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 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 the Court for a protective order with regard to the financial information that defendants requested from him in their March 2004 discovery requests. As Mr. Rider has made clear for the last three years, he has no objection to providing defendants with the requested information concerning funding he has received over the years from "animal advocates and animal advocacy organizations," as long as he can do so pursuant to a protective order that will ensure (1) that such personal financial information is not publicly disclosed or used for any purpose other than this litigation; and (2) that the individuals and organizations he identifies are not subject to harassment by defendants.

At the same time they insist that they badly need this information to continue with this litigation, defendants have nevertheless refused to accept Mr. Rider's long-standing offer to

provide the information, and instead insist – wrongly – that he "refuses" to provide it to them. See, e.g., Defendants' Opposition (Def. Opp.) at 8. Apparently, defendants believe that by insisting *ad nauseum* that Mr. Rider "refuses" to provide them this information, id., that he has committed "perjury" in these proceedings, Def. Opp. at 2, 4, that he is guilty of "widespread spoliation" of evidence, Def. Opp. at 8, and that all of the plaintiffs and their counsel are involved in an "unlawful payment scheme," Def. Opp. at 14, the Court will eventually blindly accept these scurrilous, unsupported – and sanctionable – accusations as true.

Mr. Rider makes the following additional points in response to defendants' opposition to his motion for a protective order.

1. Defendants devote a good deal of their opposition to anticipating that Mr. Rider will not provide them with the financial information they requested in March 2004, simply because Mr. Rider pointed out that the term "animal advocacy organization" as used in the relevant Interrogatories was not defined by defendants, the term "animal advocate" was defined in a limited way, and defendants have never asked him to actually "identify all of his sources of funding." See Memorandum In Support of Plaintiff Tom Rider's Motion for A Protective Order With Respect to Certain Financial Information ("PO Mem.") at 2-4; Defendants' Opposition ("Def. Opp") at 2-8.

However, as Mr. Rider has unequivocally stated, despite these limitations in the way defendants framed their actual discovery requests, he "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 [defined by defendants]." See PO Mem. at 4 (emphasis added). Moreover, of course

this includes any documents that reflect such information. See Defendants' Opposition at 5 (complaining that they did not ask only for "information," but also requested documents).

Thus, the only issue here is whether the Court should allow Mr. Rider to provide those discovery responses to defendants subject to a protective order that will ensure that such highly personal financial information is not made public, absent the Court's permission, and which also ensures that the individuals and organizations who provided any financial assistance to Mr. Rider are not harassed by defendants in any way.

In light of the fact that Mr. Rider has offered to provide all of this information for almost three years now – as long as defendants would not publicly disclose it – defendants' protestations that Mr. Rider is "refusing" to provide them with such information have no basis in fact. See Def. Opp. at 8. Apparently defendants would rather complain that plaintiffs are refusing to provide this information than accept plaintiffs' long-standing offers to provide it, so that they can continue to hurl their bogus assaults of "obfuscation" and "hiding the ball" at Mr. Rider, the other plaintiffs, and plaintiffs' counsel.

2. Defendants' argument that Mr. Rider "lacks standing" to request a protective order on behalf of those individuals and organizations who may have provided him financial assistance over the years for his highly effective public education on behalf of the Asian elephants to whom he has devoted his life also has no merit. As very clearly explained in the memorandum in support of the requested protective order, 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." PO Mem. at 9 (emphasis added) (citations omitted). See also id. at 11 (explaining that "[f]or 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," Mr. Rider seeks a protective order that will ensure that "defendants will be prohibited from harassing any of these individuals or groups in any way").

Indeed, this Court need look no further than defendants' own opposition brief to understand the legitimacy of Mr. Rider's concerns. Thus, defendants' candidly make reference to the fact that they may use this information in an effort to persuade Mr. Rider's supporters not to support him in the future, stating that "donors may not want to affiliate themselves with the unlawful payment scheme that Rider, his counsel, and his co-plaintiffs have conspired to commit." Def. Opp. at 14. Of course, those donors will not find out about all of these alleged nefarious activities unless defendants – the architects of these spurious accusations – take it upon themselves to inform them, once they obtain the donors' identities from Mr. Rider.

Defendants also suggest, as plaintiffs had predicted, see PO Mem. at 11-12, that defendants may also file lawsuits against such individuals. See Def. Opp. at 22 ("[i]f evidence exists that FEI has legitimate causes of action previously unknown to it, then it is FEI's decision whether to pursue suit – not plaintiffs'"); see also PO Mem. at 9-10 ("under [defendants'] 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").

This is precisely why Mr. Rider seeks a protective order here – to protect the individuals and organizations who have generously contributed to his public education efforts over the last

seven years from this kind of harassment by defendants. Particularly in light of defendants' well established pattern of harassing those who dare to criticize the circus, this is a completely legitimate basis for the requested protective order. See PO Mem. at 11-14.

3. Defendants also wrongly assert that by seeking the requested protective order, Mr. Rider "asks this Court to establish a double-standard in this case whereby FEI discovery materials are open to all while Rider's discovery materials are protected as 'confidential.'" Def. Opp. at 1. Plaintiffs have in fact agreed to several protective orders with respect to records produced by defendants. See Joint Stipulated Protective Order Concerning Recordings of Ringling Bros. And Barnum & Bailey Circus Performances (Aug. 15, 2006) (Docket No. 77); Joint Stipulated Protective Order Regarding Video Recordings (Aug. 4, 2006) (Docket No. 76); Plaintiffs' Proposed Protective Order (Docket No. 49, Attachments 1 and 2) (regarding medical records containing information that "forms the basis of a specific research paper that defendants intend to publish in the near future"); Court's Order (September 26, 2005) (Docket No. 50) (approving plaintiffs' protective order for medical records).[1]

The standard that applies, both under Rule 26(c), and pursuant to this Court's own Order in this case is a showing of "good cause." See Rule 26(c), Fed. R. Civ. P.; see also Order (November 25, 2003) (denying general protective order for all discovery, but acknowledging that

[1] In their Reply in Support of FEI's Motion to Compel Discovery from Plaintiff Tom Rider (Docket No. 144), defendants falsely state that plaintiffs "only submitted a proposed [protective] order"on the veterinary records "after the Court ruled that FEI was entitled to one." Id. at 8, n.4. The Court made no such order. Rather, when plaintiffs indicated at oral argument that they would stipulate to a narrowly drawn protective order, the Court asked the parties to draft and propose such an order. See Transcript of Sept. 16, 2005 Hearing at 86. Plaintiffs did so, see Docket No. 49, and the Court then denied the broad protective order requested by defendants and instead entered the limited order proposed by plaintiffs. See Docket No. 50.

protective orders may be appropriate for "particular specified information . . . upon a showing of 'good cause'"). Here, Mr. Rider has amply demonstrated good cause for a requested protective order covering his personal financial information.

4. Mr. Rider has not committed any "perjury" as defendants allege, Def. Opp. at 2, 4. See Reply Memorandum In Support of Plaintiff Tom Rider's Motion for a Protective Order To Protect His Personal Privacy (Docket No. 117) at 9-13; Plaintiffs' Opposition to Defendants' Motion To Compel Discovery From Plaintiff Tom Rider (Docket No. 138) at 3-7; see also United States v. Dunnigan, 507 U.S. 87, 94-95 (1993) (the finding of "perjury" requires "false testimony concerning a material matter with the willful intent to provide false testimony").

Nor has Mr. Rider engaged in the "spoliation" of any documents requested in discovery, Def. Opp. at 8. See Plaintiffs' Opposition to Defendants' Motion To Compel Discovery From Plaintiff Tom Rider (Docket No. 138) at 9-12; see also Rice v. United States of America, 917 F. Supp. 17, 19 (D.D.C. 1996) (the "prevailing rule" is that spoliation requires a showing of "bad faith" destruction of evidence).

5. Contrary to defendants' assertion, Mr. Rider's motion for a protective order is not "too late." Def. Opp. at 19. As the record unequivocally shows, Mr. Rider offered to provide all of the requested financial information subject to a confidentiality agreement almost three years ago, when he responded to defendants' March 2004 discovery. See PO Mem. at 4. Yet, defendants did not take him up on this offer, nor contest in any way Mr. Rider's responses to their discovery. See id. at 5. In fact, it was not until November 22, 2006 that defendants – then represented by new counsel – first complained about any of Mr. Rider's June 2004 discovery responses. Id. In response, as required under the Rules of Procedure, Mr. Rider and his counsel

attempted to convince defendants to accept the requested information pursuant to a confidentiality agreement. See id. at 5-6; see also Rule 26(c) (movant for protective order must certify that it has "in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action") (emphasis added).

However, when defendants made it clear that they would only accept public disclosure of the requested financial information, and moved to compel such public disclosure, Mr. Rider opposed that motion and promptly moved for the requested protective order. See also Rule 37((a)(4) (explaining that if a motion to compel is denied "the court may enter any protective order authorized by Rule 26(c)").

6. Defendants' assertion that Mr. Rider has somehow "waived" his right to ask for confidentiality here because another entity – The Wildlife Advocacy Project – has already willingly disclosed some of the same information that is sought from him, Def. Opp. at 11, makes no sense, nor do defendants cite any case law for the novel proposition that an organization can waive an individual's right to assert confidentiality for his personal financial information. Nor is there any basis for defendants' assertion that Mr. Rider has "waived" his right to request confidentiality under Rule 26(c) because he once told a legislator that some of his expenses were being paid by the ASPCA. Def. Opp. at 11. The standard that applies to protective order is "good cause."

Here, Mr. Rider is being asked to provide defendants with a comprehensive list of all of the funding and other items of value he has received from any "animal advocacy organization" and any "animal advocate" over the last seven years, and the documents that reflect such information. See PO Mem. at 2. Clearly, providing a complete list of such highly personal

financial information warrants a protective order that would bar defendants from publicly disclosing such information, "to the extent that it has not already been disclosed by those organizations and individuals themselves," which is all that Mr. Rider has requested here, along with an order prohibiting the harassment of any such organizations or individuals. See PO Mem. at 6.[2]

CONCLUSION

For all of the foregoing reasons, as well as those set forth in Mr. Rider's opening memorandum, the requested protective order should be granted.

Respectfully submitted,

/s/ Katherine A. Meyer
Katherine A. Meyer
(D.C. Bar No. 244301)
Kimberly D. Ockene
(D.C. Bar No. 461191)

Meyer Glitzenstein & Crystal
1601 Connecticut Ave., N.W. Suite 700
Washington, D.C. 20009
(202) 588-5206

May 23, 2007

[2] Defendants suggest that plaintiffs' proposed protective order is "unworkable" because it does not contain a provision for filing documents with the Court. Def. Opp. at 21. Although plaintiffs believe it is obvious that such information would have to be filed under seal, the mere fact that it may be appropriate to make modifications to the protective order is not a basis for denying it altogether.