

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 07- 1532 (EGS/JMF)
	:	
ANIMAL WELFARE INSTITUTE, et al.	:	
	:	
Defendants.	:	
	:	

~~**PROPOSED ORDER**~~

In accordance with the Court’s 5/9/13 Order (Docket No. 151) and Fed. R. Civ. P. 16(b)(3), Plaintiff Feld Entertainment, Inc. (“FEI”). and Defendants Animal Welfare Institute (“AWI”), Born Free USA (“Born Free”), Fund for Animals (“FFA”), Humane Society of the United States (“HSUS”), Tom Rider (“Rider”), Wildlife Advocacy Project (“WAP”), Meyer, Glitzenstein & Crystal (“MGC”), Katherine Meyer (“Meyer”), Eric Glitzenstein (“Glitzenstein”), Howard Crystal (“Crystal”), Kimberly Ockene (“Ockene”) and Jonathan Lovvorn (“Lovvorn”), (collectively “the parties”) hereby submit the following scheduling order:

A. Schedule. The Parties propose the following schedule:

December 31, 2013	Deadline for amendments to pleadings and/or joinder of new parties.
April 1, 2014	Disclosure of expert witnesses.
June 2, 2014	Fact discovery cut-off.
July 1, 2014	Expert reports due.
August 15, 2014	Expert rebuttal reports due.
September 15, 2014	Expert discovery cut-off.
October 1, 2014	Dispositive motions filed.

December 1, 2014	Oppositions to dispositive motions.
January 12, 2015	Dispositive motions replies.
February 1, 2015	Pretrial conference.
June 1, 2015	Trial.

B. Format for Production of Documents. Unless otherwise ordered, documents shall be produced in the following manner:

1. Paper Documents

When the parties produce hard copy (paper) documents, the paper will be scanned and produced electronically as Group IV single page TIFF images, 300 DPI, named the same as their Bates number (Acrobat PDF scans will comply with this requirement). To the extent an image is illegible or difficult to read, a party propounding the request (Requesting Party) may ask to see the original document. Each TIFF should be endorsed with a unique document identifier (i.e., Bates Label).

Machine generated OCR created from scanned images of hard copy documents will be provided at a document level. There will be one text file per document, named the same as the Beginning Bates number (Document ID) of the document. The OCR text file for a document will reside in the same location (file directory) as the images for that document. The text file associated with any redacted document will exclude redacted text.

If a document is more than one page, to the extent possible, the unitization of the document and any attachments or affixed notes should be maintained as it existed when collected by the producing party. The parties may unitize their documents using either physical unitization (i.e., based on physical binding or organizational elements present with the original paper documents like staples, clips and binder inserts) or logical unitization (i.e., a manual review of the paper to determine what logically constitutes a document like page numbers or headers). If

unitization cannot be maintained, the original unitization should be documented in the data load file or otherwise electronically tracked.

2. Unstructured Electronically Stored Information (“ESI”) (e.g. e-mail, Word, Excel, PowerPoint)

Unstructured ESI also will be produced as Group IV single page TIFF images, 300 DPI, named the same as their Bates number, except as noted below. Each TIFF should be endorsed with a unique document identifier (i.e., Bates Label). Excel files and PowerPoints will be produced in native format, named the same as their Beginning Bates number and with their confidentiality designation, with placeholder TIFF images endorsed substantially as follows: “this file produced natively,” the applicable Bates number, and any other applicable endorsements, and their MDHash value. Native files shall be produced with related searchable text and metadata (to the extent it exists). The parties will discuss reasonable, discrete requests for production in native format on a document by document or category by category basis.

Extracted text taken from native files will be provided at a document level. There will be one text file per document, named the same as the beginning Bates number (Document ID) of the document. The extracted text file for a document will reside in the same location (file directory) as the images for that document. The text file associated with any redacted document will exclude redacted text (i.e. the Producing Party can OCR the redacted image of the unstructured ESI and replace the original extracted text).

To the extent a custodial document has hidden comments, speaker notes, or columns or other embedded data, the parties agree this data should be legible and produced in such a way as to understand its context and not block other text or data.

3. Metadata

The following fields will be provided for all custodial documents (paper and electronic) in the production: Begin Bates, End Bates, Begin/End Attachment, Parent/Child ID, Document Type (Paper, Email, Attachment or E-document), Custodian, Redacted and Confidentiality (see below). The following metadata fields associated with emails, attachments and non-email custodial ESI will be exchanged to the extent that they exist and are reasonably accessible and processed: Subject / Re: Line (Email), File Name (Non-Email), Sent Date (Email), Received Date (Email), Created Date (All Electronic File Types), Modified Date (All Electronic File Types), Author (All Electronic File Types), Recipient (Email), Copyee (Email), BCC (Email), Importance (Email); File Extension (Attachment or E-document) and Nativelink. Metadata will be provided in a flat file (.txt or .dat) using standard Concordance delimiters. Each line will begin with the fields Beg Bates and End Bates. A chart listing the pertinent metadata and the chosen formats is attached as Exhibit "A". If metadata is not produced because it does not exist or because it is "not reasonably accessible" in accordance with applicable precedent, then the producing party shall identify it as such within their production.

4. Additional Specifications for All Custodial Documents (Paper and Unstructured ESI)

a. Load Files

For all produced paper and unstructured ESI, a standard Opticon image load file indicating document boundaries and location of images will accompany the images. The fields should include Bates ID, CD Name, Path\TIFF Name, DocBreak and Document.

When producing a multi-page document, images for the document should not span multiple directories. In addition, parties responding to a request (Producing Parties) should not

include more than 1,000 images in a single directory unless a document is more than 1,000 pages.

b. Black and White

Generally speaking, Custodial Documents can be produced in black and white. However, if an original document contains color and is incomprehensible without color, the party producing the document should, upon request, produce the document in color to assist the party requesting the document in understanding the document. The parties expect that there will be few instances in which such requests will be necessary and such requests should not unreasonably be denied by the Producing Party. Production of color images will be in JPEG format.

c. Bates Labeling

For each Custodial Document, produced as TIFF images, the Producing Party should electronically “burn” a legible, unique Bates number onto each page at a location that does not obliterate, conceal or interfere with any information from the source document. For Custodial Documents produced in native format, the Bates number shall be included in the file name of the produced document. Each Producing Party should use unique Bates Labels to identify its images and documents. A Bates Label should begin with at least three alphabetical characters and followed by at least seven numbers (e.g. ABC0000001 or ACME00000023 or JUPITER0000004).

d. Redactions

For Custodial Documents, if the Producing Party is redacting information from a page, the Producing Party should electronically “burn” the word “Redacted” onto the page at or reasonably near the location of the redaction(s). If the Producing Party redacts a document, it may withhold from the document’s Load File only the metadata directly associated with the

redaction and shall designate the document as redacted in the produced metadata. The reason for privilege redaction(s) of each privilege-logged record must be disclosed in the appropriate privilege log.

e. TIFF Filename Convention

The file name for each TIFF image should correspond to the Bates Label for that Image (e.g. ABC0000009 would be ABC0000009.tif).

f. Attachments

To the extent any Custodial Document has a relationship to another Custodial Document (such as an attachment to e-mail, exhibit to a memo, embedded file, or an appendix to a report), that relationship should be preserved and produced using the Begin Attach and End Attach fields in the Load File discussed above.

g. Embedded Data

Unless produced in native format, for documents produced as TIFFs, objects embedded in other files (e.g. a spreadsheet within a PowerPoint or Word document) will be extracted as a separate document and treated like attachments to the document.

h. Organization of Production

To the extent a Producing Party organizes its production of Custodial Documents as it is kept in the ordinary course of business (rather than by document request), Producing Party should scan and produce folders, redwells, binder-covers and other organizational structure. Such materials should be produced as independent documents and be produced before the documents that were contained in these elements to the extent reasonably accomplishable by the above-addressed unitization. (e.g. the file folder should have a Bates Label immediately before the documents contained in the file folder). The Producing Party will provide the name of the custodian who had possession of the document when it was collected to the extent that it can be

reasonably determined at the time of collection. A custodian can include an employee or person's name, a shared space on an electronic data store (e.g. departmental share), or an archive storage.

i. Confidentiality

If the Producing Party is producing a Custodial Document subject to a claim that it is protected from disclosure under any protective order or confidentiality agreement, or any agreement entered into or Order issued in this matter, the Producing Party should electronically "burn" the word "CONFIDENTIAL INFORMATION" onto each page of the document, or otherwise designate the confidential status in a manner in compliance with the applicable protective order or agreement. The Producing Party should also include in the flat file (.txt or .dat) a designation that the document is protected and the level of protection, as required by any protective order or agreement.

5. Structured Data (e.g. databases)

If data from structured data systems (e.g. databases) is responsive to particular requests and will otherwise be produced, the Parties agree that the responding party will notify the requesting party of its intended production format prior to the actual production and the Parties will discuss in good faith the most reasonable production format for the particular information. Where possible, relevant and responsive information from databases will be either produced in standard (a/k/a canned) reports or as pipe-delimited ASCII format with the first row including data field headings/names.

6. Global De-Duplication

The parties may use global de-duplication across custodians from within their unique possession, custody or control to remove exact duplicates (based on MD5 or SHA-1 hash values

at the family level) so long as the suppression of documents from review tracks where the duplicates were residing so that it can be produced if warranted.

7. Selection Criteria and Computer Assisted Review

The parties agree to meet and confer to develop and calibrate search terms and programmatic culling processes associated with computer-assisted documents after document requests have issued.

C. Return of Inadvertently, Unintentionally, or Mistakenly Produced Privileged Documents

The parties agree that if information subject to a claim of attorney-client privilege or work product immunity or any other privilege or immunity is inadvertently, unintentionally, or mistakenly produced in this litigation (07-1532-EGS), such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or work-product immunity for the document or any other document covering the same or a similar subject matter under applicable law, including Federal Rule of Evidence 502. The parties agree that (1) a statement by a party that a production was inadvertent, unintentional, or mistaken shall be dispositive; (2) they are all taking reasonable steps to prevent disclosure of privileged material; and (3) that a party took prompt steps to rectify the inadvertent, unintentional, or mistaken production if they notify the recipient within (14) calendar days of learning of the inadvertent production. If a Producing Party has inadvertently, unintentionally or mistakenly produced Information subject to a claim of immunity or privilege, and if the Producing Party makes a written request for the return of such Information, the Information for which a claim of inadvertent, unintentional, or mistaken production is made (including any analyses, memoranda, derivative works, or notes which were generated based upon such Information), as well as all copies, shall be either sequestered, destroyed or returned within five (5) business days regardless

of whether the Receiving Party disputes the claim of privilege. The Producing Party will provide sufficient information to the Receiving Party regarding the asserted privilege(s), in the form of a privilege log. If the Receiving Party disputes the Producing Party's assertion of privilege, the Receiving Party may move the Court for an order compelling production of the material but such motion shall not assert the fact or circumstance of an inadvertent, unintentional, or mistaken production as a grounds for entering such an order. Subject to the Court's direction, resolution of the issue may include the Court's review of the potentially privileged information in camera. Notwithstanding this agreement, no party will be prevented from seeking any further protection or relief provided by any statute, law, or Rules or Orders of a Court. Likewise, no party will be prevented from moving the Court for an order compelling the production of documents for which a party asserts the privilege has been waived, is inapplicable or no longer applies in each case solely due to a reason other than an inadvertent, unintentional, or mistaken production.

Pursuant to Fed. R. Civ. P. 26 (f)(3)(D), and in a manner giving effect to Fed. R. Evid. 502 (d)-(f), the parties request that the protocol for return of inadvertently, unintentionally or mistakenly produced privileged documents, stated herein, be incorporated into an order of the Court.

D. Document Requests

The parties believe that Fed. R. Civ. P. 34 shall govern requests for production of documents, with the following stated exceptions. For electronically stored information, the parties shall produce such information in accordance with the protocols set forth herein. Should the production of any information previously produced in *ASPCA et al. v. Feld Entertainment, Inc.* (00-1641-EGS or 03-2006-EGS) be required, the producing party shall have the option of either re-producing the document again or providing a sufficient description of the previously produced document, either by Bates number or, in the event such documents were previously

produced without a Bates number, by specific information that makes them readily identifiable, or by trial exhibit number or other identifiable docket number.

E. Production of Documents Previously Produced in *Animal Welfare Institute, et al. v. Feld Entertainment, Inc.*, (00-1641-EGS or 03-2006-EGS) (the “ESA Action”).

The parties have agreed that to the extent documents produced in the prior ESA Action are responsive to discovery requests in this matter, such documents need not be re-produced to any party in this matter, and the production protocols described herein do not apply to the production of any document previously produced in the ESA Action. To the extent a previously-produced document cannot be located, a party may make a request for a discrete document(s). The parties agree, and the Court so orders, that the Humane Society of the United States (“HSUS”) and Wildlife Advocacy Project (“WAP”) shall be added to the protective order issued in the ESA Action on 9/25/2007 (03-2006, Docket No. 195) for the purpose of gaining access to and receiving copies of any document that is responsive to discovery requests in this matter that were previously produced pursuant to this protective order in the ESA Case.

E. Privilege Log Specifications

The parties agree that privilege logs will be produced as an Excel spreadsheet. Documents withheld from production that a party believes are covered by an attorney-client privilege and/or work product protection, which do not fall into categories specifically excluded by court order or by agreement of the parties, should be logged on a privilege log on a document-by-document basis. The following information should be provided (as applicable) in the privilege log for each document: (1) Document identification number; (2) document type; (3) attachments; (4) date; (5) author; (6) recipient(s); (7) copyee(s); (8) privilege or protection claimed; and (9) description of the document including information sufficient to establish the

elements of each asserted privilege. In order for the description of the document to be sufficient so that the requesting party can assess the nature and claim of the privilege and privilege disputes can be focused on particular documents so that the parties and the Court are not wasting time and effort on unnecessary documents, the description needs to be detailed enough so that the issue in the case or matter can be identified.

F. Scheduling of Depositions

The parties shall use reasonable and best efforts to schedule depositions for mutually agreeable dates and times and, if possible, set a deposition schedule by agreement in advance. Depositions must be noticed a minimum of 14 days in advance of the deposition date. The parties may not use scheduling conflicts to unduly delay a deposition or interfere with the order of discovery. The parties agree that absent an agreement among counsel or court order, they will not schedule multiple depositions to occur on the same day. In the event of a scheduling conflict, the parties should use reasonable efforts to reach a mutually agreeable date. If the parties are unable to do so, the date of the deposition may proceed subject to the availability of the witness and the attorney noticing the deposition. Nothing in this order shall prevent a party from seeking a court order regarding depositions in the event that scheduling cannot be mutually agreed upon, and a motion seeking such order shall automatically postpone the deposition. The parties agree that counsel may attend depositions by telephone or similar remote-access device, and the party or parties attending by telephone or similar remote-access device shall be responsible for setting up their own dial-in information or access in advance of the deposition for use during the same. A party foregoing participation in a properly noticed deposition may not depose that same individual or organization at a later date, except by agreement of the parties or order of the Court.

G. Time Limits on Depositions and Cross-Noticing Procedure

Each deposition other than that of a party shall be limited to one day of 7 hours unless extended by agreement of the parties or order of the Court. Depositions of individuals or entities may be noticed by either side (the Plaintiff or the Defendants collectively) or by both sides. Noticing a deposition will count against the total number of depositions allotted the noticing side. A deposition notice by any Defendant will serve as a notice on behalf of the Defendants collectively.

MAGISTRATE JUDGE JOHN M. FACCIOLA