

1 Logan T. Johnston, #009484
2 **JOHNSTON LAW OFFICES, P.L.C.**
3 14040 N. Cave Creek Rd., Suite 309
4 Phoenix, Arizona 85022
5 Telephone: (602) 435-0050
6 ltjohnston@live.com

7 David T. Barton #016848
8 Kathryn Hackett King #024698
9 **BURNSBARTON PLC**
10 2201 East Camelback Road, Ste. 360
11 Phone: (602) 753-4500
12 david@burnsbarton.com
13 kate@burnsbarton.com

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 TO
QUASH TWO SUBPOENAS**

(Assigned to the Honorable Scott H.
Rash)

28 Pursuant to Federal Rules of Civil Procedure 45(d)(1) and 26(b)(2)(C), Defendant
Jami Snyder, Director of the Arizona Health Care Cost Containment System (“AHCCCS”),
respectfully requests this Court quash two subpoenas issued by Plaintiffs to the experts
retained by Defendant.

I. Background

On June 8, 2021, Plaintiffs D.H. and John Doe (“Plaintiffs”) issued two subpoenas:
one to Dr. Michael Laidlaw, M.D., which includes sixty (60) separate requests for

1 documents, **Exhibit A**, and one to Dr. Stephen Levine, M.D., which includes eighty-four
2 (84) separate requests for documents, **Exhibit B**. By and large, the subpoenas are similar
3 – Requests 1-29 are identical, followed by particular requests for each expert. Beyond the
4 sheer number of requests provided to each expert, the requests themselves – and their often
5 ambiguous and undefined wording – are problematic within the scope of discovery. Many
6 of the requests are targeted at “all Documents” or “all Communications” with “any person,”
7 during the past four years, ten-years or even longer. The subpoenas also include a broad
8 definition of “Documents” (“synonymous in meaning and equal in scope to the usage of
9 this term in Fed. R. Civ. P. 34(a)(1)(A)” and including drafts and non-identical copies) and
10 “Communication” (“the transmittal of information by any means”). *See* Exhs A, p. 4; B, p.
11 4. A full accounting of the objectionable nature of each request would be as much an undue
12 burden on this Court and the parties as compliance would be on the recipients, but a few
13 examples from the subpoenas highlight how these requests quickly run afoul of Rule 45.

14 The requests delve deep into the personal and business records of both experts,
15 demanding an extensive production of documents and communications – some certainly
16 privileged and/or confidential – between both experts; the experts and AHCCCS; the
17 experts and “any attorney acting on” or “employed or engaged by AHCCCS,” and
18 occasionally the experts and “any person.” *See* Exhs A, p. 7, ¶¶ 1-9; B, p. 7. ¶¶ 1-9. Request
19 10 goes as far as demanding “all documents and/or communications that [the experts]
20 generated, reviewed, reflected upon, read, or used in connection with the formulation or
21 preparation of Your Declaration, *even if such information was rejected or not relied upon*
22 *in formulating any opinion rendered.*” *Id* at ¶ 10. Given that these experts relied upon their
23 own lengthy education, training, research and experience, it is impossible to comply with
24 this request.

25 Requests 14-20 demand the experts produce every single document and
26 communication related to every time the doctors have acted as experts or expressed their
27 opinion on Gender Dysphoria, regardless of whether this be in a court of law, before
28 arbitrators, legislators, on social media, the web, or in print. *Id.* at pp. 8-9. And most

1 invasively, Requests 21-26 demand an accounting of every single patient with gender
2 dysphoria the doctors have ever treated in their career and the outcomes of their care.

3 But this is merely the tip of the iceberg. After requesting an accounting of his entire
4 practice, Plaintiffs demand from Dr. Laidlaw a copy of not only every single publication in
5 his curriculum vitae, but also “any materials reviewed in preparation for [each]
6 publication.” See Exh. A, p. 11, ¶¶ 32-38. With the term “materials” left undefined, and
7 only the definitions for “communications” and “documents” for guidance, it is clear these
8 requests ignore the practical reality of academia: that Dr. Laidlaw’s publications required
9 extensive research and thorough communication between himself, his co-authors, and his
10 peers. In *The Gender Identity Phantom*, for example – a publicly available article – Dr.
11 Laidlaw cites 11 unique, publicly available sources. See Exh. A, p. 11, ¶ 37. And request
12 37 goes even further, requiring Dr. Laidlaw to produce all documents he reviewed but did
13 not cite, the communications Dr. Laidlaw may have had with his peers regarding his work,
14 the drafts he may have written, and the notes he may have taken. Similarly, Requests 48
15 and 50 demand an accounting of “all research studies, or data [Dr. Laidlaw has] conducted,
16 prepared, or reviewed” supporting the opinions articulated in his Declaration.

17 Dr. Levine’s subpoena suffers the same fatal flaws. As they have done with Dr.
18 Laidlaw, Plaintiffs have requested every document associated with every publication in Dr.
19 Levine’s CV. See Exh. B, pp. 11-12, ¶¶ 35- 40. They have also demanded Dr. Levine
20 produce every record he has considered in forming every opinion they find contentious from
21 his Declaration. See, for example, pp. 12-18, ¶¶ 41-81.

22 Pursuant to LRCiv 7.1(h), counsel for Defendant emailed Plaintiffs’ counsel on June
23 14, proposing a suggestion for reducing the number of requests in both subpoenas. Counsel
24 for Defendant followed up with Plaintiffs’ counsel on June 17. Plaintiffs’ counsel indicated
25 they would respond the next day (on June 18), but no response was received on June 18. It
26 was not until today’s date (June 22, the day of Defendant’s deadline to object to the
27 subpoenas) that Plaintiffs’ counsel reached out to set up a time to discuss the scope of the
28 subpoenas, leaving Defendant with no choice but to file this motion to quash to preserve

1 her rights. With no other recourse given the deadline to object to the subpoenas, Defendant
2 had no choice but to ask for this Court’s intervention in compliance with Fed.R.Civ.P.
3 45(d)(1) and 26(c).

4 **II. Legal Argument**

5 **A. The subpoenas are improperly broad and should be quashed.**

6 Under Rule 45(d)(1), a “party or attorney responsible for issuing and serving a
7 subpoena must take reasonable steps to avoid imposing undue burden or expense on a
8 person subject to the subpoena.” Fed.R.Civ.P. 45(d)(1). “By failing to limit [a] subpoena
9 to certain categories of documents . . . [the party serving the subpoena] is merely trying to
10 engage in a fishing expedition.” *Lewin v. Nackard Bottling Co.*, CV 10-8041-PCT-FJM,
11 2010 WL 4607402, at *1 (D. Ariz. Nov. 4, 2010)(granting motion to quash). Fed.R.Civ.P.
12 26 and 45 guide the Court’s discretion. Rule 26 usually allows parties to obtain discovery
13 on any nonprivileged matter that is relevant to a claim or defense and proportional to the
14 needs of the case. Rule 26(c) requires that a court limit the extent of discovery, including
15 that which is obtained by a subpoena, if it “can be obtained from some other source that is
16 more convenient, less burdensome, or less expensive” or “is outside the scope permitted by
17 Rule 26(b)(1).” Fed.R.Civ.P. 26(b)(2)(C)(i), (iii). In turn, Rule 26(b)(1) broadly allows
18 “discovery regarding any nonprivileged matter that is relevant to any party’s claim or
19 defense and proportional to the needs of the case[.]” Fed. R. Civ. P. 26(b)(1).

20 The “relevance” standard, however, does not apply to non-parties. *See Dart Indus.*
21 *Co. v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980)(“While discovery is a
22 valuable right and should not be unnecessarily restricted ..., the ‘necessary’ restriction may
23 be broader when a nonparty is the target of discovery.”) (internal citation omitted) “To
24 obtain discovery from a nonparty, a party must demonstrate that its need for discovery
25 outweighs the nonparty’s interest in nondisclosure.” *R. Prasad Indus. v. Flat Iron Envtl.*
Solutions Corp., 2014 WL 2804276, at *2 (D. Ariz. June 20, 2014).

26 Rule 45 sets out two forms of quashing subpoenas: mandatory and permissive.
27 Under Fed.R.Civ.P. 45(d)(3)(A)(iv), “the court for the district where compliance is required
28

1 **must** quash or modify a subpoena that...subjects a person to undue burden.” (emphasis
2 added); see *Mount Hope Church v. Bash Back!*, 705 F.3d 418, 427–28 (9th Cir. 2012)
3 “Common examples of undue burden include: ‘untimely service, inability to appear,
4 inability to produce requested documents or things, failure to identify items requested, or
5 excessive costs.’” *Brown v. Sperber-Porter*, 2017 WL 10409840, at *3 (D. Ariz. Nov. 6,
6 2017)(quoting *In re County of Orange*, 208 B.R. 117, 120). In tandem with a party’s
7 obligation not to impose undue burden or expense under Rule 45, the courts have expanded
8 the notion of burden to “challenges based on relevancy.” *Chartis Specialty Ins. Co. v. Scott*
9 *Homes Multifamily Inc*, 2014 WL 12729149 at *3 (D. Ariz. 2014)(citing *Moon v. SCP Pool*
10 *Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005) (“[S]uch factors as relevance, the need of the
11 party for the documents, the breadth of the document request, the time period covered by
12 it, the particularity with which the documents are described [should be considered in
13 determining] the burden imposed.”); see also *Udoh v. Glencroft*, 2010 WL 2889880 (D.
14 Ariz. 2010)(granting nonparty and party’s joint motion to quash subpoena for records
15 irrelevant to the claim or facts at hand); *Rodriguez v. Ryan*, 2016 WL 4498458 (D. Ariz.
16 2016)(granting party’s motion to quash non-party subpoena because party would bear the
17 cost of reviewing and objecting to thousands of pages of documents prior to their disclosure
18 pursuant to the subpoena).

19 The subpoenas as presented would require Dr. Laidlaw and Dr. Levine to incur
20 extraordinary costs attempting to identify such broadly defined ‘documents’ and
21 ‘communications’ from their entire professional histories. And as noted above, some of the
22 requests are for publicly available documents, but Plaintiffs here attempt to shift the cost of
23 gathering those documents to Dr. Laidlaw and Dr. Levine. Dr. Levine estimates compliance
24 with his subpoena would require him to take, at a minimum, ten days from his practice to
25 comb over documents from his entire career as a physician, with no guarantee that he still
26 has access to many of the documents requested given the scope of the subpoena. Similarly,
27 Dr. Laidlaw estimates each request in the subpoena will take him roughly 4-8 hours,
28 depending on the request, to thoroughly review archived records with due diligence.

1 Of course, because both Dr. Levine and Dr. Laidlaw are retained experts, the expense
2 of this effort will be borne by Defendant. In addition, these requests would require
3 Defendant's counsel to review the documents prior to production, adding onto the burden
4 of these requests. Because these subpoenas fail to comply with Rule 45's requirement that
5 a subpoena avoid undue burden or expense, the Court should quash both subpoenas.

6 **B. In the Alternative, the Court Should Issue a Protective Order Forbidding**
7 **Discovery into the Requested Documents.**

8 Even if the Court does not quash the subpoenas pursuant to Rule 45(d), Rule 26(c)
9 provides sufficient grounds for the issuance of a protective order forbidding the disclosure
10 of the documents requested. As noted above, Rules 45 and 26 work in tandem to limit the
11 scope of subpoenas. Courts have the discretion to grant protective orders pursuant to
12 Fed.R.Civ.P. 26(c), which states in relevant part: "Upon motion by a party or by the person
13 from who discovery is sought ... the court ... may [for good cause shown] make any order
14 which justice requires to protect a party from annoyance, embarrassment, oppression, or
15 undue burden or expense..." Generally, courts have "broad latitude to grant protective
16 orders to prevent disclosure of materials for many types of information..." *See Phillips ex*
17 *rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1211–1212 (9th Cir.2002);
18 Fed.R.Civ.P. 26(c)(a court may order that "certain matters not be inquired into, or that the
19 scope of the disclosure or discovery be limited to certain matters.").

20 In the subpoena context, the Court has power to issue a protective order preventing
21 discovery into matters requested under subpoena. In *Firetrace USA, LLC v. Jesclard*, 2008
22 WL 5146691 (D. Ariz. 2008), the Court considered defendant's motion to quash plaintiff's
23 subpoenas to three of defendant's nonparty vendors. The defendant argued that "Rule 26(c)
24 allows a party to challenge all disclosures, regardless of their source, if the requested
25 information exposes the moving party to "annoyance, embarrassment, oppression, or undue
26 burden or expense." Citing the 1991 Advisory Committee Notes to Rule 45, the Court noted
27 a party may move for a protective order to protect itself from annoyance, embarrassment,
28 oppression, or undue burden or expense, regardless of whether the moving party is seeking

1 to prevent disclosure of information by a nonparty, as long as the moving party can tie the
2 protected information to an interest listed in the rule, such as annoyance, embarrassment or
3 undue expense. The court found “under either rule a party may prevent the disclosure of
4 information from a nonparty by showing a claim of personal right or privilege, including
5 information which could expose the moving party to “annoyance, embarrassment,
6 oppression, or *undue burden or expense.*” *Id* (emphasis added).

7 Here, Plaintiffs’ subpoenas include an astounding 144 separate requests for
8 documents and communications, often vague, and many stretching back 10 or more years.
9 The requests are plagued with overbroad language and include requests that have no other
10 purposes than to harass the recipients and drive up the expense of this litigation. Because
11 of this, and for the reasons articulated above, Defendant asks this Court to issue a protective
12 order limiting Plaintiffs’ discovery.

13 **III. Conclusion**

14 The subpoenas to Dr. Laidlaw and Dr. Levine are improper under Rule 45 and Rule
15 26. Plaintiffs’ failure to negotiate the number of requests down to a reasonable number
16 before the deadline to object to the subpoenas left Defendant with no option but to file this
17 motion to quash. For this reason, and those stated above, Defendant asks this Court to quash
18 both subpoenas.

19 RESPECTFULLY SUBMITTED this 22nd day of June, 2021.

20 **BURNSBARTON PLC**

21 By /s/ Kathryn Hackett King

22 David T. Barton
23 Kathryn Hackett King

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

28 *Attorneys for Defendant*

CERTIFICATE OF SERVICE

I hereby certifies that on June 22, 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:

Brent P. Ray
Andrew J. Chinsky
KING & SPALDING LLP
353 N. Clark Street, 12th Floor
Chicago, Illinois 60654
T: +1 312 995 6333
F: +1 312 995 6330
Email:bray@kslaw.com
achinsky@kslaw.com

Daniel C. Barr
Janet M. Howe
PERKINS COIE LLP
2901 N. Central Avenue, Suite 2000
Phoenix, AZ 85012-2788
T: +1 602 351 8085
F: +1 602 648 7085
Email:dbarr@perkinscoie.com
jhowe@perkinscoie.com

Asaf Orr
NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
T: +1 415 392 6257
F: +1 415 392 8442
Email:aorr@nclrights.org

Abigail K. Coursolle
Catherine McKee
NATIONAL HEALTH LAW PROGRAM
3701 Wilshire Boulevard, Suite 750
Los Angeles, CA 90010
T: +1 310 204 6010
Email:coursolle@healthlaw.org
mckee@healthlaw.org

Attorneys for Plaintiffs and the Class

s/Tonya Denler

EXHIBIT A

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
_____)	
<i>Defendant</i>)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To:

_____ (Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place:	Date and Time:
--------	----------------

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR /s/ Janet M. Howe

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) _____, who issues or requests this subpoena, are:

Janet M. Howe, Perkins Coie, 2901 North Central Avenue, Suite 2000, Phoenix, AZ 85012; JHowe@perkinscoie.com; 602-351-8187

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Subpoena to Michael K. Laidlaw, M.D.

EXHIBIT A – Things to be Produced

Definitions and Instructions

1. “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.

2. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) by any means.

3. “Arizona Medicaid” collectively refers to the State of Arizona’s Medicaid program and its constituent programs governed by Ariz. Rev. Stat. §§ 36-2901 – 36-2999.08, 36-3401 – 36-3436.01 and the associated implementing regulations in Chapters 21, 22, 28, 29, 30, 31, and 34 of Title 9 of the Arizona Administrative Code and administered by AHCCCS and/or by one of several participating managed care organizations.

4. “AHCCCS” refers to the State Medicaid agency that administers the Arizona Medicaid program, known as the Arizona Health Care Cost Containment System, and includes any officials, employees, agents, representatives, contractors, attorneys, and any other persons acting or purporting to act for or on behalf of AHCCCS and/or its Secretary.

5. “Proposed Class” refers to all transgender individuals under the age of 21 who are or will be enrolled in AHCCCS, have or will have a diagnosis of gender dysphoria, and are seeking or will seek coverage for male chest reconstruction surgery following a determination by their respective health care providers that the procedure is necessary to treat gender dysphoria.

6. “Plaintiffs” refers to the Named Plaintiffs and the Proposed Class.

7. “Action” refers to the above-titled action, *D.H., et al. v. Snyder*, U.S. District Court for the District of Arizona, Case No. 4:20-cv-00335-SHR.

8. “Complaint” means Plaintiffs’ operative complaint in this Action.

9. “Challenged Exclusion” means the exclusion of “gender reassignment surgeries” from “AHCCCS coverage” under subsection B.4(a) of Arizona Administrative Code R9-22-205, adopted effective May 20, 1982.

10. “Gender Reassignment Surgeries” means any and all of the services and procedures excluded from AHCCCS coverage under the Challenged Exclusion referred to with the term “gender reassignment surgeries.”

11. “Gender Dysphoria” refers to the condition currently referred to as Gender Dysphoria in Adolescents and Adults in the Diagnostic and Statistical Manual of Psychiatric Disorders, Fifth Edition (“DSM-5”), and related diagnoses in current or previous editions of the DSM and/or the International Classification of Diseases (“ICD”), including gender identity disorder and transsexualism.

12. “You” or “Your” means deponent, Michael K. Laidlaw, M.D.

13. “Declaration” means the Expert Declaration of Michael K. Laidlaw, M.D. that You executed and submitted in support of Defendant’s Opposition to Plaintiffs’ Motion for Preliminary Injunction filed in this Action on September 28, 2020 as Document 18-1.

14. If a date range for responsive documents is not provided for in the request or is not apparent from the context of the request itself, the request seeks documents created, received or read by You from January 1, 2017 to the present.

15. One legible copy of each document requested is to be produced. Any copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any addition or omission, shall constitute a separate document and must be produced. Plaintiffs reserve the right to inspect the original of any document produced upon reasonable request.

16. All documents that are physically attached to each other shall be considered one document and left so attached. Documents that are segregated or separated from other documents, whether by inclusion in binders, files, sub-files, or by use of dividers, tabs, or other methods, shall

be left so segregated or separated. Documents shall be retained in the order in which they are maintained in the file where they are found.

17. If an objection to a request is based upon a claim of privilege, attorney work product, or any other basis, please identify, contemporaneously with producing responses to these Requests, in writing each document so withheld by providing the following information:

- a. the date or approximate date of the document;
- b. the type of document (e.g., letter, memorandum);
- c. a description of the subject matter of the document;
- d. each and every person who prepared, signed, or participated in the preparation of the document or any copy thereof;
- e. each and every person who received the document or any copy thereof;
- f. the present custodian(s) of each document;
- g. a list of attachments or enclosures to the document; and
- h. the nature of the privilege asserted and any statutes, rules, or cases that you contend support the assertion of privilege.

18. Identify and produce all segregable portions of any responsive document to which a claim of privilege, attorney work product, or other basis for withholding the document does not apply.

Document Requests

1. Your Communications with AHCCCS regarding gender identity issues, Gender Dysphoria, and/or treating Gender Dysphoria, and/or Gender Reassignment Surgeries, from January 1, 2017 to the present.

2. Any Communications between You and Stephen B. Levine, M.D. regarding gender identity issues, Gender Dysphoria, treating Gender Dysphoria, and/or Gender Reassignment Surgeries from January 1, 2017 to the present.

3. Any Communications between You and any person, except for any attorney acting on AHCCCS's behalf, regarding the opinions expressed in Your Declaration.

4. Any Communications between You and any person, except for any attorney acting on AHCCCS's behalf, regarding Your preparation of the Declaration.

5. All Documents cited in Your Declaration.

6. All Documents that reflect facts or data considered by You in preparing Your Declaration.

7. All Communications that relate to Your compensation for preparing Your Declaration.

8. All Communications between You and any attorney employed or engaged by AHCCCS, that relate to any facts or data that You considered in preparing Your Declaration.

9. All Communications between You and any attorney employed or engaged by AHCCCS, that relate to any assumptions provided by the attorney and that You relied on in preparing Your Declaration, including but not limited to assumptions regarding the named plaintiffs in the Action.

10. All Documents and/or Communications that You generated, reviewed, reflected upon, read or used in connection with the formulation or preparation of Your Declaration, even if such information was rejected or not relied upon in formulating any opinion rendered.

11. Documents that reflect the development, foundation or basis of the opinions set forth in Your Declaration, including but not limited to notes, task lists, outlines, or letters You made in preparation of Your Declaration.

12. All Communications between You and any attorney employed or engaged by AHCCCS, that relate to any facts or data that You should consider in forming any opinion or testimony You intend to give at deposition or trial in this action.

13. All Documents and Communications regarding the development and promulgation of the Challenged Exclusion, including but not limited to documents You have received from AHCCCS reflecting reports, data, research or studies considered or reviewed by AHCCCS in connection with the development or promulgation of the Challenged Exclusion.

14. Documents sufficient to identify all actions in state or federal court or arbitration in which You have been asked to submit a declaration or affidavit, or asked to testify at deposition, trial or arbitration, regarding gender identity issues, Gender Dysphoria, the treatment of Gender Dysphoria, or Gender Reassignment Surgery.

15. All affidavits or declarations that You have prepared, or amicus briefs prepared at Your request or on Your behalf, for filing in any state or federal court or arbitration regarding gender identity issues, Gender Dysphoria, the treatment of Gender Dysphoria, or Gender Reassignment Surgery.

16. All transcripts of testimony You have given in deposition, trial or arbitration where the opinions subject to Your testimony concerned gender identity issues, Gender Dysphoria, the treatment of Gender Dysphoria, or Gender Reassignment Surgery.

17. All Documents, including statements, letters, memoranda, or other writings prepared by You, for consideration by lawmakers or regulatory agencies regarding proposed legislation or regulation or amendments thereto that impact transgender rights, including but not limited to medical coverage for treatment of Gender Dysphoria, or Gender Reassignment Surgery.

18. All transcripts, audio or video recordings, or documents reflecting testimony offered by You, for consideration by lawmakers or regulatory agencies regarding proposed legislation or regulation or amendments thereto that impact transgender rights, including but not limited to medical coverage for treatment of Gender Dysphoria, or Gender Reassignment Surgery.

19. All Documents reflecting statements You have made on social media platforms regarding Your views, opinions, studies or research on gender identity issues, transgenderism, transgender persons, transgender rights, Gender Dysphoria, or Gender Reassignment Surgery.

20. All Documents, including statements, letters, articles, or other writings, prepared by You for publication in any internet website, internet forum, newspaper, magazine, or scientific, academic or clinical journal, regarding Your views, studies or research on gender identity issues, transgenderism, transgender persons, transgender rights, Gender Dysphoria, or Gender Reassignment Surgery.

21. Document(s) sufficient to reflect the number of persons diagnosed with gender dysphoria that You have treated in your practice, under 14 years old, between 14-17 years old and over 17 years old.

22. Document(s) sufficient to reflect the number of patients You have treated in your practice for gender incongruence, gender dysphoria, or conditions, symptoms or comorbidities associated with gender incongruence or gender dysphoria, under 14 years old, between 14-17 years old and over 17 years old, each calendar year.

23. Document(s) sufficient to reflect the total number of patients You have treated in Your practice under 14 years old, between 14-17 years old, and over 17 years old, each calendar year.

24. Document(s) sufficient to reflect the total number of Your patients for whom You have prescribed, recommended, requested authorization, or submitted statements in support of a request for authorization for hormone therapy to treat gender dysphoria, under 14 years old,

between 14-17 years old and over 17 years old, each calendar year You have been a practicing physician.

25. Document(s) sufficient to reflect the total number of Your patients for whom You have recommended, requested authorization, or submitted statements in support of a request for authorization for Gender Reassignment Surgeries or surgical intervention to treat gender dysphoria, under 14 years old, between 14-17 years old and over 17 years old, each calendar year You have been a practicing physician.

26. Document(s) sufficient to reflect the total number of Your patients who have undergone a surgical intervention to treat gender dysphoria or Gender Reassignment Surgeries before or during the course of Your treatment of the patients, under 14 years old, between 14-17 years old and over 17 years old, each calendar year You have been a practicing physician.

27. All Documents which You have reviewed that reflect clinical guidelines for the use of hormone-replacement therapy to treat gender dysphoria, including children or adolescents diagnosed with Gender Dysphoria.

28. All Documents which You have reviewed regarding the clinical benefits of the use of hormone-replacement therapy to treat Gender Dysphoria, including children or adolescents diagnosed with Gender Dysphoria.

29. All Documents which You have reviewed that reflect clinical guidelines for the use of surgical intervention to treat patients diagnosed with Gender Dysphoria, including children or adolescents diagnosed with Gender Dysphoria.

30. All Documents which You have reviewed regarding the clinical benefits of the use of surgical intervention to treat Gender Dysphoria, including children or adolescents diagnosed with Gender Dysphoria.

31. All statements You have written recommending a course of treatment or supporting a request for authorization for hormone therapy or gender affirming procedures to treat Gender Dysphoria, with the patient names and identifying information redacted.

32. The publication “Correction: Transgender Surgery Provides No Mental Health Benefit” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

33. The publication “Gender affirmation surgery conclusion lacks evidence” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

34. The publication “The Pediatric Endocrine Society’s Statement on Puberty Blockers Isn’t Just Deceptive. It’s Dangerous” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

35. The publication “The Right to Best Care for Children Does Not Include the Right to Medical Transition” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

36. The publication “Letter to the Editor: ‘Endocrine Treatment of Gender-Dysphoric/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline’” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

37. The publication “The Gender Identity Phantom” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

38. The publication “Gender Dysphoria and Children: An Endocrinologist’s Evaluation of ‘I am Jazz’” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication other than the book “I am Jazz.”

39. All Communications between You and any individual working for or acting on behalf of The Witherspoon Institute, or “Public Discourse” of thepublicdiscourse.com, regarding gender identity issues, transgenderism, transgender persons, transgender rights or Gender Dysphoria.

40. All Communications between You and any individual working for or acting on behalf of Alliance Defending Freedom regarding preparation of the Brief of Amicus Curiae filed

with the U.S. Court of Appeals for the 11th Circuit in the Case of *Drew Adams v. School Board of St. Johns County, Florida*, identified in Exhibit A to Your Declaration.

41. All Communications regarding the case of *Drew Adams v. School Board of St. Johns County, Florida* in the U.S. Court of Appeals for the 11th Circuit, identified in Exhibit A to Your Declaration.

42. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion in Paragraph 18, footnote 1 of Your Declaration, that Plaintiff John Doe should be examined to determine whether he suffers from “dissociative identity disorder,” including but not limited any studies, journals, articles, reports or research regarding any connection or relation between Gender Dysphoria and dissociative identity disorder or the misdiagnosis of dissociative identity disorder as Gender Dysphoria.

43. All Documents reflecting the percentage of middle adolescents (ages 14 to 17) diagnosed with gender dysphoria that will “outgrow” the condition or remain dysphoric by the time they reach adulthood, including but not limited to any such documents You prepared or reviewed in preparation of the article cited in Paragraph 22 of Your Declaration (“Letter to the Editor: Endocrine Treatment of Gender Dysphoria/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline”).

44. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion that “[t]here is currently no way to predict who will desist and who will remain dysphoric,” in Paragraph 22 of Your Declaration.

45. All Documents that You have reviewed regarding any connection or link between Gender Dysphoria and an “increased rate of postoperative infections,” or “increased morbidity and mortality” after gender-affirming surgery to treat Gender Dysphoria.

46. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion that You have “significant concerns about the ability of two minors with histories of significant underlying psychiatric issues, separate and apart from gender

dysphoria, to provide informed consent to undergo an irreversible sex reassignment surgery,” in Paragraph 29 of Your Declaration.

47. All Documents that support the opinion found in Paragraph 33 of Your Declaration that the “professional consensus about the psychiatric, psychological, medical, and surgical management of gender dysphoria” that establish WPATH’s standards of care, “exists only within the confines of its organization.”

48. All research, studies or data You have conducted, prepared or reviewed that support Your opinion that gender-affirming surgery is not effective or safe for treating minors, that post-date the study referenced in Paragraph 34 of Your Declaration titled “*Chest Reconstruction and Chest Dysphoria in Transmasculine Minors and Young Adults Comparisons of Nonsurgical and Postsurgical Cohorts*, 172 JAMA Pediatrics 431, 434 (2018).”

49. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion that the participants in *Chest Reconstruction and Chest Dysphoria in Transmasculine Minors and Young Adults Comparisons of Nonsurgical and Postsurgical Cohorts* “lacked the maturity and capacity of good judgement for truly informed consent for this life altering procedure,” in Paragraph 34 of your declaration.

50. All research, studies or data that You have conducted, prepared or reviewed that support Your disagreement with the statement that “Chest dysphoria was high among presurgical transmasculine youth, and surgical intervention positively affected both minors and young adults,” as referenced in Paragraph 34 of Your Declaration.

51. All Documents that support Your “professional opinion” that for persons “under 21..., there is a significant chance that a young person may later regret” top surgery to treat gender dysphoria,” as set forth in Paragraph 40 of Your Declaration.

52. All Documents that support Your “professional opinion” that “there is a significant chance that a young person may later regret” top surgery to treat gender dysphoria” as set forth in Paragraph 40 of Your Declaration, particularly for adolescents over the age of 14.

53. All Documents that support Your “professional opinion” that male chest reconstruction surgery involves “an organ that cannot be replaced,” as set forth in Paragraph 40 of Your Declaration.

54. All Documents that support Your “professional opinion” that “it is never appropriate to provide bilateral mastectomy with chest wall recontouring surgery on individuals diagnosed with gender dysphoria,” as set forth in Paragraph 40 of Your Declaration.

55. All Documents that You have reviewed that contradict Your “professional opinion” that “it is never appropriate to provide bilateral mastectomy with chest wall recontouring surgery on individuals diagnosed with gender dysphoria,” as set forth in Paragraph 40 of Your Declaration.

56. All Documents that support Your assertion in the publication “*Gender Dysphoria and Children: An Endocrinologist’s Evaluation of “I am Jazz”*” identified in Exhibit A of Your Declaration, that gender dysphoria “is a psychological condition, rather than a biological one.”

57. All Documents regarding or expressing Your opinion on whether gender-affirming surgical procedures can be effective in treating Gender Dysphoria, from January 1, 2017 to the present.

58. All Documents regarding or expressing Your opinion on whether gender-affirming surgical procedures can be effective in treating Gender Dysphoria in adolescents, from January 1, 2017 to the present.

59. All Documents regarding or expressing Your opinions or recommendations regarding health benefit coverage exclusions for treatment of Gender Dysphoria, whether in a commercial or non-commercial context, from January 1, 2017 to the present.

60. All Documents regarding or expressing Your opinions or recommendations regarding health benefit coverage exclusions for gender-affirming surgery for treating Gender Dysphoria, whether in a commercial or non-commercial context, from January 1, 2017 to the present.

EXHIBIT B

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)
Plaintiff)
v.) Civil Action No.
_____)
Defendant)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place: Date and Time:

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) _____, who issues or requests this subpoena, are:

602-351-8187

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Subpoena to Stephen B. Levine, M.D.

EXHIBIT A – Things to be Produced

Definitions and Instructions

1. “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.

2. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) by any means.

3. “Arizona Medicaid” collectively refers to the State of Arizona’s Medicaid program and its constituent programs governed by Ariz. Rev. Stat. §§ 36-2901 – 36-2999.08, 36-3401 – 36-3436.01 and the associated implementing regulations in Chapters 21, 22, 28, 29, 30, 31, and 34 of Title 9 of the Arizona Administrative Code and administered by AHCCCS and/or by one of several participating managed care organizations.

4. “AHCCCS” refers to the State Medicaid agency that administers the Arizona Medicaid program, known as the Arizona Health Care Cost Containment System, and includes any officials, employees, agents, representatives, contractors, attorneys, and any other persons acting or purporting to act for or on behalf of AHCCCS and/or its Secretary.

5. “Proposed Class” refers to all transgender individuals under the age of 21 who are or will be enrolled in AHCCCS, have or will have a diagnosis of gender dysphoria, and are seeking or will seek coverage for male chest reconstruction surgery following a determination by their respective health care providers that the procedure is necessary to treat gender dysphoria.

6. “Plaintiffs” refers to the Named Plaintiffs and the Proposed Class.

7. “Action” refers to the above-titled action, *D.H., et al. v. Snyder*, U.S. District Court for the District of Arizona, Case No. 4:20-cv-00335-SHR.

8. “Complaint” means Plaintiffs’ operative complaint in this Action.

9. “Challenged Exclusion” means the exclusion of “gender reassignment surgeries” from “AHCCCS coverage” under subsection B.4(a) of Arizona Administrative Code R9-22-205, adopted effective May 20, 1982.

10. “Gender Reassignment Surgeries” means any and all of the services and procedures excluded from AHCCCS coverage under the Challenged Exclusion referred to with the term “gender reassignment surgeries.”

11. “Gender Dysphoria” refers to the condition currently referred to as Gender Dysphoria in Adolescents and Adults in the Diagnostic and Statistical Manual of Psychiatric Disorders, Fifth Edition (“DSM-5”), and related diagnoses in current or previous editions of the DSM and/or the International Classification of Diseases (“ICD”), including gender identity disorder and transsexualism.

12. “You” or “Your” means deponent, Stephen B. Levine, M.D.

13. “Declaration” means the Expert Declaration of Dr. Stephen B. Levine, M.D. that You executed and submitted in support of Defendant’s Opposition to Plaintiffs’ Motion for Preliminary Injunction filed in this Action on September 28, 2020 as Document 18-2.

14. If a date range for responsive documents is not provided for in the request or is not apparent from the context of the request itself, the request seeks documents created, received or read by You from January 1, 2007 to the present.

15. One legible copy of each document requested is to be produced. Any copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any addition or omission, shall constitute a separate document and must be produced. Plaintiffs reserve the right to inspect the original of any document produced upon reasonable request.

16. All documents that are physically attached to each other shall be considered one document and left so attached. Documents that are segregated or separated from other documents, whether by inclusion in binders, files, sub-files, or by use of dividers, tabs, or other methods, shall

be left so segregated or separated. Documents shall be retained in the order in which they are maintained in the file where they are found.

17. If an objection to a request is based upon a claim of privilege, attorney work product, or any other basis, please identify, contemporaneously with producing responses to these Requests, in writing each document so withheld by providing the following information:

- a. the date or approximate date of the document;
- b. the type of document (e.g., letter, memorandum);
- c. a description of the subject matter of the document;
- d. each and every person who prepared, signed, or participated in the preparation of the document or any copy thereof;
- e. each and every person who received the document or any copy thereof;
- f. the present custodian(s) of each document;
- g. a list of attachments or enclosures to the document; and
- h. the nature of the privilege asserted and any statutes, rules, or cases that you contend support the assertion of privilege.

18. Identify and produce all segregable portions of any responsive document to which a claim of privilege, attorney work product, or other basis for withholding the document does not apply.

Document Requests

1. Your Communications with AHCCCS regarding gender identity issues, Gender Dysphoria, treating Gender Dysphoria, and/or Gender Reassignment Surgeries.

2. Any Communications between You and Michael K. Laidlaw, M.D. regarding gender identity issues, Gender Dysphoria, treating Gender Dysphoria, and/or Gender Reassignment Surgeries from January 1, 2017 to the present.

3. Any Communications between You and any person, except for any attorney acting on AHCCCS's behalf, regarding the opinions expressed in Your Declaration.

4. Any Communications between You and any person, except for any attorney acting on AHCCCS's behalf, regarding Your preparation of the Declaration.

5. All Documents cited in Your Declaration.

6. All Documents that reflect facts or data considered by You in preparing Your Declaration.

7. All Communications that relate to Your compensation for preparing Your Declaration.

8. All Communications between You and any attorney employed or engaged by AHCCCS, that relate to any facts or data that You considered in preparing Your Declaration.

9. All Communications between You and any attorney employed or engaged by AHCCCS, that relate to any assumptions provided by the attorney and that You relied on in preparing Your Declaration, including but not limited to assumptions regarding the named plaintiffs in the Action.

10. All Documents and/or Communications that You generated, reviewed, reflected upon, read or used in connection with the formulation or preparation of Your Declaration, even if such information was rejected or not relied upon in formulating any opinion rendered.

11. Documents that reflect the development, foundation or basis of the opinions set forth in Your Declaration, including but not limited to notes, task lists, outlines, or letters You made in preparation of Your Declaration.

12. All Communications between You and any attorney employed or engaged by AHCCCS, that relate to any facts or data that You should consider in forming any opinion or testimony You intend to give at deposition or trial in this action.

13. All Documents and Communications regarding the development and promulgation of the Challenged Exclusion, including but not limited to documents You have received from AHCCCS reflecting reports, data, research or studies considered or reviewed by AHCCCS in connection with the development or promulgation of the Challenged Exclusion.

14. Documents sufficient to identify all actions in state or federal court or arbitration in which You have been asked to submit a declaration or affidavit, or asked to testify at deposition, trial or arbitration, regarding gender identity issues, Gender Dysphoria, the treatment of Gender Dysphoria, or Gender Reassignment Surgery.

15. All affidavits or declarations that You have prepared, or amicus briefs prepared at Your request or on Your behalf, for filing in any state or federal court or arbitration involving a transgender litigant and/or regarding gender identity issues, Gender Dysphoria, the treatment of Gender Dysphoria, or Gender Reassignment Surgery.

16. All transcripts of testimony You have given in deposition, trial or arbitration where the opinions subject to Your testimony concerned gender identity issues, Gender Dysphoria, the treatment of Gender Dysphoria, or Gender Reassignment Surgery.

17. All Documents, including statements, letters, memoranda, or other writings prepared by You, for consideration by lawmakers or regulatory agencies regarding proposed legislation or regulation or amendments thereto that impact transgender rights, including but not limited to medical coverage for treatment of Gender Dysphoria, or Gender Reassignment Surgery.

18. All transcripts, audio or video recordings, or documents reflecting testimony offered by You, for consideration by lawmakers or regulatory agencies regarding proposed legislation or regulation or amendments thereto that impact transgender rights, including but not

limited to medical coverage for treatment of Gender Dysphoria, or Gender Reassignment Surgery.

19. All Documents reflecting statements You have made on social media platforms regarding Your views, opinions, studies or research on gender identity issues, transgenderism, transgender persons, transgender rights, Gender Dysphoria, or Gender Reassignment Surgery.

20. All Documents, including statements, letters, articles, or other writings, prepared by You for publication in any internet website, internet forum, newspaper, magazine, or scientific, academic or clinical journal, regarding Your views, studies or research on gender identity issues, transgenderism, transgender persons, transgender rights, Gender Dysphoria, or Gender Reassignment Surgery.

21. Document(s) sufficient to reflect the number of persons diagnosed with gender dysphoria that You have treated in Your practice, under 14 years old, between 14-17 years old and over 17 years old, each calendar year.

22. Document(s) sufficient to reflect the number of patients You have treated for gender incongruence, gender dysphoria, or conditions, symptoms or comorbidities associated with gender incongruence or gender dysphoria, under 14 years old, between 14-17 years old and over 17 years old, each calendar year.

23. Document(s) sufficient to reflect the total number of patients You have treated under 14 years old, between 14-17 years old, and over 17 years old, each calendar year.

24. Document(s) sufficient to reflect the total number of Your patients for whom You have recommended, requested authorization, or submitted statements in support of a request for authorization for hormone therapy to treat gender dysphoria, under 14 years old, between 14-17 years old and over 17 years old, each calendar year.

25. Document(s) sufficient to reflect the total number Your patients for whom You have recommended, requested authorization, or submitted statements in support of a request for authorization for Gender Reassignment Surgeries or surgical intervention to treat gender

dysphoria, under 14 years old, between 14-17 years old and over 17 years old, each calendar year.

26. Document(s) sufficient to reflect the total number of Your patients who have undergone Gender Reassignment Surgery or a surgical procedure to treat gender dysphoria before or during the course of Your treatment of the patients, under 14 years old, between 14-17 years old and over 17 years old, each calendar year.

27. Document(s) sufficient to reflect the number of patients that have been treated at the Gender Identity Clinic (referenced in Paragraph 5 of Your Declaration) for gender incongruence, gender dysphoria, or conditions, symptoms or comorbidities associated with gender incongruence or gender dysphoria, under 14 years old, between 14-17 years old and over 17 years old, each calendar year from 2010 to the present.

28. Document(s) sufficient to reflect the total number of patients that have been treated at the Gender Identity Clinic (referenced in Paragraph 5 of Your Declaration) who have undergone hormone replacement therapy to treat Gender Dysphoria before or during their course of treatment at the Clinic, who are under 14 years old, between 14-17 years old and over 17 years old, each calendar year from 2010 to the present.

29. Document(s) sufficient to reflect the total number of patients that have been treated at the Gender Identity Clinic (referenced in Paragraph 5 of Your Declaration) who have undergone surgical intervention to treat gender dysphoria or Gender Reassignment Surgeries to treat Gender Dysphoria before or during their course of treatment at the Clinic, who are under 14 years old, between 14-17 years old and over 17 years old, each calendar year from 2010 to the present.

30. All Documents which You have reviewed that reflect clinical guidelines for the use of hormone-replacement therapy to treat gender dysphoria, including children or adolescents diagnosed with Gender Dysphoria.

31. All Documents which You have reviewed regarding the clinical benefits of the use of hormone-replacement therapy to treat Gender Dysphoria, including children or adolescents diagnosed with Gender Dysphoria.

32. All Documents which You have reviewed that reflect clinical guidelines for the use of surgical intervention to treat patients diagnosed with Gender Dysphoria, including children or adolescents diagnosed with Gender Dysphoria.

33. All Documents which You have reviewed regarding the clinical benefits of the use of surgical intervention to treat Gender Dysphoria, including children or adolescents diagnosed with Gender Dysphoria.

34. All statements You have written recommending a course of treatment or in support of a request for authorization for hormone therapy or gender affirming procedures to treat Gender Dysphoria, from January 1, 2010 to the present, with the patient names and identifying information redacted.

35. The publication “Informed Consent for Transgender Patients” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

36. The publication “The Psychiatrist’s Role in Managing Transgender Youth” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

37. The publication “Ethical Concerns About the Emerging Treatment of Gender Dysphoria” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

38. The publication “Reflections of an Expert on the Legal Battles Over Prisoners with Gender Dysphoria” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

39. The publication “Real-Life Test Experience: Recommendations for Revisions to the Standards of Care of the World Professional Association for Transgender Health” identified

in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

40. The publication “The Newly Devised Standards of Care for Gender Identity Disorders” identified in Exhibit A to Your Declaration, and any materials You reviewed in preparation of that publication.

41. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that “[a] boy or a girl who claims or expresses interest in pursuing a transgender identity often does so based on stereotypical notions of femaleness and maleness that are based on constrictive notions of what men and women can be,” as set forth in Paragraph 18 of Your Declaration, and/or Your article titled “*Ethical Concerns About Emerging Treatment Paradigms for Gender Dysphoria.*”

42. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that “[a] young child’s – or even adolescent’s – understanding of this topic [i.e. the “array of adaptive possibilities for how to live life as a man or a woman”] is quite limited,” as set forth in Paragraph 18 of Your Declaration.

43. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that “gender dysphoria is a psychiatric rather than a medical diagnosis,” as set forth in Paragraph 22 of Your Declaration.

44. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that “cultural influences” have “a powerful effect” on the “incidence of child and adolescent gender dysphoria” as set forth in Paragraph 24 of Your Declaration.

45. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that “[i]n recent years, for adolescent patients, intensive involvement with online transgender communities or ‘friends’ is the rule rather than the exception,” and that this is “a potentially significant influence on the identity development of the patient,” as set forth in Paragraph 25 of Your Declaration.

46. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that the “sexual minority rights perspective ... paradigm has been successful in influencing public policy and the education of pediatricians, endocrinologists, public school officials, and many mental health professions,” as set forth in Paragraph 26 of Your Declaration.

47. All Documents that reflect or support the “difficulty running controlled experiments,” as set forth in Paragraph 27 of Your Declaration.

48. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that the “large majority of children who present with gender dysphoria will desist from desiring a transgender identity by adulthood if left untreated,” as set forth in Paragraph 28 of Your Declaration.

49. All Documents that You have reviewed or authorized that reflect on the number, percentage or ratio of adolescents diagnosed with Gender Dysphoria that “desist from desiring a transgender identity by adulthood when left untreated.”

50. All Documents that reflect or support Your statement in Paragraph 31 of Your Declaration that “[You] and others have reported success in alleviating distress in this way for some patients, whether or not the patient’s sense of discomfort or incongruence with his or her natal sex entirely disappeared. Relieving accompanying psychological co-morbidities leaves the patient freer to consider the pros and cons of transition as he or she matures.”

51. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that the “many gender-nonconforming children and adolescents in recent years derive from minority and vulnerable groups who have reasons to feel isolated and have an uncomfortable sense of self. A trans identity may be a hopeful attempt to redefine the self in a manner that increases their comfort and decreases their anxiety,” as set forth in Paragraph 33 of Your Declaration.

52. All Documents reflecting the “anecdotal reports” and “anecdotal evidence” that “psychotherapy can enable a return to male identification for genetically male boys, adolescents,

and men, or return female identification for genetically female girls, adolescents and women,” as set forth in Paragraph 35 of Your Declaration.

53. All Documents, including articles, studies, research, data and evidence that You have reviewed regarding and/or supporting the use of the “affirmation therapy” or “gender affirmation” model of therapy (as described in Paragraph 38 of Your Declaration) for children and adolescents post-puberty.

54. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that the “in the case of young children, prompt and thorough affirmation of a transgender identity disregards the principles of child development and family dynamics, and is not supported by science,” as set forth in Paragraph 41 of Your Declaration.

55. All Documents that reflect Your opinion on affirmation of transgender identity in the case of adolescents who have been diagnosed with Gender Dysphoria.

56. All Documents that reflect or support Your opinion, upon which you base your opinion, and/or that You relied upon when rendering the opinions regarding WPATH’s Standards of Care set forth in Paragraphs 43-47 of Your Declaration.

57. All Documents and Communications from 2001-2002 regarding the reasons You resigned Your membership to the Harry Benjamin International Gender Dysphoria Association / WPATH.

58. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that “WPATH has fully adopted some mix of the medical and civil rights paradigms” as set forth in Paragraph 48 of Your Declaration.

59. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that “[i]t is important to WPATH that the person has gender dysphoria; the pathway to the development of this state is not,” as set forth in Paragraph 48 of Your Declaration.

60. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that WPATH “does not welcome skepticism” as set forth in Paragraph 49 of Your Declaration.

61. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that “most current members of WPATH have little ongoing experience with the mentally ill” as set forth in Paragraph 51 of Your Declaration.

62. All Documents that reflect or support Your assertion that “[a]s a result of the downgrading of the role of the psychiatric assessment of patients, new ‘gender affirming’ clinics have arisen in many urban settings that quickly (sometimes within an hour’s time) recommend transition,” as set forth in Paragraph 51 of Your Declaration.

63. All Documents that reflect or support Your assertion that “[a] distinctive and critical characteristic of juvenile gender dysphoria is ... that in the large majority of patients, absent a substantial intervention such as social transition and/or hormone therapy, gender dysphoria does not persist through puberty,” as set forth in Paragraph 58 of Your Declaration.

64. All Documents that reflect or support Your assertion that “there is now data that suggests that a therapy that encourages social transition dramatically changes outcomes,” as set forth in Paragraph 61 of Your Declaration.

65. All “published statements that suggest that all children who express a desire for a transgender identity should be promptly supported in that claimed identity,” including those published by “PFLAG,” as referenced in Paragraph 68 of Your Declaration.

66. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering Your opinion, that “The knowledge-base concerning the causes and treatment of gender dysphoria has low scientific quality,” as set forth in Paragraph 69 of Your Declaration.

67. All Documents that reflect or support Your assertion, and/or that You relied upon when rendering your assertion, that “individuals with gender dysphoria are well known to commit suicide or otherwise suffer increased mortality before and after not only social transition, but also before and after SRS,” as set forth in Paragraph 74 of Your Declaration.

68. All Documents that reflect or support Your assertion that “The estimated suicide rate of trans adolescents is the same as teenagers who are in treatment for serious mental illness,” as set forth in Paragraph 76 of Your Declaration.

69. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that “claims that affirmation will reduce the risk of suicide for children are not based on science,” as set forth in Paragraph 76 of Your Declaration.

70. All Documents that reflect or support Your assertion that the studies that “either claimed positive mental health outcomes or that psychotherapy interventions had negative outcomes” have “been soundly criticized,” as set forth in Paragraph 81 of Your Declaration.

71. All Documents that reflect or support Your assertion that “There is already much evidence that the long-term outcome of SRS is not favorable for many gender dysphoric individuals,” as set forth in Paragraph 81 of Your Declaration.

72. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that adolescents who seek SRS “who appear quite certain about what they need to be happier cannot envision the unique challenges they will face, let alone master these developmental challenges,” as set forth in Paragraph 81 of Your Declaration.

73. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering Your opinion, that “trans male adolescents [who] have their breast removed... still will experience gender dysphoria because of the presence of their female genitalia,” and this “anatomic source of incongruence will continue to limit intimate dimension of their life possibilities,” as set forth in Paragraph 82 of Your Declaration.

74. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering Your opinion, that “Bilateral mastectomies should not be construed as a curative intervention for gender dysphoria,” but instead “only eradicates the displeasure of having female breasts,” as set forth in Paragraph 82 of Your Declaration.

75. The “multiple studies from different nations” referenced in Paragraph 83 of Your Declaration.

76. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering Your opinion, that affirmation therapy “could lead to additional sources of crippling emotional and psychological pain,” which is “too often not considered by advocates of social transition and not considered at all by the trans child,” as set forth in Paragraph 84 of Your Declaration.

77. All Documents that reflect or support Your assertion that “it is well known that many effects of cross-sex hormones cannot be reversed should the patient later regret his transition,” as set forth in Paragraph 88 of Your Declaration.

78. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering Your opinion, that “In adulthood, the friendships of transgender individuals tend to be confined to other transgender individuals (often ‘virtual’ friends known only online) and a generally more limited set of others,” as set forth in Paragraph 92 of Your Declaration.

79. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that “individuals often pin excessive hope in transition, believing that transition will solve what are in fact ordinary social stresses associated with maturation, or mental health co-morbidities,” as set forth in Paragraph 97 of Your Declaration.

80. All Documents that reflect or support Your opinion, and/or that You relied upon when rendering your opinion, that “transition can result in deflection from mastering personal challenges at the appropriate time, or addressing conditions that require treatment,” as set forth in Paragraph 97 of Your Declaration.

81. All Documents regarding Your observation as referenced in Paragraph 101 of Your Declaration, of the “many instances of individuals who claimed a transgender identity for a time, but ultimately changed their minds and reclaimed the gender identity congruent with their sex,” including but not limited to Documents sufficient to identify how often this occurred for adolescent and young adult patients at “the gender clinic which [You] founded in 1974 and to this day, in a different location, continue to co-direct.”

82. All Documents regarding or expressing Your opinion on whether Gender Reassignment Surgeries can be effective in treating Gender Dysphoria for transgender people under the age of 21, from January 1, 2007 to the present.

83. All Documents regarding or expressing Your opinions or recommendations regarding health benefit coverage exclusions for treatment of Gender Dysphoria, whether in a commercial or non-commercial context, from January 1, 2007 to the present.

84. All Documents regarding or expressing Your opinions or recommendations regarding health benefit coverage exclusions for gender-affirming surgery for treating Gender Dysphoria, whether in a commercial or non-commercial context, from January 1, 2007 to the present.

**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 and through 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.

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

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION TO
QUASH TWO SUBPOENAS**

This matter is before the Court on Defendant Jami Snyder, Director of the Arizona Health Care Cost Containment System's Motion to Quash Two Subpoenas, and good cause appearing therefore,

IT IS HEREBY ORDERED granting the Motion to Quash Two Subpoenas. Plaintiffs' subpoenas to Dr. Stephen Levine and Dr. Michael Laidlaw are hereby quashed.