

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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| FELD ENTERTAINMENT, INC. | : | |
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| Plaintiff, | : | |
| | : | |
| v. | : | Case No. 07- 1532 (EGS) |
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| AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY ANIMALS, <u>et al.</u> | : | |
| | : | |
| Defendants. | : | |
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PLAINTIFF’S DISCOVERY PLAN

Pursuant to the Court’s Limited Scheduling Order (12-09-10) (DE 56) and Fed. R. Civ. P. 26(f)(3), Plaintiff Feld Entertainment, Inc. hereby submits its Discovery Plan.

BACKGROUND

On December 17, 2010, counsel for Plaintiff and Defendants met and conferred about discovery issues pursuant to the Court’s Limited Scheduling Order (12-09-10) (DE 56) and Rule 26(f). At this conference, Plaintiff discussed at length the subjects of discovery which it thought were necessary, specifications for electronic discovery, issues regarding privileges and privilege log requirements, formats for document production, and other discovery issues. Defendants indicated their desire that electronic discovery not go forward. While Defendants also listed some of the subjects of discovery which they thought necessary, they did not express any particular views on electronic discovery format or propose any other discovery specifications, other than to say that electronic discovery was ill-advised at this time and they would make this position known to the Court.

On February 1, 2011, counsel for Plaintiff contacted the lawyer for Defendants who previously had coordinated the defense perspective for the various Defendants to discuss how best to accomplish merging the views of the parties for purposes of submitting a discovery plan, including an identification of which defense counsel would marshal the efforts of all Defendants, by the Court-ordered February 11, 2011 deadline. Defendants never identified such a person, and instead simply requested that Plaintiff provide its version of the discovery plan. Plaintiff was still preparing its plan when, on Tuesday, February 8, 2011, counsel for Defendant sent Plaintiff Defendants' discovery plan. Defendants' "plan", however, was simply a brief reciting the reasons why Defendants believe that no discovery should occur and why Defendants believe that their motion to dismiss should be granted. Defendants made no attempt whatsoever to narrow the areas of disagreement regarding the scope or format for discovery whatsoever. Defendants' position made clear that they had no interest in conducting discovery, much less negotiating a discovery plan. Nevertheless, Plaintiff forwarded its completed discovery plan to defendants on February 9, 2011 for review, and requested that any Defendant who was willing to work with Plaintiff on those discovery plan areas mandated by Rule 26 should make this known to Plaintiff. No Defendant did so. Plaintiff then sent a proposed cover filing to Defendants on February 11, 2011 in order to facilitate the submission of a single filing to the Court and requested the opportunity to see Defendants' discovery plan before it was filed. Defendants responded indicating that they were going to file their own discovery plan separately. Plaintiff renewed its request to review Defendants' proposed plan (rather than a summary of the same), but Defendants ignored that request and simply filed their own proposed discovery plan.

As was expected, Defendants' discovery plan (DE 59) is largely a repetition of the legal arguments why Defendants believe there should be no discovery and why Defendants believe

their motion to dismiss should be granted and why Defendants believe they are above the law. Plaintiff does not believe that the exchange of discovery plans is the appropriate vehicle for such arguments and Defendants' tactics should not be allowed. However, Plaintiff is compelled to respond to Defendants' assertion that a "significant new development" has arisen with Plaintiff's disclosure that the damages it is seeking in the instant case are the attorneys fees and costs it was forced to bear in the Endangered Species Act case (No. 03-2006). Nothing about this is "significant," nor does it warrant some kind of stay of discovery in this case. Attorneys fees that a party incurs in having to defend a case that is the product of racketeering activity are recoverable as damages under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* *Handeen v. Lemaire*, 112 F.3d 1339, 1354 (8th Cir. 1997); *Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1167 (2nd Cir.), *cert. denied*, 510 U.S. 945 (1993); *Bankers Tr. Co. v. Rhodes*, 859 F.2d 1096, 1105 (2nd Cir. 1988), *cert. denied*, 490 U.S. 1007 (1989); *Burger v. Kuimelis*, 325 F. Supp. 2d 1026, 1035 (N.D. Cal. 2004). Furthermore, that there may be routes to recovery of the same sum in addition to RICO is beside the point. Plaintiff is entitled to pursue all avenues of relief. *Malley-Duff & Assoc., Inc. v. Crown Life Ins. Co.*, 792 F.2d 341, 354-55 (3rd Cir. 1986) (attorneys fees incurred in defending a case affected by obstruction of justice were recoverable as damages in later RICO suit even though plaintiff could have sought sanctions in the earlier case; "[w]e must assume that by including obstruction of justice among the RICO predicate acts, Congress envisioned the statute being used, where all other requirements are met, to supplement remedies already available for such conduct"), *aff'd on other grounds*, 483 U.S. 143 (1987). Plaintiff will address such points in detail at the appropriate time when files its responses to the various motions to dismiss on March 4, 2011.

Plaintiff sets forth its Discovery Plan as follows:

- A. Initial Disclosures.** The Court's 12/9/10 Limited Discovery Order required the parties to exchange initial disclosures pursuant to Fed. R. Civ. P 26 (f) (1)-(2) by January 28, 2011.
- B. Subjects On Which Discovery Is Necessary/Timing And Phases For Discovery/Plaintiff's Proposed Areas For Discovery.** The parties conducted their Fed. R. Civ. P. 26(f) conference on December 17, 2010. The respective positions discussed at the conference, and the subsequently exchanged Initial Disclosures and draft discovery plans, have made it clear that the parties hold significantly divergent views as to proposed areas/appropriate subjects for discovery. Consequently, in order to avoid costly and time-consuming discovery disputes at the outset of discovery, Plaintiff believes that the Court should determine at the outset the appropriate scope of discovery so that the parties may reasonably tailor their discovery plan and requests accordingly. After such a determination is made, the parties may confer about additional protocols for conducting such discovery.

Subjects On Which Discovery Is Necessary. Subject to further case investigation, Plaintiff believes that discovery is necessary on the following subjects:¹

1. Payments/financial or other support to Tom Rider, or to any actual or contemplated witness or plaintiff in *ASPCA et al. v. Feld Entertainment, Inc.*, (03-2006-EGS and 00-1641-EGS) ("ESA Action"), made directly to any of these individuals or by or through the Wildlife Advocacy Project ("WAP") and the planning, coordinating dividing, accounting for and/or characterization of any such payment by defendants or any other individual or organization.
2. Monitoring of sums paid to Rider, WAP and/or any ESA Action witness or plaintiff and documentation of expenses and other expenditures regarding same.

¹ Unless otherwise indicated, the relevant time frame for discovery is January 1, 1998 to the present.

3. Decision(s) to start and to stop funding Tom Rider, WAP and/or other ESA Action witnesses.

4. Defendants' grant practices and procedures and recordkeeping/auditing related to same.

5. Authorization and approval for ESA Action Plaintiffs (organizations) to join the ESA Actions as plaintiffs.

6. Evaluation of Tom Rider as an ESA Action plaintiff and credibility of his claims and testimony.

7. Selection process for identifying the defendant in the ESA Action.

8. Plans to use, or use of, ESA Action and Rider for fundraising, legislative activities, media and/or publicity agendas.

9. The impact of the ESA Action on Feld Entertainment, Inc., including but not limited to damages caused by Defendants.

10. Communications with or about Tom Rider.

11. Tom Rider's "media" work, including any legislative meetings or testimony he attended or provided.

12. Defendants' media strategy that is in any way connected to payments to Tom Rider with respect to the ESA Action (from January 1, 1998 through December 30, 2009, unless Defendants will stipulate to a date certain that they ceased paying Rider), including all Rider payments withheld from production in the ESA Action on the grounds of "media strategy".

13. Preservation measures taken by all Defendants.

14. Defendants' document retention and/or destruction policies and practices.

15. Defendants' decisions to use various terms to characterize payments to Tom Rider or WAP including but not limited to "grants", "reimbursement for media work", and payments for "minimal living expenses."

16. WAP activities and records (from its inception to the present) (including but not limited to website, mission statement, purpose, corporate structure, staffing, financials, grant process, meeting minutes, correspondence, registration as a non-profit, tax documents, etc.).

17. Defendants' Form 990 and proper handling of grants and related matters for tax purposes.

18. Creation, maintenance and/or alternation of Defendants' websites.

19. Current and past employment of Tom Rider and reasons for separation from each.

20. Tom Rider's entry into the animal rights' witness network, including but not limited to the retention of Rider as a client of Meyer, Glitzenstein & Crystal.

21. Tom Rider's tax history/issues from 1990 to the present, including but not limited to any tax advice provided to him by any Defendant or arranged by any Defendant.

22. Fundraising/donations, marketing and/or advertising plans, programs or campaigns that refer to or contemplate using the ESA Action to raise funds or to gain media attention or publicity, including proposed plans, strategies, campaigns or programs that were not implemented and what funds were spent on.

23. Excluding any humane law enforcement action by ASPCA that does not involve exotic animals, identification of all litigation from January 1, 1998 to the present, in which each Defendant (a) was a plaintiff, and any civil litigation which each Defendant contemplated, proposed and/or anticipated filing, and (b) was a civil or criminal defendant.

24. Lectures, speeches, interviews or statements given by Tom Rider regarding any subject and for any time period.

25. Organization, ownership structure and formation of Meyer Glitzenstein and Crystal, including but not limited to the Partnership Agreement, corporate formation records, filings with the DC Department of Consumer and Regulatory Affairs, and insurance policies.

26. Meyer Glitzenstein and Crystal tax returns for tax years 2000 through 2009.

27. Individual tax returns of Eric Glitzenstein and Katherine Meyer for tax years 2000 through 2009.

28. Complaints related to Defendants' fundraising, campaigns, tactics or publicity made by members of public, federal, state, or local agencies, or any other organization.

29. Instances in which each Defendant has been investigated by governmental authorities (federal, state, local) concerning fundraising, donations, or tax compliance.

30. Any filing made with the IRS since 2000 that mentions, discloses or refers in any way to payments or grants to Tom Rider, and any documents related to such a filing.

31. The relationship between HSUS and FFA from 2000 to the present, including but not limited to a merger.

32. All information related to the formulation of and the decision to bring the original ESA Action (00-1641) with Tom Rider as a plaintiff, including but not limited to information related to the 60 day Notice letter, the complaint to the USDA, or any other proposed plaintiff including but not limited to Glenn Ewell, James Stehcon, Archele Hundley, Robert Tom or Margaret Tom.

33. Physical hardware (laptops, desktops, PDAs, etc.) of individuals likely to be involved in spoliation issues, including but not limited to Lisa Weisberg and Tom Rider.

34. Communications with any person listed on the witness lists of the trial of the ESA Action and any payments or financial support to same.

35. Communications with PETA about the ESA Action, including but not limited to any disclosed or proposed ESA Action witness or plaintiff, Tom Rider, Robert Tom, Margaret Tom, Frank Hagan, Gerald Ramos or Archele Hundley.

36. Communications with Animal Defenders, Animal Defenders International, Last Chance for Animals for In Defense of Animals about the ESA Action or Tom Rider.

37. Previous drafts and versions of selected discovery responses in the ESA Action (specific requests to be identified).

When Discovery Should Be Completed. As the Court has entered a Limited Scheduling Order that allows for limited discovery only through the resolution of the Defendants' Motion to Dismiss, Plaintiff submits that it is premature to select a date by which all of fact discovery should be completed at this time.

Phases of Discovery. Other than establishing separate scheduling for fact and expert discovery, Plaintiff does not anticipate the need for separate discovery phases.

C. Issues Regarding Electronically Stored Information ("ESI")

Plaintiff believes that discovery of electronically stored information will be necessary. Plaintiff therefore proposes the following electronic discovery production format, applicable to all parties:

Form of Production.

1. Custodial Documents

The parties agree that custodial documents will be exchanged in the following proposed electronic format:

Paper Documents²

Hard copy (paper) documents will be scanned and produced electronically as Group IV single page TIFF images, 300 DPI, named the same as their Beginning Bates number. To the extent an image is illegible or difficult to read, a party propounding the request (Requesting Party) may ask to see the original document. Each TIFF should be endorsed with a unique document identifier (*i.e.*, Bates Label).

Machine generated OCR created from scanned images of hard copy documents will be provided at a document level. There will be one text file per document, named the same as the beginning Bates number (Document ID) of the document. The OCR text file for a document will reside in the same location (file directory) as the images for that document. The text file associated with any redacted document will exclude redacted text.

If a document is more than one page, to the extent possible, the unitization of the document and any attachments or affixed notes should be maintained as it existed when collected by the producing party. Parties may unitize their documents using either physical unitization (*i.e.*, based on physical binding or organizational elements present with the original paper documents like staples, clips and binder inserts) or logical unitization (*i.e.*, a manual review of the paper to determine what logically constitutes a document like page numbers or headers). If unitization cannot be maintained, the original unitization should be documented in the data load file or otherwise electronically tracked.

² Should the production of any paper document previously produced in *ASPCA et al. v. Feld Entertainment, Inc.* (00-1641-EGS or 03-2006-EGS) be required, the parties agree that such documents need not be re-produced, but should instead be identified by Bates number (unless documents were not Bates labeled or otherwise readily identifiable, and in such cases, must be specifically identified). Any other item that previously was made available for inspection or copying in the ESA Action shall not be made available for inspection or copying in this litigation.

Unstructured ESI (e.g. e-mail, Word, Excel, PowerPoint)

Unstructured ESI also will be produced as Group IV single page TIFF images, 300 DPI, named the same as their Beginning Bates number. Each TIFF should be endorsed with a unique document identifier (*i.e.*, Bates Label). However, the parties agree that the parties will produce specific documents in native format when requested with particularity.

Extracted text taken from native files will be provided at a document level. There will be one text file per document, named the same as the beginning Bates number (Document ID) of the document. The extracted text file for a document will reside in the same location (file directory) as the images for that document. The text file associated with any redacted document will exclude redacted text (*i.e.* the Producing Party can OCR the redacted image of the unstructured ESI and replace the original extracted text).

The following metadata fields associated with emails, attachments and non-email custodial ESI will be exchanged: Subject / Re: Line (Email), File Name (Non-Email), Sent Date (Email), Received Date (Email), Created Date (All Electronic File Types), Modified Date (All Electronic File Types), Author (All Electronic File Types), Recipient (Email), Copyee (Email) and BCC (Email). Metadata will be provided in a flat file (.txt or .dat) using standard Concordance delimiters. Each line will begin with the fields Beg Bates and End Bates.

To the extent a custodial document has hidden comments, speaker notes, or columns or other embedded data, the parties agree this data should be legible and produced in such a way as to understand its context and not block other text or data.

Additional Specifications for All Custodial Documents (Paper and Unstructured ESI)

a. Load Files

For all produced paper and unstructured ESI, a standard Opticon image load file indicating document boundaries and location of images will accompany the images. The fields should include Bates ID, CD Name, Path\Tiff Name, DocBreak and Document. The following fields will be provided for all custodial documents in the production: Begin Bates, End Bates, Begin/End Attachment, Parent/Child ID, custodian and Confidentiality (see below).

When producing a multi-page document, images for the document should not span multiple directories. In addition, parties responding to a request (Producing Parties) should not include more than 1,000 images in a single directory unless a document is more than 1,000 pages.

b. Black and White

Generally speaking, Custodial Documents can be produced in black and white. However, if an original document contains color and is incomprehensible without color, the party producing the document should, upon request, produce the document in color to assist the party requesting the document in understanding the document. The Parties expect that there will be few instances in which such requests will be necessary and such requests should not unreasonably be denied by the Producing Party. Production of color images will be in JPEG format.

c. Bates Labeling

For Custodial Documents, the Producing Party should electronically “burn” a legible, unique Bates number onto each page at a location that does not obliterate, conceal or interfere with any information from the source document. Each Producing Party should use unique Bates

Labels to identify its images and documents. A Bates Label should begin with at least three alphabetical characters and followed by at least seven numbers (e.g. ABC0000001 or ACME00000023 or JUPITER0000004).

d. Redactions

For Custodial Documents, if the Producing Party is redacting information from a page, the Producing Party should electronically “burn” the word “Redacted” onto the page at or reasonably near the location of the redaction(s). If the Producing Party redacts a document, it may withhold from the document’s Load File only the metadata directly associated with the redaction. The reason for each redaction must be disclosed in the appropriate privilege log.

e. TIFF Filename Convention

The file name for each TIFF image should correspond to the Bates Label for that Image (e.g. ABC0000009 would be ABC0000009.tif).

f. Attachments

To the extent any Custodial Document has a relationship to another Custodial Document (such as an attachment to e-mail, exhibit to a memo, embedded file, or an appendix to a report), that relationship should be preserved and produced using the Begin Attach and End Attach fields in the Load File discussed above.

g. Organization of Production³

To the extent a Producing Party organizes its production of Custodial Documents as it is kept in the ordinary course of business (rather than by document request), Producing Party should scan and produce folders, redwells, binder-covers and other organizational structure. Such materials should be produced as independent documents and be produced before the

³ The “Organization of Production” section applies only to documents produced in the instant matter and does not apply to prior productions of documents made in the ESA Action.

documents that were contained in these elements (e.g. the file folder should have a Bates Label immediately before the documents contained in the file folder). The Producing Party also will provide the name of the custodian who had possession of the document when it was collected.

h. Confidentiality

If the Producing Party is producing a Custodial Document subject to a claim that it is protected from disclosure under any protective or confidentiality order or agreement entered issued in this matter or other order of the Court, the Producing Party should electronically “burn” the word “CONFIDENTIAL INFORMATION” onto each page of the document. The Producing Party should also include in the Load File a designation that the document is protected and the level of protection, as required by any protective order or agreement.

2. Structured Data (e.g. databases)

If data from structured data systems (e.g. databases) is responsive to particular requests, the parties agree that the responding party will notify the requesting party of its intended production format prior to the actual production and the parties will discuss in good faith the most reasonable production format for the particular information. Where possible, relevant and responsive information from databases will be either produced in standard (a/k/a canned) reports or as pipe-delimited ASCII format with the first row including data field headings/names.

Necessity for Forensic Analysis. Plaintiff believes that forensic analysis of certain of Defendants’ or its custodians’ computers, hardware, portable hard drives, or other portable media may be necessary to recover documents. Plaintiff submits that the parties should confer and submit to the Court a protocol for inspection, review, analysis and cost-sharing for such tasks.

Additional Discovery Protocols. The parties have not yet addressed every aspect of a discovery protocol and therefore Plaintiff proposes that after the subjects on which discovery

may be needed are clarified by the Court, the parties agree to continue their dialogue and develop additional protocol that may assist in narrowing the scope of discovery and/or reducing its cost or burden including, potentially, a protocol for the development and calibration of selection criteria and the use of global de-duplication.

D. Claims of Privilege / Protection.

1. Waiver issues. Plaintiff anticipates that this case will require the Court to analyze whether certain of Defendants' privileges and/or protections have been waived or no longer apply, including but not limited to the crime/fraud exception to the attorney-client privilege and/or work product protection, claims of protection made pursuant to "media strategy" or the First Amendment to the United States Constitution.

2. Privilege log requirements. Plaintiff proposes that the following privileged documents and electronically stored information ("privileged material") need not be logged, indexed or produced: (a) privileged material generated or maintained by counsel of record in this matter and their associated attorneys and support staff, including paralegal and secretarial personnel, from January 1, 2010 to the present, from the following law firms only: Wilson, Elser, Moskowitz, Edelman & Dicker LLP, Ropes & Gray LLP, Morgan Lewis & Bockius, LLP, Patterson Belknap Webb & Tyler, LLP, Shertler & Onorato, LLP, Wilmer Cutler Pickering Hale & Dorr, LLP, and DiMuro Ginsburg, PC; (b) privileged material generated or maintained by counsel of record in this matter and their associated attorneys and support staff, including paralegal and secretarial personnel, from Fulbright & Jaworski LLP. Plaintiff submits that the parties should agree to confer at a later time to determine whether any other categories of privileged documents can be excluded from the logging requirement. Notwithstanding the above stipulation, all privileged material should be preserved in the event of a later dispute.

Documents withheld from production that a party believes are covered by an attorney-client privilege and/or work product protection, which do not fall into the categories specifically excluded above, should be logged on a privilege log on a document-by-document basis. The following information should be provided (as applicable) in the privilege log for each document: (1) Document identification number; (2) document type; (3) document length/file size; (4) attachments; (5) date; (6) author; (7) recipient(s); (8) copyee(s); (9) privilege or protection claimed; and (10) description of the document including information sufficient to establish the elements of each asserted privilege. For those documents that contain a series of e-mail communications in a single document (“email string”), reference to the document as an “email string” should be made in the document description field. All recipients on embedded email communications (or parts of the “string”) must be identified in the recipient field so that the privilege claim may adequately be assessed. Email strings that are not privileged in their entirety should be redacted, the redaction labeled to reflect the nature of the privilege; the redactions logged; and the non-privileged portions produced. All counsel or their employees (or direct reports for in-house counsel) shall be identified as such in the privilege log. Further, any non-party or counsel shall also be identified as such in the privilege log.

3. Return of inadvertently produced privileged documents.

Plaintiff proposes the following: If information subject to a claim of attorney-client privilege or work product immunity or any other privilege or immunity is inadvertently or mistakenly produced for the first time in this litigation (07-1532-EGS), such production shall in no way prejudice or otherwise constitute a waiver of, or estoppels as to, any claim of privilege or work-product immunity for the inadvertently produced document or any other document covering the same or a similar subject matter under applicable law, including Federal Rule of

Evidence 502. The parties agree that (1) absent exceptional circumstances, a statement by a party that a production was inadvertent shall be dispositive; (2) they are all taking reasonable steps to prevent disclosure of privileged material; and (3) that a party took prompt steps to rectify the inadvertent production if they notify the recipient within (14) calendar days of learning of the inadvertent production. If a Producing Party has inadvertently or mistakenly produced Information subject to a claim of immunity or privilege, and if the Producing Party makes a written request for the return of such Information, the Information for which a claim of inadvertent production is made (including any analyses, memoranda or notes which were internally generated based upon such inadvertently-produced Information), as well as all copies, shall be either sequestered or returned within five (5) business days regardless of whether the Receiving Party disputes the claim of privilege. The Producing Party will provide sufficient information to the Receiving Party regarding the asserted privilege(s), in the form of a privilege log. If the Receiving Party disputes the Producing Party's assertion of privilege, the Receiving Party may move the Court for an order compelling production of the material but such motion shall not assert the fact or circumstance of the inadvertent production as a grounds for entering such an order. Subject to the Court's direction, resolution of the issue may include the Court's review of the potentially privileged Information *in camera*. Notwithstanding this agreement, no party will be prevented from moving the Court for an order compelling the production of documents for which the privilege has been waived pursuant to, *inter alia*, the crime-fraud exception or for which a claim of protection is inapplicable or no longer applies.

Pursuant to Fed. R. Civ. P. 26 (f)(3)(D), the parties request that the protocol for return of inadvertently produced privileged documents, stated herein, be incorporated into an order of the Court.

E. Limitations on Discovery. Because of the complexity of the case and the potential number of witnesses, Plaintiff believes that the presumptive limits on discovery as stated in the Federal Rules of Civil Procedure shall be modified as stated. Therefore, plaintiff submits that the limitations on discovery should be as follows:

1. Depositions.⁴ Due to the complexity of the case and potential number of witnesses, plaintiff believes that the presumptive limits on 10 depositions as stated in the Federal Rules of Civil Procedure should not apply. Plaintiff submits the following limits on depositions: Plaintiff shall be entitled to take 40 fact depositions. Defendants collectively shall be entitled to take 40 fact depositions. If any party believes that additional depositions are necessary, the parties should to meet and assess whether additional fact depositions are necessary and reasonable. Each deposition other than that of a party shall be limited to one day of 7 hours unless extended by agreement of the parties or order of the Court. Depositions of a party (either of an individual or of an organization pursuant to Fed. R. Civ. P. 30(b)(6)) shall be limited to two days and 14 hours unless extended by agreement of the parties or order of the Court. Absent an order from the Court, an individual or organization shall only be deposed once in connection with this case, with the exception that an individual designated as a Fed. R. Civ. P. 30(b)(6) witness may separately be noticed for deposition in his or her individual capacity, and will be subject to the same time limits stated herein. Any party seeking to depose a deponent noticed for deposition shall file a cross notice of deposition indicating the party's desire to attend the originally-scheduled deposition and participate in same.

The parties shall use reasonable efforts to schedule depositions for mutually agreeable dates and times and, if possible, set a deposition schedule by agreement in advance. Depositions

⁴ While not specifically called for by the 12/9/10 Limited Scheduling Order, Plaintiff hereby submits its views on deposition discovery for the convenience of the Court.

must be noticed a minimum of 14 days in advance of the deposition date. The parties may not use scheduling conflicts to unduly delay a deposition or interfere with the order of discovery. In the event of a scheduling conflict, the parties should use reasonable efforts to reach a mutually agreeable date. If the parties are unable to do so, the date of the deposition may proceed subject to the availability of the witness and the attorney noticing the deposition. Nothing in this order shall prevent a party from seeking a court order regarding depositions in the event that scheduling cannot be mutually agreed upon. The parties agree that counsel may attend depositions by telephone or similar remote-access device, and the party or parties attending by telephone or similar remote-access device shall be responsible for setting up their own dial-in information or access in advance of the deposition for use during the same. A party foregoing participation in a properly noticed deposition may not depose that same individual or organization at a later date, except by agreement of the parties or order of the Court.

2. Interrogatories. Plaintiff believes the following limits on interrogatories should be imposed: Defendants shall collectively have the ability to serve no more than 85 interrogatories against Plaintiff. Plaintiff shall have the ability to serve no more than 85 interrogatories. Twenty (20) of those 85 interrogatories will be considered to be “common interrogatories” which each Defendant must answer, and this will only be counted as a single interrogatory against Plaintiff’s total. Plaintiff’s remaining 65 interrogatories may be divided among the Defendants as Plaintiff elects.

3. Requests for Admissions.

Plaintiffs submit that Rule 36 shall govern requests for admission in this matter.

4. Document Requests.

Plaintiff believes that Fed. R. Civ. P. 34 shall govern requests for production of documents, with the following stated exceptions. For electronically stored information, the parties shall produce such information in accordance with the protocols set forth herein ("Form of Production"). Should the production of any information previously produced in *ASPCA et al. v. Feld Entertainment, Inc.* (00-1641-EGS or 03-2006-EGS) be required, the parties agree that such documents need not be re-produced again, but should instead be identified by Bates number or, in the event such documents were previously produced without a Bates number, by specific information that makes them readily identifiable. Plaintiffs believe that the parties should agree to confer in advance prior to seeking the production of unredacted versions of documents that previously were only produced in redacted form in *ASPCA et al. v. Feld Entertainment, Inc.* (00-1641-EGS or 03-2006-EGS). If such redactions are claimed to be privileged or otherwise protected from disclosure, the redacted material must be logged in accordance with the privilege requirements stated herein.

F. Other Matters.

Protective and Confidentiality Order(s). Plaintiff believes that the Court should enter a Protective and Confidentiality Order and shall confer and submit a proposed order to the Court.

Dated: February 11, 2011

Respectfully submitted,

/s/ John M. Simpson
John M. Simpson (D.C. Bar #256412)
jsimpson@fulbright.com
Richard C. Smith (D.C. Bar #498177)
rcsmith@fulbright.com
Michelle C. Pardo (D.C. Bar #456004)
mpardo@fulbright.com
FULBRIGHT & JAWORSKI L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 662-0200
Facsimile: (202) 662-4643
Counsel for Plaintiff Feld Entertainment, Inc.