UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

GARLAND D. MURPHY, III, M.D., and PHYLLIS MURPHY, Individually and on behalf of all others similarly situated,	§	
Plaintiffs,	§	
vs.	§	**CASE NO. 5:17-CV-05035-TLB**
GOSPEL FOR ASIA, INC., GOSPEL FOR ASIA-INTERNATIONAL, K.P. YOHANNAN, GISELA PUNNOSE, DANIEL PUNNOSE, DAVID CARROLL, and PAT EMERICK,	§	
Defendants.	§	

RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO SERVE DISCOVERY

Defendants Gospel for Asia, Inc. ("GFA-USA"), Gospel for Asia-International,[1] K.P. Yohannan, Gisela Punnose, Daniel Punnose, David Carroll, and Pat Emerick (collectively, "Defendants") file this Response to Plaintiffs' *Motion for Leave to Serve Discovery* (the "Motion"). In support thereof, Defendants respectfully show the Court as follows:

I. INTRODUCTION

Plaintiffs seek leave to serve 1,072 requests for admission ("RFA"). Plaintiffs made their Motion because they seek access to information on whether donors' designations were honored. GFA-USA's Field partners have recently committed to providing Plaintiffs access to documents necessary to analyze the issues in dispute (e.g., how donations were handled and spent, whether designated donations were fulfilled, etc.). Moreover, Defendants have gathered and will be

[1] Gospel for Asia-International does not currently exist.

producing the weekly, monthly, and annual reports they received over the years from the Field partners describing work being done in the Field, such as the number of Jesus Wells constructed or the number of blankets distributed. Together, with the numerous in-country visits by donors and GFA-USA staff, these reports confirm that Defendants were aware of and were being informed on a regular basis about how funds were being used in the Field.

Plaintiffs also fail to recognize the production to date from GFA-USA, the upcoming production of reports from the Field referenced above, Defendants' commitment in their discovery responses to investigate the ability to obtain information from the Field Partners (which they have now obtained), the complexities of fulfilling designations, and the current climate in India (non-profit organizations have been banned from receiving foreign funds). Put simply, Defendants are not refusing to produce documents Plaintiffs have requested—rather they have consistently stated their intent to produce or provide access to records they could obtain from their Field partners and consistently explained the risks and complexities associated with this task.

Further, Plaintiffs' attempted use of the RFAs to prove disputed facts is also improper under the law.

The Court should deny Plaintiffs' Motion because there is no need to obtain the information through the RFAs and they are legally improper.

II. ARGUMENTS & AUTHORITY

The specific legal question before the Court is whether Plaintiffs should be granted leave to serve over one thousand requests for admission. The simple answer to that question is no, because (1) the requested information on fulfilling designations will be provided to Plaintiffs through documents from the Field partners and (2) the governing legal principles undergirding requests for admission show they are largely improper.

A. THERE IS NO NEED FOR THE RFAS

Plaintiffs say they are looking for a way to determine whether a donor's request was actually fulfilled in the Field (e.g. if a donor sent in money to sponsor a child, was that child actually cared for?). Plaintiffs allege those designated purposes were not fulfilled. Defendants say they were. Defendants have produced voluminous documents to date, are gathering the numerous reports received from the Field over the years, and have recently learned that the Field partners will make documents available on this issue. Because these documents are available, there is no need to resort to the improper RFAs.

1. Defendants have already produced financial documents illustrating that donor funds made it to the Field and are gathering and producing additional materials that were contemporaneously received from the Field.

Initially, GFA-USA has produced a huge amount of information that it possesses here in the United States. Specifically, Defendants have produced financial documents and records, including dated bank-deposit tickets illustrating a specific deposit of funds in GFA-USA's "Field Account," Reconciliation Details and Summaries for GFA-USA's bank accounts, print-out summaries of GFA-USA's "Field" account, "at-a-glance" account statements, Merrill Lynch reports, wire transfer records, its general ledger, designation reports tallying donations by category, and other financial records. These documents show the transmission of Field-designated donations to the Field. Thus, GFA-USA has provided the documents showing how the donations it received were handled and sent to the Field partners and the designation reports itemizing what donors wanted done with the funds.

Moreover, Defendants are gathering and producing even more information that demonstrates significant work being done in the Field with donations transmitted to the Field partners. GFA-USA received monthly, weekly, and annual reports from the Field, which contain summaries of work being done during a particular period. For example, reports contain

information related to the number of Jesus Wells constructed, the number of blankets distributed, and the number of water filters distributed.

In short, Defendants have produced and are continuing to produce documentation they have identified in the United States regarding receipt of donations, transmission of those donations to the Field, and use of those donations in the Field.

2. The situation in the Field is complex.

Plaintiffs suggest it should be a simple matter to show how each designation was honored. But this ignores the complexities of the Field and difficulties in obtaining such information. As detailed below, the Field partners have recently committed to provide access to Plaintiffs regarding their claims. In each of their discovery responses, Defendants have stated that "Defendants are investigating the ability to obtain financial documents relevant to the lawsuit from international sources that they do not control." This was a recognition of significant issues that exist in foreign countries.

The Field Partners are separate legal entities with their own governing boards. They are not controlled by GFA-USA or K.P. Yohannan, and thus Defendants do not have the authority to simply order them to produce documents. This separateness is important in India.

The Indian government enacted the Foreign Contribution Regulation Act ("FCRA") to ensure organizations operating within India align with its national interests. Defendants believe that the licenses of around 20,000 of 33,000 non-governmental organizations (often called NGOs) have been cancelled by the Indian government after they were found in alleged violation of the FCRA. The consequence of such a finding is that those NGOs are barred from receiving

foreign funds.[2] In one such instance, U.S. politicians have lobbied to persuade the Indian government to relax financial restrictions on Compassion International, which has had at least $3.5 million of aid blocked each month as a result of its "violation" of the FCRA.[3] There were at least two Congressional hearings on these issues in 2016.[4]

Notwithstanding the above concerns, and due to restrictions imposed on its operations and continued inability to receive foreign funds, Compassion International was forced to close its office in India, explaining: "Since we can no longer distribute funds to our field offices, we have just had to notify our Indian country staff that we must formally close our field offices in India . . . ." (*Supra.* n. 3.) Indeed, "[t]he number of foreign-funded organi[z]ations operating in India has reportedly shrunk by nearly half in the past two years." (*Id.*) The closure of Compassion International's field office—standing alone—resulted in 145,000 children losing essential services. (*Supra* n. 4.)

Defendants are naturally concerned that their defense of this case by showing work done in India is not misunderstood and thus create problems for the Field partners and result in that very work being halted altogether.

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[2] *See FCRA Licenses of 20,000 NGOs Cancelled*, THE TIMES OF INDIA, Dec. 27, 2016, http://timesofindia.indiatimes.com/india/fcra-licences-of-20000-ngos-cancelled/articleshow/56203438.cms (last visited 9/26/17).

[3] *See Christian Charity Set to Withdraw From India After Funding Blocked*, THE GUARDIAN, Feb. 3, 2017, https://www.theguardian.com/world/2017/feb/03/christian-charity-set-to-withdraw-from-india-after-funding-blocked (last visited 9/26/17).

[4] *See American Compassion in India: Government Obstacles*, FOREIGN AFFAIRS COMMITTEE, Dec. 6, 2016, https://foreignaffairs.house.gov/hearing/hearing-american-compassion-india-government-obstacles/ (last visited 10/4/17); *Challenges & Opportunities: The Advancement of Human Rights in India*, U.S. CONGRESS: TOM LANTOS HUMAN RIGHTS COMMISSION, June 7, 2016 (last visited 10/4/17).

3. The Field partners have recently granted permission for Plaintiffs to access the Field partners' financial records concerning Field designations.

The Field partners have granted permission for Plaintiffs to access their financial records in the Field to analyze the issues in dispute (e.g., how donations were handled and spent, whether designated donations were fulfilled, etc.). The access will of course have to be done consistent with Indian legal and professional requirements to ensure that the Field partners' FCRA status is not jeopardized. But Defendants believe this can be handled and Plaintiffs will have access to the materials they need to investigate their case in the ways discussed below.

Specifically, GFA-USA has requested that the Field partners (who are separate legal entities with their own governing boards) provide access to the documents requested by Plaintiffs, the records and information concerning the donor funds sent from GFA-USA (or its affiliated LLCs), the records and information about whether and how the designations of the U.S. donors were fulfilled, and any other records or information needed to analyze the allegations made in the lawsuit.

The Field partners have committed to providing copies of documents that are already in scanned/electronic form to counsel for Plaintiffs, their expert(s), Defendants' expert(s), and to allow access in India to any other necessary documents that are not in such form. This is subject to what the Field partners have advised is a right to privacy protected under Section 43A of Information Technology Act 2000 read along with rules 5(1), 5(2)(a), 5(3), 5(4), 5(5), 5(6), 5(6), 5(7) and 6(1) of the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rule 2011[5] and concerns of being misunderstood regarding any proceedings for conversion by inducement or allurement under Freedom of

[5] *See* Ministry of Communications and Information Technology (Department of Information Technology) Notification, available at http://www.wipo.int/edocs/lexdocs/laws/en/in/in098en.pdf (last accessed 10/6/17).

Religion Acts of MadhyaPradesh, Chattisgarh, Odisha, Gujarat, Maharashtra, Jharkand, and Himachel Pradesh. Plaintiffs' access is also subject to compliance with Indian registration and/or authorization requirements for any work done in India (e.g., use of a licensed Indian accounting firm). Finally, Plaintiffs' access is subject to preliminary good-faith discussion regarding how Plaintiffs' expert in India is engaged to accomplish the task (so as to allow Plaintiffs to direct the work while also protecting the Field partners from the risks outlined herein). Defendants anticipate working with Plaintiffs and satisfying these protections to allow the necessary access, and of course, the production will be subject to this Court's Protective Order.

Granting the Motion in light of Defendants' continued good-faith efforts to produce documents and the recent commitment from Field partners is unnecessary and, as explained below, legally improper.

B. THE RFAS ARE IMPROPER

Moving beyond the now-moot impetus for requesting leave to serve them, the proposed RFAs are improper based on the bed-rock legal principles undergirding requests for admission.

1. The RFAs contravene the purpose of Rule 36.

Plaintiffs' Motion should not be granted because the requests for admission contravene the purpose of Rule 36 by seeking to prove contested facts that will be disputed at trial.

"The purpose of [Rule 36] is 'to expedite the trial and to relieve the parties of the cost of proving facts that will *not* be disputed at trial.'" *Hardy v. Bartmess*, NO. 1:09CV00041 DPM/HDY, 2011 WL 13195971, at *1 (E.D. Ark. Apr. 1, 2011) (emphasis added); *see also Nat'l Union Fire Ins. Co. of Pitt. v. Donaldson Co., Inc.*, Civil No. 10-4948 JRT/AJB, 2013 WL 12155269, at *2 (D. Minn. Oct. 1, 2013) (observing requests for admission are designed to "expedite trial by eliminating the necessity of proving undisputed and peripheral issues.")

(internal citations omitted); *Stockdale v. Stockdale*, No. 4:08-CV-1773 CAS, 2009 WL 5217001, at *1 (E.D. Mo. Dec. 30, 2009) (similar). In other words, "[t]he purpose of [] requests for admissions generally is not to discover additional information concerning the subject of the request . . ." *Nat'l Indep. Truckers Ins. Co. v. Gadway*, No. 8:10CV253, 2011 WL 5554802, at *1 (D. Neb. Nov. 15, 2011) (quoting *Layne Christensen Co. v. Purolite Co.*, No. 09-2381, 2011 WL 381611, at *4 (D. Kan. Jan. 25, 2011) (slip op.)); *Tamas v. Family Movie Club, Inc.*, 301 F.R.D. 346, 347 (N.D. Ill. 2014). The principle that requests for admission should be directed to matters not seriously in dispute—as articulated by the cases cited above—is well-settled. *See* 8B Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2252 (3d ed. 2010) (providing that "[t]he rule is intended to expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial, the truth of which is known to the parties or can be ascertained by reasonable inquiry," and collecting cases).

Furthermore, Rule 36 is, strictly speaking, not a discovery procedure at all, because it presupposes that a party proceeding under it knows the facts or has the document and merely wishes its opponent to concede their genuineness. *Id.* at § 2253.[6]

The RFAs run afoul of the purpose of Rule 36, and Courts have granted relief to parties resisting similarly improper requests for admission. *See, e.g., Nat'l Union Fire Ins. Co.*, 2013 WL 12155269, at *1 (denying requesting party's motion to compel and holding responding party's objections to requests for admission were appropriate); *Stockdale*, 2009 WL 5217001, at *2-3 (denying plaintiff's motion to determine sufficiency of defendant's answers and objections

[6] Citing *Misco, Inc. v. U.S. Steel Corp.*, 784 F.2d 198, 205 (5th Cir. 1986)); *Jackson v. Wash. Metropolitan Area Transit Auth.*, Civil Action No. WGC-16-1050, 2016 WL 6569062, at *4 (D. Md. Nov. 4, 2016) (observing requests for admission are "not a discovery tool in the truest sense, but rather, . . . a procedure for obtaining admissions for the record of facts already known.") (quoting *Wigler v. Elec. Data Sys. Corp.*, 108 F.R.D. 204, 206 (D. Md. 1985).

to requests for admission and motion to compel, and holding plaintiff may propound no more than thirty requests for admission to defendant); *Tamas*, 301 F.R.D. at 347 (finding requests for admission were improper, among other reasons, because they were not designed to identify matters on which the parties agreed, but rather sought information regarding a fundamental disagreement at the heart of the lawsuit); *Wigler*, 108 F.R.D. at 206-07 (granting protective order in part on ground that the relevant requests for admission were an "intolerable distortion of the purpose of this particular discovery tool" and in part because of the sheer volume of requests). The RFAs do not expedite the trial and/or relieve the parties of the cost of proving *undisputed* facts; rather, the RFAs go directly to the core, contested issues in this litigation. Similarly, the bulk of the RFAs do not explore facts already known and/or confirm the genuineness of the donor designations Defendants have already produced; rather, they presume those donor designations misrepresent where donations were actually allocated.

As Plaintiffs note, their latest discovery requests "break[] out each of the 179 different [donor designation] codes and recorded amounts . . ." (Doc. 32 at p. 3.) Each donor designation code includes six requests for admission (parts a. through f.) (one exception, No. 60) and a request for production. Each string of requests begins with two requests that seek admissions based on Plaintiffs' compilation of financial information: (1) admit that "GFA" received "x" in contributions from donors with donor designations for project "y"; and (2) admit that, within a specified time period, "GFA" recorded donor contributions for project "y" in the amount of "x." (*See, e.g.*, Motion its Ex. E at 1.a.-b.) Plaintiffs follow up those two requests by asking Defendants to admit (3) "GFA" did not spend "x" amount on "y" project (fundamentally the basis of Plaintiffs' entire lawsuit); (4) "GFA" "field partners" did not spend "x" amount on "y" project (same); (5) that Defendants have produced all evidence regarding how "x" amount

designated for "y" project was spent; and (6) that Defendants have no evidence as to how "x" amount designated for "y" project was spent. (*See, e.g., id.* at 1.c.-f.) After laying the factual predicate with the first two parts,[7] these requests improperly seek to prove operative facts that will be disputed at trial.

2. The volume and scope of the RFAs is abusive and oppressive.

Putting aside the requests' impropriety under Rule 36, Plaintiffs' Motion should also be denied because the volume and scope of the RFAs is abusive and oppressive.

First, the sheer volume of the RFAs—1072 separate requests in all—is abusive and oppressive. Requests for admission should not consist of such a great number or transcend the core facts of the case, "pick[ing] every nit a squad of lawyers could possibly see in it." *See Wigler*, 108 F.R.D. at 206-07 (finding 1,664 requests for admission "clearly impose[d] an undue burden on the plaintiff" and granting protective order).[8]

Second, the subject matter of the RFAs is abusive and oppressive. Requests for admission are intended to be a simplified procedure requiring *minimal response and explanation*; they are "in essence a simplified procedure that should require minimal response and explanation

[7] Defendants submit these first two requests, while not objectionable because they concern disputed facts, do number more than 300, are not a judicious and appropriate use of admissions, and will not advance the litigation given the purpose of the entire set of each chain. Defendants will of course do whatever the Court orders, but notes that the current Motion is a request for leave to serve the entire set of admissions, and for this reason opposes the requested leave.

[8] *See also Stokes v. Interline Brands Inc.*, No. C-12-05527 JSW (DMR), 2013 WL 6056886, at *2 (N.D. Cal. Nov. 14, 2013) (finding that the "sheer volume" of the 1,059 requests for admission in a 162-page submission was "unduly burdensome and oppressive"); *Robinson v. Stanley*, 06 C 5158, 2009 WL 3233909, at *2 (N.D. Ill. Oct. 8, 2009) (observing courts "routinely disallow requests for admission that run into the hundreds on the grounds that they are abusive, unreasonable, and oppressive"); *Salomon S.A. v. Alpina Sports Corp.*, 737 F. Supp. 720, 726-27 (D.N.H. 1990) (finding two sets of over 1,000 requests for admission—which, furthermore, sought defendants' stipulation on a variety of facts related to the claims that formed the central part of the litigation—was unwarranted); *Misco*, 784 F.2d at 206 (finding 2,028 requests for admission in 343 pages was an abuse of the discovery process).

as well as *rarely requiring reliance on documentation of facts outside of the requests themselves . . . .*" *Martin Marietta Materials, Inc. v. Bedford Reinforced Plastics, Inc.*, No. 3:2003-57, 2007 WL 1300772, at *2 (W.D. Pa. May 2, 2007) (emphasis added) (internal citation omitted); *see also Climco Coils Co. v. Siemens Energy & Automation, Inc.*, 04 C 50342, 2006 WL 850969, at *1 (N.D. Ill. Mar. 28, 2006) ("Under Rule 36, requests for admission should be simple and direct so that they can be readily admitted or denied.").

Here, the bulk of the 1072 requests for admission will not simplify this litigation. Instead, the RFAs impose an oppressive burden on Defendants that go "beyond the permissible parameters of a request for admission" and "defeat[s] the purpose" of requests for admission. *Martin Marietta*, 2007 WL 1300772, at *2. These are not requests answerable on their face; rather, the RFAs involve the review of voluminous records (which will be made available to Plaintiffs) evidencing the allocation and use of thousands, hundreds of thousands, and millions of dollars. Plaintiffs' Motion casts their 1072 requests for admission as "simple," insinuating that the answers they seek come from one bank account, but that is simply not the case. "Not only does this drafting of requests require [Defendants] to reference [voluminous documents,] outside of the request to answer it, but the request of such a character number over [1,000]." *See Martin Marietta*, 2007 WL 1300772, at *2. ("[T]o allow five hundred forty-four requests for admission that reference documents external to the requests would in fact defeat the purpose of requests for admission and the limitation of such references to exceptional circumstances.").

III. CONCLUSION

Defendants respectfully request the Court deny Plaintiffs' Motion. Defendants also request all additional and further relief to which they may be justly entitled.

DATED: October 6, 2017.

By: */s/ Robert T. Mowrey*

LOCKE LORD LLP
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-6776
Telephone: (214) 740-8000
Facsimile: (214) 740-8800

Harriet E. Miers (admitted *pro hac vice*)
TX State Bar No. 00000067
hmiers@lockelord.com
Robert T. Mowrey (admitted *pro hac vice*)
TX State Bar No. 14607500
rmowrey@lockelord.com
Paul F. Schuster (admitted *pro hac vice*)
TX State Bar No. 00784931
pschuster@lockelord.com
Matthew H. Davis (admitted *pro hac vice*)
TX State Bar No. 24069580
mdavis@lockelord.com

SHULTS LAW FIRM, LLP

Steven Shults, Ark. Bar No. 78139
sshults@shultslaw.com
John T. Adams, Ark. Bar No. 2005014
jadams@shultslaw.com
200 West Capitol Avenue, Suite 1600
Little Rock, AR 72201-3621
Phone: (501) 375-2301
Fax: (501) 375-6861

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on October 6, 2017, the following attorneys of record were served via ***ECF Notice***:

Woodson W. Bassett III
wbassett@bassettlawfirm.com
James Graves
jgraves@bassettlawfirm.com
BASSETT LAW FIRM LLP
221 North College Avenue
P. O. Box 3618
Fayetteville, Arkansas 72702
(479) 521-9996
(479) 521-9600 Fax
Counsel for Plaintiffs & the Class

Marc R. Stanley
marcstanley@mac.com
Martin Woodward
mwoodward@stanleylawgroup.com
STANLEY LAW GROUP
6116 N. Central Expressway., Suite 1500
Dallas, Texas 75206
(214) 443-4300
(214) 443-0358 Fax
Counsel for Plaintiffs & the Class

Tom Mills
tmills@millsandwilliams.com
MILLS & WILLIAMS, LLP
5910 N. Central Expressway, Suite 980
Dallas, Texas 75206
(214) 265-9265
(214) 361-3167 Fax
Counsel for Plaintiffs & the Class

/s/ Robert T. Mowrey
Counsel for Defendants