

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ANIMAL WELFARE INSTITUTE, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No: 03-2006 (EGS)
	)	
FELD ENTERTAINMENT, INC.,	)	
	)	
Defendant.	)	
	)	
	)	
_____	)	

**DEFENDANT FELD ENTERTAINMENT, INC.’S  
MOTION TO CORRECT 03-29-13 ORDER AND MEMORANDUM OPINION**

Defendant Feld Entertainment, Inc. (“FEI”) hereby moves the Court to correct the Court’s 03-29-13 Order and Memorandum Opinion (ECF Nos. 619 & 620) (“03-29-13 Order & Mem. Op.”) pursuant to Fed. R. Civ. P. 60(a). The points and authorities in support of FEI’s Motion are as follows:

1. In its 03-29-13 Order and Memorandum Opinion, the Court granted in part FEI’s motion for entitlement to attorneys’ fees (ECF No. 593) (04-10-12). The Court **“ORDERED** that defendant’s motion for attorneys’ fees against all plaintiffs in this action jointly and severally is **GRANTED**” and (2) **“FURTHER ORDERED** that plaintiffs’ counsel Katherine Meyer and Meyer, Glitzenstein & Crystal are jointly and severally liable for FEI’s attorneys’ fees incurred in litigating the portion of its Motion to Compel (*ECF No. 101*) which sought information about Tom Rider’s financial relationship with animal rights advocates.” 03-29-13 Order (emphasis added).

2. FEI respectfully submits that the Court referenced the incorrect ECF filing number when it sanctioned Ms. Meyer and Meyer, Glitzenstein & Crystal (“MGC”) for their involvement with discovery regarding Mr. Rider’s financial relationship with animal rights advocates. The Court sanctioned Ms. Meyer for her participation in Mr. Rider’s false June 2004 response to Interrogatory No. 24 and held that “Ms. Meyer may be held liable for FEI’s attorneys’ fees incurred in litigating the portion of its Motion to Compel *which sought information about Rider’s financial relationship with animal rights advocates.*” 03-29-13 Mem. Op. at 42 (emphasis added).<sup>1</sup> In support of this holding, the Court cited ECF No. 101 and the Court’s 08-23-07 Order (ECF No. 178). *Id.* at 42; *see also id.* at 4 & 49-50 (same). The Court’s reference to ECF No. 101 was, in turn, included in its Order. *See* 03-29-13 Order.

3. However, ECF No. 101, FEI’s Motion to Compel Testimony of Plaintiff Tom Eugene Rider and for Costs and Fees (“Motion to Compel Rider Testimony”), did not address Mr. Rider’s interrogatory responses or his “financial relationship with animal rights advocates.” 03-29-13 Mem. Op. at 42. It addressed Mr. Rider’s failure to answer deposition questions regarding his military record, felony arrest record and misdemeanor convictions, and his participation as a party in prior civil litigation. *See* ECF No. 101 at 4-5; 08-23-07 Order, at 1-2 (granting in part ECF No. 101).

4. The Motion that addressed Mr. Rider’s “financial relationship with animal rights advocates,” 03-29-13 Mem. Op. at 42, including his response to Interrogatory No. 24, was ECF No. 126, FEI’s Motion to Compel Discovery from Plaintiff Tom Rider and for Sanctions, Including Dismissal (“Motion to Compel Rider Discovery”). *See* ECF No. 126 at 2 (moving to compel, *inter alia*, “all responsive documents and information concerning [Mr. Rider’s] income and payments from other animal advocates or animal advocacy organizations”), 9-10

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<sup>1</sup> Citations to documents filed on the ECF system are to the .pdf page numbers.

(referencing Interrogatory No. 24), 15-16 (same) & 26-27 (same). FEI submits that the Court's 03-29-13 Order and Memorandum Opinion should have referenced ECF No. 126 rather than ECF No. 101.

5. When the Court ruled on ECF No. 126 in its 08-23-07 Order, it ordered Mr. Rider to produce, *inter alia*, “[a]ll responsive documents and information concerning his income and payments from other animal advocates and animal advocacy organizations” and “[c]omplete and truthful answers to interrogatories 2, 4, 7, **and 24** ... .” 08-23-07 Order, at 3-4 (emphasis added). When the Court awarded § 1927 sanctions, it held that Ms. Meyer and MGC are jointly and severally liable for FEI's attorneys' fees incurred in compelling the disclosure of this information, and not the information that was the subject of ECF No. 101. *See* 03-29-13 Mem. Op. at 41-42. Although both ECF No. 101 and ECF No. 126 were decided by the Court's 08-23-07 Order (*see* 08-23-07 Order at 1 & 3), the context of the Court's recent March 29, 2013 Order is referencing the financial issues resolved by ECF No. 126. *See* 03-29-13 Mem. Op. at 41-42.

6. Therefore, FEI submits that when holding that Ms. Meyer and MGC are jointly and severally liable “for FEI's attorneys' fees incurred in litigating the portion of its Motion to Compel which sought information about Rider's financial relationship with animal rights advocates,” 03-29-13 Mem. Op. at 42, the Court should have cited ECF No. 126, and not ECF No. 101. Likewise, ECF No. 126, and not ECF No. 101, should have been referenced in the 03-29-13 Order.

7. This error may be corrected pursuant to Fed. R. Civ. P. 60(a), which permits the Court to “correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” “The district court is afforded broad discretion in correcting errors and granting relief from judgment under Rule 60.”

*Washington v. Thurgood Marshall Acad.*, 232 F.R.D. 6, 9 (D.D.C. 2005) (Facciola, M.J.). “[T]he D.C. Circuit has suggested that courts have not only the power but also the duty to correct judgments which contain clerical errors or judgments which have issued due to inadvertence or mistake.” *Franklin-Mason v. England*, 2005 U.S. Dist. LEXIS 15402, at \*2 n.1 (D.D.C. Aug. 1, 2005) (Facciola, M.J.) (internal quotations omitted). “[T]he relevant test for the applicability of Rule 60(a) is whether the change affects the substantive rights of the parties and is therefore beyond the scope of Rule 60(a) or is instead a clerical error, a copying or computational mistake, which is correctable under the Rule.” See *Trans-Pacific Policing Agreement v. United States*, 2002 U.S. Dist. LEXIS 27672, at \*4 (D.D.C. April 24, 2002) (Hogan, J.) (quoting *United States v. Kellogg*, 12 F.3d 497, 504 (5th Cir. 1994)); see also WRIGHT, MILLER & KANE § 2854 (“[A] motion under Rule 60(a) only can be used to make the judgment or record speak the truth and cannot be used to make it say something other than what originally was pronounced.”).

8. FEI’s request to correct the ECF filing entry referenced in the sanctions order, from ECF No. 101 (Motion to Compel Rider Testimony) to ECF No. 126 (Motion to Compel Rider Discovery), is a purely ministerial exercise which makes no substantive changes to the 03-29-13 Order and Memorandum Opinion. Cf. *Internet Fin. Servs. LLC v. Law Firm of Larson-Jackson*, 394 F. Supp. 2d 1, 3-5 (D.D.C. 2005) (Collyer, J.) (holding that an amended judgment changing the caption from listing the lead Defendant and “et al.” to identifying both defendants was a ministerial exercise, properly considered a motion to correct a clerical mistake under Rule 60(a)). Here, the sanction was imposed because of a false interrogatory answer, and the remedy ordered was reimbursement of the amount of legal fees spent by the aggrieved party in compelling a truthful answer to that interrogatory. The sanctions order simply made a mistaken reference to the wrong motion to compel. This is the type of error that courts in this district have

corrected pursuant to Rule 60(a). *See, e.g., Oehser v. United States*, 820 F.2d 1341, 1342 n.1 (D.C. Cir. 1987) (unpublished) (noting that district court corrected clerical error imposing Rule 11 sanctions against the wrong counsel); *Int'l Painters & Allied Trades Indust. Pension Fund & Design Techn.*, 254 F.R.D. 13, 20-21 (D.D.C. 2008) (Kollar-Kotelly, J.) (correcting dollar amount of default judgment); *Ideal Elec. Sec. Co. v. Sciencetech, Inc.*, 1998 U.S. Dist. LEXIS 10484, at \*1 n.1 (D.D.C. July 8, 1998) (Hogan, J.) (correcting errors in the identification of the plaintiff's amended complaint and of the counts therein); *Martini v. Fannie Mae*, 977 F. Supp. 464, 469 n.3 (D.D.C. 1997) (Kessler, J.) (correcting dollar amount of judgment), *vacated on other grounds*, 178 F.3d 1336 (1999).

9. Accordingly, for all of the reasons stated above, FEI respectfully requests that the Court issue a corrected Order and Memorandum Opinion holding that “plaintiffs’ counsel Katherine Meyer and Meyer, Glitzenstein & Crystal are jointly and severally liable for FEI’s attorneys fees incurred in litigating the portion of its” ***Motion to Compel Discovery from Plaintiff Tom Rider and for Sanctions, Including Dismissal (ECF No. 126)*** “which sought information about Tom Rider’s financial relationship with animal rights advocates.” A proposed order is attached.

10. Pursuant to Local Civil Rule 7(m), counsel for FEI conferred with opposing counsel, who represented that:

- Plaintiffs AWI, FFA and Mr. Rider take no position on the Motion.
- Counsel for Ms. Meyer and MGC indicated that he is out of the office due to a funeral and requested until Monday, May 6, 2013 to respond. Counsel represented that if the Motion was filed prior to May 6, Ms. Meyer and MGC object to the Motion.

Dated: April 30, 2013

Respectfully submitted,

/s/ John M. Simpson

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