Mr. Rider about payments to him by AWI, other plaintiffs, and/or WAP. Hearing Tr. (2/26/08) at 206-11; Hearing Tr. (3/6/08) at 18-19. Mr. Rider did not disclose these communications in his Court-ordered, or any prior responses to Interrogatory No. 4. FEI Exs. 12-14. After FEI filed its Motion to Enforce the Court's August 23, 2007 Order (DE 223) and the Court requested an evidentiary hearing on that Motion, Mr. Rider supplemented his response to Interrogatory No. 4 to state that he had conversations with, *inter alia*, Ms. Silverman "for the purpose of telling [her] which address to use to send" the payments to him. FEI Ex. 15 at 2. This amended and belated response still does not describe all of their communications (which began in 2005) concerning payments. For example, Mr. Rider's response does not

describe any communications that he had with Ms. Silverman regarding his van repairs. *Compare* Hearing Tr. (2/26/08) at 208-10 *with* FEI Ex. 12-15.

29. Ms. Cathy Liss of AWI testified that she had oral communications with Mr. Rider regarding AWI's payments to him from approximately 2002-2005. Hearing Tr. (5/30/08) at 78-80, 122-23. Mr. Rider did not disclose any such communications in his Court-ordered, or any prior responses to Interrogatory No. 4. FEI Exs. 12-14. After FEI filed its Motion to Enforce the Court's August 23, 2007 Order (DE 223) and the Court requested an evidentiary hearing on that Motion, Mr. Rider supplemented his response to Interrogatory No. 4 to state that he had conversations with, *inter alia*, Ms. Liss "for the purpose of telling [her] which address to use to send" the payments to him. FEI Ex. 15 at 2. This amended and belated response still does not describe all of their communications (which took place from 2002-2005) concerning payments. For example, Mr. Rider's response does not describe any of Mr. Rider's telephone calls to Ms. Liss for the purpose of requesting direct payments from AWI. *Compare* Hearing Tr. (2/26/08) at 79-80 & FEI Ex. 32 (AWI Dep.) at 141 *with* FEI Exs. 12-15.
30. FFA paid Mr. Rider \$1,000.00 in July 2004. Hearing Tr. (5/30/08) at 21; FEI Ex. 52. Michael Markarian testified that he had conversations with Mr. Rider about this funding. Hearing Tr. (5/30/08) at 22. Mr. Rider did not disclose these communications in his Court-ordered, or any other responses to Interrogatory No. 4. FEI Exs. 12-15.
31. Document Request No. 20 asked Mr. Rider to produce: "Bank statements or other documents demonstrating your sources of income since you stopped working in the 'circus community.'" FEI Ex. 1 at 9.

32. Document Request No. 21 asked Mr. Rider to produce: “All documents that refer, reflect, or relate to any payments or gifts in money or goods made by any animal advocates or animal advocacy organizations to you, including but not limited to any payment of your transportation expenses, hotel bills, or food, or other costs of living by any animal advocates or animal advocacy organizations.” FEI Ex. 1 at 9.
33. Document Request No. 22 asked Mr. Rider to produce: “All documents that refer, reflect, or relate to any communication between you and any animal advocates or person affiliated with such a group, including but not limited to communications while you were working for the Chipperfields or after you left the employ of the Chipperfields but before you returned to the United States.” FEI Ex. 1 at 10.
34. A copy of the documents that Mr. Rider has produced in this case was submitted by plaintiffs. Pl. Ex. 4 [Tab A]. As described more fully below in Findings of Fact 35-39, Mr. Rider’s document production is incomplete because it does not contain documents that are known to exist or in all probability once existed.
35. Mr. Rider has had at least three computers – one provided by a “local activist” prior to 2002, one provided by ASPCA in 2002 and one provided by Mr. Rich Rubin that Mr. Rider had in 2006. FEI Ex. 56; FEI Ex. 35 (Rider Dep.) (10/12/06) at 152-53 & 155. Mr. Rider testified that he exchanged emails with Ms. Weisberg. FEI Ex. 36 (Rider Dep.) (12/18-19/07) at 221-22; *see also* FEI Ex. 34 (ASPCA Dep.) at 169. Mr. Rider also testified that he received emails from his lawyers, that he has sent emails to WAP and that he has sent 100 emails to Ms. Silverman. FEI Ex. 36 (Rider Dep.) (12/18-19/07) at 218-19 & 222-23. No email to or from Mr. Rider was produced by Mr. Rider. Pl. Ex. 4 [Tab A]. Plaintiffs presented no evidence that any of the three computers that Mr. Rider has or had was

searched for responsive information or that the contents of such computers were preserved for purposes of discovery in this case. Moreover, Mr. Rider's Court-ordered declaration does not describe any such emails that he once had but that were "discarded, destroyed or otherwise not produced." FEI Ex. 40. Mr. Rider did not list any emails to or from Ms. Weisberg or Ms. Silverman on his privilege log. FEI Exs. 6 & 9.

36. The WAP ledger shows multiple payments to Mr. Rider beginning in 2002, the vast majority of which were by check. FEI Ex. 57. Mr. Rider has no bank account and cashed all the checks. FEI Ex. 35 (Rider Dep.) (10/12/06) at 133. Mr. Rider has produced only six check cashing receipts, all of which are dated after March 1, 2007. FEI Ex. 82. Mr. Rider's Court-ordered declaration does not describe any check-cashing receipts that he once had but that were "discarded, destroyed or otherwise not produced." FEI Ex. 40.
37. Beginning in August 2005, WAP checks to Mr. Rider were transmitted with a cover letter from Eric Glitzenstein to Mr. Rider. FEI Ex. 35 (Rider Dep.) (10/12/06) at 128-29. There were eighty-eight (88) such letters dated between August 2005 and January 2008. Pl. Ex. 4 [Tab A]. Mr. Rider testified that he saved and sent back to his attorneys, MGC, "99%" of the letters that Mr. Glitzenstein sent him with the checks. FEI Ex. 36 (Rider Dep.) (12/18-19/07) at 503-04. FEI subpoenaed these originals from MGC and, at the hearing, MGC only produced 30 of the 88 letters as documents sent back to them by Mr. Rider. FEI Exs. 94 & 94-A. MGC does not have originals of the other 58 letters sent to Mr. Rider. Mr. Rider's testimony that he saved 99% of them is not credible.
38. Mr. Rider testified that the originals of the IRS Forms 1099 that he received from WAP were saved and sent to MGC. FEI Ex. 36 (Rider Dep.) (12/18-19/07) at 553-58. Of the six Forms 1099 that WAP sent to Mr. Rider, Mr. Rider and/or MGC produced only three

recipient copies, which indicates that only half of the copies received by Mr. Rider were saved and half were not saved. Pl. Ex. 4 [Tab A] (TR 00197 & 00626); Pl. Ex. 6 [Tab G] (M112 & 113); FEI Exs. 94 & 94-A. Plaintiffs presented no evidence as to why Mr. Rider would have been sent anything other than the recipient copy of the 1099. Mr. Rider's testimony that the documents he received were saved was not correct.

39. Mr. Rider admitted that he did not save the Federal Express Airbills, which accompanied the payments from WAP. FEI Ex. 36 (Rider Dep.) (12/18-19/07) at 507-08. Such documents were not produced by Mr. Rider, Pl. Ex. 4 [Tab A] and were not described in his declaration. FEI Ex. 40.

IV. FEI'S DISCOVERY REQUESTS TO THE ORGANIZATIONAL PLAINTIFFS

40. Interrogatory No. 16 asked each Organizational Plaintiff to: "Describe every communication that you, any of your employees or volunteers or any person acting on your behalf or at your behest has had with any current or former employee of defendants since 1996." FEI Ex. 16 at 5.
41. Interrogatory No. 19 asked each Organizational Plaintiff to: "Describe each communication you have had since 1996 with any other animal advocates or animal advocacy organizations about the presentation of elephants in circuses or about the treatment of elephants at any circus, including Ringling Brothers and Barnum & Bailey Circus." FEI Ex. 16 at 6.
42. Document Request No. 19 asked each Organizational Plaintiff to produce: "All documents sufficient to show all resources you have expended in 'advocating better treatment of animals in captivity, including animals used for entertainment purposes' each year from 1996 to the present." FEI Ex. 3 at 9. The "resources" referred to in this document request

are alleged in plaintiffs' complaint. Compl. (9/26/03) (DE 1) at ¶¶ 4, 9, 14; Supp. Compl. (2/23/06) (DE 180) at ¶ 4.

43. Document Request No. 20 asked each Organizational Plaintiff to produce: "All documents that refer, reflect, or relate to any expenditure by you of 'financial and other resources' made while 'pursuing alternative sources of information about [FEI's] actions and treatment of elephants.'" FEI Ex. 3 at 9. The "financial and other resources" referred to in this document request are alleged in plaintiffs' complaint. Compl. (9/26/03) (DE 1) at ¶¶ 6, 11, 16; Supp. Compl. (2/23/06) (DE 180) at ¶ 6.
44. Document Request No. 21 asked each Organizational Plaintiff to produce: "All documents that refer, reflect, or relate to any communications between you and plaintiff Tom Rider." FEI Ex. 3 at 9.
45. Document Request No. 22 asked each Organizational Plaintiff to produce: "All documents that refer, reflect, or relate to any communications between you and any other animal advocates or animal advocacy organizations concerning, (a) any circus, including but not limited to Ringling Bros. and Barnum & Bailey Circus or (b) the treatment of elephants in captivity." FEI Ex. 3 at 9.

V. THE HISTORY OF ASPCA'S DISCOVERY RESPONSES

46. Lisa Weisberg is Senior Vice President of Government Affairs and Public Policy for ASPCA. Hearing Tr. (2/26/08) at 5-6. Ms. Weisberg served as ASPCA's Fed. R. Civ. P. 30(b)(6) representative and was deposed on July 19, 2005. Hearing Tr. (2/26/08) at 10-11; FEI Ex. 34 (ASPCA Dep.). Ms. Weisberg verified ASPCA's responses to FEI's interrogatories. FEI Exs. 17-20. Ms. Weisberg provided a declaration pursuant to the Court's 8/23/07 Order on ASPCA's behalf. Hearing Tr. (2/26/08) at 8-9; FEI Ex. 44.

47. ASPCA has made payments to or for Mr. Rider totaling more than \$25,000.00. Pl. Ex. 1 [Tab B]; FEI Exs. 19, 58, 77 & 83.
48. ASPCA made payments to or for Mr. Rider through MGC totaling more than \$5,700.00. FEI Exs. 19 & 83.
49. From on or about June 2001 to on or about November 2003, MGC provided money to Mr. Rider via wire transfers and ASPCA was invoiced for at least part of those payments. FEI Ex. 83. Ms. Weisberg testified that MGC's invoices to ASPCA for its payments to Mr. Rider were produced in June 2004. Hearing Tr. (2/26/08) at 65-66. That statement is not correct. MGC's invoices to ASPCA for its payments to Mr. Rider were not produced to FEI until ASPCA's September 2007 Court-ordered document production. FEI Ex. 19 at 13. ASPCA did not disclose that its payments to MGC included reimbursement for payments by MGC to Mr. Rider until its September 2007 Court-ordered interrogatory responses. *Compare* FEI Ex. 19 *with* FEI Exs. 17 & 18.
50. ASPCA directly made payments to or Mr. Rider totaling more than \$13,000.00. Pl. Ex. 1 [Tab B] (A 01221-50); FEI Exs. 19 & 77.
51. From on or about 2002 to on or about 2003, ASPCA made payments to or for Mr. Rider that are reflected in "general ledger" accounting statements. Pl. Ex. 1 [Tab B] (A 01222-39). These payments were for wireless phone charges, internet access, and travelers checks. ASPCA has not produced any other documentation underlying these payments, nor has it described any such documents as documents that it once had but that were "discarded, destroyed or otherwise not produced" in its Court-ordered declaration. Pl. Ex. 1 [Tab B]; FEI Ex. 44. ASPCA neither produced the "general ledger" accounting

statements, nor disclosed these payments in its interrogatory responses until its September 2007 Court-ordered production. *Compare* FEI Ex. 19 *with* FEI Exs. 17 & 18.

52. From on or about March 2002 to on or about May 2003, ASPCA made payments for Mr. Rider's hotel stays on Ms. Weisberg's American Express credit card. Pl. Ex. 1 [Tab B] (A 01240-50); FEI Ex. 77. ASPCA has not produced any other documentation underlying these payments, nor has it described any such documents as documents that it once had but that were "discarded, destroyed or otherwise not produced" in its Court-ordered declaration. Pl. Ex. 1 [Tab B]; FEI Ex. 44. ASPCA originally discarded these credit card statements because Ms. Weisberg did not think that ASPCA had an obligation to save them "once they were paid and they were going to be reflected elsewhere." Hearing Tr. (2/26/08) at 67-68. ASPCA had to request these statements from American Express so that ASPCA could produce them to FEI. *Id.* at 68-69; FEI Ex. 44. ASPCA neither produced these documents, nor disclosed these payments in its interrogatory responses until its September 2007 Court-ordered production. *Compare* FEI Ex. 19 *with* FEI Exs. 17 & 18.
53. Ms. Weisberg testified that ASPCA produced "general ledger" accountings in June 2004 that reflected the amounts paid for Mr. Rider on Ms. Weisberg's American Express credit card. Hearing Tr. (2/26/08) at 66-68. That statement is not correct. ASPCA neither produced the "general ledger" accountings, nor disclosed these payments in its interrogatory responses until its September 2007 Court-ordered production. *Compare* FEI Ex. 19 *with* FEI Exs. 17 & 18.
54. ASPCA made a \$6,000.00 payment to WAP for Mr. Rider on December 21, 2001. Pl. Ex. 1 [Tab B] (A 01221); FEI Exs. 19 & 58. ASPCA did not produce a memorandum or the check request relating to this payment in any of its document productions, including its

September 2007 Court-ordered document production. Pl. Ex. 1 [Tab B]. That such documents existed is demonstrated by the memorandum and check requests for other such payments that ASPCA did produce. *See, e.g.*, Pl. Ex. 1 (A 00884, 00886, 00894, A 00895, A 01217); Hearing Tr. (2/26/08) at 34-37. ASPCA did not describe documents related to the December 21, 2001 payment as documents that it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 44.

55. ASPCA, together with AWI and HSUS, co-sponsored a fundraiser in California in July 2005. FEI Ex. 64. Proceeds from this fundraiser were provided to WAP. FEI Ex. 57. WAP then disbursed that money to Mr. Rider. FEI Ex. 58. The organizations exchanged emails regarding this event and there were “telephone conversations amongst the people that organized” it. Hearing Tr. (3/6/08) at 32 (T. Silverman); Hearing Tr. (2/26/08) at 38 (L. Weisberg). ASPCA has not disclosed in its interrogatory responses either the email or telephone communications. FEI Exs. 17-20. ASPCA has not produced copies of the emails or the fundraiser invitation, nor has ASPCA described such documents as documents it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. Pl. Ex. 1 [Tab B]; FEI Ex. 64; FEI Ex. 44.

56. ASPCA has produced only two emails regarding its payments to or for Mr. Rider. FEI Exs. 54 & 55.

57. Ms. Weisberg testified that she would print-out any “on-point” emails and file those print-outs in a folder. Hearing Tr. (2/26/08) at 77 & 84. Ms. Weisberg testified that she regarded emails concerning payments to Mr. Rider as being “on-point” and that she printed out and saved those emails. *Id.* at 84. Ms. Weisberg also testified that ASPCA once had in its possession emails concerning payments to Mr. Rider and that these emails “were not

kept” by ASPCA. *Id.* at 52-54. Ms. Weisberg testified that the emails that ASPCA did not keep were described in ASPCA’s Court-ordered declaration and that ASPCA’s declaration had “made it clear that [ASPCA’s] email backup system is very limited.” *Id.* at 53-54. That statement is not correct. ASPCA’s Court-ordered declaration does not describe its email backup system and does not describe any emails that it once had but that were “discarded, destroyed or otherwise not produced.” FEI Ex. 44. As described more fully below in Findings of Fact Nos. 58-61, the record indicates that responsive emails involving ASPCA did exist that should have been either produced in this case or the nonproduction of which should have been accounted for in ASPCA’s declaration.

58. Ms. Weisberg and Mr. Rider testified that they exchanged emails. FEI Ex. 34 (ASPCA Dep.) at 169; FEI Ex. 36 (Rider Dep.) (12/18-19/07) at 221-22. ASPCA did not produce any such emails in its September 2007 Court-ordered, or any other document, productions. Pl. Ex. 1 [Tab B]. ASPCA also did not describe any such emails as documents that it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 44. These emails were not listed on ASPCA’s privilege log. FEI Exs. 6, 8 & 10.

59. Ms. Weisberg and Mr. Larry Hawk, the former president of ASPCA, exchanged emails regarding ASPCA’s payments to Mr. Rider. *See, e.g.*, FEI Exs. 54 & 55. When responding to the Court’s 8/23/07 Order, however, ASPCA did not search Mr. Hawk’s paper correspondence files for any additional such emails, or any other documents. Hearing Tr. (2/26/08) at 24-25. ASPCA also did not describe any of Mr. Hawk’s emails or other documents as documents that it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 44.

60. Ms. Weisberg testified that she exchanged emails with Ms. Meyer and with the representatives of the other organizational plaintiffs in this case. Hearing Tr. (2/26/08) at 56-60; *see also id.* at 203-05 (T. Silverman). ASPCA did not produce any such emails in its September 2007 Court-ordered, or any other document, productions. Pl. Ex. 1 [Tab B]. ASPCA also did not describe any such emails as documents that it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 44.
61. On November 5, 2003, Ms. Meyer sent an email to Ms. Weisberg (ASPCA), Mr. Markarian (FFA) and Ms. Liss (AWI). FEI Ex. 51. This email discussed payments to Mr. Rider. WAP produced pages 2 and 3 of this email to FEI. ASPCA did not produce this email in its September 2007 Court-ordered, or any other document, productions. Pl. Ex. 1 [Tab B]. ASPCA did not describe this email as a document that it once had but that was “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 44. Page 1 of this email still has not been produced by any party.
62. ASPCA admitted that payments it made for Mr. Rider were a financial resource expended by ASPCA to pursue alternative sources of information about FEI’s actions and treatment of elephants when it included such information in its original response to Interrogatory No. 22. FEI Ex. 17 at 33. Because Document Request No. 20 likewise asked ASPCA to produce all documents that “refer, reflect or relate to any such financial resources,” FEI Ex. 3 at 9, ASPCA has admitted that all documents that refer, reflect or relate to any payments to Mr. Rider are responsive to Document Request No. 20.
63. Ms. Weisberg testified that she had oral communications with Mr. Rider regarding ASPCA’s payments to him. Hearing Tr. (2/26/08) at 48-49; FEI Ex. 34 (ASPCA Dep.) at

- 166-69. ASPCA did not disclose these communications in its Court-ordered, or any other, interrogatory responses. FEI Exs. 17-20.
64. Ms. Weisberg testified that she sent a memo to ASPCA's employees instructing them how to comply with the Court's 8/23/07 Order. That memo did not instruct ASPCA employees to record any oral communications regarding payments to Mr. Rider that they may have had. Hearing Tr. (2/26/08) at 40-42. ASPCA did not disclose any such communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 17-20.
65. Ms. Weisberg testified that she had oral communications with Nancy Blaney of ASPCA regarding ASPCA's payments to Mr. Rider. Hearing Tr. (2/26/08) at 42-43; FEI Ex. 34 (ASPCA Dep.) at 51. ASPCA did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 17-20.
66. Ms. Weisberg testified that she had oral communications with AWI and FFA regarding payments to Mr. Rider. Hearing Tr. (2/26/08) at 43-47; FEI Ex. 34 (ASPCA Dep.) at 51-52; *see also* Hearing Tr. (2/26/08). at 195 & 213-14 (T. Silverman); Hearing Tr. (3/6/08) at 9 (T. Silverman); Hearing Tr. (5/30/08) at 77-83 (C. Liss). As described more fully in Findings of Fact Nos. 67-69, known oral communications that are responsive to one or more of FEI's interrogatories are not included in ASPCA's Court-ordered, or any other interrogatory responses. FEI Exs. 17-20.
67. Ms. Weisberg participated in conference calls with Ms. Paquette (API), Ms. Silverman (AWI), Ms. Liss (AWI), Mr. Lovvorn (HSUS) and Katherine Meyer (WAP) regarding payments to Mr. Rider. Hearing Tr. (2/26/08) at 115-117 & 121-22 (N. Paquette); *id.* at 195 & 213-214 (T. Silverman); 3/6/08 Tr. at 9 (T. Silverman); Hearing Tr. (5/30/08) at 81-

83 (C. Liss). ASPCA did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 17-20.

68. Ms. Weisberg testified that she had oral communications with Katherine Meyer, acting in her WAP capacity, regarding ASPCA's payments to WAP for Mr. Rider. Hearing Tr. (2/26/08) at 60. ASPCA did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 17-20.

69. Ms. Weisberg testified that she had oral communications with Ms. D'Arcy Kemnitz, formerly the Executive Director of WAP, regarding ASPCA's payments to WAP for Mr. Rider. Hearing Tr. (2/26/08) at 60-64; *see also id.* at 162 (D. Kemnitz). Ms. Weisberg testified that these oral communications were disclosed in ASPCA's interrogatory responses. Hearing Tr. (2/26/08) at 61-62. That statement is not correct. ASPCA did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 17-20; Hearing Tr. (2/26/08) at 62-64.

VI. THE HISTORY OF AWI'S DISCOVERY RESPONSES

70. Ms. Cathy Liss is the President of the AWI. Ms. Liss has been employed with AWI for more than twenty-five years. Hearing Tr. (5/30/08) at 76. Ms. Liss served as AWI's Fed. R. Civ. P. 30(b)(6) representative and was deposed on May 18, 2005. FEI Ex. 34 (AWI Dep.). Ms. Liss also verified AWI's responses to FEI's interrogatories dated June 9, 2004 and January 31, 2007. FEI Exs. 21 & 22.

71. Ms. Tracy Silverman is General Counsel of AWI. Ms. Silverman has been employed with AWI since February 14, 2005. Hearing Tr. (2/26/08) at 189-90. Ms. Silverman supervised AWI's response to the Court's 8/23/07 Order. Hearing Tr. (3/6/08) at 28 & 39. Pursuant to the 8/23/07 Order, Ms. Silverman verified AWI's supplemental interrogatory responses

and provided a declaration on AWI's behalf. FEI Exs. 23 & 41. Ms. Silverman also verified AWI's supplemental responses to FEI's interrogatories dated January 30, 2008. FEI Ex. 24.

72. AWI has made payments to or for Mr. Rider totaling more than \$65,000.00. Pl. Ex. 7 [Tab C]; FEI Exs. 23, 24, 53, 58, 64, 75, 84.
73. AWI made payments to or for Mr. Rider through MGC totaling more than \$2,000.00. FEI Exs. 23 & 84.
74. From on or about June 2001 to on or about November 2003, MGC provided money to Mr. Rider via wire transfers and AWI was then invoiced for at least part of those payments. FEI Ex. 84. AWI did not produce these MGC invoices to FEI until its September 2007 Court-ordered document production. FEI Ex. 23 at 13. AWI also did not disclose these payments to Mr. Rider through MGC until its September 2007 Court-ordered interrogatory responses. *Compare* FEI Ex. 23 *with* FEI Exs. 21 & 22.
75. AWI's September 2007 Court-ordered response to Interrogatory No. 21 indicates that each plaintiff received a cover sheet attached to these invoices "specifying the amount that group was being billed, as well as any specific expenses charged only to that group." FEI Ex. 23. AWI did not produce these cover sheets in its September 2007 Court-ordered, or any other document, productions. AWI also did not describe these cover sheets as documents that AWI once had but that were "discarded, destroyed or otherwise not produced" in its Court-ordered declaration. FEI Ex. 41. Ms. Liss testified that if AWI still had these cover sheets, they would have been produced to FEI. Hearing Tr. (5/30/08) at 110-12.
76. AWI has made direct payments to or for Mr. Rider totaling more than \$7,000.00. Pl. Ex. 7 [Tab C]; FEI Exs. 23, 24, 58, 75, 84

77. At some time during 2000-2001, AWI made a direct payment to Mr. Rider for \$1,102.00. The only document that AWI has produced regarding this payment is its IRS Form 990 for that time period which shows a “grant” for this amount to Mr. Rider, which was not produced to FEI until AWI’s September 2007 Court-ordered production. FEI Ex. 53 (A 09968); FEI Ex. 23 at 12. AWI did not produce a check, check request, wire transfer receipt or any other type of document regarding this payment. Pl. Ex. 7 [Tab C]. AWI did not describe any documents regarding this payment as documents that it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 41. Ms. Liss was unable to testify if this \$1,102.00 figure reflected one payment or multiple payments, how this payment(s) was made, and if there were any receipts for this payment(s). Hearing Tr. (5/30/08) Tr. at 91-93.
78. In February 2005, AWI made two payments totaling \$1100.00 to Mr. Rider via wire transfer. The only document that AWI has produced regarding these payments is a copy of Ms. Liss’s AWI credit card statement showing this payment, which was not produced to FEI until AWI’s September 2007 Court-ordered production. Pl. Ex. 7 [Tab C] (AWI 09941); FEI Ex. 23 at 12. AWI did not produce any other documents regarding these payments. AWI did not produce a wire transfer receipt or any other type of document regarding this payment, even though AWI produced a wire transfer receipt for another wire transfer that it made to Mr. Rider. Pl. Ex. 7 [Tab C] (AWI 10116-17). AWI did not describe any documents regarding these payments as documents that it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 41.

79. On March 30, 2006 AWI made a \$500.00 payment to Mr. Rider. That transaction was processed as follows: AWI made a check out to Jill Umphlett for \$600.00, Ms. Umphlett cashed that check, wired the \$500.00 to Mr. Rider, paid for the wire transfer fee of \$36.00, and then returned the remaining \$64.00 to AWI's petty cash fund. Hearing Tr. (3/6/08) at 22-23; *see also* FEI Ex. 23 at 12. The only document that AWI has produced regarding this payment is an internet print-out of the check (with certain hand-writing) which was not produced to FEI until AWI's September 2007 Court-ordered production. Pl. Ex. 7 [Tab C] (AWI 09946); FEI Ex. 23 at 12. AWI did not produce any other documents regarding this payment. AWI did not produce a check request, wire transfer receipt, petty cash receipt or any other type of document regarding this payment, even though AWI produced a wire transfer receipt for another wire transfer that it made to Mr. Rider. Pl. Ex. 7 [Tab C] (AWI 10116-17). AWI did not describe any documents regarding this payment as documents that it once had but that were "discarded, destroyed or otherwise not produced" in its Court-ordered declaration. FEI Ex. 41. Ms. Silverman testified that she did not know whether AWI maintains receipts for petty cash and that she did not know whether Ms. Umphlett received a receipt for this wire transfer. Hearing Tr. (3/6/08) at 22-23.
80. AWI has paid for repairs to Mr. Rider's van on at least two occasions.
81. Ms. Silverman received an invoice for repairs from "Tom Francis Imports" in Santa Monica, CA requesting that payment be made to a Sabrina "Venskus" via facsimile on or about July 7, 2006. FEI Ex. 75. Ms. Silverman testified that the invoice was for repairs to Mr. Rider's vehicle and that AWI paid this invoice. Hearing Tr. (3/6/08) at 34-35. The documents show that this transaction was processed as follows: AWI sent WAP a check for approximately one-half of the amount of Rider's van repairs. Pl. Ex. 7 [Tab C] (AWI

06506) (check to WAP in the amount of \$1902.60 for “Tom’s van repairs”). WAP then paid for all of the repairs. FEI Ex. 57 (7/20/06 payment to “Sabrina Venskus” in the amount of \$3805.15 for “Van repair for T. Rider to continue media”). This facsimile was produced to FEI by WAP. AWI did not produce this facsimile, or any communications related thereto, in its September 2007 Court-ordered, or any other document productions. Pl. Ex. 7 [Tab C]; FEI Ex. 23 at 12. AWI did not describe this facsimile, or any communications related thereto, as documents that it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 41. AWI did not disclose any communications with “Tom Francis Imports,” WAP or Mr. Rider related to this payment in its Court-ordered, or any other interrogatory responses. FEI Exs. 21-24.

82. AWI paid for repairs to Mr. Rider’s van in the amount of \$1,657.58 on or about December 8, 2006. The only document AWI has produced regarding this payment is a copy of Ms. Liss’s AWI credit card statement showing this payment, which was not produced to FEI until AWI’s September 2007 Court-ordered production. Pl. Ex. 7 [Tab C] (AWI 09942-09944); FEI Ex. 23 at 12. AWI did not produce any other documents regarding AWI’s payment for these repairs. AWI did not produce an invoice, receipt or any other type of document regarding this payment. Pl. Ex. 7 [Tab C]. AWI did not describe any documents regarding this payment as documents that it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 41. Ms. Liss testified that if AWI had them, any documents, including correspondence and invoices, regarding this payment would have been provided to FEI. Hearing Tr. (5/30/08) at 117-18.

83. AWI has made at least sixteen payments to or for Mr. Rider through WAP totaling more than \$55,000.00. FEI Exs. 23, 24 & 58.
84. On May 18, 2005, Ms. Liss testified at deposition as AWI's Rule 30(b)(6) witness. As AWI's Rule 30(b)(6) witness, Ms. Liss was notified to testify at deposition regarding, *inter alia*, "[t]he circumstances surrounding and amount of any money or other form of remuneration, reimbursement, or coverage for expenses paid by any Plaintiff or any animal activist to any former employee, consultant, or contractor of Defendant during the Relevant Time Period" and "[a]ny efforts by AWI to gather information regarding the activities of any Feld employee or Feld's Treatment of Asian elephants, including any use of third parties in such efforts and any funds expended thereon." FEI Ex. 88. Ms. Liss testified that she was prepared to be deposed on those topics. Hearing Tr. (5/30/08) at 98-99.
85. Ms. Liss testified that she was "not aware" whether AWI was sharing Mr. Rider's expenses with any other organization and she did "not know" whether any other animal welfare organizations were providing reimbursements to Mr. Rider. FEI Ex. 32 (AWI Dep.) at 141-42; *see also* Hearing Tr. (5/30/08) at 105-113. Ms. Liss's testimony was not correct. By the date of that deposition, May 18, 2005, the following facts had already occurred: AWI had made four payments to WAP for Mr. Rider totaling \$10,500.00. FEI Ex. 58. ASPCA had made one payment to WAP in the amount of \$6,000.00. Pl. Ex. 1 [Tab B] (A 01221). ASPCA, AWI, and FFA had agreed to pay Mr. Rider \$1,000.00 each. FEI Ex. 54. Ms. Meyer had sent an email to Ms. Weisberg, Mr. Markarian and Ms. Liss asking them to make payments to WAP for Mr. Rider. FEI Ex. 51. And, ASPCA, AWI and FFA had all received invoices from MGC for payments to Mr. Rider, including expenses to be "shared" among all three groups. FEI Exs. 83-85.

86. At the evidentiary hearing, Ms. Liss claimed that her deposition testimony was limited to AWI's direct payments to Mr. Rider. *Id.* at 103-04 & 130. Ms. Liss relied on AWI's Court-ordered interrogatory responses to support this testimony. Hearing Tr. (5/30/08) at 130; FEI Ex. 23 at 13 n.1. This representation is not credible. At deposition, Ms. Liss testified that the "last time" AWI "made a payment to [Mr. Rider]" was "at some point in 2005;" that is, sometime between January 1, 2005 and the May 18, 2005 deposition. FEI Ex. 32 (AWI Dep.) at 139. These payments are reflected in two checks, both of which were made payable to WAP. Pl. Ex. 7 [Tab C] (AWI 06946-06497) (AWI checks to WAP dated March 4, 2005 and March 25, 2005). Ms. Liss, therefore, was not purporting to limit her deposition testimony to payments made directly to Mr. Rider. At the hearing, Ms. Silverman testified that AWI's attorneys wrote AWI's Court-ordered interrogatory responses, and that she, and not Ms. Liss, reviewed those responses and signed the accompanying verification. Hearing Tr. (3/6/08) at 38-41; FEI Ex. 23.
87. AWI, together with ASPCA and FFA/HSUS, co-sponsored a fundraiser in California in July 2005. FEI Ex. 64. Ms. Silverman testified that the proceeds from this fundraiser "did not go to pay Tom Rider." Hearing Tr. (3/6/08) at 32-24. That statement is not correct. Proceeds from this fundraiser were provided to WAP. FEI Ex. 57. WAP then disbursed that money to Mr. Rider. FEI Ex. 58. AWI sent WAP two checks from the proceeds of this fundraiser, which together totaled more than \$13,000.00. FEI Ex. 58 ("AWI – From fundraiser in LA") (10/7/2005) ("Grant \$ from AWI (from Fundraiser in CA) (11/23/2005)"); Hearing Tr. (3/6/08) at 32-34.
88. The only document that AWI has produced is the fundraiser invitation itself. FEI Ex. 64. The organizations exchanged emails regarding this event and there were "telephone

conversations amongst the people that organized” it. Hearing Tr. (3/6/08) at 32 (T. Silverman); Hearing Tr. (2/26/08) at 38 (L. Weisberg). AWI has not disclosed in its interrogatory responses either the email or the telephone communications. FEI Exs. 21-24. AWI has not produced copies of the emails or described them as documents it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. Pl. Ex. 7 [Tab C]; FEI Ex. 41.

89. AWI has produced no emails regarding its payments to or for Mr. Rider. Pl. Ex. 7 [Tab C].
90. Ms. Silverman testified that AWI saved all of its emails regarding this case and “[n]ot every single email always makes it into the saved folder, but [she] do[es] the best [that she] can.” Hearing Tr. (3/6/08) at 36 & 45. Ms. Liss testified that she keeps all of her emails. Hearing Tr. (5/30/08) at 87. As described more fully below in Findings of Fact Nos. 91-93, the record indicates that responsive emails involving AWI did exist that should have been either produced in this case or the nonproduction of which should have been accounted for in AWI’s declaration.
91. On November 5, 2003, Ms. Meyer sent an email to Ms. Liss (AWI), Ms. Weisberg (ASPCA), and Mr. Markarian (FFA). FEI Ex. 51. WAP produced pages 2 and 3 of this email to FEI. AWI did not produce this email in its September 2007 Court-ordered, or any other document, productions. Pl. Ex. 7 [Tab C]. AWI did not describe this email as a document that it once had but that was “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 41. Page 1 of this email has not been produced by any party.
92. Ms. Silverman testified that she exchanged emails with Ms. Meyer and with the representatives of the other organizational plaintiffs in this case. Hearing Tr. (2/26/08) at

203-05; *see also* Hearing Tr. (2/26/08) at 57-60 (L. Weisberg). Ms. Silverman testified that AWI produced all of the emails that she exchanged with the representatives of the organizational plaintiffs. Hearing Tr. (2/26/08) at 204-05. AWI did not produce any such emails, including FEI Ex. 51, in its September 2007 Court-ordered, or any other document, productions. Pl. Ex. 7 [Tab C]. AWI did not describe any such emails as documents that it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 41. AWI did not list any such emails on its privilege log. FEI Exs. 6, 8 & 10.

93. Ms. Silverman testified that Mr. Rider sent her emails “very infrequently.” Hearing Tr. (2/26/08) at 211-212. Mr. Rider, however, testified that he emailed AWI approximately 100 times in 2007 alone. FEI Ex. 36 (Rider Dep.) (12/18-19/07) at 222-24. AWI did not produce any such emails in its September 2007 Court-ordered, or any other document, productions. Pl. Ex. 7 [Tab C]. AWI did not describe such emails as documents that it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 41. AWI did not list these emails on its privilege log. FEI Ex. 6, 8 & 10.

94. Ms. Liss testified that she had oral communications with Mr. Rider regarding AWI’s payments to him from approximately 2002-2005. Hearing Tr. (5/30/08) at 78-80, 122-23. AWI did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 21-24. Ms. Liss testified that she did not disclose these oral communications in AWI’s interrogatory responses because she “took [Interrogatory No. 16] in the context of personal meetings.” Hearing Tr. (5/30/08) at 122-23.

95. Ms. Silverman testified that she had oral communications with Mr. Rider regarding payments to him by AWI, other plaintiffs, and/or WAP. Ms. Silverman testified that she talked with Mr. Rider either every day or every other day. Through those conversations, Ms. Silverman coordinated AWI's payments to him. Hearing Tr. (2/26/08) at 206-11; Hearing Tr. (3/6/08) at 18-19; *see also* Hearing Tr. (5/30/08) at 78-79 (C. Liss). AWI did not disclose these communications in its Court-ordered, or any prior, interrogatory responses. FEI Exs. 21-23. After FEI filed its Motion to Enforce the Court's August 23, 2007 Order (DE 223) and the Court requested an evidentiary hearing on that Motion, AWI supplemented its response to Interrogatory No. 16 to state that Ms. Silverman "had had conversations with Mr. Rider concerning his location so that either AWI or the Wildlife Advocacy Project can send him funds" FEI Ex. 24 at 6; *see also id.* at 8. This amended and belated response still does not describe all of their communications (which began in 2005) concerning payments. For example, AWI's response does not describe any communications that Ms. Silverman had with Mr. Rider regarding his van repairs. *Compare* Hearing Tr. (2/26/08) at 208-10 *with* FEI Exs. 21-24.
96. Ms. Silverman testified that she had oral communications with Katherine Meyer, acting in her WAP capacity, regarding AWI's payments to WAP for Mr. Rider. Hearing Tr. (3/6/08) at 19. AWI did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 21-24.
97. Ms. Silverman testified that she had oral communications with Jill Umphlett, administrative assistant at AWI, regarding AWI's payments to Mr. Rider. Hearing Tr. (3/6/08) at 12-14, 18, 21-22, 26. AWI did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 21-24.

98. Ms. Silverman testified that she had oral communications with Ms. Liss regarding AWI's payments to Mr. Rider. Hearing Tr. (3/6/08) at 14. AWI did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 21-24.
99. Ms. Liss testified that she had oral communications with ASPCA and FFA regarding payments to Mr. Rider. Hearing Tr. (5/30/08) at 77-83; *see also* Hearing Tr. (2/26/08) at 43-47 (L. Weisberg); *id.* at 195 & 213-14 (T. Silverman); FEI Ex. 34 (ASPCA Dep.) at 51-52. AWI did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 21-24.
100. Ms. Liss and Ms. Silverman testified that they participated in conference calls with Ms. Weisberg (ASPCA), Ms. Paquette (API), Mr. Lovvorn (HSUS) and Katherine Meyer (WAP) regarding payments to Mr. Rider. Hearing Tr. (2/26/08) at 195 & 213-14 (T. Silverman); Hearing Tr. (3/6/08) at 9 (T. Silverman); Hearing Tr. (5/30/08) (C. Liss) at 81-83, 120; *see also* Hearing Tr. (2/26/08) at 115-117 & 121-22 (N. Paquette). AWI did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 21-24.

VII. THE HISTORY OF FFA'S & HSUS'S DISCOVERY RESPONSES

101. The Humane Society of the United States ("HSUS") purchased almost all of Fund for Animals' ("FFA's") assets on January 1, 2005. Hearing Tr. (3/6/08) at 52-54. As part of the Asset Acquisition Agreement, HSUS was required to, and did, offer employment to all of FFA's employees. Prior to the transaction, FFA had approximately fifty employees. FFA no longer has any employees of its own. Its operations are run by people who work for, and are paid by, HSUS. Hearing Tr. (3/6/08) at 56.

102. FFA no longer has its own litigation department, public relations department, or fundraising department. It relies upon those departments within HSUS. Hearing Tr. (3/6/08) at 57-58.
103. Michael Markarian is President of FFA. He also is Executive Vice President for External Affairs of HSUS. Mr. Markarian testified that, as President, he spends on average one hour per week on FFA matters. Hearing Tr. (3/6/08) at 50-51. Mr. Markarian is not sure whether FFA has a General Counsel or not. Hearing Tr. (5/30/08) at 34.
104. Jonathan Lovvorn signed the complaint in this case. Complaint (9/26/03) (DE 1). He was outside counsel at the time, but is now Vice President of Animal Protection Litigation for HSUS. Hearing Tr. (5/30/08) at 145. Mr. Lovvorn has no formal position within FFA. However, he has participated in conference calls with other plaintiffs in what was stated to be an "FFA" capacity. Hearing Tr. (2/26/08) at 115-16.
105. Documents in the files of FFA are within the possession, custody, and control of HSUS. HSUS owns all of the computers and filing cabinets previously maintained by FFA. Hearing Tr. (3/6/08) at 54. FFA representatives, including Mr. Markarian, use computers owned by HSUS to conduct what was described as FFA business. *Id.* at 54-55. They also use their HSUS email account to conduct what was described as FFA business. *Id.* at 55. All of FFA's files about payments to or for Mr. Rider, therefore, are within the possession, custody, and control of HSUS and subject to the Court's December 3, 2007 Order directed towards HSUS. Conversely, all of HSUS's files concerning payments to or for Mr. Rider are within the possession, custody, and control of FFA and subject to the Court's August 23, 2007 Order. Because FFA has no employees of its own, it relies upon HSUS

employees to make and process payments to WAP on its behalf. *Id.* at 68-69; Hearing Tr. (5/30/08) at 39.

106. Mr. Markarian served as FFA's Fed. R. Civ. P. 30(b)(6) representative and was deposed on June 22, 2005. Hearing Tr. (5/30/08) at 7; FEI Ex. 33 (FFA Dep.). Mr. Markarian also verified FFA's responses to FEI's interrogatories. Hearing Tr. (5/30/08) at 7; FEI Ex. 25-28. Mr. Markarian also supervised FFA's response to the Court's 8/23/07 Order and provided a declaration pursuant to that Order on FFA's behalf. Hearing Tr. (3/6/08) at 63; Hearing Tr. (5/30/08) at 27 & 42; FEI Ex. 42.
107. FFA paid Mr. Rider \$1,000.00 directly in July 2004. Hearing Tr. (5/30/08) at 21; FEI Ex. 27 at 12; FEI Ex. 52.
108. FFA made payments to or for Mr. Rider through MGC totaling at least \$4,400.00. FEI Ex. 27 at 13.
109. From on or about June 2001 to on or about November 2003, MGC provided money to Mr. Rider via wire transfers and FFA was then invoiced for at least part of those payments. FEI Ex. 83-85. FFA did not produce these MGC invoices to FEI until its September 2007 Court-ordered document production. FEI Ex. 27 at 13-14. FFA did not disclose these payments to Mr. Rider through MGC until its September 2007 Court-ordered interrogatory responses. *Compare* FEI Ex. 27 *with* FEI Exs. 25 & 26.
110. HSUS and/or FFA made payments to or for Mr. Rider through WAP totaling \$11,500.00. FEI EX. 27 at 12; FEI Ex. 58. These payments were drawn on HSUS bank accounts and accompanied by letters signed by Jonathan Lovvorn on HSUS letterhead. *See, e.g.*, FEI Ex. 65; Pl. Ex. 8 [Tab D] (F 04489) (letter dated 7/17/06); Hearing Tr. (5/30/08) at 39. FFA has not produced at least three of the cover letters from Mr. Lovvorn. *Compare* Pl.

Tab H (WAP Production of letters dated 4/4/05, 5/24/05, 3/1/05) *with* Pl. Ex. 8 [Tab D] (FFA omitting same). Nor has FFA described these letters as documents that it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. FEI Ex. 42. HSUS also has not produced at least one such letter. Hearing Tr. (5/30/08) at 42.

111. On June 22, 2005, at deposition, FFA testified that it had only paid Mr. Rider on one occasion. FEI Ex. 33 (FFA Dep.) at 157-58. FFA omitted at that time any reference to the payments it made to Mr. Rider through MGC and any reference to the payments it/HSUS made to Mr. Rider through WAP.

112. FFA’s interrogatory responses in June 2004 and January 2007 omitted all of its payments to Mr. Rider (whether directly or indirectly). FEI Exs. 25 & 26. Such payments were included in FFA’s interrogatory responses in response to the Court’s August 23, 2007 Order. FEI Ex. 27 at 11-14. FFA has sought to explain its prior omissions on the basis that it did not interpret FEI’s Interrogatory No. 21 to require the disclosure of “donations” to other individuals or organizations. FEI Ex. 27 at 12. This representation is not credible. FFA disclosed that very type of “donation” to another organization in its original interrogatory answers. FEI Ex. 25 at 33. FFA is represented by counsel who signed and served interrogatory responses from the other organizations identifying their payments to WAP in January 2007. FEI Ex. 22 at 16; FEI Ex. 29 at 32-34. FFA, however, did not disclose its/HSUS’s payments to WAP at that time. FEI Exs. 25 & 26.

113. FEI served a document subpoena upon HSUS on June 15, 2007. Mr. Markarian supervised HSUS’s response to that subpoena and provided a declaration concerning that response on behalf of HSUS after the Court’s 12/3/07 Order. Hearing Tr. (3/6/08) at 63; Hearing Tr.

(5/30/08) at 7; FEI Ex. 45. Only after FEI subpoenaed HSUS for documents concerning its payments to WAP and filed a motion to compel on the matter on September 21, 2007, did FFA claim in its September 24, 2007 discovery responses that the payments from HSUS's bank account to WAP were really payments by FFA. FEI Ex. 27 at 12.

114. Mr. Markarian testified that FFA produced all of the documents in its or HSUS's files that concern payments to or for Mr. Rider. Hearing Tr. (3/6/08) at 63. Mr. Markarian testified that he is not aware of any emails he ever received or sent concerning payments to Mr. Rider. *Id.* at 89. Mr. Markarian also testified that no one at HSUS had any documents except for the accounting department relating to these payments. *Id.* at 92. Mr. Markarian also testified that FFA disclosed in response to FEI's interrogatories all of its internal communications, its communications with HSUS, and its communication with other organizations concerning payments to Mr. Rider. *Id.* at 64. As more fully described in Findings of Fact Nos. 115-126 below, these statements are not credible.

115. On November 5, 2003, Ms. Meyer sent an email to Mr. Markarian (FFA), Ms. Weisberg (ASPCA) and Ms. Liss (AWI). Hearing Tr. (5/30/08) at 12-13; FEI Ex. 51. The email discussed payments to Mr. Rider. WAP produced pages 2 and 3 of this email to FEI. FFA did not produce this email in its September 2007 Court-ordered, or any other document, productions. Pl. Ex. 8 [Tab D]; Hearing Tr. (5/30/08) at 13. FFA did not produce the fundraising letter that was attached to the email Mr. Markarian received. Pl. Ex. 8 [Tab D]; Hearing Tr. (5/30/08) at 19-20. FFA did not describe this email or the fundraising letter as documents that it once had but that were "discarded, destroyed or otherwise not produced" in its Court-ordered declaration. FEI Ex. 42. Page 1 of this email still has not been produced by any party.

116. FFA did not describe in response to FEI's interrogatories its communications with Ms. Meyer concerning the November 5, 2003 email and her request for ideas as to how money could be raised to pay Mr. Rider. Hearing Tr. (5/30/08) at 18-19, 52-53; FEI Exs. 25-28 & 51.
117. FFA paid Mr. Rider \$1,000.00 directly in July 2004. Hearing Tr. (5/30/08) at 21; FEI Ex. 52. Mr. Markarian testified that FFA would have discussed this payment with ASPCA, which was supposed to pay half of it, as well as with Mr. Rider. Hearing Tr. (5/30/08) at 21. FFA did not identify such communications in its Court-ordered, or any other interrogatory response. Hearing Tr. (5/30/08) at 52-53; FEI Exs. 25-28.
118. Mr. Markarian testified that he had communications with Marian Probst (of FFA) about payments to Mr. Rider. Hearing Tr. (3/6/08) at 68; Hearing Tr. (5/30/08) at 22. FFA did not identify such communications in its Court-ordered, or any other interrogatory response. FEI Exs. 25-28.
119. Mr. Markarian testified that FFA did not originally consider documents about indirect payments to be responsive to FEI's document requests. Hearing Tr. (5/30/08) at 26. Mr. Markarian also testified that that is why FFA produced its check to Mr. Rider in 2004. *Id.* Mr. Markarian's representation that FFA produced documents about direct payments to Mr. Rider in 2004 is not correct. No such documents were produced in 2004. FEI Ex. 27 at 12; Pl. Ex. 8 [Tab D]. Therefore, his representation that FFA originally withheld documents about indirect payments because it believed only direct payments were responsive is not credible.
120. Over the course of several years, FFA paid Mr. Rider through the law firm of MGC. FEI Ex. 85. FFA was billed for these payments on invoices containing descriptions of legal

work performed by MGC. *Id.* Some of these invoices charged one organization for the amount paid to Mr. Rider and others charged the organizations a “shared expense.” *Id.* Mr. Markarian testified that he presumably agreed to pay FFA’s portions. Hearing Tr. (5/30/08) at 30. FFA, however, has not disclosed any such communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 25-28.

121. FFA participated in conference calls with Ms. Weisberg (ASPCA), Ms. Silverman (AWI), Ms. Paquette (API) and potentially others regarding payments to Mr. Rider. Hearing Tr. (2/26/08) at 115-117 & 121-22 (N. Paquette); *id.* at 214 (T. Silverman); Hearing Tr. (3/6/08) at 9 (T. Silverman); Hearing Tr. (5/30/08) at 81-83 (C. Liss). FFA did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 25-28.

122. FFA/HSUS, together with ASPCA and AWI, co-sponsored a fundraiser in California in July 2005. FEI Ex. 64. Proceeds from this fundraiser were provided to WAP. FEI Ex. 57. WAP then disbursed that money to Mr. Rider. FEI Ex. 58. The organizations exchanged emails regarding this event and there were “telephone conversations amongst the people that organized” it. Hearing Tr. (3/6/08) at 32 (T. Silverman); Hearing Tr. (2/26/08) at 38 (L. Weisberg). FFA has not disclosed in its interrogatory responses either the email or telephone communications. FEI Exs. 25-28. FFA, moreover, has not produced copies of the emails or described them as documents it once had but that were “discarded, destroyed or otherwise not produced” in its Court-ordered declaration. Pl. Ex. 8 [Tab D]; FEI Ex. 64; FEI Ex. 42.

123. Neither FFA nor HSUS has produced any emails regarding its payments to or for Mr. Rider. Pl. Ex. 8 [Tab D]. As described more fully below in Findings of Fact Nos. 125-126,

the record indicates that responsive emails involving FFA and HSUS did exist that should have been either produced in this case or the nonproduction of which should have been accounted for in declarations.

124. Mr. Markarian testified that he was not aware of Roger Kindler discussing this litigation with the FFA Board of Directors. Hearing Tr. (3/6/08) at 60. Mr. Kindler is the General Counsel of HSUS, but Mr. Markarian is not sure whether he also is General Counsel of FFA. Hearing Tr. (5/30/08) at 34. A document produced by HSUS (but not by FFA) indicates that Mr. Kindler has discussed this litigation with the FFA Board and that Mr. Markarian was present for that discussion. Hearing Tr. (5/30/08) at 36-37. Although Mr. Markarian testified that the FFA Board has discussed this litigation multiple times, Hearing Tr. (3/6/08) at 70, FFA has not produced any of the corresponding Board Minutes.
125. Mr. Markarian testified that Mr. Lovvorn has no emails referring or reflecting or relating to Mr. Rider. Hearing Tr. (3/6/08) at 89. That statement is not correct. Mr. Lovvorn received multiple emails referring, reflecting, or relating to Mr. Rider. FEI Exs. 69, 72; Hearing Tr. (5/30/08) at 47-49. Although these were compelled by the Court's December 3, 2007 Order, HSUS has not produced them. Hearing Tr. (5/30/08) at 45-49.
126. Plaintiffs first filed this lawsuit on July 11, 2000. Compl. (Civ. Act. No. 00-1641). FFA did not instruct its employees to preserve documents relevant to this litigation until 2005. Hearing Tr. (5/30/08) at 62-63. Prior to that, FFA did not require its employees to retain all documents concerning payments to Mr. Rider. *Id.* at 14-15, 63. Mr. Markarian, FFA's President, presumes he destroyed at least one such document. *Id.* at 14. Mr. Markarian, moreover, testified that it was "not particularly" his practice to preserve documents relating

to Mr. Rider. *Id.* at 14-15. FFA's declaration does not mention specific documents being discarded or that it was not in the practice of saving such documents. FEI Ex. 42.

VIII. HISTORY OF API'S DISCOVERY RESPONSES

127. Nicole Paquette is the designated representative for plaintiff API in this matter. Hearing Tr. (2/26/08) at 91. Ms. Paquette also served as API's Fed. R. Civ. P. 30(b)(6) representative and was deposed on January 29-30, 2008. Hearing Tr. (2/26/08) at 90-91; FEI Ex. 38 (API Dep.).
128. Ms. Paquette verified API's responses to FEI's interrogatories dated January 16, 2007 and January 30, 2008. Hearing Tr. (2/26/08) at 137; FEI Exs. 29 & 31. Ms. Paquette supervised API's response to the Court's 8/23/07 Order. Hearing Tr. (2/26/08) at 122 & 125-27. Pursuant to the 8/23/07 Order, Ms. Paquette provided a declaration on API's behalf. FEI Ex. 43.
129. API has made payments to WAP for Mr. Rider totaling approximately \$13,000.00 FEI Ex. 58. API made its first payment to WAP two months after the Court granted it permission to join this lawsuit in February 2006. *Id.*
130. Ms. Paquette participated in conference calls with Ms. Weisberg (ASPCA), Ms. Silverman (AWI), Mr. Lovvorn (FFA/HSUS), and Katherine Meyer (WAP) regarding payments to Mr. Rider. Hearing Tr. (2/26/08) at 115-117 & 121-22 (N. Paquette); *id.* at 214 (T. Silverman); Hearing Tr. (3/6/08) at 9 (T. Silverman); Hearing Tr. (5/30/08) at 81-83 (C. Liss). API did not disclose these communications in its Court-ordered, or any other interrogatory responses. FEI Exs. 29-31.
131. Ms. Paquette testified that she had oral communications with Michelle Thew of API regarding API's payments to or for Mr. Rider. Hearing Tr. (2/26/08) at 109. API did not

disclose these communications in its Court-ordered, or any other interrogatory responses.
FEI Exs. 29-31.

132. API admitted that payments it made for Mr. Rider were a financial resource expended by API to pursue alternative sources of information about FEI's actions and treatment of elephants when it included such information in its original response to Interrogatory No. 22. FEI Ex. 29 at 33-34. Since Document Request No. 20 asked API to produce all documents that "refer, reflect or relate to any such financial resources," FEI Ex. 3 at 9, API has admitted that all documents that refer, reflect or relate to any payments to Mr. Rider are responsive to Document Request No. 20.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

1. This Court has jurisdiction over the parties to this action and the subject matter of this action. The United States Magistrate Judge who presided over the evidentiary hearing that was held in connection with defendant's motion to enforce had the statutory authority to take the actions that said judicial officer took during the hearing as well as the actions taken thereafter with respect to the motion to enforce.
2. The Court's August 23, 2007 Order was clear and unambiguous.
3. The Court's August 23, 2007 Order clearly and unambiguously required plaintiffs to produce all responsive documents concerning payments by the Organizational Plaintiffs, their counsel, or the Wildlife Advocacy Project to or for Tom Rider.
4. Communications about such payments are responsive to the document requests and interrogatories issued to Tom Rider.

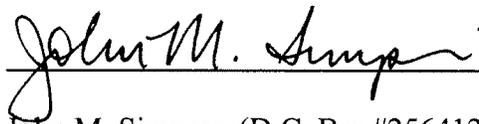
5. Communications about such payments are responsive to the document requests and interrogatories issued to the Organizational Plaintiffs.
6. The Court's August 23, 2007 Order required Tom Rider to produce all documents reflecting his communications about such payments.
7. The Court's August 23, 2007 Order required the Organizational Plaintiffs to produce all documents reflecting their communications about such payments.
8. The Court's August 23, 2007 required Tom Rider to describe all of his communications about such payments.
9. The Court's August 23, 2007 Order required the Organizational Plaintiffs to describe all of their communications (whether internal, with co-plaintiffs, or with counsel) about such payments.
10. While the Court's August 23, 2007 Order did not require plaintiffs to divulge media or legislative strategies, the Court did not create a loophole pursuant to which payment-related documents and information could be withheld if they also had some relation to plaintiffs' alleged media or legislative strategies.
11. Any document that concerned payments to Tom Rider and that also may have referred to media or legislative strategies, either (i) should have been produced in redacted form to remove any references to media or legislative strategies; (ii) if privileged under the First Amendment or other basis, should have been logged on plaintiffs' privilege log; or (iii) should have been accounted for in plaintiffs' declarations as a payment-related document that was not "otherwise" being produced, together with an explanation of the reasons therefore (*i.e.*, that it contained media or legislative strategies). Plaintiffs took none of these actions.

12. Any oral communication that occurred that concerned payments to Tom Rider and that also concerned plaintiffs' media or legislative strategies should have been disclosed in plaintiffs' interrogatory answers, with the details as to any such strategies omitted. Plaintiffs did not make such disclosures in their interrogatory answers.
13. As detailed in the foregoing Findings of Fact, Tom Rider withheld documents and information compelled by the Court's Order and has failed to account for responsive information that he possesses or once possessed but did not produce.
14. As detailed in the foregoing Findings of Fact, ASPCA withheld documents and information compelled by the Court's Order and has failed to account for responsive information that it possesses or once possessed but did not produce.
15. As detailed in the foregoing Findings of Fact, AWI withheld documents and information compelled by the Court's Order and has failed to account for responsive information that it possesses or once possessed but did not produce.
16. As detailed in the foregoing Findings of Fact, FFA withheld documents and information compelled by the Court's Order and has failed to account for responsive information that it possesses or once possessed but did not produce.
17. As detailed in the foregoing Findings of Fact, API withheld documents and information compelled by the Court's Order and has failed to account for responsive information that it possesses or once possessed but did not produce.
18. As a result of the documents and information that he has withheld or failed to account for, Tom Rider is in contempt of the Court's August 23, 2007 Order.
19. As a result of the documents and information that it has withheld or failed to account for, ASPCA is in contempt of the Court's August 23, 2007 Order.

20. As a result of the documents and information that it has withheld or failed to account for, AWI is in contempt of the Court's August 23, 2007 Order.
21. As a result of the documents and information that it has withheld or failed to account for, FFA is in contempt of the Court's August 23, 2007 Order.
22. As a result of the documents and information that it has withheld or failed to account for, API is in contempt of the Court's August 23, 2007 Order.

Dated this 19th day of June, 2008.

Respectfully submitted,

A handwritten signature in cursive script, reading "John M. Simpson", is written over a horizontal line.

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