

Steven M. Wise (application for admission *pro hac vice* filed on January 6, 2012)
Center for the Expansion of Fundamental Rights, Inc.
5195 NW 112th Terrace
Coral Springs, FL 33076
Tel: 954-648-9864
swise@nonhumanrights.org

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JAN 24 2012
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY
UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA
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FOR THE SOUTHERN DISTRICT OF CALIFORNIA

TILIKUM, KATINA, CORKY,
KASATKA, AND ULISES,
five orcas,

Plaintiffs,

By their Next Friends, People for the Ethical
Treatment of Animals, Inc., Richard "Ric"
O'Barry, Ingrid N. Visser, Ph.D., Howard
Garrett, Samantha Berg, and Carol Ray,

v.

SEAWORLD PARKS &
ENTERTAINMENT, INC. AND
SEAWORLD, LLC,

Defendants.

Case No. 11-CV-2476 JM WMC

(The Honorable Jeffrey T. Miller)

**AFFIDAVIT OF STEVEN M.
WISE, ESQ IN SUPPORT OF
MOTION OF THE CENTER
FOR THE EXPANSION OF
FUNDAMENTAL RIGHTS, INC.
FOR LEAVE TO APPEAR
AS AMICUS CURIAE**

Date: February 6, 2012
Time: 10:30 a.m.
Courtroom: 5190

Action Filed: October 25, 2011
Trial Date: None Set

**AFFIDAVIT OF STEVEN M. WISE, ESQ IN SUPPORT OF MOTION OF THE
CENTER FOR THE EXPANSION OF FUNDAMENTAL RIGHTS, INC. FOR
LEAVE TO APPEAR AS AMICUS CURIAE**

I swear and affirm that the following is true to the best of my personal knowledge:

(1). My name is Steven M. Wise. I reside and work in Coral Springs, Florida. I
hold a J.D. from Boston University Law School and have been practicing animal

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protection law for 35 years throughout the United States. I am licensed to practice law in Massachusetts. I served as President of the Animal Legal Defense Fund, Inc., presently headquartered in Cotati, California, from 1984 to 1994. I am the founder, and have been the President, of the Center for the Expansion of Fundamental Rights, Inc. ("CEFR"), a 501(c)(3) nonprofit corporation incorporated in Massachusetts, since 1996. CEFR's major activity is the Nonhuman Rights Project ("NHRP"). The mission of the Nonhuman Rights Project is, through education and litigation, to change the common law status of at least some nonhuman animals from "things," which lack the capacity to possess any legal right, to "persons," who possess such fundamental rights as bodily integrity and bodily liberty, and those other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them (*see* www.nonhumanrights.org)

(2). I have been teaching "Animal Rights Law" or "Animal Rights Jurisprudence" at American law schools since 1990. I taught the first class in "Animal Rights Law" at the Harvard Law School in 2000. I have been teaching "Animal Rights Law" or "Animal Rights Jurisprudence" at the Vermont Law School since 1990 and at the Lewis and Clark Law School, in Portland, Oregon, since 2007. I have been teaching "Animal Rights Jurisprudence" at the University of Miami Law School since 2009 and taught it at the St. Thomas Law School, in Miami, Florida, in 2006, and since 2010. I taught "Animal Rights Law" at the John Marshall Law School in Chicago in 1999. I was Instructor and Tutor teaching "Animal Law" in the Masters of Science in Animals and Public Policy Program at Tufts University School of Veterinary Medicine from 1996 to 2003. I am associated with the Universitat Autònoma de Barcelona Masters Program in Law, where I occasionally lecture on animal rights law.

(3). I regularly lecture on animal rights jurisprudence at law schools and in other forums in the United States and throughout the world, including Japan, Australia, Spain, New Zealand, South Africa, Brazil, England, Spain, Italy, and Switzerland.

(4). I have written four books on animal rights jurisprudence and human slavery. These include (a) *RATTLING THE CAGE—TOWARD LEGAL RIGHTS FOR ANIMALS* (Perseus Publishing 2000); (b) *DRAWING THE LINE—SCIENCE AND THE CASE FOR ANIMAL RIGHTS* (Perseus Publishing 2002); (c) *THOUGH THE HEAVENS MAY FALL—THE LANDMARK TRIAL THAT LED TO THE END OF HUMAN SLAVERY* (de Capo Press 2005); and (d) *AN AMERICAN TRILOGY—DEATH, SLAVERY, AND DOMINION ALONG THE BANKS OF THE CAPE FEAR RIVER* (de Capo Press 2009).

(5). I have written six book chapters: (a) "Animal law and animal sacrifice: Analysis of the U.S. Supreme Court Ruling on Santaria animal sacrifice in Hialeah," in *A COMMUNION OF SUBJECTS – ANIMALS IN RELIGION, SCIENCE, AND ETHICS* (Paul Waldau and Kimberly Patton, eds. Columbia University Press 2006); (b) "Entitling Nonhuman Animals to Fundamental Legal Rights on the Basis of Practical Autonomy," in *ANIMALS, ETHICS, AND TRADE* (Earthscan 2006); (c) "Resources on Animals and the Law," in *ANIMALS ARE THE ISSUE - LIBRARY RESOURCES ON ANIMAL ISSUES* (John M. Kistler, ed., Haworth Press 2004); (d) "Animal Rights, One Step at a Time," in *ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS* (Cass Sunstein and Martha Nussbaum, eds., Oxford University Press 2004); (e) "Untitled," *The State of the Animals II* (Humane Society of the United States, 2003); and (f) "A Great Shout - Breaking the Barriers to Legal Rights for Great Apes," in *GREAT APES AND HUMANS - THE ETHICS OF COEXISTENCE* (Smithsonian Press, 2001).

(6). I have written 14 law review and journal articles: (a) *Legal Personhood and the Nonhuman Rights Project*, 17 ANIMAL LAW 1 (2011); (b) *An Argument for the Basic Rights of Farmed Animals*, 106 MICH. L. REV. FIRST IMPRESSIONS 133 (2008); (c) *Arguments in favour of basic legal rights for nonhumans*, REFORM (Australian Law Reform Commission March, 2008); (d) *The entitlement of chimpanzees to the common law writs of habeas corpus and de homine replegiando to challenge their legal thinghood*, 37(2) GOLDEN GATE LAW REVIEW 219 (2007); (e) *Rattling the Cage Defended*, 43 BOSTON COLLEGE LAW REVIEW 623 (2002); (f) *Animal Thing to Animal Person - Thoughts on Time, Place, and Theories*, 5 ANIMAL LAW 59 (1999); (g) *Hardly a Revolution - The Eligibility of Nonhuman Animals for Dignity-Rights in a Liberal Democracy*, 22 VERMONT LAW REVIEW 793 (1998); (h) *Recovery of Common Law Damages of Emotional Distress and Loss of Society for the Wrongful Deaths of Companion Animals*, 4 ANIMAL LAW 33 (1998); (i) with Dr. Jane Goodall, *Why Chimpanzees are Entitled to Fundamental Legal Rights*, 3 ANIMAL LAW 61 (1997); (j) *Legal Rights for Nonhuman Animals: The Case for Chimpanzees and Bonobos*, 2 ANIMAL LAW 179 (1996); (k) *The Legal Thinghood of Nonhuman Animals*, 23(2) BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW 471 (1996), reprinted in 3 PRIVATE LAW REVIEW (2003) and 4 PRIVATE LAW REVIEW (2004)(China University of Politics and Law Publishing); (l) *How Nonhuman Animals Became Trapped in a Nonexistent Universe*, 1 ANIMAL LAW 15 (1995); (m) *Scientific experimental conduct is not protected by the First Amendment*, 6(4) BOSTON BAR JOURNAL 20 (Sept./ Oct., 1992); and (n) *Of Farm Animals and Justice*, 3 PACE ENVIRONMENTAL LAW REVIEW 191 (1986)

(7). My legal writings on the issue of the capacity of nonhuman animals for legal rights have been critiqued by such eminent judges and law professors as The Honorable Richard A. Posner, *Book Review: Animal Rights*, 110 THE YALE LAW JOURNAL 527 (2000), The Honorable Richard A. Posner, "Animal Rights: Legal, Philosophical, and Pragmatic Perspectives," in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass Sunstein and Martha Nussbaum, eds., Oxford University Press 2004), Cass Sunstein, *The Chimps' Day in Court*, N.Y. Times Book Review, February 20, 2000, Martha Nussbaum, *Book Review Animal Rights: The Need for a Theoretical Basis*, 114 HARVARD LAW REVIEW 5 (2001), and Laurence A. Tribe, *Ten Lessons Our Constitutional Experience Can Teach Us About the Puzzle of Animal Rights: The Works of Steven M. Wise*, 7 ANIMAL LAW 1 (2001). According to my Westlaw search, dated December 22, 2011, my writings on animal rights jurisprudence and animal law have been cited at least 248 times in the legal literature and twice by courts.

(8). In 2011, The NHRP has hired two law school graduates (of Boston College and Georgetown Law School) and had between 30 and 50 volunteers from the disciplines of law, sociology, political science, natural science, and mathematics working for it. Since 2007, the NHRP has invested about 25,000 hours, amongst other things, researching, writing, and evaluating legal theories involving two dozen critical substantive and procedural legal issues for each of the fifty states. Our purpose is to understand which theories might have the greatest chance of persuading an American state high court to expand the status of legal "person" to even a single nonhuman animal. This is in preparation for launching a series of lawsuits in 2013 that will seek a judicial

ruling that a specific nonhuman animal plaintiff has the capacity for legal rights and is entitled to common law legal personhood.

(9). The NHRP's work primarily focuses on the problems associated with obtaining legal rights for a nonhuman animal, particularly such marine mammals as whales and dolphins, apes, elephants, and African Grey parrots. Our particular expertise lies in the area of the capacity of a nonhuman animal to possess any legal right, especially the capacity to sue or be sued, and the definition and requirements for legal personhood. It also includes such common law legal principles and theories as capacity to sue, common law writs of habeas corpus and de homine replegiando, freedom act statutes, fundamental rights, manumission, equality, and liberty.

(10). The NHRP is producing ten law review articles on the legal theories it has been carefully researching, analyzing, and developing. The first law review in this series was published as *Legal Personhood and the Nonhuman Rights Project*, 17 ANIMAL LAW 1 (2011). The NHRP is hoping to have the remaining law review articles published in 2012 and early 2013.

(11). The NHRP has expended more than 120 hours studying the Complaint filed in this suit, the defendants' Motion to Dismiss, and Opposition to Defendant's Motion to Dismiss and Accompanying Memorandum and researching and drafting the accompanying Memorandum in Support of its Motion for Leave to File an Amicus Brief and For Leave to Argue. My extensive relevant experience and expertise and CEFR's extensive experience and expertise would significantly aid this Court in properly disposing of the defendants' dispositive Motion to Dismiss.

DATED: January 17, 2012

SIGNED UNDER THE PAINS AND PENALTIES
OF PERJURY:

s/ Steven M. Wise

Steven M. Wise (application for admission *pro hac*
vice filed on January 6, 2012)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing motion was served upon all counsel of record by placing a copy of the same in the United States Mail, postage prepaid, and sent to their last known address as follows:

Jeffrey S. Kerr, Esq.
Martina Bernstein, Esq.
PETA FOUNDATION
1536 16th Street, N.W.
Washington, DC 200369
Jeff@petaf.org
MartinaB@petaf.org

Matthew Strugar, Esq.
PETA FOUNDATION
2154 W. Sunset Blvd.
Los Angeles, CA 90026
Matthew-s@petaf.org

Philip J. Hirschkop
Hirschkop & Associates P.C.
1101 King St., Ste. 610
Alexandria, VA 22314
pjhirschkop@aol.com

KELLEY DRYER & WARREN LLP

Michael J. O'Connor, Esq.
Edward E. Weiman, Esq.
10100 Santa Monica Blvd, 23rd Fl
Los Angeles, CA 90067
moconnor@kelleydrye.com
eweiman@kelleydrye.com

FULBRIGHT & JAWORSKI LLP

Richard R. Mainland, Esq.
555 S. Flower St., 41st Fl
Los Angeles, CA 90071
rmainland@fulbright.com

DATED: January 17, 2012

s/ Steven M. Wise

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Rights, Inc.
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