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INTRODUCTION

Having declined to do any of its own discovery, Defendant City of Tampa (“Tampa” or the “City”) seeks to avoid certain of Plaintiffs’ verified complaint allegations, which constitute summary judgment evidence, by moving to strike what it cannot factually refute. The Court should deny the City’s motion.

ARGUMENT

I. PLAINTIFFS’ VERIFIED COMPLAINT ALLEGATIONS ARE ADMISSIBLE AS SUMMARY JUDGMENT EVIDENCE UNDER RULE 56.

A. Plaintiffs’ Verified Complaint Allegations are Admissible as Summary Judgment Evidence Even if Self-Serving.

Plaintiffs do not dispute that a verified complaint is equivalent to an affidavit for summary judgment purposes. (Mot. Strike 2.) *See, e.g., Sears v. Roberts*, 922 F.3d 1199, 1206 (11th Cir. 2019). To be sure, there is nothing improper about a party’s “rel[ying] very heavily on his own statements in . . . the verified complaint” for summary judgment purposes. *See Comer v. City of Palm Bay*, 171 F. Supp. 2d 1307, 1313 (M.D. Fla. 2000). “[S]o long as Civil Rule 56(c)(4) is satisfied, the verified allegations in a complaint are treated as evidence at the summary judgment stage.” *PNC Bank Nat’l Ass’n v. Wilnic Properties, LLC*, No. 5:16-CV-66-OC-PRL, 2017 WL 202609, at *1 (M.D. Fla. Jan. 18, 2017).

And while it is true that “[a]n affidavit cannot be conclusory. . . nothing in Rule 56 (or, for that matter, in the Federal Rules of Civil Procedure) prohibits an affidavit from being self-serving.” *United States v. Stein*, 881 F.3d 853, 857 (11th Cir. 2018) (citation omitted); *see also Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1253 (11th Cir. 2013) (“To be sure, [plaintiff’s] sworn statements are self-serving, but that alone does not permit us to disregard them at the summary judgment stage.”). “[A] litigant’s self-serving statements based on personal knowledge or observation” are appropriately considered for summary judgment purposes. *Stein*, 881 F.3d at 857.

B. The City Must Refute Plaintiffs’ Verified Complaint Allegations with Summary Judgment Evidence Beyond General Denials in the Pleadings.

Also under Rule 56, “[i]f a party . . . fails to address another party’s assertion of fact as required by Rule 56(c), the court may . . . consider the fact undisputed for purposes of the motion [and] grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it” Fed. R. Civ. P. 56(e). “The non-moving party may not simply rest on the pleadings, but must use affidavits, depositions, answers to interrogatories, or other admissible evidence to demonstrate that a material fact issue remains to be tried.” *PNC Bank Nat’l Ass’n v. Wilnic Properties, LLC*, No. 5:16-CV-66-OC-PRL, 2017 WL 202609, at *3 (M.D. Fla. Jan. 18, 2017). “[G]eneral denial is not sufficient to preclude summary judgment” *Cadence Bank, N.A. v. Windolf*, No. 5:13-CV-222-RS-GRJ, 2015 WL 473835, at *2 (N.D. Fla. Feb. 4, 2015).

II. THE CITY FAILS TO DEMONSTRATE GROUNDS FOR STRIKING PLAINTIFFS’ VERIFIED COMPLAINT ALLEGATIONS.

The First Amended Verified Complaint (“FAVC”) allegations identified in part II.i of the City’s argument (Tampa Mot. Strike 5–6) are not impermissibly conclusory because they reflect Plaintiffs Vazzo’s and Pickup’s personal knowledge and observations regarding their own clients and practices.

The FAVC allegations identified in part II.ii of the City’s argument (Mot. Strike 6–8) are not impermissibly conclusory because they reflect Plaintiffs Vazzo’s and Pickup’s personal knowledge and observations regarding their own clients and practices in relation to Tampa’s Ordinance.

The FAVC allegations identified in part II.iii of the City's argument (Mot. Strike 8-9) are not impermissibly conclusory because they reflect Plaintiff New Hearts Outreach's personal knowledge and observations regarding its own purposes, goals, and activities.

The FAVC allegations identified in part II.iv of the City's argument (Mot. Strike 9-10) are not impermissibly conclusory because they reflect Plaintiffs' personal knowledge and observations regarding their own goals and intentions for their counseling practices and referrals.

The FAVC allegations identified in part II.v of the City's argument (Mot. Strike 10) are not impermissibly conclusory because they reflect Plaintiffs Vazzo's and Pickup's personal knowledge and observations regarding their own clients and practices in relation to Tampa's Ordinance.

Because the City has not produced summary judgment evidence to refute Plaintiffs' verified allegations identified herein, beyond general denials in the City's Answer (D.165) (Mot. Strike 4 n.2), the Court should consider the facts undisputed for purposes of Plaintiffs' Motion for Summary Judgment. *See* Fed. R. Civ. P. 56(e); *PNC Bank*, 2017 WL 202609, at *3; *Cadence Bank*, 2015 WL 473835, at *2.

CONCLUSION

For all of the foregoing reasons, the City's Motion to Strike should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this September 24, 2019, I caused a true and correct copy of the foregoing to be filed electronically with the Court's CM/ECF system. Service upon all counsel of record will be effectuated by the Court's electronic notification system.

/s/ Roger K. Gannam
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