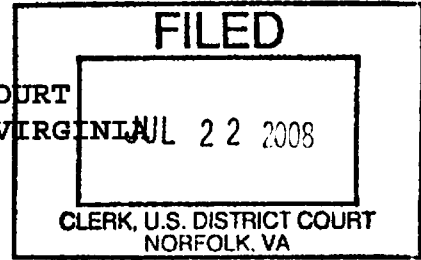


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



Feld Entertainment, Inc.,

Plaintiff,

v.

Civil Action No. 2:08mc4

People for the Ethical  
Treatment of Animals, Inc.

Defendant.

ORDER

The Court currently has the following pleadings under consideration: Feld Entertainment[,] [Inc.'s] Motion to Compel Documents Subpoenaed from PETA (Document No. 1) and Feld Entertainment, Inc.'s Memorandum in Support of it's [sic] Motion to Compel Documents Subpoenaed from PETA (Document No. 2), both filed on January 28, 2008; Defendant People for the Ethical Treatment of Animals' Brief in Opposition to Plaintiff's Motion to Compel (Document No. 5), filed on February 13, 2008; and Plaintiff's Reply Brief in Support of its Motion to Compel Production of Documents (Document No. 9), filed on February 19, 2008. Upon consideration of the pleadings, the record supplied to the Court, and the arguments of counsel, and as more fully explained herein, it is hereby ORDERED that Feld Entertainment, Inc.'s motion to compel is GRANTED IN PART and DENIED IN PART.

## I. BACKGROUND

This matter arises out of a dispute over a subpoena duces tecum issued by Plaintiff, Feld Entertainment, Inc. ("Plaintiff" or "FEI") ("the FEI subpoena"), a defendant in the underlying litigation pending in the United States District Court for the District of Columbia, American Society for the Prevention of Cruelty to Animals, et al. v. Ringling Bros. and Barnum & Bailey Circus, et al., Case No. 1:03cv2006 ("D.C. Litigation"),<sup>1</sup> to Defendant, People for the Ethical Treatment of Animals ("Defendant" or "PETA"), a non-party that is interested, but not involved in the D.C. Litigation. The FEI subpoena was issued on September 21, 2007,<sup>2</sup> out of the Eastern District of Virginia, Norfolk Division,<sup>3</sup>

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<sup>1</sup>The D.C. Litigation generally involves allegations brought by a group of animal rights activists concerning the treatment of elephants in the care of FEI, doing business as Ringling Bros. and Barnum & Bailey Circus ("Ringling Bros."). After extensive litigation, the claims in the D.C. Litigation were significantly narrowed to a determination of whether or not FEI's treatment of certain of its elephants constitutes a "taking" under the Endangered Species Act, 16 U.S.C. § 1631 et seq. Though, apparently both FEI and Ringling Bros. have been named as defendants in the D.C. Litigation, FEI is the proper party in interest insofar as Ringling Bros. is not a stand-alone entity. See Transcript, Proceedings of March 14, 2008 ("Tr.") at 1.

<sup>2</sup>The Court notes there were actually two (2) subpoenas issued to PETA out of the instant litigation. The first, issued to PETA on January 21, 2005, with a return date of February 21, 2005, concerned "[a]ll documents that refer, reflect, or relate to Frank E. Hagan." (hereinafter referred to as "the Hagan subpoena.") See FEI's Mot., Exh. 2. Apparently Frank Hagan, now deceased, was a former FEI employee who was deposed as part of the D.C. Litigation. The FEI subpoena (the second subpoena), issued to PETA on September 20, 2007, with a return date of October 12, 2007, included inter alia a request to produce "[a]ll documents that refer, reflect, or

and it was comprised of seven (7) different requests for the production of documents (collectively, the "Requests for Production"), including videotapes in the possession of PETA that pertain to the care and treatment of FEI's animals, such as its elephants. See infra. In response to the subpoena, PETA lodged many general and specific objections to the scope of production requested. In the months following the issuance of the subpoena, counsel for the parties exchanged correspondence and telephone calls in an attempt to work out a compromise on the scope of the document production required under the subpoena.<sup>4</sup> As a result of this exchange, some of those objections were resolved as the parties attempted to focus the scope of the requests to information

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relate to any other current or former employee . . . , or other representative of [FEI]." See FEI's Mot., Exh. 1. The parties appear to have conceded that the Hagan subpoena is not at issue in the instant motion to compel insofar as it is stale, having been issued well over three (3) years ago, and considering that any documents producible in response to the Hagan subpoena would also be producible under the FEI subpoena. See Tr. at 73-74.

<sup>3</sup>PETA's headquarters is located in Norfolk, Virginia, thus making the Eastern District of Virginia, Norfolk Division, the proper court from which to request the subpoena and to hear objections to the subpoena. Fed. R. Civ. P. 45.

<sup>4</sup>This included a letter from PETA's counsel to FEI's counsel dated October 10, 2007, with reference to a telephone conference between counsel of September 28, 2007; a letter from FEI's counsel to PETA's counsel dated November 15, 2007; a letter from FEI's counsel to PETA's counsel dated December 7, 2007, with reference to a telephone conference between counsel of December 5, 2007; a letter from PETA's counsel to FEI's counsel dated December 14, 2007; and a letter from FEI's counsel to PETA's counsel dated December 18, 2007.

pertaining to the care and handling of FEI's elephants generally (as opposed to all elephants or all circuses) and to the individuals specifically identified in the Requests for Production.<sup>5</sup> Further, this exchange resulted in the production of certain documents from PETA, including a chart and supporting documentation containing the date and amount of payments made by various persons and entities, in redacted form, though clearly not enough to satisfy FEI's requests. There was no agreement reached on the production of videotapes in PETA's possession.

On January 28, 2008, FEI filed in this Court its motion to compel the additional documents subpoenaed from PETA. In addition to opposing the motion to compel in this Court, PETA filed a motion to quash FEI's subpoena in the United States District Court for the District of Columbia on February 8, 2008 (case no. 1:08mc69). On March 7, 2008, that court issued an order staying its proceedings on PETA's motion to quash the subpoena pending this Court's decision on the instant motion to compel.<sup>6</sup>

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<sup>5</sup>Specifically, there were nine (9) former FEI employees identified in the various requests: Archele Faye Hundley, Robert Tom, Jr., Margaret Tom, Tom Rider, Glenn Ewell, Gerald Ramos, James Stehcon, Garrison Christianson, and/or Kelly Tansy [a.k.a. Kelley Tansey].

<sup>6</sup>In that order, United States District Judge Emmet G. Sullivan indicated his intent to stay the proceedings in the United States District Court for the District of Columbia on PETA's motion to quash "unless [the United States District Court for the Eastern District of Virginia] shall stay the proceedings before it . . . ." Judge Friedman of this Court determined that a stay was not necessary in his March 11, 2008 Order. See infra note 7.

The Court held a hearing on these pleadings on March 14, 2008.<sup>7</sup> At that hearing, Christopher A. Abel, Esq., and George A. Gasper, Esq., appeared on behalf of FEI; and J. Bryan Plumlee, Esq., and Philip J. Hirschkop, Esq., appeared on behalf of PETA. The Official Court Reporter was Jody A. Stewart. First, it was noted that while the scope of the allegations in the D.C. Litigation has been narrowed to include only six (6) specific elephants, the scope of discovery that may lead to evidence admissible evidence at trial arguably pertains to FEI's care and treatment of its elephants generally, and thus goes beyond those six specific elephants.<sup>8</sup> Second, the Court took interest in the

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<sup>7</sup>That hearing was necessitated by the decision of United States District Judge Jerome B. Friedman, denying PETA's Motion for Protective Order to Transfer This Matter to the District of Columbia or to Stay the Matter, filed February 13, 2008 (Document No. 7), in a Memorandum Order entered on March 11, 2008 (Document No. 23). Judge Friedman, noting that the question of whether the court that issued the subpoena could transfer a motion to compel on that subpoena back to the trial court had not been addressed by the Fourth Circuit or by the Eastern District of Virginia, relied upon the provisions of Rule 45 and the analysis in United States v. Star Scientific, Inc., 205 F. Supp. 2d 482 (D. Md. 2000) (J. Motz), to find that it was not appropriate to transfer or stay the motion to compel under the circumstances. That order also denied, as moot, PETA's Motion in the Alternative to Transfer This Matter for Forum Non Conveniens, filed February 29, 2008 (Docket No. 14).

<sup>8</sup>To that end, reference was made to certain discovery rulings made by United States District Judge Sullivan and United States Magistrate Judge Facciola in the D.C. Litigation. Those rulings may or may not be directly applicable here, however, to the extent they pertain to parties and nonparties other than PETA. Nevertheless, this Court will endeavor to craft the instant decision consistent with such rulings.

Notably, Judge Facciola rulings specifically withheld a finding on the issue of the relevancy of certain discoverable

characterization of PETA's role in the D.C. Litigation: FEI argued that while PETA is not a party, it clearly is a "real party in interest," while PETA steadfastly maintained it is not a supporter of the D.C. Litigation.<sup>9</sup> Third, it was argued by PETA that any videotapes deemed responsive to the Requests for Production should be redacted to remove the audio component of the tapes to protect the private conversations of any individuals who were taped. Finally, the Court acknowledged the existence of certain rulings from the United States District Court for the District of Columbia concerning discovery issues that might bear on the Requests for Production. The Court deferred ruling on the instant motion to compel, pending the filing of supplemental briefs by the parties on or before April 1, 2008, directing the Court's attention to any

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documents as they pertain to FEI's care and treatment of its elephants generally, as opposed to its care and treatment of those six specific elephants. Likewise, this Court's rulings do not make that distinction in regard to the documents producible under the subpoena.

<sup>9</sup>As with most contested issues, the truth appears to lie somewhere in the middle of these extremes. The Court notes that while PETA is a nonparty to the D.C. Litigation, PETA clearly has an interest in an outcome favorable to the animal rights organizations, such as the American Society for the Prevention of Cruelty to Animals, a plaintiff to that litigation. Nevertheless, PETA, as any other individual or organization, has certain First Amendment rights protecting its ability to support generally litigation involving animal rights, such as the D.C. Litigation. To the extent, however, that PETA has provided support, whether directly or indirectly, to any of the parties or putative parties involved in the D.C. Litigation, the Court deems such information as entirely relevant and discoverable under the auspices of the subject subpoena.

such rulings. Counsel were also directed to appear before the Court again on April 8, 2008, for further argument on that motion.

On April 1, 2008, the Court received and filed Plaintiff's Court-Ordered Supplemental Brief Concerning its Motion to Compel Documents Subpoenaed from PETA (Document No. 28) as well as PETA's Supplemental Opposition to Motion to Compel (Document No. 29).

On April 8, 2008, the Court resumed the hearing on FEI's motion to compel, based on its review of the parties' supplemental briefs. At that hearing, Christopher A. Abel, Esq., and Dawn L. Serafine, Esq., appeared on behalf of FEI; and J. Bryan Plumlee, Esq., and Philip J. Hirschkop, Esq., appeared on behalf of PETA. The Official Court Reporter was Jody A. Stewart. At that hearing, the Court pronounced several rulings, summarized here. First, the Court decided it would not quash the FEI subpoena, but instead would modify its terms as more fully explained infra. Second, the Court overruled any assertion of a mutual defense privilege theory given that PETA explicitly disclaimed any legal interest in the D.C. Litigation,<sup>10</sup> see In re Grand Jury Subpoena, 415 F.3d 333, 341 (4th Cir. 2005) ("For the privilege to apply, the proponent must establish that the parties had 'some common interest about a legal

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<sup>10</sup>The Court notes that though this issue was not formally raised by the parties in the moving papers, it appears from the correspondence exchanged between counsel regarding the scope of the subpoena, see supra note 4, that PETA had attempted to assert some form of that privilege in asserting its right to withhold documents arguably responsive to the subpoena.

matter.'") (quoting Sheet Metal Workers Int'l Assoc. v. Sweeney, 29 F.3d 120, 124 (4th Cir. 1994)), though the Court determined there was no obligation to file a privilege log until after receiving a ruling on its objections to the subpoena.<sup>11</sup> Third, the Court overruled any assertion that FEI violated the discovery cutoff deadlines by filing the FEI subpoena in the first instance, and further overruled any assertion that FEI violated the Rule 45 service requirements and/or that PETA failed to timely object to the subpoena. Fourth, the Court determined that PETA's contributions to any of the parties or putative parties to the D.C. Litigation are relevant for discovery purposes. On this point, however, the Court acknowledged PETA's First Amendment privacy interests with respect to any support it may have provided to this or any other animal-rights litigation, see supra note 9. Fifth, the Court determined that the videos in PETA's possession (see

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<sup>11</sup>The Court notes that counsel for PETA was admonished that the failure to produce a privilege log consistent with the law in this Circuit could result in the waiver of certain privileges. However, this ruling is consistent with Judge Facciola's ruling of February 23, 2006, in which he stated: "defendants were not required to assert any privilege for the documents gather[ed] by counsel to cross-examine and impeach Rider until after their objection was ruled on. Similarly, defendants were not obligated to list the documents on any privilege log. Accordingly, I cannot find that defendants waived work product protection [by failing to produce a privilege documents log commensurate with their objections]." See Order, J. Facciola, February 23, 2006 at 5. Similarly, now that the Court has overruled, in part, PETA's objections to the document requests, PETA is permitted to produce an appropriate privilege log along with any assertions of privilege, other than the mutual defense privilege, supra, commensurate with its responses hereto.



Request for Production No. 6), including the audio component, are relevant to the issues in the D.C. Litigation.

Further, at that hearing, the Court overruled any request for the award of costs and attorney's fees associated with the prosecution of the instant motion to compel. As noted by United States District Judge Sullivan, the instant litigation suffers from a sort of "poisoned atmosphere," see Tr. at 5, that has resulted in an inability of counsel for all the parties and nonparties to agree on document production in a timely and efficient fashion. However, the Court does not ascribe blame to one side or another, thus the Court will not impose any sanctions here.

## II. ANALYSIS

### A. Provisions of Rule 45

Rule 45 of the Federal Rules of Civil Procedure sets forth the procedures for serving a subpoena on a nonparty to the underlying litigation as well as the authority of the court to quash or modify the subpoena, if properly objected to by the nonparty. Specifically, Rule 45 authorizes a court to modify or quash a subpoena that, inter alia, "subjects a person to undue burden." Fed. R. Civ. P. 45(c)(3)(A)(iv); see also Higginbotham v. KCS Int'l, 202 F.R.D. 444, 456 (D. Md. 2001). It would be unduly burdensome to require the production of documents in response to requests that are deemed by the Court to be overly broad or that seek information that the Court deems irrelevant. See Lindner v.

Calero-Portocarrero, 180 F.R.D. 168, 173-74 (D.D.C. 1998) (applying court's authority to modify subpoena pursuant to Fed. R. Civ. P. 45(c) (3) (A) (iv) based upon relevance determination and recognizing "factors to be considered in the undue burden analysis include relevance.") On this basis, this Court modifies the Requests for Production infra.

**B. The Requests for Production**

In the instant case, there are seven (7) document requests at issue. The Requests for Production, as written, include the following:<sup>12</sup>

**REQUESTS FOR PRODUCTION**

1. All documents that refer, reflect, or relate to Archele Faye Hundley, including without limitation: (a) all communications with or about Ms. Hundley; (b) all documents reflecting Ms. Hundley's statements or allegations concerning the Litigation, elephants in circuses, Defendant, and/or any current or former employee, consultant, agent, attorney, director, or other representative of Defendant; (c) all documents that reflect anything of value, whether monetary or in kind, requested by or on behalf of, given to, directed to, or made at the direction of Ms. Hundley, including consulting fees and payments and/or reimbursements for services rendered or for goods obtained/received, that were given and/or made either directly to Ms. Hundley or indirectly to Ms. Hundley through another person and/or entity, including MGC and/or WAP; (d) all documents that relate to the purpose of any payments made to, directed to, or requested by Ms. Hundley; and (e) all documents that relate to any payments received, requested, or solicited by you or on your behalf for purposes of paying

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<sup>12</sup>The Court notes that the Requests for Production were accompanied by an extensive and rather cumbersome "Appendix" that included three pages of "Definitions" and over two pages of "Instructions."

Ms. Hundley, funding any activities to be undertaken by Ms. Hundley, or funding any activities relating to Defendant or any other circus, including but not limited to, IRS Forms 1099.

2. All documents that refer, reflect, or relate to Robert Tom, Jr., including without limitation: (a) all communications with or about Mr. Tom; (b) all documents reflecting Mr. Tom's statements or allegations concerning the Litigation, elephants in circuses, Defendant, and/or any current or former employee, consultant, agent, attorney, director, or other representation of Defendant; (c) all documents that reflect anything of value, whether monetary or in kind, requested by or on behalf of, given to, directed to, or made at the direction of Mr. Tom, including consulting fees and payments and/or reimbursements for services rendered or for goods obtained/received, that were given and/or made either directly to Mr. Tom or indirectly to Mr. Tom through another person and/or entity, including MGC and/or WAP; (d) all documents that relate to the purpose of any payments made to, directed to, or requested by Mr. Tom; and (e) all documents that relate to any payments received, requested, or solicited by you or on your behalf for purposes of paying Mr. Tom, funding any activities to be undertaken by Mr. Tom, or funding any activities relating to Defendant or any other circus, including but not limited to, IRS Forms 1099.

3. All documents that refer, reflect, or relate to Margaret Tom, including without limitation: (a) all communication with or about Mrs. Tom; (b) all documents reflecting Mrs. Tom's statements or allegations concerning the Litigation, elephants in circuses, Defendant, and/or any current or former employee, consultant, agent, attorney, director, or other representation of Defendant; (c) all documents that reflect anything of value, whether monetary or in kind, requested by or on behalf of, given to, directed to, or made at the direction of Mrs. Tom, including consulting fees and payments and/or reimbursements for services rendered or for goods obtained/received, that were given and/or made either directly to Mrs. Tom or indirectly to Mrs. Tom through another person and/or entity, including MGC and/or WAP; (d) all documents that relate to the purpose of any payments made to, directed to, or requested by Mrs. Tom; and (e) all documents that relate to any payments received, requested, or solicited by you

or on your behalf for purposes of paying Mrs. Tom, funding any activities to be undertaken by Mrs. Tom, or funding any activities relating to Defendant or any other circus, including but not limited to, IRS Forms 1099.

4. All documents that refer, reflect, or relate to any other current or former employee, consultant, agent, attorney, director, or other representative of Defendant (including but not limited to Tom Rider, Glenn Ewell, Gerald Ramos, James Stechcon, Garrison Christianson, and/or Kelly Tansy [a.k.a. Kelley Tansey]), including without limitation: (a) all communications with or about such persons; (b) all documents reflecting any such person's statements or allegations concerning the Litigation, elephants in circuses, Defendant, and/or any other current or former employee, consultant, agent, attorney, director, or other representative of Defendant; (c) all documents that reflect anything of value, whether monetary or in kind, requested by or on behalf of, given to, directed to, or made at the direction of such persons, including consulting fees and payments and/or reimbursements for services rendered or for goods obtained/received, that were given and/or made either directly to such persons or indirectly to such persons through another person and/or entity, including MGC and/or WAP; (d) all documents that relate to the purpose of any payments made to, directed to, or requested by such persons; and (e) all documents that relate to any payments received, requested, or solicited by you or on your behalf for purposes of paying such persons, funding any activities to be undertaken by such persons or funding any activities relating to Defendant or any other circus, including but not limited to, IRS Forms 1099.

5. All documents that refer, reflect, or relate to any solicitation of or request for donations, contributions, payments and/or any thing(s) of value concerning the Litigation, elephants in circuses, Defendant, and/or any current or former employee, consultant, agent, attorney, director, or other representative of Defendant (including but not limited to Tom Rider, Glenn Ewell, Gerald Ramos, James Stechcon, Garrison Christianson, Kelley Tansy [a.k.a. Kelly Tansey], Archele Faye Hundley, Margaret Tom and/or Robert Tom, Jr.), by: (a) Plaintiffs; (b) MGC; and (c) WAP.

6. All pictures and video or audio recordings (such as tapes, CDs or DVDs) (in complete and unedited

form) that you or anyone else has taken of anything owned by Defendant (such as its boxcars or bullhooks), of any of Defendant's animals (such as its elephants), or of anyone who has ever worked for Defendant (such as Sacha Houcke, Alex Vargas, Carrie Coleman, Tom Rider, Glenn Ewell, Gerald Ramos, James Stehcon, Garrison Christianson, Kelly Tansy [a.k.a. Kelly Tansey], Archele Faye Hundley, Margaret Tom and/or Robert Tom, Jr.).

7. All documents provided to, or communications with, plaintiffs or their counsel (including MGC) that refer, reflect[,] or relate to Defendant's care or treatment of its elephants at issue in the Litigation.

### **C. The Motion to Compel**

In its motion to compel, FEI requested an order compelling PETA to fully respond to the Requests for Production, and FEI requested an award of its costs and attorney's fees, as provided by Fed. R. Civ. P. 45(e). The Court has previously denied any request to impose sanctions, thus this portion of the motion to compel is DENIED. However, the Court GRANTS the motion to compel, in part, to the extent that PETA is DIRECTED to respond to the Requests for Production as amended infra (the "Amended Requests for Production"), and the Court DENIES the motion, in part, to the extent that PETA is not obligated to provide information that the Court deems irrelevant or overly burdensome.

### **D. Amended Requests for Production**

#### **1. Request Nos. 1-4**

The Court considers the first four (4) requests collectively to the extent they each request the production of "[a]ll documents that refer, reflect, or relate to" different former employees of

FEI: Archele Faye Hundley, Robert Tom, Jr., Margaret Tom, as well as Tom Rider, Glenn Ewell, Gerald Ramos, James Stechcon, Garrison Christianson, and/or Kelly Tansy (a.k.a. Kelly Tansey). Insofar as each of these persons identified is involved in the D.C. Litigation, potentially or in fact, the Court generally concludes that the information sought to be discovered in the various Requests for Production is relevant, except as noted herein. Specifically, the Court FINDS that subpart (a) of each request is overly broad and unduly burdensome, thus PETA need not respond to that portion of the request over and above any other responses directed herein. The Court FINDS that subpart (b) of each request is overly broad to the extent that it purports to concern statements made by each identified person "concerning . . . elephants in circuses," generally, as opposed to those elephants in FEI's circuses. Thus PETA is directed to respond to that portion of the request as modified herein. The Court further FINDS that the information requested in subparts (c), (d) and (e), pertaining to financial contributions to, on behalf of, or solicited by each person identified in the requests, is relevant. However, the source of any such financial contributions is irrelevant "unless they are parties to this litigation, attorneys for any of the parties, or employees or officers of any of the plaintiff organizations or WAP." See Order of August 23, 2007, United States District Judge Sullivan, at 3. Thus, consistent with Judge

Sullivan's August 23, 2007 ruling, this Court FINDS that any documents produced in response to subparts (c)-(e), may be redacted as to the source of any contributions made by any entity other than a party, an attorney for a party, an employee or officer of any plaintiff-organization or WAP, or by PETA itself. This allows the documents produced to be redacted to protect the personal identifying information of any person(s) other than those identified above, namely, any person other than a party, an attorney for a party, an employee or officer of any plaintiff-organization or WAP, or PETA itself.

Based on the foregoing, the Court hereby amends Request Nos. 1-4 as follows:

1. All documents that refer, reflect, or relate to Archele Faye Hundley, including without limitation: ~~(a) all communications with or about Ms. Hundley,~~ (b) all documents reflecting Ms. Hundley's statements or allegations concerning the [D.C.] Litigation, [the] elephants in [FEI's] circuses, [FEI], and/or any current or former employee, consultant, agent, attorney, director, or other representative of [FEI]; (c) all documents that reflect anything of value, whether monetary or in kind, requested by or on behalf of, given to, directed to, or made at the direction of Ms. Hundley, including consulting fees and payments and/or reimbursements for services rendered or for goods obtained/received, that were given and/or made either directly to Ms. Hundley or indirectly to Ms. Hundley through another person and/or entity, including MGC and/or WAP; (d) all documents that relate to the purpose of any payments made to, directed to, or requested by Ms. Hundley; and (e) all documents that relate to any payments received, requested, or solicited by [PETA] or on [PETA's] behalf for purposes of paying Ms. Hundley, funding any activities to be undertaken by Ms. Hundley, or funding any activities relating to [FEI] or any [of the elephants in FEI's] circus[es], including but not

limited to, IRS Forms 1099.

2. All documents that refer, reflect, or relate to Robert Tom, Jr., including without limitation: ~~(a) all communications with or about Mr. Tom;~~ (b) all documents reflecting Mr. Tom's statements or allegations concerning the [D.C.] Litigation, [the] elephants in [FEI's] circuses, [FEI], and/or any current or former employee, consultant, agent, attorney, director, or other representation of [FEI]; (c) all documents that reflect anything of value, whether monetary or in kind, requested by or on behalf of, given to, directed to, or made at the direction of Mr. Tom, including consulting fees and payments and/or reimbursements for services rendered or for goods obtained/received, that were given and/or made either directly to Mr. Tom or indirectly to Mr. Tom through another person and/or entity, including MGC and/or WAP; (d) all documents that relate to the purpose of any payments made to, directed to, or requested by Mr. Tom; and (e) all documents that relate to any payments received, requested, or solicited by [PETA] or on [PETA's] behalf for purposes of paying Mr. Tom, funding any activities to be undertaken by Mr. Tom, or funding any activities relating to [FEI] or any [of the elephants in FEI] circus[es], including but not limited to, IRS Forms 1099.

3. All documents that refer, reflect, or relate to Margaret Tom, including without limitation: ~~(a) all communication with or about Mrs. Tom;~~ (b) all documents reflecting Mrs. Tom's statements or allegations concerning the [D.C.] Litigation, [the] elephants in [FEI's] circuses, [FEI], and/or any current or former employee, consultant, agent, attorney, director, or other representation of [FEI]; (c) all documents that reflect anything of value, whether monetary or in kind, requested by or on behalf of, given to, directed to, or made at the direction of Mrs. Tom, including consulting fees and payments and/or reimbursements for services rendered or for goods obtained/received, that were given and/or made either directly to Mrs. Tom or indirectly to Mrs. Tom through another person and/or entity, including MGC and/or WAP; (d) all documents that relate to the purpose of any payments made to, directed to, or requested by Mrs. Tom; and (e) all documents that relate to any payments received, requested, or solicited by [PETA] or on [PETA's] behalf for purposes of paying Mrs. Tom, funding any activities to be undertaken by Mrs. Tom, or



funding any activities relating to [FEI] or any [of the elephants in FEI's] circus[es], including but not limited to, IRS Forms 1099.

4. All documents that refer, reflect, or relate to any other current or former employee, consultant, agent, attorney, director, or other representative of [FEI] (including but not limited to Tom Rider, Glenn Ewell, Gerald Ramos, James Stechcon, Garrison Christianson, and/or Kelly Tansy [a.k.a. Kelley Tansey]), including without limitation: ~~(a) all communications with or about such persons;~~ (b) all documents reflecting any such person's statements or allegations concerning the [D.C.] Litigation, [the] elephants in [FEI's] circuses, and/or any other current or former employee, consultant, agent, attorney, director, or other representative of [FEI]; (c) all documents that reflect anything of value, whether monetary or in kind, requested by or on behalf of, given to, directed to, or made at the direction of such persons, including consulting fees and payments and/or reimbursements for services rendered or for goods obtained/received, that were given and/or made either directly to such persons or indirectly to such persons through another person and/or entity, including MGC and/or WAP; (d) all documents that relate to the purpose of any payments made to, directed to, or requested by such persons; and (e) all documents that relate to any payments received, requested, or solicited by [PETA] or on [PETA's] behalf for purposes of paying such persons, funding any activities to be undertaken by such persons or funding any activities relating to [FEI] or any [of the elephants in FEI's] circus[es], including but not limited to, IRS Forms 1099.

To the extent not already produced, PETA shall respond fully to these amended requests, with the appropriate redactions, supra, within ten (10) days from the date of entry of this Order.

## 2. Request No. 5

The Court FINDS that the information requested in Request No. 5, pertaining to financial contributions to, on behalf of, or solicited by each identified person, is relevant, except that the

source of any such financial contributions is irrelevant unless made by a party, an attorney for a party, an employee or officer of any plaintiff-organization or WAP, or by PETA itself. Accordingly, the Court hereby amends Request No. 5 as follows:

5. All documents that refer, reflect, or relate to any solicitation of or request for donations, contributions, payments and/or any thing(s) of value concerning the [D.C.] Litigation, [the] elephants in [FEI's] circuses, and/or any current or former employee, consultant, agent, attorney, director, or other representative of [FEI] (including but not limited to Tom Rider, Glenn Ewell, Gerald Ramos, James Stehcon, Garrison Christianson, Kelley Tansy [a.k.a. Kelly Tansey], Archele Faye Hundley, Margaret Tom and/or Robert Tom, Jr.), by: (a) Plaintiffs [in the D.C. Litigation]; (b) MGC; and (c) WAP.

To the extent not already produced, PETA shall respond fully to this amended request, with the appropriate redactions, supra, within ten (10) days from the date of entry of this Order.

### 3. Request No. 6

The Court FINDS that the photographs and videotapes in PETA's possession addressed in Request No. 6 are relevant to the D.C. Litigation, but only to the extent that such photographs and videotapes pertain to the care, treatment, training and handling of FEI's elephants. This includes the audio components of any such videotapes, thus the Court DENIES PETA's request to redact such videotapes. Accordingly, the Court hereby amends Request No. 6 as follows:

6. All pictures and video [and] audio recordings [in PETA's possession] (such as tapes, CDs or DVDs) (in complete and unedited form) that [PETA] or anyone else

has taken of anything owned by [FEI] (such as its boxcars or bullhooks), ~~of~~ [and that pertains to] any of [FEI]'s ~~animals (such as its elephants,~~ or of anyone who has ever worked for [FEI] [with respect to the elephants in FEI's care] (such as Sacha Houcke, Alex Vargas, Carrie Coleman, Tom Rider, Glenn Ewell, Gerald Ramos, James Stehcon, Garrison Christianson, Kelly Tansy [a.k.a. Kelly Tansey], Archele Faye Hundley, Margaret Tom and/or Robert Tom, Jr.).

To the extent not already produced, PETA shall respond fully to this amended request, without redaction, supra, within ten (10) days from the date of entry of this Order. Any such photographs or videotapes are to be made available by PETA, for inspection, viewing and, if necessary, copying by FEI, at the offices of PETA's local counsel, Huff, Poole & Mahoney, P.C., 4705 Columbus St., Virginia Beach, Virginia, 23462, or at a location otherwise mutually agreed upon, during normal business hours (10:00 a.m. to 5:00 p.m.) and for a reasonable duration (at least 30 days). PETA shall be responsible for transporting the responsive documents to/from its local counsel's office, but all costs associated with the inspection, viewing and copying of any responsive photographs and videotapes, including the provision of any necessary equipment and/or personnel, are to be borne solely by FEI.

#### **4. Request No. 7**

Based on the foregoing, the Court hereby amends Request No. 7 as follows:

7. All documents provided to, or communications with, [P]laintiffs [in the D.C. Litigation] or their counsel (including MGC) that refer, reflect[, ] or relate to [FEI]'s care or treatment of its elephants at issue in

the [D.C.] Litigation.

To the extent not previously produced or not covered by the foregoing document requests, PETA shall respond fully to this amended request, including the production of any privilege log consistent with the Court's aforementioned ruling, see supra note 11, within ten (10) days from the date of entry of this Order.

**III. CONCLUSION**

Based on the foregoing, the Court, having DENIED the request for attorney's fees and costs, GRANTS the motion to compel, in part, to the extent that PETA is DIRECTED to respond to the Amended Requests for Production as indicated herein, and the Court DENIES the motion, in part, to the extent that PETA is not obligated to provide information that the Court deems irrelevant or overly burdensome.

IT IS SO ORDERED.

  
UNITED STATES MAGISTRATE JUDGE

Norfolk, Virginia

July 22, 2008