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25 UNITED STATES DISTRICT COURT
26 DISTRICT OF ARIZONA

27 D.H., by and through his mother, Janice)
28 Hennessy-Waller, and John Doe, by his)
guardian and next friend, Susan Doe, on)
behalf of themselves and all others)
similarly situated,)

29 Plaintiffs,)

30 vs.)

31 Jami Snyder, Director of the Arizona)
32 Health Care Cost Containment System,)
33 in her official capacity,)

34 Defendant.)

No. 4:20-cv-00335-TUC-SHR

**PLAINTIFF'S MOTION TO
COMPEL DOCUMENTS AND
TESTIMONY**

***ORAL ARGUMENT
REQUESTED***

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1 Plaintiff John Doe (“Plaintiff”), by and through his undersigned counsel, hereby submits
2 this motion to compel against Defendant Jami Snyder, Director of the Arizona Health Care Cost
3 Containment System (“AHCCCS”). This motion, exhibits, and index of exhibits are accompanied
4 by Plaintiff’s LRCiv 7.2(j)-(k) and 37.1 Statement. The motion asks the Court to:

- 5 1) Compel (a) full disclosure of relevant meetings or communications between AHCCCS
6 and the Governor’s office and (b) documents and testimony related thereto, including
7 2 entries on Defendant’s privilege log and several other documents that must exist but
8 have not been produced or included on any privilege log;
- 9 2) Compel answers to certain questions (with reasonable follow-up questions) posed to
10 Dr. Sara Salek (Chief Medical Officer of AHCCCS) during her deposition, concerning
11 her evaluation of potential changes to the Challenged Exclusion independent of the
12 Governor’s input or advice of counsel; and
- 13 3) Compel production of 51 other documents that Defendant has improperly redacted or
14 withheld on the basis of attorney-client privilege or attorney work product.

15 **I. INTRODUCTION**

16 Plaintiff filed this suit in August 2020 to challenge AHCCCS’s categorical exclusion of
17 coverage for “gender reassignment surgeries.” Ariz. Admin. R9-22-205-B(4)(a) (the “Challenged
18 Exclusion”). In the nineteen months of discovery that has followed, Defendant has provided no
19 reason why the Challenged Exclusion exists. Defendant has located no documents explaining
20 why the Challenged Exclusion was originally enacted. Nor has Defendant ever explained why it
21 still exists today. Multiple witnesses have testified that AHCCCS has not evaluated whether the
22 Challenged Exclusion is consistent with the well-established standard of care to treat gender
23 dysphoria or whether it complies the Early and Periodic Screening, Diagnostic, and Treatment
24 (“EPSDT”) requirements of the Medicaid Act. These witnesses have testified that AHCCCS has
25 never determined whether surgical care for the treatment of gender dysphoria is considered
26 medically necessary or whether it is experimental, cosmetic, or cost effective.

27 The documents and testimony at issue in this motion might shed light on why the
28 Challenged Exclusion exists and whether Defendant has a legally adequate justification to

1 continue enforcing it. The Court should overrule Defendant’s objection to production for several
2 reasons. *First*, Defendant has waived privilege over all communications at issue in this motion
3 by failing to timely assert the privilege. *Second*, meetings and communications between
4 AHCCCS and the Governor’s office should be disclosed. Not only has Defendant failed to
5 disclose all relevant meetings and communications, but these communications are not properly
6 withheld because (a) these meetings involve policy and political decisions, not legal advice; (b)
7 these meetings significantly pre-dated the start of litigation and therefore cannot constitute
8 attorney work product; (c) the information was disclosed to a third party, and the common interest
9 doctrine does not apply; (d) there is no “executive” privilege that would apply to these meetings;
10 and (e) even if there were, Plaintiff’s need for the information overcomes any such qualified
11 privilege. *Third*, Dr. Salek should be compelled to answer certain questions regarding her
12 consideration of changes to the Challenge Exclusion independent of any input from advice of
13 counsel. *Fourth*, dozens of documents on Defendant’s privilege log appear to involve routine
14 media, policy, or business issues—although an attorney may have been copied on some of these
15 communications, these documents are not privileged.

16 For these reasons, Plaintiff respectfully requests that the Court grant this motion and that
17 Defendant be compelled to provide the documents and testimony requested herein.

18 **II. BACKGROUND**

19 This dispute regarding privilege issues first arose during Dr. Salek’s deposition held
20 November 12, 2021. There, Plaintiff learned for the first time that Defendant claimed “privilege”
21 over certain documents, meetings, and communications involving the Governor’s office. Dr.
22 Salek testified that, sometime between 2016-2018, AHCCCS almost, but did not, formally
23 evaluate the Challenged Exclusion. Around this timeframe, Dr. Salek met with Defendant’s
24 predecessor, an AHCCCS lawyer, and a representative from the Governor’s office to discuss the
25 Challenged Exclusion. Ex. 1, at 27:20-30:17. Plaintiff believes the representative from the
26 Governor’s office was Christina Corieri, a Senior Policy Advisor.

27 Defendant had never before disclosed this meeting to Plaintiff despite the fact that this
28 information was responsive to multiple discovery requests, including specifically Interrogatory

1 Nos. 15, 16, and 17, initially answered January 19, 2021. Ex. 2. These Interrogatories sought
2 information about meetings where the Challenged Exclusion was discussed, as well as
3 information about the materials AHCCCS considered related to the Challenged Exclusion and
4 the occasions on which it considered amending or repealing the Challenged Exclusion. Similarly,
5 Plaintiff's Request for Production of Documents Nos. 6, 11, and 41 sought discovery on all
6 communications relating to the development, promulgation, implementation, or enforcement of
7 the Challenged Exclusion as well as any consideration of eliminating or amending the same, and
8 all documents referenced in Defendant's Interrogatory responses. In Defendant's initial response
9 to these document requests, also served January 19, 2021, Defendant did not disclose the
10 meetings with the Governor. Ex. 3. Nor did Defendant claim privilege on any related documents
11 on the privilege log served in March 2021 ("Initial Log"). Ex. 4. Nor did Defendant ever tell
12 Plaintiff that she planned to supplement the Initial Log.

13 Despite the fact that Defendant had never disclosed any meetings with the Governor's
14 office or logged these meetings on a privilege log, and that Plaintiff first found out about these
15 meetings during the deposition, Defendant's counsel instructed Dr. Salek not to answer questions
16 regarding the meetings with the Governor's office. Ex. 1, at 30:18-32:7.

17 Following the revelation of the meeting with the Governor's office, Plaintiff then asked
18 Dr. Salek whether she had reviewed the Challenged Exclusion independent of input from the
19 Governor's office and whether, in her independent opinion, AHCCCS should change its rules to
20 cover surgical care to treat gender dysphoria. Plaintiff's counsel asked Dr. Salek to "put the
21 meeting aside" and answer questions "independent of advice of counsel." Yet Defendant's
22 counsel continued to instruct Dr. Salek not to answer these questions. *Id.* at 32:8-35:15.¹

23 Following Dr. Salek's deposition, the parties exchanged correspondence on these issues.
24 Exs. 5 & 6. The parties also spoke several times by phone. Plaintiff pointed out that responsive

25
26 ¹ During Dr. Salek's deposition, Plaintiff also learned for the first time Defendant
27 had failed to produce other responsive documents. Defendant's counsel did not dispute this error;
28 he simply said: "Send me a letter." Ex. 1, at 196:24. For this reason, Plaintiff will continue the
deposition of Dr. Salek at a date to be determined. To avoid having to depose Dr. Salek for a
third time, Plaintiff first seeks resolution on the issues in this motion to compel.

1 documents and information had been improperly withheld. Plaintiff also pointed out that, in
2 *Toomey v. Arizona*, Case No. 4:19-cv-00035-RM-LAB (D. Arizona) (“*Toomey*”), the Governor’s
3 office had claimed privilege over multiple communications from Defendant to Ms. Corieri plus
4 communications with AHCCCS’s Chief Legislative Liaison regarding the Challenged Exclusion
5 and AHCCCS’s coverage of surgical treatment for gender dysphoria—and AHCCCS had not
6 (and still has not) disclosed any of that to Plaintiff. *Infra* nn. 2 & 3.

7 On December 10, 2021, Defendant served a revised privilege log (“Revised Log”) and
8 amended discovery responses, which amended Defendant’s responses to Interrogatory Nos. 15
9 & 17 (though these responses still do not capture the full scope of Dr. Salek’s testimony). Exs. 7
10 & 8. The Revised Log (Ex. 7) still contained numerous deficiencies in format and descriptions
11 that did not allow Plaintiff to properly evaluate Defendant’s claims of privilege. Thus, on January
12 3, 2022, Plaintiff requested that Defendant remedy these deficiencies, and on January 14, 2022,
13 Defendant served yet another version of her privilege log (the “Late Log”). Ex. 9.

14 While Defendant’s Initial Log contained eight entries, the Late Log contains thirty-four
15 pages of entries. The Initial Log’s entries all dated from 2020-2021, after the start of litigation.
16 The Late Log contains dozens of entries that long predated the start of litigation—including some
17 entries dating as early as 2015. And the Late Log—despite being Defendant’s third attempt to
18 provide a privilege log—still does not include all entries which, based on the filings in *Toomey*,
19 Plaintiff knows must exist. Nor do the descriptions in the Late Log justify Defendant’s assertion
20 of privilege over dozens of entries, including the entries challenged in this motion.

21 At a status conference held on January 28, 2022, Plaintiff previewed this dispute with the
22 Court, and the Court ordered Plaintiff to file a motion to compel by February 28, 2022. *See* D.E.
23 131. Since the status conference, the parties have continued to meet and confer in an effort to
24 narrow the scope of their dispute by phone and by email. On February 16, 2022, Defendant’s
25 counsel proposed a “stipulation” whereby AHCCCS would agree to produce most of the
26 challenged documents, subject to extensive restrictions—including that Plaintiff would approve
27 of Defendant’s selective waiver of privilege and forego further discovery and questioning on
28 these documents before Plaintiff had even seen them. Ex. 10. Those stipulations are plainly

1 unacceptable and unreasonable. In response, Plaintiff proposed that Defendant simply produce
2 the documents that were not actually privileged and to bring a narrower set of disputes to the
3 Court. *Id.* Defendant did not agree. Thus, despite exhaustive efforts, the parties could not come
4 to agreement on the status of these privilege issues and are at an impasse.

5 **III. STANDARD OF REVIEW**

6 Plaintiff has a right to “obtain discovery regarding any non-privileged matter that is
7 relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ.
8 P. 26(b)(1); *Ocean Garden Prods. Inc. v. Blessings Inc.*, No. CV-18-00322-TUC-RM, 2020 WL
9 4284383, at *1 (D. Ariz. July 27, 2020). The Rules “contemplate broad discovery.” *Rutherford*
10 *v. Palo Verde Health Care Dist.*, No. ED CV13-01247 JAK (SPx), 2014 WL 12632904, at *2
11 (C.D. Cal. Dec. 1, 2014). “Testimonial exclusionary rules and privileges contravene the
12 fundamental principle that the public has a right to” relevant evidence, and “[a]s such, they must
13 be strictly construed.” *Trammel v. United States*, 445 U.S. 40, 50 (1980) (internal quotation
14 omitted); *United States v. Ruehle*, 583 F.3d 600, 607 (9th Cir. 2009) (internal quotation omitted)
15 (“Because it impedes full and free discovery of the truth, the attorney-client privilege is strictly
16 construed . . . within the narrowest possible limits consistent with the logic of its principle.”).

17 Rule 26(b)(5)(A) controls claims of privilege. That Rule provides that when a party
18 withholds information by claiming that it is privileged, the party must “(i) expressly make the
19 claim; and (ii) describe the nature of the documents, communications, or tangible things not
20 produced or disclosed—and do so in a manner that, without revealing information itself
21 privileged or protected, will enable other parties to assess the claim.” The Court may overrule
22 Defendant’s claims of privilege and order disclosure. Fed. R. Civ. P. 37(a).

23 Where a party asserts “an evidentiary privilege[, that party] has the burden to demonstrate
24 that the [asserted] privilege applies to the information in question.” *Tornay v. United States*, 840
25 F.2d 1424, 1426 (9th Cir. 1988). Here, Defendant carries that burden. And because Plaintiff
26 invokes the Court’s federal question jurisdiction, federal common law—and not Arizona law—
27 governs Defendant’s claims of privilege. *See* Fed. R. Evid. 501; *see also Clarke v. Am. Com. Nat.*
28 *Bank*, 974 F.2d 127, 129 (9th Cir. 1992); Dkt. 1 ¶ 18.

1 **IV. ARGUMENT**

2 **A. Defendant waived all conceivable privileges over the materials at issue.**

3 Defendant belatedly and deficiently asserted claims of privilege close to a year after
4 answering Plaintiff's discovery requests. Defendant's Late Log still does not set an adequate
5 basis for many of her claims. And but for Dr. Salek's testimony, Plaintiff would never have
6 known about these issues. Under these circumstances, Defendant waived privileged.

7 Rule 26(b)(5) does not specify the time in which a privilege must be asserted or a privilege
8 log must be produced. But the Ninth Circuit has addressed these exact issues. *Burlington N. &*
9 *Santa Fe Ry. Co. v. U.S. Dist. Ct. for Dist. of Mont.*, 408 F.3d 1142 (9th Cir. 2005). In *Burlington*,
10 the Ninth Circuit affirmed the district court's finding that defendant waived privilege "where the
11 log was not filed during the Rule 34 time limit, but was filed *five months* later." *Id.* at 1149
12 (emphasis in original). The record also contained "evidence that even the untimely assertion of
13 privileges by [appellant] were insufficient," and "even after producing the privilege log,
14 [appellant] made substantive changes to that log." *Id.* Thus, although the court did not adopt a
15 "*per se* waiver rule that deems a privilege waived if a privilege log is not produced within Rule
16 34's 30-day time limit," appellant had waived privilege.

17 *Burlington* is directly on point and supplies the appropriate rule of decision. Indeed, the
18 facts are strikingly similar to this case:

- 19 • Defendant served her Initial Log in March 2021—approximately 2 ½ months after
20 serving her written discovery responses. The Initial Log contained eight entries, all of
21 which correspond to communications from 2020 or 2021—after the start of litigation.
- 22 • Defendant served her Revised Log on December 10, 2021—approximately 11 months
23 after serving her discovery responses. The Revised Log consisted of 7 pages, but the
24 entries were still grouped together and so vague as to prevent Plaintiff from
25 understanding the basis for Defendant's privilege claims.
- 26 • Defendant served the Late Log on January 14, 2022—approximately 1 year after
27 serving her discovery responses. The Late Log consists of thirty-four pages of entries,
28 and still does not provide a sufficient basis for many assertions of privilege.

1 Defendant did not simply make an innocent mistake. Instead, these additional (and still-
 2 deficient) logs were only provided after Plaintiff discovered these deficiencies during a
 3 deposition, followed by Plaintiff's repeated pleas for a privilege log that adequately detailed the
 4 documents Defendant sought to withhold from discovery. And there is no dispute that the
 5 documents and testimony sought in this motion are relevant and should have been disclosed.
 6 Defendant has never objected to producing these materials based on relevance.

7 In short, Defendant never would have disclosed these materials had Plaintiff not asked Dr.
 8 Salek the right questions during her deposition and then repeatedly pushed Defendant for a proper
 9 privilege log. "To withhold materials without" proper notice "is contrary to the rule, subjects the
 10 party to sanctions under Rule 37(b)(2), and may be viewed as a waiver of the privilege or
 11 protection." *Burlington*, 408 F.3d at 1147 (citing advisory committee's note to 1993 amendments
 12 to Rule 26(b)(5)). Moreover, "the spirit of the rules is violated when advocates attempt to use
 13 discovery tools as tactical weapons rather than to expose the facts and illuminate the issues." *Id.*
 14 at 1149. Thus, because Defendant failed to timely assert her claims of privilege over the
 15 documents or communications sought in this motion, she has waived privilege. *Id.* at 1149-50;
 16 *Ruehle*, 583 F.3d at 609 (noting "failure to define the scope of his claim of privilege weighs in
 17 favor of disclosure"); *McCormick v. United States*, No. CV 05-118 TUC RCC, 2006 WL
 18 8440318, at *3 (D. Ariz. Feb. 6, 2006) ("Failure to provide sufficient information may constitute
 19 a waiver of the privilege."); *Sweet v. City of Mesa*, No. CV-17-00152-PHX-GMS, 2022 WL
 20 326406, at *5 (D. Ariz. Feb. 3, 2022) (applying *Burlington* and finding waiver).

21 **B. Documents and testimony regarding meetings with the Governor's policy**
 22 **advisor may not be withheld.**

23 **1. Defendant should immediately disclose all relevant meetings and**
 24 **communications with the Governor's office.**

25 Documents and testimony regarding relevant meetings with the Governor's office should
 26 be disclosed. But as an initial matter, Defendant has yet to even identify all such communications.

27 The only meeting with the Governor's office identified on the Late Log is an October 15,
 28 2015, meeting between AHCCCS employees and Ms. Corieri. *See* Ex. 9, Entry #74. Plaintiff

1 knows that other communications must exist and that the Late Log is incomplete because, in
 2 *Toomey*, the privilege log served by the Governor’s office includes multiple communications
 3 with AHCCCS that do not appear on any of Defendant’s logs in this case. This includes at least
 4 two emails dated August 6, 2020, the day that this case was filed, with the subject lines
 5 “Healthcare Coverage” and “Administrative Code,” between Defendant and Christina Corieri, a
 6 policy advisor in the Governor’s office; no lawyers are copied on the email.² This also includes
 7 a January 18, 2017, email from the Chief Legislative Liaison of AHCCCS to Ms. Corieri
 8 regarding AHCCCS’s coverage and proposed legislation.³

9 Plainly, communications between the Governor’s office and AHCCCS would also be in
 10 AHCCCS’s possession, yet Defendant has neither produced these communications nor claimed
 11 privilege over these documents. Defendant must identify them and, because Defendant waived
 12 privilege over them by failing to timely assert her privilege, and for the additional reasons given
 13 below, these communications should be produced in full.

14 **2. *The attorney-client privilege does not shield policy or political decisions.***

15 Defendant should not only disclose all relevant meetings with the Governor’s office, but
 16 also these documents and communications should be produced in full. Defendant’s witnesses,
 17 including Dr. Salek, should also be compelled to testify about these issues as appropriate.⁴

18 “The attorney-client privilege protects” only those “confidential communications between
 19 attorneys and clients, *which are made for the purpose of giving legal advice.*” *United States v.*
 20 *Sanmina Corp.*, 968 F.3d 1107, 1116 (9th Cir. 2020) (emphasis added). “Whether information is
 21 covered by the attorney-client privilege is determined by an eight-part test: (1) Where legal
 22 advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the
 23 communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his

24 _____
 25 ² See Ex. 11, *Toomey v. Arizona*, Revised Privilege Log (May 26, 2021) (attached as Ex.
 7 to Wee Declaration (D.E. 202-3, pp. 76 of 193) (June 4, 2021)).

26 ³ See Ex. 12, *Toomey v. Arizona*, Decl. of Christina Corieri, ¶ 11(3) (June 17, 2021)
 27 (attached to Governor’s Response to Mot. to Compel (D.E. 208-1) (June 18, 2021)).

28 ⁴ Pending this motion, depositions may need to continue for witnesses in addition to Dr.
 Salek. Due to Defendant’s objection, these witnesses also refused to testify about these issues.

1 instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) unless
2 the protection be waived.” *Id.*

3 “The fact that a person is a lawyer does not make all communications with that person
4 privileged.” *Murray v. Mayo Clinic*, No. CV-14-01314-PHX-SPL, 2016 WL 10646315, at *3
5 (D. Ariz. July 20, 2016) (citing *United States v. Martin*, 278 F.3d 988, 999 (9th Cir. 2002)).
6 “Further, communications do not become cloaked with the lawyer-client privilege merely by the
7 fact of their being passed from client to lawyer,” and “[s]imply ‘cc-ing’ an attorney on an email
8 is not sufficient to invoke the privilege.” *Id.* (quotation omitted); *Ruehle*, 583 F.3d at 607.
9 “Routine business dealings are not protected under attorney-client privilege, and labeling a
10 communication as privileged does not automatically protect it.” *Murray*, 2016 WL 10646315, at
11 *3. Thus, documents that contain “mundane business dealings” rather than “confidential legal
12 advice” are “discoverable, even if an attorney had been copied.” *Id.* (citation omitted).

13 Here, Defendant asserts a blanket attorney-client privilege over meetings with the
14 Governor’s office merely because an attorney was present. This is not sufficient. It is axiomatic
15 that “the mere presence of an attorney does not render [these communications] privileged. Rather,
16 it is the seeking and rendering of advice of counsel which is protected.” *United States v. Town of*
17 *Colorado City*, No. 3:12-CV-8123-HRH, 2014 WL 5431222, at *3 (D. Ariz. Oct. 27, 2014).

18 For example, the Late Log claims privilege over the following meeting and related
19 meeting invitation, which includes Ms. Corieri: “Meeting on or around October 15, 2015 between
20 AHCCCS employees and AHCCCS counsel regarding changes to the coverage of the Affordable
21 Care Act published September 2015.” Ex. 9, at Entry #74 (and preceding unnumbered Entry).
22 Defendant cannot withhold the meeting invite, as the fact that a meeting occurred is not
23 privileged. *Lopes v. Vieira*, 688 F. Supp. 2d 1050, 1059 (E.D. Cal. 2010) (citing *Upjohn Co. v.*
24 *United States*, 449 U.S. 383, 395 (1981) (“The attorney-client privilege protects communications,
25 not facts.”). Any policy or political issues discussed are properly subject to discovery. And Ms.
26 Corieri is a policy staffer. There is no indication that this meeting concerned any or only legal
27 advice, and the same is true with respect to the other communications with the Governor’s office.

1 Defendant has not provided an adequate explanation or affidavits to justify the assertion of the
2 attorney-client privilege. Her claim should be overruled.

3 **3. *These relevant documents are not work-product protected.***

4 None of the meetings or communications with the Governor’s office are protected by the
5 attorney work product doctrine. “A document is privileged as attorney work-product when it was
6 prepared (1) in anticipation of litigation or for trial, and (2) by or for another party or by or for
7 that other party’s representative.” *Rojas v. Fed. Aviation Admin.*, 989 F.3d 666, 676 (9th Cir.
8 2021) (en banc) (internal quotation marks omitted). A document was “prepared in anticipation
9 of litigation or for trial” only when “the document can be fairly said to have been prepared or
10 obtained because of the prospect of litigation.” *United States v. Richey*, 632 F.3d 559, 568 (9th
11 Cir. 2011). Courts in the Ninth Circuit look to “the totality of the circumstances” and only grant
12 a document work product protection where it “would not have been created in substantially
13 similar form but for the prospect of litigation.” *Id.* Here, the meetings and communications in
14 question occurred in 2015 (as on the Late Log) or in 2016-2018 (according to Dr. Salek’s
15 recollection) or in 2017 (according to the Governor’s privilege log in *Toomey*). This lawsuit, by
16 contrast, was not filed until late 2020 (and *Toomey* was not filed until early 2019). Thus, these
17 communications cannot have been prepared in anticipation of litigation.

18 **4. *The common interest privilege does not protect the relevant documents.***

19 Meetings and communications with the Governor’s office are also discoverable because
20 they necessarily involved communications between AHCCCS and a third party. There is no
21 attorney-client privilege when a “party discloses privileged information to a third party who is
22 not bound by the privilege.” *Bittaker v. Woodford*, 331 F.3d 715, 719 (9th Cir. 2003).

23 Recognizing that its communications with the Governor’s office—a third party—would
24 not ordinarily be privileged, AHCCCS seeks to invoke the “common interest” doctrine to save
25 its privilege. “Rather than a separate privilege, the ‘common interest’ or ‘joint defense’ rule is an
26 exception to ordinary waiver rules designed to allow attorneys for different clients pursuing a
27 common legal strategy to communicate with each other.” *In re Pac. Pictures Corp.*, 679 F.3d
28 1121, 1129 (9th Cir. 2012). This narrow exception applies only “where (1) [a] communication

1 was made by separate parties in the course of a matter of common interest or joint defense; (2)
2 the communication was designed to further that effort; and (3) the privilege has not been waived.
3 *Avocent Redmond Corp. v. Rose Elecs., Inc.*, 516 F. Supp. 2d 1199, 1203 (W.D. Wash. 2007).

4 Defendant cannot invoke the common interest doctrine for two reasons. **First**, in addition
5 to the general waiver issues identified above, Defendant did not assert a common interest
6 privilege during Dr. Salek's deposition. The words "common interest" do not appear in Dr.
7 Salek's deposition transcript. The first time that Plaintiff ever heard that Defendant was asserting
8 a common interest privilege was when Defendant served her Revised Log weeks later. Thus,
9 Defendant's "shifting theories" of privilege further supports a finding of waiver specifically of
10 the common interest privilege. *Sweet*, 2022 WL 326406, at *5.

11 **Second**, in order for such privilege to attach, the communication needs to be between
12 lawyers or parties represented by lawyers, a condition which is not satisfied here. Defendant must
13 show that "representatives with whom its lawyers were communicating were themselves lawyers
14 or represented by lawyers at the time of the communication. As noted, this is a prerequisite to the
15 application of the doctrine." *Flowers-Carter v. Braun Corp.*, No. CV-18-03836-PHX-DWL,
16 2020 WL 2319935, at *13 (D. Ariz. May 11, 2020), *reconsideration den.*, No. CV-18-03836-
17 PHX-DWL, 2020 WL 3078500 (D. Ariz. June 10, 2020). AHCCCS does not meet this standard.
18 Here, as Dr. Salek testified, she met with the AHCCCS director, AHCCCS general counsel, and
19 Ms. Corieri to discuss the Challenged Exclusion. Ex. 1, at 27:20-30:17. No lawyer from the
20 Governor's office was involved. Thus, the common interest privilege does not apply.

21 **5. The "executive" privilege does not shield these materials.**

22 Defendant also asserts what she calls the "executive privilege" to justify her refusal to
23 disclose documents to Plaintiff. But there is no such thing as a unitary "executive privilege."
24 Instead, there are two types of federal common law privileges that may apply to a government
25 executive: "the presidential communications privilege and the deliberative process privilege."
26 *Toomey v. Arizona*, No. CV190035TUCRMLAB, 2021 WL 3854860, at *3 (D. Ariz. Aug. 27,
27 2021), *aff'd*, 2021 WL 4272691 (D. Ariz. Sept. 21, 2021). Neither apply here.

1 First, Defendant lacks standing to assert any analogue to the presidential communications
2 privilege because she is not the Governor. *See Ctr. on Corp. Resp., Inc. v. Shultz*, 368 F. Supp.
3 863, 873 (D.D.C. 1973) (“The President, as head of the ‘agency,’ the White House, must make
4 the formal claim. A mere statement by [special counsel] that he is authorized to advise the Court
5 that the White House is claiming executive privilege is wholly insufficient to activate a formal
6 claim of executive privilege.”); *United States v. Burr*, 25 F. Cas. 187, 192 (C.C.D. Va. 1807) (“I
7 admit, that in such a case, much reliance must be placed on the declaration of the president”).
8 Here, the Governor has not formally made such a claim. And to the extent that Defendant argues
9 that the Governor may assert this claim through her, that argument also fails because Defendant
10 has provided no supporting affidavits. *See In re Sealed Case*, 121 F.3d 729, 745 n. 16 (D.C. Cir.
11 1997) (noting affidavit of White House Counsel stated specifically that he was authorized by
12 President to invoke presidential communications privilege).

13 Second, to Plaintiff’s knowledge, no Court in the Ninth Circuit has ever extended the
14 federal common law presidential communications privilege to communications between a state
15 Governor’s office and a state agency. The only time this Court ever examined this question was
16 in *Toomey*, where this Court found that Arizona executive agencies do *not* enjoy “the presidential
17 communications privilege” or an analogue to it. *Toomey*, 2021 WL 3854860, at *4. As *Toomey*
18 explained, the “absence of Ninth Circuit case law may be explained by examining the reason for
19 the privilege. The presidential communication privilege is ‘inextricably rooted in the separation
20 of powers under the Constitution.’” *Id.* (citing *United States v. Nixon*, 418 U.S. 683, 708 (1974)).
21 But this reasoning does “not exist in the instant case,” as the “Governor’s Office does not
22 represent a coequal branch of government vis-a-vis the federal judicial branch.” *Id.* Thus, the
23 “executive privilege” claimed by AHCCCS is “not part of the federal common law.” *Id.*

24 Third, *Toomey* did find that Arizona executive agencies might enjoy “a deliberative
25 process privilege, which is a creature of federal common law,” even though Arizona state courts
26 have not recognized a deliberative process privilege under state law. *Id.* at *4, *6. But the
27 deliberative process privilege does not apply here. “A document must meet two requirements for
28 the deliberative process privilege to apply.” *FTC. v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1161

1 (9th Cir. 1984). “First, the document must be predecisional—it must have been generated before
2 the adoption of an agency’s policy or decision.” *Id.* “Second, the document must be deliberative
3 in nature, containing opinions, recommendations, or advice about agency policies.” *Id.* “Purely
4 factual material that does not reflect deliberative processes is not protected.” *Id.* Any
5 communications with the Governor’s office do not meet these requirements. The Challenged
6 Exclusion was enacted in 1982. Plaintiff does not seek materials generated before the adoption
7 of the Challenged Exclusion. Nor does Plaintiff seek materials generated as part of a deliberative
8 rulemaking process, because, as Dr. Salek testified, AHCCCS has not engaged in such a
9 rulemaking or considered whether scientific evidence supports coverage for surgical care for the
10 treatment of gender dysphoria. Ex. 1 at 38:13-40:4. Instead, Plaintiff seeks the type of “purely
11 factual material” that is not protected by the deliberative process privilege.

12 Finally, even if the executive communications privilege exists as AHCCCS claims
13 (though it does not), it is a qualified privilege. *See Nixon*, 418 U.S. at 706. Here, Plaintiff’s need
14 for—and the public interest in reviewing—the information overcomes any conceivable privilege.
15 Defendant has repeatedly argued that this Court must apply rational basis to analyze Plaintiff’s
16 equal protection claim. D.E. 18 at 17-18; Defendant-Appellee’s Answering Brief at 26, *Doe v.*
17 *Snyder*, Case No. 21-15668 (9th Cir. Jun. 30, 2021). Plaintiff disagrees that rational basis is the
18 relevant level of constitutional scrutiny, but even if it were, the information Defendant seeks to
19 withhold would deny Plaintiff an adequate opportunity to explore whether any justification for
20 the Challenged Exclusion were asserted or discussed during those meetings, and to test whether
21 those justifications could meet the applicable legal standard. Indeed, this issue was also decided
22 in *Toomey*, where this Court held that defendants indicated “that they relied on the advice of legal
23 counsel in deciding to maintain the exclusion of coverage for gender reassignment surgery. . . .
24 This constitutes an affirmative act placing the privileged materials at issue.” *Toomey*, 2021 WL
25 4272691, at *4. *Toomey* was correct, because privilege cannot be used “as both a shield and a
26 sword.” *Bittaker v. Woodford*, 331 F.3d 715, 719 (9th Cir. 2003). “In practical terms, this means
27 that parties in litigation may not abuse the privilege by asserting claims the opposing party cannot
28 adequately dispute unless it has access to the privileged materials.” *Id.* The same is true of

1 asserting defenses that place at issue the content of privileged material. *Id.* For this reason, too,
2 the Court should overrule Defendant’s assertion of “executive privilege.”

3 **C. Dr. Salek should be compelled to answer certain other non-privileged**
4 **questions related to her own evaluation of the Challenged Exclusion.**

5 Dr. Salek conceded that, in her role as AHCCCS’s Chief Medical Officer, she has an
6 independent responsibility to evaluate potential changes to AHCCCS regulations to account for
7 evolving medical knowledge. Ex. 1, at 35:23-36:5. Nevertheless, Defense counsel repeatedly
8 instructed Dr. Salek not to answer a series of questions related to her carrying out that
9 responsibility with regards to the Challenged Exclusion and “independent” from anything that
10 stemmed from meetings with the Governor’s office or advice of counsel. Defense counsel
11 improperly instructed Dr. Salek not to answer each of the following questions:

- 12 • “Q: But put the meeting aside, Dr. Salek. In 2016 to 2018, did you, as the medical
13 director of AHCCCS, believe that a rulemaking proceeding to address the challenged
14 exclusion was warranted?” *Id.* at 32:8-12.
- 15 • “Q: But in the interest of moving on, Dr. Salek, did you, as the chief medical officer
16 of AHCCCS, independent of advice of counsel, have an opinion in 2016 to 2018 as to
17 whether a rulemaking proceeding was warranted to address the challenged exclusion?”
18 *Id.* at 33:10-15.
- 19 • “Q: Did you, as the chief medical officer of AHCCCS, independent of advice of
20 counsel, ever consider whether a rulemaking was warranted to address the challenged
21 exclusion?” *Id.* at 34:19-22.

22 Plaintiff is entitled to know whether, in that independent capacity, she believed (or
23 believes) that changes to the Challenged Exclusion are warranted. Even if she has never
24 considered it, or if she does not believe that changes are warranted, Plaintiff is entitled to those
25 admissions on the record, and to explore the bases for Dr. Salek’s beliefs. If she never formed an
26 opinion about the issue independent of what she was told by the Governor’s office, Plaintiff is
27 entitled to know that, too. Thus, Dr. Salek should be compelled to answer the above-outlined
28 questions, as well as follow-ups to those questions.

1 **D. Defendant failed to carry her burden to assert privilege on the other log**
 2 **entries, which appear to concern routine media, policy, and business issues.**

3 Finally, Defendant should be compelled to produce 51 other entries on the privilege log
 4 for which she has not sustained her burden to claim privilege. These communications appear to
 5 concern routine business, media, or policy issues within AHCCCS, with no apparent legal advice
 6 solicited or rendered. For the Court’s ease of review, Plaintiff has excerpted these 51 entries (plus
 7 2 related to the meetings with the Governor’s office) and attached them as Ex. 13.

8 Some examples of the types of entries at issue include the following:

- 9 • Defendant describes entry #50 as “Email correspondence between AHCCCS
 10 employees and AHCCCS counsel discussing news outlet’s publication following
 11 AHCCCS employee’s provision of information at the direction of counsel
 12 regarding AHCCCS and transgender services.” But a discussion about a news
 13 publication is not a discussion in which legal advice is sought or rendered. The
 14 same is true about entry #52, which is simply described as “Email correspondence
 15 between AHCCCS employees and AHCCCS counsel regarding news article about
 16 transgender services.” The same is true about entry #73, which states
 17 “Correspondence between AHCCCS employees conferring the advice of counsel
 18 regarding media request for information on extent of Medicaid coverage for
 19 transgender youths under AHCCCS”—yet no lawyer is copied on the email, nor
 20 does Defendant identify who is the referenced “counsel.”⁵
- 21 • Defendant describes entry #56 as “Email correspondence between AHCCCS
 22 counsel and AHCCCS employee advising employees of counsel’s position on
 23 agency’s next steps regarding ALJ’s decision about beneficiary coverage.”
 24 Defendant provides no detail about what “ALJ” decision is at issue. There is simply
 25 no way for Plaintiff to evaluate Defendant’s claim of privilege.

26 ⁵ See *Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, No. 16CV00236-
 27 WHODMR, 2019 WL 1589974, at *3 (N.D. Cal. Apr. 11, 2019) (communications “discussing
 28 . . . public relations strategies are not privileged”); *In re Premera Blue Cross Customer Data Sec.*
Breach Litig., 329 F.R.D. 656, 663 (D. Or. 2019) (similar).

- 1 • Entry #59 is described as “Email correspondence regarding notes of meeting
2 between AHCCCS employees and AHCCCS counsel re gender dysphoria and
3 gender reassignment services and coverage.” A routine business meeting regarding
4 coverage for particular services is not privileged. There is no indication that advice
5 of counsel was sought or given. *See Murray*, 2016 WL 10646315, at *3.
- 6 • Entry #63 states “Email correspondence between AHCCCS employees discussing
7 advice of counsel regarding public query of AHCCCS’s transgender health
8 coverage.” No counsel is copied on this email. Nor is the name of counsel identified
9 by Defendant. Nor is discussion regarding a “public query” privileged.
- 10 • Entry #66 states “Email correspondence between AHCCCS employee and
11 employee from governor’s office to schedule call,” and Entry #74 states “Invitation
12 to meeting on or around October 15, 2015 between AHCCCS employees and
13 AHCCCS counsel regarding changes to the coverage of the Affordable Care Act
14 published September 2015.” Putting aside the issue of whether the October 2015
15 meeting with the Governor’s office would itself be privileged (which it is not),
16 clearly logistical emails or meeting invitations—quite literally, scheduling a call or
17 meeting—are not privileged.

18 The above are just a handful of examples from Defendant’s Late Log for which her
19 assertion of privilege does not appear justified. Plaintiff acknowledges that, for some of these
20 entries, an attorney is present on the communication. But it is entirely unclear what legal advice
21 (if any) that attorney has been asked to give or is giving, and again, “the mere presence of an
22 attorney does not render [these communications] privileged.” *Town of Colorado City*, 2014 WL
23 5431222, at *3.

24 One other example bears emphasis. Several sub-entries of Entry #75 appear to pertain to
25 a “cost/risk analysis.” The actual “cost/risk analysis” itself does not appear to be on the Late
26 Log—nor has it been produced. Defendant testified that AHCCCS prepared this assessment of
27 the cost of covering surgical care for the treatment of gender dysphoria in response to this
28 litigation. Defendant testified that this “simply is an estimate of costs if we were to add a covered

1 benefit.” Ex. 14, at 122:3-4. When asked if that was “legal risk or exposure,” Defendant testified
2 that it was “financial risk or exposure.” *Id.* 140:19-21. Given this testimony, the “cost/risk
3 analysis” at issue is a routine business document. It was not prepared to show legal or litigation
4 risk. Further, Defendant has repeatedly asserted cost as a justification for the Challenged
5 Exclusion, yet Defendant refuses to provide Plaintiff with that assessment. As with the meetings
6 with the Governor’s office, Defendant cannot on the one hand use that document as a basis for
7 its defense in this lawsuit, while claiming that Plaintiff is not entitled to see that document on the
8 other, because privilege cannot be used “as both a shield and a sword.” *Bittaker*, 331 F.3d at 719.

9 **V. CONCLUSION**

10 Therefore, Plaintiff respectfully requests that the Court grant Plaintiff’s motion to compel.
11 For the Court’s consideration, Plaintiff has enclosed a [Proposed] Order Granting Plaintiff’s
12 Motion to Compel.

13 Respectfully submitted,

14 DATED: FEBRUARY 28, 2022

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1 November 23, 2021. Defendant responded to Plaintiff’s letter on December 10, 2021, and
 2 produced a revised privilege log (the “Revised Log”) on that date. Exs. 6 & 7. The parties
 3 continued to discuss these matters by phone and by email. On January 3, 2022, Plaintiff
 4 requested that Defendant remedy the remaining deficiencies with Defendant’s privilege log, and
 5 on January 14, 2022, Defendant served another version of her privilege log (the “Late Log”).
 6 Ex. 9.

7 The parties continued to discuss these matters by email and, on February 10 & 15, 2022,
 8 by phone. On February 16, 2022, Defendant offered to produce certain of the documents at issue
 9 in this motion subject to certain “stipulations,” but these stipulations were not acceptable to
 10 Plaintiff. Plaintiff proposed an alternate “stipulation” to resolve these privilege challenges,
 11 which was as follows: *Defendant is withdrawing her claim of privilege on certain documents*
 12 *that were previously logged as privilege because, upon further review, these documents are not*
 13 *privileged. Plaintiff agrees that the mere production of these documents does not waive*
 14 *Defendant’s privilege over documents and communications that are actually privileged.* Ex. 10.

15 Defendant declined to agree to Plaintiff’s proposed compromise. Thus, after a sincere
 16 effort in good faith to resolve or further narrow the dispute, the parties have been unable to do
 17 so.

18 LRCIV 37.1 Statement

19 Documents and Testimony Concerning Meetings with the Governor’s Office (Part IV.B)

20 **Plaintiff’s Specific Request No. 1** (Plaintiff’s Request for Production No. 6)

- 21 1. **Request:** “All communications relating to the development and promulgation of
 22 the Challenged Exclusion.”
- 23 2. **Objection/Response:** “Because the Challenged Exclusion is a rule created in
 24 1982, Defendant objects to this request to the extent it seeks documents that are
 25 not available to AHCCCS because they are older than AHCCCS’s document
 26 retention policies. Defendant further objects on the basis that this request is outside
 27 the scope of class certification discovery, and the scope of permissible discovery
 28 is an issue currently pending before the Court. Subject to and without waiving her

1 objections, Defendant states that she has not located any responsive documents at
2 this time.”

- 3 3. **Reason for Deficiency:** Though AHCCCS’s Chief Medical Officer—Dr. Sara
4 Salek—testified that she met with Defendant’s predecessor, an AHCCCS lawyer,
5 and a representative from the Governor’s office to discuss the Challenged
6 Exclusion sometime between 2016 and 2018, Ex. 1, at 27:20-30:17, Defendant
7 has failed to produce documents and communications related to this and similar
8 meetings. Though Defendant asserts that such documents and communications are
9 protected from disclosure by the attorney-client privilege, the work product
10 doctrine, the common interest doctrine, and the “executive” privilege, none of
11 these privileges or protections apply.

12 **Plaintiff’s Specific Request No. 2** (Plaintiff’s Request for Production No. 41)

- 13 1. **Request:** “All documents Defendant relied upon, referenced in or identified in
14 answering Plaintiffs’ interrogatories.”
- 15 2. **Objection/Response:** “Defendant refers Plaintiffs to the AHCCCS Medical
16 Policy Manual, particularly Chapters 310-B, 310-V, and 430, and the AHCCCS
17 rules at A.A.C. R9-22-201 et seq. and the documents identified in these responses
18 to Plaintiffs’ First Request for Production.”
- 19 3. **Reason for Deficiency:** Plaintiff’s Interrogatories Nos. 15-17 sought information
20 about meetings where the Challenged Exclusion was discussed, as well as
21 information about the materials AHCCCS considered related to the Challenged
22 Exclusion and the occasions on which it considered amending or repealing the
23 Challenged Exclusion. In responding to Interrogatories, Defendant made
24 representations about the contents of a meeting regarding the Challenged
25 Exclusion that AHCCCS’s Chief Medical Officer—Dr. Sara Salek—testified took
26 place sometime between 2016 and 2018, Ex. 1, at 27:20-30:17. Defendant has
27 failed to produce documents and communications related to this and similar
28 meetings. Though Defendant asserts that such documents and communications are

1 protected from disclosure by the attorney-client privilege, the work product
2 doctrine, the common interest doctrine, and the “executive” privilege, none of
3 these privileges or protections apply.

4 **Plaintiff’s Specific Request No. 3** (Deposition Testimony of Dr. Sara Salek)

- 5 1. **Request:** [Unasked questions during the deposition of Dr. Sara Salek regarding
6 the content of the 2016-2018 meeting with the Governor’s office regarding the
7 Challenged Exclusion.]
- 8 2. **Objection/Response:** “MR. BARTON: I’m going to object at this point and
9 instruct her not to answer. I certainly allowed a lot of questions about this meeting,
10 but when you start asking about opinions and thoughts and ideas and what was
11 exchanged, that invades privilege. MR. CHINSKY: I’m sorry, David. What’s the
12 basis of the objection? MR. BARTON: Attorney-client privileged
13 communications. Executive privilege.” Ex. 1, at 30:21-31:6.
- 14 3. **Reason for Deficiency:** Defendant’s objections foreclosed Plaintiff from
15 obtaining any testimony about the contents of the 2016-2018 meeting with the
16 Governor’s office. Though Defendant asserts that testimony is prohibited by the
17 attorney-client privilege, the work product doctrine, the common interest doctrine,
18 and the “executive” privilege, none of these privileges or protections apply.

19 **Dr. Salek’s Own Evaluation of the Challenged Exclusion (Part IV.C)**

20 **Plaintiff’s Specific Request No. 4** (Deposition Testimony of Dr. Sara Salek)

- 21 1. **Request:** “But put the meeting aside, Dr. Salek. In 2016 to 2018, did you, as the
22 medical director of AHCCCS, believe that a rulemaking proceeding to address the
23 challenged exclusion was warranted?” Ex. 1, at 32:8-12.
- 24 2. **Objection/Response:** “MR. BARTON: Same objection. [Referring to earlier
25 answer of ‘Attorney-client privileged communications. Executive privilege.’] No
26 need to answer that question. MR. CHINSKY: I’m not asking about the meeting,
27 David. And I’m entitled to know if the witness, as the medical director of
28 AHCCCS, considered and had an opinion as to whether the challenged exclusion

1 should have been subject to a rulemaking proceeding in the past. MR. BARTON:
 2 But, again, same objection, Andrew. I mean, think about it. What you're basically
 3 saying is, 'Okay, so there was a meeting to discuss this. Do you think we need to
 4 be engaging in rulemaking to change the rule? That's the question that was being
 5 discussed. I'm not going to let this witness provide an opinion about what she
 6 thought because I'm sure that same opinion was shared in the meeting, and we're
 7 not going to get into what was discussed at the meeting. So, yeah, we stand on --
 8 MR. CHINSKY: All right, David. David, like I said, we can take this up with the
 9 Court." *Id.* at 32:13-33:9.

- 10 3. **Reason for Deficiency:** This question does not invade any applicable privilege or
 11 protection, nor would any such privilege objection be sustained in light of the
 12 arguments above and Plaintiff's need for this information, which would overcome
 13 any qualified privilege. It asks for Dr. Salek's views about her independent
 14 responsibility as AHCCCS's Chief Medical Officer to evaluate potential changes
 15 to AHCCCS regulations to account for evolving medical knowledge. Dr. Salek
 16 admits that she has this responsibility. *Id.* at 35:23-36:5. Plaintiff is entitled to
 17 understand how Dr. Salek understood this responsibility with regard to the
 18 Challenged Exclusion and how she exercised (or failed to exercise) that
 19 responsibility.

20 **Plaintiff's Specific Request No. 5** (Deposition Testimony of Dr. Sara Salek)

- 21 1. **Request:** "But in the interest of moving on, Dr. Salek, did you, as the chief
 22 medical officer of AHCCCS, independent of advice of counsel, have an opinion
 23 in 2016 to 2018 as to whether a rulemaking proceeding was warranted to address
 24 the challenged exclusion?" Ex. 1, at 33:10-15.
- 25 2. **Objection/Response:** "MR. BARTON: Same objection. I instruct the witness not
 26 to answer that question. MR. CHINSKY: David, I'm saying independent of the
 27 advice of counsel. This cannot possibly be seeking privileged information. MR.
 28 BARTON: Andrew, you know the privilege better than that. The privilege covers

1 all communications for the purpose of seeking and obtaining and getting legal
2 advice. And so -- MR. CHINSKY: David, I am asking independent of legal
3 counsel.” *Id.* at 33:16-34:2.

4 3. **Reason for Deficiency:** *See* Plaintiff’s Specific Request No. 4.

5 **Plaintiff’s Specific Request No. 6** (Deposition Testimony of Dr. Sara Salek)

6 1. **Request:** “Did you, as the chief medical officer of AHCCCS, independent of
7 advice of counsel, ever consider whether a rulemaking was warranted to address
8 the challenged exclusion?” Ex. 1, at 34:19-22.

9 2. **Objection/Response:** “MR. BARTON: No. She’s not going to answer that
10 question for all the reasons we’ve discussed. And if you want to take it up with
11 Judge Rash, be my guest. MR. CHINSKY: I think we probably will.” *Id.* at 34:23-
12 35:2.

13 3. **Reason for Deficiency:** *See* Plaintiff’s Specific Request No. 4.

14
15 **Various Other Documents Over Which Defendant Improperly Asserts Privilege (Part IV.D)**

16 **Plaintiff’s Specific Request No. 7** (Plaintiff’s Request for Production No. 7)

17 1. **Request:** “All reports or data collected or gathered, regardless of whether
18 prepared by or on behalf of AHCCCS, and regardless of whether presented,
19 reviewed, considered or relied upon by AHCCCS and/or the State of Arizona, in
20 connection with the implementation, enforcement, and/or any consideration of the
21 elimination or amendment of the Challenged Exclusion.”

22 2. **Objection/Response:** “Defendant objects to this request as being overbroad,
23 unduly burdensome and not relevant or proportional to the needs of the case with
24 respect to information that was never presented, reviewed, considered or relied
25 upon by AHCCCS. Because the Challenged Exclusion is a rule created in 1982,
26 Defendant objects to this request to the extent it seeks documents that are not
27 available to AHCCCS because they are older than AHCCCS’s document retention
28 policies. Defendant also objects because ‘the State of Arizona’ is neither a party

1 to this lawsuit nor an entity within the control of Defendant. Defendant further
 2 objects on the basis that this request is outside the scope of class certification
 3 discovery, and the scope of permissible discovery is an issue currently pending
 4 before the Court. Subject to and without waiving her objections, Defendant states
 5 that she has not located any responsive documents at this time.”

- 6 3. **Reason for Deficiency:** Defendant has identified documents and communications
 7 responsive to this Request. *See* Ex. 13. Though Defendant asserts that certain
 8 documents and communications are protected from disclosure by the attorney-
 9 client privilege, the work product doctrine, the common interest doctrine, or the
 10 “executive” privilege, none of these privileges or protections apply. Even if the
 11 documents and communications in question did invade the work product doctrine
 12 or “executive” privilege (and they do not), Plaintiff’s need for—and the public
 13 interest in reviewing—such documents and communications overcomes these
 14 qualified protections.

15 **Plaintiff’s Specific Request No. 8** (Plaintiff’s Request for Production No. 8)

- 16 1. **Request:** “All documents related to research and studies performed by or on
 17 behalf of AHCCCS and/or the State of Arizona, regardless of whether presented,
 18 reviewed, considered or relied upon by AHCCCS and/or the State of Arizona, in
 19 connection with the implementation, enforcement, and/or any consideration of
 20 elimination or amendment of the Challenged Exclusion.”
- 21 2. **Objection/Response:** “Defendant objects to this request as being overbroad and
 22 unduly burdensome and the request is not relevant or proportional to the needs of
 23 the case with respect to information that was never presented, reviewed,
 24 considered or relied upon by AHCCCS. It requests documents reviewed or
 25 considered by ‘the State of Arizona,’ which is neither a party to this lawsuit nor
 26 an entity within the control of Defendant. Because the Challenged Exclusion is a
 27 rule created in 1982, Defendant objects to this request to the extent it seeks
 28 documents that are not available to AHCCCS because they are older than

1 AHCCCS's document retention policies. Defendant further objects on the basis
2 that this request is outside the scope of class certification discovery, and the scope
3 of permissible discovery is an issue currently pending before the Court. Subject to
4 and without waiving her objections, Defendant states that she has not located any
5 responsive documents at this time, but Defendant is continuing to search the
6 records available since January 1, 2016 and will supplement this response once
7 that search is complete."

8 3. **Reason for Deficiency:** *See* Plaintiff's Specific Request No. 7.

9 **Plaintiff's Specific Request No. 9** (Plaintiff's Request for Production No. 9)

10 1. **Request:** "All documents related to research and studies that were considered or
11 relied upon by AHCCCS in connection with the implementation, enforcement,
12 and/or any consideration of elimination or amendment of the Challenged
13 Exclusion."

14 2. **Objection/Response:** "Because the Challenged Exclusion is a rule created in
15 1982, Defendant objects to this request to the extent it seeks documents that are
16 not available to AHCCCS because they are older than AHCCCS's document
17 retention policies. Defendant further objects on the basis that this request is outside
18 the scope of class certification discovery, and the scope of permissible discovery
19 is an issue currently pending before the Court. Subject to and without waiving her
20 objections, Defendant states that she has not located any responsive documents at
21 this time."

22 3. **Reason for Deficiency:** *See* Plaintiff's Specific Request No. 7.

23 **Plaintiff's Specific Request No. 10** (Plaintiff's Request for Production No. 14)

24 1. **Request:** "All documents related to research and studies performed by or on
25 behalf of AHCCCS and/or the State of Arizona on the treatment of Gender
26 Dysphoria."

27 2. **Objection/Response:** "Because the Challenged Exclusion is a rule created in
28 1982, Defendant objects to this request to the extent it seeks documents that are

1 not available to AHCCCS because they are older than AHCCCS's document
 2 retention policies. Defendant objects that the request for documents reviewed or
 3 considered by 'the State of Arizona,' which is neither a party to this lawsuit nor
 4 an entity within the control of Defendant. Defendant further objects on the basis
 5 that this request is outside the scope of class certification discovery, and the scope
 6 of permissible discovery is an issue currently pending before the Court. Subject to
 7 and without waiving her objections, Defendant states that she has not located any
 8 responsive documents at this time."

9 3. **Reason for Deficiency:** *See* Plaintiff's Specific Request No. 7.

10 **Plaintiff's Specific Request No. 11** (Plaintiff's Request for Production No. 18)

11 1. **Request:** "All non-privileged documents regarding any report, research or
 12 analysis by or on behalf of AHCCCS and/or the State of Arizona on whether the
 13 Challenged Exclusion complies with Section 1557 of the Affordable Care Act's
 14 prohibition on unlawful discrimination on the basis of sex (42 U.S.C. § 18116)."

15 2. **Objection/Response:** "Because the Challenged Exclusion is a rule created in
 16 1982, Defendant objects to this request to the extent it seeks documents that are
 17 not available to AHCCCS because they are older than AHCCCS's document
 18 retention policies. Defendant objects that the request for documents reviewed or
 19 considered by 'the State of Arizona,' which is neither a party to this lawsuit nor
 20 an entity within the control of Defendant. Defendant further objects on the basis
 21 that this request is outside the scope of class certification discovery, and the scope
 22 of permissible discovery is an issue currently pending before the Court. Subject to
 23 and without waiving her objections, Defendant states that she has not located any
 24 non-privileged responsive documents at this time."

25 3. **Reason for Deficiency:** *See* Plaintiff's Specific Request No. 7.

26 **Plaintiff's Specific Request No. 12** (Plaintiff's Request for Production No. 21)

27 1. **Request:** "All documents and communications, including but not limited to
 28 reports, studies, research or memoranda, related to any federal regulations or

1 guidance regarding discrimination based on sex or gender identity in health care
2 and/or state Medicaid programs.”

- 3 2. **Objection/Response:** “Defendant objects to this request as being overbroad,
4 ambiguous, and unduly burdensome as to the phrases ‘based on sex’ and ‘in health
5 care.’ Because the Challenged Exclusion is a rule created in 1982, Defendant
6 objects to this request to the extent it seeks documents that are not available to
7 AHCCCS because they are older than AHCCCS’s document retention policies.
8 Defendant also objects to the extent this request seeks information protected from
9 disclosure by the attorney-client and/or work product privileges. Defendant further
10 objects on the basis that this request is outside the scope of class certification
11 discovery, and the scope of permissible discovery is an issue currently pending
12 before the Court. Subject to and without waiving her objections, Defendant states
13 that she has not located any nonprivileged responsive documents at this time.”

- 14 3. **Reason for Deficiency:** *See* Plaintiff’s Specific Request No. 7.

15 **Plaintiff’s Specific Request No. 13** (Plaintiff’s Request for Production No. 23)

- 16 1. **Request:** “All non-privileged documents regarding any report, research or
17 analysis by or on behalf of AHCCCS and/or the State of Arizona on whether the
18 Challenged Exclusion might be subject to legal challenge on any state or federal
19 grounds.”
- 20 2. **Objection/Response:** “Defendant objects that the request for documents
21 reviewed or considered by ‘the State of Arizona,’ which is neither a party to this
22 lawsuit nor an entity within the control of Defendant, is improper and unduly
23 burdensome. Because the Challenged Exclusion is a rule created in 1982,
24 Defendant objects to this request to the extent it seeks documents that are not
25 available to AHCCCS because they are older than AHCCCS’s document retention
26 policies. Defendant further objects on the basis that this request is outside the
27 scope of class certification discovery, and the scope of permissible discovery is an
28 issue currently pending before the Court. Subject to and without waiving her

1 objections, Defendant states that she has not located any non-privileged
2 responsive documents at this time.”

3 3. **Reason for Deficiency:** *See* Plaintiff’s Specific Request No. 7.

4 **Plaintiff’s Specific Request No. 14** (Plaintiff’s Request for Production No. 24)

5 1. **Request:** “All documents and communications relating to any request by any
6 person to modify, amend, or eliminate the Challenged Exclusion since its
7 implementation.”

8 2. **Objection/Response:** “Defendant objects to this request as being overbroad and
9 unduly burdensome to extent it requests documents for the past 39 years, most of
10 which are beyond AHCCCS’s document retention policies. Because the
11 Challenged Exclusion is a rule created in 1982, Defendant objects to this request
12 to the extent it seeks documents that are not available to AHCCCS because they
13 are older than AHCCCS’s document retention policies. Defendant objects to the
14 extent this request seeks information protected from disclosure by the attorney-
15 client and/or work product privileges. Defendant further objects on the basis that
16 this request is outside the scope of class certification discovery, and the scope of
17 permissible discovery is an issue currently pending before the Court. Subject to
18 and without waiving her objections, Defendant states that she has not located any
19 non-privileged responsive documents at this time.”

20 3. **Reason for Deficiency:** *See* Plaintiff’s Specific Request No. 7.

21 **Plaintiff’s Specific Request No. 15** (Plaintiff’s Request for Production No. 26)

22 1. **Request:** All research, studies, data, reports, publication, testimony or other
23 documents considered, reviewed, or relied upon by AHCCCS related to Arizona
24 House Bill 2294 introduced January 23, 2017.

25 2. **Objection/Response:** “Defendant objects on the basis that this request is outside
26 the scope of class certification discovery, and the scope of permissible discovery
27 is an issue currently pending before the Court. Subject to and without waiving her
28

1 objections, Defendant states that she has not located any responsive documents at
2 this time.”

3 3. **Reason for Deficiency:** *See* Plaintiff’s Specific Request No. 7.

4 **Plaintiff’s Specific Request No. 16 (Plaintiff’s Request for Production No. 27)**

5 1. **Request:** “All documents and communications reflecting AHCCCS
6 recommendations, research, studies, data, reports, publications, testimony or other
7 documents prepared by or on behalf of AHCCCS in connection with Arizona
8 House Bill 2294 introduced January 23, 2017.”

9 2. **Objection/Response:** “Defendant further objects on the basis that this request is
10 outside the scope of class certification discovery, and the scope of permissible
11 discovery is an issue currently pending before the Court. Subject to and without
12 waiving her objections, Defendant states that she has not located any responsive
13 documents at this time.”

14 3. **Reason for Deficiency:** *See* Plaintiff’s Specific Request No. 7.

15 **Plaintiff’s Specific Request No. 17 (Plaintiff’s Request for Production No. 32)**

16 1. **Request:** “All documents relating to Defendant or AHCCCS’s review or
17 consideration of the diagnosis of Gender Dysphoria with respect to treatment and
18 services under Arizona Medicaid.”

19 2. **Objection/Response:** “Because the Challenged Exclusion is a rule created in
20 1982, Defendant objects to this request to the extent it seeks documents that are
21 not available to AHCCCS because they are older than AHCCCS’s document
22 retention policies. The request seeks documents regarding treatments and services
23 other than male chest reconstruction surgery for gender dysphoria in persons under
24 the age of 21 (Complaint at ¶ 106) that are not relevant to the claims or defenses
25 in this case or proportional to the needs of the case. Defendant objects to the extent
26 this request seeks information protected from disclosure by the attorney-client
27 and/or work product privileges. Defendant further objects on the basis that this
28 request is outside the scope of class certification discovery, and the scope of

1 permissible discovery is an issue currently pending before the Court. Subject to
2 and without waiving her objections, Defendant refers Plaintiffs to the AHCCCS
3 Medical Policy Manual, particularly Chapters 310-B, 310-V, and 430, and the
4 AHCCCS rules at A.A.C. R9-22-201 et seq.”

5 3. **Reason for Deficiency:** *See* Plaintiff’s Specific Request No. 7.

6 **Plaintiff’s Specific Request No. 18** (Plaintiff’s Request for Production No. 33)

7 1. **Request:** “All documents reflecting AHCCCS’s current criteria for authorization
8 and coverage for non-surgical treatments and services for Gender Dysphoria.”

9 2. **Objection/Response:** “Defendant objects that this request is overbroad and
10 unduly burdensome, is not limited to children eligible for EPSDT services, and
11 requests documents regarding treatments and services other than male chest
12 reconstruction surgery for gender dysphoria in persons under the age of 21
13 (Complaint at ¶ 106) that are not relevant to the claims or defenses in this case or
14 proportional to the needs of the case. Defendant further objects on the basis that
15 this request is outside the scope of class certification discovery, and the scope of
16 permissible discovery is an issue currently pending before the Court. Subject to
17 and without waiving her objections, Defendant refers Plaintiffs to the AHCCCS
18 Medical Policy Manual and the AHCCCS rules at A.A.C. R9-22-201 et seq.”

19 3. **Reason for Deficiency:** *See* Plaintiff’s Specific Request No. 7.

20
21 **Specific Requests That Are Deficient For Multiple Reasons**

22 **Plaintiff’s Specific Request No. 19** (Plaintiff’s Request for Production No. 11)

23 1. **Request:** “All communications relating to the implementation, enforcement,
24 and/or any consideration of elimination or amendment of the Challenged
25 Exclusion.”

26 2. **Objection/Response:** “Because the Challenged Exclusion is a rule created in
27 1982, Defendant objects to this request to the extent it seeks documents that are
28 not available to AHCCCS because they are older than AHCCCS’s document

1 retention policies. Defendant further objects on the basis that this request is outside
2 the scope of class certification discovery, and the scope of permissible discovery
3 is an issue currently pending before the Court. Subject to and without waiving her
4 objections, Defendant states that she has not located any responsive documents at
5 this time.”

6 3. **Reason for Deficiency:** *See* Plaintiff’s Specific Request Nos. 1 and 7.

7
8
9 Respectfully submitted,

10 DATED: FEBRUARY 28, 2022

KING & SPALDING LLP

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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2021, I electronically transmitted the attached documents to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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INDEX OF EXHIBITS TO PLAINTIFF'S MOTION TO COMPEL

No. 4:20-cv-00335-TUC-SHR

Exhibit	Description
1	Deposition Transcript of Dr. Sara Salek (Nov. 12, 2021) (relevant excerpts)
2	Defendant's Answer to Plaintiff's First Set of Interrogatories (Jan. 19, 2021)
3	[Defendant's] Response to Plaintiffs' First Request for Production (Jan. 19, 2021)
4	Snyder Privilege Log (Mar. 29, 2019) ("Initial Log")
5	Letter from Plaintiff to Defendant Re: Discovery Issues Identified at Dr. Salek's Deposition (Nov. 16, 2021)
6	Letter from Defendant to Plaintiff Responding to Nov. 16 Letter (Dec. 10, 2021)
7	Revised and Updated Snyder Privilege Log (Dec. 10, 2021) ("Revised Log")
8	Defendant's Second Amended Supplemental Answers to Plaintiffs' First Set of Interrogatories (Dec. 10, 2021)
9	Snyder Amended and Supplemental Privilege Log (Jan. 14, 2022) ("Late Log")
10	Email Correspondence between Plaintiff and Defendant Re: Meet & Confer Follow-Up (Feb. 14–24, 2022)
11	<i>Toomey v. Arizona</i> , Governor's Revised Privilege Log (May 26, 2021) (attached as Ex. 7 to Wee Declaration (D.E. 202-3) (June 4, 2021))
12	<i>Toomey v. Arizona</i> , Decl. of Christina Corieri (June 17, 2021) (attached to Governor's Response to Mot. to Compel (D.E. 208-1) (June 18, 2021)).
13	Plaintiff Privilege Log Challenges (specific entries challenged in the motion)
14	Deposition Transcript of Jami Snyder (Jan. 21, 2022) (relevant excerpts)

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

D.H., by and through his mother,) No. 4:20-cv-335-SHR
Janice Hennessey-Waller; and John Doe,))
by his guardian and next friend, Susan))
Doe, on behalf of themselves and all))
others similarly situated,))

Plaintiffs,)

vs.)

Jami Snyder, Director of the Arizona)
Health Care Cost Containment System,)
in her official capacity,)

Defendant.)

(Pages 1-201)



VIDEO-RECORDED VIDEOCONFERENCE DEPOSITION OF
DR. SARA SALEK

November 12, 2021

PURSUANT TO WRITTEN NOTICE and the
appropriate rules of civil procedure, the
video-recorded videoconference deposition of Dr. Sara
Salek, called for examination by the Plaintiffs, was
taken remotely commencing at 9:08 a.m. on
November 12, 2021, before Jennifer Bajwa Melius,
Verbatim Stenographic Reporter and Registered
Professional Reporter.

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ALSO PRESENT:

Syed Hassan, Videographer
Kasey Rogg, Esq., AHCCCS
Silvia Elena Beckman, King & Spalding LLP

1 **decides when to open up a rulemaking proceeding?**

2 A. It typically -- it typically is an
3 interplay between, you know, if a rule is -- you know,
4 if circumstances have changed, if it's outdated and
5 needs updating, and it would be a decision made
6 before -- between our agency as well as the executive
7 branch, so the governor's office.

09:40:16AM

8 THE STENOGRAPHER: Mr. Barton, did I
9 miss something that you said?

10 MR. BARTON: No.

09:40:35AM

11 THE STENOGRAPHER: Thank you.

12 **Q. (By Mr. Chinsky) And when you say**
13 **AHCCCS would need permission from the executive**
14 **branch, what do you mean by that?**

15 A. Well, we report in to the governor and
16 the governor's office, so we serve on behalf of the
17 governor's office. And so there's an established
18 process in regards to, you know, requesting opening of
19 a rule and the rule-writing process just because it --
20 it does require, you know, a bit of administration in
21 regards to resources in order to do since it can be
22 quite detailed and time consuming.

09:40:48AM

23 So my understanding is that there is a
24 formal process by which we receive approvals around
25 opening and revising rules.

09:41:07AM

09:41:30AM

1 Q. Do you, as the chief medical officer of
2 AHCCCS, have the ability to request that a rulemaking
3 proceeding be opened to address a particular
4 regulation?

5 A. Can you please restate your question? 09:41:48AM

6 Q. Sure. Who within AHCCCS has the ability
7 to ask the executive branch for permission to open a
8 rulemaking process?

9 A. It would be -- it would be a decision
10 made between our legal services as well as our
11 executive team at AHCCCS. 09:42:13AM

12 Q. Are you part of the executive team at
13 AHCCCS?

14 A. I am.

15 Q. So supposing that you wanted to open a
16 rulemaking proceeding to change a particular
17 regulation, you would have the ability to propose that
18 to the executive team and legal services group?

19 A. We could. 09:42:26AM

20 Q. Have you considered opening a rulemaking
21 proceeding to reevaluate the challenged exclusion? 09:42:49AM

22 A. We have.

23 Q. When did you do that?

24 A. I don't recall the specific date. It
25 was sometime between 2016 and 2018. 09:43:25AM

1 **Q. What prompted AHCCCS to consider a**
2 **rulemaking proceeding to address the challenged**
3 **exclusion between 2016 and 2018?**

4 A. My recollection was that there were --
5 specific federal guidance in regards to
6 gender-reassignment surgeries -- or actually, let me
7 clarify -- just in regards to treatment of gender
8 dysphoria.

09:43:50AM

9 **Q. Who initiated those discussions on**
10 **opening this rulemaking proceeding?**

09:44:20AM

11 A. I don't recall.

12 **Q. But you personally were part of those**
13 **discussions?**

14 A. I was.

15 **Q. Who else was part of those discussions?**

09:44:33AM

16 A. Our director at the time as well as
17 legal counsel.

18 **Q. Was anyone else part of those**
19 **discussions?**

20 A. Governor's office.

09:44:55AM

21 **Q. Was anyone else part of those**
22 **discussions?**

23 A. Not that I recall.

24 **Q. How did those discussions take place?**

25 **Did you have meetings or teleconferences or -- I guess**

09:45:30AM

1 this was pre-pandemic so probably not Zoom, but how
2 did those meetings take place?

3 A. In person.

4 Q. About how many meetings were there?

5 A. I recall one.

09:45:50AM

6 Q. Do you recall when that meeting took
7 place?

8 MR. BARTON: Objection.

9 A. I don't recall the specific date, no.

10 Q. (By Mr. Chinsky) How many people were
11 present at the meeting to discuss a potential
12 rulemaking proceeding with respect to the challenged
13 exclusion?

09:46:08AM

14 A. My recollection was four.

15 Q. And that would be you, the director,
16 legal counsel, and someone from the governor's office?

09:46:31AM

17 A. Yes.

18 Q. Was there an agenda for the meeting?

19 A. Not that I recall.

20 Q. Were there any type of written documents
21 or presentations used during the meeting?

09:47:03AM

22 A. Not that I recall.

23 Q. Did you have any communications over
24 email about this issue?

25 A. Can you please restate the question?

09:47:26AM

1 Q. Yeah. That was a bad question.

2 Did you have any email communications
3 regarding a potential rulemaking proceeding with
4 respect to the challenged exclusion in the
5 2016-to-2018 time frame?

09:47:43AM

6 MR. BARTON: Objection.

7 A. Not that I recall.

8 Q. (By Mr. Chinsky) How was it that that
9 meeting came to be? And by that I mean do you
10 remember who proposed it, how the participants in the
11 meeting were set, that sort of thing.

09:48:09AM

12 A. From my recollection, I believe we
13 decided to meet based off of the federal guidance
14 around treatments for gender dysphoria. I don't
15 recall who called the meeting in regards to if it was
16 the governor's office or if it was at our director's
17 request. I wasn't part of that decision-making.

09:48:36AM

18 Q. At that point as medical director of
19 AHCCCS, did you believe that a rulemaking proceeding
20 was warranted to address the challenged exclusion?

09:49:01AM

21 MR. BARTON: I'm going to object at this
22 point and instruct her not to answer. I certainly
23 allowed a lot of questions about this meeting, but
24 when you start asking about opinions and thoughts and
25 ideas and what was exchanged, that invades privilege,

09:49:19AM

1 so I'm going to instruct her not to answer that
2 question.

3 MR. CHINSKY: I'm sorry, David. What's
4 the basis of the objection?

5 MR. BARTON: Attorney-client privileged
6 communications. Executive privilege.

09:49:28AM

7 MR. CHINSKY: I'm asking the witness, as
8 the medical director of AHCCCS between 2016 and 2018,
9 do you think a rulemaking proceeding to address the
10 challenged exclusion was warranted.

09:49:45AM

11 MR. BARTON: Yes. Exactly. And when
12 you start asking about the thoughts and impressions of
13 the people who attended a meeting that was protected
14 by both of those privileges, you're, in essence,
15 asking -- [Zoom audio distortion] -- questions to find
16 out what was said at the meeting. So I'm not going to
17 allow her to answer the question.

09:50:02AM

18 THE STENOGRAPHER: You're asking a what
19 question?

20 MR. BARTON: I'm sorry. I said when
21 he's asking about the thoughts and impressions of the
22 individuals who attended a meeting where an issue on
23 the discussion between legal and executive office is
24 being discussed, you are, in essence, asking what was
25 discussed at the meeting. And so I'm not going to

09:50:07AM

09:50:21AM

1 allow this witness who was present during that
2 meeting -- and that meeting was clearly privileged by
3 the executive and attorney-client privileges -- I'm
4 not going to let this witness explain what her
5 thoughts and impressions were about the meeting.

09:50:34AM

6 MR. CHINSKY: Okay. Well, we may take
7 that up with the Court.

8 Q. (By Mr. Chinsky) But put the meeting
9 aside, Dr. Salek. In 2016 to 2018, did you, as the
10 medical director of AHCCCS, believe that a rulemaking
11 proceeding to address the challenged exclusion was
12 warranted?

09:50:50AM

13 MR. BARTON: Same objection.

14 No need to answer that question.

15 MR. CHINSKY: I'm not asking about the
16 meeting, David. And I'm entitled to know if the
17 witness, as the medical director of AHCCCS, considered
18 and had an opinion as to whether the challenged
19 exclusion should have been subject to a rulemaking
20 proceeding in the past.

09:50:58AM

21 MR. BARTON: But, again, same objection,
22 Andrew. I mean, think about it. What you're
23 basically saying is, "Okay, so there was a meeting to
24 discuss this. Do you think we need to be engaging in
25 rulemaking to change the rule?" That's the question

09:51:13AM

09:51:25AM

1 that was being discussed.

2 I'm not going to let this witness
3 provide an opinion about what she thought because I'm
4 sure that same opinion was shared in the meeting, and
5 we're not going to get into what was discussed at the
6 meeting.

09:51:37AM

7 So, yeah, we stand on --

8 MR. CHINSKY: All right, David. David,
9 like I said, we can take this up with the Court.

10 **Q. (By Mr. Chinsky) But in the interest of**
11 **moving on, Dr. Salek, did you, as the chief medical**
12 **officer of AHCCCS, independent of advice of counsel,**
13 **have an opinion in 2016 to 2018 as to whether a**
14 **rulemaking proceeding was warranted to address the**
15 **challenged exclusion?**

09:51:49AM

16 MR. BARTON: Same objection.

17 I instruct the witness not to answer
18 that question.

09:52:07AM

19 MR. CHINSKY: David, I'm saying
20 independent of the advice of counsel. This cannot
21 possibly be seeking privileged information.

09:52:13AM

22 MR. BARTON: Andrew, you know the
23 privilege better than that. The privilege covers all
24 communications for the purpose of seeking and
25 obtaining and getting legal advice. And so --

09:52:26AM

1 MR. CHINSKY: David, I am asking
2 independent of legal counsel.

3 Q. (By Mr. Chinsky) Independent of
4 anything that any lawyer told you, do you, as a chief
5 medical officer of AHCCCS -- well, let me back up a
6 second. 09:52:37AM

7 Dr. Salek, you, as the chief medical
8 officer of AHCCCS and as a member of the executive
9 team, have the ability to evaluate potential
10 rulemaking proceedings to address AHCCCS regulations,
11 right? 09:52:53AM

12 A. Do you mind restating the question?

13 Q. Sure. Do you, as the chief medical
14 officer of AHCCCS, a member of the AHCCCS executive
15 team, have the ability to evaluate and propose
16 rulemaking proceedings in response to, for example,
17 evolving medical knowledge? 09:53:10AM

18 A. Yes, we have the ability to propose.

19 Q. Did you, as the chief medical officer of
20 AHCCCS, independent of advice of counsel, ever
21 consider whether a rulemaking proceeding was warranted
22 to address the challenged exclusion? 09:53:36AM

23 MR. BARTON: No. She's not going to
24 answer that question for all the reasons we've
25 discussed. And if you want to take it up with Judge 09:53:55AM

1 Rash, be my guest.

2 MR. CHINSKY: I think we probably will.

3 Q. (By Mr. Chinsky) Dr. Salek, are you
4 going to take the advice of your counsel and refuse to
5 answer my question?

09:54:07AM

6 A. I've been instructed to take the advice
7 of my counsel.

8 Q. So are you refusing to answer the
9 question?

10 A. I've been instructed to take the advice
11 of my counsel.

09:54:17AM

12 Q. I understand. So are you refusing to
13 answer my question?

14 MR. BARTON: Asked and answered.

15 A. Yes.

09:54:28AM

16 Q. (By Mr. Chinsky) Dr. Salek, do you, as
17 the chief medical officer of AHCCCS, believe that you
18 have an independent responsibility to evaluate
19 potential changes to AHCCCS regulations in response to
20 evolving medical knowledge?

09:55:03AM

21 MR. BARTON: Objection.

22 A. Do you mind restating the question?

23 Q. (By Mr. Chinsky) As part of your role
24 as the chief medical officer of AHCCCS, do you believe
25 that you have an independent responsibility to

09:55:20AM

1 evaluate potential changes to AHCCCS regulations to
2 account for evolving medical knowledge?

3 MR. BARTON: Objection.

4 A. Yes. If by "independent" you mean in a
5 capacity of chief medical officer of AHCCCS, yes.

09:55:35AM

6 Q. (By Mr. Chinsky) Have you ever proposed
7 a rulemaking proceeding based on evolving medical
8 knowledge that has come to your attention?

9 MR. BARTON: I'm going to -- I'm going
10 to instruct the witness to answer only if it was not
11 in connection with the meeting we've been discussing.

09:55:58AM

12 MR. CHINSKY: David, none of this line
13 of questions has anything to do with the meeting.

14 MR. BARTON: Well, again, then she can
15 answer if she has ever expressed an opinion outside
16 the meeting that we've discussed.

09:56:09AM

17 Q. (By Mr. Chinsky) Dr. Salek, for clarity
18 of the record, none of my questions have been about
19 the meeting. My question is have you, as the chief
20 medical officer of AHCCCS, ever proposed a rulemaking
21 proceeding in response to evolving medical knowledge
22 that has come to your attention?

09:56:28AM

23 MR. BARTON: Outside of the rulemaking
24 meeting we've discussed.

25 A. And so, from my recollection, I've been

09:56:43AM

1 part of proceedings to update rules based off of a
2 myriad of facts, but as far as, you know, my direct
3 involvement which has required -- or a specific
4 rule-related revision that I specifically, you know,
5 requested, not to my recollection.

09:57:05AM

6 You know, that's primarily based on the
7 fact that, you know, most of the updates that we've
8 required in the seven and a half years that I've been
9 at AHCCCS can be done through our established
10 processes, whether that be with CMS, with updating our
11 medical policies. I have -- to my recollection, I
12 have not had to request or go through the formal
13 request process for a rule revision outside of the
14 established objection.

09:57:24AM

15 Q. (By Mr. Chinsky) I'm not sure that
16 answered my question. Is your office responsible for
17 monitoring updates and standards of care and medical
18 knowledge to ensure that AHCCCS regulations reflect
19 the currently available and modern medical
20 information?

09:57:47AM

21 MR. BARTON: Objection.

22 A. Do you mind restating the question?

23 Q. (By Mr. Chinsky) Yeah. Is part of your
24 responsibility as the chief medical officer of AHCCCS
25 to monitor evolving standards in the medical field to

09:58:31AM

09:58:45AM

1 **ensure that AHCCCS regulations are kept up to date?**

2 A. Yes, in regards to reviewing specific
3 coverage of, you know, medical services, that we
4 are -- we do have established processes to review that
5 in regard to -- for example, when new codes come out 09:59:16AM
6 every quarter, we do review the coverage of those
7 decisions.

8 And then in regard to, you know, the
9 evolving healthcare field, it is quite dynamic, and we
10 do have established processes to review changes in 09:59:35AM
11 scientific evidence to support coverage of specific
12 services.

13 **Q. Can you please describe what those**
14 **established processes are to review changes in**
15 **scientific evidence to support coverage of specific** 09:59:56AM
16 **services?**

17 A. Sure. We would first evaluate
18 whether -- if there was a specific HCPC code
19 associated with the service and then evaluate if that
20 code is open within our PMMIS system or if it was 10:00:16AM
21 closed for coverage.

22 If it was closed and there was
23 sufficient information to warrant us evaluating it, we
24 would take it before our medical management committee,
25 which is represented by our clinical staff at AHCCCS. 10:00:36AM

1 And as part of that review process, we
2 would look at the established evidence, including
3 Hayes publications. So it is a specific subscription
4 that we have to look at, an independent entity
5 evaluating the best, you know, clinical evidence and
6 research and the quality of the research that's been
7 conducted.

10:00:59AM

8 And then we would also look at other
9 payer policies such as Medicare, other Medicaid
10 states, private commercial health insurance coverage,
11 and then we would also, you know, consider the
12 information provided by our local community, including
13 physicians as well as other stakeholders in making a
14 decision.

10:01:14AM

15 And then if, from a clinical
16 perspective, we did recommend coverage, then it would
17 go before our fiscal review committee to determine if
18 it had a capitation rate impact or not. If it does
19 have a capitation rate impact, we would have to
20 evaluate that as part of our formal cap rate setting
21 process as well as legislative review of our proposed
22 budget.

10:01:34AM

23 **Q. Okay. So let's try to break that down a**
24 **little bit step-by-step.**

10:01:51AM

25 **But, I guess, first, to your knowledge,**

10:02:09AM

1 has AHCCCS ever engaged in any part of that process
2 you described with respect to coverage for
3 gender-affirming surgery?

4 A. No.

5 Q. So the first thing you said -- and, 10:02:24AM
6 again, this is where my vocabulary limits may come
7 into play. But you said you would first evaluate
8 whether there is a specific HCPC code; is that right?

9 A. Yeah. And so a HCPC code is just the
10 healthcare common procedural coding system. And so 10:02:47AM
11 it --

12 Q. Sorry. Go ahead.

13 A. Yeah. And so it could be specifically
14 a -- like an AMA, American Medical Association, CPT
15 code, or it could be a HCPC code as developed by CMS. 10:03:05AM
16 And so there's two kind of coding books, so to speak.

17 And so typically any kind of service
18 that we're covering through as a payer, it's going to
19 have an affiliate associated code, a HCPC code. And
20 so first we would evaluate based off that, for 10:03:26AM
21 example, new technology or a service that we hadn't
22 previously covered.

23 We'd first establish whether there was a
24 specific payment code for that service and if it was
25 open in our payment system or if it was closed in our 10:03:40AM

1 payment system. In other words, if it was open,
2 meaning that it was available for use, or if it was
3 closed, not available for use, meaning we would not
4 cover.

5 **Q. So is it that, if there's a creation of**
6 **a new code, that may indicate that some new procedure**
7 **or treatment may be available that is worth looking**
8 **into? Is that a lay summary of what you just said?**

10:03:55AM

9 A. Yeah. So the -- to clarify the process
10 is that there are new codes that are established by
11 the AMA or CMS, and they can be updated on a quarterly
12 basis as well as there's a major update on an annual
13 basis.

10:04:22AM

14 And so we establish at the onset of the
15 code development as new codes are being developed and
16 put into these major coding systems -- when they're
17 established, we determine whether or not that code is
18 covered or not covered based on our Medicaid benefit
19 packages within Arizona.

10:04:39AM

20 And so there are thousands of these
21 codes. And, you know, typically every -- this time
22 every year for our January update, there can be
23 several hundred new codes that are developed for our
24 review.

10:04:57AM

25 **Q. Is your office responsible for reviewing**

10:05:13AM

1 policies and procedures AHCCCS uses to evaluate
2 whether to engage in rulemaking, policies and
3 procedures AHCCCS uses to evaluate coverage for a new
4 treatment or to cover treatments that were previously
5 not covered, and the Hayes study, which apparently was
6 supposed to have been produced to us months ago but
7 was not.

04:03:56PM

8 These documents are clearly responsive
9 to Requests for Productions Numbers 7, 8, 9, 13, 14,
10 15, and potentially others. I'll also note that
11 Interrogatory Responses Number 15, 16, and 17 are
12 incomplete and need to be amended immediately.

04:04:11PM

13 In Interrogatory Number 15, for example,
14 defendant states that she "is not aware of any public
15 meeting discussing the challenged exclusion or any
16 non-public meeting that is not protected by the
17 attorney-client privilege."

04:04:30PM

18 However, that non-public meeting that
19 apparently happened at some point between 2016 and
20 2018 based on the information available to us today
21 was not logged on the privilege log. We have had no
22 opportunity to evaluate defendant's claim of privilege
23 or to challenge it accordingly. The privilege log
24 should be supplemented immediately and should have
25 done so months ago.

04:04:45PM

04:05:03PM

1 Interrogatory responses to Number 16 and
2 17 are also clearly inadequate. Neither of these
3 interrogatories are limited in time to prior to the
4 initiation of the lawsuit. And as Dr. Salek testified
5 here today, she has had several occasions in recent
6 times to evaluate gender-affirming surgical care,
7 review the Hayes study, speak with other
8 organizations, speak with Dr. Chulani, and potentially
9 there are others. Those interrogatory responses also
10 need to be updated immediately.

04:05:17PM

04:05:35PM

11 Given that we are in the middle of
12 depositions and this is all information that should
13 have been provided to us months ago, we would ask that
14 defendant's counsel update all of this information and
15 provide all of these documents to us by 5:00 p.m.
16 Mountain Time next Friday, November 19th.

04:05:48PM

17 We are also reserving the right to
18 adjust the schedule to currently noticed depositions
19 to account for the fact that we haven't had a chance
20 to review these documents. And, like I said, we
21 reserve the right to call Dr. Salek back.

04:06:02PM

22 That -- I don't have any other
23 questions.

24 MR. BARTON: Send me a letter.

25 All right. Thank you. Good times.

04:06:13PM

1 MR. CHINSKY: Before we go off the
2 record, David, I don't have to send you a letter
3 because all of this should have been produced to us
4 months and months ago pursuant to existing RFPs.

5 MR. BARTON: And --

04:06:26PM

6 MR. CHINSKY: So we may need to
7 memorialize this, but this is all on the record, and
8 you're advised that this should have been produced to
9 us months and months ago and you clearly understand
10 what is being asked of you.

04:06:38PM

11 MR. BARTON: And you also know, Andrew,
12 because you're not someone who -- a litigator -- I
13 don't think so -- that it is inappropriate to use a
14 deposition to advance a discovery dispute. If you're
15 concerned about our productions, send me a letter.

04:06:48PM

16 Thank you.

17 MR. CHINSKY: Well, when the discovery
18 dispute is directly responsive to the testimony that
19 the witness gives, we differ there. But we'll discuss
20 further next week.

04:07:01PM

21 MR. BARTON: Sounds good.

22 Thank you, everybody.

23 MR. CHINSKY: Thank you, Dr. Salek.

24 MR. BARTON: Have a great day. Have a
25 great weekend.

04:07:08PM

1 I, Jennifer Bajwa Melius, do hereby declare:
 2 That, prior to being examined, the witness
 3 named in the foregoing deposition was by me duly sworn
 4 pursuant to Section 30(f)(1) of the Federal Rules of
 Civil Procedure and the deposition is a true record of
 the testimony given by the witness.

5 That said deposition was taken down by me in
 6 shorthand at the time and place therein named and
 thereafter reduced to text under my direction.

7
 8 _____ That the witness was requested to
 review the transcript and make any
 9 changes to the transcript as a result
 of that review pursuant to Section
 10 30(e) of the Federal Rules of Civil
 Procedure.

11 _____ Signature is Waived

12 _____ The changes made by the witness are
 13 appended to the transcript.

14 X No request was made that the transcript
 15 be reviewed pursuant to Section 30(e)
 of the Federal Rules of Civil
 16 Procedure.

17 I further declare that I have no interest in
 18 the event or the action.

19 I declare under penalty of perjury under the
 laws of the United States of America that the
 20 foregoing is true and correct.

21 Witness my hand this 16th day of November, 2021.

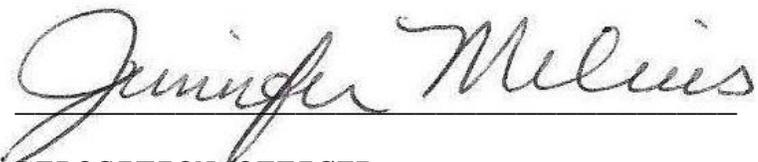
22
 23 
 24 _____
 25 DEPOSITION OFFICER

EXHIBIT 2

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14 *Attorneys for Defendant*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

D.H., by and through his mother, Janice
Hennessy-Waller; and John Doe, by his
guardian and next friend, Susan Doe, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

Jami Snyder, Director of the Arizona Health
Care Cost Containment System, in her
official capacity,

Defendant.

Case No. 4:20-cv-00335-SHR

**DEFENDANT’S ANSWERS TO
PLAINTIFFS’ FIRST SET OF
INTERROGATORIES**

(Assigned to the Honorable Scott H.
Rash)

Defendant Jami Snyder, Director of the Arizona Health Care Cost Containment
System, in her official capacity (“Defendant”), for her Answers to Plaintiffs’ First Set of
Interrogatories as follows.

OBJECTIONS AND ANSWERS

INTERROGATORY NO. 1: Identify all persons with information or knowledge
concerning the facts and allegations set forth in Plaintiffs’ Complaint and/or your defenses
thereto.

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RESPONSE TO INTERROGATORY NO. 1:

See Defendant’s disclosure statements.

INTERROGATORY NO. 2: Identify all persons who assisted in preparing the answers to these Interrogatories or provided information contained in the answers. For each person identified, state his or her title, duties, role in preparing the answers, and the Interrogatory answer(s) to which he or she provided information or assistance. This identification should also indicate whether the information provided is within his or her knowledge or was obtained from some other person or source; if the information was obtained from another person or source, that person or source should also be identified.

RESPONSE TO INTERROGATORY NO. 2:

Defendant objects to the extent this interrogatory seeks the disclosure of information protected by the Attorney Work Product, or Attorney Client Privileges. And as a result, Defendant will not disclose information related to the assistance obtained from legal counsel in preparing responses to these interrogatories. How counsel obtained information to respond to these interrogatories is also privileged work product – and for that reason, Defendant will not provide specific information about which person provided information related to each interrogatory. Defendant also objects to this interrogatory because it includes multiple discrete subparts that appear calculated to avoid the limitations imposed by Fed. R. Civ. Pro. 33(a)(1).

Without waiving the forgoing objections, and consistent therewith, Defendant states that the following individuals helped gather information necessary to provide answers to these interrogatories:

Dr. Sara Salek
Chief Medical Officer, AHCCCS
c/o Johnston Law Offices
14040 N. Cave Creek Rd., Suite 309
Phoenix, AZ 85022

1 Jakenna Lebsock
2 AHCCCS Assistant Director, Health Care Management Clinical Operations
3 c/o Johnston Law Offices
4 14040 N. Cave Creek Rd., Suite 309
5 Phoenix, AZ 85022

6 **INTERROGATORY NO. 3.** Describe the process Arizona Medicaid uses to
7 determine if a particular service is medically necessary to treat a certain condition. A
8 complete response to this Interrogatory should identify all documents related to that
9 process.

10 **RESPONSE TO INTERROGATORY NO.3:**

11 Requests for prior authorization of a service are reviewed by 1) personnel at the
12 AHCCCS health plans for persons enrolled with those plans, and 2) by AHCCCS
13 personnel within the Office of the Chief Medical Officer for those AHCCCS-eligible
14 persons not enrolled in a health plan. The standards to be applied to determine medical
15 necessity include information as to the standard of care, the nature of the service
16 requested, the history and condition of the recipient, and legal requirements, including
17 those found in A.A.C. R9-22-101.B (defining “medical necessity”), A.A.C. R9-22-202.B;
18 A.A.C. R9-22-204.A; A.A.C. R9-22-205.B, and the AHCCCS Medical Policy Manual at
19 Chapters 310-B, 310-V, and 430.

20 **INTERROGATORY NO. 4.** Describe the process by which the documents
21 identified in Interrogatory No. 3 were originally drafted and how those documents are
22 updated.

23 **RESPONSE TO INTERROGATORY NO. 4:**

24 Defendant has no knowledge or information with which to answer how documents
25 in prior administrations were originally drafted or updated. Generally, the process for
26 administrative rulemaking is as prescribed in A.R.S. 41-1021 et seq. and AHCCCS
27 policies are updated on an as-needed basis by the AHCCCS Policy Committee.
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INTERROGATORY NO. 5: Identify all persons involved in the drafting, promulgation, and implementation of the Challenged Exclusion, including each person’s role(s) in drafting, promulgating, and implementing the Challenged Exclusion and his or her employer and job title.

RESPONSE TO INTERROGATORY NO. 5:

Defendant has been unable to locate or identify any document or person with knowledge or information responsive to this interrogatory.

INTERROGATORY NO. 6: Describe the process by which the Challenged Exclusion was originally drafted, promulgated, and implemented. A complete answer to this Interrogatory should list all public and non-public meetings at which You, AHCCCS, or employees of You or AHCCCS discussed the proposed regulation that became the Challenged Exclusion and identify all research, studies, data, reports, publications, testimony, or other documents considered, reviewed, or relied on in the drafting, promulgation, and implementation of the Challenged Exclusion.

RESPONSE TO INTERROGATORY NO. 6:

Defendant has been unable to locate or identify any document or person with knowledge or information with which to answer this interrogatory.

INTERROGATORY NO. 7: Identify all documents, including, but not limited to, provider guides and manuals, provider bulletins, plan bulletins, clinical coverage policies, and claims processing manuals, related to the medical procedures, treatments, and services covered by Arizona Medicaid to treat gender dysphoria.

RESPONSE TO INTERROGATORY NO. 7:

See A.A.C. R9-22-205 and the AHCCCS Medical Policy Manual at Chapter 430.

1 **INTERROGATORY NO. 8:** Identify all medical procedures, treatments, and
2 services (including all applicable and related procedure or treatment codes) that are
3 excluded from coverage under Arizona Medicaid when requested or intended for the
4 treatment of gender dysphoria. A complete answer to this Interrogatory should state
5 whether the following gender-confirming treatments are excluded from coverage:
6 penectomy, orchiectomy, vaginoplasty, feminizing genitoplasty, breast reconstruction,
7 chondrolaryngoplasty, phalloplasty, metoidioplasty, masculinizing genitoplasty,
8 mastectomy, reduction mammoplasty, hysterectomy, oophorectomy, salpingo-
9 oophorectomy, estradiol (in all forms, including oral/sublingual estradiol, transdermal
10 estradiol, estradiol valerate IM, and estradiol cypionate IM), medroxyprogesterone acetate
11 (Provera), micronized progesterone, spironolactone, finasteride, dutasteride, and
12 testosterone (in all forms, including testosterone cypionate, testosterone enanthate,
13 testosterone topical gel 1%, testosterone topical gel 1.62%, testosterone patches,
14 testosterone cream, testosterone axillary gel 2%, testosterone undecanoate), and
15 Gonadotropin-releasing hormone (GnRH) antagonists. A complete answer to this
16 Interrogatory should also state whether coverage for the aforementioned procedures,
17 treatments, and services, or any others intended for the treatment of gender dysphoria, is
18 excluded because of the Challenged Exclusion or for some reason other than Challenged
19 Exclusion. A complete answer to this Interrogatory should also state whether the
20 Challenged Exclusion applies differently for beneficiaries under twenty-one years of age
21 and, if so, an explanation of those differences.

22 **RESPONSE TO INTERROGATORY NO. 8:**

23 Defendant objects to this interrogatory because it seeks irrelevant information that
24 is not proportionate to the needs of this case. This case is specifically limited to male
25 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
26 21. (Complaint at ¶ 106) The procedures identified in this interrogatory are completely
27 irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this
28

1 interrogatory because it includes multiple discrete subparts that appear calculated to avoid
2 the limitations imposed by Fed. R. Civ. Pro. 33(a)(1).

3
4 **INTERROGATORY NO. 9:** For all medical procedures, treatments, and services
5 identified in response to Interrogatory No. 8 as being excluded from Arizona Medicaid
6 coverage when requested or intended to treat gender dysphoria, state whether the
7 procedure, treatment, or service is covered by Arizona Medicaid when medically
8 necessary to treat a condition other than gender dysphoria, including identifying the
9 criteria used by Arizona Medicaid to determine whether such coverage is provided.

10 **RESPONSE TO INTERROGATORY NO. 9:**

11 Defendant objects to this interrogatory because it seeks irrelevant information that
12 is not proportionate to the needs of this case. This case is specifically limited to male
13 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
14 21. (Complaint at ¶ 106) The procedures identified in interrogatory No. 8 are completely
15 irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this
16 interrogatory because it includes multiple discrete subparts that appear calculated to avoid
17 the limitations imposed by Fed. R. Civ. Pro. 33(a)(1).

18
19 **INTERROGATORY NO. 10:** Identify all types of breast- or chest-related
20 surgery covered by Arizona Medicaid, including, but not limited to, mastectomy,
21 reduction mammoplasty, breast reconstruction, nipple areolar reconstruction, surgery to
22 treat gynecomastia, and any other surgery designed or intended to change the appearance
23 or functioning of the patient's chest/breast. For each type of surgery, identify the number
24 of claims paid by AHCCCS or by any third-party Arizona Medicaid managed care
25 organization since January 1, 2010, and the total cost of those claims. The data for each
26 surgery should also distinguish between procedures performed on beneficiaries under
27 twenty-one years old and beneficiaries over twenty-one years old.

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RESPONSE TO INTERROGATORY NO. 10:

Defendant objects to this interrogatory because it seeks irrelevant information that is not proportionate to the needs of this case. This case is specifically limited to male chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of 21. (Complaint at ¶ 106) The procedures identified in interrogatory No. 8 are completely irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this interrogatory because it includes multiple discrete subparts that appear calculated to avoid the limitations imposed by Fed. R. Civ. Pro. 33(a)(1).

INTERROGATORY NO. 11: Identify all persons involved in implementing and/or enforcing the Challenged Exclusion from January 1, 2010 to present, including each person’s role(s).

RESPONSE TO INTERROGATORY NO. 11:

Defendant objects to the overbreadth of the time period encompassed by this interrogatory. Over the ten-year period encompassed by this interrogatory there have been many people who have implemented the rules and regulations applicable to the Challenged Exclusion. Those persons come and go in the usual course of change in jobs and administrations. For these reasons, Defendant cannot identify all those persons by name.

Without waiving her objections, Defendant states that the persons who would “implement” or “enforce” the Challenged Exclusion include personnel in the AHCCCS health plans who approve or deny requests for gender reassignment surgery for members of those health plans and, at the AHCCCS Administration level, AHCCCS’s Chief Medical Officer and his or her staff.

INTERROGATORY NO. 12: Identify every instance of denial of coverage or prior authorization for coverage for any medical treatment, service, or procedure based on

1 the Challenged Exclusion from January 1, 2010 to present, including the name or unique
2 identifier of the individual beneficiary denied coverage; the date of the denial; and the
3 denied treatment(s), service(s), or procedure(s). A complete answer to this Interrogatory
4 should identify every instance of denial of coverage or prior authorization of coverage
5 under Arizona Medicaid regardless of whether the denial was made by AHCCCS or any
6 third-party Arizona Medicaid managed care organization.

7 **RESPONSE TO INTERROGATORY NO. 12:**

8 Defendant objects to this interrogatory because it seeks irrelevant information that
9 is not proportionate to the needs of this case. This case is specifically limited to male
10 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
11 21. (Complaint at ¶ 106) This interrogatory seeks information related to any instance of
12 denial under the Challenged Exclusion and thus includes denials that are completely
13 irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this
14 interrogatory because it includes multiple discrete subparts that appear calculated to avoid
15 the limitations imposed by Fed. R. Civ. Pro. 33(a)(1). The request also includes an
16 impermissibly broad period of time.

17 Without waiving her objections, Defendant is continuing to search the records
18 available since January 1, 2016 and will supplement this response once that search is
19 complete.

20
21 **INTERROGATORY NO. 13:** For each individual identified in response to
22 Interrogatory No. 12 as having been denied coverage pursuant to the Challenged
23 Exclusion, state the individual's age at the time of the denial and dates of enrollment in
24 Arizona Medicaid.

25 **RESPONSE TO INTERROGATORY NO. 13:**

26 Defendant objects to this interrogatory because it seeks irrelevant information that
27 is not proportionate to the needs of this case. This case is specifically limited to male
28

1 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
2 21. (Complaint at ¶ 106) This interrogatory seeks information related to any instance of
3 denial under the Challenged Exclusion and thus includes denials that are completely
4 irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this
5 interrogatory because it includes multiple discrete subparts that appear calculated to avoid
6 the limitations imposed by Fed. R. Civ. Pro. 33(a)(1). The request also includes an
7 impermissibly broad period of time.

8 See response to Interrogatory No. 12.

9
10 **INTERROGATORY NO. 14:** Identify all internal appeals made to You,
11 AHCCCS, or any third-party managed care organization; administrative appeals; formal
12 or informal requests for reconsideration made to You, AHCCCS, or any third-party
13 managed care organization; or judicial challenges to any denial of coverage or prior
14 authorization for coverage for any medical treatment, service, or procedure based on the
15 Challenged Exclusion from January 1, 2010 to present, including stating the status and
16 final disposition of any such request, appeal, or challenge.

17 **RESPONSE TO INTERROGATORY NO. 14:**

18 Defendant objects to this interrogatory because it seeks irrelevant information that
19 is not proportionate to the needs of this case. This case is specifically limited to male
20 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
21 21. (Complaint at ¶ 106) This interrogatory seeks information related to any instance of
22 denial under the Challenged Exclusion and thus includes denials that are completely
23 irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this
24 interrogatory because it includes multiple discrete subparts that appear calculated to avoid
25 the limitations imposed by Fed. R. Civ. Pro. 33(a)(1). The request also includes an
26 impermissibly broad period of time.

27 See response to Interrogatory No. 12.

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INTERROGATORY NO. 15: Identify all public or non-public meetings involving You or AHCCCS in which the Challenged Exclusion and/or Arizona Medicaid coverage for medical or surgical treatments or services to treat gender dysphoria was discussed, listing the date of each meeting, the nature of each meeting, and the attendees of the meeting, and identifying any documents or other materials relating to those meetings in Your custody or control.

RESPONSE TO INTERROGATORY NO. 15:

Defendant is not aware of any public meeting discussing the Challenged Exclusion or any or non-public meeting that is not protected by the attorney-client privilege.

INTERROGATORY NO. 16: Identify all research, studies, data, reports, publications, testimony, or other documents relating to the Challenged Exclusion that You or AHCCCS considered, reviewed, or relied on since the Challenged Exclusion’s adoption. Identify the date or approximate date You or AHCCCS considered, reviewed, or relied on each document and the employee(s) of You or AHCCCS who considered, reviewed, or relied on such documents and their role(s). A complete answer to this Interrogatory should include documents relating to the medical necessity, safety, and efficacy (including whether a procedure is deemed experimental) of excluded treatments and services; the public health effects of enforcing, amending, or eliminating the Challenged Exclusion; and the cost/fiscal impact to Arizona Medicaid of enforcing, amending, or eliminating the Challenged Exclusion.

RESPONSE TO INTERROGATORY NO. 16:

Defendant objects to this interrogatory because it includes multiple discrete subparts that appear calculated to avoid the limitations imposed by Fed. R. Civ. Pro. 33(a)(1). The request also includes an impermissibly broad period of time. Because the

1 Challenged Exclusion was created in 1982, Defendant also objects to this interrogatory to
2 the extent it seeks information that is not currently available or known to AHCCCS.

3 Without waiving her objections, Defendant has had no occasion since January 1,
4 2016 to review research, studies, or other documents relating to the Challenged Exclusion
5 prior to initiation of Plaintiffs' lawsuit.

6
7 **INTERROGATORY NO. 17:** Identify and describe any instance in which You or
8 AHCCCS formally or informally considered amending or eliminating the Challenged
9 Exclusion. For each instance of consideration, identify the date or approximate date of
10 consideration; the offices or employees under Your or AHCCCS' supervision involved in
11 such consideration and their role(s); the nature of the considered changes; and what (if
12 any) actions were taken by You or AHCCCS.

13 **RESPONSE TO INTERROGATORY NO. 17:**

14 Defendant objects to this interrogatory because it includes multiple discrete
15 subparts that appear calculated to avoid the limitations imposed by Fed. R. Civ. Pro.
16 33(a)(1). The request also includes an impermissibly broad period of time. Because the
17 Challenged Exclusion was created in 1982, Defendant also objects to this interrogatory to
18 the extent it seeks information that is not currently available or known to AHCCCS.

19 Based on the information currently available, Defendant has not had occasion,
20 prior to initiation of this lawsuit, to consider amending or eliminating the Challenged
21 Exclusion.

22 DATED this 19th day of January, 2021.

23 /s/ David T. Barton

24 **BURNSBARTON PLC**
25 David T. Barton
26 Kathryn Hackett King

27 **JOHNSTON LAW OFFICES, P.L.C.**
28 14040 N. Cave Creek Rd., Suite 309
Phoenix, Arizona 85022

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VERIFICATION

Jakenna Lebsock, hereby declares under penalty of perjury that the foregoing answers are true and correct to the best of her knowledge and belief. This verification is based upon information currently known to me, and information gathered from others. The information gathered is the sort of information AHCCCS would typically rely upon in making business decisions.

DATED January 19, 2021

/s/ *Jakenna Lebsock*

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2021 I electronically transmitted the foregoing document by electronic mail to the following.

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EXHIBIT 3

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

D.H., by and through his mother, Janice
Hennessy-Waller; and John Doe, by his
guardian and next friend, Susan Doe, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

Jami Snyder, Director of the Arizona Health
Care Cost Containment System, in her
official capacity,

Defendant.

Case No. 4:20-cv-00335-SHR

**RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION**

(Assigned to the Honorable Scott H.
Rash)

Defendant Jami Snyder, Director of the Arizona Health Care Cost Containment System, in her official capacity ("Defendant"), responds as follows to Plaintiffs' First Request for Production of Documents.

GENERAL STATEMENT

All of Defendant's objections and responses to the Requests for Production of Documents are based on information presently available to Defendant. However, discovery in this litigation is still underway. As discovery progresses, witnesses, facts,

1 documents, and evidence may be discovered which are not set forth herein, but which may
2 be responsive to a discovery request. Facts and evidence, or the relevance of facts and
3 evidence, may at this time be unknown to or imperfectly understood by Defendant. By
4 this response, Defendant therefore does not waive or agree to be estopped from
5 supplementing, changing, or modifying her responses to the Requests for Production of
6 Documents as discovery progresses. Defendant expressly reserves the right to rely on all
7 facts, information, and documents developed in discovery, and otherwise to supplement,
8 amend, or correct any or all of its discovery responses.

9
10 1. The documents produced in response to these Requests for Production of
11 Documents will be produced solely for the purpose of this litigation. Each document is
12 subject to all objections to admissibility and any and all other objections on any ground
13 that would require exclusion at the time of trial. Defendant expressly reserves all
14 objections and grounds therefore, and a right to interpose any such objections at the time
15 of trial.

16 2. Defendant has used reasonable efforts to respond to each Request.
17 Defendant reserves the right to supplement or amend her responses when, and if,
18 additional information is obtained or discovered.

19 **OBJECTIONS AND RESPONSES**

20 **REQUEST FOR PRODUCTION NO. 1:** All documents related to any document
21 retention policies maintained by Defendant and AHCCCS, including any litigation holds
22 or document preservation orders relating to this lawsuit.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:** Defendant objects on the
24 basis that this request is outside the scope of class certification discovery, and the scope of
25 permissible discovery is an issue currently pending before the Court. Defendant also
26 objects that this request seeks two separate and distinct documents (a. AHCCS document
27 retention policies, and b. the litigation hold). AHCCCS's document retention policy is
28 stated at A.A.C. R9-22-601.D, but the litigation holds, which were prepared by counsel
and directed by counsel, are privileged and will not be disclosed.

1
2
3 **REQUEST FOR PRODUCTION NO. 2:** All reports or data collected or gathered,
4 regardless of whether prepared by or on behalf of AHCCCS, and regardless of whether
5 presented, reviewed, considered or relied upon by AHCCCS and/or the State of Arizona,
6 in connection with the development and promulgation of the Challenged Exclusion.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:** Defendant objects to this
8 request as being overbroad, unduly burdensome and not relevant or proportional to the
9 needs of the case with respect to information that was never presented, reviewed,
10 considered or relied upon by AHCCCS. Because the Challenged Exclusion is a rule
11 created in 1982, Defendant objects to this request to the extent it seeks documents that are
12 not available to AHCCCS because they are older than AHCCCS's document retention
13 policies. Defendant also objects because "the State of Arizona" is neither a party to this
14 lawsuit nor an entity within the control of Defendant. Defendant further objects on the
15 basis that this request is outside the scope of class certification discovery, and the scope of
16 permissible discovery is an issue currently pending before the Court. Subject to and
17 without waiving her objections, Defendant states that she has not located any responsive
18 documents at this time.

19 **REQUEST FOR PRODUCTION NO. 3:** All documents related to research and studies
20 performed by or on behalf of AHCCCS and/or the State of Arizona, regardless of whether
21 presented, reviewed, considered or relied upon by AHCCCS and/or the State of Arizona,
22 in connection with the development and promulgation of the Challenged Exclusion.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:** Defendant objects to this
24 request as being overbroad, unduly burdensome, and not relevant or proportional to the
25 needs of the case with respect to information that was never presented, reviewed,
26 considered or relied upon by AHCCCS. Because the Challenged Exclusion is a rule
27 created in 1982, Defendant objects to this request to the extent it seeks documents that are
28 not available to AHCCCS because they are older than AHCCCS's document retention

1 policies. Defendant objects to the request for documents reviewed or considered by “the
2 State of Arizona,” which is neither a party to this lawsuit nor an entity within the control
3 of Defendant. Defendant further objects on the basis that this request is outside the scope
4 of class certification discovery, and the scope of permissible discovery is an issue
5 currently pending before the Court. Subject to and without waiving her objections,
6 Defendant states that she has not located any responsive documents at this time.
7

8 **REQUEST FOR PRODUCTION NO. 4:** All documents related to research and studies
9 that were considered or relied upon by AHCCCS in connection with the development and
10 promulgation of the Challenged Exclusion.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:** Because the Challenged
12 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
13 documents that are not available to AHCCCS because they are older than AHCCCS’s
14 document retention policies. Defendant further objects on the basis that this request is
15 outside the scope of class certification discovery, and the scope of permissible discovery
16 is an issue currently pending before the Court. Subject to and without waiving her
17 objections, Defendant states that she has not located any responsive documents at this
18 time.
19

20 **REQUEST FOR PRODUCTION NO. 5:** All documents reflecting or related to
21 testimony given, considered, or relied on by AHCCCS in connection with the
22 development and promulgation of the Challenged Exclusion.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:** Because the Challenged
24 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
25 documents that are not available to AHCCCS because they are older than AHCCCS’s
26 document retention policies. Defendant further objects on the basis that this request is
27 outside the scope of class certification discovery, and the scope of permissible discovery
28 is an issue currently pending before the Court. Subject to and without waiving her

1 objections, Defendant states that she has not located any responsive documents at this
2 time.

3
4 **REQUEST FOR PRODUCTION NO. 6:** All communications relating to the
5 development and promulgation of the Challenged Exclusion.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:** Because the Challenged
7 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
8 documents that are not available to AHCCCS because they are older than AHCCCS's
9 document retention policies. Defendant further objects on the basis that this request is
10 outside the scope of class certification discovery, and the scope of permissible discovery
11 is an issue currently pending before the Court. Subject to and without waiving her
12 objections, Defendant states that she has not located any responsive documents at this
13 time.

14
15 **REQUEST FOR PRODUCTION NO. 7:** All reports or data collected or gathered,
16 regardless of whether prepared by or on behalf of AHCCCS, and regardless of whether
17 presented, reviewed, considered or relied upon by AHCCCS and/or the State of Arizona,
18 in connection with the implementation, enforcement, and/or any consideration of the
19 elimination or amendment of the Challenged Exclusion.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:** Defendant objects to this
21 request as being overbroad and unduly burdensome and the request is not relevant or
22 proportional to the needs of the case with respect to information that was never presented,
23 reviewed, considered or relied upon by AHCCCS. It requests documents reviewed or
24 considered by "the State of Arizona," which is neither a party to this lawsuit nor an entity
25 within the control of Defendant. Because the Challenged Exclusion is a rule created in
26 1982, Defendant objects to this request to the extent it seeks documents that are not
27 available to AHCCCS because they are older than AHCCCS's document retention
28 policies. Defendant further objects on the basis that this request is outside the scope of

1 class certification discovery, and the scope of permissible discovery is an issue currently
2 pending before the Court. Subject to and without waiving her objections, Defendant
3 states that she has not located any responsive documents at this time, but Defendant is
4 continuing to search the records available since January 1, 2016 and will supplement this
5 response once that search is complete.
6

7 **REQUEST FOR PRODUCTION NO. 8:** All documents related to research and studies
8 performed by or on behalf of AHCCCS and/or the State of Arizona, regardless of whether
9 presented, reviewed, considered or relied upon by AHCCCS and/or the State of Arizona,
10 in connection with the implementation, enforcement, and/or any consideration of
11 elimination or amendment of the Challenged Exclusion.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:** Defendant objects to this
13 request as being overbroad and unduly burdensome and the request is not relevant or
14 proportional to the needs of the case with respect to information that was never presented,
15 reviewed, considered or relied upon by AHCCCS. It requests documents reviewed or
16 considered by “the State of Arizona,” which is neither a party to this lawsuit nor an entity
17 within the control of Defendant. Because the Challenged Exclusion is a rule created in
18 1982, Defendant objects to this request to the extent it seeks documents that are not
19 available to AHCCCS because they are older than AHCCCS’s document retention
20 policies. Defendant further objects on the basis that this request is outside the scope of
21 class certification discovery, and the scope of permissible discovery is an issue currently
22 pending before the Court. Subject to and without waiving her objections, Defendant
23 states that she has not located any responsive documents at this time.
24

25 **REQUEST FOR PRODUCTION NO. 9:** All documents related to research and studies
26 that were considered or relied upon by AHCCCS in connection with the implementation,
27 enforcement, and/or any consideration of elimination or amendment of the Challenged
28 Exclusion.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:** Because the Challenged
2 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
3 documents that are not available to AHCCCS because they are older than AHCCCS's
4 document retention policies. Defendant further objects on the basis that this request is
5 outside the scope of class certification discovery, and the scope of permissible discovery
6 is an issue currently pending before the Court. Subject to and without waiving her
7 objections, Defendant states that she has not located any responsive documents at this
8 time.

9
10 **REQUEST FOR PRODUCTION NO. 10:** All documents reflecting or related to
11 testimony given, considered or relied upon by AHCCCS in connection with the
12 implementation, enforcement, and/or any consideration of elimination or amendment of
13 the Challenged Exclusion.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:** Because the Challenged
15 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
16 documents that are not available to AHCCCS because they are older than AHCCCS's
17 document retention policies. Defendant further objects on the basis that this request is
18 outside the scope of class certification discovery, and the scope of permissible discovery
19 is an issue currently pending before the Court. Subject to and without waiving her
20 objections, Defendant states that she has not located any responsive documents at this
21 time.

22
23 **REQUEST FOR PRODUCTION NO. 11:** All communications relating to the
24 implementation, enforcement, and/or any consideration of elimination or amendment of
25 the Challenged Exclusion.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:** Because the Challenged
27 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
28 documents that are not available to AHCCCS because they are older than AHCCCS's

1 document retention policies. Defendant further objects on the basis that this request is
2 outside the scope of class certification discovery, and the scope of permissible discovery
3 is an issue currently pending before the Court. Subject to and without waiving her
4 objections, Defendant states that she has not located any responsive documents at this
5 time.

6
7 **REQUEST FOR PRODUCTION NO. 12:** All documents reflecting data, reports,
8 research or studies that You contend support continued implementation and enforcement
9 of the Challenged Exclusion.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:** Because the Challenged
11 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
12 documents that are not available to AHCCCS because they are older than AHCCCS's
13 document retention policies. Defendant further objects on the basis that this request is
14 outside the scope of class certification discovery, and the scope of permissible discovery
15 is an issue currently pending before the Court. Subject to and without waiving her
16 objections, see the documents, reports, research and studies identified and referred to in
17 the declarations of Defendant's expert witnesses (Dr. Laidlaw and Dr. Levine), which are
18 generally available in the public domain and thus can be located and produced by
19 Plaintiffs as easily as Defendant.

20
21 **REQUEST FOR PRODUCTION NO. 13:** All documents reflecting policies,
22 procedures, or practices related to the implementation, application or enforcement of the
23 Challenged Exclusion.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:** Because the Challenged
25 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
26 documents that are not available to AHCCCS because they are older than AHCCCS's
27 document retention policies. Defendant objects on the basis that this request is outside the
28 scope of class certification discovery, and the scope of permissible discovery is an issue

1 currently pending before the Court. Subject to and without waiving her objections, see the
2 AHCCCS Medical Policy Manual, including but not limited to Policies 310-B, 310-V, and
3 430 (available at
4 <https://www.azahcccs.gov/shared/Downloads/MedicalPolicyManual/300/310B.pdf>,
5 <https://www.azahcccs.gov/shared/Downloads/MedicalPolicyManual/300/310-V.pdf>
6 and <https://www.azahcccs.gov/shared/Downloads/MedicalPolicyManual/400/430.pdf>);
7 documents identified and referred to in the declarations of Defendant's expert witnesses
8 (Dr. Laidlaw and Dr. Levine), which are generally available in the public domain and thus
9 can be located and produced by Plaintiffs as easily as Defendant; and documents bates
10 labeled SNYDER000143-251.

11
12 **REQUEST FOR PRODUCTION NO. 14:** All documents related to research and
13 studies performed by or on behalf of AHCCCS and/or the State of Arizona on the
14 treatment of Gender Dysphoria.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:** Because the Challenged
16 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
17 documents that are not available to AHCCCS because they are older than AHCCCS's
18 document retention policies. Defendant objects that the request for documents reviewed or
19 considered by "the State of Arizona," which is neither a party to this lawsuit nor an entity
20 within the control of Defendant. Defendant further objects on the basis that this request is
21 outside the scope of class certification discovery, and the scope of permissible discovery
22 is an issue currently pending before the Court. Subject to and without waiving her
23 objections, Defendant states that she has not located any responsive documents at this
24 time.

25
26 **REQUEST FOR PRODUCTION NO. 15:** All documents related to research and
27 studies on the medical necessity, safety or efficacy of Transition-Related Surgeries
28 presented, reviewed, considered or relied upon by AHCCCS and/or the State of Arizona

1 in connection with the development of any criteria or policies regarding services or
2 treatment for Gender Dysphoria.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:** Defendant objects that the
4 request for documents reviewed or considered by “the State of Arizona,” which is neither
5 a party to this lawsuit nor an entity within the control of Defendant, is improper and
6 unduly burdensome. Because the Challenged Exclusion is a rule created in 1982,
7 Defendant objects to this request to the extent it seeks documents that are not available to
8 AHCCCS because they are older than AHCCCS’s document retention policies. Defendant
9 also objects on the basis that the request seeks documents about “Transition-Related
10 Surgeries” beyond the surgery that is relevant to the claims and defenses in this case (male
11 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
12 21 (Complaint at ¶ 106)). Defendant further objects on the basis that this request is outside
13 the scope of class certification discovery, and the scope of permissible discovery is an
14 issue currently pending before the Court. Subject to and without waiving her objections,
15 Defendant states that she has not located any responsive documents at this time.
16

17 **REQUEST FOR PRODUCTION NO. 16:** All non-privileged documents regarding
18 any report, research or analysis by or on behalf of AHCCCS and/or the State of Arizona
19 on whether the Challenged Exclusion complies with the Medicaid Act’s Early and
20 Periodic Screening, Diagnostic and Treatment Services requirements (42 U.S.C. §§
21 1396a(a)(10)(A), 1396a(a)(10)(43), 1396d(a)(4)(B), 1396d(4)).

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:** Because the Challenged
23 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
24 documents that are not available to AHCCCS because they are older than AHCCCS’s
25 document retention policies. Defendant objects that the request for documents reviewed or
26 considered by “the State of Arizona,” which is neither a party to this lawsuit nor an entity
27 within the control of Defendant, is improper and unduly burdensome. Defendant further
28 objects on the basis that this request is outside the scope of class certification discovery,

1 and the scope of permissible discovery is an issue currently pending before the Court.
2 Subject to and without waiving her objections, Defendant states that she has not located
3 any non-privileged responsive documents at this time.
4

5 **REQUEST FOR PRODUCTION NO. 17:** All non-privileged documents regarding any
6 report, research or analysis by or on behalf of AHCCCS and/or the State of Arizona on
7 whether the Challenged Exclusion complies with the Medicaid Act's Comparability
8 requirements (42 U.S.C. § 1396a(a)(10)(B)(i); 42 C.F.R. § 440.230(b), (c)).

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:** Because the Challenged
10 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
11 documents that are not available to AHCCCS because they are older than AHCCCS's
12 document retention policies. Defendant objects that the request for documents reviewed or
13 considered by "the State of Arizona," which is neither a party to this lawsuit nor an entity
14 within the control of Defendant. Defendant further objects on the basis that this request is
15 outside the scope of class certification discovery, and the scope of permissible discovery
16 is an issue currently pending before the Court. Subject to and without waiving her
17 objections, Defendant states that she has not located any non-privileged responsive
18 documents at this time.
19

20 **REQUEST FOR PRODUCTION NO. 18:** All non-privileged documents regarding any
21 report, research or analysis by or on behalf of AHCCCS and/or the State of Arizona on
22 whether the Challenged Exclusion complies with Section 1557 of the Affordable Care
23 Act's prohibition on unlawful discrimination on the basis of sex (42 U.S.C. § 18116).

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:** Because the Challenged
25 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
26 documents that are not available to AHCCCS because they are older than AHCCCS's
27 document retention policies. Defendant objects that the request for documents reviewed or
28 considered by "the State of Arizona," which is neither a party to this lawsuit nor an entity

1 within the control of Defendant. Defendant further objects on the basis that this request is
2 outside the scope of class certification discovery, and the scope of permissible discovery
3 is an issue currently pending before the Court. Subject to and without waiving her
4 objections, Defendant states that she has not located any non-privileged responsive
5 documents at this time.

6
7 **REQUEST FOR PRODUCTION NO. 19:** All non-privileged documents regarding any
8 report, research or analysis by or on behalf of AHCCCS and/or the State of Arizona on
9 whether the Challenged Exclusion might violate the Equal Protection Clause of the
10 Fourteenth Amendment of the U.S. Constitution.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:** Because the Challenged
12 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
13 documents that are not available to AHCCCS because they are older than AHCCCS's
14 document retention policies. Defendant objects that the request for documents reviewed or
15 considered by "the State of Arizona," which is neither a party to this lawsuit nor an entity
16 within the control of Defendant. Defendant further objects on the basis that this request is
17 outside the scope of class certification discovery, and the scope of permissible discovery
18 is an issue currently pending before the Court. Subject to and without waiving her
19 objections, Defendant states that she has not located any non-privileged responsive
20 documents at this time.

21
22 **REQUEST FOR PRODUCTION NO. 20:** All non-privileged documents regarding any
23 report, research or analysis by or on behalf of AHCCCS and/or the State of Arizona on
24 whether the Challenged Exclusion might violate any state or federal anti-discrimination
25 laws.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:** Because the Challenged
27 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
28 documents that are not available to AHCCCS because they are older than AHCCCS's

1 document retention policies. Defendant objects that the request for documents reviewed
2 or considered by “the State of Arizona,” which is neither a party to this lawsuit nor an
3 entity within the control of Defendant. Defendant further objects on the basis that this
4 request is outside the scope of class certification discovery, and the scope of permissible
5 discovery is an issue currently pending before the Court. Subject to and without waiving
6 her objections, Defendant states that she has not located any responsive documents at this
7 time.

8
9 **REQUEST FOR PRODUCTION NO. 21:** All documents and communications,
10 including but not limited to reports, studies, research or memoranda, related to any federal
11 regulations or guidance regarding discrimination based on sex or gender identity in health
12 care and/or state Medicaid programs.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:** Defendant objects to this
14 request as being overbroad, ambiguous, and unduly burdensome as to the phrases “based
15 on sex” and “in health care.” Because the Challenged Exclusion is a rule created in 1982,
16 Defendant objects to this request to the extent it seeks documents that are not available to
17 AHCCCS because they are older than AHCCCS’s document retention policies. Defendant
18 also objects to the extent this request seeks information protected from disclosure by the
19 attorney-client and/or work product privileges. Defendant further objects on the basis that
20 this request is outside the scope of class certification discovery, and the scope of
21 permissible discovery is an issue currently pending before the Court. Subject to and
22 without waiving her objections, Defendant states that she has not located any non-
23 privileged responsive documents at this time.

24
25 **REQUEST FOR PRODUCTION NO. 22:** All documents and communications,
26 including but not limited to reports, studies, research or memoranda, related to the impact
27 on the Challenged Exclusion of any federal regulations or guidance regarding sex or gender
28 identity discrimination in health care and/or state Medicaid programs.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:** Defendant objects to the
2 extent this request seeks information protected from disclosure by the attorney-client
3 and/or work product privileges. Because the Challenged Exclusion is a rule created in
4 1982, Defendant objects to this request to the extent it seeks documents that are not
5 available to AHCCCS because they are older than AHCCCS’s document retention
6 policies. Defendant further objects on the basis that this request is outside the scope of
7 class certification discovery, and the scope of permissible discovery is an issue currently
8 pending before the Court. Subject to and without waiving her objections, Defendant
9 states that she has not located any non-privileged responsive documents at this time.
10

11 **REQUEST FOR PRODUCTION NO. 23:** All non-privileged documents regarding any
12 report, research or analysis by or on behalf of AHCCCS and/or the State of Arizona on
13 whether the Challenged Exclusion might be subject to legal challenge on any state or
14 federal grounds.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:** Defendant objects that the
16 request for documents reviewed or considered by “the State of Arizona,” which is neither
17 a party to this lawsuit nor an entity within the control of Defendant, is improper and
18 unduly burdensome. Because the Challenged Exclusion is a rule created in 1982,
19 Defendant objects to this request to the extent it seeks documents that are not available to
20 AHCCCS because they are older than AHCCCS’s document retention policies. Defendant
21 further objects on the basis that this request is outside the scope of class certification
22 discovery, and the scope of permissible discovery is an issue currently pending before the
23 Court. Subject to and without waiving her objections, Defendant states that she has not
24 located any non-privileged responsive documents at this time.
25

26 **REQUEST FOR PRODUCTION NO. 24:** All documents and communications relating
27 to any request by any person to modify, amend, or eliminate the Challenged Exclusion since
28 its implementation.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:** Defendant objects to this
2 request as being overbroad and unduly burdensome to extent it requests documents for the
3 past 39 years, most of which are beyond AHCCCS's document retention policies.

4 Because the Challenged Exclusion is a rule created in 1982, Defendant objects to this
5 request to the extent it seeks documents that are not available to AHCCCS because they
6 are older than AHCCCS's document retention policies. Defendant objects to the extent
7 this request seeks information protected from disclosure by the attorney-client and/or
8 work product privileges. Defendant further objects on the basis that this request is outside
9 the scope of class certification discovery, and the scope of permissible discovery is an
10 issue currently pending before the Court. Subject to and without waiving her objections,
11 Defendant states that she has not located any non-privileged responsive documents at this
12 time.

13
14 **REQUEST FOR PRODUCTION NO. 25:** All documents and communications relating
15 to any actions or recommendations by any person on behalf of the AHCCCS to modify,
16 amend or eliminate the Challenged Exclusion.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:** This request seeks
18 information that is not relevant to any party's claim or defense in this case or proportional
19 to the needs of the case. Because the Challenged Exclusion is a rule created in 1982,
20 Defendant objects to this request to the extent it seeks documents that are not available to
21 AHCCCS because they are older than AHCCCS's document retention policies. Defendant
22 further objects on the basis that this request is outside the scope of class certification
23 discovery, and the scope of permissible discovery is an issue currently pending before the
24 Court. Subject to and without waiving her objections, Defendant states that she has not
25 located any responsive documents at this time.
26
27
28

1 **REQUEST FOR PRODUCTION NO. 26:** All research, studies, data, reports,
2 publication, testimony or other documents considered, reviewed, or relied upon by
3 AHCCCS related to Arizona House Bill 2294 introduced January 23, 2017.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:** Defendant objects on the
5 basis that this request is outside the scope of class certification discovery, and the scope of
6 permissible discovery is an issue currently pending before the Court. Subject to and
7 without waiving her objections, Defendant states that she has not located any responsive
8 documents at this time.

9
10 **REQUEST FOR PRODUCTION NO. 27:** All documents and communications
11 reflecting AHCCCS recommendations, research, studies, data, reports, publications,
12 testimony or other documents prepared by or on behalf of AHCCCS in connection with
13 Arizona House Bill 2294 introduced January 23, 2017.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:** Defendant further objects
15 on the basis that this request is outside the scope of class certification discovery, and the
16 scope of permissible discovery is an issue currently pending before the Court. Subject to
17 and without waiving her objections, Defendant states that she has not located any
18 responsive documents at this time.

19
20 **REQUEST FOR PRODUCTION NO. 28:** All documents reflecting AHCCCS's
21 current criteria for authorization and coverage for surgical treatments and services for
22 Gender Dysphoria.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:** Defendant objects on the
24 basis that this request is outside the scope of class certification discovery, and the scope of
25 permissible discovery is an issue currently pending before the Court. Defendant further
26 objects that this request is overbroad as it requests documents regarding surgical
27 treatments and services other than male chest reconstruction surgery for gender dysphoria
28 in persons under the age of 21 (Complaint at ¶ 106) that are not the subject matter of this

1 litigation and are not relevant to the claims or defenses in this case or proportional to the
2 needs of the case. Subject to and without waiving her objections, see the Challenged
3 Exclusion and the AHCCCS Medical Policy Manual at chapters 310-B, 310-V, and 430.
4

5 **REQUEST FOR PRODUCTION NO. 29:** All documents and communications
6 reflecting instructions or policies from AHCCCS to any AHCCCS managed care
7 organization regarding authorization and coverage for surgical treatments and services for
8 Gender Dysphoria.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:** Because the Challenged
10 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
11 documents that are not available to AHCCCS because they are older than AHCCCS's
12 document retention policies. Defendant further objects on the basis that this request is
13 outside the scope of class certification discovery, and the scope of permissible discovery
14 is an issue currently pending before the Court. Defendant objects that this request is
15 overbroad and unduly burdensome and requests documents regarding surgical treatments
16 and services other than male chest reconstruction surgery for gender dysphoria in persons
17 under the age of 21 (Complaint at ¶ 106) that are not the subject matter of this litigation
18 and are not relevant to the claims or defenses in this case or proportional to the needs of
19 the case. Subject to and without waiving her objections, Defendant states she has not
20 located any responsive documents at this time beyond those identified in response to
21 Request for Production No. 28.
22

23 **REQUEST FOR PRODUCTION NO. 30:** All documents reflecting information,
24 instructions, or guidance regarding implementation or enforcement of the Challenged
25 Exclusion provided to any AHCCCS managed care organization.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:** Because the Challenged
27 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
28 documents that are not available to AHCCCS because they are older than AHCCCS's

1 document retention policies. Defendant further objects on the basis that this request is
2 outside the scope of class certification discovery, and the scope of permissible discovery
3 is an issue currently pending before the Court. Subject to and without waiving her
4 objections, see documents bates labeled SNYDER000143-251, 285-303.
5

6 **REQUEST FOR PRODUCTION NO. 31:** All documents reflecting AHCCCS's current
7 criteria for authorization and coverage for the following services (including all applicable
8 and related procedure codes) when intended to treat any condition other than gender
9 dysphoria: penectomy, orchiectomy, vaginoplasty, feminizing genitoplasty, breast
10 reconstruction, chondrolaryngoplasty, phalloplasty, metoidioplasty, masculinizing
11 genitoplasty, mastectomy, reduction mammoplasty, hysterectomy, oophorectomy, and
12 salpingo-oophorectomy.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:** Defendant objects that this
14 request is overbroad and unduly burdensome and requests documents regarding
15 treatments/services of conditions other than chest reconstruction surgery for individuals
16 under the age of 21 that are not the subject matter of this litigation and are not relevant to
17 the claims or defenses in this case or proportional to the needs of the case. Defendant
18 further objects on the basis that this request is outside the scope of class certification
19 discovery, and the scope of permissible discovery is an issue currently pending before the
20 Court. The request is also not limited to children eligible for EPSDT services. Subject to
21 and without waiving her objections, Defendant refers Plaintiffs to the AHCCCS Medical
22 Policy Manual, particularly Chapters 310-B, 310-V, and 430, and the AHCCCS rules at
23 A.A.C. R9-22-201 et seq.
24

25 **REQUEST FOR PRODUCTION NO. 32:** All documents relating to Defendant or
26 AHCCCS's review or consideration of the diagnosis of Gender Dysphoria with respect to
27 treatment and services under Arizona Medicaid.
28

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:** Because the Challenged
2 Exclusion is a rule created in 1982, Defendant objects to this request to the extent it seeks
3 documents that are not available to AHCCCS because they are older than AHCCCS's
4 document retention policies. The request seeks documents regarding treatments and
5 services other than male chest reconstruction surgery for gender dysphoria in persons
6 under the age of 21 (Complaint at ¶ 106) that are not relevant to the claims or defenses in
7 this case or proportional to the needs of the case. Defendant objects to the extent this
8 request seeks information protected from disclosure by the attorney-client and/or work
9 product privileges. Defendant further objects on the basis that this request is outside the
10 scope of class certification discovery, and the scope of permissible discovery is an issue
11 currently pending before the Court. Subject to and without waiving her objections,
12 Defendant refers Plaintiffs to the AHCCCS Medical Policy Manual, particularly Chapters
13 310-B, 310-V, and 430, and the AHCCCS rules at A.A.C. R9-22-201 et seq.

14
15 **REQUEST FOR PRODUCTION NO. 33:** All documents reflecting AHCCCS's current
16 criteria for authorization and coverage for non-surgical treatments and services for Gender
17 Dysphoria.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:** Defendant objects that this
19 request is overbroad and unduly burdensome, is not limited to children eligible for EPSDT
20 services, and requests documents regarding treatments and services other than male chest
21 reconstruction surgery for gender dysphoria in persons under the age of 21 (Complaint at
22 ¶ 106) that are not relevant to the claims or defenses in this case or proportional to the
23 needs of the case. Defendant further objects on the basis that this request is outside the
24 scope of class certification discovery, and the scope of permissible discovery is an issue
25 currently pending before the Court. Subject to and without waiving her objections,
26 Defendant refers Plaintiffs to the AHCCCS Medical Policy Manual and the AHCCCS
27 rules at A.A.C. R9-22-201 et seq.
28

1 **REQUEST FOR PRODUCTION NO. 34:** All documents reflecting any approval of
2 coverage of Transition-Related Surgery to any Arizona Medicaid beneficiary.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:** Defendant objects that this
4 request is overbroad and burdensome as to time, and the request seeks documents about
5 “Transition-Related Surgeries” beyond the surgery that is relevant to the claims and
6 defenses in this case (male chest reconstruction surgery in persons under the age of 21
7 (Complaint at ¶ 106)). Defendant further objects on the basis that this request is outside
8 the scope of class certification discovery, and the scope of permissible discovery is an
9 issue currently pending before the Court. Subject to and without waiving her objections,
10 Defendant states that she has not located any responsive documents at this time.

11
12 **REQUEST FOR PRODUCTION NO. 35:** All documents relating to, referencing, or
13 identifying one or more of the Named Plaintiffs from the date of each Named Plaintiff was
14 covered under AHCCCS to the present.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35** Defendant objects to this
16 request because Plaintiffs have not disclosed the identities of the Named Plaintiffs in this
17 action, and therefore it is not possible to search for responsive documents relating to the
18 Named Plaintiffs. Defendant also objects to the extent this request seeks information
19 protected from disclosure by the attorney-client and/or work product privileges. Subject
20 to and without waiving her objections, see documents produced by Plaintiffs and their
21 experts in this litigation; in addition, Defendant is continuing to search records available
22 since January 1, 2016 and will supplement this response once that search is complete.

23
24 **REQUEST FOR PRODUCTION NO. 36:** All documents reviewed, considered or relied
25 upon by any expert witness retained by Defendant or any clinician who provided a
26 declaration on Defendant’s behalf in connection with this Action.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:** Defendant objects to the
28 extent this request seeks information protected from disclosure under Fed.R.Civ.P.

1 26(b)(4). Fed.R.Civ.P. 26(b)(4) protects from disclosure communications between a
2 party's attorney and expert witnesses, except to the extent they (i) relate to compensation
3 for the expert's study or testimony, (ii) identify facts or data that the party's attorney
4 provided and that the expert considered in forming the opinions to be expressed; or (iii)
5 identify assumptions that the party's attorney provided and that the expert relied on in
6 forming the opinions to be expressed. Subject to and without waiving her objections, see
7 the declarations filed by Plaintiffs in support of Plaintiffs' Motion for Preliminary
8 Injunction (Doc. 4, 4-1, 4-2, 5, 5-1, 5-2, 5-3, 5-4, 5-5, 32); documents referred to in the
9 Declarations of Defendant's experts (Dr. Levine and Dr. Laidlaw), which are generally
10 available in the public domain and thus can be located and produced by Plaintiffs as easily
11 as Defendant; and documents bates labeled SNYDER000001-142.

12
13 **REQUEST FOR PRODUCTION NO. 37:** All documents relating to compensation for
14 any expert witness retained by Defendant or any clinician who provided a declaration on
15 Defendant's behalf in connection with this Action.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37:** Pursuant to Fed.R.Civ.P.
17 26(b)(4), see documents bates labeled SNYDER000252-284.

18
19 **REQUEST FOR PRODUCTION NO. 38:** All documents identifying facts and
20 assumptions that Defendants' attorneys provided to any expert witness retained by
21 Defendant and that expert relied on in forming the opinions to be expressed.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 38:** Pursuant to Fed.R.Civ.P.
23 26(b)(4), see the declarations filed by Plaintiffs in support of Plaintiffs' Motion for
24 Preliminary Injunction (Doc. 4, 4-1, 4-2, 5, 5-1, 5-2, 5-3, 5-4, 5-5, 32) and documents bates
25 labeled SNYDER000001-142.

26
27 **REQUEST FOR PRODUCTION NO. 39:** All documents used to prepare or educate a
28 witness providing a declaration on Defendant's behalf in connection with this Action.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 39:** Defendant objects to this
2 request as vague and ambiguous, as it is unknown who is intended to have “used” such
3 documents (“used” by the witness? “used” by Defendant’s counsel? etc.) Defendant also
4 objects to the extent this request seeks information protected from disclosure under
5 Fed.R.Civ.P. 26(b)(4). Fed.R.Civ.P. 26(b)(4) protects from disclosure communications
6 between a party’s attorney and expert witnesses, except to the extent they (i) relate to
7 compensation for the expert’s study or testimony, (ii) identify facts or data that the party’s
8 attorney provided and that the expert considered in forming the opinions to be expressed;
9 or (iii) identify assumptions that the party’s attorney provided and that the expert relied on
10 in forming the opinions to be expressed. Subject to and without waiving her objections,
11 see the declarations filed by Plaintiffs in support of Plaintiffs’ Motion for Preliminary
12 Injunction (Doc. 4, 4-1, 4-2, 5, 5-1, 5-2, 5-3, 5-4, 5-5, 32); documents referred to in the
13 Declarations provided by Defendant’s experts (Dr. Laidlaw and Dr. Levine) which are
14 generally available in the public domain and thus can be located and produced by
15 Plaintiffs as easily as Defendant; and documents bates labeled SNYDER000001-142.

16
17 **REQUEST FOR PRODUCTION NO. 40:** All documents Defendant referenced, relied
18 upon or identified in Defendant’s Fed. R. Civ. P. Rule 26(a) initial disclosures.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 40:** See Defendant’s initial
20 disclosure statement and the documents identified in these responses to Plaintiffs’ First
21 Request for Production.

22
23 **REQUEST FOR PRODUCTION NO. 41:** All documents Defendant relied upon,
24 referenced in or identified in answering Plaintiffs’ interrogatories.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41:** Defendant refers Plaintiffs
26 to the AHCCCS Medical Policy Manual, particularly Chapters 310-B, 310-V, and 430,
27 and the AHCCCS rules at A.A.C. R9-22-201 et seq. and the documents identified in these
28 responses to Plaintiffs’ First Request for Production.

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DATED this 19th day of January, 2021.

By /s/ Kathryn Hackett King

David T. Barton
Kathryn Hackett King

JOHNSTON LAW OFFICES, P.L.C.
Logan T. Johnston
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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2021, I electronically transmitted the foregoing document to the following:

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Attorneys for Plaintiffs and the Class

/s/Betsy Hibbs

EXHIBIT 4

*D. H. v. Snyder***Snyder Privilege Log****2021-03-29**

Dates	Document Description	Privilege
2020-08-20	Attorney-client privileged memo re: <i>D.H. v. Snyder</i> lawsuit	Attorney-client privileged communication
2020-09-17 to 2021-01-07	Emails prepared at direction of AHCCCS legal counsel to Banner Health contacts requesting Banner Health preserve and provide potentially relevant and/or responsive documents/information, and Banner Health's responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2020-12-04	Emails prepared at direction of AHCCCS legal counsel to Arizona Complete Health contacts requesting Arizona Complete Health preserve and provide potentially relevant and/or responsive documents/information, and Arizona Complete Health's responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2020-12-04	Emails prepared at direction of AHCCCS legal counsel to Care 1st contacts requesting Care 1st preserve and provide potentially relevant and/or responsive documents/information, and Care 1st's responses to same.	Attorney work product (direction of counsel)

Dates	Document Description	Privilege
2020-09-17 to 2020-11-30	Emails prepared at direction of AHCCCS legal counsel to Department of Economic Security (“DES”) contacts requesting DES preserve and provide potentially relevant and/or responsive documents/information, and DES’s responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2021-01-07	Emails prepared at direction of AHCCCS legal counsel to Health Choice contacts requesting Health Choice preserve and provide potentially relevant and/or responsive documents/information, and Health Choice’s responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2021-01-08	Emails prepared at direction of AHCCCS legal counsel to Magellan Complete Care of Arizona contacts requesting Magellan Complete Care of Arizona preserve and provide potentially relevant and/or responsive documents/information, and Magellan Complete Care of Arizona’s responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2020-12-04	Emails prepared at direction of AHCCCS legal counsel to Mercy Care contacts requesting Mercy Care preserve and provide potentially relevant and/or responsive documents/information, and Mercy Care’s responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2020-12-08	Emails prepared at direction of AHCCCS legal counsel to United Healthcare contacts requesting United Healthcare preserve and provide potentially relevant and/or responsive documents/information, and United Healthcare’s responses to same.	Attorney work product (direction of counsel)

EXHIBIT 5

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November 16, 2021

VIA EMAIL

David T. Barton (david@burnsbarton.com)
BurnsBarton PLC
2201 East Camelback Road, Ste. 360
Phoenix, Arizona 85016

Re: *John Doe v. Snyder*, Case No. 4:20-cv-00335-SHR

Dear David,

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 7.2(j) of the United States District Court for the District of Arizona, we write to request a meet-and-confer to discuss multiple issues that first became apparent to us during the November 12 deposition of Dr. Sara Salek, and to request Dr. Salek's availability to conclude her deposition in December. Given that we are in the middle of depositions and many of these issues should have been brought to our attention at least 9 months ago, please provide us with your availability for a telephonic meet-and-confer this ***Thursday, November 18, 2021***. If we are unable to reach resolution on each of these issues, we intend to file a motion to compel and to seek appropriate sanctions.

I. Responsive Documents Improperly Withheld from Plaintiff

First, during Dr. Salek's testimony, Dr. Salek identified multiple documents responsive to Plaintiff's Requests for Production that either have not been produced or were improperly withheld from Plaintiff. Such documents identified by Dr. Salek include: (1) policies and procedures that AHCCCS uses to evaluate whether to engage in rulemaking, (2) policies and procedures that AHCCCS uses to evaluate coverage for new treatment or to cover treatments that were previously not covered, and (3) the Hayes documents that Dr. Salek referenced in her answers, which Dr. Salek testified she had reviewed as recently as ***this year***. These documents are responsive to, at minimum, Requests 7, 8, 9, 12, 13, 14, 15, 42, 43, and 45, and also Requests 10 and 11. Moreover, with respect to the Hayes documents, you represented that Defendant had intended to produce these documents earlier this year. Please immediately supplement Defendant's document productions with these documents and provide them to us no later than ***November 23, 2021, at 5:00 p.m. MT***.

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II. Inaccurate and Incomplete Responses to Interrogatories

Second, Defendant's responses to multiple Interrogatories are inaccurate, incomplete, or both. Dr. Salek's responses during her deposition highlighted critical deficiencies in Defendant's Second Supplemental Answers to Plaintiffs' First Set of Interrogatories, served on November 3, 2021. Below are several of the responses that require further supplementation:

Interrogatory No. 15 states: "Identify all public or non-public meetings involving You or AHCCCS in which the Challenged Exclusion and/or Arizona Medicaid coverage for medical or surgical treatments or services to treat gender dysphoria was discussed, listing the date of each meeting, the nature of each meeting, and the attendees of the meeting, and identifying any documents or other materials relating to those meetings in Your custody or control." Defendant's current response states: "Defendant is not aware of any public meeting discussing the Challenged Exclusion or any or non-public meeting that is not protected by the attorney-client privilege." That response is inaccurate. Dr. Salek testified that she has had multiple meetings responsive to Interrogatory No. 15, including with the Society for Evidence-Based Gender Medicine, Dr. Chulani of Phoenix Children's Hospital, and—sometime between 2016-2018, to the best of Dr. Salek's recollection—at least one meeting with Dr. Salek, the AHCCCS Director, an unnamed legal counsel, and a representative from the Governor's office. Please amend Defendant's response to Interrogatory No. 15 to include this information by **November 23, 2021, at 5:00 p.m. MT**.

Interrogatory No. 16 states: "Identify all research, studies, data, reports, publications, testimony, or other documents relating to the Challenged Exclusion that You or AHCCCS considered, reviewed, or relied on since the Challenged Exclusion's adoption. Identify the date or approximate date You or AHCCCS considered, reviewed, or relied on each document and the employee(s) of You or AHCCCS who considered, reviewed, or relied on such documents and their role(s). A complete answer to this Interrogatory should include documents relating to the medical necessity, safety, and efficacy (including whether a procedure is deemed experimental) of excluded treatments and services; the public health effects of enforcing, amending, or eliminating the Challenged Exclusion; and the cost/fiscal impact to Arizona Medicaid of enforcing, amending, or eliminating the Challenged Exclusion." Defendant's current response states: "Without waiving her objections, Defendant has had no occasion since January 1, 2016 to review research, studies, or other documents relating to the Challenged Exclusion prior to initiation of Plaintiffs' lawsuit." That response is both inaccurate and incomplete. As Dr. Salek testified, Defendant herself has participated in at least one meeting between 2016-2018 in which the Challenged Exclusion was reviewed. It is also incomplete because this Interrogatory seeks information pertaining to Defendant *and* AHCCCS—which would include Dr. Salek. And, as you know, Dr. Salek testified that she has reviewed research, studies, or other documents related to the Challenged Exclusion numerous times since 2016, including multiple times this year. Please amend Defendant's response to Interrogatory No. 16 to include this information by **November 23, 2021, at 5:00 p.m. MT**. Please include *all* such responsive information, as this Interrogatory is not limited in time to "prior to initiation" of this case.

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Interrogatory No. 17 states: “Identify and describe any instance in which You or AHCCCS formally or informally considered amending or eliminating the Challenged Exclusion. For each instance of consideration, identify the date or approximate date of consideration; the offices or employees under Your or AHCCCS’ supervision involved in such consideration and their role(s); the nature of the considered changes; and what (if any) actions were taken by You or AHCCCS.” Defendant’s current response states: “Based on the information currently available, Defendant has not had occasion, prior to initiation of this lawsuit, to consider amending or eliminating the Challenged Exclusion.” For the reasons just stated with respect to Interrogatory Nos. 15 and 16, this response is inaccurate and incomplete. Please amend Defendant’s response to Interrogatory No. 17 to include this information **November 23, 2021, at 5:00 p.m. MT**. Please include **all** such responsive information, as this Interrogatory is not limited in time to “prior to initiation” of this case.

III. Improper Claims of Privilege

Third, inquiry into any of these areas is not protected by any privilege for at least two reasons, explained below. But as an overall matter, it is deeply concerning that Defendant appears to have improperly concealed a meeting between AHCCCS and the Governor’s office. As a result, Plaintiff is concerned that Defendant has not fully disclosed the existence of other materials or documents under the guise of “privilege.” In fact, it has come to our attention that other responsive materials **must** exist. In *Toomey v. Arizona*, the Governor’s office attempted to claim privilege over certain materials and communications regarding certain treatments for gender dysphoria. Among these materials include multiple communications from Jami Snyder to Christina Corieri, a Senior Policy Advisor for The Office of Governor Douglas A. Ducey, over which the Governor claimed an executive communications privilege (a claim which was later rejected, as described below).¹ In the course of briefing a motion to compel, the Governor’s office disclosed a January 18, 2017, email communication from the Chief Legislative Liaison of AHCCCS to Ms. Corieri regarding AHCCCS’s coverage and proposed legislation.² Both of these communications are **in addition** to the 2016-2018 meeting between AHCCCS and the Governor’s office identified by Dr. Salek. Defendant failed to disclose any of these communications to us.

Please disclose to Plaintiff all meetings or information responsive to Interrogatory Nos. 15, 16, and 17 by **November 23, 2021, at 5:00 p.m. MT**. By the same date and time, please also produce any documents or communications in any way related to such meetings, including but not limited to the communications identified in the paragraph above, as such documents or communications would be responsive to the Requests identified above as well as Request No. 41. By the same date and time, please confirm that you will not continue to assert a claim of privilege over these or related communications, including with respect to the upcoming depositions for other witnesses.

¹ See *Toomey v. Arizona*, Case No. 4:19-cv-00035-RM-LAB Revised Privilege Log (May 26, 2021), attached as Ex. 7 to Wee Declaration (D.E. 202-3, pp. 70-77 of 193) (June 4, 2021).

² See *id.*, Decl. of Christina Corieri, ¶ 11(3) (June 17, 2021), attached to Governor’s Response to Mot. to Compel (D.E. 208-1) (June 18, 2021).

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A. Defendant Has Waived Any Claim of Privilege

To the extent that Defendant purports to claim privilege over the meeting with the Governor's office or any other meetings that Defendant failed to disclose in response to Interrogatory No. 15, Defendant has waived any claim of privilege. Rule 26(b)(5) states: "When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct. for Dist. of Mont.*, 408 F.3d 1142, 1147, 1150 (9th Cir. 2005) (affirming finding of waiver of privilege where a privilege log "not only was not filed during the Rule 34 time limit, but was filed five months later.").

On January 19, 2021, Defendant served her Answers to Plaintiffs' First Set of Interrogatories, which included the Interrogatories in question. On March 29, 2021, nearly *eight months* ago, Defendant served her privilege log, which identified nine documents withheld as privileged dating from late 2020 or early 2021. This privilege log did *not* identify any other information or documents that were being withheld pursuant to a claim of privilege—including the meeting with the Governor's office identified by Dr. Salek. Nor has Defendant supplemented her privilege log at any time or otherwise indicated that she intended to do so. Nor has Defendant provided sufficient information to enable Plaintiff to assess Defendant's claim of privilege, including the names of the participants, when the meeting took place, where the meeting took place, and the basis for the privilege.

"To withhold materials without such notice is contrary to the rule, subjects the party to sanctions under Rule 37(b)(2), and may be viewed as a waiver of the privilege or protection." *Burlington*, 408 F.3d at 1147 (9th Cir. 2005) (citing advisory committee's note (1993 Amendments)). Moreover, "the spirit of the rules is violated when advocates attempt to use discovery tools as tactical weapons rather than to expose the facts and illuminate the issues." *Id.* at 1149. Because Defendant failed to provide a timely privilege log, Defendant has waived any claim of privilege regarding any meeting with the Governor's office. *See also United States v. Ruehle*, 583 F.3d 600, 609 (9th Cir. 2009) (noting "failure to define the scope of his claim of privilege weighs in favor of disclosure"); *McCormick v. United States*, No. CV 05-118 TUC RCC, 2006 WL 8440318, at *3 (D. Ariz. Feb. 6, 2006) ("Failure to provide sufficient information may constitute a waiver of the privilege.").

B. No Privilege Applies

Executive privilege does not apply because, as this Court has previously found, a Governor's executive privilege "is not part of the federal common law." *Toomey*, 2021 WL 3854860, at *4 (D. Ariz. Aug. 27, 2021), *aff'd*, 2021 WL 4272691 (D. Ariz. Sept. 21, 2021). Nor would any deliberation privilege apply—Defendant has not asserted (and hence Defendant has waived) such a privilege, but in any event, the *Toomey* Court also found that the deliberation

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privilege would not apply to the documents at issue and specifically noted that “Arizona courts have not recognized a deliberative process privilege under state law.” *Id.* at *6.³

Attorney-client privilege also does not apply because the meeting and communications in question involved a third party, the Governor’s office. It is axiomatic that there can be no attorney-client privilege when a “party discloses privileged information to a third party who is not bound by the privilege.” *Bittaker v. Woodford*, 331 F.3d 715, 719 (9th Cir. 2003). Moreover, “the mere presence of an attorney does not render [these communications] privileged. Rather, it is the seeking and rendering of advice of counsel which is protected.” *United States v. Town of Colorado City*, No. 3:12-CV-8123-HRH, 2014 WL 5431222, at *3 (D. Ariz. Oct. 27, 2014). Thus, to the extent that the meeting between AHCCCS and the Governor’s office involved a *policy* discussion, those communications are *not privileged*. This would include, for example, whether the Challenged Exclusion is consistent with the current standard of care, and whether and how AHCCCS should evaluate whether gender-affirming surgical care could be medically necessary.

IV. Improper Objections to Questions Which Did Not Call for Privileged Information

Fourth, during Dr. Salek’s deposition, you improperly purported to interpose objections based on the attorney-client privilege—not only in response to questions about the meeting with the Governor’s office (of which Defendant has waived privilege and no privilege applies), but also in response to questions that clearly did not call for privileged information.

- Q: “But *put the meeting aside*, Dr. Salek. In 2016 to 2018, [did] you as medical director of AHCCCS believe that a rulemaking proceeding to address the challenged exclusion was warranted?” Rough Tr. at 27.
- Q: “Dr. Salek, [did] you as the chief medical officer of AHCCCS, *independent of advice of counsel*, have an opinion in 2016 to 2018 as to whether a rulemaking proceeding was warranted to address the challenged exclusion?” *Id.* at 28.
- Q: “Did you, as the chief medical officer of AHCCCS, *independent of advice of counsel*, ever consider whether a rulemaking proceeding was warranted to address the challenged exclusion?” *Id.* at 29.

On the basis of your objections, Dr. Salek refused to answer these questions. But these questions were entirely proper and did not call for the disclosure of any attorney-client communications. Plaintiff is entitled to inquire of the Chief Medical Officer of AHCCCS as to whether she believes action is warranted to address the Challenged Exclusion, including because the Challenged Exclusion is out of date and no longer consistent with the standard of care. By **November 23, 2021**,

³ Plus, “the claim of deliberative due process privilege must be raised by a formal claim made by the head of the agency after she has personally considered the material in question prior to the invocation of the privilege.” *E.E.O.C. v. Swissport Fueling, Inc.*, No. CV-10-2101-PHX-GMS, 2012 WL 1648416, at *15 (D. Ariz. May 10, 2012). Here, Dr. Salek is not the “head of the agency” and cannot unilaterally assert this privilege, especially with respect to materials that she reviewed rather than Defendant. Defendant has not asserted this privilege, nor could she at this belated hour.

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at 5:00 p.m. MT, please confirm that, when we re-convene Dr. Salek's deposition, you will not object to inquiry into these issues or instruct Dr. Salek to refuse to answer. Please also confirm that you will not offer similar objections during the upcoming depositions for other witnesses.

V. Improper Coaching of the Witness

Fifth, during Dr. Salek's deposition, you improperly coached the witness multiple times both on and off the record. On the record, you engaged in long, speaking objections, giving the witness clues as to how you wanted her to answer the question. *See, e.g.*, Rough Tr. at 20, 71, 179. Remarkably, Dr. Salek also testified that she discussed her testimony with you over the lunch break. *Id.* at 97-98. Pursuant to Rule 30(c), depositions are conducted in the same manner as cross-examination proceeds at trial. It is plainly improper for a witness and her counsel to discuss the substance of testimony during deposition breaks except where necessary to address matters of privilege. "Courts have ruled that once a deposition begins, counsel should not confer with the witness except to determine whether a privilege should be asserted." *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 14-CV-2058-SC, 2015 WL 12942210, at *3 (N.D. Cal. May 29, 2015). Please confirm in writing that, moving forward, you will **not** discuss a witness's testimony during deposition breaks except where necessary to address matters of privilege.

VI. Conclusion of Dr. Salek's Deposition

In light of these issues, by **November 23, 2021, at 5:00 p.m. MT**, please provide dates in December when we can conclude Dr. Salek's deposition following production of the documents and revised written discovery responses identified above. Given that Defendant's discovery deficiencies caused our inability to conclude Dr. Salek's deposition on November 12, please also confirm that Defendant will pay the costs for us to re-convene and conclude Dr. Salek's deposition.

Time is of the essence to resolve these issues, as we are currently scheduled to take the deposition of Jakenna Lebsock on November 30. Therefore, we emphasize our request that you provide us with your availability for a telephonic meet-and-confer this **Thursday, November 18**. We reserve all rights.

Sincerely,



Andrew Chinsky

cc: Logan T. Johnston (ltjohnston@live.com)
Brent Ray (bray@kslaw.com)
Daniel C. Barr (dbarr@perkinscoie.com)
Janet M. Howe (jhowe@perkinscoie.com)
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Abigail K. Coursolle (coursolle@healthlaw.org)
Catherine McKee (mckee@healthlaw.org)

EXHIBIT 6

BurnsBarton

Labor and Employment Lawyers

December 10, 2021

VIA ELECTRONIC MAIL

Andrew Chinsky
King & Spalding LLP
1180 Peachtree Street, NE
Suite 1600
Atlanta, GA 30309
achinsky@kslaw.com

Re: ***John Doe v. Snyder***, Case No. **4:20-cv-00335-SHR**

Dear Andrew:

Thank you for reaching out to discuss your concerns following Dr. Salek's deposition, and for your continued patience as we work diligently to respond to your requests. As we discussed over the phone, this letter responds to the remaining subjects in your November 16 letter to which we have not already come to a compromise. I will address each of your topics in turn. If you would like to discuss this further, please respond with your availability and we will schedule a call quickly.

I. Plaintiff's Concerns Regarding the Production of Documents

In your letter, you cite two categories of documents you believe we have improperly withheld from production: i) policy documents driving AHCCCS's rulemaking and medical coverage decisions and ii) the *Hayes* document. As you note in your letter, we intended to produce the *Hayes* document earlier and only excluded its production through a clerical error. We have since remedied that – you will find the *Hayes* report at SNYDER.001119-1256. As for the policies and procedures you reference following Dr. Salek's testimony, I would like to clear up a few misconceptions from your letter. When asked whether AHCCCS had a process for evaluating changes to AHCCCS's coverages and rules, Dr. Salek stated that AHCCCS has a "rule process that is governed and overseen by [AHCCCS's] office of legal services." Depo. at 23:15-27:19. Dr. Salek went on to testify about AHCCCS's rulemaking process and noted that there was a written process for "medical management [and] new technology review." Depo. at 46:8-19.

Andrew Chinsky
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Page 2

Dr. Salek did not testify that AHCCCS has a written procedure for rulemaking or for evaluating changes to certain rules. And as Ms. Lebsock testified during her deposition, this is a context-dependent process that AHCCCS engages in without the use of a written policy. I am happy to inform you that, consistent with your discovery requests, we have already produced the written processes AHCCCS *does* have – to the extent they exist. *See* SNYDER.429-538 (Policies 310-B, 310-V, and 430, regarding covered services); SNYDER.1017-1022 (Policy 117, regarding grievance procedures); and AHCCCS’s Medical Policy Manual Chapter 100, incorporated by reference in response to Request for Production No. 13 (and available at <https://www.azahcccs.gov/shared/Downloads/MedicalPolicyManual/100/100.pdf>) (see for example Chapter 100, Sec. II, addressing circumstances in which the policies may be changed).

II. Responses to Interrogatories

First, it is important to clarify your statement regarding the “meetings” to which Dr. Salek testified. Dr. Salek testified that her conversations with Dr. Chulani and SEGM were “to better understand the current standards within the field of gender medicine.” Depo. at 121:20-23. They were not related to any possible changes to the Challenged Exclusion and did not encompass “the Challenged Exclusion and/or Arizona Medicaid coverage for medical or surgical treatments or services to treat gender dysphoria.”

As for the meeting Dr. Salek recalled with the Governor’ Office, Dr. Salek has searched her email and calendar and found email related to a meeting on November 5, 2015 that could be the meeting in question. The email subject line is, “Meeting with Christina Corieri re: Section 1557 Proposed Rules Overview: Monica, Matt, Gina – Optional: Tom & Beth.” AHCCCS General Counsel Matthew Devlin and Deputy General Counsel Gina Relkin attended. Others invited to the meeting were Tom Betlach (AHCCCS Director), Beth Kohler (AHCCCS Deputy Director), Monica Coury (Assistant Director, AHCCCS Office of Intergovernmental Relations) Mike Liburdi (General Counsel, Governor Douglas A. Ducey) Christina Corieri (Senior Policy Advisor) and Dr. Salek. Dr. Salek cannot confirm, nor deny, with certainty that this is the meeting she recalled during her deposition, but she has searched her calendar and email and finds no other meeting that matches her recollection. We have added this email and the meeting to our privilege log.

As Ms. Lebsock testified, AHCCCS made a good faith effort to gather information necessary to answer Interrogatories 15-17 before providing its response. In the spirit of full disclosure, and without waiving any privilege that attaches to her communications, AHCCCS is providing as Exhibit A to this letter the April 6, 2021 email and memorandum Ms. Lebsock sent to individuals likely to have discoverable information within AHCCCS (including Dr. Salek). Dr. Salek responded to the email and stated that

Andrew Chinsky
December 10, 2021
Page 3

she had completed a search and had not identified any responsive documents or information. The email related to the November 5, 2015 meeting was not discovered in our ESI search because its date put it outside the date parameters of the agreed-upon search (January 1, 2016 to present). In light of this information, and without waiving any of our objections or conceding that this information is relevant or admissible, we are amending our answers to Interrogatories 15 and 17 to address Dr. Salek's testimony.

III. Plaintiff's Concerns Stemming from *Toomey v. Arizona*

I can assure you that we have not improperly withheld documents on the basis of privilege to "conceal a meeting between AHCCCS and the Governor's office." As you'll recall, we conducted a thorough search of AHCCCS'S ESI following our discovery dispute in March. As Kate noted in her March 17, 2021 letter, we reviewed the ESI from twenty-three AHCCCS custodians from January 1, 2016 to present using the search terms Kate and your team agreed upon. Our search did not uncover responsive communications between Director Snyder and Ms. Corieri, nor did it uncover responsive communications between Legislative Liaison Kyle Sawyer and Ms. Corieri. The responsive documents we did discover have been produced or identified on our privilege log. If you have a specific meeting or document you believe we have missed, please provide more details and we will search again. Your specific reference to an email between the "Chief Legislative Liaison of AHCCCS" and Ms. Corieri on November 18, 2017 would not have been identified in our ESI search because the Chief Legislative Liaison at the time was Christopher Vineyard, and Mr. Vineyard was not one of the custodians whose email the parties agreed to search.

IV. Deposition Objections

I have taken the time to review the transcript of Dr. Salek's deposition and the concerns you describe in your letter, and I stand by my objections on the basis of attorney-client and executive privilege. Moreover content of the meeting Dr. Salek described between AHCCCS' counsel and the governor's office are protected not only by the attorney-client and executive privileges but also the common interest privilege. *See United States v. Austin*, 416 F.3d 1016, 1021 (9th Cir. 2005); *United States v. Henke*, 222 F.3d 633, 637 (9th Cir. 2000)(noting the privilege is an extension of the attorney-client privilege). As Dr, Salek testified, AHCCCS is an administrative agency of the State of Arizona that reports directly to the Governor's Office. The meeting we have identified was conducted at the request of counsel representing the shared interests of AHCCCS and the Governor's Office. Your questions sought information regarding the content of this meeting, and your follow-up questions merely served as an end-around to get at the content of the information shared at meeting. As I noted during Dr. Salek's deposition, your line of questioning sought the opinions and impressions of Dr. Salke that were the opinions and impressions she would have shared at the meeting. If Dr. Salek had testified further in response to your questions, she would have inevitably risked waiving

Andrew Chinsky
December 10, 2021
Page 4

that privilege. *See U.S. v. Richey*, 632 F.3d 559 (9th Cir. 2011) (noting that “voluntary disclosure of privileged communications constitutes waiver of the privilege for all other communications on the same subject.”). It is on these grounds that I instructed Dr. Salek not to respond to your questions, and I stand by this objection.

I also note that your reference to the decisions in *Toomey* with regard to the executive or attorney client privilege in that case are unpersuasive. In the first instance, the rulings in that case are on appeal, and, more fundamentally, the facts in that case which led to an alleged waiver of those privileges are not present in our case.

As noted above, we have provided all the information necessary to demonstrate that the information and opinions shared at the meeting were privileged. We will not provide additional information.

V. Conclusion

Once again, I appreciate you providing me with the basis for your concerns and allowing us the opportunity to confer on these issues in an amicable and productive way. Please let me know if you would like to discuss this further.

Respectfully,

BURNSBARTON PLC

David T. Barton

David T. Barton

Encl: Exhibit A

EXHIBIT 7

*D. H. v. Snyder***Revised and Updated Snyder Privilege Log****2021-12-10**

Date Ranges	Document Description	Privilege
2020-08-20	Attorney-client privileged memo re: <i>D.H. v. Snyder</i> lawsuit	Attorney-client privileged communication
2020-09-17 to 2021-05-25	Emails prepared at direction of AHCCCS legal counsel to Banner Health contacts requesting Banner Health preserve and provide potentially relevant and/or responsive documents/information, and Banner Health's responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2021-04-23	Emails prepared at direction of AHCCCS legal counsel to Arizona Complete Health contacts requesting Arizona Complete Health preserve and provide potentially relevant and/or responsive documents/information, and Arizona Complete Health's responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2021-04-23	Emails prepared at direction of AHCCCS legal counsel to Care 1st contacts requesting Care 1st preserve and provide potentially relevant and/or responsive documents/information, and Care 1st's responses to same.	Attorney work product (direction of counsel)

Date Ranges	Document Description	Privilege
2020-09-17 to 2021-04-26	Emails prepared at direction of AHCCCS legal counsel to Department of Economic Security (“DES”) contacts requesting DES preserve and provide potentially relevant and/or responsive documents/information, and DES’s responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2021-04-23	Emails prepared at direction of AHCCCS legal counsel to Health Choice contacts requesting Health Choice preserve and provide potentially relevant and/or responsive documents/information, and Health Choice’s responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2021-04-23	Emails prepared at direction of AHCCCS legal counsel to Magellan Complete Care of Arizona contacts requesting Magellan Complete Care of Arizona preserve and provide potentially relevant and/or responsive documents/information, and Magellan Complete Care of Arizona’s responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2020-12-04; 2021-02-05	Emails prepared at direction of AHCCCS legal counsel to Mercy Care contacts requesting Mercy Care preserve and provide potentially relevant and/or responsive documents/information, and Mercy Care’s responses to same.	Attorney work product (direction of counsel)
2020-09-17 to 2021-04-27	Emails prepared at direction of AHCCCS legal counsel to United Healthcare contacts requesting United Healthcare preserve and provide potentially relevant and/or responsive documents/information, and United Healthcare’s responses to same.	Attorney work product (direction of counsel)
2021-01-17 to 2021-01-21	Email correspondence prepared at direction of AHCCCS legal counsel to the Department of Child Safety (DCS) contacts requesting DCS provide potentially relevant and/or responsive documents/information, and DCS’s responses to same.	Attorney work product (direction of counsel)

Date Ranges	Document Description	Privilege
2021-04-06 to 2021-04-27	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodians identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information, and responses to same.	Attorney-client privileged communication and Attorney work product (direction of counsel)
2018-08-09 to 2018-08-13	Email correspondence between AHCCCS employees and AHCCCS counsel regarding R9-31-205.	Attorney-client privileged communication
2016-09-05 to 2016-09-21	Email correspondence between AHCCCS employees and AHCCCS counsel regarding Section 1557.	Attorney-client privileged communication
2018-04-08 to 2018-04-09	Email correspondence between AHCCCS employees and AHCCCS counsel regarding news article about AHCCCS and transgender services.	Attorney-client privileged communication
2016-09-29 to 2016-09-30	Email correspondence between AHCCCS employees and AHCCCS counsel regarding news article about transgender services.	Attorney-client privileged communication
2016-07-14 to 2016-07-16	Email correspondence between AHCCCS employees and AHCCCS counsel regarding gender reassignment coverage data in Medicaid programs.	Attorney-client privileged communication and attorney-work product

Date Ranges	Document Description	Privilege
2016-07-12 to 2016-07-13	Email correspondence between AHCCCS employees and AHCCCS counsel re ACA Section 1557.	Attorney-client privileged communication
2018-01-31 to 2018-02-17	Email correspondence between AHCCCS employees and AHCCCS counsel re ALJ decision.	Attorney-client privileged communication
2016-08-24	Email correspondence between AHCCCS employees and AHCCCS counsel re Section 1557.	Attorney-client privileged communication
2016-15-07	Email correspondence between AHCCCS employees and AHCCCS counsel re ACA Section 1557.	Attorney-client privileged communication
2015-11-30 to 2016-01-24	Email correspondence regarding notes of meeting between AHCCCS employees and AHCCCS counsel re gender dysphoria and gender reassignment services and coverage.	Attorney-client privileged communication and attorney-work product
2016-07-31	Email correspondence between AHCCCS employees and AHCCCS counsel re Section 1557 of the ACA and containing information about health plans' responses about Section 1557 of the ACA	Attorney-client privileged communication and attorney work product (direction of counsel)

Date Ranges	Document Description	Privilege
2016-08-24	Email correspondence between AHCCCS employees and AHCCCS counsel re 1557 and pharmacy gender edits	Attorney-client privileged communication
2020-06-12 to 2020-06-15	Email correspondence between AHCCCS employees and AHCCCS counsel re section 1557 rules and Supreme Court rulings.	Attorney-client privileged communication
2018-06-22 to 2018-06-24	Email correspondence between AHCCCS employees and AHCCCS counsel re transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED
2016-10-12 to 2016-10-31	Email correspondence with legal counsel regarding request about transgender health coverage.	Attorney-client privileged communication and attorney work product privilege (direction of counsel)
2016-07-28 to 2016-07-29	Email correspondence between AHCCCS employees and AHCCCS counsel re Section 1557 of the Affordable Care Act.	Attorney-client privileged communication REDACTED
2016-07-28	Email correspondence between AHCCCS employees and AHCCCS counsel re ACA section 1557 and Medicaid policies.	Attorney-client privileged communication and Work Product privileged (direction of counsel)

Date Ranges	Document Description	Privilege
2018-03-30 to 2018-04-04	Email correspondence between AHCCCS employees and AHCCCS counsel and between AHCCCS employees at the direction of counsel re media request for information about transgender health coverage.	Attorney-client privileged communication and work product privileged (direction of counsel) REDACTED
2019-08-26	Email correspondence between AHCCCS employees and AHCCCS counsel re AHCCCS rule regarding gender reassignment surgery.	Attorney-client privileged communication REDACTED
2017-01-17 to 2017-01-18	Email correspondence between AHCCCS employees and AHCCCS counsel re HB 2294 – gender reassignments.	Attorney-client privileged communication
2015-09-08	Email correspondence between AHCCCS employees and AHCCCS counsel re HRT for gender reassignment.	Attorney-client privileged communication
2015-10-14	Correspondence between AHCCCS counsel, AHCCCS employees, and the Governor’s Office regarding Proposed Rules under the Affordable Care Act.	Attorney-client privileged communication; Common interest privileged communication; Executive privilege; Attorney work product; Deliberative Process privilege

Date Ranges	Document Description	Privilege
2015-11-5	Information and advice exchanged at a meeting on or around November 5, 2015 between AHCCCS employees, AHCCCS counsel and the Governor's Office and counsel regarding Proposed Rules under the Affordable Care Act.	Attorney-client privileged communication; Common interest privileged communication; Executive privilege; Attorney work product; Deliberative Process privilege

EXHIBIT 8

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4 Phoenix, Arizona 85022
5 Telephone: (602) 435-0050
6 ltjohnston@live.com

7 C. Christine Burns #017108
8 David T. Barton #016848
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10 **BURNSBARTON PLC**
11 2201 East Camelback Road, Ste. 360
12 Phone: (602) 753-4500
13 christine@burnsbarton.com
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16 *Attorneys for Defendant*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

D.H., by and through his mother, Janice
Hennessy-Waller; and John Doe, by his
guardian and next friend, Susan Doe, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

Jami Snyder, Director of the Arizona Health
Care Cost Containment System, in her
official capacity,

Defendant.

Case No. 4:20-cv-00335-SHR

**DEFENDANT’S SECOND AMENDED
SUPPLEMENTAL ANSWERS TO
PLAINTIFFS’ FIRST SET OF
INTERROGATORIES**

(Assigned to the Honorable Scott H.
Rash)

Defendant Jami Snyder, Director of the Arizona Health Care Cost Containment
System, in her official capacity (“Defendant”), supplements her Answers to Plaintiffs’
First Set of Interrogatories as follows. Supplemental information is in **bold**.

OBJECTIONS AND ANSWERS

1 **INTERROGATORY NO. 1:** Identify all persons with information or knowledge
2 concerning the facts and allegations set forth in Plaintiffs' Complaint and/or your defenses
3 thereto.

4 **RESPONSE TO INTERROGATORY NO. 1:**

5 See Defendant's disclosure statements.

6
7 **INTERROGATORY NO. 2:** Identify all persons who assisted in preparing the
8 answers to these Interrogatories or provided information contained in the answers. For
9 each person identified, state his or her title, duties, role in preparing the answers, and the
10 Interrogatory answer(s) to which he or she provided information or assistance. This
11 identification should also indicate whether the information provided is within his or her
12 knowledge or was obtained from some other person or source; if the information was
13 obtained from another person or source, that person or source should also be identified.

14 **RESPONSE TO INTERROGATORY NO. 2:**

15 Defendant objects to the extent this interrogatory seeks the disclosure of
16 information protected by the Attorney Work Product, or Attorney Client Privileges. And
17 as a result, Defendant will not disclose information related to the assistance obtained from
18 legal counsel in preparing responses to these interrogatories. How counsel obtained
19 information to respond to these interrogatories is also privileged work product – and for
20 that reason, Defendant will not provide specific information about which person provided
21 information related to each interrogatory. Defendant also objects to this interrogatory
22 because it includes multiple discrete subparts that appear calculated to avoid the
23 limitations imposed by Fed. R. Civ. Pro. 33(a)(1).

24 Without waiving the forgoing objections, and consistent therewith, Defendant
25 states that the following individuals helped gather information necessary to provide
26 answers to these interrogatories:

27 Dr. Sara Salek
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Chief Medical Officer, AHCCCS
c/o Johnston Law Offices
14040 N. Cave Creek Rd., Suite 309
Phoenix, AZ 85022

Jakenna Lebsock
AHCCCS Assistant Director, Health Care Management Clinical Operations
c/o Johnston Law Offices
14040 N. Cave Creek Rd., Suite 309
Phoenix, AZ 85022

INTERROGATORY NO. 3. Describe the process Arizona Medicaid uses to determine if a particular service is medically necessary to treat a certain condition. A complete response to this Interrogatory should identify all documents related to that process.

RESPONSE TO INTERROGATORY NO.3:

Requests for prior authorization of a service are reviewed by 1) personnel at the AHCCCS health plans for persons enrolled with those plans, and 2) by AHCCCS personnel within the Office of the Chief Medical Officer for those AHCCCS-eligible persons not enrolled in a health plan. The standards to be applied to determine medical necessity include information as to the standard of care, the nature of the service requested, the history and condition of the recipient, and legal requirements, including those found in A.A.C. R9-22-101.B (defining “medical necessity”), A.A.C. R9-22-202.B; A.A.C. R9-22-204.A; A.A.C. R9-22-205.B, and the AHCCCS Medical Policy Manual at Chapters 310-B, 310-V, and 430, and documents produced at SNYDER.000352-391, SNYDER.000393-548, and SNYDER.000739-780. In addition, pursuant to the parties’ meet and confer process and Defendant’s March 17, 2021 letter to Plaintiffs’ counsel, Defendant notes that AHCCCS does not have AHCCCS guides, manuals, bulletins, or coverage policies that address procedures, treatments, or services to treat gender dysphoria, apart from the Challenged Exclusion set forth in A.A.C. R9-22-205-B.4(a); nonetheless, Defendant asked the health plans whether the health plans have policies or

1 procedures that govern evaluation of medical necessity for gender dysphoria treatments
2 covered by AHCCCS (e.g., hormone treatments and counseling) from January 1, 2016 to
3 present, and those documents have been produced at SNYDER.000143-251,
4 SNYDER.000285-303, SNYDER.000304-351, and SNYDER.000550-738.
5

6 **INTERROGATORY NO. 4.** Describe the process by which the documents
7 identified in Interrogatory No. 3 were originally drafted and how those documents are
8 updated.
9

10 **RESPONSE TO INTERROGATORY NO. 4:**

11 Defendant has no knowledge or information with which to answer how documents
12 in prior administrations were originally drafted or updated. Generally, the process for
13 administrative rulemaking is as prescribed in A.R.S. 41-1021 et seq. and AHCCCS
14 policies are updated on an as-needed basis by the AHCCCS Policy Committee.
15

16 **INTERROGATORY NO. 5:** Identify all persons involved in the drafting,
17 promulgation, and implementation of the Challenged Exclusion, including each person's
18 role(s) in drafting, promulgating, and implementing the Challenged Exclusion and his or
19 her employer and job title.

20 **RESPONSE TO INTERROGATORY NO. 5:**

21 Defendant has been unable to locate or identify any document or person with
22 knowledge or information responsive to this interrogatory. Pursuant to the parties' meet
23 and confer process and Defendant's March 17, 2021 letter to Plaintiffs' counsel, Jakenna
24 Lebsack reached out to several units within AHCCCS (listed on page 2 of the March 17,
25 2021 letter) to ask whether those individuals have information or documents responsive to
26 Interrogatory No. 5. At the time of Ms. Lebsack's communication, Karen Grady had
27 already departed AHCCCS and Ms. Lebsack did not connect with Ms. Grady about this
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1 information request. That effort failed to reveal any document or person with knowledge
2 or information responsive to this interrogatory.

3
4 **INTERROGATORY NO. 6:** Describe the process by which the Challenged
5 Exclusion was originally drafted, promulgated, and implemented. A complete answer to
6 this Interrogatory should list all public and non-public meetings at which You, AHCCCS,
7 or employees of You or AHCCCS discussed the proposed regulation that became the
8 Challenged Exclusion and identify all research, studies, data, reports, publications,
9 testimony, or other documents considered, reviewed, or relied on in the drafting,
10 promulgation, and implementation of the Challenged Exclusion.

11 **RESPONSE TO INTERROGATORY NO. 6:**

12 Defendant has been unable to locate or identify any document or person with
13 knowledge or information with which to answer this interrogatory. Pursuant to the
14 parties' meet and confer process and Defendant's March 17, 2021 letter to Plaintiffs'
15 counsel, Jakenna Lebsock reached out to several units within AHCCCS (listed on page 2
16 of the March 17, 2021 letter) to ask whether those individuals have information or
17 documents responsive to Interrogatory No. 6. At the time of Ms. Lebsock's
18 communication, Karen Grady had already departed AHCCCS and Ms. Lebsock did not
19 connect with Ms. Grady about this information request. That effort did not result in the
20 discovery of any document or person with knowledge or information responsive to this
21 interrogatory.

22
23 **INTERROGATORY NO. 7:** Identify all documents, including, but not limited
24 to, provider guides and manuals, provider bulletins, plan bulletins, clinical coverage
25 policies, and claims processing manuals, related to the medical procedures, treatments,
26 and services covered by Arizona Medicaid to treat gender dysphoria.

27 **RESPONSE TO INTERROGATORY NO. 7:**

1 See A.A.C. R9-22-205 and the AHCCCS Medical Policy Manual at Chapter 430.
2 Pursuant to the parties' meet and confer process and Defendant's March 17, 2021 letter to
3 Plaintiffs' counsel, Defendant notes that AHCCCS does not have AHCCCS guides,
4 manuals, bulletins, or coverage policies that address procedures, treatments, or services to
5 treat gender dysphoria, apart from the Challenged Exclusion set forth in A.A.C. R9-22-
6 205-B.4(a); nonetheless, AHCCCS asked the health plans whether the health plans have
7 policies or procedures that govern evaluation of medical necessity for gender dysphoria
8 treatments covered by AHCCCS (e.g., hormone treatments and counseling) from
9 January 1, 2016 to present, and those documents have been produced at
10 SNYDER.000143-251, SNYDER.000285-303, SNYDER.000304-351, and
11 SNYDER.000550-738.

12
13 **INTERROGATORY NO. 8:** Identify all medical procedures, treatments, and
14 services (including all applicable and related procedure or treatment codes) that are
15 excluded from coverage under Arizona Medicaid when requested or intended for the
16 treatment of gender dysphoria. A complete answer to this Interrogatory should state
17 whether the following gender-confirming treatments are excluded from coverage:
18 penectomy, orchiectomy, vaginoplasty, feminizing genitoplasty, breast reconstruction,
19 chondrolaryngoplasty, phalloplasty, metoidioplasty, masculinizing genitoplasty,
20 mastectomy, reduction mammoplasty, hysterectomy, oophorectomy, salpingo-
21 oophorectomy, estradiol (in all forms, including oral/sublingual estradiol, transdermal
22 estradiol, estradiol valerate IM, and estradiol cypionate IM), medroxyprogesterone acetate
23 (Provera), micronized progesterone, spironolactone, finasteride, dutasteride, and
24 testosterone (in all forms, including testosterone cypionate, testosterone enanthate,
25 testosterone topical gel 1%, testosterone topical gel 1.62%, testosterone patches,
26 testosterone cream, testosterone axillary gel 2%, testosterone undecanoate), and
27 Gonadotropin-releasing hormone (GnRH) antagonists. A complete answer to this
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1 Interrogatory should also state whether coverage for the aforementioned procedures,
2 treatments, and services, or any others intended for the treatment of gender dysphoria, is
3 excluded because of the Challenged Exclusion or for some reason other than Challenged
4 Exclusion. A complete answer to this Interrogatory should also state whether the
5 Challenged Exclusion applies differently for beneficiaries under twenty-one years of age
6 and, if so, an explanation of those differences.

7 **RESPONSE TO INTERROGATORY NO. 8:**

8 Defendant objects to this interrogatory because it seeks irrelevant information that
9 is not proportionate to the needs of this case. This case is specifically limited to male
10 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
11 21. (Complaint at ¶ 106) The procedures identified in this interrogatory are completely
12 irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this
13 interrogatory because it includes multiple discrete subparts that appear calculated to avoid
14 the limitations imposed by Fed. R. Civ. Pro. 33(a)(1).

15
16 **INTERROGATORY NO. 9:** For all medical procedures, treatments, and services
17 identified in response to Interrogatory No. 8 as being excluded from Arizona Medicaid
18 coverage when requested or intended to treat gender dysphoria, state whether the
19 procedure, treatment, or service is covered by Arizona Medicaid when medically
20 necessary to treat a condition other than gender dysphoria, including identifying the
21 criteria used by Arizona Medicaid to determine whether such coverage is provided.

22 **RESPONSE TO INTERROGATORY NO. 9:**

23 Defendant objects to this interrogatory because it seeks irrelevant information that
24 is not proportionate to the needs of this case. This case is specifically limited to male
25 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
26 21. (Complaint at ¶ 106) The procedures identified in interrogatory No. 8 are completely
27 irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this
28

1 interrogatory because it includes multiple discrete subparts that appear calculated to avoid
2 the limitations imposed by Fed. R. Civ. Pro. 33(a)(1).

3
4 **INTERROGATORY NO. 10:** Identify all types of breast- or chest-related
5 surgery covered by Arizona Medicaid, including, but not limited to, mastectomy,
6 reduction mammoplasty, breast reconstruction, nipple areolar reconstruction, surgery to
7 treat gynecomastia, and any other surgery designed or intended to change the appearance
8 or functioning of the patient's chest/breast. For each type of surgery, identify the number
9 of claims paid by AHCCCS or by any third-party Arizona Medicaid managed care
10 organization since January 1, 2010, and the total cost of those claims. The data for each
11 surgery should also distinguish between procedures performed on beneficiaries under
12 twenty-one years old and beneficiaries over twenty-one years old.

13 **RESPONSE TO INTERROGATORY NO. 10:**

14 Defendant objects to this interrogatory because it seeks irrelevant information that
15 is not proportionate to the needs of this case. This case is specifically limited to male
16 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
17 21. (Complaint at ¶ 106) The procedures identified in interrogatory No. 8 are completely
18 irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this
19 interrogatory because it includes multiple discrete subparts that appear calculated to avoid
20 the limitations imposed by Fed. R. Civ. Pro. 33(a)(1).

21 Subject to and without waiving these objections, Defendant directs Plaintiff to the
22 following: <https://www.azahcccs.gov/PlansProviders/RatesAndBilling/FFS/>

23 The above link includes the rates payable for all services paid for by AHCCCS. Given
24 that this case now involves just one plaintiff, and because it is unknown what specific procedures
25 are needed by Plaintiff, AHCCCS cannot speculate as to the specific expense of the procedures
26 allegedly needed by Plaintiff. Moreover, AHCCCS objects to this request to the extent it seeks
27
28

1 information related to services provided, or services that could be provided, to individuals other
2 than Plaintiff.

3 INTERROGATORY NO. 11: Identify all persons involved in implementing
4 and/or enforcing the Challenged Exclusion from January 1, 2010 to present, including
5 each person's role(s).

6 **RESPONSE TO INTERROGATORY NO. 11:**

7 Defendant objects to the overbreadth of the time period encompassed by this
8 interrogatory. Over the ten-year period encompassed by this interrogatory there have
9 been many people who have implemented the rules and regulations applicable to the
10 Challenged Exclusion. Those persons come and go in the usual course of change in jobs
11 and administrations. For these reasons, Defendant cannot identify all those persons by
12 name.

13 Without waiving her objections, Defendant states that the persons who would
14 "implement" or "enforce" the Challenged Exclusion include personnel in the AHCCCS
15 health plans who approve or deny requests for gender reassignment surgery for members
16 of those health plans and, at the AHCCCS Administration level, AHCCCS's Chief
17 Medical Officer and his or her staff.

18
19 **INTERROGATORY NO. 12:** Identify every instance of denial of coverage or
20 prior authorization for coverage for any medical treatment, service, or procedure based on
21 the Challenged Exclusion from January 1, 2010 to present, including the name or unique
22 identifier of the individual beneficiary denied coverage; the date of the denial; and the
23 denied treatment(s), service(s), or procedure(s). A complete answer to this Interrogatory
24 should identify every instance of denial of coverage or prior authorization of coverage
25 under Arizona Medicaid regardless of whether the denial was made by AHCCCS or any
26 third-party Arizona Medicaid managed care organization.

27 **RESPONSE TO INTERROGATORY NO. 12:**

28

1 Defendant objects to this interrogatory because it seeks irrelevant information that
2 is not proportionate to the needs of this case. This case is specifically limited to male
3 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
4 21. (Complaint at ¶ 106) This interrogatory seeks information related to any instance of
5 denial under the Challenged Exclusion and thus includes denials that are completely
6 irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this
7 interrogatory because it includes multiple discrete subparts that appear calculated to avoid
8 the limitations imposed by Fed. R. Civ. Pro. 33(a)(1). The request also includes an
9 impermissibly broad period of time.

10 Without waiving Defendant's prior objections, pursuant to the parties' meet and
11 confer process, including Defendant's March 17, 2021 letter to Plaintiffs' counsel,
12 Defendant (1) searched AHCCCS's records from 2011 to present, and (2) asked the health
13 plans to search the health plan's records for January 1, 2016 to present for information
14 about denials of coverage or prior authorization for coverage under the Challenged
15 Exclusion for male chest reconstruction surgery of individuals under age 21. Based on
16 that information, Defendant provides the following information in response to
17 Interrogatory No. 12:

18 (1) Plaintiff D.H.: (a) decision date by health plan: 2019; (b) procedure code denied:
19 19303.

20 (2) Litigation Patient No. 2: (a) decision date by health plan: 2019; (b) procedure
21 denied: reduction mammoplasty and mastectomy; (c) age at time of denial: 18.
22 The claim for Patient No. 2 was later granted and Patient No. 2 received the
23 requested services (*see* SNYDER.000549).

24 (3) Litigation Patient No. 4: (a) decision date by health plan: 2017; (b) chest
25 reconstruction surgery for treatment of gender dysphoria; (c) age at time of denial:
26 18.
27
28

1 **INTERROGATORY NO. 13:** For each individual identified in response to
2 Interrogatory No. 12 as having been denied coverage pursuant to the Challenged
3 Exclusion, state the individual’s age at the time of the denial and dates of enrollment in
4 Arizona Medicaid.

5 **RESPONSE TO INTERROGATORY NO. 13:**

6 Defendant objects to this interrogatory because it seeks irrelevant information that
7 is not proportionate to the needs of this case. This case is specifically limited to male
8 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
9 21. (Complaint at ¶ 106) This interrogatory seeks information related to any instance of
10 denial under the Challenged Exclusion and thus includes denials that are completely
11 irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this
12 interrogatory because it includes multiple discrete subparts that appear calculated to avoid
13 the limitations imposed by Fed. R. Civ. Pro. 33(a)(1). The request also includes an
14 impermissibly broad period of time.

15 See response to Interrogatory No. 12.

16
17 **INTERROGATORY NO. 14:** Identify all internal appeals made to You,
18 AHCCCS, or any third-party managed care organization; administrative appeals; formal
19 or informal requests for reconsideration made to You, AHCCCS, or any third-party
20 managed care organization; or judicial challenges to any denial of coverage or prior
21 authorization for coverage for any medical treatment, service, or procedure based on the
22 Challenged Exclusion from January 1, 2010 to present, including stating the status and
23 final disposition of any such request, appeal, or challenge.

24 **RESPONSE TO INTERROGATORY NO. 14:**

25 Defendant objects to this interrogatory because it seeks irrelevant information that
26 is not proportionate to the needs of this case. This case is specifically limited to male
27 chest reconstruction surgery as a remedy for gender dysphoria in persons under the age of
28

1 21. (Complaint at ¶ 106) This interrogatory seeks information related to any instance of
2 denial under the Challenged Exclusion and thus includes denials that are completely
3 irrelevant to the medical procedure at issue in this lawsuit. Defendant also objects to this
4 interrogatory because it includes multiple discrete subparts that appear calculated to avoid
5 the limitations imposed by Fed. R. Civ. Pro. 33(a)(1). The request also includes an
6 impermissibly broad period of time.

7 See response to Interrogatory No. 12.

8
9 **INTERROGATORY NO. 15:** Identify all public or non-public meetings
10 involving You or AHCCCS in which the Challenged Exclusion and/or Arizona Medicaid
11 coverage for medical or surgical treatments or services to treat gender dysphoria was
12 discussed, listing the date of each meeting, the nature of each meeting, and the attendees
13 of the meeting, and identifying any documents or other materials relating to those
14 meetings in Your custody or control.

15 **RESPONSE TO INTERROGATORY NO. 15:**

16 Defendant is not aware of any public meeting discussing the Challenged Exclusion
17 or any or non-public meeting that is not protected by the attorney-client privilege. **This**
18 **response includes the meeting discussed in the deposition of Dr. Sarah Salek, which**
19 **meeting was scheduled to obtain the advice of counsel and may, or may not, have**
20 **occurred during the relevant time-period.**

21 **INTERROGATORY NO. 16:** Identify all research, studies, data, reports,
22 publications, testimony, or other documents relating to the Challenged Exclusion that You
23 or AHCCCS considered, reviewed, or relied on since the Challenged Exclusion's
24 adoption. Identify the date or approximate date You or AHCCCS considered, reviewed,
25 or relied on each document and the employee(s) of You or AHCCCS who considered,
26 reviewed, or relied on such documents and their role(s). A complete answer to this
27 Interrogatory should include documents relating to the medical necessity, safety, and
28

1 efficacy (including whether a procedure is deemed experimental) of excluded treatments
2 and services; the public health effects of enforcing, amending, or eliminating the
3 Challenged Exclusion; and the cost/fiscal impact to Arizona Medicaid of enforcing,
4 amending, or eliminating the Challenged Exclusion.

5 **RESPONSE TO INTERROGATORY NO. 16:**

6 Defendant objects to this interrogatory because it includes multiple discrete
7 subparts that appear calculated to avoid the limitations imposed by Fed. R. Civ. Pro.
8 33(a)(1). The request also includes an impermissibly broad period of time. Because the
9 Challenged Exclusion was created in 1982, Defendant also objects to this interrogatory to
10 the extent it seeks information that is not currently available or known to AHCCCS.

11 Without waiving her objections, Defendant has had no occasion since January 1,
12 2016 to review research, studies, or other documents relating to the Challenged Exclusion
13 prior to initiation of Plaintiffs' lawsuit.

14
15 **INTERROGATORY NO. 17:** Identify and describe any instance in which You or
16 AHCCCS formally or informally considered amending or eliminating the Challenged
17 Exclusion. For each instance of consideration, identify the date or approximate date of
18 consideration; the offices or employees under Your or AHCCCS' supervision involved in
19 such consideration and their role(s); the nature of the considered changes; and what (if
20 any) actions were taken by You or AHCCCS.

21 **RESPONSE TO INTERROGATORY NO. 17:**

22 Defendant objects to this interrogatory because it includes multiple discrete
23 subparts that appear calculated to avoid the limitations imposed by Fed. R. Civ. Pro.
24 33(a)(1). The request also includes an impermissibly broad period of time. Because the
25 Challenged Exclusion was created in 1982, Defendant also objects to this interrogatory to
26 the extent it seeks information that is not currently available or known to AHCCCS.
27
28

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2021, I electronically transmitted the foregoing document by electronic mail to the following.

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s/David Barton

EXHIBIT 9

*D. H. v. Snyder***Snyder Amended and Supplemental Privilege Log****2022-01-14**

Note: The following individuals are or have at the time of the relevant communication been counsel for AHCCCS or the Governor's Office: Kate King, Gina Relkin, Matt Devlin, Logan Johnston, and Benjamin Runkle.

Log Designation¹	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
1	8/20/20		Kate King	Jakenna Lebsock	Email from counsel to client regarding lawsuit and defense of same.	Attorney-client privilege
2	9/17/20		Jakenna Lebsock	Scott Van Valkenburg; Rodd Mas; Ryan Thomsen; Theresa Dorazio; Robert Kraus; Michael Ferguson; Patricia Dal Soglio; Edward Fess; Laurie Lotempio; Jason Winfrey; Sara Park; Pearlette Ramos; Mark Wilson; Sylvia Jones; Joel Conger; Carissa Townsend; Bernadette Moreno; Kellie Manders; Charlton Wilson; Amanda Pizzolanti; Mark Carroll; Nicole Larson; Steve Chakmakian; Patricia Gilman; Olivia Patton; Kristen Moore; Sandra Stein; Christina Quast; Michelle Holmes; Eric Tack	Emails prepared at direction of AHCCCS legal counsel to health plan contacts requesting health plans preserve and provide potentially relevant and/or responsive documents/information.	Attorney work product (direction of counsel)

¹ Emails in a chain receive a single document designation. For example, four emails exchanged over the course of a week in one email chain would receive the designation "1" for purposes of this chart.

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
3	11/23/20		Jakenna Lebsock	Scott Van Valkenburg; Rodd Mas; Ryan Thomsen; Theresa Dorazio; Robert Kraus; Michael Ferguson; Patricia Dal Soglio; Edward Fess; Laurie Lotempio; Jason Winfrey; Sara Park; Pearlette Ramos; Mark Wilson; Sylvia Jones; Joel Conger; Carissa Townsend; Bernadette Moreno; Kellie Manders; Charlton Wilson; Amanda Pizzolanti; Mark Carroll; Nicole Larson; Steve Chakmakian; Patricia Gilman; Olivia Patton; Kristen Moore; Sandra Stein; Christina Quast; Michelle Holmes; Eric Tack	Emails prepared at direction of AHCCCS legal counsel to health plan contacts requesting health plans preserve and provide potentially relevant and/or responsive documents/information.	Attorney work product (direction of counsel)
4	11/23/20		Mike Ferguson	Jakenna Lebsock	Email between Carel st Director of Regulatory Operations and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
4	11/23/20		Jakenna Lebsock	Mike Ferguson	Email between Carel st Director of Regulatory Operations and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
4	12/4/20		Mike Ferguson	Jakenna Lebsock; Patty Dal Soglio; Scott Cummings; Christina Quast; Michelle Holmes; Eric Tack	Email between Carel st Director of Regulatory Operations and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
4	12/9/20		Mike Ferguson	Jakenna Lebsock; Patty Dal Soglio	Email between Care1st Director of Regulatory Operations and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
5	1/16/21		Logan Johnston	Patty Dal Soglio; Jakenna Lebsock	Email between AHCCCS counsel and Care1st regarding substance of response to request for production	Attorney client privilege
5	1/19/21		Patty Dal Soglio	Logan Johnston; Jakenna Lebsock	Email between AHCCCS counsel and Care1st regarding substance of response to request for production	Attorney client privilege
6	12/1/20		Ryan Thomsen	Jakenna Lebsock	Email between Banner Health Medicaid Administrative Director and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
7	12/4/20		Cheyenne Ross	Jakenna Lebsock; James Stover; Rodd Mas	Correspondence from Arizona Complete Health VP of Compliance and Regulatory Affairs and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
8	12/4/20		Patty Dal Soglio	Jakenna Lebsock; Scott Cummings; Mike Ferguson	Correspondence from Carel st Compliance Director to AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
9	12/16/20		Jakenna Lebsock	Scott Van Valkenburg; Rodd Mas; Ryan Thomsen; Theresa Dorazio; Robert Kraus; Michael Ferguson; Patricia Dal Soglio; Edward Fess; Laurie Lotempio; Jason Winfrey; Sara Park; Pearlette Ramos; Mark Wilson; Sylvia Jones; Joel Conger; Carissa Townsend; Bernadette Moreno; Kellie Manders; Charlton Wilson; Amanda Pizzolanti; Mark Carroll; Nicole Larson; Steve Chakmakian; Patricia Gilman; Olivia Patton; Kristen Moore; Sandra Stein; Christina Quast; Michelle Holmes; Eric Tack	Email prepared at direction of AHCCCS legal counsel to health plan contacts requesting health plans preserve and provide potentially relevant and/or responsive documents/information.	Attorney work product (direction of counsel)
10	12/24/20		Jakenna Lebsock	Scott Van Valkenburg; Rodd Mas; Ryan Thomsen; Theresa Dorazio; Robert Kraus; Michael Ferguson; Patricia Dal Soglio; Edward Fess; Laurie Lotempio; Jason Winfrey; Sara Park; Pearlette Ramos; Mark Wilson; Sylvia Jones; Joel Conger; Carissa Townsend; Bernadette Moreno; Kellie Manders; Charlton Wilson; Amanda Pizzolanti; Mark Carroll; Nicole Larson; Steve Chakmakian; Patricia Gilman; Olivia Patton; Kristen Moore; Sandra Stein; Christina Quast; Michelle Holmes; Eric Tack	Email prepared at direction of AHCCCS legal counsel to health plan contacts requesting health plans preserve and provide potentially relevant and/or responsive documents/information.	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
11	12/30/20		Cheyenne Ross	Jakenna Lebsock; Patty Dal Soglio; Michael Ferguson; Rodd Mas; Scott Cummings; James Stover	Email between Arizona Complete Health and Care 1st VP of Compliance and Regulatory Affairs and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
12	1/7/21		Ryan Thomsen	Jakenna Lebsock	Email between Banner Health Medicaid Administrative Director and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
13	4/6/21		Jakenna Lebsock	Scott Van Valkenburg; Rodd Mas; Ryan Thomsen; Theresa Dorazio; Robert Kraus; Michael Ferguson; Patricia Dal Soglio; Edward Fess; Laurie Lotempio; Jason Winfrey; Sara Park; Pearlette Ramos; Mark Wilson; Sylvia Jones; Joel Conger; Carissa Townsend; Bernadette Moreno; Kellie Manders; Charlton Wilson; Amanda Pizzolanti; Mark Carroll; Nicole Larson; Steve Chakmakian; Patricia Gilman; Olivia Patton; Kristen Moore; Sandra Stein; Christina Quast; Michelle Holmes; Eric Tack	Emails prepared at direction of AHCCCS legal counsel to health plan contacts requesting health plans preserve and provide potentially relevant and/or responsive documents/information.	Attorney work product (direction of counsel)
14	4/23/21		Mike Ferguson	Jakenna Lebsock; Scott Cummings; Patty Dal Soglio; Cheyenne Ross	Correspondence from Care 1st Compliance Director to AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
15	4/23/21		Rodd Mas	Jakenna Lebsock; James Stover; Cheyenne Ross	Correspondence from Arizona Complete Health VP of Regulatory Operations to AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	
16	4/23/21		Rena Rischar	Jakenna Lebsock	Email between Arizona Complete Health Contract Compliance Administrator and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
17	4/26/21		Ryan Thomsen	Jakenna Lebsock	Email between Banner Health Medicaid Administrative Director and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
18	5/25/21		Ryan J Thomsen	Jakenna Lebsock	Email between Banner Health Medicaid Administrative Director and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
19	4/27/21		Chris Palme-Krizak	Jakenna Lebsock	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
20	4/12/21		Chris Palme-Krizak	Jakenna Lebsock	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
20	4/12/21		Jakenna Lebsock	Chris Palme-Krizak	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
20	4/26/21		Jakenna Lebsock	Chris Palme-Krizak	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
21	12/1/20		Heidi Kimmer	Jakenna Lebsock; Olivia Patton; Stephen Chakmakian	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
21	12/1/20		Jakenna Lebsock	Heidi Kimmer; Olivia Patton; Stephen Chakmakian	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
21	12/8/20		Heidi Kimmer	Jakenna Lebsock; Olivia Patton; Stephen Chakmakian	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
21	12/8/20		Jakenna Lebsock	Heidi Kimmer; Olivia Patton; Stephen Chakmakian	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
21	12/8/20		Olivia Patton	Jakenna Lebsock; Heidi Kimmer; Stephen Chakmakian	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
22	4/23/21		Reyna Melendrez	Jakenna Lebsock; Anthony Como; Minnie Andrade; Kristin Nelson	Email between Molina (formerly Magellan Complete Care of Arizona) Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
23	1/7/21		Reyna Melendrez	Jakenna Lebsock	Email between Molina (formerly Magellan Complete Care of Arizona) Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
23	1/7/21		Jakenna Lebsock	Reyna Melendrez	Email between Molina (formerly Magellan Complete Care of Arizona) Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
23	1/8/21		Reyna Melendrez	Jakenna Lebsock; Michael Policky	Email between Molina (formerly Magellan Complete Care of Arizona) Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
24	4/22/21		Kellie Manders	Jakenna Lebsock; Charlton Wilson; Joshua Kutinsky; Naoma Gault Holmes; Bernadette Moreno; Carissa Townsend; Alyson Huls; Meredith Kinser	Email between Mercy Care of Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
25	1/7/21		Kellie Manders	Jakenna Lebsock; Naoma Gault Holmes; Charlton Wilson; Joshua Kutinsky; Bernadette Moreno; Carissa Townsend; Alyson Juls; Meredith Kinser	Email between Mercy Care of Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
26	11/24/20		Kellie Manders	Jakenna Lebsock	Email between Mercy Care of Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
26	11/24/20		Jakenna Lebsock	Kellie Manders	Email between Mercy Care of Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
26	11/25/20		Kellie Manders	Jakenna Lebsock	Email between Mercy Care of Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
26	11/27/20		Jakenna Lebsock	Kellie Manders	Email between Mercy Care of Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
26	11/30/20		Kellie Manders	Jakenna Lebsock	Email between Mercy Care of Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
26	11/30/20		Jakenna Lebsock	Kellie Manders; Bernadette Moreno; Carissa Townsend; Alyson Huls; Meredith Kinser; Naoma Gault Holmes; Joshua Kutinsky; Charlton Wilson; Suzanne Buhrow	Email between Mercy Care of Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
26	11/30/20		Kellie Manders	Jakenna Lebsock; Bernadette Moreno; Carissa Townsend; Alyson Huls; Meredith Kinser; Naoma Gault Holmes; Joshua Kutinsky; Charlton Wilson; Suzanne Buhrow	Email between Mercy Care of Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
26	12/4/20		Kellie Manders	Jakenna Lebsock; Bernadette Moreno; Carissa Townsend; Alyson Huls; Meredith Kinser; Naoma Gault Holmes; Joshua Kutinsky; Charlton Wilson; Suzanne Buhrow	Email between Mercy Care of Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
27	4/23/21		Amanda Pizzolanti	Jakenna Lebsock; Ellen Lewis; Nicole Larson; Mark Carroll; Shawn Nau; Diana Alvarez; Jordan Wilkins; Anzio Dickerson	Email between Health Choice Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
28	1/7/21		Amanda Pizzolanti	Jakenna Lebsock; Nicole Larson; Mark Carroll; Shawn Nau; Jordan Wilkins	Email between Health Choice Arizona and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
29	1/17/21		Jakenna Lebsock	Jason Winfrey	Email between the Arizona Department of Child Safety and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
29	1/20/21		Jason Winfrey	Jakenna Lebsock	Emails between the Arizona Department of Child Safety and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
29	1/21/21		Jason Winfrey	Jakenna Lebsock	Emails between the Arizona Department of Child Safety and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
30	11/30/20		dddahcccsdeliverables@azdes.gov	Jakenna Lebsock	Emails between the Arizona Department of Developmental Disabilities and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
31	4/21/21		Leatrice Sullivan	Jakenna Lebsock	Emails between the Arizona Department of Developmental Disabilities and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
32	9/17/20		Coralyn Lingwall	Ljakenna Lebsock; Zane Ramadan; Sherri Wince; Jeanette Castillo; Samantha Egan; David Lara; Denise Giles; DDD AHCCCS Deliverables - DES	Emails between the Arizona Department of Developmental Disabilities and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
33	2/9/21		Scott Veenendall	Jakenna Lebsock; Chris Palme-Krizak; Olivia Patton	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
33	1/7/21		Scott Veenendall	Jakenna Lebsock; Chris Palme-Krizak; Olivia Patton	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
33	1/7/21		Jakenna Lebsock	Chris Palme-Krizak; Scott Veenendall; Olivia Patton	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
33	1/6/21		Chris Palme-Krizak	Jakenna Lebsock	Email between United Healthcare and AHCCCS discussing directions of AHCCCS legal counsel and responsive documents/information	Attorney work product (direction of counsel)
34	4/6/21		Jakenna Lebsock	Jami Snyder; Shelli Silver; Sara Salek; Dana Hearn; Mohamed Arif; Heidi Capriotti; Markay Adams; Satya Sarma; Ewaryst Jedrasik; Matthew Isiogu; Bret Cloninger; Lori Petre; Christina Quast; Julie Ambur; Eric Tack; Mike Sisson; Matt Devlin; Daniel Lippert; Mike Sisson; Nicole Fries; Joseph Ruiz; Kyle Sawyer	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodians identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
35	4/26/21		Jakenna Lebsock	Mike Sisson	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
35	4/26/21		Mike Sisson	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
36	4/8/21		Bret Cloninger	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
37	4/26/21		Daniel Lippert	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
37	4/26/21		Jakenna Lebsock	Daniel Lippert	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially	Attorney-client privileged communication and Attorney work product

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
					relevant and/or responsive documents/information	(direction of counsel)
38	4/26/21		Jakenna Lebsock	Dana Flannery	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
38	4/26/21		Dana Flannery	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
39	4/6/21		Eric Tack	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
40	4/7/21		Ewaryst Jedrasik	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)

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41	4/26/21		Jakenna Lebsock	Heidi Capriotti	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
41	4/26/21		Heidi Capriotti	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
42	4/7/21		Joseph Ruiz	Jakenna Lebsock; Jami Snyder; Shelli Silver; Sara Salek; Dana Hearn; Mohamed Arif; Heidi Capriotti; Markay Adams; Satya Sarma; Ewaryst Jedrasik; Matthew Isiogu; Bret Cloninger; Lori Petre; Christina Quast; Julie Ambur; Eric Tack; Mike Sisson; Matt Devlin; Daniel Lippert; Mike Sisson; Nicole Fries; Kyle Sawyer	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
42	4/6/21		Julie Ambur	Jakenna Lebsock; Jami Snyder; Shelli Silver; Sara Salek; Dana Hearn; Mohamed Arif; Heidi Capriotti; Markay Adams; Satya Sarma; Ewaryst Jedrasik; Matthew Isiogu; Bret Cloninger; Lori Petre; Christina Quast; Joseph Ruiz; Eric Tack; Mike Sisson; Matt Devlin; Daniel Lippert; Mike Sisson; Nicole Fries; Kyle Sawyer	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
42	4/8/21		Kyle Sawyer	Jakenna Lebsock; Jami Snyder; Shelli Silver; Sara Salek; Dana Hearn; Mohamed Arif; Heidi Capriotti; Markay Adams; Satya Sarma; Ewaryst Jedrasik; Matthew Isiogu; Bret Cloninger; Lori Petre; Christina Quast; Julie Ambur; Eric Tack; Mike Sisson; Matt Devlin; Daniel Lippert; Mike Sisson; Nicole Fries; Joseph Ruiz	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
43	4/26/21		Lori Petre	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
44	4/15/21		Markay Adams	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
45	4/26/21		Matthew Isiogu	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney-client privileged communication and Attorney work product (direction of counsel)
46	4/20/21		Nicole Fries	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially	Attorney-client privileged communication and Attorney work product

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					relevant and/or responsive documents/information	(direction of counsel)
47	4/7/21		Sara Salek	Jakenna Lebsock	Email correspondence prepared at direction of AHCCCS legal counsel to AHCCCS custodian identified in March 17, 2021 letter requesting potentially relevant and/or responsive documents/information	Attorney work product (direction of counsel)
48	8/9/18		Susan Russo	Julie Ambur; Eric Tack; Gina Relkin; Karen Grady; Alison Lovell; Sandi Borys	Correspondence between AHCCCS general counsel to AHCCCS employees providing advice related to state care plan and alignment with R9-31-205 provision on midwifery.	Attorney-client privileged communication
48	8/13/18		Julie Ambur	Susan Russo; Eric Tack; Gina Relkin; Karen Grady; Alison Lovell; Sandi Borys	Correspondence between AHCCCS employees regarding advice received from ACCCS Counsel related to state care plan and alignment with R9-31-205 provision on midwifery.	Attorney-client privileged communication; Attorney work product (direction of counsel)
49	9/5/16		Gina Relkin	Benjamin Runkle; Michal Rudnick	Email correspondence between AHCCCS employee and AHCCCS counsel regarding general summary of Section 1557 being supplied to contractors as part of AHCCCS Update meeting with MCO (managed care organization) CEOs.	Attorney-client privileged communication

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49	9/6/16		Michal Rudnick	Gina Relkin; Benjamin Runkle	Email correspondence between AHCCCS employee and AHCCCS counsel regarding counsel's intentions on timing of supplying summary of Section 1557 to contractors.	Attorney-client privileged communication
49	9/6/16		Gina Relkin	Benjamin Runkle; Michal Rudnick	Email correspondence between AHCCCS employee and AHCCCS counsel requesting counsel provide substantive advice at meeting with contractors.	Attorney-client privileged communication
49	9/15/16		Michal Rudnick	Gina Relkin; Benjamin Runkle; Christina Quast	Email correspondence between AHCCCS employee and AHCCCS employee regarding counsel's attendance at AHCCCS update meeting with MCOs.	Attorney-client privileged communication
49	9/20/16		Christina Quast	Michal Rudnik; Gina Relkin; Benjamin Runkle	Email correspondence between AHCCCS employees and AHCCCS counsel regarding extent of counsel's substantive guidance on summary of Section 1557 in advance of AHCCCS Update meeting with MCOs.	Attorney-client privileged communication
49	9/20/16		Benjamin Runkle	Gina Relkin; Michal Rudnick; Christina Quast	Email correspondence between AHCCCS employees and AHCCCS counsel regarding extent of counsel's substantive guidance on summary of Section 1557 in advance of AHCCCS Update meeting with MCOs.	Attorney-client privileged communication

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49	9/21/16		Christina Quast	Michal Rudnik; Gina Relkin; Benjamin Runkle	Email correspondence between AHCCCS employees and AHCCCS counsel regarding extent of counsel's substantive guidance on summary of Section 1557 in advance of AHCCCS Update meeting with MCOs.	Attorney-client privileged communication
50	4/8/18		Heidi Capriotti	Gina Relkin; Jami Snyder; Sara Sa lek; Eric Tack; Elizabeth Lorenz	Email correspondence between AHCCCS employees and AHCCCS counsel discussing news outlet's publication following AHCCCS employee's provision of information at the direction of counsel regarding AHCCCS and transgender services.	Attorney-client privileged communication
50	4/9/18		Eric Tack	Gina Relkin; Jami Snyder; Sara Sa lek; Heidi Capriotti; Eliza beth Lorenz	Email correspondence between AHCCCS employees and AHCCCS counsel discussing news outlet's publication following AHCCCS employee's provision of information at the direction of counsel regarding AHCCCS and transgender services	Attorney-client privileged communication
51	9/29/16		Gina Relkin	AHCCCS Executive Management Team Listserv	Email correspondence between AHCCCS employees and AHCCCS counsel advising executive board of out-of-state Medicaid coverage for transition-related care following the effective date of Section 1557.	Attorney-client privileged communication

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52	9/29/16		Tom Betlach	Gina Relkin; Matt Devlin; Beth Kohler	Email correspondence between AHCCCS employees and AHCCCS counsel regarding news article about transgender services.	Attorney-client privileged communication
52	9/30/16		Gina Relkin	Tom Betlach; Matt Devlin; Beth Kohler	Email correspondence between AHCCCS employees and AHCCCS counsel regarding news article about transgender services.	Attorney-client privileged communication
53	7/28/16		Michal Rudnick	Beth Kohler; Sara Salek; Matt Devlin; Gina Relkin; Shelli Silver; Virginia Rountree; Monica Coury; Suzanne Beman	Email correspondence between AHCCCS employees and AHCCCS counsel regarding Colorado, DC, and Rhode Island's draft policies for Medicaid coverage following effective date of Section 1557.	Attorney-client privileged communication and Work Product privileged (direction of counsel)
54	7/14/16		Benjamin Runkle	Matt Devlin; Gina Relkin	Email correspondence amongst AHCCCS counsel regarding gender reassignment coverage data in Medicaid programs.	Attorney-client privileged communication and attorney-work product
54	7/18/16		Gina Relkin;	Benjamin Runkle; Matt Devlin	Email correspondence amongst AHCCCS counsel regarding gender reassignment coverage data in Medicaid programs.	Attorney-client privileged communication and attorney-work product

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55	7/12/16		Michal Rudnick	Gina Relkin; Beth Kohler; Elizabeth Carpio; Lori Petre; Matt Devlin; Shelli Silver; Virginia Rountree	Email correspondence between AHCCCS employees and AHCCCS counsel soliciting a advice of counsel on impact of Section 1557 on AHCCCS and MCOs.	Attorney-client privileged communication
55	7/12/16		Gina Relkin	Michal Rudnick; Beth Kohler; Elizabeth Carpio; Lori Petre; Matt Devlin; Shelli Silver; Virginia Rountree	Email correspondence between AHCCCS employees and AHCCCS counsel providing a advice of counsel on impact of Section 1557 on AHCCCS and MCOs.	Attorney-client privileged communication
55	7/13/16		Lori Petre	Gina Relkin; Beth Kohler; Elizabeth Carpio; Michal Rudnick; Matt Devlin; Shelli Silver; Virginia Rountree	Email correspondence between AHCCCS employees and AHCCCS counsel discussing a advice of counsel on impact of Section 1557 on AHCCCS and MCOs.	Attorney-client privileged communication
55	7/13/16		Beth Kohler	Gina Relkin; Lori Petre; Elizabeth Carpio; Michal Rudnick; Matt Devlin; Shelli Silver; Virginia Rountree	Email correspondence between AHCCCS employees and AHCCCS counsel discussing a advice of counsel on impact of Section 1557 on AHCCCS and MCOs.	Attorney-client privileged communication
56	1/31/18		Danielle Miller	Matt Devlin	Email correspondence between AHCCCS counsel and counsel's paralegal transmitting ALJ decision.	Attorney-client privileged communication

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56	2/17/18		Matt Devlin	Sara Saiek; Gina Relkin	Email correspondence between AHCCCS counsel and AHCCCS employee advising employees of counsel's position on a agency's next steps regarding ALJ's decision about beneficiary coverage.	Attorney-client privileged communication
57	8/24/16		Michal Rudnick	Gina Relkin; Suzanne Berman; Virginia Rountree; Christina Quast; Matt Devlin; Eliza beth Carpio; Anne Dye; Benjamin Runkle	Email correspondence between AHCCCS employees and AHCCCS counsel recounting notes from small group meeting to discuss pharmacy gender edits	Attorney-client privileged communication
57	8/24/16		Lori Petri	Shelli Silver	Email correspondence between AHCCCS employees conferring the advice of AHCCCS counsel on Section 1557 and pharmacy gender edits.	Attorney-client privileged communication
58	7/15/16			Michal Rudnick; Gina Relkin; Beth Kohler; Daniel Lippert; Lynn Hopkins; Shelli Silver; Virginia Rountree; Eliza beth Carpio; Anne Dye; Sharon Ormsby; Matt Devlin; Penny Ellis; Joni Dunning; Monica Coury; Paul Galdys; Craig Srsen; Sara Saiek; Lauren Prole; Suzanne Berman; Lori Petre; Millie Lozano; Ben Runkle; Julie Ambur; Adam Geier; Kelli Donley; Debbie Reichow; Jakenna Lebsock; Christina Quast; Danielle Chronister; David Rudnick; Gabriella Cardenas [The above is a list of invitees to a teleconference].	Meeting between AHCCCS employees and AHCCCS counsel to discuss gender code edits and best practices for inputting data in MCO systems following ACA Section 1557.	Attorney-client privileged communication

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59	1/20/16		Shelli Silver	Victoria Burns; Cynthia Lane; Windy Marks; Lori Petre; Christina Quast; Debbie Reichow; Virginia Rountree	Email correspondence regarding notes of meeting between AHCCCS employees and AHCCCS counsel re gender dysphoria and gender reassignment services and coverage.	Attorney-client privileged communication and attorney-work product (direction of counsel)
59	1/24/16		Debbie Reichow	Shelli Silver	Email correspondence regarding notes of meeting between AHCCCS employees and AHCCCS counsel re gender dysphoria and gender reassignment services and coverage.	Attorney-client privileged communication and attorney-work product (direction of counsel)
60	7/31/16		Suzanne Berman	Matt Devlin; Gina Relkin; Michal Rudnick; Benjamin Runkle; Beth Kohler; Sara Salek; Shelli Silver; Virginia Rountree; Monica Coury	Email correspondence between AHCCCS employee and AHCCCS counsel re health plan responses to summary of Section 1557 provided by AHCCCS at direction of counsel.	Attorney-client privileged communication and attorney work product (direction of counsel)
61	6/12/20		Gina Relkin	Matt Devlin	Email correspondence between AHCCCS counsel discussing Health and Human Services final rule on Section 1557.	Attorney-client privileged communication
61	6/15/20		Matt Devlin	Gina Relkin	Email correspondence between AHCCCS counsel discussing Health and Human Services final rule on Section 1557 and the Supreme Court's ruling on sex orientation in <i>Bostock</i> .	Attorney-client privileged communication

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61	6/15/20		Gina Relkin	Matt Devlin	Email correspondence between AHCCCS counsel discussing Health and Human Services final rule on Section 1557 and the Supreme Court's ruling on sex orientation in <i>Bostock</i> .	Attorney-client privileged communication
62	6/15/20		Shelli Silver	Matt Devlin; Gina Relkin	Email correspondence between AHCCCS counsel discussing Health and Human Services final rule on Section 1557 and the Supreme Court's ruling on sex orientation in <i>Bostock</i> .	Attorney-client privileged communication
63	6/22/18	SNYDER.00 1259-1265	Jakenna Lebsock	Sara Salek	Email correspondence between AHCCCS employees discussing a dvice of counsel regarding public query of AHCCCS's transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED
63	6/22/18	SNYDER.00 1259-1265	Sara Salek	Gina Relkin; Jakenna Lebsock	Email correspondence between AHCCCS employees and counsel responding in accordance with a dvice of counsel regarding public query of AHCCCS's transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED
63	6/22/18	SNYDER.00 1259-1265	Gina Relkin	Sara Salek; Jakenna Lebsock	Email correspondence from AHCCCS counsel to AHCCCS employees providing further a dvice of counsel regarding public query of AHCCCS's transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED

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63	6/23/18	SNYDER.00 1259-1265	Sara Salek	Gina Relkin; Jakenna Lebsock	Email correspondence from AHCCCS employee to AHCCCS counsel seeking further advice of counsel regarding public query of AHCCCS's transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED
63	6/24/18	SNYDER.00 1259-1265	Gina Relkin	Sara Salek; Jakenna Lebsock	Email correspondence from AHCCCS counsel to AHCCCS employees providing further advice of counsel regarding public query of AHCCCS's transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED
64	10/12/16		Monica Coury	Gina Relkin; Matt Devlin; Christopher Vinyard; Kyle Sawyer; Beth Kohler; Sara Salek	Correspondence from AHCCCS employee to AHCCCS employees and counsel notifying counsel and employees of press inquiry and soliciting advice of counsel	Attorney-client privileged communication; Executive Privilege; common interest privilege
65	10/12/16		Monica Coury	Matt Devlin	Correspondence from AHCCCS employee to AHCCCS counsel soliciting advice regarding AHCCCS's response to media request for information regarding AHCCCS care coverage.	Attorney-client privilege
65	10/12/16		Matt Devlin	Monica Coury	Correspondence from AHCCCS counsel providing advice on how to respond to media request for information regarding AHCCCS care coverage.	Attorney-client privilege

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65	10/12/16		Monica Coury	Matt Devlin	Correspondence between AHCCCS employees and AHCCCS counsel regarding counsel's advice on how to respond to media request for information regarding AHCCCS care coverage.	Attorney-client privilege
66	10/12/16		Monica Coury	Gina Relkin; Matt Devlin; Christopher Vinyard; Kyle Sawyer; Beth Kohler; Sara Salek	Correspondence from AHCCCS employee to AHCCCS employees and counsel regarding advice sought from counsel and pending response to media inquiry.	Attorney-client privileged communication; Executive Privilege; common interest privilege
66	10/12/16		Christina Corieri	Daniel Ruiz; Monica Coury	Email correspondence between AHCCCS employee and employee from governor's office to schedule call.	Attorney-client privileged communication and attorney work product privilege (direction of counsel); Executive Privilege; common interest privilege
66	10/12/16		Monica Coury	Daniel Ruiz; Christina Corieri	Email correspondence between AHCCCS employee and employee from governor's office to schedule call.	Attorney-client privileged communication and attorney work product privilege (direction of counsel); Executive Privilege

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66	10/12/16		Beth Kohler	Christina Corier; Daniel Ruiz; Matt Devlin; Kate King	Email correspondence between AHCCCS employees, AHCCCS counsel, and counsel from the governor's office regarding media request for information about transgender health coverage and advice of AHCCCS counsel	Attorney-client privileged communication and attorney work product privilege (direction of counsel)
66	10/12/16		Daniel Ruiz	Beth Kohler; Christina Corieri; Matt Devlin; Kate King; Monica Coury	Email correspondence between AHCCCS employees and counsel from the governor's office regarding governor's office and counsel's advice on media request for information about transgender health coverage and advice of AHCCCS counsel	Attorney-client privileged communication and attorney work product privilege (direction of counsel); Executive Privilege
66	10/12/16		Daniel Ruiz	Beth Kohler; Christina Corieri; Matt Devlin; Kate King; Monica Coury	Email correspondence between AHCCCS employees and counsel from the governor's office affirming receipt of information provided by governor's office at advice of counsel.	Attorney-client privileged communication and attorney work product privilege (direction of counsel); Executive Privilege
67	10/13/16		Matt Devlin	Beth Kohler; Monica Coury	Email correspondence between AHCCCS counsel and AHCCCS employees providing counsel's advice on request for information about transgender health coverage.	Attorney-client privileged communication and attorney work product privilege (direction of counsel)

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68	7/28/16	SNYDER.00 0927	Suzanne Berman	Benjamin Runkle	Email correspondence between AHCCCS employees and AHCCCS counsel soliciting the advice of counsel regarding health plan's statement of compliance with Section 1557.	Attorney-client privileged communication REDACTED
68	7/29/16	SNYDER.00 0927	Benjamin Runkle	Matt Devlin	Email correspondence between AHCCCS counsel regarding health plan's statement of compliance with Section 1557.	Attorney-client privileged communication REDACTED
69	8/26/19	SNYDER.00 0931/935	Gina Relkin	Jami Snyder; Sara Salek	Email correspondence between AHCCCS employees and AHCCCS counsel describing AHCCCS rule excluding gender reassignment surgery.	Attorney-client privileged communication REDACTED
70	1/18/17		Beth Kohler	Matt Devlin; Christopher Vinyard; Elizabeth Lorenz; Sara Salek	Email correspondence between AHCCCS employees and AHCCCS counsel seeking advice of counsel related to HB 2294/gender reassignment surgery.	Attorney-client privileged communication
70	1/18/17		Matt Devlin	Beth Kohler; Christopher Vinyard; Elizabeth Lorenz; Sara Salek	Email correspondence between AHCCCS employees and AHCCCS counsel providing advice of counsel related to HB 2294/gender reassignment surgery.	Attorney-client privileged communication

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70	1/18/17		Christopher Vinyard	Beth Kohler; Matt Devlin; Eliza beth Lorenz; Sara Salek	Email correspondence between AHCCCS employees and AHCCCS counsel discussing advice of counsel related to HB 2294/gender reassignment surgery.	Attorney-client privileged communication
71	9/8/15		Suzanne Berman	Gina Relkin	Email correspondence between AHCCCS employees and AHCCCS counsel re HRT for gender reassignment.	Attorney-client privileged communication
72	10/14/15		Gina Relkin	Tom Betlach; Matt Devlin; Beth Kohler; Mike Liburdi; Christina Corieri; Monica Coury	Correspondence from AHCCCS counsel to employees and counsel of AHCCCS and Governor's Office providing counsel's summary of Section 1557.	Attorney-client privileged communication; Common Interest Privileged Communication; Attorney Work Product; Executive Privilege;
73	3/30/18		Eric Tack	Sara Salek; Heidi Capriotti	Correspondence between AHCCCS employees conferring the advice of counsel regarding media request for information on extent of Medicaid coverage for transgender youths under AHCCCS.	Attorney client privilege; attorney work product (direction of counsel)

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73	4/4/18		Jami Snyder	Gina Relkin; Heidi Capriotti	Correspondence between AHCCCS employees conferring the advice of counsel regarding media request for information on extent of Medicaid coverage for transgender youths under AHCCCS.	Attorney client privilege; attorney work product (direction of counsel)
	10/15/15			Attendees: Matt Devlin, Monica Coury, Sara Salek, Gina Relkin, Christina Corieri Optional: Tom Betlach; Beth Kohler	Meeting on or around October 15, 2015 between AHCCCS employees and AHCCCS counsel regarding changes to the coverage of the Affordable Care Act published September 2015.	Attorney-client privileged communication; Common Interest Privileged Communication; Attorney Work Product; Executive Privilege;
74	10/15/15		Gina Relkin	Matt Devlin, Monica Coury, Sara Salek, Mike Libursi, Christina Corieri Optional: Tom Betlach; Beth Kohler	Invitation to meeting on or around October 15, 2015 between AHCCCS employees and AHCCCS counsel regarding changes to the coverage of the Affordable Care Act published September 2015.	Attorney-client privileged communication; Common Interest Privileged Communication; Attorney Work Product; Executive Privilege;
75	8/10/20		Matt Devlin	Jami Snyder, Sara Salek, Shelli Silver, Kristen Challa combe	Email from AHCCCS legal counsel to AHCCCS employees conveying legal papers associated with this lawsuit, the issues associated with same, and defense counsel	Attorney-client privilege; Attorney work product (direction of counsel)

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75	8/18/20		Shelli Silver	Matt Devlin	Email from AHCCCS employee to AHCCCS legal counsel requesting guidance regarding preparation of a cost/risk analysis related to the lawsuit.	Attorney-client privilege; Attorney work product (direction of counsel)
75	8/18/20		Gina Relkin	Matt Devlin	Email between AHCCCS legal counsel regarding scope of litigation as it pertains to risk analysis.	Attorney-client privilege; Attorney work product (direction of counsel)
75	8/18/20		Jami Snyder	Matt Devlin	Email from AHCCCS employee to AHCCCS legal counsel adding Sarah Salek to the conversation related to risk analysis.	Attorney-client privilege; Attorney work product (direction of counsel)
75	8/18/20		Matt Devlin	Jami Snyder, Gina Relkin, Sara Salek, Shelli Silver, Matthew Isiogu, Kristen Challacombe	Email from AHCCCS legal counsel to AHCCCS employees providing further guidance regarding requested analysis.	Attorney-client privilege; Attorney work product (direction of counsel)
75	8/18/20		Sara Salek	Matt Devlin, Jami Snyder, Gina Relkin, Shelli Silver, Matthew Isiogu, Kristen Challacombe	Email from AHCCCS employee to AHCCCS legal counsel and AHCCCS employees confirming that the team will follow guidance from legal counsel regarding requested analysis.	Attorney-client privilege; Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
75	8/18/20		Sara Salek	John Stall	Email from AHCCCS employee to another AHCCCS employee to gather information requested by legal counsel	Attorney work product (direction of counsel)
75	8/18/20		John Stall	Sarah Salek	Email from AHCCCS employee to another AHCCCS confirming receipt of request.	Attorney work product (direction of counsel)
75	10/26/20		Sara Salek	John Stall	Email from AHCCCS employee to another AHCCCS employee following up on information requested by legal counsel	Attorney work product (direction of counsel)
75	9/8/20		John Stall		Information prepared at the request of counsel related to the lawsuit	Attorney work product (direction of counsel)
75	10/27/20		John Stall	Sarah Salek, Matthew Isiogu	Email from AHCCCS employee to another AHCCCS providing copy of information prepared at the request of legal counsel.	Attorney work product (direction of counsel)
75	10/27/20		Sara Salek	Jami Snyder	Email from AHCCCS employee to another AHCCCS conveying information prepared at the request of legal counsel	Attorney work product (direction of counsel)

Log Designation 1	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
76	01/04/21		John Stall		Information prepared at the request of counsel related to the lawsuit	Attorney work product (direction of counsel)
76	2/25/21		John Stall	Jami Snyder, Matthew Idiogu, Bret Cloniger	Email from AHCCCS employee to another AHCCCS employee conveying the information prepared at the request of counsel.	Attorney work product (direction of counsel)

EXHIBIT 10

From: Andrew Chinsky
Sent: Thursday, February 24, 2022 6:34 PM
To: David Barton
Cc: AOrr; Brent Ray
Subject: RE: Doe v. Snyder - Meet & Confer Follow-Up

David,

Thanks, we'll file our motion. We've been trying to work through this since mid-November. I disagree that "more time" is the issue.

Last question for you. Entry 75 concerns a "cost/risk analysis." Defendant testified that this "simply is an estimate of costs if we were to add a covered benefit." Tr. at 122:3-4. When asked if that was "legal risk or exposure," Defendant testified that it was "financial risk or exposure." Tr. at 140:19-21. Defendant has also suggested that cost may be a relevant consideration for the Challenged Exclusion.

Given the above, is Defendant maintaining her claim of privilege over Entry 75 and the cost/risk analysis?

Thanks,
Andrew

Andrew Chinsky
Senior Associate

T: +1 404 572 2812 | E: achinsky@kslaw.com | [Bio](#) | [vCard](#)

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From: David Barton <david@burnsbarton.com>
Sent: Thursday, February 24, 2022 12:51 PM
To: Andrew Chinsky <achinsky@kslaw.com>
Cc: AOrr <AOr@nclrights.org>; Brent Ray <bray@kslaw.com>
Subject: Re: Doe v. Snyder - Meet & Confer Follow-Up

CAUTION: MAIL FROM OUTSIDE THE FIRM

Thank you Andrew,

I've been back through the documents. There are some that we could redact to remove communications that reflect privileged advice given, or work done at the request of counsel, but by in large, I am comfortable that the documents we have identified as privileged are privileged.

And that is certainly true of the meeting that occurred with the governor's office.

If we had more time, we could perhaps work through those partial compromises, but we don't have time, so you should file your motion.

David Barton

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BurnsBarton

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On Feb 24, 2022, at 7:47 AM, Andrew Chinsky <achinsky@kslaw.com> wrote:

David,

Following up on my emails from Friday and over the weekend, it is now Thursday, and we still haven't heard from you on this. Our motion to compel is due Monday. Unless we hear otherwise, we must assume that Defendant has not agreed to fully identify the relevant meetings with the Governor's office or produce any of the documents we challenged. Thus, our motion to compel will encompass all of these issues, along with answers to the questions posed to Dr. Salek which you instructed her not to answer. For our LRCiv 7.2(j)-(k) statement, we will tell the Court that, after consultation and sincere efforts, we have been unable to satisfactorily resolve these issues.

Thanks,
Andrew

Andrew Chinsky
Senior Associate

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From: Andrew Chinsky
Sent: Sunday, February 20, 2022 3:53 PM
To: David Barton <david@burnsbarton.com>
Cc: AOrr <AOrri@nclrights.org>; Brent Ray <bray@kslaw.com>
Subject: RE: Doe v. Snyder - Meet & Confer Follow-Up

David,

In addition to the January 18, 2017 email I noted immediately below, I wanted to remind you that there are also multiple other communications logged on the Governor's privilege log in *Toomey* between Director Snyder and Christina Corieri that do not appear on your privilege log in our case. See *Toomey*, D.E. 202-3, at p. 76 of 193. Again, we raised this issue in our initial letter to you, but these communications still have not been disclosed to us despite the fact that we know they exist. We will seek these communications in our motion as well.

Thanks,
Andrew

Andrew Chinsky
Senior Associate

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From: Andrew Chinsky
Sent: Saturday, February 19, 2022 11:20 AM
To: David Barton <david@burnsbarton.com>
Cc: AOrr <AOrri@nclrights.org>; Brent Ray <bray@kslaw.com>
Subject: RE: Doe v. Snyder - Meet & Confer Follow-Up

David,

As you consider our email below, we have one other outstanding item that we addressed in our November 16 letter to you but has not been resolved. It appears to us that there are additional materials responsive to our discovery requests that have been neither produced nor included on your privilege log. Specifically, Ms. Corieri pointed to the following communication in her declaration attached to the Governor's opposition to the motion to compel in the *Toomey* case:

<image002.jpg>

We do not see any January 18, 2017, communication on Defendant's privilege log. Nor do we see this communication in Defendant's production. Please advise as to your position on this communication and confirm whether there are any other communications Defendant is withholding that are not on the privilege log. If we cannot get resolution on this item, we intend to include this issue in our motion to compel.

Thanks,
Andrew

Andrew Chinsky
Senior Associate

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From: Andrew Chinsky
Sent: Friday, February 18, 2022 6:33 PM
To: David Barton <david@burnsbarton.com>
Cc: AOrr <AOr@nclrights.org>; Brent Ray <bray@kslaw.com>
Subject: RE: Doe v. Snyder - Meet & Confer Follow-Up

David,

Following up on our conversation of February 16, we have reviewed your proposal below. As I said to you over the phone, we do not see how waiver is relevant to our dispute. We are asking Defendant to produce documents that Defendant previously withheld as privileged, but which we do not believe are actually privileged based on the description you provided in the log. We are not asking Defendant to selectively waive privilege on any documents. If it is your position that all 41 documents you identified are actually privileged, then we can take those 41 documents to Judge Rash, and it will be your burden to sustain your claim of privilege to the Court.

Although we think it entirely unnecessary, if it would be helpful, we will agree as follows: **Defendant is withdrawing her claim of privilege on certain documents that were previously logged as privilege because, upon further review, these documents are not privileged. Plaintiff agrees that the mere production of these documents does not waive Defendant's privilege over documents and communications that are actually privileged.**

Unfortunately, we are basically out of time to continue our negotiations, so we'd ask that you let us know by COB on Wednesday, February 23, if this stipulation is acceptable to you and, if so, the documents on which Defendant is withdrawing her claim of privilege. We would like to narrow the issues and really focus on the documents that are truly privileged, and we are confident that the record will reflect our good faith efforts to do so.

To be clear, before seeing the documents, we cannot promise not to seek further discovery based on the content therein. I don't think this is what you are asking of us, but we want to make that clear. For example, if it appears that one of the newly-disclosed emails is missing an attachment, we could surely seek that attachment in discovery. As another example, if we learn about new meetings or new people involved in the subject matter of this case, we could surely ask about those issues in a deposition. But again, this isn't a waiver issue. This is simply seeking additional discovery about non-privileged information.

Finally, we don't need to stipulate as to whether the documents are designated confidential or attorneys' eyes only before the documents are produced. That's an entirely separate issue and is covered by the protective order.

Thanks,
Andrew

Andrew Chinsky
Senior Associate

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From: David Barton <david@burnsbarton.com>
Sent: Wednesday, February 16, 2022 3:55 PM
To: Andrew Chinsky <achinsky@kslaw.com>
Cc: AOrr <AOrri@nclrights.org>; Brent Ray <bray@kslaw.com>
Subject: Re: Doe v. Snyder - Meet & Confer Follow-Up

CAUTION: MAIL FROM OUTSIDE THE FIRM

Andrew,

I need to review this stipulation and proposal with my client. The GC is out of town this week. But I want to keep the ball rolling, so, with the right to make adjustments to this proposal, here it is:

AHCCCS will agree to produce most of the 41 documents you have challenged. In doing so, it will require the following stipulations:

1. The production will not be construed as a general waiver of any privilege that exists between AHCCCS and its attorneys, and AHCCCS and the governor’s office (including its attorneys), that protects such communications from disclosure - rather these documents are provided as a compromise to avoid litigation related to your challenge to our assertion of privilege;
2. None of the lawyers identified in the documents or meetings will be questioned about the document or meeting - nor will a lawyer become a witness in this case;
3. No witness will be asked to explain or comment about the legal advice or recommendations that may be referenced or suggested in the document or meeting;
4. No witness will be asked to explain or comment about their views related to the legal questions that may have been the subject of the document or meeting; and
5. The documents will be identified as “attorney eyes only” under our Protective Order and may not be shared with anyone other than counsel in this case. Specifically, neither the document, the facts described or inferred in those documents, the advice provided or suggested by the documents, or the meetings identified in the documents may be shared with anyone other than counsel for JD, including anyone associated with the Toomey case, nor may our production of these documents be used for any purpose or shared with any attorney who is also acting as an attorney in the Toomey case.

If you can agree to these stipulations, we will produce all of the documents you have identified in your spreadsheet with the exception of the following:

52	9/29/16	Tom Betlach	Gina Relkin; Matt Devlin; Beth Kohler	Email correspondence between AHCCCS employees and AHCCCS counsel regarding news article about transgender services.	Attorney-client privileged communication
52	9/30/16	Gina Relkin	Tom Betlach; Matt Devlin; Beth Kohler	Email correspondence between AHCCCS employees and AHCCCS counsel regarding news article about transgender services.	Attorney-client privileged communication
56	2/17/18	Matt Devlin	Sara Salek; Gina Relkin	Email correspondence between AHCCCS counsel and AHCCCS employee advising employees of counsel’s position on agency’s next steps regarding ALJ’s decision about beneficiary coverage.	Attorney-client privileged communication
63	6/22/18	SNYDER.001259-1265 Gina Relkin	Sara Salek; Jakenna Lebsack	Email correspondence from AHCCCS counsel to AHCCCS employees providing further advice of counsel regarding public query of AHCCCS’s transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED
73	4/4/18	Jami Snyder	Gina Relkin; Heidi Capriotti	Correspondence between AHCCCS employees conferring the advice of counsel regarding media request for information on extent of Medicaid coverage for transgender youths under AHCCCS.	Attorney client privilege; attorney work product (direction of counsel)

If we have not already done

so, we will produce the 4/3 email from Sara Salek to Heidi Capriotti and the 4/4 email from Heidi Capriotti to Jami Snyder - but not the 4/4 email from Ms. Snyder to Gina Relkin and Heidi Capriotti.

74 (and related meeting content)

10/15/15

Gina Relkin

Matt Devlin, Monica Coury, Sara Salek, Mike Libursi, Christina Corieri

Optional: Tom Betlach; Beth Kohler

Invitation to meeting on or around October 15, 2015 between AHCCCS employees and AHCCCS counsel regarding changes to the coverage of the Affordable Care Act published September 2015.

Attorney-client privileged communication; Common Interest Privileged Communication; Attorney Work Product; Executive Privilege;

David Barton

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On Feb 15, 2022, at 10:49 AM, David Barton <david@burnsbarton.com> wrote:

Andrew,

I'm still digging out after yesterday's deposition. I'm happy to put together a stipulation, but I may not have time to get to it before we are scheduled to talk today.

Let's put off our call for a day until I can put something in writing. In doing so, I'll let you know exactly what documents we are willing to disclose - and which we believe must remain protected. I think that might be very helpful.

I'll get you that stipulation by noon tomorrow if you want to set up our call for Wednesday afternoon.

David Barton

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On Feb 14, 2022, at 10:14 AM, Andrew Chinsky <achinsky@kslaw.com> wrote:

David,

I know we are scheduled to speak tomorrow to follow up on last week's meet and confer, but you mentioned some kind of stipulation under which your client might produce most of the documents listed on the privilege log that we have challenged.

Is it possible for you to put your proposed stipulation in writing so we can review it before we speak tomorrow? I think it would be most productive to see exactly what you had in mind so that we can comment or discuss as needed.

Thanks,
Andrew

Andrew Chinsky

Senior Associate

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EXHIBIT 11

Toomey v. State of Arizona, et al.
Amended and Supplemental Privilege Log of the Office of Governor Douglas A. Ducey
Re: Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

Document Date	Document Type	Author/Sender	Recipients	Subject	Privilege Assertion	Additional Bases for Withholding
5/11/2015	Email Correspondence and Attachments	Gina Relkin	Mike Liburdi, Matt Devlin, Monica Coury	Public Records Requests	Attorney-Client Privilege; Common Interest Privilege	Irrelevant ¹
6/17/2015	Email Correspondence and Attachments	Gerrie Marks	Christina Corieri	Healthcare Plans	Executive Communications Privilege ²	Irrelevant
10/14/2015	Email Correspondence and Attachment	Gina Relkin	Christina Corieri, Tom Betlach, Beth Kohler, Monica Coury, Mike Liburdi, Matt Devlin	Affordable Care Act	Attorney-Client Privilege; Attorney Work Product; Executive Communications Privilege; Common Interest Privilege	Irrelevant
6/8/2016	Email Correspondence	Dawn Northup	John Fry, Nicole Ong Colyer, Mike Liburdi	Recent Litigation	Attorney-Client Privilege; Executive Communications Privilege; Common Interest Privilege	Irrelevant
6/8/2016	Email Correspondence	Nicole Ong Colyer	Dawn Northup, John Fry, Mike Liburdi	Recent Litigation	Attorney-Client Privilege; Executive Communications Privilege; Common Interest Privilege	Irrelevant
8/20/2016	Email Correspondence and Attachment	Dominic Draye	Mike Liburdi, John Lopez, Rusty Crandall	Potential Litigation	Attorney-Client Privilege; Attorney Work-Product	Irrelevant
8/26/2016	Email Correspondence and Attachment	Dominic Draye	Mike Liburdi	Potential Litigation	Attorney-Client Privilege; Executive Communications Privilege	Irrelevant

¹ Documents bearing an “Irrelevant” notation are technically responsive to the broad scope of the Subpoena, but not relevant to the claims and defenses the Governor’s Office understands have been asserted in *Russell B. Toomey v. State of Arizona, et al.*, United States District Court for the District of Arizona, Case No. CV 19-0035-TUC-RM (LAB) (concerning the self-funded health plan provided to employees of the State of Arizona).

² For documents bearing an “Executive Communications Privilege” notation, the Governor’s Office has asserted the executive communications privilege and/or deliberative process privilege, both of which are forms of executive privilege. At minimum, if the Court concludes an executive communications privilege does not apply to the documents, the deliberative process privilege applies.

Document Date	Document Type	Author/Sender	Recipients	Subject	Privilege Assertion	Additional Bases for Withholding
9/1/2016	Email Correspondence and Attachment	Kathryn Hackett King	Christina Corieri	Potential Litigation	Attorney-Client Privilege; Executive Communications Privilege	Irrelevant
9/12/2016	Email Correspondence and Attachment	Kathryn Hackett King	Mike Liburdi	Potential Litigation	Attorney-Client Privilege; Executive Communications Privilege	Irrelevant
10/12/2016	Email Correspondence	Christina Corieri	Daniel Scarpinato, Mike Liburdi	Media Response	Attorney-Client Privilege	Irrelevant
10/12/2016	Email Correspondence	Mike Liburdi	Daniel Scarpinato, Christina Corieri	Media Response	Attorney-Client Privilege	Irrelevant
10/12/2016	Email Correspondence	Monica Coury	Christina Corieri, Daniel Ruiz, Kathryn Hackett King, Matt Devlin, Beth Kohler	Media Response	Attorney-Client Privilege; Common Interest Privilege	Irrelevant
10/12/2016	Email Correspondence	Beth Kohler	Monica Coury, Christina Corieri, Daniel Ruiz, Matt Devlin, Kathryn Hackett King	Media Response	Attorney-Client Privilege; Common Interest Privilege	Irrelevant
10/12/2016	Email Correspondence	Kathryn Hackett King	Mike Liburdi, Christina Corieri, Daniel Ruiz	Media Response	Attorney-Client Privilege	Irrelevant
10/12/2016	Email Correspondence	Daniel Ruiz	Kathryn Hackett King, Mike Liburdi, Christina Corieri, Daniel Scarpinato	Media Response	Attorney-Client Privilege	Irrelevant
10/12/2016	Email Correspondence	Mike Liburdi	Daniel Ruiz, Christina Corieri, Daniel Scarpinato, Kathryn Hackett King	Media Response	Attorney-Client Privilege	Irrelevant
10/13/2016	Email Correspondence	Kathryn Hackett King	Mike Liburdi, Christina Corieri, Daniel Ruiz, Daniel Scarpinato	Media Response	Attorney-Client Privilege	Irrelevant
10/13/2016	Email Correspondence	Daniel Scarpinato	Mike Liburdi, Kathryn Hackett King, Christina Corieri, Daniel Ruiz	Media Response	Attorney-Client Privilege	Irrelevant
10/13/2016	Email Correspondence	Daniel Ruiz	Mike Liburdi, Kathryn Hackett King, Daniel Scarpinato, Christina Corieri	Media Response	Attorney-Client Privilege	Irrelevant

Document Date	Document Type	Author/Sender	Recipients	Subject	Privilege Assertion	Additional Bases for Withholding
10/13/2016	Email Correspondence	Christina Corieri	Mike Liburdi, Kathryn Hackett King, Daniel Scarpinato, Daniel Ruiz	Media Response	Attorney-Client Privilege	Irrelevant
10/13/2016	Email Correspondence	Christina Corieri	Danny Seiden	Forwarding attorney-client communication with M. Liburdi and K. King re: Media Response	Attorney-Client Privilege	Irrelevant
10/13/2016	Email Correspondence	Daniel Scarpinato	Mike Liburdi, Kathryn Hackett King, Daniel Ruiz, Christina Corieri	Media Response	Attorney-Client Privilege	Irrelevant
10/13/2016	Email Correspondence	Daniel Ruiz	Beth Kohler, Monica Coury, Christina Corieri, Kathryn Hackett King, Matt Devlin	Media Response	Attorney-Client Privilege; Common Interest Privilege	Irrelevant
10/13/2016	Email Correspondence	Monica Coury	Daniel Ruiz, Beth Kohler, Christina Corieri, Kathryn Hackett King, Matt Devlin	Media Response	Attorney-Client Privilege; Common Interest Privilege	Irrelevant
10/14/2016	Email Correspondence and Attachment	Dominic Draye	Mike Liburdi	Potential Litigation	Attorney-Client Privilege; Executive Communications Privilege	Irrelevant
10/18/2016	Email Correspondence and Attachment	Michael Bailey	Mike Liburdi	Recent Litigation	Attorney-Client Privilege	Irrelevant
11/25/2016	Email Correspondence	Marie Isaacson	Christina Corieri, Nicole Ong Colyer	Affordable Care Act	Attorney-Client Privilege; Executive Communications Privilege; Common Interest Privilege	Already Produced by the State Defendants per Court Order
11/28/2016	Email Correspondence	Christina Corieri	Mike Liburdi	Affordable Care Act	Attorney-Client Privilege; Executive Communications Privilege	
11/28/2016	Email Correspondence	Christina Corieri	Marie Isaacson, Nicole Ong Colyer	Affordable Care Act	Attorney-Client Privilege; Executive Communications Privilege; Common Interest Privilege	Already Produced by the State Defendants per Court Order

Document Date	Document Type	Author/Sender	Recipients	Subject	Privilege Assertion	Additional Bases for Withholding
11/28/2016	Email Correspondence	Marie Isaacson	Christina Corieri	Affordable Care Act	Executive Communications Privilege	Already Produced by the State Defendants per Court Order
12/14/2016	Email Correspondence	Marie Isaacson	Christina Corieri	Affordable Care Act	Executive Communications Privilege	Already Produced by the State Defendants per Court Order
12/15/2016	Email Correspondence	Christina Corieri	Marie Isaacson	Affordable Care Act	Executive Communications Privilege	Already Produced by the State Defendants per Court Order
12/15/2016	Email Correspondence	Marie Isaacson	Christina Corieri, Scott Bender, Nicole Ong Colyer	Affordable Care Act	Attorney-Client Privilege; Executive Communications Privilege; Common Interest Privilege	Already Produced by the State Defendants per Court Order
1/1/2017	Email Correspondence and Attachment	Rusty Crandell	Mike Liburdi, Dominic Draye	Recent Litigation	Attorney-Client Privilege	Irrelevant
1/17/2017	Email Correspondence and Attachment	Art Harding	Christina Corieri, Tim Roemer	Department of Corrections	Executive Communications Privilege	Irrelevant
1/18/2017	Email Correspondence	Christopher Vinyard	Christina Corieri	Administrative Code	Executive Communications Privilege	Irrelevant
1/22/2017	Email Correspondence	Katie Fischer	Gretchen Conger, Daniel Seiden	House Bill	Executive Communications Privilege	Irrelevant
1/23/2017	Email Correspondence	Gretchen Conger	Katie Fischer, Daniel Seiden	House Bill	Executive Communications Privilege	Irrelevant
1/23/2017	Email Correspondence	Katie Fischer	Gretchen Conger, Daniel Seiden	House Bill	Executive Communications Privilege	Irrelevant
1/23/2017	Email Correspondence	Danny Seiden	Gretchen Conger, Christina Corieri, Katie Fischer	Proposed Legislation	Executive Communications Privilege	Irrelevant
1/23/2017	Email Correspondence	Gretchen Conger	Katie Fischer, Daniel Seiden	Proposed Legislation	Executive Communications Privilege	Irrelevant
1/23/2017	Email Correspondence	Christina Corieri	Daniel Seiden, Gretchen Conger, Katie Fischer	Proposed Legislation	Executive Communications Privilege	Irrelevant

Document Date	Document Type	Author/Sender	Recipients	Subject	Privilege Assertion	Additional Bases for Withholding
1/24/2017	Email Correspondence	Aaron Favreau	Christina Corieri	Proposed Legislation	Executive Communications Privilege	Irrelevant
1/24/2017	Email Correspondence	Christina Corieri	Aaron Favreau	Proposed Legislation	Executive Communications Privilege	Irrelevant
1/25/2017	Email Correspondence	Tim Roemer	Christina Corieri	Proposed Legislation	Executive Communications Privilege	Irrelevant
1/25/2017	Email Correspondence	Art Harding	Gretchen Conger, Katie Fischer, Tim Roemer	Proposed Legislation	Executive Communications Privilege	Irrelevant
1/25/2017	Email Correspondence	Art Harding	Gretchen Conger, Katie Fischer, Tim Roemer	Proposed Legislation	Executive Communications Privilege	Irrelevant
1/25/2017	Email Correspondence	Gretchen Conger	Art Harding, Katie Fischer, Tim Roemer	Proposed Legislation	Executive Communications Privilege	Irrelevant
1/24/2019	Email Correspondence	Patrick Ptak	Gilbert Davidson, Anni Foster, Nicole Colyer, Daniel Scarpinato, Daniel Ruiz, Gretchen Conger, Megan Rose	Toomey v. State of AZ, et al.	Attorney Client Privilege; Common Interest Privilege	
1/24/2019	Email Correspondence	Anni Foster	Patrick Ptak, Gilbert Davidson, Nicole Colyer, Daniel Scarpinato, Daniel Ruiz, Gretchen Conger, Megan Rose, Nicole Sornsin	Toomey v. State of AZ, et al.	Attorney Client Privilege; Common Interest Privilege	
1/24/2019	Email Correspondence	Dawn Wallace	Anni Foster, Gilbert Davidson, Daniel Scarpinato, Daniel Ruiz, Patrick Ptak, Gretchen Conger, Katie Fischer	Toomey v. State of AZ, et al.	Attorney Client Privilege	
1/24/2019	Email Correspondence	Gretchen Conger	Anni Foster, Patrick Ptak, Gilbert Davidson, Nicole Colyer, Daniel Scarpinato, Daniel Ruiz, Megan Rose, Nicole Sornsin	Toomey v. State of AZ, et al.	Attorney Client Privilege; Common Interest Privilege	
1/24/2019	Email Correspondence	Daniel Scarpinato	Patrick Ptak, Gilbert Davidson, Anni Foster, Nicole Colyer, Daniel Ruiz, Gretchen Conger, Megan Rose	Toomey v. State of AZ, et al.	Attorney Client Privilege; Common Interest Privilege	
2/6/2019	Email Correspondence and Attachment	Nicole Colyer	Christina Corieri	Toomey v. State of AZ, et al.	Attorney-Client Privilege	

Document Date	Document Type	Author/Sender	Recipients	Subject	Privilege Assertion	Additional Bases for Withholding
6/26/2019	Email Correspondence and Attachment	Anni Foster	Daniel Scarpinato, Gretchen Conger, Patrick Ptak, Daniel Ruiz, Gilbert Davidson, Katie Fischer, Christina Corieri	Toomey v. State of AZ, et al.	Attorney-Client Privilege	
10/1/2019	Email Correspondence and Attachment	Nicole Colyer	Christina Corieri, Anni Foster	Toomey v. State of AZ, et al.	Attorney-Client Privilege	
5/21/2020	Email Correspondence	Anni Foster	Daniel Scarpinato, Gretchen Conger, Patrick Ptak, Katie Fischer, Daniel Ruiz	Recent Court Ruling	Attorney-Client Privilege; Executive Communications Privilege	
5/28/2020	Email Correspondence	Laura Raymond	Anni Foster	Recent Court Ruling	Attorney-Client Privilege; Executive Communications Privilege	Irrelevant
5/28/2020	Email Correspondence	Anni Foster	Laura Raymond, Gretchen Conger, Hannalee Donoso, Alyssa Salvaggio	Recent Court Ruling	Attorney-Client Privilege; Executive Communications Privilege	Irrelevant
8/6/2020	Email Correspondence	Jami Snyder	Christina Corieri	Healthcare Coverage	Executive Communications Privilege	Irrelevant
8/6/2020	Email Correspondence	Anni Foster	Christina Corieri	DH v Snyder	Attorney-Client Privilege; Executive Communications Privilege	Irrelevant
8/6/2020	Email Correspondence	Jami Snyder	Christina Corieri	Administrative Code	Executive Communications Privilege	Irrelevant
9/28/2020	Email Correspondence and Attachments	Matthew Devlin	Anni Foster, Christina Corieri, Nicole Sornsin	DH v Snyder	Attorney-Client Privilege; Attorney Work Product; Common Interest Privilege	Irrelevant
9/28/2020	Email Correspondence	Anni Foster	Matthew Devlin, Christina Corieri, Nicole Sornsin	DH v Snyder	Attorney-Client Privilege; Attorney Work Product; Common Interest Privilege	Irrelevant
9/28/2020	Email Correspondence	Matthew Devlin	Anni Foster, Christina Corieri, Nicole Sornsin	DH v Snyder	Attorney-Client Privilege; Attorney Work Product; Common Interest Privilege	Irrelevant

Document Date	Document Type	Author/Sender	Recipients	Subject	Privilege Assertion	Additional Bases for Withholding
9/28/2020	Email Correspondence	Nicole Sornsin	Matthew Devlin, Kimberly Suciu, Anni Foster, Christina Corieri	DH v Snyder	Attorney-Client Privilege; Attorney Work Product; Common Interest Privilege	Irrelevant
9/28/2020	Email Correspondence	Anni Foster	Matthew Devlin, Christina Corieri, Nicole Sornsin	DH v Snyder	Attorney-Client Privilege; Attorney Work Product; Common Interest Privilege	Irrelevant

EXHIBIT 12

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 8 Governor Douglas A. Ducey

9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF ARIZONA**

12 Russell B. Toomey,
 13
 14 Plaintiff,
 15 vs.
 16 State of Arizona; The Arizona Board of Regents,
 17 D/B/A University of Arizona, a governmental
 18 body of the State of Arizona; et al.,
 19 Defendants.

Case No. 4:19-CV-00035-RM-LAB

**DECLARATION OF CHRISTINA
 CORIERI**

21 I, Christina Corieri, submit this declaration under penalty of perjury pursuant to 28 U.S.C. §
 22 1746 and declare as follows:

23 1. I currently serve as a Senior Policy Advisor for The Office of Governor Douglas A.
 24 Ducey (the “Governor’s Office”). I have served in this role since September 2016. Immediately
 25 prior to becoming a Senior Policy Advisor, I served as the Health and Human Services Policy
 26 Advisor for the Governor’s Office from January 2015 to August 2016. All actions described below

1 were taken in my capacity as a policy advisor for the Governor's Office. I submit this declaration in
2 connection with the Governor's Office's Response in Opposition to Plaintiff Russell B. Toomey's
3 Motion for Entry of an Order Compelling the Production of Documents (the "Motion to Compel")
4 in the above-captioned case.

5 2. This declaration is based on my personal knowledge, information available to me in
6 the performance of my official duties, my knowledge of the issues being litigated in the above-
7 captioned case, and my personal review of each of the 17 documents at issue in the Motion to
8 Compel.

9 3. Pursuant to Arizona law, the Governor is charged with, among other responsibilities,
10 "transacting all executive business with the officers of the government," overseeing executive state
11 agencies, ensuring that the laws are "faithfully executed," and signing or vetoing legislation. In
12 execution of these Constitutional and statutory duties, the Governor's Office monitors and analyzes
13 bills introduced during the legislative session, and communicates with and collects information and
14 opinions from individual executive officers and state agencies regarding State policy and issues of
15 concern. Further, the Governor's Office works with these officers and agencies to develop and
16 evaluate policy alternatives, make informed decisions, and formulate and carry out those executive
17 decisions.

18 4. My responsibilities as a Health and Human Services Policy Advisor and Senior Policy
19 Advisor include, among other duties, assisting and reporting directly to the Governor in the
20 development of policies and acting as a liaison with the Arizona Legislature and executive state
21 agencies. In carrying out my responsibilities, I seek candid advice and input, explore policy
22 alternatives and assist the Governor's Office in making informed, considered decisions. The
23 Governor's Office vigilantly protects the confidentiality of its decision-making process and how
24 policies are shaped and formulated. This confidentiality is essential to obtaining candid input,
25 provides freedom to explore alternatives, and enhances decision-making.

26 5. While not a party to the above-captioned case, the Governor's Office has produced
27 non-privileged documents responsive to Plaintiff's subpoena request for documents containing any
28 reference to any surgery to treat gender dysphoria. The Governor's Office also reviewed and

1 withheld certain technically responsive documents on privilege grounds. In our view, the 17
2 documents at issue in the Motion to Compel (the “Documents”) are confidential and fall within the
3 executive communications privilege and the deliberative process privilege.

4 6. I have personally reviewed each of the Documents. They do not discuss or relate to
5 the decision regarding the Exclusion at issue in the Plaintiff’s Complaint. While I am unable to
6 specifically describe the content of each Document without waiving the privileges asserted, I can
7 testify that, in general, the Documents relate to the state Affordable Care Act benchmark plan,
8 healthcare available through the Arizona Health Care Cost Containment System (“AHCCCS”),
9 healthcare available through the Arizona Department of Corrections (“ADC”), or proposed
10 legislation relating to healthcare. The Documents do not relate to the Exclusion decision at issue in
11 this action.

12 7. The Documents reflect confidential communications between and with senior
13 advisors in the Governor’s Office, made in the course and performance of their duties in advising
14 the Governor. The Documents relate to policy, regulatory, legislative, and budgetary matters of
15 interest to the Governor’s Office, in furtherance of the Governor’s decision-making. The
16 Documents, and the communications of the type reflected in the Documents, foster sound, candid
17 and informed deliberations, explanations of alternatives, decision-making, and policy formulation.

18 8. The Documents are not, on their face, directed to the Governor. However, each of
19 the Documents concerns an area of gubernatorial decision-making or policy and assists policy
20 advisors in advising the Governor.

21 9. The public interest and the efficient and effective operation of the Governor’s Office
22 would be adversely affected by disclosure of the Documents. Disclosure would jeopardize the
23 quality of the Governor’s Office’s decision-making regarding State policy and proposed legislation.
24 If the confidentiality of the discussions occurring among senior personnel of the Governor’s Office
25 and the State’s executive agencies in formulating policy is not maintained, it would severely impair
26 our ability to have the frank discussion of legal and policy matters necessary to enhance and
27 improve the quality of decisions by the Governor’s Office in the exercise of the Governor’s
28 Constitutional and statutory duties. Such discussions may include, for example, information

1 concerning the benefits, risks and consequences of a proposed policy. The benefits, risks and
2 consequences, in turn, need to be balanced with the costs and legal implications of such policies.
3 The details of such discussions could at times shock the conscience by discussing such sensitive
4 topics as cuts in funding to essential services or prioritizing funding that is not sufficient to cover
5 every expenditure that every citizen desires. These discussions result in decisions that are in the best
6 interests of all Arizonans and are necessary to govern effectively.

7 10. The Governor's Office appropriately and consistently asserts the executive
8 communications privilege and the deliberative process privilege when necessary in other litigation or
9 in response to requests for information and relies on these privileges in carrying out the Governor's
10 Constitutional and statutory duties.

11 11. The Documents, which are enumerated in the Motion to Compel at footnote one, are
12 described in more detail as follows:

13
14 (1) June 17, 2015 email communication between the director of the Arizona
15 Department of Insurance and me attaching deliverables and due diligence materials
16 regarding healthcare coverage and exclusions in various options for the state's
17 selection of an Affordable Care Act benchmark plan. As set forth above, this
18 communication does not discuss or relate to the decision regarding the Exclusion at
19 issue in this action. The information contained in the email and attachments was
20 provided to me in the course and performance of my duties in advising the Governor
21 regarding healthcare policy for the state, specifically, which plan the state should use
22 for other plans to benchmark their plans against for purposes of the Affordable Care
23 Act. This email had nothing to do with decisions about the state's employee health
24 benefits plan. The information was predecisional, as it preceded the selection of an
25 Affordable Care Act benchmark plan. This communication and the attached
26 materials were also deliberative as they were made in the course of preparing to
27 advise the Governor and to assist in the Governor's Office's formulation of
28 healthcare policy.

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(2) January 17, 2017 email communication and attachment between the Legislative Liaison at ADC and me regarding ADC's healthcare coverage for inmates. The communication does not address the Exclusion challenged by Plaintiff. The information contained in these documents was provided to me in the course and performance of my duties in assisting in the formulation of policy and preparing to advise the Governor regarding proposed Legislation. This information was predecisional as the Governor would ultimately be responsible for signing or vetoing the legislation if passed by the Legislature. These documents were deliberative as they were made to assist a senior policy advisor in the Governor's Office's formulation of healthcare policy and decision-making concerning the proposed legislation. They were further deliberative as they bore on policies the Governor's Office was considering regarding the proposed legislation.

(3) January 18, 2017 email communication from the Chief Legislative Liaison of AHCCCS to me regarding AHCCCS's coverage and proposed Legislation. The communication does not address the Exclusion challenged by Plaintiff. The information received was disclosed to me in the course and performance of my duties in assisting in the consideration and formulation of policy and advising the Governor regarding this proposed legislation. These documents were predecisional as the Governor would ultimately be responsible for signing or vetoing the legislation if passed by the Legislature. These documents were deliberative as they contained information designed to assist in the Governor's Office's formulation of healthcare policy and decision-making concerning the proposed legislation. They were further deliberative as they bore on the policies the Governor's Office was considering regarding the proposed legislation.

1 (4)-(6) January 22-23, 2017 email communications between the Director of Legislative
2 Affairs and the Deputy Chief of Staff of the Governor's Office relating to monitoring
3 various proposed legislation. The communications do not address the Exclusion
4 challenged by Plaintiff. These communications were between senior advisors in the
5 Governor's Office and were made in the course and performance of their duties in
6 assisting in the formulation of policy and advising the Governor regarding proposed
7 legislation that the Governor would ultimately be responsible for signing or vetoing if
8 passed by the Legislature. The communications were predecisional. They were also
9 deliberative as they were made to assist in the Governor's Office's formulation of
10 healthcare policy and decision-making concerning the proposed legislation. The
11 communications were further deliberative as they reflected preliminary assessments
12 of the significance of proposed legislation by senior advisors in the Governor's
13 Office and were made in the course of advising (or preparing to advise) the
14 Governor.

15
16 (7)-(9) January 23, 2017 internal email communications within the Governor's Office
17 between senior advisors, including me, the Deputy Chief of Staff and legislative
18 liaisons relating to proposed legislation. These communications do not address the
19 Exclusion challenged by Plaintiff. These communications were between senior
20 personnel in the Governor's Office and were made in the course and performance of
21 their duties in assisting in the formulation of policy and preparing to advise the
22 Governor regarding proposed legislation which the Governor
23 would ultimately be responsible for signing or vetoing if passed by the Legislature.
24 Accordingly these communications were predecisional. They were also deliberative
25 as they were made to assist in the Governor's Office's formulation of healthcare
26 policy and decision-making concerning the proposed legislation. These
27 communications involved internal deliberations relating to the proposed legislation,
28 reflected ongoing assessments by senior personnel in the Governor's Office of the

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significance of the bills, and were made in the course of preparing to advise the Governor.

(10)-(11) January 24, 2017 internal email communications within the Governor's Office between the Special Assistant to the Deputy Chief of Staff of the Governor's Office and me relating to proposed legislation. These communications do not address the Exclusion challenged by Plaintiff. These communications were predecisional as the Governor would ultimately be responsible for signing or vetoing the bills if passed by the Legislature. These communications were made in the course of preparing to advise the Governor regarding proposed legislation and to assist in the Governor's Office's formulation of healthcare policy. They are further deliberative as they contain the information that influenced preliminary assessments by senior personnel at the Governor's Office of the significance of the bills.

(12)-(15) January 25, 2017 email communications between the Legislative Liaison of the Arizona Department of Homeland Security and senior advisors, the Deputy Chief of Staff and legislative liaisons of the Governor's Office regarding proposed legislation. These communications do not address the Exclusion challenged by Plaintiff. These communications were predecisional as the Governor would ultimately be responsible for signing or vetoing the proposed legislation if passed by the Legislature. These communications were made in the course of preparing to advise the Governor regarding the proposed legislation. They were deliberative as they were made to assist in the Governor's Office's formulation of policy and decision-making concerning the proposed legislation and contain the preliminary assessments by the Legislative Liaison for the Governor's Office's consideration of the significance of the bills to the Governor's policy.

1 (16) August 6, 2020 email communications between the Director of AHCCCS and
2 me regarding an assessment of other states' Medicaid coverage policies. The
3 communication does not address the Exclusion challenged by Plaintiff. The
4 communication was made in the course of my duties in preparing to advise the
5 Governor and assisting in the formulation of decisions regarding policy surrounding
6 litigation separate from this case. These documents were predecisional, as they
7 preceded the policy decisions necessary in that litigation. These documents were
8 deliberative as they offer information and commentary regarding the underlying
9 subject matter, which was gathered to assist the Governor's Office in the formulation
10 of healthcare policy.

11
12 (17) August 6, 2020 email communications between the Director of AHCCCS and
13 me regarding aspects of AHCCCS's healthcare coverage. The communication does
14 not address the Exclusion challenged by Plaintiff. The information contained in the
15 communication was provided to me in the course and performance of my duties in
16 assisting policy formation and preparing to advise the Governor on decisions needed
17 regarding policy surrounding litigation separate from this case. This documents was
18 predecisional, as the communications preceded the decisions necessary in that
19 litigation. These documents were deliberative as they contained information and
20 policy the Governor's Office was considering and would employ to advise the
21 Governor and assist in the Governor's Office's formulation of policy.

22
23 I declare under the penalty of perjury that the foregoing is true and correct.

24 Executed this 17th day of June, 2021.

25 

26 CHRISTINA CORIERI

EXHIBIT 13

DOE v. SNYDER
PLAINTIFF PRIVILEGE LOG CHALLENGES

No.	Log Designation	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
1	48	8/13/2018		Julie Ambur	Susan Russo; Eric Tack; Gina Relkin; Karen Grady; Alison Lovell; Sandi Borys	Correspondence between AHCCCS employees regarding advice received from ACCCS Counsel related to state care plan and alignment with R9-31-205 provision on midwifery.	Attorney-client privileged communication; Attorney work product (direction of counsel)
2	50	4/8/2018		Heidi Capriotti	Gina Relkin; Jami Snyder; Sara Salek; Eric Tack; Elizabeth Lorenz	Email correspondence between AHCCCS employees and AHCCCS counsel discussing news outlet's publication following AHCCCS employee's provision of information at the direction of counsel regarding AHCCCS and transgender services.	Attorney-client privileged communication
3	50	4/9/2018		Eric Tack	Gina Relkin; Jami Snyder; Sara Salek; Heidi Capriotti; Elizabeth Lorenz	Email correspondence between AHCCCS employees and AHCCCS counsel discussing news outlet's publication following AHCCCS employee's provision of information at the direction of counsel regarding AHCCCS and transgender services	Attorney-client privileged communication
4	51	9/29/2016		Gina Relkin	AHCCCS Executive Management Team Listserv	Email correspondence between AHCCCS employees and AHCCCS counsel advising executive board of out-of-state Medicaid coverage for transition-related care following the effective date of Section 1557.	Attorney-client privileged communication
5	52	9/29/2016		Tom Betlach	Gina Relkin; Matt Devlin; Beth Kohler	Email correspondence between AHCCCS employees and AHCCCS counsel regarding news article about transgender services.	Attorney-client privileged communication
6	52	9/30/2016		Gina Relkin	Tom Betlach; Matt Devlin; Beth Kohler	Email correspondence between AHCCCS employees and AHCCCS counsel regarding news article about transgender services.	Attorney-client privileged communication
7	53	7/28/2016		Michal Rudnick	Beth Kohler; Sara Salek; Matt Devlin; Gina Relkin; Shelli Silver; Virginia Rountree; Monica Coury; Suzanne Berman	Email correspondence between AHCCCS employees and AHCCCS counsel regarding Colorado, DC, and Rhode Island's draft policies for Medicaid coverage following effective date of Section 1557.	Attorney-client privileged communication and Work Product privileged (direction of counsel)
8	54	7/14/2016		Benjamin Runkle	Matt Devlin; Gina Relkin	Email correspondence amongst AHCCCS counsel regarding gender reassignment coverage data in Medicaid programs.	Attorney-client privileged communication and attorney-work product
9	54	7/18/2016		Gina Relkin;	Benjamin Runkle; Matt Devlin	Email correspondence amongst AHCCCS counsel regarding gender reassignment coverage data in Medicaid programs.	Attorney-client privileged communication and attorney-work product
10	56	1/31/2018		Danielle Miller	Matt Devlin	Email correspondence between AHCCCS counsel and counsel's paralegal transmitting ALJ decision.	Attorney-client privileged communication
11	56	2/17/2018		Matt Devlin	Sara Salek; Gina Relkin	Email correspondence between AHCCCS counsel and AHCCCS employee advising employees of counsel's position on agency's next steps regarding ALJ's decision about beneficiary coverage.	Attorney-client privileged communication
12	57	8/24/2016		Michal Rudnick	Gina Relkin; Suzanne Berman; Virginia Rountree; Christina Quast; Matt Devlin; Elizabeth Carpio; Anne Dye; Benjamin Runkle	Email correspondence between AHCCCS employees and AHCCCS counsel recounting notes from small group meeting to discuss pharmacy gender edits	Attorney-client privileged communication
13	57	8/24/2016		Lori Petri	Shelli Silver	Email correspondence between AHCCCS employees conferring the advice of AHCCCS counsel on Section 1557 and pharmacy gender edits.	Attorney-client privileged communication

DOE v. SNYDER
PLAINTIFF PRIVILEGE LOG CHALLENGES

No.	Log Designation	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
14	58	7/15/2016			Michal Rudnick; Gina Relkin; Beth Kohler; Daniel Lippert; Lynn Hopkins; Shelli Silver; Virginia Rountree; Elizabeth Carpio; Anne Dye; Sharon Ormsby; Matt Devlin; Penny Ellis; Joni Dunning; Monica Coury; Paul Galdys; Craig Srsen; Sara Salek; Lauren Prole; Suzanne Berman; Lori Petre; Millie Lozano; Ben Runkle; Julie Ambur; Adam Geier; Kelli Donley; Debbie Reichow; Jakenna Lebsock; Christina Quast; Danielle Chronister; David Rudnick; Gabriella Cardenas [The above is a list of invitees to a teleconference].	Meeting between AHCCCS employees and AHCCCS counsel to discuss gender code edits and best practices for inputting data in MCO systems following ACA Section 1557.	Attorney-client privileged communication
15	59	1/20/2016		Shelli Silver	Victoria Burns; Cynthia Lane; Windy Marks; Lori Petre; Christina Quast; Debbie Reichow; Virginia Rountree	Email correspondence regarding notes of meeting between AHCCCS employees and AHCCCS counsel re gender dysphoria and gender reassignment services and coverage.	Attorney-client privileged communication and attorney-work product (direction of counsel)
16	59	1/24/2016		Debbie Reichow	Shelli Silver	Email correspondence regarding notes of meeting between AHCCCS employees and AHCCCS counsel re gender dysphoria and gender reassignment services and coverage.	Attorney-client privileged communication and attorney-work product (direction of counsel)
17	60	7/31/2016		Suzanne Berman	Matt Devlin; Gina Relkin; Michal Rudnick; Benjamin Runkle; Beth Kohler; Sara Salek; Shelli Silver; Virginia Rountree; Monica Coury	Email correspondence between AHCCCS employee and AHCCCS counsel re health plan responses to summary of Section 1557 provided by AHCCCS at direction of counsel.	Attorney-client privileged communication and attorney work product (direction of counsel)
18	63	6/22/2018	SNYDER.001259-1265	Jakenna Lebsock	Sara Salek	Email correspondence between AHCCCS employees discussing advice of counsel regarding public query of AHCCCS's transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED
19	63	6/22/2018	SNYDER.001259-1265	Sara Salek	Gina Relkin; Jakenna Lebsock	Email correspondence between AHCCCS employees and counsel responding in accordance with advice of counsel regarding public query of AHCCCS's transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED
20	63	6/22/2018	SNYDER.001259-1265	Gina Relkin	Sara Salek; Jakenna Lebsock	Email correspondence from AHCCCS counsel to AHCCCS employees providing further advice of counsel regarding public query of AHCCCS's transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED
21	63	6/23/2018	SNYDER.001259-1265	Sara Salek	Gina Relkin; Jakenna Lebsock	Email correspondence from AHCCCS employee to AHCCCS counsel seeking further advice of counsel regarding public query of AHCCCS's transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED
22	63	6/24/2018	SNYDER.001259-1265	Gina Relkin	Sara Salek; Jakenna Lebsock	Email correspondence from AHCCCS counsel to AHCCCS employees providing further advice of counsel regarding public query of AHCCCS's transgender health coverage.	Attorney-client privileged communication and attorney work product (direction of counsel) REDACTED
23	64	10/12/2016		Monica Coury	Gina Relkin; Matt Devlin; Christopher Vinyard; Kyle Sawyer; Beth Kohler; Sara Salek	Correspondence from AHCCCS employee to AHCCCS employees and counsel notifying counsel and employees of press inquiry and soliciting advice of counsel	Attorney-client privileged communication; Executive Privilege; common interest privilege

DOE v. SNYDER
PLAINTIFF PRIVILEGE LOG CHALLENGES

No.	Log Designation	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
24	65	10/12/2016		Monica Coury	Matt Devlin	Correspondence from AHCCCS employee to AHCCCS counsel soliciting advice regarding AHCCCS's response to media request for information regarding AHCCCS care coverage.	Attorney-client privilege
25	65	10/12/2016		Matt Devlin	Monica Coury	Correspondence from AHCCCS counsel providing advice on how to respond to media request for information regarding AHCCCS care coverage.	Attorney-client privilege
26	65	10/12/2016		Monica Coury	Matt Devlin	Correspondence between AHCCCS employees and AHCCCS counsel regarding counsel's advice on how to respond to media request for information regarding AHCCCS care coverage.	Attorney-client privilege
27	66	10/12/2016		Monica Coury	Gina Relkin; Matt Devlin; Christopher Vinyard; Kyle Sawyer; Beth Kohler; Sara Salek	Correspondence from AHCCCS employee to AHCCCS employees and counsel regarding advice sought from counsel and pending response to media inquiry.	Attorney-client privileged communication; Executive Privilege; common interest privilege
28	66	10/12/2016		Christina Corieri	Daniel Ruiz; Monica Coury	Email correspondence between AHCCCS employee and employee from governor's office to schedule call.	Attorney-client privileged communication and attorney work product privilege (direction of counsel); Executive Privilege; common interest privilege
29	66	10/12/2016		Monica Coury	Daniel Ruiz; Christina Corieri	Email correspondence between AHCCCS employee and employee from governor's office to schedule call.	Attorney-client privileged communication and attorney work product privilege (direction of counsel); Executive Privilege
30	66	10/12/2016		Beth Kohler	Christina Corier; Daniel Ruiz; Matt Devlin; Kate King	Email correspondence between AHCCCS employees, AHCCCS counsel, and counsel from the governor's office regarding media request for information about transgender health coverage and advice of AHCCCS counsel	Attorney-client privileged communication and attorney work product privilege (direction of counsel)
31	66	10/12/2016		Daniel Ruiz	Beth Kohler; Christina Corieri; Matt Devlin; Kate King; Monica Coury	Email correspondence between AHCCCS employees and counsel from the governor's office regarding governor's office and counsel's advice on media request for information about transgender health coverage and advice of AHCCCS counsel	Attorney-client privileged communication and attorney work product privilege (direction of counsel); Executive Privilege
32	66	10/12/2016		Daniel Ruiz	Beth Kohler; Christina Corieri; Matt Devlin; Kate King; Monica Coury	Email correspondence between AHCCCS employees and counsel from the governor's office affirming receipt of information provided by governor's office at advice of counsel.	Attorney-client privileged communication and attorney work product privilege (direction of counsel); Executive Privilege
33	67	10/13/2016		Matt Devlin	Beth Kohler; Monica Coury	Email correspondence between AHCCCS counsel and AHCCCS employees providing counsel's advice on request for information about transgender health coverage.	Attorney-client privileged communication and attorney work product privilege (direction of counsel)
34	70	1/18/2017		Beth Kohler	Matt Devlin; Christopher Vinyard; Elizabeth Lorenz; Sara Salek	Email correspondence between AHCCCS employees and AHCCCS counsel seeking advice of counsel related to HB 2294/gender reassignment surgery.	Attorney-client privileged communication

DOE v. SNYDER
PLAINTIFF PRIVILEGE LOG CHALLENGES

No.	Log Designation	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
35	70	1/18/2017		Matt Devlin	Beth Kohler; Christopher Vinyard; Elizabeth Lorenz; Sara Salek	Email correspondence between AHCCCS employees and AHCCCS counsel providing advice of counsel related to HB 2294/gender reassignment surgery.	Attorney-client privileged communication
36	70	1/18/2017		Christopher Vinyard	Beth Kohler; Matt Devlin; Elizabeth Lorenz; Sara Salek	Email correspondence between AHCCCS employees and AHCCCS counsel discussing advice of counsel related to HB 2294/gender reassignment surgery.	Attorney-client privileged communication
37	71	9/8/2015		Suzanne Berman	Gina Relkin	Email correspondence between AHCCCS employees and AHCCCS counsel re HRT for gender reassignment.	Attorney-client privileged communication
38	73	3/30/2018		Eric Tack	Sara Salek; Heidi Capriotti	Correspondence between AHCCCS employees conferring the advice of counsel regarding media request for information on extent of Medicaid coverage for transgender youths under AHCCCS.	Attorney client privilege; attorney work product (direction of counsel)
39	73	4/4/2018		Jami Snyder	Gina Relkin; Heidi Capriotti	Correspondence between AHCCCS employees conferring the advice of counsel regarding media request for information on extent of Medicaid coverage for transgender youths under AHCCCS.	Attorney client privilege; attorney work product (direction of counsel)
40	74	10/15/2015		Gina Relkin	Matt Devlin, Monica Coury, Sara Salek, Mike Libursi, Christina Corieri Optional: Tom Betlach; Beth Kohler	Invitation to meeting on or around October 15, 2015 between AHCCCS employees and AHCCCS counsel regarding changes to the coverage of the Affordable Care Act published September 2015.	Attorney-client privileged communication; Common Interest Privileged Communication; Attorney Work Product; Executive Privilege;
41		10/15/2015			Attendees: Matt Devlin, Monica Coury, Sara Salek, Gina Relkin, Christina Corieri Optional: Tom Betlach; Beth Kohler	Meeting on or around October 15, 2015 between AHCCCS employees and AHCCCS counsel regarding changes to the coverage of the Affordable Care Act published September 2015.	Attorney-client privileged communication; Common Interest Privileged Communication; Attorney Work Product; Executive Privilege;
42	75	8/10/2020		Matt Devlin	Jami Snyder, Sara Salek, Shelli Silver, Kristen Challacombe	Email from AHCCCS legal counsel to AHCCCS employees conveying legal papers associated with this lawsuit, the issues associated with same, and defense counsel	Attorney-client privilege; Attorney work product (direction of counsel)
43	75	8/18/2020		Shelli Silver	Matt Devlin	Email from AHCCCS employee to AHCCCS legal counsel requesting guidance regarding preparation of a cost/risk analysis related to the lawsuit.	Attorney-client privilege; Attorney work product (direction of counsel)
44	75	8/18/2020		Gina Relkin	Matt Devlin	Email between AHCCCS legal counsel regarding scope of litigation as it pertains to risk analysis.	Attorney-client privilege; Attorney work product (direction of counsel)
45	75	8/18/2020		Jami Snyder	Matt Devlin	Email from AHCCCS employee to AHCCCS legal counsel adding Sarah Salek to the conversation related to risk analysis.	Attorney-client privilege; Attorney work product (direction of counsel)

DOE v. SNYDER
PLAINTIFF PRIVILEGE LOG CHALLENGES

No.	Log Designation	Date Created/Sent	Bates-label, where appropriate	Author(s)	Recipient(s)	Document Description	Privilege Asserted
46	75	8/18/2020		Matt Devlin	Jami Snyder, Gina Relkin, Sara Salek, Shelli Silver, Matthew Isiogu, Kristen Challacombe	Email from AHCCCS legal counsel to AHCCCS employees providing further guidance regarding requested analysis.	Attorney-client privilege; Attorney work product (direction of counsel)
47	75	8/18/2020		Sara Salek	Matt Devlin, Jami Snyder, Gina Relkin, Shelli Silver, Matthew Isiogu, Kristen Challacombe	Email from AHCCCS employee to AHCCCS legal counsel and AHCCCS employees confirming that the team will follow guidance from legal counsel regarding requested analysis.	Attorney-client privilege; Attorney work product (direction of counsel)
48	75	8/18/2020		Sara Salek	John Stall	Email from AHCCCS employee to another AHCCCS employee to gather information requested by legal counsel	Attorney work product (direction of counsel)
49	75	8/18/2020		John Stall	Sarah Salek	Email from AHCCCS employee to another AHCCCS confirming receipt of request.	Attorney work product (direction of counsel)
50	75	10/26/2020		Sara Salek	John Stall	Email from AHCCCS employee to another AHCCCS employee following up on information requested by legal counsel	Attorney work product (direction of counsel)
51	75	9/8/2020		John Stall		Information prepared at the request of counsel related to the lawsuit	Attorney work product (direction of counsel)
52	75	10/27/2020		John Stall	Sarah Salek, Matthew Isiogu	Email from AHCCCS employee to another AHCCCS providing copy of information prepared at the request of legal counsel.	Attorney work product (direction of counsel)
53	75	10/27/2020		Sara Salek	Jami Snyder	Email from AHCCCS employee to another AHCCCS conveying information prepared at the request of legal counsel	Attorney work product (direction of counsel)

EXHIBIT 14

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

John Doe, by his guardian and next)	
friend, Susan Doe,)	
)	No. 4:20-cv-335-SHR
Plaintiff,)	
)	
vs.)	
)	
Jami Snyder, Director of the)	
Arizona Health Care Cost Containment)	
System, in her official capacity,)	
)	
Defendant.)	
_____)	(Pages 1-156)



VIDEOTAPED DEPOSITION OF JAMI SNYDER
via ZOOM VIDEOCONFERENCING
Friday, January 21, 2022
at 9:29 a.m. MT
Phoenix, Arizona

Reported by: John Fahrenwald, RPR, AZ CCR NO. 50901

1 APPEARANCES: (All parties appearing remotely):

2 FOR THE PLAINTIFFS:

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16 FOR THE DEFENDANT:

17 BY: DAVID BARTON, ESQ.
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21
22
23 ALSO PRESENT: Kasey Rogg, AHCCCS
Sylvia Linda Beckman, Paralegal
24 Shaz Hassan, Videographer

25

1 A. In-house counsel at AHCCCS. 1:55:54PM

2 Q. Okay. And what about emails or correspondence
3 related to gender reassignment surgeries?

4 A. Not that I --

5 Q. Other than with counsel? 1:56:07PM

6 A. Not that I can recall. But we were just talking
7 about this, and I receive hundreds of emails every day. I
8 don't recall any offhand.

9 Q. Okay. Have you received any emails from
10 individuals other than counsel about this litigation? 1:56:22PM

11 A. Not that I can recall offhand, but it is possible.

12 Q. Okay. Have you taken any notes related to the
13 challenged exclusion?

14 A. I have taken -- I took a few notes during our prep
15 session last Friday. 1:56:47PM

16 Q. Okay. And what about related to gender dysphoria?
17 Have you taken any notes related to gender dysphoria?

18 A. I don't know that there were notes specific to
19 gender dysphoria.

20 Q. Okay. 1:57:08PM

21 A. But to the challenged exclusion, yeah.

22 Q. Have you requested any information regarding the
23 challenged exclusion?

24 A. I have. And the information I requested was in
25 fact around that risk analysis that -- you know, exposure 1:57:26PM

1 analysis for the agency related to coverage.

1:57:30PM

2 Q. What is a risk analysis related to coverage?

3 A. At a basic level, it's simply is an estimate of
4 costs if we were to add a covered benefit.

5 Q. Okay. Has -- is -- has cost effectiveness been
6 assessed for gender reassignment surgeries?

1:57:48PM

7 MR. BARTON: Objection.

8 THE WITNESS: No. Risk analysis has been
9 conducted in terms of assessing the exposure to the agency,
10 but that's separate and distinct from an analysis of cost
11 effectiveness.

1:58:08PM

12 Q. (BY MS. HOWE:) All right. Have you idea requested
13 any information about other gender dysphoria treatment other
14 than gender reassignment surgeries?

15 A. No.

1:58:29PM

16 Q. Earlier we talked about your role with the public
17 and you had said this was one of you primary
18 responsibilities with dealing with the public.

19 Have you ever talked to community
20 organizations about gender reassignment surgeries?

1:58:56PM

21 A. No. However, I have, on a handful of occasions,
22 spoken about the litigation in the form of an update.

23 Q. Okay. And who were you giving that update to?

24 A. I can't recall offhand which groups, but we have a
25 series of groups that we regularly meet with where we'll

1:59:16PM

1 provide that sort of update on any active litigation.

1:59:24PM

2 Q. Okay. And sorry just to go back, do you remember
3 about when that risk analysis exposure was done?

4 A. I don't recall offhand.

5 Q. Was it after the start of litigation, or before?

1:59:40PM

6 A. After.

7 Q. Okay. Have you ever talked to any providers about
8 the challenged exclusion?

9 A. No.

10 Q. Have you talked to any transgender members of
11 AHCCCS about the challenged exclusion?

2:00:07PM

12 A. No.

13 Q. Have you talked to any transgender AHCCCS members
14 about gender dysphoria?

15 A. No.

2:00:21PM

16 Q. Have you ever reviewed other State Medicaid
17 policies that provide coverage for gender reassignment
18 surgeries?

19 A. No.

20 Q. Is it your opinion today that AHCCCS has assessed
21 whether gender reassignment surgeries are safe and
22 effective?

2:00:30PM

23 A. No. I would -- I would say that we have conducted
24 an initial review of the evidence, and our review
25 demonstrates that it's still an open question.

2:01:07PM

1 the legislation.

2:24:59PM

2 Q. Okay.

3 MS. HOWE: You can take that down, Shaz.
4 Okay. I only have a couple more sections to go through
5 here, but I think this might be a great time for a 10-minute
6 break if that works for you.

2:25:21PM

7 THE WITNESS: Sounds good, thank you.

8 VIDEOGRAPHER: Were off the record. The time
9 is 2:25 p.m., and we are off the record. This marks the end
10 of Media III.

2:25:34PM

11 (a break was taken from 2:25 to 2:38 p.m.)

12 VIDEOGRAPHER: The time is 2:38 p.m., and we
13 are back on the record. This marks the beginning of
14 Media IV.

15 Q. (BY MS. HOWE:) Okay. Great. Thank you.

2:38:09PM

16 Ms. Snyder, I wanted to follow up on a couple
17 things that came up earlier. And I just wanted to -- just
18 to verify this, as we are here today, that AHCCCS's rational
19 for continuing to enforce this exclusion of gender
20 reassignment surgeries is based on the surgeries not being
21 considered safe and effective; is that correct?

2:38:26PM

22 A. It's based on the fact that that there's still on
23 open question as to whether it's safe and effective.

24 Q. And is it your understanding that that question is
25 being considered at AHCCCS?

2:38:55PM

1 A. It's my understanding that Dr. Salik has conducted
2 a review of the existing literature on the matter.

2:39:01PM

3 Q. Okay. And I wanted to go back to that
4 conversation. You had said you had received a risk analysis
5 from your in-house counsel regarding the challenged
6 exclusion. Did Dr. Salik -- or, oh, I'm sorry.

2:39:22PM

7 Is that correct?

8 A. The risk analysis involved -- it was prompted by
9 in-house counsel, but involved the participation of a number
10 of people that have expertise in that sort of analysis.

2:39:40PM

11 Q. Okay. Fair enough. Thank you for that
12 clarification.

13 And the risk analysis was about providing the
14 gender reassignment surgeries; is that correct?

15 MR. BARTON: Objection.

2:39:56PM

16 THE WITNESS: It was a specifically about the
17 agency's risk or exposure if we were to provide gender
18 reassignment surgery.

19 Q. (BY MS. HOWE:) Is that legal risk or exposure?

20 MR. BARTON: Objection.

2:40:14PM

21 THE WITNESS: Financial risk or exposure.

22 Q. (BY MS. HOWE:) Okay. Did Dr. Salik review this
23 risk analysis?

24 MR. BARTON: Objection.

25 THE WITNESS: I believe she did.

2:40:29PM

1 Q. (BY MS. HOWE:) Are you aware of whether this risk
2 analysis was produced to plaintiffs in this matter or
3 plaintiff -- excuse me.

2:22:24PM

4 A. I -- I do not know.

5 MS. HOWE: David, we would just like it to go
6 on the record that we would like that produced to plaintiff.
7 It's responsive to our entire discovery requests.

2:40:43PM

8 MR. BARTON: It's on our privilege log.

9 MS. HOWE: We will follow up on that.

10 MR. BARTON: Okay.

2:41:01PM

11 MS. HOWE: Shaz, can you pull up Exhibit -- I
12 believe it's marked as Exhibit 8, but we will be mark it as
13 Exhibit 6. I'm sorry. It's Exhibit 8 in the files, but
14 we'll be marking it as Exhibit No. 6.

15 (Exhibit No. 6 was marked for identification.)

2:41:11PM

16 Q. (BY MS. HOWE:) Ms. Snyder, these are some emails
17 that were produced in response to plaintiff's discovery
18 request.

19 MS. HOWE: Shaz, can you scroll down to the
20 bottom? Just so you know, the oldest email is on the
21 bottom, so we'll -- okay, there you go -- kind of get a
22 sense for who it is.

2:41:37PM

23 Q. (BY MS. HOWE:) Ms. Snyder, are you familiar with
24 the sender of is this email, Diana Mercado?

25 A. I don't recall. Frankly, I have 1100 employees so

2:41:57PM

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CERTIFICATE OF REPORTER

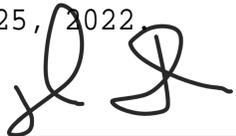
I, the undersigned, a Certified Shorthand Reporter of the State of Arizona, do hereby certify:

That the foregoing proceedings were taken before me via video conferencing at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript was requested.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: January 25, 2022


JOHN FAHRENWALD, RPR, CR NO. 50901

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

D.H., by and through his mother, Janice
Hennessy-Waller, and John Doe, by his
guardian and next friend, Susan Doe, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

Jami Snyder, Director of the Arizona Health
Care Cost Containment System, in her official
capacity,

Defendant.

No. CV-20-00335-TUC-SHR

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION TO
COMPEL**

The Court, having considered Plaintiff's motion to compel, and having found good
cause in support thereof, **IT IS ORDERED** that Plaintiff's motion to compel and request
for sanctions is **GRANTED**.

IT IS FURTHER ORDERED that:

- 1) Defendant shall provide (a) full disclosure of relevant meetings or
communications between AHCCCS and the Governor's office, including but not
limited to the meetings and communications identified in the motion to compel,
and (b) shall produce all documents and provide testimony related thereto. For
avoidance of doubt, this includes but is not limited to the 2 documents identified
in Defendant's privilege log and the documents identified by the Governor's

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office in *Toomey*, which Defendant has neither produced nor included on any privilege log in this matter;

2) Dr. Salek shall answer the questions identified in the motion to compel (with reasonable follow-up questions) concerning her evaluation of potential changes to the Challenged Exclusion independent of the Governor’s input or advice of counsel; and

3) Defendant shall immediately produce the 51 other documents identified in the motion to compel, over which Defendant has improperly redacted or withheld on the basis of attorney-client privilege or attorney work product. For the avoidance of doubt, this includes the “risk analysis” identified in the motion to compel, whether or not the document is itself on any privilege log.