

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

RAJA'EE FATIHAH,

Plaintiff,

v.

CHAD NEAL (d.b.a. Save Yourself Survival  
and Tactical Gun Range) and NICOLE  
MAYHORN NEAL (d.b.a. Save Yourself  
Survival and Tactical Gun Range),

Defendants.

No. 6:16-cv-00058-JHP

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**PLAINTIFF'S MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

STATEMENT OF MATERIAL UNDISPUTED FACTS .....2

    A.    The Gun Range’s “no Muslim policy” .....2

    B.    Defendants’ Exclusion of Mr. Fatihah from the Gun Range .....6

    C.    The Operation of the Gun Range .....13

ARGUMENT.....20

I.    THE GUN RANGE IS SUBJECT TO TITLE II’S PROHIBITION AGAINST  
DISCRIMINATION ON THE BASIS OF FAITH. ....21

II.   PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT BASED ON THE  
UNREBUTTED DIRECT EVIDENCE OF DEFENDANTS’  
DISCRIMINATORY TREATMENT OF MR. FATIHAH.....23

    A.    The Direct Evidence of Defendants’ Discriminatory Conduct Is  
Overwhelming and Unrebutted.....24

    B.    Defendants Cannot Show They Would Have Denied Mr. Fatihah Access to  
the Gun Range Even Absent Their “No Muslim Policy.” .....28

    C.    The First Amendment Does Not Prevent This Court From Considering  
Defendants’ Sign or Other Speech As Part of the Discrimination Analysis.....31

CONCLUSION.....33

**TABLE OF AUTHORITIES**

**CASES**

*Aros v. McDonnell Douglas Corp.*, 348 F. Supp. 661 (C.D. Cal. 1972) .....28

*Bailey v. Patterson*, 323 F.2d 201 (5th Cir. 1963).....27

*Blow v. North Carolina*, 379 U.S. 684 (1965).....27

*CAIR Florida, Inc. v. Teotwawki Investments, LLC*, No. 15-CV-61541, 2015 WL 11198249 (S.D. Fla. Nov. 24, 2015).....27

*Concord Rod & Gun Club, Inc. v. Massachusetts Commission Against Discrimination*, 402 Mass. 716 (Ma. 1988).....22

*Daniel v. Paul*, 395 U.S. 298 (1968).....21, 22

*Dewitt v. Southwestern Bell Telephone Co.*, 845 F.3d 1299 (10th Cir. 2017).....21, 28 31

*Diaz v. Pan American World Airways, Inc.*, 442 F.2d 385 (5th Cir. 1971).....30

*Dixon v. International Brotherhood of Police Officers*, 504 F.3d 73 (1st Cir. 2007).....32

*Doe v. Division of Youth & Family Services*, 148 F. Supp. 2d 462 (D.N.J. 2001).....22

*Durham v. Red Lake Fishing & Hunting Club, Inc.*, 666 F. Supp. 954 (W.D. Tex. 1987) .....21, 22

*E.E.O.C. v. Alton Packaging Corp.*, 901 F.2d 920 (11th Cir. 1990) .....23

*E.E.O.C. v. Sunbelt Rentals, Inc.*, 521 F.3d 306 (4th Cir. 2008) .....29

*Estate of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255 (10th Cir. 2008) .....30

*Evans v. Seaman*, 452 F.2d 749 (5th Cir. 1971) .....22

*Exodus Refugee Immigration, Inc. v. Pence*, 838 F.3d 902 (7th Cir. 2016) .....29

*Fahim v. Marriott Hotel Services, Inc.*, 551 F.3d 344 (5th Cir. 2008) .....23

*Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949).....32

*Green v. Dillard’s, Inc.*, 483 F.3d 533 (8th Cir. 2007).....25

*Hall v. United States Department of Labor, Administration Review Board*, 476 F.3d 847 (10th Cir. 2007).....24

*Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964).....20

*International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977) ..... 31-32

*James v. Heuberger Motors, Inc.*, No. 10-CV-01648-CMA-KLM, 2011 WL 5331600 (D. Colo. Nov. 4, 2011), amended, No. 10-CV-01648-CMA-KLM, 2011 WL 6152950 (D. Colo. Dec. 12, 2011).....24

*Jones v. Denver Post Corp.*, 203 F.3d 748 (10th Cir. 2000) .....24

*King v. Auto, Truck, Industry Parts & Supply, Inc.*, 21 F. Supp. 2d 1370 (N.D. Fla. 1998) .....25

*Lam v. University of Hawaii*, 40 F.3d 1551 (9th Cir.1994) .....30

*Long v. Laramie County Community College District*, 840 F.2d 743 (10th Cir. 1988) .....23, 28

*McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) .....23

*McLaurin v. Waffle House, Inc.*, 178 F. Supp. 3d 536 (S.D. Tex. 2016).....23

*Missouri Pacific Railroad Co. v. Kansas Gas & Electric Co.*, 862 F.2d 796 (10th Cir. 1988) .....28

*Moore v. United States Department of Agriculture on Behalf of Farmers Home Administration*, 55 F.3d 991 (5th Cir. 1995) .....24

*Nichols v. Frank*, 42 F.3d 503 (9th Cir. 1994).....27

*Perry v. Kunz*, 878 F.2d 1056 (8th Cir. 1989) .....24

*Pleener v. New York City Board of Education*, 311 F. App’x 479 (2d Cir. 2009) .....30

*Powers v. Ohio*, 499 U.S. 400 (1991) .....29

*Rumsfeld v. Forum for Academic & Institutional Rights*, 547 U.S. 47 (2006).....32

*Sayed-Aly v. Tommy Gun, Inc.*, 170 F. Supp. 3d 771 (E.D. Pa. 2016) .....22

*Scott v. Harris*, 550 U.S. 372 (2007) .....31

*Tandy v. City of Wichita*, 380 F.3d 1277 (10th Cir. 2004) .....21

*Thompson v. United States Department of Housing & Urban Development*, 348 F. Supp. 2d 398 (D. Md. 2005) .....26

*Tyler v. RE/MAX Mountain States, Inc.*, 232 F.3d 808 (10th Cir. 2000).....23

*United States ex rel. Cooper v. Auto Fare, Inc.*, No. 3:14-CV-0008-RJC, 2014 WL 2889993 (W.D.N.C. June 25, 2014) .....25

*United States v. City of Jackson*, 318 F.2d 1 (5th Cir. 1963).....27

*United States v. Lansdowne Swim Club*, 894 F.2d 83 (3d Cir. 1990).....22, 23

*United States v. Sayer*, 748 F.3d 425 (1st Cir. 2014).....32

*Unus v. Kane*, 565 F.3d 103 (4th Cir. 2009).....29

**STATUTES**

42 U.S.C. § 2000a.....1, 20

42 U.S.C. § 2000a(b)(3).....21

42 U.S.C. § 2000a(c).....22

Okla. Stat. Ann. Title 13, § 176.4(5) (2017).....7

Okla. Stat. Ann. Title 25, § 1401 (2017) .....21

Okla. Stat. Ann. Title 25, § 1402 (2017) .....21

**LEGISLATIVE MATERIALS**

H.R. Rep. No. 88-914 (1963).....20

S. Rep. No. 88-872 (1964).....20

**OTHER AUTHORITIES**

1 Niki L.M. Brown & Barry M. Steniford, eds., *The Jim Crow Encyclopedia* 149 (2008).....20

*The Civil Rights Act of 1964: A Long Struggle for Freedom, Jim Crow Restrictions*, Library of Congress, <http://www.loc.gov/exhibits/civil-rights-act/segregation-era.html#obj024> .....26

*Letter from a Birmingham Jail* (Apr. 16, 1963), reproduced in Martin Luther King, Jr., *The Essential Martin Luther King, Jr.* (Clayborn Carson, ed.).....26

Prints and Photographs Online Catalog, *Birney, Montana. People who came to a Saturday night dance around the bar*, Library of Congress <http://www.loc.gov/pictures/resource/fsa.8c15746/> (last visited Apr. 27, 2017) .....26

*Target Shooting in America*, National Shooting Sports Foundation (2013), <http://www.nssf.org/PDF/research/TargetShootingInAmericaReport.pdf> .....21

Victoria W. Wolcott, *Race, Riots, and Roller Coasters: The Struggle over Segregated Recreation in America* (2012).....26

## INTRODUCTION

This case involves a modern-day resurrection of Jim Crow. The Defendants, who operate a shooting range, posted a sign at the entrance of their business announcing their intention to deny service to Muslims. They then acted on that brazen policy and barred Plaintiff from using the range after learning that he is Muslim. Ending this type of discriminatory conduct is precisely the reason Congress passed Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a (“Title II”).

Title II provides that all individuals are “entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation . . . without discrimination on the ground of race, color, religion, or national origin.” 42 U.S.C. § 2000a(a). The law marked the end of a shameful era in American history when entire groups of people were outright excluded from, or denied equal access to, spaces otherwise open to the public simply because of the color of their skin, their ethnic heritage, or their faith. The protections put in place by Title II were more than legal decrees; they were moral imperatives rooted in our collective understanding that discrimination of this nature is an affront to basic human dignity and fundamental American values.

When Defendants opened a recreational shooting range and invited the public to use it, they undertook a duty to operate the business in accordance with the law, serving all customers on equal terms. Instead, they posted a sign at the entry of their business, the Save Yourself Survival and Tactical Gear and Gun Range (“Gun Range”), declaring it a “MUSLIM FREE ESTABLISHMENT!!!” They posted a similar notice on the business’s public Facebook page. And, in numerous media interviews documenting their bigoted business practices, Defendants proudly affirmed their “no Muslim policy.” Defendants then denied Plaintiff Raja’ee Fatihah access to the Gun Range after he disclosed that he is a Muslim—or, as Defendant Chad Neal slurred him, a “muzrat.”

Defendants’ “no Muslim policy” is no different than a “Whites Only” or “No Jews” policy. It is patently illegal. The Court should take Defendants at their word and grant summary judgment to Mr. Fatihah.

**STATEMENT OF MATERIAL UNDISPUTED FACTS**<sup>1</sup>

**A. The Gun Range’s “no Muslim policy”**

1. On or about July 17, 2015, Defendants posted a sign on the window near the entrance of the Save Yourself Survival and Tactical Gear and Gun Range (“Gun Range”) announcing, “*THIS PRIVATELY OWNED BUSINESS IS A MUSLIM FREE ESTABLISHMENT, WE RESERVE THE RIGHT TO REFUSE SERVICE TO ANYONE. THANK YOU.*” Ex. A, Dep. of Nicole Neal (“NN Dep.”) Vol. I, 69:4-70:10 & Ex. 25 at 2 (with “MUSLIM FREE” in larger font size than the other words);<sup>2</sup> Ex. G, Defs.’ Resp. to Pl.’s Interrog. No. 1 at 5. The notice was hung above the Gun Range’s business-hours sign. Ex. A, NN Dep. Vol. I, 70:17-71:6 & Ex. 24. Defendants have replaced it at various points with identical or very similar signs due to fading. Ex. A, NN Dep. Vol. I, 70:7-71:6, 66:16-67:2 & Ex. 21 (replacement sign stating, “*THIS PRIVATELY OWNED BUSINESS IS A MUSLIM FREE ESTABLISHMENT!!! WE RESERVE THE RIGHT TO REFUSE SERVICE TO ANYONE!!! THANK YOU!” (with the words “MUSLIM FREE ESTABLISHMENT” in larger font size than the other words).*

2. In addition to posting a sign on the business’s door, Defendants posted a notice on the business’s public Facebook page, Ex. A, NN Dep. Vol. II, 135:20-23 & Ex. 46, stating:

Save Yourself Survival and Tactical Gear and Gun Range is now a Muslim free business. We will not support or condone those who hate our country. We love our country and want our fellow Americans to know we do not tolerate terrorism. They have come to our home and attacked us on our soil. We reserve the right to refuse service to anyone. Thank you.

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<sup>1</sup> Plaintiff is still awaiting a ruling on its Motion to Determine Sufficiency of Responses to Requests for Admission Nos. 1, 3-14 (ECF No. 44), filed on Feb. 1, 2017, and respectfully reserves the right to supplement this Statement following a ruling on that motion.

<sup>2</sup> To avoid confusion, Plaintiff has labeled all exhibits in support of this motion with letters (starting with “A”). References to numbered exhibits (e.g., “Ex. 25”) refer to deposition exhibits. While Plaintiff has attached the full deposition transcript of any deposition relied upon in this brief, only cited deposition exhibits are attached due to the volume of exhibits.

3. On August 13, 2015, Mr. Neal sent a Facebook message to a fellow gun range owner, Jan Morgan, to let her know that he had been interviewed by the *Tulsa World* “over our *no Muslim policy* because CAIRE [sic] sent them a news release,” adding, “[t]he muzrats will be targeting us now.” Ex. B, Dep. of Chad Neal (“CN Dep.”) 84:19-86:2 & Ex. 39 at 1 (emphasis added). Morgan owns a gun range in Arkansas and has banned Muslims from her business as well. Ex. H, Declaration of Brady R. Henderson (“Henderson Decl.”) ¶ 2 & Ex. 1. On August 13, 2015, Defendants posted a notice on the business’s Facebook page stating, “We align ourselves and our store policies with Jan Morgan.” *Id.*

4. In discussing the “no Muslim policy” in various public interviews, Mrs. Neal stated the following:

- a. “Our customers really deemed it necessary. They wouldn’t feel safe being on a range with a Muslim out there practicing as well.” Ex. A, NN Dep. Vol. II, 137:15-23 & Ex. 48 at 00:51-59 (Mrs. Neal in video interview with KOTV News on 6, Aug. 13, 2015).<sup>3</sup>
- b. “Until the Muslims want to stand with us, we have to say no Muslims.” Ex. A, NN Dep. Vol. II, 138:4-9 & Ex. 48 at 2:04-09 (Mrs. Neal in video interview with KOTV News on 6, Aug. 13, 2015).
- c. “We put the sign up because our customers have stated to us that they wouldn’t feel comfortable practicing on a range with a Muslim on the range practicing as well.” Ex. A, NN Dep. Vol. II, 136:5-137:4 & Ex. 47 at 00:54-01:05 (Mrs. Neal in video interview with Fox 23, Aug. 14, 2015).
- d. “Well, we also noticed an increase in activity across the street. As you guys know we have the Valero, the gas station across the street. And we’ve noticed an increase in activity of Muslims coming in their full garb. A lot of people around town have noticed this as well and a lot of my customers have mentioned the fact that if somebody was like that on the range or in our store, they wouldn’t come back. And our customers keep the lights on, they

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<sup>3</sup> All audio and video recordings will be conventionally filed with the Court.



keep us in business. Without them we have nothing, we're not a store. If our customers aren't comfortable with somebody, a Muslim, man or woman, coming in in their full garb, then you know we can't allow that. Our customers dictate our policies. Our customers come first." Ex. A, NN Dep. Vol. II, 142:24-143:4 & Ex. 49 at 3:06-3:53 (Mrs. Neal in video interview with Martin David Miller, Sept. 3, 2015).

- e. "I'm getting support [for the Muslim-free sign] from all over the world and I'm getting messages saying that if you don't put a stop to it, they will infest you just like they've infested us. If you don't stand up to them [Muslims] now while you still have a chance, you will be overrun and being forced into the Sharia law and watch them kill your wives, your children, mutilate them, rape your little boys. They're going to infest us if we do not take a stand and America needs to stand." Ex. A, NN Dep. Vol. II, 147:1-4 & Ex. 50B at 4:50-5:28 (Mrs. Neal in video interview with Martin David Miller, Sept. 3, 2015).
- f. "This is our home. Our store is our whole life. We put that sign up a month before somebody ever noticed it. It wasn't for publicity, it wasn't for advertisement. Like I said, we've noticed an increase in traffic [of Muslims] across the street. I'm not a mean person, I don't want to be mean, but if they came over here, I'd have to ask them to leave. So the sign was just to give them forewarning so they don't have to come in here and I have to tell them to go away. Yeah. Unfortunately that's just the way it has to be. I can't change the way true Americans feel about Muslims. It's not my fault, but I kind of feel the same way. When they decide to be peaceful and stop cutting people's heads off and stop setting people on fire and stop stoning people to death and raping our children and women and doing genital mutilation, okay maybe they'll be accepted back into society. . . . [Y]ou really can't tell the difference between an extremist and a 'peaceful' moderate Muslim. How am I supposed to know the difference?" Ex. A, NN Dep. Vol. II, 145:15-17 & Ex. 50A at 5:50-7:55 (Mrs. Neal in video interview with Martin David Miller, Sept. 3, 2015).

5. Defendants, in addition, posted a number of statements on Facebook relating to Muslims, including:

- a. On October 24, 2014, Mr. Neal posted a photo of the building Defendants planned to purchase for the business. A comment asked, “What? No Spider Pig?” Mr. Neal replied, “We are still going to find one [a pig] to put out as a muslim deterrent along with a sign that says ‘We sell tactical bacon’!!! Lol.” Ex. B, CN Dep. 62:20-63:1 & Ex. 23.
- b. On February 5, 2015, Mr. Neal posted a picture of a pig on his Facebook page, indicating that it would be the business’s “mascot” and wrote that the pig’s name was “Mo Hamm Head. ‘Mo.’” Ex. B, CN Dep. 62:11-19 & Ex. 22 (posting comment that “Mo” was short for “Mohammad (Mo-hamm-head). Lol”).
- c. On November 21, 2015, Defendants posted an image on the business’s Facebook page, which stated: “*Sorry folks, but Islamic Terrorism is coming here. So called ‘moderate Muslims’ are waiting for their memo to act. THE first priority for EVERY law abiding citizen is to purchase a minimum of one firearm, learn gun safety, learn how to use it, teach their entire family how to use it, make day trips to shooting ranges, practice, practice, practice, apply for a CWP and carry every day, everywhere you go, 24/7/365.*” The image was accompanied by Defendants’ comment: “Please protect yourself! If you have any questions don’t hesitate to call or come by!” Ex. A, NN Dep. Vol. II, 159:15-18 & Ex. 73 (italics in original).
- d. On August 21, 2015, Jan Morgan posted a cartoon about Muslim-free establishments on her Facebook page. Ex. B, CN Dep. 86:7-23 & Ex. 40 at 1. Mr. Neal explained in one comment that the cartoon was about him: “Exactly.....says the guy the cartoon is about, facing off against group of towel heads alone.” *Id.* at 88:5-7, 89:2-6 & Ex. 40 at 5 (comment on Aug. 22, 2015). He then posted additional comments on the thread and clicked the “like” button for several other comments, including:
  - i. Mr. Neal “liked” an August 22nd comment from Mark Williams, which stated, “Frankly, if My friends and I are at a firing range enjoying the day shooting and 3

or 4 muslim guys show up suddenly, Im certain We all will be scoping out the closest cover and the thought would have to roll through Your mind, will this be the day of a life and death rumble. I wouldn't turn My back for a second.” Ex. B, CN Dep. 88:16-89:1 & Ex. 40 at 5-6.

- ii. Mr. Neal “liked” this comment from Gary Waltrip Jr. on September 10, 2015: “Only two kinds of Muslimes ...ones who have committed terrorist acts and ones who have yet to commit terrorist acts!....they are nothing more then cockroaches that need to be exterminated!” Ex. B, CN Dep. 89:7-23 & Ex. 40 at 7-8.
- iii. On September 18, 2015, Gary Waltrip Jr. wrote: “If hating Islam and all that follow it makes me a racist pig Barbara then I wear that badge proudly! BTW you're free to pack up your goat and return to whatever 3rd world toilet you came from. Western modern civilization is not compatible with 7th century pedophile rapist and murdering followers! ....In other words....GET THE FUCK OUT ....you're not wanted here!” Mr. Neal liked the comment and wrote, “I like this guy.....^^^^^^^^” Ex. B, CN Dep. 89:24-90:20 & Ex. 40 at 9-10.
- iv. In the comments on the cartoon, Mr. Neal posted a graphic stating, “A RADICAL MUSLIM WANTS TO BEHEAD YOU. A MODERATE MUSLIM WANTS A RADICAL MUSLIM TO BEHEAD YOU.” Ex. B, CN Dep. 91:15-20 & Ex. 40 at 13.

**B. Defendants' Exclusion of Mr. Fatihah from the Gun Range**

6. Mr. Fatihah is a Tulsa native and a Muslim. Ex. D, Dep. of Raja'ee Fatihah (“RF Dep.”) 7:15-16, 22:23-23:3 & Ex. 6. A graduate of the University of Oklahoma, he is married, has three children, and currently works as a social services inspector for the State of Oklahoma's Department of Human Services Office of Client Advocacy. *Id.* at 22:23-23:3, 37:2-4 & Ex. 6. Mr. Fatihah has served in the Army Reserve since August 2011. *Id.* at 40:4-11.

7. On October 23, 2015, Mr. Fatihah visited the Save Yourself Survival Tactical Gear and Gun Range. Although the Gun Range was open to customers at the time, Defendants refused to allow him to use it. Ex. A, NN Dep. Vol. II, 44:7-9, 95:21-23.

8. Mr. Fatihah testified at his deposition that he went to the Gun Range to recreationally shoot, and—in light of the Gun Range’s “Muslim Free” policy—to start a conversation with Defendants, and to begin building a personal relationship with them “so that they could know someone who’s Muslim.” Ex. D, RF Dep. 51:15-52:18. Mr. Fatihah recorded his visit to the Gun Range and testified that he did so to “protect [him]self and [to] be ready to challenge any discriminatory actions.” *Id.* at 54:8-13.<sup>4</sup>

9. The Gun Range is an outdoor range with a “covered pistol range area and an uncovered rifle range.” Ex. G, Defs.’ Resp. to Pl.’s Interrog. No. 1 at 4; *but see* Ex. H, Henderson Decl. ¶ 3, Ex. 2 (rifle range has recently been covered).

10. On the morning of Mr. Fatihah’s visit to the Gun Range, the weather involved, at most, “just a drizzle.” Ex. A, NN Dep. Vol. II, 45:4-10. The weather did not cause Defendants to close the Gun Range: Both the pistol and rifle ranges were open when Mr. Fatihah arrived. Ex. A, NN Dep. Vol. II, 44:7-9. In fact, Defendants have previously invited customers to visit the Gun Range and shoot during rainy weather. *Id.* Vol. II, 44:11-45:2; 153:23-154:4 & Ex. 64 (“Nice to see a full parking lot even on a crappy day!! The range is open between squalls!! Lol.”); *id.* Vol. II, 153:12-16 & Ex. 63 (“The weather doesn’t stop you from surviving and so we are still open today for all your needs and so is the gun range! Bring the family down to get some time behind the trigger!”); *id.* Ex. 53 at 1; *id.* Vol. II, 154:25-155:4 & Ex. 67; *id.* Vol. II, 154:5-9 & Ex. 65; Ex. H, Henderson Decl. ¶ 4, Ex. 3 (“A rainy day for a carry class. Fight like you train, train like you fight! Congratulations, folks!”). Were the weather so severe (e.g., “tornados, warnings, lightning, safety risks” or other “[h]azards to being able to see”) as to make shooting dangerous on the day of Mr.

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<sup>4</sup> In Oklahoma, it is legal for one party to a conversation to record the conversation without the consent of the other party. *See* Okla. Stat. Ann. Tit. 13, § 176.4(5) (2017).

Fatihah's visit or on any other day, Defendants would have closed the range to customers. *Id.* Vol. II, 42:15-25, 43:20-44:2.

11. When Mr. Fatihah entered the business, Mrs. Neal greeted him, confirmed that he was there to "do some shooting," asked him to fill out a liability waiver, offered to allow him to borrow protective eyewear, and began ringing up his purchase of earplugs and a paper target. Ex. D, RF Dep. 101:12-17; Ex. A, NN Dep. Ex. 36 at 00:55-05:14 (audio recording); *id.* Vol. II, 65:4-66:8 & Ex. 35 (receipts showing transaction); *id.* Vol. II, 41:1-6 & Ex. 30 (signed waiver).

12. As Mrs. Neal began to ring up Mr. Fatihah's purchase of a target and ear plugs, Mr. Fatihah said to her, "I'm Muslim." Mrs. Neal responded, "You're Muslim?" Ex. A, NN Dep. Ex. 36 at 05:14-05:21. After Mr. Fatihah confirmed this, Mrs. Neal called for her husband, who was in the back office. *Id.* Ex. 36 at 05:19-05:25; Ex. B, CN Dep. 24:9-20. After observing that Mr. Fatihah "didn't come in here dressed in your [Muslim] garb,"<sup>5</sup> Mrs. Neal asked him if he was there to "convert or, you know, prove a point." In response, Mr. Fatihah stated that he was there to use the range. Ex. A, NN Dep. Ex. 36 at 05:36-05:55.

13. Mr. Neal then stated, "We have a club policy that we have to approve our members. This is a temporary pass that you get for the day. So it [has] to be approved with the board to make sure that you're approved." Ex. A, NN Dep. Ex. 36 at 05:58-06:18. Defendants had never before sought approval from the board for a customer to use the Gun Range or purchase a membership, whether daily or annual. *Id.* Vol. I, 124:7-11.

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<sup>5</sup> During Mr. Fatihah's visit, Mrs. Neal stated that he "came dressed as an American," prompting Mr. Fatihah to reply, "Well, I am an American. This is how I dress all the time." Ex. A, NN Dep. Ex. 36 at 07:36-07:45. During their depositions, Defendants testified that Mr. Fatihah was wearing cargo pants and a black fleece jacket. *Id.* Vol. II, 55:19-25, 51:14-19; Ex. B, CN Dep. 32:8-11, 35:6-8. Mr. Fatihah testified that he wore Dickies, a polo shirt, and a black Army jacket with a "yellow and white Army star symbol on the back." Ex. D, RF Dep. 54:15-55:1.

The discrepancy is immaterial here because the Gun Range rules do not prohibit either set of clothing; indeed, Mr. Neal wears a black fleece and cargo pants on the Gun Range. Ex. A, NN Dep. Vol. I, 120:24-121:17 & Exs. 26-27; Ex. B, CN Dep. 35:14-36:12. And Defendants never suggested during his visit that Mr. Fatihah was inappropriately dressed. *See generally* Ex A, NN Dep. Ex. 36.

14. After stating that Mr. Fatihah, dressed as he was, was “not [t]here to cause anybody any trouble,” Ex. A, NN Dep. Ex. 36 at 06:38-06:45, Mrs. Neal stated, nevertheless, that both Defendants would be going out on the range with him. Mr. Fatihah said okay and did not object to the condition. *Id.* Ex. 36 at 06:45-06:55. Mrs. Neal then brought up “Sharia law,” stating: “There really is a difference between ones [Muslims] who have come and adopted the American culture and want to live as an American or the ones who want America to change for them. There’s a huge difference. Do you see what I’m saying? The ones who want us to adopt Sharia law and change our ways.” *Id.* Ex. 36 at 07:47-08:09.

15. Mr. Fatihah responded by explaining that, as a Muslim, he follows Sharia law but does not seek to impose it on others: “I am a practitioner of it and I know with absolute certainty that Sharia does not compel me in any way to make you follow any aspect of my religion and it’s the same for all other Americans.” Ex. A, NN Dep. Ex. 36 at 08:09-08:37.

16. Mr. Neal then asserted that Mr. Fatihah’s faith requires its followers to kill and lie to “infidels.” Ex. A, NN Dep. Ex. 36 at 08:36-08:47 (“But you have to practice your religion and -- which is Sharia law, which says to kill the infidels, lie to the infidels.”). Mr. Fatihah rejected this characterization too, *id.* Ex.36 at 09:58-10:27, explaining:

I was born and raised here in the United States. I’m a service member. I’m a Muslim. And I know thousands of Muslims. I’ve been to mosques all over the country. I’ve never encountered anyone who talks about that, killing the infidel or forcing anyone to convert, trying to make anyone follow Sharia. Sharia is for Muslims only. Sharia just is -- just our religious law, the guidelines we have to live by according to the faith.

17. Mr. Neal subsequently stated that Mr. Fatihah would not be permitted to use the range until after the “board” reviewed and approved his “paperwork.” Ex. A, NN Dep. Ex. 36 at 11:15-11:34. When Mr. Fatihah asked Mr. Neal to describe the approval process, Mr. Neal stated: “The approval process is you take it to the board, they look over your paperwork, and if you get approved, then we’ll give you a call.” *Id.* Ex. 36 at 11:35-11:45.

18. In response, Mr. Fatihah stated, “Alright. You guys have a good day.” Mr. Neal stated, “You too. Thanks.” Mr. Fatihah then left without incident. Ex. A, NN Dep. Ex. 36 at 12:08-12.

19. From the moment Mr. Fatihah entered the business to the moment he left, Defendants did not comment on the guns Mr. Fatihah had with him, including their type, whether they were in a case, or whether they were loaded. *See generally* Ex. A, NN Dep. Ex. 36. Despite later testifying that they thought Mr. Fatihah's rifle was loaded,<sup>6</sup> Defendants did not inform Mr. Fatihah that he was violating Gun Range Rules, ask him to leave or remove the magazine that they now say they believed to be inserted into his rifle, or assert at the time that his handling of his rifle was unsafe or improper. Ex. B, CN Dep. 30:15-24; Ex. A, NN Dep. Vol. II, 50:23-51:2; *see generally id.* Ex. 36.

20. After Mr. Fatihah left, Defendants Googled his name and learned that he is a member of the board of the Council on American-Islamic Relations, Oklahoma Chapter (CAIR-Oklahoma). Ex. B, CN Dep. Ex. 39 at 11; Ex. A, NN Dep. Vol. II, 98:2-7, 100:5-22 & Ex. 37. During his visit to the Gun Range, Defendants did not know Mr. Fatihah was a board member of CAIR-Oklahoma. *See* Ex. G, Defs.' Resp. to Pl.'s Interrog. No. 1 at 7; Ex. A, NN Dep. Vol. II, 98:2-7.

21. CAIR-Oklahoma is a not-for-profit corporation formed under the laws of Oklahoma. Ex. C, Dep. of Adam Soltani ("AS Dep.") 72:22-73:2. CAIR-Oklahoma and the Council on American-Islamic Relations (CAIR-National) are legally independent organizations. *Id.* CAIR-Oklahoma is governed by an independent board of directors and receives no funding from CAIR-National. Ex. C, AS Dep. 68:24-69:1, 73:2-5. The CAIR-Oklahoma board has the final say on all policies and

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<sup>6</sup> Mr. Fatihah brought two guns with him to the Gun Range: "a rifle and a handgun." Ex. G, Defs.' Resp. to Pl.'s Interrog. No. 1 at 5; Ex. D, RF Dep. 55:15-16; 56:9-10. Mr. Fatihah testified that the rifle was a Chiappa M1-9 rifle. Ex. D, RF Dep. 56:10-17. Defendants have made varying claims about the type of rifle they believed Mr. Fatihah to have with him. First, they publicly affirmed their attorney's claim he had entered the premises with an AK-47 slung over his shoulder with the magazine inserted. Ex. A, NN Dep. Vol. II, 159:20-25 & Ex. 74. However, after attending Mr. Fatihah's deposition (Ex. A, NN Dep. Vol. II, 164:9-19; Ex. B, CN Dep. 91:21-92:10) and hearing him testify that he owns an AR-15 but not an AK-47 (Ex. D, RF Dep. 49:6-7, 87:17-19), Defendants changed their story again. They testified at their own depositions that they were unsure what type of rifle Mr. Fatihah had, but that it was either an AR-15 or AK-47, or some type of military rifle. Ex. A, NN Dep. Vol. II, 46:14-16; Ex. B, CN Dep. 26:7-12 (admitting that he "couldn't clearly see the rifle"). Mr. Neal also admitted that he was unable to see the well of the rifle, where the magazine would be inserted. Ex. B, CN Dep. 28:25-29:2, 31:13-17.

activities undertaken by CAIR-Oklahoma. *Id.* at 72:19-73:11. In addition to advocating for civil rights for the Muslim community, CAIR-Oklahoma conducts “outreach to communities and organizations to educate people about Islam and Muslims in the state of Oklahoma and throughout the country.” Ex. C, AS Dep. 11:24-12:8.

22. While Mr. Fatihah is a member of the board of CAIR-Oklahoma, he is not a member of the board of CAIR-National. Ex. D, RF Dep. 14:25-15:2, 20:2-5; Ex. C, AS Dep. 15:10-12; Ex. A, NN Dep. Vol. II, 104:8-12.

23. The U.S Department of State has rejected the claim that CAIR-National is a terrorist organization, Ex. A, NN Dep. Ex. 38 (“[T]he U.S. government clearly does not consider CAIR to be a terrorist organization.”). Neither CAIR-National nor CAIR-Oklahoma has ever been indicted for or convicted of any crime.

24. After Mr. Fatihah’s visit, Mrs. Neal also conducted a search for Mr. Fatihah’s name through the On Demand Court Records database. Ex. A, NN Dep. Vol. II, 99:7-15. This search produced no evidence of criminal or terrorist activity by Mr. Fatihah. *Id.* Vol. II, 99:25-100:1, 114:12-20. Neither Mr. Neal nor Mrs. Neal has any evidence that Mr. Fatihah has been personally involved in terrorist or criminal activity. *Id.* Vol. II, 115:5-15; Ex. B, CN Dep. 49:6-12. In fact, Mr. Fatihah has never been prosecuted for or convicted of any crime and has no criminal history. Ex. I, Pl.’s Supp. Resp. to Defs.’ Interrog. No. 13.

25. Defendants never called any law enforcement agency to express concerns or suspicion about Mr. Fatihah. They did not call the police, FBI, or any other law enforcement while Mr. Fatihah was at the business or at any time after he left. Ex. A, NN Dep. Vol. II, 84:12-85:20, 117:24-118:22; Ex. B, CN Dep. 45:4-18, 48:21-49:5.

26. The day after Mr. Fatihah’s visit to the Gun Range, Mr. Neal wrote, in a message to Jan Morgan, “[H]ad a face to face probe by a muzrat from CAIR yesterday try to gain access to the range.” Ex. B, CN Dep. Ex. 39 at 10-11.<sup>7</sup>

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<sup>7</sup> This was not the first time that Mr. Neal had publicly referred to Muslims by the slur “muzrat.” *Supra* ¶ 3; Ex. B, CN Depo. 67:23-68:20 & Ex. 33 (writing, one month after the visit by Mr.



27. Because Defendants never called Mr. Fatihah to update him on the status of his application, Ex. A, NN Dep. Vol. II, 116:2-8, Mr. Fatihah called the Gun Range on or about December 10, 2015, to inquire about it. Mrs. Neal stated, “No, I haven’t heard anything about it [Plaintiff’s application]. . . . Let me get your name and number and I’ll call you right back.” *Id.* Vol. II, 120:8-14 & Ex 40 at 00:44-00:50 (audio recording); Ex. D, RF Dep. 124:5-12. She did not call him back after that. Ex. A, NN. Dep. Vol. II, 121:5-8. She later testified that she “didn’t remember who he [Mr. Fatihah] was on that phone conversation.” *Id.* Vol. II, 120:22-121:4.

28. Defendants will not allow Mr. Fatihah to use the Gun Range in the future. Ex. G, Defs.’ Resp. to Pl.’s Interrog. Nos 1, 16 at 8, 18.

29. Prior to their denial of service to Mr. Fatihah, Defendants had never denied a customer the ability to purchase a membership to use the Gun Range. Ex. A, NN Dep. Vol. I, 124:3-6.

30. Prior to the Google and On Demand searches that Defendants conducted for Mr. Fatihah, Defendants had never previously conducted any such background check on a Gun Range customer. Ex. G, Defs.’ Resp. to Pl.’s Interrog. No. 16 at 18; Ex. A, NN Dep. Vol. II, 27:20-28:9. At the time of Mr. Fatihah’s visit to the Gun Range, Defendants had no written policy requiring any sort of background check for use of the Gun Range and still do not have such a written policy. *See* Ex. A, NN Dep. Vol. I, 75:2-10; 86:13-20 & Exs. 26-27.

31. Prior to Mr. Fatihah’s visit to the Gun Range, Defendants had no written policy restricting use of the Gun Range based on customers’ membership in or association with any other

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Fatihah, who is an African American, “Muzrats are all colors and nationalities. Stay armed and vigilant”). Defendants also have made their hatred of Muslims and Islam known through other public comments. Ex. B, CN Depo. 63:2-5 & Ex. 24 (posting link to article entitled, “Why Islam is Not a Religion”); *id.* 65:20-23 & Ex. 27 (posting meme that states, “IF BEING A RACIST MEANS I DON’T WANT MY COUNTRY TURNED INTO A PILE OF ROCKS & GOATSHIT RULED BY A BARBARIC CULT THEN I’M A RACIST”); *id.* 68:21-69:4 & Ex. 34 (posting meme stating, “YOUR FACE WHEN A MUSLIM SAYS ISLAM IS PEACEFUL”); Ex. A, NN Dep. Vol. II, 160:18-25 & Ex. 77 (“I . . . enjoy pissing off muslims... lol”); *id.* Vol. II, 160:7-12 & Ex. 76 (“The ones our POTUS calls ‘radical’ is actually the norm... the Muslims that embrace western culture are actually radical...”).

organization, including CAIR-National or CAIR-Oklahoma. *See* Ex. A, NN Dep. Vol. I, 75:2-10 & Ex. 26; *id.* Vol. I, 82:21-83:17 & Ex. 28.

32. Defendants never convened a meeting of the board (in person or by phone) to discuss Mr. Fatihah's application. Ex. A, NN Dep. Vol. II, 117:14-17. Nor did the board hold any type of formal vote on Mr. Fatihah's application. Ex. E, Dep. of Pamela Butler ("PB Dep.") 36:10-13; Ex. F, Dep. of Martin Butler ("MB Dep.") 42:9-11.

33. Mr. Fatihah testified that he has visited several gun ranges within Oklahoma. Two were indoor ranges. Ex. D, RF Dep. 43:22-24, 45:17-19. However, Mr. Fatihah was also looking for a range with an "outdoor facility." *Id.* at 47:6-7. To that end, he visited one establishment in Tulsa with an outdoor range. *Id.* at 46:18-47:7. The range, however, did not work for him because it hosted numerous events and "extra activities," resulting in limited access to the range depending on its calendar for any particular day. *Id.* at 47:12-21. He has also visited two other outdoor ranges, both a 45-minute to one-hour drive from his home. *Id.* at 48:8-21. The first range, located at the Fort Gibson Wildlife Management Area in Wagoner, Oklahoma, has no formal shooting lanes or targets set up and is inadequate to satisfy Mr. Fatihah's desire to find an outdoor range that he can frequent more regularly. Ex. L, Decl. of Raja'ee Fatihah ("Fatihah Decl."), ¶ 2. The other range visited by Mr. Fatihah was Defendants' Gun Range. *Id.* at 48:8-21. Mr. Fatihah has not returned to Defendants' Gun Range since October 23, 2015, in light of Defendants' statement that he would not be admitted to the range. Ex. D, RF Dep. 121:23-122:2. However, he would return to use Defendants' Gun Range in the future if permitted to do so by the Court or Defendants. Ex. L, Fatihah Decl., ¶ 3.

### **C. The Operation of the Gun Range**

34. The business "sells goods and items that move through interstate commerce[.]" Ex. J, Defs.' Resp. to Req. for Admission Nos. 15-16 at 13. Items manufactured or shipped from outside of Oklahoma and sold by the business include items that may be purchased and used the same day in connection with customers' enjoyment of the Gun Range, including clothing, holsters, scabbards, gun cleaning kits, ammunition, ear protection, and paper targets in multiple colors and

designs (e.g., a zombie design). Ex. A, NN Dep. Vol. I, 18:14-16, 18:23-25, 20:16-23, 21:22-24:16, & Exs. 2, 36 at 05:00-05:11; Ex. B, CN Dep. 14:21-16:14, 58:14-18 & Ex. 3, 16; Ex. K, Dep. of Kenneth Harper (“KH Dep.”) 49:14-24.

35. The business does not rent guns to customers to use at the Gun Range. Customers must bring their own guns, and there is no requirement that the guns they use at the Gun Range be manufactured in Oklahoma. Ex. A, NN Dep. Vol. I, 38:3-22. In addition, some Gun Range customers do not reside in Oklahoma and have traveled from out of state to the Gun Range. *Id.* Vol. II, 26:18-27:3 (recalling customers from Arizona, Florida, likely Arkansas, and possibly the Dominican Republic or Puerto Rico). Defendants permit customers to bring in handguns, as well as a variety of rifles and other guns, including, for example, military-style weapons, AR-15s, and AK-47s. Ex. A, NN Dep. Vol. II, 47:4-5, 152:20-153:2 & Ex. 61; *id.* Vol. II, 149:23-150:1 & Ex. 53 at 5; *id.* Vol. II, 153:3-6 & Ex. 62; *id.* Vol. II, 151:17-20 & Ex. 57; *id.* Vol. II, 163:6-14 & Ex. 80; *id.* Vol. II, 152:13-17 & Ex. 60; Ex. K, KH Dep. 19:9-12, 34:15-16.

36. The business offers firearm classes and trainings. At least one instructor traveled from out of state to the Gun Range to teach customers. Ex. H., Henderson Decl. ¶ 5, Ex. 4

37. The business is categorized as a “Recreation/Sports Website” on its Facebook page. Ex. A, NN Dep. Vol. I, 31:8-15 & Ex. 7. Mrs. Neal created the page after the business opened, and she and Mr. Neal are its administrators. *Id.* Vol. I, 31:16-23.

38. After the media covered the business’s “no Muslim policy,” Defendants used the business’s public Facebook page to thank people for supporting their “efforts to make our facility a safe place for people to enjoy shooting sports.” Ex. A, NN Dep. Vol. II, 155:11-24 & Ex. 68. In addition, through the Gun Range’s public Facebook page, Defendants have encouraged customers to visit the range for fun and relaxation and have highlighted examples of customers having fun at the business. Ex. B, CN Dep. 59:21-25 & Ex. 19 (“It’s a great weekend to go shootin! Come on out and have some fun!!”); Ex. A, NN Dep. Vol. II, 152:20-153:2 & Ex. 61 (“It’s a great day to come out to the range! Bring all your toys!”); *id.* Vol. II, 163:5-14 & Ex. 80 (“Come on out and shoot with us today! It’s gonna be a great weekend. Don’t forget about our flea market going on

as well and food bucket sale!!”); *id.* Vol. II, 149:23-150:1 & Ex. 53 at 5 (“Dad’s shoot for free all Fathers Day weekend! Come on out and put some lead down range with the kids! These guys were having fun!”); *id.* Vol. I, 38:25-39:14; *id.* Vol. II, 150:24-151:6 & Ex. 55 (announcing new family entertainment center with television: “We would like to welcome all our customers to not only our store, but our home as well! When you come shop and shoot with us, you become part of our family! Now you will have a nice comfy place to relax when you need a break from the range or are waiting on your friends and family to get done shooting!”); *id.* Vol. II, 153:3-6 & Ex. 62 (“OMGsh! My friend Lanny brought his AK47 with a arm stock and IT WAS SO MUCH FUN!!!”); *id.* Vol. II, 152:13-17 & Ex. 60 (“This beauty came to play today!”); *id.* Vol. II, 150:19-23 & Ex. 54 (“Customer trying on our handmade ghillie suit! Always fun at Save Yourself Survival and Tactical Gear and Gun Range!”); Ex. H, Henderson Decl. ¶ 6, Ex. 5 (posting that spring hours mean “6 DAYS WORTH OF SHOOTING FUN!!! YAY!!!”).

39. The business holds social events for customers and highlights them, as well as family and couples’ outings to the Gun Range, on its public Facebook page. Ex. A, NN Dep. Vol. I, 63:17-19 (“We’ve had barbecues. We’ve had picnics. We’ve had holidays. We’ve invited everybody out.”); *id.* Vol. II, 151:17-20 & Ex. 57 (“Another dad shooting with his kids. Happy Father’s Day!”); *id.* Vol. II, 151:21-24 & Ex. 58 (“Date night on the range! Those that shoot together stay together! <3”); Ex. H, Henderson Decl. ¶¶ 7-8 & Exs. 6-7 (hosting “Are You Willing To Be Free?” event and dinner).

40. Membership purchase options and prices—\$10 for a daily membership, \$100 for an individual annual membership, and \$125 for a family annual membership—have remained the same since the Gun Range’s opening. Ex. G, Defs.’ Resp. to Plf’s Interrog. Nos. 2, 3 at 9-10; Ex. A, NN Dep. Vol. I, 84:9-85:6.

41. Since the Gun Range’s opening, there have been no changes in personnel, board composition, board members’ duties, or Gun Range members’ benefits, even after Defendants started referring to the Gun Range as a Gun Club. Ex. A, NN Dep. Vol. I, 85:11-86:6; 83:25-84:3

(answering “No,” when asked, “Is the business different as a gun club than it was before you adopted that terminology?”).

42. Defendants have identified the four members of the Gun Range board as Chad and Nicole Neal and Martin and Pamela Butler. Ex. A, NN Dep. Vol. I, 54:5-6. The board does not have a formal title or name. *Id.* Vol. I, 53:25-54:4; Ex. F, MB Dep. 11:11-13; Ex. B, CN Dep. 17:22-23. There are no official Gun Range documents identifying the members of the Gun Range board. Ex. A, NN Dep. Vol. I, 74:13-19. Board members did not sign any contract, agreement, or other document in connection with becoming members of, or serving on, the board, and there is no written documentation of their duties. Ex. E, PB Dep. 17:8-11, 18:5-13; Ex. F, MB Dep. 13:23-15:5, 23:18-20; Ex. B, CN Dep. 18:15-18; Ex. A, NN Dep. Vol. I, 58:2-24; *id.* Vol. II, 40:8-11.

43. Board members are not elected by the Gun Range membership. Ex. F, MB Dep. 12:17-20; Ex. A, NN Dep. Vol. I, 55:6-9. Mrs. Neal testified that she is the head of the board. She was not elected by other board members nor Gun Range membership. Ex. A, NN Dep. Vol. I, 58:25-59:14. The board has no vice chair or vice president, secretary, or treasurer. *Id.* Vol. I, 59:15-21.

44. As of the date of their depositions, the four board members identified by Defendants had never held a board meeting in person or via phone; the board does not hold meetings, and thus there are no minutes or printed agendas relating to Gun Range business. Ex. E, PB Dep. 25:4-20; Ex. F, MB Dep. 15:16-17; Ex. A, NN Dep. Vol. I, 59:22-61:7; Ex. B, CN Dep. 18:19-21.

45. The board does not vote on or review every customer request to use the Gun Range and had never been consulted about a potential customer or member before Mr. Fatihah’s visit to the Gun Range. Ex. A, NN Dep. Vol. I, 86:21-87:15, 124:7-11; Ex. F, MB Dep. 26:21-25, 39:18-20; Ex. E, PB Dep. 31:11-15. Mrs. Neal testified that she makes the final decision as to membership for any particular individual and that the board does not have the power to override that decision. Ex. F, MB Dep. at 31:19-21; Ex. A, NN Dep. Vol. II, 40:12-18.

46. Nor does the board vote on policies for the Gun Range. The board did not vote on, or review in advance, the “Muslim free establishment” sign posted near the entrance, any version of the Gun Range rules, or the decision to incorporate the range under the title of a “Gun Club” after

this lawsuit was filed. Ex. E, PB Dep. 21:14-17, 22:12-15, 23:19-21, 39:8-12; Ex. F, MB Dep. 19:18-20, 20:18-21:13, 25:19-20, 34:24-35:6, 35:22-36:4; Ex. A, NN Dep. Vol. I, 65:7-11, 67:5-22, 75:22-76:6, 78:23-25; Ex. B, CN Dep. 18:22-24, 19:24-20:3, 46:15-17. Indeed, there are no procedures in place for conducting or recording a vote of the board with respect to any matter. Ex. A, NN Dep. Vol. I, 65:21-66:1.

47. The Board also has no authority with respect to the business's finances or staff, and the board may not hire employees and has no authority to fire the Neals or review their performance. Ex. A, NN Dep. Vol. I, 64:12-65:3; Ex. F, MB Dep. 18:18-19:14.

48. The Gun Range holds no regular or formal meetings for members. Ex. A, NN Dep. Vol. I, 63:2-12. Gun Range members are not notified when a new customer purchases a membership, whether daily or annual, and do not vote on membership applications. New members do not need a reference from a current member to purchase a membership. *See* Ex. A, NN Dep. Vol. I 123:1-10.

49. No Gun Range member has ever had a membership revoked and there are no written procedures for members to vote on revocation. Ex. A, NN Dep. Vol. I, 123:11-124:2; Ex. F. MB Dep. 38:22-39:5.

50. Defendants have advertised their business to the public without any mention that any type of application or approval process is required to use the Gun Range. Ex. A, NN Dep. Vol. II, 127:2-10 & Ex. 43 at 3; Ex. H, Henderson Decl. ¶ 9, Ex. 8 (video posted on store's public Facebook page showing where the store is located, announcing the range costs "\$10 a day," and encouraging viewers to "come out and see us"); Ex. A, NN Dep. Vol. II, 127:13-128:2 & Ex. 43 at 4 (sign advertising business on the side of Highway 69); *id.* Vol. II, 123:19-124:10, 128:3-9 & Exs. 42 at 3-4, 43 at 5 (advertisement in Muskogee Phoenix announcing, "GUN RANGE!!! Now open in Oktaha!"); *id.* Vol. II, 125:3-11 & Ex. 43 at 1-2 (advertisement in *Oklahoma Biker Magazine*, stating the location of "Save Yourself Survival and Tactical Gear" and noting that "poker runs" are welcome); Ex. H, Henderson Decl. ¶ 10, Ex. 9 (Facebook post showing billboard advertising "Gun Range" and "Carry Classes").

51. The business has offered cost-free Gun Range days on special occasions and holidays. These free Gun Range days are not restricted to members or previous customers of the range. Ex. A, NN Dep. Vol. II, 150:11-18, 148:11-150:1 & Ex. 53 (announcing free range days for Mother's Day, Father's Day, Veterans' Day, and the one-year anniversary of the business's opening). The business also sells gift certificates for Gun Range memberships. *Id.* Vol. I, 42:1-5 & Ex. 17 ("give to your favorite person this holiday season before they are gone!"). Neither the gift certificates nor Defendants' advertising of them mention that an application process or board approval is required before a gift certificate may be redeemed by the recipients. *Id.*

52. After this lawsuit was filed, Defendants amended the Gun Range rules, Ex. A, NN Dep. Vol. I, 86:13-20 & Ex. 27, to state that they "will not serve" the following:

- (a) Anyone who is either directly or indirectly associated with terrorism in any way;
- (b) Anyone associated in any way with an organization that is associated with terrorism;
- (c) Anyone who causes, or seeks to cause, any disturbance whatsoever at the Gun Club;
- (d) Anyone who is not permitted to purchase or possess a firearm under any local, state, or federal guideline;
- (e) Anyone who seeks to do harm to the interests of the United States;
- (f) Anyone, in the sole judgment of the Gun Club, its owners, its employees, or its volunteers, who may pose a threat to public safety based on the person's behavior, comments, history, dress, background, or other such indicia indicating that the person may be a threat to public safety. This judgment will not be based solely upon a person's race, color, religion, or sex.

53. Notwithstanding these newly amended rules, customers seeking to purchase a daily or annual membership are not asked about or required to disclose (1) any medical conditions that might affect their ability to shoot, (2) any pending criminal charges for gun-related crimes, (3) any pending criminal charges for domestic violence, (4) whether they are subject to a protective order for domestic violence, (5) any pending criminal charges for other violent crimes, (6) any past convictions for domestic violence or other crimes involving violence, (7) any pending charges for

crimes involving unlawful possession of guns, (8) any convictions for crimes involving unlawful possession of guns, (9) any pending charges for terrorist activity, (10) any past convictions for crimes relating to terrorist activity, (11) any history of drug or alcohol abuse, or (12) any pending criminal charges relating to drug or alcohol use. Ex. A, NN Dep. Vol. II, 19:19-22:23.

54. Notwithstanding the newly amended rules, customers who purchase daily or annual memberships are not asked about, and do not have to disclose, whether they are legally prohibited from owning a gun. Defendants do not know whether all current Gun Range members are permitted to purchase or possess a firearm. Ex. A, NN Dep. Vol. II, 23:21-25; *id.* Vol. I, 116:2-5.

55. Notwithstanding the newly amended rules, neither Defendants nor the board conducts a background check or online background investigation of all daily pass holders or annual members, or customers seeking to purchase a daily pass or annual membership, to determine whether they meet the criteria listed in the revised Gun Range rules. Ex. A, NN Dep. Vol. I, 86:21-87:15, 105:25-106:23.

56. Notwithstanding the newly amended rules, Defendants do not ask customers seeking to purchase daily passes or annual memberships which organizations they are members of, and customers are not required to disclose this information before being allowed onto the Gun Range. Ex. A, NN Dep. Vol. I, 106:24-107:4; Ex. B, CN Dep. 51:23-52:1.

57. Notwithstanding the newly amended rules, Defendants do not take any steps to ensure that every customer who purchases a membership, whether daily or annual complies with the parts (a) and (b) of the policy, and Defendants do not know whether all current members of the Gun Range comply with it. Ex. A, NN Dep. Vol. I, 107:16-108:24.

58. Notwithstanding the newly amended rules, months after this lawsuit was filed, Mrs. Neal once again publicly affirmed the business's "no Muslim policy." On June 4, 2016, after announcing on Facebook that she had a call with her attorney about the "Muslim lawsuit," Mrs. Neal responded to further inquiry by explaining, "Yes, I own Save Yourself Survival and Tactical Gear and Gun Club in Oktaha, the only Muslim free gun range in Oklahoma, and I'm being sued by CAIR and ACLU[.]" Ex. A, NN Dep. Vol. II, 162:12-22 & Ex. 79. (Mrs. Neal further stated



“Thank you!” in response to a comment made by another person: “Oh my! I pray you win! Muslims shouldn't be allowed to own a gun, much less go to a gun store, or shooting range. They need to be banned from the country! PERIOD! They are the devils people. I'm proud you stood your ground.”).

### ARGUMENT

Enacted against the backdrop of segregation and Jim Crow, Title II was “the heart and soul” of the Civil Rights Act of 1964. 1 Niki L.M. Brown & Barry M. Steniford, eds., *The Jim Crow Encyclopedia* 149 (2008). In banning discrimination by operators of public accommodations, Title II recognized “the humiliation, frustration, and embarrassment” that occurs when individuals are told they are “unacceptable as a member of the public” because of their race, religion, or other protected characteristics and sought to vindicate “the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.” S. Rep. No. 88-872, at 16-17 (1964). *Accord Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250 (1964) (upholding constitutionality of Title II). As several members of Congress at the time of its passage explained, the right of equal access to public accommodations “is so distinctive in its nature that its denial constitutes a shocking refutation of a free society.” H.R. Rep. No. 88-914, at 7 (1963).

When Defendants decided to operate a recreational shooting range open to the public, they became subject to Title II’s restrictions and their customers became the beneficiaries of its protections. 42 U.S.C. § 2000a. There is overwhelming, clear, and undisputed evidence that Defendants violated Title II by denying Mr. Fatihah access to the shooting range because of his Muslim faith. Indeed, Defendants explicitly stated that they would not allow Muslims at the Gun Range. That policy is announced in writing as customers enter the business, and Defendants have repeatedly affirmed the policy in social media posts and media interviews. It is further undisputed that, after Mr. Fatihah disclosed his Muslim faith to Defendants, they discussed his religious beliefs with him and then prohibited him from using the Gun Range, claiming his use had to be approved

by the “board”—a process they had never before applied to any customer.<sup>8</sup> Even viewing these facts in the light most favorable to Defendants and drawing all reasonable inferences in their favor, as the Court must at this phase, *see Dewitt v. Sw. Bell Tel. Co.*, 845 F.3d 1299, 1306 (10th Cir. 2017), Plaintiff is entitled to summary judgment on his Title II claim.<sup>9</sup>

**I. THE GUN RANGE IS SUBJECT TO TITLE II’S PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF FAITH.**

The undisputed facts show that the Gun Range is a place of entertainment under 42 U.S.C. § 2000a(b)(3). For purposes of Title II, “entertainment” is defined as “the act of diverting, amusing, or causing someone’s time to pass agreeably” and includes participation in a “sport or activity.” *Daniel v. Paul*, 395 U.S. 298, 306-07 & n.7 (1968) (quoting Webster’s Third New International Dictionary, at 757). The Gun Range qualifies under that definition and “indeed it advertises itself as such.” *See id.* at 306; *see* SUF ¶¶ 37-39, 50-51. Target shooting “provides fun and enjoyment for millions of Americans,” including Defendants’ customers. *See Target Shooting in America*, National Shooting Sports Foundation, 2 (2013), <http://www.nssf.org/PDF/research/TargetShootingInAmericaReport.pdf>. For these reasons, courts have found that similar businesses qualify as places of public accommodation. *See, e.g., Durham v. Red Lake Fishing & Hunting Club, Inc.*, 666 F. Supp. 954, 959 (W.D. Tex. 1987) (holding that fishing and hunting club was a

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<sup>8</sup> In their affirmative defenses, Defendants wrongly assert that Mr. Fatihah lacks standing. Answer to Am. Compl. p. 9, ¶ 6, ECF No. 36. Mr. Fatihah suffered an injury in fact because he was denied access to Defendants’ place of business, and continues to be denied access to this day. Statement of Material Undisputed Facts (“SUF”) ¶¶ 17, 28. This injury is neither conjectural nor hypothetical: He physically entered the business and was told he would not be permitted access. His injury is traceable to the challenged action of the Defendants: They are the persons who denied him access. And his injury would be redressed by the relief requested—an injunction affording him the access of which he was deprived. Nothing more is required of Plaintiff to demonstrate standing. *See Tandy v. City of Wichita*, 380 F.3d 1277, 1283 (10th Cir. 2004).

<sup>9</sup> Plaintiff also has asserted a claim under Oklahoma’s public accommodations law, Okla. Stat. Ann. Tit. 25, §§ 1401-1402 (2017). This motion seeks summary judgment only on his Title II claim. Under Title II, Mr. Fatihah seeks only injunctive relief (and, if appropriate, attorneys’ fees and costs), but no damages. Should the Court grant this motion and enjoin Defendants’ unlawful conduct, Plaintiff’s state-law claim would be superfluous and this case would conclude.

“place of entertainment” because hunting and fishing are recreational past times); *Sayed-Aly v. Tommy Gun, Inc.*, 170 F. Supp. 3d 771, 775 (E.D. Pa. 2016) (holding that indoor firearm range qualified as a place of “accommodation, resort or amusement” under Pennsylvania’s public-accommodations law); *Doe v. Div. of Youth & Family Servs.*, 148 F. Supp. 2d 462, 495 (D.N.J. 2001) (noting that the New Jersey Law Against Discrimination lists “shooting gallery” as a place of public accommodation); *Concord Rod & Gun Club, Inc. v. Mass. Comm’n Against Discrimination*, 402 Mass. 716, 718 (Ma. 1988) (upholding determination that fishing and gun club, which operated trap shooting range and a pistol range on its property, was a “place of public accommodation, resort or amusement” subject to Massachusetts antidiscrimination statute).

The undisputed facts also show that the Gun Range’s operations affect interstate commerce because the business “customarily presents . . . sources of entertainment which move in commerce.” 42 U.S.C. § 2000a(c). Customers may purchase various items from the business to use at the Gun Range in connection with their recreational shooting, including clothing, holsters, gun cleaning kits, ear protection, ammunition, and targets; these items are manufactured and shipped from outside of Oklahoma, and thus move in interstate commerce. SUF ¶ 34. Defendants have even offered a training class taught by an instructor who travelled to the Gun Range from out of state. SUF ¶ 36. Finally, Gun Range customers—including those from out-of-state—bring their own guns, which need not be manufactured in Oklahoma, for use at the range. SUF ¶ 35. Based on these undisputed facts, the Gun Range affects interstate commerce, as contemplated by Title II. *See, e.g., Daniel*, 395 U.S. at 308 (recreational lake club purchased of boats from out of state company and juke box manufactured out of state); *United States v. Lansdowne Swim Club*, 894 F.2d 83, 87 (3d Cir. 1990) (swim club’s operations affected interstate commerce because the swim club’s sliding board was manufactured out of state and some guests were from out of state); *see also Evans v. Seaman*, 452 F.2d 749, 751 (5th Cir. 1971) (holding that roller skates used at roller rink were “sources of entertainment [which] move in commerce” because the skates were purchased out of state); *Durham*, 666 F.Supp. at 959 (holding that hunting and fishing club

“affected interstate commerce by allowing various members and guests to bring in boats, camping equipment and guns which had moved in interstate commerce”).

**II. PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT BASED ON THE UNREBUTTED DIRECT EVIDENCE OF DEFENDANTS’ DISCRIMINATORY TREATMENT OF MR. FATIHAH.**

“Discrimination claims brought pursuant to Title II can be proven by direct or circumstantial evidence.” *McLaurin v. Waffle House, Inc.*, 178 F. Supp. 3d 536, 545 (S.D. Tex. 2016) (citing *Fahim v. Marriott Hotel Servs., Inc.*, 551 F.3d 344, 349 (5th Cir. 2008)). *Accord Tyler v. RE/MAX Mountain States, Inc.*, 232 F.3d 808, 812 (10th Cir. 2000) (A “plaintiff alleging . . . discrimination may prove intentional discrimination through either direct or circumstantial evidence”).<sup>10</sup> While the three-part burden-shifting analysis set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), is used in cases involving circumstantial evidence,<sup>11</sup> that test does not apply when a plaintiff presents direct evidence of discrimination. *See Long v. Laramie Cty. Cmty. Coll. Dist.*, 840 F.2d 743, 748–49 (10th Cir. 1988). Instead, as the Tenth Circuit explained in the context of a Title VII sex discrimination case, “[i]f the district court finds that discrimination has been established by the plaintiff’s direct evidence, the employer must do more than merely articulate a nondiscriminatory justification and the burden shifts to the employer to prove by a preponderance of the evidence that the adverse employment action would have been taken even in the absence of the impermissible motivation.” *Id.*; *see also E.E.O.C. v. Alton Packaging Corp.*, 901

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<sup>10</sup> Because there is “scant case law under Title II” of the Civil Rights Act of 1964, “courts faced with a Title II case frequently borrow Title VII authority” in analyzing evidence of discrimination for summary judgment purposes. *See Fahim*, 551 F.3d at 349 (applying Title VII case law to Title II racial discrimination claim); *Lansdowne Swim Club*, 894 F.2d at 88 & n.7 (same).

<sup>11</sup> Under the circumstantial evidence standard, a plaintiff bears the burden of showing that (1) he is a member of a protected class; (2) he attempted to contract for the services of a public accommodation; (3) he was denied those services; and (4) the services were made available to similarly situated persons outside his protected class. *Fahim*, 551 F.3d at 350. If he makes this *prima facie* showing, the defendant is required to identify a legitimate, non-discriminatory reason for denial of service. *Id.* at 350. The burden then shifts back to the plaintiff to prove that the defendant’s reason is either “pretextual or, if true, was not the ‘motivating factor’” for denying service. *Id.* at 350-51.

F.2d 920, 925 (11th Cir. 1990) (holding in racial discrimination case that “[p]roduction of nondiscriminatory reasons is not enough in a direct evidence case; the defendant must prove that there was a separate, racially-neutral reason for its failure to promote the plaintiff”); *Perry v. Kunz*, 878 F.2d 1056, 1059 (8th Cir. 1989) (“The plaintiff’s proof by means of direct evidence of discrimination does not merely fulfill his burden of showing a prima facie case; it suffices to make his entire case and throws the burden on the defendant of proving, at least by a preponderance of the evidence . . . that it would have rejected the plaintiff even in the absence of discrimination.”) (quoting 2 Larson, *Employment Discrimination*, § 50.62 at pp. 10–67 to 10–68 (1988)).

This case is properly adjudicated under the “direct evidence” framework in light of the fact that the Defendants literally posted a sign at the entrance of their business announcing their discriminatory policy against Muslims.

**A. The Direct Evidence of Defendants’ Discriminatory Conduct Is Overwhelming and Unrebutted.**

There is ample direct evidence of Defendants’ discrimination. Direct evidence of discrimination may include “proof of an existing policy which itself constitutes discrimination . . . or oral or written statements on the part of a defendant showing a discriminatory motivation.” *See Hall v. U.S. Dep’t of Labor, Admin. Review Bd.*, 476 F.3d 847, 854–55 (10th Cir. 2007) (internal quotation marks and citations omitted); *see also Jones v. Denver Post Corp.*, 203 F.3d 748, 752 (10th Cir. 2000) (noting that an employer’s policy that is discriminatory on its face is direct evidence of discrimination); *James v. Heuberger Motors, Inc.*, No. 10-CV-01648-CMA-KLM, 2011 WL 5331600, at \*4 (D. Colo. Nov. 4, 2011), amended, No. 10-CV-01648-CMA-KLM, 2011 WL 6152950 (D. Colo. Dec. 12, 2011) (“[A]n employer’s policy that expressly prohibits hiring people of a certain race or national origin would constitute direct evidence of discrimination.”). For example, a letter from a credit agency stating that “no whites” may qualify for loans to purchase certain farmland properties constitutes direct evidence of racial discrimination. *Moore v. U.S. Dep’t of Agric. on Behalf of Farmers Home Admin.*, 55 F.3d 991, 995 (5th Cir. 1995). So too do statements by an employer that “he would never place a female

driver at the front counter” and demands by an employer that a manager “‘put a stop’ to and discourage the female drivers’ inquiries about filling counter vacancies.” *King v. Auto, Truck, Indus. Parts & Supply, Inc.*, 21 F. Supp. 2d 1370, 1381 (N.D. Fla. 1998). Also found to constitute direct evidence are statements by the president of an auto dealership “referr[ing] to African Americans as ‘niggers’ and ‘monkeys’” and stating that “he was particularly interested in African American purchasers because of their inferior intellect and fewer credit options.” *U.S. ex rel. Cooper v. Auto Fare, Inc.*, No. 3:14-CV-0008-RJC, 2014 WL 2889993, at \*3 (W.D.N.C. June 25, 2014) (“Remarks by decision makers can be direct evidence of discriminatory intent.”). *Accord Green v. Dillard’s, Inc.*, 483 F.3d 533, 540 (8th Cir. 2007) (“While direct evidence is not necessary to raise a reasonable inference of discriminatory intent, calling customers ‘niggers’ is direct evidence of discrimination.”).

Mr. Fatihah has produced an abundance of analogous direct evidence demonstrating Defendants’ discrimination. The Gun Range has adopted an explicit, facially discriminatory “no Muslim policy,” and has broadcast that policy via various public means, including by posting a sign near the entry of the business, posting notices on Facebook, and giving interviews to media outlets. Through their written and oral statements, Defendants have repeatedly made clear that they will not serve Muslims, SUF ¶¶ 1-4, labelling them terrorists, “muzrats,” and “towel heads.” SUF ¶¶ 2, 3, 5, 26.

When Mr. Fatihah entered the business on October 23, 2015, Defendants did not object to admitting him to the Gun Range—until, that is, he revealed he is Muslim. SUF ¶¶ 12-13. After he disclosed his religion, Mrs. Neal brought up Sharia law, arguing that Muslims want Americans to adopt it and “change our ways,” while Mr. Neal declared that Sharia law “says to kill the infidels, lie to the infidels. SUF ¶¶ 14, 16. Even after Mr. Fatihah made clear that those were not his religious beliefs, Defendants informed him that he would not be admitted to the Gun Range that day and that his paperwork would have to be submitted to the “board” for approval before he could use the range—a requirement that Defendants had never previously imposed on any customer seeking to purchase either a daily or annual membership. SUF ¶¶ 13, 17, 45. Just one day later,

Mr. Neal called Mr. Fatihah a “muzrat” when recounting the visit to another gun store owner who has also banned Muslims. SUF ¶ 26. And eight months later, after this lawsuit was filed, Mrs. Neal continued to boast publicly that she owns the “only Muslim free gun range in Oklahoma.” SUF ¶ 58. Though the board never held a vote on Mr. Fatihah’s “paperwork,” SUF ¶ 32, Defendants eventually informed him in their discovery responses that he would never be permitted to use the Gun Range. SUF ¶ 28.

Defendants’ “no Muslim policy,” and in particular their sign designating the Gun Range a “Muslim free establishment,” harken back to the discriminatory signage that pervaded public accommodations during the Jim Crow era, giving rise to Title II. *See, e.g., Thompson v. U.S. Dep’t of Hous. & Urban Dev.*, 348 F. Supp. 2d 398, 405 (D. Md. 2005) (“NO JEWS, DOGS OR COLOREDS ALLOWED.”); Prints and Photographs Online Catalog, *Birney, Montana. People who came to a Saturday night dance around the bar*, Library of Congress <http://www.loc.gov/pictures/resource/fsa.8c15746/> (last visited Apr. 27, 2017) (“positively NO beer sold to Indians”); *The Civil Rights Act of 1964: A Long Struggle for Freedom, Jim Crow Restrictions*, Library of Congress, <http://www.loc.gov/exhibits/civil-rights-act/segregation-era.html#obj024> (“No Dogs, Negroes, Mexicans”) (last visited Apr. 27, 2017).

As Martin Luther King described them in his *Letter from a Birmingham Jail*, the “nagging signs” served to “humiliate” their targets “day in and day out.” *Letter from a Birmingham Jail* (Apr. 16, 1963), reproduced in Martin Luther King, Jr., *The Essential Martin Luther King, Jr.* (Clayborn Carson, ed.). These discriminatory policies were premised on irrational fears and false stereotypes painting African Americans and people of color as dirty, barbaric, and violent; blacks were deemed unsuitable to share the same water, food, and recreational space as whites. Businesses that excluded blacks and other “undesirable” groups were marketed as “safe spaces where white families would find cleanliness and order.” *See* Victoria W. Wolcott, *Race, Riots, and Roller Coasters: The Struggle over Segregated Recreation in America* (2012) 10. Capitalizing on similar stereotypes and fears of Muslims, Defendants have merely substituted faith for race. *See, e.g.,* SUF ¶ 4a (“Our customers really deemed it the necessary. They wouldn’t feel safe being on a range

with a Muslim out there practicing as well.”). In the process, Defendants have not only excluded Muslims from a public accommodation, but they also have stoked vitriolic opprobrium against Muslims at a time when the Muslim community is already marginalized and suffering unprecedented discrimination and harassment. SUF ¶ 5c (sharing an image on the business’s Facebook page warning that “*Islamic Terrorism is coming here. So called ‘moderate Muslims’ are waiting for their memo to act,*” and urging people to buy a firearm and visit shooting ranges); SUF ¶¶ 3-5.

With the shameful pedigree of Defendants’ “no Muslim policy” and discriminatory signage, it is difficult to imagine more direct evidence of the type of discrimination barred by Title II. *See CAIR Florida, Inc. v. Teotwawki Investments, LLC*, No. 15-CV-61541, 2015 WL 11198249, at \*3 & n.2 (S.D. Fla. Nov. 24, 2015) (cautioning, in case where gun store owner declared his business a “Muslim Free Zone,” that “Title II of the Civil Rights Act was designed to redress the very type of circumstances presented by the instant allegations”). *Cf. Blow v. North Carolina*, 379 U.S. 684, 684–85 (1965) (vacating indictments against African Americans who sought to patronize restaurant that “served whites only and carried a sign to that effect on its front door”); *United States v. City of Jackson*, 318 F.2d 1, 5–6 (5th Cir. 1963) (explaining that “segregation signs at the terminals in Jackson carry out” policy of segregation); *Bailey v. Patterson*, 323 F.2d 201, 204 (5th Cir. 1963) (recounting that court had directed city to remove segregations signs “and any others indicating or suggesting that any of the terminal facilities are for the use of persons of any particular race or color”).

Indeed, Defendants’ “no Muslim policy” is shocking precisely because it is so rare today that individuals and businesses who are subject to anti-discrimination laws act with such overt prejudice. *See, e.g., Nichols v. Frank*, 42 F.3d 503, 512 (9th Cir. 1994) (“Landlords offering apartments for rent no longer post notices saying ‘Whites Only.’ Instead, they will tell African–Americans and other minorities that the apartment has already been rented. Employers who do not wish to hire minorities no longer announce that such is their policy. They now cover up their misdeeds and offer false explanations for their employment misconduct.”).



**B. Defendants Cannot Show They Would Have Denied Mr. Fatihah Access to the Gun Range Even Absent Their “No Muslim Policy.”**

Given Plaintiff’s direct evidence of discrimination, the burdens of production and persuasion shift to Defendants, who—in order to avoid liability—must prove by a preponderance of the evidence that they would have denied Mr. Fatihah service in 2015, and would continue to do so in the future, “even in the absence of the impermissible motivation.” *Long*, 840 F.2d at 748–49. Defendants may create a genuine dispute of fact sufficient to avoid summary judgment *only* “if a rational jury could find in [their] favor.” *See Dewitt*, 845 F.3d at 1306 (internal quotation marks omitted); *Mo. Pac. R. Co. v. Kan. Gas & Elec. Co.*, 862 F.2d 796, 800 (10th Cir. 1988) (“[N]o triable issue of fact is present if the evidence in the record is insufficient to support a verdict for the party opposing a motion for summary judgment.”).

Aware of the damning evidence demonstrating their discrimination against Mr. Fatihah, Defendants will likely seek to avoid liability by manufacturing other reasons to justify their treatment of him. Throughout discovery, for example, Defendants have claimed they denied Mr. Fatihah access to the Gun Range not because he is Muslim but because they deemed him a public-safety threat, contending that (1) Muslims are required to kill and lie to non-Muslims, (2) he is associated with a terrorist organization because he serves on the board of an Oklahoma Muslim civil rights organization, and (3) he was allegedly “threatening” during his visit to the business, causing them to fear for their lives. Ex. A, NN Dep. Ex. 36 at 08:36-08:47; *id.* Vol. II, 106:5-23, 71:19-72:11; Ex. B, CN Dep. 42:17-20; Ex. G, Defs.’ Resp. to Pl.’s Interrog. No. 1 at 6-7.

As to the first two “justifications,” they give the lie to Defendants’ claim that their exclusion of Mr. Fatihah was not motivated by his faith. To allow Defendants to defend their intentional discrimination on the basis of religion by relying on the precise stereotypes about that faith that underlie their animus would turn Title II on its head. *See, e.g., Aros v. McDonnell Douglas Corp.*, 348 F. Supp. 661, 666 (C.D. Cal. 1972) (“[T]he message of the [Civil Rights] Act of [1964] is clear: every person is to be treated as an individual, with respect and dignity. Stereotypes based upon race, color, religion, sex or national origin are to be avoided.”); *cf., e.g.,*

*E.E.O.C. v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 316-17 (4th Cir. 2008) (reversing grant of summary judgment for employer in hostile environment case where Muslim employee was subjected to severe and pervasive anti-Muslim harassment and stereotypes, including slurs such as “towel head” and “Taliban” and other “anti-Muslim crudities that associated [the plaintiff], and the Muslim faith, with violence and terrorism”). A business that today enforces a “Whites Only” policy hardly could defend itself, as many once did, by parroting inherently racist beliefs that black customers are too dirty, dangerous, or otherwise unfit to share public space with white customers. *Cf. Powers v. Ohio*, 499 U.S. 400, 410 (1991) (“We may not accept as a defense to racial discrimination the very stereotype the law condemns.”).

It should go without saying, but Defendants’ “off-the-wall theory that all members of one of the world’s major religions are terrorists,” *see Unus v. Kane*, 565 F.3d 103, 129 (4th Cir. 2009), and are compelled to commit violence is absolutely false and cannot be reconciled with the fact that millions of American Muslims, and tens of millions of Muslims worldwide, live their lives and practice their faith peacefully. Defendants’ ignorance and fear about the Muslim faith and Muslim civil society groups is no defense to unlawful discrimination.<sup>12</sup> *See Exodus Refugee Immigration, Inc. v. Pence*, 838 F.3d 902, 904-05 (7th Cir. 2016) (“[The Governor] argues that his policy of excluding Syrian refugees is based not on nationality and thus is not discriminatory, but is based solely on the threat he thinks they pose to the safety of residents of Indiana. But that’s the equivalent of his saying (not that he does say) that he wants to forbid black people to settle in Indiana not because they’re black but because he’s afraid of them . . . But that of course would be

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<sup>12</sup> Defendants’ opinions about CAIR are just another variation on their anti-Muslim prejudice. It is undisputed that U.S Department of State has explicitly rejected Defendants’ argument that CAIR—a recognized and longstanding civil rights group dedicated to protecting and advancing Muslims’ rights—is a terrorist organization, and that neither CAIR-National nor CAIR-Oklahoma has ever been indicted for or convicted of any criminal activity. SUF ¶ 23. Moreover, Mr. Fatihah is not on the board of CAIR-National, but rather CAIR-Oklahoma, a separate organization. SUF 21-22. And Defendants indisputably *had no knowledge* of Mr. Fatihah’s association with CAIR-Oklahoma when they denied him access to the range on October 23, 2015. SUF ¶ 20.

racial discrimination, just as his targeting Syrian refugees is discrimination on the basis of nationality.”).

Nor can Defendants justify their discrimination by relying on their customers’ ignorance and fear about Muslims. SUF ¶ 4; *see, e.g., Pleener v. New York City Bd. of Educ.*, 311 F. App’x 479, 482 (2d Cir. 2009) (“We agree that federal law does not permit an employer to discriminate based on race to accommodate the actual or perceived invidious biases of its clientele.”); *Lam v. Univ. of Hawaii*, 40 F.3d 1551, 1560 n. 13 (9th Cir.1994) (“The existence of . . . third party preferences for discrimination does not, of course, justify discriminatory hiring practices.”); *Diaz v. Pan Am. World Airways, Inc.*, 442 F.2d 385, 389 (5th Cir. 1971) (holding that refusal to hire men as flight attendants violated Title VII, despite “fact that Pan Am’s passengers prefer female stewardesses” because “it would be totally anomalous if we were to allow the preferences and prejudices of the customers to determine whether the sex discrimination was valid” and Title VII was intended to overcome these “very prejudices”).

As to the Defendants’ third purported reason for denying Plaintiff service—his own behavior—the record evidence does not even begin to support the conclusion that Mr. Fatihah posed a danger to anyone. This claim is wholly belied by all of the objective and undisputed record evidence, and no reasonable jury could conclude Plaintiff posed a threat to anyone. *See Estate of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255, 1259 (10th Cir. 2008) (“The nonmoving party ‘must do more than simply show that there is some metaphysical doubt as to the material facts . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’”). The audio recording of Mr. Fatihah’s visit demonstrates that he was calm and polite throughout his visit. SUF ¶¶ 11-18; *see generally* Ex. A, NN Dep. Ex. 36. Moreover, it is undisputed that Mr. Fatihah immediately left the business without incident after Defendants stated that he would not be allowed to use the range. SUF ¶ 18. It is also undisputed that Defendants never called law enforcement to report Mr. Fatihah or file a report against him. SUF ¶ 25. When Mr. Fatihah called the Gun Range weeks later to check on the status of his “board approval,” Mrs. Neal (despite claiming now that she feared for her life during Mr.

Fatihah’s visit to the business and Mr. Fatihah being, at the time, the only customer in the history of the business who required “board consideration”) did not even recall who he was. SUF ¶ 27. Finally, in a message written the following day regarding Mr. Fatihah’s visit, Mr. Neal did not mention any threatening behavior by him. SUF ¶ 26.

In sum, Defendants have failed to “marshal[] sufficient evidence requiring submission to the jury to avoid summary judgment.” *See Dewitt*, 845 F.3d at 1306 (internal quotation marks omitted). As here, “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007) (holding that summary judgment should have been granted to defendant where videotape evidence of plaintiff’s reckless driving “so utterly discredited” his version of events that “no reasonable jury could have believed him”). Mr. Fatihah is entitled to summary judgment on his Title II claim.

**C. The First Amendment Does Not Prevent This Court From Considering Defendants’ Sign or Other Speech As Part of the Discrimination Analysis.**

Defendants try to evade the consequences of their unlawful discriminatory conduct by invoking the First Amendment as an affirmative defense, no fewer than three times. Answer to Am. Compl. pp. 8-9, ECF No. 36. Specifically, they argue that their “Muslim Free” sign is “political and public issue speech such that any cause of action based on this speech is barred by the First and Fourteenth Amendments.” *Id.* at 8, ¶ 2; *see also id.* at 9 ¶¶ 4-5. But there is nothing improper or unconstitutional about considering a defendant’s speech as part of a discrimination case. On the contrary, as discussed above, courts routinely consider evidence of written and oral statements made by defendants in discrimination cases, including cases brought under the Civil Rights Act of 1964. *Supra* pp. 23-29.

A defendant’s speech often plays a central role in the discrimination analysis because it is usually an integral part of the illegal discriminatory conduct or, at a minimum, consideration of the speech is necessary to elucidating the Defendant’s discriminatory animus. *Cf., e.g., Int’l Bhd.*

of *Teamsters v. United States*, 431 U.S. 324, 365 (1977) (“[I]f an employer should announce his policy of discrimination by a sign reading ‘Whites Only’ on the hiring-office door, his victims would not be limited to the few who ignored the sign and subjected themselves to personal rebuffs.”). In the context of enforcing antidiscrimination laws, then, regulating discriminatory speech that is integral to conduct, or considering it as part of the discrimination analysis to elucidate an unlawful motive for conduct, does not give rise to a First Amendment claim or defense. As the Supreme Court has explained:

Congress, for example, can prohibit employers from discriminating in hiring on the basis of race. The fact that this will require an employer to take down a sign reading “White Applicants Only” hardly means that the law should be analyzed as one regulating the employer’s speech rather than conduct.

*Rumsfeld v. Forum for Academic & Institutional Rights*, 547 U.S. 47, 62 (2006). *Accord Dixon v. Int’l Bhd. of Police Officers*, 504 F.3d 73, 84 (1st Cir. 2007) (“[T]he idea that employers can be held liable for speech . . . is inseparable from the very purpose of antidiscrimination statutes.”); *United States v. Sayer*, 748 F.3d 425, 433-434 (1st Cir. 2014) (speech that is integral to unlawful conduct is not protected by the First Amendment).

Defendants’ discriminatory sign and other written and oral comments are direct evidence of the very type of conduct that Title II prohibits: a discriminatory refusal to offer service on the basis of religion. More than that, Defendants’ sign and other statements are integral to their unlawful conduct because they are the *vehicles* through which Defendants both communicate the business’s discriminatory policy to the public *and* enforce it. *See* SUF ¶ 4f (Mrs. Neal explaining that Defendants put up their sign to “give them [Muslims] forewarning so they don’t have to come in here and I have to tell them to go away”); SUF ¶ 1-5, 38, 58. Accordingly, Defendants have no free speech defense. *See Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949) (“[I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.”).

A contrary conclusion would nullify this nation's civil rights laws. A place of business that discriminates against a would-be customer inevitably does so by *telling* the customer that he or she will not be served. If such speech were granted blanket First Amendment protection and were somehow entirely excluded from the analysis of a discrimination claim, the entire edifice of federal civil rights law would crumble. Any lunch counter could, for instance, refuse service to black citizens simply by asserting that its statements announcing such a policy to would-be patrons are intended only to make a political point. Such a result cannot lie given the history and express purposes of Title II. *Supra* pp. 20, 26.

### CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter summary judgment in his favor on his Title II claim and enjoin Defendants from denying him access to the Gun Range.

*/s/ Brady Henderson*

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