

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

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

**DEFENDANT FELD ENTERTAINMENT, INC.’S OPPOSITION TO PLAINTIFFS’
MOTION FOR LEAVE TO TAKE “LIMITED” DISCOVERY**

EXHIBIT 1

(Opp. Ex. 1)

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

**DECLARATION OF JOHN M. SIMPSON IN SUPPORT OF
DEFENDANT FELD ENTERTAINMENT, INC.’S OPPOSITION TO
PLAINTIFFS’ MOTION FOR LEAVE TO TAKE LIMITED DISCOVERY**

1. My name is John M. Simpson. I am more than twenty-one (21) years of age and am competent to make this declaration. Unless otherwise indicated, I have personal knowledge of the facts stated in this declaration.

2. I am a partner at the law firm of Fulbright & Jaworski LLP (“Fulbright” or the “Firm”). I am Fulbright’s partner in charge of the above-referenced matter.

3. Paragraph 242 of my Declaration in Support of FEI’s Fee Petition (ECF No. 636) included fifteen (15) Fulbright time entries that were partially redacted for privilege because they identify either (1) potential fact or expert witnesses who were never called to testify at trial or (2) a participant in a settlement negotiation that did not involve all Plaintiffs. Simpson Decl. ¶ 242. Ms. Pardo’s October 29, 2007 time entry was inadvertently included in this list. That entry is redacted for privilege, and was not claimed as part of Feld Entertainment, Inc. (“FEI”)’s Fee Petition. The entry was specifically excluded from the part of FEI’s claim based on Fulbright’s work. *See* JS Ex. 19 at 4 (ECF No. 639-6 at 4).

4. The aggregate total value of the fourteen (14) Fulbright entries that were partially redacted, as claimed by FEI in its Fee Petition, is \$9,923.04.

5. At my direction, the Covington & Burling LLP (“Covington”) potential witness redactions identified by Plaintiffs in Exhibit A to their Motion (ECF No. 673-2), was reviewed to determine whether Plaintiffs had included any entries in their chart that were not actually being claimed by FEI. There are 10 such entries. I also directed that the claimed value of the remaining entries be calculated. Once the unclaimed entries included in Plaintiffs’ Exhibit A are excluded, the aggregate total value of the remaining 165 entries, as claimed by FEI in its Fee Petition, is \$103,839.45.

6. From June 2010 to the present, Fulbright has sent FEI invoices that include narrative descriptions of the time billed. I reviewed and oversaw the preparation of those invoices, and, specifically, the invoices that are attached to my Declaration as JS Ex. 32. The timekeeper narratives in these invoices were copied verbatim from the Firm’s Elite accounting database for the timekeepers working on the case, which I then personally reviewed. Those narratives were then edited to correct for errors and to remove or revise references that may reveal attorney-client privileged or work product information. Consequently, the data in the Elite timekeeping system is not identical to what is sent to the client on the invoices. The document produced to Plaintiffs as JS Ex. 32 is a .pdf of the invoices that were sent to the client. The information reflected in the invoices contained in JS Ex. 32 does not currently exist in Excel or any other spreadsheet format. To reproduce this information in a sortable, Excel format, would require the creation of a new document which would then have to be manually reviewed to carry over the redactions and color-coding that are reflected in the currently filed version of JS Ex. 32. In addition, the timekeeper narratives would have to be manually reviewed, line-by-line, to ensure

that the timekeeper narratives in the newly created document match the timekeeper narratives in JS Ex. 32 (*i.e.*, that all errors and edits for privilege have been accounted for). Because this involves the privileged information of the client, I believe that it is a task that is only appropriately performed by an attorney. I estimate that it would take a single lawyer from thirty (30) to fifty (50) hours to complete such a task.

7. For the period prior to June 2010, Fulbright did not send narratives with its invoices. In support of FEI's Fee Petition for that time period, FEI produced time entries from Fulbright's Elite timekeeping software. That information was submitted to the Court in Adobe Acrobat format after it had been redacted and color-coded in a discovery database containing TIF images of those records. At my direction, Fulbright personnel cut and pasted the Elite narratives and related information into an Excel spreadsheet so that it could be printed out, reviewed and scanned into the discovery database for redaction, color-coding, and ultimate production as an exhibit in the case. There was no need for that document to be sortable as it was simply a method of obtaining a printed copy of the information. That spreadsheet is not sortable because the information was not loaded into the document on a cell-by-cell basis, but, instead, by cutting and pasting across cells, which does not support any kind of meaningful sorting. This spreadsheet was then printed and scanned into a document review database. From there, it was reviewed, highlighted, redacted, and then produced. The Excel spreadsheet is not sortable, and it does not contain the highlighting or redacting in the document produced to Plaintiffs as JS Ex. 31. The information reflected in JS Ex. 31 does not currently exist in a sortable Excel format. To reproduce this information in a sortable, Excel format would require the creation of a new document which would then have to be manually reviewed to carry over the redactions and color-coding that are reflected in the currently filed version of JS Ex. 31. Because this involves

the privileged information of the client, I believe that it is a task that is only appropriately performed by an attorney. I estimate that it would take a single lawyer from forty-five (45) to seventy (70) hours to complete such a task.

8. There is no written retainer agreement between FEI and Fulbright for the instant case. At the time Fulbright took on the representation of FEI in the above-captioned matter, it was not the general practice of the firm to prepare new retainer agreements for each new matter opened for existing clients. The understanding between the Firm and FEI about the legal fees for the instant matter is stated in paragraphs 188, 190, 202 of my Declaration (ECF No. 636).

9. I have no knowledge of any complaint by FEI about Fulbright's rates, the hours charged, or the overall costs of the litigation with respect to the instant matter, either in my capacity as lead counsel in charge of the litigation from its inception at Fulbright or as the billing partner. In my more than thirty-five (35) years of law practice and my more than twenty-three (23) years of experience representing this particular client, it is inconceivable that any such complaint, if one had been made, would not have been brought to my attention. In addition, I inquired of the prior two Fulbright billing partners for this matter, who both stated that they had no knowledge of any complaints from FEI about Fulbright's rates, hours charged, or overall costs of the litigation.

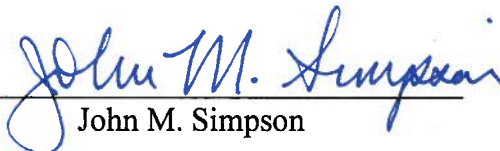
10. In 2010 FEI hired a new General Counsel. Fulbright adjusted its billing practices in 2010 to conform to the new General Counsel's billing preferences.

11. After the parties met and conferred regarding the relief sought by Plaintiffs' Motion for fee discovery, FEI agreed to provide all of the Fulbright "for professional services rendered" invoices not already in Plaintiffs' possession. Counsel for FEI provided these invoices to Plaintiffs' counsel on December 6, 2013. Additionally, counsel for FEI is providing the

Retention Letter between Fulbright and Troutman Sanders contemporaneously with the filing of FEI's Opposition to Plaintiffs' Motion for leave to take fee discovery.

12. During the merits phase of the above-captioned matter, three individuals working on behalf of plaintiffs spent months in Fulbright's Washington, DC office reviewing videotapes, using Fulbright's space and equipment free of charge.

13. I declare under penalty of perjury that the foregoing is true and correct. Executed on December 13, 2013.


John M. Simpson