

Plaintiffs' Opposition to
Defendant's Motion to Strike
Plaintiffs' Amended Pre-Trial Statement

Exhibit 1

Meyer Glitzenstein & Crystal

1601 Connecticut Avenue, N.W.

Suite 700

Washington, D.C. 20009-1056

Katherine A. Meyer
Eric R. Glitzenstein
Howard M. Crystal
Kimberly D. Ockene
Tanya M. Sanerib
Joshua R. Stebbins
Delcianna J. Winders

Telephone (202) 588-5206
Fax (202) 588-5049
www.meyerglitz.com

September 5, 2008

Sent By Electronic and First Class Mail

Lisa Zeiler Joiner
Fulbright & Jaworski
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Re: ASPCA v. FEI, Civ. No. 03-2006 (EGS/JMF)

Dear Ms. Joiner:

I did not receive your letter dated September 2, 2008 regarding Plaintiffs' Pre-trial Statement until Wednesday afternoon, as I was out of town.

In response to your questions concerning Plaintiffs' Exhibits 1 and 2, which are the medical records of all of the elephants and the medical records of the seven elephants with whom Tom Rider worked that are still in defendant's possession – Jewell, Karen, Nicole, Lutzi, Mysore, Susan, and Zina – Dr. Ensley did in fact rely on all of these medical records to form his expert opinions in this case.¹ As you know, we provided a list of the Bates Labels for all such documents as an Attachment to his Report, and on August 23, 2008, we had a CD-Rom delivered to you that contains a copy of each of those records. All of the medical records contained on that CD Rom will be included in Exhibit 1; the medical records for the seven elephants will be additionally included as a separate Exhibit 2. Dr. Ensley states in his Expert Report that his opinions are based on a review of all of these records.

¹In the pre-trial statement we inadvertently left Nicole off the list.

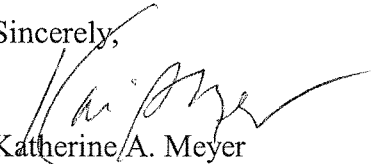


Lisa Joiner
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Second, I have attached a list of plaintiffs' witnesses with a description of their testimony. With few exceptions, this information was provided to defendant a while ago, each time we disclosed our potential witnesses, as required by Rules 26(a)(1) and 26(e). I have also included an estimate of the time needed to present the testimony of each such witness. While doing this, I realized that we inadvertently omitted expert witness Ajay Desai from the list of witnesses on the Pre-trial Statement we filed last week – so I have added him here. We will file an amended Pre-trial Statement soon so that Judge Sullivan has all of this information.

As an additional matter, we note that defendant's Pre-trial Statement relies heavily on information that is currently subject to the protective order that Judge Facciola issued in this case on September 25, 2007 at the request of defendant, DE 195 – i.e., information that was disclosed in discovery after September 25, 2007, including information about funding of Tom Rider's public education efforts, information disclosed during both fact witness and expert depositions, information about what occurred at the Court-ordered inspections, and information that is included in various expert reports. Please clarify your position as to why defendant referred to such information in its recent public filings, so that we can have a mutual understanding of what is permitted in this regard. If we do not hear back from you on this point by the end of the day Monday, September 8, we will assume that now that this case is set for trial, it is defendant's position that Judge Facciola's protective order no longer applies with respect to all future filings before Judge Sullivan.

Sincerely,



Katherine A. Meyer

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. Buskellinga 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 bullhooks 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>3-4 hours</p>
<p>*Dr. Philip Ensley, D.V.M. 2740 Granada Avenue San Diego, CA 92104 (619) 282.9852</p>	<p>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 bullhooks 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.</p>	<p>2-3 hours</p>

<p>*Ajay Desai</p> <p>B.C. 84, Camp Belgaum - 590001 INDIA 91 831 2462267</p>	<p>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 bullhook and confinement and chaining of elephants; All subjects covered in his Expert Report and during his deposition.</p>	<p>2 1/2 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>Patrick Cuviallo</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>Archele Hundley</p> <p>5609 1/2 Church Drive Charleston, W. Va. 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>Robert Tom, Jr.</p> <p>90 Joseph Dr. Almo, Kentucky 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>*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; hAll subjects covered in her Expert Report and during her deposition.</p>	<p>1-1.5 hours</p>
<p>*Carol Buckley (Expert and Fact Witness)</p> <p>The Elephant Sanctuary 183 Buck Hollow Road Hohenwald, TN 38462 (931) 796.6500</p>	<p>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 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.</p>	<p>2 hours</p>
<p>*Colleen Kinzley (Expert and Fact Witness)</p> <p>General Curator The Oakland Zoo P.O. Box 5238 Oakland, CA 94605 (510) 632-9525</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 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.</p>	<p>1-2 hours</p>

<p>*Gail Laule 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;EBP 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 1/2 hours</p>
<p>Tom Rider c/o 4909 Elisabeth Street Cudahy, CA 90201 (202) 374-1503</p>	<p>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; Testimony regarding his advocacy on behalf of elephants.</p>	<p>3-4 hours</p>
<p>Nicole Paquette Animal Protection Institute 1122 S Street Sacramento, CA 95811 (916) 447-3085</p>	<p>Testimony regarding the standing of API, including legislative developments and activities regarding captive elephants.</p>	<p>1-2 hours</p>
<p>*Dr. Benjamin Hart, Ph.D. School of Veterinary Medicine University of California, Davis, CA 95616 (530)752-2181</p>	<p>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.</p>	<p>1-2 hours</p>

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; eye-witness testimony regarding Ringling Bros. mistreatment of elephants.	1 ½ hour
Kindall Cross 119 Elmore Rd. Pittsburgh, PA 15221 (412) 243-4828	To authenticate video evidence contained in PL 07072.	20 minutes
Claudia Emerson 6040 Blvd. East West New York, New Jersey 07093 (917) 664-0516	To authenticate video contained in PL 18038.	20 minutes
Louis Gedo 150-15 Sanford Ave. Apt. 3A Flushing, New York 11355 (718) 359-6424	To authenticate video contained in PL 08972.	20-30 minutes
Chris Green 7107 S. Yale Ave. Tulsa, OK 74136 (918) 519-0803	To authenticate video contained in PL 07074.	20 minutes
Barbara Grove 40 Clinton Street, Apt. 4 Redwood, CA 94062 (650) 839-0305	To authenticate video recordings of Ringling Bros. Elephants; eye-witness testimony regarding Ringling Bros. mistreatment of elephants.	45 minutes - 1 hour

<p>Rob Hutton 817 South One Thousand East #3 Salt Lake City, Utah 84102 (801) 550-8065</p>	<p>To authenticate video recordings of Ringling Bros. Elephants; eye-witness testimony regarding Ringling Bros. mistreatment of elephants.</p>	<p>1 hour</p>
<p>Paul Kercheval c/o 501 Front Street Norfolk, VA 23510 (757) 622-7382</p>	<p>To authenticate video recordings of Ringling Bros. Elephants; eye-witness testimony regarding Ringling Bros. mistreatment of elephants.</p>	<p>1 hour</p>
<p>Alfredo Kuba 500 W. Middlefield Rd. Mountain View, CA 94043 (510) 632-9525</p>	<p>To authenticate video recordings of Ringling Bros. Elephants; eye-witness testimony regarding Ringling Bros. mistreatment of elephants.</p>	<p>1 ½ hour</p>
<p>Michelle Sinnott 1601 Connecticut Ave., N.W. Suite 700 Washington, D.C. 20009 (202) 588-5206</p>	<p>To explain the compilation of the data contained in the Transportation Orders produced by defendant.</p>	<p>30-40 minutes</p>
<p>Elisabeth Swart 10 State Street Newburyport, Mass. 01950 (508) 783-8308</p>	<p>To authenticate video recordings of Ringling Bros. Elephants, handlers and trainers; eye-witness testimony regarding Ringling Bros. mistreatment of elephants.</p>	<p>1 hour</p>
<p>Nicholas Trammel 1015 Tennyson Street Denver, Colorado 80204 (303) 861-3078</p>	<p>To authenticate video recordings of Ringling Bros. Elephants; eye-witness testimony regarding Ringling Bros. mistreatment of elephants.</p>	<p>1 hour</p>

<p>Burlington Northern Santa Fe Railroad (BNSF), Corporate Representative</p> <p>2650 Lou Menk Drive Fort Worth, TX 76131-2830 (800) 795-2673</p>	<p>To authenticate subpoenaed records concerning number of hours Ringling Bros. train used railroad tracks.</p>	<p>30-45 minutes</p>
<p>CSX Transportation Corp., Corporate Representative</p> <p>500 Water Street, 15th Floor Jacksonville, FL 32202 (904) 359-3200</p>	<p>To authenticate subpoenaed records concerning number of hours Ringling Bros. train used railroad tracks.</p>	<p>30-45 minutes</p>
<p>A representative of the Washington D.C. Humane Society</p>	<p>To authenticate records, FEI 1576.</p>	<p>10-20 minutes</p>
<p>A representative of the Verizon Center (formerly MCI Center)</p> <p>Washington, D.C.</p>	<p>To authenticate subpoenaed video tape taken at MCI Center</p>	<p>30-45 minutes</p>
<p>USDA employee Diane Ward</p> <p>USDA 1400 Independence Ave., S.W. Washington, D.C. 20250</p>	<p>To authenticate USDA documents; testimony regarding USDA investigations of Tom Rider's Complaint, Nicole, and tuberculosis.</p>	<p>1 hour</p>
<p>USDA employee Miava Binkley</p> <p>USDA 1400 Independence Ave., S.W. Washington, D.C. 20250</p>	<p>To authenticate USDA documents; testimony regarding Doc and Angelica incident.</p>	<p>1 hour</p>
<p>USDA employee Robert Brandes</p> <p>USDA 1400 Independence Ave., S.W. Washington, D.C. 20250</p>	<p>To authenticate USDA documents; testimony; testimony regarding Doc and Angelica incident.</p>	<p>1 hour</p>

USDA employee David Green USDA 1400 Independence Ave., S.W. Washington, D.C. 20250	To authenticate USDA documents; testimony regarding investigation of Benjamin's death.	1 hour
USDA employee Christopher Mina USDA 1400 Independence Ave., S.W. Washington, D.C. 20250	To authenticate USDA documents.	20 minutes