

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

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

Plaintiffs,

v.

Case No. 03-2006 (EGS/JMF)

FELD ENTERTAINMENT, INC.,

Defendant.

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**DEFENDANT FELD ENTERTAINMENT, INC.'S OBJECTIONS TO
PLAINTIFFS' SECOND AMENDED PRE-TRIAL STATEMENT**

EXHIBIT 2

B. Exhibits Plaintiffs May Offer:

EXHIBIT NUMBER	DESCRIPTION	OBJECTION
1	8/20/04 Affidavit of Frank Hagan regarding Investigation number AZ040156-AC	Irrelevant and Immaterial. F.R.E. 401, 402 (as to ¶¶ 1-28; 32-36 that deal with other animals not at issue in this case (lions and alpaca)) Hearsay. F.R.E. 801, 802, 805 Hearsay within Hearsay. F.R.E. 801, 802, 805 Authenticity. F.R.E. 901
2	5/4/00 Letter from Christine Franco to Bob Gibbens documenting her inspection of Ringling Brothers Red Unit on 8/23-29/99 (PL 4689-4691)	Irrelevant (Red Unit elephants not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805 Incomplete (FOIA redactions). F.R.E. 106
3	7/25/00 Affidavit of Joel Parrott regarding the examination of photographs taken by Christine Franco (PL 4717-4718)	Irrelevant (Red Unit elephants not at issue). F.R.E. 401, 402 Incomplete (FOIA redactions). F.R.E. 106
4	8/2/99 Affidavit of William Lawler regarding the incident involving Benjamin (PL 10065-10070)	Irrelevant (CBW/deceased elephant not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805
5	Separation and Weaning of Young Elephants (FELD 19902-19906)	Irrelevant (CBW elephants not at issue; weaning not at issue). F.R.E. 401, 402
6	Request from USDA to Julie Strauss regarding additional items needed for Investigation Number FL98026 and Julie Strauss' 11/4/04 response to this request (FELD 27825-27831)	Irrelevant (CBW/deceased elephant not at issue). F.R.E. 401, 402
7	4/4/94 Animal Activist Activities with Related Materials to Same (FEI 38291-38299)	Irrelevant (date) (deceased and non-Rider, Red Unit elephants not at issue). F.R.E. 401, 402
8	Government Exhibit 3-R to Investigation Number AZ04156 (PL 13501)	Irrelevant and Immaterial (Other animals not at issue (lion)). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805

B. Exhibits Plaintiffs May Offer:

EXHIBIT NUMBER	DESCRIPTION	OBJECTION
9	10/26/04 Report of Investigation for Case # AZ040156-AC (PL 13390-13426)	Irrelevant and Immaterial (Other animals not at issue (lion)). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805 Incomplete (Plaintiffs' Redactions). F.R.E. 106
10	8/12/04 Affidavit of Eugene Pettus regarding Investigation # AZ040156-AC (PL 13478-13480)	Irrelevant and Immaterial (Other animals not at issue (lion)). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay F.R.E. 801, 802, 805 Hearsay. F.R.E. 801, 802
11	5/14/01 Email from Diane Ward to Francis Keyser regarding Richard Froemming (PL 18037)	Hearsay. F.R.E. 801, 802
12	8/3/00 Memo from Diane Ward to Samuel Santiago regarding case # CA00136-AC (PL 18025-18026, PL 4499-4500)	Irrelevant (elephants never owned by FEI not at issue) (weaning not at issue) and Immaterial (TB not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805 Incomplete (FOIA redactions). F.R.E. 106
13	Affidavits of Ringling Brothers Employees (FELD 25203-25209)	No objection.
14	8/24/00 Narrative from S. Taylor to M. Binkley regarding USDA Inspection (PL 4027-4028)	No objection.
15	5/31/00 Interview Log regarding case #OH00018-AC (FELD 896)	Irrelevant (elephants not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805 Incomplete (FOIA redactions). F.R.E. 106
16	11/23/02 Employee Tranquilizer Training-Red Unit Winter Quarters-Tampa, FL (FEI 1790)	Irrelevant (Red Unit) and Immaterial (tranquilizer). F.R.E. 401, 402
17	10/15/99 Notice of Written Warning (FEI 2756)	Irrelevant (Red Unit elephants not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802

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18	10/29/01 Letter from Chester Gipson to Jeannie Perron and Julie Strauss (FELD 4969-4970)	Irrelevant (CBW elephants not at issue; weaning not at issue). F.R.E. 401, 402
19	Care and Weaning of Young Elephants (FELD 29207-29209)	Irrelevant (CBW elephants not at issue; weaning not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Incomplete (document does not include cover letter from EMA, FELD 29205-206). F.R.E. 106
20	4/4/94 Letter from Richard Froemming to Kenneth Feld (FEI 38233-38290)	Irrelevant (CBW elephants not at issue; non-Rider elephant not at issue; weaning not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805
21	12/13/99 Email from Dennis Schmitt to Debbie Olson (FEI 18885-18886)	Irrelevant (weaning not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805
22	10/22/07 Email from Customer Service regarding Ringling.com: Animal Care (FEI 49137)	No objection.
23	9/8/99 Email and attachment from Richard Froemming to Randy Peterson regarding Menage Number 130 th (FEI 32603-32605)	No objection.
24	1/12/01 Affidavit of Miava Binkley concerning FL 01095 (PL 4067)	Irrelevant (CBW elephants not at issue; weaning not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Incomplete (FOIA Redaction). F.R.E. 106
25	9/9/99 Narrative concerning inspection at the CEC (FEI 819-820)	Irrelevant (CBW elephants not at issue; weaning not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805

B. Exhibits Plaintiffs May Offer:

EXHIBIT NUMBER	DESCRIPTION	OBJECTION
		Incomplete (document also should include FEI 821-829). F.R.E. 106
26	6/9/98 Inspection Report of Ringling Brothers CEC (FELD 063-064)	Irrelevant. F.R.E. 401, 402 Needless cumulative evidence (duplicative of Pls. Will Call Ex. 108). F.R.E. 403
27	2007 Animal Care Routine (FEI 49043-49063)	Irrelevant (Red Unit not at issue). F.R.E. 401, 402
28	1/20/00 AZA Press Release (API 6133-6135)	Irrelevant. F.R.E. 401, 402 Hearsay. F.R.E. 801, 802
29	3/21/00 AZA Policies on Elephants (API 3238-3239)	Irrelevant. F.R.E. 401, 402 Hearsay. F.R.E. 801, 802
30	Roberts, Ed, <i>Elephant Control</i> , June 1979, Elephant Keepers Forum (PL 16720-16724)	Irrelevant. F.R.E. 401, 402 Hearsay. F.R.E. 801, 802
31	3/23/05 Memo to USDA and APHIS (AWI 6643-6645)	Irrelevant (CBW elephants not at issue; weaning not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Incomplete (FOIA Redaction). F.R.E. 106
32	Complaint, Performing Animal Welfare Society et al. v. Feld Entertainment, Inc., et al., No. S-00-1259-GEB-DAD(E.D. Ca.)	Irrelevant and Immaterial. F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805
33	6/6/05 Letter from Julie Strauss to Adam Parascandola (FEI 1572-1575)	No objection.
34	Memorandum Opinion, Jan Pottker, et al., v. Kenneth Feld, et al., No. 1999 CA008068 B (Sup. Ct. D.C.) (August 14,2008)	Irrelevant and Immaterial. F.R.E. 401, 402 Unfair prejudice, confusion of the issues, misleading the trier of fact. F.R.E. 403
35	3/22/07 Email from Kenneth Vail to Martine Frank (PL 14516)	Irrelevant (Red Unit elephants not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805

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EXHIBIT NUMBER	DESCRIPTION	OBJECTION
36	8/18/00 Email from Diane Ward to Robert Gibbens (PL 10993)	Incomplete (document is incomplete; document should include PL 014517-519). F.R.E. 106
37	3/23/99 Letter from Julie Strauss to Bob Ertman regarding Ringling Brothers Annual Report (PL 1731-1732)	Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805 No objection.
38	4/2/01 Letter from Julie Strauss to Bob Ertman regarding Ringling Brothers 2000 Annual Report (FELD 198-200)	No objection.
39	4/14/99 Letter from Ron DeHaven to Dr. Gary West regarding the 2/10/99 inspection at Ringling Brothers CEC (FELD 25617-25618)	Irrelevant (CBW and non-Rider elephants not at issue; weaning not at issue) and Immaterial (TB not at issue). F.R.E. 401, 402
40	2/17/05 Email from Anita Santiago to Angelina Quevedo (FEI 11466-11467)	Irrelevant (CBW elephants/Gold Unit not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805
41	12/8/04 Statement of Gary Jacobson (FELD 27834)	Irrelevant (CBW and deceased elephant not at issue). F.R.E. 401, 402
42	4/30/07 Letter from Katherine Meyer [sic] to John Simpson [sic].	Irrelevant. F.R.E. 401, 402
43	7/17/02 Email from Todd Willens to Dan Hupart regarding IDA Ringling press release (FELD 28213-28215, FELD 24703-24704)	Irrelevant (Gold Unit not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805
44	Ringling Brothers Barnum & Bailey Circus Long Term Animal Task Force (FEI 1840-1512)	Irrelevant. F.R.E. 401, 402 Authenticity . (lack of foundation). F.R.E. 901 Unfair prejudice, confusion of the issues, misleading the trier of fact. F.R.E. 403

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EXHIBIT NUMBER	DESCRIPTION	OBJECTION
45	Krupp, Sarah, <i>Circus Vargas Reinvents Itself</i> , Contra Cost Times, 10/31/05 (Exhibit 8 to Plaintiffs' Opposition to Defendants Motion for Leave to Amend Answer to Assert Addition Defense and Rico Counterclaim, DE 132)	Plaintiffs represent that Ex. 44 contains only the documents listed by Bates number in the "description". However, the documents contained in Ex. 44, as provided on DVD and hard drive by plaintiffs, contains FEI 1480-1512, and not FEI 1840-1512 as represented by plaintiffs. Defendant therefore objects to plaintiffs' use of any exhibit that it has not had the opportunity to review for accuracy and object accordingly. Irrelevant (Gold Unit not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805
46	Lemonick, Michael, <i>Who Belongs in the Zoo? It May be That Some Animals Just Can't Be Kept Humanely in Captivity, Zoos May Have to Reinvent Themselves-Once Again</i> , Time Magazine, 6/11/06 (Exhibit 9 to Plaintiffs' Opposition to Defendants Motion for Leave to Amend Answer to Assert Addition Defense and Rico Counterclaim, DE 132)	Irrelevant (Gold Unit not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805
47	10/27/00 list of Young Ringling Elephants (FEI 15032)	Irrelevant (CBW/deceased elephants not at issue) (breeding not at issue). F.R.E. 401, 402
48	5/8/06 Letter from Dennis Schmitt to Ellen Wiedner regarding artificial insemination of traveling elephants (FEI 16624)	Irrelevant (CBW elephants not at issue) (breeding not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802
48	1997-2002 AZA Elephant Master Plan (AWI 3690-3713)	Irrelevant. F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Incomplete. F.R.E. 106

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49	1/10/04 Email from Lindsay William to Ellen Wiedner (FEI 31846)	Irrelevant (CBW/deceased elephant not at issue). F.R.E. 401, 402
50	5/12/92 Letter from Julie Strauss to Leslie Sweeney regarding PRT-720230 (PL 7666-7686)	Irrelevant (date; non-Rider elephants; breeding not at issue) and Immaterial (in part other animals not at issue (tigers and leopards)). F.R.E. 401, 402
51	Affidavit of Claire George, <u>Pottker v. Feld Entertainment, Inc., et al.</u> , Civ. No.9-008068 (Sup. Ct. D.C.) (Exhibit 12 to Plaintiffs' Opposition to Defendants Motion for Leave to Amend Answer to Assert Addition Defense and Rico Counterclaim, DE 132)	Irrelevant and Immaterial. F.R.E. 401, 402 Hearsay. F.R.E. 801, 802 Unfair prejudice, confusion of the issues, misleading the trier of fact. F.R.E. 403 Incomplete (entire affidavit is not included in exhibit). F.R.E. 106
52	6/20/94 Animal Activist Activities with Related Materials to Same (FEI 38246-38272)	Irrelevant (date). F.R.E. 410, 402 Hearsay. F.R.E. 801, 802 Hearsay within Hearsay. F.R.E. 801, 802, 805
53	10/23/04 Email from Dr. Lindsay William to Dr. Ellen Wiedner regarding Winter Quarters Animal Welfare Training (FEI 33503-Revised-33506-Revised)	Irrelevant (CBW/deceased elephant not at issue). F.R.E. 401, 402 Hearsay. F.R.E. 801, 802
54	Photographs taken during Court Ordered Inspection of The Center for Elephant Conservation (11/29/07) and the Blue Unit in Auburn Hills, MI (11/13/07) PL 15052-15057 PL 15083 PL 15047 PL 15048 PL 15027 PL 14966 PL 14899 PL 14949 PL 14914 PL 14898 PL 14922 PL 15043 PL 14913 PL 14910 PL 14908 PL 14905 PL 14903 PL 14897 PL 14926 PL 14931 PL 14949 PL 15019	Irrelevant and Immaterial only as to any photographs of electric prods (not at issue). F.R.E. 401, 402

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EXHIBIT NUMBER	DESCRIPTION	OBJECTION
	PL 14924 PL 14927 PL 14928 PL 15024 PL 15025 PL 15033 PL 15035 PL 15036 PL 15037 PL 15040 PL 14996 PL 14968 PL 14974 PL 14982 PL 15088 PL 15030 PL 14946-14949 PL 1494 PL 15037 PL 15024 PL 14982 PL 14978 PL 14986 PL 15071 PL 14960 PL 15007 PL 15140 PL 15141 PL 15008 PL 14960 PL 15058 PL 15060 PL 15069 PL 15484 PL 15553 PL 15558 PL 15596 PL 15597 PL 15618 PL 15624 PL 15634 PL 15637 PL 15644 PL 15646 PL 15650 PL 15654 PL 15656 PL 15704 PL 15707 PL 15710 PL 15713 PL 15722 PL 15730 PL 15731 PL 15152-15479	
55	Photograph of handler and elephant (FEI 7465)	No objection.
56	#1 Feld Entertainment, RBBC, 132d Blue, B-Roll Rehearsals, Clowns, Elephants, Wardrobe Juggling, Clown Alley; 12/10/2001 Tape 1 of 10 RB132-018-01 (FEI 45204)	Thirty (30) minute video, the first thirteen minutes of which portrays clowns practicing some kind of slapstick routine. No objection to remainder of tape to the extent that it portrays Rider elephants; object to non-Rider Blue Unit and CBW elephants. Irrelevant. F.R.E. 401, 402
57	#12/15/03 B-Roll rehearsals, Arena Winter Quarters Tampa, FL, Opening Rehearsal; Blue 134 th Tape 17 of 24 RB134-046-01 (FEI 45196)	Thirty (30) minute video containing immaterial information (jugglers, clowns, welders etc.) and minimal footage portraying elephants not at issue (non-Rider Blue Unit and CBW elephants). Irrelevant. F.R.E. 401, 402
58	USDA Inspection of Premises where Benjamin Died (8/12/99) (Produced to Defendants on 3/9/05)	Irrelevant (CBW/deceased elephant not at issue). F.R.E. 401, 402
59	Elephant Birth-Sara, Camera 1&2 (FEI 10350)	Irrelevant (CBW elephant; breeding not at issue). F.R.E. 401, 402
60	Elephant Birth, Gunther, Tape 1 of 2 (FEI 0017)	Irrelevant (CBW elephant; breeding not at issue). F.R.E. 401, 402
61	Elephant Birth Gunther, Tape 2 of 2 (FEI 0018)	Irrelevant (CBW elephant; breeding not at issue). F.R.E. 401, 402

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62	Birth of Romeo 1/10/1993 Tape #6 (FEI 10352)	Irrelevant (CBW elephant; breeding not at issue). F.R.E. 401, 402
63	Alana, Irving Birth (FEI 38229)	Irrelevant (CBW elephant; breeding not at issue). F.R.E. 401, 402
64	Icky Birth (FEI 38228)	Irrelevant (CBW elephant; breeding not at issue). F.R.E. 401, 402
65	Mala Birth (FEI 38227)	Irrelevant (CBW elephant; breeding not at issue). F.R.E. 401, 402
66	Emma 8/21/99 pm 8/22/989 am (FEI 40982)	Irrelevant (non-Rider elephant). F.R.E. 401, 402
67	Emma 8/23/-24/99 (FEI 40983)	Irrelevant (non-Rider elephant). F.R.E. 401, 402
68	CEC: Birth Footage of Sara Tape B1-4/16/02 (FEI 40975)	Irrelevant (CBW elephant; breeding not at issue). F.R.E. 401, 402
69	Emma 8/22/99 pm-8/23/99 am (FEI 40984)	Irrelevant (non-Rider elephant). F.R.E. 401, 402
70	Emma-8/15-16/99 (FEI 40990)	Irrelevant (non-Rider elephant). F.R.E. 401, 402
71	Why exotic animals should be banned?; Ringling PR Film; Ringling Conservation Center PR Film; Ringling Show 122 nd edition; Gunther in Show; Interview with former RB employee Joe Heflin ('97); Carson & Barnes training footage; (PL 8969)	Two-hour, five minute and thirty-one second (2:05:31) compilation of disjointed video segments, which is essentially an advocacy piece, that portrays elephants not at issue (Red Unit and CBW elephants; elephants owned by other circuses); portrays immaterial animals (tigers, chimpanzees, dogs); contains self-serving voiceover commentary; contains slanted news coverage clips; contains the ex parte hearsay interview of an alleged ex-FEI employee; and duplicates material on other exhibits (Pls. Will Call Exs. 121-B, 126). Irrelevant. F.R.E. 401, 402. Marginal relevance outweighed by unfair prejudice, confusion, misleading the trier of fact, undue delay, waste of time and cumulative effect. F.R.E. 403. No foundation due to lack of authentication. F.R.E. 901. Hearsay. F.R.E. 801, 802. Hearsay within hearsay. F.R.E. 805
72	PAWS-Best Friends (PL 7077)	Ten minute, forty-four second (10:44) video regarding Performing Animal Welfare Society that portrays elephants not at issue (never owned by FEI); portrays immaterial animals (African elephants,

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73	Sissy Beating-(50 minutes) (PL 9043)	cougars, bears, monkeys); includes selectively-edited footage regarding circuses and holders of elephants other than FEI; and is immaterial because it could only go to a claim for relief (forfeiture) that has been abandoned. No foundation due to lack of authentication. F.R.E. 901. Irrelevant. F.R.E. 401, 402. Marginal relevance is outweighed by the misleading nature of this exhibit. F.R.E. 403. Hearsay. F.R.E. 801; 802. Hearsay within hearsay. F.R.E. 805
74	The Crusaders-Mickey the elephant (1 min) (PL 9044)	This is exhibit is totally duplicative of material on Pls. Will Call Ex. 140, and, in addition to the obvious cumulation, FEI objects to this exhibit for the same reasons stated with respect to Pls. Will Call Ex. 140. This is exhibit is totally duplicative of material on Pls. Will Call Ex. 140, and, in addition to the obvious cumulation, FEI objects to this exhibit for the same reasons stated with respect to Pls. Will Call Ex. 140.
75	2002 Brochure for the Center for Elephant Conservation (FELD 3354-3357)	No objection.