

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE)
PREVENTION OF CRUELTY TO)
ANIMALS, <i>et al.</i> ,)
)
Plaintiffs,)
)
v.)
)
RINGLING BROS. AND BARNUM &)
BAILEY CIRCUS, <i>et al.</i> ,)
)
Defendants.)
_____)

Case No. 1:03-cv-02006 (EGS/JMF)

DX 3

**EXHIBIT 3
TO
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE)
 PREVENTION OF CRUELTY TO)
 ANIMALS, *et al.*,)
)
 Plaintiffs,)
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 v.)
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 RINGLING BROS. AND BARNUM &)
 BAILEY CIRCUS, *et al.*,)
)
 Defendant.)
 _____)

Case No. 1:03-cv-02006 (EGS/JMF)

DECLARATION OF JEROME S. SOWALSKY

1. My name is Jerome S. Sowalsky. I am more than twenty-one (21) years of age and, unless indicated otherwise, have personal knowledge of the facts stated below.

2. Feld Entertainment, Inc. is a corporation organized under the laws of the State of Delaware. As used in this declaration, "FEI" refers to Feld Entertainment, Inc. and its corporate predecessors (including subsidiaries of FEI and FEI's corporate predecessors).

3. I am currently employed as Executive Vice President and General Counsel for FEI. I have been employed by FEI since 1973.

4. During the period from 1954 through the present, FEI owned or leased the Asian elephants that are listed in paragraphs 7 and 8 of Defendant's Statement of Material Facts as to Which There is No Genuine Issue, filed in the above-captioned matter.

5. "Ringling Bros. and Barnum & Bailey Circus" is not a legal entity. "Ringling Bros. and Barnum & Bailey Circus" is a trade name under which FEI has

produced and presented live circus shows. Based upon my personal recollection since 1972 and upon historical accounts and FEI records that I have personally reviewed, FEI has produced and presented live circus shows for more than a century and each such circus show has included one or more elephants.

6. Since 1979, The United States Fish and Wildlife Service (“FWS”), of the United States Department of the Interior, has issued documents entitled “Federal Fish and Wildlife Permit” to FEI under 50 C.F.R. § 17.21(g) for captive-bred wildlife (hereinafter “CBW permits”). FWS has never revoked or suspended any of the CBW permits that it has issued to FEI under 50 C.F.R. § 17.21(g). The most recent of these CBW permits was effective as of February 14, 2006 and expires on February 12, 2009. A true and accurate copy of that permit is attached as DX 9 to the Memorandum of Points and Authorities in Support of Defendant’s Motion for Summary Judgment, filed in the above-captioned case. FEI has not received any report or other writing from FWS indicating that FWS believes that FEI’s husbandry practices, including use of the guide, tethering and weaning as to FEI’s Asian elephants, are a violation of the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*

7. Inspectors of the Animal and Plant Health Inspection Service (“APHIS”) of the United States Department of Agriculture (“USDA”) frequently inspect FEI’s facilities for maintaining Asian elephants, including all of the touring circus units and FEI’s fixed facilities in Florida for compliance with the federal Animal Welfare Act (“AWA”), 7 U.S.C. § 2131 *et seq.*, and USDA regulations. These inspections often have been the results of complaints made to APHIS by animal rights and similar groups. As of the date of this filing, neither USDA nor APHIS has issued any final agency decision to

FEI finding that FEI's husbandry practices involving the guide (sometimes referred to as the "bull hook"), tethering and weaning are in violation of the AWA.

8. FWS has issued certificates or permits under the Convention on the International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), 27 U.S.T. 1087 (July 1, 1975), and under the ESA regarding certain of FEI's Asian elephants. The certificates listed below were issued by FWS on or about the date stated and are maintained in FEI's records in the ordinary course of FEI's business. True and accurate copies of the certificates listed below are included in DX 5 and DX 7 to the Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment, filed in the above-captioned case:

- CITES "Other Certificate" (7-1-86), DX 7 (p. 1).
- CITES "Other Certificate" (7-29-86), DX 5 (FELD 0005542-43).
- CITES "Other Certificate" (2-9-88), DX 5 (FELD 0005415).
- CITES "Other Certificate" (2-22-88), DX 5 (FELD 0005135).
- CITES "Other Certificate" (4-4-88), DX 5 (FELD 0005406).
- CITES "Import Permit" & "Re-Export Certificate" (1-23-89), DX 7 (p. 2).
- CITES "Other Certificate" (1-26-89), DX 7 (pp. 3-4).
- CITES "Re-Export Certificate" & "Other Certificate" (10-20-94), DX 5 (FELD 0005566-68).
- CITES "Other Certificate" (2-28-97), DX 5 (FELD 0005535-37).
- CITES "Other Certificate" (6-25-99), DX 5 (FELD 005526-28).
- CITES "Other Certificate" (10-30-02), DX 5 (FELD 0005199).
- CITES "Other Certificate" (10-30-02), DX 5 (FELD 0005268).
- CITES "Other Certificate" (10-30-02), DX 5 (FELD 0005321).
- CITES "Other Certificate" (10-30-02), DX 5 (FELD 0005599).
- CITES "Other Certificate" (11-25-02), DX 5 (FELD 0005328).

9. FWS has issued certain permits under the ESA with respect to certain of FEI's Asian elephants. The permits listed below were issued by FWS on or about the

date stated and are maintained in FEI's records in the ordinary course of FEI's business. True and accurate copies of the certificates listed below are included in DX 5 and DX 7 to the Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment, filed in the above-captioned case:

- Federal Fish and Wildlife Permit No. PRT 2-3634 (12-1-81), DX 7 (p. 5).
- Federal Fish and Wildlife Permit No. PRT 707241 (6-24-86), DX 5 (FELD 0005250).
- Federal Fish and Wildlife Permit No. PRT 709866 (9-3-86), DX 7 (p. 6).
- Federal Fish and Wildlife Permit No. PRT 749009 (7-18-90), DX 5 (FELD 0004994-95).
- Federal Fish and Wildlife Permit No. PRT 2-6874 (10-15-90), DX 5 (FELD 0005513).

10. The documents listed below are documents that were generated by employees or representatives of FEI in the ordinary course of FEI's business and copies of which are maintained in the records of FEI. True and accurate copies of the documents listed below are included in DX 5 and DX 7 to the Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment, filed in the above-captioned case:

- Bill of Sale (3-16-89), DX 5 (FELD 0005084).
- Letter Agreement from Robert Fleshner to Roman P. Schmitt (2-28-89), DX 5 (FELD 0005085-86).
- Agreement to Purchase Elephants (4-23-90), DX 7 (pp. 7-12).
- Affidavit of Gary Jacobson (5-13-04), DX 5 (FELD 0005139).
- Affidavit of Donna Gautier (1-16-95), DX 5 (FELD 0005176).
- Affidavit of Gary Jacobson (5-16-01), DX 5 (FELD 0005185).
- Affidavit of Jim Williams (2-6-98), DX 5 (FELD 0005186).
- Letter Agreement from Kenneth J. Feld to Anthony Diano (4-23-86), DX 5 (FELD 000524749).
- Affidavit of Julie Alexa Strauss (6-11-01), DX 5 (FELD 0005322).

- Affidavit of Jerome S. Sowalsky (1-29-99), DX 5 (FELD 0005354).
- Affidavit of Gary Jacobson (8-9-02), DX 5 (FELD 0005381).
- Note by W.A. Lindsay, DVM (8-23-99), DX 5 (FELD 0005382).
- Record of Acquisition, Disposition or Transport of Animals (7-29-02), DX 5 (FELD 0005397).
- Record of Acquisition, Disposition or Transport of Animals (6-15-02), DX 5 (FELD 0005398).
- Affidavit of Tim. J. Holst (11-14-96), DX 5 (FELD 0005427).
- News Release (1-14-93), DX 5 (FELD 0005451-52).
- Record of Acquisition, Disposition or Transport of Animals (1-30-02), DX 5 (FELD 0005455).
- Affidavit of Jim Williams (1-25-99), DX 5 (FELD 0005487).
- Record of Acquisition, Disposition or Transport of Animals (2-19-95), DX 5 (FELD 0005493).
- Record of Acquisition, Disposition or Transport of Animals (7-4-95), DX 5 (FELD 0005595).
- Bill of Sale (1-31-03), DX 5 (FELD 0005596-97).
- Ringling Bros. and Barnum & Bailey Circus Blue Unit Animal Census 2005 (2-9-05), DX 5 (FELD 0006254).
- Ringling Bros. and Barnum & Bailey Circus Red Unit Animal Census 2005 (1-3105), DX 5 (FELD 0006259).
- Center for Elephant Conservation Animal Census 2005 (1-17-05), DX 5 (FELD 0006269-70).
- Two Tails Ranch Animal Census 2004 (10-13-04), DX 5 (FELD 0006281).
- Note by W. A. Lindsay, D.V.M. (11-18-01), DX 5 (FELD 0006939).
- “Gunther” Information Sheet (11-19-01), DX 5 (FELD 0006940).
- Record of Acquisition, Disposition or Transport of Animals (4-16-01), DX 5 (FELD 0007646).
- Note by Ellen Wiedner, VMD (6-1-05), DX 5 (FELD 0019436).
- Note by W. A. Lindsay, D.V.M. (3-5-02), DX 5 (FELD 0019437).
- Record of Acquisition, Disposition or Transport of Animals (3-5-02), DX 5 (FELD 0019438).
- Note by W. A. Lindsay, D.V.M. (4-16-01), DX 5 (FELD 0019566).
- “Sara” Information Sheet (4-16-01), DX 5 (FELD 0019567).

- Ringling Bros. and Barnum & Bailey Circus, Center for Elephant Conservation (1-6-99), DX 5 (FELD 0020121-22).
- News Release (6-1-05), DX 5 (FEI 1173).
- Email from Kenneth Feld to all FEI personnel (6-6-05), DX 5 (FEI 1174).
- Record of Acquisition, Disposition or Transport of Animals (6-1-05), DX 5 (FEI 1230).
- Record of Acquisition, Disposition or Transport of Animals (5-28-05), DX 5 (FEI 1403).
- Birthing notes (4-6-06), DX 5 (FEI 38095-96).

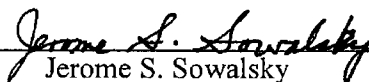
11. The documents listed below are documents that pertain to FEI's elephants that were received in the ordinary course of FEI's business and copies of which are maintained in the records of FEI. True and accurate copies of the documents listed below are included in DX 5 and DX 7 and attached as DX 11 to the Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment, filed in the above-captioned case:

- CITES permits (German and French) (1980), DX 5 (FELD 0005516-18).
- Letter from Patrick Knapman, D.V.M., to Jerome Sowalsky (3-3-82), DX 5 (FELD 0005181).
- Record of Acquisition, Disposition or Transport of Animals (3-1-82), DX 5 (FELD 0005182).
- Certificate of Origin (4-9-80), DX 5 (FELD 0005514-15).
- Certificate (3-27-95), DX 5 (FELD 0005598).
- Federal Fish and Wildlife Permit Application (11-1-85), DX 7 (pp. 13-15).
- Letter from William A. Dennler to International Animal Exchange, Inc. (6-6-82), DX 7 (p. 16).
- ISIS "New Inventory Data" (12-28-83), DX 7 (p. 17).
- Toledo Zoo Specimen Record, DX 7 (pp. 18-19).
- Delivery Receipt (9-13-85), DX 7 (p. 20).
- Federal Fish and Wildlife Permit Application (2-1-88), DX 7 (pp. 21-24).
- Captive-Bred Wildlife Registration (5-23-85), DX 7 (pp. 25-28).
- Letter from C.R. Bavin to FEI (11-4-75) (DX 11).

12. During the period from 1998 through the present, FEI's circus units have performed in venues in the State of New York. During the period from 1998 through the present, FEI has not received any report or other writing from a humane law enforcement officer employed by the American Society for the Prevention of Cruelty to Animals finding a violation of any New York animal cruelty law with respect to FEI's Asian elephants.

13. I declare under penalty of perjury that the foregoing is true and correct.

Executed on SEPTEMBER 5, 2006.



Jerome S. Sowalsky