

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

EMANUEL DUNAGAN, et al.,

Plaintiffs,

v.

ILLINOIS INSTITUTE OF ART-CHICAGO,
LLC, et al.,

Defendants.

Case No. 19-cv-809

Honorable Charles R. Norgle

**DEFENDANTS BRENT RICHARDSON,
CHRIS RICHARDSON, AND SHELLY MURPHY'S RESPONSE TO
PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' ANSWERS TO
PLAINTIFFS' FOURTH AMENDED COMPLAINT**

On September 9, 2021, Plaintiffs filed their Fourth Amended Complaint (“Plaintiffs’ Complaint”) which is over 310 pages long including exhibits. These 310 pages contain hundreds and hundreds of multifaceted factual allegations against various parties including against Individual Defendants¹. Now Plaintiffs, without even a phone call to raise their objections to Defendants directly, motion the Court to strike Individual Defendants’ Answers to Plaintiffs’ Complaint because they allege that Individual Defendants were not truthful in their answers. Naturally, and quite literally, any plaintiff would allege that certain, or all, of any defendant’s answers to allegations of a complaint were not truthful from the plaintiffs’ point of view. Here, despite Plaintiffs’ allegation, Individual Defendants were candid and truthful. Even more, Plaintiffs’ own failure to meet and confer

¹ Initially-capitalized terms used in Defendants’ Response but not otherwise defined in Defendants’ Response shall have the meanings given to such terms in Plaintiffs’ Motion to Strike.

with Individual Defendants about their objections raised in Plaintiffs' Motion, demonstrates their own failure to act in good faith with Individual Defendants and before this Court.

Plaintiffs unreasonably request that the Court require Individual Defendants to file revised answers **under oath to their allegations within 72 hours**. Not only does this request have no basis in the Federal Rules of Civil Procedure (the "Rules"), but it is also arbitrary, unreasonable, and, in effect, a subversion of the due process afforded any defendant under the Rules. Individual Defendants request the Court deny this highly unreasonable remedy.

Individual Defendants met the requirements of the Rules. The Rules provide that "a party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial". Fed. R. Civ. P. 8 ("Rule 8"). If Individual Defendants do not believe they know the truth of an allegation, the Rules afford Individual Defendants time in the discovery process to ascertain facts before they admit any of Plaintiffs' allegations in their answer—this is the purpose of Rule 8. And this is exactly what has occurred in Individual Defendants' Answer. Individual Defendants do not yet know the precise truth of many of Plaintiffs' specific allegations. And given the vast number of Plaintiffs' allegations, and the complexity of the issues involved in this case, it will take months of discovery to unravel and ascertain the truth of Plaintiffs' accusations and Defendants' affirmative defenses. Individual Defendants' answers to Plaintiffs' allegations, as given, are all Plaintiffs are owed at this time. In short order, the discovery process will shine light on the truth for both parties--and equally as

important under the Rules--give Individual Defendants time to obtain information sufficient to form a belief about the truth of any of Plaintiffs' hundreds of allegations.

In effect, Plaintiffs' Motion and requested remedies are an end-around the due process of law afforded to civil litigants in the United States under the Rules. Further, Individual Defendants refute Plaintiffs' allegations that they do not take this case seriously. Individual Defendants filed a combined answer together to save on costly litigation fees and costs—nothing more. There is nothing sinister or negligent as Plaintiffs suggests. For the reasons stated here and below, Individual Defendants request that Plaintiffs' Motion to Strike be denied entirely and the Court allow the discovery process to proceed as intended under the Rules. In the alternative, Individual Defendants request the Court require Plaintiffs to meet and confer with Individual Defendants regarding Individual Defendants' answers to Plaintiffs' specific factual allegations that Plaintiffs believe are deficient and grant Individual Defendants a reasonable time² to amend their answers based on Plaintiffs' specific requests made in the parties' consultation.

ARGUMENT

1. The Court should require Plaintiffs to meet and confer with Individual Defendants in a good faith consultation before considering Plaintiffs' Motion.

Plaintiffs are seeking to compel Defendants to admit to certain facts they believe they know that Individual Defendants know to be true. In substance, Plaintiffs' Motion is akin to an order to compel. Both the most-applicable Rules and the local rules of the Court, require a movant to meet and confer with the opposing party before a movant motions a

² Individual Defendants believe 25 days is a reasonable time.

court:

On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action. Fed. R. Civ. P. 37 (“Rule 37”); *see also*, LR 37.2.

Here, although Plaintiffs’ Motion does not fall precisely under the rubric of an order to compel, the Court should require Plaintiffs to meet and confer with Individual Defendants in good faith. Plaintiffs failed to even make a phone call to Individual Defendants to discuss the objections raised in their motion. Plaintiffs’ issues likely could have been quickly remedied—at least to some extent—before these issues were brought before this Court. The spirit and intent of the Rules require Plaintiffs to meet and confer in good faith prior to involving the Court. Plaintiffs seem much more interested into painting Individual Defendants as bad actors and making this litigation as expensive as possible. This should not be condoned by the Court. Accordingly, Individual Defendants request that the Court deny Plaintiffs’ motion and require Plaintiffs meet and confer with Individual Defendants before the Court consider Plaintiffs’ Motion and requested remedy.

2. Individual Defendants met the requirements of Rule 8 and Plaintiff’s Motion is entirely premature at this point in the lawsuit.

Rule 8 states in relevant part: “A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.” Individual Defendants’ answers did just this. Nothing more is required by the Rules. Individual Defendants met the requirements of Rule 8. Accordingly, Plaintiffs’ Motion should be denied.

Further, given the hundreds of specific allegations made in Plaintiffs' Complaint and that discovery has yet to take place, it is reasonable for Individual Defendants to lack knowledge or information sufficient to admit that specific allegations are true at this time in the litigation. Plaintiffs' Motion puts the cart before the horse. Plaintiffs and Defendants will have their opportunity to present evidence to support their respective allegations and defenses and the opportunity to impeach the credibility of each witness including Individual Defendants. Now is not the proper time. Plaintiffs' Motion is entirely premature. Accordingly, Plaintiffs' Motion should be denied.

3. Plaintiffs' request for Individual Defendants to file a new answers in 72 hours, under oath, is arbitrary, unreasonable, and has no basis in the Rules.

Plaintiffs request that the Court inflict a draconian remedy on Individual Defendants is wholly arbitrary as it has no basis in the Rules. It is also unreasonable because 72 hours is outrageously fast. For these reasons, Individual Defendants request that the Court deny Plaintiffs' request.

By combining their defenses, each Individual Defendant is attempting to save on costly litigation expenses. There is nothing sinister or negligent at play as claimed by Plaintiffs. Moreover, Plaintiffs' requested remedy for a sworn, 72 hour answer is entirely unreasonable and unfair to Individual Defendants because it places a higher burden on Individual Defendants than is required under the Rules. Accordingly, Individual Defendants request that Plaintiffs' Motion be denied and that the Court not grant their requested remedy.

4. The Rules require Individual Defendants to raise all affirmative defenses.

Despite Plaintiffs' false and disingenuous claim that Individual Defendants

“through the kitchen sink” at Plaintiffs’ by asserting affirmative defenses that Plaintiffs may consider irrelevant, they did not. It is customary for a defendant to raise all conceivable affirmative defenses in their answer to a plaintiff’s complaint that defendants’ consider relevant. In fact, the Rules require it:

“In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense.” FRCP Rule 8(c).

Individual Defendants must raise their affirmative defenses or risk potentially waiving their rights to them. Individual Defendants did not “throw the kitchen sink” at Plaintiffs but did attempt to error on the side of caution. If Individual Defendants thought an affirmative defense was potentially relevant to this lawsuit, they asserted it. It is Individual Defendants who face the serious risk of potentially waiving a relevant affirmative defense by failing to raise it, not Plaintiffs. Ironically, given Plaintiffs’ over 310-page Complaint with hundreds and hundreds of allegations, it is Plaintiffs who “threw the kitchen sink” at Individual Defendants. Moreover, Plaintiffs fail to argue how any of Individual Defendants alleged “irrelevant” affirmative defenses prejudice Plaintiffs’ case in any way. The affirmative defenses raised do not prejudice Plaintiffs’ case. Further, Plaintiffs fail to request an appropriate remedy for the Court to consider besides requesting an arbitrary and unreasonable remedy as shown in Section 3 herein. Accordingly, the Court should deny Plaintiffs’ Motion.

CONCLUSION

For the reasons set forth above, Individual Defendants request that Plaintiffs’ Motion to Strike Defendants Brent Richardson, Chris Richardson, and Shelly Murphy’s Answer to Plaintiffs’ Fourth Amended Complaint be denied. In the alternative, Individual

Defendants request the Court require Plaintiffs to meet and confer with Individual Defendants about their answers to specific factual allegations that they believe are deficient and grant Individual Defendants a reasonable time to amend their answers after the parties meet and confer, and not consider Plaintiffs' Motion until after that time.

DATED October 4, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2021, I caused the forgoing document to be electronically filed using the Court's CM/ECF system, notification of which will be sent all to counsel of record.

By: s/ Michael A. Schern