Plaintiffs' position is that they are entitled to take discovery regarding all of defendants' practices that plaintiffs allege violate the Endangered Species Act and that statute's implementing regulations, including past, present, and on-going practices, and that discovery is not limited solely to the precise examples of violations provided in the notice letters that were sent to defendants. Rule 26(b)(1), Fed.R.Civ.P., provides that the plaintiffs may obtain discovery regarding any matter, not privileged, that is relevant to their claims that are contained in their Complaint, including:

> (1) that "Ringling Bros.' past and continuing routine beatings of its elephants, including its baby elephants; its forcible removal of baby elephants from their mothers; and its chaining and confinement of elephants for many hours each day violate the 'taking' prohibitions of section 9 of the ESA, 16 U.S.C. § 1538(a)(1)(B), the prohibition against the 'possession' and 'transportation' of an endangered species that has been unlawfully taken, id. § 1538(a)(1)(D), and the prohibitions against the transportation of endangered species in interstate commerce in the course of a commercial activity, except as permitted by the Fish and Wildlife Service, id. § 1538(a)(1)(E)."
>
> (2) that "Ringling Bros.' treatment of its elephants is inhumane and unhealthful for the animals, and violates the AWA regulations, and hence its treatment of the animals also violates the permit it was issued by the Fish and Wildlife Service, and the FWS's regulations implementing the ESA, 50 C.F.R. §§ 13.41, 13.48, which require any person holding a permit to comply with "all applicable laws and regulations governing the permitted activity."

Second Amended Complaint §§ 91-92 (emphasis added). Such discovery would include information that may not itself be admissible at the trial, but is "reasonably calculated to lead to the discovery of admissible evidence." Rule 26(b)(1).

It well established that the scope of discovery is "construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 350 (1978) (emphasis added), citing Hickman v. Taylor, 329 U.S. 495, 501 (1947); see also, e.g., Cofield v. City of LaGrange, Georgia, 913 F. Sup. 608, 614 (D.D.C. 1996) (noting that scope of discovery under Rule 26(b) is "exceedingly broad").

Moreover, the notice letters provided Ringling Bros. specifically informed the defendants that Ringling Bros. "is in violation of the prohibition against the 'taking' of endangered Asian elephants . . . since its elephant trainers and handlers routinely beat elephants, including baby elephants, in order to make them perform or behave in a particular way, and Ringling Brothers also keeps the elephants chained for extremely long periods of time." Notice Letter (December 21, 1998)

at 1 (emphasis added); see also id. at 2 ("the trainers use the bull hooks on many of the animals"); id. at 3 ("such treatment of elephants in Ringling Brothers' circus is by no means aberrational, but, rather, is business as usual for this exhibitor") (emphasis added); id. at 3 ("elephants are left chained hour after hour, each day . . . when the circus is traveling, the elephants remain chained in the stock cars for as long as 2-3 days consecutively,") (emphasis added). The notice letters also informed Ringling that it "is also in violation of 16 U.S.C. § 1538 because, for the same reasons, it is in possession of animals that have been unlawfully 'taken' and because it continues to transport those animals in interstate commerce." Id. at 1 (emphasis added).

The notice letters further informed Ringling that the use of force to separate nursing baby elephants from their mothers is part of Ringling's "routine 'separation process,'" and that this "also constitutes an unlawful 'taking' of endangered elephants in violation of section 9 of the Endangered Species Act, 16 U.S.C. § 1538, and the [FWS's] implementing regulations, because it 'harms' and 'harasses' the babies, and also 'harasses' their mothers . . .." Notice Letter (November 15, 1999) at 1-2 (emphasis added). The notice letters further advised Ringling that such treatment "is unlawful under the ESA," and also "violates the conditions under which Ringling Brothers holds a captive-bred wildlife registration – a separate violation of the ESA." Id. at 2 (emphasis added).

Therefore, in view of the fact that the notice letters specifically address on-going, routine violations of the ESA and that statute's implementing regulations, it is plaintiffs' position that they should be allowed to take discovery concerning evidence of all such practices, including past, present, and continuing practices. See Rule 26(b)(1); see also Idaho Sporting Congress v. Computrol, 952 F. Supp. 690, 693 (D. Idaho 1996) (because notice letter states that defendant "*is* in violation" of the statute, it "is broad enough to encompass ongoing violations") (emphasis in original); Public Interest Research Group of New Jersey v. Hercules, Inc., 50 F.3d 1239, 1250 (3rd Cir. 1995) (notice letter that includes list of specific violations provides sufficient information to encompass "violations of the same type . . . occurring during and after the period covered by the notice letter"); Atlantic States Legal Foundation v. Stroh Die Casting Co., 116 F.3d 814 (7th Cir.

1997) (notice letter that identifies specific violations is sufficient to put violator on notice of similar violations); Public Interest Research Group of New Jersey v. WITCO Chemical Corp., 1990 WL 512262 (D.N.J. 1990) (the requirement of pre-suit notification "was never intended to infringe on plaintiffs' right to take discovery").