

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**ANIMAL WELFARE INSTITUTE, *et al.*,**

**Plaintiffs,**

**V.**

**FELD ENTERTAINMENT, INC.,**

**Defendant.**

**Case No. 1:03-cv-2006(EGS)**

**NOTIFICATION AND RECOMMENDATIONS BY PLAINTIFFS AND ESA COUNSEL  
REGARDING APPOINTMENT OF SPECIAL MASTER**

In conformance with the Court’s April 19, 2013, Order in the above-captioned action (the “ESA Action”), Plaintiffs the Animal Welfare Institute, The Fund for Animals, Inc., Born Free USA and Tom Rider (“Plaintiffs”), and Katherine Meyer and Meyer, Glitzenstein & Crystal (collectively, “Plaintiffs and ESA Counsel”), by and through their undersigned counsel of record, respectfully submit the following notification and recommendations regarding the appointment of Magistrate Judge John M. Facciola as Special Master.

Plaintiffs and ESA Counsel have no objection to, and affirmatively endorse, the appointment of Magistrate Judge John M. Facciola as the Special Master to oversee all issues related to a determination as to any amount of attorneys' fees due to Defendant pursuant to Federal Rule of Civil Procedure 53 and Local Civil Rule 72.1(b)(3).

Plaintiffs and ESA Counsel recommend that the scope of Magistrate Judge Facciola's duties and authority as Special Master be as broadly defined as possible to enable a fair inquiry into the matter and generally be consistent with the powers and duties that the Court has

delegated to Magistrate Judge Facciola in *Feld Entertainment, Inc. v. Animal Welfare Institute, et al.*, Case No 1:07-cv-01532 (EGS/JMF) (the “RICO Action”), so that Magistrate Judge Facciola may conduct his duties as to both cases in the most efficient, non-duplicative manner possible. Plaintiffs and ESA Counsel’s specific recommendations are set forth below, corresponding generally to the categories appearing in Federal Rule of Civil Procedure 53(b)(2) dealing with the contents of the Order that the Court should enter:

- Rule 53(b)(2)(A) -- The Master’s Duties. Plaintiffs and ESA Counsel believe the Special Master’s duties should be broadly stated such that the Special Master is given the task of addressing and ruling on all issues relating to Defendant’s application for legal fees as it relates to Plaintiffs and ESA Counsel. This includes all issues raised by that application for legal fees and issues raised regarding the ultimate amount that may be owed by each individual Plaintiff and by ESA Counsel. Plaintiffs and ESA Counsel believe there should be no limitation on the duties of the Special Master in this regard. Plaintiffs and ESA Counsel recommend that the Special Master have all powers necessary to render a ruling on the matters set forth above, including without limitation those powers normally possessed by a Magistrate Judge to regulate all proceedings, oversee discovery, hold evidentiary hearings, take testimony, and otherwise exercise powers referenced in both Federal Rule of Civil Procedure 53(c) and Local Civil Rule 72.1. Plaintiffs and ESA Counsel believe that the Special Master should further have the authority and discretion to organize and regulate the fulfillment of his duties in this matter with the pursuit of whatever responsibilities he is delegated by the Court in the RICO Action, a matter that involves some of the

same tasks regarding discovery and elucidation of legal fees claimed as compensable by virtue of their status as damages sought in the RICO Action.

- Rule 53(b)(2)(B) -- *Ex Parte* Communications. Plaintiffs and ESA Counsel believe that the Special Master should be free to communicate with the Court in whatever fashion the Special Master and the Court deem appropriate. Plaintiffs and ESA Counsel believe that the Special Master should otherwise abide by his normal procedures regarding such communications with the parties in this matter.
- Rule 53(b)(2)(C) -- The Nature of the Record. Plaintiffs and ESA Counsel believe that the Special Master should compile the record of this matter in conformance with his normal procedures and practice as a Magistrate Judge and in conformance with the powers given to him under Local Civil Rule 72.1.
- Rule 53(b)(2)(D) -- Time Limits, Record Filing Procedures, and Standards of Review. As to time limits, Plaintiffs and ESA Counsel believe that the time limits set forth in their Initial Status Report (120 days for filing the fee application for Defendant; 180 days for Plaintiffs' and ESA Counsels' separate responses; and 45 days for Defendant's reply or replies) are reasonable. Alternatively, Plaintiffs and ESA counsel believe that the Special Master should set whatever time limits he believes are reasonable after review of the matter. With regard to the filing of the record and other procedures, Plaintiffs and ESA Counsel recommend that the Special Master follow his normal practice as a Magistrate Judge and pursuant to Local Civil Rule 72.1. With regard to the standard of review, if any objection is filed, Plaintiffs and ESA Counsel recommend that the Special Master's findings

of fact and legal conclusions be subject to *de novo* review in conformance with Federal Rule of Civil Procedure 53(f).

- Rule 53(b)(2)(E) -- Compensation. Plaintiffs and ESA Counsel understand that the law precludes compensation to a Magistrate Judge acting as a Special Master apart from that which is normal for a United States Magistrate Judge.

Respectfully submitted,

/s/ Stephen L. Neal, Jr.

Bernard J. DiMuro (D.C. Bar No. 393020)

Stephen L. Neal, Jr. (D.C. Bar No. 441405)

**DIMUROGINSBERG, P.C.**

1101 King Street, Suite 610

Alexandria, Virginia 22314

Telephone: (703) 684-4333

Facsimile: (703) 548-3181

Emails: bdimuro@dimuro.com

sneal@dimuro.com

*Counsel for Plaintiff Animal Welfare Institute*

/s/ Roger E. Zuckerman

Roger E. Zuckerman (D.C. Bar No. 134346)

**ZUCKERMAN SPAEDER LLP**

1800 M Street, N.W., Suite 1000

Washington, DC 20036

Telephone: (202) 778-1800

Facsimile: (202) 822-8106

Email: rzuckerman@zuckerman.com

and

/s/ Logan D. Smith

Logan D. Smith (D.C. Bar No. 474314)

**Alexander Smith, Ltd.**

3525 Del Mar Heights Road, #766

San Diego, CA 92130

Email: logan@alexandersmithlaw.com

*Counsel for Plaintiff The Fund for Animals,  
Inc.*

/s/ David H. Dickieson

David H. Dickieson (D.C. Bar No. 321778)

**SCHERTLER & ONORATO, LLP**

575 7<sup>th</sup> Street, N.W., Suite 300 South

Washington, DC 20004

Telephone: (202) 628-4199

Facsimile: (202) 628-4177

Email: ddickieson@schertlerlaw.com

*Counsel for Plaintiff Born Free USA United  
with the Animal Protection Institute*

/s/ Matthew G. Kaiser

Matthew G. Kaiser (D.C. Bar No. 486272)

**THE KAISER LAW FIRM PLLC**

1750 K Street, N.W., Suite 200

Washington, D.C. 20006

Telephone: (202) 640-2850

Facsimile: (202) 280-1034

Email: mkaiser@thekaiserlawfirm.com

*Counsel for Plaintiff Tom Rider*

/s/ Stephen L. Braga

Stephen L. Braga (D.C. Bar No. 366727)

**Law Office of Stephen L. Braga**

3079 Woods Cove Lane

Woodbridge, VA 22192

Telephone: (617) 304-7124

Email: slbraga@msn.com

*Counsel for the Law Firm of Meyer,  
Glitzenstein & Crystal and Katherine A. Meyer*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic filing this 26th day of April, 2013, to all counsel of record.

/s/ Roger E. Zuckerman

Roger E. Zuckerman