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December 16, 2005

VIA ELECTRONIC AND FIRST CLASS MAIL

Kimberly Ockene, Esq.
Meyer Glitzenstein & Crystal
1601 Connecticut Ave. NW, Suite 700
Washington, DC 20009

Re: ASPCA et al. v. Ringling Bros. and Barnum & Bailey Circus et al.,
No. 03-2006 (EGS)

Dear Kim:

I write in response to your letter of November 30.

As you note, defendant produced more than 1,500 pages of documents shortly before you sent your letter. As this production indicates, defendant is working to gather materials that it has agreed to produce, and it will continue to produce them on a rolling basis. Medical records that were included in defendant's November 30 production fall primarily into three categories: (1) duplicates of documents that defendant previously produced in this case, which we obtained from a separate source and produced in an abundance of caution; (2) documents that have been created since defendant's production on September 28; and (3) documents that were provided to the USDA or otherwise contained in files about USDA investigations, almost all of which were duplicates of documents already produced to plaintiffs. There were also a small number of foot-care documents that had not been produced previously. Defendant has at all times been diligently searching for all responsive documents, including any documents that could qualify as medical records covered by Judge Sullivan's Order dated September 26, 2005. Defendant is continuing to do so and will continue to produce responsive documents if and when they are located.

Turning to the numbered items in your letter:

1. Identification of individuals and employment responsibilities. You are correct that defendant will provide plaintiffs with an updated version of the list of employees who have had direct responsibilities for elephants since 1996, including the unit to which such persons were assigned. We also discussed providing you a list of job titles from which encompassed within that list. However, in speaking with the client, we have learned that the list was not limited to any particular set of job titles. Instead, the client's search began with a list of all people who had

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worked in "Circus Operations" from 1996 to the present, according to the two payroll systems described in Harry Shugerman's declaration. Mr. Shugerman then narrowed the list based on his own knowledge and conversations with three employees who he determined were likely to have the necessary institutional knowledge. We are in the process of preparing a supplemental interrogatory response that will describe this process.

Contrary to your letter, we have not agreed to provide you with a list of "individuals who have been hired from Puerto Rico since 1996" Plaintiffs' Interrogatory No. 5 asks for information only about "employees who were hired from Puerto Rico in April or May of 1999." Accordingly, we agreed to provide and have only searched for information about employees who resided in Puerto Rico when they were hired in the Spring of 1999. Let me reiterate that defendant has no information suggesting that any of these employees had any responsibilities for elephants.

2. Information related to Asian elephants in defendant's custody. Defendant will, as you say, produce information about all elephants for which it provided care since 1996, regardless of who owned those animals or was ultimately responsible for their care. By producing this material, defendant is not conceding its relevance in this case. Defendant has searched for all documents about each of these elephants, regardless of ownership, and it either has produced or is in the process of reviewing for production all responsive, non-privileged documents that it has located. In particular, I note that defendant has produced documents about each of the elephants listed in plaintiffs' Notice of Filing from April.

3. Information related to defendant's conservation activities. Defendant has produced information about its conservation activities, and it will continue to supplement those responses, including any information that it might use at trial. Defendant will also produce responsive, non-privileged documents about breeding efforts. Indeed, defendant has already produced documents in this category, including monthly calendars from the CEC, which were produced on September 28. Defendant's agreement to search for and produce documents that are responsive to this request is not an affirmation that all the types of documents that plaintiffs list in the reply to their motion to compel or in Interrogatory No. 11 exist.

4. Information related to tuberculosis. As you stated, defendant has agreed to withdraw, for purposes of discovery, its relevance objection to documents about tuberculosis. As you know, defendant has already produced more than 6,000 pages of documents about tuberculosis, including trunk wash records and other materials. Defendant is currently reviewing for production additional files that include documents relating to this subject. If they are responsive, we will either produce or log them, as appropriate.

5. Information related to plaintiffs' "Report." Defendant has agreed to produce documents responsive to plaintiffs' Document Request No. 23. That is, per plaintiffs' Interrogatory No. 15, defendant has agreed to produce documents about the "investigations, cases, and fact-finding matters" that are discussed in the various chapters of plaintiffs' "Report."

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This will include the documents about the Mark Gebel trial noted in my letter to you of October 20.

The wording of your letter, which describes "any information concerning the treatment, personality, or management of ... Nicole and Karen" can be read to go beyond information about the allegations made against Feld and the subsequent investigations discussed in the "Report." We are searching for all documents about the investigations, including internal memoranda about those investigations or the allegations made in the investigations, information gathered as part of the investigations, and correspondence with USDA (or other regulatory authorities). Indeed, defendant's November 30 production included materials responsive to this request. To the extent that plaintiffs seek something broader than what I have described, the broader set of materials would seem to go beyond documents about "investigations, cases, and fact-finding matters." Moreover, in our meet-and-confer discussions in September, we did not discuss producing materials that did not relate to the investigations, cases, or fact-finding matters. To the contrary, you emphasized the "investigations, cases, and fact-finding matters" language in seeking documents about the Gebel trial. If plaintiffs are seeking something broader than what I have described above, please clearly identify what documents plaintiffs are seeking and how plaintiffs believe that such materials are covered by their discovery requests.

6. Video, audio, and other recordings. You have accurately stated the terms of our agreement about videos or other recordings. We are gathering videos that are likely to show elephants, and we will make them available for review shortly. Please contact me to arrange a mutually convenient schedule for someone to review the recordings in our office. We will also shortly provide you with a list of the recordings in Feld's library.

We have inquired with the CEC, and we have not identified any additional videos that are not already in Feld's library. In particular, as you requested, I have again inquired as to whether there is any recording of the closed-circuit cameras in the elephant barn, and I have been told there is not.

7. Plaintiffs' "identification" interrogatories. As you stated, plaintiffs have agreed to withdraw the interrogatories that seek identification of documents. In particular, by this agreement, plaintiffs are agreeing to withdraw part or all of Interrogatory Nos. 2, 6, 8, 9, 10, 11, 13, 14, 15, and 17. Defendant will not stand on its objection that plaintiffs' have served more than 25 interrogatories, including subparts, in responding to plaintiffs' remaining interrogatories. Defendant has responded to all such Interrogatories, and it is currently preparing supplemental responses. Defendant reserves the right to re-raise this objection if plaintiffs attempt to serve additional interrogatories in this litigation.

I also want to raise two additional items.

First, in my September 28 letter to you, we told you that a significant number of x-rays and other images of elephants were available for copying at Covington & Burling. We have not

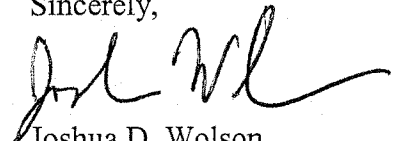
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heard from plaintiffs about these images. Because many of these are diagnostic records that are used regularly at the CEC, we need to return them to the CEC as soon as possible. Accordingly, if plaintiffs wish to review or copy these materials, please make arrangements to do so by December 23.

Second, in a footnote in your letter, you ask that we inform you whether documents are responsive to particular agreements reached in the meet-and-confer process. As we have told you throughout the discovery process, defendant is producing documents as kept in the ordinary course of business, and it is under no obligation to identify the requests to which they are responsive. As a courtesy, I can tell you that the documents that were produced on November consist largely of documents about tuberculosis and the various USDA investigations that are covered by plaintiffs' "Report." However, many of the documents are also likely responsive to other of plaintiffs' requests, and we have made no effort to list all the requests to which they are responsive. If I misunderstood your question, or the reason you are asking, please let me know.

Please contact me if you would like to discuss any of this further.

Sincerely,



Joshua D. Wolson