UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, *et al.*,	)	
Plaintiffs,	)	
v.	)	
	)	Civ. No. 03-2006 (EGS/JMF)
RINGLING BROTHERS AND BARNUM & BAILEY CIRCUS, *et al.*,	)	
Defendants.	)	

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF TOM RIDER'S MOTION FOR A PROTECTIVE ORDER TO PROTECT HIS PERSONAL PRIVACY

Introduction

Pursuant to the requirements of Rule 26(c), Plaintiff Tom Rider has moved for a protective order to prevent defendants from insisting that he answer questions concerning his marital history and any prior arrests that did not lead to convictions – on the grounds that such information is completely irrelevant to this Endangered Species Act case, and because such an order is necessary to protect Mr. Rider from "annoyance, embarrassment, [and] oppression." Rule 26(c), Fed. R. Civ. P. Mr. Rider has also requested a protective order that would allow him to provide defendants with answers to questions concerning his military background and whether he has ever been convicted of a misdemeanor, but would ensure that such information – all of which is extremely personal – not be disclosed to the public, without further order of this Court.

In response, defendants do not articulate any basis whatsoever as to why Mr. Rider's marital history and possible arrests without convictions are relevant to this proceeding. Nor,

other than their desire to punish Mr. Rider for publicly exposing what goes on behind the scenes at the Ringling Bros. circus, and their desire to retaliate against plaintiffs for refusing to agree to a blanket protective order covering all discovery in this case, do defendants explain why information about Mr. Rider's military background and any misdemeanor convictions must be publicly disclosed in this proceeding.

Instead, once again defendants try to divert the Court's attention from what is at issue in this case – i.e., defendants' now well documented abuse of endangered Asian elephants – by engaging in completely unwarranted character assassination of Mr. Rider, his co-plaintiffs, and his counsel in this case. Particularly in light of the mounting evidence that completely corroborates what Mr. Rider has been saying for the last six years about defendants' abuse of these animals – including eye-witness testimony from several other former Ringling Bros. employees in addition to Mr. Rider, voluminous videotape of what goes on at the circus, and defendants' own internal memoranda that has recently been obtained in discovery – it is not surprising that defendants have chosen this tactic. See, e.g. Exhibit M to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (Docket No. 96) ("Pl. SJ Opp.") at 29-31 (Videotape Compilation of Ringling Bros. handlers striking elephants with bullhooks, and showing elephants in chains); Exhibit R to Pl. SJ Opp. (Testimony of Frank Hagan, former Ringling Bros. employee describing that handlers routinely strike elephants with bullhooks); Pl. Ex. LL to Pl. SJ Opp. (Docket No. 113) (Affidavit of Robert Tom, recent Ringling employee describing "severe[] abuse"of elephants); Pl. Ex. MM to Pl. SJ Opp (Docket No. 113) (Affidavit of Archele Faye Hundley, recent Ringling employee, describing abuse that "occurred every day," and stating that "[w]henever the public is not around, the elephants are chained up"); see also Pl.

Ex. C to Pl. SJ Opp. (internal memorandum from Ringling's "Animal Behaviorist" describing "blood in small pools and dripped along the length of the rubber and all the way inside the barn" as a result of "hooking" with a bullhook); Pl. Ex. N to SJ Opp. (internal Ringling email stating that "at least 4 of the elephants came in with multiple abrasions and lacerations from the hooks"); Pl. Ex. D to SJ Opp, Transcript of Ringling employee Robert Ridley (stating that he sees "puncture wounds cause by bullhooks . . . three to four times a month").

However, as demonstrated below, defendants' completely unfounded accusations about the plaintiffs and their counsel do not detract from the fact that Mr. Rider has amply demonstrated "good cause" for the requested protective order within the meaning of Rule 26(c). On the contrary, defendants' wild and completely unsubstantiated accusations about Mr. Rider only bolster his need for a protective order to protect him from further unwarranted character assassination by these defendants.

A. Plaintiffs And Their Counsel Have Not Engaged In Any Obfuscation Here And Their Hands Are Extremely Clean.

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Contrary to the self-serving statements by defendants, plaintiffs' counsel have not engaged in any "obstructionist behavior" regarding this request for a protective order, nor do plaintiffs in any way "seek to litigate this case in secret." See Feld Entertainment, Inc.'s Response In Opposition To Plaintiff Tom Rider's Motion For A Protective Order ("Def. Opp.") at 1, 5. Rather, as permitted by both Rule 26(c) and this Court's November 25, 2003 Order, plaintiffs – for the first time in this case – have moved for a protective order to govern several extremely discrete areas of inquiry, all of which implicate Mr. Rider's personal privacy. See Order (Docket No. 15) ("[d]efendants may move for a protective order with respect to particular

specified information . . . upon a showing of 'good cause' as permitted by Rule 26(c) of the Federal Rules of Civil Procedure").

Moreover, as the record of this proceeding clearly demonstrates, as soon as defendants made clear their intention to pursue information regarding these highly personal matters, plaintiffs' counsel immediately attempted to negotiate a protective order and informed defendants' counsel that if they were unwilling to stipulate to such an order, plaintiffs would file a motion for a protective order "within a few weeks" of October 18 – precisely what plaintiffs did here. See Letter from Katherine Meyer to John Simpson (October 18, 2006), Exhibit E, at 2; see also Pl. Motion for A Protective Order (November 13, 2006) (Docket No. 106).

Hence, there simply is no basis whatsoever for defendants' revisionist statements that plaintiffs "sought to delay the matter indefinitely and avoid Court resolution," or that, but for the filing of defendants' completely unnecessary motion to compel, "the issue would have languished, and Plaintiffs never would have raised the matter with the Court." Def. Opp. at 2, 3. Again, the record demonstrates that within days of this matter being raised by defendants, plaintiffs acted quickly and reasonably to resolve this dispute without involving the Court, and that they also sought judicial resolution as quickly as possible after defendants made clear that they would not agree to a protective order. Hence, defendants' argument that the requested protective order should be denied on the grounds that it is somehow untimely or sought in bad faith is completely unfounded.

Nor is there any merit to defendants' other general theme for denying the requested protective order – that plaintiffs and their counsel all have "dirty hands" in this case. Def. Opp. at 7. Again, plaintiffs certainly understand why defendants so dislike Mr. Rider and this lawsuit

– which exposes and seeks to end the brutality and confinement inflicted upon the Asian elephants that are used in this highly profitable enterprise. However, all of the plaintiffs, their counsel, and the Wildlife Advocacy Project, have been extremely forthcoming about the fact that they, along with others who oppose the abuse of endangered species, have funded Mr. Rider's extremely effective public education efforts on these issues for the last six years. See, e.g., Deposition of Lisa Weisberg (Vice President of ASPCA) (Exhibit I) at 34-57 (describing funding of Tom Rider's media and public education efforts); Deposition of Cathy Liss (President of Animal Welfare Institute) (Exhibit J) at 138-57 (discussing AWI's funding of Mr. Rider's efforts); Deposition of Mike Markarian (President of the Fund for Animals) (Exhibit K) at 157-59 (describing funding of Mr. Rider's public education work); see also Wildlife Advocacy Project's Opposition to Defendants' Motion to Compel (Docket No. 93) at 14-16 (describing grants provided for Mr. Rider's public education work). Indeed, as defendants point out in their own opposition, Def. Opp. at 4, plaintiffs' counsel very candidly informed the Court of this matter in open court over a year ago. See Transcript of September 16, 2005 Hearing at 29 -30 (explaining that "Tom Rider, a plaintiff in this case [is] going around the country in his own van . . . to speak out and say what really happened when he worked [at Ringling]," and that "he gets grant money from some of he clients and some other organizations" for this purpose).[1]

[1]Defendants' insistence that the Wildlife Advocacy Project is a "shell organization" operated by plaintiffs' counsel to pay Mr. Rider to be a plaintiff in this case, Def. Opp. at 4, n.4, is also baseless. The Wildlife Advocacy Project is a non-profit organization approved by the Internal Revenue Service "to assist grassroots activists in achieving long-term protection of wildlife and the environment and in stopping the abuse and exploitation of animals held in captivity" – precisely the kind of work for which it provides funding to Mr. Rider. See, WAP Opposition to Defendants' Motion to Compel (Docket No. 93) at 8-11 (and exhibits cited therein); see also id. (describing other projects funded by WAP).

But the fact that Mr. Rider has received funding for this extremely valuable public education service – at a rate that is certainly far below what defendants pay their media spokesmen to deny Mr. Rider's and others' evidence of mistreatment of this endangered species[2] – does not mean that Mr. Rider is lying about the basis for his standing in this case, or about what he witnessed when he worked at Ringling, as suggested by defendants. On the contrary, the fact that Mr. Rider has devoted his life to traveling around the country and living in a used van in order to inform the public about defendants' rampant violations of the Endangered Species Act, and to lend his unique experience as a "barn man" for the circus to animal welfare organizations and state and local legislators who seek to curtail the abuse and exploitation of captive animals, only demonstrates the complete authenticity of Mr. Rider's concern for these animals whom he cared for and grew to love when he worked at Ringling Bros. See Complaint ¶¶ 18-23; see also Deposition Testimony of Tom Rider (Exhibit L) at 112 (stating that he brought this lawsuit "because of the way I feel about these elephants . . . may love of these animals"). Indeed, as the chief USDA investigator of Mr. Rider's Animal Welfare Act complaints about the circus observed in an internal memorandum to her superiors, "[t]here is no question that he loves the

[2]Although plaintiffs and the Wildlife Advocacy Project have been extremely forthcoming about the amount of funds Mr. Rider has received for his public education efforts over the years, defendants have refused to divulge any information concerning their expenditures on public relations, and Magistrate Facciola has agreed with defendants' position that such information is of "marginal" relevance to the defendants' credibility in this case, and hence need not be produced. See Memorandum Opinion (Feb. 23, 2006) (Docket No. 59) at 7-9. Moreover, while defendants have aggregated the grants paid to Mr. Rider over a six-year period in an effort to paint him as a "hired gun," Def. Opp. at 6 , even using defendants' "nearly $100,000" figure, Def. Opp. at 4, n.5, means that, on average, Mr. Rider has received approximately $16,000 a year for his extremely valuable public education efforts – an amount that is substantially lower than what a professional media group would charge for comparable services. Moreover, it is because Mr. Rider is not a professional media consultant, but rather a former "barn man" for the circus, that his public education efforts are so effective.

elephants that he worked with . . . and wants to help them find a better life than what is provided by the circus." See Memorandum from Diane Ward, IES Investigator to Robert Gibbens, Elizabeth Goldentyer, A.C. Regional Directors (July 21, 2000) at 1 (attached as Exhibit M) (emphasis added).

Defendants' insistence that the other plaintiffs and their counsel are nevertheless paying Mr. Rider to be involved in this case "to circumvent [the other plaintiffs'] lack of standing," Def. Opp. at 6, is completely off base. As demonstrated above, not only does Mr. Rider have an undeniable personal interest in pursuing this case – i.e., "to help [the elephants] find a better life than what is provided by the circus," see Exhibit M – but the organizational plaintiffs also have standing in their own right to bring this case. See Complaint at 3-16; see also ASPCA v. Ringling Bros., 317 F.3d 334, 338 (D.C. Cir. 2003) (finding that because Mr. Rider had standing the Court need not decide the standing of the organizational plaintiffs); Abigail Alliance for Better Access to Developmental Drugs, et al. v. Eschenbach, No. 04-5350, 2006 WL 3359334 (D.C. Cir. Nov. 21, 2006) (organization alleging that unlawful conduct impedes its ability to carry out organizational activities has Article III standing).

As to whether Mr. Rider is lying about what he witnessed when he worked for the circus, there is now a mountain of evidence corroborating his eye-witness testimony that Ringling Bros. beats the Asian elephants with bullhooks, keeps them chained for most of their lives, and forcibly separates nursing baby elephants from their mothers in order to "train" them to be docile. See supra at 2-3. Therefore, the suggestion that Mr. Rider is lying about these matters is completely unsupported by the record of this case.

In any event, it will be up to this Court to judge Mr. Rider's credibility on these issues at the appropriate time – a day that Mr. Rider has eagerly awaited for several years now. However, the fact that Mr. Rider receives funding to conduct a highly successful public education campaign about a matter of intense public interest certainly provides no basis for denying him the completely reasonable protective orders that he has requested.[3]

B. Defendants Have Not Provided Any Other Legitimate Basis For Denying The Requested Protective Orders.

1. Mr. Rider Has Not Surrendered His Right To Seek A Protective Order.

Defendants' suggestion that individuals who bring lawsuits to enforce an important public policy – here the protection of an endangered species – are somehow foreclosed from invoking the protections of Rule 26(c), Def. Opp. at 10, is without any basis in law. Thus, cases holding that a "public figure" has a diminished "right to privacy," id., and that there is no "right of privacy" in information that is already a matter of public record, Def. Opp. at 11, have no bearing here.

Mr. Rider is not suing anyone for defamation – and hence whether or not he qualifies as a "public figure" is completely irrelevant to the issue before the Court. Rather, Mr. Rider is simply invoking the plain language of Rule 26(c) in seeking a protective order that would prevent the defendants from causing him further "annoyance, embarrassment" and "oppression" by publicly disclosing information that is extremely personal. Moreover, in contrast to the cases cited by defendants, the information defendants seek from Mr. Rider clearly is not otherwise available on

[3]As to Mr. Rider's failure to pay taxes, see Def. Opp. at 7, Mr. Rider has been extremely forthcoming about this issue and the reasons he believed he was not required to do so. See Rider Deposition Testimony at 123-127.

"the public record," or defendants would not need to seek such information from Mr. Rider himself. See Def. Opp. at 11-12. Accordingly, the mere fact that Mr. Rider has chosen to bring this lawsuit in an effort to stop defendants from engaging in flagrant violations of the ESA, and that he also informs the public about the systematic daily abuse that he witnessed when he worked at Ringling, does not preclude him from seeking the protections afforded litigants under Rule 26(c) for matters that are extremely personal.

2. Mr. Rider Has Demonstrated Good Cause For Preventing Defendants From Inquiring Into His Marital History And Possible Arrest Record.

As to Mr. Rider's marital history and whether he has ever been arrested for a crime for which he was not convicted – matters for which Mr. Rider requests complete protection from discovery – defendants have not made any showing whatsoever to rebut plaintiffs' demonstration that neither of these areas of inquiry are relevant to this proceeding and hence within the scope of permissible discovery under Rule 26(b). See Plaintiffs' Memorandum In Support Of Tom Rider's Motion For A Protective Order ("PO Mem.") at 7-12 (and cases cited therein).[4]

As to the relevance of Mr. Rider's marital history, the only argument that defendants have mustered is that Mr. Rider "perjured" himself when he failed to list certain short-lived custody

[4]For this reason, defendants' assertion that plaintiffs' request for a protective order is "premature," because they are asking the Court to "bypass the issue of discoverability and instead make an evidentiary ruling on the admissibility at trial of the matters at issue," Def. Opp. at 15-16, is wrong. As to both the marital history and arrests without convictions inquiries, plaintiffs are asserting that such information is not relevant to this case, and hence that it falls outside the scope of permissible discovery. As to Mr. Rider's military service and any misdemeanor convictions, plaintiffs have made clear that they will produce such information to defendants – they merely seek to protect such information from public disclosure on the grounds expressly provided in Rule 26(c) – i.e., to protect Mr. Rider from "annoyance, embarrassment [and] oppression." The motion *in liming* cases cited by defendants. Def. Opp. at 16, did not address the issue of whether certain matters of inquiry were discoverable.

disputes that occurred seventeen years ago in response to an Interrogatory requesting him to list all "prior litigation" to which he has been a party. See Def. Opp. at 14-15. Hence, defendants appear to assert that because Mr. Rider "perjured" himself on this point, they are now entitled to probe the details of his extremely personal marital history. See id.. However, there is no basis whatsoever for defendants' accusation that Mr. Rider "perjured" himself, and hence defendants' attempt to parlay that completely unfounded assertion into a relevant basis for discovery here is completely untenable.

As Mr. Rider has already candidly explained, when he was asked to list all "prior litigation" in which he has ever been involved, it simply did not occur to him that his 17-year old custody dispute with his ex-wife qualified as such "prior litigation." See Declaration of Tom Rider, PO Exhibit G, ¶¶ 3-4; see also Rider Objections To Def. Interrog. at 2 ("Mr. Rider objects to . . . each Interrogatory to the extent that it is vague, ambiguous, [or] overly broad"). Therefore, the mere fact that Mr. Rider innocently failed to list this marital dispute as "prior litigation" certainly does not mean that he has "perjured" himself, since perjury by definition requires an intent to "willfully" state something that is not true. 16 U.S.C. § 1621.[5]

Here, Mr. Rider did nothing of the kind, but innocently failed to list a long-resolved custody dispute that he simply did not think of as "litigation" – a mistake that many other lay

[5]Defendants' incorrectly cite this Court's September 26, 2005 Order granting plaintiffs' motion to compel defendants to turn over the medical records for the elephants in support of their contention that, by lodging a general objection to this question (and presumably the question about all prior "jobs," see *infra* at 13-14), Mr. Rider "waived" his right to seek a protective order with respect to such information now. See Def. Opp. at 14. However, the Court's September 26, 2005 Order held that because defendants had neither objected to the production of the animals' medical records – at all - nor asserted any privilege for such records, they had "waived" their right to object to this discovery.

people with only a high-school education would probably make if asked the same question. Therefore, because this is the only basis for defendants' assertion that such information is at all relevant here, and Mr. Rider has already explained to defendants why he inadvertently failed to list this particular matter in response to this Interrogatory – as he immediately offered to do, see Letter from Katherine Meyer to John Simpson, PO Exhibit E at 2 – defendants' "perjury" justification simply does not wash.[6]

On the other hand, there can be no dispute that the substance of Mr. Rider's marital disputes is extremely personal and completely unrelated to this litigation in any way. Accordingly, "good cause" for entering a protective order to bar defendants from inquiring into these matters clearly exists. See PO Mem. at 10-12 (and cases cited therein).

Indeed, the Court need look no further than the way defendants misuse the legal authorities cited by plaintiffs to appreciate why Mr. Rider needs a protective order on this issue to protect himself from "annoyance, embarrassment, [and] oppression." Rule 26(c). Thus, simply because the underlying facts of several of the cases cited by plaintiffs on the marital history issue involved allegations of domestic violence, defendants – without any foundation whatsoever – now publicly assert in their Opposition that this necessarily "suggests that Rider was involved in some kind of domestic violence." Def. Opp. at 15; see also id. (stating that "if

[6]Defendants make the peculiar argument that plaintiffs' counsel was not allowed to discuss this matter with Mr. Rider in order to prepare a response to defendants' motion to compel this information from Mr. Rider, or Mr. Rider's request for a protective order. See Def. Opp. at 9, n.10. However, not to have such discussions with Mr. Rider in order to prepare his defense to the motion to compel (and for sanctions) would have been a gross violation of counsel's obligations to her client. See, e.g., District of Columbia Rules of Professional Conduct, Rule 2.1(a) ("A lawyer shall abide by a clients decisions concerning the objectives of representation . . . and shall consult the client as to the means by which they are to be pursued") (emphasis added).

Rider himself has some kind of history of abuse, it would be relevant to his motive and bias in bringing this lawsuit . . .). Such outlandish, completely unwarranted statements made for the sole purpose of impugning Mr. Rider's integrity in order to punish him for bringing this ESA case should not be permitted. Hence, "good cause" exists to protect Mr. Rider from further scurrilous allegations by defendants.

As to the issue of whether defendants may insist that Mr. Rider answer questions about whether he has ever been arrested for a crime for which he was not convicted, defendants have not provided any basis whatsoever as to why such information is relevant, nor overcome the authorities relied on by plaintiffs to show that such information is not relevant here. See PO Mem. at 13. Rather, relying only on cases where an individual's prior arrest record was demonstrably relevant to either the plaintiff's claim or the defendant's defense, the defendants misleadingly state that all such information "is discoverable." Def. Opp. at 14; see also In re Amtrak "Sunset Limited" Train Crash, 136 F.Supp. 2d 1251, 1260-62 (S.D. Ala. 2001) (history of arrests for distributing bad checks was relevant to defense that plaintiff's claimed inability to manage his finances was not the result of "post traumatic stress syndrome" caused by challenged train derailment); Dotson v. Bravo, 202 F.R.D.559, 571 (N.D. Ill. 2001) (prior arrest record of plaintiff was relevant to defendant's defense to plaintiff's malicious prosecution charge); Rosenfeld v Union Insur. Society, 157 F. Supp. 395, 396 (E.D.N.Y. 1957) (husband's criminal history was relevant to whether policy holder had violated obligation to disclose "material facts" that would have led insurance company to decline issuance of policy for loss of property due to theft).

However, since defendants have not shown that any possible arrest of Mr. Rider for which he was not convicted is at all relevant to this Endangered Species Act case, Mr. Rider is also entitled to a protective order with respect to this information to protect him from "annoyance, embarrassment, [and] oppression."

2. Mr. Rider Should Be Granted A Protective Order To Ensue That Information About His Military Background And Possible Misdemeanor Convictions Is Not Disseminated To The Public.

Mr. Rider agrees that his military background and information about whether he has ever been convicted of a misdemeanor could be relevant to this proceeding, since it may bear on his credibility. See PO Mem. at 14-16. However, because such matters are extremely personal, he has requested a protective order that would allow him to provide such information to defendants and the Court, but ensure that such information would not be further disseminated to the public. Again – particularly in light of defendants' desperate use of completely unsubstantiated allegations to publicly accuse Mr. Rider of being a "perjurer," and perpetrator of "some kind of domestic violence," see Def. Opp. at 15 – clearly there is "good cause" to protect Mr. Rider from further "annoyance, embarrassment [and] oppression" that will surely occur if defendants are not restricted in their use of this extremely personal information.

Defendants have made no argument as to why any possible misdemeanor convictions must be publicly disclosed, and hence, plaintiff's showing on this point – i.e., that public discussion of this matter is not necessary here and would severely invade Mr. Rider's personal privacy – amply satisfies the "good cause" requirement of Rule 26(c).

As to Mr. Rider's military background, defendants cling to the erroneous assertion that this information should be publicly disclosed because Mr. Rider "perjured" himself when he

failed to list his military service as a "job" he held "since [he] completed high school." See Def. Opp. at 8, 13. However, as explained in plaintiff's opening memorandum, the Interrogatory on this point does not expressly ask Mr. Rider to describe his "military service," nor did Mr. Rider ever intend to hide from defendants the fact that he served in the military, since he long ago disclosed this fact on his employment application for Ringling. See PO Mem. at 16, n.3; Exhibit H ; see also Interrogatory Responses at 2 (Mr. Rider objects to "each interrogatory to the extent that it is vague, ambiguous, [or] overly broad"). Although defendants insist that this prior disclosure is completely "irrelevant" here, Def. Opp. at 13, this can hardly be so when defendants necessarily accuse Mr. Rider of now "willfully" lying about whether he ever served in the military – a fundamental element of "perjury," 18 U.S.C. § 1621.

In addition, because the Interrogatory asked Mr. Rider to identify each job he had held "since you completed of high school," see Def. Interrog. No. 2, to the extent that Mr. Rider joined the military before he obtained his high school decree, it is not at all clear that listing of his military service was even required by this particular Interrogatory. See also Def. Opp. at 8 (asserting that "[t]his interrogatory would have called for the identification and disclosure of Rider's military service regardless of when he obtained his GED ") (emphasis added); see also Rider Interrogatory Responses at 2 (objecting to each interrogatory "to the extent that it is vague, ambiguous, [or] overly broad"); PO Mem. at 16, n.3 (stating that "when Mr. Rider testifies further about this matter, subject to an appropriate protective order, he can explain why his Interrogatory Response is accurate concerning when, in relation to receiving his high school diploma, he served in the military").

In any event, these matters are extremely personal and, other than wishing to publicly disparage Mr. Rider as much as possible in an effort to divert the public's – and the Court's – attention from the merits of this case, defendants have made no showing as to why such matters need to be discussed in public.

CONCLUSION

For all of the following reasons, as well as those set forth in support of Mr. Rider's motion for a protective order, and his opposition to defendants' motion to compel his testimony on these matters, the motion for a protective order should be granted and plaintiffs should be granted their attorneys' fees and costs associated with this matter. See Rules 26(c), 37(a)(4)(B).

Respectfully submitted,

/s/

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December 5, 2006