

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

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| SEXUAL MINORITIES UGANDA |) | |
| |) | |
| <i>Plaintiff,</i> |) | |
| |) | |
| v. |) | |
| |) | Civil Action |
| SCOTT LIVELY, individually and as |) | |
| President of Abiding Truth Ministries, |) | 3:12-CV-30051 |
| |) | |
| <i>Defendant.</i> |) | |
| |) | |

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO COMPEL
PLAINTIFF TO PRODUCE UNREDACTED DOCUMENTS**

In the course of producing over 25,000 pages in response to Defendant’s 196 requests for documents, Plaintiff properly objected to and redacted non-responsive and/or non-relevant information and information protected by the associational privilege. Defendant’s motion to compel unredacted versions of Plaintiff’s production should be denied.

BACKGROUND

On September 1, 2014 – one month before the original discovery deadline – Defendant served 196 Requests for Production on Plaintiff, and, as agreed upon by the parties, Plaintiff served its initial responses and objections to each of Defendant’s requests on October 8, 2014. Declaration of Pam Spees dated July 9, 2015 (“Spees Decl.”), Ex. A. Plaintiff prefaced its responses with an explanation that it “ha[d] not yet completed the collection of all responsive documents, specifically including those located outside the United States” and that its “investigation and discovery in this action [wa]s continuing.” *Id.* at 1. Among other objections, Plaintiff specifically objected to many of Defendant’s requests to the extent that:

the requested documents **will result in the disclosure of the names of individuals who are not party to this action and that such disclosure would chill or violate their rights to freedom of speech and association** under the United States and Ugandan Constitutions; Universal Declaration of Human Rights (1948) (articles 20, 23); International Covenant on Economic, Social and Cultural Rights (1966) (article 8); International Covenant on Civil and Political Rights (1966) (articles 21, 22); Convention on the Rights of the Child (1989) (article 15); and African Charter on Human and Peoples' Rights (1981) (articles 10, 11), and would reveal information about non-parties that is highly personal in nature protected by the right to privacy under the United States and Ugandan Constitutions; the Universal Declaration of Human Rights (1948) (article 12); the International Covenant on Civil and Political Rights (1966) (article 17); the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (article 8); and the Declaration of Principles on Freedom of Expression in Africa (2002) (Art. 4.3).

Id., Responses to Request Nos. 2, 4, 9-11, 47, 64, 69, 70, 75, 76, 81-82, 87-88, 99, 104-106, 124, 127-195.

To respond to Defendant's voluminous requests, Plaintiff's counsel conducted a diligent and expansive search of Plaintiff's electronic and hard copy documents in the custody of its seven staff members in Uganda and reviewed hundreds of thousands of pages to identify responsive and/or relevant information. Spees Decl. ¶ 3. Plaintiff made redactions on four grounds.¹ First, Plaintiff redacted information protected by the attorney-client communication and attorney work product privileges and labeled those redactions "02-Privileged." *Id.* ¶ 7.

Second, Plaintiff redacted and labeled as "Personal Data": (i) the identifying information for individuals or entities associated with or who have provided some level of support to

¹ Plaintiff's early productions containing redactions, served on December 12 and 19, 2014, and January 26, 2015, merely labeled each redaction with the word "REDACTION" due to a technological error. Spees Decl. ¶ 4. Later productions, served on January 30, February 4, 9, 13, and 18, March 17 and 25, and April 14, 2015, comprising the vast majority of documents produced by Plaintiff in this litigation, contained specific language over each redaction making the basis for the redaction readily apparent. *Id.* ¶ 6. Upon learning, for the first time from Defendant's present motion, the confusion this caused, Plaintiff began the process of distinguishing the redactions on its December 12 and 19 and January 26 productions and will re-produce those documents with specifically labeled redactions as soon as possible. *Id.* ¶ 5.

Plaintiff, including donors, partners, supporters, affiliates, and businesses who accept Plaintiff's patronage for the purpose of organizing workshops or other advocacy or educational events, but who were not any of the approximately 138 witnesses to any events at issue and disclosed in this litigation; (ii) the email addresses for list-serves through which Plaintiff and non-parties communicate regarding persecution of lesbian, gay, bisexual, transgender and intersex ("LGBTI") Ugandans and other LGBTI communities around the world; (iii) the personal phone numbers of witnesses for whom professional phone numbers were already provided to Defendant; and (iv) Plaintiff's bank account details. *Id.* ¶ 8. Notably, Plaintiff did not redact the names of individuals or entities, including businesses who hosted Plaintiff's and others' workshops and other events, who are among the approximately 138 witnesses to events in this action who have been disclosed to Defendant. *Id.*

Third, Plaintiff's counsel's review of the documents found that many with responsive information also contained non-responsive information that was both not relevant to any claims or defenses and would reveal Plaintiff's and non-parties' confidential, non-public – but irrelevant – operations. In an effort to be comprehensive in its responses to Defendant's requests, Plaintiff produced such documents, but redacted non-responsive information as "01 Non-Responsive." *Id.* ¶ 10.

Fourth and finally, as a part of this process, Plaintiff's counsel found that certain documents discussed the Anti-Homosexuality Bill ("AHB") and were thus responsive to certain of Defendant's documents requests, but contained information that was both not relevant and would reveal Plaintiff's and non-parties' highly confidential internal and/or non-public campaign strategies to prevent the enactment of the AHB into law. Upon determining this, and before the majority of its production was served on Defendant, Plaintiff promptly supplemented its

responses to Defendant's Requests for Productions Nos. 4, 8, and 127-192 with the following objection on January 30, 2015:

In addition to the objections contained in SMUG's response to this request served on Defendant on October 8, 2014, as set forth above, SMUG objects to this request to the extent that it seeks documents beyond those that discuss underlying facts concerning the passage of the AHB, including Lively's role in that regard, and non-privileged documents relating to the legal challenge to the AHB. To the extent that this request seeks documents containing any passing mention of the AHB, regardless of the primary subject of the document, SMUG objects on the ground that it is overbroad and unduly burdensome. To the extent this request seeks documents relating to SMUG's and/or non-parties' strategies to prevent the passage of the AHB into law, SMUG objects on the ground that it seeks documents that are not relevant nor reasonably calculated to lead to the discovery of admissible evidence. SMUG is not seeking damages for its efforts to prevent the passage of the AHB, but only for its efforts to mount a legal challenge to the AHB as enacted. Subject to and without waiving the above objections, SMUG states that it will produce any responsive documents.

Spees Decl. Ex. B, Supplemental Responses to Requests for Production Nos. 4, 8, and 127-192.

Thereafter, Plaintiff produced otherwise responsive and relevant documents concerning the AHB with redactions of any discussion of internal and/or non-public strategies to prevent the enactment of the bill into law. Spees Decl. ¶ 11. Plaintiff labeled such redactions as "03-Non-Responsive." *Id.* For the sake of clarity, counsel for Plaintiff explained to counsel for Defendant on May 29, 2015 that the "03-Non-Responsive" designation signified that the information had been redacted based on Plaintiff's relevance objections set forth in its Supplemental Responses to Defendant's Requests for Production, specifically Plaintiff's objection to producing documents reflecting Plaintiff's and/or non-parties' strategies to prevent the passage of the AHB into law. Spees Decl. Ex. C. Notably, Plaintiff produced information regarding its *public* and external advocacy efforts to prevent the enactment of the AHB, while withholding highly confidential internal, non-public strategies to prevent the enactment of the AHB into law. Spees Decl. ¶ 11.

ARGUMENT

A. Information Redacted as “Personal Information” Is Neither Relevant Nor Reasonably Calculated to Lead to the Discovery of Admissible Evidence and Is Protected Under the Associational Privilege

Contrary to Defendant’s contention, redacted information labeled “Personal Data” was not withheld solely on the basis that it is “confidential,” but because the information is both not relevant to any claims or defenses in this action and its disclosure would violate the associational rights of Plaintiff and non-parties as recognized by the First Amendment to the United States Constitution, as well as parallel provisions in Article 29 of the Ugandan Constitution and Article 22 of the International Covenant on Civil and Political Rights to which both countries are party,² along with numerous other international treaties. As such, the redactions are in compliance with the Confidentiality Order.

It is well settled that judicial orders compelling disclosure in litigation between private parties can constitute an abridgment of parties’ rights of associational privacy. *NAACP v. Alabama*, 357 U.S. 449 (1958) (“It is not of moment that the State has here acted solely through its judicial branch, for whether legislative or judicial, it is still the application of state power which we are asked to scrutinize”). In some circumstances, the “threat to First Amendment rights may be more severe in a discovery context, since the party directing the inquiry is a litigation adversary who may well attempt to harass his opponent and gain strategic advantage” *Britt v. Superior Court*, 20 Cal. 3d 844, 857 (1978). Plaintiff brought this case under a U.S. statute in the only jurisdiction where Defendant could be found, and is “entitled to the advantages of the legal process with which [it] is forced to deal.” *See Berlin Democratic Club v. Rumsfeld*, 410 F. Supp. 144, 152 (D.D.C. 1976) (recognizing that non-resident aliens can avail

² *See* United Nations Office of the High Commissioner for Human Rights, Status of Ratification Interactive Dashboard, at <http://indicators.ohchr.org> (last visited July 6, 2015).

themselves of constitutional protection when seeking relief under a U.S. statute which permits granting the requested relief to non-resident aliens).

1. The redacted information is not relevant

Plaintiff redacted as “Personal Information” identifying information for non-parties who were not witnesses to any events at issue in this action, the email addresses for list-serves through which Plaintiff and non-parties communicate regarding persecution of LGBTI Ugandans and other LGBTI communities around the world, the personal mobile phone numbers for certain witnesses for whom Plaintiff provided alternative, business phone numbers responses, and Plaintiff’s bank account details. Spees Decl. ¶ 8. None of this information is relevant to any claims or defenses or would lead to the discovery of admissible evidence. Plaintiff has disclosed the identities and contact information of all of its witnesses to Defendant, and is not relying on any information redacted as “Personal Data” in any capacity. Moreover, none of the redacted information is necessary to understand the context of documents produced by Plaintiff.

2. The redacted information is protected from disclosure by the associational privilege

The associational privilege protects organizations from being compelled to disclose internal associational information including the identities of members, contributors, affiliates, and volunteers. *Int’l Action Center v. United States*, 207 F.R.D. 1, 3 (D.D.C. 2002). *See also Grandbouche v. Clancy*, 825 F.2d 1463, 1465-67 (10th Cir. 1987); *Wyoming v. USDA*, 239 F. Supp. 2d 1219, 1238 n.14 (D. Wyo. 2002). Disclosures of political affiliations and activities that would have a deterrent effect on the exercise of First Amendment rights are subject to “exacting scrutiny,” even in actions involving only private entities, *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160-61 (9th Cir. 2009) (citing *Buckley v. Valeo*, 424 U.S. 1, 64-65 (1976)). A party seeking the discovery “must show that the information sought is highly relevant to the claims or

defenses in the litigation—a more demanding standard of relevance than that under Federal Rule of Civil Procedure 26(b)(1).” *Id.* at 1161. These considerations hold true even when protection is sought by the party bringing suit, *Grandbouche*, 825 F.2d at 1467 (“While the filing of a lawsuit may implicitly bring about a partial waiver of one’s constitutional right of associational privacy, the scope of such ‘waiver’ must be narrowly rather than expansively construed, so that plaintiffs will not be unduly deterred from instituting lawsuits by the fear of exposure of their private associational affiliations and activities.”).

The party invoking the associational privilege bears the burden of making a prima facie showing of a reasonable probability that compelling disclosure of such information will chill the associational rights of the organization and its affiliates, including through “threats, harassment, or reprisals from either Government officials or private parties.” *Buckley*, 424 U.S. at 74. *See also Black Panther Party v. Smith*, 661 F.2d 1243, 1267-68 (D.C. Cir. 1981); *Sherwin-Williams Co. v. Spitzer*, Civil No. 1:04-CV-185 (DNH/RFT), 2005 U.S. Dist. LEXIS 18700, at *14 (N.D.N.Y. Aug. 24, 2005). “The existence of a prima facie case turns not on the type of information sought, but on whether disclosure of the information will have a deterrent effect on the exercise of protected activities.” *Perry*, 591 F.3d at 1162. Indeed, even where information was found to be relevant to the claims and defenses and where a protective order was in place, the Ninth Circuit found that the potential chilling effect of disclosure on political association outweighed the requester’s need for the information. *See Id.* at 1165 (holding that a protective order’s “mere assurance that private information will be narrowly rather than broadly disseminated” is not dispositive).

Where a party makes the prima facie showing, the burden shifts to the party seeking the discovery to demonstrate a sufficiently compelling need for the information. *NAACP v.*

Alabama, 357 U.S. 449, 463 (1958). The party seeking to force disclosure must prove that its need for the information outweighs the harms that disclosure would likely cause, *id.*, by demonstrating “a compelling need for the information that will survive ‘exacting scrutiny,’” *Sherwin-Williams Co*, 2005 U.S. Dist. LEXIS 18700 at 15 (noting that the “exacting scrutiny” standard is the standard that “all courts are expected to employ in determining access to such records, at least as to the effect of the associational privilege”).

The criminalization of Plaintiff’s advocacy and its very existence is at issue in this case due to Defendant’s role in the persecution of Uganda’s LGBTI community. *See, e.g.*, dkt. 27 at ¶ 5. The AHB, for which Defendant provided significant support, *see id.* ¶¶ 9, 36-39, 75-93; *see also, e.g.*, Spees Decl. Ex. D (Defendant’s correspondence with co-conspirator Martin Ssempe providing his suggested revisions to the AHB wherein, *inter alia*, he recommends prison sentences of up to five years for promotion); Declaration of Frank Mugisha, dated July 8, 2015, (“Mugisha Decl.”) ¶ 3, sought to criminalize advocacy for LGBTI rights and penalize those who provide assistance to known LGBTI persons, *see* Mugisha Decl., Ex. A at § 13. Even prior to its enactment into law, government officials and private parties invoked the provisions of the legislation seeking to criminalize so-called promotion of homosexuality to expose and harass LGBTI rights advocates and shut down events and workshops involving LGBTI persons and their supporters. *See, e.g.*, dkt. 27 at ¶ 176-185; Spees Decl. Ex. E at 3; Mugisha Decl. ¶ 4. Such actions have already had a concrete chilling effect on the exercise of associational rights among LGBTI rights advocates. For instance, following a raid of one of Plaintiff’s workshops, the Ugandan Minister of Ethics and Integrity stated both publicly and in court that the government was monitoring support for LGBTI rights awareness efforts in Uganda from entities within and outside of the country. Mugisha Decl. ¶¶ 4, 6 and Ex. B. A Ugandan court sanctioned the

Minister's conduct. *Id.* ¶ 7 and Ex. C. As a result, Plaintiff and other nonparties have faced difficulties in maintaining communications and coordination with their partners and supporters domestically and abroad. *Id.* ¶ 9. Similarly, when a document containing the names of organizations affiliated with a coalition advocating against the AHB (the "Coalition") was leaked to the media and government officials, some members of the Coalition withdrew for fear of threats, harassments, and reprisals. *Id.* at ¶¶ 8-9.

Following the enactment of the Anti-Homosexuality Act into law – containing the same provisions as the original AHB criminalizing LGBTI rights advocacy, *id.* at ¶ 10 and Ex. E – an ally organization that hosted the Coalition was the subject of a government investigation and had its services suspended because of its relationship with the Coalition. *Id.* at ¶ 13. As a result, the Coalition's work has been disrupted since other organizations are now reluctant to host it. *Id.* The enactment of the Anti-Homosexuality Act also saw continued outings of persons suspected of being LGBTI, including outings of persons who are not activists or otherwise in the public eye. *Id.* at ¶¶ 11-12.

Within the context of this ongoing targeting, there is a high probability that compelled disclosure of information redacted as "Personal Data" would chill Plaintiff and non-parties' attempts to associate. *See* Mugisha Decl. ¶¶ 17-20. Disclosure of this information would also facilitate further erosion of the Ugandan LGBTI community's right to associate freely with each other and their supporters – the very reason Plaintiff, an LGBTI rights organization, brought this action. *Grandbouche*, 825 F.2d at 1467 (explaining that plaintiffs should "not be unduly deterred from instituting lawsuits by the fear of exposure of their private associational affiliations and activities").

Moreover, documents produced by Defendant demonstrate that his role in furthering this

threat remains significant and constant. Defendant has remained in communication with his co-conspirators following the filing of this lawsuit, discussing the criminalization of LGBTI advocacy and specifically targeting Plaintiff, *see* Spees Decl. Ex. F (contacting co-conspirators Stephen Langa and Martin Ssempe, and Charles Tuhaise, an advisor to the Ugandan Parliament, informing them that “Uganda should . . . adopt the anti-propaganda law that was just passed in Russia. It will accomplish the objective of stopping foreign interference in Uganda, and the destructive propaganda efforts of groups like SMUG”), and singling out events organized by Plaintiff to promote LGBTI rights, *see id.* (calling the attention of Langa, Ssempe, and Tuhaise to the first pride parade held in Uganda in 2012, with Tuhaise responding that these “kinds of things will continue until we get a law passed by Parliament to stop them”).

As Plaintiff is able to make a *prima facie* demonstration of a reasonable threat, the burden shifts to Defendant to demonstrate a compelling need for the requested information and that the information sought is “highly relevant.” *See Perry*, 591 F.3d at 1161. Any minimal pertinence of the information redacted as “Personal Data,” *see supra* Section A.1, cannot satisfy this burden.

B. Plaintiff Properly Redacted Non-Responsive and Non-Relevant Information

1. Redaction of non-responsive and non-relevant information is proper under the Federal Rules

“[C]ourts have found redaction appropriate where the information redacted was not relevant to the issues in the case.” *Spano v. Boeing*, Case No. 3:06-cv-00743-DRH-DGW, 2008 U.S. Dist. LEXIS 31306, at *7 (S.D. Ill. Apr. 16, 2008) (crediting a party’s production of documents with redacted irrelevant information rather than withholding the documents altogether where the redacted information was “not relevant to the issues in this case and not reasonably calculated to lead to the discovery of admissible evidence”). *See also Beauchem v. Rockford Products Corp.*, Case No. 01 C50134, 2002 U.S. Dist. LEXIS 14879, at *6 (N.D. Ill. Aug. 13,

2002) (finding redaction of information irrelevant to the case as appropriate under Rule 26); *Schiller v. City of New York*, 04 Civ. 7922 (KMK) (JCF), 04 Civ. 7921 (KMK) (JCF), 05 Civ. 8453 (KMK) (JCF), 2006 U.S. Dist. LEXIS 88854, at *20-21 (S.D.N.Y. Dec. 7, 2006) (denying a motion to compel by permitting the redaction of information not relevant to any claim or defense in documents produced in discovery).

This Court has consistently upheld the ability of a party to redact non-responsive and non-relevant information from document productions. *See Zurich Am. Ins. Co. v. Watts Regulator Co.*, Civil Action No. 10-11190-NMG, 2013 U.S. Dist. LEXIS 39441, at *7 (D. Mass. Mar. 21, 2013) (denying defendant's motion to compel where plaintiff produced relevant information in redacted form, and where redacted information was not within the scope of defendant's discovery requests); *United States v. Bulger*, Criminal Action No. 99-10371-DJC, 2013 U.S. Dist. LEXIS 68328, at *9-11 (D. Mass. May 14, 2013) (permitting the redaction of non-relevant information where such information was found to be non-discoverable).

2. Plaintiff's internal and/or non-public advocacy strategies to prevent the enactment of the AHB are not relevant and the redaction of such information is proper

As asserted in its supplemental objections, documents concerning Plaintiff and non-parties' internal and/or non-public strategies to prevent the passage of the AHB are not relevant to any claim or defenses nor reasonably calculated to lead to discovery of admissible evidence. Plaintiff claims that Defendant, together with others, contributed to the widespread or systematic persecution of the LGBTI community in Uganda. Plaintiff asserts that Defendant has contributed to this persecution through, *inter alia*, his efforts in support of the drafting and passage of the AHB and other means of impeding advocacy for the rights of LGBTI Ugandans. *See* dkt. 27 at 85-86. The harms Plaintiff claims it has suffered include the additional *public* advocacy and *public* education it has had to conduct to counter the harmful effects of the AHB

and the resources it has had to expend to challenge the law in court once it was enacted. Spees Decl. Ex. G at 12-13.

Thus, Plaintiff asserts that the only information that is relevant to the claims and defenses in this action are “underlying facts concerning the passage of the AHB, including Lively’s role in that regard, and non-privileged documents relating to the legal challenge to the [enacted] AHB.” Spees Decl. Ex. B. Plaintiff produced documents concerning not only the law itself, its harmful consequences, and Lively’s role in drafting or facilitating the passage of the legislation, but also Plaintiff’s public advocacy to counter the AHB and its resulting harms. *See* Spees Decl. Ex. H. Plaintiff only withheld its internal and/or non-public strategies to prevent the passage of the legislation because such information neither makes the persecution caused by the law more or less likely nor Defendant’s role in the persecution more or less likely. And since Plaintiff is not claiming any damages in the form of internal and/or non-public efforts it and third parties have had to make to prevent the passage of the AHB into law, such information does not make the harms caused to Plaintiff for which it is claiming damages more or less likely.

Beyond being both non-responsive and non-relevant, this information is also protected by the associational privilege. *See In re Prudential Ins. Co. of America SGLI/VGLI Contract Litigation*, No. 11-02208, 2012 WL 548894, at *2 (D. Mass. Feb. 16, 2012) (explaining that “[r]edactions may remain when justified by legitimate confidentiality concerns or by the existence of an attorney/client or other recognized privilege”). The associational privilege extends beyond the protection of the identities of an organization’s members, donors, and affiliates to include its sensitive internal strategies and ideas. *Perry*, 591 F.3d at 1162 (finding that “[c]ompelled disclosure of internal campaign information can deter that participation” and “have a deterrent effect on the free flow of information within campaigns,” and “[i]mplicit in the

right to associate with others to advance one's shared political beliefs is the right to exchange ideas and formulate strategy and messages, and to do so in private”).

While the Anti-Homosexuality Act was nullified by the Constitutional Court of Uganda, it was only nullified on procedural grounds, Mugisha Decl. ¶ 14, Ex. G, and more than 200 members of the Ugandan Parliament have reportedly demanded that the law be tabled again and have vowed to ensure it passes, *id.* ¶ 15, Ex. H. Additionally, media reported in late 2014 that a new version of the law has been drafted and is expected to be re-introduced in the Ugandan Parliament during its current session. See *id.* ¶ 16, Ex. I.

If Plaintiff were compelled to disclose its highly confidential internal and/or non-public strategies to prevent the enactment of the AHB to the very party alleged to be responsible for its introduction, it would impede Plaintiff and its partners and allies' implementation of those strategies to prevent the passage of similar pending or future legislation and would deter Plaintiff's partners and allies from collaborating with it any further. *Id.* ¶ 21.

Given the marginal relevance of this information, Defendant cannot demonstrate that the information sought is “highly relevant” and therefore cannot meet the high burden for disclosure of information protected by the associational privilege. See *supra* Section A.2.

3. Plaintiff's Supplemental Objections to Defendant's Document Requests Were Timely and Appropriate

Plaintiff served timely objections to Defendant's document requests and diligently followed up with a supplemental objection. Defendant's reliance on *Marx* is misplaced. There, the party “had failed to respond in any way to the request within the thirty day period prescribed by Fed.R.Civ.P. 34(b).” *Marx v. Kelly, Hart & Hallman, P.C.*, 929 F.2d 8, 9 (1991). By contrast, Plaintiff asserted objections to each of Defendant's 196 document requests within the time period prescribed by Rule 34(b).

At the time it asserted its initial objections, Plaintiff alerted Defendant to the fact that it was still in the process of identifying responsive documents. *See* Spees Decl. Ex. A at 1. As SMUG, through its counsel, engaged in the process of identifying documents responsive to Defendant's voluminous requests, spanning a 10-year period and from seven different custodians in Uganda, it learned that its original discovery responses should be refined and pursuant to Rule 26(e) promptly supplemented its responses. *See Rivera v. Kmart Corp.*, 190 F.R.D. 298, 300-301 (D.P.R. 2000) (finding that, despite the fact that some documents pre-dated the request for production, their relevance and responsiveness to the request may not have been known to the party's attorney, "who understands the significance of these documents and 'bears the responsibility to bring answers up to date.'") (quoting Fed.R.Civ.P. 26(e) advisory committee's note); *High Tech Communications, Inc. v. Panasonic Co.*, Civ. A. No. 94-1477, 1995 WL 133344, at *2 (E.D. La. Mar. 24, 1995) (finding no waiver of a specific objection served later and intending to supplement objections served within the 30-day period, particularly due to the large number of documents that were sought). Moreover, failure to specifically object to a party's request for documents does not result in automatic waiver as a "waiver is a serious sanction to be imposed in cases of 'unjustified delay, inexcusable conduct, bad faith or other flagrant violations.'" *Rivera*, 190 F.R.D. at 300 (quoting *Applied Systems, Inc. v. Northern Insurance Co. of New York*, No. 97 C 1565, 1997 WL 639235, at *2 (N.D.Ill. Oct. 7, 1997)). Plaintiff supplemented its timely objections before the majority of its documents were produced and long before the close of fact discovery. Thus, Plaintiff's supplemental objections were not only appropriate but also caused no prejudice to Defendant.

C. Plaintiff's Redactions of Parts of Folder Information for a Small Subset of Documents Are Proper

Plaintiff produced documents "as they are kept in the usual course of business," Fed. R.

Civ. P. 34(b)(2)(E)(i), along with information showing “where the documents were maintained, who maintained them, and whether the documents came from one single source or file or multiple courses or files.” *Energy Power (Shenzhen) Co. Ltd. v. Xiaolong Wang*, Civil Action No. 13–11348–DJC, 2014 WL 4687542, at *4 (D. Mass. Sept. 17, 2014) (internal quotations omitted). *See* Spees Decl. Ex. I.

Like the “Personal Data” redactions, *see infra* Section A, the redactions made on parts of the folder information for a small subset of documents – less than 0.3% of all documents produced by Plaintiff – protect information that is both not relevant and protected by the associational privilege. Spees Decl. ¶ 20. As explained in the redaction log provided to Defendant, the redactions of Plaintiff’s folder information are of information reflecting: the names of Plaintiff’s donors; the first name of an individual not witness to any events at issue in this litigation; and the names of one of Plaintiff’s projects and an internal organizational process not relevant to any claims or defenses in this action or to any damages sought by Plaintiff – the files for this project and process, respectively, simply contained some documents that contained responsive information. *See* dkt. 172-7. Moreover, the redacted text would not have provided useful information regarding the production, and Plaintiff’s descriptions of the redacted text in its log provided even greater information regarding the folders than the redacted text itself would have. *See id.*³ Disclosure of this information would chill Plaintiff and non-parties’ associational

³ Defendant’s complaints regarding any purported deficiencies in Plaintiff’s folder information are curious. Approximately 80% of Plaintiff’s production consisted of emails for which folder information was unnecessary. Spees Decl. ¶ 20. Moreover, Defendant’s categorizing of his initial production was neither specific nor informative. *See, e.g.* Spees Decl. Ex. J at 4 (in response to Plaintiff’s Request for Production No. 8 seeking documents relating to communications with Defendant’s co-conspirators identified in Plaintiff’s complaint, merely referring to broad categories of documents – “communications about Uganda” and “documents regarding the Anti-Homosexuality Bill” – spanning 561 pages, only a small subset of which related to communications with the co-conspirators). And he neither labeled nor provided folder

rights. *See supra* Section A.2; Mugisha Decl. ¶¶ 17-20.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that Defendant's Motion to Compel Plaintiff to Produce Unredacted Documents be denied.

Dated: July 9, 2015

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Attorneys for Plaintiff

information for three subsequent productions recently made to Plaintiff, which totaled close to 1700 pages. Spees Decl. ¶ 21.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Court on July 9, 2015. Service will be effectuated by the Court's electronic notification system upon all counsel or parties of record.

/s/ Pam Spees

Pam Spees