

FRED R. SILVESTER (3862)
DENNIS J. CONROY (0712)
SPENCER SIEBERS (8320)
SILVESTER & CONROY, L.C.
230 South 5th East, Suite 590
Salt Lake City, Utah 84102
Telephone (801) 532-2266

Attorneys for Plaintiff

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DISTRICT COURT
BY: [Signature]

**IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE DISTRICT OF UTAH**

WORLD WIDE ASSOCIATION OF
SPECIALTY PROGRAMS, a Utah
corporation,

Plaintiff,

vs.

PURE, INC., PURE FOUNDATION, INC.,
SUE SCHEFF and DOES 1 THROUGH 10,

Defendants.

**PLAINTIFF'S OBJECTIONS TO
DEFENDANTS' DESIGNATION OF
WITNESSES AND EXHIBITS**

Civil No. 2:02-CV-00108 ~~ST~~

Honorable Judge Paul Cassell

Plaintiff World Wide Association of Specialty Programs ("World Wide") hereby submits these Objections to Defendants' Designated Witnesses and Exhibits pursuant to Fed. R. Civ. P. 26(a)(3). Some of the following objections are foundation, relevance and hearsay objections preserved for trial should defendants' seek to introduce certain materials. However, due to time constraints on trial of this matter, plaintiff has argued more substantive objections to certain proposed witnesses and exhibits with the aim of resolving some of these matters before trial.

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**I. ONLY A HANDFUL OF DEFENDANTS' DESIGNATED WITNESSES
COULD OFFER TESTIMONY RELEVANT TO PLAINTIFF'S
DEFAMATION CLAIMS**

Scheff's initial disclosures listed over 100 potential witnesses. Plaintiff deposed Scheff twice to determine which of these persons listed had any knowledge relevant to plaintiff's claims. This discovery established only a handful of Scheff's designated witnesses could testify relevant to plaintiff's claims of defamation. Plaintiff specifically outlined trial would include defamatory statements concerning:

- 1) the death of [V H] at Tranquility Bay in 2001;
- 2) the fabricated story of [J J] as told by Scheff posing as Mark D.W. on the Woodbury Reports website;
- 3) World Wide's alleged ownership of High Impact;
- 4) the education and training of staff at Carolina Springs Academy; licensing and accreditation of CSA;
- 5) the alleged closure of World Wide member schools by government officials;
- 6) Ashlyn Scheff's alleged treatment at Carolina Springs;
- 7) alleged after effects of treatment at World Wide member schools;
- 8) the alleged source of Scheff's posts on Woodbury Reports;
- 9) PURE's alleged contacts with World Wide parents confirming Scheff's stories of abuse on Woodbury Reports;
- 10) alleged abuse of [A I] at Cross Creek Manor;
- 11) alleged criminal convictions of Robert Lichfield.

Only the following persons could testify concerning these specific statements:

Scheff published statements about the death of [V H] based on information from [K P], the daughter of Debbie Saenz. [K P] is not listed as a witness. The proposed testimony of her mother, as set forth in her affidavit, is not based on personal knowledge but on her conversations with her daughter.

Scheff published statements about [J J] based on conversations with Arlene Farrow. Ms. Farrow claims her information regarding [J J's] physical condition came from conversations with her husband, Bernie Farrow. The Farrows are the only witnesses listed by defendants with even the potential foundation to testify concerning [J J].

Scheff published statements that High Impact was a World Wide member school owned by Robert Lichfield based on information provided to her from Randall Hinton, Marie Peart and Heidi Mock. Scheff also noted that proposed witness Donna Watson would testify that High Impact was recommended for her out of control son who was being kicked out of Carolina Springs for violation of their zero tolerance policy, but that fact is not in dispute.

The licensing, accreditation and credentials of staff at Carolina Springs is undisputed. In response to subpoena, Carolina Springs produced the licenses and certificates which Elaine Davis, the director, will verify.

Scheff published statements concerning the alleged closure of World Wide schools by government officials based on newspaper accounts.

Scheff's statements concerning the alleged abuse of her daughter, Ashlyn, at Carolina Springs are supposedly based on conversations with Ashlyn. Ashlyn is the only designated witness who

could testify of these alleged events based on personal knowledge.

Scheff published that students from World Wide member schools suffered from Post Traumatic Stress Disorder, depression, anxiety and mood disorders within 3-6 months after leaving the school based on conversations with Cary Brown, who is not listed as a witness, and with Laurie Berg, who is not listed as a witness.

Scheff is the only witness who can testify concerning her postings on Woodbury Reports and her creation of aliases. Further, Scheff testified her postings that she was receiving confirmation of her stories of abuse from other World Wide parents in the form of 53 letters, 107 responses, and 38 replaced families were all made up.

Scheff posted newsletters concerning the alleged abuse of [A I] based on information from Blanche Hardy and [A I].

Scheff published false statements concerning Robert Lichfield's alleged criminal convictions based on information from Marie Peart.

Accordingly, the only designated witnesses with even potentially relevant testimony concerning plaintiff's defamation claims are Scheff, Bernie and Arlene Farrow, Randall Hinton, Marie Peart, Heidi Mock, Ashlyn Scheff, Blanche Hardy and [A I].

II. INTRODUCTION OF ADDITIONAL DESIGNATED WITNESSES WOULD BE MORE PREJUDICIAL THAN PROBATIVE BASED ON THE STATEMENTS AT ISSUE, THE TIME SET FOR TRIAL, AND THIS COURT'S NO CONTACT ORDER

It is not enough under Rule 403 to simply state evidence would be prejudicial. Rather, the prejudice must be unfair and must substantially outweigh any probative value. As set forth above,

only a handful of defendants' designated witnesses may even potentially introduce evidence probative of plaintiff's defamation claims. Moreover, only Scheff and Marie Peart could offer evidence in opposition to plaintiff's false advertising claims. What are the other 29 witnesses for?¹

Plaintiff anticipates these persons would be called to offer testimony that they told Scheff at one time or another that they (or their children) were abused at a World Wide member school. According to defendants' Motion for Summary Judgment, such testimony would show Scheff reasonably believed these stories of abuse and, therefore, did not publish stories of abuse with requisite malice. Because plaintiff seeks punitive damages, evidence concerning the reasonableness of Scheff's actions is probative. Scheff, however, may testify as to the reasonableness of her reliance and that reasonableness can be adequately cross-examined. The minimal probativeness of the evidence will thus be preserved.

However, attempting to parade 29 witnesses through a 5 day trial will be substantially more prejudicial than probative as it would simply be impossible to cross-examine these witnesses within the existing confines of this trial setting. For example, defendants propose to put Christine Gomez on the stand. Ms. Gomez enrolled her son at Spring Creek Lodge. He was kicked out of Spring Creek for violation of the school's zero tolerance policy and Ms. Gomez did not want him at home. Ms. Gomez thus enrolled her son at Tranquility Bay. It is anticipated Ms. Gomez would offer testimony somewhat similar to the newsletter she authored for PURE's website claiming the staff

¹ These witnesses are: Amberly Knight, Jonathon Grimes, Debra Saenz, Bernadette Cabreal, Lori Damhorst, [B R], Christine Moisan, John France, [J F Jr], Paul Richards, Christine Gomez, Chris Goodwin, Lee Colburn, Donna Watson, Gini-Farmer Remines, Ryan Pink, Theresa Grimes, [Z P], [R M], [S F], [A G], [L B], [E R], [A V], Paula Reeves, Terry Cameron, Karen Burnett, Phillip Greenbarg and Christine Smith.

was not credentialed, not trained, unprofessional, abusive by any standards and that the entire organization was fraudulent. These allegations can have only negligible probative value as they may relate to Scheff's reasonableness in fabricating internet personalities; postings stories of the abuse of [V H], [J J], Ashlyn Scheff and [A I]; and stating Carolina Springs has uncredentialed teachers and staff.

The prejudicial nature of Ms. Gomez's inflammatory accusations, however, is significant. It is not speculation to conclude that a jury, if it believed Christine Gomez's son was abused at a World Wide member school, would look less favorably on granting World Wide relief - not because of the merits of plaintiff's false advertising and defamation claims, but based on passion or an instinct to punish. Thus courts have excluded evidence of abortion, pornography or homosexuality as inflammatory topics when only remotely relevant. *Nickerson v. G.D. Searle & Co.*, 900 F.2d 412, 418-19 (1st Cir. 1990); *United States v. Harding*, 991 F.2d 981, 996 (2nd Cir. 1993); *Guam v. Shymanovitz*, 157 F.3d 1154, 1160 (9th Cir. 1998). Courts have also excluded evidence of spousal abuse when only tangentially relevant out of concern the jury would punish the defendant for those acts instead of the acts charged. *Gray v. Genlyte Group, Inc.*, 289 F.3d 128, 139 (1st Cir. 2002); *United States v. Hands*, 184 F.3d 1322, 1328-29 (11th Cir. 1999).

To counter the passion and prejudice engendered by Ms. Gomez's testimony, World Wide would be entitled to not only explore the witnesses' contact with Scheff, but to actually disprove the witnesses' allegations of abuse. To do so, World Wide would introduce evidence of Gomez's son's enrollment at Spring Creek Lodge and Tranquility Bay; evidence of his treatment; evidence of his counseling with psychologists, social workers and family therapists; evidence of the school's staff

and credentials; evidence of Gomez's communications with Ms. Scheff which led to a decided change in her attitude toward Tranquility Bay; evidence of the source of Ms. Gomez's alleged complaints; and evidence of material inconsistencies between Ms. Gomez's newsletter, letters to members of the press and internet postings. In essence, defendants propose 29 such mini-trials of abuse allegations.

These mini-trials, even one, would be unfairly prejudicial because they would distract the jury's focus from the claims at issue. World Wide member schools are not on trial for alleged abuse. Thus, the evidence could only tend to take the jury's eye off the main issues. For example, in the trial of Timothy McVeigh, the Tenth Circuit held the trial court properly excluded evidence of another possible defendant because it would force the government to disprove nebulous allegations of another's fault while turning the jury's focus away from the conduct of McVeigh, the actual defendant on trial. "The danger of 'confusion of the issues' and 'misleading the jury' arises when circumstantial evidence would tend to sidetrack the jury into consideration of factual disputes only tangentially related to the facts at issue in the current case." *United States v. McVeigh*, 153 F.3d 1166, 1191 (10th Cir. 1998); *see also United States v. Morales-Quinones*, 812 F.2d 604, 614 (10th Cir. 1987)(upholding exclusion of evidence which tended to shift focus away from defendant to the witness).

Moreover, the trial setting will not allow plaintiff to rebut these proposed witnesses. Plaintiff has no means to explore the testimony of these persons except by cross-examination. As set forth above, plaintiff did not undertake to depose Scheff's 100 potential witnesses because, according to Scheff's testimony, they had no information relevant to plaintiff's claims. Now that defendants have

designated these 29 persons, plaintiff's counsel may not contact them before trial by order of this Court. Still others, such as Lori Damhorst, Jonathon Grimes, Phillip Greenbarg and Cade Cooper, were never disclosed prior to defendants' designation (a full list of undisclosed witnesses is set forth in the next section). Therefore, plaintiff will hear these persons' testimony for the first time at trial and can only counter such testimony through cross examination and rebuttal testimony. There is simply not time.

Again, just in the example of Ms. Gomez, World Wide would be entitled to call staff and treatment professionals from Spring Creek Lodge and Tranquility Bay to refute her allegations of abuse. The problem, however, is even when World Wide successfully debunks the allegations, the damage is already done because trial has shifted from defendants' false advertising and defamation to Ms. Gomez's allegations of abuse. As cited by the Tenth Circuit, "The classic explanation of this danger [confusion of the issues] comes from Dean Wigmore: 'The notion here is that, in attempting to dispute or explain away the evidence thus offered, new issues will arise as to the occurrence of the instances and the similarity of conditions, [and] new witnesses will be needed whose cross examination and impeachment may lead to further issues.'" *McVeigh*, 153 F.3d at 1191, *quoting* 2 John Henry Wigmore, *Evidence* § 443, at 528-29 (James H. Chadbourn rev., 1979).

If these tangential persons are allowed to testify, World Wide will be denied its right of cross examination which will be of particular importance considering the calculated passion and prejudice arising merely from the allegations of child abuse, regardless of their truth. It would be an abuse of discretion to allow a witness to testify that they (or their child) were abused when such allegations: 1) have only minimal relevance to the disputed issues; 2) such minimal relevance may be introduced

through another witness; 3) the evidence misleads and confuses the jury concerning the issues at trial and invites the jury to render a verdict on an improper basis; and 4) where plaintiff is not allowed time for effective cross-examination and counterbalancing of the substantial unfair prejudice of such testimony.

Thus, plaintiff objects to these designated witnesses under Rule 403 and moves for an order excluding such witnesses from testifying at trial.

III. PROPOSED WITNESSES THAT WERE NEITHER DISCLOSED NOR SUPPLEMENTED SHOULD NOT BE ALLOWED TO TESTIFY

Pursuant to Rule 37(c)(1), designated witnesses who were not disclosed cannot testify. Scheff's Initial Disclosures identified over 100 potential witnesses. Plaintiff tried to contact most of these persons informally to determine which witnesses actually had information relevant to plaintiff's claims. Scheff told these persons not to contact plaintiff's counsel. Plaintiff thus deposed Scheff and submitted discovery requests to discover which of these potential witnesses had relevant information. As set forth, plaintiff narrowed the list to a handful of potential relevant witnesses. Over the last two years, plaintiff and counsel have gathered information on these potential witnesses which could rebut or refute anticipated testimony.

However, if witnesses were never disclosed, plaintiff could not gather such information; plaintiff could not determine the potential relevance of their testimony; plaintiff could not question defendants on their proposed relevance; and plaintiff could not evaluate their internet communications or their email communications with defendants. Parties have a duty to disclose individuals who may have discoverable information well before the final designation of witnesses

to allow this type of discovery. Further, Rule 37(c)(1) expressly dictates that a witness not disclosed under Rule 26(a) nor supplemented under Rule 26(e) is not permitted to testify at trial.

Here, the following persons were disclosed for the first time in defendants' designation: Amberly Knight, Jonathon Grimes, Lori Damhorst, [B R], [J F Jr.], Terry Cameron, Phillip Greenbarg, Christine Smith, Theresa Grimes, [Z P], [R M], [S F], [L B], [A V] and Cade Cooper.

The exclusion of these witnesses is within this Court's discretion. Under Tenth Circuit case law, such discretion is guided by the prejudice or surprise of the newly disclosed witnesses, the ability of plaintiff to cure the prejudice, the extent to which trial would be disrupted, and evidence of bad faith or willfulness. *Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co.*, 170 F.3d 985, 993 (10th Cir. 1999). As set forth above, the proposed testimony of these persons has minimal if any relevance. World Wide will be unable to cure the prejudice of their testimony without substantial disruption of the trial. Finally, defendants knew of these persons well before the deadline to designate witnesses and did not disclose them. Accordingly, plaintiff objects to these witnesses being allowed to testify at trial.

OBJECTIONS TO DESIGNATED EXHIBITS

Materials attached to Expert Witness Reports:

Plaintiff's objections to those materials included with Dr. Roderick Hall's report are addressed in plaintiff's motion in limine. The documents are inadmissible under Rule 401, 402, 602, 801, 802, 805 and 901. The documents purport to record allegations of child abuse at World Wide member schools. There is no indication any of the accounts are reliable, the declarants have not been identified, there is no indication they are based on personal knowledge, and they are irrelevant to

plaintiff's specific claims of defamation.

DHEC and DSS Documents:

These documents are inadmissible under Rules 401, 402, 602, 801, 802 and 805. The documents are hundreds of pages subpoenaed from the South Carolina Department of Health and Environmental Control (DHEC) and the Department of Social Services (DSS) for the State of South Carolina.

Regarding the DHEC documents, defendants took the deposition of Joyce Slocum. Ms. Slocum was able to lay foundation for one document, a March 19, 1999 report she authored. Scheff's daughter was not enrolled at Carolina Springs until August, 2000. Ms. Slocum's report, written a year and a half before any relevant time period in this case, is inadmissible under Rules 401 and 402. Ms. Slocum testified she had no further personal involvement in investigating Carolina Springs after her 1999 report, particularly during the time Scheff's daughter was at the school. *See* Slocum at 12, Exhibit A. Ms. Slocum further admitted DHEC's alleged jurisdiction over Carolina Springs was litigated with DSS and the court determined DHEC had no jurisdiction over Carolina Springs. *Id.* at 14. Therefore, the only evidence Ms. Slocum has to offer is her reporting of hearsay statements from students made during her investigation a year and a half before Ashlyn Scheff came to Carolina Springs. The exception under Rule 803(8)(B) does not apply because Ms. Slocum was not authorized to investigate CSA. The statements are therefore inadmissible.

Regarding the DSS documents, defendants deposed Lauren Staudt who was the licensing agent for Carolina Springs at DSS. Ms. Staudt, however, did not visit Carolina Springs until December, 2001, the time Scheff withdrew her daughter from the school. *See* Staudt at 6, Exhibit

B. The records Ms. Staudt produced were from 2001 through 2003, after Ashlyn Scheff left Carolina Springs. Id. at 8. The only relevant testimony Ms. Staudt could give was whether CSA was licensed in 2000 when Ashlyn was there, and Ms. Staudt testified she did not know. Id. at 32.

Defendants seek to admit Ms. Staudt's notes of telephone calls and emails reporting allegations of abuse at CSA between 2001 and 2003. Defendant's counsel stated the documents were relevant because they proved the truth of defendants' statements. Id. at 27. If introduced for such purpose the documents are inadmissible under Rules 602, 801, 802 and 805.

Moreover, since none of the reports concern statements made by defendants at issue in this litigation, they are inadmissible under Rules 401 and 402 as irrelevant. As general allegations of abuse, they are more prejudicial than probative under Rule 403 and, as set forth concerning defendants' proposed witnesses, cannot be merely dumped on the jury without any opportunity for World Wide to refute such allegations. Ms. Staudt testified many of the allegations were made anonymously, that her department has an obligation to record every complaint, that she could not verify a substantial number of the complaints lodged against CSA, and she admitted students at such facilities are not reliable reporters of abuse. Id. at 33-35. With no indication of the trustworthiness of the reports, no indication of personal knowledge, no relevance to an issue in the case, and no ability to refute amorphous allegations, the documents must be excluded.

Photographs of High Impact:

These undated, unidentified photographs are inadmissible under Rules 401, 402 and 901.

Documents concerning World Wide member schools unrelated to case:

Defendants have designated a wide variety of documents that are irrelevant to any issues in

this case under Rules 401, 402, 403, 801, 802 and 805. These documents include:

- Letter from Amberly Knight to PANI. This letter addresses alleged concerns about Dundee Ranch in 2003.
- Copies of documents from State Department; Documents from Government of Western Samoa. These documents address licensing, investigations and approvals from 1996 through 1998 of Paradise Cove.
- Focus Seminar homework. Plaintiff is unsure why this exhibit is designated.
- Spring Creek Lodge and Casa by the Sea Parent Manuals. These are manuals sent out by these schools in 2003.
- Government Documents from investigation of Dundee Ranch Academy. These documents are from a 2003 investigation and are in Spanish with no expert translation under Rule 604.
- Majestic Ranch and Cross Creek employee manuals. These are manuals produced by these schools to employees in 2003.
- Letters from George Miller to John Ashcroft. These are letters passing on media reports and parent allegations.
- Newspaper articles. Defendants did not produce the articles but those introduced at depositions in this matter involved media accounts of parents and former students' allegations of abuse.

None of these documents are relevant to prove or disprove any statements at issue in this case. They are offered merely to attempt to shift the jury's focus from defendants to plaintiff by

introduction of second and third hand unsubstantiated allegations of abuse.

Teen Help Agendas from 2003:


These documents are inadmissible under Rules 401, 402, 801, 802 and 805.

Documents designated as "may" introduce:

Defendants designated approximately 30,000 documents as "may" introduce along with every pleading, every exhibit and every letter from plaintiff's counsel. Due to the breadth of this designation, plaintiff cannot make specific objections to the material. Therefore, plaintiff reserves the right to object to these materials as and if offered at trial of this matter.

DATED this 6th day of July, 2004.

SILVESTER & CONROY, L.C.

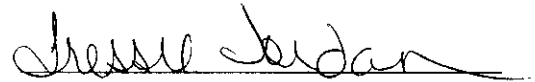
A handwritten signature in black ink, appearing to read 'Fred R. Silvester', is written over a horizontal line.

Fred R. Silvester
Spencer C. Siebers
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July, 2004, a true and correct copy of the foregoing **PLAINTIFF'S OBJECTIONS TO DEFENDANTS' DESIGNATION OF WITNESSES AND EXHIBITS** was served by mailing the same via first-class U.S. Mail, postage prepaid to the following::

C. Richard Henriksen, Jr.
Aaron Flater
HENRIKSEN & HENRIKSEN, P.C.
Attorneys for Defendants
320 South 500 East
Salt Lake City, UT 84102



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