

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.,)	
)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 07-1532 (EGS/JMF)
)	
)	
ANIMAL WELFARE INSTITUTE, <i>et al.</i> ,)	
)	
Defendants.)	

MOTION FOR PARTIAL SUMMARY JUDGMENT BY DEFENDANTS KATHERINE MEYER, ERIC GLITZENSTEIN, AND MEYER GLITZENSTEIN & CRYSTAL ON PLAINTIFF’S TIME-BARRED RICO CLAIM AGAINST THEM

Pursuant to Rule 56(a), Fed. R. Civ. P., Defendants Katherine Meyer, Eric Glitzenstein, and Meyer Glitzenstein & Crystal, (hereinafter collectively referred to as “MGC Defendants”), move for partial summary judgment in this case on the ground that FEI’s claims against these Defendants under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962, are barred by the four-year statute of limitations that applies to such claims.¹ As demonstrated below, there is no genuine issue in dispute about any of the material facts establishing the timing of plaintiff’s own documented and/or admitted state of knowledge concerning the bases for its RICO claims. There is also, self-evidently, no need for plaintiff to have the opportunity to take further discovery *into its own state of knowledge* before this motion is resolved by the Court. To the contrary, it is perfectly appropriate for the motion to be resolved

¹ FEI’s RICO claim against Defendant Howard Crystal in his individual capacity was already dismissed by the Court. *See* DE 90 at 44. At certain times pertinent to this motion Meyer Glitzenstein & Crystal was known as Meyer & Glitzenstein. However, for ease of reference the firm will be referred to as MGC throughout this motion.

now before these defendants are wrongfully forced to endure two years of intensive party discovery, pretrial and trial proceedings on this demonstrably stale RICO claim against them.

In support of this motion, the MGC defendants submit their accompanying Memorandum of Law with Exhibits and their Rule 7(h) Statement of Material Facts Not in Genuine Dispute, which in combination unequivocally establish that plaintiff's RICO claims against these defendants were barred by the statute of limitations long before those claims were belatedly filed. Accordingly, a proposed Order granting the MGC Defendants' Motion for Partial Summary Judgment accompanies this motion as well.

Respectfully submitted,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

BACKGROUND 1

ARGUMENT 7

A. Long Before February 16, 2006 FEI Knew That The MGC Defendants Were Making Standing Allegations On Behalf Of Mr. Rider That FEI Believed To Be False. 9

B. Before February 16, 2006 FEI Knew That Mr. Rider Was Being Financially Supported By The Plaintiff Organizations And WAP, That Some Of This Funding Was Provided By The MGC Defendants, And That WAP Was Founded And Run By Defendants Meyer and Glitzenstein. 13

1. FEI Knew Before Any Discovery Had Been Taken In The ESA Case That Mr. Rider Was Receiving Financial Assistance From Organizations That Were Plaintiffs In The ESA Case. 13

 a) FEI Knew Before February 16, 2006 That Mr. Rider Was Receiving Financial Assistance From PAWS. 13

 b) FEI Knew Long Before February 16, 2006 That The ASPCA Was Paying Mr. Rider’s Living Expenses. 14

2. Long Before February 2006, FEI Knew From The ESA Plaintiffs’ Discovery Responses That Mr. Rider Was Receiving Financial Assistance From The Plaintiff Organizations, That Some of This Funding Was Provided By MGC And Then Billed To the Organizations, That Some Of The Funding Was Provided To WAP, And That WAP Was Founded By Meyer And Glitzenstein. 17

 a) FEI Was Informed About Funding Of Mr. Rider By The Plaintiffs’ Initial 2004 Discovery Responses. 17

 b) FEI Obtained Still More Details About The Funding Of Mr. Rider And The MGC Defendants’ Involvement In It At The July 19, 2005 Rule 30(b)(6) Deposition Of The ASPCA. 20

3. Ms. Meyer Stated In Open Court In September 2005 That Mr. Rider Was Receiving Funding From The Plaintiff Organizations And Others. 25

4.	FEI Obtained Additional Details About The Funding Of Mr. Rider From WAP’s September 2005 Subpoena Response.	26
C.	By February 15, 2006, FEI Knew That The MGC Defendants Had Made Certain Representations To This Court and the Court of Appeals About The Basis For Mr. Rider’s Standing.	32
D.	Not Only Is FEI Legally Foreclosed From Relying On Any “Fraudulent Concealment” Exception To Sidestep RICO’s Statute of Limitations, But FEI Failed To Avail Itself Of Readily Available Opportunities To Obtain Even <i>More</i> Information Concerning Mr. Rider’s Funding.	33
	CONCLUSION	37

TABLE OF AUTHORITIES

CASES	PAGE
<u>Anderson v. Liberty Lobby, Inc.</u> , 477 U.S. 242 (1986).....	7
<u>ASPCA v. FEI</u> , 677 F. Supp. 55 (D.D.C. 2009).....	<i>passim</i>
<u>Connors v. Hallmark & Son Coal Co.</u> , 935 F.2d 336 (D.C. Cir. 1991).....	36
<u>Cornwell v. Robinson</u> , 23 F.3d 694 (2d Cir. 1994)	31
<u>Credit Suisse Sec. (USA) LLC v. Simmonds</u> , 132 S. Ct. 1414 (2012).....	8, 9
<u>Feld Entertainment, Inc. v. ASPCA</u> , 873 F. Supp. 2d 288 (D.D.C. 2012).....	2, 23, 37
<u>Feld Entertainment, Inc. v. ASPCA</u> , 523 F. Supp. 2d 1 (D.D.C. 2007).....	5, 6, 14, 15, 16, 21, 22, 24, 28, 30
<u>Ferguson v. Local 689, Amalgamated Transit Union</u> , 626 F. Supp. 2d 55 (D.D.C. 2009).....	30
<u>Hardin v. Jackson</u> , 648 F. Supp.2d 42 (D.D.C. 2009).....	36
<u>Havens Realty Corp. v. Coleman</u> , 455 U.S. 363 (1982)	34
<u>John R. Sand & Gravel Co. v. United States</u> , 552 U.S. 130 (2008)	8
<u>Keohane v. United States</u> , 669 F.3d 325 (D.C. Cir. 2012).....	36
<u>Kifafi v. Hilton Hotels Ret. Plan</u> , 701 F.3d 718 (D.C. Cir. 2012).....	7, 36
<u>Louisiana-Pac. Corp. v. ASARCO, Inc.</u> , 5 F.3d 431 (9th Cir. 1993).....	31

Merck & Co. v. Reynolds,
559 U.S. 633 (2010) 36

Nader v. Democratic National Comm.,
567 F.3d 692 (D.C. Cir. 2009).....*passim*

Rendall-Speranza v. Nassim,
107 F.3d 913 (D.C. Cir. 1997)..... 31

Riddell v. Riddell Washington Corp.,
866 F.2d 1480 (D.C. Cir. 1989)..... 34

Ringling Bros. and Barnum & Bailey Circus,
244 F.R.D. 49 (D.D.C. 2007) 3, 4, 22, 23, 24, 26

Rotella v. Wood,
528 U.S. 549 (2000) 1, 7, 36

Sparshott v. Feld Entm't Inc.,
89 F. Supp. 2d 1 (D.D.C. 2000)..... 31

Western Assoc. v. Market Square Assoc.,
235 F.3d 629 (D.C. Cir. 2001)..... 8, 20

STATUTES

Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.**passim*

Fed. R. Civ. P. 56(a) 7

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In this Circuit, the statute of limitations runs from the date plaintiff knew or could have known of “*some evidence*” of the basis for the alleged wrongdoing that caused its injuries. *Nader v. Democratic National Comm.*, 567 F.3d 692, 700 (D.C. Cir. 2009). The statute of limitations on plaintiff’s RICO claims is four years. *Rotella v. Wood*, 528 U.S. 549, 553 (2000). Because FEI had much more than “*some evidence*” of the asserted basis for its RICO claims against Defendants Meyer, Glitzenstein, and the firm Meyer Glitzenstein & Crystal (“MGC Defendants”) far earlier than February 16, 2006 – four years before the date on which FEI added the MGC Defendants to its RICO claims (February 16, 2010) – those claims are barred by the statute of limitations. Accordingly, those RICO claims must now be dismissed against these Defendants.

BACKGROUND

FEI’s RICO claims against the MGC Defendants are primarily premised on the allegation that these Defendants were part of a conspiracy to bribe Tom Rider to be a plaintiff in a case brought against FEI under the Endangered Species Act for the unlawful “take” of the endangered

Asian elephants used in FEI's circus, the Ringling Brothers and Barnum & Bailey Circus. *See Performing Animal Welfare Society v. Ringling Bros. And Barnum & Bailey Circus*, No. 00-1641 (D.D.C. 2000); *American Society for the Prevention of Cruelty to Animals v. FEI*, No. 03-2005 (D.D.C. 2003) (hereinafter collectively referred to as "the ESA Action"); *see also generally ASPCA v. FEI*, 677 F. Supp. 55 (D.D.C. 2009) ("ESA Standing Decision"). Indeed, in denying the Defendants' collective motion to dismiss this case, the Court stressed that "[i]n order to prove its RICO claim, FEI must prove that the ESA plaintiffs and their attorneys bribed Mr. Rider to testify falsely about his aesthetic and emotional injury." Memorandum Opinion (July 9, 2012), DE 90 (emphasis added), *Feld Entertainment, Inc. v. ASPCA*, 873 F. Supp. 2d 288, 306 (D.D.C. 2012). Thus, FEI alleges that the MGC Defendants and others paid Mr. Rider to lie about his love of the elephants and other matters relating to his assertion that he had the necessary Article III standing for the Court to exercise subject matter jurisdiction over the ESA case. *See, e.g.*, Amended Complaint ("Am. Compl.") ¶¶ 17 - 22 ("At various times during the past eight years, ASPCA, AWI, FFA/HSUS and API, facilitated by WAP, MGC, Meyer and Glitzenstein provided funding to Rider for his participation as a plaintiff and as a key fact witness in the ESA Action in which Rider testified falsely under oath" regarding the basis for his standing, and that "[t]hese payments and benefits to Rider constitute bribery of a witness . . .").¹

¹ To establish standing in the ESA case with respect to Rider, the plaintiffs alleged that Mr. Rider, who had worked with elephants at the Ringling Bros. Circus for two-and-a-half years, had become emotionally attached to the elephants, was aesthetically harmed by seeing them struck with bull hooks and kept on chains for the majority of their lives, and wanted to improve their lives. *See generally* Civ No. 00-1641 (July 11, 2000) ("2000 Complaint") at ¶¶ 30-34; Amended Complaint, Civ. No. 00-1641 (August 11, 2000) ("2000 Amended Complaint") ¶¶ 30-34; Complaint, Civ. No. 03-2006 ("2003 Complaint") ¶¶ 18-23.

After the ESA Litigation had been pending for many years, on February 28, 2007 FEI filed a motion for leave to file a counterclaim to assert RICO claims against all of the plaintiffs in the ESA Litigation, as well as The Wildlife Advocacy Project (“WAP”) – a non-profit organization founded in 1997 by Eric Glitzenstein and Katherine Meyer. *See* Motion of Defendant Feld Entertainment, Inc. For Leave to Amend Answer To Assert Additional Defense and RICO Counterclaim, ESA Action DE 121; *see also* MGC Ex. A (1997 “Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code”). In support of its motion, FEI contended that all of the plaintiff organizations “*facilitated by WAP and MGC*,” are paying Rider for his participation as a plaintiff and as a key fact witness in the ESA Action,” and that “[s]uch actions constitute violations of federal and state laws prohibiting bribery of, and paying gratuities to, a witness.” ESA Action DE 121 at 2 (emphasis added). FEI further specifically alleged, “based on evidence that ha[d] been produced in the ESA Action,” *id.* at 3, that the organizational plaintiffs “*facilitated by WAP and MGC*” had “devised an illegal, ethically improper, and fraudulent scheme to pay Rider and hide the fact that Rider was on their payroll by creating the false image of Rider as a purported volunteer championing Asian elephant welfare,” and that, at various times the organizational plaintiffs paid Rider directly, and “at other times” such payments “have been funneled through MGC or WAP.” *Id.* at 3-4 (emphasis added). Although FEI asserted numerous allegations of misconduct directly against the MGC Defendants, it chose not to include the firm or any of the lawyers as defendants in its proposed counterclaim. *See id.*

On August 23, 2007, the Court denied FEI’s motion to add the RICO counterclaim. *See* Memorandum Opinion, ESA Action DE 176, *ASPCA v. Ringling Bros. and Barnum & Bailey*

Circus, 244 F.R.D. 49 (D.D.C. 2007). The Court found that the RICO counterclaim was “dilatatory,” and stressed that the Court could not “ignore the fact that [FEI] has been aware that plaintiff Tom Rider has been receiving payments from the plaintiff organizations for more than two years.” ESA Action DE 176 at 4, 7; 244 F.R.D. at 51, 52 (emphasis added). The Court further noted that “[a]lthough [FEI] alleges an ‘elaborate cover-up,’ that prevented it from becoming ‘fully aware of the extent, mechanics, and purpose of the payment scheme until at least June 30, 2006,’ . . . such a statement *ignores the evidence in this case that was available to defendant before June 30, 2006.*” ESA Action No. 176 at 7, 244 F.R.D. at 52 (internal citations omitted) (emphasis added). In particular the Court explained that “*Plaintiffs’ counsel admitted in open court on September 16, 2005 that the plaintiff organizations provided grants to Tom Rider to ‘speak out about what really happened’ when he worked at the circus.*” *Id.* (citing Hearing Tr. (Sept. 16, 2005)) (emphasis added).

Four days later, on August 28, 2007, FEI filed the same RICO claim as a separate lawsuit, naming as defendants all of the ESA Plaintiffs and WAP. *See* FEI Original Complaint (August 28, 2007), DE 1. Although the Complaint was again replete with references to the alleged misdeeds of Ms. Meyer, Mr. Glitzenstein, and MGC, *see e.g., id.* ¶¶ 8, 27, 66, 120, 135, 138, 156, 159, 165, 167-168, *FEI once again elected not to name any of the lawyers or the law firm as defendants.* Significantly, however, FEI made a crucial admission in this Complaint: namely, that the purportedly illegal “*payment scheme, which was devised and carried out with the encouragement of MGC, first became known to FEI in June 2004 when one or more of the defendants submitted their discovery responses in the ESA Action.*” *Id.* at ¶ 20 (emphasis added). Thus, in its own original Complaint, FEI admitted that it knew about MGC’s alleged

involvement in the illegal “payment scheme” more than a year and a half *before* the statute of limitations on that claim expired.

On November 7, 2007, the Court issued an order staying the newly filed RICO litigation on the ground that allowing it to proceed would unfairly delay resolution of the ESA litigation and would not unduly prejudice FEI. In so ruling, the Court noted that “*FEI itself has already long delayed its day in court on [the RICO] claim[,]*” in light of the fact that “*FEI alleges in its complaint that it first learned of payments to Tom Rider in June of 2004 . . .*” DE 23, *Feld Entertainment, Inc. v. ASPCA*, 523 F.Supp.2d 1, 4 (D.D.C. 2007) (citing FEI RICO Complaint ¶ 20) (emphasis added).

On December 30, 2009, after a trial on the merits in the ESA Action, the Court held that neither Mr. Rider nor the organizational plaintiffs had met their burden of proof to establish Article III standing. *ESA Standing Decision*, 677 F. Supp. 2d at 57. In so ruling, the Court stressed that because it lacked subject matter jurisdiction over the plaintiffs’ claims in the ESA Action it could “not [] reach the merits of plaintiffs’ allegations that FEI ‘takes’ its elephants in violation of Section 9 of the ESA.” *Id.* at 66.²

On February 16, 2010, FEI filed its Amended Complaint in this action and, for the first time named as additional defendants the MGC Defendants, Mr. Crystal, two other attorneys who once worked at MGC (Jonathan Lovvorn and Kimberly Ockene), and the Humane Society of the United States. First Amended Complaint, DE 25. In response to Defendants’ subsequent argument in a motion to dismiss that, even on the face of FEI’s Amended Complaint, the RICO

² The Court’s standing decision was subsequently affirmed by the Court of Appeals. *See* 639 F.3d 13 (D.C. Cir. 2011).

claims fell outside the applicable four-year statute of limitations, especially with respect to Defendants named for the first time in 2010, the Court stated that it was “*troubled by the statute of limitation argument with respect to the new defendants.*” *Id.* at 28 (emphasis added). The Court further stated that the new defendants “point to not-insignificant information at FEI’s disposal before February 16, 2006, that, defendants may be able to show, *may well have triggered the statute of limitation for RICO against the new defendants.*” *Id.* (emphasis added).

However, “given the stringent standard defendants must meet” at the motion to dismiss stage, the Court declined to dismiss the RICO claims against the MGC Defendants at that initial stage of the litigation, *id.*, while clearly suggesting that the “information” to which the MGC Defendants had pointed – which, as demonstrated below, was only a *fraction* of the undisputed evidence on which they are relying in *this* motion – could indeed be dispositive of the issue at a subsequent time.

That time has now come.

ARGUMENT

A Court must grant summary judgment if the movant demonstrates that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). As the Supreme Court has explained, “[b]y its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Rather, “the requirement is that there be no *genuine* issue of *material* fact.” *Id.* at 248. A “material” fact means “[o]nly disputes over *facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.*” *Id.* (emphasis added).

It is well established that there is a four-year statute of limitations for civil RICO claims, *Rotella*, 528 U.S. at 553, and that this time period begins to run from the date the plaintiff knew or should have known of its injury. *Id.* at 555. Thus, as the Supreme Court has explained, “*discovery of the injury, not discovery of the other elements of a claim, is what starts the clock.*” *Id.* (emphasis added). Moreover, under the discovery rule that applies here, the statute of limitations began to run not only from the date FEI actually *knew* that the MGC Defendants were involved in the alleged activities that FEI contends has caused its injury, but also from when FEI could “by reasonable diligence have known” of “some evidence” of that alleged wrongdoing. *See Nader*, 567 F.3d at 700; *Kifafi v. Hilton Hotels Ret. Plan*, 701 F.3d 718, 729 (D.C. Cir. 2012).

This four-year statute of limitations is consonant “with the basic policies of all limitations provisions: *repose, elimination of stale claims, and certainty about a plaintiff’s opportunity for recovery and a defendant’s potential liabilities.*” *Rotella*, 528 U.S. at 555 (emphasis added); *see*

also *Credit Suisse Sec. (USA) LLC v. Simmonds*, __U.S. __, 132 S. Ct. 1414, 1420 (2012) (noting that the “general purpose” of statutes of limitations is “to protect defendants against stale or unduly delayed claims”) (quoting *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133 (2008)) (emphasis added). These principles strongly support a finding that the RICO claims brought against the MGC Defendants are now time-barred. They were brought *twelve years* after the ESA Action that forms the foundation for FEI’s alleged RICO “pattern” was initiated, and far longer than four years after the time that FEI *itself* has flatly conceded it learned of the “payment scheme” that forms the basis for its claims against these Defendants. *See* DE 1 at ¶ 20 (stating that FEI learned of the payment scheme” which was purportedly “devised and carried out with the encouragement of MGC” in “June 2004”).³

It is, in fact, indisputable that FEI had *abundant* evidence long before the determinative date of February 16, 2006 that, in FEI’s view, Mr. Rider’s 2000 account of his experiences when he worked at FEI were untrue and that he was receiving money from several of the organizational plaintiffs in the ESA case. FEI also knew long before February 16, 2006 that the MGC Defendants were representing Mr. Rider and the organizational plaintiffs in the ESA Action, that they had signed the Complaints, as well as the briefs before both this Court and the Court of Appeals asserting that Mr. Rider was suffering aesthetic injury because of the way the elephants were mistreated, and that MGC had assisted the ESA organizational plaintiffs in providing living

³ In conflict with its original 2007 Complaint, which asserted that FEI learned of the payment scheme in June 2004, FEI’s 2010 Amended Complaint states that FEI began “to uncover the payment scheme” *on July 19, 2005*, when FEI deposed a representative of the ASPCA. Amended Compl. ¶ 32. But since both dates are considerably more than four years before the February 2010 date that FEI opted to file RICO claims against the MGC Defendants, they both support the MGC Defendants’ contention that the RICO claims against them are plainly time-barred. *See also Western Assoc. v. Market Square Assoc.*, 235 F. 3d 629, 634 (D.C. Cir. 2001) (court may rely on factual allegations made in original complaint in determining validity of amended complaint).

and traveling expenses to Mr. Rider. FEI also knew in advance of February 16, 2006, that Mr. Rider had been provided funding by WAP and that WAP was founded and operated by Eric Glitzenstein and Katherine Meyer, and that WAP had received grants intended for Mr. Rider from the organizational plaintiffs.

Therefore, as FEI itself has essentially admitted in both its Original Complaint and Amended Complaint, well before February 16, 2006 – the operative date under Judge Sullivan’s analysis for determining whether FEI’s RICO claims against the MGC Defendants are barred by the statute of limitations; *see also* DE 174 at 13 n. 2 (acknowledgement by FEI that RICO is governed by a four year statute of limitations and hence the “period prior to February 16, 2006” is relevant for determining whether the claims against the MGC Defendants are time-barred) – FEI had considerably more than “some evidence” of the alleged activities that form the basis for its claims. Accordingly, in keeping with the four-year statute of limitations for pursuit of RICO claims, as well as the “general purpose” of such limitations periods to “protect defendants against stale or unduly delayed claims,” *Credit Suisse*, __ U.S. at __, 132 S. Ct. at 1420, the Court should enter partial summary judgment now in favor of the MGC Defendants with regard to these claims.

A. Long Before February 16, 2006 FEI Knew That The MGC Defendants Were Making Standing Allegations On Behalf Of Mr. Rider That FEI Believed To Be False.

A central part of FEI’s RICO theory rests on the notion that Mr. Rider was being paid to make certain statements to establish that he had Article III standing in the ESA case that were not true – e.g., that he loved the elephants that he worked with, that he was aesthetically injured by seeing them mistreated, and that he left the circus community because he did not like seeing the mistreatment. *See* ESA Action, 2000 Am. Complaint ¶¶ 30-34; 2003 Complaint ¶¶ 18-23.

However, because it is undisputed that Mr. Rider worked at FEI during 1997 - 1999, *see* ESA Standing Decision, 677 F. Supp. 2d at 58, and FEI also knew the circumstances under which Mr. Rider left FEI's employment and went to Europe with Daniel Raffo (also a former FEI employee), *see id.* at 70; *see also* MGC Ex. B (4/11/00 e-mail from FEI's Director of Corporate Communications to a journalist stating that "Mr. Rider left Ringling Bros. of his own volition, and we understand that he left because he wanted to travel in Europe"), FEI was in a position to assess these standing allegations *from the moment they were made in 2000 in the original Complaint*.⁴ In other words, from 2000 forward, FEI knew that – in its view – Mr. Rider was fabricating these allegations. FEI also knew in 2000 that the plaintiffs in the ESA case, including Mr. Rider, were being represented by MGC (formerly Meyer & Glitzenstein), and specifically Katherine Meyer and Eric Glitzenstein. *See* ESA Action, 2000 Complaint at 27 (signed by Meyer and Glitzenstein); 2000 Amended Complaint at 24 (same).

In fact, very early on, FEI disputed most of Mr. Rider's statements about what he witnessed when he worked there and how it affected him, based largely on the ground that, according to FEI, Mr. Rider never complained to management about the mistreatment when he

⁴ Indeed, FEI's own documents demonstrate that FEI was closely monitoring Mr. Rider's activities and statements even *before* the original ESA Complaint was filed in July 2000. *See, e.g.*, MGC Ex. C (5/22/00 internal FEI e-mail from FEI's Director of Corporate Communications to multiple FEI employees stating that "I wanted you to see this article about Tom Rider that ran in the Peoria paper," and complaining that the "overall tone gives credibility to Tom's claims"); MGC Ex. D (5/20/00 e-mail from FEI's Director of Corporate Communications to other FEI employees attaching a newspaper article featuring Mr. Rider and stating that "Note that Tom will be put forward as a witness next month"); MGC Ex. E (5/8/00 e-mail from FEI's Director of Corporate Communications to "EVERYONE" entitled "Media coverage of animal care concerns" and explaining that media coverage of FEI's elephant treatment "featured information provided by a former Blue Unit employee alleging abuse of the elephants" and that the "Performing Animal Welfare Society [the original lead plaintiff in the ESA Action], one of our harshest critics, is circulating his story"); MGC Ex. F (6/28/00 internal FEI e-mail captioned "Tom Rider to protest RB in Las Vegas"); MGC Ex. G (4/11/00 FEI e-mail circulating an article from a British newspaper about Mr. Rider's allegations of elephant abuse in connection with the circus he was traveling with in Europe following his work at Ringling Bros.).

worked for the Circus – a point that FEI relied on before the Court to discredit Mr. Rider’s standing allegations.⁵ But, from the very outset of the ESA Action (and even earlier) FEI itself was in possession of information bearing on whether Mr. Rider had or had not complained internally (and to whom) about the kinds of elephant mistreatment that he publicly maintained he had witnessed. Indeed, on June 13, 2000 (weeks before the original ESA Action was even filed) FEI issued a press release concerning Congressional testimony given by Mr. Rider in which FEI stated that his claims of elephant mistreatment were “unsubstantiated” and that “Rider is clearly working in collaboration with animal activist groups.” MGC Ex. H, FEI Press Release (June 13, 2000). Consistent with this view, FEI officials insisted to journalists and others that Mr. Rider was not telling the truth because he had failed to complain to management when he worked at FEI.⁶

FEI also knew that when Mr. Rider left his employment with FEI in 1999, he went to Europe with Daniel Raffo and several elephants, MGC Ex. G; MGC Ex. K (5/20/00 letter to the editor from FEI’s Director of Corporate Communications stating that Mr. Rider “left Ringling Bros. to accompany some of the elephants he had been responsible for cleaning up after when they returned to Europe”) – another reason relied on before the Court as a basis for not believing Mr. Rider’s 2000 standing allegation that he left the circus because of the mistreatment that he had witnessed. *See* 677 F. Supp. 2d at 70. Thus, it is clear *from the very beginning of the ESA*

⁵ Judge Sullivan found that although Mr. Rider had made some complaints about elephant mistreatment, including to “his supervisor Randy Peterson,” his failure to complain to management and others undermined his standing. 677 F. Supp. 2d at 69.

⁶ *See e.g.*, MGC Ex. E (5/8/00 e-mail from FEI’s Director of Corporate Communications stating that Mr. Rider “never reported his concerns to the senior animal care staff”); MGC Ex. I (5/29/02 FEI e-mail attaching Philadelphia Daily News article quoting FEI “public relations director” as stating that “Rider never complained to management at the time”); MGC Ex. J (6/4/01 internal FEI e-mail circulating Harrisburg Patriot article stating that, according to FEI’s Director of Corporate Communications, “Rider never told the circus about the abuse while he was employed”).

Action in 2000 that FEI already had in its possession many of the core facts underlying its claim that Mr. Rider was intentionally fabricating the basis for his standing in that case, and that, according to FEI, the MGC Defendants were “facilitat[ing]” that fabrication, including by signing the ESA Complaints on his behalf. *Compare e.g.*, Am. RICO Compl. ¶ 17 (stating that Mr. Rider’s “false” standing allegations had been “facilitated by” the MGC Defendants) *with* 2000 ESA Complaint at 27 (signed by Katherine Meyer and Eric Glitzenstein); ESA Action, 2000 Am. ESA Complaint at 24 (same).

By the same token, by 2000 – a decade *before* filing RICO claims against the MGC Defendants – FEI was *already* in possession of the essential facts supporting its basic contention that the plaintiffs in the ESA case, along with their attorneys, had set out to “create[] the romantic, but totally untrue, image of Rider as the heroic champion of elephant welfare who quit his FEI job because of ‘aesthetic injury’ and who was now speaking out for the elephants at great personal inconvenience and sacrifice to himself.” Am. RICO Compl. ¶ 4 (emphasis added). ***Indeed, shortly after the Complaint was filed in the ESA Action, FEI’s spokespersons were already repeatedly telling the public that the reason Mr. Rider was making false statements about his experience at the circus was that he was being paid to do so by animal protection organizations.***⁷ As demonstrated below, this public relations commentary on the Complaint arose, *inter alia*, from FEI’s own internal documents indicating that Mr. Rider had ***admitted***

⁷ *See, e.g.*, MGC Ex. L, ABC 7 I-Team Investigation (November 22, 2002) (quoting Ringling Bros.’ “animal stewardship director” as stating that “Tom Rider worked for Ringling Brothers for two years and never once did he make a complaint about what he says he witnessed if what he saw was so bad. Today he works for an extremist hate organization and he gets paid to do it.”); MGC Ex. M, Horizons Newspaper (Nov. 20, 2003) (quoting “Ringling Brothers’ spokesperson Jenifer Maninger” as stating that the ESA Action was brought “by a former employee who is being paid by animal rights organizations” and that “I think he’s an individual who’s down on his luck and who unfortunately was looking for income.”).

publicly that his living and traveling expenses were being paid by organizational plaintiffs in the ESA Action.

B. Before February 16, 2006 FEI Knew That Mr. Rider Was Being Financially Supported By The Plaintiff Organizations And WAP, That Some Of This Funding Was Provided By The MGC Defendants, And That WAP Was Founded And Run By Defendants Meyer and Glitzenstein.

1. FEI Knew Before Any Discovery Had Been Taken In The ESA Case That Mr. Rider Was Receiving Financial Assistance From Organizations That Were Plaintiffs In The ESA Case.

a) FEI Knew Before February 16, 2006 That Mr. Rider Was Receiving Financial Assistance From PAWS.

FEI indisputably knew in 2000 that Mr. Rider was working with the Performing Animal Welfare Society (“PAWS”) – the original lead plaintiff in the ESA Action. *See* 2000 Complaint at 1. Indeed, a May 2000 news article widely circulated within FEI reported that FEI “discounted” Mr. Rider’s accounts of animal mistreatment at Ringling Bros. on this very basis. *See* MGC Ex. N at 1 (5/7/00 FEI e-mail attaching San Jose Mercury News, May 9, 2000) (Mr. Rider “who quit [Ringling Bros.] last November, is *now working with an animal rights group that has filed complaints against Ringling – a fact the company has cited in discounting his story*”); identifying Catherine Ort-Mabry as the “spokeswoman for Feld Entertainment Inc., Ringling’s parent company”) (emphasis added); MGC Ex. C (5/22/00 FEI e-mail attaching article stating that “Catherine Ort-Mabry, director of corporate communications for Feld Entertainment, the producers of Ringling Bros., *said Rider is being used by the activist group [PAWS] and isn’t telling the truth*”) (emphasis added); *see also* Am. RICO Compl. ¶ 61 (“At the time that the original complaint was filed on July 11, 2000, *Rider was employed as a ‘security guard’ by one of the plaintiffs named in the original complaint.*”) (emphasis added).

Thus, FEI clearly knew in 2000-2001 that Mr. Rider was working for PAWS in some capacity while he was a Plaintiff and witness in the ESA Action – and hence that he was receiving some financial benefit from the original lead plaintiff in that case. It is *indisputable* that FEI knew this fact by no later than August 16, 2004, when PAWS’ official Ed Stewart was deposed in the ESA case and testified in answer to questions from FEI’s attorney that Mr. Rider “did work for PAWS” as a “watch man.” *See* MGC Ex. O at 132 (Deposition of Ed Stewart) (Aug. 16, 2004).

b) FEI Knew Long Before February 16, 2006 That The ASPCA Was Paying Mr. Rider’s Living Expenses.

FEI also knew by May 28, 2002 *at the latest*, and apparently some time before then, that the ASPCA – which became the lead plaintiff in the ESA case after PAWS withdrew – was paying for Mr. Rider’s living expenses. Thus, an internal FEI e-mail produced in discovery and admitted into evidence in the ESA case shows that Todd Willens, FEI’s Vice President for Government Relations, had assigned someone the task of finding evidence to “refute” any notion that Mr. Rider “was covering his own expenses,” since “*up until last week, he [Mr. Rider] admitted to ASPCA paying his way.*” MGC Ex. I at 2 (internal FEI E-mail, May 28-29, 2002), ESA Action, Plaintiffs’ WC Exhibit 197 (emphasis added).⁸

⁸ The May 2002 email concerning Mr. Rider’s funding was deemed significant enough to be shared among several of FEI’s top officials, as well as others in the circus industry. The e-mail was sent to Mr. Willens by Mary Lou Kelly, identified as the “Grassroots Coordinator” for FEI’s “Government Relations” department, which was headed by Willens, *see* MGC Ex. I at 8-9; MGC Ex. P and was forwarded by Mr. Willens to Mackay Marketing – a firm that handles public relations for several circuses, *see* <http://www.mackaymarketing.com> – and eventually forwarded to Kari Johnson, one of the owners of “Have Trunk Will Travel,” which rents elephants for commercial uses and who served as one of FEI’s expert witnesses in the ESA Action. *See* MGC Ex. I at 1; *see also* ESA Trial Testimony of Kari Johnson (March 4, 2009 p.m.) at 3-17 (being offered as an expert witness for FEI). Ms. Johnson forwarded the e-mail on May 29, 2002 to Gary Jacobson, who runs FEI’s Center for Elephant Conservation and served as the Rule 30(b)(6) deponent for FEI in the ESA Action, who then forwarded the information to Richard Froemming, a former Vice President of FEI. *See* MGC Ex. I at 1; *see also* ESA Trial Testimony of Gary Jacobson (March 5, 2009, p.m.) at

Crucially, this 2002 e-mail reports that Mr. Rider had admitted both at a recent legislative hearing in Rhode Island and in a news story in the Philadelphia press that his living expenses were being paid by the ASPCA. As to the legislative hearing, the email recounts that Rhode Island Representative David Caprio asked Mr. Rider “where do you live? What do you do, now that you don’t work for Ringling,?” and “Tom said he follows Ringling around to protect ‘my girls’ [the elephants], and *ASPCA pays his expenses for traveling.*” MGC Ex. I at 4 (emphasis added). The e-mail further recounts that “[w]hen pressed by Caprio, *Tom said ASPCA pays for hotels, bus fare, meals, a new set of luggage, and other business expenses.*” *Id.* (emphasis added); *see also id.* (further recounting that “he [Mr. Rider] said *if ASPCA didn’t pay for everything*, he’[d] still do it – ‘I’d hitchhike for my girls.’”) (emphasis added). The Philadelphia Daily News story attached to the e-mail likewise reported that Mr. Rider “travels the country, just as the circus does . . . to speak for his ‘girls,’ who can’t speak for themselves” and that “*his expenses [are] paid by the ASPCA.*” *Id.* at 5 (emphasis added). Therefore, by no later than May 2002, FEI indisputably was put on notice that Mr. Rider had received money from both the original lead plaintiffs in the ESA case, PAWS, and from the new lead plaintiff, ASPCA. It is likewise clear that FEI was continuing to closely monitor Mr. Rider’s activities and statements. *Id.*; *see also* ESA Action DE 146 at 11 (FEI’s own characterization of the May 2002 e-mail as reflecting evidence that “*Rider himself voluntarily testified publicly to a state legislator about his finances*”) (emphasis added).

25-26; MGC Ex. Q, *People for the Ethical Treatment of Animals v. Kenneth Feld*, (Cir. Ct. Fairfax County) (Trial Testimony of Kenneth Feld) (March 9, 2006) at 2055 (testifying that Mr. Froemming was the “vice-president for circus operations”).

Indeed, another internal FEI e-mail produced in discovery in the ESA case further demonstrates that FEI knew about the arrangement between the ASPCA and Mr. Rider and that FEI was in fact continuing to track Mr. Rider's activities as he traveled around the country. *See* MGC Ex. R (FEI e-mail, Nov. 4, 2003). That e-mail, which was forwarded to FEI General Counsel Julie Strauss and Thomas Albert, another high-level FEI official, states that “*sponsored by the ASPCA*,” “Tom Rider has been touring the country” criticizing the circus industry. *Id.* (emphasis added). The e-mail recounts that “Mr. Rider [] spoke against the circus industry at the City Council meeting in Huntington Beach, CA,” and that “Mr. Rider spoke at the UCLA Bohnett Animal Rights ‘Law’ Series during which time he showed very damaging clandestine video of circus elephants,” *id.* at 1, and that “[i]f a member of the public had no idea about it one way or another – Mr. Rider’s presentation could easily be considered VERY damaging to our industry.” *Id.* (emphasis in original).⁹

Thus, it is clear that long before February 2006 FEI knew that, in its view, Mr. Rider was going around the country and lying to legislatures, the media, and others about FEI’s elephant treatment and the allegations he was making in the ESA Action, and that he was doing so because he was being paid by animal protection groups, including his co-Plaintiffs in the ESA Action. Indeed, by January 2004, in a story about the ESA lawsuit, FEI’s “head of animal training and

⁹ Additional FEI documents demonstrate that well before February 2006, FEI was continuing to monitor Mr. Rider’s activities, including his association with animal protection organizations and their acknowledgements of financial support for his activities. *See, e.g.*, MGC Ex. S (7/18/02 e-mail from FEI’s in-house general counsel to FEI’s then-outside attorney with Covington & Burling forwarding a 7/16/02 press release from another national animal protection organization, In Defense of Animals, announcing that it was “sponsoring the work of Tom Rider” and is “covering all of Rider’s expenses as he follows Ringling Bros. across the country in a Greyhound bus, conducting press conferences before circus performances and providing his first-hand knowledge of the rampant mistreatment of animals at Ringling Bros. . . . IDA is proud to provide Mr. Rider with the resources to allow him to educate the public about the abysmal treatment of animals.”); MGC Ex. T (August 2004 e-mail to FEI’s General Counsel and other FEI personnel stating that “[a]s you know, Tom Rider was on WB2 News locally at 7:08 a.m. today” and summarizing his statements on the news program).

care,” John Kirtland, summarily dismissed the accounts that Mr. Rider was making of FEI’s elephant mistreatment in this case and elsewhere by stating that Mr. Rider was “*making a living parroting animal rights’ rhetoric.*” See MGC Ex. U at 2 (emphasis added).¹⁰

2. Long Before February 2006, FEI Knew From The ESA Plaintiffs’ Discovery Responses That Mr. Rider Was Receiving Financial Assistance From The Plaintiff Organizations, That Some of This Funding Was Provided By MGC And Then Billed To the Organizations, That Some Of The Funding Was Provided To WAP, And That WAP Was Founded By Meyer And Glitzenstein.

a) FEI Was Informed About Funding Of Mr. Rider By The Plaintiffs’ Initial 2004 Discovery Responses.

As FEI conceded in its original Complaint (at ¶ 20), FEI also knew based on the Plaintiffs’ June 2004 discovery responses in the ESA Action that Mr. Rider was receiving financial assistance from the organizational plaintiffs. For example, an e-mail to the President of the ASPCA from Lisa Weisberg, the ASPCA’s then-Vice President for Governmental Affairs and Public Policy dated May 7, 2001, produced to FEI on June 30, 2004, states that “Tom Rider . . . has just left the employ of Pat Derby’s group, PAWS, in order to follow the circus and speak out about its training/abuse of elephants,” that “[h]e wanted to leave PAWS for a while in order to do this and to ensure that he would not be taken off the suit,” that “[i]n order to follow the circus he cannot be employed,” and that “[*t]o pay his travel expenses for the next few months both AWI [the Animal Welfare Institute] and the Fund [Fund for Animals] . . . have agreed to pay \$1,000 each to cover 2 months of on the road expenses.*” MGC Ex. W (emphasis added); see also MGC

¹⁰ In its 2004 discovery responses ESA Plaintiff Animal Welfare Institute (“AWI”) also provided FEI a copy of a June 13, 2001 news article stating that Mr. Rider was “joining with the animal activists who finance his travels in filing a lawsuit against the circus.” See MGC Ex. V (KARKTV News Story, June 13, 2001); see also MGC Ex. BBB (Sinnott Decl. ¶ 3) (attesting that this article was provided to FEI in June 2004).

Ex. BBB (Sinnott Decl. at ¶ 3) (verifying that this document was produced to FEI on June 30, 2004)).

On June 30, 2004, the ASPCA also produced an e-mail from Ms. Weisberg to ASPCA President Larry Hawk dated January 29, 2002, with the subject line “Tom Rider,” describing the “impressive p.r. [public relations] work” Mr. Rider was doing for the organization, stating that “[t]he commitment and sacrifice this guy has made for the last year is truly impressive,” and *discussing the amount of funding the ASPCA would be providing for Mr. Rider’s media work.* See MGC Ex. X (e-mail, Jan. 29, 2002) (emphasis added) (produced as A00073) (“The level of our funding can also come down from the \$24K we budgeted (probably more in the order of \$16-18K) now that some of the logistical issues have been resolved”); *see also* MGC Ex. BBB (Sinnott Decl. at ¶ 3) (verifying that this document was produced to FEI on June 30, 2004)).

In June 2004 as well, the ASPCA further produced several copies of “check requests,” including one for \$526.16 to be made out to “Meyer & Glitzenstein” for “**Reimbursement for money given to Tom Rider** exceeding the \$6,000 grant to The Wildlife Advocacy Project for 1st quarter 2002,” noting that “\$400 of this covers zoom camera,” MGC Ex. Y (emphasis added) (produced to FEI as A00884); a request for a check for “Meyer & Glitzenstein” for \$445.00 for expenses related to “Tom Rider testimony at MA Legislative hearing on anti-circus bill,” MGC Ex. Z (produced to FEI as A00886); and a check request for “Meyer & Glitzenstein” in the amount of \$500.00 for “Ringling Brs. Media Support.” MGC Ex. AA (produced to FEI as A00894); *see* MGC Ex. BBB (Sinnott Decl. at ¶ 3) (verifying that all of these documents were produced to FEI on June 30, 2004)); *see also* *Nader v. DNC*, 567 F.3d at 702 (noting that the plaintiff “surely had inquiry notice of [its abuse of process] claim against the DNC when he

discovered [the DNC] was paying the lawyers” in one of the cases brought to keep Nader off the ballot).

Also on June 30, 2004, in response to FEI’s interrogatory requesting the organizations to [i]dentify each expenditure from 1997 to the present of ‘financial or other resources’ made while ‘pursuing alternative sources of information about defendants’ actions and treatment of elephants’ as alleged in the complaint,” the ASPCA responded that “[i]n 2001, the ASPCA gave the Wildlife Advocacy Project a grant for \$ 7,400 for public education about Ringling Bros.’s mistreatment of Asian elephants.” *See* MGC Ex. CC, ASPCA Interrogatory Response No. 22. After FEI received this information, and *long before February 2006*, FEI could also have discerned from WAP’s public website that WAP was “founded by Katherine Meyer and Eric Glitzenstein of the Washington, D.C. public interest law firm, Meyer & Glitzenstein” to “assist grassroots activists in achieving long-term protection of wildlife and the environment,” and in “stopping the abuse and exploitation of animals held in captivity,” and that, in addition to WAP’s work involving, e.g., the Florida manatee, Delmarva fox squirrel, and wild horses, WAP was also involved in a public education campaign concerning the “Treatment of Performance Elephants,” particularly by the Ringling Bros. circus. *See* MGC Ex. VV (WAP website, July 27, 2005); *see also* MGC Ex. DD (Glitzenstein Decl. at ¶ 2) (verifying that Ex. VV was produced to FEI in September 2005 in response to FEI’s subpoena in the ESA Action).

Thus, based on the information provided to FEI in discovery as early as June 2004, FEI at least knew that (1) Mr. Rider had stopped working at PAWS so that, according to the ASPCA, he could follow the circus and engage in advocacy; (2) the ASPCA, AWI, and FFA were in fact contributing funding to Mr. Rider for that effort; (3) the ASPCA had budgeted between \$16,000 -

\$24,000 for that purpose; (4) *the ASPCA had sent checks to Meyer & Glitzenstein to reimburse the firm for money provided to Mr. Rider in connection with his public advocacy activities*; and (5) the ASPCA had given a grant of \$7,400 to WAP, a non-profit organization founded by Ms. Meyer and Mr. Glitzenstein, to be used for “public education” about Ringling Bros.’s mistreatment of Asian elephants.

It could hardly be clearer that FEI had “*some evidence*,” *Nader*, 567 F.3d at 700, of the basis for FEI’s RICO allegations that the MGC Defendants were involved in paying Mr. Rider to testify falsely by the end of June 2004 – a full year and a half *before* February 16, 2006, the statute of limitations trigger date for FEI’s February 16, 2010 claims. As noted earlier, FEI’s original Complaint essentially conceded as much when it specifically alleged that “*[t]he payment scheme, which was devised and carried out with the encouragement and advice of MGC, first became known to FEI in June 2004 when one or more of the defendants submitted their discovery responses in the ESA Action.*” See Complaint ¶ 20 (emphasis added). FEI knowingly and voluntarily made this concession based on the “discovery responses in the ESA Action,” and nothing more is required to find that FEI sued the MGC defendants far past the expiration of the statute of limitations. See *Western Assoc.*, 235 F.3d at 634 (finding amended RICO claim “specious on its face” when the *original* Complaint revealed that plaintiff had alleged only a single scheme rather than the requisite “pattern” required by RICO).

b) FEI Obtained Still More Details About The Funding Of Mr. Rider And The MGC Defendants’ Involvement In It At The July 19, 2005 Rule 30(b)(6) Deposition Of The ASPCA.

On July 19, 2005, still seven months before February 16, 2006, FEI obtained even more detailed evidence about the matters central to its RICO allegations when FEI took the Rule

30(b)(6) deposition of the ASPCA. *See* MGC Ex. EE (Deposition of Lisa Weisberg). In response to questions from FEI's attorney that were based on the ASPCA's June 2004 Interrogatory and Document Production Responses discussed above, the designated spokesperson for the organization, then-ASPCA Vice President Lisa Weisberg, provided detailed additional testimony about the fact that (1) the ASPCA had provided funding for Mr. Rider in connection with his media outreach and other advocacy activities; (2) some of that funding had been provided to Mr. Rider by the law firm of Meyer & Glitzenstein and then billed to the ASPCA; (3) MGC "wired" the money to Mr. Rider through Western Union; (4) some of the funding had been provided through grants given to WAP; (5) WAP was a non-profit organization founded by Katherine Meyer and Eric Glitzenstein and "housed" in the same office as the law firm; (6) both AWI and FFA had also provided funding for Mr. Rider; and (7) the three ESA plaintiff organizations had discussions about dividing up the funding for Mr. Rider's media outreach.

In particular, well more than four years before FEI first asserted RICO claims against the MGC Defendants, Ms. Weisberg testified, among many other matters, to the following details of Mr. Rider's funding, on which FEI has also relied to assert its RICO claims:

- the ASPCA spent "[a]pproximately \$18,000" in 2002 defraying Mr. Rider's living and traveling expenses while he traveled around the country and engaged in media and other activities, Deposition of Lisa Weisberg (July 19, 2005), MGC Ex. EE at 34;
- in 2003 the ASPCA spent \$22,000 "to support Tom Rider in his public outreach efforts and in speaking with the media about the various violations engaged in by Ringling Bros.," *id.* at 36;
- Darcy Kemnitz, who "used to work for the Wildlife Advocacy Project at Meyer Glitzenstein," provided media support to Mr. Rider, *id.* at 42;

- WAP “was created by Meyer & Glitzenstein to advocate for the humane treatment of wildlife and preservation of habitat,” *id.* at 43;
- a “*check request for Meyer & Glitzenstein dated April 4th, 2002,*” for “[r]eimbursement for money given to Tom Rider exceeding the \$6,000 grant to the Wildlife Advocacy Project for first quarter 2002,” *id.* at 43-44 (emphasis added);
- Katherine Meyer and Eric Glitzenstein are involved in operating WAP and WAP is “housed in the same office as Meyer & Glitzenstein,” *id.* at 44-45, 90-91;
- the ASPCA “provided a grant to [WAP] to enable Tom Rider to do his public outreach and education about the treatment of Ringling Bros. of its Asian elephants,” *id.* at 45;
- a check request for Meyer & Glitzenstein for “\$526.16 is additional funding over the original allotment in the budget for this project,” and that “\$400 of this was for a zoom camera,” *id.*;
- the other activities covered in a \$6,000 grant “were to reimburse Tom Rider for his general living expenses to travel the country and meet with the media,” and that the \$6,000 grant “*was to reimburse Mr. Rider for his Greyhound bus tickets, to travel the country, basic day-to-day living expenses, food, lodging,*” and *confirming that this was “all provided through the Wildlife Advocacy Project,”* *id.* at 46 (emphasis added);
- a May 23, 2003 check request “*payable to Meyer & Glitzenstein*” was to reimburse the firm for “*cover[ing] his transportation and hotel costs to get to Massachusetts, to get to Boston to testify at the hearing,*” *id.* at 48 (emphasis added);
- the reason the ASPCA did not provide the funds directly to Mr. Rider was that it “had no way of getting the money to Mr. Rider because he was on the road and *Meyer & Glitzenstein was able to wire the money to him,*” *id.* at 48-49 (emphasis added);
- the ASPCA discussed with AWI “how we could fund the costs for his travels and how we would divide the costs,” and that ASPCA spoke “with the two other plaintiffs, *the AWI and the Fund for Animals regarding this*” funding, *id.* at 51-52 (emphasis added);

- “[t]he money was wired to wherever he was through Western Union by Meyer & Glitzenstein and we [ASPCA] would be invoiced for it,” *id.* at 52-53 (emphasis added);
- the ASPCA had communications “[b]oth with the Fund for Animals and AWI . . . recognizing the good work that Mr. Rider was doing and the ASPCA’s inability to continue funding his expenses to continue that work due to other budgetary needs,” *id.* at 80-81;
- following 2003, “while ASPCA was not providing any funding to Mr. Rider, the AWI and the Fund For Animals were” doing so, *id.* at 80-81 (emphasis added);
- a January 29, 2002 e-mail to the ASPCA President about Mr. Rider’s “impressive p.r. work” and the ASPCA’s decision to bring the media project in-house and “integrating it into the work of the [ASPCA’s] media relations department,” *id.* at 156-60;
- a comment in a January 2003 e-mail about the “sacrifices” Mr. Rider had made as part of his media outreach referred to the fact that he “basically lived on the road. Oftentimes he would sleep in the Greyhound bus station.” *Id.* at 161.

In addition, as this case has progressed, FEI’s allegation of a RICO “pattern” has been found to be dependent on a July 21, 2005 fundraiser held in California. *See* Mem.Op. (July 9, 2012) at 32-33, 873 F. Supp. 2d at 312 (finding an alleged “pattern” based on allegations that misrepresentations were made at this fundraiser regarding “Rider, the ESA Action, and FEI”) (quoting Am. Compl. ¶ 179). However, it is also indisputable that FEI knew about that fundraising event by at least July 19, 2005 because FEI produced a copy of the fundraiser invitation at Ms. Weisberg’s deposition, made it an Exhibit to the deposition, and questioned Ms. Weisberg about it. *See* MGC Ex. FF (Weisberg Dep. Exhibit 23). That document on its face states that the benefit was being hosted by the ASPCA, AWI, and the Humane Society of the United States. *Id.* It further describes the ESA lawsuit, asserts that Mr. Rider had “left the circus to speak out about the elephant abuse he witnessed on a daily basis,” provides some of the

specific evidence of Ringling Bros.’s mistreatment of the elephants, and states that the groups “need your help to raise money so we can successfully wage this battle on behalf of the elephants.” *Id.* at 1-2. The invitation further states that the fundraiser will involve “[a] question and answer session *led by the attorneys handling the lawsuit against Ringling Bros.*” *Id.* (emphasis added).

Further, in her 2005 deposition, Ms. Weisberg answered all of FEI’s counsel’s questions regarding the fundraiser, MGC Ex. EE at 204-210, explaining that the ASPCA sent the invitation to its “high donors in the California area” and also e-mailed the invitation “to ASPCA supporters generally in California,” *id.* at 206, and testifying that one of the purposes of the fund-raiser was “to provide additional funding for Tom Rider to continue his outreach.” *Id.* at 210 (emphasis added). Therefore, FEI’s allegations that the July 2005 fundraiser was held “in furtherance” of the RICO conspiracy – because it was both used “to raise money as an additional source of funding for Rider,” and the “defendants who were involved in the fundraiser specifically referred to the ESA Action in the fundraising solicitation materials,” Am. Compl. ¶ 179 – are *also* based on facts known to FEI more than four years before suit was brought against the MGC Defendants.¹¹

Indeed, in view of Ms. Weisberg’s copious testimony concerning these matters, FEI flatly admits even in its *Amended* Complaint that it began “to uncover the payment scheme” at the core of its RICO claims at “the Rule 30(b)(6) deposition of ASPCA, taken in the ESA Action *on July 19, 2005.*” Am. Compl. ¶ 32 (emphasis added). Although this is a year *later* than FEI originally

¹¹ AWI’s Rule 30(b)(6) deponent, Cathy Liss, also testified on May 26, 2005 that AWI had provided money to Mr. Rider, see MGC Ex. GG at 138-45 (Liss Deposition), as did the Rule 30(b)(6) deponent for the Fund for Animals, Mike Markarian. See MGC Ex. HH at 156-63 (Markarian Deposition).

admitted it knew about the basis for the alleged RICO conspiracy, *see* Comp. ¶ 20 (stating that FEI had begun to uncover the “details” of the alleged conspiracy by June **2004**), FEI’s concession that Ms. Weisberg’s detailed testimony *in June 2005* was adequate to “uncover” the purported scheme on which FEI’s claim depends compels the conclusion that FEI did not bring its RICO claims against the MGC Defendants within RICO’s four-year statute of limitations.

3. Ms. Meyer Stated In Open Court In September 2005 That Mr. Rider Was Receiving Funding From The Plaintiff Organizations And Others.

Based on the above, by July 2005 (if not much earlier), FEI indisputably had all of the fundamental information that forms the basis of its RICO claims against the MGC Defendants. Yet, lest there have been any doubt, at a September 16, 2005 hearing on several matters in the ESA case, Ms. Meyer told the Court (and FEI’s counsel):

Ms. Meyer: Right now they [Ringling Bros.] are out there on a daily basis making all kinds of statements about the wonderful care that they give their elephants, that they’re conserving them for the future and that our clients are lying, Mr. Rider is lying about what he is saying about these elephants being beaten all the time, chained all the time, that we’re lying about the babies being forcibly removed from their mothers, that we are whacky animal rights activists, we cannot be trusted. And they’re controlling the entire debate.

Now, if they’re going to control the entire debate, then perhaps we should get a gag order against them for making those kind[s] of statements and then we’ll be on equal footing. But I don’t think that they should be able to use [the] fact that one of the documents might make its way into the public somewhere along the line and somebody might draw an inference from it as a basis for getting a protective order.

The Court: I agree with you. There’s no reason why your organization ought to be maligned. Especially if they control the media, they can get on the [Today] show and bad mouth your organization and call you whatever they’re calling you, I agree with you.

Ms. Meyer: That's right. And *what we have on the other side, Your Honor, we have Tom Rider, a plaintiff in this case, he's going around the country in his own van, he gets grant money from some of the clients and some other organizations to speak out and say what really happened when he worked there. That's what we have on the other side.* And they want to make sure that none of the information that might actually shed some light on what's going on . . .[is] ever disclosed to the public.

Transcript (September 16, 2005), MGC Ex. II at 29-30 (emphasis added).

Indeed, this voluntary statement by Ms. Meyer regarding the fact that Mr. Rider was receiving funding from some of the plaintiff organizations in the ESA litigation was specifically cited by the Court in the course of finding in August 2007 that FEI's motion to add *any* of its RICO claims to the ESA Action was "dilatatory." *See* 244 F.R.D. at 51 (stating that the Court "cannot ignore the fact that *[FEI] has been aware that plaintiff Tom Rider has been receiving payments from the plaintiff organizations for more than two years,*" and relying on the fact that "*Plaintiff's counsel admitted in open court on September 16, 2005 that the plaintiff organizations provided grants to Tom Rider to 'speak out about what really happened' when he worked at the circus.*") (emphasis added).

4. FEI Obtained Additional Details About The Funding Of Mr. Rider From WAP's September 2005 Subpoena Response.

All of the above shows that FEI not only had "some" of the alleged basis for its RICO claims against the MGC Defendants, *Nader*, 567 F.3d at 700, long before February 16, 2006, but that it had *abundant* facts on which it now bases those claims. Yet in September 29, 2005, FEI received even *more* such information from WAP in response to a third-party subpoena to that organization. Thus, FEI's RICO claim against the MGC Defendants appears to be predicated in part on the allegation that the MGC Defendants used WAP to "facilitate" funding for Mr. Rider,

see Am. Compl. ¶ 17. However, FEI also undeniably knew about WAP's role in Mr. Rider's funding more than four years before the MGC Defendants were sued because the documents produced by WAP in 2005 corroborated Ms. Weisberg's testimony concerning the involvement of WAP in Mr. Rider's funding (as well as WAP's relationship to Ms. Meyer and Mr. Glitzenstein).

These subpoenaed documents produced in 2005 included a copy of WAP's "Custom Transaction Detail Report" which divulged a number of "grants" and "donations" by ASPCA and AWI, as well as others, specifically for Mr. Rider's efforts. *See* MGC Ex. JJ (WAP 9/14/05 Transaction Detail Report) (reflecting, e.g., \$ 6,000 "Grant from ASPCA to WAP *for Tom Rider*"; \$ 2,500 "Grant from AWI for Elephant Education – *Tom Rider*"; \$ 1,500 "AWI donation *to T. Rider*"; \$ 3,500 "AWI donation *for Tom Rider*"; and other "*Tom Rider contributions*" and "donations" for Mr. Rider's advocacy efforts and the "Elephant media camp[aign]"); *see also* MGC Ex. DD (Glitzenstein Decl. at ¶ 2 (verifying that such information was produced to FEI in September 2005)); MGC Ex. KK (ESA Action DE 85 at 13 & Ex. 32) (FEI's acknowledgement that this WAP "accounting ledger" reflecting grants and donations for Mr. Rider was produced to FEI "[o]n September 29, 2005"); MGC Ex. LL (11/28/05 letter from WAP's outside counsel to FEI's then-counsel explaining that the transaction detail report "contains a comprehensive compilation of deposits and disbursements relating in any fashion to elephants, Tom Rider, Ringling Bros. or the lawsuit").¹²

¹² On First Amendment grounds, WAP redacted the identities of contributors to Mr. Rider's public education campaign who were not plaintiffs in the ESA Action. The Court subsequently sustained that position. *See* ESA Action DE 178 at 9. In any event, the redacted Transaction Detail Report, as well as other information that WAP furnished to FEI in 2005, made unmistakably clear that ASPCA and AWI, as well as others, were in fact providing funds to WAP for Mr. Rider's living and traveling expenses.

The documents produced by WAP in 2005 also include letters to WAP from both the ASPCA and AWI regarding grants for Mr. Rider's media and public outreach work. *See* MGC Ex. MM (letter from Lisa Weisberg to D'Arcy Kemnitz, Dec. 21, 2001) ("Enclosed please find a check for \$ 6,000 in payment for the 2002 first quarter grant money for the Tom Ryder [sic] project."); MGC Ex. NN (letter from Cathy Liss to Katherine Meyer, Feb. 13, 2004). The documents also include letters from others contributing funding to Mr. Rider's public advocacy efforts. *See, e.g.*, MGC Ex. OO; *see also id.* at 1 ("Tom Rider spoke at the Capital Bldg. in Harrisburg recently. Thanks to him for his compassionate work for elephants. Please accept this token check to assist him in his work – we so much admire what he is doing"); *id.* at 2 (sending contribution "towards the work of Mr. Tom Rider, in his efforts to reduce animal suffering in the circus").¹³

The documents produced in 2005 also include a memo concerning grant money received from the ASPCA, and recounting that the ASPCA would provide Mr. Rider with both a laptop computer and cell phone coverage, MGC Ex. QQ, a list of Mr. Rider's "Travel Schedule," including the cities he would be visiting, the hotels he would be staying at, and the hotel rates, *see* MGC Ex. RR, and a "Bus Schedule" for Mr. Rider. MGC Ex. SS. The WAP documents provided to FEI on September 29, 2005, also included proposals by Ms. Meyer and Mr.

¹³ The documents also include letters from both Mr. Glitzenstein and Ms. Meyer on behalf of WAP thanking people for their contributions. *See* MGC Ex. PP; *see also id.* at 3 (letter from Eric Glitzenstein (Nov. 26, 2003) (identifying Mr. Glitzenstein as the President of WAP and thanking individual for "your recent contribution to The Wildlife Advocacy [Project] for Tom Rider's efforts to educate the public about what goes on behind the scenes at the Ringling Brothers' circus. Your contribution will help Tom continue his efforts to be a voice for the elephants"); *id.* at 3 (letter from Katherine Meyer) (April 19, 2005) stating that "[w]ith the help of your grant money, Tom will be able to continue traveling around the country to educate the public – through the media, grass roots organizations, and local hearings about this very important animal welfare issue. As you know, as a direct result of Tom's work, a coveted Genesis Award was recently presented to the reporter who aired an excellent piece on the circus last fall, and Tom also recently generated extensive media coverage on this issue in the LA area. He also recently assisted grass roots groups on the east coast, including Florida, Boston, and New Hampshire, in presenting this issue to the public").

Glitzenstein seeking funding for Mr. Rider's public education efforts. *See* MGC Ex. TT (letter from Ms. Meyer to Cathy Liss, December 11, 2003) (enclosing a grant proposal from WAP with a list of Mr. Rider's recent media and grass roots activities); *see also* MGC Ex. UU (letter from Eric Glitzenstein, March 21, 2005) (explaining that WAP has "been helping to support the public education efforts of Tom Rider, a former Ringling Brothers' worker with inside knowledge of how the elephants are treated and who 'tracks' the circus around the country and has done remarkably well with extremely limited resources in getting the word out on local television and radio programs").¹⁴

Finally, the documents provided to FEI by WAP on September 29, 2005 also included a copy of WAP's then current website. *See* MGC Ex. VV. As explained previously, the website stated that WAP is a "non-profit advocacy group *founded by Katherine Meyer and Eric Glitzenstein of the Washington, DC public interest law firm, Meyer Glitzenstein & Crystal,*" that it "assist[s] grassroots activists in achieving long-term protection of wildlife and the environment, and in *stopping the abuse and exploitation of animals held in captivity,*" and that it "can achieve greater protection for wildlife in the courts, legislatures and the regulatory agencies, when *the public is educated and mobilized to fight against the degradation of wildlife.*" *Id.* (emphasis added). The website further listed among its "current activities" a project involving "Ringling Bros.' treatment of Endangered elephants," *id.*, and contained a lengthy discussion of the Asian elephant species, the Ringling Bros.' Circus, and the evidence that Ringling Bros. abuses the

¹⁴ The documents also include a grant proposal to WAP from Mr. Rider, MGC Ex. WW, and letters from both Mr. Glitzenstein and Ms. Meyer to Mr. Rider forwarding him grant money and thanking him "for all you are doing to put a halt to the cruel and inhumane treatment of these wonderful, intelligent animals." *See, e.g.*, MGC Ex. XX.

elephants by hitting them with bullhooks and forcibly separating baby elephants from their mothers with ropes and chains. *Id.*

WAP's 2005 website also specifically discussed Mr. Rider and some of the accounts of elephant mistreatment that Mr. Rider said he had witnessed at the circus, as well as the eye-witness accounts of two other former Ringling Bros. employees, Glenn Ewell and James Stechon, and the deaths of two baby elephants, Kenny and Benjamin. *See id.* at 4. The website information provided to FEI also discussed the pending ESA litigation, explained that the plaintiffs are the ASPCA, Fund for Animals, AWI, and Tom Rider, and expressly stated that "[t]he plaintiffs are represented by the law firm Meyer & Glitzenstein." *Id.* (emphasis added). It also provided the address for WAP – which is the same as the address for MGC. *Id.* at 6.¹⁵

In light of this additional information – all of which FEI had in hand in 2005 – FEI obviously made a *strategic decision to exclude the MGC Defendants* when FEI first filed its RICO case in August 2007. Whatever the reason for that tactical decision, it cannot undermine the fact that FEI's belated 2010 claim against the MGC Defendants is barred by RICO's four-year statute of limitations. *See Ferguson v. Local 689, Amalgamated Transit Union*, 626 F. Supp. 2d 55, 60-61 (D.D.C. 2009) (where the plaintiff's "original complaint contain[ed] multiple references" to a potential defendant yet did not name it as a defendant, *it was evident that the party's exclusion was deliberate* and that it had not been "left out of the suit as the result of a

¹⁵ In addition to responding to the subpoena, on December 7, 2005, WAP's counsel also responded to a separate request from FEI for a copy of WAP's application for tax exempt status and the granting of that status by the Internal Revenue Service. WAP's counsel provided a copy of WAP's September 17, 1997 "Application for Recognition Under Section 501(c)(3) of the Internal Revenue Code" indicating that the organization had been formed originally in May 1997; specifically advising the IRS that the organization had a "relationship" with Meyer & Glitzenstein; that "both Eric Glitzenstein and Katherine Meyer will provide volunteer work" for the organization; and identifying Mr. Glitzenstein and Ms. Meyer as President and Secretary of the organization, respectively. *See MGC Ex. A.*

‘mere slip of the pen’”; in that circumstance, the “potential defendant is *entitled to the repose afforded by a statute of limitations*”) (quoting *Rendall-Speranza v. Nassim*, 107 F.3d 913, 918 (D.C. Cir. 1997) (emphasis added); *see also Sparshott v. Feld Entm’t Inc.*, 89 F. Supp. 2d 1, 3 (D.D.C. 2000) (“where a plaintiff was fully aware of the defendant’s identity during the limitations period,” it was foreclosed from seeking to add that defendant after the limitations period had run); *Louisiana-Pac. Corp. v. ASARCO, Inc.*, 5 F.3d 431, 434 (9th Cir. 1993) (where a plaintiff made a “*conscious choice of whom to sue*” when it brought suit, it was foreclosed from bringing in time-barred defendants at a later date) (emphasis added); *Cornwell v. Robinson*, 23 F.3d 694, 705 (2d Cir. 1994) (plaintiff’s failure to sue certain potential defendants “in the original complaint, in light of her obvious knowledge and the detailed nature of that pleading’s exhibit [identifying those individuals and their alleged misconduct] must be considered a matter of choice,” foreclosing those defendants from being brought into the suit at a later date).¹⁶

¹⁶ This is especially true when, in addition to its basic claim that the MGC Defendants gave Mr. Rider money and “facilitated” others in doing so for the purpose of “bribing” him to lie about the basis for his standing, FEI also alleges in its present RICO Complaint that the MGC Defendants also provided money to “others” who criticized the circus, including Mr. Ewell. *See* Am. Compl. at ¶¶ 246-272 (“Payment or Inducements to Other Witnesses and Parties”). As shown above, FEI knew well before February 16, 2006 that WAP and MGC were citing Mr. Ewell as an additional former Ringling Bros. employee who had seen the elephants mistreated in the same ways that Mr. Rider had witnessed. Indeed, Mr. Ewell was included as an additional plaintiff in the original 2000 ESA Complaint, *see* Complaint, Civ. No. 00-1641 at 1, ¶¶ 36-40 – a fact that is also included in FEI’s Amended Complaint. *See* Am. Comp. ¶ 258 ; *see also* id. ¶ 261 (“Meyer used Ewell’s statements as one of the bases of a December 21, 1998 complaint to the Animal Plant Health Inspection Service (“APHIS”) division of the USDA about FEI’s mistreatment of its elephants. WAP also posted Ewell’s allegations of elephant mistreatment on its website.”) (emphasis added).

FEI also knew by November 16, 2004, that MGC had subpoenaed and taken the deposition of another former Ringling Bros.’ employee, Frank Hagan, since FEI attended that deposition. *See* MGC Ex. YY (Deposition of Frank Hagan) (Nov. 9, 2004); *see also* Am. Compl. at ¶ 257 (alleging as part of its RICO conspiracy that “[o]n November 16 [sic], 2004, Hagan was deposed in connection with the ESA Action at the behest of defendant’s counsel, MGC. Hagan’s deposition testimony included false statements. At the trial of the ESA Action, defendants moved into evidence portions of Hagan’s deposition in an attempt to prove their ‘taking’ allegations.”).

C. By February 15, 2006, FEI Knew That The MGC Defendants Had Made Certain Representations To This Court and the Court of Appeals About The Basis For Mr. Rider's Standing.

Part of FEI's RICO claims against the MGC Defendants also centers on its allegations that the MGC Defendants made "materially false" representations to this Court and the Court of Appeals regarding the bases for Mr. Rider's standing. *See* Am. Compl. ¶¶ 50-59. FEI asserts that the MGC Defendants originally asserted standing for Mr. Rider based on the allegation that he was "refraining" from visiting the elephants to whom he had become emotionally attached, when, by the time the Court of Appeals issued its original standing decision in 2003, Mr. Rider had in fact made efforts to see the elephants on several occasions. *Id.* However, FEI indisputably knew by September 26, 2003 that Mr. Rider had in fact been back to see the elephants because *this fact is included in the very body of the 2003 Complaint in the ESA Action.* *See* 2003 Complaint, ESA Action, DE 1 ¶ 23. While FEI has referred to this as an "obscure" addition to the ESA Complaint, Am. Compl. ¶ 56, this information is in fact specifically stated as a basis for Mr. Rider's standing:

23. Because of his close personal relationship with the elephants, Mr. Rider nevertheless still makes efforts to see the animals, and *he has been able to observe the elephants he knows, as well as other Ringling elephants, on several occasions during the last couple of years by going to cities where the circus is performing.* However, each time he has been able to see the animals, he is aesthetically injured by the demeanor and physical appearance of the animals who appear sad and beaten down, devoid of their spirits, and extremely stressed, and who exhibit stereotypic behavior, such as swaying back and forth. Because of his experience with the circus, Mr. Rider knows that the demeanor and behavior of the elephants, which cause him aesthetic injury, is a result of the way they are mistreated by Ringling Bros. *Because of his love of these animals, Mr. Rider continues to visit them,* and will continue to do so in the future, even though, each time he does so, he suffers more aesthetic injury.

2003 Complaint ¶ 23 (emphasis added).

In any event, because FEI knew about the 2003 ESA Complaint when it was filed, *see id.*, to the extent that this change in the factual circumstances concerning Mr. Rider's ability to visit the elephants forms an essential basis for the RICO "pattern" FEI is alleging, it simply reinforces that such a basis for FEI's RICO claim against the MGC Defendants was known *over three years before the expiration of the statute of limitations trigger date*. In fact, FEI knew almost seven years before it filed its Amended Complaint in this case that the facts upon which MGC alleged standing for Mr. Rider had changed between the time the original Complaint was filed in 2000 and the Complaint was refiled in 2003 after the remand from the Court of Appeals. Under any interpretation of the evidence, waiting seven years to bring the claim was far too long.

D. Not Only Is FEI Legally Foreclosed From Relying On Any "Fraudulent Concealment" Exception To Sidestep RICO's Statute of Limitations, But FEI Failed To Avail Itself Of Readily Available Opportunities To Obtain Even *More Information Concerning Mr. Rider's Funding*.

In view of the foregoing, any effort by FEI to rely on a "fraudulent concealment" justification for failing to bring its claims against the MGC Defendants within the four-year statute of limitations must fail. *See* FEI Opposition To Motion Of Defendants To Dismiss Plaintiff's Complaint, DE 68, at 50-51 (asserting fraudulent concealment in response to motion to dismiss). As the D.C. Circuit has held, where, as here, a plaintiff has *actual* notice of sufficient facts underlying its purported claims, the doctrine of fraudulent concealment is legally irrelevant to the Court's assessment of whether the statute of limitations has run. *See Nader*, 567 F.3d at 700 ("*Clearly, the doctrine of fraudulent concealment does not come into play, whatever the lengths to which a defendant has gone to conceal the wrongs, if a plaintiff is on notice of a*

potential claim.”) (emphasis added) (quoting *Riddell v. Riddell Washington Corp.*, 866 F.2d 1480, 1494 (D.C. Cir. 1989)). Accordingly, where, as here, FEI’s *own* Original and Amended Complaints essentially concede that FEI knew enough to bring its RICO claims by 2004 or 2005 *at the latest*, FEI was surely on “notice of a potential claim,” and, accordingly, the doctrine of fraudulent concealment does not even “come into play.” *Nader*, 567 F.3d at 700.

Moreover, any effort by FEI to invoke that doctrine here must ring especially hollow in light of FEI’s failures in the ESA Action to avail itself of readily available avenues for obtaining still *more* details about Mr. Rider’s funding. *See id.*, 567 F.3d at 700 (explaining that a plaintiff’s knowledge of facts forming the basis for a claim “*includes not only what [the plaintiff] knew, but what he could by reasonable diligence have known*”) (emphasis added). Although FEI indisputably knew as early as 2002 that Mr. Rider had received money from at least two of the organizational plaintiffs in the ESA Action, FEI never submitted an interrogatory or document production request to the organizational plaintiffs in that case specifically asking for all records and information relating to Mr. Rider’s funding.¹⁷

In addition, in response to a discovery request to Mr. Rider himself, asking him to “[i]dentify all income, funds, compensation, other money or items, including without limitation, food, clothing, shelter, or transportation, you have ever received from any animal advocate or animal advocacy organization,” Mr. Rider responded that he objected to the Interrogatory “on the

¹⁷ Instead, tracking the allegations made in the Complaint for organizational standing under *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), FEI asked the groups to identify the expenditures they alleged were causing a drain of their resources as a consequence of FEI’s ESA violations. *See, e.g.*, MGC Ex. BB (Defendants’ First Set of Interrogatories to Plaintiffs American Society for the Prevention of Cruelty to Animals, Animal Welfare Institute, and Fund for Animals, March 30, 2004), at Interrogatory No. 21 (“Identify each resource you have expended from 1997 to the present in ‘advocating better treatment for animals held in captivity, including animals used for entertainment purposes’ as alleged in the complaint”); *id.* Interrogatory No. 22 (“Identify each expenditure from 1997 to the present of ‘financial and other resources’ made while ‘pursuing alternative sources of information about defendants’ actions and treatment of elephants’ as alleged in the complaint”).

ground that it seeks privileged information that is protected by his right to privacy and would infringe on his freedom of association,” but nevertheless stated that “[s]ubject to and without waiving the foregoing or general objections to these Interrogatories, and *subject to a confidentiality agreement, Mr. Rider would be willing to provide defendants with the answer to the first sentence of this Interrogatory.*” See MGC Ex. ZZ (Mr. Rider’s Objection and Response to Interrogatory No. 24) (emphasis added). Thus, FEI was informed on June 30, 2004 by defendant Meyer that if FEI would merely agree to a confidentiality agreement for the specific information sought, Mr. Rider would proceed to “[i]dentify all income, funds . . . other money or items, including without limitation food, clothing, shelter, or transportation, [he] [had] ever received from any animal advocate or animal advocacy organization.” See *id.* (emphasis added); see also *id.* at 3 (Ms. Meyer signed the objections).¹⁸

But FEI never took Mr. Rider up on this offer, despite the fact that the parties in the ESA Action had agreed to confidentiality agreements for *other* information. See, e.g., ESA Action, DE 75 (Joint Stipulated Protective Order Regarding [FEI] Video Recordings); ESA Action, DE 179 at 2 (allowing Mr. Rider to provide information about his military background subject to a protective order). Instead, FEI vigorously opposed Mr. Rider’s request for a protective order including, ironically, on the grounds that “*Rider himself voluntarily testified publicly to a state*

¹⁸ The second sentence of the pertinent Interrogatory to Mr. Rider provided that “[i]f the money or items were given to you as compensation for services rendered, describe the service rendered and the amount of compensation.” *Id.* As to that sentence, because Mr. Rider did not regard the living expenses he received as “compensation for services rendered,” he responded that “I have not received any such compensation.” *Id.*; see also MGC Ex. AAA (Trial Testimony of Tom Rider, Feb. 12, 2009 p.m. at 90-92) (explaining that he did not view the funding as a salary he received for a job, but rather considered it simply as covering his basic expenses while he traveled around the country). Although the Court in the ESA Action found that Mr. Rider provided a “false” response to that part of the interrogatory, 677 F. Supp. 2d at 81, that has no bearing on the statute of limitations issue raised here since FEI had actual knowledge from multiple sources – including Mr. Rider’s own legislative testimony in 2002 – concerning funding of Mr. Rider’s living and traveling expenses.

legislator about his finances,” ESA Action DE 146 at 11 (emphasis added), and that “Rider has willingly entered the public spotlight through his legislative and media appearances.” *Id.* at 12 (contending that Mr. Rider had become a “public figure” through his media appearances).¹⁹

However, whatever FEI’s purpose in opposing a confidentiality agreement for that information – and FEI advised the Court that it wanted the information so that it could publicly pillory Mr. Rider with it, *id.* at 12 (“[T]here is no reason to permit Rider to publicly criticize FEI and then simultaneously protect him from public scrutiny regarding his motivations for doing so.”) – FEI’s refusal to take available information under a protective order surely does not reflect the kind of “due diligence” that courts consider in determining when and whether a party had actual or constructive knowledge of the facts underlying an asserted claim. *See Kifafi*, 701 F.3d at 729 (under the “discovery rule,” the statute of limitations begins “when the plaintiff ‘discovers, or with due diligence should have discovered’ the injury supporting the legal claim”) (emphasis added) (quoting *Connors v. Hallmark & Son Coal Co.*, 935 F.2d 336, 343 (D.C. Cir. 1991)).²⁰

¹⁹ Mr. Rider requested a protective order that would “protect his privacy, and also protect others who have contributed to his public education and advocacy efforts from harassment and retaliation by defendants [FEI].” *See* Memorandum In Support of Plaintiff Tom Rider’s Motion For A Protective Order With Respect To Certain Financial Information, ESA Action, Docket No. 141. When the Court eventually ordered Mr. Rider to respond to the Interrogatory concerning his finances, it allowed him to “redact the names of individual donors or organizations unless they are parties to this litigation, attorneys for any of the parties, or employees or officers of any of the plaintiff organizations or WAP.” Order (Aug. 23, 2007) ESA Action, DE 178 at 3 (emphasis added). As a result, FEI ended up getting less information than Mr. Rider had agreed to provide in June 2004 via a confidentiality agreement.

²⁰ *See also Merck & Co. v. Reynolds*, 559 U.S. 633, 644 (2010) (noting that the “discovery rule” applies when the plaintiff has the opportunity to obtain the information that is central to its claim through “actual discovery”); *Rotella*, 528 U.S. at 556 (noting that in applying the discovery rule in a medical malpractice case, “the potential plaintiff ‘need only ask’” if he has been wronged by a doctor) (quotes in original) (emphasis added); *Keohane v. United States*, 669 F.3d 325, 329 (D.C. Cir. 2012) (noting that a plaintiff has a “reasonable opportunity” to discover the basis for its claim when there was “nothing that prevented him from uncovering this fact by inquiring”); *Hardin v. Jackson*, 648 F. Supp.2d 42, 47 (D.D.C. 2009) (plaintiffs challenging EPA registration of pesticides failed to file claim within applicable statute of limitations where they “could have easily requested the registration documents on which they now base their claims”).

Accordingly, because as demonstrated herein FEI had extensive *actual* notice of the facts underlying its claims against these Defendants, the Court need not address this issue. However, the fact that FEI made the deliberate choice to decline to obtain at an earlier stage of the ESA Action still *more* information concerning Mr. Rider's funding only serves to reinforce why the Court should reject any effort by FEI to circumvent the applicable statute of limitations.

CONCLUSION

As the foregoing amply demonstrates, FEI had much more than “some evidence” of the basis for its RICO claims against the MGC Defendants, *Nader*, 567 F.3d at 700, long before the statute of limitations for such claims expired. Indeed, in rejecting the Defendants' motion to dismiss the RICO claims, this Court indicated that, even at *that* juncture, it was “*troubled by the statute of limitation argument with respect to the new defendants.*” Memorandum Opinion (DE 90) at 28; *FEI v. ASPCA*, 873 F. Supp. 2d at 310 (emphasis added). However, now that the Court has been presented with extensive *additional* evidence of what FEI in fact knew about the basis for its allegations against these Defendants, if the Court was “troubled” when all it had before it was what the MGC Defendants could rely on to oppose a motion to dismiss, the Court should have little difficulty concluding that FEI knew of far more than the requisite “some evidence” long before February 16 2006 – the operative date for assessing the timeliness of the addition of the MGC Defendants in 2010. Accordingly, the MGC Defendants' motion for partial summary judgment should be granted and the RICO claims against these Defendants should now be dismissed with prejudice.²¹

²¹ Since the RICO claims are the only basis for federal jurisdiction against the MGC Defendants, the dismissal of the RICO claims would raise the question of whether the Court should retain jurisdiction over any of the state law claims against MGC. That issue should be briefed separately in the event that the Court grants this motion.

Respectfully submitted,

/s/Stephen L. Braga

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be served via electronic filing
this 16th day of October, 2013, on all counsel of record.

/s/Stephen L. Braga
Stephen L. Braga

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.,)	
)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 07-1532 (EGS/JMF)
)	
)	
ANIMAL WELFARE INSTITUTE, <i>et al.</i> ,)	
)	
Defendants.)	

**STATEMENT OF MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE DISPUTE**

1. Defendants Meyer Glitzenstein & Crystal (“MGC), Katherine Meyer, and Eric Glitzenstein (hereafter collectively referred to as the “MGC Defendants”) were at all times counsel of record in *Performing Animal Welfare Society v. Ringling Bros. & Barnum & Bailey Circus*, No. 00-1641 (D.D.C. 2000) and *American Society for the Prevention of Cruelty to Animals v. FEI*, No. 03-2005 (D.D.C. 2003) (hereinafter collectively referred to as “the ESA Action”). *See* ESA Action DE 1.

2. On February 28, 2007, in the ESA Action, FEI filed a motion for leave to file a counterclaim to assert RICO claims against all of the plaintiffs in the ESA Litigation, as well as the Wildlife Advocacy Project (“WAP”). *See* ESA Action DE 121.

3. In support of the foregoing counterclaim motion, FEI asserted that all of the plaintiff organizations “facilitated by WAP and MGC, are paying Rider for his participation as a plaintiff and as a key fact witness in the ESA Action,” and that “[s]uch

actions constitute violations of federal and state laws prohibiting bribery of, and paying gratuities to, a witness.” *Id.* at 2.

4. In support of the foregoing counterclaim motion, FEI also alleged that, “based on evidence that ha[d] been produced in the ESA Action,” *id.* at 3, the organizational plaintiffs “facilitated by WAP and MGC” had “devised an illegal, ethically improper, and fraudulent scheme to pay Rider and hide the fact that Rider was on their payroll by creating the false image of Rider as a purported volunteer championing Asian elephant welfare,” and that, at various times the organizational plaintiffs paid Rider directly, and “at other times” such payments “have been funneled through MGC or WAP.” *Id.* at 3-4 (emphasis added).

5. Although FEI’s proposed counterclaim asserted numerous allegations of misconduct directly against the MGC Defendants, it did not include the firm or any of the individual lawyers as defendants. *Id.*

6. On August 23, 2007, the Court denied FEI’s motion to add the RICO counterclaim. *See Memorandum Opinion, ESA Action DE 176, ASPCA v. Ringling Bros. and Barnum & Bailey Circus*, 244 F.R.D. 49 (D.D.C. 2007).

7. In denying FEI’s counterclaim motion, the Court found that the RICO counterclaim was “dilatory” and that it could not “ignore the fact that [FEI] has been aware that plaintiff Tom Rider has been receiving payments from the plaintiff organizations for more than two years.” *ESA Action DE 176 at 4, 7; 244 F.R.D. at 51, 52.*

8. In denying FEI’s counterclaim motion, the Court also recognized that “Plaintiffs’ counsel admitted in open court on September 16, 2005 that the plaintiff organizations

provided grants to Tom Rider to ‘speak out about what really happened’ when he worked at the circus.” *Id.* (citing Hearing Tr. (Sept. 16, 2005)).

9. On August 28, 2007, FEI filed as a separate lawsuit the same RICO claim that FEI had attempted to file in the ESA Action as a counterclaim, naming as defendants all of the ESA Plaintiffs and WAP. *See* FEI Original Complaint (August 28, 2007), DE 1.

10. Although the August 28, 2007 Complaint again contained many references to the alleged involvement of Katherine Meyer, Eric Glitzenstein, and MGC in the conduct that FEI contends underlies its RICO claims, *see, e.g., id.* ¶¶ 8, 27, 66, 120, 135, 138, 156, 159, 165, 167-168, that Complaint did not name MGC or any of the individual attorneys from the ESA Action as Defendants. *See* DE 1.

11. FEI’s August 28, 2007 RICO Complaint in this case stated that the purportedly illegal “payment scheme, which was devised and carried out with the encouragement of MGC, first became known to FEI in June 2004 when one or more of the defendants submitted their discovery responses in the ESA Action.” *See* DE 1 at ¶ 20.

12. On November 7, 2007, the Court issued an order staying litigation on FEI’s RICO Complaint, finding that “FEI itself has already long delayed its day in court on [the RICO] claim[,]” in light of the fact that “FEI alleges in its complaint that it first learned of payments to Tom Rider in June of 2004” DE 23, *Feld Entertainment, Inc. v. ASPCA*, 523 F.Supp.2d 1, 4 (D.D.C. 2007) (citing FEI RICO Complaint ¶ 20).

13. On February 16, 2010, following resolution of the ESA Action, FEI filed its Amended RICO Complaint in this case and for the first time named as defendants the MGC Defendants, Howard Crystal, two other attorneys who once worked at MGC

(Jonathan Lovvorn and Kimberly Ockene), and the Humane Society of the United States. *See* First Amended Complaint, DE 25.

14. FEI's Amended RICO Complaint recites that FEI began "to uncover the payment scheme" on July 19, 2005, when FEI deposed a representative of the ASPCA. *See* DE 25 at ¶ 32.

15. Before the ESA Action was filed, FEI monitored Mr. Rider's activities and public statements concerning FEI's treatment of circus elephants. *See* MGC Ex. C (5/22/00 internal FEI e-mail from FEI's Director of Corporate Communications to multiple FEI employees stating that "I wanted you to see this article about Tom Rider that ran in the Peoria paper," and stating that the "overall tone gives credibility to Tom's claims"); MGC Ex. D (5/20/00 e-mail from FEI's Director of Corporate Communications to other FEI employees attaching a newspaper article featuring Mr. Rider and stating that "[n]ote that Tom will be put forward as a witness next month"); MGC Ex. E (5/8/00 e-mail from FEI's Director of Corporate Communications to "EVERYONE" entitled "Media coverage of animal care concerns," explaining that media coverage of FEI's elephant treatment "featured information provided by a former Blue Unit employee alleging abuse of the elephants" and that the "Performing Animal Welfare Society [the original lead plaintiff in the ESA Action], one of our harshest critics, is circulating his story"); MGC Ex. F (6/28/00 internal FEI e-mail captioned "Tom Rider to protest RB in Las Vegas"); MGC Ex. G (4/11/00 FEI e-mail circulating an article from a British newspaper about Mr. Rider's allegations of elephant abuse in connection with the circus he was traveling with in Europe following his work at Ringling Bros.).

16. At the time the ESA Action was filed in 2000, FEI knew that Mr. Rider had left employment with FEI in order to work with elephants in a traveling circus in Europe, and that Mr. Rider's work entailed working with Daniel Raffo. *See* MGC Ex. B (4/11/00 e-mail from FEI's Director of Corporate Communications to a journalist stating that "Mr. Rider left Ringling Bros. of his own volition, and we understand that he left because he wanted to travel in Europe"); MGC Ex. G; MGC Ex. K (5/20/00 letter to the editor from FEI's Director of Corporate Communications stating that Mr. Rider "left Ringling Bros. to accompany some of the elephants he had been responsible for cleaning up after when they returned to Europe").

17. FEI knew in 2000 that the plaintiffs in the ESA Action, including Mr. Rider, were being represented by MGC (formerly Meyer & Glitzenstein), and specifically Katherine Meyer and Eric Glitzenstein. *See* 2000 Complaint in ESA Action at 27 (signed by Meyer and Glitzenstein); 2000 Amended Complaint in ESA Action, at 24 (same).

18. On June 13, 2000, FEI issued a press release concerning Congressional testimony given by Mr. Rider in which FEI stated that his claims of elephant mistreatment were "unsubstantiated" and that "Rider is clearly working in collaboration with animal activist groups." FEI Press Release (June 13, 2000), MGC Ex. H.

19. Beginning in 2000 and at other times before February 16, 2010, spokespersons for FEI stated to journalists and others that Tom Rider's allegations of elephant mistreatment should not be believed because, *inter alia*, Mr. Rider had never complained to FEI management about the mistreatment of elephants when he worked for the circus. *See e.g.*, MGC Ex. E (5/8/00 e-mail from FEI's Director of Corporate Communications stating that Mr. Rider "never reported his concerns to the senior animal care staff");

MGC Ex. I (5/29/02 FEI e-mail attaching Philadelphia Daily News article quoting FEI “public relations director” as stating that “Rider never complained to management at the time”); MGC Ex. J (6/4/01 internal FEI e-mail circulating Harrisburg Patriot article stating that, according to FEI’s Director of Corporate Communications, “Rider never told the circus about the abuse while he was employed”).

20. At the time that the ESA Action was filed in 2000, FEI was in possession of information concerning whether and to who within FEI Tom Rider had complained about elephant mistreatment while he was employed with FEI. MGC Ex. E; MGC Ex. H; MGC Ex. I; MGC Ex. J.

21. At the time that the ESA Action was filed in 2000 and throughout the subsequent time period prior to February 16, 2006, FEI was in possession of facts that were sufficient for FEI to ascertain whether Tom Rider was telling the truth concerning his allegations of elephant treatment by FEI. *See* MGC Ex. A-N.

22. After the original Complaint was filed in the ESA Action and prior to February 16, 2006, FEI employees told journalists and other members of the public that Mr. Rider was fabricating his allegations of elephant mistreatment by FEI and that he was being paid to do so by animal protection organizations. *See, e.g.*, MGC Ex. L, ABC 7 I-Team Investigation (November 22, 2002) (quoting Ringling Bros.’ “animal stewardship director” as stating that “Tom Rider worked for Ringling Brothers for two years and never once did he make a complaint about what he says he witnessed if what he saw was so bad. Today he works for an extremist hate organization and he gets paid to do it.”); MGC Ex. M, Horizons Newspaper (Nov. 20, 2003) (quoting “Ringling Brothers’ spokesperson Jenifer Maninger” as stating that the ESA Action was brought “by a former

employee who is being paid by animal rights organizations” and that “I think he’s an individual who’s down on his luck and who unfortunately was looking for income”); MGC Ex. U at 2, Tampa Tribune (Jan. 11, 2004) (statement by FEI’s “head of animal training and care” that Mr. Rider was “making a living parroting animals rights’ rhetoric”).

23. FEI knew in 2000 that Mr. Rider was working with the Performing Animal Welfare Society (“PAWS”), the original lead plaintiff in the ESA Action. *See* MGC Ex. N, 5/7/00 FEI e-mail attaching San Jose Mercury News, May 9, 2000, at 1 (Mr. Rider “who quit [Ringling Bros.] last November, is now working with an animal rights group that has filed complaints against Ringling – a fact the company has cited in discounting his story”; identifying Catherine Ort-Mabry as the “spokeswoman for Feld Entertainment Inc., Ringling’s parent company”); MGC Ex. C (5/22/00 FEI e-mail attaching article stating that “Catherine Ort-Mabry, director of corporate communications for Feld Entertainment, the producers of Ringling Bros., said Rider is being used by the activist group [PAWS] and isn’t telling the truth”).

24. When PAWS’ official Ed Stewart was deposed in the ESA Action in 2004, he testified in answer to questions from FEI’s attorney that Tom Rider “did work for PAWS” as a “watch man.” *See* Ex. O at 132.

25. FEI employees believed in 2002 that the ASPCA was paying for Tom Rider’s living and traveling expenses. MGC Ex. I at 2.

26. An FEI e-mail dated May 28-29, 2002, which was produced in discovery and admitted into evidence in the ESA Action, indicates that Todd Willens, FEI’s Vice President for Government Relations, had assigned someone the task of finding evidence

to “refute” any notion that Mr. Rider “was covering his own expenses,” since “up until last week, he [Mr. Rider] admitted to ASPCA paying his way.” MGC Ex. I at 2.

27. FEI’s May 28-29, 2002 e-mail discussing Mr. Rider’s funding by ASPCA was circulated among several of FEI’s top officials, including Mary Lou Kelly, identified as the “Grassroots Coordinator” for FEI’s “Government Relations” department (which was headed by Mr. Willens), *see* MGC Ex. I at 1, 8-9; MGC Ex. P; Gary Jacobson, who runs FEI’s Center for Elephant Conservation (and who served as the Rule 30(b)(6) deponent for FEI in the ESA Action) and Richard Froemming, a former Vice President of FEI. See MGC Ex. I at 1; *see also* ESA Trial Testimony of Gary Jacobson (March 5, 2009, p.m.) at 25-26; *People for the Ethical Treatment of Animals v. Kenneth Feld*, (Cir. Ct. Fairfax County) (Trial Testimony of Kenneth Feld) (March 9, 2006) at 2055 (testifying that Mr. Froemming was the FEI “vice-president for circus operations”) (MGC Ex. Q).

28. FEI’s May 28-29, 2002 e-mail discussing Tom Rider’s funding by ASPCA states that Mr. Rider had admitted both at a recent legislative hearing in Rhode Island and in a news story in a Philadelphia newspaper that his living expenses were being paid by the ASPCA. *See* MGC Ex. I.

29. FEI’s May 28-29, 2002 e-mail reported that when asked by Rhode Island Representative David Caprio “where do you live? What do you do, now that you don’t work for Ringling,?,” “Tom said he follows Ringling around to protect ‘my girls’ [the elephants], and ASPCA pays his expenses for traveling.” MGC Ex. I at 4.

30. FEI’s May 28-29, 2002 e-mail also stated that “[w]hen pressed by Caprio, Tom said ASPCA pays for hotels, bus fare, meals, a new set of luggage, and other business expenses.” *Id.*

31. A Philadelphia Daily News story attached to FEI's May 28-29, 2002 e-mail discussing Tom Rider's funding by ASPCA states that Mr. Rider "travels the country, just as the circus does . . . to speak for his 'girls,' who can't speak for themselves" and that "his expenses [are] paid by the ASPCA." MGC Ex. I at 5.

32. By no later than May 2002, FEI knew that ASPCA was providing funding to Tom Rider because Mr. Rider had stated that fact publicly. *See* MGC Ex. I; ESA Action DE 146 at 11 (FEI's characterization of the May 28-29 2002 e-mail as indicating that "Rider himself voluntarily testified publicly to a state legislator about his finances").

33. A November 2003 e-mail produced by FEI in discovery in the ESA Action, which was forwarded to FEI's General Counsel and Thomas Albert, another FEI official, states that Mr. Rider was being "sponsored by the ASPCA," and that he "has been touring the country" criticizing the treatment of elephants in the circus; that he "spoke against the circus industry at the City Council meeting in Huntington Beach, CA"; and that he "spoke at the UCLA Bohnett Animal Rights 'Law' Series during which time he showed very damaging clandestine video of circus elephants.." MGC Ex. R.

34. Based on the ESA Plaintiffs' June 2004 discovery responses in the ESA Action, FEI knew at that time that Mr. Rider was receiving financial assistance from the ESA organizational plaintiffs. *See, e.g.*, MGC Ex. W; MGC Ex. X

35. A May 7, 2001 e-mail that was produced to FEI on June 30, 2004 in the ESA Action, from Lisa Weisberg, the ASPCA's then-Vice President for Governmental Affairs and Public Policy to ASPCA's then-President, states that "Tom Rider . . . has just left the employ of Pat Derby's group, PAWS, in order to follow the circus and speak out about its training/abuse of elephants"; that "[h]e wanted to leave PAWS for a while in order to do

this and to ensure that he would not be taken off the suit”; that “[i]n order to follow the circus he cannot be employed”; and that “[t]o pay his travel expenses for the next few months both AWI [the Animal Welfare Institute] and the Fund [Fund for Animals] . . . have agreed to pay \$1,000 each to cover 2 months of on the road expenses.” MGC Ex. W; *see also* MGC Ex. BBB.

36. A January 29, 2002 e-mail from Lisa Weisberg to ASPCA President Larry Hawk, which was produced to FEI on June 30, 2004 in the ESA Action, has the subject line “Tom Rider,” and refers to the “impressive p.r. [public relations] work” Mr. Rider was doing for the ASPCA; states that “[t]he commitment and sacrifice this guy has made for the last year is truly impressive”; and, referring to the funding that ASPCA would be providing for Mr. Rider’s media work, states that the “level of our funding can also come down from the \$24K we budgeted (probably more in the order of \$16-18K) now that some of the logistical issues have been resolved.” MGC Ex. X; *see also* MGC Ex. BBB.

37. In June 2004, the ASPCA produced to FEI in the ESA Action several copies of “check requests,” including one for \$526.16 to be made out to “Meyer & Glitzenstein” for “Reimbursement for money given to Tom Rider exceeding the \$6,000 grant to The Wildlife Advocacy Project for 1st quarter 2002,” and stating that “\$400 of this covers zoom camera,” MGC Ex. Y.

38. In June 2004, the ASPCA produced to FEI in the ESA Action a request for a check for “Meyer & Glitzenstein” for \$445.00 for expenses related to “Tom Rider testimony at MA Legislative hearing on anti-circus bill.” MGC Ex. Z.

39. In June 2004, the ASPCA produced to FEI in the ESA Action a check request for “Meyer & Glitzenstein” in the amount of \$500.00 for “Ringling Brs. Media Support.” MGC Ex. AA.

40. On June 30, 2004, in response to FEI’s interrogatory requesting the ESA plaintiff organizations to “[i]dentify each expenditure from 1997 to the present of ‘financial or other resources’ made while ‘pursuing alternative sources of information about defendants’ actions and treatment of elephants’ as alleged in the complaint,” the ASPCA responded that “[i]n 2001, the ASPCA gave the Wildlife Advocacy Project a grant for \$ 7,400 for public education about Ringling Bros.’s mistreatment of Asian elephants.” MGC Ex. 22, ASPCA Interrogatory Response No. 22.

41. On July 19, 2005, as part of discovery in the ESA Action, FEI took the deposition of ASPCA’s then-Vice President Lisa Weisberg. *See* MGC Ex. EE.

42. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that the ASPCA spent “[a]pproximately \$18,000” in 2002 defraying Mr. Rider’s living and traveling expenses while he traveled around the country and engaged in media and other activities. MGC Ex. EE at 34.

43. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that in 2003 the ASPCA spent \$22,000 “to support Tom Rider in his public outreach efforts and in speaking with the media about the various violations engaged in by Ringling Bros.” MGC Ex. EE at 36.

44. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that Darcy Kemnitz “used to work for the Wildlife Advocacy Project at Meyer Glitzenstein,” and that Ms. Kemnitz provided media support to Mr. Rider. MGC Ex. EE at 42.

45. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that the Wildlife Advocacy Project (“WAP”) “was created by Meyer & Glitzenstein to advocate for the humane treatment of wildlife and preservation of habitat.” MGC Ex. EE at 43.

46. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that ASPCA processed a “check request for Meyer & Glitzenstein dated April 4th, 2002,” for “[r]eimbursement for money given to Tom Rider exceeding the \$6,000 grant to the Wildlife Advocacy Project for first quarter 2002.” MGC Ex. EE at 43-44.

47. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that Katherine Meyer and Eric Glitzenstein are involved in operating WAP and WAP is “housed in the same office as Meyer & Glitzenstein.” MGC Ex. EE at 44-45, 90-91.

48. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that the ASPCA “provided a grant to [WAP] to enable Tom Rider to do his public outreach and education about the treatment of Ringling Bros. of its Asian elephants.” MGC Ex. EE at 45.

49. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that a check request for Meyer & Glitzenstein for “\$526.16 is additional funding over the original allotment in the budget for this project,” and that “\$400 of this was for a zoom camera.” MGC Ex. EE at 45.

50. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that activities covered in a \$6,000 grant “were to reimburse Tom Rider for his general living expenses to travel the country and meet with the media,” and that the \$6,000 grant “was to reimburse Mr. Rider for his Greyhound bus tickets, to travel the country, basic day-to-

day living expenses, food, lodging,” and that this was “all provided through the Wildlife Advocacy Project.” MGC Ex. EE at 46.

51. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that a May 23, 2003 check request “payable to Meyer & Glitzenstein” was to reimburse the firm for “cover[ing] his [Rider’s] transportation and hotel costs to get to Massachusetts, to get to Boston to testify at the hearing.” MGC Ex. EE at 48.

52. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that the reason the ASPCA did not provide funds directly to Mr. Rider was that it “had no way of getting the money to Mr. Rider because he was on the road and Meyer & Glitzenstein was able to wire the money to him.” MGC Ex. EE at 48-49.

53. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that the ASPCA discussed with AWI “how we could fund the costs for his travels and how we would divide the costs,” and that ASPCA spoke “with the two other plaintiffs, the AWI and the Fund for Animals regarding this” funding. MGC Ex. EE at 51-52.

54. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that “[t]he money was wired to wherever he [Rider] was through Western Union by Meyer & Glitzenstein and we [ASPCA] would be invoiced for it.” MGC Ex. EE at 51-52.

55. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that the ASPCA had communications “[b]oth with the Fund for Animals and AWI . . . recognizing the good work that Mr. Rider was doing and the ASPCA’s inability to continue funding his expenses to continue that work due to other budgetary needs.” MGC Ex. EE at 80-81.

56. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that following 2003, “while ASPCA was not providing any funding to Mr. Rider, the AWI and the Fund For Animals were” doing so. MGC Ex. EE at 80-81.

57. In Lisa Weisberg’s July 19, 2005 deposition in the ESA Action, FEI’s counsel asked Ms. Weisberg questions about a July 21, 2005 fundraiser to be held in California, *see* MGC Ex. EE at 204-10, and FEI’s counsel produced at the deposition and made an exhibit a copy of an invitation to the July 2005 fundraiser. *See* MGC Ex. FF

58. The fundraiser invitation referenced above states that the fundraiser was being hosted by the ASPCA, AWI, and the Humane Society of the United States; that Mr. Rider had “left the circus to speak out about the elephant abuse he witnessed on a daily basis,”; that the groups hosting the event “need your help to raise money so we can successfully wage this battle on behalf of the elephants”; and that the fundraiser would involve “[a] question and answer session led by the attorneys handling the lawsuit against Ringling Bros.” *Id.* at 1-2.

59. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg testified that ASPCA sent the invitation to the fundraiser to ASPCA’s “high donors in the California area” and also e-mailed the invitation “to ASPCA supporters generally in California.” MGC Ex. EE at 206.

60. In her July 19, 2005 deposition in the ESA Action, Lisa Weisberg also testified that one of the purposes of the fundraiser was “to provide additional funding for Tom Rider to continue his outreach.” *Id.* at 210.

61. At a September 16, 2005 hearing on several matters in the ESA Action, Katherine Meyer engaged in a colloquy with the Court in which she stated that “Tom Rider, a

plaintiff in this case, he's going around the country in his own van, he gets grant money from some of the clients and some other organizations to speak out and say what really happened when he worked there." MGC Ex. II at 29-30.

62. In September 2005, in response to a subpoena issued by FEI in the ESA Action, WAP provided FEI with a copy of WAP's "Custom Transaction Detail Report," which redacted some information but divulged a number of "grants" and "donations" by ASPCA and AWI, as well as others, specifically for Mr. Rider. *See* MGC Ex. JJ.

63. The WAP "Transaction Detail Report" referenced above specifically identified a \$ 6,000 "Grant from ASPCA to WAP for Tom Rider"; a \$ 2,500 "Grant from AWI for Elephant Education – Tom Rider"; a \$ 1,500 "AWI donation to T. Rider"; a \$ 3,500 "AWI donation for Tom Rider"; and other "Tom Rider contributions" and "donations" for Mr. Rider's advocacy efforts and the "Elephant media campa[ign]." *Id.*; *see also* MGC Ex. DD; ESA Action DE 85 at 13 & Ex. 32, MGC Ex. KK (FEI's acknowledgement that this WAP "accounting ledger" reflecting grants and donations for Mr. Rider was produced to FEI "[o]n September 29, 2005"); MGC Ex. LL.

64. Documents produced to FEI by WAP in September 2005 include letters to WAP from the ASPCA and AWI, as well as others, concerning contributions for Mr. Rider's media and public outreach work. *See* MGC Ex. MM; MGC Ex. NN; MGC Ex. OO.

65. Documents produced to FEI by WAP in September 2005 include letters from both Eric Glitzenstein and Katherine Meyer on behalf of WAP thanking people for their contributions to Tom Rider's media campaign. *See* MGC Ex. PP.

66. Documents produced to FEI by WAP in September 2005 include a memo concerning grant money received by WAP from the ASPCA, stating that the ASPCA

would provide Tom Rider with both a laptop computer and cell phone coverage. MGC Ex. QQ.

67. Documents produced to FEI by WAP in September 2005 include a “Travel Schedule” for Tom Rider, including cities he would be visiting, the hotels he would be staying at plus the hotel rates, and a “Bus Schedule” for Mr. Rider. MGC Ex. RR; MGC Ex. SS.

68. Documents produced to FEI by WAP in September 2005 include proposals by Katherine Meyer and Eric Glitzenstein requesting funding for Mr. Rider’s advocacy. MGC Ex. TT; MGC Ex. UU.

69. Documents produced to FEI by WAP in September 2005 included copies of pages replicating WAP’s website, which stated that WAP is a “non-profit advocacy group founded by Katherine Meyer and Eric Glitzenstein of the Washington, DC public interest law firm, Meyer Glitzenstein & Crystal”; that WAP “assist[s] grassroots activists in achieving long-term protection of wildlife and the environment, and in stopping the abuse and exploitation of animals held in captivity,” and that WAP “can achieve greater protection for wildlife in the courts, legislatures and the regulatory agencies, when the public is educated and mobilized to fight against the degradation of wildlife.” *See* MGC Ex. VV.

70. WAP website pages produced to FEI in 2005 also listed among WAP’s “current activities” a project involving “Ringling Bros.’ treatment of Endangered elephants,” and contained a discussion of the Asian elephant species, the Ringling Bros.’ circus, and evidence that Ringling Bros. hits the elephants with bullhooks and forcibly separates baby elephants from their mothers with ropes and chains. MGC Ex. VV.

71. The WAP website pages produced to FEI in 2005 also discussed Tom Rider and some of the accounts of elephant mistreatment that Mr. Rider said he had witnessed at the circus, as well as the eye-witness accounts of two other former Ringling Bros. employees, Glenn Ewell and James Stechon, and the deaths of two baby elephants, Kenny and Benjamin. MGC Ex. VV at 4.

72. The WAP website pages produced to FEI in 2005 also discussed the pending ESA litigation; explained that the plaintiffs were the ASPCA, Fund for Animals, AWI, and Tom Rider; stated that “[t]he plaintiffs are represented by the law firm Meyer & Glitzenstein”; and provided the address for WAP, which is the same as the address for MGC. *Id.* at 6.

73. The documents produced to FEI by WAP in September 2005 included a grant proposal to WAP from Tom Rider, MGC Ex. WW, and letters from both Eric Glitzenstein and Katherine Meyer to Mr. Rider forwarding him grant money and thanking him “for all you are doing to put a halt to the cruel and inhumane treatment of these wonderful, intelligent animals.” *See, e.g.*, MGC Ex. XX.

74. On December 7, 2005, WAP’s counsel provided to FEI’s counsel a copy of WAP’s September 17, 1997 “Application for Recognition Under Section 501(c)(3) of the Internal Revenue Code” indicating that the organization had been formed originally in May 1997; advising the IRS that the organization had a “relationship” with the law firm Meyer & Glitzenstein; stating that “both Eric Glitzenstein and Katherine Meyer will provide volunteer work” for the non-profit organization; and identifying Mr. Glitzenstein and Ms. Meyer as President and Secretary of the organization, respectively. MGC EX. A.

75. The ESA plaintiffs' 2003 Complaint in the ESA Action stated that Mr. Rider "has been able to observe the elephants he knows, as well as other Ringling elephants, on several occasions during the last couple of years by going to cities where the circus is performing," and that Mr. Rider "continues to visit them, and will continue to do so. 2003 ESA Complaint ¶ 23 (ESA Action DE 1).

Respectfully submitted,

/s/Stephen L. Braga

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.,)	
)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 07-1532 (EGS/JMF)
)	
)	
ANIMAL WELFARE INSTITUTE, et al.,)	
)	
Defendants.)	

ORDER

This matter is before the Court on the motion of defendants Meyer Glitzenstein & Crystal, Katherine Meyer, and Eric Glitzenstein (collectively the “MGC Defendants”) for partial summary judgment on plaintiff’s claims arising under the Racketeer Influenced & Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* (“RICO”). On consideration of the motion and opposition, and the entire record in the case, it is, by the Court, this ___ day of _____, 2013,

ORDERED that the MGC Defendants’ motion for partial summary judgment is granted; and it is further

ORDERED that partial summary judgment is hereby entered for the MGC Defendants and against plaintiff Feld Entertainment, Inc. on all of plaintiff’s RICO claims against the MGC Defendants.

U.S. District Judge