UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.	:	
	:	
Plaintiff,	:	
	:	
v.	:	**Case No. 07- 1532 (EGS)**
	:	
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY ANIMALS, et al.	:	
	:	
Defendants.	:	
	:	

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO TEMPORARILY STAY ALL PROCEEDINGS

EXHIBIT 9

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December 15, 2006

Sent by E-Mail and First Class Mail

George A. Gasper
Fulbright & Jaworski
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2623

Re: ASPCA v. Ringling Bros., Civ. No. 03-2006

Dear Mr. Gasper:

This letter responds to the meet and confer letter that you sent me on November 22, 2006 ("11/22 Let."). Your principal concern appears to be that the plaintiffs are "deficient" in several respects regarding their June 9, 2004 discovery responses to defendants' initial March 30, 2004 discovery requests. In addition, you complain about certain answers that were provided by plaintiffs' 30(b)(6) witnesses at their depositions that occurred May 18, 2005 (Cathy Liss); June 22, 2005 (Michael Markarian), and July 19, 2005 (Lisa Weisberg). Finally, you also ask that plaintiffs update their document production, since the last update you received was in August of this year. See 11/22 Let. at 10.

I have not been able to get back to you on these matters until now because your letter was sent the day before Thanksgiving, Ms. Ockene is out on maternity leave, and, since Thanksgiving, I have had two out-of-town arguments and several briefs due in various forums. As your co-counsel knows, I am also dealing with a very serious illness in my immediate family. Nevertheless, I am getting back to you as soon as feasible and within the time-frame requested in your November 22 letter.

A. General Response

As to your principal concern – i.e., the "deficiencies" in plaintiffs' June, 2004 responses to defendants' initial discovery requests, I am sure it will come as no surprise to you that we are extremely perplexed by the fact that defendants have waited more than two and a half years to complain about any of these responses, and then have demanded that we provide complete responses to your more than 12 page, single-spaced letter about these matters within such a short period of time. Indeed, you sent your letter to us on November 22, the day before the Thanksgiving holiday, and have requested a complete response to all of your concerns by today – thus, giving the plaintiffs fifteen business days to respond. This is simply not enough time to answer all of your numerous questions concerning the alleged "deficiencies" in plaintiffs' June 2004 discovery responses, when defendants have had two and a half years to lodge those complaints. Indeed, even if we count from the day your law firm entered its appearance in this case, March 10, 2006, you have had nine months to lodge your complaints, and have failed to do so until now.

The extreme delay in notifying us of these alleged deficiencies is particularly egregious in light of the fact that when plaintiffs notified defendants of the deficiencies in defendants' discovery responses in October 2004 – only four months after those discovery responses were received – defendants complained mightily about this delay. See, e.g., Letter from Josh Wolson (November 8, 2004) ("there is no reason to have allowed this process to sit in limbo for four months . . . [t]he long delay makes it more difficult for us and our client to re-canvass the files that are no longer fresh in our clients' minds"); see also Memorandum In Opposition To Plaintiffs' Motion To Compel (February 15, 2005) at 1 ("until October 19 [2004], when plaintiffs first sent a letter about defendants' responses, defendants had no reason to believe that plaintiffs deemed any of their discovery responses inadequate"). Needless to say, a more than two and a half year delay in identifying alleged deficiencies is far more troubling, and also much more problematic, than the four month delay about which defendants vociferously complained.

I would also add that defendants not only waited to notify us of these alleged deficiencies until more than two and a half years after plaintiffs provided defendants with their discovery responses, but you also appear to have waited to send your letter until Ms. Ockene, who as your own letter demonstrates has been principally responsible for handling these particular discovery matters, was out of our office on maternity leave – a fact that is well known by defendants' lawyers. Indeed, while your letter raises many questions concerning particular representations made by Ms. Ockene either in letters or during depositions, it is obviously extremely difficult for us to respond immediately to these matters while she is on leave.

Therefore, as an initial matter, although we certainly will try our best to respond to all of your concerns promptly, and to produce all additional discovery that is not privileged that you contend should have been provided with the June 2004 discovery responses, as well as to answer the questions you have about particular testimony that was provided during depositions of our clients during the summer of 2005, we need more time to do so. Indeed, although we have begun

the process of discussing these matters with our clients, this requires multiple discussions with several high-level officials from each group, which will require considerably more time than you have suggested, and, with the holidays upon us, cannot possibly be completed until some time after the New Year. Mr. Rider is currently traveling throughout the country which makes it difficult for us to meet with him as well.

Providing a thorough response to your November 22 letter will also require us to have discussions with Ms. Ockene and will also require Ms. Ockene to review correspondence and deposition transcripts to which you refer throughout your November 22 letter – all of which will require her to take time off from her maternity leave which is otherwise not currently scheduled to end until some time in February.

In addition, you make reference in your letter to the fact that you are "continuing" to review plaintiffs' June 2004 discovery responses and deposition testimony, and that if you "discover additional deficiencies," you will "promptly" notify us. See 11/22 Let. at 1. However, if we are going to make our clients take time out from their extremely busy schedules to address concerns you have about their June 2004 discovery responses or their 2005 deposition testimony, we prefer to do so with all of your questions in hand, rather than on a piecemeal basis. Therefore, either provide us with a complete list of all of the alleged "deficiencies" you have found in our clients' June 2004 discovery responses and deposition testimony now, or we will assume that we need not address any such additional matters once we provide complete responses to your November 22 letter.

We suggest that, unless we receive a complete list of such alleged deficiencies by the end of this month, December 31, 2006, we may assume that this matter is closed, barring any new revelations that bear on these matters. If you have a different date on which you can give us a complete list of all the deficiencies in the plaintiffs' 2004 discovery responses or 2005 depositions that we can use to calculate a time-table for providing you a complete response to your concerns, please let us know as soon as possible.

Assuming that by December 31, 2006 you are able to identify all of the alleged deficiencies that you contend exist with respect to plaintiffs' June 2004 responses to defendants' initial discovery requests, and plaintiffs' 2005 deposition testimony, we will endeavor to provide you as soon as possible with all of the information addressed in your November 22 letter, as supplemented by any additional "deficiencies" you identify by December 31. If you tell us soon that there are no such additional "deficiencies" to which we need to respond, we will make our best effort to complete the process of discussions with our clients and Ms. Ockene within the next few weeks, and provide you a more complete response to all of the matters addressed in your November 22 letter by January 15, 2007. Under the circumstances – and particularly defendants' two and a half year delay in notifying us of any of the alleged "deficiencies" in plaintiffs' June 9, 2004 discovery responses and 2005 deposition testimony – this is extremely reasonable on our part. Indeed, we note that when plaintiffs notified defendants on October 19, 2004 of the deficiencies in defendants' June 2004 discovery responses – only four months after

those discovery responses were provided – we gave the defendants until January 11, 2005 to provide responses to those concerns before proceeding with a motion to compel. See Letter to Eugene Gulland (October 19, 2004); Letter to Joshua Wolson (December 22, 2004).

If you decide to complete your notification concerning the alleged deficiencies in plaintiffs' June 2004 discovery responses and 2005 deposition testimony by December 31, we will do our best to get you a complete response to all of these matters by January 31, 2007. Therefore, please let us know as soon as possible whether you intend to supplement your November 22 letter with additional items.

As to your request that plaintiffs "please update" their June 2004 discovery requests, see 11/22 Let. at 10, we agree that both parties should comply with their duty to supplement their discovery responses. To date, neither plaintiffs nor defendants have provided any supplemental responses to Interrogatories. In addition, plaintiffs have provided supplemental responses with respect to most if not all of defendants' document production requests on March 21, 2005, July 11, 2006, and August 11, 2006. Accordingly, we propose that the parties mutually agree to a date on which they will produce all supplemental discovery, including both Interrogatory responses and Document requests, that has not yet been produced with respect to all of the discovery requests that were served by the parties in March 2004. We would propose that this date also be January 31, 2007, but are open to alternative suggestions that may be more convenient and/or realistic for defendants.

To summarize, we are agreeing to provide you, by January 15, 2007, complete answers to all of your questions concerning the alleged deficiencies in plaintiffs' June 2004 discovery responses and 2005 deposition testimony, if you advise us that you have no additional concerns, and to provide you with all outstanding supplemental discovery by January 31, 2007, if defendants will agree to reciprocate by providing us with all of their outstanding supplemental discovery by that date. However, if you do have additional concerns about plaintiffs' June 2004 responses to defendants' initial discovery, or with respect to plaintiffs' deposition testimony – as you appear to suggest may be the case – we have requested that you supplement your November 22 letter by December 31, 2006 with such concerns, and, if you do so, we will provide a complete response to all such concerns by January 31, 2007.

B. Specific Responses

There are certain matters raised in your November 22 letter that we can respond to now.

1. Discovery Sought From The Organizational Plaintiffs

First, in response to your question in footnote 2 of your letter regarding Ms. Ockene's representation in her February 13, 2006 letter concerning objections, it is our understanding that any document for which any objection was raised was listed on plaintiffs' privilege log. Thus, unlike defendants' practice – which came to light during our dispute over defendants' failure to

produce the elephants' medical records -- plaintiffs did not intentionally hide the existence of any documents that were covered by defendants' document production requests. Rather, plaintiffs searched for all requested records, and either produced them, listed them on their privilege log, or specifically requested a confidentiality agreement for information that is confidential.[1]

Second, you have raised several concerns about conversations that the plaintiffs may have had with each other that did not concern litigation strategy, including but not limited to conversations about funding of Mr. Rider's public education efforts, and documents that may have been generated on such matters. You have also asked whether any of the plaintiffs had any such conversations with employees or officials of the Wildlife Advocacy Project, and whether any documents concerning such communications exist. As part of our effort to provide you with a complete response to all of your concerns, we will definitely ask our clients about all such matters. As to the plaintiffs' obligation to further supplement their discovery responses about these matters, plaintiffs will do so on whatever date the parties agree to for mutual supplementation, and will also update their privilege log as necessary. We do not anticipate asserting a privilege for any conversations or documents that did not concern litigation strategy, but until we are able to ascertain precisely what conversations and documents may exist, we cannot give you a guarantee on this at this time.

Third, you question why, in response to Defendants' Interrogatories No. 21 and 22, none of the plaintiff organizations identified financial and other resources provided for Mr. Rider's public education efforts. See 11/22 Let. at 6-7. The simple answer appears to be that these Interrogatories specifically refer to the plaintiffs' standing allegations in the Complaint that they filed in this case. We do not believe that any of the plaintiffs were relying on any funding of Mr. Rider's public education efforts in support of their standing allegations. Nor do we know whether any of the plaintiffs had made any contributions to Mr. Rider's public education efforts at the time the Complaint was filed. However, we will definitely look into this matter and see if there is any additional information that should have been provided with the June 9, 2004 discovery responses. As to plaintiffs' duty to supplement their responses to these questions, we will do so on whatever date the parties agree to for mutual supplementation.

Fourth, plaintiffs have no "non-privileged portions of the invoices from [our] firm that reflect monies filtered through it for payments to Mr. Rider." 11/22 Let. at 7.

Fifth, we will discuss with Ms. Weisberg whether she can ascertain "what other issues the money was directed to" when the ASPCA stopped funding Mr. Rider's public education efforts in 2003, see 11/22 Let. at 7, and if she can figure this out at this late date, we will either provide

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[1]You note that Ms. Weisberg lodged an objection in response to Document Request No. 3 to producing documents on the basis of work product, but that no such document is listed on the privilege log. See 11/22 Let. at 4. It is my understanding that there are no such documents and that Ms. Weisberg did not mean to imply that there are any. However, we will check with her to make sure.

you the information without a confidentiality agreement or request that you agree to one, as you suggest on page 8 of your letter.

Sixth, as to whether there are additional records concerning inspections of circuses by the ASPCA dating back to January 1, 1996, that have not been produced, 11/22 Let. at 8, we already responded to this inquiry. See Letter from Ms. Ockene (July 11, 2006). The ASPCA has not been able to locate any other documents that are responsive to this discovery request. As to the inspections for which there are no documents, we will discuss this with the ASPCA and provide you with such descriptions.

Seventh, as to your question in footnote 3 on page 8 of your letter, as promised, we have made further inquiries about the answer to Interrogatory No. 20, and the answer is that our client is not aware of any other such communications.

Eighth, we can confirm that, on June 9, 2004, the organizational plaintiffs produced all documents requested of them in defendants' March 30, 2004 discovery requests, except for those listed on plaintiffs' privilege log, and if plaintiffs requested a confidentiality agreement with respect to any such records. In addition, plaintiffs have supplemented those discovery requests with additional records on March 21, 2005, July 11, 2006, and August 11, 2006, and intend to provide further supplemental responses on the date upon which the parties mutually agree for such supplementation.

Ninth, as to your inquiry regarding whether AWI's discovery responses included responses from the Society of Animal Protective Legislation (SAPL), see 11/22 Let. at 10, the answer is yes, they did. AWI, including SAPL, will provide any supplemental discovery by the date the parties mutually agree upon for such supplementation. As to your related question concerning whether the ASPCA has produced discovery responses from its Humane Law Enforcement Division, see 11/22 Let. at 10, the answer is also yes. All such additional records that had not already been produced were provided to you by letter from Ms. Ockene dated July 11, 2006. The ASPCA, including its Humane Law Enforcement Division, will provide any supplemental discovery by the date the parties mutually agree upon for such supplementation.

Tenth, your observation that some of plaintiffs' supplemental productions have included documents generated prior to 2003, see 11/22 Let. at 10, simply demonstrates that plaintiffs are continuing to be as thorough as possible in providing defendants with all requested discovery. Indeed, we note that defendants' own supplemental productions produced on July 21, 2006 and August 3, 2006, contain documents dated 1995, 1998, 1999, 2002, and 2004.[2]

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[2]See FEI 21945-46; FEI 15282; FEI 22036; FEI 15274; FEI 11392; FEI 15300; FEI 18859-63; FEI 21310-11; FEI 29446.

2. Discovery Sought From Tom Rider

First, Mr. Rider's response to Document Request Nos. 3 and 4 was intended to be inclusive. See 11/22 Let. at 10.

Second, we disagree with you that Mr. Rider has "possession, custody, or control" of copies of documents that are maintained by the other plaintiff organizations or The Wildlife Advocacy Project, and you have provided no citations for this novel proposition. See 11/22 Let. at 11. See, also Alexander v. FBI, 194 F.R.D. 299 (D.D.C. 2000) (a party has "control" over a document if the party has "the legal right to obtain the document[] on demand"). Please let us know your authority for your assertion that Mr. Rider has the legal right to obtain documents from any of the organizational plaintiffs or The Wildlife Advocacy Project. The bottom line is that Mr. Rider produced every document he had in his possession, custody, or control in response to defendants' March 30, 2004 discovery requests, unless he claimed a privilege for the document or specifically requested a confidentiality agreement for it. He, like the other plaintiffs, acknowledges his obligation to supplement his discovery responses, and he will definitely do so by the date that is agreed upon by the parties.

Third, you omit a very salient point from your discussion concerning Mr. Rider's responses to Document Request Nos. 20 and 21, and Interrogatory No. 24 on page 11 of your letter, which is that Mr. Rider agreed to provide answers to all of this discovery subject to a confidentiality agreement. See Mr. Rider's Interrogatory Responses at 19; Mr. Rider's Document Request Responses at 13-14. Indeed, Mr. Rider made absolutely clear two and a half years ago that he was "willing to provide" all of this information. Id. Now that defendants have obtained much of this information from other sources, including the organizational plaintiffs and The Wildlife Advocacy Project, and, as you note, Mr. Rider himself willingly provided some of this information to defendants during his October 12, 2006 deposition, we will check with Mr. Rider to ascertain whether he is willing to provide a complete response to this discovery without a confidentiality agreement. In addition, Mr. Rider recognizes his obligation to supplement his responses on these matters and intends to do so by the date upon which the parties agree for such supplementation.[3]

Fourth, as to Mr. Rider's responses to Document Request Nos. 22 and 23, and Interrogatory No. 4, it is incorrect to suggest that Mr. Rider objected to providing answers to all of this discovery "based on an alleged attorney-client privilege." See 11/22 Let. at 12. On the contrary, in response to Interrogatory No. 4, Mr. Rider provided a detailed list of individuals and groups he has spoken with, and he also produced documents reflecting this information. See Interrogatory Responses at 8-10. It is true that Mr. Rider asserted a privilege "with respect to

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[3]Your semantic disagreement with Mr. Rider about what constitutes "compensation," see 11/22 Let. at 11, is irrelevant in light of the fact that your Interrogatory No. 24 also asked him to identify all "money or items, without limitation," etc. that he has received, which he has consistently agreed to do. See Mr. Rider's Interrogatory Response at 19.

conversations he has had with the co-plaintiffs, that one or more of his attorneys participated in, and with respect to conversations he has had with Lisa Weisberg who is an attorney with the ASPCA." As to whether any such conversations involved matters that did not concern litigation strategy – which appears to be your main concern – we will ask Mr. Rider, and, if so, make every effort to provide such information to defendants, unless Mr. Rider has some other legitimate basis for objecting to the disclosure of such information.

We will also attempt to ascertain whether Mr. Rider is able to describe more of the conversations that may be responsive to Interrogatory No. 4, and if so, provide that information to you. We will also ascertain from Mr. Rider whether he wishes to continue to assert a privilege based on his right to association with respect to his answer to this particular Interrogatory, and if so, we will provide you with the basis for any asserted harm that would flow from the information that was sought by this Interrogatory. See 11/22 Let. at 12. As to communications Mr. Rider has had with the Wildlife Advocacy Project, id., we will also provide this information to you when we provide our complete response to your November 22 letter.

As to documents, on June 9, 2004, Mr. Rider produced to defendants all documents requested by Document Request Nos. 22 and 23. He acknowledges that he has a duty to supplement his response to this discovery and we will ensure that he does so by the date agreed upon by the parties.

Fifth, we can confirm that on June 9, 2004, Mr. Rider produced all documents requested in defendants' March 30, 2004 discovery requests, except for those for which he asserted a privilege (which would be listed on plaintiffs' privilege log) or for which he specifically requested a confidentiality agreement. As we have stated throughout this letter, Mr. Rider acknowledges his obligation to supplement his discovery responses and he will do so by the date that is agreed upon by the parties.

C. Conclusion

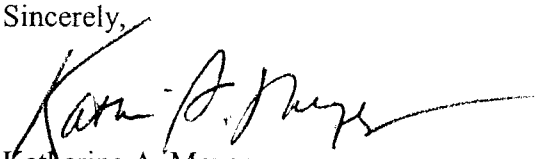
We have tried to answer as many of the questions raised in your November 22 letter as possible on such short notice, and in view of my schedule, the fact that Ms. Ockene is on leave, and the amount of time that has passed since plaintiffs provided defendants with their discovery responses. As explained, we will provide answers to all of your other questions by January 15 if you inform us that you have no other concerns about the plaintiffs' June 9, 2004 discovery responses or their 2005 depositions. However, if you do have additional concerns, we have asked you to provide them to us by December 31, 2006, so that we can address all such concerns at one time, rather than on a piecemeal basis. In that event, we have stated that we will provide answers to all of such concerns by January 31, 2007.

Therefore, please let us know if you will be providing us with an additional list of alleged discovery "deficiencies" so that we will know which schedule should apply. If by December 31, 2006, you have not notified us of any other alleged "deficiencies" in the plaintiffs' June 9, 2004

discovery responses or 2005 depositions, we will assume that your November 22 letter includes the entire list.

In addition, we have suggested that the parties mutually agree on a date of January 31, 2007 to exchange all supplemental discovery, which would also include providing supplemental responses to the parties' March 30, 2004 Interrogatories. Please let us know if you can agree to that date, or whether you would like to suggest an alternative date that is more convenient or practical for defendants. If you believe a personal meeting would help sort out any of these matters or assist in arriving at a mutually convenient schedule for reaching a final resolution on these issues, please let us know.

Sincerely,



Katherine A. Meyer