

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 CONFIDENTIALITY DESIGNATION**

Plaintiff Sexual Minorities Uganda (“SMUG”) respectfully submits this memorandum of law in support of its Motion to Retain Confidentiality Designations (the “Motion”), relating to a document marked Exhibit A-1 to Plaintiff’s Sixth Supplemental Responses to Defendant Scott Lively’s First Set of Interrogatories, served February 19, 2016 (“Exhibit A-1”) that SMUG designated “confidential” (“Confidentiality Designation”) pursuant to the Order Regarding Confidentiality of Certain Discovery Material (Dkt. No. 106) (the “Protective Order”).

On July 25, 2016, Defendant Scott Lively (“Defendant”) objected to the Confidentiality Designation. On August 4, 2016, SMUG notified Defendant that SMUG believes that the Confidentiality Designation is proper, and SMUG would file a motion to retain the Confidentiality Designation unless Defendant withdraws the objection. On August 5, 2016, Defendant informed SMUG that he maintains his objection to the Confidentiality Designation. Accordingly, SMUG submits this Motion under paragraph 9 of the Protective Order for a

determination that the Confidentiality Designation should be maintained.

### **ARGUMENT**

The Confidentiality Designation is proper and should be maintained for the following two reasons: (1) Exhibit A-1 was properly designated as “confidential” pursuant to the Protective Order because it contains highly private financial and programmatic information, and the release of that information may subject SMUG or its affiliates to imminent harm; and (2) by order dated September 23, 2015 (Dkt. No. 229), this Court already ruled that financial information, such as that included in Exhibit A-1, is properly deemed “confidential.”

**1. Exhibit A-1 was properly designated as “confidential” pursuant to the Protective Order.**

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.” 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) if 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).

Exhibit A-1 contains highly confidential financial information concerning SMUG’s calculation of damages arising from: (a) SMUG’s expenditures and diversion of resources **to protect SMUG from persecution** resulting from conspiracy and/or joint criminal enterprise as

alleged in the First Amended Complaint (Dkt. No. 27) (“Complaint”); (b) SMUG’s expenditures and diversion of resources **to counteract the persecution** resulting from the persecution conspiracy and/or joint criminal enterprise as alleged in the First Amended Complaint; and (c) compensation for frustration of SMUG’s purpose as a result of **harm SMUG suffered** to its standing and reputation in the community. On a more granular level, Exhibit A-1 includes information about SMUG’s overhead/administrative expenses, including: (1) general office expenditures; (2) allowances; (3) rent; and (4) strategic planning workshops and general assembly meetings.

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)).

As set forth in the Complaint, and shown further in SMUG’s forthcoming Opposition to Defendant’s Motion for Summary Judgment, 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 *see id.* ¶¶ 190-93, 228. This persecution has been noted by the United States Department of State. *See, e.g.,* U.S. State Department’s 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).

This persecution is ongoing as on August 4, 2016, SMUG experienced yet another incident of persecution. During Ugandan LGBTI Pride celebrations, the police conducted a violent and unlawful raid, and arrested more than 16 people, including the Executive Director and Programme Director of SMUG (and witnesses in this case), Frank Mugisha and Pepe Onzeima.<sup>1</sup>

In addition to persecution by the police, SMUG has experienced undue scrutiny by the media. The Ugandan media would likely publish stories about SMUG's financial information because the media has been very interested in how LGBTI rights organizations are funded. *See* September 4, 2015 Declaration of Frank Mugisha (Dkt. No. 213) ("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 (Dkt. No. 213-2). Whenever SMUG is mentioned in the media, SMUG begins to face harassment on the street by the general public and law enforcement and sometimes receive threatening phone calls. *See id.* Accordingly, Exhibit A-1 should continue to be treated as "confidential" under the Protective Order.

**2. This Court has already ruled that financial information, such as that included in Exhibit A-1, is properly deemed "confidential."**

The Confidentiality Designation is proper under the law of this case. By order dated September 23, 2015 (Dkt. No. 229), the Court granted SMUG's previous motion (Dkt. No. 211)

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<sup>1</sup> *See* article titled "A Pride event in Uganda has been broken up by the police as at least two LGBT + activists are arrested," available at <http://www.pinknews.co.uk/2016/08/04/pride-uganda-raided-by-police-as-lgbt-activists-arrested/>; article titled "Civil Society, Human Rights Activists Condemn Ugandan Police Attack on Lawful LGBTI Pride Celebration," available at <https://pbs.twimg.com/media/CpFxr8rXEAQc2zk?format=jpg&name=large>; New York Times article titled "Ugandan Police Break Up Gay Pride Event, Briefly Arrest Some," available at [http://www.nytimes.com/aponline/2016/08/05/world/africa/ap-af-uganda-gays.html?\\_r=1](http://www.nytimes.com/aponline/2016/08/05/world/africa/ap-af-uganda-gays.html?_r=1)

to preserve the confidentiality of SMUG's financial information. This Court found that the Supreme Court's decision *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984), in which the Supreme Court affirmed the terms of a protective order that prohibited the disclosure by the defendants of financial information produced by a non-profit entity in discovery, is controlling on this issue. This Court explained:

While Defendant's liability for the repression and persecution of LGBTI individuals in Uganda remains at issue, the fact of the repression and persecution is well-established. Plaintiff has sufficiently demonstrated that public disclosure of the financial information about which Mr. Mugisha testified could result in imminent harm to, or undue harassment of, Plaintiff and LGBTI persons in Uganda (Dkt. Nos. 213 , 213 -1, 213 - 2).

(Dkt. No. 229). Accordingly, pursuant to the Court's September 23, 2015 ruling (Dkt. No. 229), the Confidentiality Designation is proper and should be maintained.

### CONCLUSION

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

Dated: August 8, 2016

Respectfully submitted,

/s/ Daniel W. Beebe

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