

**MEMORANDUM IN SUPPORT OF
RENEWED PRELIMINARY INJUNCTION**

This renewal to the 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. On December 12, 2017, Plaintiff filed a preliminary injunction to allow Asian elephant Ruth to be examined and removed from Buttonwood Park Zoo (Dkt. #16). On February 15, 2018, Plaintiff Joyce Rowley was substituted for Friends of Ruth & Emily, Inc. (Dkt. #23).

The merits of the case are likely to succeed because additional and continuous harm has occurred to Asian elephant Ruth since the suit was filed which substantiates the claims made in the complaint.

This renewed preliminary injunction meets Rule 65 requirements for a preliminary injunction as follows.

1. Without receiving the preliminary injunction, irreparable harm has and will continue to occur to Ruth, one of the two endangered species of Asian elephants held captive by Defendant. Plaintiff has suffered and will suffer irreparable harm from Ruth's continued injury and likely death at the zoo.

2. The threat is imminent. If this were a dog kept under these conditions, there would be no doubt that the dog was in imminent danger and that there was sufficient evidence to remove the dog. The Defendant's Animal Control Officer routinely removes animals if they are found to be kept standing in its own waste.

3. Old injuries are not healing well and Ruth has incurred new injuries.

4. The records, as noted previously and as described in the Declaration of Julia Allen, D.V.M., Ph.D.¹, show that Ruth's injury had not healed after five months of various treatments and continues to require treatment as her ear tissue sloughs off. It appears Ruth will lose half of her ear to this injury².

5. There is additional direct evidence that Ruth's living quarters caused her to get staphylococcus and streptococcus infections on the painfully raw tissue of her ear as the skin sloughed off (Dkt. 17-2 through 17-5).

6. On April 7, 2018, Ruth suffered a more recent injury on her trunk of unknown origin that gouged out a 4" by 2" chunk of her trunk³.

7. On May 28, 2018, Ruth suffered a trauma or injury to her rear left leg which now requires treatment⁴.

8. On June 13, 2018, Ruth was observed with a large 3 in. diameter laceration on her left cheek, of unknown origin⁵.

9. Ruth is not receiving adequate care throughout the day to alleviate her suffering due to her inability to regulate her temperature. In 80°F weather on June 14, 2018, Ruth did not have access to adequate shade, mud, or water.

10. Her untreated lameness makes her unable to access the concrete water feature, even when it is not contaminated with duck feces, as it often is. The barn doors were closed as she must be on exhibit to show people what an elephant looks like. And, standing in the barn day and night will only increase her lameness and pain.

¹ Ex. 1, Declaration of Julia Allen, DVM, PhD.

² Ex. 2, Photo of Ruth's ear dated June 13, 2018.

³ Ex. 3, Clinical records for Ruth, secured through MGL 66, Public Records Access Act from the City of New Bedford, MA, dated April 1, 2018 through April 30, 2018.

⁴ Ex. 4, Clinical records for Ruth, secured through MGL 66, Public Records Access Act from the City of New Bedford, MA, dated May 1, 2018 through May 31, 2018.

⁵ Ibid, Ex. 2, Photo of Ruth's ear dated June 13, 2018.

11. On that day, Ruth exhibited stereotype behavior for over an hour, swaying and rocking her head back and forth while standing facing the barn door and then standing near the door⁶.

12. Elephants can die from overheating, and are subject to heat stroke and other heat-illnesses as are dogs and humans.

13. The fact that Ruth is surviving yet more calamities due to her captivity at Buttonwood Park Zoo makes the risk of harm no less imminent--it only increases the risk of further life-threatening injuries.

14. There is no harm to the Defendant to have Asian elephant Ruth examined or removed. The Defendant has already claimed that it will not replace her if she dies at the zoo.

15. There is no other remedy available to plaintiff.

16. The grant of the injunction will serve the public interest in protecting this captive zoo elephant, and upholding the Endangered Species Act. 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. (www.thepetitionsite.com/101/458/190/new-bedford-send-zoos-incompatible-elephants-ruth-and-emily-to-a-sanctuary/). Over 70 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 (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.

17. Should Ruth die at the zoo, no public interest would be served.

I. FACTUAL BACKGROUND

⁶ Ex. 6, Videos taken at 2:49 p.m. and 3:50 p.m., June 14, 2018, at <https://youtu.be/lbvSk-K4e4w> and <https://youtu.be/vbJqbi4q6uc>, respectively.

18. Two days after the complaint was filed 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 and a scalpel to remove decaying tissue. This injury was described in full in the original preliminary injunction (Dkt. 16, 17).

19. Briefly, on September 23, 2017, Defendant's elephant staff injected Ketaprofen as prescribed in Ruth's right ear vein. According to the record, only 50% of the drug was used. On October 3, 2017, clinical records for Ruth indicated that her right ear had a 2-inch infected lesion.

20. By October 30, 2017, the Defendant's veterinarian made a diagnosis of vasculitis.

21. Elephant ears are thermoregulators and control the elephant's temperature through a complex vascular system. As noted in Dr. Allen's declaration, Ruth will have difficulty in the future controlling her temperature.

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

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

24. 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.

25. Ruth must spend a minimum of 16 hours standing, walking, sleeping and eating in her own waste (Cplt. 1:64). She cannot escape it.

26. Due to inclement weather, and shorter zoo hours of operation, her confinement increased to 18-20 hours after November 1st. As temperatures dropped to freezing and snow

prevented the elephants from exiting the barn or being allowed outside, Ruth spent less than 4 hours per day outside. Between December 26, 2017 and January 7, 2018, Ruth spent 13 days continuously inside the barn as temperatures dropped to -11°F at times during the day.

27. 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.

28. Regardless of causation, Ruth's painful and dangerous condition is a direct result of her captivity at defendant's Buttonwood Park Zoo. After eight months and multiple treatments, Ruth's ear is not better, and apparently she will lose at least half of it.

29. Now Ruth is subjected to extreme heat without relief.

30. Ruth will not be subjected to unsanitary and dangerous environmental 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.

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

32. 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.

33. In hot weather, elephants can maintain mobility by accessing the barn during the day and accessing the 2,000 acre habitat at night. There are multiple opportunities for cooling during hot weather--ponds, streams, lakes, and deep forest shade.

34. For these reasons, relocation to The Elephant Sanctuary would be more likely to result in healing Ruth's vasculitis and secondary infections, addressing environmental issues relative to temperature control, monitoring, and veterinary care,

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

II. RELIEF

Plaintiff seeks a preliminary injunction against the Defendant's continued keeping of Ruth under these dangerous conditions.

Plaintiff seeks the Court order the City to allow Ruth's assessment by Plaintiff's transport experts. Several elephant veterinary familiar with transporting an elephant and a transport company have been contacted regarding her safe removal from Buttonwood Park Zoo and transfer to The Elephant Sanctuary. Should the Court allow it, Plaintiff will pay for the assessment for the transport.

Plaintiff seeks the Court order the City to pay the full cost of Ruth's transport to The Elephant Sanctuary.

Respectfully submitted on June 15, 2018,

/s/Joyce Rowley
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