

EXHIBIT 1

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C O U N S E L O R S A T L A W

September 6, 2013

VIA EMAIL

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Re: *Feld Entertainment Inc. v. Animal Welfare Institute, et al.*
Case Number: 07-1532-(EGS/JMF)

Dear Mr. Simpson:

Counsel for Plaintiff and Defendants met at your office yesterday in an attempt to identify a list of categories appropriate for logging pursuant to Magistrate Judge Facciola's August 8, 2013 Order. (*See* ECF No. 156 at 3-4.) Counsel for Defendants understood that this meet and confer would address not only the identification of categories appropriate for logging by Defendants and their counsel prior to January 1, 2010, but also the identification of categories appropriate for logging by Plaintiff and its counsel, including Fulbright & Jaworski, LLP ("Fulbright"), prior to January 1, 2010.

During our meeting, however, you asserted that Magistrate Judge Facciola's August 8, 2013 Order does not require you to meet and confer with us regarding the identification of categories of privileged material created or received by Fulbright at any time because Fulbright is not obligated to log any documents. We disagree.

As you will recall, on May 9, 2013, Magistrate Judge Facciola ordered the Parties to meet and confer regarding certain discovery issues and to submit a proposed order specifying those areas of discovery on which the Parties agreed. (ECF No. 151.) On May 24, 2013, the Parties filed a Notice of Meet and Confer and Proposed Rule 16(B)(3) Discovery Order, indicating that

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they had met and conferred about the remaining discovery issues and specifying the Parties' areas of agreement. (ECF No. 152.) In that Notice, Plaintiff represented with respect to privileged documents that need not be logged:

Plaintiff does not believe that its counsel should have to individually log, index or produce, *without limitation as to subject matter*, documents created or received *prior to January 1, 2010*. . . .

(*Id.* at 4-5 (emphasis added).) Defendants responded as follows:

Defendants believe that Plaintiffs' counsel should have to log certain categories of documents created or received prior to January 1, 2010. Plaintiff appears to agree, objecting only to a requirement that it log all documents created or received prior to January 1, 2010 'without limitation as to subject matter.' Defendants similarly object to having to produce or log documents without limitations as to subject matter. The parties should meet and confer to develop the categories or subject matters of documents appropriate for logging.

(*Id.* at 5 (emphasis added).)

Consistent with Plaintiff's representations, Magistrate Judge Facciola's August 8, 2013 Order required the Parties to meet and confer to identify a list of categories appropriate for logging that were created or received prior to January 1, 2010, relating to the ESA case. (ECF No. 156 at 3-4.) Significantly, Magistrate Judge Facciola noted that "*Plaintiff proposed* that there be *subject matter limitations* on the logging of documents created or received *prior to* January 1, 2010." (ECF No. 156 at 4 (citing 152 at 4-5) (emphasis added).)

Nonetheless, yesterday you took the position that Magistrate Judge Facciola's Order does not require Plaintiff to log any materials created or received by Fulbright prior to January 1, 2010, relating to the ESA case. We disagree with your reading of the Order. We believe that the correct reading of the Order is that Fulbright need not log privileged material it created or received *after* January 1, 2010. Defendants agreed to such an approach, as noted by Magistrate Judge Facciola in his Order. Defendants did not agree that Fulbright would be exempt from logging all privileged documents *prior to* January 1, 2010. Rather, the whole point of meeting and conferring was to try to agree upon the "subject matter limitations" that you proposed were necessary in order for Fulbright to log documents created or received prior to January 1, 2010.

In our discussions with you yesterday we agreed to resume the meet and confer process on privilege logging after Defendants have served their operative document requests. We propose that the Parties defer raising with the Court their differences about the pre-January 1,

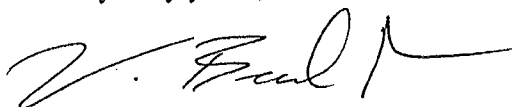
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2010 Fulbright documents until the overall meet and confer process regarding privilege logging is complete. However, if you plan to take the position that Defendants will somehow limit or forfeit our ability to obtain relief on this issue at a later time unless we raise it with Magistrate Judge Facciola now, then we will move for clarification and/or modification of the Court's August 8, 2013 Order immediately. Please let us know your position by 5:00 p.m. on Monday, September 9, 2013.

If you have any questions, please do not hesitate to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Brad Nes", with a stylized flourish at the end.

W. Brad Nes

cc:

All counsel for co-Defendants (via e-mail)