

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ASSOCIATION TO PRESERVE)	
AND PROTECT LOCAL)	
LIVELIHOODS et al.,)	
)	
Plaintiffs)	
)	
v.)	No. 1:22-cv-00416-LEW
)	
TOWN OF BAR HARBOR et al.,)	
)	
Defendants)	

ORDER RE: DISCOVERY DISPUTE

On June 12, 2023, I held a discovery hearing with Attorneys Woodcock, Hamilton, Olesen, Kraft, Kingston, Braden, Economy, Wagner, and Papazian. Intervenor-Defendant Charles Sidman seeks to compel the Plaintiffs to disclose the identity of the members of the Association to Preserve and Protect Local Livelihoods (APPLL) and produce certain financial information; he also challenges the Plaintiffs’ decision to redact certain financial documents and designate them attorney’s eyes only under the terms of the confidentiality order. *See* ECF Nos. 110, 120.

At the hearing, Sidman argued that he needs the information he seeks to defend against the Plaintiffs’ claims that enforcement of the municipal ordinance at issue in this case—which limits the number of disembarking cruise ship passengers in the Town of Bar Harbor to 1,000 per day—would cause economic harm by reducing the number of visitors to the Town. Sidman emphasized that his “whole theory” of the case is that any decrease in visiting passengers from large cruise ships resulting

from the ordinance would be offset by a corresponding increase in tourism by small cruise ship passengers and land-based travelers. He also contended that he needs to see the documents marked attorney's eyes only because he has designated himself as a rebuttal expert to the Plaintiffs' economics expert (although he acknowledged that he has no background in economics or finances).

The Plaintiffs, on the other hand, emphasized that they seek only injunctive relief and argued that the information Sidman seeks is irrelevant to their constitutional claims, particularly now that the Town has agreed not to enforce the ordinance until the resolution of this case. The Plaintiffs explained that they produced some sensitive financial documents to Sidman's counsel to show that they had standing to bring the claims, but that they designated the documents attorney's eyes only given Sidman's heated op-eds in a local paper where, among other things, he likened APPLL and its members to cancer cells killing the Town and insinuated that they need to be exposed. The Plaintiffs also noted that their economics expert did not rely on any financial information from APPLL's members to make his findings, and that Sidman has already had an opportunity to depose the expert and analyze the information on which he relied.

Having taken the dispute under advisement, I now conclude that Sidman has not shown that the information he seeks is relevant and proportional to the needs of this case. *See* Fed. R. Civ. P. 26(b)(1). In so holding, I recognize that general notions of economic harm permeate this case, but, in the absence of a cogent explanation from Sidman as to why he needs granular information from the Plaintiffs about their

finances and APPLL’s members to defend the constitutionality of the ordinance, I find that the burden of producing this sensitive information outweighs its likely benefit—particularly where Sidman’s op-eds raise the possibility that he may have ulterior motives in seeking this information. *See* ECF No. 127-1 at 1 (“Will a mere rounding error in Ocean Properties’ proudly touted empire of over 110 hotels and resorts nationwide justify the discovery and disclosures that a lawsuit will inevitably bring?”); ECF No. 127-3 at 4 (“[H]ighly promising new modes of treatment called immunotherapy function by revealing these cancer cells as the foreign threats that they are, so that the body’s own defenses can recognize and reject the invaders. The analogy between cancer and APPLL’s membership should be evident to all.”).

Sidman’s op-eds and dubious economics expertise also convince me that the Plaintiffs have demonstrated good cause to retain the attorney’s eyes only designation on the sensitive financial documents they produced. *See* ECF Nos. 110, 121-22. Finally, because Sidman did not meaningfully challenge the Plaintiffs’ representation that they only redacted irrelevant information from the attorney’s eyes only documents, there is no basis for me to order them to produce unredacted versions.

Accordingly, treating Sidman’s request for a discovery hearing as a motion for relief, it is ***DENIED***.

NOTICE

In accordance with Federal Rule of Civil Procedure 72(a), a party may serve and file an objection to this order within fourteen (14) days after being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to review by the District Court and to any further appeal of this order.

Dated: June 13, 2023

/s/ Karen Frink Wolf
United States Magistrate Judge