UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**Civ. No. 07-1532 (EGS)**
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, *et al.*,	)	
	)	
Defendants.	)	

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE SECTION III OF PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants Jonathan Lovvorn and Kimberly Ockene submit this Reply to plaintiff's Opposition to the Motion To Strike ("Opp."):

1. Plaintiff acknowledges that Section III of its Notice of Supplemental Authority is intended to rebut arguments made in Mr. Lovvorn and Ms. Ockene's reply brief on their Motion To Dismiss. *See* Opp. at 2 ("FEI's citations respond to arguments made for the first time in Lovvorn and Ockene's Reply brief"). In other words, plaintiff admits it used its Notice of Supplemental Authority as a sur-reply. This plainly was not permitted by the Court's June 24, 2011 Order, or the rules of this Court.

2. Plaintiff's contention that the cases it cites in Section III of its Notice were cited at oral argument or in plaintiff's previous notice of supplemental authority – which the Court struck – is not an argument that the Notice complies with the Court's June 24 Order. If anything, the fact that these cases were cited at oral argument highlights the impropriety of incorporating them into a Notice of *Supplemental* Authority.

3. Plaintiff's assertion that the cases cited in Section III of its Notice are "dispositive" so dilutes the concept of "dispositive" as to make it meaningless. The cases cited

include decades-old cases from district courts outside of this Circuit which are not binding on this Court. If the Court meant "arguably relevant" instead of "dispositive," it would have used that phrase. *See* Opp. at 3 (arguing the cases cited are "dispositive" because they are "on point"). In keeping with the Court's Order, Lovvorn and Ockene will not rebut these flawed cites. The Complaint is what is at issue, and the allegations as to these defendants have already been demonstrated to be manifestly inadequate.[1/]

Conclusion

The motion to strike Section III of plaintiff's Notice of Supplemental Authority should be granted.

Respectfully submitted,

/s/ Andrew B. Weissman
Andrew Weissman, D.C. Bar No. 245720
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000 (telephone)
(202) 663-6363 (facsimile)
andrew.weissman@wilmerhale.com

Counsel for Jonathan Lovvorn and Kimberly Ockene

July 11, 2011

[1/] For all of the reasons stated in Mr. Lovvorn and Ms. Ockene's reply brief on their motion to dismiss, and despite plaintiff's constant inflammatory rhetoric, *plaintiff did not plead any facts in the Complaint supporting the plausible inference that Lovvorn and Ockene were general partners at their former law firm*, notwithstanding plaintiff's revisionist contention that it intended to assert such a claim from the outset (Opp. at 2). Nor can plaintiff's hyperbolic references to an alleged "multitude of predicate acts" (Opp. at 3) change the fact that the Complaint fails to plead any facts *as to these defendants* that provide a plausible inference that they committed any RICO predicate crimes.

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ORDER

This matter came before the Court upon the Motion of Defendants Jonathan Lovvorn and Kimberly Ockene to Strike Section III of Plaintiff's Notice of Supplemental Authority (07-05-11) (DE 79). Upon consideration of the motion, the opposition and the reply, it is hereby

ORDERED that the motion is granted, and the Court strikes Section III of plaintiff's Notice of Supplemental Authority.

SO ORDERED.

Signed: _____
Emmet G. Sullivan
United States District Judge

July __, 2011