

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

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<p><b>CHELSEY NELSON PHOTOGRAPHY LLC and CHELSEY NELSON,</b></p> <p style="text-align: center;"><b>Plaintiffs,</b></p> <p><b>v.</b></p> <p><b>LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, et al.,</b></p> <p style="text-align: center;"><b>Defendants.</b></p>	<p><b>Case No. 3:19-cv-851-JRW</b></p>
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**DEFENDANTS’ MOTION FOR PROTECTIVE ORDER**

Defendants Louisville/Jefferson County Metro Government, Louisville Metro Human Relations Commission – Enforcement, Louisville Metro Human Relations Commission – Advocacy, Verná Goatley, in her official capacity as Executive Director of the HRC, Marie Dever, Kevin Delahanty, Charles Lanier, Sr., Leslie Faust, William Sutter, Ibrahim Syed, and Leonard Thomas, in their official capacities as members of the Louisville Metro Human Relations Commission-Enforcement (collectively, “Defendants”), by counsel, pursuant to Fed. R. Civ. P. 26(c)(1) and the Court’s Order dated March 1, 2021 [Doc. No. 62], make the following motion for protective order to limit the scope of discovery to be produced in response to certain requests for production of documents and interrogatories propounded by Plaintiffs Chelsey Nelson Photography and Chelsey Nelson (collectively, “Plaintiffs”).

**INTRODUCTION**

Plaintiff Chelsey Nelson is a wedding photographer who filed this litigation to challenge the constitutionality of Louisville’s Fairness Ordinance, which prohibits discrimination in employment, housing, and the provision of goods and services (public accommodations). *See*

Louisville Metro Ordinance § 92.01, *et seq.* Ms. Nelson alleges a religious objection to providing photography services for same-sex weddings. No discrimination complaints have ever been filed against Ms. Nelson and Ms. Nelson has never been investigated by Louisville Metro’s Human Relations Commission (“HRC”). Indeed, Ms. Nelson has only ever professionally photographed 5 weddings as primary shooter and 5 weddings as a second shooter for other photographers. Ms. Nelson has never been asked to photograph or provide any services with respect to a same-sex wedding.

In order to allege standing to bring her claims, Ms. Nelson has stated that, if asked, she would refuse to provide her photography services for same-sex weddings and drafted (with the assistance of counsel) a marketing statement to create a violation of the “unwelcome” clause of the Fairness Ordinance which makes clear that customers seeking services for same-sex weddings will be refused.<sup>1</sup> Defendants have admitted that this hypothetical conduct and certain language in Plaintiffs’ marketing statement violates the Fairness Ordinance. *See* Answer, ¶ 17. Because Plaintiffs carefully crafted Ms. Nelson’s statement of intention to refuse services and her marketing statement to create clear violations of the Fairness Ordinance, there are no nuanced questions of interpretation at issue in this litigation.

Plaintiffs have nevertheless sought discovery of the case files for all prior complaints of discrimination ever received or investigated by HRC, including employment and housing complaints. Plaintiffs have argued that this discovery is relevant to see how HRC receives complaints and interprets and applies the Fairness Ordinance. Defendants submit that this

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<sup>1</sup> *See* Deposition of Chelsey Nelson (Feb. 16, 2021), excerpts attached hereto as Exhibit 1, at Tr. 166:7-8. Ms. Nelson did not contact counsel for representation with respect to the claims asserted in this litigation; her counsel in this litigation (Alliance Defending Freedom) initiated contact with Ms. Nelson. *Id.* at Tr. 149:20-150:6.

discovery is not relevant to Plaintiffs' claims, that production of hundreds of case files dating back at least 10 years would be unduly burdensome, including because most of these files are in archived storage, and that Plaintiffs' need for this discovery, if any, is not proportional to the burdens that would be imposed on Defendants in complying with these discovery requests. In addition to those objections, Defendants have objected that confidentiality statutes prohibit the disclosure of the vast majority of these case files and also summary spreadsheets which identify complainants, respondents, and case information on an individual, case-by-case basis. As such, there is good cause for the issuance of a protective order limiting the scope of discovery as requested by this motion.

### **LEGAL STANDARD**

Fed. R. Civ. P. 26(c)(1)(D) authorizes a party to move for a protective order "forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters." The Court may, for good cause, grant a protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Id.* As further described during the parties' February 23, 2021 teleconference with the Court, the parties have conferred in good faith, but were ultimately unsuccessful in resolving the discovery disputes addressed by this motion.

### **ARGUMENT**

Plaintiffs have identified three categories of documents and information that are subject to dispute: (1) discrimination complaints and case files requested by Plaintiffs' Requests for Production Nos. 40-58; (2) summary spreadsheets containing information regarding HRC's investigation of discrimination complaints requested by Plaintiffs' Requests for Production Nos. 1-39; and (3) Interrogatory Nos. 15-17, which seek an identification of facts relating to any consideration of alternative means to achieve the Louisville Metro's interest in preventing

discrimination.

**I. Discrimination Complaints and Case Files**

Plaintiffs' Request for Production Nos. 40-58 broadly sought all complaints and case files for every complaint of discrimination investigated by HRC since December 2004, regardless of the category of discrimination (employment, housing, public accommodations) or protected class (race, religion, national origin, age, disability, sex, gender identity, or sexual orientation). During the meet-and-confer process, Plaintiffs offered to preliminarily limit their request with respect to employment and housing discrimination to complaints (rather than entire case files) from 2010 to present. Plaintiffs purported to reserve the ability to request complete case files after review of this proposed preliminary production. Plaintiffs offered no limitation of their request for complaints and case files relating to allegations of discrimination in public accommodations.

**A. The Requested Discovery Is Not Relevant to Plaintiffs' Claims**

Plaintiffs have never been accused of discrimination in any complaint filed with HRC and have never been investigated by HRC. Plaintiffs are seeking the production of documents relating to complaints and investigations of third-parties which have no involvement whatsoever in this litigation. During the meet-and-confer process, Plaintiffs variously argued that HRC's enforcement files are relevant to explore how HRC receives complaints, how HRC has interpreted the Fairness Ordinance in other cases, how broadly HRC defines a "public accommodation," and whether there is any evidence of animus towards parties alleged to have engaged in violations of the Fairness Ordinance. However, none of these issues are reasonably in dispute in this litigation.

The Fairness Ordinance itself describes the procedure for filing complaints of discrimination. *See* Louisville Metro Ordinance § 92.09. Defendants have admitted that members of the public may submit complaints of discrimination and that the Fairness Ordinance is actively enforced by HRC. *See* Defendants' Responses to Plaintiffs' Requests for Admission, attached

hereto as Exhibit 2, Nos. 4-11; Answer, ¶ 10 (admitting the allegation in Paragraph 303 of the Complaint which alleges that HRC's Enforcement Commission actively investigates complaints of alleged violations of the Fairness Ordinance).

With respect to the meaning of the Fairness Ordinance, Plaintiffs have intentionally crafted this lawsuit to avoid any questions of interpretation. There is no dispute that Plaintiffs' wedding photography business is a public accommodation that is subject to the Fairness Ordinance. *See* Defendants' Response to Plaintiffs' Request for Admission No. 1.. Plaintiffs' marketing statement was drafted (with the assistance of litigation counsel) specifically to be in violation of the Fairness Ordinance to provide the purported basis for Plaintiffs to allege standing to challenge the constitutionality of the Ordinance. Defendants have admitted that certain portions of that statement violate the Fairness Ordinance (Answer, ¶ 17) and therefore there are no complicated or nuanced questions of interpretation at issue in this litigation.

Plaintiffs have never been the subject of any enforcement activity, so there will be no evidence of any animus whatsoever against Plaintiffs because Defendants had not heard of Plaintiffs before they commenced this lawsuit. Plaintiffs have not alleged and would have no good faith basis to allege targeting or anything of the sort.

During the meet-and-confer process, Defendants asked Plaintiffs to identify any other cases in which this scope of discovery was permitted. Plaintiffs failed to identify any precedent for their requests. Defendants respectfully submit that Plaintiffs have no good faith basis to go on a fishing expedition through case files of unrelated discrimination complaints filed by third-parties. *See, e.g., Babcock Power, Inc. v. Kapsalis*, 3:13-CV-717-DJH-CHL, 2015 WL 9581850, at \*3 (W.D. Ky. Dec. 30, 2015) (“while the relevancy standard may be a liberal one, it is not a license to go fishing with the hope that something might be discovered”).

## **B. Complying with Plaintiffs' Requests Would Impose Undue Burdens on Defendants**

Even if the Court is persuaded that the discovery sought by Plaintiffs has some marginal relevance to Plaintiffs claims, that relevance and Plaintiffs' need for the discovery must be weighed against the burdens that would be imposed on Defendants to comply with Plaintiffs' requests. With respect to the scope of discovery, Fed. R. Civ. P. 26(b)(1) states:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(emphasis added).

The volume of documents requested by Plaintiffs is enormous. Plaintiffs have essentially requested the production of the entirety of HRC's enforcement files dating back to December 2004. As reflected by publicly-available data, this includes hundreds of cases. HRC's case files are maintained in hard copy, paper format. *See* Affidavit of HRC's Executive Director Verná Goatley, attached hereto as Exhibit 3 ("Goatley Aff."), ¶ 3. There is no electronic copy of HRC's case files. *Id.* HRC does not maintain a separate file of complaints. *Id.* at ¶ 8. Rather, complaints are contained within individual case files. *Id.* The vast majority of complaints of discrimination received and/or investigated by HRC are resolved without any public hearing or trial. *Id.* at ¶ 5.

HRC investigators maintain case files for cases they are actively investigating in their own offices. *Id.* at ¶ 4. Once an investigation has concluded, case files are temporarily maintained in a central file at HRC's offices before being sent to off-site archived storage, where they are kept for ten years. *Id.* at ¶ 6. If HRC needs to retrieve a file from archived storage, it must identify the case file by its unique case number and transmit the request to Louisville Metro's Archives Department.

*Id.* at ¶ 7. It typically takes 2-4 weeks to retrieve a single archived file. *Id.*

In order to retrieve a particular complaint, HRC would need to retrieve the entire case file from archived storage and manually review the file to find the complaint. *Id.* at ¶ 8. In the rare case where a public hearing occurred, the documents associated with that public hearing would be intermingled with documents that must be kept confidential under the Fairness Ordinance, as discussed below. *Id.* at ¶ 19. Tedious and time-consuming manual review would be required to segregate confidential files from those which could be disclosed. *Id.*

Of course, HRC has never had occasion to retrieve the entire repository of its case files from archived storage, which is what would be required to comply with Plaintiffs' requests. It is therefore unknown how long it would take to retrieve that volume of files or where HRC could find space to house those files for manual review. Because of the marginal-at-best relevance of the discovery sought, these burdens are not proportional to Plaintiffs' need for the discovery and are therefore undue.

### **C. Defendants Are Prohibited from Producing the Vast Majority of the Requested Documents by Confidentiality Laws**

As more particularly identified below, provisions of Louisville's Fairness Ordinance, Louisville's contracts with federal agencies, and federal law prohibit the disclosures sought by Plaintiffs. As attested by HRC's Executive Director, aside from being legally required, the confidentiality of discrimination complaints and HRC's investigative files serves important policy purposes that would be thwarted by the kind of sweeping disclosures requested by Plaintiffs in this litigation. *Goatley Aff.*, at ¶ 20. The confidentiality of HRC's files makes some complainants more comfortable reporting discrimination. *Id.* The confidentiality of HRC's files up to the point of a public hearing has the effect of encouraging parties accused of discrimination to conciliate complaints against them, which often involves the respondent engaging in anti-discrimination

training or other remedial measures. *Id.* As such, the confidentiality of HRC's files serves the important purpose of eliminating discrimination in the Louisville Metro community. *Id.*

### **1. Contractual and Statutory Prohibitions relating to Complaints and Investigations of Employment Discrimination**

Louisville Metro Government has a contractual relationship with the federal Equal Employment Opportunity Commission ("EEOC"), pursuant to which HRC and EEOC work together to investigate allegations of employment discrimination in the Louisville Metro area. Goatley Aff., at ¶ 9. An example of a contract between Louisville Metro Government and EEOC is attached as Exhibit A to Executive Director Goatley's Affidavit. As set forth in the Worksharing Agreement that is part of the EEOC contract, HRC and EEOC regularly and freely share information regarding their investigation of complaints of employment discrimination. Goatley Aff., at ¶ 11. As such, information obtained from the EEOC is regularly mixed together with information obtained by HRC in HRC's case files. *Id.*

The contract with EEOC specifically requires Louisville Metro Government to comply with federal confidentiality and privacy laws as set forth in Title VII, Americans with Disabilities Act, Genetic Information Nondiscrimination Act, and the Privacy Act. *See* Goatley Aff. Ex. A, Sections H.1 and H.8. A review of these federal laws makes clear that the production of complaints and case files in cases that do not result in publicly-filed litigation are prohibited. *See, e.g.*, 29 C.F.R. § 1601.22 ("Neither a charge, nor information obtained during the investigation of a charge of employment discrimination under title VII, the ADA, or GINA, nor information obtained from records required to be kept or reports required to be filed pursuant to title VII, the ADA, or GINA, shall be made matters of public information by the Commission prior to the institution of any proceeding under title VII, the ADA, or GINA involving such charge or information."); 29 C.F.R. § 1610.17 ("Section 706(b) of title VII provides that the Commission shall not make public charges

which have been filed. It also provides that (subsequent to the filing of a charge, an investigation, and a finding that there is reasonable cause to believe that the charge is true) nothing said or done during and as a part of the Commission's endeavors to eliminate any alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion may be made public by the Commission without the written consent of the parties concerned; nor may it be used as evidence in a subsequent proceeding."); 29 C.F.R. § 1611.10 ("The Commission shall not disclose any record which is contained in a system of records it maintains, by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is authorized by one or more provisions of 5 U.S.C. 552a(b).").

These statutes serve the public policy goal of encouraging settlement of discrimination complaints. *See, e.g., American Centennial Ins. Co. v. U.S. E.E.O.C.*, 722 F. Supp. 180, 184 (D.N.J. 1989) ("the intent of the nondisclosure section" of the federal employment discrimination statutes is to achieve "maximum results from the voluntary complaint resolution process by conducting the investigation and conciliation in private"). These statutes have been applied to prohibit discovery sought in civil litigation, even where the discovery sought was related to other complaints of discrimination against the defendant in the litigation. *See, e.g., Equal Employment Opportunity Commission v. Associated Dry Goods Corp.*, 449 U.S. 590, 603, 101 S. Ct. 817, 825, 66 L. Ed. 2d 762 (1981) (prohibiting disclosure of other discrimination complaints filed against employer in case brought by employee alleging discrimination). There is no question that discovery like that sought by Chelsey Nelson in this litigation—which relates to third parties that have nothing to do with this litigation—is prohibited by these statutes.

If HRC were to disclose documents or information in violation of these statutes, HRC and

its employees could face criminal penalties. *See* 42 U.S.C.A. § 2000e-8 (“It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one year.”). In addition to specified statutory penalties, the funding received by Louisville Metro Government pursuant to its contract with EEOC would be threatened if HRC disclosed information in violation of these confidentiality and privacy obligations. *Goatley Aff.*, at ¶ 10.

## **2. Contractual and Statutory Prohibitions relating to Complaints and Investigations of Housing Discrimination**

Louisville Metro Government also has a contractual relationship with the federal Department of Housing and Urban Development (“HUD”), pursuant to which HRC and HUD work together to investigate allegations of housing discrimination in the Louisville Metro area. *Goatley Aff.*, at ¶ 13. An example of a contract between Louisville Metro Government and HUD is attached to Executive Director Goatley’s Affidavit as Exhibit B. Pursuant to Section 26 of the HUD contract, HRC is prohibited from releasing information collected during the course of an investigation of housing discrimination while the complaint is open, except in limited circumstances that do not apply here. *See id.*, Section 26.

A federal regulation requires that things said or done in the course of conciliating a complaint of housing discrimination be kept confidential. *See* 24 C.F.R. § 103.330(a) (“nothing that is said or done in the course of conciliation under this part may be made public or used as evidence in a subsequent administrative hearing under part 180 or in civil actions under title VIII

of the Fair Housing Act, without the written consent of the persons concerned”). Additional federal regulations set forth obligations to keep certain information confidential at the request of the complainant and/or respondent in a housing discrimination matter. *See* 24 C.F.R. § 103.330(b) (“Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purposes of the Fair Housing Act.”); 24 C.F.R. § 103.204(c) (“HUD may also make the information you provide available to other Federal, State, or local agencies having an interest in the matter. In making such information available, HUD will take steps to protect the confidentiality of any informant or complainant when desired by the informant or complainant.”).

In the course of preparing her affidavit to be submitted in support of this motion, Executive Director Goatley contacted her counterparts at HUD to ask whether they considered complaints of housing discrimination and investigative files subject to public disclosure. Goatley Aff., at ¶ 15. These HUD agents vehemently objected to public disclosure of files relating to housing discrimination complaints and indicated that they considered the files to be confidential. *Id.* HUD regularly audits HRC’s compliance with the file maintenance provisions of the HUD contract. *Id.* at ¶ 16. The funding received by Louisville Metro Government pursuant to its contract with HUD would be threatened if HRC disclosed information in violation of its obligations under the HUD contract. *Id.*

### **3. Confidentiality Requirement in Louisville’s Fairness Ordinance**

Louisville’s Fairness Ordinance has a provision which authorizes HRC to “Publish or cause to be published conciliation agreements or enforcement agreements,” but requires that “All other records and information shall be confidential except as reasonably necessary to conduct an investigation and proceeding.” *See* Louisville Metro Ordinance § 92.08(B)(7). This provision applies to all categories of discrimination (employment, housing, and public accommodations).

HRC strictly complies with this obligation by keeping its case files confidential except as necessary to conduct a public hearing regarding complaints of discrimination, which are very rare. Goatley Aff., at ¶ 17. HRC is prohibited from producing the vast majority of its case files pursuant to Louisville Metro Ordinance § 92.08(B)(7).

## **II. Summary Spreadsheets regarding HRC's Investigation of Discrimination Complaints**

Plaintiffs' Requests for Production Nos. 1-39 sought the production of summary spreadsheets with specified metrics regarding HRC's investigation of discrimination complaints dating back to 2004. Not all of the metrics requested by Plaintiffs are tracked by Defendants, but much of the information requested is available to the public (and Plaintiffs) via HRC's website, which posts HRC's annual reports, newsletters, and minutes from meetings of HRC's Advocacy and Enforcement Boards. *See generally* <https://louisvilleky.gov/government/human-relations-commission/reports-publications> and <https://louisvilleky.gov/government/human-relations-commission/advocacy-and-enforcement-boards>.

HRC's Annual Reports contain data for discrimination complaints which reflects:

- the number of complaints filed and number of complaints closed by category of discrimination (employment, housing, public accommodations) and each protected class;
- the number of cases by category of discrimination in which there was a finding of probable cause, settlements, administrative closure, judicial dismissals, withdrawals of complaints, and other results metrics;
- a list of conciliation agreements which discloses the name of the complainant, the name of the party accused of discrimination, the basis of the discrimination, any adverse action, and the terms of the conciliation agreement.

*See, e.g.*, HRC Annual Report for 2015-2017, attached hereto as Exhibit 4. Similar metrics are included in a Compliance Activity Report which is appended to publicly-available minutes from monthly meetings of HRC's Enforcement Board. *See, e.g.*, Enforcement Board Minutes from December 2020, attached hereto as Exhibit 5.

Aside from the information published regarding conciliation agreements, which HRC is specifically authorized to make public by Louisville Metro Ordinance § 92.08(B)(7) (authorizing HRC to "Publish or cause to be published conciliation agreements or enforcement agreements"), the data made public in HRC's Annual Reports and Board Minutes is anonymized and summary, meaning that it does not reveal the names of individual complainants, respondents, or details of the alleged discrimination or HRC's investigation.

Defendants withheld from their document production additional summary spreadsheets responsive to Plaintiffs' requests because they identified individual complainants, respondents, and other information regarding HRC's investigations on a case-by-case basis. As disclosed to Plaintiffs during the meet-and-confer process, the withheld spreadsheets are:

- EEOC Resolutions Reports and EEOC Pending Inventory Reports: These documents contain charts listing individual cases, with columns for: FEPA Number/EEOC Number; CP Name/Respondent; R/T; Office Date; Charge Date; Cause Date; Closure Date; Closed; Statutes; Benefits; On Site; Staff Initial Date; F/U; Proc Time; Proc T w/exc; Staff Age. These documents also contain cover pages stating that the documents are subject to the Confidentiality Laws. Pages from these documents which summarized case data for the years from 2010 to 2020 in a way that did not identify individual cases was produced to Defendants as LOU

METRO 01718-LOU METRO 01833, example attached hereto as Exhibit 6.<sup>2</sup>

- HUD Reports of Open FHAP Complaints and HUD Reports of Closed FHAP Complaints: These documents contain charts listing individual cases, with columns for: Investigator; HUD Case Number; FHAP Case Number; Case Name (which identifies the complainant and the respondent); HUD Monitor; HUD Filing Date; Cause Date; Age.
- Spreadsheets used by HRC to track open and closed cases: These spreadsheets list individual cases. The format of these spreadsheets has changed slightly over the years. Each spreadsheet contains some or all of the following columns: EEOC; Intake; Investigator; Complaint No.; EEOC No.; Complainant; Respondent; Closure; Amt Rec'd/Reason; Code; Date Opened; Date Closed; Days Open; TER; HRC; No Credit; Hearing Date/Outcome of Hearing; Basis; Action.

Defendants respectfully submit that they are prohibited from producing these withheld spreadsheets pursuant to the confidentiality laws and contractual requirements discussed above.

### **III. Interrogatories Regarding Consideration of Alternative Means to Prevent Discrimination**

Plaintiffs' Interrogatory Nos. 15-17 are contention interrogatories which asked whether Defendants contend that requiring Plaintiffs to provide the same services to same-sex couples as Plaintiffs provide to opposite-sex couples is the least restrictive means to achieving any government interest. Defendants responded that, yes, the Louisville Metro Fairness Ordinance cannot accomplish its purpose of preventing discrimination if religious objectors are permitted to

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<sup>2</sup> See 29 C.F.R. § 1601.22 (permitting "the publication of data derived from [an investigation of employment discrimination] in a form which does not reveal the identity of charging parties, respondents, or persons supplying the information").

discriminate. Plaintiffs' Interrogatory Nos. 15-17 further sought an identification of all facts supporting that contention, including all alternative means considered. It is this part of the interrogatory to which Plaintiffs seek to compel a further response.

Defendants are Louisville Metro Government, HRC, and the current members of HRC's Enforcement Board. None of Defendants were legislators at the time the Jefferson County Fiscal Court, the Board of Aldermen of the City of Louisville, or Louisville Metro Council considered and passed the Fairness Ordinance. Therefore Defendants cannot provide discovery regarding what alternative measures those legislators considered, other than the transcripts and minutes of those legislative sessions, which have been produced to Plaintiffs. As such, Defendants submit that they have adequately responded to Plaintiffs' Interrogatories Nos. 15-17.

### **CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiffs' motion to compel and grant Defendants' motion for protective order with respect to the discovery disputed by this motion. A proposed order has been tendered with this motion.

Respectfully submitted,

/s/ Casey L. Hinkle

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 5, 2021, the foregoing was filed via the Court's electronic filing system, which will automatically send notice of such filing to all counsel of record.

/s/ Casey L. Hinkle

*Counsel for Defendants*