IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CAIR FOUNDATION, INC., d/b/a COUNCIL ON AMERICAN-ISLAMIC RELATIONS, & CAIR, Plaintiff, v. LORI SAROYA, Defendant.	Civil No.: 0:21-cv-01267 (SRN/TNL) **FILED UNDER SEAL** **DEFENDANT LORI SAROYA'S MEMORANDUM OF LAW IN SUPPORT OF HER MOTION FOR AN ORDER COMPELLING PLAINTIFF TO ANSWER INTERROGATORIES**

Plaintiff, which identifies itself as "CAIR Foundation, Inc d/b/a Council on American-Islamic Relations & CAIR" ("CAIR"), filed a Complaint in this Court consisting of over 200 paragraphs, alleging that its former Board member and top official Lori Saroya ("Saroya") defamed it and interfered with its business relations by making what it claims are "false," defamatory statements about it. However, when faced with Rule 34 Requests seeking documents, and now Rule 33 Interrogatories, CAIR has all but entirely refused to comply with what are fundamental, basic and obviously relevant discovery requests—with CAIR taking the position, in effect, that it may allege that Saroya made "false" statements about it, but that it is entitled to withhold the evidence germane to her defense that these statements are in fact entirely true, and that, as a matter of law, therefore, the lawsuit filed by Plaintiff, or Plaintiffs, as the case may be, is meritless.

Just as it has objected to producing the documents relating directly to the truth of the supposedly actionable statements made by Saroya, so, too, CAIR objects to providing

answers to interrogatories directed at whether CAIR did in fact foster, engage in or indulge sexual harassment, gender discrimination, retaliation against those who raised these issues, gross financial mismanagement, disregard of basic governance requirements and duplicity about its raising of foreign funds, and at whether CAIR has been disingenuous with its Board, donors, chapters and volunteers, as well as the Muslim community at large. (*See, e.g.*, Compl. dated May 21, 2021 [Dkt. #1] ("Compl.") ¶¶ 52-161.) The Interrogatories served by Saroya on August 23, 2021 were directed at eliciting answers which are either directly germane to the truth of those statements, or, at a minimum, reasonably calculated to lead to the discovery of such evidence, or directed at demonstrating that, in addition, CAIR has not suffered any damages as a result of these statements. (*See* Decl. of Steven C. Kerbaugh in Supp. of Mot. for an Order Compelling Pl. to Answer Interrogs. dated Nov. 3, 2021 ("Kerbaugh Decl.") Ex. A.) CAIR, which has also objected to producing the vast majority of the documents in its actual possession, custody or control relating to these issues, served a lengthy list of objections, refusing to respond to many interrogatories and unilaterally altering the scope (temporally and/or by subject matter) of others. (*Id.* Ex. B.)[1]

Counsel for Saroya sent a meet and confer letter to opposing counsel on October 4, 2021. (*Id.* Ex. C.) CAIR responded on October 18, 2021. (*Id.* Ex. D.) By its response, CAIR maintained the bulk of its objections, refusing to provide responsive information

[1] The full set of Interrogatories and CAIR's objections to same are attached to the Kerbaugh Declaration as Exhibits A and B pursuant to Local Rule 37.1(c) for the Court's reference. They will not be repeated verbatim here.

despite its plain relevance for the reasons set forth in Saroya's correspondence. (*See id.* Exs. C-D.) Saroya thus brings this motion to compel.

ARGUMENT

I. THE RULES REQUIRE CAIR TO PRODUCE INFORMATION RELEVANT TO ITS CLAIMS AND SAROYA'S DEFENSES.

Parties are entitled to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense . . . ." Fed. R. Civ. P. 26(b)(1). Information "need not be admissible in evidence to be discoverable." *Id.* "In the context of discovery, 'relevant' has been defined as encompassing any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Walker v. Nw. Airlines Corp.*, No. 00-2604, 2002 WL 32539635, at *1 (D. Minn. Oct. 28, 2002) (quotation omitted); *see also Hickman v. Taylor*, 329 U.S. 495, 507 (1947) (the rules provide for "broad and liberal" discovery; "[n]o longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case."); *Kramer v. Boeing Co.*, 126 F.R.D. 690, 692 (D. Minn. 1989) (noting that relevancy "is a difficult objection upon which to prevail during the discovery phase of an action."). Moreover, "[d]iscovery is not to be denied because it relates to a claim or defense that is being challenged as insufficient." *LNV Corp. v. Outsource Serv. Mgmt., LLC*, No. 13-1926, 2013 WL 12180768, at *3 (D. Minn. Nov. 14, 2013) (quoting 8 Charles Alan Wright, et al., *Federal Practice and Procedure* § 2008 (2013) (citing cases)).

"The purpose of discovery is to provide a mechanism for making relevant information available to the litigants. 'Mutual knowledge of all the relevant facts gathered

by both parties is essential to proper litigation.'" Fed. R. Civ. P. 26, cmt. 1983 Amendment (quoting *Hickman* , 329 U.S. at 507); *see also Transclean Corp. v. Bridgewood Servs., Inc.*, 101 F. Supp. 2d 788, 797 (D. Minn. 2000) (noting that the purpose of Rule 26 is "to prevent Trial by ambush"). Courts should give the discovery rules "a broad, liberal interpretation." *Edgar v. Finley*, 312 F.2d 533, 535 (8th Cir. 1963). Pursuant to these Rules, Saroya is entitled to the information that is relevant to her defenses and to CAIR's allegations against her.

II. CAIR SHOULD NOT BE PERMITTED TO WITHHOLD EVIDENCE IN ITS ACTUAL POSSESSION DIRECTLY GERMANE TO THE TRUTH OF SAROYA'S STATEMENTS ON THE BASIS THAT THE EVIDENCE REFERS TO, OR WAS PROVIDED TO CAIR BY, ITS OFFICES AROUND THE COUNTRY OR AFFILIATES WHICH IT CONTROLS.

As it did in response to Saroya's requests for the production of documents, CAIR objected to the definition of CAIR as including its chapters and the Washington Trust Foundation, Inc. ("WTF"), CAIR Action Network, Inc. and CAIR National Legal Defense Fund, Inc. (the "National Affiliates"). (Kerbaugh Decl. Ex. B at Objections to Saroya's Definitions.) The Court should order CAIR to produce responsive information relating to the chapters or National Affiliates in CAIR's actual possession, custody or control given the control that CAIR exercises over them.

As discussed in prior briefing:

- CAIR describes its chapters as its "offices in cities across the country";
- CAIR's chapters are all part of a CAIR-wide National Council;
- [redacted];

- CAIR is involved in the onboarding and training of new hires within chapters;
- CAIR routinely involves itself in chapter affairs, penalizing chapters and individuals within them, and threatening disaffiliation, for actions that CAIR views as detrimental to its brand;
- [redacted];
- [redacted]
- [redacted];
- [redacted]
- [redacted]; and
- [redacted]

(*See* Mem. in Supp. of Def. Lori Saroya's Mot. to Compel dated Oct. 18, 2021 [Dkt. #36] at 4-14; Decl. of Lori Saroya in Supp. of Def.'s Mot. to Compel dated Oct. 17, 2021 [Dkt. #41] ("Saroya Decl.").)

CAIR, however, takes the position that even though its own internal documents and its own website make clear that its chapters are simply its own offices around the country that it controls and guides, and even though WTF is essentially an alter ego of CAIR, evidence that CAIR itself actually possesses about its own handling of claims of sexual harassment, sexual assault, gender discrimination, retaliation and other misconduct should not be disclosed because these claims also involve CAIR's offices around the country or

WTF, controlled by CAIR. Not only do CAIR's own internal documents and website make clear that this is meritless, but Saroya herself, the CAIR official responsible for overseeing these offices, which it calls chapters, has submitted an affidavit, unrebutted by CAIR, which demonstrates as much. (*See* Saroya Decl.) Under the circumstances, there is no basis for CAIR to withhold information in its possession relating to CAIR's chapters or WTF that is directly germane to the truth of Saroya's statements.

Moreover, there are numerous statements alleged in the Complaint relating to "CAIR," and "CAIR" is a moniker used not only by CAIR Foundation, Inc., but by the National Affiliates and by each chapter. Therefore, the supposedly "false" statements made by Saroya were ones that were broadly of and concerning the CAIR organization as a whole. This is further demonstrated by specific statements regarding, for example, CARE-CA (a chapter), CAIR-NJ (a chapter) and the WTF (a National Affiliate). (*See, e.g.*, Compl. ¶¶ 88, 119.) More importantly, as described above, all of the chapters and National Affiliates are inextricably intertwined with CAIR and serve core functions in its national infrastructure. A statement regarding one is necessarily a statement regarding them all.[2] Finally, many of the statements made by Saroya are about CAIR's handling – i.e., its refusal to investigate, or its whitewashing, or its retaliatory conduct relating to – allegations about CAIR offices around the country, and this is all information in CAIR's

[2] Notably, when Saroya intended to except a component part of the CAIR organization in her statements, she did so. This is exemplified by one of the statements that CAIR alleges to be false in which Saroya expressly excluded "the sincere people at CAIR-MN . . . ." (Compl. ¶ 92.)

actual possession right now. Since information relating to CAIR's chapters and National Affiliates is relevant to this case and Saroya's truth defense, the Court should order CAIR to produce information relating to them in its possession, custody and control.

III. THE COURT SHOULD ORDER THAT CAIR PRODUCE INFORMATION RELATING TO SAROYA'S DEFENSES AND ITS CLAIMS IN RESPONSE TO THE INTERROGATORIES.

A. CAIR Should Respond to the Interrogatories Relating to Foreign Donations (Interrogatory Nos. 6 and 15).

Interrogatory No. 6 requests that CAIR provide information relating to contributions, donations or grants of which CAIR is aware to CAIR and its National Affiliates by any individual or entity outside the United States. (Kerbaugh Decl. Ex. B at Interrog. 6.) Interrogatory No. 15 seeks information relating to every foreign trip taken by an officer, director or employee of CAIR paid for in whole or in part by CAIR since 2011. (*Id.* at Interrog. 15.) CAIR objects on relevance grounds and on the grounds that the information sought in Interrogatory No. 6 is "highly confidential." (*Id.* at Interrogs. 6 and 15.)[3]

But CAIR says that Saroya made a "false statement" when she said that CAIR accepted "international funding through their Washington Trust Foundation . . . ." (Compl. ¶ 119.) Now, it maintains that it concedes that it accepts funding from foreign sources but objects to the "implication" that it was funded by terrorist organizations. (*See* Kerbaugh Decl. Ex. D; Mem. in Opp. to Def.'s Mot. to Compel dated Oct. 25, 2021 [Dkt. #46] at 13.)

[3] Of course, any confidentiality objection is baseless now that the Court has entered a Protective Order that governs how information designated as "confidential" is to be treated in this litigation and not disclosed outside it.

However, it also alleges that Saroya defamed it by stating that it has been dishonest and misleading with regard to its foreign donors with the public. (*See id.* ¶¶ 119-21, 131 (relating to statement regarding "issues with their Washington Trust Foundation entity receiving international donations"), 146 (relating to statement regarding "[l]ack of transparency around CAIR's Washington Trust Foundation (WTF) entity receiving international donations that are funneled through CAIR."); *see also id.* Exs. G, G-2, G-3, J, K (containing statement regarding "lack of transparency around international funding sources"), L-O.) One way or the other, CAIR cannot have it both ways: if it maintains that Saroya has made false statements about its foreign donors, or has been deceptive about its funding, it must disclose the evidence about its solicitation of foreign funds, including those from whom it solicited those funds, and its receipt of foreign funds, including those from whom it has accepted funds, whether in the form of donations, grants or loans. The Court should order CAIR to respond to Interrogatory Nos. 6 and 15.

B. CAIR Should Respond to Interrogatories Relating to Lawsuits, Administrative Claims and Criminal Matters (Interrogatory Nos. 3-5).

Interrogatory Nos. 3, 4 and 5 request information relating to every lawsuit, including those alleging defamation, that CAIR has filed from 2011 to the present; information relating to every lawsuit or administrative claim filed by any individual, entity or agency against CAIR or any of its directors, officers or employees since 2011; and information relating to every federal or state criminal indictment or information issued against, or guilty plea entered by, any employee, officer or director of CAIR since 2011, respectively. (Kerbaugh Decl. Ex. B at Interrog. Nos. 3-5.) In response to each, CAIR generally alleged

that responsive information is not relevant and that the timeframe identified in the Interrogatory is too long. (*See id.*) It then proceeded to provide responses limited to the time period between 2016 to the present. (*See id.*)

But the information sought in these Interrogatories is unquestionably relevant to this litigation. Information responsive to Interrogatory No. 3 speaks to the truth of Saroya's statements regarding CAIR using attorneys to retaliate against individuals who have been victimized or expressed concern about misconduct and unjust treatment within CAIR. (*See* Compl. ¶ 82; *see also* Def. Lori Saroya's Answer to the Compl. dated June 11, 2021 [Dkt. #5] ("Answer") at Introduction.) Information responsive to Interrogatory No. 4 is relevant given that lawsuits or administrative claims against CAIR and its agents directly relate to the truth of Saroya's statements regarding mismanagement, financial improprieties, discrimination, harassment, abuse, retaliation, union busting and so forth.[4] And information responsive to Interrogatory No. 5 is relevant to the truth of statements relating to misconduct, harassment, abuse and so forth.

CAIR should thus respond to Interrogatory Nos. 3-5 as initially posed. There is simply no basis for CAIR to limit its responses to these Interrogatories in terms of timeframe or subject matter given the statements it alleges are false. Notably, virtually none of those statements relates to misconduct in any given year or other specified time

[4] CAIR sought to unilaterally alter the scope of this Interrogatory to lawsuits or administrative claims alleging gender discrimination, sexual harassment or retaliation. (*See* Kerbaugh Decl. Ex. B at Interrog. No. 4.) This is so despite the fact that the statements CAIR alleges to be false are broader than that and relate to, for example, mismanagement, financial misconduct, religious discrimination, union busting and so forth.

period – e.g., they do not allege that CAIR engaged in religious discrimination in 2016, or retaliation between the years of 2017 to 2018. (*See, generally*, Compl.)[5] CAIR's conduct predating 2016 is directly relevant to the truth of the statements that CAIR alleges are false. Moreover, CAIR has not meaningfully alleged how it is that producing responsive information from the 2011 to 2016 timeframe is unduly burdensome. Presumably, if CAIR is correct in its assertion that there is no truth to Saroya's statements, it would not be burdensome to produce the information at all. The Court should order CAIR to provide the information that it is withholding in response to Interrogatory Nos. 3, 4 and 5.

C. CAIR Should Respond to Interrogatories Seeking Information Relating to Reports of Discrimination, Harassment and Retaliation, and Investigations Relating to Same (Interrogatory Nos. 9, 10 and 13).

Interrogatory No. 9 seeks information relating to any officer or employee of CAIR, or any of its chapters or affiliates, who has asserted that they have been the subject of discrimination, harassment or retaliation by any employee or officer of CAIR, or any chapter or affiliate, since 2011. (Kerbaugh Decl. Ex. A at Interrog. 9.) Interrogatory No. 10 seeks information relating to any investigation conducted by CAIR with regard to

[5] As CAIR alleges, Saroya has been affiliated with the CAIR organization since 2007, when she was a co-founder of the Minnesota Chapter. (*See* Compl. ¶ 30.) To the extent that CAIR alleges that information relating to misconduct that predates her employment at CAIR-National in 2016 is not relevant because she could not have had information relating to that timeframe, its argument misses the mark in that (a) yes she could have, and (b) when Saroya commenced her employment is not germane to whether the statements alleged to be false were true. Evidence of the truth of Saroya's statements is no less germane because the events in question took place prior to her employment, and evidence of the truth of these statements, whether or not Saroya had direct knowledge of all of the facts that demonstrate that what she said was true, is of dispositive significance in this case.

assertions of discrimination, harassment or retaliation identified in response to Interrogatory No. 9. (*Id.* at Interrog. 10.) CAIR has indicated that it will produce responsive information for the time period 2016 to the present, but it has objected on overbreadth and relevance grounds insofar as the documents predate that time period. (*See id.* at Interrogs. 9-10; Kerbaugh Decl. Ex. D.) This is so despite the plain relevance of responsive information dating from 2011, as discussed *supra*. The Court should order CAIR to fully respond to Interrogatory Nos. 9 and 10.

Similarly, Interrogatory No. 13 seeks information relating to any investigation conducted by CAIR into allegations of misconduct by Hassan Shibly. (*Id.* at Interrog. No. 13.) CAIR objected to this Interrogatory on relevance grounds. (*Id.*) This is so despite the fact that Mr. Shibly, the former head of CAIR's Florida Chapter, has been the subject of allegations of sexual harassment and abuse, among other things, and that, more fundamentally, Saroya and others have pointed out that CAIR looked the other way, indulged and even supported Shibly's misconduct. (*See* Answer at Introduction, ¶ 23.) As detailed in Saroya's Answer, an NPR report has indicated CAIR officials did little, if anything, to follow up relating to Shibly's misconduct despite being aware of it for over four years. (*Id.* ¶ 23.) CAIR presumably denies as much despite alleging in its Complaint that it has procedures in place to investigate complaints regarding chapter officials. (*See* Compl. ¶¶ 151-53.) Evidence relating to CAIR's investigation of misconduct by Mr. Shibly is directly relevant to the truth of statements by Saroya relating to CAIR being "aware of a pattern of discrimination and abuse within CAIR" and failing to take appropriate steps to remedy this issue. (*See id.* ¶¶ 146-53.)

CAIR nevertheless refuses to produce information relating to investigations conducted regarding Mr. Shibly's misconduct because he has never been employed by CAIR-National. (Kerbaugh Decl. Ex. D.) Again, though, CAIR is misconstruing the breadth of the statements it alleges are false in an effort to get out of its obligation to produce documents that it believes will be harmful to it and its case. (*See* Section II, *supra*.) And CAIR has directly placed at issue investigations regarding Shibly's abuse by claiming that Saroya's statements regarding CAIR's failure to remedy discrimination and abuse within the organization are false. CAIR should likewise produce information relating to investigations into the conduct of Mr. Shibly.

D. CAIR Should Respond to the Interrogatories Seeking Information Relating to Settlement, Severance and Non-Disclosure Agreements (Interrogatory Nos. 11 and 14).

Interrogatory No. 11 seeks information relating to every settlement agreement, severance agreement or non-disclosure agreement entered into with any individual by CAIR since 2011, and Interrogatory No. 14 seeks information relating to every payment in connection with such a settlement or severance agreement paid by CAIR, or any chapter or affiliate, since 2011. (Kerbaugh Decl. Ex. B at Interrogs. 11 and 14.) In response to these Interrogatories, CAIR narrowed the scope of the Interrogatories to agreements relating to individuals asserting "claims of sexual or gender discrimination, harassment, or retaliation" against CAIR from 2016 through 2021. (*Id.*)

It has done so despite the obvious relevance of documents predating 2016 to the fundamental question in this case: assuming they are otherwise actionable, were Saroya's statements true? (*See* Section III.B, *supra*.) This is also so despite the fact that the

allegations that CAIR alleges to be false are broader in scope than those alleging discrimination, harassment or retaliation. For example, those statements further relate to subjects such as financial improprieties, mismanagement, union busting and so forth, all of which CAIR alleges are subjects of Saroya's purportedly false statements. CAIR entering into any agreement that purports to silence an individual who has alleged any misconduct against CAIR is relevant to the truth of Saroya's statements regarding the underlying misconduct and regarding CAIR's efforts to silence those who speak up against it.

E. CAIR Should Respond to the Interrogatory Relating to Media Consultants and Lobbyists (Interrogatory No. 2).

Interrogatory No. 2 seeks the identities of every public relations firm, media consultant or lobbyist engaged by CAIR since 2011. (Kerbaugh Decl. Ex. B at Interrog. No. 2.) CAIR objects to the Interrogatory on relevance grounds. (*Id.*) This is so despite the fact that, among other things, such third parties may very well have evidence relating to the truth of statements that CAIR claims are false and CAIR's efforts to remediate fallout relating to instances or allegations of mismanagement, financial improprieties, discrimination, harassment, retaliation, abuse, union busting and so forth, all issues on which CAIR alleges Saroya has made false statements. Here, it is notable that CAIR has made a series of extrajudicial statements in the media about Saroya, including on social media.

After conferring on the subject, CAIR agreed "to produce information related to any media consultant, lobbyist, or public relations firm engaged for reputational management purposes for CAIR as an entity" and provided the name of one company. (*Id.* Ex. D.)

CAIR has not, however, confirmed that this entity is the only one that has been engaged for the purpose of assisting in connection with instances relating to issues identified in Saroya's statements that CAIR alleges to be false, nor has it identified any media consultants, lobbyists or public relations firms that it knows to have been engaged by any chapters or the National Affiliates. To the extent that CAIR possesses additional information responsive to this Interrogatory, it should provide it.

F. CAIR Should Respond to Interrogatories Relating to Saroya (Interrogatory Nos. 16 and 17).

Interrogatory No. 16 asks that CAIR provide information relating to every statement made to any chapters, affiliates or the media, or posted on social media, referring or relating to Saroya since 2011. (*Id.* Ex. B at Interrog. No. 16.) CAIR objected that public statements and statements on social media are readily available to Saroya. (*Id.*) But that is not necessarily the case, especially if the post was made on a "private" message board. Moreover, Saroya cannot possibly be expected to know every location where CAIR may have posted about her. That would be knowledge uniquely in CAIR's possession.

Furthermore, CAIR objected on relevance grounds and agreed only to produce statements issued to any chapter or third-party organizations relating to Saroya's allegedly false communications and this lawsuit. (*Id.*) This is so despite the fact that other statements relating to Saroya are likewise relevant in that they bear on allegations in CAIR's Complaint regarding Saroya's conduct while an employee at CAIR and allegations in Saroya's Answer regarding CAIR repeatedly, publicly praising Saroya and her work. (*See* Compl. ¶¶ 38-50 (making numerous allegations relating to Saroya's purportedly deficient

work performance and misconduct); Answer at Introduction, ¶¶ 38-50 (responding to allegations regarding purportedly deficient work performance).) In light of its own allegations, there is no basis for CAIR to unilaterally narrow the scope of Interrogatory No. 16. It should respond to it fully.

Similarly, Interrogatory No. 17 seeks the identification of any "document referring or relating to or reflecting or constituting . . . an evaluation or comment on Lori Saroya's job performance" while employed at CAIR-Minnesota or CAIR. (Kerbaugh Decl. Ex. B at Interrog. 17.) CAIR objected on relevance grounds and indicated that it would respond only for 2016 to 2018, further indicating in meet and confer correspondence that it would produce her performance evaluations and would also search for relevant ESI. (*Id.* Exs. B and D.) Again, responsive information is relevant to the allegations that CAIR has leveled against Saroya in this litigation. CAIR should respond to Interrogatory No. 17 as posed.

IV. CAIR'S ATTEMPTED ABUSE OF THE ATTORNEYS' EYES ONLY DESIGNATION.

Interrogatory No. 7 seeks the identity of any donor or prospective donor to CAIR that declined to contribute to CAIR, or reduced its contribution, as a result of any statement by Saroya, as well as the factual basis for CAIR's belief that it occurred. (*Id.* Ex. B at Interrog. No. 7.) CAIR indicates that it will only produce responsive information subject to an Attorneys' Eyes Only ("AEO") designation. (*Id.*) Inasmuch, CAIR is seeking to strip Saroya of her ability to effectively and intelligently participate in her defense of CAIR's claimed entitlement to damages.

This is an outcome that the law should not and cannot condone. As the District of North Dakota has noted:

> **While limiting disclosure on an "attorneys' eyes only" basis is recognized as an appropriate method of protecting information in very limited situations**, *e.g.,* cases involving trade secrets, *e.g., In re city of New York,* 607 F.3d 923, 935–36 (2d Cir.2010) ("attorneys' eyes only" disclosure is a "routine feature of civil litigation involving trade secrets"), **it is a drastic remedy given its impact on the party entitled to the information. For one thing, it limits the ability of the receiving party to view the relevant evidence, fully discuss it with counsel, and make intelligent litigation decisions**. *E.g., Dorchen/Martin Assoc., Inc. v. Brook of Cheboygan,* No. 11–10561, 2012 WL 1936415, at *1 (E.D.Mich. May 29, 2012). **Also, in many cases, it limits the ability of a party to provide needed assistance to counsel.** *E.g., MGP Ingredients, Inc. v. Mars, Inc.,* 245 F.R.D. 497, 500–02 (D.Kan.2007); *Medtronic Sofamor Danek, Inc. v. Michelson,* No. 01–2373–GV, 2002 WL 33003691, at * *2–4 (W.D.Tenn. Jan. 30, 2002); *Frees, Inc. v. McMillian,* No. 05–1979, 2007 WL 184889, at *5 (W.D.La. Jan. 22, 2007).
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> For these reasons, **any designation of material as "attorneys' eyes only" should be reserved for only those rare instances in which it is truly justified, *i.e.,* when there is a real expectation and entitlement to confidentiality under the law that has been preserved and not waived and there is no other effective alternative**. *Burris v. Versa Products, Inc.,* No. 07–3938, 2013 WL 608742, at *2 (D.Minn. Feb. 19, 2013) (strict criteria for "attorneys' eyes only" disclosure not met); *EQ Oklahoma, Inc. v. A Clean Environment Co.,* No. 11–CV–510, 2012 WL 5429869, at *2 (N.D.Okla. Nov. 7, 2012) (same); *Scentsy, Inc. v. B.R. Chase, L.L.C.,* No. 1:11–cv–00249, 2012 WL 4523112, at * *4–6 (D.Idaho Oct. 2, 2012) (same); *Brandt Industries, Ltd. v. Pitonyak Machinery Corp.,* No. 1:10–cv0857, 2012 WL 3704956, at * *2–3 (S.D.Ind. Aug. 27, 2012) (same). In other words, **it should not be authorized simply because one of the parties would prefer that certain information not be disclosed to an opposing party**.

Ragland v. Blue Cross Blue Shield of N.D., No. 12-080, 2013 WL 3776495, at *1-2 (N.D. June 25, 2013) (emphasis added); *see also Gillespie v. Charter Commc'ns*, 133 F. Supp. 3d 1195, 1202 (E.D. Mo. 2015) ("Therefore, any designation of material as 'attorneys' eyes only' should be reserved only for those rare instances in which it is truly justified . . . and

there is no other effective alternative. . . . Generally, an 'attorneys' eyes only' designation is appropriate only in cases involving trade secrets, patents, or other intellectual property.") (quotations omitted).

CAIR cannot be allowed to shield all information relating to its alleged damages from Saroya. Doing so would effectively preclude her from directing, providing information relevant to or in any way participating in her defense. For example, if counsel cannot communicate to Saroya the donors CAIR alleges to have been lost, Saroya would have no way to communicate to her counsel facts undermining CAIR's claims – e.g., that Saroya never communicated with the donors alleged to have been lost, that Saroya does not know who the purported lost donors are, that the donors alleged to have been lost due to Saroya's statements ceased donating to CAIR on other grounds, and so forth. It cannot be the case that Saroya is not permitted to participate in defending against CAIR's allegations of causation and damages, two crucial elements of its claims, simply because CAIR does not want her to know how it is that she allegedly harmed it.

Given the importance of Saroya being able to participate in her defense and the fact that a "Confidentiality" designation would be more than sufficient to protect CAIR's supposed interest in maintaining donor confidentiality, CAIR should respond full to Interrogatory No. 7 and should not be allowed to designate responsive material as AEO.

CONCLUSION

For the foregoing reasons, Saroya respectfully requests that the Court order CAIR to respond to Interrogatory Nos. 2-6, 9-11 and 13-17, and Saroya further respectfully

requests that the Court order CAIR to respond fully to Interrogatory No. 7 without designating responsive information AEO.

Dated: November 3, 2021

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