

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION)	
OF CRUELTY TO ANIMALS, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Civ. No. 03-2006 (EGS/JMF)
)	
FELD ENTERTAINMENT, INC.)	
)	
Defendant.)	

PLAINTIFFS' AMENDED PRE-TRIAL STATEMENT

Pursuant to Local Rule 16.5, plaintiffs submit this amended pre-trial statement.

I. STATEMENT OF THE CASE

A. Nature of the Case:

This is a case under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531-1544, concerning the endangered Asian elephant. Plaintiffs contend that defendant Feld Entertainment Inc. ("FEI"), which operates the Ringling Brothers and Barnum & Bailey Circus ("Ringling Bros."), "takes" the endangered Asian elephants in its possession in violation of section 9 of the ESA by "harming," "harassing," and "wounding" the elephants. See 16 U.S.C. § 1532(19) (definition of "take"). FEI does so because its employees routinely hit the elephants with bull hooks to train, handle, "correct," and "discipline" the elephants, and to get them to perform and behave as demanded by FEI. FEI also "takes" the elephants by chaining them on hard surfaces for many hours each day, and many more hours when the elephants used in the circus are transported

on train cars from one location to the next, which is done more than forty weeks of each year, year after year.

Plaintiffs contend that because FEI unlawfully takes the endangered elephants, it is also in violation of the provisions of the ESA that prohibit the “possession” and “transportation” of any endangered animal that has been unlawfully taken, 16 U.S.C. §§ 1538(a)(1)(B), (D), and that because it takes the elephants in ways that have not been permitted by the Fish and Wildlife Service (“FWS”), it is also violating the ESA’s separate prohibition against the transportation of any endangered species in interstate commerce in the course of a commercial activity, except as permitted by the Fish and Wildlife Service. Id. § 1538(a)(1)(E).

B. Identities of the Parties:

The Plaintiffs in the case are the American Society for the Prevention of Cruelty to Animals, the Animal Welfare Institute, the Fund for Animals, the Animal Protection Institute, and Tom Rider, a former Ringling Bros. employee. The Defendant is FEI.

C. Basis for the Court’s Jurisdiction:

The Court has jurisdiction over plaintiffs’ claims pursuant to the ESA, 16 U.S.C. § 1540(g), as well as 28 U.S.C. § 1331.

II. STATEMENT OF CLAIMS MADE BY PLAINTIFFS:

A. Plaintiffs’ Claims

Plaintiffs make the following claims:

1. Defendant unlawfully takes endangered Asian elephants, in violation of 16 U.S.C. § 1538(a)(1)(B), by harming, harassing, and wounding them with bull hooks and other instruments;

2. Defendant unlawfully takes endangered Asian elephants, in violation of 16 U.S.C. § 1538(a)(1)(B), by harming, harassing, and wounding them by confining them for long periods of time in chains, on hard surfaces, and in small spaces;
3. Because defendant is unlawfully taking the Asian elephants, it is also in possession of endangered animals that have been unlawfully taken, in violation of 16 U.S.C. § 1538(a)(1)(D); and
4. Because defendant is unlawfully taking the Asian elephants, it is also transporting endangered species that have been unlawfully taken, in violation of 16 U.S.C. § 1538(a)(1)(D), (E).¹

B. Summary of Legal Elements and Factual Support For Each of Plaintiffs' Claims. (Pursuant to the Court's First Amended Pretrial Order at 2).

1. The Legal Elements Governing The Take Of An Endangered Species.

Section 9 of the ESA prohibits the "take" of any endangered species. 16 U.S.C. § 1538(a)(1)(B). This prohibition applies not only to wild animals, but also to endangered species held in captivity. See, e.g., id. § 1538(a)(1) (section 9 prohibits the take of "any endangered species of fish or wildlife" (emphasis added)); see also 63 Fed. Reg. 48634, 48636 (Sept. 11, 1998) (Fish and Wildlife Service explains that "take" was defined by Congress to apply to endangered or threatened wildlife "whether wild or captive").

¹ In their Complaint, plaintiffs also asserted a claim based on the forcible separation of baby elephants from their mothers. See Compl. ¶¶ 1, 78-89, 96. However, the Court's August 23, 2007 partial grant of summary judgment for the defendant does not allow plaintiffs to seek relief with respect to the captive-born elephants, on the grounds that only the FWS can bring an enforcement action concerning those elephants. See Mem. Op. (DE 173) at 17-23. Accordingly, plaintiffs are no longer addressing that specific claim.

The term “take” is broadly defined to mean “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). The FWS has additionally defined “harm” to include any act that “kills or injures wildlife,” including actions that “significantly impair[] essential behavioral patterns,” 50 C.F.R. § 17.3. The term “harass” is defined to mean “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.” *Id.*²

As the Supreme Court has observed, the term “take” is defined in the statute “in the broadest possible manner to include every conceivable way in which a person can take or attempt to take any fish or wildlife.” *Babbitt v. Sweet Home Chapter of Cmty. for a Greater Or.*, 515 U.S. 687, 705 (1995) (quoting S. Rep. No. 93-307, at 7 (1973)) (emphasis added). There is no requirement that the harm to the species be intentional, and both direct and indirect harm can constitute unlawful “takes” of a listed species. *See, e.g., id.* at 704-07 (holding that actions that destroy the habitat of an endangered species can “take” the species).

Once the Court finds that there is an unlawful “take” of an endangered species, it must craft an appropriate remedy to halt the conduct that constitutes the “take.” *See Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 194-95 (1978) (rejecting any role for the courts “to strike a balance of equities” because “Congress has spoken in the plainest of words, making it abundantly clear

² For endangered animals held in captivity, “harass” is further defined to exclude “(1) Animal husbandry practices that meet or exceed the minimum standards for facilities and care under the Animal Welfare Act, (2) Breeding procedures, or (3) Provisions of veterinary care for confining, tranquilizing, or anesthetizing, when such practices, procedures, or provisions are not likely to result in injury to the wildlife.” 50 C.F.R. § 17.3.

that the balance has been struck in favor of affording endangered species the highest of priorities). Accordingly, whether FEI is engaged in other activities that purportedly “conserve” the Asian elephant – a proposition with which plaintiffs vigorously disagree – is completely irrelevant to what this Court has recognized is “a very narrow issue – whether or not defendant’s treatment of its elephants constitutes a taking” under the Endangered Species Act. Mem. Op. (Aug. 23, 2007) (DE 176) at 8.

2. FEI’s Routine Confinement Practices Takes The Elephants.

Plaintiffs have extensive evidence in support of their claim that the elephants are routinely chained for long periods of time, and for days at a time when the elephants are on the road – which is more than forty weeks of every year. In addition to testimony of former and current Ringling Bros. employees, plaintiffs rely on videotape of elephants chained on “picket lines” – i.e., a line of several elephants, each chained on two legs and then to a central stake or “picket” – as well as elephants chained by themselves and chained on the train. In addition, plaintiffs will rely on documents from the United States Department of Agriculture (“USDA”), the agency that administers the Animal Welfare Act, that describe the manner in which the elephants are confined on chains, including one such document that states that “[t]he chains on some were so short and taut, that [the elephants] could not have turned 180 [degrees], or take a single full step forward or backward, much less a few steps.”³ Plaintiffs also have videotape that they subpoenaed from

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³ USDA Memorandum (Dec. 22, 1998), PL 1529 (Pls.’ Will Call Ex. 55).

Plaintiffs will also present evidence showing that even when the elephants are not on chains they are confined in small pens that do not provide them much freedom of movement.

Plaintiffs will present FEI's own documents and deposition testimony to corroborate that the elephants spend many hours each day on chains. For example, FEI's Chief Executive Officer Kenneth Feld **REDACTED**

REDACTED,⁴ and FEI's own "Transportation Orders," which show the time periods that the elephants are on the train, demonstrate that the elephants are chained on the hard train surface in extremely cramped spaces for an average of twenty consecutive hours when the circus travels from one venue to another, and that they are often kept chained in the box cars for sixty to seventy consecutive hours or more, and sometimes as much as ninety to 100 hours.⁵

Plaintiffs will also present evidence from former employees, FEI's own internal documents, USDA records, and records subpoenaed from **REDACTED** **REDACTED** that demonstrate that FEI also often keeps the elephants on the train overnight and at other times when the train is not moving.

Although in its public relations materials, FEI tells the public that the elephants kept at its breeding facility, which it calls "the Center for Elephant Conservation" ("CEC") "can roam and socialize to their heart's content,"⁶ according to testimony from FEI's own manager of that facility, **REDACTED**

⁴ **REDACTED**

⁵ Compilation of data from FEI Transportation Orders (Pls.' Will Call Ex. 50).

⁶ See, e.g., Feld 0003355.

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Plaintiffs' experts will explain that keeping the elephants confined in this manner "harms," "harasses," and "wounds" the elephants in many ways, by contributing to serious foot, leg, joint, and other injuries and diseases, and significantly impairing and disrupting their essential and normal behavioral patterns, including their need to walk, their need to turn around and to explore their surroundings, and their need to socialize with other elephants. Plaintiffs will also demonstrate that many of the elephants engage in what is called "stereotypic" behavior – i.e., they rock back and forth repetitively on their chains – and plaintiffs experts, who have extensively researched such behavior in captive animals, will explain that this is a REDACTED

REDACTED Dr. Philip Ensley, a veterinarian for the San Diego Zoo and Wildlife Park for twenty-nine years – who has reviewed all of the elephants' medical records that plaintiffs were able to secure as a result of two Orders from this Court, Order (Sept. 26, 2005) (DE 50); Order (Sept. 26, 2006) (DE 94), will also testify REDACTED

REDACTED Plaintiffs will rely on eye-witness testimony concerning the stereotypic behavior of the elephants, as well as videotape evidence, including videotape taken at the Court-ordered

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inspections of the elephants.⁸

Plaintiffs will also demonstrate **REDACT** of the FEI elephants have tested positive for tuberculosis (“TB”) over the years, which, according to plaintiffs’ experts **REDACTED**

The prevalence of TB among the elephants is demonstrated by the elephants’ medical records and other internal FEI records, and by USDA records and the fact that the State of Florida has imposed a quarantine on the CEC because elephants there have tested positive for this disease. See FEI Press Release (Sept. 5, 2006) (Pls.’ Will Call Ex. 102).

**3. FEI’s Use Of The Bull Hook And Other Weapons “Takes”
The Asian Elephants.**

Plaintiffs also have substantial evidence that FEI employees’ routine practice is to hit, pull, prod, jab, strike, and “hook” the Asian elephants with an instrument called a “bull hook” or “ankus” – and that FEI now calls a “guide” – which is an approximately three-foot long club with two metal hooks on one end. This instrument is used on a daily basis by FEI employees to strike and “hook” the elephants on various parts of their bodies to make them to do as they are instructed and to “correct,” “discipline,” and punish them for disobeying commands. FEI employees use other instruments for the same purpose, including brooms, whips, and a “hot shot,” which is a device that administers a strong electric shock to the animal.

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Plaintiffs will present testimony from former Ringling Bros. employees that the bull hook is used this way, and they will also present additional eye-witness testimony from other individuals who have observed Ringling Bros. employees throughout the country routinely use the bull hook to prod, pull, jab, strike and hook the elephants. Plaintiffs also have videotape footage of Ringling Bros. employees prodding, jabbing, pulling, striking, and hooking elephants with bull hooks.

Ringling Bros.'s own internal documents and deposition testimony also show that Ringling Bros. employees routinely engage in these practices. For example, one document shows that a "hot shot" was being used to "manage" the elephants, and that one elephant was beaten so badly with a bull hook that she had twenty-two "puncture wounds" caused by "sharp" bull hooks.⁹ Another document states that an elephant was "dripping blood all over the arena floor during the show from being hooked," and that "[l]ast night in the show . . . [a handler] hook[ed] Lutzi under the trunk three times and behind the leg once in an attempt to line her up for the T-mount," and that there was "blood in small pools and dripped along the length of the rubber and . . . all the way inside the barn."¹⁰ Another internal FEI document states that Troy Metzler – a Ringling Bros. "Superintendent of Elephants" – "was observed hitting Angelica 3 to five times in the stocks before unloading her and then using a hand electric prod within public view after unloading," and that Mr. Metzler also "carried an electric prod in his back pocket throughout most of the

⁹ Animal Activity Report, FEI 38273, at 2-3 (Pls.' Will Call Ex. 19).

¹⁰ Memorandum from Deborah Fahrenbruck to Mike Stuart (January 8, 2005), FEI 15025 - 27 (Pls.' Will Call Ex. 9).

California tour.”¹¹

Plaintiffs will also present USDA documents demonstrating evidence of bull hook use on the elephants, including Investigative Reports from that agency that conclude that the trainer’s use of the bull hook on a very young elephant “created behavioral stress and trauma which precipitated in the physical harm and ultimate death of the animal,”¹² and that the striking of another elephant with a bull hook **REDACTED**¹³ Plaintiffs will present testimony and evidence from local law enforcement officials concerning the use of the bull hook on the elephants, including testimony from a former San Jose, California Police Officer.

Plaintiffs’ experts, including Dr. Philip Ensley, who has reviewed all of the medical records for the elephants, Carol Buckley, Colleen Kinzley, and Gail Laule – all of whom have extensive professional knowledge and experience about how the bull hook is used in the circus industry to train and handle elephants – will testify that **REDACTED**

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¹¹ E-mail from Deborah Fahrenbruck to Mike Stuart (Jan. 8, 2005), FEI 15024 (Pls.’ Will Call Ex. 10).

¹² USDA Investigative Report (Sept. 1, 1999), PL 10051 (Pls.’ Will Call Ex. 24).

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¹⁴ Plaintiffs also obtained two separate orders from Judge Facciola requiring that certain medical records that were the subject of this Court’s earlier compulsion orders be provided to him in camera when plaintiffs challenged the withholding of these documents. See Minute Order (June 3, 2008) (concerning FEI 42475 and 42477); Order of Aug. 4, 2008 (DE 325). However, according to FEI, these documents have been lost by FEI’s counsel, and hence they will not be provided to the Court. See FEI’s Resp. To The Court’s Aug. 4, 2008 Order (Aug. 13, 2008) (DE 332). It is plaintiffs’ position that under these unusual circumstances the Court should preclude FEI from relying on other documents that are similar in kind to those that have not been

It is plaintiffs' position that the use of the bull hook and other instruments "wounds" the elephants in violation of the ESA's take prohibition, and that it also "harms" and "harasses" the elephants in violation of the take prohibition because it causes physical, psychological, and behavioral injuries to the elephants (and in one case resulted in the death of an elephant), and also significantly impairs and disrupts the elephants' essential and normal behavioral patterns, including their ability to move freely without being hit, their ability to explore their surroundings, and their ability to socialize with other elephants.

III. STATEMENT OF DEFENSES RAISED BY DEFENDANT:

Defendant has asserted the following defenses:

1. Plaintiffs have failed to state a claim on which relief can be granted;
2. There is no "case or controversy" under Article III of the Constitution because Plaintiffs do not have standing to pursue this action;
3. Plaintiffs lack standing under the Endangered Species Act, 16 U.S.C. § 1531 et seq.;
4. The Court does not have subject matter jurisdiction over plaintiffs' allegations;
5. Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitations;
6. Plaintiffs' claims are barred in whole or in part by the doctrine of laches;
7. Plaintiffs may not challenge the validity of administrative interpretation of regulations issued by the Department of the Interior in this action against

turned over, and that it should also draw a negative evidentiary inference against FEI that these documents would have further corroborated plaintiffs' claims. See Pls.' Mot. In Limine And For Additional Sanctions Due To Def.'s Spoliation of Evidence (Aug. 29, 2008).

Defendant; and

8. This Court does not have jurisdiction over plaintiffs' allegations exceeding the scope of the allegations in the "right to sue" letter referenced in paragraph 95 of the Complaint.

IV. THE SCHEDULE OF WITNESSES TO BE CALLED BY PLAINTIFFS:

(Expert Witnesses are designated by an asterisk)

A. Witnesses Plaintiffs Expect To Call:

Name of Witness	Testimony	Estimated Time
<p>*Dr. Joyce Poole, Ph.D.</p> <p>Buskhellenga 3 3236 Sandefjord Norway (47) 33478817</p>	<p>Background on Asian elephants; Basic elephant physiology and biology; Elephant reproductive behavior; Elephant ecology; Elephant socialization and behavior; Expert opinions regarding the use of bull hooks and other instruments on elephants; Expert opinions regarding the chaining and confinement of the elephants; Opinions about the conservation of elephants; Opinions based on Court-ordered inspection of elephants; Narration of Bedi Films, "<i>Elephant Lord of the Jungle</i>," distributed by U.K. PolyGram Video Ltd., 1987; All subjects covered in her Expert Report and during her deposition.</p>	<p>2-3 hours</p>
<p>*Dr. Ros Clubb, Ph.D.</p> <p>Wilberforce Way, Southwater Horsham, West Sussex RH 13 9RS United Kingdom 44-0-300-1123-0206</p>	<p>Background on elephant behavior and training; Expert opinions on stereotypic and other abnormal behaviors in elephants; Expert opinions on the use of bull hooks and other instruments on elephants; Expert opinions on chaining and confinement of the elephants; All subjects covered in her Expert Report and during her deposition.</p>	<p>1.5 hours</p>

<p>*Gail Laule</p> <p>Active Environments Inc. 7651 Santos Road Lompoc, CA 93436 (805) 737- 3700</p>	<p>The basics of elephant training; Free contact management of captive elephants; Protected contact management of captive elephants; Asian elephant biology and physiology; Expert opinions on the use of bull hooks and other instruments on elephants; Expert opinions on chaining and confinement of the elephants; Expert opinions regarding the ramifications of free contact training; All subjects covered in her Expert Report and during her deposition.</p>	<p>2.5 hours</p>
<p>Patrick CuvIELlo</p> <p>P.O. Box 2834 Redwood City, CA 94064 (650) 654-9955</p>	<p>Eye-witness testimony of Ringling Bros. treatment of elephants from 1989-2008, including use of the bull hook and chaining and confinement of the elephants; Authentication of videotapes.</p>	<p>3 hours</p>
<p>Lanette Williams</p> <p>495 Goodman Branch Rd. Hohenwald, TN 38462 (931) 796-5204</p>	<p>Testimony concerning an inspection by the Santa Clara Valley Humane Society in San Jose California in 1999; Testimony concerning a 2001 incident involving the striking of an elephant named Asia.</p>	<p>1.5 hours</p>
<p>Robert Tom, Jr.</p> <p>90 Joseph Dr. Almo, KY 42020 (270) 873-8209</p>	<p>Former Ringling Bros. employee; Eye-witness testimony of Ringling Bros. treatment of the elephants between 2004-2006, including use of the bull hook and the chaining and confinement of the elephants.</p>	<p>1 hour</p>
<p>Archele Hundley</p> <p>5609 ½ Church Drive Charleston, WV 25306 (304) 421-8424</p>	<p>Former Ringling Bros. employee; Eye-witness testimony of Ringling Bros. treatment of elephants during summer of 2006, including use of the bull hook and the chaining and confinement of the elephants.</p>	<p>1 hour</p>
<p>*Colleen Kinzley (Expert and Fact Witness)</p> <p>General Curator The Oakland Zoo</p>	<p>Overview of elephant physiology and behavior; Expert opinions on the use of bull hooks and other instruments on elephants; Expert opinions on chaining and confinement of the elephants; Expert opinions based on attending</p>	<p>1-2 hours</p>

P.O. Box 5238 Oakland, CA 94605 (510) 632-9525	Court-ordered inspection of the elephants; Explanation of the U.S. captive elephant industry and conservation of elephants; Review of photographs in connection with Santa Clara Valley Humane Society Inspection; All subjects covered in her Expert Report and during her deposition.	
*Ajay Desai B.C. 84, Camp Belgaum - 590001 India 91 831 2462267	Basic elephant physiology and behavior; Asian elephant conservation; History and information on Asian elephants in captivity in Asia; Expert opinions regarding the use of the bull hook and confinement and chaining of elephants; All subjects covered in his Expert Report and during his deposition.	2.5 hours
Tom Rider c/o 4909 Elisabeth Street Cudahy, CA 90201 (202) 374-1503	Former Ringling Bros. employee 1997-1999; Eye-witness testimony regarding the use of the bull hook and other instruments on the elephants; Eye-witness testimony regarding the chaining and confinement of the elephants; Eye-witness testimony regarding the treatment of the elephants from 2000-2008; Testimony regarding his standing and advocacy on behalf of elephants.	3-4 hours
*Dr. Philip Ensley, D.V.M. 2740 Granada Avenue San Diego, CA 92104 (619) 282-9852	Expert Opinion based on a review of the medical records of the FEI elephants; Expert Opinions based on Court-ordered inspections of elephants; Expert opinions regarding the use of bull hooks and other instruments on elephants; Expert opinions regarding the chaining and confinement of the elephants; All subjects covered in his Expert Report and during his deposition.	2-3 hours
*Carol Buckley (Expert and Fact Witness) The Elephant Sanctuary	Background on elephants; Expert opinions on the use of bull hooks and other instruments on elephants; Expert opinions on chaining and confinement of the elephants; Expert opinions	2 hours

183 Buck Hollow Road Hohenwald, TN 38462 (931) 796-6500	based on knowledge of elephant trainers and former work and experience in the circus industry; Expert opinions based on attending Court-ordered inspections of the elephants; All subjects covered in her Expert Report and during her deposition.	
Nicole Paquette Animal Protection Institute 1122 S Street Sacramento, CA 95811 (916) 447-3085	Testimony regarding the standing of API, including legislative activities; and changes in the captive elephant industry.	1-2 hours
*Dr. Benjamin Hart, Ph.D. School of Veterinary Medicine University of California, Davis, CA 95616 (530) 752-2181	Background on elephants; Expert opinions on the use of bull hooks and other instruments on elephants; Expert opinions on chaining and confinement of the elephants; Conservation of wild elephants; All subjects covered in his Expert Report and during his deposition.	2 hours

B. Witnesses Plaintiffs May Call If Necessary:

Deniz Bolbo P.O. Box 2834 Redwood City, CA 94064 (650) 654-9955	To authenticate video recordings of Ringling Bros. elephants.	45 minutes
Louis Gedo 150-15 Sanford Ave. Apt. 3A Flushing, NY 11355 (718) 359-6424	To authenticate video evidence contained in PL 08972.	20-30 minutes

Barbara Grove 40 Clinton Street, Apt. 4 Redwood, CA 94062 (650) 839-0305	To authenticate video recordings of Ringling Bros. elephants.	45 minutes - 1 hour
Rob Hutton 817 South One Thousand East #3 Salt Lake City, UT 84102 (801) 550-8065	To authenticate video recordings of Ringling Bros. elephants.	30 minutes
Paul Kercheval c/o 501 Front Street Norfolk, VA 23510 (757) 622-7382	To authenticate video recordings of Ringling Bros. elephants.	30 minutes
Alfredo Kuba 500 W. Middlefield Rd. Mountain View, CA 94043 (510) 632-9525	To authenticate video recordings of Ringling Bros. elephants.	30 minutes
Michelle Sinnott 1601 Connecticut Ave., N.W. Suite 700 Washington, DC 20009 (202) 588-5206	To explain the compilation of the data contained in the Transportation Orders produced by defendant.	30-40 minutes
Elisabeth Swart 10 State Street Newburyport, MA 01950 (508) 783-8308	To authenticate video recordings of Ringling Bros. elephants, handlers, and trainers.	45 minutes

Nicholas Trammel 1015 Tennyson Street Denver, Colorado 80204 (303) 861-3078	To authenticate video recordings of Ringling Bros. elephants.	20-30 minutes
Burlington Northern Santa Fe Railroad (BNSF), Corporate Representative 2650 Lou Menk Drive Fort Worth, TX 76131-2830 (800) 795-2673	To authenticate subpoenaed records concerning number of hours Ringling Bros. train used railroad tracks.	30-45 minutes
CSX Transportation Corp., Corporate Representative 500 Water Street, 15th Floor Jacksonville, FL 32202 (904) 359-3200	To authenticate subpoenaed records concerning number of hours Ringling Bros. train used railroad tracks.	30-45 minutes
Washington Humane Society, Representative 4590 Macarthur Blvd. NW. Washington, DC 20007 (202) 234-8626	To authenticate records, FEI 1576.	10-15 minutes

V. EXHIBITS TO BE OFFERED IN EVIDENCE BY PLAINTIFFS:

A. Exhibits Plaintiffs Expect To Offer:

- Exhibit 1 Records Pertaining to Ringling Brothers Elephants Reviewed by Plaintiffs' Expert
Dr. Philip Ensley (contained on DVD provided to Defendant on 8/23/08)
- Exhibit 1A Medical Records of Ringling Brothers Elephants Prepared by Defendant or at
Defendant's Request
- Exhibit 1B USDA and Other Enforcement Agency Records Pertaining to Ringling Brothers

Elephants

- Exhibit 1C Regulatory Documents Regarding the Location and Transfer of Ringling Brothers Elephants
- Exhibit 2 Records of the Elephants Jewell, Karen, Lutzi, Mysore, Nicole, Susan, and Zina Reviewed by Plaintiffs' Expert Dr. Philip Ensley (contained on DVD provided to Defendant on 8/23/08)
- Exhibit 2A Medical Records of the Elephants Jewell, Karen, Lutzi, Mysore, Nicole, Susan, and Zina Prepared by Defendant or at Defendant's Request
- Exhibit 2B USDA and Other Enforcement Agency Records Pertaining to the Elephants Jewell, Karen, Lutzi, Mysore, Nicole, Susan, and Zina
- Exhibit 2C Regulatory Documents Regarding the Location and Transfer of the Elephants Jewell, Karen, Lutzi, Mysore, Nicole, Susan, and Zina
- Exhibit 3 9/26/00 Affidavit of Dr. Michael Smith regarding a 9/7/00 inspection of Ringling Brothers Blue Unit (FELD 0688-0691)
- Exhibit 4 1/16/99 Narrative written by Kristina Cox Documenting the 1/7/99 and 1/8/99 Inspection of Ringling Brothers Blue Unit (PL 14244-14245)
- Exhibit 5 Adams, Dr. Jack, Wild Elephants In Captivity (PL 10896)
- Exhibit 6 8/25/01 Humane Society of Santa Clara Valley elephant abuse citation issued to Mark Oliver Gebel (FELD 28618)
- Exhibit 7 9/2/05 Report of Investigation for Case # VA05008-AC (PL 11716-11724)
- Exhibit 8 10/12/05 Letter to Kenneth Vail from Cassie Armiger regarding Case # VA05008-AC (PL 14659-14660)
- Exhibit 9 1/8/05 Email from Deborah Fahrenbruck to Mike Stuart regarding a letter written, but never sent, to Kenneth Feld (FEI 15025-15027)
- Exhibit 10 1/8/05 Email from Deborah Fahrenbruck to Mike Stuart regarding notes on Phoenix/California (FEI 15024)
- Exhibit 11 7/25/04 Email from Heather Riggs to William Lindsay, Ellen Wiedner, and Allison Case regarding a few updates (FEI 16646-16648)

- Exhibit 12 7/24/04 Email from Heather Riggs to William Lindsay, Ellen Wiedner, and Allison Case regarding elephants (FEI 16614-16618)
- Exhibit 13 9/14/00 Inspection Report of Ringling Brothers Red Unit (PL 11784)
- Exhibit 14 6/9/00 Memo from Carl LaLonde to Dr. Miava Binkley regarding Case #OH00018-AC (PL 11840-11841)
- Exhibit 15 5/31/00 Interview Log regarding Case # OH00018-AC (FELD 591)
- Exhibit 16 9/3/99 Email from William Lindsay to Pete Cimini regarding Elephant Reports (FEI 31338-31342)
- Exhibit 17 Lanette Williams report of 8/22-29/99 inspection, Government Exhibit 85 (FELD 626-636)
- Exhibit 18 9/20/94 Inter-Office Memorandum from Richard Froemming to Kenneth Feld regarding status update - winter quarters, animals, and projects (FEI 39504-Revised - FEI 39507H-Revised)
- Exhibit 19 3/7/94 Animal Activist Activities (FEI 38273-38299)
- Exhibit 20 7/20/00 Affidavit of Tom Rider (PL 4458-4464)
- Exhibit 21 5/15/01 Report of Investigation for Case # CA01069-AC (PL 1351-1352)
- Exhibit 22 9/18/01 Ringling Bros. and Barnum & Bailey Circus Department of Veterinary Care Elephant Workshop in Conjunction with the Annual Meeting of the American Association of Zoo Veterinarians (FEI 2349-2373)
- Exhibit 23 2/4/01 Email from Cathy Shilton to Mark Gaipo regarding vet report (FEI 21230)
- Exhibit 24 9/1/99 Report of Investigation for Case # TX99237-AC (PL 3141-3150)
- Exhibit 25 8/30/04 Email from Ellen Wiedner to William Lindsay, Allison Case, and Ramiro Isaza (FEI 32492-32494)
- Exhibit 26 1/9/99 Affidavit of Robert Ridley (FELD 23386)
- Exhibit 27 8/25/01, 8/30/01, 9/1/01, and 9/4/01 Report of Humane Society of Santa Clara Valley Inspection Report of Ringling Brothers (FELD 28607-28617)
- Exhibit 28 5/20/05 Letter from Adam Parascandola to Julie Strauss regarding investigation by

the Washington Humane Society on 4/16/05 (FEI 1576-1579)

Exhibit 29 7/26/04 Email from Allison Case to Jim Andacht and Mark Gaipo (FEI 19522)

Exhibit 31 3/6/98 Email from Ron DeHaven to Michael Dunn regarding several Ringling Brothers investigations (FELD 00219)

Exhibit 32 2/5/98 Affidavit of Gary West regarding the elephant Kenny (PL 1537-1539)

Exhibit 33 7/5/98 Consent Decision relating to the elephant Kenny (A 1126-1129)

Exhibit 34 Documents concerning the location and transfer of Ringling Brothers elephants (2000-2005)

FEI 1453-1456

FELD 6022-6023

FEI 11014

FELD 5891

FELD 6086-6087

FEI 11150

FELD 5889

FELD 6252-6253

Exhibit 35 Regulatory Status of Asian Elephants Currently Owned by Feld Entertainment, Inc. - Summary (Exhibit 1 to Defendant Motion for Summary Judgment, DE 82)

Exhibit 36 5/1/05 - 7/16/07 Asian Elephant North American Regional Studbook (PL 16303-16430)

Exhibit 37 9/19/07 Defendant's Notice of Issues (DE 188)

Exhibit 38 5/11/00 Daily Animal Report (FEI 36506)

Exhibit 39 Marcy Rosendale's inspection notes from a 7/11/06 inspection (PL 13735-13736)

Exhibit 40 Physical Examination and Diagnostic Procedures (FEI 2358)

Exhibit 41 2/16/99 Memo from Miava Binkley documenting USDA inspection of Doc and Angelica (FEI 817-818)

Exhibit 42 2/9-10/99 Inspection Report of Ringling Brothers CEC (PL 3846)

Exhibit 43 5/11/99 Letter from Ron DeHaven to Julie Strauss regarding the 2/10/99 inspection at Ringling Brothers CEC (FEI 843-844)

Exhibit 44 Blue Unit Elephant Husbandry Protocol (FEI 51888-51890)

Exhibit 45 Daily Routine for the CEC (FEI 49629)

- Exhibit 46 Defendant's First and Supplemental Responses to Plaintiffs' Interrogatories (6/9/04, 3/3/05, 1/31/07, and 1/30/08)
- Exhibit 47 Defendant's Response to Plaintiff's Request for Admissions (6/9/04)
- Exhibit 48 7/21/04 Memo from Michael Smith to Dr. Garland regarding a 7/12/04 Ringling Brothers train arrival inspection (PL 13535-13536)
- Exhibit 49 Transportation Orders
- Exhibit 49A Blue Unit Transportation Orders dated 2000-2008 (see Appendix A)
- Exhibit 49B Red Unit Transportation Orders dated 2000-2008 (see Appendix A)
- Exhibit 49C Blue and Red Unit Transportation Orders dated 1997-1999 (see Appendix A)
- Exhibit 50 Declaration of Michelle Sinnott and Attachments (Exhibit 37 to Plaintiffs' Motion for Preliminary Injunction, DE 297)
- Exhibit 51 Burlington Northern Santa Fe Railroad Documents dated 2007
- | | | |
|----------------|----------------|----------------|
| PL 17118-17120 | PL 17225-17227 | PL 17460-17462 |
| PL 17133-17138 | PL 17229-17231 | PL 17499-17501 |
| PL 17145-17148 | PL 17234-17237 | PL 17662-17666 |
| PL 17172-17177 | PL 17258-17263 | PL 17687-17691 |
| PL 17178-17183 | PL 17353-17354 | PL 17707-17708 |
| PL 17212 | PL 17381-17383 | PL 17711-17713 |
| PL 17212-17213 | PL 17384-17386 | PL 17736-17741 |
| PL 17216-17218 | PL 17387-17391 | |
- Exhibit 52 10/16/04 Email from Ellen Wiedner to William Lindsay, Allison Case, and Ramiro Isaza (FEI 33114-33115)
- Exhibit 53 1/25/02 Email from Todd Willens to Joe DeMike (FEI 17030-17032)
- Exhibit 54 7/16/99 Memo from Charles Curren to Dr. Robert Williams documenting a 7/15/99 inspection (PL 2081-2083)
- Exhibit 55 Undated Memo from S. Taylor to R. Williams documenting a 12/22/98 inspection (FELD 1529-1531)

Exhibit 56 5/9/05 Ringling Brothers Circus Operations Standard Operating Procedures (FEI 3069-3086)

Exhibit 57 5/10/00 Email from Betty Goldentyer to Barbara Kohn regarding Research Proposal (PL 11874)

Exhibit 58 6/18/99 Elephant Daily Report (FEI 22576)

Exhibit 59 2/27/01 Daily Animal Record (FEI 36878)

Exhibit 60 8/2/01-8/13/01 Daily Animal Record (FEI 36713-36723)

Exhibit 61 5/11/06 Animal Welfare Complaint regarding allegations of elephant abuse at Ringling Brothers (PL 13718-13721)

Exhibit 62 8/12/04 Affidavit of Jonathon Griggs regarding Investigation # AZ04156 (PL 13483-13486)

Exhibit 63 7/21/04 Memo from Michael Smith to Dr. Garland regarding Ringling Circus train arrival inspection (PL 13535-13536)

Exhibit 64 Itineraries for Ringling Brothers Red and Blue Units (2001-2007)

FELD 1684-1685	PL 12056-12057	FELD 1697-1698
FELD 1686-1687	PL 13595-13596	FELD 1700-1702
FELD 1688-1689	PL 13588	PL 12066
FELD 1699	FELD 1693-1694	PL 13577-13578
FELD 1690	FELD 1695-1696	PL 13572

Exhibit 65 Friend, Ted, Transportation and Management of Circus Animals, Transportation of Circus Elephants, July 2001 (FELD 2210-2317)

Exhibit 66 5/3/99 Daily Animal Report (FEI 22645)

Exhibit 67 10/17/99 Daily Animal Report (FEI 22670)

Exhibit 68 10/22/99 Daily Animal Report (FEI 22672)

Exhibit 69 Elephant Husbandry Care Ringling Bros. and Barnum & Bailey Circus (FEI 13060)

Exhibit 70 USDA Animal Care Resource Guide, 10/13/98 Policy #6 (FELD 2453-2454)

- Exhibit 71 USDA Animal Care Resource Guide, 4/1/98 Policy #21 (F 3348-3349)
- Exhibit 72 9/5/97 Animal Care Inspection Report (FELD 001-002)
- Exhibit 73 3/2001 AZA Standards for Elephant Management and Care (PL 10938-10950)
- Exhibit 74 5/2003 AZA Standards for Elephant Management and Care (API 1424-1437)
- Exhibit 75 AAZPA Guidelines for Management of Elephants in Captivity (F 3403-3408)
- Exhibit 76 2002 Feld Entertainment Standards and Guidelines for Animal Care and Management (FEI 438-467)
- Exhibit 77 9/3/94 Memorandum from Richard Froemming to Richard Houck regarding Guide for Animal Handlers (FEI 486-489)
- Exhibit 78 2/5/01-2/10/01 AZA Principles of Elephant Management, Wheeling, WV, conducted by American Zoo & Aquarium Association (PL16732-16998)
- Exhibit 79 The Elephant Managers Association Inc. Guidelines for Elephant Management and Care (FEI 3215-3225)
- Exhibit 80 Roocroft, Alan and Zoll, Donald Atwell, Managing Elephants: An Introduction to Their Training and Management, 1994 (PL 11245)
- Exhibit 81 12/14/97 Letter from Joan Galvin to Barbara Kohn regarding Docket No. 97-001-1; Handling, Training and Exhibition of Potentially Dangerous Exotic or Wild Animals (FELD 25288-25300)
- Exhibit 82 Complaint, ASPCA et al. v. Feld Entertainment, Inc. et al., Civ. No. 03-2006 (EGS/JMF)
- Supplemental Complaint ASPCA et al. v. Feld Entertainment, Inc. et al., Civ. No. 03-2006 (EGS/JMF)
- Exhibit 83 5/14/02 Invoice, Check Request, and Check concerning the purchase of 40 bullhooks for \$12,000 from Charlie Gray (FELD 3295-3297)
- Exhibit 84 September 2005 USDA/APHIS Audit Report; APHIS Animal Care Program Inspection and Enforcement Activities (PL 10817-10876)
- Exhibit 85 3/29/07 Letter from Elizabeth Goldentyer to Robert Huttenlocker regarding Case # VA07015 (PL 13841)

- Exhibit 86 Documents reflecting the origin of Ringling Brothers elephants (DX 5 and DX7 to Defendant Motion for Summary Judgment, DE 82)
- Exhibit 87 2/15/01 Affidavit of Gary West regarding the investigation of the Doc and Angelica incident (PL 4104-4108)
- Exhibit 88 8/9/01 Letter from Jeannie Perron to Ron DeHaven regarding a previous letter to Feld Entertainment, Inc. of July 23, 2001 (PL 4145)
- Exhibit 89 8/10/01 Letter from Ron DeHaven to Jeannie Perron (PL 4147)
- Exhibit 90 3/28/00 Letter from Julie Strauss to Ron DeHaven regarding a February 1999 inspection at the CEC (FELD 25632-25634)
- Exhibit 91 Plaintiffs' 60-Day Notice Letters (12/21/98, 11/15/99, 4/12/01, 7/22/05)
- Exhibit 92 Documents reflecting Animal Protection Institute's Circus Advocacy Work
API 4827-4937
API 5549-5704
API 2868-2873
API 7203-7206
API 7256-7259
API Website (current)
- API Third Supplemental Interrogatory Responses (9/24/07)
- Exhibit 93 7/21/00 Memo from Diane Ward to Robert Gibbens (PL 12609-12611)
- Exhibit 94 Media concerning Tom Rider and the Ringling Brothers Circus
Exhibit 94A Print Media (see Appendix A)
Exhibit 94B Broadcast Media (see Appendix A)
- Exhibit 95 Legislation regarding Circus Practices

PL 05405-05410	API 1850-1852	API 1962-1963
FEI 38603	API 1840-1849	API 1993
API 1886	API 1888-1893	API 4938-4939
API 1912-1916	API 2013-2015	API 1398-1402
API 5005-5011	API 1909-1911	API 3751-3752
API 4955-4957	API 1880-1883	API 0653-0670
API 1853-1855	API 1976-1979	API 0639-0642
API 4977-4979	API 1859-1879	PL 08731-08734

- Exhibit 96 Feld Entertainment & Subsidiaries tax form number 1120 (2004) (Exhibit H to Plaintiffs' Opposition to Defendant Motion for Summary Judgment, DE 96)
- Exhibit 97 Dukceovich, David Forbes Face: Kenneth Feld, Forbes.com, 1/9/01(PL 5917-5918)
- Exhibit 98 8/6/04 Email from Kenneth Feld regarding Riccardo(FEI 30193)
- Exhibit 99 2006 Ringling Brothers and Barnum & Bailey Animal Care Brochure (PL 15735)
- Kirtland, John, Ort-Mabry, Catherine, and Jacobson, Gary, Endangered Species? Not If We Can Help It. Reproductive Success at Ringling Brothers Center for Elephant Conservation (FEI 719-749)
- Exhibit 100 Excerpts, Ringling Brothers Website (7/24/08)
- Show and Ticket Information
- Animal Care FAQ, Answers by Bruce Read
- Amazing Animals
- Awesome Elephants; CEC
- Animal Care; Get the Answers
- Excerpts, Center for Elephant Conservation Website (7/24/08)
- Home
- About the Center for Elephant Conservation
- Safety and Comfort in a Pristine Wilderness
- Ringling Bros. Center for Elephant Conservation Facts & Figures
- Asian Elephants by the Numbers
- The Nursery
- A Year in the Life of an Asian Elephant
- Elephants Born in Ringling Bros. Breeding Program
- Research & Conservation
- Ringling Bros. Center for Elephant Conservation Media Contact Information
- Exhibit 101 Excerpts, Ringling Brothers Website (Current)
- Exhibit 102 Documents reflecting the TB status of Ringling Brothers Elephants (see Appendix A)
- Exhibit 103 Guidelines for the Control of Tuberculosis in Elephants (March 2008, 2003, Oct. 2002, Jan. 2000, Nov. 1997)
- PL 11034-11061 FELD 14386-14422 FELD 29774-29814
- <http://www.usaha.org/committees/tb/tb.shtml>

- Exhibit 104 USDA Animal Care Resource Guide, 7/17/07 Policy #3
http://www.aphis.usda.gov/animal_welfare/downloads/policy/policy3.pdf
- Exhibit 105 5/12/06 Letter from Michelle Pardo to Kimberly Ockene regarding the production of elephant veterinary records
- Exhibit 106 9/7/00 Inspection Report of Ringling Brothers (FEI 629)
- Exhibit 107 5/3/06 Inspection Report of Ringling Brothers CEC (PL 13566)
- Exhibit 108 6/9/98 Inspection Report of Ringling Brothers CEC (FELD 063-064)
- Exhibit 109 8/27/01 Memorandum from Charmain Zordan to Diane Ward regarding additional information on Investigation #CA00136-AC (PL 4607)
- Exhibit 110 Internal Ringling Brothers Notes concerning an 6/9/04 inspection by the Ashville Animal Services (FEI 10893)
- Exhibit 111 Trial Testimony of Kenneth Feld, People for the Ethical Treatment of Animals v. Kenneth Feld, et al., No. 024452 (Cir. CT. Fairfax County, VA) (March 9, 2006, at 1894-2118)
- Exhibit 112 7/2004 - 8/2004 Handwritten Notes Regarding the Elephant India (FELD 9753)
- Exhibit 113 Plaintiffs' Expert Reports and Exhibits
- Exhibit 114 9/29/05 Declaration of Archele Hundley (API 6241-6248)
 12/13/06 USDA Affidavit of Archele Hundley (PL 14350-14354)
- Exhibit 115 10/10/06 Declaration of Robert Tom, Jr. (API 6235-6240)
 4/4/07 USDA Affidavit of Robert Tom, Jr. (PL 14501-14502)
- Exhibit 116 1/13/06 Letter from Margaret Tom to The Honorable Richard Daley regarding elephant abuse at Ringling Brothers (PL 10936)
 4/4/07 USDA Affidavit of Margaret Tom (PL 14503-14504)
- Exhibit 117 Photographs of Ringling Brothers Elephants
- | | | |
|-----------------|---------------|----------------|
| FEI 15436-15437 | FEI 7940-7943 | FEI 7970-7971 |
| FEI 7984-7985 | FEI 7990-7991 | FEI 7998-7999 |
| FEI 8016-8017 | FEI 8047-8049 | FEI 8058-8059 |
| FEI 8070-8075 | FEI 8080-8081 | FEI 8085- 8090 |

FEI 8106-8109	FEU 8120-8121	FEI 8124-8125
FEI 8150-8154	FEI 8161-8162	FEI 8168-8169
FEI 8175-8188	FEI 8223-8225	FEI 8232-8243
FEI 8248-8251	FEI 8257-8268	FEI 8283-8284
FEI 12201-12202		

Exhibit 118 Photographs taken during Court Ordered Inspection of The Center for Elephant Conservation (11/29/07) and the Blue Unit in Auburn Hills, MI (11/13/07)

PL 15010	PL 14992	PL 15000	PL 15143	PL 15145
PL 15148	PL 15150	PL 15051	PL 15072	PL 15086
PL 15018	PL 15017	PL 15121	PL 15118	PL 15543
PL 15548	PL 15600	PL 15601	PL 15602	PL 15652
PL 15661	PL 15688	PL 15725	PL 15727	

Exhibit 119 8/23/99 Photographs taken by Christine Franco as part of a Santa Clara Humane Society Inspection of Ringling Brothers (PL 8318-8361)

Exhibit 120 Photographs taken during 8/25/01 - 9/4/01 Humane Society of Santa Clara Valley Inspection of Ringling Brothers (FELD 28620-28625, FELD 28674-28677, FELD 28391)

Exhibit 121A "Ringling Abuse" (PL 07074) - Part I (0:00:00 - 2:04:12)

Exhibit 121B "Ringling Abuse" (PL 07074) - Part II (2:04:13 - 5:05:53)

Exhibit 122 PETA "Ringling Bullhooking Incidents in Greenville, SC on 2/1/06" (00-43:15) and 2/3/06 (26:58 - end) (PL 08982)

Exhibit 123 Pat CuvIELlo Compilation (PL 07069)

Exhibit 124 1987 Footage - PAWS Ringling Bros. Elephant Complaint (PL 070660)

Exhibit 125A Ringling Bros. in Mexico 5/9/98 (PL 08979)

Exhibit 125B Ringling Bros. in Mexico 5/9/98 (Exhibit H to Edward Stewart's Deposition)

Exhibit 126 Carson & Barnes Elephant Training (PL 14918)

Exhibit 127 Footage of Austin Texas, July 2, 2006 (API 7166)

Exhibit 128 Ringling - Angelica & Sara chained & Swaying (PL 08980)

#18 Ringling Bros. Oakland, Ca Aug 04 Violations 2-131(2)(1) Exhibit 3A to VA 05008 USDA Investigation (PL 14913)

- Exhibit 129 “Ringling’s Greatest Hits” (201 mins) (PL 07083)
- Exhibit 130 Ringling Brother’s Elephants chained in boxcars, March 2000 (PL 08972)
- Exhibit 131 RB Blue Unit; Oakland, CA, San Jose, CA: Parking lot scene @ 6:45:35 7/11/06 (PL 08963)
- Exhibit 132 Compilation of video footage of elephants from 1987-2004 (Produced to Defendant on 3/20/08 along with Plaintiff’s Expert Reports)
- Exhibit 133 Compilation (May 6, 2005) (Produced to Defendant on 3/20/08 along with Plaintiff’s Expert Reports)
(PL 08970, PL 08963, PL 08980, PL 08979, FELD-VID 0004, PL 08969)
- Exhibit 135 Compilation of Defendant Video Footage (Provided to Defendant on 6/10/08)
- | | | | | |
|-----------|-----------|-----------|-----------|-----------|
| FEI 40979 | FEI 45189 | FEI 45221 | FEI 45190 | FEI 45191 |
| FEI 40964 | FEI 40973 | FEI 45229 | FEI 45233 | FEI 45193 |
| FEI 45204 | FEI 45245 | FEI 45194 | FEI 45196 | FEI 45198 |
| FEI 45215 | FEI 45216 | FEI 40966 | | |
- Exhibit 136 Compilation of Defendant Performance Footage (Provided to Defendant on 6/10/08)
- | | | |
|-----------|----------|-----------|
| FEI 45220 | FEI 0022 | FEI 00024 |
| PL 08969 | FEI 3241 | FEI 10353 |
- Exhibit 137 Compilation of PETA Footage (Provided to Defendant on 6/10/08) (PL 16717, API 7166)
- Exhibit 139 Training & Rehearsal Footage from Defendant (Provided to Defendant on 6/10/08)
- | | | |
|-----------|---------------|-----------|
| FEI 40988 | FEI 004 | FEI 0022 |
| FEI 40976 | FELD-VID 0004 | FEI 40956 |
| FEI 40979 | FEI 0001 | FEI 40981 |
| FEI 40959 | | |
- Exhibit 140 Plaintiffs’ Training Footage Compilation (Provided to Defendant on 6/10/08) (PL 07077, PL 14918, PL 09043, PL 09044)

- Exhibit 141 Baby Ricardo - Raw Birth Footage - unedited (FELD-VID 006, FEI 0019)
- Exhibit 142 Video footage of the Rule 34 Inspection at the Center for Elephant Conservation outside Polk City, Florida (11/29/07)
- Exhibit 143 Video footage of the Rule 34 Inspection of the Blue Unit in Auburn Hills, Michigan (11/13/07)
- Exhibit 144 "Our Girls Video" - The Elephant Sanctuary - www.elephants.com (PL 08973)
- Exhibit 145A Surveillance Video from Madison Square Garden
Ex. 1, 2, 3, 4, 5-1, 5-2, 5-3, 5-5, 5-6, 5-7, 5-10, 5-11, 5-12, 5-13, 5-14, 5-15, and 5-16 to Temistocles Nadal's Deposition (February 8, 2005)
- Exhibit 145B Surveillance Video from the MCI Center
Ex. 1 and 2-9 to David Clarence Coley's Deposition (August 10, 2004)
- Exhibit 146 Pat CuvIELlo Recent Compilation - Ringling '05 and '06 (PL 17095)
- Exhibit 147 Video of Santa Clara Humane Society Inspection, San Jose, CA (7/99) (PL 08962)
- Exhibit 148 Hershey Animal Care Shoot, Tape 4 of 5 5/27/04, AC2004-004-01 (FEI 145224)
- Exhibit 149 #8 Interviews with: Kenneth Feld, Gunther Gebel Williams; Gunther's Triumphant Return RB000-381-R (FEI 45200)
- Exhibit 150A Baby 1/4/1996 (FEI 10362) - Part I (0:00:00 - 4:05:26)
- Exhibit 150B Baby 1/4/1996 (FEI 10362) - Part II (4:05:27 - 6:10:53)
- Exhibit 150C Baby 1/4/1996 (10368)

Additional Exhibits Plaintiffs Expect to Offer:

Plaintiffs reserve the right to rely on any documents, videos, or audio recordings that may be released to plaintiffs as a result of a pending in camera review by Judge Facciola.

Plaintiffs reserve the right to rely on all pleadings; Civ. No. 1641, Civ. No. 06-2003, and Civ. No. 07-1532.

Plaintiffs reserve the right to rely on compilations of evidence that may be made for the convenience of the Court.

Plaintiffs reserve the right to rely on enlargements and exemplars of Exhibits that may be shown at trial.

B. Exhibits Plaintiffs May Offer:

- Exhibit 3 7/25/00 Affidavit of Joel Parrott regarding the examination of photographs taken by Christine Franco (PL 4717-4718)
- Exhibit 5 Separation and Weaning of Young Elephants (FELD 19902-19906)
- Exhibit 6 Request from USDA to Julie Strauss regarding additional items needed for Investigation Number FL98026 and Julie Strauss's 11/4/04 response to this request (FELD 27825-27831)
- Exhibit 7 4/4/94 Animal Activist Activities with Related Materials to Same (FEI 38291-38299)
- Exhibit 9 10/26/04 Report of Investigation for Case # AZ040156-AC (PL 13390-13426)
- Exhibit 10 8/12/04 Affidavit of Eugene Pettus regarding Investigation # AZ040156-AC (PL 13478-13480)
- Exhibit 11 5/14/01 Email from Diane Ward to Francis Keyser regarding Richard Froeming (PL 18037)
- Exhibit 12 8/30/00 Memo from Diane Ward to Samuel Santiago regarding case # CA00136-AC (PL 18025-18026, PL 4499-4500)
- Exhibit 13 Affidavits of Ringling Brothers Employees (FELD 25203-25209)
- Exhibit 14 8/24/00 Narrative from S. Taylor to M. Binkley regarding USDA Inspection (PL 4027-4028)
- Exhibit 15 5/31/00 Interview Log regarding case # OH00018-AC (FELD 896)
- Exhibit 16 11/23/02 Employee Tranquilizer Training – Red Unit Winter Quarters – Tampa, FL (FEI 1790)
- Exhibit 18 10/29/01 Letter from Chester Gipson to Jeannie Perron and Julie Strauss (FELD 39517-39518)
- Exhibit 19 Care and Weaning of Young Elephants (FELD 29207-29209)

- Exhibit 20 4/4/94 Letter from Richard Froemming to Kenneth Feld (FEI 38233-38290)
- Exhibit 21 12/13/99 Email from Dennis Schmitt to Debbie Olson (FEI 18885-18886)
- Exhibit 22 10/22/07 Email from Customer Service regarding Ringling.com: Animal Care (FEI 49137)
- Exhibit 23 9/8/99 Email and attachment from Richard Froemming to Randy Peterson regarding Menage Number 130th (FEI 32603-32605)
- Exhibit 24 1/12/01 Affidavit of Miava Binkley concerning FL 01095 (PL 4067)
- Exhibit 25 9/9/99 Narrative concerning inspection at the CEC (FEI 819-820)
- Exhibit 26 6/9/98 Inspection Report of Ringling Brothers CEC (FELD 063-064)
- Exhibit 27 2007 Animal Care Routine (FEI 49043-49063)
- Exhibit 28 1/20/00 AZA Press Release (API 6133-6135)
- Exhibit 29 3/21/00 AZA Policies on Elephants (API 3238-3239)
- Exhibit 30 Roberts, Ed, *Elephant Control*, June 1979, Elephant Keepers Forum (PL 16720-16724)
- Exhibit 31 3/23/05 Memo to USDA and APHIS (AWI 6643-6645)
- Exhibit 32 Complaint, Performing Animal Welfare Society et al. v. Feld Entertainment, Inc., et al., No. S-00-1259-GEB-DAD (E.D. Ca.)
- Exhibit 33 6/6/05 Letter from Julie Strauss to Adam Parascandola (FEI 1572-1575)
- Exhibit 34 Memorandum Opinion, Jan Pottker, et al., v. Kenneth Feld, et al., No. 1999 CA 008068 B (Sup. Ct. D.C.)(August 14, 2008)
- Exhibit 35 3/22/07 Email from Kenneth Vail to Martine Frank (PL 14516)
- Exhibit 36 8/18/00 Email from Diane Ward to Robert Gibbens (PL 10993)
- Exhibit 37 3/23/99 Letter from Julie Straus to Bob Ertman regarding Ringling Brothers Annual Report (PL 1731-1732)

- Exhibit 38 4/2/01 Letter from Julie Strauss to Bob Ertman regarding Ringling Brothers 2000 Annual Report (FELD 198-200)
- Exhibit 39 4/14/99 Letter from Ron DeHaven to Dr. Gary West regarding the 2/10/99 inspection at Ringling Brothers CEC (FELD 25617-25618)
- Exhibit 40 2/17/05 Email from Anita Santiago to Angelina Quevedo (FEI 11466-11467)
- Exhibit 41 12/8/04 Statement of Gary Jacobson (FELD 27834)
- Exhibit 42 4/30/07 Letter from John Simpson to Katherine Meyer
- Exhibit 43 7/17/02 Email from Todd Willens to Dan Hupart regarding IDA Ringling press release (FELD 28213-28215, FELD 24703-24704)
- Exhibit 44 Ringling Brothers Barnum & Bailey Circus Long-Term Animal Task Force (FEI 1480-1512)
- Exhibit 45 Krupp, Sarah, *Circus Vargas Reinvents Itself*, Contra Cost Times, 10/31/05 (Exhibit 8 to Plaintiffs' Opposition to Defendants Motion for Leave to Amend Answer to Assert Addition Defense and RICO Counterclaim, DE 132)

Lemonick, Michael, *Who Belongs in the Zoo? It May be That Some Animals Just Can't Be Kept Humanely in Captivity, Zoos May Have to Reinvent Themselves—Once Again*, Time Magazine, 6/11/06 (Exhibit 9 to Plaintiffs' Opposition to Defendants Motion for Leave to Amend Answer to Assert Addition Defense and Rico Counterclaim, DE 132)
- Exhibit 46 10/27/00 List of Young Ringling Elephants (FEI 15032)
- Exhibit 47 5/8/06 Letter from Dennis Schmitt to Ellen Wiedner regarding artificial insemination of traveling elephants (FEI 16624)
- Exhibit 48 1997-2002 AZA Elephant Master Plan (AWI 3690-3713)
- Exhibit 49 1/10/04 Email from Lindsay William to Ellen Wiedner (FEI 31846)
- Exhibit 50 5/12/92 Letter from Julie Strauss to Leslie Sweeney regarding PRT-720230 (PL 7666-7686)
- Exhibit 51 Affidavit of Claire George, Pottker v. Feld Entertainment, Inc., et al., Civ. No. 99-008068 (Sup. Ct. D.C.), (Exhibit 12 to Plaintiffs' Opposition to Defendants

Motion for Leave to Amend Answer to Assert Addition Defense and Rico Counterclaim, DE 132)

Exhibit 52 6/20/94 Animal Activist Activities with Related Material to Same (FEI 38246-38272)

Exhibit 53 10/23/04 Email from Dr. Lindsay William to Dr. Ellen Wiedner regarding Winter Quarters Animal Welfare Training (FEI 33503-Revised – 33506-Revised)

Exhibit 54 Photographs taken during Court-ordered inspection of The Center for Elephant Conservation (11/29/07) and the Blue Unit in Auburn Hills, MI (11/13/07)

PL 15052-15057	PL 15025	PL 15058
PL 15083	PL 15033	PL 15060
PL 15047	PL 15035	PL 15069
PL 15048	PL 15036	PL 15484
PL 15027	PL 15037	PL 15553
PL 14966	PL 15040	PL 15558
PL 14899	PL 14996	PL 15596
PL 14949	PL 14968	PL 15597
PL 14914	PL 14974	PL 15618
PL 14898	PL 14982	PL 15624
PL 14922	PL 15088	PL 15634
PL 15043	PL 15030	PL 15637
PL 14913	PL 14946-14949	PL 15644
PL 14910	PL 1494	PL 15646
PL 14908	PL 15037	PL 15650
PL 14905	PL 15024	PL 15654
PL 14903	PL 14982	PL 15656
PL 14897	PL 14978	PL 15704
PL 14926	PL 14986	PL 15707
PL 14931	PL 15071	PL 15710
PL 14949	PL 14960	PL 15713
PL 15019	PL 15007	PL 15722
PL 14924	PL 15140	PL 15730
PL 14927	PL 15141	PL 15731
PL 14928	PL 15008	PL 15152-15479
PL 15024	PL 14960	

Exhibit 55 Photograph of handler and elephant (FEI 7465)

Exhibit 56 #1 Feld Entertainment, RBBBC, 132d Blue, B-Roll Rehearsals, Clowns, Elephants, Warbrobe Juggling, Clown Alley; 12/10/2001 Tape 1 of 10 RB

132-018-01 (FEI 45204)

- Exhibit 57 #12/15/03 B-Roll rehearsals, Arena Winter Quarters Tampa, FL, Opening Rehearsal; Blue 134th Tape 17 of 24 RB134-046-01 (FEI 45196)
- Exhibit 58 USDA Inspection of Premises Where Benjamin Died (8/12/99) (Produced to Defendants on 3/9/05)
- Exhibit 59 Elephant Birth – Sara, Camera 1&2 (FEI 10350)
- Exhibit 60 Elephant Birth, Gunther, Tape 1 of 2 (FEI 0017)
- Exhibit 61 Elephant Birth, Gunther, Tape 2 of 2 (FEI 0018)
- Exhibit 62 Birth of Romeo 1/10/1993 Tape #6 (FEI 10352)
- Exhibit 63 Alana, Irving Birth (FEI 38229)
- Exhibit 64 Icky Birth (FEI 38228)
- Exhibit 65 Mala Birth (FEI 38227)
- Exhibit 66 Emma 8/21/99 pm 8/22/99 am (FEI 40982)
- Exhibit 67 Emma 8/23-24/99 (FEI 40983)
- Exhibit 68 CEC: Birth Footage of Sara Tape B1 – 4/16/02 (FEI 40975)
- Exhibit 69 Emma 8/22/99 pm – 8/23/99 am (FEI 40984)
- Exhibit 70 Emma – 8/15 – 16/99 (FEI 40990)
- Exhibit 71 Why exotic animals should be banned?; Ringling PR Film; Ringling Conservation Center PR Film; Ringling Show 122nd edition; Gunther in Show; Interview with former RB employee Joe Heflin ('97); Carson & Barnes training footage; (PL 8969)
- Exhibit 72 PAWS - Best Friends (PL 7077)
- Exhibit 73 Sissy Beating - (50 minutes) (PL 9043)
- Exhibit 74 The Crusaders - Mickey the elephant (1 min) (PL 9044)

VI. PLAINTIFFS' DEPOSITION DESIGNATIONS:

Pursuant to the Court's directive, plaintiffs are also submitting, as Exhibit A, a CD-Rom that contains their deposition designations. The designations are as follows:

Andacht, James (1/30/08)

9:07 – 26:10
42:18 – 44:04
55:09 – 57:05
58:06 – 64:11
71:14 – 89:16
90:04 – 105:22
109:15 – 109:19
110:04 – 110:09
111:20 – 111:21
114:09 – 120:10
120:17 – 133:14
138:18 – 153:20
162:16 – 163:10
175:01 – 177:02
182:01 – 182:04
185:02 – 189:08
196:06 – 213:12
214:19 – 221:12
227:12 – 231:12
237:12 – 246:14
247:01 – 249:10
250:11 – 253:18
255:03 – 257:21
260:19 – 261:01
270:03 – 271:07

Coley, David Clarence (8/10/04)

01:01 – 115:06

Feld, Kenneth (1/16/08)

07:02 – 09:17
10:18 – 13:13
15:03 – 20:06

21:21 – 27:10
28:02 – 28:18
31:18 – 38:17
42:02 – 42:06
42:19 – 43:20
46:08 – 51:17
51:21 – 77:13
82:04 – 82:11
89:04 – 103:20
108:16 – 111:18
113:04 – 156:02
159:03 – 159:09
159:15 – 163:12
164:01 – 167:03
167:14 – 169:04
170:16 – 185:04
191:01 – 191:22
192:15 – 209:14
211:13 – 235:09
236:03 – 243:13
245:10 – 247:04
257:11 – 274:03
278:02 – 301:05
302:03 – 305:05
308:14 – 308:21
319:04 – 329:15
321:29 – 331:07
333:20 – 339:06

Frisco, Joseph Jr. (12/7/07)

20:03 – 22:20
33:18 – 56:21
65:22 – 76:12
79:17 – 86:06
112:08 – 164:06
169:17 – 173:18
180:01 – 181:09
182:06 – 207:20
211:19 – 254:21
270:04 – 272:20
277:03 – 283:17
304:09 – 313:03

316:01 – 334:18
335:05 – 359:09
361:18 – 362:09

Hagan, Frank (11/9/04)

05:01 – 13:25
15:01 – 25:12
30:02 – 44:13
57:18 – 73:02
85:17 – 97:25
98:04 – 123:25
178:05 – 183:22

Houcke, Sacha (1/7/08)

05:21 – 08:03
61:12 – 66:06
73:14 – 73:17
79:08 – 89:16
91:07 – 96:17
99:01 – 103:12
109:01 – 112:25
116:01 – 116:18
118:02 – 130:01

Jacobson, Gary (10/24/07)

07:09 – 07:19
14:03 – 47:12
59:01 – 105:18
123:07 – 128:15
136:14 – 141:12
151:01 – 164:17
169:21 - 179:05
187:06 – 191:07
197:12 – 203:06
207:13 – 219:10
219:18 – 226:10
236:20 – 249:09
255:21 – 258:20
260:05 – 262:08
263:21 – 267:09

269:07 – 285:19
298:19 – 302:13
314:01 – 315:10
326:06 – 326:17
334:01 – 348:07
360:20 – 382:03

Jacobson, Gary (11/20/07)

06:07 – 27:17
29:02 – 30:21
43:03 – 50:15
54:02 – 68:16
79:13 – 79:22
80:04 – 86:12
89:03 – 104:12

Jacobson, Gary (1/18/08)

01:01 – 266:22

Metzler, Troy (7/25/06)

05:11 – 06:21
08:13 – 88:11
93:05 – 152:14
179:04 – 181:02
186:20 – 221:13
235:15 – 244:05
245:01 – 247:19
257:05 – 263:05
271:17 – 290:20
298:16 – 307:22
323:12 – 338:18
342:02 – 354:04
357:09 – 368:19
371:12 – 385:15
391:22 – 394:09
404:01 – 405:07

Nadal, Temistocles (2/8/05)

01:01 – 119:11

Ramos, Gerald (1/24/07)

11:08 – 17:13
68:01 – 72:14
78:06 – 79:23
87:24 – 95:07

Ridley, Robert (8/25/06)

08:01 – 57:19
63:23 – 72:14
72:24 – 77:02
78:19 – 81:09
87:01 – 87:08
87:24 – 88:06
91:21 – 113:08
116:14 - 117:24
120:25 – 122:09
128:04 – 131:25
134:14 – 140:12

Swart, Betsy (3/18/05)

05:06
06:19 – 07:23
23:03 – 24:22
44:07 – 44:24
49:17 – 71:18
73:02 – 75:03
108:08 – 109:23

Stewart, Edward (8/16/04)

04:24 – 10:14
10:24 – 16:24
18:11 – 19:10
34:06 – 37:05
37:08 – 43:04
46:09 – 64:21
67:01 – 75:19
79:14 – 81:01
87:13 – 89:19

95:12 – 98:07
108:23 – 110:19
134:18 – 135:23
142:15 – 146:02

Tom, Margaret (12/17/07)

05:02 – 05:14
06:22 – 09:08
14:06 – 15:01
15:15 – 36:02
44:14 – 49:22
54:03 – 55:14

Vargas, Alejandro (5/31/07)

12:06 – 56:02
68:02 – 70:08
74:03 – 75:18
80:17 – 83:22
86:15 – 98:11
102:01 – 107:12
112:07 – 121:01
122:01 – 139:19
146:03 – 147:06
152:01 – 153:02
154:08 – 161:09
186:14 – 189:20
197:16 – 198:13
227:19 – 242:16

VII. ITEMIZATION OF DAMAGES

This section does not apply in this case.

VIII. REQUEST FOR RELIEF SOUGHT BY PLAINTIFFS:

Plaintiffs request that the Court issue an Order containing the following relief:

1. Declare that FEI's treatment of the elephants violates the ESA and that statute's implementing regulations;

2. Enjoin FEI from continuing to violate the ESA and that statute's implementing regulations with respect to the elephants in its possession;
3. Enjoin FEI from harming, harassing, wounding, and otherwise "taking" endangered elephants;
4. Enjoin FEI from continuing to take the Asian elephants by transporting them in railroad cars as part of the routine operation of the circus;
5. Enjoin FEI from continuing to take the Asian elephants by maintaining them in chains except as is necessary to provide them with veterinary care, or as otherwise necessary to protect the health and welfare of the elephants;
6. Enjoin FEI from continuing to take the endangered elephants by maintaining them at the CEC or any other facility on hard surfaces;
7. Enjoin FEI from continuing to "take" any endangered Asian elephants by striking, hitting, hooking, or threatening to strike, hit, or hook them with bull hooks or any other instruments;
8. Award plaintiffs their reasonable attorneys' fees and costs for this action; and
9. Grant plaintiffs such other and further relief as may be just and proper.

IX. STIPULATIONS

Pursuant to the Court's First Amended Pretrial Order, stipulations are due on September 29, 2008.

X. TRIAL BRIEF

Pursuant to the Court's First Amended Pretrial Order, plaintiffs' pre-trial brief was filed September 29, 2008.

XI. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs' pretrial proposed findings of fact and conclusions of law are attached hereto as Exhibit B.

Respectfully submitted,

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