

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE  
PREVENTION OF CRUELTY TO  
ANIMALS, et al.,

Plaintiffs,

v.

Case No. 03-2006 (EGS/JMF)

RINGLING BROS. AND BARNUM &  
BAILEY CIRCUS, et al.,

Defendants.

**JOINT STIPULATED PROTECTIVE ORDER CONCERNING  
RECORDINGS OF RINGLING BROS. AND  
BARNUM & BAILEY CIRCUS PERFORMANCES**

The parties hereby agree to the following protective order governing the production of video or other recordings produced for discovery in this case by defendant Feld Entertainment, Inc. ("FEI") that contain footage of performances or rehearsals of such performances of the Ringling Bros. Barnum & Bailey Circus. The terms of protection are as follows:

FEI owns certain recordings containing footage of FEI's circus performances and related rehearsals of performances. FEI's position regarding these recordings is as follows: FEI's recordings are protected proprietary material under common law copyright and should not be subject to public disclosure. FEI's rehearsals are closed to the public, and admission is charged for performances. Videotaping is prohibited. Dissemination of these recordings to the public would substantially diminish the commercial value of the performances. For these reasons, FEI contends that good cause is shown and that a protective order pursuant to Federal Rule of Civil Procedure 26(c) is warranted to control the dissemination and use of these recordings.

It is plaintiffs' position that recordings with performance footage or footage of rehearsals of performances do not contain the sort of "trade secret" or "confidential" commercial information that would entitle FEI to a protective order pursuant to Fed. R. Civ. P. 26(c)(7), because the performances are open to the public – including FEI's competitors – for a modest fee. In addition, copyright laws already apply to plaintiffs' use of any copyrighted footage, and the fact that material may be protected by copyright laws does not entitle FEI to a protective order under Rule 26.

Notwithstanding the parties' opposing positions on this matter, in the interest of moving forward with discovery and the production of the videotapes to plaintiffs, the parties have agreed to the following protective order:

1. FEI may designate as "CONFIDENTIAL MATERIAL" for purposes of this protective order any recordings reflecting circus performances or rehearsals of the same. The term "CONFIDENTIAL MATERIAL" shall include the recording, information directly related thereto, such as a videotape log of same, and the contents thereof.
2. The designation of CONFIDENTIAL MATERIAL may be made by (1) typing or imprinting upon copies of the material "CONFIDENTIAL MATERIAL"; or (2) orally designating deposition transcripts and testimony as confidential material during the course of the deposition.
3. Except upon the prior written consent of FEI, CONFIDENTIAL MATERIAL shall be used solely for purposes of this litigation and may be disclosed solely in accordance with the terms of this protective order, except that nothing shall prevent any person from making use of any information designated as CONFIDENTIAL MATERIAL if such information: (a) was or becomes available to the public through no fault of a receiving person; (b) was or is lawfully

obtained from a source not subject to the Protective Order; or (c) is exempted from the operation of this protective order by the written consent of FEI.

4. With the exception of the Court, its personnel, and court reporters, access to CONFIDENTIAL MATERIAL shall be limited to "Authorized Persons." For purposes of this protective order, an Authorized Person includes: (a) counsel to the parties having responsibility for this action, and persons regularly employed in counsel's office when necessary for this litigation; (b) consulting or testifying experts and their employees; (c) the parties to this litigation; (d) any deponent in this case and their counsel; (e) any lay witness to the extent necessary to prepare the witness for his or her testimony; (f) any person indicated on the face of such material to be its originator, author, or recipient of a copy of the material; and (g) any other person upon whom FEI may agree in writing.

5. Prior to disclosure of any CONFIDENTIAL MATERIAL to persons other than those described in Paragraph 4, counsel shall furnish a copy of this protective order to them and obtain the written agreement of each such person to be bound by it by having them execute the Acknowledgment and Nondisclosure Agreement which is attached to this protective order as Exhibit A. Counsel of record for the party disclosing the CONFIDENTIAL MATERIAL (either plaintiffs or defendant) shall be responsible for maintaining a file of executed acknowledgement forms signed by each person to whom the party has disclosed CONFIDENTIAL MATERIAL and which shall be provided to all counsel upon a showing of good cause.

6. CONFIDENTIAL MATERIAL that is appended as an exhibit to, or is discussed or referred to in, any affidavits, briefs, memoranda, or other documents submitted to the Court shall be filed under seal. The Clerk of Court shall maintain such information or documents under seal,

and the information or documents shall be made available only to persons authorized by this protective order or by further order of the Court.

7. Nothing in this protective order shall operate as an admission that any particular document or item of information is, or is not, admissible in evidence at the trial of this action.

8. The terms of this protective order do not apply to the introduction into evidence or use of the covered recordings at any trial or other hearing that may take place in this litigation.

9. The provisions of this protective order shall remain in full force and effect following the final disposition of this case unless waived by the written consent of FEI, or otherwise ordered by the Court. Within ninety (90) days after the final disposition of this case, including disposition of any and all appeals, plaintiffs shall either destroy or return all CONFIDENTIAL MATERIAL to FEI (the disclosure of which has not been otherwise authorized by the Court or FEI), and further, plaintiffs shall certify to FEI that such steps have been completed.

10. The terms of this protective order apply only to recordings produced by FEI to plaintiffs after the date on which the parties submitted this protective order to the Court.

11. Nothing contained in this joint protective order shall preclude any party from moving for a modification of any provision of this protective order at any time, including the lifting of the protective order in its entirety. In addition, nothing in this protective order shall operate as a waiver of any rights that FEI has pursuant to applicable copyright laws.

Respectfully submitted,

/s/  
Michelle C. Pardo (D.C. Bar #456004)  
John M. Simpson (D.C. Bar #256412)  
Joseph T. Small, Jr. (D.C. Bar #926519)  
Lisa Zeiler Joiner (D.C. Bar #465210)

FULBRIGHT & JAWORSKI L.L.P.  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Telephone: (202) 662-0200  
Facsimile: (202) 662-4643

Counsel for Defendant

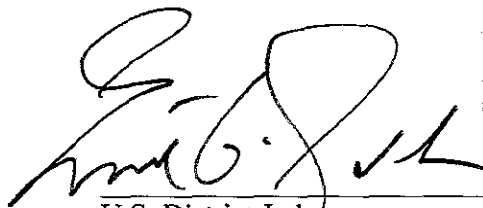
SO ORDERED:

8/16/06  
Date

/s/  
Katherine A. Meyer (D.C. Bar # 244301)  
Kimberly D. Ockene (D.C. Bar # 461191)

MEYER GLITZENSTEIN & CRYSTAL  
1601 Connecticut Avenue, NW  
Suite 700  
Washington, D.C. 20009  
Telephone: (202) 588-5206  
Facsimile: (202) 588-5049

Counsel for Plaintiffs

  
U.S. District Judge

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**ACKNOWLEDGEMENT AND NONDISCLOSURE AGREEMENT**

I hereby certify my understanding that material produced by Feld Entertainment, Inc. ("FEI") in the above-captioned case, which has been designated as "CONFIDENTIAL MATERIAL", is being provided to me pursuant to the terms and restrictions of the Joint Stipulated Protective Order Concerning Recordings of Ringling Bros. and Barnum & Bailey Circus Performances entered in this action by the United States District Court of the District of Columbia on \_\_\_\_\_, 2006 (the "Order"). I have read and understand the terms of the Order, I agree to be fully bound by them, and I hereby submit to the jurisdiction of the United States District Court of the District of Columbia for purposes of enforcement of the Order. This Acknowledgement cannot be used for any purpose except to enforce the terms of this Order and/or Acknowledgement.

I understand that a violation of this undertaking could be punishable as a contempt of court.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Print or Type Name: \_\_\_\_\_