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14 *Attorneys for Defendant*

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

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

22 Plaintiffs,

23 vs.

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

27 Defendant.

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

**DEFENDANT’S MOTION FOR
TIME TO CONDUCT CLASS
DISCOVERY AND RESPOND TO
PLAINTIFFS’ MOTION FOR CLASS
CERTIFICATION**

(Assigned to the Honorable Scott H.
Rash)

28 As noted in the parties’ Rule 26(f) report (Doc. 33), Defendant Jami Snyder (“Defendant”) contends discovery in this case should be bifurcated to develop a record related to the unique issues in this case on the question of class certification under Fed.R.Civ.P. 23. The specific questions that need to be addressed include whether Plaintiffs’ proposed class is so numerous that joinder of all members is impracticable; whether there are questions of law or fact common to the proposed class; whether the claims

1 of Plaintiffs are typical of the claims of the proposed class; and whether Plaintiffs will fairly
2 and adequately protect the interests of the proposed class.

3 As noted by Defendant in the 26(f) report, a trial court “must conduct a rigorous
4 analysis to determine whether the party seeking class certification has met the prerequisites
5 of Rule 23.” *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679, 690 (9th Cir.), *reh'g en*
6 *banc granted sub nom. In re Hyundai And Kia Fuel Econ. Litig.*, 897 F.3d 1003 (9th Cir.
7 2018), and *on reh'g en banc*, 926 F.3d 539 (9th Cir. 2019) (quoting *Zinser v. Accufix*
8 *Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001)). In the Ninth Circuit, a “class
9 action determination can only be decided after the district court undertakes a ‘rigorous
10 analysis’ of the prerequisites for class certification.” *ABS Entm’t, Inc. v CBS Corp.*, 908
11 F.3d 405, 427 (9th Cir. 2018) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51
12 (2011). *Kamm v. California City Dev. Co.*, 509 F.2d 205, 210 (9th Cir. 1975) (“The propriety
13 of a class action cannot be determined in some cases without discovery;” “To deny discovery
14 in [such cases] would be an abuse of discretion.”); *Doninger v. Pac. Nw. Bell, Inc.*, 564 F.2d
15 1304, 1313 (9th Cir.1977) (stating that “the better and more advisable practice for a District
16 Court to follow is to afford the litigants an opportunity to present evidence as to whether a
17 class action was maintainable” and that such an opportunity requires “enough discovery to
18 obtain the material”).

19 To develop such a record, other judges in the District of Arizona have followed the
20 bifurcated model proposed by Defendant. *See e.g.*, Scheduling Order, *Briggs v.*
21 *Montgomery*, Case No. CV-18-02684-PHX-EJM (D.Ariz. Sept. 12, 2019) (Doc. 106) (“The
22 dates and deadlines contained within this Order pertain only to the class certification phase
23 of this litigation. Discovery will be bifurcated into two phases, the first addressing issues
24 related to certification of the class. . . Subsequently, a second phase of discovery will
25 commence regarding the merits of issues raised in Plaintiffs’ Complaint.”); Rule 16
26 Scheduling Order, *Daniel v. Swift Transportation Corp.*, Case No. CV-11-01548-PHX-
27 ROS (D.Ariz. Jan. 20, 2012) (Doc. 40) (“Phase I discovery will focus upon issues to be
28

1 addressed by Plaintiffs’ anticipated Motion for Class Certification. Phase II discovery will
2 focus upon the merits of Plaintiffs’ claims.”).

3 At the pretrial conference held on December 11, 2020, this Court explained that it
4 needed to see the motion for class certification before it could properly evaluate Defendant’s
5 request for bifurcated discovery. It ordered Plaintiffs to file their motion for class
6 certification within 30 days. (Doc. 38) Plaintiffs did so on January 12, 2021 (Doc. 40) (the
7 “Motion”).

8 Plaintiffs’ proposed class is the following: “All transgender individuals under age 21
9 who are or will be enrolled in AHCCCS, have or will have a diagnosis of gender dysphoria,
10 and are seeking or will seek coverage for male chest reconstruction surgery following a
11 determination by their respective health care providers that the procedure is necessary to
12 treat their gender dysphoria. (Complaint, Doc. 1, ¶ 106). Plaintiffs’ Motion raises more
13 questions than it answers related to the Rule 23 questions Defendant and this Court must
14 now grapple with. As just one example, the Motion alleges that the numerosity requirement
15 is satisfied on the sole basis that one health care provider, Dr. Cronyn (who also filed a
16 declaration in support of this lawsuit and Plaintiffs’ motion for preliminary injunction)
17 works at a clinic that treats “approximately 250 transgender youth per year ranging from 4
18 to 21, and of those patients, more than 40 are transgender boys who receive their health
19 insurance through AHCCCS and need male chest reconstruction surgery.”¹ (Motion, Doc.
20 40, at 5:2-4)

21 This sweeping claim requires testing. In the first place, records maintained by
22 AHCCCS show very few (if any) claims for male chest reconstruction surgery have been
23 made by transgender males with gender dysphoria under the age of 21. Second, Dr.
24 Cronyn’s count of 40 includes 21-year-olds, even though Plaintiffs’ proposed class are
25 “individuals under age 21.” (Doc. 1, ¶ 106) (emphasis added). Third, the claim itself is
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27 ¹ Notably, Plaintiffs do not cite any medical or scientific reports or research to support this
28 claim. Plaintiffs provide no other evidence to support this claim of the number of
transgender males under the age of 21 who “need male chest reconstruction surgery” (Doc.
40, p.5) to treat gender dysphoria.

1 consistent with Defendant’s understanding that not all transgender males need, or will even
2 seek, chest reconstruction surgery (e.g., Plaintiffs broadly claim 250 transgender youth, but
3 only 40 “need male chest reconstruction surgery” (Doc. 40, p.5)). Thus, any claim based
4 upon the number of transgender youth treating at a particular clinic who claim a need for
5 male chest reconstruction surgery must be carefully examined and evaluated before it can
6 provide a basis of sufficient numerosity for class treatment.

7
8 As a result, Defendant has served requests for admission, interrogatories, and
9 requests for production on Plaintiffs to gather information necessary to her response (a copy
10 of that discovery is attached as Exhibit A). After obtaining the written discovery it has
11 already served, Defendant also wishes to depose a select group of witnesses, including Dr.
12 Cronyn and the two named Plaintiffs, to further explore the factual issues critical to its
13 response to the motion for class certification.

14 For this reason, Defendant moves this Court for an order allowing the parties
15 approximately 90 days (until April 26, 2021) to complete class discovery, and for an order
16 extending the time for Defendant to respond to the motion for class certification to a
17 reasonable time after that discovery concludes, or May 12, 2021.

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19 RESPECTFULLY SUBMITTED this 25th day of January, 2021.

20
21 **BURNSBARTON PLC**

22 By /s/ Kathryn Hackett King

23 David T. Barton
24 Kathryn Hackett King

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

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certifies that on January 25, 2021, I electronically transmitted the foregoing document, using the ECF System for filing and transmittal of a Notice of Electronic Filing and to ECF registrants and e-mailed a copy of the foregoing to the following:

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Attorneys for Plaintiffs and the Class

s/Carolyn Galbreath

EXHIBIT A

1 Logan T. Johnston, #009484
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14 *Attorneys for Defendant*

15 UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF ARIZONA

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

22 Plaintiffs,

23 v.

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

27 Defendant.

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

**DEFENDANT’S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO PLAINTIFF D.H.
AND PLAINTIFF JOHN DOE**

29 Defendant Jami Snyder, Director of the Arizona Health Care Cost Containment
30 System (“AHCCCS”), in her official capacity (“Defendant”), submits the following
31 Requests for Production of Documents to Plaintiff D.H. and Plaintiff John Doe
32 (“Plaintiffs”, “You” or “Your”) to be answered in writing within thirty (30) days
33 pursuant to Rule 34, Federal Rules of Civil Procedure. Defendant is issuing these

1 Requests for Production of Documents to both Plaintiffs. Defendant may later issue
2 separate, additional Requests for Production of Documents to each individual Plaintiff.

3 **INSTRUCTIONS**

4 Each request for production is addressed to, and the responses hereto are to
5 include and be based upon, documents in the possession, custody or control of Plaintiffs,
6 their agents, servants, attorneys and all other persons who have investigated or gathered
7 information and/or documents relating to the subject matter of this litigation at the
8 request of or on behalf of Plaintiffs.

9 You are requested to provide a written response, served within thirty (30) days
10 after service of this request, along with each and every document, paper, book, account,
11 letter, photograph, object or tangible thing of each category specified below.

12 You are advised that, pursuant to Rule 36(b)(2)(B), for each item or category
13 below, the response must either state that inspection and related activities will be
14 permitted as requested or state with specificity the grounds for objecting to the request,
15 including the reasons. You may state that you will produce copies of documents or of
16 electronically stored information instead of permitting inspection.

17 Delivery by mail of said documents, or true copies thereof, verified to Kathryn H.
18 King, at BurnsBarton PLC, 2201 East Camelback Road, Ste. 360, Phoenix, Arizona
19 85016 on or before the date designed for appearance will be deemed as complying with
20 this Request for Production.

21 If You object to any Request for Production, whether in whole or in part, state: (i)
22 the legal basis for each objection you raise and (ii) the factual grounds on which you rely
23 to support each objection.

24 If You have no documents responsive to a particular request within Your
25 possession, custody, or control, You should so state even in the event that You also wish
26 to assert an objection to said request.

1 simulations; specifications; statistical calculations, compilations and computations;
2 studies; summaries; surveys; tax returns, including all schedules and attachments thereto;
3 telecopies and facsimiles; telegraphs; telexes; tests and test results; travel and expense
4 reports; typewritten materials; unemployment compensation claims and related
5 materials; video tapes; voice recordings; vouchers; workers compensation claims and
6 related materials; and working papers. Every copy of a document hereinafter requested
7 which differs from the original in any respect as to the information it bears or reflects
8 shall be produced as a separate document.

9 The term “Complaint” refers to Plaintiffs’ most recent complaint on file with the
10 Court and any subsequent amendments thereto. Should Plaintiffs successfully amend
11 their complaint, they are bound under the Federal Rules of Civil Procedure to
12 supplement their responses to these Requests accordingly.

13 The term “Lawsuit” refers to the above-captioned action filed in the United States
14 District Court, District of Arizona, Case No. 4:20-cv-00335.

15 The term “statement” or “communication” includes any verbal, nonverbal, or
16 written exchange of information that was transmitted or intended to be transmitted from
17 one individual or entity to another individual or entity.

18 The term “Challenged Exclusion” refers to the benefit limitation found in Ariz.
19 Admin. Code R9-22-205-B(4)(a).

20 “AHCCCS” refers to the Arizona Health Care Cost Containment System.

21 **REQUESTS FOR PRODUCTION**

22 **REQUEST FOR PRODUCTION NO. 1:**

23 Please produce copies of all scientific studies, research, and clinical evidence that
24 identify the long-term health benefits of male chest reconstruction surgery for
25 individuals with gender dysphoria under the age of 21.

26 **PLAINTIFF D.H. RESPONSE:**

1 **PLAINTIFF JOHN DOE RESPONSE:**

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3 **REQUEST FOR PRODUCTION NO. 2:**

4 Please produce the complete medical records for Plaintiff John Doe and Plaintiff
5 D.H.

6 **PLAINTIFF D. H. RESPONSE:**

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8 **PLAINTIFF JOHN DOE RESPONSE:**

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11 **REQUEST FOR PRODUCTION NO. 3:**

12 Please produce all documents that support the assertion of Dr. Cronyn that El Rio
13 Health Center is treating more than 40 transgender boys who receive their health
14 insurance through AHCCCS and need male chest reconstruction surgery. *See* Cronyn
15 Declaration at ¶ 10. In producing these documents, please replace any personally
16 identifying information with AHCCCS member identification numbers that allow the
17 information to be verified while protecting patient privacy and mark the document
18 “confidential” pursuant to the protective order in place in this lawsuit.

19 **PLAINTIFF D.H. RESPONSE:**

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22 **PLAINTIFF JOHN DOE RESPONSE:**

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24 **REQUEST FOR PRODUCTION NO. 4:**

25 Please produce a transcript of the talk “Creating a Primary Care Medical Home
26 for Transgender Youth.” *See* Cronyn Declaration at ¶ 12.

27 **PLAINTIFF D. H. RESPONSE:**

1 **PLAINTIFF JOHN DOE RESPONSE:**

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3 **REQUEST FOR PRODUCTION NO. 5:**

4 Please produce all generally accepted scientific guidelines, research, or
5 publications that describe the criteria that should be applied to determine that male chest
6 reconstruction surgery is medically necessary for transgender males under the age of 21
7 who suffer from gender dysphoria.

8 **PLAINTIFF D. H. RESPONSE:**

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11 **PLAINTIFF JOHN DOE RESPONSE:**

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13 **REQUEST FOR PRODUCTION NO. 6:**

14 Please produce any non-privileged communications Plaintiffs and/or their
15 guardians have had with the National Center for Lesbian Rights and/or National Health
16 Law Program.

17 **PLAINTIFF D. H. RESPONSE:**

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19 **PLAINTIFF JOHN DOE RESPONSE:**

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22 **REQUEST FOR PRODUCTION NO. 7:**

23 Please produce all documents reflecting the budget the National Center for
24 Lesbian Rights and/or National Health Law Program have set aside to advance its
25 agenda on transgender interests.

26 **PLAINTIFF D. H. RESPONSE:**

1 **PLAINTIFF JOHN DOE RESPONSE:**

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3 **REQUEST FOR PRODUCTION NO. 8:**

4 Please produce any policy statements, letters, or documents by Plaintiffs, their
5 guardians, the National Center for Lesbian Rights, and/or the National Health Law
6 Program referencing the goals of this Lawsuit.

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8 **PLAINTIFF D. H. RESPONSE:**

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11 **PLAINTIFF JOHN DOE RESPONSE:**

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13 **REQUEST FOR PRODUCTION NO. 9:**

14 Please produce any studies or reports that support your contention that
15 “Transgender people ... experience disproportionately high rates of harassment and
16 discrimination in all aspects of their lives” and therefore “would be reluctant join a
17 lawsuit that might publicize their circumstances.” (Motion for Class Certification at p.
18 4)

19 **PLAINTIFF D. H. RESPONSE:**

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22 **PLAINTIFF JOHN DOE RESPONSE:**

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24 **REQUEST FOR PRODUCTION NO. 10:**

25 Please produce any documents that you relied upon, referenced, or referred to in
26 preparing your answers to Defendant’s First Set of Requests for Admission,
27 Interrogatories and Requests for Production.

1 **PLAINTIFF D. H. RESPONSE:**

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3 **PLAINTIFF JOHN DOE RESPONSE:**

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5
6 RESPECTFULLY SUBMITTED this 25th day of January, 2021.

7 **BURNSBARTON PLC**

8
9 By /s/ Kathryn Hackett King

10 David T. Barton
11 Kathryn Hackett King

12 **JOHNSTON LAW OFFICES, P.L.C.**

13 Logan T. Johnston
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15 Phoenix, Arizona 85022

16 *Attorneys for Defendant*

17
18
19 **CERTIFICATE OF SERVICE**

20
21 I hereby certify that on January 25, 2021, I sent the foregoing document by email
22 to the following CM/ECF registrants:

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26 *s/Carolyn Galbreath*

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14 *Attorneys for Defendant*

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

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

22 Plaintiffs,

23 vs.

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

27 Defendant.

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

**DEFENDANT’S FIRST SET OF
REQUESTS FOR ADMISSION TO
PLAINTIFF D.H. AND PLAINTIFF
JOHN DOE**

(Assigned to the Honorable Scott H.
Rash)

28 To: Plaintiff D.H. and Plaintiff John Doe
c/o Brent P. Ray
Andrew J. Chinsky
KING & SPALDING LLP
353 N. Clark Street, 12th Floor
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c/o Daniel C. Barr
Janet M. Howe
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Attorneys for Plaintiffs and the Class

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Defendant Jami Snyder, Director of the Arizona Health Care Cost Containment System, in her official capacity (“Defendant”), requests that Plaintiff D.H. and Plaintiff John Doe (“Plaintiffs”, “You” or “Your”) answer the following Requests for Admission in accordance with Rule 36 of the Federal Rules of Civil Procedure.

Pursuant to Rule 36, you are required to admit or deny the Requests for Admission set forth below. **You are advised that these requests will be deemed admitted unless, within thirty days after you receive these requests, you provide Defendant with a written answer or objection addressed to each request.**

A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify an answer or deny only a part of the request, you shall specify so much of it as true and qualify or deny the remainder, setting forth in detail the reasons for your denial or qualification as requested herein. You may not give lack of information or knowledge as a reason for failure to admit or deny unless you include a statement that you have made reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to admit or deny the matter in question.

If you fail to admit the truth of any matter requested herein and that matter is thereafter proved true during the trial of this lawsuit or otherwise, you may be required to pay to Defendant the reasonable expenses, including attorneys’ fees, incurred in proving the truth of the matter.

The term “Challenged Exclusion” refers to the benefit limitation found in Ariz. Admin. Code R9-22-205-B(4)(a).

“AHCCCS” refers to the Arizona Health Care Cost Containment System.

REQUESTS FOR ADMISSION

REQUEST NO. 1: Admit that not all natal females with gender dysphoria will seek male chest reconstruction surgery.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

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PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 2: Admit that male chest reconstruction surgery is not medically necessary for all natal females with gender dysphoria.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 3: Admit that the determination of whether male chest reconstruction surgery is medically necessary for a natal female with gender dysphoria is a fact-intensive inquiry that must take into account the unique circumstances of each individual. (Complaint ¶ 29).

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 4: Admit that hormone treatment is one way to alleviate the effects of gender dysphoria. (Complaint ¶ 29).

PLAINTIFF D.H. RESPONSE:

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ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 5: Admit there are no studies that identify the long-term health benefits of male chest reconstruction surgery for individuals under the age of 21 with gender dysphoria.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 6: Admit that there are no generally accepted guidelines or tests for medical professionals to apply to determine whether male chest reconstruction surgery is medically necessary for a natal female with gender dysphoria.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

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REQUEST NO. 7: Admit that childhood gender dysphoria more often than not does not persist into adulthood.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 8: Admit that adolescent gender dysphoria more often than not does not persist into adulthood.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 9: Admit that some peer-reviewed studies show that childhood gender dysphoria not does not persist into adulthood in 97% of cases.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

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REQUEST NO. 10: Admit that it is a generally accepted medical fact that the brains of individuals under the age of 21 are still developing.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 11: Admit that Plaintiff D.H. suffered from “significant psychological distress” including “severe anxiety and suicidal ideation” before D.H. was diagnosed with gender dysphoria. (Complaint ¶¶ 6-7).

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 12: Admit that no psychiatrist has recommended that Plaintiff D.H. obtain male chest reconstruction surgery. (Complaint ¶ 9).

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

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REQUEST NO. 13: Admit that Plaintiff John Doe suffered from “depression and suicidal ideation” before John Doe was diagnosed with gender dysphoria. (Complaint ¶ 10).

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 14: Admit that irreversible changes to one’s body can negatively affect one’s quality of life. (Complaint ¶ 27).

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 15: Admit that Plaintiffs have no evidence that any transgender male under the age of 21 (other than Plaintiff D.H.) has applied for an individual exception to the Challenged Exclusion.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

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PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 16: Admit that Plaintiffs have no evidence that any transgender male under the age of 21 enrolled in AHCCCS (other than Plaintiff D.H.) has appealed a determination that male chest reconstruction surgery is not medically necessary.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 17: Admit that Plaintiffs have no evidence that any transgender male under the age of 21 enrolled in AHCCCS (other than Plaintiff D.H.) has appealed a determination that male chest reconstruction surgery is not eligible for payment under the Challenged Exclusion.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 18: Admit that no court of law in the United States has determined that male chest reconstruction surgery is medically necessary to treat gender dysphoria in individuals under the age of 21.

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PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 19: Admit that circumstances unique to Plaintiff John Doe and Plaintiff D.H. make male chest reconstruction surgery medically necessary for them.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 20: Admit that the Challenged Exclusion limits surgical treatment of issues related to the care and treatment of transgender individuals beyond the surgical treatment sought by Plaintiffs.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

1 **REQUEST NO. 21:** Admit that it is Plaintiffs’ position that if the Court grants the relief
2 requested by Plaintiffs and strikes down the Challenged Exclusion, AHCCCS will have no
3 ability to limit coverage for any gender reassignment surgery deemed medically necessary
4 by a healthcare provider.

5 **PLAINTIFF D.H. RESPONSE:**

6 ADMIT _____ DENY _____
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9 **PLAINTIFF JOHN DOE RESPONSE:**

10 ADMIT _____ DENY _____
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12 **REQUEST NO. 22:** Admit that it is Plaintiffs’ position that male chest reconstruction
13 surgery is only a small segment of the reassignment surgeries that could be medically
14 necessary for individuals with gender dysphoria.

15 **PLAINTIFF D.H. RESPONSE:**

16 ADMIT _____ DENY _____
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19 **PLAINTIFF JOHN DOE RESPONSE:**

20 ADMIT _____ DENY _____
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22 **REQUEST NO. 23:** Admit that AHCCCS is not legally required to provide coverage for
23 any medical treatment that is deemed “experimental.”

24 **PLAINTIFF D.H. RESPONSE:**

25 ADMIT _____ DENY _____
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PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

REQUEST NO. 24: Admit that nothing in the Medicaid Act expressly requires AHCCCS to provide coverage for gender reassignment surgeries.

PLAINTIFF D.H. RESPONSE:

ADMIT _____ DENY _____

PLAINTIFF JOHN DOE RESPONSE:

ADMIT _____ DENY _____

RESPECTFULLY SUBMITTED this 25th day of January, 2021.

BURNSBARTON PLC

By /s/ Kathryn Hackett King

David T. Barton
Kathryn Hackett King

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CERTIFICATE OF SERVICE

I hereby certifies that on January 25, 2021, I e-mailed a copy of the foregoing to the following:

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14 *Attorneys for Defendant*

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

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

22 Plaintiffs,

23 vs.

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

27 Defendant.

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

**DEFENDANT’S FIRST SET OF
INTERROGATORIES TO
PLAINTIFF D.H. AND PLAINTIFF
JOHN DOE**

(Assigned to the Honorable Scott H.
Rash)

28 Defendant Jami Snyder, Director of the Arizona Health Care Cost Containment System, in her official capacity (“Defendant”), pursuant to Rule 33, Federal Rules of Civil Procedure, hereby requests that Plaintiff D.H. and Plaintiff John Doe (“Plaintiffs”, “You” or “Your”) mail or hand-deliver to the undersigned counsel, within thirty (30) days of receipt thereof, responses to the following Interrogatories. Defendant is issuing these Interrogatories to both Plaintiffs. Defendant may later issue separate, additional Interrogatories to each individual Plaintiff.

1
2 **INSTRUCTIONS**

3 You are to divulge all the information that You, as a party to this action, or Your
4 attorneys, investigators, agents, employee, or other representatives are aware of or
5 possess.

6 When an interrogatory seeks an answer that includes several parts, set out each part
7 of the answer so that it is understandable.

8 When an interrogatory asks You to list or describe a document, that interrogatory is
9 asking for all documents as defined below.

10 If You withhold any information under a claim of privilege, please identify the
11 information You are withholding with sufficient particularity to allow the propounding
12 party to move for a court order compelling You to provide that information, identify the
13 privilege(s) that You are asserting, and describe the factual basis for each privilege You
14 are asserting.

15 If You once possessed, or had custody or control of, but no longer possess or have
16 custody or control of, any documents that any interrogatory asks about, identify each such
17 document and state its date, author, subject, recipient, and intended recipients. Explain
18 why You no longer possess, or have custody or control of the document, and state the
19 name and address of each person that You know or believe to have the document, or a
20 copy thereof, in their possession, custody or control.

21 If You answer an interrogatory with “not applicable” or use a similar phrase or
22 answer, explain in detail everything that You, Your attorneys, and/or representatives did
23 to obtain the answer to that interrogatory.

24 If You answer an interrogatory with “do not know” or “unknown” or a similar
25 phrase or answer, explain in detail everything that You, Your attorneys, and/or
26 representatives did to obtain the answer to that interrogatory.

27 If You cannot properly answer an interrogatory in a space provided, please answer
28 that interrogatory on an attached paper.

1 The terms “document” and “documents” as used herein encompass any writing,
2 electronically stored information, or graphic representation conveying information,
3 regardless of the medium on which produced or recorded, including without limitation:
4 affidavits; agreements; analyses; applications of all types; appointment calendars;
5 architectural drawings and blueprints; arithmetic data and computations; assignments;
6 bank books and statements; bank drafts; bills; bills of lading; books; booklets; books of
7 account; bulletins; business and personal records; certificates of all types; charts of all
8 types; checks; circulars; computer generated information; contracts; correspondence; data
9 compilations; data processing files and records; declarations; diagrams; diaries of all
10 types; drawings of all types; engravings; envelopes; equations; etchings; expense
11 statements; films; forecasts; forms; formulas; graphs; handwritten materials; instructions;
12 insurance claim forms; invoices; journals of all types; letters; licenses of all types; lists of
13 all types; magazines; magnetic data disks and tapes; maps; memoranda; messages;
14 microfilm and microfiche; minutes; motion pictures; newspapers; notes; orders; paintings;
15 pamphlets; photographs and photographic negatives; pictures; planning materials; printed
16 materials; questionnaires; receipts; registrations; reports; schedules; simulations;
17 specifications; statistical calculations, compilations and computations; studies; summaries;
18 surveys; tax returns, including all schedules and attachments thereto; telecopies and
19 facsimiles; telegraphs; telexes; tests and test results; travel and expense reports;
20 typewritten materials; unemployment compensation claims and related materials; video
21 tapes; voice recordings; vouchers; workers compensation claims and related materials;
22 and working papers. Every copy of a document hereinafter requested which differs from
23 the original in any respect as to the information it bears or reflects shall be produced as a
24 separate document.

25 The term “Lawsuit” refers to the above-captioned action filed in the United States
26 District Court, District of Arizona, Case No. 4:20-cv-00335-SHR.

27 The term “party” or “parties” means party or parties to this Lawsuit.
28

1 The term “person” means corporation, natural person, company, organization,
2 association, partnership, and/or other entity.

3 The terms “identify with particularity,” “describe with particularity,” and “state
4 with particularity” mean fully and completely explain and/or describe the thing, person,
5 place, or process referred to, so that a person unacquainted with this action, its context,
6 and its subject events, can fully understand it. Regarding persons or entities, provide
7 sufficient information to identify and locate the individual including, for example, their
8 names, current addresses, telephone numbers, present employers, and affiliations.
9 Regarding other items, provide title, dates, creators, addresses, locations, and possessors.

10 To “identify” a natural person or witness means to provide information sufficient
11 for the party to identify and locate the individual including, for example, the person’s full
12 name, present or last known address, present or last known phone number, present or last
13 known employer, present or last known self-employment, occupational or professional
14 capacity, and/or qualifications, and relationship to any party.

15 To “identify a document” means to provide information sufficient for the party to
16 identify and locate the document including, for example, its date, its author or authors, its
17 publisher, its title or other designation, each individual and/or entity to whom it is
18 addressed, the substance of its subject matter, the substance of its contents, and the
19 individual presently possessing the original and/or copies thereof.

20 The term “date” means the exact day (day, month, year) or, if the exact day is
21 unavailable, Your best available estimate or approximation of the exact amount, including
22 the factual basis for Your estimate or approximation.

23 The phrase “describe with particularity” means describe an act or event in detail by
24 identifying specifics such as the date and time of the event, an account of what happened,
25 all persons who witnessed the event or could provide information about the event, and any
26 documentation that You have or believe exists that relates to the act or event.

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INTERROGATORY NO. 3:

Please describe the criteria that should be applied to determine that male chest reconstruction surgery is medically necessary for transgender males under the age of 21 who suffer from gender dysphoria.

PLAINTIFF D.H. RESPONSE:

PLAINTIFF JOHN DOE RESPONSE:

INTERROGATORY NO. 4:

Please describe all efforts made by Plaintiff John Doe and Plaintiff D.H. to obtain approval of coverage for the male chest reconstruction surgery they seek by way of this Lawsuit.

PLAINTIFF D.H. RESPONSE:

PLAINTIFF JOHN DOE RESPONSE:

INTERROGATORY NO. 5:

Please describe all efforts made by the National Center for Lesbian Rights and/or National Health Law Program to obtain a legislative or administrative change to the Challenged Exception before initiating the current Lawsuit.

PLAINTIFF D.H. RESPONSE:

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PLAINTIFF JOHN DOE RESPONSE:

INTERROGATORY NO. 6:

Please describe all efforts made by the National Center for Lesbian Rights and/or National Health Law Program to obtain a legislative or administrative change to the Medicaid Act as it pertains to gender reassignment surgeries before initiating the current Lawsuit.

PLAINTIFF D.H. RESPONSE:

PLAINTIFF JOHN DOE RESPONSE:

INTERROGATORY NO. 7:

If You provided anything other than an unqualified denial to Requests for Admission 15, 16, and 17, please, 1) provide the basis for Your denial; 2) identify the individual(s) who applied for an exception or appealed a determination; and 3) provide the date of such application or appeal.

PLAINTIFF D.H. RESPONSE:

PLAINTIFF JOHN DOE RESPONSE:

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RESPECTFULLY SUBMITTED this 25th day of January, 2021.

BURNSBARTON PLC

By /s/ Kathryn Hackett King

David T. Barton
Kathryn Hackett King

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CERTIFICATE OF SERVICE

I hereby certifies that on January 25, 2021, I e-mailed a copy of the foregoing to the following:

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14 *Attorneys for Defendant*

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

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

22 Plaintiffs,

23 vs.

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

27 Defendant.

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

**[PROPOSED] ORDER GRANTING
DEFENDANT’S MOTION FOR
TIME TO CONDUCT CLASS
DISCOVERY AND RESPOND TO
PLAINTIFFS’ MOTION FOR CLASS
CERTIFICATION**

(Assigned to the Honorable Scott H.
Rash)

28 The Court, having considered Defendant’s Motion for Time to Conduct Class
Discovery and Respond to Plaintiffs’ Motion for Class Certification (“Motion”) and good
cause appearing therefore,

IT IS ORDERED that Defendant’s Motion is GRANTED. Discovery in this case
shall be bifurcated into two phases: the first phase to address class certification discovery,
and the second phase to address the merits of Plaintiffs’ claims. The parties have until April

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26, 2021 to complete class discovery, and the time for Defendant to respond to Plaintiffs’
Motion for Class Certification (Doc. 40) is extended to May 12, 2021.