

**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.

No. 03-2006

**REPLY IN SUPPORT OF MOTION BY THE
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS TO REMOVE ITS NAME FROM THE CASE CAPTION IN
LIGHT OF THE DISMISSAL OF ALL CLAIMS AGAINST IT**

Former party the American Society for the Prevention of Cruelty to Animals ("ASPCA") respectfully submits this reply brief in further support of its motion for an order removing the ASPCA from the case caption in the above-captioned action in light of the Court's dismissal of all claims against it.

Only one party has filed an opposition to the ASPCA's motion—plaintiff Animal Welfare Institute ("AWI"). None of the arguments AWI raises have merit.

First, AWI argues that a caption change is inappropriate because the ASPCA and its employees may be witnesses in *Feld Entertainment Inc. v. ASPCA et al.*, No. 07-1532 (D.D.C.). AWI Opp. at 2. AWI concedes that the Court, pursuant to the ASPCA's settlement with Feld Entertainment, Inc. ("FEI"), has dismissed all claims against the ASPCA in this case. It is no longer a party. There is no reason why the potential involvement of the ASPCA in *another* case would require the ASPCA to remain on the case caption in *this* case. Furthermore, AWI misses

a critical distinction—to the extent that any ASPCA witness were to testify in *Feld Entertainment Inc. v. ASPCA*, they would do so as non-parties. Indeed, the settlement agreement cited by AWI explicitly provides that the ASPCA is only obligated to respond to discovery requests as "a non-party under the Federal Rules of Civil Procedure." AWI Opp. Ex. A at 5. AWI cites no justification, and there is none, for requiring that an entity which is no longer a party to an action remain on the case caption indefinitely.

Second, AWI argues that "there are remaining issues involving the ASPCA that may need to be resolved in this case," specifically, the extent to which the settlement payment by the ASPCA may affect the remaining liability of the plaintiffs. AWI Opp. at 2. The ASPCA takes no position on these issues, and their resolution does not depend in any way on the ASPCA's continued presence in the case caption. As AWI's filing makes clear, the parties have access to the settlement agreement between FEI and the ASPCA. The remaining parties are therefore free to make arguments about the effect of the ASPCA's settlement payment on any remaining liabilities, which will ultimately be resolved by the Court. This in no way requires the ASPCA to remain on the case caption.

Third, AWI attempts to argue that the cases cited by the ASPCA in support of its motion are distinguishable on two grounds. AWI argues that none of the cases cited involved opposed motions for a caption change. But this is irrelevant; the mere fact that a motion is opposed or unopposed has nothing to do with its underlying merits. AWI also argues that none of the cases involved "potential remaining legal issues regarding the payment of taxed costs and potential attorneys' fees," or other "post-trial proceedings where further involvement by that party may be necessary." AWI Opp. at 3. But, as explained above, the fact that the other plaintiffs may have

liabilities to be resolved in no way requires involvement by the ASPCA in this action. AWI's distinctions are therefore without a difference.

Ultimately, AWI's opposition appears to be driven by the fact that AWI is the next party in the caption and that its name will appear first if the ASPCA's motion is granted. AWI's concerns about being first in the caption are not a reason to deny the ASPCA's motion.

For all of the foregoing reasons, the ASPCA respectfully requests that the Court grant its motion and remove the ASPCA's name from the caption in this case going forward.

Dated: March 21, 2013

Respectfully submitted,

/s/ Daniel S. Ruzumna

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