

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiff,)

v.)

FELD ENTERTAINMENT, INC.,)

Defendant.)

Civil Action No. 03-2006 (EGS/JMF)

**DEFENDANT'S OBJECTIONS TO
PLAINTIFFS' PROPOSED FINDINGS OF FACT**

EXHIBIT A

PART 1

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OF CRUELTY TO ANIMALS, et al.,)	
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Plaintiff,)	
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v.)	Civil Action No. 03-2006 (EGS/JMF)
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FELD ENTERTAINMENT, INC.,)	
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**DEFENDANT’S OBJECTIONS TO
PLAINTIFFS’ PROPOSED FINDINGS OF FACT**

Defendant Feld Entertainment, Inc., (“FEI”) submits its Objections to Plaintiffs’ Proposed Findings of Fact (Apr. 24, 2009, DE 533) (“PFOF”). As ordered by the Court, this document sets forth each PFOF along with FEI’s objection. As preliminary matters, FEI respectfully would show the following:

The length of this document was made necessary by the length of the PFOF, 233 pages, twenty-two (22) pages of which contained 57 single spaced “Endnotes.” Also, the length was made necessary by FEI’s need to comment on myriad citations to the trial record that misapplied or mischaracterized the record. Although time did not permit comments on all such citations, FEI was able to address many. Although this document’s length would make a “front-to-back” reading difficult, FEI hopes that it will be a valuable resource to the Court for reviewing individually the specific issues discussed therein.

Plaintiffs' single-spaced "Endnotes" (PFOF at 212-233) violate the Court's Final Pretrial Order (10-15-08) (DE 373) ¶ 24 ("All submissions to the Court shall be double-spaced"), and FEI accordingly requests that they all be stricken.

FEI's objections to any paragraph in the PFOF apply to the Endnotes cited in that paragraph, regardless of whether the objection refers expressly to those Endnotes.

Throughout, paragraphs in the PFOF refer to "elephants," "the elephants," or use terms that are not specific to the six (6) elephants at issue in this case (Jewel, Karen, Lutzi, Mysore, Nicole and Susan). By memorandum opinion and order dated October 25, 2007 (DE 212 & 213), the Court granted in part defendant's motion for reconsideration of the August 23, 2007 partial denial of summary judgment. Based upon the Court of Appeals' decision in this case regarding plaintiff Mr. Rider's standing to sue, the October 25, 2007 decision further limited plaintiffs' claims herein to the following six (6) Asian elephants: Jewel, Karen, Lutzi, Mysore, Nicole and Susan. Mem. Op. at 6-7 (DE 213) (10-25-07). Plaintiffs contend that the elephant Zina also is one of the elephants at issue, but plaintiffs have not sought reconsideration of the summary judgment ruling excluding Zina from the case.

Throughout the PFOF are paragraphs that address claims over which the Court does not have jurisdiction because they were not raised in the letter dated April 12, 2001, sent on behalf of Mr. Rider and others. For reasons set forth in FEI's PCOL ¶ 37, the Court does not have jurisdiction under the ESA with respect to any of the following actions that plaintiffs complain about: tethering, the elephants being maintained on hard, unyielding surfaces, the transportation of the elephants in train cars, "hot shots," forced defecation, the performance of circus "tricks" by the elephants, the watering of the elephants, the alleged effects of purported "learned

helplessness”, tuberculosis or castration. PWC 91; FOF 23. Lacking jurisdiction of these matters, the Court must decline to address them.

The PFOF and FEI’s objections to them are set forth, *infra*, following a glossary of terms that is included for the Court’s convenience.

GLOSSARY

API	Animal Protection Institute
ASPCA	American Society for the Prevention of Cruelty to Animals
AWA	Animal Welfare Act
AWI	Animal Welfare Institute
CB-CB	Clyde Beatty-Cole Bros. Circus
CBW	Captive-Bred Wildlife
CEC	Ringling Bros. and Barnum & Bailey Center for Elephant Conservation
COL	Conclusion of Law
DCOL	Defendant’s Proposed Conclusions of law
DE	Docket Entry
DFOF	Defendant’s Proposed Findings of Fact
DOI	Department of Interior
DX	Defendant’s Trial Exhibit
EHRG	Elephant Husbandry Resource Guide

FEI	Feld Entertainment, Inc.
FOF	Finding of Fact
FFA	Fund for Animals
FWS	Fish and Wildlife Service
HSSCV	Humane Society of Santa Clara Valley
HSUS	Humane Society of the United States
MGC	Meyer, Glitzenstein & Crystal
PAWS	Performing Animal Welfare Society
PCOL	Plaintiffs' Conclusions of Law
PETA	People for the Ethical Treatment of Animals
PFOF	Plaintiffs' Findings of Fact
PMC	Plaintiffs' May Call Trial Exhibit
PWC	Plaintiffs' Will Call Trial Exhibit
USDA	United States Department of Agriculture
WAP	Wildlife Advocacy Project

PLAINTIFFS' PROPOSED FINDINGS OF FACT

Pursuant to the Court's First Amended Pretrial Order (Docket Entry ("DE") 328), plaintiffs American Society for the Prevention of Cruelty to Animals, et al., submit the following proposed findings of fact. For the convenience of the Court, and to make sure that the Court has citations to all of the record evidence that supports each of plaintiffs' proposed findings, plaintiffs have included endnotes with some of the findings that contain such additional citations. When plaintiffs submit the electronic copy of this document, the endnotes will all be linked to the text, along with the exhibits and other citations, so that the Court can easily refer to them. Plaintiffs are also filing as a separate document their proposed conclusions of law. However, where applicable, findings of fact should also be deemed conclusions of law, and vice versa.

I. JURISDICTION

A. The Plaintiffs Provided The Notice Required By The ESA

1. As required by the citizen suit provision of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540(g), plaintiffs sent 60-day notice letters to Kenneth Feld, Chief Executive Officer of defendant Feld Entertainment Inc. ("FEI"), and to the Secretary of the Interior and the Director of the Fish and Wildlife Service ("FWS"), advising them that FEI was in violation of the "take" prohibitions of Section 9 of the ESA, id. § 1538, with regard to its treatment of the Asian elephant. See PWC 91 (Letters dated December 21, 1998; November 15, 1999; April 12, 2001; July 22, 2005.) FEI owns and operates the Ringling Brothers and Barnum & Bailey Circus ("Ringling Bros."). The Court finds that these letters provided the requisite notice concerning each of the practices for which plaintiffs have sought relief in this case.¹

1. FEI OBJECTION: No objection to third sentence. The remainder of PFOF ¶ 1 is not supported by the record. The only 60-day notice letter that was transmitted on behalf of the current plaintiffs, ASPCA, AWI, FFA and Mr. Rider, was the letter dated April 12, 2001, PWC 91 at 10-12, which only took issue with FEI's use of the bull hook and suggested that elephant Karen was dangerous and her presence on the Blue Unit was a purported violation of the AWA. The attempted incorporation of the 60-day notice letters dated December 21, 1998 and November 15, 1999, id., at 1-5, is ineffectual because none of the current plaintiffs was a party to either letter and because those letters had been submitted by parties (PAWS, Ms. Derby and Messrs. Stewart and Ewell) who, by April 12, 2001, had either dropped out of the litigation (Mr. Ewell) or had settled their ESA claims against FEI (PAWS, Ms. Derby and Mr. Stewart).

Reliance upon notice letters submitted by parties who no longer have claims against FEI, does not provide FEI with notice of the *existing* plaintiffs' claims. The notice letter for Mr. Rider, the only plaintiff who arguably has standing to sue, says nothing about tethering the elephants. *Id.* at 10-12. Neither Mr. Rider's notice letter nor API's notice letter mentions the numerous other subjects that plaintiffs sought to litigate herein: standing on hard, unyielding surfaces; transportation by rail car; "hot shots;" forced defecation; performing circus "tricks;" watering; learned helplessness, tuberculosis and castration. *Id.* at 10-14. Therefore the record does not support plaintiffs' assertions that plaintiffs gave notice of their claims to FEI in accordance with the ESA.

ENDNOTE 1: The first notice letter, dated December 21, 1998, was sent on behalf of the original plaintiff the Performing Animal Welfare Society ("PAWS") and its officers, and put FEI on notice that it was violating the take prohibition of the ESA because "its elephant trainers and handlers routinely beat elephants, including baby elephants, in order to make them perform or behave in a particular way, and Ringling Brothers also keeps the elephants chained for extremely long periods of time." See PWC 91 at 1; see also id. at 2 ("Ringling Brothers' handlers and trainers beat elephants severely with an instrument called a 'bull hook;' "particular elephants are beaten more frequently, including an Asian elephant named 'Nicole,' and a baby elephant named 'Benjamin;'" id. at 3 (the fact that supervisors witnessed and ignored this mistreatment demonstrates that "such treatment of elephants in Ringling Brothers' circus is by no means aberrational, but, rather, is business as usual;" "elephants are left chained hour after hour, each day, . . . and when the circus is traveling, the elephants remain chained in the stock cars for as long as 2-3 days consecutively, and not provided any opportunity, whatsoever, to walk around or otherwise exercise;" [t]hese conditions, which are completely at odds with the natural biological needs of these magnificent animals, also constitute the unlawful 'taking' of endangered elephants"). Id. The second letter, sent on November 15, 1999, supplemented the initial notice letter by putting FEI on notice of "take" violations because of evidence that it forcefully separated nursing baby elephants from their mothers. See PWC 91 at 4-5.

The third notice letter was sent on April 12, 2001 on behalf of the ASPCA, Animal Welfare Institute ("AWI"), Fund for Animals ("FFA"), and Tom Rider. See PWC 91 at 10-12. It expressly incorporated by reference the earlier notice letters, and provided additional notice that FEI was violating Section 9 of the ESA because elephants were being "struck with bullhooks or clubs and other instruments, and, in one case, being clipped with a sharp instrument we believe is called a 'leatherman.'" Id. That letter also complained about elephants engaged in "stereotypic behavior" from being chained, id., and handlers hitting elephants "under their chins," and it referenced and enclosed videotape of these practices. Id. The fourth letter, dated July 22, 2005, was sent by the Animal Protection Institute. PWC 91 at 13-23. It expressly incorporated all of

the previous notice letters by reference, id. at 14, and complained that FEI is violating Section 9 of the ESA because of the way elephant trainers and handlers “routinely chain and confine” the elephants, use the bull hook “to train, discipline, control, and dominate the elephants.” Id. at 13.

ENDNOTE 1. FEI OBJECTION: Plaintiffs’ selective quotations from the various notice letters in PWC 91 do not cure the deficiencies in their 60-day letters as outlined in FEI’s response to PFOF ¶ 1.

B. Plaintiffs Have Demonstrated Article III Standing.

1. Tom Rider Has Article III Standing.

2. The Court finds by a preponderance of the evidence that plaintiffs Tom Rider is a credible witness and that his testimony and the other supporting materials in the record demonstrate that Mr. Rider has Article III standing to pursue the claims in this case.

2. FEI OBJECTION: This proposed finding is overwhelmingly refuted by the evidence in this case. Mr. Rider was impeached on multiple occasions and on virtually every substantive point that he attempted to make in his testimony. *See* DFOF ¶ 51-136 infra. In addition, Mr. Rider failed to establish his standing to sue because he failed to carry his burden of proving an injury in fact, traceable to defendant’s actions that can be redressed by this Court. *See* DFOF ¶ 112-136, infra.

3. Plaintiff Tom Rider, was employed by the Ringling Bros. circus, on the “Blue Unit,” for approximately two and a half years, from June 1997 to November 1999. Trial Tr. 17:18 - 17:24, Feb. 12, 2009 a.m.; PWC 20 at 1 (PL 04458). For the first few months of his employment, he worked as a “barn helper,” helping to clean up around the elephants, but then he became a “barn man” for the Blue Unit, which required him to clean up after the elephants, provide them food and water, and watch over them whenever he was on duty. Trial Tr. 18:01 - 18:15, Feb. 12, 2009 a.m. In this capacity, he was around the elephants all the time that he was working, id. at 21:06-09; in fact, he testified that he was instructed to “never take my eyes off the elephants.” Id. at 18:11 - 18:13. Jeff Pettigrew, who has worked for FEI for many years, and worked for the Blue Unit during the same time Mr. Rider worked there, testified that Mr. Rider spent a lot of time with the elephants. PWC 178 at 115:03 - 115:17 (Nov. 14, 2008).

3. FEI OBJECTION: No objection to first, second and third sentences. The last sentence suggests that Mr. Pettigrew observed Mr. Rider spending a lot of time generally around the

elephants when, in fact, Mr. Pettigrew testified that he only saw Mr. Rider around the elephants during Mr. Rider's eight (8)-hour shift. DX 312A (Pettigrew Dep. at 115:18-19). Moreover, the record is clear that Mr. Rider spent very little, if any, time with the Blue Unit elephants on his day off or during non-working hours. DFOF ¶ 65.

4. During his time there, Mr. Rider formed a strong personal attachment to many of the Ringling Bros. elephants, including Meena, Lechamee, Kamela, Lutzi, Susan, Zina, Rebecca, Jewel, Sophie, Karen, Mini, Mysore, Nicole, and Roma, whom he calls his "girls." Trial Tr. 18:22 - 19:02, Feb. 12, 2009 a.m. (naming the elephants that he worked with); *id.*, Trial Tr. 30:16 - 31:10 (he "loved going to work," he "loved seeing those elephants," he "enjoyed going to work to see the girls." "I called them my girls").²

4. FEI OBJECTION: There is no evidence to support the claim that Mr. Rider formed a "strong personal attachment to many of the Ringling Bros. elephants, including" the ones listed. Mr. Rider has never claimed an attachment to *any* elephant other the ones listed. Furthermore, the record does not support the assertion that Mr. Rider formed a "strong personal attachment" to the elephants that are listed. While Mr. Rider provided a list of the elephants in his direct trial testimony, he struggled to name those same elephants in his 2007 deposition, omitted Zina when asked to name the elephants he was attached to in his 2006 deposition, omitted Meena when asked to name the elephants he was attached to in his 2004 interrogatory answers, and could not even identify several of his alleged "girls" in videos played at trial. DFOF ¶ 117, 122, 124. Mr. Rider admitted that, if there was any sort of attachment, it was to the three elephants owned by Richard Chipperfield. DFOF ¶ 115. Even that assertion is suspect, given the complete lack of interest Mr. Rider has shown in them since he left the employment with Mr. Raffo. DFOF ¶ 122. Furthermore, any assertion that Mr. Rider formed an attachment to the elephants owned by FEI is totally undermined by Mr. Rider's statements and actions, before, during and after his employment with FEI. DFOF ¶¶ 52-72, 113-127. His statements and actions are incompatible with the assertion that he was strongly attached to these animals. The self-serving testimony

cited in PFOF ¶ 4 does not establish a strong, personal bond to the elephants but, rather, is vague, conclusory and generalized and does not distinguish Mr. Rider from anyone else who might have an interest in Asian elephants.

ENDNOTE 2: See also id., Trial Tr. at 69:11 - 69:19 (explaining that he had an “attachment” to the elephants; that he “had worked with these girls for 2 ½ years”); id., Trial Tr. 22:08 (“I always talked to them”); id. Trial Tr. at 70:01 - 04 (he stayed at Ringling Bros. because he “cared and [] loved those girls”); Trial Tr. 46:23 - 47:01, Feb. 17, 2009 p.m. (cont.)

(“I loved my elephants and I knew that if I was there, at least they were hearing . . . me every day, they were seeing me every afternoon and I could give them my love and affection”); DX 16 at 32 (Rider Response to Interrogatory No. 16) (naming the elephants he worked with, and stating that “I got to know the elephants very well, and grew to love them,” he had “emotional feelings” for the elephants, he “looked forward to seeing them every day,” he was “very close to them, they got in my blood,” and every day he was with them “I showed them that I loved them, and I believe they trusted me.”).

ENDNOTE 2: FEI OBJECTION: None of the cited testimony by Mr. Rider demonstrates a “strong personal attachment” to FEI elephants or any other elephants. The cited testimony is self-serving, vague, conclusory and generalized and does not distinguish Mr. Rider from anyone else who might have an interest in Asian elephants. The citation to DX 16 at 32 is erroneous as it is a reference to Mr. Rider’s January 2008 answer to Interrogatory No. 24 concerning the payments he has received from plaintiffs, plaintiffs’ (and his) counsel and WAP. The part of the interrogatory answers that plaintiffs apparently intended to cite (DX 16 at 9-10 (2004 answer to Interrogatory No. 16)) is unhelpful to Mr. Rider in any event because it contains the same self-serving, generalized statements. Furthermore, this interrogatory answer omitted Meena from the list of elephants that Mr. Rider worked with, *id.*, even though she was allegedly one of his “girls,” thereby further undermining the assertion of a “strong personal attachment” to Meena and any of the other elephants. Mr. Rider never supplemented this interrogatory with any further information. DX 16 at 16, 22-33.

5. That Mr. Rider formed a special bond with the elephants he worked with is corroborated by Diane Ward, the USDA Investigator who was assigned to handle Mr. Rider's Complaint under the Animal Welfare Act, who told her superiors that "I have worked with Tom for the last week, and have taken a lengthy statement from him . . . Tom worked with these elephants, as their keeper (Barn man) for 2 ½ years. There is no question that he loves the elephants that he worked with (in the blue unit) and wants to help them find a better life than what is provided by the circus." PWC 93 at 1 (PL 012609).

5. FEI OBJECTION: Diane Ward is not competent to opine on Mr. Rider's credibility with respect to his professed "love" for the FEI elephants. Such is solely the province of the finder of fact. Furthermore, there is no indication in the memorandum that, when she opined on Mr. Rider's purported "love" for the elephants, Ms. Ward was aware of the fact that Mr. Rider was then receiving money from PAWS – characterized by PAWS as "wages" and "compensation" – which was Mr. Rider's sole source of support. DFOF ¶¶ 76-82. Plaintiffs cite this memorandum selectively because Ms. Ward also found "very hard to believe" Mr. Rider's assertion that FEI received advanced notice of USDA inspections. PWC 93 at 2. The "advance notice" claim is refuted by the record in this case. DFOF ¶ 346. Furthermore, the allegations of elephant mistreatment by Mr. Rider outlined in Ms. Ward's memorandum were all ultimately rejected by USDA and Mr. Rider's case was "deemed no violation and closed." DX 71A at 5; DFOF ¶ 349.

6. That Mr. Rider formed an emotional attachment to these elephants is further corroborated by defendant's own witnesses, including FEI's Chief Executive Officer Kenneth Feld, who stated in sworn testimony that the people who work with the elephants at FEI have a "real bond" with the elephants, "an attachment," that is "really no different than what any of us would have with our dogs or our pets." PWC 182 at 68:02 - 69:12, Vargas Dep., May 31, 2007. Alex Vargas, who has worked as an FEI elephant handler for many years, testified that he agrees with this statement, see id. at 69:17 - 19; 70:03, and, at the trial, Mr. Feld repeated several times that employees who work with the elephants form a special "bond" with them. See Trial Tr. 12:10-12:11, March 3, 2009 a.m. (the elephants "have a bond with the people that work with them every day"); id. at 116:20 - 116:23 (describing as the "heart of everything that we're talking about here," the "human animal experience and the bond that our trainers, our animal handlers have with these animals"); see also Trial Tr. 84:25 - 85:02, March 5, 2009 p.m. (Testimony of Gary Jacobson) (he thinks of the elephants he works with like "part of the family").

6. FEI OBJECTION: The cited testimony of Messrs. Feld, Vargas and Jacobson does not corroborate Mr. Rider's claim of a personal attachment to the FEI elephants. It is not contested that a human can form a bond with an elephant. The question is whether Mr. Rider had such a bond with the FEI elephants, and the record is clear that he did not. The testimony of Messrs. Feld, Vargas and Jacobson does not bear on this issue at all. None of these witnesses testified that they had any personal knowledge of, or observed, any relationship between Mr. Rider and the FEI elephants.

7. Even though it has been many years since he worked with the elephants, Mr. Rider is still able to describe the elephants' unique physical characteristics, as well as their personalities. See Trial Tr. 21:10 - 29:06, Feb. 12, 2009 a.m.; Trial Tr. 28:21 - 31:10, February 17, 2009 p.m..

7. FEI OBJECTION: This proposed finding of fact is not supported by the record. Mr. Rider's testimony about the physical characteristics and personalities of the elephants was vague and did not provide details that would have been known only to someone with close personal knowledge of these animals. DFOF ¶ 116. The physical characteristics that he provided were nonspecific and could have been memorized from the CITES certificates that described these animals. *E.g.*, DX 3 at 22. This stands in sharp contrast to other witnesses, such as Messrs. Raffo and Vargas, who provided specific information about these elephants that Mr. Rider did not disclose. 3-4-09 a.m. at 17:2-18:2 (Raffo: describing unique noise made by Sophie); DX 316A (Vargas Dep. at 26:9-27:19, 28:14 (personalities of Karen, Sophie, Zina, Lutzi, Minnie and Rebecca)). Furthermore, Mr. Rider's description of elephant Karen as "playful" was contradicted by his several prior descriptions of her as "dangerous," as an elephant that he never touched because she would kill him had she had the chance, and as a "bitch" – all of which came out, not in Mr. Rider's direct, but in his cross-examination. DFOF ¶ 125. In addition, at several points in the trial, Mr. Rider was unable to identify the elephants he allegedly worked with from

videos that were played in the courtroom and, in particular, failed to recognize from those videos elephants with unique physical characteristics (*e.g.*, elephant Susan's swayed back). DFOF ¶ 117.

8. Although when shown video footage of some of the elephants at trial, Mr. Rider was unable to positively identify particular elephants by name with absolute certainty, this does not mean that Mr. Rider does not continue to have a bond with these elephants. Indeed, defendant's own witness, Brian French, who currently works with the Blue Unit elephants, was not able to identify one of the elephants depicted in the video footage of the Auburn Hills inspection. See Trial Tr. 77:08 - 77:20, March 12, 2009 a.m. By analogy, the mere fact that someone could not with certainty identify his golden retriever when shown a photograph of several such dogs (and subject to the penalty of perjury if he makes a mistake) would not mean that he does not love his dog, particularly when asked to do so many years after he last lived with his dog.

8. FEI OBJECTION: This proposed finding of fact has no basis and does not explain away Mr. Rider's failure to identify his "girls" when shown videos of them at trial. Mr. French's testimony is beside the point because there is no evidence that Mr. French claims to have had a "bond" with the elephant that he could not identify on the video tape that he was shown. In contrast, Mr. Raffo, who had not worked with elephants since 2001, readily identified Karen and Sophie in the tape that he was shown, while Mr. Rider could not. DFOF ¶ 117. The "golden retriever" analogy in this proposed finding of fact has no support in the evidence or in common sense. It is simply speculative. It just as likely that an avid dog lover could pick his/her own golden retriever out of a line up of other golden retrievers. Nothing in the record supports either hypothesis.

9. Seven of the elephants with whom Mr. Rider worked – Karen, Nicole, Lutzi, Zina, Mysore, Susan, and Jewell – are still in FEI's possession. See PWC 169 (Chart of Elephants owned by Feld Entertainment, including location of elephants).

9. FEI OBJECTION: No objection to the first sentence. The cited exhibit (PWC 169) is inaccurate as it contains the wrong birth date for Nicole. DX 1 at 6; 3-11-09 p.m. at 97:25-99:5 (Sowalsky).

10. The record establishes that Zina was one of the elephants with whom Mr. Rider worked and formed a personal attachment. See PFF No. 3 and Exhibits cited therein; See also PWC 169; PWC 184 at 10, 17, 107 (references to Zina in Mr. Rider's March 25, 2000 deposition taken by Performing Animal Welfare Society); PWC 20 at 2 (PL 04459) (describing in July 2000 sworn affidavit to USDA a beating Jeff Pettigrew gave Zina). Accordingly, there is no basis for defendant's suggestion that Mr. Rider does not have standing with respect to the treatment of Zina.

10. FEI OBJECTION: The record refutes the assertion that Mr. Rider had a personal attachment to Zina because he omitted her when his own lawyer asked him, in his 2006 deposition in this case, to name the elephants that he worked with. DFOF ¶ 124. Plaintiffs' citations to Mr. Rider's March 25, 2000 statement to PAWS (PWC 184) are beside the point. There is no reference to Zina at page 10 of that exhibit. The exhibit is not a "deposition" because no one from the defendant was present; it was a one-sided statement given to a lawyer representing PAWS. 2-12-09 p.m. at 34:22-35:13 (Rider); PWC 184 at 1. It also does not serve to rehabilitate Mr. Rider because the statement was given on the same date on which Mr. Rider began taking money and other benefits from PAWS. DFOF ¶ 76-82. Mr. Rider's account in his 2000 USDA affidavit (PWC 20) of the alleged "beating" of Zina in Richmond, Virginia in 1998, and the hook marks that allegedly resulted, conflicts with his own admission that Zina never had any marks on her which is why she was one of the elephants who was always exhibited to the USDA. DFOF ¶ 279. Mr. Rider's USDA affidavit also fails to mention that one of the alleged "abusers" in the Richmond incident, was Andrew Weller, the father of Mr. Rider's grandson whom Mr. Rider claims owes child support (DFOF ¶ 279) – a material omission in the account

to USDA given that such a fact would have born heavily on Mr. Rider's motive to falsify with respect to Mr. Weller.

11. The fact that Mr. Rider once forgot to mention Zina's name when asked to name the Blue Unit elephants with whom he worked is not a basis for doubting his credibility when he says that Zina is one of the elephants he loves and saw mistreated. In fact, when asked to name the Blue Unit elephants that he worked with, defendant's witness Daniel Raffo left out Mysore, who was on the Blue Unit when he worked there. See Trial Tr. 7:11 - 7:16, March 4, 2009 a.m.; see also PWC 169 (Mysore was on the Blue Unit from 1/94 - 3/06); PWC 183 (Raffo worked on Blue Unit 1994 - 1997). Indeed, it is not uncommon for a grandparent to leave a name of one of his grandchildren off the list when asked to name them, but this certainly does not mean that he does not love that grandchild.

11. FEI OBJECTION. This proposed finding of fact has no basis in the record. Plaintiffs misrepresent Mr. Raffo's testimony. Mr. Raffo was asked, on direct examination, to name the elephants that he "presented in the show," not to name the elephants that were on the Blue Unit when he worked there. 3-4-09 a.m. at 7:11 (Raffo). There is no evidence that Mr. Raffo presented Mysore in the show, so his omission of her from his answer is entirely beside the point. The assertion that it is "not uncommon" for a grandparent to forget the names of grandchildren has no basis in fact. Plaintiffs cannot explain away the obvious implication that flows from Mr. Rider's omission of one of his alleged "girls" when he was asked by his own lawyer to name them.

12. Currently, Karen and Nicole are still on the road with the Circus's "Blue Unit," and Lutzi, Jewell, Susan, Mysore, and Zina are at FEI's "Center for Elephant Conservation" ("CEC") in Florida. See Chart, PWC 169.

12. FEI OBJECTION: No objection to the first sentence. OBJECTION: The cited exhibit (PWC 169) is inaccurate as it contains the wrong birth date for Nicole. DX 1 at 6; 3-11-09 p.m. at 97:25-99:5 (Sowalsky).

13. When he worked for FEI, Mr. Rider saw the elephants mistreated on a daily basis by being hit and beaten with bull hooks. Trial Tr. 49:25 - 51:14, Feb. 12, 2009 a.m. (describing

the “excessive” use of the bull hook, and how the handlers would always hook the elephants on the top of the ear, on the head, hit them on the back of the legs or behind the knees, that “they had a habit, every time they wanted to move an elephant over . . . they’d stab them,” “hook them in the rear,” “[a]ny time they wanted to get an elephant to respond, they were using the hook on them”); (naming the handlers who used the bull hook this way).³

13. FEI OBJECTION: The record does not support this proposed finding of fact. Mr. Rider’s assertion that he saw mistreatment of the elephants with the bull hook on a “daily” basis is refuted by his own 2006 deposition testimony in which, in response to a question from his own lawyer, he testified that the FEI elephant handlers did not use the guide unless the elephants had failed first to respond to a voice command. 2-12-09 p.m. at 109:11-110:10 (Rider) (impeachment with 2006 deposition testimony).

ENDNOTE 3: See also id. 51:15 - 52:02 (describing the beating of Zina and Rebecca by Jeff Pettigrew and Andy Weller that he witnessed in Richmond, Virginia because the elephants “wouldn’t lay down” – they “took the point and kept hooking her on the top of the back, trying to pull her down . . . [t]hey kept doing it over and over and over again. And when it was done I had to go get the Wonder Dust and literally cover up the cuts on her. There was 20-plus, 30-plus on one – 20-plus hook marks [with] little gouges in them”); id., 54:07 - 54:20 (describing the hook marks “behind he ears, on top of the head, behind the trunk, under the chin . . . cuts behind the legs. A lot of them on the back when they are laying them down”); id., 54:22 - 55:13 (describing a beating of Karen by Pat Harned when she rattled her chain when Benjamin was being hooked severely by Harned; “he yelled at Karen, and then he came over there and he started in on Karen for at least 21 minutes, 23 minutes. He had her, jabbing her under the leg, making her raise her foot up and hold it there, hitting her behind the leg, come up and jabbing her in the side . . . [h]ooking on the head and behind the ears. It went on and on”); id., 58:08 - 58:15 (incidents involving the use of the bull hook “were so frequent that it would – almost every town we were in was using the bull hook on the elephants”); id., 59:23 - 60:08 (describing a beating of the elephants in Canada by Adam Hill, Randy Peterson and Pat Harned – “they grabbed their bull hooks and they started just laying into the elephants, hooking them, hitting them”); id., 61:13 - 63:12 (describing the hooking of the baby elephants by Pat Harned and Gary Jacobson); id., 65:02 - 65:08 (elephants would be hit with bull hooks for “[a]ny behavior [the handlers] didn’t like”); see also Mr. Rider’s Testimony, Trial Tr. 21:12 - 21:20, Feb. 17, 2009 p.m. (he saw a bull hook used in a way that broke the skin of an elephant so many times that he couldn’t count them; and he saw the bull hook used in a way that made an elephant bleed “hundreds” of times); id., 22:04 - 23:19 (“all of the elephants at one time or another had blood hook marks and stuff like that and hook wel[t]s,” including Nicole, Karen, Mysore, Jewell, Susan, Lutzi, and Zina); id., 26:12 - 26:22 (he saw wounds behind the ears of elephants “two or three times a week”).

ENDNOTE 3. FEI OBJECTION: The cited testimony from Mr. Rider does not support the assertion in PFOF ¶ 13 of “daily” mistreatment of the elephants with the guide. The Richmond, Virginia, incident involving elephant Zina is refuted by Mr. Rider’s own admission that Zina never had any marks on her, which is why she was one of the elephants made available for USDA inspection. 2-12-09 p.m. at 117:7-119:1 (Rider: impeached with PWC 94A (PL 178974)); DFOF ¶ 279. Mr. Rider admitted that the New Haven incident involving elephant Karen was an instance of discipline and that he observed no wounds on Karen as a result. 2-12-09 p.m. at 115:15-116:25 (Rider); DFOF ¶ 278. Mr. Rider admitted and was impeached on the points that the incident in Ottawa, Canada, involved use of the guide by the handlers to break up an elephant fight and that Mr. Rider was not aware of any other method that could have been used to stop such an altercation among the elephants. 2-12-09 p.m. at 123:17-125:3 (Rider); DFOF ¶ 278. Despite the assertion of “daily” mistreatment with the guide, Mr. Rider admitted and was impeached on the points that none of the elephants at issue had scars behind their ears or any permanent marks as a result of their handling. 2-12-09 p.m. at 119:2-123:2 (Rider). The testimony of Mr. Rider that plaintiffs cite from the afternoon of February 17, 2009 (21:12-20, 22:04-23:19, 26:12-22) concerning alleged misuse of the bull hook that Mr. Rider purportedly observed was on redirect, and came after Mr. Rider had been impeached numerous times on cross-examination; after he already had had an opportunity on direct to state what he had observed (and only identified three specific incidents involving the elephants at issue and Zina, 2-12-09 a.m. at 51:17-52:2, 54:22-58:15, 59:23-60:8 (Rider); DFOF ¶ 277); and was elicited through leading questions from plaintiffs’ counsel. Consequently, this after-the-fact effort on redirect to shore up the assertion of “daily” bull hook misuse carries no weight.

14. Mr. Rider also saw the elephants mistreated by being kept in chains for most of the day, and days at a time when the circus was traveling on railroad cars. See Testimony of Mr.

Rider, Trial Tr. 30:18 - 30:19 (the elephants were “chained up all the time on this picket line”); id., 31:11 - 31:18 (the elephants were chained on two, opposite legs); 32:01 - 32:04 (the elephants were chained from the time he got to work until the time he left, except for when they were in the show).⁴

14. FEI OBJECTION: This proposed finding of fact is not supported by the testimony cited. In none of these citations did Mr. Rider quantify the amount of time that the elephants on the Blue Unit spent on tethers. The assertion that the elephants were chained “most of the day,” is contradicted by Mr. Rider’s own numerous conflicting accounts of how much time the elephants were chained – made in his prior depositions and in other contexts – and is refuted by the videotape evidence in this case presented by both plaintiffs and defendant. DFOF ¶ 281.

ENDNOTE 4: See also id. 34:02 - 34:05 (the elephants were chained up when he left each day and still on chains when he got to work in the morning); 36:25 (when they were chained up, they really can’t turn around); 42:01 - 42:11 (describing the elephants chained on the train “on both the same side legs;” “[t]hey would be chained on the inside legs by the wall of the train;” “Front and back. Always chained, never let loose to roam around in the train. And that’s where they stayed until we got from – when we put them on the train at night until we got there”); 42:12 - 43:23 (the elephants were rarely taken off the train, sometimes the train rides lasted many days; during the 2 ½ years he worked there the elephants were only taken off the train in the middle of a run two times); 43:24 - 45:03 (the train had a metal floor and elephants stood in urine and feces); see also Trial Tr. 23:04 - 24:10, Feb. 17, 2009 p.m. (cont.) (these chaining practices were used with Karen, Mysore, Jewell, Susan, Lutzi, and Zina).

ENDNOTE 4. FEI OBJECTION: These citations do not support the assertion that the elephants were “mistreated” by being tethered. The first citation (2-12-09 a.m. at 34:02-05 (Rider)) only addresses the brief period of time when Mr. Rider was a barn man’s assistant and only purports to speak to the time when Mr. Rider was actually at work. Mr. Rider admitted having no personal knowledge of the extent to which the elephants were tethered when it was not his work shift. 2-17-09 a.m. at 36:25-37:3 (Rider). The remaining citations, going to the tethering of the elephants on the train cars, does not support the claim of “mistreatment.” Not even plaintiffs’ experts have suggested that the elephants could be safely transported in railcars without tethers or other equally restrictive forms of restraint. DFOF ¶¶ 270-72. The testimony

about the elephants being taken off the train only “rarely” actually confirms the point that plaintiffs have greatly exaggerated the lengths of the train trips. Trips that were the length of the trip from Canada to Houston, Texas, described by Mr. Rider, 2-12-09 a.m. at 42:17-43:8 (Rider), only occurred once or twice a year. DFOF ¶ 247. The assertion that the elephants “stood in urine and feces” while on the train cars is refuted by Mr. Rider’s own admissions, on cross-examination, that urine drained through the drain holes, that when it did not drain, it was covered with sawdust and swept up and that solid waste was pushed out the train car door fifteen (15) or twenty (20) times per shift – whenever the elephants relieved themselves. 2-17-09 a.m. at 43:23-44:12, 45:7-23 (Rider).

15. Mr. Rider’s trial testimony about the daily mistreatment of the animals is augmented and corroborated by the March 2000 deposition testimony he provided to the Performing Animal Welfare Society. See, e.g., PWC 184 at 9:22-10:20 (the handlers would hit the elephants on a daily basis); 12:07 - 13:15 (they would hook the elephants to make them go faster, “[h]itting them around the front leg and . . . hooking them on the back part”); 17:12 - 18:07 (describing the beating of Zina and Rebecca in Richmond, Va.); 20:05 - 20:12 (the elephants were hooked “repeatedly;” if they didn’t do something right in the ring, Randy Peterson would take both hands and “hook them underneath the knee and start ripping at them like that to make them get their foot in the air and stuff. Hit them on the forehead”); 20:17 - 21:11 (elephants that rattled their chains “would get severely beaten for it”); 21:16 - 22:18 (describes the beating of Karen in New Haven, Ct. for “rattling her chain”).⁵

15. FEI OBJECTION: Mr. Rider’s trial testimony is not “corroborated” by the self-serving *ex parte* statement that he gave to the lawyer representing PAWS on March 25, 2000. PWC 184. The exhibit is not a “deposition” because no one from the defendant was present; it was a one-sided statement given to a lawyer representing PAWS. 2-12-09 p.m. at 34:22-35:13 (Rider); PWC 184 at 1. It also does not serve to rehabilitate Mr. Rider because the statement was given on the same date on which Mr. Rider began taking money and other benefits from PAWS. DFOF ¶¶ 76-82. The statement has been cited improperly by plaintiffs here because, of the incidents referred to in PFOF ¶ 15, only the Richmond, Virginia, and New Haven, Connecticut

instances came up in Mr. Rider's direct. 2-12-09 a.m. at 51:17-52:2, 54:22-58:15 (Rider). The other instances were not subjects in the direct and therefore not properly the subject of "rehabilitation" through PWC 184. Even if PWC 184 were a deposition (and it is not) a party cannot use his own deposition at trial except in extraordinary circumstances, none of which plaintiffs ever attempted to establish at trial. Fed. R. Civ. P. 32(a)(4). Plaintiffs' use of PWC 184 is an improper attempt to circumvent this rule.

ENDNOTE 5: See also id. 24:12 - 26:04 (Pat Harned would always pick on Benjamin, Benjamin was hit "four to five times a week, at least;" hit often with the bull hook and Gary Jacobson would "us[e] the hook on the babies repeatedly"); 421:05 - 43:01 (the abuse happened in "every town;" "all your 'handlers' were the ones, they were constantly hooking . . . On a daily basis when they were walking them . . . every town"); 49:14 - 49:17 (Randy [Peterson] use to "get into and hook" Nicole); 59:09 - 59:13 ("it just deteriorated down to a point where it became Randy and his handlers becoming very hook happy and constantly beating on the elephants, especially Nicole"); 60:17 - 61:10 (Mr. Rider saw Randy Peterson "severely beat" elephants); 90:11 - 92:01 (the elephants had to stand in their own waste on the train); 93:21- 94:09 (on the train the elephants "are chained up and they can't move . . . [i]t is very cramped conditions"); 95:01 - 95:21 (in the wintertime the elephants were on chains most of the time); 104:02 - 106:01 (Pat [Harned] beat Karen; "Sonny smacked her to keep her under control;" "Adam would lay into Sophie and Karen").

ENDNOTE 5. FEI OBJECTION: The portions of the March 25, 2000 PAWS statement cited herein have no weight for the reasons stated in response to PFOF ¶ 15. In addition, these events are not properly before the Court because these instances were not addressed in Mr. Rider's direct testimony and therefore could not be the proper subjects of "rehabilitation" through a prior, supposedly "consistent," statement. These citations are an inappropriate effort – through citations buried in footnote to a proposed finding of fact – to supplement Mr. Rider's testimony after the fact when he did not go into these matters on the stand. Even if PWC 184 were a deposition (and it is not) a party cannot use his own deposition at trial except in extraordinary circumstances, none of which plaintiffs ever attempted to

establish at trial. Fed. R. Civ. P. 32(a)(4). Plaintiffs' use of PWC 184 is an improper attempt to circumvent this rule.

16. Mr. Rider's trial testimony is further augmented and corroborated by the July 2000 Affidavit that he provided to the United States Department of Agriculture ("USDA"). See, e.g., PWC 20 at 1 ("[t]he abuse at Ringling Brothers is 6 out of 7 days a week, it is just an on going daily event at every town listed on the route cards"); id. at 1-2 (describing specific incidents of abuse, including a beating in October 1997 of Nicole and Sophie because they "did not perform in the show correctly and they were being punished;" id. at 2 (describing the 1998 beating of Zina and Rebecca in Richmond, Va.); id. at 3 (describing the beating of Karen in New Haven, Ct., because she "rattled her chain" when she saw Pat Harned beating Benjamin); id. at 4-5 (describing additional incidents).⁶

16. FEI OBJECTION: The affidavit that Mr. Rider gave the USDA in July 2000 neither "augments" nor "corroborates" the testimony that he gave at trial. The references in PFOF ¶ 16 to incidents involving elephant Nicole do not augment anything Mr. Rider testified to in his direct because Mr. Rider did not identify any incidents involving Nicole in his direct. 2-12-09 a.m. at 16:19-101:25 (Rider); 2-12-09 p.m. at 2:5-9:6 (Rider). Thus, these citations to the affidavit are an inappropriate attempt to provide substantive testimony that was never given under the guise of "rehabilitation." Moreover, the affidavit in fact contradicts Mr. Rider's trial testimony and demonstrates, through its inconsistencies with other statements that Mr. Rider has given, that Mr. Rider has no credibility. As to the purported "beating" of Zina in Richmond, the affidavit leaves out (PWC 20 at 2) the point that one of the individuals involved (Andrew Weller) is the father of Mr. Rider's grandson and owes child support and therefore is a person as to whom Mr. Rider has a bias, DFOF ¶ 279 – facts fact that clearly would have been material to USDA in evaluating Mr. Rider's credibility. Furthermore, the affidavit claims that the Richmond "beating" left Zina with more than twenty-four (24) hook marks and Rebecca with more than thirty-six (36) hook marks that Mr. Rider counted "immediately" after the purported "beating." PWC 20 at 2. However, four months earlier, in the PAWS statement (which was

closer in time to the events in question), Mr. Rider stated that Zina had twenty-three (23) hook marks and Rebecca had twenty-eight (28) and that he and “John,” the day barn man, had counted them “one day,” PWC 184 at 17:12-18:02 – facts that nowhere appear in the USDA affidavit. These material inconsistencies in the sworn accounts (given four months apart) of a single incident render unbelievable any version of it by Mr. Rider. Similarly, the USDA affidavit asserts that, in New Haven, Mr. Harned “beat” elephant Karen for rattling her chain in response to Mr. Harned’s mistreatment of elephant Benjamin. PWC 20 at 3. However, in the statement to PAWS, Mr. Rider stated that the elephants rattled their chains because they wanted more hay, PWC 184 at 20:21-21:4, and the PAWS statement’s account of Karen’s alleged “beating” in New Haven makes no mention of Benjamin, let alone the assertion that Karen’s chain-rattling was in response to Mr. Harned’s alleged mistreatment of Benjamin, *id.* at 21:16-22:18. Furthermore, Mr. Rider embellished the story even further in 2002 when he told a newspaper that Karen had been “made to stand on one foot and beaten,” PWC 94A at 243 – a fantastical detail that did not appear in either prior version of this statement. These significant conflicts in the basic facts, purportedly observed by Mr. Rider as an eyewitness, make his testimony unbelievable.

ENDNOTE 6: See also *id.* at 5 (describing the beating of Nicole; and that in April 1999, Randy and Adam made Mr. Rider close the tent “so they could beat Sophie and Nicole for playing with each other”); *id.* (the beating of the elephants in Canada by Adam Hill, Randy Peterson, and Pat Harned); *id.* (Pat Harned “was always beating on Benjamin, because he was a young bull elephant and was full of play”); *id.* at 6 (providing a list of the handlers who “abused animals daily,” including “Adam Hill, Pat Harned, Randy Peterson, Scott Green, Jeff Pettigrew, Robert Ridley, Jeff (known as ‘Cowboy’), James . . . Dave McFarland, Steve Hart, Josh, Dave Whailey, Dave Wiley, Daniel Raffo, and Gary Jacobson (baby trainer),” and stating that “[t]hese people use excessive hooking and hitting with the bull hooks and hooking . . .;” *id.* at 7 (“I saw baby Benjamin systematically abused . . . by Pat Harned”).

ENDNOTE 6. FEI OBJECTION: These citations to the affidavit are not rehabilitative but, instead, in the guise of “rehabilitation” with a prior, allegedly “consistent” statement, relate

purported facts that Mr. Rider claims to have observed but did not testify to on direct. Mr. Rider remembered few of these details in his direct examination. In particular, there was no testimony on direct about the purported “systematic” abuse of elephant Benjamin. In fact, the Court struck, as non-responsive, Mr. Rider’s attempt to testify about the alleged “hooking and hitting” of Benjamin. 2-12-09 a.m. 57:5-58:2 (Rider). Furthermore, in response to questions from the Court, Mr. Rider admitted that Mr. Harned used the guide with respect to Benjamin when Benjamin did not respond to voice commands such as “leave Shirley alone,” which is not evidence of abuse, let alone “systematic” abuse. *Id.* at 62:23-63:12.

17. Mr. Rider’s accounts of the daily mistreatment of the elephants are also corroborated by several other former Ringling Bros. employees, including Frank Hagan, Gerald Ramos, Archele Hundley, Robert Tom, Jr., and Margaret Tom, see Proposed Findings of Fact (“PFF”) ¶¶ 139-147.

17. FEI OBJECTION: None of these witnesses “corroborates” Mr. Rider’s “account of daily mistreatment.” None of these individuals is a credible witness because they all either have biases against FEI for employment disciplinary actions, have criminal records for crimes of dishonesty or are closely aligned with, or have been paid money by, PETA. DFOF ¶¶ 314-315, 317-327. Furthermore, none of these witnesses (except Mr. Ramos who was there six (6) days) worked with elephants, three of them (Ms. Hundley and the Toms) worked on the Red Unit and the two who worked on the Blue Unit (Messrs. Hagan and Ramos) worked there during a different time period than Mr. Rider. *Id.*

18. Mr. Rider’s accounts of mistreatment are also corroborated by a detailed complaint sent to the USDA in 1998 based on the eye-witness accounts of two other former Ringling Bros. employees, Glen Ewell and James Stechon, who worked on the Blue Unit during the same time frame that Mr. Rider worked there. See PWC 190D (December 21, 1998 Letter to the USDA describing the eye-witness accounts of Mr. Ewell and Mr. Stechon); *id.* at 2 (reporting that on many occasions they witnessed Ringling Brothers’ elephant handlers and trainers, including individuals named “Randy,” “Adam,” “Pat,” “Steve,” and “Robby,” beat elephants with a bull hook; and that the elephants were repeatedly beat with bull hooks on the head, ankles,

and other parts of their bodies to make them behave in a particular way or to punish them for not performing as desired).⁷

18. FEI OBJECTION: Mr. Rider's testimony is not "corroborated" by the statements of Glenn Ewell or James Stehcon. All of this is inadmissible hearsay and was admitted by agreement pursuant to a completeness objection by plaintiffs to DX 71A to show what USDA had in the record before it when it rejected the baseless claims of these two individuals, not for the truth of the matter asserted. 3-11-09 p.m. at 16:15-20, 34:18-20, 45:3-14, 58:14-23. These statements also were *ex parte* and were not subject to cross-examination. Neither of these individuals is a credible witness in any event. Mr. Ewell has a history of drug use and domestic abuse with respect to his wife and child. PWC 190C at 1. Mr. Stehcon has a record of domestic violence, assaulting police officers, carrying a concealed weapon and drug possession. *Id.* Mr. Ewell was a plaintiff in this case for a month and then was dropped without explanation in August 2000. *See* Compl., Civ. No. 00-1641 (DE 1) (7-11-00); Am. Compl., Civ. No. 00-1641 (DE 7) (8-11-00). Furthermore, USDA investigated the claims of Messrs. Ewell and Stehcon and determined that they had no merit. USDA closed the matter because "no violations were documented." DX 71A at 2. In response to a complaint by plaintiffs' counsel that USDA was not doing its job enforcing the AWA as to FEI's elephants in the Ewell/Stechcon and other cases, USDA wrote: "APHIS Animal care field inspectors are trained professionals. In addition to their years of experience they have also received training specific to inspecting elephants. In fiscal year (FY) 1999 Animal Care conducted three courses in elephant training and handling." PWC 190B at 2.

ENDNOTE 7: See also *id.* at 3 ("[b]oth men also testified that the Ringling Brothers' elephant handlers and trainers use the sharp end of the bull hook to make the elephants do as they wish, by hooking it onto their ears, their ankles, and other parts of their hides and then pulling on the bull hook . These men also testified that these beatings and stabbings with the bull hooks cause the elephants much distress and pain, as evidenced by the animals' cries and other

distressful verbal reactions, and that the elephant handlers often draw blood from the animals when they use the bull hooks”); id. (“Mr. Ewell and Mr. Stechon testified that particular elephants are beaten more frequently, including . . . “Nicole,” and a baby elephant named “Benjamin.” The men testified that they have seen Randy and Adam beat Nicole on several occasions, and that Randy beat her so hard once that he shattered a bull hook on her. Mr. Stechon testified that he saw three of the handlers and trainers, Randy, Adam, and Pat, beating Nicole at one time); id. (“The men also testified that they also witnessed Pat beat the baby elephant Benjamin many times”); id. at 4 (both men “also testified that elephants are left chained hour after hour, each day, and that, with few exceptions, they are allowed off their chains only when they perform. In addition when the circus is traveling, the elephants remain chained in the stock cars for as long as 2-3 days consecutively, and are not provided any opportunity, whatsoever, to walk around, or otherwise exercise”).

This letter was sent to the USDA before Benjamin died, and requested that, in view of the eyewitness accounts of the beatings of Benjamin by Pat Harned, the USDA take action to “ensure” that he (and Nicole) “are protected from further abuse and mistreatment.” See id. at 5. However, as with all of the other complaints sent to the USDA, the agency did nothing, see DX , and 7 months later, Benjamin was dead. See PWC 24, USDA Investigation Report, at 3 (PL 03143) (concluding that Benjamin, “seeing and/or being ‘touched’ or ‘poked’ by Mr. Harned with an ankus created behavioral stress and trauma which precipitated in the physical harm and ultimate death of the animal”).

ENDNOTE 7. FEI OBJECTION: The references to the additional statements from Messrs. Ewell and Stechon are not competent evidence for the reasons stated above in response to PFOF ¶ 18. The Ewell and Stechon allegations were refuted by the affidavits of FEI personnel as well as the opinion of a veterinarian who found no evidence of elephant abuse, PWC 190A at 3-4, which is evidently why USDA closed this case with a finding of “no violations were documented,” DX 71A at 2. Furthermore the details in this endnote are not matters as to which Rider testified in his direct, 2-12-09 a.m. at 16:19-101:25 (Rider); 2-12-09 p.m. at 2:5-9:6 (Rider), so they are not corroborative of his testimony.

The reference in the second paragraph of the endnote to the death of Benjamin is irrelevant. Benjamin is not one of the elephants that Mr. Rider allegedly formed an “attachment” to and even were he alive today, Benjamin would be excluded from the case by virtue of the partial summary judgment in favor of FEI as to CBW elephants. DE 173 at 23. The USDA

investigative report that plaintiffs rely on (PWC 24) has no foundation because plaintiffs offered no evidence as to the authority of the person who wrote it or the authoritative value, if any, of such a report with the USDA. Furthermore, the apparent conclusion of the investigator that Benjamin's death was caused by use of the guide is wrong and not based upon competent evidence. There is no evidence that the investigator was present when the elephant died. The list of materials that the investigator relied upon shows that the investigator did not review the most critical piece of evidence generated – the video of the actual death of the animal. PWC 24 at 7-8. That video tape, DX 183A, makes it clear that the guide had nothing to do with the elephant's death. The video tape demonstrates conclusively that plaintiffs' repeated assertions that Benjamin was "beaten" to death are patently false, which explains why plaintiffs vigorously opposed the introduction of the tape into evidence and preferred instead to rely upon the uninformed speculation of an investigator who did not have all of the facts. Furthermore, the only individual who was present when the elephant died and who testified at trial – Angela Martin (by deposition) – testified that Mr. Harned, the individual who supposedly "poked" Benjamin to his death, had nothing in his hands during the entire sequence of events leading up to the elephant's death in the pond. 3-12-09 p.m. (5:45) at 62:25-66:19 (A. Martin (by deposition)); 3-13-09 a.m. at 8:18-9:8 (A. Martin (by deposition)). USDA ultimately closed the Benjamin case because, despite the groundless speculation of the investigator, "no violations were documented." DX 71A at 6.

19. Mr. Rider's accounts of mistreatment are also corroborated by the testimony of Pat CuvIELLO, Sergeant Lanette Williams, and video and photographic evidence provided by those witnesses, see PFF ¶¶ 149-154; by FEI's own internal documents, see PFF ¶ 136; by FEI's own current employees, see PFF ¶¶ 134-35; and by USDA documents, see PFF ¶¶ 137-38. See also Trial Testimony of Pat CuvIELLO, Trial Tr. 89:21 - 90:04 (Mr. CuvIELLO explains that he supports Mr. Rider wholeheartedly because "I had been [monitoring the circus] for about 12 years prior to meeting Mr. Rider, so I had seen this stuff happening, so when Tom Rider came out, I knew

what he was saying was true, because I had witnessed it myself, and I supported him in helping the elephants in the circus”).

19. FEI OBJECTION: The citations in this proposed finding of fact do not “corroborate” Mr. Rider’s purported “accounts of mistreatment.” See FEI objections to PFOF ¶¶ 134-38 & 149-54, *infra*. The citation to the trial and/or deposition testimony of Messrs. Metzler, Frisco, Jacobson and Feld, PFOF ¶ 134-35, is particularly ironic because these witnesses all described uses of the guide that are proper and none of which resulted in an adverse effect upon, much less any “wound,” “harm” or “harassment” of, the elephants involved. If this is the guide use that Mr. Rider claims he witnessed, then he witnessed nothing that could conceivably constitute “abuse” or a “taking” of these elephants. The reference to Ms. Swart’s deposition testimony is totally irrelevant since she described events that occurred on the Red Unit, are remote in time – more than ten (10) years ago – that involved an elephant trainer (Gunther Gebel Williams) who died in 2001. Her apparent lifelong involvement with animal rights and animal special interest causes deprives her testimony of any pretense of objectivity. DFOF ¶ 334. Ms. Durham Williams’ testimony (concerning events on the Red Unit that also are remote in time (1999 and 2001)) likewise is beside the point. At trial, her description of guide use that she observed was consistent with the FEI witnesses and did not describe it as being used in an abusive manner. 2-5-09 p.m. at 137:5-138:8, 141:25-143:17 (Williams Durham). As she put it, most of the time the handlers used the bull hook “as a guiding tool,” “put[ting] it against the skin but not in a harsh manner ... more of a light poke.” *Id.* at 154:21-25. The only handlers whose use of the guide she took issue with were Gunther Gebel Williams and Mark Gebel, 2-5-08 p.m. at 142:19-25, 153:20-155:7 (Williams Durham); 2-6-09 p.m. at 16:15-18:25 (Williams Durham). The former is deceased and the latter is no longer employed by FEI. The events involving Mark Gebel in 2001 were the subject of a state criminal case in which he was acquitted by a jury without having

to mount a defense. DFOF ¶¶ 329, 356. And the videos, photographs and other material that Ms. Williams Durham assisted in compiling with respect to the Red Unit elephants in 1999 were presented to a state prosecutor who brought no action against FEI. DFOF ¶¶ 330, 357. These materials and the materials that Ms. Williams Durham assisted in compiling with respect to the 2001 incident involving Mr. Gebel were both presented to the USDA but no enforcement action resulted. DFOF ¶ 356-57. In fact, USDA specifically closed the 2001 Gebel matter “due to insufficient evidence.” DX 71A at 4. Mr. CuvIELlo’s testimony is not corroborative, due to the overwhelming bias he has towards elephants in the circus and towards the Ringling Bros. Circus in particular, as illustrated by, among other things, the website he has established that is devoted solely to criticizing Ringling Bros. DFOF ¶ 332-33. None of the USDA materials cited by plaintiffs resulted in any violation of the AWA. Indeed, USDA has never found FEI to be in violation of the AWA as to the use of the guide to manage FEI’s elephants. DFOF ¶¶ 347-48; DX 71A.

20. Mr. Rider observed the negative impacts this mistreatment has on the elephants, which in turn impaired his own aesthetic enjoyment of them. Trial Tr. 50:17 - 50:20, Feb. 12, 2009 a.m. (explaining that the elephants “fear” the bull hook, and that he has “seen elephants cringe when it comes at them”); *id.*, 53:02 (he saw elephants bleed from bull hook wounds); *id.*, 64:19 - 64:23 (he saw elephants “cringing, trumpeting, squealing, making squealing noises, and just cowering”); *id.*, 35:05 - 35:17 (the elephants “would always sway back and forth” when chained . . . it was hard for them to lay down. If they laid down and tried to get up, they were always rocking, and kept rocking back and forth”); *id.*, 36:25 (“[w]hen they are chained up, they really can’t turn around”); Trial Tr. 22:07 - 22:09, Feb. 17, 2009 p.m. (cont.) (“all the elephants at one time or another had bloody hook marks and stuff like that and hook wel[t]s”); *id.*, 22:14 - 23:03 (he saw bloody hook marks on Nicole, Karen, Mysore, Jewell, Susan, Lutzi, and Zina); *id.*, 26:02 - 26:22 (he saw cuts on the ears of the elephants caused by bull hooks, and he saw wounds behind their ears “two or three times a week”); *see also* PWC 184, 17:12:18:07 (testifying about the beating of Zina and Rebecca, “I got very upset that night); *id.*, 26:05 - 26:15 (he heard “these outrageous wails of the baby getting hit”); 38:08 - 39:02 (the elephants “would flinch” every time Gary Jacobson was around); and the adult elephants “would cower, just back up in fear” when anyone came near them, they were always “in fear [that] something was going to happen;” “that’s a bad feeling . . . to watch [the elephants] show fear of a broom”); *id.*, 49:11 - 49:13 (the elephants had “scars and scabs . . . from where they had been hooked so much”); *see also* DX 16, Tom Rider’s Response to Interrogatory No. 16, at 32 (“I loved those elephants, and I didn’t want

to see them harmed, but I saw it”); PWC 20 (USDA Affidavit) at 1 (PL 04458) (“I saw blood on the trunks of the elephants”); PWC 184 (PAWS Deposition), 25:14 - 25:17 (he “hear[d] the screams of the babies” being hit by Pat Harned).

20. FEI OBJECTION: The claim of “aesthetic injury” that Mr. Rider states he suffered as a result of his observations of the alleged mistreatment of the elephants is undermined by the facts that he worked for FEI for two and one half years without ever complaining about any of this purported mistreatment to anyone in management, to the veterinarians, to the USDA or local or state animal control officers or to the press, all of whom were present at various times on the Blue Unit and were accessible to Mr. Rider and that he allowed his twenty (20)-year old daughter to come into this allegedly abusive atmosphere to work for FEI. DFOF ¶¶ 54-61. The citations to Mr. Rider’s redirect testimony as to cuts on the bodies of and behind the ears of the six elephants at issue and Zina carry no weight because these details did not come out in Mr. Rider’s direct and, during his cross-examination, he admitted that none of these elephants had any permanent scars behind their ears and the occasional marks on their bodies came and went in a few days. DFOF ¶¶ 277-80. Mr. Rider’s account of the alleged incident in Richmond, Virginia involving Zina is not believable, as was discussed, *supra*, in FEI’s response to PFOF ¶¶ 10 & 16, *supra*. See also DFOF ¶ 279. Plaintiffs’ references in PFOF ¶ 20 to Mr. Rider’s 2000 PAWS statement and to his 2000 USDA affidavit are entitled to no weight because these matters were not discussed in Mr. Rider’s direct, and the citation to them here is an improper attempt to provide substantive testimony that Mr. Rider never gave in the guise of a prior, allegedly “consistent” statement.

21. Despite the routine mistreatment that he observed, Mr. Rider stayed at Ringling Bros. for 2 ½ years because he loved the elephants and wanted them to at least have someone around who could give them love and affection. Trial Tr. 46:23 - 47:01, Feb. 17, 2009 p.m. (cont.) (“I loved my elephants and I knew that if I was there, at least they were . . . hearing me every day, they were seeing me every afternoon and I could give them my love and affection”); Trial Tr. 70:01 - 70:05, Feb. 12, 2009 a.m. (“I stayed there for 2 -1/2 years even though I saw all

this that went on because I cared and I loved those girls. I loved those animals.”); see also DX 16, Response to Interrogatory No. 16, at 32 (“If felt that my emotional feelings for those elephants, my love for those elephants, was shown by not striking them”); id. (“When I was on the train it would be the same thing . . . I was up there my myself keeping them as content as I could”).

21. FEI OBJECTION. This proposed finding of fact is not supported by the record. The impeachment of Mr. Rider’s self-serving testimony – that he stayed with FEI for two and one half years despite the alleged “abuse” because he “loved” the elephants at issue in this case and Zina – was overwhelming. The professions of elephant “love” are totally incompatible with the fact that Mr. Rider did not lift one finger the entire time he was with FEI to stop the abuse that he claims he witnessed daily. DFOF ¶¶ 51-60. If, as he claims, Mr. Rider “loved” the FEI elephants as much as his children and grandson, DFOF ¶ 61, he would not have stood silent, allowed the abuse to continue all in an effort to save a job that he ultimately quit voluntarily in any event. The failure to take any action whatsoever, is fatal to the credibility of Mr. Rider’s claims of elephant “love.”

Mr. Rider admitted telling an audience of college students in 2002 that the *only* reason that he stayed at FEI was because of the three elephants owned by Richard Chipperfield. DFOF ¶ 115. Furthermore, despite claiming to “love” the six elephants at issue and Zina, there is no evidence that Mr. Rider ever spent any extra time with them in his off hours and on his day off. DFOF ¶ 65. Indeed, Mr. Rider did not even produce photographs of the elephants, materials that one naturally would expect to see from someone who claims that he “loves” those animals like his own children and grandchild. Even Archele Hundley had photographs of herself and the elephants. DX 127A. Ironically, the only photographs in this case of Mr. Rider with an elephant are of Mr. Rider handling elephant Meena with a bull hook, despite Mr. Rider’s professed abhorrence of that instrument. DX 32. It is clear that Mr. Rider stayed with FEI until the normal

end point in the touring season for reasons personal to Mr. Rider, namely, because the FEI job offered higher pay and better working conditions than the elephant job he had held with the Clyde Beatty – Cole Bros. Circus; it had nothing to do with the elephants or his “love” of them. DFOF ¶ 53. And he left the FEI job, voluntarily, in the normal course – with no complaints on the way out to anyone about elephant mistreatment, DFOF ¶¶ 64, 66 – because he had an opportunity to travel in Europe with Daniel Raffo and tend to the three Chipperfield elephants. DFOF ¶ 67. The job with Raffo – one of the very persons Mr. Rider now claims abused the FEI elephants in the period 1997-99 – is not a job that any reasonable person in Mr. Rider’s shoes would have taken if in fact there had been such elephant abuse and if in fact such alleged abuse had caused Mr. Rider “aesthetic injury.” DFOF ¶ 67.

22. During his time at the circus, Mr. Rider complained to his fellow workers about the mistreatment of the elephants, including his supervisor Randy Peterson and his union steward Jeff Pettigrew. See Trial Tr. 8:12 - 8:17, Feb. 12, 2009 p.m. (he complained to Peterson who was his supervisor); id. at 11:04 - 11:16 (he complained to Pettigrew who was the union steward). However, whenever he complained, he was constantly told that hitting and beating the elephants with bull hooks was “discipline” that was necessary for the elephants. Trial Tr. 58:16 - 59:21, Feb. 12, 2009 a.m.; id. 59:08 - 09 (“If anybody ever asked [], why do you use the bull hook, it was always discipline, discipline that’s the word that came out”); Trial Tr. 8:08 - 11:16, Feb. 17, 2009 p.m. (cont.); PWC 20 (USDA Affidavit) at 2 (PL 04459) (in Greensboro, NC, “I had been doing a lot of complaining about the animal abuse, Randy wanted to get me out of the circus because of my complaints, Randy knew I didn’t like the animal abuse”); id. at 18-19 (“I told Alex [Vargas] about the animal abuse, he said he couldn’t do anything about it because he didn’t want to lose his job”); PWC 184 (PAWS Deposition), 15:06 - 15:12 (in Greensboro Randy Peterson threatened to get rid of Mr. Rider because he was outspoken about the bull hook); id. 64:22 - 65:02 (that’s their “discipline for the elephants” – “smack them on the head” with a bull hook); 59:16 - 20 (“I went to Alex [Vargas] one time in Jacksonville, Florida and I told him the same thing. I said, you know, this has to stop. And he goes, well, it’s not going to stop because it’s just discipline . . . this is what they called it”); see also DX 32 at 31 (Mr. Rider often complained to his fellow workers about this mistreatment); id. (detailing the times he complained to Jeff Pettigrew, Randy Peterson, and Alex Vargas). .

22. FEI OBJECTION: Mr. Rider’s claim that he “complained to his fellow workers about the mistreatment of the elephants” is not supported by the record and is not credible. In the first place, it is not corroborated. Mr. Raffo, who was an elephant handler on the Blue Unit during

the entire time period that Mr. Rider worked for FEI testified, without contradiction, that Mr. Rider never complained to him or anyone else about the use of the bull hook or any other issues with respect to the elephants. 3-4-09 a.m. at 44:4-9 (Raffo). Nor did Mr. Rider complain about elephant mistreatment to Mr. Raffo when Mr. Rider worked for Mr. Raffo in Europe. *Id.* at 25:6-24. Indeed, Mr. Raffo testified, in response to questions from counsel for plaintiff, that if Mr. Rider had been a complainer, Mr. Raffo would not have taken him to Europe. *Id.* at 44:10-14. Furthermore, Geoffrey Pettigrew, an elephant handler and the union steward for the Blue Unit elephant workers during the time period that Mr. Rider worked for FEI, also testified (by deposition) that Mr. Rider never complained to him about elephant mistreatment or elephant abuse the entire time that Mr. Rider worked for FEI. DX 348A (Pettigrew Dep. at 147:8-22). Which is not to say Mr. Rider did no complaining. In fact, he complained frequently to Mr. Pettigrew about the pay scale, accommodations on the train and making sure he was getting his day off, all of which Mr. Pettigrew handled in accordance with the collective bargaining agreement between FEI and the Teamsters Union. *Id.* at 148:9-149:1. Even on the day he left his employment with FEI to go to Europe with Mr. Raffo, Mr. Rider made no complaints to Mr. Pettigrew about purported elephant mistreatment. *Id.* at 150:3-151:3. Furthermore, the assertion that Mr. Rider complained about purported misuse of the guide is completely contradicted by the three photographs that were made of him in December 1999 using a guide to maneuver elephant Meena. DX 32; DFOF ¶¶ 68-69. A person who really did complain all the time about how the guide was used on his “girls” would never have permitted himself to be photographed using a guide on one of those “girls.” The photographs completely undermine any testimony by Mr. Rider about alleged guide misuse. The photographs have the same credibility-destroying effect on Mr. Rider as if Sarah Brady were photographed pointing a handgun at someone.

23. Mr. Rider did not take his complaints to anyone above Mr. Peterson, because Mr. Peterson was his supervisor and he was afraid that he would lose his job if he did so. Trial Tr. 12:02 - 12:25, Feb. 17, 2009 p.m. (cont.); id. (“And I knew at that point if you went to anybody above your supervisor, which I really didn’t have to go. I should have went to my supervisor and [it] should have been handled from that point. So when I found out that they are just going to call it discipline, I know I can’t walk up to Kenneth Feld and go, ‘Hey, Mr. Feld, come here, look what they’re doing to your animals,’ because you’re done. You are going to lose your job for some reason. It doesn’t have to be that, but you will not be there very long.”); see also Trial Tr. 59:20-21, Feb. 12, 2009 a.m. (“I went to my supervisor, and that’s about as far as I could go”); PWC 178 at 117:06 - 117:09 Pettigrew Dep., (Nov. 14, 2008) (Randy Peterson was Mr. Rider’s supervisor on the Blue Unit). Mr. Rider followed FEI policy when he reported the mistreatment to his immediate supervisor, Randy Peterson. See Trial Tr. 17:21 - 18:05, March 4, 2009 p.m. (Kenneth Feld testified that the “policy” at FEI is that employees are “encouraged if they view what they would say is mistreatment to speak with supervisors about that”).

23. FEI OBJECTION: The assertion that Mr. Rider did not take his purported concerns about the treatment of the elephants to management because he “was afraid he would lose his job if he did so” is not credible. In the first place, despite working at FEI for two and one half years and despite the assertion that “69 people in two years” worked with the Blue Unit elephants, Mr. Rider did not identify a single employee who was fired for complaining about animal mistreatment or expressed any such “fear” of being fired to him. Furthermore, the lack-of-complaints-to-management-due-to-fear-of-being-fired theory is refuted by the undisputed fact that Mr. Rider met with the Blue Unit manager on Mr. Rider’s last day of work with FEI – at a time when Mr. Rider already had another job (with Mr. Raffo) and therefore at time when there was absolutely no threat whatsoever to his FEI employment – and he *still* did not say anything at all about the alleged mistreatment of his “girls.” DFOF ¶ 61. In addition, Mr. Rider was a member of the Teamsters Union, and the record is undisputed that a member of the union could not be fired for complaining about how the animals were treated. DX 348A (Pettigrew Dep. at 145:20-146:9); DFOF ¶ 61. Indeed, had Mr. Rider actually complained about animal mistreatment, that issue would have been required to be taken by the union to management, and if a satisfactory resolution were not achieved, the union could have called a work stoppage or

strike. DX 348A (Pettigrew Dep. at 145:20-147:7). Furthermore, although he initially denied it, Mr. Rider was impeached with prior inconsistent statements that demonstrated quite clearly that he consulted with the union on this subject and the union advised him that he could not be fired for complaining about the treatment of the animals. 2-17-09 p.m. (2:48) at 69:24-70:7, 70:25-72:16 (Rider). Mr. Rider's *post hoc* rationalization for not complaining to management is also refuted by his own false testimony to the Nebraska Legislature, Committee on Judiciary, in 2006. There, Mr. Rider stated that he had been "written up" three times by FEI for complaining about animal abuse. DFOF ¶ 62. If in fact Mr. Rider never complained to management because he feared being fired, then how did he get "written up" by management for complaining? The Nebraska testimony was false because the write ups are in evidence and were issued to Mr. Rider for missing work, insubordinate conduct and drunk and disorderly behavior – events that he admits took place and events that he did not disclose to the Nebraska Legislature. DFOF ¶ 63; PWC 94A at 249-76.

The assertion that Mr. Rider could not just walk up to Kenneth Feld and complain about animal abuse is refuted by Mr. Rider's own prior statements and actions. Mr. Rider admitted that Mr. Feld was backstage at the show on multiple occasions and, on one occasion in Washington, D.C., Mr. Feld actually spoke to Mr. Rider and Mr. Rider thought about talking to Mr. Feld about the elephants but ultimately did not do so. 2-12-09 p.m. at 34:10-36:11 (Rider). Although he denied this interaction initially, he was impeached with the 2000 statement to PAWS in which Mr. Rider described this interaction with Mr. Feld quite clearly. *Id.* Furthermore, Mr. Rider claims that the reason he obtained the job in FEI in the first place was due to a conversation he had with Mr. Feld. *Id.* at 17:6-19:11, 36:9-11. So the insinuation that

Mr. Feld was unapproachable is simply false. If Mr. Rider really cared about his “girls” as much as he claims and was so upset about their treatment, he could have told it all to Mr. Feld.

The “fear of being fired” is a theory that has been invented after the fact to attempt to explain away the fact that, although Mr. Rider’s “girls” were allegedly being mistreated, he never did anything about it at the time. It has no credibility and should be rejected.

24. Mr. Rider also did not complain to the USDA or any other authorities while he was employed at the circus because he was afraid that he would lose his job, because that is what the Ringling Bros. employees understood would happen if they said anything about the mistreatment that goes on at the circus. Id.; see also Trial Tr. 12:04 - 12:13, Feb. 17, 2009 p.m. (cont.) (“I didn’t want to lose my job . . . everybody on the animal crew knew that. If you complain . . . you’re going to get fired; maybe not for that, but they are gong to find another reason. So it was just a known fact . . . you hide everything from the USDA, you don’t tell the USDA, you don’t even tell the general public what goes on. Everything is kept quiet”); see also PWC 20 (USDA Affidavit) at 1 (“[w]hen I was hired, I was told that if you complain to the USDA or the news media that we would lose our jobs”). Mr. Rider understood that while Ringling Bros. would not be overt about firing him for complaining about the mistreatment of the animals, it would find a way to fire him for other reasons. Trial Tr. 12:04 - 12:13, Feb. 17, 2009 p.m. (cont.)

24. FEI OBJECTION: The “fear of being fired” theory advanced here to explain away Mr. Rider’s failure to complain to the USDA about the purported elephant mistreatment has no support for the same reasons stated in response to PFOF ¶ 23, *supra*. Moreover, even if it were true that Mr. Rider feared being fired by an overt complaint to USDA, Mr. Rider never explained why it was he could not have contacted the USDA – or any other authority, including the media – anonymously. 2-12-09 p.m. at 36:12-37:11 (Rider). The assertion that “everyone on the animal crew knew” that complaining would get one fired is not supported by Mr. Rider’s identification of a single person who told him that. The further assertion that FEI would “find a way” to fire him if he complained is ridiculous. Mr. Rider contends that he did in fact complain to Mr. Peterson and admits that he was written up three times for missing work, insubordinate behavior and drunken and disorderly conduct. DFOF ¶ 63. He could have been fired for any one

of these reasons, but he was not. *Id.* The covert, “find-a-way-to-fire-him” theory does not stand up under even Mr. Rider’s version of the facts. FEI had ample basis to fire him but did not do so.

25. Randy Peterson and Jeff Pettigrew themselves hit elephants with bull hooks on a regular basis, and this treatment did not stop after Mr. Rider complained to them. See Trial Tr. 8:18 - 9:16, Feb. 17, 2009 p.m. (cont.); id., 11:17 - 12:01. This testimony is corroborated by the testimony of Pat CuvIELLO, Trial Tr. 6:02 - 6:24, Feb. 9, 2009 p.m., and videotape of Mr. Pettigrew jabbing an elephant with a bull hook, see id.; PWC 132L; it is also corroborated by the testimony of Kenneth Feld who admitted that all of the Ringling Bros. handlers strike elephants with bull hooks. PFF ¶ 135; see also Chart C, PWC 183 (list of elephant handlers).

25. FEI OBJECTION: This finding of fact rests on a false premise. Although he denied it initially, Mr. Rider was impeached with his own interrogatory answer that, in response to Mr. Rider’s complaints to Mr. Pettigrew about the latter’s elephant handling, Mr. Pettigrew told Mr. Rider that Mr. Rider did not know what he was talking about. 2-12-09 p.m. at 27:5-28:14. (Rider). Messrs. Peterson and Vargas also told him that what Mr. Rider evidently misperceived as “abuse” was proper discipline. *Id.* at 26:16-27:4. There is no evidence that what was going on with these elephants was not in fact proper discipline. Mr. Feld testified that, regardless of the verb he or others might use to describe the way in which FEI handlers make contact with the elephants with the guide, the result is not harmful to the animals. 3-3-09 a.m. at 41:22-43:20, 118:18-119:2 (Feld). But the key point is that Mr. Rider admitted that he was not satisfied with any of the answers he received from the handlers but nonetheless did not take the matter to Jeff Steele, the Unit manager, even though Mr. Rider actually witnessed Mr. Steele verbally reprimanding certain of the handlers for marks on the some of the elephants. 2-12-09 p.m. at 28:15-30:9 (Rider). Thus, had there really been an issue with how the elephants were being treated, there is no reason to believe Mr. Steele would have failed to do something about it – but Mr. Rider never went to Mr. Steele. Nor is this proposed finding corroborated by Mr. CuvIELLO.

The testimony describing, and the seventeen (17)-second video snippet of, Mr. Pettigrew's actions do not show any harm or injury to the elephant. In fact, the elephant barely reacts, if at all, to Mr. Pettigrew's use of the guide. PWC 132L; 2-9-09 p.m. at 6:2-24 (Cuviallo).

26. Mr. Rider's concerns about losing his job if he complained are corroborated by Daniel Raffo who testified that if Mr. Rider had complained about the treatment of the animals at Ringling Bros., Mr. Raffo never would have taken him to Europe. Trial Tr. 44:10 - 44:14, March 4, 2009 a.m.

26. FEI OBJECTION: Mr. Raffo's testimony does not "corroborate" anything helpful to Mr. Rider. The proposition that Mr. Rider advances is that, although he complained to his co-workers about alleged elephant mistreatment, he did not complain to *FEI management* because he feared being fired. There is no evidence that Mr. Raffo held a management position when he worked with FEI in 1994 through 1999. In fact, Mr. Raffo was an elephant presenter and, along with Mr. Rider, worked feeding, washing and cleaning up after the elephants. 3-4-09 a.m. at 6:21-7:10 (Raffo). Thus, Mr. Raffo was a co-worker and Mr. Rider's failure to complain to him proves nothing about a fear of complaining to FEI management. But, by the same token, the undisputed facts that Mr. Rider never complained to Mr. Raffo and that Mr. Raffo never heard about any complaints by Mr. Rider to others, *id.* at 44:4-9, sharply undermines Mr. Rider's assertion that he actually did complain frequently to his co-workers about alleged elephant mistreatment.

27. Mr. Rider's concerns that he could lose his job if he complained about the mistreatment to others is further corroborated by the fact that he received all three disciplinary "write-ups" for other alleged employment transgressions after he started complaining about the mistreatment of the elephants, see DX 40 - 42; see also PWC 20 at 2 (in February 1998, Randy Peterson threatened to get Mr. Rider out of the circus because he was complaining a lot about the animal abuse). These concerns are further corroborated by the fact that Mr. Robert Tom also received "write-ups" for various alleged employment transgressions after he complained about the beating of an elephant by Sacha Houcke (including two "write-ups" on the same day for both missing work completely and being late for work). See DX 166 and DX 167; see also PFF ¶ 158.

27. FEI OBJECTION: The timing of Mr. Rider's "write ups" fails to "corroborate" Mr. Rider's "fear of firing" theory. The implication is that, due to his complaining, Mr. Rider feared being terminated for some trumped up reason. However, he admitted that the events that gave rise to the write-ups – missing work, insubordination and drunken and disorderly conduct – were all events that did in fact happen. DFOF ¶ 63. If, as Mr. Rider claims, the proposition is that FEI would "look for a way" to fire him, since the write-ups came after he began to complain, then why was Mr. Rider not terminated? Under his own version of the facts, he provided the company with more than ample grounds for doing so that would not have been pretextual. The truly relevant timing – which plaintiffs ignore – is that both before and after the various write-ups were issued, Mr. Rider contacted the union and was told that he could not be fired for complaining about how the animals were treated. DX 16 at 8. Furthermore, Mr. Rider never pursued a grievance under the collective bargaining agreement with respect to any of these write-ups which refutes any suggestion that he thought they were trumped up. 2-12-09 p.m. at 43:17-23 (Rider).

Mr. Tom was terminated, not because he complained about animal abuse but because he was a poor employee and failed to take proper care of the animals he was charged with – all of which is documented in the records and the unrefuted testimony of Carrie Coleman. DX 166-68; 3-5-09 p.m. 3:19-22 (Coleman). The representation that Mr. Tom did not get write ups for his own misconduct until "after" he started complaining about an alleged elephant beating is untrue. The first time Mr. Tom complained about that alleged incident was in Houston, Texas in late July 2006. 2-5-09 p.m. at 111:2-112:25 (R. Tom). By then, Mr. Tom had already been written up twice for misconduct. *Id.* at 115:3-117:24; DX 166 & 167. The insinuation that the two

write-ups were contradictory is baseless. Mr. Tom did not show up initially for work and, when he ultimately got there, left early without permission. DX 166 & 167.

28. Mr. Rider's concerns are further corroborated by the fact that Frank Hagan was fired for allegedly negligent behavior after he complained about the fact that a young lion died when he was deprived of water during a long trip through the Mojave Desert. See PWC 162, and id. at 2-3 (FEI wrongfully terminated Mr. Hagan for the false and pre-textual reason of an unintended power outage, and threw Mr. Hagan and his nine year old daughter off the train, after Mr. Hagan complained about the death of the baby lion).

28. FEI OBJECTION: The assertions in this proposed finding of fact are false and, notably, plaintiffs cite no testimony from Frank Hagan (who is not believable in any event due to his convictions and prison time for crimes of dishonesty and other fraudulent behavior, DFOF ¶ 314). There is no evidence in this case that Frank Hagan made any "complaints" about Clyde the lion at any time prior to the point when he became a paid shill for PETA. DFOF ¶ 314. There likewise is no evidence that Clyde was a "baby lion." And the only thing cited in this proposed finding of fact – the complaint in Mr. Hagan's multi-million-dollar lawsuit against FEI (PWC 162) – is not "evidence" and has been miscited. There is no reference at pages 2-3 of that document to Mr. Hagan being fired for "allegedly negligent behavior after he complained about the fact that a young lion had died." Mr. Metzler testified that Mr. Hagan was fired due to an accident with a vehicle, and that testimony is unrefuted. 3-13-09 p.m. (5:45) at 24:8-11 (Metzler). Plaintiffs also ignore the point that Mr. Metzler and others collected a fund to help Mr. Hagan and his daughter after Mr. Hagan's termination. *Id.* at 24:12-15.

29. Although he loved the elephants, after two and a half years Mr. Rider got to the point where he could not stand to see the elephants mistreated, and so, when he had an opportunity to go to Europe with Daniel Raffo and three of the elephants (Meena, Lechemee, and Camela), he left Ringling Bros. to pursue that opportunity. Trial Tr. 68:17 - 70:05, Feb. 12, 2009 a.m. (he left because he was "tired of the way they are treating the animals here") ("I just was really tired of the treatment they were getting and then seeing it, I just didn't want it anymore. I didn't want to see it") ("I saw an opportunity to go over to Europe with [Camela, Lecheme, and Meena], and I decided, well, maybe it will be different over there. And I won't have to put up

with this kind of bull hooking that goes on there and the constant chaining and all this”) (“it hurt when I left . . . I stayed with them but I just – you get to a point when you just go, that’s it”).

29. FEI OBJECTION: This proposed finding of fact is not supported by the evidence. The assertion that Mr. Rider went to Europe with Mr. Raffo and the three Chipperfield elephants because he “could not stand to see the elephants mistreated” is completely contradicted by Mr. Rider’s own testimony (1) that the three Chipperfield elephants were mistreated with the guide and chains when they were on the Blue Unit; (2) that Mr. Rider had no reason to believe that the guide and chains would not be used in managing these elephants in Europe; (3) that he went on this trip to Europe with Mr. Raffo, one of the individuals who Mr. Rider claims mistreated the Chipperfield and the FEI elephants with the guide during the time that Mr. Rider worked on the Blue Unit; (4) that Mr. Rider himself used a guide on the Chipperfield elephants in Europe and never complained about it to Mr. Raffo; (5) that Mr. Rider made no complaints about what he could no longer “stand to see,” either to Jeff Steele in the FEI exit interview, to Mr. Raffo or to anyone else; and (6) that, although Mr. Rider worked with elephants in three (3) different circuses from April 1997 through March 2000 (Clyde Beatty, FEI and Mr. Raffo), each of which used the guide and tethers to manage their elephants, Mr. Rider did not start making any complaints to the outside world about what he allegedly could no longer “stand to see” until he started accepting money and other benefits from the other plaintiffs in this case, their (and his) lawyers and a shell organization run by their (and his) lawyers. DFOF ¶¶ 61, 64, 66-68, 72.

30. Although Mr. Raffo was one of the handlers who had also mistreated the elephants, Mr. Rider believed things would be better when he and Mr. Raffo went to Europe with just three of the elephants and they were away from Ringling Bros. Id.; see also id., 70:23 - 71:23; see also PWC 184 (PAWS Deposition), at 108:02 - 07 (one of the reasons he went over to Europe was that he was hoping he had got at least three of the elephants away from “all the abuse I seen at Ringling”). In his March 2000 deposition, Mr. Rider explained that because the three “English” elephants belonged to Graham Chipperfield – i.e., they were not owned by FEI – they were not hit as much as the other elephants, except when Chipperfield was not around, when Randy Peterson would “pick on the English.” See PWC 184, 107:06 - 108:11. However,

after he left Ringling Bros., things did not change, and, in fact, Mr. Raffo made Mr. Rider use a bull hook as part of his new job with the three elephants under Raffo's supervision. Id.; see also Testimony of Daniel Raffo, Trial Tr. 30:14 - 30:20, March 4, 2009 a.m. (Mr. Raffo paid Mr. Rider); id. at 31:24 - 32:12 (Mr. Raffo told Mr. Rider what to do, could have him fired, and was his "only boss"); id. 32:23 - 33:10 (Mr. Raffo admits that using the bull hook was part of Mr. Rider's job when he worked for Raffo).

30. FEI OBJECTION: This proposed finding of fact is not based on credible testimony. Plaintiffs' attempts to bolster Mr. Rider's testimony with the *ex parte* statement to PAWS are improper. Even if PWC 184 were a deposition (and it is not) a party cannot use his own deposition at trial except in extraordinary circumstances, none of which plaintiffs ever attempted to establish at trial. Fed. R. Civ. P. 32(a)(4). Plaintiffs' use of PWC 184 is an improper attempt to circumvent this rule. The statement has no credibility in any event. Mr. Rider had already received thousands of dollars in benefits from animal rights sympathizers at the time he made this statement on March 25, 2000, and he went onto the PAWS payroll that very day, DFOF ¶ 76, so none of these statements was made before there was a motive to falsify or before the bias created by the monetary payments came into play. The PAWS statement itself actually undercuts Mr. Rider's testimony by demonstrating that, to the extent that he had any sort of attachment to elephants, it was to the three Chipperfield elephants, not to the six elephants at issue here and Zina. Mr. Rider explicitly made reference to getting "my three girls away from them," PWC 184 at 108:6-7—the reference to "my three girls" being the Chipperfield elephants, not the FEI elephants. Of course, this is consistent with the other statements Mr. Rider made before trial (and that were used to impeach him at trial) that his "attachment," if any, was to the three Chipperfield elephants, not the other elephants. DFOF ¶ 115. Furthermore, Mr. Rider claimed in the PAWS statement that "I've got pictures coming" of the "cuts" behind "Mini's [sic]" ears. PWC 184 at 108:7-8. No such "pictures" of elephant Minnie or Meena with cuts behind the ears were ever produced in this case by Mr. Rider. Thus, far from bolstering his

testimony, plaintiffs' references to the PAWS statement simply further demonstrate that Mr. Rider cannot be believed on virtually anything he says.

The assertion that Mr. Raffo "made" Mr. Rider use the bull hook is ridiculous and is refuted by the three photographs of Mr. Rider using the bull hook on elephant Meena. DX 32. These photographs were taken on the docks in South Carolina before Mr. Rider left for Europe with Mr. Raffo. 2-12-09 p.m. at 102:18-19 (Rider); 3-4-09 a.m. at 21:18-22:8 (Raffo). Mr. Rider has never explained why, having allegedly just quit one job because he objected to bull hook use (FEI), he did not immediately quit the next one (Mr. Raffo) when he was confronted, at the very outset before the trip to Europe even occurred, with the reality of having to use the bull hook. The weak, *post hoc* rationalization that Mr. Rider went to Europe with the hope that things would change is not believable. A person with the kind of bond to the elephants that Mr. Rider claims he had does not stand silently by and "hope" things change; he takes action to make them change – which Mr. Rider never did. The record shows that Mr. Rider went to Europe because it was an opportunity to go to Europe. DFOF ¶ 72. It had nothing to do with the three Chipperfield elephants. *Id.* It had nothing to do with bull hooks being used or not used because his own actions demonstrate that Mr. Rider was not bothered by bull hook use. *Id.* Mr. Rider never complained about the treatment of the Chipperfield elephants to Mr. Raffo, DFOF ¶ 68, and did nothing after the job with Mr. Raffo ended to ascertain their whereabouts and welfare, DFOF ¶ 122.

31. Mr. Rider had not used a bull hook at Ringling Bros., see Trial Tr. 63:23 - 64:10, Feb. 12, 2009 a.m., Trial Tr. 98:07 - 98:09, Feb. 12, 2009 p.m., and did not like having to use one when he worked for Daniel Mr. Raffo. See id. at 70:23 - 71:23; see also Trial Tr. 55:10-55:24.

31. FEI OBJECTION: The assertion that Mr. Rider “had not used a bull hook at Ringling” is not credible. Mr. Raffo observed him using one, DFOF ¶ 68, and it is doubtful that, if Mr. Rider never used a bull hook at Ringling because, as he says, he opposed it due to the “aesthetic injury” it caused him, he would have allowed himself to be photographed three times with one in his hand giving directions to one of his “girls,” DX 32. Plaintiffs misrepresent the testimony in support of the assertion that Mr. Rider “did not like having to use one [a bull hook] when he worked for . . . Mr. Raffo.” In fact, what Mr. Rider testified to on direct was that when he got to Europe, “I suddenly became – I had to use – they wanted me to use a bull hook which I didn’t want to use.” 2-12-09 a.m. at 71:5-6 (Rider). This, of course, is false as was shown dramatically in the subsequent cross examination with the photographs on the docks in South Carolina. DX 32; 2-12-09 p.m. at 102:9-105:5 (Rider). Mr. Rider had been confronted with the reality of having to use the bull hook long before he got to Europe as the photographs show and as even his feeble attempt to explain them away shows. If Mr. Rider is to be believed, Mr. Raffo “forced” him to pose for these photographs. *Id.* at 102:10. So having been “forced” to pose for a bull hook picture (an assertion that is not credible in and of itself) before the job with Mr. Raffo even began, how is it that Mr. Rider could have any hope that “things would change?” None of this is believable.

32. Although Mr. Raffo testified at trial that Mr. Rider also used the bull hook when he was employed at Ringling Bros., no other FEI employee corroborated this testimony – even though FEI has access to dozens of individuals who worked with Mr. Rider during the time he worked at FEI. See, e.g., PWC 183 (list of FEI employees, and when and where the work at FEI). Furthermore, Jeff Pettigrew, who worked with Mr. Rider for several years at the Blue Unit, testified that he never observed Mr. Rider using a bull hook at Ringling Bros. PWC 178, Pettigrew Dep., 149:02 - 149:11 (Nov. 14, 2008); see also PWC 183 at 5 (Jeff Pettigrew worked at the Blue Unit during 1997-99 when Mr. Rider worked there).

32. FEI OBJECTION: This finding of fact is baseless. That Mr. Pettigrew did not see Mr. Rider with a bull hook does not demonstrate that Mr. Rider never used one when employed by

FEI and in no way contradicts Mr. Raffo. After Mr. Rider became a barn man, he worked an eight-hour shift, and his schedule and Mr. Pettigrew's schedule did not always coincide. DX 384A (Pettigrew Dep. at 118:20-22). The photographs of Mr. Rider with the bull hook provide all the corroboration, if any were needed, of Mr. Raffo's testimony. It is inconceivable that someone such as Mr. Rider who claims to have refused, on principle, to use the bull hook while employed by FEI and then allegedly quit his job because he saw others misusing that instrument on the elephants, would, immediately after quitting that job, allow himself to be photographed using the bull hook on one of the elephants he claims was terrorized by the very sight of it.

33. Mr. Raffo's testimony that he saw Mr. Rider use a bull hook at Ringling Bros. is also contradicted by Mr. Raffo's concession that he did not have an opportunity to observe Mr. Rider "interacting with the elephants" when they worked at Ringling Bros. *Id.* at 12:23 - 12:25. In addition, Mr. Raffo's recollection of Mr. Rider having a bull hook at Ringling Bros. is identical to his memory of Mr. Rider having a bull hook when he worked for Mr. Raffo in Europe - i.e., both memories involve Mr. Rider carrying a bull hook around in a "wheelbarrow," suggesting that Mr. Raffo is confusing his memory of Mr. Rider when he worked at Ringling Bros. with his memory of Mr. Rider when he worked for Mr. Raffo in Europe, and was required to have a bull hook. Compare Trial Tr. 8:11 - 8:18, March 4, 2009 a.m. with id. at 25:06 - 25:09. Indeed, Mr. Raffo admitted that the only photograph of Mr. Rider holding a bull hook was taken after Mr. Rider had already left Ringling Bros.. Trial Tr. 39:05 - 39:20, March 4, 2009 a.m.

33. FEI OBJECTION: It is surprising that plaintiffs would cite the testimony that Mr. Raffo never saw Mr. Rider interacting with the elephants on the Blue Unit since that undercuts Mr. Rider's assertion that he had some kind of "bond" with the animals and "loved" them. Furthermore, that Mr. Raffo did not observe Mr. Rider interacting with the elephants in no way contradicts the fact that Mr. Raffo observed Mr. Rider using the bull hook with the elephants in the normal course of Mr. Rider's job. Mr. Raffo did testify that he observed Mr. Rider cleaning up after the elephants, 3-4-09 a.m. at 13:14-18 (Raffo), which would have been the only context in which Mr. Rider could have properly used a guide with respect to the elephants, *id.* at 7:19-24. That Mr. Raffo was somehow "confused" between the two periods of employment is baseless.

Mr. Raffo was asked completely separate lines of questions about Mr. Rider having and using a bull hook at FEI and in Europe. *Id.* at 7:11-9:23, 25:5-34.

34. Mr. Raffo's testimony that he saw Mr. Rider use a bull hook when he worked at Ringling Bros. is also not particularly credible in light of the fact that Mr. Raffo was rehired by FEI less than a year ago, after not working for FEI for almost nine years, and he was given a compensation package that exceeds \$100,000 a year - almost twice what he was paid at FEI the last time he worked there. See Id., Trial Tr. 55:23 - 56:11.

34. FEI OBJECTION: That Mr. Raffo currently works as a tiger presenter for FEI proves nothing about his credibility as a witness. There is no evidence that Mr. Raffo was hired by FEI because he might be a witness in this case or that the salary he is paid is anything other than the market rate for a tiger trainer. Mr. Raffo has a legitimate job presenting tigers; Mr. Rider receives hundreds of thousands of dollars for being a plaintiff in, and talking about, this case. DFOF ¶¶ 73-111. There is no valid comparison between the two from the standpoint of credibility.

35. After three months of seeing the three elephants continue to be mistreated in Europe, being required to use a bull hook on the elephants, and, finally, seeing two young tigers killed simply because Mr. Raffo had no use for them in his tiger act, Mr. Rider decided he could no longer continue to watch animals be mistreated, so he quit that job and decided to speak out publicly about the mistreatment he had witnessed. See Trial Tr. 70:23 - 73:23, Feb. 12, 2009 a.m.; see also Trial Tr. 47:02 - 47:10, Feb. 17, 2009 p.m. (cont.). Mr. Rider's testimony that the two young tigers were killed because they were superfluous to Mr. Raffo's tiger act was corroborated by Mr. Raffo's own testimony when he admitted that the two young tigers "that were not working were removed when we were in Frankfurt [] Germany," Trial Tr. 34:02 - 34:03, March 4, 2009 a.m.; see also id. (explaining that when they got to Europe his contract with Mr. Chipperfield "changed," and "these two tigers were not necessary," and so they were "removed"). Before he left, Mr. Rider promised Lechemee, Camela, and Meena that he would do everything he could to help them. Trial Tr. 73:06-73:13, Feb. 12, 2009 a.m.; see also id. at 83:08 - 83:14 (explaining that the reason he does his public education work is that "I made a promise to my elephants when I left Germany . . . And I decided at that point, that's what I had to do, I have to speak to anybody that is going to listen, this is what goes on.").

35. FEI OBJECTION: This finding of fact is not based upon credible testimony. Mr. Rider has given multiple conflicting accounts of why he quit the job in Europe with Mr. Raffo.

DFOF ¶ 71. The very first time he was asked about this by FEI – in interrogatories in this case in 2004 – Mr. Rider stated, under oath, that he quit the job with Mr. Raffo “because of the way Raffo and others who worked for the Chipperfields continued to mistreat the elephants.” DX 16 at 6. He said nothing at all about the euthanization of tigers having anything to do with this decision. *Id.*; 2-12-09 p.m. at 53:19-54:19 (Rider). Furthermore, this finding of fact is contrary to Mr. Rider’s own allegations in the complaints in this case in which he contended that he stopped working in the “circus community” because of the way *FEI* treated its elephants. DFOF ¶ 72. None of the complaints made any reference to Mr. Rider working in Europe with Mr. Raffo, to Mr. Raffo allegedly mistreating elephants in Europe or to allegedly improper euthanization of tigers. Compl. ¶ 33, Civ. No. 00-1641 (DE 1) (7-11-00); Am. Compl. ¶ 33, Civ. No. 00-1641 (DE 7) (8-11-00); Sec. Am. Compl. ¶ 21, Civ. No. 00-1641 (DE 21) (4-10-01); Compl. ¶ 21, Civ. No. 03-2006 (DE 1) (9-26-03).

36. Mr. Rider then went to London, contacted a reporter from the Daily Mirror who he knew had written a story about the boat trip with the three elephants, and told the reporter about the mistreatment he had witnessed while he was in Europe, which in turn resulted in a story about the treatment of the elephants in Europe. *Id.*, at 73:15 - 75:10. At that point, Mr. Rider realized that the media was a powerful tool for informing the public about the mistreatment of animals that goes on at the circus. *See* Trial Tr. 48:24 - 49:13, Feb. 17, 2009, p.m. (cont.) (from his experience with the Daily Mirror, he learned that “by stepping forward and speaking for the elephants that the public was going to be made aware of this . . . and I knew that this was a way to help the elephants”).

36. FEI OBJECTION: This proposed finding of fact is misleading because it is incomplete. It omits the salient facts that Mr. Rider abandoned his job with Mr. Raffo with no notice, after having obtained a salary advance from Mr. Raffo, and after approximately two days of interactions with two English-speaking individuals who had professed being interested in working for Mr. Raffo. DFOF ¶ 74. It also leaves out the fact that Mr. Rider’s entire stay in London was financed by *The Daily Mirror*. DFOF ¶ 75.

37. Mr. Rider then returned to the United States, and went to the Performing Animal Welfare Society (“PAWS”) in Galt, California, where he gave a lengthy deposition under oath in March 2000 about what he had witnessed when he worked at Ringling Bros. See PWC 184. Mr. Rider spent the next year helping PAWS do media and public education concerning this issue, and he also testified before Congress about the mistreatment of the elephants at Ringling Bros. During that time, PAWS paid for Mr. Rider’s motel room in Galt, Ca. and gave him approximately \$50 a week for groceries. Trial Tr. 76:21 - 78:10 .

37. FEI OBJECTION: This proposed finding is misleading because it is incomplete. It omits the salient facts that Mr. Rider’s trip from London to the U.S. was paid for by *The Daily Mirror*, and that individuals associated with that publication and others gave him \$1100 in cash. DFOF ¶ 75. Mr. Rider also gave conflicting accounts of how he got to California. At trial, he claimed, under oath, that he went by bus paid for by the money he picked up in London; in a sworn interrogatory he stated that he flew at PAWS’ expense. DFO ¶ F76. The difference is material. Travel by bus supports the romantic image of Tom Rider the self-sacrificing spokesman for his “girls” using his last penny to get to California for their benefit. Travel by air shows that he was being handled and manipulated by his ultimate benefactors who were intent on getting him quickly into the fold.

The statement Mr. Rider gave on March 20, 2000 was not a “deposition.” It was an *ex parte* statement given to counsel for PAWS without cross-examination and without the presence of counsel for FEI. 2-12-09 p.m. at 34:22-35:13 (Rider); PWC 184 at 1. Plaintiffs omit the fact that, in addition to the free motel room and the initial payment of \$50 per week, PAWS also provided Mr. Rider with a free mobile home to live in and periodic checks of \$185-200. DFOF ¶ 77. This cash and benefits were Mr. Rider’s only source of support and, for 2000 and 2001, totaled \$2691.67 and \$2492.00 respectively, in “non-employee compensation” and “wages.” DFOF ¶ 78. There is no evidence that Mr. Rider spent “the next year” doing media and public education work for PAWS. In fact, during that time period he only spoke to the media two or

three times; his other tasks – giving the *ex parte* statement, giving a statement to a congressional subcommittee, giving an affidavit to USDA and becoming a plaintiff in this case – were all linked to his paid role as a plaintiff and a witness. 2-12-09 p.m. at 64:14-66:12 (Rider).

38. Mr. Rider also took his complaints to the United States Department of Agriculture (“USDA”) which administers the Animal Welfare Act, which governs the treatment of all animals used in entertainment, regardless of whether they are also covered by the Endangered Species Act. See 7 U.S.C. § 2131 *et seq.* He met with USDA Investigator Diane Ward in Sacramento, California, and later provided the USDA with a sworn affidavit, PWC 20, and he personally met with high level officials for the USDA in Washington, D.C., including Ron DeHaven, Director of Animal Care for USDA’s Animal Plant Health Inspection Services, and Michael Dunn, who was the Under Secretary of Agriculture. Trial Tr. 78:22 - 79:20, Feb. 12, 2009 a.m. However, the USDA never took any enforcement action against Ringling Bros. as a result of Mr. Rider’s complaints. Id.; see also DX 71A.

38. FEI OBJECTION: No objection to the first two sentences. The last sentence of PFOF ¶ 38 is highly misleading. Although Mr. Rider tried to deny that USDA had ever told him that FEI had committed no violations with respect to the matters complained of by Mr. Rider, he was shown on cross-examination to have told an audience of college students in Carbondale, Illinois, in September 2002 that USDA closed his case and told him that FEI had “done nothing wrong.” 2-17-09 p.m. (12:50) at 74:24-76:16 (Rider); DFOF ¶ 349. USDA examined Mr. Rider’s allegations and determined that they had no merit, advising FEI in writing that “[n]o violations were documented and no further action is being taken” and that the case was “deemed no violation and closed.” DX 71A at 10, 5; DFOF ¶ 349.

39. On July 11, 2000, Mr. Rider joined PAWS and its officials, along with several of the other organizational plaintiffs, in bringing a lawsuit against FEI under the ESA for “taking” the Asian elephants in violation of Section 9 of the statute. See ASPCA et al. v. Ringling Bros., et al., Civ. No. 00-1641 (D.D.C.). That suit was later dismissed and replaced with the present litigation, without prejudice. See Order (Nov. 25, 2003). Sometime later, PAWS asked Mr. Rider to do some security work for the organization at its property that it was turning into an animal sanctuary in California. Trial Tr. at 77:20 - 77:24, Feb. 12, 2009 a.m.; id., 79:29 - 80:04; id., see also DX 39.

39. FEI OBJECTION: The first two sentences, while not objectionable on their own, are misleading because plaintiffs omit the important case history that occurred between the filing of Civil Action No. 00-1641 and Civil Action 03-2006, including the misleading statements and misrepresentations that Mr. Rider made to this Court and the Court of Appeals in an effort to convince these courts that he had sufficiently alleged standing to sue – allegations that were contrary to his own undisputed actions at the time and were proven to be false at trial. DFOF ¶¶ 112-114. Plaintiffs also omit the fact that during the period between the filing of the original and the present case, Mr. Rider was paid a substantial sum of money – approximately \$46,000 – by PAWS, ASPCA, AWI, FFA and MGC, DX 48A, and that these funds were Mr. Rider’s sole source of support, DFOF ¶¶ 76-99. The last sentence of PFOF ¶ 39 also is misleading because Mr. Rider admitted that the work he did at the PAWS’ San Andreas facility “was not a real job.” 2-12-09 p.m. at 67:12-19 (Rider).

40. In January 2001, PAWS and its officials Pat Derby and Ed Stewart settled a different lawsuit that they had brought against FEI under RICO for infiltrating and stealing confidential information from PAWS. Trial Testimony of Kenneth Feld, Trial Tr. 108:02 - 108:09, March 3, 2009 p.m.. As part of that settlement, (1) PAWS was given two of the Ringling Bros. elephants that Mr. Rider had worked with, Rebecca and Mini, for PAWS’ sanctuary in California, as well as an undisclosed sum of money for their care; (2) PAWS, Ms. Derby, and Mr. Stewart were required to withdraw as plaintiffs from this action; and (3) anyone who was employed by PAWS was prohibited from speaking out against Ringling Bros.. See Notice of Voluntary Dismissal of Three of the Plaintiffs (Jan. 8, 2001), Civ. No. 00-1641; Testimony of Tom Rider, Trial Tr. 80:08 - 81:18., Feb. 12, 2009 a.m.; Testimony of Kenneth Feld, Trial Tr. 108:02 - 111:12, March 3, 2009 p.m..

40. FEI OBJECTION: The first sentence is improper because PAWS’ allegations were just that – allegations, not fact. 3-3-09 a.m. at 108:2-9 (Feld). There is no evidence to support the assertion that one of the terms of FEI’s settlement with PAWS was that “anyone who was employed by PAWS was prohibited from speaking out against Ringling Bros.” Mr. Feld testified only that the agreement contained a non-disparagement clause. *Id.* at 111:6-12. Mr.

Rider's testimony on this subject is improperly cited on this point because it was only admitted for state of mind not for the truth of the matter asserted, which is how his testimony is used in the proposed finding of fact. 2-12-09 a.m. at 80:11-81:13 (Rider). No objection to remainder of PFOF ¶ 40.

41. In May 2001, PAWS officials informed Mr. Rider that because of this settlement he could no longer speak out about what he had seen at Ringling Bros. Trial Tr. 80:08 - 81:18., Feb. 12, 2009 a.m. However, because Mr. Rider was not a party to the settlement with FEI, and he wanted to "do everything in [his] power to help the elephants, and this means speaking out as much as possible about how Ringling Bros. beats them and especially mistreats the babies," in May, 2001, Mr. Rider quit his position with PAWS. See id.; DX 39 (Mr. Rider's letter to Ms. Derby of PAWS explaining why he left); see also id. ("I figured that leaving PAWS was the only way to do this, since I was not able to speak out anymore as long as I was there without getting you in trouble").

41. FEI OBJECTION: The citation to Mr. Rider's testimony in the first sentence is improper since it was only admitted for state of mind not for the truth of the matter asserted, which is how plaintiffs are trying to use it here. 2-12-09 a.m. at 80:11-81:13 (Rider). The remainder of PFOF ¶ 41 is based on a self-serving letter that Mr. Rider claims he wrote and that contradicts his own testimony that his relationship with PAWS "really wasn't work" and "was not a real job." 2-12-09 a.m. at 77:3-4 (Rider); 2-12-09 p.m. at 67:12-19 (Rider).

42. On April 12, 2001, along with the ASPCA, Fund for Animals, and Animal Welfare Institute, Mr. Rider sent a 60-day notice letter to FEI that it was in violation of the "take" prohibition of the Endangered Species Act for its treatment of the endangered Asian elephants, and he sent a copy of that letter to the Secretary of the Department of Director of the Fish and Wildlife Service. PWC 91 at 10-12.

42. FEI OBJECTION: Mr. Rider's purported notice letter did not give FEI valid notice of the "taking" claims that plaintiffs pursued in the trial or in the case generally. See FEI response to PFOF ¶ 1, *supra*.

43. Since he left PAWS, with the financial support of the organizational plaintiffs and other animal protection groups, including The Wildlife Advocacy Project, and of other

concerned individuals, Mr. Rider has devoted the last eight and a half years of his life to traveling around the country so that he can speak to representatives of the media, grassroots groups, and legislators about the harsh conditions endured by the circus elephants, in an effort to ameliorate these conditions and improve the lives of these animals. See Testimony of Mr. Rider, Trial Tr. 82:02 - 88:13, Feb. 12, 2009 a.m.; Trial Tr. 40:10 - 42:10, Feb. 17, 2009 p.m. (cont.) (Mr. Rider discusses other groups and individuals who have contributed funding to his efforts); see also Deposition Testimony of Eric Glitzenstein, President of The Wildlife Advocacy Project, PFF ¶ 58; PWC 94A and 94B (examples of media, grassroots, and legislative work done by Mr. Rider); DX 39 (Mr. Rider's letter quitting his position with PAWS because "[w]hen you found out that I was planning to go to Washington to help the ASPCA at a press conference, you told me that I would be fired if I did that. So, I decided that I had to leave PAWS. I want to do everything in my power to help the elephants, and this means speaking out as much as possible about how Ringling Bros. beats them and especially mistreats the babies").

43. FEI OBJECTION: At all times since on or about March 2000—or for over nine years—Mr. Rider has received funding from one or more of the past or present organizational plaintiffs (either directly, through MGC or through WAP). DFOF ¶¶ 73-99; DX 48A. Plaintiffs' citation to funding from "other concerned individuals" and "other groups" is a red herring. The bulk of the "funding" for Mr. Rider's "media work" has come from the past and present organizational plaintiffs (and through counsel of record's law firm and/or its 501(c)(3) organization, WAP). Mr. Rider has received at least \$190,000.00 from PAWS, ASPCA, FFA, AWI, API and from WAP itself. DFOF ¶ 101. By contrast, the record shows that Mr. Rider has received approximately \$33,000.00 in funding from "other groups" and individuals. DX 16 at 28.

Mr. Rider's "devotion" is not to FEI's elephants but rather to the money provided to him: for the past nine years, Mr. Rider's only income is, and has been, the payments he receives for his purported "media work." DFOF ¶ 73. In fact, Mr. Rider turned down paid full-time *and* part-time employment working with elephants at plaintiff FFA's Black Beauty Ranch ("BBR"). DFOF ¶ 106.

As discussed in greater depth in response to PFOF ¶ 56, which is hereby incorporated by reference, "since le[aving] PAWS," Mr. Rider has not been "traveling around the country" on