

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**AMERICAN SOCIETY FOR THE  
PREVENTION OF CRUELTY TO  
ANIMALS *et al.*,**

**Plaintiffs,**

**v.**

**RINGLING BROTHERS AND BARNUM &  
BAILEY CIRCUS *et al.*,**

**Defendants.**

**Civil Action No. 03-2006 (EGS/JMF)**

**ORDER**

Pursuant to a minute order entered on June 3, 2008, defendant<sup>1</sup> was directed to submit for an in camera review those documents that were the subject of plaintiff's February 15, 2008 motion to compel.<sup>2</sup> Similarly, pursuant to a minute order entered on June 5, 2008, plaintiffs were directed to submit for an in camera review those documents that were the subject of defendant's motions to enforce the court's August 23, 2007 and December 3, 2007 orders.<sup>3</sup> After carefully reviewing the documents, as illustrated in the two charts below, all three pending motions will be granted in part and denied in part. As to those documents not listed in either chart, the claimed privileges or reasons for withholding the documents are upheld.

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<sup>1</sup> Defendants are Ringling Brothers and Barnum & Bailey Circus and Feld Entertainment, Inc., hereinafter referred to generically as "defendant."

<sup>2</sup> See Plaintiffs' Motion to Compel Redacted Information that has been Withheld by Defendant [#266].

<sup>3</sup> See Defendant's Motion to Enforce the Court's August 23, 2007 Order [#223] and Defendant's Motion to Enforce the Court's December 3, 2007 Order [#247].

**Defendant's Documents**

<b>BATES #</b>	<b>Description of Information Redacted</b>	<b>Reason for Redaction</b>	<b>Court's Ruling</b>
FEI 31341- REVISED	Discussion of activists and inspections	Not responsive / Attorney-client privilege	In the text of its opposition, defendant describes the document as non-responsive. Opp. <sup>4</sup> at 15. In its supplemental privilege log of 1/30/08, defendant claims that the document is protected by the attorney-client privilege and describes it as a "Memorandum containing request for legal advice regarding USDA inspections." <i>Id.</i> , Ex. 7 at 9. Document does not contain a communication from defendant to its attorney made in confidence for the purpose of securing legal advice. Redaction is appropriate solely on the basis that the information contained therein is non-responsive.
FEI 32599 – 601- REVISED	Information related to personnel, health/status of other animals, and reference to a USDA report on baby elephant tethers	Not responsive / Attorney-client privilege	Redaction based on non-responsiveness is appropriate. In its supplemental privilege log of 1/30/08, defendant claims that the document is protected by the attorney-client privilege and describes it as a "Memorandum reflecting request for legal advice from in-house counsel regarding USDA inquiry." Opp., Ex. 7 at 9. Privilege log does not identify author or recipient of document by name. Furthermore, that the

<sup>4</sup> Feld Entertainment, Inc.'s Opposition to Plaintiffs' Motion to Compel Redacted Information that has been Withheld by Defendant [#274] ("Opp.").

			document reveals that legal advice was sought is not in itself protected under the attorney-client privilege unless it discloses a communication that was intended to be confidential.
FEI 39507A-REVISED (p 11-16)	Discussion about PETA activity and media coverage of alleged abuse of elephants; discussion of “long term animal strategy,” including potential risk management procedures/policies	No reason indicated	These documents are not identified by plaintiffs in their March 17, 2008 Attachment. Reply <sup>5</sup> at Ex. 1. In addition, although defendant indicates that the entire document was withheld, it fails to indicate the reason. It will therefore do so within 7 days of the date of this Order.
FEI 39507B-REVISED - FEI 39507D-REVISED	Discussion of regulations overview with staff, including instructions on use of tranquilizer gun	No reason indicated	These documents are not identified by plaintiffs in their March 17, 2008 Attachment. Reply at Ex. 1. In addition, although defendant indicates that the entire document was withheld, it fails to indicate the reason. It will therefore do so within 7 days of the date of this Order.
FEI 39507E-REVISED (p 20-28)	Policies and procedures related to handler uniforms, training manuals, security, media, headpieces on elephants, arena set up/tear down, signs, mission statement, and public tours of animal habitat	No reason indicated	These documents are not identified by plaintiffs in their March 17, 2008 Attachment. Reply at Ex. 1. In addition, although defendant indicates that the entire document was withheld, it fails to indicate the reason. It will therefore do so within 7 days of the date of this Order.
FEI 39507H-REVISED	Copies of media reports and draft of business plan	No reason indicated	These documents are not identified by plaintiffs in their March 17, 2008 Attachment. Reply at Ex. 1. In addition, although defendant indicates that the entire document was withheld, it fails to indicate

<sup>5</sup> Plaintiffs’ Reply in Support of Their Motion to Compel Redacted Information [#279] (“Reply”)

			the reason. It will therefore do so within 7 days of the date of this Order.
FEI 42475	Nothing produced	No reason indicated	Document identified as “2 pages of fax REDACTED,” but redacted documents not produced. Redacted documents will be produced to the Court within 7 days of the date of this order. Defendant will also indicate the reason for the redaction.
FEI 42477	Nothing produced	No reason indicated	Document identified as “4 pages of fax REDACTED,” but redacted documents not produced. Redacted documents will be produced to the Court within 7 days of the date of this order. Defendant will also indicate the reason for the redaction.
FELD 0029097 - 98	Excerpts from USDA employee interviews	Not responsive / Attorney-client privilege	According to defendant’s privilege log, redaction was based on attorney-client privilege, not because it was non-responsive. Opp. at 15. Log identifies doc as “excerpts from USDA employee interviews.” These communications are not protected by the attorney-client privilege as they are not communications made by defendant’s employees to its counsel in an effort to obtain legal advice. They will be turned over.
FEI 45187	Health information pertaining to other animals, miscellaneous information regarding circus operations, and discussions with attorney	Not responsive / Attorney-client privilege / Work-product privilege	According to the supplemental privilege log of 5/11/07, documents are protected by attorney-client and work-product privileges. Opp., Ex. 5 at 15. Documents are described as “correspondence with comments of legal counsel regarding USDA

			<p>investigation.” Proper redaction as to non-responsive documents, but not as to portion withheld for attorney-client and work-product privilege. Document is a copy of an e-mail from William Lindsay to Richard Froemming. Although last paragraph talks about the author’s needing the recipient’s help with the timing and wording of someone’s termination, it is not clear whose. Also, there is no indication that document was prepared in anticipation of litigation. Finally, the sentence beginning “Dr. Thoen and I” is not protected by either attorney-client or work-product as there is not indication that litigation is pending or that advice is sought. Those portions of the document redacted for attorney-client and work-product privilege will be turned over within 7 days of the date of this Order.</p>
FEI 40018	Email heading information for attorney with attachment	Attorney-client privilege	<p>Improper redaction as to attorney-client privilege. All that was redacted was the heading information from an e-mail. It will be turned over within 7 days of the date of this Order.</p>
FEI 40019	Email heading information for attorney showing attachment	Attorney-client privilege	<p>Improper redaction as to attorney-client privilege. All that was redacted was the heading information from an e-mail. It will be turned over within 7 days of the date of this Order.</p>
FEI 51533	Email heading information for	Attorney-client privilege	<p>Improper redaction as to attorney-client privilege. All</p>

	attorney showing multiple attachments		that was redacted was the heading information from an e-mail and a simple question about printing. It will be turned over within 7 days of the date of this Order.
FEI 51572	Email containing heading information showing attachment	Attorney-client privilege	Improper redaction as to attorney-client privilege. All that was redacted was the heading information from an e-mail and a simple statement. It will be turned over within 7 days of the date of this Order.
FEI 52206	Email containing heading information showing attachment	Attorney-client privilege	Improper redaction as to attorney-client privilege. All that was redacted was the heading information from an e-mail. It will be turned over within 7 days of the date of this Order.
FEI 52210	Animal welfare training information and personal notes	Attorney-client privilege	Although document is described by defendant as the "handwritten notes of in-house counsel regarding preparation for Animal Welfare Act training and comments on draft outline regarding same," it does not reflect communications made by defendant's employees to its counsel in an effort to obtain legal advice. Opp., Ex. 7 at 9. It is therefore not protected by the attorney-client privilege and will be turned over within 7 days of the date of this Order.

### Plaintiffs' Documents

A 01222 – A 01230	Reclass advances for Tom Rider \$1,860; Travelers' Checks \$5,000; Finance 112102 Travelers' Checks to Tom Rider	Not Responsive	Plaintiffs have turned over some but not all line items in the ledger that are identified as "AT&T Wireless to #51" and "00AATT13." Plaintiffs will therefore show cause in
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	\$1,200		writing, within 7 days of the date of this Order, as to why all line items bearing those codes should not be turned over to defendant. In addition, plaintiffs will, within 7 days of the date of this Order, turn over the information contained in line 3 on UR-A 01223 and line 1 on UR-A 01224.
A 01231 – A 01239 <sup>6</sup>	ASPCA ledger report of payments made for various internet accounts.	Not Responsive	Plaintiffs have turned over some but not all line items relating to an Earthlink account. Plaintiffs will therefore show cause in writing, within 7 days of the date of this Order, as to why all line items relating to this account should not be turned over to defendant.
A 01240 – A 01241	Credit card statement and attached receipts – travel expenses for Lisa Weisberg redacted, account information redacted, receipts which correspond to unredacted credit card charges also redacted	Not Responsive	The information, which appears in the “Summary of Account” portion of the bill, has already been turned over. There is no reason why that same information, which is provided in slightly different format on the last page, should not also be turned over. Plaintiffs will therefore do so within 7 days of the date of this Order.
A 01242 – A 01243	Credit card statement and attached receipts – travel expenses for Lisa Weisberg redacted, account information redacted, receipts which correspond to unredacted credit card charges also redacted	Not Responsive	The information, which appears in the “Summary of Account” portion of the bill, has already been turned over. There is no reason why that same information, which is provided in slightly different format on the last page, should not also be turned over. Plaintiffs will therefore do so within 7 days of the date

<sup>6</sup> A 01231 and A 01232 – of unredacted documents were not produced and therefore the unredacted set of documents is off by two numbers.

			of this Order.
A 01244 – A 01246	Credit card statement and attached receipts – travel expenses for Lisa Weisberg redacted, account information redacted, receipts which correspond to unredacted credit card charges also redacted	Not Responsive	The information, which appears in the “Summary of Account” portion of the bill, has already been turned over. There is no reason why that same information, which is provided in slightly different format on the last page, should not also be turned over. Plaintiffs will therefore do so within 7 days of the date of this Order.
A 01247 – A 01248	Credit card statement and attached receipts – travel expenses for Lisa Weisberg redacted, account information redacted, receipts which correspond to unredacted credit card charges also redacted	Not Responsive	The information, which appears in the “Summary of Account” portion of the bill, has already been turned over. There is no reason why that same information, which is provided in slightly different format on the last page, should not also be turned over. Plaintiffs will therefore do so within 7 days of the date of this Order.
A 01249 – A 01250	Credit card statement and attached receipts – travel expenses for Lisa Weisberg and Deborah Bresch redacted, account information redacted, receipts which correspond to unredacted credit card charges also redacted	Not Responsive	The information, which appears in the “Summary of Account” portion of the bill, has already been turned over. There is no reason why that same information, which is provided in slightly different format on the last page, should not also be turned over. Plaintiffs will therefore do so within 7 days of the date of this Order.
AWI 09936 – AWI 09937	Invoice itemization of charges, \$500 to Tom Rider	Not Responsive	Plaintiffs will, within 7 days of the date of this Order, turn over the information relating to the payment to Rider on UR-AWI 09937.
AWI 10050 – AWI 10053 *unredacted	Invoice itemization of charges, including meetings and calls with TR, credit to AWI, and	Not Responsive	Plaintiffs will, within 7 days of the date of this Order, turn over the information relating to the payment to Rider on



d documents: UR-AWI 09950 – UR-AWI 09953	\$500 wire transfer to TR for ASPCA to pay		UR-AWI 09953.
F 04502 – F 04506	Invoice itemization of charges, including long distances calls, discussions, press conferences with Tom Rider, credits to AWI, and Wire Transfer to Tom Rider – ASPCA to pay (\$500)	Not Responsive	Plaintiffs will, within 7 days of the date of this Order, turn over the information relating to the payment to Rider on UR-F 04506.
F 04507 – F 04510	Invoice itemization of charges, including \$500 payment to Tom Rider made via check when TR was in office – ASPCA to pay for 1 week and Advocates- Elephants to pay 1 week	Not Responsive	Plaintiffs will, within 7 days of the date of this Order, turn over the information relating to the payment to Rider on UR-F 04510.
<b>WITHHELD DOCUMENTS (bearing IC bates number)</b>			
IC-076	E-mail from Tracy Silverman to Jill Umphlett requesting that a check be sent to Tom Rider for \$250 via Fed Ex	Not Responsive	Plaintiffs will, within 7 days of the date of this Order, turn over the information relating to the payment to Rider.
IC-193 – IC-197	Invoice from Meyer Glitz including split bill information, payment to account towards Tom Rider's expenses, payment to Tom Rider, payment from account to Tom Rider in Miami, payment to Tom Rider in Atlanta, payment to Tom Rider for expenses, bus fair, hotel in California,	Not Responsive	Plaintiffs will, within 7 days of the date of this Order, turn over the information relating to payments to Rider on IC - 196.

	another payment for Tom Rider in Atlanta, payment for hotel and video camera, and wire transfer to Tom Rider in Atlanta for hotel expenses		
IC-198 – IC-202	Invoice from Meyer Glitz including split bill information, wire transfers to Tom Rider in NY and in CA	Not Responsive	Plaintiffs will, within 7 days of the date of this Order, turn over the information relating to payments to Rider on IC - 201.
IC-203	Letter from Meyer Glitz to FFA re: corrected invoice because previous invoice shared the expense of \$500 wire transfer to Tom Rider when FFA was responsible for the entire amount	Not Responsive	Plaintiffs will, within 7 days of the date of this Order, turn over the information relating to the payment to Rider. Plaintiffs are also instructed to turn over the invoice referenced in the document, if it is within plaintiffs' possession.

It is, therefore, hereby,

**ORDERED** that Plaintiffs' Motion to Compel Redacted Information that has been Withheld by Defendant [#266] is **GRANTED** in part and **DENIED** in part. It is further, hereby,

**ORDERED** that Defendant's Motion to Enforce the Court's August 23, 2007 Order [#223] is **GRANTED** in part and **DENIED** in part. Finally, it is, hereby,

**ORDERED** that Defendant's Motion to Enforce the Court's December 3, 2007 Order [#247] is **GRANTED** in part and **DENIED** in part.

**SO ORDERED.**

Dated: August 1, 2008

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/S/  
JOHN M. FACCIOLA  
UNITED STATES MAGISTRATE JUDGE