

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

Lin Li Qu, et al.	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	CA-09-CV-0053-S
	)	
Central Falls Detention Facility	)	
Corporation, et al.	)	
	)	
<i>Defendants.</i>	)	

**PLAINTIFF’S RESPONSE TO  
DEFENDANTS’ MOTION FOR ENTRY OF A PROTECTIVE ORDER**

NOW COMES THE PLAINTIFF Lin Li Qu and hereby files the following response to defendant Central Falls Detention Facility Corporation’s and other Defendants’ (Defendants) Motion for Entry of a Protective Order.

Defendants assert that this Court should severely restrict access (by litigants, their attorneys, and the public) to video tapes of highly relevant factual evidence of their wrongdoings. They base their request for these restrictions on the undocumented assertion that the video tapes would supposedly inflame a future jury if the public were to view them. The sole evidence in support of such a drastic remedy is internet searches conducted by the defendants that show that there has *already* been a large amount of national and international publicity about this case.

The defendants then completely contradict the basis for their request to restrict drastically access to the videos (alleging prejudice they would suffer if the public saw the evidence). In a footnote (footnote number four, page 5) of their Memorandum, they also

assert, “the video, in fact directly refutes the most serious allegations of misconduct on the part of CFDF and its employees.” The defendants should not be allowed to have it both ways.

The Plaintiff respectfully requests that this Court not grant the protective order in any of the forms proposed by the defendants, but rather to consider the following:

1. There is no adequate showing or basis for the entry of a protective order, especially considering the contradictory assertions made by the defendants. Therefore, this Court should deny the defendants’ motion outright.

2. To date, the only parties that have seen and had unfettered access to the videos in questions are the Wyatt defendants and the U.S. Government defendants. No representative or attorney for the Plaintiff has even seen the videos in questions. Most importantly, this Court has not seen the video tapes. Yet the defendants are asking this Court to rule on the possible impact of the release of the videos on a future jury. “A finding of good cause must be based on a particular factual demonstration of potential harm, not on conclusory statements.” Anderson v. Cryovac, 805 F.2d 1, 19 (1st Cir. 1986).

If the Court were not inclined to deny the motion for a protective order outright, at a minimum it should conduct a review of the videos in question before entering any order and allow the Plaintiff to do the same.<sup>1</sup>

3. Plaintiff acknowledges that in the First Circuit, as set forth in Anderson, this Court has discretion, upon a showing of good cause under Rule 26(c), to issue a protective order for pre-trial civil discovery materials that the Court has not yet relied

---

<sup>1</sup> Plaintiff would agree to a limited temporary protective order restricting access to videos at this stage to the Plaintiffs, their attorneys, and their representatives during this short period of review.

upon to make a substantive decision in the case. However, there must be a “sensitivity to First Amendment concerns by striving to keep the protective orders as narrow as possible.” Anderson at 20.

If in fact this Court finds that the defendants have shown good cause to restrict public access to the videos at this time, (either before or after viewing the video tapes in question) then the Plaintiff respectfully requests that the following elements of any protective order be included.

a. CFDF should give copies of the video tapes to attorneys for all of the parties. It would be extremely unfair to allow the defendants (or some of them) to have unfettered access to the videos to prepare their defense but require the Plaintiff to view the videos at the Defendant’s location. Allowing a watermark to be placed on the videos would be acceptable to the Plaintiff as the defendants request (footnote one, page 4);

b. Any restrictions must only be for the pre-trial period and any protective order must dissolve at the time of trial.

c. The public has a right to “access to materials considered in rulings on dispositive pretrial motions,” and therefore any protective order must state that it only applies unless and until the Court considers the video tapes in the context of any future substantive or dispositive motion. Anderson at 21, *citing*, In the Matter of Continental Illinois Securities Litigation, 732 F.2d 1302 (7<sup>th</sup> Cir, 1984); Joy v. North, 692 F.2d 880 (2<sup>nd</sup> Cir. 1982), *cert. denied*, 460 U.S. 1051, 75 L. Ed. 2d 930, 103 S. Ct. 1498 (1983).

d. Any protective order must allow the use of the video tapes at depositions. These video tapes are likely to be the best evidence of some of the actual actions of the defendants and the Plaintiff. The ability to use the videos when deposing witnesses (those who are in the videos and those who are not) will be crucial in allowing the Plaintiff to do discovery and establish her case.

Conclusion

The Plaintiff therefore requests that this Honorable Court deny Defendants' Motion for Entry of a Protective Order.

In the alternative, Plaintiff requests that the Court first review the videos and allow all parties to review them (under a temporary protective order) before receiving further input from the parties on this issue and before the Court rules on this issue.

Finally, if the Court is inclined to enter a protective order at this time, then Plaintiff requests that the Court require: (1) copies of the videos to be made for all parties; (2) the restrictions only apply for pre-trial (and dissolve at the time of trial); (3) the protective order would dissolve if and when the Court were to rely upon the videos for purposes of making a dispositive or substantive ruling; and (4) that the video tapes be allowed to be used at depositions in this case.

Dated: April 19, 2010

Respectfully submitted,

/s/ Robert J. McConnell  
Robert J. McConnell (#3888)  
Fidelma L. Fitzpatrick (#5417)  
Aileen L. Sprague (#6507)  
Motley Rice LLC  
321 South Main Street  
Providence, RI 02903  
Tel: (401) 457-7700  
Fax: (401) 457-7708  
(Cooperating attorneys, R.I. Affiliate,  
American Civil Liberties Union)

Certificate of Service

I hereby certify that I mailed and e-mailed true copy of the within motion to all counsel of record on this 19<sup>th</sup> day of April 2010.

/s/ Robert J. McConnell  
Robert J. McConnell (#3888)