

## MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY INJUNCTION

This preliminary injunction is sought under Rule 65 of the Federal Rules of Civil Procedure. Plaintiff brought an Endangered Species Act complaint to the Court on September 21, 2017. A hearing is pending on whether plaintiff may proceed *pro se*. However, the merits of the case are likely to succeed whether it is brought *pro se* for the Friends of Ruth & Emily, Inc. or personally by and for its president, Joyce Rowley. This is so because additional harm has occurred to Asian elephant Ruth since the suit was filed which substantiates the claims.

This motion meets the Rule 65 requirements for a preliminary injunction as follows:

1. Without receiving the preliminary injunction, irreparable harm will likely occur to Ruth, one of the two endangered species of Asian elephants held captive by defendant. Plaintiff will suffer irreparable harm from Ruth's continued injury and likely death.
2. The threat is imminent. The records, as noted below, show that Ruth's injury has not healed after two months of various treatments. Due to the severity of the injury, she will likely need some or all of her ear amputated.
3. There is no harm to the defendant to have the Asian elephant Ruth examined or removed. The defendant has already claimed that it will not replace her if she dies at the zoo.
4. There is no other remedy available to plaintiff.
5. The grant of the injunction will serve the public interest in protecting captive zoo and circus elephants. An online petition that over 120,000 people have signed asking that both elephants, including Asian elephant Ruth, be removed from the zoo as a result of filing this lawsuit. (<https://www.thepetitionsite.com/101/458/190/new-bedford-send-zoos-incompatible-elephants-ruth-and-emily-to-a-sanctuary/>). Over 65 people donated to a legal fund for the lawsuit to go forward and for Asian elephants Ruth and Emily to be removed from the zoo and relocated

to The Elephant Sanctuary (<https://www.gofundme.com/R-ELegalFund>). Previously, over 2,500 New Bedford residents signed a petition for both Buttonwood Park Zoo elephants to be removed and sent to The Elephant Sanctuary. Should Ruth die at the zoo, no public interest would be served.

### **FACTUAL BACKGROUND**

Since filing the complaint on September 21, 2017, Asian elephant Ruth contracted vasculitis on her right ear. This painful condition has resulted in sloughing of the skin on her ear and destroyed parts of her ear tissue. It requires painful "debridement" and physical cutting of the skin with tissue scissors to removed decaying tissue.<sup>1</sup>

Elephant ears are thermoregulators and control the elephant's temperature through a complex vascular system.<sup>2</sup>

On September 23, 2017, a City elephant staffer injected Ketaprofen as prescribed in Ruth's right ear vein<sup>3</sup>. According to the record, the injection was only 50% successful. On October 3, 2017, clinical records for Ruth indicated that her right ear had a 2-inch infected lesion.

On October 5, 2017, the City veterinarian made a diagnosis of presumptive vasculitis, which was then modified on October 6 as caused by "trauma, degenerative, secondary to an injection, metabolic, neoplasia, autoimmune or other." This diagnosis was further modified,

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<sup>1</sup> Exhibit 1. Clinical notes for the period November 7, 2017 through November 30, 2017, as secured by Massachusetts Public Records Act (MGL 66), p.1

<sup>2</sup> Animal Ecology, Arthur Sperry Pearse, p. 101

<sup>3</sup> Exhibit 2, Clinical notes for the period September 20, 2017 to November 9, 2017, as secured by Massachusetts Public Records Act (MGL 66), p. 37

dropping metabolic (October 7), and degenerative causes (October 10), until on October 30 it was changed to simply "vasculitis."<sup>4</sup>

However, it may be a misdiagnosis. Iatrogenic segmental gangrene in elephants is caused by perivascular injection of irritants into the ear and has an identical appearance as what is on Ruth's ear<sup>5</sup>. In addition to clearly segmented skin as indicated by pink straight lines characteristic of segmental gangrene, Ruth's ears exhibit dark areas referred to in the clinical notes and as shown on photos, which indicates gangrene. This type of gangrene is a "dry gas gangrene" not caused by infection, but by the destruction of vascular cells.

On October 20, 2017, punch biopsies were performed and reviewed. No infectious agents were found, which would also be consistent with dry gas gangrene. Repeated body checks found no trauma. Despite the intravenous injection with Ketaprofen shortly before her ear began sloughing off, the City veterinarian and consultants decided it was a sensitivity to something in her environment<sup>6</sup>.

Additional bloodwork on October 25, 2017 indicated Ruth had become "mildly anisocytosis" (anemic).<sup>7</sup> However, the anemia has not been treated.<sup>8</sup>

On October 25, 2017, two pockets of purulent material were noted "as they had been."<sup>9</sup> It is unclear from the records when these began. The original infection of October 3, 2017, was not cultured and did not show up on the biopsy.

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<sup>4</sup> Ibid. p.31-4

<sup>5</sup> Exhibit 3, Wildpro, description of Iatrogenic segmental gangrene, photo of Ruth's ear for comparison.

<sup>6</sup> Exhibit 2, Clinical notes, p. 13, IDEXX report

<sup>7</sup> Ibid, Bloodwork.

<sup>8</sup> Exhibits 1, 2.

<sup>9</sup> Exhibit 2, p. 11.

On October 25 and again on November 1, 2017, the City veterinarian prescribed oral sulfatrim medication, presumably to treat the infection.<sup>10</sup> As of November 15, 2017, the most recent records available, the infection had not subsided, nor had Ruth's ear stopped sloughing.

The threat of this becoming a fatal injury is seen in the unsanitary conditions in which Ruth is kept.

Elephants "dust" frequently by throwing dirt on themselves to protect themselves from insects.

The barn floor is dirt, (Cplt 1:59) leading to staphylococcus and streptococcus skin infections in Ruth in 2014, and staphylococcus skin infections in Emily in 2016<sup>11</sup>.

Ruth must spend a minimum of 16 hours standing, walking, sleeping and eating in her own waste (Cplt. 1:64). She cannot escape it. Due to inclement weather, and shorter zoo hours of operation, this has increased to 18-20 hours since November 1st. Very shortly, that period will increase to days at a time as temperatures drop to freezing and snow prevents the elephants from exiting the barn or being allowed outside.

Ruth's new stall is a mere 750 s.f., proportionately the equivalent of a 160-lb. person kept in a 15 s.f. closet. Ruth cannot avoid contaminating her injured and infected ear with waste-laden dirt when she dusts in the barn.

Regardless of causation, Ruth's painful and dangerous condition is a direct result of her captivity at defendant's Buttonwood Park Zoo. After two months and multiple treatments, Ruth's ear is not better, and she may lose some or all of it.

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<sup>10</sup> Ibid, p. 11-12, p. 3.

<sup>11</sup> Exhibit 4, Clinical notes January 2014, January 2016.

Ruth will not be subjected to unsanitary and dangerous conditions at The Elephant Sanctuary. The Sanctuary has specialized areas in its elephant barns to treat sick elephants. The barn floors are concrete, and can be kept sanitary through daily powerwashing.

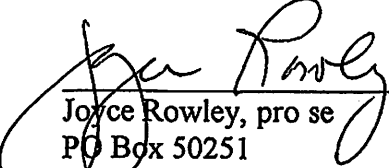
Although concrete floors can cause harm to elephants' feet long term, the climate is such that the elephants can be outside on natural ground for longer periods of the day, and throughout most of the winter. When it does snow in Tennessee, it rarely lasts more than a day.

Because the Sanctuary is closed to the public and they have 24-hour staffing, the elephants do not need to be put inside of the barn. Instead, they can remain outside at night if they so choose, weather permitting.

For these reasons, relocation to The Elephant Sanctuary would be more likely to result in curing Ruth's vasculitis and secondary infection(s).

Left at the defendant's zoo, Ruth's condition will likely worsen and likely lead to premature euthanasia.

Respectfully submitted on December 8, 2017,

  
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