

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

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

Pursuant to the Court’s August 8, 2013 Order (ECF No. 156), Plaintiff Feld Entertainment, Inc. (“FEI”) proposes the entry of a protective order governing the disclosure of material produced in discovery in the above-captioned matter. Upon consideration of the parties’ submissions, and the entire record in this case, it is this _____ day of _____, 2013, hereby **ORDERED** that a Protective Order is entered as follows:

1. **Good Cause.** Good cause exists for the entry of this Protective Order (“Order”), which is necessary to prevent the unauthorized disclosure of Confidential Material, as defined below, and to ensure that such information will be used only for purposes of litigating the case captioned *Feld Entertainment, Inc. v. Animal Welfare Institute et. al.*, Civ. No. 07-1532-EGS/JMF (D.D.C.) (the “Lawsuit”).

2. **This Protective Order Governs All Information Filed in this Matter and All Discoverable Information.** This Order shall govern the parties’ use and disclosure of all Confidential Material, as defined below, obtained by any party from any opposing party or any Third Party, in any formal discovery activity or proceeding during the course of the Lawsuit, up

to the time of the pretrial conference in this matter, as set forth in paragraph 15 below. Such information shall be used by the Receiving Parties only for the purpose of preparing for and conducting the Lawsuit, including any settlement discussions and negotiations or any form of alternative dispute resolution, and any further proceedings in this case, including any and all appeals. This Order also governs documents filed on the public docket in the United States District Court for the District of Columbia in the Lawsuit, and in any other United States district court, regardless of title, label or type (“Filings”) and any information provided or exchanged in discovery, including, without limitation, Rule 26 disclosures; responses to requests for production of documents; interrogatory responses; responses to requests for admissions; answers or responses to any other discovery requests; deposition transcripts, exhibits and testimony; and, any material produced by a Third Party pursuant to subpoena or otherwise provided to any party in connection with this Lawsuit (“Discovery Material”).

3. **Confidential Material.** As used herein, the term “Confidential Material” shall refer to all documents and information exchanged or obtained in the Lawsuit that may be designated by any party to the Lawsuit or any Third Party producing the documents or information (the “Producing Party”) as “Confidential,” including all copies thereof, reference thereto in deposition testimony or otherwise, and information contained therein. When producing Discovery Material, any Producing Party may designate, in whole or in part, any document or discovery response that the Producing Party reasonably believes includes information that is Confidential.

4. **Limited Intent of Protective Order.** By stipulating to the Confidentiality of the categories of documents listed above, the parties do not concede that such documents are discoverable, relevant, material, or admissible at trial.

5. **Designation of Discovery Material.** To the extent that Discovery Material contains Confidential Material, as set forth in paragraph 3 of this Order, any Producing Party may designate such material as Confidential by marking thereon in clearly legible print **“Confidential – Produced Pursuant to Protective Order.”** In the case of any information produced in electronic form, the Producing Party should, to the extent possible, electronically brand the document with the protective order designation described above. For any electronic, paper or other information that cannot be conveniently labeled, the Producing Party may designate such material as Confidential by informing the Receiving Parties in writing that such information is Confidential at the time of disclosing that information and by identifying the Bates numbers of the documents or otherwise reasonably specifying which portion of the information is Confidential. Such a designation shall constitute a representation that the material so designated contains or constitutes at the time of the designation information considered by the Producing Party to be sensitive, proprietary, or otherwise protected. Any such designations are to be reasonably limited in both subject matter and in time.

Any party or Third Party may designate portions of deposition testimony or exhibits to a deposition as “Confidential Material” by advising the court reporter during the course of testimony that certain testimony is Confidential. When a party or Third Party notifies the court reporter during the course of the deposition that certain testimony is Confidential, the reporter shall include on the cover page the legend:

“This transcript portion contains Confidential Information and/or Confidential Documents subject to a Protective Order and shall be used only in accordance therewith.”

Alternatively, any party or Third Party may designate as Confidential the pages and lines of that testimony, or exhibits to that testimony, in writing, within fourteen (14) calendar days of

receipt of the final transcript of the deposition. Each deposition in its entirety shall be treated as Confidential for a period of fourteen (14) calendar days after a final transcript of such deposition is available.

6. **Designation of Documents Filed in Court.** Any Filing that contains Confidential Material, including pleadings, motions, briefs, and attachments thereto, including discovery papers, deposition transcripts, exhibits or other documents, shall be filed under seal in accordance with the procedures set forth in the Local Rules for the United States District Court for the District of Columbia, or, in an action to enforce a third party subpoena issued in connection with this Lawsuit, the local rules of the United States district court where the Filing is made. If a Filing contains both Confidential Material and non-Confidential Material, only the Confidential Material shall be shall be redacted from the Filing and only the Confidential Material shall be filed under seal. The parties shall use their best efforts to only redact information governed by this Order, and file the remainder of the Filing publicly on the ECF system. This Order does not authorize the parties to make wholesale filings under seal.

If a party makes a Filing where documents or information marked as Confidential are not redacted in the Filing, the Producing Party may object to the disclosure in the Filing (the "Objecting Party"). The Objecting Party shall object in writing to the party making the Filing and designate which portions of the Filing contain Confidential Material. Upon receipt of this objection, the party making the Filing shall agree not to further disseminate the Confidential Material, and attempt to resolve this matter informally with the Objecting Party. If the matter cannot be resolved informally, the issue may be brought to the attention of the Court for resolution. No further dissemination of the Confidential Material shall take place until the Court has ruled on the issue or the issue has been resolved by agreement.

7. **Uses of Confidential Material.** Any material designated as Confidential shall be used solely for the preparation and trial of the Lawsuit, any appeal(s) in the Lawsuit, settlement discussions and negotiations in connection with the Lawsuit, any form of alternative dispute resolution of the Lawsuit, or in response to a government subpoena or request for information, and for no other purpose whatsoever. Any party seeking to use any Confidential Material for any other purpose must seek permission from the Court by motion. The burden of demonstrating why the Court should permit the Confidential Material to be used outside of the Lawsuit shall at all times remain with the party seeking disclosure. Except to the extent it is used at the trial of the Lawsuit in open court pursuant to paragraph 15 or by any decision rendered by the Court, all Confidential Material shall be kept by the parties in a confidential manner, and shall not be given, shown, disclosed, disseminated, or described, directly or indirectly, to any person(s) other than those set forth in paragraph 8 below.

8. **Confidential Material – Permitted Disclosure.** Confidential Material shall not be disclosed, given, shown, made available or communicated in any way, directly or indirectly, by the parties to anyone other than the following persons:

- a. the Court and court personnel, court reporters recording testimony in this case, and any notarizing officers;
- b. the parties in the litigation, and any partner, director, officer, employee, or agent of a party who is requested by that party or any of its attorneys to work on the Lawsuit, or any representative of a party's insurer;
- c. each lawyer for a party in this case, including trial counsel, local counsel, in-house counsel, and their respective legal assistants and clerical employees;
- d. outside consultants, experts, and vendors, including their staff, that are (i) unaffiliated with the parties (other than through their service as an outside consultant, expert or vendor in this Lawsuit), and (ii) reasonably deemed necessary, in the judgment of counsel for the party to the conduct of this litigation;
- e. any person who is an author or addressee of the designated document or

thing, or who is identified as an additional recipient, or any such person who properly and lawfully has a copy or original of the document;

- f. any person who is a witness at a deposition and their counsel;
- g. any lay witness to the extent necessary to prepare the witness for his or her testimony;
- h. the U.S. government and its agencies, in response to a subpoena or request for information; and
- i. such other persons as may be permitted to have access pursuant to paragraph 11 below.

9. **Requirements for Disclosure to Individuals Generally.** Other than the Court and court personnel, all individuals to whom Confidential Material is to be disclosed shall be informed of the existence of this Order, shall be provided with a copy thereof, and shall be instructed that Confidential Material may not be used other than in connection with the Lawsuit, and may not disclose such information to anyone other than those persons authorized by this Order. Counsel for the parties shall take reasonable steps to ensure adherence to the terms and conditions of this Order by their respective employees.

10. **Requirements for Disclosure to Certain Designated Individuals.** Each individual to whom Confidential Material is to be disclosed pursuant to Paragraphs 8(d) and 8(i) above shall certify in writing prior to such disclosure, by signing the Acknowledgement and Nondisclosure Agreement attached hereto as Exhibit A, that he or she has been informed of this Order, has been provided with and reviewed a copy thereof, and understands and agrees to comply with the obligations set forth in this Order. It shall be the obligation of the parties' counsel to obtain and maintain signed copies of all such Acknowledgments and to provide such Acknowledgments to counsel for all parties upon a showing of good cause.

11. **Additional Use and Disclosure of Confidential Material.** If a party wishes to disclose any Confidential Material to anyone other than those individuals identified in paragraph 8 of this Order, notice shall be served on counsel for all parties by electronic mail. The notice shall include the identity of the person to whom disclosure is desired, the information to be disclosed, and the need and purpose for the disclosure. If no objection is made by the other parties in writing within five (5) business days after such notice, the disclosure may occur, provided that the person to whom disclosure is made executes the Acknowledgement and Nondisclosure Agreement attached hereto as Exhibit A. If there is an objection, the parties shall attempt in good faith to resolve the objection informally. If the objection cannot be resolved on an informal basis, the party seeking disclosure must move the Court for permission to make such a disclosure. No disclosure shall occur unless the Court has ruled in favor of such disclosure or the parties have resolved the issue by written agreement.

12. **Challenging a Confidential Designation.** In the event that a party objects to the designation of any documents or information as Confidential, that party shall timely provide the Producing Party written notice of, and the basis for, such objections. Counsel for all parties shall be copied on the correspondence. A party shall not be obligated to challenge the propriety of a designation at the time it is made, and a failure to do so shall not preclude a subsequent challenge thereto. The parties will use their best efforts to resolve such objections between themselves. If the objections cannot be resolved informally, the party objecting to the designation may file a motion before this Court with respect to the propriety of the designation. The Producing Party will cooperate in obtaining a prompt resolution of any such motion filed. Pending a resolution, the material in question shall continue to be treated as Confidential as provided hereunder and no disclosure shall occur until the Court has ruled in favor of such disclosure or the parties have

resolved the issue by written agreement. However, any dispute about whether any material is properly designated as Confidential shall in no way delay discovery. All such documents and information shall be produced, and any dispute as to the Confidentiality of the information shall be resolved in accordance with the procedures set forth in this Order. The burden of proving that material is properly designated as Confidential shall at all times remain with the Producing Party which designated the material as Confidential.

13. **Inadvertent Disclosure of Confidential Material.** If a document or other information is produced without being marked as Confidential but the Producing Party later desires that the document or information be deemed Confidential, the Producing Party will, as soon as possible, but in no event later than thirty (30) calendar days after discovery of the disclosure of such document or information, notify all parties in writing of the documents or information that are to be considered Confidential Material and will provide to the parties a second copy of the specific documents or information, marking them as Confidential. The Receiving Parties may not be held responsible for not treating the previously unmarked items as Confidential. Once such a Confidentiality designation is made, the parties must treat such material in accordance with this Order.

14. **Return of Inadvertently Produced Privileged Documents.** The return of inadvertently, unintentionally, or mistakenly produced privileged documents shall be governed by the Court's August 8, 2013 Order. *See* ECF No. 157 at 8-9.

15. **Trial.** The parties' pretrial statements shall include a list of all proposed trial exhibits, *see* LCvR 16.5(b)(1)(v), and also must clearly indicate whether any of those exhibits have been marked by any party or Third Party as Confidential. At the pretrial conference, the Court will determine whether Confidential Material listed by any party as a proposed trial exhibit

will remain sealed or will be unsealed, should it be used at the trial. If Confidential Material is marked as a proposed trial exhibit, but is not used at the trial, it will remain sealed.

16. **Termination of this Action.** Within sixty (60) days after final conclusion of the Lawsuit, all Confidential Material, copies of Confidential Material, and all excerpts therefrom, in the possession, custody or control of the parties other than the party that produced the Confidential Material shall be destroyed or returned to counsel for the Producing Party. Notwithstanding the foregoing, a party's attorneys shall not be required to destroy their work product, pleadings filed in the case, or correspondence exchanged in the case. Such materials may be utilized by the attorney(s) only (1) to defend against claims of professional liability, (2) to defend against ethics complaints, (3) to use the legal research contained therein, or (4) to enforce any court order, judgment, or settlement agreement. Within sixty (60) days after the final conclusion of the Lawsuit, counsel for each party shall also provide written certifications to opposing counsel that the actions required by this paragraph have been completed. As used in this paragraph, "final conclusion" refers to final judgment and the exhaustion of available appeals, as provided by applicable law, or settlement.

17. **Protective Order in No. 03-2006.** The September 25, 2007 protective order entered in Civ. No. 03-2006 (ECF No. 195) remains in place. The materials produced pursuant to that order, but which are not part of the judicial record in Civ. No. 03-2006, shall remain sealed in this case. Pursuant to the parties' agreement, the Court ordered that HSUS and WAP be added to the September 25, 2007 protective order 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 in Civ. No. 03-2006 pursuant to the September 25, 2007 protective order. *See* 08/08/13 Order (ECF No. 157), at 10.

18. **Violation of this Protective Order.** The Court retains jurisdiction to enforce this Order. Any violation of this Order by any party may be sanctionable as a contempt of court.

EXHIBIT “A” TO PROTECTIVE ODER

ACKNOWLEDGEMENT AND NONDISCLOSURE AGREEMENT

I hereby certify my understanding that material produced in the above-captioned case, which has been designated as “Confidential Material,” is being provided to me pursuant to the terms and restrictions of the Protective Order entered in this action by the United States District Court for the District of Columbia on _____, 2013 (the “Order”). I have read and understand the terms of the Order, I agree to be fully bound by them, and I hereby submit to the jurisdiction of the United States District Court for the District of Columbia for purposes of enforcement of the Order. This Acknowledgment cannot be used for any purpose except to enforce the terms of this Order and/or Acknowledgment. I understand that a violation of this undertaking could be punishable as a contempt of court.

DATED: _____

SIGNATURE: _____

PRINTED NAME: _____

SO ORDERED.

DATED: _____, 2013

BY THE COURT:

THE HONORABLE JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE