UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

RAJA'EE FATIHAH, Plaintiff, v. CHAD NEAL (d.b.a. Save Yourself Survival and Tactical Gun Range) and NICOLE MAYHORN NEAL (d.b.a. Save Yourself Survival and Tactical Gun Range), Defendants.	No. 6:16-cv-00058-JHP

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO DETERMINE SUFFICIENCY OF RESPONSES TO REQUESTS FOR ADMISSION NOS. 1, 3-14

Defendants Chad Neal and Nicole Mayhorn Neal ("Defendants"), by and through counsel, hereby respond to Plaintiff Raja'ee Fatihah's ("Plaintiff") motion to determine the sufficiency of certain responses to Plaintiff's requests for admissions (Doc. No. 44).

As set forth below, Plaintiff's requests for admissions are improper, and this motion, which is nothing more than a request that this Court resolve the veracity of Defendants' denials, is wrongheaded. Defendants made clear during the meet and confer and following that meeting in their lengthy email to Plaintiff (*see* Pl.'s Ex. B [Doc. No. 44-2]), that filing such a motion was ill advised. Plaintiff, nevertheless, has decided to burden Defendants and this Court with this improper motion. Plaintiff's motion should be summarily denied, and this Court should consider awarding Defendants sanctions for having to respond. *See* Fed. R. Civ. P. 36 & 37.

BACKGROUND

Plaintiff was not denied use of Defendants' gun range based on any prohibited category or characteristic, including religion, and Defendants do not have a policy of restricting access to the gun range on the basis of religion (or any other prohibited category or characteristic). This dangerous lawsuit—a lawsuit which was contrived to create a controversy and a disturbance *at a gun range*—was promoted by the Council on American-Islamic Relations (CAIR), and its Oklahoma affiliate, CAIR-Oklahoma. Plaintiff is a board member of CAIR-Oklahoma.

CAIR is an organization that federal, state, and international governments acknowledge has ties to terrorism. The U.S. government identified CAIR as a Hamas-linked, Muslim Brotherhood front organization operating in the United States. CAIR was an unindicted co-conspirator in the largest terrorism financing trial prosecuted by the federal government to date. *See, e.g., United States v. Holy Land Found. for Relief & Dev.*, 624 F.3d 685, 688, 689 n.1 (5th Cir. Tex. 2010) (confirming that CAIR, among others, was included in the "List of Unindicted Co-conspirators and/or Joint Venturers" that was filed by the federal government in this criminal prosecution of a conspiracy to provide support to Hamas, a designated foreign terrorist organization).

And when CAIR lawyers sought to have their organization removed from the list of co-conspirators, the federal judge presiding over the case denied the request. *See* Mem. Op. Order at 14-19, *United States v. Holy Land Found. for Relief & Dev.*, No. 3:04-CR-0240-P (N.D. Dall. July 1, 2009), ECF No. 1356 (attached as Ex. 1).[1] And in that ruling, the federal judge reviewed the *evidence* and stated that "[t]he Government has produced *ample evidence* to establish the

[1] All of the numbered exhibits filed in support of this response are attached to the Muise Declaration, which was filed as Exhibit A.

associations of CAIR, ISNA and NAIT with HLF, the Islamic Association for Palestine ('IAP'), and with Hamas." *Id*. at 14-15 (emphasis added).

This close connection between CAIR and terrorist organizations prompted the FBI to sever ties with CAIR (Ex. 2 [FBI letter])—a decision that had bi-partisan support, including support from Senator Charles Schumer (Ex. 3 [Schumer, *et al*. letter]). And this connection to terrorist organizations extends to all CAIR organizations, including its affiliates such as CAIR-Oklahoma. (*See, e.g.*, Ex. 4 [FBI letter regarding CAIR-Oklahoma]). Indeed, the Director of CAIR-Oklahoma acknowledged the direct connection with CAIR national, and he testified that CAIR-Oklahoma agrees to "operate within the mission of CAIR." (Ex. 5 [Soltani Dep. at 74]). Because of CAIR's direct ties to terrorist organizations, the United Arab Emirates (UAE) has officially declared CAIR a terrorist organization. (Ex. 6 [List of Terror Groups Published by UAE]). State governments such as Louisiana have similarly acknowledged CAIR's terrorist ties and have publicly sought to distance themselves from this organization. (Ex. 7 [Louisiana House Resolution]). All of this information is publicly available and was provided to Plaintiff's counsel during the course of discovery in this case. (Muise Decl. ¶ 9 at Ex. A).

On October 23, 2015, Plaintiff went to Defendants' gun range armed with a loaded (round in the chamber) military-issue handgun strapped to his side, a military-style rifle slung over his shoulder, magazines loaded with approximately 140 rounds of 9 mm ammunition, a concealed recording device in his pocket, and an agenda: to create a controversy so he could file this lawsuit.

In this lawsuit, Plaintiff is attempting to convince the Court that it can, or should, force owners and operators of gun ranges to permit persons they believe to be safety threats, or worse, terrorists (or in this case, proven to be directly involved with an organization with ties to terrorism, and we refer here to CAIR and all of the evidence from government agencies demonstrating this

fact) to train with weapons at their facilities. But neither state nor federal law requires the owner of a gun range to train the next Chattanooga, Tennessee terrorist with dangerous firearms based on a claim that failing to do so constitutes unlawful religious discrimination. Here, Plaintiff did not like a sign that Defendants posted outside of their gun range following the Islamic terrorist attack in Chattanooga (an attack in which the jihadist gunman claimed to have trained at a firing range prior to his deadly killing spree), so he went to Defendants' range armed with weapons, a concealed recording device, and an agenda to create a controversy and a disturbance in order to be denied use of the range so he could file this lawsuit.

Additionally, and directly to the point of Plaintiff's allegations of discrimination, the evidence shows that Defendants *never* inquired as to Plaintiff's religion when he visited the gun range on October 23, 2015—Defendants *never* inquire as to *any* customer's religion. It wasn't until Plaintiff decided to create a controversy about his religion and assumed a threatening, armed stance that Defendants became concerned about Plaintiff firing at the range that day. As the discussion continued and the tension mounted, however, Defendants ultimately decided to invoke the posted range rule stating that all memberships were subject to board approval so that Defendants could ease the tension, take a pause, and conduct a background check of Plaintiff. And this background check confirmed their suspicions and concerns: Plaintiff was a board member of CAIR, an organization with strong ties to terrorism.

In sum, this case is not about religious discrimination, it's about public safety. And the fact that some people may want to remain willfully blind to the terrorist threat that exists (particularly to those who operate businesses such as gun ranges—*n.b.*, this is not a lunch counter), and the many ties between CAIR and this threat, does not mean that Defendants must bury their heads in the sand as well. Consequently, Defendants' responses (*i.e.*, denials) to Plaintiff's ill-

conceived requests for admissions are not only sufficient under Rule 36, they are supported by the "ample evidence."

At the end of the day, it is not the Court's role in the context of this motion to determine the veracity of Defendants' responses. As Defendants made clear during their meet and confer and as stated in the email to Plaintiff's counsel prior to the filing of this motion: "[I]f you have any doubt or if an answer was not clear to you, our unequivocal response to each and every RFA is 'denied.'" (Ex. B [Doc. No. 44-2]). That is a sufficient response. There is nothing further for this Court to do, except deny Plaintiff's motion.

ARGUMENT

I. Plaintiff's Requests Are Not Proper.

To begin, Plaintiff's requests are not proper under Rule 36.

> In regard to the proper use of Rule 36, Professor Moore has said: 'As pointed out earlier, the procedure for obtaining admissions of fact should be used to obtain admission of facts as to which there is no real dispute and which the adverse party can admit cleanly, without qualifications. * * * It is not intended to be used to cover the entire case and every item of evidence.' 4 Moore's Federal Practice, P. 36.04. To the same effect see *Electric Furnace Co. v. Fire Assng. of Philadelphia*, 9 F.R.D. 741 (N.D. Ohio E.D.1949); and *Lantz v. New York Central Railroad Co.*, 37 F.R.D. 69 (N.D. Ohio E.D.1963, Kalbfleisch, J.).

Peck v. Clesi, 37 F.R.D. 11, 12 (N.D. Ohio 1963); *see also Pfizer Inc. v. Ranbaxy Labs. Ltd.*, No. 03-209 JJF, 2004 U.S. Dist. LEXIS 6553, *2 (D. Del. Apr. 12, 2004) ("The purpose of Rule 36 of the Federal Rules of Civil Procedure is to allow parties to require their adversary to admit relevant facts not in dispute, thus eliminating the need to produce witnesses and evidence in support of these facts.").

Here, Plaintiff requests that Defendants admit vague and in many respects irrelevant facts, but facts that are nonetheless in dispute.[2] Indeed, given the context of this case, Plaintiff's requests are far from "clean." In short, the requests are not proper, and we will further address this issue in response to Plaintiff's specific claims below.

We turn now to the larger threshold issue presented by Plaintiff's motion, and this issue compels this Court to deny the motion.

II. Plaintiff's Motion Is Improper.

The principal issue presented by Plaintiff's motion was clearly and definitively addressed by Judge Greene from the U.S. District Court for the District of Columbia in *Foretich v. Chung*, No. 91-0123 (HHG), 1993 U.S. Dist. LEXIS 12841, (D.D.C. 1993).[3] In that opinion, Judge Greene denied the defendants' motion under Rule 36, and he set forth in a clear analysis why the motion was ill conceived—an analysis that is directly applicable here. Because this analysis is dispositive, we quote it in full below:

> The defendants are asking this Court to order the plaintiff to serve a revised response admitting that he is a public figure for purposes of this lawsuit. Alternatively, they seek an order stating that this fact be deemed admitted by the Court. In making this request, they rely on Rule 36(a) of the Federal Rules of Civil Procedure which states in relevant part:
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> > The party who requested the admissions may move to determine the *sufficiency* of the answers or objections. . . . If the Court determines that an answer does not comply with the requirements of this rule, it may order that the matter is admitted or that an amended answer be served.

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[2] For example, despite the "ample evidence" tying CAIR (and thus persons associated with CAIR, including those associated with CAIR-Oklahoma) to terrorist organizations such as Hamas, Plaintiff wants Defendants to admit that zero evidence, which includes circumstantial evidence, exists that Plaintiff or others associated with CAIR, such as any employee or board member of CAIR-Oklahoma, has had "personal contact" with various terrorist organizations. (*See* Ex. A [Doc. No. 44-1]). In light of the "ample evidence" connecting CAIR with terrorist organizations, the proper response to such requests is "denied." Indeed, this response is "sufficient" under Rule 36.

[3] Defendants' counsel presented a similar argument to Plaintiff's counsel during the meet and confer. (*See* Ex. B [Doc. No. 44-2]).

Fed. R. Civ. P. 36(a) (1993) (emphasis added).

The defendants cite this Rule for the proposition that a Court is authorized, at this stage of the proceedings, to make a factual determination of the accuracy of a party's denial. The plain text of the Rule does not authorize such an order and the defendants have cited no precedents in which, on a Rule 36 motion, a court ordered a matter admitted because a party's unequivocal denial of a request for an admission was unsupported by the evidence.

The purpose of Rule 36 indicates that such a ruling would be inappropriate. By authorizing requests for admissions, Rule 36 is designed "to define and limit the matters in controversy between the parties." 8 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure:* Civil § 2251 (1970) (Wright & Miller). A party served with a request for admission has a number of options available to it. He or she can admit the matter at issue, deny the assertion, object to the request, move for a protective order, do nothing, or set out the reasons why he or she can not respond. *Id.* at section 2259. Rule 36 plainly states that where a party fails to respond to a request for an admission, that requested matter is considered admitted. In this case, the plaintiff clearly stated that he was denying the defendants' request for an admission that he is a public figure for purposes of this lawsuit. *Regardless of its accuracy, this response was appropriate under Rule 36 and the Federal Rules do not allow the defendants to litigate, at this time, whether the plaintiff was justified in denying their request*. The question of whether Dr. Foretich is a public figure is obviously still in dispute between the parties.

The defendants are incorrect in their assumption that the right to challenge the "sufficiency" of a response is the equivalent of the right to challenge the veracity of a denial. According to Wright and Miller, a response may be considered insufficient where it "is not 'specific' or . . . the explanation for failure to admit or deny is not 'in detail' as the rule requires." *Id.* at section 2263. Where a response is "insufficient" in this manner, the rule authorizes the Court to either treat the matter as admitted (essentially treating the insufficient answer as nonresponsive) or order that "an amended answer be served." Fed. R. Civ. P. 36(a). According to the advisory committee notes to Rule 36, the purpose of allowing motions to challenge the sufficiency of responses is to clarify how an ambiguous response will be treated so that each party is aware, as the litigation progresses, whether or not a particular issue has been admitted or is still in dispute. *See* Fed. R. Civ. P. 36 advisory committee's note.

Rule 37(c) of the Federal Rules provides additional support for the conclusion that the defendants are seeking improper relief through this motion. Rule 37(c) provides that a party who refuses to admit a certain matter in response to a Rule 36 request can, under certain circumstances, be held liable for expenses incurred by the opposing party in proving that particular matter at trial. *See* Fed. R. Civ. P. 37(c) (1993). Under Rule 37(c) the defendants might eventually be able to recover the costs of proving that the plaintiff is a public figure.

> However, *there is simply no provision of the Federal Rules allowing a party to litigate a denied request for an admission at this stage of the proceedings*. Under the defendants' theory the Court could be called upon to decide each and every factual issue presented by a request for an admission, adding yet another arrow in the quiver of those who seek to delay litigation. The defendants' memorandum of points and authorities submitted in support of their request reads like a motion for summary judgment directed at the public figure question. That is where this matter is more properly addressed and, if possible, resolved.

Foretich v. Chung, 1993 U.S. Dist. LEXIS 12841, at *3-7 (emphasis added); *see also Pfizer Inc.*, 2004 U.S. Dist. LEXIS 6553, at *4 (noting that "a consideration of 'sufficiency' should focus on the specificity of the response and *not on whether the response is correct or in good faith*" and "where issues in dispute are requested to be admitted, a denial is a perfectly reasonable response") (emphasis added).

As Defendants' counsel made crystal clear to Plaintiff's counsel during our meet and confer and in correspondence following that meeting, "[I]f you have any doubt or if an answer was not clear to you, our unequivocal response to each and every RFA is 'denied.'"[4] (Ex. B [Doc. No. 44-2]). Apparently not willing to take "denied" as a proper response, Plaintiff filed this motion. As noted above, this Court need not take much time in resolving this matter since Plaintiff has no basis for pursuing it further with this Court pursuant to Rule 36.

Indeed, Plaintiff's motion makes clear that he wants to litigate these matters pursuant to Rule 36, but that is wholly improper. For example, Plaintiff wants "Defendants [to] admit that they have *no knowledge or evidence* that Mr. Fatihah has read any of the materials referred to in

[4] The very purpose of a meet and confer is to resolve any issues before having to file a motion. Defendants stated during the meet and confer and restated with emphasis in a follow up email (*see* Ex. B [Doc. No. 44-2]), that each response should be construed as an unequivocal "denied." Yet, in his motion, Plaintiff continues to ignore this point, and he continues to ignore that each response is a "denied." Instead, Plaintiff acts as if we never had a meet and confer and instead seeks to latch on to language that he deems "insufficient." (*See* Pl.'s Mot. at 5 [complaining that in their denial, Defendants stated that they "can neither confirm nor deny [Mr. Fatihah's] involvement in any criminal activity at this time," but ignoring the fact that the response is "denied"]).

their expert's report." (Pl.'s Mot. at 4) (emphasis). Yet, the materials in the report are authentic writings and authoritative sources about sharia law, and Plaintiff himself admits that he is a sharia-adherent Muslim. And the fact remains, what is relevant and material in this case is ***not*** what is in the mind of Plaintiff, but what was in the mind of Defendants when Plaintiff declared his adherence to sharia during his confrontation with Defendants at the gun range on October 23, and whether ***Defendants' understanding of sharia*** finds support in the authentic and authoritative writings of Islam—and it does.[5]

Plaintiff also complains about "inferential leaps and assumptions" (Pl.'s Mot. at 4), but there is plenty of "evidence" to support Defendants' denials,[6] and evidence can certainly be circumstantial. For example, a witness may not have direct evidence that it is raining, but seeing a wet umbrella in the corner is certainly "evidence" of rain. Similar reasoning applies to each of the responses to which Plaintiff complains. There is "ample evidence" linking CAIR to terrorist organizations, and Plaintiff admits his direct and close association with CAIR. Consequently, there is evidence that links Plaintiff to terrorist organizations. Plaintiff has consciously chosen to associate himself with CAIR, and a consequence of that association is that he cannot use Defendants' gun range.

As another example, because of the strong ties between "CAIR" and terrorist organizations, Plaintiff no doubt wants to try and create a distinction between the organization known generally as "CAIR" and CAIR-Oklahoma. But whatever distinction there is between the two, it is utterly

[5] Since Plaintiff ties the relevance of his requests for admissions to Defendants' expert report, a copy of that report is provided for this Court's convenience. (*See* Ex. 8 [Coughlin Expert Report]). A review of this report further shows that Plaintiff's requests are improper.

[6] Throughout his requests, Plaintiff asks Defendants to "[a]dmit that you have *no knowledge or evidence*" regarding certain matters. (*See* Ex. A [Doc. No. 44-1]) (emphasis added). Defendants properly responded by denying.

meaningless in the context of this lawsuit. When the FBI severs ties with "CAIR"—it severs ties with all of CAIR (including CAIR-Oklahoma, which is "CAIR") (*see, e.g.,* Ex. 4 [FBI letter regarding CAIR-Oklahoma]). When the UAE declares "CAIR" a terrorist organization—it is referring to all of CAIR (including CAIR-Oklahoma). The two organizations are indistinguishable, and particularly for purposes of this lawsuit.

Plaintiff also asserts that his criminal history "is plainly relevant because Defendants assert that they could exclude Mr. Fatihah because he posed some kind of danger to their establishment because he is Muslim." (Pl.'s Mot. at 5). To begin, this assertion is incoherent and a non sequitur. Nevertheless, Defendants never asserted that Plaintiff posed a danger "because he is Muslim." Plaintiff posed a danger because of his behavior and because of his associations with CAIR. Indeed, you don't have to be a Muslim to work at or be associated with CAIR. CAIR is ***not*** a religious organization. (Ex. 5 [Soltani Dep. at 13-14]). An atheist (or a Christian for that matter) working for CAIR would be denied access to Defendants' gun range just as Plaintiff was denied.

In the final analysis, what all of this shows is that Plaintiff is seeking to litigate this case by way of Rule 36, which is entirely improper. *See Foretich*, 1993 U.S. Dist. LEXIS 12841, at *3-7. Plaintiff may not want to take "denied" as a "sufficient" response from Defendants, but the law demands otherwise. Consequently, Plaintiff's motion should be summarily *denied*.

CONCLUSION

For the forgoing reasons, this Court should deny Plaintiff's motion and consider awarding Defendants their attorneys' fees as sanctions for having to respond to it.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

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