

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

SEXUAL MINORITIES UGANDA,

Plaintiff,

v.

SCOTT LIVELY, individually and as President of
Abiding Truth Ministries,

Defendant.

CIVIL ACTION

NO. 3:12-CV-30051-MAP

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION TO RETAIN CONFIDENTIAL DESIGNATIONS**

PRELIMINARY STATEMENT

Plaintiff Sexual Minorities Uganda (“SMUG”) respectfully submits this memorandum of law in support of its Motion to Retain Confidential Designations (the “Motion”), which relates to certain portions of the transcript of the deposition of Frank Mugisha (“Mugisha”) that SMUG has designated as “confidential” (the “Disputed Confidential Designations”) pursuant to the Order Regarding Confidentiality of Certain Discovery Material (Dkt. No. 106) (the “Protective Order”). Defendant Scott Lively (“Defendant”) has objected to the Disputed Confidential Designations. Accordingly, SMUG submits this Motion under paragraph 9 of the Protective Order for a determination that the Disputed Confidential Designations are proper and should be maintained confidential.

The Disputed Confidential Designations protect deposition testimony by Mugisha concerning: (a) the amount of funding/donor financing received by SMUG; (b) the amount of money in SMUG’s budget; (c) the amount of SMUG’s expenditures; and (d) the amount of

money Mugisha receives from SMUG as a stipend or as reimbursement for expenses. *See* Declaration of Frank Mugisha (“Mugisha Decl.”) ¶¶ 2–4.

Under the Protective Order, specific portions of a deposition transcript may be designated as “confidential” within 10 business days after the receipt of the final transcript. Protective Order ¶ 6. However, the Protective Order provides that, if a party objects to the confidential designation by another party and the parties cannot, after consulting, resolve their differences, “within fourteen (14) days of receiving the objection, the Designating Party shall either remove the designation or move the Court for a determination that the designation is proper.” *Id.* ¶ 9.

Pursuant to paragraphs 1 and 6 of the Protective Order, on July 21, 2015, SMUG designated as “confidential” specific portions of the transcript of the June 22, 2015 deposition of Mugisha. *See* Declaration of Daniel W. Beebe (“Beebe Decl.”) ¶ 2. SMUG made the Disputed Confidential Designations on the good-faith basis that this redacted information should continue to be treated as confidential because disclosure of this information is likely to subject Mugisha personally and SMUG and its staff to a risk of imminent harm or undue harassment. *See* Mugisha Decl. ¶ 5. SMUG also believes that, as set forth in greater detail below, disclosure of this information may also subject other members of the lesbian, gay, bisexual, transgender, and intersex (“LGBTI”) community in Uganda to a risk of imminent harm or undue harassment based on their actual or presumed relationship to SMUG. *See id.*

On August 21, 2015, Defendant objected to the Disputed Confidential Designations, *i.e.*, all of SMUG’s confidentiality designations on pages 61 to 70 of the Mugisha deposition transcript. *See* Beebe Decl. ¶ 3; *see also* Mugisha Decl. ¶ 2, Exhibit A. On August 31, 2015, the parties conferred by telephone to discuss Defendant’s objections, but were unable to resolve

their differences. *See* Beebe Decl. ¶¶ 4–6. Accordingly, SMUG respectfully submits this Motion under paragraph 9 of the Protective Order to maintain the confidentiality of the Disputed Confidential Designations.

ARGUMENT

Under the provisions of the Protective Order, the Disputed Confidential Designations should be maintained as confidential because disclosure of this confidential information may subject SMUG, its members, and affiliates to a risk of harm and/or undue harassment, and because the Disputed Confidential Designations protect information that is highly private and personal.

The Protective Order is designed to insulate the parties and vulnerable individuals, including SMUG and its members, from “annoyance, embarrassment, oppression, or undue burden or expense.” *See* Fed.R.Civ.P. 26(c)(1). Accordingly, the Protective Order specifically provides:

Any party or third party who provides Confidential Discovery Material in this Action ... may designate it as CONFIDENTIAL if there is a good faith basis for the belief that it contains information that (a) is highly private and personal; (b) may subject a person or organization to a risk of imminent harm of undue harassment; or (c) is protected from public disclosure by law or contract.

Protective Order ¶ 1. Protective order protection is particularly appropriate when, as here, disclosure of certain information may endanger a party or subject a party to “harassment and reprisals.” *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 26–27 (1986).

Courts have found that an organization’s “budget information” and other financial details should be treated as confidential because public disclosure could subject the organization to injury. *See, e.g., Wilson v. Pharmacia Corp. Long Term Disability Plan*, 2015 WL 4572833, at *2 (D. Mass. July 29, 2015) (quoting *Irizarry-Santiago v. Essilor Industries*, 293 F.R.D. 100,

104 (D.P.R. 2013)); *see also, e.g., In re New Motor Vehicles Canadian Export Antitrust Litigation*, 229 F.R.D. 35, 37 (D. Me. 2005).

Courts also have recognized that employee salary information should be treated as confidential. *See, e.g., Colon v. Tracey*, 717 F.3d 43, 47 (1st Cir. 2013); *Hochstadt v. Worcester Found. for Experimental Biology*, 545 F.2d 222, 228 (1st Cir. 1976).

As set forth in the First Amended Complaint (Dkt. No. 27) (“Complaint”), the LGBTI community in Uganda suffers from widespread and systematic persecution, including arbitrary arrests and detention and cruel, inhuman, and degrading treatment, *see* Complaint ¶¶ 30, 34, 186-89; public outings of persons’ sexual orientation, gender identity, and/or associational activities, *see id.* ¶¶ 216-23; unlawful raids of gatherings and private homes, *see id.* ¶¶ 165-85, 209-10; and denial of critical services and forced evictions, *see id.* ¶¶ 190-93, 228. This persecution has been noted by the United States Department of State. *See, e.g.,* Uganda 2012 Human Rights Report, *available at* <http://www.state.gov/documents/organization/204390.pdf> (describing violence and discrimination against the LGBTI community in Uganda).

If how much money SMUG and/or its employees receive were to become public, the Ugandan media likely would publish stories about it since the media has been very interested in how LGBTI rights organizations are funded. *See* Mugisha Decl. ¶ 6. For example, in December 2009, a Ugandan tabloid, the Red Pepper, published an article with the headline “City Tycoons Who Bankroll Ugandan Homos Revealed,” speculating on how much money LGBTI organizations receive. *See id., Exhibit B.* Whenever SMUG is mentioned in the media, SMUG and its members begin to face harassment on the street by the general public and law enforcement and sometimes receive threatening phone calls. *See id.*

Additionally, anti-gay leaders in Uganda, including the named co-conspirators in this

action, and various Ugandan tabloids, have publicly stated that SMUG and other LGBTI organizations receive funds to “recruit children” into homosexuality and to “promote homosexuality.” *See id.* ¶ 7. Thus, were the media to publish how much money SMUG and/or Mugisha receive, the general public would likely believe that such stories confirm the rumors spread about the LGBTI community by antigay leaders. *See id.* This would put SMUG at risk of facing further harassment and threatening phone calls from the general public as well as law enforcement. *See id.*

SMUG also believes that, if this information were to be made public, landlords would likely increase rents on SMUG and its members on the belief that if SMUG as an organization is receiving a certain amount of funding, the members of its staff must be able to pay higher rents. *See id.* ¶ 8.

Finally, there would be no discernable prejudice to Defendant if he is unable to disseminate this confidential information to the public.

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that its Motion to Retain Confidential Designations be granted.

Dated: September 4, 2015

Respectfully submitted,

/s/ Daniel W. Beebe

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Court on September 4, 2015. Service will be effectuated by the Court's electronic notification system upon all counsel or parties of record.

/s/ Daniel W. Beebe

Daniel W. Beebe