

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X
AMERICAN SOCIETY FOR THE Docket No. 03-2006
PREVENTION OF CRUELTY
TO ANIMALS, ET AL,
Plaintiffs,
v. Washington, D.C.
February 19, 2009
2:40 p.m.
FELD ENTERTAINMENT, INC., PM SESSION
Defendant.
-----X

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: KATHERINE A. MEYER, ESQUIRE
HOWARD M. CRYSTAL, ESQUIRE
TANYA SANERIB, ESQUIRE
DELCIANNA J. WINDERS, ESQUIRE
Meyer, Glitzenstein & Crystal
1601 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20009
202.588.5206

For the Defendant: JOHN M. SIMPSON, ESQUIRE
LISA ZEILER JOINER, ESQUIRE
LANCE L. SHEA, ESQUIRE
KARA L. PETTEWAY, ESQUIRE
MICHELLE PARDO, ESQUIRE
Fulbright & Jaworski, LLP
801 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20004
202.724.6522

Court Reporter: Catalina Kerr, RPR
U.S. District Courthouse
Room 6716
Washington, D.C. 20001
202.354.3258

Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 P-R-O-C-E-E-D-I-N-G-S

2 (2:40 P.M.; OPEN COURT.)

3 THE COURT: All right. Counsel, do you have
4 additional deposition testimony, or do you wish to call another
5 witness at this point?

6 MR. CRYSTAL: Your Honor, at this time we're going to
7 call another witness. We're going to call to the stand Nicole
8 Paquette who's an organizational Plaintiff representative.

9 THE DEPUTY CLERK: Please raise your right hand.

10 (WITNESS SWORN BY THE DEPUTY CLERK.)

11 THE COURT: All right. Good afternoon.

12 THE WITNESS: Good afternoon.

13 NICOLE PAQUETTE,
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. CRYSTAL:

17 Q Good afternoon.

18 A Hello.

19 Q Could you please state your name and spell it for us.

20 A Nicole Paquette, N-I-C-O-L-E, P-A-Q-U-E-T-T-E.

21 Q Ms. Paquette, where do you live?

22 A I live in Sacramento, California.

23 Q And where do you work?

24 A I work at Born Free U.S.A. united with Animal Protection
25 Institute.

1 Q Did that group have a prior name?

2 A Yes, it did.

3 Q What was that?

4 A The Animal Protection Institute.

5 Q And is that known as API?

6 A Yes.

7 Q If I refer to API today, will you understand what I'm
8 referring to?

9 A Yes.

10 Q When was API originally formed?

11 A We were formed in 1968.

12 Q And where is API based?

13 A Our head office is in Sacramento, California.

14 Q How long have you worked there?

15 A A little over nine-and-a-half years.

16 Q And what is your current position at API?

17 A Senior vice president and general counsel.

18 Q How long have you been the general counsel?

19 A Since 2002.

20 Q And you mentioned a name change. Why did API change its
21 name?

22 A We were -- we simply joined forces with another
23 organization that had the same issues that we worked on.

24 Q What organization was that?

25 A That was Born Free U.S.A., and that original organization

1 has subsequently dissolved.

2 Q Was API associated with Born Free before this change?

3 A No, we were not.

4 Q Ms. Paquette, what is the organizational mission of API?

5 A Our mission is to advocate against cruelty and
6 exploitation of animals.

7 Q And what if any specific campaigns does API have to carry
8 out that mission?

9 A We work on four campaigns, animals in entertainment, the
10 international wildlife trade, exotic pets, as well as trapping
11 and fur.

12 Q And with regard to animals in entertainment, are there
13 components to that campaign?

14 A Yes. We work on two issues there, circuses -- animals in
15 circuses as well as animals at various types of zoos.

16 Q And what parts are there to the circus campaign that API
17 works on?

18 A We work on four different areas within the circus
19 campaign, so one would be -- we have a public education and
20 advocacy component. We also have a legislative component, a
21 media component as well as a litigation component.

22 Q Now, I'd like to ask you a few questions about the public
23 education and advocacy component that you just mentioned.
24 What's the purpose of that campaign?

25 A The purpose is to educate the general public as well as

1 our members about what goes on within animal circuses, so the
2 general abuse that goes on with the use of the bull hooks and
3 the chains and the other animals as well.

4 Q Does that include the Ringling Brothers circus?

5 A Yes, it does.

6 Q And what aspects of the Ringling Brothers circus is API
7 concerned about?

8 A We're concerned about the use of the -- the forcible use
9 of the bull hook that is used on the elephants as well as the
10 constant chaining of the elephants, and the transport, that
11 they're being transported across the country for about 11
12 months of the year.

13 Q And why is API concerned about these activities?

14 A Well, for several reasons. We're concerned because, you
15 know, it's an issue that our members care quite deeply about.
16 It's one of the issues that our members writes to us about and
17 call us about.

18 Also, we're concerned because just the way the
19 animals are treated, you know, we're worried about the general
20 treatment with respect to the bull hook and the chains, and
21 then also we're concerned because it's a take under the
22 Endangered Species Act, and we don't -- we don't agree with
23 that.

24 Q You mentioned members. How many members does API have?

25 A We have 40,000 members and supporters nationwide.

1 Q And what, if anything, does API do to advocate this
2 particular issue? You talked about the advocacy campaign
3 here.

4 A We do, again, a wider array of different activities in
5 that arena to educate the public as well as our members. We
6 have a website. That's probably our most visible component.
7 We have information about the various animal circuses.

8 We also have -- we have fliers and posters about the
9 circus that we hand out to the public. We help organize
10 peaceful protests when a circus is coming to town. We also
11 do -- we have a billboard campaign aspect to that and a public
12 service announcement aspect to that campaign as well.

13 MR. CRYSTAL: Your Honor, at this time I'd like to
14 show Ms. Paquette some pages from Plaintiffs' Will Call Exhibit
15 92, starting at page 1 of that exhibit.

16 THE COURT: All right.

17 Q (BY MR. CRYSTAL) And if you could take a look at the -- I
18 would like to show the first 13 pages of this exhibit, which is
19 API 5550 to 5562, so if we could move through those first 13
20 pages.

21 Ms. Paquette, if you could take a look at this.

22 THE COURT: I'm sorry, is this in evidence? I don't
23 recall.

24 MR. CRYSTAL: No, it is not in evidence yet, Your
25 Honor.

1 THE COURT: All right. Are there objections?

2 MS. JOINER: As for this exhibit, if you're not going
3 to offer it for the truth, there's no objection.

4 MR. CRYSTAL: We are not offering it for the truth.

5 THE COURT: All right. I'll admit it.

6 (PLAINTIFFS' WILL CALL EXHIBIT 92 ADMITTED.)

7 MR. CRYSTAL: Thank you.

8 THE COURT: Before you get to that, you said
9 something constituted -- constitutes a take. You said that.
10 What are you talking about?

11 THE WITNESS: Just that the use of the bull hook as
12 well as the use of the chains, it's a take under the Endangered
13 Species Act.

14 THE COURT: Why do you say that?

15 THE WITNESS: Because it wounds and harms and
16 harasses the elephants.

17 THE COURT: So, in your view, would it be anything
18 that wounds or harms?

19 THE WITNESS: I'm sorry?

20 THE COURT: Would it be anything that wounds or
21 harms, in your view, anything would constitute a take?

22 THE WITNESS: We would feel that anything -- you
23 know, the use of the bull hook, because of the way in which
24 it's used, would leave wounds and harm the animal as well as
25 the chaining because it disrupts the normal social behavior of

1 the elephant. They are unable to move around the majority of
2 their lives. They're chained.

3 THE COURT: And the harm you're referring to,
4 physical harm or emotional harm?

5 THE WITNESS: Both. For the probably -- for the
6 chaining, it would be both physical and psychological harm.

7 THE COURT: Psychological. All right.

8 Q (BY MR. CRYSTAL) Ms. Paquette, do you recognize this
9 document?

10 A Yes, I do.

11 Q And what is it?

12 A These are our -- it's our flier that we hand out to the
13 public, and then there are subsequent inserts from the various
14 animal circuses.

15 Q And who receives this document?

16 A Our members do, but mostly the general public. They call
17 us and they e-mail us for this information.

18 Q And what's the purpose of this document?

19 A The purpose is to educate the general public about what's
20 wrong with animal circuses. You know, it describes things
21 like incidences within the circus if an animal has died or
22 escaped. They explain Animal Welfare Act violations that have
23 occurred.

24 Q And what, if any, costs are associated with generating a
25 document like this?

1 A The various costs would be staff time production, but
2 definitely like significant resources are expended on
3 producing these and sending them out to the public.

4 MR. CRYSTAL: And I'd now like to show Ms. Paquette
5 the next three pages of this exhibit, which are API 5563 to
6 5565.

7 Q (BY MR. CRYSTAL) Ms. Paquette, if you could look at these
8 pages, which will display. And do you recognize these?

9 A Yes, I do.

10 Q And what are these documents?

11 A These are -- the first two are stickers, and this -- the
12 third one is -- it's just a little card that we hand out and
13 these are -- we mail to various people that call or e-mail us,
14 we mail them to the general public.

15 Q And what's the purpose of these materials?

16 A Again, it's just to educate the public about what's wrong
17 with animal circuses.

18 Q And again, what, if any, costs are associated with
19 generating these materials?

20 A Again, it's staff time, production costs.

21 Q Now, I'd like to show you the next eight pages of this
22 exhibit, pages 17 to 25, which are API 5566 through 5574. If
23 you could take a moment to look at that document as we flip
24 through. Do you recognize this document?

25 A Yes, I do.

1 Q And what is this?

2 A This is a letter that we would send to our members as
3 well as to new people that we want to become our members, and
4 this is a -- basically an educational material. Oftentimes
5 our members only receive a few pieces of mail from us, and
6 this is a way that we can communicate our issues to them.

7 Q And how often do you send materials like this?

8 A We send them probably 16 to 20 times a year, but on the
9 circus, at least, on average, four times a year.

10 Q And what, if any, costs are associated with generating
11 these materials?

12 A This, again, it would be staff time, design time, but --
13 and mailing, which would be very significant for us.

14 Q And now I'd like to look at the next four pages, pages 26
15 through 29, which are API 5575 through 5578. If we could flip
16 through those pages. Do you recognize this document?

17 A Yes, I do.

18 Q And what is this?

19 A This was a mailing that we did to our members describing
20 an incident where we were trying to post a billboard, one
21 about the animal circuses, and it was -- we were unable to
22 post it. We were denied by the -- by Clear Channel, so we
23 were unable to actually have it viewed, and then it also
24 talked about our PSAs, and we've been denied posting our PSAs,
25 so we're telling our members that.

1 Q What are your PSAs?

2 A They're public service announcements and they talk about
3 the dangers of animal circuses and they focus a lot on the
4 elephant aspects of elephants in circuses.

5 Q And where does API run those PSAs?

6 A We have them available on our website, so actually the
7 members of the general public can post -- can air them, but
8 we've aired them in various cities across the country where
9 the Ringling Brothers circus has performed.

10 Q And you mentioned billboards. What are those?

11 A We had -- we have both static and mobile billboards that
12 we've placed in various cities, again, where the Ringling
13 Brothers circus has performed. This -- they would have
14 various sayings on them, like one has said, "Would you pay
15 your" -- "Would you chain your dog most of his life? Why pay
16 a circus to do it to elephants."

17 And then we've also had another one more specific.
18 We had a quote from a Ringling Brothers employee.

19 Q And what, if any, costs are associated with the PSAs and
20 the billboards?

21 A Again, that's significant resources. It's quite
22 expensive to post those types of billboards as well as design
23 them.

24 Q And now I'd like to show you pages 45 and 46 of this
25 exhibit, which is API 5594 and 5595, if you could look at this

1 document and tell me if you recognize it.

2 A Yes, I do.

3 Q And what is that document?

4 A These are -- this is a typical action alert that we would
5 send to our action alert members. Mostly it's an e-mail
6 system, and this would be every year at the beginning of --
7 beginning of the year we'd send these types of alerts to our
8 members and throughout the year trying to get members of the
9 public as well as our own members to take action when the
10 circus comes.

11 So it tells things like, you know, be aware that
12 when the circus comes, write a letter to the editor, call us
13 for information and we'd send them our fliers.

14 Q And does API spend staff time on those efforts?

15 A Yes, we do.

16 Q Now I'd like to move ahead to pages 73 to 77 of this
17 exhibit, which are API 5622 to 5626, and again, if you could
18 briefly look at this document as we flip through it and tell
19 me if you recognize this document.

20 A Yes, I do.

21 Q And what is this?

22 A This is -- these are what we would call our bulletins and
23 we would send these out. We don't send these out anymore, but
24 we would send these out to our members as an insert and they
25 would cover three to five issues and they would typically

1 cover animals in circuses.

2 Q And if I could ask you to look at pages 121 to 124, which
3 are API 5670 to 5673. If we could -- again, if we could flip
4 through that document. And do you recognize this document?

5 A Yes, I do.

6 Q And what is that?

7 A This is an article that was in our quarterly magazine
8 called "Animal Issues."

9 Q And what is that magazine?

10 A It's our -- the organization's magazine that we send to
11 our members and we publish it four times a year and we
12 typically have a story at least once or twice a year about the
13 circus in there.

14 Q And what's the purpose of that magazine?

15 A Again, it's to educate our members about what we're doing
16 to convey to them all the areas that we're working on.

17 Q And if I could now show you pages 131 to 134, which is
18 API 5679 to 5682. And again, do you recognize this document?

19 A Yes.

20 Q And what is that?

21 A This is another magazine article that was in our animal
22 issues magazine.

23 Q With regard to the bulletins that we discussed and these
24 magazine articles, what, if any, resources does API expend for
25 these advocacy efforts?

1 A We spend staff time, design time, as well as just the
2 general cost of production and mailing, so, you know, for us
3 it's a significant amount of money.

4 Q And then just one further excerpt from this exhibit I'd
5 like to show you, pages 160 to 164, which are API 4828 through
6 4832 of this exhibit. If you could look at these pages and
7 tell me if you recognize this document.

8 A Yes, I do.

9 Q And what is this?

10 A This is another example of an action alert. So we would
11 send one like similar to this every time the circus would go
12 to a specific town, and so we would -- we were sending out
13 like, for example, wherever Ringling Brothers was -- their
14 various units were traveling, we would send that to the
15 various members in that city and we would encourage them to
16 get active.

17 Q And with regard to all of these advocacy efforts, are
18 they all directed just at Ringling Brothers' elephants?

19 A Not all of them. We do work on other animal circuses,
20 but the majority of our efforts are actually on Ringling
21 Brothers circus.

22 MR. CRYSTAL: At this time, you already moved into
23 evidence -- I think admitted, just these portions we'd like to
24 move into evidence of this exhibit.

25 THE COURT: Sure, that's fine.

1 Q (BY MR. CRYSTAL) And I'd like to turn to another
2 component of your -- of the circus campaign. You mentioned a
3 litigation component. What does that entail?

4 A That entails, as of now, it's just this particular
5 lawsuit that we're dealing with right now.

6 Q You mean being a Plaintiff in the lawsuit?

7 A Yes.

8 Q And when did API decide to become a Plaintiff in this
9 lawsuit?

10 A Well, we sent our 60-day notice July of '05.

11 Q And why did API decide to become a Plaintiff in this
12 lawsuit?

13 A Well, we decided because probably back in 2004 API
14 restructured a lot of the work that we were working on and we
15 re-prioritized the circus campaign as one of the priority
16 campaigns, so we elevated it to a campaign that we'd work a
17 lot more on.

18 And so, as we were looking all the various issues
19 that we could do in addition to our public advocacy work and
20 the legislation, we had already known about this particular
21 lawsuit and we wanted to become involved in it.

22 Q And did you know who the other organizations were that
23 were part of the lawsuit?

24 A Yes, I did.

25 Q Who were they?

1 A They were the ASPCA, the Fund for Animals and the Animal
2 Welfare Institute.

3 Q And what was your organization's view about these other
4 groups?

5 A Well, I mean, the ASPCA has been around for -- I mean, I
6 think they're the longest organization, animal protection
7 organization, so we had very high regards for ASPCA and all of
8 them. We've worked very closely with all of them, and they
9 have -- they're very well respected nationally.

10 Q And did API send the 60-day notice letter?

11 A Yes, we did.

12 Q And when was that?

13 A July of '05.

14 MR. CRYSTAL: And Your Honor, at this time I'd like
15 to show Plaintiffs' Will Call Exhibit 91 from page 13 to 23.

16 THE COURT: Any objection?

17 MS. JOINER: No objection.

18 THE COURT: All right.

19 Q (BY MR. CRYSTAL) If you could take a look at this
20 document and tell me if you recognize it.

21 A Yes.

22 Q What is that document?

23 A That is API's 60-day notice letter.

24 Q If we could just go to the second page of that document.
25 Page 2, is that your signature?

1 A Yes, it is.

2 MR. CRYSTAL: At this time we'd move into evidence
3 exhibit -- Will Call Exhibit 91.

4 THE COURT: Any objection?

5 MS. JOINER: No objection.

6 THE COURT: Admitted.

7 (PLAINTIFFS' WILL CALL EXHIBIT 91 ADMITTED.)

8 Q (BY MR. CRYSTAL) You also mentioned media efforts as part
9 of the circus campaign. What does that include?

10 A Our media efforts include -- you know, we send out press
11 releases. We held press conferences on this issue. We send
12 out letters to the editor. We also contribute to Tom Rider's
13 media efforts.

14 Q And are all of those media efforts directed to Ringling
15 Brothers' elephants?

16 A No, they're not.

17 Q What portion of their media efforts are?

18 A I probably couldn't really break it down, but we work
19 on -- some of our media efforts are for our legislative
20 efforts, and it just really depends.

21 Q And you mentioned Tom Rider's media efforts. What do you
22 mean?

23 A We support -- we support Tom Rider's efforts by providing
24 grants to the Wildlife Advocacy Project.

25 Q And I think you just mentioned legislative efforts as

1 part of the circus campaign. What does that entail?

2 A Well, we work both on the national and the state and the
3 local level on legislation that would either prohibit wild and
4 exotic animals in circuses or more recently we've been working
5 on legislation that would prohibit the use of the bull hooks
6 and chains on elephants.

7 Q What kind of -- you mentioned nationally and locally.
8 Can you give us some examples?

9 A Well, on the local level, we've worked on numerous local
10 ordinances that would -- that would regulate the circus so
11 they would either prohibit wild and exotic animals or prohibit
12 the devices, but you know, we've helped various communities in
13 California such as Encinitas, California.

14 We helped communities -- I'm trying to think of some
15 more, but we basically offer advice to people who are trying
16 to work on these issues. We introduce them ourselves. We've
17 drafted model legislation that members of the public contact
18 us and we offer our expertise on trying to pass those
19 ordinances.

20 MR. CRYSTAL: And at this time, Your Honor, I'd like
21 to show Ms. Paquette some excerpts from Plaintiff's Exhibit 95.
22 Again, we won't be offering these for the truth of the matter.

23 THE COURT: Any objection?

24 MS. JOINER: No objection.

25 MR. CRYSTAL: So I'd like to start on page 30, which

1 is API --

2 THE COURT: I'm sorry, did you mention national
3 efforts as well?

4 THE WITNESS: Yeah. What we do nationally is -- I
5 mean, there haven't been recently any legislative efforts that
6 have addressed elephants or circuses, but there was a bill, I
7 want to say it was introduced in 1999 and 2000, that we, you
8 know, wrote letters and we assisted in.

9 THE COURT: And that bill would have done what had it
10 been --

11 THE WITNESS: It would have -- it would have
12 prohibited the interstate movement of elephants in traveling
13 shows and circuses.

14 Q (BY MR. CRYSTAL) Ms. Paquette, if you could look at these
15 first few pages and tell me if you recognize this document.

16 A Yes, I do.

17 Q What is that?

18 A That was an ordinance that was passed in the City of
19 Encinitas, California, and that one would be on the display of
20 wild and exotic animals in that city.

21 Q And what, if anything, did API do to help win passage of
22 this?

23 A This was actually an earlier model that we drafted, so
24 somebody had contacted us and we provided them with this model
25 and then we gave them guidance on the process, and then it was

1 passed.

2 Q And now I'd like to show you pages 49 through 51 of this
3 exhibit, which are API 2013 to 2015. If you could again take
4 a look and tell me if you recognize this document.

5 A Yes, I do.

6 Q And what is that?

7 A That's an ordinance that was passed in the City of
8 Rohnert Park, California.

9 Q And what was API's role in this?

10 A We were contacted by the local group there. There were
11 residents in Rohnert Park who wanted to work on this, so we
12 gave them advice on how to do it. I provided my model and
13 some fact sheets to them and assisted.

14 Q And finally I'd like to show you pages 55 through 58,
15 which is API 1180 to 1183, and again, if you could look at
16 this document and tell me if you recognize it.

17 A Yes, I do.

18 Q What is that document?

19 A This is an ordinance that was passed in Santa Anna,
20 California, and this one prohibits the display of wild and
21 exotic animals in circuses and traveling shows.

22 Q And again, what, if any, role did API have in the passage
23 of this ordinance?

24 A We were contacted by a person who was working on this, so
25 again, it was more we offered fact sheets, any kind of

1 materials that they needed. We wrote letters of support on
2 this.

3 Q And we talked about national legislation and local. Has
4 API also been active at the state level?

5 A Yes, we have.

6 Q And what, if any, efforts have there been there?

7 A We introduced bills dealing with prohibiting wild and
8 exotic animals in circuses and also introduced bills on
9 banning the use of bull hooks and chains in probably like four
10 states, and then we've also assisted in other efforts that
11 have come to our attention that have tried to do the same.

12 Q What other states?

13 A We've introduced bills in California, Nebraska,
14 Connecticut and Massachusetts.

15 Q And now I'd like to show you pages 87 to 88 of this
16 exhibit, which is API 4938 to 4939. And again, if you could
17 tell me if you recognize this document.

18 A Yes, I do.

19 Q And what is that?

20 A This is a bill that we introduced in Massachusetts in
21 2003, and this would have prohibited the display of specific
22 exotic animals, which would include elephants in the State of
23 Massachusetts.

24 Q And did that bill pass?

25 A This version did not pass, no.

1 Q Okay. Why not?

2 A It --

3 Q I'm sorry. Okay.

4 A I was just going to say that subsequently, I mean, this
5 bill hasn't passed, but one version of it. We introduced a
6 bill in Massachusetts on bull hooks and chains, and that bill
7 passed the Senate one year unanimously, but we ran out of time
8 in the House to get it passed.

9 Q And you mentioned your website earlier. What, if any,
10 information does API provide about these legislative efforts
11 on the website?

12 A We post a brief summary about all the legislative
13 efforts. These particular pieces of legislation we work on,
14 we give our members and the public information on how to take
15 action to write letters of support if they live in that state.

16 Q And the last part of this exhibit I'd like to show you is
17 pages 115 to 118, which is API 639 to 642. What is this?

18 A This is a list of all of the local ordinances that have
19 passed across the country which prohibit the display of wild
20 and exotic animals.

21 Q And with regard to all of these legislative efforts we've
22 discussed, what, if any, resources does API expend in order to
23 engage in these legislative efforts?

24 A We spend a lot of staff time, a lot of just trying to get
25 everything done to put forth a piece of legislation. It's

1 quite expensive for an organization like ours.

2 MR. CRYSTAL: At this time, I would move just the
3 portions of Exhibit 95 that we've displayed.

4 THE COURT: Any objection?

5 MS. JOINER: If they're not offered for the truth of
6 the matter asserted, no objection.

7 MR. CRYSTAL: They're not.

8 THE COURT: Admitted.

9 (PLAINTIFFS' WILL CALL EXHIBIT 95 ADMITTED.)

10 Q (BY MR. CRYSTAL) And since we've been discussing your
11 website, could you tell us what, if any, details API has put on
12 its website about this trial since it began on February 4th?

13 A On the first day we did put a trial update on there, on
14 our website.

15 Q And why did API do that?

16 A Well, it's this -- again, this is an issue that our
17 members care greatly about. We've been contacted to -- by our
18 members about, you know, wanting to know what's happened
19 throughout the trial.

20 Q And has API since removed details about the trial from
21 the website?

22 A Yes, we have.

23 Q And why is that?

24 A Because we were instructed by our counsel to do so.

25 Q So I think we have discussed the four areas of the circus

1 campaign, legislative, advocacy, media and litigation. Are
2 there any other work that API -- is there any other work that
3 API does in this area of circus campaign?

4 A Yeah, we work on the regulatory level, trying to help
5 animals in circuses.

6 Q And what does that entail?

7 A Well, in addition to say commenting on the various states
8 that have regulatory changes relating to captive exotic
9 animals, probably the biggest effort that we work on is in
10 California.

11 So, as a result of a lawsuit that API filed against
12 the Department of Fish & Game, there is a state appointed
13 advisory committee that was appointed to look at the existing
14 state regulations on how people in the state who own exotic
15 animals are inspected. So we're charged with coming up with
16 recommendations to facilitate that inspection process.

17 Q And who appointed the members of that committee?

18 A The director of Fish & Game.

19 Q And who are the chairs of that committee?

20 A The chairs are -- I'm a co-chair along with Julie
21 Strauss.

22 Q And how about at the federal level, what, if any,
23 regulatory work does API do on the circus campaign?

24 A On the federal level, we monitor the Federal Register.
25 So with respect to the USDA, we monitor the Federal Register

1 for any kind of changes to the Animal Welfare Act. If there
2 are any postings, we would submit comments. We also monitor
3 their website to see if any changes, we read enforcement
4 reports. We submit FOIA requests to the USDA for the various
5 animal circuses.

6 Q And you mentioned enforcement reports. What are those?

7 A Well, on the website they have various listings of, you
8 know, all the violations at the various animal -- the various
9 exhibitors or the various licensees have done and they kind of
10 do a summary at the end of every year. I think it's like
11 every year they have a summary report. I think that they
12 haven't had one for this year, but there's also, there was a
13 2004 enforcement audit report that we've reviewed.

14 MR. CRYSTAL: And Your Honor, at this time we would
15 like to move into evidence Plaintiffs' Will Call Exhibit 84,
16 which is the 2004 audit report. It is a public record.

17 THE COURT: Any objection?

18 MR. CRYSTAL: And we'd like to discuss.

19 MS. JOINER: Objection is irrelevant and also
20 hearsay.

21 MR. CRYSTAL: Well, Your Honor, that response to --
22 hearsay is that it is a public record, and it's clear from the
23 face of the document that it's a USDA public record.

24 In terms of its relevance, there has been a lot of
25 discussion that --

1 THE COURT: On that basis, I'll admit it.

2 MR. CRYSTAL: Thank you.

3 (PLAINTIFFS' WILL CALL EXHIBIT 84 ADMITTED.)

4 Q (BY MR. CRYSTAL) Do you recognize this document?

5 A Yes, I do.

6 Q And what is that?

7 A This is the 2005 audit report that the U.S. -- was the
8 U.S. Department Office of Inspector General did. They audited
9 the Eastern Region of --

10 THE COURT: Wait a second. This report is published?

11 MR. CRYSTAL: Yes, Your Honor.

12 THE COURT: It is published. To the public, it is.
13 All right.

14 A They audited the Eastern Region of the Animal Care
15 Division, which oversees the Animal Welfare Act.

16 Q (BY MR. CRYSTAL) What is the Animal Care Division?

17 A The Animal Care, they're charged with enforcing the
18 Animal Welfare Act. They're under the Animal Plant Health
19 Inspection Service, which is under the USDA.

20 Q Is that APHIS?

21 A APHIS.

22 Q Okay. If we could turn to page 3 of this document, which
23 is the page little "i," and if you could read for us the first
24 full paragraph that starts "this report," just that first
25 sentence.

1 I'm sorry, it's starting with "this report," so it's
2 the second full paragraph. I'm sorry. I'd just like you to
3 read that first sentence for us.

4 A (Reading) This report presents the results of our audit
5 of the Animal & Plant Health Inspection Service's, APHIS,
6 Animal Care unit, or AC unit, which has the responsibility of
7 inspecting all facilities covered under the AWA and following
8 up on complaints of abuse and noncompliance.

9 Q And now, if we could go to just the first bullet on the
10 bottom part of that page. If you could just read that first
11 sentence for us.

12 A (Reading) Due to a lack of clear national guidance, AC's
13 Eastern Region is not aggressively pursuing enforcement
14 actions against violators of the AWA.

15 Q And now I'd like to turn just to the next page of this
16 document and again focus on that first bullet. If you could
17 read for us that first bullet.

18 A (Reading) Discounted stipulated fines assessed against
19 violators of the AWA are usually minimal. Under current APHIS
20 policy, AC offers a 75 percent discount on stipulated fines as
21 an incentive for violators to settle out of court to avoid
22 attorney and court costs. In addition to giving the discount,
23 we found that APHIS offered other concessions to violators,
24 lowering the actual amount paid to a fraction of the original
25 assessment. An IES official told us that as a result,

1 violators considered the monetary stipulation as a normal cost
2 of conducting business rather than a deterrent for violating
3 the law.

4 Q Now, is this the kind of material that API reviews
5 regularly for their USDA work?

6 A Yes.

7 Q Thank you. And do you monitor any other federal agency's
8 work in connection with the circus campaign?

9 A Yeah. We monitor the U.S. Fish & Wildlife Service, so
10 again, we would look at the Federal Register, we would see if
11 there are any changes to the Endangered Species Act. We
12 regularly comment if there are any type of Section 10 permits
13 dealing with captive exotic animals. We would regularly
14 review them. We would ask for the application and then we'd
15 review them and then make an assessment as to whether we
16 should comment or not, and oftentimes we do comment.

17 Q And why is that information in the Federal Register?

18 A Because the -- the law provides that any time you apply
19 for a Section 10 permit, you get noticed in the Federal
20 Register, you get 30 days to respond, you can get a copy of
21 the application and then you can submit comments.

22 Q And which section of the Endangered Species Act? I think
23 you mentioned it's Section 10?

24 A Section 10.

25 MR. CRYSTAL: Your Honor, I'd just like to show

1 Section 10(c) of the Endangered Species Act to help the Court's
2 understanding --

3 THE COURT: That's fine.

4 MR. CRYSTAL: -- of what we're discussing. If we
5 could blow up 10(c) there on the bottom left, a little bit
6 further down.

7 Q (BY MR. CRYSTAL) If you could just read for us the first
8 couple of sentences.

9 A (Reading) The secretary shall publish -- sorry. The
10 secretary shall publish notice in the Federal Register of each
11 application for an exemption or permit which is made under
12 this section. Each notice shall invite the submission from
13 interested parties within 30 days after the date of the notice
14 of written data, views, or arguments with respect to the
15 application.

16 Q And then if you could just read the last sentence.

17 A (Reading) Information received by the secretary as part
18 of any application shall be available to the public as a
19 matter of public record at every stage of the proceeding.

20 Q And you say that this is the kind of information API
21 reviews when it's in the Federal Register?

22 A Yes.

23 Q And can you give us an example of that?

24 A One example would be, there have been permits often
25 that -- These various canned hunting ranches would be wanting

1 to kill various animal species, so these were enclosed areas
2 and so we would ask for -- we wanted to know more about that.

3 So we asked for the permits, copies of the
4 applications, and then we submitted -- we would review that
5 application, and what we were reviewing was we found out that
6 these -- these canned hunts were basically asking to kill
7 these animals and then they were donating money to the wild
8 and they were filtering the money through non-profits.

9 So we would regularly comment on that, and then we
10 would take that information. Because one of the nonprofits
11 was actually the Smithsonian, so that kind of got us
12 interested in this issue, and so we alerted the Smithsonian
13 and they subsequently dropped that, and so we continue to
14 monitor that whole system, you know, still to this day.

15 Q And is that information you received through the Section
16 10(c) process?

17 A Yes, yes.

18 Q What is your understanding of whether Ringling Brothers
19 has applied for a Section 10 permit concerning their
20 elephants?

21 A It was my understanding they have not.

22 Q And does API use other methods to try and collect that
23 kind of information?

24 A Yes. I mean, we regularly monitor news services or, you
25 know, anything that we could get to try to get that type of

1 information. It's just difficult.

2 Q What kind of resources does API expend to try and collect
3 that information?

4 A Well, we would spend a lot of staff time trying to gather
5 that information.

6 Q And are you familiar with the Fish & Wildlife Services
7 regulations that implement this Section 10(c) process?

8 A Yes, I am.

9 Q Do you know which regulation that is?

10 A It's Section 17.22 of the 50 CFR.

11 MR. CRYSTAL: And again, Your Honor, I'd like to show
12 Ms. Paquette this section so we can discuss it.

13 If you could look at this section of the CFR, and if
14 we could blow up from maybe from A(i). This is kind of hard
15 to read from the top left corner. Yeah, let's go -- no, just
16 right there is fine. Great.

17 Q (BY MR. CRYSTAL) Now, is this the section you're
18 referring to?

19 A Yes, it is.

20 Q And if you can look at this section and tell us when you
21 need to scroll down because we can't fit it all in here at
22 once, but -- and tell us which sections, if any, API would
23 rely upon to collect the kind of information we're talking
24 about.

25 A So you can scroll down. Okay. We would rely on Sections

1 (v), (vi) and (vii). We would want information from those two
2 areas -- or three areas.

3 Q Could you read for us Section (v).

4 A (Reading) A complete description and address of the
5 institution or other facility where the wildlife sought to be
6 covered by the permit will be used, displayed or maintained.

7 Q And why would API want that information?

8 A Well, it would provide information to where these
9 animals -- where all of the elephants are being taken to, like
10 so where they're displayed. It also gave us information about
11 how they are being maintained at the various arenas, so kind
12 of what kind of substrate are they standing on, are they going
13 to be indoors, outdoors, how are they going to be chained, you
14 know, again, it would give us a lot of information.

15 Q Anything else? And how about Section (vi), could you
16 read that for us.

17 A (vi) would be (reading) If the applicant seeks to have
18 live wildlife covered by the permit, a complete description,
19 including photographs or diagrams of the facilities to house
20 and/or care for the wildlife and a resume of the experience of
21 those persons who will be caring for the wildlife.

22 Q And why would that information be useful to API?

23 A Well, for the first part, which would be the complete
24 description, including photographs or diagrams of the
25 facilities, that would give us information about, you know,

1 how are these animals being treated, how are they being
2 housed. We would see photographs of the area -- the various
3 places where they're being kept.

4 With the second part, with the resumes of the
5 experience, this would provide resumes of the, I would assume,
6 handlers of the various elephants. We would know who's
7 handling which animal. Kind of if we know prior history of
8 that handler, we would better understand how those particular
9 elephants are being treated.

10 Q Anything else?

11 A No.

12 Q How about section (vii), could you read that for us.

13 A (Reading) (vii), A full statement of the reasons why the
14 applicant is justified in obtaining a permit, including the
15 details of the activities sought to be authorized by the
16 permit.

17 Q And why would that information be useful for API?

18 A So this would be for two parts. So one, we would get the
19 details of the activities sought to be authorized, so that
20 would give us, you know, the various details of how the bull
21 hook is being used on these animals. So I would imagine we
22 would get things like, you know, how is the bull hook used to
23 discipline the elephants, how is the bull hook used to train
24 these animals, when is it used outside of that discipline and
25 training.

1 We also get information on how the chaining is used.
2 So, for example, how long are these elephants chained from
3 location to location, when are they unchained, when are they
4 unloaded, things like that. And then the second part of this
5 would be we'd get the justification. So we would get their
6 justification as to why the bull hook and the chaining is
7 necessary as well as how that actually enhances the survival
8 of that species.

9 Q With regard to all of this information, how would API use
10 this information as part of its circus campaign?

11 A Well, we would use it in probably a wide variety of ways.
12 We would produce various probably fact sheets and charts and
13 summaries and we would provide that to our members or the
14 general public. We would also use it in our legislative
15 efforts to educate lawmakers about what's going on. We would
16 post it on our website. We would likely write magazine
17 articles in our quarterly magazine.

18 Q Anything else?

19 A That's all I can think of right now.

20 Q Now, several times this afternoon you've mentioned that
21 API is spending significant resources on the -- these various
22 aspects of the circus campaign, and I just want to ask you a
23 few questions to try and quantify that, and I'd like to do
24 that. I'd like to look at Defendant's Exhibit 21.

25 MR. CRYSTAL: Again, I don't plan on introducing this

1 into evidence. This is Defendant's Exhibit 21, page 33, which
2 are API's responses to interrogatories.

3 MS. JOINER: I object to hearsay, Your Honor.

4 THE COURT: You're not offering this?

5 MR. CRYSTAL: I'm not offering it into evidence, Your
6 Honor.

7 THE COURT: You're using it for what purpose?

8 MR. CRYSTAL: I want to ask her some questions about
9 her responses to interrogatories.

10 THE COURT: That's fine. That's fine.

11 Q (BY MR. CRYSTAL) If you could look at Defendant's Exhibit
12 21 and first tell me if you recognize this document and tell us
13 what it is.

14 A Yeah. This is our API's response and objections to
15 Defendant's first set of interrogatories.

16 Q And if we could turn to page 9 of this response, and if
17 you could please read --

18 THE COURT: Let me ask counsel a question. Let's
19 assume that you wish to introduce into evidence the answers of
20 this witness to those questions in interrogatories. The whole
21 purpose of the hearsay rule is to keep evidence out because
22 people aren't available for cross-examination. Let's assume
23 you're going to introduce those answers and she's here for
24 cross-examination, what's the prejudice to Defendant?

25 MS. JOINER: Well, I think that -- There, I'm on now.

1 With interrogatories, I would say that this is -- this
2 particular person is a Party Plaintiff and rather than having
3 their testimony bolstered up front by reading from a document,
4 I think the testimony should have to come from the witness.
5 And in -- if there's cross-examination, I would do it then
6 rather than just marking an interrogatory and handing it in and
7 saying here you go.

8 THE COURT: There's no real prejudice with Defendant,
9 though, if you have the right to cross-examine, is there?

10 MS. JOINER: If I can cross-examine --

11 THE COURT: Well, sure you could. Of course.

12 But they're not offering that -- you're not offering
13 that, are you?

14 MR. CRYSTAL: I wasn't planning on offering this.

15 THE COURT: All right. Go ahead.

16 Q (BY MR. CRYSTAL) Looking at Question 21 in the bottom, if
17 you could just please read for us the question and then the
18 first sentence of the answer.

19 A (Reading) Identify each resource you have expended from
20 1997 to the present in advocating better treatment for animals
21 held in captivity, including animals used for entertainment
22 purposes as alleged in the complaint, including the amount and
23 purpose of each expenditure.

24 Q If you could read the first sentence of the answer,
25 please, first two sentences.

1 A (Reading) Subject to -- I'm sorry, the first two?

2 Q Yes, go ahead.

3 A (Reading) Subject to any -- I'm sorry. Subject to and
4 without waiving its previous objections to this interrogatory,
5 API estimates that in 2007 approximately 5 percent of its
6 total expenditures for the year were spent on advocating for
7 the better treatment of elephants. Since 1999, API has
8 dedicated approximately 3 to 8 percent of its budget to
9 advocating better treatment for animals held in captivity for
10 a total approximate expenditure of \$97,930.

11 Q Is that an annual expenditure?

12 A Yes, that is.

13 Q And what kind of activities did API include to come up
14 with this total?

15 A It would be staff time, it would be all of our work on
16 our legislative efforts, our public advocacy efforts or media
17 efforts. It would be, you know, the work that our web person
18 has to do. I mean, just a lot of -- everything that we do
19 with respect to the elephant issue, that would go into it.

20 Q And have you estimated the amount that API spent in 2008
21 advocating for the better treatment of animals in captivity?

22 A I have.

23 Q And what does that amount to?

24 A It does amount to -- again, it's 5 percent, and so it's a
25 little over the ninety-seven. About 110-, \$-12,000.

1 Q And are those the advocacy resources that API is relying
2 on to demonstrate standing in this case?

3 A Yes, it is.

4 Q And are those resources API would no longer have to
5 expend if Ringling Brothers no longer had elephants?

6 A Probably the bulk of it we would no longer have to spend,
7 yeah.

8 Q Why is that?

9 A Well, because the -- most of our work right now is on --
10 focused on the Ringling Brothers, that we would -- we would
11 still spend some money on other elephant issues.

12 Q And now I'd like you to look at Question 22, which is on
13 the next page, and if you could please read for us the --
14 Question No. 22 and the answer.

15 A (Reading) Identify each expenditure from 1997 to the
16 present of financial and other resources made while pursuing
17 alternative sources of information about Defendant's actions
18 and treatment of elephants as alleged in the complaint.

19 Q If you could please read the answer.

20 A (Reading) Subject to and without waiving its previous
21 objections to this interrogatory, API states that in 2007,
22 roughly 10 percent of the time and benefits of Nicole Paquette
23 was spent gathering information from individuals, other
24 organizations, and government agencies about Ringling
25 Brothers' treatment of its Asian elephants, as well as

1 searching news articles and reports and the internet for
2 information concerning Ringling Brothers. Roughly 10 percent
3 of the time and benefits of API's director of public
4 relations, Elizabeth Wilder, was spent gathering information
5 from individuals and other organizations from Ringling
6 Brothers' treatment of its Asian elephants. Roughly
7 15 percent of the time and benefits of API's grass roots
8 coordinator, Sandy Haynes, was spent communicating with API's
9 members, activists and members of the public and obtaining
10 information from them on Ringling Brothers, and approximately
11 .5 percent of the overhead for API's office was dedicated to
12 these endeavors for an approximate total resource expenditure
13 of 42,000.

14 Q And has API estimated the amount of resources spent for
15 these same efforts for 2008?

16 A Yes, we have.

17 Q And what do those amount to?

18 A They're roughly the same.

19 Q And are those resources API would no longer have to
20 expend if Ringling Brothers applied for a Section 10 permit
21 under the ESA?

22 A Well, we would -- most of it, again, because we would be
23 getting the applications, so a lot of our informational
24 gathering, we wouldn't have to spend as much time and money.
25 We'd still probably search news articles.

1 Q And is this the information gathering resources that API
2 is relying on to demonstrate its standing in this case?

3 A Yes, it is.

4 MR. CRYSTAL: I have no further questions at this
5 time, Your Honor.

6 THE COURT: All right. Any cross-examination?

7 MS. JOINER: Yes, Your Honor.

8 May it please the Court.

9 THE COURT: Sure. Go right ahead.

10 CROSS-EXAMINATION

11 BY MS. JOINER:

12 Q Ms. Paquette, you are not a doctor of veterinary
13 medicine, correct?

14 A That is correct.

15 Q And you're also not an elephant handler?

16 A That's correct.

17 Q And you've never worked for Ringling Brothers?

18 A That's correct.

19 Q And you've never worked for any circus?

20 A That is correct.

21 Q You'd be morally opposed to that, wouldn't you?

22 A I don't think I'd ever take a job doing that.

23 Q Okay. You've got some pretty strong views about the
24 circus, don't you?

25 A As an organization?

1 Q Organization or personally?

2 A Yeah, I mean, API is against the use of wild and exotic
3 animals in circuses.

4 Q Okay. And you've also done a blog for Born Free, haven't
5 you?

6 A Well, we did -- we did a trial update on the first day,
7 and we took it down.

8 Q Okay. Well, in your -- in your blogs for Born Free,
9 you've written that API makes you sick to your stomach,
10 haven't you?

11 A That what does?

12 Q That Ringling Brothers makes you sick to your stomach?

13 A I could have. I mean, I don't recall all of the blogs
14 I've written.

15 Q Okay. Let's pull up the 9/8/08 entry, please.

16 Do you recognize this?

17 A Yes, I do.

18 Q And do you want to read the first sentence for us?

19 A (Reading) Every year around this time I start feeling a
20 little sick to my stomach and then I realize it's because
21 Ringling Brothers and Barnum & Bailey Circus is rolling into
22 my town this week.

23 Q Okay. And if you scroll down to one, two, three, four
24 more paragraphs down, I would like to ask you about the
25 sentence that says, "In addition, Ringling elephants are

1 chained all the time, except when performing." Do you see
2 that?

3 A Yes.

4 Q Did you write that?

5 A I did.

6 Q What's your basis for saying they're chained all the time
7 except when performing?

8 A Well, it's just based on some of the evidence that we've
9 seen, which is essentially that they're chained in transport
10 cars and then they walk to the arena, and we've seen the
11 elephants are chained right after that. And then they're
12 unchained during the -- right around the time of their
13 performance.

14 Q Do you recall the basis for that evidence that you've
15 seen?

16 A I don't recall specifically, no.

17 Q Okay. You are a licensed practicing attorney, correct?

18 A I am.

19 Q And you mentioned earlier that you began working for API
20 in 1999?

21 A Yes.

22 Q And you've worked there continuously since that time,
23 right?

24 A Correct.

25 Q Okay. When you started in 1999, was the executive

1 director of API Ellen Berger?

2 A Yes.

3 Q And after about a year-and-a-half, I think you said you
4 became the general counsel?

5 A It was probably three years.

6 Q Okay.

7 A 2002.

8 Q Okay. And as general counsel, your duties included
9 reviewing press releases and anything that had some kind of a
10 legal ramification; is that correct?

11 A That was one of them, yes.

12 Q Okay. And then in November of 2002 to 2006 you were the
13 director of legal and government affairs; is that right?

14 A That sounds about the right time frame.

15 Q And during that time you had to oversee all litigation?

16 A Yes.

17 Q Is that correct? And you also made recommendations to
18 the CEO at that time about whether to enter a lawsuit; is that
19 right?

20 A You mean just in general, yes. Yes. Yes.

21 Q Okay. And you also handled the relationships with
22 counsel that you hired for any of those cases; is that right?

23 A Yes.

24 Q And you mentioned that API merged in December of 2007
25 with Born Free U.S.A.?

1 A Yeah. December of 2007?

2 Q That's correct. And since that position -- or excuse me,
3 since that merger, your position has been Senior VP and
4 General Counsel?

5 A Yes.

6 Q Okay. And you agreed during discovery to testify as
7 API's 30(b)(6) witness; is that right?

8 A Yes.

9 Q Born Free U.S.A. is an affiliate of the Born Free
10 Foundation in England and Born Free Kenya, correct?

11 A We are separate legal entities, so we are all part of the
12 same family but we're all separate. The easiest way to
13 explain it is we are a separate 501(c)(3) and the Born Free
14 foundation is a separate charity and we all have separate
15 board of directors.

16 Q Okay.

17 A So basically what one does doesn't apply to the other.

18 Q But you are affiliated with them; is that right?

19 A Yeah, I mean, we're part of the same family.

20 Q Okay. Did you go to visit Born Free Kenya last fall?

21 A I did.

22 Q Did you also visit the Amboseli National Park?

23 A I did.

24 Q And Born Free has supported the Amboseli Research Project
25 for years, correct?

1 A Born Free Foundation.

2 Q Is that right?

3 A Born Free Foundation.

4 Q Has supported it for years?

5 A That's my understanding.

6 Q Okay. And API's expert, Dr. Joyce Poole, participated in
7 the Amboseli Research Project correct?

8 A And just for a point of clarification. My trip to Kenya
9 was just a vacation. I didn't go for work.

10 Q It wasn't a business trip?

11 A Right.

12 Q Okay. Now, you yourself met Dr. Poole after you started
13 working at API; is that right?

14 A Correct.

15 Q And you called and e-mailed with Dr. Poole to get her
16 support for legislature?

17 A Legislation, yes.

18 Q Okay. And Dr. Poole attended a legislative hearing in
19 January 2007 in Massachusetts on behalf of API; is that right?

20 A Yeah. It wasn't an actual hearing, but we set up a event
21 for her to present to the legislature.

22 Q Okay. And she spoke on behalf of the bill to ban bull
23 hooks and chains; is that right?

24 A Yes.

25 Q Now, as part of its mission statement, Born Free states

1 that it believe wildlife belongs in the wild and works to
2 phase out zoos. Are you aware of that?

3 A Yes.

4 Q And is that still part of the mission statement now since
5 the merger?

6 A Yes.

7 Q Okay. Will API be working to phase out the Oakland Zoo?

8 A Well, the zoo -- if you kind of step back on the zoo
9 term. I mean, we use the zoo term not to just apply to AZA
10 zoos. So we have a -- we work on what we would call roadside
11 zoos, one of the USDA facilities that have exotic animals, so
12 we prioritize the zoos. Our campaign actually is called, "Zoo
13 Check." It's really a monitoring system.

14 Q The Oakland Zoo is the one that API considers to provide
15 the basic needs of elephants; is that right?

16 A Yeah, it's the zoo -- I've been to the zoo, so yes.

17 Q And that's a protected contact facility you're aware of,
18 right?

19 A Yes.

20 Q And you consider -- or API considers Oakland Zoo to
21 provide the elephant's basic needs because they don't use the
22 bull hook or the chains?

23 A Right. I mean, we're basing it -- obviously, I don't
24 know the whole structure of the Oakland Zoo, but we support
25 the fact that they don't use bull hooks and chains and that

1 they are protected contact.

2 Q And you also believe that they don't use any devices to
3 train the animals; is that right?

4 A That's my understanding.

5 Q Okay. Oakland Zoo has four elephants and you think that
6 they're Asian; is that correct?

7 A Well, I know I said that in my deposition, but I mean,
8 they are -- I know they're African at this point.

9 Q So since your deposition you've learned that they are not
10 Asian elephants?

11 A Yes, correct.

12 Q Okay. Who's the curator of the Oakland Zoo?

13 A Colleen Kinzley.

14 Q And that's the same Colleen Kinzley that was here this
15 morning as Plaintiffs' expert?

16 A Yes.

17 Q Okay. How did you meet her?

18 A I think the first time I met her was at a PAWS
19 conference. She was a speaker.

20 Q And what does PAWS stand for?

21 A The Performing Animal Welfare Society.

22 Q And that was the original Plaintiff in this lawsuit?

23 A Correct.

24 Q Okay. And you mentioned that you visited the Oakland
25 Zoo --

1 A Yes.

2 Q -- just now. When was that?

3 A I want to say it was 2006, I believe.

4 Q Okay. Was that with Ms. Kinzley?

5 A Yes. She gave our tour with Dr. Parrot.

6 Q Okay. And did you just tell us that API is opposed to
7 wild and exotic animals in captivity?

8 A I don't think I said that, but I think I said we were
9 opposed -- I don't know if I said that, but I believe I was
10 saying we're against wild and exotic animals in circuses. I
11 think that's what I just said earlier.

12 Q All right. Well, API is opposed to wild and exotic
13 animals in all forms of entertainment; is that correct?

14 A Yes, that's correct.

15 Q And API is opposed to wild and exotic animals in
16 captivity, isn't it?

17 A That's correct.

18 Q Is API still against any and all use of the ankus or the
19 bull hook?

20 A That is correct.

21 THE COURT: I'm sorry, I didn't hear you.

22 THE WITNESS: Oh, I'm sorry. That's correct.

23 Q (BY MS. JOINER) And for API, there is no proper use of a
24 bull hook; is that right?

25 A Yes.

1 Q Okay. And that's because you consider the bull hook to
2 be a weapon?

3 A Correct.

4 Q And in fact, API disapproves even of the mere showing of
5 the bull hook to an elephant that's been trained with one,
6 correct?

7 A Yes, because that's -- I mean, from our research and
8 understanding is because the mere showing of it actually
9 brings back what the training and the discipline that's
10 happened in the past, so one way to actually show the animal
11 to get back in line or to do what the animal is supposed to do
12 is to merely show the animal the bull hook.

13 Q And API is against that?

14 A Yes.

15 Q Okay. And API is also against any members of the public
16 having contact with elephants, correct?

17 A Numbers of public, yes.

18 Q Okay. But API would consider it appropriate to provide
19 veterinary care to an elephant if it was done in a protected
20 contact situation?

21 A Yes.

22 Q Okay. Would API consider it appropriate to provide
23 husbandry to elephants in a protected contact situation?

24 A Yes.

25 Q All right. And API would consider it appropriate to use

1 husbandry tools that are necessary for that?

2 A Yes.

3 Q And are you aware that elephant pads are trimmed with
4 knives and the bottom of them are cut off as part of
5 husbandry?

6 A I don't know if I was aware of that, but...

7 Q And API doesn't oppose that?

8 A Well, we support proper husbandry and taking care of the
9 animals' feet.

10 Q So that wouldn't be unlawful to do that?

11 A Well, I guess I mis- -- I would take your word that they
12 use that, and so I would say that that would be fine.

13 Q Okay. Nobody at API has ever handled an elephant; is
14 that right?

15 A That's correct.

16 Q And nobody at API has ever trained one?

17 A No one has.

18 Q Okay. And nobody at API has ever used a bull hook with
19 an elephant either, correct?

20 A Correct.

21 Q And nobody at API has the ability to perform husbandry on
22 elephants either?

23 A That's correct.

24 Q And API does not own or care for any elephants?

25 A No, we don't.

1 Q But you have a primate sanctuary?

2 A Yes, we do.

3 Q All right. And nobody at API has ever assisted with the
4 birth of a baby elephant either?

5 A No.

6 Q Okay. And nobody at API has ever been involved with the
7 breeding of an elephant, whether naturally or through
8 artificial insemination?

9 A No.

10 Q And nobody at API has a member who watches or tracks the
11 loading or unloading times of animals from the Ringling
12 Brothers' train; is that right?

13 A What was the first part? No --

14 Q Nobody at API tracks the loading and unloading times?

15 A Oh, I'm sorry, no, no, no.

16 Q And that was information that you thought you'd hope to
17 gather from the permitting process; is that right?

18 A Correct.

19 Q You're aware that the Court granted summary judgment on
20 October 25th, 2007, correct?

21 A Correct.

22 MS. JOINER: Would you pull up Docket No. 212. Okay.
23 I'd ask the Court to take notice of this. This is the order.

24 THE COURT: All right.

25 MS. JOINER: And --

1 THE WITNESS: Is this the August order? Is that what
2 you said?

3 Q (BY MS. JOINER) October 25th.

4 A Oh, okay, yes.

5 Q Yes, October 25th. And if you would scroll down,
6 please. This was an order that ruled on motions to reconsider
7 that arose from the earlier August 2007 orders, correct?

8 A I believe so.

9 Q Okay. Well, you see that portion there in the middle
10 that says, (reading) Further ordered that Defendant's motion
11 for reconsideration, or in the alternative, for certification
12 pursuant to 28 U.S.C. 1292(b) is granted in part and denied in
13 part.

14 A I see that.

15 Q Okay. You want to take a look at the memorandum opinion
16 just to be sure?

17 A I'll take your word for it.

18 Q Okay. And this particular order --

19 MS. JOINER: The memorandum opinion is Docket No.
20 213, Your Honor.

21 THE COURT: All right.

22 Q (BY MS. JOINER) Limited the case to six pre-act
23 elephants. Do you recall that?

24 A Yes.

25 Q All right. At the time of that order, API had been

1 litigating this case as a Plaintiff for over 18 months; is
2 that correct?

3 A That sounds right.

4 Q Okay. Does API know the names of any of the elephants
5 that remain in this case?

6 A Yes.

7 Q Which ones?

8 A Nicole, Karen, Mysore, Susan, Lutzi, Jewell. Did I name
9 six?

10 Q I think you got five.

11 A So it's Karen, Nicole, Mysore, Susan, Jewell -- I draw a
12 blank on the other one, and then Zina is the seventh one.

13 Q Okay. And at the time of your deposition you were able
14 to name three; is that correct?

15 A That's correct.

16 Q Now, API doesn't contest Feld Entertainment's ownership
17 of these six or seven elephants; is that right?

18 A That's right.

19 Q Okay. And it likewise, there is no claim in this case
20 that Feld Entertainment unlawfully acquired these elephants,
21 correct?

22 A Correct.

23 Q Okay. And Asian elephants are not native to any regions
24 in the U.S., correct?

25 A Correct.

1 Q So Plaintiffs have no claim in this case that Feld
2 Entertainment has destroyed habitat or eco systems here in the
3 U.S.?

4 A Correct.

5 Q Because there are no Asian elephants that are in the wild
6 in the U.S.; is that right?

7 A That's right.

8 Q And API recognizes that captive elephants cannot go back
9 into the wild; is that right?

10 A I don't know of any that have, so that would be right.

11 Q Okay. But you recognize that that cannot happen?

12 A I mean, unless somebody can come up with a -- come up
13 with that, but no, I mean, I would say that that's probably
14 near impossible to do.

15 Q And you're not aware of any successful release of captive
16 elephants back into the wild, correct?

17 A Not of elephants, no.

18 Q Okay. And API believes that elephants should be removed
19 from zoos and circuses; is that right?

20 A Well, definitely from circuses, but I mean, for the zoo
21 aspects, you know, we work towards -- you know, we kind of
22 look at it from the standpoint of as we prioritize the various
23 kind of levels of captivity.

24 So, we've been working on this circus issue with
25 elephants. We don't believe that they should be traveling

1 around the country in train cars for 11 months of the year.
2 We don't believe that's an appropriate life for the elephants.

3 Q Okay. I'd like to go to page 137 of your deposition,
4 please, line 10. And the question was asked, (Reading) And
5 earlier you were explaining API's position with regard to zoos
6 and I wanted to go back and ask you are there any other
7 facilities, places, sanctuaries, whatever term or label is
8 appropriate, that API considers appropriate for elephants in
9 the U.S.?

10 (Reading) Answer: Well, API recognizes that there
11 are elephants in captivity such as zoos and in circuses and
12 that if we were to help them out of those captive
13 situations --

14 COURT REPORTER: You need to slow down. I lost you
15 after "captive situation."

16 Q (BY MS. JOINER) (Reading) -- out of those captive
17 situations they need to go somewhere because they cannot go into
18 the wild, so those places we would find acceptable for those
19 animals that are rescued would be at true sanctuaries.

20 Did I read that correctly?

21 A You did.

22 Q And there are two sanctuaries that API approves of in the
23 country, isn't there?

24 A Yes.

25 Q Which two are they?

1 A The Elephant Sanctuary and PAWS. I don't actually know
2 of any other sanctuary that exists other than those two.

3 Q And the Elephant Sanctuary in Tennessee is run by
4 Plaintiffs' expert Ms. Buckley?

5 A That's correct.

6 Q And API has known Ms. Buckley since 1999?

7 A Yeah. I think in my deposition I only have institutional
8 knowledge since then, so I would say at that time at least I
9 knew we knew of her then in '99. I don't know how far back.

10 Q Okay. So at least since that time?

11 A Yes, exactly.

12 Q All right. And Ms. Buckley consults with API; is that
13 right?

14 A She -- I mean, we talk about issues and she helps us with
15 advice and letters of support and whatnot, yes.

16 Q Okay. And you forgot to mention at your depo that you've
17 also previously litigated with Ms. Buckley as a co-plaintiff,
18 correct?

19 A Yeah, we did actually.

20 MS. JOINER: Would you pull up the Swaziland
21 complaint, please.

22 Q (BY MS. JOINER) Do you recognize the amended complaint
23 here?

24 MS. JOINER: Would you scroll down for the first
25 couple of pages, please. Let her see the first few pages.

1 Keep going. Amended complaint for declaratory and injunctive
2 relief.

3 Q (BY MS. JOINER) This was a lawsuit that was filed here in
4 this federal district court; is that correct?

5 A Yes.

6 Q And that's Civil Action No. 03-1497. You see that at the
7 top right there?

8 A Oh, yes, I see that at the top, yes.

9 Q If you'd go back to first page, please, with the various
10 plaintiffs. The first two plaintiffs on this complaint are
11 the Born Free Foundation and U.S.A. that you've now merged
12 with; is that correct?

13 A Yeah. We merged with the first one, but yes.

14 Q Okay. The Elephant Sanctuary is a co-plaintiff in this
15 case; is that correct?

16 A Correct.

17 Q Along with People for the Ethical Treatment of Animals?

18 A Correct.

19 Q The Animal Welfare Institute?

20 A Correct.

21 Q And in this case API was suing to stop two zoos from
22 importing wild elephants from Swaziland, correct?

23 A Correct.

24 Q All right. And that's because API also opposes
25 importation; is that right?

1 A Correct.

2 Q And the elephants that were at issue in this particular
3 case were set to be called; isn't that right?

4 A Well, they were actually -- we actually found them
5 alternative homes. We found two other locations for them, so
6 I don't necessarily -- the person who had the animals said
7 that they were set to be culled, but we actually found
8 alternative placement for those animals.

9 Q Was it API's position in that case that these animals
10 would be better off dead than in U.S. zoos?

11 A Our position was that they would be better off at
12 these -- the places that we found. We found two new homes --
13 two new areas, locations in South Africa where they would
14 actually be able to go, where they would be able to stay in
15 the wild and be able to stay in a group of animals and they'd
16 live in a larger herd. So that was our position that that's
17 what we wanted for those elephants.

18 Q And the holder of those elephants had actually notified
19 Fish & Wildlife that if they were not going to be imported,
20 they would be culled. They would not be sent to those two
21 other locations, correct?

22 A That is correct.

23 Q Now, Ms. Buckley let you visit her elephant sanctuary,
24 didn't she?

25 A She did.

1 Q How many times have you done that?

2 A I know at least twice. I want to say three times, but I
3 definitely know of at least twice.

4 Q And you know that that sanctuary is closed to the public?

5 A Correct.

6 Q Do you also know that they are opposed to and do not
7 breed elephants at Hohenwald?

8 A I'm sorry, do I know...

9 Q That they are opposed to and do not breed elephants at
10 this sanctuary in Hohenwald?

11 A That's correct.

12 Q Is API opposed to breeding elephants in captivity?

13 A Yes, we are.

14 Q Why is that?

15 A Well, we just don't -- again, it kind of goes back to the
16 philosophy that wild and exotic animals should not be in
17 captivity. We don't feel that -- we feel that we already have
18 elephants in captivity and we don't need to bring any more
19 into captivity.

20 MS. JOINER: Would you please pull up Plaintiffs'
21 Will Call 151.

22 Q (BY MS. JOINER) This is a chart from Plaintiffs' counsel
23 that they moved into evidence. These are the elephants that
24 have been born to FEI. There are 22 of them; is that correct?
25 You can scroll through and count them if you'd like.

1 A Oops, well, I lost my count, but I take your word for it.
2 He went too fast.

3 Q All right. Is it API's position that these 22 births are
4 not propagation of the species?

5 A Well, I don't know what their -- in my opinion, I
6 wouldn't know what these particular baby elephants are doing
7 to help their wild counterparts. I think they're -- they're
8 being bred to be in the circus.

9 Q So, is that a "no" to my question?

10 A I'm sorry, please repeat your question.

11 Q Is it API's position that the birth of 22 elephants is
12 not furthering the propagation of the species?

13 A Correct.

14 Q Let's go back to the second sanctuary, the PAWS facility
15 in California. You've been there as well; is that right?

16 A I have.

17 Q And how many times have you visited?

18 A I don't know how many times.

19 Q A lot?

20 A Probably.

21 Q Okay. And API, you urge your members to encourage local
22 legislation or policy that takes elephants out of zoos and
23 sends them to either the Elephant Sanctuary or to PAWS; is
24 that right?

25 A I don't think we have legislation on zoos to do that.

1 We've had -- I don't -- I can't remember legislation that
2 we've actually wrote that says -- says that. I could be
3 wrong.

4 Q But you've urged your members to try to do that, correct?

5 A We probably have. I don't recall a specific incident,
6 but --

7 Q Okay. So, just to be clear on this, API does not want
8 Asian elephants imported into the U.S., right?

9 A Correct.

10 Q And they don't want the Asian elephants that are already
11 here to be in circuses or zoos, correct?

12 A Well, again, they're in zoos and circuses, so I mean, our
13 advocacy work is really trying to improve their standard of
14 care. And so, I mean, it's not like -- we know we have an
15 issue here right now in the U.S. so we know they're in
16 circuses, we know they're in zoos, and what we try to do is we
17 try to better their life in those areas. We try to improve
18 the standards of care. We don't want these facilities to use
19 the bull hooks and chains, you know, so I don't know if -- I
20 don't think I can answer your question "yes" or "no."

21 Q Well, it's more than trying to better their life. You're
22 trying to take them out and put them in the sanctuaries,
23 aren't you?

24 A Well, I don't think we would be able to take over 500
25 elephants out of the zoos and circuses and place them all in

1 sanctuaries. They would not fit.

2 Q Would you go to Plaintiffs' Will Call 92, please. I want
3 to look at 5687 to 5688. This is, just for the record, PDF
4 139 to 140.

5 And this, to me, looks like a two-page document,
6 Ms. Paquette, and I wanted to show you on the second page the
7 box in the middle. Would you read that first sentence there
8 for us.

9 A Can we go -- I actually don't remember what this is, so
10 is this --

11 Q Sure. You want to look at the page before?

12 A Yeah, uh-huh. Can you scroll to the bottom?

13 Q Sure.

14 A Okay. So it's from our magazine. Okay.

15 THE COURT: All right, Counsel, we'll take a
16 15-minute recess, and then we'll proceed with
17 cross-examination.

18 MS. JOINER: Thank you.

19 THE COURT: We'll start back at -- looks like
20 4:00 o'clock. We'll start back at 4:15.

21 THE DEPUTY CLERK: This honorable court now stands in
22 recess until 4:15.

23 (A BRIEF RECESS WAS TAKEN.)

24 THE DEPUTY CLERK: Please remain seated and come to
25 order.

1 Q (BY MS. JOINER) We left off before the break, Ms.
2 Paquette, you had explained that API doesn't want Asian
3 elephants imported in the U.S., it doesn't want the elephants
4 that are currently here to be bred; is that correct?

5 A Correct.

6 Q And the ultimate outcome then, under API's approach, is
7 the extinction of Asian elephants in the U.S.; isn't that
8 right?

9 A Well, I don't think I want them to be extinct, but
10 meaning I don't want any new ones being bred in the U.S. at
11 this point, that's correct.

12 THE COURT: Why not? Why not?

13 THE WITNESS: Well, because we don't believe that the
14 elephants should be in captivity.

15 Q (BY MS. JOINER) Okay. I want to go back to Plaintiffs'
16 Will Call 92 that your counsel looked at portions of from you.
17 Long before this case, API was opposing Ringling; is that right?

18 A Can you just speak up a little, I'm sorry.

19 Q I'm sorry. Long before this case, API had been opposing
20 Ringling; is that correct?

21 A That's correct.

22 Q All right. And API already had a circus campaign
23 specifically against Ringling in 1998 before you were even
24 hired; is that correct?

25 A Again, I don't know if it was specifically against

1 Ringling Brothers, but I know we had a circus campaign.

2 Q Okay.

3 A But I wasn't there, so I don't know.

4 Q Okay. Let's go to API 5662 to -63. This would be PDF
5 113 to -14. And if you look up at the top of that document,
6 Ms. Paquette, it indicates that it is dated 1999; is that
7 correct?

8 A That's correct.

9 Q And I want to direct your attention down to the -- it's a
10 little bit hard to read. I believe it's the third line that
11 says, "We've used the courts, the legislatures and the ballot
12 box." Do you see that?

13 A Yes.

14 Q Okay. So by 1999, API had used multiple forums in order
15 to further its initiatives; is that correct?

16 A That's correct.

17 Q Okay. And by using the courts, it means litigation; is
18 that right?

19 A I mean, I would assume so, yes.

20 Q Okay. And even before that, in the summer of 1998, API
21 had a campaign against what it considered to be the rampant
22 abuse of the Ringling Brothers and Barnum & Bailey Circus; is
23 that right?

24 A Again, I wasn't there in 1998.

25 Q Okay. Let's go to the next page and take a look. And

1 under "Animals in Entertainment," the last sentence there,
2 it's hard to read, but it says, (Reading) The API-led
3 coalition's summer 1998 campaign against rampant abuse in the
4 Ringling Brothers and Barnum & Bailey Circus is just one of
5 many such efforts to show the public the truth about this
6 centuries old show business tradition.

7 Did I read that correctly?

8 A Yes.

9 Q Okay. Do you know who was in that coalition?

10 A I do not.

11 Q And by 1998 API was also reviewing Ringling's record with
12 the USDA, correct?

13 A That's my understanding.

14 Q Okay. And I believe you testified earlier that since
15 then you have continued to monitor Ringling's --

16 A Yes.

17 Q -- record with the USDA?

18 A Yes.

19 Q All right. And in the summer of 2000, API had a
20 anti-circus billboarding campaign with PAWS; is that right?

21 A That's my recollection. I think there is a couple of
22 other partners, but yes.

23 Q Okay. And API learned about this case at the time it was
24 filed; is that right?

25 A Yes.

1 Q Okay. And it was frequently working with PAWS at the
2 time?

3 A Not so much back in 2000, but -- I mean, not as a regular
4 basis as we have been, you know, in the later years.

5 Q Okay. But it was working with it so many times that the
6 events were too numerous to recall; is that correct?

7 A That is what I said in my deposition, yes.

8 Q Okay. And this lawsuit was originally filed on
9 July 11th, 2000; is that right?

10 A That sounds right.

11 Q Okay. And API was also in contact with the other
12 Plaintiffs such as Ed Stewart and Pat Derby from PAWS at the
13 time?

14 A I would assume so, yes.

15 Q Okay. And API also knew that Tom Rider was staying at
16 PAWS at that time; is that right?

17 A I don't believe we knew that he was staying there. I
18 knew that he did stay there, but I believe I learned about
19 that after the fact.

20 Q I see. So you learned that he was there but shortly
21 after he had left?

22 A That's my recollection.

23 Q Okay. But API did know that Rider testified before
24 Congress in June 2000 about the treatment of elephants; is
25 that right?

1 A I did because I saw his statement, yes.

2 Q Okay. And when you referenced earlier with your counsel
3 that you had done some national work, was that with regard to
4 the same bill that Mr. Rider testified about?

5 A Yes.

6 Q And API even began quoting Mr. Rider in its newsletter,
7 didn't it?

8 A I can't recall.

9 Q Okay. Let's take a look at same exhibit, API 5630 to
10 5637, which I believe is PDF 81 through 88. It's hard to see.
11 Up in the very top right-hand corner -- I'll scroll through
12 this so you can see the pages. If you go to the very top
13 right-hand corner. Go back up, please. Somebody has
14 handwritten "2002." Does that look like that's the correct
15 date for this document?

16 A That's what it says, yes.

17 Q Let's scroll through it so you can take a look at it.
18 They are pretty faint, so we'll just scroll down and let us
19 know when you're ready.

20 A (Witness reading.) Okay. Okay.

21 Q Next page, please.

22 A (Witness reading.) Okay.

23 Q Scroll down, please.

24 A (Witness reading.) Okay.

25 Q Next page, please.

1 A (Witness reading) Okay.

2 Q Scroll down, please.

3 A (Witness reading.) Okay.

4 Q Next page, please.

5 A (Witness reading.) Okay.

6 Q And scroll down to the bottom, please.

7 A (Reading) Okay.

8 Q Do you see the -- before I go back, the "PPS" down at the
9 bottom says, "I hope you enjoy API's 2002 calendar and
10 datebook"?

11 A Yes.

12 Q Does that mean this letter would have come out maybe
13 January of 2002?

14 A I don't know. I mean, we sent out the datebook. We
15 don't do it anymore, so I don't remember when exactly we would
16 send that out, but it would probably be in the first quarter
17 of the year.

18 Q Okay. And is this one of the letters that you sent out
19 to try to gain membership; is that what this is?

20 A This one -- this one is a "to gain members."

21 Q Okay. Now, I want to go back to 5631 and direct your
22 attention to some language in there. The second paragraph,
23 the last sentence. Second paragraph, last sentence up at the
24 top a little bit. There we go.

25 API writes, "There are no federal restrictions on

1 how many hours in the day they'll spend tethered to one spot."

2 Do you see that?

3 A Yes.

4 Q That was part of this letter that API sent out?

5 A That's in this letter, yes.

6 Q Is that true at the time it was written?

7 A I mean, there are no chaining limits on -- in the Animal
8 Welfare Act.

9 Q Okay. Go down to the next paragraph. I want to direct
10 your -- next paragraph on the document, please. I want to
11 direct your attention to the sentence that says, "Wild
12 elephants are gentle and benevolent." Do you see that?

13 A Yes.

14 Q What is API's basis for saying that?

15 A I would imagine it would have been from research and just
16 general knowledge from experts.

17 Q Do you know, as you sit here today?

18 A Well, I don't -- I mean, I can't point to what the basis
19 was for that in 2002, no.

20 Q Okay. And I want to go down three more paragraphs, very
21 last sentence, little bit hard to read. It's a little bit
22 faint. It says, (Reading) In June 2000, a former Ringling
23 Brothers employee testified before Congress that elephants,
24 quote, are beaten all the time when they don't perform
25 properly, end quote.

1 Did I read that correctly?

2 A Yes.

3 Q Is that referencing Mr. Rider's testimony before
4 Congress?

5 A I would assume so.

6 Q Well, there are no other Ringling Brothers employees that
7 testified before Congress in 2000, correct?

8 A Correct.

9 Q Okay. API said the exact same thing in its 2003 letter,
10 didn't it?

11 A It probably did. I mean -- I don't know. I mean, I'm
12 assuming that we used some of the same language in other
13 letters.

14 Q Okay.

15 MS. JOINER: Let's go to 5616 through 5621. I
16 believe this is PDF 6772. There's the first page. I want to
17 scroll to the second, please. And if you could blow that up
18 second paragraph for us, Mr. Palisoul.

19 Q (BY MS. JOINER) This is again the same language.
20 (Reading) There are no federal restrictions on how many hours
21 in the day they'll spend tethered to one spot.

22 Did I read that correctly?

23 A Yes.

24 Q If we go down one, two, three, four more paragraphs down,
25 the same quote from Mr. Rider; is that correct?

1 A Yes.

2 Q All right. And then if we go two more pages over and
3 look at the "PS." Down at the bottom it says, "2003 calendar
4 and datebook," so this was a 2003 letter from API; is that
5 right?

6 A Yes.

7 Q Okay. In February of 2000, you also acted as counsel for
8 the Citizens for Cruelty-Free Entertainment at a public
9 hearing before the Seattle City Council; is that right?

10 A I don't know if I was counsel, but I did -- what I did is
11 I helped on the language for an ordinance that was introduced
12 in Seattle to ban wild and exotic animal shows.

13 Q Let's look at API 5649. This is PDF 100 in the same
14 exhibit.

15 MS. JOINER: And would you blow up that box so we can
16 see it a little bit.

17 Q (BY MS. JOINER) And this indicates, (reading) Emotions
18 ran high at the public hearing which pitted animal advocates,
19 including API's Nicole Paquette, who acted as counsel for the
20 local Citizens for Cruelty-Free Entertainment and helped draft
21 the ordinance against high-powered lobbyists from Feld
22 Entertainment which owns the Ringling Brothers and Barnum &
23 Bailey Circus.

24 Did I read that correctly?

25 A Yes.

1 Q Now, do you remember that you acted as counsel for the
2 Citizens for Cruelty-free Entertainment?

3 A Yes.

4 Q Al right. Is that the same Citizens for Cruelty-Free
5 Entertainment that Denise Bolbol is affiliated with?

6 A No.

7 Q It's a different group?

8 A Yes.

9 Q Do you receive footage from activists from time to time?

10 A From time to time.

11 Q And one of those persons is Pat CuvIELlo?

12 A Yes.

13 Q Okay. You also know Archele Hundley, don't you?

14 A Yes, I do.

15 Q Okay. And she was at some kind of lobbying conference in
16 Massachusetts with you; is that correct?

17 A Yes. She didn't come with me, but she was -- she
18 attended the same conference that I attended.

19 Q And which conference was that?

20 A The National Conference of State Legislatures.

21 Q Okay. And at that point you loaned her \$100; is that
22 right?

23 A We loaned her \$100, correct.

24 Q And PETA repaid you for that; is that correct?

25 A That's correct.

1 Q PETA also regularly sends you video footage; is that
2 right?

3 A They do, yes.

4 Q And that's footage you have produced in this case but you
5 don't know how it was made; is that right?

6 A Yes.

7 Q Was PETA sending API materials before API joined the
8 lawsuit?

9 A I would assume we received video footage from them before
10 the lawsuit, but I -- I can't put my finger on any one
11 example.

12 Q Okay. In two -- in January of 2001, when PAWS and
13 Mr. Stewart and Ms. Derby settled this lawsuit, API read about
14 it in the newspaper; is that right?

15 A Yes.

16 Q Okay. And at that time API also knew that the lawsuit
17 was continuing without them, correct?

18 A Yes.

19 Q All right. And I think you testified with your counsel
20 that you knew the remaining parties, Animal Welfare Institute,
21 ASPCA and Fund for Animals?

22 A Yes.

23 Q Okay. You had long-standing relationships with those
24 various organizations?

25 A Yes.

1 Q And at some point you eventually met Mr. Rider at the
2 California State Capital; is that right?

3 A That's right.

4 Q And do you remember who introduced you to him?

5 A I do not.

6 Q Okay. So, even though API knew that this legislation was
7 pending, it did not try to join because the circus wasn't one
8 of API's top priority campaigns?

9 A That's correct.

10 MS. JOINER: I have a short excerpt from the
11 deposition I would like to read as a party admission.

12 THE COURT: All right.

13 MS. JOINER: This is page 74, 7 through 18 -- lines 7
14 through 18. The question is asked, (Reading) September of
15 '05. Okay. So if the lawsuit was originally filed by PAWS
16 several years before that and API had knowledge that this
17 litigation was pending, why did API wait until 2005 to try to
18 join the lawsuit?

19 (Reading) Answer: Up until 2004, circus wasn't one
20 of our top priority campaigns, so in a tier of high priority,
21 low priority, circus would have been a low priority campaign.
22 And then in 2004 we began to restructure and re-prioritize
23 campaigns and the circus campaign became one of the priority
24 campaigns.

25 Did I read that correctly?

1 A Yes.

2 Q Did the prioritizing of the circus campaign have anything
3 to do with soliciting donations?

4 A No.

5 Q Okay. But API does use Ringling for fundraising; is that
6 correct?

7 A Yes, we do.

8 Q Let's look -- let's go back to PWC 92 at 5556 through
9 5568. This is PDF 17 through 19 that your counsel had you
10 look at earlier. And if we look down at the fourth paragraph.

11 MS. JOINER: If you can enlarge that.

12 Q (BY MS. JOINER) It says, (Reading) I'm writing to ask
13 you to join us by becoming a founding member of the new API
14 Elephant Defense Fund to raise money for the lawsuit and other
15 work on behalf of circus elephants.

16 Did I read that correctly?

17 A Yes, you did.

18 Q Okay. Was the new Elephant Defense Fund set up just for
19 purposes of this case?

20 A It was set up for all of our elephant work, but our main
21 elephant work would be with respect to the elephants in
22 circuses.

23 Q Okay. And I want to go to the next page 5567, the next
24 to the last paragraph and it says, (Reading) A victory in
25 this case could mean that there will be no more elephants in

1 future Ringling Brothers performances.

2 Did I read that correctly?

3 A Yes, you did.

4 Q Is that what you were hoping the outcome of this case
5 would be at the time you filed suit?

6 A Well, that was one of the -- one of our items that we
7 were asking for in this suit, so yeah, that would be one of
8 the hopes that we had.

9 Q Okay. And if we go down to the next paragraph, it says,
10 (reading) We hope that this case will go to trial by this
11 spring, but in the meantime we need to raise at least \$100,000
12 to be an active partner in the lawsuit and for other
13 activities on behalf of elephants used in the circus.

14 Did I read that correctly?

15 A Yes, you did.

16 Q Why did you need to raise \$100,000 to become an active
17 partner in the lawsuit?

18 A Well, it wasn't -- I mean, obviously we weren't required
19 to raise a certain amount of money to be a member of the
20 lawsuit. It was simply, we -- you know, we looked at our
21 budget over the years for how much we spend on our circus
22 campaign and how much we projected that we would have to
23 expend in lawyers' fees, and that was a rough estimate.

24 Q So after you prioritized the circus campaign at API, you
25 began to look for circus litigation, if I understood your

1 testimony earlier correctly?

2 A Yeah, because it's one of our tools to help educate and
3 make change for animals.

4 Q Okay. So you identified this lawsuit for API; is that
5 right?

6 A Yes.

7 Q And Ms. Phew, the CEO at the time, agreed?

8 A Yes.

9 Q And the board approved that?

10 A Correct.

11 Q And then API checked with Meyer, Glitzenstein & Crystal
12 to see if it was feasible to join the lawsuit; is that right?

13 A That's correct.

14 Q Okay. But API did not talk to any other parties about
15 joining the lawsuit, did it?

16 A Not prior to joining. We talked to our counsel.

17 Q Okay. So you then sent your 60-day notice letter; is
18 that right?

19 A Correct.

20 Q API is aware that there is no private cause of action
21 under the Animal Welfare Act, correct?

22 A Correct.

23 Q And in its notice letter, API complained about the use of
24 the bull hook and the chaining of elephants; is that right?

25 A Yes.

1 Q And API has no personal knowledge of the events described
2 in that letter; is that correct?

3 A The only thing we have is the one letter we referenced
4 for the chaining, which it was the letter -- I'm sorry, not
5 letter. A picture. One of pictures that we referenced in
6 that was a picture that a photographer that we hired took.

7 Q And then API moved for leave to file a supplemental
8 complaint on October 27, 2005; is that correct?

9 A Yes.

10 MS. JOINER: And will you pull that up, please.
11 That's Docket No. 55 in this case. There we go. And if you
12 would go to page 2 of the memo, please.

13 Q (BY MS. JOINER) The language that I wanted to focus on
14 says, (Reading) In addition, API specified more recent grounds
15 for these allegations, including recent eyewitness accounts by
16 former Ringling Brother employee Frank Hagan who was employed by
17 Ringling Brothers for approximately 10 years until August 2004
18 as well as more recent video and photographic evidence.

19 Did I read that correctly?

20 A Yes.

21 Q At the time this motion was filed, Frank Hagan had
22 already been deposed in this case nearly a year earlier; isn't
23 that correct?

24 A I don't know the date exactly he was deposed.

25 MS. JOINER: Bring up that cover page, please, from

1 his deposition.

2 Q (BY MS. JOINER) You recognize that Mr. Hagan was deposed
3 in this case on November 9, 2004?

4 A Yes.

5 Q And going back to your motion to join the case, if we
6 could do that. "More recent video and photograph
7 experience" -- is the photograph experience the one you just
8 described for us?

9 A Yes.

10 Q And what was the more recent video?

11 A I don't really -- I don't remember exactly what video
12 footage, but I know there was a 2006 video footage of an
13 incident in Austin. I believe -- I don't remember what we
14 sent.

15 Q Okay.

16 A Or if we sent anything. I know that was a more recent
17 video.

18 Q The 2006 footage?

19 A Yeah.

20 Q That would have come after this motion was filed in
21 October?

22 A Oh, okay, I'm getting my dates confused. I can't recall.

23 Q Okay. Is there -- there's nowhere in this motion, is
24 there, where you talk about re-prioritizing the circus
25 campaign?

1 A Not to my knowledge.

2 MR. CRYSTAL: I'm going to object on relevance
3 grounds. I'm not sure why this is --

4 THE COURT: I'll allow it.

5 Q (BY MS. JOINER) Let's go now to the order that granted
6 this motion. This was entered on February 23, 2006. It's
7 Docket No. 60. I want to direct your attention to the middle of
8 that, Ms. Paquette. It says, (Reading) The Court finds that
9 the API does not seek to raise any new claims to this case. The
10 API's claims against the Defendants arise under the Endangered
11 Species Act, ESA, 16 U.S.C. 1531 et seq., and are identical to
12 those of the existing Plaintiffs.

13 Did I read that correctly?

14 A Yes, you did.

15 Q And you agree that API's claims are no different than any
16 of the other organizational Plaintiffs' claims in this case;
17 is that correct?

18 A That's correct.

19 Q Now, API is not claiming that elephants are physically
20 being taken from anywhere in this case; is that right?

21 A You mean taken from the wild?

22 Q That's correct?

23 A Yeah, we're not claiming that elephants are being taken
24 from the wild.

25 Q Okay. And you mentioned with your counsel the Section 10

1 process for permit. Were you meaning an incidental take
2 permit or a enhance the survival of the species permit?

3 A Enhance the survival of the species permit.

4 Q Okay. So you're not claiming that Feld Entertainment
5 should have to seek an incidental take permit?

6 A No.

7 Q Okay. I want to go back to 50 CFR 1722. Okay. You
8 explained with your counsel, I believe, that the information
9 that you thought you would receive from a permit application
10 would be found in Roman numeral -- little Roman numeral (v),
11 (vi) and (vii); is that right?

12 A Yes.

13 Q Okay. Now, if you would pull up for just a moment the
14 definitions that go along with this regulation, which is 50
15 CFR 17.3. If you would go to the second page of that, and
16 we're going to have to start in that bottom of the left-hand
17 column. This regulation says, (reading) Enhance the
18 propagation or survival when used in reference to wildlife in
19 captivity includes but is not limited to the following
20 activities when it can be shown that such activities would not
21 be detrimental to the survival of wild or captive populations
22 of the affected species.

23 Did I read that correctly?

24 A I believe so, but it wasn't on the screen.

25 Q Okay. You want to take time to look at it?

1 A I'll trust you.

2 Q Okay. And then I want to go -- there's three provisions
3 there. (a), (b) and I want to go to the next column and look
4 at (c).

5 It says, (Reading) Exhibition of living wildlife in
6 a manner designed to educate the public about the ecological
7 role and conservation needs of the affected species.

8 Do you see that? Have I read that correctly?

9 A Yes.

10 Q Okay. So in order to apply for an enhancement or
11 propagation or survival of the species under this definition,
12 a person could obtain a permit if they were exhibiting living
13 wildlife in a manner designed to educate the public; is that
14 correct?

15 A That's what it means, and if I can just take one minute
16 to read what you highlighted originally.

17 Q Do you need him to go back so you can see that?

18 A No, it's still highlighted.

19 Q Okay.

20 A (Witness reading) Okay. Thank you.

21 Q Okay. Now, what information specifically is it that API
22 expects to get about the six elephants in this case from the
23 permitting process that it does not already have through the
24 discovery process in this litigation?

25 A Well, I don't -- to my knowledge, we don't have the

1 justification to why the use of the bull hook and the
2 chaining, you know, why are those implements being used, how
3 is that going to enhance the survival of the species. I don't
4 understand -- I don't know of documents that we have on that.

5 I don't know of documents that we would have that --
6 essentially which set forth exactly from Point A to Point B
7 how many hours they've been chained, so if they got on the
8 chain at X time, when did they -- when exactly were they
9 unloaded -- I'm sorry, when were they exactly unchained. I
10 don't believe we have from Point A to Point B the exact
11 calculations and numbers of that.

12 I mean, those are a couple of examples.

13 Q Okay. Well, from discovery in this case, you have the
14 route cards of Ringling, correct, you know Ringling's
15 schedule?

16 A We know Ringling's schedule.

17 Q Okay. And you know its address; is that correct?

18 A Yes.

19 Q And your counsel's actually visited its stationary
20 facility in Florida, correct?

21 A That's correct.

22 Q And it's also visited one of the locations in Auburn
23 Hills; is that correct?

24 A That's correct.

25 Q And counsel has inspected the train and seen the pens; is

1 that correct?

2 A The pens? I know the trains.

3 Q The train and the pens, I should say.

4 A Yes.

5 Q Okay. And during discovery, counsel has asked about the
6 employees, is that correct, that handle the elephants?

7 A Yes.

8 Q And Feld Entertainment was made to answer an
9 interrogatory response that identified all of the elephant
10 handlers in this case; is that correct?

11 A I don't know.

12 Q You are aware that API has not sued the Secretary of the
13 Interior in this case; is that right?

14 A Yes.

15 Q Okay. So how does API plan to force the Fish & Wildlife
16 Service to consider such an application even if Feld
17 Entertainment submitted one to them?

18 A I'm sorry, how would we force -- I'm not understanding.
19 Can you repeat that.

20 Q That's correct. Well, for instance, if Feld
21 Entertainment were ordered to submit an application to Fish &
22 Wildlife, the Department of Interior is not before the Court
23 in this case; is that correct?

24 A That's correct.

25 Q So how does API plan to force the Fish & Wildlife Service

1 to act on that permit?

2 A No, I've not thought about that, so I mean, I don't know.

3 Q And what would API do if Fish & Wildlife granted the
4 permit?

5 A If they granted the permit, then we would -- obviously
6 it's like I stated, we would take that information and we
7 would put it in the forms of fact sheets, put it on our
8 website, we would educate the legislature in our efforts to
9 prohibit the use of bull hooks and chains, we would -- I mean,
10 that would provide us -- in my opinion, that would provide us
11 more information than we currently have, and so that would
12 help us in our overall efforts.

13 Q Would this litigation start all over again?

14 A I've no idea.

15 Q Okay. Well, when the zoos were granted import permits in
16 the Swaziland case, API then filed suit in federal court
17 because it wanted to block those permits, didn't it?

18 A When they were trying to import the elephants, yes, we
19 filed a lawsuit.

20 Q So is it API's position that if Fish & Wildlife granted
21 Feld Entertainment a permit, it would not file suit to
22 challenge that?

23 A I can't speak to what we are going to do in the future.
24 I just know what we're doing at this stage of the game.

25 Q Okay. And what would API's position be if Fish &

1 Wildlife denied the permit?

2 THE COURT: What's the relevance of all this? It's
3 all speculation.

4 MS. JOINER: Okay. Well, the relevance, Your Honor,
5 is that this is part of the relief that she is requesting in
6 the complaint.

7 THE COURT: What someone may do in the future seems
8 to me to be entirely irrelevant. I want to focus on the issues
9 in lawsuit. People can do whatever they want to do, depending
10 on what relief I grant or don't grant, but I'm not going to --
11 my decision is not going to be based on sheer speculation, what
12 some party may do.

13 You're not the general counsel of that organization,
14 are you?

15 THE WITNESS: I am.

16 THE COURT: Oh, you are the general counsel.

17 Still, I'm not going to be persuaded to decide this
18 case on the merits because some organization decides to do
19 something in the future or doesn't decide to do something in
20 the future. Whatever they decide to do or not do is their
21 business. My business is to resolve this case on the merits
22 before me.

23 Q (BY MS. JOINER) Is API claiming that the money that it
24 paid to the Wildlife Advocacy Project for Tom Rider part of its
25 injury in this case?

1 A We are -- it's part of our issue with respect to our
2 overall money that we spend on our activity expense, the
3 campaign expense.

4 Q Is that a "yes"?

5 A Yes, part of it.

6 Q Okay. When did API first learn of the Wildlife Advocacy
7 Project?

8 A I don't know when API did. I know -- trying to remember.
9 I want to say I knew about it before I worked at API. If it
10 was -- I don't even remember if it was in that long. I just
11 don't remember the dates. I'm sorry.

12 Q Okay. Now, API submitted four grants in 2006 and 2007 to
13 the Wildlife Advocacy Project as contributions for Mr. Rider;
14 is that correct?

15 THE COURT: May I stop you one second.

16 I'm sorry, did you want to say anything with respect
17 to what the Court just said? Maybe you disagree. I don't
18 know. Maybe it is relevant.

19 MR. CRYSTAL: We certainly don't think it's relevant.

20 THE COURT: All right. I don't either. All right.
21 Go ahead.

22 Q (BY MS. JOINER) I'll repeat that one. API submitted four
23 grants in 2006 and 2007 as contributions for Mr. Rider's media
24 efforts; is that correct?

25 A We submitted two each year, so two in 2006 and two in

1 2007.

2 Q Four total?

3 A Four total.

4 Q Okay. And the money was sent because --

5 THE COURT: Excuse me one second. I'm sorry.

6 (PAUSE.)

7 THE COURT: Sorry.

8 MS. JOINER: That's okay.

9 Q (BY MS. JOINER) The money was sent to the Wildlife
10 Advocacy Project because you told me in your deposition, "We
11 were employing Mr. Rider to head up our PR efforts and the
12 Wildlife Advocacy Project was paying him for his work"?

13 A Correct.

14 Q Okay. And who is the "we" that you are referring to
15 there?

16 A We were paying him, so that would have been API.

17 Q Was anybody else paying him?

18 A Well, other -- other organizations were giving grant
19 money.

20 Q But technically, it was the Wildlife Advocacy Project
21 that was employing Mr. Rider; is that correct?

22 A Yes.

23 Q Okay. As of January 2008, API budgeted to pay WAP,
24 Wildlife Advocacy Project, \$6,000 in 2008; is that correct?

25 A Yes.

1 Q And were those contributions actually made?

2 A Yes, they were.

3 Q Okay. And has API budgeted any grants for the Wildlife
4 Advocacy Project in 2009?

5 A No, we haven't.

6 Q There was an initial conversation among API, ASPCA, AWI
7 and Fund for Animals regarding how to split up the payments
8 for Mr. Rider; is that correct?

9 MR. CRYSTAL: Your Honor, I'm going to object at this
10 point on the grounds it's asking for -- about communications
11 among these people. It goes to legislative and media
12 strategies, which the Court has already previously moved is
13 irrelevant to this case.

14 THE COURT: You didn't have to say that, Counsel.
15 I'm inclined to grant that. Sustain it.

16 MS. JOINER: They're claiming this as part of their
17 damages, and I didn't have any of the details of the
18 conversation. It's just simply the conversation when it
19 occurred.

20 THE COURT: I sustained the objection.

21 Q (BY MS. JOINER) The amount of the funding for Mr. Rider
22 was based on approximately how much living expenses and costs he
23 would need to do work following the circus; is that right?

24 A Yes.

25 Q Okay. And API thought it would be easier to run the

1 payments through the Wildlife Advocacy Project instead of
2 paying Mr. Rider directly?

3 A Yeah. We contributed to the Wildlife Advocacy Project
4 for that, yes.

5 Q Okay. Now, Mr. Rider did not turn in any kind of
6 receipts or show the amount of his expenditures to API; is
7 that correct?

8 A That's correct.

9 Q I'd like to look at FEI Exhibit 66, please. These are
10 the grant documents, Ms. Paquette, that we looked at in your
11 deposition. This document is actually misstated. It says
12 April 20th, 2005.

13 A That's correct. It should be 2006.

14 Q Okay. So there's a typo on that one?

15 A Typo.

16 Q All right. And underneath "To whom it may concern," it
17 says, (reading) Please find enclosed a grant for \$3,000
18 towards support of the Ringling Brothers and Barnum & Bailey
19 case.

20 Did I read that correctly?

21 A Yes, you did.

22 Q Okay. And then if we turn to the next page, this is the
23 payment record for that?

24 A Yes, it is.

25 Q And this is dated April 21, 2006, correct?

1 A Yes.

2 Q Okay. Was this the first time that API had ever made any
3 payment to Mr. Rider?

4 A It was our first grant that we made to the Wildlife
5 Advocacy Project.

6 Q And that money was for Mr. Rider?

7 A Yes.

8 Q And had API ever paid Mr. Rider previously?

9 A No.

10 Q Okay.

11 A We hadn't paid him, but we paid for an airline ticket
12 before this time frame.

13 Q Okay. But you hadn't given Mr. Rider any money before
14 then?

15 A That's correct.

16 Q Okay. But by 2006, API was aware of Mr. Rider for at
17 least five or six years; is that correct?

18 A That's correct.

19 Q And API also knew by that time that Mr. Rider was
20 speaking out against the circus and Ringling Brothers
21 specifically, correct?

22 A That's correct.

23 Q And it never paid anything to or for him until after it
24 petitioned this court to join the lawsuit; is that correct?

25 A That's correct.

1 Q If we go to the next page, please. This is the second
2 payment in 2006. The amount in this is 3951.30; is that
3 correct?

4 A Yes.

5 Q And the \$951.30 above \$3,000 was for van repairs; is that
6 right?

7 A Yes.

8 Q And you found out about that from Ms. Silverman?

9 A Yes.

10 Q And who is Ms. Silverman?

11 A Tracy Silverman, she works for the Animal Welfare
12 Institute.

13 Q And she is the primary contact on behalf of the
14 organizational Plaintiffs in this case of Mr. Rider?

15 A Yes.

16 Q I'd like to go to the next document, which is 2872. This
17 letter is dated January 3, 2007; is that correct?

18 A Yes.

19 Q And the language in this document has changed. It says,
20 (reading) Please find enclosed a grant for \$3,000 towards
21 support of the Ringling Brothers and Barnum & Bailey PR
22 efforts.

23 Is that correct?

24 A That's correct.

25 Q The prior letter is referenced, "the Ringling Brothers

1 case"; is that right?

2 A That's correct.

3 Q And now the letter is referenced, "the PR efforts"; is
4 that right?

5 A That's right. But that's -- I mean, if I can give a
6 little example of that. During the 2007 budget year, I had
7 re-prioritized how we calculate and how we account for what
8 we're spending in the circus campaign, so I merely pulled that
9 out because I didn't want it lumped into the cost of the
10 attorney's fees.

11 Q So you changed your accounting procedures?

12 A To reflect -- yeah.

13 Q In 2007?

14 A We changed the codes.

15 Q Okay. And by 2006, the discovery disputes regarding the
16 Rider payments had already started in this case as well; is
17 that right?

18 A I assume so. I can't recall the exact date.

19 Q Okay. And you mentioned that you paid some travel
20 expenses for Mr. Rider to go to Nebraska; is that right?

21 A That's correct.

22 Q And was that to sponsor a bill to ban bull hooks and
23 chains?

24 A Yes. We flew him out to testify at the hearing.

25 Q And you paid for his travel and hotel expenses; is that

1 right?

2 A Correct.

3 Q Even though Mr. Rider was already receiving grant money
4 at this time for his travel expenses?

5 A Correct. But this was an API effort, not a -- it wasn't
6 part of the lawsuit, so we -- we spent our own money because
7 it was our own organizational effort.

8 MS. JOINER: I have nothing further.

9 THE COURT: All right. Let me -- before you sit
10 down, let me go back to this question. Tell me why it's
11 relevant what this organization would want to do --

12 MS. JOINER: I'm sorry?

13 THE COURT: -- if they prevail in this lawsuit? Why
14 is it relevant, what action they would take?

15 MS. JOINER: I think it's relevant because part of
16 what they have put in their supplemental complaint is that they
17 want this court to order us to go apply -- go apply for a
18 permit from Fish & Wildlife.

19 There are several possible outcomes as to what could
20 happen with Fish & Wildlife. They could say "yes," "no,"
21 "maybe," "I don't know," and the point being is that in that
22 situation, she's testified repeatedly API doesn't want
23 elephants in the circus.

24 THE COURT: Right.

25 MS. JOINER: So regardless of what the outcome is of

1 a permit application, I think it's fair game for argument to
2 Your Honor that regardless of the outcome of that --

3 THE COURT: They're not going to be happy.

4 MS. JOINER: That's right, they're not going to rest.
5 So the last thing in the world we want to do is to go back to a
6 permit -- I don't know if I'm supposed to be arguing in front
7 of a witness. But the last thing we want to --

8 THE COURT: I'm going to ask the witness to step
9 outside. You are the general counsel. I'm talking about --

10 MS. JOINER: I don't have an objection if she's here,
11 but the last thing in the world we want to do is go through a
12 permit process and then turn around and start litigation all
13 over again.

14 That's our point, Judge, and that's part of the
15 relief that they requested.

16 THE COURT: Why isn't it relevant?

17 I'm going to ask you to step outside while I'm
18 having this conversation with the attorneys.

19 THE WITNESS: Okay.

20 THE COURT: All right.

21 MR. CRYSTAL: Your Honor --

22 THE COURT: Why isn't that relevant?

23 MR. CRYSTAL: I know Your Honor --

24 THE COURT: They're not going to be happy at all, are
25 they?

1 MR. CRYSTAL: For example, Your Honor, I know Your
2 Honor has heard many cases under the National Environmental
3 Policy Act. If the agency hasn't done the EIS, then the
4 Plaintiff runs into court and says, "Do the EIS." The Court
5 would never decide whether or not to require that EIS, and meet
6 the compliance, based on whether or not the Plaintiff bring
7 another lawsuit saying that EIS is inadequate. That happens
8 every day of the week, Your Honor.

9 The Court doesn't decide a case based on whether or
10 not the Plaintiff may or may not be satisfied. The question
11 is whether or not the Defendants are in compliance with the
12 legal standard.

13 THE COURT: Even if the witness told me, "Judge, it
14 would be great if you ordered them to have to apply, but in all
15 likelihood, because we're opposed to animals being in circuses,
16 we'd never been happy."

17 MR. CRYSTAL: Well, and --

18 THE COURT: Then should the Court consider that in
19 reaching its decision?

20 MR. CRYSTAL: Absolutely not, Your Honor, but I think
21 the more salient point with regard to the standing issue that
22 the Court is considering with regard to this witness is the
23 permitting process, which we've elicited here today and that
24 there were lots of questions about, allows the Plaintiffs the
25 opportunity to review the application materials and gives them

1 a notice and comment opportunity, and that's relief that we
2 believe, under the applicable informational injury case law,
3 gives the Plaintiff standing.

4 So, with regard to that particular standing inquiry,
5 certainly the question as to whether and how the Plaintiff is
6 going to use the information can't be used against the
7 Plaintiff in terms of whether they're entitled to the relief.
8 So I would say that, and in addition, of course, an
9 over-arching -- for the over-arching question about relief the
10 Court may award, be it providing a permit or any other relief,
11 we don't think the question as to how a Plaintiff might act in
12 the future can be at all relevant to the relief the Court
13 awards in this case or in any case.

14 MS. JOINER: There are two points to that, I think.
15 One is with regard to the informational injury. We obviously
16 don't agree that they have it in this instance because
17 informational injury means you have a statutory right to
18 information. And as of right now there's nothing that gives
19 Feld Entertainment notice saying, "Hey, if you're going to have
20 elephants in the circus, you better come apply for a permit."
21 That's not the current status of the law.

22 So there is no informational right. There's no
23 statutory right to information, but that's what Plaintiff is
24 seeking to have imposed in this case as part of it.

25 The second point about that is that in terms of the

1 information that they claim that they would actually get out
2 of that were skeptical. In light of the mountains and
3 mountains of information that have been supplied through
4 discovery in this case, I'm really not sure that a permit is
5 going to provide them with anymore information.

6 And I did not take Ms. Paquette through various
7 factors because when counsel had her up here on direct, she
8 pointed to only three. But if you go back to that reg and
9 look at the first four, again it just shows you that we're
10 putting square pegs into round holes. They don't even apply.
11 Certain factors in that reg do not even apply to the situation
12 that we're dealing with here.

13 So that's our position on the informational injury.
14 It's not at all about what you can do or what information the
15 person -- or what they're going to do down the road. You
16 can't make decisions based upon what somebody said or doesn't
17 say, but the point here is that clearly they're never going to
18 be happy so long as there are elephants in the circus.

19 You heard from Ms. Laule. As long as there are
20 elephants in the circus, there are going to be tethers and
21 guides. That's the way it is. It cannot be done -- there is
22 no alternative to that. So, we're -- you know, we're at
23 opposite ends of the spectrum and I don't know how a
24 permitting process is going to fix that.

25 THE COURT: No, it's nonjury. I'll give you some

1 leeway. I'm not persuaded it's entirely relevant, but I don't
2 want the witness to go back home and then think the light will
3 go on and I say I should have asked her some more questions. I
4 can disregard it at the appropriate time and give it no weight.

5 If you want to ask a couple of more questions along
6 those lines, I'll allow it over objection and give it what
7 weight, if any, it's entitled to. I mean, that's the life of
8 a lot of these cases, especially environmental cases. I mean,
9 I can tell you, it's -- you know, they go on and on and on,
10 and you can count on it. You know, when you issue a decision,
11 you know you are going to see the parties sooner or later.

12 MS. JOINER: Right, I understand.

13 THE COURT: And that's the litigation life, but if
14 you want to ask a few more questions along those lines, that's
15 fine. I'll let you do that.

16 MS. JOINER: I think you permitted me leeway. I
17 think I got my questions in.

18 THE COURT: You sure?

19 MS. JOINER: Yes.

20 THE COURT: Okay. Fair enough.

21 Redirect?

22 MR. CRYSTAL: Just a few questions, Your Honor.

23 THE COURT: Sure.

24 MR. CRYSTAL: If I could just say one more word on
25 this point, which is that again, the threshold legal question

1 before Your Honor in this case is whether or not there's a take
2 under the Endangered Species Act.

3 THE COURT: Right, absolutely.

4 MR. CRYSTAL: And what flows from that, in terms of
5 the permitting process we've elicited today --

6 THE COURT: What is the remedy, if any, to that
7 process.

8 MR. CRYSTAL: Exactly, exactly.

9 THE COURT: And what may be in the future, it may be
10 and will probably be.

11 MR. CRYSTAL: Yes.

12 THE COURT: All right. But that's not relevant for
13 the Court to consider either?

14 MR. CRYSTAL: I don't think so, Your Honor.

15 THE COURT: All right. The bottom line is that if
16 the Court were to grant the relief the Plaintiffs are seeking,
17 that wouldn't -- that wouldn't make you happy, would it?

18 THE WITNESS: Sorry, say --

19 THE COURT: That wouldn't make you entirely happy,
20 would it?

21 THE WITNESS: If you grant the --

22 THE COURT: The relief, required them to file for
23 permits.

24 THE WITNESS: I wouldn't be 100 percent happy, but
25 again, that would be -- it would at least give us information.

1 THE COURT: Give you information as a result of the
2 application process.

3 THE WITNESS: Yes.

4 THE COURT: All right. But you still -- I mean, and
5 in your heart and your mind, you still are opposed to the
6 organization -- just categorically opposed to elephants being
7 in circuses.

8 THE WITNESS: That's correct.

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MR. CRYSTAL:

12 Q Ms. Paquette, I just have a few more questions for you.
13 Why is API opposed to exotic animals in entertainment?

14 A We're opposed because what they are forced to do on a
15 day-in and day basis and how it takes -- and what it takes to
16 get them to perform day-in and day-out, in our opinion,
17 amounts to abuse.

18 They have to use various devices, various training
19 methods that our organization is opposed to. We believe that
20 animals in captivity, and one, to not be abused. You know, we
21 own a rescue facility where we don't force our animals to do
22 anything. They just live out their lives as peacefully as
23 possible until -- you know, we're against any forms of
24 entertainment because of that.

25 Q And Defense counsel showed you an excerpt from one of

1 your publications. I think it was something that you had
2 posted which talked about you being sick to your stomach.
3 What were you referring to there?

4 A I just mean -- it was a personal blog that I wrote, and
5 it was just meaning I get -- I get very upset when Ringling
6 Brothers does come to my own back yard because I do know what
7 happens to these elephants, and so when I know they're in my
8 own back yard, I get very upset.

9 Q And Defense counsel asked you some questions about
10 whether you believe its unlawful, whether the Ringling
11 Brothers' ownership of the elephants is unlawful. I just want
12 to make sure there's no misunderstanding.

13 Does API believe that Ringling Brothers' treatment
14 of elephants complies with the Endangered Species Act?

15 A No.

16 Q Okay. Now, I'd like to show you, again, Plaintiffs' -- I
17 think it was Plaintiffs' 151; is that right. This was --
18 Defense counsel showed you this list. Do you know what that's
19 a list of?

20 A It's a list of the baby elephants born to -- at
21 Ringling's CEC.

22 Q And do you know if any of those baby elephants are no
23 longer alive?

24 A Yes. Some of them are dead.

25 Q Which ones?

1 A Benjamin is dead, Bertha, Kenny, and Ricardo.

2 Q And do you know the approximate ages at which they died?

3 A They were fairly young. I don't know the exact ages,
4 but -- they died, but I believe it says it on there, so
5 Ricardo died, I think he was eight months old.

6 Q And are you aware whether any of these baby elephants had
7 been reintroduced into the wild?

8 A No, they had not.

9 Q And there was some discussion about the timing for API's
10 decision to join this case. I just want to make sure that the
11 record is clear on this. Why did API decide to join this
12 case?

13 A Well, we decided to join because we re-prioritized our
14 campaign -- our circus campaign in 2004 when we had a new CEO.
15 We had a change of leadership and a restructuring of our
16 campaigns, and so we changed at that point. And so we looked
17 at different options to get involved -- additional options
18 than what we were already doing, and one was the litigation.

19 And again, this is an issue that our members cared
20 so deeply about, so it just goes hand-in-hand with our circus
21 campaign.

22 Q Why didn't API join the case earlier?

23 A Well, again, our circus campaign wasn't a high priority
24 campaign. It was a low priority. I mean, we were, in fact,
25 limited on the amount of time we could spend on the circus

1 campaign, and when we moved it to a high priority, then it
2 became unlimited.

3 Q And there was some questions asked about the Section 10
4 regulations. Do you recall that?

5 A Yes.

6 Q And Defense counsel asked you some questions about the
7 incidental take permitting as distinguished from the
8 enhancement permitting; do you recall that?

9 A Yes.

10 Q I think you had indicated that you thought it would be an
11 enhancement permit that would be applied for?

12 A Yes.

13 Q And why not an incidental take permit?

14 A Well, from my understanding of what an incidental take
15 permit is, you would have to be essentially saying that I'm
16 going to incidentally take this animal because I'm doing some
17 other project or I'm doing something else that I will
18 incidentally take an animal, such as I am building -- I'm
19 putting a road through a forest, therefore I may incidentally
20 harm a endangered bird, and so I can't see how that scenario
21 would fit into the use of the bull hook and chain. I couldn't
22 imagine what that other scenario would be for Ringling
23 Brothers.

24 Q And there was some discussion about the information you
25 would obtain and the reasons for it, and I'd just like to

1 briefly go back to Section 10(c) of the Endangered Species
2 Act, and actually move down to Section 10(d) which starts at
3 the top of that next paragraph, and if you could just read
4 that paragraph for us. We may have to blow it up to read it.
5 There we go. This is the top of the page in the right column.

6 A Oh, starting with "the secretary"?

7 Q Yes.

8 A Oh, okay. (Reading) The secretary may grant exceptions
9 under Subsections A(1)(a) and the (b) of this section only if
10 he finds and publishes his findings in the Federal Register
11 that (1) such exceptions were applied for in good faith; (2)
12 if granted and exercised, will not operate to the disadvantage
13 of such endangered species, and (3) will be consistent with
14 the purposes and policy set forth in Section 1531 of this
15 total.

16 Q And would these findings be useful to API in its work?

17 A Yes, it would.

18 Q Why is that?

19 A Well, again, it would -- it would help explain why there
20 was exceptions to this, so I would imagine that the Fish &
21 Wildlife Service would set forth a rationale so we would be
22 able to understand that rationale and be able to utilize it in
23 our efforts.

24 Q Defense counsel asked you a few questions about some
25 cover letters that you submitted along with applications to

1 the Wildlife Advocacy Project; do you recall those questions?

2 A Yes.

3 Q And some changes in language?

4 A Yes.

5 Q And why did that occur?

6 A It occurred because in 2007 I was the interim CEO then,
7 and so I went through and really wanted to fully recode our
8 budget. And so I was trying to figure out the best way to see
9 how we were allocating our money, so I recoded how we actually
10 put things in our budget.

11 So I separated -- we were originally coding the
12 Wildlife Advocacy Project with the litigation costs, and that
13 was confusing to me because it wasn't costs for litigation.
14 It was costs for the PR campaign, so I separated it out in
15 code.

16 Q And is API claiming that the ongoing contributions that
17 any -- if there are any, any ongoing contributions to the
18 Wildlife Advocacy Project are a basis for their standing in
19 this case?

20 A The ongoing?

21 Q Yes.

22 A No.

23 Q Okay.

24 MR. CRYSTAL: I have no further questions, Your
25 Honor.

1 THE COURT: All right. Any other questions?

2 MS. JOINER: Nothing further, Your Honor.

3 THE COURT: All right. Thank you. You may step
4 down. All right.

5 And your witnesses for Monday? You have some
6 additional deposition testimony?

7 MS. MEYER: Yes, Your Honor.

8 THE COURT: Not for today but for Monday. How much
9 additional deposition testimony and for whom?

10 MS. MEYER: We have -- actually we have two more
11 expert witnesses, so those will be live witnesses, Your Honor.

12 THE COURT: All right. Who are they?

13 MS. MEYER: Carol Buckley and Phil Ensley, and then
14 we have -- we're a little behind on the depositions. We have
15 Ms. Swart, Mr. Ramos, Mr. Ridley, Mr. Andacht, Mr. Jacobson,
16 Mr. Houcke, Mr. Metzler, Mr. French, Mr. Pettigrew, Mr. Feld
17 and Mr. Frisco. Some of those are very short, however.

18 THE COURT: How long do you anticipate your direct to
19 be for your two experts?

20 MS. MEYER: I think it's going to be pretty long,
21 Your Honor. I would say for Dr. Ensley, probably around three
22 hours, and for Ms. Buckley, probably two. Two hours.

23 THE COURT: All right. And Dr. Ensley is your
24 veterinarian?

25 MS. MEYER: Yes.

1 THE COURT: And is it Dr. Buckley or --

2 MS. MEYER: No, she's not a doctor.

3 THE COURT: And her expertise?

4 MS. MEYER: She's a -- actually, I'll let Ms. Sanerib
5 speak to that if that's all right. She's the one who can
6 articulate that best.

7 MS. SANERIB: Your Honor, she's a former circus
8 elephant trainer, and she now runs the Elephant Sanctuary.

9 THE COURT: All right.

10 MS. MEYER: I left out one other deponent, Your
11 Honor.

12 THE COURT: Sure.

13 MS. MEYER: Daniel Raffo.

14 THE COURT: Deposition, right?

15 MS. MEYER: Yes, that's very short, that one.

16 THE COURT: Raffo. All right. So what does it look
17 like? Tuesday you rest?

18 MS. MEYER: Well, I think it's probably more
19 realistic to say Wednesday, Your Honor, given the way things
20 are going.

21 THE COURT: All right. I've continued -- I had some
22 other matters on my calendar. I continued them. I had
23 sentencings in the D.C. tax fraud case and they would have
24 taken hours next week, lots of hours, and I've continued them.
25 So -- and I have no other sealed matters. Let me just take a

1 look.

2 We're going to get a lot accomplished on -- I
3 misspoke. I said Tuesday. On Monday. Monday, I don't have
4 any other matters.

5 And Carol -- And if I have other matters, they won't
6 interfere with this trial, so hopefully we can get the
7 Plaintiffs rested on Tuesday.

8 MS. MEYER: Pardon me?

9 THE COURT: Hopefully, you'll be in a position to
10 rest on Tuesday.

11 MS. MEYER: We'll keep plugging along, Your Honor,
12 and hopefully we will. I just got handed another note. I left
13 out one other deponent, which is Alex Vargas.

14 THE COURT: All right. Any other matters we have to
15 talk about?

16 MR. SIMPSON: Your Honor, if we could just get, No.
17 1, an extension until the close of business tomorrow.

18 THE COURT: Absolutely.

19 MR. SIMPSON: On the evidentiary brief.

20 THE COURT: I have no problems with that, sure.

21 MR. SIMPSON: And then the other thing is, if there's
22 going to be a one-day hiatus between when they rested --

23 THE COURT: There will be. It looks like it's going
24 to be more than one day. It looks like -- we'll play it by
25 ear, but it looks like -- I mean, I think -- I have no reason

1 to believe they're going to rest on Tuesday, but I don't know
2 if I'm hearing three hours of direct on one, I don't know how
3 much time for cross-examination. Even if we end early on
4 Wednesday, we probably won't get to the motion till the
5 following Monday probably.

6 MR. SIMPSON: In that regard, I wanted to get the
7 Court's guidance on when our 72-notice list should begin to
8 run. I mean...

9 THE COURT: Yeah. Let me see. There's some more
10 juggling I have to do here. Let me see.

11 MR. SIMPSON: Maybe it's premature at this point.

12 THE COURT: Probably is. I'm not going to be fair
13 with you, though. I'm not going to --

14 (PAUSE.)

15 THE COURT: I'll be fair with you, Counsel. Let's
16 assume this. Let's assume they rest Wednesday, noon or so,
17 which sounds like that may happen. Worse case scenario,
18 Thursday. Then I'll hear argument on that motion on Tuesday.
19 We won't be able to sit on Monday. On Tuesday.

20 MR. SIMPSON: Okay. All right.

21 THE COURT: So, what guidance does that give you with
22 respect to your 72 -- then, you know, also on my order, I may
23 take a day to think about your motion.

24 MR. SIMPSON: That was my concern.

25 THE COURT: I don't know that right now. I mean,

1 believe me, those two pleadings were extremely helpful.

2 MR. SIMPSON: I know what I don't want to do is
3 what's gone on so far, which is have these notices start coming
4 out and then we get a big log jam and there's confusion and --
5 because that doesn't really serve anybody's purpose to be
6 preparing for something that has to change.

7 THE COURT: Right. I'm going to reserve at least a
8 one day and it may not be that your first witness, if you have
9 to call any witnesses at all, won't be until Thursday probably.
10 I mean, I can plan ahead right now and just do that. Maybe it
11 makes sense to do it. Let me take a short recess and talk with
12 my staff. Maybe it makes more sense to do that, and so now you
13 know up front that your case-in-chief if and when it proceeds
14 at all, it will proceed on Thursday, but I need to talk to
15 Carol and Addy.

16 I need to move some more matters, too, because I've
17 got a Guantanamo hearing coming up, and that's time-consuming.
18 There's nothing I can do about that. Let me just take five
19 minutes before you leave and see if I can sort this out on my
20 calendar and also possibly move some other matters as well.

21 MR. SIMPSON: Very well, Your Honor.

22 THE COURT: Carol, let me talk to you for a few
23 minutes, okay.

24 (PAUSE.)

25 THE COURT: It's difficult to predict past next week,

1 Counsel. There is just too many other matters on my calendar,
2 and I can't enlist the magistrate judge to help with the
3 Guantanamo cases, and I want to be fair. This trial is in
4 progress and it's very important that we finish it.

5 Let me ask you this: How long do you anticipate
6 your argument to be on your motion, your motion for judgment
7 at the close of your case?

8 MR. SIMPSON: I think reasonably that's like an
9 hour-and-a-half project, I mean, my part of it, opening and
10 closing. If Your Honor indulges, it could go on, obviously,
11 for an extended period of time, but I think that's not an
12 unreasonable amount of time.

13 THE COURT: All right. Let's play with a couple of
14 dates. The -- I'm going to make an assumption that Plaintiffs
15 are going to rest on Wednesday and we're going to have to try
16 and accomplish as much as we can Monday, Tuesday and Wednesday
17 of next week.

18 Then you would want a day. Let's assume, for
19 purposes of our discussion, that they rest on Wednesday, then
20 you'd file your motion. You plan to file a written motion,
21 correct?

22 MR. SIMPSON: Well, we'll do what Your Honor thinks.

23 THE COURT: No, I'm not requiring it, and I have the
24 pretrial here, but what did I say in the pretrial?

25 MR. SIMPSON: Well, it wasn't addressed, and when we

1 did talk about it, we talked about an oral motion.

2 THE COURT: That's fine. That's fine. But you need
3 at least a -- you need a day to prepare your thoughts; is that
4 correct?

5 MR. SIMPSON: Yes, sir.

6 THE COURT: That's fine. If that happens, you'll
7 have more than that day, though, if they rest on Wednesday
8 because -- Let's see. Because I'm not sitting that Friday in
9 other matters and I'm not sitting that Monday. So you would
10 have a chance to argue that on Tuesday, and you know what, and
11 I'm just going to have to forego that luxury of a day to think
12 about it.

13 Well, what I could do this is this, I could say that
14 I'll take the day, which would be the 4th, and then you call
15 your first witness on the 5th. Now, that may or may not play
16 out that way, but that's the way it's beginning to look like.
17 I can tell you there's at least two hours I have to devote on
18 the 9th to a -- to a pretrial hearing on one of his Guantanamo
19 cases and I can't do it late in the day because they're only
20 certain court reporters that who are cleared to hear those
21 matters, but I'm moving the trial in that matter.

22 I can tell you that I'm not going to be here under
23 any circumstances on the 24st or the 28th and hopefully this
24 case will be over by then, and I cannot sit in this case on
25 the 19th, I can tell you that, because I've made a

1 commitment to do something months ago. I can't -- I just
2 can't do it.

3 So, you know, those are my best thoughts about time.
4 We'll just have to try and -- you know, it will become clearer
5 because we're going to work on some matters and try to move
6 some other matters between now and next Monday. But hopefully
7 we'll get to the point where Plaintiff can rest on the 25th,
8 and I may just forego the reading of depositions into the
9 record to save time and I'll just have to read them on my own
10 time.

11 How many hours had you allocated to the reading of
12 testimony, deposition testimony?

13 MS. MEYER: Your Honor, I don't have the actual
14 count, but I was thinking that what I would do is go over it
15 again this weekend and try to pare it down so that it's shorter
16 and shorter.

17 THE COURT: I can tell both sides now, I'm probably
18 going to forego that. That's just not going to work. We just
19 have to make adjustments here. It's more important that the
20 record be -- this record be concluded, but I want to be fair
21 with Defense counsel and his notice and his experts, and so I'm
22 just balancing a lot, but hopefully we can get to Wednesday.

23 Especially if you only have two experts, and I'm
24 telling the parties, both sides now that I don't need to be
25 read to anymore with respect to deposition. I'll have to read

1 it myself. That's going to cut down some time.

2 How much time had you allocated for the reading of
3 deposition testimony?

4 MR. SIMPSON: Well, ours was pretty brief. I mean,
5 we were going to do some counter-designations.

6 THE COURT: You already gotten some in the
7 counter-designations, the Plaintiffs.

8 MR. SIMPSON: Right. It's not as extensive as what
9 they were talking about.

10 THE COURT: Right, right. So it's just a lot of
11 balancing right now, but hopefully, we can get to the point
12 where -- I mean, it would be really great if we could get the
13 Plaintiffs to rest on Tuesday, but we'll see.

14 (PAUSE.)

15 THE COURT: I hadn't thought about this. Let me just
16 start earlier on Monday, since I've moved everything. I do
17 have about 15 minutes at 9:45. I have to do something on
18 Monday morning. Carol, let me ask you before I broach this.

19 (PAUSE.)

20 THE COURT: All right. We're going to start 8:30 on
21 Monday. Plaintiffs are going to have to finish their case
22 Monday and Tuesday, so -- and if I need to get a third court
23 reporter, but we're going the sit past 5:30.

24 All right. That's what we're going to do.
25 Plaintiffs are going to have to rest on Tuesday, and we'll sit

1 for as long as it takes to get to the end of Plaintiffs' case
2 by Tuesday. So you have your day, if you need a day,
3 Wednesday, and you can -- actually this works out well,
4 because then you can argue a motion Thursday. And if I need
5 to take it under advisement, I have the luxury of that
6 weekend, and if not, I'll rule on Thursday and you start with
7 your case-in-chief on the 3rd, and this is for -- we'll just
8 sit for as long as we have to, and if I need to get a third
9 court reporter, we'll do so.

10 Now, having said all that, let me rethink this 8:30
11 in the morning. We can -- actually it's easier to sit later
12 than it is earlier, isn't it? Yeah. So what makes more
13 sense. Let me hear. Carol, you've got a stake in this. Talk
14 to me now. What makes more sense?

15 (PAUSE.)

16 THE COURT: All right. Look, I've got to keep my
17 staff happy, too. All right. That's not insignificant. All
18 right.

19 9:30 we're going to start, and then if we have to
20 sit later, we will sit later, and Carol, we'll make
21 arrangements for a third court reporter. And Carol is going
22 to -- you see Carol walk out of the door at 6:00 o'clock, it's
23 not because she's mad at us every day. It's just that she's
24 allowed to do that. Seniority has its perks.

25 So those are my best thoughts. You are going to

1 finish your case on Tuesday, all right. You're going to have
2 to. You only have two experts now, and the depositions, I'll
3 read them myself on my time, you know. Obviously, if they
4 are -- well, I'll read them myself. Yes.

5 MR. SIMPSON: I would just suggest, Your Honor, if
6 they're going to pare their depositions down even further, that
7 they gave us advance notice of that paring down, the response,
8 that we would do --

9 THE COURT: I'll do that. I have to order that now.
10 What's fair? Come on, I want to finish this trial now.

11 MR. SIMPSON: Sometime maybe by midnight on Saturday.

12 MS. MEYER: Now I'm getting confused. I was paring
13 it down for presentation to the Court, but if you're going
14 to --

15 THE COURT: If you want to pare it down for
16 presentation and we have some time on Tuesday and you to -- you
17 know, my preference is to read it myself. They still want --
18 they still want the opportunity to file objections, though.

19 MR. SIMPSON: Well, to make our counter-designations
20 if they pare it down.

21 THE COURT: Is that unreasonable, midnight on
22 Saturday? You're going to have to finish on Tuesday.

23 MS. MEYER: We're going to rely on what we've already
24 designated. I'm talking about paring it down for presentation
25 to the Court, so if -- you already have our designations. I'm

1 not talking about eliminating something that we are going to
2 rely on.

3 MR. SIMPSON: Well, if we can just know what they
4 want to do live and versus --

5 MS. MEYER: That, we could do.

6 THE COURT: All right. That's fair enough. But
7 you're going to have to finish on Tuesday. We'll sit -- if we
8 have to sit later -- but you know, with public transportation,
9 et cetera, it's impractical to say 8:30. It just doesn't make
10 sense, so we'll start at 9:30 and we'll just sit -- we'll sit
11 later on Monday and we'll definitely finish on Tuesday.

12 All right. So all right, Counsel, have a nice
13 weekend.

14 MS. MEYER: Thank you, Your Honor.

15 (PROCEEDINGS END AT 5:55 P.M.)

16 *-*-*-*

17

18

19

20

21

22

23

24

25

C O N T E N T S

DIRECT EXAMINATION OF NICOLE PAQUETTE BY MR. CRYSTAL	2
CROSS-EXAMINATION OF NICOLE PAQUETTE BY MS JOINER...	40
REDIRECT EXAMINATION OF NICOLE PAQUETTE BY MR. CRYSTAL	101
<u>EXHIBITS:</u>	
PLFS' WC 84 ADMITTED INTO EVIDENCE.....	26
PLFS' WC 91 ADMITTED INTO EVIDENCE.....	17
PLFS' WC 92 ADMITTED INTO EVIDENCE.....	7
PLFS' WC 95 ADMITTED INTO EVIDENCE.....	23

* - * - * - *

CERTIFICATE OF REPORTER

I, Catalina Kerr, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Catalina Kerr

Date