UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, et al.,	:	
Plaintiffs,	:	
v.	:	**Case No. 03-2006 (EGS/JMF)**
FELD ENTERTAINMENT, INC.,	:	
Defendant.	:	

MOTION TO STRIKE DR. CLUBB'S SUPPLEMENTAL REPORT AND REQUEST FOR EXPEDITED CONSIDERATION OF MOTION[1]

Pursuant to Federal Rules of Civil Procedure 16(b), 26(a), and 37, Defendant Feld Entertainment, Inc. ("FEI" or "Defendant") hereby moves the Court to strike the untimely First Supplemental Expert Witness Report of Dr. Ros Clubb (8/12/08). As grounds therefore, FEI states as follows:

With little more than two weeks left before the close of expert discovery, and after five of the thirteen expert depositions in this case have closed, plaintiffs served a "supplemental report" for Dr. Ros Clubb on the evening of Tuesday, August 12, 2008.[2] Dr. Clubb's deposition is currently scheduled for Friday, August 22, 2008 (after being re-scheduled – at plaintiffs' request

[1] Pursuant to LCvR 7(m), counsel for FEI certifies that they have conferred with plaintiffs' counsel on this matter and requested that the supplemental report be voluntarily withdrawn to avoid the need for this motion. Plaintiffs do not consent to the relief requested. See Ex. 6.

[2] Five expert depositions were already taken and closed before this "supplemental" report was served: two defense experts (Keele & Friend) and three of plaintiffs' experts (Hart, Buckley & Laule). Seven additional expert depositions were scheduled to be completed by August 30. Plaintiffs asked to re-schedule the August 12 deposition of their expert Colleen Kinzley, stating family medical reasons. FEI has no objection to doing so for that purpose. It does object, however, if the purpose for the delay was to allow Ms. Kinzley extra time to file a likekind "supplemental" report.

– from August 8). Clubb's second report is not a supplemental report as contemplated by Rule 26; rather, it is nothing more than a rebuttal to Dr. Friend's July 31, 2008 deposition testimony and a tardy effort to revamp and bolster Dr. Clubb's original expert report. Rebuttal reports (regardless of however labeled) were never contemplated or provided for in either Judge Facciola's scheduling orders or Judge Sullivan's pretrial and first amended pretrial orders. The trial is two months away, now slated to begin on October 20, 2008. ***Simply put, there is insufficient time to launch a second round of expert reports if this case is to be tried in October 2008. Moreover, it is unfair and highly prejudicial to FEI to permit plaintiffs to change the procedure midstream and start serving additional expert reports approximately two weeks before expert discovery closes.*** FEI asked plaintiffs to withdraw Clubb's second report in order to avoid a motions practice and to prevent a disruption to the current schedule. They refused, and FEI is compelled to seek emergency relief from the Court. The supplemental report is untimely, and is not authorized by the Federal Rules of Civil Procedure or this Court's scheduling orders. Pursuant to Federal Rule of Civil Procedure 37, it should be stricken. FEI asks the Court for an expedited ruling in light of the extremely tight timeframe the parties are operating under.

I. Procedural and Factual Background.

Dr. Clubb is one of the plaintiffs' eight identified testifying expert witnesses in this case. Her initial expert report, dated March 18, 2008, was served on FEI on March 20, 2008. See Ex. 1, Clubb report (3/20/08). At plaintiffs' request, FEI agreed to schedule Dr. Clubb's deposition for August 8 and then re-schedule it for Friday, August 22, 2008. On Tuesday night, without notice, agreement of the parties or leave of this Court, the plaintiffs served a purported "supplemental" expert report authored by Dr. Clubb. This supplemental report does not correct

any errors in her initial report or address newly discovered factual information. Rather, Dr. Clubb provides additional commentary in her supplemental report, criticizing the opinions of a defense expert, Dr. Friend, who was deposed on July 31.

The parties long ago agreed to follow this Court's scheduling orders with respect to the timing of expert reports. See Stipulation Limiting the Scope of Expert Discovery at 2, ¶ 3 (9/2/04) (Docket # 22). Last August Judge Sullivan set December 31, 2007, as the deadline for all expert discovery and referred the case to Magistrate Judge Facciola for discovery. See Discovery Order at 11 (8/23/07) (Docket # 178). Judge Facciola then ordered plaintiffs to disclose their expert witnesses on October 12, 2007, and defendant to disclose its experts on October 19, 2007. (Order ¶1 (9/25/07)) (Docket # 195). He entered the following schedule for expert evidence:

> Plaintiffs shall comply with the requirement of Rule 26(a)(2) as to all their intended experts by January 21, 2008. Defendants shall comply with that same rule by February 21, 2008. On February 22, 2008, there will commernce a 60 day period of expert discovery and all discovery of whatever type or nature will end on April 22, 2008.

Order at 3, ¶3 (12/18/07) (Docket # 239). On December 21, 2007, the plaintiffs, with FEI's consent, asked that the deadline be adjusted, and that the plaintiffs have until February 21, 2008, to serve all of their expert reports. See Joint Motion to Modify the Discovery Order at 1 (12/21/07) (Docket # 243). On February 19, 2008, the plaintiffs again asked, and FEI again consented, to modify the scheduling order, this time to allow the plaintiffs to have until March 20, 2008, to serve all expert reports. FEI's experts' reports would then be due on May 15, 2008. See Joint Motion to Modify the Discovery Order at 1 (2/19/08) (Docket #264). The Court did

not act on that motion, but plaintiffs served their expert reports, with one exception, on March 20.[3]

On April 25, 2008, FEI moved for an extension of time to serve its experts' reports. See FEI's Motion to Modify the Discovery Order (4/25/08) (Docket # 291). The plaintiffs opposed this motion. See Plaintiffs' Opposition to Defendant's Motion for an Extension of Time to Prepare its Expert Reports (5/1/08) (Docket #292). FEI's motion was granted by minute order on May 19, 2008. FEI served the expert reports it had on May 15, 2008, and one of its experts, Michael Keele, completed and served his final report on June 30, 2008.

Plaintiffs moved for a preliminary injunction on the issue of chaining on May 21, 2008, which resulted in an emergency status hearing on May 22, 2008. At that hearing, plaintiffs' counsel stated that they had done their expert reports:

> "We did our expert reports. We gave it all to our experts. We did our expert reports, gave them our expert report in March, March 20th, and that's another component of this, you Honor. As you may recall, there was a huge battle over getting medical records for the elephants, and that's a huge part of how we're able to move for a preliminary injunction as well, your Honor, because the medical records which have now been reviewed by our experts prove that in fact the chaining and confinement of the elephants causes them all kinds of wounds and injuries."

Ex. 2, 5/22/08 Hearing Transcript at 6-7. Defense counsel stated it would complete its reports, which would then leave the parties with "thirteen to fiften depositions that we would have to schedule." The Court indicated those would be done by the end of August and the case would then proceed to trial in October. Id. at 8-9. Plaintiffs counsel agreed to this schedule:

> Magistrate Facciola: The reports will be in by June 30 so we've got all of July and August to do eighteen deposition if we push hard.
>
> The Court: Is that realistic?
>
> Ms. Meyer: We're willing to do it. It's been done in other cases my firm's been involved in. You just have to do it and just get it done.

[3] Dr. Ajay Desai's report was served five days later.

> Magistrate Facciola: It's got to get done. The judge has already said no further extensions of discovery, isn't that right?
> The Court: That's it.

Id. ***Nowhere in any of this procedure during the last year were an additional round of rebuttal expert reports contemplated, scheduled or permitted.***

Nonetheless, on August 12, 2008, after business hours and eight business days before Dr. Clubb's scheduled deposition, the plaintiffs e-mailed FEI's counsel the "First Supplemental Expert Witness Report of Dr. Ros Clubb." See Ex. 3, Sanerib e-mail to Joiner (8/12/08). A copy of this supplemental report is attached as Ex. 4. At no time had the plaintiffs' counsel discussed with FEI's counsel the need for an additional report for Dr. Clubb, or sought leave of this Court to amend the scheduling order to allow for a second report.

Dr. Clubb's "supplemental" report appears to include a restatement, in whole, of her initial report. Dr. Clubb added to this original text approximately 3 pages of additional commentary regarding the expert report, academic work, and opinions of Dr. Ted Friend, a testifying expert retained by FEI. See id.; see also Ex. 3, Sanerib e-mail to Joiner (8/12/08) (explaining that "additions to her report are in bold"). Dr. Friend's report was served on the plaintiffs approximately three months ago, on May 15, 2005. The only "new" evidence cited by Dr. Clubb in her supplemental report is Dr. Friend's May 15 expert report and the transcript of his deposition. See Ex. 4 at Appendix A. Other added citations were either treatises or articles available long before March 2008, or a report produced by FEI to plaintiffs in June 2004. Id. (listing materials not previously considered); Ex. 5, Wolson Letter to Ockene (6/10/04) (producing FELD 002210). The pages of new text contain many new opinions.[4]

[4] In the main, the new opinions attempt to criticize or rebut research conducted or relied on by Dr. Friend. The latest such research was available to Dr. Clubb long before March 2008. Thus, Dr. Clubb's new opinions should have been stated in her initial report, if she intended to render

Submission of Dr. Clubb's supplemental expert report is not permitted by the Federal Rules, this Court's scheduling order, or the parties' stipulations. This is because the supplemental report was submitted long after the deadline for expert reports. Moreover, the supplemental report fails to cite any new evidence or correct any errors in the original report. Counsel for FEI communicated with counsel for plaintiffs on August 13, 2008, and requested that the supplemental report be withdrawn. See Ex. 6, Joiner e-mail to Sanerib (8/13/08). Plaintiffs' counsel refused. See Ex. 6, Sanerib e-mail to Joiner (8/14/08). This motion followed.

II. Plaintiffs' Untimely Supplemental Expert Report Should Be Stricken.

A. Standard of Review.

The full and timely disclosure of expert opinions is crucial in this case if the October trial date is to hold. As Magistrate Judge Facciola recently explained:

> The interest served by requiring the disclosure of expert opinions is self evident. It is to prevent unfair surprise at trial and to permit the opposing party to prepare for the expert's cross examination. By "locking" the expert witness into what Fed. R. Civ. P. 26(a)(2)(B) calls "a complete statement of all opinions to be expressed and the basis and reasons therefor," the opposing party knows exactly what she is facing and can decide whether to take the deposition of the expert and how to prepare for cross examination and rebuttal. When the expert supplements her report by addressing a new matter after discovery has ended, the very purpose of the rule is nullified. I, therefore, am obliged by these rules to strike the report.

Coles v. Perry, 217 F.R.D. 1, 4 (D.D.C. 2003).

This Court has discretion to control the order of events in this case, including the authority to establish a schedule for expert disclosures and reports. See Fed. R. Civ. P. 16(a) & 26(a)(2)(C); see also St. Paul Mercury Ins. Co. v. Capitol Sprinkler Inspection, Inc., 2007 U.S. Dist. LEXIS 39606, at *16-17 (D.D.C. June 1, 2007) (citing Olgyay v. Soc'y for Envtl. Graphic

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them at all. The fact that she did not choose to express them until after reading Dr. Friend's deposition transcript in this case does not make them new information. See infra, Section II.C.

Design, Inc., 169 F.R.D. 219, 220 (D.D.C. 1996)). A scheduling order may only be modified with a showing of good cause. See Fed. R. Civ. P. 16(b)(4). Where a scheduling order has not been modified, the Court has authority to exclude untimely or otherwise improper expert reports. See Fed. R. Civ. P. 37(b)(2)(A)(ii); see also Coles, 217 F.R.D. at 4.

B. Plaintiffs' Supplemental Report is Untimely.

"A Scheduling Order is 'intended to serve as the unalterable road map (absent good cause) for the remainder of the case.'" St. Paul Mercury Ins. Co., 2007 U.S. Dist. LEXIS 39606, at * 16 (quoting Olgyay v. Soc'y for Envtl. Graphic Design, Inc., 169 F.R.D. 219, 220 (D.D.C. 1996)). The scheduling order "is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril." Id. (quotations omitted). Rather, "disregard of the order would undermine the court's ability to control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the cavalier." Id. at *17.

By any construction of this Court's orders, March 20, 2008 was the last date upon which the plaintiffs could serve an expert report. August 12, 2008, is almost five months after this deadline expired. The plaintiffs "in this case [were] obligated to seek a modification of the Scheduling Order by demonstrating 'good cause' ***before*** serving" their supplemental expert report. St. Paul Mercury Ins. Co., 2007 U.S. Dist. LEXIS 39606, at *17 (emphasis added). Here, the plaintiffs have made no effort to establish good cause for modifying the scheduling order. They have simply disregarded this Court's schedule in favor of a procedure and timing of their own choosing.

This Court's scheduling order did not contemplate rebuttal expert reports, nor did the Stipulation upon which plaintiffs attempted to rely. See Ex. 3, Sanerib e-mail to Joiner (8/12/08) (claiming the "supplemental" report was submitted "pursuant to our expert stipulation"). Rule

26(a)(2)(C)(i) & (ii) direct that expert reports must be served ***at least 90 days before trial***, or "if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B), ***within 30 days after the other party's disclosure***." Dr. Friend's report was served on May 15, 2008, and any permissible "rebuttal" report would have to have been served by June 14, 2008. Even if permitted by this Court's scheduling orders, which it was not, the plaintiffs' "supplemental" report still would be untimely by almost two months.

C. Plaintiffs' August 12 Report is not a Permissible Supplementation

Pursuant to Rule 26(e), a party is under a duty to supplement a Rule 26(a)(2)(B) expert report "if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties . . . ." Fed. R. Civ. P. 26(e)(1)(A). This Rule "does not grant a license to supplement a previously filed expert report because a party wants to, but instead imposes an obligation to supplement the report when a party discovers the information it has disclosed is incomplete or incorrect." Coles, 217 F.R.D. at 4; see also Leviton-Manufacturing Co v. NICOR, *Inc.*, 245 F.R.D. 524, 528 (D.N.M. 2007) ("Rule 26(e) does not allow a party to file supplements intended to 'deepen' or 'strengthen' its own expert's prior rule 26(a)(2)(B) report").

Instead, Rule 26(e) "permits supplemental reports only for the narrow purpose of correcting inaccuracies or adding information that was not available at the time of the initial report." Minebea Co. v. Papst, 231 F.R.D. 3, 6 (D.D.C. 2005). In twin decisions in Beller v. United States, 221 F.R.D. 689 (D.N.M. 2003) ("Beller I") and Beller v. United States, 221 F.R.D. 696 (D.N.M. 2003) ("Beller II"), the district court held that untimely supplemental reports that went beyond correcting mistakes or citing previously undiscoverable evidence were

inadmissible, and granted motions to strike both reports. See, e.g., Beller I, 221 F.R.D. at 694-95 (party conceded "that the opinions proposed by Dr. Ames in her supplement were intended to strengthen, broaden and deepen the earlier opinions," and thus it was "not a situation where, subsequent to the preparation of the original report, new information was discovered which required that the original report be supplemented because the original opinion was no longer correct.").

Beller II struck the supplemental report of a damages expert who had revised his opinion on the basis of another expert's report. See Beller II, 221 F.R.D. at 698-99 ("Dr. Grant modifie[d] the opinion not because of any change in the maintenance expenses relating to the Ramaekers, but based on another expert's opinion – Dr. McDonald's – concerning maintenance expenses for the Bellers, the other set of plaintiffs in this action."). Because "Dr. Grant's supplemental report was filed beyond the dates imposed by the Court's deadline," and because it was produced without the submitting party "having sought or obtained leave of the Court to modify case management deadlines," and because it expressed opinions different than the opinions contained in his original report, the court found "good cause to strike the revised report." Id. at 702.[5]

Dr. Clubb has not sought to correct any errors in her report. Nowhere in her supplemental report does she contend that her initial report relied on incorrect information, or

[5] Paragraph 3 of the parties' Stipulation Limiting the Scope of Expert Discovery (9/2/04) (Docket # 22) directs that "the parties will supplement such [expert] disclosures, to the extent necessary, no later than ten (10) business days before an expert's deposition." This language does not expand upon the scope of mandated (and thus permissible) supplements to expert reports provided by Fed. R. Civ. P. 26(e), and instead recognizes that such supplementations are limited "to those necessary." The purpose of paragraph 3 generally, and this clause in particular, is limited to the timing, not the scope, of expert reports. Should the plaintiffs seek to rely on this language for their unnecessary supplementation, it should be noted that they did not provide this document until eight business days before Dr. Clubb's deposition – rendering it doubly untimely.

that her initial analysis was flawed, or that her conclusions were erroneous. Indeed, it appears that all of her initial bases, analyses, and conclusions were imported whole and intact from her initial report and restated in their entirety in her supplemental report.

Nor does Dr. Clubb cite new factual information that was unavailable to plaintiffs or to her at the time she completed her initial report. While in her supplemental report she cites to 14 treatises or articles not cited in her initial report, those were clearly as available to her in March as they were in August. For example, her supplemental report's new reference 16 is Kiley-Worthington, M., *Animals in Circuses and Zoos: Chiron's World?* (1990 Little Eco-Farms Publishing Essex, England), and is cited at page 8 of her supplemental report. Dr. Clubb explains "I am familiar with Dr. Kiley-Worthington's report, but I have not cited it due to the poor quality of the work." Ex. 4 at 8. She cites to this authority in her supplemental report solely to defend herself against what she perceives as Dr. Friend's "suggest[ion] that I have purposely avoided citing this study." Id.

Indeed, ***all*** of her "supplemental" comments are attacks on the opinions, methodology, prior research, or references of Dr. Friend. The only "new" information cited by Dr. Clubb are the report and deposition transcript of Dr. Friend. The supplemental report's new citations were to treatises or articles available long before March 2008 and to a report ***produced by FEI to plaintiffs in FEI's first document production in this case, which occurred on June 10, 2004***. See Ex. 5, Wolson Letter to Ockene (6/10/04) (producing FELD 002210); Ex. 4 at App. A (listing materials not previously considered).

A rival expert opinion with which you disagree does not constitute new information which would mandate a supplemental report. If plaintiffs' tactic – untimely supplemental reports for the purpose of arguing against rival experts – is permitted, expert disclosure and

discovery would never end. Such an approach "would create a system where preliminary reports could be followed by supplementary reports and there would be no finality to expert reports, as each side, in order to buttress its case or position, could 'supplement' existing reports and modify opinions previously given." Beller I, 221 F.R.D. at 695. Such a "practice would surely circumvent the full disclosure requirement implicit in Rule 26 and would interfere with the Court's ability to set case management deadlines, because new reports and opinions would warrant a new round of consultation with one's own expert and virtually require new rounds of depositions." Beller II, 221 F.R.D. at 701-02.

The procedure plaintiffs are attempting to embark on would ensure that expert reports and discovery continue on *ad infinitum*. ***There is no time for this if this case is to be tried in October.*** Indeed, if the Court declines to strike Dr. Clubb's supplemental report, then, in the interests of parity, FEI must have the opportunity to offer surrebuttal reports. Two of its experts have already been deposed, two more are scheduled for Tuesday, August 18, and another one is scheduled for Friday, August 29. What plaintiffs have attempted to do here without any notice or permission is unworkable and fundamentally unfair. The trial date should be continued if the parties are going to suddenly embark upon a second round of expert reports, which cannot possibly be concluded by August 30.

D. The Plaintiffs' Tactics Should Not Be Permitted

"If disclosed after the deadline for Rule 26(a)(2) disclosures, any wholly new opinions contained in a revised expert report are subject to the sanctions imposed by Rule 37(c)." Sheesley v. Cessna Aircraft Co., 2006 U.S. Dist. LEXIS 77919, at *11 (D.S.D. Oct. 24, 2006) (citing Transclean Corp. v. Bridgewood Servs., Inc., 101 F. Supp. 2d 788, 795-96 (D. Minn. 2000); Trilogy Communs., Inc. v. Times Fiber Communs., Inc., 109 F.3d 739, 744 (Fed. Cir.

1997)). "Rule 37(c)(1) provides for the exclusion at trial of any information not disclosed pursuant to Rule 26(a), unless the failure to disclose is harmless, or if there was substantial justification for such failure." Minebea, 231 F.R.D. at 5. The plaintiffs have "articulated no substantial justification for waiting" five months to offer Dr. Clubb's new opinions. Id. "Discovery in this action began years ago, and the time for disclosure of additional evidence has long since passed." Id. Dr. Clubb's supplemental report should be stricken.

Plaintiffs will presumably claim that their midstream procedural change and eleventh hour tactics are not truly prejudicial, since Dr. Clubb has not yet been deposed, and that a few extra pages here and there are harmless. This is not true. FEI has expended considerable resources in preparing for expert depositions, and it is absolutely unacceptable for the plaintiffs to offer this kind of moving target for opinions that should have been disclosed five months ago if they were to be offered at all. The fact that Dr. Clubb chose not to disclose them until now does not make them new information that would be a proper basis for supplementation. If permitted now, they are new opinions that must be addressed in the heat of pre-trial preparation rather than in earlier months, when time was available. In Gen. Elec. Cap'l Bus. Asset Funding Corp. v. S.A.S.E. Military Ltd., 2004 U.S. Dist. LEXIS 30713 (W.D. Tex. Oct. 8, 2004), a party sought to rely on a supplemental expert report that was disclosed only two months before trial. The court rejected the argument that the obvious prejudice caused by this untimely disclosure could be cured by further delaying discovery. The offending party's

> offer to accommodate G.E. Capital by delaying the deposition [of the expert] is not excuse for delaying production of the supplemental report until its serendipitous discovery. The intent of Rule 26(b) is to ensure that deposition testimony can proceed with parties already armed with the expert's report so as to be able to evaluate the opinions to be offered. Continuance of the deposition would invoke additional expense upon the opposing party, constitutes a waste of time already spent preparing for the scheduled deposition, and would only further delay this already lengthy litigation. Therefore, [the] argument that

> accommodation constitutes good cause for allowance of the new report must fail.

Id. at *9-10.

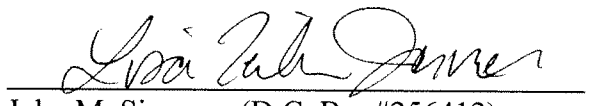
Moreover, it must be noted that Dr. Clubb is only one of the plaintiffs' ***eight*** identified testifying experts. Given the plaintiffs' decision to ignore this Court's prior scheduling orders, there is no way to know which of these seven are authoring, have authored, or will author supplemental reports of their own. Defense counsel has requested that plaintiffs explain whether they are planning any further such "supplemental" reports, and plaintiffs' counsel have declined to answer that questiom by hedging: "As far as we know, Dr. Clubb and Dr. Ensley are our only experts who are preparing supplemental reports." See Ex. 6, Sanerib e-mail to Joinre (8/15/08). This email response by plaintiffs today is the first one to disclose to FEI that an additional supplemental report (by Ensley) has been prepared. Indeed, the plaintiffs have not advised whether Dr. Clubb is satisfied with her attacks on Dr. Friend, or if she intends to expand the scope of her report via new installments after each defense expert is deposed. As it completes trial preparation, Defendant cannot be subjected to a barrage of new opinions, served untimely and without warning, the Court's leave or basis in the Rules.

CONCLUSION

For the foregoing reasons, Defendant Feld Entertainment, Inc. asks that the Court grant this motion, and strike or otherwise exclude the First Supplemental Expert Report of Dr. Ros Clubb. FEI contends that a second round of expert reports is neither necessary nor feasible given the inordinate amount of work that must otherwise be done between now and the October 20 trial date. Alternatively, if the Court is going to permit plaintiffs' experts to submit rebuttal reports, then FEI asks that the trial date be vacated and a new schedule be developed for expert reports and depositions to which FEI strongly objects.

Dated this 15th day of August, 2008.

Respectfully submitted,



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, et al.,	:	
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v.	:	**Case No. 03-2006 (EGS/JMF)**
FELD ENTERTAINMENT, INC.,	:	
Defendant.	:	

ORDER

Upon consideration of Feld Entertainment, Inc.'s Motion to Strike Dr. Clubb's Supplemental Report and Request for Expedited Consideration, it is this _____ day of August, 2008,

ORDERED that the Motion for Partial Reconsideration is **GRANTED**; and it is further

ORDERED that the Supplemental Report of Dr. Ros Clubb is **STRICKEN** from the record in the above-captioned matter.

_____
MAGISTRATE JUDGE FACCIOLA

CERTIFICATE OF SERVICE

I, Kara L. Petteway, do hereby certify that on August 15, 2008 the foregoing **Motion to Strike Dr. Clubb's Supplemental Report and Request for Expedited Consideration of Motion** was served on the following in the manners stated below:

FILED PUBLICLY IN REDACTED/UNSEALED FORM VIA ECF to:

All ECF-registered persons for this case, including plaintiffs' counsel

FILED WITH THE CLERK OF COURT UNDER SEAL IN UNREDACTED FORM to:

Clerk's Office
U.S.D.C. for the District of Columbia
E. Barrett Prettyman Courthouse
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COURTESY COPY TO CHAMBERS OF HON. JOHN M. FACCIOLA UNDER SEAL IN UNREDACTED FORM

Chambers
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/s/
Kara L. Petteway