

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION**

<p>SEXUAL MINORITIES UGANDA</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>SCOTT LIVELY, individually and as President of Abiding Truth Ministries,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>)</p>	<p>Civil Action</p> <p>3:12-CV-30051</p>
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**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF’S MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND RESPONSES TO INTERROGATORIES**

Defendant has improperly narrowed the scope of several of Plaintiff’s interrogatories and requests for production. Specifically, in response to Plaintiff’s Interrogatories No. 16, 19, 20, and 21 and Requests for Production No. 4, 22, 23, 24, and 25, Defendant has refused to provide documents or information regarding his persecutory efforts to deprive lesbian, gay, bisexual, transgender, and intersex (“LGBTI”) people of their fundamental rights in countries besides Uganda. Defendant’s objections on this ground are barred. First, Plaintiff’s First Amended Complaint (the “Complaint”) (Dkt. 27) specifically alleges Defendant’s actions in Moldova, Latvia, Russia, Lithuania, and elsewhere to demonstrate that Defendant’s “role in Uganda was not an aberration or something that came about inadvertently but part of his much larger scheme to promote and facilitate discrimination against LGBTI persons around the world.” Dkt. 27 at ¶ 64. Indeed, in its order denying Defendant’s Motion to Dismiss, the Court noted the interconnected nature of Defendant’s work “in Uganda *and elsewhere.*” Dkt. 59 at 10 (emphasis added). Second, Defendant’s efforts to strip away the rights of LGBTI persons in other

countries directly support Plaintiff's persecution claim, which includes allegations of Defendant's intentional and severe deprivation of fundamental rights. Defendant's deliberate efforts to systematically deprive LGBTI persons of their fundamental rights in Eastern and Central Europe and elsewhere constitute other acts that can demonstrate Defendant's intentions behind his work in Uganda under Fed. R. Evid. 404(b)(2). Third, discovery produced in this case to date confirms that Defendant's campaign against the "gay movement" in Uganda is part of a larger international plan of persecution for which he has consistently taken credit and that Defendant has actively sought to connect his work in other countries with his work in Uganda. Thus, Plaintiff is entitled to all non-privileged documents and communications within Defendant's possession, custody, or control that are responsive these requests.

BACKGROUND

Plaintiff served its First Set of Interrogatories and First Request for Production of Documents on Defendant on April 1, 2014. *See* Spiegelman Decl., Exhibits A and B. On June 12, 2014, Defendant served his Responses and Objections to both sets of discovery requests, including objections to the category of requests at issue here. *See id.*, Exhibits C and D. On May 14 and 27, 2015, counsel for the parties conferred on this issue via telephone in anticipation of Plaintiff's motion, but failed to reach a resolution.

Defendant objected to Interrogatories No. 16, 19, 20, and 21 and Requests for Production No. 22, 23, 24, and 25, to the extent these requests seek the production of information, communications, and documents that do not pertain specifically to his efforts in Uganda. *See* Spiegelman Decl., Exhibits C and D. Similarly, in response to Request for Production No. 4, Defendant refused to produce the board meeting minutes of Abiding Truth Ministries – the entity on behalf of which Defendant claims to have acted "to the extent any of the acts, omissions or

conduct alleged throughout [the] Complaint were actually undertaken by him” (Dkt. 83 at 1), including anti-LGBTI efforts connected to Eastern Europe (*id.* at ¶¶ 58-59, 67) – wherein there was no discussion of Uganda. He asserted that such information, communications, and documents are neither relevant nor likely to lead to admissible evidence because the “lawsuit is brought solely by a Ugandan entity and is about Lively’s alleged activities in Uganda.” *See, e.g.*, Spiegelman Decl., Exhibit D at Req. No. 22.

On September 9, 2014, counsel for Plaintiff responded to Defendant’s objections via email, offering to meet and confer telephonically and explaining Plaintiff’s concerns with Defendant’s objections. Spiegelman Decl., Exhibit E. Plaintiff emphasized that Defendant’s broader international activities concerning homosexuality are directly related to Plaintiff’s claims arising from his persecutory conduct in Uganda, and that as such, Defendant has no legitimate basis to narrow the scope of Plaintiff’s requests to information specific to Uganda. *Id.* Defendant’s counsel replied via email on October 20, 2014, merely repeating Defendant’s previously asserted positions on Plaintiff’s requests. *Id.*, Exhibit F. Counsel for Plaintiff responded with regard to the totality of Defendant’s Responses and Objections on October 31, and receiving no further response on this issue, sent another letter on January 8, 2015, and again received no response. *Id.*, Exhibit G. Finally, telephonic meet-and-confer sessions were conducted on May 14 and 27, 2015 between counsel for the parties, on which occasions counsel for Defendant reiterated and confirmed his commitment to these objections.¹

¹ Counsel for the parties have successfully resolved a number of other discovery disputes through telephonic conferences, including issues regarding additional searches and productions of responsive documents.

ARGUMENT

A plaintiff is entitled to information or documents relevant to its claims without any need for intervention by the court. *See Delgado v. Galvin*, Civil Action No. 12-cv-10872, 2014 U.S. Dist. LEXIS 33476, at *9 (D. Mass. Mar. 14, 2014) (differentiating such discovery from discovery on matters merely “relevant to the subject matter involved in the action,” which requires a showing of good cause); *In re Subpoena to Witzel*, 531 F.3d 113, 118 (1st Cir. 2008) (explaining that a matter’s relevance to a party’s claims establishes prima facie entitlement to discovery concerning that matter). Indeed, unless otherwise ordered by the court, parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense. *See Morse v. Massachusetts Executive Office of Public Safety Dept. of State Police*, CIVIL ACTION NO. 12-40160-TSH, 2014 U.S. Dist. LEXIS 93145, at *3 (D. Mass. Jul. 9, 2014).

The scope of relevance is laid out by the plaintiff’s allegations and the components of its claims, and can only be expanded, not limited, by the defendant’s theory of the case. *See In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1191-93 (10th Cir. 2009). A plaintiff is entitled to test its allegations through discovery, so long as discovery is reasonable and not arbitrary in light of its allegations. *In re Toyota Motor Corp. Sec. Litig.*, Master File. No CV 10-922 DSF (AJWx), 2012 U.S. Dist. LEXIS 124438, at *23-24 (C.D. Cal. Mar. 12, 2012). As explained in detail below, Plaintiff is entitled to the discovery sought given that the requested information is plainly relevant to its allegations, and moreover, directly relates to the proving of specific elements of Plaintiff’s persecution claims. Further, such relevance is underscored by discovery conducted thus far that confirms Plaintiff’s allegations regarding Defendant’s global strategy and efforts to specifically connect his work in other countries to his efforts in Uganda.

A. The Discovery Sought is Directly Related to Plaintiff's Allegations

Plaintiff alleges in the Complaint that Defendant “advis[es] and work[s] with political leaders in different countries to deprive LGBTI communities of fundamental human rights,” including political leaders in Uganda. Dkt. 27 at ¶ 23. Plaintiff’s allegations further describe Defendant’s international agenda “to advocate more forcefully in Uganda and elsewhere for the criminalization of advocacy, as necessary for silencing individuals who support the rights of LGBTI individuals.” *Id.* at ¶ 67. The allegations describing Defendant’s work in countries other than Uganda, such as Moldova, Latvia, Russia, and Lithuania, seek to demonstrate “that his role in Uganda was not an aberration or something that came about by accident but part of his much larger scheme to promote and help enshrine discrimination against LGBTI persons around the world.” *Id.* at ¶ 64. *See also id.* at ¶ 58 (alleging Defendant’s publication of *Defend the Family: Activist Handbook*, which “was written for activists in Latvia where Lively had co-founded Watchmen on the Walls – an organization Lively describes as a global coalition that coordinates ‘opposition to the international homosexual movement’”); *id.* at ¶ 63 (alleging Defendant’s persecutory efforts in Moldova, including “the crucial role he played in defeat[ing] the non-discrimination legislation pending at the time”). Given that Plaintiff’s allegations expressly implicate Defendant’s persecutory strategies and efforts in Eastern and Central Europe and elsewhere, Plaintiff is entitled to discovery on those matters in order to test and prove its allegations. *See In re Toyota*, 2012 U.S. Dist. LEXIS 124438, at *24.

B. The Discovery Sought Bears Directly on Plaintiff's Claim of Persecution

The information sought by Plaintiff regarding Defendant’s efforts in countries besides Uganda bears on elements of Plaintiff’s persecution claim. Where the discovery sought helps establish an element of a party’s claim, it is *ipso facto* relevant. *See Nairobi Holdings Ltd. v.*

Brown Bros. Harriman & Co., 02 Civ. 1230 (LMM), 2005 U.S. Dist. LEXIS 4300, at *6-7 (S.D.N.Y. Mar. 18, 2005) (where plaintiff presented fraud claims for which it needed to show that defendants made certain representations with the intent to deceive plaintiff, rejecting defendant’s attempt to narrow the timeframe for documents considered relevant because “[i]mplicit in [the scienter] element is the need to show what the defendants knew at the time of the alleged misrepresentations” and thus, “a time-frame for discovering defendants’ knowledge of facts at issue must be sufficiently broad to reveal evidence of the facts as well as evidence of when defendants learned those facts”). Persecution, as a crime against humanity, consists of the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.” *Rome Statute of the International Criminal Court*, Art. 7(2)(G). Evidence of Defendant’s deliberate work to systematically deprive LGBTI persons of their fundamental rights in Eastern and Central Europe and elsewhere constitute other acts admissible to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident” under Fed. R. Evid. 404(b)(2) and can serve to demonstrate Defendant’s intent behind his work in Uganda. *Compare In re Subpoena to Witzel*, 531 F.3d at 119 (denying motion to compel certain communications among third parties (without defendants’ participation) sought in support of equal protection claims on the ground that they “would not show what the defendants intended in taking the actions that they did” because plaintiff made no showing of defendants’ knowledge of those communications).

C. Discovery Conducted Thus Far Confirms Plaintiff’s Allegations

Documents produced by Defendant in discovery so far reveal that even Defendant himself views his work in Uganda as connected to his broader global agenda. For example, Defendant’s documents demonstrate that he views the way in which LGBTI advocacy was

criminalized in Eastern Europe and Russia as a means of stopping Plaintiff's work in Uganda. Emails show that Defendant attempted to connect his Latvian collaborator and co-founder (with Defendant) of the anti-LGBTI organization Watchmen on the Walls, Alexey Ledyayev, with his Ugandan co-conspirator Stephen Langa to organize a "pro-family" (euphemism for LGBTI persecution) conference in Kampala, Uganda. Spiegelman Decl., Exhibit H. *See also id.*, Exhibit I (contacting Stephen Langa and individuals associated with New Generation Church in Latvia regarding an invitation to Uganda to inform them that "I will be in Latvia in June working with the New Generation Church. They may be interested in sending me with a delegation to assist you with this effort"); *id.*, Exhibit J (informing Stephen Langa, "I'm in Warsaw for the World Congress of Families IV, along with Pastor Alexey [Ledyayev] and company. Tonight we agreed to hold a Watchmen on the Walls conference in Kampala in February with the goal of rallying the African nations to exhort South Africa to reverse its pro-homosexual policies"); *id.*, Exhibit K (referring to Langa as the "new WOW coordinator in Uganda"). Defendant also turned to partners in Russia to participate in and provide financial support for such a conference. *See id.*, Exhibit L.

Similarly, in a 2013 email titled "International Coalition Building" to all four Ugandan co-conspirators, Defendant took credit for legislation recently passed in Russia criminalizing advocacy and advised his Ugandan partners to adopt similar legislation, in light of challenges to the Anti-Homosexuality Bill. *Id.*, Exhibit M. In a separate email to Ugandan co-conspirators Stephen Langa and Martin Ssempe, Defendant explained that doing so would "accomplish that objective of stopping . . . the destructive propaganda efforts of groups like SMUG [and] would change the entire international debate about Uganda, and give you a strong ally in Russia and the several East European countries that are also following Russia's lead." *Id.*, Exhibit N.

The partial discovery Defendant produced on these transnational connections so far affirms Plaintiff's theory and helps establish Defendant's intent to persecute LGBTI Ugandans. *Compare In re Subpoena to Witzel*, 531 F.3d at 117-18, 120 (affirming this Court's denial of a plaintiff's motion to compel a nonparty's communications on the ground that the plaintiff had made no showing of defendants' knowledge of such communications or that such communications were "likely to lead to circumstantial evidence of the defendants' discrimination").

Accordingly, Defendant may not exclude from his responses to Plaintiff's Interrogatory No. 16, 19, 20, and 21, and Requests for Production No. 4, 22, 23, 24, and 25, documents concerning "information or documents pertaining to individuals, conversations, trips, speeches, legislative efforts, or transfer of funds that do not pertain specifically to Uganda" (Spiegelman Decl., Exhibit E), and Plaintiff is entitled to any and all such documents.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that its Motion to Compel Production of Documents and Responses to Interrogatories be granted.

Dated: June 11, 2015

By: /s/ Jeena Shah
Jeena Shah, *admitted pro hac vice*
Pamela C. Spees, *admitted pro hac vice*
Baher Azmy, *admitted pro hac vice*
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
212-614-6431 - Phone
212-614-6499 - Fax
pspees@ccrjustice.org

Mark S. Sullivan, *admitted pro hac vice*

Joshua Colangelo-Bryan, admitted *pro hac vice*

Gina Spiegelman, admitted *pro hac vice*

Daniel W. Beebe, admitted *pro hac vice*

Kaleb McNeely, admitted *pro hac vice*

Dorsey & Whitney, LLP

51 West 52nd Street, New York, New York

10019-6119

Tel. 212-415-9200

sullivan.mark@dorsey.com

Luke Ryan

(Bar No. 664999)

100 Main Street, Third Floor

Northampton, MA 01060

Tel. (413) 586-4800

Fax (413) 582-6419

lryan@strhlaw.com

Attorneys for Plaintiff