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Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GREGG SCHUMACHER and LINDA)	
SCHUMACHER, individually and as)	No. CV 07-601-HU
husband and wife, and GREGG)	
SCHUMACHER FURS LLC dba)	PLAINTIFFS' REPLY TO IDA,
SCHUMACHER FURS & OUTERWEAR,)	ROSSELL, DURKEE & MIERAS'
)	RESPONSE TO PLAINTIFFS'
Plaintiffs)	MOTION FOR PRELIMINARY
)	INJUNCTION
v.)	
)	
CITY OF PORTLAND, a municipal)	
corporation; IN DEFENSE OF ANIMALS,)	
a foreign nonprofit corporation; ANIMAL)	
LIBERATION FRONT, an unincorporated)	
association; PEOPLE FOR THE ETHICAL)	
TREATMENT OF ANIMALS, INC., a)	
foreign nonprofit corporation; MATT)	
ROSSELL; KEVIN MEIRAS aka "Bluejay";)	
CONNIE DURKEE; ALEX LILLI; JOHN)	
DOES 1-10; and JANE DOES 1-10)	
)	
Defendants.)	

INTRODUCTION

Plaintiffs have filed a motion for preliminary injunction seeking, among other relief, imposition of reasonable time, place and manner restrictions on future protest activity, restrictions upon protest activity near plaintiffs' residence or making threats of death or serious injury to plaintiffs and others connected with them, limitations on interference with potential lessors with whom plaintiffs are negotiating for an alternate location and limitations upon interference with plaintiffs' domain name.

These defendants' memorandum and declarations in opposition to the motion for preliminary injunction are as significant for what they don't say as for what they do. None of the responses attempts to controvert plaintiffs' evidence of protest activity outside the Schumacher Fur & Outerwear store. At most, they attempt to limit the nature and extent of their involvement in such activity. Neither do the responses address the other injunctive relief sought, or even the need for it, including the documented threats to plaintiffs personally, nighttime hidden appearances at the Schumacher residence, and other off-premises conduct.

The fulcrum upon which the entire case balances is which of the alleged conduct is constitutionally protected speech, as contrasted with expressive speech or activity that extends beyond the boundaries of tortious and/or criminal conduct. There is no detriment to defendants if the court enjoins tortious or criminal conduct, and indeed an injunction of such activity would be in the public interest, as indicated by the presence of federal, state and local statutes and ordinances already prohibiting such conduct. To the extent the City of Portland has not enforced these provisions, it falls to the court to do so.

Even if the court determines that requested preliminary injunctive relief concerning the SFO store premises is moot, or shortly to be so, the remaining other injunctive relief sought is vital to plaintiffs' protection during the pendency of the case.

DEFENDANTS' FACTUAL RESPONSE

Most of these defendants' factual responses are contained in the affidavits submitted by Matt Rossell and Connie Durkee from IDA and Kevin Mieras, reputedly affiliated with ALF. Complaint, ¶ 13. Matt Rossell claims not to have control over any individuals participating in the protests outside the SFO store, Aff. of Matt Rossell, p. 2, yet he has been observed week after week delivering a TV and other protest materials used in the Saturday afternoon group protests and often using a bullhorn. Scott Castleman Declaration, p. 3. Plaintiffs believe him to be one of the primary leaders of the protests. Complaint, ¶ 12. He claims to draw "chalk lines on the sidewalk to encourage people to make sure there was ingress and egress at the Schumacher Furs store and room for pedestrians to pass on the sidewalk" (Aff. of Matt Rossell, p. 2), but the photos and video attached as Exhibits 1 and 2 to Gregg Schumacher's declaration depict a far different scene. He goes on to criticize the plaintiffs for signs posted or held up inside the store as if that excuses what has occurred outside. *Id* at p. 3.

Connie Durkee acknowledges her involvement with IDA, but denies any further participation in any protest activity. Aff. of Connie Durkee, pp. 2-3. Plaintiffs believe her to be a protest leader and organizer as well. Complaint, ¶ 14.

Of all the defendants, plaintiffs can identify Kevin Mieras and his conduct most specifically. He is believed to be connected with ALF, which has no members (Complaint, ¶¶ 10, 13; Ex. 3 to Declaration of Herbert G. Grey), yet he claims not to

belong to any animal rights group named in the lawsuit, including ALF. Aff. of Kevin Mieras, pp. 2, 3. He denies having control over any other protestors, yet the allegations against ALF show they are the most vociferous protestors present. Gregg Schumacher Declaration, p. 6 and Ex. 1 attached thereto. He denies any involvement in protest activity away from the store, Aff. of Kevin Mieras, p. 2, yet Gregg Schumacher recognized his voice out of the darkness at his home. Gregg Schumacher Declaration, p. 6. he does not deny, or even address, anonymous efforts to discourage SFO's efforts to relocate. Exs. 4-a, 4-c and 4-d attached to Gregg Schumacher's Declaration.

Plaintiffs can further identify the 10' by 10' sign suspended between two trees in front of the store as an IDA sign because it bears IDA identification. Gregg Schumacher Declaration, p. 6 and Ex. 2-p attached thereto. The problems associated with the sign are documented in Gregg Schumacher's declaration (*Id.*), and its compliance with Portland sign restrictions remains to be seen. Finally, video shows a masked man holding an IDA poster screaming "Shame on you!" to an elderly customer as she leaves the store. Ex. 1 to Gregg Schumacher Declaration.

In short, the defendants would have the court believe no one is in charge of any protest activity, almost no one belongs to an organized group and the large groups of protestors who have materialized every Saturday afternoon somehow mysteriously appear without any guidance or direction.

DEFENDANTS' LEGAL ARGUMENTS

First, plaintiffs reiterate that the purpose for the injunction is not to chill or limit constitutionally-protected speech and are focused on unprotected conduct. *See* Plaintiffs' Motion for Preliminary Injunction, pp. 2-4.

These defendants argue first that it is too late for issuance of an injunction because SFO's current store is closing May 31, 2007. Memorandum, p. 2. They further claim an "unexplained delay" in bringing this action. Memorandum, pp. 2, 4. Those arguments lack merit because the requested injunction addresses activities beyond the operation of the store. Even if the court is persuaded an injunction of unprotected protest activity at the SFO store is moot, or shortly to be so, it can hardly be said that an injunction against threats of death or bodily injury, protest activity at the Schumacher home, organized opposition to SFO's attempts to relocate anywhere else or interference with their domain name are moot. As for the delay in bringing the action, the Supplemental Declaration of Gregg Schumacher (p. 3) makes clear the delay is not attributable to any lack of diligence on the part of plaintiffs.

Defendants next implausibly argue "the likelihood of anyone suffering the injuries Plaintiffs predict is remote." Memorandum, p. 5. To argue that plaintiffs' allegations of injury are speculative when they have already documented precisely the kinds of threats they fear borders on disingenuous. *See* Complaint, ¶¶ 22, 37, 42, 45, 48; Plaintiffs' Memorandum, pp. 6-7; Declaration of Gregg Schumacher, pp. 6-7; Declaration of Linda Schumacher, p. 3; Declaration of Scott Castleman, pp. 10-11. It is small comfort to hear defense assertions "Oh, I'm sure no one would do that" when the threats have already been made.

Defendants next argue the court can't distinguish between illegal protestor activity and protected activity because plaintiffs haven't alleged with sufficient specificity which defendants are responsible. Memorandum, p. 5. First, the court can clearly distinguish the difference between constitutionally-protected speech and conduct

that transcends the bounds of protected speech, and courts do so all the time. Courts may impose reasonable time, place and manner restrictions without regard to content, even in a public forum. See authorities cited in Plaintiffs' memorandum, pp. 10-11. Courts have acknowledged authority to limit protest activity in a residential area. *Id* at 11. Secondly, there can be no doubt of the involvement of these defendants, as well as the Animal Liberation Front, because they and the allegations against them have been specifically identified to some degree. Complaint, ¶¶ 17, 36, 41, 44, 47. Declaration of Gregg Schumacher, p. 6.

Interestingly, these defendants do not deny their involvement in the activities plaintiffs complain of, other than Kevin Mieras denying he has been to the Schumacher home or threatened them. Mieras Affidavit, p. 3. Kevin Mieras' protestation that he is not a member of ALF is meaningless because ALF does not have membership or any overt form of corporate organization. Mieras Affidavit, pp. 2, 3. *See also* Declaration of Herbert G. Grey, pp. 3-4, quoting FBI testimony concerning ALF. No explanation is offered why significant numbers of protestors mysteriously appear every Saturday afternoon if no one is directing them. Gregg Schumacher Declaration, p. 3. No explanation is offered for internet messages intended to discourage any mall owner or property manager from leasing to SFO. Gregg Schumacher Declaration, Exhibits 4-a, 4-c and 4-d.

Defendants next cite authority to the effect courts have *no* authority to enjoin the commission of a crime except under three limited circumstances. Memorandum, p. 6. One of the exceptions discussed is "widespread public nuisance" that adversely affects, for example, interstate commerce. *Id*. First, injunction of criminal activity is unnecessary

if the police enforce the law, which plaintiffs have documented has not occurred here. Plaintiffs' Memorandum, pp. 5-6. Second, even what constitutes "widespread" public nuisance takes on an entirely new meaning in the age of the internet, when messages may be- and here have been- posted anonymously and distributed to untold numbers of readers. Gregg Schumacher Declaration, Exhibits 4-a, 4-c and 4-d. Plaintiffs have specifically documented interference with interstate commerce in this case, including but not limited to their frustrated attempts to relocate in Bellevue, Washington. Plaintiffs' Memorandum, p. 6. Gregg Schumacher Declaration, pp. 7-8.

Finally, these defendants rely on Restatement (Second) of Torts § 396 to support their argument injunction of torts is discouraged. Memorandum, p. 7. In point of fact, that section contemplates application and balancing of certain factors which are remarkably similar in many ways to the threshold requirements for a preliminary injunction. Those factors include the nature of the interest to be protected, the adequacy of other remedies, unreasonableness of delay, plaintiffs' misconduct, relative hardships, interests of third persons and the public, and the practicability of framing and enforcing an order. *Id.* These factors actually favor the relief plaintiffs seek.

a) Plaintiffs seek protection of their own First Amendment interests, their persons and their property, with recognition of legitimate First Amendment rights of those who oppose them (Motion for Preliminary Injunction, pp. 2-3; Memorandum, pp. 11-12; Gregg Schumacher Declaration. p. 9);

b) Plaintiffs seek an injunction in part because those charged with enforcing the law for their protection and for the protection of the public have not done so (Memorandum, pp. 5-6);

c) Plaintiffs acknowledge the significant delay in bringing this action, but have documented their diligence in trying to act sooner (Supplemental Declaration of Gregg Schumacher, p. 3);

d) Defendants apparently argue statements and actions of Gregg Schumacher have provoked or incited the protests (Aff. of Matt Rossell, p. 3), but they do not justify the conduct of defendants over a lengthy period of time;

e) The relative hardships clearly predominate in favor of plaintiffs, with little or no interference in defendants' legitimate exercise of First Amendment rights (*See* Plaintiffs' Memorandum, pp.7-8);

f) The public interest herein clearly justifies a preliminary injunction. The lack of law and order outlined in the record, the personal threats against the Schumachers and others and the alleged lack of enforcement of the law can hardly be argued to serve the public interest, and the presence of federal, state and local criminal provisions demonstrate the validity of the public interest in limiting conduct in apparent violation of those provisions. Plaintiffs' Memorandum, pp. 11-12. Finally, it should not be overlooked that plaintiffs' rights are being infringed as conditions now stand. *Id.*; and

g) The court is eminently qualified to distinguish between protected speech activity and illegal conduct, and presumably the police and/or the court could address any violations.

CONCLUSION

The opposition of these defendants to the pending motion for preliminary injunction is selective, careful and overlooks a plethora of evidence of real and immediate harm. The gravamen of their arguments is to the effect the law can't or shouldn't limit

their protest activities, even if they exceed well-defined constitutional boundaries. To the extent plaintiffs seek to enjoin only unlawful or harmful conduct rather than protected speech, and they have demonstrated real and immediate threats to themselves and their business, defendants' arguments are unpersuasive and should be rejected.

DATED this 16th day of May, 2007.



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