

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. :

NOTICE OF OBJECTION TO MISREPRESENTATION IN CONSENT MOTION

On the afternoon of Monday, December 23, 2013, counsel for defendant The Fund for Animals (“FFA”) telephoned counsel for plaintiff Feld Entertainment, Inc. (“FEI”) and requested a four (4) day extension on the reply brief for the motion for protective order filed on December 2, 2013 by FFA and defendants, the Animal Welfare Institute and The Humane Society of the United States. ECF No. 184. Counsel for FEI readily agreed to the extension. However counsel for FFA did not state that he was calling on behalf of any other defendant, including defendant the Wildlife Advocacy Project (“WAP”). (WAP, represented by separate counsel, belatedly joined the motion for protective order with a one-page “me-too” filing on December 6, 2013. ECF No. 185.) After counsel for FFA obtained FEI’s consent to the four-day extension, he filed the consent motion at 6:28 p.m., after normal business hours, on December 23. ECF No. 190. The consent motion stated, for the first time, that WAP was one of the moving parties and that “WAP ... may elect to file *a separate reply*.” *Id.* at 1 n.1 (emphasis added). The filing therefore created the false impression that FEI had consented, not only to the extra time, but to the extra

reply brief. Counsel for FEI gave no such consent because a separate WAP reply was never discussed..

Counsel for FEI contacted counsel for FFA shortly after the filing – with within 45 minutes of electronic service – about the misrepresentation included in the consent motion. The response was to mince words and to assert that FEI’s consent had not been incorrectly described. Sufficient corrective action was not forthcoming. Given the erroneous impression created about FEI’s consent, as well as the impending holidays, FEI therefore files the instant objection. FEI did not consent to a separate reply brief for WAP. Nor is there any reason for WAP to have its own reply brief when it was not even apparently interested enough to participate in the original motion for protective order to develop any WAP-specific argument not already covered by that motion. Therefore, while FEI has no objection to the extension of time, WAP should not be afforded a separate reply. Any argument that WAP deems relevant to WAP should be included in a single, 25-page reply brief for the defendants.

Dated: December 23, 2013

Respectfully submitted,

/s/ John M. Simpson

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