

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

SERVICE EMPLOYEES
INTERNATIONAL UNION 775,

Plaintiff,

vs.

CHAD ELBANDAGJI, an individual, and
WENDY ACOSTA-ELBANDAGJI,
in her marital community,

Defendants.

No. 16-2-13095-0

DISCOVERY MASTER'S ORDER ON
FREEDOM FOUNDATION'S MOTION
TO COMPEL AND SEIU'S MOTION
FOR PROTECTIVE ORDER

This case comes before me on 1) Freedom Foundation's Motion to Compel; and 2) Plaintiff's ["SEIU's"] Motion for Protective Order from Defendant Evergreen Freedom Foundation's Discovery Requests, both dated June 5, 2017.

I have considered the Motions; Freedom Foundation's Response to SEIU's Motion and SEIU's Response to Freedom Foundation's Motion, both dated June 9; and Freedom Foundation's Reply to SEIU's Response and SEIU's Reply to Freedom Foundation's Response, both dated June 12, as well as the attachments to such submissions.

Motion to Compel Discovery.

Washington favors broad discovery, which is an integral part of the right to access the courts embedded in our constitution and promotes a fair, just, and efficient judicial process. *E.g.*, *Cedell v. Farmers Ins. Co. of Wash.*, 176 Wn.2d 686, 695 (2013) (citations omitted).

SEIU has not fully answered Freedom Foundation's discovery requests. Such requests, as modified in Exhibit A hereto, are reasonably calculated to lead to the discovery of admissible evidence as to SEIU's claims in this case, Freedom Foundation's defenses to such claims, and Freedom Foundation's counter-claims.

By June 30, 2017, SEIU shall provide full responses to Freedom Foundation's discovery requests, as modified in Exhibit A hereto.

Motion for Protective Order.

The court's major concern in supervising discovery should be facilitation of the process and the protection of its integrity, which necessarily involves consideration of the privacy interest of the parties and, in the ordinary case at least, does not require or condone publicity. *Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 256 ((1982); *aff'd* 467 U.S. 20 (1984).

Dreiling v. Jain, 151 Wn.2d 900, 916-17 (2004) (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130-31 (9th Cir. 2003)) appears to express the Washington Supreme Court's current view as to CR 26(c) protective orders: The court must determine whether a party requesting a protective order has met the burden, for each specific document (or interrogatory response) it seeks to protect, to show that specific prejudice or harm will result if no protective order is granted. Unsubstantiated allegations are insufficient--where possible, the requesting party must provide supporting affidavits and concrete examples. Entire documents should not be protected where mere redaction of sensitive items will satisfy the need for secrecy.

The Freedom Foundation's examination and consideration of the information and records SEIU is hereby ordered to provide, and discussion of such information and records with both outside and inside counsel, is necessary for it to meaningfully participate in this case.

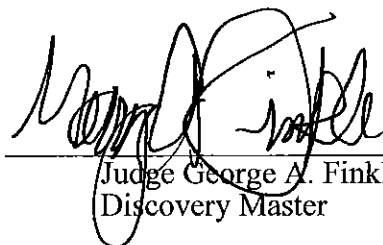
I do not find that SEIU has demonstrated that the Freedom Foundation has wrongfully communicated with SEIU members or used SEIU's confidential information to harass SEIU members or employees. The Freedom Foundation is entitled to contact SEIU members, and prior restraint of its efforts to do so is impermissible. *See, Harris v. Quinn*, 134 S.Ct 2618, 2644 (2014); *SEIU 775 v. Evergreen Freedom Foundation*, No. 75446-7-1, Commissioner's Ruling Denying Discretionary Review (Div. 1, July 22, 2016); Order Denying Motion to Modify, August 31, 2016). I do not find that SEIU has met its burden to show that specific prejudice or harm to it will result if no protective order is granted.

Further, SEIU and the Freedom Foundation are hotly contesting this and related cases, which have involved multiple requests for injunctive relief and appeals. Considering the complex litigation landscape, fairly executing and enforcing a protective order would at best be difficult.

In sum, SEIU has not justified Attorneys' Eyes Only or other use restrictions. SEIU's Motion for Protective Order is denied.

The parties' requests for attorney fees and costs related to the present motions are denied.

June 16, 2017



Judge George A. Finkle (Ret.)
Discovery Master

ATTACHMENT A

I. REQUESTS WHICH SEIU 775 REFUSES TO ANSWER WITHOUT A "USE" AND "ATTORNEY'S EYES ONLY" RESTRICTION, AND WHICH SEIU 775 MAY STILL REFUSE TO ANSWER EVEN WITH SUCH PROTECTIONS:

- A. **INTERROGATORY NO. 2:** Identify all steps and measures you used at the time of the allegations in your complaint to keep secret the alleged property described in Interrogatory No. 1 and all information contained in that property.
- B. **INTERROGATORY NO. 3:** Identify all steps and measures you use or used to create the alleged property and the individuals involved in doing so.
- C. **INTERROGATORY NO. 4:** Identify each person or entity with access to the alleged property or any of its/their components (including to any copies) since November 2007. ~~[SEIU 775 will further not answer for before January 2015 for this interrogatory, although the access to the material prior to Chad Elbandagji's hiring is likely to lead to the discovery of admissible evidence and should be required to be produced.]~~ **JANUARY 1, 2015.**
- D. **INTERROGATORY NO. 5:** State all facts and identify all persons with knowledge or information (and state the facts each such person knows) supporting, refuting, undermining, or otherwise relevant to your allegation that Defendants caused you damage including, steps in installing additional security measures and the expenses in pursuing litigation against Defendants.
- E. **INTERROGATORY NO. 6:** State all facts and identify all persons with knowledge or information (and state the facts each such person knows) supporting, refuting, undermining, or otherwise relevant to your allegation that Defendants knew your alleged property was proprietary and confidential.
- F. **INTERROGATORY NO. 7:** State all facts and identify all persons with knowledge or information (and state the facts each such person knows) supporting, refuting, undermining, or otherwise relevant to your allegation that Mr. Elbandagji and Ms. Acosta violated the terms of their employment or agreements with SEIU 775.
- G. **INTERROGATORY NO. 8:** State all facts and identify all persons with knowledge or information (and state the facts each such person knows) supporting, refuting, undermining, or otherwise relevant to the alleged independent economic value of your alleged property.
- H. **INTERROGATORY NO. 9:** Identify any steps you have taken to mitigate any alleged damage from Defendants' alleged possession or use of your alleged property.
- I. **INTERROGATORY NO. 10:** Identify all steps and measures you use or used to keep your alleged property confidential.

SINCE JANUARY 1, 2015

- 1 J. **INTERROGATORY NO. 11:** Identify all individuals to whom you have given access to
2 your alleged property in the last five years and identify which individuals signed a non-
disclosure agreement.
- 3 K. **INTERROGATORY NO. 12:** State all facts and identify all persons with knowledge or
4 information (and state the facts each such person knows) supporting, refuting, undermining,
5 or otherwise relevant to any investigation you conducted to discover whether there had
6 been a misappropriation of your alleged property and who had misappropriated it.
- 7 L. **INTERROGATORY NO. 15:** State all facts and identify all persons with knowledge or
8 information (and state the facts each such person knows) supporting, refuting, undermining,
9 or otherwise relevant to your allegation that Defendants' actions resulted in or will result in
10 actual and substantial injury to you.
- 11 M. **INTERROGATORY NO. 16:** State all facts and identify all persons with knowledge or
12 information (and state the facts each such person knows) supporting, refuting, undermining,
13 or otherwise relevant to your allegation that the allegedly stolen property is worth at least
\$7,500.
- 14 N. **INTERROGATORY NO. 21:** State all persons with whom SEIU 775 or its lawyers have
15 discussed (a) the instant litigation, (b) King County Cause Number 16-2-12945-5 SEA or
16 (c) King County Cause Number 16-2-20264-1 SEA, and all facts known to those
17 individuals.
- 18 O. **INTERROGATORY NO. 22:** Identify with specificity the amount of damages you
19 allegedly suffered as a result of Defendants' alleged conduct in this case and how this
20 amount was calculated.
- 21 P. **INTERROGATORY NO. 23:** Identify each Individual Provider who exercised his or her
22 constitutional right to cease financially supporting you as a result of Defendants' alleged
unlawful conduct.
- 23 Q. **INTERROGATORY NO. 24:** Describe your policy for handling Individual Provider
24 objections to membership and/or the payment of union dues/fees.
- 25 R. **INTERROGATORY NO. 25:** Describe whether you allow Individual Providers who
26 object to SEIU 775 membership and/or the payment of union dues/fees to immediately
27 cease the payment of union dues/fees if the Individual Provider has signed an SEIU 775
membership card.
- S. **REQUEST FOR PRODUCTION NO. 1:** Produce all documents identified or referenced
in your interrogatory answers above.
- T. **REQUEST FOR PRODUCTION NO. 2:** Produce all documents identifying all steps and
measures you use or used to keep your alleged property confidential.

1 U. **REQUEST FOR PRODUCTION NO. 3:** Produce all documents concerning Defendant
2 Freedom Foundation's communications with SEIU 775, SEIU 775 members, SEIU 775
3 former members, or Individual Providers.

4 V. **REQUEST FOR PRODUCTION NO. 4:** Produce all documents discussing, evidencing,
5 containing information regarding, supporting, refuting, undermining, or otherwise relevant
6 to the investigation you conducted to discover who had obtained your alleged property.

7 W. **REQUEST FOR PRODUCTION NO. 5:** Produce all documents that support,
8 undermine, or otherwise refer to any investigation you conducted to discover whether your
9 alleged property had been misappropriated and who had misappropriated it.

10 X. **REQUEST FOR PRODUCTION NO. 7:** Produce all documents created ^{AFTER DEC. 31, 2014, AND} prior to this
11 lawsuit identifying or referring to your alleged property as confidential and proprietary.

12 Y. **REQUEST FOR PRODUCTION NO. 8:** Produce all documents discussing, evidencing,
13 containing information regarding, supporting, refuting, undermining, or otherwise relevant
14 to the investigation you conducted to discover who had obtained your property

15 Z. **REQUEST FOR PRODUCTION NO. 9:** Produce all documents discussing, evidencing,
16 containing information regarding, supporting, refuting, undermining, or otherwise relevant
17 to your allegation that you were damaged by Defendants' possession or use of your alleged
18 property.

19 AA. **REQUEST FOR PRODUCTION NO. 12:** Produce all documents that support,
20 undermine, or otherwise refer to your allegation that your alleged property is worth at least
21 \$7,500.

22 BB. **REQUEST FOR PRODUCTION NO. 15:** Produce all documents that support,
23 undermine, or otherwise refer to your allegation that Defendants' alleged actions caused
24 you any damage.

25 CC. **REQUEST FOR PRODUCTION NO. 16:** Produce all documents, including but not
26 limited to, handbooks, memorandum, policies, manuals, training materials, or other
27 documents which relate to or pertain to any of your confidentiality policies, procedures, or
efforts.

~~DD. **REQUEST FOR PRODUCTION NO. 17:** Produce all communications between
SEIU 775 and/or its counsel and SEIU Healthcare Northwest Training Partnership and/or
its counsel related to (a) this lawsuit, (b) *SEIU Healthcare Northwest Training Partnership
v. Evergreen Freedom Foundation*, Cause Number 16-2-20264-1 SEA, or (c) *SEIU 775 v.
Evergreen Freedom Foundation*, Cause Number 16-2-12945-5 SEA.~~

1 **EE. REQUEST FOR PRODUCTION NO. 21:** Produce all documents related to your attempt
to mitigate alleged damages caused by Defendants' alleged unlawful conduct in this case.

2 **FF. REQUEST FOR PRODUCTION NO. 22:** Produce all documents related to how you
3 calculated the amount of alleged damages you suffered as a result of Defendants' alleged
unlawful conduct in this case.

4
5 **II. REQUESTS SEIU 775 IS UNDERSTOOD TO HAVE AGREED TO**
6 **ANSWER, BUT WHICH SEIU 775 HAS YET TO ANSWER:**

7 **A. INTERROGATORY NO. 1:** Identify with specificity the property you allege was/were
8 misappropriated by either Defendants Freedom Foundation or Chad Elbandagji or Wendy
Acosta.

9 **B. REQUEST FOR PRODUCTION NO. 6:** Produce all documents that support,
10 undermine, or otherwise refer to your allegation that "Mr. and Mrs. Elbandagji agreed to
11 provide the requested and confidential proprietary information in return for payment by the
Foundation."

12 **C. REQUEST FOR PRODUCTION NO. 20:** Produce all transcripts of depositions or
13 statements of Chad Elbandagji or Wendy Acosta obtained by SEIU 775 or its agents at any
time.

14 **III. REQUESTS WHICH SEIU 775 CLAIMS TO BE ANSWERING BUT WHICH**
15 **IT HAS NOT ADEQUATELY ANSWERED:**

16 **A. INTERROGATORY NO. 13:** State all facts and identify all persons with knowledge or
17 information (and state the facts each such person knows) supporting, refuting, undermining,
18 or otherwise relevant to your allegation that "Mr. and Mrs. Elbandagji agreed to provide the
19 requested and confidential proprietary information in return for payment by the
Foundation."

20 **B. INTERROGATORY NO. 14:** State all facts and identify all persons with knowledge or
21 information (and state the facts each such person knows) supporting, refuting, undermining,
22 or otherwise relevant to your allegation that Defendants obtained your alleged property by
illegitimate means.

23 **C. INTERROGATORY NO. 17:** State all facts and identify all persons with knowledge or
24 information (and state the facts each such person knows) supporting, refuting, undermining,
25 or otherwise relevant to your allegation that the Foundation purchased the allegedly stolen
26 property for at least \$2,000.

- 1 D. **INTERROGATORY NO. 19:** State all facts and identify all persons with knowledge or
2 information (and state the facts each such person knows) supporting, refuting, undermining,
3 or otherwise relevant to your allegation that “Mr. and Mrs. Elbandagji agreed to work
4 together to accomplish an unlawful purpose.”
- 5 E. **INTERROGATORY NO. 20:** State all facts and identify all persons with knowledge or
6 information (and state the facts each such person knows) supporting, refuting, undermining,
7 or otherwise relevant to your allegation that “the Foundation entered into an agreement with
8 Mr. and Mrs. Elbandagji” to acquire the allegedly stolen lists.
- 9 F. **REQUEST FOR PRODUCTION NO. 10:** Produce all documents discussing,
10 evidencing, containing information regarding, supporting, refuting, undermining, or
11 otherwise relevant to your allegation that Defendants wrongfully acquired your confidential
12 and proprietary information
- 13 G. **REQUEST FOR PRODUCTION NO. 11:** Produce all documents discussing,
14 evidencing, containing information regarding, supporting, refuting, undermining, or
15 otherwise relevant to your allegation that Defendants worked together for the unlawful
16 purpose of detaining your alleged property.
- 17 H. **REQUEST FOR PRODUCTION NO. 13:** Produce all documents that support,
18 undermine, or otherwise refer to your allegation that the Freedom Foundation paid Mr.
19 Elbandagji at least \$2,000 for your alleged property.
- 20 I. **REQUEST FOR PRODUCTION NO. 14:** Produce all documents that support,
21 undermine, or otherwise refer to your allegation that Defendants knew that your alleged
22 property is confidential and proprietary information.
- 23 J. **REQUEST FOR PRODUCTION NO. 18:** Produce all documents discussing the
24 prospects of mediation with Defendants in (a) this action, (b) Cause Number 16-2-12945-5
25 SEA or (c) Cause Number 16-2-20264-1 SEA.
- 26 K. **REQUEST FOR PRODUCTION NO. 19:** Produce all communications with SEIU 775 or
27 its counsel and Chad Elbandagji or Wendy Acosta related to the claims against them or the
Foundation.