

**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 FELD ENTERTAINMENT, INC.'S OBJECTIONS TO  
PLAINTIFFS' PROPOSED TRIAL EXHIBITS and to TRANSCRIPTS**

Pursuant to paragraph 8 of the Court's First Amended Pre-Trial Order ("Order") (Docket No. 328) (8/6/08), defendant Feld Entertainment, Inc. ("FEI") hereby provides notice of its objections to plaintiffs' proposed trial exhibits. FEI has the following general objections to plaintiffs' exhibits:

1. FEI objects to the untimely production by plaintiffs of their exhibits. Paragraph 8 of the Order required:

Copies of all exhibits the parties intend to introduce at trial shall be provided to the Court and opposing counsel by no later than **September 16, 2008**. Objections to proposed exhibits must be filed no later than **September 23, 2008**.

Id. ¶ 8. Plaintiffs did not abide by this provision in the Order.

Instead, FEI received a notebook of DVDs on the evening of Tuesday, September 16, 2008. The discs were labeled only as "will call" or "may call" and volume "\_\_\_" of "\_\_\_" (for example, "will call volume 1 of 9"). No index accompanied them. The DVDs were not prepared in chronological order, and the exhibits on them were not labeled. Thus, the files when printed were unidentifiable by exhibit number. Plaintiffs' failure to produce timely their trial exhibits

prejudiced FEI's counsel in their ability to respond and object timely and created undue burden on FEI's counsel to comply with the Order.<sup>1</sup>

2. Plaintiffs failed to provide FEI with the USB flash drives that they provided to the Court on September 16, 2008. Plaintiffs' counsel's cover letter to the Court indicates that plaintiffs provided three USB flash drives to chambers; however, plaintiffs produced no such USB flash drives to FEI. Plaintiffs only provided FEI with (unlabeled) copies of their exhibits on 14 DVDs. FEI twice requested that plaintiffs provide their exhibits in the same format that was provided to the Court. Plaintiffs refused to do so.

3. FEI objects to the external hard drive produced to it on Friday, September 19, 2008 as untimely and an improper format. Although this set of exhibits produced by plaintiffs now included exhibit numbers, it was not accompanied by hard copies. (The hard drive provided to FEI does not contain plaintiffs' may call exhibits 6-9.) In this format, FEI's counsel either has to scroll on-line through exhibits that are hundreds of pages each, or print all of them out. FEI proceeded in good faith and produced separated, labeled hard copies of its trial exhibits for the Court and plaintiffs on Tuesday, September 16. Plaintiffs should have reciprocated. FEI estimates that, if printed, plaintiffs' exhibits would easily total more than sixteen boxes of materials. FEI objects to having to bear the substantial cost of printing, separating and preparing such exhibits – a burden that should be borne by plaintiffs, not FEI. See Order ¶ 8 (referencing *hard copy* exhibits for use at trial). It is unclear how FEI is going to be expected to match up the pdf files that plaintiffs have provided to it with the actual exhibits plaintiffs will undoubtedly rely upon at the pretrial conference and at trial. The risk of delay and confusion is not insignificant.

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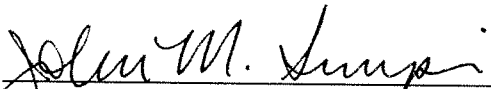
<sup>1</sup> Counsel for FEI has conferred with plaintiffs' counsel on objections no's 1-3 herein. Plaintiffs' counsel offered to stipulate to a time extension for objections to number 1, but since none of the other upcoming deadlines will change, *i.e.*, pretrial briefing, expert summaries and pretrial conference preparation, this was an empty gesture.

4. At this time, FEI is not aware of any discrepancies in transcripts, and thus, has no objections to same.

FEI's specific objections to plaintiffs' will call exhibits are provided in Attachment A hereto, and its specific objections to plaintiffs' may call exhibits are provided in Attachment B hereto.

Dated this 23rd day of September, 2008.

Respectfully submitted,

  
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