

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

JOSEPH MALDONADO,

Plaintiff,

Case No. 3:22-cv-18229-TKW-ZCB

v.

BMG RIGHTS MANAGEMENT
LLC, CREATE MUSIC GROUP,
INC., TIGER KING PUBLISHING,
RIP ROARING RECORDS LLC,
AND VINCE JOHNSON,

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANT JOHNSON'S
MOTION FOR PROTECTIVE ORDER

COMES NOW the Plaintiff, JOSEPH MALDONADO, by and through the undersigned Counsel, and hereby files this Response to Defendant Vince Johnson's ("JOHNSON") Motion for Protective Order [DE 65] and in support thereof states as follows:

1. On May 24, 2023, JOHNSON filed a Motion for Protective Order [DE 65] seeking a gag order on his deposition and asking the Court to consider his testimony as inadmissible evidence. For the following reasons, JOHNSON's motion is legally insufficient, improper, overbroad, and violative of the First Amendment.
2. What remains in this case stems from a fairly simple breach of contract and non-disclosure agreement. In a series of contracts, JOHNSON assigned all rights

to Mr. Maldonado for music JOHNSON wrote (contracts attached hereto as Exhibit 1).

3. JOHNSON's video deposition was taken on Wednesday, May 17, 2023 in Vancouver, Washington. JOHNSON defended himself pro-se at his deposition. Prior to JOHNSON's deposition, the parties did not enter into a confidentiality order pertaining to any discovery and JOHNSON did not seek a protective order to limit the use or dissemination of his deposition.

4. During the deposition, JOHNSON admitted that the contracts at issue were valid. JOHNSON also admitted his confidentiality agreement was valid (see Exhibit 2). JOHNSON also repeatedly invoked the Fifth Amendment of the United States Constitution and refused to answer questions that had no relevance to self-incrimination or potential criminal charges/investigation. A subsequent motion to compel will be filed should the parties be unable to come to a resolution with JOHNSON. As such, his deposition has not been completed.

5. Following the deposition while standing on the sidewalk, JOHNSON admitted that he answered some questions dishonestly and attempted to plead the 5th because he did not want that information on the record. He agreed to discuss same only because "we were talking man to man off the record." The undersigned may be seeking additional relief from the Court as JOHNSON informally admitted to

obtaining over \$100,000 in royalties despite assigning all rights away to Maldonado. He refused to answer these questions during his deposition.

6. JOHNSON's motion further accuses the undersigned of refusing to question him on "all of the e-mails" and claimed the undersigned owed an obligation to question him based on e-mails and/or documents which do not exist.¹

7. In an e-mail to the undersigned following the deposition, JOHNSON threatened to file a class action counter suit for fraud against Maldonado if Maldonado did not settle the case. (attached as Exhibit 3).

8. JOHNSON's motion does not state grounds upon which relief can be granted and there is no showing of requisite prejudice to JOHNSON simply because he does not want his statements against interest disseminated.

MEMORANDUM OF LAW

9. "A party may generally do what it wants with material obtained through the discovery process, as long as it wants to do something legal." *Harris v. Amoco Prod. Co.*, 768 F. 2d 699, 684 (5th Cir. 1985). The federal rules do not limit the use of discovered documents or statements. *Id.* See *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1128 n.1 (9th Cir. 2003) ("absent court order or a private agreement, the parties would be free to disclosure their discovered materials to collateral litigants); see also *Jepson, Inc. v. Makita Elec. Works, Ltd.*, 30 F.3d 854,

¹ JOHNSON is not in compliance with the Court's scheduling order and has failed to file Rule 26 disclosures to date.

858 (7th Cir. 1994)(“parties may disseminate materials to litigants in other cases or to the public”).

10. No good cause has been established for a protective order. The Eleventh Circuit has examined various factors in determining whether good cause exists for the issuance of a protective order pursuant to Rule 26(c). They include: the severity and likelihood of the perceived harm; the precision with which the order is drawn; the availability of a less onerous alternative; and the duration of the order. *In re Alexander Grant & Co. Litigation*, 820 F.2d 352, 356 (11th Cir. 1987). Further, the Eleventh Circuit has “superimposed a ‘balancing of interests’ approach to Rule 26(c) with the burden of persuasion on the party moving for a protective order. *Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir. 1985).

11. JOHNSON has not satisfied any of these factors and has failed to demonstrate the severity and the likelihood of the perceived harm if a protective order is not issued in this case. JOHNSON has failed to point to specific testimony from the deposition that cause damage to his reputation or career. Nor has JOHNSON demonstrated that the release of his deposition or any discovery materials obtained in this action have interfered with the fair administration of justice in these proceedings. Furthermore, JOHNSON has requested a bench trial in this action.

12. The fact that JOHNSON may be embarrassed by his deposition testimony is not sufficient. Mere embarrassment, without a demonstration that the embarrassment will be particularly serious or substantial is not enough to demonstrate good cause for a protective order. *See Flaherty v. Seroussi*, 209 F.R.D. 295, 299-300 (N.D.N.Y. 2001); *Welsh v. City and County of San Francisco*, 887 F. Supp. 1293, 1297 (N.D. Cal. 1995).

13. Simply put, JOHNSON has not demonstrated good cause for limiting the release of discovery in the matter.

14. Furthermore, the relief sought would violate Maldonado's First Amendment Rights. There were unqualified prohibitions laid down by the framers of the Constitution which were intended to give liberty of the press in the broadest scope that could be countenanced in orderly society. The Supreme Court has mandated that the freedom of discussion should be given the widest range of discretion possible compatible with essential requirement of fair and orderly administration of justice. *Sheppard v. Maxwell*, 384 U.S. 333 (1966).

15. Stated alternatively, the freedom of discussion should be given the widest range compatible with essential requirement of fair and orderly administration of justice, but it must not be allowed to divert trial from very purpose of court system to adjudicate controversies, both criminal and civil, in calmness and solemnity of courtroom according to legal procedure. *Id.*

16. Where there was ‘no threat or menace to the integrity of the trial, the United States Supreme Court has consistently required that the press have a free hand, even though we sometimes deplored its sensationalism. *See Craig v. Harney*, 331 U.S. 367, 377 (1947).

17. Despite this, JOHNSON seeks to prevent any and all dissemination of his testimony in perpetuity, claiming his own testimony would ruin his reputation in the music business. Such an overbroad request tips the remaining factors set forth above in favor of Maldonado, as JOHNSON has sought relief which extends far beyond the concerns arising from the release of JOHNSON’s deposition.

18. Lastly, JOHNSON’s request to have his deposition testimony stricken is frivolous and should be denied. JOHNSON cannot seek to have his own sworn testimony stricken just because he doesn’t like how he responded to and/or answered questions.

WHEREFORE, Plaintiff respectfully request that this Court enter an Order denying Defendant, JOHNSON’s Motion for Protective Order and any other relief this Court deems necessary and just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the forgoing was served on Vince Johnson via electronic mail at vincejohnson@q.com and via regular mail to 9307 NE 87TH Street, Vancouver, Washington 98662, on this the 2nd day of June 2023.

Respectfully submitted,

**PHILLIPS, HUNT, WALKER &
HANNA**

/s/ John M. Phillips

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