

**ORIGINAL**

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

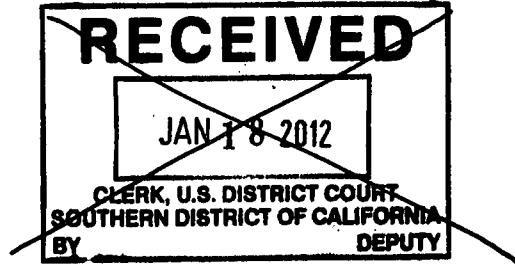
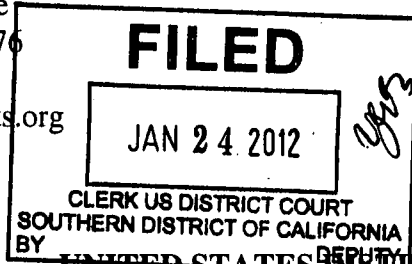
Center for the Expansion of Fundamental Rights, Inc.

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~~UNITED STATES DISTRICT COURT~~

**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)

**MOTION OF 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

Now comes the Center for the Expansion of Fundamental Rights, Inc. ("CEFR") and moves for leave to appear as *amicus curiae*, in particular to file the attached *Memorandum* and, if this Court sees fit, to present oral argument concerning the potentially dispositive issue of the plaintiff orcas' capacity to sue under Fed. R. Civ. Pro. 17, on the following grounds:

1. Both parties have failed adequately to brief this issue, together spending just three pages on it.

2. Both the proposed *amicus curiae* and its President, Steven M. Wise (“Wise”), are nationally and internationally recognized as experts on the related issues of the capacity to sue and legal personhood of nonhuman animals.

3. Wise holds a J.D. from Boston University Law School and has been practicing animal protection law for 35 years throughout the United States (Wise Aff. ¶ 1). He is licensed to practice law in Massachusetts (Wise Aff. ¶ 1). Wise served as President of the Animal Legal Defense Fund, Inc., presently headquartered in Cotati, California, from 1984 to 1994 (Wise Aff. ¶ 1). He is the founder, and has been President, of CEFR, a 501(c)(3) nonprofit corporation incorporated in Massachusetts, since 1996 (Wise Aff. ¶ 1). CEFR’s major activity is the Nonhuman Rights Project (“NHRP”) (Wise Aff. ¶ 1). NHRP’s mission 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 have the capacity to possess legal rights and who may possess such fundamental common law rights as bodily integrity and bodily liberty, as well as such other legal rights as the evolving standards of morality, scientific discovery, and human experience might them (*see* [www.nonhumanrights.org](http://www.nonhumanrights.org)) (Wise Aff. ¶ 1).

4. Wise has been teaching “Animal Rights Law” or “Animal Rights Jurisprudence” at American law schools since 1990 (Wise Aff. ¶ 2). He taught the first class in “Animal Rights Law” at the Harvard Law School in 2000 (Wise Aff. ¶ 2). He has 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 (Wise Aff. ¶ 2). He has 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 (Wise Aff. ¶ 2). He taught "Animal Rights Law" at the John Marshall Law School in Chicago in 1999 (Wise Aff. ¶ 2). He 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 (Wise Aff. ¶ 2). He is currently associated with the Universitat Autònoma de Barcelona Masters Program in Law, where he lectures on animal rights law (Wise Aff. ¶ 2).

5. Wise regularly lectures on animal rights jurisprudence at law schools and in other forums in the United States and throughout the world. In the last decade has lectured throughout Japan, Australia, Spain, New Zealand, South Africa, Brazil, England, Austria, Italy, and Switzerland (Wise Aff. ¶ 3).

6. Wise has written four relevant books on animal rights jurisprudence and human slavery (Wise Aff. ¶ 4). 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) (Wise Aff. ¶ 4).

7. Wise has written six relevant 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) (Wise Aff. ¶ 5).

8. Wise has written 13 relevant law review and law 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) (Wise Aff. ¶ 6).

9. Wise's legal writings on the issue of the capacity of nonhuman animals for legal rights and legal personhood have been critiqued by such eminent judges and law professors as (a) The Honorable Richard A. Posner, *Book Review: Animal Rights*, 110 THE YALE LAW JOURNAL 527 (2000); "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), (b) Cass Sunstein, *The Chimps' Day in Court*, N.Y. Times Book Review, February 20, 2000, (c) Martha Nussbaum, *Animal Rights: The Need for a Theoretical Basis*, 114 HARVARD LAW REVIEW 5 (2001)(reviewing Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals*), and (d) 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) (Wise Aff. ¶ 7). Wise's writings have been cited in at least 248 legal articles and twice by courts (Wise Aff. ¶ 7).

10. In 2011, The NHRP hired two law school graduates (of Boston College and Georgetown Law School) and employed up to 50 volunteers from the disciplines of law, sociology, political science, natural science, and mathematics (Wise Aff. ¶ 8). 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 (Wise Aff. ¶ 8). Its purpose is to understand which theories might have the greatest chance of persuading American state high courts to expand the common law status

of legal “person” to even a single nonhuman animal (Wise Aff. ¶ 8). The NHRP is preparing to launch a series of lawsuits, beginning in 2013, in which it will seek judicial rulings that a specific nonhuman animal plaintiff has the capacity for legal rights and is entitled to common law legal personhood (Wise Aff. ¶ 8).

11. The NHRP’s work primarily focuses on the problems associated with obtaining common law rights of any kind, including the capacity to sue, for a nonhuman animal, in particular whales and dolphins, apes, elephants, and African Grey parrots (Wise Aff. ¶ 9). The NHRP’s particular expertise lies in the area of the capacity of a nonhuman animal to possess any legal right, especially the capacity to sue, and the definition of, and requirements for, legal personhood (Wise Aff. ¶ 9).

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

13. The NHRP has expended more than 150 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 (Wise Aff. ¶ 11). Wise’s extensive relevant experience and expertise and CEFR’s extensive experience and expertise would significantly aid this Court in properly disposing of the defendants’ potentially dispositive Motion to Dismiss (Wise Aff. ¶ 11).

14. This court “has ‘broad discretion to appoint amici curiae.’” *Alto v. Salazar*, 2011 U.S. Dist. LEXIS 117987, at 5-6 (S.D. Cal. Oct. 12, 2011)(citing *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds*, *Sandin v. Conner*, 515 U.S. 472 (1995)). *See also Funbus Systems, Inc. v. State of Cal. Public Utilities Com'n.*, 801 F.2d 1120, 1125 (9th Cir. 1986); *Juniper Networks v. Shipley*, 2010 WL 986809, at \*9 (N.D. Cal. 2010). “(C)ourts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case, and, with further permission of the court, to argue the case and introduce evidence,” *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D.La.1990). *See generally Concerned Area Residents for The Environment v. Southview Farm*, 834 F. Supp. 1410, 1413 (W.D. N.Y. 1993); *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992), *aff'd*, 19 F.3d 1432 (6th Cir. 1994). No prerequisites exist other than a nonparty seeking to appear as an *amicus curiae* must show that its participation will be useful or desirable to the court. *In re Roxford Foods Litigation*, 790 F. Supp. 987, 997 (E.D. Cal. 1991). As set forth in the accompanying *Affidavit of Steven M. Wise*, the Center for the Expansion of Fundamental Rights, Inc. and its attorney, Steven M. Wise, have lengthy and broad experience with the issues associated with obtaining the capacity to sue and legal personhood for nonhuman animals, in particularly such cetaceans as orcas.

DATED: January 17, 2012

Respectfully submitted:

s/ Steven M. Wise

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filed on January 6, 2012)  
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**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:

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DATED: January 17, 2012

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