

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

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<b>FELD ENTERTAINMENT, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No: 07-1532-EGS/JMF</b>
	)	
<b>AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

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**REPLY IN SUPPORT OF MOTION TO REVISE CASE CAPTION**

Plaintiff Feld Entertainment, Inc. (“FEI”) hereby replies in support of the Motion by the American Society for the Prevention of Cruelty to Animals (“ASPCA”) to Remove Its Name from the Case Caption in Light of the Dismissal of All Claims Against It (02-25-13) (Docket Entry (“DE”) 135). FEI had no objection to the relief sought by ASPCA’s motion and so advised ASPCA. *Id.* at 3. However, defendant Animal Welfare Institute’s (“AWI’s”) opposition to ASPCA’s motion (“AWI Opp.”) (DE 137) raises issues that were not raised by ASPCA’s motion and seeks relief from the Court that has no support. Therefore, FEI submits this reply to respond to the points raised by AWI.

*First*, AWI’s filing is improper. It is essentially a separate motion to revise the case caption to AWI’s own apparent liking rather than a legitimate opposition to the relief sought by ASPCA. However, the filing does not comply with the requirements of a valid motion, including the meet-and-confer requirements of LCvR 7(m). There is no indication whatsoever of any

attempt by AWI to confer with the other defendants, *i.e.*, Tom Rider, The Fund For Animals, Animal Protection Institute United with Born Free USA, Katherine Meyer, Eric Glitzenstein, Howard Crystal, Meyer Glitzenstein & Crystal, the Wildlife Advocacy Project, The Humane Society of the United States, Jonathan Lovvorn and Kimberly Ockene. Nor is there any representation of what these parties' position (if any) on AWI's request may be.

*Second*, AWI attempts improperly to inject the issue of damages set-off into the purely ministerial matter of deleting ASPCA's name from the caption. ASPCA has already been dismissed as a party to this litigation. DE 128. Whether the \$9,300,000.00 that ASPCA paid in cash to FEI to settle this case and the related ESA Case (No. 03-2006-EGS (D.D.C.)) provides the remaining defendants with some kind of "set off" or "credit" to FEI's claims for damages for racketeering, conspiracy and intentional torts has nothing to do with whether ASPCA's name should remain on the caption. AWI cites nothing in support of its position.

*Third*, AWI's request to change the caption of this case to "*In Re: Feld Litigation*," Opp. at 3, has no basis. AWI cites no authority for such a change. Moreover, such a vague caption would be tantamount to allowing AWI to proceed under a pseudonym. However, as both this Court and the Circuit have recognized, proceedings in federal court carry a presumption of openness, which includes the identity of the litigants; litigating anonymously is reserved for only the rarest exceptions, a showing that AWI has not even attempted to make. *See, e.g., United States v. Microsoft Corp.*, 56 F.3d 1448, 1494 (D.C. Cir. 1995) (noting the "rare dispensation" of anonymity" and rejecting the district court's allowance of *amici* to proceed as "Doe Companies"); *In re Special Proceedings*, 840 F. Supp. 2d 370, 378 (D.D.C. 2012) ("judicial proceedings in the United States are presumptively open to the public. Proceedings, records, and *the identities of litigants* are withheld from the public only when the movant overcomes strong

presumptions in favor of disclosure”) (emphasis added). *See also Qualls v. Rumsfeld*, 228 F.R.D. 8, 10 (D.D.C. 2005) (“Requiring parties to disclose their identities furthers the public’s interest in knowing the facts surrounding judicial proceedings;” denying plaintiffs’ “John Doe” requests).

That AWI finds itself next in the line-up of defendants after ASPCA’s dismissal, is AWI’s own doing. In the First Amended Complaint, DE 25, FEI listed those defendants herein who were plaintiffs in the ESA Case in the same order in which they listed themselves in the ESA Case complaint. *Compare id.* at 1 with No. 03-2006, Complaint at 1 (DE 1). AWI must be listed as the new lead defendant because the Federal Rules require it. *See* Fed. R. Civ. P. 7(b)(2) (all motions and filed papers must conform to the form requirements for pleadings); R. 10(a)(2) (pleading captions must “nam[e] *the first party on each side*”) (emphasis added).

AWI was more than willing to be a high-visibility litigant when it was using the ESA Case for publicity and fundraising. *See* No. 03-2006, Def. Trial Ex. 62 (2005 fundraiser invitation). Now that the tables have turned, and AWI faces claims in this case for actual damages, treble damages, punitive damages and attorneys’ fees and costs, AWI is in no position to be seeking to hide behind a vague case caption. That AWI apparently now finds it uncomfortable to be a visible litigant in a case that it brought about through its own misconduct is no reason to give it the anonymity that it seeks. *See Nat’l Ass’n of Waterfront Employers v. Old Republic Ins. Co.*, 587 F. Supp. 2d 90, 99 (D.D.C. 2008) (a party’s desire “‘merely to avoid the annoyance and criticism that may attend any litigation’” is not a reason to permit use of pseudonym) (citation omitted).

WHEREFORE premises considered, ASPCA's motion – in the form in which it was proposed to FEI and to which FEI had no objection – should be granted and AWI's request for a different caption should be denied.

Dated: March 15, 2013

Respectfully submitted,

/s/ John M. Simpson

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