

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 17-22281-CIV-COOKE/GOODMAN

HERALDS OF THE GOSPEL
FOUNDATION, INC., et al.

Plaintiffs,

v.

ALFONSO BECCAR VARELA, et al.

Defendants.

**ORDER PROVISIONALLY GRANTING
MOTION TO STRIKE PORTIONS OF DEFENDANT'S ANSWER**

Plaintiffs ask the Court to strike portions of the answer filed by Defendant Alfonso Beccar Varela because they say it (and some of the attachments) “contain[s] detailed commentaries that disclose the nature and content of the Videos . . . in contravention to this Court’s Temporary Restraining Order.” [ECF No. 21, p. 2]. Varela submitted an opposition response [ECF No. 29] and Plaintiffs filed a reply [ECF No. 32]. United States District Judge Marcia G. Cooke referred all pre-trial motions to the Undersigned. [ECF No. 8]

In his response, Varela argues that his answer was mailed before he even received notice that the TRO had been entered. [ECF No. 29, p. 1]. He also notes that he filed a motion for clarification [ECF No. 20] of the Temporary Restraining Order [ECF

No. 16] and “will follow any further instruction issued by the Court.” [ECF No. 29, p. 2]. The Undersigned previously (and recently) entered a Report and Recommendations on the motion for clarification, recommending, in effect, that the motion be granted, in part. [ECF No. 63].

Plaintiffs’ motion to strike first contends that Varela’s answer seeks to violate the TRO by submitting electronic copies of the videos on the public record. That argument is now moot because the Undersigned already entered an Order on Varela’s motion to accept multi-media evidence. [ECF No. 57]. The Order directs Varela to submit an electronic copy of the nine videos to the Clerk’s Office for under-seal filing. Varela has complied. [ECF No. 62]. Plaintiffs’ concerns about Varela’s desire to file the videos on the public record have now been adequately addressed, as the videos were filed under seal. However, the Undersigned has access to them, a scenario which will be helpful when I enter a Report and Recommendations on Plaintiffs’ motion for a preliminary injunction and evaluate Varela’s claim that Plaintiffs have inaccurately described the videos’ content (and to assess his “fair use” defense).

Plaintiffs’ second grievance concerns 13 paragraphs of the answer and three exhibits. They say these paragraphs and the exhibits “defeat the purpose of this Court’s Temporary Restraining Order by publishing the Videos and commentaries of the Videos on a publicly-accessible record.” [ECF No. 21, p. 2]. Plaintiffs’ motion represents that they “are not seeking to preclude Varela from exercising his First Amendment Rights

through his public criticism of the Plaintiffs as long as he does not discuss the content of the confidential videos.” [ECF No. 21, p. 3]. They also say the information is “completely irrelevant to the question of whether the information was misappropriated or illegally reproduced.” [ECF No. 21, p. 4].

Varela’s response contends, among other things, that his “exposure of the Plaintiffs’ concealed practices dates from well before the publication of the Videos.” [ECF No. 29, p. 2]. In fact, he argues that Plaintiffs tried to silence him two years ago and that the videos “simply reinforced and provided additional dramatic evidence to my ongoing reporting.” [ECF No. 29, p. 3]. He also argues that the videos brought his criticism of the Plaintiffs “to the attention of serious journalists . . . which in turn caused the resignation of the Plaintiff’s leader and the intervention of the Vatican.” [ECF No. 29, p. 3].

Varela argues that any effort to restore the status quo which extends beyond the removal of the videos from his blog or website would be excessive. Thus, Varela contends, “[t]o silence [his] comments does not restore any statu[s] quo, but would simply mean the satisfaction of the Plaintiff’s desire of silencing the truth.” [ECF No. 29, p. 3].

Plaintiffs’ reply notes that Varela does not suggest that “his denial of Plaintiffs’ causes action and affirmative defense thereto somehow require Varela to insert commentaries on confidential subject matter contained in the Videos that Varela

illegally acquired.” [ECF No. 32, p. 2]. They contend that Varela can set forth his denial of the allegations in compliance with pleading requirements without inserting his views and opinions (and those of others) in the answer. They say “[i]t is abundantly clear that Varela is using the pleading process as an opportunity to further his incessant disparagement of the Plaintiffs” and note that Varela posted the entirety of his answer on his website. [ECF No. 32, p. 2 n. 1].

Varela’s answer does, in fact, contain colorful and provocative language which is not required to frame adequate responses and affirmative defenses.

In addition, the answer does, in certain places, provide descriptions of the very videos which are the subject of the TRO and the still-pending motion for preliminary injunction.

On the other hand, as outlined in the earlier-issued Report and Recommendations on Varela’s motion for clarification, Varela contends that he obtained information about the Plaintiffs’ supposedly unusual exorcism practices long before the actual videos were provided to him. He says that the videos simply confirmed what he had already heard or suspected -- and had written about.

The Report and Recommendations on the clarification motion outlines the logistical hurdles which must be cleared when determining whether a comment by Varela about the Plaintiffs’ practices arose from the videos (which would be prohibited under the TRO) or from an independent source, such as pre-video information he

acquired. The Undersigned cannot now conclusively discern whether a specific comment in the answer comes from the videos that Varela acquired or from an acceptable source.

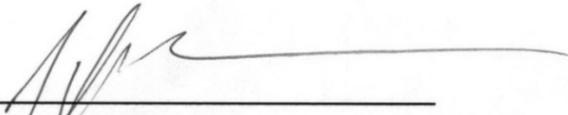
Because the answer does contain superfluous information, the Undersigned concludes (at least provisionally) that Plaintiffs' motion to strike be **granted**, that Varela's answer be **stricken**, and that Varela be required to submit an amended answer (with affirmative defenses) within 7 days of an Order adopting the earlier-issued recommendation. This Order also directs Varela to omit any discussion not necessary to admit or deny the allegations of the Complaint or to frame affirmative defenses in his amended answer.

In addition, this Order permits Varela to include in his amended answer comments authorized by the earlier-issued Report and Recommendations -- if they are necessary for the pleading. Moreover, if Varela chooses to include in his amended answer rhetoric about Plaintiffs' activities depicted in the videos or commentary about Plaintiffs, then he has the burden to establish a legitimate, independent source for the comments he makes. In other words, the same framework explained in the earlier-issued Report and Recommendations [ECF No. 63] would apply here as well.

Because this Order relates to an earlier-issued Report and Recommendations which has not yet been approved, the Undersigned holds the effectiveness of this Order in abeyance until (and if) Judge Cooke adopts and approves that Report and

Recommendations. If that happens, then the answer will be stricken and Varela would have seven days to submit an amended answer. The Undersigned will issue a separate Order actually striking the answer once the Report and Recommendations is adopted. If Judge Cooke does not adopt that Report and Recommendations, then the Undersigned will issue an updated order.

DONE AND ORDERED in Chambers, in Miami, Florida, on September 21, 2017.


Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Honorable Marcia G. Cooke
All counsel of record

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