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2 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
3 FOR MULTNOMAH COUNTY  
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6 **DAVID KOENIG**

7 Plaintiff

8 vs  
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10 **EVANS CLINCHY**  
11 **JENNIFER CLINCHY and**  
12 **BRIANNA (LOLA) McKISSEN**

13 Defendants  
14

Case No. 23CV15424

**DEFENDANT JENNIFER  
CLINCHY'S RESPONSE TO  
PLAINTIFF'S MOTION TO  
DETERMINE SUFFICIENCY**

Oral Argument: Requested  
Estimated Time: 10 Minutes  
Court Reporting: Requested

15 **UTCR 5.050 STATEMENT**

16 Ms. Clinchy (defendant) requests oral argument and does not expect oral  
17 argument will exceed ten minutes, and requests official court reporting services.  
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20 **RESPONSE TO MOTION**

21 As explained in her pending objection and motion for protective order filed on  
22 June 8, 2023, defendant objects to plaintiff's request for admission 14 on substantive  
23 grounds. And as explained below, defendant's objections to the form of requests 1, 2,  
24 8, 9, and 12 should be sustained because as presented, a simple admission or denial  
25 to these requests is not possible.<sup>1</sup>  
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<sup>1</sup> Defendant will not substantively respond to the self-serving facts alleged in the "Background"  
portion of plaintiff's motion, except to say the facts are unsupported and will soon be addressed on  
summary judgment.

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2 **STATEMENT OF AUTHORITY**

3 The scope of discovery is limited to matters that are relevant to a party’s claim  
4 or defense. ORCP 36 B. A trial court has broad discretion to control the scope of  
5 discovery. *Farmers Ins. Grp. v. Hansen*, 46 Or App 377, 380 (1980).  
6

7 ORCP 45 permits a party to request the admission of the “truth of relevant  
8 matters within the scope of Rule 36 B.” Because ORCP 45 is modeled after, and  
9 nearly identical to, FRCP 36, federal caselaw interpreting requests for admission are  
10 persuasive in interpreting ORCP 45. *See, e.g., Goldsborough v. Eagle Crest Partners,*  
11 *Ltd.*, 105 Or App 499, 503 (1991) (“Because FRCP 34 is nearly identical to ORCP 43,  
12 cases interpreting the federal rule are persuasive.”).  
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14 ORCP 45 B permits a party to whom a request for admission is directed to  
15 serve “the party requesting the admission a written answer or objection addressed  
16 to the matter.” ORCP 45 C permits the requesting party to move to determine the  
17 sufficiency of the answers or objections. “Unless the court determines that an  
18 objection is justified, it shall order that an answer be served.” *Id.*  
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21 Requests for admission are intended only to narrow the issues in controversy  
22 and “are not principally discovery devices.” *Safeco of Am. v. Rawstron*, 181 F.R.D.  
23 441, 445 (C.D. Cal. 1998) (citing 8A Charles Alan Wright & Arthur R. Miller, *Federal*  
24 *Practice and Procedure* § 2252, at 524-525). It is well settled that requests for  
25 admission “are required to be simple and direct, and should be limited to singular  
26 relevant facts.” *SEC v. Micro-Moisture Controls, Inc.*, 21 F.R.D. 164, 166 (S.D.N.Y.  
27 1957).  
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2 Each request for admission must be phrased such that “it can be admitted or  
3 denied **without explanation.**”<sup>2</sup> *United States ex rel. Savage v. CH2M Hill Plateau*  
4 *Remediation Co.*, No. 4:14-cv-05002-SMJ, 2020 WL 8678015, 2020 US Dist LEXIS  
5 251353, at \*4-5 (ED Wash Apr. 20, 2020) (emphasis added) (citing *Dubin v. E.F.*  
6 *Hutton Grp. Inc.*, 125 F.R.D. 372, 375 (S.D.N.Y. 1989) (quoting *Federal Practice and*  
7 *Procedure*, supra, at § 2258)).  
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10 The cases cited in plaintiff’s motion to endorse “fishing expeditions” are not  
11 on point because those cases refer to the discovery process generally, not to the  
12 somewhat unique discovery device of a request for admission. Motion at 3. Unlike  
13 general discovery, where “the searcher does not know what is available for  
14 ‘catching’”, requests for admission are specifically designed to elicit only one of two  
15 simple responses, without the need for any explanation or additional facts. *Id.*  
16

17 Courts will sustain form-of-the-question objections to requests for admission  
18 that cannot simply be admitted or denied, as such requests are not reasonably  
19 calculated to lead to the discovery of admissible evidence. ORCP 36 B(1);  
20 *Bridgewater v. Sweeny*, No. 2:11-cv-1216-CMK-P, 2012 US Dist LEXIS 157188, at  
21 \*6-7 (ED Cal Oct. 31, 2012) (“Defendant’s objections are sustained. The request is  
22 compound and vague. A simple admission or denial was not possible as the request  
23 was presented.”).  
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28 <sup>2</sup> “Each request for an admission should be phrased simply and directly so that it can be admitted or denied without explanation.” *Safeco Ins. Co. of Am.*, 181 FRD at 447 (citing 8A Wright, Miller & Marcus § 2258 at 546-547); *United Coal Companies v. Powell Construction Co.*, 839 F.2d 958, 968 (3d Cir. 1988) (“Rule 36 should not be used unless the statement of facts sought to be admitted is phrased so that it can be admitted or denied without explanation.”).

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2 **ARGUMENT**

3 As explained below, defendant did her best to respond to the requests for  
4 admission that called for a straightforward fact to be admitted or denied without the  
5 need for further explanation. But request 14 is substantively objectionable (and  
6 subject to defendant’s pending objection and motion for protective order, currently  
7 set for a hearing before Judge Skye on July 11, 2023), and requests 1, 2, 8, 9, and 12  
8 are objectionable as to form because “a simple admission or denial” is “not possible”  
9 without explanation as the undefined requests are currently presented. *Bridgewater*  
10 at \*6-7.  
11

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13 **– Request 1 –**

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15 Request 1 pertains to plaintiff’s alleged “use of physical violence.” This request  
16 cannot be fairly answered as presented without explanation because it’s unclear  
17 whether the term “use of physical violence” means only behavior of plaintiff  
18 involving physical force intended to hurt someone, or whether it also means behavior  
19 of plaintiff using pressure to get someone to have sex, or whether it also means other  
20 violent behavior of plaintiff, like pounding fists on a table. All of these forms of  
21 behavior are at issue in this case, and it is unclear exactly what behavior defendant  
22 would be admitting or denying if required to respond to request 1 without an  
23 explanation. The Court should sustain defendant’s objections to request 1.  
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– Request 2 –

Request 2 pertains to whether plaintiff’s relationship with defendant was “romantic.” Defendant’s pending motion for protective order makes clear that plaintiff and defendant dated each other in the past, and that plaintiff allegedly engaged in sexual coercion while they were dating. Defendant should not be required to respond to an undefined request that could be interpreted as an admission that plaintiff’s sexual coercion was in any way “romantic.” The fact that plaintiff and defendant dated is not in dispute, and nothing is gained by requiring a response to request 2 except possibly plaintiff’s ability to later use the admission to reframe sexual coercion as somehow “romantic.” The Court should sustain defendant’s objections to request 2.

– Request 8 –

Request 8 pertains to whether defendant ever sought a restraining order against plaintiff. The word “sought” is not defined, and defendant has sought information from law enforcement pertaining to a restraining order, defendant has sought privileged advice from an attorney pertaining to a restraining order, but defendant has not sought a restraining order *in court*. Defendant may assume that plaintiff’s request 8 pertains only to whether defendant has sought a restraining order in court (information that would also be publicly available) – but defendant should not be required to assume. The Court should sustain defendant’s objections to request 8.

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2 **- Request 9 -**

3 Request 9 pertains to whether defendant ever contacted law enforcement in  
4 any way regarding plaintiff. Again, law enforcement may simply mean a local police  
5 department, but it may instead mean federal officials, both of whom defendant has  
6 contacted regarding plaintiff. Defendant should not be required to guess at a  
7 response to this vague and unclear request, nor should defendant be required to  
8 provide an explanation. Defendant's objection should be sustained.  
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11 **- Request 12 -**

12 Request 12 is compound, and vague, as "sexual assault" means both unwanted  
13 sexual touching, as well as coercing someone into a sexual act, and so a simple  
14 admission or denial is not possible without further explanation as the request is  
15 currently presented. The Court should sustain defendant's objections.  
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17 **- Request 14 -**

18 Request 14 is subject to defendant's pending objection and motion for  
19 protective order, and defendant incorporates the motion's prior arguments and  
20 objections into her response to plaintiff's motion to determine sufficiency.  
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2 **CONCLUSION**

3 As stated in defendant’s motion for protective order, many of plaintiff’s  
4 requests for admission contain typographical errors, missing words, constitute  
5 compound requests with undefined terms, and it is generally difficult to decipher  
6 precisely what all is being asked to be admitted or denied.  
7

8 When it comes to admissions, precision and specificity matter, and as  
9 plaintiff’s requests for admission 1, 2, 8, 9, and 12 are currently presented, “a simple  
10 admission or denial [is] not possible” without explanation, and so the Court should  
11 sustain defendant’s objections to these requests.  
12  
13

14 June 28, 2023

15 **RESPECTFULLY FILED,**

16 /s/ Michael Fuller

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

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2 **PROOF OF SERVICE**

3 I certify that I caused this document to be served on:  
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15 **June 28, 2023**

16 /s/ Michael Fuller  
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