

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiffs,

v.

FELD ENTERTAINMENT, INC.,

Defendant.

Case No. 03-2006 (EGS/JMF)

**DEFENDANT FELD ENTERTAINMENT, INC.'S AMENDED
PRE-TRIAL STATEMENT**

Pursuant to LCvR 16.5 and the Court's Order (11/4/08) (Docket # 387), defendant Feld Entertainment, Inc. ("FEI") hereby submits its Amended Pre-Trial Statement.¹

I. STATEMENT OF THE CASE (LCvR 16.5(b)(1)(i))

A. Nature of the Case

This case is a matter of first impression. Plaintiffs have filed suit pursuant to the "citizen suit" provision in section 11 of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540, to outlaw the use of generally accepted tools that defendant, virtually every circus and many zoos in the United States must continue to use in order to care for and manage lawfully-owned Asian elephants. Specifically, plaintiffs claim that defendant is engaged in an unlawful "taking" of its Asian elephants as the result of three well-established husbandry practices: use of the guide/bullhook in handling the elephants, the tethering/chaining of the elephants, and

¹ Pursuant to the Court's Order (11/4/08) (Docket # 387), FEI is providing the Court and plaintiffs with a redline showing the changes made to its Pretrial Statement (8/29/08) (Docket # 342). Pursuant to paragraphs twenty-three and twenty-five of the Court's Final Pretrial Order (10/15/08) (Docket # 373), FEI will provide the Court with two bound hard copies and two electronic copies of its Amended Pretrial Statement on January 6, 2009. FEI will also provide the Court and plaintiffs with a hard copy and an electronic copy of its amended Exhibit 6 on January 6, 2009.

weaning/separation of elephant calves from their mothers. See Compl. ¶ 1, Civ. Act. No. 03-2006 (9/26/03) (Docket # 1); Supp. Compl. ¶ 11 (2/23/06) (Docket # 180). They seek an injunction to prohibit defendant from using guides, from using tethers, or from weaning calves. Id. at 21, ¶ 4; id. at 6. Plaintiffs have dropped their demand for forfeiture and so indicated to the Court during the June 11, 2008 status conference. See Minute Entry (6/11/08).

Plaintiffs' claims are anchored by an individual, Tom Rider, who worked for the Blue Unit of the circus from 1997-1999. The remaining plaintiffs are organizational groups who generally oppose the use of elephants in entertainment, and have all participated in the stream of continuous funding that has gone to their co-plaintiff, Mr. Rider, since this lawsuit was first filed (in a predecessor action) in July of 2000. Plaintiffs originally sought to bring their action regarding defendant's entire herd of Asian elephants, which is currently 53.² Through two summary judgment orders, the Court has narrowed this case to six elephants: Susan, Lutzi, Jewell, Karen, Mysore and Nicole.³ See Summ. Judg. Order & Op. at 22-23 (8/23/07) (Docket # 172 & 173) (granting summary judgment as to Captive Bred Wildlife elephants); Order & Mem. Op. (10/25/07) (Docket # 212 & 213) (claims limited to elephants to which Rider alleges emotional attachment).

Defendant contests whether the ESA even applies to non-indigenous, exotic animals that have been lawfully imported into, and are lawfully held in captivity in, the United States. There is no indication from the plain language of the ESA or in the legislative history that Congress ever intended that the ESA "taking" prohibition be applied to captive endangered species as another layer of welfare protection in addition to the rules and regulations of captive animal

² Sundara, the twenty-first elephant to be born into the Ringling Bros. family, was born at the Center for Elephant Conservation ("CEC") on November 9, 2008.

³ Plaintiffs claim Mr. Rider forgot to identify one of the elephants, Zina, to which he is emotionally attached. Plaintiffs have not sought relief from this order.

welfare imposed upon exhibitors, like FEI, by the Animal Welfare Act (“AWA”), 7 U.S.C. § 2131 *et seq.* The AWA does not contain a private cause of action, and there is nothing in the ESA to suggest that Congress contemplated that the ESA would be applied in the manner plaintiffs seek to invoke it here, that is, as a private prosecution under the AWA. Defendant denies that this Court has jurisdiction to hear this case due to the plaintiffs’ lack of standing. Even if plaintiffs had standing, defendant denies any liability for its use of the three generally accepted husbandry practices that are challenged in this case. Although the nature of plaintiffs’ relief is injunctive, the practical effect of such relief would be to prohibit or ban elephants from appearing in defendant’s circuses and all other circuses.

B. The Parties

There are currently five plaintiffs in this case, four organizational plaintiffs and one individual plaintiff. The organizational plaintiffs are: (1) Plaintiff American Society for the Prevention of Cruelty to Animals (“ASPCA”) is a non-profit membership organization which professes to be dedicated to eliminating the abuse, neglect, and exploitation of all animals, including animals used in entertainment. (2) Plaintiff Animal Welfare Institute (“AWI”) is a non-profit membership organization which professes to be dedicated to eliminating pain and fear inflicted by people on animals, including animals used for entertainment purposes. (3) Plaintiff The Fund for Animals (“FFA”) is a non-profit membership organization which professes to be dedicated to eliminating the abuse, neglect, and exploitation of animals, including those used for entertainment purposes. FFA and the Humane Society of the United States (“HSUS”) merged effective January 1, 2005. After the merger, both groups operated their advocacy programs under the banner of the HSUS. (4) Plaintiff Born Free USA United with Animal Protection Institute (“API”) is a non-profit membership organization which professes to be dedicated to eliminating the abuse, neglect, and exploitation of animals, such as animals used in

entertainment. The only individual plaintiff, Mr. Rider, worked as a barn man for FEI on its Blue Unit from June 1997 until November 1999.

Feld Entertainment, Inc., the only named defendant, is a closely held Delaware corporation with its principal place of business in Vienna, Virginia. FEI produces and presents the Ringling Bros., and Barnum & Bailey Circus, consisting of three traveling units: Blue, Red and Gold. FEI currently owns the largest herd of Asian elephants in North America. That herd is a sustainable population. The six FEI elephants that are at issue in this case are located on the Blue Unit and at the Ringling Bros., and Barnum & Bailey Center for Elephant Conservation in Florida.

C. The Basis of the Court's Jurisdiction

Plaintiffs claim federal jurisdiction arises pursuant to 16 U.S.C. § 1540(g) and 28 U.S.C. § 1331. Defendant denies this Court has jurisdiction for the following reasons:

(1) Plaintiff Rider lacks standing. Mr. Rider has no injury in fact, and even if there were injury in fact, there is no redressibility for his claims.

(2) The case is moot with respect to the five elephants at issue that are located at the CEC. Mr. Rider's action does not satisfy Article III standing or case or controversy requirements. It must be dismissed. Moreover, if the Court awards the relief sought as to the other two elephants located on the Blue Unit, the case will become moot.

(3) Without Mr. Rider, the Organizational Plaintiffs lack standing, which this Court has already ruled. See Mem. Op. & Order, Civ. Act. No. 00-1641 (June 29, 2001); Mem. Op. & Order, Civ. Act. No. 03-2006 (October 25, 2007) (Docket # 212 & 213).

(4) The claim of weaning must be dismissed for lack of standing because it is not predicated upon any actual injury in fact. Instead, it is predicated upon documents received in response to a FOIA request.

(5) This Court further has no jurisdiction to adjudicate any claim not raised in the 60-day notice letters required by 16 U.S.C. § 1540(g)(2)(A)(i).

II. STATEMENT OF CLAIMS (LCvR 16.5(b)(1)(ii))

Plaintiffs' claims are brought under the ESA, 16 U.S.C. § 1531, et seq., against FEI for "taking" its Asian elephants. (Asian elephants have been listed as Endangered by the Department of Interior since 1976.) Plaintiffs proceed pursuant to 16 U.S.C. § 1540(g), the citizen suit provision of the ESA. Plaintiffs claim FEI has violated the ESA by taking its elephants by "harming," "harassing" and "wounding" them. See Compl. ¶¶ 1-2; Supp. Compl. ¶¶ 1-2; see also 16 U.S.C. § 1532(19) (defining "take"). The ESA's implementing regulations further define "harm" as "an act which actually kills or injures wildlife." 50 C.F.R. § 17.3. "Harass" under the ESA means:

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. This definition, when applied to captive wildlife, does not include generally accepted:

- (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) Provision of veterinary care for confining, tranquilizing, or anesthetizing, when such practices, procedures, or provision are not likely to result in injury to the wildlife.

Id. The term "wound" is not defined in the ESA or its implementing regulations.

There are three components to plaintiffs' taking claim. Specifically, they allege that FEI has "taken" its Asian elephants by: (1) using the guide/bullhook; (2) using tethering/chaining; and (3) weaning/separating calves. Compl. ¶ 1; Supp. Compl. ¶ 11. Plaintiffs' claims have been limited to six elephants: Susan, Lutzi, Jewell, Karen, Mysore and Nicole. See Summ. Judg. Order & Op. at 22-23; Standing Order & Mem. Op. at 5-7. Plaintiffs allege that Rider is attached to a seventh elephant, Zina, although he forgot to name her when asked at deposition.

III. STATEMENT OF DEFENSES (LCvR 16.5(b)(I)(iii))

FEI denies that this Court has jurisdiction to adjudicate any of the plaintiffs' claims in this case. See, supra, § I(C). Furthermore, FEI emphatically denies any liability for any and all of plaintiffs' claims. Plaintiffs have failed to state a claim upon which relief can be granted. While plaintiffs would like this Court to believe that this case is about animal cruelty and abuse such that the guide and tethering should be prohibited, it is not. This case is about whether FEI, and every other circus, that has elephants will be permitted to remain open and operating. This suit is a manifestation of the deeply divided chasm in the animal world between those such as plaintiffs who believe elephants performing "tricks" in a circus is unlawful and those such as defendant who believe that animals, including elephants, should be preserved, protected by, personally interacted with, and shared among humans.

In the United States, there are two basic methods of handling elephants: free contact and protected contact. In free contact, the handler is standing right next to the elephant with no physical barrier between them. This is a generally accepted method of elephant management. In protected contact, a barrier separates the handler and elephant restricting the contact between them. See Olson Declaration at ¶¶ 6-8, DX 27 to FEI's summary judgment reply (10/26/06) (Docket # 100). The elephants at issue in this case are managed by free contact as are other performing elephants (whether in circuses, fairs, the film industry or other exhibitions). Moreover, roughly half of the zoos in the United States also use free contact. Id. ¶ 5. The use of the guide is a necessary and appropriate tool for the free contact management of elephants. Notably, some facilities in protected contact use the guide as well. Id. ¶¶ 7, 9.

Contrary to plaintiffs' claims, the guide is not an instrument of torture but rather is a time-tested, appropriate and generally accepted husbandry tool. It permits handlers to personally

interact with elephants regardless of the nature of the interaction, be it for veterinary purposes, grooming, other husbandry, exhibition of these animals, or just for the sheer awe and joy of it. Banning the guide will ban free contact, and banning free contact will take elephants out of the circus.

Similarly, the circus cannot have elephants if it cannot tether them, including while transporting them. Again, “tethers are an acceptable and necessary tool in the management of captive elephants.” See Elephant Husbandry Resource Guide at 67 (Deborah Olson, ed.). “Under normal circumstances, elephants should not be tethered continuously for more than 16 hours without exercise.” Id. at 68. During transport, elephants should be provided with fresh hay, and “if the trip lasts more than 16 hours, they should be provided with an opportunity to drink water.” Id. at 223. Defendant complies with all of this.

Even more importantly, though, is that FEI’s elephants are healthy, alert, and thriving whether they are on the Blue Unit or at the CEC. FEI intends to demonstrate this at trial through evidence, and in doing so, hopes to debunk the misinformation, urban legend, and mythology that has been propagated by those who do not own or know how to care for an elephant. FEI’s staff includes world-class veterinarians and handlers that care for its elephants, and they are tired of being inappropriately accused of animal abuse.

IV. WITNESS SCHEDULE (LCvR 16.5(b)(1)(iv))**A. Will Call Witnesses**

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
Kenneth J. Feld	Feld Entertainment, Inc. 8607 Westwood Center Dr. Vienna, VA 22182 703-448-4000	History, operations and knowledge of FEI's acquisition and ownership of elephants, importance of elephants to Feld family and the circus, measures to enhance the survival of the species and related topics.	.75 hour of direct examination
*Dr. Theodore H. Friend	c/o Fulbright & Jaworski LLP 801 Pennsylvania Ave., NW Washington, D.C. 20004 202-662-0200	Expert opinions regarding FEI's elephants, including transportation conditions and procedures and stereotypic behavior and any other opinions in his report.	1.0 hour of direct examination
*Michael N. Keele	c/o Fulbright & Jaworski LLP 801 Pennsylvania Ave., NW Washington, D.C. 20004 202-662-0200	Expert opinions regarding FEI's elephants, including training, handling techniques and methods, husbandry standards and practices for Asian elephants in captivity in exhibition and other facilities and any other opinions in his report.	3.0 hours of direct examination

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
*Gary Jacobson	RBBB Center for Elephant Conservation 12850 Old Grade Road Polk City, FL 33868 863-984-9374	Expert opinions and fact testimony regarding FEI's elephants, including elephant handling, training, husbandry, care, standards; FEI's history and operations related to same, including traveling and stationary facilities. Court-ordered inspection of FEI's elephants in this case.	6.0 hours of direct examination
*Gary Johnson	c/o Fulbright & Jaworski LLP 801 Pennsylvania Ave., NW Washington, D.C. 20004 202-662-0200	Expert opinions regarding FEI's elephants, including training, handling techniques and methods, husbandry standards and practices for Asian elephants in captivity in entertainment and similar modes of exhibition and any other opinions in their report.	1.0 hour of direct examination
*Kari Johnson	c/o Fulbright & Jaworski LLP 801 Pennsylvania Ave., NW Washington, D.C. 20004 202-662-0200	Expert opinions regarding FEI's elephants, including training, handling techniques and methods, husbandry standards and practices for Asian elephants in captivity in entertainment and similar modes of exhibition and any other opinions in their report.	1.0 hour of direct examination

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
*Dr. Dennis Schmitt	c/o Fulbright & Jaworski LLP 801 Pennsylvania Ave., NW Washington, D.C. 20004 202-662-0200	Expert opinions and fact testimony regarding FEI's elephants, including veterinary care, breeding, husbandry of elephants, standards & FEI's history and operations related to same and any other opinions in his report.	4.0 hours of direct examination
Jerome S. Sowalsky, Esq.	Feld Entertainment, Inc. 8607 Westwood Center Dr. Vienna, VA 22182 703-448-4000	Regulatory and legal history of FEI's elephants, including acquisition, permitting and regulatory status.	1.0 hour of direct examination
Wildlife Advocacy Project – Eric Glitzenstein	Wildlife Advocacy Project 1601 Connecticut Ave., NW Washington, D.C. 20009 202-588-5206	Payments of more than \$120,000 to or for Tom Rider from 2001 through the present.	.50 hour of direct examination

B. May Call Witnesses

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
Tom Albert	Feld Entertainment, Inc. 8607 Westwood Center Dr. Vienna, VA 22182 703-448-4000	FWS and USDA regulatory and enforcement issues with respect to FEI's elephants.	.50 hour of direct examination
James Andacht	Feld Entertainment, Inc. 1313 17 th Street East Palmetto, FL 34221 941-721-1200	Blue Unit organization and operations with respect to elephant care, handling and transportation; elephant and other animal support personnel administration, management and supervision.	.50 hour of direct examination

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
Janice Aria	RBBB Center for Elephant Conservation 12850 Old Grade Road Polk City, FL 33868 863-984-9374	FEI's elephants, including training, handling and husbandry methods, techniques and procedures. CEC function and organization.	.50 hour of direct examination
Dr. Allison Case	Point Defiance Zoo & Aquarium 5400 N. Pearl Street Tacoma, WA 98407 253-591-5337	Veterinary issues with respect to certain FEI elephants on the Red Unit.	.25 hour of direct examination
Graham Chipperfield	Whitehouse Southcombe Chipping Norton Oxfordshire, England OX75QH 44-786-750-4343	Facts and circumstances with respect to the care, handling and transportation of elephants on FEI's Blue Unit in 1997-99.	.50 hour of direct examination
Brian Christiani a/k/a Brian French	RBBB Blue Unit P.O.Box 1869 Palmetto, FL 34220 941-721-1200	Prior experience and knowledge working with elephants. Facts and circumstances regarding FEI's Blue Unit operations, including the care, handling and transportation of elephants during all periods of his employment on the Blue Unit.	2.0 hours of direct examination
Carrie Coleman	4310 Fountainview Lane Apt. 4206 Orlando, FL 32808	Facts and circumstances related to certain elephants on FEI's Red Unit in 2006. Matters related to the employment and performance of Archele Hundley, Robert Tom and Margaret Tom on the Red Unit.	1.0 hour of direct examination

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
Deborah Fahrenbruck	Feld Entertainment, Inc. 1313 17 th Street East Palmetto, FL 34221 941-721-1200	Facts and circumstances related to certain elephants on FEI's Blue Unit in 2004-05.	.50 hour of direct examination
Joe Frisco	RBBB Red Unit P.O.Box 1899 Palmetto, FL 34220 941-721-1200	Current Red Unit operations with respect to the care, handling and transportation of FEI's elephants.	1.0 hour of direct examination
Mark Oliver Gebel	1716 Lakeside Court Venice, FL 34293 941-497-7561	Facts and circumstances relating to certain Red Unit elephants in the period from 1998-2002; the misdemeanor animal cruelty case with respect to the Red Unit elephant Asia and Mr. Gebel's acquittal with respect thereto. Facts and circumstances regarding the deceased Asian elephant Kenny. Gunther Gebel Williams' elephant training and handling techniques and his relation with Red Unit elephants.	1.0 hour of direct examination
Matt Gillet	RBBB Blue Unit P.O. Box 1869 Palmetto, FL 34220 941-721-1200	The videotaping of activities by the Asian elephants Karen and Nicole on the Blue Unit in November 2007.	.25 hour of direct examination

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
John Griggs	RBBB Red Unit P.O. Box 1899 Palmetto, FL 34220 941-721-1200	Red Unit organization and operations with respect to elephant care, handling and transportation; elephant and other animal support personnel administration, management and supervision. Matters related to the employment and performance of Archelle Hundley, Robert Tom and Margaret Tom on the Red Unit.	1.0 hour of direct examination
Patrick Harned	RBBB Center for Elephant Conservation 12850 Old Grade Road Polk City, FL 33868 863-984-9374	Facts and circumstances surrounding the deceased Asian elephant Benjamin. Facts and circumstances with respect to the care, handling and transportation of elephants on FEI's Blue Unit in 1997-99.	.75 hour of direct examination
Mike Hayward	RBBB Blue Unit P.O. Box 1899 Palmetto, FL 34220 941-721-1200	Current Blue Unit operations with respect to the care, handling and transportation of FEI's elephants. Court-ordered inspection of FEI's elephants in this case.	1.0 hour of direct examination
Dr. Ramiro Isaza	University of Florida P.O. Box 100126 Gainesville, FL 32610-0126 352-392-4700	Consulting veterinary issues with respect to certain FEI elephants.	.50 hour of direct examination

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
Kathy Jacobson	RBBB Center for Elephant Conservation 12850 Old Grade Road Polk City, FL 33868 863-984-9374	Facts and circumstances surrounding the deceased Asian elephant Riccardo. Elephant parturition, raising and training elephant babies and CEC organization, operation and procedures.	.75 hour of direct examination
Jennifer Land	RBBB Blue Unit P.O.Box 1869 Palmetto, FL 34220 941-721-1200	The videotaping of activities by the Asian elephants Karen and Nicole on the Blue Unit in November 2007.	.25 hour of direct examination
Dr. William Lindsay	Arnaudville Veterinary Consulting 1082 Gray Oak Drive Arnaudville, LA 70512	History and experience as a veterinarian treating FEI's elephants. Facts and circumstances related to the deceased Asian elephant Kenny and issues related to other elephants on the Red Unit.	.75 hour of direct examination
Cathy Liss	Animal Welfare Institute (AWI) 1686 34 th Street, NW Washington, DC 20007	The nature of plaintiff AWI's claims in this case; AWI's positions on captive animals, animals in entertainment, captive breeding and extinction of endangered species; payments of money by AWI to or for the benefit of Tom Rider.	.75 hour of direct examination

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
Michael Markarian	The Fund for Animals (FFA) 8121 Georgia Ave., NW, Suite Silver Spring, MD 20910	The nature of plaintiff FFA's claims in this case; FFA's positions on captive animals, animals in entertainment, captive breeding and extinction of endangered species; payments of money by FFA to or for the benefit of Tom Rider.	.75 hour of direct examination
Troy Metzler	RBBB Center for Elephant Conservation 12850 Old Grade Road Polk City, FL 33868 863-984-9374	Care for, training and handling of Asian elephants on FEI's Blue Unit and issues with respect to certain Blue Unit elephants.	2.00 hours of direct examination
Randy Peterson	RBBB Center for Elephant Conservation 12850 Old Grade Road Polk City, FL 33868 863-984-9374	Facts and circumstances with respect to the care, handling and transportation of elephants on FEI's Blue Unit in 1997-99.	.75 hour of direct examination
Daniel Raffo	RBBB Blue Unit P.O. Box 1869 Palmetto, FL 34220 941-721-1200	Facts and circumstances with respect to the care, handling and transportation of elephants on FEI's Blue Unit in 1997-99 and with respect to the elephants presented by Mr. Raffo and attended to by Mr. Rider in Europe in 2000.	.75 hour of direct examination

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
Tom Rider	600 East Holland St. Washington, IL 61571 202-374-1503	Facts and circumstances with respect to the care, handling and transportation of elephants on FEI's Blue Unit in 1997-99. Receipt of more than \$120,000 from the other plaintiffs and WAP from 20001 through the present date.	2.0-3.0 hours of direct examination
Robert Ridley	RBBB Blue Unit P.O. Box 1869 Palmetto, FL 34220 941-721-1200	Care for, training and handling of Asian elephants on FEI's Blue Unit and issues with respect to certain Blue Unit elephants.	.75 hour of direct examination
Heather Riggs	Riverwoods Pet Hospital 3820 N. University Ave. Provo, Utah 84604 801-24-2233	Veterinary issues with respect to certain elephants on the Red Unit.	.25 hour of direct examination
Adam Seidon a/k/a Hill	c/o West Coast Ornamental 5948 Viola Road Venice, FL 34293 941-350-8996	Facts and circumstances with respect to the care, handling and transportation of elephants on FEI's Blue Unit in 1997-99.	.50 hour of direct examination
Jeffrey Steele	P.O. Box 10881 Jackson Hole, WY 83002 307-733-7115	Facts and circumstances with respect to the care, handling and transportation of elephants on FEI's Blue Unit in 1997-99.	.75 hour of direct examination

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
Tracy Silverman	Animal Welfare Institute (AWI) 1686 34 th Street, NW Washington, DC 20007	The nature of plaintiff AWI's claims in this case; AWI's positions on captive animals, animals in entertainment, captive breeding and extinction of endangered species; payments of money by AWI to or for the benefit of Tom Rider.	.75 hour of direct examination
Mike Stuart	RBBB Blue Unit P.O.Box 1869 Palmetto, FL 34220 941-721-1200	Blue Unit organization and operations with respect to elephant care, handling and transportation; elephant and other animal support personnel administration, management and supervision.	.75 hour of direct examination
Alex Vargas	RBBB Red Unit P.O. Box 1899 Palmetto, FL 34220 941-721-1200	Facts and circumstances with respect to the care, handling and transportation of elephants on FEI's Blue Unit in 1997-99. Facts and circumstances regarding certain Red Unit elephants in Austin, Texas, and Tulsa, Oklahoma in 2006.	1.0 hour of direct examination

NAME	ADDRESS	TESTIMONY	ESTIMATED TIME
Lisa Weisberg	American Society for the Prevention of Cruelty to Animals (ASPCA) 1725 Massachusetts Ave., NW Washington, DC 20036	The nature of plaintiff ASPCA's claims in this case; ASPCA's positions on captive animals, animals in entertainment, captive breeding and extinction of endangered species; payments of money by ASPCA to or for the benefit of Tom Rider.	.75 hour of direct examination
Dr. Ellen Wiedner	RBBB Center for Elephant Conservation 12850 Old Grade Road Polk City, FL 33868 863-984-9374	Veterinary treatment of FEI's elephants and the maintenance of veterinary records pertaining to FEI's elephants.	.75 hour of direct examination
Trudy Williams	RBBB Center for Elephant Conservation 12850 Old Grade Road Polk City, FL 33868 863-984-9374	Elephant parturition, raising and training elephant babies and CEC organization, operation and procedures.	.50 hour of direct examination
Any custodian of records necessary for exhibits.			
Any and all witnesses designated by plaintiffs in this case.			
Any and all witnesses necessary for impeachment or rebuttal purposes.			

V. EXHIBIT LISTS (LCvR 16.5(b)(1)(v))

As fully set forth in FEI's Objections to Plaintiffs' Proposed Trial Exhibits and to Transcripts (9/23/08) (Docket # 357), FEI objects to plaintiffs' failure to provide it with marked hard-copies of their trial exhibits. FEI estimates that, if printed, plaintiffs' exhibits would easily total more than sixteen boxes of materials. FEI objects to having to bear the substantial cost of printing, separating and preparing such exhibits – a burden that should be borne by plaintiffs, not FEI. FEI provided plaintiffs and the Court with both hard and electronic copies of its exhibits, and plaintiffs should be required to do the same. See Final Pretrial Order (10/15/08) (Docket # 373) ¶ 8 (referencing hard copy exhibits for use at trial); see also First Amended Pretrial Order ¶ 8 (8/6/08) (Docket # 328) (same).

FEI objects to plaintiffs' purported "reservation" of the right to make "additional objections", including "any and all relevancy" objections, to FEI's exhibits until trial time. See Pls. Objections to Defendant's Proposed Trial Exhibits (9/23/08) (Docket # 358); Pls. Objections to Defendant's Second and Third Amended Exhibit Lists (11/7/08) (Docket # 389). All objections to proposed exhibits, including "any and all relevancy objections", were due to be filed with the Court on September 23, 2008. See First Amended Pretrial Order (8/6/08) (Docket # 328) ¶ 8. Accordingly, FEI objects to any objection made by plaintiffs that is outside the scope of their September 23, 2008 and November 7, 2008 filings.

A. FEI will introduce the following exhibits:

1. Regulatory Status of Seven Asian Elephants at Issue - Summary (Excerpt from DX 1 to FEI's Motion for Summary Judgment (Docket No. 82) (9/5/06))
2. Asian Elephant Husbandry Guide
3. Documents Evidencing Regulatory Status of Seven Asian Elephants At Issue (Excerpt from DX 5 to FEI's Motion for Summary Judgment (Docket No. 82) (9/5/06))

FELD 0005176	FELD 0005328	FELD 0005535-537
FELD 0005199	FELD 0005354	FELD 0005599
FELD 0005242-243	FELD 0005427	FELD 0006254
FELD 0005247-250	FELD 0005513-518	FELD 0006269
FELD 0005268	FELD 0005526-528	

4. Asian Elephant North American Regional Studbook (DX 6 to FEI's Motion for Summary Judgment (Docket No. 82) (9/5/06))
5. Letter from C.R. Bavin, Chief, Division of Law Enforcement, United States Department of Interior to Ringling Brothers & Barnum & Bailey Shows (11/4/75) (DX 11 to FEI's Motion for Summary Judgment (Docket No. 82) (9/5/06))
6. Animal Censuses (1994-2008) (Bates Range Provided in Appendix I)
7. ASPCA Inspection Documents (A 00801, A 00804-806, A 00819-841)
8. Documents Relating to the Asian Elephant "Jewell" (Bates Range Provided in Appendix I)
9. Documents Relating to the Asian Elephant "Karen" (Bates Range Provided in Appendix I)
10. Documents Relating to the Asian Elephant "Lutzi" (Bates Range Provided in Appendix I)
11. Documents Relating to the Asian Elephant "Mysore" (Bates Range Provided in Appendix I)
12. Documents Relating to the Asian Elephant "Nicole" (Bates Range Provided in Appendix I)
13. Documents Relating to the Asian Elephant "Susan" (Bates Range Provided in Appendix I)
14. Documents Relating to the Asian Elephant "Zina" (Bates Range Provided in Appendix I)
15. FEI's Interrogatories to Tom Rider (3/30/04)
16. Rider's First Response and Supplemental Responses to FEI's Interrogatories (6/9/04; 1/30/07; 9/24/07; 1/30/08)

17. FEI's Interrogatories to the Organizational Plaintiffs (3/30/04)
18. ASPCA's First Response and Supplemental Responses to FEI's Interrogatories (6/9/04; 1/31/07; 9/26/07; 10/26/07; 1/30/08)
19. AWI's First Response and Supplemental Responses to FEI's Interrogatories (6/9/04; 1/31/07; 9/24/07; 1/30/08)
20. FFA's First Response and Supplemental Responses to FEI's Interrogatories (6/9/04; 1/31/07; 9/24/07; 1/30/08)
21. API's First Response and Supplemental Responses to FEI's Interrogatories (1/15/07; 9/24/07; 1/30/08)
22. Expert Report of Ted H. Friend (5/15/08)
23. Expert Report of Dennis Schmitt (5/15/08)
24. Expert Report of Kari and Gary Johnson (5/15/08)
25. Expert Report of Michael N. Keele (6/28/08)
26. Court-ordered Inspection Video Footage (Auburn Hills) (11/13/07)
27. Court-ordered Inspection Video Footage (CEC) (11/29/07)
28. Karen & Nicole Video Footage (11/13/07) (FEI 45267)
29. Karen & Nicole Observation Video Footage (11/16/07) (FEI 52228-232)
30. Tom Rider / San Diego Video Footage (TR 00201)
31. Letter from Kathi Travers (ASPCA) to Julie Strauss (5/5/96) (FELD 0024121)
32. Email from Lisa Picard to Julie Strauss (4/10/00) (FELD 006359-360)
33. Transcript and Video of Tom Rider Statement Under Oath to Performing Animal Welfare Society ("PAWS") (3/25/00) (PL 07068)
34. Tom Rider Statement Under Oath to Congressional Committee (6/13/08) (FELD 0023875-876) (Ex. 13 to Tom Rider Deposition (10/12/06))
35. Tom Rider USDA Affidavit (7/20/00) (FELD 0024122-128 / PL 004458-464) (Ex. 11 to Tom Rider Deposition (10/12/06))
36. Ringling Bros. & Barnum & Bailey Combined Shows, Inc. Official Tour, Blue Unit, 1997-1999 (TR 00163-172) (Ex. 5 to Tom Rider Deposition (10/12/06))

37. Letter from Katherine Meyer to Tom Rider (4/12/05) (WAP 262) (Ex. 6 to Tom Rider Deposition (10/12/06))
38. Tom Rider Application for Employment with Feld Entertainment, Inc. (FELD 0004826-827) (Ex. 7 to Tom Rider Deposition (10/12/06))
39. Letter from Tom Rider to Pat Derby (PAWS) (5/14/01) (TR 00001) (Ex. 10 to Tom Rider Deposition (10/12/06))
40. Written Warning from Feld Entertainment, Inc. to Tom Rider (12/2/98) (FELD 0004832) (Ex. 14 to Tom Rider Deposition (10/12/06))
41. Written Warning from Feld Entertainment, Inc. to Tom Rider (7/18/99) (FELD 0004831) (Ex. 15 to Tom Rider Deposition (10/12/06))
42. Written Warning from Feld Entertainment, Inc. to Tom Rider (10/30/99) (FELD 0004830) (Ex. 16 to Tom Rider Deposition (10/12/06))
43. Tom Rider Military Personnel Record (Ex. 1 to Def. Deposition of Tom Rider (12/18-19/07))
44. Letter from The Audubon Institute to USDA/APHIS (5/2/99) and Letter from USDA/APHIA to FWS (5/11/99) (PL 04803-804)
45. ASPCA Policy & Position Statements (A 00127-146)
46. Email from Lisa Weisberg to Larry Hawk (5/7/01) (A 00046) (Ex. 9 to ASPCA Rule 30(b)(6) Deposition)
47. ASPCA By-Laws as of June 19, 2002 (A 00855-863) (Ex. 11 to ASPCA Rule 30(b)(6) Deposition)
48. Payments to or for Tom Rider - Summary
49. WAP Ledgers of Payments Made to or for Tom Rider (September 24, 2007 WAP-004-009; November 30, 2007 WAP-001)
50. WAP Ledgers of Payments Received for Tom Rider (September 24, 2007 WAP-002-003; November 30, 2007 WAP-002)
51. Checks from WAP to Tom Rider

WAP 402-99	March 30, 2007 WAP-005
WAP 500-501	March 30, 2007 WAP-007
WAP 540-541	March 30, 2007 WAP-009

March 30, 2007 WAP-011	March 30, 2007 WAP-079
March 30, 2007 WAP-013	March 30, 2007 WAP-082
March 30, 2007 WAP-015	March 30, 2007 WAP-084
March 30, 2007 WAP-017	March 30, 2007 WAP-086-087
March 30, 2007 WAP-019	March 30, 2007 WAP-091
March 30, 2007 WAP-021	March 30, 2007 WAP-094
March 30, 2007 WAP-023-024	March 30, 2007 WAP-096
March 30, 2007 WAP-027	March 30, 2007 WAP-098
March 30, 2007 WAP-029-030	March 30, 2007 WAP-100
March 30, 2007 WAP-032	March 30, 2007 WAP-102-103
March 30, 2007 WAP-034	March 30, 2007 WAP-106
March 30, 2007 WAP-037	March 30, 2007 WAP-108
March 30, 2007 WAP-039	March 30, 2007 WAP-110-111
March 30, 2007 WAP-041	March 30, 2007 WAP-114-115
March 30, 2007 WAP-043-044	March 30, 2007 WAP-118
March 30, 2007 WAP-046	March 30, 2007 WAP-120
March 30, 2007 WAP-049-051	March 30, 2007 WAP-122
March 30, 2007 WAP-054	March 30, 2007 WAP-256
March 30, 2007 WAP-064	September 24, 2007 WAP-012-013
March 30, 2007 WAP-066	September 24, 2007 WAP-015
March 30, 2007 WAP-068	September 24, 2007 WAP-017-019
March 30, 2007 WAP-070	September 24, 2007 WAP-021-025
March 30, 2007 WAP-072	September 24, 2007 WAP-027-028
March 30, 2007 WAP-074	September 24, 2007 WAP-030-031
March 30, 2007 WAP-076-077	September 24, 2007 WAP-033

September 24, 2007 WAP-035-036	November 30, 2007 WAP-024-025
September 24, 2007 WAP-038-039	November 30, 2007 WAP-027-028
September 24, 2007 WAP-041-042	November 30, 2007 WAP- 030-031
September 24, 2007 WAP-044-046	November 30, 2007 WAP-033-034
September 24, 2007 WAP-048	November 30, 2007 WAP-056-057
September 24, 2007 WAP-050	November 30, 2007 WAP-060-06
November 30, 2007 WAP-001	

52. Tom Rider's Receipts

TR 00221-394	TR 00614
TR 00466-545	TR 00627-703
TR 00612	

53. Letters from Eric Glitzenstein to Tom Rider

TR 00207-209	TR 00400-455	TR 00619-625
TR 00376-399	TR 00462-465	

54. IRS Forms 1099 Issued to Tom Rider by WAP

TR 00457-461	M0113
TR 00197	WAP 398-401
TR 00626	March 30, 2007 WAP-125
M 0107-111	September 24, 2007 WAP-051

55. IRS Forms 1099 Issued to Tom Rider by MGC (TR 00456 / M 0106)

56. IRS Form 1099 Issued to Tom Rider by PAWS (TR 00613)

57. IRS Wage and Income Transcript for PAWS Earnings in 2001 (TR 00565)
58. Federal Express Airbills from Meyer, Glitzenstein & Crystal to Tom Rider (M 0001-105) and Summary Thereof
59. Show Schedules for the Red Unit, Blue Unit and Gold Unit
60. Tom Rider's Tax Returns (2000-2006) (TR 00546-611)
61. Meyer Glitzenstein & Crystal Invoices Reflecting Payments to Rider
 - A 01203-215 AWI 10048-049 AWI 09932-933
 - A 01219-220 AWI 009938-939 F 04513-516
 - AWI 10054-057 AWI 10050-053 F 04493-512
 - AWI 09934-935 AWI 09936-937
62. Fundraiser Invitation (AWI 09925)
63. AWI Check to an Employee for Wire Transfer to Tom Rider (AWI 09946)
64. FFA Accounting Record Concerning Payment to Tom Rider (7/22/04) (F 004485-486)
65. Partial Email (pages 2 and 3) From Katherine Meyer to Lisa Weisberg, Michael Markarian, and Cathy Liss (11/5/03) (WAP 270)
66. API Letters to WAP (API 2868-873, API 7203-206)
67. HSUS Letters to WAP (Produced by HSUS)
68. FFA/HSUS Asset Acquisition Agreement (Produced by HSUS on December 13, 2007)
69. Elephants Born to Feld Entertainment, Inc. - Summary
70. Notice of Intent to Sue Letters (12/21/98, 11/15/99, 4/12/01, 7/22/05)
71. USDA No Action and No Violation Letters and Internal Memoranda and Communications Regarding Same
 - FELD 0029112 FELD 0029296 PL 014050
 - FELD 0001416-417 PL 05087 FELD 0002005

FELD 0002017	FELD 0002009	PL 04421 -422
FELD 0002020-021	FEI 53187	FELD 0002007-008
FELD 0025252-253	FELD 0000221	
FELD 0023232-233	PL 14483	
FELD 0023985		

B. FEI may introduce the following exhibits:

Documents Relating to USDA Investigations and Various Inspection Documents

72. Certificates of Veterinary Inspection (Bates Range Provided in Appendix I)

73. USDA Inspection Reports Produced by FEI: Blue Unit

FEI 2695-696	FELD 0025194	FEI 2712
FELD 024250-251	FELD 023673	FEI 2241
FEI 37627	FEI 0632-633	FEI 38499
FELD 0023400	FELD 000629	FELD 0021176
FEI 0635	FELD 023982	FELD 021180
FELD 025196	FEI 2288	FEI 15304
FEI 11426	FELD 024289-290	FELD 000087
FELD 022783	FELD 0000042	FELD 000088
FELD 022782	FELD 000043	FELD 001985
FEI 49027	FELD 000513	FELD 001986
FEI 39941	FELD 000514	FELD 001987
FEI 44415-416	FELD 000515	FELD 001628
FEI 48116	FELD 000516	FELD 000066
FEI 44300	FELD 000511	FELD 001982

FELD 044515-16 FELD 000512 FELD 000503

74. USDA Inspection Reports Produced by FEI: Red Unit

FEI 2689-694 FELD 0010381 FEI 40014
FELD 0010375-376 FELD 0010377-378 FEI 45769
FELD 0010386 FELD 0004092 FELD 0024267
FELD 0010370 FEI 39958 FELD 0004087
FEI 2227-228 FEI 17103
FELD 0010379 FEI 49026

75. USDA Inspection Reports Produced by FEI: Gold Unit

FEI 2753
FEI 39513-514
FEI 39572

76. USDA Inspection Reports Produced by FEI: CEC

FELD 0029267-268 FELD 0023398 FELD 0020084
FELD 0020082 FELD 0025257 FELD 0020083
FEI 1472 FEI 49365 FEI 49071
FEI 1471 FEI 39957 FELD 001425
FEI 12466 FEI 44443

77. USDA Inspection Reports Produced by FEI: Williston

FEI 2739 FEI 2259 FEI 38342
FEI 2741 FELD 0010382 FEI 2719
FEI 2737 FEI 27781 FEI 2327

FEI 2735	FEI 2725	FEI 21923
FEI 2734	FEI 2722	FELD 001427
FEI 1474	FELD 0004091	FELD 0004086

78. USDA Inspection Reports Produced by FEI: Miscellaneous

FEI 2697-698	FELD 0023277-280
FEI 2188-189	FELD 0024283-287
FELD 0010380	FELD 0024291-294
FEI 2709	FELD 000065
FEI 2731	FELD 001428
FEI 1475	FELD 001429
FEI 2707	

FELD 0024270-73

79. USDA Inspection Reports Produced by Plaintiffs (Bates Range Provided in Appendix I)

80. Local Inspection Documents

PL 08756	FEI 21907	FELD 0010373-374
FEI 2661	FEI 39536	FEI 2252-254
FELD 0010371	FELD 0004823-825	FEI 2247-248
FELD 0010372	FEI 44463	FEI 2262
FEI 1691	FEI 2706	FELD 0001997
FELD 0004079-085	FELD 0010353	FELD 0002163-166

81. S.P.C.A. Inspection Reports

FEI 47736	FELD 0002124
FELD 0010369	FELD 0002128

82. Documents Relating to USDA Investigation Regarding Tuberculosis in FEI's Elephants, Including the Asian Elephant "Nicole"

FEI 3101-103	PL 10507-508	FELD 0026738-746
PL 01965-66	FELD 0026329-424	
PL 04851-866	FELD 0026577-586	

83. Documents Relating to USDA Investigation Regarding the Asian Elephant "Benjamin"

FELD 0001802-1967	FELD 0026235-236	FELD 0001085
FELD 0025242-51	FELD 0026239	FELD 0023480-484
FELD 0025227-228	FELD 0026243	FELD 0025492-497
FELD 0025257	PL 10040	
FELD 0026290	PL 10042	
FELD 0023671	FELD 0002000	

84. Documents Relating to USDA Investigation Regarding the Asian Elephant "Kenny"

FELD 0023323-324	FELD 0023245-248	PL 01731-732
FELD 0023155-162	FELD 0023255-272	PL 01736-738
FELD 0028907-908	PL 01450-454	
FELD 0023233	PL 14057-094	

85. Documents Relating to USDA Investigation Regarding the Asian Elephant "Riccardo"

FELD 0004178-179	FELD 0027832-839
------------------	------------------

FELD 0027816-817

FELD 0024200-201

86. Documents Relating to USDA Investigation Regarding the Asian Elephants “Doc” and “Angelica”

FELD 0024202-203	FELD 0025822-823	FELD 0025865-886
FELD 0029205-209	FELD 0025826-27	FELD 0023990
FELD 0023841-842	FELD 0025834-36	FELD 0029249

87. Documents Relating to USDA Investigation Regarding the Asian Elephants “Rudy” and “Angelica” (PL 014715-718)

88. Documents Relating to USDA San Jose Investigation (FELD 0002010-016, FELD 0002018-021)

89. Documents Relating to USDA Investigation of Allegations by Archele Hundley (PL 014355-360, PL 014433, PL 014456-463)

90. Documents Relating to USDA Investigation of Allegations by Glenn “Doc” Ewell and James Stehcon

FELD 0025201-217	FELD 0001526-527	FELD 0001461 -463
FELD 0001446-451	FELD 0001444-445	FELD 0001470
FELD 0001557-578	FELD 0001471-472	FELD 0001407-408
FELD 0001418-419	FELD 0025535-36	
FELD 0001458-460	FELD 0025196	
PL 014099-123	PL 04427	

Deposition Exhibits

91. Fraser, Christian and Jeremy Armstrong, *9,000 Miles of Hell; Torment of Circus Elephants Exposed*, THE MIRROR, Mar. 20, 2000, at 4-5. (Ex. 3 to Def. Deposition of Tom Rider (12/18-19/07))
92. FedEx Airbill from Tom Rider to Meyer, Glitzenstein & Crystal (TR 00468) (Ex. 20 to Def. Deposition of Tom Rider (12/18-19/07))

93. "AWI Online" (5/11/05) (Ex. 2 to AWI Rule 30(b)(6) Deposition)
94. AWI "Aims and Programs" (5/11/05) (Ex. 3 to AWI Rule 30(b)(6) Deposition)
95. AWI Annual Report (AWI 00010) (Ex. 4 to AWI Rule 30(b)(6) Deposition)
96. Email from Cathy Liss to "pelster@fuse.net" (2/9/04) (Ex. 7 to AWI Rule 30(b)(6) Deposition)
97. Letter from AWI to Regulatory Analysis and Development PPD (4/17/00) (AWI 02465-468) (Ex. 8 to AWI Rule 30(b)(6) Deposition)
98. Letter from Pan Productions to AWI (4/19/91) (AWI 01270) (Ex. 9 to AWI Rule 30(b)(6) Deposition)
99. AWI 01552-557 (Ex. 10 to AWI Rule 30(b)(6) Deposition)
100. API Letter Regarding "Circus Campaign Updated" (7/29/98) (AWI 01564-568) (Ex. 11 to AWI Rule 30(b)(6) Deposition)
101. AWI 01618-623 (Ex. 12 to AWI Rule 30(b)(6) Deposition)
102. FFA "What's New", at <http://www.fundforanimals.org/Home/> (6/20/05) (Ex. 2 to FFA Rule 30(b)(6) Deposition)
103. "The Fund for Animals" (F 02250-252) (Ex. 3 to FFA Rule 30(b)(6) Deposition)
104. "Welcome to The Fund for Animals" (F 02019-024) (Ex. 4 to FFA Rule 30(b)(6) Deposition)
105. The Fund for Animals Annual Report 2003 (Ex. 6 to FFA Rule 30(b)(6) Deposition)
106. The Fund for Animals Bulk Mailings 1997-2004 (F 02164-192) (Ex. 7 to FFA Rule 30(b)(6) Deposition)
107. The Fund for Animals First Class Mailings 1998-2004 (F 02193-226) (Ex. 8 to FFA Rule 30(b)(6) Deposition)
108. Federal Election Commission: Contribution of Kenneth Feld (F 00822-832) (Ex. 11 to FFA Rule 30(b)(6) Deposition)
109. Attitudes of Parents and Teachers Toward Education and Animals in the Circus (F 03590-592)) (Ex. 12 to FFA Rule 30(b)(6) Deposition)
110. ASPCA Lobbying Report (1999) (Ex. 2 to ASPCA Rule 30(b)(6) Deposition)
111. ASPCA Check Request & Invoice from Meyer & Glitzenstein (12/24/02) (A 00896-897) (Ex. 4 to ASPCA Rule 30(b)(6) Deposition)

112. ASPCA Check Request (7/17/03) (A 00903) (Ex. 5 to ASPCA Rule 30(b)(6) Deposition)
113. ASPCA Check Request & Memorandum (11/9/03) (A 00894-895) (Ex. 6 to ASPCA Rule 30(b)(6) Deposition)
114. ASPCA Check Request (4/4/02) (A 00884) (Ex. 7 to ASPCA Rule 30(b)(6) Deposition)
115. ASPCA Check Request (5/23/03) (A 00886) (Ex. 8 to ASPCA Rule 30(b)(6) Deposition)
116. ASPCA IRS Form 990 (2002) (A 00866-871) (Ex. 10 to ASPCA Rule 30(b)(6) Deposition)
117. ASPCA Urges Assistance in Circus Elephant Campaign (April 2001) (A 00033) (Ex. 19 to ASPCA Rule 30(b)(6) Deposition)
118. Letter from Lisa Weisberg to The Honorable John B. Harwood (6/16/00) (A 00083-084) (Ex. 20 to ASPCA Rule 30(b)(6) Deposition)
119. Invoices from Hilton San Jose & Towers (12/18-29/99) (Ex. C to Frank Hagan Deposition)
120. California v. Hagan, DA No: 991236422, Felony Case Summary (Ca. Super. Ct. San Jose) (Ex. D to Frank Hagan Deposition)
121. United States Government, U.S. Secret Service Memorandum, File: 99-3600745 (12/27/99) (Ex. E to Frank Hagan Deposition)
122. Police Report Re: Frank Hagan (12/26/99) (Ex. F to Frank Hagan Deposition)
123. California v. Thomas Frank Dalesandro, Petition for Modification of Terms of Probation (6/1/00) (Ex. G to Frank Hagan Deposition)
124. Archele Hundley Affidavit (9/29/06) (Exhibit MM to Pls. Opp. to Defendant's Motion for Summary Judgment) (Docket No. 113) (11/22/06) (Ex. 2 to Archele Hundley Deposition)
125. Archele Hundley Declaration (9/29/06) (PL 014598-605) (Ex. 3 to Archele Hundley Deposition)
126. Archele Hundley Affidavit (12/13/06) (PL 014568-72) (Ex. 4 to Archele Hundley Deposition)
127. Photographs Taken By Archele Hundley (AH-0019-1-9) (Ex. 5 to Archele Hundley Deposition)

128. Photographs Taken by Archele Hundley (AH-0020-1-9) (Ex. 6 to Archele Hundley Deposition)
129. "What I Saw Behind the Scenes at Ringling Bros. and Barnum & Bailey Circus" (Ex. 7 to Archele Hundley Deposition)
130. Facsimile Cover Sheet from PeTA to Archele Hundley (1/18/07) (Produced by PeTA) (Ex. 8 to Archele Hundley Deposition)
131. Red Unit Itinerary (2005) (AH-0049-050) (Ex. 9 to Archele Hundley Deposition)
132. Alltel Wireless Bills (Produced by PeTA) (Ex. 10 to Archele Hundley Deposition)
133. PeTA Financial Report and Check Request Forms Showing Payments to or for Archele Hundley (10/1/07 & 8/9/07) (Produced by PeTA) and Public Service Announcement (Exs. 11 & 12 to Archele Hundley Deposition)
134. Documents Showing Travel by Archele Hundley (AH-0001-08, AH-0013-16) (Ex. 13 to Archele Hundley Deposition)
135. Email from RaeLeann Smith to n8rku@yahoo.com (AH-0054) (Ex. 14 to Archele Hundley Deposition)
136. Yahoo Travel Confirmation and Itinerary (AH-0059-60, AH-009-12) (Ex. 15 to Archele Hundley Deposition)
137. Letter from Leslie Mink (MGC) to Archele Hundley (A-0145) (Ex. 16 to Archele Hundley Deposition)
138. Press Release, ASPCA Asks Court to Add Former Ringling Bros. Employees as Plaintiffs in Lawsuit Against "Greatest Show on Earth" (8/29/07) (Ex. 17 to Archele Hundley Deposition)
139. Archele Hundley Statements to Committees (AH-0053 & AH-0055) (Ex. 18 & 19 to Archele Hundley Deposition)
140. Letter from Margaret Tom to The Honorable Richard M. Daley (11/13/06) (AH-0057 / TOM-0202) (Ex. 1 to Margaret Tom Deposition)
141. Sound Bites for Margaret and Sound Bites for Bob (TOM-206-207) (Ex. 2 to Margaret Tom Deposition)
142. Margaret Tom Affidavit (4/4/07) (PL 014503-504) (Ex. 3 to Margaret Tom Deposition)
143. Disciplinary Report Re: Margaret Tom (8/23/05) (Ex. 4 to Margaret Tom Deposition)

144. Disciplinary Report Re: Margaret Tom (8/25/05) (Ex. 5 to Margaret Tom Deposition)
145. Disciplinary Report Re: Margaret Tom (8/30/05) (Ex. 6 to Margaret Tom Deposition)
146. Notice of Disciplinary Action Form (10/30/05) (Ex. 7 to Margaret Tom Deposition)
147. Jimmy Strickland Written Statement (1/7/06) (Ex. 8 to Margaret Tom Deposition)
148. Margaret Tom Written Statement (Ex. 9 to Margaret Tom Deposition)
149. Notice of Disciplinary Action Form (4/1/06) (Ex. 10 to Margaret Tom Deposition)
150. Coaching / Counseling Form (4/8/06) (Ex. 11 to Margaret Tom Deposition)
151. Disciplinary Report Form / Margaret Tom (4/26/06) (Ex. 12 to Margaret Tom Deposition)
152. Written Warning to Margaret Tom from Feld Entertainment, Inc. (6/28/06) (Ex. 13 to Margaret Tom Deposition)
153. Personnel Action Request Form (8/6/06) (Ex. 14 to Margaret Tom Deposition)
154. Email from Debbie Leahy to "RMFRIENDLYCLUB01@aol.com" (10/23/06) (Produced by PeTA) (Ex. 1 to Robert Tom Deposition)
155. Reservation Information for Stay in Chicago (Produced by PeTA) (Ex. 2 to Robert Tom Deposition)
156. Letter from Robert Tom, Jr. (11/13/06) to The Honorable Richard M. Daley (AH-0056 / TOM-0205) (Ex. 3 to Robert Tom Deposition)
157. Robert Tom Declaration (10/10/06) (Ex. 4 to Robert Tom Deposition) (Exhibit LL to to Pls. Opp. to Defendant's Motion for Summary Judgment) (Docket No. 113) (11/22/06)
158. TOM-0242 (Ex. 5 to Robert Tom Deposition)
159. Sound Bites for Margaret and Sound Bites for Bob (TOM-206-207) (Ex. 6 to Robert Tom Deposition)
160. Letter from Leslie Mink (MGC) to Robert and Margaret Tom and Itinerary (TOM-0131-38) (Ex. 7 to Robert Tom Deposition)
161. Letter from "ReaLeann" to "Bob and Margaret" and Itinerary (TOM-0198-0201) (Ex. 8 to Robert Tom Deposition)

162. Westin Embassy Row Invoice (TOM-238) (Ex. 9 to Robert Tom Deposition)
163. Amtrak Reservation Confirmation (TOM-0240-41) (Ex. 10 to Robert Tom Deposition)
164. PeTA Financial Report and Check Request Form (2/15/07) (Produced by PeTA) (Ex. 11 to Robert Tom Deposition)
165. Robert Tom Affidavit (4/4/07) (PL 014501-502) (Ex. 12 to Robert Tom Deposition)
166. Written Warning to Robert Tom, Jr. from Feld Entertainment, Inc. (6/28/06) (Ex. 16 to Robert Tom Deposition)
167. Written Warning to Robert Tom, Jr. from Feld Entertainment, Inc. (6/28/06) (Ex. 17 to Robert Tom Deposition)
168. Written Warning to Robert Tom, Jr. from Feld Entertainment, Inc. (8/4/06) (Ex. 18 to Robert Tom Deposition)
169. Personnel Action Request Form (Ex. 19 to Robert Tom Deposition)
170. Gerald Robert Ramos, Application for Employment with Feld Entertainment, Inc. (Ex. 2 to Gerald Ramos Deposition)

Video Footage

171. The Guide, Tethers & Training: Aids in Elephant Care (Produced to Plaintiffs on 6/13/08)
172. Compilation of Training and Rehearsal Footage (Produced by Plaintiffs on 6/10/08)
173. Blue Elephants Video Footage 4-5-99 (FEI 52899)
174. The Elephant Sanctuary "Ele-Cam" Video Footage (FEI 53184-186)
175. Ringling Bros, and Barnum & Bailey Circus Animal Care / Long Beach (Tape # 10) (7/25/94)
176. Ringling Bros, and Barnum & Bailey Circus Animal Care / Long Beach (Tape # 11) (7/25/94)
177. Ringling Bros, and Barnum & Bailey 130th Edition Animal Care B-Roll Package (7/21/00) (FEI 0022)
178. Center for Elephant Conservation / CEC: Baby PT Satellite Media Tour / VNR (6/10/02)

179. King Tusk B-Roll, Feld Entertainment, Inc.
180. Ringling Bros, and Barnum & Bailey Animal Care - Elephants B-Roll (12/14/99)
181. Center for Elephant Conservation - Doc & Angelica (Tape # 2) (8/4/97)
182. Feld Entertainment AC Highlights Elephants
183. Benjamin Videotape (7/26/99)

Orders, Exhibits Previously Filed in Civ. Act. No. 03-2006, Correspondence, and Discovery Requests and Responses

184. Court Orders Regarding Fed. R. Civ. P. 34 Inspections ((Docket No. 195) (9/25/07); (Docket No. 219) (11/5/07); (Docket No. 228) (11/26/07))
185. Sanerib Letter to Joiner (10/12/07) and attachments thereto
186. Notice of Intent to Sue Letter from Archele Hundley, Robert Tom and Margaret Tom (3/30/07) (Ex. 3 to Pls. Motion to File a Suppl. Compl.) (Docket No. 181) (8/29/07))
187. Exhibit 64 to FEI's Opposition to Plaintiffs' Motion Under Rule 11 (Docket No. 165) (8/16/07)
188. Letter from Dominic C. MacKenzie to Kimberly D. Ockene (8/15/08) (producing CSXT 00001-00068)
189. Defendant's First Set of Document Requests to the Organizational Plaintiffs (3/30/04) and Responses and Objections Thereto
190. Defendants' First Set of Document Requests to Tom Rider (3/30/04) and Responses and Objections Thereto
191. Defendant's First Set of Requests for Admission (3/30/04) and Responses and Objections Thereto

Miscellaneous

192. Transportation Orders Produced in Discovery
193. Feld Entertainment, Inc.'s Current USDA Licenses and Permits (FWS Permit (Expiration Date 2/12/09); AWA Permit (Expiration Date 4/28/09); AWA Permit (Expiration Date 4/28/08); AWA Permit (Expiration Date 4/28/07))
194. June 2007 Las Vegas News Stories Regarding ESA Action (Exs. 1, 3 & 4 to Reply in Support of FEI's Motion to Enforce the Court Order (Docket No. 158) (7/3/07))

195. PeTA Chart of Payments to Tom Rider, Archele Hundley, Robert Tom, and Margaret Tom (Produced by PeTA)
196. Records Concerning Payments to or for Frank Hagan (Produced by PETA)
197. Newstory and Video, I-Team: Circus Lawsuit Moves Forward (Parts I & II) (6/17/08), CBS 8, Las Vegas, NV
198. Newstory and Video, I-Team: Ringling Brothers Responds to a Pending Lawsuit (7/4/08), CBS 8, Las Vegas, NV
199. PHOTOS: Circus Unpacks Its Trunks, LAS VEGAS REVIEW-JOURNAL, *available at* <http://www.lvrj.com/news/20557719.html> (last visited 7/13/08)
200. Agreement Between Teamsters Local Union No. 688 and Irvin Feld and Kenneth Feld Productions, Inc. dba Ringling Bros. & Barnum & Bailey Circus (1/1/96-12/31/98) (FEI 53188-209)
201. Agreement Between Teamsters Local Union No. 688 and Feld Entertainment, Inc. dba Ringling Bros. & Barnum & Bailey Circus (1/1/99-1/31/01) (FEI 53210-233)
202. Dawson, Adam, Santa Ana Investor Gets 9-year Term; He Swindled Bank Out of \$21 Million in Real-Estate Deal, A-03, THE ORANGE COUNTY REGISTER (7/26/88)
203. Dawson, Adam, Former Santa Ana Financier Guilty of 33 Counts of Fraud, A-04, THE ORANGE COUNTY REGISTER (5/25/88)
204. United States of America v. Ramos, Case No. CR 86-466-HLH (C.D. Ca. 2000), Judgment and Commitment Order Following Revocation of Supervised Release
205. Letter from William A. Lindsay, D.V.M. (8/29/98) (FELD 0001590)

206. Letter from USDA to Richard Froemming Regarding Train Transportation (11/22/02) (FELD 0028084)
207. Documents Relating to Glenn "Doc" Ewell
FELD 0025512 FELD 0025551-556 PL 04348-352
FELD 0025515 PL 03216-220

208. Jury Verdict and Final Judgment, People v. Mark Oliver Gebel Case No. CC 122517 (Ca. Super. Ct.)

209. Documents Produced by Plaintiffs on 8/11/08

A 01222-Revised-A 01230-Revised

A 01231-Revised-A 01239-Revised

A 01240-Revised-A 1250 Revised

AWI 10050-Revised-AWI 100053-Revised

F 04502-Revised-F 04506-Revised

F 04507-Revised-F 04510-Revised

IC 203/F 04546

IC 196/A 01254

IC201/A 01255

IC 076/AWI 10139

210. Wildlife Advocacy Project IRS Forms 990 (2002-07)

211. IRS Tax Lien Against Tom E. Rider, P.O. Box. 73, Inglis, FL 34449-0073
(9/27/07), *available* *at*
[http://oncore.levyclerk.com/oncoreweb/showdetails.aspx?id=386650&rn=4&pi=0](http://oncore.levyclerk.com/oncoreweb/showdetails.aspx?id=386650&rn=4&pi=0&ref=search)
&ref=search

Exhibits Related to Plaintiffs' Experts

212. Hart, Benjamin L. *et al.*, Control of Urine Marking By Use of Long-Term Treatment with Fluoxetine or Clomipramine in Cats, *JAVMA*, Vol. 226, No. 3, 378-382 (Feb. 1, 2005) (Ex. 3 to Benjamin Hart Deposition)
213. Hart, Benjamin L. *et al.*, Cognitive Behaviour in Asian Elephants: Use and Modification of Branches for Fly Switching, *Animal Behaviour*, 839-847 (2001) (Ex. 4 to Benjamin Hart Deposition)
214. Brockett, R.C. *et al.*, Nocturnal Behavior in a Group of Unchained Female African Elephants, *Zoo Biology*, 18: 101-109 (1999) (Ex. 5 to Benjamin Hart Deposition)
215. Wilson, Megan L. *et al.*, Nocturnal Bheavior in a Group of Female African Elephant, *Zoo Biology*, 25: 173-186 (2006) (Ex. 6 to Benjamin Hart Deposition)
216. Schmid, J., Keeping Circus Elephants Temporarily in Paddocks - The Effects of Their Behavior, *Animal Welfare*, 4: 87-101 (1995) (Ex. 7 to Benjamin Hart Deposition)
217. Mason, G.J. and N.R. Latham, Can't Stop, Won't Stop: Is Stereotypy a Reliable Animal Welfare Indicator? *Animal Welfare* 13: S57-69 (2004) (Ex. 8 to Benjamin Hart Deposition)
218. Swaisgood, Ronald R. and David J. Shepardson, Scientific Approaches to Enrichment and Stereotypies in Zoo Animals: What's Been Done and Where Should We Go Next? *Zoo Biology*, 24: 499-518 (2005) (Ex. 9 to Benjamin Hart Deposition)
219. Hart, Benjamin and Lynette Hart, Fly Switching by Asian Elephants: Tool Use to Control Parasites, *Animal Behavior*, 48: 35-45 (1994) (Ex. 10 to Benjamin Hart Deposition)
220. Friend, Ted H., Behavior of Picketed Circus Elephants, *Applied Animal Behaviour Science*, 62: 73-88 (1999) (Ex. 11 to Benjamin Hart Deposition)
221. Friend, Ted. H. and Melissa L. Parker, The Effect of Penning Versus Picketing on Stereotypic Behavior of Circus Elephants, *Applied Animal Behavior Science*, 64: 213-25 (1999) (Ex. 12 to Benjamin Hart Deposition)
222. Gruber, T.M. *et al.*, Variation in Stereotypic Behavior Related to Restraint in Circus Elephants, *Zoo Biology*, 19: 209-221 (2000) (Ex. 13 to Benjamin Hart Deposition)
223. Williams, J.L. and T.H. Friend, Behavior of Circus Elephants During Transport, *JEMA*, Vol. 14, No. 3, 8-11 (Ex. 14 to Benjamin Hart Deposition)

224. Hart, Benjamin *et al.*, Large Brains and Cognition: Where Do Elephants Fit In? Neuroscience and Biobehavioral Reviews, 32: 86-98 (2008) (Ex. 15 to Benjamin Hart Deposition)
225. Povinelli, Daniel J., Failure to Find Self-Recognition in Elephants (*Elephas Maximus*) in Contrast to Their Use of Mirror Cues to Discover Hidden Food, Journal of Comparative Psychology, Vol. 103, No. 2, 122-31 (1989) (Ex. 16 to Benjamin Hart Deposition)
226. Plotnik, Joshua M. *et al.*, Self-Recognition In An Asian Elephant, PNAS, Vol. 103, No. 45, 17053-57 (2006) (Ex. 17 to Benjamin Hart Deposition)
227. Douglas-Hamilton, Iain, *et al.*, Behavioural Reactions of Elephants Towards A Dying and Deceased Matriarch, Applied Animal Behavior Science (2006) (Ex. 18 to Benjamin Hart Deposition)
228. Whittaker, Margaret and Gail Laule, Protected Contact and Elephant Welfare, *in* An Elephant in the Room: the Science and Well Being of Elephants in Captivity (eds. L. Kane and D. Forthman) (forthcoming) (Ex. 3 to Gaule Laule Deposition)
229. Trunklines, The Elephant Sanctuary (Spring 2005) (Ex. 3 to Carol Buckley Deposition)
230. Trunklines, The Elephant Sanctuary (Summer 2005) (Ex. 4 to Carol Buckley Deposition)
231. Hutchins, Michael, What's In A Name? Zoo vs. Sanctuary, *Communique*, 54-56 (Ex. 5 to Carol Buckley Deposition)
232. Trunklines, The Elephant Sanctuary (June 2001) (Ex. 6 to Carol Buckley Deposition)
233. Federal Environmental Laws Document, Attachment (Ex. 4 to Philip Ensley Deposition)
234. "Osteodystrophy in an Orphan Asian Elephant" (Ex. 5 to Philip Ensley Deposition)
235. "New Concepts in Special Medical Care" (Ex. 6 to Philip Ensley Deposition)
236. "Standards for Elephant Management and Care" (Ex. 8 to Philip Ensley Deposition)
237. Color Copy of Photograph, Zina, Figure 37 (Ex. 9 to Philip Ensley Deposition)

238. Color Copy of Three Photographs, Susan, Figures 41, 42, 43 (Ex. 10 to Philip Ensley Deposition)
239. Black and White Copy of Two Photographs, Karen, Figures 19 and 20 (Ex. 11 to Philip Ensley Deposition)
240. Color Copy of Two Photographs, Karen, Figures 17 and 18 (Ex. 12 to Philip Ensley Deposition)
241. Color Copy of Three Photographs, Karen, Figures 14, 15, and 16 (Ex. 13 to Philip Ensley Deposition)
242. Color Copy of Two Photographs, Karen, Figures 23 and 24 (Ex. 14 to Philip Ensley Deposition)
243. Color Copy of Photographs, Figures 10, 11, 35, 36, 38, 39, 40, 44, 45, 46, 47, 48, 49, 53 and 54 (Ex. 15 to Philip Ensley Deposition)
244. "Nocturnal Behavior in a Group of Unchained Female African Elephants" (Ex. 16 to Philip Ensley Deposition)
245. "Nocturnal Behavior in a Group of Female African Elephants" (Ex. 17 to Philip Ensley Deposition)
246. "A Review of the Welfare of Zoo Elephants in Europe," Clubb and Mason (Ex. 3 to Ros Clubb Deposition)
247. "Can't Stop, Won't Stop: Is Stereotypy a Reliable Animal Welfare Indicator?" (Ex. 4 to Ros Clubb Deposition)
248. Excerpt from Testimony of J. Frisco, Jr. (12/7/07), pp. 154-73 (Ex. 5 to Ros Clubb Deposition)
249. "Managing Elephants, an Introduction to their Training and Management," Roofcrof and Zoll (Ex. 6 to Ros Clubb Deposition)
250. "Keeping Circus Elephants Temporarily in Paddocks, the Effects of Their Behavior," J. Schmid (Ex. 7 to Ros Clubb Deposition)
251. Federal Environmental Law, 16 U.S.C. § 1532, Definition of "Harm" and "Harass" (Ex. 3 to Joyce Poole Deposition)
252. Affidavit of Dr. Joyce Poole in Animal Welfare v. Minister for the Environment (Ex. 5 to Joyce Poole Deposition)

253. Statement of Dr. Joyce Poole (12/4/05), posted on ElephantVoices (Ex. 6 to Joyce Poole Deposition)
254. Letter (1/11/06), "Statement Regarding Toni," posted on ElephantVoices (Ex. 7 to Joyce Poole Deposition)
255. Statement of Joyce Poole, "The Capture and Training of Elephants," 11/9/07 on ElephantTrust.org (Ex. 8 to Joyce Poole Deposition)
256. "Mind and Movement: Meeting the Interests of Elephants," by J. Poole and P. Gramli (Ex. 9 to Joyce Poole Deposition)
257. Excerpt, Testimony of J. Frisco, Jr. (12/7/07), pp. 158-165 (Ex. 10 to Joyce Poole Deposition)
258. Excerpt from Wildlife Direct Website, "Legal Case Against Ringling Brothers Circus for Mistreatment of Elephants" (Ex. 11 to Joyce Poole Deposition)
259. Appendix B to Report, "Excerpt on Elephant Voices," Advocacy Policy (Ex. 12 to Joyce Poole Deposition)
260. USA Today, "Elephant Debate: Live in Zoo or Roam Free" (11/1/06) (Ex. 13 to Joyce Poole Deposition)
261. "Keynote Address to the 22nd Annual Elephant Managers Workshop," J. Poole (11/9/01-11/12/01) (Ex. 14 to Joyce Poole Deposition)
262. Excerpt from "A Review of the Welfare of Zoo Elephants in Europe," Clubb and Mason (Ex. 15 to Joyce Poole Deposition)
263. "Can't Stop, Won't Stop: Is Stereotypy a Reliable Animal Welfare Indicator," Mason and Latham (Ex. 16 to Joyce Poole Deposition)
264. The Elephant Sanctuary, Trunklines

Special Editions: Bunny's Special Edition; Sissy's Special Edition; Winkie's Special Edition (October 2000)

2001: June 2001; October 2001

2002: Spring 2002; Fall 2002

2003: Spring 2003; Summer 2003; Fall 2003

2004: Spring 2004; Summer 2004; Fall 2004

2005: Spring 2005; Summer 2005; December 2005

2006: Spring 2006; Fall 2006
2007: Spring 2007; Summer 2007
2008: Spring 2008; Summer 2008

265. The Elephant Sanctuary, "Asian-Ele Diaries" (2002-08)
266. The Elephant Sanctuary, Annual Reports (2002-07)
267. Kinzley, Colleen, "What If?" When Protected Contact Elephant Management Isn't" (Ex. 3 to Colleen Kinzley Deposition)
268. Redesign of the Oakland Zoo's Elephant Facility (Ex. 4 to Colleen Kinzley Deposition)
269. Federal Environmental Law, 16 U.S.C. § 1532 (Ex. 5 to Colleen Kinzley Deposition)
270. Cannon, Teresa & Peter Davis, Aliya: Stories of the Elephants in Sri Lanka (Ex. 6 to Colleen Kinzley Deposition)
271. Excerpt from Sukumar, R. The Asian Elephant: Ecology and Management (Ex. 7 to Colleen Kinzley Deposition)
272. Excerpt from Troy Metzler Deposition (7/25/06) (Ex. 8 to Colleen Kinzley Deposition)
273. Excerpt from Contra Costa Times (1/2/02) (Ex. 9 to Colleen Kinzley Deposition)
274. Excerpt from Contra Costa Times (3/17/03) (Ex. 10 to Colleen Kinzley Deposition)
275. Excerpt from San Francisco Chronicle (11/7/04) (Ex. 11 to Colleen Kinzley Deposition)
276. Excerpt from Elephants: Majestic Creatures of the Wild (Ex. 12 to Colleen Kinzley Deposition)
277. Excerpt from Pryor, Karen, Don't Shoot the Dog! The New Art of Teaching and Training (Rev. ed.) (Ex. 13 to Colleen Kinzley Deposition)
278. Excerpt from Joe Frisco Deposition (12/7/07) (Ex. 14 to Colleen Kinzley Deposition)
279. Tom Rider's Evolving Story (Ex. 4 to Def. Opposition to Pls. Motion Under Rule 11 (Docket No. 165) (8/16/07))

280. Press Conference, 11/13/06, Legal 645F
281. Archelle #2 8/18/06, Legal 593
282. Archele Hundley Tape 1, Legal 439
283. Archele Hundley Tape 2, Legal 440K
284. Chicago City Hall Elephant Ordinance (Main Camera Tape 1 of 4) 2/23/06, Legal 550
285. Archelle # 3 8/18/06, Legal 590
286. 8/5/06, Dallas, TX, Tape 5 PT Show 1, 2, 3, Ringling Red Unit
Legal 504 E
287. Greenville, SC 2/3/06 Blue Unit Tape 8, Legal 69 E
288. 8/19/06 Lexington, KY, Ringling Red Unit, Tape 6 PT, End of Show 2, 8/19
Show 3, Legal 252 A
289. 10/3/06 21:00, Denver CO, Ringling Blue Unit Tape #1 PT, 10/3 unload/walk
(Rob), Legal 43 E
290. 8/19/06 Lexington, KY, Ringling Red Unit Tape #5 PT, 8/19 Show 1 Show 2
Legal 406 A
291. Legal 470 E
292. PETA Financial Report and Check Request Form, 8/9/07, P 000054
293. Because expert discovery regarding Ajay Desai, who resides in India, is ongoing
and not concluded, FEI reserves the right to designate additional exhibits related to him.
294. All documents authored by plaintiffs' experts.
295. All scientific publications cited to or relied upon by plaintiffs' experts.
296. All video footage of FEI shown to plaintiffs' experts.
297. All materials cited by defendant's experts.
299. Any demonstrative exhibits to be created.
300. Any exhibit used at any deposition in this case.

301. Any and all pleadings (together with exhibits) submitted in this case, including its predecessor action (Civ. Act. No. 00-1641) and its appeal to the United States Court of Appeals for the District of Columbia Circuit.

302. Any document produced or identified, or that becomes known to defendant, between now and the time defendant presents its case at trial.

303. Any exhibit identified by any party in any version of the pretrial statements.

304. FEI reserves the right to introduce any exhibit(s) that may be necessary at the trial for impeachment or rebuttal purposes.

VI. DEPOSITION DESIGNATIONS (LCvR 16.5(b)(1)(vi))

FEI hereby designates the deposition testimony of the following individuals. Pursuant to paragraph 7 of the First Amended Pre-Trial Order, FEI has electronically designated its deposition testimony and is providing a copy (on CD-Rom) of the same to the Court and plaintiffs.⁴ FEI's designations are indicated by yellow highlighting.

- A. Ed Stewart
- B. Angela Martin
- C. Betsy Swart
- D. AWI Rule 30(b)(6) (Cathy Liss)⁵

⁴ Designations A-N were previously provided in electronic format to the Court and plaintiffs. Designations O-P will be provided in electronic format to the Court and plaintiffs on January 6, 2009.

⁵ Due to a problem with the quality of the transcript, FEI was unable to highlight but would like to designate, the following pages and lines of the Rule 30(b)(6) Deposition of AWI:

89:9-89:12

138:18-138:21

178:17-178:25

194:10

194:20-22

- E. FFA Rule 30(b)(6) (Michael Markarian)
- F. ASPCA Rule 30(b)(6) (Lisa Weisberg)
- G. Troy Metzler
- H. Robert Ridley
- I. Tom Rider (10/12/06 & 12/18-19/07)
- J. Margaret Tom
- K. WAP Rule 30(b)(6) (Eric Glitzenstein) (12/21/07 & 1/29/08)
- L. Sacha Houcke
- M. D'Arcy Kemnitz
- N. Alex Vargas
- O. Jeff Pettigrew
- P. Daniel Raffo

VII. ITEMIZATION OF DAMAGES (LCvR 16.5(b)(I)(vii))

This section does not apply.

VIII. REQUEST FOR OTHER RELIEF SOUGHT (LCvR 16.5(b)(I)(viii))

Pursuant to 16 U.S.C. § 1540(g)(4) asks that it be awarded all costs incurred in this litigation, including its attorney fees and expert witness fees.

IX. STIPULATIONS (LCvR 16.5(d)(I))

Pursuant to ¶ 1 of the Amended Pretrial Order, stipulations were due no later than September 29, 2008. The parties stipulated to the authenticity of all documents on either parties' exhibit list that were authored by the United States Department of Agriculture ("USDA"). See Stipulation (9/29/08) (Docket No. 361).

X. TRIAL BRIEF (LCvR 16.5(d)(2))

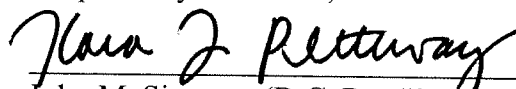
Pursuant to ¶ 1 of the Amended Pretrial Order, trial briefs were due no later than September 29, 2008. See Pretrial Brief (9/29/08) (Docket No. 362).

XI. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW (LCvR 16.5(d)(4))

FEI's proposed findings of fact and conclusions of law were previously attached to its pretrial statement as Exhibit 1, and, for the Court's reference, are again attached to this amended pretrial statement as Exhibit 1

Dated this 5th day of January, 2009.

Respectfully submitted,



John M. Simpson (D.C. Bar #256412)
Joseph T. Small, Jr. (D.C. Bar #926519)
Lisa Zeiler Joiner (D.C. Bar #465210)
Lance L. Shea (D.C. Bar #475951)
Michelle C. Pardo (D.C. Bar #456004)
Kara L. Petteway (D.C. Bar #975541)

FULBRIGHT & JAWORSKI L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 662-0200
Facsimile: (202) 662-4643

Counsel for Defendant Feld Entertainment, Inc.