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May 12, 2006

VIA FACSIMILE AND FIRST CLASS MAIL

Kimberly Ockene
Meyer Glitzenstein & Crystal
1601 Connecticut Avenue, N.W.
Suite 700
Washington, DC 20009-1056

Re: ASPCA v. Feld Entertainment, Inc. (No. 03-2006)(ESG)

Dear Kim:

Reference is made to your letter of April 28, 2006 addressing the production of elephant veterinary records in this case.

It is readily apparent from plaintiffs' letter that plaintiffs have a fundamental misunderstanding of the way veterinary medicine is administered to an elephant herd, and the manner in which elephant veterinary records are created or maintained. Therefore, a brief background may illustrate why plaintiffs are incorrect in their assumption that defendant's production of veterinary records is "incomplete."

First, plaintiffs state that the records produced to date "contain almost no narrative evaluations, diagnoses, handwritten veterinary reports, or other substantive veterinary records that one would expect to find in the files." Ockene Letter at 1. Plaintiffs have requested veterinary records for a period of twelve (12) years. In many cases, this would include records for elephants who have died in the previous decade. Defendant has produced the veterinary records that were created and maintained. Outside the requirements of the document production associated with this pending litigation, defendant has no regulatory obligation to maintain elephant veterinary records for this period of time.

Second, it also is unclear why plaintiffs would "expect" to find their laundry list of items in the veterinary records. Notwithstanding plaintiffs' opinions, the practice of veterinary medicine and veterinary recordkeeping is not akin to the practice of human medicine and recordkeeping, nor does it closely parallel the veterinary care that one might receive for a pet dog or cat. Any assumption that veterinary records will resemble or be maintained like human medical records is misplaced. Defendant's veterinarians practice "herd" veterinary medicine, which differs greatly from, for example, a neighborhood veterinarian who maintains a practice

Plaintiffs' Exhibit 2

serving a pet population. The practice of veterinarian medicine, and the creation, and content of medical records for veterinary herd medicine are exceedingly different from plaintiffs' perception. For this reason, plaintiffs' basic assumptions about the records are incorrect.

1. Defendants Have Produced Records For All Elephants Still Living or Within Defendant's Custody or Control[1]

Plaintiffs also allege that defendant has produced limited or no veterinary records for certain elephants. Each of these elephants are addressed below.

Irvin: Veterinary records for Irvin have been produced in our May 12, 2006 supplemental production.[2]

Aree: Records for Aree have been produced. Aree's nickname is "Myrtle." As such, there are no separate veterinary records for "Myrtle".

Bertha: Records for Bertha have been produced in our May 12, 2006 production.

Karnaudi: Karnaudi died in 1996. All records for Karnaudi have been produced.

Seetna: Defendant did not own Seetna. Seetna was a Miami Metro Zoo elephant who came to stay with defendant after a hurricane. Seetna was euthanized in 1996. Any Seetna records in defendant's possession have been produced.

Bully: Defendant did not own Bully. Defendant did not, as a practice, retain veterinary records of elephants that it did not own. As far as defendant is aware, this elephant returned to Spain in 2000. Any documents in defendant's possession that reference Bully have been produced.

Ongerly: Defendant did not own Ongerly. Defendant did not, as a practice, retain veterinary records of elephants that it did not own. As far as defendant is aware, this elephant returned to Spain in 2000. Any documents in defendant's possession that reference Ongerly have been produced.

Katanho (aka "Katho"): Defendant did not own Katanho. Defendant did not, as a practice, retain veterinary records on elephants that it did not own. As far as defendant is aware, this elephant returned to Spain in 2000. Any documents in defendant's possession that reference Katanho have been produced.

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1 On April 6, 2006, defendant welcomed a new female Asian calf. This calf's veterinary records will be produced in the next supplemental production with other recently-generated documents.

2 The May 12, 2006 supplemental production correspondence is attached hereto.

Rhani: Defendant has a record of two elephants with the name "Rhani". Rhani (DOB 1950) died in 1994. Rhani (DOB ~1942) died in 1996. Any records maintained for each Rhani have been produced.

Peggy (DOB 1950): Defendant already has produced records for Peggy.

Nunya: Defendant has no record of ever owning an elephant named "Nunya". Moreover, upon examination of FELD 22405, the document in which plaintiffs found reference to this "name", it appears that "nunya" is some type of slang word that was filled into a blank area of the chart to indicate a blank line or likely, "none".

Bertha: Defendant has produced additional documents relating to Bertha in its May 12, 2006 supplemental production. Bertha was euthanized following surgery; as such, common sense dictates why no surgical follow-up records exist for a deceased elephant.[3] Defendant is unaware what kind of "euthanasia report" plaintiffs are referring to; such a report was not created and does not exist. Bertha's necropsy report was produced in the May 12, 2006 production.

2. Other Elephants' Veterinary Records

Plaintiffs allege that defendant has produced a "paucity" of veterinary records, and "hardly the quantity that one would expect to find in a veterinary file for any animal that received 'round the-the-clock veterinary attention." Ockene Letter at 3. This statement again reflects a fundamental misunderstanding of the practice of veterinary "herd" medicine. For example, while a veterinarian may examine the herd countless times, the vet typically will not create a medical record for a normal elephant living in a herd. As an example, plaintiffs cite to Aree's medical records. In reality, one would not expect a healthy one year old calf like Aree to have multiple pages of veterinary records. Moreover, the fact that Aree's veterinary records contain laboratory reports "without any annotation or accompanying information" again illustrates a lack of basic understanding for veterinary medicine. A veterinarian creates medical records to aid in veterinary care. If a lab report indicates that a particular elephant's lab test is positive or negative, a veterinarian has no need for separate written analysis. The record states all the information that the defendant's veterinarians, or any other veterinarian, needs to know. The practicalities of veterinary herd medicine require no more, and any allegation that the elephants' medical files are "utterly deficient" is unfounded.

Plaintiffs also cite to newspaper articles and conclude that based on these reports, which are inaccurate, that defendant has failed to produce additional elephant veterinary records. Ockene Letter at 2-3. Plaintiffs state that they are aware of, or have received records for, three of the four calves mentioned in these articles. Again, plaintiffs' information is wrong. There was

[3] Plaintiffs claim that Bertha's surgical report is somehow incomplete. Plaintiffs incorrectly identify the surgical report as FELD 2439. Bertha's surgical report is document FELD 24239. It has been produced in its entirety.

no birth of a fourth calf during the stated time period. The calf of Emma died in utero and was never delivered as a live birth. As such, defendant has no veterinary records for a calf that was never born alive.

Plaintiffs list other elephants for which they only received a single page of records. The following elephants were not owned by defendant: Burma, Dalip (Miami Zoo elephant, returned in 1995), Anna Mae, Babati, Desy, Dunja, Jumbo, Madras, Mosly, Peggy (DOB 1944) (breeding loan), Pete, Sabrina, Said and Tony. As such, defendant did not have a practice of retaining these elephants' medical records after they left. Veterinary records for these elephants that remain in defendant's possession have been produced.

Also, in response to your recent requests, defendant has undertaken a comprehensive search to make sure that every veterinary record relevant to this case has been produced. The May 12, 2006 supplemental production provides additional records that were located after the last supplemental production in October of 2005. However, if any additional medical record is located, defendant will further supplement its production in a timely manner.

3. Categories of Standard Veterinary Records

Plaintiffs' assumptions about categories of information being "missing" from the elephants' records again demonstrates an unfamiliarity with veterinary medicine of an elephant herd. Ockene Letter at 4. For example, plaintiffs state that they would "expect to see" observational, diagnostic, or evaluative notes which you label as a "basic medical chart." However, plaintiffs' opinion, presumably based on a comparison to human or a neighborhood veterinary practice, has no basis. Defendant's veterinarians provide necessary commentary and analysis when the medical care and treatment plan warrants this response. On those occasions in which the veterinarians kept handwritten notes, and if such notes are still in existence, these notes were produced.

Moreover, while the American Zoo and Aquarium Association ("AZA") may recommend recording "complete body daily exams", defendant is not a zoo, nor is it regulated by the AZA. However, with respect to many elephant care practices, defendant meets or exceeds those standards required by the AZA. Plaintiffs' conclusion that the absence of these, or similar categories in the veterinary records, indicates that veterinary records are incomplete is simply incorrect.

Plaintiffs also cite to various USDA regulations to support their argument that defendant's records are deficient. Plaintiffs' citations are irrelevant. Ockene Letter at 4 (citing 9 C.F.R. §§ 2.31, 2.32, 2.33, 2.40, 3.110). For example, Sections 2.31 through 2.33 address qualifications for research facilities; Section 2.40 addresses an exhibitor's requirement to have an attending veterinarian; Section 3.110 deals with veterinary care for marine mammals. In fact, the Animal Welfare Act does not require defendant to maintain health records on its elephants, and a lack of or inadequacy of health records cannot be cited as a stand-alone violation. See USDA Animal Care Resource Guide, Exhibitor Inspection Guide at 14.2.1 (Rev. Nov. 2004). If health

records are kept, they should be retained "for at least 1 year after the animal's disposition or death." Id. at 14.2.3; see also 14.2.5 (voluntary requirement for traveling exhibitors to maintain appropriate health records on the road). Notwithstanding the regulatory requirements, defendant has produced all veterinary records that it could find, and has included records from 1994 and 1995 in its May 12, 2006 supplemental production. As such, the production of veterinary records is not "incomplete."

A. Adequan Injections

Plaintiffs cite to one of Asia's veterinary records to illustrate that no further documentation regarding an "adequan injection" makes for an incomplete record. Ockene Letter at 5. Unlike an antibiotic or other medically significant treatment, adequan is similar to, for example, glucosomine, and the administration of such is not significant to warrant follow-up. Your suggestion to the contrary indicates your misunderstanding of veterinary drugs and medicine.

B. Consulting Veterinarians

Defendant has arrangements with consulting veterinarians to provide veterinary care to its animals. While the use of consulting veterinarians is much more common with horses and other animals, they do care for defendant's elephants from time to time. In these instances, when a consulting veterinarian treats an elephant on the units or at one of defendant's facilities, that consulting veterinarian, if appropriate, will add to the elephant's veterinary record on site. Indeed, to the extent a consulting veterinarian has treated an elephant and noted it in the elephant's medical record, these records already have been produced to plaintiffs.

C. Corresponding Interpretation and Treatment Plans

Plaintiffs also claim that laboratory reports, without accompanying analysis, are per se incomplete. As stated previously, this further illustrates plaintiffs' fundamental misunderstanding of veterinary medicine and recordkeeping. For example, plaintiffs cite to lab report results that indicate that various elephants showed findings of *Mycobacterium avian* complex in their blood. Ockene Letter at 6. What plaintiffs apparently do not know, however, is that *Mycobacterium avian* complex in elephants is non-pathogenic. Any trained veterinarian would know this simply by reviewing the laboratory report and, as such, separate analysis or "narrative discussion" of the "significance" of this result is unwarranted and impractical. More importantly, no regulation applicable to defendant requires such notations. Far from illustrating that the records are incomplete, this example again illustrates that plaintiffs do not understand how medical treatment is administered to elephant herds.

D. Health Certificates

Plaintiffs contend that "health certificates", required for entry into various states at the time of interstate shipment, are responsive to their request for medical records. This is incorrect.

Such a permit, which expires shortly after the elephant enters the particular state, is in no way considered to be a "veterinary record." It is not prepared in connection with any aspect of rendering medical treatment to an elephant and, as such, is not responsive.

E. Anesthetic, Euthanasia, and Surgical Report Documents

Plaintiff also concludes that defendant's elephant veterinary records are incomplete if they do not contain euthanasia or necropsy reports. Defendant is unaware of any requirement for a "euthanasia report". Defendant already has produced documents that indicate the date upon which an elephant was euthanized. To the extent necropsy reports are generated, and exist in defendant's files, they also have been produced. Plaintiffs cite to Sarah's medical record as an example of an incomplete record because it does not contain a follow-up documentation for surgery on a fistula. However, defendant's veterinarians determined that surgery on Sarah's fistula was not an appropriate course of action and, as such, the surgery was never performed. This example further illustrates that plaintiffs' presumptions and premature conclusions about the veterinary records are misplaced.

F. Electronic Mail Communications

Defendant previously has produced e-mail communications. Due to plaintiffs' request, however, defendant will re-visit this issue and supplement the production if necessary. It would be helpful if counsel for both parties could meet to discuss with more particularity the categories of e-mail that plaintiffs request.

G. Veterinary Records of Abnormal Pregnancies and/or Stillborns

Plaintiffs allege that defendant has failed to produce records regarding abnormal pregnancies of its elephants or stillborn calves. Ockene Letter at 7-8 ("records indicating the demise of fetuses for Birka, Emma"; "medical history of Sid, indicating that she 'looks to be pregnant' but not indicating any further follow-up concerning the pregnancy"). Birka and Sid, although suspected to be pregnant, in fact were not. As such, no veterinary records regarding pregnancy were created. Emma did not deliver a live calf; typically, medical records of a stillborn calf would not be created. Plaintiffs already have received veterinary records for these elephants.

4. Records with Gaps in Time

Plaintiffs have concluded that defendant's veterinary records contain "large time gaps." Ockene Letter at 8. Notwithstanding plaintiffs own conclusions, defendant has searched for, and produced, the veterinary records of its elephants for the period from 1994 forward. Plaintiffs' opinion as to what should be included in a medical record has no relationship to the practice of veterinary herd medicine and recordkeeping. Contrary to plaintiffs' allegations, defendant did not omit "bits and pieces" of the records. Defendant has met the obligation of the discovery

requests and the Court's order. If any additional medical records are located, defendant will further supplement its production in a timely manner.

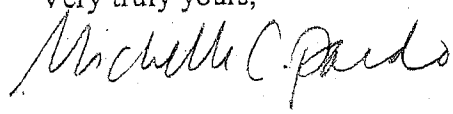
5. Other Records

Plaintiffs further suggest that the production of veterinary records is incomplete as it does not include thoracic x-rays of Benjamin or Shirley. Defendant has conducted a search for such records, and has not located any. Further, with respect to medical records generated for Rudy and Angelica in connection with an incident in Puerto Rico in December, 2005, if any medical records exist, defendant will produce those in a supplemental production with other recent records.

In summary, defendant has conducted an exhaustive search for any elephant veterinary record and produced these to plaintiffs. In some cases, erring on the side of caution, defendant has produced veterinary records in its May 12, 2006 supplemental production that may actually duplicate some records in an earlier production.[4] Despite plaintiffs' unwarranted conclusions, defendant has kept more than adequate veterinary records, in accordance with applicable law and the standard practice applicable to herd medicine, and has produced those in existence.

Please feel free to contact me with any questions.

Very truly yours,



Michelle C. Pardo

Enclosure

[4] As plaintiffs are aware, defendant's new counsel first made an appearance in this matter in March of 2006, and had not participated in the earlier productions of documents. Defendant made a supplemental document production to plaintiffs on May 12, 2006, which contains responsive veterinary and other categories of documents, including documents from 1994 and 1995.