IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DEFENDANT FELD ENTERTAINMENT, INC.'S OPPOSITION TO KATHERINE MEYER AND MEYER GLITZENSTEIN & CRYSTAL'S MOTION FOR AN EXTENSION OF TIME

Defendant Feld Entertainment, Inc. ("FEI"), by and through undersigned counsel, hereby respectfully submits its opposition to Katherine Meyer ("Meyer") and Meyer Glitzenstein & Crystal ("MGC")'s Motion for an Extension of Time to respond to FEI's Fee Petition ("Motion" or "Mot."), ECF No. 680, filed December 23, 2013.

In their Motion, Meyer and MGC request an extension of time to respond to FEI's Fee Petition (ECF No. 635-664) "so that it is due on the same schedule as the Organizational Plaintiffs." Mot. at 1. Motions for extensions of time should only be granted for "good cause." Fed. R. Civ. P. 6(b). Here, Meyer and MGC do not even claim that they need more time to respond to FEI's Fee Petition. Rather, they argue only that they should be on the same schedule as the organizations. But the sanctions that Meyer and MGC must pay are separate from the fees the organizations must pay pursuant to the Endangered Species Act,[1] and they cannot piggyback onto the organizations' extension motion, because the organizations' claimed needs for an

[1] The Court held that FEI is entitled to recover its fees on two different bases. First, the plaintiffs are jointly and severally liable, under the Endangered Species Act, for the fees FEI was required to spend defending itself through the entirety of the case. Mar. 29, 2013 Mem. Op. (ECF No. 620) at 3-4, 26-35, 49. Second, Meyer and MGC are jointly and severally liable, under 28 U.S.C. § 1927, for the fees FEI incurred in litigating the portion of its motion to compel which sought information about Rider's relationship with animal rights advocates. *Id*. at 4, 37-42, 49-50.

extension are completely inapplicable to Meyer and MGC. The organizations requested (and potentially received) an extension for four reasons: (1) FEI's Fee Petition is very large; (2) Plaintiffs had not yet received the Peer Monitor data that had to be filed under seal; (3) the organizations filed a motion for fee discovery; and (4) FEI filed a motion to join HSUS. ECF No. 676 at 2. **None** of these reasons applies to, nor justifies an extension for, Meyer and MGC (perhaps explaining why they did not join that motion in the first place).

1. The Portion of FEI's Fee Petition Related to Meyer and MGC's Sanction is Discrete and Small. The sanctions amount, while collateral to the whole Fee Petition, is a separate, self-contained issue – **relating to just one motion**. Both the Fee Petition and Mr. Simpson's Declaration separate out sections for the sanctions issue. The portion of the Fee Petition devoted to this **amounts to only one page** (ECF No. 635 at 42-43), and this issue accounts for a mere six (6) paragraphs of Mr. Simpson's 264-paragraph Declaration. ECF No. 636 (¶¶ 256-261). The work related to the motion at issue was done by one law firm (Fulbright & Jaworski LLP), in less than one year, and each time entry related to this work has already been highlighted in yellow in the accompanying time entries for ease of reference. *See* JS Ex. 31, Parts 2-4 (ECF No. 643-1, 644-1, 655-1). Responding to the portions of FEI's Fee Petition related to the sanction is thus not burdensome, and could easily be done within the 90 days provided.

2. Meyer and MGC Now Have the Sealed Rate Data, Which Likely Does Not Affect Their Opposition in Any Event. The organizations claimed they needed more time because they had not yet seen small portions of the Fee Petition which FEI was required to file under seal pursuant to its contract with the Peer Monitor service. ECF No. 676 at 4-6. This argument does not necessitate an indefinite extension for Meyer and MGC's response.

First, counsel for Meyer and MGC now has the rate data. FEI's counsel provided it on December 27, 2013, the same day that the Court granted FEI's motion to seal, ECF No. 682, and nearly a month before Meyer and MGC's response is due. In any event, this material is not likely to affect Meyer and MGC's response, because the material that required sealing relates only to rates (and has nothing to do with hours expended, staffing, exclusions, etc.). Meyer and MGC do not have a credible basis for challenging the Fulbright rates, because FEI paid the rates charged, and as counsel for Meyer and MGC well knows, the courts are unanimous that the rates actually charged and paid are presumptively the reasonable rates in a lodestar analysis. *See, e.g. McKesson Corp. v. Islamic Republic of Iran*, 2013 U.S. Dist. LEXIS 43266, at *15 (D.D.C. Mar. 27, 2013) (Where the case involves "two private litigants … 'the best measure of [the rates] the market will allow are the rates actually charged.'") (quoting *Yazdani v. Access ATM*, 474 F. Supp. 2d 134, 138 (D.D.C. 2007) (Facciola, M.J.)).[2]

This fact also undermines the only argument Meyer and MGC can come up with for why they should get the same stay as the organizations – that the Court should not have to determine the reasonable hourly rate twice. Mot. at 1. This is a red herring. Any argument that Fulbright's rates are unreasonable is futile because the rates charged and paid are reasonable according to the case law and Meyer/MGC's own attorney's sworn declarations. But even if the Court did have to make an independent determination about the reasonableness of Fulbright's rates in setting the amount of the § 1927 sanction, the Court could merely adopt those rates when ruling on the remainder of the Fee Petition. There never needs to be any duplication of effort by the Court – the reasonableness of Fulbright's rates need only be decided once.

[2] Indeed, counsel for Meyer/MGC submitted a declaration under oath as a fee expert in another fee litigation (*Miller v. Holzmann*) in which he endorsed the "mega law firm rates" of Wilmer Hale, which were generally higher than those charged by Fulbright during the same time frame covered by the § 1927 sanction. *See* Simpson Decl. (ECF No. 636) at ¶ 216-17; JS Ex. 10 (ECF No. 637-7, 637-8) (Braga Declarations from *Miller*); JS Ex. 11 (ECF No. 638-1) (graphs comparing Fulbright rates to Wilmer Hale rates).

3. Meyer and MGC Have Not Requested, And Will Not Receive, Any Fee Discovery. More than a month after FEI submitted its Fee Petition, plaintiffs Born Free, AWI, and FFA filed a motion for leave to take fee discovery, ECF No. 673 (11-26-13), which they then parlayed into a reason why they needed an extension to respond to the Fee Petition. ECF No. 676. Because Meyer and MGC did not join that motion and have not requested any fee discovery themselves, they will receive no fee discovery, regardless of the outcome of the organizations' motion. Because their response is not affected at all by the motion for fee discovery, their due date should not be affected either.

4. The Motion to Join HSUS Has No Effect on the Meyer/MGC Sanction. Section 1927 sanctions are only available against attorneys, not parties. Because HSUS cannot be responsible for Meyer and MGC's sanction regardless of the outcome of the motion to join, there is no reason to delay the sanctions briefing until that motion is decided.

Wherefore, because Meyer and MGC have failed to provide good cause, their Motion for an Extension of Time should be denied.

Dated: January 9, 2014

Respectfully submitted,

/s/ John M. Simpson

John M. Simpson (D.C. Bar #256412)
john.simpson@nortonrosefulbright.com
Michelle C. Pardo (D.C. Bar #456004)
michelle.pardo@nortonrosefulbright.com
Kara L. Petteway (D.C. Bar #975541)
kara.petteway@nortonrosefulbright.com
Rebecca E. Bazan (D.C. Bar #994246)
rebecca.bazan@nortonrosefulbright.com

FULBRIGHT & JAWORSKI LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2623
Telephone: (202) 662-0200
Counsel for Defendant Feld Entertainment, Inc.