

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

<b>FELD ENTERTAINMENT, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**Civ. No. 1:07-cv-1532 (EGS/JMF)**

**OPPOSITION TO THE ASPCA’S MOTION TO REMOVE ITS NAME FROM THE  
CASE CAPTION IN LIGHT OF THE DISMISSAL OF ALL CLAIMS AGAINST IT**

Plaintiff Animal Welfare Institute, Inc. (“AWI” ), by and through its undersigned counsel of record, respectfully submits this Opposition to the Motion by the American Society for the Prevention of Cruelty to Animals (the “ASPCA”) to Remove its Name from the Case Caption in Light of the Dismissal of all Claims Against It (“Motion”).

AWI, which was a co-plaintiff in the multiparty ESA Action alongside ASPCA and others for almost the past decade, respectfully submits that the ASPCA has presented no legitimate basis to change the caption. The Motion should therefore be denied, and the caption should remain unaltered. In the event the Court grants the Motion, AWI respectfully submits that the caption should be “*In Re: Feld Litigation.*”

The ASPCA and Plaintiff Feld Entertainment, Inc. (“Feld”) entered into a settlement which resolved all claims between them. Motion at 1; Exhibit A at 1, 4-7. This settlement did not include the other parties to this action. Exhibit A at 4-5. On December 28, 2012, the ASPCA and Feld filed a stipulation seeking the dismissal of all Feld’s claims against the

ASPCA. Motion at 1. On December 31, 2012, the Court granted that motion and dismissed all claims against the ASPCA. *Id.* Feld continues to prosecute this action against the remaining twelve defendants. *Id.*

The settlement agreement entered into between the ASPCA and Feld clearly provides that at least part of the settlement proceeds cover any potential damages in this action, although it is not clear what amount of the settlement proceeds are apportioned to this action. Exhibit A at 1, 4-7. Through counsel, the ASPCA has advised that, in light of the settlement reached with Feld, it has no intention of paying any damages or judgment that may be entered in this case.<sup>1</sup>

In light of this backdrop, and for multiple reasons, the ASPCA's Motion is premature as the ASPCA's involvement in this matter has not concluded. First, the ASPCA has been one of the plaintiffs in the underlying ESA Action for almost a decade and it and its employees will be material witnesses in this case. Indeed, there are multiple allegations in the Amended Complaint that directly involve the ASPCA and Feld has not amended its Amended Complaint to remove these allegations. Second, there are remaining legal issues involving the ASPCA that may still need to be resolved. For instance, issues may arise in the event that the ASPCA's settlement with Feld does not cover any potential damages or judgment in this action (again, AWI believes that there should ultimately be no damages awarded). However, at this time, we do not know the precise scope or extent of such involvement by the ASPCA; thus, the ASPCA's Motion is premature.

The authorities upon which the ASPCA relies for the proposition that "Courts often remove settling or otherwise dismissed parties from a case caption when litigation will be

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<sup>1</sup> It must be noted that AWI believes that Feld's claims lack any merit and should be dismissed in their entirety.

ongoing against other parties” appear to be inapposite and unlike the facts and circumstances in this very unique case. Motion at 2 (citing cases). In none of those cases does it appear that any of the remaining parties opposed the amendment or even that the amendment was at issue. More importantly, and unlike the case at bar, in none of those cases were there potential remaining legal issues among co-parties like the ASPCA. To the contrary, all issues as to the dismissed parties appear to have been resolved in those cases. That is not the case here where further involvement by the ASPCA may be necessary for a variety of reasons.

For the forgoing reasons, the Motion should be denied and the caption should remain unaltered. In the event the Court grants the Motion, AWI respectfully submits that the caption should be “*In Re: Feld Litigation*” and not “*Feld Entertainment, Inc. v. Animal Welfare Institute, et al.*” as the ASPCA suggests in its proposed Order. The ASPCA does not object to this suggested change in the caption, but Feld does. Alternative proposed Orders are attached.

**DATED: March 14, 2013**

**Respectfully submitted,**

/s/

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*Counsel for Defendant The Animal Welfare Institute*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 14<sup>th</sup> day of March, 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/  
Stephen L. Neal, Jr.