UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, et al.,	)	
Plaintiffs,	)	Civ. No. 03-2006 (EGS/JMF)
v.	)	Judge: Emmett G. Sullivan
RINGLING BROTHERS AND BARNUM & BAILEY CIRCUS, et al.,	)	
Defendants.	)	

PLAINTIFFS' RESPONSE TO DEFENDANTS' "RESPONSE" TO PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL COMPLAINT

Plaintiffs have moved for leave to file a Supplemental Complaint for the sole purpose of adding to this action an additional organizational plaintiff, the Animal Protection Institute ("API"). Defendants did not file an opposition to plaintiffs' motion, and hence, under Local Rule 7, the Court may deem plaintiffs' motion as conceded. Instead, defendants chose to file a "response" urging the Court to make plaintiffs refile their motion to provide defendants with more information about API's decision to join the pending lawsuit.[1]

Defendants assert that plaintiffs have not provided any explanation or reasons as to why API should be allowed to join this lawsuit. However, this is not true. Plaintiffs' motion references the 60-day notice letter that API sent to defendants (a copy of which was also again given to defendants' counsel), which explains in great detail why API – like the other plaintiffs to

[1]Because defendants did not file an opposition, plaintiffs also had no obligation to file a reply within five days of defendants' "response." See Local Rule 7.

this action – believes that defendants are violating the Endangered Species Act with respect to their treatment of endangered Asian elephants. See Exhibit 1. That letter, as well as plaintiffs' motion, further explains that, in addition to the evidence already presented to defendants of a pattern of violations of the ESA, API has gathered more recent evidence of those violations. Accordingly, API has also decided to challenge defendants' treatment of these animals, and, rather than file its own separate case, with permission of this Court, and for the convenience of the parties and the Court, it has chosen to join the case that is already pending before the Court.[2]

Defendants insist that it was somehow "improper" for API in its notice letter to defendants to incorporate by reference allegations of violations of the ESA that have been asserted by other animal protection organizations. See Defendants' Response at 2. However, there is nothing at all "improper" about incorporating these allegations by reference, rather than repeating each of them in API's notice letter. The purpose of the notice provision of the ESA is to make sure that the defendants are on notice of the practices that are alleged to be in violation of the Act. 16 U.S.C. § 1530(g). That purpose is well served by API's notice letter, including its incorporation by reference of previous notice letters sent to defendants, which describe additional incidents of violations of the ESA.

Defendants make the odd assertion that allowing API to incorporate by reference previous allegations of violations of the ESA somehow violates the "statue of limitations" that applies here. Defendants' Response at note 2. Since this case challenges on-going violations of the ESA – i.e., defendants' routine violation of the statute by striking elephants with bullhooks, keeping

[2]The 60-day Notice letter was cited as Exhibit 1 to plaintiffs' Motion. However, plaintiffs inadvertently failed to attach the actual Exhibit when they filed their Motion, and, accordingly, have attached it here.

elephants chained for most of the day and night, and forcibly removing baby elephants from their mothers before they are naturally weaned -- there is no statute of limitations that applies here. Therefore, all of plaintiffs' evidence of defendants' unlawful practices, including past and present evidence, is clearly relevant to these claims. See, e.g., Trevino v. Celanese Corp., 701 F.2d 397, 405 (5th Cir. 1983) ("While some of this information [dating back almost two decades] might be of questionable relevance to a simple action for failure to hire, much of it would be highly relevant in proving a continuing pattern of discrimination"); see also Court's Order (November 25, 2003) ("Plaintiffs are entitled to take discovery regarding all of defendants' practices that plaintiffs allege violate the Endangered Species Act and that statute's implementing regulations, including past, present, and on-going practices") (emphasis added).

For the same reason, defendants' insistence that API cannot "obtain relief for events occurring" before it sent its notice letter, Defendants' Response at 5, makes no sense. Clearly, under the notice provisions, API may provide defendants with evidence of violations that occurred prior to the date of the notice letter – to do otherwise, would require all ESA plaintiffs to speculate about violations that may occur in the future. More importantly however, API, like the other plaintiffs in this case, seeks to challenge defendants' current, on-going, violations of the ESA, as evidenced by defendants' past, present, and continuing treatment of these animals.

As to the other "conditions" defendants seek to impose on API, Defendants' Response at 5-6, plaintiffs have made clear – as does the proposed Supplemental Complaint – that API does not seek to raise any new claims in this case, and, of course, API will abide by all agreed-upon and ordered procedures. Therefore, since defendants have not demonstrated any prejudice from allowing API to join this case by means of a Supplemental Complaint, plaintiffs' motion to file

that complaint adding API as a plaintiff should be granted.

Respectfully submitted,

/s/

Katherine A. Meyer
(D.C. Bar No. 244301)
Kimberly D. Ockene
(D.C. Bar No. 461191)
Eric R. Glitzenstein
(D.C. Bar No. 358287)

Meyer Glitzenstein & Crystal
1601 Connecticut Avenue, Suite 700
Washington, D.C. 20009
(202) 588-5206

Counsel for Plaintiffs

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