

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) JENNIFER 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 Jennifer Clinchy’s objections and responses to Plaintiff’s requests for admission
23 (“RFAs”). Plaintiff respectfully asks the Court to deem RFAs Number 1, 2, 6-9, and 14 admitted
24 in their entirety. In the alternative, Plaintiff respectfully asks the Court to direct Ms. Clinchy to
25 serve answers or amended answers to RFAs Number 1, 2, 6-9, 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 On May 16, 2023, Plaintiff served sixteen RFAs on Defendant Jennifer Clinchy. On June
17 8, Ms. Clinchy served responses on Plaintiff. Def's. Resps. to Pl's. Reqs. for Admis. ("Def's
18 RFA Resps.") See Exhibit 1. Of the sixteen requests, Ms. Clinchy provided admissions or denials
19 to only six. She objected or failed to respond to the remainder.
20

21 POINTS AND AUTHORITIES

22 Pursuant to ORCP 45 A, a party may serve on any other party a request for the admission
23 by the latter of the truth of relevant matters within the scope of Rule 36 B specified in the
24 request, including facts or opinions of fact, or the application of law to fact, or of the genuineness
25 of any relevant documents or physical objects described in or exhibited with the request.
26 Admissions discoverable pursuant to ORCP 36 B(1) include "any matter, not privileged, which
27
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, 8, 9, and 12**

26 RFAs number 1, 2, 8, 9, and 12 ask Ms. Clinchy to admit or deny the following
27 statements:
28

- 1 1. You have never witnessed Plaintiff use physical violence against another human being.
- 2 2. You were in a romantic relationship with Plaintiff from approximately 2014 to
- 3 approximately 2016.
- 4 8. You have never sought a restraining order against Plaintiff.
- 5 9. Prior to 2022, you had never contacted law enforcement in any way regarding Plaintiff.
- 6
- 7 12. In the September 9, 2022 statement that you submitted to NASPA, you included a
- 8 letter to Jason Idalski with two sentences highlighted. The first highlighted sentence is “Like so
- 9 many women, I have been sexually assaulted in the past.” This sentence does not refer to
- 10 Plaintiff.

11 Def’s. RFA Resps. at 1. Ms. Clinchy objected to these RFAs on the ground that the terms

12 “physical violence against another human being,” “romantic,” “sought,” “restraining order,”

13 “law enforcement,” and “refer,” were vague and undefined. *Id.* These objections are without

14 merit. Generally, words of common usage do not need to be defined. *State v. McDonnell*, 313 Or.

15 478, 497 (Or. 1992); *State v. Nefstad*, 309 Or. 523, 539-40 (Or. 1990). In each instance, the word

16 or words that Ms. Clinchy objects to as being undefined or vague are words of common usage,

17 “understandable without elaboration in the context in which it was used.” *State v. Nichols*, 236

18 Or. 521, 535 (Or. 1964). The mere existence of hypothetical uncertainty regarding a word or

19 phrase’s application to a minute subset of potential facts should not absolve a respondent of the

20 duty to respond to these requests for admissions by applying the commonly held definitions of

21 those words or phrases.

22

23

24

25 Requests for Admission 6 and 7

26 RFAs number 6 and 7 ask Ms. Clinchy to admit or deny the following statements:

27

28

1 As to relevance, Mr. Koenig's claims involve allegations that Ms. Clinchy willfully
2 misdescribed him as an individual who presents a threat of violence. She repeated false and
3 defamatory statements made by another defendant with the full knowledge that, even if those
4 statements had the slightest basis in reality, they would represent nothing more than hyperbole.
5 Ms. Clinchy also relied on an online exchange between Mr. Koenig and another individual, in
6 which Mr. Koenig used violent imagery as hyperbole, to bolster her false and defamatory
7 statements regarding Mr. Koenig's potential for actual violence. The statement that Ms. Clinchy
8 is being asked to admit or deny is relevant to her state of mind regarding the use or alleged use of
9 violent language in a hyperbolic fashion, and the request is therefore reasonably calculated to
10 lead to the discovery of admissible evidence.
11

12
13 As to annoyance, embarrassment, and oppression, Mr. Koenig strongly denies the
14 allegation that this request "telegraphs [his] harassing and abusive motivations." Def's. RFA
15 Resp. at 4. Mr. Koenig's only motivations in bringing this action are to restore his damaged
16 reputation and be made whole for the damage he has suffered due to defendants' actions and
17 statements. Ms. Clinchy implies that Ms. Clinchy, Ms. McKissen, and Mr. Clinchy are the only
18 defendants in this action because of Mr. Koenig's previous romantic relationships with Ms.
19 Clinchy and Ms. McKissen. Def's. RFA Resp. at 4 n 5. This is untrue. Ms. Clinchy, Ms.
20 McKissen, and Mr. Clinchy are the only defendants in this action because they are the only
21 individuals who committed the torts which are its causes of action.
22

23
24 RFA number 14 was not intended to, and responding to it would not in fact, embarrass,
25 annoy, or oppress Ms. Clinchy, nor interfere with her employment prospects. The statement
26 referenced in the request would be embarrassing or oppressive only if it was likely to be
27 understood by a reasonable person as a literal threat, which it is not. Ms. Clinchy argues that she
28

1 is “especially susceptible” to this sort of annoyance and embarrassment due to her status as a
2 White House lawyer. Def’s RFA Resp. at 4. But Ms. Clinchy is not currently a White House
3 lawyer, and appears to be self-employed, a status which minimizes any hypothetical harm to her
4 employment prospects. *See* Exhibit 2. Even assuming that Ms. Clinchy’s response to this request
5 would result in a risk of embarrassment, annoyance, oppression, or interference with her
6 employment prospects, Plaintiff has expressed his willingness to stipulate to a protective order
7 regarding such a response, essentially eliminating that risk.
8

9
10 **CONCLUSION**

11 For the foregoing reasons, Plaintiff’s Motion should be granted, and this Court should
12 deem Plaintiff’s Requests for Admission 1, 2, 6-9, and 14 as admitted in their entirety. In the
13 alternative, Plaintiff respectfully asks this Court to direct Ms. Clinchy to serve answers or
14 amended answers to RFAs Number 1, 2, 6-9, and 14.
15

16
17
18 DATED: June 14, 2023.

19 /s/ Marc Mohan
20 Marc Mohan
21 OSB #203325
22 Verite Law Company
23 1525 SE 22nd Ave.
24 Portland OR 97214
25 503-754-1656
26 marc@veritelawcompany.com
27 Attorney for Plaintiff
28

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PROOF OF SERVICE

I certify that I caused this document to be served via e-mail and first-class mail on:

Defendant Jennifer Clinchy
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JUNE 14, 2023.

/s/ Marc Mohan
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EXHIBIT 1

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

Case No. 23CV15424

DAVID KOENIG

Plaintiff

vs

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

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

Defendants

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 were in a romantic relationship with Plaintiff from approximately 2014 to approximately 2016.

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 “romantic.”
6

7 **REQUEST NO. 3:** The last time you were in the same place as Plaintiff was
8 July 17, 2018 at the wedding of Chris Lipe and Randi Goldberg in Aruba.
9

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

12 **REQUEST NO. 4:** At the July 17, 2018 wedding, you initiated a brief
13 conversation with Plaintiff, approaching him at the bar area and asking how he was
14 doing.
15

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

18 **REQUEST NO. 5:** At the July 17, 2018 wedding, there was no further
19 interaction between yourself and Plaintiff following that brief conversation.
20

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

23 **REQUEST NO. 6:** Since January 6, 2017, plaintiff has only sent a direct
24 communication to you one time, apart from e-mails sent to multiple recipients, and
25 that was on September 17, 2018 in response to your email of September 13, 2018.
26

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. 7:** Since March 26, 2019, plaintiff has never communicated
5 with you at all, not even by copying you on a group email.
6

7 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
8 objections, reasonable inquiry has been made and the information known or readily
9 obtainable by defendant is insufficient to enable defendant to admit or deny, so far
10 as defendant understands the request.
11

12 **REQUEST NO. 8:** You have never sought a restraining order against
13 Plaintiff.
14

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

21 **REQUEST NO. 9:** Prior to 2022, you had never contacted law enforcement in
22 any way regarding Plaintiff.
23

24 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
25 objections, reasonable inquiry has been made and the information known or readily
26 obtainable by defendant is insufficient to enable defendant to admit or deny without
27 knowing the definition of the vague term “law enforcement.”
28

1
2 **REQUEST NO. 8:** You are the co-founder of the Scrabble tournament
3 organization The Collins Coalition (“CoCo”).

4 **RESPONSE:** Admit, so far as defendant understands the request.
5

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

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

11 **REQUEST NO. 10:** You said that it was your husband Evans Clinchy who
12 held a grudge against Plaintiff, and not yourself.

13 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
14 objections, reasonable inquiry has been made and the information known or readily
15 obtainable by defendant is insufficient to enable defendant to admit or deny the use
16 of the exact phrase and wording in the request, so far as defendant understands the
17 request.
18

19 **REQUEST NO. 11:** Prior to April 2022, you never made a complaint to any
20 of the three leading Scrabble tournament organizations regarding Plaintiff.
21

22 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
23 objections, reasonable inquiry has been made and the information known or readily
24 obtainable by defendant is insufficient to enable defendant to admit or deny without
25 knowing the definitions of the undefined terms used in the request.
26

27 **REQUEST NO. 12:** In the September 9, 2022 statement that you submitted
28

1
2 to NASPA, you included a letter to Jason Idalski with two sentences highlighted.
3 The first highlighted sentence is, “Like so many women, I have been sexually
4 assaulted in the past.” This sentence does not refer to Plaintiff.
5

6 **RESPONSE:** Objections: form, undefined terms. Notwithstanding the
7 objections, reasonable inquiry has been made and the information known or readily
8 obtainable by defendant is insufficient to enable defendant to admit or deny without
9 knowing the definition of the vague term “refer.”
10

11 **REQUEST NO. 13:** In the same letter, the second highlighted sentence is, “I
12 forfeited the game because I would find it intensely distressful to relive that trauma
13 by playing against a man who has harassed and behaved disrespectfully towards
14 women.” This sentence refers to Sam Kantimathi, NOT to the Plaintiff.
15

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

19 **REQUEST NO. 14:** Did you state, while employed the White House Office
20 of Technology and Policy, that it would be smarter to assassinate a Supreme Court
21 Justice than to assassinate a President?
22
23
24
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1
2 **RESPONSE:** Defendant respectfully objects for the reasons stated in the pending
3 motion for protective order.

4 June 8, 2023

5
6 **RESPECTFULLY FILED,**

7 /s/ Michael Fuller

8 **Michael Fuller, OSB No. 09357**

9 Lead Trial Attorney for Defendant

OlsenDaines

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1
2 **PROOF OF SERVICE**

3 I certify that I caused this document to be served on:
4

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15 **June 8, 2023**

16 /s/ Michael Fuller
17 **Michael Fuller, OSB No. 09357**
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From White House Lawyer to Career Consultant

Jennifer began her career as an attorney and policy advisor for the U.S. government. She served the President of the United States as a recruiter and hiring manager for the Obama White House. For seven years, she critiqued thousands of resumes and cover letters from

the strongest candidates in the country. She witnessed firsthand what worked to get candidates hired for the most competitive office in the nation. After leaving the White House, she has applied her expertise to transform resumes, cover letters, personal statements, and LinkedIn profiles for more than 100 clients.

Jennifer's clients range from college students to startup founders, small business owners and C-suite executives. Her multi-disciplinary background in science and law has enabled her to assist clients in a wide range of fields spanning technology, health care, medicine, finance, marketing, communications, entertainment, media, the environment, nonprofits, government, academia, research science, biotechnology, education, philanthropy, music, and the arts.



As a Certified Professional Resume Writer and active member of the Professional Association of Resume Writers and Career Coaches, Jennifer stays on top of the latest trends in resume writing. She is passionate about empowering her clients with the career tools they need to pursue their dreams. She takes a highly collaborative and creative approach to career consulting, ensuring that every client receives individual attention and service. No two clients are alike and no two resumes are alike. Jennifer works directly with her clients to uncover the strengths that will position them to achieve their goals. Resumes written by Jennifer showcase each client's unique abilities and experience, all in eye-catching designs that maximize machine readability in Applicant Tracking Systems.

Professional Highlights and Education

- Certified Professional Resume Writer (CPRW) and active member of the Professional Association of Resume Writers and Career Coaches (PARWCC)
- Top-tier Pro seller on freelancing platform Fiverr, with more than 150 5-star reviews
- Winner of the Coaching Fellowship for extraordinary young women leaders of impact
- Co-founder and Executive Director of a national nonprofit
- Member of the Board of Trustees for The Nature Conservancy, Washington Chapter
- J.D. and Master of Public Policy in Environmental and Regulatory Policy, Georgetown University
- B.S. Neurobiology and B.A International Studies, University of Washington
- Registered Patent Attorney with the U.S. Patent and Trademark Office
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