

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
THE FUND FOR ANIMALS, ANIMAL WELFARE INSTITUTE, AND HSUS'  
MOTION FOR A PROTECTIVE ORDER**

**Civ. No. 1:07-cv-1532**

**Ex. 1**

**Second Req. for Prod. of Docs to Def. the Fund Animals**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**FELD ENTERTAINMENT, INC.** :  
 :  
 **Plaintiff,** :  
 :  
 v. :  
 :  
 **ANIMAL WELFARE INSTITUTE, et al.:** :  
 :  
 **Defendants.** :  
 \_\_\_\_\_ :

**Case No. 07- 1532-(EGS/JMF)**

**PLAINTIFF FELD ENTERTAINMENT, INC.’S SECOND REQUEST FOR  
PRODUCTION OF DOCUMENTS TO DEFENDANT THE FUND FOR ANIMALS**

Pursuant to Fed. R. Civ. P. 34, the Court’s Orders of 05/09/13 (ECF No. 151) and 08/08/13 (ECF No. 156) and the 08/08/13 Scheduling Order (ECF No. 157), Plaintiff Feld Entertainment, Inc. hereby propounds the following second set of requests for production of documents to Defendant The Fund for Animals. Defendant The Fund for Animals is requested to respond to these requests within thirty (30) days after the date of service, in accordance with Fed. R. Civ. P. 34(b)(2)(A).

**DEFINITIONS**

1. “FEI” or “Plaintiff” means the plaintiff in this action, Feld Entertainment, Inc.
2. “Defendants” means the defendants in this action named in Plaintiff’s First Amended Complaint.
3. “First Amended Complaint” or “FAC” means the First Amended Complaint filed in Civil Action No. 07-1532-EGS/JMF, by Feld Entertainment, Inc., in the United States District Court for the District of Columbia on February 16, 2010 (ECF No. 25).

4. “ASPCA” means the American Society for the Prevention of Cruelty to Animals and any of its current or former employees, consultants, agents, attorneys, directors, other representatives, and all other persons acting under their control or on their behalf.

5. “AWI” means the Animal Welfare Institute and any of its current or former employees, consultants, agents, attorneys, directors, other representatives, and all other persons acting under their control or on their behalf.

6. “FFA” means The Fund for Animals and any of its current or former employees, consultants, agents, attorneys, directors, other representatives, and all other persons acting under their control or on their behalf.

7. “API” means the Animal Protection Institute and its successor, Born Free USA, previously known as Born Free USA United with Animal Protection Institute, as stated in ECF No. 58 in the instant case, and any of its current or former employees, consultants, agents, attorneys, directors, other representatives, and all other persons acting under their control or on their behalf.

8. “WAP” means the Wildlife Advocacy Project and any of its current or former employees, consultants, agents, attorneys, directors, other representatives, and all other persons acting under their control or on their behalf.

9. “MGC” means Meyer, Glitzenstein & Crystal and the predecessor law firm of Meyer & Glitzenstein and any of its current or former partners, employees, consultants, agents, attorneys, directors, other representatives, and all other persons acting under their control or on their behalf.

10. “HSUS” means The Humane Society of the United States and any of its current or former employees, consultants, agents, attorneys, directors, other representatives, and all other persons acting under their control or on their behalf.

11. The ESA Action means *ASPCA et al. v. Feld Entertainment, Inc.*, Nos. 03-2006-EGS (D.D.C.) and 00-1641-EGS (D.D.C.).

12. “ESA Action plaintiffs” means ASPCA, AWI, API, FFA, and Tom Rider.

13. “ESA Action witnesses” means any individual or representative of a corporate entity or organization, who: (1) testified (in any capacity) in the ESA Action, (2) was listed in any party’s Fed. R. Civ. P. 26 initial disclosures, or (3) was listed on any witness list in the ESA Action, regardless of whether they appeared to testify at a hearing or trial in the ESA Action.

14. “Financial support” means anything of value, whether monetary or in kind, requested by or on behalf of, given to, directed to a person or organization, or indirectly through a person or organization for the benefit of another, including but not limited to funds, payments, reimbursements for expenses or services rendered, grants, gifts, or remuneration of any kind.

15. “Animal Activist/Group” means any person or entity that advocates on behalf of animals and includes, but is not limited to, the ASPCA or any local or regional Society for the Prevention of Cruelty to Animals (“SPCA”), the HSUS or any local or regional Humane Society, FFA, AWI, the People for the Ethical Treatment of Animals (“PETA”), the Performing Animal Welfare Society (“PAWS”), the Earth Liberation Front (“ELF”), the Animal Liberation Front (“ALF”), API, Born Free International (“BFI”); Captive Animals’ Protection Society (“CAPS”), In Defense of Animals (“IDA”), Compassion over Killing (“CK”), Animal Defenders International (“ADI”) and the WAP.

16. “Media campaign” refers to Tom Rider’s media, “grassroots” public education, public outreach and/or public relations work, advocacy, activities and/or campaign, as described in the ESA Action Plaintiffs’ Proposed Findings of Fact Nos. 43-45 & 56-64 (No. 03-2006, ECF No. 533 (04/24/09)).

17. “You” or “your” means The Fund for Animals and any of its current or former employees, consultants, agents, attorneys, directors, other representatives, and all other persons acting under their control or on their behalf.

18. “Media strategy” has the same meaning herein that the ESA Action plaintiffs ascribed to that term when they objected, on the grounds of “media strategy,” to the production of documents and other information that FEI sought from the ESA Action plaintiffs in the ESA Action.

19. The phrase “refer, reflect, or relate to” is used as a means of requesting information or documents that constitute, comprise, consist of, contain, evidence, set forth, propose, show, disclose, describe, discuss, mention, explain, summarize, reflect, deal with, identify, analyze, demonstrate, or in any way address, involve, regard, pertain to, touch upon, affect, or concern, in whole or in part, the subject matter of the relevant request for production.

20. The term “communication” means any transmission of information from one person or persons to another person or persons, regardless of the medium by which such communication occurred.

21. The terms “include” or “including” denote a portion of a larger whole and are used without limitation.

22. The words “and” and “or” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses which otherwise might be construed as outside its scope.

23. To the extent not otherwise defined, all words shall have their usual and ordinary meaning as the context of the sentence would indicate.

24. “Document” is defined to be synonymous and equal in scope to usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a), and shall include all documents regardless of whether they exist in paper or electronic format. A copy or duplicate of a document which has any non-conforming notes, marginal annotations, or other markings, and any preliminary version, draft, or revision of the foregoing is a separate document within the meaning of this term. Document(s) include, without limitation and by way of example only, any memorandum, letter, envelope, correspondence, electronic mail, report, note, Post-It, message, text message, e-communication, telephone message, telephone log, diary, ledger, chart, journal, calendar, minutes, working paper, financial report, accounting report, account statement, check, work papers, teletype message, facsimile, directory, computer disk or tape, thumb or flash drive, or video or audio recording such as a tape, CD, or DVD. Document(s) also include the file, folder tabs, binders and labels appended to or containing any Documents. The term “documents” includes electronic mail messages and other documents stored in, or accessible through, computer or other information retrieval systems, such as personal computers, portable computers, workstations, minicomputers, personal data assistants, and portable or removable storage media.

25. “Produce” or “Production” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction. Document production shall occur in accordance with the protocol specified by the Court’s Order of 08/08/13 (ECF No. 156) and the Scheduling Order of 08/08/13 (ECF No. 157).

26. Any word written in the singular herein shall be construed as plural or vice versa when necessary to facilitate the response to any request unless otherwise specified.

27. Words of any gender include the other gender.

**INSTRUCTIONS**

1. Furnish all documents known or available to you, regardless of whether such documents are possessed directly by you or by others under your control, for instance, by your agents, representatives, or attorneys.

2. Electronically stored information (“ESI”) shall be produced in accordance with the protocol specified by the Court’s Order of 08/08/13 (ECF No. 156) and the Scheduling Order of 08/08/13 (ECF No. 157).

3. Documents withheld from production on the basis of the attorney-client privilege, work product protection and/or any other privilege shall be logged in accordance with the specifications contained in the Court’s Order of 08/08/13 (ECF No. 156) and the Scheduling Order of 08/08/13 (ECF No. 157).

4. Documents shall be produced in accordance the applicable standards under Fed. R. Civ. P. 34(b)(2)(E).

5. If any request for documents cannot be complied with in full, it shall be complied with to the extent possible with an explanation as to why full compliance is not possible.

6. Each request for documents seeks production of all documents described herein and any attachments, exhibits or appendices thereto in your possession, custody or control and all documents and any attachments that you have the legal right to obtain or have the ability to obtain from sources under your control.

7. These requests for production of documents are deemed to be continuing; the answers and responses must, accordingly, be amended to reflect any further information and/or documents that come to your attention between the date of service hereof and the date of trial.

8. Should documents or information previously produced in the ESA Action be responsive to any of these requests for production, the production of such documents shall be made as specified in the 08/08/13 Scheduling Order (ECF No. 157). If any previously-produced documents contain redactions of information claimed to be privileged or otherwise protected from disclosure, the redacted material must be logged in accordance with the privilege requirements stated herein.

9. Unless otherwise stated in a particular request, the time period for which documents are requested is January 1, 1998 to the present.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. All documents that refer, reflect, or relate to FFA's decision to become a plaintiff in the ESA Action.

2. All documents that refer, reflect or relate to the reason(s) why Glenn Ewell ceased to be a plaintiff in the ESA Action

3. All documents that refer, reflect or relate to FFA's decision to bring the ESA Action with Tom Rider as a plaintiff, including but not limited to all documents that refer, reflect or relate to the 60 day Notice letter(s) dated 12/21/98, 11/15/99, 04/12/01 and 07/22/05 (admitted in the trial of the ESA Action as Plaintiffs' Will Call Exhibit 91), the complaint(s) to the USDA, or any other proposed plaintiff including but not limited to Glenn Ewell, James Stehcon, Archele Hundley, Robert Tom or Margaret Tom.

4. All documents that refer, reflect, or relate to FFA's evaluation of Tom Rider as an ESA Action Plaintiff or witness, including but not limited to his credibility, proposed testimony, or actual testimony.



5. All documents that refer, reflect or relate to how defendants became acquainted with and/or were introduced to Tom Rider and how Tom Rider was retained (1) as a client by MGC, (2) as a spokesperson for defendants or (3) in any other capacity in which Tom Rider was retained to provide a service to or at the behest of defendants.

6. All documents that refer, reflect, or relate to the process by which the defendant(s) in the ESA Action were identified or selected, and the criteria for selection.

7. Lectures, speeches, interviews, presentations or statements given by Tom Rider regarding the ESA Action, his work with FEI elephants and any other elephants on or after November 25, 1999, whether in written, video, audio or other format.

8. All documents that refer, reflect or relate to FFA's relationship with WAP.

9. All documents that refer, reflect or relate to payments, grants, or any financial support whatsoever, regardless of label or characterization, to Tom Rider, or to any other organization or individual for the benefit of Tom Rider (including but not limited to WAP and/or MGC).

10. All documents that refer, reflect or relate to any analysis or discussion of the lawfulness or unlawfulness of making payments, grants, or providing any financial support whatsoever, regardless of label or characterization, to Tom Rider, or to any other organization or individual for the benefit of Tom Rider (including but not limited to WAP and/or MGC).

11. All documents that refer, reflect or relate to any tax advice or assistance, including payment of taxes, that was given to Tom Rider by any defendant or that any defendant arranged to be given to Tom Rider.

12. All documents that refer, reflect or relate to proposed or actual payments, grants, or any financial support whatsoever, regardless of label or characterization, to any ESA Action

plaintiff or ESA Action witness or potential witness, or to any other organization or individual for the benefit of any ESA Action plaintiff or ESA Action witness or potential witness.

13. All documents that refer, reflect or relate to the coordination of proposed or actual payments, grants or any financial support whatsoever, regardless of label or characterization, to any ESA Action plaintiff or ESA Action witness or potential witness between or among defendants.

14. All documents that refer, reflect or relate to accounting or monitoring of payments, grants or financial support whatsoever, regardless of label or characterization, to Tom Rider, WAP and/or any ESA Action actual or potential witness or plaintiff and all documents that refer, reflect or relate to documentation of expenses and other expenditures regarding said payments, grants or financial support.

15. All documents that refer, reflect or relate to communications with Tom Rider about his “media campaign,” or communications with anyone else about Tom Rider’s “media campaign,” including but not limited to defendants’ assessment of the effectiveness of Tom Rider’s “media campaign.”

16. All documents that refer, reflect or relate to Tom Rider’s “media campaign,” including but not limited to reports received by defendants about such “media campaign.”

17. All documents that refer, reflect or relate to the decision to label, characterize or call payments to Tom Rider, WAP or any other ESA Action plaintiff or witness “grants” or any advice (legal or otherwise) related to same.

18. All documents that refer, reflect, or relate to procedures, policies or practices regarding FFA’s process of awarding grants, including but not limited to, application, review, award and notification thereof, administration, fiscal monitoring, reporting and compliance

during the period of time in which any defendant made payments, grants, or any financial support whatsoever, regardless of label or characterization, to, or for the benefit of, Tom Rider, any actual or potential ESA Action witness or any ESA Action plaintiff.

19. All documents that refer, reflect or relate to any payments, grants, or any financial support whatsoever, regardless of label or characterization, to Tom Rider that were withheld from production in the ESA Action on the basis of “media strategy” or the First Amendment to the United States Constitution.

20. All documents that refer, reflect or relate to defendants’ creation and understanding of a media strategy that is in any way connected to payments to Tom Rider with respect to the ESA Action.

21. Any filing made with the Internal Revenue Service (“IRS”) since 2000 that mentions, discloses or refers in any way to payments, grants or any financial support whatsoever to Tom Rider (or to any other individual or organization for his benefit), and all documents related to such a filing.

22. Your IRS Form 990s (990 or 990-EZ) for tax years 2000 to the present.

23. All documents that refer, reflect or relate to any communications you have had with or received from any person or entity concerning any addition to, deletion from or revision of the information contained in any Form 990 or 990-EZ covered by Request No. 22 that refers, reflects or relates to the ESA Action, Tom Rider, FEI or FEI’s elephants.

24. All documents that refer, reflect, or relate to any solicitation of or request for donations, contributions, payments or financial support of any kind, regardless of label or characterization, concerning the ESA Action, FEI or FEI’s elephants, Tom Rider, and/or WAP, by defendants.

25. All documents that refer to fundraising donations, marketing, advertising plans, programs, strategies, and campaigns that contemplated or contemplate using the ESA Action, FEI or FEI's elephants to raise funds or donations or to gain media attention or publicity, including but not limited to proposed plans, strategies, campaigns or programs that were not implemented, and what such funds or donations were spent on.

26. With respect to any fundraising donations, marketing, advertising plans, programs or campaigns that contemplated or contemplate using the ESA Action, FEI or FEI's elephants to raise funds or donations or to gain media attention or publicity, all documents that refer, reflect or relate to reports or communications as to the efficacy of any such campaign or appeal, contracts with fundraising counsel or advisors, solicitors, telemarketers and filings with federal and state authorities regarding same.

27. All documents that refer, reflect or relate to donations (whether financial or in kind) that were designated or otherwise earmarked by the donor for use in connection with the ESA Action or that were designated or otherwise earmarked by the donor to support work or any other form of activity concerning Tom Rider, FEI or FEI's elephants.

28. All documents, not otherwise covered by Request No. 27, that refer, reflect or relate to donations (whether financial or in kind) that were made as a result of the ESA Action, Tom Rider, FEI or FEI's elephants.

29. All documents sufficient to identify each and every person or entity who made any of the donations described in Request Nos. 27 and 28.

30. All current and prior versions of your web or internet pages or material that relate to FEI or FEI's elephants, Asian elephants, the ESA Action or any party to the ESA Action, including but not limited to web or internet pages that contain references to the ESA Action and

a link to a donation page or “donate now” icon or the equivalent that direct the user to make donations (whether financial or in kind).

31. All documents that refer, reflect, or relate to the “2005 Benefit For The Asian Elephants” or any other fund-raising activities and/or benefits referring or relating to the ESA Action, FEI’s elephants, Tom Rider, FEI, and/or WAP. This request includes, but is not limited to any documents that refer, reflect or relate to any: (a) meeting of your Board of Directors or any committee, subcommittee, working group, or other sub-unit thereof where there was any discussion of any such fund-raisers and/or benefits; (b) public statements, including press releases, that you, your agents, or anyone acting at your behest have made that refer to or mention any such fund-raisers and/or benefits; (c) internal communications that refer to or mention any such fund-raisers and/or benefits; (d) communications with defendants or any other Animal Activist/Group that refer to or mention any such fund-raisers and/or benefits; and (e) communications with any of your members, volunteers, donors and/or employees that refer to or mention any such fund-raisers and/or benefits.

32. Complaints related to FFA’s fundraising activities on behalf of elephants as well as complaints about FFA’s campaigns, tactics or publicity made by members of the public, federal, state, or local agencies.

33. Complaints made by anyone of which FFA was made aware that accused FFA of making false statements during any fundraising activity.

34. All documents that refer, reflect or relate to any investigation of FFA by any federal, state or local governmental authority concerning fundraising, donations, donor fraud or tax compliance with respect to any contribution of money or any other thing of value that was made to FFA with respect to its work on behalf of elephants.

35. Communications with any person listed on the witness lists of the trial of the ESA Action with respect to any payments, grants or financial support to same.

36. Communications with PETA about the ESA Action, including but not limited to any communications concerning any ESA Action witness or potential witness, ESA Action plaintiff, Tom Rider, Robert Tom, Margaret Tom, Frank Hagan, Gerald Ramos or Archele Hundley. *See* 07/22/08 Order, Civil Action No. 2:08mc4, E.D. Va. (“The Court overruled any assertion of a mutual defense privilege theory given that PETA explicitly disclaimed any legal interest in the D.C. Litigation”).

37. All documents that refer, reflect or relate to any meeting of FFA’s Board of Directors or any committee, subcommittee, working group, or other sub-unit thereof where there was any discussion of the ESA Action, FEI, FEI’s elephants or Tom Rider’s “media campaign.”

38. All documents that refer, reflect or relate to your relationship with MGC since the filing of the First Amended Complaint, including but not limited to any documents that refer, reflect or relate to FFA’s retention of MGC as counsel in any matter since the First Amended Complaint was filed.

39. All documents that refer, reflect or relate to the Asset Acquisition Agreement dated November 22, 2004, by and between HSUS and FFA (that was attached as Exhibit A to the Supplemental Motion of HSUS to Dismiss in the instant case (ECF No. 55) (“Agreement”), including all correspondence of any kind whatsoever, press statements, financial reports and analyses, due diligence reports or analyses, legal opinions or memoranda that refer, reflect or relate to the Agreement.

40. All documents that support the assertion at page 56 of your Answer (ECF No. 104) to the First Amended Complaint that FEI's claims against FFA are barred, in whole or in part, under the applicable statutes of limitations and/or repose.

41. All documents that support the assertion at page 56 of your Answer (ECF No. 104) to the First Amended Complaint that FEI's claims against FFA are barred in whole or in part by the doctrines of estoppel or laches.

42. All documents that support the assertion at page 56 of your Answer (ECF No. 104) to the First Amended Complaint that FEI's damages were proximately caused by superseding and/or intervening acts or negligence done by other for whom FFA is (or was) not responsible, including the acts or negligence of persons acting outside the scope of their employment or agency and for whom FFA is (or was) not responsible.

43. All documents that support the assertion at page 57 of your Answer (ECF No. 104) to the First Amended Complaint that FEI's claims are barred in whole or in part because FFA acted in good faith at all times.

44. All documents that support the assertion at page 57 of your Answer (ECF No. 104) to the First Amended Complaint that FEI's claims against FFA are barred in whole or in part by the doctrines of *in pari delicto* and unclean hands.

45. All documents that support the assertion at page 57 of your Answer (ECF No. 104) to the First Amended Complaint that FEI failed to mitigate damages.

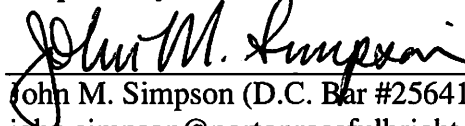
46. All documents that refer, reflect or relate to any policy of insurance or any other contract for indemnification that covers, potentially covers or that has been claimed to cover any actual, potential or asserted liability of FFA arising out of the instant case or arising out of the ESA Action, including but not limited to, policies of insurance issued by National Union Fire

Insurance Company of Pittsburgh, PA; American Empire Surplus Lines Insurance Company; OneBeacon Insurance Group; OneBeacon Insurance Company; OneBeacon America Insurance Company; GA Insurance Company of New York; Commercial Union Insurance Company; Homeland Insurance Company of New York; Pennsylvania General Insurance Company; The Travelers; The Travelers Indemnity Company; Travelers Property Casualty Company of America; and Charter Oak Fire Insurance Company.

47. All documents that refer, reflect or relate to any correspondence with respect to any claim for coverage under any policy of insurance or contract for indemnification responsive to Request No. 46.

Dated: August 20, 2013

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this ~~20th~~ day of August, 2013, a true and correct copy of the foregoing was via first class mail, postage prepaid, to the following:

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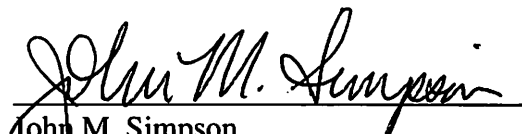
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