



FEI's objections are set forth below by the section numbers listed in Plaintiffs' Second Amended Pre-Trial Statement:

**IV. PLAINTIFFS' WITNESSES**

FEI specifically objects as follows:

**(1) Red Unit Testimony.** FEI specifically objects to any witnesses providing testimony regarding FEI's Red Unit as irrelevant and improper character evidence and for all other reasons set forth in its motion in limine filed on August 29, 2008. See Motion in Limine to Exclude Irrelevant Evidence Regarding Other Elephants (Docket # 345) (8/29/08). FEI therefore objects to the testimony of the following former Red Unit employees: (1) Archele Hundley and (2) Robert Tom, Jr. To the extent that any witness will testify for the purpose of authenticating videotapes only containing footage of FEI's Red Unit or of any elephant no longer at issue in this case, FEI also objects to their testimony.

**(2) Lanette Williams.** FEI also objects to the testimony of Lanette Williams. Ms. Williams has knowledge relevant only to FEI's Red Unit and therefore she will not testify to any evidence relevant to whether the remaining six (or seven) elephants at issue are being "taken."

**(3) Daubert Objections to Expert Witnesses.** FEI intends to make Daubert objections to the following expert witnesses: Joyce Poole, Philip Ensley, Ros Clubb, Carol Buckley, Colleen Kinzley, Gail Laule and Benjamin Hart.<sup>1</sup>

**(4) Any Previously Undisclosed Custodian of Records.** FEI reserves its right to object to any previously undisclosed custodian of records.

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<sup>1</sup> Ajay Desai was deleted from plaintiffs' witness list. See Pls. Second Am. Pre-Trial Statement (Docket No. 392) (1/5/09).

**V. PLAINTIFFS' EXHIBITS**

As fully set forth in FEI's Objections to Plaintiffs' Proposed Trial Exhibits and to Transcripts (9/23/08) (Docket # 357), and as stated in FEI's Amended Pre-Trial Statement, 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 effort by plaintiffs to belatedly raise objections for the first time at trial as untimely and unfair. Such objections were due no later than September 23, 2008 (or when their objections to PETA exhibits were filed on November 7, 2008), and FEI's position is that any objections not raised at that time are waived.

**VI. PLAINTIFFS' DEPOSITION DESIGNATIONS**

FEI objects to any witnesses providing testimony regarding FEI's Red Unit as irrelevant, improper character evidence and for all other reasons set forth in its motion in limine filed on August 29, 2008 (Docket # 345). FEI therefore objects to plaintiffs' designation of the depositions of the following current and former Red Unit employees for use at trial: (1) Joseph Frisco, Jr.; (2) Sacha Houcke; (3) Margaret Tom; and (4) Carrie Coleman.

FEI reserves any and all testimonial objections for trial.

Pursuant to paragraph 7 of the Court's First Amended Pre-Trial Order, FEI's counter-designations are being provided to plaintiffs and the Court on CD-Rom.<sup>2</sup> Plaintiffs' designations are highlighted in green. FEI's counter-designations are indicated by yellow highlighting. Where FEI's and plaintiffs' counter-designations overlap, that testimony is highlighted in orange.<sup>2</sup> Specifically, FEI has counter-designated portions of the deposition testimony of the following individuals:

- A. Gary Jacobson (10/24/07<sup>3</sup> & 1/18/08)
- B. Joseph Frisco, Jr.
- C. Robert Ridley
- D. Troy Metzler

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<sup>2</sup> Counter-designations A-L were previously provided to the Court and plaintiffs in electronic format on September 16, 2008. Counter-designations M-Q (in addition to FEI's further counter-designations for James Andacht, Frank Hagan and Gary Jacobson (11/20/07), see infra) will be provided to the Court and plaintiffs in electronic format on Tuesday, January 13, 2009.

<sup>2</sup> For the convenience of the Court and plaintiffs, a listing of the page and line numbers for all of FEI's deposition designations and counter-designations (those filed on August 29, 2008, September 16, 2008, and today, Monday January 12, 2009) is attached hereto as Exhibit 3.

<sup>3</sup> Plaintiffs have designated a portion of Mr. Jacobson's October 24, 2007 deposition that deals with weaning and the separation of baby elephants from their mothers. Jacobson Dep. (10/24/07) at 271-283. Plaintiffs' designation of this testimony is contrary to the representation in their pre-trial statement that plaintiffs are no longer addressing the claim of separation, and FEI therefore objects to plaintiffs' designation of this testimony. See Pls. Pre-Trial Statement at 3 n.1.

- E. Alejandro Vargas
- F. Sacha Houcke
- G. Betsy Swart
- H. Ed Stewart
- I. Kenneth Feld
- J. James Andacht
- K. Frank Hagan
- L. Gerald Ramos
- M. Carrie Coleman
- N. Jeff Pettigrew
- O. Jerry Sowalsky
- P. Daniel Raffo
- Q. Brian Christiani / French

FEI objects to plaintiffs' designation of *additional* testimony from the following individuals in their Second Amended Pre-Trial Statement: (1) James Andacht; (2) Frank Hagan; (3) Gary Jacobson (11/20/07); (4) Gerald Ramos; and (4) Alex Vargas.<sup>4</sup> Deposition designations for these individuals were due on August 29, 2008. See First Amended Pre-Trial Order (Docket No. 328) (8/6/08) ¶ 7. The Court's Order (11/4/08) (Docket No. 387) only contemplated the designation of testimony from individuals who were ordered to be deposed (Brian Christiani / French, Jerome Sowalsky, Carrie Coleman, Jeff Pettigrew and Daniel Raffo), and not a revision

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<sup>4</sup> On October 17, 2008, plaintiffs requested that FEI agree to their designation of additional testimony from James Andacht, Gary Jacobson, Kenneth Feld and Robert Ridley. FEI agreed to allow plaintiffs to designate some, but not all, of the testimony identified by plaintiffs. See Ex. 4, Meyer Email to Joiner (10/17/08) & Joiner Email to Meyer (10/18/08). Accordingly, FEI does not object to plaintiffs' designation of the additional testimony to which FEI agreed on October 18, 2008.

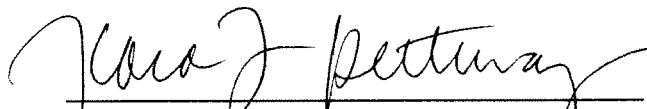
of deposition designations that were due several months prior. The additional designations added by plaintiffs are, in some cases, a substantial reworking of their original designations and in no way relate to the testimony of the Court-ordered deponents. FEI therefore requests that plaintiffs' additional designations for James Andacht, Frank Hagan, Gary Jacobson, Gerald Ramos and Alex Vargas be stricken. If the Court allows plaintiffs to amend their prior designations for these individuals, then FEI would like to counter-designate additional testimony from the transcripts of: (1) James Andacht; (2) Frank Hagan, and (3) Gary Jacobson (11/20/07).<sup>5</sup>

**VIII. RELIEF SOUGHT BY PLAINTIFFS**

FEI objects to any and all relief sought by plaintiffs, including but not limited to any relief related to any elephants other than the six (or seven) at issue in this case.

Dated this 12th day of January, 2009.

Respectfully submitted,



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<sup>5</sup> FEI's additional counter-designations for James Andacht, Frank Hagan and Gary Jacobson (11/20/07) will be provided to the Court and plaintiffs in electronic format on Tuesday, January 13, 2009. For the convenience of the Court and plaintiffs, all of FEI's counter-designations for these transcripts, including its September 16, 2008 counter-designations, have been combined into one .pdf file.