

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

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

**PLAINTIFFS' RESPONSE TO FELD ENTERTAINMENT INC.'S MOTION FOR
LEAVE TO FILE UNDER SEAL CONFIDENTIAL RATE DATA**

Plaintiffs do not oppose FEI's motion (the "Motion") to file under seal the Peer Monitor survey and any references thereto contained in FEI's Fee Petition or the supporting declarations and exhibits. Plaintiffs respond to the Motion only (i) to answer the (irrelevant) accusation contained therein that "Plaintiffs seem intent on making recovery of FEI's attorneys' fees as expensive as possible," *see* Motion at 6, and (ii) to point out that FEI has yet to serve Plaintiffs with copies of the materials it filed under seal.

As FEI's counsel admits, Plaintiffs repeatedly represented that they would consent to FEI filing the Peer Monitor survey under seal. *See* Motion at 6. Each time FEI broached the issue, Plaintiffs sought FEI's assurance that FEI would only seek to seal the Peer Monitor survey. FEI repeatedly refused to confirm this fact. FEI formally sought Plaintiffs' consent via an e-mail dated October 8, 2013. *See* Motion, Ex. 9. At that time, FEI provided Plaintiffs only with a copy of the Proposed Order, which asks the Court to seal "the Peer Monitor Survey *and other confidential rate data.*" (emphasis added).¹ Given FEI's refusal to provide more specific

¹ Notwithstanding this broad language, FEI's motion, which FEI did not provide to Plaintiffs when it sought their consent, makes clear that FEI only seeks to seal the Peer Monitor survey itself.

information regarding what it sought to file under seal, and given the perplexing overbreadth of the Proposed Order, Plaintiffs were in no position to consent to a motion they had never seen.

FEI also misses the mark when it seeks to hold up Plaintiffs' refusal to consent to the Motion as "another illustration of plaintiffs' 'frivolous and vexatious' litigation tactics," which supposedly are "in significant part" to blame for the "magnitude of the fee request that FEI makes." Motion at 6. Setting aside that FEI's inability to obtain consent is due to its own intransigence, FEI would have had to file the Motion regardless of Plaintiffs' position. Plaintiffs cannot consent away the public's right to free access to court documents; only the Court can determine that FEI's need for confidentiality outweighs the "'heavy presumption' in favor of public access to court records." Motion at 3 (citing *Fudali v. Pivotal Corp.*, 623 F. Supp. 2d 25, 27-28 (D.D.C. 2009) (Facciola, J.)). FEI would still have had to prepare a motion arguing why the Peer Monitor survey needed to be sealed.

Lastly, Plaintiffs note that FEI has failed to provide them with the materials it seeks to file under seal, despite FEI's obligation to serve its complete Fee Petition on October 21, 2013. Plaintiffs requested these materials from FEI via e-mail on October 24, 2013. At that time, Plaintiffs represented that they would treat the materials as sealed until the Court ruled otherwise, as they must pursuant to Local Rule 5.1(h). FEI has steadfastly, and groundlessly, refused to provide Plaintiffs with these materials until the Court rules on the Motion. FEI's refusal to provide these materials prejudices Plaintiffs by preventing them from evaluating FEI's voluminous Fee Petition and preparing their response.

Date: November 1, 2013

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 1st day of November, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

_____/s/_____
Andrew Caridas