

1 CHAD A. READLER
Acting Assistant Attorney General
2 Civil Division

3 BRETT A. SHUMATE
Deputy Assistant Attorney General

4 JOHN R. GRIFFITHS
5 Branch Director

6 ANTHONY J. COPPOLINO
Deputy Director

7 RYAN B. PARKER
8 ANDREW E. CARMICHAEL
United States Department of Justice
9 Civil Division, Federal Programs Branch

10 Telephone: (202) 514-4336
Email: ryan.parker@usdoj.gov

11 *Counsel for Defendants*

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 AIDEN STOCKMAN; NICOLAS
16 TALBOTT; TAMASYN REEVES;
17 JAQUICE TATE; JOHN DOES 1-2;
18 JANE DOE; and EQUALITY
CALIFORNIA,

19 Plaintiffs,

20 v.

DONALD J. TRUMP, et al.

21 Defendants.

22 STATE OF CALIFORNIA,
23 Plaintiff-Intervenor,

24 v.

25 DONALD J. TRUMP, et al.

26 Defendants.
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CASE NO. 5:17-CV-01799-JGB-KK

**JOINT STIPULATION FOR
FEDERAL RULE OF EVIDENCE
502(d) ORDER**

DISCOVERY MATTER

1 Defendants Donald J. Trump, James N. Mattis, Joseph F. Dunford, Jr.,
2 Richard V. Spencer, Ryan D. McCarthy, Heather A. Wilson, and Elaine C. Duke
3 (collectively, “Defendants”); Plaintiffs Aiden Stockman, Nicolas Talbott, Tamasyn
4 Reeves, Jaquice Tate, John Does 1-2, Jane Doe, and Equality California
5 (collectively, “Plaintiffs”); and Intervenor-Plaintiff California (along with
6 Defendants and Plaintiffs, the “Parties”) by and through their respective counsel,
7 hereby stipulate and agree as follows:

8 WHEREAS, during the course of the above-captioned case (the “C.D. Cal.
9 Case”), and the related cases *Doe v. Trump*, No. 1:17-cv-1597 (D.D.C.); *Stone v.*
10 *Trump*, No. 1:17-cv-02459 (D. Md.); and *Karnoski v. Trump*, No. 2:17-cv-1297
11 (W.D. Wash.) (collectively, the “Related Cases”), the parties may seek information
12 that is privileged or otherwise protected from disclosure;

13 WHEREAS, a Court Order, as contemplated under Federal Rule of Evidence
14 502(d), is necessary to guard against the risk of inadvertent waiver of applicable
15 privileges and protections;

16 WHEREAS, the parties have conferred and agreed upon a procedure to
17 assert claims of privilege or protection after the production of information;

18 WHEREAS, the Courts in the three Related Cases have entered substantially
19 similar orders to facilitate the efficient coordination of discovery in the all pending
20 cases;

21 THEREFORE, THE PARTIES STIPULATE, AGREE, AND JOINTLY
22 REQUEST THAT this Court enter the Parties’ accompanying Proposed Federal
23 Rule of Evidence 502(d) Order.

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1 Dated: April 17, 2018

LATHAM & WATKINS LLP
Marvin S. Putnam
Amy C. Quartarolo
Adam S. Sieff
Harrison J. White

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3
4
5 By: /s/ Amy C. Quartarolo
Amy C. Quartarolo

6 *Attorneys for Plaintiffs*
7 *Aiden Stockman, Nicolas Talbott, Tamasyne*
8 *Reeves, Jaquice Tate, John Does 1-2, Jane*
9 *Doe, and Equality California*

10 CALIFORNIA DEPT. OF JUSTICE
11 Xavier Becerra
12 Mark R. Beckington
13 Gabrielle D. Boutin
14 Enrique A. Monagas

15 By: /s/ Enrique Monagas
Enrique Monagas

16 *Attorneys for Plaintiff-Intervenor*
17 *State of California*

18 UNITED STATES DEPT. OF JUSTICE
19 Chad A. Readler
20 Brett A. Shumate
21 John R. Griffiths
22 Anthony J. Coppolino
23 Ryan B. Parker
24 Andrew E. Carmichael

25 By: /s/ Ryan B. Parker
26 Ryan B. Parker

27 *Attorneys for Defendants*
28 *Donald J. Trump, et. al.*

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ATTESTATION STATEMENT

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: April 17, 2018

UNITED STATES
DEPARTMENT OF JUSTICE

By /s/ Ryan B Parker
Ryan B. Parker
Attorneys for Defendants

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AIDEN STOCKMAN; NICOLAS
TALBOTT; TAMASYN REEVES;
JAQUICE TATE; JOHN DOES 1-2;
JANE DOE; and EQUALITY
CALIFORNIA,

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

CASE NO. 5:17-CV-01799-JGB-KK

**[PROPOSED] FEDERAL RULE
OF EVIDENCE 502(d) ORDER**

DISCOVERY MATTER

STATE OF CALIFORNIA,
Plaintiff-Intervenor,

v.

DONALD J. TRUMP, et al.

Defendants.

Pursuant to Federal Rule of Evidence 502(d) and for good cause shown, the Court hereby enters the following Rule 502(d) Order:

Good Cause Statement. Good cause exists for the entry of this Order. This action is one of four related cases challenging the Government’s policy regarding military service by transgender individuals. *See Doe v. Trump*, No. 1:17-cv-1597 (D.D.C.); *Stone v. Trump*, No. 1:17-cv-02459 (D. Md.); and *Karnoski v. Trump*, No. 2:17-cv-01297 (W.D. Wash.). In an attempt to litigate the four related cases efficiently, the parties to each of the four cases have agreed that discovery material that is produced by any party or non-party in any of the named actions will be

1 deemed produced in all four of the cases. In order to facilitate the sharing of
2 discovery materials, the parties to the other three cases have agreed to, and the
3 courts in the other three cases have entered, Rule 502(d) agreements that are
4 similar to this Order. Defendants have already produced substantial discovery
5 materials to the plaintiffs in the other three cases. Those discovery materials
6 include information otherwise generally unavailable to the public or otherwise
7 protected from disclosure under state or federal statutes, court rules, case decisions,
8 or common law, including internal documents of the Department of Defense, the
9 United States Army, the United States Air Force, and the United States Navy.
10 Pursuant to Defendants' agreement with Plaintiffs and Intervenor in this case,
11 Defendants are prepared to provide the discovery materials that they have
12 produced in the other three cases to Plaintiffs and Intervenor, once this Order and
13 the accompanying Protective Order and Cross-Use Agreement have been entered
14 by the Court. Accordingly, to expedite the flow of information, to facilitate the
15 prompt resolution of disputes over confidentiality of discovery materials, to
16 adequately protect information the parties are entitled to keep confidential, and to
17 serve the ends of justice, a protective order covering such information is justified
18 in this matter.

19 **I. NO WAIVER BY DISCLOSURE**

20 1. The production of a document, or part of a document, shall not
21 constitute a waiver of any privilege or protection as to any portion of that
22 document, or as to any undisclosed privileged or protected communications or
23 information concerning the same subject matter, in this or in any other proceeding.
24 This Order applies to the attorney-client privilege, work-product protections, and
25 all other protections afforded by Federal Rule of Civil Procedure 26(b) and
26 governmental privileges. Nothing in this Order shall constitute an admission that
27 any document disclosed in this litigation is subject to any of the foregoing
28 privileges or protections, or that any party is entitled to raise or assert such

1 privileges. Additionally, nothing in this Order shall prohibit parties from
2 withholding from production any document covered by any applicable privilege or
3 other protection.

4 2. This Order shall displace the provisions of Fed. R. Evid. 502(b)(1)
5 and (2). That is, the disclosure of privileged or protected information, as described
6 above, in this litigation shall not constitute a subject-matter waiver of the privilege
7 or protection in this or any other federal or state proceeding, regardless of the
8 standard of care or specific steps taken to prevent disclosure. However, nothing in
9 this Order shall limit a party's right to conduct a pre-production review of
10 documents as it deems appropriate.

11 **II. DEFINITIONS**

12 1. "Document," as used herein, includes all items listed in Fed. R. Civ.
13 P. 34(a)(1)(A) and (B).

14 2. "Documents Produced," as used herein, includes all documents made
15 available for review or produced in any manner during this litigation.

16 **III. PROCEDURES**

17 The procedures applicable to a claim of privilege with respect to a produced
18 document and the resolution thereof shall be as follows:

19 1. If a party discovers a document, or part thereof, produced by another
20 party that is privileged or otherwise protected, the receiving party shall promptly
21 notify the producing party and then return the document or destroy it and certify
22 that it has been destroyed to the producing party. Nothing in this Order is intended
23 to shift the burden to identify privileged and protected documents from the
24 producing party to the receiving party.

25 2. If the producing party determines that a document produced, or part
26 thereof, is subject to a privilege or privileges, the producing party shall promptly
27 give the receiving party notice of the claim of privilege ("privilege notice").

28 3. The privilege notice must contain information sufficient to identify
the document including, if applicable, a Bates number as well as an identification
of the privilege asserted and its basis.

1 4. Upon receiving the privilege notice, if the receiving party agrees with
2 the privilege assertion made, the receiving party must promptly return the specified
3 document(s) and any copies or destroy the document(s) and copies and certify to
4 the producing party that the document(s) and copies have been destroyed. The
5 receiving party must sequester and destroy any notes taken about the document. If
6 a receiving party disclosed the document or information specified in the notice
7 before receiving the notice, it must take reasonable steps to retrieve it, and so
8 notify the producing party of the disclosure and its efforts to retrieve the document
9 or information.

10 5. Upon receiving the privilege notice, if the receiving party wishes to
11 dispute a producing party's privilege notice, the receiving party shall promptly
12 meet and confer with the producing party. The document(s) shall be sequestered
13 and not be used by the receiving party in the litigation (e.g., filed as an exhibit to a
14 pleading or used in deposition) while the dispute is pending. If the parties are
15 unable to come to an agreement about the privilege assertions made in the privilege
16 notice, the receiving party may make a sealed motion for a judicial determination
17 of the privilege claim.

18 6. Pending resolution of the judicial determination, the parties shall both
19 preserve and refrain from using the challenged information for any purpose and
20 shall not disclose it to any person other than those required by law to be served
21 with a copy of the sealed motion. The receiving party's motion challenging the
22 assertion must not publicly disclose the information claimed to be privileged. Any
23 further briefing by any party shall also not publicly disclose the information
24 claimed to be privileged if the privilege claim remains unresolved or is resolved in
25 the producing party's favor.

26 7. If a document must be returned or destroyed as determined by the
27 process above, that document, along with copies and notes about the document,
28 that exist on back-up tapes, systems, or similar storage need not be immediately
deleted or destroyed, and, instead, such materials shall be overwritten and
destroyed in the normal course of business. Until they are overwritten in the

1 normal course of business, the receiving party will take reasonable steps to limit
2 access, if any, to the persons necessary to conduct routine IT and cybersecurity
3 functions.

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5 **SO ORDERED.**

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7 Dated: _____

KENLY KIYA KATO

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United States Magistrate Judge

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