UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, et al.,	:	
Plaintiffs,	:	
v.	:	**Case No. 1:03-CV-02006 (EGS/JMF)**
RINGLING BROS. AND BARNUM & BAILEY CIRCUS, et al.,	:	
Defendants.	:	

FELD ENTERTAINMENT, INC.'S
RESPONSE IN OPPOSITION TO PLAINTIFF TOM RIDER'S MOTION FOR A PROTECTIVE ORDER TO PROTECT HIS PERSONAL PRIVACY

On October 12, 2006, Plaintiffs' counsel precipitously instructed their client, Tom Rider, at his deposition not to answer any questions regarding: his participation as a party in prior litigation (to which he had already perjured himself in his interrogatory answers), see also Interrogatory No. 7 & Response thereto (attached hereto as Exhibit 1); his service in the military (including whether he was a deserter and confined for it), see id. at Interrogatory No. 2 & Response thereto; and his arrest record (including any convictions for misdemeanors), see id. at Interrogatory No. 6.[1]

Plaintiffs' counsel apparently thought that their obstructionist behavior would be the end of the matter. See Plaintiff Tom Rider's Opposition to Defendant's Motion to Compel at 2, 10 (11/13/06) ("Opposition") (claiming they had no idea that FEI was serious about the questions

[1] Relevant excerpts from Rider's October 12, 2006 deposition transcript ("Rider Depo.") are attached hereto as Exhibit 2. The instructions not to answer regarding prior civil litigation were given at Rider Depo. at 165:14-167:22. The instructions not to answer regarding Rider's military service were given at Rider Depo. at 156:21-158:22, 159:6-160:16, 162:21-163:12, 233:6-234:4. The instructions not to answer regarding Rider's arrest and conviction record were given at Rider Depo. at 163:13-21, 164:2-8.

asked during its cross-examination and that their conduct was excusable because prior likekind transgressions have gone unchallenged).[2] After FEI called plaintiffs' counsel out on their improper instructions not to answer, see Plaintiff Tom Rider's Motion for Protective Order to Protect His Personal Privacy at Ex. D (11/13/06) ("Motion"), plaintiffs' counsel still failed to recognize their obligation under Federal Rule of Civil Procedure 30. Instead, they attempted to negotiate the terms as to what Mr. Rider would answer, when he would do so, and how he would do so. id. at Ex. E. (proposing that, of the pending questions Rider would now agree to answer, FEI should wait until such time as FEI deposes Rider). Plaintiffs concluded by pronouncing that "In view of our willingness to work out the terms of a protective order concerning several of the matters addressed in your letter, and the fact that defendants are not yet ready to take Mr. Rider's deposition, there should be no reason for defendants to file a motion to compel over these matters." Id. The suggested approach sought to delay the matter indefinitely and avoid Court resolution, which is inconsistent with plaintiffs' obligations under Rule 30 for instructions not to answer. FEI would not accept plaintiffs' efforts to shirk their duties of raising the instructions not to answer with the Court, and FEI therefore advised counsel that it would file a motion to compel. Id. at Ex. F. On October 30, 2006, FEI filed its Motion to Compel Testimony of Plaintiff Tom Eugene Rider and for Costs and Fees (10/30/06) ("Motion to Compel").[3]

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[2] The Opposition was filed the same day and relates to the same issues as the instant motion to which FEI now responds. Accordingly, FEI hereby incorporates by reference Defendant Feld Entertainment, Inc's Motion to Compel Testimony of Plaintiff Tom Eugene Rider and for Costs and Fees (10/30/06) and its Reply in Support thereof (11/20/06).

[3] This exchange of correspondence set forth above, in addition to what happened at Rider's deposition, constitutes the parties' conferences and satisfies LCvR 7(m). Bizarrely, plaintiffs conclude from this that FEI failed to confer properly with them before filing its motion to compel, see Opposition at 7-10 (continuing on for over three pages claiming that FEI's efforts to confer before filing were insufficient), but that their own conference – based on the exact same correspondence – is sufficient. Cf. Cover Motion at 1-2. The only conclusion to draw from this illogical argument is that plaintiffs believe that unless and until FEI capitulates and agrees to do whatever they ask on whatever terms they demand, regardless of how legally incorrect or frivolous their position is, no conference by FEI can ever be sufficient. LCvR 7(m) obviously contains no such requirement. Indeed, under the circumstances here, where the decision is made on the spot at the deposition to give the instruction and the consequences are immediate

Only after FEI filed its Motion to Compel, and on the very same day that plaintiffs' opposition to it was due, did plaintiffs bother to move for a protective order. See Plaintiff Tom Rider's Motion for a Protective Order to Protect His Personal Privacy (11/13/06) ("Motion"). Counsel for FEI remain convinced that had they not sought judicial intervention by filing their Motion to Compel, the issue would have languished, and Plaintiffs never would have raised the matter with the Court as Rule 30 requires. Their reluctance to do so springs not from laudable motives to reduce motions practice but from a desire to hide their misconduct from the Court, and as a result, their Motion should be denied. See In re Stratosphere Corp. Securities Litigation, 182 F.R.D. 614, 619 (D. Nev. 1998) (where judicial determination is not sought, the court will presume insufficient grounds for instructions not to answer, and that "the action was taken merely to obstruct the discovery process.").

As FEI will demonstrate below, the questions posed to Mr. Rider were proper, they relate to this litigation (including the perjury Mr. Rider has committed with his interrogatory responses), and are fair grounds for impeachment of him. Furthermore, plaintiffs, their counsel and Mr. Rider himself have willingly thrust Rider into the public arena and made him a public figure. This is the man to whom they admittedly have paid tens of thousands of dollars since this lawsuit was filed to be their mouthpiece to the media about this case. He is a public figure, and the instructions not to answer were given on matters of public record. Mr. Rider, therefore, has no cognizable privacy interest to protect, which renders the Motion frivolous. It vexatiously and needlessly increased the proceedings in this case, and FEI should be awarded its costs and fees for having to respond to it. See 28 U.S.C. § 1927.

(blocked testimony and impeded flow of the deposition), it is arguable whether any further conference is necessary at all beyond what occurs at the deposition itself.

I. PROCEDURAL BACKGROUND

A brief review of the relevant procedural background is necessary to understand the posture in which the Motion comes to this Court. From the outset of this case, plaintiffs have declared the subject matter to be one of public interest that must be litigated in full public view. They convinced this Court to not enter a protective order that would govern all discovery, but instead permit public, pretrial litigation because of the purported "great public interest" involved: "Furthermore, this issue – whether wild animals trained with force and confinement should be used in entertainment – is one of great public interest that has been debated for years in this country and many others." Plaintiffs urged that the "court must take into consideration 'whether the case involves issues important to the public.'" Plaintiffs Memorandum in Opposition to Defendants' Motion for Protective Order at 5-7 (10/22/03). Plaintiffs prevailed in their argument, and the Court denied FEI's motion for a protective order to govern discovery. See Order at 2 (11/25/03) ("Defendant may move for a protective order with respect to particular specified information that is to be produced in discovery, upon a showing of 'good cause,' as permitted by Rule 26(c) of the Federal Rules of Civil Procedure.").

Two years later, at the September 16, 2005 hearing with the Court, Ms. Meyer re-iterated that this case was a matter of public interest, and that FEI's motion for protective order regarding the confidentiality of elephant medical records should be denied:

> On the other side, Your Honor, we have Tim Rider, a plaintiff in this case, he's going around the country in his own van,[4] he gets grant money from some of the clients[5] and some other organizations[6] to speak out and say what really happened when he worked there. That's what we have on their side.

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[4] We now know through discovery that the van was purchased for Mr. Rider with funds provided by WAP – a shell organization owned and operated by Ms. Meyer and Mr. Glitzenstein. Ex. 2, Rider Depo at 142:19-:144:18.

[5] We now know through discovery that the "grants" appear to cumulatively total nearly $100,000. See Motion to Compel Documents Subpoenaed from the Wildlife Advocacy Project at 1-2 (9/7/06).

> And they want to make sure that none of the information that might actually shed some light on what's going on, I'm not saying it necessarily does, but it might, I don't know, not be ever disclosed to the public. We have to litigate this case in secret so that they can control the debate.
>
> And, again, Your Honor, the presumption is open proceedings. They have to come forward with good cause to get a protective order. They simply haven't met their showing.

Ex. 3, Hearing Tr. at 29-31 (9/16/05). The Court again agreed with plaintiffs and rejected FEI's request for a protective order. See Order at 2 (9/26/05).

These words have now come home to roost for plaintiffs much to their dismay. After prevailing repeatedly on their arguments that this case is a matter of great public interest that Mr. Rider personally touts on the media circuit and that they should not be forced to litigate in secret, plaintiffs now in fact seek to litigate the case in secret. FEI will obviously not agree to such a hypocritical approach, and as a result, plaintiffs claim that FEI is now "retaliating" against them. See Motion at 8-9. They further claim that FEI should now agree to a protective order for their resident celebrity, Tom Rider, because they agreed to two of them related to FEI's copyrighted materials and review of potentially non-responsive videos. Id. at 10 (citing Joint Stipulated Protective Order Regarding Video Recordings (8/2/06) (protective order setting forth the procedure for review of potentially non-responsive videos as stipulated to by the parties in ¶ 6 of their Joint Statute Report Regarding (9/23/05)) and Joint Stipulated Protective Order Concerning Recordings of Ringling Bros. and Barnum & Bailey Circus Performances (8/16/05) (protective order concerning rehearsals and performances, which are copyrighted materials of FEI that are not open to public filming)).

The critical distinction between the two protective orders from August 2006 and what plaintiffs seek here is one of good cause. The 8/2/06 Order resulted from the Court ordering the

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[6] We now know through discovery that the "other organizations" paying Rider include the alter ego of plaintiffs' counsel, the WAP. Ex. 2, Rider Depo. at 128:3-129:1.

parties to narrow some of their discovery disputes, including an objection that FEI had made as to the overbreadth of plaintiffs' request for all videotapes depicting elephants. They settled on a procedure whereby plaintiffs could review tapes, which may or may not even be responsive, pursuant to a protective order. Plaintiffs initially objected to the 8/16/05 Order because they claimed it did not fall within the ambit of Rule 26(c). Only when FEI advised them that it was entitled to a protective order for its copyrighted materials, and that it would seek one from the Court regardless of whether plaintiffs would fight them on it, did plaintiffs agree to it. Good cause was present for both of those protective orders. Here, however, Tom Rider is a public figure, and the questions he was instructed not to answer are all matters of public record. Indeed, he already answered some of them (albeit untruthfully) in his interrogatories. By definition, the questions are relevant, he has no right to privacy in them and no "good cause" exists for a protective order that either prohibits the questioning altogether or places it under a confidentiality restriction. See, infra, § II.

Enforcing the law of this case equitably upon all of the parties has nothing to do with "retaliation." As FEI has already noted, "both WAP and plaintiffs welcome public education and scrutiny in this case just so long as it remains one-sided and restricted to Feld Entertainment, Inc." Reply in Support of Motion to Compel Documents Subpoenaed From the Wildlife Advocacy Project at 1 (10/03/06). FEI sees no reason why it should be forced to defend itself in secret while plaintiffs attack it in public. In fact, here's what FEI thinks the public has a right to know about the conduct of plaintiffs and their counsel: Tom Rider is a hired gun who exists in this case as a means for the organizational plaintiffs to circumvent their lack of standing. To that end, the organizational plaintiffs and WAP, the alter ego of plaintiffs' counsel, have systematically paid Mr. Rider what appears to be more than $100,000 in what they

euphemistically call "grants." See id. at 1.[7] Mr. Rider, for his part, has not paid taxes on even so much as a dime of this money, and has instead been helping himself to a tax-free ride since approximately 1998. Ex. 2, Rider Depo. at 123:1-127:15. Mr. Rider has also embarked on a media junket to discredit FEI, and serves as the apparently lucrative centerpiece for the organizational plaintiffs' fundraising. See Ex. 1, Interrogatory Response No. 5; Ex. 4, AWI 5921-5923 (fundraiser featuring Rider and plaintiffs' counsel). The public has the right to know that all of their hands – plaintiffs and counsel's – are dirty.[8]

Plaintiffs also appear to fixate on the fact that FEI has not yet taken its own deposition of Mr. Rider. See Motion at 3, 5. Notably, they declined to inform the Court that this, again, is a direct result of their own misconduct. Plaintiffs took the position that they would not produce Mr. Rider for deposition until *they* were satisfied with FEI's document production. See Ex. 5, excerpts from Meyer & Ockene letter to Gulland & Wolson at 6 (10/18-19/04) ("Defendants have produced very few documents regarding Tom Rider. Please be advised that unless and until all records responsive to this request are produced, plaintiffs will not make Mr. Rider available to be deposed by defendants.") (emphasis in original); Ockene letter to Wolson at 4 (12/22/04) ("However, we reiterate that until defendants have complied with this Request in full, we are not prepared to make Mr. Rider available for a deposition.").[9] Rule 26(d) expressly prohibits what plaintiffs' counsel did: Unless the court rules otherwise, "methods of discovery may be used in

[7] Most of the documentation that FEI has recovered to piece this financial puzzle together has come from the WAP subpoena. The plaintiffs failed to produce these materials even though they were requested.

[8] When FEI has finished collecting the documentation on the same, whether voluntarily or through court order, it will then move the Court to amend its pleadings to add all supportable defenses and/or claims in conformity with this recently discovered evidence.

[9] This dispute apparently concerned FEI's counsel's work product gathered for purposes of impeachment. Judge Facciola ruled that it need not be produced. See Order at 4-6 (2/23/06); see also Ex. 5. 12/22/04 Ockene Letter at 4. Thus, it is clear at this time that plaintiffs were well aware years ago that Mr. Rider would have some explaining to do on cross-examination, but simply failed to prepare for it when it occurred at his deposition.

any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery." Fed.R.Civ.P. 26(d). Plaintiffs also protest that FEI did not first move to compel proper responses to the written discovery propounded on plaintiffs. See Motion at 2-3. Rule 26(d) does not require this. In any event, FEI has now complied with plaintiffs' counsel's wishes by sending them a twelve-page single-space letter on November 22, 2006 setting forth the multitude of deficiencies in plaintiffs' discovery responses and document production. If plaintiffs refuse to cure the deficiencies, FEI will be forced to move the Court to compel the documents and answers.

Finally, in what has become an all-too-common and deeply troubling trend by plaintiffs' counsel, the Motion starts with a misrepresentation regarding the interrogatories and omits a highly relevant portion of them for the Court's consideration: "In their March 2004 written discovery directed to Mr. Rider, defendants did not make any inquiry regarding Mr. Rider's marital history or military background." Motion at 2; see also, e.g., Opposition to Plaintiffs' Motion Requesting Attorneys' Fees and Costs Related to Plaintiffs' Motion to Enforce the Court's September 26, 2005 Order at 4-7 (11/16/06) (explaining blatant misrepresentations made by plaintiffs to the Court regarding document productions). This is false. Interrogatory No. 2 requires Rider to:

> Describe each and every job or volunteer position you have held since you completed high school (or, if you never completed high school, since your last year of schooling) that you did not describe in response to the previous interrogatory.

Ex. 1 at Interrogatory No. 2. This interrogatory would have called for the identification and disclosure of Rider's military service regardless of when he obtained his GED. Plaintiffs do not even attach this for the Court's consideration. See Ex. A to Motion.

Interrogatory No. 7 requires Rider to:

> Identify any civil litigation to which you have been a party or have testified, whether in the United States or abroad, including without limitation the parties to the case, the attorneys who represented any of the parties, whether you were a plaintiff or a defendant, the jurisdiction in which the case was filed, the causes of action asserted in the case, the allegations in the case, and the disposition of the case.

Ex. 1 at Interrogatory No. 7. Rider answered this untruthfully and without objection. It obviously called for any case to which he had been a party, and would include any kind of divorce or custody proceedings. Counsel fail to attach his response to their Motion. See Ex. A to Motion. Their misrepresentation that he was never asked about this in written discovery also is belied by a later argument found in their brief. Cf. Motion at 2 with Motion at 12 (citing Meyer's letter offering to now have "Mr. Rider answer questions as to why his Interrogatory Response concerning 'prior civil litigation' did not mention some marital dispute to which he has been a party."). Indeed, plaintiffs' counsel then went so far as to obtain and attach a declaration from Mr. Rider as to why he omitted those cases from his interrogatory response. Id. at 12 & Ex. G.[10]

Unfortunately, the half-truths and false statements that FEI has received from Rider are turning out to be entirely consistent with the manner in which his counsel have decided to run this case and conduct this litigation. The Court must end this disturbing practice.

II. RIDER'S PRIVACY INTEREST CLAIM IS FRIVOLOUS

Rider has two categories of objections. Rider claims that he should not be made to answer *any* questions regarding his "marital history and arrest record unrelated to convictions."

[10] The declaration containing Mr. Rider's after-the-fact excuses for his perjury was entirely inappropriate while the questions remained open and pending due to the instructions not to answer. Counsel has now conferred with the witness and tampered with his testimony while he is on the stand about unanswered questions. This tactic is prohibited in this district, and they should be sanctioned for doing so. See Reply in Support of Motion to Compel at 6-9 and authority cited therein.

Motion at 7. He claims that he will now testify about his military background and misdemeanor convictions, but only subject to a confidentiality order. Id. (This offer comes too late. Plaintiffs made no effort to provide the testimony under a protective order at the time of the deposition, when they should have if they were actually sincere in their willingness to so proceed.) The basis for Rider's Motion is that it is "necessary to protect [his] personal privacy." Id. Rider is a public figure. He has willingly become a celebrity spokesperson for the animal rights activists on this matter of "great public interest." As such, he has no cognizable privacy interest. Moreover, as counsel for FEI already advised plaintiffs' counsel, the testimony on which they instructed Rider not to answer were matters of public record. Again, there is no cognizable privacy interest that would entitle him to a confidentiality order on such things.

A. Rider Is a Willing Public Figure In a Matter of Public Interest

As Ms. Meyer previously advised the Court, Rider is out driving around in his van talking about this matter of admittedly "great public interest" to anybody who will listen. Although Rider provided only a partial list of his contacts with the media back in June of 2004, it is replete with newspaper, radio and television contacts. See Ex. 1, Interrogatory No. 5 and Response thereto. He also provides testimony at legislative hearings. Id. at 11. Thus, Rider is a public figure on a matter of public interest, and any right to privacy now yields as a result:

> [P]rivacy concerns give way when balanced against the interest in publishing matters of public importance. As Warren and Brandeis stated in their classic law review article: "The right of privacy does not prohibit any publication of matter which is of public or general interest." The Right to Privacy, 4 Harv. L. Rev. 193, 214 (1890). One of the costs associated with participation in public affairs is an attendant loss of privacy.

Bartnicki v. Vopper, 532 U.S. 514, 533-34 (2001) (holding that First Amendment right to freedom of expression on matters of public interest trumps risk of potential chilling effect resulting from public disclosure); accord Meetze v. Assoc. Press, 95 S.E.2d 606, 609 (S.C. 1956)

(law does not recognize privacy rights in connection with inherently public matters). Plaintiffs' own authority recognizes the heightened standards public figures face in pursuing claims. See Herbert v. Lando, 441 U.S. 153, 156-57 (1979).

Rider willingly assumed the role of public figure and continues in it to this day. He cannot now retreat from that and claim that he himself should be shielded from scrutiny, particularly on the basis of a non-existent privacy interest.

B. Rider Has No Privacy Interest In Matters of Public Record

"[O]fficial records and documents open to the public are the basic data of governmental operations." Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 492 (1975). As a result, the right to privacy "fades" when information has appeared in the public record. Id. at 494-95; Sheetz v. The Morning Call, Inc., 946 F.2d 202, 207 (3d Cir. 1991) (no reasonable expectation of privacy in matters reported to police). State law, including that of the District of Columbia, also adheres to this principle. See, e.g., Wolf v. Regardie, 533 A.2d 1213, 1221 & n.13 (D.C. Ct. App. 1989) (applying Cox to hold that no privacy right exists in information that appears in public record); see also Meetze, 95 S.E.2d at 610 (no right to privacy regarding events related to birth, which was required by law to be entered as a public record); Metter v. Los Angeles Examiner, 95 P.2d 491, 495-96 (Cal. Ct. App. 1939) ("Manifestly an individual cannot claim a right to privacy with regard to that which cannot, from the very nature of things and by operation of law, remain private.") (no right to privacy regarding events related to death, which are matter of public record). Plaintiffs' reliance upon caselaw involving medical records protected by statute and the federal psychotherapist privilege is misplaced. See, e.g., In re: Sealed Case (Medical Records), 381 F.3d 1205, 1210 (D.C. Cir. 2004).

Rider was instructed not to answer about his military service, his arrest and misdemeanor conviction record, and his participation in other litigation. All of these are matters of public record, which plaintiffs make no effort to dispute. Tellingly, Rider submitted a declaration to discuss how he would now answer one of the *pending* questions but makes no reference to any purported privacy interest, nor does he mention of any type of expungement of his records that removed them from the public record. See Ex. G to Motion.

Accordingly, Rider has no cognizable privacy interest to be protected. The instructions not to answer were ill-founded, and should not have been given. FEI's efforts to cross-examine Mr. Rider were obstructed without merit, and sanctions should follow. See Motion to Compel at 11-12 (setting forth authority for granting sanctions).

III. RIDER COMMITTED PERJURY IN HIS INTERROGATORY RESPONSES

Interrogatories constitute sworn statements that must be verified by the party submitting them. Fed.R.Civ.P. 33(b)(1). "Knowingly incomplete and misleading answers to written interrogatories constitutes perjury, as well as, fraud." Dotson v. Bravo, 202 F.R.D. 559, 567 (N.D. Ill. 2001) (dismissing case where plaintiff perjured himself in response to interrogatory regarding arrest records), aff'd, 321 F.3d 663 (7th Cir. 2003); In re Amtrak "Sunset Limited" Train Crash, 136 F.Supp.2d 1251, 1258, 1271 (S.D. Ala. 2001) (interrogatory answer was "so knowingly incomplete and misleading that it constituted perjury as well as fraud on defendants and the court") (dismissing case with prejudice for perjured answers), aff'd, 29 Fed. App. 575 (11th Cir.). Credibility is always an issue in any action. Discovery related to perjured interrogatory responses clearly has impeachment value that renders it discoverable regardless of whether it is ultimately inadmissible. Dotson, 202 F.R.D. at 572. Moreover, a party is entitled to

rely on an opposing party's answers to interrogatories. In re Amtrak, 136 F.Supp.2d at 1260. "Litigants should not be permitted to cheat." Dotson, 202 F.R.D. at 573.

Rider signed and verified his interrogatory responses. See Ex. 1 at 41. But he perjured himself by providing incomplete, false answers to them. Rider omitted his military service entirely from his answer to the interrogatory regarding his work history since high school. Instead, he states "I received my high school diploma in 1970. I then went to work for Caterpillar Tractor Co., as a chip wheeler, and work the third, 'grave yard' shift." See Ex. 1, Response No. 2 at 5. This is entirely disingenuous. The answer makes it look as though Rider was never in the military and that his first job after high school was with Caterpillar. Id. We know, however, from the government records that Rider was in the service from 1967-1971, *spanning the time period that Rider claims he received his diploma and went to work for Caterpillar*. See Ex. 6, FOIA release at 1. Nor do Rider's objections save him. The boilerplate contained in his answer does not indicate that he will be hiding his military service, and as demonstrated above, the objection to "privileged information that is protected by his right to privacy" is patently frivolous.[11]

Rider argues that his perjury should be overlooked because he previously disclosed his military service in his job application with FEI. Motion at 16 n.3. This is irrelevant. An unsworn job application that was completed six years earlier by no means excuses Mr. Rider from submitting sworn truthful interrogatory responses in litigation as required by Rule 33. If anything, the job application is further proof of the relevance and appropriateness of the line of inquiry into Rider's military service that FEI's counsel was blocked from taking.

[11] It is noteworthy that the Motion itself contains no argument or legal authority to support a "privilege" claim arising from the right to privacy.

Rider also selectively answered Interrogatory No. 6 related to his arrest and conviction record. See Ex. 1, Response No. 6 at 13. This information is discoverable, and at times, even admissible as indicated by the authorities cited herein. See, e.g., In re: Amtrak, 136 F.Supp.2d at 1260-62; Dotson, 202 F.R.D. at 571; see also Rosenfeld v. Union Insur. Society, 157 F.Supp. 395, 396 (E.D.N.Y. 1957) (interrogatories regarding arrest and conviction record appropriate). Moreover, because plaintiffs have obstructed discovery into this line of inquiry, FEI still does not have full knowledge of what Rider has been arrested for, or apparently, convicted of. Any crimes of dishonesty such as fraud or embezzlement clearly go to credibility, and any crimes involving assault or abuse would be material due to the nature of this lawsuit involving allegations of abuse.

Rider also committed perjury in answering Interrogatory No. 7 that asked him to identify any other litigation that he has been a party to or testified in. Rider raised no objections, and answered that he has not been a party or testified in any other civil litigation apart from this case (and its predecessor, civil action number 00-1641). Rider now tries to claim that he raised an objection to this interrogatory. See Motion at 12 (citing to general objections). This Court has already ruled that such general objections are insufficient and constitute a waiver of any right to the discovery of such information. See Order at 2 (9/26/05) (citing Athridge v. Aetna Casualty and Surety Co., 184 F.R.D. 181 (D.D.C. 1998)). Having waived his objections to this interrogatory and proceeding to falsely answer it, Rider cannot now claim that he is entitled to protection from doing so. The law of this case requires otherwise. Id. The testimony responsive

to this, regardless of whether it pertains to his "marital history" is clearly relevant to his credibility.[12]

Plaintiffs cite a bevy of caselaw regarding marital disputes, which suggests Rider was involved in some kind of domestic violence. Motion at 10-11. Again, because FEI was blocked from taking this testimony, it cannot speak to what Rider has done. Plaintiffs' caselaw, however, does not help them. All of it addresses the admissibility of domestic disputes in a range of criminal trials. Id. Those cases do not involve perjury in interrogatory responses that has been committed here. In one of plaintiffs' cases, the actual divorce decree was not admitted but testimony regarding the "turbulent marital relationship" was. U.S. v. Miles, 968 F.2d 21, 1992 WL 138612, *2 (10th Cir. June 19, 1992). Again, this is a case in equity, and if Rider himself has some kind of history of abuse, it would be relevant to his motive and bias in bringing this lawsuit in which he himself levels allegations of abuse against FEI.[13]

IV. PLAINTIFFS' MOTION IS PREMATURE

Plaintiffs are asking this Court to bypass the issue of *discoverability* and instead make an evidentiary ruling on the *admissibility* at trial of the matters at issue. First, the two standards for discoverability and admissibility are entirely different. Second, any ruling on admissibility – without even first discovering what the evidence is – is entirely premature. The Court presently has no basis to determine whether evidence related to Rider's participation in other lawsuits, his

[12] Rider tries to salvage his answer by now submitting a declaration claiming that he did not understand what civil litigation meant. As FEI has already explained, this is inherently incredible given his subsequent deposition testimony. See Reply to Motion to Compel at 13-14.

[13] These interrogatories are the ones pertinent to the instructions not to answer, but they are by no means, the only ones in which Rider committed perjury. Interrogatory No. 24 asked Rider to identify all forms of funds and compensation he has received from animal rights organizations. Rider objected and answered that "I have not received any such compensation." See Ex. 1, Interrogatory Response No. 24 at 39. This response is outrageous given the dollar amounts paid to him by the animal rights organizations, and the annual 1099's that WAP issued to him that expressly report this money as "non-employee compensation." It is beyond credulity that Rider's counsel who signed the objections to Rider's interrogatories, and who are part and parcel of the WAP and know of the 1099's, let him serve this response on FEI. See id. at 40 (counsel's signatures as to objections).

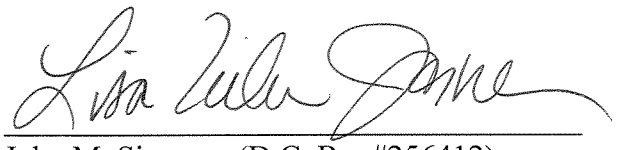
military history, or his criminal history is admissible pursuant to F.R.E. 403, 404, 607, 608, 609, 613 or otherwise. Kies v. City of Aurora, 156 F.Supp.2d 970, 977 (N.D. Ill. 2001) (deferring ruling on motion in limine to exclude prior arrests or convictions until trial); U.S. v. Morales, 1993 WL 465209, *9 (S.D.N.Y. Nov. 15, 1003) (deferring ruling on motion in limine to exclude prior conviction until trial). FEI should at least be able to discover this highly relevant information to make whatever proffer it deems necessary for evidentiary and appellate purposes, regardless of admissibility, which is how it would be done at trial.

CONCLUSION

Rider is a public figure whose only livelihood is commenting on this matter of public interest. His counsel erroneously instructed him not to answer questions that related to matters of public record at his deposition. They now seek to shield him from any public scrutiny, and claim that the perjury he has committed is not relevant to this case. Plaintiffs have vexatiously multiplied the proceedings by obstructing Rider's testimony, instructing him not to answer questions based on relevance objections (some of which were waived in the interrogatories), tampering with his testimony by preparing and submitting a declaration from him on *an open, pending question*, and seeking a protective order on the basis of Rider's right of privacy, which is non-existent. The Court should sanction plaintiffs and their counsel for their misconduct pursuant to Fed.R.Civ.P. 30(d) & 37, 28 U.S.C. § 1927, and its inherent authority.

Dated this 27th day of November, 2006.

Respectfully submitted,



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, et al.,	:	
Plaintiffs,	:	
v.	:	**Case No. 1:03-CV-02006 (EGS/JMF)**
RINGLING BROS. AND BARNUM & BAILEY CIRCUS, et al.,	:	
Defendants.	:	

ORDER

Upon consideration of Plaintiff Tom Rider's Motion for A Protective Order to Protect his Personal Privacy ("Motion") and Feld Entertainment, Inc.'s Response in Opposition thereto, it is this _____ day of _____, 2006,

ORDERED that the Motion is DENIED; and it is further

ORDERED that Plaintiff Tom Eugene Rider ("Rider") shall reappear for the completion of the deposition noticed by Plaintiffs within ten (10) days of this Order; and it is further

ORDERED that Rider has waived his objections to answering questions related to his criminal record, military record, and prior litigation record; and it is further

ORDERED that Rider shall answer all questions that were posed to him by counsel for Feld Entertainment, Inc. at his October 12, 2006 deposition and to which an objection and instruction was interposed by Plaintiffs' counsel, as well as any related follow-up questions; and it is further

ORDERED that Plaintiffs shall pay the costs and fees to Feld Entertainment, Inc. for the preparation of its Opposition to the Motion; and it is further

ORDERED that Feld Entertainment, Inc. shall submit a statement of its fees and expenses within thirty (30) days of the date of this Order.

Dated: _____

_____
UNITED STATES DISTRICT JUDGE