

JMF Chart  
Findings of Fact

<b>Defendant's Findings Nos.</b>	<b>Defendant's Assertion as to ASPCA</b>	<b>ASPCA's Reply</b>
51	They did not produce general ledger statements reflecting payments to Rider.	They searched and produced everything they had.
52	They discarded American Express ("Amex") credit card statements	They have produced copies of Amex credit card statements.
53	The statement that ASPCA produced general ledger accounting that reflected payments to Rider on Amex card is incorrect.	They have now produced them.
54	They made a \$6,000 payment to WAP in 2001. They did not produce a memo or check request for the payment. That documents existed is shown by memo and check requests for other such payments that ASPCA produced.	They produced documentation of the grant and stated that, although others might exist, ASPCA does not know of them.
55	They co-sponsored a fundraiser in CA in July 2005. E-mails were exchanged about this event and there were telephone conversations about it. They did not produce e-mails or invitations to the fundraiser.	Their participation in the fundraiser was limited and FEI has received documents demonstrating that funds that were raised at the event were provided to WAP for Rider.
56	They only produced two e-mails regarding payments to or for Rider.	They have produced hard copies of e-mails and have no others.
58	Weisberg and Rider exchanged e-mails. ASPCA did not produce such e-mails.	Weisberg testified that discussions were by phone and has produced responsive e-mails.
59	Weisberg and Hawk exchanged e-mails regarding payments to Rider but did not search his files for any such e-mails or other documents.	Weisberg testified that she was the person responsible for all matters relating to Rider and that Hawk would not have had any additional e-mails.
60	Weisberg testified that she exchanged e-mails with representatives of other plaintiff organizations. ASPCA did not produce such e-mails.	Weisberg testified that e-mails were primarily for the purpose of scheduling conference calls or stories in the media about the circus.

61	On Nov. 5, 2003, Meyer sent an e-mail to Weisberg and others. Two pages of the e-mail were produced by WAP. The e-mail discussed payments to Rider. ASPCA did not produce the entire e-mail.	They could not locate it in their search for documents.
62	They admitted that payments to Rider were a financial resource expended by ASPCA to pursue alternative sources of information about treatment of elephants.	In response to Interrogatory # 21, ASPCA listed funds provided Rider as such a resource but did not list them as resource in response to Interrogatory # 22.
63	Weisberg testified that she had oral communications with Rider but did not disclose them.	The interrogatory was objected to. The order related only to communications regarding the subject matter of lawsuit, not regarding media or legislative strategies or communications. In any event, ASPCA provided a response to Interrogatory # 16, in which it described conversations between Weisberg and Rider.
64	A memo from Weisberg to staff as to how to comply with court order did not instruct employees to record any oral communications.	ASPCA objected to Interrogatory # 16 on numerous grounds and court's order related only to communications regarding the subject matter of lawsuit not related to media or legislative strategies or communications. In any event, the answer spoke of individuals from ASPCA's media department having had communications with Rider.
65	Weisberg testified that she had oral communications with Nancy Blaney of ASPCA regarding payments to Rider, but ASPCA did not disclose them.	None of FEI's interrogatories required the identification of internal communications concerning funding provided to Rider. Interrogatory # 19 speaks only of communications about the presentation of elephants in the circus. Order related only to communications regarding the subject matter of lawsuit not related to media or legislative strategies or communications. Discussions between Weisberg and Blaney were about media or legislative strategies.
66	Weisberg testified that she had	None of the interrogatories requested

	oral communications with AWI and FFA regarding payments to Rider, but ASPCA did not disclose them.	communications with other plaintiffs concerning funding for Rider. Plaintiffs have testified that discussions concerning their strategy for funding Rider's media efforts were intertwined with media strategy.
67	Weisberg testified that she had oral communications with API, AWI, HSUS, and WAP regarding payments to Rider, but ASPCA did not disclose them.	Same.
68	Weisberg testified that she had oral communications with Meyer regarding payments to Rider, but ASPCA did not disclose them.	Same.
69	Weisberg testified that she had oral communications with Exec. Director of WAP regarding ASPCA's payments for Rider, but ASPCA did not disclose them.	Same.
<b>Defendant's Findings Nos.</b>	<b>Defendant's Assertion as to AWI</b>	<b>AWI's Reply</b>
75	Response to Interrogatory # 21 indicated that each plaintiff received a cover sheet attached to invoices from Meyer, Glitzenstein & Crystal ("MGC") indicating that each was being billed but did not produce them.	AWI produced the invoices.
77	While AWI produced a 990 showing a grant to Rider in 2001 it did not produce any other document pertaining to payments.	AWI produced, to the best of its abilities, all documentation pertaining to payments to Rider. Order does not require that FEI be provided with additional documentation of the same payments.
78	While AWI produced a credit card statement showing the February 2005 payment to Rider, it did not produce any other document pertaining to payments.	Same.
79	While AWI produced an internet print-out of the check showing the March 30, 2006 payment to Rider, it did not produce any other document pertaining to payments.	Same.

81	Facsimile showing payments for repairs to Rider's van produced to FEI by WAP but not produced by AWI.	Plaintiffs, by producing documentation sufficient to show payment, complied with request for document and court order.
82	While FEI got AWI credit card statement showing payment for repairs to Rider's van in December 8, 2006, it did not produce any other documents.	Same.
85	Liss's deposition testimony as to her not knowing whether other animal welfare organizations were providing reimbursement to Rider or sharing them was incorrect.	This is irrelevant to whether plaintiffs complied with order and her testimony is, in any event, misinterpreted by FEI.
86	Liss's deposition testimony that her testimony was limited to AWI's direct payments to Rider is not credible.	Same.
87	AWI co-sponsored a fund raiser in California in 2005 and Silverman's statement that proceeds did not go to Rider is incorrect.	AWI produced documents pertaining to fundraiser. Silverman's testimony was correct. She explained that , while proceeds did not go directly to paying Rider, they did go to WAP to support Rider's public education work.
88	Plaintiffs only produced invitation to fundraiser, despite plaintiffs' exchanging e-mails and having telephone conversations about it.	E-mails and conversations fell within exclusion for media and legislative efforts. Proceeds from fund raiser used to support Rider were disclosed.
89	AWI produced no e-mails regarding payment to or for Rider.	They searched but could not find them.
91	Meyer sent e-mail to other organizational plaintiffs. WAP produced pages 2 and 3 but AWI did not produce them.	AWI could not locate them during its search.
92	Silverman exchanged e-mails with representatives of other organizational plaintiffs, but AWI did not produce them.	Silverman testified that e-mails generally involved the litigation and were not produced or logged in the privilege log because the parties agreed that the material exchanged between counsel and clients that concerned litigation strategy need not be logged.
93	AWI did not produce e-mails from Rider although Rider testified that he e-mailed AWI	AWI did not locate any e-mails from Rider that were responsive to the discovery request and did not

	100 times in 2007 alone.	concern media and legislative strategy.
94	Liss testified that she spoke to Rider about AWI's payments to him in 2002-2005, but AWI did not disclose these communications.	Liss testified as to these communications in her deposition and as these communications with Rider pertained to media campaigns they were not required to be disclosed.
95	Silverman testified that she spoke to Rider regarding payments by AWI and other plaintiffs but her belated response that she had such communications did not disclose all communications concerning payments.	Silverman testified that she and Rider, who talked regularly, discussed media strategy and what he saw when he worked for the circus. They discussed funding in a general sense but did not discuss specific amounts of money. Such conversations were excluded from discovery as discussions about media and legislative strategy.
96	Silverman had conversations with Meyer concerning AWI's payments to WAP for Rider, but AWI did not disclose these communications.	These conversations relate to AWI's media strategy and were described in AWI's interrogatory responses.
97-98	Silverman testified that she spoke with an AWI administrative assistant and with Liss concerning payments to Rider, but AWI did not disclose these communications.	Interrogatories inquire about internal communications about funding for Rider and, in any event, communications fell within exemption for media or legislative efforts.
99-100	Silverman testified that she spoke to ASPCA and FFA representatives and participated in conference calls regarding payments to Rider, but AWI did not disclose these communications.	Same.
<b>Defendant's Findings Nos.</b>	<b>Defendant's Assertion as to FFA</b>	<b>FFA's Reply</b>
105	Documents in the files of FFA are within HSUS's possession and all files within the possession of one entity are in the possession of other.	No evidence that this is so; all files of both organizations were searched.
110	FFA did not produce three of the cover letters accompanying	FFA produced all cover letters and is complaining that it did not receive

	payments to Rider but WAP did.	duplicate copies of letters already in its possession. Plaintiffs are not required to produce duplicates.
111	FFA representative testified that FFA only paid Rider on one occasion and omitted reference to payments made to Rider through MGC or through WAP.	FFA representative represented at deposition that he interpreted question to which FEI refers as meaning direct payments to Rider.
112	FFA did not disclose payments to Rider in response to interrogatory but included them in response to court order.	FFA representative explained why he initially did not believe he was obliged to disclose payments.
115	Meyer sent e-mail to FFA and other organizational plaintiffs' representatives. WAP produced pages 2 and 3 but FFA did not produce them.	FFA could not locate this e-mail in its search.
116	FFA did not describe, in response to interrogatory, an e-mail of November 5, 2003 from Meyer requesting ideas on how to raise money to pay Rider.	FFA representative could not recall e-mail and did not account for it in interrogatory responses.
117	FFA paid Rider \$1,000 in July 2004 and FFA representative testified that he would have discussed this payment with ASPCA who was supposed to pay half of it, but FFA did not identify such communications.	FFA representative testified that he did not recall FFA's discussions with ASPCA about this payment.
118	FFA representative testified that he had conversations with a colleague about payments to Rider, but FFA did not identify such communications.	None of FEI's discovery requests called for production of internal communications concerning funding for Rider's media campaign and such communications were, in any event, excluded as legislative or media strategy discussions.
120	FFA representative testified that he presumably agreed to pay FFA's portions of invoices from MGC, but FFA did not identify such communications.	FFA representative testified that he did not remember discussing payments from seven years ago.
121	FFA representative testified that he participated in conference call with representatives of other organizational plaintiffs concerning payments to Rider, but	Such conversations were excluded as legislative or media strategy discussions.

	FFA did not disclose these communications.	
122	FFA did not produce e-mails pertaining to California fundraiser or disclose telephone conversations pertaining to it.	Such e-mails and conversations were excluded as legislative or media strategy discussions. In any event, plaintiffs disclosed to FEI all proceeds from fund raiser used to fund Rider's media efforts.
123, 124-125	FFA did not produce any e-mails regarding payment to or for Rider. A document produced by HSUS indicates that counsel for HSUS discussed litigation with HSUS board, but FFA has not produced any Board minutes. Lovvorn received e-mails relating to Rider but FFA representative testified that Lovvorn had no e-mails reflecting or relating to Rider.	Despite an exhaustive search, FFA could not find any more documents than it produced.
126	FFA did not instruct its employees to preserve documents until 2005, five years after filing of complaint. FFA representative testified that he destroyed one such document and that it was not particularly his practice to preserve documents pertaining to Rider.	FFA representative testified that FFA made exhaustive search for records related to contributions to Rider's efforts and produced all he could find.
<b>Defendant's Findings Nos.</b>	<b>Defendant's Assertion as to API</b>	<b>API's Reply</b>
130-131	API representative participated in conference calls with representatives of the organizational plaintiffs regarding payments to Rider. API representative testified that she also participated in conversations with another API representative regarding payments to Rider. However, API did not disclose these communications.	FEI's discovery did not demand production of communications pertaining to Rider's media campaign and therefore fell within the exclusion for communications pertaining to media strategy efforts.