

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

1
2 DAVID KOENIG,)
3) Case No. 23CV15424
4 Plaintiff,)
5 v.) PLAINTIFF’S
6) MOTION TO DETERMINE THE
7 EVANS CLINCHY) SUFFICIENCY OF DEFENDANT
8 JENNIFER CLINCHY, and) EVANS CLINCHY’S
9 BRIANNA (LOLA) McKISSEN,) RESPONSES AND OBJECTIONS TO
10) REQUESTS FOR ADMISSION
11 Defendants.)

12
13 **Oral Argument Requested**

14 Pursuant to UTCR 5.050(1), defendant requests oral argument on this Motion. The
15 estimated time required for the hearing is 30 minutes. Official court reporting services are
16 requested.

17 **UTCR 5.010 Certification**

18 Pursuant to UTCR 5.010, the parties conferred on this Motion prior to filing and were
19 unable to resolve the issues raised herein.

20 **Motion**

21 Pursuant to ORCP 45, Plaintiff moves the Court to determine the sufficiency of
22 Defendant Evans Clinchy’s objections and responses to Plaintiff’s requests for admission
23 (“RFAs”). Plaintiff respectfully asks the Court to deem RFAs Number 1, 2, and 14 admitted in
24 their entirety. In the alternative, Plaintiff respectfully asks the Court to direct Mr. Clinchy to
25 serve answers or amended answers to RFAs Number 1, 2, and 14.

26 **BACKGROUND**

1 Plaintiff is a highly successful tournament Scrabble player who was the subject of a
2 disciplinary proceeding of the Advisory Board of the North American Scrabble Players
3 Association in 2022. This proceeding was initiated because of false and defamatory statements
4 by Defendants regarding Plaintiff, including that he had engaged in sexual harassment and sexual
5 coercion, and that he was a threat to commit acts of physical violence at a Scrabble tournament.
6 In September of 2022, relying in part on these false and defamatory statements, Plaintiff was
7 suspended from the organization and barred from its events for three years, causing him
8 significant economic damages. Separately from this harm, Defendants' false and defamatory
9 statements resulted in noneconomic damages, including serious damage to his reputation in the
10 Scrabble community and severe emotional distress.
11

12
13 Unwilling to allow the lies about him to stand, Plaintiff filed a lawsuit against the three
14 individuals who had told them, seeking to have his reputation restored and to be compensated for
15 the damages he had suffered.
16

17 On May 16, 2023, Plaintiff served fourteen RFAs on Defendant Evans Clinchy. On June
18 8, Mr. Clinchy served responses on Plaintiff. Def's. Resps. to Pl's. Reqs. for Admis. ("Def's
19 RFA Resps.") See Exhibit 1. Of the fourteen requests, Mr. Clinchy provided admissions or
20 denials to only nine. He objected or failed to respond to the remainder.
21

22 POINTS AND AUTHORITIES

23 Pursuant to ORCP 45 A, a party may serve on any other party a request for the admission
24 by the latter of the truth of relevant matters within the scope of Rule 36 B specified in the
25 request, including facts or opinions of fact, or the application of law to fact, or of the genuineness
26 of any relevant documents or physical objects described in or exhibited with the request.

27 Admissions discoverable pursuant to ORCP 36 B(1) include "any matter, not privileged, which
28

1 is relevant to the claim or defense of the party seeking discovery.... It is not ground for objection
2 that the information sought will be inadmissible at the trial if the information sought appears
3 reasonably calculated to lead to the discovery of admissible evidence.”

4 “A request for discovery must often be couched in broad terms, because the significance
5 of the material cannot always be determined until it has been inspected.” *Vaughan v. Taylor*, 79
6 Or App 359, 365, 718 P2d 1387, *rev den*, 301 Or 445 (1986). In *Vaughan*, the Oregon Court of
7 Appeals cited with approval the following description of the breadth of permissible discovery:
8 “The scope of discovery has been made very broad and the restrictions imposed upon it are
9 directed chiefly at the use of, rather than the acquisition of, the information discovered.”
10 *Vaughan*, 79 Or App at 365 n 7 (quoting Charles A. Wright & Arthur R. Miller, 8 *Federal*
11 *Practice and Procedure* § 2001 (1970)).
12

13
14 Broadly phrased discovery requests are often disparaged as “fishing expeditions.”
15 However, the Oregon Supreme Court finds no fault with likening discovery to a fishing
16 expedition: “Pretrial discovery is a valid procedural tool; however, it is a ‘fishing expedition’ in
17 the sense that the searcher does not know what is available for ‘catching.’ For this reason, the
18 searcher wants to use as large a net as possible.” *Pac. Nw. Bell Tel. Co. v. Century Home*
19 *Components, Inc.*, 261 Or 333, 339, 491 P2d 1023 (1971), *modified and withdrawn in part on*
20 *other grounds*, 261 Or 333, 494 P2d 884 (1972).
21

22 Following is a summary of requests to which plaintiff has failed to produce sufficient
23 responses:
24

25 **Requests for Admission 1, 2, and 14**

26 RFAs number 1, 2, and 14 ask Mr. Clinchy to admit or deny the following statements:

27 1. You have never witnessed Plaintiff use physical violence against another human being.
28

1 2. You have never witnessed Plaintiff engage in sexual harassment.

2 14. You frequently employed, with the Scrabble community, in person and online, the
3 catch phrase “Fuck you, you fucking fuck!”

4 Def’s. RFA Resps. at 1-2, 4. Mr. Clinchy objected to these RFAs on the ground that the
5 terms “physical violence against another human being,” “harassment,” “employed,” and
6 “frequently,” were vague and undefined. *Id.* These objections are without merit. Generally,
7 words of common usage do not need to be defined. *State v. McDonnell*, 313 Or. 478, 497 (Or.
8 1992); *State v. Nefstad*, 309 Or. 523, 539-40 (Or. 1990). In each instance, the word or words that
9 Ms. Clinchy objects to as being undefined or vague are words of common usage,
10 “understandable without elaboration in the context in which it was used.” *State v. Nichols*, 236
11 Or. 521, 535 (Or. 1964). The mere existence of hypothetical uncertainty regarding a word or
12 phrase’s application to a minute subset of potential facts should not absolve a respondent of the
13 duty to respond to these requests for admissions by applying the commonly held definitions of
14 those words or phrases.
15
16
17

18 **CONCLUSION**

19 For the foregoing reasons, Plaintiff’s Motion should be granted, and this Court should
20 deem Plaintiff’s Requests for Admission 1, 2, and 14 as admitted in their entirety. In the
21 alternative, Plaintiff respectfully asks this Court to direct Mr. Clinchy to serve answers or
22 amended answers to RFAs Number 1, 2, and 14.
23

24 DATED: June 15, 2023.

25 /s/ Marc Mohan
26 Marc Mohan
27 OSB #203325
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PROOF OF SERVICE

I certify that I caused this document to be served on:

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JUNE 15, 2023.

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EXHIBIT 1

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

DAVID KOENIG

Plaintiff

vs

**EVANS CLINCHY
JENNIFER CLINCHY and
BRIANNA (LOLA) McKISSEN**

Defendants

Case No. 23CV15424

**DEFENDANT EVANS CLINCHY'S
RESPONSES TO PLAINTIFF'S
REQUESTS FOR ADMISSION**

RESPONSES TO SPECIFIC REQUESTS

REQUEST NO. 1: You have never witnessed Plaintiff use physical violence against another human being.

RESPONSE: Objections: form, undefined terms. Notwithstanding the objections, reasonable inquiry has been made and the information known or readily obtainable by defendant is insufficient to enable defendant to admit or deny without knowing the definition of the vague term "physical violence against another human being."

REQUEST NO. 2: You have never witnessed Plaintiff engage in sexual harassment.

1
2 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
3 objections, reasonable inquiry has been made and the information known or readily
4 obtainable by defendant is insufficient to enable defendant to admit or deny without
5 knowing the definition of the vague term “harassment.”
6

7 **REQUEST NO. 3:** You have never witnessed Plaintiff engage in sexual
8 coercion.
9

10 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
11 objections, admit, so far as defendant understands the request.

12 **REQUEST NO. 4:** You have never witnessed Plaintiff engage in sexual
13 assault.
14

15 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
16 objections, admit, so far as defendant understands the request.

17 **REQUEST NO. 5:** You have disliked Plaintiff since at least 2013.

18 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
19 objections, admit, so far as defendant understands the request.
20

21 **REQUEST NO. 6:** You have attempted to exclude Plaintiff from Scrabble
22 tournaments by circumventing the typical registration process.

23 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
24 objections, deny, so far as defendant understands the request.
25

26 **REQUEST NO. 7:** You have called Plaintiff “an awful, awful human being.”

27 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
28 objections, reasonable inquiry has been made and the information known or readily

1
2 obtainable by defendant is insufficient to enable defendant to admit or deny, so far
3 as defendant understands the request.

4 **REQUEST NO. 8:** You are a co-founder of the Scrabble tournament
5 organization The Collins Coalition (“CoCo”).
6

7 **RESPONSE:** Admit, so far as defendant understands the request.

8 **REQUEST NO. 9:** One of the motivations for the founding of CoCo was to
9 exclude plaintiff from participating in its tournaments.
10

11 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
12 objections, deny, so far as defendant understands the request.

13 **REQUEST NO. 10:** Prior to April 2022, you never made a complaint to either
14 the Word Game Players Organization or the National Scrabble Players Association
15 regarding Plaintiff.
16

17 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
18 objections, reasonable inquiry has been made and the information known or readily
19 obtainable by defendant is insufficient to enable defendant to admit or deny without
20 knowing the definition of the term “National Scrabble Players Association”, which
21 appears to be a nonexistent organization.
22

23 **REQUEST NO. 11:** You have never seen Plaintiff behave disruptively or
24 aggressively at a Scrabble tournament.
25

26 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
27 objections, admit, so far as defendant understands the request.
28

1
2 **REQUEST NO. 12:** At a Scrabble tournament in New Orleans in January
3 2017, you jumped up and down, pumped your fist, and yelled loudly after an
4 adjudication in your favor during a game against Plaintiff.

5
6 **RESPONSE:** Objections: form, undefined terms, relevance. Notwithstanding
7 the objections, deny, so far as defendant understands the request.

8 **REQUEST NO. 13:** You threatened to break another Scrabble player’s
9 kneecaps, so that they would have to crawl to the challenge computer.

10
11 **RESPONSE:** Objections: form, undefined terms, relevance. Notwithstanding
12 the objections, deny, so far as defendant understands the request.

13 **REQUEST NO. 14:** You frequently employed, within the Scrabble
14 community, in person and online, the catch phrase “Fuck you, you fucking fuck!”

15
16 **RESPONSE:** Objections: form, undefined terms, relevance. Notwithstanding
17 the objections, reasonable inquiry has been made and the information known or
18 readily obtainable by defendant is insufficient to enable defendant to admit or deny
19 without knowing the definitions of the vague terms “employed” or “frequently.”
20

21 June 8, 2023

22 **RESPECTFULLY FILED,**

23 /s/ Michael Fuller
24 **Michael Fuller, OSB No. 09357**
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June 8, 2023

/s/ Michael Fuller
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