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.	)	
	)	

REPLY IN SUPPORT OF FELD ENTERTAINMENT, INC.'S
MOTION FOR SUBSTITUTION OF PLAINTIFF TOM RIDER

Matthew Kaiser, counsel of record for Tom Rider in the instant matter and now "former counsel" to Mr. Rider, despite having taken "no position" during the meet and confer process required by Local Rule 7(m) and admittedly having "no authority to speak" on Mr. Rider's behalf, now responds as *amicus curiae*[1] in order to challenge FEI's Motion for Substitution and the relief sought therein.[2]

[1] As a threshold matter, Former Counsel's "*Amicus Curiae* Response" ("Response") is inappropriate and should not be considered. "An amicus brief, defined as a friend of the court, . . . does not represent the parties but participates only for the benefit of the Court." *Jin v. Ministry of State Sec. et al.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008) (internal quotation omitted). Mr. Kaiser's role in this case was representing a party, Tom Rider. He remains counsel of record in this matter and, even in this filing, is advancing interests of Tom Rider and his potential successors or legal representatives. This fact alone disqualifies Former Counsel from participating as *amicus*. Even if he was not prohibited from participating as *amicus* due to his participation in this case as counsel for a party, he sought no leave of Court to file this so-called *amicus* brief. *Jin*, 557 F. Supp. 2d at 136-137 (it is solely within the court's discretion to determine "the fact, extent and manner of the participation" by the amicus) (quoting *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)); *see also Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970) ("an amicus who argues facts should rarely be welcomed"); *Sierra Club*, 2007 U.S. Dist. LEXIS 84230, at *10-11 (S.D. Tex. Nov. 14, 2007) (denying leave to file where, *inter alia*, amicus sought to litigate fact issues and its interests and objectives were identical to the party who position it sought to support. Since Former Counsel's *amicus curiae* brief is not properly before the Court, it should be disregarded in its entirety.

[2] Mr. Rider's former counsel in the parallel RICO Case, 07-1532-EGS/JMF (D.D.C.), filed a similarly-worded "*Amicus Curiae* Response." Mr. Kaiser makes some, but not all, of the arguments raised by Mr. Rider's RICO Case counsel. To the extent arguments made in the RICO Case are relevant to the substitution issue in this case, FEI respectfully refers the Court the *Amicus Curiae* Response and accompanying exhibits filed in the RICO Case, which is submitted herewith for the Court's convenience as Exhibit 6.

Former Counsel's Response aims to "have it both ways". He disclaims any obligation with respect to his deceased client, Mr. Rider, and repeatedly has stated that he has no authority to speak on Mr. Rider's behalf or on behalf of his estate. However, he then has much to say about why substitution is inappropriate and why he has no obligation to cooperate with FEI's counsel regarding the preservation of Mr. Rider's potentially relevant information or provide all information that is required for a legally sufficient Notice of Death.

FEI's substitution motion is a necessary procedural step to preserve its rights and claims against Mr. Rider following what FEI believed to be Mr. Rider's untimely death. After FEI's counsel was informed of Mr. Rider's death, FEI's counsel promptly engaged in correspondence with Mr. Rider's three attorneys (one in the instant matter and two in the RICO case) to receive assurances on the most pressing and time sensitive issue: whether Mr. Rider's potentially discoverable documents would continue to be preserved after his death. What ensued was anything but a straightforward assurance that potentially responsive documents had been properly preserved, and would continue to be preserved, even after Mr. Rider's death. Mr. Rider's counsel never answered that question. In particular, FEI's questions regarding the preservation of Mr. Rider's Hotmail account went (and still are) unanswered. Rather, Mr. Rider's counsel (in both matters) disclaimed any responsibility for Mr. Rider's documents and any obligation to cooperate in discussions regarding preservation of documents that are potentially relevant to this case.

Former Counsel also has advanced an inconsistent position on his authority to participate in this litigation. Despite his staunch denial that he has no remaining obligations to his deceased client and this case, he advances multiple arguments challenging substitution as though he is advancing the interests of Mr. Rider and/or his successors. Former Counsel should not be heard

to disclaim any responsibility for discovery obligations in this action and simultaneously try to derail FEI's attempt to preserve its rights after the death of Mr. Rider.

ARGUMENT

1. Former Counsel's Position on Preservation Confirms FEI's Concerns

Rather than address the preservation issue framed by FEI's Motion, Former Counsel's Response magnifies the concerns that developed after Former Counsel's and FEI's counsel's correspondence on the issue. *See* Exs. 1-5. Specifically, Former Counsel appears to be taking the position that unless and until a discovery request is served, a party has no duty to preserve potentially relevant documents. Response ¶ 19 (stating that Former Counsel should not have to preserve documents "that were not the subject of discovery during their client's lifetime"). However, this narrow view of preservation is not the law. "A party is obligated to preserve potentially relevant evidence once he anticipates litigation." *Smith v. Café Asia*, 246 F.R.D. 19, 21 n.1 (D.D.C. 2007) (citing *United Med. Supply Co., Inc. v. U.S.*, 77 Fed. Cl. 257, 258) (2007)) (internal quotations omitted). Failure to do so risks a finding of spoliation and potential sanctions. *See D'Onofrio v. SFX Sports Group, Inc.*, 2010 U.S. Dist. LEXIS 86711, at *13-14 (D.D.C. Aug. 24, 2010).

While the instant matter has moved past the merits phase of the litigation, the Court has held that FEI is entitled to recover its attorney's fees and plaintiffs have since moved for discovery in connection with the attorneys' fee petition. ECF No. 673. FEI has argued that in the event discovery is awarded, it should be mutual. FEI's Memorandum in Support of Motion for Substitution ("FEI's Mem.") at 5. Former Counsel's Response argues nothing to the contrary and therefore concedes that Mr. Rider's information may well be subject to discovery during the fee phase of this case. As Former Counsel's preservation obligation is ongoing, neither the

continuing attorneys fee phase of this litigation nor Mr. Rider's intervening death should have halted the preservation process.

2. Former Counsel Does Not Deny That Mr. Rider's Hotmail Account May Contain Potentially Relevant Information

Former Counsel does not even try to refute the point that Mr. Rider's Hotmail account is a relevant data source for preservation and potential discovery. That Mr. Rider's Hotmail email account may contain information potentially relevant to this case is not merely speculative. Indeed, as outlined in FEI's opening Motion, Mr. Rider's co-plaintiffs in this case advertised to the public on their websites a 2008 press release that included Mr. Rider's name and Hotmail address as a contact point *about the ESA Case*. FEI Mem. at 6-7.[3] It stands to reason that Mr. Rider may also have communicated with his attorneys and his co-plaintiffs which, if fee discovery is permitted, would be a relevant data source.

In addition, Mr. Rider actually communicated *about this case* using his Hotmail account. On June 14, 2011, Tom Rider sent an email about this case to FEI's counsel, John Simpson, through Mr. Rider's Hotmail email account.[4] Mr. Simpson promptly telephoned Mr. Stephen Braga (Rider's other former counsel, and current counsel to WAP, MGC, Meyer, Glitzenstein, and Crystal) to inform him of this communication and forwarded Mr. Rider's email to him. Even if Former Counsel had been unaware that co-plaintiffs in this matter had published Mr. Rider's Hotmail address on their websites in a press release advertising the ESA Case (where it

[3] Mr. Rider's communications about the ESA Case are directly relevant to the parallel RICO case. It is more than likely that having publicly advertised the information, that donors or other members of the public may have contacted Mr. Rider at this Hotmail address and discussed with him his role in the ESA Case, the lawsuit, fund raising for the lawsuit, or FEI. Each of these topics has repeatedly been addressed in the RICO Case, thereby putting Mr. Rider's RICO case counsel on notice to preserve document related thereto. Yet the answers to FEI's preservation questions were not provided by Mr. Rider's RICO attorneys either. *See generally* Ex. 6.

[4] FEI has not attached the email as an exhibit since its contents implicate Fed. R. Evid. 408. However, if directed, FEI can submit it to the Court *in camera*.

remains *to this day*), certainly, as of June 14, 2011—more than three years prior to Mr. Rider's death—Former Counsel should have been made aware by prior counsel that Mr. Rider was communicating through his Hotmail account with FEI's counsel and taken steps to have that information preserved.

Given all of these circumstances, Mr. Rider's lawyers knew or clearly should have known about Mr. Rider's Hotmail account long before the current exchange of correspondence about preservation occurred. Former Counsel had a duty to preserve Mr. Rider's potentially relevant evidence, including his Hotmail account, while Mr. Rider was alive, and that duty did not lapse when Mr. Rider died. FEI Mem. at 6. Former Counsel cites nothing to the contrary. The current statement that nothing has been affirmatively destroyed, made for the first time in the Response (¶ 19), does not answer the question whether preservation of the Hotmail account occurred prior to death or whether preventable loss of evidence has or is about to occur by the Internet Service Provider after death. Former Counsel had a duty to preserve Mr. Rider's potentially relevant evidence, including avoiding the loss of information through email account inactivity or other automated or routine process.[5]

Former Counsel claims that there is no factual predicate that would have led to FEI's inquiry regarding preservation, or the disposition, of Mr. Rider's documents information." Up until Mr. Rider's death, FEI had proceeded under the assumption that the parties and their counsel were acting in good faith and upholding their respective preservation obligations.

[5] Former Counsel appears to object to certifying for the Court and FEI that he took appropriate preservation steps. Response ¶ 11. Even if Former Counsel's primary objective in filing its "*Amicus Curiae* Response" was to ensure that he would not have to do anything in this litigation going forward, it is perplexing that he saw fit to try to derail substitution with other substantive challenges particularly where, as here, no party to the case (nor a properly served substitute) has made such an argument. Nor is the solution, as Former Counsel suggests, issuing a third party subpoena to Microsoft, the Internet Service Provider responsible for Hotmail. Response ¶ 22. This, as FEI pointed out in its opening brief, is flatly contrary to the Electronic Communications Privacy Act ("ECPA"). FEI Mem. at 7-8.

However, when FEI's counsel was informed of Mr. Rider's death, which came as a surprise to FEI, rather than leave preservation issues to chance, this unexpected change in circumstances prompted FEI to seek assurances from Former Counsel that Mr. Rider's potentially relevant information—particularly information in electronic format that could be destroyed by automated and routine process unless the custodian takes affirmative action to interrupt that process—would be maintained. *See* Simpson Correspondence (12/18/2013) (raising preservation issue including Rider Hotmail account) (Ex. 5),[6] FEI received no such assurance. *See* Exs. 1, 5.

Without intervention, Mr. Rider's death may well lead to the destruction of potentially relevant electronic documents. That Former Counsel has not affirmatively "destroyed" documents – a statement which Former Counsel now makes for the first time in his Response (¶ 19) – does not address the key issue of whether Mr. Rider's information was properly preserved before his death and will continue to be preserved after his death. If documents were being properly preserved prior to Mr. Rider's death, it should not have been difficult for Former Counsel to confirm that preservation would be maintained after death. *See Walters v. Cowans*, 1987 U.S. Dist. LEXIS 14115, at *5 (N.D. Ill. Apr. 28, 1987) (rejecting notion that death of client absolved counsel of all client duties; "[a]s [defendant's] attorney of record, he continues to have obligations placed upon attorneys under the federal rules.").[7]

[6] Former Counsel has not explained whether, in assisting Mr. Rider with his preservation obligation, he took possession of Mr. Rider's documents for safe-keeping or merely instructed him to save his documents. Given that Mr. Rider, as a defendant in the RICO case, has been implicated by the allegations of wrongdoing, and has been described by his own counsel in this case as "unsophisticated", the risk of placing compliance with preservation in his own hands may indeed have been ill-advised. *Cf. Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004) ("counsel must take affirmative steps to monitor compliance so that all sources of information are identified and searched"). Depending upon Mr. Rider's physical or mental condition at the time, the difficulty of adequately complying with a preservation hold may have been magnified when Mr. Rider was admitted into the Golden LivingCenter (which appears to be a facility that provides nursing, rehabilitation, assisted living and hospice services). *See* Rider Obituary (10/3/2013) (Mr. Rider's obituary indicating that he resided at the Golden LivingCenter, a patient facility in Scranton, PA, prior to his death) (Ex. 7).

[7] Former Counsel's claim that FEI's citation to the Rules of Professional Conduct is an *ad hominem* attack on counsel and a misplaced effort to impugn his integrity is baseless. Response ¶ 18 & n.1. The fact remains that

3. Former Counsel Is In The Best Position to Determine Mr. Rider's Successor or Legal Representative

Former Counsel does not argue with the fact that the Notice of Death is ineffective because it fails to identify Mr. Rider's successor or legal representative. However, Former Counsel objects to rectifying this deficiency by supplying that information to the Court, stating that FEI's counsel "already has more information on this issue" than Former Counsel. Response ¶ 7. FEI fails to see how, practically speaking, this can be true. First, the news of Mr. Rider's death, announced by Mr. Rider's RICO counsel, presumably was learned from someone close to Mr. Rider or with knowledge of his medical situation, who may be a successor, legal representative, next of kin or, at a minimum, someone with contacts to such a person, and therefore, from someone as to whom Former Counsel has readier access than FEI. Second, documents produced *in this case* identified by name, for example, two of Rider's three daughters, including last known addresses. *See, e.g.*, DX55, No. 03-2006 (ECF 458-8) at TR00457-TR00459. Such documents were available to prior and Former Counsel representing Mr. Rider. Moreover, Former Counsel would be hard-pressed to argue that he is not in a better position to reach out and contact Mr. Rider's daughters than opposing counsel. *See Schlansky v. Murphy*, 1993 U.S. App. LEXIS 11813 (6th Cir. May 11, 1993) (unpublished) ("emphasizing] that the decedent's attorney should take reasonable steps to protect his late client's interests, such

certain duties imposed by the Rules of Professional Responsibility on counsel survive the death of the client, which include the duty to preserve the client's property and the duty not to prejudice the client's legal interests; duties that, combined, readily impose a duty not to stand by while preventable loss of the client's evidence occurs. FEI Mem. at 6. Former Counsel may not agree with FEI's argument (although he has made no effort to respond to it on the merits), but citing to these Rules is not an *ad hominem* attack. Given Former Counsel's studious silence on these issues prior to the filing of this Motion, he cannot be heard to complain now that FEI has been forced to raise the question whether he has in fact complied with these ethical obligations. Indeed, notably absent from Former Counsel's correspondence is any confirmation that documents have not been destroyed—a position that was advanced for the first time in his Response (¶ 19).

as by endeavoring to contact the decedent's representative and informing him of the pending action.").

4. Former Counsel Cannot Both Advocate for A Party In This Case and Disclaim Any Responsibility To His Client

Despite Former Counsel's insistence that he no longer has any authority to participate in this litigation, Response ¶ 1 & Ex. 5, he now sets forth an argument that no other party in this case has advanced: that substitution in this case is improper and, moreover, the court has no jurisdiction to determine the issue.[8] Former Counsel's selective invocation of his authority to participate in litigation is troubling. *See Walters*, 1987 U.S. Dist. LEXIS 14115, at *4 (finding that taking action on behalf of a deceased client after death was inconsistent with the argument that client's death terminated lawyer's authority to take any action on client's behalf). Since the death of Mr. Rider, Former Counsel has remained counsel of record, has filed a Notice of Death in this case, and now has submitted a Response that advances arguments challenging the merits of the substitution motion as though he represented Mr. Rider or his successors or legal representatives. Either Former Counsel is "in the case" and should fulfill his preservation duties and ensure that potentially relevant emails do not get destroyed due to inactivity or he is "out of the case" and therefore should not be heard to advance a position on any party's behalf.

5. Rule 25 Should Be Liberally Construed to Effectuate the Procedural Goal of Substitution

Even if Former Counsel had standing to argue a party's position on substitution, his arguments are not well-founded. First, without citation to any authority, Former Counsel argues that Rule 25 should not be used to facilitate discovery. Response ¶ 20. Former Counsel fails to

[8] It is well settled that an *amicus curiae* has no standing to raise arguments not pressed by the parties. *See, e.g., Knetsch v. United States*, 364 U.S. 361, 370 (1960); *Common Cause v. Bolger*, 512 F. Supp. 26, 35 (D.D.C. 1980). No party in this case has objected to the substitution of Mr. Rider and therefore Former Counsel should not be heard to do so in his self-described role as "*amici*".

explain why the necessity of discovery would preclude a plaintiff from availing itself of Rule 25. Rule 25 contains no such limitations on its use. Indeed, Rule 25 should be construed liberally. *McSurley v. McClellan*, 753 F.2d 88, 98-99 (D.C. Cir. 1985) (purpose of Rule 25 amendments was to liberalize the Rule and allow flexibility in the substitution of parties). Here, although FEI has indicated that the preservation of Mr. Rider's potentially relevant information is the most pressing issue necessitating substitution, it is not the only reason. If Former Counsel is correct in disclaiming any information about Mr. Rider's estate, *see* Response ¶ 9, then he cannot guarantee that there would never be any possibility of a monetary recovery of attorneys' fees. It may not ultimately bear fruit, but FEI is not required to foreclose that option at this time.

Moreover, "[a] motion to substitute made within the prescribed time will ordinarily be granted, but under the permissive language of the first sentence of the amended rule ('the court may order') it may be denied by the court in the exercise of a sound discretion if made long after the death -- as can occur if the suggestion of death is not made or is delayed -- and circumstances have arisen rendering it unfair to allow substitution." Fed. R. Civ. P. 25(a) advisory committee's note (1963 amendment). *See also In re Baycol Prods. Litig.*, 616 F.3d 778, 783 (8th Cir. 2010) (Rule 25(a) motions should be "freely granted"); *Wilson v. Feldman*, 1991 U.S. Dist. LEXIS 12874, at *6 (D.D.C. Sept. 18, 1991) ("Rule 25(a)(1) should be interpreted liberally and not 'as a bar to otherwise meritorious actions'"); WRIGHT MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 3D § 1955 ("There appears to be only one reported case under the amended rule in which substitution has been denied when the motion was made within the 90-day period.").

Former Counsel evidently concedes that FEI's Motion is timely, as he makes no arguments to the contrary. Nor does he argue that the motion for substitution is somehow unfair

or prejudicial. Indeed, in light of his self-described "*amicus curiae*" status and the insistence that he has no authority to advocate on behalf of Mr. Rider, his estate, or any of the individuals identified by FEI for substitution, it would be difficult to see how he could advance such an argument. *See* Response ¶ 1 (Former Counsel "no longer represents Mr. Rider and no longer has the authority to speak on his behalf in this litigation"); Ex. 5 ("I find myself unauthorized to take further action in this litigation"). Instead, Former Counsel suggests that Mr. Rider's financial state (describing him as "penniless"), without any evidentiary support, precludes substitution. As a threshold matter, it is difficult to believe how Former Counsel can advance the patently contradictory argument that he has no information about Mr. Rider's estate, would-be successors or legal representatives (Response ¶¶ 6-8 & Exs. 3, 5), but yet at the same time assert that Mr. Rider's estate is "penniless". Response ¶ 21.[9] Indeed, in denying any knowledge about Mr. Rider's estate, Former Counsel indicated "I do not know who might receive assets or distributions from his estate," Ex. 3, which implies that even Former Counsel recognized the possibility that assets or distributions exist. FEI has not had the opportunity to discover any of this information and, until it has such an opportunity, should not be prejudiced by denial of its substitution motion and termination of its valid claims against Mr. Rider's successor or legal representative.

6. Service Pursuant To Fed. R. Civ. P. 4 Satisfies Personal Jurisdiction

Second, Former Counsel's argument that the Court lacks personal jurisdiction over Mr. Rider's daughters is incorrect. Response ¶¶ 3-4. Former Counsel cites no authority for this position. However, it is clear that the Court gains personal jurisdiction over a non-party upon

[9] *See Hardy v. Kaszycki & Sons Contractors, Inc.*, 842 F. Supp. 713, 716 (S.D.N.Y. 1993) (rejecting surviving spouse's efforts to thwart substitution by representing her husband's estate had no assets and noting that decedent's estate had two insurance policies).

service of process pursuant to Fed. R. Civ. P. 4. *See Giles v. Campbell*, 698 F.3d 153, 158 (3d Cir. 2012) (cited by Rider's Former Counsel); *Ransom v. Brennan*, 437 F.2d 513, 517-10 (5th Cir. 1971); *see also Robinson v. Advanced Decoy Research,* 2008 U.S. Dist. LEXIS 39705, at *5 (S.D. Cal. May 15, 2008) ("The Plaintiff's death does not automatically terminate the court's jurisdiction"). As Rule 4 indicates, a person may be served in any judicial district in the United States.

Since the filing of FEI's Motion for Substitution (which indicated that service would be made upon parties and non-parties pursuant to Rules 5 and 4, respectively), Tracie Rider has been personally served with the Motion and accompanying memorandum and exhibits and the Statement of Death on January 8, 2014. Affidavit of Service of Tracie Rider (Ex. 8). Attempts to serve Tammy Rider are ongoing. Therefore, as of the date of this filing, the Court already has obtained personal jurisdiction over one of the suggested substitutes.

7. Former Counsel's Additional Challenge to Substitution Is Unavailing

Former Counsel challenges the Court's ability to substitute a successor or legal representative. Response ¶¶ 9, 23.[10] Former Counsel suggests that the application of state law will somehow preclude this Court from ruling on the substitution motion. *Id.* ¶ 9.[11] However, it is far from uncommon for a federal court to determine a substitution motion and apply the state law regarding a potential successor or legal representative. *See, e.g., In re Baycol Products Litig.*, 616 F.3d at 785-88 (applying state law to determine proper party for substitution). Former Counsel has not argued that Pennsylvania succession laws do not apply nor has he contested

[10] Former Counsel does not challenge the survivability of the attorneys' fee claim against Mr. Rider.

[11] Former Counsel suggests that the Court cannot rule on this Motion on an "*ex parte*" basis. Response ¶ 23. Nothing prohibited Tracie Rider, who was properly served on January 8, 2014, from responding to this Motion for Substitution. Since Ms. Rider was properly served, and since Former Counsel disclaims any representation of Ms. Rider, or any other potential substitute for Mr. Rider, Former Counsel has no standing to oppose substitution.

FEI's argument that, under Pennsylvania law, Mr. Rider's daughters would be his likely successors or legal representatives. Moreover, consistent with the amendments to Rule 25(a), the D.C. Circuit's decisions in *Rende* and *McSurley* previously cited by FEI (Mem. at 3-4), and the *In re Baycol Products Litigation* case cited by Former Counsel, a proper party for substitution need not be only an executor or primary beneficiary of an already distributed estate. *See In re Baycol Products Litig.*, 616 F.2d at 784-85; *see also Hardy*, 842 F.Supp. at 716-17 (rejecting claim that widow who was not a representative of the decedent's estate was not a proper party for substitution; it was undisputed that the widow was at least the primary (even if not the sole) distributee of the husband's estate and therefore a proper party for substitution). Having identified likely distributees of Mr. Rider's estate (including Tracie Rider who has been personally served) there is no valid argument against substitution in these circumstances.

CONCLUSION

Former Counsel cannot be heard to complain about the merits of substitution and simultaneously disclaim any responsibility for ensuring that obligations to his deceased client, Mr. Rider, are upheld post-death. As Former Counsel has seen fit to avail himself of participating the litigation after the death of Mr. Rider (both by filing a Notice of Death and now arguing against substitution) he should be ordered to facilitate what should be a fairly routine process of ensuring that preservation of information, and the chain of custody or "safekeeping" of same, be done. Further, he is in a better position than FEI to determine the appropriate successor or legal representative. In any event, Former Counsel should not be permitted to further stonewall FEI's efforts to properly avail itself of Rule 25 and preserve its claims against Tom Rider going forward. Accordingly, FEI respectfully requests that the Court grant the relief requested.

Dated: January 27, 2014

Respectfully submitted,

/s/ John M. Simpson

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CERTIFICATE OF SERVICE

On this 27th day of January, 2014, the foregoing was served on all counsel of record via ECF notice. Service by postage prepaid, first class mail, was served on:

Tracie Rider
406 Taft Street
Washington, IL 61571

/s/ John M. Simpson