UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

JOHN BRITTON, LORINDA BRITTON, SILVERHAWK AVIATION LLC, and DAVID CURRIE

Plaintiffs,

v.

DALLAS AIRMOTIVE INC., and ROLLS ROYCE CORPORATION,

Defendants.

Case No. 1:07-cv-00547-EJL-LMB

ORDER

Now before the Court is DAI's *Motion for Sanctions* (Docket No. 385). The motion was argued to the court on June 2, 2011. Trial is scheduled to commence on June 21, 2011. Having carefully reviewed the record, considered argument of counsel, and being otherwise fully advised, the Court enters the following Order.

In their moving papers, DAI reports to the Court that, on February 24, 2011, counsel for DAI received an unsolicited email[1] notifying them that "plaintiff John Britton and a non-party

[1] DAI received an email from someone identifying himself as "Bryan Reo." DAI retained an investigator who claims to have spoken with Reo several times by phone. According to DAI, Reo claims to also be a target of Britton. As noted, *infra*, Plaintiffs also claim to have been contacted by an anonymous emailer, identifying himself as "Bryan Nicewonger."

have been issuing threats and defamatory statements against DAI counsel." *Motion*, 2 (Docket No. 385). DAI states it conducted its own investigation, engaging the services of a private detective and retired New York City police officer. Through this investigation, DAI determined that Britton and a non-party, Martin Linstedt, have been posting threatening and defamatory comments about DAI counsel Raymond Mariani and Judge Edward Lodge on white-supremacy web sites and internet radio programs. DAI opines that Britton is attempting to intimidate counsel and/or taint the jury pool by posting messages on web sites and participating in a white-supremacist internet radio program rife with racism and threats of violence.

DAI includes with its motion a number of postings made to internet chat boards allegedly made by Britton and Lindstedt. Linstedt is the leader of an alleged racist church that is one of the surviving branches of the Aryan nations following successful prosecution of the Aryan nations by the Southern Poverty Law Center. Linstedt also produces an internet radio program, in which Britton has participated. In addition to preventing Britton from continuing this conduct, DAI requests that the Court severely sanction Britton – going so far as arguing that "[t]he Court should consider the ultimate sanction of dismissal for this extreme conduct in light of both the highly offensive nature of the content and that the conduct is contempt of an existing order that was necessitated by plaintiff's own lawyer." DAI later supplemented the record with six recordings, on compact disc, of Lindstedt's internet radio show.[2]

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[2] Court staff listened to approximately eight hours of Linstedt's radio program, "*The Movement Turd*." The show contains mostly unintelligible racist rants by Linstedt, who sounds intoxicated during most of the episodes. Britton acknowledges to participating in the show on two occasions.

DAI acknowledges that it has limited evidence of Britton directly, but contend that he and Lindstedt are working closely together to harass and threaten DAI, and disparage its counsel and the presiding judge in this action. DAI urges that the Court "not wait for [Britton's] conduct to reach that low water mark," based on Britton's alleged history, his association with an infamous hate group, and his alleged personal threats of violence against others. DAI concludes that "[t]he repeated references by both Britton and his associate to killing and bloodshed are more than sufficient to consider their behavior imminently threatening."

Plaintiffs have submitted evidence suggesting that two days after counsel for DAI received the email from Reo, and the day after Reo was contacted by DAI's investigator, Britton received the following message from an individual identifying themself as Bryan Nicewonger:

> "Nothing like losing a lawsuit with Dallas Airmotive to make your day, eh? Have fun with that ... You should have gone away when the going was good."

Plaintiffs concede that Britton knows Linstedt and has participated in his internet radio program. However, Plaintiffs argue that the specific references to the case, the court, and DAI counsel are not made by Britton, but by Linstedt, a non-party to this action. Without further commenting on Britton's statements in the recordings, Plaintiffs maintain that DAI has failed to show that their motion for a protective order can overcome Britton's Constitutionally protected interest in free speech.

Finally, Plaintiffs object to DAI's motion on evidentiary grounds arguing hearsay (FRE 801), lack of foundation as to personal knowledge (FRE 602), and relevance (FRE 401, 402 and 403).

Analysis

Regardless of admissibility issues, if all the threats and defamatory statements can be attributed to Britton, DAI still must show why Britton's comments are not constitutionally protected. Generally, to regulate or sanction speech, DAI must provide evidence of "clear and present danger."

> The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.

Schenck v. U.S., 249 U.S. 47, 52 (1919). Here, DAI has not shown Britton's intent in participating in Lindstedt's radio program, nor have they provided adequate evidence to show that Britton and Linstedt are acting in concert. Additionally, Plaintiffs' hearsay objections are well taken considering the comments on the internet chat board. DAI has not yet shown that the comments attributed to Britton were actually made by Britton.

However, these allegations cannot be taken lightly. DAI presents a compelling motion, especially in light of generalized threats of violence contained in the message boards and Lindstedt's radio program. Considering the contentious history of this action, and the seriousness of the allegations leveled at Britton, this motion has been given serious consideration by the Court. While DAI has not provided sufficient evidence to

sanction Plaintiffs at this point in time, they have provided enough to allow an extension of limited discovery into these allegations. Accordingly, DAI may immediately depose Plaintiff John Britton for the limited purpose of discovering the extent of his involvement and relationship with Martin Lindstedt, and the involvement of Britton, if any, in intimidating and disparaging counsel, the presiding judge, or attempting to taint the jury pool. This is a one time deposition, limited to one day. Should DAI discovery further evidence, they may renew their motion for sanctions. However, with the exception of the limited relief in the form of an immediate deposition of Britton, DAI's motion will be otherwise denied.

ORDER

Accordingly, DAI's Motion for Sanctions (Docket No. 385) is GRANTED IN PART and DENIED IN PART as provided in this memorandum decision.

DATED: **June 10, 2011**.

Honorable Larry M. Boyle
United States Magistrate Judge