



AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Feld Entertainment, Inc.
Plaintiff
v.
American Society for the Prevention of Cruelty to Animals, et al.
Defendant
Civil Action No. 1:07-cv-1532 (EGS)
(If the action is pending in another district, state where: )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Fulbright & Jaworski LLP c/o J. Scott Maberry, Esq., Registered Agent
Market Square, 801 Pennsylvania Avenue, N.W., Washington, D.C. 20004-2623

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: SEE ATTACHED SCHEDULE A

Place: DiMuroGinsberg, PC
908 King Street, Suite 200
Alexandria, VA 22314
Date and Time: 03/28/2011 10:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/25/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Animal Welfare Institute's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Animal Welfare Institute, who issues or requests this subpoena, are:

Stephen L. Neal, Jr., Esq. (D.C. Bar #441405) Tel: (703) 684-4333; Email: sneal@dimuro.com
DiMuroGinsberg, PC
908 King Street, Suite 200, Alexandria, VA 22314

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Civil Action No. 1:07-cv-1532 (EGS)

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## SCHEDULE A

### Definitions

1. "RICO Action" means the lawsuit captioned *Feld Entertainment, Inc. v. American Society for the Prevention of Cruelty to Animals, et al.*, Civil Action No. 1:07-1532 (D.D.C.).
2. "ESA Action" means the lawsuit captioned *American Society for the Prevention of Cruelty to Animals, et al. v. Feld Entertainment, Inc.*, Case Nos. 01-1641 & 03-2006 (D.D.C.).
3. "FEI", "Ringling" or "Circus" means Feld Entertainment, Inc., the plaintiff in the RICO Action and the defendant in the ESA Action.
4. "ESA Plaintiffs" means the plaintiffs in the ESA Action.
5. "You," "Your," or "Yours" means Fulbright & Jaworski, L.L.P.
6. "Firm" means Fulbright & Jaworski, L.L.P.
7. "Employee(s)" means any officer, director, trustee, agent, attorney, employee, representative, assign, accountant, investigator, and anyone else acting on his/her behalf, whether active or retired, full-time or part-time, current or former, and compensated or not.
8. "Document(s)" has the same meaning herein as used in Rule 34 of the Federal Rules of Civil Procedure and shall be construed in its broadest sense to include, without limitation, any written, printed, typed, recorded, magnetic, punched, copied, graphic, or other tangible thing in, through, or from which information is embodied, translated, conveyed, or stored including, without limitation, contracts, correspondence, marketing plans, business plans, financial statements, memoranda, notes, records, books, papers, telegrams, telexes, electronic mail, dictation tapes, audio tapes, video tapes, computer tapes (including back-up tapes), computer disks (including back-up disks), CD Rom, diskette, magnetic tape, computer print outs, microfilm, microfiche, worksheets, diaries, calendars, phone messages, appointment books, and all copies and drafts of such Documents except those that are identical in every respect to the original Documents. Different versions of the same Documents including, but not limited to, drafts, revisions, or Documents with handwritten notations or marks not found in the original or on other copies are different Documents and must be produced. To the extent You have possession, custody, or control of any information or Documents or other materials responsive to the Requests which constitute, is contained in, or is stored or represented on a computer hard drive, computer disk, CD Rom, diskette, magnetic tape, audio tape, video tape, compact disk, microfiche, film, or other media that store information, text or data electronically, magnetically, or mechanically, it shall be within the meaning of Document as defined above and You are required to produce duplicates of all such information either in hard copy form or in any other form such that the information or material is accessible.
9. Information or Documents "Relating To", "Related To", or which "Relates To", any subject matter shall mean any information or Document which constitutes, contains,

embodies, evidences, reflects, supports, concerns, identifies, states, refers to, regards, records, deals with, describes, explains, or is in any way pertinent to that subject.

**Documents Requested**

1. All Documents Relating To any retainer agreements or other contracts or agreements among or between FEI, the Firm, fact or expert witnesses in the ESA Action, other attorneys or law firms retained by FEI for the ESA Action, or any other individuals or entities associated in any way with the ESA Action.
2. All Documents Relating To the Firm's attorneys' fees and costs associated with the ESA Action, including all billing Documents, timesheets, electronic records, preliminary bills, invoices, write-offs, and backups.
3. All Documents that show the amount of attorneys' fees and costs actually paid by FEI for the ESA Action.
4. With respect to each attorney, paralegal, or other Firm employee who maintained billing Documents associated with the ESA Action, Documents sufficient to identify their names, years of experience, billable rates charged for the ESA Action, and billable rates charged for all other cases from 1999-2010.
5. All Documents Relating To each cost, expense, or disbursement in the ESA Action, including all receipts of payment.
6. All Documents Relating To the amount of attorneys' fees and/or costs actually incurred in connection with the ESA Action, including all billing Documents, electronic Documents, and other supporting Documents.
7. All Documents Relating To the amount of attorneys' fees and/or costs actually charged in connection with the ESA Action, including all billing Documents, electronic Documents, invoices, write-offs, and other supporting Documents.
8. All Documents Relating To the Firm's standard cost or disbursements billing practices, including standard practices concerning mark-ups for any costs, such as copying, long-distance, Westlaw or Lexis research, or any other third-party vendor providing services to the Firm.
9. All Documents Relating To the Firm's standard attorneys' fees billing practices, including the standard hourly rates charged by level of experience from 1999-2010, and the standard practice concerning write-offs.
10. All Documents Relating To personnel staffing decisions associated with the ESA Action, including the number of attorneys attending depositions, the number of attorneys attending hearings and the trial, and the number of attorneys assigned to research and draft Documents filed

in the ESA Action.

11. All Documents Relating To the Firm's attorneys' fees and/or costs or disbursements associated with the contempt hearing before Judge Facciola in the ESA Action, including all billing Documents, electronic Documents, invoices, write-offs, and backups.

12. All Documents Relating To attorneys' fees and/or costs or disbursements associated with the medical Documents for the elephants in the ESA Action, including: (a) the failure to provide that information prior to being ordered to do so; (b) the ESA Plaintiffs' motion to compel these Documents and FEI's opposition and motion for a protective order regarding these Documents; (c) the ESA Plaintiffs' motion to enforce the order for the production of these Documents and FEI's opposition to that motion; and (d) FEI's eventual production of these Documents, including all billing Documents, electronic Documents, invoices, write-offs, backups, and receipts.

13. All Documents Relating To attorneys' fees and/or costs or disbursements associated with Ted Friend's handling of videotapes showing the elephants on the train, including all billing Documents, electronic Documents, invoices, write-offs, backups, and receipts.

14. All Documents Relating To attorneys' fees and/or costs or disbursements associated with the destruction or loss of: (a) the two pages of Documents reflected in a page bates labeled FEI42475; and (b) the four pages of Documents reflected in a page bates labeled FEI42477, all of which were identified as responsive, but were never produced in the ESA Action, including all billing Documents, electronic Documents, invoices, write-offs, backups, and receipts.

15. All Documents Relating To attorneys' fees and/or costs or disbursements associated with the testimony of expert witnesses in the ESA Action, including but not limited to Dennis Schmidt, Ted Friend and Mike Keele – including but not limited to all billing Documents, electronic Documents, invoices, write-offs, backups, and receipts.

16. All Documents Relating To presentations of any kind made by Michele Pardo, John Simpson, Lisa Joiner, Kara Petteway, George Gasper, or anyone else associated with Fulbright & Jaworski, concerning: (a) the ESA Action; (b) any of the plaintiffs in the ESA Action; (c) animal protection groups and/or animal activists; (d) animal protection litigation; (e) environmental litigation, (f) bringing RICO claims, including, but not limited to copies of the text and transcripts of such presentations, and recordings of any kind of such presentations.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of February, 2011, I served the foregoing by electronic mail upon the following:

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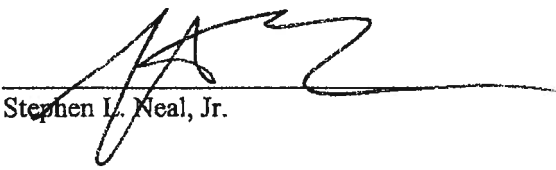
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\_\_\_\_\_  
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