

Plaintiffs' Exhibit 6

Motion To Compel Inspections
(Civ. No. 03-2006 (EGS/JMF))

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiffs,

v.

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

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

Defendants.

**DEFENDANT FELD ENTERTAINMENT INC.'S RESPONSE AND OBJECTIONS
TO PLAINTIFFS' RULE 34 REQUESTS FOR ENTRY UPON LAND
& INSPECTION OF ELEPHANTS AND FACILITIES**

Pursuant to F.R.C.P. 26 and 34, Defendant Feld Entertainment, Inc. ("FEI") hereby submits its response to Plaintiffs' Rule 34 Requests for Entry Upon Land & Inspection of Elephants and Facilities ("Request for Inspection"):

GENERAL OBJECTIONS

1. FEI objects to the Request for Inspection as overbroad, unduly burdensome, vague and ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. FEI objects to plaintiffs' improper use of Rule 34 as a vehicle to gather general information for their political cause rather than as a legitimate means for discovering evidence related to this case. FEI further objects that plaintiffs have not met their burden of showing requisite need for their Request for Inspection, which is invasive and intrusive. FEI objects to any inspection without leave of Court, which if permitted, would occur only under strict supervision, guidelines, and procedures identified fully in advance.

2. FEI has filed a motion for summary judgment which should not only terminate this litigation but also obviate any purported need for any inspection by plaintiffs; accordingly, FEI objects to any inspection until such time as the Court has ruled on its motion for summary judgment or its expedited motion to stay discovery.

3. FEI objects to the Request for Inspection as untimely. Plaintiffs stipulated in 2003 to the close of written discovery, which would include the instant request pursuant to Fed.R.Civ.P. 34. See Stipulated Pre-trial Schedule ¶ 3 (12/5/03). The parties have since amended the pre-trial statement several times without ever re-opening written discovery. The Court entered the scheduling orders as requested. See Minute Orders, entered 7/13/04, 9/8/04, 10/25/04. Plaintiffs have not moved the Court for leave to re-open written discovery.

4. FEI objects to the Request for Inspection because it is not reasonably calculated to lead to the discovery of admissible evidence. This case is filed pursuant to the Endangered Species Act (“ESA”), not the Animal Welfare Act – which has no private cause of action. Plaintiffs’ ESA claim is based on three practices: use of the bullhook, tethering, and weaning of baby elephants. See Complaint for Declaratory and Injunctive Relief ¶ 1 (9/26/03). Plaintiffs have no basis for requesting an inspection of the elephants pursuant to their claims regarding these standard industry practices. FEI further objects to plaintiffs’ request to inspect the “facilities” and “all areas of maintenance” as having absolutely no relationship to this lawsuit or plaintiffs’ claims therein. It is nothing more than a fishing expedition.

5. FEI objects to the Request for Inspection as vague and ambiguous. Plaintiffs have inappropriately requested to generically “physically inspect, observe, test, photograph and videotape” FEI’s elephants and facilities. FEI objects to this as improperly vague for failure to identify any of the purported personnel involved, including their identities, resumes, curriculum

vitae, and/or qualifications, if any. FEI further objects to this as improperly vague for failure to identify any of the purported “tests” sought, the proposed protocol for conducting such testing, or the tools or equipment to be used. As such, FEI further objects to all such testing as irrelevant and not likely to lead to the discovery of admissible evidence.

6. FEI objects to the Request for Inspection as overly broad to the extent that it seeks to inspect both elephants and facilities for which plaintiffs have no standing to make a claim. FEI further objects to plaintiffs’ efforts as private citizens to conduct a USDA-style inspection/investigation when plaintiffs have no authority or standing to do that, and it is directly contrary to the statutory and regulatory scheme established pursuant to the Animal Welfare Act and implementing rules and regulations thereto.

7. FEI objects to the Request for Inspection as unduly burdensome because it is overbroad in scope, seeks to bring more people than the facilities permit or can handle at any one time, and would directly and intentionally disrupt and interfere with FEI’s business, including its performances. FEI further objects to the Request for Inspection as cost-prohibitive due to the overbroad nature of the request.

8. FEI objects to the Request for Inspection as duplicative and lacking in requisite need. Plaintiffs do not need to enter the premises to photograph or take video footage of the elephants, which they already do routinely. See, e.g., AWI 05934-06037 (elephant walk and unloading photos); PL 8980 (video produced by plaintiffs and used at deposition for questioning by plaintiffs).

9. FEI objects to the Request for Inspection as unduly intrusive and an invasion of privacy of its employees and its elephants. FEI further objects to any photographing or videotaping that would disrupt or interfere with the daily schedules or husbandry of the elephants

as contrary to their health and/or well-being. FEI further objects to any inspections of the Williston retirement facility or the Center for Elephant Conservation, which are not open to the public.

10. FEI objects to the Request for Inspection as harassing and a security risk, particularly as it pertains to any photographing or videotaping of FEI's personnel, its facilities or their respective layouts. Certain of FEI's employees are stalked by animal rights activists on a regular basis. FEI has had to obtain a permanent restraining order against animal rights' activists who harass FEI and its employees. FEI has also received death and bomb threats from animal rights activists, including the Animal Liberation Front, a terrorist group recognized by the FBI. See, e.g., FEI 38776, 38794, 38798, 38818. FEI therefore objects to any videotaping of facilities or layouts as a security threat.

11. FEI objects to the Request for Inspection as a risk to the health, safety and welfare of its elephants. FEI objects to entry or access by any human who cannot first provide a clean bill of health, including a recent, negative tuberculosis test from a recognized, accredited lab agreeable to FEI so as not to contaminate FEI's elephants. FEI further objects to any contact or touching of its elephants as overbroad and harassing: plaintiffs do not need to wash or wipe down the elephants and provide no justifiable basis for such request. FEI further objects to any interruption or disruption to the elephants' daily schedules as unduly burdensome and contrary to the best interests of its elephants' health, safety and welfare.

12. FEI objects to the Request for Inspection as requiring its personnel to perform or otherwise demonstrate for plaintiffs who apparently believe that FEI's personnel must accompany them "as needed to perform the requested inspection." FEI has no obligation to perform demonstrations for plaintiffs, nor do the Federal Rules of Civil Procedure require it.

13. FEI objects to the Request for Inspection, particularly the requested testing and personal contact by plaintiffs with FEI's entire elephant herd, as a risk to plaintiffs' (or their designated agents') own health, safety and welfare. FEI would require releases containing hold harmless clauses from any person seeking direct contact with FEI's entire elephant herd, particularly where plaintiffs have provided no identities or credentials of those who will purportedly be seeking to wash or test FEI's elephants. See, e.g., http://www.elephants.com/media/Tennessean_7_25_06.htm (last visited 9/11/06) (experienced handler recently killed while trying to inspect elephant's eye).

14. FEI objects to the Request for Inspection absent an appropriate protective order regarding the dissemination of any information taken from FEI.

15. FEI reserves all rights to object as to the competency, relevancy, materiality and admissibility of information, if any, that is produced pursuant to plaintiffs' Request for Inspection.

16. FEI reserves the right to supplement or amend its objections pending receipt of further information regarding plaintiffs' Request for Inspection.

17. The foregoing General Objections apply to each and every one of the following responses and objections as if set forth fully thereafter, and failure to repeat an objection in response to a specific request shall not be deemed a waiver or limitation of these General Objections.

Objections to Specific Inspection Requests

REQUEST BY PLAINTIFFS:

I. The Stationary Facilities

A. Williston Elephant Retirement Facility

Plaintiffs request permission to enter upon the land at the facility known as the Williston Elephant Retirement Facility or "Two Tails Ranch" (hereafter "Williston" or "the facility") and to physically inspect, observe, test, photograph, and videotape: (a) all of the elephants Ringling Brothers maintains at the facility; and (b) those parts of the facility that pertain in any way to the maintenance and care of the elephants.

Williston is located at 18655 NE 81st Street Williston, Florida 32696. According to documents provided by defendants, Ringling Brothers has sufficient control over this property to permit the requested inspection.

This request pertains to all of the elephants at the facility. According to records that have been provided by defendants, as of April 1, 2006, the following Ringling Brothers elephants were present at Williston: Calcutta I, Cora, India, Prince Tusk, Sabu/Zabu Putzi, and Siam. In addition, once Ringling Brothers' Gold Unit is done touring in August of 2006, the elephants named Mysore and Angelica may also be present at Williston.

SPECIFIC OBJECTIONS: FEI incorporates by reference all General Objections above as if set forth fully here. In addition, FEI objects to this request on the grounds that it does not own, but leases the Williston facility, and Rule 34 requests for entry apply only to parties to the litigation. FEI should not be made to permit plaintiffs to access a third-party's premises if the third-party does not consent. FEI further objects to this request as harassing and overbroad: the elephants located at this facility either are not subject to the ESA and/or have no connection to plaintiff Tom Rider, and the facility itself is not at issue in this lawsuit. Accordingly, plaintiffs have no standing for this request, and it is not reasonably calculated to lead to the discovery of admissible evidence. FEI further objects to this request as vague and ambiguous: plaintiffs have not identified who they would like to have in attendance, whether

such attendee(s) are qualified to be there, what "inspections," "observations," or "testing" would be sought, or the procedures or protocol for such requests.

REQUEST BY PLAINTIFFS:

B. The Center For Elephant Conservation

Plaintiffs request the right to enter upon the land at the facility known as the "Center for Elephant Conservation" (hereafter "CEC" or "the facility"), and to physically inspect, observe, test, photograph, and videotape: (a) all of the elephants Ringling Brothers maintains at the facility; and (b) those parts of the facility that pertain in any way to the maintenance and care of the elephants.

The CEC is located on 200 acres at 3401 Old Grade Road, Polk City, Florida 33868. The CEC is owned and operated by Ringling Brothers.

This request pertains to all of the elephants at the facility. According to records that have been provided by defendants, as of April 27, 2006, the following Ringling elephants were present at the CEC: Alana, Emma, Icky II, Louie, Zina, Shirley, Josky, Mala, Sally, Sid, Lutzi, Tova, Asha, Aree, Rudy, Susan, Burma, Smokey, Charlie, Rajah, Romeo, Osgood, Vance, Irvin, P.T., Doc, and Gunther. In addition, once the Gold Unit is done touring in August of 2006, Mysore and Angelica may also be present at the CEC.

SPECIFIC OBJECTIONS: FEI incorporates by reference all General Objections and the Specific Objections from Part I(A) above as if set forth fully here. FEI further objects to this request as harassing and overbroad: the elephants located at this facility either are not subject to the ESA and/or have no connection to plaintiff Tom Rider, and the facility itself is not at issue in this lawsuit. Accordingly, Plaintiffs have no standing for this request, and it is not reasonably calculated to lead to the discovery of admissible evidence. FEI further objects to

this request as vague and ambiguous: plaintiffs have not identified who they would like to have in attendance, whether such attendee(s) are qualified to be there, what "inspections," "observations," or "testing" would be sought, or the procedures or protocol for such requests.

REQUEST BY PLAINTIFFS:

C. The Details Of The Stationary Facilities Inspections

Plaintiffs seek permission for a team of four to five experts to enter the facilities conduct the inspection, accompanied by plaintiffs' attorneys, photographers, and videographers. The experts will include a board certified veterinarian, an elephant biologist, up to two animal behaviorists, and an expert in elephant training and management. Once the date of the inspection is agreed upon, a more detailed description of the inspection team, including the identities and credentials of the experts who will be participating in the inspection, will be provided to counsel for defendants.

Plaintiffs request that defendants make available at each of these two inspections: (a) an officer, director, managing agent, or other person who is authorized to represent Ringling Brothers and who will identify the elephants at each facility during the inspection; and (b) those personnel who are necessary to ensure that plaintiffs' representatives are provided complete access to all of the elephants and facilities, as needed to perform the requested inspections.

Plaintiffs request permission to inspect, observe, and take photographs and video footage of the elephants for up to six hours at each facility. Plaintiffs request permission to physically inspect, observe, photograph, and take video footage of each of the elephants. This includes, but is not limited to, inspecting the bottoms of the elephants' feet, behind their ears, and the opportunity to wash or wipe down any part of an elephant.

In addition, plaintiffs request permission to inspect, observe, photograph, and take video footage of: (1) all areas of the facilities where the elephants are kept or maintained for any period of time, including, but not limited to, the elephant barns and yard; and (2) the areas of the facilities associated with the maintenance of the elephants including, but not limited to, the veterinary offices, places where food is stored, and places where other elephant associated supplies are kept, including, but not limited to, medicine and training tools and equipment. According to Ringling Brothers' website, at the CEC this would include the main barn, the two single male barns, one double male barn, the five outside paddocks, the hay barn, any other part of the facilities where the elephants may be maintained for any period of time, and any facilities that are relevant to the maintenance and care of the elephants. See www.elephantcenter.com/comfortsafety.aspx. At Williston this would include, but not be limited to, the main barns and outside paddocks.

In the interest of minimizing disruption of defendants' operations, plaintiffs are proposing several alternative dates for inspecting the elephants in Florida, and will make plaintiffs' inspection team available to conduct the inspections of Williston and the CEC during two consecutive days. The inspections of the elephants at Ringling Brothers' Florida facilities could occur sometime during the following date ranges:

- (1) September 20-27
- (2) October 1-7
- (3) November 5-10

SPECIFIC OBJECTIONS: FEI incorporates by reference all General Objections above and the Specific Objections to Parts I(A) and I(B) as if set forth fully here. FEI further objects to this request as harassing, overbroad, and unduly burdensome: Plaintiffs seek to bring a "team" of personnel that is, at a minimum, comprised of 8 people excluding anybody – counsel,

agents, or party-representatives – from the defense. FEI further objects to any person who is not fully identified in advance, including but not limited to, the disclosure of such person's purported training or credentials, which includes any sought inspection or testing by anybody who is not a currently licensed veterinarian in good standing that is experienced with Asian elephants and board certified in at least zoo medicine and/or large animals. FEI further objects to plaintiffs' request for six hours of videotaping as unduly burdensome and overbroad to the extent that it in any way disrupts or interferes with the daily schedules and husbandry of the elephants. FEI objects to this request as contrary to the Federal Rules of Civil Procedure to the extent that it purports to require FEI to provide personnel to assist plaintiffs by conducting demonstrations for plaintiffs or with plaintiffs' efforts to identify or distinguish the elephants. FEI objects to this request as contrary to the Federal Rules of Civil Procedure to the extent that it purports to require FEI to safeguard plaintiffs who desire to have direct contact with FEI's elephants, but have not demonstrated a need or qualification to come near its elephants for testing or otherwise. FEI further objects to this request as unduly burdensome, invasive, and unnecessary: facilities and maintenance, veterinary offices, food, medicine, training tools and equipment are not part of this case and do not relate to plaintiffs' claims.

REQUEST BY PLAINTIFFS:

II. On The Road

A. The Blue Unit

Plaintiffs request permission to enter upon the land at the venue where Ringling Brothers' Blue Unit is located during the time of the inspection for the purpose of observing, physically inspecting, photographing, and videotaping all of the elephants and the facilities involved in the maintenance and care of the elephants. On information and belief, Ringling

Brothers has authority to permit plaintiffs access to these facilities for purposes of performing the requested inspections. This request pertains to all of the elephants on the Blue Unit. According to records that have been provided by defendants, as of March 17, 2006, the following Ringling Brothers elephants were on the Blue Unit: Karen, Minyak, Nichole, Bonnie, Juliette, Kelly Ann, Sara, and Jewell. In addition, once Ringling Brothers' Gold Unit is done touring in August of 2006, the elephants named Mysore and Angelica may also be present on the Blue Unit.

SPECIFIC OBJECTIONS: FEI incorporates by reference all General Objections and the Specific Objections to Part I above as if set forth fully here. In addition, FEI objects to this request on the grounds that it does not own the venues where it performs on the road, and Rule 34 requests for entry apply only to parties to the litigation. FEI should not be made to permit plaintiffs to access a third-party's premises if the third-party does not consent. FEI further objects to this request as harassing and overbroad: the elephants located on this unit either are not subject to the ESA and/or have no connection to plaintiff Tom Rider. Accordingly, plaintiffs have no standing for this request, and it is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST BY PLAINTIFFS:

B. The Red Unit

Plaintiffs request permission to enter upon the land at the venue where Ringling Brothers' Red Unit is located during the time of the inspection for the purpose of observing, physically inspecting, photographing, and videotaping the elephants and the facilities involved in the maintenance and care of the elephants. On information and belief, Ringling Brothers has

authority to permit plaintiffs access to these facilities for purposes of performing the requested inspections.

This request pertains to all of the elephants on the Red Unit According to records that have been provided by defendants, as of April 27, 2006, the following Ringling Brothers elephants B were on the Red Unit: Asia, Assan, Baby, Bananna, Banko, Luna, Sarah, Siam, Toby, and Tonka. In addition, once Ringling Brothers' Gold Unit is done touring in August of 2006, the elephants named Mysore and Angelica may also be present an the Red Unit.

SPECIFIC OBJECTIONS: FEI incorporates by reference all General Objections and the Specific Objections to Part I and Part II(A) above as if set forth fully here. In addition, FEI objects to this request on the grounds that it does not own the venues where it performs on the road, and Rule 34 requests for entry apply only to parties to the litigation. FEI should not be made to permit plaintiffs to access a third-party's premises if the third-party does not consent. FEI further objects to this request as harassing and overbroad: the elephants located on this unit either are not subject to the ESA and/or have no connection to plaintiff Tom Rider. Accordingly, plaintiffs have no standing for this request, and it is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST BY PLAINTIFFS:

C. The Details Of The On The Road Inspections

Plaintiffs seek permission for a team of four to five experts to enter the facilities and conduct the inspection, accompanied by plaintiffs' attorneys, photographers, and videographers. The experts will include a board certified veterinarian, an elephant biologist, up to two animal behaviorists, and an expert in elephant training and management. Once the date of the inspection is agreed upon, a more detailed description of the inspection team,

including the identities and credentials of the experts who will be participating in the inspection, will be provided to counsel for defendants.

Plaintiffs request that defendants make available at each of these two inspections: (a) an officer, director, managing agent, or other person who is authorized to represent Ringling Brothers and who will identify the elephants at each facility during the inspection; and (b) those personnel who are necessary to ensure that plaintiffs' representatives are provided complete access to all of the elephants and facilities, as needed to perform the requested inspections. Plaintiffs request permission for their inspection team to inspect, observe, photograph, and videotape the elephants being unloaded from the train at the venue, and to inspect the elephants and the train cars in which the elephants are transported.

Plaintiffs request permission to observe, photograph, and videotape the elephants being taken to the arena, coliseum, or other facility where the Unit will be housed during its tenure at the venue where the inspection is being conducted.

Plaintiffs request permission to observe, photograph, and videotape the elephants where they are maintained, where they rehearse, and where they perform at each the facility for up to six hours.

Plaintiffs request permission to physically inspect, observe, photograph, and take video footage of the elephants at the facility, including, but not limited to, inspecting the bottoms of the elephants' feet, behind their ears, and the opportunity to wash or wipe down any part of an elephant.

In addition, plaintiffs request permission to inspect, observe, photograph, and take video footage of: (1) all the areas of the facilities where the elephants are kept or maintained for any period of time, including, but not limited to, tents, picket lines, and hot wire pens; and

(2) all the areas of the facilities associated with the maintenance of the elephants, including, but not limited to, where food and medicine are stored, and places where other elephant associated supplies are kept, including, but not limited to, training tools and equipment.

In the interest of minimizing the disruption of defendants' operations, plaintiffs are proposing several alternative dates for inspecting the elephants on the road. The following venues where the inspection of the Red Unit could be conducted:

- (1) Grand Rapids, Michigan-September 27-October 1
- (2) Boston, Massachusetts -October 6-15
- (3) Pittsburgh, Pennsylvania-November 1-5
- (4) Auburn Hills, Michigan - November 8-12

The following are venues where the inspection of the Blue Unit could be conducted:

- (1) Sacramento, California - September 21-24
- (2) Denver, Colorado - October 4-15
- (3) Rosemont, Illinois -November 1-12
- (4) Chicago, Illinois - November 14-26

Defendants will need to inform plaintiffs' counsel precisely when each Unit is scheduled to arrive at the cities listed above so that plaintiffs can schedule the inspections to include all of the de-training of the elephants when the circus first arrives at the venue where the inspection will take place.

SPECIFIC OBJECTIONS: FEI incorporates by reference all General Objections above and the Specific Objections to Part I and Parts II(A) & II(B) as if set forth fully here. FEI further objects to this request as harassing, overbroad, and unduly burdensome: Plaintiffs already photograph and videotape the train cars, the unloading, the elephant walk to and from the train

to the venue, and the elephants while housed at the venues rendering a request for inspection duplicative and unnecessary. See, e.g., PL 08972, 08976. FEI further objects to this request as a safety risk if plaintiffs are seeking to enter the train cars while the elephants are inside. FEI further objects as overbroad and unduly burdensome the request to videotape for six hours, which would disrupt and interfere with the daily schedules and husbandry of the elephants. FEI further objects to the request to observe, photograph or videotape its rehearsals and performances – which are not open to the public – as information and material protected as trade secrets and/or U.S. copyright law, the access and use of which material must be regulated by an appropriate protective order. FEI further objects to this request as unduly burdensome, invasive, and unnecessary: the “tents, picket lines, and hot wire pens,” as well as “food, medicine, supplies” and their storage are not part of this case and do not relate to plaintiffs’ claims.

REQUEST BY PLAINTIFFS:

* * * * *

None of the four inspections described above can be scheduled to occur at the same time. Aside from this requirement, plaintiffs are willing to work with defendants to find mutually agreeable dates for the inspections.

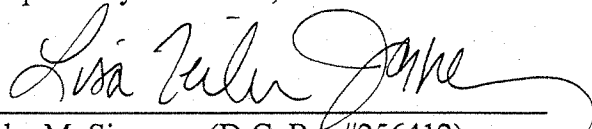
To the extent that Mysore and/or Angelica are not present at Williston, the CEC, the Blue Unit, or the Red Unit when the requested inspections take place, plaintiffs request permission to physically inspect, observe, test, photograph, and videotape these two elephants wherever they are located at such time.

SPECIFIC OBJECTIONS: FEI incorporates by reference all General Objections above and the Specific Objections to Parts I and II as if set forth fully here. FEI further objects to any inspection or any scheduling of any such inspection until such time as plaintiffs fulfill their

obligations to disclose: 1) their need for the inspection; 2) why the requested inspection bears any relationship to this case and how it is reasonably calculated to lead to the discovery of admissible evidence; 3) what exactly it is that plaintiffs are purporting to do during the inspection; and 4) who exactly will plaintiffs purport to bring, and what the qualifications of those persons are. As it stands, plaintiffs' Request for Inspection is grossly overbroad and bears no semblance to plaintiffs' claims or this litigation as filed. The Court should not indulge plaintiffs' efforts to "hide the ball" through their refusal to disclose what they would like to do and who they would like to perform this request. Accordingly, FEI objects to the request in its entirety as void for untimeliness, irrelevance, vagueness, undue burden and cost, safety and security risks presented to both humans and elephants, and overbreadth.

Dated this 13th day of September, 2006.

Respectfully submitted,



John M. Simpson (D.C. Bar #256412)
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Counsel for Defendant Feld Entertainment, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Feld Entertainment, Inc's Response and Objections to Plaintiffs' Request for Entry Upon Land and Inspection of Elephants and Facilities was served via first class U.S. mail, postage prepaid, on this th 13 day of September, 2006, to:

Katherine A. Meyer, Esq.
Kimberly D. Ockene, Esq.
Meyer Glitzenstein & Crystal
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Washington, D.C. 20009

Counsel for Plaintiffs

A handwritten signature in cursive script, appearing to read "Lisa Zulu", is written over a horizontal line.