

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION)	
OF CRUELTY TO ANIMALS, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Civ. No. 03-2006 (EGS)
)	
FELD ENTERTAINMENT, INC.)	
)	
Defendant.)	

DECLARATION OF KATHERINE A. MEYER

1. I was the lead counsel for the plaintiffs in the Endangered Species Act (ESA) litigation. I submit this declaration in support of the opposition to defendant Feld Entertainment Inc.'s (FEI's) motion for attorneys' fees and costs. This declaration is based upon my personal knowledge, as well as information that I learned in the course of litigating this case. This declaration is made solely in my personal capacity as an officer of the court and not on behalf of any current or former client or employee and without authorization or intent to waive any privileges that any such individuals may have. My clients in the ESA litigation have reviewed this declaration through independent counsel and have confirmed that there is nothing in here that should be construed as a waiver of any privilege and that, therefore, there is no reason why this declaration cannot be filed in the public record.

2. I have been a member of the D.C. Bar since 1976. I have always practiced public interest law. I first worked for a small public interest firm, Swankin & Turner, doing consumer protection work, and then became a staff attorney for the Center for Auto Safety, where I

specialized in auto safety and other consumer protection issues. In 1979 I joined the Public Citizen Litigation Group, which is the litigation arm for Public Citizen, founded by Ralph Nader in 1971. I specialized in Freedom of Information Act cases and food and drug law, with an emphasis on children's safety issues, and handled a smattering of other kinds of public interest cases. In 1989, I became Of Counsel and then later a partner with Harmon, Curran & Spielberg, a small public interest firm, where I specialized in consumer protection, open government, initiative and referenda, environmental, wildlife, and animal protection law. In 1993, Eric Glitzenstein and I founded Meyer & Glitzenstein, now Meyer, Glitzenstein & Crystal ("MGC" or "the firm"), a private law-firm specializing in public interest cases, principally open government, environmental, wildlife and animal protection, and public health law. Id.

3. We are a small firm, currently with only three partners and two associates. We charge our clients public interest rates that are far below the market rates for comparable services, or do cases on a statutory attorneys' fee basis – i.e. we charge nothing for our services and, if we prevail, we may be able to obtain an award of attorneys' fees and costs pursuant to a statutory fee-shifting provision.

4. I am a member of the bars of the First, Third, Fourth, Ninth, Eleventh, and D.C. Circuits and the U.S. Supreme Court. I was appointed by the U.S. Court of Appeals for the D.C. Circuit to serve on its Advisory Committee on Procedures from 1995-2001. I have taught public interest advocacy at The Georgetown University Law Center and have served on the Board of Directors of several environmental and consumer protection organizations.

5. In the 36 years that I have been practicing law, I have been sanctioned only once. Those sanctions were overturned by the unanimous Supreme Court of Pennsylvania. Hulsizer v.

Labor Day Comm., 734 A.2d 848 (Pa. 1999).

6. I never provided any funding to Mr. Rider to lie about his basis for standing in this case or about anything else, and I was never involved in any such effort by anyone else.

Throughout this litigation I had a good faith basis for believing that the standing assertions that were made on behalf of all of the plaintiffs were well grounded in both fact and law.

A. My Basis For Believing That Mr. Rider Had Standing In This Case

1. Evidence I reviewed before I met Mr. Rider

7. I became involved in the ESA litigation against FEI on behalf of one of my clients at the time, the Performing Animal Welfare Society (PAWS). I was introduced to PAWS and its officers Pat Derby and Ed Stewart through a colleague, Elizabeth Swart, who had worked for several other animal protection groups that had been clients of ours over the years. I met the PAWS officers sometime during the spring or summer of 1998.

8. At the time I met Ms. Derby, our firm had been litigating a case challenging United States Department of Agriculture (USDA) regulations governing the “psychological well-being of primates” under the Animal Welfare Act (AWA). That case resulted in an en banc D.C. Circuit ruling establishing new standing law for the protection of animals held in captivity, by holding that an individual who has formed a special relationship with a particular animal and is aesthetically injured by seeing the animal mistreated has standing to challenge government regulations that authorize the conditions that led to the mistreatment. Animal Legal Defense Fund v. Glickman, 154 F.3d 426 (D.C. Cir. 1998) (en banc); see also, e.g., Developments in the Law – Access to Courts: Aesthetic Injuries, Animals Rights, and Anthropomorphism, 122 Harv. L. Rev. 1204, 1210 (Feb. 2009) (“Glickman and the cases following it are significant in

that they open U.S. courts' doors to citizen suits in which animal rights are adjudicated").

9. By the time I met Ms. Derby, PAWS was already extremely involved in advocating on behalf of animals used in entertainment. Ms. Derby had previously been an animal trainer for large cats used in entertainment and commercial advertising and was intimately familiar with the way these animals were trained to perform tricks on command, which involved brutal conditioning to make them submissive and obedient. Ms. Derby had written a book about her experiences in this field, "The Lady and Her Tiger," which I read. By the time I met her in 1998, she and PAWS were well known in the animal protection world as extremely effective in advocating on behalf of animals used in entertainment.

10. When I met Ms. Derby in 1998, PAWS was already engaged in a major campaign to end the abuse of elephants and other animals in circuses, with a special focus on FEI's Ringling Brothers circus – the only circus that transports elephants on trains while it travels around the country. Over the years, Ms. Derby and her colleagues had been able to record videotape of public loadings and un-loadings of the elephants at train stations in California, Mexico, and other venues, which showed Ringling Bros. employees hitting elephants with bull hooks and whips. See, e.g., Exhibit 1 (DVD of sample PAWS footage that I reviewed). I watched these videotapes and saw for myself how inhumanely FEI's employees treat the elephants who I learned were extremely intelligent and social beings. On behalf of PAWS, I began representing the organization in its efforts to advocate for better treatment for the elephants, and we did several different projects together.

11. Sometime in the fall or winter of 1998, Ms. Derby sent me sworn videotaped testimony that PAWS' in-house counsel, Sharon Simms, had secured from two individuals, Glen

Ewell and James Stechon, who had recently been employed by Ringling Bros., and who had left because they had witnessed abuse of the elephants. I was very moved by this testimony, especially when Mr. Ewell cried as he talked about how hard it was to see the elephants, particularly an adult elephant named Nicole and a baby elephant named Benjamin, routinely beaten with bull hooks. Based on these videotaped depositions, on behalf of PAWS the firm sent a formal complaint to the USDA describing how the routine bull hook use and chaining of the elephants witnessed by these two former Ringling Bros. employees violated several Animal Welfare Act standards, and urging the USDA to investigate the matter, and, in the meantime to confiscate Nicole and Benjamin to protect them from any further abuse. See PWC 190D (Exhibit 2).¹ The letter to the USDA also focused on a particular elephant named Karen whom these former FEI employees said was extremely dangerous. Id. Unfortunately, the USDA did not take any enforcement action against FEI based on this complaint.

12. In July 1999, seven months after our urgent request on behalf of PAWS that the USDA confiscate Benjamin to protect him from further harm, FEI issued press releases announcing that Benjamin had “died suddenly while playing and bathing in a pond on private property outside Houston, Texas” during “a scheduled stop en route to the Reunion Arena in Dallas.” See Exhibits 3, 4. On July 27, 1999, PAWS wrote the USDA requesting an investigation of Benjamin’s death in light of PAWS’ previous complaint about Ringling Bros.’ abuse of Benjamin, the fact that “[e]lephants are notoriously good swimmers,” and because another young FEI elephant had also recently died under suspicious circumstances. Exhibit 5. Despite the USDA investigator’s later conclusion that the use of the bull hook by Pat Harned

¹“PWC” refers to Plaintiffs’ Will Call exhibits that were admitted into evidence at trial; “DX”

“precipitated in the physical harm and ultimate death of [Benjamin],” PWC 24, the USDA again took no enforcement action against FEI.

13. A couple of months later, PAWS obtained USDA documents showing that two inspectors had found “large visible lesions on the rear legs” of two other very young elephants named Doc and Angelica who were living at FEI’s “Center for Elephant Conservation” (CEC) where FEI breeds and trains elephants for the circus, which FEI employees explained were “rope burns resulting from the separation process from the mothers” of the two baby elephants. PWC 42. Based on this information, PAWS sent another letter to the USDA requesting an investigation. Exhibit 7. Although the USDA subsequently informed FEI that “there is sufficient evidence to confirm the handling of these animals caused unnecessary trauma, behavioral stress, physical harm, and discomfort to these two elephants,” PWC 43 (Exhibit 8), the agency again took no enforcement action against FEI.

2. Tom Rider’s sworn testimony recorded by PAWS

14. In the spring of 2000, PAWS sent me the March 25, 2000 videotaped sworn testimony recorded by another Ringling Bros. employee who had recently left the circus named Tom Rider. See Exhibit 9 (a copy of the videotaped deposition included on the DVD provided to the Court); PWC 184 (Exhibit 10) (a transcription of the deposition commissioned by FEI). In that deposition, Mr. Rider recounted that he had worked for the Clyde-Beatty Cole Brothers Circus for awhile and had then spent about two-and-a-half years working for Ringling Bros., first helping the “barn man” take care of the elephants, and then as a “barn man” himself, responsible for feeding, watering, and cleaning up after the elephants. See PWC 184 at 5-8.

refers to Defendant’s Exhibits that were admitted into evidence.

15. I watched this videotaped deposition of Mr. Rider before I met him.

16. At his March 25, 2000 deposition, Mr. Rider described in great detail the routine “hooking” and beating of elephants with bull hooks, and particularly the beatings he witnessed of Nicole and Benjamin – the same elephants that the other former FEI employees had identified as recipients of particularly harsh treatment. Mr. Rider also described the way the elephants were kept on chains most of the day and in the stock cars, where they were made to stand in their own waste, id. at 90-92, and he talked about how dangerous the elephant named Karen was, id. at 101-03 – just as the other former FEI employees had described in their earlier depositions. Mr. Rider also identified the handlers he had seen hit elephants with bull hooks – many of whom had also been identified by Mr. Ewell and Mr. Stechon, and he described in detail particular incidents of elephants abuse.

17. Mr. Rider also made several statements that led me to believe that, like the other former FEI employees whose testimony I had seen, he cared deeply for these animals, and was greatly disturbed by seeing them mistreated on a daily basis. He identified the elephants by name, id. at 9, referred to them throughout the deposition as “my girls,” id. at 7 (explaining that his responsibilities included “staying with the girls”), id. at 40 (“I never left my girls”); see also id. at 12, 38, 44, 84, 90, 92, 93, 108, and testified that he “really wanted” to be made a barn man “because I wanted to get in there and start taking care of the girls.” Id. at 46. He described how the elephants would “jerk” when hit, id. at 12, and “flinch,” “cower,” and “back up in fear” when their handlers came around, id. at 38, and he said it gave him a “bad feeling” that the elephants were always afraid of being hit. See id. at 38-39. Mr. Rider also testified that he “felt uncomfortable” seeing the elephants routinely hit with bull hooks, id. at

9-10, and he described several particularly brutal beatings of elephants that clearly upset him, id. at 17-18 (explaining that he “got very upset” at seeing that Zina and Rebecca had “between 23 and 28” “hook marks” on them from being beaten by Jeff Pettigrew and Andy Weller); id. at 22-23 (describing a “violent” beating of Karen by Pat Harned that lasted “23 minutes”), id. at 107 (recounting seeing lots of “hook marks” on Nicole);, id. at 108 (stressing that Mini has “cut marks behind her ear that are 3 inches deep from what Ringling did to her.”). Id. at 108. Mr. Rider also testified that he could hear the “screams” of the baby elephants as they were being trained, id. at 23-24 (“we would always hear off in the distance a baby screaming” at winter quarters); id. at 26 (“you would hear these outrageous wails of the baby getting it”), id. at 84-86 (describing the “echoes” of Benjamin’s screams when the circus was at the MCI Center); and he several times articulated that what he witnessed continued to haunt him. See id. at 10 (seeing the elephants hit with bull hooks on their legs “sticks in my mind”); id. at 22 (the 23-minute beating of Karen “stuck in our heads”); id. at 100 (he can still “picture in my mind” the baby elephants chained in a picket line).

18. In his March 2000 testimony Mr. Rider also expressed what I perceived as strong empathy for the elephants – he spoke at length about how Benjamin was routinely beaten by Pat Harned just for acting “natural.” See, e.g., id. at 24-25 (“It seemed to me Pat would always pick on Benjamin . . . Benjamin was getting into more stuff, which is natural, more natural for a male to do. He was getting into a lot of stuff. We would hear off in the distance. We would just hear the screams . . . you would hear the screams of the babies and it was always Patrick and the babies. Just a very well known thing.”). He talked about how he thought hitting the elephants on the heels with bull hooks, which was done routinely, “would have to hurt,” because it “would

hurt a human if you did it.” Id. at 11-12. He also said that he felt that it “was very cruel” that the elephants were made to stand outside in the cold weather, id. at 45, and recounted that he had shoved hay in the door of the train to protect them from “snow getting into the stock cars,” id. at 88-89, and also provided the elephants bottled water when it “was 125 degrees” in the train as it traveled through Arizona in the summer heat, id. at 92. Mr. Rider also testified that he felt badly that the elephants were not provided any water when they were required to walk for miles in the heat. See id. at 48 (“They should have been watered halfway. That was my feeling. It is only a three and-a-half mile walk, but, still, when the girls are in that kind of heat and walking like that, they should at least stop and have some water”).

19. When asked about the lesions that had been reportedly observed on the babies Doc and Angelica by a USDA inspector, Mr. Rider testified that this probably resulted from the way the babies are “trained” at the CEC – which he referred to as “the farm” – i.e. that “the ropes are used to force the babies to lie down,” and he further stated:

that’s one of the reasons the farm is not open to the general public. Because they can just block and tackle [the baby elephants]. They can do anything they want. If they want to make them stand up, they can tie them and hoist them up in a block and tackle and make them stand up. That’s a pretty well known fact in the circus community. The general public doesn’t know it. That’s their training . . .

It is used by Gary Jacobson, Pat, by Randy . . . this is how you train an elephant. You tie them up and you make them do it until they do it. If they don’t get it the first time, you hit them.

PWC 184 at 97-99

20. Mr. Rider also explained in his March 25, 2000 testimony that although FEI had posted a notice for the employees that Benjamin had drowned during a “scheduled water stop,”

this was not a scheduled stop and that elephants “swim like fish.” Id. at 28. Rather, based on the routine beatings of Benjamin that he had personally witnessed, Mr. Rider surmised that Mr. Harned’s use of the bull hook had something to do with Benjamin’s death, and that FEI was engaged in “a cover-up” of what actually happened. Id. at 30-31.

21. Mr. Rider also testified that he had repeatedly complained about the mistreatment of the elephants to the other members of the crew – which reinforced my belief that he genuinely cared for the elephants and that seeing them mistreated definitely upset him in a very palpable way. See e.g., PWC 184 at 16 (testifying that “I did a lot of yelling at people when they were hitting – I got to the point sometimes, I threw my broom down, started yelling at them, going ‘why are you doing that to the elephant, why are you hooking the elephant?’”); id. at 18-19 (testifying that he “was probably the most outspoken one in the bunch,” and that he “would wake people up” on the train to talk about it).

22. However, Mr. Rider also testified that when he complained about the abuse to his fellow employees he was told that hitting the elephants was “discipline,” and that he “never went anywhere” higher with his complaints because he was afraid he would lose his job. Id. at 16, 46-47, 64, 19.

23. This March 25, 2000 videotaped deposition was my first introduction to Tom Rider, and it made me believe that he truly cared for the Ringling Bros. elephants, that it upset him greatly to see them mistreated, and that he genuinely wanted to do whatever he could to help improve their lives.

24. Based on Mr. Rider’s sworn testimony, on behalf of PAWS the firm submitted yet another formal complaint to the USDA to investigate the abuse of the elephants with bull hooks,

the excessive chaining of the elephants, and the danger to the public posed by Karen. See Letter to Michael Dunn (April 10, 2000), Exhibit 11. Again, the USDA took no enforcement action against FEI.

3. Further corroboration at the time of filing the complaint

25. Before filing the original Complaint in this action on July 11, 2000, I also met with Mr. Rider in person and interviewed him about how the elephants were treated at the Ringling Bros. circus and how this affected him. My impressions of Mr. Rider at our in-person meeting mirrored my impressions on viewing his March 2000 deposition. Having watched Mr. Rider's March 2000 videotaped testimony and spent time with him, and based on the corroboration provided by Ms. Derby's own experiences as an animal trainer, the videotape of Ringling Bros. employees hitting and whipping elephants, the testimony of other former Ringling Bros. employees, and internal USDA documents stating that FEI employees had inflicted "large visible lesions" on elephants which "harm[ed]" them, I fully believed Mr. Rider's accounts of what he had witnessed while employed by FEI, and had no reason to doubt that he genuinely cared for the elephants, that it upset him greatly to see them mistreated, and that he wanted to help improve their lives.

26. Around the time we filed the original Complaint, I also talked to Diane Ward, the USDA Investigator assigned to investigate PAWS' complaint to the USDA based on Mr. Rider's eye-witness accounts. Ms. Ward made clear to me that she also believed Mr. Rider, a sentiment that she memorialized in a July 21, 2000 Memorandum to her superiors at the USDA in which she stated "I have worked with Tom for the last week, and have taken a lengthy statement from him" and "[t]here 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 (Exhibit 12). Her assessment further reinforced my own belief in Mr. Rider.

27. Before filing the original Complaint, I also knew that Ms. Derby had accompanied Mr. Rider to a meeting with high-level officials at the USDA in June 2000 to discuss these matters, see Trial Tr. 78:22 - 79:20, Feb. 12, 2009 a.m., and that with Ms. Derby, television celebrity Bob Barker, and others, Mr. Rider had testified before Congress on June 13, 2000 in support of legislation to prohibit elephants and elephant rides because of safety concerns, explaining that “because of the way they live and are trained, elephants are extremely dangerous,” and that his experiences working with elephants “have left me with a considerable respect for the damage that elephants can do even unintentionally.” See PWC 94A at 246-248 (Exhibit 13). Knowing that Mr. Rider had spoken to both the USDA and Congress about his experiences, having observed his sworn videotaped deposition, and having met and interviewed him in person, I was confident that he was being truthful about what he witnessed at the circus and how it affected him.

28. The fact that both Ms. Swart and Ms. Derby had spent time with Mr. Rider before I met him, that Ms. Derby had spoken in several public forums with him, submitted a formal USDA complaint based on his eye-witness accounts, accompanied him to meetings with high-level officials of the USDA, testified before Congress with him, and agreed to be a co-plaintiff with him in the lawsuit indicated that she also fully believed his accounts about the mistreatment of the elephants he had witnessed, that he truly cared about the elephants, that he was bothered by the way they were mistreated, and that he wanted to help them. Because I had very high regard for both Ms. Derby and Ms. Swart, this also supported my belief that Mr. Rider

was telling the truth about these matters.

4. Corroborating events while the litigation was pending

29. Since filing the original Complaint, I have spent many hours with Mr. Rider in person and have spent many more hours talking to him on the phone, and I have never once doubted that he loves the elephants with whom he worked, that it bothered him greatly to see them hit with bull hooks and made to live on chains, and that he wanted to do everything he could to help them. To the contrary, his actions during the pendency of the ESA litigation only strengthened my belief in his veracity about these matters.

30. For example, in January 2001 PAWS and FEI reached a settlement in a different case brought by PAWS against FEI for spying on and infiltrating PAWS, and, as part of that settlement PAWS and its officers were required to withdraw from the ESA case and sign a nondisparagement clause that prohibited anyone who worked for PAWS from saying anything disparaging of FEI. 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. However, Mr. Rider elected to leave PAWS in May 2001 rather than be subject to a gag order that would prohibit him from speaking out against the circus, see DX 39 (Exhibit 14), which greatly supported my belief in his genuine affection for the elephants and his desire to help them. It was my understanding that Mr. Rider could have stayed at PAWS and had a place to live and a job of sorts if he had been willing to abide by the nondisparagement clause that was included in that settlement agreement. The fact that he chose not to do so and instead to leave PAWS and travel around the country, and actually live – first on a bus and then in his car – so that he could continue to speak

out on behalf of the elephants, spoke volumes to me about the depth of his concern for these animals. As Mr. Rider himself testified, it was his idea, not mine, to ask the plaintiff organizations to pay for his basic living expenses so that he could travel around the country to continue to talk to reporters and the public about what he had witnessed at the circus, as he had done while we was at PAWS. Trial Tr. Feb. 12, 2009 at 70-71.

31. Although, as he testified, Mr. Rider was afraid that FEI would retaliate against him for speaking out about the abuse he had witnessed, see Trial Tr. 54:24 - 55:03, Feb. 17, 2009 p.m. (cont.) (testifying that he “was scared for my life”), he was willing to continue to travel throughout the country, by himself, to continue his public education efforts on behalf of the elephants. I also knew, based on PAWS’ other lawsuit against FEI and other sources that FEI engaged in extensive efforts to harass and retaliate against those who criticize its practices. See, e.g., Salon Magazine (August 31, 2001) (describing FEI’s covert efforts to spy on and derail an author’s book concerning FEI) (Exhibit 15); Affidavit of Clair George, Pottker v. Feld Entertainment, Inc., et al., Civ. No. 99-008068 (Sup. Ct. D.C.) (Exhibit 16) (affirming that after leaving the CIA as head of “covert operations worldwide” he worked as a “consultant to Feld Entertainment and its affiliates” in furtherance of their “surveillance of and efforts to counter the activities of various animal rights groups”); 60 Minutes Piece (May 4, 2003) (concerning FEI’s covert operations) (Exhibit 17 included on the DVD provided to the Court). In addition, we obtained in discovery an internal FEI document outlining the various methods FEI would take to derail those who criticize its practices, including a daily operation to “expose and discredit animal activist entities.” See FEI’s “Long Term Animal Plan Task Force” (Exhibit 18) at 2, 12. Based on what I knew about FEI’s efforts to silence its critics, I was extremely impressed that

Mr. Rider was willing to take these risks on behalf of the elephants.

32. Over the years, I have also personally dealt with reporters, grass roots groups, lawyers, legislators and their staffs, and many other individuals who have known or worked with Mr. Rider personally, all of whom consistently expressed their belief in his veracity, his eye-witness accounts of what he saw at the circus, and his genuine concern for the elephants – all of which additionally contributed to my own assessment of his credibility.

33. I have also spoken to several other former Ringling Bros. employees over the years who have expressed feelings very similar to those expressed by Mr. Rider concerning their affection for the elephants, concerns about their mistreatment, that such mistreatment was hard to witness, that the memories of the mistreatment still haunt them, and their hope that something could be done to help these animals. These conversations were completely consistent with Mr. Rider's genuine care and concern for the elephants, and only served to further support my belief in his standing and the strength of our case against FEI.

34. During the course of litigating this case, I reviewed voluminous materials, took many depositions of FEI employees, and heard all of the trial testimony, all of which, in my view, corroborated Mr. Rider's original March 2000 testimony about what occurs at the circus, including that FEI's elephants are routinely hit with bull hooks and forced to stand chained on hard surfaces for most of their lives. See Plaintiffs' Proposed Findings of Fact ¶¶ 123-263.

35. There were other particular points that Mr. Rider had emphasized in his March 2000 testimony that stood out in my mind that were later corroborated by FEI's own witnesses and official government reports. For example, Mr. Rider testified that the training of the baby elephants at the CEC was so brutal that the CEC is "not open to the general public" – testimony

that in my view was corroborated by Gary Jacobson who runs FEI's CEC and who testified at trial that in fact he does not even let FEI's public relations department see how the baby elephants are trained because an ordinary person would not understand what it takes to make a baby elephant submissive. See Trial Tr. March 9, 2009 a.m. at 45-46 ("in the modern world it's just more difficult to explain" because "[e]very thing has to be warm and fuzzy.").

36. Mr. Rider's March 2000 suspicions about the circumstances surrounding the death of Benjamin – i.e. that this did not occur at a scheduled water stop and that Pat Harned's use of the bull hook had something to do with the elephant's death – were corroborated by the USDA's Final Investigative Report of the matter which also concluded that the site of Benjamin's death was not a regularly scheduled stop and that Mr. Harned's use of the bull hook "precipitated in the physical harm and ultimate death of the animal." PWC 24 at 3.

37. Another example of why I believed Mr. Rider, that I mentioned during the last hearing in the case, Trial Tr. July 14, 2009 at 61, was Mr. Rider's consistent pre-trial testimony that when he complained about the elephants being hit with bull hooks, he was told this was necessary "discipline." See March 2000 Testimony, PWC 184 at 64-65 ("When I say beating, I'm talking about both hands on the hook and severely beat them three or four times on the head . . . [t]hat's their, quote discipline for the elephants"); see also June 13, 2000 Congressional Testimony, PWC 94A at 248 (Exhibit 13) ("When I became disturbed about the treatment of the elephants, the continued beatings, including the baby Benjamin, I was told 'that's discipline'"); October 1, 2006 Deposition of Tom Rider (Exhibit 19) at 47 ("at Ringling they say the bull hook is for discipline"); id. at 53 ("If [the elephant] does anything that it is not supposed to do on that line it is discipline – what Ringling calls discipline. Those elephants were struck for doing

anything out of the ordinary”); id. at 82 (“I didn’t like seeing those elephants hit. I said, Why are they always hitting the elephants? . . . He says, You can’t do anything. It is discipline”). . . . Sure enough, in a brief filed on November 10, 2000, FEI itself argued that the use of a bull hook to “discipline” an elephant should not be considered a “take” under the ESA, Reply In Support of Motion to Dismiss, Civ. No. 00-1641 at 12, and FEI’s own elephant handler later testified at a deposition that what other former FEI employees regarded as a “beating” was merely “discipline” of the elephant. PWC 182 at 112-113 (testimony of Alex Vargas).

38. In his March 2000 deposition testimony Mr. Rider had mentioned that some of the elephants had arthritis, PWC 184 at 49 (testifying that “Nicole was developing arthritis,” and that “her leg was getting awful bad, infected and swelled up); id. at 80 (testifying that the elephant named Letcheme also had “arthritis”) – observations that in my view were corroborated by the expert report of Dr. Ensley, who reviewed the thousands of pages of medical records for the elephants and found that the elephants uniformly suffered from debilitating leg and joint diseases from being forced to spend the majority of their lives standing and lying on hard surfaces. See PWC 113 L at 110-111. Dr. Ensley also found that the elephants had signs of scars and lesions on the left sides of their bodies in places where the record showed bull hooks are traditionally used. See Trial Tr. 35, 52-56, Feb. 24, 2009 a.m. Dr. Ensley’s conclusions on these matters further corroborated my belief in Mr. Rider’s eye-witness accounts of how the elephants were treated and reinforced my view of how this must have affected him.

39. I also heard several FEI employees and Mr. Feld himself express the bond that is formed between circus workers and the elephants, which also reinforced my belief in Mr. Rider’s bond with these animals. See, e.g., Trial Tr. 12:10-12:11, March 3, 2009 a.m. (Mr. Feld

testifying that the elephants “have a bond with the people that work with them every day”); id. at 116:20 -116:23 (describing the “human animal experience and the bond that our trainers, our animal handlers have with these animals”); see also 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, agreeing that there is “an attachment” to the elephants that is “really no different than what any of us would have with our dogs or our pets.”); 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”). In my view, if these individuals – who were the perpetrators of the elephant mistreatment we were challenging – could claim an affectionate bond with the elephants, Mr. Rider, who had complained about their treatment to his fellow crew members and his supervisor while employed at the circus and was now publicly advocating for better treatment for the elephants, surely felt that attachment toward them.

40. These examples, and many others, confirmed many of Mr. Rider’s factual allegations, and therefore reinforced my belief that Mr. Rider was telling me the truth about what he had experienced at Ringling Bros. and how it affected him.

41. During the years I spent litigating this case immersed in the voluminous evidence corroborating Mr. Rider’s eye-witness accounts of how the elephants are treated – including FEI’s own documents and the testimony of many of its own employees – I myself grew fond of these animals, was deeply affected by their plight, and wanted to help them attain better lives. This was especially true after I attended the two court-ordered inspections, where I was able to actually see many of these elephants chained on concrete, swaying back and forth for hours at a time with nothing else to do. My own feelings reinforced my belief that Mr. Rider’s affection

for the elephants and desire to do whatever he could to help them live more humane lives were completely genuine.

42. In the course of litigating this case I also saw many hours of videotape taken of FEI employees hitting elephants with bull hooks and FEI elephants chained on concrete and engaged in stereotypic behavior, see e.g. PWC 130; PWC 132A-P; PWC 146A-B, and videotape that was not introduced at trial. I also saw undercover videotape taken at other circuses that showed elephants being threatened and struck with bull hooks, and I consulted experts and publications that confirmed that these were standard industry practices – all of which further reinforced my belief in Mr. Rider’s accounts of what he had seen at Ringling Bros., and which, in my view, also corroborated his testimony that this affected him in a very personal way. Indeed, I had strong emotional reactions simply by watching such treatment on a computer monitor, yet he had actually seen it first hand as part of his daily job experience.

5. Additional evidence of my good faith

43. I never intended to mislead this Court or the Court of Appeals about the basis for Mr. Rider’s standing. Both the original Complaint and the 2003 Complaint asserted that Mr. Rider loves the elephants and had formed a special bond with them, but was “unable to [visit them] without suffering more aesthetic and emotional injury.” Original Complaint (Civ. No. 00-1641) at ¶ 4; Complaint (Civ. No. 03-2006) ¶ 22. At the time we filed the original Complaint in July 2000 Mr. Rider had not yet been back to see the elephants, and we therefore relied on the Supreme Court’s recent opinion in Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. Inc., 528 U.S. 167, 181-82 (2000) to assert that he was injured by having to make the choice between refraining from visiting them and subjecting himself to more aesthetic injury.

However, by 2003 when this case was remanded by the Court of Appeals Mr. Rider had in fact been able to see the elephants on numerous occasions – a fact that we specifically included in the 2003 Complaint. See Complaint at ¶ 23.

44. Although FEI relies heavily on some remarks I made at a 2006 conference at New York University Law School concerning “Legal Standing For Animals and Advocates,” FEI Exhibit 4, those remarks are taken completely out of context and do not in any way suggest that we did not truly believe in the standing assertions that we made on behalf of Mr. Rider or the other plaintiffs in this case. FEI omitted the fact that, while I explained to the law students the difference in the standing allegations made in ALDF v. Glickman and ASPCA v. Ringling Bros., 317 F.3d 334 (D.C. Cir. 2003), I also stressed that we believed we would “have no problem proving” that Rider fell in love with the Asian elephants with whom he worked,” that “[h]e really did bond with them,” that “[h]e knows them all by name and spent a lot of time with them,” and that “[h]e. could not bear seeing them mistreated.” Id. at 75. While the Court ultimately disagreed with my assessment of the strength of Mr. Rider’s standing allegations, I advanced these allegations in good faith, and there was nothing nefarious about my trying to teach law students about standing law and the importance of using existing precedents to advance the law of standing in furtherance of protecting wildlife.

45. In October 2006, after the sudden death of another former Ringling Bros. employee who had recently gone public about the abuse he witnessed at the circus (Frank Hagan), I noticed the deposition of Mr. Rider to preserve his factual testimony should something happen to him before the case could be tried. I would not have taken that deposition, during which I knew Mr. Rider would be cross-examined by FEI’s counsel about his accounts of what

he had witnessed at Ringling Bros., his basis for standing, the funding he had received, and other matters – about which he was in fact cross-examined – if I did not have a good faith belief in Mr. Rider’s veracity and his basis for asserting standing in this case.

46. Neither counsel nor the organizational plaintiffs in this case would have put Mr. Rider on the stand if we did not believe that he was telling the truth about his genuine affection for the elephants, that it upset him to see them mistreated, and that he wanted to help improve their lives. First, we take our ethical obligations very seriously. Second, we also take our efforts to protect these elephants very seriously, and would never have intentionally jeopardized our case by relying on a witness – much less a plaintiff – whom we believed to be less than fully credible. We knew Mr. Rider would be cross-examined on many of the issues that ultimately convinced the Court that he was not credible, including the fact that he received funding from the plaintiff organizations and others, that FEI had a photograph of him holding a bull hook, and that he had not complained to management, the veterinarians, or the USDA while he was working at Ringling Bros. However, because we genuinely believed that Mr. Rider cared about the elephants, suffered as a result of that abuse, and therefore had the requisite standing to bring and pursue this case, and because we knew that we had an important case on the merits, we put Mr. Rider on the stand accepting the risk that the Court might view him differently than we did.

47. I did not have any ulterior motive for bringing this case – I agreed to represent the plaintiffs for the sole purpose of assisting them in their efforts to protect the Asian elephants from further mistreatment that we believed was prohibited by the Endangered Species Act, and I firmly believed at all times that this case was well-grounded in fact and law.

48. I also always had a good faith basis for asserting standing on behalf of the organizational plaintiffs in this case, both as to their informational injury and their resource injury under Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982) and its progeny.

49. I never filed a pleading or memorandum in the case nor engaged in any conduct for the purpose of delaying or multiplying the proceedings. On the contrary, in an effort to obtain some meaningful relief for the elephants we very much wanted to expedite a final resolution of the case as much as possible.

50. Whenever I signed a pleading or brief in the case I did so with the good faith belief that it was well grounded in fact and law, and was consistent with all legal and ethical requirements, the federal and local rules of civil procedure, and my obligations as an officer of the Court.

B. Responses to Some of the Court's Specific Findings

51. I understand that the Court had its own reasons for not believing Mr. Rider's standing assertions after hearing Mr. Rider's testimony and cross-examination at trial. However, as I explain above, before filing this case I personally engaged in extensive due diligence to arrive at a good faith basis for our allegations regarding Mr. Rider's standing and the merits allegations regarding FEI's mistreatment of the elephants. As I also explain above, events during the pendency of the case, and ultimately evidence and testimony presented at trial, gave me no reason to doubt the conclusions I had reached as a result of my pre-filing due diligence. Because I know the Court provided some specific reasons for not crediting Mr. Rider's standing testimony, I wish to explain why my knowledge of the facts underlying the Court's findings did not undermine my good faith basis for believing that Mr. Rider was telling the truth.

1. The fact that Mr. Rider continued to work for FEI

52. Although the Court found unlikely that Mr. Rider would continue to work for FEI for two and a half years if he were truly bothered by the way the elephants were mistreated, Finding of Fact (FOF) 3, based on everything I knew about him, I believed that Mr. Rider stayed at FEI for so long, at least in part, because he loved the elephants and wanted to be able to provide them some measure of affection and reassurance. See Trial Tr. Feb. 17, 2009 p.m. (cont.) at 46-47 (Mr. Rider explained that “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 (Response to Interrogatory No. 16, at 32 (“I 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 by myself keeping them as content as I could”). In my view, Mr. Rider’s explanation at trial was consistent with testimony he had given in his March 2000 deposition – before I had even met him – that he had provided comfort and aid to the elephants whenever he could. See PWC 184 at 88-89 (he had shoved hay in the door of the train to protect the elephants from the cold); id. at 92 (he had provided them bottled water when it was 125 degrees on the train); see also id. at 38-39 (he tried to put the elephants at ease when he walked past them by saying “Come on girls, it is okay, it is just me”).

53. For all of these reasons, the fact that Mr. Rider had stayed at FEI for two and a half years was understandable to me and did not dissuade me from continuing to believe that he loved the elephants and wanted to help them.

2. The fact that Mr. Rider did not complain to higher authorities when

he was still employed at FEI

54. The Court also found that Mr. Rider was not credible because he did not complain “to anyone in management about the mistreatment,” including Mr. Feld, and he did not complain to FEI’s veterinarians, the USDA, or any state and local animal control officers while he was employed at FEI. FOF 4 -6. While this is true, the Court also found that there was evidence that Mr. Rider did complain “to the elephant handlers and his direct supervisor,” FOF 4, and that he also “complained to the union” about these matters, FOF 9. Based on these facts, Mr. Rider’s explanation that he was afraid if he took his complaints any higher he would lose his job, Tr. Feb. 17, 2009 p.m. (cont.) at 12, 59, made sense to me. Mr. Rider had made this same point in his March 25, 2000 testimony. See e.g., PWC 184C at 47 (“the first year was really just seeing the stuff going on and not really opening my mouth too much about it and stuff because of fear of what could happen to me”); id. at 19 (“I just never went anywhere with it because, you know, you are afraid you don’t want to lose your job and end up on the street, because that’s what would have happened if you open your mouth too much. They start going on, he is a troublemaker. You lose your job.”). This was also consistent with what he told USDA Investigator Ward in July 2000, as stated in his sworn affidavit. See PWC 20, Exhibit 20, 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”). Indeed, the Court itself recognized “that an employee may fear making complaints against an employer, regardless of the protections provided – or at least promised – by a collective bargaining agreement.” FOF 9.

55. Mr. Rider’s explanation further rang true to me because – as the guy who cleaned

up after the elephants – he was extremely low on the totem pole at FEI, and because his concerns about losing his job under some pretext appeared to be borne out by what had happened to other FEI employees who complained about the mistreatment of the elephants. For example, Mr. Robert Tom, who testified as a fact witness at the trial, received “write-ups” for various alleged employment transgressions after he complained about the beating of an elephant by FEI employee 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, and former FEI employee Frank Hagan was fired for allegedly negligent behavior after he complained about the fact that a young lion died when it was deprived of water during a long trip through the Mojave Desert. See PWC 162 at 2-3.

56. In any event, while I understand why the Court viewed these matters differently, for all of the reasons stated above I personally had a good faith belief that Mr. Rider was telling the truth about why, while still employed at FEI, he did not take his complaints about the mistreatment of the elephants higher than the other handlers, his supervisor, and the union. The fact that, as the Court found, there is evidence that Mr. Rider did in fact complain internally to others at FEI further demonstrated to me that Mr. Rider cared about the elephants and was certainly upset by seeing them mistreated, and had tried to act on their behalf. I also know that although Mr. Rider did not complain to the USDA about the mistreatment when he was still employed by FEI, he did allow his complaints to be formally lodged with the USDA soon after he came back to this country in March, 2000, see Exhibit 11, which further reinforced by personal belief that he was telling the truth about what he had witnessed at the circus and that it had affected him in a very personal way.

3. The photo of Mr. Rider holding a bull hook

57. The Court also found that Mr. Rider's standing assertions were not credible because FEI produced a photograph showing Mr. Rider holding a bull hook in his hand. FOF 16-18. While I understand why the Court would reach this conclusion, FEI's own witness testified that this photograph was taken after Mr. Rider had left his employment with Ringling Bros. and had agreed to go to Europe with Daniel Raffo and the three Chipperfield elephants with whom he had formed an especially strong attachment, see Testimony of Daniel Raffo, March 4, 2009 a.m. at 39, and, as Mr. Raffo also confirmed, Mr. Rider was required to carry a bull hook when he worked for him. Id. at 32- 33.

58. Most significant to me, no one testified or produced any evidence that Mr. Rider ever hit an elephant with a bull hook at any of the circuses at which he worked, even though FEI had access to dozens of individuals who worked with Mr. Rider during his time with FEI and with Mr. Raffo. On the contrary, 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).²

59. Because Mr. Rider had testified in March 2000 that he never used a bull hook when he worked at Ringling Bros., PWC 184 at 14-15, and I already knew he was required to carry one when he worked with Mr. Raffo, which he testified was one of the reasons he quit that job after only about three months, see 2006 Deposition Testimony of Mr. Rider, Exhibit 19, at

² FEI misleadingly states in its Exhibit that "Rider admits that he also handled bullhooks while he was employed with FEI." FEI Fee Exhibit 10 at 1. This citation refers to deposition testimony where Mr. Rider simply admitted that the reason he was able to describe how much the Ringling Bros.' bull hooks weighed is that he "moved them off the ground" while employed there. October 12, 2006 Testimony, Exhibit 19, at 227.

195-96, the fact that he was photographed holding a bull hook after he had left his employment with FEI to work with Mr. Raffo, did not dissuade me from continuing to believe that Mr. Rider truly cared for the elephants and wanted to help improve their lives in some way.

4. The fact that Mr. Rider accepted a job with Mr. Raffo

60. The Court concluded that Mr. Rider would not have accepted a job with and remained in the employment of Mr. Raffo, who he testified also mistreated the elephants, if he had truly suffered aesthetic and emotional injury from witnessing mistreatment of these animals. FOF 15. However, based on my knowledge of Mr. Rider, I personally believed Mr. Rider's explanation – which he had given in his very first deposition to PAWS in March 2000 – that he went to Europe because he particularly loved the three “Chipperfield elephants” and thought this was a chance to both stay with them and get them away from “all the abuse” he had “seen at Ringling.” PWC 184 at 108; see also October 12, 2006 Deposition, Exhibit 19 at 106 (“my complaining didn't help so I needed to get away”). My belief in Mr. Rider's explanation was bolstered by the fact that because he was required to carry a bull hook for the first time by Mr. Raffo, and because of mistreatment he witnessed while working with Mr. Raffo in Europe, Mr. Rider left that job after a few months. See Plaintiffs' Proposed Findings of Fact Nos. 33-35.

61. I also believed Mr. Rider's testimony that he left his employment with the Chipperfield elephants because of various mistreatment he had witnessed, not only of the elephants but also of two young tigers that he testified were killed so that they would not have to be fed any longer, see October 16, 2006 Deposition, Exhibit 19 at 105-107, 195, and Mr. Rider's decision to leave a job on his own volition to advocate for circus animals further reinforced my belief that he was telling the truth about the mistreatment he had witnessed, was bothered by the

mistreatment, and wanted to speak out on behalf of these elephants.

5. Mr. Rider's failure to recall the names of all of the elephants

62. The Court also found that Mr. Rider did not have a sufficient attachment to the elephants because in his June 2004 Interrogatory Responses he forgot to name one of the elephants with whom he worked (Meena), FOF 70, during his October 12, 2006 deposition he forgot to name another elephant (Zina), and that he “similarly struggled to recall the names of the Blue Unit elephants in his 2007 deposition.” FOF 72. While I understand why these lapses could contribute to the Court’s finding, they did not affect my personal belief that Mr. Rider had a genuine attachment to all of the elephants with whom he worked. When Mr. Rider gave his first sworn testimony on March 25, 2000 - which was much closer in time to when he had worked with these animals – he was able to name all of the elephants with no difficulty. See PWC 184 at 9 (when asked to “off the top of your head . . . name the elephants you were responsible for, replying “Meena, Letchmee, Kamela, Zyna,, Lootsie [Lutzi], Susan, Rebecca, Jewel, Sophie, Karen, Marsore [Mysore], Mini, Nicole. And Roma was in there somewhere”).

6. The fact that Mr. Rider did not visit certain elephants

63. The Court also found as a basis for not crediting Mr. Rider’s standing assertions that Mr. Rider had not made efforts to see some of the elephants with whom he worked at Ringling Bros., including Rebecca and Mini who were living at the PAWS sanctuary, and the elephants subject to the court-ordered inspections. See FOF 67-69. First, because of the tense circumstances under which Mr. Rider ended his relationship with PAWS, see DX 39, PFF 41, I did not believe that he had a realistic opportunity to visit those elephants at the PAWS’ sanctuary.

64. Second, as to the two court-ordered inspections, while Mr. Rider testified that he was personally afraid to be around the FEI staff in light of all that had happened since he left the circus, see Trial Tr. Feb. 17, 2009 at 54-55, I and my co-counsel, in consultation with our experts, had decided for strategic reasons that Mr. Rider should not attend the inspections, because (a) we did not want to give FEI's counsel the opportunity to assert that the only reason Mr. Rider could identify the elephants by their physical characteristics at trial was that he had recently seen them at the inspections (see, e.g., Trial Tr. Feb. 17, 2009 p.m. at 28-29 (describing Karen has having "U-shaped" black hair on her forehead), id. at 30 (testifying that it was "easy to spot" Nicole because "she had a lot of pink . . . on her trunk and stuff;") and (b) we did not want FEI to argue that if any of the elephants engaged in stereotypic or other abnormal behavior during the inspections this was because Mr. Rider was present. Rather, we wanted the inspections to focus solely on our expert witnesses' evaluations of the elephants.

65. Nonetheless, knowing how much Mr. Rider loved these elephants, I did personally call him on a cell phone as I stood there watching Karen and Nicole during the inspection, and I also called him during the inspection of the elephants at the CEC.

66. For these reasons, and for all of the others provided above, I personally had a good faith basis for believing that Mr. Rider truly loved these elephants, wanted to do what he could to provide them with better lives, and wanted to visit them once they were rescued if possible.

7. Mr. Rider referring to Karen as a "bitch"

67. Another reason the Court doubted Mr. Rider's love of the elephants is that he calls the elephant named Karen a "bitch" on a videotape that Mr. Rider took during one of his visits to see the elephants when they were arriving by train at a particular venue, and which plaintiffs

produced to FEI. FOF 73. While I appreciate the Court’s concern about this use of language, this particular incident did not undercut my personal belief that Mr. Rider loved all of the elephants, including Karen. Having seen and read his March 2000 testimony concerning Karen, and having read his Congressional testimony about how dangerous she is – which was confirmed by many other FEI employees³ – and having heard Mr. Rider’s story, which he told at trial, about how Karen had thrown apples at him when he outsmarted her by escaping her effort to block his path by distracting her with a broom, Tr. Feb. 12, 2009 a.m. at 25-26, I personally viewed his name calling on the video as simply continuing their contentious, yet playful relationship rather than an indictment of his genuine affection for her. See, e.g., March 2000 testimony, PWC 184 at 102-03 (remembering an occasion when he pulled some hay away from the elephants, looking over at Karen and saying “Can’t get me now,” and that “[s]he slapped me on the back just to be playing with me”).

8. Lack of specific observations of mistreatment of the elephants

68. The Court found that Mr. Rider lacked any present or imminent aesthetic injury because he “admits, from December 1, 1999 through the present time, he had not observed any mistreatment of the Asian elephants Jewel, Lutzi, Mysore, Nicole, Susan or Zina,” and because “[t]he evidence offered by Mr. Rider to support the alleged mistreatment of the Asian elephant Karen during this time period was inconclusive and insufficient to support his claims.”

³As discussed above, the other former Ringling Bros. employees whose sworn testimony I had seen in 1998 had also testified that Karen is especially dangerous, see also PWC 190D at 4-5, and several of FEI’s then current employees likewise acknowledged to the USDA that Karen is a dangerous animal. See, e.g., Affidavit of Robert Ridley, Karen’s principal handler at FEI, PWC 26 (“Karen could be dangerous”); Affidavit of Randy Peterson, PWC 190A at 4 (“[w]e advise new employees without any elephant experience to stay away from [Karen] to avoid getting hurt”).

Conclusion of Law 11. However, based on everything described above, I believed that Mr. Rider knew that all of the Blue Unit elephants were routinely hit with bull hooks and kept chained on concrete for most of their lives with nothing to do, and that continuing to see the elephants under what he knew were the same conditions upset him whenever he saw them, regardless of whether he actually saw them being hit with bull hooks. See Trial Tr. 97:01 - 98:10, Feb. 12, 2009 a.m. (testifying that every time he goes to see the elephants he sees “the same thing, I see the elephants chained up, I see the bull hooks”) (“It still hurts. I still see the same thing I saw when I was there”); id., 98:12 - 99:07 (“nothing changes but the lot . . . nothing changes but where you’re at. Still ongoing”); see also Trial Tr. Feb. 17, 2009 p.m. at 22 (when he sees the elephants he suffers aesthetic injury). In addition, Mr. Rider produced videotape that I believe shows Karen’s trainer getting a bull hook stuck in her mouth after hooking her with it, see PWC 132P, and the Court itself noted that Mr. Rider testified that when he visited the elephants he witnessed them “swaying . . . when they were chained,” Conclusion of Law 15, citing Tr. Feb. 12, 2009 a.m. at 35 – which plaintiffs’ experts and FEI’s own expert testified was “abnormal” behavior. See PFF ¶¶ 330-347. For all of these reasons, I believed that Mr. Rider could tell that the elephants were still being mistreated and that this continued to upset him.

9. Disclosure of Mr. Rider’s funding

69. As the lead attorney for the litigation, I was ultimately responsible for supervising the plaintiffs’ discovery responses, and can assure the Court that there was never any intention on the part of either the plaintiffs or the attorneys to conceal from FEI or the Court the fact that Mr. Rider was being provided money to pay for his living and traveling expenses. FEI’s initial discovery requests did not specifically ask the plaintiff organizations whether they were

providing funding to Mr. Rider. Nevertheless, as early as June 2004 in response to discovery requests concerning the organizations' standing allegations ASPCA had produced to FEI internal e-mails explaining that Mr. Rider had left his position with PAWS "to follow the circus and speak out about its training/abuse of elephants," that Mr. Rider had already "been doing some impressive p.r. work" in conjunction with the ASPCA, and that ASPCA would therefore fund his "road expenses" so that he could continue his advocacy work. DX 46 (Exhibit 21) (emphasis added). In their initial June 2004 written discovery responses, the ASPCA further disclosed that it had provided funding to the Wildlife Advocacy Project for "public education about Ringling Bros. mistreatment of Asian elephants," Exhibit 22 at 33, and the Fund for Animals divulged a "Grant/Funding Proposal" from WAP to FFA specifically proposing funding for Mr. Rider's "transportation, lodging, meals, phone expenses, and other administrative and out-of-pocket costs for Mr. Rider to continue" his public advocacy efforts in which Mr. Rider had been engaging. Exhibit 23 (emphasis added).

70. In addition, in July 2005, based on documents that the ASPCA had submitted in June 2004, ASPCA's 30(b)(6) witness, Lisa Weisberg testified that the ASPCA had spent money on "Tom Rider's speaking with the media across the country," see Weisberg Deposition (July 19, 2005), Exhibit 24, at 34-36, see also id. at 48-49, 225, that some of the funding for Mr. Rider had been expended by plaintiffs' counsel and then billed back to the organizational plaintiffs, id. at 53 (explaining that some of the funds had been wired to Mr. Rider "through Western Union by Meyer & Glitzenstein and then we would be invoiced for it"), and that funding for Mr. Rider was also provided through the Wildlife Advocacy Project, id. at 42-47, 56-57, 83-85, 87-91. Ms. Weisberg also testified extensively about the fact that Mr. Rider worked closely with the

ASPCA's media department. Id. at 157-61.

71. As the Court itself previously noted, in my role as counsel for the plaintiffs I also volunteered in "open court on September 16, 2005" that the plaintiff organizations had provided funding to "Tom Rider to 'speak out about what really happened' when he worked at the circus." See DE 176 at 7 (quoting Sept. 16, 2005 Hr'g Tr.).

72. With respect to the Court's finding that Mr. Rider's June 2004 interrogatory response that he had received no "compensation" for "services rendered" to any "animal advocate or animal advocacy organization" was "false," FOF 55-56, I wish to assure the Court that I did not intend to mislead FEI about the funding of Mr. Rider, but, as explained below, was instead trying to balance my obligation to represent Mr. Rider's interests with our overall discovery obligations.

73. The pertinent interrogatory actually had two parts: the first part, which is not addressed in the Court's final decision, asked Mr. Rider to "identify all income, funds, compensation, other money or items, including, without limitation, food, clothing, shelter, or transportation, you have ever received from any animal advocate or animal advocacy organization," and the second part asked that "[i]f the money or items were given to you as compensation for services rendered, describe the services rendered and the amount of compensation." See Interrog. 24 (Exhibit 25). Importantly, Mr. Rider's written discovery responses did not state that he had no information responsive to the first part of the interrogatory. To the contrary, in response to a parallel document production request, Mr. Rider had already agreed to provide FEI with such information subject to a confidentiality agreement to protect his privacy and First Amendment right of association, see Answer to Document Request No. 21

(June 30, 2004), Exhibit 26. He repeated this offer with respect to his answer to the first part of the Interrogatory, which asked him to identify “all money” he had received from “any animal advocate or animal advocacy organization.” See Response to Interrogatory No. 24, Exhibit 25 (“subject to a confidentiality agreement, Mr. Rider would be willing to provide defendants with the answer to the first sentence of this Interrogatory”).

74. However, when he answered this question in 2004, Mr. Rider regarded his public advocacy for the elephants not as a job for which he was being paid a salary, but rather as something he was doing on his own initiative, which is why he answered the second part of the Interrogatory by stating “I have not received any such compensation [‘for services rendered’].” Id.; see also Tr. Feb. 12, 2009 p.m. at 90-91 (testifying that the money he receives is used for his “expenses” incurred in conjunction with his public advocacy and that “I don’t have a paycheck for it, I’m not doing it for pay”).

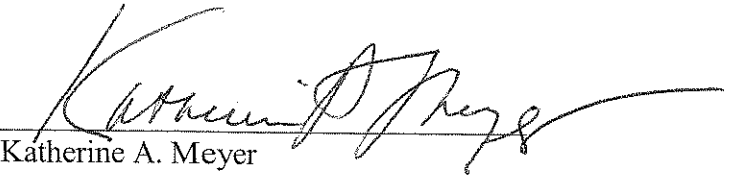
75. In any event, because at the same time we offered to provide FEI with all of the funding information under a confidentiality agreement, both with the initial June 2004 discovery responses and again on subsequent occasions, it was my professional judgment that we acted appropriately by responding to the Interrogatory this way. See Response to Document Request 21 (Exhibit 26); Response to Interrogatory No. 24 (Exhibit 25); see also DE127-5 (1/16/07 letter from Katherine Meyer to George Gasper) (describing the information that FEI had already received concerning Mr. Rider’s funding and stating that “Mr. Rider is willing to provide a more complete list to defendants of his sources and amounts of income since he stopped working for circuses – as he has consistently stated he would do since June 2004.” However, because he still believes that much of this information is personal and confidential, he continues to request that

he provide this information to defendants subject to a confidentiality agreement. If you agree to this approach, I will draft a proposed agreement for your review as soon as possible.”) (emphasis added). Nonetheless, FEI never took Mr. Rider up on his offers.

76. Therefore, because I several times offered to provide FEI with the information they were requesting regarding Mr. Rider’s funding, I acted in good faith in signing the objections to the Interrogatories, with no intent to hide this information from FEI but merely to preserve my client’s position that the funding was not, in his view, “compensation for services rendered.” See also, e.g., Koller by and Through Koller v. Richardson-Merrell, Inc., 737 F.2d 1038, 1056 (D.C. Cir. 1984) (“[T]he duty of a lawyer, both to his client and to the legal system is to represent his client zealously within the bounds of the law”) (internal citations omitted).

77. The Court also found as a basis for discrediting Mr. Rider’s standing assertions the fact that Mr. Rider did not file income tax returns concerning the funds he had received from the organizational plaintiffs and others between 2001 and 2006. FOF 58. While this is an understandable basis for doubting someone’s credibility, it did not detract from my own personal belief that Mr. Rider was not trying to hide the fact that he had received funding from the clients because I knew that, as early as May 2002, as reflected in FEI’s own internal e-mail that we received in discovery, Mr. Rider had publicly stated that he was receiving such funding, see PWC 187 (Exhibit 27), and that in June 2004 we had offered to provide FEI information concerning all such funding, subject to a confidentiality agreement. I am not a tax lawyer and was never advising him in that capacity. I did however refer Mr. Rider to a tax attorney at Skadden Arps who handled this matter for him and dealt with the IRS on his behalf. See Tr. Feb. 12, 2009 p.m. at 2-3.

Pursuant to 28 U.S.C. § 1746, I declare that the foregoing is true and correct.


Katherine A. Meyer

Date: June 10, 2012