

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ANIMAL WELFARE INSTITUTE, )  
et al., )  
)  
Plaintiffs, )  
)  
v. ) Civ. Action No. 03-2006  
)  
FELD ENTERTAINMENT, INC. )  
)  
Defendant. )  
)

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**ORDER APPOINTING SPECIAL MASTER**

Upon consideration of the parties' proposals and recommendations regarding the appointment of a Special Master in these cases pursuant to Rule 53 of the Federal Rules of Civil Procedure, and the affidavit of the Special Master submitted in compliance with Federal Rule of Civil Procedure 53(b)(3)(A) disclosing no reason for disqualification under 28 U.S.C. § 455, it is hereby

**ORDERED** that United States Magistrate Judge John M. Facciola is appointed Special Master pursuant to Federal Rule of Civil Procedure 53(a)(1)(C).<sup>1</sup> The Special Master shall prepare

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<sup>1</sup> Plaintiffs consent to the appointment of a Special Master pursuant to Rule 53(a)(1)(A); however, Feld Entertainment, Inc., ("FEI") does not consent. The Court has considered FEI's objections to appointing a special master and finds them without merit. Therefore, the Court appoints the Special Master pursuant to Rule 53(a)(1)(C), which allows for a special master

and file a Report and Recommendation containing findings of fact and conclusions of law regarding the amount of attorneys' fees to be awarded in this case. Upon filing of his Report and Recommendation, the Special Master shall promptly serve a copy on each party. The Special Master is further directed to proceed with all reasonable diligence to perform the duties set forth herein, as well as any additional duties which the Court, in its discretion, may direct from time to time as necessary.

**I. SPECIAL MASTER DUTIES**

The Special Master is hereby granted the full panoply of powers and authority provided for under Federal Rule of Civil Procedure 53. The Special Master shall determine the amount of fees defendant FEI is entitled to recover, pursuant to the Court's decision dated March 29, 2013. Specifically, the Special Master shall determine:

- A. the amount of fees to be awarded against plaintiffs under the fee shifting provision of the Endangered Species Act, 16 U.S.C. § 1540(g)(4); and

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without consent of the parties to handle post-trial matters that cannot be addressed effectively and timely by an available district judge.

B. The amount of fees to be awarded against plaintiffs' counsel Katherine Meyer and Meyer, Glitzenstein & Crystal pursuant to 28 U.S.C. § 1927.<sup>2</sup>

**II. COST TO THE PARTIES**

Because the Special Master also serves as a Magistrate Judge of this Court, he shall not be compensated further for his work performed as Special Master.

**III. EX PARTE COMMUNICATIONS BETWEEN THE COURT AND SPECIAL MASTER AND BETWEEN THE PARTIES AND SPECIAL MASTER**

The Special Master is empowered to communicate on an ex parte basis with a party or the Court for routine scheduling or other administrative matters. The Special Master may communicate ex parte with the Court on matters as to which the Special Master has been empowered to act only upon advance notice to the parties.

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<sup>2</sup> The Court notes defendant's request that the scope of Judge Facciola's duties as Special Master also include: 1) the set-off, if any, to apply to the fee award as a result of FEI's settlement with former plaintiff ASPCA, and 2) the liability of the Humane Society of the United States ("HSUS") for FEI's attorneys fees. See FEI's Resp. to Court Order Regarding Appointment of Special Master, Dkt. No. 624 at 16. The first is already encompassed in this referral. The second, however, is not properly before the Court at this time. HSUS is not a party to this case and there is no pending request that it be deemed a party; accordingly, HSUS has not had the opportunity to state its position whether the Special Master should determine its liability for fees as required under Rule 53(b)(1).

**IV. STANDARD OF REVIEW FOR SPECIAL MASTER'S DECISIONS**

The parties shall be provided twenty-one (21) days from the filing of any Report and Recommendation in which to file objections. The Special Master's findings of fact and conclusions of law will be reviewed de novo. The Special Master's procedural rulings may be set aside only for an abuse of discretion.

**V. NATURE OF MATERIALS TO BE PRESERVED AND FILED AS THE RECORD OF THE SPECIAL MASTER'S ACTIVITIES**

The materials and records in this matter shall be limited to the documents filed by means of the Court's Electronic Case Filing System.

**VI. TIME LIMITS**

The Special Master shall proceed with all reasonable diligence.<sup>3</sup> The appointment of the Special Master shall not interfere with or delay proceedings in the related action, *Feld Entertainment, Inc. v. AWI, et al.*, Case 07-1532; nor shall proceedings in that action interfere with or delay the resolution of the proceedings before the Special Master in this case.

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<sup>3</sup> The Court declines to address the parties' proposed schedules and other recommendations for the conduct of fee proceedings in their filings. The Special Master shall determine the appropriate schedule and other matters related to the conduct of the proceedings pursuant to his authority under Rule 53.

**VII. AMENDMENT OF APPOINTMENT ORDER**

This Order may be amended at any time by the Court after reasonable notice and an opportunity to be heard is provided to all parties.

**SO ORDERED.**

**Signed:** Emmet G. Sullivan  
United States District Judge  
June 12, 2013