

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

ANIMAL WELFARE INSTITUTE, et al.

Plaintiffs,

v.

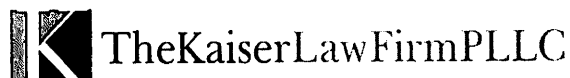
FELD ENTERTAINMENT, INC.,

Defendant.

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) **Case No: 03-2006 (EGS/JMF)**
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**DEFENDANT FELD ENTERTAINMENT, INC.'S MOTION FOR SUBSTITUTION OF
PLAINTIFF TOM RIDER AND NOTICE OF HEARING**

EXHIBIT 5



1400 I Street NW
Suite 525
Washington, DC 20005
(202) 640-2850
(202) 280-1034 (facsimile)
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mkaiser@tklf.com

December 27, 2013

Via Email

John M. Simpson
Fulbright & Jaworski LLP
801 Pennsylvania Ave NW
Washington, DC 20004-2623

RE: Animal Welfare Institute v. Feld, 03-2006-EGS/JMF (D.D.C.)

Dear Mr. Simpson:

Thank you for your letter of December 18, 2013 discussing what you believe my obligations are in light of Mr. Rider's death.

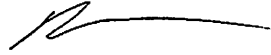
You have asked previously if I have information about who will serve as Mr. Rider's personal representative or executor. You have also asked who is likely to be the beneficiary of any assets of Mr. Rider's estate. I have previously informed you that I do not have that information. As I read the unpublished case from Illinois cited in your letter, *Walters v. Cowan's*, 1987 WL 10301 (N.D. Ill. Apr. 30, 1987), and on the assumption that it accurately states the law, I have complied with any of my obligations of disclosure in light of Mr. Rider's death by informing you that I do not have the information that you seek.

Your letter seeks to task me with other, broader, obligations, which I do not agree that I have. While it is true *Walters* says that as counsel of record I would have an obligation to respond to any properly propounded discovery, *Walters* itself suggests that my response could appropriately be that I am unable to provide the information that you seek. Yet, beyond that limited obligation, you seem to believe that I have a duty to affirmatively seek out Mr. Rider's login information and initiate the "Next of Kin" process with Microsoft. I don't find such a duty in *Walters*. If you have cases that suggest a broader set of obligations, I would be grateful if you would forward them to me.

Beyond that, since my client is profoundly unavailable, I find myself unauthorized to take

further action in this litigation. I realize that you have asked my position on a motion to substitute parties. As a result of Mr. Rider's death, I take no position on your motion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew G. Kaiser', with a long horizontal flourish extending to the right.

Matthew G. Kaiser



December 18, 2013

Via E-Mail

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Re: Animal Welfare Institute, et al., v. Feld Entertainment, Inc., No. 03-2006-EGS/JMF (D.D.C.)

Dear Mr. Kaiser:

I previously contacted you on October 25, 2013 to remind you of your obligation to preserve data sources of your client, Tom Rider (now deceased), that are likely to contain information that may be relevant to this litigation. This includes, but is not limited to, data sources such as Mr. Rider's banking accounts, paper files, e-mail, social media accounts, home computer, laptop, personal data assistant or phone. In particular, we know that Mr. Rider communicated about the RICO Case (No. 07-1532-EGS/JMF (D.D.C.)) and the instant case from the following email address: tomeasyrider06@hotmail.com. Additionally, at least two of Mr. Rider's co-defendants (Born Free USA and The Fund for Animals) have published this email address as a contact point for Mr. Rider (see <http://www.bornfreeusa.org/press.php?p=1658&more=1>; http://www.blackbeautyranh.org/media_room/press-releases/2008/stop_cruel_chaining_and_confinement.html) on their respective websites.

Accordingly, you should already have taken steps to preserve any and all information of Mr. Rider that may be relevant to this case and any of his passwords or login credentials that are used to access same. As you likely are aware, in order to have emails preserved or provided from an internet service provider (including but not limited to Hotmail, which is owned by Microsoft) the account holder or his estate must provide consent. Indeed, Microsoft has a "Next of Kin" process that can be used to preserve all of the e-mail on a Hotmail account (information about the process is included here: http://answers.microsoft.com/en-us/outlook_com/forum/oaccount-omyinfo/my-family-member-died-recently-is-in-coma-what-do/308cedce-5444-4185-82e8-0623ecc1d3d6). Since it is clear that Mr. Rider had a Hotmail account that he in fact used to make communications about the cases, we are concerned about preservation of potentially relevant documents because it is possible that Microsoft will delete the account if no one takes any action.

Please confirm by close of business on Monday, December 27, 2013 whether you have sought to obtain consent from Mr. Rider's kin to obtain a copy of Mr. Rider's account or if you have plans to do so in the immediate future or whether you have initiated the preservation process with Microsoft. Additionally, we believe that, even though Mr. Rider has died, as current counsel of record, it is your obligation, until relieved, to handle and respond to discovery requests directed to Mr. Rider, which includes a duty to preserve and produce relevant documents from Mr. Riders' e-mail account and any other potentially relevant data sources. *E.g., Ganci v.*

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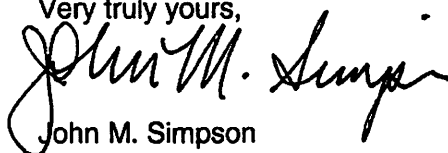
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NORTON ROSE FULBRIGHT

December 18, 2013
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Cowans, 1987 U.S. Dist. Lexis 14115 at *4-5 (N.D. Ill. Apr. 30, 1987). If we do not obtain a satisfactory answer from you by December 27, we will contact Magistrate Judge Facciola and seek his guidance as to what should be done to preserve Mr. Rider's documents. If you plan to transfer the representation of Mr. Rider's estate to new counsel, please provide that person's contact information as soon as possible.

Very truly yours,



John M. Simpson

JMS