

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

JUL 30 2003

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

AMERICAN SOCIETY FOR THE	)	
PREVENTION OF CRUELTY TO	)	
ANIMALS, et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 00-1641
	)	(EGS) [8]
RINGLING BROS., et al	)	
	)	
Defendants.	)	
	)	

A M E N D E D O R D E R

Plaintiffs in this case challenge defendants' "routine beating, chaining, and other mistreatment" of Asian elephants and submit that such treatment constitutes the unlawful "taking" of an endangered species in violation of Section 9 of the Endangered Species Act, 16 U.S.C. § 1531 et seq. (1973). Pending before the Court is defendants' motion to dismiss plaintiffs' complaint, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can be granted.

In appraising the sufficiency of a complaint, a court must follow "the accepted rule that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff[s] can prove no set of facts in support of [their] claim which would entitle [them] to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). See also *Swierkiewicz v. Sorema*, 534 U.S. 506, 514 (2002) (holding that a court may dismiss a complaint "only if it

2

3

is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations."). For purposes of a motion to dismiss, a court must treat the plaintiff's factual allegations as true, see e.g., *Warth v. Seldin*, 422 U.S. 490, 501 (1975) and must liberally construe the complaint in favor of the plaintiff, *Jenkins v. McKeithen*, 395 U.S. 411, 421-422 (1969).

In the present case, the Court must accept as true plaintiffs' assertions concerning defendants' treatment of Asian elephants, a species considered "endangered" under the ESA. Accordingly, upon consideration of the defendants' motion to dismiss, as well as the response and reply thereto and the relevant case and statutory law governing the issue, it is by the Court hereby

**ORDERED** that the defendants' motion to dismiss [8] is **denied**; and it is

**FURTHER ORDERED** that the defendants shall file a responsive pleading **by no later than August 11, 2003**; and it is

**FURTHER ORDERED** that, pursuant to LCvR 16.3 of the Local Rules, as amended effective December 1, 2000, and Fed. R. Civ. P. 26(f), as amended effective December 1, 2000, counsel shall confer **by no later than September 9, 2003** and submit their Report addressing all topics listed in LCvR 16.3(c) **by no later than September 16, 2003**; and it is

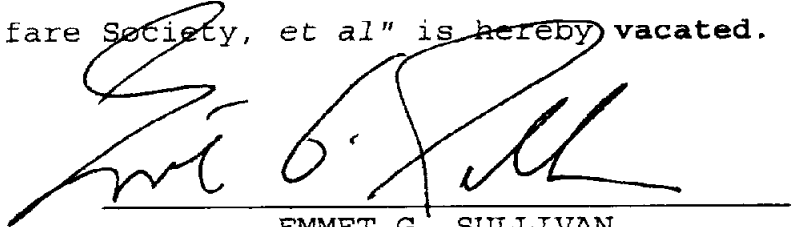
**FURTHER ORDERED** that an Initial Scheduling Conference is

scheduled in this case for **September 23, 2003 at 10:00 a.m.** in Courtroom One; and it is

**FURTHER ORDERED** that the order denying the defendants' motion to dismiss dated July 29, 2003 and naming the plaintiffs as "Performing Animal Welfare Society, et al" is hereby **vacated**.

DATE:

7/30/03



EMMET G. SULLIVAN  
UNITED STATES DISTRICT JUDGE

Notice to:

Stephen Louis Braga, Esq.  
BAKER BOTTS, LLP  
The Warner Building  
1299 Pennsylvania Avenue, NW  
Washington, DC 20004-2400

Katherine Anne Meyer, Esq.  
Suite 700  
MEYER & GLITZENSTEIN  
1601 Connecticut Avenue, NW  
Washington, DC 20009

Harris Weinstein, Esq.  
Suite 813-A  
COVINGTON & BURLING  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004-2401