

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

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

Plaintiffs,)

v.)

RINGLING BROTHERS AND BARNUM)
& BAILEY CIRCUS, et al.,)

Defendants.)

Civ. No. 03-2006 (EGS/JMF)
Judge: Emmett G. Sullivan

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT
ADDING THE ANIMAL PROTECTION INSTITUTE
AS AN ADDITIONAL PLAINTIFF**

Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, Plaintiffs move for leave to file the attached Supplemental Complaint in this case for the sole purpose of adding an additional plaintiff – the Animal Protection Institute (“API”). As demonstrated in the accompanying memorandum of law, API’s claims against the defendants arising under the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 et seq., are identical to those of the existing plaintiffs, as supplemented by additional, more recent evidence of the same continuing violations of the statute. Therefore, because API could file its own lawsuit against the defendants challenging their violations of the ESA, which would only add to the number of cases on this Court’s docket, in the interest of judicial economy it makes sense to allow the plaintiffs to add API as an additional plaintiff with a Supplemental Complaint.

Plaintiffs’ counsel contacted defendants’ counsel prior to filing this motion, and was

informed by defendants' counsel that he was not yet able to represent defendants' position on the motion.

Respectfully submitted,

/s/
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October 27, 2005

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS’
MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT**

Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, Plaintiffs have moved for leave to file a Supplemental Complaint in this action under the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 et seq., for the sole purpose of adding the Animal Protection Institute (“API”) as an additional plaintiff. For the reasons demonstrated below, the motion should be granted.

Relevant Background

In this ESA case, plaintiffs – the American Society for the Prevention of Cruelty to Animals, the Fund for Animals, the Animal Welfare Institute, and Tom Rider – challenge routine, continuing practices of defendants Ringling Brothers and Barnum & Bailey Circus (“Ringling Bros.”) and Feld Entertainment which plaintiffs allege unlawfully “take” endangered Asian elephants in violation of Section 9 of the ESA, 16 U.S.C. § 1538(a), and that statute’s implementing regulations. In particular, plaintiffs allege that Ringling Bros. illegally “takes” the elephants – i.e., harms, harasses, and wounds them, 16 U.S.C. § 1532(19) (definition of “take”) –

by beating and striking the elephants with sharp bullhooks, by keeping them chained for long periods of time, and by forcibly removing baby elephants from their mothers with ropes and chains before they are naturally weaned. Complaint ¶¶ 62-83. Plaintiffs allege that defendants engage in these unlawful actions on a daily basis, throughout the country. Complaint ¶¶ 1, 91.

The Animal Protection Institute is a non-profit membership organization headquartered in Sacramento, California, with a long history of advocating protection of animals used in entertainment, including elephants in circuses. See Proposed Supplemental Complaint ¶ 3; see also www.api4animals.org. On July 22, 2005, pursuant to the notice provisions of the ESA, 16 U.S.C. 1540(g)(2)(A), API sent defendants a notice letter alleging the same unlawful practices that are the subject of this pending litigation. See Letter to Kenneth Feld from Nicole Paquette (July 22, 2005) (attached as Exhibit 1). In that letter, API repeated each of the allegations of defendants' unlawful "take" of Asian elephants that are the subject of the pending lawsuit, and incorporated by reference the notice letters that had previously been sent to defendants on this matter. Id. at 2. In addition, API specified more recent grounds for those allegations, including recent eye-witness accounts by former Ringling Bros. employee Frank Hagan, who was employed by Ringling Bros. for approximately ten years until August 2004, as well as more recent video and photographic evidence. Id. Therefore, now that the sixty days has expired from the date API sent its notice letter to defendants, API seeks to join the pending lawsuit as an additional plaintiff.

Argument

Rule 15(d) provides that "[u]pon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth

transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.” Here, as explained above, since the Complaint in this case was filed, API has sent Ringling Bros. a notice letter concerning the same continuing unlawful activities under the ESA that are the subject of the pending Complaint, with more recent evidence of such violations. Therefore, rather than have API file a separate lawsuit alleging the same violations of law, plaintiffs wish to have API simply join this lawsuit as an additional plaintiff.

It is well established that, under such circumstances – particularly where supplementation does not change the claims that have been asserted against the defendants – adding a new party to the case by supplementing the Complaint is appropriate. See, e.g., Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 227 (1964); Gomez v. Wilson, 477 F.2d 411, (D.C. Cir. 1973); United Public Workers of America v. Local No. 312, 94 F. Supp. 538, 542 (E.D. Mich. 1950) (Rule 15(d) . . . authorizes the Court to permit a party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading [which] could also include the addition of parties plaintiff”). Indeed, while API could file its own lawsuit against the defendant, and seek to consolidate that case with this one, there is no reason to add another case to this Court’s docket when API can be added as an additional plaintiff simply by supplementing the existing Complaint.

Conclusion

For the foregoing reasons, plaintiffs’ motion to supplement the Complaint in this case should be granted.

Respectfully submitted,

/s/

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AND)

ANIMAL PROTECTION INSTITUTE,)
1122 S Street)
Sacramento, CA 95814,)

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RINGLING BROS. AND BARNUM &)
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Civ. No. 03-2006 (EGS/JMF)

SUPPLEMENTAL COMPLAINT

1. This Supplemental Complaint adds the Animal Protection Institute as a plaintiff to this pending case under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq. against Ringling Brothers and Barnum & Bailey Circus ("Ringling Bros.") for "taking" endangered elephants -- i.e. harming, harassing, and wounding them -- in violation of the ESA and the regulations implementing that statute.

Jurisdiction

2. This Court has jurisdiction over this case pursuant to 16 U.S.C. § 1540(g) and 28 U.S.C. § 1331.

Parties

3. The Animal Protection Institute (“API”) is a non-profit membership organization dedicated to eliminating the abuse, neglect, and exploitation of animals, including animals used in entertainment. API has approximately 85,000 members and supporters throughout the United States, including Washington, D.C. It brings this action on its own behalf and on behalf of its members.

4. API spends substantial resources each year on advocating better treatment for animals held in captivity, including animals used in circuses. It routinely sends submissions to the federal government concerning the treatment of captive animals, particularly animals used in circuses, and it responds to requests for public comment from the federal government concerning animal welfare issues. API’s members also routinely comment on such matters.

5. API publishes a magazine, on a quarterly basis, which goes to all of its members, and it operates a website on the world wide web. The magazine and website report on animal welfare issues, including legislative and regulatory matters affecting animals used for entertainment, and particularly animals used in circuses, and they also inform API’s members about actions that can be taken to promote the protection and humane treatment of animals.

6. Defendants’ unlawful actions in “taking” endangered elephants as described in the initial Complaint in this action, and as further described below, injure API and its members. Defendants’ “taking” of elephants without permission from the Fish and Wildlife Service pursuant to the process created by section 10 of the Endangered Species Act violates API’s and its members’ statutory right to obtain the information generated by the section 10 process, and to participate in that process. In particular, defendants’ unlawful actions cause API and its members

injury by depriving API of the ability to obtain and disseminate through its newsletter and website information regarding defendants' treatment of endangered elephants who are commercially exploited. In addition, because defendants "take" elephants without permission from the FWS -- and hence without public notice and comment as required by the ESA -- API must spend financial and other resources pursuing alternative sources of information about defendants' actions and treatment of elephants in order to obtain such information for use in its work, to disseminate to its members and the public, and to submit comments and other submissions to the agencies with jurisdiction over these matters. This requires API to spend its limited resources on monitoring the treatment of the elephants used by defendants when API could otherwise spend such resources on other animal protection projects that would benefit the organization as well as its members.

If API prevails in this case, Ringling will either no longer be allowed to use Asian elephants in its circus, will have to do so without engaging in acts that "take" those animals, or will have to seek permission from the FWS to engage in practices that constitute a "take" of the animals. Any such relief would redress API's injuries, and the injury to its members, by making it less likely that API would have to continue to spend substantial resources monitoring defendants' treatment of Asian elephants, reporting its findings to its members, the public, and regulatory authorities, and advocating for better treatment of these animals.

7. If API prevails in its claim for relief regarding forfeiture of the endangered elephants in defendants' possession, it will have a statutory right to a reward for furnishing information that leads to such forfeiture, pursuant to the ESA, 16 U.S.C. § 1540(d).

8. The defendants to this Supplemental Complaint are the same as the defendants to the Complaint in this action, and therefore paragraphs 25-35 of the Complaint are hereby incorporated by reference.

Relevant Facts

9. This case challenges the defendants' violations of the ESA, by engaging in actions that "take" endangered Asian elephants, including the routine beating and striking of elephants with bullhooks and other instruments; the chaining of elephants for long periods of time; and the forcible removal of baby elephants from their mothers before they are naturally weaned.

10. The same statutory and regulatory framework that is set forth in the Complaint, at ¶¶ 36 - 47, also applies to this Supplemental Complaint, and therefore, all of those paragraphs from the Complaint are hereby incorporated by reference. In addition, all of the factual allegations set forth in the Complaint at ¶¶ 48 - 95 also apply to this Supplemental Complaint and are therefore also hereby incorporated by reference.

11. On July 22, 2005, API sent a notice letter to Kenneth Feld, President of Ringling Brothers and Barnum & Bailey Circus, advising him that Ringling Bros. is in violation of the "take" prohibitions of Section 9 of the ESA, 16 U.S.C. § 1538(a), "since its elephant trainers and handlers routinely chain and confine their elephants, use the bullhook on their elephants, and forcibly separate baby elephants from their mothers." In support of these allegations, API relied on, expressly incorporated by reference, and attached the notice letters sent by the plaintiffs in this action and other animal protection groups on December 21, 1998, November 15, 1999, and April 12, 2001.

12. As to the allegations concerning the chaining and confinement of the elephants, API additionally relied on more recent eye-witness accounts of former Ringling Bros. employee Frank Hagan, who left the circus in August, 2004, as well as more recent video footage, and photographs taken as recently as January 26, 2005, which show that, within seconds of the elephants completing their walk from the train station to the arena where they were to perform, chains were placed on them. In addition, API noted that, when the elephants are traveling from location to location, they remain chained in the stock cars for as long as 2-3 days consecutively, and are not provided any opportunity to walk around, or otherwise to exercise.

13. As to the allegations concerning Ringling Bros.' use of the bullhook, API additionally relied on the recent eyewitness accounts of former Ringling Bros. employee Frank Hagan, and videotape footage, including, for example, the fact that, on September 3, 2004, a CBS affiliate in San Francisco aired recent footage of a Ringling Bros. handler striking an elephant with a bullhook.

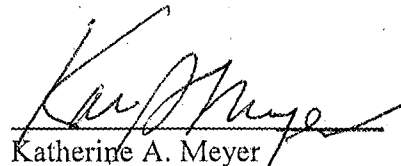
14. As to the allegations concerning Ringling Bros.' forcible removal of baby elephants from their mothers, API relied on the fact that Ringling Bros.' employees themselves admitted to officials of the United States Department of Agriculture that such "separation" techniques were "routine" at defendants' breeding farm, which defendants refer to as the "Center for Elephant Conservation," and the additional fact that Ringling Bros. has continued to produce baby elephants at the CEC for use in its circus and does not allow those animals to be naturally weaned from their mothers or to stay with their mothers, as they would in the wild.

Claims for Relief

15. API's claims for relief are the same as those contained in the original Complaint at ¶¶ 96-97, and are therefore also hereby incorporated by reference.

WHEREFORE, plaintiff API requests that this Court grant it the same relief that has been requested by the other plaintiffs to this case, as stated at pages 21-22 of the Complaint.

Respectfully submitted,



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ORDER

Upon consideration of plaintiffs' motion for leave to file a supplemental complaint to add the Animal Protection Institute as an additional plaintiff to this case, the defendants' response thereto, and the entire record of this proceeding, it is this day of , 2005,

ORDERED that plaintiffs' motion is granted, and it is further

ORDERED that plaintiffs shall be entitled to file their Supplemental Complaint adding the Animal Protection Institute as an additional plaintiff in this case.

United States District Judge