

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

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

**DEFENDANT THE HUMANE SOCIETY OF THE UNITED STATES’S
MOTION FOR LEAVE TO SUPPLEMENT ITS ANSWER TO PLAINTIFF
FELD ENTERTAINMENT INC.’S FIRST AMENDED COMPLAINT**

Defendant The Humane Society of the United States (“HSUS”) respectfully moves this Court under Federal Rule of Civil Procedure 15(d) for leave to supplement its Answer to Plaintiff Feld Entertainment Inc.’s (“FEI’s”) First Amended Complaint to include the defense of set-off.

On August 9, 2012, HSUS filed its Answer to FEI’s First Amended Complaint. (ECF 103.) Subsequently, on December 14, 2012, American Society for the Prevention of Cruelty to Animals (“ASPCA”) and FEI entered into a settlement agreement that resolved all claims between Feld and ASPCA. (*See* ECF 137, Ex. A.) The \$9,300,000.00 that ASPCA paid to FEI to settle this case and the related ESA Action (No. 03-2006-EGS (D.D.C.)) covers at least a portion of the damages sought by FEI against HSUS in this action. HSUS therefore seeks to supplement its Answer to include the defense of set-off.

The December 14, 2012 settlement between ASPCA and FEI is precisely the type of supplemental event contemplated by Rule 15(d). Rule 15(d) provides that “[u]pon motion of a

party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.” Fed. R. Civ. P. 15(d). Under Rule 15(d), a supplemental pleading “can be used to set forth additional defenses or otherwise add to an answer by alleging transactions or occurrences that took place after the filing of the original answer.” 6A Fed. Prac. & Proc. Civ. § 1504 (3d ed. Dec. 2012).

A motion for leave to file a supplemental Answer should be freely granted “[a]bsent undue delay, bad faith, dilatory tactics, undue prejudice to the party served with the proposed pleading, or futility.” *Quarantino v. Tiffany & Co.*, 71 F.3d 58, 66 (2d Cir. 1995) (internal citations omitted) (reversing district court’s denial of leave to supplement pleading to include retaliation claim and remanding for further proceedings); see 3-15 Moore’s Federal Practice – Civil §15.30 (“A court should freely grant leave to a party to supplement a pleading unless there is a reason for denying the request.”); see also *Sanchez v. City of Santa Ana*, 915 F.2d 424, 431-32 (9th Cir. 1990) (noting defendant may add affirmative defense of res judicata that arose after answer filed by filing motion for leave to supplement answer).

In light of ASPCA’s settlement payment to FEI, HSUS respectfully requests leave to supplement its Answer with the defense that – in the event that damages are awarded to FEI – HSUS is entitled to set off FEI’s damages with the ASPCA settlement payment and any other recovery, payment, reimbursement, or indemnity that FEI receives or has received from any other source that would compensate FEI or reduce any claimed injuries, damages, or losses allegedly stemming from the subject matter of this case.

HSUS’s request to supplement is made in good faith, will not prejudice any party, and will not cause undue delay. HSUS’s supplemental Answer will not prolong discovery because

discovery is currently stayed and the first discovery scheduling conference before Magistrate Judge Facciola is not set to take place until April 3, 2013, will not impact the trial date because no trial date has been set, and will not delay the resolution of this case. HSUS therefore requests that this Court permit HSUS leave to file the supplemental Answer attached as Exhibit 1. A redline version comparing the original Answer and the proposed First Supplemental Answer is attached as Exhibit 2.

On March 26, 2013, in accordance with LCvR 7(m), HSUS contacted counsel for all parties regarding its request. None of the defendants opposes the motion. Counsel for Plaintiff FEI stated that he was not going to be able to consult with FEI about this motion before the deadline set.

For the foregoing reasons, HSUS respectfully requests that the Court grant its motion. A proposed order is attached to this motion.

Date: March 28, 2013

Respectfully submitted,

/s/ W. Brad Nes
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[PROPOSED] ORDER

Having considered The Humane Society of the United States’s (“HSUS’s”) Motion for Leave to Supplement its Answer to Plaintiff Feld Entertainment Inc.’s First Amended Complaint, the Court being fully advised, and finding no prejudice to Plaintiff by allowing the proposed supplement,

it is hereby **ORDERED** that HSUS’s Motion is **GRANTED**, this ____ day of _____, 2013.

Hon. Emmet G. Sullivan
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion and (Proposed) Order was served via electronic filing this 28th day of March, 2013, to all counsel of record.

/s/ W. Brad Nes _____
W. Brad Nes