

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. :

_____ :

FED. R. CIV. P. 56(D) DECLARATION OF JOHN M. SIMPSON

1. My name is John M. Simpson. I am more than twenty-one (21) years of age and I am competent to make this declaration.

2. I am a partner in the law firm of Fulbright & Jaworski LLP (“Fulbright”). I am counsel of record for plaintiff Feld Entertainment, Inc. (“FEI”) in the above-captioned matter.

3. I have reviewed the Motion for Partial Summary Judgment filed by defendants Katherine Meyer, Eric Glitzenstein and Meyer, Glitzenstein & Crystal (collectively “MGC”) (“Motion”), and all exhibits thereto.

4. I have reviewed FEI’s Opposition to the Motion for Partial Summary Judgment of Katherine Meyer, Eric Glitzenstein and Meyer, Glitzenstein & Crystal (“Opposition”), and all exhibits thereto.

5. The matters and facts asserted in FEI’s Opposition are true and correct to the best of my knowledge and belief.

6. Discovery in this case commenced approximately three (3) months ago. The Court issued a Rule 16 scheduling order in this case on August 8, 2013. ECF 157. Since that time, the parties have exchanged document requests and responses and objections thereto. None

of the parties has actually produced documents in this case beyond initial disclosures and the identification of documents previously produced in the ESA Action (Civ. Nos. 00-1641 & 03-2006) (D.D.C.) (EGS/JMF). No interrogatories have been served. Fact discovery currently is set to close on June 2, 2014. *Id.*

7. There are genuine issues of material fact with respect to MGC's Motion on which discovery is necessary. Specifically, discovery is necessary to determine the relationship between defendants MGC and the Wildlife Advocacy Project ("WAP"). Facts concerning the relationship between MGC and WAP are essential to FEI's Opposition to MGC's Motion with respect to the effect, under Fed. R. Civ. P. 15(c)(1), of FEI's amendments to the pleadings in the First Amended Complaint (ECF 25) that are the subject of MGC's Motion.

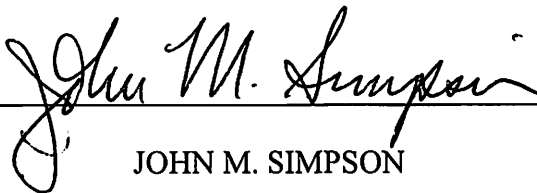
8. Both MGC and WAP have denied FEI's allegations that WAP is the alter ego of MGC and that Meyer and Glitzenstein completely dominate WAP's operations. *Compare* ECF 25 ¶ 43 *with* ECF 97 ¶ 43 *and* ECF 98 ¶ 43. At the same time, MGC is contending in its Motion that actions taken by Meyer and Glitzenstein in their capacities as officers of WAP and other actions taken by WAP itself constitute "notice," for purposes of the statute of limitations, of actions by MGC or the partners of MGC.

9. FEI has not had an opportunity to take discovery on the relationship between MGC and WAP in this case because discovery has just commenced. *See supra* ¶ 6.

10. FEI was prevented from taking discovery on the relationship between MGC and WAP in the related ESA Action, Civ. Nos. 00-1641 & 03-2006 (D.D.C.) (ECF/JMF). For example, in the ESA Action FEI sought to depose WAP concerning "[t]he formation and corporate structure of WAP, including but not limited to the relationship and overlap with Plaintiffs' counsel." No. 03-2006, ECF 237. WAP successfully quashed FEI's request to take

deposition testimony on this topic. *Id.* FEI subpoenaed MGC for documents, but that subpoena was limited, in significant part, to the production of the Federal Express Airbills that were created by MGC and used to send payments to Tom Rider (DX 58A).

11. I declare under penalty of perjury that the foregoing is true and correct. Executed on November 22, 2013.



JOHN M. SIMPSON