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.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFF TOM RIDER'S MOTION FOR A PROTECTIVE ORDER WITH RESPECT TO CERTAIN FINANCIAL INFORMATION

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff Tom Rider has moved for a protective order with respect to certain financial information that has been requested by defendants, to protect Mr. Rider and others from "annoyance, embarrassment [or] oppression." Fed. R. Civ. P. 26(c). While Mr. Rider has no objection to providing defendants with financial information that actually exceeds the scope of what defendants actually requested in their March 2004 discovery requests – and has been willing to do so since June 30, 2004 – he requests that he be permitted to do so subject to a protective order that will protect his privacy, and also protect others who have contributed to his public education and advocacy efforts from harassment and retaliation by defendants. As demonstrated below, Mr. Rider has ample "good cause" for the requested protective order as required by Rule 26(c).

BACKGROUND

Mr. Rider is one of the plaintiffs in this case under the Endangered Species Act, which seeks to enjoin defendants Ringling Bros. Circus and its parent company, Feld Entertainment, Inc. (hereinafter collectively referred to as "Ringling Bros.") from "taking" endangered Asian elephants – e.g., "harming, harassing, or wounding" these animals, see 16 U.S.C. § 1532(19) – by striking them with bullhooks, keeping them chained for most of their lives, and forcibly separating baby elephants from their mothers before they are naturally weaned.

In their initial Interrogatories dated March 30, 2004, defendants asked Mr. Rider the following question:

> Identify all income, funds, compensation, other money or items, including, without limitation, food, clothing, shelter, or transportation, you have ever received from any animal advocate or animal advocacy organization.

Interrogatory No. 24 (Rider Exhibit A). In their accompanying March 30, 2004, defendants also asked Mr. Rider to produce the following documents:

> All documents that refer, reflect, or relate to any payments of gifts in money or goods made by any animal advocates or animal advocacy organizations to you including but not limited to any payment of your transportation expenses, hotel bills, or food, or other costs of living by any animal advocates or animal advocacy organizations.

Document Request No. 21 (Rider Exhibit A). Defendants also asked him to produce "[b]ank statements or other documents demonstrating your sources of income since you stopped working in the 'circus community.'" Document Request No. 20 (Rider Exhibit A).

For both Interrogatory 24 and Document Production Request 21, defendants defined the terms "animal advocate" and "animal advocacy organization" to mean "any individual or organization as that term is used in plaintiffs' initial disclosures" - i.e., the Initial Disclosures that

plaintiffs provided to defendants on January 30, 2004. See Rider Exhibit B. However, that document does not include the term "animal advocacy organization" at all, and only uses the term "animal advocate" in describing two specific categories of information: (1) "[c]orrespondence between animal advocates (including plaintiffs) and the USDA [United States Department of Agriculture] concerning Ringling Brothers' compliance with the Animal Welfare Act;" and (2) "[c]orrespondence between animal advocates (including plaintiffs) and Feld Entertainment or the Department of Interior (Fish and Wildlife Service) concerning Feld/Ringling Brothers' violations of the Endangered Species Act." See Rider Exhibit C at 21.

Therefore, according to defendants' own instruction, Mr. Rider has never had any obligation to provide them with information covered by these particular discovery requests unless such funding or other "items" were provided to Mr. Rider by either plaintiffs or one of the individuals or groups whose correspondence with either the USDA or the Department of Interior was in plaintiffs' counsel's possession as of January 30, 2004. Furthermore, Mr. Rider answered all of defendants' questions about the funding that he has received from the other plaintiff organizations at his October 12, 2006 deposition, and Mr. Rider has also produced IRS 1099 Forms, which demonstrate his "sources of income" pursuant to Document Request No. 20. See also Rider Deposition Transcript (Rider Exhibit D), at 148-53. [1]

[1] The other plaintiffs have also already identified all of the funding that they have provided Mr. Rider. See Plaintiffs' Opposition to Defendants' Motion to Amend Answers (Docket No. 132) at 24-25. The Wildlife Advocacy Project has also disclosed to defendants all of the grants that it has provided Mr. Rider for his public education efforts and the sources of those grants (with the exception of the identities of individual grantors, for which it has requested a confidentiality agreement), and it has also produced all of the 1099 Forms concerning those grants. See Wildlife Advocacy Project's Opposition To Motion To Compel (Sept. 21, 2006) (Docket No. 93) at 21-26.

Accordingly, the only financial information that has ever been outstanding with respect to defendants' discovery is any information concerning funding or other "items" Mr. Rider may have received from any additional groups or individuals whose correspondence is referenced in Plaintiffs' Initial Disclosures (Interrogatory No. 24, Document Request No. 21). However, such specific information – again, as defined by defendants themselves – is extremely limited in scope, since on January 30, 2004, plaintiffs did not have much correspondence in their files from "animal advocates" other than plaintiffs that was sent to the USDA, Mr. Feld, or the Department of Interior. Accordingly, defendants' insistence that Mr. Rider has been "hiding" his sources of funding from them for years, see e.g., Defendants' Motion To Compel Discovery From Tom Rider at 2, is completely inaccurate: in fact, defendants have never asked Mr. Rider to identify all of his sources of funding. Nevertheless, as discussed below, Mr. Rider has always been willing to provide defendants with information concerning all individuals and groups that can even arguably be described as "animal advocacy organizations" or "animal advocates" without regard to how those terms were used in plaintiffs' Initial Disclosures.

Thus, in response to the discovery requests that defendants did propound, Mr. Rider objected to providing the requested information "on the grounds that [the discovery] seeks information that is irrelevant, oppressive, and on the grounds that [the discovery] seeks privileged information that is protected by his right to privacy, and would infringe on his freedom of association." See Mr. Rider's Response To Defendants' Interrogatories at 39; Mr. Rider's Response To Defendants' Document Production Request at 13 (Rider Exhibit A). Nevertheless, Mr. Rider stated that "[s]ubject to and without waiving [those] objections . . . and subject to a confidentiality agreement," he would be willing to provide the requested information. See id.

Between June 30, 2004 and October 12, 2006 – almost two and a half years – defendants did not respond to Mr. Rider's offer to provide information about his sources of income. In addition, although plaintiffs made Mr. Rider available for a deposition on October 12, 2006, defendants again did not ask him to identify all of his sources of funding over the years, but instead asked him only whether he had received funding from any of the plaintiff organizations, or his lawyers in this case – all of which he answered without objection (yes, to the former; no to the latter). See Rider Deposition (October 12, 2006), Rider Ex. D.[2]

Nevertheless, by letter dated November 22, 2006, defendants for the first time began complaining that Mr. Rider was refusing to provide them with all of the financial information they had requested in their March 30, 2004 discovery requests. See Letter from George Gasper to Katherine Meyer (November 22, 2006) at 11. In response, plaintiffs' counsel pointed out that much of this information had already been disclosed by Mr. Rider at his October 12, 2006 deposition, that the individual organizational plaintiffs had also disclosed this information in their own discovery responses and at their depositions, and that The Wildlife Advocacy Project, had also provided such information subject to a subpoena duces tecum. See Letters from Katherine Meyer to George Gasper (December 15, 2006), (January 16, 2006) (Rider Ex. E at 7-9. Nevertheless, plaintiffs' counsel reiterated Mr. Rider's long-standing offer to provide defendants with the requested financial information, subject to an appropriate confidentiality agreement. See id. at 9 ("Mr. Rider is willing to provide a more complete list to defendants of his sources and amounts of income since he stopped working for the circus . . . [h]owever, because he still

[2]Defendants' counsel also asked Mr. Rider how he got his lap top computer, which Mr. Rider also answered (from a friend who was identified by name). See Rider Dep. at152.

believes much of this information is personal and confidential, he continues to request that he provide this information to defendants subject to a confidentiality agreement. If you agree to this approach, I will draft a proposed agreement for your review as soon as possible") (emphasis added). However, defendants have refused to allow Mr. Rider to provide any of this information subject to a confidentiality agreement, and has instead chosen to move the Court to compel public disclosure of this information. See Defendant's Motion To Compel Discovery From Plaintiff Tom Rider (Docket No. 126).

ARGUMENT

Rule 26(c) provides that "for good cause shown," the Court may enter a protective order to protect a party or person "from annoyance, embarrassment, [or] oppression," and that such an order may provide that the disclosure or discovery either not be had at all, or that it be allowed pursuant to "specified terms and conditions." Rule 26(c), Fed. R. Civ. P. As the Court of Appeals has observed, "Rule 26(c) is highly flexible, having been designed to accommodate all relevant interests as they arise," and the existence of "good cause" for a protective order "is a factual matter to be determined from the nature and character of the information sought." U.S. v. Microsoft, 165 F.3d 952, 959 (D.C. Cir. 1999).

Here, Mr. Rider does not seek to be excused from providing defendants with information concerning funding he has received over the years from "animal advocates and animal advocacy organizations," as requested by defendants. However, he seeks to do so pursuant to a protective order that will (1) ensure that such personal financial information – to the extent that it has not already been disclosed by those organizations or individuals themselves – is not publicly disclosed or used for any purpose other than this litigation; and (2) that the individuals and

organizations that he identifies are not subject to harassment by defendants. Both of these concerns fall well within the Court's purview under Rule 26(c).

In addition, although as explained above, defendants have never asked Mr. Rider to identify all of his sources of funding – but instead only asked him to identify the funding and other items he has received from "animal advocates" or "animal advocacy organizations" as those terms were used in Plaintiffs' January 30, 2004 Initial Disclosures, Mr. Rider is nevertheless willing to provide defendants with much more information than they requested, as long as he can do so pursuant to the requested protective order.

1. Mr. Rider's Financial Information Should Be Kept Confidential.

It is well settled that protective orders may be entered to protect matters that would invade an individual's personal privacy. See, e.g., Seattle Times Co. v. Rhinehart, 467 U.S. 20, 35 (1984) (recognizing that "[a]lthough [Rule [26(c)] contains no specific reference to privacy or to other rights or interests that may be implicated, such matters are implicit in the broad purpose and language of the Rule") (emphasis added); In re Sealed Case, 381 F.3d 1205, 1216 (D.C. Cir. 2004) ("[i]n exercising their discretion under the rule, courts have long recognized that interests in privacy may call for an extra measure of protection, even where information sought is not privileged") (emphasis added).

Thus, as the Court of Appeals has also observed, the "'court, in its discretion, is authorized . . . to fashion a set of limitations that allows as much relevant information to be discovered as possible, while preventing unnecessary intrusions into the legitimate interests – including privacy and other confidentiality interests – that might be harmed by the release of the material sought.'" In re Sealed Case, 381 F.3d at 1216 (internal citations omitted) (emphasis

added). In addition, the Supreme Court has held that "district courts should not neglect their power to restrict discovery where 'justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Herbert v. Lando, 441 U.S. 153, 177 (1979) (quoting Rule 26(c)).

Here, Mr. Rider's list of funding he has received from animal advocates and animal advocacy organizations over the last seven years, and documents demonstrating his "sources of income" constitute personal, financial information that should not be publicly disclosed without permission from the Court, except to the extent that it has already been publicly disclosed by the groups or individuals who have provided any such funding. Thus, while Mr. Rider understands that such information may be legitimately used by defendants in this case in an attempt to cast doubt on his credibility as an eye-witness to defendants' mistreatment of the endangered elephants, defendants have presented no reason why such personal financial information must be publicly disclosed.

Indeed, we note that when plaintiffs attempted to obtain financial information from defendants concerning how much money they make from the circus each year – on the grounds that this information bears on the credibility of defendants – Judge Facciola agreed with defendants that his information, even when applied to a corporation, rather than an individual, was extremely "sensitive." See Magistrate Facciola's Memorandum Opinion (February 23, 2006) (Docket No. 59) at 9. He further held that "[t]he fact that defendants' financial information may have some value regarding defendants' witnesses' credibility is of marginal utility and is too far out of proportion to the sensitivity of the financial information sought and the burden that would be placed on defendants in gathering and producing such documents." Id.

(emphasis added).

Here, in sharp contrast to the stance taken by defendants about their financial information, Mr. Rider does not seek to keep from them the information they have requested – i.e., the amount of money he has received over the years from animal advocates and animal advocacy organizations. Rather, he seeks to provide the information subject to a protective order that would ensure that the "sensitivity of the financial information sought " is not compromised by requiring that it be publicly disclosed. Id.

Not only is that information, to the extent it has not been disclosed by the individuals and organizations themselves, highly personal, but Mr. Rider is legitimately concerned that if he is compelled to publicly disclose this information, this will interfere with his First Amendment rights of speech and association, since defendants will use this information to pressure Mr. Rider's supporters not to contribute to or otherwise support his public advocacy efforts in the future. See, e.g., Wyoming v. USDA, 208 F.R.D. 449, 454 (D.D.C. 2002) (discovery not permitted when it has the "potential 'for chilling the free exercise of political speech and association guarded by the First Amendment'") (emphasis added) (quoting FEC v. Machinists Non-Partisan Political League, 655 F.2d 380, 388 (D.C. Cir. 1981)).

Indeed, as this Court well knows, defendants are already seeking to amend their Answer in this case to add a counterclaim against both the plaintiffs and The Wildlife Advocacy Project under the Racketeer Influenced and Corrupt Practices Act ("RICO") for having provided grant money to Mr. Rider for his highly effective public education and legislative advocacy work on behalf of the Asian elephants. See Plaintiffs' Opposition to Defendant FEI's Motion to Amend Answers (Docket No. 132) ("Pl. Amend Opp."). Thus, under their view of the law, anyone who

provides funding to Mr. Rider is necessarily "bribing" him to participate in this case and is otherwise engaged in all kinds of other unlawful activities. Id.

Clearly defendants' tactic was undertaken in an effort not only to make plaintiffs and The Wildlife Advocacy Group spend their resources defending themselves against this classic "SLAPP" suit maneuver, but also to put pressure on plaintiffs and The Wildlife Advocacy Group – and those who have provided it funding – to discontinue their funding of Mr. Rider's advocacy efforts. See, e.g., Glover, M., "S.L.A.P.P. Suits: A First Amendment Issue and Beyond," 21 N.C. Cent. L.J. 122, 132 (1995) (the "substantial legal costs" that a SLAPP defendant must bear to defend itself against the SLAPP suit "often serves as a deterrent [to] . . . further participation in the SLAPP-related activity or other future activities that might result in the same sort of litigation") (emphasis added); see also Testimony of Charles Smith, FEI Chief Financial Officer, People for the Ethical Treatment of Animals v. Kenneth Feld, et al., No. 204452 (Cir. Ct. Fairfax County, Va.) (February 28, 2006), Pl. Amend Opp. Exhibit 10 (FEI's plan to discredit its detractors includes attacking animal protection groups with "lawsuits . . . [and] money irregularities," since "[b]y keeping up the pressure" on those fronts, the groups "[w]ill spend more of their resources in defending their actions" than on their advocacy work) (emphasis added).[3]

Likewise, in view of defendants' track record on this front, and the fact that defendants are obviously very concerned about the effectiveness of Mr. Rider's efforts to inform the public about the animal abuse that goes on behind the scenes at the circus, Mr. Rider has every reason to

[3] Several of the Exhibits cited herein are also Exhibits to Plaintiffs' Opposition To FEI's Motion To Amend Answers (Docket No. 132). Rather than file duplicates of those Exhibits here, those Exhibits are simply cited as "Pl. Amend Opp. Ex."

believe that if he is required to publicly disclose every individual or group that has ever provided him funding or other items, such as "food, clothing, shelter, or transportation," Def. Int. No. 24, defendants will undoubtedly use such information in an effort to pressure those groups and individuals to cease their support of Mr. Rider's advocacy efforts. See id.; see also E-mail from Peggy Williams to Julie Strauss (Nov. 4, 2003), Pl. Amend Opp. Ex. 48 (reporting that Mr. Rider spoke at a UCLA Animal Rights Law Series, "during which time he showed very damaging clandestine video of circus elephants," and that "Mr. Rider's presentation could easily be considered VERY damaging to our industry." (capitals in original, emphasis added).

2. A Protective Order Is Needed To Protect Others From Harassment.

For the same reason, and because defendants also have a well established pattern of spying on, harassing, intimidating, reporting to the IRS, suing, and otherwise oppressing those who criticize their operations – including not only "animal activists," but also reporters, writers, and even teachers – Mr. Rider also seeks a protective order from this Court that will ensure that once he provides defendants with the information they have requested, defendants will be prohibited from harassing any of these individuals or groups in any way. See Pl. Amend Opp. (Docket No. 132) at 8-11 (and Exhibits cited therein).

Thus, as plaintiffs have demonstrated, id., defendants' own "Long Term Animal Plan Task Force" Plan, FEI 1480, Pl. Amend Opp. Ex.1, details plans to "expose and discredit animal activist entities," id. at 28 (emphasis added), "[p]lac[e] stories in all media (print, t.v., radio)" with "negative information about activists," id. at 12 (emphasis added), videotape their activities in an effort to "dissuade activist activity if they know their actions are being memorialized, id. at 8 (emphasis added), "target[] . . . how donations are used [and] the terrorist activities of the

activists," and "[f]ormulat[e] a plan to discredit IRS Section 501(c)(3) status of" animal protection organizations). Id. at 12-13 (emphasis added). Defendants' plan also details strategies for dealing with reporters and teachers who disseminate information about Ringling's mistreatment of animals, including threatening legal action against editors and news directors who publish such stories, and waging an "intensive campaign to the school itself, principal and Board of Education demanding [an] investigation" of the source of any letters sent by school children raising concerns about the treatment of the animals). Id. at 12-13 (emphasis added).

Moreover, in trial testimony presented last year in another proceeding, FEI officials, including CEO Kenneth Feld himself, admitted that defendants conducted a "covert" operation of infiltration and surveillance of various animal protection groups, including the placement of "operatives" acting as volunteers inside the groups who then forwarded to FEI highly confidential information about those groups and their officers, including membership and donor lists, bank statements, credit card numbers, and social security cards). See Pl. Amend Opp. at 9-11.

In fact, in another case still pending in D.C. Superior Court, an affidavit executed by the former Deputy Director of the CIA stated that "as part of my consulting work for Feld Entertainment, I was also asked to review reports from Richard Froemming and his organizations, based on their surveillance of and efforts to counter the activities of various animal rights groups"). Affidavit of Clair George, Pottker v. Feld Entertainment, Inc., et al., Civ. No. 99-008068 (Sup. Ct. D.C.), Pl. Amend Opp. Ex. 12; see also "The Greatest Vendetta on Earth," Salon (2001), Pl. Amend Opp. Ex. 14; 60 Minutes piece, Pl. Amend Opp. Ex. 15 (DVD) (reporting on FEI's covert interference with an author's efforts to write a book about the circus).

Mr. Rider does not want those who have been kind enough over the years to support his efforts to speak out about what he witnessed while he worked at the circus to be subjected to this kind of harassment and intimidation. It is well established that this Court has the discretion to fashion a protective order that will protect these individuals and groups from such harassment. See, e.g., Centeno-Bernuey v. Becker Farms, 219 F.R.D. 59 (W.D.N.Y. 2003) (protective order granted where plaintiffs defendants had threatened to report plaintiffs to the Immigration and Naturalization Service and referred to them as "terrorists" in letters to plaintiffs' counsel); Elvis Presley Enterprises, Inc. V. Elvisly Yours, Inc., 936 F.2d 889 (6th Cir. 1991) (refusing to allow deposition of witness where evidence indicated that "the primary purpose in deposing her would be to harass and annoy her"); Management Information Technologies, Inc. v. Alyeska Pipeline Service Co., 151 F.R.D. 478, 481 (D.D.C. 1993) (granting protective order because "[t]he Court is unwilling to subject non-parties . . . to the possible retaliation that frequently results when a whistleblower is identified"); Nocal, Inc. v. Sabercat Ventures, Inc., Civ. No. 04-0240, 2004 WL 3174427, *4 (N.D. Cal. Nov. 15, 2004) (protective order granted to protect the witness from "further discovery attempts and harassment"). Indeed, courts have recognized that "[w]hen the potential for abuse of procedure is high, the Court can and should act within its discretion to limit the discovery process, even if relevancy is determined." Centeno-Bernuy v. Becker Farms, 219 F.R.D. at 61 (quoting Topo v. Dhir, 210 F.R.D. 76, 78 (S.D.N.Y. 2002) (emphasis added).

* * *

Again, to be clear, Mr. Rider has no objection to providing defendants' with the requested financial information and, as explained above, even financial information that defendants have never requested from him. In fact, the record shows that Mr. Rider has always been willing to

provide defendants with this information. However, to protect both him and those who have contributed to his public advocacy efforts from harassment and retaliation by defendants, Mr. Rider requests that this Court allow the production of such information subject to a protective order that will (1) ensure that defendants do not publicly disclose any such information that has not already been disclosed by those groups or individuals; and (2) prohibit defendants from contacting any such individuals or entities without permission of plaintiffs or the Court upon a showing of good cause, and that defendants also be prohibited from serving any such individuals or groups with subpoenas or other discovery requests, filing lawsuits against them, spying on them, infiltrating them, intimidating them, or otherwise harassing them in any way, without permission from this Court and with good cause shown. A proposed order encompassing these protections is attached.

CONCLUSION

For the foregoing reasons, plaintiff Tom Rider's motion for a protective order should be granted.

Respectfully submitted,

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