

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS, et al.,

Plaintiffs,

v.

FELD ENTERTAINMENT, INC.,

Defendant.

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Case No. 03-2006 (EGS/JMF)

DEFENDANT'S MOTION TO ENFORCE THE COURT'S AUGUST 23, 2007 ORDER

EXHIBIT 1

FULBRIGHT & JAWORSKI L.L.P.

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October 3, 2007

VIA FACSIMILE AND U.S. MAIL

Katherine A. Meyer
Meyer Glitzenstein & Crystal
1601 Connecticut Avenue, N.W.
Suite 700
Washington, DC 20009-1056

Re: ASPCA v. Feld Entertainment, Inc. (No. 03-2006) (EGS/JMF)

Dear Ms. Meyer:

This letter will address the insufficiency of Tom Rider's Court-ordered production of September 24, 2007. Because Mr. Rider's refusal to provide complete and accurate discovery responses continues to hinder FEI's right to depose him, please provide the documents and information requested below by October 10, 2007.

To begin with, Mr. Rider's declaration appears to blatantly disregard one of the explicit requirements contained in the Court's order of August 23, 2007. Specifically, Mr. Rider was ordered to provide:

A sworn declaration or affidavit identifying, to the extent Mr. Rider can recall, any responsive documents that were once in Mr. Rider's possession (since July 11, 2000) but have been discarded, destroyed, or given to other persons or otherwise not produced, together with a description of *each such document* and an explanation of why it was discarded, destroyed, spoliated or otherwise disposed of.

Order (8/23/07) at 3 (emphasis added). Although Mr. Rider's declaration acknowledges that some responsive documents have been destroyed (pre-March 2004) and that others may have been destroyed (post-March 2004), nowhere does Mr. Rider attempt to identify *each* such document, let alone to provide a description of *each* such document. His generic description of some receipts, by way of example only, hardly constitutes a description of *each* document destroyed prior to March 30, 2004. *See* Rider Decl. ¶ 3. *Each* receipt, as well as *each* additional document, destroyed by Mr. Rider must be described. Mr. Rider, moreover, has not identified at all any of the documents that he believes may have been destroyed after March 30, 2004. *Id.* at 5. Mr. Rider should provide an amended declaration that complies with the Court's order immediately, *i.e.*, on or before October 10, 2007.

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Similarly, Mr. Rider's declaration does not include a sufficient explanation as to why responsive documents were destroyed. His blanket assertion that certain such documents no longer exist because he purports to live in a van is incredulous. Litigants may not discard responsive documents merely because they do not have a designated space to save them. The van excuse is not believable in any event, because the amount of material that he reasonably could be expected to have is not voluminous. If there is any other reason that Mr. Rider did not keep all of his responsive documents (other than because he alleges to live in a van), he should include that in his amended declaration. If not, we will presume that Mr. Rider's only explanation for destroying such documents is that he purportedly lives in a van and will so inform the Court when we seek sanctions for Mr. Rider's spoliation.

Not only is Mr. Rider's sworn declaration incomplete, so too is his sworn response to Interrogatory No. 24. Instead of identifying the actual amount of money paid to him by his co-plaintiffs, Mr. Rider appears to have identified only those payments that FEI already knew about. Even a cursory review of the organizational plaintiffs' latest responses to Interrogatory No. 21, however, now shows that many payments to Mr. Rider had previously been undisclosed and, astoundingly, that Mr. Rider's latest response to Interrogatory No. 24 remains incomplete, notwithstanding that it was sworn under oath (again) and compelled by Court order. Mr. Rider should provide an amended (accurate and complete) response to Interrogatory No. 24 immediately, *i.e.*, on or before October 10, 2007. FEI should not have to continuously exert its time and resources independently verifying whether an answer submitted under oath by a litigant and compelled by a Court Order is accurate and complete. That is your obligation. Mr. Rider's amended response should include all payments that he has received, not just those that FEI knows about.

Mr. Rider's response to Interrogatory No. 4, moreover, remains intentionally vague. Pursuant to Court order, Mr. Rider must identify all communications with animal advocates concerning the subject matter of this lawsuit. Order (8/23/07) at 3. To date, Mr. Rider has not described any such communications with his co-plaintiffs outside the presence of counsel. Your prior correspondence and briefing implies that such communications have occurred but that plaintiffs are claiming attorney-client privilege over all of them notwithstanding that counsel was not present. Please confirm whether Mr. Rider has discussed this lawsuit with other plaintiffs outside the presence of an attorney who represents all plaintiffs in this case (*i.e.*, those who are attorneys of record, not just in-house counsel of the organizational plaintiffs). Because we do not believe all such communications to be privileged, please provide the dates and participants of each such conversation together with a description of the communication that does not waive any alleged privilege but is sufficient for us to determine whether the communication outside the presence of counsel was truly privileged. You will recall that the Court has ordered plaintiffs to disclose all communications concerning this lawsuit that are not privileged, as defined by the D.C. Circuit. Order (8/23/07) at 3. If plaintiffs insist upon claiming a blanket attorney-client privilege for all such communications (again, outside the presence of counsel), we will have no choice but to take this specific issue up with the Court. Precedent from and within the D.C.

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Circuit is clear: not all such communications are privileged. Similarly, Mr. Rider should produce any e-mails with the other plaintiffs concerning this lawsuit. If there were none, please let us know that as well. Of course, if there were such e-mails and Mr. Rider neglected to retain them, they should be specifically described in his amended declaration.

Mr. Rider also must produce “[a]ll responsive documents and information concerning his income and payments from other animal advocates and animal advocacy organizations” *See* Order (8/23/07) at 3. This includes documents and information reflecting any communication he has had with others (including his co-plaintiffs and counsel) regarding the “income” and “payments” that have been provided to him. Any and all documents reflecting such communications must be produced. Again, if any such documents have not been retained by Mr. Rider, they should be described in his amended declaration. Moreover, any such communications that specifically concerned funding related to FEI must be included in Mr. Rider’s response to Interrogatory No. 4. Of course, in producing the requested documents and information, Mr. Rider may redact the identity of certain individuals or organizations who provided such payments. *See* Order (8/23/07) at 4.

With respect to the documents actually produced by Mr. Rider, you will recall that earlier this year the parties disagreed regarding whether Mr. Rider has possession, custody, or control over documents maintained by his counsel in their “WAP” files. It appears now that Mr. Rider has produced, page-for-page, WAP’s copies of letters sent to him and of receipts submitted by him. Please confirm whether these documents recently produced by Mr. Rider were in his possession, or if these were from the files of his counsel and/or WAP. The Court has ordered Mr. Rider to produce all responsive documents from the “files of his attorneys.” Order (8/23/07) at 3. We construe the “files of his attorneys” to include the files of his attorneys located in their law firm’s office pertaining to their alleged non-profit organization designed to support their litigation activities. Please confirm that Mr. Rider has produced all of WAP’s documents that are responsive to the document requests issued by FEI to Mr. Rider.

For the most part, the only documents Mr. Rider actually has produced concerning the payments that have been made to him appear to be copies of the documents in WAP’s files. Conspicuously absent from Mr. Rider’s production, for example, are any receipts reflecting how, where, or when he cashed the checks from WAP or your law firm.¹ Similarly, Mr. Rider has produced few, if any, documents concerning the payments he received directly from his co-plaintiffs or others. Were there no cover letters enclosed with these payments? Were there no wire transfer receipts obtained by Mr. Rider? Did Mr. Rider not keep receipts for the expenses that his co-plaintiffs paid on his behalf, such as the hotels that ASPCA paid for? All of these documents (and any other such documents reflecting payments made to Mr. Rider) must either

¹ Although Mr. Rider references such receipts as an example of the types of documents he destroyed prior to March 30, 2004, he neither has produced nor mentioned in his declaration the same types of receipts since March 30, 2004.

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be produced by October 10, 2007 or, if no longer in Mr. Rider's possession, custody, or control, specifically identified and described in his amended declaration.

Finally, Mr. Rider neglected to produce his state income tax returns for 2005 and 2006. Please provide such returns immediately or please confirm that no such returns have been filed.

Thank you in advance for your prompt attention to this matter. We will be in touch as soon as possible with any questions regarding the organizational plaintiffs' Court-ordered production of September 24, 2007.

Very truly yours,


George A. Gasper

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October 29, 2007

VIA FACSIMILE AND U.S. MAIL

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Re: ASPCA v. Feld Entertainment, Inc. (No. 03-2006) (EGS/JMF)

Dear Ms. Meyer:

As indicated at the status conference last Thursday, FEI will be filing a motion to enforce regarding the Court's August 23, 2007 Order. The motion will include the deficiencies regarding Tom Rider's production as well as the organizational plaintiffs' productions. Specifically, as to the organizational plaintiffs, we again do not believe that all of the documents and information reflecting their communications (whether internal or external) regarding payments to Rider have been produced notwithstanding the Court's explicit Order that "all responsive documents and information concerning payments to Tom Rider" be produced. *See* Order (8/23/07) at 6.

We presume that the organizational plaintiffs' position regarding such payment information does not differ from Mr. Rider's – such that the parties have reached an impasse as indicated to the Court at the status conference. Please let me know immediately if that is incorrect as we will be filing our motion to enforce shortly.

Very truly yours,


George A. Gasper