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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.

FEI OBJECTION: On February 28, 2007, FEI filed a motion for leave to, *inter alia*, assert a RICO counterclaim against the all of the parties who were plaintiffs in the ESA Action *at that point in time* (ASPCA, AWI, FFA, Rider and API) and WAP. *See* No. 03-2006, ECF 121-5.

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.

FEI OBJECTION: Paragraph 3’s selective quotation of FEI’s Memorandum in Support of Motion for Leave to Amend Answers to Assert Additional Defense and RICO Counterclaim (No. 03-2006, ECF 121-1), filed on February 28, 2007, is misleading. In addition to the language quoted in paragraph 3, that document stated the following:

- “Because of the plaintiffs’, WAP’s and MGC’s continuing cover-up – submitting false interrogatory answers and false deposition testimony and refusing to produce documents subpoenaed from WAP – *FEI was not fully aware of the extent, mechanics and purpose of the payment scheme until at least June 30, 2006*, when after discussions with FEI’s new counsel, WAP partially responded to FEI’s third-party subpoena.” No. 03-2006, ECF 121-1 at 4 (emphasis added).

- “*Indeed, the WAP partial production was a key event because only then did it become clear that tens of thousands of dollars in witness payments were being funneled either*

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through MGC or WAP, a shell entity dominated by MGC, counsel of record in this very case.”

No. 03-2006, ECF 121-1 at 6 (emphasis added).

- “FEI only recently learned that: the ‘grants’ support Rider’s lifestyle and are not for ‘media expenses’ (*June 30, 2006 – WAP’s partial response to FEI’s subpoena*); the payment scheme is still ongoing (*October 12, 2006 – the plaintiffs’ deposition of Rider*); and API is involved in the scheme (*January 15, 2007 – API’s first discovery responses*).” No. 03-2006, ECF 121-1 at 12 (emphases added).

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).

FEI OBJECTION: Paragraph 4’s selective quotation of FEI’s Memorandum in Support of Motion for Leave to Amend Answers to Assert Additional Defense and RICO Counterclaim (No. 03-2006, ECF 121-1), filed on February 28, 2007, is misleading. See **FEI OBJECTION** to ¶ 3, *supra*.

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.*

FEI OBJECTION: On February 28, 2007, FEI filed a motion for leave to, *inter alia*, assert a RICO counterclaim against all of the parties who were plaintiffs in the ESA Action at that point in time (ASPCA, AWI, FFA, Rider and API) and WAP. See No. 03-2006, ECF 121-5.

Almost all of the proposed counterclaim allegations concerning the MGC defendants’

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involvement in the alleged racketeering conduct were based on information produced after February 16, 2006. *See* Proposed Counterclaim (No. 03-2006, ECF 121-5) ¶¶ 39, 57, 66, 73, 118-119. Some allegations were based on information available to FEI before February 16, 2006, but corrective and/or additional information concerning those allegations was subsequently produced pursuant to Court order (No. 03-2006, ECF 178 & 325) in 2007 and 2008. *See id.* ¶¶ 80-84. *See also* Ex. 2, Timeline of Key Rider Payment Facts. The information which served as the basis for the Proposed Counterclaim allegations, as of the date it was filed (February 28, 2007), was set forth in the Annotated Proposed Counterclaim, which was filed in conjunction with FEI's Opposition to Plaintiffs' Motion Under Rule 11. *See* No. 03-2006, ECF 165-2 (Annotated Counterclaim with factual basis for allegations noted in boldface brackets following each paragraph).

- ***Proposed Counterclaim Paragraph 39*** references a November 5, 2003 email sent by Meyer to ASPCA, FFA and AWI soliciting funds on behalf of WAP from Meyer's MGC email account (DX 65). The only document underlying the allegation in this paragraph was the November 5, 2003 email (DX 65) (***produced by WAP on 6-30-06***). *See* No. 03-2006, ECF 165-2, ¶ 39. WAP withheld this document from its 9-29-05 production in its entirety on First Amendment grounds. Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 15, 9-29-05 WAP Privilege Log at 33; Ex. 16, WAP 6-30-06 Production.

- ***Proposed Counterclaim Paragraph 57*** references the payment of a hotel room for Rider by WAP, through Glitzenstein, on WAP's credit card. The documents and testimony underlying the allegations in this paragraph were (1) an invoice from the Lincoln Inn (***produced by WAP on 6-30-06***); (2) the WAP to Rider Ledger (***produced in unredacted form by WAP on 6-30-06***); and (3) Rider's ***October 12, 2006*** deposition testimony. *See* No. 03-2006, ECF 165-2,

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¶ 57. Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 15, 9-29-05 WAP Privilege Log; Ex. 16, WAP 6-30-06 Production; Ex. 17, Comparison of WAP to Rider Ledger (DX 49).

- ***Proposed Counterclaim Paragraph 66*** references WAP's April 12, 2005 "grant" to Rider to purchase a used van. The documents and testimony underlying the allegations in this paragraph were (1) the WAP van "grant" letter (DX 37) (*produced in unredacted form by WAP on 6-30-06*); (2) the WAP to Rider ledger (DX 49) (*produced in unredacted form by WAP on 6-30-06*); and (3) Rider's ***October 12, 2006*** deposition. See No. 03-2006, ECF 165-2, ¶ 66. Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 15, 9-29-05 WAP Privilege Log; Ex. 16, WAP 6-30-06 Production; Ex. 17, Comparison of WAP to Rider Ledger (DX 49); Ex. 20, Comparison of WAP Van Grant Letter (DX 37).

- ***Proposed Counterclaim Paragraph 73*** references WAP's cover letters to Rider, which were signed by Glitzenstein (DX 53). The documents and testimony underlying the allegations in paragraph 73 were (1) the Glitzenstein Letters to Rider (DX 53) (*produced in unredacted form by WAP on 6-30-06*); (2) the WAP van "grant" letter (DX 37) (*produced in unredacted form by WAP on 6-30-06*); (3) Rider's receipts (DX 52) (*produced by WAP on 6-30-06*); and (4) Rider's ***October 12, 2006*** deposition testimony. Rider's receipts (DX 52) were withheld in their entirety from WAP's September 29, 2005 production due to the purported need for a protective order. Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 15, 9-29-05 WAP Privilege Log at 33; Ex. 16, WAP 6-30-06 Production; Ex. 19, Comparison of Glitzenstein to Rider Letters (DX 53); Ex. 20, Comparison of WAP Van Grant Letter (DX 37).

- ***Proposed Counterclaim Paragraph 80*** references ASPCA's payment of \$9,000.00 to MGC in 2001, for both legal fees and for payments to Rider through WAP. The allegations in this paragraph were based on (1) ASPCA's ***June 9, 2004*** interrogatory responses

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and (2) ASPCA's *July 2005* deposition testimony. *See* No. 03-2006, ECF 165-2, ¶ 80.

In their June 9, 2004 interrogatory responses, neither Rider nor ASPCA disclosed this, or any other, payment to or for Rider. ASPCA disclosed payments to MGC and WAP, but did not disclose that those payments were to or for Rider. **FOF 55-57**. However, pursuant to Court order (No. 03-2006, ECF 178), on *September 24 & 26, 2007*: (1) ASPCA corrected its June 9, 2004 interrogatory response and July 2005 deposition testimony through a revised interrogatory response, DX 18R at 13 n.2 (“In its original interrogatory responses and at Ms. Weisberg’s July 2005 deposition, the ASPCA stated that it had given the Wildlife Advocacy Project a grant in 2001 in the amount of \$7,400.00. ... In conducting further investigations on this matter, the ASPCA has determined that the total amount of the grant in 2001 was \$6,000”); (2) ASPCA’s revised interrogatory response also disclosed that its payment to WAP was to or for Rider, *compare* DX 18R at 19 (6-9-04) *with id.* at 22 (9-26-07); and (3) Rider provided a significantly revised interrogatory response disclosing the extensive payments to him through WAP, DX 16 at 25-28. The information produced on September 24 & 26 2007 demonstrated that Rider’s June 9, 2004 response to Interrogatory No. 24, concerning compensation from animal advocates and animal advocacy organizations for services rendered, was false. **FOF 55**. ASPCA’s \$6,000.00 “grant” to WAP was deposited into an “account towards Tom Rider expenses” that was maintained by MGC and reflected on an MGC invoice to ASPCA. The MGC invoice matches up to disbursements made by WAP to or for Rider. *Compare* DX 209 at 44 (IC 196-97 / A-1254-55) *with* DX 49. The unredacted ledger was first produced on June 30, 2006 and the invoice demonstrating that the “grant” money was deposited into an “account towards Tom Rider expenses” was produced pursuant to Court order (No. 03-2006, ECF 325) on *August 11, 2008*. *See* DX 209 at 44 (IC 196 / A 01254); ECF 325 at 9 (describing IC 193-97 as

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“Invoice from Meyer Glitz including split bill information, payment to account towards Tom Rider’s expenses”); Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 17, Comparison of WAP to Rider Ledgers (DX 49).

In addition, the IRS Form 1099 issued to Rider by WAP for calendar year 2002 (the year ASPCA’s payment to WAP was disbursed to Rider, *see* DX 209 and discussion *supra*) (DX 54), which reported the money as “compensation,” was first produced by WAP on **June 30, 2006**. The production of this document demonstrated that Rider’s June 9, 2004 response to Interrogatory No. 24, concerning “compensation” from animal advocates and animal advocacy organizations for services rendered, was false. **FOF 55**.

See also **FEI OBJECTION** to ¶¶ 34 & 62, *infra*.

- **Proposed Counterclaim Paragraph 81** references a May 2001 payment to Rider by ASPCA, AWI and FFA; ASPCA made the payment through MGC. The allegations in this paragraph were based on (1) the May 7, 2001 Weisberg Email to Hawk (MGC Ex. W) (DX 46) (*produced by ASPCA on 6-9-04*) and (2) ASPCA’s **July 2005** deposition testimony. *See* No. 03-2006, ECF 165-2, ¶ 81; Ex. 4, Production Dates of Rider Payment Trial Exhibits.

In their June 9, 2004 interrogatory responses, **none** of the plaintiffs disclosed this, or any other, payment to or for Rider. ASPCA disclosed payments to MGC and WAP, but did not disclose that those payments were to or for Rider. **FOF 55-57**. However, pursuant to Court order (No. 03-2006, ECF 178), on **September 24 & 26, 2007**: (1) ASPCA, AWI and FFA produced MGC invoices for payments to Rider dated 2001-2003 and disclosed the payments to Rider through MGC in their interrogatory responses, DX 61; DX 18R at 22-23; DX 19 at 20-21; DX 20R at 34-35; (2) ASPCA’s revised interrogatory response also disclosed that its payment to MGC was to or for Rider, *compare* DX 18R at 19 (6-9-04) *with id.* at 22-23 (9-26-07); (3) Rider

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provided a significantly revised interrogatory response disclosing the extensive payments to him through MGC, DX 16 at 25-28; and (4) Rider produced an IRS Form 1099 issued to him by MGC for calendar year 2001, which reported the money paid to him as “compensation,” DX 55. The information produced on September 24 & 26 2007 demonstrated that (1) the May 2001 payment to Rider was not only invoiced by MGC to ASPCA, it also was invoiced by MGC to AWI and FFA, DX 61; (2) ASPCA, AWI and FFA collectively received twenty-two (22) invoices for Rider over the course of three (3) years, some of which for were “shared” expenses to be split among the organizations, *id.*; and (3) Rider’s June 9, 2004 response to Interrogatory No. 24, concerning “compensation” from animal advocates and animal advocacy organizations for services rendered, was false. **FOF 55**.

*See also **FEI OBJECTION** to ¶¶ 34 & 62, *infra*.*

- ***Proposed Counterclaim Paragraph 82*** references ASPCA’s 2002 payments to Rider, which were included in ASPCA’s regular payments to MGC. The documents and testimony underlying the allegations in Paragraph 82 were (1) an ASPCA check request (MGC Ex. Y) (***produced by ASPCA on 6-9-04***) and (2) ASPCA’s ***July 2005*** deposition testimony. *See* No. 03-2006, ECF 165-2, ¶ 82.

In their June 9, 2004 interrogatory responses, ***none*** of the plaintiffs disclosed this, or any other, payment to or for Rider. ASPCA disclosed payments to MGC and WAP, but did not disclose that those payments were to or for Rider. **FOF 55-57**. However, pursuant to Court order (No. 03-2006, ECF 178) on ***September 24 & 26, 2007***: (1) ASPCA, AWI and FFA produced MGC invoices for payments to Rider dated 2001-2003 and disclosed the payments in their interrogatory responses, DX 61; DX 18R at 22-23; DX 19 at 20-21; DX 20R at 34-35; (2) ASPCA’s revised interrogatory response also disclosed that its payment to MGC was to or for

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Rider, *compare* DX 18R at 19 (6-9-04) *with id.* at 22-23 (9-26-07); and (3) Rider provided a significantly revised interrogatory response disclosing the payments to him through MGC, DX 16 at 25-28. The information produced on September 24 & 26 2007 demonstrated that (1) ASPCA, AWI and FFA collectively received twenty-two (22) invoices for Rider over the course of three (3) years, some of which for were “shared” expenses to be split among the organizations, DX 61 and (2) Rider’s June 9, 2004 response to Interrogatory No. 24, concerning compensation from animal advocates and animal advocacy organizations for services rendered, was false. **FOF 55.**

See also **FEI OBJECTION** to ¶¶ 34 & 62, *infra*.

- ***Proposed Counterclaim Paragraph 83*** references ASPCA’s 2003 payment to Rider through MGC for testimony at a Massachusetts legislative hearing. The documents and testimony underlying the allegations in Paragraph 83 were (1) an ASPCA check request (MGC Ex. Z) (***produced by ASPCA on 6-9-04***) and (2) ASPCA’s ***July 2005*** deposition testimony. *See* No. 03-2006, ECF 165-2, ¶ 83.

In their June 9, 2004 interrogatory responses, ***none*** of the plaintiffs disclosed this, or any other, payment to or for Rider. ASPCA disclosed payments to MGC and WAP, but did not disclose that those payments were to or for Rider. **FOF 55-57.** However, pursuant to Court order (No. 03-2006, ECF 178) on ***September 24 & 26, 2007***: (1) ASPCA, AWI and FFA produced MGC invoices for payments to Rider dated 2001-2003 and disclosed the payments in their interrogatory responses, DX 61; DX 18R at 22-23; DX 19 at 20-21; DX 20R at 34-35; (2) ASPCA’s revised interrogatory response also disclosed that its payment to MGC was to or for Rider, *compare* DX 18R at 19 (6-9-04) *with id.* at 22-23 (9-26-07); and (3) Rider provided a significantly revised interrogatory response disclosing the extensive payments to him through

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MGC, DX 16 at 25-28. The information produced on September 24 & 26 2007 demonstrated that (1) ASPCA, AWI and FFA collectively received twenty-two (22) invoices for Rider over the course of three (3) years, some of which for were “shared” expenses to be split among the organizations, DX 61 and (2) Rider’s June 9, 2004 response to Interrogatory No. 24, concerning compensation from animal advocates and animal advocacy organizations for services rendered, was false. **FOF 55**.

*See also **FEI OBJECTION** to ¶¶ 34 & 62, *infra*.*

- **Proposed Counterclaim Paragraph 84** references ASPCA’s \$6,000.00 “grant” to WAP, including ASPCA’s supplementation of that “grant” with a \$526.16 payment from ASPCA to MGC. *See also* Proposed Counterclaim ¶ 48 (same). The documents underlying the allegations in the paragraph were (1) a check from ASPCA to WAP (***produced by WAP on 6-30-06***); (2) a letter from ASPCA to WAP (***produced by WAP on 9-29-05***); (3) an internal WAP memorandum (MGC Ex. MM) (***produced by WAP on 9-29-05***); (4) an ASPCA check request (MGC Ex. Y) (***produced by ASPCA on 6-9-04***); and the WAP ledgers (DX 49-50) (***produced by WAP in unredacted form on 6-30-06***). *See* No. 03-2006, ECF 165-2, ¶ 83; Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 14, WAP 9-29-05 Production; Ex. 16, WAP 6-30-06 Production; Ex. 17, Comparison of WAP to Rider Ledger (DX 49); Ex. 18, Comparison of WAP Deposit Ledger (DX 50)

In their June 9, 2004 interrogatory responses, neither Rider nor ASPCA disclosed these, or any other, payments to or for Rider. ASPCA disclosed payments to MGC and WAP, but did not disclose that those payments were to or for Rider. **FOF 55-57**. However, pursuant to Court order (No. 03-2006, ECF 178) on **September 24 & 26, 2007**: (1) ASPCA corrected its June 9, 2004 interrogatory response and July 2005 deposition testimony concerning its “grant” to WAP

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through a revised interrogatory response, DX 18R at 13 n.2 (“In its original interrogatory responses and at Ms. Weisberg’s July 2005 deposition, the ASPCA stated that it had given the Wildlife Advocacy Project a grant in 2001 in the amount of \$7,400.00. ... In conducting further investigations on this matter, the ASPCA has determined that the total amount of the grant in 2001 was \$6,000”); (2) ASPCA’s revised interrogatory response also disclosed that its payments to WAP and MGC were to or for Rider, *compare* DX 18R at 19 (6-9-04) *with id.* at 22-23 (9-26-07); (3) ASPCA, AWI and FFA produced MGC invoices for payments to Rider dated 2001-2003 and disclosed the payments to Rider through MGC in their interrogatory responses, DX 61; DX 18R at 22-23; DX 19 at 20-21; DX 20R at 34-35; (4) Rider provided a significantly revised interrogatory response disclosing the extensive payments to him through WAP and MGC, DX 16 at 25-28. The information produced on September 24 & 26 2007 demonstrated that (1) ASPCA, AWI and FFA collectively received twenty-two (22) invoices for Rider over the course of three (3) years, some of which for were “shared” expenses to be split among the organizations, DX 61 and (2) Rider’s June 9, 2004 response to Interrogatory No. 24, concerning compensation from animal advocates and animal advocacy organizations for services rendered, was false. **FOF 55.**

ASPCA’s \$6,000.00 “grant” to WAP was deposited into an “account towards Tom Rider expenses” that was maintained by MGC and reflected on an MGC invoice to ASPCA. The MGC invoice matches up to disbursements made by WAP to or for Rider. The unredacted ledger was first produced on June 30, 2006 and the invoice demonstrating that the “grant” money was deposited into an “account towards Tom Rider expenses” was produced pursuant to Court order (No. 03-2006, ECF 325) on **August 11, 2008**. *See* DX 209 at 44 (IC 196 / A 01254); ECF 325 at 9 (describing IC 193-97 as “Invoice from Meyer Glitz including split bill information,

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payment to account towards Tom Rider's expenses"); Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 17, Comparison of WAP to Rider Ledgers (DX 49).

In addition, the IRS Form 1099 issued to Rider by WAP for calendar year 2002 (the year ASPCA's payment was disbursed to him, *see* DX 209 and discussion *supra*) (DX 54), which reported the money as "compensation," was first produced by WAP on **June 30, 2006**. The production of this document demonstrated that Rider's June 9, 2004 response to Interrogatory No. 24, concerning "compensation" from animal advocates and animal advocacy organizations for services rendered, was false. **FOF 55**.

See also **FEI OBJECTION** to ¶¶ 34 & 62, *infra*.

- **Proposed Counterclaim Paragraph 119** references a payment made by MGC to Rider that was reimbursed by WAP. The documents underlying the allegations in this paragraph were (1) a check from WAP to MGC (**produced by WAP on 6-30-06**) and (2) the WAP to Rider ledger (DX 49) (**produced in unredacted form by WAP on 6-30-06**). *See* No. 03-2006, ECF 165-2, ¶ 119; ; Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 16, WAP 6-30-06 Production; Ex. 17, Comparison of WAP to Rider Ledger (DX 49).

- **Proposed Counterclaim Paragraph 120** references a November 5, 2003 email sent by Meyer to ASPCA, FFA and AWI soliciting funds on behalf of WAP from Meyer's MGC email account (DX 65). The only document underlying the allegation in this paragraph was the November 5, 2003 email (DX 65) (**produced by WAP on 6-30-06**). WAP withheld this document from its 9-29-05 production in its entirety on First Amendment grounds. Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 15, 9-29-05 WAP Privilege Log at 33; Ex. 16, WAP 6-30-06 Production.

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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).

FEI RESPONSE: Admitted.

7. In denying FEI's counterclaim motion, the Court found that the RICO counterclaim was "dilatatory" 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.

FEI OBJECTION: The Court denied FEI's request for leave to amend its answers to, *inter alia*, assert a RICO counterclaim on August 23, 2007. No. 03-2006, ECF 176. The language quoted in paragraph 7 only references the "payments from the *plaintiff organizations*;" it does not reference payments to Rider *for participation in the ESA Action as a plaintiff* by the *MGC defendants*. **FOF 1, 35, 53, 55-56 & 59.**

The Court's opinion on the proposed counterclaim (No. 03-2006, ECF 176) was issued before plaintiffs' Court-ordered productions (No. 03-2006, ECF 178 & 325) were made and before the trial of the ESA Action. In its December 30, 2009 Memorandum Opinion (No. 03-2006, ECF 559) the Court found that:

- Rider falsely stated under oath that he had not received any compensation from any animal advocate or animal advocacy organizations for services rendered. **FOF 55.** There was "no excuse for this false response. The lawyer who signed the objections to this answer, Katherine Meyer, was a principal in two of the entities – WAP and MGC that had paid Mr. Rider and had sent him 1099's reporting such payments. Moreover, the third payor, PAWS, who also sent Mr. Rider a 1099, was one of Ms. Meyer's clients. Indeed, after the payments to Mr. Rider from PAWS ceased in May 2001, it was apparently Ms. Meyer's suggestion that the other organizational plaintiffs pay Mr. Rider, initially through MGC and later through WAP. **Mr.**

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Rider did not provide a complete and truthful answer to Interrogatory No. 24 until September 24, 2007, after the Court had overruled his objections and compelled his answer.” FOF 56.

(citations omitted) (emphasis added). *See also* No. 03-2006, ECF 620 at 10 (“Rider lied about the payments . . .”).

- “The organizational plaintiffs have also been less than forthcoming about the extent of the payments to Mr. Rider. ***In response to FEI’s discovery requests, neither ASPCA, FFA nor AWI disclosed in their initial responses in 2004 that they had paid money directly to Mr. Rider or through MGC when, by that point in time, they had in fact done so.*** In 2004, ASPCA made reference to the fact that payments had been made to MGC and WAP, although ASPCA did not disclose that such payments were ultimately remitted to Mr. Rider. ***FFA and AWI did not disclose their payments to Mr. Rider through MGC and WAP even when specifically asked about Mr. Rider’s funding at their depositions*** taken pursuant to Federal Rule of Civil Procedure 30(b)(6). **The true nature and extent of the payments the organizational plaintiffs had made to Mr. Rider directly or through MGC or WAP was not fully disclosed until after the Court’s order of August 23, 2007 granting FEI’s motion to compel the disclosure of such information.” FOF 57.** (citations omitted) (emphases added). *See also* No. 03-2006, ECF 620 at 11 (“The organizational plaintiffs also concealed the payments from FEI, in whole or in part, by providing misleading or incomplete information to FEI until after the Court granted FEI’s motion to compel complete information about payments to Rider in the summer of 2007.”).

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)).

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FEI OBJECTION: The Court's opinion denying FEI's motion for leave to amend its answers to, *inter alia*, assert a RICO counterclaim (ECF 176) issued before plaintiffs' Court-ordered productions (No. 03-2006, ECF 178 & 325) were made and before the trial of the ESA Action.

The language quoted in paragraph 8 states only that "the *plaintiff organizations* provided *grants* to Tom Rider." (emphases added). The quoted language does not reference *payments* to Rider *for participation in the ESA Action as a plaintiff* by the *MGC defendants*. **FOF 1, 35, 53, 55-56 & 59.**

The Court already has determined that Ms. Meyer's statement in open court on September 16, 2005 did not trigger the RICO statute of limitations as to any defendant. No. 07-1532, ECF 90 at 24-29.

The complete statement that Ms. Meyer made in open court on September 16, 2005 is set forth below:

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 *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 (emphases added).

By the time of Ms. Meyer's statement in open court on September 16, 2005, Rider had received over \$70,000.00 in payments and benefits directly from PAWS, AWI, MGC, WAP and ASPCA. *See* DX 48A. Further, MGC had sent nearly sixty (60) pages of invoices collectively to ASPCA, AWI and FFA for payments to Rider, DX 61, and MGC had sent Rider an IRS Form 1099 classifying the money as "compensation." DX 55. None of this was disclosed by Ms. Meyer in her statement to the Court. Furthermore, only the following information about the

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payments and benefits that Rider had received was available to FEI at the time of Ms. Meyer's September 16, 2005 statement:

- **Rider's Public Statements:** In 2002, Rider publicly stated that he was "follow[ing]" Ringling and that ASPCA was paying for his "expenses for traveling." MGC Ex. I (PWC 197). In 2003, Rider stated that he was "not employed by animal welfare agency and he d[id] not receive a paycheck." MGC Ex. M. Rider further stated that "no big group" was funding him; "private people donat[ed] money" to him. *Id.* In 2004, Rider repeated the same story, stating that he "d[idn't] receive money ... from animal groups"; he only received money from a "private individual in California." MGC Ex. U.

All of these statements by Rider were false. By 2002, Rider had received more than \$15,000.00 in compensation directly from PAWS, AWI and MGC, and ASPCA, AWI and FFA all had received MGC invoices for payments to Rider. DX 48A. By 2003, Rider had received more than \$36,000.00 in compensation directly from PAWS, AWI, MGC, WAP and ASPCA, and ASPCA, AWI and FFA all had received MGC invoices for payments to Rider. *Id.* By 2004, Rider had received more than \$46,000.00 in compensation directly from PAWS, AWI, MGC, WAP and ASPCA, and ASPCA, AWI and FFA all had received MGC invoices for payments to Rider. *Id.* Further, Rider was not "follow[ing] Ringling," nor were the payments reimbursements for "expenses for traveling." **FOF 44, 49 & 50.** The amount, nature and circumstances of the funding provided by ASPCA, PAWS, AWI and FFA to or for Rider was first fully disclosed in response to Court order (No. 03-2006, ECF 178), on **September 24, 2007.** **FOF 57.**

- **6-9-04 Document Production:** Plaintiffs produced only nine (9) pages of documents reflecting intermittent reimbursement of Rider's travel expenses even though, by this

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point in time: ASPCA had paid Rider directly, through MGC and through WAP; AWI had paid Rider directly, through MGC and through WAP; and, FFA had paid Rider through MGC. Ex. 12, Payment Documents Produced on 6-9-04; **FOF 57**; No. 03-2006, No. 03-2006, ECF 620 at 10-11; DX 16 at 25-28 (9-24-07); DX 18R at 21-24 (9-26-07); DX 19 at 18-21 (9-24-07); DX 20R at 32-35 (9-24-07). *See also* **FEI OBJECTION** to ¶ 34, *infra*.

- **6-9-04 Interrogatory Responses:** Rider falsely stated under oath that he had not received any compensation from any animal advocate or animal advocacy organization for services rendered. None of the organizational plaintiffs disclosed their payments to Rider in their interrogatory responses, even though, by this point in time: ASPCA had paid Rider directly, through MGC and through WAP; AWI had paid Rider directly, through MGC and through WAP; and, FFA had paid Rider through MGC. ASPCA's interrogatory responses disclosed payments to MGC and WAP, but did not disclose that these payments were to or for Rider. **FOF 55-57**; No. 03-2006, ECF 620 at 10-11; DX 16; DX 18R; DX 19; DX 20R; DX 48A. *See also* **FEI OBJECTION** to ¶ 34, *infra*.

- **AWI Rule 30(b)(6) Deposition Testimony:** AWI falsely testified that it was "not aware" whether it was "sharing" Rider's "expenses" with "other organizations." Ex. 23, AWI Dep. Excerpts at 138-46. AWI's testimony was false. By the time of AWI's testimony, AWI had received seventeen (17) pages of MGC invoices for payments to Rider, some of which were "shared" expenses split by ASPCA, AWI and FFA. DX 61 (*produced by AWI and FFA on 9-24-07 & produced by ASPCA on 9-26-07*). Further, AWI had made five (5) "donations" to WAP for Rider totaling \$10,500.00. DX 50 (*produced by WAP on 9-29-05*). *See also* **FOF 57** ("FFA and AWI did not disclose their payments to Mr. Rider through MGC and WAP even

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when specifically asked about Mr. Rider's funding at their depositions taken pursuant to Federal Rule of Civil Procedure 30(b)(6).").

- **FFA Rule 30(b)(6) Deposition Testimony:** FFA falsely testified at deposition that it had paid Rider \$1,000.00 on only one occasion. Ex. 24, FFA Dep. Excerpts at 157-59. By the time of FFA's testimony, FFA had received twenty-three (23) pages of MGC invoices for payments to Rider, DX 61 (*produced by AWI on 9-24-07*) and HSUS had made two (2) "donations" to WAP for Rider, that were internally marked as for "Fund" (*i.e.*, FFA) litigation, Ex. 18, Comparison of WAP Deposit Ledgers (DX 50) (*produced by WAP in unredacted form on 6-30-06*). Meyer defended FFA's deposition. Ex. 24, FFA Dep. Excerpts. *See also* **FOF 57** ("FFA and AWI did not disclose their payments to Mr. Rider through MGC and WAP even when specifically asked about Mr. Rider's funding at their depositions taken pursuant to Federal Rule of Civil Procedure 30(b)(6).").

- **ASPCA Rule 30(b)(6) Deposition Testimony:** ASPCA testified that it paid Rider directly, through MGC and WAP. ASPCA falsely testified that the money is to "reimburse" Rider for expenses incurred with a traveling media campaign. Ex. 25, ASPCA Dep. Excerpts at 34-36, 45-47 & 228-29. Further, ASPCA falsely testified that a payment it made to MGC was for "copies and dissemination" of a report, was not was not "compensation" to Rider. *Id.* at 41-42. Further, ASPCA falsely testified that it only made one (1) payment to MGC that included funds that were intended to go to Rider. *Id.* at 48-49. By the time of ASPCA's deposition testimony, ASPCA had received fifteen (15) pages of invoices for payments to Rider. DX 61 (*produced by ASPCA on 9-26-07*). ASPCA's Court ordered (No. 03-2006, ECF 178) interrogatory responses, dated *September 26, 2007*, admitted that all of these funds were for Rider's living expenses. DX 18R at 21-24. Further, ASPCA's testimony did not disclose that its

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payment to WAP for Rider was deposited into an “account towards Tom Rider expenses” that was maintained by MGC and reflected on MGC invoices to ASPCA. The MGC invoice matches up to disbursements made by WAP to or for Rider. *Compare* DX 209 (IC 196 / A 1254) with DX 49. The unredacted ledger was first produced on **June 30, 2006** and the invoice demonstrating that the “grant” money was deposited into an “account towards Tom Rider expenses” was first produced by ASPCA pursuant to Court order (No. 03-2006, ECF 325) on **August 11, 2008**. See **FEI OBJECTION** to ¶¶ 39, 42-56, *infra*.

Further, Ms. Meyer’s statement in open court on September 16, 2005 omitted the facts set forth below, which subsequently were found by the Court in its December 30, 2009 Memorandum Opinion (No. 03-2006, ECF 559):

- ***Rider was not “going around the country.”*** **FOF 49** (“While Mr. Rider has claimed that his media work has tracked the actual route of FEI’s Blue Unit, much of his claimed media work actually been performed in the home of one of his daughters or at a campground in Florida, even though WAP’s cover letters to him and the ledger kept by WAP imply that Mr. Rider is traveling. ... Mr. Rider’s travels, as indicated by the locations where he has both received checks from WAP (DX 58A) and has actually spent the money (DX 52), does not correlate with the movements of FEI’s Red or Blue Units”). See also No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus”). Indeed, even the ESA Action plaintiffs conceded this point in their post-trial proposed findings of fact, which were signed by Meyer. ECF 533 at 32 (PFOF ¶ 57) (“Like others that do public relations work, Mr. Rider is not always physically in each city where he is doing his public education work, but is able to do that work over the phone or via email.”) & 216 (Meyer signature; Glitzenstein and Crystal included on signature block). The following trial exhibits cited by the Court in Finding of Fact 49 were

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produced to FEI after February 16, 2006: DX 49 (unredacted); DX 52; DX 53; DX 58A. *See* Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 17, Comparison of WAP to Rider Ledger (DX 49). They were not available to FEI when Ms. Meyer made the September 16, 2005 statement to the Court.

- ***It was Rider's "own van" in name only. FOF 43*** (“WAP also provided the funds to purchase Mr. Rider’s used 1983 Volkswagen Van, which he lives in and uses to travel around the country.”). WAP provided Rider with a “Grant To Purchase Vehicle For Use In Project To Educate The Public About The Treatment of Elephants By The Ringling Bros. Circus” in April 2005, approximately five (5) months prior to Meyer’s statement in open court. A memorandum from Meyer, which was on WAP letterhead, enclosed the funds necessary to purchase the van. The following trial exhibits cited by the Court in Finding of Fact 43 were produced to FEI after February 16, 2006: DX 49 (unredacted); DX 37 (unredacted). *See* Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 17, Comparison of WAP to Rider Ledger (DX 49); Ex. 20, Comparison of WAP Van Grant Letter (DX 37). They were not available to FEI when Ms. Meyer made the September 16, 2005 statement to the Court.

- ***The “money” received by Rider was his sole source of income. FOF 21*** (“[A]t all times from and after March 2000, Mr. Rider has received money and other financial benefits from animal activists or others sympathetic to such interest groups, including all organizational plaintiffs in this case (past and present), plaintiffs’ counsel and an organization run by plaintiffs’ counsel. DX 48A. At no point in the period after March 2000 has Mr. Rider held a job or had any source of income or financial support other than the money and other financial benefits that Mr. Rider has received from animal advocacy organizations or others sympathetic to such groups.”). *See also* No. 03-2006, ECF 620 at 10 (“From March 2000 through the trial in 2009,

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this money was his only source of income and support). FEI first learned this fact at the ESA Action plaintiffs' own deposition of Rider in October 2006. Ex. 26, Rider Dep. Excerpts (10-06), at 135-36. The information summarized in the following trial exhibit cited by the Court in Finding of Fact 21 was produced to FEI after February 16, 2006: DX 48A. See Ex. 4, Production Dates of Rider Payment Trial Exhibits. It was not available to FEI when Ms. Meyer made the September 16, 2005 statement to the Court.

- ***The “money” was actually systematic and regular payments of the same dollar amount.*** **FOF 41** (“Mr. Rider has received regular payments from WAP, initially \$500.00 per week and later \$1,000.00 every two weeks, beginning in July 2003 and continuing through at least the end of 2008.”). The following trial exhibit cited by the Court in Finding of Fact 43 was produced to FEI after February 16, 2006: DX 49 (unredacted). See Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 17, Comparison of WAP to Rider Ledger (DX 49). It was not available to FEI when Ms. Meyer made the September 16, 2005 statement to the Court.

- ***Rider was not paying taxes on the “money.”*** **FOF 58** (“During the period from 2001 through 2006, Mr. Rider did not declare any of the money that had been paid to him by the organizational plaintiffs, WAP or MGC as income on any tax return filed with the federal or any state government. Mr. Rider did not file such tax returns until April 2007, after the subject had been raised in his October 2006 deposition and other filings in this case.”). FEI learned that Rider was not paying taxes on the “grant” money at his October 12, 2006 deposition. Ex. 26, Rider Dep. Excerpts (10-06), at 125-27 & 209-10. This information was not available to FEI when Ms. Meyer made the September 16, 2005 statement to the Court.

- ***The “money” was not provided by only “some of the clients”; it was provided by each and every one of the past and present ESA Action organizational plaintiffs.*** **FOF 48**

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(“From the time he returned to the United States on March 20, 2000 through December 31, 2008, Mr. Rider has been paid at least \$190,000 by PAWS, ASPCA, AWI FFA/HSUS and API (directly or through MGC or WAP) and by WAP itself.”). *See also* No. 03-2006, ECF 620 at 9-10. The information summarized in the following trial exhibit cited by the Court in Finding of Fact 48 was produced to FEI after February 16, 2006: DX 48A. *See* Ex. 4, Production Dates of Rider Payment Trial Exhibits. It was not available to FEI when Ms. Meyer made the September 16, 2005 statement to the Court.

- ***The “other organizations” paying Rider included counsel’s law firm, MGC, and WAP, and organization controlled by them.*** **FOF 35** (“At various times from May 2001 to November 2003, money was made available to Mr. Rider through MGC. The monies that MGC provided to Mr. Rider were then charged back to the organizational plaintiffs on MGC legal bills as expenses and were reimbursed to MGC in that fashion.”) & **FOF 37** (“Most of the money provided to Mr. Rider has been paid by the organizational plaintiffs to WAP, which then, in turn, provided the money to Mr. Rider or paid expenses on his behalf.”). *See also* No. 03-2006, ECF 620 at 9-10. The following trial exhibits cited by the Court in Findings of Fact 35 & 37 were produced to FEI after February 16, 2006: DX 18R at 22-23; DX 19 at 20-21; DX 20R at 34-35; DX 48A; DX 61. *See* Ex. 4, Production Dates of Rider Payment Trial Exhibits. They were not available to FEI when Ms. Meyer made the September 16, 2005 statement to the Court.

- ***Rider’s “media work”, i.e., “speak[ing] out” about the treatment of FEI’s elephants, was “episodic and non-continuous” and was not related to the amount of “money” he received.*** **FOF 44** (“WAP’s regular and systematic payments to Mr. Rider are not reimbursements for expenses actually incurred by him.”) & **FOF 50** (Rider’s “media” work was “episodic and noncontinuous. There appear to be a number of gaps in this activity lasting several

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weeks or months, including one such gap of more than nine months. ... Despite the irregular and sporadic nature of the media work, the payments and other financial support have come to Mr. Rider from WAP and the organizational plaintiffs or their counsel without interruption. ...[The] payments were only loosely, if at all, correlated to [Rider's "media"] efforts. Despite the irregular and sporadic nature of the media work, the payments and other financial support have come to Mr. Rider from WAP and the organizational plaintiffs or their counsel without interruption.”). *See also* No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”). The following trial exhibits cited by the Court in Finding of Fact 44 & 50 were produced to FEI after February 16, 2006: DX 18R at 21-24, 27; DX 19 at 18-21; DX 20R at 32-35; DX 48A; DX 49 (unredacted); DX 50 (unredacted); DX 51-53; DX 61; DX 63-67; DX 346. *See* Ex. 4, Production Dates of Rider Payment Trial Exhibits. They were not available to FEI when Ms. Meyer made the September 16, 2005 statement to the Court.

- ***The payments were “directly linked to the litigation.”*** **FOF 51.** Finding of Fact 51 cites the deposition testimony of Glitzenstein, which was taken in December 2007 and January 2008. DX 346. *See* Ex. 4, Production Dates of Rider Payment Trial Exhibits.

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.

FEI RESPONSE: On August 23, 2007, FEI filed a separate lawsuit against the plaintiffs in the ESA Action *at that point in time* (ASPCA, AWI, FFA, Rider and API) and WAP. *See* No. 07-1532, ECF 1.

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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.

FEI OBJECTION: On August 23, 2007, FEI filed a separate lawsuit against the plaintiffs in the ESA Action *at that point in time* (ASPCA, AWI, FFA, Rider and API) and WAP. *See* No. 07-1532, ECF 1.

Almost all of the RICO Complaint's allegations concerning the MGC defendants' involvement in the payments to Rider were based on information produced after February 16, 2006. Some allegations were based on information available to FEI before February 16, 2006, but corrective and/or additional information was produced pursuant to Court order (No. 03-2006, ECF 178 & 325) in 2007 and 2008. *See* **FEI OBJECTION** to ¶ 5, *supra*.

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.

FEI OBJECTION: FEI filed an Amended Complaint on February 16, 2010. No. 07-1532, ECF 25.

Paragraph 32 of the First Amended Complaint alleges that: "The true nature and extent of the payment scheme was not fully disclosed until after the Court's order of August 23, 2007 granting FEI's motion to compel the disclosure of such information and after the complaint in the instant action was filed." *See also* **FOF 57**; No. 03-2006, ECF 620 at 11.

Paragraph 81 of the First Amended Complaint alleges that: "The full extent of MGC's involvement in the payments to Rider did not become known until after the Court's order of August 23, 2007 in the ESA Action grantin FEI's motion to compel discovery of, *inter alia*,

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Rider payment information and after the complaint in the instant action was filed. ... The concealment of the MGC 1099 and invoices constitutes fraudulent concealment of any cause of action that could have arisen on the basis of such information.”

FEI’s Memorandum in Support of Motion for Leave to Amend Answer to Assert Additional Defense and RICO Counterclaim (No. 03-2006, ECF 121-1) stated that “FEI was not fully aware of the extent, mechanics and purpose of the payment scheme until at least June 30, 2006.” See **FEI OBJECTION** to ¶ 3, *supra*.

Almost all of the RICO Complaint’s allegations concerning the MGC defendants’ involvement in the payments to Rider were based on information produced after February 16, 2006. Some allegations were based on information available to FEI before February 16, 2006, but corrective and/or additional information was produced pursuant to Court order (No. 03-2006, ECF 178 & 325) in 2007 and 2008. See **FEI OBJECTION** to ¶ 5, *supra*.

The Court ultimately found that “[t]he true nature and extent of the payments the organizational plaintiffs had made to Mr. Rider directly or through WAP or MGC was not fully disclosed until after the Court’s order of August 23, 2007, granting FEI’s motion to compel the disclosure of such information.” **FOF 57**. See also **FEI OBJECTION** to ¶ 7, *supra*; No. 03-2006, ECF 620 at 10-11.

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).

FEI OBJECTION: Paragraph 12’s quotation of the Court’s November 7, 2007 Memorandum Opinion (No. 07-1532), is misleading. The Court’s Memorandum Opinion stated

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the following: “FEI alleges in its complaint that it first learned of payments to Tom Rider in June of 2004, Compl. ¶ 20, *although in other filings, FEI alleges that it did not discover the ‘scheme’ until June of 2006. FEI’s Mot. to Amend. at 4.*” No. 07-1532, ECF 23 at 6 (emphasis added).

FEI’s Memorandum in Support of Motion for Leave to Amend Answer to Assert Additional Defense and RICO Counterclaim (No. 03-2006, ECF 121-1) stated that “FEI was not fully aware of the extent, mechanics and purpose of the payment scheme until at least June 30, 2006.” See **FEI OBJECTION** to ¶ 3, *supra*.

Almost all of the RICO Complaint’s allegations concerning the MGC defendants’ involvement in the payments to Rider were based on information produced after February 16, 2006. Some allegations were based on information available to FEI before February 16, 2006, but corrective and/or additional information was produced pursuant to Court order (No. 03-2006, ECF 178 & 325) in 2007 and 2008. See **FEI OBJECTION** to ¶ 5, *supra*.

The Court ultimately found that “[t]he true nature and extent of the payments the organizational plaintiffs had made to Mr. Rider directly or through WAP or MGC was not fully disclosed until after the Court’s order of August 23, 2007, granting FEI’s motion to compel the disclosure of such information.” See also **FEI OBJECTION** to ¶ 7, *supra*; No. 03-2006, ECF 620 at 10-11.

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.

FEI RESPONSE: Admitted.

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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.

FEI OBJECTION: FEI filed an Amended Complaint on February 16, 2010. No. 07-1532, ECF 25.

Paragraph 32 of the First Amended Complaint also alleges that: "The true nature and extent of the payment scheme was not fully disclosed until after the Court's order of August 23, 2007 granting FEI's motion to compel the disclosure of such information and after the complaint in the instant action was filed." No. 07-1532, ECF 25, ¶ 32. *See also* **FOF 57**; ECF 620 at 11.

Paragraph 81 of the First Amended Complaint alleges that: "The full extent of MGC's involvement in the payments to Rider did not become known until after the Court's order of August 23, 2007 in the ESA Action granting FEI's motion to compel discovery of, *inter alia*, Rider payment information and after the complaint in the instant action was filed. ... The concealment of the MGC 1099 and invoices constitutes fraudulent concealment of any cause of action that could have arisen on the basis of such information."

FEI's Memorandum in Support of Motion for Leave to Amend Answer to Assert Additional Defense and RICO Counterclaim (No. 03-2006, ECF 121-1) stated that "FEI was not fully aware of the extent, mechanics and purpose of the payment scheme until at least June 30, 2006." *See* **FEI OBJECTION** to ¶ 3, *supra*.

Almost all of the First Amended RICO Complaint's allegations concerning the MGC defendants' involvement in the alleged racketeering conduct were based information produced after February 16, 2006. Some of the allegations in the First Amended RICO Complaint were based on information produced before February 16, 2006, but corrective and/or additional

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information concerning those allegation was produced pursuant to Court order (No. 03-2006, 178 & 325) in 2007 and 2008. See **FEI OBJECTION** to ¶ 5, *supra*.

The Court ultimately found that “[t]he true nature and extent of the payments the organizational plaintiffs had made to Mr. Rider directly or through WAP or MGC was not fully disclosed until after the Court’s order of August 23, 2007, granting FEI’s motion o compel the disclosure of such information.” See also **FEI OBJECTION** to ¶ 7, *supra*; No. 03-2006, ECF 620 at 10-11.

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.).

FEI OBJECTION: Paragraph 15 misleadingly characterizes the documents cited therein. FEI did not “monitor” Mr. Rider’s activities. The documents cited in Paragraph 15 speak for themselves.

Rider’s “activities and public statements of FEI’s treatment of circus elephants” was relevant to Rider’s credibility, an issue for the finder of fact to determine at trial. See No. 03-2006, ECF 620 at 35 (“Rider’s standing hinged on his credibility, which only a trial could

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resolve.”).

Further, FEI’s knowledge of Rider’s “activities and public statements of FEI’s treatment of circus elephants” is not relevant to whether FEI had inquiry notice of its injury or racketeering claims against the MGC defendants for bribery and illegal gratuity payments, obstruction of justice, money laundering and mail and wire fraud.

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”).

FEI OBJECTION: The documents cited in Paragraph 16 speak for themselves.

The reasons Rider left his employment with FEI, and for whom went to work, was relevant to Rider’s credibility, an issue for the finder of fact to determine at trial. *See* No. 03-2006, ECF 620 at 35 (“Rider’s standing hinged on his credibility, which only a trial could resolve.”).

Further, FEI’s knowledge that Rider “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” is not relevant to whether FEI had inquiry notice of its injury or racketeering claims against the MGC defendants for bribery and illegal gratuity payments, obstruction of justice, money laundering and mail and wire fraud.

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 on ESA Action at 27 (signed by

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Meyer and Glitzenstein); 2000 Amended Complaint in ESA Action, at 24 (same).

FEI OBJECTION: FEI's knowledge that Rider was "represented by MGC" is not relevant to whether FEI had inquiry notice of its injury or racketeering claims against the MGC defendants for bribery and illegal gratuity payments, obstruction of justice, money laundering and mail and wire fraud.

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.

FEI OBJECTION: The document cited in Paragraph 18 speaks for itself.

Rider's "work[] in collaboration with animal activist groups," was relevant to Rider's credibility, an issue for the finder of fact to determine at trial. *See* No. 03-2006, ECF 620 at 35 ("Rider's standing hinged on his credibility, which only a trial could resolve.").

Further, FEI's knowledge that Rider was "working in collaboration with animal activist groups" is not relevant to whether FEI had inquiry notice of its injury or racketeering claims against the MGC defendants for bribery and illegal gratuity payments, obstruction of justice, money laundering and mail and wire fraud.

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").

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FEI OBJECTION: The documents cited in Paragraph 19 speak for themselves.

Whether “Rider’s allegations” should have been “believed” because he “had never complaint to FEI management about the mistreatment of elephants when he worked for the circus” was relevant to Rider’s credibility, an issue for the finder of fact to determine at trial. *See* No. 03-2006, ECF 620 at 35 (“Rider’s standing hinged on his credibility, which only a trial could resolve.”).

Further, FEI’s knowledge of Rider’s failure to “complain[] to FEI management about the mistreatment of elephants when he worked for the circus” is not relevant to whether FEI had inquiry notice of its injury or racketeering claims against the MGC defendants for bribery and illegal gratuity payments, obstruction of justice, money laundering and mail and wire fraud.

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.

FEI OBJECTION: The documents cited in Paragraph 20 speak for themselves.

“[W]hether and to who within FEI Tom Rider had complained about elephant mistreatment while he was employed with FEI” was relevant to Rider’s credibility, an issue for the finder of fact to determine at trial. *See* No. 03-2006, ECF 620 at 35 (“Rider’s standing hinged on his credibility, which only a trial could resolve.”).

Further, FEI’s knowledge of “whether and to who within FEI Tom Rider had complained about elephant mistreatment while he was employed with FEI” is not relevant to whether FEI had inquiry notice of its injury or racketeering claims against the MGC defendants for bribery and illegal gratuity payments, obstruction of justice, money laundering and mail and wire fraud.

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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.

FEI OBJECTION: The documents cited in Paragraph 21 speak for themselves.

Whether Rider was “telling the truth concerning his allegations of elephant treatment by FEI” was relevant to Rider’s credibility, an issue for the finder of fact to determine at trial. *See* No. 03-2006, ECF 620 at 35 (“Rider’s standing hinged on his credibility, which only a trial could resolve.”).

Further, whether 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” is not relevant to whether FEI had inquiry notice of its injury or racketeering claims against the MGC defendants for bribery and illegal gratuity payments, obstruction of justice, money laundering and mail and wire fraud. That Rider may have been lying about what he claimed he witnesses as an FEI employee did not put FEI on notice of the bribery and illegal gratuity payments, obstruction of justice, money laundering and mail and wire fraud.

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”).

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FEI OBJECTION: Paragraph 22 misleadingly characterizes the documents cited therein. None of the documents cited in Paragraph 22 stated that Rider was “being paid” to “fabricat[e] his allegations of elephant mistreatment. The documents cited in Paragraph 22 speak for themselves. See 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.*”) (emphasis added); 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”) (emphasis added); 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*”) (emphasis added). Knowledge that Rider was a compensated spokesperson making false statements to the media did not put FEI on notice of the bribery and illegal gratuity payments, obstruction of justice, money laundering and mail and wire fraud.

Whether Rider was “fabricating his allegations of elephant mistreatment” and the impact the payments had on Rider’s allegations were relevant to Rider’s credibility, an issue for the finder of fact to determine at trial. See No. 03-2006, ECF 620 at 35 (“Rider’s standing hinged on his credibility, which only a trial could resolve.”).

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.

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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”).

FEI OBJECTION: In 2000, FEI was not aware that Rider’s only source of income was the money he was receiving from animal advocacy organizations and others sympathetic to such groups, including PAWS. **FOF 21** (“At no point in the period after March 2000 has Mr. Rider held a job or had any source of income or financial support other than the money and other financial benefits that Mr. Rider has receive from animal advocacy organizations or others sympathetic to such groups.”). *See also* No. 03-2006, ECF 620 at 10 (“From March 2000 through the trial in 2009, this money was his only source of income and support.”). FEI first learned this fact at the ESA Action plaintiffs’ own deposition of Rider in October 2006. Ex. 26, Rider Dep. Excerpts (10-06), at 135-36. *See also* Ex. 2, Timeline of Key Rider Payment Facts.

In 2000, FEI was not aware that Rider also had received compensation from AWI. DX 48A. AWI’s direct payment to Rider in 2000 was first disclosed pursuant to Court order (No. 03-2006, ECF 178) on September 24, 2007. DX 48A; DX 19 at 18-19.

On June 9, 2004 Rider provided a “false” statement under oath indicating that he had not received *any* compensation from any animal advocate or animal advocacy organization for services rendered. **FOF 55-56**; ECF 620 at 10 (“Rider lied about the payments”). For 2000, PAWS issued Rider an IRS Form 1099 classifying the money paid to Rider “compensation,” and for 2001 issued him a W-2 classifying the money as “wages. DX 56-57. Neither of these documents were produced to FEI until September 24, 2007. Ex. 4, Production Dates of Rider Payment Trial Exhibits. The same June 9, 2004 interrogatory answers did nto list PAWS among

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any of Rider's former employers. DX 19 at 5-6 (Rider answer to Interrogatory No. 2). Rider also denied, under oath, at his October 12, 2006 deposition that he ever had a job with PAWS, Ex. 26, Rider Dep. Excerpts (10-06), at 203, even though he received employed tax documents from PAWS, DX 56-57, and wrote a letter "resigning" his purported PAWS job. DX 39.

See also **FEI OBJECTION** to ¶ 24, *infra*.

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.

FEI OBJECTION: Paragraph 24 mischaracterizes the deposition testimony of Mr. Stewart. On August 16, 2004, Mr. Stewart provided the following testimony:

Q: Did Mr. Rider come to work for PAWS at some point?

A: *Well, I would guess you would say that, yeah.*

Q: *Why do you answer me as to say you guess you would say that?*

A: *Well, I mean over time he did work for PAWS, yeah.*

...

Q: Was it a regular employment position?

A: It was – what do you mean regular?

Q: *Did he have regular hours?*

A: *No.*

Q: Did he work a regular shift?

A: He was, well, he sort of worked a regular shift, he would be there on the property watching for intruders or trespassers.

MGC Ex. O at 132-33 (emphases added).

Approximately three months before Stewart provided the above testimony, Rider had provided a "false" statement under oath indicating that he had not received any compensation from any animal advocate or animal advocacy organization for services rendered, as well as an interrogatory response that omitted PAWS from his list of prior employers. **FOF 55-56**; No. 03-2006, ECF 620 at 10 ("Rider lied about the payments"); DX 19 at 5-6 (Rider answer to Interrogatory No. 2). But, for 2000 and 2001, PAWS issued Rider IRS Forms 1099 and W-2

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reporting money paid to Rider “compensation” or “wages.” DX 56-57. These documents were first produced pursuant to Court order (No. 03-2006, ECF 178) on September 24, 2007. Ex. 4, Production Dates of Rider Payment Trial Exhibits.

At Rider’s October 12, 2006 deposition, Rider testified that he did not work for PAWS. Ex. 26, Rider Dep. Excerpts (10-06), at 203 (“*I never worked for them.*”) (emphasis added). At Rider’s December 2007 deposition, Rider testified **Filed Under Seal**

Further, at trial, “*Mr.*

Rider admit[ted] that he did not perform a ‘real job’ for PAWS.” FOF 25.

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

FEI OBJECTION: The payment of “living and traveling expenses” is not the equivalent of (nor is it inquiry notice of) the MGC defendants’ alleged racketeering conduct (bribery and illegal gratuity payments, obstruction of justice, money laundering and mail and wire fraud). In certain circumstances the payment of a client’s living and travel expenses is permitted. 18 U.S.C. § 201(d); D.C. RULE OF PROF’L CONDUCT 1.8(d)(2). *See also* No. 03-2006, ECF 599 at 33 (ESA Action plaintiffs arguing that Rule 1.8(d)(2) authorized them to pay Rider’s living expenses) & 599-30, ¶ 28 (Glitzenstein arguing the same). Providing a payment or benefit to a witness for or because of testimony, however, is an illegal gratuity. § 201(c).

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Corruptly providing a witness with a payment or benefit with intent to influence the testimony is a bribe. § 201(d).

The May 28-29, 2002 FEI e-mail cited in Paragraph 25 (MGC Ex. I) was admitted at the ESA Action trial as PWC 197. ECF 484-2 at 43. The Court considered this exhibit (No. 03-2006, ECF 559 at 18 n.11) but ultimately found that “[t]he true nature and extent of the payments the organizational plaintiffs had made to Mr. Rider directly or through MGC or WAP was not fully disclosed until after the Court’s order of August 23, 2007, granting FEI’s motion to compel the disclosure of such information.” **FOF 57**. *See also* No. 03-2006, ECF 620 at 10-11. Furthermore, the Court already has determined that this email did not trigger the RICO statute of limitations as to any defendant, including ASPCA. No. 07-1532, ECF 90 at 23-24.

The FEI internal email and the Philadelphia Daily News Article it forwarded stated the following:

Tom said *he follows Ringling around* to protect ‘my girls’ [the elephants], and ASPCA pays his *expenses for traveling*. When pressed by Caprio, Tom said ASPCA pays for *hotels, bus fare, meals, a new set of luggage, and other business expenses*. So Caprio asked if he has any living expenses at all, and Tom said no. But he said if ASPCA didn’t pay for everything, he’s [*sic*] still do it – ‘I’d hitchhike for my girls.’

...

He *travels the country*, just as the circus does (his *expenses* paid by the ASPCA), to *speak* for his ‘girls,’ who can’t speak for themselves.

MGX Ex. I (FEI 38336-337).

The FEI internal email and the Philadelphia Daily News Article it forwarded did not state the following:

- ***By the time the email was sent, PAWS, MGC, ASPCA AWI and FFA had provided over \$15,000.00 in funding to or for Rider.*** DX 48A. In calendar year 2002 alone, Rider received over \$21,000.00 from MGC, AWI and ASPCA. *Id.* The amount, nature and

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circumstances of the funding provided by ASPCA, PAWS, AWI and FFA to or for Rider was first fully disclosed in response to Court order (No. 03-2006, ECF 178), on *September 24, 2007*.

FOF 57. *See also* Ex. 2, Timeline of Key Rider Payment Facts; Ex. 4, Production Dates of Rider Payment Trial Exhibits;

- *By the time the email was sent, ASPCA, AWI and FFA all had received numerous legal invoices (collectively twenty-two (22)) from counsel of record, MGC, showing shared and individualized charges for payments that MGC made to Rider. **FOF 35**; DX 61.*

These payments were first disclosed pursuant to Court order (No. 03-2006, ECF 178) on *September 24 & 26, 2007*. *See* DX 61; DX 18R at 22-23; DX 19 at 20-21; DX 20R at 34-35; Ex. 4, Production Dates of Rider Payment Trial Exhibits.

- *By the time the email was sent, ASPCA made a “grant” to the 501(c)(3) controlled by plaintiffs’ counsel, WAP, which then provided those funds to Mr. Rider. *See* DX 18R at 22. ASPCA produced one document reflecting that it had made a \$6,000.00 grant to WAP on June 9, 2004 (MGC Ex. Y), and it disclosed that it made a “grant” to WAP in its June 9, 2004 interrogatory responses. DX 18R at 10. But ASPCA “did not disclose that such payments were ultimately remitted to Mr. Rider.” **FOF 57.** *Compare* DX 18R at 10 *with id.* at 22.*

ASPCA’s \$6,000.00 “grant” to WAP was deposited into an “account towards Tom Rider expenses” that was maintained by MGC and reflected on an MGC invoice to ASPCA. The MGC invoice matches up to disbursements made by WAP to or for Rider. *Compare* DX 209 (IC 196 / A -1254) *with* DX 49. The invoice demonstrating that the “grant” money was deposited into an “account towards Tom Rider expenses” was first produced pursuant to Court order (ECF 325) on *August 11, 2008*. *See* Ex. 2, Timeline of Key Rider Payment Facts; Ex. 4, Production Dates of Rider Payment Trial Exhibits.

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- *The money provided to Mr. Rider was not intended to be “reimbursements.”* **FOF 44** (“WAP’s regular and systematic payments to Mr. Rider are not reimbursements for expenses actually incurred by him.”). The money was for Mr. Rider’s “initial and continuing participation as a plaintiff in this litigation.” **FOF 1, 53 & 59.**

- *Two days after this email was sent, on May 31, 2002, ASPCA provided Mr. Rider with \$3800.00 in traveler’s checks, which are the equivalent of cash.* The ledger showing ASPCA’s payment of traveler’s checks to Rider was first produced pursuant to Court order (No. 03-2006, ECF 178) on September 26, 2007. *See* Ex. 4, Production Dates of Rider Payment Trial Exhibits.

- *The money provided to Rider as “expenses for traveling” was his sole source of income.* **FOF 21** (“At no point in the period after March 2000 has Mr. Rider held a job or had any source of income or financial support other than the money and other financial benefits that Mr. Rider has receive from animal advocacy organizations or others sympathetic to such groups.”). *See also* No. 03-2006, ECF 620 at 10 (“From March 2000 through the trial in 2009, this money was his only source of income and support.”). FEI first learned this fact at the ESA Action plaintiffs’ own deposition of Rider in October 2006. Ex. 26, Rider Dep. Excerpts (10-06), at 135-36. *See also* Ex. 2, Timeline of Key Rider Payment Facts.

- *Rider was not “travel[ing] the country”.* **FOF 49** (“While Mr. Rider has claimed that his media work has tracked the actual route of FEI’s Blue Unit, much of his claimed media work has actually been performed in the home of one of his daughters or at a campground in Florida, even though WAP’s cover letters to him and the ledger kept by WAP imply that Mr. Rider is traveling. ... Mr. Rider’s travels, as indicated by the locations where he has both received checks from WAP (DX 58A) and has actually spent the money (DX 52), does not

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correlate with the movements of FEI's Red or Blue Units ..."). *See also* No. 03-2006, ECF 620 at 10 ("Rider did not actually follow the circus ..."). Indeed, even the ESA Action plaintiffs conceded this point in their post-trial proposed findings of fact, which were signed by Meyer. No. 03-2006, ECF 533 at 32 (PFOF ¶ 57) ("Like others that do public relations work, Mr. Rider is not always physically in each city where he is doing his public education work, but is able to do that work over the phone or via email.") & 216 (Meyer signature; Glitzenstein and Crystal included on signature block). The following trial exhibits cited by the Court in Finding of Fact 49 were produced to FEI after February 16, 2006: DX 49 (unredacted); DX 52; DX 53; DX 58A. *See* Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 17, Comparison of WAP to Rider Ledger (DX 49).

- ***Rider was not "speaking out."*** **FOF 50** (Rider's "media" work was "episodic and noncontinuous. There appear to be a number of gaps in this activity lasting several weeks or months, including one such gap of more than nine months. ... Despite the irregular and sporadic nature of the media work, the payments and other financial support have come to Mr. Rider from WAP and the organizational plaintiffs or their counsel without interruption. ...[The] payments were only loosely, if at all, correlated to [Rider's "media"] efforts. Despite the irregular and sporadic nature of the media work, the payments and other financial support have come to Mr. Rider from WAP and the organizational plaintiffs or their counsel without interruption."). *See also* ECF 620 at 10 ("Rider did not actually follow the circus, nor did he perform significant media activity."). The following trial exhibits cited by the Court in Finding of Fact 50 were produced to FEI after February 16, 2006: DX 18R at 21-24, 27; DX 19 at 18-21; DX 20R at 32-35; DX 48A; DX 49 (unredacted); DX 50 (unredacted); DX 51; DX 53; DX 61; DX 63-67; DX 346.

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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.

FEI OBJECTION: See FEI OBJECTION to ¶ 25, *supra*.

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).

FEI OBJECTION: Paragraph 27 cites nothing for the proposition that Mary Lou Kelly and Gary Jacobson are "top officials" at FEI. *See also* FEI OBJECTION to ¶ 25, *supra*.

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.

FEI OBJECTION: See FEI OBJECTION to ¶ 25, *supra*.

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.

FEI OBJECTION: See FEI OBJECTION to ¶ 25, *supra*.

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.*

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FEI OBJECTION: See FEI OBJECTION to ¶ 25, *supra*.

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.

FEI OBJECTION: See FEI OBJECTION to ¶ 25, *supra*.

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").

FEI OBJECTION: See FEI OBJECTION to ¶ 25, *supra*.

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.

FEI OBJECTION: Approximately two (2) weeks after the email cited in paragraph 33 was sent, *Rider stated that he was "not employed by any animal welfare agency and he does not receive a paycheck."* MGC Ex. M (emphasis added). Further, Rider stated that "*no big group*" was funding him; "it's just private people donating money." *Id.* (emphasis added). Approximately eight (8) months after the email was sent, Rider stated under oath that he had not received any compensation from any animal advocate or animal advocacy organization for services rendered. That responses was "false." FOF 55-56; No. 03-2006, ECF 620 at 10-11.

Further, the November 2003 email cited in paragraph 33 does not state that:

- *By the time the email was sent, Rider had received more than \$ 36,000.00 in*

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payments and benefits from PAWS, MGC, WAP, ASPCA, AWI and FFA. DX 48A. In calendar year 2003 alone, he received from than \$10,000.00 in payments and benefits from ASPCA, MGC and WAP. *Id.* The amount, nature and circumstances of the funding provided by PAWS, MGC, WAP, ASPCA, AWI and FFA to or for Rider was first fully disclosed in response to Court order (No. 03-2006, ECF 178), on September 24, 2007. **FOF 57.** *See also* Ex. 2, Timeline of Key Rider Payment Facts; Ex. 4, Production Dates of Rider Payment Trial Exhibits.

- *By the time the email was sent, ASPCA, AWI and FFA all had received numerous legal invoices from counsel of record, MGC, showing shared and individualized charges for payments that MGC made to Rider.* **FOF 35;** DX 61. These payments were first disclosed pursuant to Court order (No. 03-2006, ECF 178) on September 24 & 26, 2007. *See* DX 61; DX 18R at 22-23; DX 19 at 20-21; DX 20R at 34-35; Ex. 4, Production Dates of Rider Payment Trial Exhibits.

- *The money provided to Mr. Rider was his sole source of income.* **FOF 21** (“At no point in the period after March 2000 has Mr. Rider held a job or had any source of income or financial support other than the money and other financial benefits that Mr. Rider has received from animal advocacy organizations or others sympathetic to such groups.”). *See also* No. 03-2006, ECF 620 at 10 (“From March 2000 through the trial in 2009, this money was his only source of income and support.”). FEI first learned this fact at the ESA Action plaintiffs’ own deposition of Rider in October 2006. Ex. 26, Rider Dep. Excerpts (10-06), at 135-36. *See also* Ex. 2, Timeline of Key Rider Payment Facts.

- *Rider was not “touring the country”.* **FOF 49** (“While Mr. Rider has claimed that his media work has tracked the actual route of FEI’s Blue Unit, much of his claimed media

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work has actually been performed in the home of one of his daughters or at a campground in Florida, even though WAP's cover letters to him and the ledger kept by WAP imply that Mr. Rider is traveling. ... Mr. Rider's travels, as indicated by the locations where he has both received checks from WAP (DX 58A) and has actually spent the money (DX 52), does not correlate with the movements of FEI's Red or Blue Units"). *See also* No. 03-2006, ECF 620 at 10 ("Rider did not actually follow the circus"). Indeed, even the ESA Action plaintiffs conceded this point in their post-trial proposed findings of fact, which were signed by Meyer. No. 03-2006, ECF 533 at 32 (PFOF ¶ 57) ("Like others that do public relations work, Mr. Rider is not always physically in each city where he is doing his public education work, but is able to do that work over the phone or via email.") & 216 (Meyer signature; Glitzenstein and Crystal included on signature block). The following trial exhibits cited by the Court in Finding of Fact 49 were produced to FEI after February 16, 2006: DX 49 (unredacted); DX 52; DX 53; DX 58A. *See* Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 17, Comparison of WAP to Rider Ledger (DX 49).

- ***Rider was not "lecturing in cities when a circus is performing there."*** FOF 50 (Rider's "media" work was "episodic and noncontinuous. There appear to be a number of gaps in this activity lasting several weeks or months, including one such gap of more than nine months. ... Despite the irregular and sporadic nature of the media work, the payments and other financial support have come to Mr. Rider from WAP and the organizational plaintiffs or their counsel without interruption. ...[The] payments were only loosely, if at all, correlated to [Rider's "media"] efforts. Despite the irregular and sporadic nature of the media work, the payments and other financial support have come to Mr. Rider from WAP and the organizational plaintiffs or their counsel without interruption."). *See also* ECF 620 at 10 ("Rider did not actually follow the

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circus, nor did he perform significant media activity.”). The following trial exhibits cited by the Court in Finding of Fact 50 were produced to FEI after February 16, 2006: DX 18R at 21-24, 27; DX 19 at 18-21; DX 20R at 32-35; DX 48A; DX 49 (unredacted); DX 50 (unredacted); DX 51; DX 53; DX 61; DX 63-67; DX 346. *See* Ex. 4, Production Dates of Rider Payment Trial Exhibits.

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.

FEI OBJECTION: The organizational plaintiff provided FEI with nothing on June 9, 2004 indicating that any of the organizations were, at the time, paying Rider anything. Indeed, they deliberately concealed that fact. On June 9, 2004, the ESA Action plaintiffs provided their first set of responses to defendant Feld Entertainment’s interrogatories and document requests. “As the lead attorney for the litigation, [Meyer] was ultimately responsible for supervising the plaintiffs’ discovery responses” No. 03-2006, ECF 599-2 (Meyer Attorneys’ Fees Decl.), ¶ 69. By the date of the ESA Action plaintiffs’ June 9, 2004 discovery responses, Rider “had received more than \$50,000.00 from PAWS, MGC, ASPCA, AWI, FFA and WAP.” **FOF 55.** *See also* DX48A. However, as set forth below, in their June 9, 2004 discovery responses, Rider “lied” about the payments and the organizational plaintiffs “concealed the payments from FEI, in whole or in part, by providing misleading or incomplete information to FEI” No. 03-2006, ECF 620 at 10-11. *See also* Ex. 2, Timeline of Key Rider Payment Facts.

- ***Rider “lied about the payments” in his June 9, 2004 interrogatory responses.*** No. 03-2006, ECF 620 at 10. Interrogatory No. 24 “asked whether Mr. Rider had received any compensation from any animal advocate or animal advocacy organization for services rendered.”

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FOF 55. “Mr. Rider stated—under oath—that ‘I have not received any such compensation.’” *Id.* (quoting DX 16 at 12). “This statement was false.” *Id.* See also No. 03-2006, ECF 620 at 42 (‘Rider lied when answering FEI’s 2004 interrogatory asking whether he had received any compensation from any animal advocate or animal advocacy organization for services rendered.’). There was “no excuse for this false response,” because “[t]he lawyer who signed the objections to this answer, Katherine Meyer, DX 16 at 13, was a principal in two of the entities – WAP and MGC – that had paid Mr. Rider and had sent him 1099’s reporting such payments. ... [I]t was apparently Ms. Meyer’s suggestions that the other organizational plaintiffs pay Mr. Rider, initially through MGC and later through WAP.” **FOF 56.** See also No. 03-2006, ECF 620 at 42 (“[T]he record clearly and convincingly established that Ms. Meyer, who signed the objections to the false response, had been paying Rider through her law firm and WAP since 2001, and had been paying Rider through her law firm and WAP since 2001, and had sent him IRS Form 1099s reporting the payments as compensation.”). **Meyer and MGC were sanctioned pursuant to 28 U.S.C. § 1927 for assisting Rider with preparing Rider’s June 9, 2004 “affirmatively false” response to Interrogatory No. 24.** *Id.*

- ***All of the organizational plaintiffs failed to disclose the direct and indirect payments to or for Rider which they had made at that point in time in their interrogatory responses.*** The organizational plaintiffs were asked to identify “each resource you have expended from 1997 to present in ‘advocating better treatment for animals held in captivity’ and “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.” See, e.g., DX 18R at 6 & 10. “In response to FEI’s discovery requests, neither ASPCA, FFA, nor AWI disclosed in their initial responses in 2004 that they had paid money

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directly to Mr. Rider or through MGC when, by that point in time, they had in fact done so. In 2004, ASPCA made reference to the fact that payments had been made to MGC and WAP, although ASPCA did not disclose that such payments were ultimately remitted to Mr. Rider.”

FOF 57. Compare DX 18R at 19 (6-9-04) (“In 2001, the ASPCA gave The Wildlife Advocacy Project a grant for \$7,400 for public education about Ringling Bros.’s mistreatment of Asian elephants.”) with *id.* at 22 (9-26-07) (“In December 2011, the ASPCA provided a \$6,000.00 grant to the Wildlife Advocacy Project ... and understood that these funds would be used for Mr. Rider’s media and public education advocacy.”).¹

The ESA Action plaintiffs first provided complete interrogatory responses concerning the Rider payments pursuant to Court order (No. 03-2006, ECF 178) on September 24 & 26, 2007. Compare DX 16 at 12 (6-9-04) with *id.* at 25-28 (9-24-07); compare DX 18R at 6-11 (6-9-04) with *id.* at 21-24 (9-26-07); compare DX 19 at 6-8 (6-9-04) with *id.* at 18-21 (9-24-07); compare DX 20R at 12-19 (6-9-04) with *id.* at 32-35 (9-24-07). All of the ESA Action plaintiffs’ June 9, 2004 interrogatory responses were signed by Meyer. DX 16 at 13; DX 18R at 12; DX 19 at 8; DX 20R at 20.

- ***Rider’s June 9, 2004 Document Production.*** Rider was requested to produce documents concerning his “sources of income” and “any payments or gifts in money or good made by any animal advocates or animal advocacy organizations to you” Ex. 11, FEI’s Document Requests to Rider, Nos. 20-21. Rider, through his counsel, MGC, produced only *one* document that conceivably could have concerned direct or indirect payments made to him, even

¹ ASPCA’s June 9, 2004 interrogatory response was incorrect. Pursuant to Court order (No. 03-2006, ECF 178), ASPCA corrected its June 9, 2004 interrogatory response and its July 2005 deposition testimony regarding its “grant” to WAP and stated that it made only a \$6,000.00 grant to WAP in 2001 on September 26, 2007. DX 18R at 13 n.2 (“In its original interrogatory responses and at Ms. Weisberg’s July 2005 deposition, the ASPCA stated that it had given the Wildlife Advocacy Project a grant in 2001 in the amount of \$7,400.00. ... In conducting further investigations on this matter, the ASPCA has determined that the total amount of the grant in 2001 was \$6,000”).

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though he had received in excess of \$50,000.00 by that point in time. **FOF 55**. The document produced was a letter from Rider to PAWS indicating that he “quit” his “security job” at PAWS. Ex. 12, Payment Documents Produced on June 9, 2004 (TR 00001) (DX 39). But Rider simultaneously negated any significance of that letter by failing to include PAWS as one of his employers in his June 9, 2004 answer to Interrogatory No. 2. DX 16 at 5-6. Furthermore, Rider, through his counsel, MGC, did not produce, *inter alia*: an IRS Form 1099 issued to Rider by PAWS for calendar year 2000 (DX 56); an IRS Form W-2 issued by PAWS to Rider for calendar year 2001 (DX 57); an MGC IRS Form 1099, for calendar year 2001 (DX 55); and WAP IRS Forms 1099 for calendar years 2002 and 2003 (DX 54). Rider first produced these documents pursuant to Court order (No. 03-2006, ECF 178) on September 24, 2007. *See* Ex. 4, Production Dates of Rider Payment Exhibits.

- ***Organizational Plaintiffs’ June 9, 2004 Document Productions.*** The organizational plaintiffs were requested to produce “[d]ocuments sufficient to show all resources you have expended in advocating better treatment for animals held in captivity” and “[a]ll documents that refer, reflect, or relate to any expenditure by you of ‘financial and other resources’ made while pursuing alternative sources of information about defendants’ actions and treatment of elephants.” Ex. 9, FEI’s Document Requests to the Org. Pls.

The ESA Action organizational plaintiffs objected to Request Nos. 19 & 20 on the grounds that, *inter alia*, the requests: ***“would require the disclosure of invoices received by Meyer & Glitzenstein, which describe work performed in connection with ASPCA v. Ringling Bros, Civ. Nos. 00-161 [sic], 03-2006, and ASPCA v. USDA, Civ. No. 01-2628, and hence are protected by the attorney-work product privilege.”*** Ex. 10, Org. Pls. Resp. to FEI’s Document Requests, at 12-13 (emphasis added). This objection was signed by Meyer. *Id.* at 20. Two

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years later, in 2006, in correspondence to FEI, Meyer repeated that “plaintiffs have no ‘non-privileged portions of the invoices from [our] firm that reflect monies filtered through it for payments to Mr. Rider.’” No. 03-2006, ECF 127-7. Further, in 2007, Meyer repeatedly stated in briefing and correspondence that the ESA Action plaintiffs had produced all documents reflecting payments “directly to Mr. Rider and to the Wildlife Advocacy Project.” These statements by Meyer all omitted the payments made to Rider through her own law firm. ECF 127-5 at 8-9 & 11; ECF 127-11 at 3; ECF 132 at 15; ECF 141-1 at 3 n.1 & 4; ECF 156 at 4-5. *Nearly sixty (60) pages of non-privileged portions of invoices from MGC to ASPCA, AWI and FFA, dated 2001-2003 for payments to Rider (DX 61) existed and were first produced pursuant to Court order on September 24 & 26, 2007.* See Ex. 4, Production Dates of Rider Payment Exhibits.

ASPCA: On June 9, 2004, ASPCA only produced the following four (4) documents reflecting the more than \$14,000 of direct and indirect payments that it had made to or for Rider – directly, through MGC and through WAP. Compare DX 18R at 6-11 (6-9-04) with *id.* at 21-24. See also DX 48A; DX 49; DX 61; DX 209.

- ***Weisberg Email to Hawk (5-7-01) (A 00046) (MGC Ex. W) (DX 46)***: “In order to follow the circus [Mr. Rider] cannot be employed. To pay his travel expenses for the next few months both AWI and the Fund (and us, by Nancy) have agreed to pay \$1,000 each to cover 2 months of on the road expenses.” (emphasis added). The Court already has determined that this document did not trigger the RICO statute of limitations as to any defendant. No. 07-1532, ECF 90 at 24-29.

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- ***Weisberg Email to Hawk (1-29-02) (A 00073) (MGC Ex. X)***: “Tom [sic] has been doing some impressive p.r. work for us The commitment and sacrifice this guy has made for the last year is truly impressive. 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.”
- ***ASPCA Check Request (4-4-02) (A 00884) (MGC Ex. Y)***: “Reimbursement for money given to Tom Rider exceeding the \$6,000 grant to Wildlife Advocacy Project for 1st quarter 2002. \$400 of this covers zoom camera – charged to capital budget?”; \$526.16.
- ***ASPCA Check Request (5-23-03) (A 00886) (MGC Ex. Z)***: “Tom Rider testimony at MA legislative hrg on anti-circus bill”; \$445.00.

Ex. 12, Payment Documents Produced on June 9, 2004.

In addition to the documents described above, ASPCA’s June 9, 2004 document production included other check requests and documents evidencing payments to MGC. These check requests did not reference Rider (or payments to or for him). *See* Ex. 13, Additional ASPCA Check Requests Produced on June 9, 2004. *See also* MGC Ex. AA (ASPCA check request for “Ringling Bros. Media Support”) (included in Ex. 13 hereto).

AWI: AWI’s June 9, 2004 production included only one (1) document reflecting the \$5,000.00 in payments that, by that point in time, it already had made to or for Rider directly, through MGC and through WAP. *Compare* DX 19 at 6-8 (6-9-04) *with id.* at 18-21 (9-24-07). *See also* DX 48A; DX 49; DX 61.

- ***AWI Internal Email (6-13-01) (AWI 01832) (MGC Ex. V)*** (Ex. 12, Payment Documents Produced on June 9, 2004): “But Ryder [sic] disagrees, join with the animal

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activists who finance his travels in filing a lawsuit against the circus.”

FFA: FFA’s June 9, 2004 production only included one (1) document reflecting the more than \$4000.00 in payments that, by that point in time, it already had made to or for Rider through MGC. *Compare* DX 20R at 12-19 (6-9-04) *with id.* at 32-35. *See also* DX 48A; DX 49; DX 61.

- ***Grant/Funding Proposal (12/11/03) (F 01945-947)*** (Ex. 12, Payment Documents Produced on June 9, 2004): “With some very minimal grass-roots support, Mr. Rider has been touring the country for the past two years, staying just ahead of Ringling, doing media interviews and television spots on the subject, and assisting grass-roots groups in educating the public about the issue. ... He has no funds of his own and is not employed by any group. ... The \$10,000 requested would fund this public education effort for the year 2004. Funds would be spent principally on transportation, lodging, meals, phone expenses, and other administrative and out-of-pocket costs for Mr. Rider to continue these efforts.” (emphasis added).

Summary of Documents Produced on June 9, 2004 (Ex. 12): None of the documents produced on June 9, 2004 indicated any current funding of Rider. Furthermore, none of the documents produced on June 9, 2004 revealed what was later revealed at trial: (1) Rider had been receiving regular and systematic payments from the organizational plaintiffs, MGC and WAP since 2001, and not episodic and/or intermittent reimbursements of expenses for specific “media” work (**FOF 21, 41 & 48**); (2) the payments were Rider’s sole source of income (**FOF 21**); (3) the payments funded Rider’s day-to-day living expenses (**FOF 43**); (4) the payments were not reimbursements for expenses actually incurred by Rider (**FOF 44**); (5) Rider was not paying income taxes on the payments (**FOF 58**); (6) Rider was not actually following the circus

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(FOF 49); (7) the payments were “only loosely, if at all, correlated” to Rider’s “media” work **(FOF 50)**; (8) the payments were “directly linked to the litigation” **(FOF 51)**; and (9) the primary purpose of the payments was for Rider’s participation and testimony in the ESA Action **(FOF 1, 53 & 59)**. *See also* No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”); **FEI OBJECTION** to ¶ 8 (production dates of documents and testimony cited in Findings of Fact, *supra*).

To the contrary, the documents produced on June 9, 2004 indicated that (1) Rider actually had been traveling, MGC Ex. W (“In order to follow the circus [Mr. Rider] cannot be employed.”) & Ex. 12, Payment Documents Produced on June 9, 2004 (F 01945-947) (“Mr. Rider has been touring the country for the past two years, staying just ahead of Ringling”); (2) Rider actually had been doing specific media work and/or engagement, MGC Ex. X (“Tom [sic] has been doing some impressive p.r. work for us”) & Ex. 12 Payment Documents Produced on June 9, 2004 (F 01945-947) (“Mr. Rider has been ... doing media interviews and television spots on the subject, and assisting grass-roots groups in educating the public.”); and (3) the payments had been reimbursements for specific “media” work, and not general payments for all of Rider’s day-to-day living expenses, MGC Ex. Z (expenses for trip to Massachusetts where Rider was to provide testimony) & Ex. 12, Payment Documents Produced on June 9, 2004 (F 01945-947) (“Funds would be spent principally on transportation, lodging, meals, phone expenses, and other administrative and out-of-pocket costs for Mr. Rider to continue these efforts.”). All of these impressions were false as was later revealed at trial. Further, although the WAP grant letter (Ex. 12, Payment Documents Produced on June 9, 2004) (F 01945-947) indicated that \$10,000 would “fund [Rider’s] public education effort for the year 2004,” Rider actually was paid close to \$24,000.00 in “compensation” by WAP that calendar year. DX 54 at 3

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(WAP 2004 IRS Form 1099) (*produced by WAP on 6-30-06*). Ex. 4, Production Dates of Rider Payment Trial Exhibits.

Public Statements By Rider: Prior to plaintiffs' June 9, 2004 discovery responses, Rider publicly stated – twice – that he was not receiving funding from any animal rights and/or welfare organizations. *See* MGC Ex. M (PL 05961) (news article dated 11-20-03) (“He insists that he is not employed by any welfare agency and he does not receive paycheck. ‘This year, its’ just private people donating money. No big group is even funding me this year.’ Rider states that he received a \$5000 donation from a private individual, which he has been using since June.”); MGC Ex. U (API 5716) (news article dated 1-11-04) (“He said he doesn’t receive money at this time from any animal groups but does receive money from a private individual in California, whom he declined to name.”). The MGC defendants do not claim that any of them was the “private individual” referenced in Rider’s statements.

Rider made one public statement in 2002 indicating that “ASPCA pays his expenses for traveling,” including “hotels, bus fare, meals, a new set of luggage, and other business expenses.” MGC Ex. I. Among other things, that statement did not indicate that (1) Rider had received payments from all of the current and former organizational plaintiffs (PAWS, AWI, FFA) directly or through MGC (**FOF 48**; DX 48A); (2) ASPCA, AWI and FFA all had received numerous legal invoices (collectively twenty-two (22)) from counsel of record, MGC, showing shared and individual charges for payments that MGC made to Rider (**FOF 35**; DX 61); and (3) ASPCA made a “grant” to the 501(c)(3) run by plaintiffs’ counsel, WAP, which then deposited them in an “account payable provided those funds to Mr. Rider. DX 209 (IC 196 / A -1254) (“12/26/01 Payment to account towards Tom Rider expenses”); ECF 325 at 9 (describing IC 193-97 as “Invoice from Meyer Glitz including split bill information, payment to account

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towards Tom Rider's expenses ...").

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.

FEI OBJECTION: *See* **FEI OBJECTION** to ¶ 34, *supra*.

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.

FEI OBJECTION: *See* **FEI OBJECTION** to ¶ 34, *supra*.

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.

FEI OBJECTION: *See* **FEI OBJECTION** to ¶ 34, *supra*.

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.

FEI OBJECTION: *See* **FEI OBJECTION** to ¶ 34, *supra*.

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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.

FEI OBJECTION: MGC Ex. AA does not reference Rider, nor does it indicate that ASPCA, AWI and FFA were all being invoiced by MGC for “shared” and individual payments to or for Rider. **FOF 35**; DX 61. *See also* **FEI OBJECTION** to ¶ 34, *supra*.

Further, at the Rule 30(b)(6) deposition of ASPCA on July 19, 2005, Ms. Weisberg specifically testified as follows with regard to MGC Ex. AA, which was marked as Exhibit 6 to the deposition:

Q: ... What services were included in this media support that the funds were going to pay for?

A: Again, I believe it was for the dissemination of the report, copies and dissemination of the report to the media.

Q: So this specific check request was also in regards to the enforcement report?

A: Yes.

Q: So there were no other media support efforts separate from the enforcement report that were compensated through this check request?

A: I don't believe so.

Q: Were any of the services provided in this media support provided by Tom Rider?

A: Yes.

...

Q: Do you know if any of the funds provided in this check went to Mr. Rider as compensation for those efforts?

A: Some of the copies of the report may have been given to Mr. Rider to accompany his visits to the media.

Q: But that's the only type of compensation that was provided to Mr. Rider through this?

A: Correct.

Ex. 25, ASPCA Dep. Excerpts at 41-42 (emphases added).

Ms. Weisberg's testimony was false. The \$500.00 requested by MGC AA (Deposition Exhibit 6) was “compensation” for Rider's role as a plaintiff in the ESA Action, not for “copies and dissemination” of the enforcement report. **FOF 1, 35, 53 & 59**. *See also* DX 61 at 15 (A

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01220) (11/19/03; “Media expenses for Tom Rider in Ringling Brothers case.”; \$500.00). Directly contrary to Ms. Weisberg’s testimony, the money was reported on tax forms as “compensation.” **FOF 55**. *See also* DX 54-57.

Further, ASPCA’s Court ordered (No. 03-2006, ECF 178) and sworn interrogatory responses, contracted ASPCA’s own sworn Rule 30(b)(6) deposition testimony by stating that the funds requested by by MGC AA (Deposition Exhibit 6) were for Rider’s “living expenses”, not for “copies and dissemination” of the enforcement report: “*All of the funds that the ASPCA provided to Mr. Rider were for living expenses* in connection with his important advocacy efforts as he traveled throughout the country on behalf of the elephants In 2003, the ASPCA provided approximately \$1,045.00 for Mr. Rider ‘s media and public education advocacy through reimbursements to Meyer & Glitzenstein. These funds are reflected in documents being produced by the ASPCA. *See A 1218-1220.*” DX 18R at 21 (emphases added).

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.

FEI OBJECTION: “In response to FEI’s discovery requests, neither ASPCA, FFA, nor AWI disclosed in their initial responses in 2004 that they had paid money directly to Mr. Rider or through MGC when, by that point in time, they had in fact done so. *In 2004, ASPCA made reference to the fact that payments had been made to MGC and WAP, although ASPCA did not disclose that such payments were ultimately remitted to Mr. Rider.*” **FOF 57** (emphasis

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added). ASPCA first disclosed that its payment to WAP was for Rider in its Court ordered (No. 03-2006, ECF 178) interrogatory responses dated *September 26, 2007*. Compare DX 18R at 19 (6-9-04) (“In 2001, the ASPCA gave The Wildlife Advocacy Project a grant for \$7,400 for public education about Ringling Bros.’s mistreatment of Asian elephants.”) *with id.* at 22 (9-26-07) (“In December 2011, the ASPCA provided a \$6,000.00 grant to the Wildlife Advocacy Project ... and understood that these funds would be used for Mr. Rider’s media and public education advocacy.”).

Further, ASPCA’s June 9, 2004 interrogatory response was incorrect. Pursuant to Court order (No. 03-2006, ECF 178), ASPCA corrected its June 9, 2004 interrogatory response and its July 2005 deposition testimony regarding its “grant” to WAP and stated that it made only a \$6,000.00 grant to WAP in 2001 on September 26, 2007. DX 18R at 13 n.2 (“In its original interrogatory responses and at Ms. Weisberg’s July 2005 deposition, the ASPCA stated that it had given the Wildlife Advocacy Project a grant in 2001 in the amount of \$7,400.00. ... In conducting further investigations on this matter, the ASPCA has determined that the total amount of the grant in 2001 was \$6,000 ...”).

Further, ASPCA’s June 9, 2004 interrogatory response did not indicate that ASPCA’s \$6,000.00 “grant” to WAP was deposited into an “account towards Tom Rider expenses” that was maintained by MGC and reflected on MGC invoices to ASPCA. The MGC invoice matches up to disbursements made by WAP to or for Rider. Compare DX 209 (IC 196 / A - 1254) *with* DX 49. The unredacted ledger was first produced on June 30, 2006 and the invoice demonstrating that the “grant” money was deposited into an “account towards Tom Rider expenses” was produced pursuant to Court order (ECF 325) on August 11, 2008. See DX 209 at 44 (IC 196 / A -1254); ECF 325 at 9 (describing IC 193-97 as “Invoice from Meyer Glitz

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including split bill information, payment to account towards Tom Rider's expenses"); Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 17, Comparison of WAP to Rider Ledgers.

See also **FEI OBJECTION** to ¶ 34, *supra*.

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.

FEI RESPONSE: Admitted.

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.

FEI OBJECTION: The payment of Rider's "living and traveling expenses" is not the equivalent of (nor is it inquiry notice of) the MGC defendants' alleged racketeering conduct (bribery and illegal gratuity payments, obstruction of justice, money laundering and mail and wire fraud). In certain circumstances the payment of a client's living and travel expenses is permitted. 18 U.S.C. § 201(d); D.C. RULE OF PROF'L CONDUCT 1.8(d)(2). *See also* No. 03-2006, ECF 599 at 33 (ESA Action plaintiffs arguing that Rule 1.8(d)(2) authorized them to pay Rider's living expenses). Providing a payment or benefit to a witness for or because of testimony, however, is an illegal gratuity. § 201(c). Corruptly providing a witness with a payment or benefit with intent to influence the testimony is a bribe. § 201(d).

Paragraph 42 selectively cites ASPCA's testimony. ASPCA further testified:

Q. And what was that money spent on?

A: It was spent on Tom Rider's *speaking with the media across the country* and gathering additional information about the treatment of the elephants by Ringling Bros.

Q: When you say gathering additional information about the treatment of elephants by Ringling Bros., what do you mean?

A: Well, he would try to see the elephants, he would note their despondent state,

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their _ performance of unnatural acts and *basically do public education*, testify at hearings in support of legislation to ban exotic animals in traveling acts.”

Ex. 25, ASPCA Dep. Excerpts at 34-35 (emphases added).

ASPCA’s testimony did not indicate that (1) Rider had been receiving regular and systematic payments from the organizational plaintiffs, MGC and WAP since 2001, and not episodic and/or intermittent reimbursements of expenses for specific “media” work and/or engagements (**FOF 21, 41 & 48**); (2) the payments were Rider’s sole source of income (**FOF 21**); (3) the payments funded Rider’s day-to-day living expenses (**FOF 43**); (4) the payments were not reimbursements for expenses actually incurred by Rider (**FOF 44**); (5) Rider was not paying income taxes on the payments (**FOF 58**); (6) Rider was not actually following the circus (**FOF 49**); (7) the payments were “only loosely, if at all, correlated” to Rider’s “media” work (**FOF 50**); (8) the payments were “directly linked to the litigation” (**FOF 51**); and (9) the primary purpose of the payments was for Rider’s participation and testimony in the ESA Action (**FOF 1, 53 & 59**). *See also* No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”); **FEI OBJECTION** to ¶ 8 (production dates of documents and testimony cited in Findings of Fact, *supra*).

To the contrary, ASPCA’s testimony indicated that Rider (1) was “speaking with the media” and/or doing “public education” (Ex. 25, ASPCA Dep. Excerpts at 34-35) and (2) actually traveling “across the country” (*id.*).

Further, neither ASPCA nor Rider disclosed the payments described in Paragraph 42 in their June 9, 2004 discovery responses. The payments were first disclosed by Rider and ASPCA in their Court ordered (No. 03-2006, ECF 178) discovery responses dated *September 24 & 26, 2007*. *Compare* DX 16 at 12 (6-9-04) *with id.* at 25-28 (9-24-07); *compare* DX 18R at 6-11 (6-

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9-04) *with id.* at 21-24 (9-26-07). See **FEI OBJECTION** to ¶ 34, *supra*.

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.

FEI OBJECTION: Contrary to ASPCA’s testimony, Rider was not engaged in “public outreach efforts” nor was he “speaking with the media.” **FOF 50**. See also No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”). The payments were for Rider’s participation as a plaintiff in the ESA Action. **FOF 1, 53, 69**. See also **FEI OBJECTION** to ¶ 42, *supra*.

Further, neither ASPCA nor Rider disclosed the payments described in Paragraph 43 in their June 9, 2004 discovery responses. The payments were first disclosed by Rider and ASPCA in their Court ordered (No. 03-2006, ECF 178) discovery responses dated *September 24 & 26, 2007*. Compare DX 16 at 12 (6-9-04) *with id.* at 25-28 (9-24-07); compare DX 18R at 6-11 (6-9-04) *with id.* at 21-24 (9-26-07). See **FEI OBJECTION** to ¶ 34, *supra*.

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.

FEI OBJECTION: Rider did not perform “media” work. **FOF 50**. See also No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”); **FEI OBJECTION** to ¶ 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.

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FEI OBJECTION: See **FEI OBJECTION** to ¶ 47, *infra*.

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.

FEI OBJECTION: Paragraph 46 selectively quotes ASPCA’s testimony. Ms.

Weisberg further testified as follows:

Q: And the check request for \$526.16 is additional funding the original allotment in the budget for this project?

A: Correct.

Q: And \$400 of this was for a zoom camera?

A: Yes.

Q: Was the zoom camera to be used by Mr. Rider?

A: Yes.

Q: And for what purpose was the zoom camera to be used by him?

A: To gather additional information about the treatment and chaining of the elephants by Ringling Bros.

Q: What other activities were covered in the \$6,000 grant?

A: They were to reimburse Tom Rider for his general living expenses to travel the country and meet with the media.

...

Q: Returning to Exhibit 7. So if you could tell me – if you could go into more detail as to what the \$6,000 grant originally was for.

A: Again, it was to reimburse Mr. Rider for his Greyhound bus tickets, to travel the country, basic day-to-day living expenses, food, lodging.

Q: And this was all provided through the Wildlife Advocacy Project.

A: Correct.

...

Q. What in particular was the \$7,400 a payment for?

A: It was to reimburse Mr. Rider for his travel and general living expenses as he toured the country speaking with the media.

...

BY MS. OCKENE:

Q. And turning to – actually I have another question on that. And you earlier stated that the funds that were provided to the Wildlife Advocacy Project were used to support Tom Rider’s travel expenses, his media outreach efforts, his public education efforts?

A: Correct.

Q: Are you aware whether the money that went to the Wildlife Advocacy Project might have been used for other things other than simply for Tom Rider’s efforts?

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A: I assumed it was for Tom Rider's efforts.

Q: Do you know if it could also have been used to support Ms. Darcy Kemnitz' [sic] position, for example?

A: It may have been It may have gone towards whatever salary she got working on behalf of the Project.

Ex. 25, ASPCA Dep. at 45-47 & 228-29.

ASPCA's testimony did not indicate that ASPCA's \$6,000.00 "grant" to WAP was deposited into an "account towards Tom Rider expenses" that was maintained by MGC and reflected on MGC invoices to ASPCA. Nor did Ms. Weisberg's testimony indicate that the MGC invoice matched up to WAP's ledger of disbursements to Rider. *Compare* DX 209 at 44 (IC 196 / A -1254) *with* DX 49.

Further, ASPCA's testimony did not indicate that (1) Rider had been receiving regular and systematic payments from the organizational plaintiffs, MGC and WAP since 2001, and not episodic and/or intermittent reimbursements of expenses for specific "media" work and/or engagements (**FOF 21, 41 & 48**); (2) the payments were Rider's sole source of income (**FOF 21**); (3) the payments funded Rider's day-to-day living expenses (**FOF 43**); (4) the payments were not reimbursements for expenses actually incurred by Rider (**FOF 44**); (5) Rider was not paying income taxes on the payments (**FOF 58**); (6) Rider was not actually following the circus (**FOF 49**); (7) the payments were "only loosely, if at all, correlated" to Rider's "media" work (**FOF 50**); (8) the payments were "directly linked to the litigation" (**FOF 51**); and (9) the primary purpose of the payments was for Rider's participation and testimony in the ESA Action (**FOF 1, 53 & 59**). *See also* No. 03-2006, ECF 620 at 10 ("Rider did not actually follow the circus, nor did he perform significant media activity."); **FEI OBJECTION** to ¶ 8 (production dates of documents and testimony cited in Findings of Fact, *supra*).

To the contrary, ASPCA's testimony indicated that (1) the "grant" money was intended

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to be a “reimbursement” for Rider’s expenses (Ex. 25, ASPCA Dep. Excerpts at 46-47 & 85); (2) Rider was “tour[ing] the country” (*id.* at 46-47 & 85); (3) Rider was “speaking with the media” (*id.* at 46-47 & 85); and (4) the WAP “grant” money may have been used to support “other things other than simply [*sic*] Tom Rider’s efforts” (*id.* at 229-29).

ASPCA’s payments to WAP and MGC, described in paragraph 46, were not disclosed as being for Rider’s benefit in its June 9, 2004 interrogatory responses. **FOF 57**. That ASPCA’s payments to WAP and MGC were intended for Rider was first disclosed pursuant to Court order (No. 03-2006, ECF 178) on **September 26, 2007**. Compare DX 18R at 6-11 (6-9-04) with *id.* at 21-24 (9-26-07). Further, Rider did not disclose his receipt of ASPCA’s payments (through WAP and MGC) in his June 9, 2004 interrogatory responses. See **FEI OBJECTION** to ¶ 34, *supra*.

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.

FEI OBJECTION: ASPCA’s testimony that Meyer and Glitzenstein were “involved in operating WAP” and “housed in the same office as Meyer & Glitzenstein” did not indicate that Meyer and Glitzenstein “controlled” WAP. No. 03-2006, ECF 620 at 10.

ASPCA’s testimony did not indicate that ASPCA’s \$6,000.00 “grant” to WAP was deposited into an “account towards Tom Rider expenses” that was maintained by MGC and reflected on MGC invoices to ASPCA. Nor did Ms. Weisberg’s testimony indicate that the MGC invoices matched up to WAP’s ledger of disbursements to Rider. Compare DX 209 at 44 (IC 196 / A 1254) (*produced by ASPCA on 8-11-08*) with DX 49 (*produced in unredacted form*

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by WAP on 6-30-06). Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex.17, Comparison of WAP to Rider Ledgers (DX 49).

ASPCA's testimony did not indicate that Meyer solicited funds from ASPCA, AWI and FFA on behalf of WAP using her MGC email account. DX 65 (*produced by WAP on 6-30-06*). Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 15, WAP 9-29-05 Privilege Log at 33 (withholding production of DX 65 in its entirety on First Amendment grounds). See also **FEI OBJECTION** to ¶ 5, *supra* (Proposed Counterclaim ¶¶ 39 & 120).

ASPCA's testimony did not indicate that nearly all of WAP's "disbursements relating in any fashion to elephants, Tom Rider, Ringling Brothers of the lawsuit" were for Rider. Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 6, WAP Production Letters (9-29-05); Ex. 17, Comparison of WAP to Rider Ledgers (DX 49) (*produced by WAP in unredacted form on 6-30-06*).

ASPCA's testimony did not indicate that "WAP's payments to Rider were sent by MGC via Federal Express;" the "support staff from MGC prepared the Federal Express envelopes to Mr. Rider;" and the "expense for the mailing is paid for by MGC." **FOF 42**.

ASPCA's testimony did not indicate that MGC made a payment to Rider and then was reimbursed for that payment from WAP. See Ex. 17, Comparison of WAP to Rider Ledger (DX 49) (*produced in unredacted form by WAP on 6-30-06*); Ex. 21, WAP Check to MGC (*produced on 7-20-06*). See also **FEI OBJECTION** to ¶ 5, *supra* (Proposed Counterclaim ¶ 119).

ASPCA's testimony did not indicate that WAP existed primarily as a filter for illegal witness payments to Rider. Compare DX 54 at 4 (2005 IRS Form 990 issued to Rider by WAP, reporting \$33,600.00 in "nonemployee compensation") (produced by WAP on 6-30-06) with

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Ex. 30, WAP 2005 Form 990 (reporting **\$31,893.00** in revenue, expenses and changes in net assets or fund balances).

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.

FEI OBJECTION: Contrary to ASPCA’s testimony, Rider did not engage in “public outreach and education.” **FOF 50**. See also No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”). The payments were for Rider’s participation as a plaintiff in the ESA Action. **FOF 1, 53, 59**. See also **FEI OBJECTION** to ¶ 46, *supra*.

Further, neither ASPCA nor Rider disclosed the payments described in Paragraph 48 in their June 9, 2004 discovery responses. The payments were first disclosed by Rider and ASPCA in their Court ordered (No. 03-2006, ECF 178) discovery responses dated **September 24 & 26, 2007**. Compare DX 16 at 12 (6-9-04) with *id.* at 25-28 (9-24-07); compare DX 18R at 6-11 (6-9-04) with *id.* at 21-24 (9-26-07). See **FEI OBJECTION** to ¶ 34, *supra*.

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.

FEI OBJECTION: Contrary to ASPCA’s testimony, Rider did not engage in media work. **FOF 50**. See also No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”). The payments were for Rider’s participation as a plaintiff in the ESA Action. **FOF 1, 53, 59**. See also **FEI OBJECTION** to ¶ 46, *supra*.

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Further, neither ASPCA nor Rider disclosed the payments described in Paragraph 49 in their June 9, 2004 discovery responses. The payments were first disclosed by Rider and ASPCA in their Court ordered (No. 03-2006, ECF 178) discovery responses dated *September 24 & 26, 2007*. Compare DX 16 at 12 (6-9-04) with *id.* at 25-28 (9-24-07); compare DX 18R at 6-11 (6-9-04) with *id.* at 21-24 (9-26-07). See **FEI OBJECTION** to ¶ 34, *supra*.

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 Wildlife Advocacy Project.” MGC Ex. EE at 46.

FEI OBJECTION: Contrary to ASPCA’s testimony, Rider did not “travel the country and meet with media.” **FOF 49-50**. See also No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”). Contrary to Ms. Weisberg’s testimony, the payments were not “reimburse[ments].” **FOF 44**. The payments were for Rider’s participation as a plaintiff in the ESA Action. **FOF 1, 53, 59**. See also **FEI OBJECTION** to ¶ 46, *supra*.

Further, neither ASPCA nor Rider disclosed the payments described in Paragraph 48 in their June 9, 2004 discovery responses. The payments were first disclosed by Rider and ASPCA in their Court ordered (No. 03-2006, ECF 178) discovery responses dated *September 24 & 26, 2007*. Compare DX 16 at 12 (6-9-04) with *id.* at 25-28 (9-24-07); compare DX 18R at 6-11 (6-9-04) with *id.* at 21-24 (9-26-07). See **FEI OBJECTION** to ¶ 34, *supra*.

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.

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FEI OBJECTION: Contrary to ASPCA's testimony, the payments were for Rider's participation as a plaintiff in the ESA Action. **FOF 1, 53, 59.** See also **FEI OBJECTION** to ¶ 46, *supra*.

Further, paragraph 51 selectively quotes Ms. Weisberg's testimony. Ms. Weisberg specifically testified as follows with regard to MGC Ex. Z, which was marked as Exhibit 8 to the deposition:

Q: And this is another check request requested by you for the check made payable to Meyer & Glitzenstein for, quote, 'Tom Rider testimony at Mass. legislative hearing on anticircus bill,' correct?

A: Correct.

Q: Why did the ASPCA reimburse Mr. Rider for this testimony?

A: That covered his transportation and hotel costs to get to Massachusetts, to get to Boston to testify at the hearing.

Q: Why did the ASPCA not reimburse Mr. Rider directly for his work on this project?

A: At the time, we 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.

...

Q: Have any other payments from the ASPCA to Meyer & Glitzenstein included funds that were intended to go to Mr. Rider?

A: No.

Ex. 25, ASPCA Dep. Excerpts at 48-49.

ASPCA's testimony was false. ASPCA produced **fifteen (15) total pages** of invoices for payments by ASPCA to Rider through MGC pursuant to Court order (No. 03-2006, ECF 178) on ***September 26, 2007***. DX 61; Ex. 4, Production Dates of Rider Payment Trial Exhibits.

See also **FEI OBJECTION** to ¶ 34, *supra*.

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.

FEI OBJECTION: Contrary to ASPCA's testimony, Rider was not "on the road."

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FOF 50. *See also* No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”); **FEI OBJECTION** to ¶ 46, *supra*.

Further, neither ASPCA nor Rider disclosed the payments described in Paragraph 52 in their June 9, 2004 discovery responses. The payments were first disclosed by Rider and ASPCA in their Court ordered (No. 03-2006, ECF 178) discovery responses dated *September 24 & 26, 2007*. *Compare* DX 16 at 12 (6-9-04) *with id.* at 25-28 (9-24-07); *compare* DX 18R at 6-11 (6-9-04) *with id.* at 21-24 (9-26-07). *See* **FEI OBJECTION** to ¶ 34, *supra*.

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.

FEI OBJECTION: Contrary to ASPCA’s testimony, Rider did not “travel.” **FOF 49.** *See also* No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”); **FEI OBJECTION** to ¶ 46, *supra*.

Paragraph 53 selectively quotes ASPCA’s deposition testimony. ASPCA also testified that it did not know whether Rider was currently receiving money from any of the other plaintiffs or whether any of the funding had been provided through WAP. Ex. 25, ASPCA Dep. Excerpts at 80-81 & 210.

Fruther, FEI asked additional questions about discussions among ASPCA, AWI and FFA regarding Rider’s funding, and plaintiffs’ counsel objected on the basis of attorney-client privilege. Thus, the MGC defendants’ involvement in those conversations was not disclosed to FEI:

Q: Did you have any discussions with any of the other plaintiffs regarding continuing funding past 2003?

A: Yes.

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Q: And what were those discussions?

MS. OCKENE: I'm going to object just to the extent that it calls for attorney-client communications and instruct you not to answer, just to the extent it would include such conversations.

...

MS. OCKENE: To the extent that you had discussions that didn't involve us, your lawyers, you can answer the question.

Ex. 25, ASPCA Dep. Excerpts at 80 (emphasis added).

FEI subsequently sought to compel the disclosure of ESA Action plaintiff API's testimony concerning the apportionment of the payments to Rider by the ESA Action organizational plaintiffs. The ESA Action plaintiffs objected on the basis of "media strategy." FEI's motion to compel was denied. No. 03-2006, ECF 326.

None of AWI's or FFA's payments to or for Rider, described in Paragraph 53, were disclosed in AWI, FFA or Rider's June 9, 2004 discovery responses. **FOF 57**. See also **FEI OBJECTION** to ¶ 34, *supra*. Further, as set forth below, "FFA and AWI did not disclose their payments to Mr. Rider through MGC and WAP even when specifically asked about Mr. Rider's funding at their depositions taken pursuant to Federal Rule of Civil Procedure 30(b)(6)." **FOF 57**. See also No. 03-2006, ECF 620 at 10-11.

- **AWI Rule 30(b)(6) Deposition Testimony:** Contrary to ASPCA's testimony, AWI falsely testified that it was "not aware" whether it was "sharing" Rider's "expenses" with "other organizations." Ex. 23, AWI Dep. Excerpts at 138-46. AWI's testimony was false. By the time of AWI's testimony, AWI had received seventeen (17) pages of MGC invoices for payments to Rider, some of which were "shared" expenses split by ASPCA, AWI and FFA. Further, AWI had made five (5) "donations" to WAP for Rider totaling \$10,500.00. DX 19 at 18-21; DX 48A; DX 50; DX 61.

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- **FFA Rule 30(b) Deposition Testimony:** Contrary to ASPCA's testimony, FFA falsely testified at deposition that it had paid Rider \$1,000.00 on only one occasion. Ex. 24, FFA Dep. Excerpts. FFA's testimony was false. By the time of FFA's testimony, FFA had received twenty-three (23) pages of MGC invoices for payments to Rider and HSUS had made two (2) "donations" to WAP for Rider, that were internally marked as for "Fund" (*i.e.*, FFA) litigation. Meyer defended FFA's deposition. DX 20R at 32-35; DX 48A; DX 50; DX 61.

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.

FEI OBJECTION: Contrary to Ms. Weisberg's testimony ("[t]he money was wired to wherever [Rider] was"), Rider did not actually travel. **FOF 49.** *See also* No. 03-2006, ECF 620 at 10 ("Rider did not actually follow the circus, nor did he perform significant media activity."); **FEI OBJECTION** to ¶ 46 *supra*.

Further, neither ASPCA nor Rider disclosed the payments described in Paragraph 54 in their June 9, 2004 discovery responses. The payments were first disclosed by Rider and ASPCA in their Court ordered (No. 03-2006, ECF 178) discovery responses dated **September 24 & 26, 2007.** *Compare* DX 16 at 12 (6-9-04) *with id.* at 25-28 (9-24-07); *compare* DX 18R at 6-11 (6-9-04) *with id.* at 21-24 (9-26-07). *See also* **FEI OBJECTION** to ¶ 34, *supra*.

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.

FEI OBJECTION: Contrary to ASPCA's testimony, Rider did not do media work.

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FOF 50. *See also* No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”); **FEI OBJECTION** to ¶ 46, *supra*.

None of AWI’s or FFA’s payments to or for Rider, described in Paragraph 55, were disclosed in AWI, FFA or Rider’s June 9, 2004 discovery responses. **FOF 57.** *See also* **FEI OBJECTION** to ¶ 34, *supra*.

Further, “FFA and AWI did not disclose their payments to Mr. Rider through MGC and WAP even when specifically asked about Mr. Rider’s funding at their depositions taken pursuant to Federal Rule of Civil Procedure 30(b)(6).” **FOF 57.** *See also* **FEI OBJECTION** to ¶ 53, *supra*.

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.

FEI OBJECTION: None of AWI’s or FFA’s payments to or for Rider, described in Paragraph 56, were disclosed in AWI, FFA or Rider’s June 9, 2004 discovery responses. **FOF 57.** *See also* **FEI OBJECTION** to ¶ 34, *supra*.

Further, “FFA and AWI did not disclose their payments to Mr. Rider through MGC and WAP even when specifically asked about Mr. Rider’s funding at their depositions taken pursuant to Federal Rule of Civil Procedure 30(b)(6).” **FOF 57.** *See also* **FEI OBJECTION** to ¶ 53, *supra*.

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.

FEI OBJECTION: Admitted.

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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.

FEI OBJECTION: The fundraiser invitation referenced in Paragraph 58 does not state the following facts which subsequently were found by the Court in its December 30, 2009 Memorandum Opinion:

- *Rider did not “le[ave] the circus to speak out about the elephant abuse he witnessed on a daily basis.”* **FOF 20** (“The Court finds that Mr. Rider left these circus jobs not because of any mistreatment of the elephants, but for reasons personal to Mr. Rider, such as higher salary and better working conditions, or the opportunity to travel in Europe. Furthermore, as indicated by FOF 21-59 below, the Court finds that the evidence does not support a conclusion that Mr. Rider left the circus community in March 2000 because he could no longer tolerate the alleged mistreatment of the elephants, or that at the time he worked for FEI he had a strong, personal and emotional attachment to the elephants and was suffering aesthetic injury as a result of witnessing their mistreatment.”).

- *Rider started “speaking[ing]” only after he was paid to do so.* **FOF 53** (“[T]he financial support in this case began before the advocacy efforts and suggests that absent financial incentive, Mr. Rider may not have begun or continued his advocacy efforts or his participation as a plaintiff in this case.”).

- *The money raised was sent by AWI to WAP, which in turn disbursed the funds to Rider, to pay for his participation in the ESA Action.* **FOF 39** (“Proceeds from the fundraiser (more than \$13,000.00) were provided by AWI to WAP, which in turn then disbursed those

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funds to Mr. Rider.”) & **FOF 53** (“The Court finds that the primary purpose of the funding provided by the organizational plaintiffs by and/or through MGC and WAP was to secure Mr. Rider’s initial and continuing participations as a plaintiff in this litigation.”). The unredacted copy of the WAP deposition ledger (DX 50) cited in Finding of Fact 39, which showed that the fundraiser money was filtered from AWI to WAP to Rider, was first produced by WAP on **June 30, 2006**. Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 17, Comparison of WAP Deposit Ledgers (DX 50).

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.

FEI OBJECTION: Admitted.

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.

FEI OBJECTION: Rider was not engaged in “outreach” efforts. **FOF 50**. *See also* No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”).

See also **FEI OBJECTION** to ¶ 58.

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.

FEI OBJECTION: *See* **FEI OBJECTION** to ¶ 8, *supra*.

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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.

FEI OBJECTION: None of the "grants" and "donations" referenced in Paragraph 62 were disclosed by any of the plaintiffs in the June 9, 2004 discovery responses. These payments were first disclosed by the ESA Action plaintiffs in their Court ordered (No. 03-2006, ECF 178) discovery responses dated *September 24 & 26, 2007*. *See* **FEI OBJECTION** to ¶ 34, *supra*. Further, "FFA and AWI did not disclose their payments to Mr. Rider through MGC and WAP even when specifically asked about Mr. Rider's funding at their depositions taken pursuant to Federal Rule of Civil Procedure 30(b)(6)." **FOF 57**. *See also* **FEI OBJECTION** to ¶ 53.

On September 29, 2005, WAP provided a partial production of redacted documents in response to a third-party subpoena issued by FEI. *Compare* Ex. 14, WAP 9-29-05 Production with Ex. 16, WAP 6-30-06 Production. WAP's response to the subpoena was "personally" overseen by Glitzenstein. MGC Ex. DD, ¶ 2.

WAP's September 29, 2005 production was not designated by WAP as exclusively consisting of Rider payment information. Instead, the production was described by Glitzenstein in the production letter as a "*comprehensive compilation of receipts and disbursements relating in any fashion to elephants, Tom Rider, Ringling Brothers or the lawsuit.*" Ex. 6, WAP Production Letters (9-29-05 Letter) (emphasis added). On September 29, 2005, MGC Ex. JJ, the ledger of "receipts," the WAP Deposit ledger, was produced in redacted form. *See* Ex. 15, WAP 9-29-05 Privilege Log at 1; Ex. 18, Comparison of WAP Deposit Ledgers (DX 50). An unredacted version of the same document (lifting the redaction of the identity of HSUS) was produced to FEI on *June 30, 2006*. Ex. 4, Production Dates of Rider Payment Trial Exhibits.

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Ex. 18, Comparison of WAP Deposit Ledgers (DX 50).

WAP's September 29, 2005 production also included a heavily redacted version of the ledger of "disbursements," the WAP to Rider ledger. Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 15, WAP 9-29-05 Privilege Log at 1; Ex. 17, Comparison of WAP to Rider Ledgers (DX 49).

The ledger of "disbursements" redacted the following fields: name, memo, account, class and amount. Ex. 17, Comparison of WAP to Rider Ledgers (DX 49). Thus, the WAP to Rider ledger produced on September 29, 2005 did not indicate to whom WAP was making payments, nor did it indicate the amount of those payments or what they were for. *See id.* Cf. Ex. 6, WAP Production Letters (9-29-05) (indicating that the ledger related "in any fashion to elephants, Tom Rider, Ringling Brothers or the lawsuit."). WAP produced an unredacted version of the WAP to Rider ledger on ***June 30, 2006***. *Id.* The unredacted ledger for the first time showed that nearly all of WAP's disbursements were for Rider; Rider received systematic, regular payments of the same amount; ***and that WAP had paid Rider more than \$70,000.00***. *Id.* In addition, on ***June 30, 2006***, WAP for the first time produced the IRS Form 1099's it had issued to Rider for calendar years 2002-2004, which reported the amounts of the money paid to him, and classified it as "compensation." DX 54; Ex. 4, Production Dates of Rider Payment Trial Exhibits. Cf. DX 16 at 12 (6-9-04) ("I have not received any such compensation.") & 13 (response signed by Meyer; Glitzenstein included on signature block).

WAP's September 29, 2005 production included redacted copies of cover letters from Glitzenstein to Rider, enclosing WAP's grant checks to Rider (MGC Ex. XX). Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 15, WAP 9-29-05 Privilege Log at 31-32; Ex. 19, Comparison of WAP Grant Letters (DX 53). The cover letters produced on September 29, 2005

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redacted the purpose of the grants, *i.e.*, they were for “media” work in particular cities. Ex. 19, Comparison of WAP Grant Letters. The unredacted cover letters were produced by WAP on **June 30, 2006**. Ex. 4, Production Dates of Rider Payment Trial Exhibits.

WAP’s September 29, 2005 production withheld in their entirety Rider’s receipts. Ex. 15, WAP Privilege Log at 33; MGC Ex. LL at 1 (“WAP has withheld (subject to an appropriate protective order) receipts received by WAP for Tom Rider’s expenses regarding his public education and media work.”). WAP produced Rider’s receipts on **June 30, 2006**, albeit without a protective order. DX 52; Ex. 4, Production Dates of Rider Payment Trial Exhibits. Rider’s receipts showed that “grant” money did not match up with Rider’s expenses. See **FOF 44**.

WAP’s September 29, 2005 production included a redacted copy of a grant letter from Meyer to Rider (DX 37) (MGC Ex. XX). The letter produced on September 29, 2005 redacted the amount (\$5500.00) and purpose of the grant (to purchase a van to purportedly follow FEI’s circus). WAP produced an unredacted copy of the van grant letter on **June 30, 2006**. Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 20, Comparison of WAP Van Grant Letter. The redacted van document was produced to FEI less than two (2) weeks after Meyer had deceptively described the van to the Court as Rider’s “own” van – without disclosing the fact that Meyer had actually given Rider the money to buy his “own” van.

WAP’s September 29, 2005 production withheld in its entirety a November 5, 2003 email from Meyer to ASPCA, AWI and FFA soliciting funds on behalf of WAP (DX 65). Ex. 15, WAP 9-29-05 Privilege Log at 33. This email was first produced on **June 30, 2006**. Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 16, WAP June 30, 2006 Production.

None of the documents produced by WAP on September 29, 2005 (Ex. 14, WAP 9-29-05 Production) indicated the following: (1) Rider had been receiving regular and systematic

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payments from the organizational plaintiffs, MGC and WAP since 2001, and not episodic and/or intermittent reimbursements of expenses for specific “media” work (**FOF 21, 41 & 48**); (2) the payments were Rider’s sole source of income (**FOF 21**); (3) the payments funded Rider’s day-to-day living expenses (**FOF 43**); (4) the payments were not reimbursements for expenses actually incurred by Rider (**FOF 44**); (5) Rider was not paying income taxes on the payments (**FOF 58**); (6) Rider was not actually following the circus (**FOF 49**); (7) the payments were “only loosely, if at all, correlated” to Rider’s “media” work (**FOF 50**); (8) the payments were “directly linked to the litigation” (**FOF 51**); and (9) the primary purpose of the payments was for Rider’s participation and testimony in the ESA Action (**FOF 1, 53 & 59**). *See also* No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”); **FEI OBJECTION** to ¶ 8 (production dates of documents and testimony cited in Findings of Fact, *supra*).

See also Ex. 2, Timeline of Key Rider Payment Facts.

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.

FEI OBJECTION: None of the “grants” and “donations” referenced in Paragraph 63 were disclosed by any of the plaintiffs in the June 9, 2004 discovery responses. These payments were first disclosed by the ESA Action plaintiffs in their Court ordered (No. 03-2006, ECF 178) discovery responses dated *September 24 & 26, 2007*. *See* **FEI OBJECTION** to ¶ 34, *supra*.

See also **FEI OBJECTION** to ¶ 62, *supra*.

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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.

FEI OBJECTION: None of the "grants" and "donations" referenced in Paragraph 62 were disclosed by any of the plaintiffs in the June 9, 2004 discovery responses. These payments were first disclosed by the ESA Action plaintiffs in their Court ordered (No. 03-2006, ECF 178) discovery responses dated *September 24 & 26, 2007*. *See* **FEI OBJECTION** to ¶ 34, *supra*.

See also **FEI OBJECTION** to ¶ 62, *supra*.

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.

FEI OBJECTION: *See* **FEI OBJECTION** to ¶ 62, *supra*.

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.

FEI OBJECTION: The payment to Rider referenced in Paragraph 66 was not disclosed by either ASPCA or Rider in their June 9, 2004 discovery responses. The payments were first disclosed by Rider and ASPCA in their Court ordered (No. 03-2006, ECF 178) discovery responses dated *September 24 & 26, 2007*. *Compare* DX 16 at 12 (6-9-04) *with id.* at 25-28 (9-24-07); *compare* DX 18R at 6-11 (6-9-04) *with id.* at 21-24 (9-26-07) *See* **FEI OBJECTION** to ¶ 34, *supra*.

See also **FEI OBJECTION** to ¶ 62, *supra*.

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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.

FEI OBJECTION: Rider did not actually travel, nor did he perform “media” work.

FOF 49-50. *See also* No. 03-2006, ECF 620 at at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”).

See also **FEI OBJECTION** to ¶ 62, *supra*.

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.

FEI OBJECTION: The documents referenced in Paragraph 68 do not indicate the following: (1) Rider had been receiving regular and systematic payments from the organizational plaintiffs, MGC and WAP since 2001, and not episodic and/or intermittent reimbursements of expenses for specific “media” work (**FOF 21, 41 & 48**); (2) the payments were Rider’s sole source of income (**FOF 21**); (3) the payments funded Rider’s day-to-day living expenses (**FOF 43**); (4) the payments were not reimbursements for expenses actually incurred by Rider (**FOF 44**); (5) Rider was not paying income taxes on the payments (**FOF 58**); (6) Rider was not actually following the circus (**FOF 49**); (7) the payments were “only loosely, if at all, correlated” to Rider’s “media” work (**FOF 50**); (8) the payments were “directly linked to the litigation” (**FOF 51**); and (9) the primary purpose of the payments was for Rider’s participation and testimony in the ESA Action (**FOF 1, 53 & 59**). *See also* No. 03-2006, ECF 620 at 10 (“Rider did not actually follow the circus, nor did he perform significant media activity.”); **FEI OBJECTION** to ¶ 8 (production dates of documents and testimony cited in Findings of Fact, *supra*).

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To the contrary, MGC Ex. TT and UU indicated that Rider was actually travelling (Rider was “touring the country, MGC Ex. TT) (Rider “‘tracks’ the circus around the country”, MGC Ex. UU); Rider actually conducted media work (MGC Ex. TT & MGC Ex. UU); and the money was a reimbursement for specific expenses (“Funds would be spent principally on transportation, lodging, meals, phone expenses, and other administrative and out-of-pocket costs,” MGC Ex. TT).

Further, MGC Ex. TT falsely states that Rider “quit the circus when he could no longer tolerate the way the elephants are treated, and he has been speaking out on this issue ever since.” **FOF 20** (“The Court finds that Mr. Rider left these circus jobs not because of any mistreatment of the elephants, but for reasons personal to Mr. Rider, such as higher salary and better working conditions, or the opportunity to travel in Europe. Furthermore, as indicated by FOF 21-59 below, the Court finds that the evidence does not support a conclusion that Mr. Rider left the circus community in March 2000 because he could no longer tolerate the alleged mistreatment of the elephants, or that at the time he worked for FEI he had a strong, personal and emotional attachment to the elephants and was suffering aesthetic injury as a result of witnessing their mistreatment.”); **FOF 53** (“[T]he financial support in this case began before the advocacy efforts and suggests that absent financial incentive, Mr. Rider may not have begun or continued his advocacy efforts or his participation as a plaintiff in this case.”).

In addition, MGC Ex. TT indicated that \$10,000 would “fund [Rider’s] public education effort for the year 2004,” but ***Rider actually was paid close to \$24,000.00 in “compensation” by WAP that calendar year.*** DX 54 at 3 (WAP 2004 IRS Form 1099) (*produced by WAP on 6-30-06*); Ex. 4, Production Dates of Rider Payment Trial Exhibits.

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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.

FEI OBJECTION: MGC Ex. VV did not indicate the following: (1) Rider had been receiving regular and systematic payments from the organizational plaintiffs, MGC and WAP since 2001, and not episodic and/or intermittent reimbursements of expenses for specific "media" work (**FOF 21, 41 & 48**); (2) the payments were Rider's sole source of income (**FOF 21**); (3) the payments funded Rider's day-to-day living expenses (**FOF 43**); (4) the payments were not reimbursements for expenses actually incurred by Rider (**FOF 44**); (5) Rider was not paying income taxes on the payments (**FOF 58**); (6) Rider was not actually following the circus (**FOF 49**); (7) the payments were "only loosely, if at all, correlated" to Rider's "media" work (**FOF 50**); (8) the payments were "directly linked to the litigation" (**FOF 51**); and (9) the primary purpose of the payments was for Rider's participation and testimony in the ESA Action (**FOF 1, 53 & 59**). *See also* No. 03-2006, ECF 620 at 10 ("Rider did not actually follow the circus, nor did he perform significant media activity."); **FEI OBJECTION** to ¶ 8 (production dates of documents and testimony cited in Findings of Fact, *supra*).

Further, MGC Ex. VV did not indicate that Meyer and Glitzenstein "controlled" WAP. No. 03-2006, ECF 620 at 10.

MGC Ex. VV did not indicate that ASPCA's \$6,000.00 "grant" to WAP was deposited into an "account towards Tom Rider expenses" that was maintained by MGC and reflected on MGC invoices to ASPCA. Nor did it indicate that the MGC invoices matched up to WAP's ledger of disbursements to Rider. *Compare* DX 209 at 44 (IC 196 / A 1254) (*produced by*

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ASPCA on 8-11-08) with DX 49 (*produced in unredacted form by WAP on 6-30-06*). Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 17, Comparison of WAP to Rider Ledgers.

MGC Ex. VV did not indicate that Meyer solicited funds from ASPCA, AWI and FFA on behalf of WAP using her MGC email account. DX 65 (*produced by WAP on 6-30-06*). Ex. 4, Production Dates of Rider Payment Trial Exhibits; Ex. 15, WAP 9-29-05 Privilege Log at 33 (withholding production of DX 65 in its entirety on First Amendment grounds). See also **FEI OBJECTION** to ¶ 5 (Proposed Counterclaim ¶¶ 39 & 120).

MGC Ex. VV did not indicate that nearly all of WAP's "disbursements relating in any fashion to elephants, Tom Rider, Ringling Brothers of the lawsuit" were for Rider. Ex. 6, WAP Production Letters (9-29-05); Ex. 17 Comparison of WAP to Rider Ledgers (DX 49) (*produced by WAP in unredacted form on 6-30-06*); Ex. 4, Production Dates of Rider Payment Trial Exhibits.

MGC Ex. VV did not indicate that "WAP's payments to Rider were sent by MGC via Federal Express;" the "support staff from MGC prepared the Federal Express envelopes to Mr. Rider;" and the "expense for the mailing is paid for by MGC." **FOF 42**.

MGC Ex. VV did not indicate that MGC made a payment to Rider and then was reimbursed for that payment from WAP. See Ex. 17, Comparison of WAP to Rider Ledger (DX 49) (*produced in unredacted form by WAP on 6-30-06*); Ex. 21, WAP Check to MGC (*produced on 7-20-06*). See also **FEI OBJECTION** to ¶ 5 (Proposed Counterclaim ¶ 119).

MGC Ex. VV did not indicate that WAP existed primarily as a filter for illegal witness payments to Rider. Compare DX 54 at 4 (2005 IRS Form 990 issued to Rider by WAP, reporting \$33,600.00 in "nonemployee compensation") (produced by WAP on 6-30-06) with

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Ex. 30, WAP 2005 Form 990 (reporting **\$31,893.00** in revenue, expenses and changes in net assets or fund balances).

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.

FEI OBJECTION: See **FEI OBJECTION** to ¶ 69, *supra*.

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.

FEI OBJECTION: See **FEI OBJECTION** to ¶ 69, *supra*.

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.

FEI OBJECTION: See **FEI OBJECTION** to ¶ 69, *supra*.

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.

FEI OBJECTION: See **FEI OBJECTION** to ¶ 62, *supra*.

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

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work” for the non-profit organization; and identifying Mr. Glitzenstein and Ms. Meyer as President and Secretary of the organization, respectively. MGC EX.

FEI OBJECTION: MGC Ex. A did not indicate that Meyer and Glitzenstein “controlled” WAP. No. 03-2006, ECF 620 at 10.

MGC Ex. A indicates that WAP “intended to raise funds primarily through private foundations” “primarily” for “media and public communication support for grassroots biodiversity activists.” MGC Ex. A does not indicate that WAP intended to raise money from MGC clients, animal advocacy organizations and individual donors for the purpose of paying a plaintiff for participation in litigation where MGC was counsel of record. *Cf.* **FOF 1, 21, 35, 53, 59.**

MGC Ex. A indicates that “[a]ny salaries and wages, together with fringe benefits or other forms of compensation (housing, transportation, and other allowances) paid to or provide to NBAP’s employees, directors or officers will not exceed a value which is reasonable and commensurate with the duties and working hours associate with such employment and with the compensation ordinarily paid persons with similar positions or duties.” *Cf.* **FOF 1, 21, 44, 49-50, 53, 59.**

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).

FEI RESPONSE: Admitted.