

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(NORFOLK DIVISION)

FELD ENTERTAINMENT, INC.,

PLAINTIFF

V.

PEOPLE FOR THE ETHICAL

TREATMENT OF ANIMALS,

DEFENDANT

CASE NO. 2:08MC00004

PROTECTIVE ORDER

On January 28, 2008, Plaintiff, FELD Entertainment, Inc., ("FEI") moved this Court pursuant to Fed. R. Civ. P. 45(C)(2)(B) to compel production of documents subpoenaed from Defendant, People for The Ethical Treatment of Animals ("PeTA"). The subpoena was issued out of litigation pending in the District of Columbia, captioned as *ASPCA, et al. v. Ringling Bros., et al.* Civil Action No. 03-2006 (D.D.C.-EGS-JMP), and which was previously captioned as *ASPCA et al. v. Ringling Bros., et al.* Civil Action No. 00-1641 (D.D.C.) (hereinafter referred to as the "D.C. Litigation"). After hearing oral argument and reviewing briefs submitted in support and opposition, the Court modified the subpoena and PeTA was ordered by this Court to produce certain documents, photographs, and videotapes (in differing formats such as DVD, mini-cassette, computer harddrive, Beta, VHS etc. . .) to FEI. Further, the Court ruled from the bench on April 8, 2008, that the protective order entered by the court in the D.C. Litigation on September 25, 2007, covers PeTA's production and shall be incorporated for these proceedings. Thereafter, during the production of PeTA's materials to FEI, it was brought to the Court's

attention certain portions of the videotapes were considered non-responsive by PeTA to the request as amended by the Court's Order of July 22, 2008 compelling production and Order of the District Court entered on September 8, 2008 clarifying its Order of July 22, 2008. FEI moved the Court to require PeTA to provide the portions of videotape PeTA had withheld as non-responsive, and a hearing was held on September 23, 2008. PeTA argued it was prejudicial and that FEI intends to use the information outside the context of the D.C. Litigation. Upon hearing argument of counsel for both parties and to protect PeTA's privacy and other interests and the privacy interests of persons working on behalf of PeTA while providing FEI an opportunity to review and/or copy these videotapes, it is hereby Ordered that PeTA shall provide for review all portions of videotape previously redacted as non-responsive to the request as modified by the Court's Orders of July 22 and September 8, 2008 and that this Protective Order is entered to protect the privacy and other interests of PeTA, its employees, and volunteers regarding all documents, photographs, videotapes, information, and material provided in response to FEI's subpoena or this Court's Order of July 22 and the District Court's Order of September 8, 2008.

It is therefore ORDERED that all documents, photographs, videotapes, information, and materials disclosed, furnished, or submitted, by or on behalf of PeTA to FEI in any manner in response to the subpoena FEI served on PeTA or the Court's Orders of July 22 and September 8, 2008, shall be used solely in connection with pre-trial proceedings, preparation for trial, trial, or other proceedings in the D.C. Litigation, and for no other use or purpose. The Court prohibits this information to be copied and used to harass individuals, to facilitate midnight phone calls, or for publishing an individual's information broadly and widely on the internet. The Court

prohibits the use of these recordings in a way that is unfair or untoward, such as splicing together different clips for the purpose of embarrassment. The Court specifically rules that:

i. All documents, photographs, videotapes, information, and material disclosed, furnished, or submitted, by or on behalf of PeTA to FEI under subpoena or by order of this Court shall be used solely for the purpose of the D.C. Litigation and shall not be communicated in any manner, verbal or otherwise, to anyone other than a person qualified to receive such documents, photographs, videotapes, information, and material under the terms of this Order. Persons qualified under this Order, and the persons and entities for whom they work who are qualified to view, in any way, documents, photographs, videotapes, information, and materials provided by PeTA, shall be held to a strict liability standard as to this provision.

ii. Access to the documents, photographs, videotapes, information, and materials provided by PeTA to FEI in response to FEI's subpoena or this Court's order ("Qualified Persons") shall be restricted to the following individuals and only to the extent necessary to perform specific required tasks which are part of the D.C. Litigation:

- a. the attorneys in the law firms appearing in this action or in the D.C. Litigation and personnel who are employees of those firms and are assisting the attorneys working on this action or the D.C. litigation;
- b. those officers, directors, and employees of FEI, potential witnesses, and other parties whose assistance is required in the preparation of the D.C. Litigation and who must have access to the documents, photographs, videotapes, information, or materials to render such assistance;
- c. experts or consultants retained in connection with the D.C. Litigation;

- d. the Court and Court personnel, including stenographic reporters engaged in such proceedings as are necessarily incident to the preparation or trial of the D.C. Litigation; and
- e. such other persons as the parties shall agree to in writing, or the Court shall determine.

iii. Each Qualified Person described in subparagraphs (a), (b), (c) or (e) of the preceding paragraph to whom protected documents, photographs, videotapes, information, or materials are to be furnished, shown, or disclosed shall be presented by the disclosing party with a copy of this Protective Order and required to sign an Acknowledgement and Nondisclosure Agreement. The language of the Acknowledgement and Nondisclosure Agreement shall be as follows:

ACKNOWLEDGEMENT AND NONDISCLOSURE AGREEMENT

I hereby certify my understanding that documents, photographs, videotapes, information, and material produced to Feld Entertainment, Inc. ("FEI") in the above-captioned case by People for the Ethical Treatment of Animals ("PeTA"), is being provided to me pursuant to the terms and restrictions of the Protective Order entered in this action by the United States District Court of the District for the Eastern District of Virginia, Norfolk Division on September ____, 2008 (the "Order") as well as the Protective Order entered in the D.C. Litigation on September 25, 2007. I have read and understand the terms of the Orders, I agree to be fully bound by them, and I hereby submit to the jurisdiction of the United States District Court for the Eastern District of Virginia, Norfolk Division for purposes of enforcement of the Orders.

I understand that a violation of this undertaking is punishable as contempt of Court.

Dated: _____

Signature: _____

Print _____

Copies of executed Acknowledgement and Nondisclosure Agreements shall be furnished to PeTA upon execution, but in the case of testifying expert witnesses or lay witness the agreement need not be furnished until the expert and/or lay witness is identified in response to discovery, and in the case of non-testifying expert witnesses the agreements need not be furnished until the end of the trial of this matter. No document or information produced by PeTA to FEI in this litigation shall be produced or disclosed to any other person in connection with this litigation unless that person falls within the class of persons described in paragraph 4 (a-e) and agrees to be bound by the terms of this Protective Order and the Protective Order entered in the D.C. Litigation. All such persons shall be bound by the terms of both Protective Orders, and shall not permit disclosure of the documents or the information contained therein other than pursuant to the terms of the Orders. Court personnel shall be bound by the terms of this Order without the need for signing an Acknowledgement and Nondisclosure Agreement.

iv. FEI shall seek to have all parties to the D.C. Litigation, whether presently a party or hereafter added, agree to be bound by the terms of this Protective Order. Those other parties shall become bound by the terms of this Order by signing an Acknowledgement and Nondisclosure Agreement in the form set forth above.. Upon signing that Acknowledgement and Nondisclosure Agreement, a party shall be bound by the terms of this order to the same extent as FEI. No document, photograph, videotape or materials produced by PeTA to FEI shall be produced to any other party in the D.C. Litigation litigation unless that party agrees to be bound by the terms of this Protective Order and signs a Acknowledgement and Nondisclosure Agreement.

v. Within ninety (90) days after the final disposition of this case, (whether by judgment, settlement, appeal or otherwise), FEI shall assemble and return to PeTA all protected documents, photographs, videotapes, information, and materials, including all copies thereof (but not including copies containing notes or other attorney's work product that may have been placed thereon by counsel for plaintiff). All copies containing notes or other attorneys' work product shall be destroyed within ninety (90) days of the final resolution of this action, at which time counsel for FEI shall confirm in writing to counsel for PeTA that such destruction has occurred. FEI and its counsel are responsible for the assembly and return of all protected material which were provided to other persons pursuant to the Acknowledgement and Nondisclosure Agreement.

9. Upon settlement, final judgment, expiration of the time for appeal, or completion of all appellate and remand or retrial proceedings, all copies of documents, photographs, videotapes, information, and materials protected under this order and produced into evidence in D.C. Litigation shall be withdrawn from evidence and returned to PeTA; it is the obligation of FEI's counsel to diligently pursue withdrawal and return.

10. PeTA or FEI may apply to the Court for a modification of this Order, and nothing in the Order shall be deemed to prejudice their rights to seek modification. Any person or entity who is determined to be in violation of this Protective Order shall be held in contempt of this Court.

11. Nothing in this Protective Order withdraws, diminishes, or renders ineffective or superceded the continuing application of the Protective Order from the D.C. Litigation, as imposed on the parties to this litigation at the April 8, 2008 hearing in this litigation.

Acknowledgement and Nondisclosure Agreement

ENTERED this ____ day of September, 2008.

United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following:

Christopher A. Abel, Esq.
Dawn L. Serafine, Esq.
TROUTMAN SANDERS, LLP
150 West Main Street
Norfolk, Virginia 23510
e-mail: chris.abel@troutmansanders.com
dawn.serafine@troutmansanders.com

Counsel for Plaintiff Feld Entertainment, Inc.

And I hereby certify that I will mail the document by U.S. Mail to the following non-filing user:

Lisa Zeiler Joiner, Esquire
George Gasper, Esquire
FULBRIGHT & JAWORSKI, LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Of Counsel for Plaintiff Feld Entertainment, Inc.

 /s/
J. Bryan Plumlee, Esq.
Virginia State Bar No. 44444
Counsel for Defendant
HUFF, POOLE & MAHONEY, P.C.
4705 Columbus Street
Virginia Beach, Virginia 23462
Phone: (757) 499-1841
Fax: (757) 552-6016
bplumlee@hpmlaw.com

PHILIP J. HIRSCHKOP
Virginia State Bar No. 04929
HIRSCHKOP & ASSOCIATES, P.C.
908 King Street, Suite 200
Alexandria, Virginia 22314
Phone: (703) 836-6595
Fax: (703) 548-3181
hirschkoplaw@aol.com
Counsel for Defendant