

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
THE FUND FOR ANIMALS, ANIMAL WELFARE INSTITUTE, AND HSUS'
MOTION FOR A PROTECTIVE ORDER**

Civ. No. 1:07-cv-1532

Ex. 4

Declaration of Michael Markarian

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.,

Plaintiff,

v.

ANIMAL WELFARE INSTITUTE, *et al.*,

Defendants.

Case No. 07-1532
(EGS/JMF)

DECLARATION OF MICHAEL MARKARIAN

I, Michael Markarian, declare as follows:

1. My name is Michael Markarian, and I am more than 21 years old and am competent to make this declaration. If called upon to do so, I could and would testify to all matters set forth herein.
2. I have personal knowledge of all matters discussed in this declaration, except where I state facts based on my belief, and those facts I believe to be true.
3. I currently serve as the President of The Fund for Animals and have held this position since 2002. I began working with The Fund for Animals in 1993 and became its executive vice president in 1998. I am also currently the Chief Program and Policy Officer of The Humane Society of the United States and the President of the Humane Society Legislative Fund. The Fund for Animals is a 501(c)(3) nonprofit charitable organization incorporated in 1967 with its principal place of business in Gaithersburg, Maryland and its headquarters in New York, New York. The mission of The Fund for Animals is to promote the humane treatment of animals.

4. In 2005, The Fund for Animals entered into a corporate combination with The Humane Society of the United States ("HSUS"), pursuant to an asset acquisition agreement. Since that time, The Fund for Animals has continued in existence with its primary focus being direct animal care work taking place at animal sanctuaries and wildlife rehabilitation centers throughout the United States. Specifically, The Fund for Animals rescues abused or imminently threatened animals and provides care for them at one of several animal care facilities it operates, including our Cleveland Amory Black Beauty Ranch, or provides medical treatment to injured native wildlife and releases them back to the wild. In furtherance of this mission, The Fund for Animals also advocates for animals and occasionally commits its resources to rulemaking petitions, litigation, and other public policy work aimed at preventing practices that harm animals.

5. Based on my work for The Fund for Animals for the past two decades, I have knowledge about The Fund for Animals' fundraising, its donors, and the importance of the donations to The Fund for Animals that support and sustain our charitable activities. I also understand the steps taken by The Fund for Animals to preserve donors' confidentiality and privacy.

6. The Fund for Animals receives financial support in the form of donations made through the mail, donations via its website, www.fundforanimals.org, and bequests. We rely upon this donor support to sustain our operations and to maintain the direct animal care programs that we provide at the Cleveland Amory Black Beauty Ranch and three other animal care centers. These programs require significant expenditures on an ongoing basis in order to shelter, feed, and provide medical treatment for the thousands of animals cared for at our facilities. Losing the financial support of its donors would

irreparably harm The Fund for Animals as a viable organization and endanger the animals that benefit from our care programs.

7. The Fund for Animals respects our donors' rights to privacy and rights of association, and we recognize that many of our donors desire to keep their contributions and support private and confidential. Like many nonprofit organizations, we view our donors' identities, contact information, and similar confidential information, as our confidential and proprietary business information, and preserve the confidentiality of the information to protect our donors' privacy and our own institutional interests.

8. Accordingly, The Fund for Animals has a number of policies in place to protect our donors' information. For example, our website includes a privacy policy (the "Privacy Policy"), which specifies that any information obtained through the website, including online donations, donor names, and e-mail addresses, will be kept confidential. The Privacy Policy states that information obtained from donors online will only be shared with The Fund for Animals, other affiliated organizations such as HSUS, and other reputable "sponsors and licensees" that The Fund has actively partnered with and determined to be "committed to the protection of visitors' privacy and committed to our animal protection goals." *See* <http://www.fundforanimals.org/about/privacy-policy.html>. The Privacy Policy also allows our donors to prevent us from sharing their information with anyone by sending us a request via e-mail. *See id.* Similarly, donors with whom we communicate via mail receive notices at least once a year allowing them to prevent us from sharing their information with anyone.

9. For donors who do not opt out from sharing, we follow strict guidelines under which we will only share donor information with a limited category of like-minded

organizations, whom we have determined have goals consistent with our not-for-profit mission to protect and care for animals, and whose mailings we approve in advance before they are sent to supporters of The Fund for Animals.

10. Under no circumstances would we ever willingly provide private donor information to Feld Entertainment, Inc. ("FEI"), given its opposition to animal welfare organizations and our goals.

11. I am concerned about the possible consequences that would result if the Court requires The Fund for Animals to provide confidential donor information to FEI. I believe that current donors could be less likely to continue their financial support out of concern that The Fund for Animals cannot adequately protect their private information and interests. I also believe that there could be fewer new donors, based on the fear that their financial support could lead to harassment. I am especially concerned here, because of my understanding—based on what I have read in news media reports and based on the long history of litigation with FEI—that FEI has a hostile attitude toward animal protection organizations and those who have challenged FEI's treatment of animals.

12. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 22, 2013



Michael Markarian