

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, §

v. §

Case no. **5:17-CV-5035 TLB**

Gospel for Asia, Inc., §  
Gospel for Asia-International, §  
K.P. Yohannan, Gisela Punnose, §  
Daniel Punnose, David Carroll, §  
and Pat Emerick, §

Defendants. §

**Motion for Leave to File Reply in Support of Discovery Motion**

Plaintiffs Garland D. Murphy, III, M.D. and Phyllis Murphy respectfully move the Court pursuant to Local Rule 7.2 to file the attached reply in support of their Motion for Leave to Serve Discovery [Doc. 32].

Plaintiffs seek leave to file the attached reply to inform the Court fully and address issues raised in Defendants' response [Doc. 39]. Plaintiffs' proposed reply will assist the Court in resolving the motion, will not prejudice Defendants, and will not cause undue delay.

For these reasons, Plaintiffs respectfully request the Court to grant this motion and permit them to file the attached reply in support of their Motion for Leave to Serve Discovery.

Dated: October 12, 2017

Respectfully submitted,

/s/ Marc R. Stanley

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/s/ Marc R. Stanley  
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**Reply in Support of Motion for Leave to Serve Discovery**

Defendants' response shows exactly why the Court should grant the Murphys' motion: without committing to do anything specific, Defendants ask to be excused from responding to the Murphys' targeted requests for admission, hinting that (sometime) they will (maybe) produce documents that (perhaps) relate to donor funds, or that they will (possibly) instead furnish some after-the-fact forensic reconstruction. But accepting those vague recitals will leave the parties and the Court exactly where they have been for months: with no information about whether the money donors sent to GFA was spent as donors designated—and, troublingly, no assurance that the truth will ever be revealed.

Rather, the Court should order Defendants to simply admit or deny that the categories of donor funds were spent as designated, and that they either have or lack evidence of how the funds were spent—and to produce forthwith whatever evidence they have. The Court should therefore grant the Murphys' motion.

The May 16 case management hearing [Doc. 26] and the recent September 22 telephone conference [Doc. 37] allowed the parties and the Court to flesh out the issues raised by the Murphys' motion; accordingly, this reply draws heavily from the transcripts of those discussions.

**Defendants have not committed to revealing the truth**

Defendants represented to the Murphys and the proposed Class that 100% of their donations *would be spent* in the field as they designated—making evidence of those expenditures critical. Crucially, the Murphys do not dispute that money left GFA, ostensibly *to be spent* in the field.

At the May 16 case management hearing, Defendants' counsel affirmed to the Court:

MR. MOWREY: Going to the heart of their allegations, we believe that we will be able to show that the monies that were designated went to the particular items that were specified.

Transcript [Doc. 26] 34:21-24.

Despite this representation, two sets of discovery (consisting of interrogatories and requests for production) yielded no such evidence. So the Murphys took each of Defendants' designations and simply asked whether and how Defendants can prove the monies for each were spent as designated, as their counsel explained at the September 22 telephone conference:

MR. STANLEY: What we're really just trying to find out now, what does GFA have. We're not asking what their international partners have. Do you, GFA, have any information on how this money was spent and, if so, give it to us....

Transcript [Doc. 37] 18:17-22.

The Court then specifically asked Defendants' counsel about how the money is tracked:

THE COURT: All right. Mr. Mowrey, you apparently—your clients apparently track donations received by these different categories. Help me understand the methods that they use to track their disbursements or their expenditures by purpose.

MR. MOWREY: All right, your Honor. Yes, and I will answer that question.

Transcript [Doc. 37] 18:25-19:4.

But the question was never answered. And, with the benefit of two weeks from the time of the conference to submit a written response, Defendants have come no closer to furnishing an answer. All of the verbiage in their response says nothing remotely definitive or clear about how they track expenditures by purpose, much less whether they have such evidence (or, if so, when they will produce it).

Either Defendants have the information or they don't—only they know the truth. If they don't, they should simply say so. As Your Honor observed in addressing Defendants' counsel:

THE COURT: They have a right to acquire it independently; and to the extent that you don't have the documentation and you do not control in any manner production of documents that have been requested, then I get it. You may not be in a position to provide documents that you don't have access or control over; but if that's the case, that's your response.

Transcript [Doc. 37] 28:15-21.

Instead of giving that response—which the requests for admission would elicit—Defendants insinuate in their brief that they may now attempt to reconstruct some type of accounting from information they (maybe) receive from entities they (supposedly) do not control. But that is not relevant to whether Defendants in fact discharged their obligation to track the donated funds over the last several years (at least through the

agreed-upon discovery period of 2009 to Q1 of 2016) and ensure that they were spent as donors designated.

In addressing the Court at the telephone conference, Defendants' counsel reaffirmed (at least indirectly) that they can corroborate or verify how the donated funds were actually spent:

THE COURT: You're describing for me somewhat of a shell game inasmuch as if a donor were ever to say, "How can I know that the money that I designated for ministry tools actually went to ministry tools," and you're saying, "Well, we can't prove that. You'd have to ask the people that we gave it to," who, by the way, are foreign companies or foreign entities or foreign individuals.

So if that's what the response is, then are you telling me that there is no accounting or accountability mechanism from the people that you forward money to in Asia to corroborate or verify that they are spending the money in accordance with your donors' intentions?

MR. MOWREY: No, your Honor, I'm not saying that....

Transcript [Doc. 37] 22:2-15.

But Defendants' response sheds no light at all on what the mechanism is. It obliquely says that more documents may be coming (who knows when), but it also says that "the situation in the Field is complex," suggesting otherwise. Interestingly, the main "complexity" Defendants cite is "to ensure that the Field partners' FCRA status is not jeopardized." Response [Doc. 39] at 6. ("FCRA" is the Indian law requiring registration of entities that receive foreign donations.).

Yet, on the very day Defendants filed their response, *The Times of India* reported: "The Believers Church, founded by K P Yohannan, and three NGOs associated with it

have been barred from bringing in foreign funds to India with the Ministry of Home Affairs (MHA) cancelling their FCRA registrations.”<sup>1</sup>

*The Times of India* report also quotes Believers Church spokesperson Fr. Sijo Panthapallil:

“Our FCRA registrations are under revision for the last one year. They had sent us a letter asking for documents and we have submitted the required documents.” Fr Panthapallil said they had submitted a huge cache of documents, weighing 60kg, to MHA two months ago. “Then they demanded four further documents, which we had submitted on September 4, 2017,” he said.<sup>2</sup>

Might the 132 pounds of already-compiled documents (plus four further ones) sitting in the Indian Ministry of Home Affairs have any bearing on what happened to the donated funds? Or are they all completely irrelevant? Whatever the truth is, only Defendants know, but at least obtaining answers to questions like this won’t jeopardize the Field partners’ FCRA status, as the MHA had already suspended it.

In sum, there should be no further obstacles between whatever the truth is, and the parties and the Court. If the requests for admission will establish that Defendants do not have the evidence of how the donated funds were spent, Defendants should simply admit that. If they will establish that Defendants have such evidence, Defendants should furnish it. Deflections, inaccurate representations, and obfuscation will not substitute for the simple truth the Murphys have been attempting to discover.

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<sup>1</sup> <https://timesofindia.indiatimes.com/city/kochi/mha-no-fgn-funds-for-believers-church/articleshow/60962612.cms> (accessed October 11, 2017); see also <http://www.patheos.com/blogs/warrenthrockmorton/2017/10/05/indian-government-halts-flow-foreign-funds-gospel-asia/> (accessed October 11, 2017).

<sup>2</sup> <https://timesofindia.indiatimes.com/city/kochi/mha-no-fgn-funds-for-believers-church/articleshow/60962612.cms> (accessed October 11, 2017).



### **The requests for admission are appropriate**

As Defendants note, the very purpose of Rule 36 requests for admission is “to expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial.” Response [Doc. 39] at 7 (quoting *Hardy v. Bartmess*, 2011 WL 13195971, at \*1 (E.D. Ark. Apr. 1, 2011)).

At the September 22 telephone conference, Defendants’ counsel objected:

MR. MOWREY: The point here is that the very issue that Mr. Stanley is getting at is basically to prove his case or to disprove our case through these requests for admissions, and that is just a totally inappropriate way of -- that requests for admissions are designed for.

Transcript [Doc. 37] 11:12-17.

In fact, the Murphys’ requests for admission may prove definitively that, in 2017 and before, Defendants do not know how the monies were spent and cannot tell donors the monies were spent as designated. As the Court inquired of Defendants’ counsel:

THE COURT: Mr. Mowrey, how, in fact, is that any different than if you had provided them a set of documents and you get back a set of requests for admissions that admits that this is a properly authorized signature?

Transcript [Doc. 37] 14:15-19.

“Admissions reduce the time required to try a case. Indeed, they often make summary judgment possible. Finally, admissions encourage litigants to evaluate realistically the hazards of trial, and thus tend to promote settlements.” CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE & PROCEDURE* § 2252 (3d ed. 2010).

Simple, straightforward responses to the Murphys’ requests for admission will inarguably serve the purpose of the Rule. They will cut through the clouds of murk that currently obscure the answer to the very simplest questions: did Defendants spend the

donors' money for the designated purposes? Do Defendants have the evidence to show how the money was spent? They will save the jury time. And they will facilitate the truth.

**Conclusion and prayer**

The Court should grant the Murphys' motion, and should grant all other relief to which the Murphys are justly entitled.

Dated: October 12, 2017

Respectfully submitted,

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