

**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'S WITNESS AND EXHIBIT LIST FOR THURSDAY, MARCH 5, 2009

Defendant hereby provides notice of the following list of witnesses who are likely to testify on Thursday, March 5, 2009 and the exhibits plaintiffs intend to introduce that same date. In addition to the witnesses and exhibits listed in this notice, defendant also may call any witnesses or exhibits previously identified. Defendant reserves the right to rely upon any exhibit already admitted into evidence.

I. CARRIE COLEMAN

EXHIBIT #	Description	Evidentiary Basis
DX 124	Archele Hundley Declaration (9/26/06) (Exhibit MM to Pls. Opp. to Defendant's Motion for Summary Judgment) (Docket No. 113) (11/22/06) (Ex. 2 to Archele Hundley Deposition) (<u>see also</u> Ex. 11 to Carrie Coleman Deposition)	Witness credibility
DX 157	Robert Tom Declaration (10/10/06) (Exhibit LL to Pls. Opp. to Defendant's Motion for Summary Judgment) (Docket No. 113) (11/22/06) (Ex. 4 to Robert Tom Deposition) (<u>see also</u> Ex. 14 to Carrie Coleman Deposition)	Witness credibility
DX 165	Robert Tom Affidavit (4/4/07) (PL 14501-502) (Ex. 12 to Robert Tom Deposition) (<u>see also</u> Ex. 15 to Carrie Coleman Deposition)	Witness credibility

EXHIBIT #	Description	Evidentiary Basis
DX 168	Written Warning to Robert Tom, Jr. from Feld Entertainment, Inc. (8/4/06) (Ex. 18 to Robert Tom Deposition) (Ex. 12 to Carrie Coleman Deposition)	Witness credibility
DX 142	Margaret Tom Affidavit (4/4/07) (PL 14503-504) (Ex. 3 to Margaret Tom Deposition) (<u>see also</u> Ex. 16 to Carrie Coleman Deposition)	Witness credibility
DX 192 FEI 48900	Transportation Orders	Train issues; witness credibility
PWC1A – Baby FEI 16609	Medical record for Baby (Ex. 6 to Carrie Coleman Deposition)	Relevant to defenses
DX 127 19-3, 19- 4, 19-7	Red Unit photographs taken by Archele Hundley	Relevant to defenses
DX 128 AH 20-2, 20-5, 20-6	Red Unit photographs taken by Archele Hundley	Relevant to defenses

II. LISA WEISBERG (ASPCA)¹

EXHIBIT #	Description	Evidentiary Basis
DX 7	ASPCA Inspection Documents (A 00801-806; A 00819-841)	Party Admission; No objection by plaintiffs
DX 17	FEI's Interrogatories to the Organizational Plaintiffs (3/30/04)	No objection by plaintiffs
DX 18	ASPCA's First Response and Supplemental Responses to FEI's Interrogatories (1/15/07; 1/31/07; 9/26/07; 10/26/07; 1/30/08)	Party Admission; No objection by plaintiffs
DX 31	Letter from Kathi Travers (ASPCA) to J. Strauss (5/5/96) (FELD 0024121)	Party Admission; No objection by plaintiffs
DX 45	ASPCA Policy and Position Statements (A 00127-146)	Party Admission; No objection by plaintiffs
DX 46	Email from Lisa Weisberg to Larry Hawk (5/7/01) (A 00046) (Ex. 9 to ASPCA Rule 30(b)(6) Deposition)	Party Admission; No objection by plaintiffs
DX 47	ASPCA By-Laws as of June 19, 2002 (A00855-863) (Ex. 11 to ASPCA Rule 30(b)(6) Deposition).	Party Admission; No objection by plaintiffs

¹ Ms. Weisberg is the Senior Vice President of Government Affairs and Public Policy at the American Society for the Prevention of Cruelty to Animals (ASPCA). Ms. Weisberg served as ASPCA's Rule 30(b)(6) deponent and verified its interrogatory answers. Because Ms. Weisberg is an officer of an adverse party, FEI requests that it be permitted to ask leading questions during its direct examination pursuant to F.R.E. 611(c).

EXHIBIT #	Description	Evidentiary Basis
DX 59	Show schedules for the Red Unit, Blue Unit and Gold Unit.	No objection by plaintiffs
DX 61	Meyer Glitzenstein & Crystal Invoices Reflecting Payments to Rider.	No objection by plaintiffs
DX 118	Letter from Lisa Weisberg to The Honorable John B. Harwood (6/16/00) (A00083-84) (Ex. 20 to ASPCA 30(b)(6) Deposition).	Party Admission; No objection by plaintiffs
PX 94A	Media concerning Tom Rider and the Ringling Brothers Circus (Print media.)	Admitted into evidence in plaintiffs' case in chief
	Article 26, New York Agriculture and Markets Law	Judicial Notice
	Complaint, Civ. Act. No. 03-2006 (9/26/03)	Judicial Notice

III. MICHAEL MARKARIAN (FFA/HSUS)²

EXHIBIT #	Description	Evidentiary Basis
DX 17	FEI's Interrogatories to the Organizational Plaintiffs (3/30/04)	No objection by plaintiffs
DX 20	FFA's First Response and Supplemental Responses to FEI's Interrogatories (1/15/07; 1/31/07; 9/24/07; 1/30/08)	Party Admission; No objection by plaintiffs
DX 50	WAP Ledgers of Payment Received for Tom Rider (September 24, 2007 WAP-002-003; November 30, 2007 WAP-002)	No objection by plaintiffs

² Mr. Markarian is the President of the Fund for Animals (FFA) (and also is the Executive Vice President for External Affairs at the Humane Society of the United States (HSUS)). Mr. Markarian served as FFA's Rule 30(b)(6) deponent and verified its interrogatory answers. Because Mr. Markarian is an officer of an adverse party, FEI requests that it be permitted to ask leading questions during its direct examination pursuant to F.R.E. 611(c).

EXHIBIT #	Description	Evidentiary Basis
DX 61	Meyer, Glitzenstein & Crystal Invoices Reflecting Payments to Rider (pp. 34-57)	No objection by plaintiffs
DX 62	Fundraiser Invitation (AWI 09925)	No objection by plaintiffs
DX 64	FFA Accounting Record Concerning Payment to Tom Rider (7/22/04) (F 004485-486)	No objection by plaintiffs
DX 65	Partial Email (pages 2 and 3) From Katherine Meyer to Lisa Weisberg, Michael Markarian, and Cathy Liss (11/5/03) (WAP 270)	No objection by plaintiffs
DX 67	HSUS Letters to WAP (Produced by HSUS)	No objection by plaintiffs
DX 68	FFA/HSUS Asset Acquisition Agreement (Produced by HSUS on December 13, 2007)	No objection by plaintiffs
DX 209	Documents Produced by Plaintiffs on 8/11/08	No objection by plaintiffs
DX 83	Documents Relating to USDA Investigation Regarding the Asian Elephant "Benjamin" (pg. 186)	Party Admission
PWC 74	American Zoo and Aquarium Association, Standards for Elephant Management and Care	Admitted into evidence during plaintiffs' case-in-chief
	Complaint, Civ. Act. No. 03-2006 (9/26/03)	Judicial Notice

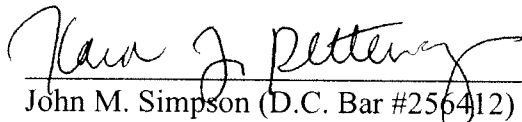
IV. ERIC GLITZENSTEIN (WAP)

EXHIBIT #	Description	Evidentiary Basis
	Deposition Testimony (by videotape) 8:05- 8:22 22:11- 27:21 32:09 -35:11 38:18 – 41:21 42:16-43:13 45:15 - 46:09 67:04 - 67:17 91:14 - 96:03 105:20-106:22 109:11 - 111:15 119:14 - 120:03 163:09 - 163:18 195:06 - 200:14 386:04 - 388:12 ³	Deposition testimony (pursuant to Court Order)
DX 49	WAP Ledgers of Payment Made to or for Tom Rider (September 24, 2007 WAP-004-009; November 30, 2007 WAP-001) (used as Ex. 2 to Glitzenstein Deposition)	No objection by plaintiffs
DX 50	WAP Ledgers of Payments Received for Tom Rider (September 24, 2007 WAP-002-003; November 30, 2007 WAP-001) (used as Ex. 9 to Glitzenstein Deposition)	No objection by plaintiffs
DX 66	API Letters to WAP (API 2868-873, API 7203-206) (Letters dated 4/20/05 and 1/3/07 used as Ex. 11 to Glitzenstein Deposition)	No objection by plaintiffs
DX 58A	Federal Express Airbills from Meyer, Glitzenstein & Crystal to Tom Rider (M 0001-105)	No objection by plaintiffs

³ Defendant designated Mr. Glitzenstein's testimony at 387:3-388:12 in its pretrial statement, *see* DE 395-2 (Corrected Exhibit 3 at 10), and respectfully requests that it also be permitted to present the testimony immediately preceding that designation, 386:04-387:02, for context and completeness.

Dated this 2nd day of March, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kara L. Petteway", is written over a horizontal line.

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)

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