

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Johnny Jones,)
)
Plaintiff,)
) No. 17-cv-8218
-vs-)
) (*Judge Rowland*)
Wexford Health Sources, Inc., a)
foreign corporation, and Dr.)
Marshall James,)
)
Defendants.)

MOTION TO STRIKE

Plaintiff, by counsel, moves the Court to strike defendants' responses to nine paragraphs in plaintiff's Rule 56.1(b) Statement of Additional Facts.¹

Grounds for this motion are as follows:

1. Defendants respond to nine of plaintiff's additional facts, ECF No. 102, with the following identical denial:

Deny. Dr. Cannestra's opinion is not rendered to a reasonable degree of medical certainty. (DSOF, Ex. G [Deposition of Dr. Cannestra]).

(ECF No. 107 ¶¶ 2, 13, 14, 20, 22, 23, 24, 33, 40.)

2. Plaintiff supported each of these additional facts with citations to specific pages of Dr. Cannestra's Verified Expert Report or to specific

¹ Many of defendants' other responses are deficient, but do not warrant a motion to strike.

pages and line numbers of his deposition. For example, plaintiff supported additional fact 2 by citing to page 6 of Dr. Cannestra's report.

3. Dr. Cannestra included in his Verified Expert Report the clear statement that, "The opinions rendered in this report are made within a reasonable degree of medical and orthopedic surgical certainty." (ECF No. 100-1 at 12.)

4. Defendants appear to ask the Court to examine a 99-page transcript as the proverbial "pigs, hunting for truffles," *Dorris v. Unum Life Ins. Co. of Am.*, 949 F.3d 297, 306 (7th Cir. 2020) (cleaned up) to determine whether something Dr. Cannestra said in his deposition contradicts his unequivocal statement that his opinions are "made with a reasonable degree of medical and orthopedic surgical certainty." (ECF No. 100 at 12.) The Court should not tolerate this tactic.

5. Defendants' conclusory denials hint at a *Daubert* challenge to Dr. Cannestra's opinions, but the Court should not consider this woefully undeveloped challenge, raised only in response to plaintiff's additional facts and supported only by citation to a 99-page transcript.

6. A party seeking to deny a proposed undisputed fact "must include a specific reference to the affidavit or other part of the record that supports such a denial." *Ammons v. Aramark Uniform Servs., Inc.*, 368

F.3d 809, 817 (7th Cir. 2004); *see also Smith v. Lamz*, 321 F.3d 680 (7th Cir. 2003) (“[W]hen a responding party’s statement fails to controvert the facts as set forth in the moving party’s statement in the manner dictated by the rule, those facts shall be deemed admitted for the purposes of the motion.”).

7. The Court should therefore strike defendants’ denials of paragraphs 2, 13, 14, 20, 22, 23, 24, 33, and 40 of plaintiff’s additional facts, ECF No. 102. *Basta v. Am. Hotel Register Co.*, 872 F. Supp. 2d 694, 699 (N.D. Ill. 2012) (striking paragraphs in the response to a statement of material facts because “the evidence cited to support them fails to do so”).

Respectfully submitted,

/s/ Joel A. Flaxman
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