

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

EDEN ROGERS and

BRANDY WELCH,

Plaintiffs,

-against-

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES;

ALEX AZAR, in his official capacity as Secretary
of the UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;

ADMINISTRATION FOR CHILDREN AND
FAMILIES;

LYNN JOHNSON, in her official capacity as
Assistant Secretary of the ADMINISTRATION
FOR CHILDREN AND FAMILIES;

SCOTT LEKAN, in his official capacity as
Principal Deputy Assistant Secretary of the
ADMINISTRATION FOR CHILDREN AND
FAMILIES;

HENRY MCMASTER, in his official capacity as
Governor of the STATE OF SOUTH CAROLINA;
and

MICHAEL LEACH, in his official capacity as State
Director of the SOUTH CAROLINA
DEPARTMENT OF SOCIAL SERVICES,

Defendants.

Case No. 6:19-cv-01567-JD

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS'
OPPOSITION TO GOVERNOR
MCMASTER'S MOTION FOR A
PROTECTIVE ORDER**

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Plaintiffs Eden Rogers and Brandy Welch (“Plaintiffs”) respectfully submit this memorandum of law in support of their Opposition to Governor Henry McMaster’s Motion for a Protective Order (“Mot.”, ECF No. 138). Plaintiffs have conferred with opposing counsel in a good faith attempt to resolve the matter herein, but the parties have reached an impasse.

INTRODUCTION

This case implicates the First Amendment, due process and equal protection rights of South Carolina citizens. As to Defendant Henry McMaster, Plaintiffs challenge his actions authorizing state-contracted, government-funded child placing agencies (“CPAs”) to use religious eligibility criteria when screening potential foster parents for children in state custody and their intentional discrimination against prospective foster parents on the basis of religion and sexual orientation. Specifically, the complaint alleges that Governor McMaster interfered with the South Carolina Department of Social Services’ (“DSS”) revocation of the permanent CPA license held by Miracle Hill Ministries (“Miracle Hill”); sought a waiver from the U.S. Department of Health & Human Services (“HHS”) for all faith-based CPAs in South Carolina, relieving them of certain federal non-discrimination requirements (the “waiver request”); and issued an Executive Order requiring DSS to revise its own non-discrimination policies to allow faith-based CPAs to continue discriminating against potential foster parents. (*See* Compl. ¶¶ 54-67, ECF No. 1.)

In light of these significant issues, Plaintiffs sought to depose a representative of the Office of the Governor (the “Office”) under Federal Rule of Civil Procedure 30(b)(6) and served Rule 45 subpoenas for depositions of two employees of the Governor’s Office. Plaintiffs also planned to notice the deposition of Governor McMaster. In response, Governor McMaster filed the instant motion for a protective order, and, several days later, the Office filed a separate

motion for a protective order and to quash the subpoenas (ECF No. 142). Plaintiffs will explain fully their reasons for opposing the Office's motion in their opposition to be filed with the Court on May 13, 2021.

Governor McMaster argues that his deposition is prohibited by the apex doctrine and the deliberative process privilege, and the Office argues that the subpoenaed deposition testimony of any employees of the Office is prohibited by principles of sovereign immunity, as well as by the apex doctrine and the deliberative process privilege. Taken together, Governor McMaster's and the Office's arguments, if credited, would prevent Plaintiffs from obtaining any deposition testimony whatsoever from any witness associated with Governor McMaster's Office concerning any of the Governor's actions that form the basis of this lawsuit. Such an outcome has no basis in law and would violate the spirit and the letter of the Federal Rules of Civil Procedure governing discovery. Given the very similar and intertwined issues between Governor McMaster's motion here and the Office's motion for a protective order and to quash the subpoenas, Plaintiffs respectfully request that the Court consolidate these motions and consider them together once briefing is complete on both.

Taken on their own merit, Governor McMaster's arguments fail. The apex doctrine is designed to prevent the deposition of a high-ranking government official who truly has no knowledge of the facts of the case. That is not the case here. As the allegations of Plaintiffs' complaint and documents produced during discovery make clear, Governor McMaster was directly involved in the actions that gave rise to Plaintiffs' complaint. Moreover, Plaintiffs have already exhausted less burdensome avenues of discovery—Governor McMaster's responses to interrogatories and requests for admission were evasive, nonresponsive and argumentative. And given the position taken by the Office in this litigation, Plaintiffs have been unable to take

the depositions of employees of the Office who might be able to provide sufficient information in response to Plaintiffs' requests. For these reasons, Plaintiffs are entitled to Governor McMaster's deposition.

Plaintiffs recognize that Governor McMaster is a busy government official with many demands on his time, and they do not intend to burden him unnecessarily. But Governor McMaster's assertion that he is the only party to this litigation from the Office of the Governor, combined with the Office's refusal to produce any witnesses for deposition, necessitated Plaintiffs' pursuit of Governor McMaster's deposition. If Plaintiffs are permitted to depose other witnesses from the Office, and assuming those witnesses provide meaningful testimony on the topics at issue, Plaintiffs may not ultimately need to take Governor McMaster's deposition. But Plaintiffs nonetheless must reserve their rights to do so, and thus Plaintiffs respectfully request that the Court deny Governor McMaster's motion for a protective order without prejudice until such time as the parties can determine whether his deposition is necessary.

STATEMENT OF FACTS

Discovery in this case has proceeded for nearly a year now. Promptly after the Court's decision on Defendants' motions to dismiss (ECF No. 81), Plaintiffs served requests for production of documents ("RFPs") on Governor McMaster (and DSS and HHS), which triggered a protracted dispute culminating in Plaintiffs' motion to compel discovery from Governor McMaster and DSS Director Michael Leach. After 60 days, Governor McMaster finally served 394 pages of discovery, most of which was duplicative of materials Plaintiffs had already received through FOIA requests, and Governor McMaster failed to produce any documents in response to more than half of Plaintiffs' requests. After multiple meet-and-confers and correspondence through which Plaintiffs attempted to understand Governor McMaster's search

process, Governor McMaster stood by his overly broad objections and refused to engage any further with Plaintiffs to overcome the impasse on discovery. Plaintiffs thereafter filed a motion to compel discovery (ECF No. 107), which resulted in an order (i) requiring the parties to continue negotiating the discovery disputes and to file joint reports appraising the Court of the status of the parties' negotiations and (ii) reminding the parties that the Court "reserved the right to assess sanctions . . . against any person or entity who fails to act in good faith to resolve the issues before the [C]ourt". (ECF No. 112.) Governor McMaster finally completed his document production in January 2021, and Plaintiffs withdrew their motion to compel. (ECF No. 124.)

Plaintiffs also served interrogatories and requests for admissions ("RFAs") on Governor McMaster. Governor McMaster's responses to the RFAs consisted of nothing but argumentative denials. (*See Barbur Decl., Ex. 4.*) And in his first round of responses to Plaintiffs' interrogatories, Governor McMaster erroneously invoked the deliberative process privilege to deny Plaintiffs access to basic, factual information that goes to the heart of the case, such as who was involved in drafting the Governor's March 13, 2018 Executive Order (ECF No. 138-2). (*See Barbur Decl., Ex. 5.*) Without this information, Plaintiffs had no way to know whom from Governor McMaster's Office to depose concerning essential facts of the case. Governor McMaster eventually provided this information, but only after another protracted process of meet-and-confers and exchanges of correspondence between the parties. (*See Barbur Decl., Ex. 6.*)

In an effort to move the case forward into deposition discovery, on March 4, 2021, counsel for Plaintiffs sent a letter to Governor McMaster's counsel, indicating that Plaintiffs planned to notice a Rule 30(b)(6) deposition of the Office or the Governor, attaching a list of proposed deposition topics and requesting a meet-and-confer to discuss the topics. (ECF

No. 138-4.) Plaintiffs also stated that they planned to notice depositions of two members of Governor McMaster's staff, Leigh Lemoine and Brian Symmes. (*Id.*) Governor McMaster's counsel responded on March 23, 2021, stating that the Governor was unable to produce a Rule 30(b)(6) representative or the two individual witnesses in response to deposition notices, because Governor McMaster himself is the only defendant named in the complaint from the Office of the Governor. (ECF No. 138-6.)

On April 2, 2021, Plaintiffs' counsel informed Governor McMaster's counsel that, in light of the position taken by the Governor in his counsel's March 23 letter, Plaintiffs planned to serve Rule 45 subpoenas on the Office of the Governor and the two individual witnesses and to notice the deposition of Governor McMaster. (ECF No. 138-7, at 1.) Plaintiffs' counsel also offered to meet and confer about the proposed Rule 30(b)(6) topics and to discuss suitable deposition dates in advance of serving a subpoena on the Office of the Governor. (*Id.* at 1-2.) Plaintiffs served Rule 45 subpoenas on Leigh Lemoine and Brian Symmes via certified mail on April 12, 2021.

On April 14, 2021, and six weeks after Plaintiffs first raised the prospect of a Rule 30(b)(6) deposition of the Office of the Governor, Governor McMaster's counsel responded—for the first time and with no explanation—that he was “unable” to confer regarding a Rule 30(b)(6) deposition on behalf of the Office of the Governor. (ECF 138-9, at 1.) Instead, Governor McMaster's counsel invited Plaintiffs' counsel to confer with in-house counsel for the Office of the Governor. (*Id.*) Also in the April 14 letter, Governor McMaster's counsel objected to any deposition of Governor McMaster, stating that such a deposition would be “impermissible under the apex doctrine and/or the privilege that surrounds the deliberations and decisional process of high-ranking executive officials”. (*Id.*) He offered to meet and confer but noted that “if . . . you

intend to persist in serving a notice of deposition on Governor McMaster such a conference may be fruitless, and we will instead proceed to move for a protective order.” (*Id.* at 2.)

Plaintiffs’ counsel responded on April 21, 2021, stating that “[e]specially since you have taken the position that we are not entitled to take the deposition of anyone else in the Governor’s Office, we are entitled to depose Governor McMaster, who has unique, personal knowledge of facts relevant to this case”. (ECF No. 138-10, at 1.) Plaintiffs’ counsel further indicated that they would serve a notice for the Governor’s deposition shortly. (*Id.*) In response, Governor McMaster filed this motion for a protective order to prohibit Plaintiffs from taking his deposition, to which Plaintiffs now respond.

At the direction of Governor McMaster’s counsel, on April 19, 2021, Plaintiffs’ counsel sent a letter to in-house counsel for the Office of the Governor, stating Plaintiffs’ intention to serve a Rule 45 subpoena on the Office of the Governor and asking for counsel’s availability to meet and confer on the proposed topics and to discuss suitable deposition dates. (Barbur Decl., Ex. 1.) Plaintiffs’ counsel’s letter also asked whether the Office’s counsel would be representing Ms. Lemoine and Mr. Symmes, the two members of the Governor’s staff whom Plaintiffs had subpoenaed, and whether they would be available for deposition on the dates indicated in the subpoenas. (*Id.*)

On April 20, 2021, the Office’s counsel responded that “any such subpoena directed to the Office would be both substantively inappropriate and procedurally improper” and “would impose an undue, and unnecessary, burden on the Office”. (ECF No. 142-4, at 1.) The Office’s counsel also indicated that the two individual witnesses were not available on the subpoenaed dates, and that the Office objected to any such discovery efforts and, absent withdrawal of the subpoenas, would move to quash or for a protective order. (*Id.* at 2.)

Counsel for Plaintiffs and counsel for the Office of the Governor held a meet-and-confer on April 22, 2021 to discuss these issues, during which Plaintiffs' counsel explained that, when combined, the positions taken by Governor McMaster and by his Office would leave Plaintiffs with no deposition discovery as to one central party in the case. The Office's counsel nonetheless maintained that Plaintiffs were not entitled to a Rule 30(b)(6) deposition or to the depositions of the two members of Governor McMaster's staff. The Office filed a consolidated motion for a protective order and to quash the subpoenas on April 29, 2021 (ECF No. 142), which is also pending before the Court.

Plaintiffs now oppose Governor McMaster's motion for a protective order.

LEGAL STANDARD

The court has broad authority under Federal Rules of Civil Procedure 26(b)(2)(C) and 26(c) "to determine 'when a protective order is appropriate and what degree of protection is required.'" *Wood v. Harshbarger*, No. 3:13-CV-21079, 2014 WL 3056855, at *3 (S.D.W. Va. July 7, 2014) (quoting *Furlow v. United States*, 55 F. Supp. 2d 360, 366 (D. Md. 1999)). Protective orders are to be "sparingly used and cautiously granted." *Baron Fin. Corp. v. Natanzon*, 240 F.R.D. 200, 202 (D. Md. 2006) (quoting *Medlin v. Andrew*, 113 F.R.D. 650, 652 (M.D.N.C. 1987)).

Significantly, courts are reluctant to "constrain discovery" by "prevent[ing] the taking of a deposition." *Wood*, 2014 WL 3056855, at *3 (citing *Minter v. Wells Fargo Bank, N.A.*, 258 F.R.D. 118, 125 (D. Md. 2009)). The "need for prospective relief" with respect to a deposition "is more difficult to establish than in other methods of discovery." *Id.* Ordinarily, "[b]y requesting the Court to prohibit plaintiff from deposing a witness, defendant . . . assumes a heavy burden because protective orders which totally prohibit a deposition 'should be rarely

granted absent extraordinary circumstances.” *Static Control Components, Inc. v. Darkprint Imaging*, 201 F.R.D. 431, 434 (M.D.N.C. 2001) (quoting *N.F.A. Corp. v. Riverview Narrow Fabrics, Inc.*, 117 F.R.D. 83, 84 (M.D.N.C. 1987)).¹

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO TAKE DISCOVERY OF GOVERNOR MCMASTER VIA DEPOSITION.

“Depositions are an essential part of civil litigation”. *Cooner v. Clayton*, No. 5:06-CV-338-D, 2008 WL 821541, at *8 (E.D.N.C. Mar. 26, 2008). As such, parties are deprived of “material evidence” by bad faith refusals to be deposed. *Id.*; *see also Wood*, 2014 WL 3056855, at *5 (granting motion to compel and denying motion for a protective order precluding the deposition of a government official because “[w]ithout the deposition, Plaintiff will be precluded from discovering” evidence that is essential to the “Plaintiff’s stated claims”); *Rosinbum v. Azar*, No. CV TDC-19-3119, 2020 WL 6545853, at *6 (D. Md. Nov. 6, 2020) (“Depositions are needed because in their absence, a plaintiff has had “no means of ferreting out inconsistencies or falsehoods. . . .” (quoting *Hart v. Lew*, 973 F. Supp. 2d 561, 574 (D. Md. 2013))). Other discovery methods “cannot be considered a functional equivalent of live (or deposition) testimony, nor are they adequate or sufficient to substitute for testimony.” *See United States v. Moussaoui*, 365 F.3d 292, 331 (4th Cir.) (Gregory, J. concurring in part and dissenting in part), *opinion amended on reh’g*, 382 F.3d 453 (4th Cir. 2004).

¹ By invoking the apex doctrine, Governor McMaster seeks to “reallocate[] the burden that accompanies a motion for a protective order”. *In re C. R. Bard, Inc. Pelvic Repair Sys. Prod. Liab. Litig.*, MDL No. 2187, 2014 WL 12703776, at *4 (S.D.W. Va. June 30, 2014). As explained below, Governor McMaster’s deposition should be allowed even if Governor McMaster’s proffered burden shifting framework is correct. *See City of Huntington v. AmerisourceBergen Drug Corp.*, No. 3:17-01362, 2020 WL 3520314, at *3-4 (S.D.W. Va. June 29, 2020).

Plaintiffs need, and are entitled, to take deposition discovery of Governor McMaster, who is perhaps the most important defendant in this case. Indeed, Governor McMaster has been directly and personally involved in the actions giving rise to Plaintiffs' claims in this suit. Judge Cain recognized Governor McMaster's critical role when the Court denied Governor McMaster's motion to dismiss: "rather than requiring Miracle Hill to comply with the applicable state and federal non-discrimination requirements as DSS had, Governor McMaster sought to create and obtain exemptions from such requirements to enable Miracle Hill to continue excluding prospective foster parents based on its religious criteria"; "[Governor] McMaster requested that HHS grant South Carolina a waiver from the non-discrimination provisions of" federal law; and "before the HHS waiver was granted, [Governor] McMaster entered the Executive Order . . . prohibiting DSS from denying licensure to faith-based CPAs solely on account of their . . . sincerely held religious beliefs". (May 8, 2020 Order, ECF No. 81, at 25-26.)

Plaintiffs have already identified (in, for example, their proposed Rule 30(b)(6) deposition topics) a number of topics and issues that can only adequately be explored through depositions of Governor McMaster, his Office or his staff. These topics include (but are not limited to):

- The involvement of Governor McMaster, or any person in Governor McMaster's Office, in the 2018 dispute between DSS and Miracle Hill over Miracle Hill's CPA license;
- The extent of Governor McMaster's or his Office's awareness of Miracle Hill's history of discriminating on the basis of religion and/or sexual orientation before the dispute between DSS and Miracle Hill;
- Communications between the Governor's Office and DSS regarding the Miracle Hill licensing issue, and what happened to cause DSS to change its position and start to work with the Governor's Office on the waiver request;

- Communications between the Governor's Office and HHS or others in the federal government regarding the application of the federal non-discrimination requirements to faith-based CPAs in South Carolina, both before and after Governor McMaster's waiver request;
- The process followed by Governor McMaster in drafting and submitting the waiver request, and in drafting and issuing the Executive Order, including the involvement of members of his staff;
- Whether anyone at the Governor's Office considered the impact the waiver granted by HHS to faith-based South Carolina CPAs or the Executive Order would have on the availability of foster parents in South Carolina;
- The involvement of Governor McMaster, or any person in Governor McMaster's Office, if any, in HHS's 2019 decision not to enforce its own non-discrimination requirements and to ultimately eliminate certain protections that previously applied to HHS-grant-funded service providers; and
- Governor McMaster's and his Office's efforts to search for, collect and produce documents and communications in response to Plaintiffs' RFPs and interrogatories.

Given Governor McMaster's critical role and the centrality of these issues to this case, it cannot be that Plaintiffs are not entitled to a single deposition of any official associated with his Office, and yet that is the combined effect of the positions taken by Governor McMaster and the Office. Despite Governor McMaster's arguments to the contrary (Mot. at 13-15), other discovery methods have not sufficed and will not serve as adequate substitutes for live deposition testimony. Plaintiffs do not seek to unduly burden Governor McMaster, but they do need to depose some witnesses from the Governor's Office so they can obtain discovery regarding key topics and issues in the case. For these reasons, and the reasons Plaintiffs will explain in response to the Office's motion, the Court should deny with prejudice the Office's motion for a protective order and to quash the subpoenas, and deny without prejudice Governor McMaster's motion for a protective order until the parties can determine whether the Governor's deposition is necessary. *See Kimberlin v. Frey*, No. GJH-13-3059, 2015 WL 13203619, at *3 (D. Md. July

27, 2015) (denying without prejudice a motion for protective order, even where the subpoenaed individual was no longer a defendant in the case, on the ground that the “request could lead to the discovery of admissible evidence” regarding events and communications that had taken place during the relevant time period in the action).

A. Governor McMaster’s and the Office’s combined gamesmanship have precluded Plaintiffs from deposing anyone from the Governor’s Office and should not be rewarded.

As the chronology laid out in the Statement of Facts makes clear, Plaintiffs’ legitimate attempts to pursue deposition discovery of Governor McMaster have only been met with delay and stonewalling. In an effort to avoid burdening the Governor with a deposition, Plaintiffs began in early March by asking for a Rule 30(b)(6) deposition of the Office of the Governor and the depositions of two members of Governor McMaster’s staff, Ms. Lemoine and Mr. Symmes. However, Governor McMaster’s counsel refused to produce a Rule 30(b)(6) designee or the two individuals, on the grounds that neither the Office of the Governor nor either of the individuals (and only Governor McMaster) is a party to the case.²

The idea that the Governor, sued in his official capacity, and the Office of which he is the head are somehow separate and distinct entities is nothing but a fiction created to stymie the discovery process. “As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against

² Plaintiffs could not have named the Office of the Governor as a defendant in this case under well established principles of sovereign immunity. Although the Eleventh Amendment generally bars suit against states or state agencies, the Supreme Court has crafted an exception to state sovereign immunity that permits suits against state officials in their official capacities to enforce federal law to go forward, but only for prospective injunctive and declaratory relief—and only for continuing or threatened violations of federal constitutional rights. *See, e.g., Ex Parte Young*, 209 U.S. 123 (1908); *Green v. Mansour*, 474 U.S. 64 (1985); *Edelman v. Jordan*, 415 U.S. 651 (1974).

the entity.” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). As such, “any non-privileged, relevant information within the control of the related public entity is also discoverable against that official.” *Tyler v. Suffolk Cty.*, 256 F.R.D. 34, 37 (D. Mass. 2009). But in order to move discovery along and proceed to depositions, Plaintiffs served Rule 45 subpoenas on the two individuals and stated their intention to serve a subpoena on the Governor’s Office after the parties had an opportunity to meet and confer on the proposed Rule 30(b)(6) topics.

Plaintiffs were then surprised to learn for the first time—six weeks after first stating their intention to take depositions of the Governor’s Office and nearly two years into this litigation—that counsel for Governor McMaster does not represent the Office of the Governor. After all, Governor McMaster’s counsel produced documents from and asserted privilege on behalf of exactly the same people in the Office of the Governor that he now says he does not represent.

However, at the instruction of Governor McMaster’s counsel, Plaintiffs contacted in-house counsel for the Office about the depositions, but were only met by further obstacles. In-house counsel for the Office of the Governor refused to produce a Rule 30(b)(6) representative of the Office or the two individual members of the Governor’s staff.³ And Governor McMaster’s

³ Notably, Plaintiffs took this same approach to obtaining deposition discovery from DSS Director Michael Leach, but with a different result. Recognizing that DSS itself is not named as a party to this suit, Director Leach’s counsel requested that Plaintiffs serve Rule 45 subpoenas on DSS and the two individual witnesses Plaintiffs sought to depose. (Barbur Decl., Ex. 2.) Once those subpoenas were served, Director Leach’s counsel did not object to producing Rule 30(b)(6) designees to testify on behalf of DSS, or to producing the two DSS employees for individual depositions, and the parties have been working diligently to schedule the depositions. And while Plaintiffs reserve their right to notice the deposition of Director Leach, they have not done so and do not intend to do so until the other DSS depositions are complete and they can assess whether his testimony is necessary.

counsel objected to the deposition of Governor McMaster as “impermissible under the apex doctrine and/or the privilege that surrounds the deliberations and decisional process of high-ranking executive officials”. (ECF No. 138-9.)

The cumulative impact of the positions taken by Governor McMaster and the Office of the Governor is that Plaintiffs have been precluded from taking any depositions of Governor McMaster, his Office or his staff. Plaintiffs cannot tolerate that outcome, nor does the law permit it. *See Taylor v. Oak Forest Health & Rehab., LLC*, 302 F.R.D. 390, 394 (M.D.N.C. 2014) (finding that the defendants suffered “significant prejudice” as a result of the plaintiff’s “failure to give non-argumentative and full deposition testimony”, which “stonewall[ed]” efforts to obtain information about facts relevant to the case), *aff’d*, 590 F. App’x 254 (4th Cir. 2015). The Court should not reward such gamesmanship.

B. Other discovery methods are inadequate replacements for deposition discovery here.

Governor McMaster repeatedly touts his 843-page production as adequate substitute discovery. (Mot. at 4, 13.) As discussed above, that production only came after Plaintiffs worked for months to resolve disputes with Governor McMaster over their requests for production and ultimately filed a motion to compel. (*See* ECF No. 107.) And even then, the Governor’s production was hardly elucidating and contained many documents that were already part of the record in the case. By contrast, Miracle Hill, a non-party, produced 13,000 pages in response to a subpoena from Plaintiffs after engaging in good-faith negotiations over Plaintiffs’ requests.⁴

⁴ The Governor’s attempt to bolster the sufficiency of his own document production by comparison to the number of pages Plaintiffs produced (Mot. at 13) is unavailing. Plaintiffs are prospective foster parents who were turned away by Miracle Hill. The Governor is the chief

Indeed, there are numerous obvious holes in the Governor's production. It lacks any documents that adequately explain why, after DSS made plain its intent to require Miracle Hill to comply with relevant policies and regulations, less than a month later, DSS about faced, and instead began working with the Governor's Office to obtain a waiver from HSS. (*See* Barbur Decl., Ex. 3.) And the documents Governor McMaster has produced shed little light on other communications Governor McMaster or his staff may have had with HHS regarding the non-discrimination regulations at issue, or whether and why special treatment was provided to Miracle Hill that may not have been provided to other CPAs, among other topics. The documents similarly do not shed light on the sincerity of Governor McMaster's proffered justifications for his actions—*i.e.*, whether the waiver request truly was in the best interests of children in foster care or the South Carolina foster care system in general—which is a critical piece of Plaintiffs' case. Plaintiffs are entitled to explore these issues at deposition.

Moreover, Governor McMaster's argument that Plaintiffs have already canvassed all the non-privileged materials within the Governor's custody related to the case (Mot. at 18-19) is self-serving and circular. It assumes that the Governor in fact produced all non-privileged documents responsive to Plaintiffs' RFPs—an assumption that Plaintiffs are entitled to probe at deposition. *See Burnett v. Ford Motor Co.*, No. 3:13-cv-14207, 2015 WL 4137847, at *9 (S.D.W. Va. July 8, 2015) (denying defendant's motion for a protective order over information about its document search procedures).

Governor McMaster also claims that Plaintiffs could obtain the information they seek by serving on him interrogatories or requests for admissions. (Mot. at 13-15.) However,

executive of the State of South Carolina. It should come as no surprise that the Governor would have more relevant documents in his possession, custody or control.

responses to interrogatories and RFAs are crafted by attorneys and are no substitute for deposition testimony. *See Szego v. Comm'r*, No. 91-2153, 1993 WL 211655, at *1-2 (4th Cir. June 17, 1993) (per curiam) (concluding that interrogatory answers were not properly in the summary judgment record because they were filed by the defendant's attorney and not based on the defendant's personal knowledge).

And Governor McMaster's prior responses to Plaintiffs' RFAs and interrogatories give Plaintiffs no reason to believe they would receive satisfactory responses if they employed these same discovery methods again. In response to Plaintiffs' RFAs, Governor McMaster provided Plaintiffs with a series of argumentative denials that were not remotely elucidating. Multiple responses incorporated irrelevant details, none of which went beyond publicly available information.⁵ Governor McMaster's interrogatory responses were no more enlightening. In many cases, Governor McMaster intentionally misconstrued questions and failed to provide discoverable information about underlying facts, to which Plaintiffs are entitled.⁶ For example,

⁵ For example, in response to RFA 1 ("Admit that Miracle Hill discriminates against prospective foster families on the basis of religion."), Governor McMaster responded: "Denied. Miracle Hill is a private entity and a third party, but, based on the Governor's understanding of the facts known to him regarding Miracle Hill's practices, he has no basis to believe that Miracle Hill engages in invidious discrimination in its treatment of prospective foster parents on the basis of their religion. To the best of the Governor's knowledge, Miracle Hill serves needy children and adults and works with volunteers without regard to their religious beliefs, but requires that employees and the foster parents with whom Miracle Hill works share its religious beliefs pursuant to its Free Exercise and associational rights." (Barbur Decl., Ex. 4, at 4.)

⁶ For example, in response to Interrogatory No. 2 ("Identify the individuals involved in the McMaster Executive Order."), Governor McMaster's counsel wrote: "Governor McMaster does not and cannot know the entire, potentially expansive, list of people in the state and federal government, the press, and the public who received, read, and inquired about Executive Order 2018-12, including those who wrote, called, or emailed his office in advance of or in reaction to the issuance of the Executive Order to opine or inquire about the need, permissibility, scope, meaning, and interpretation of the Order." (Barbur Decl., Ex. 5, at 3-4.) Governor McMaster could not possibly have believed that Plaintiffs sought to capture information about members of "the public who received, read, and inquired about Executive Order 2018-12, including those

as noted above, Governor McMaster initially failed to name any individual involved in the preparations and/or drafting of his March 13, 2018 Executive Order, arguing that the deliberative process privilege shielded even the identities of those people (which it does not). *See Prop. of the People, Inc. v. Off. of Mgmt. & Budget*, 330 F. Supp. 3d 373, 382 (D.D.C. 2018) (rejecting federal agency’s assertion that the identity of meeting attendees would intrude on the agency’s deliberative process). Governor McMaster only finally provided this basic, factual information after extensive communications with Plaintiffs.

Given this history, there is no reason for Plaintiffs to believe they would have more success employing these discovery methods a second time and certainly no basis for Plaintiffs to conclude that those methods would be more probative than live deposition testimony.

C. Plaintiffs do not seek to burden Governor McMaster unnecessarily.

Plaintiffs do not dispute that, as South Carolina’s chief executive, Governor McMaster has a myriad of important duties and many demands on his time, outlined in detail in the Governor’s motion. (Mot. at 15-16.) Plaintiffs are willing—and have always been willing—to meet and confer with Governor McMaster’s and the Office’s counsel to discuss how Plaintiffs can obtain the deposition discovery they need in the least burdensome way. Should the Court deny the Office’s motion for a protective order and to quash the subpoenas, Plaintiffs intend to begin by taking the Rule 30(b)(6) deposition of the Office of the Governor and then the depositions of the two individuals. Assuming those witnesses provide meaningful testimony on the topics at issue, Plaintiffs may not need to pursue Governor McMaster’s deposition. But

who wrote, called, or emailed [McMaster’s] office”. This reading of Interrogatory No. 2 was intentionally obtuse.

Plaintiffs nonetheless must reserve their rights to seek Governor McMaster's deposition until they have had an opportunity to depose the other witnesses and assess the sufficiency of that testimony. And if Governor McMaster's deposition does prove necessary, Plaintiffs' counsel will work cooperatively with Governor McMaster's counsel to select a deposition date that works best for the Governor's schedule and causes the least interruption to his duties, and will consider a reasonable proposal to limit the length of the deposition.

For the foregoing reasons, the Court should deny without prejudice Governor McMaster's motion for a protective order.

II. GOVERNOR MCMASTER'S DEPOSITION IS NOT BARRED BY THE APEX DOCTRINE OR THE DELIBERATIVE PROCESS PRIVILEGE.

Governor McMaster argues that his deposition is prohibited in its entirety by both the apex doctrine and the deliberative process privilege. (Mot. at 7-19.) Neither argument holds water, and neither justifies granting his motion for a protective order.

A. Governor McMaster's deposition is not prohibited by the apex doctrine.

The Fourth Circuit has never discussed, much less adopted, the so-called "apex doctrine". *Cunagin ex rel. J.C. v. Cabell Huntington, Hospital, Inc.*, No. 3:19-cv-00250, 2021 WL 1518877, at *4 (S.D.W. Va. April 16, 2021). But cases from district courts in this Circuit applying the apex doctrine have "establish[ed] that the apex deposition rule is bottomed on the apex executive lacking any knowledge of the relevant facts". *Paice, LLC v. Hyundai Motor Co.*, No. CIV. WDQ-12-0499, 2014 WL 3613394, at *1 (D. Md. June 27, 2014); *Intelligent Verification Sys., LLC v. Microsoft Corp.*, No. 2:12CV525, 2014 WL 12544827, at *2 (E.D. Va.

Jan. 9, 2014) (purpose of the apex doctrine is to protect high-ranking officials from discovery abuses when they have “no particular direct knowledge of the facts pertaining to the lawsuit”).⁷

Courts within the Fourth Circuit typically require a deposing party to establish that “(1) the [high-ranking official] has unique or special knowledge of the facts at issue and (2) other less burdensome avenues for obtaining the information sought have been exhausted” before allowing the deposition of a high-ranking government official. *In re Lipitor (Atorvastatin Calcium) Mktg., Sales Pracs. & Prods. Liab. Litig.*, MDL No. 2:14-mn-02502-RMG, 2014 WL 12621613, at *2 (D.S.C. Nov. 13, 2014) (quoting *Smithfield Bus. Park, LLC*, No. 5:12-CV-282-F, 2014 WL 547078, at *2 (E.D.N.C. Feb. 10, 2014)); *see also JTH Tax, Inc. v. Aime*, No. 2:16cv279, 2016 WL 9223926, at *4 (E.D. Va. Dec. 13, 2016) (allowing the deposition of the CEO of a corporation because the plaintiffs alleged that he “may have unique direct knowledge of an alleged conversation” concerning events that gave rise to the complaint).⁸

⁷ “A witness ordinarily cannot escape examination by denying knowledge of any relevant facts, since the party seeking to take the deposition is entitled to test the witness’s lack of knowledge.” *Performance Sales & Mktg. LLC v. Lowe’s Cos., Inc.*, No. 5:07-CV-00140-RLV, 2012 WL 4061680, at *4 (W.D.N.C. Sept. 14, 2012). For this reason, courts usually require the apex deponent to “submit an affidavit . . . stating that he or she lacks superior or unique knowledge of the relevant facts”. *In re C. R. Bard, Inc. Pelvic Repair Sys. Prod. Liab. Litig.*, MDL No. 2187, 2014 WL 12703776, at *4 (S.D.W. Va. June 30, 2014). Notably, Governor McMaster has provided no such affidavit. *See City of Huntington*, 2020 WL 3520314, at *3 (noting that deponent failed to provide affidavit disclaiming unique personal knowledge of the facts of the case).

⁸ Governor McMaster inexplicably cites predominantly out-of-circuit cases, including a District of New Mexico case for the standard that he applies. (*See* Mot. at 8 (citing *Tierra Blanca High Country Youth Program v. Gonzales*, 329 F.R.D. 694, 696 (D.N.M. 2019).) The Court should instead follow the standard of the District of South Carolina and other courts in the Fourth Circuit when applying the apex doctrine.

1. *The apex doctrine does not prohibit Plaintiffs from taking Governor McMaster's deposition if he has "unique or special knowledge of the facts at issue".*

Plaintiffs do not deny that Governor McMaster qualifies as a high-ranking government official.⁹ However, in light of Governor McMaster's central role in key events of this case, Plaintiffs have good reason to believe that Governor McMaster may himself possess unique or special knowledge that would warrant his deposition.¹⁰ "At some point, the involvement of a high-ranking executive 'becomes less supervisory and directory and more hands-on and personal, that it is considered so intertwined with the issues in controversy that fundamental fairness requires the discovery of factual information held by the official by way of deposition.'" *In re C. R. Bard, Inc. Pelvic Repair Sys. Prod. Liab. Litig.*, 2014 WL 12703776, at *5 (quoting *United States v. Wal-mart Stores*, No. PJM-01-cv-152, 2002 WL 562301 (D. Md. Mar. 29, 2002)). Even where others might share the same "knowledge on some subjects" as a high-ranking official, deposing a high-ranking official is appropriate where "there is no assertion

⁹ The Governor's Office also claims that the apex doctrine bars the depositions of the two members of Governor McMaster's staff, as well as any witness designated as the Office's Rule 30(b)(6) representative. (ECF. No. 142, at 1-2.) "To invoke the protection of the apex doctrine, the party resisting discovery must first demonstrate he or she is a high-ranking official." *Cunagin ex rel. J.C.*, 2021 WL 1518877, at *3. Brian Symmes is the Communications Director for the Governor's Office, and Leigh Lemoine is a Deputy Chief of Staff. As Plaintiffs will explain more fully in opposition to the Office's motion, the Governor's Office cannot demonstrate that Mr. Symmes and Ms. Lemoine are "high-ranking officials" such that the apex doctrine should apply. And the Office of the Governor's argument that the apex doctrine precludes the deposition of a Rule 30(b)(6) witness is highly illogical—it is entirely in the Office's hands to decide whom to educate on the Rule 30(b)(6) topics and put forward as its Rule 30(b)(6) witness. Not every single employee of the Governor's Office is a high-ranking government official to whom the apex doctrine would apply, and the Governor's Office could certainly designate an employee who is lower on the chain of command.

¹⁰ Plaintiffs cannot adequately assess whether the Governor does possess such knowledge without the other depositions they subpoenaed and intend to subpoena from the Governor's Office, which counsels further in favor of the Court's denying the Office's motion for a protective order and to quash the subpoenas.

that this deposition is unreasonably cumulative or duplicative.” *Minter v. Wells Fargo Bank, N.A.*, 258 F.R.D. 118, 127 (D. Md. 2009).

As established above, Governor McMaster (or, at the very least, officials in his Office) has been intimately involved in the issues of the case, and Plaintiffs have identified multiple subjects on which they are entitled to deposition testimony and about which he likely has personal knowledge. And his testimony cannot be duplicative—no other fact depositions have yet occurred in this case, and Plaintiffs do not plan to pursue Governor McMaster’s deposition if the Court denies the Office of the Governor’s motion and the other witnesses from the Office provide meaningful testimony on the topics at issue.

For these reasons, Governor McMaster’s repeated citations to unpublished orders in *Estate of Latoya Nicole Valentine v. State of South Carolina*, C/A No. 3:18-00895-JFA (D.S.C.), which granted a protective order prohibiting Governor McMaster’s deposition, are inapposite. In that case, “Plaintiffs[] fail[ed] to show how [Governor McMaster] ha[d] any knowledge relevant to Plaintiffs’ claims at all.” *Estate of Latoya Nicole Valentine v. State of South Carolina*, C/A No. 3:18-00895-JFA, at *7 (D.S.C. July 9, 2020) (ECF No. 153). Moreover, Governor McMaster conveniently fails to mention that, before reconsidering and quashing the subpoena, the court in that case initially ordered a limited deposition of him after he submitted “evasive and non-responsive answers” to interrogatories the court had ordered in lieu of a deposition.¹¹ *Estate of Latoya Nicole Valentine v. State of South Carolina*, C/A No. 3:18-00895-JFA, at *5 (D.S.C. July 9, 2020) (ECF No. 187).

¹¹ The Court only granted Governor McMaster’s motion to reconsider and quashed the subpoena after the plaintiffs issued discovery requests that clearly violated the spirit of the order allowing Governor McMaster’s deposition. *Estate of Latoya Nicole Valentine v. State of South Carolina*, C/A No. 3:18-00895-JFA, at *6 (D.S.C. July 9, 2020) (ECF No. 196).

Governor McMaster further argues that his deposition is irrelevant to Plaintiffs' Establishment Clause claim because, under the *Lemon* test,¹² the secular purpose of his actions is clear from the face of the waiver request and his Executive Order. (Mot. at 10-12.) "But the proffered secular purpose must be 'sincere and not a sham.'" *Glassman v. Arlington Cty., Va.*, 628 F.3d 140, 146-47 (4th Cir. 2010) (quoting *Edwards v. Aguillard*, 482 U.S. 578, 587 (1987)); see *Mellen v. Bunting*, 327 F.3d 355, 372-73 (4th Cir. 2003) (quoting *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 308 (2000)) ("[A] state may disingenuously profess a secular purpose for what is, in fact, a religious practice. While the state's characterization of its purpose is entitled to deference, it is our obligation to distinguish 'a sham secular purpose from a sincere one.'"). The waiver request and the Executive Order repeatedly cite the need to provide homes for children in foster care as the purpose behind ensuring that Miracle Hill and other faith-based South Carolina CPAs are allowed to continue to discriminate against potential foster parents. (See ECF No. 138-1, at 2 ("Faith-based CPAs should be allowed to hold their sincerely held religious beliefs and be licensed to recruit foster parents for our foster children."); (ECF No. 138-2, at 2 ("CPAs may be secular or non-secular and are separate private, non-governmental entities that recruit, retain, and support current and prospective foster-care families in South Carolina, thereby fulfilling a crucial need for the State and providing a critical service to the children of South Carolina.")) But Plaintiffs intend to put forth expert and other evidence that discrimination against potential foster parents on the basis of their religion or sexual orientation

¹² Governor McMaster's distaste for the *Lemon* test aside (Mot. at 10 n.5), the Supreme Court has not overruled *Lemon* and its test continues to guide Establishment Clause claims. See *Buxton v. Kurtinitis*, 862 F.3d 423, 431-32 (4th Cir. 2017) ("Framed as an Establishment Clause violation, the appropriate test for this claim is found in *Lemon v. Kurtzman*, 403 U.S. 602 (1971).").

decreases the pool of willing and able foster families available to care for children, thereby *harming* children in care. Whether Governor McMaster was aware of or conducted any studies or investigations on this topic, for example, could establish that the proffered justifications for his actions are merely a “sham”. Plaintiffs are entitled to explore that topic, and others on which Governor McMaster has “unique or special knowledge”, at deposition.

Governor McMaster also argues that his deposition is unnecessary to support Plaintiffs’ Equal Protection claims based on religious discrimination. (Mot. at 9-10.) This line of argument and all of the cases the Governor cites in support are totally irrelevant—the Court dismissed Plaintiffs’ Equal Protection claims based on religious discrimination, which Governor McMaster acknowledges. (*See* ECF No. 81, at 44-45; Mot. at 9 n.3.) In upholding Plaintiffs’ Equal Protection claims based on sexual-orientation discrimination—the Equal Protection claims that actually still exist in this case—the Court held that Governor McMaster failed to make any arguments about either the standard that applied to those claims or any legitimate state purpose for the Governor’s actions. (ECF No. 81, at 45-46.) To the extent Governor McMaster is attempting to present these merits-based arguments to the Court in a discovery motion—which arguments Governor McMaster failed to present at the motion to dismiss stage—the Court should reject those attempts and allow Plaintiffs deposition discovery into the process around the issuance of the relevant documents. *Cf. Willis v. Town of Marshall, N.C.*, 426 F.3d 251, 263-64 (4th Cir. 2005) (reversing district court’s premature denial of discovery into claim to be analyzed under rational basis review); *Clayland Farm Enters. v. Talbot Cnty., Md.*, No. GLR-14-03412, 2018 WL 1609623, at *2-3 (D. Md. Apr. 3, 2018) (rejecting defendant’s argument that “discovery should effectively be precluded” because it had provided an alleged rational basis under the substantive Due Process Clause for the challenged conduct).

2. *Plaintiffs have exhausted other less burdensome avenues for obtaining the information they seek, and other discovery devices cannot substitute for deposition testimony.*

As discussed above, other discovery methods—document requests, interrogatories and RFAs—have not sufficed in this case. Governor McMaster’s document production does not shed light on a number of issues witnesses could speak to, the Governor’s responses to RFAs contained nothing but argumentative denials, and his interrogatory responses provided little useful information. *See JTH Tax, Inc.*, 2016 WL 9223926, at *5 (holding that plaintiffs had exhausted less burdensome avenues for obtaining discovery when the defendant provided evasive and nonresponsive answers to other discovery devices such as interrogatories and requests for production of documents). Additionally, Plaintiffs have attempted to take a Rule 30(b)(6) deposition of the Office of the Governor and the depositions of two of Governor McMaster’s staff members—all of which would be less burdensome than compelling the Governor himself to sit for deposition—but have been precluded from doing so. If permitted to take the depositions of the Office and the two staff members, Plaintiffs would only pursue Governor McMaster’s deposition once those avenues had been exhausted. Thus, the apex doctrine does not bar Governor McMaster’s deposition, and the Court should deny his motion for a protective order.

B. Plaintiffs do not intend to invade the deliberative process privilege.

Plaintiffs have no intention of invading the deliberative process privilege. Plaintiffs, however, are entitled to explore the facts underlying the Governor’s efforts to ensure that South Carolina’s CPAs would not be required to comply with the non-discrimination requirements established by federal and state law. *Church v. Montgomery Cnty., Md.*, 335 F. Supp. 3d 758, 771 (D. Md. 2018) (“This [deliberative process] privilege does not protect the

essential facts used in the process, but how said facts are considered, reviewed, handled or interpreted by decision makers is out of bounds.”).

Indeed, Governor McMaster’s concern about Plaintiffs probing his mental processes (Mot. at 17-19) are unfounded. Plaintiffs intend only to question the Governor about factual information related to the events and topics that Judge Cain has already determined are relevant to this case. (*See supra*, at 9.) And if Governor McMaster is concerned that questioning on even this basic information will open the floodgates to questioning about *all* of his policy positions (Mot. at 18), he could instead offer members of his staff to be deposed about these issues, as Plaintiffs requested from the beginning.

Finally, even if the Governor’s concerns were warranted (and they are not), the deliberative process privilege should not be used as a basis to block the deposition as a whole. The Court could limit Governor McMaster’s deposition by instructing Plaintiffs’ counsel not to intrude into Governor McMaster’s deliberations about policymaking, and Governor McMaster’s counsel will, of course, remain free to object at the deposition to questions he feels are prohibited by the privilege. *See Greenoe v. United States*, No. 5:10-CR-277-FL, 2015 WL 437560, at *4 (E.D.N.C. Feb. 3, 2015) (finding general assertion of deliberative process privilege (among others) “[in]sufficient . . . to quash the deposition in its entirety”, especially where the deposition may be limited to avoid intrusions into the deliberative process).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Governor McMaster's motion for a protective order without prejudice until such time as the parties can determine whether his deposition is necessary.

May 10, 2021

/s/ Susan K. Dunn

Susan K. Dunn (Federal Bar No. 647)
AMERICAN CIVIL LIBERTIES UNION
OF SOUTH CAROLINA FOUNDATION
P.O. Box 20998
Charleston, SC 29413
(843) 282-7953
sdunn@aclusc.org

South Carolina Equality Coalition, Inc.
M. Malissa Burnette (Federal Bar No. 1616)
Nekki Shutt (Federal Bar No. 6530)
BURNETTE SHUTT & MCDANIEL, PA
912 Lady Street, 2nd floor
P.O. Box 1929
Columbia, SC 29202
(803) 850-0912
mburnette@burnetteshutt.law
nshutt@burnetteshutt.law

Peter T. Barbur (admitted *pro hac vice*)
Katherine D. Janson (admitted *pro hac vice*)
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
pbarbur@cravath.com
kjanson@cravath.com

Leslie Cooper (admitted *pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
lcooper@aclu.org

Daniel Mach (admitted *pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

915 15th Street NW
Washington, DC 20005
(202) 675-2330
dmach@aclu.org

M. Currey Cook (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

120 Wall Street, 19th Floor
New York, NY 10005
(212) 809-8585
ccook@lambdalegal.org

Karen L. Loewy (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

1776 K Street NW, 8th Floor
Washington, DC 20006-2304
(202) 804-6245
kloewy@lambdalegal.org

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

EDEN ROGERS and

BRANDY WELCH,

Plaintiffs,

-against-

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES;

ALEX AZAR, in his official capacity as Secretary
of the UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;

ADMINISTRATION FOR CHILDREN AND
FAMILIES;

LYNN JOHNSON, in her official capacity as
Assistant Secretary of the ADMINISTRATION
FOR CHILDREN AND FAMILIES;

SCOTT LEKAN, in his official capacity as
Principal Deputy Assistant Secretary of the
ADMINISTRATION FOR CHILDREN AND
FAMILIES;

HENRY MCMASTER, in his official capacity as
Governor of the STATE OF SOUTH
CAROLINA; and

MICHAEL LEACH, in his official capacity as
State Director of the SOUTH CAROLINA
DEPARTMENT OF SOCIAL SERVICES,

Defendants.

Case No. 6:19-cv-1567-JD

**DECLARATION OF
PETER T. BARBUR IN SUPPORT
OF PLAINTIFFS' OPPOSITION TO
GOVERNOR MCMASTER'S
MOTION FOR A PROTECTIVE
ORDER**

DECLARATION OF PETER T. BARBUR

I, PETER T. BARBUR, declare as follows:

I am a Partner of the law firm Cravath, Swaine & Moore LLP and am admitted *pro hac vice* as counsel to Plaintiffs Eden Rogers and Brandy Welch in the above-captioned action.

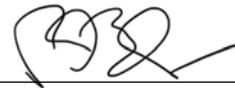
I submit this declaration in support of Plaintiffs' Opposition to Governor McMaster's Motion for a Protective Order, dated May 10, 2021.

1. Attached hereto as **Exhibit 1** is a true and correct copy of a letter from Peter Barbur to Thomas Limehouse, dated April 19, 2021.
2. Attached hereto as **Exhibit 2** is a true and correct copy of an email from Kenneth Woodington to Katherine Janson, *et al.*, dated April 5, 2021.
3. Attached hereto as **Exhibit 3** is a true and correct copy of an email from Karen Luchka Wingo, Director of Communications and Legislative Affairs at the South Carolina Department of Social Services, to Representatives Rita Allison and Shannon Erickson of the South Carolina House of Representatives, dated February 22, 2018.
4. Attached hereto as **Exhibit 4** is a true and correct copy of Defendant Henry McMaster's Objections and Responses to the Plaintiffs' First Set of Requests for Admission, dated October 15, 2020.
5. Attached hereto as **Exhibit 5** is a true and correct copy of Defendant Henry McMaster's Objections and Responses to the Plaintiffs' First Set of Interrogatories, dated October 15, 2020.
6. Attached hereto as **Exhibit 6** is a true and correct copy of Defendant Henry

McMaster's Objections and Supplemental Response to the Plaintiffs' First Set of Interrogatories, dated December 18, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 10, 2021.

A handwritten signature in black ink, appearing to read 'P. Barbur', is written above a horizontal line.

Peter T. Barbur

Exhibit 1

CRAVATH, SWAINE & MOORE LLP

WORLDWIDE PLAZA
825 EIGHTH AVENUE
NEW YORK, NY 10019-7475

TELEPHONE: +1-212-474-1000
FACSIMILE: +1-212-474-3700

CITYPOINT
ONE ROPEMAKER STREET
LONDON EC2Y 9HR
TELEPHONE: +44-20-7453-1000
FACSIMILE: +44-20-7860-1150

WRITER'S DIRECT DIAL NUMBER
+1-212-474-1058

WRITER'S EMAIL ADDRESS
pbarbur@cravath.com

JOHN W. WHITE
EVAN R. CHESLER
STEPHEN L. GORDON
ROBERT H. BARON
DAVID MERCADO
CHRISTINE A. VARNEY
PETER T. BARBUR
MICHAEL S. GOLDMAN
RICHARD HALL
JULIE A. NORTH
ANDREW W. NEEDHAM
STEPHEN L. BURNS
KATHERINE B. FORREST
KEITH R. HUMMEL
DAVID J. KAPPOS
DANIEL SLIFKIN
ROBERT I. TOWNSEND, III
PHILIP J. BOECKMAN
WILLIAM V. FOGG
FAIZA J. SAEED
RICHARD J. STARK
THOMAS E. DUNN
MARK I. GREENE
DAVID R. MARRIOTT
MICHAEL A. PASKIN
ANDREW J. PITTS
MICHAEL T. REYNOLDS

ANTONY L. RYAN
GEORGE E. ZOBITZ
GEORGE A. STEPHANAKIS
DARIN P. MCATEE
GARY A. BORNSTEIN
TIMOTHY G. CAMERON
KARIN A. DEMASI
DAVID S. FINKELSTEIN
RACHEL G. SKAISTIS
PAUL H. ZUMBRO
ERIC W. HILFERS
GEORGE F. SCHOEN
ERIK R. TAVZEL
CRAIG F. ARCELLA
DAMIEN R. ZOUBEK
LAUREN ANGELILLI
TATIANA LAPUSHCHIK
ALYSSA K. CAPLES
JENNIFER S. CONWAY
MINH VAN NGO
KEVIN J. ORSINI
MATTHEW MORREALE
JOHN D. BURETTA
J. WESLEY EARNHARDT
YONATAN EVEN
BENJAMIN GRUENSTEIN
JOSEPH D. ZAVAGLIA

STEPHEN M. KESSING
LAUREN A. MOSKOWITZ
DAVID J. PERKINS
J. LEONARD TETI, II
D. SCOTT BENNETT
TING S. CHEN
CHRISTOPHER K. FARGO
DAVID M. STUART
AARON M. GRUBER
O. KEITH HALLAM, III
OMID H. NASAB
DAMARIS HERNÁNDEZ
JONATHAN J. KATZ
DAVID L. PORTILLA
RORY A. LERARIS
KARA L. MUNGOVAN
MARGARET T. SEGALL
NICHOLAS A. DORSEY
ANDREW C. ELKEN
JENNY HOCHENBERG
VANESSA A. LAVELY
G.J. LIGELIS JR.
MICHAEL E. MARIANI
LAUREN R. KENNEDY
SASHA ROSENTHAL-LARREA
ALLISON M. WEIN
MICHAEL P. ADDIS

JUSTIN C. CLARKE
SHARONMOYEE GOSWAMI
C. DANIEL HAAREN
EVAN MEHRAN NORRIS
LAUREN M. ROSENBERG
MICHAEL L. ARNOLD
HEATHER A. BENJAMIN
MATTHEW J. BOBBY
DANIEL J. CERQUEIRA
ALEXANDRA C. DENNING
HELAM GEBREMARIAM
MATTHEW G. JONES
MATTHEW M. KELLY
DAVID H. KORN
BRITTANY L. SUKIENNIK
ANDREW M. WARK

PARTNER EMERITUS
SAMUEL C. BUTLER

OF COUNSEL
MICHAEL L. SCHLER
CHRISTOPHER J. KELLY

April 19, 2021

Rogers, et al. v. U.S. Dept. of Health and Human Servs., et al.,
Case No. 6:19-cv-01567-JD (D.S.C.)

Dear Mr. Limehouse:

We are counsel for Plaintiffs in the above-captioned matter.

We are planning to serve a Rule 45 subpoena for a 30(b)(6) deposition of the Office of the Governor. We have been corresponding with Miles Coleman about holding a meet and confer to discuss the list of 30(b)(6) topics attached hereto, as required under the Federal Rules, in advance of our serving the subpoena. Recently, he informed us that he is unable to confer on behalf of the Office of the Governor and invited us to confer directly with you. Please let us know when you are available to meet and confer regarding the 30(b)(6) topics, and to discuss suitable deposition dates.

As you may know, we served deposition subpoenas on two members of the Governor's staff, Leigh Lemoine and Brian Symmes, last week. Will you be representing Ms. Lemoine and Mr. Symmes in connection with their depositions? If so, please let us know if the witnesses are available on the dates we indicated in the subpoenas and, if not, when they will be available for deposition.

We look forward to your prompt response on these issues.

Very truly yours,



Peter T. Barbur

Thomas A. Limehouse, Jr., Esq.
OFFICE OF THE GOVERNOR
State House
1100 Gervais Street
Columbia, South Carolina 29201

Copies to:

Miles E. Coleman, Esq.
NELSON MULLINS RILEY & SCARBOROUGH, LLP
2 W. Washington Street, 4th Floor
Greenville, South Carolina 29601

Jay T. Thompson, Esq.
NELSON MULLINS RILEY & SCARBOROUGH, LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

Robert D. Cook, Esq.
South Carolina Solicitor General
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 11549
Columbia, South Carolina 29211

William H. Davidson, II, Esq.
Kenneth P. Woodington, Esq.
DAVIDSON, WREN & DEMASTERS, PA
Post Office Box 8568
Columbia, South Carolina 29202

VIA ELECTRONIC MAIL

30(b)(6) Deposition Topics: Governor McMaster's Office

1. The foster care system in South Carolina generally, including the role of the South Carolina Department of Social Services (“DSS”) and the role of private child placing agencies (“CPAs”), including faith-based CPAs.
2. The name and location of each South Carolina CPA, and the amount of state and federal funding provided to each CPA for foster care services for each of the past five years.
3. The benefits, support and services that CPAs in South Carolina, including faith-based CPAs, provide to prospective and current foster parents, including in the application process, in the placement process and during the parents’ foster period; and how those benefits, support and services compare to those provided to prospective and current foster parents who pursue licensure directly through DSS.
4. The involvement of Governor Henry McMaster, or any person at Governor McMaster’s office, in the 2018 dispute between DSS and Miracle Hill Ministries over Miracle Hill’s CPA license, including awareness of Miracle Hill’s practice of refusing to work with prospective foster parents on the basis of their religion, same-sex relationship, or LGBTQ status.
5. Discrimination against prospective foster parents on the basis of religion, same-sex relationship, or LGBTQ status by Miracle Hill or other South Carolina CPAs; any complaints made by prospective foster families who were denied services by those CPAs based on religion, same-sex relationship, or LGBTQ status; and steps taken in response to, or to prevent, such discrimination.
6. The names and locations of all South Carolina CPAs with current DSS contracts that restrict eligibility of prospective foster parents on the basis of religion, same-sex relationship, or LGBTQ status.
7. The extent to which permitting South Carolina CPAs to restrict eligibility of prospective foster parents on the basis of religion, same-sex relationship, or LGBTQ status impacts the number of available foster parents, including any empirical evidence of or studies examining any such impacts.
8. The extent to which foster parents in South Carolina are permitted to inculcate their own religious beliefs in foster children in their care; any complaints about religious proselytizing by foster families; and any steps taken by DSS to monitor or regulate this.
9. The February 27, 2018 letter from Governor McMaster to the Acting Assistant Secretary of the Administration for Children and Families (“ACF”) requesting a “deviation or waiver” from the U.S. Department of Health and Human Services (“HHS”) regulations at 45 C.F.R. § 75.300(c) (the “HHS Grants Rule”).

10. The January 23, 2019 letter from ACF to Governor McMaster granting the requested exception from the HHS Grants Rule, and the impact thereof.
11. Governor McMaster's Executive Order No. 2018-12, issued on March 13, 2018, and the impact thereof, including, but not limited to, revisions or additions to the South Carolina Code of Regulations or to any DSS policies or procedures.
12. The involvement of Governor McMaster, or any person at Governor McMaster's office, in other religious accommodations, or requests for accommodations, for faith-based CPAs in South Carolina or other states.
13. Any policies or practices regarding the licensing of same-sex couples or LGBTQ people as foster parents in South Carolina.
14. The involvement of Governor McMaster, or any person at Governor McMaster's office, in HHS's Notification of Nonenforcement of Health and Human Services Grants Regulation, published at 84 Fed. Reg. 63,809 (Nov. 19, 2019) (the "Nonenforcement Policy").
15. The involvement of Governor McMaster, or any person at Governor McMaster's office, in the final rule promulgated by HHS on January 12, 2021, entitled Health and Human Services Grants Regulation, published at 86 Fed. Reg. 2,257 (the "2021 Grants Rule").
16. Communications about the topics listed above between Governor McMaster, or any person at Governor McMaster's office, and (i) any person at Miracle Hill or other South Carolina CPAs, (ii) any person at HHS, (iii) any person at DSS, including, but not limited to, Director Michael Leach, (iv) any person at the office of any state or federal elected officials, (v) any member of the public or (iv) any other person at Governor McMaster's office.
17. Governor McMaster's and his office's efforts to search for, collect and produce documents and communications in response to Plaintiffs' First Set of Requests for Production and Plaintiffs' First Set of Interrogatories.

Exhibit 2

From: Kenneth P. Woodington <kwoodington@DML-LAW.com>
Sent: Monday, April 5, 2021 1:29 PM
To: Katherine Janson <kjanson@cravath.com>
Cc: William H. Davidson II <w davidson@DML-LAW.com>; Miles Coleman (Miles.Coleman@nelsonmullins.com) <Miles.Coleman@nelsonmullins.com>; Jay.Thompson@nelsonmullins.com; bcook@scag.gov; lcooper@aclu.org; dmach@aclu.org; sdunn@aclusc.org; ccook@lambdalegal.org; kloewy@lambdalegal.org; nshutt@burnetteshutt.law; mburnette@burnetteshutt.law; Peter Barbur <PBarbur@cravath.com>; Rebecca Schindel <rschindel@cravath.com>; Mika Madgavkar <mmadgavkar@cravath.com>; Cristopher Ray <cray@cravath.com>; Miranda J. Li <mjli@cravath.com>; Serena Candelaria <scandelaria@cravath.com>
Subject: RE: Rogers v. HHS -- deposition scheduling

External (kwoodington@dml-law.com)

[Report This Email](#) [FAQ](#)

Dear counsel:

I apologize for my unanticipated delay in getting back to you regarding deposition scheduling.

While the position of Defendant Leach is similar to that expressed by Miles Coleman in his letter of March 23 on this topic, I would advise that if Plaintiffs will issue a subpoena to DSS for the 30(b)(6) depositions and issue subpoenas to the individuals for their depositions, DSS will make the deponents available at mutually convenient times. Upon the issuance of such subpoenas (of which I will accept service), I will try to get the designations and any objections back to you quickly.

DSS reserves the right to object to deposition topics as warranted. I agree to meet and confer expeditiously on any objections that may be raised.

With regard to deposition dates, I would ask that Plaintiffs' counsel coordinate dates with Jonathan Riddle of this firm, who is copied on this email.

I will respond separately regarding the privilege log issue.

Sincerely,

Ken Woodington

Kenneth P. Woodington
Davidson, Wren & DeMasters, P.A.
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
kwoodington@dml-law.com
T: 803-806-8222
F: 803-806-8855

From: Katherine Janson <kjanson@cravath.com>
Sent: Friday, April 2, 2021 2:32 PM
To: Kenneth P. Woodington <kwoodington@DML-LAW.com>
Cc: William H. Davidson II <w davidson@DML-LAW.com>; Miles Coleman (Miles.Coleman@nelsonmullins.com) <Miles.Coleman@nelsonmullins.com>; Jay.Thompson@nelsonmullins.com; bcook@scag.gov; lcooper@aclu.org; dmach@aclu.org; sdunn@aclusc.org; ccook@lambdalegal.org; kloewy@lambdalegal.org; nshutt@burnetteshutt.law; mburnette@burnetteshutt.law; Peter Barbur <PBarbur@cravath.com>; Rebecca Schindel <rschindel@cravath.com>; Mika Madgavkar <mmadgavkar@cravath.com>; Cristopher Ray <cray@cravath.com>; Miranda J. Li <mjli@cravath.com>; Serena Candelaria <scandelaria@cravath.com>
Subject: RE: Rogers v. HHS -- Correspondence

Ken,

Please see the attached correspondence.

Thanks,
Kate

Kate Janson
Cravath, Swaine & Moore LLP
825 Eighth Avenue | New York, NY 10019
T: 1 (212) 474-1989
kjanson@cravath.com

From: Kenneth P. Woodington <kwoodington@DML-LAW.com>
Sent: Friday, March 19, 2021 9:18 AM
To: Katherine Janson <kjanson@cravath.com>
Cc: William H. Davidson II <w davidson@DML-LAW.com>; Miles Coleman (Miles.Coleman@nelsonmullins.com) <Miles.Coleman@nelsonmullins.com>; Jay.Thompson@nelsonmullins.com; bcook@scag.gov; lcooper@aclu.org; dmach@aclu.org; sdunn@aclusc.org; ccook@lambdalegal.org; kloewy@lambdalegal.org; nshutt@burnetteshutt.law; mburnette@burnetteshutt.law; Peter Barbur <PBarbur@cravath.com>; Rebecca Schindel <rschindel@cravath.com>; Mika Madgavkar <mmadgavkar@cravath.com>; Cristopher Ray <cray@cravath.com>; Miranda J. Li <mjli@cravath.com>; Serena Candelaria <scandelaria@cravath.com>
Subject: RE: Rogers v. HHS -- Correspondence

Kate, with regard to the proposed 30(b)(6) depositions, Miles Coleman recently advised that he needed to consult with the Governor's Office in connection with those depositions. My client, who is the head of a cabinet agency, also needs to be part of that consultation.

I apologize for the delay in getting back to you on this.

Ken

Kenneth P. Woodington
Davidson, Wren & DeMasters, P.A.
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568

kwoodington@dml-law.com

T: 803-806-8222

F: 803-806-8855

From: Katherine Janson <kjanson@cravath.com>

Sent: Wednesday, March 17, 2021 11:25 AM

To: Kenneth P. Woodington <kwoodington@DML-LAW.com>

Cc: William H. Davidson II <w davidson@DML-LAW.com>; Miles Coleman (Miles.Coleman@nelsonmullins.com) <Miles.Coleman@nelsonmullins.com>; Jay.Thompson@nelsonmullins.com; bcook@scag.gov; lcooper@aclu.org; dmach@aclu.org; sdunn@aclusc.org; ccook@lambdalegal.org; kloewy@lambdalegal.org; nshutt@burnetteshutt.law; mburnette@burnetteshutt.law; Peter Barbur <PBarbur@cravath.com>; Rebecca Schindel <rschindel@cravath.com>; Mika Madgavkar <mmadgavkar@cravath.com>; Cristopher Ray <cray@cravath.com>; Miranda J. Li <mjli@cravath.com>; Serena Candelaria <scandelaria@cravath.com>

Subject: RE: Rogers v. HHS -- Correspondence

Ken,

Thank you for your email. Please let us know when you are available to meet and confer regarding the 30(b)(6) topics we sent with our March 4 letter, and on what dates the DSS 30(b)(6) deponent will be available for deposition.

Kate Janson

Cravath, Swaine & Moore LLP

825 Eighth Avenue | New York, NY 10019

T: 1 (212) 474-1989

kjanson@cravath.com

From: Kenneth P. Woodington <kwoodington@DML-LAW.com>

Sent: Monday, March 8, 2021 8:38 AM

To: Katherine Janson <kjanson@cravath.com>

Cc: William H. Davidson II <w davidson@DML-LAW.com>; Miles Coleman (Miles.Coleman@nelsonmullins.com) <Miles.Coleman@nelsonmullins.com>; Jay.Thompson@nelsonmullins.com; bcook@scag.gov; lcooper@aclu.org; dmach@aclu.org; sdunn@aclusc.org; ccook@lambdalegal.org; kloewy@lambdalegal.org; nshutt@burnetteshutt.law; mburnette@burnetteshutt.law; Peter Barbur <PBarbur@cravath.com>; Rebecca Schindel <rschindel@cravath.com>; Mika Madgavkar <mmadgavkar@cravath.com>; Cristopher Ray <cray@cravath.com>; Miranda J. Li <mjli@cravath.com>; Serena Candelaria <scandelaria@cravath.com>

Subject: RE: Rogers v. HHS -- Correspondence

Kate, I have been in touch with DSS to determine who the 30(b)(6) deponents would be, and whether the March 23 or 24 dates would work.

I'm tied up most of today and tomorrow, so it may be Wednesday before I can let you know something about whether the deponent will be available on those dates.

Sincerely,

Ken

From: Katherine Janson <kjanson@cravath.com>
Sent: Thursday, March 4, 2021 11:48 AM
To: Kenneth P. Woodington <kwoodington@DML-LAW.com>
Cc: William H. Davidson II <w davidson@DML-LAW.com>; Miles Coleman (Miles.Coleman@nelsonmullins.com) <Miles.Coleman@nelsonmullins.com>; Jay.Thompson@nelsonmullins.com; bcook@scag.gov; lcooper@aclu.org; dmach@aclu.org; sdunn@aclusc.org; ccook@lambdalegal.org; kloewy@lambdalegal.org; nshutt@burnetteshutt.law; mburnette@burnetteshutt.law; Peter Barbur <PBarbur@cravath.com>; Rebecca Schindel <rschindel@cravath.com>; Mika Madgavkar <mmadgavkar@cravath.com>; Cristopher Ray <cray@cravath.com>; Miranda J. Li <mjli@cravath.com>; Serena Candelaria <scandelaria@cravath.com>
Subject: Rogers v. HHS -- Correspondence

Ken,

Please see the attached correspondence regarding deposition logistics and scheduling.

Best,
Kate

Kate Janson
Cravath, Swaine & Moore LLP
825 Eighth Avenue | New York, NY 10019
T: 1 (212) 474-1989
kjanson@cravath.com

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Exhibit 3

Subject Fwd: Help needed protecting Miracle Hill's Foster Care Program

From Wingo, Karen L

To Alford, Susan

Cc Meacham, Joan B

Sent Thursday, February 22, 2018 7:14 PM

Just an FYI - response below from Chairwoman Allison; responses so far have been similar.

Sent from my iPhone

Begin forwarded message:

From: "Merita A. \"Rita\" Allison" <RitaAllison@schouse.gov>

Date: February 22, 2018 at 6:25:58 PM EST

To: "Wingo, Karen L" <Karen.Wingo@dss.sc.gov>

Subject: RE: Help needed protecting Miracle Hill's Foster Care Program

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Thanks for update. We will continue to support Miracle Hill and the work you do.

Because I Care

Rep. Rota Allison

On Feb 22, 2018 4:49 PM, "Wingo, Karen L" <Karen.Wingo@dss.sc.gov> wrote:

Chairwoman Allison and Rep. Erickson,

Hope you are having a good week and thank you for reaching out to us on this issue. As you saw yesterday, the Department is working with Governor McMaster to obtain a waiver from the feds to resolve this legal issue. Last month, the Department issued a renewable six month provisional license to Miracle Hill to ensure they can continue to provide services to foster and adoptive parents in South Carolina while we work towards resolution. Miracle Hill continues to be a valued partner of the Department of Social Services.

As always, if you have any questions, please give me a call.

All the best,

Karen

Karen Luchka Wingo

Director of Communications and Legislative Affairs

South Carolina Department of Social Services

P.O. Box 1520

1535 Confederate Avenue

Columbia, South Carolina 29202

Cell Phone: (803) 603-1223

Email: karen.wingo@dss.sc.gov

www.dss.sc.gov

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The abuse/neglect hotline number for your county is located on the SCDSS home web page at www.dss.sc.gov. For emergencies, please contact your local law enforcement office.

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If you have received this message in error, please notify the sender immediately

by reply e-mail and delete this message and any attachments.

From: Shannon Erickson [<mailto:ShannonErickson@schouse.gov>]

Sent: Sunday, February 18, 2018 8:37 PM

To: Wingo, Karen L <Karen.Wingo@dss.sc.gov>

Cc: Merita A. "Rita" Allison <RitaAllison@schouse.gov>

Subject: Fwd: Help needed protecting Miracle Hill's Foster Care Program

*** THIS IS AN EXTERNAL E-MAIL. Use CAUTION when clicking on links as they could open malicious websites. *** (DLP2)

Karen,

Chairwoman Rita Allison and I have both received emails on this issue.

Please let us know the status and how we can correct this problem. We do not need to keep any good group from participating in our foster care program.

Thank you,

SRepresentative

Shannon S. Erickson

South Carolina House of Representatives

District 124, Beaufort

843-255-2260 Beaufort Delegation Office

843-734-3261 Columbia Office

(Sent by personal device, please excuse any typos or misspellings.)

Begin forwarded message:

From: "Merita A. \"Rita\" Allison" <RitaAllison@schouse.gov>

Date: February 17, 2018 at 4:19:02 PM EST

To: Shannon Erickson <ShannonErickson@schouse.gov>

Cc: "bwilliams@miraclehill.org" <bwilliams@miraclehill.org>

Subject: **Fw: Help needed protecting Miracle Hill's Foster Care Program**

Shannon,

I know that you are dealing with this matter. I hope this can work out for Miracle Hill and the children of our state. Let me know if I can help in anyway. Thanks, Rita

Because I Care,

Rep. Rita Allison

House District 36, Spartanburg County

SC House of Representatives

402-C Blatt Building

Columbia, S.C. 29211

803-212-6788

RitaAllison@schouse.gov

P.O. Box 93

Lyman, S.C. 29365

864-439-6255 (h)

864-909-1092 (c)

864-949-1674 (fax)

RNRAllison@charter.net

From: Beth Williams <bwilliams@miraclehill.org>

Sent: Friday, February 16, 2018 2:55 PM

To: Merita A. "Rita" Allison

Cc: Reid Lehman

Subject: Help needed protecting Miracle Hill's Foster Care Program

Good Afternoon Representative Allison,

I am writing you this afternoon to seek help in an urgent matter that will affect our foster care ministry and foster parents who live in your

district. Miracle Hill Ministries has foster homes located in several counties of the Upstate including Greenville and Spartanburg Counties. We want to alert you to this issue and request your support. Below, you'll find some helpful background facts, key information, and suggested ways you can help. Miracle Hill Ministries' license as a foster family agency (a "Child Placing Agency" or "CPA") was due for its annual renewal a few weeks ago. But instead of renewing our license, the agency sent us a temporary, provisional license on January 26 giving us 30 days to "correct" what SCDSS views as a "concern," namely our long-standing and constitutionally-protected practice of choosing to partner with foster families who share our religious beliefs, mission, and motivation. In SCDSS' view, this practice violates state and federal regulations and SCDSS policies, and thus Miracle Hill must either abandon its religious convictions or close down its successful CPA operation.

About Miracle Hill's foster ministry:

In addition to our three residential children's homes, Miracle Hill Ministries has been recruiting foster families to care for South Carolina's children since 1988. In the last five years, to help with the dire need in our state for foster families, Miracle Hill has grown its foster care program in the upstate from 45 to 241 licensed foster families and has served 263 families since July 2017. On any given day, we are serving over 160 of the state's foster children in these foster families through eight upstate counties. Today we are the state's largest provider of foster families for Level I foster children, and we provide 15% of the state's 1600 foster families.

You'll want to know:

- The need for foster families in the state of South Carolina is dire. Children are languishing in the Department of Social Services system waiting for a family. The Michelle H lawsuit mandates less use of residential homes and greater use of foster homes, yet SCDSS has difficulty in recruiting foster families and would show little progress if not for the private providers like Miracle Hill.
- Miracle Hill Foster Care serves all foster children without discrimination, regardless of the children's or their family's religious beliefs, race, national origin, sex, disability, political beliefs, or any other basis
- Miracle Hill Foster Care recruits foster parents because the Bible calls us to care for orphans. We recruit Christian foster parents because of a firmly-held belief that Miracle Hill's ministry is to be carried out by spiritually like-minded individuals.
- Miracle Hill is one of many faith-based providers in our state. Miracle Hill is the test case for this interpretation. If it is allowed to stand, it will have a chilling effect on the recruitment of foster families by other religious providers.

How you can help!

1. Governor McMaster is working with the federal Department of Health and Human Services to secure an interpretation of federal regulations clarifying that our practice of working with foster families who share our religious beliefs, mission, and motivation is *not* illegal under federal law and regulations. Please let him know you support his effort and the work of Miracle Hill.

2. Please encourage the legislators on the Joint Citizens & Legislative Committee on Children to ensure the relevant state regulations and agency policy—S.C. Code of Regs. §§ 114-4980(A(2)(a) and -210(B)(2)), and SCDSS Policy 710—are not allowed to be interpreted to harm religious child care providers or to infringe on such providers’ constitutionally- and statutorily-protected religious and associational rights.

3. If a proposed change in law to protect religious child care providers is introduced, please support it.

Additional Information.

SCDSS made their renewal visit for our CPA license in December. On January 26, 2018, I received a letter and a temporary license from SCDSS licensing stating that Miracle Hill is out of compliance with S.C. Code of Regs. § 114-4980(A(2)(a), which states, “The child placing agency shall utilize the regulations established by the Department to conduct the foster home investigations.” While that phrase has been in the regulations for many years, it has never been interpreted to restrict the rights of religious child care providers before now. The letter goes on to express SCDSS’ view that South Carolina’s CPA licensing regulations do not allow a CPA such as Miracle Hill to rely on *any* criteria other than the ones set out in statute and regulation when selecting the foster families they will serve.

The temporary license issued by SCDSS gives us 30 days to submit a written plan of “compliance,” and states if these “concerns” are not completely resolved within a six months, SCDSS will close Miracle Hill’s successful foster care program.

I have attached the language of the regulations cited by SCDSS in threatening our license. The language on the first page (Regulation 114-4980(A(2)(a)) is very vague: a CPA “shall utilize the regulations established by the department.” Of course, we’ve always used the regulations established by SCDSS, but the regulations were never interpreted before to mean we could not also recruit consistent with our value system. The language on the following page (Regulation 114-210(B)(2)) is more specific, stating SCDSS cannot “aid or perpetuate unlawful discrimination . . . by licensing or otherwise using providers who discriminate on the basis of . . . religion . . . or other *unlawful* basis” (emphasis added). Our response is that we have never discriminated on any **unlawful** basis. We do not discriminate based on race, color, national origin, qualified disability, sex, age, or political beliefs. However, as a religious organization, we’ve always exercised our legally-protected right to work with families who share our religious beliefs.

Miracle Hill Ministries has been operating under the CPA regulations since 1995. Miracle Hill wants to continue to serve the state by recruiting, licensing, and supervising foster families to care for children, but because we view foster care as a Christian ministry, we also want to practice our belief that we should only license and supervise Christian foster parents. We certainly support the right of non-Christians to become foster families, and in addition to the county SCDSS offices, there are many private providers available to license them. When someone who doesn’t meet our criteria inquires about fostering, we encourage them to move

forward into fostering with SCDSS or another CPA and tell them how to do so.

As you can see above, when South Carolina needed us, we stepped up to assist the state in recruiting foster parents, and that need is still great. It is our fervent desire to continue this ministry of serving foster children. However, unless MHM conforms with DSS licensing they will be ending this much needed program in the upstate and preventing potential families from being licensed with our program.

Thank you for your concern and any help you can provide in this matter. My cell # is below if you'd like to talk.

Respectfully yours,

From: Samuel McLaughlin [<mailto:samuel.mclaughlin9@gmail.com>]

Sent: Friday, February 23, 2018 12:24 PM

To: Wingo, Karen L <Karen.Wingo@dss.sc.gov>

Subject: Re: Miracle Hill

*** THIS IS AN EXTERNAL E-MAIL. Use CAUTION when clicking on links as they could open malicious websites. *** (DLP2)

Good Afternoon Karen-

I sincerely appreciate your prompt response.

Have a great weekend!

Best Regards-

Samuel McLaughlin

On Feb 23, 2018, at 09:18, Wingo, Karen L <Karen.Wingo@dss.sc.gov> wrote:

Mr. McLaughlin,

Thank you for reaching out to our Department regarding Miracle Hill. Miracle Hill continues to be a valued partner of the Department of Social Services. The Department is working with Governor McMaster to obtain a waiver from the feds to resolve this legal issue. There is not a 30 day ultimatum. Last month, the Department issued a renewable six month provisional license to Miracle Hill to ensure they can continue to provide services to foster and adoptive parents in South Carolina while we work towards resolution. I hope this sufficiently answers your questions, but if you have any others, please let us know.

All the best,

Karen

Karen Luchka Wingo

Director of Communications and Legislative Affairs

South Carolina Department of Social Services

P.O. Box 1520

1535 Confederate Avenue

Columbia, South Carolina 29202

Cell Phone: (803) 603-1223

Email: karen.wingo@dss.sc.gov

www.dss.sc.gov

<image001.png>

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From: Bryant, Pamela

Sent: Friday, February 23, 2018 9:05 AM

To: Wingo, Karen L <Karen.Wingo@dss.sc.gov>

Subject: FW: Miracle Hill

Pam Bryant

Director, Constituent Services/Ombudsman
SC Department of Social Services
Office of Communications and Legislative Affairs
P.O. Box 1520

1535 Confederate Avenue
Columbia, South Carolina 29202
Office Phone: (803) 898-1512
Email: pam.bryant@dss.sc.gov

www.dss.sc.gov

<image001.png>

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From: Samuel McLaughlin [<mailto:samuel.mclaughlin9@gmail.com>]

Sent: Thursday, February 22, 2018 7:04 PM

To: _DSS - Constituent Services <ConstituentServices@dss.sc.gov>

Subject: Miracle Hill

*** THIS IS AN EXTERNAL E-MAIL. Use CAUTION when clicking on links as they could open malicious websites. *** (DLP2)

Dear SC Department of Social Services-

I first want to thank you for your organization's dedication and service to the State of South Carolina! Your continuous work to fight for the cause of the child and of the family is sincerely appreciated and needed.

The purpose of my email is more of an informational request. I recently read an article about the SC DSS's decision to issue an ultimatum to Miracle Hill Ministries. I may be mistaken, but from my interpretation of the article it stated that an order was issued to Miracle Hill to abandon the organization's faith requirements for the foster care parents and families. The piece stated that a "new interpretation" of certain state and federal regulations prompted this order.

As I am certainly not a person to trust the media or their sources from just one article, I was wondering if the SC DSS would be able to provide or cite the particular regulations that were reinterpreted.

While I understand SC DSS is under no obligation to provide this information, as a

resident of South Carolina, I believe that it is the government's responsibility to provide nonclassified information to the public when requested; especially given that the generation and compilation of government information is funded by myself and other citizens of SC.

Finally, I would ask that the SC DSS reconsider their use of an ultimatum, if in fact the media was correct in its reporting. A more sensible approach is needed, if the law that was interpreted does indeed forbid foster care organizations from a religious requirement. Providing a 30 day time frame to uproot an organization such as Miracle Hill bears no thought or concern for the children and families that are part of organization's foster care network.

I appreciate any information you are able to provide with regards to this matter.

Best Regards-

Samuel McLaughlin

Exhibit 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Eden Rogers et al.,)	
	)	Civil Action No. 6:19-cv-01567-TMC
Plaintiffs,)	
)	
v.	)	<u>DEFENDANT HENRY MCMASTER’S</u>
	)	<u>OBJECTIONS AND RESPONSES TO</u>
United States Department of Health and Human Services, et al.,	)	<u>THE PLAINTIFFS’ FIRST SET OF</u>
	)	<u>REQUESTS FOR ADMISSION</u>
)	
Defendants.)	

Pursuant to Federal Rules of Civil Procedure 26 and 36, Defendant Henry McMaster, in his official capacity as Governor of the State of South Carolina, submits the following responses and objections to Plaintiffs’ First Set of Requests for Admissions (“RFAs”) served on September 15, 2020. For the sake of brevity, Governor McMaster articulates below certain specific objections applicable to all the requests, rather than repeating them in the response to each request.

OBJECTIONS APPLICABLE TO ALL REQUESTS

Plaintiffs’ Complaint challenges the constitutionality of specific actions of the Defendants, including specifically identified actions of Governor McMaster taken in his official capacity as Governor of the State of South Carolina. Plaintiffs’ RFAs, however, “relate to the period from January 1, 2017 to the present.” *See* RFAs at 4, ¶ 9. Governor McMaster was not Governor of the State of South Carolina on January 1, 2017. Accordingly, his responses are based on information known to him on or after at the date of his installation as Governor on January 24, 2017.¹

¹ The Governor does not anticipate this limitation will be controversial, as the Complaint alleges his earliest knowledge of the relevant facts was on or around February 21, 2018, *see* Complaint (ECF No. 1) ¶ 61, and the earliest alleged knowledge of the relevant facts by *any* Defendant appears to be late 2017 or early 2018, *see id.* ¶¶ 54–56.

Governor McMaster further objects to the RFAs to the extent they request admissions or denials of assertions relating to facts post-dating the Defendants’ actions challenged in this lawsuit. *See id.* (stating the RFAs relate to a time period extending “to the present”). For example, the first three RFAs request admissions regarding alleged policies and practices of Miracle Hill Ministries—a private, third-party Child Placing Agency. But Miracle Hill’s current policies and practices (or, more precisely, the Governor’s understanding of them) are not relevant to the constitutionality of the Defendants’ challenged actions in 2018 and early 2019.² Those actions were either constitutional or unconstitutional at the time they occurred, and Miracle Hill’s policies and practices (or, again, the Governor’s understanding of them) are relevant, if at all, only at the time the challenged actions occurred. Stated differently, Miracle Hill’s policies in 2019 and 2020—whether the same or different from in prior years—do not inform the constitutional analysis of the Defendants’ challenged actions in 2018 and early 2019, and cannot transform constitutional actions into unconstitutional ones.³

Similarly, the fourth RFA relates to Governor McMaster’s efforts to require CPAs to comply with state or federal nondiscrimination laws and policies. Again, the Complaint challenges the constitutionality of specific actions in 2018 and early 2019. Those actions’ constitutionality (or unconstitutionality) is not altered, affected, influenced by, or dependent on the Governor’s

² The causes of action in this proceeding arise from specific, identifiable, enumerated actions, namely (1) a letter sent by Governor McMaster on February 27, 2018; (2) an Executive Order issued by Governor McMaster on March 13, 2018; and (3) a response letter sent to Governor McMaster on January 23, 2019. The Complaint claims the alleged constitutional violations arose immediately from and occurred, if at all (which is not conceded), at the time of the challenged actions. Indeed, Plaintiffs specifically claim it was *these actions* that violated the Establishment and Equal Protection Clauses.

³ To be clear, a CPA’s later change in policies and practices could affect a Plaintiff’s *standing* to challenge the Defendants’ actions, as Governor McMaster has argued in a related lawsuit, *Maddonna v. U.S. Dept. of Health & Human Servs. et al.* No. 6:19-cv-03551-TMC (D.S.C.).

subsequent action (or inaction) to require CPAs to comply with nondiscrimination requirements. Accordingly, Governor McMaster's admissions or denials of the RFAs are based on his knowledge beginning on the date of his installation as Governor through the date of the final allegedly unconstitutional action challenged in Plaintiffs' Complaint, namely the waiver issued by the United States Department of Health and Human Services on January 23, 2019.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Governor McMaster incorporates by reference the Objections to Definitions or Objections to Instructions found in any other Defendants' Responses and Objections to the RFAs to the extent the definitions or instructions to which other Defendants have objected are identical to those found in the RFAs served on the Governor (though perhaps in some instances found in different numbered paragraphs of the RFAs' Definitions and Instructions), and to the extent any definitions or instructions differ from or purport to impose an obligation broader than that found in Rules 26(b)(1) or 36, Fed. R. Civ. P., or any other applicable Rule of Civil Procedure.

The Governor further objects to the definition of the terms "You" and "Your" found in Definition 5 of the RFAs to the extent it implies that the Office of the Governor of South Carolina is a party in interest to this proceeding or is itself susceptible to discovery requests or demands. The Office of the Governor of South Carolina is an agency or department of the State and is not a party to this Case. The Governor also objects to the definition of the terms "You" and "Your" to the extent that the definition implies that any "offices, divisions, and departments" of the State government are parties to this suit or are themselves susceptible to discovery demands or requests despite not being named as parties to the suit.⁴

⁴ For the avoidance of doubt, the Governor's objections to the definition of the terms "You" and "Your" relate to the implications noted above, and the objections have not altered the substance of his responses to the RFAs, *infra*.

**SPECIFIC RESPONSES AND OBJECTIONS
TO THE REQUESTS FOR ADMISSION**

REQUEST NO. 1: Admit that Miracle Hill discriminates against prospective foster families on the basis of religion.

RESPONSE: Denied. Miracle Hill is a private entity and a third party, but, based on the Governor's understanding of the facts known to him regarding Miracle Hill's practices, he has no basis to believe that Miracle Hill engages in invidious discrimination in its treatment of prospective foster parents on the basis of their religion. To the best of the Governor's knowledge, Miracle Hill serves needy children and adults and works with volunteers without regard to their religious beliefs, but requires that employees and the foster parents with whom Miracle Hill works share its religious beliefs pursuant to its Free Exercise and associational rights.

REQUEST NO. 2: Admit that Miracle Hill discriminates against prospective foster families on the basis of sexual orientation.

RESPONSE: Denied. Miracle Hill is a private entity and a third party, but, based on the Governor's understanding of the facts known to him regarding Miracle Hill's practices, he has no basis to believe that Miracle Hill discriminates against or among prospective foster parents on the basis of sexual orientation.

REQUEST NO. 3: Admit that Miracle Hill is unwilling to accept foster care applications who are [sic] same-sex married couples.

RESPONSE: Denied. As an initial matter, the Governor presumes Request Number 3 intends to assert that Miracle Hill is unwilling to accept foster care applications *from* same-sex married couples. (An application, of course, cannot *be* a married couple.) As noted above, Miracle Hill is a private entity and a third party, but, based on the Governor's understanding of the facts known to him regarding Miracle Hill's practices, he has no basis to believe that same-sex married

couples are unable to submit an application for Miracle Hill's consideration. Indeed, while the Governor is not aware of Miracle Hill's internal policies, the allegations of Plaintiffs' Complaint (assuming, *arguendo*, that they are true) indicate that, at least in Plaintiffs' case, Miracle Hill, knowing Plaintiffs were a same-sex married couple, encouraged them to submit an online inquiry form, received their application, and attempted to aid them in seeking licensure directly from SCDSS or through partnership with local private CPAs. *See* Compl. ¶¶ 79, 82.

REQUEST NO. 4: Admit that you have taken no steps to require Miracle Hill or other CPAs to comply with federal and state laws and policies barring discrimination on the basis of religion or sexual orientation.

RESPONSE: Denied. As an initial matter, Governor McMaster objects to this request as vague and ambiguous to the extent it fails to identify or describe the laws and policies to which it refers. Governor McMaster further objects to the request as argumentative and based on an incorrect premise, namely the assumption that the Governor himself would have occasion or the direct, immediate responsibility to supervise the operations and policies of individual CPAs (the responsibility for which rests with SCDSS). Nevertheless, to the extent the Governor is responsible, through SCDSS, for the enforcement of state and federal nondiscrimination laws and policies, he has taken steps to assure Miracle Hill's and other CPAs' compliance with such laws, including but not limited to ensuring Miracle Hill and other CPAs do not discriminate among the recipients of their services (*i.e.*, foster children) on the basis of their religion or sexual orientation.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Miles E. Coleman
Miles E. Coleman
Federal Bar No. 11594
E-Mail: miles.coleman@nelsonmullins.com
2 W. Washington Street / 4th Floor
Greenville, SC 29201
(864) 373-2352

Jay T. Thompson
Federal Bar No. 09846
E-Mail: jay.thompson@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

OFFICE OF THE ATTORNEY GENERAL

Robert D. Cook, South Carolina Solicitor General
Federal Bar No. 285
E-Mail: bcook@scag.gov
Post Office Box 11549
Columbia, SC 29211
(803) 734-3970

Attorneys for Governor Henry McMaster

Greenville, South Carolina
October 15, 2020

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Eden Rogers et al.,)	
	)	Civil Action No. 6:19-cv-01567-TMC
Plaintiffs,)	
)	
v.)	
	)	<u>CERTIFICATE OF SERVICE</u>
United States Department of Health and)	
Human Services, et al.,)	
)	
Defendants.)	

I hereby certify that I have served a copy of Defendant Henry McMaster’s Objections and Responses to Plaintiffs’ First Set of Requests for Admission by electronic mail on the following:

M. Malissa Burnette
Nekki Shutt
BURNETTE SHUTT & MCDANIEL, PA
912 Lady Street, 2nd floor
P.O. Box 1929
Columbia, SC 29202
(803) 850-0912
mburnette@burnetteshutt.law
nshutt@burnetteshutt.law

Susan K. Dunn
AMERICAN CIVIL LIBERTIES UNION OF SOUTH CAROLINA FOUNDATION
P.O. Box 20998
Charleston, SC 29413
(843) 282-7953
sdunn@aclusc.org

Peter T. Barbur
Katherine D. Janson
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
pbarbur@cravath.com
kjanson@cravath.com

Leslie Cooper
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
lcooper@aclu.org

Daniel Mach
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street NW
Washington, DC 20005
(202) 675-2330
dmach@aclu.org

M. Currey Cook
Karen L. Loewy
Cathren Cohen
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005
(212) 809-8585
ccook@lambdalegal.org
kloewy@lambdalegal.orgccohen@lambdalegal.org

Counsel for Plaintiffs

Peter M. McCoy, Jr., Esq.
Joseph H. Hunt, Esq.
Christie V. Newman, Esq.
Christopher A. Bates, Esq.
Michelle Bennett, Esq.
UNITED STATES ATTORNEY'S OFFICE
1441 Main Street, Suite 500
Columbia, South Carolina 29201
Christie.Newman@usdoj.gov

James R. Powers, Esq.
Trial Attorney
Federal Programs Branch
U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION
1100 L. Street, NW
Washington, D.C. 20005
James.R.Powers@usdoj.gov

Counsel for the Federal Defendants

William H. Davidson
Kenneth P. Woodington
DAVIDSON, WREN & DEMASTERS P.A.
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
(803) 806-8222
wdavidson@dml-law.com
kwoodington@dml-law.com

Counsel for Defendant Leach

/s Miles E. Coleman
Miles E. Coleman

Counsel for Governor Henry McMaster

Exhibit 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Eden Rogers et al.,)	
	)	Civil Action No. 6:19-cv-01567-TMC
Plaintiffs,)	
	)	<u>DEFENDANT HENRY MCMASTER’S</u>
v.	)	<u>OBJECTIONS AND RESPONSES TO</u>
	)	<u>THE PLAINTIFFS’ FIRST SET</u>
United States Department of Health and Human Services, et al.,	)	<u>OF INTERROGATORIES</u>
)	
Defendants.)	
)	

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendant Henry McMaster, in his official capacity as Governor of the State of South Carolina, submits the following responses and objections to Plaintiffs’ First Set of Interrogatories (the “Interrogatories”) served on September 15, 2020. For the sake of brevity, Governor McMaster articulates below certain specific objections applicable to all the requests, rather than repeating them in the response to each request.

OBJECTIONS APPLICABLE TO ALL INTERROGATORIES

Plaintiffs’ Complaint challenges the constitutionality of Defendants’ specific actions, including specifically identified actions of Governor McMaster taken in his official capacity as Governor of the State of South Carolina. Plaintiffs’ Interrogatories, however, “relate to the period from January 1, 2017 to the present.” *See* Interrogatories at 6, ¶ 10. Governor McMaster was not Governor of the State of South Carolina on January 1, 2017. Accordingly, his responses are based on information known to him on or after at the date of his installation as Governor on January 24, 2017.¹

Governor McMaster further objects to the Interrogatories to the extent they request information or materials post-dating the Defendants’ actions challenged in this lawsuit. *See id.*

¹ The Governor does not anticipate this limitation will be controversial, as the Complaint alleges his earliest knowledge of the relevant facts was on or around February 21, 2018, *see* Complaint (ECF No. 1) ¶ 61, and the earliest alleged knowledge of the relevant facts by *any* Defendant appears to be late 2017 or early 2018, *see id.* ¶¶ 54–56.

(stating the Interrogatories relate to a time period extending “to the present”). The causes of action in this proceeding arise from specific, identifiable, enumerated actions, namely (1) a letter sent by Governor McMaster on February 27, 2018; (2) an Executive Order issued by Governor McMaster on March 13, 2018; and (3) a response letter sent to Governor McMaster on January 23, 2019. The Complaint claims the alleged constitutional violations arose immediately from and occurred, if at all (which is not conceded), at the time of the challenged actions. Indeed, Plaintiffs specifically claim it was *these actions* that violated the Establishment and Equal Protection Clauses. The challenged actions were either constitutional or unconstitutional at the time they occurred, and subsequent events cannot transform constitutional actions into unconstitutional ones.²

Accordingly, Governor McMaster’s responses to the Interrogatories reflect information or materials from the period beginning on the date of his installation as Governor through the date of the final allegedly unconstitutional action challenged in Plaintiffs’ Complaint, namely the waiver issued by the United States Department of Health and Human Services on January 23, 2019.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Governor McMaster incorporates by reference the Objections to Definitions or Instructions found in any other Defendants’ Responses and Objections to the Interrogatories to the extent the definitions or instructions to which other Defendants have objected are identical to those found in the Interrogatories served on the Governor (though perhaps in some instances found in different numbered paragraphs of the Interrogatories’ Definitions and Instructions), and to the extent any definitions or instructions differ from or purport to impose an obligation broader than that found in Rules 26(b)(1) or 33, Fed. R. Civ. P., or any other applicable Rule of Civil Procedure.

² To be clear, a CPA’s later change in policies and practices could affect a Plaintiff’s *standing* to challenge the Defendants’ actions, as Governor McMaster has argued in a related lawsuit, *Maddonna v. U.S. Dept. of Health & Human Servs. et al.* No. 6:19-cv-03551-TMC (D.S.C.).

The Governor further objects to the definition of the terms “You” and “Your” found in Definition 14 of the Interrogatories to the extent it implies that the Office of the Governor of South Carolina is a party in interest to this proceeding or is itself susceptible to discovery requests or demands. The Office of the Governor of South Carolina is an agency or department of the State and is not a party to this Case. The Governor also objects to the definition of the terms “You” and “Your” to the extent that the definition implies that any “offices, divisions, and departments” of the State government are parties to this suit or are themselves susceptible to discovery demands or requests despite not being named as parties to the suit.³

RESPONSES AND OBJECTIONS TO THE INTERROGATORIES

INTERROGATORY NO. 1: Identify the individuals involved in the McMaster Request.

RESPONSE: As an initial matter, Governor McMaster notes the words “involved in” are not defined or described in the Interrogatories. Governor McMaster does not and cannot know, for example, the entire cast of characters at the United States Department of Health and Human Services (“HHS”) involved in HHS’ receipt of, review of, analysis of, deliberations about, and response to his letter. Nevertheless, in an effort to respond to the apparent intention of Interrogatory 1, Governor McMaster identifies the following individuals on his staff who participated substantively in preparing and sending the letter from Governor McMaster to Steven Wagner at HHS on February 27, 2018: Governor Henry McMaster; Trey Walker; and counsel.

INTERROGATORY NO. 2: Identify the individuals involved in the McMaster Executive Order.

³ For the avoidance of doubt, the Governor’s objections to the definition of the terms “You” and “Your” relate to the implications noted above. The objections have not altered the substance of his responses to the Interrogatories, *infra*.

RESPONSE: As an initial matter, Governor McMaster notes the words “involved in” are not defined or described in the Interrogatories. As noted above, the Governor McMaster does not and cannot know the entire, potentially expansive, list of people in the state and federal government, the press, and the public who received, read, and inquired about Executive Order 2018-12, including those who wrote, called, or emailed his office in advance of or in reaction to the issuance of the Executive Order to opine or inquire about the need, permissibility, scope, meaning, and interpretation of the Order. Governor McMaster further objects that the Executive Order is a final, complete, official executive act, and that the disclosure of the staff who advised or consulted him in regard to it would be a substantial intrusion into the executive’s private, privileged decision making process. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367 (2004).

INTERROGATORY NO. 3: Identify the individuals in the Governor’s office involved in communications with Miracle Hill, any individual within DSS, any individual within HHS, the public or the press regarding the McMaster Request, the McMaster Executive Order, the Nonenforcement Policy or the Proposed Rulemaking.

RESPONSE: Governor McMaster objects to the Interrogatory to the extent it seeks information pertaining to the “Nonenforcement Policy” and “Proposed Rulemaking,” neither of which are mentioned in the Complaint, both of which occurred after the Complaint was filed, and neither of which, as a matter of law, can have any causal relationship to Plaintiffs’ alleged injuries. The Governor also objects to the Interrogatory to the extent it implies the Office of the Governor is a party to this litigation or is susceptible to discovery requests in this litigation. Governor McMaster further notes the ambiguity of the undefined term “involved in.” Nevertheless, in an effort to respond to the apparent intention of Interrogatory 3, Governor McMaster identifies the following individuals on his staff who communicated with SCDSS, HHS, Miracle Hill, the public, or the press regarding Executive Order 2018-12 and the letter sent from Governor McMaster to

Steven Wagner at HHS on February 27, 2018: Governor Henry McMaster; Trey Walker; Brian Symmes; Leigh Lemoine; and counsel.

INTERROGATORY NO. 4: Identify all CPAs in addition to Miracle Hill that use religious criteria in the process of recruiting, evaluating, certifying and placing children with foster parents.

RESPONSE: Governor McMaster objects to the Interrogatory to the extent it incorrectly states or implies that CPAs certify or license foster parents or place foster children. CPAs do not and cannot perform such tasks; SCDSS does. Subject to this objection, Governor McMaster responds that he is not aware of the specific individual policies and practices of the various CPAs in the State in regard to their recruiting or evaluation of foster parents, and that he neither can nor should be expected himself to police the various CPAs to determine their policies and practices, since the responsibility for oversight and supervision of CPAs rests with SCDSS.

INTERROGATORY NO. 5: Identify all CPAs in addition to Miracle Hill that refuse to recruit, evaluate, certify or place children with married same-sex couples who seek to be foster parents.

RESPONSE: Governor McMaster objects to the Interrogatory to the extent it incorrectly states or implies that CPAs certify or license foster parents or place foster children. CPAs do not and cannot perform such tasks; SCDSS does. Subject to this objection, Governor McMaster responds that he is not aware of the specific individual policies and practices of the various CPAs in the State in regard to their recruiting or evaluation of foster parents, and that he neither can nor should be expected himself to police the various CPAs to determine their policies and practices, since the responsibility for oversight and supervision of CPAs rests with SCDSS.

[SIGNATURE PAGE ATTACHED]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Miles E. Coleman

Miles E. Coleman
Federal Bar No. 11594
E-Mail: miles.coleman@nelsonmullins.com
2 W. Washington Street / 4th Floor
Greenville, SC 29201
(864) 373-2352

Jay T. Thompson
Federal Bar No. 09846
E-Mail: jay.thompson@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

OFFICE OF THE ATTORNEY GENERAL

Robert D. Cook, South Carolina Solicitor General
Federal Bar No. 285
E-Mail: bcook@scag.gov
Post Office Box 11549
Columbia, SC 29211
(803) 734-3970

Attorneys for Governor Henry McMaster

Greenville, South Carolina
October 15, 2020

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Eden Rogers et al.,)	
	)	Civil Action No. 6:19-cv-01567-TMC
Plaintiffs,)	
)	
v.)	
	)	<u>CERTIFICATE OF SERVICE</u>
United States Department of Health and)	
Human Services, et al.,)	
)	
Defendants.)	

I hereby certify that I have served a copy of Defendant Henry McMaster’s Objections and Responses to Plaintiffs’ First Set of Interrogatories by electronic mail on the following:

M. Malissa Burnette
Nekki Shutt
BURNETTE SHUTT & MCDANIEL, PA
912 Lady Street, 2nd floor
P.O. Box 1929
Columbia, SC 29202
(803) 850-0912
mburnette@burnetteshutt.law
nshutt@burnetteshutt.law

Susan K. Dunn
AMERICAN CIVIL LIBERTIES UNION OF SOUTH CAROLINA FOUNDATION
P.O. Box 20998
Charleston, SC 29413
(843) 282-7953
sdunn@aclusc.org

Peter T. Barbur
Katherine D. Janson
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
pbarbur@cravath.com
kjanson@cravath.com

Leslie Cooper
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
lcooper@aclu.org

Daniel Mach
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street NW
Washington, DC 20005
(202) 675-2330
dmach@aclu.org

M. Currey Cook
Karen L. Loewy
Cathren Cohen
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005
(212) 809-8585
ccook@lambdalegal.org
kloewy@lambdalegal.orgccohen@lambdalegal.org

Counsel for Plaintiffs

Peter M. McCoy, Jr., Esq.
Joseph H. Hunt, Esq.
Christie V. Newman, Esq.
Christopher A. Bates, Esq.
Michelle Bennett, Esq.
UNITED STATES ATTORNEY'S OFFICE
1441 Main Street, Suite 500
Columbia, South Carolina 29201
Christie.Newman@usdoj.gov

James R. Powers, Esq.
Trial Attorney
Federal Programs Branch
U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION
1100 L. Street, NW
Washington, D.C. 20005
James.R.Powers@usdoj.gov

Counsel for the Federal Defendants

William H. Davidson
Kenneth P. Woodington
DAVIDSON, WREN & DEMASTERS P.A.
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
(803) 806-8222
wdavidson@dml-law.com
kwoodington@dml-law.com

Counsel for Defendant Leach

/s/ Miles E. Coleman

Miles E. Coleman

Counsel for Governor Henry McMaster

Exhibit 6

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Eden Rogers et al.,)	
)	
Plaintiffs,	)	Civil Action No. 6:19-cv-01567-TMC
)	
v.	)	<u>DEFENDANT HENRY MCMASTER’S</u>
	)	<u>OBJECTIONS AND SUPPLEMENTAL</u>
United States Department of Health and Human Services, et al.,	)	<u>RESPONSE TO THE PLAINTIFFS’</u>
	)	<u>FIRST SET OF INTERROGATORIES</u>
Defendants.)	
)	

Pursuant to Federal Rules of Civil Procedure 26 and 33, and pursuant to the exchange of correspondence between counsel regarding the resolution of the parties’ disputes relating to Plaintiffs’ First Set of Interrogatories (the “Interrogatories”) served on September 15, 2020, Defendant Henry McMaster, in his official capacity as Governor of the State of South Carolina, submits the following supplemental response.

INTERROGATORY NO. 2: Identify the individuals involved in the McMaster Executive Order.

RESPONSE: As an initial matter, Governor McMaster notes the words “involved in” are not defined or described in the Interrogatories. Governor McMaster does not and cannot know the entire, potentially expansive list of people in the state and federal government, the press, and the public who received, read, and inquired about Executive Order 2018-12, including those who wrote, called, or emailed his office in advance of or in reaction to the issuance of the Executive Order to opine or inquire about the need, permissibility, scope, meaning, and interpretation of the Order. Governor McMaster further objects that the Executive Order is a final, completed, official act, and that discovery into the contents of deliberations and counsel regarding the Executive Order would be a substantial intrusion into the executive’s private, privileged decision making process.

See Cheney v. U.S. Dist. Court, 542 U.S. 367 (2004). Nevertheless, and without waiving the foregoing objections, Governor McMaster identifies the following individuals: Governor Henry McMaster, Trey Walker, Richele Taylor, and Thomas Limehouse.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Miles E. Coleman
Miles E. Coleman
Federal Bar No. 11594
E-Mail: miles.coleman@nelsonmullins.com
2 W. Washington Street / 4th Floor
Greenville, SC 29201
(864) 373-2352

Jay T. Thompson
Federal Bar No. 09846
E-Mail: jay.thompson@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

OFFICE OF THE ATTORNEY GENERAL

Robert D. Cook, South Carolina Solicitor General
Federal Bar No. 285
E-Mail: bcook@scag.gov
Post Office Box 11549
Columbia, SC 29211
(803) 734-3970

Attorneys for Governor Henry McMaster

Greenville, South Carolina
December 18, 2020

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Eden Rogers et al.,)	
	)	Civil Action No. 6:19-cv-01567-TMC
Plaintiffs,)	
)	
v.)	
	)	<u>CERTIFICATE OF SERVICE</u>
United States Department of Health and)	
Human Services, et al.,)	
)	
Defendants.)	

I hereby certify that I have served a copy of Defendant Henry McMaster’s Objections and Supplemental Response to Plaintiffs’ First Set of Interrogatories by electronic mail on the following:

M. Malissa Burnette
Nekki Shutt
BURNETTE SHUTT & MCDANIEL, PA
912 Lady Street, 2nd floor
P.O. Box 1929
Columbia, SC 29202
(803) 850-0912
mburnette@burnetteshutt.law
nshutt@burnetteshutt.law

Susan K. Dunn
AMERICAN CIVIL LIBERTIES UNION OF SOUTH CAROLINA FOUNDATION
P.O. Box 20998
Charleston, SC 29413
(843) 282-7953
sdunn@aclusc.org

Peter T. Barbur
Katherine D. Janson
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
pbarbur@cravath.com
kjanson@cravath.com

Leslie Cooper
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
lcooper@aclu.org

Daniel Mach
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street NW
Washington, DC 20005
(202) 675-2330
dmach@aclu.org

M. Currey Cook
Karen L. Loewy
Cathren Cohen
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005
(212) 809-8585
ccook@lambdalegal.org
kloewy@lambdalegal.orgccohen@lambdalegal.org

Counsel for Plaintiffs

Peter M. McCoy, Jr., Esq.
Joseph H. Hunt, Esq.
Christie V. Newman, Esq.
Christopher A. Bates, Esq.
Michelle Bennett, Esq.
UNITED STATES ATTORNEY'S OFFICE
1441 Main Street, Suite 500
Columbia, South Carolina 29201
Christie.Newman@usdoj.gov

James R. Powers, Esq.
Trial Attorney
Federal Programs Branch
U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION
1100 L. Street, NW
Washington, D.C. 20005
James.R.Powers@usdoj.gov

Counsel for the Federal Defendants

William H. Davidson
Kenneth P. Woodington
DAVIDSON, WREN & DEMASTERS P.A.
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
(803) 806-8222
wdavidson@dml-law.com
kwoodington@dml-law.com

Counsel for Defendant Leach

/s Miles E. Coleman
Miles E. Coleman

Counsel for Governor Henry McMaster