

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASPCA, <u>et al.</u> ,)	
)	
Plaintiffs,)	
v.)	Civ. No. 03-2006 (EGS)
)	
RINGLING BROS. AND BARNUM)	
& BAILEY CIRCUS, <u>et al.</u> ,)	
)	
Defendants,)	

PLAINTIFFS' STATUS REPORT REGARDING DISCOVERY

Pursuant to this Court's September 8, 2005 Order, plaintiffs submit this status report concerning what remains in dispute under Plaintiffs' pending Motion to Compel and the defendants' Motion for a Protective Order. Plaintiffs' compliance with their discovery obligations is not in dispute since, as required by the Federal Rules, plaintiffs either produced all of the information requested by defendants, or identified responsive privileged information on a detailed privilege log – thus, defendants have not moved to compel any discovery responses from plaintiffs. However, as explained in plaintiffs' January 25, 2005 Motion to Compel, defendants have failed to produce the majority of information and records that were requested by plaintiffs over a year and a half ago, on March 30, 2004.

A. Plaintiffs' Motion To Compel. On April 5, 2005, plaintiffs filed a Notice of Filing, which notified the Court of additional materials that defendants produced after plaintiffs filed their January 25, 2005 Motion to Compel. That Notice of Filing also indicated which materials remained in dispute. Plaintiffs hereby incorporate by reference the Notice of Filing as an explanation of issues that remain for the Court to resolve. See Notice of Filing, April 5, 2005.

Unfortunately, since plaintiffs filed their Notice of Filing, the defendants have served plaintiffs with only one additional production of documents, on June 7, 2005, consisting of 125

pages, and a supplemental privilege log listing 33 records. The new records are largely internal communications and contacts with reporters concerning defendants' response to public statements by plaintiff Tom Rider. However, defendants have yet to produce most of the records relating to Mr. Rider that plaintiffs requested over a year and a half ago. Therefore, those records, and most of the records addressed in plaintiffs' Motion to Compel, remain at issue, as explained in the April 5 Notice of Filing.

B. Defendants' Motion for A Protective Order. As plaintiffs explained most recently in plaintiffs' April 12, 2005 Surreply, by not even acknowledging the existence of the elephants' "detailed" medical records, nor claiming any privilege for such records, defendants waived their right to claim that such records are now "confidential." Defendants should not be rewarded for such tactics with a broad protective order that would cause much of this case to be litigated in secret – since these critical records will be referred to by both lay and expert witnesses throughout this case, and also in procedural and other motions that will come before the Court. Defendants have also failed to overcome the "strong presumption" in favor of open proceedings, John Does I-VI v. Yogi, 110 F.R.D. 629, 632 (D.D.C. 1986), with their belated, completely unsubstantiated argument that their veterinarians will suddenly stop providing adequate care to the animals if the medical records are produced without a protective order. Accordingly, plaintiffs maintain that the motion for a protective order should be denied, except in the rare situation where defendants can demonstrate that a particular record is commercially sensitive because it is being relied on in a particular research paper that defendants intend to publish in the near future, and disclosure of such data would substantially diminish the commercial value of that publication. See Plaintiffs' Opp. to Defendants' Mot. for a Protective Order, March 4, 2005,

at 16; Surreply at 8-9.

Respectfully submitted,

/s/

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