

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP
801 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2623
WWW.FULBRIGHT.COM

LISA ZEILER JOINER
PARTNER
LJOINER@FULBRIGHT.COM

DIRECT DIAL: (202) 662-4501
TELEPHONE: (202) 662-0200
FACSIMILE: (202) 662-4643

February 6, 2008

VIA FACSIMILE & REGULAR MAIL

Philip J. Hirschkop
908 King Street, Suite 200
Alexandria, Virginia 22314-3013

Re: ASPCA, et al. v. Feld Entertainment, Inc., Civ. Action No. 1:03-cv-2006: Sham Subpoenae Issued to PETA

Dear Mr. Hirschkop:

I am in receipt of and write in response to your February 5, 2008 letter in which you state that *you* "must and will obey" the sham subpoenae sent to *PETA* by plaintiffs' counsel in the above-captioned ASPCA matter. Therein lies the folly of your argument. You personally were not subpoenaed for anything; rather, your client, PETA, was. PETA, however, was the wrong entity to subpoena as both you and Ms. Meyer probably realize by now. PETA has no legal right to any of the transcripts sought by the sham subpoenae, and you have no right to ignore the various protective orders in effect that so state and bind you. Furthermore, the return date of the sham subpoenae was January 30, 2008, now nearly a week ago, so your pronouncement that you must suddenly act today is false. The coordinated efforts between you and plaintiffs in the ASPCA case to rig these sham subpoenae are obvious but nonetheless procedurally flawed. For example, Ms. Meyer would have to move to compel in the ASPCA matter in order for PETA to be obligated to do anything. None of us believe for a moment that your friend and comrade in arms, Kathy Meyer (that you so oft referred to in the hearings during the PETA case), is going to move to compel against PETA, an entity that she has personally represented in other matters. She would need leave of the ASPCA court to do so, and she has not raised the matter with the court. Nor has Ms. Meyer ever responded to my January 25, 2008 letter asking that plaintiffs withdraw this set of sham subpoenae. If the subpoenae are withdrawn (as they should be), any purported response by PETA is moot. If she refuses, then the ASPCA court has been alerted to the matter, and it will be addressed in whatever manner the court desires. You, however, are not currently obligated or bound by either subpoena to do anything as no subpoena was issued to you. You are also in no position to dictate to me how issues are to be addressed with the ASPCA court.

Philip J. Hirshkop
February 6, 2008
Page 2

The fact of the matter is that the sham subpoenae were not properly issued, they violate the fact discovery cutoff in the ASPCA case as well as several other orders regarding the scope of discovery, they seek material irrelevant to the ASPCA case, PETA itself has nothing to even produce in response as it has no lawful possession, custody or control of the documents sought by the sham subpoenae, and you personally have no right to ignore and violate the various courts' protective orders that have been entered covering those documents by now donating them to Ms. Meyer under the guise of complying with the sham subpoenae. You have likewise been provided notice that Mr. Smith is also maintaining the confidentiality designation of his deposition. You and I can debate about which paragraphs of the various PETA protective orders apply and how they work, but that is a matter for the Fairfax court to resolve should the issue actually ever become ripe. It currently is not. Nobody is asking the Fairfax court to quash anything – there is no need. The various protective orders in effect currently prohibit you from providing anything to plaintiffs in the ASPCA case, a point which you are obviously aware of and is likely why you and Ms. Meyer coordinated the sham subpoenae to begin with.

You are acting in blatant bad faith. You have been put on notice of the various persons' and entities' objections to this subpoena, you have been reminded of the numerous protective orders that prohibit you from doing anything further, and you have now been told twice why the subpoenae are bogus. For you to turn over any confidential material in light of that is pure bad faith. If you do so, we will seek all appropriate sanctions and relief available against you as well as Ms Meyer and the ASPCA plaintiffs. Given that Ms. Meyer never responded to my January 25, 2008 letter, I have no reason to believe that she wishes to proceed with these sham subpoenae. She can notify me immediately if she feels otherwise.

Please feel to call me should you have any other questions.

Sincerely,

A handwritten signature in black ink that reads "Lisa Zeiler Joiner" followed by a stylized set of initials "KAC".

Lisa Zeiler Joiner

cc: William B. Porter (via facsimile)
Matthew B. Andelman (via facsimile)
Katherine Meyer (via e-mail & regular mail)