EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DECLARATION OF ERIC R. GLITZENSTEIN

1. I am a partner in the law firm Meyer Glitzenstein & Crystal ("MGC"), which represented the plaintiffs in this litigation. I base this declaration on my personal knowledge, including more than thirty years of experience litigating public interest cases in the federal courts in Washington, D.C. In submitting this declaration, my purpose is to provide the Court with my personal views, as an officer of the Court, of how the litigation was conducted and my understanding of the good faith legal and factual basis for the case. I do not intend, and have not been authorized, to waive any privilege that any participant in this litigation may have. I have shared this declaration with my clients in the litigation through their separate counsel, and they have confirmed that there is nothing in this declaration that should be construed as a waiver of any privilege and that, therefore, there is no reason why this declaration cannot be filed on the public record.

A My Relevant Experience

2. Since graduating from law school in 1981 and then clerking for Judge Thomas A. Flannery of this Court for one year, I have practiced public interest law, first with the Public

Citizen Litigation Group and then in private firms that charged well below market rates, and frequently no fees at all, for legal services. My practice has involved representing non-profit organizations and individuals in federal court in a variety of public-interest areas including environmental and animal protection litigation. I have litigated many Endangered Species Act ("ESA") cases in federal courts around the country, and I am often asked to speak at conferences, seminars, and law school classes concerning ESA enforcement, litigation, and related topics. I was asked to write the "Citizen Suits" chapter for the American Bar Association's book on the ESA, *Endangered Species Act: Law, Policy, and Perspectives* (2010), and serve as Vice Chair of the ABA's Animal Law Committee. I have been an Adjunct Professor at Georgetown University Law Center, where I taught classes in Public Interest Advocacy as part of the Public Interest Law Scholars program at Georgetown.

3. I have never been sanctioned by any court, either in this jurisdiction or elsewhere, for any reason whatsoever.

B. I Had A Good-Faith Basis For Bringing And Pursuing This Case

4. Although MGC is a small firm, we are generally involved in a number of cases, including several complex federal cases, at any one time. While this litigation was pending, MGC represented environmental organizations seeking to protect the Florida Everglades and Miami's drinking water supply from limestone mining, which involved many months of evidentiary hearings in Miami in which I personally participated; I represented a coalition of conservation and animal organizations in extensive litigation before this Court challenging the failure of the federal government adequately to protect and conserve the endangered Florida manatee; and I was lead counsel in an Endangered Species Act case in the U.S. Supreme Court.

Due to these competing staffing demands, not all lawyers in the firm participated in this litigation to the same degree at all times. With respect to my own involvement, while I reviewed drafts of various filings and consulted on strategy from the outset of the case, as discussed further below, I was principally involved in the evidentiary hearing before Judge Facciola in 2008 and the trial and its aftermath in 2009.

5. Based on my personal involvement in this litigation, what I have learned about the litigation from other attorneys at MGC who participated in various aspects of the case over the years, and my three decades of experience in federal court litigation in general and my involvement in ESA litigation in particular, I believe that this litigation was at all times conducted by plaintiffs and counsel in a good faith effort to remedy violations of the ESA. I also believe that the litigation was based on a reasonable investigation of the facts and the law, both before the case was filed and after. I never filed any pleading or other document in the litigation, nor engaged in any other conduct in the case, in order to delay or multiply the proceedings.

6. In particular, throughout the litigation I personally believed that Tom Rider had a genuine attachment to the Asian elephants with whom he had worked at Feld Entertainment, Inc. ("FEI"), that his assertion of an aesthetic injury in connection with their ongoing treatment by FEI – particularly the extensive use of bullhooks and chaining – was genuine and well-founded, and that he earnestly did desire to alleviate their suffering, both by accomplishing a favorable ruling in this litigation and through the public advocacy in which he personally engaged over the years. I also believed that the organizational standing theories that plaintiffs advocated from the outset of the case, although ultimately unsuccessful, were legitimate legal theories in light of my

understanding of the relevant case law.

7. I have personally met with Mr. Rider on a number of occasions over the years and have always believed that he was sincere with regard to his devotion to the elephants with whom he worked, his conviction that they were mistreated, his claim that he could not observe them without suffering an aesthetic injury, and his desire to do what he could to improve their lives. I I certainly did not ask, encourage, or pay Mr. Rider to lie about anything, including his standing allegations or testimony in connection with this case, and I would not have represented him or associated with him in connection with this case and his public advocacy for the elephants had I believed that he was lying about his attachment to the FEI elephants, their mistreatment by FEI, or his aesthetic injury from that mistreatment.

8. I appreciate that, in issuing its December 2009 ruling, the Court saw Mr. Rider in a different light than I did, and that the Court had its reasons for doing so. As I acknowledged to the Court during the hearing on FEI's motion for judgment following plaintiffs presentation of their case in chief, Mr. Rider is "not a perfect person," Trial Tr. 2/26/09 am, at 91:22-23, but, as I also indicated to the Court, I personally regarded Mr. Rider as "honest" with respect to the matters of central importance to his standing in this case – *i.e*., the validity of his testimony regarding elephant mistreatment and whether he genuinely cared for the elephants and personally felt aggrieved by their mistreatment. *Id*. at 91:21-92:5; *id*. at 93:19-23 (explaining my belief that Mr. Rider's "fondness" for the elephants was "genuine" and that any "discrepancies in his testimony did not "fundamentally undercut either that or the application of the standing principle" to him).

9. As I indicated to the Court, I found it significant that a USDA investigator who met with Mr. Rider in 2000 concluded that 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 in the circus." Trial Tr. 2/26/09 am, at 94:19-22. This was an important part of my own good faith assessment of Mr. Rider's standing allegations. Having read many thousands of government records during my career, including many investigatory records, I personally found it to be noteworthy and unusual for an agency investigator to stress, in a memorandum to her superiors, a particular individual's emotional connection to a specific animal or group of animals. I believed the USDA investigator would not have done so unless she was especially struck by Mr. Rider's apparent devotion to the FEI elephants with whom he had worked. My personal and professional judgment, as I expressed at trial, was that the impressions of a trained government investigator in 2000 – gained shortly after Mr. Rider had worked with the elephants – afforded a valuable "contemporary sense" of whether Mr. Rider had a genuine attachment to the elephants. *Id*. at 95:21-96:4.

10. I was also impressed by the fact that Mr. Rider took significant personal risks in speaking out about the elephant mistreatment he had witnessed and in becoming a plaintiff in this case. FEI is a large corporation with a reputation for attempting to discredit, disparage and silence those who publicly call its practices into question. I perceived Mr. Rider's willingness to become a highly public voice for the FEI elephants as the behavior of someone who was genuinely concerned about the well-being of these elephants and who deeply desired to help them. My assessment was reinforced by my understanding that, when he first began his public advocacy efforts, Mr. Rider traveled around the country on a Greyhound bus to advocate for the

elephants, and that he later drove hundreds of miles to where the circus was performing in a dilapidated van (which I have personally seen) in which, as the Court found, Mr. Rider also frequently lived. In my own estimation, the modest funding Mr. Rider was receiving – which, according to the Court's ruling, averaged out to less than $ 23,000 per year – and the rather meager existence it provided could not sufficiently explain why someone in Mr. Rider's position would have undertaken the risks that he did in making an enemy of a wealthy and powerful corporation like FEI, or in making the personal sacrifices that he made in traveling – by himself – to dozens of cities and towns to where the circus was performing. Again, while I understand that the Court arrived at a different conclusion, I believe that my own good faith assessment of Mr. Rider was based on a reasonable evaluation of what might ultimately motivate someone in Mr. Rider's position to act as he did.

11. My perception of Mr. Rider's credibility was also reinforced by the underlying merits of the case. As I personally viewed Mr. Rider's allegations in the case, there were elements of his allegations that I could verify objectively– *i.e.*, his longstanding allegations that FEI systematically beat elephants with bullhooks and kept them on chains for much of their lives. There was also an element that was inherently harder to corroborate *i.e.*, determining whether he *subjectively* felt a genuine emotional attachment to the elephants with whom he worked and whether he genuinely felt upset by observing them being subjected to the harsh conditions at FEI. The evidence that we obtained in the case (including the elephants' medical records that FEI resisted disclosing) tended to corroborate, in my mind, those elements of Mr. Rider's testimony that were objectively verifiable –for example, it established that FEI used bullhooks in a manner that causes wounds and other injuries to elephants, and that FEI kept elephants chained on hard

surfaces for much of their lives, especially when they were traveling from town to town, resulting in serious foot and leg injuries, as well as painful bed sores on the elephants' bodies. While the court did not address these issues, because it did not reach the merits, in my personal estimation and professional judgment, confirmation of these facts made it more likely that Mr. Rider was credible as to those aspects of his allegations that I found by nature to be more subjective and did not lend themselves as easily to corroboration, *i.e.*, his own internal emotional state and aesthetic reaction to the elephant mistreatment.

12. The attorney at MGC who interacted most extensively with Mr. Rider was my partner, Katherine Meyer. Throughout the litigation, my impression was that Ms. Meyer completely believed in Mr. Rider's devotion to the elephants with whom he worked, that he was personally aggrieved by their ongoing mistreatment, and that a favorable ruling from this Court could both improve the lives of the elephants and ameliorate Mr. Rider's injury. I have practiced law with Ms. Meyer for thirty years (first at Public Citizen and then in private practice), and we have been married for twenty years. I believe that she is a person of exceptional professional integrity and have never known her to take a position in litigation that she did not in good faith believe was well-founded in law and fact. Moreover, I have always regarded Ms. Meyer as an astute judge of character. Accordingly, the fact that Ms. Meyer, who dealt directly with Mr. Rider far more extensively than I did over the years, at all times appeared to believe very strongly in his veracity with respect to his attachment to the elephants and his assertion of an aesthetic injury, was also an important consideration in my own good faith judgment that Mr. Rider's standing allegations were legally and factually valid.

13. When the case was initially filed, as at all other times, I certainly never intentionally misled this Court or the Court of Appeals concerning the basis for Mr. Rider's standing or any other matter, and I do not believe that any other attorney at MGC ever had that intent. In particular, I never intended to mislead the courts as to whether Mr. Rider had been attempting to observe FEI's elephants, and I had no reason to do so. I understood that, prior to the ESA case being filed, it was already well-established in the D.C. Circuit's *en banc* ruling in *Animal Legal Defense Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998) that someone who repeatedly and directly observes animals in allegedly inhumane conditions can suffer an injury in fact for purposes of Article III standing. I was extremely familiar with this case because my firm had successfully argued it and I participated in it. Accordingly, I understood that it would have been contrary to plaintiffs' interests here to have hidden from the courts any efforts by Mr. Rider to visit the elephants and, instead, press a theory of standing that had not yet been tested in this context. In any event, I believed that, although some of the specific facts bearing on Mr. Rider's efforts to observe and advocate for the elephants changed somewhat over the course of this lengthy litigation, the theory underlying his assertion of injury (*i.e.*, that, due to his attachment to the elephants, he could not view them *without* suffering further aesthetic injury) did not change. Accordingly, we never had any reason or intent to mislead the courts – as evidenced by the fact that we promptly filed an Amended Complaint in 2003, following the Court of Appeals' remand, accurately conveying what plaintiffs then understood to be Mr. Rider's travels and how they related to his standing allegations.

C. There Was No Cover-up Of Mr. Rider's Funding

14. I did not draft plaintiffs' initial answers to FEI's interrogatories or document production requests in 2004 or represent the organizational plaintiffs at their depositions in 2005. However, I did act as plaintiffs' lead counsel in the evidentiary hearing that was conducted before Judge Facciola in 2008 in response to FEI's unsuccessful motion to hold plaintiffs in contempt. As a result, I became quite familiar with how plaintiffs had responded to the discovery requests, particularly as they related to the funding of Mr. Rider. In keeping with the testimony provided by the organizational representatives who testified in the evidentiary hearing, and as set forth in the post-hearing brief that plaintiffs filed with Judge Facciola, *see* DE 316, it is my view that at all times plaintiffs and their counsel endeavored in good faith to comply with their discovery obligations as they understood them and that there was no effort to cover up Mr. Rider's funding.

15. As I explained in our post-hearing brief to Judge Facciola, I believe that one of the central problems afflicting the initial round of written discovery requests submitted by FEI was the vast gulf between what FEI subsequently said it *wanted* – *i.e.*, all information pertaining to the organizations' provision of funding for Mr. Rider – and what FEI *actually requested* in its interrogatories and document production requests – *i.e.*, information supporting the organizations' *own* standing allegations. Although in responding to the requests that were actually made, the organizational plaintiffs did, in their very first discovery responses in 2004, provide information bearing directly on Mr. Rider's funding, *id*. at 6, it was not until this Court's August 23, 2007 Order that plaintiffs received express direction as to which funding information plaintiffs were required to produce and what they could legitimately withhold on privilege or

relevance grounds. *See* DE 178 at 6-7. Accordingly, I argued at the evidentiary hearing that plaintiffs had fully complied with their discovery obligations and the Court's August 2007 discovery order, and this view was vindicated by Magistrate Facciola's subsequent order rejecting FEI's request for contempt sanctions. DE 374. Having personally participated in the evidentiary hearing that specifically focused on plaintiffs' compliance with their discovery obligations, I believe that FEI's assertion of a concerted "cover-up" of Mr. Rider's funding is baseless, and that there was no intention on the part of plaintiffs or their counsel to circumvent discovery with regard to Mr. Rider's funding. To the contrary, at all stages of the litigation, we attempted in good faith to comply with our discovery obligations in light of the specific requests made by FEI.

D. My Involvement In Plaintiffs' Good Faith Effort To Craft An Efficacious And Reasonable Remedy Proposal

16. In addition to taking the lead role in the evidentiary hearing before Judge Facciola, I participated in the trial and helped to craft the final remedy that we proposed to the Court following the trial. In helping to develop that remedy, I, on my clients' behalf, endeavored in good faith to further plaintiffs' interests and also to accommodate concerns expressed by the Court during trial and some of FEI's stated objections. During the trial, FEI had strenuously argued at various junctures that an immediate final injunction would violate its constitutional due process rights because FEI had relied on the fact that no executive branch agency had ever declared that FEI was engaging in a prohibited "take" of the elephants although the circus had been operating for many years. *See* Trial Tr. Feb. 26, 2009 pm at 58:23-59:05 (FEI's counsel argued that there would be a due process problem if the Court determined that FEI's practices

were taking the elephants because the "agency has never applied" the take prohibition to FEI); Trial Tr. March 11, 2009 am at 50:17-50:23 (FEI counsel stating that if the court were to hold that FEI's practices are taking the elephants, "then I think there is a significant problem here about whether it's fair to expect the company to have understood that").

17. In helping to craft a proposed remedy, I also sought to take into consideration the Court's colloquies with counsel, including at the beginning of the trial, during the hearing on FEI's motion for judgment following plaintiffs' presentation of their case, and at the closing argument. In those discussion with counsel, the Court questioned whether there was an appropriate mechanism for incorporating the input of the "executive branch" into an assessment of what all parties recognized were issues of first impression regarding which, if any, of FEI's long-standing practices constitute a "take" under the ESA and how they should be regulated. *See, e.g.*, Trial Tr., 3/18/09 am at 122:3-5 ("It just occurs to me that maybe at some point the Court might be interested in what the view is of the executive branch."). During the hearing on FEI's motion for judgment following plaintiffs' presentation of their case, which I argued for plaintiffs, the Court, in a colloquy with FEI's counsel, explored whether there might be a remedy that would avoid the Court itself having to "regulat[e] the use of the bull hook or chaining," and instead would ensure that FEI's practices could be addressed as part of the ESA permitting process. *See* Trial Tr. 2/26/09 am, at 65:22-66:2 (asking FEI's counsel whether the Court could "avoid regulating the use of the bull hook or chaining by simply requiring that if [FEI is] going to have elephants in the circus within this certain defined class . . . you have to apply for a permit that is then regulated by the federal government").

18. In light of these developments, and without "radically chang[ing] [our] remedial theory," or "abandon[ing]" our request for any injunctive relief, as FEI asserts, FEI Mot. at 16, we proposed a remedy that I believed took all of these concerns into consideration: we proposed that the Court could issue broad declaratory relief that FEI's practices violate the ESA's take prohibition (a declaration we had sought since the original Complaint in 2000), and *defer* consideration of injunctive relief for a very short period (thirty days) to allow FEI to seek a permit from the FWS under section 10 of the Act. *See* DE 533-1 at 51 (¶ 116). In doing so, I helped to draft submissions that explained our continued belief that injunctive relief was "clearly appropriate here," DE 533-1 at 44 (¶ 104) (Plaintiffs' Proposed Conclusions of Law), and that we were not in any way withdrawing our request for injunctive relief. *Id*; *see also* DE 555-1 at 1 (Plaintiffs' 7/23/09 Submission Regarding the Court's Authority to Issue Declaratory Relief in Addition to Injunctive Relief in this Case") ("At the outset, plaintiffs wish to reiterate in the most emphatic terms that [contrary to FEI's argument] plaintiffs have certainly not 'abandoned' their request for injunctive relief.") (emphasis in original); *id*. at 9 ("Again, plaintiffs certainly have not relinquished their claim for injunctive relief in this case.") (emphasis in original). Rather, our decision to refine the proposed remedy was "simply a temporary deferment" of the Court's consideration of injunctive relief, *id*. at 2, and was expressly designed to address the "'due process' concerns raised by FEI" at trial, "as well as this Court's inquiries during the trial about whether there is an appropriate way to incorporate the views of the federal government" in overseeing the specific practices at issue, while also help improve the elephants' lives in a manner that would ameliorate the asserted injuries to plaintiffs. *Id*.

19. Although we proposed temporarily deferring, rather than abandoning, our request for injunctive relief, it was my personal and professional judgment that, in and of itself, our request for broad declaratory relief –a form of relief that I was aware other courts have issued in ESA cases, *see* DE 555-1 at 3-7 (citing the precedent for declaratory relief in ESA cases) – could have improved the lives of the elephants and ameliorated plaintiffs' asserted injuries, especially in light of the unique circumstances of this case. I believed that if, as we requested, the Court issued a declaratory judgment finding FEI in violation of the ESA and enumerated the FEI practices that the Court deemed to be a prohibited "take" because they "wounded" and were otherwise harmful and injurious to the elephants (such as bullhook use resulting in puncture wounds and bleeding, and chaining on trains for days at a time), this alone could have led FEI's high-profile circus to ameliorate those practices in an effort to bring itself into compliance with the law – the legal function of declaratory relief. For this reason, we specifically included a proposed conclusion of law that FEI be required to respond to the Court's declaratory judgment by filing a declaration "address[ing] whether FEI has taken any other steps in response to the Court's findings (i.e., with regard to the treatment of the elephants) *that the Court should take into consideration in crafting injunctive relief*") (emphasis added). DE 533-1 at 51 (Plaintiffs' Proposed Conclusions of Law) at 51 (¶ 116)).

20. In my personal and professional judgment, the declaratory relief that plaintiffs requested was also a good faith effort to propose a remedy that could have benefitted *all* of the pre-Act elephants in FEI's possession – thus better remedying the *Havens Realty* resource injury that the our clients had asserted – and not merely the seven specific elephants as to whom the Court had ruled Mr. Rider could pursue relief. *See* DE 213 at 6-7 (10/25/07 ruling limiting Mr.

Rider's standing to obtain relief only as to the specific "pre-Act" elephants with whom he had worked). I also believed that any permitting process undertaken by FEI in the face of such declaratory relief could have led to further restrictions imposed by the FWS, especially in view of the FWS regulation specifically requiring that *any* permit issued by the Service must be conditioned on requirements ensuring that the "animals are being 'maintained' under humane and healthful conditions." 50 C.F.R. § 13.41; *see also* Trial Tr. /26/09 pm, at 77:5-78:18 (my argument to the Court that FWS, in applying 50 C.F.R. § 13.41, "would also be in a position to attach mitigating measures that . . . were more conducive to the welfare and wellbeing of the animals," including, for example, reducing the amount of time that the elephants are chained); *see also* Final Ruling, 677 F. Supp. 2d at 64 (quoting 50 C.F.R. § 13.41).

21. In sum, based on my role in helping to craft the post-trial submissions proposing and explaining plaintiffs' suggested remedy, I believe that plaintiffs' proposal and arguments to the Court on this matter represented an earnest, good faith, and legally supportable effort to assist the Court in fashioning a final remedy that took into account all of the complexities of this unique case, particularly in light of the evolution of the case at trial.

E. I Believed That Mr. Rider Was Engaging In Effective Public Advocacy For The Elephants And That The Funding Provided To Him Was For The Purpose Of Supporting That Advocacy

22. The Wildlife Advocacy Project ("WAP") is a non-profit organization that was founded by Ms. Meyer and me in 1997 in order to pursue public advocacy and education on behalf of captive and wild animals. See DE 93-1 at 8-10. Although WAP has always had a very small budget, it has pursued public education and other forms of advocacy with respect to a variety of wildlife and animal protection issues, including the protection of Florida manatees

from power boats and habitat degradation, the importance of siting renewable energy projects in a manner that minimizes their impacts on migratory birds and bats, and, of relevance here, the treatment of FEI's elephants. One of the reasons that Ms. Meyer and I founded WAP was that we recognized that some public-interest cases receive considerable attention in the media, and that it was therefore imperative that such litigation be conducted in coordination with an effective media and public education campaign that would accurately characterize and explain the litigation and ensure that opponents could not provide misinformation concerning it.

23. As explained in the Rule 30(b)(6) deposition that I provided on behalf of WAP this case, facilitating Mr. Rider's advocacy was consistent with WAP's organizational mission based on our belief that Mr. Rider was in fact an effective public voice for the elephants because he had worked at FEI and could speak from the heart about what he had witnessed and the emotional toll that it took on him. In my experience as a long-term public interest litigator and advocate, it was crucial that the litigation be accompanied by this public education and media campaign – in which Mr. Rider played a vital role – especially because FEI was expending substantial resources publicly denouncing the plaintiffs' claims of elephant mistreatment as baseless and insisting to the public that the elephants who perform in the circus are well-treated, happy, and healthy.

24. In its final ruling, as support for its finding that the "payments that Mr. Rider has received are directly linked to the litigation," the Court relied in part on "WAP's acknowledg[ement] that Mr. Rider's 'public education campaign' is 'intertwined with the purpose of [this] case' and that the 'distinction' between the 'public education campaign' and litigation like this 'is meaningless.'" Final Ruling, FOF 51 (quoting Glitzenstein Dep. at

386:4-388:12)). Although I can understand why the Court relied on the quoted language from WAP's Rule 30(b)(6) deposition, it was certainly not my intention to suggest in that deposition that Mr. Rider was being funded by WAP to participate as a plaintiff in the litigation. Rather, I was attempting to convey why it was essential to support an *effective media campaign* in conjunction with a high-profile, controversial lawsuit like this one. This is more fully reflected in the statements directly preceding the language quoted above:

> [i]n public interest litigation like this, when you get involved in a case where you know that there is going to be public relations efforts relating to the litigation from both the standpoint of putting forth your views, *but also understanding that the other side is going to demonize what you have done, and criticize what you have done in the media, and launch its own multimillion dollar campaign to discredit your lawsuit, it would be extremely foolhardy, frankly, for plaintiff organizations in a situation like that not to look for an appropriate way of advocating on behalf of what they are trying to accomplish in the lawsuit, which in this case is safeguarding the elephants that are being mistreated by the Ringling Bros. Barnum & Bailey Circus and Feld Entertainment*. So our view would be, just speaking on behalf of WAP, and the purpose of Mr. Rider's public education campaign, that the distinction between the case and the PR efforts, which is intertwined with the purpose of the case, is a meaningless distinction.

Glitzenstein Dep. at 387:10-388:12; *id*. at 52:8-52:14 (emphasis added).

25. From my personal vantage point and in my professional judgment, there was nothing inconsistent about Mr. Rider serving as a plaintiff in this case and his role as a public advocate for the elephants. Rather, I saw these as two sides of the same coin: his devotion and attachment to the elephants, which underlay his Article III standing and which I believed to be genuine, made him a particularly convincing spokesperson and advocate for the elephants. By the same token, in my personal estimation, Mr. Rider's willingness to travel around the country while living on a bus and then in a van and speak out about what he had seen at the circus

reinforced my conviction that he had a genuine attachment to the elephants and an earnest desire to help them.

26. In forming my impressions of Mr. Rider's advocacy during this case, I was aware of the tradition of ex-insiders such as Mr. Rider playing an important role in campaigns to expose and reform abusive conditions that would otherwise have remained in the shadows. While working on this case, I came across an historical precedent that immediately struck me at the time because it seemed to crystalize by way of analogy why I personally viewed Mr. Rider's advocacy as an especially effective way of educating the public about the plight of circus elephants. In a 2007 book on the cross-Atlantic slave trade, historian Marcus Rediker explained that abolitionists in Great Britain found that hearing from sailors who had been aboard the slave ships was a far more meaningful way to convey to the British public the cruelty of what occurred on the ships than relying on sophisticated clergy and other opponents. *See* Rediker, *The Slave Ship: A Human History* 326 (2007) (explaining how a British abolitionist relied on the "dissidents who knew the slave trade from the inside and had chilling stories to tell about it. He would use these stories to make the trade, which to most people was an abstract and distant proposition, into something concrete, human, and immediate."). My own personal evaluation of Mr. Rider's advocacy was very similar to what Rediker described, *i.e.*, that as someone who had personally witnessed over several years the actual conditions inside the circus – and, I believed, had been deeply affected by what he had seen – Mr. Rider was able to convey to the public in a meaningful and direct way that a few hours of entertainment in watching the elephants perform circus tricks are purchased at a very steep price in terms of the elephants' pain and suffering.

27. My personal and professional assessment was that Mr. Rider was an effective public advocate for the elephants in the media, before legislative bodies, and in other forums, and I would not have agreed to have WAP support his public education campaign had I not believed that to be the case. As I testified in my Rule 30(b)(6) deposition, Mr. Rider established a proven track record of generating and/or contributing to media coverage of FEI's mistreatment of the elephants when WAP began to support his advocacy efforts. *See* Glitzenstein Dep. at 161:15-162:10 (describing print and/or television coverage in Peoria, Madison, Harrisburg, New York, and other locations in the March - June 2001 time frame). I was also impressed by Mr. Rider's interviews with television, radio, print, and online journalists around the country,[1] and I believed that, as a result of his willingness to speak out, many more people developed an appreciation for what circus elephants must endure than was the case before he embarked on his advocacy campaign. Although it is true that there were periods when Mr. Rider's efforts did not result in media coverage, as I testified in the deposition for WAP, I know from many years of involvement in public interest advocacy that media coverage of issues is inherently episodic, unpredictable, and idiosyncratic, and I believed that Mr. Rider was making earnest efforts to contact the media and otherwise advocate for the elephants, both when he was on the road

[1] Mr. Rider was quoted by, among other television, print, and on-line media: Washington Post, KidsPost (Washington Post), CNN, the Associated Press, CBS News, local CBS Affiliates in Los Angeles, Boston Globe, BBC, Philadelphia Daily News, San Diego Union-Tribune, United Press International, Reuters, NationalGeographic.com, KMEG TV (Lincoln, Nebraska), Tampa Tribune, the Asheville Global Report, the Berkeley Daily Planet, the Georgetonian, SiouxCityJournal.com, the New Standard (Chicago), Las Vegas City Life, the Roanoke Times, WIVB TV (Buffalo, New York), KPTM TV (Omaha, Nebraska), the Press-Telegram (Long Beach, California), Oracle (University of South Florida), the Peoria Journal Star, WESH.com, Press & Dakotan, The Patriot News (Harrisburg, PA), San Mateo County Times, KARK News 4 (Little Rock, Arkansas), World-Herald Bureau (Lincoln, Nebraska), Sacramento Bee, Entertainment News Daily, Channel 3 News (Madison, WI), San Jose Mercury News, Contra Costa Times, KBCV-TV (Las Vegas), News One (Las Vegas), MetroActive (Silicon Valley weekly paper), ThePittsburghChannel.com, U.S. Newswire, the Villager, News Channel 10 (Amarillo, Texas), Las Vegas Now. *See* PWC94A.

tracking the circus or engaging in other advocacy efforts, and when he was not traveling for various reasons. *See* Glitzenstein Dep. at 49:01-50:02, 48:16-48:22; 46:13-46:16, 47:1-47:15, 48:1-49:11, 86:19-87:10, 100:1-101:18, 107:13-109:4. My personal and professional view, again based on many years of public interest advocacy, was that Mr. Rider, an intelligent but unsophisticated individual who was not trained in the public relations world, generated and/or contributed directly to a rather remarkable amount of media coverage and public exposure to the elephants' plight over the years, and that WAP's organizational interest in supporting an effective public education campaign on this issue was well-served by Mr. Rider's advocacy. *Id*. at 30:5-30:21, 52:14-52:18, 159:7-162:10, 30:05-30:21, 37:21-38:07.

28. It was also my understanding that even if plaintiffs' counsel had been providing Mr. Rider with funds for his basic living expenses so that he could maintain his participation in the lawsuit, that would have been consistent with the D.C. Rules of Professional Conduct. I advised the Court of this view during the argument on FEI's motion for judgment in February 2009, *see* Trial Tr. 2/26/09 am at 72:16-24, and plaintiffs also did so in a March 2007 pleading. *See* DE132 at 45 (plaintiffs' 3/30/07 filing explaining that Rule 1.8(d)(2) "expressly <u>permits</u> a lawyer to advance funds to his own client as 'reasonably necessary to permit the client to institute or maintain the litigation,'" and that "this includes '<u>living expenses of a client</u> to the extent necessary to permit the client to continue the litigation'") (emphasis in original; internal citation omitted). Accordingly, because, from my perspective, Mr. Rider was simply having his living and traveling expenses funded by nonprofit organizations that shared his commitment to the elephants so that he could engage in an effective public advocacy campaign on their behalf, this funding was both entirely appropriate and consistent with Mr. Rider's attachment to the

elephants, which I believed to be genuine. *See* Trial Tr. 2/26/09 pm at 72:7-15.

29. Along with outside counsel for WAP, I oversaw WAP's response to the third party subpoenas to WAP – which were issued after plaintiffs, in their initial discovery responses, acknowledged providing Mr. Rider with funding through donations to WAP. I believed that WAP's support for Mr. Rider's advocacy for the elephants was entirely appropriate, and I neither engaged in nor knew of any effort or intention to hide WAP's involvement in Mr. Rider's funding. As I testified in the Rule 30(b)(6) deposition, hiding Mr. Rider's funding was never a factor in the decision to provide Mr. Rider with funding through WAP, as evidenced by the Form 1099s that WAP duly prepared and filed with the IRS regarding the funding provided to Mr. Rider, which we also provided to FEI in discovery. Support for Mr. Rider was provided through WAP because Mr. Rider's public advocacy campaign was consistent with WAP's wildlife protection mission and this was the most effective way to carry out such a campaign in coordination with the litigation. *See* Glitzenstein Dep. at 58:08-58:21, 64:21-65:11.

F. <u>My Statement at the 2006 NYU Conference</u>

30. Contrary to FEI's allegations, nothing I said at the Animal Law Conference at NYU Law School in 2006 in any way suggested – or was intended to suggest – that I did not believe in the validity of our standing arguments in this case. As the Court can see from reading the entire panel discussion (which is reproduced as Exhibit 4 to FEI's motion), I was addressing a point made by another panelist (Professor David Favre), who was expounding the view (which he has also addressed extensively in academic literature) that courts should simply recognize animals *themselves* as appropriate plaintiffs, rather than ascertaining whether human beings have separate interests that are being impaired by the mistreatment of animals. In the passage cited by

FEI, I was merely making the point that, from the vantage of the *animals* whose "interests are being addressed," it does not matter whether the case is brought in the name of the animal itself or, rather, by a human being who can assert a cognizable interest, so long as the litigation is "accomplishing the result of reducing the cruel, inhumane treatment of animals." Nothing in that passage in any way suggested, or was intended to suggest, that this or any other case I have been involved in was brought without a good faith belief in the legal or factual foundation for the specific standing allegations being made.

Pursuant to 28 U.S.C. § 1746, I swear that the foregoing is true and accurate to the best of my knowledge.

Eric R. Glitzenstein

Dated: June 10, 2012