

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Norfolk Division)**

FELD ENTERTAINMENT, INC.,	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2:2008mc00004
	:	
PEOPLE FOR THE ETHICAL TREATMENT	:	
OF ANIMALS,	:	
	:	
Defendant	:	

**MOTION FOR PROTECTIVE ORDER
TO TRANSFER THIS MATTER TO THE DISTRICT OF COLUMBIA,
OR TO STAY THE MATTER**

COMES NOW People for the Ethical Treatment of Animals (“PeTA”), in response to the special action filed herein by Feld Entertainment, Inc. (“FEI”), and in support of this motion states as follows:

1. The subpoena at issue in this matter stems from a case that has been pending for several years in the United States District Court for the District of Columbia (*ASPCA, et al. v. Ringling Bros., etc., et al.*, Civil Action No. 03-2006 (EGS/JMF) (the “D.C. litigation”). Discovery in that case has been ordered closed on January 30, 2008 after years of extensive discovery. The D.C. litigation has been assigned to The Honorable Emmet G. Sullivan, with much of the discovery assigned to Magistrate Judge John M. Facciola. As set forth in the attached Motion for Protective Order, *infra*, filed in the D.C. litigation (Exhibit 1, without attachments), the requests in the subpoena that FEI seeks to be enforced here are in direct violation of a number of rulings of the United States District Court for the District of Columbia (the trial court) and in violation of the scheduling order terminating discovery in that case. This

Court is being asked to overrule or contradict rulings of the trial court, which has considered this matter for years through motions to amend, add parties, add counterclaims, for sanctions, for summary judgment, etc., the staying of a companion RICO lawsuit by FEI, and numerous discovery hearings before the two assigned judges. The docket sheet, current through February 11, 2008, is attached as Exhibit 2 and Exhibit 2a.

2. PeTA has offered to submit itself to the jurisdiction of that Court so there might be uniform rulings and those judges could interpret their own orders. FEI, in its inappropriate attempt to judge shop and to get this Court to rule differently than the trial court, has refused that process. Just so it is clear – PeTA does agree to the jurisdiction of the United States District Court for the District of Columbia and has already accepted one other subpoena from that Court on which there will be a hearing soon on a Motion to Compel production.

3. The background bringing the matter before this Court is set forth in a motion for a protective order, filed in the United States District Court for the District of Columbia, to quash the subpoena in question in this matter, or to rule on the validity of various requests in the subpoena. That motion is attached as Exhibit 1 and is adopted as if fully set forth herein. It lays out a full chronology of events between the parties.

4. It is PeTA's position that it has fully complied with the subpoena, within the rulings of the trial court. Regardless, this matter is not timely and is barred by the order terminating discovery by the trial court. PeTA understands that the present posture in the D.C. litigation is that discovery was cut off as of January 30, 2008. The subpoena in question issued on September 20, 2007, and was accepted by PeTA on September 21, 2007. Counsel for PeTA called FEI's counsel within one week and timely filed objections on October 10, 2007. FEI did

not respond to the objections for five weeks, until after the close of business on November 15, 2007, just four business days before the Thanksgiving holiday. PetA's counsel contacted FEI's counsel on November 20, 2007 and then called again and had a lengthy discussion on December 5, 2007. PeTA's counsel reviewed the entire subpoena with FEI's counsel and gave specific information on a number of requests from the subpoena, particularly as to the relation with PeTA of each of the seven specifically enumerated witnesses about whom documents were sought and the breadth and nature of documents that PeTA might have.

5. Thereafter, on December 14 and December 17, 2007, PeTA made extensive production, exceeding the scope of what was previously ordered against other parties by the Court in the D.C. litigation. There was further communication in December between PeTA and FEI, as FEI's counsel insisted that FEI wanted every document PeTA had regarding any FEI or Ringling employee and any video PeTA made, in a period covering over a decade, of any animal of any circus, etc. The requests were outrageously in violation of rulings of the United States District Court for the District of Columbia, which is why we now find ourselves in Norfolk. PeTA made plain it would oppose such requests. PeTA last heard from FEI on December 18, 2007. FEI then waited six weeks, until January 28, 2008 (two days before the discovery cutoff), to file this action.

6. PeTA has filed a Motion for a Protective Order in the trial court in the District of Columbia and requested that the issue be expedited. That is the proper procedure in the District of Columbia as set forth by the United States Court of Appeals for the District of Columbia. In the Fourth Circuit, however, a number of district courts have differently interpreted Rule 45 allowing transfer to the trial court to preserve the consistency of rulings. This is fully briefed in

the attached Points and Authorities. Accordingly, this motion for a protective order is being filed requesting that this Court transfer this matter to the District of Columbia or, if it should not see fit to do so, that it stay the matter pending rulings by the trial court in the District of Columbia on the motion for a protective order (*see* Exhibit 1) previously filed with the District of Columbia. A stay would give this Court guidance of the trial court and not have one court disrupting the trial and discovery in another court in a case not before this court.

WHEREFORE, PeTA requests the Court transfer this matter to the United States District Court for District of Columbia or stay this proceeding pending a ruling from the District of Columbia.

Respectfully submitted,

By _____ /s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of February, 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:

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

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