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| <p>4th Judicial District El Paso County</p> <p>El Paso County Judicial Building<br/>270 S Tejon St<br/>Colorado Springs, CO 80903</p>   | <p><b>▲ COURT USE ONLY ▲</b></p> <p>DATE FILED: November 3, 2023 11:28 AM<br/>FILING ID: 8822194A58187<br/>CASE NUMBER: 2023CV31236</p> |
| <p><b>Petitioner:</b></p> <p>NONHUMAN RIGHTS PROJECT, INC., on behalf of Missy, Kimba, Lucky, LouLou, and Jambo,</p> <p>v.</p> <p><b>Respondents:</b></p> <p>CHEYENNE MOUNTAIN ZOOLOGICAL SOCIETY, and BOB CHASTAIN, in his official capacity as President and CEO of Cheyenne Mountain Zoological Society.</p> |   |
| <p>NONHUMAN RIGHTS PROJECT, INC:</p> <p>Jacob Davis, Esq.<br/>Nonhuman Rights Project, Inc.<br/>525 Skyles Pl, Ste 302<br/>Whitefish, MT 59937<br/>Phone: (513) 833-5165<br/><a href="mailto:jdavis@nonhumanrights.org">jdavis@nonhumanrights.org</a><br/>Atty. Reg. #: 54032</p>                               | <p>Case No: 2023CV31236</p> <p>Div: 8</p> <p>Courtroom:</p>   |
| <p><b><u>OPPOSED</u> MOTION FOR PERMISSION TO SERVE SUPPLEMENTAL PLEADING</b></p>   |   |

Petitioner Nonhuman Rights Project, Inc. respectfully requests that this Court enter an order, pursuant to C.R.C.P. 15(d), granting permission to serve the attached Supplemental Pleading upon Respondents, and in support states:

**Certificate of Compliance with C.R.C.P. 121, § 1-15(8)**: Undersigned counsel certifies he conferred with Respondents' counsel regarding the relief requested in this motion. Respondents

oppose the requested relief because submission of the Supplemental Pleading would, in their view, be “both untimely and wholly irrelevant to [Respondents’] pending motion to dismiss.”

1. Petitioner’s Verified Petition for Writ of Habeas Corpus (“Petition”) on behalf of Missy, Kimba, Lucky, LouLou, and Jambo, five African elephants at the Cheyenne Mountain Zoo, was filed with the Court on June 29, 2023. Respondents filed their motion to dismiss on August 31, 2023, to which Petitioner filed a response on October 5, 2023. Respondents filed their reply on October 19, 2023.
2. C.R.C.P. 15(d) provides that on “motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.”
3. The Supplemental Pleading (with two exhibits) supports the habeas corpus claim in the Petition, setting forth occurrences and events that have arisen since the filing of the Petition. Those occurrences and events confirm that the Cheyenne Mountain Zoo is an unacceptable place for elephants.
4. As described in the Supplemental Pleading, recent videos of LouLou and Jambo taken on October 27, 2023 (see here: <https://bit.ly/3QAuLvS>), just one week before the filing of this motion, show the elephants repeatedly swaying back and forth, exhibiting behavior known as stereotypes—a sign of brain damage caused by chronic stress. These videos represent clear evidence that the elephants are living a sad, miserable existence. Notably, the videos depict the same stereotypic behaviors that Dr. Bob Jacobs observed when he visited the Cheyenne Mountain Zoo over a year ago.

5. As the Supplemental Pleading further notes, the winter weather in Colorado is especially problematic for the elephants. During the day, the elephants are either outside in very cold temperatures, which can exacerbate arthritic joint pain, or confined in the barn all day, which can contribute to foot and joint damage.
6. Petitioner’s motion is made in good faith, and granting it will not cause Respondents to suffer any prejudice. *See Eagle River Mobile Home Park, Ltd. v. Dist. Court In & For Eagle Cnty.*, 647 P.2d 660, 664 (Colo. 1982) (amendment to complaint should have been allowed since “[n]othing in the record before us indicates that the motion to amend was made in bad faith or for a dilatory purpose, and there is no indication that the parties would be prejudiced by any delay in the trial necessitated by the amendment”); *id.* (“we must be mindful of the liberal policy of amendment contemplated by C.R.C.P. 15, which has been repeatedly recognized by this court”). “Exercise of the trial court's discretion under Rules 15(a) and 15(d) is substantially similar and should be governed by the same considerations.” *Id.* at 662 n.4.

WHEREFORE: Petitioner respectfully requests that this Court enter an Order granting permission to serve the attached Supplemental Pleading upon Respondents. A proposed order is attached for the Court’s consideration.

DATED: November 3, 2023

Nonhuman Rights Project, Inc.  
By:           /s/ Jake Davis            
          Jake Davis, Esq.

Attorney for Petitioner Nonhuman Rights Project, Inc. on behalf of  
Missy, Kimba, Lucky, LouLou, and Jambo

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of November 2023, I electronically filed a true and correct copy of the foregoing **MOTION FOR PERMISSION TO SERVE SUPPLEMENTAL PLEADING**, plus attachments, and **PROPOSED ORDER** via the Colorado Courts E-Filing System which will send notification of such filing and service upon all counsel of record:

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*/s/ Jake Davis*  
Jake Davis, Esq.