

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
FELD ENTERTAINMENT, INC.,)	
)	
Plaintiff,)	
)	Civil Action No. 07-1532 (EGS/JMF)
v.)	
)	
ANIMAL WELFARE INSTITUTE, <u>et al.</u>,)	
)	
Defendants.)	
_____)	

**PLAINTIFF FELD ENTERTAINMENT, INC.’S RESPONSE TO DEFENDANTS’
MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO
SECOND AMENDED COMPLAINT**

Plaintiff Feld Entertainment, Inc. (“FEI”) hereby responds to defendants’ Motion for Enlargement of Time to Respond to Plaintiff’s Second Amended Complaint (ECF 218), and states as follows:

1. FEI represented to counsel for defendants that it will consent to a two (2) week extension of time – for a total of four (4) weeks – for defendants to respond to the Second Amended Complaint (“SAC”). *See* Ex. 1 hereto (03-07-2014 email from Pardo to Caridas, et al.). Defendants’ Motion did not include FEI’s position. *Cf.* LCvR 7(m). A two (2) week extension of time (or four (4) weeks of time, in total) is the same amount of time that the Court allotted for defendants’ answers to the First Amended Complaint. *See* 07-09-2012 Order (ECF 89) (directing defendants to respond to the First Amended Complaint by no later than August 9, 2012). Accordingly, four (4) weeks is more than a sufficient amount of time for defendants to respond to the Second Amended Complaint.

2. Defendants request a 30 day extension – or seven (7) weeks total – to respond to the SAC, for two (2) reasons: (i) the extent of the changes to the Second Amended Complaint and (ii) the briefing schedule for the fee petition proceedings in the related ESA Action (Civ. No. 03-2006). Neither reason warrants the unnecessary, lengthy extension requested by defendants. Defendants’ request is another attempt to “run out the clock” and further delay litigation of this matter, which has been pending for more than six (6) years.

The Second Amended Complaint

3. FEI amended its complaint within the timeframe set forth in the Court’s scheduling order. *See* ECF 205.

4. As previously stated in FEI’s Motion for Leave to Amend, the Second Amended Complaint ***does not add new parties or causes of action***. The Second Amended Complaint makes additions and deletions to FEI’s prior pleading (marked in redline, *see* ECF 205-2), which:

- (i) take into account legal and factual developments since February 16, 2010, when the First Amended Complaint was filed (*e.g.*, the SAC adds citations to Judge Sullivan’s 12-30-09 Memorandum Opinion (affirmed, in its entirety, by the Circuit in October 2011) and 03-29-2013 Memorandum Opinion in the ESA Action, and conforms the pleading to Judge Sullivan’s 07-09-2012 Opinion in this case by deleting certain allegations and one cause of action);
- (ii) conforms the pleading to the representations that FEI has made about what is or is not in issue (*e.g.*, the pleading deletes allegations concerning elephant mistreatment, to streamline the issues to be litigated in this case, *see* ECF 205-2, ¶ 220); and

- (iii) adds further factual detail to the existing claims, some of which has been learned since February 16, 2010 (*e.g.*, advertisements and/or solicitations generated by defendants, since the date of filing the First Amended Complaint, that continue to use the ESA Action and/or Rider to raise money, and that contain materially false statements and/or omissions, *see* paragraph 5, *infra*).

5. Specifically, the Second Amended Complaint comes forward with new allegations in response to defendants' repeated argument – raised as recently as their objections to Magistrate Judge Facciola's order on their donor fraud protective order motion (*see* ECF 214 & 215) – that FEI's donor fraud allegations are legally deficient. The new allegations amplify, but do not change, FEI's donor fraud theory. The bases for the new allegations are well-known to defendants, because, as set forth below, the allegations are based on documents that they themselves generated:

- (i) documents produced by defendants in discovery in the ESA Action, which are specifically identified by date (*e.g.*, ECF 205-2, ¶¶ 241-272, identifying WAP solicitations by date), and/or by bates number (*e.g.*, ECF 205-2, ¶ 298 (citing AWI 10130-10133), ¶ 303 (citing API 07321-07338), ¶ 304 (citing API 07329-07337 & API 07338-07343));

- (ii) pages from defendant's own websites, which are identified by the website address (*e.g.*, ECF 205-2, ¶¶ 233-240 (WAP's current website solicitations); ¶¶ 276-291 (HSUS/FFA's current website solicitations); ¶¶ 294-297 (AWI's current website solicitations); ¶¶ 308-317 (Born Free's current website solicitations)).

Fee Petition Briefing Schedule in the ESA Action

6. Defendants' request for an extension due to the upcoming deadline for filing the fee petition opposition(s) in the ESA Action is contrary to Judge Sullivan's express order that the

fee petition proceedings in the ESA Action shall not interfere with or delay the proceedings in this RICO case. No. 03-2006, ECF 629 at 4 (Time Limits). The ESA Action plaintiffs have had more than five (5) months to respond to FEI's Fee Petition (No. 03-2006, ECF 635), which was filed on October 21, 2013. While FEI's fee petition filing was large and detailed, five (5) months is more than a sufficient amount of time to craft a response to it. Moreover, a significant number of the new donor fraud allegations *only* involve the solicitations and/or advertisements of the Wildlife Advocacy Project ("WAP") and the Humane Society of the United States ("HSUS") (e.g., ECF 205-2, ¶¶ 224-277 & 280-283), neither of which, at this time, are respondents to the fee petition proceedings.¹ These defendants should be able to respond to the SAC allegations within the four (4) week timeframe consented to by FEI.

7. Accordingly, to facilitate the timely resolution of this case, which has been pending since August 2007, and for all of the reasons stated above, FEI respectfully requests that defendants be granted a two (2) week extension of time in which to file their responses to FEI's Second Amended Complaint.

¹ FEI filed a motion to join the HSUS as a party plaintiff to the ESA Action (No. 03-2006, ECF 672), which currently is pending before the Court.

Dated: March 13, 2014

Respectfully submitted,

/s/ John M. Simpson

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