

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

| | | |
|------------------------|---|------------------------|
| J.A.W., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 3:18-cv-37-WTL-MPB |
| |) | |
| EVANSVILLE VANDERBURGH |) | |
| SCHOOL CORPORATION, |) | |
| |) | |
| Defendant. |) | |

**Plaintiff’s Objections to Defendant’s Witnesses and Exhibits
for the Preliminary Injunction Hearing**

COMES NOW Plaintiff, by his counsel, and pursuant to this Court’s order of June 5, 2018 (Dkt. 33 at 4) files his objections to the defendant’s (“EVSC’s”) list of witnesses and exhibits for the preliminary injunction hearing presently scheduled for July 20, 2018. Specifically, the plaintiff states as follows:

1. On June 5, 2018, this Court ordered as follows (Dkt. 33 at 4) (emphasis in original):

The parties shall file a list of exhibits they intend to offer and witnesses they intend to call at the [preliminary injunction] hearing by no later than **July 6, 2018**. Any objections to the other party’s exhibits or witnesses shall be filed by no later than **July 13, 2018**.

2. In accordance with this Order, both parties filed their witness and exhibit lists on July 6, 2018. (Dkts. 44 & 45).
3. The plaintiff now objects to the following exhibits as described by EVSC on its exhibit list:

5. Plaintiff’s EVSC student records.

6. Correspondence exchanged between Plaintiff and EVSC officials.

7. Correspondence exchanged concerning Plaintiff between third parties and EVSC officials.

* * *

9. All documents identified by Plaintiff in Plaintiff's Initial Disclosures

Each of these catch-all categories lacks the specificity required of a pre-hearing exhibit list, and EVSC should not be permitted to introduce any exhibits that are not specifically designated.¹

4. Courts have repeatedly refused to permit parties to include catch-all categories in similar exhibit lists. *See, e.g., Burkhart v. R.J. Reynolds Tobacco Co.*, No. 3:09-cv-10727-WGY-HTS, 2014 WL 12617550, at *7 (M.D. Fla. Apr. 30, 2014) (“Defendants ask the Court to exclude any document that has not been individually disclosed on Plaintiff’s exhibit lists. Defendants argue that Plaintiffs have included in their preliminary exhibit list ‘improper “catch-all” exhibits that incorporate by reference hundreds, thousands, or even millions of documents not individually disclosed.’ The Court grants the request. The parties must specifically and individually identify each document or other item of evidence . . . or the document will not be admissible.”); *Blanco v. Capform*,

¹ There is nothing inconsistent about the plaintiff’s objection to EVSC’s description of “[a]ll documents identified . . . in Plaintiff’s Initial Disclosures.” These disclosures, as will frequently be the case, are prepared and served prior to significant (or any) discovery and therefore contain certain catch-all categories of information likely to be revealed during the discovery process. As set forth immediately below, the purpose of requiring a witness and exhibit list in advance of an evidentiary hearing is to narrow these broad *categories* of individuals and documents to those that a party *specifically* intends to introduce at the hearing.

Inc., No. 11-23508-Civ-COOKE/TURNOFF, 2013 WL 12061862, at *1 (S.D. Fla. Jan. 9, 2013) (“Federal Rule of Civil Procedure 26(a)(3)(A)(iii) requires that the pretrial disclosures include ‘an identification of *each* document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.’ Accordingly, Rule 26(a)(3)(A)(iii) contemplates that each exhibit be identified *clearly* and *individually*. Capform’s exhibit list contains composite exhibits and catch all phrases in violation of Rule 26(a)(3)(A)(iii).”) (internal citation omitted) (emphasis in original); *Gardner v. Safeway Stores, Inc.*, 99 F.R.D. 258, 260 (D. Kan. 1983) (“In this district, arrangements are made during pretrial proceedings for the identification of all documentary evidence and witnesses to be used at trial. The court believes those procedures require *candid* and *complete* disclosure of both potential exhibits and witnesses. The rationale for such a requirement is obvious—to avoid surprise at the time of trial.”) (emphasis in original); *cf. Menovcik v. BASF Corp.*, No. 09-12096, 2010 WL 11542091, at *3 (E.D. Mich. Dec. 6, 2010) (“[T]he parties must provide the specific names of individuals they might use as witnesses. It is not sufficient to identify them through the use of a collective description, such as ‘employees or representatives of the defendant.’”) (quoting Moore’s Fed. Prac. § 26.22 (3d ed. 1997)).

5. The purpose of requiring an exhibit list prior to the hearing on the plaintiff’s request for a preliminary injunction is to avoid unfair surprise at the hearing

itself. Accordingly, the plaintiff's witness and exhibit list properly identifies each witness and each exhibit with the specificity required by precedent and by this Court's order. As case law demonstrates, neither the plaintiff nor the Court should be forced to guess at the evidence that EVSC intends to offer at next week's hearing. Any attempt to introduce exhibits not specifically described on EVSC's exhibit list must be rejected.

6. The plaintiff also reserves his right to raise objections, based on relevance or otherwise, to the testimony of the individuals identified on EVSC's witness list. However, such objections cannot be anticipated in advance and are properly reserved for the preliminary injunction hearing itself.

WHEREFORE, pursuant to this Court's order of June 5, 2018, the plaintiff files his objections to the defendant's ("EVSC's") list of witnesses and exhibits for the preliminary injunction hearing presently scheduled for July 20, 2018, and requests all proper relief.

s/ Kenneth J. Falk
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s/ Gavin M. Rose
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Certificate of Service

I hereby certify that on this 13th day of July, 2018, a copy of the foregoing was filed electronically with the Clerk of this Court. A copy will be served by the Court's system on:

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