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13 and Defendant Dr. Francine Patterson

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

17 ZOOLOGICAL SOCIETY OF  
18 CINCINNATI, D/B/A CINCINNATI  
19 ZOO & BOTANICAL GARDEN, an  
Ohio non-profit Corporation,

20 Plaintiff,

21 vs.

22 THE GORILLA FOUNDATION, a  
California Corporation; and  
23 FRANCINE PATTERSON,

24 Defendants.

CASE NO. 4:18-cv-06529 (RS)

**OPPOSITION OF DEFENDANTS  
TO EX PARTE APPLICATION TO  
COMPEL EARLY TRANSFER OF  
NDUME DESPITE SERIOUS  
SAFETY RISKS**

Hearing date:

Time:

Courtroom: 3

Judge: Hon. Richard Seeborg

25  
26 The recent ex parte application of CZBG to compel transfer of Ndume a few  
27 weeks before anyone can be sure it is safe, falsely portrays his current situation at TGF, as  
28 if it is harmful. Yet, at the same time, they pretend that there is literally no risk in

1 transferring an elderly, male gorilla, with symptomatic *Balantidium Coli*, and an abnormal  
2 heart, who is exhibiting signs of massive stress in anticipation of his forcible removal from  
3 his peaceful home of almost 28 years.

4  
5 Contrary to the CZBG claims of urgency to transport him, it is clear that Ndume is  
6 not ready for a safe transfer. Over the recent past, his stress levels have increased  
7 dramatically, and during the last two days he has presented with diarrhea, emesis and  
8 decreased appetite. These are all new symptoms since the last court filing and are unusual  
9 for him, and extremely concerning to those concerned about his welfare. These indicators  
10 are plainly related to the addition of severe stress caused by his imminent transfer.

11  
12 TGF alone has tried to work cooperatively to insure a safe transfer. CZBG has done  
13 everything possible to hide the truth, from TGF and this Court. Based upon his recent  
14 testing, TGF learned that he now has *Balantidium coli* present in his stool. This does not  
15 just pose a danger to him but to anyone who comes in contact with him during transport,  
16 especially with his frequent, sometimes forceful (when mixed with gas), loose stools.

17  
18 The cysts present in his stool are the infective form of the parasite. They directly  
19 put Ndume, other nearby gorillas and any humans nearby at serious risk. CZBG knows  
20 this is true, but pretends as if there are no risks whatsoever.

21  
22 The CZBG haste to move Ndume, with no regard for his health is concerning. All  
23 of their experts are within the zoo community. The information TGF is providing comes  
24 from independent sources, and presents a balanced view. This opposition includes a  
25 declaration from Dr. Jane Hopper, the Head Veterinarian from the Aspinall Foundation in  
26 England. They are an organization which is specialized in and extremely experienced in  
27 caring for and transporting gorillas. They care for gorillas in parks in the UK as well as  
28

1 conservation projects in the Congo and Gabon, including up to 125 Western Lowland  
2 Gorillas.

3 Dr. Hopper oversees the health of all of those gorillas, and strongly agrees with the  
4 TGF position that a transfer under these circumstances is ill advised when considering  
5 Ndume's safety. In her words, "I have never transported gorillas that have tested positive  
6 for *Balantidium coli* and have symptoms of diarrhea and inappetence, as I believe it would  
7 be endangering the gorilla's health to do so."

8  
9 Her opinion is also supported by Dr. Shields, a gastroenterology specialist at  
10 Stanford, as well as the AZA's own manual pertaining to transport of gorillas. As  
11 demonstrated in the last brief, their own manual cautions against transport of a gorilla with  
12 active *Balantidium Coli*, given the serious mortality risks involved.

13  
14 Moreover, the inconsistencies between the current CZBG position and the TGF  
15 position could easily be eliminated by reference to their own records. But, they have  
16 refused to cooperatively share that evidence. Why? Because it very likely undermines  
17 their conclusory assertions in this action.

18  
19 As but a few examples, the specific documents TGF has requested from CZBG that  
20 would shed light on the risks of *Balantidium coli* have been withheld.

21  
22 Similarly, CZBG said they would have Ndume's cardiac ultrasound reviewed by the  
23 Great Ape Heart Project, but they have provided no records. At this point, the CZBG  
24 cardiologist claims his heart looks fine, while an entirely independent cardiologist says the  
25 best he can tell (without better images) is that Ndume's heart is abnormal.

26  
27 When TGF asked if images were submitted to the Great Ape Heart Project for an  
28 expedited review, as promised, TGF received no response. Nor did the CZBG

1 cardiologist request better images. Why? Clearly, they do not want more proof that  
2 Ndume's heart is not able to withstand the extreme stress of a forcible transfer? There is  
3 such evidence already. Why would they silently ignore this issue?  
4

5 A gorilla, Caesar, who was transferred after living at the Los Angeles Zoo for 26  
6 years (Ndume has lived at TGF for 27.5) survived transport and quarantine, but died one  
7 week after introductions with other gorillas began. He died of severe bowel inflammation  
8 - often an outcome of *Balantidium coli* infection and stress. TGF requested this necropsy  
9 report, and was told it would be provided, but as with all such requests, it was not.

10  
11 While CZBG insists it is harmful for gorillas to live without conspecifics,  
12 motivating their claim that it is in his best interest to be transferred, this claim is only  
13 documented in the case of zoo gorillas, shown by elevated urinary cortisol levels. Gorillas  
14 in the wild and at sanctuaries do not show this result.

15  
16 Moreover, Ndume's urinary cortisol level has routinely been low, indicating he has  
17 been doing well in this regard at TGF.

18  
19 As previously indicated by a declaration from world-renown gorilla expert, Ian  
20 Redmond, it is a natural process for elderly male gorillas to separate from their group and  
21 live solitarily. The same opinions have been echoed by Jerry Stones a well regarded  
22 gorilla keeper at Glades Porter, whom Ron Evans (Head CZBG Gorilla keeper) has quoted  
23 as a "Gorilla Expert."<sup>1</sup>

24  
25 <sup>1</sup> "Consider the case of Joe, who was captured in the wild and later placed at the Gladys  
26 Porter Zoo. He showed no interest in breeding or even in socializing with other gorillas.  
27 He eventually was sent to Gorilla Haven in Georgia, where he lives in a separate enclosure  
28 by himself. "He prefers it that way," Stones said. "He's doing fine. He's happy." This  
behavior does not differ much from the way some humans live. "There are people - the  
spinster aunt or the old bachelor uncle - who never got married," he said. "It was not a  
(footnote continued)

1 Hence, the entire premise of the CZBG rush to transport Ndume is flawed. His  
2 early history of extreme stress at public zoos, resolved at TGF. Now, they seek to expedite  
3 his transfer, for no legitimate reason, despite serious health risks to Ndume, and the people  
4 who might be exposed to the Balantidium Coli cysts present in his extremely loose stools.

5  
6 TGF fully understands the decision of this Court to allow CZBG to transfer Ndume.  
7 But, that order was tempered with a safety caveat, which CZBG seeks to simply ignore by  
8 claiming, without basis, that there is literally no risk to forcibly moving him under these  
9 circumstances. They know better.

10  
11 They are clearly willing to gamble with Ndume's life, not for his benefit, but for  
12 their own. No animal welfare professional who truly cares about the well-being of their  
13 animals, would rush this transport next week, when it can be completed with much greater  
14 safety in just a few more weeks.

15  
16 Accordingly, TGF urges this Court to take the safe course of action. Allow the  
17 treatment of his Balantidium Coli to take effect and his stress to diminish. Then, at least  
18 the risks inherent in his transfer will not necessarily present a life-threatening outcome.

19  
20 Respectfully submitted:

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23 \_\_\_\_\_  
24 sexual orientation, they really just were not interested. Why would we think that there  
25 wouldn't be animals that would have the same feelings? Joe was totally satisfied to do his  
26 own thing. A lot of that was probably because of the way he was raised; but then, it could  
27 have been a possibility that it was just his own desire."

28  
29 Source: [https://www.brownsvilleherald.com/news/local/gorillas-in-our-midst-relationship-between-legendary-primates-zoo-s/article\\_43c7f196-e0af-50b9-9054-111faa786a8a.html](https://www.brownsvilleherald.com/news/local/gorillas-in-our-midst-relationship-between-legendary-primates-zoo-s/article_43c7f196-e0af-50b9-9054-111faa786a8a.html)

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DATED: June 7, 2019

**CASSELMAN LAW GROUP**  
DAVID B. CASSELMAN  
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KIRK S. COMER

Bv:           /s/ David B. Casselman            
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The Gorilla Foundation and Defendant Dr.  
Francine Patterson

DATED: June 7, 2019

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FRANK M. PITRE  
JULIE L. FIEBER

Bv:           /s/ Frank M. Pitre            
FRANK M. PITRE  
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The Gorilla Foundation and Defendant Dr.  
Francine Patterson

1                    **Declaration of Aspinall Foundation Gorilla Veterinarian,**

2    **(ASPINALL VET)**

3                    **Regarding Treatment of Ndume for B. coli before Transfer**

4  
5                    Dr. Jane Hopper, MRCVS declares as follows:

6  
7                    1.        This declaration is submitted in response to the Cincinnati Zoo's  
8 decision to transfer Ndume over 2000 miles (by air) from The Gorilla Foundation  
9 within one week of discovering that he has tested positive for *Balantidium coli*, and  
10 has diarrhea and a decreased appetite. Based on my personal knowledge, credentials  
11 and experience, if called as a witness, I could and would competently testify to the  
12 following facts.

13  
14                    2.        I am a Doctor of Veterinary Medicine employed by The Aspinall  
15 Foundation as Head of Veterinary Services for the last 14 years. I oversee the health  
16 of our gorillas in the UK parks and in our conservation projects in Congo and Gabon.  
17 The number of gorillas under my care has varied over the years but is often up to 125  
18 Western Lowland Gorillas at any one time.

19  
20                    3.        In my opinion transporting a gorilla that has tested positive for  
21 *Balantidium coli* and that is showing signs of diarrhea and inappetence is dangerous  
22 to the gorilla's health.

23                    In my opinion the transport should be delayed until the gorilla has completed a  
24 course of medication to treat the *Balantidium coli*, all symptoms have resolved, and  
25 further tests have shown that the gorilla is no longer shedding *Balantidium coli*.  
26 Further diagnostics may be necessary if symptoms do not resolve.  
27 I have never transported a gorilla that has the clinical signs of diarrhea and  
28

1 inappetence and has tested positive for *Balantidium coli*. I believe it would be  
2 endangering the gorilla's health to do so.

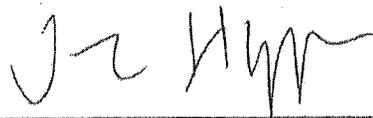
3

4 I declare under penalty of perjury under the laws of the United States of  
5 America that the foregoing is true and correct.

6

7 Executed June 7, 2019.

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Dr. ASPINALL\_VET

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of LOS ANGELES, STATE OF CALIFORNIA. My  
4 business address is 5567 Reseda Boulevard, Suite 330, Tarzana, California 91356. I am  
over the age of eighteen years and am not a party to the within action;

5 On June 7, 2019, I served the following document(s) entitled: **OPPOSITION OF**  
6 **DEFENDANTS TO EX PARTE APPLICATION TO COMPEL EARLY**  
7 **TRANSFER OF NDUME DESPITE SERIOUS SAFETY RULES** on ALL  
INTERESTED PARTIES in this action via Electronic Filing with the Clerk of the Court  
using the CM/ECF system.

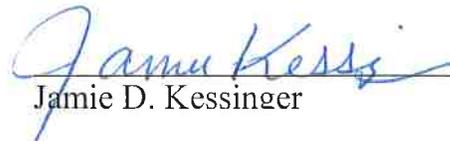
8 Simon J. Frankel  
9 COVINGTON & BURLING LLP  
10 One Front Street, 35<sup>th</sup> Floor  
11 San Francisco, CA 94111  
12 Telephone: 415-591-6000  
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14 **BY ECF:** I hereby certify that on June 7, 2019, I electronically filed the above listed  
15 documents with the Clerk of the Court using the CM/ECF system.

16 I declare under the penalty of perjury under the laws of the United States of  
America that the above is true and correct.

17 Executed on June 7, 2019, at Tarzana, California.

18  
19   
20 Jamie D. Kessinger