

The Honorable Marsha J. Pechman

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

RYAN KARNOSKI, et al.,
Plaintiffs, and
STATE OF WASHINGTON,
Plaintiff-Intervenor,
v.
DONALD J. TRUMP, in his official capacity
as President of the United States, et al.,
Defendants.

Case No. 2:17-cv-01297-MJP
**PLAINTIFFS’ MOTION TO COMPEL
DEFENDANTS TO ADEQUATELY
RESPOND TO PLAINTIFFS’ FIRST,
SECOND, AND THIRD SETS OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS AND
INTERROGATORIES**

NOTE ON MOTION CALENDAR:
August 30, 2019

1 Pursuant to Federal Rules of Civil Procedure 26, 33, and 34, Plaintiffs request an order
 2 compelling Donald J. Trump, in his official capacity as President of the United States
 3 (“Defendant Trump”), Mark Esper, in his official capacity as acting Secretary of Defense, and
 4 the United States Department of Defense (“DoD”) (together, “Defendants”) to respond to each of
 5 Plaintiffs’ requests for the production of documents (“RFPs”) and Interrogatories so as to (1)
 6 provide individualized objections to each request rather than the boiler-plate objections that were
 7 initially provided, and (2) identify whether any documents are being withheld pursuant to an
 8 individualized objection and, if so, sufficiently identify the documents withheld pursuant to that
 9 objection.

10 BACKGROUND

11 **A. Defendants responded to Plaintiffs’ requests for the production of documents with 12 boilerplate objections followed by generalized, non-specific responses.**

13 Plaintiffs served their first of three sets of RFPs on Defendants on December 29, 2017. For
 14 each of the sets of discovery, Plaintiffs served one set on the Secretary of Defense and the
 15 Department of Defense, and another separate set on Defendant Trump. Defendants responded on
 16 February 9, 2018. (Declaration of Vanessa Barsanti (“Barsanti Decl.”) Exs. 1 & 2.) In response
 17 to Plaintiffs’ first set of RFPs, Defendants purported to respond to each of Plaintiffs’ RFPs in
 18 turn. However, for *each and every* one of Plaintiffs’ RFPs in this set, Nos. 1–25, Defendants
 19 copied and pasted the same objections on privilege grounds (the “Privilege Objections”):

20 Defendants object to this RFP to the extent that it seeks (a) attorney work
 21 product; (b) communications or information protected by the attorney-client
 22 privilege; (c) communications or information protected by the deliberative
 23 process privilege; (d) material the disclosure of which would violate legitimate
 24 privacy interests and expectations of persons not party to this litigation; or (e)
 25 communications or information protected by the presidential communications
 privilege. Without waiver of the objections, a privilege log will be provided by
 the government, which describes the privileged documents that have been
 withheld and the basis for privilege at issue for those documents.

26 (*See generally* Barsanti Decl., Ex. 2.) For fourteen of these RFPs—more than half of the RFPs in
 27 this set—Defendants copied and pasted the following same objections on grounds unrelated to
 28 any potential claim of privilege (the “Nonprivileged Objections”):

1 Defendants further object on the grounds that this request is overbroad, unduly
 2 burdensome, and disproportionate to the needs of the case. Specifically, the
 3 reference to “All Documents and Communications” purports to require
 4 Defendants to search for and produce documents in any and all locations,
 5 regardless of whether the documents would be redundant and/or regardless of
 6 whether such searches would be likely to yield information that is distinct or
 7 that is relevant.

8 (*See* Barsanti Decl., Ex. 2 at RFP Nos. 1–8, 12, 14–15, 22–23.)¹ Following these extensive
 9 objections, Defendants responded generally to 22 of the 25 RFPs that, “Subject to and without
 10 waiving the above objections, Defendants will produce any nonprivileged documents responsive
 11 to this RFP in Defendants’ possession, custody, and control.” (*See, e.g.*, Barsanti Decl., Ex. 2 at
 12 RFP Nos. 1–4, 6, 8–13, 15–25.) In addition, for RFP Nos. 5, 7, and 14, despite having levied the
 13 exact same objections verbatim as those listed in the RFPs under which Defendants agreed to
 14 produce *some* documents, Defendants did not state at all whether they would produce documents
 15 responsive to the RFP. (*See, e.g.*, Barsanti Decl., Ex. 2 at RFP Nos. 5, 7, 14.) In all instances,
 16 Defendants did not identify whether documents have been withheld pursuant to particular
 17 objections to particular RFPs.²

18 Plaintiffs served their second set of RFPs on April 26, 2018, to which Defendants
 19 responded on May 29, 2018. Barsanti Decl., Exs. 3 & 4. These responses suffered from the same
 20 deficiencies as Defendants’ responses to set one. In particular, Defendants again copied and
 21 pasted the same boilerplate Privilege Objections to each of Plaintiffs’ RFPs in turn, regardless of
 22 the language of the particular RFP. (Barsanti Decl., Ex. 4 at RFP Nos. 26–35.) For RFP No. 26,

23 ¹ The language of the objection only varies slightly between RFPs. Sometimes the objection refers to “All
 24 Documents and Communications,” “All Documents,” “All Documents or Communications,” or “All studies,
 25 reports, instructions, directives, or other Documents.”

26 ² Defendant Trump’s discovery responses were slightly different. Although Defendant Trump’s specific objections
 27 largely mirrored those of the DoD’s responses, Defendant Trump generally did not agree to produce any documents
 28 responsive to Plaintiffs’ requests:

Defendants object to any discovery requests directed to the President of the United States in this case based
 on these compelling separation of powers concerns, and in particular object to the discovery sought that is
 subject to the presidential communications privilege. Based on the foregoing objections, the President will
 not produce privileged or non-privileged documents and information that have been identified as potentially
 responsive.

Ex. 1 at 8. Though these responses will likely be the subject of a future motion to compel regarding certain privileges
 claimed by Defendant Trump, Plaintiffs are entitled to more fulsome and complete responses now in order to
 understand the objections levied and have an opportunity to narrow the dispute.

1 Defendants objected that the request was “overbroad, unduly burdensome, and disproportionate
 2 to the needs of the case,” stated that it “construe[d] this request as excluding service member
 3 medical records and information,” and unilaterally limited the request to seeking documents
 4 containing summaries of other categories of information, but still generally only responded that it
 5 would produce documents subject to its objections without specifying the limitations of its
 6 search and production. (*See* Barsanti Decl., Ex. 4 at RFP No. 26.)

7 Plaintiffs served their third set of RFPs on April 12, 2019 and Defendants responded on
 8 May 28, 2019. (Barsanti Decl., Exs. 5 & 6.) Defendants again asserted the same boilerplate
 9 Privilege Objections to every single one of Plaintiffs’ RFPs. Ex. 6 at RFP Nos. 36–68.
 10 Defendants did not provide specific responses to the RFPs that detailed how the responses would
 11 be limited by Defendants’ objections. For example, for RFP No. 36, Defendants objected that the
 12 request was overbroad, unduly burdensome, vague, ambiguous, and disproportionate to the needs
 13 of the case on multiple grounds; yet, despite these objections, Defendants responded broadly and
 14 vaguely that, “Subject to and without waiving the above objections and subject to applicable
 15 privileges, the Department of Defense has produced materials responsive to Plaintiffs’ request
 16 between June 30, 2016 and March 23, 2018.” (Barsanti Decl., Ex. 6 at RFP No. 36; *see also id.*
 17 at RFP Nos. 40–41, 55, 58, 60–68.)

18 **B. Defendants responded to Plaintiffs’ interrogatories with boilerplate objections**
 19 **followed by generalized, non-specific responses.**

20 Plaintiffs served their first set of interrogatories (Nos. 1–15) on December 29, 2017.
 21 Defendant Trump provided his responses to this set on February 9, 2018, (Barsanti Decl., Ex. 7),
 22 and the DoD also originally provided a response on February 9, 2018, but later provided
 23 supplemental responses on June 1, 2018. (Barsanti Decl., Ex. 8.) Plaintiffs served their second
 24 set of interrogatories (Nos. 16–21) on April 26, 2018 and Defendants responded on May 29,
 25 2018. (Barsanti Decl., Exs. 9 & 10.) Plaintiffs served their third set of interrogatories (Nos. 22–
 26 24) on April 12, 2019 and Defendants responded on May 28, 2019. (Barsanti Decl., Exs. 11 &
 27 12.)

28 For *every single* interrogatory within sets one and two propounded on Defendants (Nos. 1–

21), Defendants have responded by reciting similar boilerplate privilege objections to those listed in response to the RFPs:

The Department of Defense objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege. Consequently, and for the reasons presented in Defendant's Motion for a Protective Order, ECF No. 268, the Department of Defense will not provide substantive responses to the extent that this interrogatory calls for the disclosure of presidential communications.

(*See generally* Barsanti Decl., Exs. 8 & 10.)³ Defendants responded to many of these interrogatories despite having levied these privilege objections, yet these responses do not identify what, if any, information was withheld from Defendants' responses due to any particular claim of privilege. For some interrogatories, Defendants do not provide a response at all. (*See, e.g.,* Barsanti Decl., Ex. 8 at Interrogatory Nos. 4–6, 8, 15; Ex. 10 at Interrogatory Nos. 20–21; Ex. 12 at Interrogatory Nos. 23–24.)

C. The Parties were unable to resolve their dispute through the meet and confer process.

On July 25, 2019, Plaintiffs sent a letter to Defendants notifying them that their boilerplate objections to Plaintiffs' requests violated Federal Rule of Civil Procedure 34 and requesting that Defendants remedy their responses. (*See* Barsanti Decl., Ex. 13 at pp. 1–2.) Defendants responded to Plaintiffs' letter on August 2, 2019 with general, non-specific information about how documents were collected. (*See* Barsanti Decl., Ex. 14 at pp. 1–2.) Defendants then provided a conclusory statement that this general, non-specific information satisfied their discovery obligations under Rule 34. (*See id.* at p. 2.) The parties attempted one final meet and confer telephone call on August 9, 2019, in which they met and conferred regarding the parties' discovery correspondence. Defendants refused to cure any of the above deficiencies, and only stated they would confer with their clients regarding possibly stating if documents were being

³ Defendant Trump again did not respond to any of the interrogatories, objecting that "any discovery requests directed to the President of the United States in this case based on these compelling separation of powers concerns, and in particular object to the discovery sought that is subject to the presidential communications privilege." *See generally* Ex. 7.

1 withheld on the basis of the deliberative process privilege. Plaintiffs requested that Defendants
 2 confirm by August 14 if they would be so amending their responses, but August 14 came and
 3 went without any word from Defendants. The parties thus remain at an impasse regarding the
 4 sufficiency of Defendants' discovery responses and this issue is now ripe for decision by the
 5 Court.

6 LEGAL STANDARD

7 A party may serve an interrogatory or request the production of any document within the
 8 scope of Rule 26(b). Fed. R. Civ. P. 33(a); Fed. R. Civ. P. 34(a). "For each item or category, the
 9 response must either state that inspection and related activities will be permitted as requested or
 10 *state with specificity the grounds for objecting to the request*, including the reasons." Fed. R.
 11 Civ. P. 34(b)(2)(B) (emphasis added). "An objection *must state whether any responsive*
 12 *materials are being withheld on the basis of that objection*. An objection to part of a request
 13 must specify the part and permit inspection of the rest." Fed. R. Civ. P. 34(b)(2)(C) (emphasis
 14 added); *see also* Fed. R. Civ. P. 33(b)(4). If a party withholds discoverable information due to
 15 privilege, that party must "expressly make the claim; and describe the nature of the documents,
 16 communications, or tangible things not produced or disclosed--and do so in a manner that,
 17 without revealing information itself privileged or protected, will enable other parties to assess the
 18 claim." Fed. R. Civ. P. 26(b)(5)(A)(i-ii).

19 ARGUMENT

20 Defendants' discovery responses are deficient in at least two respects. First, Defendants
 21 have impermissibly provided boilerplate objections to all of Plaintiffs' RFPs and almost all of
 22 Plaintiffs' interrogatories. Second, Defendants have not identified with specificity how their
 23 objections have limited their discovery responses or whether any responsive materials are being
 24 withheld on the basis of any particular objection.

25 **A. Defendants must "state with specificity the grounds for objecting" to Plaintiffs'** 26 **discovery requests.**

27 Courts routinely compel more complete discovery responses where one party relies on
 28 non-specific, general, boilerplate objections that "are not sufficient to permit the Court or the

1 Plaintiff to meaningfully determine the sufficiency of Defendant’s response to legitimate
 2 discovery.” *See Best v. BNSF Ry. Co.*, No. CV-06-172-RHW, 2008 WL 149137, at *5 (E.D.
 3 Wash. Jan. 10, 2008); *see also Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of*
 4 *Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005) (“We hold that boilerplate objections or blanket
 5 refusals inserted into a response to a Rule 34 request for production of documents are insufficient
 6 to assert a privilege.”); *Tedrow v. Boeing Emps. Credit Union*, 315 F.R.D. 358, 359–61 (W.D.
 7 Wash. 2016) (granting in part plaintiff’s motion for further responses where the defendant made
 8 “boilerplate responses and objections”).

9 In *Athwal v. Nijjer*, the plaintiff brought a motion to compel adequate discovery responses
 10 from a third party whose responses were “incomplete.” *Athwal v. Nijjer*, No. C17-00740RSL,
 11 2018 WL 1156233, at *1 (W.D. Wash. Mar. 5, 2018). In response to one of the plaintiff’s
 12 interrogatories, the third party responded only that “this is an extremely burdensome request,”
 13 and that it was “in the process of attempting to obtain information to provide an accounting for
 14 such transfers and/or withdrawals.” *Id.* at *5. In response to one of the plaintiff’s requests for the
 15 production of documents, the third party objected that:

16 [T]he request: 1) is vague, overbroad, and unduly burdensome; 2) seeks
 17 information that is irrelevant, not admissible in evidence, or reasonably
 18 calculated to lead to the discovery of admissible evidence; 3) would require the
 19 production of documents that contain confidential or other protected
 20 information that has no bearing on the above referenced litigation; 4) seeks
 21 information that was prepared in anticipation of litigation and contains mental
 impressions, conclusions, opinions and/or legal theories of attorney and/or
 representatives of Indigo; 5) seeks attorney work product; and/or 6) seeks
 information subject to attorney/client privilege.

22 *Id.* The court, in finding that the third party’s objections were “boilerplate in nature” and
 23 failed to state with specificity the grounds for the objections, overruled the objections and
 24 ordered the third party to “provide detailed responses” to the plaintiff’s discovery requests. *Id.*
 25 Because the court found that the third party and defendant had “repeatedly violated the spirit of
 26 the discovery rules by delaying disclosure and omitting information,” and that “[d]iscovery
 27 production is not a mere courtesy to other parties but rather a requirement of federal litigation,”
 28 the court ordered the third party to “supplement all of its deficient discovery responses, whether

1 or not they have been addressed by number, as to meet the standards expressed in the Federal
2 Rules of Civil Procedure and this Order.” *Id.* at *6.

3 As discussed above, Defendants repeatedly copied and pasted the same Privilege
4 Objections to each of Plaintiffs’ RFPs regardless of the language of the particular request.
5 Indeed, even where the RFP clearly does not call for the production of any privileged material—
6 for example, as in RFP No. 21 requesting, “All Documents and Communications produced by
7 You to any party in any of the following lawsuits: *Doe v. Trump*, No. 17-cv-1597 (D.D.C.);
8 *Stone v. Trump*, No. 1:17-cv-02459 (D. Md.); *Stockman v. Trump*, No. 17-cv-1799 (C.D. Cal.),
9 and any cases consolidated therewith”—Defendants *still* pasted the same Privilege Objections.
10 *See Ex. 2* at RFP No. 21. Plaintiffs’ request did not call for documents requested in those
11 lawsuits, but rather only the documents *produced*. Presumably, Defendants would not have
12 produced privileged documents in the cases listed above, yet Defendants *still* included their
13 boilerplate objection to this RFP. These boilerplate objections make it impossible for Plaintiffs to
14 assess the boundaries and legitimacy of Defendants’ privilege objections with respect to each
15 request and make it impossible for the parties to meet and confer on the scope of Defendants’
16 objections because every single RFP contains the same boilerplate language. The same is true of
17 Defendants’ boilerplate privilege objections to all of Plaintiffs’ interrogatories. Although
18 Defendants have supplied privilege logs for many of the documents withheld for privilege,
19 Plaintiffs are still without information regarding whether Defendants are withholding documents
20 pursuant to any particular RFP or interrogatory on privilege grounds. As a result, Defendants
21 should be compelled to provide more precise and particularized privilege-related objections to
22 each of Plaintiffs’ RFPs and interrogatories, such that Defendants only state objections that are
23 tailored to the specific discovery request and that identify where and the extent to which
24 Plaintiffs’ discovery requests may implicate particular privilege concerns. To the extent
25 Defendants identify RFPs or interrogatories where no document is being withheld on the basis of
26 privilege, Defendants should be required to withdraw their Privilege Objections.

27 Defendants’ Nonprivileged Objections are equally deficient. For many of Plaintiffs’ RFPs,
28 Defendants assert the same boilerplate objections verbatim—that the request is “overbroad,

1 unduly burdensome, and disproportionate to the needs of the case.” These objections are not
2 followed by language that meaningfully helps Plaintiffs to understand *how or why* the request is
3 overbroad, unduly burdensome, and disproportionate to the needs of the case, but rather are
4 followed by language that makes the objections even more convoluted and confusing:
5 “Specifically, the reference to ‘All Documents and Communications’ purports to require
6 Defendants to search for and produce documents in any and all locations, regardless of whether
7 the documents would be redundant and/or regardless of whether such searches would be likely to
8 yield information that is distinct or that is relevant.” (*See Barsanti Decl.*, Ex. 2 at RFP Nos. 1–8,
9 12, 14–15, 22–23.) Such vague and boilerplate objections that do not meaningfully identify the
10 scope and extent of the objection are insufficient. *See Athwal*, 2018 WL 1156233, at *3 (“A
11 general statement that the request is burdensome without any detail as to why or how is not
12 sufficient.”). Nor do Defendants’ responses specify whether these objections have prevented
13 Defendants from searching for or producing documents responsive to the requests; instead, their
14 responses state only that Defendants will “produce any nonprivileged documents responsive to
15 this RFP in Defendants’ possession, custody, and control.” These non-specific, general,
16 boilerplate objections do not allow Plaintiffs the opportunity to meaningfully determine the
17 scope of the dispute to attempt to remedy any disagreements through further meet and confer
18 conferences with Defendants. Defendants should be compelled to provide more precise and
19 particularized objections to each of Plaintiffs’ RFPs and interrogatories, such that Defendants
20 only state objections that are tailored to the specific discovery request and that identify where
21 and the extent to which Plaintiffs’ discovery requests implicate a particular objection. To the
22 extent certain objections do not apply to an RFP and interrogatory, Defendants should be
23 required to withdraw their Nonprivileged Objections.

24 This deficiency is not limited only to the requests identified as having received
25 Defendants’ Privileged Objections or Nonprivileged Objections, but includes all requests and
26 interrogatories under which Defendants asserted boilerplate objections that were not tailored to
27 the language of the individual request or interrogatory and that do not provide Plaintiffs with
28 enough information to assess the legitimacy of the objections. Courts have previously compelled

1 responses to deficient discovery requests generally, rather than by number by number, where the
 2 responses generally were inadequate. *See, e.g., id.* at *6. As a result, these responses are deficient
 3 on the whole and more fulsome responses should be compelled by the Court.

4 **B. Defendants must be compelled to identify which documents are being withheld**
 5 **pursuant to specific objections to each request or interrogatory.**

6 In addition to requiring more than boilerplate objections to discovery responses, Federal
 7 Rules of Civil Procedure 34(b)(2)(b) and (c) require that parties specifically identify how the
 8 scope of their discovery responses are limited by their objections and whether and how any
 9 information and/or documents are being withheld pursuant to their objections. *See Weidenhamer*
 10 *v. Expedia, Inc.*, No. C14-1239RAJ, 2015 WL 1292978, at *7, *9 (W.D. Wash. Mar. 23, 2015)
 11 (ordering party to “prepare new responses” that state “with reasonable specificity, the extent to
 12 which [it] is withholding responsive documents based on those objections” that “give a person
 13 reading them [a] basis to determine where its objections end and its responses begin [and . . . a]
 14 basis to begin a discussion about whether [the defendant] has made a reasonable effort to identify
 15 responsive information or documents.”); *Tedrow*, 315 F.R.D. at 359–61 (compelling more
 16 fulsome interrogatory responses where the initial answer “does not sufficiently identify the
 17 location of the information sought” and compelling defendant to be “more specific in identifying
 18 objected-to materials” in reaction to defendant’s responses to plaintiff’s RFPs indicating “simply
 19 that it will produce the relevant and non-privileged documents responsive to the request”).
 20 Indeed, as acknowledged by both parties, Rule 34 was amended in 2015 to require that
 21 objections to discovery requests be stated with specificity *precisely* so that the parties could
 22 avoid the dispute at issue in this Motion. The Committee Notes to Rule 34 state:

23 Rule 34(b)(2)(B) is amended to require that objections to Rule 34 requests be
 24 stated with specificity. This provision adopts the language of Rule 33(b)(4),
 25 eliminating any doubt that less specific objections might be suitable under Rule
 26 34(b)(2)(C) ***directing that an objection must state whether any responsive***
 27 ***materials are being withheld on the basis of that objection.*** An objection may
 28 state that a request is overbroad, but if the objection recognizes that some part
 of the request is appropriate the objection should state the scope that is not
 overbroad. ***Examples would be a statement that the responding party will***
limit the search to documents or electronically stored information created

1 *within a given period of time prior to the events in suit, or to specified*
 2 *sources.* When there is such an objection, the statement of what has been
 withheld can properly identify as matters “withheld” anything beyond the
 scope of the search specified in the objection.

3

4 Rule 34(b)(2)(C) is amended to provide that an objection to a Rule 34 request
 5 *must state whether anything is being withheld on the basis of the objection.*
 This amendment should end the confusion that frequently arises when a
 producing party states several objections and still produces information,
 6 *leaving the requesting party uncertain whether any relevant and responsive*
 7 *information has been withheld on the basis of the objections.* The producing
 party does not need to provide a detailed description or log of all documents
 withheld, *but does need to alert other parties to the fact that documents have*
 8 *been withheld and thereby facilitate an informed discussion of the objection.*
 An objection that states the limits that have controlled the search for
 responsive and relevant materials qualifies as a statement that the materials
 9 have been “withheld.”
 10

11 Fed. R. Civ. P. 34(b)(2)(B-C) advisory committee’s note to 2015 amendment (emphasis added).

12 Notwithstanding this additional guidance embedded into the Rule itself, Defendants have
 13 improperly responded to Plaintiffs’ requests. Defendants do not heed the Committee Notes’ clear
 14 guidance that an appropriate discovery response to an overbroad objection would “be a statement
 15 that the responding party will limit the search to documents or electronically stored information
 16 created within a given period of time prior to the events in suit, or to specified sources.” *Id.*
 17 Despite their laundry list of objections to almost all of Plaintiffs’ discovery requests, Defendants
 18 generally assert that, “Subject to and without waiving the above objections, Defendants will
 19 produce any nonprivileged documents responsive to this RFP in Defendants’ possession,
 20 custody, and control.” This general language does not inform Plaintiffs or the Court of the
 21 parameters of Defendants’ production like that of the language of the example response
 22 embedded in the Notes to the Rule.

23 Similarly, Defendants’ responses to certain RFPs that merely direct Plaintiffs to already-
 24 produced documents following a number of objections are insufficient. *See, e.g.,* Ex. 6 at RFP
 25 No. 36 (“Subject to and without waiving the above objections and subject to applicable
 26 privileges, the Department of Defense has produced materials responsive to Plaintiffs’ request
 27 between June 30, 2016 and March 23, 2018.”); *but see Caccamise v. Credit One Bank, N.A.,* No.
 28 18cv971-JLS(BLM), 2019 WL 1900908, at *4 (S.D. Cal. Apr. 26, 2019) (granting plaintiff’s

1 request to compel supplemental responses where defendant directed plaintiff to previously
2 produced documents after making several general and specific objections that made it “unclear if
3 the identified documents are the only responsive documents or if Defendant is withholding any
4 additional documents pursuant to its objections”); *Tedrow*, 315 F.R.D. at 359–60 (finding
5 defendant’s responses vague and unhelpful where they stated that “this information, to the extent
6 it exists, can be found in the documents produced in response to these discovery requests”
7 without providing further specificity or direction).

8 Defendants assert in their August 2, 2019 letter that they have met the requirements of the
9 Rule and Comment regarding specificity by stating the limits that controlled their search for
10 responsive documents, but neither the Comment to the Rule nor Defendants’ cited case law
11 support this position. *See* Ex. 14 at p. 2. Defendants provided general, limited examples of *some*
12 of the steps that they undertook to collect, review, and produce documents responsive to
13 Plaintiffs’ requests, such as “digitally gather[ing]” data “from current and former DoD officials
14 who were involved in the development of the Carter and/or Mattis policies” and “[b]roadly
15 craft[ing] search terms, like ‘transgend*,’ ‘trans gender,’ or ‘gender dysphoria.’” *Id.* at p. 1. But
16 this limited, select information does nothing to inform Plaintiffs or the Court of the boundaries or
17 “limits” of Defendants’ search to allow Plaintiffs to determine whether these steps caused
18 Defendants to sufficiently collect all responsive, non-objectionable documents and information.
19 For example, without knowing the list of custodians from whom Defendants collected
20 documents, Plaintiffs cannot determine whether any relevant custodians were left off the list. A
21 general citation to “current and former DoD officials who were involved in the development of
22 the Carter and/or Mattis policies” is insufficient. Also insufficient are Defendants’ three
23 identified search terms: “transgend*,” “trans gender,” or “gender dysphoria.” *Id.* Not only have
24 Defendants conceded that they “did not conduct separate searches for each of Plaintiffs’ requests
25 for production,” *id.*, but the deficiencies in their identified search terms are apparent—there are a
26 number of Plaintiffs’ requests that seek documents that may not include those limited terms.
27 (*See, e.g.*, Barsanti Decl., Ex. 2 at RFP No. 11 (“All Documents reflecting visits to the White
28 House on July 10, 2017 by President Trump’s Evangelical Advisory Board members or his

1 campaign’s Evangelical Advisors, including but not limited to, visitor logs.”); Ex. 4 at RFP No.
 2 26 (“Documents sufficient to show the total annual amount spent and average, actual, or
 3 estimated annual per-person cost of hormone therapy provided to service members for each of
 4 fiscal years 2015, 2016, and 2017, and for the year to date of fiscal year 2018, including without
 5 limitation hormone therapy for the treatment of hypogonadism, hypothyroidism,
 6 hyperthyroidism, prostate cancer, breast cancer, growth hormone deficiency, menopause,
 7 osteoporosis, and transgender hormone therapy.”).) In order to comply with the Comment to the
 8 Rule, Defendants must specifically identify the limits used to locate responsive documents.

9 The case cited in Defendants’ August 2, 2019 letter, *Rowan v. Sunflower Elec. Power*
 10 *Corp.*, actually supports Plaintiffs’ position. Indeed, the court in *Rowan* appeared to analyze—
 11 and endorse—the defendants’ request-by-request identification of the limits used to locate
 12 responsive documents. *See Rowan v. Sunflower Elec. Power Corp.*, No. 15-cv-9227-JWL-TJJ,
 13 2016 WL 3743102, at *6 (D. Kan. July 13, 2016). For example, the defendant’s identification of
 14 *specific* limits used to locate documents for particular requests, such as “all bid proposals
 15 [defendant] received for the project dated July 25 and November 1, 2013, and [] the evaluation
 16 and recommendation letters submitted for those bid proposals,” were sufficiently specific to
 17 comply with the requirements of Rule 34(b)(2)(C). *Id.* Defendants’ discovery responses and
 18 extremely general limits on production provided in their August 2, 2019 letter fall far short of
 19 what *Rowan* and the Rules require.

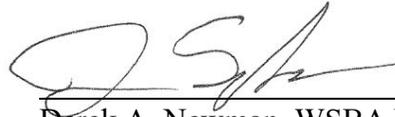
20 Because Defendants’ discovery responses neither identify how the scope of their responses
 21 are limited by their objections or whether any documents are being withheld pursuant to their
 22 objections, nor sufficiently identify the limits that controlled their search for responsive
 23 documents, Defendants must be compelled to provide more fulsome discovery responses.

24 CONCLUSION

25 Defendants’ boilerplate objections and inadequate responses regarding which documents
 26 and information have been withheld pursuant to those objections violate Rules 26, 33,
 27 34(b)(2)(B), and 34(b)(2)(C). As a result, the Court should issue an order compelling Defendants
 28 to adequately respond to all three sets of Plaintiffs’ RFPs and interrogatories.

1 Respectfully submitted August 15, 2019.

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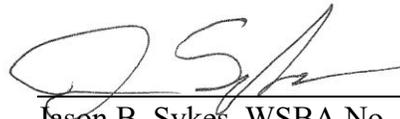
25 Vanessa Barsanti (admitted pro hac vice)

26 Daniel I. Siegfried (admitted pro hac vice)

27 *Counsel for Plaintiffs*

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that all participants in the case are registered CM/ECF users and that service of the foregoing documents will be accomplished by the CM/ECF system on August 15, 2019.



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The Honorable Marsha J. Pechman

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

RYAN KARNOSKI, et al.,

Plaintiffs,

STATE OF WASHINGTON,

Plaintiff-Intervenor,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, et al.,

Defendants.

Case No. 2:17-cv-01297-MJP

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION TO COMPEL
DEFENDANTS TO ADEQUATELY
RESPOND TO PLAINTIFFS' FIRST,
SECOND, AND THIRD SETS OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS AND
INTERROGATORIES**

NOTE ON MOTION CALENDAR:
August 30, 2019

This matter, having come before the Court on Plaintiffs' Motion to Compel Defendants to Adequately Respond to Plaintiffs' First, Second, and Third Sets of Requests for Production of Documents and Interrogatories, and good cause appearing therefore,

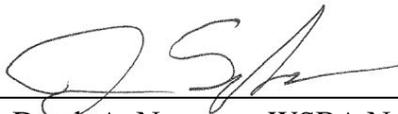
IT IS HEREBY ORDERED that Plaintiffs' Motion to Compel is hereby GRANTED. Defendants shall serve supplemental discovery responses within seven days of this Order.

Dated this _____ day of _____, 2019.

The Honorable Marsha J. Pechman
United States District Court Judge

1 Presented by:

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